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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 304

RIN 3206–AF37

Expert and Consultant Appointments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting regulations for the employment and pay of persons appointed under the expert and consultant authority. The Technical and Miscellaneous Civil Service Amendments Act of 1992 requires OPM to prescribe such regulations and to ensure agency compliance.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT:

Employment and reporting requirements—Tracy E. Spencer or Christina Gonzales, (202) 606–0830, or fax (202) 606–2329;

Pay and leave administration—Frank Derby, (202) 606–1413, or fax (202) 606–0824.

SUPPLEMENTARY INFORMATION: A longstanding law, 5 U.S.C. 3109, authorizes agencies to make excepted appointments of qualified persons to perform expert or consultant work that is temporary (not to exceed 1 year) or intermittent. In 1991, the General Accounting Office (GAO) reviewed expert and consultant appointments made under section 3109 by nine installations during a 30-month period. GAO determined that almost one-third of those appointments were improper and recommended that Congress amend 5 U.S.C. 3109 to authorize OPM to regulate the employment of experts and consultants.

Section 2(8) of Pub. L. 102–378, October 2, 1992, requires OPM to regulate appointments under 5 U.S.C. 3109 and to collect data on pay and days worked. OPM issued proposed regulations to implement that requirement on December 29, 1994 (59 FR 67232). We received comments on those regulations from nine Federal agencies and one private firm.

Comments on Coverage

One agency suggested that the regulations use an alternative term for "consultant" to distinguish individuals who receive Federal civil service appointments from those serving under contracts for consulting services. We did not adopt that suggestion because the terms "expert" and "consultant," are contained in the law.

One agency asked whether the regulations cover appointments of advisory group members. The regulations cover all appointments made under 5 U.S.C. 3109, including those to advisory groups. Another agency asked how the regulations will affect current appointments of experts and consultants. Experts and consultants appointed without time limit will become subject to the new regulations immediately on the effective date. Those already appointed with time limits will become subject to the regulations upon expiration of their current appointment. We do not anticipate that the regulations will necessitate changes in employment conditions because the requirements either repeat or liberalize those contained in previous instructions and determinations issued by OPM and GAO.

Comments on Appointments and Reappointments (Section 304.103)

The law requires that experts and consultants be appointed on a temporary or intermittent basis. One agency suggested that the regulations should permit experts and consultants who work on a strictly intermittent basis to be appointed for periods longer than 1 year or without time limit. That has been done.

All other experts and consultants must be employed under temporary appointments. The proposed regulations included two options for limiting length of temporary service: By time (Option 1) or by cumulative earnings (Option 2).

Several agencies suggested that Option 1 should include the same flexibilities for extension or reappointment that are available for other temporary Federal appointments. We have adopted suggestions to permit reappointment to demonstrably different duties and to provide for OPM approval of exceptions to time limits.

Several agencies asked whether an individual's maximum lifetime earnings limit under Option 2 would increase to reflect increases in basic pay rates. One agency asked whether an individual who had previously exhausted his/her lifetime limit could be reappointed following such an increase. The final regulations permit, but do not require, agencies to raise an appointee's lifetime earnings limit to reflect statutory pay increases.

One agency suggested that OPM provide examples of situations in which Option 1 or Option 2 would be appropriate. We did not adopt that suggestion because we believe that each agency can best make that determination based on first-hand knowledge of its own work. Another agency suggested that the determination be required prior to any reappointment, rather than upon initial appointment, to reduce documentation requirements for appointments that are never renewed. We have adopted that suggestion although, in practice, we expect that many appointees will want to know the possibility for reappointment when deciding whether to accept the agency's initial offer.

Comments on Pay and Leave Administration (Sections 304.104 through 304.106)

The regulation stipulates that experts and consultants are not automatically entitled to pay rate adjustments at the time of general pay increases under 5 U.S.C. 5303 unless provided for in the appointment document. (See 5 CFR 304.106(a).) One agency suggested that entitlement to receive those pay rate adjustments be at the discretion of agency managers. That comment seems to be based on a misunderstanding. The regulations do not impair any agency's ability to make ad hoc adjustments in expert or consultant pay under its administrative pay setting authority. The provision in question simply states that experts and consultants have no entitlement to pay adjustments equal to those under 5 U.S.C. 5303, unless the agency has chosen to convey such entitlement in the appointing document. In the absence of a documented provision for such pay adjustments, they are at the employing agency's discretion. We have revised § 304.106(a) to make clear that agencies have discretionary authority to adjust the pay of experts and consultants.

One agency commented on the necessity for the use of an updated service computation date (SCD) for intermittent experts and consultants in the preparation of reports required under section 304.108. The concern was a need for the continuous updating of SCDs for intermittents. However, OPM does not require continuous updating of SCDs for intermittent employees. Agencies are required to update those SCDs if the employee leaves the agency (transfer, separation, retirement, etc.) or changes to a non-intermittent work schedule.

One consultants' organization commented that there should be no provision for overtime for experts and consultants. Entitlement to overtime pay and other premium pay is a matter of law, if applicable eligibility requirements are met. That organization also suggested that agencies engage in a pre-screening process whereby available experts and consultants could be listed by subject expertise and fee schedule. Agencies are free to do so based upon foreseeable needs and funds available.

One agency asked whether experts and consultants who are covered under the Fair Labor Standards Act (FLSA) overtime provisions are subject to the special FLSA rules applicable to General Schedule employees under title 5, United States Code, and OPM regulations. Those experts and consultants are subject to OPM's regulations on FLSA overtime pay. (See section 4(f) of the Fair Labor Standards Act of 1938, as amended.) To clarify this, we have added a reference to OPM's FLSA regulations (part 551) in section 304.106(c).

One agency recommended that § 304.105 be revised to make clear how daily and biweekly pay limits are to be computed in cases where an agency has authority to pay an expert or consultant above the GS–15, step 10, limitation. Since these regulations are limited to implementation of 5 U.S.C. 3109, we have not included rules on implementing a pay limit under other statutory provisions. However, all Federal employees covered under 5 U.S.C. 5504 would be subject to the rules therein for the computation of hourly, daily and biweekly rates of pay.

An agency asked how pay would be administered for experts and consultants who are paid on a daily basis in the event that they are assigned to established regular tours of duty (i.e., not intermittent) and who therefore have an entitlement to annual and sick leave. Since these employees have scheduled tours, they are accountable for their scheduled work hours by performing work or taking annual leave, sick leave, leave without pay, compensatory time, etc. Accordingly, OPM believes that such employees should be compensated on an hourly basis rather than on a daily basis.

We are considering adding a provision to these regulations that would establish a clear requirement that any expert or consultant with an established regular tour of duty must be paid on an hourly basis. However, we are interested in agency comments regarding such a requirement before proceeding with a regulatory change. Therefore, we invite agency representatives to provide comments by calling the Compensation Administration Division at (202) 606–2858 or by writing to Donald J. Winstead, Assistant Director for Compensation Policy, Office of Personnel Management, Room 6H31, 1900 E Street, NW., Washington, DC 20415.

Comments on Reporting and Compliance Requirements (Sections 304.107 and 304.108)

As revised, 5 U.S.C. 3109 requires agencies to report annually on their use of *paid* experts and consultants and to provide the controls and oversight necessary to ensure proper use of the appointing authority. We have adopted an agency's suggestion to clarify that the pay to be reported does not include reimbursement for travel and related expenses. We did not adopt a suggestion to delete requirements that agencies conduct appropriate training and oversight to ensure proper use of the appointing authority because Congress intended these elements to be part of agencies' compliance programs. We have, however, reworded the regulation to clarify that the specific procedures for meeting these requirements are up to each agency.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal Government employment practices.

List of Subjects in 5 CFR Part 304

Administrative practice and procedure, Government employees.

Office of Personnel Management,

James B. King,

Director.

Accordingly, OPM is adding part 304 to title 5, Code of Federal Regulations, as follows:

PART 304—EXPERT AND CONSULTANT APPOINTMENTS

Sec.

304.101 Coverage.
304.102 Definitions.
304.103 Authority.
304.104 Determining rate of pay.
304.105 Daily and biweekly basic pay limitations.
304.106 Pay and leave administration.
304.107 Reports.
304.108 Compliance.

Authority: 5 U.S.C. 3109.

§ 304.101 Coverage.

These regulations apply to the appointment of experts and consultants as Federal employees under 5 U.S.C. 3109. They do not apply to the appointments of experts and consultants under other employment authorities or to the procurement of services by contracts under the procurement laws.

§ 304.102 Definitions.

For purposes of this part:

(a) An *agency* is an executive department, a military department, or an independent agency.

(b) A *consultant* is a person who can provide valuable and pertinent advice generally drawn from a high degree of broad administrative, professional, or technical knowledge or experience. When an agency requires public advisory participation, a consultant also may be a person who is affected by a particular program and can provide useful views from personal experience.

(c) A *consultant position* is one that requires providing advice, views, opinions, alternatives, or recommendations on a temporary and/or intermittent basis on issues, problems, or questions presented by a Federal official.

(d) An *expert* is a person who is specially qualified by education and experience to perform difficult and challenging tasks in a particular field beyond the usual range of achievement of competent persons in that field. An expert is regarded by other persons in the field as an authority or practitioner of unusual competence and skill in a professional, scientific, technical or other activity.

(e) An *expert position* is one that requires the services of a specialist with skills superior to those of others in the same profession, occupation, or activity to perform work on a temporary and/or

intermittent basis assigned by a Federal official. For example, a microbial contamination specialist may apply new test methods to identify bacteria on products, a computer scientist may adapt advanced methods to develop a complex software system, or a plate maker may engrave a novel design.

(f) *Intemittent employment,* as defined in part 340, subpart D, of this chapter, means employment without a regularly scheduled tour of duty.

(g) *Temporary employment* means employment not to exceed 1 year. An expert or consultant serving under a temporary appointment may have a full-time, part-time, seasonal, or intermittent work schedule.

(h) Employment *without compensation* means unpaid service that is provided at the agency's request and is to perform duties that are unclassified. It is not volunteer service.

§ 304.103 Authority.

(a) *Basic authority.* (1) When authorized by an appropriation or other statute to use 5 U.S.C. 3109, an agency may appoint a qualified expert or consultant to an expert or consultant position that requires only intermittent and/or temporary employment. Such an appointment is excepted from competitive examination, position classification, and the General Schedule pay rates.

(2) An expert or consultant who works on a strictly intermittent basis may be appointed under this authority without time limit or for any period determined by the agency. All other experts and consultants must receive temporary appointments. Temporary experts and consultants may be reappointed in the same agency only as provided in paragraph (c) of this section.

(b) *Inappropriate use.* An agency must not use 5 U.S.C. 3109 to appoint an expert or consultant:

(1) To a position requiring Presidential appointment. However, subject to the conditions of this part, an agency may appoint an individual awaiting final action on a Presidential appointment to an expert or consultant position.

(2) To a Senior Executive Service position (including an FBI or DEA Senior Executive Service position).

(3) To perform managerial or supervisory work (although an expert may act as team leader or director of the specific project for which he/she is hired), to make final decisions on substantive policies, or to otherwise function in the agency chain of command (e.g., to approve financial transactions, personnel actions, etc.).

(4) To do work performed by the agency's regular employees.

(5) To fill in during staff shortages.

(6) Solely in anticipation of giving that individual a career appointment. However, subject to the conditions of this part, an agency may appoint an individual to an expert or consultant position pending Schedule C appointment or noncareer appointment in the Senior Executive Service.

(c) *Reappointment.* An agency may reemploy an expert or consultant to perform demonstrably different duties without regard to the length of that individual's previous expert or consultant service with the agency. Reappointment to perform substantially the same duties is subject to the following limits:

(1) An agency may employ an expert or consultant who works on a full-time basis for a maximum of 2 years—i.e., on an initial appointment not to exceed 1 year and a reappointment not to exceed 1 additional year.

(2) An agency may reappoint an expert or consultant who works on a part-time or intermittent schedule in accordance with one of the following options. The agency must determine which option it will use in advance of any reappointment and must base its determination on objective criteria (e.g., nature of duties, pay level, whether or not work is regularly scheduled). Option 1 must be applied to reappointments of experts and consultants appointed without compensation.

(i) *Option 1—Annual service.* An agency may reappoint an expert or consultant, with no limit on the number of reappointments, as long as the individual is paid for no more than 6 months (130 days or 1,040 hours) of work, or works for no more than that amount of time without compensation, in a service year. (The service year is the calendar year that begins on the date of the individual's initial appointment in the agency.) An expert or consultant who exceeds this limit in his/her first service year may be reappointed for 1 additional year. An expert or consultant who exceeds the limit during any subsequent service year may not be reappointed thereafter.

(ii) *Option 2—Cumulative earnings.* Each expert or consultant will have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of section 304.105. The agency may adjust this limit to reflect statutory increases in basic pay rates. The agency may reappoint an expert or consultant until his/her total earnings from expert or consultant employment with the agency reach the lifetime maximum, as determined by using the applicable maximum salary rate. At that point, the employment must be terminated.

(3) OPM may authorize reappointment of an expert or consultant as an exception to the limits in the section when necessitated by unforeseen and unusual circumstances.

§ 304.104 Determining rate of pay.

(a) The rate of basic pay for experts and consultants is set by administrative action. The head of an agency, or his or her designee, must determine the appropriate rate of basic pay on an hourly or daily basis, subject to the limitations described in section 304.105.

(b) The head of an agency, or his or her designee, shall consider the following factors in setting the initial rate of basic pay for an expert or consultant:

(1) The level and difficulty of the work to be performed;

(2) The qualifications of the expert or consultant;

(3) The pay rates of comparable individuals performing similar work in Federal or non-Federal sectors; and

(4) The availability of qualified candidates.

(c) An expert or consultant appointed under 5 U.S.C. 3109 may be employed without pay, provided the individual agrees in advance in writing to waive any claim for compensation for those services.

§ 304.105 Daily and biweekly basic pay limitations.

(a) Unless specifically authorized by an appropriation or other statute, agencies subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, may not pay for any 1 day an aggregate amount of pay (including basic pay, locality pay under subpart F of part 531 of this chapter, and premium pay under subpart A of part 550 of this chapter) that exceeds the daily equivalent of the highest rate payable under 5 U.S.C. 5332—that is, the daily rate for GS–15, step 10, under the General Schedule (excluding locality pay or any other additional pay). The daily rate is computed by dividing the annual GS–15, step 10, rate by 2,087 hours to find the hourly rate of pay and by multiplying the hourly rate of pay by 8 hours.

(b) Unless specifically authorized by an appropriation or other statute, an expert or consultant shall not be paid for any biweekly pay period an aggregate amount of pay (including basic pay, locality pay under subpart F of part 531 of this chapter, and premium pay under subpart A of part 550 of this chapter) in excess of the biweekly rate of pay for GS–15, step 10, under the General Schedule (excluding locality pay or any other additional pay). The biweekly rate is computed by dividing the annual GS–15, step 10, rate by 2,087 hours to find the hourly rate of pay and by multiplying the hourly rate of pay by 80 hours.

§ 304.106 Pay and leave administration.

(a) The employing agency has the authority to adjust the pay of experts and consultants after initial appointment and to establish appropriate policies governing the amount and timing of any such adjustments, subject to the limitations of § 304.105. In addition to the factors listed in § 304.104(b), the agency may consider factors such as job performance, contributions to agency mission, and the general pay increases granted to other Federal employees. Experts and consultants are not entitled to receive automatic adjustments in their rates of basic pay at the time of general pay increases under 5 U.S.C. 5303 unless specifically provided for in the official appointing document. In the absence of such automatic entitlement, any pay adjustments are at the agency's discretion.

(b) Experts and consultants paid on a daily rate basis are not entitled to overtime pay under section 5542 of title 5, United States Code. Otherwise, experts and consultants qualify for premium pay under subchapter V of chapter 55 of title 5, United States Code, if they meet the applicable eligibility requirements (including the requirement that an employee have a regularly scheduled tour of duty, where applicable).

(c) Experts and consultants may be entitled to overtime pay under the Fair Labor Standards Act if they are nonexempt under OPM regulations implementing that Act for Federal employees. (See 5 CFR part 551).

(d) An expert or consultant may be paid for service on an intermittent basis in more than one expert or consultant position, provided the pay is not received for the same period of time (5 U.S.C. 5533(d)(1)).

(e) Experts and consultants are subject to the provisions of 5 U.S.C. 8344 and 8468 on reduction of basic pay by the amount of annuity received.

(f) Experts and consultants are subject to the provisions of 5 U.S.C. 5532 on reduction of retired military pay.

(g) Experts and consultants with a regularly scheduled tour of duty (i.e., not intermittent) are entitled to sick and annual leave in accordance with chapter 63 of title 5, United States Code, and to pay for any holiday occurring on a workday on which they perform no work, provided that workday is part of the basic workweek. Those employed on an intermittent basis do not earn leave and are not entitled to paid holidays.

§ 304.107 Reports.

As required by 5 U.S.C. 3109(e), each agency shall report to the Office of Personnel Management on an annual basis:

(a) The number of days the agency employed each paid expert or consultant; and

(b) The total amount the agency paid each expert or consultant so employed. (Do not include payments for travel and related expenses.)

§ 304.108 Compliance.

(a) Each agency using 5 U.S.C. 3109 must establish and maintain a system of controls and oversight necessary to assure compliance with 5 U.S.C. 3109 and these regulations. The system must include—

(1) Appropriate training and information procedures to ensure that officials and employees using the authority understand the statutory and regulatory requirements; and

(2) Appropriate provision for review of expert and consultant appointments.

(b) OPM will, as necessary—

(1) Review agency employment of experts and consultants and agency controls and oversight to determine compliance; and

(2) Issue instructions and guidance to agencies on employing experts and consultants and on reporting procedures.

[FR Doc. 95–21573 Filed 8–31–95; 8:45 am]

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5 CFR Parts 353, 870, and 890

RIN 3206–AG02

Restoration to Duty From Uniformed Service or Compensable Injury

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for written comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations on the restoration rights of Federal employees who leave their employment to perform duty with the uniformed services. These regulations implement the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, which was enacted into law on October 13, 1994. The new law revises and restructures the Veteran's Reemployment Rights law (codified in chapter 43 of title 38, United States Code), which governs the restoration rights of employees who perform military duty. USERRA clarifies, expands, and strengthens the rights and benefits of applicants and employees, alters the appeal procedures available to Federal employees, and, for the first time, provides Federal employees Department of Labor assistance in processing claims. USERRA also requires OPM to place certain returning employees when their former agencies determine that it is "impossible or unreasonable" to reemploy them.

Although the sections have been renumbered, and in some cases renamed, there is no substantive change in the regulations governing the restoration rights of employees who sustain compensable injuries. However, in § 353.301(a), the word "may" has been changed to "must" to make clear that an agency must place an employee who fully recovers from a compensable injury within 1 year, even if it means placing the person in a different location. Also, § 353.301(d) makes clear that partially recovered employees are entitled to restoration rights only in the local commuting area, not agencywide. (This provision was inadvertently omitted from the final regulations published in the **Federal Register** on January 13, 1995, that incorporated into the regulations various staffing provisions previously found only in the Federal Personnel Manual.)

These interim regulations also implement provisions that expand on the coverage of the affected employees under the Federal Employees' Group Life Insurance (FEGLI) Program and the Federal Employees Health Benefits (FEHB) Program. Both the FEGLI and the FEHB regulations are amended to show that employees who separate to perform military service under the provisions of this Act are considered to be employees in nonpay status. The FEHB regulations are further amended to show that FEHB coverage may continue for up to 18 months after the employee enters military service.

DATES: Effective: September 1, 1995. Comments must be received on or before November 30, 1995.

ADDRESS: Send or deliver comments to: Leonard R. Klein, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: For part 353: Raleigh M. Neville, (202) 606–0830. For parts 870 and 890: Margaret Sears (202) 606–0004.

SUPPLEMENTARY INFORMATION: The job rights of employees who leave their employment to perform military duty have been protected under the Veterans' Reemployment Rights Act (chapter 43 of title 38, United States Code) since 1940. However, this law had become a confusing patchwork of statutory amendments, which, over the years, had been interpreted by over one thousand different (and sometimes conflicting) court decisions. It became increasingly difficult for employers and employees to understand their respective rights and responsibilities.

Thus, on October 13, 1994, President Clinton signed into law the new Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Pub. L. 103–353. The new law completely rewrites the existing provisions of title 38, United States Code, governing the rights of employees who perform military duty and makes many substantive changes that will affect employees, agencies, and OPM.

Among the important changes made by the new law are the following:

—Coverage is broader. USERRA covers persons who perform duty in the "uniformed services." (Under the old law, coverage was limited to the "armed forces.") It also covers all employees except those serving in positions where there is "no reasonable expectation that employment will continue indefinitely or for a reasonable period." (The old law specifically excluded temporary service.) The interim regulations provide that all employees are covered. However, an employee on a time-limited appointment who enters uniformed service serves out any remaining unexpired portion of the appointment upon his or her return.

—Intelligence agencies are treated differently under the law. Although employees in these agencies (CIA, FBI, NSA, etc.) have substantially the same rights as other Federal employees under the law, they are not subject to OPM's regulations and do not have the same appeal rights as other employees.

—There is a 5-year cumulative total on uniformed service. For the first time, the law makes clear that it is intended to protect "noncareer" service and establishes a 5-year cumulative total on uniformed service. (Under the interpretations applied to the old law, a Federal employee could be absent on military duty for up to 4 years at a time and there was no cumulative limit.) However, there are important exceptions to the 5-year limit. These include initial enlistments lasting more than 5 years, periodic training duty, and involuntary active duty extensions and recalls. The new law expressly provides that an employee's job protections do not depend on the timing, frequency, or duration of uniformed service.

—Enhanced protections for disabled veterans. Agencies must make reasonable efforts to accommodate the disability. Servicemembers convalescing from injuries received during service now have up to 2 years to return to their jobs (as opposed to 1 year under the old law).

—New skills training required for some veterans. As under the old law, USERRA provides that returning servicemembers be reemployed in the job they would have attained had they not been absent for military service (the longstanding "escalator" principle). However, the new law also requires that reasonable efforts be made (such as training or retraining) that would enable returning servicemembers to refresh or upgrade their skills so that they might qualify for reemployment.

—The position to which the person has restoration rights is now determined by how long the employee has been gone. If the period of military duty is less than 91 days, the employee is entitled to the position he of she would have attained had the absence not occurred. If the military duty lasts more than 90 days, the person's entitlement is essentially the same except that he or she may be placed in an equivalent position. (Under the old law, restoration rights were based largely on the kind of military duty performed, for example, active duty, active duty for training, inactive duty, etc.)

—Similarly, the length of time an employee has to report back for duty following uniformed service is now determined by how long he or she has been gone. If the absence was for less than 31 days, the employee must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking account safe travel home plus an 8 hour rest period. For service of more than 30 days but less than 181 days, the employee must submit an application for restoration within 14 days of release from service. For service of more than 180 days, an application for restoration must be submitted within 90 days of release from service. Failure to return within these time limits does not mean that restoration rights are forfeited; it only means the agency can take whatever disciplinary action it would normally take for unexcused absences. (Under the old law, the length of time an employee had to apply for restoration was determined by the type of military duty performed.)

—Notice requirement. For the first time, the law requires that servicemembers provide advance written or verbal notice to their agencies for all military service. (Under the old law, notice was required only for training duty.)

—Appeal rights have changed. Federal employees and applicants with complaints under the new law may now seek assistance from the Department of Labor's Veterans' Employment and Training Service (VETS). VETS will attempt to informally resolve any disputes with the agency over military duty. If informal resolution fails, Labor will refer the case to the Office of the Special Counsel which is authorized to represent the employee before the Merit Systems Protection Board. Alternatively, an employee may still elect to appeal directly to MSPB and by-pass Labor and the Special Counsel.

—Special placement provisions are mandated for certain returning employees when their former agencies are unable to reemploy them. The new law requires OPM to place in the executive branch the following categories of employees when their former agencies determine that it is "impossible or unreasonable" to reemploy them:

(1) Executive branch employees whose agencies no longer exist and the functions have not been transferred, or it is otherwise impossible or unreasonable to reemploy the person;

(2) Legislative and judicial branch employees;

(3) National Guard technicians; and

(4) Employees of the intelligence agencies.

The interim regulations specify how this will be carried out.

—Status while absent. While on duty with the uniformed services, an employee is considered to be on a leave of absence (leave without pay) unless the employee elects to use other leave.

—Nondiscrimination. USERRA broadens the nondiscrimination provisions of the old law and expressly forbids any discrimination in employment or proportion because of uniformed service.

—Enhanced health and pension plan coverage. Employees performing military duty of more than 30 days may elect to continue their health benefit coverage for up to 18 months. Also under USERRA, to receive retirement credit for military service, employees under the Federal Employees Retirement System (FERS) are required to pay only what they would have paid had they not gone on military duty.

USERRA also expands retirement coverage to include all full-time National Guard duty if that duty interrupts creditable civilian service and is followed by reemployment that occurs after August 1, 1990. (Only National Guard service performed for the U.S. was covered under the old law.)

Under 38 U.S.C. 4316, employee benefits, other than health benefits, continue for employees covered by this Act in the same way as they do for other employees who are on leave without pay. Employees who leave their jobs to enter the uniformed services are considered to be employees on leave without pay so long as they meet the requirements for reemployment under this Act. Under the Federal Employees' Group Life Insurance (FEGLI) Program, employees may continue their life insurance coverage for up to 12 months in nonpay status at no cost to the employee. Therefore, the interim regulations amend 5 CFR 870.502 to show that an employee who separates from Federal service to enter the uniformed services is considered to be an employee in nonpay status for so long as the employee remains eligible for benefits under 38 U.S.C. 4316. As a result, life insurance coverage continues for up to one year for employees who do not separate, but go on military furloughs (nonpay status). For those who actually separate from their Federal jobs to enter the uniformed services, life insurance coverage continues for up to 12 months or until a date that is 90 days after the service with the uniformed services ends, whichever is earlier.

Under 38 U.S.C. 4317, employees who are covered by an employers' group health plan and who enter the uniformed services may elect to continue their coverage for up to 18 months after the date the absence to serve in the uniformed services begins. If the service continues for more than 30 days, the employee can be charged up to 102 percent of the premium. The Federal Employees Health Benefits (FEHB) law provides for continued coverage for up to 12 months for employees in leave without pay status. FEHB regulations provide that these employees may pay their respective shares of the premium; however, an employee may choose to incur a debt and postpone payment until he or she returns to pay and duty status. The employing agency must pay the Government contribution on a current basis. Therefore, for the first 12-months, employees entitled to benefits under 38 U.S.C. 4317 are charged only the employee share of the premium.

The interim regulations amend §§ 890.303 and 890.304 to provide that the enrollment of an employee who enters on military furlough (nonpay status) may continue an additional 6 months after the coverage would otherwise stop due to the expiration of 365 days in nonpay status if the employee's eligibility for benefits under 38 U.S.C. 4317 continues. The enrollment of an employee who separates to enter the uniformed services may continue for up to 18 months if the employee's eligibility for benefits under 38 U.S.C. 4317 continues. (Eligibility for benefits under 38 U.S.C. 4317 ends the earlier of 18 months after the date the employee's absence due to service in the uniformed services began or 90 days after the service ends.) Employees on military furlough or in nonpay status to serve in the uniformed services on the date of enactment of Pub. L. 103–353, October 13, 1994, are also entitled to continued coverage under 38 U.S.C. 4317 for the balance of the 18-month period after their absence to enter the uniformed services began. An enrollment that had already terminated due to the expiration of 365 days in nonpay status may be reinstated for the balance of the 18-month period.

The interim regulations also amend 5 CFR 890.502(g) to provide that employees whose enrollment continues beyond 12 months in nonpay status because of their eligibility for benefits under 38 U.S.C. 4317 must pay 102 percent of the premium (the employee share plus the Government share, plus 2 percent of the total). In addition, the interim regulations amend the provision for waiving the employee share of the health benefits premium for employees who enter the uniformed services in support of Operations Desert Shield and/or Desert Storm by limiting its application to those who enter before the effective date of these interim regulations.

—Enhanced thrift savings plan coverage. The new law allows employees to make up contributions to the thrift savings plan missed because of military duty. Under the old law, employees who went on military duty were ineligible to make contributions to the thrift savings plan. (The Federal Retirement Thrift Investment Board is issuing regulations on this aspect of the law.)

—Effective date. The new law applies to restorations effected on or after December 12, 1994.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Specifically, the law which these regulations implement was enacted in October 1994 and became fully effective as of December 12, 1994.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities because it pertains only to Federal employees and agencies.

List of Subjects

5 CFR Part 353

Administrative practice and procedure, Government employees.

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management,

James B. King,

Director.

Accordingly, OPM is amending parts 353, 870, and 890 as follows:

1. Part 353 is revised to read as follows:

PART 353—RESTORATION TO DUTY FROM UNIFORMED SERVICE OR COMPENSABLE INJURY

Subpart A—General Provisions

Sec.

353.101 Scope.
353.102 Definitions.
353.103 Persons covered.
353.104 Notification of rights and obligations.
353.105 Maintenance of records.
353.106 Personnel actions during employee's absence.
353.107 Service credit upon reemployment.
353.108 Effect of performance and conduct on restoration rights.
353.109 Transfer of function to another agency.
353.110 OPM placement assistance.

Subpart B—Uniformed Service

353.201 Introduction.
353.202 Discrimination and acts of reprisal prohibited.
353.203 Length of service.
353.204 Notice to employer.
353.205 Return to duty and application for reemployment.
353.206 Documentation upon return.
353.207 Position to which restored.
353.208 Use of paid leave during uniformed service.
353.209 Retention protections.
353.210 Department of Labor assistance to applicants and employees.
353.211 Appeal rights.

Subpart C—Compensable Injury

353.301 Restoration rights.
353.302 Retention protections.
353.303 Restoration rights of TAPER employees.
353.304 Appeals to the Merit Systems Protection Board.

Authority: 38 U.S.C. 4301 et. seq., and 5 U.S.C. 8151.

Subpart A—General Provisions

§ 353.101 Scope.

The rights and obligations of employees and agencies in connection with leaves of absence or restoration to duty following uniformed service under 38 U.S.C. 4301 et. seq., and restoration under 5 U.S.C. 8151 for employees who sustain compensable injuries, are subject to the provisions of this part. Subpart A covers those provisions that are common to both of the above groups of employees. Subpart B deals with provisions that apply just to uniformed service and subpart C covers provisions that pertain just to injured employees.

§ 353.102 Definitions.

In this part:

Agency means.

(1) With respect to restoration following a compensable injury, any department, independent establishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and

(2) With respect to uniformed service, an executive agency as defined in 5 U.S.C. 105 (other than an intelligence agency referred to in 5 U.S.C. 2302(a)(2)(C)(ii), including the U.S. Postal Service and Postal Rate Commission, a nonappropriated fund instrumentality of the United States, or a military department as defined in 5 U.S.C. 102. In the case of a National Guard technician employed under 32 U.S.C. 709, the employing agency is the adjutant general of the State in which the technician is employed.

Fully recovered means compensation payments have been terminated on the basis that the employee is able to perform all the duties of the position he or she left or an equivalent one.

Injury means a compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter 1, and includes, in addition to accidental injury, a disease proximately caused by the employment.

Leave of absence means military leave, annual leave, without pay (LWOP), furlough, continuation of pay, or any combination of these.

Military leave means paid leave provided to Reservists and members of the National Guard under 5 U.S.C. 6323.

Notice means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an agency by the employee performing the service or by the uniformed service in which the service is to be performed.

Partially recovered means an injured employee, though not ready to resume the full range of his or her regular duties, has recovered sufficiently to return to part-time or light duty or to another position with less demanding physical requirements. Ordinarily, it is expected that a partially recovered employee will fully recover eventually.

Physically disqualified means that:

(1)(i) For medical reasons the employee is unable to perform the duties of the position formerly held or an equivalent one, or

(ii) There is a medical reason to restrict the individual from some or all essential duties because of possible incapacitation (for example, a seizure) or because of risk of health impairment (such as further exposure to a toxic substance for an individual who has already shown the effects of such exposure).

(2) The condition is considered permanent with little likelihood for improvement or recovery.

Reasonable efforts in the case of actions required by an agency for a person returning from uniformed service means actions, including training, that do not place an undue hardship on the agency.

Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which a person is absent from employment for the purpose of examination to determine fitness to perform such duty.

Status means the particular attributes of a specific position. This includes the rank or responsibility of the position, its duties, working conditions, pay, tenure, and seniority.

Undue hardship means actions taken by an agency requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of actions needed under this part;

(2) The overall financial resources of the facility involved in taking the action; the number of persons employed at the facility; the effect on expenses and resources, or the impact otherwise of the action on the operation of the facility; and

(3) The overall size of the agency with respect to the number of employees, the number, type, and location of its facilities and type of operations, including composition, structure, and functions of the work force.

Uniformed services means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the Commissioned Corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

§ 353.103 Persons covered.

(a) The provisions of this part pertaining to service in the uniformed services cover each agency employee who enters into such service. However, an employee serving under a time-limited appointment completes any unexpired portion of his or her appointment upon return from uniformed service.

(b) The provisions of this part concerning employee injury cover a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentally wholly owned by the United States, who was separated or furloughed from an appointment without time limitation, or from a temporary appointment pending establishment of a register (TAPER) as a result of a compensable injury; but do not include—

(1) A commissioned officer of the Regular Corps of the Public Health Service;

(2) A commissioned officer of the Reserve Corps of the Public Health Service on active duty; or

(3) A commissioned officer of the National Oceanic and Atmospheric Administration.

§ 353.104 Notification of rights and obligations.

When an agency separates, grants a leave of absence, restores or fails to restore an employee because of uniformed service or compensable injury, it shall notify the employee of his or her rights, obligations, and benefits relating to Government employment, including any appeal and grievance rights. However, regardless of notification, an employee is still required to exercise due diligence in ascertaining his or her rights, and to seek reemployment within the time limits provided by chapter 43 of title 38, United States Code, for restoration after uniformed service, or as soon as he or she is able after a compensable injury.

§ 353.105 Maintenance of records.

Each agency shall identify the position vacated by an employee who is injured or leaves to enter uniformed service. It shall also maintain the necessary records to ensure that all such employees are preserved the rights and benefits granted by law and this part.

§ 353.106 Personnel actions during employee's absence.

(a) An employee absent because of service in the uniformed services is to be carried on leave without pay unless the employee elects to use other leave or freely and knowingly provides written notice of intent not to return to a position of employment with the agency, in which case the employee can be separated. (**Note:** A separation under this provision affects only the employee's seniority while gone; it does not affect his or her restoration rights.)

(b) An employee absent because of compensable injury may be carried on leave without pay or separated unless the employee elects to use sick or annual leave.

(c) Agency promotion plans must provide a mechanism by which employees who are absent because of compensable injury or uniformed service can be considered for promotion.

§ 353.107 Service credit upon reemployment.

Upon reemployment, an employee absent because of uniformed service or compensable injury is generally entitled to be treated as though he or she had never left. This means that a person who is reemployed following uniformed service or full recovery from compensable injury receives credit for the entire period of the absence for purposes of rights and benefits based upon seniority and length of service, including within-grade increases, career tenure, completion of probation, leave rate accrual, and severance pay.

§ 353.108 Effect of performance and conduct on restoration rights.

The laws covered by this part do not permit an agency to circumvent the protections afforded by other laws to employees who face the involuntary loss of their positions. Thus, an employee may not be denied restoration rights because of poor performance or conduct that occurred prior to the employee's departure for compensable injury or uniformed service. However, separation for cause that is substantially unrelated to the injury or to the performance of uniformed service negates restoration rights. Additionally, if during the period of injury or uniformed service the employee's conduct is such that it would disqualify him or her for employment under OPM or agency regulations, restoration rights may be denied.

§ 353.109 Transfer of function to another agency.

If the function of an employee absent because of uniformed service or compensable injury is transferred to another agency, and if the employee would have been transferred with the function under part 351 of this chapter had he or she not been absent, the employee is entitled to be placed in a position in the gaining agency that is equivalent to the one he or she left. It shall also assume the obligation to restore the employee in accordance with law and this part.

§ 353.110 OPM placement assistance.

(a) *Employee returning from uniformed service.* (1) OPM will offer placement in the executive branch to the following categories of employees upon notification by the agency and application by the employee: (Such notification should be sent to the Associate Director for Employment, OPM, 1900 E Street, NW., Washington, DC 20415.)

(i) Executive branch employees (other than an employee of an intelligence agency) when *OPM determines* that:

(A) their agencies no longer exist and the functions have not been transferred, or;

(B) it is otherwise impossible or unreasonable for their former agencies to place them;

(ii) Legislative and judicial branch employees when *their employers* determine that it is impossible or unreasonable to reemploy them;

(iii) National Guard technicians when *the Adjutant General of a State* determines that it is impossible or unreasonable to reemploy them; and

(iv) Employees of the intelligence agencies (defined in 5 U.S.C. 2302(a)(2)(C)(ii)) when *their agencies* determine that it is impossible or unreasonable to reemploy them.

(2) OPM will determine if a vacant position equivalent (in terms of pay, grade, and status) to the one time the individual left exists, for which the individual is qualified, in the commuting area in which he or she was employed immediately before entering the uniformed services. If such a vacancy exists, OPM will order the agency to place the individual. If no such position is available, the individual may elect to be placed in a lesser position in the commuting area, or OPM will attempt to place the individual in an equivalent position in another geographic location determined by OPM. If the individual declines an offer of equivalent employment, he or she has no further restoration rights.

(b) *Employee returning from compensable injury.* OPM will provide placement assistance to an employee with restoration rights in the executive, legislative, or judicial branches who cannot be placed in his or her former agency and who either has competitive status or is eligible to acquire it under 5 U.S.C. 3304(C). If the employee's agency is abolished and its functions are not transferred, or it is not possible for the employee to be restored in his or her former agency, OPM will provide placement assistance by enrolling the employee in OPM's Interagency Placement Program (or its successor) under part 330 of this chapter. This paragraph does not apply to an employee serving under a temporary appointment pending establishment of a register (TAPER).

Subpart B—Uniformed Service

§ 353.201 Introduction.

The Uniformed Services Employment and Reemployment Rights Act of 1994 revised and strengthened the existing Veterans' Reemployment Rights law, made the Department of Labor responsible for investigating employee complaints, required OPM to place certain returning employees in other agencies, established a separate restoration rights program for employees of the intelligence agencies, and altered the appeals rights process. The new law applies to persons exercising restoration rights on or after December 12, 1994.

§ 353.202 Discrimination and acts of reprisal prohibited.

A person who seeks or holds a position in the Executive branch may not be denied hiring, retention in employment, or any other incident or advantage of employment because of any application, membership, or service in the uniformed services. Furthermore, an agency may not take any reprisal against an employee for taking any action to enforce a protection, assist or participate in an investigation, or exercise any right provided for under chapter 43 of title 38, United States Code.

§ 353.203 Length of service.

(a) *Counting service after the effective date of USERRA (12/12/94).* To be entitled to restoration rights under this part, cumulative service in the uniformed services while employed by the Federal Government may not exceed 5 years. However, the 5-year period does not include any service—

(1) That is required beyond 5 years to complete an initial period of obligated service;

(2) During which the individual was unable to obtain orders releasing him or her from service in the uniformed services before expiration of the 5-year period, and such inability was through no fault of the individual;

(3) Performed as required pursuant to 10 U.S.C. 10147, under 32 U.S.C. 502(a) or 503, or to fulfill additional training requirements determined and certified in writing by the Secretary of the military department concerned to be necessary for professional development or for completion of skill training or retraining;

(4) Performed by a member of a uniformed service who is:

(i) Ordered to or retained on active duty under sections 12301(a), 12301(g), 12302, 12304, 12305, or 688 of title 10, United States Code, or under 14 U.S.C. 331, 332, 359, 360, 367, or 712;

(ii) Ordered to or retrained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary of the military department concerned, of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304;

(iv) Ordered to active duty in support, as determined by the Secretary of the military department concerned, of a critical mission or requirement of the uniformed services, or

(iv) Called into Federal service as a member of the National Guard under chapter 15 or under section 12406 of title 10, United States Code.

(b) *Counting service prior to the effective date of USERRA.* In determining the 5-year total that may not be exceeded for purposes of exercising restoration rights, service performed prior to December 12, 1994, is considered only to the extent that it would have counted under the previous law (the Veterans' Reemployment Rights statute). For example, the service of a National Guard technician who entered on an Active Guard Reserve (AGR) tour under section 502(f) of title 32, United States Code, was not counted toward the 4-year time limit under the previous statute because it was specifically considered active duty for training. However, title 32, section 502(f) AGR service is not exempt from the cumulative time limits allowed under USERRA and service after the effective date counts under USERRA rules. Thus, if a technician was on a 32 U.S.C. 502(f) AGR tour on October 13, 1994, (the date USERRA was signed into law), but exercised restoration rights after December 11, 1994, (the date USERRA became fully effective), AGR service prior to December 12 would not count in computing the 5-year total, but all service beginning with that date would count.

(c) *Nature of Reserve service and resolving conflicts.* An employee who is a member of the Reserve or National Guard has a dual obligation—to the military and to his or her employer. Given the nature of the employee's service obligation, some conflict with job demands is often unavoidable and a good-faith effort on the part of both the employee and the agency is needed to minimize conflict and resolve differences. Some accommodation may be necessary by both parties. Most Reserve component members are required, as a minimum, to participate in drills for 2 days each month and in 2 weeks of active duty for training per year. But some members are required to participate in longer or more frequent training tours. USERRA makes it clear that the timing, frequency, duration, and nature of the duty performed is not an issue so long as the employee gave proper notice, and did not exceed the time limits specified. However, to the extent that the employee has influence upon the timing, frequency, or duration of such training or duty, he or she is expected to use that influence to minimize the burden upon the agency. The employee is expected to provide the agency with as much advance notice as possible whenever military duty or training will interfere with civilian work. When a conflict arises between the Reserve duty and the legitimate needs of the employer, the agency may contact appropriate military authorities to express concern. Where the request would require the employee to be absent from work for an extended period, during times of acute need, or when, in light of previous leaves, the requested leave is cumulatively burdensome, the agency may contact the military commander of the employee's military unit to determine if the military duty could be rescheduled or performed by another member. If the military authorities determine that the military duty cannot be rescheduled or cancelled, the agency is required to permit the employee to perform his or her military duty.

(d) *Mobilization authority.* By law, members of the Selected Reserve (a component of the Ready Reserve), can be called up under a presidential order for purposes other than training for as long as 270 days. If the President declares a national emergency, the remainder of the Ready Reserve—the Individual Ready Reserve and the Inactive National Guard—may be called up. The Ready Reserve as a whole is subject to as much as 24 consecutive months of active duty in a national emergency declared by the President.

§ 353.204 Notice to employer.

To be entitled to restoration rights under this part, an employee (or an appropriate officer of the uniformed service in which service is to be performed) must give the employer advance written or verbal notice of the service except that no notice is required if it is precluded by military necessity or, under all relevant circumstances, the giving of notice is otherwise impossible or unreasonable.

§ 353.205 Return to duty and application for reemployment.

Periods allowed for return to duty are based on the length of time the person was performing service in the uniformed services, as follows:

(a) An employee whose uniformed service was for *less than 31 days*, or who was absent for the purpose of an examination to determine fitness for the uniformed services, is required to report back to work not later than the beginning of the first regularly scheduled work day on the first full calendar day following completion of the period of service and the expiration of 8 hours after a period allowing for the safe transportation of the employee from the place of service to the employee's residence, or as soon as possible after the expiration of the 8-hour period if reporting within the above period is impossible or unreasonable through no fault of the employee.

(b) If the service was for *more than 30 but less than 181 days*, the employee must submit an application for reemployment with the agency not later than 14 days after completing the period of service. (If submitting the application is impossible or unreasonable through no fault of the individual, it must be submitted the next full calendar day when it becomes possible to do so.)

(c) If the period of service was for *more than 180 days*, the employee must submit an application for reemployment not later than 90 days after completing the period of service.

(d) An employee who is hospitalized or convalescing from an injury or illness incurred in, or aggravated during uniformed service is required to report for duty at the end of the period that is necessary for the person to recover, based on the length of service as discussed in paragraphs (a), (b), and (c) of this section, except that the period of recovery may not exceed 2 years (extended by the minimum time required to accommodate circumstances beyond the employee's control which make reporting within the period specified impossible or unreasonable).

(e) A person who does not report within the time limits specified does not automatically forfeit restoration rights, but, rather, is subject to whatever policy and disciplinary action the agency would normally apply for a similar absence without authorization.

§ 353.206 Documentation upon return.

Upon request, a returning employee who was absent for more than 30 days, or was hospitalized or convalescing from an injury or illness incurred in or aggravated during the performance of service in the uniformed services, must provide the agency with documentation that establishes the timeliness of the application for reemployment, and length and character of service. If documentation is unavailable, the agency must restore the employee until documentation becomes available.

§ 353.207 Position to which restored.

(a) *Timing*. An employee returning from the uniformed services following an absence of more than 30 days is entitled to be restored as soon as possible after making application, but in no event later than 30 days after receipt of the application by the agency.

(b) *Nondisabled*. If the employee's uniformed service was for less than 91 days, he or she must be employed in the position for which qualified that he or she would have attained if continuously employed. If not qualified for this position after reasonable efforts by the agency to qualify the employee, he or she is entitled to be placed in the position he or she left. For service of 91 days or more, the agency has the option of placing the employee in a position of like seniority, status, and pay. (Note: Upon reemployment, a term employee completes the unexpired portion of his or her original appointment.) If unqualified (for any reason other than disability incurred in or aggravated during service in the uniformed services) after reasonable efforts by the agency to qualify the employee for such position or the position the employee left, he or she must be restored to any other position of lesser status and pay for which qualified, with full seniority.

(c) *Disabled*. An employee with a disability incurred in or aggravated during uniformed service and who, after reasonable efforts by the agency to accommodate the disability, is entitled to be placed in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case. The agency is not required to reemploy a disabled employee if, after making due efforts to accommodate the disability, such reemployment would impose an undue hardship on the agency.

(d) *Two or more persons entitled to restoration in the same position*. If two or more persons are entitled to restoration in the same position, the one who left the position first has the prior right to restoration in that position. The other employee(s) is entitled to be placed in a position as described in paragraphs (b) and (c) of this section.

(e) *Relationship to an entitlement based on veterans' preference*. An employee's right to restoration under this part does not entitle the person to retention, preference, or displacement rights over any person with a superior claim based on veterans' preference.

§ 353.208 Use of paid leave during uniformed service.

An employee performing service with the uniformed services must be 6permitted, upon request, to use any accrued annual leave (or sick leave, if appropriate), or military leave during such service. (Note, however, that under 5 U.S.C. 6323, military leave cannot be used for inactive duty, e.g., drills.)

§ 353.209 Retention protections.

(a) *During uniformed service*. An employee may not be demoted or separated (other than military separation) while performing duty with the uniformed services except for cause. (Reduction in force is not considered "for cause" under this subpart.) He or she is not a "competing employee" under § 351.404 of this chapter. If the employee's position is abolished during such absence, the agency must reassign the employee to another position of like status, and pay.

(b) *Upon reemployment*. Except in the case of an employee under time-limited appointment who finishes out the unexpired portion of his or her appointment upon reemployment, an employee reemployed under this subpart may not be discharged, except for cause—

(1) If the period of uniformed service was more than 180 days, within 1 year; and

(2) If the period of uniformed service was more than 30 days, but less than 181 days, within 6 months.

§ 353.210 Department of Labor assistance to applicants and employees.

USERRA requires the Department of Labor's Veterans' Employment and Training Service (VETS) to provide employment and reemployment assistance to any Federal employee or applicant who requests it. VETS staff will attempt to informally resolve employment disputes brought to them. If informal dispute resolution proves unsuccessful, VETS may ask the Office of the Special Counsel to represent the individual in an appeal before the Merit Systems Protection Board (MSPB).

§ 353.211 Appeal rights.

An individual who believes an agency has not complied with the provisions of law and this part relating to the employment or reemployment of the person by the agency may—

(a) File a complaint with the Department of Labor, as noted in § 353.210, or

(b) Appeal directly to MSPB if the individual chooses not to file a complaint with the Department of Labor, or is informed by either Labor or the Office of the Special Counsel that they will not pursue to the case.

Subpart C—Compensable Injury

§ 353.301 Restoration rights.

(a) *Fully recovered within 1 year*. An employee who fully recovers from a compensable injury within 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the employee resumes regular full-time employment with the United States), is entitled to be restored immediately and unconditionally to his or her former position or an equivalent one. Although these restoration rights are agencywide, the employee's basic entitlement is to the former position or equivalent in the local commuting area the employee left. If a suitable vacancy does not exist, the employee is entitled to displace an employee occupying a continuing position under temporary appointment or tenure group III. If there is no such position in the local commuting area, the agency must offer the employee a position (as described above) in another location. This paragraph also applies when an injured employee accepts a lower-grade position in lieu of separation and subsequently fully recovers. A fully recovered employee is expected to return to work immediately upon the cessation of compensation.

(b) *Fully recovered after 1 year*. An employee who separated because of a compensable injury and whose full recovery takes longer than 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States), is entitled to priority consideration, agencywide, for restoration to the position he or she left or an equivalent one provided he or she applies for reappointment within 30 days of the cessation of compensation. Priority consideration is accorded by entering the individual on the agency's reemployment priority list for the competitive service or reemployment list for the excepted service. If the individual cannot be placed in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency. (See parts 302 and 330 of this chapter for more information on how this may be accomplished for the excepted and competitive services, respectively.) This subpart also applies when an injured employee accepts a lower-graded position in lieu of separation and subsequently fully recovers.

(c) *Physically disqualified*. An individual who is physically disqualified for the former position or equivalent because of a compensable injury, is entitled to be placed in another position for which qualified that will provide the employee with the same status, and pay, or the nearest approximation thereof, consistent with the circumstances in each case. This right is agencywide and applies for a period of 1 year from the date eligibility for compensation begins. After 1 year, the individual is entitled to the rights accorded individuals who fully or partially recover, as applicable.

(d) *Partially recovered*. Agencies must make every effort to restore in the local commuting area, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty. At a minimum, this would mean treating these employees substantially the same as other handicapped individuals under the Rehabilitation Act of 1973, as amended. (See 29 U.S.C. 791(b) and 794.) If the individual fully recovers, he or she is entitled to be considered for the position held at the time of injury, or an equivalent one. A partially recovered employee is expected to seek reemployment as soon as he or she is able.

§ 353.302 Retention protections.

An injured employee enjoys no special protection in a reduction in force. Separation by reduction in force or for cause while on compensation means the individual has no restoration rights.

§ 353.303 Restoration rights of TAPER employees.

An employee serving in the competitive service under a temporary appointment pending establishment of a register (TAPER) under § 316.201 of this chapter (other than an employee serving in a position classified above GS–15), is entitled to be restored to the position he or she left or an equivalent one in the same commuting area.

§ 353.304 Appeals to the Merit Systems Protection Board.

(a) Except as provided in paragraphs (b) and (c) of this section, an injured employee or former employee of an agency in the executive branch (including the U.S. Postal Service and the Postal Rate Commission) may appeal to the MSPB an agency's failure to restore, improper restoration, or failure to return an employee following a leave of absence. All appeals must be submitted in accordance with MSPB's regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

PART 870—BASIC LIFE INSURANCE

2. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716; section 870.202(c) also issued under 5 U.S.C. 7701(b)(2); subpart J is also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

3. In § 870.501, paragraph (d) is amended by adding a sentence at the end to read as follows:

§ 870.501 Termination and conversion of insurance coverage.

* * * * *

(d) * * * For the purpose of this paragraph, an individual who is entitled to benefits under part 353 of this chapter is considered to be an employee in nonpay status.

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

4. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; section 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

5. Section 890.303 is amended by adding a new paragraph (i) to read as follows:

§ 890.303 Contination of enrollment.

* * * * *

(i) Service in the uniformed services. The enrollment of an individual who separates to enter the uniformed services under conditions that entitle him or her to benefits under part 353 of this chapter may continue for the 18-month period beginning on the date that the absence to serve in the uniformed services begins, provided that the individual continues to be entitled to benefits under part 353 of this chapter. The enrollment of an employee who enters on military furlough or is placed in nonpay status to serve in the uniformed services may continue for the 18-month period beginning on the date that the absence to serve in the uniformed services begins, provided that the employee continues to be entitled to benefits under part 353 of this chapter. An employee in nonpay status is entitled to continued coverage under paragraph (e) of this section if the employee's entitlement to benefits under part 353 of this chapter ends before the expiration of 365 days in nonpay status. The enrollment of an employee who is on military furlough or in nonpay status in order to serve in the uniformed services on October 13, 1994, may continue for the 18-month period beginning on the date that the absence to serve in the uniformed services began, provided that the employee continues to be entitled to continued coverage under part 353 of this chapter. If the enrollment of such an employee had terminated due to the expiration of 365 days in nonpay status, it may be reinstated for the remainder of the 18-month period beginning on the date that the absence to serve in the uniformed services began, provided that the employee continues to be entitled to continued coverage under part 353 of this chapter.

6. In § 890.304 paragraph (a)(1) is amended by revising paragraph (a)(1)(vi) and adding two new paragraphs (a)(1)(vii) and (viii) to read as follows:

§ 890.304 Termination of enrollment.

(a) * * *

(1) * * *

(vi) The day he or she is separated, furloughed, or placed on leave of absence to serve in the uniformed services under conditions entitling him or her to benefits under part 353 of this chapter for the purpose of performing duty not limited to 30 days or less, provided the employee elects, in writing to have the enrollment so terminated.

(vii) For an employee who separates to serve in the uniformed services under conditions entitling him or her to benefits under part 353 of this chapter for the purpose of performing duty not limited to 30 days or less, the date that is 18 months after the date that the absence to serve in the uniformed services began or the date entitlement to benefits under part 353 of this chapter ends, whichever is earlier, unless the enrollment is terminated under paragraph (a)(1)(vi) of this section.

(viii) For an employee who is furloughed or placed on leave of absence under conditions entitling him or her to benefits under part 353 of this chapter, the date that is 18 months after the date that the absence to serve in the uniformed services began or the date entitlement to benefits under part 353 of this chapter ends, whichever is earlier, but not earlier than the date the enrollment would otherwise terminate under paragraph (a)(1)(v) of this section.

* * * * *

7. In § 890.305 paragraph (a) is revised to read as follows:

§ 890.305 Reinstatement of enrollment after military service.

(a) The enrollment of an employee or annuitant whose enrollment was terminated under § 890.304(a)(1)(vi), (vii) or (viii) or § 890.304(b)(4)(iii) is automatically reinstated on the day the employee is restored to a civilian position under the provisions of part 353 of this chapter or on the day the annuitant is separated from the uniformed services, as the case may be.

* * * * *

8. In § 890.501 paragraph (e) is revised and two new paragraphs (f) and (g) are added to read as follows:

§ 890.501 Government contributions.

* * * * *

(e) Except as provided in paragraphs (f) and (g) of this section, the employing office must make a contribution for an employee for each pay period during which the enrollment continues.

(f) Temporary employees enrolled under 5 U.S.C. 8906a must pay the full subscription charge including the Government contribution. Employees with provisional appointments under § 316.403 are not considered to be enrolled under 5 U.S.C. 8906a for the purpose of this paragraph.

(g) The Government contribution for an employee who enters the uniformed services and whose enrollment continues under § 890.303(i) ceases after 365 days in nonpay status.

9. In § 890.502 paragraph (g) is revised to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(g) *Uniformed services.* (1) except as provided in paragraph (g)(2) of this section, an employee whose coverage continues under section 890.303(i) is responsible for payment of the employee share of the cost of enrollment for every pay period for which the enrollment continues for the first 365 days of continued coverage as set forth under paragraph (b) of this section. For coverage that continues after 365 days in nonpay status, the employee must pay, on a current basis, the full subscription charge, including both the employee and Government shares, plus an additional 2 percent of the full subscription charge.

(2) Payment of the employee's share of the cost of enrollment is waived for the first 365 days of continued coverage in the case of an employee whose coverage continues under § 890.303(e) following furlough or placement on leave of absence under the provisions of part 353 of this chapter or under § 890.303(i) if the employee was ordered to active duty before September 1, 1995 under section 672, 673b, 674, 675, or 688 of title 10, United States Code, in support of Operation Desert Storm.

* * * * *

[FR Doc. 95–21571 Filed 8–31–95; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 329

[INS No. 1404–95]

RIN 1115–AC34

Amendment of Filing Deadline for Naturalization for Philippine Veterans of World War II Based Upon Active Duty Service in the United States Armed Forces During Specified Periods of Hostilities

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final Rule.

SUMMARY: This final rule amends the date previously published in the Federal Register as the final date applications must be received by the Service in order to be considered applications for naturalization under section 405 of the Immigration and Naturalization Act of 1990. This rule is necessary to correct an oversight in the calculation of the filing deadline and to ensure that Philippine veterans of World War II who missed the originally published filing deadline are afforded the opportunity for naturalization under this provision.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: W.R. Tillifson, Adjudications Officer, Adjudications Division, Naturalization and Special Projects Branch, Immigration and Naturalization Service, 425 I Street, NW., room 3214, Washington, DC 20536, telephone 202–514–5014.

SUPPLEMENTARY INFORMATION: Under current regulations, the final date applications had to be received by the Service in order to be considered under section 405 of the Immigration Act of 1990, Public Law No. 101–649, was February 2, 1995. The correct date should have been February 3, 1995. Accordingly, 8 CFR 329.5 is being amended to reflect the correct final date for filing. Philippine veterans of World War II who failed to file applications on February 2, 1995, but filed applications on February 3, 1995, will be considered for naturalization under section 405 of the Immigration Act of 1990.

The Service's immediate implementation of this rule as a final rule is based on the "good cause" exception found at 5 U.S.C. 553(d)(3). This rule simply corrects the filing deadline for section 405 applications thereby benefitting applicants who were denied consideration for failure to apply by the February 2, 1995, deadline.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule simply corrects the filing deadline for 405 applications thereby benefitting applicants who were denied consideration for failure to apply by the February 2, 1995 deadline. This amendment has no financial impact on applicants eligible under this provision.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that it will not have a significant negative impact on family well-being.

List of Subjects in 8 CFR Part 329

Armed Forces, Citizenship and Naturalization, Veterans.

According, part 329 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

1. The authority citation for part 329 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443.

§ 329.5 [Amended]

2. In § 329.5, paragraph (e) is amended by revising the date: "February 2, 1995" to read: "February 3, 1995"

Dated: August 25, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–21689 Filed 8–31–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 275

[Docket No. 950808205–5205–01]

RIN 0693–XX11

Policies and Procedures Governing the Appearance of NIST Employees as Witnesses in Private Litigation

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards (NIST) hereby removes 15 CFR Part 275 which sets forth policies and procedures governing the appearance of NIST employees as witnesses in private litigation. This action is taken in keeping with the goals of the National Performance Review and in order to comply with recent Executive Orders that address regulatory reforms. Part 275 is removed because it is out of date and unnecessary.

The policies and procedures to be followed with respect to the testimony of all Department of Commerce employees regarding official matters, and the production of Department documents in legal proceedings is set forth at 15 CFR Part 15a.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Rubin, 301–975–2803.

SUPPLEMENTARY INFORMATION: On March 4, 1995, as part of the President's Regulatory Reform Initiative, the President directed agencies to conduct a page-by-page review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform. After conducting a review of the NIST regulations, it was determined that 15 CFR Part 275 was outdated and should be removed because 15 CFR Part 15a sets forth current Department policies with respect to the testimony of employees regarding official matters, and the production of Department documents in legal proceedings.

List of Subjects in 15 CFR Part 275

Administrative practice and procedure, Courts, Government employees.

PART 275—[REMOVED AND RESERVED]

Accordingly, under authority of Sec. 9, 31 Stat. 1450, as amended, 15 U.S.C. 277, 15 CFR part 275 is removed and reserved.

Dated: August 28, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–21734 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 600

Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act

AGENCY: Federal Trade Commission.

ACTION: Final amendment to commentary.

SUMMARY: The Commission is amending its Commentary on the Fair Credit Reporting Act ("FCRA"), 16 CFR part 600, to state that the FCRA does not require the disclosure of "risk scores" to consumers by consumer reporting agencies. This action responds to comments the Commission and its staff received from the public in response to its **Federal Register** publication on June 17, 1994.

EFFECTIVE DATE: September 1, 1995.

ADDRESSES: Federal Trade Commission; Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Clarke Brinckerhoff, Attorney, Division of Credit Practices, Federal Trade Commission, Washington, DC 20580, 202–326–3208.

SUPPLEMENTARY INFORMATION:

Background and Chronology

Section 609(a)(1) of the FCRA requires each credit bureau to disclose to a properly identified consumer "(t)he nature and substance of all information (except medical information) in its files on the consumer at the time of the request" by the consumer for such disclosure. A risk score is a statistical assessment of the data in the consumer's file that a credit bureau can provide to its customer. Credit bureaus did not provide such scores until the late 1980's, and thus they were not contemplated, when the FCRA was enacted in 1970.

On May 4, 1990, the Commission included in the final version of its Commentary on the FCRA (16 CFR part 600) a sentence in Comment 7 to Section 609 that adopted the position taken by an informal August 1988 staff opinion letter that the provision did not require disclosure of risk scores (55 FR 18804, 18822).

On February 11, 1992, the Commission reversed its position by publishing a notice in the **Federal Register** changing the sentence in Comment 7 to state the view that the provision required disclosure of risk scores, effective immediately (57 FR 4935). The Commission based its reversal on (1) Its subsequent investigations, which indicated that some credit report users got only a risk score, and (2) the legislative history of the FCRA, in particular a statement by Representative Leonor Sullivan that credit bureaus should have to disclose information "in any form which would be relayed to a (bureau client) in making a judgment as to the worthiness of the individual's application . . ." 116 Cong. Rec. 36572 (Oct. 12, 1970).

After the Commission amended the FCRA Commentary, several industry representatives requested clarification of the revision. Three principal issues arose concerning the applicability of the FCRA to risk scores: (1) When a consumer reporting agency must disclose a risk score, (2) what score(s) must be disclosed, and (3) what type of explanation of the score must be provided as part of the disclosure.

On June 17, 1994, the Commission published for public comment a proposed revision to the FCRA Commentary addressing these issues (59 FR 31176). The proposal, this time styled as an additional Comment 12 to Section 609, maintained the position set forth by the Commission in its February 1992 revision that risk score disclosure was required; it specified that the score needed to be computed and reported only as of the date of the consumer's disclosure request, that disclosure was required regardless of whether a credit bureau or a creditor created (or owned) the scoring system used to calculate the numerical score, and that only a brief explanation was required. In addition, it posed a number of questions on which it requested public comment.

Eighty parties responded with written submissions for Commission consideration. On the industry side, the record includes extensive comments filed by or on behalf of credit bureaus that supply risk scores, creditors who purchase and use such scores, and the companies that prepare scoring systems that they use to produce them. Consumer interests were represented by a consortium of state Attorney General offices and a major national consumer advocacy group, among others.

Summary of Comments and Final Interpretation

The industry commenters argued strongly that section 609 does not literally require the disclosure of risk scores. They contended that a credit bureau's risk score is not "information * * * in its files * * * at the time of the request" but rather is a system of analyzing that information for the credit bureau's client. For a fee, the credit bureau applies a statistical "model" to the information in its files and (generally combined with a full credit report) provides the resulting number ("score") to its client. The score does not exist in the file until that function is performed, and is not retained by the credit bureau after it is provided to the bureau's client.

The industry commenters also argued that the disclosure of risk scores would be costly to the credit-granting and credit-reporting industries, and further contended that the benefits to the public were uncertain and (if they existed at all) far outweighed by the costs. Finally, they noted that consumers already have access to information much more significant than a numerical score—the underlying information in the credit file (under Section 609) and a statement of the reasons why any user rejected their credit applications (under the Equal Credit Opportunity Act ("ECOA") and its implementing Regulation B).

The consumer representatives emphasized the quote from Rep. Sullivan on which the Commission had relied in its February 1992 opinion. They pressed the view that it is only fair for consumers to have risk scores if credit bureau users are receiving them, and contended that consumers should not be deprived of disclosure of risk scores simply because credit bureaus do not retain them.

Based on the comments, the Commission has decided to reinstate its original position that Section 609 does not require a credit bureau to disclose risk scores because they are not "information . . . in its files on the consumer at the time of the request" by the consumer for file disclosure. Section 603(g) defines the term "file" to mean "all of the information on (the) consumer *recorded and retained* by a consumer reporting agency regardless of how the information is stored." (Emphasis added). In analyzing the application of Section 609 to a risk score, the Commission has considered the process involved in generating a risk score. The comments indicate that a risk score is not "recorded and retained" by the credit bureau; rather it is produced when the bureau applies the scoring model to the actual data in the consumer's credit history and provides the resulting numerical score to its client who pays to have that function performed by the bureau. In addition to not being in the credit bureau "files", the score does not even exist "at the time of the request."

List of Subjects in 16 CFR Part 600

Credit, Trade practices.

For the reasons set out in the preamble, the Commission amends Title 16, Chapter I, Part 600 of the Code of Federal Regulations as follows:

PART 600—STATEMENT OF GENERAL POLICY OR INTERPRETATIONS

1. The authority citation for Part 600 continues to read as follows:

Authority: 15 U.S.C. 1681s and 16 CFR 1.73.

2. In the appendix to Part 600, the Commission amends Section 609 by revising comment 7 and adding a new comment 12, to read as follows:

Appendix—Commentary on the Fair Credit Reporting Act

* * * * *

Section 609—Disclosures to Consumers

* * * * *

7. Ancillary Information.

A consumer reporting agency is not required to disclose information consisting of an audit trail of changes it makes in the consumer's file, billing records, or the contents of a consumer relations folder, if the information is not from consumer reports and will not be used in preparing future consumer reports. Such data is not included in the term "information in the files" which must be disclosed to the consumer pursuant to this section. A consumer reporting agency must disclose claims report information only if it has appeared in consumer reports.

* * * * *

12. Risk Scores.

A consumer reporting agency is not required to disclose a risk score (or other numerical evaluation, however named) that is provided to the agency's client (based on an analysis of data on the consumer) but not retained by the agency. Such a score is not information "in (the agency's) files at the time of the request" by the consumer for file disclosure.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–21789 Filed 8–31–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 882, 887, 982, and 983

[Docket No. FR–2294–N–03]

RIN 2577–AB14

Section 8 Certificate and Voucher Programs Conforming Rule; Announcement of Effective Date and OMB Approval Number

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of effective date and OMB approval number to final rule.

SUMMARY: On July 3, 1995 (60 FR 34660), the Department published in the **Federal Register**, a final rule that combined and conformed rules for tenant-based rental assistance under the rental certificate and the rental voucher programs. The rule also amended requirements for project-based assistance under the rental certificate program.

The effective date section of that rule indicated that before the rule could become effective, the information collections contained in the rule must be reviewed and approved by the Office of Management and Budget (OMB), as required under the Paperwork Reduction Act of 1980. Since OMB has completed this process, the purpose of this document is to announce the effective date of the final rule, and also to announce the OMB approval number.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Director, Rental Assistance Division, Room 4204, Telephone numbers (202) 708–2841 (voice); (202) 708–0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On February 24, 1993 (58 FR 11292), HUD published a comprehensive proposed rule to combine and conform the rules for tenant-based Section 8 rental assistance under the certificate and voucher programs. The matrix, contained in the preamble of that proposed rule (60 FR 11318), identified information collection requirements in §§ 982.53, 982.102, 982.151, 982.302, 982.305, 982.404, and 982.406.

The July 3, 1995 final rule contained additional information requirements from those mentioned above in §§ 982.52, 982.54, 982.153, 982.155, 982.156, 982.157, 982.158, 982.159, 982.160, 982.206, 982.301, 982.303, 982.304, 982.307, 982.310, 982.352, 982.403, 982.452, 982.455, 982.551, 982.552, 982.554, 982.555, 983.3, 983.12, 983.51, 983.52, 983.54, 983.55, 983.57, 983.103, 983.104, 983.151, 983.202, 983.203, 983.205, and 983.207.

A proposed information collection notice published simultaneously in the **Federal Register** on July 3, 1995 (60 FR 34729), with the final rule identified the numbers of the Forms to be used for submission of information to the Department.

This document announces the effective date of the July 3, 1995 final rule, and announces the approval number received from the Office of Management and Budget for these programs.

List of Subjects

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recording requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, and under the Secretary's authority of 42 U.S.C. 3535(d), the final rule, "Section 8 Certificate and Voucher Programs Conforming Rule", published July 3, 1995 (60 FR 34660) that amended 24 CFR Parts 882, 887, 982, and 983, is effective October 2, 1995. 24 CFR Parts 982 and 983 are further amended by adding the OMB approval number, as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

1. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§§ 982.52–982.54, 982.102, 982.151, 982.153, 982.155–982.160, 982.206, 982.301–982.305, 982.307, 982.310, 982.352, 982.403–982.404, 982.406, 982.452, 982.455, 982.551–982.552, 982.554–982.555 [Amended]

2. Sections 982.52, 982.53, 982.54, 982.102, 982.151, 982.153, 982.155, 982,156, 982.157, 982.158, 982.159, 982.160, 982.206, 982.301, 982.302, 982.303, 982.304, 982.305, 982.307, 982.310, 982.352, 982.403, 982.404, 982.406, 982.452, 982.455, 982.551, 982.552, 982.554, and 982.555 are amended by adding at the end of each section the phrase, "(Approved by the Office of Management and Budget under control number 2577–0169)".

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

3. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§§ 983.3, 983.12, 983.51–983.52, 983.54–983.55, 983.57, 983.103–983.104, 983.151, 983.202–983.203, 983.205, 983.207 [Amended]

4. Sections 983.3, 983.12, 983.51, 983.52, 983.54, 983.55, 983.57, 983.103, 983.104, 983.151, 983.202, 983.203, 983.205, and 983.207 are amended by adding at the end of each section the phrase, "(Approved by the Office of Management and Budget under control number 2577–0169)".

Dated: August 28, 1995.

Joseph Shuldiner,

Assistant Secretary for the Office of Public and Indian Housing.

[FR Doc. 95–21719 Filed 8–31–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8617]

RIN 1545–AS58; 1545–AT13

Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations implementing changes to the accuracy-related penalty under section 6662 of the Internal Revenue Code of 1986 that were made by section 13251 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) and Title VII of the Uruguay Round Agreements Act, implementing the Uruguay Round of the General Agreement on Tariffs and Trade

(the GATT Act). The final regulations also provide guidance as to when a taxpayer may rely upon the advice of others as evidence of reasonable cause and good faith within the meaning of section 6664(c) for purposes of avoiding the accuracy-related penalty of section 6662, and as to what constitutes reasonable cause and good faith within the meaning of section 6664(c) as applicable to the substantial understatement penalty of section 6662(b)(2) with respect to tax shelter items of a corporation. These regulations affect taxpayers subject to the accuracy-related penalty.

EFFECTIVE DATE: These regulations are effective September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Rochelle L. Hodes, (202) 622- 6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

As part of OBRA 1993, Congress made certain changes to the accuracy-related penalty. These changes eliminated the disclosure exception for the negligence penalty (section 6662(b)(1) of the Internal Revenue Code (Code)) and raised the disclosure standard for purposes of the penalties for disregard of rules or regulations (section 6662(b)(1) of the Code) and substantial understatement of income tax (section 6662(b)(2) of the Code) from "not frivolous" to "reasonable basis."

On March 17, 1994, temporary regulations (TD 8533) reflecting changes to the accuracy-related penalty made by OBRA 1993 were published in the **Federal Register** (59 FR 12547). A notice of proposed rulemaking (IA–78–93) relating to the temporary regulations was published in the **Federal Register** for the same day (59 FR 12563). On March 30, 1994, a correction to the temporary regulations was published in the **Federal Register** (59 FR 14749) clarifying language in § 1.6662–7T(a)(2) of the temporary regulations. The same day a correction to the notice of proposed rulemaking was published in the **Federal Register** (59 FR 14810) correcting "RIN 1545–AS58" to read "RIN 1545–AS62" and other administrative matters and clarifying language in §§ 1.6662–2(d)(2) and 1.6662–7(a)(2) of the proposed regulations.

Section 744 of the GATT Act made further changes to the accuracy-related penalty. For corporate taxpayers, the GATT Act amended section 6662(d) of the Code to eliminate the exception to the substantial understatement penalty regarding tax shelter items for which the taxpayer had substantial authority and reasonably believed that its treatment was more likely than not the proper treatment. The legislative history of the GATT Act states that "the standards applicable to corporate tax shelters are tightened" and "in no instance [will] this modification result in a penalty not being imposed where a penalty would have been imposed under prior law." S. Rep. No. 412, 103d Cong., 2d Sess. 165 (1994); H.R. Rep. No. 826, 103d Cong., 2d Sess. 198–99 (1994).

On January 4, 1995, a notice of proposed rulemaking (IA–55–94) was published in the **Federal Register** (60 FR 406) implementing the changes made by the GATT Act and providing guidance with regard to reliance upon the advice of others as evidence of reasonable cause and good faith within the meaning of section 6664(c) of the Code for purposes of avoiding the accuracy-related penalty of section 6662, and what constitutes reasonable cause and good faith within the meaning of section 6664(c) as it applies to the substantial understatement penalty of section 6662(b)(2) with respect to tax shelter items of a corporation.

Written comments responding to these notices were received. A public hearing on the notices regarding changes made by OBRA 1993 was held on July 12, 1994. A public hearing on the notice regarding changes made by the GATT Act was held on April 28, 1995. After consideration of all the comments, the proposed regulations under sections 6662 and 6664 of the Code are adopted as revised by this Treasury decision.

Explanation of Provisions

Reasonable Basis Standard for Disclosure

With respect to the reasonable basis standard, the final regulations adopt the proposed regulations without substantive change. The regulations provide that the reasonable basis standard is "significantly higher than the not frivolous standard applicable to preparers under section 6694." In the preamble to the proposed regulations, Treasury requested comments on any additional guidance as to the reasonable basis standard for purposes of the negligence, disregard of rules or regulations, and substantial understatement penalties. Several commentators recommended adopting as the definition of reasonable basis the description that existed in § 1.6662–4(d)(2) of the regulations prior to amendment by these final regulations. Other commentators recommended equating the reasonable basis standard with the negligence standard and the realistic possibility of success standard, taking into account the relative knowledge and experience of the taxpayer. The IRS and Treasury are continuing to consider these comments in connection with a separate project to publish a notice of proposed rulemaking providing further guidance as to the reasonable basis standard. Treasury and the IRS invite additional comments and suggestions regarding this project.

Reliance on Tax Advisor

Under sections 6662 and 6664, and applicable regulations, a taxpayer's good faith reliance on the advice (including an opinion) of a professional tax advisor will generally be taken into account for purposes of determining whether the taxpayer will be subject to an accuracy-related penalty. See, e.g., §§ 1.6662–4(g)(4)(ii) and 1.6664–4(b). The proposed regulations clarify when a taxpayer may be considered to have reasonably relied in good faith upon advice (including an opinion provided by a professional tax advisor), for purposes of sections 6662 and 6664. In general, § 1.6664–4(c) of the proposed regulations requires advice to be based on all material facts (including, for example, the taxpayer's purposes for entering into a transaction) and to relate applicable law to such facts in reaching its conclusion. The advice must not be based upon unreasonable factual or legal assumptions (including assumptions as to future events), nor unreasonably rely on the representations, findings or agreements of the taxpayer or any other person. The proposed regulations also indicate that reliance may not be reasonable or in good faith if the taxpayer knew, or should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

Several commentators recommended changes to these provisions of the proposed regulations. For example, one commentator suggested eliminating language in § 1.6664–4(c)(1) of the proposed regulations that reliance on advice may not be reasonable and in good faith if the taxpayer knew, or should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

The final regulations do not adopt this suggestion. In requiring that reliance on advice must be reasonable in light of all of the facts and circumstances, the final regulations do not depart from prior law. In most situations it will generally be reasonable for a taxpayer to conclude that an attorney, an accountant, or an enrolled agent is qualified to give advice on Federal tax law.

Another commentator suggested eliminating the requirements that advice must be based on all material facts and reasonable factual and legal assumptions. The commentator stated that taxpayers are not in a position to determine what facts are material, particularly in complex transactions, nor are they in a position to determine whether the advisor based the opinion on material facts and reasonable factual and legal assumptions. An additional commentator requested guidance to distinguish the term *pertinent* as it is used throughout the regulations and the term *material* as it is used in § 1.6664–4(c) of the proposed regulations.

In response to these comments, and in order to resolve confusion, the final regulations provide that advice must be based upon all pertinent facts and circumstances and the law as it relates to those facts and circumstances. As used in this context, pertinent is intended to have the same meaning as it has in § 1.6662–4(g)(4)(ii), which provides that a taxpayer may satisfy the reasonable belief requirement of section 6662(d)(2)(C)(i) through reliance on an advisor's analysis of pertinent facts and authorities. To clarify that separate rules apply to taxpayers and advisors, the final regulations have also been revised to include a cross-reference to the preparer penalties under §§ 1.6694–1 through 1.6694–3 and Circular 230 (contained in 31 CFR part 10).

Another commentator recommended eliminating, or in the alternative revising and clarifying, the requirement that advice take into account the taxpayer's purposes for entering into a transaction or structuring a transaction in a particular manner. The final regulations do not adopt this recommendation. It is appropriate to consider a taxpayer's reasons for structuring a transaction in a particular manner in determining whether the taxpayer acted in good faith in its tax return treatment of items from the transaction.

Reasonable Cause for Tax Shelter Items of a Corporation

The proposed regulations provide that a corporation's legal justification may be taken into account, as appropriate, in establishing that the corporation acted with reasonable cause and in good faith in its treatment of a tax shelter item only if there is substantial authority for the treatment of the item and the corporation reasonably believes in good faith that such treatment is more likely than not the proper treatment. Under the proposed regulations, satisfaction of the substantial authority and reasonable belief criteria is an important factor to be considered in determining whether the taxpayer acted with reasonable cause and in good faith, but is not necessarily dispositive. The proposed regulations also provide that facts and circumstances other than a corporation's legal justification may be taken into account, as appropriate, in determining whether it acted with reasonable cause and in good faith, regardless of whether the substantial authority and reasonable belief requirements are satisfied.

One commentator urged removal of the special reasonable cause standard for corporate-tax shelter items under the proposed regulations. According to the commentator, there is no authority in section 6664 or its legislative history for a reasonable cause standard for tax shelter items of corporate taxpayers that differs from the standard for noncorporate taxpayers.

Other commentators recommended revising the legal justification test for determining reasonable cause. Particularly, these commentators recommended removing the objective requirement that substantial authority be present for the taxpayer's position (the authority requirement). Alternatively, one commentator suggested making the legal justification test a "safe harbor." Under this alternative, a taxpayer that satisfies the authority requirement and the belief requirement under proposed § 1.6664–4(e)(2) would be treated as having acted with reasonable cause and in good faith.

The final regulations do not adopt these suggestions. Treasury and the IRS continue to believe that the regulations, including the authority requirement, properly implement the statute and Congressional intent.

Satisfaction of the minimum requirements under the legal justification test is an important factor to be considered in determining whether a corporate taxpayer acted with reasonable cause and in good faith, but is not necessarily dispositive. For example, depending on the circumstances, satisfaction of the minimum requirements may not be dispositive if the taxpayer's participation in the tax shelter lacked significant business purpose, if the taxpayer claimed tax benefits that are unreasonable in comparison to the taxpayer's investment in the tax shelter, or if the taxpayer agreed with the organizer or promoter of the tax shelter that the taxpayer would protect the confidentiality of the tax aspects of the structure of the tax shelter. In addition, a taxpayer that does not satisfy the authority requirement may nonetheless demonstrate that it acted with reasonable cause and in good faith based on facts and circumstances unrelated to its legal justification (the other factors test).

Although several commentators requested additional guidance with regard to the other factors test, they provided no examples of factors (other than factors related to legal justification) that they would like to be included in the final regulations. The suggested factors were not adopted because legal justification is not relevant to the other factors test. While the final regulations do not provide additional guidance in this area, Treasury and the IRS continue to welcome comments on the issue.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Rochelle L. Hodes, Office of Assistant Chief Counsel (Income Tax and Accounting), and David Meyer formerly of that office. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6662–0 is amended by:

1. Revising the introductory language.
2. Revising the entry for § 1.6662–2(d) and adding entries for (d) (1), (2), and (3).

3. Revising the entries for §§ 1.6662–3(b)(3) and 1.6662–4(g).

4. Adding an entry for § 1.6662–7.

5. Removing the entry for § 1.6662–7T.

The additions and revisions read as follows:

§ 1.6662–0 Table of contents.

This section lists the captions that appear in §§ 1.6662–1 through 1.6662–7.

* * * * *

§ 1.6662–2 Accuracy related penalty.

* * * * *

(d) Effective dates.
(1) Returns due before January 1, 1994.
(2) Returns due after December 31, 1993.
(3) Special rules for tax shelter items.

* * * * *

§ 1.6662–3 Negligence or disregard of rules or regulations.

* * * * *

(b) * * *
(3) Reasonable basis.
(i) In general [Reserved].
(ii) Relationship to other standards.

* * * * *

§ 1.6662–4 Substantial understatement of income tax.

* * * * *

(g) Items relating to tax shelters.
(1) In general.
(i) Noncorporate taxpayers.
(ii) Corporate taxpayers.
(A) In general.
(B) Special rule for transactions occurring prior to December 9, 1994.
(iii) Disclosure irrelevant.
(iv) Cross-reference.
(2) Tax shelter.
(i) In general.
(ii) Principal purpose.
(3) Tax shelter item.
(4) Reasonable belief.
(i) In general.
(ii) Facts and circumstances; reliance on professional tax advisor.
(5) Pass-through entities.

* * * * *

§ 1.6662–7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

(a) Scope.
(b) No disclosure exception for negligence penalty.
(c) Disclosure standard for other penalties is reasonable basis.
(d) Definition of reasonable basis.
(1) In general [Reserved].
(2) Relationship to other standards.

Par. 3. In § 1.6662–1, the second and third sentences of the concluding text are revised to read as follows:

§ 1.6662–1 Overview of the accuracy-related penalty.

* * * * *

* * * The penalties for disregard of rules or regulations and for a substantial understatement of income tax may be avoided by adequately disclosing certain information as provided in § 1.6662–3(c) and §§ 1.6662–4(e) and (f), respectively. The penalties for negligence and for a substantial (or gross) valuation misstatement under chapter 1 may not be avoided by disclosure. * * *

Par. 4. Section 1.6662–2 is amended by:

1. Revising the heading of paragraph (d), redesignating the text of paragraph (d) following the heading as paragraph (d)(1), adding a new heading for newly designated paragraph (d)(1), and revising the first and second sentences of newly redesignated paragraph (d)(1).

2. Adding new paragraphs (d)(2) and (3).

The additions and revisions read as follows:

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) *Effective dates*—(1) *Returns due before January 1, 1994.* Section 1.6662–3(c) and §§ 1.6662–4 (e) and (f) (relating to methods of making adequate disclosure) (as contained in 26 CFR part 1 revised April 1, 1995) apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1991, but before January 1, 1994. Except as provided in the preceding sentence and in paragraphs (d)(2) and (3) of this section, §§ 1.6662–1 through 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1989, but before January 1, 1994. * * *

(2) *Returns due after December 31, 1993.* Except as provided in paragraph (d)(3) and the last sentence of this paragraph (d)(2), the provisions of §§ 1.6662–1 through 1.6662–4 and § 1.6662–7 (as revised to reflect the changes made to the accuracy-related penalty by the Omnibus Budget Reconciliation Act of 1993) and of § 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1993. These changes include raising the disclosure standard for the penalties for disregarding rules or regulations and for a substantial understatement of income tax from not frivolous to reasonable basis, eliminating the disclosure exception for the negligence penalty, and providing guidance on the meaning of reasonable basis. The Omnibus Budget Reconciliation Act of 1993 changes relating to the penalties for negligence or disregard of rules or regulations will not apply to returns (including qualified amended returns) that are filed on or before March 14, 1994, but the provisions of §§ 1.6662–1 through 1.6662–3 (as contained in 26 CFR part 1 revised April 1, 1995) relating to those penalties will apply to such returns.

(3) *Special rules for tax shelter items.* Sections 1.6662–4(g)(1) and 1.6662–4(g)(4) apply to returns the due date of which (determined without regard to extensions of time for filing) is after September 1, 1995. Except as provided in the last sentence of this paragraph (d)(3), §§ 1.6662–4(g)(1) and 1.6662–4(g)(4) (as contained in 26 CFR part 1 revised April 1, 1995) apply to returns the due date of which (determined without regard to extensions of time for filing) is on or before September 1, 1995 and after December 31, 1989. For transactions occurring after December 8, 1994, §§ 1.6662–4(g)(1) and 1.6662–4(g)(2) (as contained in 26 CFR part 1 revised April 1, 1995) are applied taking into account the changes made to section 6662(d)(2)(C) (relating to the substantial understatement penalty for tax shelter items of corporations) by section 744 of Title VII of the Uruguay Round Agreements Act, Pub. L. 103–465 (108 Stat. 4809).

Par. 5. Section 1.6662–3 is amended by:

1. Revising the second sentence of paragraph (a).

2. Revising paragraph (b)(3).

3. Revising paragraphs (c)(1) and (2).

The revisions read as follows:

§ 1.6662–3 Negligence or disregard of rules or regulations.

(a) * * * The penalty for disregarding rules or regulations does not apply, however, if the requirements of § 1.6662–3(c)(1) are satisfied and the position in question is adequately disclosed as provided in § 1.6662–3(c)(2), or to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies. * * *

(b) * * *

(3) *Reasonable basis*—(i) *In general.* [Reserved].

(ii) *Relationship to other standards.* The reasonable basis standard is significantly higher than the not frivolous standard applicable to preparers under section 6694 and defined in § 1.6694–2(c)(2).

(c) * * * (1) *In general.* No penalty under section 6662(b)(1) may be imposed on any portion of an underpayment that is attributable to a position contrary to a rule or regulation if the position is disclosed in accordance with the rules of paragraph (c)(2) of this section and, in case of a position contrary to a regulation, the

position represents a good faith challenge to the validity of the regulation. This disclosure exception does not apply, however, in the case of a position that does not have a reasonable basis or where the taxpayer fails to keep adequate books and records or to substantiate items properly.

(2) *Method of disclosure.* Disclosure is adequate for purposes of the penalty for disregarding rules or regulations if made in accordance with the provisions of §§ 1.6662–4(f)(1), (3), (4), and (5), which permit disclosure on a properly completed and filed Form 8275 or 8275–R, as appropriate. In addition, the statutory or regulatory provision or ruling in question must be adequately identified on the Form 8275 or 8275–R, as appropriate. The provisions of § 1.6662–4(f)(2), which permit disclosure in accordance with an annual revenue procedure for purposes of the substantial understatement penalty, do not apply for purposes of this section.

* * * * *

Par. 6. Section 1.6662–4 is amended by:

1. Removing the third sentence in paragraph (d)(2).

2. Revising paragraph (e)(2).

3. Revising paragraphs (g)(1), (g)(4), and (g)(5).

The revisions read as follows:

§ 1.6662–4 Substantial understatement of income tax.

* * * * *

(e) * * *

(2) *Circumstances where disclosure will not have an effect.* The rules of paragraph (e)(1) of this section do not apply where the item or position on the return—

(i) Does not have a reasonable basis (as defined in § 1.6662–3(b)(3));

(ii) Is attributable to a tax shelter (as defined in section 6662(d)(2)(C)(iii) and paragraph (g)(2) of this section); or

(iii) Is not properly substantiated, or the taxpayer failed to keep adequate books and records with respect to the item or position.

* * * * *

(g) *Items relating to tax shelters*—(1) *In general*—(i) *Noncorporate taxpayers.* Tax shelter items (as defined in paragraph (g)(3) of this section) of a taxpayer other than a corporation are treated for purposes of this section as if such items were shown properly on the return for a taxable year in computing the amount of tax shown on the return, and thus the tax attributable to such items is not included in the understatement for the year, if—

(A) There is substantial authority (as provided in paragraph (d) of this section) for the tax treatment of that item; and

(B) The taxpayer reasonably believed at the time the return was filed that the tax treatment of that item was more likely than not the proper treatment.

(ii) *Corporate taxpayers*—(A) *In general.* Except as provided in paragraph (g)(1)(ii)(B) of this section, all tax shelter items (as defined in paragraph (g)(3) of this section) of a corporation are taken into account in computing the amount of any understatement.

(B) *Special rule for transactions occurring prior to December 9, 1994.* The tax shelter items of a corporation arising in connection with transactions occurring prior to December 9, 1994 are treated for purposes of this section as if such items were shown properly on the return if the requirements of paragraph (g)(1)(i) are satisfied with respect to such items.

(iii) *Disclosure irrelevant.* Disclosure made with respect to a tax shelter item of either a corporate or noncorporate taxpayer does not affect the amount of an understatement.

(iv) *Cross-reference.* See § 1.6664–4(e) for certain rules regarding the availability of the reasonable cause and good faith exception to the substantial understatement penalty with respect to tax shelter items of corporations.

* * * * *

(4) *Reasonable belief*—(i) *In general.* For purposes of section 6662(d) and paragraph (g)(1)(i)(B) of this section (pertaining to tax shelter items of noncorporate taxpayers), a taxpayer is considered reasonably to believe that the tax treatment of an item is more likely than not the proper tax treatment if (without taking into account the possibility that a return will not be audited, that an issue will not be raised on audit, or that an issue will be settled)—

(A) The taxpayer analyzes the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section, and in reliance upon that analysis, reasonably concludes in good faith that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service; or

(B) The taxpayer reasonably relies in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service.

(ii) *Facts and circumstances; reliance on professional tax advisor.* All facts and circumstances must be taken into account in determining whether a taxpayer satisfies the requirements of paragraph (g)(4)(i) of this section. However, in no event will a taxpayer be considered to have reasonably relied in good faith on the opinion of a professional tax advisor for purposes of paragraph (g)(4)(i)(B) of this section unless the requirements of § 1.6664–4(c)(1) are met. The fact that the requirements of § 1.6664–4(c)(1) are satisfied will not necessarily establish that the taxpayer reasonably relied on the opinion in good faith. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(5) *Pass-through entities.* In the case of tax shelter items attributable to a pass-through entity, the actions described in paragraphs (g)(4)(i)(A) and (B) of this section, if taken by the entity, are deemed to have been taken by the taxpayer and are considered in determining whether the taxpayer reasonably believed that the tax treatment of an item was more likely than not the proper tax treatment.

Par. 7. Section 1.6662–7 is added to read as follows:

§ 1.6662–7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

(a) *Scope.* The Omnibus Budget Reconciliation Act of 1993 made certain changes to the accuracy-related penalty in section 6662. This section provides rules reflecting those changes.

(b) *No disclosure exception for negligence penalty.* The penalty for negligence in section 6662(b)(1) may not be avoided by disclosure of a return position.

(c) *Disclosure standard for other penalties is reasonable basis.* The penalties for disregarding rules or regulations in section 6662(b)(1) and for a substantial understatement of income tax in section 6662(b)(2) may be avoided by adequate disclosure of a return position only if the position has at least a reasonable basis. See § 1.6662–3(c) and §§ 1.6662–4(e) and (f) for other applicable disclosure rules.

(d) *Definition of reasonable basis*—(1) *In general.* [Reserved].

(2) *Relationship to other standards.* The reasonable basis standard is significantly higher than the not frivolous standard applicable to

preparers under section 6694 and defined in § 1.6694–2(c)(2).

§ 1.6662–7T [Removed]

Par. 8. Section 1.6662–7T is removed.

Par. 9. Section 1.6664–0 is amended by revising the entries for §§ 1.6664–1(b) and 1.6664–4 to read as follows:

§ 1.6664–0 Table of contents.

* * * * *

§ 1.6664–1 Accuracy-related and fraud penalties; definitions and special rules.

* * * * *

(b) Effective date.
(1) In general.
(2) Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

(a) In general.
(b) Facts and circumstances taken into account.
(1) In general.
(2) Examples.
(c) Reliance on opinion or advice.
(1) Fact and circumstances; minimum requirements.
(i) All facts and circumstances considered.
(ii) No unreasonable assumptions.
(iii) Law is related to actual facts.
(2) Definitions.
(i) Advice.
(ii) Material.
(3) Cross-reference.
(d) Pass-through items.
(e) Special rules for substantial understatement penalty attributable to tax shelter items of corporations.
(1) In general; facts and circumstances.
(2) Reasonable cause based on legal justification.
(i) Minimum requirements.
(A) Authority requirement.
(B) Belief requirement.
(ii) Legal justification defined.
(3) Minimum requirements not dispositive.
(4) Other factors.
(f) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]
(g) Valuation misstatements of charitable deduction property.
(1) In general.
(2) Definitions.
(i) Charitable deduction property.
(ii) Qualified appraisal.
(iii) Qualified appraiser.

* * * * *

Par. 10. Section 1.6664–1 is amended by revising paragraph (b) to read as follows:

§ 1.6664–1 Accuracy-related and fraud penalties; definitions and special rules.

* * * * *

(b) *Effective date*—(1) *In general.* Sections 1.6664–1 through 1.6664–3 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1989.

(2) *Reasonable cause and good faith exception to section 6662 penalties.* Section 1.6664–4 applies to returns the due date of which (determined without regard to extensions of time for filing) is after September 1, 1995. Except as provided in the last sentence of this paragraph (b)(2), § 1.6664–4 (as contained in 26 CFR part 1 revised April 1, 1995) applies to returns the due date of which (determined without regard to extensions of time for filing) is on or before September 1, 1995 and after December 31, 1989. For transactions occurring after December 8, 1994, § 1.6664–4 (as contained in 26 CFR part 1 revised April 1, 1995) is applied taking into account the changes made to section 6662(d)(2)(C) (relating to the substantial understatement penalty for tax shelter items of corporations) by section 744 of Title VII of the Uruguay Round Agreements Act, Pub. L. 103–465 (108 Stat. 4809).

Par. 11. Section 1.6664–4 is amended by:

1. Revising the last sentence of paragraph (a).
2. Revising paragraph (b)(1).
3. Revising the introductory language of paragraph (b)(2) and *Example 1.*
4. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (f), and (g), respectively.
5. Revising newly designated paragraph (d).
6. Adding new paragraphs (c) and (e).

The additions and revisions read as follows:

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

(a) * * * Rules for determining whether the reasonable cause and good faith exception applies are set forth in paragraphs (b) through (g) of this section.

(b) *Facts and circumstances taken into account*—(1) *In general.* The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. (See paragraph (e) of this section for certain rules relating to a substantial understatement penalty attributable to tax shelter items of corporations.) Generally, the most important factor is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of all of the facts and circumstances, including the experience, knowledge, and education of the taxpayer. An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith. Reliance on an information return or on the advice of a professional tax advisor or an appraiser does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice, or other facts, however, constitutes reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. (See paragraph (c) of this section for certain rules relating to reliance on the advice of others.) For example, reliance on erroneous information (such as an error relating to the cost or adjusted basis of property, the date property was placed in service, or the amount of opening or closing inventory) inadvertently included in data compiled by the various divisions of a multidivisional corporation or in financial books and records prepared by those divisions generally indicates reasonable cause and good faith, provided the corporation employed internal controls and procedures, reasonable under the circumstances, that were designed to identify such factual errors. Reasonable cause and good faith ordinarily is not indicated by the mere fact that there is an appraisal of the value of property. Other factors to consider include the methodology and assumptions underlying the appraisal, the appraised value, the relationship between appraised value and purchase price, the circumstances under which the appraisal was obtained, and the appraiser's relationship to the taxpayer or to the activity in which the property is used. (See paragraph (g) of this section for certain rules relating to appraisals for charitable deduction property.) A taxpayer's reliance on erroneous information reported on a Form W–2, Form 1099, or other information return indicates reasonable cause and good faith, provided the taxpayer did not know or have reason to know that the information was incorrect. Generally, a taxpayer knows, or has reason to know, that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge of the transaction. This knowledge includes, for example, the taxpayer's knowledge of the terms of his employment relationship or of the rate of return on a payor's obligation.

(2) *Examples.* The following examples illustrate this paragraph (b). They do not involve tax shelter items. (See paragraph (e) of this section for certain rules relating to the substantial understatement penalty attributable to the tax shelter items of corporations.)

Example 1. A, an individual calendar year taxpayer, engages B, a professional tax advisor, to give A advice concerning the deductibility of certain state and local taxes. A provides B with full details concerning the taxes at issue. B advises A that the taxes are fully deductible. A, in preparing his own tax return, claims a deduction for the taxes. Absent other facts, and assuming the facts and circumstances surrounding B's advice and A's reliance on such advice satisfy the requirements of paragraph (c) of this section, A is considered to have demonstrated good faith by seeking the advice of a professional tax advisor, and to have shown reasonable cause for any underpayment attributable to the deduction claimed for the taxes. However, if A had sought advice from someone that A knew, or should have known, lacked knowledge in the relevant aspects of Federal tax law, or if other facts demonstrate that A failed to act reasonably or in good faith, A would not be considered to have shown reasonable cause or to have acted in good faith.

* * * * *

(c) *Reliance on opinion or advice*—(1) *Facts and circumstances; minimum requirements.* All facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on advice (including the opinion of a professional tax advisor) as to the treatment of the taxpayer (or any entity, plan, or arrangement) under Federal tax law. However, in no event will a taxpayer be considered to have reasonably relied in good faith on advice unless the requirements of this paragraph (c)(1) are satisfied. The fact that these requirements are satisfied will not necessarily establish that the taxpayer reasonably relied on the advice (including the opinion of a professional tax advisor) in good faith. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) *All facts and circumstances considered.* The advice must be based upon all pertinent facts and circumstances and the law as it relates to those facts and circumstances. For example, the advice must take into account the taxpayer's purposes (and the relative weight of such purposes) for entering into a transaction and for structuring a transaction in a particular manner. In addition, the requirements of this paragraph (c)(1) are not satisfied if the taxpayer fails to disclose a fact that it knows, or should know, to be relevant to the proper tax treatment of an item.

(ii) *No unreasonable assumptions.* The advice must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings, or agreements of the taxpayer or any other person. For example, the advice must not be based upon a representation or assumption which the taxpayer knows, or has reason to know, is unlikely to be true, such as an inaccurate representation or assumption as to the taxpayer's purposes for entering into a transaction or for structuring a transaction in a particular manner.

(2) *Advice defined.* Advice is any communication, including the opinion of a professional tax advisor, setting forth the analysis or conclusion of a person, other than the taxpayer, provided to (or for the benefit of) the taxpayer and on which the taxpayer relies, directly or indirectly, with respect to the imposition of the section 6662 accuracy-related penalty. Advice does not have to be in any particular form.

(3) *Cross-reference.* For rules applicable to advisors, see e.g., §§ 1.6694–1 through 1.6694–3 (regarding preparer penalties), 31 CFR 10.22 (regarding diligence as to accuracy), 31 CFR 10.33 (regarding tax shelter opinions), and 31 CFR 10.34 (regarding standards for advising with respect to tax return positions and for preparing or signing returns).

(d) *Pass-through items.* The determination of whether a taxpayer acted with reasonable cause and in good faith with respect to an underpayment that is related to an item reflected on the return of a pass-through entity is made on the basis of all pertinent facts and circumstances, including the taxpayer's own actions, as well as the actions of the pass-through entity.

(e) *Special rules for substantial understatement penalty attributable to tax shelter items of corporations*—(1) *In general; facts and circumstances.* The determination of whether a corporation acted with reasonable cause and in good faith in its treatment of a tax shelter item (as defined in § 1.6662–4(g)(3)) is based on all pertinent facts and circumstances. Paragraphs (e)(2), (3), and (4) of this section set forth rules that apply, in the case of a penalty attributable to a substantial understatement of income tax (within the meaning of section 6662(d)), in determining whether a corporation acted with reasonable cause and in good faith with respect to a tax shelter item.

(2) *Reasonable cause based on legal justification*—(i) *Minimum requirements.* A corporation's legal justification (as defined in paragraph (e)(2)(ii) of this section) may be taken into account, as appropriate, in establishing that the corporation acted with reasonable cause [illegible] in good faith in its treatment [illegible] shelter item only if the authority requirement of paragraph (e)(2)(i)(A) of this section and the belief requirement of paragraph (e)(2)(i)(B) of this section are satisfied (the minimum requirements). Thus, a failure to satisfy the minimum requirements will preclude a finding of reasonable cause and good faith based (in whole or in part) on the corporation's legal justification.

(A) *Authority requirement.* The authority requirement is satisfied only if there is substantial authority (within the meaning of § 1.6662–4(d)) for the tax treatment of the item.

(B) *Belief requirement.* The belief requirement is satisfied only if, based on all facts and circumstances, the corporation reasonably believed, at the time the return was filed, that the tax treatment of the item was more likely than not the proper treatment. For purposes of the preceding sentence, a corporation is considered reasonably to believe that the tax treatment of an item is more likely than not the proper tax treatment if (without taking into account the possibility that a return will not be audited, that an issue will not be raised on audit, or that an issue will be settled)—

(*1*) The corporation analyzes the pertinent facts and authorities in the manner described in § 1.6662–4(d)(3)(ii), and in reliance upon that analysis, reasonably concludes in good faith that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service; or

(*2*) The corporation reasonably relies in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities in the manner described in § 1.6662–4(d)(3)(ii) and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service. (For this purpose, the requirements of paragraph (c) of this section must be met with respect to the opinion of a professional tax advisor.)

(ii) *Legal justification defined.* For purposes of this paragraph (e), *legal justification* includes any justification relating to the treatment or characterization under the Federal tax law of the tax shelter item or of the entity, plan, or arrangement that gave rise to the item. Thus, a taxpayer's belief (whether independently formed or based on the advice of others) as to the merits of the taxpayer's underlying position is a legal justification.

(3) *Minimum requirements not dispositive.* Satisfaction of the minimum requirements of paragraph (e)(2) of this section is an important factor to be considered in determining whether a corporate taxpayer acted with reasonable cause and in good faith, but is not necessarily dispositive. For example, depending on the circumstances, satisfaction of the minimum requirements may not be dispositive if the taxpayer's participation in the tax shelter lacked significant business purpose, if the taxpayer claimed tax benefits that are unreasonable in comparison to the taxpayer's investment in the tax shelter, or if the taxpayer agreed with the organizer or promoter of the tax shelter that the taxpayer would protect the confidentiality of the tax aspects of the structure of the tax shelter.

(4) *Other factors.* Facts and circumstances other than a corporation's legal justification may be taken into account, as appropriate, in determining whether the corporation acted with reasonable cause and in good faith with respect to a tax shelter item regardless of whether the minimum requirements of paragraph (e)(2) of this section are satisfied.

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 18, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–21682 Filed 8–31–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 95–028]

RIN 2115–AE46

Special Local Regulations; City of Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Miami Offshore Grand Prix. The event will be held on September 3, 1995 from 11 a.m. EDT (Eastern Daylight Time) until 3 p.m. EDT. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on September 3, 1995 at 10:30 a.m. EDT and terminate at 3:30 p.m. EDT that day. In the event of inclement weather, an alternate rain date of September 4, 1995 is established with these same times.

ADDRESSES: The Environmental Assessment and Finding of No Significant Impact for this rulemaking are available for inspection and copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida.

FOR FURTHER INFORMATION CONTACT: LTJG B. E. Dailey, Coast Guard Group Miami, Florida at (305) 535–4492.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. § 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable, as there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG Bryan E. Dailey, Project Officer, USCG Group Miami, and LT Jacqueline Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

Offshore Power Boat Racing Association, is sponsoring a high speed power boat race with approximately sixty-five (65) race boats, ranging in length from 24 to 50 feet, participating in the event. There will be approximately two hundred (200) spectator craft. The proposed race course includes Government Cut, Miami, Florida, and the Atlantic Ocean offshore Miami Beach, Florida. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 5 hours on the day of the event.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B. of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact has been prepared and are available for inspection and copying from LTJG B. Dailey, Coast Guard Group Miami, Florida, (305) 535–4492. As a condition to the permit, the applicant is required to educate the event participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T07–028 is added to read as follows:

§ 100.35–T07–028 City of Miami Beach, FL.

(a) *Regulated Area:*

(1) The regulated area begins from that portion of Miami Main Channel at approximate position 25°45′57″ N, 080°08′42″ W, thence to the southern entrance to the Miami Beach Marina

and approximate position 25°46′10″ N, 080°08′28″ W, thence south east along the shore to the Western end of Bar Cut to lighted buoy 10 (Light list number 9395) approximate position 25°45′39″ N, 080°07′29″ W, thence Westward along the Government Cut North Jetty to shore and the shoreline to approximate position 25°48′13″ N, 080°07′06″ W, thence east approximately 2.4 nautical miles to approximate position 25°48.13′ N, 080°05′51″ W, thence south to approximate position 25°45′05″ N, 080°06′45″ W, thence west bearing 295° true to Fisher Island. The regulated area then follows the shoreline of Fisher Island North and West to approximate position 25°45′51″ N, 080°08′42″ W, thence back to the starting point.

(2) In the Event that sea conditions make it unsafe for the race course to transit through Government Cut, an alternate regulated area has been established by a line joining the following points: 25°46′50″ N, 080°07′60″ W; thence to 25°46′50″ N, 080°07′80″ W; thence to, 25°49′20″ N, 080°06′80″ W; thence to 25°51′10″ N, 080°06′70″; thence to 25°51′00″ N, 080°07′10″ W; thence to along the shoreline to the starting point.

(b) *Special local regulations:*

(1) Entry into the regulated area by other than authorized parade participants or official patrol vessels is prohibited, unless otherwise authorized by the Patrol Commander. At the completion of scheduled races and departure of participants from the regulated area, traffic may resume normal operations. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) The regulated area will be enforced by a regatta patrol. The Coast Guard Patrol Commander will be monitoring VHF-FM channels 16 and 22A. Guide boats will be stationed along the parade route to mark the major course changes.

(3) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(4) Spectators are required to maintain a safe distance from the race course at all times, including 300 yards from those portions of the course where the participants will be engaging in high speed turns, and 100 yards to the Eastern side of the Atlantic Ocean portion of the course. Spectators shall maintain 100 yards distance on either side of participating vessels along the race route in Bar and Government Cuts as described in paragraph (a)(1).

(c) *Effective dates:* This section becomes effective on September 3, 1995 at 10:30 a.m. EDT and terminates on 3:30 p.m. EDT that day. In the event of inclement weather, an alternate rain date of September 4, 1995 is established with these same times.

Dated: August 10, 1995.

Roger T. Rufe, Jr.,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 95–21691 Filed 8–31–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD09–95–009]

RIN 2115–AA97

Safety Zone; Lake Erie, in the Vicinity of Euclid, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie with a one quarter mile radius centered on 41–47.6′ N, 081–36.1′ W. This safety zone is needed in the warmer summer months to prevent recreational and commercial divers from tampering with the exposed valves on the sunken tank barge Cleveco. Such tampering may lead to the release of oil in quantities that may be harmful to the environment, as the Cleveco contains approximately 165,000 gallons of oil. In addition, the Coast Guard is making preparations to remove the oil from the tank barge this summer. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 12 noon EST on May 29, 1995, and terminates at 12 noon EST on October 1, 1995, unless terminated earlier by the Coast Guard Captain of the Port, Cleveland, Ohio.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric M. King, Chief, Port Operations, Coast Guard Marine Safety Office Cleveland, 1055 East Ninth Street, Cleveland, OH 44114, (216) 522–4405.

SUPPLEMENTARY INFORMATION:.

Background and Purpose

On July 14, 1994, the Army Corps of Engineers and the Coast Guard located the tank barge Cleveco, sunk nine miles offshore from Euclid, Ohio in Lake Erie. The tank barge rests keel up in 70 feet of water and contains approximately 165,000 gallons of oil. On July 16, 1994 a safety zone was established for 180 days to prevent unauthorized personnel from conducting underwater activities on or around the Cleveco, and from impeding the preliminary salvage activities of the Coast Guard and those under their supervision (59 FR 44317; August 29, 1994). Now that the waters of Lake Erie are again warming, establishment of the safety zone is again required for the same reasons. Additionally, the Coast Guard will supervise the removal of oil from the Cleveco this summer. Commercial underwater salvage equipment will be utilized to remove the oil from the barge, requiring heavy equipment and diving apparatus to support below-surface operations. Therefore, persons and vessels will be prohibited from transiting this area.

Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port or one of his designated representatives. The designated representatives of the Captain of the Port are the senior Coast Guard commissioned, warrant, or petty officer on the vessel enforcing the safety zone, and the Command Duty Officer at Marine Safety Office Cleveland, Ohio. The senior officer on the vessel enforcing the safety zone can be contacted on VHF–FM Channel 16. The Captain of the Port, Cleveland, and the Command Duty Officer at Marine Safety Office Cleveland can be contacted at telephone number (216) 522–4405.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. There were no comments received for the July 16, 1994 safety zone covering the same geographic location. Publication of a notice of proposed rulemaking and delay in the effective date would be contrary to the public interest because the safety zone is necessary to prevent possible loss of life, injury, or damage to property or the environment. In the event that unauthorized recreational or commercial divers tamper with the barge and its associated valves, a major oil release could occur, threatening lives and the environment.

Drafting Information

The drafters of this regulation are Lieutenant Eric M. King, project officer, Chief, Port Operations, Marine Safety Office Cleveland, Ohio, Commander M. Eric Reeves, program staff officer, Chief, Marine Port and Environmental Safety Branch, Ninth Coast Guard District, and

Lieutenant Karen E. Lloyd, project attorney, Ninth Coast Guard District Legal Office.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of the proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirement, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and 49 CFR 1.46.

2. A new temporary section § 165.T09–009 is added to read as follows:

§ 165.T09–009 Safety Zone; Lake Erie, In the Vicinity of Euclid, OH.

(a) *Location.* The following area is a safety zone: one quarter mile radius centered on 41–47.6N, 081–36.1W, covering the surface waters of Lake Erie down to the lake's bottom. (CNAD 83)

(b) *Effective dates.* This section becomes effective at 12 noon EST on May 29, 1995, and terminates at 12 noon EST on October 1, 1995 unless terminated earlier by the Coast Guard Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port or his designated representative. The senior officer on the vessel enforcing the safety zone can be contacted on VHF–FM Channel 16. The Captain of the Port, Cleveland, and the Command Duty Officer at Marine Safety Office Cleveland can be contacted at telephone number (216) 522–4405.

Dated: May 12, 1995.

J.J. Davin, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Cleveland.

[FR Doc. 95–21692 Filed 8–31–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–95–137]

RIN 2115–AA97

Safety Zone; City of Gloucester Fireworks, Gloucester, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Gloucester Harbor, Gloucester, MA, on September 2, 1995, from 8:30 p.m. until 10:30 p.m., in the vicinity of Pavilion Beach, Western Harbor. This zone is needed to protect the marine community from hazards associated with fireworks displays. Entry of vessels or persons into the zone is prohibited unless authorized by the Captain of the Port (COTP) Boston.

EFFECTIVE DATE: This regulation becomes effective at 8:30 p.m. on September 2, 1995, and terminates at 10:30 p.m. on September 2, 1995, or when the fireworks display is completed, unless extended or terminated sooner by the COTP Boston.

FOR FURTHER INFORMATION CONTACT: LT Gary Croot or MKC Larry Toler, Waterways Management Division, Coast Guard Captain of the Port Boston, 455 Commercial Street, Boston, MA 02109–1045, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT Gary Croot, Waterways Management Division, Coast Guard Captain of the Port Boston, and LCDR S.R. Watkins, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Due to the late date the application was received, there was not sufficient time to publish a proposed rule or a final rule 30 days in advance of the event. The delay to be encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is in celebration of the Gloucester Boat Light Parade.

Background and Purpose

The Gloucester Fireworks Fund requested a fireworks display be permitted in Gloucester Harbor on September 2, 1995 to celebrate the Gloucester Boat Light Parade. The Captain of the Port (COTP) Boston is implementing this safety zone to protect mariners and the viewing public from the inherent hazards associated with a fireworks display in Gloucester Harbor. The fireworks display is scheduled to take place on September 2, 1995 from 9:15 p.m. to 10 p.m. in an area bound by a line drawn from a point west of the mouth of the Blynman Canal in position 42°–36′–33″N, 070°–040′–30″W, thence southeast to lighted buoy 11 in position 42°–36′–20″N, 070°–39′–52″W. The line then continues southward to Ten Pound Island Light in position 42°–36′–08″N, 070°–39′–56″W, then west to a point in position 42°–36′–08″N, 070°–40′–21″W. From this position the line continues northwest to the eastern most point of Stage Head Park at 42°–36′–18″N, 070°–40′–31″W, then northward along the shoreline to the starting position. The zone will be in effect from 8:30 p.m. September 2, 1995 until 10:30 p.m., September 2, 1995 unless extended or sooner terminated by the COTP Boston.

A Coast Guard Station Gloucester patrol craft and Gloucester Harbor Police craft will be on scene to enforce the safety zone. A Safety Marine Information Broadcast will be conducted prior to and during the event.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This is because the event is of limited duration, will be conducted at a late hour, and extensive public advisories will be made well in advance of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rulemaking under the principles and criteria contained in Executive Order 12612 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. An Environmental Checklist and Categorical Exclusion Determination are available for inspection in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, § 165.T01–137, is added to read as follows:

§ 165.T01–137 Safety Zone: City of Gloucester fireworks. Gloucester, MA.

(a) *Location.* The following area is a safety zone: All waters of Gloucester Harbor within the area bounded by a line drawn from a point west of the mouth of the Blynman Canal in position 42° – 36′ – 33″N, 070° – 40′ – 30″W, thence southeast to lighted bouy 11 in position 42° – 36′ – 20″N, 070° – 39′ – 52″W. The line then continues southward to Ten Pound Island Light in position 42° – 36′ – 08″N, 070° – 39′ – 56″W, then west to position 42° – 36′ – 08″N, 070° – 40′ – 21″W. From this position the line continues northwest to the eastern most point of Stage Head Park at 42° – 36′ – 18″N, 070° – 40′ – 31″W, then northward along the shoreline to the starting position.

(b) *Effective date.* This section is effective at 8:30 p.m. on September 2, 1995. It terminates at 10:30 p.m. on September 2, 1995, unless extended or terminated sooner by the Captain of the Port Boston.

(c) *Regulations.* In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited except as authorized by the Captain of the Port Boston.

Dated: August 22, 1995.

D.M. Maguire,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 95–21693 Filed 8–31–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5289–9]

Clean Air Act Final Interim Approval of Operating Permits Program and Approval of Delegation of Section 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by Iowa for the purpose of complying with Federal requirements for an approvable state program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also approving, under section 112(l), the state's program for accepting delegation of section 112 standards.

EFFECTIVE DATE: This rule will become effective on October 2, 1995.

ADDRESSES: Copies of the state's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: USEPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas, 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval.

Where a program substantially, but not fully, meets the requirements of section 502 and part 70, EPA may grant the program interim approval for a period of up to two years. 40 CFR 70.4(d)(3) sets forth the minimum requirements a state program must meet in order to be eligible for interim approval. The 11 minimum requirements include: (1) Adequate fees, (2) applicable requirements, (3) fixed term permits, (4) public participation,

(5) EPA and affected state review, (6) no permit issuance if objection by EPA, (7) basic enforcement authority, (8) operational flexiblity, (9) streamlined procedures for issuing and revising permits and for determining completeness of applications, (10) adequate permit application requirements, and (11) alternative operating scenarios. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

On April 26, 1995, EPA proposed interim approval of the operating permits program for Iowa (see 60 FR 20465–20469). The EPA received no public comments on the proposal. In this notice, the EPA is taking final action to grant interim approval of the operating permits program for Iowa.

II. Final Action and Implications

A. Analysis of State Submission

In proposing interim approval of the Iowa program, the EPA determined that the state met the minimum requirements for interim approval outlined in 40 CFR 70.4(d)(3)(i)–(xi). In order to receive full approval, the EPA outlined specific requirements in 60 FR 20465–69 that the state must meet.

These requirements included:

1. Four specific rule revisions, as well as corrections to the acid rain regulations. The state adopted all required rule revisions and corrections on May 15, 1995, and submitted them to the EPA in a letter dated June 23, 1995. The rule revision and correction requirements therefore have been met.

2. Finalizing the operating permit fee and submission of a revised fee demonstration as necessary. In section II.A.2.a. of the April 26, 1995, notice of proposed interim approval, the EPA noted the state only collected half of its operating permit fee of $24 until it could be determined if the full amount was necessary to implement the program.

On March 20, 1995, the state elected to collect the full amount of $24 and submitted documentation of this action to the EPA on May 26, 1995. Since the EPA previously determined the adequacy of a $24 operating permit fee, this requirement has been met.

3. Hiring the originally forecasted amount of personnel to implement the Title V program or submission of a revised workload analysis that adequately describes how the program may be successfully implemented with fewer personnel.

Although the state has hired additional personnel for the purpose of implementing Title V since the April 26, 1995, **Federal Register** notice, the state has not met the original personnel forecast, nor has it submitted a revised workload analysis. This requirement for full approval has not been met; consequently, EPA is granting interim approval of the program.

B. Section 112(g)

To regulate hazardous air pollutants, the EPA will establish performance standards for each industry based on Maximum Achievable Control Technology (MACT) under section 112(g) of the Act.

On February 14, 1995, the EPA published an interpretation of section 112(g) applicability in 60 FR 8333. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Iowa must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Federal regulations.

The EPA is aware that Iowa lacks a program designed specifically to implement section 112(g). However, Iowa has adopted a subrule amendment at IAC 567–22.3(6) that gives the state authority to limit emissions of hazardous air pollutants (HAP). Iowa may use this authority to establish case-by case MACTs as needed for the review of new or modified HAP sources until such time as it adopts section 112(g).

C. Section 112(l)

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources, as well as for sources not subject to part 70 requirements. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is granting full approval under section 112(l)(5) and 40 CFR 63.91 of these programs for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated.

D. Final Action

The EPA is granting interim approval of the operating permits program submitted by Iowa on November 15, 1993. In addition, the EPA is granting approval of the state's program for receiving delegation of section 112 standards. In order to receive full approval of the operating permit program, the state must hire the original amount of forecasted personnel or provide a revised workload analysis describing how the program may be successfully implemented with fewer personnel.

This approval includes the following regulations adopted by the state of Iowa:

1. Iowa Administrative Code 567–22.100–147, effective March 16, 1994;
2. Amendments to Iowa Administrative Code 567–22.3(6); 101–103; 105; 107–108; 110; 120; 123–124; 132; 134; 139; 141–142; 146; 147; adopted May 15, 1995, and effective July 12, 1995; and
3. Iowa Administrative Code 567–2 (effective September 7, 1988); 567–7 (effective September 7, 1988); 567–10 (effective September 16, 1992).

The scope of Iowa's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within Iowa, except any sources of air pollution over which an Indian Tribe has jurisdiction (see 59 FR 55813, 55815–18 (November 9, 1994)). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; 59 FR 43956, 43962 (August 25, 1994); and 58 FR 54364 (October 21, 1993).

This interim approval, which may not be renewed, extends until October 1, 1997.

During this interim approval period, Iowa is protected from sanctions, and EPA is not obligated to promulgate, administer, or enforce a Federal operating permits program in the state.

Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the three-year time

period for processing the initial permit applications.

If Iowa fails to submit a complete corrective program for full approval by April 1, 1997, EPA will start an 18-month clock for mandatory sanctions. If Iowa then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Iowa has corrected the deficiency by submitting a complete corrective program.

Moreover, if the Administrator finds a lack of good faith on the part of Iowa, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the state has come into compliance. In any case, if, six months after application of the first sanction, Iowa still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Iowa has not submitted a timely complete corrective program or EPA has disapproved its submitted corrective program.

If EPA has not granted full approval to the Iowa program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal permits program upon interim approval expiration.

III. Administrative Requirements

A. Docket

Copies of the state's submittal and other information relied upon for the final interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of these operating permit programs, the state of Iowa has elected to adopt the program provided for under Title V of the Clean Air Act. These rules bind the state to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. EPA has determined that this interim final action does not include a mandate that may result in estimated costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 16, 1995.

Dennis Grams,
Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Iowa in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

(a) The Iowa Department of Natural Resources submitted on November 15, 1993, and supplemented by correspondence dated March 15, 1994; August 8, 1994; October 5, 1994; December 6, 1994; December 15, 1994; February 6, 1995; March 1, 1995; March 23, 1995; and May 26, 1995. Interim approval effective on October 2, 1995; interim approval expires October 1, 1997.

(b) [Reserved]

* * * * *

[FR Doc. 95–21760 Filed 8–31–95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OMC–011–FC]

Medicare Program; Contracts With Health Maintenance Organizations (HMOs) and Competitive Medical Plans (CMPs)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule clarifies and updates portions of the HCFA regulations that pertain to the following:

- The conditions that an HMO or CMP must meet to qualify for a Medicare contract (Subpart J).
- The contract requirements (Subpart L).
- The rules for enrollment, entitlement, and disenrollment of Medicare beneficiaries in a contracting HMO or CMP (Subpart K).
- How a Medicare contract is affected when there is change of ownership or leasing of facilities of a contracting HMO or CMP (Subpart M).

These are technical and editorial changes that do not affect the substance of the regulations. They are intended to make it easier to find particular provisions, to provide overviews of the different program aspects, and to better ensure uniform understanding of the rules.

DATES: *Effective Date:* These rules are effective as of October 1, 1995.

Comment Date: We will consider comments received by October 31, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OMC–011–FC, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, or
Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OMC–011–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of the document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890)).

FOR FURTHER INFORMATION CONTACT: Tracy Jensen, (410) 786–1033.

SUPPLEMENTARY INFORMATION:

I. Background

This rule is the fourth in a series of technical amendments that aim to—

1. Make it easier to find particular provisions, for example, by providing paragraph headings to serve as sign posts, using more sections (their headings will appear in the table of contents), and by listing and designating separate provisions that have been "lost" in 90-word sentences.

2. Clarify, simplify, and update, for example—

a. By using—

- Shorter words, sentences, and paragraphs;
- The active voice—showing who does what; and
- The most precise terms available, such as "enrollee" (rather than "member") for a beneficiary enrolled in an HMO or CMP; "HCFA" (rather than "the Secretary") since the responsibility for the prepaid health care programs has been delegated to HCFA; "that" (rather than "which") when the term limits or defines.

b. By eliminating unnecessary verbiage and outdated provisions.

II. Changes Made by This Rule

1. This rule amends § 417.1 to revise the definition of "service area" and to remove from the definition of "health maintenance organizations" the reference to §§ 417.168 and 417.169. Those sections were removed by a rule published on September 30, 1994 at 59 FR 49834.

2. The changes in subpart J are purely editorial, such as providing paragraph headings in § 417.410, and using present indicative to describe what HCFA does on a continuing basis.

3. In subpart K—

a. Special rules are highlighted by upgrading paragraphs to section status (new § 417.423).

b. Excessively long sentences are broken down to list and designate the separate provisions (paragraph (c) of § 417.440).

c. In § 417.460 (Disenrollment and termination of payments), we have reorganized the content to specify separately the circumstances under which disenrollment is required and those under which it is optional. We have also used more sections and eliminated unnecessary verbiage.

4. In subpart L, we have made technical and editorial changes, changes that, for example—

- Provide additional headings and more precise cross references; and
- Avoid unnecessary repetition.

5. In subpart M, we eliminated a "definitions" paragraph because, of the three terms defined, one was never used in the subpart, one was unnecessary, and the third was better explained in the only place it is used.

III. Waiver of Proposed Rulemaking and Delayed Effective Date

The changes made by this rule are technical and editorial in nature. Their aim is to simplify, clarify, and update subparts J, K, L, and M without substantive change. They have no impact on program costs. Accordingly, we find that notice and opportunity for public comment are unnecessary and contrary to the public interest and that, therefore, there is good cause to waive proposed rulemaking procedures.

In addition, it is important, for the convenience of the public, that these changes be effective as of October 1, 1995, so that they will be included in the 1995 edition of Title 42 of the Code of Federal Regulations on which the public relies. Accordingly, we find good cause to waive the usual 30-day delay in the effective date.

As previously indicated, however, we will consider timely comments from anyone who believes that, in making the technical and editorial changes, we have unintentionally altered the substance. Although we cannot respond to comments individually, if we change these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

IV. Paperwork Reduction Act

These regulations contain no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA), and section 1102(b) of the Social Security Act (the Act), we prepare a regulatory flexibility analysis for each rule, unless we can certify that the rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

The RFA defines "small entity" as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds, and is not located in a metropolitan statistical area. We have not prepared a regulatory flexibility analysis because we have determined and we certify that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

We have not prepared a regulatory flexibility analysis because we have determined and certify that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this rule was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMOs), Medicare.

42 CFR Part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. The authority citation for Part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (U.S.C. 1302 and 1395hh); Secs. 1301, 1306 and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e-5, and 300e-9); and 31 U.S.C. 9701.

B. Subpart A is amended as follows:

Subpart A—General Provisions

1. In § 417.1, the following changes are made:

a. In the definition of "health maintenance organization," the last comma and the words "and §§ 417.168 and 417.169" are removed.

b. The definition of "service area" is revised to read as set forth below.

§ 417.1 Definitions.

* * * * *

Service area means a geographic area, defined through zip codes, census tracts, or other geographic measurements, that is the area, as determined by HCFA, within which the HMO furnishes basic and supplemental health services and makes them available and accessible to all its enrollees in accordance with § 417.106(b).

* * * * *

§ 417.2 [Amended]

2. In paragraph (a) of § 417.2, "Subparts A through F" is revised to read "Subparts B through F".

C. Subpart J is amended as set forth below:

Subpart J—Qualifying Conditions for Medicare Contracts

1. Section 417.400 is revised to read as follows:

§ 417.400 Basis and scope.

(a) *Statutory basis.* The regulations in this subpart implement section 1876 of the Act, which authorizes Medicare payment to HMOs and CMPs that contract with HCFA to furnish covered services to Medicare beneficiaries.

(b) *Scope.* (1) This subpart sets forth the requirements an HMO or CMP must meet in order to enter into a contract with HCFA under section 1876 of the Act. It also specifies the procedures that HCFA follows to evaluate applications and make determinations.

(2) The rules for payment to HMOs and CMPs are set forth in subparts N, O, and P of this part.

(3) The rules for HCPP participation in Medicare under section 1833(a)(1)(A) of the Act are set forth in subpart U of this part.

2. § 417.401 is amended to add definitions of "cost contract", "cost HMO or CMP", and "risk HMO or CMP", in alphabetical order, and revise all other definitions except the definitions of "adjusted average per capita cost", "demonstration project", and "geographic area", to read as follows:

§ 417.401 Definitions.

* * * * *

Adjusted average per capita cost * * *

Adjusted community rate (ACR) is the equivalent of the premium that a risk HMO or CMP would charge Medicare enrollees independently of Medicare payments if the HMO or CMP used the same rates it charges non-Medicare enrollees for a benefit package limited to covered Medicare services.

Arrangement means a written agreement between an HMO or CMP and another entity, under which—

(1) The other entity agrees to furnish specified services to the HMO's or CMP's Medicare enrollees;

(2) The HMO or CMP retains responsibility for the services; and

(3) Medicare payment to the HMO or CMP discharges the beneficiary's obligation to pay for the services.

Benefit stabilization fund means a fund established by HCFA, at the request of a risk HMO or CMP, to withhold a portion of the per capita payments available to the HMO or CMP and pay that portion in a subsequent contract period for the purpose of stabilizing fluctuations in the availability of the additional benefits the HMO or CMP provides to its Medicare enrollees.

Cost contract means a Medicare contract under which HCFA pays the HMO or CMP on a reasonable cost basis.

Cost HMO or CMP means an HMO or CMP that has in effect a cost contract with HCFA under section 1876 of the Act and subpart L of this part.

Demonstration project * * *

Emergency services means covered inpatient or outpatient services that are furnished by an appropriate source other than the HMO or CMP and that meet the following conditions:

(1) Are needed immediately because of an injury or sudden illness.

(2) Are such that the time required to reach the HMO's or CMP's providers or suppliers (or alternatives authorized by the HMO or CMP) would mean risk of permanent damage to the enrollee's health.

Once initiated, the services continue to be considered emergency services as long as transfer of the enrollee to the HMO's or CMP's source of health care or authorized alternative is precluded because of risk to the enrollee's health or because transfer would be unreasonable, given the distance and the nature of the medical condition.

Geographic area * * *

Medicare enrollee means a Medicare beneficiary who has been identified on HCFA records as an enrollee of an HMO or CMP that has a contract with HCFA under section 1876 of the Act and subpart L of this part.

New Medicare enrollee means a Medicare beneficiary who—

(1) Enrolls with an HMO or CMP after the date on which the HMO or CMP first enters into a risk contract under subpart L of this part; and

(2) Was not enrolled with the HMO or CMP at the time he or she became entitled to benefits under Part A or eligible to enroll in Part B of Medicare.

Risk contract means a Medicare contract under which HCFA pays the HMO or CMP on a risk basis for Medicare covered services.

Risk HMO or CMP means an HMO or CMP that has in effect a risk contract with HCFA under section 1876 of the Act and subpart L of this part.

Urgently needed services means covered services that are needed by an enrollee who is temporarily absent from the HMO's or CMP's geographic area and that—

(1) Are required in order to prevent serious deterioration of the enrollee's health as a result of unforeseen injury or illness; and

(2) Cannot be delayed until the enrollee returns to the HMO's or CMP's geographic area.

3. §§ 417.404, 417.406, and 417.407 are revised to read as follows:

§ 417.404 General requirements.

(a) In order to contract with HCFA under the Medicare program, an entity must—

(1) Be determined by HCFA to be an HMO or CMP (in accordance with §§ 117.142 and 417.407, respectively); and

(2) Comply with the contract requirements set forth in subpart L of this part.

(b) HCFA enters into or renews a contract only if it determines that action would be consistent with the effective and efficient implementation of section 1876 of the Act.

§ 417.406 Application and determination.

(a) *Responsibility for making determinations.* HCFA is responsible for determining whether an entity meets the requirements to be an HMO or CMP.

(b) *Application requirements.* (1) The application requirements for HMOs are set forth in § 417.143.

(2) The requirements of § 417.143 also apply to CMPs except that there are no application fees.

(c) *Determination.* HCFA uses the procedures set forth in § 417.144(a) through (d) to determine whether an entity is an HMO or CMP.

(d) *Oversight of continuing compliance.* (1) HCFA oversees an entity's continued compliance with the requirements for an HMO as defined in § 417.1 or for a CMP as set forth in § 417.407.

(2) If an entity no longer meets those requirements, HCFA terminates the contract of that entity in accordance with § 417.494.

§ 417.407 Requirements for a Competitive Medical Plan (CMP).

(a) *General rule.* To qualify as a CMP, an entity must be organized under the laws of a State and must meet the requirements of paragraphs (b) through (f) of this section.

(b) *Required services*—(1) *Basic rule.* Except as provided in paragraph (b)(2) of this section, the entity furnishes to its enrollees at least the following services:

(i) Physicians' services performed by physicians.

(ii) Laboratory, x-ray, emergency, and preventive services.

(iii) Out-of-area coverage.

(iv) Inpatient hospital services.

(2) Exception for Medicaid prepayment risk contracts. An entity that had, before 1970, a Medicaid prepayment risk contract that did not include provision of inpatient hospital services is not required to provide those services.

(c) *Compensation for services.* The entity receives compensation (except for deductibles, coinsurance, and copayments) for the health care services it provides to enrollees on a periodic, prepaid capitation basis regardless of the frequency, extent, or kind of services provided to any enrollee.

(d) *Source of physicians' services.* The entity provides physicians' services primarily through—

(1) Physicians who are employees or partners of the entity; or

(2) Physicians or groups of physicians (organized on a group or individual practice basis) under contract with the entity to provide physicians' services.

(e) *Assumption of financial risk.* The rules set forth in § 417.120(b) for HMOs apply also to CMPs except that reference to "basic services" must be read as reference to the required services listed in paragraph (b) of this section.

(f) *Protection of enrollees.* The entity provides adequately against the risk of insolvency by meeting the requirements of §§ 417.120(a) and 417.122 for protection of enrollees against loss of benefits and liability for payment of any fees that are the legal responsibility of the entity.

§ 417.408 [Amended]

4. In § 417.408, the following changes are made:

a. In paragraph (a), the designation "(1)" is inserted before the first sentence, the designation "(2)" is inserted before the second sentence, and "will exempt" is revised to read "exempts".

b. In paragraphs (b)(1) and (c) introductory text, "will give" is revised to read "gives".

5. Section 417.410 is amended to revise the section heading and provide headings for paragraphs (a) through (f), to read as follows:

§ 417.410 Qualifying conditions: General rules.

(a) *Basic requirement.* * * *

(b) *Other qualifying conditions.* * * *

(c) *Standards.* * * *

(d) *Application of standards.* * * *

(e) *Requirements for a risk contract.* * * *

(f) *Requirements for a reasonable cost contract.* * * *

* * * * *

§ 417.412 [Amended]

6. In § 417.412, the following changes are made:

a. Paragraph (a) and the designation "(b)" are removed.

b. Paragraphs (b)(1) and (b)(2) are redesignated as paragraphs (a) and (b), respectively.

7. In § 417.413, paragraphs (b) introductory text, (b)(1), (b)(2), (c), (d)(2)(i), (d)(3), (d)(5), and (d)(6) are revised to read as follows:

§ 417.413 Qualifying condition: Operating experience and enrollment.

* * * * *

(b) *Standard: Enrollment and operating experience for HMOs or CMPs to contract on a risk basis.* To be eligible to contract on a risk basis—

(1) A nonrural HMO or CMP must currently have the following:

(i) At least 5,000 enrollees; and

(ii) At least 75 Medicare enrollees or a plan acceptable to HCFA for achieving a Medicare enrollment of 75 within 2 years from the beginning of its initial contract period.

(2) A rural HMO or CMP must currently have—

(i) At least 1,500 enrollees; and

(ii) At least 75 Medicare enrollees or a plan acceptable to HCFA for achieving a Medicare enrollment of 75 within 2 years from the beginning of its initial contract period.

* * * * *

(c) *Standard: Enrollment and operating experience for HMOs or CMPs to contract on a cost basis.* To be eligible to contract on a reasonable cost basis, an HMO or CMP must currently have enrollees sufficient in number to provide a reasonable basis for entering into a contract, as follows:

(1) At least 1,500 enrollees.

(2) At least 75 Medicare enrollees, or a plan acceptable to HCFA for achieving—

(i) A Medicare enrollment of 75 within 2 years from the beginning of its initial contract period; and

(ii) At least 250 Medicare enrollees by the beginning of its fourth contract period.

(d) *Standard: Composition of enrollment.*

(1) * * *

(2) *Waiver of composition of enrollment standard.* * * *

(i) The HMO or CMP serves a geographic area in which Medicare beneficiaries and Medicaid recipients constitute more than 50 percent of the population. (HCFA does not grant a waiver that would permit the percentage of Medicare and Medicaid enrollees to exceed the percentage of Medicare beneficiaries and Medicaid recipients in the population of the geographic area.)

* * * * *

(3) *Waiver granted on or before October 21, 1986.* An HMO or CMP (or a successor HMO or CMP) that as of October 21, 1986, had been granted an exception, waiver, or modification of the requirements of paragraph (d)(1) of this section, but that does not meet the requirements of paragraph (d)(2) of this section, must make (and throughout the period of the exception, waiver, or modification continue to make) reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by HCFA.

(i) If HCFA determines that the HMO or CMP has complied, or made significant progress toward compliance, with the approved schedule, and that an extension is in the best interest of the Medicare program, HCFA may extend the waiver of modification.

(ii) If HCFA determines that the HMO or CMP has not complied with the approved schedule, HCFA may apply the sanctions described in paragraphs (d)(6) and (d)(7) of this section.

* * * * *

(5) *Notice of sanction.* Before applying the sanctions specified in paragraph (d)(6) of this section, HCFA sends a written notice to the HMO or CMP stating the proposed action and its basis. HCFA gives the HMO or CMP 15 days after the date of the notice to provide evidence establishing the HMO's or CMP's compliance with the requirements in paragraph (d)(1), (d)(2), or (d)(3) of this section, as applicable.

(6) *Sanctions.* If, following review of the HMO's or CMP's timely response to HCFA's notice, HCFA determines that an HMO or CMP does not comply with the requirements of paragraphs (d)(1), (d)(2), or (d)(3) of this section, HCFA may apply either of the following sanctions:

(i) Require the HMO or CMP to stop accepting new enrollment applications after a date specified by HCFA.

(ii) Deny payment for individuals who are formally added or "accreted" to HCFA's records as Medicare enrollees after a date specified by HCFA.

* * * * *

§ 417.414 [Amended]

8. In § 417.414, the following changes are made:

a. In paragraph (b)(1), the word "that" is revised to read "to the extent that they".

b. Paragraph (b)(4) is removed.

9. Section 417.416 is amended by revising paragraphs (b) and (d), to read as follows:

§ 417.416 Qualifying condition: Furnishing of services.

* * * * *

(b) *Standard: Conformance with conditions of participation, conditions for coverage, and conditions for certification.* (1) Hospitals, SNFs, HHAs, CORFs, and providers of outpatient physical therapy or speech-language pathology services must meet the applicable conditions of participation in Medicare, as set forth elsewhere in this chapter.

(2) Suppliers must meet the conditions for coverage or conditions for certification of their services, as set forth elsewhere in this chapter.

(3) If more than one type of practitioner is qualified to furnish a particular service, the HMO or CMP may select the type of practitioner to be used.

* * * * *

(d) *Exceptions to physician supervision requirement.* The following services may be furnished without the direct personal supervision of a physician:

(1) Services of physician assistants and nurse practitioners (as defined in § 491.2 of this chapter), and the services and supplies incident to their services. The conditions for payment, as set forth in §§ 405.2414 and 405.2415 of this chapter for services furnished by rural health clinics and Federally qualified health centers, respectively, also apply when those services are furnished by an HMO or CMP.

(2) When furnished by a risk HMO or CMP, services of clinical psychologists, and services and supplies incident to their professional services. For purposes of this section, a clinical psychologist is an individual who—

(i) Holds a doctoral degree in psychology from an educational institution that is accredited by an organization recognized by the Council on Post-Secondary Accreditation;

(ii) Is licensed or certified at the independent practice level of psychology in the State in which he or she practices; and

(iii) Has 2 years of supervised clinical experience at least 1 of which is postgraduate.

* * * * *

D. Subpart K is amended as set forth below:

§ 417.420 [Amended]

1. In § 417.420, the following changes are made:

a. In paragraph (b), "Medicare will make payments to the HMO or CMP" is revised to read "HCFA pays the HMO or CMP".

b. In paragraph (b), the phrase ", as described in § 417.440," is removed.

c. In paragraph (c)(1), the phrase "as authorized in § 417.440" is removed.

§ 417.422 [Amended]

2. In § 417.422, the following changes are made:

a. In paragraph (a), the designation "(a)" and the heading are removed and "§ 417.424 and paragraphs (b) and (c) of this section" is revised to read "§§ 417.423 and 417.424".

b. The designation of paragraphs (a)(1) through (a)(7), is changed to "(a)" through "(g)", respectively.

c. Paragraphs (b) and (c) are removed.

3. A new § 417.423 is added, to read as follows:

§ 417.423 Special rules: ESRD and hospice patients.

(a) *ESRD patients.* (1) A Medicare beneficiary who has been medically determined to have end-stage renal disease is not eligible to enroll in an HMO or CMP.

(2) However, if a beneficiary is already enrolled in an HMO or CMP when he or she is determined to have end-stage renal disease, the HMO or CMP—

(i) Must reenroll the beneficiary as required by § 417.434; and

(ii) May not disenroll the beneficiary except as provided in § 417.460.

(b) *Hospice patients.* A Medicare beneficiary who elects hospice care under § 418.24 of this chapter is not eligible to enroll in an HMO or CMP as long as the hospice election remains in effect.

§ 417.424 [Amended]

4. In § 417.424, the following changes are made:

a. In paragraph (b), the designation "(1)" is inserted before the first sentence and the designation "(2)" is inserted before the second sentence.

b. In newly designated paragraph (b)(2), the phrase "(as defined in § 417.413(f)(2))" is removed, and the phrase "its proportion to the general population" is revised to read "the subgroup's proportion of the general population".

c. The following parenthetical statement is added at the end of newly designated paragraph (b)(2): "(A subgroup is a class of Medicare enrollees of an HMO or CMP that HCFA constructs on the basis of actuarial factors.)".

5. In § 417.426, paragraphs (b)(2) and (c) are revised to read as follows:

§ 417.426 Open enrollment requirements.

* * * * *

(b) *Capacity to accept new enrollees.* * * *

(2) HCFA evaluates the HMO's or CMP's submittal under paragraph (b)(1) of this section.

* * * * *

(c) *Reserved vacancies.* (1) Subject to HCFA's approval, an HMO or CMP may set aside a reasonable number of vacancies for an anticipated new group contract or for anticipated new enrollees under an existing group contract that will have its enrollment period after the Medicare open enrollment period during the contract year.

(2) Any set aside vacancies that are not filled within a reasonable time after the beginning of the group contract enrollment period must be made available to Medicare beneficiaries and other nongroup applicants under the requirements of this subpart.

§ 417.428 [Amended]

6. In § 417.428, paragraph (c), "risk reimbursement" is revised to read "payment on a risk basis".

7. In § 417.430, the following changes are made:

a. Paragraph (b)(3) is revised to read as set forth below.

b. In paragraph (b)(6)(i), "accepted while the organization was enrolled to capacity" is revised to read "accepted (for future enrollment) while there were no vacancies."

§ 417.430 Application procedures.

* * * * *

(b) *Handling of applications.* * * *

(3) The HMO or CMP gives the beneficiary prompt written notice of acceptance or rejection of the application.

* * * * *

§ 417.432 [Corrected]

8. In § 417.432, the heading of paragraph (e) is corrected to read: "(e) *Expedited submittal of information to HCFA.*"

9. Section 417.440 is amended to revise paragraphs (b)(1), (c), and (d) introductory text, to read as follows:

§ 417.440 Entitlement to health care services from an HMO or CMP.

* * * * *

(b) *Scope of services*—(1) *Part A and Part B services.* Except as specified in paragraphs (c), (d), and (e) of this section, a Medicare enrollee is entitled to receive from an HMO or CMP all the Medicare-covered services that are available to individuals residing in the HMO's or CMP's geographic area, as follows:

(i) Medicare Part A and Part B services if the enrollee is entitled to benefits under both programs.

(ii) Medicare Part B services if the enrollee is entitled only under that program.

* * * * *

(c) *Limitation on hospice care*—(1) *Extent of limitation*—(i) *Basic rule.* Except as provided in paragraph (c)(1)(ii) of this section, a Medicare enrollee who elects to receive hospice care under § 418.24 of this chapter waives the right to receive from the HMO or CMP any Medicare services (including services equivalent to hospice care) that are related to the terminal condition for which the enrollee elected hospice care, or to a related condition.

(ii) *Exception.* An enrollee who elects hospice care retains the right to services furnished by his or her attending physician if that physician—

(A) Is an employee or contractor of the HMO or CMP; and

(B) Is not an employee of the designated hospice and does not receive compensation from the hospice for those services.

(2) *Effective date of limitation.* The limitation in paragraph (c)(1) of this section begins on the effective date of the beneficiary's election of hospice care and remains in effect until the earlier of the following:

(i) The effective date of the enrollee's revocation of the election of hospice care as described in § 418.28 of this chapter.

(ii) The date the enrollee exhausts his or her hospice benefits.

(3) *Payment to HMO or CMP.* For the period that the Medicare enrollee's election of hospice care is in effect, HCFA pays a cost HMO or CMP only as described in § 417.585.

(d) *Limitation on provision of inpatient hospital services.* If a beneficiary's effective date of coverage, as specified in § 417.450, in a risk HMO or CMP occurs during an inpatient stay in a hospital paid for under part 412 of this chapter, the HMO or CMP—

* * * * *

10. In § 417.442, the heading and paragraph (a) are revised to read as follows:

§ 417.442 Risk HMOs and CMPs: Conditions for provision of additional benefits.

(a) *General rule.* Except as provided in paragraph (b) of this section, a risk HMO or CMP must, during any contract period, provide to its Medicare enrollees the additional benefits described in § 417.440(b)(4) if its ACRs (calculated in accordance with § 417.594) are less than the average per capita rates that HCFA pays for the Medicare enrollees during the contract period.

11. In § 417.450, paragraph (c) is revised to read as follows:

§ 417.450 Effective date of coverage.

* * * * *

(c) *Notice of effective date of coverage.* For each beneficiary added to HCFA's records as an enrollee of an HMO or CMP, HCFA gives the HMO or CMP prompt written notice of the month with which HCFA's liability begins.

§ 417.452 [Amended]

12. In § 417.452, the following changes are made:

a. In paragraph (a)(1), "under § 417.442" is revised to read "under the additional benefits provision of § 417.442".

b. In paragraph (a)(2) "may be paid by the enrollee or on his or her behalf by another individual, organization or entity." is revised to read "may be paid by or on behalf of the enrollee in the form of a premium, membership fee, charge per unit, or other similar charge.", and the second sentence is removed.

c. In paragraph (b) introductory text, "provided under § 417.442" is revised to read "provided as additional benefits under § 417.442".

§ 417.454 [Amended]

13. In § 417.454, the heading of paragraph (a) is revised to read *"Limits on charges."*

§ 417.456 [Amended]

14. In § 417.456, in paragraph (f), "will reduce" is revised to read "reduces", and "arrange" is revised to read "arranges".

§ 417.458 [Amended]

15. In § 417.458, introductory text, "agrees to recoup" is revised to read "agrees not to recoup", and "only in the following circumstances" is revised to read "except in the following circumstances".

16. Section 417.460 is revised and new sections 417.461 and 417.464 are added, to read as follows:

§ 417.460 Disenrollment of beneficiaries by an HMO or CMP.

(a) *General rule.* Except as provided in paragraphs (b) through (i) of this section, an HMO or CMP may not—

(1) Disenroll a Medicare beneficiary; or

(2) Orally or in writing, or by any action or inaction, request or encourage a Medicare enrollee to disenroll.

(b) *Bases for disenrollment: Overview*—(1) *Optional disenrollment.* Generally, an HMO or CMP may disenroll a Medicare enrollee if he or she—

(i) Fails to pay the required premiums or other charges;

(ii) Commits fraud or permits abuse of his or her enrollment card; or

(iii) Behaves in a manner that seriously impairs the HMO's or CMP's ability to furnish health care services to the particular enrollee or to other enrollees.

(2) *Required disenrollment.* Generally, an HMO or CMP must disenroll a Medicare enrollee if he or she—

(i) Moves out of the HMO's or CMP's geographic area;

(ii) Fails to convert to the risk provisions of the HMO's or CMP's Medicare contract;

(iii) Loses entitlement to Medicare Part B benefits; or

(iv) Dies.

(3) *Related provisions.* Specific requirements, limitations, and exceptions are set forth in paragraphs (c) through (i) of this section.

(c) *Failure to pay premiums or other charges—(1) Basic rule.* Except as specified in paragraph (c)(2) of this section, an HMO or CMP may disenroll a Medicare enrollee who fails to pay premiums or other charges imposed by the HMO or CMP for deductible and coinsurance amounts for which the enrollee is liable, if the HMO or CMP—

(i) Can demonstrate to HCFA that it made reasonable efforts to collect the unpaid amount;

(ii) Gives the enrollee written notice of disenrollment, including an explanation of the enrollee's right to a hearing under the HMO's or CMP's grievance procedures; and

(iii) Sends the notice of disenrollment to the enrollee before it notifies HCFA.

(2) *Exception.* If the enrollee fails to pay the premium for optional supplemental benefits (that is, a package of benefits that an enrollee is not required to accept), but pays the basic premium and other charges, the HMO or CMP may discontinue the optional benefits but may not disenroll the beneficiary.

(d) *Enrollee commits fraud or permits abuse of the enrollment card*—(1) *Basis for disenrollment.* An HMO or CMP may disenroll a Medicare beneficiary if the beneficiary—

(i) Knowingly provides, on the application form, fraudulent information that materially affects the beneficiary's eligibility to enroll in the HMO or CMP; or

(ii) Intentionally permits others to use his or her enrollment card to obtain services from the HMO or CMP.

(2) *Notice requirement.* If disenrollment is for either of the reasons specified in paragraph (d)(1) of this section, the HMO or CMP must give the beneficiary a written notice of termination of enrollment.

(i) The notice must be mailed to the enrollee before submission of the disenrollment notice to HCFA.

(ii) The notice must include an explanation of the enrollee's right to have the disenrollment heard under the grievance procedures established in accordance with § 417.436.

(3) *Report to the Inspector General.* The HMO or CMP must report to the Office of the Inspector General of the Department any disenrollment based on fraud or abuse by the enrollee.

(e) *Disenrollment for cause*—(1) *Basis for disenrollment.* An HMO or CMP may disenroll a Medicare enrollee for cause if the enrollee's behavior is disruptive, unruly, abusive, or uncooperative to the extent that his or her continuing enrollment in the HMO or CMP seriously impairs the HMO's or CMP's ability to furnish services to either the particular enrollee or other enrollees.

(2) *Effort to resolve the problem.* The HMO or CMP must make a serious effort to resolve the problem presented by the enrollee, including the use (or attempted use) of internal grievance procedures.

(3) *Consideration of extenuating circumstances.* The HMO or CMP must ascertain that the enrollee's behavior is not related to the use of medical services or to mental illness.

(4) *Documentation.* The HMO or CMP must document the problems, efforts, and medical conditions as described in paragraphs (e)(1) through (e)(3) of this section.

(5) *HCFA review of an HMO's or CMP's proposed disenrollment for cause.* (i) HCFA decides on the basis of review of the documentation submitted by the HMO or CMP, whether disenrollment requirements have been met.

(ii) HCFA makes this decision within 20 working days after receipt of the documentation material, and notifies the HMO or CMP within 5 working days after making its decision.

(6) *Effective date of disenrollment.* If HCFA permits an HMO or CMP to disenroll an enrollee for cause, the disenrollment takes effect on the first day of the calendar month after the month in which the HMO or CMP gives the enrollee a written notice of disenrollment that meets the requirements set forth in paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(f) *Enrollee moves out of the HMO's or CMP's geographic area*—(1) *Basic rules*—(i) *Disenrollment.* Except as provided in paragraph (f)(2) of this section, an HMO or CMP must disenroll a Medicare enrollee who moves out of its geographic area if the HMO or CMP establishes, on the basis of a written statement from the enrollee, or other evidence acceptable to HCFA, that the enrollee has permanently moved out of its geographic area.

(ii) *Notice requirement.* The HMO or CMP must comply with the notice requirements set forth in paragraph (d)(2) of this section.

(iii) *Effect on geographic area.* Failure to disenroll an enrollee who has moved out of the HMO's or CMP's geographic area does not expand that area to encompass the location of the enrollee's new residence.

(2) *Exception.* An HMO or CMP may retain a Medicare enrollee who is absent from its geographic area for an extended period, but who remains within the United States as defined in § 400.200 of this chapter if the enrollee agrees. For purposes of this exception, the following provisions apply:

(i) An absence for an extended period means an uninterrupted absence from the HMO's or CMP's geographic area for more than 90 days but less than 1 year.

(ii) The HMO or CMP and the enrollee may mutually agree upon restrictions for obtaining services while the enrollee is absent for an extended period from the HMO's or CMP's geographic area. However, restrictions may not be imposed on the scope of services described in § 417.440.

(iii) HMOs and CMPs that choose to exercise this exception must make the option available to all Medicare enrollees who are absent for an extended period from their geographic areas. However, HMOs and CMPs may limit this option to enrollees who go to a geographic area served by an affiliated HMO or CMP.

(iv) As used in this paragraph, "affiliated HMO or CMP" means an HMO or CMP that—

(A) Is under common ownership or control of the HMO or CMP that seeks to retain the absent enrollees; or

(B) Has in effect an agreement to furnish services to enrollees who are on an extended absence from the geographic area of the HMO or CMP that seeks to retain them.

(v) When the enrollee returns to the HMO's or CMP's geographic area (even temporarily), the restrictions of § 417.448(a) (which limit payment for services not provided or arranged for by the HMO or CMP) apply again immediately.

(vi) If the enrollee fails to return to the HMO's or CMP's geographic area within 1 year from the date he or she left that area, the HMO or CMP must disenroll the beneficiary on the first day of the month following the anniversary of the date the enrollee left that area in accordance with paragraph (f)(1) of this section.

(g) *Failure to convert to risk provisions of Medicare contract*—(1) *Basis for disenrollment.* A risk HMO or CMP must disenroll a nonrisk Medicare enrollee who refuses to convert to the risk provisions of the Medicare contract after HCFA determines that all of the HMO's or CMP's nonrisk Medicare enrollees must convert.

(2) *Advance notice requirement.* At least 30 days before it gives HCFA notice of disenrollment, the HMO or CMP must give the enrollee written notice of the fact that failure to convert will result in disenrollment.

(h) *Loss of entitlement to Medicare benefits*—(1) *Loss of entitlement to Part A benefits.* If an enrollee loses entitlement to benefits under Part A of Medicare but remains entitled to benefits under Part B, the enrollee automatically continues as a Medicare enrollee of the HMO or CMP and is entitled to receive and have payment made for Part B services, beginning with the month immediately following the last month of his or her entitlement to Part A benefits.

(2) *Loss of entitlement to Part B benefits.* If a Medicare enrollee loses entitlement to Part B benefits, the HMO or CMP must disenroll him or her as a Medicare enrollee effective with the month following the last month of entitlement to Part B benefits. However, the HMO or CMP may continue to enroll the individual under its regular plan if the individual so chooses.

(i) *Death of the enrollee.* Disenrollment is effective with the month following the month of death.

§ 417.461 Disenrollment by the enrollee.

(a) *Request for disenrollment.* (1) A Medicare enrollee who wishes to disenroll may at any time give the HMO or CMP a signed, dated request in the form and manner prescribed by HCFA.

(2) The enrollee may request a certain disenrollment date but it may be no earlier than the first day of the month following the month in which the HMO or CMP receives the request.

(b) *Responsibilities of the HMO or CMP.* The HMO or CMP must—

(1) Submit a disenrollment notice to HCFA promptly;

(2) Provide the enrollee with a copy of the request for disenrollment; and

(3) In the case of a risk HMO or CMP, also provide the enrollee with a statement explaining that he or she—

(i) Remains enrolled until the effective date of disenrollment; and

(ii) Until that date, is subject to the restrictions of § 417.448(a) under which neither the HMO or CMP nor HCFA pays for services not provided or arranged for by the HMO or CMP.

(c) *Effect of failure to submit disenrollment notice to HCFA promptly.* If the HMO or CMP fails to submit timely the correct and complete notice required in paragraph (b)(1) of this section, the HMO or CMP must reimburse HCFA for any capitation payments received after the month in which payments would have ceased if the requirement had been met timely.

§ 417.464 End of HCFA's liability for payment: Disenrollment of beneficiaries and termination or default of contract.

(a) *Effect of disenrollment: General rule.* (1) HCFA's liability for monthly capitation payments to the HMO or CMP generally ends as of the first day of the month following the month in which disenrollment is effective, as shown on HCFA's records.

(2) Disenrollment is effective no earlier than the month immediately after, and no later than the third month after, the month in which HCFA receives the disenrollment notice in acceptable form.

(b) *Effect of disenrollment: Special rules*—(1) *Fraud or abuse by the enrollee.* If disenrollment is on the basis of fraud committed or abuse permitted by the enrollee, HCFA's liability ends as of the first day of the month in which disenrollment is effective.

(2) *Loss of entitlement to Part B benefits.* If disenrollment is on the basis of loss of entitlement to Part B benefits, HCFA's liability ends as of the first day of the month following the last month of Part B entitlement.

(3) *Death of enrollee.* If the enrollee dies, HCFA's liability ends as of the first day of the month following the month of death.

(4) *Disenrollment at enrollee's request.* If disenrollment is in response to the enrollee's request, HCFA's liability ends as of the first day of the month following the month of termination requested by the enrollee.

(c) *Effect of termination or default of contract*—(1) *Termination of contract.* If the contract between HCFA and the HMO or CMP is terminated by mutual consent or by unilateral action of either party, HCFA's liability for payments ends as of the first day of the month after the last month for which the contract is in effect.

(2) *Default of contract.* If the HMO or CMP defaults on the contract before the end of the contract year because of bankruptcy or other reasons, HCFA—

(i) Determines the month in which its liability for payments ends; and

(ii) Notifies the HMO or CMP and all affected Medicare enrollees as soon as practicable.

E. Subpart L is amended as set forth below:

Subpart L—Requirements for Medicare Contracts

1. Section 417.472 is amended to revise paragraphs (a) and (b) to read as follows:

§ 417.472 Basic contract requirements.

(a) *Submittal of contract.* An HMO or CMP that wishes to contract with HCFA to furnish services to Medicare beneficiaries must submit a signed contract that meets the requirements of this subpart and any other requirements established by HCFA.

(b) *Agreement to comply with regulations and instructions.* The contract must provide that the HMO or CMP agrees to comply with all the applicable requirements and conditions set forth in this subpart and in general instructions issued by HCFA.

* * * * *

2. Sections 417.474 and 417.476 are revised to read as follows:

§ 417.474 Effective date and term of contract.

(a) *Effective date.* The contract must specify its effective date, which may not be earlier than the date it is signed by both HCFA and the HMO or CMP.

(b) *Term.* The contract must specify the duration of its term as follows:

(1) For the initial term, at least 12 months, but no more than 23 months.

(2) For any subsequent term, 12 months.

§ 417.476 Waived conditions.

If HCFA waives any of the qualifying conditions required under subpart J of this part, the contract must specify the following information for each waived condition:

(a) The specific terms of the waiver.

(b) The expiration date of the waiver.

(c) Any other information required by HCFA.

3. Section 417.480 is amended to revise the heading and the introductory text to read as follows:

§ 417.480 Maintenance of records: Cost HMOs and CMPs.

A reasonable cost contract must provide that the HMO or CMP agrees to maintain books, records, documents, and other evidence of accounting procedures and practices that—

* * * * *

4. In § 417.481, the heading and the introductory text are revised to read as follows:

§ 417.481 Maintenance of records: Risk HMOs and CMPs.

A risk contract must provide that the HMO or CMP agrees to maintain and make available to HCFA upon request, books, records, documents, and other evidence of accounting procedures and practices that—

* * * * *

5. In § 417.486, the following changes are made:

a. In the introductory text, the word "agrees" is revised to read "agrees to the following:".

b. In paragraph (a)(1), "§§ 417.530 through 417.576" is revised to read "subpart O of this part".

c. At the end of paragraphs (b) and (c), periods are substituted for the ";" and "; and ", respectively.

d. Paragraph (d) is revised to read as follows:

§ 417.486 Disclosure of information and confidentiality.

* * * * *

(d) To meet the confidentiality requirements of § 482.24(b)(3) of this chapter for medical records and for all other enrollee information that is—

(1) Contained in its records or obtained from HCFA or other sources; and

(2) Not covered under paragraph (c) of this section.

6. Section 417.488 is revised to read as follows.

§ 417.488 Notice of termination and of available alternatives: Risk contract.

A risk contract must provide that the HMO or CMP agrees to give notice as follows if the contract is terminated:

(a) At least 60 days before the effective date of termination, to give its Medicare enrollees a written notice that—

(1) Specifies the termination date; and

(2) Describes the alternatives available for obtaining Medicare services after termination.

(b) To pay the cost of the written notices.

7. In § 417.492, the introductory text of paragraph (a)(1) is republished and paragraphs (a)(l)(iii) and (b) are revised to read as follows:

§ 417.492 Nonrenewal of contract.

(a) *Nonrenewal by the HMO or CMP.* (1) If an HMO or CMP does not intend to renew its contract, it must—

* * * * *

(iii) Notify the general public at least 30 days before the end of the contract period, by publishing a notice in one or more newspapers of general circulation in each community or county located in the HMO's or CMP's geographic area.

* * * * *

(b) *Nonrenewal by HCFA*—(1) *Notice of nonrenewal.* If HCFA decides not to renew a contract, it gives written notice of nonrenewal as follows:

(i) To the HMO or CMP at least 90 days before the end of the contract period.

(ii) To the HMO's or CMP's Medicare enrollees at least 60 days before the end of the contract period.

(iii) To the general public at least 30 days before the end of the contract period.

(2) *Notice of appeal rights.* HCFA gives the HMO or CMP written notice of its right to appeal the nonrenewal decision, in accordance with subpart R of this part, if HCFA's decision was based on any of the reasons specified in § 417.494(b).

8. Section 417.494 is amended to revise paragraphs (a)(3), (b)(1)(iv), (b)(2), (b)(4), (c)(4), and (c)(5), to read as follows:

§ 417.494 Modification or termination of contract.

(a) *Modification or termination by mutual consent.* * * *

(3) If the contract is terminated, the HMO or CMP must notify its Medicare enrollees, and HCFA notifies the general public, at least 30 days before the termination date.

(b) *Termination by HCFA.* (1) * * *

(iv) HCFA determines that the HMO or CMP no longer meets the requirements of section 1876 of the Act and this subpart for being an HMO or CMP.

(2) If HCFA decides to terminate a contract, it sends a written notice informing the HMO or CMP of its right to appeal the termination in accordance with subpart R of this part.

(3) * * *

(4) HCFA notifies the HMO's or CMP's Medicare enrollees and the general public of the termination at least 30 days before the effective date of termination.

(c) *Termination by the HMO or CMP.*

* * *

(4) The contract is terminated effective 60 days after the HMO or CMP mails the notice to Medicare enrollees as required in paragraph (c)(2) of this section.

(5) HCFA's liability for payment ends as of the first day of the month after the last month for which the contract is in effect.

§ 417.500 [Amended]

9. In § 417.500, the following changes are made:

a. In paragraph (a) introductory text, "termination" is revised to read "termination of contract", and "with a contract under this subpart" is removed.

b. In paragraphs (a)(3) and (a)(4), "this part" is revised to read "subpart K of this part".

c. The heading of paragraph (b) is revised to read "*Notice of sanction and opportunity to respond.*"

d. The heading "*Notice of sanction.*" is added to paragraph (b)(1).

e. The heading "*Opportunity to respond.*" is added to paragraph (b)(2).

F. Subpart M is amended as set forth below:

Subpart M—Change of Ownership and Leasing of Facilities: Effect on Medicare Contracts

1. Section 417.520 is revised to read as follows:

§ 417.520 General provisions.

(a) *What constitutes change of ownership*—(1) *Partnership.* The removal, addition, or substitution of a partner, unless the partners expressly agree otherwise as permitted by applicable State law, constitutes a change of ownership.

(2) *Unincorporated sole proprietor.* Transfer of title and property to another party constitutes change of ownership.

(3) *Corporation.* (i) The merger of the HMO's or CMP's corporation into another corporation or the consolidation of the HMO or CMP with one or more other corporations, resulting in a new corporate body, constitutes a change of ownership.

(ii) Transfer of corporate stock or the merger of another corporation into the HMO's or CMP's corporation, with the HMO or CMP surviving, does not ordinarily constitute change of ownership.

(b) *Advance notice requirement.* (1) An HMO or CMP that has a Medicare contract in effect and is considering or negotiating a change in ownership must notify HCFA at least 60 days before the anticipated effective date of the change.

(2) If the HMO or CMP fails to give HCFA the required notice timely, it continues to be liable for capitation payments that HCFA makes to it on behalf of Medicare enrollees after the date of change of ownership.

(c) *Novation agreement defined.* A novation agreement is an agreement among the current owner of the HMO or CMP, the prospective new owner, and HCFA—

(1) That is embodied in a document executed and signed by all three parties;

(2) That meets the requirements of § 417.522; and

(3) Under which HCFA recognizes the new owner as the successor in interest to the current owner's Medicare contract.

(d) *Effect of change of ownership without novation agreement.* Except to the extent provided in paragraph (b)(2) of this section, the effect of a change of ownership without a novation agreement is that—

(1) The existing contract becomes invalid; and

(2) If the new owner wishes to participate in the Medicare program, it must apply for, and enter into, a contract in accordance with subpart L of this part.

(e) *Effect of change of ownership with novation agreement.* If the HMO or CMP submits a novation agreement that meets the requirements of § 417.522, and HCFA signs it, the new owner becomes the successor in interest to the current owner's Medicare contract.

§ 417.521 [Removed]

2. Section 417.521 is removed.

§ 417.522 [Amended]

3. In § 417.522, the following changes are made:

a. In paragraph (a) introductory text, "will approve" is revised to read "approves".

b. In paragraph (a)(3)(iii), "under this part" is revised to read "under subpart J of this part".

§ 417.523 [Amended]

4. In § 417.523, the following changes are made:

a. In paragraph (a), the heading is revised to read "*General effect of leasing.*".

b. In the text of paragraph (a) and in paragraph (b)(2), "the lessee" is revised to read "the other entity".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 22, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–21626 Filed 8–31–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 950824215–5217–02; I.D. 080195B]

American Lobster Fishery; Technical Amendment; Clarifies Eligibility Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule to amend the regulations governing the Fishery Management Plan for the American Lobster Fishery (FMP). This rule corrects the eligibility requirements for lobster limited access permits to allow permit applicants who own a vessel that was under written contract for purchase as of March 25, 1991, to qualify for the limited access permit.

EFFECTIVE DATE: August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: Currently, regulations provide that eligibility for a lobster limited access permit can be established by proof that the permit applicant owned a vessel that was under written agreement for construction or for rerigging for directed American lobster fishing as of March 25, 1991 (60 FR 21994, May 4, 1995). This action makes a correction to these eligibility requirements by allowing vessels owners who entered into a written contract to purchase a vessel for directed American lobster fishing as of March 25, 1991, to qualify for a lobster limited access permit. The New England Fishery Management Council clarified at its June 29, 1995, meeting that this provision of the eligibility requirements for a limited access permit was inadvertently omitted from the regulations implementing Amendment 5 to the Lobster FMP.

Classification

Because this rule only corrects an omission in an existing set of regulations for which full prior notice and opportunity for comment have been given, under 5 U.S.C. 553(b)(B) it is unnecessary to provide additional notice and opportunity for comment.

This action imposes no new requirements on anyone subject to these regulations, but instead relieves a restriction. Accordingly, under 5 U.S.C. 553(d), this action may be made immediately effective.

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: August 25, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.4, the first sentence of paragraph (b)(1)(i)(C) is revised to read as follows:

§ 649.4 Vessel permits.

(b) * * *

(1) * * *

(i) * * *

(C) The vessel was under written agreement for construction or rerigging for directed American lobster fishing, or was under written contract for purchase as of March 25, 1991, and the applicant meets one of the eligibility criteria set forth in paragraph (b)(1)(i)(A) or (B) of this section. * * *

* * * * *

[FR Doc. 95–21779 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 170
Friday, September 1, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–15]

Airworthiness Directives; CFM International CFM56–2/–2A/–2B/–3/–3B/–3C/–5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–2/–2A/–2B/–3/–3B/–3C/–5 series turbofan engines. This proposal would require part number reidentification of certain low pressure turbine rotor (LPTR) stub shafts and conical supports, and reduction of the low cycle fatigue (LCF) retirement lives for these reidentified parts. This proposal is prompted by the results of a refined life analysis performed by the manufacturer which revealed minimum calculated LCF lives significantly lower than published LCF retirement lives. The actions specified by the proposed AD are intended to prevent a LCF failure of the LPTR stub shaft and conical support, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by October 31, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–15, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from CFM International, Technical Publications Department, One Neumann Way, Cincinnati, OH 45215. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–15." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–15, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–2/–2A/–2B/–3/–3B/–3C/–5 series turbofan engines. Numerous first production low pressure turbine rotor (LPTR) stub shafts and conical supports were machined from thick forgings. Parts machined from thick forgings have lower metallurgical properties than ones machined from near net shape forgings. A study performed by the manufacturer using updated lifing analyses revealed that these parts have minimum calculated low cycle fatigue (LCF) lives which are significantly lower than published LCF retirement lives. This condition, if not corrected, could result in a LCF failure of the LPTR stub shaft and conical support, which could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of CFMI CFM56–2 Service Bulletin (SB) No. 72–728, Revision 2, dated December 21, 1994, CFMI CFM56–2A SB No. 72–338, dated November 25, 1993, CFMI CFM56–2B SB No. 72–476, dated December 7, 1993, and CFMI CFM56–3/–3B/–3C SB No. 72–695, dated November 25, 1993. These SB's describe procedures for the part number reidentification of LPTR stub shafts and conical supports.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require part number reidentification of certain LPTR stub shafts and conical supports, and reduction of the LCF retirement lives for these reidentified parts. The actions would be required to be accomplished in accordance with the SB's described previously.

The FAA estimates that 41 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 0.25 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Assuming that the parts cost is proportional to the reduction of the LCF retirement lives, the required parts would cost approximately $6,687 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $274,782.

The regulations proposed herein would not have substantial direct effec on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

CFM International: Docket No. 95–ANE–15.

Applicability: CFM International (CFMI) CFM56–2/–2A/–2B/–3/–3B/–3C/–5 series turbofan engines installed on, but not limited to Airbus A320 series, McDonnell Douglas DC–8 series, and Boeing 737, E–3, E–6, and KC–135 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (j) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent a low cycle fatigue (LCF) failure of the low pressure turbine rotor (LPTR) stub shaft and conical support, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Reidentify CFM56–2A LPTR stub shafts, Part Numbers (P/N) 301–330–623–0 and 301–330–624–0, with Serial Numbers (S/N) listed in Table 2 of CFMI CFM56–2A Service Bulletin (SB) No. 72–338, dated November 25, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56–2A SB No. 72–338, dated November 25, 1993, at the next piece-part exposure after the effective date of this AD, but not to exceed 6,400 cycles since new (CSN).

(b) Reidentify CFM56–2B LPTR stub shafts, P/N 301–330–618–0, 301–330–619–0, 301–330–623–0, and 301–330–624–0, with S/N listed in Table 2 of CFMI CFM56–2B SB No. 72–476, dated December 7, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56–2B SB No. 72–476, dated December 7, 1993, at the next piece-part exposure after the effective date of this AD, but not to exceed 8,300 CSN.

(c) Reidentify CFM56–2 LPTR conical supports, P/N 305–056–106–0, 305–056–109–0, 305–056–110–0, and 305–056–111–0, with S/N listed in Table 1 of CFMI CFM56–2 SB No. 72–728, Revision 2, dated December 21, 1994, in accordance with the Accomplishment Instructions of CFMI CFM56–2 SB No. 72–728, Revision 2, dated December 21, 1994, at the next piece-part exposure after the effective date of this AD, but not to exceed 18,000 CSN.

(d) Reidentify CFM56–2A LPTR conical supports, P/N 305– 056–110–0 and 305–056–111–0, with S/N listed in Table 1 of CFMI CFM56–2A SB No. 72–338, dated November 25, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56–2A SB No. 72–338, dated November 25, 1993, at the next piece-part exposure after the effective date of this AD, but not to exceed 5,700 CSN.

(e) Reidentify CFM56–2B LPTR conical supports, P/N 305–056–106–0, 305–056–109–0, 305–056–110–0, and 305–056–111–0, with S/N listed in Table 1 of CFMI CFM56–2B SB No. 72–476, dated December 7, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56–2B SB No. 72–476, dated December 7, 1993, at the next piece-part exposure after the effective date of this AD, but not to exceed 8,700 CSN.

(f) Reidentify CFM56–3B/–3C LPTR stub shafts, P/N 301–330–618–0, 301–330–619–0, 301–330–623–0, and 301–330–624–0, with S/N listed in Table 2 of CFMI CFM56–3/–3B/–3C SB No. 72–695, dated November 25, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56–3/–3B/–3C SB No. 72–695, dated November 25, 1993, as follows:

(1) For CFM56–3B series engines, at the next piece-part exposure after the effective date of this AD, but not to exceed 11,400 CSN.

(2) For CFM56–3C series engines, at the next piece-part exposure after the effective date of this AD, but not to exceed 7,900 CSN.

(g) Reidentify CFM56–3/–3B/–3C LPTR conical supports, P/N 305–056–106–0, 305–056–109–0, 305–056–110–0, and 305–056–111–0, with S/N listed in Table 1 of CFMI CFM56–3/–3B/–3C SB No. 72–695, dated November 25, 1993, in accordance with the Accomplishment Instructions of CFMI CFM56–3/–3B/–3C SB No. 72–695, dated November 25, 1993, as follows:

(1) For CFM56–3 series engines, at the next piece-part exposure after the effective date of this AD, but not to exceed 12,100 CSN.

(2) For CFM56–3B series engines, at the next piece-part exposure after the effective date of this AD, but not to exceed 9,300 CSN.

(3) For CFM56–3C series engines, at the next piece-part exposure after the effective date of this AD, but not to exceed 5,700 CSN.

(h) Remove from service CFM56–5 LPTR conical support, P/N 336–000–305–0, prior to accumulating 11,300 CSN.

(i) This action establishes new LCF retirement lives for parts reidentified in accordance with paragraphs (a) through (g) of this AD, and the new LCF retirement life noted in paragraph (h) of this AD, which are published in Chapter 05 of the applicable engine shop manual (CFM56–2 CFMI–TP.SM.4, CFM56–2A/–2B CFMI–TP.SM.6, CFM56–3 CFMI–TP.SM.5, and CFM56–5 CFMI–TP.SM.7).

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(k) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on August 23, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–21770 Filed 8–31–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892

[Docket No. 95N–0139]

Medical Devices; Proposed Reclassification and Exemption From Premarket Notification for Certain Classified Devices; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of July 28, 1995 (60 FR 38902). The document proposed to reclassify 112 generic types of class II devices into class I based on new information respecting the devices, and exempt the 112 generic types of devices, along with 12 already classified generic types of class I devices, from the requirement of premarket notification, with limitations. The document was published with some errors. This document corrects those errors.

DATES: Submit written comments by October 11, 1995. For the devices the agency is proposing to reclassify into class I and exempt from the requirement of premarket notification, FDA is proposing that any final rule that may issue based on this proposed rule become effective 30 days after the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Melpomeni K. Jeffries, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

In FR Doc. 95–18456, appearing on page 38902 in the **Federal Register** of Friday, July 28, 1995, the following corrections are made:

1. On page 38902, in the third column, under the **DATES** caption, in the second sentence, "August 28, 1995" is corrected to read "30 days after the date of its publication in the **Federal Register**."

2. On page 38906, in the first column, in Table 4.—ANESTHESIOLOGY DEVICES, "868.1975 Water Vapor Analyzer" is added after "868.1870 Gas volume calibrator".

Dated: August 28, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–21737 Filed 8–31–95; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD-FRL–5290–3]

Clean Air Act Proposed Approval of the Federal Operating Permits Program; San Luis Obispo Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing interim approval for the Federal Operating Permits Program submitted by the California Air Resources Board on behalf of the San Luis Obispo County Air Pollution Control District (San Luis Obispo or District). This Program was submitted for the purpose of complying with Federal requirements in title V of the Clean Air Act which mandates that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 2, 1995.

ADDRESS: Comments should be addressed to Frances Wicher, Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the District's submission and other supporting information used in developing the proposed interim approval including the Technical Support Document are available for inspection during normal business hours at the following location: Operating Permits Section, A–5–2, Air and Toxics Division, U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, (415) 744–1250, Operating Permits Section, A–5–2, Air and Toxics Division, U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70. Title V requires States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year of receiving the submission. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on the major elements of San Luis Obispo's title V operating permit program and on the specific elements that must be corrected to meet the minimum requirements of part 70. The full program submittal, the Technical Support Document (TSD), which contains a detailed analysis of the submittal, and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.

1. Title V Program Support Materials

San Luis Obispo's title V program was submitted by the California Air Resources Board (CARB) on November 15, 1993. Additional material was submitted by CARB on May 23 and August 21, 1995 and by the District on February 18, 1994 and May 3, 1995. In submitting the District's title V program, CARB requested source category-limited interim approval for the program because California law currently exempts agricultural sources from all permitting requirements including title V. The District's submission contains a complete program description, District implementing and supporting regulations, application and reporting forms, and other supporting information. In addition, CARB submitted for all Districts in the State a single Attorney General's opinion, State enabling legislation, and certain other information regarding State law.

EPA reviewed the District's program to assure that it contains all the elements required by § 70.4(b) (elements of the initial program submission) and has found the program complete pursuant to § 70.4(e)(1) in a letter to the CARB on January 13, 1994. An implementation agreement is currently being developed between San Luis Obispo and EPA.

2. Title V Operating Permit Regulations and Program Implementation

The rules that San Luis Obispo adopted to implement its title V program are Rules 216 *Federal Part 70 Permits* (adopted October 26, 1993) and Rules 217 *Federal Part 72 Permits* (adopted March 29, 1995). Other District rules that were submitted in support of the District's title V program are Rules 103 *Conflicts between District, State and Federal Rules* (no date), 105 *Definitions* (revised October 26, 1993), 107 *Breakdown or Upset Conditions and Emergency Variances* (revised March 29, 1995), 201 *Equipment Not Requiring a Permit* (revised November 5, 1991), 206 *Conditional Approval* (revised November 5, 1991) and 301–308 *Fees* (various adoption and revision dates).[1] These rules, along with the authorities granted the District under California State law, substantially meet the requirements of §§ 70.2 (Definitions) and 70.3 (Applicability) for applicability; § 70.5(c) (Standard application form and required information) for criteria that define insignificant activities and for complete application forms; §§ 70.4(b)(12) (Section 502(b)(10) changes) and 70.6 (Permit content) for permit content including operational flexibility; § 70.7 (Permit issuance, renewal, reopenings, and revisions) for public participation, permit issuance, and permit modifications; § 70.9 (Fee determination and certification) for fees; and § 70.11 for enforcement authority.

EPA has identified several interim approval issues affecting permit content, permit modifications and notice to the public and affected states that must be corrected in order for the San Luis Obispo program to receive full approval. These interim approval issues are discussed below and detailed in the TSD. EPA has also identified in the TSD other recommended changes that are not required for full approval but would improve, clarify, or strengthen the District's title V program.

a. Variances

The San Luis Obispo District Hearing Board has authority to issue variances from requirements imposed by State and local law. See California Health and Safety Code 42350 *et seq.* and District Rule 107 and Regulation VII. In the opinion submitted with California operating permit programs, California's Attorney General states that "(t)he variance process is *not* part of the Title V permitting process and does not affect federal enforcement for violations of the requirements set forth in a Title V permit." (Emphasis in original.)

EPA regards State and District variance provisions as wholly external to the programs submitted for approval under part 70 and consequently is proposing to take no action on these provisions of State and local law. EPA has no authority to approve provisions of state law that are inconsistent with the Act. EPA does not recognize the ability of a District to grant relief from the duty to comply with a federally-enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised, consistent with part 70 permitting procedures, to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or revision procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with § 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

b. Permit Content

San Luis Obispo's permit content requirements are found in sections F. and L. of Rule 216 and in the District's Part 70 Permit Format. The Part 70 Permit Format is San Luis Obispo's sample permit form and was submitted as part of the District's title V program. The regulatory provisions adequately address nearly all of the part 70 requirements; however, certain elements (e.g., §§ 70.6(a)(3)(ii)(A) and 70.6(a)(6)(i)), are addressed or more fully detailed only in the Part 70 Permit Format. Nothing in the District's program requires the use of the Part 70 Permit Format for every permit issued pursuant to Rule 216. EPA is, therefore, requiring, as a condition for full approval, that San Luis Obispo establish a binding requirement that the Part 70 Permit Format be included in all part 70 permits or that the District fully address all part 70 permit content requirements in Rule 216.

EPA is specifically approving the Part 70 Permit Format (dated November 13, 1993) contained in Appendix B–6 of the District November 15, 1993 submittal. Any modifications to the conditions established in this Format must be approved by EPA. Failure to include these conditions in part 70 permits will be cause for EPA to object to a District operating permit. See § 70.8(c)(1).

c. Insignificant Activities

Section 70.4(b)(2) requires States to include in their title V programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a State program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a State must request and EPA must approve as part of that State's program any activity or emission level that the State wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

San Luis Obispo submitted, as an insignificant activities list, its permit exemption rule (Rule 201) which specifies a specific list of activities and, for unlisted activities, an emissions cap of 2 lb/day (0.365 tons per year) that will be considered insignificant in the District's title V program. Rule 201, however, does not allow any activities that are subject to a New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants to be considered insignificant. In addition, the District submitted an emissions analysis of its list of insignificant activities.

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[1] EPA is only approving those portions of Rules 105, 107, 206 and 301–308 that are necessary to implement the District's title V program. More specifically, EPA is not approving the emergency variance provisions of Rule 107 B. This approval does not constitute approval under any other provisions of the Act.

San Luis Obispo County is designated attainment for all criteria pollutants; therefore, the major source threshold for all non-HAPs regulated air pollutants is 100 tons per year and, for HAPs, 10 tons per year for a single HAP and 25 tpy for a combination of HAPs. The District's emissions cap for insignificant activities is less than ½ of 1 percent of the major source threshold for all non-HAPs regulated air pollutants and less than 5 percent of the major source threshold for HAPs. EPA finds these levels to be insignificant and the 2 lb/day cap to be fully approvable.

EPA, however, in reviewing the District list of specific activities did find several activities that are potentially subject to a unit-specific applicable requirement. Rule 201 M.1. and 2. exempts air conditioning and refrigeration units regardless of size. Such units, if they have a charge rate of 50 pounds or more of a Class I or II ozone-depleting compounds, would be subject to applicable requirements and could not be considered insignificant.

The TSD provides a detailed review of the District's insignificant activities list. For interim approval, EPA is relying on San Luis Obispo's Rule 216 which requires the inclusion in each permit application of a list of all activities that are insignificant based on size or production rate and all information necessary to determine the applicability of, and to impose applicable requirements. For full program approval San Luis Obispo must revise its list of insignificant activities for title V permitting as discussed in section B.2. of this notice.

d. Definition of Title I Modification

The San Luis Obispo program does not explicitly define the term "title I modification," however, the program effectively defines the term to mean "the modification does not involve any addition, deletion, or revision to a part 70 permit condition under section 112(g) of Title I of the CAA, or under EPA regulations promulgated pursuant to Title I of the CAA, including 40 CFR parts 51, 52, 60, 61, and 62." See, for example, Rule 216 C.13., definition of "Minor Part 70 Permit Modification." While this effective definition is broad enough to cover minor new source review (minor NSR) changes because it includes changes under parts 51 and 52, it is clear from the Program Description that the District does not intend that minor NSR be considered a title I modification.

In an August 29, 1994 rulemaking proposal, EPA explained its view that the better reading of "title I modifications" includes minor NSR. However, the Agency solicited public comment on whether the phrase should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. (59 FR 44572, 44573). This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act.

The EPA has not yet taken final action on the August 29, 1994 proposal. However, in response to public comment on that proposal, the Agency has decided that the definition of "title I modifications" is best interpreted as not including changes reviewed under minor NSR programs. This decision was announced in a June 20, 1995 letter from Mary D. Nichols, EPA Assistant Administrator for Air and Radiation, to Congressman John D. Dingell, and will be included in a supplemental rulemaking proposal that will be published in August, 1995. Thus, EPA expects to confirm that San Luis Obispo's definition of "title I modification" is fully consistent with part 70.

The August 29, 1994 action proposed to, among other things, allow State programs with a more narrow definition of "title I modifications" to receive interim approval (59 FR 44572). The Agency stated that if, after considering the public comments, it continued to believe that the phrase "title I modifications" should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to allow states with a narrower definition to be eligible for interim approval. If EPA does conclude, during this rulemaking, that Title I modifications should be read to include minor NSR, it will implement the interim approval option spelled out in the August 29, 1994 proposal.

e. Affected State Notification

The San Luis Obispo program neither defines "affected state" nor includes any procedures for notifying and dealing with comments from affected states as required by § 70.2 "Affected state", § 70.8(b) and § 70.7(e)(2)(ii). In its program submittal, the District argued that it need not include these procedures because its location (on the coastline in the middle of California) precludes emissions from its sources from affecting any other states. EPA would agree with this position if the definition of "affected state" was not being revised to include tribal governments that request treatment as affected states. Because there are tribal lands that could qualify as affected states for San Luis Obispo, the District may in the future need to have affected state notification and response procedures in its title V program.

EPA has not finalized the rulemaking that will allow tribal governments to seek affected state status. EPA is proposing, as an interim approval issue for the District, that Rule 216 be revised to define and provide for giving notice to and responding to comments from affected states. Since it remains uncertain whether any tribes will seek affected state status for the San Luis Obispo District, EPA is proposing as an alternative that the District may satisfy the interim approval issue by making a commitment to: (1) Initiate rule revisions upon being notified by EPA of an application by a tribe for state status, and (2) provide affected state notice to tribes upon their filing for state status (i.e., prior to San Luis Obispo's revising Rule 216 to incorporate affected state notice procedures).

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submission must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum," (§ 70.9(b)(2)(i)).

San Luis Obispo has opted to make a presumptive minimum fee demonstration in order to show fee adequacy and meet the requirements of § 70.9 (Fee determination and certification). San Luis Obispo's existing fee schedule (Rules 301–308) requires title V facilities to pay an amount equivalent to $61 per ton in annual operating fees (1991 figures). This amount is well over the $25 per ton per year (CPI adjusted from 1989) presumptive minimum.

San Luis Obispo determined its fee level at the $61 per ton equivalent amount by assessing its 1991 fee revenue and costs, and the additional costs posed by title V. San Luis Obispo is prepared to increase fees, as needed, to reflect actual program implementation costs.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation

San Luis Obispo has demonstrated in its title V program submission adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining "federally enforceable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow San Luis Obispo to issue permits that assure compliance with all section 112 requirements. For further discussion on the District's legal authority, please refer to the TSD accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz, Director, Office of Air Quality Planning and Standards, U.S. EPA.

b. Authority for Title IV (Acid Rain) Implementation

On May 23, 1995, CARB submitted on behalf of San Luis Obispo, the District's rule Rule 217 *Federal Part 72 Permits* (adopted March 29, 1995). Rule 217 incorporates by reference 40 CFR part 72 *(Acid Rain) Permit Regulation* and provides the District adequate authority to issue permits to affected acid rain sources under title IV.

B. Proposed Action

1. Title V Operating Permits Program

The EPA is proposing to grant interim approval to the operating permits program submitted by CARB on behalf of the San Luis Obispo County Air Pollution Control District on November 15, 1993, and supplemented on February 18, 1994, and May 3, May 23 and August 21, 1995. If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, San Luis Obispo would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a federal permits program for the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

Following final interim approval, if the District failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If San Luis Obispo then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the District had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove San Luis Obispo's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In all cases, if, six months after EPA applied the first sanction, San Luis Obispo had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a district has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a District title V operating permits program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for that district upon interim approval expiration.

2. Interim Approval Issues for San Luis Obispo's Title V Operating Permits Program

If EPA finalizes this interim approval, San Luis Obispo must make the following changes, or changes that have the same effect, to receive full approval:

(1) Remove any activities from the District's list of insignificant activities that are subject to a unit-specific applicable requirement. See §§ 70.4(b)(2) and 70.5(c).

(2) Revise the definitions of "Minor Part 70 Permit Modification" in Rule 216 C.13, to ensure that significant changes to existing monitoring permit terms or conditions, rather than just relaxations of existing monitoring terms, are processed as significant permit modifications. See § 70.7(e)(4).

(3) Revise Rule 216 J.1.b. to include notice "by other means if necessary to assure adequate notice to the affected public." See § 70.7(h)(1).

(4) Revise Rule 216 H.1.a.4. and L.1.e. to further limit the types of significant permit modifications that may be operated prior to receiving a final part 70 permit revision to only those modifications that are subject to section 112(g) or required to have a permit under title I, parts C and D of the Act and that are not otherwise prohibited by an existing part 70 permit. See § 70.5(a)(1)(ii).

(5) Revise Rule 216 to establish a binding requirement that the Part 70 Permit Format will be included in all part 70 permits or revise Rule 216 to fully address all part 70 permit content requirements within the Rule. See § 70.6.

(6) Revise Rule 216 to define and provide for giving notice to and responding to comments from affected states. Alternatively, San Luis Obispo may make a commitment to: (1) Initiate rule revisions upon being notified by EPA of an application by a tribe for state status, and (2) provide affected state notice to tribes upon their filing for state status (i.e., prior to revising Rule 216 to incorporate affected state notice procedures). See §§ 70.2 "Affected state," 70.7(e)(2)(iii), and 70.8(b).

(7) Limit the exemption in Rule 216 D.4 for solid waste incineration units required to obtain a permit pursuant to section 3005 of the Solid Waste Disposal Act to those units that are not a major source. Section 70.3(b) states that all major sources, affected sources (acid rain sources), and solid waste incinerators regulated pursuant to section 129(e) of the CAA may not be exempted from title V permitting.

Although section 129(g)(1) of the CAA exempts solid waste incineration units subject to section 3005 of the Solid Waste Disposal Act from regulation under section 129, these units are still subject to title V and part 70 if they are also major sources. See § 70.3(a)(1).

(8) Revise Rule 216 H.4. to require that the permittee keep records describing non-federal minor changes (e.g., off-permit changes) and the emissions resulting from these changes. See § 70.4(b)(14)(iv).

3. California Enabling Legislation—Legislative Source Category Limited Interim Approval Issue

Because California State law currently exempts agricultural production sources from permit requirements, CARB has requested source category-limited interim approval for all California districts. EPA is proposing to grant source category-limited interim approval to the operating permits program submitted by CARB on behalf of San Luis Obispo on November 15, 1993. In order for this program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the Health and Safety Code must be revised to eliminate the exemption of agricultural production sources from the requirement to obtain a title V permit. Once the California statute has revised, the District must also revise its permit exemption rules to eliminate any blanket exemption granted agricultural sources.

The above described program and legislative deficiencies must be corrected before San Luis Obispo can receive full program approval. For additional information, please refer to the TSD, which contains a detailed analysis of San Luis Obispo's operating permits program and California's enabling legislation.

4. District Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act (60 FR 8333, February 14, 1995). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow States time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), San Luis Obispo must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing District regulations.

For this reason, EPA is proposing to approve the use of San Luis Obispo's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by San Luis Obispo of rules specifically designed to implement section 112(g). However, since the sole purpose of this approval is to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of this proposed approval to 12 months following promulgation by EPA of the section 112(g) rule.

5. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 of San Luis Obispo's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, San Luis Obispo will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in a Memorandum of Agreement between San Luis Obispo and EPA, expected to be completed prior to approval of the District's section 112(l) program for delegation of unchanged federal standards. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the District's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by October 2, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 21, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–21761 Filed 8–31–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650, and 651

[Docket No. 950824215–5217–02; I.D. 050295B]

RIN 0648–AH37

American Lobster Fishery, Framework Adjustment 1; Atlantic Sea Scallop Fishery, Framework Adjustment 3; Northeast Multispecies Fishery, Framework Adjustment 7; Vessel Ownership Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 1 to the American Lobster Fishery Management Plan (FMP), Framework Adjustment 3 to the Atlantic Sea Scallop FMP, and Framework Adjustment 7 to the Northeast Multispecies FMP. These framework adjustments would revise a provision in each of the FMPs that requires all permit applicants to own a fishing vessel at the time they apply for or renew a Federal limited access permit. This proposed action would allow certain applicants who have owned vessels that meet the various limited access permit qualification criteria, but who do not currently own a vessel, to preserve their eligibility to apply for a limited access permit for a replacement vessel in subsequent years by obtaining a Confirmation of Permit History.

DATES: Comments on the proposed rule must be received on or before September 15, 1995.

ADDRESSES: Comments on the proposed rule or supporting documents should be sent to Dr. Andrew A. Rosenberg, Regional Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Proposed Framework Adjustments to Vessel Ownership Requirements."

Copies of the Framework Adjustments, Amendment 5 to the American Lobster FMP, Amendment 4 to the Atlantic Sea Scallop FMP, and Amendment 5 to the Northeast Multispecies FMP, including regulatory impact reviews, initial regulatory flexibility analyses, and final supplemental environmental impact statements are available upon request from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: 617–231–0422.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 508–281–9272.

SUPPLEMENTARY INFORMATION:

Background

In 1994, NMFS implemented major amendments developed by the New England Fishery Management Council (Council) to the FMPs for the Atlantic sea scallop, northeast multispecies and the American lobster fisheries. These amendments, which were intended to address overfishing in these fisheries, implemented measures that limited access to these fisheries based upon historical participation.

NMFS partially implemented Amendment 4 to the Atlantic Sea Scallop FMP (January 19, 1994, 59 FR 2757) and Amendment 5 to the Northeast Multispecies FMP on March 1, 1994 (59 FR 9872). Most of the measures remaining became effective on May 1, 1994 (59 FR 22760, May 3, 1995). NMFS implemented the approved sections of Amendment 5 to the American Lobster FMP on June 21, 1994 (59 FR 31938).

Under current regulations for the Atlantic sea scallop and northeast multispecies fisheries, to be eligible to obtain a Federal limited access permit in 1994, an applicant had to have owned a vessel that qualified under the limited access criteria for each respective fishery. In addition, an applicant had to obtain a permit in 1994 to be eligible to renew a limited access permit in future years. Current regulations for the American lobster fishery are the same, with the exception that the qualifying year is 1995. These requirements represent a continuation of preexisting permit requirements.

Under a limited access permit system, however, this situation poses a potential problem for anyone who does not own a fishing vessel at the time he or she applies for, or renews, a limited access permit. This includes anyone who sold or transferred a vessel and retained the permit and fishing history, but did not buy a new vessel in time to apply for an initial Atlantic sea scallop or northeast multispecies permit during the 1994 calendar year, or, in the case of American lobster, during the 1995 calendar year.

In developing Amendment 5 to the American Lobster FMP, Amendment 4 to the Atlantic Sea Scallop FMP, and Amendment 5 to the Northeast Multispecies FMP, the Council adopted the policy that vessel owners should not be required to continue to fish their vessels to be eligible to obtain or renew limited access permits. The Council did not intend to force vessels to remain active in currently overfished fisheries to retain fishing rights for the future, but it did not explicitly address the issue of vessel ownership as a requirement to obtain a permit under the various FMP amendments. Therefore, current regulations contradict the Council's intent not to require vessels to remain active in a limited access fishery.

Proposed Adjustment

To address this problem, the Council has requested NMFS to implement this proposed action, which would allow an applicant who has owned a vessel that meets the various limited access permit qualification criteria, but who does not own a vessel at the time of application, to preserve his or her right to qualify for a Federal limited access permit for a replacement vessel in subsequent years in the Atlantic sea scallop and northeast multispecies fisheries, and in the American lobster fishery. Qualified applicants would be allowed to apply for a Confirmation of Permit History, and would need to apply for such annually, to preserve the permit and fishing history of the qualifying vessel.

Comments and Responses

The Council has discussed and heard public comment on this issue for several years during the development of the amendments to the Northeast Multispecies and Atlantic Sea Scallop FMPs. More recently, this problem was discussed at the September 21–22, 1994, Council meeting, at which time the

Council initiated this combined framework action. The public was notified of this Council meeting, and of the final Council meeting held on October 28–29, 1994, at which time this action was discussed. No public comments were received. This proposed rule provides the public with an additional opportunity to comment.

Classification

This proposed rule has been determined to be not significant under E.O. 12866.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act that has been approved by the Office of Management and Budget under OMB Control Number 0648–0202. The public reporting burden for completing an application for a Confirmation of Permit History is estimated at 0.5 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because it would not: (1) Result in a change in annual gross revenues of more than 5 percent; or (2) increase annual compliance costs for small entities by more than 5 percent and would not increase compliance costs for small entities compared to large entities.

List of Subjects

50 CFR Part 649

Fisheries.

50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 28, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Parts 649, 650, and 651 are proposed to be amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.4, paragraph (b)(1)(iv) is added to read as follows:

§ 649.4 Vessel permits.

(b) * * *

(1) * * *

(iv) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified at § 649.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judicial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History shall be accepted by the Regional Director on or before December 31, 1995. For subsequent years, applications must be received by the end of the calendar year in which the Confirmation of Permit History expires. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who hold a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b) of this section.

* * * * *

PART 650—ATLANTIC SEA SCALLOP FISHERY

3. The authority citation for part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 650.4, the introductory text is revised and paragraph (a)(1)(iv) is added to read as follows:

§ 650.4 Vessel permits.

Any vessel of the United States that fishes for, possesses, or lands per trip Atlantic sea scallops in quantities greater than 40 lb (18.14 kg) shucked scallops or 5 bushels (176.2 l) in-shell, except vessels that fish exclusively in state waters for sea scallops, must have been issued and carry on board a valid limited access scallop permit or a valid general scallop permit, issued under this section.

(a) * * *

(1) * * *

(iv) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified at § 650.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judicial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History shall be accepted by the Regional Director on or before 30 days after publication of the final rule. For subsequent years, such applications must be received by the end of the calendar year in which the Confirmation of Permit History expires. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed or transferred. Vessel permit applicants who hold a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based upon the previous history may do so pursuant to paragraph (a) of this section.

* * * * *

PART 651—NORTHEAST MULTISPECIES FISHERY

5. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 651.4, paragraph (a) introductory text is revised and paragraph (a)(1)(iv) is added to read as follows:

§ 651.4 Vessel permits.

* * * * *

(a) *Limited access multispecies permits.* Beginning on May 1, 1994, any vessel of the United States that possesses or lands more than the possession limit of regulated species specified under § 651.27(a), except vessels fishing with fewer than 4,500 hooks that have been issued a hook-gear-only permit as specified in paragraph (b) of this section, vessels fishing for regulated species exclusively in state waters, and recreational fishing vessels, must have been issued and carry on board a valid Federal limited access multispecies permit, or an authorizing letter issued under paragraph (a)(8)(v) of this section. To qualify for a limited access multispecies permit, a vessel must meet the following criteria, as applicable:

(1) * * *

(iv) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified at § 651.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judicial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History shall be accepted by the Regional Director on or before 30 days after publication of the final rule. For subsequent years, such applications must be received by the end of the calendar year before the year for which the Confirmation of Permit History expires. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed or transferred. Vessel permit applicants who hold a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a) of this section.

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[FR Doc. 95–21784 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 170
Friday, September 1, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Data User Evaluation Surveys.

Form Number(s): Various.

Agency Approval Number: 0607–0760.

Type of Request: Extension of a currently approved collection.

Burden: 3,500 hours.

Number of Respondents: 7,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau is requesting a three-year extension of the generic clearance to conduct data user surveys to continue to promote their optimal use and encourage focused and effective improvements to the quality of Census Bureau products and services. An extension of this clearance would again cover data collections in all areas of the Census Bureau. The clearance is administered jointly by the Bureau Forms Clearance Officer and a member of the Work Force Development and Quality Management Office (QMO). Offices wanting to conduct a survey under the clearance prepare a letter to OMB for signature by the Forms Clearance Officer. The letter and survey form are reviewed by the Forms Clearance Officer and the QMO member. The Forms Clearance Officer forwards signed letters, along with the survey form, for the OMB and the Office of the Under Secretary, Economic and Statistics Administration (ESA), for final approval. Survey operations begin a minimum of 5 days after submitting this letter.

Affected Public: Individuals or household, businesses or other for–profit, Not–for–profit institutions, Farms, Federal government, State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Maria Gonzalez, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Maria Gonzalez, OMB Desk Officer, Room 10202 New Executive Office Building,Washington, DC 20503.

Dated: August 29, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–21807 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Annual Survey of Communication Services.

Form Number(s): B–516 through B–521.

Agency Approval Number: 0607–0706.

Type of Request: Extension of a currently approved collection.

Burden: 7,000 hours.

Number of Respondents: 1,780.

Avg Hours Per Response: 4 hours.

Needs and Uses: The Annual Survey of Communication Services is a vital component of a broad–based, multi–year program at the Census Bureau to expand coverage and improve statistics for service–related industries. This program is part of an interagency initiative to improve statistics in this sector of the economy. This survey will provide the only annual source of key measures of the communication sector, including the telephone, broadcasting, and cable television industries. These data will serve as inputs into the national income and product accounts calculated by the Bureau of Economic Analysis, the Bureau of Labor Statistics' Producer Price Indices, and the Department of Commerce's publication, Industrial Outlook. In addition, the Census Bureau will use results of this survey in the planning and design stages of current and future economic census questionnaires by providing information on the ability of respondents to report accurate and timely data from existing records and by identifying areas of dynamic change in the communication sector.

Affected Public: Federal Government, Businesses or other for–profit organizations, Not–for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, Room 10201 New Executive Office Building,Washington, DC 20503.

Dated: August 29, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–21808 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: School Enrollment Report.

Form Number(s): P–4.

Agency Approval Number: 0607–0459.

Type of Request: Extension of a currently approved collection.

Burden: 20 hours.

Number of Respondents: 40.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau sends the School Enrollment Report annually to the 40 state departments of education that do not publish enrollment data early enough in the year for us to use their published reports. Information requested includes fall public and nonpublic enrollment by grade for the state and selected counties. In six states we collect year–end enrollment. The Census Bureau uses school enrollment data in preparing estimates of state population. State population estimates are used by dozens of Federal agencies for allocating Federal program funds, as bases for rates of occurrences, and as input for Federal surveys. State and local governments, businesses, and the general public use state population estimates for planning and other informational uses.

Affected Public: State, local, or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 28, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–21698 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Survey of Local Government Finances (School Systems).

Form Number(s): F–33, F–33–1, F–33–L1.

Agency Approval Number: 0607–0700.

Type of Request: Extension of a currently approved collection.

Burden: 2,871 hours.

Number of Respondents: 894.

Avg Hours Per Response: 3 hours and 13 minutes.

Needs and Uses: The Census Bureau collects financial data for public school systems as part of its Annual Survey of State and Local Government Finance. This survey is the only comprehensive source of public fiscal data collected on a nationwide scale using uniform definitions, concepts, and procedures. Data are incorporated with other state and local government finance data and entered into the national income accounts. Data are also used in long–established Census Bureau reports and provided to the National Center for Education Statistics (NCES). The collection of these data at the school system level are closely coordinated with the NCES' National Public Education Finance Survey (NPEFS) which obtains state totals for revenue and expenditure items.

Affected Public: State, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 28, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–21696 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–07–F

US & Foreign Commercial Service; U.S.-Caribbean Business Development Council

AGENCY: US & Foreign Commercial Service, Commerce.

ACTION: Notice of opportunity to participate in U.S.-Caribbean Business Development Council.

SUMMARY: As part of its recently launched Caribbean Commercial Strategy, the Department of Commerce, through its U.S. & Foreign Commercial Service, is establishing a U.S.-Caribbean Business Development Council (CBDC). The CBDC will be a forum for dialogue among the public and private sectors of participating countries. Its objectives are to provide a forum for constructive exchanges of information on commercial matters, encouraging discussion on issues of common interest, including, but not limited to: (i) Identifying commercial opportunities; (ii) improving dissemination of information on U.S.-Caribbean market opportunities; (iii) developing sectoral approaches to expanding business opportunities; (iv) implementing trade and business development programs; and (v) taking any other appropriate steps for fostering commercial relations between the United States and the Caribbean. The inaugural meeting for the CBDC is expected to be in mid-December, in Kingston, Jamaica.

The CBDC will be composed of two sections, a U.S. section and a Caribbean section open to membership to Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. Each participating Caribbean country will be represented by a trade or industry minister and several private sector members. The U.S. section will be chaired by Secretary of Commerce Ronald H. Brown and will be comprised of 20–25 private sector representatives.

The Department of Commerce is currently seeking nominations of outstanding individuals or companies to serve on the U.S. section of the CBDC. Private sector members serve at the discretion of the Secretary of Commerce and as representatives of the U.S. business community. They are expected to participate fully in defining the agenda for the CBDC and in implementing its work program. They are fully responsible for travel, living and personal expenses associated with the participation.

In order to be eligible for membership in the U.S. section, potential candidates must be: (i) U.S. citizens; (ii) CEOs or other top management level employees of a U.S. company or organization with demonstrated involvement in trade and investment within the Caribbean region; and, (iii) not a registered Foreign Agent.

To the extent possible, the Department of Commerce will strive to achieve membership composition that reflects U.S. entrepreneurial diversity. Therefore, in reviewing eligible candidates, the U.S. & Foreign Commercial Service will consider such selection factors as: (i) Depth of experience in the Caribbean market; (ii) industry sectors, company size, location, and demographics.

To be considered for membership, please provide the following: name and title of individual requesting consideration; name and address of the company or organization sponsoring the individual; company's product or service line; size of the company; foreign commerce experience and major markets; a brief statement (not more than 2 pages) of why each candidate should be considered for membership on the BDC; the particular segment of the business community each candidate would represent; and a personal resume.

DATES: In order to receive full consideration, requests must be received no later than September 15, 1995.

ADDRESSES: Please send requests for consideration to Ms. Maria Tildon, Special Assistant, Office of the Director General, US&FCS, preferably by fax on (202) 482–5013 or by mail at Room 3802, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Tildon, Special Assistant, Office of the Director General, US&FCS, Room 3802, U.S. Department of Commerce, Washington, DC 20230. Telephone, 202–482–0332.

Authority: Act of February 14, 1903, c. 552, as amended, 15 U.S.C. 1501 *et seq.*, 32 Stat. 825; Reorganization Plan No. 3 of 1979, 19 U.S.C. 2171 Note, 93 Stat. 1381.

Dated: August 25, 1995.

Robert LaRussa,

Principal Deputy Assistant Secretary for US&FCS.

[FR Doc. 95–21806 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–FP–P

International Trade Administration

U.S.-Argentina Business Development Council and U.S.-Brazil Business Development Council—Standards Working Groups

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Open Discussion Roundtable and Standards Seminar Organized by the U.S.-Argentina Business Development Council Standards Working Group and the U.S.-Brazil Business Development Council Standards Working Group.

SUMMARY: On January 25, 1995, Secretary of Commerce Ronald H. Brown and Argentine Minister of Economy and Public Works and Services Domingo Cavallo signed the Terms of Reference to create the U.S.-Argentina Business Development Council (A–BDC). On March 23, 1995, Secretary of Commerce Ronald H. Brown and Brazilian Minister of External Relations Luiz Felipe Lampreia signed the Terms of Reference to create the U.S.-Brazil Business Development Council (B–BDC). The purpose of the BDCs, which are bilateral, public-private sector councils, is to provide a forum for cooperation through which U.S. and respectively, Argentine and Brazilian (Argentine/Brazilian) representatives can exchange information on commercial matters and encourage discussion on various themes related to bilateral business development and trade promotion.

The BDCs are comprised of U.S. and Argentine/Brazilian sections. The U.S. sections are comprised of U.S. Government officials and senior level representatives of U.S. companies with commercial interest and experience in Argentina/Brazil. The activities of the BDCs may include, but are not limited to. the following: identifying commercial opportunities, impediments and issues of concern to the U.S. and Argentine/Brazilian business communities; improving dissemination of information on U.S.-Argentine/Brazilian market opportunities; developing sectoral or project oriented approaches to expanding bilateral business opportunities; implementing bilateral trade and business development programs; and other appropriate steps to foster bilateral commercial relations.

To implement these activities, the BDCs have formed various working groups, including Standards Working Groups ("Standards Groups") in each BDC. The two Standards Groups intend to implement a program to encourage use of internationally accepted standards and conformity assessment practices and to enhance the efficiency of U.S.-Argentine/Brazilian commerce by identifying possible solutions to standards-related impediments.

DATES: The standards discussion roundtable will be held on Tuesday, September 19, 1995 at 1:30 P.M. The standards seminar is scheduled for Tuesday, November 28, 1995.

ADDRESSES: The standards discussion roundtable will be held at the U.S. Department of Commerce, Herbert C. Hoover Building, Auditorium, 14th and Constitution Avenue NW., Washington, DC 20230. The standards seminar will be held in Buenos Aires, Argentina.

FOR FURTHER INFORMATION CONTACT:

(1) Regarding the A–BDC generally—Carrie B. Clark, Argentina Desk, (202) 482–0477;

(2) Regarding the B–BDC generally—Laura Zeiger-Hatfield, Brazil Desk, (202) 482–0428;

(3) Regarding both BDC Standards Groups and the Discussion Roundtable—Dr. Stanley I. Warshaw, Senior Policy Advisor for Standards and Technology, U.S. Department of Commerce, International Trade Administration, HCHB Room 3527, Washington, DC 20230, (202) 482–5620 or 5853, Fax: (202) 482–5444, Internet: Warshaw@usita.gov;

(4) Regarding the Standards Seminar—Mr. John L. Donaldson, Chief, Standards Code and Information Program, U.S. Department of Commerce, National Institute of Standards and Technology, TB 417, Room 109, Gaithersburg MD 20899, (301)975–4030, Fax: (301)963–2871, Internet: Donaldso@micf.nist.gov.

SUPPLEMENTARY INFORMATION:

Open Standards Discussion Roundtable Organized by the A–BDC and B–BDC Standards Groups

The U.S. sections of the BDC Standards Groups will host a roundtable to generate a broad private sector discussion of standards-related issues that may be considered by the A–BDC and B–BDC Standards Groups in preparation for future bilateral meetings scheduled to take place, respectively in Buenos Aires and Rio de Janeiro. The standards seminar will be open to all interested participants.

Open Standards Seminar

The BDCs will organize a standards seminar. In accordance with the public—private sector partnership embodied in the BDCs, the seminar is being organized and cosponsored by the International Trade Administration and the National Institute of Standards and Technology of the U.S. Department of Commerce, Argentina's National Institute of Industrial Technology, Brazil's National Institute of Metrology, Standardization and Industrial Quality, and the A–BDC and B–BDC Standards Groups. The standards seminar will be open to all interested participants.

Contact Information

Those interested in attending the standards roundtable discussion or in submitting written comments on standards issues relevant to U.S.-Argentine/Brazilian commerce and/or in participating in the standards seminar in Buenos Aires should contact the relevant persons listed above.

Authority: Act of February 14, 1903, c. 552, as amended, 15 U.S.C. § 1501 et seq., 32 Stat. 825.

Dated: August 25, 1995.

Walter M. Bastian, III,

Director, Office of Latin America and the Caribbean.

[FR Doc. 95–21697 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–DA–P

Bureau of Export Administration

Sensors Technical Advisory Committee; Partially Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held September 27, 1995, 9 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion on rechartering of the Committee.
4. Update on Administration export initiatives.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA–Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: August 29, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 95–21815 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–DT–M

Bureau of the Census

Economics and Statistics Administration; 2000 Census Advisory Committee (formerly the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009); Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the 2000 Census Advisory Committee (formerly the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009) is in the public interest in connection with the performance of duties imposed on the Department by law.

The 2000 Census Advisory Committee will continue to provide advice to the Secretary of Commerce and the Director, Bureau of the Census, on such matters as questionnaire content, operational planning, and other issues related to effective implementation.

The 2000 Census Advisory Committee will have a balanced representation of up to 35 member organizations. In addition, 15 ex-officio members will be invited to serve in a nonvoting capacity. The 2000 Census Advisory Committee will continue to report and be responsible to the Secretary of Commerce and the Director, Bureau of the Census, and will function solely as an advisory body in compliance with the Federal Advisory Committee Act.

The Department of Commerce will file copies of the committees' renewed charters with appropriate committees in Congress.

You may address inquiries or comments to Maxine Anderson-Brown, Committee Liaison Officer, Bureau of the Census, Room 3039–3, Washington, DC 20233, telephone (301) 457–2308, or Victoria Kruk, Committee Management Analyst, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–4115.

Dated: August 29, 1995.

Harry A. Scarr,

Deputy Director, Bureau of the Census.

[FR Doc. 95–21824 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–07–P

Census Advisory Committee (CAC) on the American Indian and Alaska Native Populations; Notice of Public Teleconference Call Meeting

Pursuant to the Federal Advisory Committee Act (P.L. 92–463 as amended by P.L. 94–409, P.L. 96–523, and P.L. 97–375), we are giving notice of a teleconference call of the CAC on the American Indian and Alaska Native Populations. The conference call meeting will convene on September 11, 1995 at the Census Bureau, Conference Room #3, Federal Building 3, Suitland, Maryland 20233.

The committee is composed of nine members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on its efforts to reduce the differential in the count for the 2000 census and on ways that census data can be disseminated to maximum usefulness to their communities and other users.

The committee will draw on past experience with the 1990 census process and procedures, results of evaluations and research studies, and the expertise and insight of their members to provide advice and recommendations during the research and development phase on various topics, and provide advice and recommendations during the design, planning, and implementation phases of the 2000 census.

The agenda for the conference call meeting that will begin at 1 p.m. eastern daylight time and end at 4 p.m. is:

(1) Introductory remarks by the Committee Liaison, CAC on the American Indian and Alaska Native Populations.

(2) Administrative Records, which includes the review of comments on the final report results and recommendations from the "Research and Evaluation of American Indian and Alaska Native Government Administrative Records," prepared by WESTAT.

(3) The 1996 American Indian Reservation Special Test that includes the discussion of the working group meeting held July 21, 1995 and will cover the recommendations made by the working group, cultural awareness training for the Special Test, the Tribal Liaison Program, and the outreach and promotion products.

The conference call meeting is open to the public and a brief period is set aside on September 11, 1995 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least three days before the meeting.

The conference call meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below.

Persons wishing additional information concerning the conference call meeting or who wish to submit written statements may contact Ms. Diana Harley, Decennial Management Division, Bureau of the Census, Room 3587, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone: (301) 457–4047.

Dated: August 29, 1995.

Harry A. Scarr,

Deputy Director, Bureau of the Census.

[FR Doc. 95–21825 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

Amendment of Initiation of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment of initiation of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) published *Interim Regulations* (interim rules) in the **Federal Register** on May 11, 1995 (60 FR 25130) which affected the requirements for requesting administrative reviews of countervailing duty orders beginning January 1, 1995. Parties who had requested administrative reviews of countervailing duty orders since that time were notified of these changed requirements and were provided an opportunity to amend their requests to comply with the Department's new interim rules. Having received the amended requests for review, the Department is now amending the notices of initiation for administrative reviews requested after January 1, 1995.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara E. Tillman, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Since January 1, 1995, the Department received several timely requests, in accordance with 19 CFR 355.22(a) (1994), for administrative reviews of countervailing duty orders and initiated those proceedings. On May 11, 1995, however, the Department published interim rules in the **Federal Register** which amend the existing countervailing duty regulations in accordance with certain amendments to the Tariff Act of 1930, as amended (the Act) made by the Uruguay Round Agreement Act. Under the revised § 355.22(a), each year during the anniversary month of the publication of an order, (1) an interested party may request that the Secretary conduct an administrative review of specified individual producers or exporters covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or exporters; (2) a producer or exporter covered by an order may request a review of only that person; and (3) an importer may request a review of only a producer or exporter of the merchandise imported by that importer. *See* interim rules, § 355.22(a). As a result, there is no longer a preference for calculating a single country-wide rate in countervailing duty proceedings and reviews will instead be conducted on a company-specific basis.

The Department advised requesting parties of these new requirements and provided them an opportunity to comply with the interim rules. Accordingly, the Department is now amending the notices of initiation of reviews of countervailing duty orders which were requested after January 1, 1995 to indicate the specific companies for which a review was requested.

Countervailing duty proceedings	Period to be reviewed
Amendment to Initiation Notice of March 15, 1995 (60 FR 13955)	
Peru: Cotton Yarn C–333–002 Industria Textil Piura, S.A Hilanderia San Antonio, S.A Textil Trujillo, S.A	01/01/94–12/31/94
Amendment to Initiation Notice of April 14, 1995 (60 FR 19017)	
Thailand: Certain Apparel C–549–401 Chiangmai P.K. House Co., Ltd General Garment Company, Ltd	01/01/94–12/31/94
South Africa: Ferrochrome C–791–001 Chromecorp Technology (Pty) Ltd Consolidated Mettallurgical Industries Limited Feralloys Limited Samancor Limited	01/01/94–12/31/94
United Kingdom: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products (C–421–811) United Engineering Steels Ltd UES Holdings Ltd	01/01/94–12/31/94

Countervailing duty proceedings	Period to be reviewed
British Steel plc	
Amendment to Initiation Notice of May 15, 1995 (60 FR 25886)	
Mexico: Leather Wearing Apparel C–201–001	01/01/94–12/31/94
Aeroenvios	
Aguilla Alvarez Juan Martin	
Alarcon Roman Pedro	
Alfredo Costuras Originales, S.A. de C.V	
Alorsa	
Alvarez Contreras Gildardo	
Articulos Charros Y Vaqueros, S.A. de C.V	
Articulos de Piel Chasser	
Articulos de Piel de Guadalajara, S.A. de C.V	
Articulos de Piel Muca, S.A. de C.V	
Arufe Gil Ma. Josefina	
Avila Lopez Ma. Teresa	
Bemisa, S.A. de C.V	
Bocanegra Morales Rosa Isela	
Calzado Emege, S.A. de C.V	
Comercial de Artesanias, S.A. de C.V	
Capelli	
Carillo Castillo Agustin	
Cia. Exportadora de Chapala, S.A. de C.V	
Club Aurrera	
Collado Garza Manuel Fernando	
Comercializadora Cevis, S.A. de C.V	
Compania Exportadora de Chapala	
Confecciones en Piel Leather S.A. de C.V	
Cornell Piel, S.A. de C.V	
Creaciones Alcala	
Creaciones Cevis, S.A. de C.V	
Creaciones Cozumel, S.A. de C.V	
Creaciones de Esesarte	
Creaciones Kity Ku	
Creaciones Ma Elvi	
D'Vany	
Deitz Groswirte Gregoria	
Eugenio de Alba Hernandez	
Exclusive Design in Leather Felle, S de R.L	
Exclusivos Baez, S.A. de C.V	
Export. Mexic. de Art. Charros Y Vaqueros, S.A. de C.V	
Exportadores Indios Verdes, S.A. de C.V	
Fina Estampa	
Finapiel de Mexico, S.A. de C.V	
Flores Martinez Ma. Azucena	
Frausto Avila Julia	
Gallardo Rocio	
Garcia Avila Enrique	
Garcia Gonzalez Antonia	
Garcia Gonzalez Juan Manuel	
Garcia Jose	
Geno D'Lucca	
Gil Garcia Benjamin	
Gonzalo de La Torre Jose de Jesus	
Gover	
Grupo Ticuan S.A. de C.V	
Hardo Navarro Vincente	
Harnandez Gonzalez Lino Salvador	
Hernandez Herrera Jose de Jesus	
Hernandez Rodriquez Ma. Teresa de Jesus	
Hurtado Antonio	
Hurtado Vazquez Francisco Javier	
Importaciones Y Exportacones Anaf, S.A. de C.V	
Ind. en Piel de Mexico, S.A. de C.V	
Lazo	
Lopez Avila J. Cruz	
Lorendano, S.A. de C.V	
Lusomoda De Mexico, S.A. de C.V	
Manufacturera California, S.A. de C.V	
Manufacturera de Botas Tejas. S.A. de C.V	
Manufacturera de Cintos. S.A. de C.V	
Maquiladora Pieles Pitic S.A. de C.V	
Marcelinni, S.A. de C.V	
Marco Antonio Sotelo Salazar	
Martinez Bautista Noe	
Martinez Castillo Roberto	
Martinez Fernandez Guillermo	
Maurizzio Moda Y Piel, S.A. de C.V	
Melmex, S de R.L. de C.V	
Mex Piel Export	
Mexican Legend	
Moda en Piel Le Sua, S.A. de C.V	
Mon Real	
Monaco, S.A. de C.V	
Mora Hernandez Ismael	
Morales Nernandez Bartolo	
Munoz Armas Federico	
Neca De Baja California, S.A. de C.V	
Orginales Hechos A Mano, S.A. de C.V	
Orozco Alviso J. Cruz	
Peleteria Jalisco de Baja California, S.A. de C.V	
Penilla Adolpho	
Pieles Monroy, S.A. de C.V	
Procopiel Exotica, S.A. de C.V	
Propuctora de Articulos de Piel Gerpa	
Promociones La Fiesta, S.A. de C.V	
Promotora de Modas Masculinas, S.A. de C.V	
Quintana Aguirre Martin	
Ramos Rosa	
Rios Bueno Salvador	
Rodriquez Jarez Jose Luis	
Rodriquez Ortiz Guadalupe	
Rougon Piel	
Salceda Toledo Leonel	
San Sebastian Curte, S.A. de C.V	
Serrano Robles Martin Humberto	
Servicio Harley Davidson, S.A. de C.V	
Sidransky Marcus Alejandro	
Sotelo Jose	
Sotelo Salazar Marco Antonio	
Tapetei Tipicos, S.A. de C.V	
Torres Torres Juan Antonio	
Transformadora Tuca, S.A. de C.V	
Tropico Arte Y Piel	
United Parcel Service de Mexico, S.A. de C.V	
Vincente Haro Navarro	
Vilches Mares Laura	
Zaragoza Gutierrez Ricardo	
Zedillo Lagos Teresa	
John Trackunan George	
Zuid de Mexico, S.A. de C.V	
Amendment to Initiation Notice of June 15, 1995 (60 FR 31447)	
Singapore: Ball Bearings (C–559–802)	1/01/94–12/31/94
Cylindrical Roller Bearings	
Needle Roller Bearings	
Spherical Roller Bearings	
Spherical Plane Bearings	
NMB Singapore, Ltd	
Pelmec Industries (Pte.) Ltd	
Minebea Trading (Pte.) Ltd	
Minebea Company Limited Singapore Branch	
Thailand: Ball Bearings (C–549–802)	01/01/94–12/31/94
Hi-Tech Bearings Ltd	
Pelmec Thai Ltd	
NMB Thai Ltd	

These initiations and this notice are in accordance with section 751(a) of this Act (19 U.S.C. 1675(a)) and 355.22(c)(1) of the Department's interim rules.

Dated: August 25, 1995.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 95–21811 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–809]

Court Decision and Suspension of Liquidation: Circular Welded Non-Alloy Steel Pipe From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of court decision and suspension of liquidation.

SUMMARY: On August 11, 1995, in the case of *Laclede Steel Co.* v. *United States*, Cons. Ct. No. 92–12–00784, Slip Op. 95–144 ("*Laclede*"), the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) results of redetermination on remand of the final determination of sales at less than fair value of circular welded non-alloy steel pipe from Korea. Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Department will not order the liquidation of the subject merchandise entered or withdrawn from warehouse from consumption prior to a "conclusive" decision in this case.

EFFECTIVE DATE: August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0922.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1992, the Department published its final determination of sales at less-than-fair-value. *Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 57 FR 42942 (Sept. 17, 1992). On November 2, 1992, the Department published its amendment to the final determination of sales at less-than-fair-value. *Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 57 FR 49453 (Nov. 2, 1992).

Subsequent to the Department's final determination, petitioners and three of the investigated companies filed lawsuits with the Court challenging this determination. Thereafter, the Court issued an Order and Opinion dated October 12, 1994, in *Laclede Steel Co.* v. *United States*, Cons. Ct. No. 92–12–00784, Slip Op. 94–160, remanding three issues to the Department. The Court instructed the Department to (1) reconsider its original determination that certain overrun pipe sales were within the ordinary course of trade; (2) grant duty drawback adjustments on all U.S. sales, including those compared to constructed value; and (3) conduct a correlation test, utilizing only the price factor, to determine whether there was a correlation between price and levels of trade for the subject merchandise.

The Department filed its remand results on March 3, 1995. On March 9, 1995, the Department filed amended results to correct certain typographical errors. In the remand results, the Department found the overrun pipe sales at issue to be outside the ordinary course of trade. In accordance with the Court's instructions, the Department granted adjustments for duty drawback for all U.S. sales. Additionally, as the results of the correlation test were inconclusive, the Department calculated foreign market value without regard to level of trade.

On August 11, 1995, the Court sustained the Department's remand results. *See Laclede Steel Co.* v. *United States*, Cons. Ct. No. 92–12–00784, Slip Op. 95–144 (CIT Aug. 11, 1995).

Suspension of Liquidation

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish notice of a decision of the Court or Federal Circuit which is "not in harmony" with the Department's determination. Publication of this notice fulfills this obligation. The Federal Circuit also held that in such a case, the Department must suspend liquidation until there is a "conclusive" decision in the action. A "conclusive" decision cannot be reached until the opportunity to appeal expires or any appeal is decided by the Federal Circuit. Therefore, the Department will continue to suspend liquidation pending the expiration of the period to appeal or pending a final decision of the Federal Circuit if *Laclede* is appealed.

Dated: August 28, 1995.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–21810 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 94–0003.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to United Products of America, Inc. (UPA). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993). The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology rights including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (As They Relate to the Export of Products, Services and Technology Rights)

All Export Trade Facilitation Services, including professional services in the areas of export management, procurement management, market research and analysis, feasibility analysis, customer and supplier location, government relations and assistance with state and federal programs, foreign trade and business protocol, consulting, collection of information on trade opportunities, marketing, negotiations, joint ventures, shipping, export licensing, advertising, documentation and services related to compliance with customs requirements, insurance and financing, trade show exhibitions, organizational development, business management and labor strategies, technology transfer, transportation, and facilitating the formation of shippers associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

UPA, acting as an Export Intermediary, may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among suppliers for the sale and/or licensing of Products, Services and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price for Products, Services, and/or Technology Rights for sale and/or licensing in markets to export.
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping;
10. Exchange information on a one-to-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors.

Terms and Conditions of Certificate

1. In engaging in the above Export Trade Activities and Methods of Operation, UPA shall not intentionally disclose, directly or indirectly, to any Supplier, information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods unless such information is already generally available to the trade or public.
2. UPA will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.
2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

Protection Provided by the Certificate

The Certificate protects UPA, its officers, directors, and employees acting on its behalf, from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

The Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in the Certificate prohibits UPA from engaging in conduct not specified in the Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of the Certificate of Review to UPA by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of UPA or (b) the legality of such business plans of UPA under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)", 50 FR 1786 (January 11, 1985).

Dated: August 28, 1995.

Josephine H. Ludolph,

Acting Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 95–21814 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–DR–P

Export Trade Certificate of Review

ACTION: Correction.

On August 24, 1995, notice of the issuance of Export Certificate of Review 95–00003, issued to TEXPORT, Inc., was published in the **Federal Register** beginning at page 44020. The paragraph, "Products", appearing on page 44021, under "Description of Certified Conduct" was incorrect. The paragraph should have read:

1. Products

Broadwoven fabric, cotton (SIC 2211); Broadwoven fabric, Man-made Fiber (SIC 2221); Broadwoven Fabric, Wool (SIC 2231); Narrow woven fabric and other small wares (SIC 2241); Weft knit fabric (SIC 2257); Warp knit fabric (SIC 2258); Finishers of broadwoven fabrics of cotton (SIC 2261); Finishers of broadwoven fabrics of man-made fiber (SIC 2262); Nonwoven fabrics (SIC 2297).

Dated: August 28, 1995.

Josephine H. Ludolph,

Acting Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 95–21812 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–DR–P

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 95–00005."

Summary of the Application

Applicant: The Connell Company, 45 Cardinal Drive, Westfield, N.J. 07090–1099.

Application No.: 95–00005.

Date Deemed Submitted: August 24, 1995.

The Connell Company seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Products

Japonica brown rice.

Export Trade Facilitation Services (As They Relate to the Export of Products)

Communication and processing of export orders; inspection, fumigation and stevedoring; transportation; freight forwarding and trade documentation; insurance; billing of foreign buyers; collection of letters of credit and other financial instruments.

Export Markets

The export markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, the Connell Company may:

(i) Solicit orders from foreign purchasers;

(ii) Receive information on a one-to-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for purchase and export;

(iii) Confer from time to time, on a one-to-one basis, with individual Suppliers regarding a potential purchase by the Connell Company with regard to the quantities, price, delivery schedule, and other pertinent matters pertaining thereto;

(iv) Advise individual Suppliers that the price paid to each Supplier for Products purchased by the Connell Company to be resold by the Connell Company to a specific foreign purchaser in a given time period is equivalent to the price paid to other Suppliers for Products to be sold; and ensure that such parity is maintained;

(v) Allocate the amount of purchases of Products by the Connell Company from individual Suppliers for resale in the Export Markets; and advise individual Suppliers of the total quantity of Products being purchased by the Connell Company from all Suppliers for resale in the Export Markets and the quantity being purchased by the Connell Company from each individual Supplier for resale in the Export Markets;

(vi) Enter into purchase agreements with one or more Suppliers for the purchase of Products in the United States, and sales agreements with one or more foreign purchasers for the sale of Products in the Export Markets;

(vii) Refuse to purchase from one or more Suppliers for reasons the Connell Company deems fit; and

(viii) As the single buyer of Products, coordinate schedules for delivery of Products to the dock among Suppliers; allocate dock space; allocate Products to various vessels, coordinate stevedoring from the inland trucks to the dock and from the dock to the vessels; arrange for inspection by both U.S. and foreign inspection services; arrange for fumigation of the Products; arrange for various documentation regarding the cargo; and provide for other Export Trade Facilitation services as they relate to the export of Products.

Definitions

Supplier means a person that produces, provides, or sells Products.

Dated: August 28, 1995.

Josephine H. Ludolph,

Acting Deputy Assistant Secretary for Service Industries and Finance.

[FR Doc. 95–21813 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–DR–P

Proposed Classification System for Environmental Technologies Goods and Services

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Request for comments on and notice of a public meeting regarding a proposed classification system for Environmental Technologies Goods and Services.

SUMMARY: The Department of Commerce is seeking comment on a classification system to be used to collect data on the production of goods and services used for measuring, preventing, limiting or correcting environmental damages to water, air and soil as well as problems related to waste, noise and ecosystems. The Environmental Trade Working Group of the Trade Promotion Coordinating Committee and the Environmental Technology Initiative have concluded, in response to requests from industry, state governments and environmental organizations that consistent and reliable data on environmental technologies goods and services are needed. In order to collect this data a classification system is required. A draft of that classification is included as part of this notice.

This classification system will be used by Census to conduct a special survey of firms producing environmental technologies goods and providing enviromental services. This initiative is being undertaken in coordination with the Organization for Economic Cooperation and Development in Paris, France with the objective of developing comparable data for all countries that are major producers of environmental technologies goods and services.

PUBLIC MEETING: On September 18, 1995 at 1 p.m. a public meeting will be held to give all interested parties an opportunity to comment on the proposed classification system. Comments are particularly sought as to the level of detail and products and services that should be included but are not. The meeting will be held at the Department of Commerce in Room 1414 of the Herbert Hoover Building, 14th and Constitution, NW, Washington, DC. While not required, it would be appreciated if those intending to speak could notify Jonathan Menes at the address below so as to facilitate the scheduling of speakers.

WRITTEN COMMENTS: Written comments are requested no later than September 22, 1995. Comments should be addressed to Jonathan Menes, Office of Trade and Economic Analysis, Room 2815, U.S. Department of Commerce, Washington, DC 20230. In addition, comments may be submitted by fax, 202–482–5145 or via internet to "jmenes@doc.gov. Questions regarding this notice, additional information or copies of this notice can be obtained by contacting Mr. Menes.

FOR FURTHER INFORMATION CONTACT: Jonathan Menes, Office of Trade and Economic Analysis, Room 2815, U.S. Department of Commerce, Washington, DC 20230, (202) 482–5145, fax, (202) 482–4614, internet jmenes@doc.gov.

SUPPLEMENTARY INFORMATION: In 1993, President Clinton requested that Secretary Brown lead an interagency effort to assess the competitiveness of current environmental technologies and to develop a strategy to give U.S. companies the trade development promotion efforts and technical assistance that they need to increase exports and create U.S. jobs as well as to promote a better environment. The interagency group charged with responding to that mandate found that very little data was available and what there was, was inconsistent and based on very small samples. The interagency group also held a series of meetings where many from the private sector expressed a need for better date regarding the environmental industry. As a result an environmental data working group was established to explore ways to develop better data.

In order to develop data, the group concluded that a classification system for environmental technologies goods and services was needed. Such a system has been developed drawing on inputs from the private and public sector. In addition, a parallel effort through the Organization for Economic Cooperation and Development was initiated so as to ensure the classification system and the data collected using it will be comparable with environmental date collection in other industrial countries.

This system will initially be used by the Bureau of the Census to conduct a special survey in 1996. The proposed classification system is as follows:

Total environmental products
Total environmental services
Total Air pollution control
Total Air pollution control products
Total Air particulate emissions collectors
  Electrostatic precipitators
  Fabric filters
  Mechanical collectors
  Wet scrubbers
Total gaseous emissions control devices
  Catalytic oxidation systems
  Thermal and direct oxidation systems
  Scrubbers (gas absorbers)
  Wet FGD systems
  Dry FGD systems
  Gas adsorbers
Total mobile source controls
  Catalytic converters
  On board monitoring/control systems
  Other
Total Air pollution control services
  Modeling
  Emissions monitoring
  Permitting and Licensing services
  Analytical services
  Assessment, evaluation, and planning
Total Water Pollution Control
Total Water Pollution Control Products
Total monitoring and analytical products
  Freezers
  Microtomes
  Centrifuges
  Gas Chromatography
  Mass Spectrometers
  Other instruments
  Leak detectors
  Industrial process monitoring devices
  Radiation detection devices
Water treatment chemicals
Total Water treatment equipment
  Desalinization equipment
  Storage tanks and process vessels
  Separators
  Gas separators
  Fluid filters
  Sewage systems—construction
  Water supply and delivery—construction
Total Water/Wastewater Services
  Hydrogeology services
  Ground water resource analysis
  Health and ecological risk assessment
  Treatment planning and analysis
  Analytical laboratory services
  Construction and engineering management & design
  Sewerage systems—privately operated
  Private water supply and delivery
  Licensing and permitting
Total Energy Conservation/Efficiency Products
Total Renewable Energy residential/commercial/industrial
  Solar residential/ commercial (active)
  Solar residential/ commercial (passive)
  Wind energy conversion (residential)
  Residential photovoltaics
  Residential wood stoves
  Low & medium temp solar process heat
  Alcohol fermentation plant
  Methanol/ethanol production (non petroleum based)
  Low & medium Btu gas from pyrolysis/anaerobic digestion/wood gasification
  Industrial wood fired boiler
Utility
  Wood fired steam electric plant
  Wind energy conversion
  Central station solar thermal power
  Central station solar photovoltaic
  Ocean thermal energy conversion
  Geothermal energy conversion
Total fossil energy
  Coal benefication
  Ash management
  Atmospheric fluidized bed combustion
  Coal liquifaction
  Coal gasification
  IGCC
  Cogeneration
  MHD
  Waste-to-energy systems
Total other products
  Efficiency/Conservation related services
  Load management
  Transportation efficencies
Total Solid and Hazardous waste management
Total Solid and Hazardous waste management products
  Pit and landfill liners
  Waste storage tanks/barrels/drums
  Incinerators (conventional)
  Incinerators (high temperature)
  Compactors
  Vehicles (garbage trucks, ect)
  Tire shredding machinery
  Scrap bailing machines
  Spill cleanup/containment equipment
  Landfill gas management
Total Solid and Hazardous waste management services
  Landfill management
  Waste hauling
  Facility assessment and monitoring
  Engineering, construction, design services
  Spill cleanup/containment
Total Environmental Management Services (general)
  Public education and training
  Worker education and training
  Site remediation assessment, analysis, design

- Management consulting
- Health, safety, toxicology studies and support services
- Human health assessment
- Ecological risk assessment
- Ecological sciences service
- Analytical laboratory services
- Information management
- Regulatory and compliance audits
- Risk and liability assessments
- Standards and procedures development

Dated: August 29, 1995.

Jonathan C. Menes,

Director, Office of Trade and Economic Analysis.

[FR Doc. 95–21809 Filed 8–31–95; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

PROCUREMENT LIST; ADDITION

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 2, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 30, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 34235) of proposed addition to the Procurement List.

Comments were received from one of the current contractors for this paper towel. The commenter claimed that adding the towel to the Procurement List would have a significantly adverse effect on the contractor and would result in dramatically higher prices because there would no longer be competition on this product. The contractor also observed that nonprofit agencies employing people who are blind or severely disabled are not able to produce items themselves but have to subcontract production to manufacturers.

The current contract which this contractor holds with the Government for these towels represents only a very small percentage of its total sales, and a considerably smaller percentage than it claimed. Even if the impact of the 1993 addition to the Procurement List of another commodity for which the contractor held a Government contract at the time is taken into account, the impact of the Committee's action on this contractor does not reach a level which the Committee considers severe.

The Committee is required to set a fair market price for each commodity and service added to the Procurement List, and to adjust the price as conditions change to assure the price remains competitive. The price established by the Committee does not represent a significant increase over the current Government contract price.

The nonprofit agency which will produce the towels will convert paper stock into finished towels, as well as perform all packaging operations. It should be noted that the packaging operations are the labor-intensive parts of towel production which create jobs for blind people, as the other parts of the process are done by machine.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodity.
3. The action will result in authorizing small entities to furnish the commodity to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Towel, Paper
8540–00–291–0392

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–21823 Filed 8–31–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 2, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 23, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 32658) of proposed addition to the Procurement List. Comments were received from the current contractor for this day planner. The contractor noted that both it and the nonprofit agency which would produce the planner under the Javits-Wagner-O'Day (JWOD) Program hold Multiple Award Schedule (MAS) contracts to provide day planners to the Government. Addition of the planner to the Procurement List would, according to the contractor, foreclose its ability to sell the planner to the Department of Defense, thus depriving it of a market which is essential to its success and seriously impacting the company.

The Committee's action would only add the requirements of the Defense Supply Service, Washington, DC (DSSW) for a second color binder of the planner to the Procurement List, not the entire Department of Defense. This requirement represents a very small percentage of the contractor's total sales, even when the impact of the recent addition of the DSSW requirement of another color of the same day planner is taken into account. The contractor will retain its right to sell to the rest of the Department of Defense and the rest of the Government under its MAS contract and other individual contracts. Consequently, the Committee does not

believe that its action will have a severe adverse impact on the contractor.

The contractor contended that the Committee's action would be inappropriate because it would undermine the MAS approach of giving all organizations a level playing field to compete in for Federal business. The Committee's action will not deprive the contractor or other MAS contractors of the right to compete to sell this product to other Federal customers. The fact that the nonprofit agency designated by the Committee to produce the planner also holds an MAS contract does no more than give that agency the right to compete for Federal business. That right does not, however, guarantee any work for people with severe disabilities, while the action being taken by the Committee will assure a limited business base. The Committee does not believe its action will undermine the MAS program, which will continue to encompass the vast majority of Federal sales of this product.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodity.
3. The action will result in authorizing small entities to furnish the commodity to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Organizer, Day Planner, Travel Size
7530–00–D16–0057 (Burgundy)
(Requirements for the Defense Supply Service, Washington, DC)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–21821 Filed 8–31–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 2, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Plug, Ear, Hearing Protection
6515–00–137–6345
NPA: Orange County Rehabilitation Center—Occupations, Inc., Middletown, New York
Brush, Wire
7920–00–900–3577
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Services

Grounds Maintenance, Puget Sound Naval Shipyard, Bremerton, Washington
NPA: Peninsula Services, Bremerton, Washington
Janitorial/Custodial, Presidio of Monterey, Annex and Child Development Center, Monterey, California
NPA: PRIDE Industries, Roseville, California
Janitorial/Custodial, Allison Park U.S. Army Reserve Center #2, Buildings 1 and 5, Allison Park, Pennsylvania
NPA: Vocational Rehabilitation Center of Allegheny County, Pittsburgh, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, New Kensington, Pennsylvania
NPA: Family Services of Western Pennsylvania, New Kensington, Pennsylvania

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–21822 Filed 8–31–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Logistics Modernization

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Logistics Modernization will meet in open session on September 25–26, 1995 at the Institute for Defense Analyses (IDA), 1801 N. Beauregard Street, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of

Defense and the Under Secretary of Defense for Acquisition & Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call LTC Kerry M. Brown at (703) 697–7980.

Dated: August 29, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

FR Doc. 95–21757 Filed 8–31–95; 8:45 am]

BILLING CODE 5000-04-M

Department of the Navy

Notice of Rescheduling of Public Hearing and Extension of the Comment Period for the Draft Environmental Impact Statement for Construction and Operation of a Relocatable Over the Horizon Radar, Puerto Rico

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the Commonwealth of Puerto Rico Public Law Number Nine, section 4(c), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for construction and operation of a Relocatable Over the Horizon Radar (ROTHR) system in Puerto Rico.

On August 7, 1995, the Navy announced in the **Federal Register** the postponement of public hearings scheduled for August 8, 1995 in Lajas, Puerto Rico and for August 10, 1995 in Vieques, PR. The public hearings were to solicit public comment on the DEIS for ROTHR. This announcement is to notify the public that the public hearings have been rescheduled. The Puerto Rico Environmental Quality Board and the Department of the Navy will hold two public hearings, one on September 26, 1995 from 6:30 PM to 9:30 PM at the Municipal Theater, Lajas, PR; and another on September 28, 1995 from 6:30 PM to 9:30 PM at the Town Hall Community Center, Vieques, PR. In order to allow additional time for public review on the DEIS, the public comment period has been extended to October 13, 1995.

The DEIS has been distributed to various Federal, commonwealth, and local agencies, elected officials, special interest groups, and libraries. The DEIS is available for review at the following locations: Town Hall, Municipality of Vieques, Vieques Island, PR; Public Library, Municipality of Lajas, PR; and Mayor's Office, Lajas, PR. A limited number of copies of the DEIS are available by contacting Ms. Linda Blount, (804) 322–4892 or Sr. Jose Negron, Commander Fleet Air, Caribbean, (809) 865–4429.

Written statements and/or comments regarding the DEIS should be mailed to: Department of the Navy, Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, VA 23511–2699 (Attn: Ms. Linda Blount, Code 2032LB). Questions may be directed to Ms. Linda Blount, (804) 322–4892 or Sr. Jose Negron, Commander Fleet Air, Caribbean, (809) 865–4429. All comments must be postmarked no later than October 13, 1995 to become part of the official record.

Dated: August 29, 1995.

M.D. Schetzsle,

Lt, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–21754 Filed 8–31–95; 8:45 am]

BILLING CODE 3810-FF-M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Intent to Repay to the Iowa State Board for Vocational Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h (1988), the Secretary of Education (Secretary) intends to repay to the Iowa Department of Education (Iowa), under a grantback arrangement, an amount equal to 75 percent of the principal amount of Vocational Education Basic Grant funds recovered by the U.S. Department of Education (Department) as a result of the final audit determination (ACN: 07–82144) in this matter. The Department's recovery of funds followed a settlement reached between the parties under which Iowa refunded $178,500 in principal, to the Department in full resolution of the Department's final audit determination for fiscal year (FY) 1986. This notice describes Iowa's plan for the use of the repaid Vocational Education funds and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: All comments must be received on or before October 2, 1995.

ADDRESSES: All written comments should be addressed to Dr. Marcel R. DuVall, Chief, Finance Branch, Division of Vocational-Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 600 Independence Avenue SW., (Mary E. Switzer Building, room 4320, MS–7324), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Marcel R. DuVall, Telephone (202) 205–9502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8239 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

Under a settlement agreement between the Department and Iowa, the Department recovered $178,500 from Iowa in full resolution of all claims arising from an audit of the Iowa State Department of Education, covering FY 1986. Of this amount, $132,959 is considered to be a recovery of Vocational Education Basic Grant funds.

The Department's original claim of $240,803.68 was contained in a final letter of determination issued by the Assistant Secretary for Vocational and Adult Education, et al., on July 23, 1990. The parties determined that $19,129.24 of the refund demand was barred by the statute of limitations. This claim arose from findings related to Iowa's administration of its Handicapped State Grant program, Civil Rights Technical Assistance and Training program, Adult Education program and Vocational Education program. The Vocational Education program was administered under the provisions of the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (Perkins II).

In the July 23, 1990, letter, the Assistant Secretary determined that Iowa violated the regulations governing payroll expenditures and maintenance of time distribution records. For the applicable programs, Iowa improperly allocated payroll expenditures based on predetermined budgets and failed to maintain appropriate time distribution records for employees who worked on more than one cost objective, thus violating provisions of the cost principles implemented at 34 CFR Part 74, Subpart Q, Appendix C, Part II (B)(10)(b).

Pursuant to a November 12, 1991, agreement resolving fully all claims in this matter, Iowa repaid the Department $178,500. The full payment was made

on November 22, 1993. The repayment included $132,959 of Vocational Education funds.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. section 1234h, the authority applicable to this grantback request, provides that whenever the Secretary has recovered funds paid under an applicable program because the recipient made an expenditure of funds that was not allowable, or otherwise failed to discharge its responsibility to account properly for funds, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the recipient affected by that action an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that—

(1) The practices or procedures of the recipient that resulted in the violation of law have been corrected, and that the recipient is in all other respects in compliance with the requirements of that program;

(2) The recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) The use of the funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(c) of GEPA, Iowa has applied for a grantback of $99,719, or 75 percent of the Vocational Education portion of the recovered funds. Iowa has submitted a plan for use of the proposed grantback funds, consistent with Perkins II, which is currently in effect. Iowa plans to conduct a third-party evaluation of the applied academic coursework incorporated into Iowa's tech-prep education programs and to purchase equipment needed to connect the Iowa Department of Education to the Iowa Communication Network (ICN).

Specifically, Iowa plans to utilize the requested grantback funds to—

(1) Contract with an independent firm to design and conduct an evaluation of the applied academics course being administered as a portion of Iowa's tech-prep education programs. The State developed and implemented a framework model for tech-prep education programs approximately three years ago. Many secondary and postsecondary institutions in the State have incorporated curriculum materials, based upon this framework model, into their own tech-prep education programs. These institutions are interested in obtaining data regarding the model program's effectiveness. The contractor will produce a final report summarizing the findings of this evaluation.

(2) Purchase equipment needed to link the State Department of Education to a statewide fiber optic network. This network connects all of Iowa's community colleges and provides for at least one education end point in all of the State's 99 counties. Gaining access to the ICN will enable the State to provide direct technical assistance to Perkins fund recipients, helping them to resolve administrative issues and to facilitate supplemental support services for students with special needs. The network will also improve basic communications between The State Board and the State community colleges. The additional equipment Iowa plans to purchase will serve to advance the quality of programs delivered by, and coordinated through, the postsecondary State system, resulting in Statewide benefit to vocational education, and maximizing the impact of the grantback funds.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by Iowa and other relevant documentation. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action at a later date. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Iowa State Division of Vocational Education under a grantback arrangement. The grantback award would be in the amount of $99,719, which is 75 percent—the maximum percentage authorized by the statute—of the principal amount of Vocational Education Basic Grant funds recovered by the Department as a result of the final audit determination and the settlement in this matter.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

Iowa agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) Iowa will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that was submitted and any amendments in that plan that are approved in advance of the grantback by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance of the grantback by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1995 in accordance with section 459(c) of GEPA and Iowa's plan.

(3) Iowa will, no later than January 1, 1996, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education).

Dated: August 24, 1995.

Patricia W. McNeil,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. 95–21919 Filed 8–31–95; 8:45 am]

BILLING CODE 4000-01-P

Intent To Repay to the Washington State Board for Vocational Education Funds Recovered as a Result of Two Final Audit Determinations

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act

(GEPA), 20 U.S.C. 1234h, the Secretary of Education (Secretary) intends to repay to the Washington State Board for Vocational Education (Washington), under a grantback arrangement, an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education (Department) as a result of the final audit determinations in this matter. The Department's recovery of funds followed settlements reached between the parties under which Washington refunded $49,500 (ACN: 10–03372G) and $50,000 (ACN: 10–13343G), equalling a total of $99,500 in principal, to the Department in full resolution of the Department's final audit determinations for fiscal years (FYs) 1989 and 1990. This notice describes Washington's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: All comments must be received on or before October 2, 1995.

ADDRESSES: All written comments should be addressed to Dr. Marcel R. DuVall, Chief, Finance Branch, Division of Vocational-Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 600 Independence Avenue SW., (Mary E. Switzer Building, room 4320, MS–7324), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Marcel R. DuVall, (202) 205–9502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8239 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION

A. Background

Under settlement agreements between the Department and Washington, the Department recovered $49,500 (ACN: 10–03372G) and $50,000 (ACN: 10–13343G) from Washington in full resolution of all claims arising from audits of Washington's State Division of Vocational Education, covering FYs 1989 and 1990, respectively.

The Department's original claims of $192,354 (ACN: 10–03372G (FY 1989)) and $135,248 (ACN: 10–13343G (FY 1990)) were contained in final letters of determination issued by the Assistant Secretary on March 29, 1991, and March 31, 1993, respectively. These claims arose from findings related to Washington's administration of its vocational education program under the provisions of the Carl D. Perkins Vocational Education Act. 20 U.S.C. 2301 et seq. (1988)(Perkins I).

In the March 29, 1991 letter for FY 1989, the Assistant Secretary determined that Washington violated the Federal regulations governing funds set aside for disabled and disadvantaged students awarded under Title II, Part A, of Perkins I. Specifically, Washington used funds to pay for salaries and instructional programs that served students who were not enrolled in vocational education programs, thus violating provisions implemented at 34 CFR 401.52(a) and 401.53(a)(1) and 401.58(a)(1)(1989). In addition, Washington violated the requirement, implemented at 34 CFR 401.52(a) and 401.53(a)(1), that funds allocated for disabled and disadvantaged individuals be used only for the excess costs incurred as a result of serving those populations. The Assistant Secretary further determined that Washington violated the requirement at 20 U.S.C. 2323(b)(16)(1988) that Perkins I funds be used to supplement and not supplant State and local funds.

In the March 31, 1993 letter, the Assistant Secretary determined that Washington awarded funds reserved for disabled and disadvantaged under Title II, Part A, of Perkins I to 11 community colleges based on applications proposing services that were not allowable under Perkins I. The Assistant Secretary determined that the colleges used these funds to pay for salaries and instructional programs that either served disadvantaged and disabled individuals who were not enrolled in vocational education programs or that served students who were not members of those special populations. 34 CFR 401.52(a) and 401.53(a)(1)(1990).

The settlement negotiations resulting from Washington's appeal of the Assistant Secretary's March 29, 1991 and March 31, 1993 determinations culminated in settlement agreements. The settlement agreement for the March 29, 1991 determination (ACN: 10–03372G) was executed on June 5, 1992. The Department received full payment of $49,500 for this determination in August 1992. The settlement agreement for the March 31, 1993 determination (ACN: 10–13343G) was executed on May 10, 1995. The Department received full payment of $50,000 for this determination on August 8, 1994.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. § 1234(h), provides that whenever the Secretary has recovered funds following a final audit determination with respect to any applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State or local educational agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that—

(1) The practices or procedures of the recipient that resulted in the violation of law have been corrected, and that the recipient is in all other respects in compliance with the requirements of that program;

(2) The recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) The use of the funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, Washington has applied for a grantback of $74,625, or 75 percent of the $99,500 total amount repaid to the Department under the FY 1989 and FY 1990 settlement agreements, and has submitted a plan for use of the proposed grantback funds, consistent with the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (Perkins II), which is currently in effect. Washington plans to use the FY 1989 funds to purchase equipment to assist disabled and disadvantaged populations enrolled in remedial vocational programs. Utilizing the FY 1990 funds, Washington plans to hire personnel and to purchase equipment to develop a communication system for the State and postsecondary institutions involved in vocational-technical programs.

Specifically, Washington plans to utilize the requested FY 1989 grantback funds, totaling $37,125, to—

(1) Purchase updated adaptive equipment to assist disabled and disadvantaged students enrolled in remedial and vocational training programs at South Seattle Community College, so that these students can fully participate in vocational programs. This equipment will include four G.E. Fastrac speed listening cassette recorders and adapters, two Sharp Talking Clock calculators, three adjustable computer tables for wheelchair users, four Language Masters, one personal FM Loop system, and one portable disk drive for Type 'n Speak equipment ($3,958);

(2) Purchase adaptive equipment to assist vocational education students enrolled at Spokane Community College including: four high-back stools designed to accommodate students with physical disabilities (including back injuries), six portable spell checkers for the learning disabled, and one computer workstation specially designed for the disabled ($9,119);

(3) Purchase equipment to assist vocational education students with disabilities at Shoreline Community College, including: five micro tape recorders, one computer station that utilizes speech recognition for text input, one Dragon Dictate that also uses speech recognition input, and one Laserjet 4M+ printer to permit special population students to print from laptop computers ($6,330);

(4) Purchase and enhance adaptive equipment for disabled students enrolled in vocational education programs at Everett Community College, including: four wrist rests, two ergonomic keyboards, two FM Comtrex systems, four 4-track recorders, two 2MG memory computer boards, one 4MG memory computer board, and four ergonomic chairs ($6,715);

(5) Purchase a laptop computer and related software for hearing-impaired vocational education students at Green River Community College ($3,291);

(6) Purchase adaptive equipment for disabled students enrolled in vocational education at Wenatchee Valley Community College, including: one Vista VGA system to provide computer magnification capability for the visually impaired, and one door to provide disabled access into the Student Services facility ($7,712).

Washington also plans to utilize the requested FY 1990 grantback funds, totaling $37,500, to—

(1) Purchase one Hewlett Packard NetServer and related equipment to provide an effective communication system between the State Board and local community and technical colleges. Washington plans to establish an accurate and consistent method of exchange for data related to Perkins II, its rules and regulations, especially as it relates to disadvantaged and disabled populations. The information would be available for special population coordinators, counselors, teachers and local administrators. The system would share information about "best practices", providing examples of exemplary utilization of Perkins funds for disabled and disadvantaged students. It would also provide E-mail access between the State and the local college community, permitting a question and answer dialog to be established ($10,000);

(2) Purchase hardware and software needed to support the user network and to provide applicable data. The system information would serve as a clearinghouse resource for disadvantaged and disabled populations, providing data related to career guidance and counseling, job placement; and employment assistance. The system would also be utilized to contact and aid employers interested in hiring disabled or disadvantaged vocational education students. It would provide assistance and information about job restructuring and adaptive modifications needed to accommodate the employment of special needs students ($7,500);

(3) Retain the services, by contract, of a computer project technician, who would develop and implement the communication system ($18,000); and

(4) Conduct a pilot testing and dissemination program of the completed computer network system ($2,000).

Washington plans to use the FY 1989 grantback funds to enhance access to vocational education programs for disabled and disadvantaged students. As is indicated in Washington's grantback plan, the additional equipment Washington plans to purchase will serve to advance the quality of programs delivered by, and coordinated through, the postsecondary State system, resulting in Statewide benefit to vocational education, and maximizing the impact of the grantback funds.

Washington plans to use the FY 1990 grantback funds to enable an accurate and efficient exchange of information about vocational education, especially as it relates to disadvantaged and disabled populations, to local administrators, teachers, and students within the community and technical college system. It will further allow disadvantaged and disabled vocational students to access quickly and easily a broad range of information relevant to their particular needs.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by Washington and other relevant documentation. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action at a later date. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Washington State Division of Vocational Education under a grantback arrangement. The grantback award would be in the amount of $74,625, which is 75 percent—the maximum percentage authorized by the statue—of the principal recovered to date by the Department as a result of the final audit determinations and the settlements in this matter.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

Washington agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) Washington will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that was submitted and any amendments in that plan that are approved in advance of the grantback by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance of the grantback by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1995 for ACN: 10–03372G and September 30, 1998 for ACN: 10–13343G, in accordance with section 459(c) of GEPA and Washington's plan.

(3) Washington will, no later than January 1, 1996, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the

expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education).

Dated: August 24, 1995.

Patricia W. McNeil,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. 95–21920 Filed 8–31–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Prototype Spent Nuclear Fuel Dry Transfer System

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice.

SUMMARY: On July 14, 1995, the U.S. Department of Energy published a **Federal Register** Notice entitled "Notice of Prototype Spent Nuclear Fuel Dry Transfer System Project" (60 FR 36267). That notice invited letters of interest from electric utilities and other public and private entities interested in participating with DOE in a cooperative project for prototype fabrication, demonstration and/or licensing of a spent nuclear fuel dry transfer system currently being designed under a Cooperative Agreement between DOE and the Electric Power Research Institute (EPRI).

The Department of Energy hereby announces that the due date for letters of interest in response to that notice has been extended to September 22, 1995.

DATES: Letters of interest must be received no later than September 22, 1995.

ADDRESSES: Letters of interest should be sent to the U.S. Department of Energy, Attn: Michelle Miskinis, HR–561.21, 1615 M Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Michelle Miskinis, (202) 634–4413.

SUPPLEMENTARY INFORMATION: The DOE/EPRI design consists of portable spent nuclear fuel dry transfer equipment which operates in a shielded facility to safely transfer spent nuclear fuel between casks or canister based systems. This system has potential applications at utility and Federal sites. Further details regarding the dry transfer system are included in the previous **Federal Register** Notice (60 FR 36267). Letters of interest must contain the information specified in that notice.

Issued in Washington, DC, on August 28, 1995.

Lake Barrett,

Deputy Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 95–21787 Filed 8–31–95; 8:45 am]

BILLING CODE 6450–01–P

Chicago Operations Office; Financial Assistance Award; the Electrochemical Society, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Intent to Award Based on an Unsolicited Application.

SUMMARY: The Department of Energy announces that pursuant to the provisions of 10 CFR 600.14, it intends to renew Grant No. DE–FG02–87CE34012 based on an unsolicited application received from the Electrochemical Society for the Electrochemical Society Summer Fellowship Program. The determination to renew this grant is based on the following information: A technical evaluation of the proposed project was performed pursuant to 10 CFR 600.14 (d). This renewal will provide five summer fellowships during 1996, 1997 and 1998 for students engaged in electrochemical research. The research will address energy-related aspects of electrochemical science and engineering, as well as solid state science and engineering relevant to batteries and fuel cells. Photoelectrochemistry and electrochemical processes in materials will also be explored with the goal being to reduce energy consumption. The objectives of this program are to increase students' awareness of the energy efficiency and renewable energy programs at DOE, contribute new understanding of basic phenomena related to electrochemical energy conversion, and provide training for new scientists and technologists in the field electrochemistry to ensure a continuing reservoir of electrochemical expertise. The probability of achieving the anticipated objectives is extremely high. The facilities and qualifications of the key personnel are appropriate. DOE knows of no other entity which is conducting or planning to conduct such an effort. The DOE share of funding is estimated at $45,000 for the three year project period which shall go directly to the fellowship recipients in the form of five $3,000 scholarships each year. The anticipated term of the renewal period is June 1, 1996 through May 31, 1999.

FOR FURTHER INFORMATION CONTACT: June M. Wiinikka, U.S. Department of Energy, Chicago Operations Office, Acquisition and Assistance Group, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2126. Ms. Kerry Cullerton, U.S. Department of Energy, Chicago Operations Office, Acquisition and Assistance Group, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2107.

Issued in Chicago, Illinois on August 25, 1995.

David T. Goldman,

Acquisition & Assistance Group Acting Manager.

[FR Doc. 95–21785 Filed 8–31–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–1489–000, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

August 25, 1995.

Take notice that the following filings have been made with the Commission.

1. Southern California Edison Company

[Docket No. ER95–1489–000]

Take notice that on August 23, 1995, Southern California Edison Company (Edison) tendered for filing supplements to its initial filing in the above docket. The supplements amend the rate to be effective June 1, 1995, for the Edison-Riverside Washington Water Power Firm Transmission Service Agreement between Edison and the City of Riverside, correct the losses stated for the Edison-IID Firm Transmission Service Agreement between Edison and Imperial Irrigation District, and correct a typographical error in the losses shown for the Edison-AEPCO Firm Transmission Service Agreement between Edison and the Arizona Electric Power Cooperative.

Edison states that copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Navajo Tribal Utility Authority v. Public Service Company of New Mexico

Docket No. EL95–75–000)

Take notice that on August 21, 1995, Navajo Tribal Utility Authority tendered for filing a complaint against the Public Service Company of New Mexico for rate relief.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER95–1563–000]

Take notice that on August 15, 1995, PSI Energy, Inc. tendered for filing a revision to its rates for full requirements wholesale electric service to municipalities, proposed to become effective as of September 23, 1995.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1575–000]

Take notice that on August 18, 1995, Northern States Power Company (NSP) tendered for filing Amendment No. 1 to the Transmission Service Exchange Agreement dated February 1, 1994, between NSP and East River Electric Power Cooperative (East River).

Amendment No. 1 to the Transmission Service Exchange Agreement provides for a change in the transmission wheeling rate between the parties. NSP requests the Commission to waive its Part 35 notice requirements and accept the agreement for filing effective August 19, 1995.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Power, Inc.

[Docket No. ER95–1576–000]

Take notice that on August 18, 1995, Entergy Power, Inc., tendered for filing a Purchase and Sale Agreement between Tenneco Energy Marketing Company and Entergy Power, Inc.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Power and Light Company

[Docket No. ER95–1578–000]

Take notice that on August 18, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing an Agreement dated July 24, 1995, establishing NorAm Energy Services, Inc. as a customer under the terms of WP&L's Transmission Tariff T–2.

WP&L requests an effective date of July 24, 1995 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Power and Light Company

[Docket No. ER95–1579–000]

Take notice that on August 18, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and NorAm Energy Services, Inc. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of July 20, 1995.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power and Light Company

[Docket No. ER95–1580–000]

Take notice that on August 18, 1995, Wisconsin Power and Light Company (WP&L) tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Illinois Power Company. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of August 1, 1995.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER95–1581–000]

Take notice that on August 18, 1995, PECO Energy Company (PECO) filed a Service Agreement dated August 2, 1995, with Wabash Valley Power Association (WABASH VALLEY) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds WABASH VALLEY as a customer under the Tariff.

PECO requests an effective date of August 2, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to WABASH VALLEY to the Pennsylvania Public Utility Commission.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Upper Peninsula Power Company

[Docket No. ER95–1582–000]

Take notice that on August 17, 1995, Upper Peninsula Power Company (UPPC) tendered for filing Addendum C to the Agreement dated September 12, 1966 between the Village of L'Anse and UPPC.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. GED Gas Services, LLC

[Docket No. ER95–1583–000]

Take notice that on August 17, 1995, GED Gas Services, LLC tendered for filing an application for Power Broker.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Puget Sound Power & Light Company

[Docket No. ER95–1584–000]

Take notice that on August 18, 1995, Puget Sound Power & Light Company (Puget) tendered for filing an Agreement for Purchase and Sale of Power (Purchase Agreement) with Public Utility District No. 1 of Douglas County, Washington (District). A copy of the filing was served upon District.

The Purchase Agreement is for the sale of on-peak capacity and associated energy by District and the off-peak return of energy by Puget pursuant to Puget's FPC Electric Tariff Original Volume No. 3.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Power Company

[Docket No. ER95–1585–000]

Take notice that on August 18, 1995, Consumers Power Company (Consumers), acting on behalf of itself and as agent for The Detroit Edison Company (Detroit Edison), tendered for filing various rate schedule changes to Consumers Power Company Rate Schedule FPC No. 41 and The Detroit Edison Company Rate Schedule FPC No. 22.

Copies of the filing were served upon the Michigan Public Service Commission, Consumers and Detroit Edison.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Citizens Utilities Company

[Docket No. ER95–1586–000]

Take notice that on August 18, 1995, Citizens Utilities Company (Citizens), tendered for filing two Tariffs providing for Transmission Services by its Vermont Electric Division, a Point-to-Point Transmission Service Tariff and a Network Integration Service Transmission Tariff. Citizens presently provides retail service in the Counties of Franklin, Grand Isle, Essex, Orleans and Caledonia.

As more fully set forth therein, the Transmission Tariffs provide for the non-discriminatory transmission of electric energy over Citizens' Vermont transmission facilities at cost-based rates. Initial service under the Transmission Tariffs will not begin before December 1, 1995.

Citizens states that a copy of its filing was served on all parties listed on the attached Service List.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER95–1587–000]

Take notice that on August 18, 1995, Commonwealth Edison Company (ComEd), submitted for filing revisions to its Power Sales Tariff (PS–1 Tariff). ComEd proposes to modify the PS–1 Tariff to permit ComEd to make sales under the Tariff to electric utilities with whom ComEd is directly interconnected, to reduce the minimum purchase requirement for transactions and to offer customers served under the PS–1 Tariff the option that ComEd will arrange for third-party transmission service.

ComEd requests an effective date of August 19, 1995 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon parties to service agreements under the PS–1 Tariff and the Illinois Commerce Commission.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Portland General Electric Company

[Docket No. ER95–1588–000]

Take notice that on August 18, 1995, Portland General Electric Company (PGE), tendered for filing an Interconnection and Transmission Agreement with Eugene Water & Electric Board. PGE proposes an effective date of August 19, 1995.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Kentucky Utilities Company

[Docket No. ER95–1598–000]

Take notice that on August 21, 1995, Kentucky Utilities Company tendered for filing an executed Service Agreement for Non-Firm Transmission Service with InterCoast Power Marketing Company.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Kentucky Utilities Company

[Docket No. ER95–1600–000]

Take notice that on August 21, 1995, Kentucky Utilities Company tendered for filing an executed Service Agreement for Power Services with Rainbow Energy Marketing Corporation.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Kentucky Utilities Company

[Docket No. ER95–1601–000]

Take notice that on August 21, 1995, Kentucky Utilities Company tendered for filing an executed Service Agreement for Power Services with Electric Clearinghouse, Inc.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Kentucky Utilities Company

[Docket No. ER95–1602–000]

Take notice that on August 21, 1995, Kentucky Utilities Company tendered for filing an executed Service Agreement for Power Services with Intercoast Power Marketing Company.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Kentucky Utilities Company

[Docket No. ER95–1603–000]

Take notice that on August 21, 1995, Kentucky Utilities Company tendered for filing an executed Service Agreement for Power Services with NorAm Energy Services.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21705 Filed 8–31–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–695–000]

East Tennessee Natural Gas Company; Notice of Request Under Blanket Authorization

August 28, 1995.

Take notice that on August 18, 1995, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–695–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct delivery point facilities in Fentress County, Tennessee, for Upper Cumberland Gas Utility District, an LDC, under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee states that the total delivered quantities would not exceed total authorized quantities and there would be no detriment to existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21707 Filed 8–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–670–000]

Natural Gas Pipeline Company of America; Renotice of Application

August 21, 1995.

Natural's application in Docket No. CP95–670–000 was inadvertently entitled "NOTICE OF REQUEST UNDER BLANKET AUTHORIZATION" and had the corresponding boiler-plate language, referencing a 45-day notice period when noticed on August 15, 1995. (60 FR 43790, August 23, 1995.)

In view of the above, Natural's application will be renoticed as a "NOTICE OF APPLICATION" and given a 21-day comment period.

Take notice that on August 8, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–670–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, by sale to Shell Offshore Inc. (Shell), lateral and meter facilities located in offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that the facilities were originally constructed to receive gas purchased from Shell in offshore Louisiana. Natural states that these facilities are no longer related to any gas purchase contracts and hence, no longer hold sufficient value to Natural, to warrant the expenditures required to maintain them.

Specifically, Natural proposes to abandon: (1) 2.8 miles of 8-inch pipeline that extends between Shell's "A" and "B" platforms in Eugene Island Block 331, offshore Louisiana, (2) a dual 8-inch meter and appurtenant facilities located on Shell's "A" platform in Eugene Island Block 331, offshore Louisiana, (3) a 10-inch dual meter and appurtenant facilities located on Shell's platform in Vermilion Block 321, offshore Louisiana, (4) a dual 6-inch meter and appurtenant facilities located on Shell's platform in Vermilion Block 340, offshore Louisiana, and (5) a dual 8-inch meter and appurtenant facilities located on Shell's platform in West Cameron 565, offshore Louisiana. Natural states that it intends to sell the facilities to Shell for $260,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 5, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21708 Filed 8–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–700–000]

Williams Natural Gas Co.; Application

August 28, 1995.

Take notice that on August 21, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–700–000 an application pursuant to Section 7(c) of the Natural Gas Act requesting authority to construct and operate pipeline loop facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, WNG proposes to construct and operate 28.2 miles of 20-inch pipeline loop in Newton, Lawrence, and Christian Counties, Missouri to extend its existing 20-inch Springfield loop pipeline in order to provide the capacity necessary to maintain reliable, consistent service to the Springfield, Missouri area.

WNG estimates cost of the proposed facilities to be approximately $13.7 million, which WNG states will be paid from available funds. WNG also requests a determination that rolled-in rate treatment is appropriated for these facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 18, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21706 Filed 8–31–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed; Week of May 22 Through May 26, 1995

During the Week of May 22 through May 26, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: August 18, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 22 through May 26, 1995]

Date	Name and location of applicant	Case No.	Type of submission
May 23, 1995	J.F. Tollison Fertilizer, Anson, Texas	RR272–201	Request for modification/rescission in the crude oil refund proceeding. If granted: The May 13, 1995 Dismissal, Case No. RF272–95167, issued to J.F. Tollison Fertilizer would be modified and the firm would be granted a refund in the Crude Oil Refund Proceeding.
May 24, 1995	A. Victorian, Nottingham, England	VEF–0043	Appeal of an information request denial. If granted: The April 9, 1994 Freedom of Information Request Determination issued by the Oakland Operations Office would be modified, and A. Victorian would receive access to additional Department of Energy information.

Date received	Name of refund proceeding/name of refund application	Case No.
5/19–5/26/95	Supplemental Crude	RK272–142 thru RK272–152.
5/17–5/26/95	Crude Oil Refund Applications	RG272–250 thru RG272–270.
5/17–5/26/95	Gulf Refund Applications	RF300–21827 thru RF300–21829.
5/23/95	Harold Regency Service	RF321–21070.
5/25/95	Little America Refining Co.	RF345–38.

[FR Doc. 95–21786 Filed 8–31–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5290–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 27, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0270.34.

SUPPLEMENTARY INFORMATION: Title: Public Water Supply System Supervision Program, Public Notification and Education Requirements (OMB Control No. 2040–0090; EPA ICR No. 0270.34). This is an amendment to a previously-approved collection. (These requirements were included in rules promulgated by EPA in 1987 and 1991, but were not included in ICRs developed at those times. Due to enactment of the Paperwork Reduction Act of 1995, the requirements are now being submitted for OMB review. EPA is not proposing any modification of the requirements at this time.)

Abstract: The Safe Drinking Water Act requires that the public be made aware of potential contaminants in their water systems. A public water system is required to notify its consumers when the system has exceeded regulatory action levels, has received variances or exemptions, or has failed to comply with schedules pursuant to variances. Systems notify their consumers by means of mailed notices (often included with a water bill), newspaper announcements, posted notices, and in some circumstances electronic media (radio and television). Public water systems that exceed action levels for lead must provide educational materials to consumers about lead in drinking water. The educational materials include water bill announcements, newspaper announcements, and brochures distributed by mail and made available at local health agencies, schools and other public entities. The general public notification provisions and lead public education requirements are included in the National Primary Drinking Water Regulations, 40 CFR Parts 141–143.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6.6 hours per response. This estimate includes the time needed to review regulations and guidance; prepare notification statements and brochures, distributing and/or posting the notices, and training personnel on notification procedures.

Respondents/Affected Entities: Public water systems.

Estimated No. of Respondents: 61,930.

Estimated Total Annual Burden on Respondents: 408,535 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 0270.34 and OMB Control No. 2040–0090 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: August 29, 1995.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 95–21802 Filed 8–31–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5288–6]

Information Collection Request for Used Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before October 31, 1995.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–95–UIOP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. Comments may also be submitted electronically through the Internet to: RCRA-Docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–95–UIOP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located in Room M2616 at the address listed above. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page.

Copies of the original ICR may be requested from the docket address and phone number listed above or may be found on the Internet. The complete ICR can be accessed off the main EPA Gopher menu, in the directory: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/hazardous waste—RCRA Subtitle C/hazardous waste identification/listing of used oil.

Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov
Dial-up: (919) 558–0335.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323. For technical information, contact Tracy Bone at (202) 260–3509.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities affected by this action are those which handle or manage used oil including used oil: transporters, processors, re-refiners, and burners.

Title: Used Oil Management Standards Recordkeeping and Reporting Requirements, ICR No. 1286, OMB No. 2050–0124, expires 12/31/95.

Abstract: Under statutory authority, EPA established mandatory regulations (See 40 *CFR* Part 279) that control the storage of used oil in aboveground tanks and containers to minimize potential releases from these units. It establishes notification and testing requirements, and tracking and recordkeeping requirements for used oil transporters, processors, re-refiners, and burners to document the movement of used oil. It also sets standards for the prevention and cleanup of releases to the environment during storage and transit and for the safe closure of storage units and processing and re-refining facilities to mitigate future releases and damages. EPA believes these requirements mitigate potential hazards to human health and the environment from the potential mismanagement of used oils by used oil handlers, while providing for the recycling of used oil. This information will be used to ensure compliance with the Used Oil Management Standards.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The following estimates are summarized from ICR 1286.

Burden Statement

The bottom line burden to respondents for complying with the Part 279 information collection requirements is approximately 75,626 hours per year, with an annual cost of $1,802,159.

Transporters and Transfer Facilities

For the estimated 383 used oil transporters and transfer facilities, EPA estimates the bottom line burden to these transporters and transfer facilities to be 58,236 hours per year with an annual cost of approximately $465,455. The public reporting burden for this collection of information is estimated to range from 18 to 54 minutes per response, while the recordkeeping burden averages eight minutes per respondent.

EPA estimates that 96 transporter and transfer facilities will be required to obtain an EPA identification number. EPA estimates that each of the 383 used oil transporters will make 202 shipments annually and that each shipment will consist of 15 pickups, for an annual total of 1,160,490 pickups per year. Used oil transporters will determine the halogen content of each pickup. In addition, EPA estimates that used oil transporters will rebut the hazardous waste presumption for one percent of these shipments, or 774. EPA expects that records will be maintained on file for each of the 1,161,264 determinations.

Oil Processors and Re-Refiners

For the estimated 249 used oil processors and re-refiners, EPA estimates the total estimated annual burden is 56,315 hours, with an annual cost of $1,331,587. The public reporting burden is estimated to range from 94 hours to 108 hours per respondent, while the recordkeeping burden averages 12 to 18 minutes per response.

EPA estimates that all 249 processors and re-refiners will be burdened by information collection requirements relating to the development, amendment, and retention of a contingency plan. EPA estimates that one percent of all used oil processors and re-refiners, or three facilities, will experience an emergency incident each year and have to submit to EPA a written report of the emergency incident. EPA estimates that all 249 processors/re-refiners will be affected by information collection requirements relating to preparing and maintaining a written analysis plans. EPA estimates that used oil processors and re-refiners will manage a total of 323,000 used oil shipments per year. EPA estimates that each shipment will consist of used oil picked up from 10 locations, for a total of 3,230,000 pickups delivered to used oil processors and re-refiners. EPA estimates that an additional 8,400 pickups will be delivered to blending facilities, increasing the total to 3,238,400 total pickups. EPA expects that the used oil processor or re-refiner will determine the halogen content for each pickup and, in addition, that the used oil processor or re-refiner will rebut the hazardous waste presumption for one percent of these shipments, or 3,314 shipments. In addition, EPA expects that one percent of the 249 processors and re-refiners, or approximately three facilities, will experience an emergency incident that will require recordkeeping.

Burners

For the estimated 1,155 burners of off-specification used oil, EPA estimates the total annual burden to be 185 hours, at an annual cost of $4,980. The public reporting burden is estimated to average nine minutes per response, while the recordkeeping burden averages six minutes.

EPA estimates that all 1,155 used oil burners will determine the halogen content of their used oil. EPA expects that each of these 1,155 used oil burners will receive 20 shipments, or a total of 23,100 shipments. Of these shipments, EPA expects one percent, or 231 shipments, will be tested under the rebuttable presumption. As such, EPA expects that 23,331 determinations will be performed annually and that they will keep records of each of the determinations.

States

The public reporting burden for States is estimated to range from nine minutes to 1 hour and fifteen minutes per response, with no recordkeeping burden. EPA estimated that six States would submit petitions during FY'93–95. The total annual burden for States is approximately 7.5 hours, at an annual cost of $137.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Dated: August 25, 1995.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 95–21763 Filed 8–31–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5228–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 14, 1995 Through August 18, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–L65237–ID Rating EU2, Thunderbolt Wildfire Recovery Project, Implementation, Boise and Payette National Forests, Valley County, ID.

Summary

EPA found the proposed salvage project to be environmentally unsatisfactory. EPA's primary concerns include impaired water quality, significantly increased sediment loading, degradation to salmon spawning and rearing habitat, and major deviation from the forest plan.

ERP No. D–COE–J35010–UT Rating EC2, Kennecott Tailings Modernization Project, Tailings Impoundment Expansion, COE Section 404 Permit Issuance, Salt Lake County, UT.

Summary

EPA expressed environmental concerns regarding water quality impacts and requested information that will assist in expediting a CERCLA decision.

ERP No. D–FAA–C51018–NY Rating EC2, Syracuse Hancock International Airport, Land Acquisition and Construction of Runway 10 L–28R, Funding and Airport Layout Plan Approval, Onondaga County, NY.

Summary

EPA expressed environmental concerns about the need for the proposed project, as well as the proposed project's potential impacts to wetlands, surface water quality, and noise. Accordingly, additional information should be provided in the final EIS to address these issues.

ERP No. D–FAA–L51016–WA Rating EO2, Seattle - Tacoma (Sea-Tac) International Airport Master Plan Update for Development Actions, Funding, Airport Layout Plan Approval and COE Section 404 Permit, King County, WA.

Summary

EPA expressed environmental objections with a number of concerns regarding the purpose and need for the project and air quality analysis.

ERP No. D–FHW–C40135–NY Rating EC2, I–287 Cross Westchester Expressway (CWE) Transportation Improvements, New York State Thruway Route 303 to Route 120, Funding, Right-of Way Acquisition, COE Section 10 and 404 Permits, Rockland and Westchester Counties, NY.

Summary

EPA expressed environmental concerns about the proposed project's potential impacts to wetlands and surface water quality. Additionally, EPA requested information addressing potential cumulative impacts, and supplemental information regarding the air quality analysis performed for the proposed project.

ERP No. D–FHW–L40196–WA Rating EC2, WA–20 Transportation Improvements between Fredonia (WA–536) and Burlington (Interstate 5), Funding, Right-of-Way Acquisition and COE Section 404 Permit, Skagit County, WA.

Summary

EPA expressed environmental concerns based on the predicted noise and wetland effects. Additional information is needed on mitigation for both.

ERP No. D–GSA–K80037–CA Rating EC2, San Diego-United States Courthouse, Site Selection and Construction within a portion of the Central Business District (CBD), City of San Diego, San Diego County, CA.

Summary

EPA expressed environmental concerns regarding the project's air conformity determination, the absence of solid waste recycling features, and a need to more fully document the project's consistency with GSA's environmental justice strategy.

Final EISs

ERP No. F-AFS-K65153–00 Klamath National Forest Land and Resource Management Plan, Implementation, Siskiyou Co., CA and Jackson Co., OR.

Summary

Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-BLM-L65225–OR Upper Klamath Basin Resource Management Plan, Implementation, Klamath Falls Resource Area, Lakeview District, Klamath County, OR.

Summary

Review of the Final EIS has been completed and the project found to be environmentally satisfactory.

ERP No. F-COE-K32047–CA Humboldt Harbor and Bay (Deepening) Channels, Feasibiiity Study for Navigation Improvements, Humboldt County, CA.

Summary

Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-COE-L36102–OR Willamette River Temperature Control Study, Selective Withdrawal Structure(s) (SWS) Construction, McKenzie River Subbasin, OR.

Summary

EPA reiterates its concerns regarding the impact to water quality, and fish habitat and spawning success during the construction phases. EPA supports the proposal to develop a construction monitoring and evaluation plan.

ERP No. F-FRC-D29000–VA Gaston and Roanoke Rapids Project (FERC-No. 2009 003), Nonpoint Use of Project Lands and Water for the City of Virginia Beach Water Supply Project, License Issuance, Brunswick County, VA.

Summary

EPA expressed environmental concern regarding implementation of a reuse wastewater system and not incorporating the result of a basin-wide reservoir operations modeling analysis.

ERP No. F-NAS-A12040–00 Cassini Spacecraft Exploration Mission to Explore the Planet Saturn, Implementation.

Summary

The final EIS addresses EPA's concerns raised in the draft EIS.

ERP No. FS-TVA-E06016–TN Adoption—Watts Bar Nuclear Plant, Unit 1 Operations, Operating License Issuance, Rhea County, TN.

Summary

EPA had environmental concerns that this document did not adequately address two issues raised at the draft EIS stage: need for power and pollution prevention, and recommended that future NEPA documents be more inclusive of these issues.

Dated: August 28, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 95–21805 Filed 8–31–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5228–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed August 21, 1995 Through August 25, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950388, Draft Supplement, SCS, TX, Attoyac Bayou Watershed, Flood Prevention and Watershed Protection, New Information concerning Installation of a Multiple-purpose Reservoir on the Naconiche Creek Watershed for Flood Prevention and Recreational Storage, Funding, Nacogdoches, Shelby, Rusk and San Augustine Counties, TX, Due: October 16, 1995, Contact: Harry W. Oneth (871) 774–1214.

EIS No. 950389, DRAFT EIS, SCS, HI, Lower Hamakua Ditch Watershed, Agricultural Water Management Plan, Funding and COE Section 404 Permit Issuance, Hawaii County, HI, Due: October 16, 1995, Contact: Kenneth Kaneshiro (808) 541–2600.

EIS No. 950390, DRAFT EIS, AFS, CA, Pilot Creek Watershed Land Management Plan, Implementation, Hayfork Adaptive Management Area, Six Rivers National Forest, Mad River Ranger District, Humboldt and Trinity Counties, CA, Due: October 16, 1995, Contact: Janice Stevenson (707) 574–6233.

EIS No. 950391, DRAFT EIS, UAF, OH, Gentile Air Force Station (AFS) Disposal and Reuse, Implementation, COE Section 404 Permit and EPA Permits, Issuance, Montgomery County, OH, Due: October 16, 1995, Contact: George H. Gauger (210) 536–3069.

EIS No. 950392, FINAL EIS, BLM, WY, Kenetech/PacifiCorp Windpower Development Project, Construction of a 500–MW Windplant and 230–kV Transmission Line between Arlington and Hanna, Right-of-Way Grant, COE Section 404 Permit and Special-Use-Permit Issuance, Carbon County, WY, Due: October 02, 1995, Contact: Walter E. George (307) 324–7171.

EIS No. 950393, DRAFT EIS, FHW, MO, US 61 Relocation, US 61/24 Interchange north of Hannibal to the vicinity of US 61/M Intersection south of Hannibal, Funding and Possible COE Section 404 Permit, Marion and Ralls Counties, MO, Due: October 16, 1995, Contact: Donald Newmann (314) 636–7104.

EIS No. 950394, FINAL EIS, COE, CA, Santa Paula Creek Flood Control Project, Improvements, Ventura County, CA, Due: October 02, 1995, Contact: Jim Hutchison (213) 894–3057.

EIS No. 950395, FINAL EIS, AFS, CA, Barkley Fire Salvage Sale, Implementation, Lower Deer Creek Management Area, Lassen National Forest, Almanor Ranger District, Tehama County, CA, Due: October 02, 1995, Contact: Philip Tuma (916) 258–2141.

EIS No. 950396, DRAFT EIS, USN, CA, Mare Island Naval Shipyard Disposal and Reuse, Implementation, City of Valley, Solano County, CA, Due: October 16, 1995, Contact: Jerry Hemstock (415) 244–3023.

EIS No. 950397, DRAFT EIS, AFS, OR, Hoodoo Master Plan, Plan of Operation Approval and Special-Use-Permit Issuance, Willamette National Forest, McKenzie Ranger District, Linn County, OR, Due: October 16, 1995, Contact: John P. Allen (503) 822–3381.

EIS No. 950398, DRAFT EIS, FHW, AL, Montgomery Outer Loop Construction, US 80 southwest of Montgomery to I–85 east of Montgomery, Funding and COE Section 404 Permit Issuance, Montgomery County, AL, Due: October 23, 1995, Contact: Joe D. Wilkerson (334) 223–7370.

EIS No. 950399, DRAFT EIS, AFS, OR, Trail System and Off-Highway Vehicle Management and Development, Implementation, Ochoco National Forest and Crooked River National Grassland, Crook, Grant, Jefferson, Harney and Wheeler Counties, OR, Due: October 23, 1995, Contact: Sue Kocis (503) 447–9530.

EIS No. 950400, DRAFT EIS, USA, UT, Tooele Army Depot Disposal and Reuse of BRAC Parcel, Implementation, Salt Lake, Tooele and Utah Counties, UT, Due: October 16, 1995, Contact: Glen Coffee (334) 690–2729.

EIS No. 950401, FINAL EIS, NCP, DC, Washington, D.C. New Sports and Entertainment Arena, Construction and Operation, Modern Multi-Purpose Arena, Eight potential Sites, Washington, D.C., Due: October 02, 1995, Contact: Maurice Foushee (202) 724–0174.

EIS No. 950402, FINAL EIS, EPA, FL, Miami Offshore Ocean Dredged Material Disposal Site (ODMDs), Designation, FL, Due: October 02, 1995, Contact: Wesley B. Crum (404) 347–1740.

Amended Notices

EIS No. 950318, DRAFT EIS, USN, PR, VA, Relocatable Over The Horizon Radar (ROTHR) System Construction and Operation, Commonwealth of Puerto Rico and Chesapeake, VA, Due: October 13, 1995, Contact: Linda Blount (804) 322–4892. Published FR 07–21–95—Review period extended.

Dated: August 28, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–21804 Filed 8–31–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5288–9]

Toxics Data Reporting Subcommittee of the Environmental Information and Assessments Committee National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a 1-day meeting of the Toxics Data Reporting subcommittee of the National Advisory Council for Environmental Policy and Technology. This will be the seventh meeting of the Toxics Data Reporting subcommittee, whose mission is to provide advice to EPA regarding the Agency's Toxics Release Inventory (TRI) Program.

DATES: The public meeting will take place on September 28, 1995 from 8:30 a.m. to 5:00 p.m. Members of the public wishing to make comments at this meeting should submit their comments, in writing, by September 18, 1995.

ADDRESSES: The public meeting will be held at the Bellevue Hotel, 15 E Street, NW., Washington, DC 20001. Written comments must be submitted to: U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attn: Maria Doa, 7408.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Environmental Assistance Division, U.S. Environmental Protection Agency, Mail Stop 7408, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA is proposing that the subcommittee discuss the following subjects: (1) Status and direction of activities of the Toxic Release Program (TRI), including expansion of covered facilities, review of the initial list of chemicals and consideration of reporting information under EPCRA section 313 on the use of toxic chemicals at facilities; (2) Definitions and guidance for the Pollution Prevention Act required information and the redesign of the Form R; and (3) The specific aspects of the programs that the subcommittee will wish to focus on in the next year.

Dated: August 28, 1995.

Morris Altschuler,

Office of Cooperative Environmental Management.

[FR Doc. 95–21762 Filed 8–31–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5288–8]

Sustainable Economies Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92463, EPA gives notice of a two-day meeting of the Sustainable Economies Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the Sustainable Economies Committee was formed to identify opportunities for harmonizing environmental policy, economic activity, and ecosystem management.

The meeting is being held to discuss recommendations the Committee plans to submit to EPA. Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on Wednesday, September 27, and Thursday, September 28, 1995, in Embassy Room A of the Dupont Plaza Hotel, at 1500 New Hampshire Avenue NW, Washington, D.C. On Wednesday, September 27, the Committee will meet from 9 a.m. to 5 p.m., and on Thursday, September 28, the Committee will meet from 8:30 a.m. to 4 p.m.

ADDRESSES: Written comments should be sent to: Mark Joyce, Office of Cooperative Environmental Management, U.S. EPA (1601F), 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official, Direct line (202) 260–6889, Secretary's line (202) 260–9744.

Dated: August 22, 1995.

Mark Joyce,

Designated Federal Official.

[FR Doc. 95–21765 Filed 8–31–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5289–1]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the US Environmental Protection Agency's (EPA) Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at all meetings will be on a first-come basis. For further information concerning each meeting, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office. Information concerning document availability from the relevant EPA Program area is included below.

1. Clean Air Scientific Advisory Committee

The Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will meet on Tuesday and Wednesday, September 19–20, 1995 at the Brownestone Hotel, 1707 Hillsborough Street, Raleigh, NC 27605 (phone: 919/828–0811). The meeting will begin at 8:30 am and end at 5 pm each day.

Purpose of the Meeting—At this meeting, the Committee will review and provide advice to EPA on the August 1995 external review draft staff paper for ozone (Review of National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information), and its associated analyses. The purpose of the staff paper is to evaluate and interpret the most relevant scientific and technical information reviewed in the ozone air quality criteria document in order to better specify the critical elements which the EPA staff believes should be considered in any possible revisions to the national ambient air quality standards (NAAQS) for ozone. This document is intended to bridge the gap between the scientific review contained in the criteria document and the judgments required of the Administrator in setting NAAQS for ozone. The Committee will consider presentations from Agency staff and the interested public prior to making recommendations to the Administrator.

The Committee will also complete it's review of the final changes made to the criteria document (Air Quality Criteria for Ozone and Related Photochemical Oxidants) on the basis of comments received on the February 1995 CASAC Review Draft at the previous public meeting held March 21–22, 1995 (see 60 FR 11971–11974, dated March 3, 1995).

Availability of Documents—Documents that are the subject of Science Advisory Board reviews are *not* available from the SAB. They must be obtained from the appropriate EPA office listed below.

(a) *Draft Ozone Criteria Document*—Limited copies of the final revisions will be available at the meeting.

(b) *Draft Ozone Staff Paper*—Single copies of the ozone staff paper may be obtained from Dr. David J. McKee, Office of Air Quality Planning and Standards (MD–15), U.S. EPA, Research Triangle Park, NC 27711. Dr. McKee can also be reached by telephone at (919) 541–5288 or by fax at (919) 541–0237. The Office of Air Quality Planning and Standards (OAQPS) will accept written comments from the public on all aspects of their revised external review draft staff paper for ozone and revised technical support documents through October 16, 1995. Comments should be sent to Dr. McKee at the previously stated address.

For Further Information—Members of the public desiring additional information concerning the meeting should contact Mr. A. Robert Flaak, Acting Designated Federal Official, Clean Air Scientific Advisory Committee, Science Advisory Board (1400F), US Environmental Protection Agency, Washington, DC 20460, telephone (202) 260–5133, fax (202) 260–7118 or via the INTERNET at FLAAK.ROBERT@EPAMAIL.EPA.GOV. Individuals desiring a copy of the draft meeting agenda should contact Ms. Connie Valentine at (202) 260–6552 or by fax at (202) 260–7118 or via the INTERNET at VALENTINE.CONNIE@EPAMAIL.EPA.GOV.

Members of the public who wish to make a brief oral presentation to the Committee concerning the scientific issues contained in the draft staff paper must contact Mr. Flaak in writing no later than 12 noon Eastern time on Tuesday, September 12, 1995, in order to be placed on the meeting agenda. A brief time period will be allocated for presentations on both days; however, public commentors will be limited to five minutes per person or organization [It is expected that oral comments will be heard regarding the primary standard on September 19th and on the secondary standard on September 20th]. The written request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any audio visual requirements (e.g., overhead projector, 35mm projector, chalkboard, etc), and which issue (primary or secondary standard) they will address. Presentors are expected to provide at least 35 copies of an outline of the issues to be addressed or the presentation itself.

2. Executive Committee

The Science Advisory Board's (SAB's) Executive Committee will hold its quarterly meeting on Thursday and Friday, September 21–22, 1995. On Thursday the meeting will convene at 8:30 a.m. in the Disabled American Veterans Auditorium, 807 Maine Avenue SW, Washington, DC 20460 and adjourn no later than 5:30 p.m. On Friday, the meeting will convene at 8:30 a.m. in the Administrator's Conference Room 1103 West Tower, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 and adjourn no later than 12:00 noon.

Purpose of the Meeting—At this meeting, the Executive Committee will receive updates from its standing committees and ad hoc subcommittees concerning their recent and planned activities. As part of these updates, some committees will present draft reports for Executive Committee review and approval. Drafts expected at this meeting include:

(a) Ecological Processes and Effects Committee

(1) Commentary on Methodology for Developing Bioaccumulation Factors

(2) Review of the Agency's Sediment Criteria for Metals

(b) Environmental Engineering Committee—

(1) Commentary on SAB Review of Computer Environmental Transport and Fate Models

(c) Research Strategies Advisory Committee:

(1) Commentary on Research Planning and Budget

(d) ad hoc Subcommittee on Dioxin:

(1) Review of the Agency's Reassessment of Dioxin

Although the agenda has not yet been fixed, the last item (Report of the ad hoc Subcommittee on Dioxin) will take place on Thursday, September 21.

Additional topics on the agenda include a discussion of

(a) The activities of the Subcommittee on Membership Search

(b) The activities of the Subcommittee on Projects, including consideration of three major projects for FY96:

(1) Readdressing relative risks

(2) Functioning as a lookout panel

(3) The Economics/Natural Sciences Interface

(c) The role of science in the Agency's planning and budgeting process.

For Further Information—Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202)–260–4126; fax (202)–260–9232; or via the INTERNET at: BARNES.DON@EPAMAIL.EPA.GOV. Copies of the draft meeting agenda and available draft reports listed above can be obtained from Ms. Priscilla Tillery-Gadson at the above phone and fax numbers.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: August 28, 1995.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 95–21764 Filed 8–31–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5290–8]

Science Advisory Board; Notification of Public Advisory Committee Meeting; Meeting Cancellation

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the previously announced meeting of the Ecological Processes and Effects Committee of the Science Advisory Board, scheduled for September 7–8, 1995, at the Environmental Protection Agency's Washington Information Center, Conference Room 17, 401 M Street, SW., Washington, DC 20460, has been cancelled (60 FR 43594–43595; August 22, 1995). A principal reason for the meeting was to review portions of the Agency's draft document, "Proposed Environmental Goals for America with Benchmarks for the Year 2005." That document is not yet available for review by the SAB, due to additional internal reviews scheduled by the Agency.

Background: The Environmental Goals Project is an EPA effort to define national environmental goals and benchmarks by which to measure progress toward achieving those goals. In 1994, a series of nine public roundtables were held in cities around the country to receive input on the nation's goals for the environment. The draft document, "Proposed Environmental Goals for America with Benchmarks for the Year 2005," summarizes the Agency's proposals for long-range goals and measurable 10-year benchmarks. Following review by other federal agencies and the SAB, the document will be distributed for public review, including a series of public roundtables in early 1996. Concurrent with final federal agency review of the document, the SAB has been asked to review the goals and benchmarks and evaluate the following: (a) Are the long-range goals technically meaningful and achievable? (b) will the goals, if met, result in a healthy and economically secure populace and a healthy environment? (c) are the milestones appropriate for gauging progress toward the goals? (d) do the milestones, taken together, adequately cover the range of technical considerations for each goal? and, (e) what other milestones should be considered, and is data currently available to allow their use?

For further information on the Environmental Goals Project, please contact Judith Koontz, Office of Administration and Resources Management, US EPA, 401 M Street, SW., Mail Code 3102, Washington, DC 20460, telephone (202) 260–8608.

Dated: August 28, 1995.

A. Robert Flack,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–21926 Filed 8–31–95; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS–42111G; FRL–4965–9]

Withdrawal of Conditional Exemptions From TSCA Section 4 Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is withdrawing certain conditional Toxic Substances Control Act (TSCA) section 4 testing exemptions announced in the **Federal Register** of March 31, 1995 (60 FR 16648).

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, 401 M St. SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 544–0551; Internet: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On November 10, 1993, EPA issued a final rule requiring manufacturers and processors of 1,3,5-trimethylbenzene (TMB) as one of four substances named as "Office of Water Chemicals," to conduct oral 14–day repeated dose and oral 90–day subchronic toxicity studies on TMB (58 FR 59667). Petroleum refiners, challenged EPA's final rule arguing that they had received inadequate notice that they might be considered manufacturers of TMB and therefore subject to the test rule. After reviewing the record, EPA agreed that there was an issue as to whether certain manufacturers received sufficient notice that they would be subject to the test rule. As a result, EPA issued a Clarification of Test Rule Notice to clarify that only manufacturers, importers, and processors of TMB as an isolated product, and not persons who manufacture, import, or process the substance as part of complex mixtures or substances, would be subject to the final test rule requiring certain health effects testing. This **Federal Register** Notice was published on September 2, 1994 (59 FR 45629).

On March 31, 1995, EPA published its routine **Federal Register** notice granting conditional exemptions from TSCA Section 4 Test Rules (60 FR 16648). This notice granted conditional exemptions from the requirements to test certain substances pursuant to the Office of Water Chemicals TSCA section 4 test rule issued on November 10, 1993 (58 FR 59667). EPA granted the conditional exemptions for those "manufacturers" of chemical substances who had submitted exemption applications pursuant to the Office of Water Chemicals Test Rule.

Companies are required to submit exemption applications within 30 days after the effective date of a test rule (See 40 CFR 790.45(a)). As a result, EPA received exemption applications for TMB before issuing its Clarification of Test Rule Notice for TMB. However, some of those companies that submitted the exemption applications before EPA issued the clarification may actually not be subject to the requirements of the Office of Water Chemicals Test Rule as clarified because they are "... persons, including relevant petroleum refiners, who do not manufacture, import, or process TMB as an isolated product." (59 FR 45629).

After publication of the March 31, 1995 **Federal Register** notice, EPA realized that because certain companies covered by the Clarification of Test Rule Notice of September 2, 1994 would not be subject to the Office of Water Chemicals Test Rule, they would not be required to test the substance or, in the alternative to provide a request for an exemption from the requirement to test the substance. Therefore, for those companies that are excluded from coverage under the Office of Water Chemicals Test Rule by the September 2, 1994 Clarification of Test Rule Notice, EPA withdraws the granting of the conditional exemption. Such companies were not required to submit an exemption application, ". . .or any other item that may be required pursuant to a final test rule under TSCA Section 4." (59 FR 45629).

Authority: 15 U.S.C. 2601, 2603.

Dated: August 25, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–21669 Filed 8–31–95; 8:45 am]

BILLING CODE 6560-50-F

[FRL 5288–7]

Urban Soil Lead Abatement Demonstration Project; Integrated Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of External Peer Review Workshop and Availability of Draft Document.

SUMMARY: This notice announces an External Peer Review Workshop for expert scientific review of the Draft Urban Soil Lead Abatement Demonstration Project Integrated Report and the availability of the draft Integrated Report. It is sponsored by the EPA's National Center for Environmental Assessment.

DATES: This scientific workshop will be held Wednesday, September 20, 1995, through Friday, September 22, 1995. It will begin at 9:00 a.m. Wednesday and concludes at 4:00 p.m. Friday. Members of the public may attend as observers.

A copy of the Draft Urban Soil Lead Abatement Demonstration Project Integrated Report will be available for review on or about September 8, 1995.

ADDRESSES: The meeting will be held at the Sheraton Imperial Hotel and Convention Center, 4700 Emperor Boulevard, Research Triangle Park, NC 27709, Tel: (919) 941–5050, Fax: (919) 941–2958. To attend the workshop as an observer, contact: Ms. Emily R. Lee, National Center for Environmental Assessment—RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Tel: (919) 541–4169, Fax: (919) 541–5078 by September 15, 1995. Space is limited, so please call as soon as possible.

To obtain a single copy of the Draft Integrated Report, interested parties should contact Office of Research and Development (ORD) Publications: Technology Transfer Support Division, Technical Information Branch, National Risk Management Research Laboratory, U.S. EPA, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562, Fax: (513) 569–7566. Please provide your name and mailing address, the document title: Draft Urban Soil Lead Demonstration Project Integrated Report (External Review Draft, September 1995), and the EPA document number is EPA/600/R–95/139. Copies will be available on or about September 8, 1995.

SUPPLEMENTARY INFORMATION: The Urban Soil Lead Abatement Demonstration Project, generally known as the "Three-Cities Soil Lead Study," was initiated in 1987 in cooperation with states, state health departments, and local scientists.

The purpose was to conduct soil-lead abatement demonstration projects in three U.S. metropolitan areas to evaluate the efficacy of abatement of urban soil-lead as a means to reduce lead exposures in children. The three cities chosen for the project were Boston, Baltimore, and Cincinnati.

The soil lead studies for each of the three cities have been completed. A limited supply of copies of the July 1993 individual city reports are still available. To obtain a single copy of one or more of these city reports please contact ORD Publications. The document name and EPA document numbers for the individual reports are:

Boston—Urban Soil Lead Abatement Demonstration Project, Volume II: Parts 1 and 2, Boston Report (Review Draft, July 1993) EPA/600/AP–93/001b

Baltimore—Urban Soil Lead Abatement Demonstration Project, Volume III: Parts 1 and 2, Baltimore Report (Review Draft, July 1993) EPA/600/AP–93/001c

Cincinnati—Urban Soil Lead Abatement Demonstration Project, Volume IV: Cincinnati Report (Review Draft, July 1993) EPA/600/AP–93/001d

EPA believes that all interested parties will benefit from a further statistical analysis that integrates and standardizes the results of the individual three cities studies into a single report. Thus, as an adjunct to the original project, an Integrated report was developed. An earlier draft of this integrated Report underwent external peer review, resulting in additional statistical analyses and revisions. The current draft has undergone initial internal EPA review and will undergo external scientific peer review at the September 20–22 workshop.

Expert scientific peer reviewers, from a cross-section of the public and private sectors, have been invited to attend this workshop. These peer reviewers will provide final expert scientific comment on the analyses conducted to standardize the analytical results of the Three-Cities Soil Lead Study into an Integrated Report. The workshop will specifically focus on science and analytical issues only.

Interested observers may also attend the workshop. There will be opportunity for brief oral comments from observers. If an interested party is unable to attend the workshop as an observer, the Agency will accept written comments on the Draft Integrated Report received on or before Monday, October 16, 1995. Send comments to: Ms. Emily R. Lee, National Center for Environmental Assessment—RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Tel: (919) 541–4169, FAX: (919) 541–5078.

Substantive scientific comments made on the Draft Integrated Report by the expert review panel, by workshop observers in their oral comments, or via written comments received on or before October 16, will be taken into account in revising the Integrated Report prior to finalization.

Dated: August 25, 1995.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–21766 Filed 8–31–95; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3116–EM]

Florida; Amendment to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida, (FEMA–3116–EM), dated August 3, 1995, and related determinations.

EFFECTIVE DATE: August 24, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Florida dated August 3, 1995, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of August 3, 1995:

St. Lucie County for emergency assistance as defined in the declaration letter of August 3, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–21766 Filed 8–31–95; 8:45 am]

BILLING CODE 6718-02-M

[FEMA–1064–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1064–DR), dated August 18, 1995, and related determinations.

EFFECTIVE DATE: August 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota dated August 18, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 18, 1995:

Aitkin, Cass, and Wilkin for Public Assistance and Hazard Mitigation Assistance.

Becker, Beltrami, Clay, Clearwater, Crow Wing, Hubbard, Itasca, Kittson, Mahnomen, Otter Tail, St. Louis, and Wadena Counties, and the White Earth Indian Reservation for Hazard Mitigation Assistance. (Already designated for Public Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–21777 Filed 8–31–95; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Maturity International Transport, 2039 W. Artesia Blvd., #144, Torrance, CA 90504, Heywal Soo Kahng, Sole Proprietor

AAA Dispatch International, Inc., 3429 Monterey Street, San Mateo, CA 94403, Officers: Chika Barry, President; Linda Hasler, Vice President

Mach I Air Services, Incorporated, 615 South Madison Drive, Tempe, Arizona 85281, Officers: Michael S. Entzminger, President; Kathleen M. Entzminger, Secretary.

Dated: August 25, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–21736 Filed 8–31–95; 8:45 am]

BILLING CODE 6730–01–M

OFFICE OF GOVERNMENT ETHICS

Advance Notice of Proposed Modified Form for Executive Branch Confidential Financial Disclosure Reporting To Be Submitted to OMB for Approval Under the Paperwork Reduction Act

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics plans to submit a new OGE Form 450 for confidential financial disclosure reporting under its existing executive branch regulations for approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This new, modified form will replace the existing Standard Form (SF) 450.

DATES: Comments on this proposal should be received by November 15, 1995.

ADDRESSES: Comments should be sent to William E. Gressman, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at the Office of Government Ethics, telephone 202–523–5757 (ext. 1110), FAX 202–523–6325. A copy of OGE's draft form may be obtained, without charge, by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period (with any modifications that may appear warranted), a proposed new OGE Form 450 Executive Branch Confidential Financial Disclosure Report for three-year approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Once finally approved by OMB and adopted by OGE, the new OGE form will replace the existing SF 450 Executive Branch Personnel Confidential Financial Disclosure Report. The SF 450 collects, as will the future OGE Form 450, information required under OGE's executive branchwide regulatory provisions. See subpart I of 5 CFR part 2634. The new OGE Form 450 will serve, as does the current SF 450, as the uniform report form for collection, on a confidential basis, of financial information required by the OGE regulation from certain new entrant and incumbent employees of the executive branch departments and agencies in order to allow ethics officials to conduct conflict of interest reviews and to resolve any actual or potential conflicts found.

The basis for the OGE regulation and the report form is two-fold. First, section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990) makes OGE responsible for the establishment of a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978 (the "Ethics Act"), as amended, 5 U.S.C. appendix. Second, section 107(a) of the Ethics Act further provides authority for OGE as the supervising ethics office for the executive branch of the Federal Government to require that appropriate executive agency employees file confidential financial disclosure reports, "in such form as the supervising ethics office may prescribe." The current SF 450, together with the underlying OGE regulation, both adopted in 1992 after appropriate clearances from OMB as well as the General Services Administration (GSA) for the standard form, constitute the form OGE has prescribed for such confidential financial disclosure in the executive branch. The Office of Government Ethics recently sought a limited paperwork renewal from OMB as to the existing SF 450 in order to allow sufficient time for OGE to develop and clear the new OGE Form 450 which is the subject of this advance notice. See 60 FR 34258–34259 (June 30, 1995). The new OGE form will not require GSA clearance, since it is not a standard (or optional) form under the GSA program. The Office of Government Ethics will provide further information in the future to the agencies and the public about the details of phasing in the new form, once it is finally cleared and adopted, and phasing out the existing standard form.

Since the OGE's financial disclosure regulation at 5 CFR part 2634 and the reporting format were adopted in 1992, there have been certain revisions to each. The most significant of these is the determination of OGE to exclude from general executive branch confidential financial disclosure the reporting of cash accounts in depository institutions (including banks), money market mutual funds and accounts and U.S. Government obligations and securities. See 58 FR 63023–63024 (November 30, 1993). The Office of Government Ethics has directed executive departments and agencies to notify all filers of this change, which is not reflected on the SF 450 itself. The new OGE replacement form will reflect that change, as well as various other changes and improvements in the reporting format, to make it clearer and more user-friendly. A more complete set of instructions for filling out the form is included in the draft OGE Form 450 and helpful examples are set forth on the reporting parts.

The Office of Government Ethics expects that the new form should be ready, after OMB clearance, for dissemination to executive branch departments and agencies early next year. The Office of Government Ethics will provide appropriate guidance and phase-in time to departments and agencies once the new form is available. The new form will be made available in paper, on electronic disk and on OGE's electronic bulletin board entitled "The Ethics Bulletin Board System" (TEBBS). In addition, OGE will work on making available a future electronic version of the form, to allow employees the option of preparing it on a computer. The Office of Government Ethics also intends to permit departments and agencies to develop or utilize, on their own, electronic versions of the form provided that they precisely duplicate the paper original to the extent possible.

Since 1992, various agencies have developed, with OGE review/approval alternative reporting formats, such as certificates of no conflict, for certain classes of employees. Other agencies provide for additional disclosures pursuant to independent organic statutes and in certain other circumstances when authorized by OGE. However, the future OGE Form 450, as successor to the current SF 450, will remain the uniform executive branch report form for most of those executive branch employees who are required by their agencies to report confidentially on their financial interests. The confidential report form is to be filed by each reporting individual with the designated agency ethics official at the executive department or agency where he or she is or will be employed.

Reporting individuals are regular employees whose positions have been designated by their agency as requiring confidential financial disclosure in order to help avoid conflicts with their assigned responsibilities; additionally, all special Government employees

(SGEs) are generally required to file. Agencies may, if appropriate under the OGE regulation, exclude certain regular employees or SGEs as provided in 5 CFR 2634.905. Reports are normally required to be filed within 30 days of entering a covered position (or earlier if required by the agency concerned), and again annually if the employee serves for more than 60 days in the position. As indicated in § 2634.907 of the OGE regulation, the information required to be collected includes assets and sources of income, gifts and travel reimbursements, liabilities, employment agreements and arrangements, and outside positions, subject to certain thresholds and exclusions.

Most of the persons who file this report form are current executive branch Government employees at the time they complete the forms. However, some filers are private citizens who are asked by their prospective agency to file a new entrant report prior to entering Government service in order to permit advance checking for any potential conflicts of interest and resolution thereof by agreement to recuse, divest, obtaining of a waiver, etc. Based on OGE's annual agency ethics questionnaire responses, approximately 285,000 SF 450 report forms were filed during 1994 throughout the executive branch. Of these, OGE estimates that no more than between 5% and 10%, or some 14,500 to 28,500 per year at most, are filed by private citizens, those potential regular employees whose positions are designated for confidential disclosure filing as well as potential special Government employees whose agencies require that they file their new entrant reports prior to assuming Government responsibilities.

Each filing is estimated to take an average of one and one-half hours. The number of private citizens whose reports are filed each year with OGE is less than 10, but pursuant to 5 CFR 1320.7(s)(1), the lower limit for this general regulatory-based requirement is set at 10 private persons (OGE-processed reports). This yields an annual reporting burden of 15 hours, the same as in the current OMB inventory for this information collection. The remainder of the private citizen reports are filed with other departments and agencies throughout the executive branch.

Public comment is invited on each aspect of the proposed new OGE Form 450 as set forth in this notice, including specifically views on the need for and practical utility of this proposed modified collection of information, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received submitted in response to this notice will be summarized for, and may be included with, the OGE request for OMB paperwork approval for this modified information collection. The comments will also become a matter of public record.

Approved: August 28, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 95–21753 Filed 8–31–95; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of a Meeting of the Commission on Research Integrity

Pursuant to P.L. 92–463, notice is hereby given of a public meeting of the Commission on Research Integrity.

The meeting will be held at the Washington Dulles Airport Marriott Hotel on Monday and Tuesday, September 18–19, from 8:30 a.m. until 5 p.m.

The Commission will be working on its remaining recommendations and final report to congressional oversight committees and the Secretary of the Department of Health and Human Services (HHS) on the administration of Section 493 of the Public Health Service Act, as amended by and added to by Section 161 of the NIH Revitalization Act of 1993. Recommendations include possible administrative actions to improve the HHS scientific misconduct apparatus. Interested parties are advised to call the Executive Secretary, Ms. Henrietta Hyatt-Knorr, shortly before the meeting to verify the date, place, and agenda. Persons wishing to make a presentation should contact her in writing at Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852 or by phone at (301) 443–5300, by fax at (301) 443–5351, or via internet at hhyatt@oasch.ssw.dhhs.gov. Ms. Hyatt-Knorr will furnish a meeting agenda upon request. Depending on the number of speakers and other constraints, the Executive Secretary will allocate a timeframe for anyone wishing to make an oral presentation.

Henrietta D. Hyatt-Knorr,

Executive Secretary, Commission on Research Integrity.

[FR Doc. 95–21726 Filed 8–31–95; 8:45 am]

BILLING CODE 4160–17–P

Administration for Children and Families

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date: Full Committee Meeting, September 7, 1995, 2 p.m.–6 p.m., September 8, 1995, 9 a.m.–5 p.m.

Place: Madison Hotel, 1177 15th Street NW., Washington, DC 20005.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

To Be Considered: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness.

The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs and services for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

Contact Person for More Information: Gary H. Blumenthal, Wilbur J. Cohen Building, Room 5325, 330 Independence Avenue SW., Washington, DC 20201–0001, (202) 619–0634.

Dated: August 29, 1995.

Gary H. Blumenthal,

Executive Director, PCMR.

[FR Doc. 95–21782 Filed 8–31–95; 8:45 am]

BILLING CODE 4184–01–M

Agency for Health Care Policy and Research

Notice of Advisory Committee Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following advisory committees scheduled to meet during the months of October and November 1995:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: October 18–19, 1995 8:00 a.m.

Place: The DoubleTree, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852.

Open October 18, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on October 18 from 8:00 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters and reports. During the closed session, the Subcommittee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact J. Terrell Hoffeld, D.D.S., Ph.D., Scientific Review Administrator, Office of Scientific Affairs, Agency of Health Care Policy and Research, Suite 400, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Name: Health Services Research Review Subcommittee.

Date and Time: October 18–20, 1995, 8:00 a.m.

Place: Ramada Inn, 1775, Rockville Pike, Conference Room TBA, Rockville, Maryland 20852.

Open October 18, 8:00 a.m. to 8:45 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on October 18, from 8:00 a.m. to 8:45 a.m. will be devoted to a business meeting covering administrative matters and reports. During the closed session, the Subcommittee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Patricia G. Thompson, Ph.D., Scientific Review Administrator, Office of Scientific Affairs, Agency for Health Care Policy and Research, Suite 400, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1451.

Name: Health Services Research Dissemination Study Section.

Date and Time: October 23–24, 1995, 8:00 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Conference Room TBA, Chevy Chase, Maryland 20815.

Open October 23, 1995, 8:00 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

Agenda: The open session of the meeting on October 23 from 8:00 a.m. to 8:30 a.m. will be devoted to general business matters. During the closed portions of the meeting, the Study Section will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Linda Blankenbaker, Scientific Review Administrator, Office of Scientific Affairs, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1438.

Name: Health Care Technology Study Section.

Date and Time: November 6–7, 1995, 8:00 a.m.

Place: Hyatt Regency, One Bethesda Metro Center, Conference Room TBA, Bethesda, Maryland 20814.

Open November 6, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications concerned with medical decisionmaking, computers in health care delivery, and the utilization and effects of health care technologies and procedures.

Agenda: The open session on November 6 from 8:00 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters and reports. The closed session of the meeting will be devoted to reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Karen Rudzinski, Ph.D., Scientific Review Administrator, Office of Scientific Affairs, Agency for Health Care Policy and Research, Suite 400, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1437.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: August 24, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–21816 Filed 8–31–95; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95C–0286]

Ebonex Corp.; Filing of a Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ebonex Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of bone black as a color additive in cosmetics, including cosmetics intended for use in the eye area.

DATES: Written comments on the petitioner's environmental assessment by October 2, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 5C0247) has been filed by Ebonex Corp., P.O. Box 3247, Melvindale, MI 48122. The petition proposes to amend the color additive regulations to provide for the safe use of bone black as a color additive in cosmetics, including cosmetics intended for use in the eye area.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before October 2, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 18, 1995.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–21738 Filed 8–31–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1995.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: September 14–17, 1995.

Place: Marriott Hotel Airport, Kansas City, Missouri, (816) 464–2200.

The meeting is open to the public.

Agenda: The agenda will include testimony on an oral health paper, update on the National Health Service Corps conference "Creating a Road Map for the Future", and updates on programmatic and legislative issues. The Council will also visit two Health centers in Kansas City and participate in the Region VII New Provider Orientation Conference on September 16–17.

The meetings will begin at 7:00 p.m. on Thursday and reconvene at 8:00 a.m. each successive date and adjourn at 12:30 on Sunday.

The meeting is open to the public; however, transportation for site visits will not be provided.

Anyone requiring information regarding the subject Council should contact Ms. Nada Schnabel, National Advisory Council on the National Health Service Corps, 8th floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594–4147.

Agenda Items are subject to change as priorities dictate.

Dated: August 28, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–21739 Filed 8–31–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on October 5–6, 1995, at the Belmont Conference Center, 6555 Belmont Woods Road, Elkridge, Maryland.

The meeting will be open to the public from 8 a.m. to 9 a.m. on October 5, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until recess on October 5, and from 8 a.m. until adjournment on October 6. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Gary Madonna, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Solar Building, Room 4C21, Rockville, Maryland 20892, telephone 301–496–3528, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 29, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–21836 Filed 8–31–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meeting of the National Institute of Dental Research Special Grants Review Committee

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Dental Research Special Grants Review Committee.

Date: October 19–20, 1995.

Time: 8:30 a.m. to Adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. William Gartland, Scientific Review Administrator, NIDR Special Grants Review Committee, Natcher Building, Room 4AN–38E, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To review and evaluate grant applications and/or contract proposals.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Dental Research Institute; National Institutes of Health, HHS)

Dated: August 28, 1995.

Margery Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–21835 Filed 8–31–95; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: October 30–31, 1995.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Syed M. Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, MD 20892, (301) 435–1043.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 31, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 4198, Telephone Conference.

Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 4198, Bethesda, MD 20892, (301) 435–1218.

Name of SEP: Multidisciplinary Sciences.

Date: November 2, 1995.

Time: 8:00 a.m.

Place: Embassy Suites, Washington, DC.

Contact Person: Dr. Elliot Postow, Chief, Technology and Applied Sciences Review Section, 6701 Rockledge Drive, Room 5100, Bethesda, MD 20892, (301) 435–1750.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 28, 1995.

Margery G. Grubb,

Senior Committee Manager Specialist, NIH.

[FR Doc. 95–21833 Filed 8–31–95; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Notice of Meeting of NIDR Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on October 4–6, 1995, in Building 30, Trendley Dean Conference Room, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to recess on October 5 and from 8:30 a.m. to 10:30 a.m. on October 6 for program and poster presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 6:00 p.m. until recess on October 4 and from 10:30 a.m. until adjournment on October 6 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Brent Jaquet, Director, Office of Planning, Evaluation, and Communications, NIDR, HIH, Building 31, Room 2C34, Bethesda, Maryland 20892 (telephone: (301) 496–6705) will provide a summary of the meeting, roster of committee members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

Dated: August 28, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–21829 Filed 8–31–95; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Notice of a Meeting of the National Advisory Dental Research Council

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on September 28–29, 1995. The meeting of the full Council will be open to the public on September 28 from 8:30 a.m. to recess, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland, for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on September 29, 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications and for the discussion, review and evaluation of the Board of Scientific Counselors' report. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and reports, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone (301) 496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: August 28, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–21830 Filed 8–31–95; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meetings:

Name of IRG: Research Training Review Committee.

Date: October 22–23, 1995.

Time: 7:30 p.m.

Place: Hyatt Regency, Bethesda, Maryland.

Contact Person: C. James Scheirer, Ph.D., Rockledge II, Room 7220, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate grant applications.

Name of IRG: Clinical Trials Review Committee.

Date: October 29–30, 1995.

Time: 7:00 p.m.

Place: Hyatt Regency, Bethesda, Maryland.

Contact Person: David M. Monsees, Jr., M.D., Rockledge II, Room 7178, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 28, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–21834 Filed 8–31–95; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Vascular Cell Regulation and Atherogenesis.

Date: October 16–17, 1995.

Time: 7:30 p.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Louis M. Ouellette, Ph.D., Rockledge II, Room 7216, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0310.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Growth and Differentiation of Smooth Muscle Cells.

Date: October 19–20, 1995.

Time: 7:30 p.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Louis M. Ouellette, Ph.D., Rockledge II, Room 7216, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0310.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 28, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–21831 Filed 8–31–95; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Notice of Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on October 9–10, 1995.

The meeting on October 10 will be open to the public from 9 a.m. to 3 p.m. in the Board Room of the Library, 8600 Rockville Pike, Bethesda, Maryland, for the review of research and development programs and preparation of reports of the National Center for Biotechnology Information. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. David Lipman at 301–496–2475.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 9 from 7 p.m. to approximately 10 p.m., at the Bethesda Hyatt Hotel, and on October 10, from 3 p.m. to approximately 5 p.m., in the Board Room of the National Library of Medicine, for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: August 28, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–21832 Filed 8–31–95; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose

To review and evaluate grant applications.

Committee Name: Clinical Centers and Special Projects Review Committee.

Date: October 5–October 6, 1995.

Time: 8:30 a.m.

Place: NIH Natcher Conference Center, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: Health Behavior and Prevention Review Committee.

Date: October 10–October 11, 1995.

Time: 9 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Monica F. Woodfork, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: Neuropharmacology and Neurochemistry Review Committee.

Date: October 11–October 12, 1995.

Time: 8:30 a.m.

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Services Research Review Committee.

Date: October 11–October 13, 1995.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Angela L. Redlingshafer, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: Clinical Neuroscience and Biological Psychopathology Review Committee.

Date: October 11–October 13, 1995.

Time: 9 a.m.

Place: Hampshire Hotel, 1310 New Hampshire Ave., N.W., Washington, DC 20036.

Contact Person: Maureen L. Eister, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Mental Disorders of Aging Review Committee.

Date: October 12–October 13, 1995.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: Child/Adolescent Development, Risk, and Prevention Review Committee.

Date: October 12–October 13, 1995.

Time: 9 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Violence and Traumatic Stress Review Committee.

Date: October 16–October 18, 1995.

Time: 8:30 a.m.

Place: The Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.

Contact Person: Sheri L. Schwartzback, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: Psychobiology, Behavior, and Neuroscience Review Committe.

Date: October 16–October 17, 1995.

Time: 8:30 a.m.

Place: Bethesda Holiday Inn, 8210 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William H. Radcliff, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Molecular, Cellular, and Developmental Neurobiology Review Committee.

Date: October 16–October 17, 1995.

Time: 8 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Shirley H. Maltz, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Cognitive Functional Neuroscience Review Committee.

Date: October 19–October 20, 1995.

Time: 8:30 a.m.

Place: One Washington Circle, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Shirley H. Maltz, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: Perception and Cognition Review Committee.

Date: October 19–October 20, 1995.

Time: 9 a.m.

Place: Madison Hotel, 1177 15th Street, NW., Washington, DC 20036

Contact Person: Regina M. Thomas, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Child Psychopathology and Treatment Review Committee.

Date: October 25–October 26, 1995.

Time: 9 a.m.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Bernice R. Cherry, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: Social and Group Processes Review Committee.

Date: October 26–October 27, 1995.

Time: 9 a.m.

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rehana A. Chowdhury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Treatment Assessment Review Committee.

Date: October 26–October 27, 1995.

Time: 9 a.m.

Place: Barcelo Washington Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Phyllis L. Zusman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: Mental Health Small Business Research Review Committee.

Date: October 30–October 31, 1995.

Time: 8:30 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Angela L. Redlingshafer, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: Clinical Psychopathology Review Committee.

Date: November 2–November 3, 1995.

Time: 9 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Phyllis L. Zusman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: Epidemiology and Genetics Review Committee.

Date: November 6–November 7, 1995.

Time: 9 a.m.

Place: Embassy Suites, 4300 Military Road, N.W., Washington, DC 20015.

Contact Person: Bernice R. Cherry, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: Mental Health, AIDS and Immunology Review Committee—2.

Date: November 6–November 7, 1995.

Time: 8:30 a.m.

Place: The River Inn, 924 25th Street, N.W., Washington, DC 20037.

Contact Person: Rehana A. Chowdhury, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: Mental Health, AIDS and Immunology Review Committee—1.

Date: November 7–November 8, 1995.

Time: 8:30 a.m.

Place: One Washington Circle One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Regina M. Thomas, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 553b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: August 29, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

FR Doc. 95–21826 Filed 8–31–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on October 17–18, 1995, at the Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC.

The meeting will be open to the public from 8:30 a.m. to 9:45 a.m. on October 17 to discuss administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities which will include a discussion of budgetary matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:45 a.m. until recess on October 17, and from 8:30 a.m. until adjournment on October 18. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning

individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Olivia Preble, Acting Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, Room 4C19, Bethesda, Maryland 20892, telephone 301–496–8208, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health.)

Dated: August 29, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–21827 Filed 8–31–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Microbiological and Immunological Sciences.

Date: August 30, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge II, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, MD 20892, (301) 435–1148.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 28, 1995:

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–21828 Filed 8–31–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300
Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745
American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810
Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020
Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917
CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
CompuChem Laboratories, Inc., Special Division 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263 (Formerly: Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, CompuChem Laboratories, Inc.—Special Division)
CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath)
CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)
CORNING MetPath Clinical Laboratories, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc.)
CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)
CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))
Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093
Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171
Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468
Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)
HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650 (formerly: HealthCare/Preferred Laboratories)
Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920
Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051
LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100 (Formerly: National Health Laboratories Incorporated)
Laboratory Corporation of America, d.b.a. LabCorp Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522 (Formerly: National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division)
Laboratory Corporation of America, 21903 68th Ave. South, Kent, WA 98032, 206–395–4000 (Formerly: Regional Toxicology Services)
Laboratory Corporation of America, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894 (Formerly: National Health Laboratories Incorporated)
Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961
Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835
MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213
Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199
MetPath Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–931–7200 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon)
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)
National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–244–8800
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 1737 Airport Way South, Suite 200, Seattle, WA 98134, 206–623–8100
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

No laboratories withdrew from the Program during August.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–21727 Filed 8–31–95; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–52]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, and if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will not longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Steward B. McKinney homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5581; (This is not a toll-free number).

Dated: August 25, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM—FEDERAL REGISTER REPORT FOR 09/01/95

Suitable/Available Properties

Buildings (by State)

Colorado

Bldgs. 1493, 1496, 1498
Lowry Air Force Base
Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199530009
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: Various square feet, metal frame, most recent use—classrooms

Bldgs. 1499, 1494, 1495
Lowry Air Force Base
Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199530010
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 90276 sq. ft., large hangar w/two associated buildings, most recent use—training

[FR Doc. 95–21579 Filed 8–31–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Alaska; Notice for Publication AA–10439 Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Sealaska Corporation for 6.93 acres. The lands involved are in the vicinity of Anan Bay, Alaska.

Lots 1 and 2, U.S. Survey No. 9780, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the JUNEAU EMPIRE. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 2, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 95–21769 Filed 8–31–95; 8:45 am]

BILLING CODE 4310–JA–P

[MT–930–1220–00; MTM 84500]

Notice of Proposed Withdrawal; Montana

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes to withdraw approximately 19,100 acres of Federal lands for protection of the watersheds within the drainages of the Clark's Fork of the Yellowstone, Soda Butte Creek, and the Stillwater River, and the water quality and fresh water fishery resources within Yellowstone National Park. This notice segregates the land for up to 2 years from location and entry under the mining laws. The lands will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren, 1620 L Street NW, Washington, D.C. 20240, 202–542–7779.

SUPPLEMENTARY INFORMATION: On August 29, 1995, a petition was approved allowing the Assistant Secretary, Policy, Management, and Budget to file an application to withdraw the following described Federal lands from location and entry under the mining laws, subject to valid existing rights:

Principal Meridian, Montana

T. 8 S., R. 14 E.,
  Sec. 25, unsurveyed;
  Sec. 33, partly unsurveyed;
  Secs. 34 to 36, inclusive, unsurveyed.
T. 9 S., R. 14 E.,
  Secs. 1 to 28, inclusive;
  Secs. 33 to 36, inclusive, partly surveyed.
T. 8 S., R. 15 E.,
  Secs. 30 and 31.
T. 9 S., R. 15 E.,
  Secs. 5 to 8, inclusive;
  Secs. 17 to 20, inclusive;
  Secs. 29 to 32, inclusive.

The areas described aggregate approximately 19,100 acres in Park County, Montana.

The purpose of the proposed withdrawal is for protection of the watersheds within the drainages of the Clark's Fork of the Yellowstone, Soda Butte Creek, and the Stillwater River, and the water quality and fresh water fishery resources within Yellowstone National Park.

A withdrawal application, when filed, will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated from location and entry under the mining law, subject to valid existing rights, unless the application is denied or canceled or the withdrawal is approved prior to the end of the segregation period.

Existing uses of the segregated lands may be continued except for the location or relocation of mining claims during the pendency of the 2-year segregative period, including but not limited to all legal ingress and egress to valid mining claims and patented claims, all rights-of-way, all access to non-Federal lands, all current recreational uses, and all commercial uses requiring special use permits.

Dated: August 29, 1995.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 95–21888 Filed 8–31–95; 8:45 am]

BILLING CODE 4310–DN–P

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council, Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council.

DATES: The meeting begins on Wednesday, October 18, 1995, and reconvenes on Thursday, October 19, 1995, following the Colorado River Basin Salinity Control Forum meeting.

ADDRESSES: The meeting will be held at Lake Havasu City, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. David Trueman, Colorado River Salinity Control Program Manager, Bureau of Reclamation, UC–228, Mail Room 6107, 125 South State Street, Salt Lake City, Utah 84138–1102; Telephone: (801) 524–6292, ext. 1.

SUPPLEMENTARY INFORMATION: Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Department of the Interior, the Department of Agriculture, and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the content of their report.

The meeting of the Advisory Council is open to the public. Any member of the public may file written statements with the Council before, during, or after the meeting, in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

Dated: August 28, 1995.

Charles A. Calhoun,

Regional Director.

[FR Doc. 95–21751 Filed 8–31–95; 8:45 am]

BILLING CODE 4310–94–M

Fish and Wildlife Service

Notice of Availability of a Technical/Agency Draft Recovery Plan for Harrisia portoricensis for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for *Harrisia portoricensis* (higo chumbo). This cactus occurs only on the islands of Mona, Monito, and Desecheo, all located to the west of Puerto Rico. The species is threatened by development which has been proposed on Mona Island and the effects of introduced animals such as feral pigs and goats. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before October 31, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Susan Silander, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622, Telephone: 809/851–7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened species or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for *Harrisia portoricensis* (higo chumbo), a cactus currently known from the islands of Mona, Monito, and Desecheo, all located to the west of Puerto Rico. It once occurred on the main island, however, has not been collected there since 1913. Higo chumbo, a night flowering cactus, can reach 6 feet in height and about 3 inches in diameter. It is usually unbranched and has 8 to 11 ribs separated by shallow grooves. The plant's fruit is a round, yellow, spineless berry and is a favorite food of the endangered yellow-shouldered blackbird. Higo chumbo is threatened by proposed development on the island of Mona feral pigs, which may uproot the cactus while foraging for roots, and feral goats, which may indirectly affect the cactus by modifying the vegetation. This plan will describe measures necessary to recover the species, including studies of its reproductive biology and propagation.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1531.

Dated: August 25, 1995.

James P. Oland,

Field Supervisor.

[FR Doc. 95–21699 Filed 8–31–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Mississippi River Corridor Study Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: September 7, 1995, 12 noon until 5:00 p.m.

ADDRESS: Best Western Memphis Airport Hotel, 2240 Democrat, Memphis, Tennessee 38132.

This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Alan M. Hutchings, Acting Associate Regional Director, Planning and Resource Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, or call 402–221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 29, 1990.

Dated: August 23, 1995.

William W. Schenk,

Field Director [illegible]on.

[FR Doc. 95–2[illegible]–31–95; 8:45 am]

BILLING CODE 431[illegible]

AGENCY FOR INTERNATIONAL DEVELOPMENT

Loan Guarantees To Israel; Notice of Investment Opportunity Amendment No. 1

The Government of Israel (the "GOI") wishes to select a lead managing underwriter for the structuring and sale of U.S. Agency for International Development ("USAID")-guaranteed loans. The USAID-guaranteed loans have been authorized by Public Law 102–391, and are being provided in connection with Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries.

The legislation authorizes the guaranty by USAID of up to $10 billion principal amount of loans over a five-year period, with a maximum of $2 billion in loans, offered in one or more tranches, to be guaranteed in each of the five fiscal years. This Notice is in connection with the GOI's selection of managing underwriters for an offering contemplated to be made under the authorization for the current fiscal year.

The lead managing underwriter for the proposed transaction will be selected through a competitive bid on the expected pricing date. In order to pre-qualify for participation in the competitive sale, potential bidders must demonstrate the requisite financial and technical capabilities by their responses to a Request for Proposals ("RFP"), which will be available from the GOT on or about July 28, 1995. Proposals must be submitted, in accordance with the RFP, by 5:00 p.m. on September 5, 1995. For information regarding the submission of proposals, please contact Mr. Eliahu Ziv-Zitouk, Chief Fiscal Officer, Ministry of Finance of the Government of Israel, 800 Second Avenue, New York, N.Y. 10017 (fax: 212/499/5715).

The GOI reserves the right to limit the number of firms that are eligible to submit bids to underwrite the proposed transaction, and to reject any or all bids. In order to be eligible for selection as a managing underwriter, an institution must be a member of the National Association of Securities Dealers, and otherwise meet the legal requirements for serving such role. All firms are encouraged to seek to prequalify, regardless of ethnic origin, race or gender.

The full repayment of the loans will be guaranteed by USAID. To be eligible for an USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 226 of the Foreign Assistance Act of 1961, as amended. Disbursements under the loans will be subject to certain conditions required of the GOI by USAID as set forth in agreements between USAID and the GOI.

Additional information regarding USAID's responsibilities in this guaranty program can be obtained from the undersigned: Room 225, SA–2, 515 22nd Street NW., Washington, D.C. 20523–0235, Telephone: 202/663–2773.

Dated: August 25, 1995.

Michael G. Kitay,

Assistant General Counsel, U.S. Agency for International Development.

[FR Doc. 95–21846 Filed 8–31–95; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31730 (Sub-No. 1)]

Rio Grande Industries, Inc., et al.—Trackage Rights Exemption—Burlington Northern Railroad Company Lines Between Kansas City, MO, and Chicago, IL

In a trackage rights agreement dated August 1, 1990 (1990 agreement), Burlington Northern Railroad Company (BN) granted Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, SP) overhead trackage rights between Kansas City, MO, and Chicago, IL. *See Rio Grande Industries, Inc.,*[1] Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, SPCSL Corp.—Trackage Rights—Burlington Northern Railroad Company Lines Between Kansas City, MO, and Chicago, IL, Finance Docket No. 31730 (ICC served Oct. 26, 1990).

The 1990 agreement has been modified by a settlement agreement dated April 13, 1995 (1995 agreement), which was entered into by SP, on the one side, and by BN and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), on the other side, in connection with the Finance Docket No. 32549 proceeding. *See Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549 (ICC served Aug. 23, 1995) (*BN/Santa Fe).* The 1995 agreement provides, among other things, that notwithstanding the terms of the 1990 agreement (which provides for overhead trackage rights only), SP shall be granted: access to all industries which are served directly or by reciprocal switching by either BN or Santa Fe at Fort Madison, IA, and Galesburg, IL; and access to the Toledo, Peoria and Western Railway Corporation at Bushnell, IL. The 1995 agreement further provides that BN and Santa Fe shall have the right to coordinate operations over their lines between Kansas City and Chicago and to alter the usage between each line, including usage of BN's line by SP.[2]

The modification of the terms of the 1990 agreement will be effective upon consummation of common control of BN and Santa Fe, which can occur no earlier than September 22, 1995. *See BN/Santa Fe*, slip op. at 117.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, D.C. 20036.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 25, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21748 Filed 8–31–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32719]

Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company Lines Between Pueblo, CO, and Amarillo, TX

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has agreed to grant Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, SP): (1) Overhead trackage rights over Santa Fe's lines between Pueblo, CO (in the vicinity of Santa Fe's Denver Subdivision Milepost 617.7) and Stratford, TX (in the vicinity of Santa Fe's Boise City Subdivision Milepost 85.5); and (2) overhead trackage rights over Santa Fe's lines between Pueblo, CO (in the vicinity of Santa Fe's Denver Subdivision Milepost 617.7) and Amarillo, TX (in the vicinity of Santa Fe's Panhandle Subdivision Milepost 552.3), solely for the purpose of serving industries located at Amarillo, TX.

These trackage rights have been granted pursuant to a settlement agreement dated April 13, 1995, which was entered into by SP, on the one side, and by Santa Fe and Burlington Northern Railroad Company (BN), on the other side, in connection with the Finance Docket No. 32549 proceeding. *See Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549 (ICC served Aug. 23, 1995) (*BN/Santa Fe*).

The settlement agreement also provides that BN will grant SP overhead trackage rights between Dalhart, TX, and Fort Worth, TX. This is the subject of a separate exemption notice. *See* Finance Docket No. 32720, *Southern Pacific Transportation Company, The Denver And Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Trackage Rights Exemption—Burlington Northern Railroad Company Lines Between Dalhart, TX, and Fort Worth, TX.* The settlement agreement further provides that SP shall also be granted: Access to all industries which are served directly or by reciprocal switching by either BN or Santa Fe at Amarillo, TX, at Plainview, TX, and at Lubbock, TX; and access to the Seagraves, Whiteface and Lubbock Railroad at Lubbock, TX. *See BN/Santa Fe*, slip op. at 85.

The settlement agreement provides that the various rights granted therein will be effective upon consummation of common control of BN and Santa Fe, which can occur no earlier than September 22, 1995. *See BN/Santa Fe*, slip op. at 117.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, D.C. 20036.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 25, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21745 Filed 8–31–95; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32722]

Southern Pacific Transportation Company, The Denver And Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company Lines Between Kansas City, KS, and Fort Worth, TX, and Between Hutchinson, KS, and Winfield Junction, KS

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has agreed to grant Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, SP) overhead trackage rights over Santa Fe's lines: between Kansas City, KS, and Fort Worth, TX (via Olathe, KS, and Cassoday, KS); and between Hutchinson, KS, and Winfield Junction, KS (via Wichita, KS). The Kansas City-Fort Worth trackage rights will run between Kansas City (in the vicinity of Santa Fe's Emporia Subdivision Milepost 1.7) and Fort Worth (in the vicinity of Santa Fe's Fort Worth Subdivision Milepost 345.6). The Hutchinson-Winfield Junction trackage rights will run between Hutchinson (in the vicinity of Santa Fe's La Junta Subdivision Milepost 216.4) and Winfield Junction (in the vicinity of Santa Fe's Arkansas City Subdivision Milepost 249.7).

These trackage rights have been granted pursuant to a settlement agreement dated April 13, 1995, which was entered into by SP, on the one side, and by Santa Fe and the Burlington Northern Railroad Company (BN), on the other side, in connection with the Finance Docket No. 32549 proceeding. *See Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549 (ICC served Aug. 23, 1995) (*BN/Santa Fe*).

The settlement agreement provides that the Kansas City-Fort Worth and Hutchinson-Winfield Junction trackage rights will be overhead rights only, subject to the access rights indicated in the next sentence. Under the terms of the settlement agreement, SP will receive access to: Industries served directly or by reciprocal switching by BN or Santa Fe at Wichita; industries at Hutchinson, through the present reciprocal switching arrangements; the Central Kansas Railway at Wichita; and the South Kansas and Oklahoma Railroad at Winfield, KS.

The settlement agreement provides that the various rights granted therein will be effective upon consummation of common control of BN and Santa Fe, which can occur no earlier than September 22, 1995. *See BN/Santa Fe*, slip op. at 117.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, NW., Suite 600, Washington, DC 20036.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 25, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21747 Filed 8–31–95; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32721]

Southern Pacific Transportation Company, et al.—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company Lines Between Hutchinson, KS, and Chicago, IL, and Between Topeka, KS, and Kansas City, KS

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has agreed to grant Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, SP) overhead trackage rights over Santa Fe's lines: between Hutchinson, KS, and Chicago, IL (via Ottawa, KS); and between Topeka, KS, and Kansas City, KS. The Hutchinson-Chicago trackage rights will run between Hutchinson (in the vicinity of Santa Fe's La Junta Subdivision Milepost 220.9) and Chicago (in the vicinity of Santa Fe's Chillicothe Subdivision Milepost 14.3 at McCook, IL, and in the vicinity of Santa Fe's Chillicothe Subdivision Milepost 7.3 at Nerska, IL). The Topeka-Kansas City trackage rights will run between Topeka (in the vicinity of Santa Fe's Topeka Subdivision Milepost 52.4) and Kansas City (in the vicinity of Santa Fe's Emporia Subdivision Milepost 1.7).

These trackage rights have been granted pursuant to a settlement agreement dated April 13, 1995, which was entered into by SP, on the one side, and by Santa Fe and the Burlington Northern Railroad Company (BN), on the other side, in connection with the Finance Docket No. 32549 proceeding. *See Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549

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[1] The entity formerly known as Rio Grande Industries, Inc., is now known as Southern Pacific Rail Corporation.

[2] The 1995 agreement also provides for the operation of SP trains over Santa Fe's lines between Kansas City and Chicago. This is the subject of a separate exemption notice. *See* Finance Docket No. 32721, *Southern Pacific Transportation Company, The Denver And Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company Lines Between Hutchinson, KS, and Chicago, IL, and Between Topeka, KS, and Kansas City, KS.*

(ICC served Aug. 23, 1995) (*BN/Santa Fe*).

The settlement agreement provides that SP may employ the Hutchinson-Chicago trackage rights only for trains comprised of not less than 90 percent intermodal or automotive traffic. The settlement agreement also provides that SP may not employ the Hutchinson-Chicago trackage rights to interchange with or connect with its own lines or the lines of any other carrier, with certain specified exceptions indicated in the next sentence. Under the terms of the settlement agreement, SP: may enter and exit Santa Fe's line at Kansas City solely to access the Kansas City Terminal Railroad and, through it, its connections; may enter and exit the Santa Fe line at Lomax, IL, solely for the purpose of accessing the Toledo, Peoria and Western Railway Corporation for intermodal and automotive traffic; may connect and interchange with other carriers at Streator, IL, solely for the purpose of movement to and from Chicago of traffic originating, terminating, or interchanged with other carriers in the Chicago area; and may connect with the Illinois Central Railroad at Joliet, IL, for movement over its lines to and from facilities at Chicago, for traffic originating or terminating at Chicago or interchanged with other carriers at Chicago.

The settlement agreement allows Santa Fe and BN to coordinate operations over their respective lines between Kansas City and Chicago, so that SP traffic moving over BN's lines between Kansas City and Chicago pursuant to trackage rights granted by BN in 1990 [1] may be rerouted over Santa Fe's lines, for the operational convenience of BN and Santa Fe.[2]

The settlement agreement provides that the various rights granted therein will be effective upon consummation of common control of BN and Santa Fe, which can occur no earlier than September 22, 1995. *See BN/Santa Fe*, slip op. at 117.

This notice is filed under 49 CFK 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, D.C. 20036.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 25, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21749 Filed 8–31–95; 8:45 am]

BILLING CODE 7035-01-P

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[1] *See Rio Grande Industries, Inc., Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, SPCSL Corp.—Trackage Rights—Burlington Northern Railroad Company Lines Between Kansas City, MO, and Chicago, IL*, Finance Docket No. 31730 (ICC served Oct. 26, 1990).

[2] Certain modifications to the trackage rights granted by BN in 1990 are the subject of a separate exemption notice. *See* Finance Docket No. 31730 (Sub-No. 1), *Rio Grande Industries, Inc., Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Trackage Rights Exemption—Burlington Northern Railroad Company Lines Between Kansas City, MO, and Chicago, IL.*

[Finance Docket No. 32720]

Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Trackage Rights Exemption—Burlington Northern Railroad Company Lines Between Dalhart, TX, and Fort Worth, TX

Burlington Northern Railroad Company (BN) has agreed to grant Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, SP) overhead trackage rights over BN's lines between Dalhart, TX (in the vicinity of BN's Milepost 417.5) and Fort Worth TX (in the vicinity of BN's Milepost 5.1).

These trackage rights have been granted pursuant to a settlement agreement dated April 13, 1995, which was entered into by SP, on the one side, and by BN and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), on the other side, in connection with the Finance Docket No. 32549 proceeding. *See Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549 (ICC served Aug. 23, 1995) (*BN/Santa Fe*).

The settlement agreement also provides that Santa Fe will grant SP: (1) Overhead trackage rights over Santa Fe's lines between Pueblo, CO, and Stratford, TX; and (2) overhead trackage rights over Santa Fe's lines between Pueblo, CO, and Amarillo, TX, solely for the purpose of serving industries located at Amarillo, TX. This is the subject of a separate exemption notice. See Finance Docket No. 32719, *Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company Lines Between Pueblo, CO, and Amarillo, TX*. The settlement agreement further provides that SP shall also be granted: access to all industries which are served directly or by reciprocal switching by either BN or Santa Fe at Amarillo, TX, at Plainview, TX, and at Lubbock, TX; and access to the Seagraves, Whiteface and Lubbock Railroad at Lubbock, TX. *See BN/Santa Fe*, slip op. at 85.

The settlement agreement provides that the various rights granted therein will be effective upon consummation of common control of BN and Santa Fe, which can occur no earlier than September 22, 1995. *See BN/Santa Fe*, slip op. at 117.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, D.C. 20036.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 25, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21750 Filed 8–31–95; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32760]

Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 1; Notice of prefiling notification and request for comments.

SUMMARY: Pursuant to 49 CFR 1180.4(b), Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR), Southern Pacific Rail Corporation (SPR), Southern Pacific Transportation Company (SPT), St. Louis Southwestern Railway Company (SSW), SPCSL Corp. (SPCSL), and the Denver and Rio Grande Western Railroad Company (DRGW) [1] have notified the Commission of their intent to file an application seeking authority under 49 U.S.C. 11343–45 for: (1) The acquisition of control of SPR by UP Acquisition Corporation (Acquisition), an indirect wholly owned subsidiary of UPC; (2) the merger of SPR into UPRR; and (3) the resulting common control of UP and SP by UPC. The Commission finds this to be a major transaction as defined in 49 CFR Part 1180. The applicants have proposed a procedural schedule, on which the Commission invites comments by interested persons.

DATES: Written comments on the proposed schedule must be filed with the Interstate Commerce Commission no later than September 18, 1995. The applicants' reply is due by September 28, 1995.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32760 and must be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32760, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of the applicants' representatives: (1) Arvid E. Roach II, Esq., Covington & Burling, 1201 Pennsylvania Avenue, NW., PO Box 7566, Washington, DC 20044; and (2) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 Nineteenth Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In the notice of intent filed August 4, 1995, the applicants state that under an Agreement and Plan of Merger dated August 3, 1995, UPC, Acquisition, UPRR and SPR have agreed that Acquisition will acquire all of the common stock of SPR. Acquisition plans first to acquire 25% of the stock of SPR for cash in a tender offer and place that stock in a voting trust pending review of the merger by the Commission.[2] Upon the satisfaction of certain conditions, including approval of the merger by the Commission, the remainder of the SPR stock will then be acquired for a combination of UPC stock and cash, and SPR will be merged into UPRR. The UP and SP railroads will then be consolidated.

The applicants state that they will use the year 1993 for purposes of their impact analyses to be filed in the application, and that they anticipate filing their application on or before December 1, 1995. On August 11, 1995, Santa Fe Pacific Corporation and The Atchison, Topeka, and Santa Fe Railway Company (collectively, Santa Fe) filed a partial objection to the notice of intent, objecting to the use of 1993 data in this proceeding (SF–2).[3] Also on August 11, 1995, the applicants filed a modification of their notice of intent (UP/SP–5). The applicants state that, if the 1994 ICC Waybill Sample is available by September 1, 1995, they will use 1994 as the base year, and that, if it is not, they will use 1993. Consultation with the Commission's Office of Economics and Environmental Analysis (OEEA) indicates that the 1994 data will be available by September 5, 1995. That being the case, we will require the applicants to use the 1994 data. If, for some reason, the data are not available on that date, we will reconsider this issue at that time.

The Commission finds that this is a major transaction, as defined at 49 CFR 1180.2(a), as it is a control and merger transaction involving two or more class I railroads. The application must conform to the regulations set forth at 49 CFR Part 1180 and must contain all information required therein for major transactions, except as modified by any advance waiver. The carriers are also required to submit maps with overlays that show the existing routes of both carriers and their competitors.

By petition also filed August 4, 1995, the applicants seek a protective order to protect confidential, highly confidential, and proprietary information, including contract terms, shipper-specific traffic data, and other traffic data to be submitted in connection with the control application (UP/SP–2). A protective order will be entered in a subsequent decision.

Also on August 4, 1995, the applicants filed a petition to establish a proposed procedural schedule (UP/SP–4). The Commission seeks comments now on the applicants' proposed procedural schedule, which is as follows:

Proposed Procedural Schedule

F	Primary application and related applications filed.
F + 30	Commission notice of acceptance of primary application and related applications published.
F + 60	Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification with regard to such applications due.
F + 90	Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence

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[1] UPC, UPRR, and MPRR are referred to collectively as Union Pacific. UPRR and MPRR are referred to collectively as UP.

SPR, SPT, SSW, SPCSL, and DRGW are referred to collectively as Southern Pacific. SPT, SSW, SPCSL, and DRGW are referred to collectively as SP.

UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL, and DRGW are referred to collectively as applicants or petitioners.

Applicants have petitioned for waiver or clarification of the definition of applicants so as to exclude Chicago and North Western Transportation Company (CNWT), Chicago and North Western Railway Company (CNW), and Western Railroad Properties Incorporated (WRPI), thus eliminating the necessity of their joining in the filing of the application. CNWT and CNW are scheduled to be merged into UPRR on October 1, 1995; WRPI was merged into UPRR on August 1, 1995.

[2] On August 4, 1995, the applicants filed a copy of the voting trust agreement proposed to be entered into by and between UPC, Acquisition, and Southwest Bank of St. Louis, an institutional trustee. The applicants state that they believe that Acquisition's planned purchase of 25% of the outstanding voting stock of SPR will not give UPC and its affiliates the power to exercise control of SPR and its affiliates. However, the applicants request that Commission staff issue an informal, non-binding opinion stating whether the voting trust agreement and the arrangements contained therein will effectively insulate UPC and its affiliates from any violation of the Interstate Commerce Act and Commission policy against unauthorized acquisition of control of SPR's carrier subsidiaries.

[3] Santa Fe essentially argues that, for a transaction as significant as this one, the Commission should have available the most relevant information necessary to assess changes in railroad operations and competitive impacts that will result from the proposed transaction. It is Santa Fe's position that more recent data would provide the Commission with the most relevant information, and that 1994 data will be available in ample time for use in this proceeding.

and arguments due. DOJ and DOT comments due.
F + 105 Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.
F + 120 Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application and related applications due.
F + 130 Rebuttal in support of inconsistent and responsive applications due.
F + 140 Briefs due, all parties (not to exceed 50 pages).
F + 155 Oral argument.
F + 156 Voting conference.
F + 195 Date for service of final decision.

Under the applicants' proposal, immediately upon each evidentiary filing, the filing party shall place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and shall make its witnesses available for discovery depositions. Access to documents subject to the protective order shall be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve material issues of disputed fact.[4] Discovery on responsive and inconsistent applications, comments, protests, and requests for conditions shall begin immediately upon their filing.

The proposed schedule is substantially similar to that adopted recently in *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchinson, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549 (ICC served March 7, 1995) (*BN/Santa Fe*).

We would also like comments from the public on a variation of the proposed procedural schedule.[5] Based on our recent experience in *BN/Santa Fe*, we believe that parties filing inconsistent and responsive applications, comments, protests, requests for conditions, and other opposition evidence and arguments, may not need 90 days from the date the primary application is filed to prepare their submissions. We seek comments on the feasibility of parties filing descriptions of anticipated inconsistent and responsive applications, and petitions for waiver or clarification with regard to such applications, 10 days after the publication of the notice accepting the primary application. All inconsistent and responsive applications, comments, protests, requested conditions, and other opposition evidence and argument would be due 30 days after the acceptance of the primary application. Comments from the United States Department of Justice (DOJ) and the United States Department of Transportation (USDOT) would also be due on that day. The 30 days taken from the segment of time in which protesting parties would prepare their submissions would be inserted later in the schedule.

The applicants are proposing that any applications for authority for, or for exemption of, merger-related abandonments, and any supporting verified statements, be filed with the primary application, and be treated as related applications. The applicants filed, on August 4, 1995, a petition for waiver or clarification of the Railroad Consolidation Procedures, and for related relief (UP/SP–3), in which they ask for a waiver under 49 CFR 1152.24(e)(5) to permit modifications to the procedures and timetables prescribed in our rules at 49 CFR 1152.25(d) (6) and (7), and other relief, seeking to ensure that they are able to make the referenced filings pertaining to merger-related abandonments with the primary application. Consequently, the applicants desire that all opposition evidence, comments, rebuttal, and briefing on those applications be submitted under the same schedule as the primary application. We will discuss the applicants' request for relief with regard to merger-related abandonments in a subsequent decision addressing all of the requests in UP/SP–3.

The applicants also request that the Commission establish certain guidelines to govern discovery in this proceeding. The applicants note that their proposed guidelines are similar to those developed by the parties and the presiding Administrative Law Judge in *BN/Santa Fe*, and assert that the guidelines were central to the progress of that proceeding. In the applicants' view, the guidelines provided all of the parties in *BN/Santa Fe* with a fair opportunity to conduct discovery and curtailed abusive practices that had caused delays in prior control proceedings. The applicants assert that similar early establishment of discovery guidelines at the outset of this proceeding will provide guidance to all parties and will promote an efficient and orderly proceeding. The process of assigning an Administrative Law Judge (ALJ) to this proceeding is underway. While we think the *BN/Santa Fe* discovery guidelines worked exceedingly well, we will leave all discovery matters, including the adoption of any guidelines governing discovery initially, to the discretion of the ALJ.[6] A decision naming that judge will be issued as soon as possible.

We invite interested persons to submit written comments on the proposed procedural schedule. Comments must be filed by September 18, 1995. The applicants may reply by September 28, 1995.[7]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: August 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21746 Filed 8–31–95; 8:45 am]

BILLING CODE 7035–01–M

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[4] It is not clear to what hearing the applications are referring. Their proposed schedule provides for no evidentiary hearing, and we see no need for one at this time.

[5] On August 14, 1995, The Kansas City Southern Railway Company (KCS) filed comments on the proposed procedural schedule (KCS–1). KCS claims that the applicants have not presented any justification for expediting the schedule in this proceeding without first seeking public comments on the proposed schedule. KCS alleges that it has concerns regarding its ability to conduct discovery and sufficiently analyze the competitive concerns within the time frame applicants propose. KCS would like time to develop an alternative procedural schedule. Because we are, in fact, asking for comments regarding the applicants' proposed schedule, KCS will have the opportunity to submit further comments on the schedule in response to this notice. The applicants filed a reply to KCS's comments on the proposed procedural schedule and discovery guidelines on August 18, 1995 (UP/SP–6).

[6] KCS also raises concerns about the applicants' proposed discovery guidelines in KCS–1, stating that the applicants have not established any reason why this proceeding cannot be conducted under the Commission's normal rules of discovery found at 49 CFR 1114. KCS notes that, in *BN/Santa Fe*, the Commission did not rule on discovery guidelines and instead deferred that decision to the ALJ. The ALJ conducted a conference where all parties could comment, and then issued discovery guidelines. KCS recommends that we follow the same procedure here, rather than simply adopting the same guidelines used in *BN/Santa Fe*. Because we are initially turning all discovery matters over to an ALJ, nothing more need be said regarding KCS's concerns at this time. KCS also filed a pleading in opposition to the applicants' proposed protective order (KCS–2). That pleading will be addressed in a separate decision entering the protective order.

[7] In addition to submitting an original and 20 copies of all documents filed with the Commission, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette which is formatted for WordPerfect 5.1 (or formatted so that it can be converted by WordPerfect 5.1). The computer data contained on the computer diskettes submitted will be subject to the protective order to be entered shortly in this proceeding, and is for the exclusive use of Commission employees reviewing substantive matters in this proceeding. The flexibility provided by such computer file data will facilitate expedited review by the Commission and its staff.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–7]

David W. Davis, D.O., Revocation of Registration

On October 7, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David W. Davis, D.O., of Houston, Texas (Respondent), proposing to revoke his DEA Certificate of Registration, AD7600631, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that the continued registration of Respondent was inconsistent with the public interest as that term is set forth in 21 U.S.C. 823(f) and 824(a)(4).

On November 5, 1993, Respondent, through counsel, requested a hearing on the issues raised in the order to show cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing proceedings, a hearing was held in Houston, Texas on October 20, 1994. The administrative law judge issued his findings of fact, conclusions of law and recommended ruling on January 17, 1995, recommending that Respondent's registration be revoked. No exceptions to the ruling were filed by either party. On February 17, 1995, the administrative law judge transmitted the record of the proceeding to the Deputy Administrator of DEA. After careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, in accordance with 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein.

The administrative law judge found that DEA initiated an investigation of Respondent after receiving reports from Houston area pharmacies that Respondent prescribed large amounts of controlled substances, particularly the combination of Tylenol No. 4 (a Schedule III controlled substance) and Valium or Xanax (Schedule IV controlled substances). DEA additionally was concerned about Respondent's prescribing practices because he was listed as one of the top 1,000 Medicaid prescribers for the period of January 1991 to February 1992.

The administrative law judge further found that an undercover officer from the Houston Police Department visited Respondent's office on three occasions. The undercover officer's conversations with Respondent were recorded and monitored by a DEA Diversion Investigator.

On the undercover officer's first visit, on May 14, 1991, the officer asked Respondent for something "to mellow out" with, specifically requesting Tylenol. Respondent asked the undercover officer if he wanted Xanax or Valium and prescribed 30 dosage units of Valium (10 mg) and 30 dosage units of Tylenol No. 4. There was no discussion concerning any pain or anxiety experienced by the undercover officer.

On June 21, 1991, the undercover officer made a second visit to Respondent's office and, again, expressed his need for medication to "chill out, mellow out." Although there was no previous discussion concerning whether the undercover officer had experienced any pain. Respondent, on this visit, inquired whether the officer still experienced pain. The undercover officer responded "No . . . I'm fine doc." Respondent prescribed 30 dosage units of Valium (10 mg) and 30 dosage units of Tylenol No. 4. However, Respondent denied the undercover officer's request for additional medication and warned him against developing a drug habit.

On the third visit, on July 30, 1991, the undercover officer requested Tylenol No. 4 and Valium, and specified that he did not have any pain. Respondent again prescribed 30 dosage units of Valium (10 mg) and 30 dosage units of Tylenol No. 4.

The administrative law judge found that each of the three visits lasted no longer than ten minutes and that during that time the undercover officer's blood pressure was taken on one visit and his weight may have been taken. Respondent also examined the officer's chest with a stethoscope. The undercover officer was in good health at the time of the visits and exhibited no outward manifestations of a drug abuser. At no point during any of the three office visits did the undercover officer complain of any pain.

The administrative law judge found that, subsequent to the execution of a search warrant, Respondent was indicted on three counts of prescribing a Schedule III controlled substance to an undercover officer without a valid medical purpose. On April 23, 1992, Respondent pled *nolo contendere* to the first count, and the remaining two counts were dismissed. An adjudication of guilt was withheld in favor of two years probation and a $2,000 fine, notwithstanding the fact that the District Court of Harris County, Texas, found that the evidence substantiated Respondent's guilt.

Judge Tenney additionally found that DEA obtained copies of Respondent's controlled substance prescriptions from a local pharmacy for the year of 1991. These prescriptions revealed that Respondent frequently prescribed combinations of Valium or Xanax with Tylenol No. 4, and that multiple individuals in the same household would receive similar prescriptions. DEA also obtained written statements from several Houston area pharmacists declaring that they refused to fill prescriptions issued by Respondent.

Pursuant to 21 U.S.C. 824(a)(4), the Deputy Administrator of the DEA may revoke the registration of a practitioner upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). In determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The [registrant]'s experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant]'s conviction record under Federal or State laws relating to the manufacture, distribution or dispensing of controlled substances.

(4) Compliance with applicable State, Federal or local laws relating to controlled substances.

(5) Such other conduct with may threaten the public health and safety. 21 U.S.C. 823(f).

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate in assessing the public interest. *See Mukand Lal Arora, M.D.*, 60 FR 4447 (1995); *Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989). The administrative law judge found that factors (2) through (5) were relevant in determining whether to revoke Respondent's registration, and that the Government had met its burden in establishing these factors.

The administrative law judge found that, notwithstanding the deferred adjudication of guilt, the Government had established a *prima facie* case under factor (3). DEA has previously held that a registrant may be found to have been convicted within the meaning of the Controlled Substances Act despite the withholding of an adjudication of guilt. *See Clinton D. Nutt, D.O.*, 55 FR 30992 (1990); *Eric A. Baum, M.D.*, 53 FR 47272 (1988).

The administrative law judge additionally found that the Government had proven, by a preponderance of the evidence, that Respondent had prescribed controlled substances to the undercover officer on three separate occasions, without a valid medical purpose, thereby establishing a *prima facie* case under factors (2), (4) and (5).

The administrative law judge found that the Government failed to prove that Respondent knew or should have known that the combination of Tylenol No. 4 and Valium or Xanax was highly abused on the streets or that the prescriptions issued to individuals other than the undercover officer were for a non-legitimate purpose. The Government did, however, establish that the combination controlled substances is abused among low-income individuals in the Houston area, a group served by Respondent. The administrative law judge also noted that the ease with which the undercover officer obtained the combination of drugs warrants serious concern by DEA.

The Deputy Administrator adopts the findings of fact, conclusions of law and recommended ruling of the administrative law judge in its entirety. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AD7600631, issued to David W. Davis, D.O., be, and it hereby is, revoked, and that any pending applications for such registration as a practitioner be, and they hereby are, denied. This order is effective on October 2, 1995.

Dated: August 28, 1995.

Stephen H. Greene,

Deputy Administrator.

FR Doc. 95–21694 Filed 8–31–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated April 4, 1995, and published in the **Federal Register** on April 12, 1995, (60 FR 18618), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A comment and a request for a hearing with respect to Methylphenidate were filed by two registered manufacturers. However, Mallinckrodt Chemical, Inc., has withdrawn its 1994 and 1995 applications for registration as a bulk manufacturer of Methylphenidate. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted with the exception of Methylphenidate (1724).

Dated: August 28, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–21771 Filed 8–31–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated April 7, 1995, and published in the **Federal Register** on April 17, 1995, (60 FR 19306), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Fenethylline (1503)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391)	I
4-Bromo-2, 5-dimethoxyphenethylamine (7392)	I
4-Methyl-2, 5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3, 4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
Etorphine (except HCl) (9056)	I
Difenoxin (9168)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Beta-hydroxyfentanyl (9830)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Written comments were filed by three registered manufacturers. One stated that they would not oppose or request a hearing if it was determined that Sigma Chemical Company's applications for registration was only for the importation of small quantities of Alfentanil, Sufentanil, Oxymorphone, Morphine, Cocaine, Codeine, Fentanyl, Methadone, Dextropropoxyphene, bulk (non-dosage forms), and Meperidine. DEA has found that this is the case. Another manufacturer's comment requested that the firm's application for registration to import Meperidine be denied. The remaining manufacturer commented that they have the ability to supply small quantities of amphetamine and methamphetamine and do not believe there is a need for another supplier. The comments were considered, however, DEA has determined that the application should be approved. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 28, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–21772 Filed 8–31–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Compensation 2000: Albuquerque, New Mexico and Allentown, Pennsylvania Test

ACTION: Corrected notice.

SUMMARY: This corrected notice is being published to correct errors in notice document 95–20778 in the issue of Tuesday, August 22, 1995, 60 FR 43614.

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection, "Compensation 2000: Albuquerque, New Mexico and Allentown, Pennsylvania Test." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the address section of this notice.

DATES: Written comments must be submitted on or before October 31, 1995.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue N.E., Washington, DC 20212. For further information contact Ms. Kurz at 202–606–7628. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

This collection is a test of a new method of identifying and classifying occupations within an establishment. If successful, the new method could ultimately allow for joint collection of three separate statistical surveys of wage and benefit data; the Occupational Compensation Survey Program, the Employment Cost Index, and the Employee Benefits Survey. In addition to evaluating the results of the test for use in future surveys, BLS also will publish a bulletin for each area containing the occupational earnings data collected.

II. Current Actions

The test will include establishments in the Albuquerque, New Mexico and Allentown, Pennsylvania metropolitan statistical areas, both in private industry and in State, Local or Tribal Government. It will be conducted in early 1996. Once each occupation has been selected and classified using the test methodology, earnings data for the occupations will be collected. A new data entry system using laptop computers also will be tested as part of the collection.

Type of Review: New.
Agency: Bureau of Labor Statistics.
Title: Compensation 2000: Albuquerque, New Mexico and Allentown, Pennsylvania Test.
Frequency: One time.
Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government. ,
Number of Respondents: 574.
Estimated Time Per Respondent: 2 hours.
Total Burden Hours: 1148 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they also will become a matter of public record.

Signed at Washington, D.C., this 28th day of August, 1995.

W. Stuart Rust, Jr.,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 95–21728 Filed 8–31–95; 8:45 am]

BILLING CODE 4510–24–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
- CT950001 (Feb. 10, 1995)
- CT950003 (Feb. 10, 1995)
- CT950004 (Feb. 10, 1995)

Massachusetts:
- MA950001 (Feb. 10, 1995)
- MA950002 (Feb. 10, 1995)
- MA950003 (Feb. 10, 1995)
- MA950006 (Feb. 10, 1995)
- MA950007 (Feb. 10, 1995)
- MA950008 (Feb. 10, 1995)
- MA950009 (Feb. 10, 1995)
- MA950010 (Feb. 10, 1995)
- MA950017 (Feb. 10, 1995)
- MA950018 (Feb. 10, 1995)
- MA950019 (Feb. 10, 1995)
- MA950020 (Feb. 10, 1995)
- MA950021 (Feb. 10, 1995)

New York:
- NY950017 (Feb. 10, 1995)
- NY950042 (Feb. 10, 1995)

Volume II

District of Columbia:
- DC950001 (Feb. 10, 1995)

Maryland:
- MD950001 (Feb. 10, 1995)
- MD950002 (Feb. 10, 1995)
- MD950021 (Feb. 10, 1995)
- MD950026 (Feb. 10, 1995)
- MD950034 (Feb. 10, 1995)
- MD950035 (Feb. 10, 1995)
- MD950037 (Feb. 10, 1995)
- MD950039 (Feb. 10, 1995)
- MD950046 (Feb. 10, 1995)
- MD950048 (Feb. 10, 1995)
- MD950053 (Feb. 10, 1995)

Pennsylvania:
- PA950005 (Feb. 10, 1995)
- PA950013 (Feb. 10, 1995)

Virginia:
- VA950005 (Feb. 10, 1995)
- VA950008 (Feb. 10, 1995)
- VA950011 (Feb. 10, 1995)
- VA950018 (Feb. 10, 1995)
- VA950023 (Feb. 10, 1995)
- VA950033 (Feb. 10, 1995)
- VA950034 (Feb. 10, 1995)
- VA950036 (Feb. 10, 1995)
- VA950039 (Feb. 10, 1995)
- VA950046 (Feb. 10, 1995)
- VA950051 (Feb. 10, 1995)
- VA950069 (Feb. 10, 1995)
- VA950085 (Feb. 10, 1995)
- VA950087 (Feb. 10, 1995)
- VA950088 (Feb. 10, 1995)
- VA950104 (Feb. 10, 1995)
- VA950105 (Feb. 10, 1995)
- VA950108 (Feb. 10, 1995)

West Virginia:
- WV950002 (Feb. 10, 1995)
- WV950003 (Feb. 10, 1995)
- WV950005 (Feb. 10, 1995)
- WV950006 (Feb. 10, 1995)
- WV950018 (Feb. 24, 1995)

Volume III:

Florida:
- FL950001 (Feb. 10, 1995)
- FL950017 (Feb. 10, 1995)
- FL950032 (Feb. 10, 1995)
- FL950095 (Feb. 10, 1995)

Georgia:
- GA950003 (Feb. 10, 1995)
- GA950022 (Feb. 10, 1995)
- GA950033 (Feb. 10, 1995)
- GA950040 (Feb. 10, 1995)
- GA950053 (Feb. 10, 1995)
- GA950058 (Feb. 10, 1995)
- GA950065 (Feb. 10, 1995)
- GA950066 (Feb. 10, 1995)

Kentucky:
- KY950001 (Feb. 10, 1995)
- KY950004 (Feb. 10, 1995)
- KY950027 (Feb. 10, 1995)
- KY950028 (Feb. 10, 1995)
- KY950029 (Feb. 10, 1995)
- KY950044 (Feb. 10, 1995)

Tennessee:
- TN950002 (Feb. 10, 1995)
- TN950005 (Feb. 10, 1995)
- TN950045 (Feb. 10, 1995)
- TN950062 (Feb. 10, 1995)

Volume IV

Illinois:
- IL950007 (Feb. 10, 1995)
- IL950016 (Feb. 10, 1995)
- IL950004 (Feb. 10, 1995)
- IL950006 (Feb. 10, 1995)
- IL950016 (Feb. 10, 1995)

Minnesota:
- MN950007 (Feb. 10, 1995)
- MN950008 (Feb. 10, 1995)
- MN950012 (Feb. 10, 1995)
- MN950027 (Feb. 10, 1995)
- MN950031 (Feb. 10, 1995)
- MN950035 (Feb. 10, 1995)
- MN950058 (Feb. 10, 1995)
- MN950059 (Feb. 10, 1995)
- MN950061 (Feb. 10, 1995)

Ohio:
- OH950001 (Feb. 10, 1995)
- OH950002 (Feb. 10, 1995)
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- OH950032 (Feb. 10, 1995)
- OH950034 (Feb. 10, 1995)
- OH950035 (Feb. 10, 1995)
- OH950026 (Feb. 10, 1995)

Volume V

Iowa:
- IA950005 (Feb. 10, 1995)
- IA950016 (Feb. 10, 1995)

Kansas:
- KS950007 (Feb. 10, 1995)
- KS950010 (Feb. 10, 1995)
- KS950012 (Feb. 10, 1995)
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Missouri:
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- MO950077 (Feb. 10, 1995)

Nebraska:
- NE950001 (Feb. 10, 1995)
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- NE950059 (Feb. 10, 1995)

New Mexico: NM950001 (Feb. 10, 1995)
Oklahoma: OK950014 (Feb. 10, 1995)
Texas: TX950016 (Feb. 10, 1995)

Volume VI

Alaska: AK950001 (Feb. 10, 1995)

California:
- CA950001 (Feb. 10, 1995)
- CA950002 (Feb. 10, 1995)
- CA950004 (Feb. 10, 1995)
- CA950027 (Feb. 10, 1995)

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Colorado:
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Hawaii: HI950001 (Feb. 10, 1995)
Idaho:
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Montana:
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Nevada:
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WA950013 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office,
Washington, D.C. 20402, (202) 512–1800

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 25th day of August 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–21574 Filed 8–31–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 11, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address show below, not later than September 11, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 21st day of August, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 08/21/95

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,345	Adams-Millis (Comp)	High Point, NC	08/09/95	Men's Socks.
31,346	Armstrong World Ind. (Comp)	Braintree, MA	07/21/95	Armiflex Thermoplastic Insulation.
31,347	Atlantic Oil Co. (Comp)	Glendale, CA	07/11/95	Crude Oil, Natural Gas.
31,348	Atlantic Oil Co. (Comp)	Bakersfield, CA	07/11/95	Crude Oil, Natural Gas.
31,349	Atlantic Oil Co. (Comp)	Sutter, CA	07/11/95	Crude Oil, Natural Gas.
31,350	Chains, Inc (Wkrs)	Bonners Ferry, ID	08/07/95	Industrial Chains.
31,351	Consolidated Natural Gas (Wkrs)	Clarksburg, WV	08/09/95	Drilling and Prod. of Natural Gas.
31,352	Don Shapiro Industries (Comp)	El Paso, TX	08/09/95	Denim Jeans and Shorts.
31,353	Dura Convertible Systems (Comp)	Adrian, MI	07/11/95	Convertible Topstacks.
31,354	Emerson Electric (Wkrs)	Rogers, AR	08/04/95	Small Motors and Parts.
31,355	Thompson Steel Pipe Co. (Wkrs)	Princeton, KY	08/08/95	Propane Tank Cylinders and Large Pipes.
31,356	Jeld-Wen of Bend (Comp)	Bend, OR	08/09/95	Door Frames, Casing and Other Wood Prod.
31,357	The John Chopot Lumber Co (Comp)	Colville, WA	08/04/95	Softwood Lumber.
31,358	ConAgra Flour Milling Co (AFGM)	Omaha, NE	08/11/95	Duram Flour and Duram Semolina.
31,359	Pendleton Woolen Mills (ACTWU)	Milwaukie, OR	08/09/95	Ladies' Blouses.
31,360	Peoples Gas Light & Coke (SEIU)	Elwood, IL	08/10/95	Synthetic Natural Gas.
31,361	Rice Engineering Corp (Comp)	Great Bend, KS	08/09/95	Downhole Linings.
31,362	Rice Engineering Corp (Comp)	Choctaw, OK	08/09/95	Downhold Linings.
31,363	Samsons Mfg. Corp. (Wkrs)	Wilson, NC	08/08/95	Ladies and Men's Bathrobes.
31,364	United Technologies Auto (Wkrs)	Columbus, MS	08/12/95	Auto Window Lift Motors.
31,365	ConAgra Flour Milling Co (AFGM)	Superior, WI	08/11/95	Duram Flour and Duram Semolina.
31,366	Kendall Med-West (Comp)	Salt Lake City, UT	08/15/95	Anesthesia Kits for Epidural and Spinal.
31,367	Telescope Casual Furn. (Wkrs)	Granville, NY	08/18/95	Casual Furniture.

[FR Doc. 95–21730 Filed 8–31–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 189]

Baxter: Baxter Anesthesia Division, North Reading, Massachusetts; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 9, 1994, applicable to all workers at Baxter Anesthesia Division located in North Reading, Massachusetts. The notice was published in the **Federal Register** on January 3, 1995 (60 FR 14).

At the request of the State Agency, the Department reviewed the certification and is amending it to include leased workers from B & M Associates, Woburn, Massachusetts engaged in the production of infusion pumps at the subject firm. New findings show that some workers were laid off by B & M Associates for lack of work in adversely affected employment.

The intent of the Department's certification is to include all workers of Baxter Anesthesia Division adversely affected by imports.

The amended notice applicable to TA–W–30, 1989 is hereby issued as follows:

> All workers of the North Reading, Massachusetts plant of the Baxter Anesthesia Division of Baxter, and workers from B & M Associates, Woburn, Massachusetts who were laid off for lack of work in adversely affected employment by Baxter Anesthesia Division, who became totally or partially separated from employment on or after July 27, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of August 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–21731 Filed 8–31–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,124; TA–W–31,124A]

Great Bear Industries, Cross City, Florida and Lake Butler Apparel Company, Lake Butler, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 12, 1995, applicable to all workers of Great Bear Industries located in Cross City, Florida. The notice was published in the **Federal Register** on August 9, 1995 (60 FR 40613).

New information received from the company reveals that worker separations have occurred at Lake Butler Apparel Company, Lake Butler, Florida, the parent company of Great Bear. The workers produce men's, boys' and women's slacks. The company provided information showing declines in sales, production and employment from 1993 to 1994, and in January through March 1995 compared to the same time period of 1994. The company also reported an increase in purchases of imports of apparel from 1993 to 1994.

The intent of the Department's certification is to include all workers of Great Bear and its parent company adversely affected by imports.

The amended notice applicable to TA–W–31, 124 is hereby issued as follows:

> All workers of Great Bear Industries, Cross City, Florida (TA–W–31, 124), and Lake Butler Apparel Company, Lake Butler, Florida (TA–W–31,124A) who became totally or partially separated from employment on or after June 2, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 24th day of August 1995.

Victor J. Trunzo,

Program Manager, Policy and Employment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–21729 Filed 8–31–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,145; Moore Business Forms & Systems Div., Buckhannon, WV
TA–W–31,130; Peerless Corp., Tualatin, OR
TA–W–31,164; Cairns & Brothers, Inc., Clifton, NJ
TA–W–31,239; NU Quaker Dyeing, Inc., Easton, PA
TA–W–31,210; Tampella Power Corp., Williamsport, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,158; Unisys Corp., Computer Systems Div Group, Roseville, MN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,165; Communication Associates, Inc., Anniston, AL
TA–W–31,193; Telxon Corp., Houston, TX

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

TA–W–31,204; Valmont Electric, Inc., El Paso, TX: June 15, 1994.
TA–W–31,138; Layton Sportswear, Layton, UT: June 2, 1994.
TA–W–31,287; Garan, Inc., Lambert Mills Div., Lambert, MS: July 13, 1994.
TA–W–31,205; Huls America, Inc., Elizabeth, NJ: June 1, 1994.
TA–W–31,236; Topographic Land Surveyors, Midland, TX: July 28, 1994.
TA–W–31,235; Daphne Handbag & Mfg, Scranton, PA: June 3, 1994.
TA–W–31,157; Theodore Rich Co., Inc., Terra Haute, IN: June 9, 1994.
TA–W–31,174; Emerson Electric Co., Motor Div., Ava, MO: June 17, 1994.
TA–W–31,218; Dana Corp., Mobile Fluid Products, Corinth, MS: June 23, 1994.
TA–W–31,252; Blue Eagle Exploration, Inc., Salisbury, NC & Operating at Various Locations in the Following States: A; CO, B; ID, C; NV, D; WY, E; WI: June 21, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of August, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00516; Blue Bell Snack Foods, Inc., Portland, OR
NAFTA–TAA–00519; Comptronix Corp., Colorado Springs, CO
NAFTA–TAA–00518; Bethlehem Steel Corp., Bethlehem Structural Products Corp., PB & NE Subsidiary Railroad Co., Bethlehem, PA
NAFTA–TAA–00513; Telescope Casual Furniture, Granville, NY
NAFTA–TAA–00522; AEP Industries, Inc., Moonachie, NJ

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–00520; John Lyon Reload, Klickitat, WA
NAFTA–TAA–00523; Paso Del Norte Avionics, Inc., El Paso, TX

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00545; Walker Equipment Corp., Subsidiary of Plantronics, Inc, Ringgold, GA: August 2, 1994.
NAFTA–TAA–00529; Century Place, Inc., Sewing Div., Salisbury, NC: July 20, 1994.
NAFTA–TAA–00546; American Safety Razor Co., Verona, VA: July 27, 1994.
NAFTA–TAA–00547; Electronics & Space Corp., (ESCO), St. Louis, MO: July 31, 1994.
NAFTA–TAA–00517; John Chopot Lumber Co., Colville, WA: July 3, 1994.

I hereby certify that the aforementioned determinations were issued during the months of August, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 22, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–21732 Filed 8–31–95; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on September 21 and 22, 1995, in C5320 Seminar Room 6 of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 9 a.m. each day lasting until approximately 4:30 p.m. on September 21 and 1 p.m. on September 22.

Agenda items will include overviews of activities of both the Occupational Safety and Health Administration (OSHA) and the National Institute for Safety and Health (NIOSH), a legislative update together with a review of OSHA's Hazard Communication Standard, an update on the development of a proposed safety and health program standards, an update on OSHA data initiatives, a presentation by NIOSH of their process for setting a National Research Agenda, an update by NIOSH on their Respirator Standard as well as brief organizational meetings of two workgroups: One on hazard communication, and one on safety and health programs.

Since the last NACOSH meeting on April 10 and 11, six members terms have expired. Three of these members have been reappointed for a two year term ending in September 1997. They are: James A. Merchant, Health Representative; Henry B. Lick, Management Representative; and Michael J. Wright, Labor Representative. Two new members have been appointed for a two year term. They are: Kenneth J. Zeller, Commissioner of the Indiana Department of Labor, who will serve as a Public Representative; and Kennith D. Brock, Senior Vice President and General Manager of Liberty Mutual Insurance Company, who will serve as a Safety Representative. A third new member will be added in the near future to serve as a Public Representative. Members completing the second year of a two year term are: Ellen Schall and Ruy N. Delgado Zayas, Public Representatives; Frederick M. Toca. Management Representative; Margaret M. Seminario, Labor Representative; Frederic D. Rine, Safety Representative; and Andrea K. Taylor, Health Representative.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Joanne Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak to the extent time permits, at the discretion of the Chair of the Advisory Committee. Individuals with disabilities who need special accommodations should contact Tom Hall by September 18 at the address indicated below.

An official record of the meeting will be available for public inspection through Tom Hall, Division of Consumer Affairs, Room N–3647, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 219–8615.

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 219–8021.

Signed at Washington, DC, this 29th day of August, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–21774 Filed 8–31–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cognitive, Psychological and Language Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting for the Advisory Panel for Cognitive, Psychological & Language Sciences (#1758).

Name: Advisory Panel for Cognitive, Psychological and Language Sciences (#1758).

Date and Time: September 20–22, 1995, 9 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Contact Person: Paul G. Chapin, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: To review and evaluate the outcome of NSF-funded projects in Linguistics.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning the results and impacts of research projects funded by the NSF.

Reason for Closing: The actions being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the actions. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 29, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–21783 Filed 8–31–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company; North Anna Power Station, Units No. 1 and No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to an exemption from the requirements of Section III.G.3 of Appendix R to 10 CFR Part 50 issued by the Commission on November 6, 1986 to the Virginia Electric and Power Company (the licensee) for the North Anna Power Station, Units No. 1 and No. 2 located on the licensee's site in Louisa County, Virginia.

Environmental Assessment

Identification of the Proposed Action

The original exemption issued on November 6, 1986, was from the technical requirements of Section III.G.3 of Appendix R to 10 CFR Part 50 to the extent that fire detection and fixed suppression systems are not installed throughout the Auxiliary Fuel, and Decontamination Building (Fire Area 11). The original Safety Evaluation transmitted with the November 6, 1986 exemption, stated that the charging pump cubicles have 3-hour fire-rated walls, and that the penetrations in these walls are sealed to a rating of 3 hours. By letter dated December 11, 1992, the licensee requested an addendum to the original exemption to account for non-fire-rated penetration seals and unprotected openings located in the south wall of the charging pump cubicles. The lack of rated penetration seals was identified in NRC inspection report 50–338, 339/92–18 dated October 19, 1992.

The Commission's technical evaluation of the licensee's proposed amendment to the exemption will be published in a report entitled "Safety Evaluation Related to An Addendum To Exemption From Certain Requirements of Appendix R to 10 CFR Part 50 at North Anna Power Station, Units No. 1 and No. 2." The evaluation is responsive to the licensee's request for an addendum to the exemption dated December 11, 1992, as supplemented by letter dated August 18, 1994.

The Need for the Proposed Action

The proposed exemption amendment is needed to clarify which penetrations in the south wall separating the charging pump cubicles are not sealed to a rating of 3 hours. In addition, documentation is required to specify that the lack of fire-rated penetration seals in the south wall of the pump cubicles does not present an undue risk to the public health and safety. Finally, the proposed amended exemption is needed in order to permit the licensee to use alternative fire protection configurations that achieve an equivalent level of safety compared to that attained by compliance with Section III.G of Appendix R.

Environmental Impacts of the Proposed Action

The proposed amendment to the Exemption would not degrade the level of safety attained by compliance with the rule and there would be no change in accident doses to the environment. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined; nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption amendment.

With regard to potential non-radiological impacts, the proposed exemption amendment involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed exemption amendment.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment to the exemption. This would not reduce the environmental impacts associated with fire protection modifications and compliance with the rule would accrue unreasonable costs to the licensee without an increase in safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (as amended) for the North Anna Power Station, Units No. 1 and No. 2.

Agencies and Persons Consulted

In accordance with its stated policy, on August 3, 1995, the staff consulted with the Virginia State official, James Dekrafft, of the Virginia Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment to the exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for an addendum to the exemption from 10 CFR 50, Appendix R, section III.G. of Appendix R dated December 11, 1992, as supplemented by letter dated August 18, 1994, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the Board of Supervisors Office, Louisa, County Courthouse, Louisa Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 24th day of August 1995.

For the Nuclear Regulatory Commission.

David C. Trimble,

Acting Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21742 Filed 8–31–95; 8:45 am]

BILLING CODE 7590-01-P

Generic Letter 95–06, Changes in the Operator Licensing Program; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 95–06 to inform licensees of nuclear power reactors of the NRC's intent to revise the manner in which the NRC administers the initial operator licensing program to allow greater participation of facility licensees, and to solicit volunteers to participate in a pilot program that will evaluate and refine the new examination development process. This generic letter is available in the NRC Public Document Room under accession number 9508110156. The information that was sent to the Committee to Review Generic Requirements for this generic letter will be made available in the NRC Public Document Room.

DATES: The generic letter was issued on August 15, 1995.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Stuart Richards (301) 415–1031.

SUPPLEMENTARY INFORMATION: None.

Dated at Rockville, Maryland, this 25 day of August, 1995.

For the Nuclear Regulatory Commission.

Robert L. Dennig,

Acting Chief, Events Assessment and Generic Communications Branch, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21741 Filed 8–31–95; 8:45 am]

BILLING CODE 7590-01-M

Generic Letter 95–07, Pressure Locking and Thermal Binding of Safety-Related Power-Operated Gate Valves; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 95–07 to request licensees of nuclear power reactors to describe their consideration of the potential for pressure locking and thermal binding of safety-related power-operated gate valves, and the planned and completed corrective actions for valves that are determined to be susceptible to these problems. This generic letter is available in the NRC Public Document Room under accession number 9508110268. The information that was sent to the Committee to Review Generic Requirements, including the resolution of public comments received on this generic letter, will be made available in the NRC Public Document Room. This generic letter is also discussed in Commission information paper SECY–95–200 which is available in the NRC Public Document Room.

DATES: The generic letter was issued on August 17, 1995.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Thomas G. Scarbrough (301) 415–2794.

SUPPLEMENTARY INFORMATION: None.

Dated at Rockville, Maryland, this 25th day of August, 1995.

For The Nuclear Regulatory Commission.

Robert L. Dennig,

Acting Chief, Events Assessment and Generic Communications Branch, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21740 Filed 8–31–95; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–313 and 50–368]

Entergy Operations, Inc. (Arkansas Nuclear One, Units 1 and 2); Exemption

I

Entergy Operations, Inc., (the licensee) is the holder of Facility Operating Licenses Nos. DPR–51 and NPF–6, which authorize operation of Arkansas Nuclear One, Units 1 and 2. The operating license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facilities consist of two pressurized water reactors at the licensee's site in Pope County, Arkansas.

II

Title 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), in part, states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *."

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated October 24, 1994, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, employee and contractor identification/access control cards are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Arkansas Nuclear One site. Station security personnel are required to maintain control of the badges while the individuals are offsite. This practice has been in effect at Arkansas Nuclear One since the first operating license was issued. Security personnel retain each identification access control card, when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued a picture identification card which also serves as an access control card. This card allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is "screened" by the required detection equipment and by the issuing security officer. Having received the badge, the individual proceeds to the access portal, inserts the access control card into the card reader, and passes through the turnstile which is unlocked by the access card. Once inside the station, the access card allows entry into areas if the preauthorized criteria are met.

This present procedure is labor intensive since security personnel are required to verify badge issuance, ensure badge retrieval, and maintain the badges in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge issuance, ensuring badge retrieval, and maintaining badges could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their access authorization card into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the "signature" template.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification badges coupled with their associated access control cards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at each site.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, as long as the licensee uses the hand geometry access control system, the Commission hereby grants Entergy Operations, Inc. an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment. This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of August 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21743 Filed 8–31–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 30–32493–CivP; EA 93–072; ASLBP No. 95–709–02–CivP]

Radiation Oncology Center at Marlton (ROCM) Marlton, NJ (Byproduct Materials License No. 29–28685–01); Notice of Prehearing Conference

Notice is hereby given that a prehearing conference will be held in this enforcement proceeding, beginning at 9:30 a.m., on Wednesday, October 11, 1995, and continuing (to the extent necessary) at 9:00 a.m., on Thursday, October 12, 1995, at Two White Flint North, Commission Hearing Room, Room 3 B 45, 11545 Rockville Pike, Rockville, Maryland. The purpose of the prehearing conference will be to define further the issues to be litigated during the proceeding, to establish discovery schedules, and to deal with other matters bearing upon the evidentiary hearing (such as the date, time and location of such hearing).

Members of the public are invited to attend the conference but will not be permitted to participate in the proceeding.

Rockville, Maryland, August 28, 1995.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 95–21744 Filed 8–31–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36163; File No. SR–Amex–95–34]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing of Options on the Inter@ctive Week Internet Index

August 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade options on the Amex Inter@ctive Week Internet Index ("Index"), a new stock index developed by the Amex and Inter@ctive Week based on stocks (or American Depositary Receipts ("ADRs") thereon) of companies involved in the fields of digital interactive services, software and hardware. In addition, the Amex proposes to amend Rule 901C, Commentary. 01 to reflect that 90% of the Index's numerical index value will be accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Amex has developed a new industry-specific index called the Inter@ctive Week Internet Index, based entirely on shares of widely held companies involved in providing interactive services, developing and marketing digital interactive software and manufacturing digital interactive hardware.[3] The industries represented

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The component securities of the Index are 3Com; Acclaim Entertainment; Activision; Adobe Systems; America Online; Avid Technology; Bolt, Beranek & Newman; Broadband Technologies;

by these companies are: internet service providers, on-line service companies, internet tool developers, multimedia publishers, networking companies, videoconferencing companies, interactive television companies, software technology developers and computer manufacturers. Each of the component securities are traded on the Amex, the New York Stock Exchange or through the facilities of the national Association of Securities Dealers Automated Quotation system and are reported national market system securities ("NASDAQ/NMS"). The Amex intends to trade standardized option contracts on the newly developed Index. The Exchange is filing this proposal pursuant to Rule 901C, Commentary.92, which provides for the commencement of trading of options on the Index thirty days after the date of this filing. The proposal meets all the criteria set forth in Commentary.02 and the Commission's approval of generic index approval standards as outlined below.[4]

Eligibility Standards for Index Components

Pursuant to Commentary .02 to Rule 901C, (1) All of the component securities of the Index are listed on the New York Stock Exchange or are NASDAQ/NMS listed, each of the component securities has a minimum market capitalization of at least $75 million;[5] (2) the average monthly trading volume for each of the five highest weighted component securities in the Index was greater than two million shares over the previous six months; and (3) thirty of the component securities in the Index (81.08%) have standardized options traded on them and thus have met the initial eligibility criteria for standardized options trading set forth in Rule 915.

In addition, thirty of the thirty-seven components in the Index have a monthly trading volume of at least one million shares per month during each of the six months preceding the filing of this proposal. Three of the seven components that do not meet the above requirement, which in the aggregate account for 1.24% of the weight of the Index, have months in which the volume is less than one million shares, but, the volume for those securities has never been less than 500,000 shares in any given month. The other four components that do not meet the monthly trading volume criteria are companies that were the subject of initial public offerings during the last six months and, accordingly, have not yet accumulated at least six months of trading volume data. Each of these four components have had monthly trading volumes for the months or partial months they have traded well in excess of one million shares. Performance Systems International's lowest monthly trading volume since its initial public offering was 3.3 million shares during the month of June. Spyglass Inc.'s monthly volume was 4.1 million shares in the month of June and 5.2 million shares in the month of July. UUnet Technologies lowest monthly volume was 5.9 million shares in the month of June. Netscape Communications, which went public on August 9, 1995, has had a trading volume of 19 million shares through August 14, 1995. The Exchange represents that three of the four components—Netscape Communications; Performance Systems International; and UUnet Technologies—will meet options listing standards as soon as the "Underwriter's Lock-up Periods" expire and sufficient float is available to satisfy options listing standards. Currently, Spyglass Inc. does not have sufficient shares outstanding (5.2 million shares) to qualify for options listing.

The four components that have less than six months of trading volume collectively account for only 4.58% of the Index's value. The Exchange represents that it will continually monitor the trading volume of these four components until each security reaches its six-month anniversary. During this period, if any one of the four components has a monthly trading volume of less than one million shares it will be removed from the Index. Once each component has passed its six-month anniversary, it will be maintained in the Index in accordance with the maintenance criteria set forth below and in Rule 902C, Commentary .02.[6]

The Index is capitalization weighted and no individual component stock in the Index represents more than 25 percent of the weight of the Index, and the top five highest weighted stocks do not constitute more than 50 percent of the weight of the Index.

Maintenance of the Index

The Exchange will maintain the Index in accordance with Rule 901C, Commentary .02 so that (1) the total number component securities will not increase or decrease by more than 33⅓% from the number of components in the Index at the time of its initial listing and in no event will the index have less than nine components; (2) component stocks constituting the top 90% of the Index by weight, must have a minimum market capitalization of $75 million and the component stocks constituting the bottom 10% of the Index, by weight, must have a minimum market capitalization of $50 million; (3) the monthly trading volume of each component security shall be at least 500,000 shares, or for each of the lowest weighted components in the Index that in the aggregate account for no more than 10% of the weight of the Index, the monthly trading volume shall be at least 400,000 shares; (4) the Index must meet the criteria that no single component represents more than 25% of the weight of the Index and that the five highest weighted components represents no more than 50% of the Index as of the first day of January and July in each year; (5) the lesser of the five highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the Index have an average monthly trading volume of at least one million shares over the previous six months; and (6) 90% of the Index's numerical index value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915.

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the

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Broderbund Software/Learning Co.; C-Cube Microsystems; CUC International; Cabletron; Cisco Systems; Compression Labs; Davidson & Associates; Electronic Arts; FTP Software; H&R Block (Compuserve); Metricom; Microtouch; NTN Communications, Inc.; Netcom On-Line Communications; Netscape Communications; Newbridge Networks; NetManage; Novell; Optical Data Systems; PictureTel; Qualcomm; Sierra On-Line; Silicon Graphics, Inc.; Spectrum Holobyte; Spyglass; Stratacom; Sun Microsystems, Inc.; and UUnet Technologies.

[4] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

[5] In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

[6] The Commission believes that, under the circumstances, it is appropriate for the Amex to conclude that the component trading volume requirements set forth in the generic narrow-based criteria have been satisfied in the present proposal, particularly because (1) the four components comprise only 4.58% of the Index's total value; (2) the trading volume of the four components currently meet and must continue to meet the required monthly trading volume requirements set forth in the generic standards; and (3) the options eligibility requirement contained in the generic criteria (*i.e.*, 90% of the index value and 80% of the total number of components must be options eligible) has been met by the Index and provides an additional safeguard that the Index cannot be substantially composed of securities that have a short trading history.

Commission concurs in that determination.

Index Calculation

The Index is market capitalization weighted, where the Index value is calculated by multiplying the primary exchange regular way last sale price of each component security by its number of shares outstanding, adding the sums and dividing by the current index divisor. The Index divisor was initially determined to yield a benchmark value of 200 on August 15, 1995. Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Index will be calculated and maintained by the Amex. A committee consisting of two representatives from the Amex, two representatives from Inter@ctive Week, a biweekly magazine published by Inter@ctive Enterprises L.L.C., and one representative from the digital interactive industry will be available to advise the Exchange when, pursuant to Rule 901C(b), the Exchange substitutes stocks, or adjusts the number of stocks included in the Index, based on changing conditions in the digital interactive industry or in the event of certain types of corporate actions such a merger or takeover which warrants the removal of a component security from the Index. It is anticipated that the committee will meet on a quarterly basis to review possible candidates for removal or inclusion in the Index. The committee meeting will occur after the close of trading and any determination to remove or include a component in the Index will be publicly announced prior to the opening of trading on the following business day. However, in the event the Exchange determines to increase the number of Index component stocks to greater than 48 or reduce the number of component stocks to fewer than 26, the Exchange will submit a 19b–4 filing to the Commission. In selecting securities to be included in the Index, the Exchange, in conjunction with the committee, will be guided by a number of factors including market value of outstanding shares and trading activity and adherence to Rule 901C, Commentary .02.

Expiration and Settlement

The proposed options on the Index will be European style (i.e., exercises are permitted at expiration only), and cash settled. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply. The options on the Inter@ctive Week Internet Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expirations in the three near-term calendar months and in the two additional calendar months in the January cycle. In addition, longer term option series having up to thirty-six months to expiration may be traded. In lieu of such long-term options on a full value Index level, the Exchange may instead list long-term, reduced value put and call options based on one-tenth (1/10) the Index's full value. In either event, the interval between expiration months for either a full value or reduced value long-term option will not be less than six months. The trading of any long term options would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures and all options will have European style exercise. Position limits or reduced value long term Inter@ctive Week Internet Index options will be equivalent to the position limits for regular (full value) Index options and would be aggregated with such options (for example, if the position limit for the full value options is 10,500 contracts on the same side of the market, then the position limit for the reduced value options will be 105,000 contracts on the same side of the market).

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the NASDAQ system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These Rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Inter@ctive Week Internet Index. The Index is deemed to be a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (i.e., within ten points above or below the current index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Rule 904C(c) will result in a position limit of 10,500 contracts with respect to options on this Index.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change complies with the standards set forth in the Generic Index Approval Order, it has become effective pursuant to Section 19(b)(3)(A) of the Act. Pursuant to the Generic Index Approval Order,[7] the Exchange may not list the Amex Inter@ctive Week Internet Index options for trading prior to 30 days after August 23, 1995, the date the proposed rule change was filed with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[7] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–Amex–95–34 and should be submitted by September 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21848 Filed 8–31–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36159; File No. SR–CBOE–95–07]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment to a Proposed Rule Change Relating to Solicited Transactions

August 25, 1995.

I. Introduction

On February 14, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to modify Paragraph (e) of CBOE Rule 6.9 concerning solicited transactions. The proposal would eliminate the requirement that the terms of a matching order be disclosed to the trading crowd before a member or associated person would be permitted to trade based on knowledge of an imminent, undisclosed solicited transaction. The proposed rule change was published for comment and appeared in the **Federal Register** on March 28, 1995.[3] No comments were received regarding the original proposal. On June 22, 1995, the CBOE filed Amendment No. 1 to its proposal.[4] This order approves the proposal, as amended.

II. Description of the Proposal

On November 9, 1994, the Commission approved a CBOE proposal to adopt a new Rule 6.9 that regulates the execution of solicited orders, and sets forth specific priority principles applicable to such orders. In addition, Rule 6.9(e) restricts trading by members and associated persons of members possessing knowledge of imminent undisclosed solicited transactions.[5]

Pargaraph (e) of CBOE Rule 6.9 generally restricts the ability of a member, or an associated person, who has indicated in response to a solicitation an intention to place a responsive order, and anyone aware of that intention, to trade options of the same class as any option that is the subject of the original order, or securities underlying such options, or any related instruments. If either of two conditions is met, however, the restriction does not apply. The first condition is that all the terms of both the original order and the matching order be disclosed to the trading crowd.[6]

The Exchange now proposes to amend paragraph (e) to eliminate the requirement contained in the first condition that the terms of the solicited matching order be disclosed to the trading crowd. Thus, when there has been advance solicitation of the other side of an original order, a member (or associated person) with knowledge of the original order and a matching responsive order is not permitted to trade options of the same class as any option that is the subject of the original order, the securities underlying such options, and any related instruments, until the terms of the original order, and any changes in the terms and conditions of the original order of which the member or associated person has knowledge,[7] are disclosed to the trading crowd; once those terms are disclosed, however, the member or person associated with the member may trade even if the terms of the matching order are not disclosed. The Exchange has stated that this modification would place solicited parties on an equal footing with Exchange members who have knowledge of the terms of the original order only, and would conform the trading restriction in paragraph (e) to the various priority provisions of Rule 6.9, and Interpretation .02 thereunder, which generally require disclosure only of the terms of an original order, not the terms of a matching solicited order.

Finally, the Exchange has proposed adding Interpretation .06 to Rule 6.9. Interpretation .06 states that disclosing all the terms of the original order and any changes in the terms and conditions of the original order to the crowd prior to effecting a trade does not provide a safe harbor from possible violations of front-running prohibitions, and that front-running is considered to be a violation of Exchange Rule 4.1, Just and Equitable Principles of Trade.[8]

III. Discussion

The Commission finds the proposed rule change consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act because the proposal is designed to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. The Commission believes that the CBOE's proposal is appropriate to achieve Rule 6.9's primary purpose of facilitating and regulating solicited transactions without imposing undue restrictions on trading, particularly anticipatory hedge transactions. Under the present rule, once a solicited party has indicated, in response to a solicitation, an intention to place a matching responsive order, such a solicited party may not trade based on knowledge of the impending solicited transaction, even though the original order has been fully disclosed to the crowd, until the solicited order is also disclosed.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 35519 (March 21, 1995), 60 FR 15948.

[4] Amendment No. 1 effects two changes to the Exchange's proposal. First, Paragraph (e) of Rule 6.9 is revised to state explicitly that any change in the terms and conditions of the original order, as it is entered on the trading floor and of which the member has knowledge where there is a matching solicited order, must also be disclosed to the trading crowd before that member or that person associated with a member could permissibly trade an option of the same class as any option that is the subject of the original order, a security underlying such class, or a related instrument. Second, the Exchange proposes adding a new Interpretation .06 to Rule 6.9 stating that disclosing the terms and conditions of the original order any changes to the original order pursuant to Paragraph (e) for Rule 6.9 does not provide a safe harbor from possible front-running prohibitions. Front-running is considered to be a violation of CBOE Rule 4.1. See letter from Timothy Thompson, CBOE, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated June 22, 1995 ("Amendment No. 1").

[5] See Securities Exchange Act Release No. 34959 (November 9, 1994), 59 FR 59446.

[6] The second condition is that the solicited order can no longer reasonably be considered imminent in view of the passage of time since the solicitation.

[7] See Amendment No. 1, *supra* note 4.

[8] *Id.*

The Commission notes that paragraph (e) does not restrict trading by other CBOE members who know the terms of a disclosed original order but who, if solicited, have not indicated an intention to trade at the original order's limit and who are otherwise unaware of any specific matching solicited order. Indeed, such parties may trade under the current rule even though they have good reason to believe that an execution of the original order is imminent based on market circumstances.

The Commission believes that once the terms and conditions of an original order, as well as any changes to the terms and conditions of the original order of which the member or associated person has knowledge,[9] are fully disclosed to the trading crowd, those in the crowd have essentially the same market information as do solicited persons. Moreover, any solicited person who has privately indicated an intention to place a responsive order, and anyone aware of that intention, necessarily remains subject to the risks of the market and the auction process when entering a responsive order or effecting anticipatory trades.

The Commission further believes that the narrower disclosure requirement before granting relief from the trading restrictions described above will provide the trading crowd with a fair and full opportunity to make informed trading decisions without subjecting solicited parties and the solicitation process to overly burdensome restrictions. Nevertheless, the Commission notes that this narrower disclosure requirement does not relieve market participants of the general CBOE requirement that their acts and practices be consistent with just and equitable principles of trade.[10] Thus, disclosing the terms and conditions of the original order, and any changes in the terms and conditions of the original order, to the crowd prior to effecting a trade does not provide a safe harbor from possible violations of front-running prohibitions. The Commission understands that the Exchange will issue a regulatory circular to its members describing the revisions to its solicitations rule.

Finally, the Commission notes that the Exchange's proposal relates only to the provision in the solicitations rule that restricts trading based on knowledge of an imminent undisclosed transaction. Thus, the Exchange's proposal does not affect the priority rules governing solicited transactions.[11]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 revises Paragraph (e) of Rule 6.9 by making it clear that any change in the terms and conditions of the original order must be disclosed to the crowd before a member or associated person with knowledge of such terms and conditions can enter into related transactions. Amendment No. 1 also adds Interpretation .06 to Rule 6.9 to make clear that Paragraph (e) of Rule 6.9 does not provide a safe harbor from possible violations of front-running prohibitions.[12]

The Commission believes that these changes serve to strengthen and clarify the Exchange's proposals. Specifically, the revision to Rule 6.9, Paragraph (e) addresses the concern that if changes to the original order have not been disclosed to the trading crowd, then the trading crowd would be at a disadvantage relative to the solicited party who has knowledge of the changes to the terms of the original order. New Interpretation .06 clarifies that CBOE Rule 4.1 continues to be applicable to Rule 6.9, notwithstanding the provisions of Paragraph (e) of Rule 6.9. Accordingly, the Commission believes that Amendment No. 1 raises no new or unique regulatory issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act[13] to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–07 and should be submitted by September 22, 1995.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–CBOE–95–07), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21702 Filed 8–31–95; 8:45 am]

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[9] *Id.* If the changes to the original order were not disclosed to the trading crowd, then the trading crowd would still be at a disadvantage to the solicited person who did have knowledge of the changes to the terms of the original order. The solicited person with knowledge of the changes to the original order then would have the opportunity to benefit from this knowledge that the trading crowd did not have. Thus, under the CBOE's proposal, all trading based on that knowledge is prohibited until the information is disclosed to the trading crowd. *Id.*

[10] See CBOE Rule 4.1.

[11] For example, under the priority rules, when an original order is disclosed in advance of a solicitation, and the matching order both matches the disclosed original order's limit and improves the market, the matching order has priority over other orders in the crowd (subject to customer limit order book priorities set forth in Rule 6.45). See CBOE Rule 6.9(b). Similarly, when a matching order does not match the original order's limit and does not improve the market, it does not have priority over other bids and offers represented in the crowd even if the original order was disclosed to the crowd for the full solicitation period. See CBOE Rule 6.9(c).

[12] See Amendment No. 1. *supra* note 4.

[13] 15 U.S.C. 78f(b)(5) and 78s(b)(2) (1988).

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36160; International Series Release No. 845; File No. SR–CBOE–95–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 To Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options on the Mexico 30 Index

August 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 21, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to provide for the listing and trading on the Exchange of options on the Mexico 30 Index ("Mexico Index" or "Index"), a cash-settled broad-based index with European-style exercise. The CBOE amended the proposal on August 25, 1995 in order to provide more background information on the Mexican stock market and to establish additional Index maintenance criteria.[1]

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on the Mexico 30 Index.[2] The Index is comprised of 30 representative stocks of the Mexican Stock Exchange ("Bolsa").[3] CBOE believes that options on the Index will provide investors with a low-cost means of participating in the performance of the Mexican economy and a hedging mechanism against the risk of investing in that economy. The CBOE represents that the Index is deemed to be an index option under Rule 24.2 and a broad-based index under Rule 24.1(i)(1).

Index Design. The Index was designed by and is maintained by the CBOE and the Chicago Mercantile Exchange ("CME"). CBOE represents that the 30 stocks comprising the Index were selected for their high market capitalization and their high degree of liquidity, and further believes that they are representative of the industrial composition of the broader Mexican equity market. The Mexico Index is composed of 15 broad industry groups, including building materials, diversified holding companies, and telecommunications.

The Index is weighted by the market capitalization of the component stocks, however, at the time of a semi-annual review (occurring after the close on expiration Fridays in December and June) the Index will be adjusted, if necessary, to ensure that no single component shall have a weight in the Index greater than 25%. For example, on June 16, 1995, the most recent review date, Telefonos de Mexico ("TMX") would have had a weight of 30.41% of the Index. To reduce TMX's weight, the Exchange reduced the number of outstanding TMX shares used in the calculation of the Index from 8.0375 billion to 6.1303 billion.

The total capitalization of the Index as of July 31, 1995 was $46.21 billion, which represents 49.35% of the overall capitalization of the Mexican Bolsa. The median capitalization of the stocks in the Index on July 31, 1995, was 4.507 billion Pesos ($737 million at the exchange rate of 6.115 pesos per dollar prevailing on July 31, 1995). The average market capitalization of these stocks was $1.54 billion on the same date (using the same rate of exchange). The individual market capitalization of these stocks ranged from $156 million (Grupo Sidek-B) to $13.3 billion (Telmex) on July 31, 1995. The largest stock accounted for 23.61% of the Index, while the smallest accounted for 0.36%. The top five stocks in the Index by weight accounted for 55.02% of the Index. CBOE represents that upon each semi-annual review of the Index, the Exchange shall make any necessary modifications to ensure that the top three weighted stocks in the Index by weight may not account for more than 45% of the Index at the time of a semi-annual review.[4] The average daily volume in the component securities for the period from February 1995 through July 1995, ranged from a low of approximately 9,270 shares to a high of 14,123,392 shares, with an average daily trading volume for all components of the Index of approximately 1,479,390 shares per day.

Calculation. The value of the Index is determined by multiplying the price of each stock times the number of shares outstanding, adding those sums and dividing by a divisor which gives the Index a value of 200 on its base date of January 3, 1995. This divisor is adjusted for pertinent changes as described below in the section titled "Maintenance." The Index had a closing value of 203.07 on July 31, 1995.

Maintenance. The Index will be maintained by the CBOE and CME. To maintain continuity of the Index, the divisor of the Index will be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, changes in the number of shares outstanding, spin-offs, certain rights issuances, and mergers and acquisitions. The composition of the Index will be reviewed periodically and the Exchanges may make component changes at any time.

Index Option Trading. The Exchange proposes to base trading in options on the Index on the full value of the Index as expressed in U.S. Dollars. The Exchange also may provide for the listing of full-value long-term index option series ("LEAPS®") and reduced-value LEAPS on the Index. For reduced-value LEAPS, the underlying value would be computed at one-tenth of the value of the Index. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth. The trading hours for options on the Index will be from 8:30 a.m. Chicago time to 3:15 Chicago time. Bridge Information Systems ("Bridge") will calculate the value of the Index every fifteen seconds throughout the trading day and disseminate the Index value through the Options Price Reporting Authority ("OPRA").[5] Bridge obtains quotes and trade information on a real-time basis directly through the Bolsa through an electronic feed. Accordingly, the value of the Index will be based upon the prices of the components as traded or quoted on the Bolsa.[6] Finally, CBOE represents that it has the necessary systems capacity to support new series that would result from the introduction of Mexico 30 Index options. CBOE has been informed that OPRA has the capacity to support such new series.[7]

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[1] See Letter from Eileen Smith, CBOE, to Steve Youhn, SEC, dated August 25, 1995.

[2] A European-style option may only be exercised during a specified period before expiration.

[3] The components of the Index are Alfa SA–A; Apasco SA; Grupo Casa Autrey; Banacci-B; Grupo Carso-A1; Controla Com M–B; Cemex SA–B; Cifra SA–C; Desc SA–B; Empresas Moderna–A; Fomento Econ M–B; Grupo Embotelladoro Mexico; Grupo Financiero Bancomer-B; Grupo Financiero Serfina-B; Grupo Gigante; Grupo Modelo-C; Grupo Mexico-B; Grupo Tribasa-CPO; Hylsamex SA–BCP; Empresas ICA; Iusacell; Kimberly-Clark M–A; Coca-Cola Femsa; Grupo Industrial Maseca-B; Grupo Sidek-B; Tubos De Acero; Telefonos De Mexico-L; Tolmex SA–B2; Grupo Telev-CPP; Vitro SA.

[4] See Amendment No. 1. As of July 31, 1995, the top three stocks represented 43.6% of the weight of the Index.

Exercise and Settlement. The trading hours of the Bolsa are the same as those of the New York Stock Exchange, 8:30 a.m. through 3:00 p.m. Chicago time. The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month and trading in the expiring contract month on CBOE will normally cease on Friday at 3:15 p.m. (Chicago time) unless a holiday occurs. The exercise settlement value of Index options at expiration will be determined at the close of the regular Friday trading sessions in Mexico. If a stock does not trade during this interval or if it fails to open for trading, the last available price of the stock will be used in the calculation of the Index. When expirations are moved in accordance with Exchange holidays, such as when the CBOE is closed on the Friday before expiration, the last trading day for expiring options will be Thursday and the exercise settlement value of Index options at expiration will be determined at the close of the regular Thursday trading sessions in Mexico even if the Mexican markets are open on Friday. If the Mexican markets will be closed on the Friday before expiration but the CBOE will not, the last trading day for expiring options will be Thursday.

Surveillance Agreements. The Exchange expects to apply its existing index option surveillance procedures to Index options. In addition, the Exchange is aware of a Memorandum of Understanding ("MOU") between the Commission and the Comision Nacional Bancaria y deValores. This MOU will enable the Commission to obtain information concerning the trading of the component stocks of the Mexico 30 Index. The Exchange also will make every effort to enter into an effective surveillance agreement with the Bolsa.

Position Limits. The Exchange is proposing to establish position limits for Mexico 30 Index options equal to 50,000 contracts on the same side of the market, with no more than 30,000 contracts in the series with the nearest expiration date. According to the Exchange, these limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices. Ten reduced-value options will equal one full-value contract for such purposes.

Exchange Rules Applicable. Except as modified herein, the Rules in Chapter XXIV will be applicable to Mexico 30 Index options.

2. *Statutory Basis*

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in options based on the Mexico 30 Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW. Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–45 and should be submitted by September 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21701 Filed 8–31–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36156; File No. SR–NYSE–95–22]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Exchange's Wireless Data Communications Initiatives

August 25, 1995.

I. Introduction

On June 1, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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[5] See Amendment No. 1.

[6] Telephone conversation between Eileen Smith, CBOE, and Steve Youhn, SEC, on August 25, 1995.

[7] *See* Letter from Joe Corrigan, OPRA, to Eileen Smith, CBOE, dated August 1, 1995.

[8] 17 CFR 200.30–3(a)(12) (1994).

("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to introduce into its trading floor wireless data communications technology that allows a member in a trading crowd or elsewhere on the floor to communicate with others by means of a hand-held wireless device. The Exchange also proposed an interpretation with respect to NYSE Rule 117 which requires members' orders to be in writing.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35931 (June 30, 1995), 60 FR 35767. No comments were received on the proposal.

II. Description of the Proposals

The Exchange's proposed wireless data communications technology involves the floor-based use of wireless hand-held data communication devices. The Exchange proposes to implement a four-phase process to integrate the new technology into the floor environment ("NYSE Plan").[3] The Exchange's basic operating premise is to allow private vendors to provide wireless data communications services to Exchange members on the floor, but only in a manner that treats members equitably and does not unfairly discriminate among members. The Exchange also proposes to provide its own wireless data communications service on a non-discriminatory basis.

Phase I, which has been completed, allowed the Exchange to supervise and monitor three "proof-of-concept" pilot programs on the floor to the Exchange.[4] Each of the programs tested the viability of the operation and functionality of wireless hand-held data devices on the floor. Members participating in the pilot programs were instructed to use the devices strictly for the purposes of evaluating the devices and to compare results that might have been achieved had the devices been used for actual trading purposes with results from actual trades using traditional paper tickets, telephones and the like.

Phase II will involve additional, more structured, pilot testing of independent wireless data communications services, including that offered by the Exchange. A prototype of the infrastructure that will be required to be installed in order to support the wide-scale use of the wireless hand-held data devices will be used to support the Phase II pilot programs.

In Phase III, the Exchange will conduct on the floor a pre-production pilot test of its wireless data communications system infrastructure. The Exchange will design that infrastructure to use the 2.4 Ghz radio frequency band and to support all hand-held device wireless data communications services of the Exchange and vendors. The Exchange will select an integrator to assist in the design, installation, testing and maintenance of the infrastructure.[5] In addition, the Exchange plans to allow its wireless data communication service to interface with the Exchange's Broker Booth Support System.

In Phase IV, the Exchange will have installed and tested the infrastructure and moved its own wireless data communications system to the infrastructure. At that point, the Exchange will have commenced the production roll-out of the wireless data communications infrastructure and will have directed all vendors to migrate their systems to the infrastructure. All authorized vendors will be permitted to offer their wireless data communications services (and the Exchange will offer its own system) to such number of members as their respective systems can accommodate. At that point, the floor-based wireless data communications technology should be available to all members.

Implementation of the NYSE's Plan will affect Exchange Rule 117 which prohibits members on the floor of the Exchange from making a bid, offer or transaction for or on behalf of another member except pursuant to a written order.[6] The Exchange is proposing an interpretation[7] that will deem a transmission of an order that a member located on the floor of the Exchange receives by means of an authorized hand-held device to constitute a "written order" for the purposes of Rule 117 if the member can show that the transmission of the order:

(i) Provides adequate information relating to the price, size and time of the order, the cancellation of the order, and the like;[8]

(ii) Satisfies the Exchange's audit trail requirements; and

(iii) Satisfies all other Exchange reporting and recordkeeping requirements.[9]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission believes that the NYSE Plan should foster coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by expediting and making more efficient the process by which members receive and execute orders on the floor of the Exchange.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A detailed description of the wireless communication plan and its requirements are set out in Securities Exchange Act Release No. 35931 (June 30, 1995), 60 FR 35767 (July 11, 1995).

[4] One pilot program was conducted by the Exchange and the other two were conducted by member-sponsored, private wireless data communications vendors.

[5] The Exchange plans to have the integrator define requirements, analyze technology and design the infrastructure during Phase II.

[6] Rule 117 also provides that if a member to whom an order has been entrusted leaves the trading crowd without actually transferring the written order to another member, the order shall not be represented in the market during his absence. The use of wireless data communications devices does not affect this portion of Rule 117. If a member receives an order by means of a transmission to his wireless device and he leaves a trading crowd without transferring a written version of the order to another member, the order may not be represented in the market in his absence.

[7] The Exchange intends to notify its members of this interpretation through an information memo.

[8] All orders entered from off the floor must be transmitted to a booth terminal before they are retransmitted to a hand-held device.

[9] In the case where an order is transmitted electronically from a member's off-floor location to a booth terminal and then the order is retransmitted from the booth terminal to a member's hand-held device, a record must be established and maintained which reflects the time the order was received by the booth terminal and the time the order was received by the hand-held device. The record of time of receipt by the booth terminal may be established and maintained by such terminal or by a server which records the time such terminal acknowledges receipt of the order. The booth terminal must display the order (and the time of receipt, on inquiry) and the automated record of the order (including time of receipt) must be supplemented by a paper record of the order at the booth. If the paper record cannot be produced at the booth terminal, it must then be produced by hand. The record of time of receipt by a hand-held device may be established and maintained by such device or by the server or the booth terminal which receives a message acknowledgement from the hand-held device. Regardless of whether the hand-held device records are maintained in such device or in the booth terminal or a server, such records must be capable of being printed at the booth location.

[10] 15 U.S.C. 78f(b).

The Commission also believes that the NYSE's Plan to phase in the wireless technology is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers. Before implementing Phase II of the NYSE Plan, each of the vendors of the pilot programs must describe its procedures for selecting the 25 participants that will participate in its program. These procedures must provide a fair and non-discriminatory environment and must comply with the Exchange's selection requirements. For example, each vendor must demonstrate to the Exchange that it is willing and able to offer any member who wishes to use that vendor's system the opportunity to participate in the vendor's pilot program, subject to (i) The capacity constraints of the vendor's system, (ii) reasonable lead-time that the vendor may need to bring new users on-line and (iii) the NYSE Plan limit of 25 participants per pilot program. Each vendor is required, among other things, to offer its service in a reasonable manner that does not give the vendor (if it is also a member), or a member that is a sponsor or affiliate of the vendor, an unfair advantage over other Exchange members. In addition, the Exchange will prohibit a vendor from providing its pilot program to any member that primarily trades [11] in one stock unless and until (i) The vendor is prepared to provide its service to all members who primarily trade in the same stock and who desire to participate in the pilot program or (ii) the Exchange otherwise permits. Moreover, the Exchange will develop procedures for selecting its own pilot program participants on the same basis. The Commission believes that these procedures and limitations will result in a fair implementation of the NYSE Plan.

Finally, the Commission believes that the proposed interpretation to Rule 117, under which the transmission of an order that is received by means of an authorized hand-held device will be deemed to constitute a "written order" for purposes of Rule 117, in general, protects investors and the public interest. The proposed interpretation provides that an order recieved through a hand-held device will be considered a "written order" only if it meets the specified requirements, concerning the information to be maintained about the order. The Commission believes the proposed interpretation to Rule 117 will provide a more efficient means of communicating orders on the floor at the same time it requires the same information that is currently available for orders processed manually.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–95–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21756 Filed 8–31–95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–36158; File No. SR–PSE–95–16]

Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Order Granting Approval To Proposed Rule Change and Amendment No. 1 To Proposed Rule Change Relating to Violations of the Intermarket Trading System Rules

August 25, 1995.

On June 8, 1995, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Minor Rule Violation Plan ("MRP") [3] to include violations of the Intermarket Trading System ("ITS") rules. On June 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[4]

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 35959 (July 12, 1995), 60 FR 36849 (July 18, 1995). No comments were received on the proposal.

The Exchange's MRP, set forth in PSE Rule 10.13, provides that the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member or member organization, for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. Rule 10.13 includes a list of rule violations that are eligible for the expedited disciplinary procedure under the MRP and that may be the subject of fines in accordance with the Recommended Fine Schedule.

The Exchange proposes to amend its MRP by adding the following provision to the MRP as Rule 10.13(i)(9): "Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System (ITS) (PSE Rules 5.20–5.23)." The Exchange is also proposing to amend its Recommended Fine Schedule to establish the following recommended fines (on a running two-year basis) for violations of the ITS rules and regulations: $500 for a first-time violation; $1,000 for a second-time violation; and $2,000 for a third-time violation.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, and with the Section 6(b)(6) requirement that the rules of an exchange provide that its members be appropriately disciplined for violations of an exchange's rules and the Act.

Specifically, the Commission believes that an exchange's ability to effectively enforce compliance by its members and member organizations with the Commission and Exchange rules is central to its self-regulatory functions. The inclusion of a rule in an exchange's minor rule violation plan, therefore, should not be interpreted to mean that it is not an important rule. On the contrary, the Commission recognizes that the inclusion of minor violations of particular rules under a minor rule violation plan may make the exchange's disciplinary system more efficient in prosecuting more egregious and/or repeated violations of these rules, thereby furthering its mandates to protect investors and the public interest.

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[11] The Exchange deems a member to "primarily trade in one stock" if more than 50 percent of either his trades or share volume occur in that stock. The Exchange will base determinations of percentages of trades and share volumes on, among other things, the Exchange's audit trail data.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 U.S.C. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Rule 19d–1(c)(2) under the Act, 17 CFR 240.19d–1(c)(2), authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. The PSE's Plan was approved by the Commission in Securities Exchange Act Release No. 22654 (Nov. 21, 1985), 50 FR 48853 (Nov. 27, 1985).

[4] *See* letter from Michael Pierson, Senior Attorney, PSE, to Jennifer S. Choi, Attorney, SEC, dated June 23, 1995. Amendment No. 1 withdrew the proposed changes to the Equity Floor Procedure Advice 2–B because these changes have been approved already by the Commission. *See* Securities Exchange Act Release No. 34760 (Sept. 30, 1994), 59 FR 50950 (Oct. 6, 1994) (approving File No. SR–PSE–94–13).

[5] For a discussion of the Exchange's Recommended Fine Schedule, see Securities Exchange Act Release No. 34322 (July 6, 1994), 59 FR 35958 (July 14, 1994).

[6] 15 U.S.C. 78f(b) (1988 & Supp. v 1993).

The Commission believes that adding the provisions listed above to the Exchange's MRP is consistent with Sections 6(b)(5) and 6(b)(6) in that the purpose of the Exchange's MRP is to provide for a response to a violation of Exchange rules when a meaningful sanction is needed, but when initiation of a disciplinary proceeding pursuant to Exchange Rule 10.3 [7] is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the nature of the violation. Rule 10.13 provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified required procedures.[8]

Moreover, the Commission finds that violations of the provision being added are objective and technical in nature, and easily verifiable, thereby lending themselves to the use of expedited proceedings. Noncompliance with the provisions may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings. If, however, the Exchange determines that a violation of one of these rules is not minor in nature, the Exchange retains the discretion to initiate full disciplinary proceedings in accordance with Exchange Rule 10.3. The Commission expects the PSE to bring full disciplinary proceedings in appropriate cases (*e.g.*, in cases where the violation is egregious or where there is a history or pattern of repeated violations).

Finally, the Commission finds that the imposition of the recommended fines for violations of the ITS rules and regulations should result in appropriate discipline of members, in a manner that is proportionate to the nature of such violations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PSE–95–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21703 Filed 8–31–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–21321; File No. 812–9614]

Glenbrook Life and Annuity Company, et al.

August 25, 1995.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Glenbrook Life and Annuity Company ("Company"); Glenbrook Life and Annuity Company Variable Annuity Account ("Variable Account"); and Allstate Life Financial Services, Inc. ("ALFS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge imposed under certain variable annuity contracts ("Contracts") and any other variable annuity contracts that the Company may issue that are substantially similar in all material respects to the Contracts ("Materially Similar Contracts"), from the assets of the Variable Account or any other separate account established in the future by the Company in connection with the offering of Materially Similar Contracts. Applicants also request that the exemptions apply to registered broker-dealers other than ALFS, in the event of change in the identity of the principal underwriter for the relevant contracts.

FILING DATES: The application was filed on May 22, 1995.

HEARING AND NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. However requests should be received by the Commission by 5:30 p.m., on September 19, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Michael J. Velotta, Vice President, Secretary and General Counsel, Glenbrook Life and Annuity Company, 3100 Sanders Road, J5B, Northbrook, Illinois 60062.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company, a stock life insurance company incorporated under Illinois law, is a wholly owned subsidiary of Allstate Life Insurance Company ("Allstate Life"). Allstate Life is a wholly owned subsidiary of Allstate Insurance Company which is an indirect subsidiary of Sears, Roebuck and Co.

2. On December 15, 1992, the Company established the Variable Account as a segregated investment account to fund variable annuity contracts to be issued by the Company. The Variable Account is registered as a unit investment trust under the 1940 Act.

3. ALFS, a wholly owned subsidiary of Allstate Life, is the principal underwriter for the Contracts. It is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

4. Purchase payments under the Contracts may be allocated, according to a Contractowner's instructions, to one or more of the Sub-Accounts of the Variable Account (or to one of the fixed accumulation options under the Contracts). The initial purchase payment must be at least $3,000 ($2,000 for qualified contracts). Subsequent purchase payments must be $50 or more. Each Sub-Account will invest

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[7] PSE Rule 10.3 governs the initiation of disciplinary proceedings by the Exchange for violations within the disciplinary jurisdiction of the Exchange.

[8] The MRP permits any person to contest the Exchange's imposition of the fine through submission of a written answer, at which time the matter will become a formal disciplinary action.

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1994).

solely in shares of a registered open-end management investment company (or series thereof).

5. If the Contractowner (Annuitant, if the Contractowner is not a natural person) dies before annuity payments begin, a death benefit is payable under the Contracts. The death benefit is based on the largest of the following amounts: the Contract value on the date the Company receives a proper request for payment, and the Contract values on the issue date and every seventh anniversary of that date, plus purchase payments and less withdrawals subsequent to such anniversary. The death benefit will never be less than the total purchase payments made, less withdrawals.

6. The Company will deduct a Contract Maintenance Charge of $30.00 per year from each Contractowner's Contract value to reimburse the Company for its costs in maintaining the Contract and the Variable Account. This charge is waived if the total purchase payments are $25,000 or more or if the entire Contract value is allocated to the fixed options under the Contract. The Company does not expect to realize a profit from this charge. The amount of the charge is guaranteed not to increase over the life of the Contract.

7. The Company will also deduct an Administrative Expense Charge which is an amount equal on an annual basis to .10% of the daily net assets in the Variable Account. This charge is designed to cover actual administrative expenses which exceed the revenues from the Contract Maintenance Charge. The Company does not intend to profit from this charge. The Company believes that the Administrative Expense Charge and Contract Maintenance Charge have been set at a level that will recover no more than the actual costs associated with administering the Contract. The Company guarantees that the rate of the Administrative Expense Charge will not increase over the life of the Contract.

8. The Contractowner may withdraw his or her Contract value at any time before the earlier of the annuity start date or the Contractowner's or Annuitant's death. No withdrawal Charges will be deducted on amounts up to 10% of the Contract value on the date of the first withdrawal in a Contract year ("Free Withdrawal Amount"). Amounts surrendered in excess of the Free Withdrawal Amount may be subject to a Withdrawal Charge. Free Withdrawal Amounts that are not withdrawn in a Contract Year are not carried over to later Contract Years for purposes of determining the Free Withdrawal Amount in such later years. For purposes of calculating the amount of the Withdrawal Charge, withdrawals are assumed to come from purchase payments first, beginning with the oldest payment. Withdrawals made after all purchase payments have been withdrawn will not be subject to a Withdrawal Charge.

9. Withdrawal Charges will be applied to purchase payments withdrawn (less any available Free Withdrawal Amount) as set forth below:

Number of complete years since purchase payment being withdrawn was made	Applicable withdrawal charge percentage
0 years	7
1 year	6
2 years	5
3 years	4
4 years	3
5 years	2
6 years	1
7 years or more	0

The Withdrawal Charge may be reduced or waived under circumstances described in the prospectus for the Contracts.

10. Pursuant to the Contracts, the Company deducts a daily Mortality and Expense Risk Charge equal at an annual rate of 1.25% of the assets of each Sub-Account of the Variable Account. The level of this charge is guaranteed not to increase.

Approximately .85% of this charge is allocated to the Company's assumption of mortality risk and approximately .40% to the assumption of expense risk. According to the application, the mortality risk arises from the Company's guarantee to cover all death benefits and to make annuity payments in accordance with the tables contained in the Contracts. The expense risk arises from the possibility that the Contract Maintenance Charge and the Administrative Expense Charge, which are guaranteed not to increase, will be insufficient to cover actual administrative expenses.

11. The Company reserves the right to assess a $10.00 charge on each transfer among the Sub-Accounts in excess of 12 per Contract year. However, it is currently not assessing such a charge.

12. The Company also reserves the right to deduct state premium taxes or other similar policy-holder taxes relative to the Contract when annuity payments begin or when a total withdrawal occurs.

Applicant's Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a) and 27(c)(2) of the 1940 Act, taken together, provide for the protection of the assets of investment companies that issue periodic payment plan certificates. Section 27(c)(2) of the 1940 Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificates unless all proceeds of payments (other than sales load) are deposited with a qualified bank acting as trustee or custodian, and held under an indenture or agreement containing specified provisions. Section 26(a) of the 1940 Act requires that such indenture or custodianship agreement provide, among other things, that such bank shall not allow as an expense any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants request that an exemption from Sections 26(a)(2)(C) and 27(c)(2) be granted to the extent necessary to allow the Company to deduct the Mortality and Expense Risk Charge described above from the assets of the Variable Account. Applicants further request that such exemption permit the deduction of a mortality and expense risk charge under any Materially Similar Contracts that the Company may issue from the Variable Account or, in the case of Materially Similar Contracts funded through another separate account established by the Company, such other separate account. Finally, Applicants requests that such relief will also be applicable in the event that a registered broker-dealer other than ALFS serves as the principal underwriter for the Contracts or Materially Similar Contracts.

4. Applicants submit that the requested order would promote competitiveness in the variable annuity contract market by eliminating the need for the Company to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having repeatedly to seek exemptive relief would impair the Company's ability effectively to take

advantage of business opportunities as these opportunities arise. Applicants further submit that the requested relief is consistent with the purposes of the Act and the protection of investors for the same reasons. Applicants assert that if the Company were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby.

5. Applicants represent that the mortality risk is assumed by virtue of the annuity rates which cannot be changed after issuance of the Contract and the death benefit guaranteed in the Contract. Also, because the Contract Maintenance Charge and the Administrative Expense Charge will not increase regardless of the actual costs incurred, the Company assumes an expense risk. If the Mortality or Expense Risk Charge is insufficient to cover the actual costs, the Company will bear the loss. To the extent that the charge is in excess of actual costs, the Company, at its discretion, may use the excess to offset losses when the charge is not sufficient to cover expenses.

6. Applicants assert that the Mortality and Expense Risk Charge is reasonable in relation to the risks assumed by the Company under the Contracts, and is consistent with the protection of investors insofar as it is designed to be competitive while not exposing the Company to undue risk of loss. Applicants also represent that the Mortality and Expense Risk Charge is reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is based on their analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. The Company will maintain at its home office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Company's comparative survey. Similarly, prior to relying on the exemptive relief requested herein with respect to any Materially Similar Contracts funded by the Variable Account or other separate account established by the Company, Applicants will determine that the mortality and expense risk charge under such Materially Similar Contracts will be reasonable in relation to the risks assumed by the Company and reasonable in amount as determined by industry practice with respect to comparable annuity products. The Company will maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making these determinations.

7. Applicants acknowledge that the Withdrawal Charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the Mortality and Expense Risk Charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the Withdrawal Charge. The Company has concluded, however, that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contractowners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its administrative offices and will be available to the Commission. Similarly, prior to relying on any exemptive relief granted herein with respect to any Materially Similar Contracts issued by the Variable Account or other separate accounts established by the Company, Applicants will determined that there is a reasonable likelihood that the distribution financing arrangement will benefit the Variable Account (or such other separate account) and its investors. The Company will maintain and make available to the Commission upon request a memorandum setting forth the basis of such determination.

8. The Company represents that the Variable Account (and any other separate account of the Company that relies on the relief sought in this application) will invest only in management investment companies which undertake, in the event such company adopts a plan pursuant to Rule 12b–1 adopted under the 1940 Act to finance distribution expenses, to have their board of directors (or trustees), a majority of whom are not interested persons of such company, formulate and approve any such plan under Rule 12b–1.

Conclusion

Based upon the facts and for the reasons set forth above, Applicants submit that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21700 Filed 8–31–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21322; File No. 812–9420]

Great-West Life & Annuity Insurance Company, et al.

August 28, 1995.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for amendment to order granting exemptions pursuant to the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Great-West Life & Annuity Insurance Company (the "Company"), The Great-West Life Assurance Company ("Great-West Life") and FutureFunds Series Account (the "Separate Account").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act to amend order granting exemptions from the provisions of Sections 26(a) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an amendment to an order that permits deduction of mortality and expense risk charges from the assets of the Separate Account in connection with the issuance and sale of certain group variable annuity contracts ("Existing Contracts").[1] The amendment will permit the deduction of mortality and expense risk charges from the assets of any other separate account established in the future by the Company ("Future Accounts," together with the Separate Account, "Accounts"), in connection with the issuance of certain group variable annuity contracts that are substantially similar in all material respects to the Existing Contracts ("Future Contracts," together with Existing Contracts, "Contracts").

FILING DATE: The application was filed on January 9, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30

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[1] See *Great-West Life & Annuity Insurance Company, et al.*, Inv. Co. Act Rel. No. 13998 (June 19, 1984) (notice) and Inv. Co. Act. Rel. No. 14038 (July 17, 1984) (order); file no. 812–5818.

p.m. on September 18, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Beverly A. Byrne, Assistant Counsel, Great-West Life & Annuity Insurance Company, Great-West Life Center, 8515 East Orchard Road, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Brenda D. Sneed, Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicant's Representations

1. The Company is a stock life insurance company originally organized under the laws of the State of Kansas as the National Interment Association. In September of 1990, the Company redomesticated and is now organized under the laws of the State of Colorado. The Company, a wholly-owned subsidiary of Great-West Life, is licensed to sell insurance and annuities, and is qualified to do business in 49 states and the District of Columbia.

2. The Separate Account was established by the Company under the laws of the State of Kansas on November 15, 1983. As a result of the Company's redomestication to Colorado, the Separate Account now exists pursuant to Colorado law.

3. Great-West Life, a life insurance company organized under the laws of Canada, is the principal underwriter of the Existing Contracts. Great-West Life is registered with the Commission as a broker-dealer pursuant to the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the National Association of Securities Dealers, Inc. The Existing Contracts are offered through licensed insurance agents of the Company who are registered representatives of either Great-West Life of a broker-dealer registered pursuant to the 1934 Act with which Great-West Life has entered into a dealer agreement.

4. The Separate Account is an investment account of the Company which acts as a funding vehicle for the Existing Contracts. The assets of the Separate Account are owned by the Company, but segregated from the other assets of the Company, and the obligations under the Existing Contracts are obligations of the Company. The income, gains and losses incurred on the assets in the Separate Account, whether or not realized, are credited to or charged against the Separate Account without regard to other income, gains or losses of the Company.

5. The Separate Account currently has seventeen investment divisions ("Investment Divisions") available for the purpose of investing contributions ("Contributions") by, or on behalf of, participants in the group ("Participants") received under the Existing Contracts. Each Investment Division invests solely in a corresponding portfolio of Maxim Series Fund, Inc., TCI Portfolios, Inc. or Fidelity Variable Insurance Products Fund, each of which has a different investment objective.

6. The Existing Contracts provide that, prior to the annuity commencement date, Contributions can accumulate on a variable basis, fixed basis, or a combination of both. Participants of Existing Contracts allocate Contributions to the Investment Divisions of their choice. The value under an Existing Contract varies with the investment performance of the applicable Investment Divisions of the Separate Account. Therefore, the owner of an Existing Contract, rather than the Company, assumes the risk of investment gain or loss on investments.

7. Participants of Existing Contracts may specify the date on which they desire annuity payments to begin, and may later change the date through a written request. The Existing Contracts offer several annuity options payable on a variable basis, a fixed basis, or a combination of both.

8. The Existing Contracts provide that the Company may deduct an annual contract maintenance charge of not more than sixty dollars from each Participant's account.

9. The Company currently intends to itself pay any premium tax relating to the Existing Contracts that is levied by any governmental entity, but has reserved the right to deduct any such tax from account values after giving notice to all Participants.

10. No sales charge is deducted from purchase payments, however, a contingent deferred sales charge ("CDSC") is deducted upon total or partial surrender of an Existing Contract, other than at death or annuitization. In some circumstances an amount against which a CDSC is not assessed ("Free Amount") applies. The Free Amount applicable to a given Existing Contract will not exceed ten percent of the Participant's annuity account value on December 31 of the prior year. All distributions in excess of an applicable Free Amount during a calendar year, are subject to a CDSC.

11. The amount of CDSC, which in no event will exceed 8.5%, is as follows:

(1) the CDSC equals 6% of the amount distributed in excess of the Free Amount (though the cumulative total of all such charges will not exceed 6% of all Contributions made within 72 months prior to the date of the particular distribution), for: (i) Section 401(k) retirement plans where the employer does not also maintain a Section 403(b) or Section 457 group contract with the Company; (ii) Section 401(a) plans where the employer also maintains a Section 403(b) group contract; and (iii) Section 403(b) retirement plans, other than employer-sponsored plans issued after May 1, 1992;

(2) For: (i) group contracts issued in exchange for group tax-sheltered annuity or group deferred compensation annuity contracts of Great-West Life, and (ii) Section 457 group contracts issued prior to May 1988 and not amended; the total of all CDSCs will not exceed (a) 6% of an amount equal to all Contributions made within 72 months prior to the date of the particular distribution, plus (b) an amount which is the result of multiplying the amount initially applied to a Participant annuity account from the exchanged contract by an appropriate percentage, or an amount equal to a percentage of the amount distributed in excess of the Free Amount, as chosen from the following chart:

No. of years of coverage of the participant	Percentage
Less than 5	6.
At least 5 but less than 10	5.
At least 10	4;

and.

(3) For: (i) Section 403(b) employer-sponsored plans issued after April 30, 1992; (ii) Section 457 group contracts issued after April 30, 1988; (iii) Section 457 group contracts issued prior to May 1988 but amended to incorporate this provision; and (iv) Section 401(a) plans where the employer also maintains a Section 457 group contract; the CDSC on amounts distributed in excess of the Free Amount will vary based on the following table.

No. of years of participation in the separate account	Percentage
0–4	5
5–9	4
10–14	3
15 or more	0

12. The Company assumes mortality and expense risks under the Existing Contracts because of its contractual obligation to make annuity payments, in the case of a life annuity, regardless of how long an annuitant may live. The mortality risk is the risk that, upon selection of a life annuity which has a life contingency, annuitants will live longer than the Company's actuarial projections indicate, resulting in higher than expected annuity payments. The expense risk is the risk that actual administrative expenses involved in administering the Existing Contracts may exceed the anticipated administrative expenses.

13. As compensation for assuming these mortality and expense risks, the Company assesses a daily charge at an annual effective rate of 1.25% of the net asset value of the Separate Account ("Mortality and Expense Risk Charge").

14. When the accounts derived from the Mortality and Expense Risk Charge are insufficient to cover the actual costs resulting from the mortality and expense risk, the Company bears the costs and realizes a loss. When the amounts derived from the Mortality and Expense Risk Charge are more than sufficient, the excess is a profit that is added to the Company's surplus and used for any lawful purpose, including the costs of distributing the Existing Contracts.

Applicants' Legal Analysis and Conditions

1. Pursuant to Section 6(c) of the 1940 Act the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants previously received exemptive relief ("Previous Exemption") pursuant to Section 6(c) of the 1940 Act exempting them from Sections 26(a) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the Mortality and Expense Risk Charge from the assets of the Separate Account.[2] Applicants now request an amendment to the Previous Exemption to permit the deduction of the Mortality and Expense Risk Charge from the assets of any other separate account established in the future by the Company, in connection with the issuance of certain variable annuity group contracts that are substantially similar in all material respects to the Existing Contracts. Without the requested exemptive relief, Applicants would have to request and obtain such relief for each Future Account the Company establishes to fund Future Contracts. Applicants assert that such additional requests for exemptive relief would present no issues under the 1940 Act that have not been addressed by either the Previous Exemption or the application that is the subject of this notice.

4. Applicants assert that the Mortality and Expense Risk Charge of 1.25% is within the range of industry practice for comparable annuity products. Applicants state that this determination is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge guarantees, guaranteed annuity rates and the markets in which the Contracts or offered. Applicants undertake to maintain a memorandum, available to the Commission upon request, outlining the methodology underlying this representation.

5. Applicants represent that Future Contracts will provide for equal or lower Mortality and Expense Risk Charge than the Existing Contracts. The amount of the Mortality and Expense Risk Charges will be stated in each Future Contract, and will be guaranteed not to increase.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21755 Filed 8–31–95; 8:45 am]

BILLING CODE 8010–01–M

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[2] *Great West Life & Annuity Insurance Company, et al.*, Inv. Co. Act Rel. No. 13998 (June 19, 1984) (notice) and Inv. Co. Act. Rel. No. 14038 (July 17, 1984) (order).

SMALL BUSINESS ADMINISTRATION

[(Declaration of Disaster Loan Area #2804)]

Vermont; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 16, 1995, I find that Caledonia, Chittenden, Essex, Lamoille, Orleans, and Washington Counties in the State of Vermont constitute a disaster area due to damages caused by excessive rain and flooding on August 4 through 6, 1995. Applications for loans for physical damages may be filed until the close of business on October 16, 1995, and for loans for economic injury until the close of business on May 16, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Addison, Franklin, Grand Isle, and Orange in the State of Vermont; Coos and Grafton in New Hampshire; and Clinton and Essex in New York.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000

	Percent
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 280406. For economic injury the numbers are 860900 for Vermont, 861000 for New Hampshire, and 861100 for New York.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 25, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–21704 Filed 8–31–95; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, as amended (P.L. 104–13 effective October 1, 1995), The Paperwork Reduction Act. Since the last list was published in the **Federal Register** on August 4, 1995, the following information collections have been proposed or will require extension of the current OMB approvals.

(Call the Reports Clearance Officer on (410) 965–4142 for a copy of the form(s) or package(s), or write to her at the address listed after the information collections.)

SSA Reports Clearance Officer: Charlotte S. Whitenight.

1. Statement by School Official About Student's Attendance and Statement to U.S. Social Security Administration by School Outside the U.S. About Student's Attendance—0960–0090. The information on forms SSA–1371 and SSA–1371FC is used by the Social Security Administration to determine a student's alleged full time attendance at an educational institution in cases where such attendance is needed for continued entitlement to benefits. The respondents are the school officials who provide the information on these forms.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 833 hours.

2. Report of Continuing Disability Interview—0960–0072. The information on form SSA–454 is used by the Social Security Administration to determine whether a person who receives Social Security Disability benefits is still unable to work because of his/her disability. It will be used to make a determination as to whether the Disability benefits should continue or terminate. The affected public will consist of approximately 300,000 Social Security Disability benefit recipients.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 150,000 hours.

3. Medical Report (Individual With Childhood Impairment)—0960–0102. The information on form SSA–3827 is used by the Social Security Administration to determine if an individual with a childhood impairment medically qualifies for benefits or payments under the provisions of the Social Security Act. Without this data, SSA would not by able to properly evaluate the medical aspects of an individual's claim or application. The respondents will be attending physicians/medical sources.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 6,000 hours.

4. Agreement to Sell Property—0960–0127. The information on form SSA–8060 is used by the Social Security Administration when individuals or couples who are otherwise eligible for Supplemental Security Income (SSI) benefits, but whose resources exceed the allowable limit, may receive conditional payments if they agree to dispose of their excess nonliquid resources and make repayment. The respondents will be applicants for and recipients of SSI benefits.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

5. Application for Survivors Benefits—0960–0062. The information on form SSA–24 is used by the Social Security Administration to determine if an individual who is filing for benefits from the Department of Veterans Affairs (DVA) may also be entitled by SSA. The respondents are claimants for VA benefits.

Number of Respondents: 3,200.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 800 hours.

6. Modified Benefit Formula Questionnaire—0960–0395. The information on form SSA–150 is used by the Social Security Administration to determine the correct formula to be used in computing the Social Security benefit of someone who also receives a benefit from employment not covered by Social Security. The respondents will be people who are entitled to both types of benefits.

Number of Respondents: 90,000.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 12,000 hours.

7. Modified Benefit Formula Questionnaire, Employer—0960–0477. The information on form SSA–50 is used by the Social Security Administration to verify the claimant's allegation that he or she received a pension based on union-covered employment after 1956. It also shows whether or not the individual became eligible for that pension before 1985. The respondents will be persons who are first eligible for both Social Security benefits and a pension from noncovered employment after 1985.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 10,000 hours.

8. Report of Student Beneficiary About to Attain Age 19—0960–0274. The information on form SSA–1390 is used by the Social Security Administration to determine whether a student beneficiary is entitled to benefits for the month of attainment of age 19 and subsequent months. The respondents will be student beneficiaries about to attain age 19.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 4,167 hours.

9. Reconsideration Disability Report—0960–0144. The information on form SSA–3441 is used by the Social Security Administration to determine if the claimant's medical or vocational situation changed after the initial disability determination. This form also elicits additional sources of medical and vocational evidence which were not considered in the initial determination.

The respondents are disability beneficiaries who request a reconsideration.

Number of Respondents: 400,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 200,000 hours.

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: August 25, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–21615 Filed 8–31–95; 8:45 am]

BILLING CODE 4190-29-P

Notice of Meeting of the Representative Payment Advisory Committee

Date and Time: September 21, 1995, 9:00 a.m.–9:00 p.m.; September 22, 1995, 9:00 a.m.–5:00 p.m.

Place: September 21, 1995, 9:00 a.m.–5:00 p.m., Harold Washington Social Security Center, 600 West Madison, Chicago, IL 60661; September 21, 1995, 7:00 p.m.–9:00 p.m., The Ambassador West Hotel, 1300 North State Parkway, Chicago, IL 60610; September 22, 1995, 9:00 a.m.–5:00 p.m., Harold Washington Social Security Center, 600 West Madison, Chicago, IL 60661.

Type of Meeting: The meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces the second meeting of the Representative Payment Advisory Committee. The Committee will discuss issues related to payee selection, payee recruitment and retention, standards for payee performance and payee oversight. The Committee will focus its discussion on standards for determining beneficiary (in)capability.

SSA assumes that adult beneficiaries are capable and develops capability only if there is an indication that the beneficiary cannot manage or direct the management of benefits. For beneficiaries with mental impairments, SSA develops capability only if there is an indication that the beneficiary may not have the ability to reason properly, is disoriented, has seriously impaired judgement or is unable to communicate with others. For beneficiaries with physical impairments, SSA develops capability only if the impairment makes the beneficiary dependent upon others to meet daily needs and to make decisions. If the beneficiary can *direct* the management of benefits, a payee is not appointed.

Acceptable evidence of capability includes legal, medical and other evidence that describes the person's ability to understand the value of money and make decisions about its use. Other evidence is usually information from people close to the beneficiary who are in a position to know about the beneficiary's abilities through day-to-day contact. Usual sources of this information include the beneficiary, the beneficiary's custodian, friends, relatives, neighbors, landlord, and representatives of community groups.

Determinations of capability are made in SSA field offices. The determination of capability is relevant only for payment of SSA-administered funds. A determination of incapability is reviewed whenever the beneficiary requests direct receipt of payments. SSA considers making a determination of incapability when it reviews a beneficiary's disability status or redetermines his or her eligibility for SSI payments.

Agenda: The Committee will meet commencing at 9:00 a.m. to 9:00 p.m. on Thursday, September 21, 1995, with a break for dinner, and from 9:00 a.m. to 5:00 p.m. on Friday September 22, 1995. Agenda items for both days will include, but not be limited to, a discussion concerning standards for determining beneficiary (in)capability. Oral statements on this issue or any issue concerning representative payment policy are sought from the public for presentation on September 21. Presentations will be limited to 5 minutes per public speaker.

Persons interested in presenting an oral statement should submit a written request, along with a copy of their statement, to the Social Security Administration, Representative Payment Advisory Committee, 2–N–24 Operations Building, P.O. Box 17763, Baltimore, MD 21203–7763. Requests should contain the name, address, telephone number and any business or professional affiliation of the person desiring to make an oral statement. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Representative Payment Advisory Committee will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up at the meeting site before noon on September 21. These persons will be allowed to present their oral statements as time permits. The Committee also welcomes written comments. They may be sent to the Social Security Administration, Representative Payment Advisory Committee, 2–N–24 Operations Building, P.O. Box 17763, Baltimore, MD 21203–7763.

Records are being kept of all Committee proceedings, and will be available for public inspection at the office of the Social Security Administration, Representative Payment Advisory Committee, Room 2–N–24, Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between the hours of 9:00 a.m. and 4:00 p.m. on regular business days. Anyone requiring information regarding the Committee should contact the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763; Telephone: (410) 966–4688; FAX: (410) 966–0980; Internet: adcom@ssa.gov.

Dated: August 25, 1995.

Reba Andrew,

Staff Director, Representative Payment Advisory Committee.

[FR Doc. 95– 752 –31–95; 8:45 am]

BILLING CODE 41

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Agreements Filed During the Week Ended August 18, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–393

Date filed: August 11, 1995

Parties: Members of the International Air Transport Association

Subject: TC3 Telex Mail Voter 753 Japan/Korea-Southeast Asia Intermediate class fares

Proposed Effective Date: August 28, 1995.

Paulette V. Twine,

Chief, Documentary Service Division.

[FR Doc. 95–21819 Filed 8–31–95; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 18, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–396

Date filed: August 14, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 11, 1995

Description: Application of Baltia Air Lines, Inc. (Baltia), pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail non-stop between New York, New York and St. Petersburg, Russia.

Docket Number: OST–95–403

Date filed: August 15, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 12, 1995

Description: Application of Eagle Jet charter, Inc. d/b/a Eagle Jet, pursuant to 49 U.S.C., 41102 and Subpart Q of the Regulations, requests authority to engage in interstate scheduled air transportation of passengers, property and mail: Between a place in (i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory or possession of the United States; (ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii; (iii) the District of Columbia and another place in the District of Columbia; and (iv) a territory or possession of the United States and another place in the same territory or possession.

Docket Number: OST–95–408

Date filed: August 16, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 13, 1995

Description: Application of Nashville Air, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests issuance of a certificate of public convenience and necessity so as to authorize Nashville Air to provide scheduled interstate air transportation of persons, property and mail between various points in the United States.

Docket Number: OST–95–412

Date filed: August 17, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 14, 1995

Description: Application of North East Cargo Airlines, pursuant to 49 U.S.C. Section 41301 and Part 211 of the Economic Regulations, and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in charter foreign air transportation of property and mail between a point or points in the Russian Federation and a point or points in the United States.

Docket Number: OST–95–415

Date filed: August 17, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 14, 1995

Description: Application of Polar Air Cargo, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail between the U.S. on the one hand and the countries listed in this application. Polar Air also requests that it be permitted to integrate service to these newly authorized points with service to other points for which it holds outstanding certificate authority, to the extent consistent with all applicable international agreements. Furthermore, Polar Air requests that the Department allow it to integrate the exemption authority issued by Order 95–3–30 with its certificate authority as amended by the addition of these new countries.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–21820 Filed 8–31–95; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Approval of Noise Compatibility Program, Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Greater Rockford Airport Authority for Greater Rockford Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On January 31, 1995, the FAA determined that the noise exposure maps submitted by the Greater Rockford Airport Authority under part 150 were in compliance with applicable requirements. On July 26, 1995, the Associate Administrator for Airports approved the Greater Rockford Airport noise compatibility program. This noise compatibility program is an updated version of a noise compatibility program FAA approved on March 23, 1990. The Greater Rockford Airport Authority's recommended program consists of twenty-nine measures including the withdrawal of six measures previously approved. Of the twenty-three remaining, twelve are listed as Noise Abatement Measures, eight are listed as Land Use Management Measures and three listed as Other Implementation Measures. The FAA has approved all twenty-three measures.

EFFECTIVE DATE: The effective date of the FAA's approval of the Greater Rockford Airport Noise Compatibility Program is July 26, 1995.

FOR FURTHER INFORMATION CONTACT: Melissa Wishy, Federal Aviation Administration, Chicago Airports District Office, CHI–ADO–640.8, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, (708) 294–7524.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Greater Rockford Airport, effective July 26, 1995.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The NCP was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes or aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

The Greater Rockford Airport Authority submitted to the FAA on May 3, 1994 noise exposure maps, descriptions and other documentation. This documentation was produced during the Airport Noise Compatibility Planning (Part 150) Study at Greater Rockford Airport from February 1993 through May 1994. The noise compatibility program is an updated version of a noise compatibility program FAA approved on March 23, 1990. The Greater Rockford Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 31, 1995. Notice of this determination was published in the **Federal Register** on February 23, 1995.

The Greater Rockford Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1998. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 31, 1995 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained twenty-three proposed measures for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective July 26, 1995.

Twelve of the twenty-three measures submitted are listed as "Noise Abatement Measures". Most of these noise abatement measures were designed to alter flight tracks and all were approved. Eight of the twenty-three measures submitted are listed as "Land Use Management Measures", of which all were approved. Of these eight land use measures, four are preventive measures including such things as noise overlay zoning recommendations, discouraging incompatible development in areas impacted by aircraft noise exposure of 65 DNL and higher, adopting the Part 150 NCP as a comprehensive plan element and adopting guidelines for discretionary review. The remaining land use management measures are corrective measures such as acquisition of noise impacted homes, acquisition of development and overflight rights, creation of a noise buffer, and options of voluntary sale. Finally, three measures, "Other Implementation Measures" dealing with continuing planning were also approved outright. These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on July 26, 1995. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Airport Manager's Office, Greater Rockford Airport Authority, 3600 Airport Drive, Rockford, Illinois 61125–0063

Illinois Department of Transportation, Division of Aeronautics, One Langhorne Drive, Capitol Airport, Springfield, Illinois

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois on August 21, 1995.

Louis H. Yates,

Manager, Chicago Airports District Office FAA, Great Lakes Region.

[FR Doc. 95–21818 Filed 8–31–95; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held September 19–21, 1995, starting at 8:30 a.m. on September 19. (On subsequent days, meeting begins at 8:00 a.m.). The meeting will be held at EUROCAE, 17 rue Hamelin, Paris, France.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2)

Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of June 20–22 Joint Meeting; (4) Leadership Team Meeting Report; (5) Consensus Items; (6) Review Status of Action Items; (7) Review Issue Logs; (8) Joint Team Status Reports; (9) Joint Team Assignments and Objectives; (10) Adjourn to Joint Team Sessions; (11) Joint Team Reports; (12) Other Business; (13) Agenda for Next Meeting; (14) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 28, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–21817 Filed 8–31–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 24, 1995.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0534
Form Number: IRS Form 5303
Type of Review: Resubmission
Title: Application for Determination for Collectively Bargained Plan
Description: IRS uses Form 5303 to get information needed about the finances and operation of employee benefit plans set up by employers under a collective bargaining agreement. The information obtained on Form 5303 is used to make a determination on whether the plan meets the requirements to qualify under section 401(a) and whether the related trust qualifies for exemption under section 501(a) of the Code.
Respondents: Business or other for-profit, Individuals or households
Estimated Number of Respondents/Recordkeepers: 2,500
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—22 hr., 14 min.
Learning about the law or the form—3 hr., 35 min.
Preparing the form—6 hr., 54 min.
Copying, assembling, and sending the form to the IRS—48 min.
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 83,825 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–21723 Filed 8–31–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 24, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in early to mid-September, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by September 5, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432
Project Number: PC:V 95–013–G
Type of Review: Revision
Title: CP503/CP504 Customer Opinion Survey
Description: During the month of June 1995, the "Ensuring Compliance Core Business System Sub-Process" initiated a collection notice test for paragraphs CP503, Third Notice and CP504, Fourth/Final Notice. Philadelphia, Austin and Fresno Service Centers participated in the test. The original three- or four-page notices were revised to a one-page notice resembling a credit card bill. The CP503 had one revised format while the CP504 had multiple revised formats. The survey will be conducted with a group of taxpayers who have been sent the old notice and group of taxpayers who have been sent the revised notice. The results of each group will be compared to determine the effect the revised notice had on customer satisfaction and reducing burden. In addition, the results of the survey will be used as input for future revisions of these notices.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 440
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 37 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–21724 Filed 8–31–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 24, 1995.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury

Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0200
Form Number: IRS Form 5307
Type of Review: Resubmission
Title: Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans
Description: This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS National Office or a regional prototype plan approved by the IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue Code (IRC) sections 401(a) and 501(a). It may not be used to request a letter for a multiple employer plan.
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 39,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—10 hr., 46 min.
Learning about the law or the form—5 hr., 58 min.
Preparing the form—9 hr., 12 min.
Copying, assembling, and sending the form to the IRS—48 min.
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 769,470 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–21725 Filed 8–31–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 24, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0144
Form Number: CF 301 and CF 5297
Type of Review: Extension
Title: Customs Bond Structure
Description: The CF 301 is used for the revenue and to ensure compliance with the laws, regulations and instructions. Bonds are authorized and required by law, regulation or instruction and are used as security for various types of Customs transactions.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions
Estimated Number of Respondents: 590,250
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 147,563 hours

OMB Number: 1515–0192
Form Number: None
Type of Review: Extension
Title: United States/Israel Free Trade Agreement
Description: This information collection is needed for Customs to determine if the imported merchandise should be granted a duty-free treatment. Respondents will be importers and exporters.
Respondents: Business or other for-profit, Individuals or households
Estimated Number of Respondents: 5,550
Estimated Burden Hours Per Respondent: 17 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 7,505 hours
Clearance Officer: Norman Waits (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–21721 Filed 8–31–95; 8:45 am]

BILLING CODE: 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

August 24, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0817
Regulation ID Number: EE–28–78 Final
Type of Review: Extension
Title: Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans
Description: Internal Revenue Code (IRC) section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for Public inspection. Some information may be withheld from disclosure. IRS needs information to comply with requests for public inspection of the above-named documents.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government
Estimated Number of Respondents: 51,070
Estimated Burden Hours Per Respondent: 14 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 12,018 hours

OMB Number: 1545–1027
Form Number: IRS Form 1120–PC
Type of Review: Revision
Title: U.S. Property and Casualty Insurance Company Income Tax Return
Description: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly report income and paid the correct tax.
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 2,200

Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—104 hr., 32 min.
Learning about the law or the form—35 hr., 52 min.
Preparing the form—57 hr., 46 min.
Copying, assembling, and sending the form to the IRS—5 hr., 22 min
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 447,722 hours
OMB Number: 1545–1174
Form Number: IRS Forms 6747 and 6747A
Type of Review: Extension
Title: Order for Reproduction Proofs (6747); and Order for Reader List Program (6747A)
Description: Mailing list allows customers to purchase reproduction proofs of Tax Forms. It allows them to have the forms as soon as they become available.
Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government
Estimated Number of Respondents: 1,342
Estimated Burden Hours Per Respondent:
Form 6747—15 minutes
Form 6747A—3 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 307 hours

OMB Number: 1545–1378
Regulation ID Number: PS–04–89 Final
Type of Review: Extension
Title: Disposition of an Interest in a Nuclear Power Plant
Description: The regulations require that certain information be submitted as part of a request for a revised schedule of ruling amounts. The regulations also require certain taxpayers to file a request for a revised schedule of ruling amounts.
Respondents: Business or other for-profit
Estimated Number of Respondents: 52
Estimated Burden Hours Per Respondent: 1 hour, 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 125 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–21722 Filed 8–31–95; 8:45 am]

BILLING CODE 4830–01–P

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

August 22, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

OMB Number: 1550–0051
Form Number: Not Applicable
Type of Review: Extension
Title: Application for Management Interlock
Description: 12 CFR Part 563f prohibits a management official of a depository institution from also serving as a management official of another depository institution if the two organizations are not affiliated and are very large or located in the same local area. Interlocking relationships are permitted in some circumstances with OTS approval under section 563f.4.
Respondents: Savings and Loan Associations and Savings Banks
Estimated Number of Respondents: 8
Estimated Burden Hours Per Respondents: 4 Hrs. Avg.
Frequency of Response: 1 per Year
Estimated Total Burden: 32 Hrs.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street NW., Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 95–21715 Filed 8–31–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 22, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

OMB Number: 1550–0050
Form Number: Not Applicable
Type of Review: Extension
Title: Applications to Issue Mutual Capital Certificates
Description: OTS regulations require that any insured mutual institution that wants to issue mutual capital certificates obtain OTS approval. Approval may not be granted unless the proposed issuance of the mutual capital certificates are in the form and manner prescribed by 12 CFR Section 563.74.
Respondents: Savings and Loan Associations and Savings Banks
Estimated Number of Respondents: 2
Estimated Burden Hours Per Respondents: 6 Hrs. Avg.
Frequency of Response: 1 per Year
Estimated Total Burden: 12 Avg. Hrs.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street NW., Washington, D.C. 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC. 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 95–21711 Filed 8–31–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 22, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–0061.

Form Number: Not Applicable.

Type of Review: Extension.

Title: Outside Borrowings.

Description: This information is collected only from those institutions that do not meet capital requirements. The institutions must give the OTS 10 days notice before making long-term borrowings. OTS uses the information to monitor the safety and soundness of the institutions.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondents: 4 Hrs. Avg.

Frequency of Response: 1 per Year.

Estimated Total Burden: 40 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 95–21709 Filed 8–31–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 24, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–0016.

Form Number: OTS Form 1588.

Type of Review: Revision of an existing collection.

Title: Merger Application.

Description: The Bank Merger Act and OTS merger regulations require thrifts that propose to combine with either another thrift or insured depository institution to obtain written approval from the OTS.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 94.

Estimated Burden Hours Per Respondents: 36 Hrs. Avg.

Frequency of Response: 1 per Year.

Estimated Total Burden: 3,384 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 95–21710 Filed 8–31–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 24, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–0032.

Form Number: OTS Forms 1173, 1393, and 1606.

Type of Review: Revision of an approved collection.

Title: Change of Control Notices.

Description: 12 CFR Part 574 contains the filing requirements for change of control applications. Section 1817(j) of the Federal Deposit Insurance Act requires a notice be filed with the OTS when an institution undergoes a change of control.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 53.

Estimated Burden Hours Per Respondents: 117 Hrs. Avg.

Frequency of Response: 1 per Year.

Estimated Total Burden: 6,190 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 95–21712 Filed 8–31–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 22, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision. 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–0053.

Form Number: Not Applicable.

Type of Review: Extension.

Title: Applications Filing Fees.

Description: 12 CFR Section 502.3 requires that fees accompany certain applications, filings, notices and requests by the industry.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 3,625.

Estimated Burden Hours Per Respondents: .036 Hrs. Avg.

Frequency of Response: 1 per Year.

Estimated Total Burden: 130 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 95–21713 Filed 8–31–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 24, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–0056.

Form Number: Not Applicable.

Type of Review: Extension.

Title: Identification requirements for Filings.

Description: 12 CFR Section 516.1 contains the OTS application filing procedures. Three copies of applications must be filed with the appropriate OTS Regional Office. Certain applications require more than three copies because the application raises a significant issue of law or policy or because other agencies have statutory oversight over the application.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 3,625.

Estimated Burden Hours Per Respondents: .165 Hrs. Avg.

Frequency of Response: 1 per Year.

Estimated Total Burden: 598 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 95–21714 Filed 8–31–95; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Information Collections Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Number: 2900–0059

Title and Form Number: Statement of Person Claiming to Have Stood in Relation of Parent, VA Form 21–524.

Type of Information Collection: Extension of a currently approved collection.

Needs and Uses: The form is used to secure information about the relation of a claimant to the veteran.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,000 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: One time.

Estimated Number of Respondents: 2,000 respondents.

ADDRESSES: Copies of these submissions may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6886.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer by October 25, 1995.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 565–4412.

Dated: August 24, 1995.

By direction of the Secretary

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 95–21718 Filed 8–31–95; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Prosthetics and Special-Disabilities Programs; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held September 14 and 15, 1995. This meeting will be a field meeting conducted at the VA Medical Center, Palo Alto, California. The purpose of the meeting is to provide the Committee a first hand opportunity to review the provision, coordination, and operational capabilities of the special disability programs in the VA system. For this purpose, the Committee will tour the Medical Center and engage in discussions with VA service providers.

The meeting on September 14 will begin at 8:30 a.m. and conclude at 4 p.m. The day's agenda will consist of tours and lectures relating to the special disability programs. The meeting on September 15 will begin at 8:30 a.m. with a continuation of tours and lectures and conclude at approximately 3 p.m. with an executive meeting regarding a review of findings, conclusions, and future meeting plans.

Anyone having questions concerning the meeting may contact Kathy Pessagno, Administrative Officer, Prosthetic and Sensory Aids Service, Department of Veterans Affairs Central Office at (202) 565–7296.

Dated: August 25, 1995.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–21720 Filed 8–31–95; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on the Readjustment of Vietnam and Other War Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on the Readjustment of Vietnam and Other War Veterans will be held September 14 and 15, 1995, This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for Vietnam and other war veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting on both days will be held at the American Legion, Washington Office, 1608 K Street, NW., Washington, DC. The meeting on both days will commence at 8:30 a.m. and adjourn at 4:30 p.m.

The agenda for September 14 will begin with a review of Committee special projects and reports. The first day's agenda will also cover a review of the Readjustment Counseling Service Vet Centers and VA medical center PTSD services in the context of the reorganization of Veterans Health Administration (VHA).

On September 15 the Committee will review the programs and activities of VA's Center for Minority Veterans and VHA's Women Veterans Health Program. The second day's agenda will also consist of a planning meeting to identify topics and objectives for the coming year.

Both day's meeting will be open to the public up to the meeting capacity of the room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Alfonso R.

Batres, Ph.D., M.S.S.W., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202–565–7554).

Dated: September 17, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–21866 Filed 8–31–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 170
Friday, September 1, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, August 29, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re:
  CrossLand Savings, FSB New York City (Brooklyn), New York
    and
  First New York Bank for Business New York City (Manhattan), New York (Case No. 550–03549–95–BOD)

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by John F. Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Ms. Susan F. Krause, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: August 29, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–21966 Filed 8–30–95; 2:25 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m., Tuesday, September 12, 1995.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

STATUS: The entire meeting on Tuesday, September 12, 1995 will be open to the public.

MATTERS TO BE CONSIDERED:

A. Dividends
B. Proposal to Clarify Decisions Made by the Board of Directors of the Office of Finance
C. Membership
D. Repeal of Finance Board Director Eligibility Reporting Requirements
E. Affordable Housing Program Advisory Councils
F. Affordable Housing Program: AHP Applications
G. Review of the FHLBank of San Francisco's AHP/CIP Policy Changes
H. Termination of Long-Term Advances for Failure to Meet Community Support Program Requirements
I. Homeownership Set-Aside: Final Regulation

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–21890 Filed 8–30–95; 10:24 am]

BILLING CODE 6725–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 6, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 30, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–21892 Filed 8–30–95; 10:25 am]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on September 9, 1995. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., 11th Floor, Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Continued Consideration of Proposed Regulation Regarding the Competition Initiative, If Necessary.
3. Consider and Act on Proposed Regulation Regarding Cases Involving Drug-Related Evictions.
4. Consider and Act on Proposed Changes to part 1617 of the Corporation's Regulations Regarding Class Action Litigation.
5. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: August 30, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–21967 Filed 8–30–95; 3:02 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on September 9, 1995. The meeting will commence at 1:30 p.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., 11th Floor, Board Room, Washington, D.C. 20002, (202) 332–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda
2. Consider and Act on Report on the Competition Initiative
   a. Consider and Act on Proposed Request for Proposals for the Competition of Corporation Grants
3. Report on Other Activities of the Offices of Program Support, and Program Evaluation, Analysis, and Review
4. Consider and Act on Other Business

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: August 30, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–21968 Filed 8–30–95; 3:02 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Finance Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Finance Committee will meet on September 10, 1995. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., the Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of June 23, 1995 Meeting.
3. Consideration and Review of Budget and Expenses for the Period Ending July 31, 1995.
4. Consider and Act on Proposed Revisions to the Corporation's Fiscal Year 1995 Consolidated Operating Budget.
5. Consideration of Proposed Fiscal Year 1996 Consolidated Operating Budget.
6. Consider and Act on Proposed Audit Guide for LSC Grantees.
7. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: August 30, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–21970 Filed 8–30–95; 3:02 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee and Provision for the Delivery of Legal Services, Committee Joint Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee and Provision for the Delivery of Legal Services Committee will meet jointly on September 8, 1995. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 1st Street, NE., Board Room, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of May 11, 1995 Operations and Regulations Committee Meeting Draft Minutes.
3. Approval of March 17, 1995 Joint Operations and Regulations and Provision's Committees' Meeting Draft Minutes. (Reconsideration by Provision's Committee)
4. Approval May 12, 1995 Provision's Committee Meeting Draft Minutes.
5. Consider and Act on Proposed Regulation on Grantee Timekeeping Requirements.
6. Consider and Act on Proposed Regulation Regarding the Competition Initiative.[2]

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: August 30, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–21969 Filed 8–30–95; 3:02 pm]

BILLING CODE 7050–01–M

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[2] Should the committees not conclude their joint consideration of the proposed regulation regarding the competition initiative, it will be continued at the beginning of the Operations and Regulations Committee's September 9, 1995 meeting.

Corrections

Federal Register
Vol. 60, No. 170
Friday, September 1, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

Correction

In notice document 95–20122 beginning on page 42596 in the issue of Wednesday, August 16, 1995, make the following correction:

On page 42616, in the first column, under "Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan" in the 15th line, "*Amendment No.:* 16" should read "*Amendment No.:* 116".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD05-93-103]

RIN 2115-AA98

Anchorage Grounds; Spa Creek, Annapolis, MD

Correction

In rule document 95–12733 beginning on page 27695, in the issue of Thursday, May 25, 1995, make the following correction:

§110.159 [Corrected]

On page 27696, in the second column, in §110.159, under the heading entitled "*Latitude*", in the second line, "36°58′36.1″ N" should read "38°58′36.1″ N".

BILLING CODE 1505-01-D

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federal register

Friday
September 1, 1995

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412, et al.

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1996 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, 424, 485, and 489

[BPD–825–FC]

RIN 0938–AG95

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1996 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: We are revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. In addition, in the addendum to this final rule, we are describing changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes are applicable to discharges occurring on or after October 1, 1995. We are also setting forth rate-of-increase limits as well as policy changes for hospitals and hospital units excluded from the prospective payment systems. Finally, we are setting forth several requirements concerning Essential Access Community Hospitals (EACHs) and Rural Primary Care Hospitals (RPCHs), in accordance with provisions of the Social Security Act Amendments of 1994.

DATES: *Effective Date:* This final rule is effective on October 1, 1995, except that revised § 412.46 (concerning the physician attestation requirement for inpatient claims) is effective September 1, 1995.

Comments: Comments on revised § 485.645 (concerning the requirements for RPCH providers of long-term care services ("swing beds")) will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 31, 1995. We will not consider comments concerning any other issue.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–825–FC, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–825–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Nancy Edwards, (410) 786–4531, Operating Prospective Payment, DRG, Wage Index Issues.

Tzvi Hefter, (410) 786–4529, Capital Prospective Payment, Excluded Hospitals, EACH, RPCH.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment for hospital inpatient operating costs is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the hospital inpatient prospective payment system are located in 42 CFR part 412. On September 1, 1994, we published a final rule with comment period (59 FR 45330) to implement changes to the prospective payment system for hospital operating costs beginning with Federal fiscal year (FY) 1995.

For cost reporting periods beginning before October 1, 1991, hospital inpatient operating costs were the only costs covered under the prospective payment system. Payment for capital-related costs had been made on a reasonable cost basis because, under sections 1886 (a)(4) and (d)(1)(A) of the Act, those costs had been specifically excluded from the definition of inpatient operating costs. However, section 4006(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) revised section 1886(g)(1) of the Act to require that, for hospitals paid under the prospective payment system for operating costs, capital-related costs would also be paid under a prospective payment system effective with cost reporting periods beginning on or after October 1, 1991. As required by section 1886(g) of the Act, we replaced the reasonable cost-based payment methodology with a prospective payment methodology for hospital inpatient capital-related costs. Under the new methodology, effective for cost reporting periods beginning on or after October 1, 1991, a predetermined payment amount per discharge is made for Medicare inpatient capital-related costs. (See subpart M of 42 CFR part 412, and the August 30, 1991, final rule (56 FR 43358) for a complete discussion of the prospective payment system for hospital inpatient capital-related costs.)

B. Major Contents of the Provisions of the June 2, 1995 Proposed Rule

On June 2, 1995, we published a proposed rule in the **Federal Register** (60 FR 29202) setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs, as well as changes affecting hospitals excluded from those payment systems. The following is a summary of the major changes that we proposed to make:

- We proposed changes for FY 1996 DRG classifications and relative weighting factors as required by section 1886(d)(4)(C) of the Act.
- We proposed to update the wage index for FY 1996. Specific issues included allocation of general service salaries and hours to excluded areas, and revisions to the wage index based on hospital redesignations.

- We also proposed revisions to the criteria for seeking MGCRB reclassification and discussed comments received on alternative labor market areas.
- We discussed several provisions of the regulations in 42 CFR parts 412, 424, and 485 and set forth certain proposed changes concerning the following:

—Payment for transfer cases.
—Rural referral centers.
—Determination of number of beds in determining the indirect medical education adjustment.
—Disproportionate share adjustment.
—Essential access community hospitals (EACHs) and rural primary care hospitals (RPCHs).
—Rebasing the hospital market baskets.

- We discussed several provisions of the regulations in 42 CFR part 412 concerning the prospective payment system for capital related costs and set forth certain proposed changes concerning the following:

—New update framework.
—Specific adjustment for taxes to the capital prospective payment system Federal rate.

- We discussed changes to the regulations at 42 CFR parts 412 and 413 for hospitals and hospital units excluded from the prospective payment system. The proposed changes concerned the following:

—Requirements for certain long-term care hospitals excluded from the prospective payment systems.
—Payment window for preadmission services.
—Criteria for exclusion.
—Request for payment adjustment.

- In the addendum to the proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1996 prospective payment rates for operating costs and capital-related costs. We also proposed new update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 1996 for hospitals and hospital units excluded from the prospective payment system.
- In Appendix A of the proposed rule, we set forth an analysis of the impact that the proposed changes would have on affected entities.
- In Appendix B of the proposed rule, we set forth our technical appendix on the proposed FY 1996 capital acquisition model.
- In Appendix C to the proposed rule as corrected (60 FR 39304, August 2, 1995), we included our report to Congress on our initial estimate of an update factor for FY 1996 for both hospitals included in and hospitals excluded from the prospective payment systems as required by section 1886(e)(3)(B) of the Act.
- As required by sections 1886 (e)(4) and (e)(5) of the Act, in Appendix D, we provided our recommendation of the appropriate percentage change for FY 1996 for the following:

—Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
—Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

- In the proposed rule, we discussed in detail the March 1, 1995 recommendations made by the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by section 1886(e)(2)(A) of the Act to make recommendations on the appropriate percentage change factor to be used in updating the average standardized amounts. In addition, section 1886(e)(2)(B) of the Act directs ProPAC to make recommendations regarding changes in each of the Medicare payment policies under which payments to an institution are prospectively determined. In particular, the recommendations relating to the hospital inpatient prospective payment systems are to include recommendations concerning the number of DRGs used to classify patients, adjustments to the DRGs to reflect severity of illness, and changes in the methods under which hospitals are paid for capital-related costs. Under section 1886(e)(3)(A) of the Act, the recommendations required of ProPAC under sections 1886(e)(2) (A) and (B) of the Act are to be reported to Congress not later than March 1 of each year.

We printed ProPAC's March 1, 1995 report, which included its recommendations, as Appendix E of the proposed rule. The recommendations, and the actions we proposed to take with regard to them (when an action is recommended), were discussed in detail in the appropriate sections of the preamble, the addendum, or the appendices to the proposed rule. Set forth below in sections II, III, IV, V, VI, and VII of this preamble, the addendum to this final rule, and the appendices are detailed discussion of the June 2 proposed rule, the public comments received in response to the proposed rule, and the responses to those comments, as well as the changes we are making.

C. Public Comments Received in Response to the June 2 Proposed Rule

A total of 2,006 items of correspondence containing comments on the proposed rule were received timely. Two issues, physician attestation of hospital patient claims and the DRG classification of the procedure for insertion of a coronary artery stent, were the subject of write-in campaigns. We received close to 1,000 letters on physician attestation and over 700 letters on coronary stent. Of the remaining letters, the main areas of concern addressed by the commenters were the following:

- The adjustment for taxes to the capital prospective payment system Federal rate.
- The new requirements for certain long-term hospitals excluded from the prospective payment system.
- The discussion on the definition of a transfer case.

II. Changes to DRG Classifications and Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in other DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The changes to the DRG classification system and the recalibration of the DRG weights for discharges occurring on or after October 1, 1995, are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The Medicare fiscal intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights.

Currently, cases are assigned to one of 492 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, principal diagnosis determines MDC assignment. However, there are five DRGs to which cases are assigned on the basis of procedure codes rather than first assigning them to an MDC based on the principal diagnosis. These are the DRGs for liver, bone marrow, and lung transplant (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

We proposed to make several changes to the DRG classification system for FY 1996. These proposed changes, the comments we received concerning them, our responses to those comments, and the final DRG changes, are set forth below.

2. MDC 5 (Diseases and Disorders of the Circulatory System)

a. Automatic Implantable Cardioverter Defibrillator (AICD) Procedures (DRG 116). For several years, we have received correspondence regarding the appropriate DRG assignment of certain procedures involving automatic implantable cardioverter defibrillators (AICDs). When a patient whose principal diagnosis is classified to MDC 5 (Diseases and Disorders of the Circulatory System) receives a total AICD system implant or replacement (procedure code 37.94), the case is assigned to DRG 104 or 105 (Cardiac Valve Procedures With or Without Cardiac Catheterization). However, for discharges occurring before October 1, 1992, if a procedure was performed that involved the implantation or replacement of only part of the AICD system (that is, replacement or implant of either the leads or pulse generator only), the case was assigned to DRG 120 (Other Circulatory System OR Procedures). Effective with discharges occurring on or after October 1, 1992, these procedures were reclassified to DRG 116 (Other Permanent Cardiac Pacemaker Implant or AICD Lead or Generator Procedure). In the proposed rule, we presented our analysis of AICD cases based on FY 1994 MedPAR data. We concluded that these cases continue to be appropriately assigned to DRG 116. Therefore, we did not propose any further changes to the DRG assignment. We received two public comments on our analysis and conclusion.

Comment: One commenter commended the continued assignment to DRG 116 of cases in which replacement or implantation of only part of the AICD system is performed. However, the other commenter requested that we change the DRG assignment for these cases to DRG 115 (Permanent Cardiac Pacemaker Implantation with AMI, Heart Failure or Shock). The second commenter stated that the resource use of these patients is similar to those in DRG 115, even though the patients in DRG 115 have much longer lengths of stay.

Response: Since reassignment of these procedures to DRG 116, we have annually analyzed the cases based on the most recent data. Based on data in the latest update of the FY 1994 MedPAR file (June 1995), the average standardized charge for the 2,569 AICD cases assigned to DRG 116 is $27,806. The average standardized charge for all cases in DRG 116 is $19,637 and for DRG 115, is $29,086. The $8,169 difference between the average charge for AICD cases in DRG 116 and all cases in DRG 116 is within the normal range of charges for that DRG. (One standard deviation from the mean of the charges for DRG 116 is $10,512.) We note that, compared to last year's analysis using FY 1993 MedPAR data, the average charge for the AICD cases has decreased slightly as has the difference in charges between all cases in DRG 116 and the AICD cases.

The average length of stay for the AICD cases in DRG 116 is 3.98 days compared to 5.89 days for all cases in DRG 116. However, the length of stay for cases in DRG 115 is 11.8. In general, the patients classified to DRG 115 are seriously ill and the long length of stay supports this contention. We continue to believe that the AICD patients are clinically much more similar to the patients classified to DRG 116 than to those in DRG 115 and that it is the cost of the AICD device that is responsible for the high average charge for these cases and not the intensity of hospital services required to treat the patient.

In the September 1, 1994 final rule (59 FR 45346), we stated our belief that as new AICD devices were approved by the FDA and entered the market, increased competition would result in a decrease in the price of the devices and a corresponding drop in the average charge for a hospital stay for AICD procedures. Second and third generations of several manufacturers' devices are now on the market. In addition, we believe that the slight decrease in average charges seen in the FY 1994 data compared to the FY 1993 data is a direct result of hospitals' ability to obtain AICD devices from multiple sources. (The increase in charges for AICD cases between the FY 1992 and FY 1993 data was approximately $6,000.) Based on this evidence, we will continue to assign the AICD implant cases to DRG 116 for FY 1996. However, we will reassess this assignment as a part of our FY 1997 DRG analysis in order to verify that the current pattern is maintained.

b. Sympathectomy Procedures. When performed in connection with a principal diagnosis assigned to MDC 5, procedure code 05.24 (presacral sympathectomy) is assigned to DRGs 478 and 479 (Other Vascular Procedures)[1]. However, the four other sympathectomy procedures related to MDC 5 diagnoses are classified to DRG 120 (Other Circulatory System OR Procedures). In order to improve clinical consistency, we proposed to assign procedure code 05.24 to DRG 120 rather than to DRGs 478 and 479.

We received one comment on this proposal, which supported our proposed change. Therefore, we are adopting this change as final.

3. MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period)

In the September 1, 1994, final rule (59 FR 45341), we stated our intention to improve the classification and relative weights of the DRGs that apply to newborns, children, and maternity patients. Because the Medicare population does not include many of these individuals, the original DRG classification system was developed from analysis of claims data representative of the total inpatient population. Non-Medicare discharge records from Maryland and Michigan hospitals were used to calculate the original Medicare weights for the DRGs to which newborns, children, and maternity patients are classified. Since that time, because of the lack of Medicare data, these low-volume DRGs have not been analyzed and refined, and the relative weights assigned to them may no longer be entirely reflective of the resources needed to treat patients.

Accordingly, we have acquired hospital claims data representative of the total inpatient population for analysis and evaluation. These data, collected and formatted by the Urban Institute under contract with HCFA (Contract 500–92–0024), represent claims for non-Medicare payers from 19 States. The data base contains approximately 17 million discharge records. Using these data, we are evaluating possible modifications to MDC 15 that would better address the requirements for an all-patient population.

As we have not yet completed this evaluation, we did not propose an MDC 15 DRG reclassification structure for FY 1996. However, we did propose to adjust the DRG relative weights for 36 Medicare low-volume DRGs (defined as those DRGs with fewer than 10 cases). These DRGs are generally those assigned to patients age 0–17, many of the neonate and newborn MDC 15 DRGs, and one DRG in MDC 14 (Pregnancy, Childbirth and Puerperium). The proposed DRG relative weights for these low-volume DRGs were calculated based on the non-Medicare data we acquired from the 19 States. We note that, based on the June 1995 update to the FY 1994 MedPAR file, there are only 34 low-volume DRGs in the final recalibration.

During the year, we have received suggestions from the public concerning improvements for the neonate DRG classifications. Among these suggestions have been recommendations concerning specific diagnoses that are currently considered significant problems in determining the assignment of a neonate case to DRG 390 (Neonate with Other Significant Problems) rather than DRG 391 (Normal Newborn). Another issue is the assignment to MDC 15 of discharges with a principal diagnosis of certain congenital defects regardless of the age of the patient. Because the MDC 15 modifications that we are considering should resolve these concerns, we did not propose to revise the assignment of these diagnoses and conditions. Rather, we indicated that we would incorporate the necessary and appropriate assignment of these cases with our overall modification of the neonate DRGs.

Comment: We received two comments on our proposal to base the relative weights for low-volume DRGs on all patient data, both of which supported our proposal. However, one of these commenters objected to the proposed assignment of a weight of 0.1460 to DRG 391 (Normal Newborn), the only DRG within MDC 15 for which the proposed relative weight decreased compared to the previous year's weights. This commenter stated that changes to the relative weight of DRG 391 should be postponed until our evaluation of claims data has been completed.

Response: In previous years, we computed the weight for the low-volume DRGs by adjusting the original weights of these DRGs as calculated based on 1981 bills by the percentage change in the average weight of the cases in the remaining DRGs. Thus, the weight for these DRGs was not based solely on actual experience and was, in some cases, artificially inflated. Using empirical data from more recent actual claims resulted in figures that more accurately reflect current utilization and resource use. We note that of the final 34 low-volume DRGs, only 8 experienced an increase in relative weight based on the all-patient data. Of these eight DRGs, four are in MDC 15. The decrease in the relative weight for DRG 391 is the one exception within that MDC. The decrease in weight is a function of the expanded data base and the difference between applying an automatic percentage increase and calculating a relative weight using an averaging process as we do for the other DRGs. Taking into account the changes in practice for treating normal newborns that have taken place over the last several years, it is not surprising that the weight for DRG 391 has decreased.

In any case, we see no reason why we should adjust all the low-volume weights to the new data except DRG 391. Therefore, we will proceed with the proposed methodology for updating these weights.

4. MDC 24 (Multiple Significant Trauma)

Several years ago, we created a new MDC 24 to classify cases of multiple significant trauma. In order to be assigned to this MDC, a patient must have a principal diagnosis of trauma and at least two significant trauma diagnosis codes from two different body sites reported as either principal or secondary diagnoses. We recognize eight different body site categories: head, chest, abdomen, kidney, urinary, pelvis and spine, upper limb, and lower limb.

It was brought to our attention that diagnosis code 851.06 (Cerebral cortex contusion with loss of consciousness of unspecified duration) was excluded from the list of diagnoses that count as principal or secondary diagnoses in the significant head trauma section of MDC 24. Because this code is clinically similar to those already on the list of principal or secondary diagnoses that cause assignment to DRG 487 (Other Multiple Significant Trauma), we proposed to add this diagnosis to the significant head trauma list effective with discharges occurring on or after October 1, 1995.

The one comment we received in response to this proposal stated that the change was appropriate. Thus, we have included this change in the final DRG classifications.

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[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases of patients who are age 0–17. Occasionally, a pair of DRGs is split on age >17 and age 0–17.

5. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG (DRG 103) and the class "coronary bypass" consists of two DRGs (DRGs 106 and 107). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class, therefore, involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5, and that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, which may sometimes occur in cases involving multiple procedures, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we proposed to modify the surgical hierarchy as set forth below:

- In MDC 2 (Diseases and Disorders of the Eye), we proposed to reorder Extraocular Procedures Except Orbit (DRGs 40 and 41) above Retinal Procedures (DRG 36).
- In MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue), we proposed to reorder Major Thumb or Joint Procedures or Other Hand or Wrist Procedures with CC (DRG 228) above Major Shoulder/Elbow Procedures or Other Upper Extremity Procedures with CC (DRG 223).

We received one comment in support of both surgical hierarchy changes. In addition, based on a test of the proposed changes using the most recent MedPAR file and the revised GROUPER software, we have found that the changes are still supported by the data and no additional changes are indicated. Therefore, we are now incorporating the proposed surgical hierarchy as final.

6. Refinement of Complications and Comorbidities List

a. Addition or Deletion of CCs. There is a standard list of diagnoses that are considered complications or comorbidities (CCs). We developed this list using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In preparing the original CC list, a substantial CC was defined as a condition that, because of its presence with a specific principal diagnosis, would increase the length of stay by at least 1 day for at least 75 percent of the patients.

Based upon clinical review by our medical consultants and analysis of charge data, we proposed to revise the list of diagnoses that are considered CCs as follows:

- We proposed to add diagnosis code 008.49 (Bacterial enteritis) to the CC list. This diagnosis would be considered a CC for any principal diagnosis not shown in Table 6f, Addition to the CC Exclusions List (see discussion of CC Exclusions list in section V of the addendum below).
- We proposed to delete diagnosis code 276.8 (Hypopotassemia) from the CC list. This diagnosis would no longer be considered a CC for any principal diagnosis.

Comment: We received one comment that supported our addition of diagnosis code 008.49 to the list of CCs. However, two commenters disagreed with our proposal to remove diagnosis code 276.8 from the list. The commenters state that hypokalemia, which is one of the conditions coded to 276.8, is a serious medical condition that can complicate a patient's treatment and increase the length of stay.

Response: We agree that severe cases of hypokalemia can affect a patient's clinical course. However, based on our analyses and the judgment of our expert medical advisors, we believe that when a patient has a case of hypokalemia severe enough to affect the clinical course of treatment, there will be additional manifestations of the condition. Thus, we expect that in such cases, in addition to an abnormal laboratory report finding of low potassium, the patient will have other manifestations of this condition, many of which are coded to diagnoses considered to be CCs. Therefore, we believe that a patient with severe hypoalemia will be classified to a CC DRG based on his other secondary diagnoses. However, an abnormal

laboratory finding of low potassium, which is one of the conditions coded to 276.8, does not by itself generally result in increased resource use.

Comment: One commenter requested that we add the following diagnoses to the CC list:

008.45	Clostridium difficile
331.0	Alzheimer's disease
423.9	Unspecified disease of the pericardium
348.5	Cerebral edema
333.4	Huntington's chorea
458.0	Orthostatic hypotension
458.9	Hypotension, not otherwise specified

In addition, the commenter suggested that the following diagnoses be added as CCs for DRGs 121 and 122 only:

434.xx	Occlusion of cerebral arteries
436	Acute but ill-defined, cerebrovascular disease

Response: Our analysis of FY 1994 MedPAR data did not support granting CC status to these diagnoses. However, we have limited Medicare data on several of these codes. We will reevaluate these codes as part of our DRG analysis for FY 1997.

b. CC Exclusion List. We proposed a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 1995, as well as the proposed CC changes in Section II.B.6.a. described above. (See section II.B.8 for a discussion of the diagnosis coding system changes.) The proposed revisions were made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6G and 6H in section V of the addendum to this final rule contain the revisions to the CC Exclusions List that will be effective for discharges occurring on or after October 1, 1995. Each table shows the principal diagnoses with changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk, and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6G—Additions to the CC Exclusions List. Beginning with discharges occurring on or after October 1, 1995, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6H—Deletions from the CC Exclusions List. Beginning with discharges occurring on or after October 1, 1995, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $84.00, plus $6.00 for shipping and handling and on microfiche for $20.50, plus $4.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number (PB) 88–133970) should be made to the following address: National Technical Information Service; U.S. Department of Commerce; 5285 Port Royal Road, Springfield, VA 22161; or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, and 1995) and those in Tables 6G and 6H of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1995.

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 13.0, which includes the changes set forth in this final rule, is available for $195.00, which includes $15.00 for shipping and handling. Manuals may be obtained by writing 3M/HIS at: 100 Barnes Road; Wallingford, CT 06492; or by calling (203) 949–0303.

7. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0	Incision of prostate
60.12	Open biopsy of prostate
60.15	Biopsy of periprostatic tissue
60.18	Other diagnostic procedures on prostate and periprostatic tissue
60.2	Transurethral prostatectomy
60.61	Local excision of lesion of prostate
60.69	Prostatectomy NEC
60.81	Incision of periprostatic tissue
60.82	Excision of periprostatic tissue
60.93	Repair of prostate
60.94	Control of (postoperative) hemorrhage of prostate
60.95	Transurethral balloon dilation of the prostatic urethra
60.99	Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis was published in Table 6c in section IV of the addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990, August 30, 1991, September 1, 1992, September 1, 1993, and September 1, 1994, we moved several other procedures from DRG 468 to 477. (See 55 FR 36135, 56 FR 43212, 57 FR 23625, 58 FR 46279, and 59 FR 45336, respectively.)

a. Adding Procedure Codes to MDCs. We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. This year's review did not identify any necessary changes; therefore, we did not propose to move any procedures from DRG 468 or DRG 477 to one of the surgical DRGs.

b. Reassignment of Procedures Among DRGs 468, 476, and 477. We also reviewed the list of procedures that produce assignments to each of DRG 468, 476, and 477 to ascertain if any of those procedures should be moved to one of the other DRGs based on average charges and length of stay. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we proposed to move a limited number of procedures.

In reviewing the list of OR procedures that produce DRG 468 assignments, we analyzed the average charge and length of stay data for cases assigned to that DRG to identify those procedures that are more similar to the discharges that currently group to either DRG 476 or 477. We identified several procedures that are significantly less resource intensive than the other procedures assigned to DRG 468. These procedures occur in the same "family" (that is, they relate to procedures on the same body part or system) and at least one of this family of codes is already present within DRG 477. Therefore, we proposed to move the following procedures to the list of procedures that result in assignment to DRG 477:

18.21 Excision of preauricular sinus
18.31 Radical excision of lesion of external ear
18.39 Other excision of external ear
18.5 Surgical correction of prominent ear
18.6 Reconstruction of external auditory canal
18.71 Construction of auricle of ear
18.72 Reattachment of amputated ear
18.9 Other operations of external ear

We conducted a similar analysis of the procedures that are assigned to DRG 477 to determine if any of those procedures might more appropriately be classified to DRG 468. Again, we analyzed charge and length of stay data to identify procedures that were more similar to discharges assigned to DRG 468 than to those classified in DRG 477. We did not identify any procedures in DRG 477 that should be assigned to DRG 468.

Comment: We received one comment that objected to our proposed move of procedure codes 18.21, 18.31, 18.39, 18.5, 18.6, 18.71, 18.72, 18.9 from DRG 468 to DRG 477. The commenter did not indicate the basis of the objections.

Response: In analyzing the procedures that produce assignments to each of DRG 468, 476, and 477 for possible reassignment, we evaluate both average charge and length of stay, as well as clinical evaluation to determine the appropriate classification. These procedure codes were significantly less resource intensive than other procedures assigned to DRG 468, and more closely resembled the average charge and length of stay for procedures classified to DRG 477. Our data continue to support the reclassification of these procedures to DRG 477. Therefore, we are reassigning these procedures from DRG 468 to DRG 477 as proposed.

All of the reassignments of procedures in DRGs 468 and 477 will be effective with discharges occurring on or after October 1, 1995.

8. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. The ICD–9–CM Coordination and Maintenance Committee, a Federal interdepartmental committee formed in 1985, is charged with the mission of maintaining and updating the ICD–9–CM. That mission includes approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in *Volume 1—Diseases: Tabular List* and *Volume 2—Diseases: Alphabetic Index*, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in *Volume 3—Procedures: Tabular List and Alphabetic Index*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding fields, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for FY 1996 coding changes at public meetings held on May 5 and December 1 and 2, 1994, and finalized the coding changes after consideration of comments received at the meetings and in writing within 30 days following the December 1994 meeting. The initial meeting for consideration of coding issues for implementation in FY 1997 was held on May 4, 1995. Copies of the minutes of these meetings may be obtained by writing to one of the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Sue Meads, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Rm. 9–58; 6525 Belcrest Road; Hyattsville, MD 20782.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; HCFA, Office of Hospital Policy; Division of Prospective Payment System; Room C5–06–27; 7500 Security Boulevard; Baltimore, MD 21244–1850.

The ICD–9–CM code changes that have been approved will become effective October 1, 1995. The new ICD–9–CM codes are listed, along with their DRG classifications, in Tables 6a and 6b (New Diagnosis Codes and New Procedure Codes, respectively) in section V of the addendum to this final rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we solicited comments on the proposed DRG classifications only.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes, other codes, or have been deleted, are in Table 6c (Invalid Diagnosis Codes). The procedure codes that have been replaced by expanded codes or have been deleted are in Table 6d (Invalid Procedure Codes). These invalid diagnosis and procedure codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 1995. The corresponding new or expanded codes are included in Tables 6a and 6b. Revisions to diagnosis and procedure code titles are in Tables 6e (Revised Diagnosis Code Titles) and 6f (Revised Procedure Code Titles), which also include the DRG assignments for these revised codes.

There are three new procedure codes that were previously included in codes

classified as operating room procedures even though the specific procedures specified by the new codes may not be routinely performed in an operating room. The three codes are as follows:

48.36 [Endoscopic] polypectomy of rectum
59.72 Injection of implant into urethra and/or bladder neck
92.3 Stereotactic radiosurgery

In the proposed rule, these three new codes were classified as non-OR procedures that affect DRG assignment and are indicated as such in Table 6b—New Procedure Codes. We will continue to assign these three codes to the surgical DRGs to which they are currently assigned.

Comment: We received over 700 comments requesting that we assign cases involving the insertion of a coronary artery stent along with percutaneous transluminal coronary angioplasty (PTCA) to a different DRG than conventional PTCA. These cases are all currently assigned to DRG 112 (Percutaneous Cardiovascular Procedures). The commenters stated that hospital costs for inserting coronary stents along with an angioplasty are significantly greater than those for conventional angioplasty alone and the clinical results of the stent implantation are significantly better, leading to a reduction in the need for repeat interventions and to improved quality of care. These comments are based on two studies that were published in the August 25, 1994, *New England Journal of Medicine* as well the results of an analysis commissioned by the manufacturer of one of the two stent devices currently approved by the Food and Drug Administration (FDA).

In this latter analysis, the contractor used the Medicare cases reported to DRG 112 in the FY 1994 MedPAR file and information provided voluntarily by 19 hospitals on interventional catheter procedures performed between July 1, 1994, and September 30, 1994, including information on coronary stent implantation. By matching the individual hospital data to the MedPAR file, the contractor identified 655 cases of PTCA, 68 of which involved insertion of a stent device. The following are the findings of the analysis:

- The difference between the average length of stay for the stent cases and the non-stent cases is 2.8 days (7.7 days versus 4.9 days).
- The difference between the average standardized charges for stent cases and non-stent cases was approximately $8,500 ($22,500 versus $14,000).
- The contractor projects that approximately 10 percent of the PTCA cases assigned to DRG 112 during FY 1996 will receive a stent, resulting in approximately 10,000 stent cases.

One commenter stated that section 1886(d)(4)(C) of the Act gives HCFA the authority to adjust the DRG classifications and relative weights annually to "reflect changes in treatment patterns, technology, and other factors that may change the relative use of hospital resources." Because insertion of the coronary stent is both a new technology and a change in treatment patterns, the commenter believes that we have a duty to revise the DRG classification for this procedure.

The commenter also noted that we have used this authority in the past, citing two other changes made in response to technology changes. Effective for discharges occurring in FY 1993, we reclassified certain automatic implantable cardiac defibrillator (AICD) cases from DRG 120 (Other Circulatory System OR Procedures) to DRG 116 (Other Permanent Cardiac Pacemaker Implant or AICD Lead or Generator Procedure). (See 57 FR 39749, September 1, 1992.) The commenter stated that this change was made in response to complaints that hospitals were not adequately compensated for these procedures. Also, effective for discharges occurring in FY 1987, we reclassified all extracorporeal shockwave lithotripsy (ESWL) cases to DRG 323 (Urinary Stones with CC and/or ESWL) even in the absence of a CC (which would have resulted in classification to DRG 324 (Urinary Stones without CC)). (See 51 FR 31485, September 3, 1986.) The commenter stated that we made this change even though we did not conduct an analysis of Medicare data and instead relied on an outside source for the analysis. Thus, the commenter believes that HCFA could make a change in the assignment of stent cases even though HCFA cannot, at this time, conduct a complete analysis based on Medicare data. The commenter requested that a separate DRG be created for coronary stent implantation and that payment be established at a level that is appropriate for the cost of the procedure.

We received one comment supporting our proposed assignment of coronary stent implant as non-OR. The commenter stated that the published studies that were the basis for FDA approval do not show an overwhelming improvement in any clinical event when a stent was used in place of balloon PTCA. Thus, the commenter believes that it is obvious that coronary stenting is not a "good buy," and further studies are needed.

Response: Currently, the insertion of coronary stents are included in the codes for PTCA (procedure codes 36.01, 36.02, and 36.05). That is, there is no separate code to indicate that a coronary stent was inserted during a PTCA procedure. Therefore, at this time, we cannot identify which PTCA cases in the MedPAR file include insertion of a stent. Effective October 1, 1995, a new procedure code for insertion of a coronary stent (code 36.06) will be introduced. We have designated this code as non-OR and have not assigned it to a specific DRG (see Table 6b in section V of the addendum to this final rule). However, since it is always performed in connection with PTCA, the cases will continue to be assigned to DRG 112.

When a new code is introduced, our longstanding practice is to assign it to the same DRG category as its predecessor code. One compelling reason for this practice is our inability to move the cases associated with a new code to a new DRG assignment as part of DRG reclassification and recalibration. We have discussed this policy in several previous rules, most recently in the September 1, 1994, final rule (59 FR 45340).

Since coronary angioplasty with stent is currently assigned currently to the same DRG as those without stent, this classification will continue until data on the new procedure code are available. Hospitals will begin coding claims with procedure code 36.06 beginning with discharges in FY 1996. Therefore, the resource use and other data associated with that code will be available to us for analysis as part of the FY 1998 DRG changes. We will evaluate the DRG assignment of coronary stent insertion at that time.

We agree with the commenter who stated that section 1886(d)(4)(C) of the Act gives HCFA the authority to adjust DRG classification and relative weights. In fact, that section of the law *requires* that the Secretary adjust the DRG classifications and relative weights annually. However, we virtually always limit our adjustments to those that are supported by Medicare data we have collected through the claims submittal process. Although the change in DRG assignment for AICD procedures was requested by commenters because they did not believe that the payment associated with DRG 120 was adequate compensation, the revision in DRG assignment was based on our analysis of the FY 1991 MedPAR data. In fact, we had conducted other analyses of these cases in several previous years that did not support a DRG change. (See final rules published September 1, 1989 (54

FR 36465), September 4, 1990 (55 FR 36023), and August 30, 1991 (56 FR 43216).)

Concerning the change for ESWL cases made effective October 1, 1986, we note that this revision was made in response to a ProPAC recommendation and was based on ProPAC's analysis, which found that payment under DRG 324 substantially understated the cost of ESWL. As discussed in detail in the September 3, 1986 final rule, a commenter had requested that the ESWL cases be assigned to a separate DRG based on a study conducted by the National Health Services and Practice Pattern Survey (51 FR 31486). Our response was that we are generally opposed to the creation of a single procedure DRG and that ". . . this avenue should be employed only if there is substantial evidence of inequity through classification in any of the existing clinically consistent groupings." In addition, we stated that we intended ". . . to monitor ESWL closely as Medicare data become available. If it becomes apparent that reclassification is necessary in the future, we will consider the alternative of developing a specific DRG for ESWL among the options for reclassification." We note that, since 1986, the assignment of ESWL has never been revised.

We intend to maintain the non-OR designation of procedure code 36.06 until we have collected claims data from all hospitals performing this procedure, which will be available in 1997. We will carefully examine these data as part of our analysis of DRG changes for FY 1998 and we will discuss our findings in the FY 1998 proposed rule.

9. DRG Refinements

For several years, we have been analyzing major refinements to the DRG classification system to compensate hospitals more equitably for treating severely ill Medicare patients. These refinements, generally referred to as severity of illness adjustments, would create DRGs specifically for hospital discharges involving very ill patients who consume far more resources than do other patients classified to the same DRGs in the current system. This approach has been taken by various other groups in refining the Medicare DRG system to include severity measurements, most notably the research done for Yale, the changes incorporated by the State of New York into its all patient (AP) DRG system, and the all-patient refined (APR) DRGs, which are a joint effort of 3M/HIS and the National Association of Children's Hospitals and Related Institutions.

In the May 27, 1994, proposed rule, we announced the availability of a paper we had prepared that describes our preliminary severity DRG classification system as well as the analysis upon which our proposal was formulated. Comments were due to HCFA by September 30, 1994. We received 99 individual letters commenting on the DRG refinements. Many of the commenters supported the change in theory, but there were numerous specific comments on the methodology.

Our plan was to incorporate comments and suggestions we received and to consider proposing the complete revised DRG system as part of the FY 1996 prospective payment system proposed rule. However, as the final rule published on September 1, 1992 (57 FR 39761) indicated, we would not propose to make significant changes to the DRG classification system unless we were able either to improve our ability to predict coding changes by validating in advance the impact that potential DRG changes may have on coding behavior, or to make methodological changes to prevent building the inflationary effects of the coding changes into future program payments.

Besides the mandate of section 1886(d)(4)(C)(iii) of the Act, which provides that aggregate payments may not be affected by DRG reclassification and recalibration changes, we do not believe it is prudent policy to make changes for which we cannot predict the effect on the case-mix index and, thus, payments. Our goal is to refine our methodology so that we can fulfill, in the most appropriate manner, both the statutory requirement to make appropriate DRG classification changes and to recalibrate DRG relative weights (as mandated by section 1886(d)(4)(C) of the Act) as well as to make DRG changes in a budget neutral manner.

One approach to this problem would be to maintain the average case weight at 1.0 after recalibration, thereby eliminating the process of normalization. In other words, after recalibration, we would not scale the new relative weights upward to carry forward the cumulative effects of past case-mix increases. We would, instead, make an adjustment or include in the annual update factor a specific allowance for any real case-mix change that occurred during the previous year. This is a relatively simple and straightforward system for preventing the effects of year-to-year increase in the case-mix index from accumulating in the DRG weights and to account for expected changes in coding practice. In addition, we are exploring a means of estimating anticipated case-mix change due to changes in coding practice that are a result of DRG classification revisions. (See section VII.E of this preamble for a more detailed description of this process in response to a ProPAC recommendation.) However, since we have not yet resolved these issues, we were unable to propose our refined DRG severity system for FY 1996. We will continue to analyze the comments we received and validate our previous research with later MedPAR data. We remain committed to proposing our revised system as soon as possible.

We received several comments on our plan to introduce refinements to the DRG classification to include a measure of severity. In general, these comments were supportive of the concept of a severity-adjusted DRG system to improve compensation for the treatment of severely ill patients.

Comment: One commenter supported HCFA's decision to postpone a final proposal until all related issues were resolved. Another commenter stated we should not postpone new refinements on the basis of political reasons that arise due to shifts in payments. Other commenters, while stating appreciation of our desire to predict beforehand the effect of severity changes on coding behavior, urged us to resolve the issues regarding the effect of severity-adjusted DRGs on case mix, payment, and budget neutrality. One commenter stated we should set standards for "predictive accuracy" that are reasonable and attainable.

Response: We continue to maintain our position that, until we can improve our ability to predict coding changes, or prevent inflationary effects of coding change through methodological changes to DRG recalibration, we will not propose any significant changes to the DRG classification system. However, we note that we have continued to evaluate approaches to resolve this issue.

One approach to improving our ability to predict coding changes is to develop a data base of abstracted medical records to be used to estimate the real and coding components of case-mix change and to forecast future coding improvements. As we stated in the proposed rule (60 FR 29247), HCFA has recently implemented a record reabstracting process being conducted by two clinical data abstraction centers (CDACs) under contract with the Health Standards and Quality Bureau (HSQB). This will provide a data base consisting of 30,000 records per year. When we have evaluated the results of this reabstracting effort, we will determine if it is suitable for predicting coding

behavior. We believe we are proceeding at an appropriate pace that will result in both reasonable and attainable predictive standards.

As to the statement that HCFA should not postpone DRG refinements because of political reasons due to payment shifts, we note that we are constricted by the mandate of section 1886(d)(4)(C)(iii) of the Act, which provides that aggregate payments may not be affected by DRG reclassification and recalibration changes. We have experienced severe inflationary effects in prior years (see the September 1, 1989, final rule for a discussion of the inflationary effect of the FY 1987 DRG changes (54 FR 36468)), and reiterate our position that it would not be prudent payment policy to make changes for which we cannot predict nor control the effects.

Comment: One commenter recommended that HCFA issue a GROUPER that includes the severity refinements for review and comment by the industry.

Response: We believe it would be neither cost effective nor efficient to issue a GROUPER preliminary to a decision to proceed with the severity refinements. Thus, because the severity methodology is still in the preliminary planning stages, we have not prepared a public use GROUPER for release. The figures used in the initial analysis will be subject to change based on more current data and to modification based on comments received. At such time as the severity-adjusted methodology is officially implemented, a GROUPER will be made available. This is consistent with HCFA policy on the availability of GROUPER software for other modifications to the DRG classification system. We note that we made a complete FY 1992 MedPAR file with the current and revised (severity) DRG designations available to the public as part of the May 27, 1994 proposed rule (59 FR 27756).

10. Other Issues

a. Epilepsy (DRGs 24, 25, and 26). *Comment:* We received two comments concerning the classification in DRGs 24, 25, and 26 (Seizure and Headache) of patients with intractable epilepsy, specifically those admitted for neurodiagnostic monitoring. The commenters believe that a revision to the existing DRGs is necessary to account for the greater resource use and length of stay for these patients. The commenters stated that the financial risk is greatest in DRG 25, the DRG most commonly used by specialized centers to evaluate patients, and that these patients are typically under age 40.

The commenters referred to an analysis conducted by HCFA based on FY 1993 Medicare data that indicated that the charges for cases assigned to DRG 25 were twice as great per patient for intractable epilepsy patients with monitoring than for all other patients in that DRG. This analysis was discussed in the September 1, 1994, final rule (59 FR 45343). Based on these results, the commenters argue that a change in the DRG classification system for FY 1996 is imperative, using the following criteria to classify patients into a separate DRG:

- A diagnosis of intractable epilepsy (diagnosis codes 345.0 through 345.9, with a 5th digit of 1); and
- Procedure code 89.19 for video and radio-telemetered monitoring.

In addition, one commenter noted that the relatively low volume of cases of intractable epilepsy with telemetered monitoring (fewer than 500) is not a valid objection to establishing a separate DRG for these cases because there are currently over 70 DRGs with 500 or fewer cases.

Response: The epilepsy treatment community has for some time expressed concern that the resources used to treat intractable epilepsy patients far exceeded those needed for other patients in the same DRGs, and that Medicare payment is inadequate to meet these costs. We have addressed the issue of Medicare payment for intractable epilepsy cases for the past 4 years. As a result of our previous analyses, we concluded that although intractable epilepsy patients incur higher average charges than other patients in the same DRGs, there is neither sufficient differential in the charges nor sufficient volume to warrant a DRG change.

We updated our most recent study and evaluated the March 1995 update of the FY 1994 MedPAR file. We identified 2,385 intractable epilepsy cases with an average charge of $9,084, compared to an average charge of $7,636 for all patients in the same DRGs (that is, DRGs 24, 25, and, 26).

We note that, although the incidence of inpatient admissions for all cases of epilepsy decreased nearly 30 percent in FY 1993, in FY 1994 intractable epilepsy inpatient admissions increased by a little over 4 percent, with nonintractable epilepsy admissions continuing to decrease (down 21 percent). The largest increase in admissions occurred in DRG 25, up more than 16 percent. Nonintractable epilepsy cases incurred an average charge of $7,458, for 10,536 cases.

The following table summarizes our most recent epilepsy analysis findings, comparing the average charges between epilepsy and other cases assigned to the same DRG (the number of cases is included in parentheses):

DRG	Intractable epilepsy	Nonintractable epilepsy	All epilepsy	All cases
24	$11,083 (1,065)	$8,626 (7,342)	$8,937 (8,407)	$8,649 (58,726)
25	7,471 (1,320)	4,762 (3,190)	5,555 (4,510)	4,946 (22,121)
26	0 (0)	$13,060 (4)	$13,060 (4)	7,834 (43)
All cases	9,084 (2,385)	7,458 (10,536)	7,758 (12,921)	7,636 (80,890)

Based on the recommendation of the commenters, we focused our analysis on DRG 25, with and without video-telemetered monitoring (procedure code 89.19). Our results parallel the expectations of the commenters. That is, patients with intractable epilepsy who receive monitoring incur charges significantly higher than both intractable cases without monitoring and nonintractable cases with monitoring. Also, this differential is greatest in DRG 25, with an average charge of $11,088 for intractable patients with monitoring compared to $5,397 for intractable patients not receiving monitoring. We note that the number of intractable epilepsy inpatient admissions has increased over last year; the number of cases with monitoring has increased almost 34 percent in DRG 25. Thus, it would appear that access to care is not being jeopardized, particularly in this area over which commenters expressed the greatest concern. It is notable, also, that the charges for treating intractable epilepsy patients with monitoring increased 9 percent, while the cost of treating these patients without monitoring decreased 2 percent. The results of our analysis of DRG 25 are summarized in the following table:

DRG	Intractable epilepsy	Nonintractable epilepsy
24 with 89.19	$14,299 (107)	$9,826 (35)
24 without 89.19	10,724 (958)	8,620 (7,307)
25 with 89.19	11,088 (481)	7,454 (88)
25 without 89.19	5,397 (839)	4,685 (3,102)
26 with 89.19	0 (0)	0 (0)
26 without 89.19	0 (0)	13,060 (4)

As we did last year, we evaluated the experience of intractable epilepsy patients under age 65 in DRG 25. These patients qualify for Medicare benefits on the basis of disability rather than age. We focused our analysis on DRG 25 because patients admitted for neurodiagnostic monitoring must be relatively healthy and, thus, do not usually have any complicating conditions. Again, we found that those patients under 65 years of age with intractable epilepsy and telemetered monitoring (454 cases) incurred higher average charges ($11,330) than similar patients (27 cases) over 65 ($7,030).

The results of our analysis of DRG 25 by age category are as follows:

DRG 25	Age <65	Age ≥65	All ages
All Epilepsy	$6,002 (2,659)	$4,911 (1,851)	$5,555 (4,510)
All Intractable	7,757 (1,161)	5,383 (159)	7,470 (1,320)
Intractable with 89.19	11,330 (454)	7,030 (27)	11,088 (481)
Intractable without 89.19	5,464 (707)	5,046 (132)	5,397 (839)
All Nonintractable	4,643 (1,498)	4,867 (1,692)	4,762 (3,190)
Nonintractable with 89.19	7,679 (78)	5,699 (10)	7,454 (88)
Nonintractable without 89.19	4,476 (1,420)	4,862 (1,682)	4,685 (3,102)

We also reviewed the intractable cases where sphenoidal electrodes were inserted and identified 62 cases, with an average charge of $12,220. It is interesting to note that while there was more than a 14 percent increase in the incidence of these cases, the average charge actually decreased. These patients continue to incur higher charges than those with video-telemetered monitoring.

We note that, as a group, the intractable epilepsy cases are not the most resource intensive set of cases assigned to DRGs 24, 25, and 26. The highest volume of epilepsy cases are coded 345.3 (Epilepsy, Grand Mal status), with 5,608 cases and an average charge of $12,054. Of the epilepsy diagnoses, the average charge for grand mal epilepsy is exceeded only by intractable epilepsy partialis continua (diagnosis code 345.71) with an average charge of $13,095, but only 94 cases.

In response to the commenters' contention that epilepsy centers are at financial risk, we also evaluated the distribution of epilepsy cases across hospitals. There were 740 hospitals treating intractable epilepsy patients: approximately 55 percent treated only one patient; an additional 20 percent treated 2 patients; and 7 percent treated 3 patients. Of the providers treating 10 or more cases of intractable epilepsy (7 percent or 52 hospitals), 34 treated more than 20 intractable cases (approximately 5 percent of the total providers). Recognized epilepsy specialty centers accounted for about 3 percent of total intractable admissions (24 epilepsy center providers). As in our prior analyses, we found that among the high volume hospitals, charges for these cases were normally distributed, with only 21 percent incurring charges greater than the average charge for intractable epilepsy cases with telemetered monitoring, and 33 percent above the average for all epilepsy cases. Accounting for those cases that fall within the average range, 69 percent of the providers incurred average charges below the overall average for intractable cases with monitoring, and 61 percent incurred charges below the average for all epilepsy cases.

Of the 30 recognized epilepsy treatment centers, only 24 reported any intractable epilepsy discharges in FY 1994. Approximately 71 percent (17 of 24 centers) treated 10 or more cases. However, of the total 2,385 intractable epilepsy cases, only 20 percent (477 cases) were treated at epilepsy centers. There were 16 centers (67 percent) with average charges at or below the average charge of $9,084 for all intractable epilepsy cases; only 8 centers incurred average charges above the intractable average charge for treating intractable epilepsy cases.

As we have stated in previous final rules, we acknowledge that, even though the volume of hospitals is small, many hospitals treating high numbers of intractable epilepsy patients may incur charges above the average. This is particularly true for the specialized treatment centers. However, we note that these hospitals are, for the most part, large urban or teaching hospitals or both and, as such, receive some of the highest Medicare payment rates.

We are not recommending any DRG modification for epilepsy cases at this time. Although the intractable epilepsy cases, especially those using procedure 89.19, result in higher charges than other cases in the same DRGs, neither the volume nor the differential in average charges is sufficient to justify a separate DRG for these patients.

Concerning the comment that there are over 70 DRGs with fewer than 500 cases, we note that the vast majority of these lower volume DRGs (59 out of 89 for FY 1994) are for patients age 0 to 17 years, or are located in MDC 14 (Pregnancy, Childbirth, and Puerperium) or MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period). None of these is reflective of the Medicare population, who are primarily

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age 65 or older. Many of the remaining lower volume DRGs are for cases that are generally no longer performed in the hospital inpatient setting. That is, they are assigned to surgical procedures that have moved from being generally performed in the inpatient setting to being performed in an outpatient setting. A few remaining DRGs were established during the initial classification of cases and were determined to have no other clinically appropriate DRG assignment (for example, DRG 43 (Hyphema)). This is not true for epilepsy cases, which are clinically similar to other cases in the DRGs to which they are currently assigned.

Comment: One commenter expressed concern that, in order to ensure access to care, DRG revisions must occur to account for the higher charges incurred by intractable epilepsy patients receiving neurodiagnostic monitoring.

Response: We believe that the increase in the number of intractable epilepsy cases overall (up 4 percent) and the 27 percent increase in intractable epilepsy admissions for video-telemetered monitoring are evidence that access to care is adequate for these patients. Also, a hospital may not refuse to provide a covered service to a Medicare beneficiary if it provides that service to other patients. Specifically, the Medicare regulations at 42 CFR 489.53(a)(2) provide that HCFA may terminate a hospital's Medicare provider agreement if it finds that the hospital places restrictions on the persons it accepts for treatment and fails to apply them to Medicare beneficiaries the same as to all other persons seeking care.

Comment: One commenter noted that many other payers utilize Medicare's DRG classification system, causing an even greater financial loss attributable to treating intractable epilepsy patients because of an arguably inadequate DRG payment.

Response: We have regularly cautioned against the use of the DRG classification system for populations other than the one for which it was designed. Medicare serves a predominantly elderly population, and, thus, the assignment of cases reflects the unique needs and conditions of this age group. To attempt to classify other populations within this structure may result in inappropriate designation of cases. We do not believe that we should develop a system that reflects the experience of another patient group and expect to apply such categorizations to the elderly population. Nor can we assume responsibility for other payers who may attempt to use the Medicare classification system for populations for which it was not intended.

b. Cochlear Implants (DRG 49).

Comment: We received one comment regarding cochlear implants. The commenter expressed concern that the proposed weight for DRG 49 (Major Head and Neck Procedures) is insufficient to compensate hospitals for the cost of providing the cochlear implant to Medicare patients. The commenter is concerned that this will exacerbate a growing access problem for those who need the device. The commenter stated that several hospitals each year have determined that the loss suffered in providing the cochlear implant to the Medicare population makes an ongoing cochlear implant program unsustainable. The commenter quotes utilization figures for the past 4 years, indicating a steady decline in Medicare patient volume.

Because the cochlear implant is a technology-intensive rather than a labor-intensive procedure, the commenter believes that the current system, designed to encourage hospitals to control their costs, suppresses the diffusion of the cochlear implant among the Medicare population. In the absence of a payment policy that the commenter believes will adequately reimburse technology intensive procedures, they requested the following:

- Cochlear implant procedures be placed in DRG 1 (Craniotomy Age >17 except for Trauma).
- HCFA allow separate payment of the speech processor which is not provided during the hospital stay.
- A separate, temporary DRG be created, with a weight of at least 3.0, until such time that a more acceptable policy for technology-intensive DRG's is implemented.

Response: Cochlear implants were first covered by Medicare in 1986 and were assigned to DRG 49 (Major Head & Neck Procedures), the highest weighted surgical DRG in MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth and Throat). Since that time, the cochlear industry has contended that the weight of DRG 49 is too low and does not adequately reflect the resources necessary for the cochlear implant procedure. In response to these concerns, we have analyzed Medicare data every year since 1986.

Our latest analysis, using FY 1994 Medicare claims data, identified a total of 76 cochlear implant cases. Of these cases, 67 were assigned to DRG 49 (9 cases were assigned to DRG 468, Extensive OR Procedure Unrelated to Principal Diagnosis), representing 3.3 percent of all cases in DRG 49. These 67 cases incurred an average charge of $21,793, compared to an average charge of $15,938 for all cases in DRG 49. The average charge for cochlear implant cases is down slightly from FY 1993 claims ($22,386) while the average charge for all cases in DRG 49 shows a small increase (up from $15,679). This increase is most likely a function of the reclassification, effective October 1, 1993, of the low charge procedure, partial glossectomy, from DRG 49 to DRGs 168 and 169 (Mouth Procedures).

Although there is a higher charge for the 67 cochlear cases than for many of the other cases in DRG 49, we note that the cochlear cases are distributed across 44 hospitals, with no more than 6 cases at any one hospital. The majority of hospitals (30 of 44 hospitals, or 68 percent) have only one case.

We have repeatedly addressed the recommendation that we assign cochlear implants to DRG 1, most recently in the September 1994 prospective payment final rule (59 FR 45342). Our rejection of this suggestion continues to be based on our conclusion that the diagnosis code associated with cochlear cases (diagnosis code 389, hearing loss) is not clinically coherent with the diagnosis codes assigned to MDC 1. A basic premise of DRG classification is the assignment of clinically similar discharges within categories based on a common body system or organ system. To reassign cochlear implant cases to MDC 1, we would have to move the principal diagnosis code 389 from MDC 3, the clinically appropriate MDC.

The commenter requested that HCFA allow separate payment of the speech processor, which is typically provided to the patient 4 to 6 weeks after the surgery, thus "unbundling" these costs from other inpatient supplies and services to be billed by the surgeon or audiologist to Medicare Part B. Prior to implementation of the prospective payment system, it was a practice for certain nonphysician services and supplies furnished to hospital inpatients to be billed directly to patients under Medicare Part B. However, with the enactment of Public Law 98–21 and the implementation of the prospective payment system, several statutory changes concerning the bundling policy were made. Specifically, section 1862(a)(14) of the Act provides that, to qualify for Medicare payment, all nonphysician services (with limited exceptions) furnished to hospital inpatients must be provided directly or arranged for by the hospital. Thus, these services become inpatient hospital services payable under Medicare Part A. Section 1833(d) of the Act, in turn, provides that services payable under

Part A may not be paid for under Part B. Therefore, all the services provided to a Medicare beneficiary as part of the inpatient hospital stay are covered under Part A and may not be billed under Part B. This includes the external components of the cochlear device that are implanted during an inpatient stay covered under Part A. Therefore, we do not allow separate Part B payment for part of the cochlear device.

In response to the recommendation submitted by the commenter to assign cochlear implant cases to a new DRG with a weight of at least 3.0, we believe the process for assigning cases as well as calculating DRG relative weights needs to be clarified. HCFA does not assign weights to DRGs arbitrarily, but, rather, calculates the weight for each DRG based on the resources necessary to treat patients assigned to that DRG relative to all other DRGs. A DRG weight cannot be adjusted or a new DRG created without affecting the weight of other DRGs. It would be inappropriate and inadvisable for us to create a new DRG with a specified weight assigned, as such action would impact the weight and, therefore, the payment, for other DRGs. The process by which DRG weights are recalibrated is described in detail below in section II.C of this preamble.

We acknowledge that the Medicare payment for cochlear implant patients has been an issue for several years. However, we find no justification for creating a special DRG for cochlear implants. We have consistently classified clinically similar patients in DRGs who use approximately the same amount of hospital resources. In addition, we prefer to maintain DRGs with enough cases to ensure a normal distribution and relative stability over time.

Although some technologies may not be flexible in their costs, and thus, not lend themselves readily to cost control techniques, there are other areas within the hospital's control that are responsive to cost containment. Thus, the incentive to the hospital is to treat a mix of patients and to manage its operations in such a way to offset lower payment-to-cost cases with those where the payment is in excess of cost.

We continue to believe that the low volume of these cases does not justify the establishment of a new DRG specific to cochlear implants. Nor do we generally create DRGs that are specific to a single technology, especially those available through a single source manufacturer.

In response to the commenter's concern that cochlear implants may not be available to Medicare beneficiaries in the future, as stated above in section II.B.10.a of this preamble, we note that a hospital may not refuse to provide a covered service to a Medicare beneficiary if it provides that service to other patients. Specifically, the Medicare regulations at § 489.53(a)(2) provide that HCFA may terminate a hospital's Medicare provider agreement if it finds that the hospital places restrictions on the number of Medicare beneficiaries it will accept for a particular treatment without placing the same restriction on the other populations it treats.

c. Bipolar Hip Replacement (DRG 209). We received a comment concerning the DRG assignment of certain cases in MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue).

Comment: The commenter believes that cases of bipolar hip replacement should be assigned to DRGs 210, 211, and 212 (Hip and Femur Procedures Except Major Joint) rather than to its current assignment, DRG 209 (Major Joint and Limb Reattachment Procedures of Lower Extremity). The commenter stated that procedure code 81.52 (partial hip replacement) is very similar to procedure code 79.35 (open reduction of fracture of the femur with internal fixation), which is already assigned to DRGs 210, 211, and 212. Further, the commenter believes that partial hip replacement patients are generally more frail individuals as compared to the population that elects total hip replacement surgery, and that they should, therefore, not be assigned to the same DRG.

Response: In recent years, we have conducted several analyses of the procedures assigned to the surgical DRGs in MDC 8. In the final rules dated September 4, 1990 (56 FR 43205) and September 1, 1993 (58 FR 46286), we addressed two of those analyses in detail. Although the specific issues that concern the commenter were not addressed, the result of our analyses was to retain the current DRGs 209, and 210, 211, and 212 classifications. We will, however, reexamine these assignments as part of our annual update and revision process for FY 1997.

d. Add-On Payment for Blood Clotting for Hemophiliacs. We received one comment regarding payment for blood clotting factors administered to hemophilia inpatients.

Comment: The commenter questioned why there was no reference in the proposed rules to the continuation of the add-on payment for blood clotting factors administered to Medicare hemophilia patients. The commenter believes that if this additional payment program is not continued, then some other mechanism should be developed to help alleviate the financial burden of treating these patients.

Response: We did not include a discussion of the payment for blood clotting factors provided to hemophilia inpatients in the proposed rule because the legislation that required this add-on payment expired effective with discharges beginning on or after October 1, 1994.

Section 6011 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239), as amended by section 13505 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66), provided that prospective payment hospitals receive an additional payment for blood clotting factors furnished to Medicare hospital inpatients who are hemophiliacs for discharges occurring on or after June 19, 1990, and before October 1, 1994.

We discussed the issue of payment for Medicare inpatients with hemophilia who require blood clotting factors in detail in the September 1, 1992 final rule in response to a ProPAC recommendation that the add-on payment was no longer necessary. Briefly, ProPAC found that, even though hemophiliacs were more costly to treat than the average case within a given DRG, there were insufficient data to indicate that these differences were due to the administration of the clotting factor. In addition, ProPAC found that not only was there a low volume of patients receiving the blood clotting factor, there were very few hospitals with a significant number of cases. Analyses performed by HCFA resulted in similar findings. Thus, we agreed with ProPAC's conclusion that this add-on payment for blood clotting factors is not necessary.

e. Stem Cell Transplant. Comment: We received one comment requesting that we classify procedure code 41.04 (autologous hematopoietic stem cell transplant) as an OR procedure. The code was effective beginning October 1, 1994, and was classified as a non-OR procedure at that time. The commenter believes that we should reconsider this policy based on the resource use associated with stem cell transplant. In addition, the commenter requested that the code be assigned to DRG 481 (Bone Marrow Transplant) along with the other codes in category 41.0 (bone marrow transplant).

Response: As discussed in the September 1, 1994, final rule in response to a similar comment, prior to the creation of procedure code 41.04 for stem cell transplants, this procedure was included in procedure code 99.73 (therapeutic erythrocytapheresis), a non-OR procedure (59 FR 45340). As we have noted several times, our practice is to assign a new code to the same category as its predecessor code. Because we could not separately identify the stem cell transplant cases from the other cases coded with 99.73 in order to reclassify them and their charges to another DRG, we were unable to predict the resources required for this code and unable to calculate the new weights of both the DRG in which this code was classified and the DRG to which it would be assigned. Therefore, we were prevented from redesignating code 41.04 as an OR procedure and assigning it to another DRG.

Although it was requested that this code be reassigned to DRG 481, we note that the procedure represented by this code is not a bone marrow transplant procedure. While it may consume hospital resources similar to those transplant procedures, we will be unable to verify that assumption until we can evaluate the newly coded stem cell transplant cases in the FY 1995 MedPAR file. That file will be available in calendar year 1996 and we will analyze the cases with procedure code 41.04 as a part of our DRG agenda for FY 1997.

C. Recalibration of DRG Weights

We proposed to use the same basic methodology for the FY 1996 recalibration as we did for FY 1995. (See the September 1, 1994, final rule (59 FR 45347).) That is, we proposed to recalibrate the weights based on charge data for Medicare discharges. However, we proposed to use the most current charge information available, the FY 1994 MedPAR file, rather than the FY 1993 MedPAR file. The MedPAR file includes fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights were constructed from FY 1994 MedPAR data, based on bills received by HCFA through December 1994, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1994 MedPAR file at that time included data for approximately 10.9 million Medicare discharges. The MedPAR file updated through June 1995 includes data from approximately 11 million discharges and is the file used to calculate the weights set forth in Table 5 of the addendum to this final rule.

Although we are using the same basic methodology for recalibration, we are making two revisions which are described below. The methodology used to calculate the DRG relative weights from the FY 1994 MEDPAR file is as follows:

- To the extent possible, all the claims were regrouped using the DRG classifications discussed above in section II.B of this preamble. As noted in section II.B.4, due to the unavailability of final GROUPER software, we must simulate some classification changes to approximate the placement of cases under the revised reclassification. However, there are some changes that cannot be modeled.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers. In computing the FY 1995 weights, we eliminated all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG. For the FY 1996 relative weights, we proposed to eliminate a case only if it met the current criterion and also was outside of 3.0 standard deviations from the mean log of distribution of charges per day. We believe that this refinement to the methodology reduces the risk of eliminating cases with unusually low or high total charges that are nevertheless accurately reported. For example, a case with extremely high charges and a corresponding extremely long length of stay would be less likely to be eliminated under the revised methodology.

We received no comment on this refinement and we have identified the statistical outliers in the final recalibration using this methodology.

- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. The second revision we proposed to make is in the treatment of transfer cases. In past recalibrations, we have counted transfer cases as full cases. This may distort the average standardized charges, particularly in DRGs with a high percentage of transfer cases, because the charges associated with a transfer case often do not reflect the resources necessary for a complete course of treatment. Therefore, in calculating the proposed FY 1996 relative weights, a transfer case was counted as a fraction of a case based on the ratio of its length of stay to the geometric mean length of stay of the cases assigned to the DRG. That is, a 5-day length of stay transfer case assigned to a DRG with a geometric mean length of stay of 10 days was counted as 0.5 of a total case.

We received one comment concerning this methodology, which supported our change. Therefore, we have included it in the final recalibration.

- We established the relative weight for heart and liver transplants (DRGs 103 and 480) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart and liver transplant centers that have cases in the FY 1994 MedPAR file. (Medicare coverage for heart and liver transplants is limited to those facilities that have received approval from HCFA as transplant centers.) Similarly, we limited the lung transplant cases we used to establish the weight for DRG 495 (Lung Transplant) to those hospitals that are established lung transplant centers. (As discussed in detail in the final notice with comment period of Medicare coverage of lung transplants published in the **Federal Register** on February 2, 1995 (60 FR 6543), payment for lung transplants is limited to Medicare-approved facilities, effective July 31, 1995.)
- Acquisition costs for kidney, heart, liver, and lung transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); DRG 480 (Liver Transplant); and DRG 495 (Lung Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We proposed to use that same case threshold in recalibrating the DRG weights for FY 1996. Using the final FY 1994 MedPAR data set, there are 34 DRGs that contain fewer than 10 cases. As discussed in detail in section II.B.3 of this preamble, we computed the weight for the 34 low-volume DRGs using the non-Medicare cases from 19 States.

The weights developed according to the methodology described above, using the DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that, beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b of the Addendum to this final rule, we are making a budget neutrality adjustment to implement that the requirement of section 1886(d)(4)(C)(iii) of the Act.

III. Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred by this provision, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). In addition, as discussed below, we adjust the wage index to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act.

Section 1886(d)(3)(E) of the Act also requires that the wage index be updated annually beginning October 1, 1993. This section further provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category and must exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing services.

For determining prospective payments to hospitals in FY 1996, the wage index is based on the data collected from the Medicare cost reports submitted by short-term, acute care hospitals for cost reporting periods beginning in FY 1992 (that is, cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992). The FY 1996 wage index includes wages and salaries paid by a hospital, home office salaries, fringe benefits, and certain contract labor costs. The current computation for the wage index excludes salaries and wages associated with nonhospital-type services, such as skilled nursing facility services, home health agency services, or other subprovider components that are not subject to the prospective payment system.

As discussed in detail below, we proposed to use updated wage data to construct the wage index as required by section 1886(d)(3)(E) of the Act. Set forth below is a discussion of that update as well as a discussion of other wage index issues. In addition, we proposed to change certain guidelines for hospital reclassification used by the Medicare Geographic Classification Review Board (MGCRB). That change is discussed in section III.E of this preamble.

B. FY 1996 Wage Index Update

We proposed to base the FY 1996 wage index, effective for hospital discharges occurring on or after October 1, 1995 and before October 1, 1996, on the data collected from the Medicare cost report (Worksheet S–3, Part II) submitted by hospitals for cost reporting periods beginning in FY 1992.

We proposed to use all of the categories of data collected from Worksheet S–3, Part II. Therefore, the FY 1996 wage index reflects the following:

- Total short-term, acute care hospital salaries and hours.
- Home office costs and hours.
- Fringe benefits associated with hospital and home office salaries.
- Direct patient care related contract labor costs and hours.
- The exclusion of salaries and hours for nonhospital services such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system.

Although we did not propose any changes in the reporting of hospital wage index data, we received some comments on this issue.

Comment: One commenter noted that, in early 1995, HCFA distributed special audit instructions to the fiscal intermediaries that defined "direct patient care" as "hands on care." The commenter believes that the "hands on" definition will create problems because it may be subject to various interpretations. Also, the commenter objects to a recent HCFA statement that "travel time" in connection with contract labor is excluded in costs and hours if the information is specifically identified, but otherwise is included. Again, the commenter believes there will be inconsistencies when travel time cannot be identified. Rather than continually refining the definition of direct patient care, the commenter suggested that we adopt a different approach, such as "chargeable services" or "services provided in revenue producing cost centers." In addition, the commenter recommends that HCFA consult with industry representatives before any special data requests or audit instructions are issued that involve large numbers of hospitals.

Response: Before FY 1994, the wage index did not include any costs associated with contract services because the data collected on contract services as part of the 1988 wage survey were unreliable. (See the September 1, 1993 final rule, 58 FR 46295.) However, many hospitals indicated that they were inappropriately disadvantaged because they were forced to contract out for nurses and technicians due to shortages of these services in their areas. To alleviate this problem, we revised the cost report effective for FY 1990 to collect the data associated with any direct patient care service contracts such as service contracts for nurses, therapists, and diagnostic imaging technicians. We specifically excluded any Part B services, Part A physician services, management contracts, or any contract for services not directly involved with patient care.

The contract labor definition is limited to those services directly related to hands-on patient care. This definition was adopted to address the main concern expressed by hospitals with respect to the inclusion of contract labor in the wage index, that is, that many hospitals have problems hiring nurses in areas experiencing nursing shortages and must rely on contract labor sources. We believe that defining direct patient care as "chargeable services" or "services provided in revenue producing cost centers" would result in confusion on the part of hospitals attempting to exclude nonlabor-related expenses such as payments for equipment and supplies and nonpatient care contract services such as management and housekeeping services.

Regarding the exclusion of travel time in connection with contract labor, we believe that it is appropriate to exclude from the wage data those nonlabor costs associated with contract services that are billed separately. Contract labor typically involves negotiating a dollar amount for labor to be provided. This negotiated amount may include other costs involved in providing the labor, such as travel costs for lodging, mileage, and time. However, if these nonlabor costs are billed separately from the negotiated contract, they are not to be included in the contract labor wage data.

We believe that our definition of direct patient care is accurate and clear. Special audit instructions were issued earlier this year because we were receiving many inquiries regarding contract labor for services such as pharmacy and clinical laboratory. In the instructions, which were issued in February 1995, we provided all fiscal intermediaries with written guidelines concerning our policy to exclude payments and hours not attributable to direct patient care-related contract services, which would include pharmacy and clinical laboratory services.

We believe it is appropriate to issue clarifying instructions to our fiscal intermediaries on policies without industry input, but we agree with the commenter that we should consult with industry representatives before making changes in the types of costs that are included in the wage index. In fact, virtually all our recent proposals were made in response to requests from hospital and industry representatives. In addition, we have conducted special surveys and task forces to address these issues. One example of our efforts to involve industry representatives before making a change in policy is the summer 1993 survey concerning which costs should be recognized as fringe benefit costs. (See the September 1, 1994 final rule (59 FR 45356).)

Comment: The national representative of a group of fiscal intermediaries requested that the February 1995 special instruction be distributed to all fiscal intermediaries.

Response: The February 1995 instruction on direct patient care related contract services was distributed to all fiscal intermediaries. Therefore, there should be consistent application of this policy in future data collection.

Comment: One commenter noted that the wage index for seven out of eight MSAs in one State decreased between FY 1995 and the proposed FY 1996 values while other areas of the country experienced significant increases. The commenter suggested that HCFA review in detail those MSAs that experience significant increases in their wage index values from the prior year in order to maintain consistency and equity of the payment system.

Response: HCFA does review the percent change in the updated wage index from the prior year wage index, by MSA and by urban and rural hospital location. In addition, we review the wage data for any area that experiences a wage index change of 10 percent or more to determine the reason for the fluctuation. When necessary, we contact the appropriate fiscal intermediary to ensure the validity of the data or to obtain an explanation for the change. We note that none of the MSAs referred to by the commenter experienced a change of 10 percent or more. Therefore, they were not subject to any special review.

We also analyze the impact of the updated wage index on hospitals using categories such as census division, teaching status, and geographic reclassification status. This impact analysis is located in section VI.C of Appendix A to this final rule. We include this impact analysis in both the proposed and final rules.

1. Verification of Wage Data from the Medicare Cost Report

The data for the FY 1996 wage index were obtained from Worksheet S–3, Part II, of the HCFA–2552 form submitted and certified for accuracy by short-term, acute care hospitals for cost reporting periods beginning during FY 1992 (October 1, 1991 through September 30, 1992). The wage data are reported electronically to HCFA through the Hospital Cost Report Information System (HCRIS). As in past years, we initiated an intensive review of the wage data submitted by hospitals and performed numerous edits to ensure quality and accuracy. Medicare intermediaries were instructed to transmit any revisions in wage data made as a result of their review through HCRIS by early January 1995. In the proposed rule, we discussed in detail our review of the wage data as well as the process that hospitals could use to verify their wage data and to submit corrections if necessary (60 FR 29211).

The wage file used to construct the proposed wage index included data obtained in late January 1995 from the HCRIS data base and subsequent changes we received from intermediaries through March 21, 1995. To allow sufficient time to process changes, we instructed hospitals to submit requests for corrections to their intermediaries by May 15, 1995. To be reflected in the final wage index, wage data corrections had to be reviewed, verified, and transmitted to HCFA through HCRIS on or before June 15, 1995 (except for tabulation or data entry errors). All data elements that failed edits have been resolved and are reflected in this final rule.

Comment: One commenter stated that the fiscal intermediaries should not be given as much discretion to make determinations regarding which costs should be allowed as wage data for purposes of calculating the wage index. The commenter believes that HCFA should clearly define allowable items, and intermediaries should be required to use those definitions. It is the commenter's opinion that this action would greatly improve the comparability of wage data from one MSA to another.

Response: We promote consistency in the treatment of allowable wage costs to the extent possible. We have provided the intermediaries with the wage data cost report instructions and guidelines for allowable wage data in the desk review, but it is not possible to define every allowable wage data item. (See the September 1, 1993 final rule, 58 FR 46299.) We believe that the fiscal intermediaries are generally in the best position to make determinations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. We note that, effective October 1, 1994, hospital cost reports were revised to further promote equitable and consistent treatment of wage-related costs (59 FR 45357, September 1, 1994).

Comment: One commenter is concerned that HCFA's edits are not adequate to ensure consistent treatment of the wage data by the fiscal intermediaries and to produce wage index values that reflect the true labor market situation. The commenter is also concerned about delays in making changes to improve the wage index.

Response: In response to concerns voiced in the past about inconsistent treatment of wage data, we have taken steps that we believe should eliminate most inconsistencies. Specifically, in November and December of each year, the fiscal intermediaries perform desk reviews on the wage data reported by each hospital. These reviews are conducted based on reasonableness parameters (edits) established by HCFA. HCFA also edits the wage data using additional edits, such as comparing each hospital's current year wage data to the prior year wage data, comparing each hospital's wage data to its MSA's data, and reviewing aggregate data such as all hospitals with average hourly wages below the second percentile for all hospitals nationally. The FY 1992 data that were used to calculate the FY 1996 wage index were subjected to a total of 55 edits. We have also instructed fiscal intermediaries to contact HCFA when questions arise. In addition, if a hospital disagrees with how a fiscal intermediary deals with a particular issue, the hospital is encouraged to bring it to our attention.

Regarding the fluctuations in the wage index by area, as discussed in a previous response, we analyze the impact of the updated wage index and review the data for any area that experienced a wage index value change of 10 percent or more to determine the reason for the fluctuation. When necessary, we contact the intermediary to determine the validity of the data or to obtain an explanation for the change.

Regarding changes to improve the wage index, we note that the cost report form for reporting wage data has been revised effective for FY 1995 (that is, for cost reporting periods that begin on or after October 1, 1994 and before October 1, 1995). Because this revised cost report form and instructions are more specific, we expect that the reporting of wage data and the review of that data will be more consistent across hospitals and fiscal intermediaries. However, because of the 4-year time lag between improved data reporting and the use of those data in the wage index, there is a necessary delay before the changes can affect the wage index.

2. Requests for Wage Data Corrections

In the proposed rule, we noted that we would make a diskette available in mid-August that would contain the finalized raw wage data used to construct the wage index values in this final rule. As with the diskette made available in March 1995, HCFA made the August diskette available to hospital associations and the public. The August diskette is available only for the limited purpose of identifying any potential errors made by HCFA or the intermediary in the entry of the final wage data that result from the process described above, not for the initiation of new wage data correction requests (60 FR 29212).

If, after reviewing the data in the August diskette or in this final rule, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and HCFA. These letters should outline why the hospital believes an error exists. These requests must be *received by* the intermediary and HCFA no later than September 21, 1995 to allow inclusion in the wage index values effective October 1, 1995. Requests should be sent to: Office of Hospital Policy; Attention: Nancy Edwards, Director; Division of Prospective Payment System; Room C5–06–27; 7500 Security Boulevard; Baltimore, Maryland 21244–1850. The intermediary will review requests upon receipt, and, if it is determined that an intermediary or HCFA error exists, the fiscal intermediary will notify HCFA immediately.

As noted in the proposed rule, after mid-August, we will make changes to the hospital wage data only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the August diskette. Specifically, neither the intermediary nor HCFA will accept the following types of requests in conjunction with this mid-August process: requests for wage data corrections that were submitted too late to be included in the data transmitted to the HCRIS system on or before June 15, 1995; requests for correction of errors made by the hospital that were not, but could have been, identified during the hospital's review of the March 1995 data; or requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process. Verified corrections to the wage index made as a result of an intermediary or HCFA error received timely (that is, by September 21, 1995) will be effective October 1, 1995.

We believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors made by the hospital during the preparation of Worksheet S–3 to the intermediary's attention. Moreover, because hospitals had access to the raw wage data in mid-August, they will have had the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the implementation of the prospective payment rates on October 1. We believe that if hospitals avail themselves of these opportunities, the wage index implemented on October 1 should be free of such errors. Nevertheless, in the unlikely event that such errors should occur, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(s)(2), we may make midyear corrections to the wage index only in those limited circumstances where a hospital can show: (1) that the intermediary or HCFA made an error in tabulating its data, and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 1996 (that is, by the September 21, 1995 deadline). As indicated earlier, since a hospital will have the opportunity to verify its data, and the intermediary will notify the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be made. However, should a midyear correction be necessary, the wage index change for the affected area will be made prospectively from the date the correction is made. We received several comments concerning the collection and verification of the wage data.

Comment: One commenter is concerned that the definition of "HCFA or intermediary error" related to requests for wage data corrections has been modified to mean only those errors relating to the entry or tabulation of the wage data. The commenter also stated that it is not clear if this would remove inconsistent applications or interpretations of HCFA policy by the intermediary from the definition of an error. The commenter disagrees with excluding an inconsistent application of policy from the definition of errors.

Response: In the proposed rule, we stated that, after mid-August, we would make changes to the hospital wage data only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the diskette we made available in August (60 FR 29212). We specified that after the May 15 deadline for submission of requests for corrections, hospitals would not be able to request that we reconsider factual determinations or policy interpretations made by the intermediary or HCFA. We believe that hospitals had sufficient opportunities to raise these types of issues, including review of the March 1995 data. Thus, after May 15, correctable errors to the wage data are limited to data entry or tabulation errors made by HCFA or the intermediary.

Comment: One commenter believes that any wage data and wage index changes made for one hospital after the final rule is published should not have a negative impact on other hospitals. While acknowledging budget neutrality limitations, the commenter stated that, last year, several MSAs were subject to wage index changes even though only one MSA had a hospital that made a mistake in reporting certain data.

Response: We do not believe it is appropriate to make a "partial correction," that is, correcting a hospital's wage data but not incorporating the effects of the correction into the wage index value for all hospitals in the MSA. We note that we make both types of corrections—those that decrease the wage index value of an MSA as well as those that result in an increase in the wage index value.

Comment: One commenter requested that we specify a date by which intermediaries must notify hospitals regarding determinations on wage data correction requests. The commenter believes the rules should be changed to specify a date prior to the June 15 deadline, in order to give hospitals the opportunity to appeal the intermediary decision to HCFA.

Response: In order to allow sufficient time to review and process the wage data so that the final wage index and prospective payment rates can be published by September 1, it is necessary that the intermediary transmit any wage data corrections to HCFA through HCRIS on or before June 15. The raw hospital wage data become available to the public in mid-March, and we allow hospitals 2 months to review their wage data and submit wage data corrections, including all documentation necessary to support the requested change. We then allow the intermediary 1 month in which to review, verify and submit revised data in response to these correction requests. We do not believe that it would be appropriate to shorten the time available to the intermediaries for these determinations.

In each of the past two years, a commenter has suggested that we establish a formal appeals process for disputes over corrections submitted by hospitals to intermediaries (58 FR 46301 and 59 FR 45351). We continue to believe that a formal appeals process is neither necessary nor feasible. We believe that maintaining the current timeframes gives hospitals more flexibility in their review. We encourage hospitals to submit their wage data correction requests to the fiscal intermediary as soon as possible in order to allow the intermediary sufficient time to review the request prior to June 15.

Comment: One commenter requested changes in the format of the wage data diskette that we make available to the industry. The commenter believes that HCFA should provide additional information on the wage data diskette, such as each hospital's MSA, redesignated MSAs, and inflation factors. This would allow purchasers of the diskette to group hospitals by MSA in order to make comparisons and to verify the published wage index.

Response: The purpose of the diskette that HCFA makes available is to allow each hospital to review its wage data in order to verify that it is correct before it is used in the calculation of the final wage index. We agree with the commenter that the hospital's MSA should be included in the diskette and we will revise the format accordingly. However, we are unable to add any other data elements to the diskette because of space limitations. That is, we would be forced to expand to two diskettes, requiring the purchase of both diskettes to obtain all wage data. We are, however, considering the possibility of providing all of the requested data elements electronically (that is, on-line). In the meantime, we note that there is a Payment Impact file available for both the proposed and final rules. This file contains the data used to estimate payments, and we suggest that members of the public who wish to make comparisons order this disk. See our June 2, 1995 proposed rule for ordering information (60 FR 29250).

3. Effect of Judicial Reversal of Wage Data Denial

It has been our longstanding policy to make midyear revisions to wage index data prospectively only (see, for example, 49 FR 258 (January 3, 1984); 54 FR 36478 (September 1, 1989)), and we continue to believe that, to the extent that midyear wage data revisions are appropriate, those revisions should be made prospectively only. Some hospitals whose requests for wage data revisions have been denied by HCFA have sought relief in the Federal courts. While no court has yet reversed an HCFA decision denying a hospital's wage data revision request, these cases have the potential to present the question of what effect we would give to such a final judicial decision.

Because we had not previously addressed this question in any rulemaking, we proposed to clarify our position regarding the temporal effect of a final judicial decision reversing an HCFA denial of a hospital's request for a wage data revision. We proposed to add a new § 412.63(s)(5) to clarify that such a decision has limited retroactive effect. If a final judicial decision reverses an HCFA denial of a hospital's wage data revision request, we proposed to treat the hospital as if HCFA's decision on the hospital's wage data revision request had been favorable rather than unfavorable. HCFA would pay the hospital by applying a revised wage index that reflects the revised wage data at issue. The revised wage data would not be considered for purposes of revisiting past adjudications of requests for geographic reclassification under section 1886(d)(10) of the Act. Under the statutory scheme established by Congress, decisions on applications for MGCRB reclassification must be finalized prior to the Federal fiscal year for which the reclassifications would take effect.

In some Federal fiscal years, wage data revision requests were initially reviewed by the fiscal intermediaries and forwarded to HCFA for a determination of whether a revision should be made. In other years, the fiscal intermediaries themselves have made determinations on wage data revision requests (with input from HCFA when necessary). The latter is our current policy. In the foregoing discussion, the phrases "HCFA denial of a hospital's wage data revision request" and "HCFA decision on the hospital's wage data revision request" mean the decision by either HCFA's Office of Hospital Policy or the intermediary denying a hospital's request for a wage data revision.

We considered proposing to apply a strict policy of prospectivity to final judicial decisions reversing HCFA denials of wage data revision requests—that is, adopting a policy to apply such judicial decisions prospectively from the date they are made. While we continue to believe that prospective-only changes are most appropriate under a prospective rate-setting system such as the hospital inpatient prospective payment system, we also recognize that hospitals have sought, and will continue to seek, judicial review of unfavorable HCFA decisions on hospitals' requests for wage data revisions. Applying a policy of strict prospectivity to final judicial decisions reversing HCFA denials of wage data revision requests might be viewed, in some cases, as frustrating the purpose of judicial review, since such a decision might not be made until after the close of the fiscal year or years at issue. Therefore, on balance, we believe the better policy is the one we proposed, under which we would give effect to a final judicial decision reversing a HCFA denial of a hospital's wage data revision request by applying a revised wage index that reflects the revised wage data as if HCFA's decision had been favorable rather than unfavorable.

No comments were received on this proposal. Therefore, we will implement the change as proposed effective beginning FY 1996, that is, October 1, 1995.

4. Computation of the Wage Index

As noted above, we are basing the FY 1996 wage index on wage data reported on the FY 1992 cost report. The final wage index is based on data from 5,269 hospitals paid under the prospective payment system and short-term, acute care hospitals in waiver States. The method used to compute the FY 1996 wage index is as follows:

Step 1—We gathered data from each of the non-Federal short-term, acute care hospitals for which data were reported on the Worksheet S–3, Part II of the Medicare cost report for the hospital's cost reporting periods beginning on or after October 1, 1991, and before October 1, 1992.

Each hospital was assigned to its appropriate urban or rural area prior to any reclassifications under section 1886(d)(8) or 1886(d)(10) of the Act. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1991 and had reported a cost reporting period exceeding 52 weeks. The data were included because no other data from these hospitals would be available for the cost reporting period described above, and particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1992 data.

Step 2—For each hospital, we subtracted the excluded salaries (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system) from gross hospital salaries to determine net hospital salaries. To the net hospital salaries, we added hospital contract labor costs, hospital fringe benefits, and any home office salaries and fringe benefits reported by the hospital to determine total salaries plus fringe benefits.

Step 3—For each hospital, we inflated or deflated, as appropriate, the total salaries plus fringe benefits resulting from Step 2 to a common period to determine total adjusted salaries. To make the wage inflation adjustment, we used the percentage change in average hourly earnings for each 30-day increment from October 15, 1991 through September 14, 1993, for hospital industry workers from Standard Industry Classification 806, Bureau of Labor Statistics Employment and Earnings Bulletin. The annual inflation rates used were 5.6 percent for FY 1991, 4.8 percent for FY 1992, and 3.6 percent for FY 1993. The inflation factors used to inflate the hospital's data were based on the midpoint of the cost reporting period as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/91	11/15/91	1.059411
11/14/91	12/15/91	1.055280
12/14/91	01/15/92	1.051165
01/14/92	02/15/92	1.047066
02/14/92	03/15/92	1.042983
03/14/92	04/15/92	1.038916
04/14/92	05/15/92	1.034865
05/14/92	06/15/92	1.030830
06/14/92	07/15/92	1.026810
07/14/92	08/15/92	1.022806
08/14/92	09/15/92	1.018818
09/14/92	10/15/92	1.014845
10/14/92	11/15/92	1.011859
11/14/92	12/15/92	1.008881
12/14/92	01/15/93	1.005912
01/14/93	02/15/93	1.002952
02/14/93	03/15/93	1.000000
03/14/93	04/15/93	0.997057
04/14/93	05/15/93	0.994123
05/14/93	06/15/93	0.991197
06/14/93	07/15/93	0.988280
07/14/93	08/15/93	0.985372
08/14/93	09/15/93	0.982472

For example, the midpoint of a cost reporting period beginning January 1, 1992 and ending December 31, 1992 is June 30, 1992. An inflation adjustment factor of 1.026810 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1992 and covers a period of less than 360 days or greater than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 4—For each hospital, we subtracted the reported excluded hours from the gross hospital hours to determine net hospital hours. We increased the net hours by the addition of any reported contract labor hours and home office hours to determine total hours.

Step 5—As part of our editing process, we deleted data for 37 hospitals for which we lacked sufficient documentation to verify data that failed edits because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. We retained the data for other hospitals that are no longer participating in the Medicare program because these hospitals contributed to the relative wage levels in their labor market areas during their FY 1992 cost reporting period.

Step 6—Within each urban or rural labor market area, we added the total adjusted salaries plus fringe benefits obtained in Step 3 for all hospitals in that area to determine the total adjusted salaries plus fringe benefits for the labor market area.

Step 7—We divided the total adjusted salaries plus fringe benefits obtained in Step 6 by the sum of the total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus fringe benefits obtained in Step 3 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $18.9296.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Comment: One commenter noted that Flagstaff, Arizona, a new MSA, was not designated as an MSA for either wage index or hourly wage purposes in the proposed rule. The commenter requested that we reflect this change in the final rule.

Response: After publication of the proposed rule on June 2, Office of Management and Budget (OMB) Bulletin Number 95–04 established two new MSAs effective June 30, 1995: Flagstaff, Arizona-Utah MSA (comprising Coconino County, Arizona and Kane County, Utah) and Grand Junction, Colorado MSA (comprising Mesa County, Colorado). The bulletin also changed the name of the Hickory-Morganton, North Carolina MSA to Hickory-Morganton-Lenoir, North Carolina MSA. These new MSAs and the revised designation are incorporated in the final wage index (see Tables 4a and 4d).

Comment: One commenter requested that we establish a wage index floor for each of the labor market areas in Puerto Rico equal to the level of the wage index at the time Puerto Rico became subject to the prospective payment system (October 1, 1987). An alternative proposal made by the commenter was to

establish a wage index floor based on the current wage index for rural Mississippi. The commenter also suggested that, after making either of the two recommended wage index changes, we should adjust the Puerto Rico standardized amounts to reflect the higher wage index values leading to a decrease in the labor share percentage of the Puerto Rico standardized amounts.

Response: At this time, we do not believe it would be appropriate to set up a floor level for the wage index. The wage index measures relative hospital wage levels, so that labor market areas that experience slower wage growth than the national average wage growth (on a percentage basis) experience wage index decreases while those who experience faster growth receive wage index increases. Since the wages in Puerto Rico have increased at a significantly slower level than national wages, Puerto Rico's wage index values have decreased accordingly. The average hourly wage for rural Puerto Rico has increased 51.7 percent (from $5.40 to $8.19) from FY 1984 to FY 1992, while the national average hourly wage has increased 94.0 percent (from $9.76 to $18.93). Consequently, the wage index for rural Puerto Rico has decreased from 0.5536 in FY 1988, which is based on the FY 1984 data, to 0.4326 in FY 1996, which is based on the FY 1992 wage data.

While we are concerned about the fall in the wage index values in Puerto Rico, the implementation of a wage index floor would create new problems. For example, we also must consider that the introduction of a wage index floor would have to be executed in a budget neutral manner. Thus, any wage index floor would deprive hospitals with wage index values above the floor level of their appropriate payment level through lower standardized amounts. We will continue to study this issue in the hope of finding a solution that is equitable to hospitals in all areas. Since we do not believe a wage index floor is appropriate, we will not be making any changes to the labor share percentage for Puerto Rico standardized amounts.

Comment: One commenter suggested that we eliminate the Puerto Rico Rural Area classification and classify those hospitals to their nearest geographic area (that is, one of the urban Puerto Rico areas). The commenter's suggestion is based on the belief that there is no socioeconomic difference between the rural hospitals and any other hospital on the island.

Response: We do not believe it is appropriate to offer special treatment for any rural area. Unless and until we decide to adopt a new method for defining labor market areas, we will continue to use rural areas for hospitals in counties that are not designated as part of MSAs. We note that the Puerto Rico rural wage index value has increased since publication of the proposed rule based on corrections we have received. The final rural area wage index value is 0.4326, an increase of 11 percent over the proposed value of 0.3888, and only a slight decrease from the FY 1995 wage index value.

C. Allocation of General Service Salaries and Hours to Areas Excluded From the Wage Index

In constructing the wage index, we exclude the direct wages and hours associated with certain subprovider components of the hospital, such as skilled nursing facilities and home health agencies. The cost reporting form used to collect the FY 1992 wage data also includes within the definition of excluded areas any rehabilitation and psychiatric distinct part units of the hospital that are excluded from the prospective payment system. Thus, the wage index is constructed by including only the direct wages and hours associated with those areas of the hospital subject to the prospective payment systems. However, the general service hours associated with excluded areas are not currently excluded from the wage index calculation.

In the May 26, 1993 proposed rule, we discussed our analysis of our first attempt to allocate overhead salaries and hours to areas of the hospital that are excluded from the prospective payment system (58 FR 30237). This analysis was prompted by several suggestions from hospital representatives that, in addition to excluding the direct salaries and hours for subprovider components of the hospital, HCFA should also exclude the general service, or overhead, wages and hours that are associated with these areas. For example, we currently include all of the wage costs associated with housekeeping in the wage index data, even if a facility has excluded subprovider components that receive housekeeping services. As we discussed in detail in the May 26, 1993 proposed rule, we identified several problems with the data collected that led us to the conclusion that it would be inappropriate to use the data in allocating the overhead wages and hours. Thus, we did not allocate general service salaries and hours to the excluded areas of hospitals in calculating the FY 1994 wage index.

In the September 1, 1993 final rule, we indicated that we would revisit this issue when the data for cost reporting periods beginning in FY 1992 became available (58 FR 46298). We believed that the retroactive determination of overhead hours for the FY 1990 cost reports may have caused some of the problems with the data. We stated that the FY 1992 cost report might allow a more accurate allocation since both overhead salaries and overhead hours would be directly reported on the cost report.

In calculating the FY 1996 wage index, we used data for cost reporting periods beginning in FY 1992. We received general service hour data for 4,356 of the 4,441 hospitals that reported excluded salaries. We analyzed these data to determine whether we could reasonably allocate the overhead wages and hours to the excluded areas of the hospital. First, we determined the total general service wages (including fringe benefits) from Worksheet A of the cost report. We then developed a ratio of total indirect costs (net of capital costs) allocated to the excluded areas of the hospital to total noncapital general service costs (using Worksheet B, Parts I, II, and III from the cost report). We call this the "indirect cost ratio." We computed the general service salaries and hours allocated to the excluded areas by multiplying the indirect cost ratio by the total general service salaries and by the total general service hours reported by the hospital on the cost report.

For example, if 10 percent of a hospital's total indirect costs were allocated to excluded areas, we allocated 10 percent of its overhead salaries and 10 percent of its overhead hours to the excluded areas.

In the June 2, 1995 proposed rule (60 FR 29214), we discussed in detail our analysis of the general service allocation. We found that after we completed the data edits, 4,199 hospitals still had overhead allocations. Of these, 71 percent (2,978) had average hourly wages that were lower after the overhead allocation was made to the excluded areas. The average difference between the pre- and post-allocation average hourly wage was −0.14 percent. Eighty-six hospitals had a percentage change of more than 10 percent in their average hourly wage, of which 45 were decreases. An additional 158 hospitals had a percentage change of between 5 and 10 percent, of which 104 were decreases. Thirty-seven of 49 rural labor market areas would experience decreases in their wage index value if we performed the allocation, while 195 of 317 urban areas would experience decreases. The average wage index value for all hospitals would decrease

0.08 percentage points if we performed the overhead allocation.

Thus, we again concluded that it would not be appropriate to perform the allocation of overhead salaries and hours to excluded areas of the hospital in computing the wage index. The data still have the same variations that were prevalent when we declined to use this methodology in the proposed rule for FY 1994: many hospitals were removed due to the edits, many have large swings in their average hourly wages, and many more hospitals' average hourly wages would decrease as a result of the allocation than would increase, particularly for rural hospitals. As we noted in the September 1, 1993 final rule (58 FR 46297), if these allocations are accurate, it would mean that for the majority of hospitals with excluded areas, the average hourly wage for the overhead areas (such as laundry and housekeeping) is higher than that for patient care areas (such as nursing). We do not believe that this could be the case for such a large number of hospitals, and we have therefore concluded that the reported data regarding overhead hours are inaccurate. As a result, we decided not to employ the allocation of general service salaries and hours to excluded areas of the hospital in constructing the FY 1996 wage index.

We note that hospital representatives that support the allocation of overhead salaries to excluded areas do so because they believe that, for those hospitals with excluded areas, the current average hourly wage is artificially weighted downward. (See the September 1, 1994 final rule (59 FR 45359).) They believe that the current methodology, which removes the higher nursing costs in excluded areas from the hospital's direct salaries, but leaves in the lower general services salaries, distorts wages downward. The reported data, however, are not consistent with this concern.

While we continue to believe that an allocation of overhead salaries and hours to the excluded subprovider components may be appropriate, it would not benefit the hospital industry or the Medicare program to implement an allocation that is not reliable. Clearly, the overhead hours reported by many hospitals did not accurately reflect the salaries reported. In addition, we realize that the allocation method described above may not necessarily be the most accurate method to make this allocation. We invited public comment concerning alternative methods that might produce a more accurate and uniform allocation method and at the same time impose little or no additional reporting burden on the hospital industry. We noted that, under any acceptable allocation method, we would require that the method be used by all hospitals with excluded areas and that the intermediary be able to verify the accuracy of the reported data.

The cost report effective for FY 1995 (that is, for cost reporting periods that begin on or after October 1, 1994 and before October 1, 1995) will collect overhead data, both paid hours and the related salaries, by general service area. These data will be used to construct the wage index for FY 1999. We proposed to reevaluate an allocation of overhead salaries and hours to excluded areas of the hospital once the data from this new cost report are available or possibly earlier if we receive comments or suggestions from the public or otherwise determine alternative methods to better allocate overhead salaries.

Comment: Three commenters expressed support for the exclusion of overhead salaries and hours associated with excluded areas of the hospital and made suggestions regarding allocation methods. One commenter stated that HCFA's allocation method had merits in terms of modeling the impact and collectability of the data and requested that we continue to apply the same methodology in future studies. Another commenter suggested that HCFA incorporate in this final rule the collection of data on overhead dollars and hours separately and the exclusion of overhead salaries and hours associated with excluded subprovider components. A third commenter suggested a stepped-down cost finding basis for the allocation of salaries and hours from general service areas. This commenter believes that the data necessary to perform the step-down would be readily available to the intermediary and recommended that HCFA add cost center hours to Worksheet B–1 of the HCFA 2552–89 to facilitate data collection.

Response: As discussed above, while we agree with the commenters that an allocation of overhead salaries and hours to the excluded subprovider components may be appropriate, we believe that it would not benefit the hospital industry or the Medicare program to implement at this time an allocation that is not reliable.

Both the commenters who suggested a change in methodology based that change on the collection of new data. We do not agree with one commenter's suggestion to employ an allocation method based on stepped-down cost finding as it would impose additional reporting burden on the hospital industry. The approach would require a new or revised cost reporting form to allocate overhead hours and salaries to all of a hospital's cost centers. In addition, hospitals would have to adopt uniform statistics for allocating costs to cost centers to ensure data comparability. As we noted above, any method we use should impose little or no additional reporting burden. At this time, we do not believe the merits of an allocation of general service salaries and hours to excluded areas warrant the additional reporting burden. We have implemented new cost reporting instructions concerning overhead data. We will wait to evaluate those data (which will be available for the FY 1999 wage index) before imposing any additional data collections.

D. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs) are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, pursuant to section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals reduces the MSA wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the MSA wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to the wage index value of the area that results from including the wage data of the redesignated hospitals (the "combined" wage index value). However, the wage index value for the redesignated hospitals cannot be reduced below the wage index value for the rural areas of the State in which the hospitals are located.

- Rural areas whose wage index values would be reduced by excluding the data for hospitals that have been redesignated to another area continue to have their wage index calculated as if no redesignation had occurred. Those rural areas whose wage index value increases as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage index calculated exclusive of the redesignated hospitals.
- The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index for an urban area below the Statewide rural average, provided the wage index prior to reclassification was greater than the Statewide rural wage index value.
- A change in classification of hospitals from one area to another may not result in the reduction in the wage index for any urban area whose wage index is below the rural wage index for the State. This provision also applies to any urban area that encompasses an entire State.

We note that, except for those rural areas where redesignation would otherwise reduce the rural wage index value, and for urban areas whose wage index values are already below the rural wage index and would otherwise be reduced by redesignations, the wage index value for each area is computed exclusive of the data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several MSAs listed in Table 4a have no hospitals remaining in the MSA. This is because all the hospitals originally in these MSAs have been reclassified to another area by the MGCRB. For those areas, we have listed the Statewide rural wage index value.

Comment: We received one comment on our policy of assigning the Statewide rural wage index value to MSAs where all of the hospitals have been reclassified to another area. The commenter believes that our policy is unfair to new hospitals that open in such an MSA, because they would be automatically assigned the Statewide rural wage index value, which is generally much lower than the pre-reclassified value for the MSA. The commenter stated that the Statewide rural wage index value would not reflect the labor costs in the labor market in which the hospital would be operating. Therefore, the commenter requested that we revise this policy and assign the MSA's pre-reclassified wage index value to the empty MSA.

Response: We adopted our current policy in response to comments as part of the August 30, 1991 final rule (56 FR 43222). Upon reconsideration, we agree with the commenter that the wage levels a new hospital must pay may be better reflected by the pre-reclassified wage index value for the area than the Statewide rural wage index value. Therefore, effective October 1, 1995, we will assign the pre-reclassified wage index value for an MSA to any MSA where all of the hospitals have been reclassified to another area. That value would apply as long as the MSA remains empty or until the new hospital has reported wage data that are used to calculate a wage index value (approximately 4 years). This change has been incorporated into the final wage index tables.

The final revised wage index values for FY 1996 are shown in Tables 4a, 4b, and 4c of the addendum to this final rule. Hospitals that are redesignated should use the wage index values shown in Table 4c. For some areas, more than one wage index value will be shown in Table 4c. This occurs when hospitals from more than one State are included in the group of redesignated hospitals, and one State has a higher Statewide rural wage index value than the wage index value otherwise applicable to the redesignated hospitals. Tables 4d and 4e list the average hourly wage for each labor market area based on the FY 1992 wage data. In addition, Table 3c (Hospital Case-Mix Indexes for Discharges) includes the average hourly wage for each hospital based on the FY 1992 data. Hospitals may use the average hourly wage published in this final rule for purposes of applying to the MGCRB for wage index reclassifications in FY 1997.

We note that in adjudicating these wage reclassification requests during FY 1996, the MGCRB will use the average hourly wages for each hospital and labor market area that are reflected in the final FY 1996 wage index. The FY 1996 wage index values incorporate all hospital redesignations for FY 1996. At the time the final wage index was constructed, the MGCRB had completed its review. Any changes to the wage index that resulted from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process are incorporated into the wage index values published in the final rule. For FY 1996, 420 hospitals are redesignated for purposes of the wage index (including hospitals redesignated u[illegible]er both sections 1886[illegible](8)[illegible] 1886(d)(10) of the Act).

E. Changes to t[illegible] B Guidelines

1. Limitations on Hospital Reclassification (§§ 412.230, 412.232, and 412.234)

a. Elimination of Individual Hospital Reclassification From Rural to Other Urban Areas for Purposes of the Standardized Amount. Section 1886(d)(10)(C)(i)(I) of the Act requires the MGCRB to consider applications of hospitals requesting reclassification for purposes of the standardized amount. Section 1886(d)(10)(D)(i)(II) of the Act requires that the MGCRB utilize guidelines published by the Secretary for determining whether the county in which a particular hospital is located should be treated as being a part of a particular MSA. Accordingly, the MGCRB allows reclassifications for purposes of the standardized amount for individual hospitals that meet the guidelines under § 412.230, and for groups of rural and urban hospitals that represent an entire county and that meet the guidelines under §§ 412.232 and 412.234 respectively.

As required by section 1886(d)(3)(A)(iii) of the Act, effective for discharges occurring on or after October 1, 1994, the average standardized amount for hospitals located in a rural area was made equal to the average standardized amount for hospitals located in other urban areas. The standardized amount effective for those areas is now known as the standardized amount for "other areas." Large urban areas continue to receive a separate, higher standardized amount. The effect of this provision is that in FY 1995 or later, hospitals reclassified from rural to other urban areas for purposes of the standardized amount receive no increase in their standardized payment amount, since the two rates are now the same.

However, we continue to receive applications from individual hospitals seeking to be reclassified from rural to other urban areas for the standardized amount because of certain payment advantages that accompany the urban designation. When an individual hospital reclassifies from a rural to an urban area for purposes of the standardized amount, we consider the hospital urban for all purposes except the wage index. For some rural hospitals, the urban designation enables them to qualify as a disproportionate share hospital (DSH) and to receive special payment adjustments. For other rural hospitals that already qualify for DSH payments, the urban designation qualifies them for a higher DSH adjustment than they would receive as a rural hospital.

We proposed to provide under new § 412.230(a)(5)(ii) that a hospital may not be reclassified for purposes of the standardized amount if the area to which the hospital seeks reclassification does not have a higher standardized amount than that currently received by the hospital. This change would be effective for hospital applications due October 2, 1995, requesting reclassification for FY 1997. (Since October 1 is a Sunday, the MGCRB will accept applications through October 2, 1995.)

We note that, under this change. individual rural hospitals could continue to receive reclassifications to large urban areas, since the standardized amount for large urban areas is greater than that of rural (or other urban) areas. Also, group applications from all hospitals in a rural county for reclassification to urban areas would not be affected, since these hospitals are required to meet a different "metropolitan character" criterion under § 412.232(b) and would receive the other area's wage index.

We received 15 comments in response to our proposal to eliminate standardized amount reclassifications for individual hospitals from a rural area to an other urban area. All of the commenters were opposed to our proposed change. Four of the comments we received were from individual hospitals that stated that they would no longer qualify for higher DSH payments as a result of the change.

Comment: Several commenters raised questions about whether the statute gives us the authority to eliminate standardized amount reclassifications from rural to other urban areas and whether we are interpreting the MGCRB provisions of the statute correctly. One commenter stated that the statute contains no language that modifies or limits the areas to which hospitals may seek reclassification, or restricts the types of hospitals that may seek changes in the standardized amount. The commenter believes that, because section 1886(d)(10)(C)(i) of the Act provides that the MGCRB *shall* consider applications of hospitals seeking reclassification, rather than stating that the MGCRB *may* consider such applications, the MGCRB is obligated to consider applications from hospitals seeking to be reclassified from rural areas to other urban areas. The commenter argues that the statute gives the Secretary the authority only to establish guidelines for evaluating hospital-specific facts, not to preclude specific classes of hospitals from being reclassified. Another commenter stated that since Congress had not specifically provided in legislation that rural to other urban standardized amount reclassification would no longer be allowed after the rural and other urban rates were made equal, HCFA does not have the statutory authority to make this change.

Response: We believe the proposed policy of eliminating individual hospital reclassifications from rural areas to other urban areas for purposes of the standardized amount is fully consistent with the language and purpose of the Medicare statute. Although the statute states that the MGCRB "shall" consider applications for reclassification, the statute does not require the Board to consider a reclassification request for any purpose whatsoever. Instead, the relevant terms of the statute provide that the Board "shall consider" applications for reclassification "for purposes of determining * * * the hospital's average standardized amount." Accordingly, the statute *requires* the Board to consider requests for standardized amount reclassification only if the "purpose" of the request is for the hospital to receive the other area's standardized amount. Since the standardized amount for rural areas now equals the standardized amount for other urban areas, there is no reason for a rural hospital to be reclassified to another urban area "for purposes of" the standardized amount itself.

Under the proposed policy, qualifying rural hospitals (and other urban hospitals too) may continue to seek standardized amount reclassification to large urban areas because large urban areas have a different standardized amount (base payment rate). Thus, consistent with the statute, the Board "shall consider" applications for standardized amount reclassification from hospitals seeking to receive the other area's (higher) standardized amount. As explained further below, we also believe that the proposed change is consistent with the purpose of the statute, as well as the language of the statute.

Comment: Several commenters argued that the proposed policy is contrary to the purpose of the geographic reclassification system. Some commenters believe that our proposal is contrary to congressional intent that geographic reclassification be available to hospitals to address competitive inequities. One commenter stated that HCFA had previously interpreted the purpose of geographic reclassification as addressing those situations where a hospital is more like the hospitals in a geographic adjacent area than the hospitals in its own geographic area, and that the proposed policy of not allowing rural hospitals to be reclassified to other urban areas contravened the agency's interpretation of the statute and placed those hospitals at a competitive disadvantage. Another commenter stated that we were changing our standard as to the purpose of geographic reclassification from providing hospitals with a more appropriate geographic classification to providing only a more appropriate standardized payment rate.

One commenter suggested that HCFA was interpreting the statute very narrowly in this instance, but in other cases, such as allowing rural to rural reclassification, HCFA had been more liberal. Another commenter acknowledged that the statute addressed only the wage index and standardized amount as reasons for reclassification, but said that the intent of the MGCRB provisions was to provide an opportunity for rural hospitals sharing certain characteristics with urban hospitals to partially escape the disadvantage of their rural status. Still another commenter believes Congress intended that, if a rural hospital satisfied HCFA's criteria for standardized amount reclassification to an other urban area, the hospital should be considered urban for purposes of disproportionate share payments as well because the hospital had proved that it was similar to urban hospitals.

Response: We believe the proposed policy is fully consistent with the purpose of the statute, as well as the language. The geographic reclassification process enables hospitals to be reclassified to another geographic area for purposes of receiving the other area's standardized amount or wage index, the two major components of a hospital's prospective payment rate. As indicated in the June 4, 1991 final rule implementing the reclassification process, "we believe geographic reclassification should be limited to those hospitals which are disadvantaged by their current geographic classification because they compete with the hospitals that are located in the geographic area to which they seek to be reclassified." (56 FR 25469.)

For purposes of determining an appropriate standardized amount, a hospital is not disadvantaged by its "current geographic classification" if the area to which it seeks reclassification has the same standardized amount. Rural hospitals requesting reclassification to another urban area would receive the same standardized amount. We believe it is appropriate to limit reclassifications "for purposes of" the standardized amount to hospitals seeking reclassification to an area with a higher standardized amount. We note that the statute confers broad authority on the Secretary to determine the circumstances under which reclassification is appropriate.

In essence, the commenters are arguing that hospitals should be allowed to seek reclassification solely for purposes of the DSH adjustment. However, the statute specifies only two purposes for which hospitals may seek reclassification—the standardized amount and the wage index, the two major components that determine a hospital's base prospective payment rate. We believe that, if it is appropriate not to reclassify a hospital for purposes of the base payment rate itself, as contemplated by the statute, it is appropriate not to reclassify the hospital solely for purposes of the DSH adjustment to the base payment rate.

In response to the arguments that our proposed policy would place rural hospitals unable to receive higher DSH payments at a competitive disadvantage, any hospital unable to satisfy the criteria for reclassification could claim it was placed at a competitive disadvantage. For example, rural hospitals slightly beyond the qualifying mileage requirement of 35 miles do not qualify for reclassification even if they have costs like those of an urban hospital. Almost every rural hospital in the country could argue that it shares some characteristics with urban hospitals. However, a rural hospital cannot argue now that it is disadvantaged because it is unable to receive the standardized amount of an adjacent other urban area.

Since all hospitals pay for geographic reclassification through the budget neutrality process, it is HCFA's responsibility to develop guidelines to determine when reclassification is appropriate. We believe it is appropriate not to reclassify individual rural hospitals to other urban areas for purposes of the standardized amount.

Comment: Some commenters stated that the proposed change was inconsistent with our previous policy of allowing rural hospitals to reclassify to other urban areas and considering them urban for all purposes (except the wage index). Many of the commenters were concerned about the equity of our proposal since rural hospitals located near large urban areas could continue to reclassify for the standardized amount and receive higher DSH payments if they qualified, but rural hospitals located next to other urban areas could not. Some of the commenters also stated that since rural hospitals have proved that their costs are similar to those of other urban hospitals they should be eligible for any payments and adjustments that those hospitals receive.

Response: We believe that our proposed policy is consistent with the previous policy of allowing rural hospitals to reclassify to other urban areas for purposes of the standardized amount and considering such hospitals urban for all purposes, including DSH payments. It is important to consider the circumstances underlying each policy. At the time the previous policy was implemented, the standardized amount for rural areas was different from the standardized amount for other urban areas, so it was appropriate to reclassify qualifying rural hospitals to other urban areas and to consider them urban for purposes of the standardized amount. We decided that, once a hospital was reclassified as urban for purposes of the standardized amount, the hospital would also be considered to be urban for all purposes (except the wage index).

As this analysis suggests, there is a two-step inquiry in determining whether a rural hospital should be considered urban for a purpose *other than* the standardized amount. The first, and threshold, question is whether it is appropriate to reclassify the hospital for purposes of the standardized amount itself, as contemplated by the statutory language? Only if this threshold question is answered affirmatively does one reach the second question: should the hospital be considered urban for other purposes as well?

Applying this analysis, rural hospitals seeking standardized amount reclassification to other urban areas would now receive the same standardized amount. Therefore, as explained earlier, we believe it is appropriate not to reclassify these rural hospitals as urban "for purposes of" the standardized amount. Since there is now no reason to consider these hospitals as urban for purposes of the standardized amount, we do not reach the second question of whether the hospitals should be considered urban for other purposes as well.

We recognize that there may be some possible inequity between rural hospitals seeking reclassification to other urban areas and rural hospitals seeking reclassification to large urban areas. However, the statute does not mandate that hospitals reclassified as urban for purposes of the standardized amount also be considered urban for purposes of DSH. We could have decided initially that rural hospitals reclassified to large urban areas for purposes of the standardized amount would *not* be considered urban for other purposes. But then arguably there would be some inequity between hospitals located in urban areas and rural hospitals reclassified as urban for purposes of the standardized amount.

As explained above, we believe the most appropriate policy is to first address the threshold question: whether it is appropriate to reclassify certain rural hospitals for purposes of the standardized amount. If the answer is yes, then we reach the second question: whether the hospitals should be considered urban for other purposes. We believe that all of our policies are consistent with this analysis.

Comment: One commenter suggested that we were continuing to allow rural hospitals adjacent to large urban areas to seek reclassification because the large urban standardized amount is much higher than the other standardized amount and few hospitals would be able to qualify for such reclassification.

Response: As stated earlier, we believe, consistent with the statutory language and purpose, that it is appropriate for hospitals to seek reclassification from rural areas to large urban areas for purposes of the standardized amount because the other area has a higher standardized amount.

Comment: Two commenters mentioned the impact that this change would have on rural referral centers. One commenter stated that many hospitals had voluntarily relinquished their rural referral center status in order to qualify for higher DSH payments and that HCFA had previously acknowledged the benefit of such reclassification to these hospitals. The commenters also stated that 18 hospitals eligible for rural referral center status were reclassified to other urban areas in FY 1995 and would lose $13.8 million if the proposal were implemented.

Response: While we recognize that many hospitals voluntarily relinquished their rural referral center status in the past to qualify for DSH as an urban hospital and we are sympathetic to the financial impact that the loss of higher DSH payments will have on these hospitals, we believe it is appropriate not to allow these hospitals to be reclassified for purposes of the standardized amount to another area with the same standardized amount. Eligible hospitals may seek to have rural referral center status reinstated. Although these hospitals would not be considered urban for purposes of DSH payments, we note that, under section 1886(d)(5)(F)(iv) of the Act, rural referral centers receive special treatment for purposes of DSH. In addition, we have previously recognized the role that sole community hospitals and rural referral centers play in preserving access to care for rural Medicare beneficiaries by means of the MGCRB special access rule, which waives the mileage requirement for such hospitals seeking reclassification. (*See* 42 CFR 412.230(a)(3).)

Comment: One commenter claims that our proposed change contravenes the rationale behind HCFA's requirement that DSH be included in the standardized amount reclassification test. The commenter asserts that since HCFA has noted that DSH payments change depending on whether or not a hospital is urban or rural and should be included in the standardized amount calculation, hospitals that can qualify to reclassify based upon including their DSH payments and costs should be allowed to do so.

Response: Again, there is a two-step analysis: first, is it appropriate to reclassify rural hospitals to other urban areas (or large urban areas) for purposes of the standardized amount; second, if the answer to that threshold question is yes, then should the hospitals be considered urban for purposes other than the standardized amount? As indicated above, we believe it is appropriate not to reclassify a rural hospital to an other urban area for purposes of the standardized amount because the hospital would receive the same standardized amount. In contrast, it is appropriate to reclassify rural hospitals to large urban areas for purposes of the standardized amount, and when a rural hospital qualifies to be considered urban for purposes of the standardized amount, we believe it is appropriate to consider the hospital urban for purposes of DSH. Applying this policy in determining the geographic area (rural or large urban) to which a hospital should be classified for purposes of the standardized amount, we believe that applicable DSH payments and costs should be included in the qualifying cost test because they reflect the costs and payments of the hospital under the alternative scenarios.

After considering the comments, we have decided to adopt the change as proposed.

b. Reclassification for Purposes of the Wage Index. Section 1886(d)(10)(C)(i)(II) of the Act requires the MGCRB to consider the application of any prospective payment hospital for purposes of changing its applicable wage index. Sections 412.230, 412.232, and 412.234 set forth the types of individual and group reclassifications that are currently allowed. An individual rural hospital may reclassify to another rural area or to an urban area. An individual urban hospital may reclassify to another urban area for purposes of the wage index, the standardized amount or both. A rural group may reclassify to an urban area and an urban group may reclassify to another urban area, but only for purposes of both the wage index and the standardized amount. In the proposed rule we stated that we do not believe it is appropriate for hospitals to seek reclassification to an area with a lower wage index in an effort to use the MGCRB system inequitably (60 FR 29217).

Therefore, under the proposed rule, a hospital that seeks to reclassify for the purpose of the wage index may apply for reclassification only to an area that has a higher pre-reclassified average hourly wage than the pre-reclassified average hourly wage in the hospital's original geographic area. We proposed revisions to §§ 412.230, 412.232, and 412.234 to reflect these changes.

For group reclassifications, we proposed that either the pre-reclassified average hourly wage or the standardized amount of the area to which the hospitals seek reclassification must be higher than the corresponding figure of the area in which the hospitals are located for the group to qualify for reclassification. These revisions are effective for applications for reclassification due by October 2, 1995, for reclassifications effective October 1, 1996. We received two comments on our proposal to prohibit a hospital from reclassifying to an area in which the pre-reclassification average hourly wage is lower than the pre-reclassification average hourly wage in the hospital's current area, both of which agreed with our changes. Therefore, we will implement this requirement beginning with MGCRB applications due October 2, 1995, effective for reclassifications for FY 1997.

Comment: Although we made no proposal regarding the 108 percent criterion, two commenters wrote to state their concern about the impact of that criterion in relation to hospital reclassification for wage index purposes. The current regulations require that among other criteria, a hospital that seeks to be reclassified must have an average hourly wage that equals or exceeds 108 percent of the average hourly wage of the area in which it is located. One commenter believes that this test is inappropriate, especially for hospitals that are the predominant wage payers in an area. The commenter states that as a hospital's wage influence in a labor market area increases, it becomes proportionately less likely to satisfy the 108 percent rule.

Response: We continue to believe that the 108 percent test is a reliable measure for determining whether hospitals are truly aberrant within their labor market areas and merit reclassification. We also do not believe that it would be appropriate to exclude a hospital from its labor market area in order for the hospital to qualify for reclassification. Our policy has been that the wage data for all hospitals located in a labor market area is to be used when determining reclassification qualification. If one hospital is so dominant as to affect the labor market area to the extent noted by the commenter, the resulting average hourly wage (and thus the wage index value of the area) is also affected by that hospital. Removing the dominant hospital's data from the hourly wage calculation for purposes of meeting the 108 percent test would, in our view, lead to inappropriate reclassifications.

2. Hospital Requests for Wage Data from HCFA

Currently, regulations at § 412.266 provide that a hospital may request from HCFA certain wage data that are necessary for a complete reclassification application to the MGCRB. The regulations also set forth dates by which HCFA must respond to such requests. Before 1994, hospitals needed to obtain data on average hourly wages directly from HCFA, since the data were not available from any other source. Beginning with the May 27, 1994, proposed rule, we have included the average hourly wage data for each hospital in the proposed and final rules as part of Table 3c. Therefore, hospitals no longer need to contact HCFA to obtain the data necessary to apply for reclassification. Thus, we are revising § 412.266 to indicate that hospitals are to obtain the necessary data from the **Federal Register** document. We received no comments on this change and are adopting it as proposed.

3. Elimination of the MGCRB

As discussed above, under section 1886(d)(10) of the Act, the MGCRB is charged with reviewing and making decisions on hospital requests for geographic reclassification. Since implementation of this process 5 years ago, many changes have been made to the criteria that hospitals must meet in order to qualify for reclassification. The majority of these criteria are now

objective standards that are easily assessed. However, the MGCRB application process remains essentially unchanged. We solicited comments concerning alternatives for revising and simplifying the reclassification system (60 FR 29218) including the possibility of eliminating the MGCRB and transferring its decisionmaking authority to HCFA. In addition, we suggested that if the reclassification process was revised and simplified, it might be possible to use more current wage data in making reclassification decisions.

Comment: We received seven comments in response to our suggestion that the MGCRB could be eliminated. Five of the commenters were opposed to this suggestion and two stated that they were not opposed to such a change. One of the latter two commenters agreed with us that the criteria for reclassification are essentially mechanical and can be applied unambiguously by an administering agency.

The commenters opposed to the elimination of the MGCRB believe that the Board remains the appropriate entity for reviewing reclassification applications and should be preserved. Commenters stated that the independent administrative review offered by the MGCRB is necessary to counterbalance the authority that HCFA holds over the process through its implementation of strict numerical standards and the statutory prohibition on judicial review of MGCRB and Administrator decisions. Several commenters requested that, rather than eliminate the Board because of the more mechanical nature of its review, HCFA should restructure the qualifying criteria for reclassification to allow the MGCRB the ability to consider a wide range of hospital-specific facts in determining whether geographic reclassification would be appropriate for a particular hospital or group of hospitals.

One commenter stated that in proposing to use more current wage data HCFA must not have examined its own time line. Using more current data would require either not allowing hospitals time to review their wage data prior to reclassification, or moving the fiscal intermediary review of wage data to earlier in the wage data verification process. The commenter believes that it is essential not to limit the amount of time hospitals have to review their own wage data before it is implemented.

Another commenter noted that it might be possible to improve the MGCRB process without transferring the Board's functions to HCFA. The commenter stated that they would support a legislative proposal to change the March 30 deadline for MGCRB decisions if it would allow for the improvement of the process and the use of more accurate data.

Response: We will take the commenters' suggestions into account as we consider whether to pursue statutory changes in the law governing the reclassification process. Regarding the comments that eliminating the Board would grant too much authority to HCFA, we believe that instituting a process in which HCFA rather than the MGCRB makes the geographic reclassification decisions would not result in a significantly different outcome. This is because of the basically objective nature of the current reclassification criteria and provision for the Administrator's discretionary review as set forth in the regulations at § 412.278(c). In addition, we believe that a process that is handled entirely by HCFA could lead to some administrative simplification in the application process. We understand the concerns about using more recent wage data that has not been thoroughly verified through the process described in section III. B of this preamble and will bear these concerns in mind as we further analyze potential changes.

4. MGCRB Address Change

The MGCRB has recently moved its offices to a new location. Therefore, hospitals that wish to apply to the MGCRB for geographic reclassification for FY 1997 should submit their applications to the following new mailing address: MGCRB; P.O. Box 31713; Baltimore, MD, 21207–8713. The address for deliveries is: MGCRB; 7500 Security Boulevard; Room C1–09–13; Baltimore, MD 21244–1850.

F. Alternative Labor Market Areas

In the proposed rule, we summarized our position with regard to further research into changing labor market areas and summarized the major comments we received in response to last year's proposals for potential revisions to labor market areas. There was no consensus among the commenters on the potential options for new labor market areas. Many individual hospitals that commented expressed dissatisfaction with all of the proposals.

One of the options for revising labor market areas was a blended wage index that used the MSA-based system but generally gave a hospital's own wages a higher weight than under the current system. Under this option the wage index of each hospital would be based on a average of that hospital's own average hourly wages and the average hourly wages of other hospitals in its labor area (either an MSA or Statewide rural area). We stated that while we believed a blended wage index might have merit, we were not planning to propose it given the generally negative comments we received on changes in the labor market areas.

Comment: We received two comments in response to our summary of labor market comments in the proposed rule. One commenter endorsed our statement that there was no clear "best" labor market option to pursue. The commenter also stated that the current wage areas coupled with the reclassification process best measures hospital labor market areas. The other commenter expressed disappointment that we had decided not to endorse an alternative labor market classification system such as the blended wage index. This commenter asserted that a blended wage index, in which a hospital's wages would generally be given greater weight in developing the hospital's wage index than under the current system, would not cause hospitals to increase their wages in order to increase payments. The commenter also expressed disappointment that we did not propose a method for redefining the Boston New England County Metropolitan Area (NECMA) which the commenter believes is too large to encompass the actual Boston labor market area.

Response: The Boston NECMA was expanded by OMB as part of its revised MSA definitions based on 1990 data. As we noted in the September 1, 1993 final rule (58 FR 46292) in response to a similar comment, pursuant to our broad discretion under section 1886(d)(3)(E) of the Act, we currently define labor market areas for purposes of the wage index on the basis of MSAs and NECMAs. Thus, until alternative labor market areas are established we believe the MSA definitions should be applied consistently for purposes of the wage index. Since there does not appear to be a consensus among hospitals on new labor market areas, we have not made any proposals in this area. As we stated in the proposed rule, we are willing to conduct additional research if we receive recommendations of feasible options that we have not explored previously.

IV. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating Costs

A. Payment for Transfer Cases (Section 412.4)

The prospective payment system distinguishes between "discharges," situations in which a patient leaves an acute-care hospital after receiving complete treatment, and "transfers," situations in which the patient is transferred to another acute-care hospital for related care. If a full DRG payment were made to each hospital involved in a transfer situation irrespective of the length of time the patient spent in the "sending" hospital before transfer, this would create a strong incentive to increase transfers, thereby unnecessarily endangering patients' health. Therefore, the regulations at § 412.4(d) provide that, in a transfer situation, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

Currently, the per diem rate paid to a transferring hospital is determined by dividing the full DRG payment that would have been paid in a nontransfer situation by the geometric mean length-of-stay for the DRG into which the case falls. Transferring hospitals are also eligible for outlier payments for cases that meet the cost outlier criteria established for all cases (nontransfer and transfer cases alike) classified to the DRG. They are not, however, eligible for day outlier payments. Two exceptions to the transfer payment policy are transfer cases classified into DRG 385 (Neonates, Died or Transferred to Another Acute Care Facility) or DRG 456 (Burns, Transferred to Another Acute Care Facility), which are not paid on a per diem basis but instead receive the full DRG payment.

In the May 27, 1994 proposed rule, we proposed to revise our payment methodology for transfer cases. Under the proposal, for the first day of a transfer, the per diem amount would be doubled, while a flat per diem amount would be paid for each succeeding day, up to the full DRG payment (59 FR 27734). We also proposed at that time to change our definition of a transfer case to include cases transferred from an acute-care setting paid under the prospective payment system to a hospital or unit excluded from the prospective payment system. When we published the September 1, 1994 final rule with comment period, we withdrew these proposals for FY 1995 (59 FR 45362) based on negative comments and further analysis. In that final rule, however, we stated our intention to continue to evaluate the appropriateness of our transfer policy.

For FY 1996, we again proposed to adopt a graduated per diem payment methodology for transfer cases. Again, under this methodology, we would pay double the per diem amount for the first day and the per diem amount for subsequent days (up to the full DRG amount). We did not propose to revise our definition of transfers. However, we noted that we were concerned about an accelerating trend toward earlier discharges to postacute settings. Therefore, we solicited public comments regarding this trend and the implications this has for the design of our payment systems. In its March 1, 1995 report, ProPAC supported our proposed payment methodology (Recommendation 11) and expressed its concern "about the continuity of care across treatment settings." The Commission also indicated its willingness to work with the Secretary to explore this issue. The following discussion describes our change to the transfer payment methodology and some of the issues identified by our further analysis of transfer cases.

1. Payment for Transfer Cases

As part of a study of Medicare transfer cases funded by HCFA ("Transfers of Medicare Hospital Patients under the Prospective Payment System", PM–191–HCFA, January 1994), RAND found that among cases transferred before reaching the geometric mean length-of-stay, 1-day stays cost 2.096 times the per diem payment amount for cases in nonsurgical DRGs and 2.576 times the per diem for surgical DRGs (based on FY 1991 data). Among nonsurgical transfer cases, the costs of 2-day stays were about 1.215 times the per diem payment amount, and cases transferred after 2 days cost about 10 percent more than the applicable per diem amount. Among surgical cases, the costs of stays of 2 or more days were actually about 7 percent below the applicable per diem amount.

In order to pay hospitals more appropriately for the treatment they furnish to patients before transfer, we proposed to revise § 412.4(d)(1) to pay transfers twice the per diem amount for the first day of any transfer stay plus the per diem amount for each of the remaining days before transfer, up to the full DRG amount. (Our concerns about basing the gradation of the per diem scale on the actual coefficients as estimated by RAND were described in last year's proposed and final rules, as referenced above.) This change will apply uniformly for both medical and surgical transfer cases; although surgical transfer cases appear to be more costly on average for the first day, they are relatively less costly for the second day and beyond.

If the patient is transferred again before final discharge, then, under this change, all sending hospitals involved would be paid using the graduated per diem methodology rather than the flat per diem rate they currently receive. For example, a case transferred from a community hospital to a tertiary care hospital for a procedure that is not performed at the community hospital, may subsequently be transferred back to the community hospital, which ultimately discharges the patient home. In such a case, the community hospital and the tertiary care hospital would be paid using the transfer payment methodology for the first two phases of the hospitalization, and the community hospital would also receive a DRG amount for the final phase when it discharges the patient. This is our current policy, as well. Each phase of the hospitalization is assigned a DRG based on the diagnosis and procedures applicable to that particular phase; therefore, a different DRG could be assigned to each phase.

Transfer cases would continue to be eligible for additional payments as cost outliers. In the September 1, 1993 final rule, we set forth revised qualifying criteria for transfer cases to be eligible for cost outlier payments (58 FR 46305). Before that change, transfer cases were required to meet the same criteria to qualify for cost outliers as were discharges. The revised policy adjusts the outlier threshold for transfer cases to reflect the fact that transfer cases were receiving a reduced payment amount under the per diem methodology. Last year, when we revised the cost outlier qualifying criteria so that it was based on a fixed loss threshold, the qualifying criteria for transfers continued to reflect the fact that their payment amounts are reduced relative to the full DRG amount. Although we did not state this explicitly in the September 1, 1994 final rule, it is the policy we have employed, and intend to continue to employ, since the fixed loss threshold was implemented October 1, 1994. In the proposed rule, we described the cost outlier threshold for transfer cases as equal to the fixed loss amount (for FY 1995, the prospective payment rate for the DRG plus $20,500), divided by the geometric mean for the DRG, multiplied by the length of stay before transfer. In order to maintain the correct relationship between the payment received under the new graduated per diem methodology and the outlier threshold, for FY 1996, the per diem outlier threshold should be multiplied by the length of stay before transfer plus one day. Of course, the threshold is limited

to the prospective payment rate for the DRG plus the fixed loss amount.

Using the graduated per diem methodology, RAND estimated the payment-to-cost ratio of transfer cases that were transferred before reaching the geometric mean length of stay would be 0.9321. While this is somewhat less than the payment-to-cost ratio for nontransfer cases (0.9645), it represented a significant improvement over the current ratio for transfer cases (0.7224). Using more recent data (FY 1993 MedPAR) and payment policies (FY 1995), we estimated the improvement in the payment-to-cost ratio for transfer cases to be from 0.7548 under the current flat per diem policy to 0.9701 under the graduated per diem policy.

Section 109 of the Social Security Act Amendments of 1994 (Public Law 103–432), which amended section 1886(d)(5)(I) of the Act, authorized the Secretary to make adjustments to the prospective payment system standardized amounts so that adjustments to the payment policy for transfer cases do not affect aggregate payments. In light of this authority, we believe the benefits of the graduated per diem methodology now outweigh the concerns that we expressed in the September 1, 1994 final rule. Our methodology for applying this adjustment was described in section II of the Addendum to the proposed rule and is included in this final rule as well.

Finally, we proposed to revise the DRG recalibration methodology so that transfer cases are treated as a proportion of a full case based on the transfer payment amount (as discussed above in section II.C of this preamble). Specifically, we proposed to weight transfer cases as less than a full discharge based on the proportion of the total DRG amount the hospital receives under the graduated per diem transfer payment methodology. This has the effect of increasing the relative weights of the DRGs with a high number of short-stay transfer cases.

Comment: All of the comments we received regarding our revision to the transfer payment methodology were in support of the proposal. ProPAC wrote that "(t)his policy will improve payment equity for hospitals that must transfer a large number of patients to other hospitals."

Response: All of the comments favored our proposal, and we have adopted the proposal without change. We appreciate ProPAC's valuable contribution to the analysis of the transfer payment methodology. We share its conclusion that this change will appropriately benefit hospitals that transfer large numbers of patients.

2. Definition of a Transfer Case

Under current policy, cases that are transferred from an acute-care hospital paid under the prospective payment system to another type of provider or unit are considered to be discharges (as opposed to transfers) from the acute-care hospital. As a discharge, payment for the case is the full DRG amount.

As noted above, we are concerned that the current trend of declining average lengths of stay as hospitals transfer Medicare patients into alternative health care settings (other than acute care) in less time may result in a misalignment of payments and costs under our existing payment systems. In particular, we are concerned that hospitals paid under the prospective payment system may be shifting costs (for which they are compensated through the DRG payments) to alternative settings, which in turn may be paid on a cost basis.

In the September 1, 1994 final rule, we explained our rationale for proposing to consider patients transferred to excluded hospitals or units as transfers rather than discharges. Briefly, our proposal was "based upon the premise that an increasing number of patients are being transferred to excluded hospitals or units and that these patients are still in the acute care phase of treatment when they are transferred." (See 59 FR 45364.) We also explained our reason for continuing to consider patients going to a skilled nursing facility (SNF) as discharges. In that regard, we stated that "(w)e did not propose to consider discharges to SNFs as transfers because we do not consider SNFs to be hospital settings; thus, there is generally little overlap with acute care hospitals in the services provided." Based upon further analysis of patient discharge trends and research on the type and outcomes of care provided in SNFs, as well as anecdotal evidence drawn from the health care industry, we no longer believe there is a clear distinction between the type of care provided in SNFs and the type of care provided in hospitals or units excluded from the prospective payment system, such as rehabilitation and long-term care facilities.

Therefore, we considered proposing to expand our definition of transfers to include not only cases going from one hospital paid under the prospective payment system to another but also cases transferred to excluded hospitals and units as well as SNFs. However, as discussed below, our analysis has identified problems that need to be addressed. Nevertheless, once we are convinced these problems can be effectively handled, we intend to proceed with implementing policy changes designed to remedy this issue.

First, our analysis (as well as anecdotal evidence) indicates that the settings where acute care is now being delivered are rapidly expanding and evolving. To the extent that payment is affected by where a patient goes after an acute hospitalization, it is critical to understand the clinical capabilities of different types of settings, so that the incentives created by the payment system do not unduly influence the choice of where to send a patient for postacute care. That is, all like provider settings should be treated equally in terms of payment incentives. Currently, the settings that are considered as alternatives to acute care are expanding rapidly, and we want to be sure that we do not create unforeseen financial incentives toward one alternative over another by any redefinition of transfers.

In addition, as discussed in last year's final rule, hip replacement cases (which, as a group, constitute one of the largest sources of Medicare cases moving from acute to postacute settings) would be systematically underpaid under either the current or the proposed per diem methodology. This is because the cost of the surgery including the prosthetic device, which is incurred in the first day or two of the stay, constitutes a large percentage of the total cost of the stay. A graduated per diem would have to be skewed greatly toward the first day to approximate the daily cost distribution.

We, therefore, solicited public comment with regard to these issues. Specifically, we were interested in suggestions on how best to adapt our payment methodologies for hospitals and units (both acute care paid under the prospective payment system and those excluded from this system), SNFs, and home health agencies in response to the evolving integrated delivery systems. We were particularly interested in comments and suggestions on how to design a comprehensive payment system that better matches payments with the costs providers actually incur in furnishing care (that is, reducing hospital payments when a significant phase of a patient's acute episode is treated in other than an acute hospital inpatient setting). A major issue in developing such an integrated payment system is to neutralize the incentives that arise in terms of where patients are treated. For example, hospitals should continue to be adequately compensated for acute inpatient hospitalization where appropriate, so that there will not be an adverse incentive to move patients prematurely to alternative settings.

We appreciate the numerous comments we received in response to this solicitation. Many of them shed new light on our understanding of the complicated issues involved, and will serve to enhance our analysis as we grapple with these issues in the future.

Comment: Many commenters misinterpreted our discussion related to the definition of transfer cases as a proposal to expand the definition to include patients moving from an acute care hospital to a hospital or unit excluded from the prospective payment system or to an SNF.

Response: We wish to make clear that we did not propose a change to the definition of transfers. We identified an expanded definition (one that would encompass patients going to SNFs) as one possible approach. We went on, however, to discuss why we were not proposing to make such a change to the definition at this time. Furthermore, we did not suggest that we would pay postacute care providers on the basis of the hospital DRGs.

Comment: The majority of the commenters who discussed an expanded definition of transfers as one approach to address the blurring distinction between different sites of care were opposed to it. Several commenters argued that there remains a clear distinction between the care provided in acute care hospitals and that provided by postacute care providers, and therefore it would be inappropriate to consider these cases as transfers. The point was also raised that defining these cases as transfers would create a financial incentive to hold them in the acute care hospital longer, in order to avoid a reduction in payment. On the other hand, some commenters pointed to "perverse incentives" under the current system that encourage early discharges.

Some commenters who argued against last year's proposal wrote to support a redefinition of transfers that includes SNFs. These commenters indicated they were in favor of an expanded definition if it included cases going to SNFs as transfers. Conversely, several commenters opposed including cases going to SNFs, arguing that "HCFA will *not* accomplish its goal since it will effectively remove any incentive for hospitals to move patients into a more cost-effective setting for subacute care." Not surprisingly, opinions on whether any redefinition of transfers should include cases going to SNFs divided along lines of whether the commenter represented SNFs or excluded hospitals.

Response: We would like to make clear that we recognize the importance of rehabilitative care as a necessary and distinct phase of the episode of care for many patients. Similarly, we recognize the historical distinctions between different providers of postacute care, as evidenced, for example, by our different payment policies for excluded hospitals and SNFs. Nevertheless, we are convinced these distinctions have recently become increasingly ill-defined. Part of the difficulty in addressing this issue, however, is that, while some providers have taken great strides toward integrating their health care delivery systems, many others continue to operate under the more traditional approach, with clear distinctions existing between the providers at different phases of patients' care.

We have repeatedly indicated our belief that the incentives created by our payment policy should be neutral in terms of the settings where patients receive care. That is, the payment received should correspond to the costs of the care provided, so that decisions regarding the appropriate site of care are based on clinical, not economic, concerns. As noted above, our concern stems from increasing indications that in certain contexts our present payment system no longer reflects provider costs as accurately as it once did. On the other hand, we believe that, for the most part, our per diem payment methodology for transfer cases does meet this test. Although payments for transfer cases are reduced relative to full discharges, they reflect the reduction in resources hospitals commit to these cases (particularly under our graduated per diem methodology). However, one of the issues of expanding this transfer payment methodology to cases going to excluded hospitals and units, as well as SNFs, is the underpayment for hip replacements. To the extent that the transfer payment is below costs, economic considerations are more likely to enter into the decision of when to release a patient and to which type of setting.

Finally, with regard to whether any redefinition of transfers should or should not include SNFs, we noted in the proposed rule (and reiterated above) that patients appear to be going to SNFs sooner from acute care settings. On the whole, the comments we received reinforced this belief. We will, however, continue to evaluate this issue.

Comment: Some commenters indicated that the redefinition of transfers should apply only to hospital-based distinct part units or in the case of long-term care hospitals, to a "hospital within a hospital," where the incentive to transfer early is strongest. In the words of two commenters: "(t)his perverse situation is becoming more common as States make it easier for hospitals to circumvent the normal health planning process to convert excess acute care beds to cost-based, distinct part units."

Response: We share many of the concerns expressed in these comments regarding the special potential for abuse that exists in such situations, and have addressed some of the potential abuses inherent in the "hospital within a hospital" arrangements in section IV of this preamble. However, we have historically recognized that many of the distinct part unit situations arise from legitimate efficiency incentives on the part of hospital administrators. In addition, implementing such a proposal would likely multiply the types of problems arising in the "hospital within a hospital" issue, as hospitals devise new relationships for postacute care.

Comment: It was suggested that, if we redefine transfers to include cases moving to excluded hospitals and units as well as SNFs, one State should be exempted because, among other reasons, the State's hospitals cannot establish exempt units without receiving a State Certificate of Need.

Response: One of the major factors leading us to pursue refinements with respect to this issue is the fact that not all areas of the country have equal access to postacute care alternatives. Currently, among those DRGs experiencing the most dramatic declines in length of stay, the relative weights are declining as the resources expended for these cases by acute care hospitals around the country decline. Because, effective for FY 1996, for purposes of recalibrating the DRGs, transfer cases are weighted in proportion to their payments, expanding the definition of transfer cases would alleviate some of the downward impact these cases have on the DRG weights. Hospitals lacking the opportunity to decrease their lengths of stay by transferring patients to postacute care settings would thereby benefit.

Comment: A number of commenters suggested that the appropriate means to address the issue of declining lengths of stay was through the DRGs and the prospective payment system, not the definition of a transfer. One commenter, for example, correctly asserts that the reduced resources attributable to cases discharged early from the acute hospital would ultimately result in lower DRG weights. Others called for the system to be rebased in order to capture the savings from the shorter lengths of stay.

Many commenters argued that it would be inappropriate to reduce payments for cases discharged prior to the mean without simultaneously increasing payments for cases discharged after the mean.

Response: An integral concept of the prospective payment system is that a predetermined payment can be made for an identifiable and distinct phase of care. To the extent that hospitals can provide this acute phase of patients' care at costs below average, they profit under this system. In response to this incentive, lengths of stay declined dramatically in the first few years after implementation of the prospective payment system.

Our concern regarding the misalignment of payments and costs arises when the acute phase of care may no longer be completed within the hospital. At that point, it is no longer sufficient to rely on the recalibration of the relative weights of the DRGs to correct the balance between payments and costs. Recalibration is, by definition, a budget neutral process. While payments will decline for the DRGs with cases that are being moved earlier out of the hospital, this decline will necessarily be offset by relative increases for other DRGs. The net result is that total payments systemwide are the same despite the cost reductions.

One way of potentially capturing these reductions would be to rebase the standardized amounts using more recent cost data. We are not convinced at this time, however, that such a dramatic approach is warranted. In addition, due to the need to use audited cost data in any such rebasing, it is questionable to what extent rebasing at this time would capture these savings, since this trend has apparently begun to accelerate only in the last year or two.

We disagree with the comments that it is inappropriate to reduce payments for cases discharged prior to the mean without simultaneously increasing payments for cases discharged after the mean. Cases with long lengths of stay may be eligible for outlier payments. In addition, as we pointed out in last year's final rule, generally fewer than 10 percent of cases in the DRGs most likely to receive postacute care leave the acute care hospital before the geometric mean length of stay, minus one day, and would therefore receive payment under the per diem methodology (59 FR 45365).

Comment: Several commenters noted that our current payment methodologies are predominately fee-for-service, and that this method of paying for health care will become much less prevalent in the near future. These commenters suggested that under a Medicare capitated payment methodology many of the issues with which we are concerned will resolve themselves.

Response: We agree that issues pertaining to properly allocating payments among service providers is significantly a function of our fee-for-service payment systems, which are largely required by the Medicare law. Nevertheless, given the amount of money currently paid through our fee-for-service systems, and the projections from the Office of the Actuary regarding the Medicare Trust Fund, the need to address this issue is pressing. Therefore, given the uncertainty about major legislative changes to our payment systems, we intend to pursue a solution that can be implemented relatively soon.

Comment: In response to our request, we received numerous suggestions for alternative approaches to address the evolving integration of the various phases of a patient's care across different provider settings. In the timeframe we are under to publish this final rule, we cannot appropriately analyze and respond to all of them. Additional comments we received included the following:

- There is no current infrastructure to accommodate a bundled payment system for acute and postacute care.
- HCFA should rely on the utilization review process to identify individual abusive providers and deal with them on an individual basis.
- HCFA should pursue its stated intention to better understand the clinical capabilities of various postacute settings.
- All types of providers of inpatient rehabilitation services should be under the same payment system (the Functional Related Groups concept was suggested).
- Hospital outpatient services should be included in the analysis of postacute care.
- HCFA should establish a commission to consider both the financial and clinical aspects of postacute care.
- A new discharge status code should be established for patients transferred for subacute, rather than postacute, care.

A number of revisions to SNF payment policy were also recommended, including a more stringent review of cost limit exception requests, a cap on exceptions based on like providers, elimination of the 3-day hospital stay requirement for Medicare SNF coverage, permitting providers to establish multiple distinct parts, and applying the hospital-based routine cost limits to freestanding SNFs.

Response: As noted above, we appreciate the many suggestions we received and will take each into consideration as we pursue our options. In addition, we anticipate that we will continue to work with the hospital industry as we proceed in our efforts to address this problem.

B. Physician Attestation (Section 412.46)

Under current Medicare regulations at § 412.46(a), physicians are required to sign an attestation statement for each hospital discharge before the claim can be submitted to the intermediary for payment. With this attestation, the physician is certifying the accuracy of the principal and secondary diagnoses and the major procedures performed for each patient during the inpatient stay. Because this information dictates which DRG is assigned to a case, it is extremely important that it be correct so that proper Medicare payment can be made.

The attestation statement the physicians sign reads as follows:

> I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge. (§ 412.46(a).)

Although a hospital official is required to certify on each Medicare claim form that all the data are correct, when the prospective payment system was first implemented, we believed that we needed a clear statement for each claim concerning the validity of that data. At the time, we believed that the physician was in the best position to attest to the information.

The hospital must also have on file a signed and dated acknowledgement from the attending physician that the physician has received the following notice:

> Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patients, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws. (§ 412.46(c)(1).)

We implemented these requirements to ensure a means of holding hospitals and physicians accountable for the information they submit on the Medicare claims form. At the time, we believed that these statements were valuable tools for ensuring the validity of DRG claims.

Over the years, we have received many complaints from both hospitals and physicians concerning the administrative burden of completing the attestation and acknowledgement statements. In a final rule with comment period published in the **Federal Register** on March 9, 1994 (59 FR 11003), we revised the regulations to require that a physician need sign the acknowledgement statement only upon receiving admitting privileges at a hospital and no longer was required to sign the statement every year.

In practice, review of attestation statements by the Peer Review Organizations (PROs) as a part of DRG validation review has resulted in less than a 0.01 percent denial rate of sampled claims. Therefore, in an effort to reduce burden, we are revising the regulations to eliminate the physician attestation requirement.

We believe that this will reduce the burden on both physicians, who must sign an attestation on each of the approximately 11 million Medicare inpatient claims a year, and on hospitals, which are responsible for obtaining the signatures before they can submit completed claims for payment. In addition, the hospital claim form (UB–92), which must be signed by a hospital representative, contains a certification statement that reads as follows:

> Anyone who misrepresents or falsifies essential information requested by this form may upon conviction be subject to fine and imprisonment under Federal or State law.

Because the hospital remains responsible for certifying that the hospital claim is accurate, we believe that we can hold the hospital responsible for the accuracy of the diagnostic and procedural information. We are revising revise § 412.46 by eliminating paragraphs (a), (b), (d), and (e). We note that on January 20, 1995, HCFA notified its Regional Offices that the PROs would no longer be responsible for performing attestation review.

Although this revision was not included in the proposed rule, we did receive many comments requesting that we eliminate the physician attestation requirement. In addition, this change was announced in July by Vice President Albert Gore, as one of the Administration's health care regulatory reforms.

C. Rural Referral Centers (Section 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban payment rate rather than the rural payment rate. As of that date, the other urban and rural payment rates are the same. However, rural referral centers continue to receive special treatment under both the disproportionate share hospital payment adjustment and the criteria for geographic reclassification.

One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital may be classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. In determining the proposed national and regional case-mix index values, we followed the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value included all urban hospitals nationwide, and the proposed regional values were the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

The values in the proposed rule were based on discharges occurring during FY 1994 (October 1, 1993 through September 30, 1994) and included bills posted to HCFA's records through December 1994. Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status or to meet the triennial review standards for cost reporting periods beginning on or after October 1, 1995, a hospital's case-mix index value for FY 1994 would have to be at least—

- 1.3165; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located. (See the table set forth in the June 2, 1995 proposed rule at 60 FR 29222.)

Based on the latest data available (FY 1994 bills received through June 1995), the final national case-mix value is 1.3184 and the median case-mix values by region are set forth in the table below:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2135
2. Middle Atlantic (PA, NJ, NY)	1.2077
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3141
4. East North Central (IL, IN, MI, OH, WI)	1.2288
5. East South Central (AL, KY, MS, TN)	1.2814
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1892
7. West South Central (AR, LA, OK, TX)	1.2986
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3630
9. Pacific (AK, CA, HI, OR, WA)	1.3300

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1994 case-mix index value in Table 3C in section V of the addendum to this final rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. However, we proposed to update the regional standards. The proposed regional standards were based on discharges for urban hospitals' cost reporting periods that began during FY 1993 (that is, October 1, 1992 through September 30, 1993). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status or to meet the triennial review standards for cost reporting periods beginning on or after October 1, 1995, the number of discharges a hospital must have for its cost reporting period that began during FY 1994 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located. (See the table set forth in the June 2, 1995 proposed rule at 60 FR 29222.)

Based on the latest discharge data available, the final median numbers of discharges for urban hospitals by census regions are as follows:

Region	No. of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6815
2. Middle Atlantic (PA, NJ, NY)	8618
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7500
4. East North Central (IL, IN, MI, OH, WI)	7155
5. East South Central (AL, KY, MS, TN)	5582
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5135
7. West South Central (AR, LA, OK, TX)	4464
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	8179
9. Pacific (AK, CA, HI, OR, WA)	5594

We reiterate that, to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1995, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1994 would have to be at least 3,000.

3. Retention of Referral Center Status

Section 412.96(f) states the general rule that each hospital receiving the referral center adjustment is reviewed every 3 years to determine if the hospital continues to meet the criteria for referral center status. To retain status as a referral center, a hospital must meet the criteria for classification as a referral center specified in § 412.96 (b)(1) or (b)(2) or (c) for 2 of the last 3 years, or for the current year. A hospital may meet any one of the three sets of criteria for individual years during the 3-year period or the current year. For example, a hospital may meet the two mandatory requirements in § 412.96(c)(1) (case-mix index) and (c)(2) (number of discharges) and the optional criterion in paragraph (c)(3) (medical staff) during the first year. During the second or third year, the hospital may meet the criteria under § 412.96(b)(1) (rural location and appropriate bed size).

A hospital must meet all of the criteria within any one of these three sections of the regulations in order to meet the retention requirement for a given year. That is, it will have to meet all of the criteria of § 412.96(b)(1) or § 412.96(b)(2) or § 412.96(c). For example, if a hospital meets the case-mix index standards in § 412.96(c)(1) in years 1 and 3 and the number of discharge standards in § 412.96(c)(2) in years 2 and 3, it will not meet the retention criteria. All of the standards would have to be met in the same year.

In accordance with § 412.96(f)(2), the review process is limited to the hospital's compliance during the last 3 years. Thus, if a hospital meets the criteria in effect for at least 2 of the last 3 years or if it meets the criteria in effect for the current year (that is, the criteria for FY 1996 outlined above in this section of the preamble), it will retain its status for another 3 years. We have constructed the following chart and example to aid hospitals that qualify as referral centers under the criteria in § 412.96(c) in projecting whether they will retain their status as a referral center.

Under § 412.96(f), to qualify for a 3-year extension effective with cost reporting periods beginning in FY 1996, a hospital must meet the criteria in § 412.96(c) for FY 1996 or it must meet the criteria for 2 of the last 3 years as follows:

For the cost reporting period beginning during FY	Use hospital's case-mix index for FY	Use the discharges for the hospital's cost reporting period beginning during FY	Use numerical standards as published in the **Federal Register** on
1995	1993	1993	September 1, 1994.
1994	1992	1992	September 1, 1993.
1993	1991	1991	September 1, 1992.

Example: A hospital with a cost reporting period beginning July 1 qualified as a referral center effective July 1, 1993. The hospital has fewer than 275 beds. Its 3-year status as a referral center is protected through June 30, 1996 (the end of its cost reporting period beginning July 1, 1995). To determine if the hospital should retain its status as a referral center for an additional 3-year period, we will review its compliance with the applicable criteria for its cost reporting periods beginning July 1, 1993, July 1, 1994, and July 1, 1995. The hospital must meet the criteria in effect either for its cost reporting period beginning July 1, 1996, or for two out of the three past periods. For example, to be found to have met the criteria at § 412.96(c) for its cost reporting period beginning July 1, 1994, the hospital's case-mix index value during FY 1992 must have equaled or exceeded the lower of the national or the appropriate regional standard as published in the September 1, 1993 final rule with comment period. The hospital's total number of discharges during its cost reporting year beginning July 1, 1992, must have equaled or exceeded 5,000 or the regional standard as published in the September 1, 1993 final rule with comment period.

For those hospitals that seek to retain referral center status by meeting the criteria of § 412.96(b)(1)(i) and (ii) (that is, rural location and at least 275 beds), we will look at the number of beds shown for indirect medical education purposes (as defined at § 412.105(b)) on the hospital's cost report for the appropriate year. We will consider only full cost reporting periods when determining a hospital's status under § 412.96(b)(1)(ii). This definition varies from the number of beds criterion used to determine a hospital's initial status as a referral center because we believe it is important for a hospital to demonstrate that it has maintained at least 275 beds throughout its entire cost reporting period, not just for a particular portion of the year.

Comment: One commenter noted that the American Osteopathic Hospital Association had changed its name to the American Osteopathic Healthcare Association and requested that § 412.96(c)(2)(B)(ii) be revised to reflect this change.

Response: Section 412.96(c)(2)(B)(ii) specifies that a rural osteopathic hospital that is recognized by the American Osteopathic Hospital Association can meet the number of discharges criterion at § 412.96(c)(2) if it has at least 3,000 discharges for the hospital's most recently completed cost reporting period. As requested, we are revising § 412.96(c)(2)(B)(ii) to reflect the organization's new name. To qualify as an osteopathic hospital, the hospital must be recognized by the American Osteopathic Healthcare Association (or any successor organizations).

D. Determination of Number of Beds Used in Calculating the Indirect Medical Education Adjustment (Section 412.105)

In the September 1, 1994 final rule (59 FR 45373), in an effort to clarify our policy, we amended the regulations at § 412.105(b), that describe how to determine the number of beds in a hospital for purposes of the indirect medical education adjustment. At that time, we added language to the regulations that specifically excludes "nursery" beds assigned to newborns "that are not in intensive care areas" from the bed count. This change was supposed to clarify that, with regard to infants, only beds in a nursery used for newborns (see section 2815 of the Provider Reimbursement Manual-Part 2) are excluded from the count. As we stated in the May 27, 1994 proposed rule (59 FR 27741), we made this revision "to exclude specifically only beds assigned to newborns *in the nursery"* (emphasis added). Furthermore, when we published the final rule, we added the reference to nursery beds directly into the text of § 412.105(b) "(t)o prevent any future confusion about the term 'newborn' " (59 FR 45374).

Although we received no comments in response to the May 27, 1994 proposed rule as to whether beds occupied by sick infants in areas other than a neonatal intensive care area or a nursery could be counted, we continue to receive questions on this issue. Therefore, in the June 2, 1995 proposed rule, we proposed to revise § 412.105(b) to further clarify our bed counting policy. This year, rather than specifically identifying intensive care beds occupied by infants as eligible to be counted, we proposed to delete that phrase and insert the phrase "beds in the healthy newborn nursery." As we stated in the June 2 proposed rule, our policy is and has been that only beds in a healthy, or regular, baby nursery are excluded from the count. All other beds available for occupancy by a newborn are to be counted. We received a number of comments on our policy clarification.

Comment: Several commenters believe that, rather than a policy clarification, the proposed language represents a policy shift in how we count beds. Several of these commenters indicated that the proposed language was not supported within the construct of current regulations and manual instructions. Specifically, commenters stated that the current § 412.105(b) and the manual instructions at section 2202.7.II of the Provider Reimbursement Manual-Part 2 (which defines intensive care units) indicate that the only beds assigned to infants that are to be counted are those in a neonatal intensive care unit.

Response: This change to the regulation language does not represent a policy shift. While the manual section referenced by the commenters does distinguish explicitly between neonatal intensive care units and a regular well-baby unit, this distinction clearly is not exhaustive of all of the possibilities for counting beds assigned to infants. In fact, the same manual section goes on to indicate that subintensive care type units, that is, those not meeting the criteria for intensive care units, are considered as general routine care areas. Although this discussion does not specifically mention neonatal subintensive care units, we believe it is applicable for these units as well.

In addition, section 2815 of the Provider Reimbursement Manual-Part 2 has long included a definition of newborn inpatient days that indicates that our policy for including inpatient days attributable to sick infants is not restricted to the neonatal intensive care unit in describing the days that are to be included in the completion of Worksheet D–1 of the Provider Cost Reporting Form 2552.

> "Newborn inpatient days are the days that an infant occupies a newborn bed in the nursery. Include (as inpatient days) an infant remaining in the hospital after the mother is discharged who does not occupy a newborn bed in the nursery, an infant delivered outside the hospital and later admitted to the hospital but not occupying a newborn bed in the nursery, or an infant admitted or transferred out of the nursery for an illness in inpatient days. Also, include an infant born in and remaining in the hospital and occupying a newborn bed in the nursery after the mother is discharged in newborn inpatient days."

Total inpatient days reported on that form exclude those days applicable to newborn days. However, as clearly stated, days of care for newborns outside the nursery are not considered to be newborn days.

We believe this decades-old manual instruction (in place since 1975) supports our position that all references to the exclusion of the costs, days, or beds of nursery units refer only to the regular, healthy baby nursery, and that the proposed language represents a clarification rather than a shift in policy. We recognize that some of these references may not have been as precise as they could have been when they refer only to "newborn beds" or "nursery beds," and this imprecision occasionally has led to confusion both within and outside the agency. However, where the instructions are specific, these terms are sufficiently well-defined so that they can reasonably be interpreted to refer only to a regular, healthy baby nursery.

Comment: Commenters suggested that past practice on the part of Medicare's fiscal intermediaries with regard to counting these beds has been inconsistent. That is, some intermediaries have allowed hospitals to exclude only those days that a newborn is in the nursery, while other intermediaries have allowed hospitals to exclude any day a newborn is not in a certified-intensive care unit. Therefore, the commenters believe it would be improper to begin to exclude them now. Commenters questioned whether we would require intermediaries to adjust unsettled past cost reports where these beds were excluded incorrectly. It was suggested that doing so would constitute retroactive rulemaking.

Response: We recognize that there have been inconsistencies in the application of this policy. We believe this has stemmed from the absence of a specific provision in the instructions on the treatment of subintensive/intermediate care beds, which this clarification should remedy. In light of these previous inconsistencies, we expect that all fiscal intermediaries that have not been correctly counting newborn beds consistent with our policy, as clarified in this final rule, must ensure that they revise their practices effective for cost reporting periods beginning on or after October 1, 1995. We expect that those fiscal

intermediaries that have been applying our policy appropriately will continue that practice.

Comment: Several commenters questioned whether the costs of these neonatal intermediate units were included in the calculation of the prospective payment system standardized amounts. They stated that unless we could demonstrate that the costs of these units were included in the base year used to calculate the standardized amounts, there is no basis for counting these beds when determining the resident-to-bed ratio.

Response: As indicated above in a previous response to comment, our policy to include the days, costs, and beds of these units predates the prospective payment system, as well as the base year (1981) that was used to set the standardized payment amounts. Consequently, we disagree that we should be prohibited from clarifying this policy due to apparent inconsistencies in its implementation.

Comment: Additional comments related specifically to how we differentiate between healthy baby nursery beds and special care beds. Commenters requested guidance on the status of those beds that are occasionally used to treat less healthy newborns, but that are actually located within a regular, healthy baby nursery. The commenters noted that currently there is no clear definition in the regulations or manual instructions that could be used to identify an intermediate level of special care between a healthy, or regular, nursery and a neonatal intensive care unit. Finally, one commenter suggested that we consider licensure criteria for distinguishing between treatment units.

Response: Our bed counting policy essentially is determined by our policies for including or excluding costs and days from the calculation of Medicare costs on the cost report. These policies have consistently followed the general principle that we do not attribute costs or days to individual beds, but rather to units or departments. Therefore, individual beds that are occasionally used to treat less healthy infants, but that are located within a regular, healthy baby nursery, continue to be treated as part of the unit in which they are located, that is, as part of the healthy baby nursery. In considering whether the beds used to treat sick infants constitute an intermediate neonatal care unit, one must consider the cost center concept. Section 2302.8 of the Provider Reimbursement Manual-Part 2 describes a cost center "as an organizational unit, generally a department or its subunit, having a common functional purpose for which direct and indirect costs are accumulated * * *." A regular, healthy baby nursery serves as a custodian of healthy infants, whereas the intermediate or subintensive neonatal care unit provides medical care to sick infants with very different types of costs being incurred. Therefore, the appropriate cost center with which to count the beds of an intermediate neonatal care unit is the Adults and Pediatrics cost center.

While there is a great deal of variation in the types of units that exist to care for infants, the Medicare fiscal intermediaries have been required for some time to distinguish between nurseries and intermediate units for cost reporting purposes.

Also, concerning the suggestion that we rely on licensure designations to differentiate between units, we do not believe this would be a feasible alternative due to variations in licensing criteria across the country.

Comment: A representative of a group of Medicare's fiscal intermediaries requested that we retain the language in § 412.105(b) specifically including neonatal intensive care beds in the bed count. This commenter also pointed out that what we refer to as beds are often referred to instead as bassinets, and that we should include both phrases in the regulations. Finally, we were asked to clarify our policy regarding the counting of beds or bassinets kept in the mother's room, for example, in an alternative birthing center.

Response: We proposed deleting the reference to the inclusion of neonatal intensive care unit beds from the regulations because we believe that reference led to confusion concerning the beds excluded from the hospital bed count. We continue to believe that the proposed wording, combined with the policy clarification published in last year's proposed and final rules, sufficiently defines our intentions as to which beds are to be excluded. We agree that "bassinets" should be included in the definition for determination of the number of beds. Therefore, we are revising § 412.105(b) accordingly.

With regard to beds placed in the mother's room rather than in a healthy baby nursery, these beds or bassinets are not counted in addition to the mother's bed already present in that room. We do not believe, however, that it is necessary at this time to add a reference to this issue in § 412.105. Nevertheless, we will continue to evaluate the policy implications of these arrangements in the future.

E. Disproportionate Share Adjustment (Section 412.106)

Section 1886(d)(5)(F) of the Act provides for additional payments for hospitals that serve a disproportionate share of low income patients. A hospital's disproportionate share adjustment is determined by calculating two patient percentages (Medicare Part A/Supplemental Security Income (SSI) covered days to total Medicare covered days, and Medicaid but not Medicare Part A covered days to total inpatient hospital days), adding them together, and comparing that total percentage to the hospital's qualifying criteria. These calculations are done by HCFA and the fiscal intermediary on a Federal fiscal year basis. However, § 412.106(b)(3) currently states that if a hospital prefers that HCFA use its cost reporting period instead of the Federal fiscal year, it must furnish to its intermediary, in machine-readable format as prescribed by HCFA, data on its Medicare Part A patients for its cost reporting period. These data take the place of the Federal fiscal year MedPAR file data in obtaining the Medicare Part A/SSI percentage. To ensure that the hospital is reporting actual Medicare Part A patient days, we match the hospital's data to the HCFA MedPAR data. In addition, we have required that a hospital accept the recalculated percentage, even if it is lower than the Federal fiscal year percentage.

In the last few years, this process has proven to be unsatisfactory for several reasons. First, it is an administrative burden for the hospital to prepare a tape that includes all its Medicare Part A inpatient days. In addition, the hospital's tape data have seldom exactly matched the MedPAR data. In that case, we can use only the data that match. Finally, and probably often due to this second problem, the resulting disproportionate patient percentages are invariably lower than the original HCFA determined percentage. We proposed to alleviate these problems by continuing to provide hospitals an alternative to base their percentage on their cost reporting year, but relieving them of the tape requirement.

Therefore, we proposed that if a hospital wishes a recalculation based on its cost reporting period, the hospital would notify HCFA in writing of its request that the Medicare Part A/SSI percentage be calculated based on its own cost reporting year. The hospital would be required to provide HCFA with its name, provider number, and cost report period end date. HCFA, in turn, would use all MedPAR records for that hospital from the requested time period, as opposed to only those records that matched between the MedPAR file and the hospital's tape data. This should provide hospitals with more appropriate Medicare Part A/SSI percentages.

In addition, we proposed to process these requests on a quarterly basis. Processing these individual requests for recalculation on a flow basis has become an administrative burden on the available HCFA computer processing resources. Therefore, we believe it is necessary to batch these requests and run the MedPAR data on a set schedule. This will be much more efficient and predictable.

Accordingly, we proposed to revise § 412.106(b)(3) to provide that HCFA will accept a hospital's written request, transmitted through its fiscal intermediary, for a recalculation of its Medicare Part A/SSI percentage based on its cost reporting period. The written request should include the hospital's name, provider number, and cost report period end date. We would perform a recalculation only once per hospital per cost report period, and the resulting percentage becomes the hospital's official Medicare Part A/SSI percentage for that period.

Comment: We received three comments, all of which supported our proposal to use the MedPAR file data to recalculate Medicare Part A/SSI percentages rather than continuing the requirement that hospitals submit a tape of their Medicare Part A data based on their cost reporting periods. However, one commenter was concerned that HCFA provide an opportunity for hospitals to verify the data, and another commenter requested that we add a provision that would hold a hospital harmless if the Medicare Part A/SSI percentages decreased when this alternative was requested. The latter commenter suggested that a hospital affected by the "hold harmless" provision be subject to a processing fee for the unused cost reporting period.

Response: Since there was no opposition to the proposed change, we are adopting it in this final rule. Because the SSI data used in the calculation are protected by the Privacy Act, we cannot provide an opportunity for hospitals to verify these data. The data that the Social Security Administration (SSA) uses to determine the Medicare Part A/SSI percentage are not released to HCFA and therefore we are unable to produce these data for hospitals. We must accept the data that are officially collected and compiled by the SSA on a monthly basis. The SSA is responsible for administering the SSI program and keeps track, on a monthly basis, of those individuals who receive SSI benefits.

Concerning the request for a "hold harmless" provision, it has been our consistent policy that a hospital that requests a recalculation of its Medicare Part A/SSI percentage based on its cost reporting period must accept the result of that calculation in place of the Federal fiscal year calculation. We believe that this policy prevents hospitals from taking advantage of the opportunity to request this procedure merely so that they can choose the higher percentage. Ideally, a hospital will request a recalculation only if it has not qualified for a disproportionate share adjustment but believes it is close to qualifying.

F. Essential Access Community Hospitals (EACHs) and Rural Primary Care Hospitals (RPCHs) (Sections 412.109, 413.70, 424.15, 485.603, 485.606, 485.614, 485.620, and 485.639, 485.645)

On May 26, 1993, we published a final rule to implement the EACH program (58 FR 30630). The rule set forth the requirements for designating certain hospitals as EACHs or RPCHs, the conditions that an RPCH must meet to participate in Medicare, and the rules for Medicare payment for services furnished by EACHs and RPCHs. The final rule implemented section 1820 of the Act, as added by sections 6003(g) and 6116(b)(2) of Public Law 101–239 and revised by section 4008(d) of Public Law 101–508. The amendments were intended to promote regionalization of rural health services in grant States, improve access to hospital and other health services for rural residents, and enhance the provision of emergency and other transportation services related to health care.

Section 102 of the Social Security Act Amendments of 1994, Public Law 103–432 (SSAA '94), made significant changes in the provisions of the Medicare law governing the EACH/RPCH program. To implement these changes, we proposed to revise the regulations as follows:

1. Designation of Urban Hospitals as EACHs (Section 412.109)

Section 1820(e) of the Act previously provided that only rural facilities could be designated as EACHs, and all EACHs were to be paid as sole community hospitals (SCHs). Section 102(b)(1) of SSAA '94 revised section 1820(e) of the Act to allow hospitals located in urban areas to be designated as EACHs if they have entered into network agreements with RPCHs and meet other applicable requirements. As EACHs, these urban facilities may qualify for EACH grants. However, they are not eligible for the special payment methodology afforded rural EACHs. For payment purposes, rural EACHs are treated as sole community hospitals (SCH). Section 1886(d)(5)(D) of the Act was amended to clarify that only hospitals designated as EACHs *and* located in rural areas are treated as SCHs for payment purposes. Urban EACHs will therefore continue to be paid at the applicable urban rates.

To implement this provision, we proposed to revise § 412.109 to remove the current rural location requirement for EACH designation, and to provide that payment as an SCH is limited to EACHs in rural areas. As explained below, we also proposed to revise that section to allow a State that has received an EACH grant to designate an otherwise qualified hospital in an adjoining State as an EACH.

In conjunction with this change, we proposed to make a technical correction to a reference in § 485.603.

We received no comments in response to these proposals, and are, therefore, adopting them as proposed.

2. Designation of EACHs and RPCHs in States Adjoining Grant States (Sections 412.109 and 485.606)

Section 1820(c) of the Act previously provided that hospitals could be designated as EACHs only if they were located in States receiving EACH grants. Section 1820(i)(2) of the Act did authorize designation of RPCHs outside the grant States; however, the number of facilities designated under this authority was limited to 15 nationally, and only the Secretary, not individual grant States, could make the designation. Section 1820(i)(2) of the Act further requires the Secretary, in making the special designations, to give preference to facilities that have entered into network agreements with other facilities in grant States, thus indicating a strong preference for designation of RPCHs in States adjoining grant States. Section 102(b)(2) of SSAA '94 amended section 1820 of the Act to authorize the individual grant States to make designations of both EACHs and RPCHs in adjoining States, if the facilities so designated are otherwise qualified and have entered into network agreements with EACHs or RPCHs in the grant State. The legislation does not limit the number of such designations. To implement this change, we proposed to revise §§ 412.109 and 485.606 to permit these new designations of EACHs and RPCHs by adjacent States that have received grants. We proposed that hospitals designated in this way will be required to meet other applicable requirements, and we plan to make such designations subject to review and

approval by the HCFA regional offices on the same basis as designations of facilities in the grant State. That is, the designation will not result in recognition of a facility as an EACH or RPCH for Medicare or Medicaid purposes until HCFA has determined that the requirements are met.

We received no comments in response to these proposals, and are, therefore, adopting them as proposed.

3. Designation of EACHs and RPCHs by States That Have Received Grants (Sections 412.109 and 485.606)

Section 1820(a)(1) of the Act establishes a program under which the Secretary makes grants available to not more than seven States to carry out certain activities, including designating hospitals or facilities in the State as either an EACH or an RPCH. Because there is no assurance that funding of this grant program will continue, some or all of the seven States may not receive grants under section 1820(a)(1) of the Act in the future. Since States may not continue to "receive" grants, we proposed to revise the regulations pertaining to EACHs and RPCHs by replacing references to "States receiving grants" with references to "States that have received grants" or "a State that has received a grant," as appropriate. Specifically, we proposed to revise the designation of EACHs and RPCHs under current § 412.109(b) and (c), and § 485.606, respectively, to include these revised references. Should the grant program expire, these proposed revisions would prevent any uncertainty that may arise as to the status of designations made by States that have received grants.

We received no comments in response to these proposals, and are, therefore, adopting them as proposed.

4. Change in Payment for Outpatient RPCH Services (Section 413.70)

Previously, section 1834(g) of the Act provided that payments to RPCHs for outpatient services under the cost-based facility fee plus professional charges method were to be determined under section 1833(a)(2)(B) of the Act. That section states that payment is to be made at the lesser of the reasonable cost of the services or the customary charges for the services. (This is commonly referred to as "LCC," that is, the lesser of costs or charges.) Current regulations at § 413.70(b)(2)(i) require that payment to RPCHs under the cost-based facility fee plus professional services be made in accordance with the LCC principle. This principle is set forth under § 413.13.

Section 102(e)(2) of SSAA '94 amended section 1834(g)(1) of the Act to provide that payment for outpatient RPCH services under the cost-based facility fee plus professional charges method are to be determined without regard to the amount of the customary charge. To implement this change, we proposed to amend § 413.70(b)(2)(i) to provide that for payment for RPCH outpatient services made under the cost-based RPCH payment plus professional services method, the principle of the lesser of costs or charges does not apply.

We received no comments in response to these proposals, and are, therefore, adopting them as proposed.

5. Content of Required Physician Certification (Section 424.15)

Section 1814(a)(8) of the Act previously provided that Medicare Part A could pay for inpatient RPCH services only if a physician certified that the services were required to be furnished immediately on a temporary, inpatient basis. Section 102(a)(3) of SSAA '94 deleted this requirement and provided instead that Medicare Part A will pay for the inpatient RPCH services only if a physician certifies that the individual may reasonably be expected to be discharged or transferred to a hospital within 72 hours after admission to the RPCH. We proposed to revise § 424.15 to reflect the new requirement.

We received no comments in response to this proposal, and are, therefore, adopting it as proposed.

6. Length-of-Stay Requirement for RPCHs (Sections 485.614 and 485.620)

Section 1820(f)(1)(F) of the Act previously allowed all RPCHs to keep inpatients no longer than 72 hours before discharging them or transferring them to a full-service hospital, unless discharge or transfer was precluded by inclement weather or other emergency conditions. Section 102(a)(1) of SSAA '94 removed the per-stay limitation and substituted for it a provision under which the Secretary may terminate the designation of a facility as an RPCH if the Secretary finds that the average length of stay in the preceding year exceeded 72 hours. The provision further states that periods of stay in excess of 72 hours that occurred because discharge or transfer were precluded by inclement weather or other emergency conditions are not to be taken into account in computing a facility's average length of stay for this purpose.

To implement this change, we proposed to revise §§ 485.614 and 485.620 to delete the current per-stay limitation, and to replace it with a requirement for a facility-wide average length of stay that does not exceed 72 hours, excluding parts of stays in excess of 72 hours that occurred because of inclement weather or other emergencies. In the case of a currently participating RPCH, termination of the RPCH designation can be made effective only by ending Medicare participation. Therefore, we proposed to revise § 489.53 to authorize termination of the provider agreement of an RPCH if HCFA finds that it does not maintain the required average length of stay.

We received no comments in response to these proposals, and are, therefore, adopting them as proposed.

7. Restriction on Scope of Surgical Services to RPCH Inpatients (Section 485.614 and new Section 485.639)

Before the Social Security Act Amendments of 1994 were enacted, there were no explicit restrictions on the type or extent of surgical activity that could be performed in a RPCH. These facilities and their practitioners were, however, required to conform to applicable State licensure and scope of practice laws. Section 102(a)(1) of SSAA '94 added an explicit restriction on surgical activity by RPCHs. Specifically, a State may not designate a facility as an RPCH if the facility provides inpatient hospital services consisting of surgery or any other service requiring the use of general anesthesia (other than surgical procedures specified by the Secretary under section 1833(i)(1)(A) of the Act), unless the attending physician certifies that the risk associated with transferring the patient to a hospital for such services outweighs the benefits of transferring the patient to a hospital for such services. The procedures specified by the Secretary under section 1833(i)(1)(A) of the Act are those that are performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC) or in a hospital outpatient department. Implementing regulations for section 1833(i)(1)(A) of the Act are set forth at § 416.65. HCFA also publishes a list of covered surgical procedures in Addendum A to Part 3 of the *Medicare Carriers Manual*.

To implement this change, we proposed to revise § 485.614 to reflect the new statutory provision. We note that the law still does not limit the scope of surgical procedures that can be performed for RPCH outpatients, and that both hospitals and ASCs, the other two facilities in which ASC procedures can be performed, are subject to specific health and safety rules on administration of anesthesia and performance of the surgery. To ensure adequate health and safety protection for RPCH patients and to apply Medicare standards uniformly to ASC-type procedures, we also proposed to add, at § 485.639, a new RPCH condition of participation for surgical services. We note that the new condition would apply the same rules in the RPCH as now apply in an ASC, and that it would apply to both inpatient and outpatient surgery. Given the similarities between RPCHs and ASCs and the fact that identical procedures can be performed in each, we believe uniform health and safety rules are needed.

We received no comments in response to these proposals, and are, therefore, adopting them as proposed.

G. New Provision Subject to Public Comment To Allow Provision of Skilled Nursing Facility (SNF) Services by RPCHs (Section 485.645)

When we issued regulations (§ 485.645) to implement the RPCH provisions in section 1820 of the Social Security Act (see 58 FR 30630, May 26, 1993), we made a number of interpretations or elaborations to deal with situations that were not explicitly dealt with by the statute. Among them were these two policies: an RPCH with a swing-bed agreement could have no more than 12 beds for the use of inpatients (§ 485.645(a)(1)); and all 12 beds could "swing," that is, could be used to furnish both RPCH-level (acute) care as well as a SNF-level of care, as the individual patient required.

Congress changed those policies when it enacted section 102 of the Social Security Act Amendments of 1994. First, Congress rejected the 12-bed limit. Section 102(c) of SSAA '94 amended section 1820(f)(3) of the Act to provide instead that in the case of a hospital with a swing-bed agreement under section 1883 of the Act that applies to become a RPCH, the number of beds that the RPCH can use for furnishing SNF-level services may not exceed the total number of beds that were licensed beds at the time the hospital applies to become an RPCH, minus the number of inpatient RPCH beds. (Thus, the number of beds an RPCH may have for SNF-level care could be more or fewer than 12.)

Second, amended section 1820(f)(3) now refers only to "the number of beds used [by the RPCH] for the furnishing of such [SNF-level] services." This language does not also refer to using those beds to furnish such SNF-level services along with RPCH-level services.

Third, Congress provided that the six RPCH-level beds could not also be used to furnish SNF-level services. Specifically, section 1820(f)(3) now explicitly states that the number of beds an RPCH can use for furnishing SNF-level services must be calculated "minus the number of inpatient beds used for providing inpatient [RPCH-level (acute)] care." The latter indicates that Congress did not anticipate the six RPCH-level beds would also be used to furnish SNF-level services.

Further, in section 102(g) of SSAA '94, Congress enacted a number of conforming technical amendments to make explicit that various provisions applicable to hospitals should also be applicable to RPCHs. In doing so, however, it conspicuously failed similarly to amend section 1883 of the Act, "Hospital Providers of Extended Care Services." That is the provision that permits hospitals to have swing beds. Not amending section 1883 is consistent with our conclusion that Congress intended to permit certain RPCHs to have a limited number of beds for furnishing SNF-level services, but not dual-purpose swing beds.

We believe these Congressional policy changes are based on sound policy reasons. First, the six-bed limit for inpatient RPCH-level care is reconfirmed. That was a major element in Congress' decision in the original legislation to encourage small rural hospitals to convert from being full service hospitals to become limited purpose facilities. Second, all RPCHs are now treated the same with respect to the limit on the number of RPCH-level inpatient beds. Third, hospitals that had swing-bed agreements can continue to furnish SNF-level services when they become RPCHs, without interfering with the other RPCH provisions.

As noted, although section 1820 of the Act, as amended by section 102(c) of SSAA '94, does not provide for an RPCH to continue to use its beds interchangeably to provide RPCH-level and SNF-level services, it does provide for an existing swing-bed hospital to be designated as an RPCH (with up to 6 beds used exclusively for inpatient RPCH-level services) and retain its remaining beds to be used exclusively for SNF-level services. Payment for the RPCH-level care provided by the RPCH would be determined in accordance with 42 CFR 413.70(a). In establishing the payment methodology for the SNF-level services provided by the RPCH, we have concluded that since SNF-level services provided by the hospital had previously been paid under the methodology specified for swing-bed hospitals at 42 CFR 413.114, it is consistent with sound application of these reasonable cost principles to continue to pay for those services under that methodology.

In this final rule, we are revising § 485.645 accordingly to set forth the eligibility and payment policies described above. We recognize that there may be concerns about the implementation of this provision with respect to facilities originally designated as RPCHs before the effective date of the new amendments, and are providing a 60-day public comment period on the § 485.645 changes only. (As discussed above in section IV.F of this preamble, the other changes needed to implement section 102 of SSAA '94 were included in the proposed rule and, in the absence of public comment, are being adopted without change.) Because we did not include these changes in the proposed rule, we considered delaying the implementation of section 102(c) further in order to allow time for full notice-and-comment rulemaking. However, the statutory effective date is October 31, 1994, and several facilities have indicated an interest in being designated as RPCHs under the new provisions. Moreover, we believe these changes may be necessary to assure access to SNF-level care in rural areas. In this context, we believe it would be contrary to the public interest to further delay implementation by the amount of time needed for proposed rulemaking. We will consider carefully all comments we receive, and make any further changes needed as the result of them in a final rule. We also are considering whether other, more stringent health and safety rules may be needed in light of the new provisions, and may propose further changes in this area in the future.

H. Rebasing the Hospital Market Basket

Our practice has been to update or rebase the market basket about every 5 years. Occasionally, we have adjusted this timing to coincide with the Department of Commerce, Bureau of Economic Analysis' schedule for updating the interindustry model of the United States (U.S.) economy, which is released every 5 to 7 years. The interindustry model includes detailed cost analyses of the entire U.S. economy including the hospital industry. In developing the current market basket, effective beginning October 1, 1990, we used 1987 hospital data from the American Hospital Association's (AHA's) 1988 Annual Survey for six major expense categories (wages and salaries, employee benefits, professional fees, depreciation, interest, and a residual "all other" category). We used AHA's Hospital Administrative Services (HAS) data from 1987 to derive the weights for professional liability

insurance, food, and pharmaceutical products. Weights for most of the remaining subcategories were derived from Department of Commerce, Bureau of Economic Analysis data trended forward to 1987. For a detailed description of the rebased market basket effective October 1, 1990, see the September 1, 1990 final rule (55 FR 36043).

Although it has been 5 years since the most recent rebasing of the market basket, in the proposed rule we announced our intention to schedule market basket rebasing for FY 1997. We believe that a 1-year delay in the usual schedule is advantageous for the following reasons. First, it provides an opportunity to review and incorporate two important new data sources that are not available at this time. The first of these, the FY 1992 and 1993 Medicare cost report data, contain more detailed data on labor-related and capital-related costs. We are planning on replacing the AHA Annual Survey data with Medicare cost report data for the main operating and capital cost weights. In the next several months, we are planning to compare and analyze the impact of this change to ensure the validity and consistency of the rebased market baskets for operating and capital costs. We believe that using the Medicare data would be an improvement since these data are reported directly to HCFA by Medicare participating hospitals, are readily available to us in a timely manner, and would free us from relying on data that is collected by outside organizations.

The second new data source we anticipate obtaining and analyzing is the 1992 Bureau of the Census' Assets and Expenditures Survey, which will be available later this year. The Census survey will provide much more detailed operating and capital cost data, and we anticipate that we will be able to use this survey to allocate the main cost category weights into more detailed subcategory weights for both operating and capital costs.

In addition to using the market basket to update the payment rates, we also use the percentages of the labor-related items (that is, wages and salaries, employee benefits, professional fees, business services, computer and data processing, blood services, postage, and all other labor-intensive services) to determine the labor-related portion of the standardized amounts. The labor-related portion of the standardized amounts is that portion that is subject to adjustment by the hospital wage index. In order to estimate if postponement of the market basket rebasing would adversely affect hospital payments due to a potential change in the labor-related portion of the payment amounts, we conducted an analysis using the 1987 index rebasing methodology (with 1992 equivalents of the data sources used in 1987). This analysis indicates only a minor difference in the 1987 and 1992 AHA cost shares for compensation costs, which are the major portion of labor-related costs. Therefore, we believe that delaying the market basket rebasing until FY 1997 will not disadvantage hospitals and will allow us to use more detailed and current data. We did not receive any comments opposing this plan, and we intend to rebase the market basket as a part of our FY 1997 changes to the prospective payment system.

V. Changes and Clarifications to the Prospective Payment System for Capital-Related Costs

A. Update Framework for Prospective Payment System for Inpatient Hospital Capital-Related Costs and Possible Revisions to the Federal Rate (Section 412.308(c)(1)(ii))

1. Introduction

For FY 1992 through FY 1995, § 412.308(c)(1) provides that the update for the capital prospective payment rates (Federal rate and hospital-specific rate) will be based on a 2-year moving average of actual increases in Medicare inpatient capital costs per discharge. The regulations provide that, beginning in FY 1996, HCFA will determine the update in the capital prospective payment rates based on an analytical framework that will take into account (1) changes in the price of capital (which we will incorporate into a capital input price index), and (2) appropriate changes in capital requirements resulting from development of new technologies and other factors (such as existing hospital capacity and utilization). The objective of the capital update framework is to determine a rate of increase in aggregate capital prospective payments that, along with a rate of increase in DRG operating payments, ensures a flow of capital and operating services for efficient and effective care for Medicare patients.

In the June 2, 1995 proposed rule we presented a formal proposal for an update framework for the prospective payment system for hospital inpatient capital-related costs (60 FR 29227). The proposal followed a series of preliminary models of an update framework in our FY 1992, FY 1993, FY 1994, and FY 1995 rulemaking documents. We received numerous public comments on the proposed framework, and we present our responses to those comments below.

The proposed update framework included a capital input price index (CIPI) that parallels the operating input price index. The CIPI measures the pure price changes associated with changes in capital-related costs (prices x "quantities"). The composition of capital-related costs is maintained at base-year FY 1987 proportions in the CIPI. As such, the composition of capital reflects the underlying capital acquisition process. We employ FY 1987 as the base year for this preliminary CIPI for consistency with the operating input price index. We will periodically update both the operating and the capital input price indexes to reflect the changing composition of inputs for capital and operating costs.

The proposed capital update framework, like the operating update framework, incorporated several policy adjustments in addition to the CIPI. We proposed to adjust the CIPI rate of increase for case-mix index-related changes, for intensity, and for error in previous CIPI forecasts. We also discussed a possible adjustment for the efficient and cost-effective use of capital (such as movable equipment, buildings and fixed equipment) in the hospital industry.

In the proposed framework, we attempted to maximize consistency with the current operating framework, in order to facilitate the eventual development of a single prospective payment system update framework. We also attempted to promote the goals that motivated the adoption of the capital prospective payment system, especially the goals of promoting more effective and efficient utilization of capital resources in the hospital industry and establishing incentives for hospitals to make cost-effective decisions regarding acquisition of new capital resources.

We invited comments and recommendations on all aspects of the proposed framework. We expressed interest in suggestions regarding the CIPI, the proposed policy adjustment factors, and alternative methodologies for deriving the factors. We were especially interested in comments on a possible efficiency adjustment.

2. ProPAC Recommendation for Updating the Capital Prospective Payment System Federal Rate

In its March 1, 1995 report to Congress, ProPAC recommended the use of an update framework that includes a capital market basket component. The ProPAC market basket measures 1-year changes in the purchase prices of a fixed basket of capital goods purchased by hospitals. The ProPAC framework also includes several policy adjustment factors. A forecast error correction factor adjusts payment rates so that the effects of past errors are not perpetuated. A financing policy adjustment accounts for the effects of substantial deviations from long-term trends in interest rates on hospital capital costs. The ProPAC capital update framework also includes adjustments for scientific and technological advances, productivity, and case-mix change similar to those employed in the ProPAC operating update framework. ProPAC also recommends the adoption of a single update framework for adjusting operating and capital prospective payment rates when the transition to full Federal rate capital payments is complete. ProPAC believes that using a simplified approach comparing annual price changes in capital would facilitate the development of such a unified framework.

Our long-term goal is to develop a single prospective payment system update framework. We will soon begin to study development of a unified framework. In the meantime, we will continue to maintain as much consistency as possible with the current operating framework in order to facilitate the eventual development of a unified framework.

The ProPAC and HCFA update frameworks share certain goals. The goal of each framework is to provide a rate of increase in capital prospective payments that, along with the rate of increase in operating prospective payments, will ensure a flow of capital and operating resources that will allow for efficient and effective care for Medicare patients. Both frameworks are designed to provide increases for the purchase of quality-enhancing new technologies. Both frameworks provide for case-mix adjustments to remove the effects of upcoding and to adjust for changes in within-DRG severity. Both frameworks also seek to encourage efficient capital spending behavior. Although the frameworks adopt different methodologies for promoting some of these goals, they are compatible to the degree that they share these goals.

The major difference between the ProPAC and HCFA frameworks concerns the purpose and structure of the capital input price index, or market basket. ProPAC's framework is based on the premise that capital prospective payments are only for future capital purchases and should not reflect the vintage nature of capital. Thus, ProPAC's proposed capital market basket reflects the projected increase in the purchase price of capital goods from one year to the next. HCFA's framework is based on the premise that capital prospective payments are for hospitals' capital-related expenses, which include the expenses related to future capital-related purchases. That is, HCFA's framework addresses the input price component of expenses associated with hospitals' given stock of capital in a particular fiscal year; ProPAC's framework ignores hospitals' present stock of capital and focuses on changes in input prices associated with capital purchases that hospitals will make in a particular fiscal year.

The HCFA CIPI projects the price changes associated with the accounting or vintage costs of capital assets. The HCFA CIPI is based on a definition of capital-related expenses and associated capital-related prices derived from accounting practice (including required HCFA prospective payment system accounting practice) and consistent with economic theory. HCFA believes that the concept of capital-related prices incorporated into the HCFA CIPI is more appropriate than the concept incorporated into the ProPAC market basket because the consumption of capital is not just what is purchased in one year. The consumption of capital has a time-dimension: Capital is not used up immediately but rather over time. This feature of capital is reflected in the accounting definition of capital cost, and it should be reflected as well in the concept of capital prices in the CIPI. The transition from reasonable cost reimbursement to payment under a prospective system does not cancel the applicability of general accounting practice or the HCFA accounting practice derived from it. Thus the concepts of capital-related expenses and capital-related prices continue to be appropriate. Furthermore, the base capital rates were computed on the basis of accounting costs. HCFA believes that it is more consistent to update those rates on the basis of the changes in prices associated with those costs rather than on the basis of changes in current year purchase prices alone.

The HCFA CIPI captures the vintage feature of capital price by using a vintage average approach, that is, weighted averages of purchase prices and interest rates up to and including the current year. The use of vintage averages as the measure of price changes tracks the flow of consumption of capital. The vintage approach better reflects what hospital cash-flow needs are as new assets are brought on, since hospitals still bear the costs of older assets as the new assets are brought on.

HCFA believes that the CIPI appropriately reflects the prices associated with past and current period purchases of capital. Under the HCFA approach, the price change associated with the capital costs for any year is a weighted average of the prices associated with depreciation, interest and other capital costs for that year. The prices associated with the depreciation costs during the year are an average of the prorated purchase prices for the assets in use during that year (25 years for buildings and fixed equipment, 10 years for movable equipment, including current year purchases). The prices associated with the interest costs during the year are an average of the interest rates on debt instruments in effect during that year (22 years, including debt instruments that are new in the current year). Capital-related costs for insurance have an annual time dimension, and therefore the prices associated with those expenses are current year prices only.

In addition to the disagreement over whether the CIPI should reflect the vintage nature of capital, HCFA and ProPAC also disagree over the treatment of interest. ProPAC proposes to account for interest rate changes through a separate financing policy adjustment that would account for significant changes in long-term interest rates. This adjustment would increase the update in case of significant long-term interest rate increases, and decrease the update in cases of significant interest rate decreases. (ProPAC has not identified the threshold that constitutes "significant" interest rate changes.)

HCFA believes that there must be an interest rate component in a capital input price index. Sound accounting practice includes interest, along with depreciation, as a component of capital cost. The interest and depreciation components of capital cost track the flow of consumption of capital inputs. Price is a component factor of cost (that is, cost is the product of price and quantity), and capital cost has both depreciation and interest components. There must therefore be an interest component of capital price just as there is an interest component of capital cost.

Furthermore, ProPAC's treatment of interest assumes that only current year interest rate changes need to be measured to capture the relevant price effects of interest rate changes. HCFA believes that the price aspects of interest costs, like the price aspects of depreciation costs, have a time dimension that must be captured in the CIPI. Whether the current year interest rate reflects a net lower price of financing to the hospital depends not on comparison of the current year's interest rate to the previous year's interest rate,

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but on the effect of the current year interest rate on all the hospital's debt instruments. For example, assume that the previous year's interest rate was 8 percent, and the current year's interest rate is 5 percent. However, as the hospital enters new financing arrangements at the current rate of 5 percent, it retires debt instruments from 20 years earlier that bore an interest rate of 3 percent. The price effect of the current year's interest rate is thus higher, not lower, as new debt instruments at 5 percent replace old debt instruments at 3 percent. HCFA believes it to be a great advantage of its CIPI that it directly tracks price effects such as these.

Finally, the pure price aspects of interest costs (that is, the interest rate and the purchase price that is represented in the amount of loan principal) are typically beyond the control of the hospital industry. To be sure, the actual decision to purchase capital assets or acquire debt is a "quantity" decision and typically is discretionary for a particular span of time. However, in measuring the actual expected price per unit of real capital, independently of any evaluation of the propriety of any actual purchase decisions, it is essential to recognize that the industry has some control over the amount of capital it purchases but little or no control over the price it pays for capital. Thus, the pure price aspect of interest cost changes must be incorporated into the CIPI. Otherwise, the CIPI will not accurately reflect the prices faced by hospitals who must borrow to finance necessary capital acquisitions. Limitations on the quantity of capital are appropriately implemented through policy adjustment factors. The ProPAC approach artificially eliminates pure price changes related to interest costs from the CIPI and incorporates them into a discretionary adjustment factor. The HCFA CIPI retains all price components of increases in interest costs as one measure of inflation in capital-related expenses. It thereby keeps price and quantity aspects distinct, allowing separate analysis of each factor of increases in capital expenses.

We do not agree with the ProPAC that the approach of comparing annual price changes in capital is more conducive to a single update factor. We believe that price changes in current hospital capital expenses are analogous to price changes in current hospital operating expenses. The HCFA CIPI measures the price change in capital expenses, and is, therefore, the appropriate analog to the input price index used to update operating payments under prospective payment. We provide further comments on particular ProPAC recommendations in section V.A.3 of this preamble.

3. Measurement of Capital Input Price Increases

a. Introduction. HCFA discussed a capital input price index as one component in developing future update factors for the Federal rate in the September 1, 1992 **Federal Register** (57 FR 40016). We have presented revised versions of the capital input price index in the May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), and September 1, 1994 (59 FR 45517) issues of the **Federal Register**.

In the June 2, 1995 proposed rule (60 FR 29229), we formally presented a capital input price index for public comments prior to adoption of this final rule. The proposed CIPI parallels the operating input price index. Both the CIPI and the operating input price index are designed to measure input price changes for hospitals' current year expenses, that is, to separate pure price changes from quantity and expenditure changes. The operating sector input price index measures input price changes for operating-related expenses. The capital input price index measures input price changes for capital-related expenses, which include depreciation, interest, and other expenses (such as insurance related to capital goods).

b. HCFA Capital Input Price Index Methodology. The CIPI is based on the following assumptions:

- The Federal rate is based on the concept of capital-related expenses of capital assets used for patient care in the fiscal year and, therefore, any change in the Federal rate should take into account expected changes in the input price aspects of capital-related expenses.
- Capital-related expenses are defined as the sum of depreciation expense, capital-related interest costs, and other capital-related costs, including insurance and leases.
- The input prices related to capital-related expenses are typically beyond the control of the hospital industry (that is, the hospital is a price-taker, not a price-setter).

These assumptions lead directly to a definition of a CIPI that takes into account the price aspects of changes in depreciation expense, interest costs, and other capital-related costs. Thus, the CIPI includes three categories of capital-related expenses: depreciation, interest, and other capital-related costs (such as insurance). Further, the assumptions lead directly to input prices for depreciation and interest costs that, unlike operating costs, have a time dimension that must be captured in the CIPI.

Comment: A commenter suggested that the HCFA CIPI is flawed because it relies excessively on assumptions that could cause the update to be more likely to overstate or understate the true changes in prices than an input price index measuring year-to-year changes.

Response: We believe that the HCFA CIPI appropriately and accurately reflects the "pure" price change in capital expenses for the current year as well as other years or vintages. The CIPI was developed based on accepted accounting definitions of capital expenses and conceptually sound methodologies using appropriate data. We have continually improved the index by using more relevant data, as well as implementing comments received on three prior rulemaking documents. The assumptions we have made regarding price proxies, base year weights, and expected lives have been explained thoroughly and refined in the prospective payment system rulemaking documents for the last three fiscal years. These assumptions are based on accepted accounting, economic, and financial reasoning. Thus, we believe that those assumptions lead to valid results.

Current depreciation costs represent the summed depreciation for all purchases of capital assets that are still depreciable in the current period. The input prices associated with these depreciation expenses are the purchase prices attached to all past and current capital purchases for capital still depreciable in the current period. A weighted average of these purchase prices thus represents the input price associated with depreciation expenses in the current period. Thus, the depreciation input price for the current period measures price aspects of current depreciation expenses for capital, just as the operating input price index for the current period measures price aspects of current operating expenses for labor and non-capital goods and services. The depreciation input price appropriately differs from the operating input price in that the depreciation input price is a vintage-weighted composite of all past capital purchase prices, while the operating index input price measures purchase prices for current periods only.

Comment: Two commenters contended that HCFA's vintage-weighting approach will not provide sufficient updates to allow for replacement of capital. They conclude that the CIPI should therefore include only increases in current year purchase prices. One of the commenters submitted a detailed technical analysis concluding that the HCFA CIPI will allow HCFA to match payment increases for depreciation and interest with increases in depreciation and interest expenses, but will not allow HCFA to match increases in replacement costs of assets. This commenter questioned whether a focus solely on depreciation and interest is a necessary requirement for *prospective* payment for capital. The other commenter implied that the non-vintage approach will provide sufficient capital reimbursement to replace needed capital assets, while the HCFA CIPI looks at the current capital stock that has already been acquired and paid for.

Response: We concur with the comment that the HCFA CIPI captures increases in the price component of depreciation expenses, and, under reasonable assumption, will match price increases in interest rates. The issue of providing for replacement of capital assets is a difficult one. We agree with the commenters that an adequate update framework should be able to provide updates to payment rates sufficient to fund replacement of capital assets, where it is appropriate to do so. We do not necessarily believe, however, that it is appropriate for the Medicare program to support full replacement of assets where excess capital capacity exists.

As in the case of other issues regarding the update framework, the issue of replacement costs has both price and quantity aspects. Full replacement cost involves increases reflecting both price and quantity sufficient to replace existing assets. In this section, we discuss the replacement issue from the price aspect: that is, whether the vintage-weighting approach in the HCFA CIPI can provide, where appropriate, updates sufficient to fund full replacement. In this analysis, we make the assumption that it is appropriate to set the policy adjustments within the update framework at levels to provide for the quantities necessary to provide full replacement. In section V.A. below, we discuss our continuing analysis of capital cost increases during the period just prior to the implementation of prospective payment for capital. During that period, the Medicare program paid for operating costs on a prospective basis, but hospitals continued to receive cost-based payment for capital. That analysis suggests that an excess capacity of capital assets over efficient levels may exist. If that is the case, then adjustments to provide for less than full replacement of capital assets may be appropriate since underused capacity implies inefficient use of social resources.

We do not agree with the suggestion that the HCFA CIPI cannot adequately provide for replacement of assets. The HCFA CIPI provides increases in the price component of replacement costs for new capital by adequately reflecting price increases in capital expenses. Medicare's payment for capital has changed from retrospective cost-based reimbursement to prospective payment for an efficient level of capital. However, the concept of paying for capital expenses remains the same under capital prospective payment, just as the concept of paying for operating expenses has not changed. That is, under prospective payment, hospitals will be paid for an efficient level of operating and capital expenses.

The HCFA CIPI provides a conceptually sound measure of price changes associated with the capital expenses incurred by hospitals. The level of capital expenses incurred by a hospital in a given year is not a function merely of the annual percent change in the new capital purchase prices, but rather of the purchase prices and interest rates associated with all capital assets that are still in use for patient care and that are not yet fully depreciated. Because of the vintage nature of the CIPI, the percent change in the CIPI can appropriately be above, below, or equal to the annual percent change in capital purchase prices in any given year.

Analysis by the HCFA Office of the Actuary suggests that the CIPI should provide updates adequate to finance replacement of capital under reasonable assumptions about prudent hospital financial management. Industry sources and Medicare cost report data indicate that capital is not typically paid for in full when it is acquired. Rather, debt funding is the major form of capital financing used by hospitals. Actual cash outlays for capital thus consist primarily of payments for principal and interest on loans. The interest component inherent in the capital prospective payment system should cover interest costs for an efficient hospital.

The issue concerning replacement of assets is thus whether the depreciation component implicit in the prospective capital payment can, assuming an allowance for replacement of the full quantity of assets, cover the principal costs of debt for an efficient hospital while allowing accumulation of a reserve adequate to provide the necessary down payment for future capital purchases. In the early years of debt repayment, principal payments are relatively small. During that period, the portion of the rate payment related to depreciation in excess of principal costs of debt can be accumulated in a sinking fund. Sound financial management suggests that payments for capital expenses (depreciation and interest) that are in excess of the hospital's actual capital cash outlays (principal and interest) be accumulated and invested to provide for adequate replacement of assets. In other words, prudent hospitals would invest the sinking fund to earn interest. Based on examination of historical relationships and projected trends, we believe that accumulation of the sinking fund over the life of the asset will, on average, provide an adequate amount for asset replacement.

Current interest expenses represent the total interest costs for all still-active past debt instruments associated with past and current purchases of all capital assets currently used for patient care. The input prices associated with these interest expenses are the interest rates associated with all past debt instruments that are still active in the current period. A weighted average of these interest rates thus represents the input price associated with interest expenses in the current period. Thus, the interest input price for the current period measures price aspects of current interest expenses, just as the operating input price index for the current period measures price aspects of current operating expenses for labor and non-capital goods and services. The interest input price appropriately differs from the operating input price in that the interest input price is a vintage-weighted composite of all interest rates for debt instruments that are still active in the current period, while the operating index input price measures purchase prices for current periods only.

Comment: A commenter agreed with HCFA's inclusion of interest in the CIPI. However, the commenter did not agree with the HCFA vintage approach to determining the interest component. The commenter instead recommended measuring annual price changes in financing costs.

Response: We agree with this commenter that the price increases in interest are an integral and accepted component of capital costs and therefore should be included in the CIPI. However, we do not believe that using *annual* price changes in interest rates will appropriately measure the price change for interest expenses that have a vintage nature. The HCFA CIPI measures the price aspects associated with current interest expense, which include interest costs for all still-active past debt instruments appropriately weighted. It would be inappropriate to update the interest expense component of the CIPI by the annual change in the current year interest rate when current year interest expense reflects interest rates on debt in various years, or vintages. Also, using the change in the current year interest rate would create a volatile series in the CIPI that would lack predictability, as well as inappropriately measure price increases in current year interest expense. The HCFA CIPI should include a vintage-weighted interest component, appropriately weighted, to validly measure price increases in current year interest expense.

Comment: One commenter stated that once the negative interest adjustment proposed by HCFA is eliminated, ProPAC's CIPI and HCFA's CIPI show very little difference.

Response: HCFA has not proposed a negative adjustment for interest, but merely requires that the price aspect of interest expense be appropriately measured in the CIPI. In the most recent historical and forecasted periods, it is true that the interest component is negative; however, it is correctly negative because the effect of interest rate decreases in recent years has been to decrease the interest price faced by hospitals for all the debt instruments that are still in effect. In addition, the commenter's contention about the result of removing the interest component from the CIPI is erroneous. In many of the years from 1979 to 1994, removal of the interest component creates larger differences between the HCFA CIPI and the ProPAC CIPI.

Our original version of the CIPI employed proportional annual weights in determining the moving averages of the purchase prices associated with depreciation and interest. A commenter on a previous version of the CIPI recommended that proportional annual vintage weights for capital price proxies be replaced by non-proportional annual vintage weights that reflect the relative vintage purchases of capital. The commenter pointed out that annual purchases of real capital tend to increase over time. As annual purchases of real capital increase, the later years in the moving average of depreciation and interest costs should be weighted more heavily than the earlier years. We agree with this comment. Accordingly, a special data base was prepared to provide appropriate historical vintage weights for depreciation and interest input prices. The non-proportional vintage weights in the CIPI appropriately reflect the relative contributions of current capital purchase prices and current interest rates to total capital price in the current year.

Current year other capital-related expenses (for example, insurance) have an annual time dimension and, therefore, prices associated with these expenses are, like operating input prices, current year prices only.

Comment: One commenter recommended that HCFA use a more recent year as the base year for the CIPI to increase consistency with current hospital capital expenditure patterns. Another commenter agreed that delaying the rebasing will improve the market basket and, therefore, is appropriate.

Response: We agree that using a more recent base year is desirable and, as we discussed in the June 2, 1995 (60 FR 29229) proposed rule, we have done preliminary research into the effects of changing the base year from FY 1987 to FY 1992. The initial results from currently available data sources have shown small differences between the FY 1987 and FY 1992 base year weights, resulting in a minimal effect on the CIPI. We intend to use expanded capital-related data in the FY 1992 and FY 1993 Medicare cost reports in the rebasing effort. The expanded capital-related data is available beginning with FY 1992 cost reports; therefore, we are examining the data thoroughly for reliability and accuracy using FY 1993 as a validity check. To ensure that the data is reasonable, we plan to compare data from other sources, some of which are not available at this time, to the expanded capital-related data in the Medicare cost reports. Exercising this added discretion before using the expanded capital Medicare data will not only produce more representative and reliable data, but would also ensure that the data are less subject to interpretation and error. It is for these reasons that we delayed the rebasing originally planned for FY 1996.

The FY 1987 composite data base starts with financial variables from the American Hospital Association (AHA) Panel Survey. These data are augmented by data from the Medicare cost reports and from the Department of Commerce Capital Expenditure Survey. The composite data base provides annual estimates of nominal purchases for building and fixed equipment and for movable equipment. Leasing amounts were distributed among building and fixed equipment and movable equipment nominal purchases by first computing the percentage of total owner-operated nominal purchases attributable to each type of equipment, and then applying these percentages to total leasing amounts. Nominal purchases were then converted to annual real (that is, constant dollar) purchases by dividing nominal expenditures by an appropriate purchase price proxy.

Expected life for building and fixed equipment and for movable equipment were derived from Medicare cost reports by dividing the book value of assets by current year depreciation amounts. The relative distribution of real capital purchases within the respective life for building and fixed equipment (25 years) and for movable equipment (10 years) were derived from the special data base. These relative distributions are shown in Table 1. Relative distributions for a number of different time periods were averaged to obtain the distributions in Table 1. These distributions were all very similar regardless of the periods chosen and, therefore, we selected an average of the distributions in order to simplify the calculations.

TABLE 1.—RELATIVE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Building and Fixed Equipment Expected Life: 25 years:	
1	0.015
2	0.019
3	0.022
4	0.024
5	0.023
6	0.022
7	0.020
8	0.021
9	0.025
10	0.030
11	0.033
12	0.034
13	0.034
14	0.035
15	0.038
16	0.043
17	0.049
18	0.053
19	0.056
20	0.057
21	0.060
22	0.066
23	0.071
24	0.075
25	0.077
Total	1.000
Movable Equipment Expected Life: 10 years:	
1	0.064
2	0.072
3	0.077
4	0.085
5	0.095
6	0.101
7	0.109
8	0.122
9	0.132
10	0.142
Total	1.000

TABLE 1.—RELATIVE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES—Continued

Interest Expected Life: 22 years:	
1	0.007
2	0.009
3	0.010
4	0.011
5	0.013
6	0.015
7	0.017
8	0.020
9	0.023
10	0.027
11	0.032
12	0.038
13	0.043
14	0.050
15	0.057
16	0.064
17	0.074
18	0.083
19	0.090
20	0.098
21	0.105
22	0.114
Total	1.000

[illegible]

Table 2 shows the historical, annual percentage changes in the capital-related price proxies employed in the CIPI prior to vintage-weighting. These proxies are as follows: the institutional construction index maintained by Boeckh for the unit prices of fixed assets; the machinery and equipment component of the Producer Price Index (PPI–11) for movable equipment; the average yield on domestic municipal bonds from the Bond Buyer index of 20 bonds (Muni); the average yield on Moody's corporate bonds (AAA); a composite of Muni and AAA indexes (Combined Muni/AAA); and the residential rent component of the Consumer Price Index (CPI Rent) for other capital costs.

We previously used the Engineering News-Record (ENR) building cost index as a price proxy for the unit price of fixed assets. However, we believe that the Boeckh institutional construction index is more applicable to the industry. The variation between the two indexes is minimal.

We applied the relative vintage depreciation weights from Table 1 to the appropriate non-vintage weighted historical, annual index levels (base year FY 1987) of depreciation price proxies to generate the current year, vintage-weighted component index levels for the CIPI depreciation sector. The annual percentage change between the non-vintage weighted historical, annual depreciation index levels are listed in Table 2. The annual percentage changes between the annual, vintage-weighted depreciation component index levels (base year FY 1987) are listed in Table 3. For example, the FY 1996 movable equipment index component percentage change of 1.8 percent in Table 3 was computed as the percentage change between the FY 1995 and FY 1996 vintage-weighted movable equipment component index levels. The FY 1996 movable equipment component index (base year FY 1987) represents the weighted-average of the index levels in the movable equipment price proxy (PPI–11 in Table 2) for the previous 10 years (that is, FY 1987 through 1996), weighted by the relative vintage weights listed for movable equipment in Table 1. These calculations are slightly different than prior versions of the CIPI in the **Federal Register**, and reflect a more refined weighting methodology.

TABLE 2.—ANNUAL PERCENT CHANGES FOR NON-VINTAGE WEIGHTED CAPITAL INPUT PRICE PROXIES, FISCAL YEARS 1949 TO 2000

[Proxy name—BOECKH—institutional construction, PPI–11–machinery and equipment, Muni—average yield on domestic municipal bonds—bond buyer (20 bonds), AAA—average yield on moody's AAA corporate bonds, CPI rent (all urban)—residential rent]

Fiscal year	BOECKH	PPI–11	Muni	AAA	Combined Muni/AAA	CPI rent
1949	3.3	7.4	−4.4	−3.1	−4.2	4.4
1950	1.4	0.5	−9.4	−4.2	−8.4	3.9
1951	8.6	13.6	−5.8	7.1	−3.4	3.7
1952	3.7	1.6	12.9	5.7	11.4	4.2
1953	3.5	0.8	25.9	7.3	22.2	4.7
1954	1.5	2.7	−8.2	−6.3	−7.9	4.8
1955	1.8	1.9	−0.4	1.1	−0.1	1.4
1956	4.8	7.5	7.8	7.6	7.8	1.7
1957	3.6	8.0	24.0	18.0	23.0	1.9
1958	1.8	3.2	−3.7	−1.1	−3.3	1.9
1959	3.1	1.6	11.5	13.3	11.8	1.3
1960	2.7	1.5	1.7	4.9	2.3	1.6
1961	1.1	−0.3	−3.1	−3.2	−3.2	1.3
1962	2.2	0.0	−6.4	0.8	−5.1	1.3
1963	2.3	0.0	−3.4	−2.8	−3.3	1.0
1964	2.8	0.9	3.2	3.3	3.2	1.0
1965	3.1	0.6	−0.5	1.6	−0.1	1.0
1966	3.8	2.7	16.5	11.0	15.4	1.2
1967	5.3	3.8	2.4	8.3	3.5	1.7
1968	7.3	2.8	14.7	14.5	14.6	2.4
1969	8.4	3.3	21.5	9.8	19.2	2.8
1970	7.0	4.2	22.2	18.0	21.4	4.1
1971	8.7	4.2	−13.9	−4.9	−12.3	4.7
1972	8.0	2.2	−5.8	−3.8	−5.4	3.6
1973	6.0	2.6	−1.8	0.8	−1.3	4.0
1974	8.0	9.9	12.6	12.5	12.6	4.9
1975	11.1	19.5	19.2	7.9	16.9	5.2
1976	7.6	6.7	−1.2	−3.2	−1.5	5.3
1977	8.5	6.0	−15.8	−6.4	−14.1	5.8
1978	6.6	7.6	1.1	5.6	2.0	6.7
1979	7.5	8.7	7.3	8.9	7.6	7.1
1980	8.6	11.5	26.9	22.9	26.1	8.6
1981	9.8	10.6	32.9	20.7	30.5	8.8
1982	9.6	7.1	16.2	5.5	14.2	8.0
1983	7.0	3.2	−22.5	−17.7	−21.7	6.3
1984	5.2	2.3	4.8	6.9	5.1	5.0
1985	2.0	2.2	−5.3	−7.1	−5.6	5.9
1986	1.6	1.5	−18.1	−19.6	−18.4	6.2
1987	2.1	1.5	−5.5	−5.3	−5.5	4.5
1988	2.3	2.2	7.1	9.9	7.6	3.8
1989	3.6	3.5	−6.7	−4.8	−6.3	3.8
1990	2.5	3.1	−1.2	−2.0	−1.3	4.2
1991	2.7	2.2	−2.7	−2.6	−2.7	3.9
1992	3.1	0.5	−7.4	−8.2	−7.5	2.6
1993	2.4	0.4	−10.6	−8.9	−10.3	2.4
1994	2.8	0.8	0.0	0.2	0.0	2.3
1995	3.1	1.4	6.2	8.1	6.5	2.7
1996	2.8	3.0	−6.9	−6.0	−6.7	3.0
1997	3.4	2.4	4.2	1.5	3.7	2.2
1998	3.4	2.5	−2.3	1.3	2.1	3.6
1999	3.2	2.4	−1.3	−0.6	−1.2	2.5
2000	3.2	2.5	0.5	0.6	0.5	2.7

Source: DRI/McGraw-Hill HCC, 2nd Qtr 1995; @USSIM/TRENDLONG0595; @CISSIM/CCONTROL952.
Released By: HCFA, OACT, Office of National Health Statistics.

TABLE 3.—HCFA CAPITAL INPUT PRICE INDEX PERCENT CHANGES, TOTAL AND COMPONENTS, FISCAL YEARS 1979 TO 2000

Fiscal year	Total	Depreciation			Interest	Other
		Total	Building and fixed equipment	Movable equipment		
Weights (FY1987)	1.0000	0.6510	0.3054	0.3456	0.3274	0.0216
Price Changes						
1979	5.6	7.4	6.9	7.7	2.6	7.1
1980	7.1	7.9	7.2	8.6	5.6	8.6
1981	8.8	8.4	7.6	9.1	9.5	8.8
1982	9.3	8.5	7.9	9.0	10.6	8.0
1983	6.7	8.0	7.8	8.1	4.7	6.3
1984	6.3	7.2	7.5	6.9	4.8	5.0
1985	5.1	6.2	6.7	5.7	3.3	5.9
1986	3.7	5.5	6.1	5.0	0.4	6.2
1987	3.1	4.9	5.6	4.3	−0.5	4.5
1988	3.0	4.5	5.3	3.8	0.1	3.8
1989	2.7	4.3	5.1	3.6	−0.7	3.8
1990	2.4	3.9	4.8	3.2	−1.0	4.2
1991	2.1	3.6	4.5	2.7	−1.3	3.9
1992	1.7	3.2	4.3	2.1	−2.1	2.6
1993	1.3	2.9	4.1	1.8	−2.9	2.4
1994	1.3	2.8	4.0	1.6	−2.7	2.3
1995	1.5	2.7	3.9	1.6	−1.9	2.7
1996	1.5	2.8	3.8	1.8	−2.5	3.0
1997	1.7	2.8	3.7	1.9	−2.0	2.2
1998	1.9	2.8	3.6	2.0	−1.5	3.6
1999	1.9	2.8	3.5	2.0	−1.4	2.5
2000	1.9	2.8	3.5	2.0	−1.2	2.7

Source: DRI/McGraw – Hill HCC, 2nd Qtr 1995; @USSIM/TRENDLONG0595; @CISSIM/CONTROL952.
Released By: HCFA, OACT, Office of National Health Statistics.

As we have discussed in connection with previous versions of the CIPI, stability is an important criterion for evaluating such an index. Stability is an inherent characteristic of capital because of its vintage nature; since capital assets are consumed over time, they are replaced at a relatively slow rate. An input price index for capital should reflect the relative stability of capital assets themselves. Furthermore, excessive volatility in a price index deprives the index of predictability, thus inhibiting the ability of institutions to plan for changes in capital payments resulting from changes in the CIPI. We graphically demonstrated (using the projections available at that time) the stability of the annual HCFA vintage-weighted CIPI compared to annual changes in non-vintage-weighted capital purchase prices in Figures 1 and 2 in our discussion of May 27, 1994 (59 FR 27882).

ProPAC recommends a capital input price index based on annual changes in current capital purchase prices excluding consideration of weighted historical capital purchase prices (that is, not vintage weighted). We previously argued that the ProPAC index was not consistent with the operating input price index that is currently used to assist in updating DRG payment rates. We would add that the greater volatility in annual purchase prices would introduce an unacceptable degree of volatility in prospective capital payments and does not reflect the inherent stability that comes from the vintage nature of capital.

Comment: One commenter contended that the HCFA CIPI is excessively complicated, considering that its purpose is to update just a small portion (approximately 10 percent) of payments to hospitals for inpatient services. The commenter recommended that a simpler approach be adopted.

Response: Capital expenses for prospective payment hospitals are expected to be about $7.8 billion in FY 1996, a significant amount that warrants an appropriate input price index. While the HCFA CIPI does include vintage-weighting of both depreciation and interest prices, the HCFA CIPI is actually a simplification of the complicated capital accumulation process it is measuring. It would not be appropriate to accept an index that does not measure capital prices as well just because it is simpler. The HCFA CIPI is complicated only to the point that it accurately measures price increases for capital purchased in a financial world that is itself inherently complicated by the vintage nature of capital. Despite its necessary complexities, the HCFA CIPI provides an accurate, less volatile measure of price increases than annual price changes, providing hospitals with the ability to plan for changes in capital payments. As stated earlier, the vintage nature of capital requires that the index reflect the stability of capital assets.

Another commenter on a previous version of the CIPI recommended that data from Securities Data Corporation be incorporated into the CIPI interest computations. This source provides information on hospital issuances of municipal and commercial bonds. From this data base, we incorporated information showing that the average expected life of hospital bond debt instruments (that is, the time interval between the issue date and the maturation date) was about 13 years for municipal serial bonds and about 25 years for municipal term bonds. The weighted average life for the 2 types of bonds was 22 years.

The relative nominal capital purchases within various 22-year periods provided appropriate vintage weights for annual changes in interest rates. Not all capital purchases are funded by debt. Medicare cost reports suggest that about 80 percent of new capital acquisitions are financed by debt and about 20 percent by equity financing. However, if the proportion of total purchases financed by debt does not change substantially from year to year, then it is irrelevant whether we use the full amount or a constant proportion of the full amount of nominal capital acquisitions as weights for relative amounts of the debt instruments still active in the current period.

A third commenter on a previous version of the CIPI recommended that we investigate the effects on interest rate changes of changing structures of hospital bond ratings. If bond ratings are deteriorating, hospitals incur higher interest rate charges; if bond ratings improve, hospitals incur lower interest rates. Our CIPI currently recognizes only changes in pure interest rates and does not recognize changes in effective interest rates due to changes in bond ratings.

We reviewed a hospital municipal-bond data base from Securities Data Corporation to examine that issue. The data showed that serial bonds continue to dominate short-term financing and that term bonds dominate long-term financing. We classified all bond amounts by ratings found in the data base for years 1980 to 1993. The distribution of those issues described with a Moody's Quality Rating, shown in Table 4 (portions are applied to dollar amount of debt issued), indicates a trend toward higher quality issues since 1984. Although the annual, aggregate issue amounts in Moody's quality range Aaa through A have remained approximately constant since 1980, issue amounts in the highest quality band have become substantially higher since inception of the prospective payment system. Both issue amounts in the Aaa–Aa3 ranges and those in the Aaa–A range are greater in 1993 than at any time since 1980. We conclude there is not sufficient evidence to justify a component for deteriorating bond ratings in the CIPI.

TABLE 4.—PERCENT DISTRIBUTION OF HOSPITAL MUNICIPAL BOND AMOUNTS BY MOODY'S QUALITY RATING.*

	Pre-prospective payment system	Post-prospective payment system	
	1980–1983	1984–1988	1989–1993
	(percent)	(percent)	(percent)
Aaa–Aa3	7.1	36.8	49.0
Aa–A	50.6	24.1	21.7
Baa1–Ba	9.6	3.6	8.0
Not Rated	31.0	32.7	17.9

*Distributions do not sum to 100 percent due to a residual category of missing data.

Notes:

(1) Aggregate issues from Aaa–A have remained fairly constant since 1980.

(2) Issue amounts in the highest quality band have become substantially higher since inception of the prospective payment system.

(3) Both issue amounts in the Aaa–Aa3 ranges and those in the Aa–A ranges are greater in 1993 than at any time since 1980.

Relative vintage interest weights derived from our procedure are shown in Table 1. When combined with index levels (base year FY 1987) of annual, non-vintage weighted interest rate proxies, the relative interest weights provide current year, vintage-weighted component index levels for interest rates in the CIPI. The annual percentage change between the non-vintage-weighted historical, annual interest index levels are listed in Table 2. The annual percentage change between the annual, vintage-weighted interest component index levels (base year FY 1987) are listed in Table 3. Thus, for example, the interest rate component change of −2.5 percent in Table 3 for FY 1996 represents the annual percentage change between the 1995 and 1996 vintage-weighted interest component index levels. The 1996 interest component index level (base year FY 1987) is computed as the vintage-weighted average of the previous 22 years in the interest rate proxy index level (Combined Muni/AAA) in Table 2, weighted by the interest weights listed in Table 1. We use an index level for a combined municipal and AAA commercial bond interest rate (percent changes shown in Table 2 as Combined Muni/AAA), giving the municipal rate an 85 percent weight and the AAA rate a 15 percent weight, reflecting the relative hospital debts of the government/non-profit hospital sector and the for-profit sector.

Although Medicare cost reports show that only 60 percent of current hospital debt is in the form of notes or bonds (about 40 percent is in the form of mortgages), we assumed that the relative annual weights for all debt and the relative annual changes in interest rates for all debt were the same as bond-related weights and price changes. We are still searching for an appropriate source of information on hospital commercial mortgage data. We do not expect that the discovery of such data will materially alter our current conclusions about trends in effective interest rates over time.

c. Projection of the CIPI for Fiscal Year 1996. DRI projects a 1.5 percent increase in the CIPI for FY 1996 (Table 3). This is the outcome of a 2.8 percent increase in projected weighted depreciation prices in FY 1996, partially offset by a 2.5 percent decline in vintage-weighted interest rates in FY 1996.

d. ProPAC Input Price Index.

i. Introduction. Three major differences distinguish ProPAC's CIPI from HCFA's CIPI:

- The ProPAC CIPI measures changes in capital asset purchase prices in the year the asset is purchased (that is, not vintage-weighted). HCFA's CIPI is designed to measure changes in a vintage-weighted composite of capital asset purchase prices.
- The ProPAC CIPI uses the Marshall and Swift hospital equipment index as the movable equipment purchase price proxy while HCFA uses the Producer Price Index for machinery and equipment.
- The ProPAC CIPI has no interest component. ProPAC treats interest rate changes as an optional separate update policy adjustment factor.

Through 1996, for example, ProPAC expects that long term interest rates will remain relatively stable and, therefore, believes that it is not appropriate to adjust capital input prices for forecasted changes in interest rates in the target year.

HCFA incorporates a vintage-weighted composite of interest rates in its CIPI for the target year.

ii. Depreciation. ProPAC states that its CIPI is analogous to the prospective payment operating price index. We disagree. The components of the operating index represent price changes in ongoing hospital expenses for labor and non-capital goods and services. The analogous capital expenses in this context are current depreciation costs, interest costs, and other capital-related expenses (such as insurance). Current depreciation and interest costs, according to HCFA, IRS, and accounting principles, are a cumulative composite of segments of expenses incurred in current and prior periods. Current interest costs are a cumulative composite of segments of past and current year debt costs. Since both depreciation and interest costs have a vintage component, the price aspect of these costs must have a vintage component as well. The HCFA CIPI attempts to capture these vintage components.

Differences between HCFA and ProPAC with respect to choices for annual non-vintage-weighted rates of change in alternative price proxies for movable equipment are small for much of the historical period. (We illustrated this fact in Figure 8 (Inset) in the May 27, 1994 proposed rule (59 FR 27890), using earlier projections.) As noted in our September 1, 1992 final rule, one basic criterion for accepting price proxies is public availability of documentation on data sources and methodology (57 FR 40018–40019). Despite repeated efforts, neither we nor Data Resources Inc. have been able to obtain documentation on the movable price proxy recommended by ProPAC (Marshall and Swift hospital equipment index) that explains how it is derived and what sampling frame and sampling error attach to the estimates. In the absence of such information we cannot adopt the ProPAC alternative.

HCFA's assumption is that prices for movable equipment purchased by hospitals change at about the same rate as prices for machinery and equipment generally. This assumption is justified in part by the fact that not all movable equipment purchased by hospitals is medical equipment; it stands to reason that the prices for non-medical movable equipment purchased by hospitals, such as automobiles, desks, chairs, etc., would change at about the same rate as prices for all machinery and equipment. To examine this assumption further, we measured the rate of change in the HCFA movable price proxy relative to prices for medical equipment only by preparing a composite index of medical prices from the Bureau of Labor Statistics Producer Price Index (PPI) for two commodity categories—medical instruments/equipment and X-ray/electro-medical equipment. The two PPI commodity indexes were then merged using their respective PPI weights. Price changes for this index are not available for years prior to 1984. Annual price changes for medical equipment follow the annual HCFA price proxy more closely than the ProPAC price proxy for most of the historical period. We will continue to monitor trends in these indexes to ensure that appropriate price proxies are incorporated in the CIPI.

iii. Interest. ProPAC has proposed to project annual interest rates to future periods and then to decide whether to allow an add-on to the Federal capital rate depending on the magnitude of the projection. ProPAC has presented no objective criteria for determining when an interest adjustment is appropriate. We previously noted that a single-year projection for interest rates is conceptually inappropriate since interest costs must be vintage-weighted. In addition to this conceptual problem, the ProPAC approach is impractical because future annual interest rates are volatile, vulnerable to unpredictable market forces, and subject to exogenous influences (such as Federal Reserve Board decisions) that are difficult to anticipate. Thus, any projection of future annual interest rates is likely to be inaccurate, resulting in underpayment or overpayment of the Federal capital rate relative to the capital-related expenses that the rate is supposed to reflect. The resulting uncertainty in payments under future Federal capital rates further complicates future capital expenditure decisions by hospitals. On the other hand, the projected HCFA CIPI interest component for the target year is the weighted average change over 22 years of interest rate history, of which 20 years experience in the non-vintage weighted price proxy is appropriately historical. The projected annual, non-vintage weighted experience in the price proxy for the most recent 2 years may be as inaccurate as any ProPAC projection, but any error will have minimal effects on Federal rates due to the appropriately weighted effect of the historical data in the HCFA CIPI. This stability in the interest rate component of the HCFA CIPI provides hospital planners with a degree of certainty about future Federal rate payments, other things remaining equal.

iv. The Composite CIPI. Annual percentage changes in the historical and projected HCFA and ProPAC CIPIs differ markedly as shown in Table 5. The 2.9 percent increase for the ProPAC capital market basket in Table 5 for FY 1996 is lower than the 4.1 percent increase presented in ProPAC's March 1995 Report and Recommendation to the Congress. In the ProPAC March report, ProPAC used the 4th quarter 1994 DRI forecasts, while the figure in this final rule represents 2nd quarter 1995 DRI forecasts. Between 4th quarter 1994 and 2nd quarter 1995, DRI revised its forecast downward by 1.2 percentage points to reflect slower price growth in 1996 than originally expected. A lower forecast for the movable equipment price proxy (Marshall and Swift) was responsible for roughly 60 percent of the 1.2 percentage point decline between forecasts. The remaining 40 percent of the decline was the result of lower forecasts in the fixed equipment price proxy (Boeckh) and the other capital-related expenses price proxy (CPI-residential rent), which accounted for roughly 23 percent and 12 percent, respectively. We emphasize that the later forecast was not available when ProPAC released its March report.

The ProPAC CIPI is much more volatile than the HCFA CIPI in the historical period through 1994 because it does not reflect vintage-weighted capital input price factors for depreciation. Further, the ProPAC CIPI omits conceptually relevant interest rates. The cumulative effect of declining interest rates for all debt instruments in recent years has driven the rate of change in the HCFA vintage-weighted interest rate component downward, a trend projected by DRI into future rate years. The declining interest rate component appropriately brings the HCFA CIPI below the ProPAC CIPI in the projection period. Other things being equal, the ProPAC index would result in overpayment through the Federal rate because anticipated actual capital-related expenses will be less than ProPAC projects due to the effects of lower interest rates on capital-related expenses.

TABLE 5.—ANNUAL PERCENT CHANGES IN HCFA CAPITAL INPUT PRICE INDEX AND THE PROPAC CAPITAL MARKET BASKET, 1979 TO 2000

Fiscal year	HCFA capital input price index	ProPAC capital market basket
1979	5.6	8.3
1980	7.1	9.2
1981	8.8	10.0
1982	9.3	7.7
1983	6.7	4.6
1984	6.3	3.9
1985	5.1	2.2
1986	3.7	1.7
1987	3.1	2.1
1988	3.0	3.5
1989	2.7	4.6
1990	2.4	2.3
1991	2.1	3.0
1992	1.7	2.2
1993	1.3	2.1
1994	1.3	2.8
1995	1.5	3.4
1996	1.5	2.9
1997	1.7	3.4
1998	1.9	3.3
1999	1.9	3.2
2000	1.9	3.4

Source: DRI/McGraw-Hill HCC, 2nd Qtr 1995; @USSIM/TRENDLONG0595; @CISSIM/CONTROL952.

Released By: HCFA, OACT, Office of National Health Statistics.

ProPAC believes that Medicare program payments should reflect both savings from low interest rate levels on new debt instruments and the additional costs of high interest rate levels. As explained above, the Commission has proposed accomplishing this through an interest policy adjustment. However, ProPAC has neither presented a threshold level for making an interest adjustment nor established a process for determining the amount of the adjustment. The HCFA CIPI, on the other hand, automatically registers the price effects of interest rate changes on new debt instruments that carry over into future periods, although those effects are appropriately registered only very gradually.

When interest rate levels decline, hospitals may refinance their existing debt. Refinancing has a price effect as new debt instruments with lower prices (interest rate levels) replace older debt instruments with higher prices (interest rate levels). ProPAC believes its interest policy adjustment can and should capture this behavior. In this way, Medicare can share in the savings from refinancing. The HCFA CIPI does not now automatically register the price effects of refinancing. Whether to do so or not is a policy judgment concerning whether HCFA should share in refinancing savings or allow hospitals to realize the full effects of refinancing. A refinancing adjustment would not only reflect actual hospital behavior, but would also add to the existing incentives of a rate-based system for hospitals to replace high interest debt instruments with lower interest debt instruments. However, the absence of a refinancing adjustment could allow individual hospitals to refinance and keep the savings, just as individual hospitals who become relatively more efficient in furnishing care for specific DRGs are rewarded for the more efficient behavior.

Since refinancing is a price matter, the adjustment would appropriately be on the price side of the framework, rather than on the policy adjustment side, which deals with quantities. However, the adjustment would not be included directly within the CIPI because the price effect of refinancing involves a shift in the vintage weights applied to index levels. That is, interest expense associated with prices (interest rate levels) in the year the debt is originated would be shifted to reflect interest expense associated with prices in the year the debt is refinanced. This essentially would reduce the relative vintage weights for interest in the CIPI (Table 1) in some years and increase the relative vintage weights for interest in other years. Yet by definition, the fixed-weight CIPI holds all weights constant. However, a discretionary adjustment could be made on the relative vintage weights. This is analogous to the separate adjustments for real case-mix changes in the update framework.

In the June 2, 1995 proposed rule we invited comments on whether to incorporate a refinancing adjustment within the HCFA framework. A refinancing adjustment would present specific problems because HCFA has not been able to obtain data to accurately determine refinancing amounts. Whether HCFA can ultimately propose a refinancing adjustment depends upon whether the necessary data can be obtained.

Comment: Two commenters stated that a proposed refinancing adjustment is not necessary. One commenter indicated that hospitals should be rewarded by keeping savings from

efficient behavior such as refinancing high interest debt. The other commenter indicated that it would not be proper for hospitals to be penalized or rewarded based on a theoretical refinancing threshold that would trigger an adjustment.

Response: These comments are useful in analyzing the merits and technical difficulties of including a refinancing adjustment in the HCFA update framework. We are continuing to determine whether a refinancing adjustment is appropriate, and, if so, how to implement one. We will provide any additional findings in upcoming notices. We encourage comments and suggestions, like those we have received, or recommendations of any studies or data sources that would be useful in assessing and/or implementing a refinancing adjustment.

4. Case-Mix Adjustment and Adjustment for Forecast Error

We proposed that the update framework contain adjustments for changes in the case-mix index and for forecast error.

The case-mix index (CMI) is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the CMI corresponds to an equal percentage increase in hospital payments.

The CMI can change for any of several reasons: because the average resource use of Medicare patients changes ("real" case-mix change); because changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and because the annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect"). We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the CMI. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all CMI-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1992 DRG reclassification and recalibration as part of our FY 1994 update recommendation.) The operating adjustment consists of a reduction for total observed case-mix change, an increase for the portion of case-mix change that we determine is due to real case-mix change rather than coding modifications, and an adjustment for the effect of prior DRG reclassification and recalibration changes. We proposed to adopt this CMI adjustment as well in the capital update framework.

For FY 1996, we are projecting a 0.8 percent increase in the case-mix index. We estimate that real case-mix increase will equal projected case-mix increase in FY 1996. We do not anticipate any changes in coding behavior in our projected case-mix change. The proposed net adjustment for case-mix change in FY 1996 is therefore 0.0 percentage points.

The −1.0 percent figure used in the ProPAC framework represents ProPAC's projection for observed case-mix change. ProPAC projects a 0.8 percent increase in real case-mix change across DRGs and a 0.2 percent increase in within-DRG complexity. ProPAC's net adjustment for case mix is therefore zero.

We estimate that FY 1994 DRG reclassification and recalibration resulted in a 0.3 percent increase in the case mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. ProPAC does not make an adjustment for DRG reclassification and recalibration in its update recommendation.

The current operating update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the following year. In any given year there can be unanticipated price fluctuations that can result in differences between the actual increase in prices faced by hospitals and the forecast used in calculating the update factors. We continue to believe that the capital update framework should include a forecast error adjustment factor. In setting a prospective payment rate under the proposed framework, we proposed to make an adjustment for forecast error only if our estimate of the capital input price index rate of increase for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for a forecast error made in FY 1996 through an adjustment to the FY 1998 update.

We received no comments on our proposed adjustments for case-mix increase and for forecast error. In this final rule, we are therefore adopting those adjustments as proposed.

5. Policy Adjustment Factors

The capital input price index measures the pure price changes associated with changes in capital-related costs (prices × "quantities"). The composition of capital-related costs is maintained at base-year 1987 proportions in the capital input price index. We proposed to address appropriate changes in the amount and composition of capital stock through the policy adjustment factors.

The current update framework for the prospective payment system for operating costs includes factors designed to adjust the input price index rate of increase for policy considerations. Under the revised operating framework, we adjust for service productivity (the efficiency with which providers produce individual services such as laboratory tests and diagnostic procedures) and intensity (the amount of services used to produce a discharge). The service productivity factor for the operating update framework reflects a forward-looking adjustment for the changes that hospitals can be expected to make in service-level productivity during the year. A hospital retains any productivity increases above the average.

The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services. We proposed that the intensity adjustment factor in the operating framework be adopted in the capital update framework. Under the operating update framework, we calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component) and changes in real case mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. We therefore proposed to incorporate the intensity adjustment from the operating update framework into the capital update framework. In the absence of reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we proposed to assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The proposed capital update framework would thus provide an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

Comment: Several commenters objected that we derive the estimate of allowable intensity as a function of observed intensity, so that any level of intensity is presumptively 100 percent too high.

Response: Our analysis does derive allowable intensity from observed intensity. However, we do not believe that doing so involves an assumption that any level of intensity increase is 100 percent too high. In our analysis, and in determining the level of the intensity adjustment in the framework, we assume that half of observed intensity is due to the combination of quality-enhancing new technology and within-DRG complexity, and half to ineffective practice patterns. We adopted this assumption in the absence of any estimates of the comparative contributions of those factors to the observed level of intensity increases. Under such circumstances, we believe the assumption that half of observed intensity is allowable to be reasonable because it minimizes error.

We have decided to adopt the intensity measure as proposed. For FY 1996, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1990–1994. In determining case-mix constant intensity. we found that observed case-mix increase was 2.2 percent in FY 1990, 2.8 percent in FY 1991, 1.5 percent in FY 1992, 0.8 percent in FY 1993, and 0.8 percent in FY 1994. For FY 1990 through FY 1992, we estimate that 1.0 to 1.4 percent of the case-mix increase was real. (This estimate is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G.M. Carter, J.P. Newhouse, and D.A. Relles, R–4098–HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was rather a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment.) We assumed that all of the observed case-mix increase of 0.9 percent for FY 1993 and 0.8 percent for FY 1994 was real. (This assumption is consistent with the FY 1996 CMI projections described above.) If we assume that real case-mix increase was 1.0 percent per year during FY 1990 through FY 1992 (but 0.9 percent in FY 1993 and 0.8 percent in FY 1994), case-mix constant intensity declined by an average 1.2 percent during FY 1990 through FY 1994, for a cumulative decrease of 6.1 percent. If we assume that real case-mix increase was 1.4 percent per year during FY 1990 through FY 1992 (but 0.9 percent in FY 1993 and 0.8 percent in FY 1994), case-mix constant intensity declined by an average 1.5 percent during FY 1990 through FY 1994, for a cumulative decrease of 7.2 percent. Since we estimate that intensity has declined during the FY 1990–1994 period, the intensity adjustment for FY 1996 is 0.0 percent.

In our discussion of a possible efficiency adjustment, we suggested that such an adjustment should take into account two considerations. One is that capital inputs, unlike operating inputs, are generally fixed in the short run. The productivity target in the revised operating framework operates on a short-term, year-to-year basis. Targets for capital efficiency and cost-effectiveness, however, must operate on a longer term basis. The other consideration is that, prior to the adoption of the capital prospective payment system, Medicare payment policy for capital-related costs, as well as the policies of other payers, did not provide sufficient incentives for efficient and cost-effective capital spending. Economic theory suggests that an industry with a guaranteed return on capital (such as the hospital industry prior to prospective payment for capital-related costs) would have a tendency to be overly capitalized relative to more competitive industries. This is because the incentive for firms in such an industry is to compete on the basis of more capital-intensive production processes than firms in other industries. As a result, capital costs per case, and therefore base year prospective capital rates, may be higher than would have been consistent with capital acquisition policy in more efficiency-oriented markets. A guiding principle in devising an efficiency adjustment is therefore that Medicare capital prospective payment rates should not provide for maintenance of capital in excess of the level that would be produced in an efficiency-oriented competitive market.

To examine this issue, we analyzed the change in actual Medicare capital cost per case for FY 1986 through FY 1992 in relation to the change in the capital input price index (which accounts for change in the input prices for capital-related costs), and the other adjustment factors that we were then proposing to include in the framework. (The other adjustment factors are the increase in real case mix and the increase in intensity due to quality-enhancing technological change and within-DRG complexity.) We found rates of increase in actual spending per case that exceeded the rate of increase attributable to inflation in capital input prices, quality-enhancing intensity increases, and real case-mix growth.

Our analysis was designed to examine whether hospitals had in fact responded to the incentives of the cost-based payment system for capital by expanding beyond what was necessary for efficient and cost-effective delivery of services. The analysis confirmed that volume and intensity of capital acquisition far outpaced the increase in capital input prices during the years between the implementation of the prospective payment system for operating costs and the introduction of the capital prospective payment system. Even accounting for real CMI increases and increases in intensity attributable to cost-increasing but quality-enhancing new technologies, there remains a large excess of capital-related spending.

The following table shows the results of our most recent analysis, based on the most current data available and the most recent projections. Differences between this table and the tables in previous discussions in the **Federal Register** reflect updated figures for average capital cost per case increases, based on the most recent data and projections, and our revised CIPI. This analysis encompasses all but 1 year of the period from the implementation of the prospective payment system for operating costs to the implementation of the prospective payment system for capital costs. (For FY 1984, sufficient data is not available to compute capital cost per case increases and intensity increases.) The results of the analysis in Table 6 are substantially similar to the results of previous analyses. In Table 6, real case-mix increase is assumed to be 1.0 percent annually.

TABLE 6.—CUMULATIVE PERCENTAGE CHANGE IN CAPITAL-RELATED COST PER CASE DUE TO INFLATION, REAL CMI, AND INTENSITY, 1985–1992

Year	CIPI[1]	Real CMI[2]	Allowable intensity[3]	Resulting increase[4]	Percent change cost/case[5]	Residual[6]
1985	5.1	1.0	3.7	10.1	12.5	2.2
1986	3.7	1.0	2.1	6.9	19.9	12.2
1987	3.1	1.0	2.5	6.7	14.9	7.6
1988	3.0	1.0	1.5	5.5	7.1	1.5
1989	2.7	1.0	0.5	4.3	7.8	3.4
1990	2.4	1.0	0.2	3.6	6.9	3.1
1991	2.1	1.0	0.1	3.2	5.5	2.3
1992	1.7	1.0	0.1	2.8	4.6	1.8
Cumulative (compounded)	....	....	....	52.0	111.3	39.0

[1] Figures from Table 1, section V.A.3 of this preamble.

[2] Assuming that real CMI increase is 1.0 percent annually.

[3] One half of observed intensity increase, as determined by the joint operating/capital intensity measure.

[4] The increase attributable to inflation, real CMI, and allowable intensity, calculated as the product of the rates of increase of those factors (that is, 1.031 × 1.01 × 1.025 = 1.067 for 1987).

[5] Figures supplied by HCFA's Office of the Actuary.

[6] The actual increase in average cost per case divided by the increase attributable to inflation, real CMI, and allowable intensity (that is, 1.149 /1.067 = 1.076, a 7.6 percent residual for 1987).

We believe that an adjustment for capital efficiency and cost-effectiveness should take into account the efficiency and effectiveness of the capital resources present in the base year for the capital prospective payment system. We do not believe that Medicare capital payment rates should provide for maintenance of capital in excess of the level that would be produced in an efficiency-oriented competitive market. A capital efficiency adjustment should be designed to give hospitals an incentive to reduce inefficiency and ineffectiveness in capital resources. The analysis in Table 6 suggests that, in order to restore the Federal rate to the level at which it would have been if capital costs had not been excessive in the years before the implementation of capital prospective payment, a cumulative reduction in the rate of as much as 28.1 percent (1.52/2.113=0.7194, or −28.1 percent) would be necessary.

We stated in the proposed rule that we were considering a range of options for such an efficiency adjustment. In particular, we have considered whether to provide, in the design of such an adjustment, for eventually reducing the rate by the entire 28.1 percent suggested by the above analysis. Alternatively, the eventual reduction to the rate could reflect some part, but not all, of the excess of actual capital cost increases over the identified factors. We have also considered the appropriate rate at which an adjustment based on the above analysis should be applied to the update factors. On the assumption that the updates to the rate should be reduced by the full 28.1 percent, such an adjustment could be accomplished over a shorter or longer period of time. For example, HCFA could adjust the updates to the rate over a period of 20 years at the rate of 1.4 percent per year. Similarly, the adjustment could be made over 5 years at the rate of 5.6 percent per year.

We proposed that HCFA have the discretion to apply an efficiency adjustment to the capital input price rate of change in determining the annual update factor. We invited comment on the advisability of such an adjustment, on the proportion of the residual that should be employed in adjustments to the update, and on the rate at which such an adjustment should be applied. We also solicited information on possible sources of data that would be useful in developing or refining such an adjustment, and on the possible effects of such an adjustment on various segments of the hospital industry.

Comment: Many commenters objected to a possible efficiency adjustment. Several commenters asserted that such an adjustment would be punitive because it would inappropriately punish hospitals for behavior in response to the incentives of the cost-based system. One of those commenters recommended that HCFA adopt positive incentives to motivate future behavior rather than an adjustment based on past behavior.

Response: We do not believe that an efficiency adjustment based on the analysis we have presented would necessarily be punitive. Hospitals received reasonable cost payments based on the costs we examined during the period just prior to the introduction of prospective payment for capital. We believe that the capital rates should not permanently reflect a level of cost in excess of an efficient use of capital inputs. However, we also believe that an adjustment to return the rates to a level reflecting greater efficiency in capital resources should not necessarily involve a drastic and precipitous reduction of the rates. We note for example, that with the expiration in FY 1996 of the requirement that capital prospective payments equal 90 percent of what would have been payable on a reasonable cost basis, the Federal rate is projected to increase by 22.59 percent. Thus, a substantial efficiency adjustment could be made without a net reduction in the Federal rate.

Comment: One commenter objected that the assumptions behind the analysis were not identified. Other commenters argued the analysis behind the proposed adjustment did not sufficiently account for the costs of quality improvements and other factors such as the need for design changes and features that attract patients. Several commenters objected that the analysis provided no empirical evidence that inefficiency accounts for capital expenses in excess of the expected levels.

Response: We attempted to explain all the assumptions behind our analysis. The basic assumption, which derives from economic theory, is simply that cost-based payment for capital, or any input, provides an incentive for the use of inefficiently high levels of that input. We also presented the available empirical data concerning capital cost per case increases during the period prior to the introduction of prospective payment for capital. The result of comparing actual capital cost increases during that period with the identifiable factors that contribute to cost increases, is consistent with that assumption: Cost increases exceeded the level that can be accounted for on the basis of price increases, intensity increases, and case-mix increases. We believe the factors that we have identified already account for quality increases, design changes, and the other factors mentioned by commenters. Our intensity measure, for example, accounts for any factor that affects the level of hospital charges. Presumably, hospitals account for the costs, including quality improvements and design changes to attract patients, that they face when they set the level of charges. As we discuss below, a large residual remains even when we allow for all the measured intensity changes during the period we examined. We believe that this analysis is certainly suggestive of a significant measure of inefficiency in capital costs in the pre-prospective payment period.

Comment: Several commenters from states with certificate of need (CON) requirements argued that those requirements prevent inefficient capital purchases.

Response: Our analysis was based on national figures, and it did not consider regional differences, such as the existence of CON requirements in various States, since we are evaluating an efficiency adjustment in the Federal rate.

Comment: Several commenters objected that rate reductions of the size contemplated in the discussion of a possible efficiency adjustment would jeopardize the ability of many hospitals to meet obligations entered under the existing rate levels. One commenter objected that the proposed 27.7 percent reduction in capital payments would have a devastating impact on hospitals.

Response: We did not suggest that capital payments would be reduced by 27.7 percent. Our proposal, in fact, called for a 20.5 percent increase in payments in FY 1996 compared to FY 1995. We did suggest that the rate of increase in the rates, and hence in payments, might appropriately be reduced by an adjustment to account for inefficiency in the level of costs on which the rates were based.

Comment: One commenter contended that the prospective payment system already has sufficient measures to promote efficiency and restrain the growth in capital expenditure.

Response: We agree that there are substantial incentives under the capital prospective payment system to promote efficiency and to restrain the growth of capital expenditures. However, the existence of these incentives does not resolve the problem that motivated our discussion of a possible efficiency adjustment. That problem is that the level of the capital prospective rates may reflect an inefficiently high level of capital costs. We do believe that the rates should not permanently reflect a level of capital costs in excess of an efficient use of capital inputs.

Comment: Several commenters objected that the estimate of inefficiency partially derives "efficient" capital growth due to allowable intensity as a function of observed intensity, so that any level of intensity is presumptively 100 percent too high.

Response: Our analysis does derive allowable intensity from observed intensity. However, we do not believe that doing so involves an assumption that any level of intensity increase is 100 percent too high. In our analysis, and in determining the level of the intensity adjustment in the framework, we assume that half of observed intensity is due to the combination of quality-enhancing new technology and within-DRG complexity, and half to ineffective practice patterns. We adopted this assumption in the absence of any estimates of the comparative contributions of those factors to the observed level intensity increases. This assumption does not undermine the validity of our analysis of capital cost increases before the introduction of the capital prospective payment system. On the contrary, varying our assumption about the level of allowable intensity increases yields substantially the same result. If we allow 100 percent of observed intensity increases, there remains a residual of 25.7 percent, as the following table shows:

TABLE 7.—CUMULATIVE PERCENTAGE CHANGE IN CAPITAL-RELATED COST PER CASE DUE TO INFLATION, REAL CMI, AND INTENSITY, 1985–1992

Year	CIPI[1]	Real CMI[2]	Allowable intensity[3]	Resulting increase[4]	Percent change cost/case[5]	Residual[6]
1985	5.1	1.0	7.4	14.0	12.5	−1.3
1986	3.7	1.0	4.1	9.0	19.9	10.0
1987	3.1	1.0	5.0	9.3	14.9	5.1
1988	3.0	1.0	2.9	7.0	7.1	0.1
1989	2.7	1.0	1.0	4.8	7.8	2.9
1990	2.4	1.0	0.4	3.8	6.9	2.9
1991	2.1	1.0	0.1	3.2	5.5	2.3
1992	1.7	1.0	0.2	2.9	4.6	1.7
Cumulative (compounded)				68.0	111.3	25.7

[1] Figures from Table 1, section V.A.3 of this preamble.

[2] Assuming that real CMI increase is 1.0 percent annually.

[3] Total observed intensity increase, as determined by the joint operating/capital intensity measure.

[4] The increase attributable to inflation, real CMI, and allowable intensity, calculated as the product of the rates of increase of those factors (that is, 1.031 × 1.01 × 1.05 = 1.093 for 1987).

[5] Figures supplied by HCFA's Office of the Actuary.

[6] The actual increase in average cost per case divided by the increase attributable to inflation, real CMI, and allowable intensity (that is, 1.149/1.093 = 1.051, a 5.1 percent residual for 1987).

Therefore, even under the assumption that all intensity increases are allowable, this analysis suggests that, in order to restore the Federal rate to the level at which it would have been if capital costs had not been excessive in the years before the implementation of capital prospective payment, a cumulative reduction in the rate of as much as 20.5 percent (1.68/2.113=0.7951, or −20.5 percent) would be necessary.

Comment: One commenter denied that cost-based payment for capital would influence the decision to purchase capital assets. According to the commenter, the decision to add capital resources is driven primarily by patient care needs, and not by the availability of additional reimbursement. At the same time, the

commenter asserted that low payment rates for capital often force hospitals to defer needed capital investments.

Response: The commenter's assertion that cost-based payment would not influence the decision to purchase capital assets is inconsistent with widely accepted economic theory. Several other commenters, in fact, agreed that economic theory does suggest incentives for overuse of capital under cost-based reimbursement.

Comment: Several commenters agreed that economic theory would suggest incentives for the overuse of capital during a period in which capital was paid on a cost basis while operating costs were paid on the basis of a prospective rate. However, the commenters contended that economic theory would also suggest that, if hospitals overpurchased capital, they conversely had to underemploy operating inputs. As a result, the commenters believe that reductions to the capital Federal rate to account for the inefficient overuse of capital should be matched by increases in the operating rates to account for inefficient underutilization of operating inputs.

Response: We agree with the commenters that the conjunction of rate-based payment for operating costs and cost-based payment for capital encouraged hospitals to substitute capital inputs for labor and other operating inputs. However, we do not agree that an inefficiently *high* level of capital inputs under those conditions necessarily implies an inefficiently *low* level of operating inputs. Rather, the conjunction of rate-based payment for operating costs and cost-based payment for capital could also lead to the substitution of inefficient capital inputs for inefficient operating inputs. Indeed, our previous analysis of efficient operating costs for hospitals during FY 1985 through FY 1991 (57 FR 40014), indicates that operating prospective payments during that period were sufficient for the efficient and cost-effective delivery of quality care. In conjunction with the analysis of capital spending during FY 1985 to FY 1992, these results suggest that hospitals may indeed have responded to the existing incentives by substituting an inefficiently high level of capital inputs for inefficient operating inputs. Under these circumstances, it would not be appropriate to increase operating rates in conjunction with a decrease in capital rates. Decreased capital rates, along with the existing level of operating rates, would provide the appropriate incentives for hospitals to achieve efficient levels of both capital and operating inputs.

Comment: One commenter objected that it is inappropriate to evaluate hospital behavior during a period of cost-based reimbursement for capital on the basis of standards characteristic of a more efficiency-oriented market system. Prior to the capital prospective payment system, hospitals operated within a system that did not reward efficiency. Providers should not be penalized by reducing future rates to account for their response to poor incentives in the past.

Response: We understand the commenter's concern about the use of a retrospective standard. At the same time, we do not believe that the Medicare program should necessarily base payments permanently on rates that reflect a known level of inefficiency in the use of capital inputs. We believe a solution that is fair both to hospitals and to the Medicare program can be found within the available range of options. As we have stated, an efficiency adjustment need not remove all the identified residual from the rates, nor need it do so precipitously.

Comment: One commenter argued that, since capital expenditures are associated with binding legal contracts that fix payments for capital assets, hospitals would actually be forced to reduce costs in areas other than capital in response to reductions in capital rates. The result, according to the commenter, would not be capital efficiency, but inefficiently low levels of spending in other areas. In addition, the commenter contended that rate reductions would result in inefficiencies on the capital side as hospitals delayed needed capital improvements.

Response: Implementation of an inefficiency adjustment would not necessarily produce an actual decrease in Medicare payments for capital. Rather, an efficiency adjustment could be implemented gradually so that the rate of increase in the rates and payments is reduced. Under those circumstances, the consequences that the commenter describes would not arise.

Comment: Several commenters suggested that the excess of actual capital costs over the levels accounted for in our analysis may be the result of substitution of debt financing for equity. Such substitution may have occurred as a response to negative margins under the prospective payment system. Debt financing may have increased capital costs, and the commenters urged that we test this possibility empirically.

Response: Cost report data (along with data from other sources) suggest that hospitals steadily have financed approximately 80 percent of their capital acquisitions by debt, and the remaining 20 percent by equity. We have seen no evidence that these proportions have been changing in recent years. We will continue to monitor the data, however.

Comment: ProPAC expressed concern about implementing a retroactive standard of efficient capital spending, and about the absence of a widely accepted definition of hospital efficiency.

Response: We recognize that there is not a widely accepted definition of hospital efficiency. However, we believe that the analysis we have presented suggests a significant measure of inefficiency in capital costs in the pre-prospective payment period. Nevertheless, we have decided not to implement an efficiency adjustment at this time. We will, however, continue to study the issue and attempt to refine the analysis we have presented. We continue to believe that an adjustment for capital efficiency, parallel to the productivity adjustment employed in the operating framework, would be an appropriate feature of the capital framework.

6. FY 1996 Update Factor

Table 8 summarizes HCFA's FY 1996 update factor under the framework adopted in this final rule, in comparison with the recommendation of ProPAC.

In its March 1995 report to Congress ProPAC recommended a 4.1 percent update for FY 1996. Based on more recent projections, ProPAC's recommended update would be 2.9 percent. On the basis of the projections and data available for this final rule, HCFA's update is 1.2 percent. As Table 5 shows, the different update methodologies adopted by ProPAC and HCFA, respectively, can be expected to result in higher ProPAC update recommendations during some years, and higher HCFA update recommendations during other years.

TABLE 8.—HCFA'S FY 1996 UPDATE FACTOR AND PROPAC'S RECOMMENDATIONS

	HCFA update factor	ProPAC recommendation
Capital input price index	1.5	2.9
Policy adjustment factors:		
Productivity		(1)
Efficiency	(2)	
Intensity:	0.0	
Science and technology		(1)
Intensity		(3)
Real within DRG change		(4)
Subtotal	0.0	0.0
Case mix adjustment factors:		
Projected case Mix change	−0.8	−1.0
Real across DRG change	0.8	0.8
Real within DRG change	(5)	0.2
Subtotal	0.0	0.0
Effect of FY 1994 reclassification and recalibration	−0.3	
Forecast error correction	0.0	0.0
Total update	1.2	2.9

[1] Adjustments for scientific and technological advance and productivity offset each other. No specific values were recommended.
[2] Efficiency adjustment may be adopted after public comment.
[3] Included in ProPAC's Productivity Measure.
[4] Included in ProPAC's Case Mix Adjustment.
[5] Included in HCFA'S Intensity Factor.

7. Possible Adjustments to the Federal Rate and the Hospital-Specific Rates

In the June 2, 1995 proposed rule, we discussed the effects of the expiration of the statutory budget neutrality provision on rates and aggregate payments under the capital-prospective payment system. Under that provision, we set the capital-prospective payment system rates during FY 1992 through FY 1995 so that payments would equal 90 percent of estimated Medicare payments that would have been made on a reasonable cost basis for the fiscal year. As a result of the provision's expiration, both the capital-prospective payment system rates and payments under the transition system will increase significantly. The proposed FY 1996 Federal rate was 21.3 percent higher than the FY 1995 Federal rate. We estimated that payments under the proposed rule would increase by 20.45 percent in FY 1996 compared to FY 1995, and that FY 1996 payments would exceed projected FY 1996 Medicare hospital inpatient capital costs by 4.52 percent.

In the proposed rule, we presented a discussion of possible revisions to the capital-prospective payment rates that would moderate these substantial increases in payments. These revisions could be made in conjunction with, or in place of, an update framework adjustment to account for possible inefficiency in capital spending prior to the capital-prospective payment system base period. While these possible revisions to the rate are not, strictly speaking, elements of the update framework, we presented them within the context of the proposed update framework in order to allow commenters the opportunity to consider all the possible rate revisions that might affect the future levels of rates and payments. We solicited comment on whether to make any of the possible revisions that we discussed. We expressed our belief that reductions in Medicare spending should be addressed in the context of health care reform.

Under § 412.308 of the regulations, HCFA determined the standard Federal rate, which is used to determine the Federal rate for each fiscal year, on the basis of an estimate of the FY 1992 national average Medicare capital cost per discharge. The FY 1992 national average Medicare capital cost per discharge was estimated by updating the FY 1989 national average Medicare capital cost per discharge by the estimated increase in Medicare inpatient capital cost per discharge. As we discussed in the August 30, 1991 capital prospective payment system final rule (56 FR 43366–43384), HCFA used the July 1991 update of HCRIS data to estimate an FY 1989 national average Medicare cost per case of $527.22. HCFA then updated that amount to FY 1992 by using an actuarial projection of a 31.3 percent increase in Medicare capital cost per discharge from FY 1989 to FY 1992. The standard Federal rate was thus based on an estimated FY 1992 national average Medicare capital cost per discharge of $692.24 (before the application of a transfer adjustment and a payment parameter adjustment).

Section 13501(a)(3) of Public Law 103–66 amended section 1886(g)(1)(A) of the Social Security Act to require that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. As we discussed in the September 1, 1993 final rule for FY 1994 (58 FR 46316), the purpose of that reduction was to reflect revised inflation forecasts, as of May 1993, for the increases in Medicare capital cost per discharge during FY 1989 through FY 1992. By that time, the estimate of increases in Medicare inpatient capital costs per discharge from FY 1989 through FY 1992 had declined from 31.3 percent to 21.57 percent. The 7.4 percent reduction to the Federal rate was calculated to account for these revised forecasts (1.2157/1.313=.926, a 7.4 percent decrease). That provision of Public Law 103–66 also required that, for cost reporting periods beginning on or after October 1, 1993, the Secretary redetermine which hospital payment methodology should be applied under the capital prospective payment system transition rules to take into account the 7.4 percent reduction to the Federal rate.

As a result of the reduction required by Public 103–66, the standard Federal rate is now based on an estimated FY 1992 Medicare inpatient capital cost per case of $641.01 ($692.24×0.926). At the time of the Public Law 103–66 reduction to the Federal rate, actual cost report data on the FY 1992 Medicare capital cost per discharge were not yet available. The reduction was based on cost report data for FY 1990 and FY 1991, and a revised projection of the rate of increase in Medicare capital costs per discharge during FY 1992.

We now have extensive cost report data for FY 1992. The December 1994 update of HCRIS data showed an audit-adjusted FY 1992 Medicare inpatient capital cost per discharge of $593.15, or 7.47 percent lower than the estimate (reflecting the 7.4 percent reduction mandated by Public Law 103–66) on which the Federal rate is currently based. We do not believe that the Federal rate should necessarily remain at a level that reflects a known over-estimation of base year costs. We therefore invited comment on the appropriateness of an estimated 7.47 percent reduction to the unadjusted standard Federal rate to account for that over-estimation. (The June 1995 update of HCRIS data shows an audit-adjusted FY 1992 Medicare inpatient capital cost per discharge of $596.28, or 6.98 percent lower than the estimate on which the Federal rate is currently based.)

Under § 412.328, HCFA determined the FY 1992 hospital-specific rate by using a process similar to the process for determining the FY 1992 Federal rate. The intermediary determined each hospital's allowable Medicare inpatient capital cost per discharge for the hospital's latest cost reporting period ending on or before December 31, 1990. The intermediary then updated each hospital's FY 1990 allowable Medicare capital cost per discharge to FY 1992 based on the estimated increase in Medicare inpatient capital cost per case. As in the case with the Federal rate updates, current data demonstrate that the estimates used to update the hospital specific rates from FY 1990 to FY 1992 were overstated. On the basis of the data available in the proposed rule, we indicated that we were also considering whether to correct for the original rate of increase estimates by prospectively decreasing the hospital-specific rates by 8.27 percent. Such a reduction would not apply to hospital-specific rates that have been redetermined for a later cost reporting period. This is because the rate of increase estimates were not employed for redeterminations after FY 1992.

Finally, we suggested that the analysis of capital cost increases prior to the implementation of the prospective payment system for capital-related costs could be the basis for an immediate adjustment to the Federal rate to compensate for the effects of the expiration of budget neutrality. At the time of the proposed rule, the available data suggested that a reduction to the Federal rate of up to 27.7 percent would be necessary to restore the rate to the level at which it would have been if capital costs had not exceeded the level that can be accounted for on the basis of known factors. (As discussed in section V.A.5 above, the current data suggest that a reduction of up to 28.1 percent would be necessary to restore the Federal rate to that level.) Such an adjustment could be accomplished gradually over a number of years within the context of the update framework. We suggested in the proposed rule that some large part of the residual could be removed from the rate in a single adjustment. For example, we suggested that retaining the FY 1995 budget neutrality adjustment of 0.8432 in the standard Federal rate would have the effect of recapturing a large part of the residual of capital cost increase over the identifiable factors. The remainder of the residual, if appropriate, could be removed from the rate on a gradual basis through an adjustment to the update factor, as discussed in section V.A.6 above. We therefore requested comments on the appropriateness of such measures, particularly on the appropriateness of retaining the FY 1995 budget neutrality adjustment in the rate as an efficiency measure.

Comment: Many commenters objected to possible measures to reduce the Federal rate. Some commenters contended that the error in forecasting the FY 1992 cost per case likely resulted from a substantial decline in the rate of growth in capital expenditures as hospitals anticipated the introduction of prospective payment for capital. Under these circumstances, the commenters contended, reduction to the rates would punish providers for responding to the new incentives of prospective payment.

Response: Current cost report data show a modest decline in the rate of increase in Medicare capital cost per case immediately before the introduction of the capital prospective payment system. (See Table 6 above.) From the information at our disposal, however, it is impossible to determine the degree to which this modest decline is due to behavioral changes induced by anticipation of prospective payment for capital as opposed to other factors. For example, during the last years under reasonable cost payment, the payment for capital costs was discounted; that is, the program paid 85 percent of Medicare capital costs. It is likely that the discounting of reasonable cost payment contributed to the modest decrease in the rate of increase in capital cost during that time. In any event, we intended to base the Federal capital rate on the FY 1992 Medicare capital cost per case. We do not believe it is reasonable to expect that the rate permanently reflect the level of cost that would have existed if the poor incentives that existed prior to the implementation of capital prospective payment had remained in place.

Comment: Other commenters contended that continued retrospective lookbacks to FY 1992 are inappropriate in a prospective payment system.

Response: The core notion of prospective payment is that the payment rate be set in advance of the actual payment. None of the measures that we discussed would violate that principle. In each case, rate revisions would apply prospectively, that is, only to payments in the future. Under a prospective system, prior period rates are the basis for determining rates in subsequent years. However, we believe that future rates should not be based permanently on initial estimates that we now know to be incorrect. Our intention was always to base the capital rates on FY 1992 costs per case. At the time of the final rule establishing the prospective payment system for capital-related costs, we estimated FY 1992 costs on the basis of the best data and projections then available.

Comment: Several commenters argued that retaining the FY 1995 budget neutrality adjustment in the rate would disadvantage hospitals after they have responded to the incentives under the capital prospective payment system.

Response: The purpose of retaining the FY 1995 budget neutrality adjustment in the rate would be to address a known overestimation in the costs used to establish [illegible] rate, and possibly excessive [illegible] that may be inappropriate [illegible] permanently in the rate. While [illegible] that hospitals should be able to gain from responding to the incentives of prospective payment, it does not follow that this should include permanent benefit from excessively high rate levels.

Comment: Several commenters contended that it would be illegal for HCFA to retain the FY 1995 budget neutrality adjustment in the base rate. These commenters observed that Congress mandated the sunset of budget neutrality for capital, and asserted that retaining the budget neutrality adjustment in the rate was a covert way of attempting to extend the provision beyond the statutory sunset.

Response: The purpose of the measure we discussed would not be to extend the budget neutrality provision. Rather it would be to set the rate at an appropriate level in the light of information that is now available concerning cost increases in the years up to and including FY 1992. Retaining the budget neutrality adjustment factor would simultaneously address our original overestimation of FY 1992 costs and some significant proportion of the inefficiency represented in the FY 1992 cost per case. The use of the FY 1995 budget neutrality adjustment factor would merely accomplish a major rate revision in a manner that provides substantial stability in the level of payments. As such, the adjustment would not be a budget neutrality adjustment per se, but rather an adjustment to address past estimates. Section 1886(g) of the Social Security Act confers broad authority on the Secretary to establish a prospective payment system for capital-related costs.

Comment: A number of commenters contended that the reductions discussed in the proposed rule would jeopardize the ability of many hospitals to meet current obligations and reduce their ability to meet future capital needs.

Response: The measures discussed in the proposed rule would not necessarily result in actual reductions in capital payments compared to the level of FY 1995. For example, the reduction to account for the overestimation of FY 1992 costs per case would still allow annual increases in rates and payments of over 10 percent in FY 1996, and approximately 3 to 5 percent per year through the rest of the transition.

Comment: One hospital association observed that Congress may choose to enact one or more of the measures discussed in the proposed rule. The commenter suggested that any measures to reduce the growth of Medicare expenditures would create the need for HCFA to increase the protections for hospitals that undertake major capital projects during the transition period to fully prospective capital payment. The commenter emphasized that its recommendation was budget neutral.

Response: We do not yet know what if any action Congress will take with respect to the capital prospective payment system. Thus, it would be premature to consider proposals that, under a budget neutrality provision, would involve redistribution of funds from hospitals generally to those hospitals that might benefit from expanded exceptions protection.

Comment: Several commenters contended that it would be illegal for HCFA to implement any of the identified reductions to the rates (including an efficiency adjustment). Two commenters characterized the rate reduction options as thinly disguised attempts to rebase hospitals' base year capital costs, and asserted that Congress has not given the Secretary of Health and Human Services the authority to rebase hospital capital costs. One commenter stated that the rate revisions discussed in the proposed rule would violate a fundamental principle of prospective payment: that the system provide certain and predictable payment rates.

Response: Section 1886(g) of the Social Security Act requires payment for capital-related costs under a prospective payment system "*established by the Secretary.*" (Emphasis added.) The statute prescribes only that the system provide for payment on a per discharge basis, employ appropriate weighting of payment rates by classification of discharge, and reduce payments during FY 1992 through FY 1995 by an amount estimated to equal 10 percent of what would have been paid on the basis of reasonable costs. The statute gives the Secretary wide discretion in determining the particular features of the system, including the appropriate level of payment rates. We believe that any rate revision implemented prospectively would satisfy the principle of certainty and predictability under a prospective system.

Comment: One commenter argued that reducing the rate to account for overestimation of FY 1992 cost per case amounts to rebasing the capital rates from FY 1989 to FY 1992. The commenter contended that such a measure would amount to more than a technical correction and would, in fact, require revisiting the entire discussion that gave rise to prospective payment for capital. Finally, the commenter objected that there is no evidence that FY 1992 represents a typical year in capital spending as opposed to a "trough" in capital expenses.

Response: The methodology that we adopted in the September 1, 1992 final rule provided for using the FY 1989 cost per case as the basis for estimating the FY 1992 cost per case. We used FY 1989 as the basis for estimating because it was at that time the most recent year for which substantial cost report information was available. Thus FY 1992, not FY 1989, has always been the base year for the rate. The issue is not rebasing the rate but only the appropriateness of addressing previous estimates of base year costs. We believe that the commenter's concern about whether FY 1992 was a "trough" year in capital spending is misguided. The Medicare accounting rules, which were used to determine the capital costs on which the capital Federal rate is based, count depreciation costs for all capital still in use and interest on loans for depreciable assets. Current year purchases thus have only a small effect on the accounting of capital costs for the year. Capital costs for FY 1992 include depreciation and interest costs related to capital purchases over many previous years. There is no evidence that the period up to FY 1992 represented a "trough" in capital spending.

Comment: One commenter objected that making the rate reductions under consideration would be inconsistent with HCFA's refusal over the years to "make up" for shortfalls in actual outlier payments compared to estimates.

Response: We believe that we have been completely consistent in our policies regarding rate-setting and issues of revising prior year payments under the prospective payment system. As discussed earlier, we believe that prospective adjustments to the rates may be appropriate to address errors in estimating base year costs that would otherwise be built into the rates for future fiscal years. In contrast, any difference between actual outlier payments and estimated outlier payments are not built into the rates for future years; thus, for example, if actual outlier payments in a fiscal year were 4.0 percent rather than the projected 5.1 percent, the 1.1 percent difference does not mean that prospective payment rates would be 1.1 percent lower than if we had accurately projected outliers.

The case of the outlier offset cited by the commenter is more analogous to the budget neutrality adjustments under the capital prospective system than it is to the reductions to the base capital rate that we discussed. In the cases of outliers and budget neutrality, temporary annual adjustments to the rates have been made to meet certain payment targets (that is, a designated percentage of outlier payments, in the one case, and 90 percent of what would have been paid for capital costs on a reasonable cost basis, in the other). In both cases, we have refused to make any changes in the level of the rates or payments during subsequent years to account for differences between actual and estimated payments. Thus, we have not decreased subsequent year payments to account for actual payments that have apparently exceeded the payment target of 90 percent of estimated capital costs under the expiring budget neutrality provision. We do, however, examine past experience for purposes of refining the estimation methodology used to set the outlier offsets and budget neutrality adjustments for subsequent years.

As in the case of outlier payments and budget neutrality, none of the rate changes that we discussed in the proposed rule would "make up" for past payments. In making any of those revisions, we would instead be employing better data that is now available in order to set the permanent base rate more accurately for future years.

Comment: ProPAC commented that the large increase in rates with the expiration of budget neutrality raises two sets of questions. First, it raises the issue of an appropriate update mechanism, about which HCFA and ProPAC have conducted a vigorous discussion. (See section V.A above.) The second and perhaps more important issue is the need to determine the appropriate base rate to which the update is to be applied. ProPAC believes that, because updates during the first four years of the prospective payment system were based on historical cost increases rather than on an analytical framework reflecting current factors, the updated payment rates grew more rapidly than estimated reasonable costs. The result was a widening gap between the updated base rate and the rates actually used for payment under the budget neutrality provision. The expiration of budget neutrality thus results in a 21 percent increase in both rates and payments. ProPAC believes that the appropriate level of the base payment rate is an issue that merits attention by the Secretary and Congress. The Commission identifies several possible approaches to setting the base rate at an appropriate level, including those identified in this year's proposed rule. They identify one approach that we did not discuss: updating actual FY 1992 costs to FY 1996 on the basis of an analytical framework, rather than actual cost increases.

Response: We agree with ProPAC that the appropriate level of the capital base payment rate is an important issue. We presented the discussion of possible rate revisions in the proposed rule precisely in order to initiate a discussion of that issue.

Comment: Several commenters contended that rate revisions with the potential magnitude of those discussed in the proposed rule should not be implemented through rulemaking. The commenters argued that proposals of this scope should require enabling legislation.

Response: We do not believe that it would be inappropriate for HCFA to implement rate revisions of the kind under discussion after appropriate notice and comment rulemaking. As we have previously stated, the statute gives the Secretary broad discretion in the design of the system in general and in the determination of the appropriate rate level in particular. Nevertheless, it is clear that Congress will be considering major changes in the Medicare program, including substantial budget savings proposals, during the coming months. Under the circumstances, we have decided not to proceed at this time with any possible capital rate revisions through the rulemaking process while Congress considers whether to include any such measures within more comprehensive legislation dealing with Medicare and the Federal budget.

B. Adjustment to the Capital Prospective Payment System Federal Rate for Capital-Related Taxes

In our June 2, 1995 proposed rule, we discussed an adjustment to the capital prospective payment system for capital-related tax costs. As we noted in that discussion, such an adjustment would be designed to remove a possible inequity in the capital prospective payment system. While capital-related taxes constitute a cost imposed on an identifiable group of hospitals, those costs are currently reflected in the Federal capital rate paid to all hospitals. Since the inception of the prospective payment system for capital-related costs, several commenters have pointed out that all hospitals are thus being reimbursed for costs that only some hospitals pay.

In the proposed rule, we presented a proposal for an adjustment for capital-related tax costs. However, we noted in the proposed rule that introducing an adjustment posed several serious problems which we had not been able to resolve. These issues involve equity to hospitals that may become subject to capital-related taxes in the future. They also involve our responsibility to protect the Medicare Trust Fund from possible manipulation as well as from any new open-ended commitments to increase Medicare payments. We presented a formal proposal in order to facilitate discussion of the merits of implementing a special tax adjustment. We believed that presentation and analysis of a proposal provided the best opportunity for a full and public discussion of all the issues surrounding a possible adjustment for capital-related tax costs. We presented our proposal in the hope that the process of public comment would produce a solution that could simultaneously protect the Trust Fund and satisfy the equity concerns of all hospitals.

In order to facilitate discussion of the issues surrounding the treatment of capital-related taxes, we proposed to provide for a special adjustment for the capital-related tax costs of hospitals that paid such taxes for cost reporting periods beginning in FY 1992. The tax costs of those hospitals were included in the computation of the capital Federal rate. Under our proposal, hospitals that began operation after FY 1992 would also be eligible for an adjustment. We further proposed an adjustment of the Federal rate to offset the amount of capital-related tax costs originally included in the computation of the rate. In this way, adoption of the tax adjustment would be budget neutral: Aggregate capital payments would neither increase nor decrease merely because of the tax adjustment.

For those hospitals that would be eligible for an adjustment, we proposed to apply a hospital-specific Medicare tax cost per discharge amount to the Federal rate portion of each payment for each discharge from the hospital, beginning October 1, 1995. Under our proposal, the hospital-specific Medicare tax cost per discharge was to be determined on the basis of the updated FY 1992 base year cost.

Some of the serious issues that arose in connection with the implementation of a tax adjustment concern hospitals whose tax-paying status has changed since FY 1992. Some hospitals that paid capital-related taxes in FY 1992 may no longer be subject to such taxes (for example, because they converted to non-proprietary status in a taxing jurisdiction that does not tax non-proprietary hospitals). Other hospitals may have been in operation during FY 1992, but have only become subject to tax payments since that time, either by a change in status (that is, from non-proprietary to proprietary) or by the action of State or local authorities to impose capital-related taxes on entities that had not previously been subject to such taxes.

Hospitals that subsequently become subject to taxes through the action of State or local authorities pose the most serious issues of equity and protection of the Trust Fund. On the one hand, it may seem unfair to prohibit hospitals on whom a tax cost is imposed *after* FY 1992 from receiving an adjustment available to hospitals on whom a tax cost was imposed *in* FY 1992. On the other hand, a capital Federal rate tax adjustment should not be vulnerable to possible efforts by state or local authorities to gain revenues from increased Medicare payments to hospitals. Nor should a tax adjustment provide an open-ended commitment to increase the overall level of Medicare capital payments as State and local governments extend taxation to previously tax-exempt facilities. The capital Federal rate tax adjustment that we proposed reflected only the FY 1992 capital-related tax costs included in the original computation of the Federal rate. It could not reflect costs imposed on hospitals by the extension of State and local capital-related taxes after FY 1992. Therefore, in the absence of some additional budget neutrality provision, extending the tax adjustment to hospitals that become subject to capital-related taxes after FY 1992 could significantly increase the overall level of Medicare capital payments.

We proposed that hospitals would not qualify for the adjustment if they became subject to tax payments because of state or local action to change tax laws (for example, by extending taxation to non-proprietary hospitals) since FY 1992. We did so both to prevent the possibility that State and local authorities could inappropriately gain revenues through increased Medicare payments, and to prevent the adoption of a tax adjustment from producing large increases in Medicare capital payments if additional jurisdictions impose taxes on non-proprietary hospitals. We recognized, however, that this policy might be viewed as penalizing newly taxed hospitals for changes in circumstances over which they have no control. We invited comment on the appropriateness of this proposal, which raised issues of equity between hospitals subject to capital-related taxes in FY 1992 and those newly subject to such taxes after FY 1992. We specifically invited suggestions and comments on other approaches to dealing with the situation of hospitals that become subject to taxes after FY 1992. We stated our belief that any proposal to deal with the situation of such hospitals should protect the Medicare Trust Fund against an open-ended commitment to increase Medicare payments in order to reimburse hospitals for Medicare's share of newly imposed capital-related tax obligations.

In particular, we invited comment on the possibility of providing an adjustment to such hospitals on a budget-neutral basis. Under such an approach, an annual tax adjustment budget neutrality factor would be applied to the Federal rate to account for the estimated cost of the tax adjustment over and above the costs attributable to capital-related taxes in the FY 1992 base year. In this way, aggregate payments, including tax adjustments to hospitals that have become subject to taxes since FY 1992, would not exceed the amount of payments in the absence of extending the adjustment to such hospitals. Such an approach would prevent the tax adjustment from becoming an open-ended drain on the Medicare Trust Fund. However, such an approach necessarily involves reducing the Federal rate beyond the level accounted for by the capital-related tax costs originally included in the rate computation. In other words, such a budget neutrality adjustment would reduce the amount of other capital-related costs incorporated in the original rate computation. Under such an approach, the reductions in payments to hospitals that do not pay taxes would exceed the amount of capital-related taxes included in the original rate computation; arguably, then, this approach would inappropriately disadvantage hospitals that do not pay capital-related taxes.

With regard to the situation of other hospitals whose tax status has changed since FY 1992, we stated our belief that hospitals that are no longer subject to capital-related taxes should not receive an adjustment to their capital Federal rate payments. Therefore, we proposed that a hospital (or a related organization) must be directly subject to capital-related taxes in order to qualify for the capital Federal rate tax adjustment.

In addition, we proposed that no adjustment would be made for hospitals whose status changed from non-proprietary to proprietary after FY 1992. The decision to change status to a proprietary hospital is a voluntary decision of the hospital's management, and we therefore believe that an adjustment to allow special payment for additional taxes that result from such a decision is not warranted.

However, we also proposed that hospitals that were not in operation in FY 1992 should be able to qualify for the adjustment. We therefore provided that intermediaries should accept data on capital-related tax payments from hospitals that have begun operation since FY 1992. Such hospitals were to contact their intermediaries as soon as possible, but in any case no later than July 31, 1995, to submit the appropriate data and documentation.

Comment: In Opposition: We received comments opposed to the proposed property tax adjustment from six associations representing a large number of hospitals and from two individual providers. These commenters were opposed to a tax adjustment for several related reasons. Several commenters argued that tax-exempt hospitals incur substantial costs for services they must provide to maintain tax-exempt status. They pointed out that the Internal Revenue Code requires tax-exempt hospitals to satisfy a community benefit standard. This standard requires the operation of a full-time emergency room open to all persons without regard to their ability to pay. It also requires provision of care for every person in the community regardless of ability to pay. The commenters asserted that costs faced by hospitals to provide these services may be higher than property tax levels. They objected that our proposal did not offer any special adjustment to compensate for the cost of community benefit services.

One commenter characterized the proposal as an attempt to address a perceived inequity for one group of hospitals that in turn creates new inequities for many other hospitals. In particular, the commenter objected to our suggestion that extending the adjustment to hospitals newly subject to taxes could be financed by further reducing the Federal rate paid to all hospitals. The commenter suggested that, in light of the acknowledged problems in treating all hospitals equitably in implementing an adjustment, the most equitable solution would be to maintain the integrity of the prospective payment system by refusing to provide special treatment for this cost.

Another commenter objected that the proposed tax adjustment would shift payments from hospitals that exist to serve the needs of the community to those whose primary purpose is to return a profit to its shareholders. The commenter expressed concern that this shift could aggravate existing access problems.

Several commenters objected to the proposal based on reasons related to Medicare reimbursement principles. One commenter argued that the proposed tax adjustment contradicted an established policy of the Medicare program, that organizational decisions made by a hospital should not affect payments. Another commenter contended that the proposed adjustment would subsidize the decision to become a for-profit entity. The same commenter termed the proposed adjustment a return to a cost-based reimbursement system, and thus a retreat from the principles of prospective payment. Another commenter contended that tinkering with a prospective payment system to reflect a specific component of cost may invite requests for further adjustments. One commenter specifically requested that we provide an adjustment for capital-related interest costs in the same manner as we proposed to adjust for capital-related property taxes.

Several commenters raised questions of fairness among tax-paying and tax-exempt providers. The commenter contends that for-profit hospitals do not share equally in the burden of providing care to indigent patients. Furthermore, payment reductions will affect the ability of the non-profit hospitals to maintain current service levels to Medicare beneficiaries.

Several commenters recommended either that we drop the proposal to institute a capital-related property tax adjustment, or that we introduce a tax adjustment only in conjunction with an adjustment for the costs of charity care.

In Favor: We also received numerous comments in favor of the proposed adjustment for capital-related property taxes. Most comments (129) came from tax-paying proprietary hospitals who supported the tax adjustment as proposed. Another 38 commenters supported the concept of the proposed rule, but advocated revisions to the proposal, such as expansion of the eligibility criteria.

Two hospital associations responded generally in favor of the proposed adjustment, but also requested some modifications of the proposed provisions. In particular, those commenters requested the inclusion of hospitals that did not pay property taxes in 1992, but are now paying property taxes. To prevent gaming, the commenters suggested the adoption of a 3-year waiting period before hospitals newly subject to taxes could become eligible for an adjustment. To protect the Trust Fund, the commenters recommended that future capital rate updates be reduced to provide the funds for extending the adjustment to hospitals newly subject to taxes. The commenters also suggested that hospitals should only qualify for an adjustment if they pay bona-fide taxes that apply to all businesses in an area.

Other commenters contended that we should include taxes paid on leased property or equipment in the adjustment, at least in cases where the lease provided for direct payment to taxing authorities. One commenter agreed that a level playing field exists for leases on fixed equipment, but recommended that an adjustment be provided for taxes paid on leased facilities. Another commenter requested that we allow an adjustment for municipal hospitals that have city services allocated to their facility rather than a direct property tax bill.

Two commenters pointed out that they provide charity care and community services, as the tax-exempt hospitals do, but they must also pay taxes.

Response: We have decided not to proceed with implementation of a tax adjustment at this time. Two considerations motivated this decision. First, we have not been able to resolve the problems with implementing a tax adjustment that we identified in the proposed rule. Those commenters in favor of an adjustment did suggest several means for preventing gaming by states and to protect the Medicare Trust Fund from expenditure increases. Several of the suggestions for preventing gaming have some merit. We agree with the commenters, for example, that requiring hospitals newly subject to taxes to wait 3 years before qualifying for an adjustment may reduce the possibilities for gaming. At the same time, we are concerned that some of their other suggestions, such as the adoption of rules to determine *bona fide* taxes, would prove difficult to administer. Even if these measures could prevent gaming, however, we have not been able to determine a method for protecting the Trust Fund that does not create possible new inequities. Commenters in favor of a tax adjustment have suggested reducing future rate updates by an amount sufficient to fund the extension of adjustments to hospitals newly subject to taxes. Under such a measure, however, hospitals that do not pay taxes would necessarily receive lower payments than they would in the absence of a tax adjustment. (Even some hospitals that pay taxes would receive lower payments, if the amount of the Federal rate reduction exceeds the amount of the hospital-specific adjustment.) If the problem that motivated our consideration of an adjustment is an inequity, such a measure would certainly create an inequity as well. As several commenters noted, it would not be appropriate to proceed with a proposal that replaces one possible inequity with another.

The second consideration in our decision not to implement a tax adjustment at this time is that, in the light of the comments, we believe the proposed adjustment may be incompatible with a prospective payment system for capital-related costs. Prospective payment involves an averaging system under which differences in costs among hospitals are generally not accorded special treatment. Many hospitals and groups of hospitals can cite costs which may be unique to them. Among the commenters on the proposed adjustment, for example, some claimed that capital-related tax costs deserve special treatment because they are unique to one group, while others cited charity care as a unique cost to another group of hospitals. By ignoring such differences, a prospective system provides incentives for realizing greater efficiency in the provision of services than can be achieved under a cost-based payment system. Such a system is not inequitable as long as it is consistent in rejecting special treatment for specific costs.

It is true, as the commenters in favor of a tax adjustment pointed out, that the prospective system does provide adjustments for several costs. For example, adjustments are provided under both the operating and capital systems to those hospitals that have graduate medical education programs for the costs associated with that activity. However, the adjustment for the indirect cost of graduate medical education (as well as the disproportionate share adjustment) ultimately reflects a decision specifically to encourage the activity associated with those costs. As several commenters pointed out, adoption of a tax adjustment would have amounted to subsidizing a decision about hospital organizational structure (that is, the choice of proprietary status). While many nonproprietary hospitals would have qualified for a tax adjustment, our final data showed that those hospitals would have received, on average, a capital-related tax adjustment of $6.42 per discharge. As a result, tax-paying nonproprietary hospitals would, on average, have gained only slightly more from the tax adjustment than they would have lost from the reduction to the Federal rate. This is because the amounts that voluntary hospitals pay in taxes is relatively small. In contrast, tax-paying proprietary hospitals would have received, on average, a tax adjustment of $70.47 per discharge. As a result, those hospitals would have gained much more from the adjustment than they would have lost from the reduction to the Federal rate. A tax adjustment would have subsidized proprietary hospitals that pay capital-related taxes at the expense of all other groups. Therefore, we believe that the proposed tax adjustment may not be consistent with the principles behind prospective payment.

We recognize that many hospitals that might have benefited from the implementation of a tax adjustment have been inconvenienced by the time and effort required to comply with our requests for documentation of their tax costs. Because of our decision, those hospitals will now receive no benefit in return for complying with our requests. We regret that it was not possible to make a final determination about the merits of implementing a tax adjustment before proceeding with data collection and verification. It was necessary to collect and verify data on tax costs in order to determine the dimensions of the issue before proceeding with any proposal to make an adjustment. Without verified data, we would not have been able to inform interested parties of the estimated size of the change in payments for hospitals that do not pay taxes. Once we published the proposal, it was necessary to complete data collection and verification in order to be prepared for possible implementation of the adjustment following comments. On the one hand, then, we could not proceed with a proposal without data. On the other hand, we also could not decide to implement the proposal in the final rule simply because the data had been collected. It would be inconsistent with the integrity of the rulemaking process to allow preparations necessary for the possible implementation of a proposal to dictate the results of the notice and comment process.

The issue of taking capital-related tax payments into account when determining capital-related prospective payments is an important one in the effort to create a payment system that is both fair and feasible. Providers that submitted data needed in the analysis of this issue and for the design of a payment system made an indispensable contribution toward informing the debate, influencing the formulation of this important public policy, and reaching the decision that the proposed change in the capital-related prospective payment system should not be made at this time.

As noted, we received numerous other comments about the specific features of a possible tax adjustment. Since we have decided not to proceed with such an adjustment, we will not respond to those comments at this time.

VI. Changes for Hospitals and Units Excluded From the Prospective Payment Systems

A. New Requirements for Certain Long-Term Care Hospitals Excluded From the Prospective Payment Systems (§§ 412.23(e))

1. Effect of Change of Ownership on Exclusion of Long-Term Care Hospitals

As discussed in the June 2, 1995 proposed rule, some questions have arisen as to whether a hospital's compliance with the length-of-stay requirement for long-term care (LTC) hospitals is affected by its sale to a new owner. After reviewing this issue, we concluded that if a change of ownership occurs at the start of a cost reporting period, or at any time during the 6 months immediately preceding the start of that period, the hospital should not be required to begin a new qualifying period. Therefore, we proposed to clarify current regulations by specifying under § 412.23(e)(2) that if a hospital undergoes a change of ownership at the start of a cost reporting period, or at any time within the preceding 6 months, it may be excluded from the prospective payment system as an LTC hospital if it is otherwise qualified and maintained an average length of stay in excess of 25 days, under both current and previous ownership, for that 6-month period (60 FR 29244). To qualify for the exclusion, the hospital must have been continuously in operation for all of the qualifying period and participated continuously in Medicare as a hospital. That is, periods during which the hospital was closed or did not participate in Medicare could not be counted toward the required experience.

We received no public comments on this proposal and are, therefore, adopting the regulations as proposed.

2. Revised Criterion on Purchase of Services by LTC "Hospitals Within Hospitals"

Recently, some entities began to organize themselves under what they refer to as the "hospital within a hospital" model. Under this model, an entity may operate in space leased from a hospital and have most or all services furnished under arrangements by employees of the lessor hospital. The newly organized entity may be operated by a corporation formed and controlled by the lessor hospital, or by a third entity that controls both. In either case, the new entity seeks State licensure and Medicare participation as a hospital, demonstrates that it has an average length of stay of over 25 days, and seeks to obtain an exclusion from the prospective payment systems. As explained in the rulemaking documents for FY 1995, we believe it would be inappropriate to extend the LTC hospital exclusion to what is for all practical purposes a LTC hospital unit.

To avoid granting LTC hospital exclusions inappropriately to hospital units while still allowing adequate flexibility for legitimate networking and sharing of services, we set forth additional exclusion criteria for these "hospitals within hospitals" in our September 1, 1994 final rule (59 FR 45389–45393). These regulations provide that, in addition to meeting the other LTC hospital exclusion requirements set forth in § 412.23, to be excluded from the prospective payment systems, a hospital located in the same building or in one or more entire buildings located on the same campus as another hospital must have a separate governing body, a separate chief medical officer, a separate medical staff, and a separate chief executive officer. These criteria are stated in regulations at §§ 412.23(e)(3)(i)(A) through 412.23(e)(3)(i)(D). In addition, the hospital must either perform most basic hospital functions without any assistance from the hospital with which it shares space (or from a third entity that controls both) (§ 412.23(e)(3)(i)(E)) or receive at least 75 percent of its inpatient referrals from a source other than the other hospital during the period used to demonstrate compliance with the length-of-stay criterion (§ 412.23(e)(3)(ii)). The criterion under § 412.23(e)(3)(i)(E) does permit a hospital seeking exclusion to obtain certain services from a hospital occupying space in the same building, including food and dietetic services and housekeeping, maintenance, and other services necessary to maintain a clean and safe physical environment.

Since publication of the September 1, 1994 final rule, hospital representatives have stated that there are some situations in which basic hospital services other than those related to dietetic, housekeeping and maintenance functions could be furnished in a more cost-effective manner, or more conveniently for patients, if they were provided by the hospital in which the LTC hospital is located. As discussed in the June 2, 1995 proposed rule, we recognize the need to allow LTC hospitals within hospitals greater discretion to purchase services like these from their "host" facilities, when it is done in a cost-effective and convenient way. However, it is also important that the LTC hospital exclusion criteria be clear and definite enough to limit LTC exclusions to bona fide separate hospitals. To balance these competing objectives, we proposed to revise the exclusion criteria to describe the scope of services that can be obtained from the host hospital in financial terms, rather than by type of service (60 FR 29244).

Under our proposal, an otherwise qualified hospital could obtain a LTC hospital exclusion if the operating cost of services that it furnishes directly or obtains from a source other than the hospital with which it shares a building or campus (or from a third entity which controls both hospitals) constitutes at least 85 percent of its total inpatient operating costs. This test would be applied with respect to the cost reporting period or other time period used to establish the hospital's compliance with the length of stay criterion. (If a period other than a full cost reporting period is used, the LTC hospital must provide HCFA with verifiable information on its costs for that part of the period.)

We proposed a criterion of 85 percent of total inpatient operating costs as an appropriate test of separateness based on the level of dietetic, housekeeping, and maintenance expenses incurred by a small sample of LTC hospitals for which we have readily available data. Our review showed that these expenses generally ranged from 5 to 17 percent of total inpatient operating costs for the periods under review. By setting the maximum acceptable level at 15 percent, we believe that we would allow hospitals an adequate margin for purchase of a limited range of services, without encouraging a level of dependence that calls into question the LTC hospital's status as a separate institution.

To implement this policy, we proposed to specify under § 412.23(e)(3)(i)(E) that the costs of any services a hospital obtains under contract or other agreements with a hospital occupying space in the same building or campus, or with a third entity that controls both hospitals, may not exceed 15 percent of the hospital's total inpatient operating costs, as defined under § 412.2(c). Thus, a LTC hospital would be permitted to obtain dietetic, housekeeping, maintenance or other services from another hospital with which it shares a building or campus (or from a controlling third entity), provided that the aggregate cost of these services is no more than 15 percent of its total inpatient operating costs.

Public comments on this proposal are addressed below.

Comment: One commenter objected to an exclusion criterion for LTC hospitals within hospitals that is stated in terms of the cost, rather than the type, of services purchased from the host facility. This commenter stated that hospitals within hospitals are units of acute care hospitals and should be treated as such. The commenter also stated that the proposed criterion will further complicate an already complex system, encourage more facilities to reorganize themselves in an attempt to gain exclusions from the prospective payment system, and increase Medicare administrative costs. For all of these reasons, the commenter recommended that we not only abandon the proposed change but also revise the regulations to prohibit LTC hospitals within hospitals from being excluded from the prospective payment system.

Response: Although we share the commenter's concern about possible abuse of the exclusion provisions, we do not believe that either our current regulations or our proposals encourage inappropriate exclusions. On the contrary, the current regulations provide reasonable assurance that facilities excluded as LTC hospitals are functioning as separate hospitals, and we believe that our proposed changes will preserve our ability to achieve this result. Moreover, we expect that the shift from a type-based to a volume-based standard will reduce, rather than add to, the complexity and cost of our regulations. Thus, we do not agree that it is necessary to prohibit all LTC hospitals within hospitals from being excluded from the prospective payment system, nor do we believe that the proposed changes will encourage more facilities to pursue exclusions. For these reasons, we did not adopt this commenter's suggestions.

Comment: One commenter stated that hospitals within hospitals typically are set up to serve only the LTC needs of patients of the host hospital, and are unlikely to receive referrals from other sources. A hospital of this type also may have a low occupancy level, thus leading to very high per-stay costs, which will be paid for by Medicare. To prevent this situation from occurring, the commenter recommended that the 75 percent alternative criterion in § 412.23(e)(3)(ii) be made a basic requirement for exclusion. Under this commenter's recommendation, a hospital within a hospital would be excluded as a LTC hospital only if it met the 75 percent criterion and also provided all basic services without assistance from the host hospital. The commenter argued that this approach will limit the exclusion of LTC hospitals within hospitals to those that meet legitimate community needs.

Response: Although we agree that an approach of this kind might help to prevent abuse of the exclusion provisions, we are concerned that such a standard might deny exclusion to some legitimately separate institutions. We believe that the revised criteria are sufficiently rigorous to identify only situations when exclusion is appropriate, yet flexible enough to recognize legitimate variations in the ways hospitals obtain needed services and supplies. Therefore, we did not adopt this comment.

Comment: Several commenters expressed support for our proposal to focus on the volume, rather than the type, of services purchased from the host hospital. However, these commenters also stated that a criterion set at 15 percent of total inpatient operating costs is too restrictive. One commenter favored setting the criterion at 25 percent of the LTC hospital's total inpatient operating costs, with an exception for higher levels of purchases where the LTC hospital can show that obtaining services in this way is cost-effective. Another commenter suggested setting the criterion at 35 percent of total inpatient operating costs. Still another commenter favored retaining the requirement that hospitals provide most basic hospital services but allowing some percentage of basic hospital services, as measured by cost, to be purchased from the host hospital.

Several commenters expressed concern about the range of costs considered in arriving at the 15 percent figure. One commenter stated that the 15 percent threshold is too low because it does not include those services that were prohibited in the prior years, and recommended eliminating any limit on the type or cost of services that a LTC hospital can purchase from its host hospital. Another commenter asked for more detailed information on how the 15 percent figure was derived and how the measurement will be implemented. The commenter believes the 15 percent figure is necessarily too low since several categories of costs (telephone, administrative and general, laundry and linen, social services, and physical, recreational, and respiratory therapy costs) were not included in the costs sampled to arrive at that figure. One commenter stated that the methodology used to arrive at the 15 percent figure appears to be inadequate, in that it assessed only dietetic, housekeeping, and maintenance expenses, and did not take into account services such as hyperbaric oxygen therapy, surgical services, physical therapy, and security, which can often be obtained most cost-effectively from the host hospital. Because of concern about these issues, the commenter recommended that we revise the regulations to base exclusion on the level of patient needs, rather than the volume of costs, met by services obtained from the host hospital. Two commenters recommended that the regulations be revised to state that the inpatient operating costs to which the 15 percent criterion is applied will not include any costs of leased space or of equipment rental, maintenance, or utilities for the space.

Finally, one commenter noted that some new hospitals have structured their operations for their initial 6-month period of operation to comply with the requirement that they furnish basic hospital services without assistance from the host facility, and have not held the inpatient operating costs of services purchased from the host hospital within the 15 percent ceiling allowed by the proposed regulations. The commenter stated that by shifting to a cost-based standard, we would in effect be denying exclusion to facilities that operated in compliance with the exclusion criteria in effect when they began to provide services. To avoid this scenario, the commenter suggested that we delay the effective date of the 15 percent rule by an additional year (that is, until cost reporting periods beginning on or after October 1, 1996) for hospitals meeting the criterion related to provision of basic hospital services without assistance from the host hospital.

Response: These comments appear to reflect some misunderstanding of the purpose of our proposed change to an exclusion criterion based on volume of services (as measured by costs) rather than type of services. The purpose of the proposal is not to identify the most cost-effective way for a hospital within a hospital to obtain services, but to describe a pattern of functioning that provides reasonable assurance that a facility seeking to be excluded from the prospective payment system as a LTC hospital actually functions as a separate hospital. Clearly, when a facility operates within another institution, it may be more cost-effective in many cases to obtain services from the surrounding institution. It may be even more cost-effective to integrate the governance and medical direction of the hospital and the entity. A hospital component that wishes to organize itself in this way may do so, but it would not constitute a separate hospital under section 1886(d)(1)(B) of the Act, which provides for the exclusion of LTC hospitals, but not LTC units, from the prospective payment system.

In assessing the level of dietetic, housekeeping, and maintenance expenses incurred by a sample of LTC hospitals, our goal was not to set the criterion at a level that could easily be met by all potential hospitals within hospitals, but to assess the proportion of costs that a separate hospital may need to spend for the range of services it can buy under current exclusion rules. Thus, our intent was to devise a criterion that would properly assess the level of independence of a hospital within a hospital, but would allow more discretion as to the types of services to be supplied by the host facilities. We recognize that not all hospitals located within hospitals may be able to meet the criterion, and that in some cases hospitals may need to reduce their level of purchases from host facilities to qualify for exclusion under the criterion.

In response to the comments asking for the basis for establishing the threshold at 15 percent, the proposed 15 percent criterion was based on our analysis of the best available data. The Hospital Cost Report Information System (HCRIS), the automated cost report data base submitted by the fiscal intermediaries, does not contain cost data for the specific general service cost centers, such as dietary, housekeeping and maintenance costs, that represent a large portion of the costs of shared services. As a result, we instead analyzed cost report data from the hard copies of cost reports that we had on file. Specifically, we analyzed data for LTC hospitals that had requested a review of costs in relation to the TEFRA limits. This data showed that the aggregate of these specific operating costs, in comparison to total operating costs, ranged from a low of 5 percent to a high of 17 percent. Based on this range, we concluded that 15 percent was a reasonable level at which to establish the standard, as we proposed in our June 2, 1995 rule.

In response to public comments on this proposal, we conducted further analysis of the cost reports aimed at estimating more precisely the proportion of total inpatient operating costs that is attributable to basic hospital services. To do so, we refined our analysis to include additional costs (that is, maintenance and repairs, operation of plant, and laundry and linen services), to account for ancillary costs of inpatient hospital services, and to exclude ancillary costs related to nonhospital components of the institution, such as distinct part skilled nursing facilities. The new analysis indicated a range of 7 percent to 27 percent, with an average of slightly below 15 percent.

Thus, based on this analysis, we continue to believe that a 15 percent standard represents a valid and reasonable basis for identifying hospitals within hospitals that actually function independently. However, we are concerned that some hospitals that have been excluded appropriately under criteria related to the types of services they provide independently from their hosts may not be able to meet the new criterion by the time it becomes effective (that is, by the start of cost reporting periods beginning on or after October 1, 1995). To avoid this problem as well as to widen, as appropriate, the range of compliance options available to hospitals within hospitals, we have decided to make the 15 percent standard an alternative to, rather than a replacement for, our current criterion on provision of basic hospital services. This approach will enable hospitals the flexibility to buy whatever services they wish from the host, subject to the 15 percent limit, but will not require hospitals that qualify for exclusion under current rules to alter their operations to meet a new requirement. We note that because we are making the 15 percent rule an alternative to the current criterion rather than a replacement for it, a new hospital that has organized itself to meet the current requirements will not be disadvantaged. Thus, there is no need to delay application of the 15 percent rule.

With respect to the costs to which the 15 percent criterion will apply, we are clarifying proposed § 412.23(e)(3) to state that the criterion apply to total inpatient operating costs, as defined under § 412.2(c), except that, for purposes of the prospective payment system exclusion provisions, the costs of preadmission services are those specified at § 413.40(c)(2), not those described in § 412.2(c). Costs incurred under leases or rental agreements are taken into account only to the extent they fall within the § 412.2(c) definition of operating costs.

Finally, concerning the suggestion on patient needs, we note that those needs often can be defined only subjectively, and we believe that any test or measurement used for exclusion should be an objective one that is susceptible to verification by both the provider and HCFA. Thus, we did not adopt this suggestion.

Comment: One commenter stated that current rules relating to the types of services obtained by an LTC hospital within a hospital from its host are clear and adequate for distinguishing a separate hospital from a hospital unit, and that a separate rule relating to the volume of services is not needed. This commenter suggested that instead of shifting to a volume-based standard, another way to allow greater flexibility for cost-effective purchasing from the host hospital would be to allow specific types of basic hospital services, such as laboratory services, to be purchased from the host facility. Another commenter recommended that the 15 percent limitation be applied only to basic hospital services as defined under current regulations, and that an LTC hospital within a hospital be allowed to buy other services without limitation from the host hospital.

Response: We agree that either proposed approach would increase hospital flexibility. However, the types of services available from host facilities

and from other sources vary from one community to another, and from hospital to hospital within a community, and it would be difficult to specify a range of basic hospital services that could acceptably be obtained from the host facility in all cases, without permitting so many types of services to be obtained from the host facility that the criterion would no longer be a useful measure of independent functioning. With regard to the second comment, we are concerned that applying the 15 percent criterion only to basic hospital services would effectively lower the level of independent functioning necessary for a hospital to qualify for exclusion, relative to our current requirements, and thus might permit inappropriate exclusions. Therefore, we are not adopting either of these suggestions.

Comment: A commenter suggested that the creation of a hospital within a hospital is potentially abusive only where the LTC hospital is operated by a corporation owned and controlled by the host hospital, or by a third entity that controls both the host and the LTC hospitals. The commenter recommended that the 15 percent rule be applied only where operational control of this kind exists.

Response: We do not agree with this commenter that simply satisfying the structural criteria (those related to having a separate governing body, medical staff, chief executive officer, and chief medical officer) and average length of stay criteria should be sufficient to support exclusion of an LTC hospital within a hospital. On the contrary, we believe it is essential for such an entity to show that it actually functions as a separate hospital. If the two facilities meet only the separate control criteria but the LTC facility either receives fewer than 75 percent of its inpatients from sources other than the host or receives more services, or different types of services, from the host than allowed under our regulations, we question the validity of excluding the facility from the prospective payment system as a separate LTC hospital. Under these circumstances, the facility would in reality be a unit of the host hospital. Therefore, we did not adopt this comment.

Comment: Two commenters stated that the regulations on hospitals within hospitals should be revised to apply only when an LTC hospital wishes to share a building or campus with a prospective payment hospital, not to comparable situations involving a long-term care hospital and a rehabilitation hospital.

Response: Although the "hospital within a hospital" rules were designed primarily in response to situations involving LTC and prospective payment hospitals, the possibility of inappropriate exclusion of a hospital unit can also arise if an excluded hospital such as a psychiatric or rehabilitation hospital seeks to set up an LTC hospital within itself. In both situations, our concern is that an entity that is in essence a hospital unit may seek to obtain an inappropriate exclusion from the prospective payment system. Section 1886(d)(1)(B) of the Act provides for exclusion of LTC hospitals but not of LTC units. Because newly created hospitals within hospitals are eligible for a separate TEFRA target rate and may be eligible for a new hospital exemption from the rate-of-increase ceiling under § 413.40(f), we believe it is important to prevent inappropriate exclusions in all circumstances, not merely those involving prospective payment hospitals. Thus, we do not believe it is appropriate to limit the criteria as the commenter suggested.

Comment: One commenter recommended that we revise the regulations to include a "grandfather" clause under which LTC hospitals within hospitals that were excluded from the prospective payment system before October 1, 1994, would not need to meet the current exclusion criteria in order to continue to qualify for exclusion.

Response: The adoption of the 15 percent criterion as an alternative to the existing exclusion criteria under § 412.23(e) gives hospitals within hospitals three alternatives for showing that they function as separate hospitals. Moreover, § 412.23(e)(4) specifies that the criteria concerning the performance of basic hospital functions (under § 412.23(e)(3)) do not apply to any previously excluded hospital until the hospital's first cost reporting period beginning on or after October 1, 1995. In view of the three options available to hospitals for establishing eligibility to be excluded from the prospective payment system, and the delayed effective date already provided for in regulations, we believe we have established equitable policies for previously excluded LTC hospitals within hospitals. Thus, a grandfather clause is unnecessary. Moreover, we are concerned that indefinitely exempting a set of previously excluded hospitals from the regulations would be both inequitable to newer hospitals, and difficult to administer, since similar facilities would be subject to different payment rules, based only on their initial date of exclusion. Finally, it would be contrary to the statutory scheme to exclude LTC units from the prospective payment system. Thus, we have not adopted this suggestion.

Comment: One commenter asked whether the revised criterion on purchase of services would apply to the initial qualifying period of 6 months that is used to establish length of stay for a new LTC hospital.

Response: As stated in proposed § 412.23(e)(3)(i)(E), the new criterion on purchase of services applies to the same period of at least 6 months used to determine compliance with the length-of-stay criterion in § 412.23(e)(2).

Comment: One commenter stated that if an acute care hospital is allowed to set up a LTC hospital within a hospital, it may have a financial incentive to discharge patients prematurely from the acute hospital to the long-term care hospital. The commenter suggested that we adopt further regulations limiting the acute care hospital's ability to discharge a patient to a LTC hospital that it owns or controls.

Response: We understand and share this commenter's concern, and the LTC exclusion criteria are designed to prevent inappropriate exclusions. However, HCFA has no authority to restrict the range of hospitals to which a patient may be referred following discharge from acute care. We intend to review this issue, and may propose further payment changes to avoid financial incentives for inappropriate placement of patients.

B. Clarifying Changes for Excluded Hospitals and Units (§§ 412.23, 412.29, 412.30 and 412.130)

For clarity, we proposed to revise § 412.23(e)(3) to state more clearly that a hospital sharing space with another can qualify for exclusion only if it meets all of the requirements of paragraphs (e)(3)(i)(A) through (e)(3)(i)(D) of that section and, in addition, those in *either* paragraph (e)(3)(i)(E), which deals with separate performance of services, or § 412.23(e)(3)(ii), which deals with the source of the hospital's patients.

In addition, we proposed to restate the rules in §§ 412.29 and 412.30 to differentiate more clearly between criteria that apply when a hospital seeks exclusion of a rehabilitation unit that is created through an addition to its existing bed capacity, and the criteria that apply when a hospital seeks exclusion of a unit that has been created by converting existing bed capacity from other uses. We also proposed to clarify the rules that apply when a hospital expands an existing rehabilitation unit by increasing its bed capacity or by converting existing capacity. These revisions were developed in response to complaints from some hospital representatives that the current regulations do not state our criteria clearly. We emphasized that these proposals merely restate, and do not change, existing rules. In conjunction with this proposed change, we also stated that we would make a technical change to a reference in § 412.130.

Comment: One commenter objected to the provision of § 412.30(c)(1)(ii) under which the beds a hospital seeks to add to its existing rehabilitation unit will be considered new only if over 50 percent of the beds represent newly licensed and certified beds. The commenter stated that this represents a substantive change in the rules which inappropriately restricts the ability of a hospital to convert acute care capacity to uses excluded from the prospective payment system.

Response: As the commenter noted, § 412.30(b) does not deal explicitly with situations in which a hospital seeks to expand an excluded rehabilitation unit by adding bed capacity that is made up partly of newly licensed capacity and partly of existing capacity. One purpose of the revision was to clarify our policy on this issue. However, § 412.30(a)(2) does state explicitly that "a unit that includes some beds that were previously licensed and certified and some new beds is recognized as new only if more than one half of the beds are new." Thus, the revision merely restates a current rule as to what will be considered "new" when an existing facility adds a mixture of newly licensed and existing capacity.

C. Changes to the Regulations Addressing Limitations on Reimbursable Costs (§§ 413.30 (e) and (f), and 413.35(b))

We proposed to remove obsolete material from the regulations. Specifically, we proposed to remove § 413.30 (e)(1), (e)(3), and (e)(4), since sole community hospitals, risk-basis HMOs, and rural hospitals with less than 50 beds are included under 42 CFR part 412, which governs the prospective payment system for operating costs. In addition, we proposed to remove § 413.30(f)(5), (f)(6), (f)(7) (a reserved paragraph), and (f)(9), concerning exceptions for hospital routine care, essential community hospital services, and hospital case-mix changes for cost reporting periods beginning before October 1, 1983. In conjunction with these proposed changes, we stated that we would incorporate the exemption requirements for new providers into paragraph (e) of § 413.30, redesignate subparagraphs under paragraph (f) of § 413.30, and make technical changes to references in §§ 413.30(f) and 413.35(b)(2).

We received no comments on these proposals, and are therefore adopting the changes as proposed.

D. Payment Window for Hospitals and Hospital Units Excluded from the Prospective Payment Systems (§ 413.40(c))

On January 12, 1994, we published an interim final rule with comment period to specify that inpatient hospital operating costs include costs of certain preadmission services furnished by the hospital (or by an entity that is wholly owned or operated by the hospital) to the patient up to 3 days before the date of the patient's admission to the hospital (59 FR 1654). The interim final rule implemented section 4003 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), which amended section 1886(a)(4) of the Act. Because the definition of inpatient operating costs in section 1886(a)(4) of the Act applies to both prospective payment system hospitals and hospitals excluded from the system, the January 12, 1994 interim final rule revised the regulations governing excluded hospitals as well as those governing prospective payment hospitals. Specifically, we revised § 413.40(c)(2) of the regulations to reflect the 3-day payment window as required by the statute. We received 11 comments in response to this issue. Although we stated in the proposed rule that we intended to address these comments in this final rule, we have revised our plans. We will instead issue the final rule addressing the 3-day payment window as a separate document to be published in the **Federal Register**.

On October 31, 1994, Congress enacted the Social Security Act Amendments of 1994. Section 110 of that legislation amended section 1886(a)(4) of the Act to state that, for hospitals excluded from the prospective payment system, the preadmission services to be included are those furnished during the 1 day (not 3 days) before a patient's admission.

To implement this provision, we proposed to revise § 413.40(c)(2) to provide for a 1-day payment window for hospitals and hospital units excluded from the prospective payment system. We note that the term "day" refers to the calendar day immediately preceding the date of admission, not the 24-hour time period that immediately precedes the hour of admission.

We received no comments on this proposal, and are therefore adopting the changes as proposed.

E. Ceiling on the Rate of Increase in Hospital Inpatient Costs (§ 413.40(e) and (g))

We proposed to revise § 413.40(e)(1) to clarify that a request for a payment adjustment must be *received* by a hospital's fiscal intermediary no later than 180 days from the date of the notice of program reimbursement (NPR). Currently, this section states that a request must be "made" rather than "received." We have consistently interpreted the word "made" to mean "received by the fiscal intermediary" since the original regulation was promulgated (47 FR 43282, September 30, 1982). However, use of the word "made" in § 413.40(e)(1) has resulted in varying interpretations of the timely filing requirement by hospitals and their fiscal intermediaries. In the interest of a uniform and consistent application of our policy, we proposed to clarify the regulation by substituting "received by the hospital's fiscal intermediary" for "made" in § 413.40(e)(1).

In § 413.40(g)(1), we proposed to clarify the determination of the amount of payment made to a hospital that receives a TEFRA adjustment. Since October 1, 1991, a hospital with operating costs in excess of its ceiling has been paid the ceiling plus an additional amount, as provided at § 413.40(d)(3). For these cost reporting periods, a hospital receives some payment for costs in excess of the ceiling. We also proposed to add a sentence to clarify that the amount of payment made after a TEFRA adjustment may not exceed the difference between a hospital's operating costs and the payment previously allowed.

Comment: We received two comments requesting that the postmark date of the request be used as the determinant of whether the comment is received timely. One commenter expressed concern about problems with the intermediary's delivery procedures and delays in the mail room. Both commenters requested that we use the postmark date to determine timely filing of an exception request because it provides "incontrovertible proof" that a request was made timely and is consistent with a final rule published in the **Federal Register** on June 27, 1995 (60 FR 33137) with regard to timely filing of the cost report.

One of the commenters also objected to our proposed policy of using the receipt date by the intermediary, stating that HCFA often takes 18 months or longer to respond to exception requests. The commenter added that a request based on sound merits should be

considered whether it is received on the 180th or 181st day after the notice of program reimbursement.

Response: The commenter's statement regarding the use of a postmark date for determining whether cost reports are considered timely filed is based on language from our response to a comment in a final regulation published in the **Federal Register** on June 27, 1995 (60 FR 33139) that extended the due dates for filing cost reports to five months from the end of the cost reporting period. In that response, we explained that we use the postmark date in the cost report context in accordance with section 2219.4C of the Medicare Intermediary Manual.

In the appeals context, however, there are certain statutes and regulations that impact on our decision as to when payment exceptions must be requested to be considered timely. While section 1886(b)(4)(A) of the Act, which provides the Secretary with the authority to grant exceptions to the per discharge limit, does not specify requirements with regard to timely filing of an exception request, we believe it is appropriate to examine section 1878 of the Act. That section addresses timely filing of a hearing request with the Provider Reimbursement Review Board (PRRB). Such a request, like an exception request, involves a provider seeking reimbursement in addition to that set forth in its notice of program reimbursement. For that reason, we believe that our policy with regard to the timely filing of an exception request should be consistent with section 1878 of the Act.

Section 1878(a)(3) of the Act states that if a provider files a request for a hearing within 180 days after notice of the intermediary's final determination, the provider can obtain a hearing with the PRRB. We note that *Black's Law Dictionary* defines the term "file" as follows:

> To deposit in the custody or among the records of a court. To deliver an instrument or other paper to the proper officer or official for the purpose of being kept on file by him as a matter of record or reference in the proper place.

Accordingly, we are continuing to use the date received by the intermediary to determine timely filing of an adjustment request by a provider. Under this policy, intermediaries will date stamp requests upon receipt, and we will consider the date stamped on the exception request by the intermediary as the receipt date to determine timely filing, unless the provider demonstrates that the intermediary received the request on some other date. For example, a provider may mail through an overnight delivery service a request that is not stamped until the day after delivery. Where the provider can show that it was delivered on the previous day the request will be considered timely.

With regard to the comment that HCFA often takes 18 months or longer to respond to exception requests, we regret these delays, which have resulted from the significant volume of exception requests we have received. We are making efforts to reduce the backlog and expedite processing of exception requests. However, we do not agree that all exception requests should be evaluated on their merits regardless of whether they are received on the 180th or 181st day after the NPR. To ensure effective administration of the program, intermediaries must consistently apply the timely filing requirements.

Comment: One commenter interprets our proposal to clarify that the amount of payment made after a TEFRA adjustment may not exceed the difference between a hospital's operating costs and the payment previously allowed to mean that the TEFRA penalty payment would not apply.

Response: The commenter's interpretation is not correct. Our proposal was intended only to ensure that total payments to an excluded hospital or unit that receives an exception do not exceed total inpatient operating costs. Currently, hospitals with costs above the TEFRA limit receive their per discharge limit plus 50 percent of costs in excess of the limit, up to 110 percent of the target amount. If the hospital receives an adjustment to its TEFRA target amount, the amount of penalty payment is recalculated based on the adjusted target amount. Under our policy, the hospital could continue to receive the TEFRA penalty payment and any additional adjustment amounts, but only up to its total inpatient operating costs. Accordingly, the total payment would not exceed total inpatient operating costs.

VII. ProPAC Recommendations

As required by law, we reviewed the March 1, 1995 report submitted by ProPAC to Congress and gave its recommendations careful consideration in conjunction with the proposals set forth in the proposed rule. We also responded to the individual recommendations in the proposed rule. The comments we received on the treatment of the ProPAC recommendations are set forth below along with our responses to those comments. However, if we received no comments from the public concerning a ProPAC recommendation or our response to that recommendation, we have not repeated the recommendation and response in the discussion below. Recommendations 1, 4, and 5, concerning the update factors for inpatient operating costs, the update factor for hospitals paid on the basis of hospital-specific rates, and the update factor for hospitals excluded from the prospective payment system and distinct-part units, respectively, are discussed in Appendix C to this final rule. Recommendations 2 and 3, concerning the update factors for inpatient capital costs and the single operating and capital update factor, respectively, are discussed in Section V of this final rule. Recommendation 11, concerning improving Medicare transfer payment policy, is discussed in section IV.A of the preamble. The remaining recommendations on which we received comments are discussed below.

A. Update to the Composite Rate for Dialysis Services (Recommendation 6)

Recommendation: For FY 1996, the composite rate for dialysis services should be updated to account for the following:

- The projected increase in the market basket index for dialysis services, currently estimated at 3.7 percent;
- A net adjustment of zero percentage points for scientific and technological advances and productivity; and
- A negative discretionary adjustment of 3.7 percentage points to reflect the relationship between payments and estimated fiscal year 1995 costs.

This would result in an update of zero percent.

Response in the Proposed Rule: We agree with ProPAC's recommendation not to propose a payment rate increase for dialysis services. ProPAC's cost analysis indicates that, in aggregate, Medicare payments to independent dialysis facilities were about 12 percent higher than their Medicare allowable costs, and thus there is no basis to increase the composite rate. Furthermore, ProPAC concludes that without documented explanations for reported higher costs in hospital-based facilities, it cannot justify a differential update for these facilities.

ProPAC's analysis of the 1993 unaudited cost data shows that Medicare allowable costs for independent facilities are less than their payment rate. Since 1983, the number of independent facilities has continued to increase in response to growing patient demand, even though payment rates have remained constant. As noted by ProPAC, the margin between independent facilities' composite payment rates and their Medicare allowable costs continues to decrease. Because of this trend, we will closely monitor the costs of dialysis treatments as reported by facilities on their cost reports. Further, if Medicare's conditions of coverage are revised to include an adequacy of dialysis standard, we will examine the need to adjust composite payment rates. The current composite payment rates are mandated by statute.

To improve the quality of the cost report data and to address concerns about the cost report, we have revised the independent facilities' cost report, Form HCFA 265–94. The new cost report eliminates the allocation of the facility's overhead to the drug recombinant human erythropoietin (EPO). In addition, we are revising the independent cost reports edits. These edits would screen cost report data to ensure that data elements outside edit ranges are investigated by intermediaries.

Comment: One commenter asserted that the difference in cost levels between freestanding facilities and hospital-based renal facilities is obvious; hospital-based renal facilities treat a more resource intensive and complicated patient base. The commenter recommended updating the composite payment rates using the hospital market basket index.

Response: ProPAC addressed this issue in its report. Its analysis did not attribute the difference in cost to factors such as patient mix, for which the composite payment rate system should compensate renal facilities. Rather, it showed that the higher cost per treatment in hospital-based facilities was due to higher labor expenses and the method by which costs are allocated between inpatient and outpatient departments. Differences between independent and hospital-based facilities in quality of care and patient outcomes have not been demonstrated. Patient data showed in the aggregate that there is no difference between hospital and independent renal patient medical populations. For renal facilities treating an atypical patient population, there is an exception process. This process gives renal facilities an opportunity, on a case by case basis, to demonstrate that their payment rates should be adjusted to account for higher costs attributable to differences in patient mix.

Comment: ProPAC commends the Secretary's efforts to improve the quality of cost report data by eliminating the allocation of facilities' overhead to the drug recombinant human erythropoietin (EPO) and by revising the independent cost report edits to screen cost report data more effectively. The Commission believes, however, that annual audits are necessary to develop the quality data needed to monitor dialysis costs over time and to ensure that payments for dialysis services are updated appropriately.

Response: Audits are important to ensure the quality of cost reporting data and would improve the quality of the data. However, audits are expensive for HCFA and for renal facilities, and they only correct the data being audited. The best way to improve the quality of cost data is through education, such as that being conducted by the National Renal Administrator Association. We are in the process of developing a national standard to measure the adequacy of dialysis. We will conduct audits once this standard is implemented. These audits should then document the costs associated with improved dialysis care.

B. Level of the Indirect Medical Education (IME) Adjustment to Prospective Payment System Operating Payments (Recommendation 7)

Recommendation: For FY 1996, the IME adjustment to prospective payment system operating payments should be reduced by 13 percent, from a 7.7 percent to a 6.7 percent increase for every 10 percent increment in teaching intensity. Ultimately, the IME adjustment should be reduced by about 40 percent, to a 4.5 percent increase for every 10 percent increment in teaching intensity.

Response in the Proposed Rule: ProPAC's IME estimate of 4.5 percent represents a significant acceleration in the downward trend of its estimates in the last several years (5.7 percent in 1992, 5.4 percent in 1993, and 5.2 percent in 1994). Coupled with FY 1993 cost report data showing major teaching hospitals' Medicare operating margins (difference between payments and costs as a percentage of payments) rising to over 11 percent, this declining IME estimate adds to the argument that the current adjustment is too high. Legislation would be required to reduce the IME adjustment. However, savings proposals of this sort would only be appropriate in the context of health care reform.

Comment: ProPAC's comment largely reiterated the discussion contained in its March 1995 report. ProPAC did indicate that, contrary to our assertion that its IME estimate of 4.5 percent represents an acceleration in the downward trend of its recent estimates, this apparent downward trend reflects its "continuing efforts to improve both the methods used to analyze this relationship and the accuracy of the resulting estimates." The Commission's comment goes on to indicate that, applying its current estimating methodology to prior year's data, "the results do not vary much from the current 4.5 percent estimate.

Response: We agree that, in our June 2, 1995 response to ProPAC's recommendation, we may have misinterpreted ProPAC's most recent IME estimates as indicating an accelerating downward trend. Upon further discussion with ProPAC, it appears that, rather than a declining relationship over time, the decline in the most recent estimate results from a change in how ProPAC controls for cost differences resulting from hospital location (that is, large urban, other urban or rural). Specifically, in its most recent estimate, ProPAC included dummy variables in the regression to indicate that a hospital is located in a large or other urban area, rather than standardizing the dependent variable costs per discharge for differences in the standardized amounts.

C. Making DRG Payment Rates More Accurate (Recommendation 9)

Recommendation: The Secretary should implement, as soon as practicable, the DRG severity refinements developed by HCFA. At the same time, she should improve the accuracy of basic DRG payment rates and outlier payments by changing the methods used to calculate the DRG relative weights. The weights should be based on the national average of hospital-specific relative values for all cases in each DRG, rather than the national average standardized charge per case.

Response in the Proposed Rule: In the May 27, 1994 proposed rule (59 FR 27716), we announced the availability of a paper we prepared that describes our preliminary severity DRG classification system and the analysis upon which our proposal was formulated. Based on the 100 comments we received on that paper, we are further analyzing and adjusting the severity DRG classifications. We are also examining the stability of the severity classifications over time. We agree with the Commission's judgment that adopting the severity DRGs would tend to reduce current discrepancies between payments and costs for individual cases and thereby improve payment equity among hospitals. We therefore remain committed to implementing the severity DRG classification system as soon as possible. (See discussion in Section II.B of this preamble.)

We also agree with the Commission that basing DRG weights on standardized charges results in weights that are somewhat distorted as measures of the relative costliness of treating a typical case in each DRG. The Commission notes several sources of distortion, including the following: systematic differences among hospitals in cost-to-charge ratios; variation in mark-ups for services across hospitals; variation among DRGs in the average mark-up implicit in case level charges; standardization factors that inaccurately represent cost differences among hospitals; and the absence of adjustments to account for factors such as variations in practice patterns and efficiency. We recognize that the hospital-specific relative value method of setting weights may reduce or eliminate distortions from these sources, and we are studying its effect on DRG weights and hospital payments.

The Commission also addresses two issues regarding current outlier financing policies: (1) how to account for outlier payments in setting a DRG weight that accurately reflects the relative costliness of treatment for typical cases; and (2) how to finance outlier payments so that the burden of treating such cases is spread fairly among all hospitals. We are studying these issues and look forward to working with ProPAC to find solutions.

Because the effects on DRG weights of implementing DRG severity refinements and changing the methods used to calculate DRG relative weights are interactive, we believe that appropriate changes should be adopted concurrently. However, as stated in the final rule published on September 1, 1992 (57 FR 39761) and in subsequent rules, as well as in this rule, we would not make significant changes to the DRG classification system unless we are able either to improve our ability to predict coding changes by validating in advance the impact that potential DRG changes may have on coding behavior, or to make methodological changes to prevent building the inflationary effects of the coding changes into future program payments. (See comment and response following Recommendation 10 below).

D. Improving Annual Update Policies (Recommendation 10):

Recommendation: The Secretary should be given authority to adjust the standardized amounts if anticipated coding improvements would increase aggregate payments by more than 0.25 percent during the coming year. This adjustment should be separate from the annual update. It should be based on findings from empirical analysis of the new HCFA data base of reabstracted medical records. Once sufficient data are available, the Secretary should also make a correction if there is more than a 0.1 percentage point error in a previous adjustment.

Response in the Proposed Rule: We agree with ProPAC that anticipated coding changes should be taken into account and that the most appropriate method for recognizing valid increases in case mix as a result of improved coding practices is within the framework of the standardized payment amount. We acknowledge, with ProPAC, that shifts in the mix of cases among DRGs may result from changes in practice patterns, new technology, or variations in the incidence of illness, as well as changes in the coding of diagnoses and procedures.

As ProPAC states, under section 1886(d)(4)(C) of the Act, we are required to make DRG reclassification and recalibration changes in a budget neutral manner. To meet this requirement, we normalize the DRG relative weights so that, for the discharges in the data base, the average DRG weights before and after reclassification and recalibration are equal. The recalibration of the DRG weights is accompanied by a budget neutrality adjustment to the standardized payment amount to ensure that estimated aggregate payments remain unchanged.

We share ProPAC's concern that introduction of any major modification to the DRG classification system will result in major shifts in the distribution of cases among the DRGs. Because the severity refinements to the DRGs would create many new DRGs with relatively high weights, there will be increased incentive to hospitals to report those secondary diagnoses that result in assignment to the higher weighted DRG. We agree with ProPAC that this is not inappropriate and is indeed anticipated. We further agree that we need to ensure that hospitals are fairly compensated for increases in costs that reflect real increases in the level of severity of illness of their patient population.

In order to protect the Medicare program from payment increases that are a consequence of improved coding practices that do not reflect a real increase in case mix, we have developed a methodology that would recalibrate the DRG relative weight to 1.0 each year, thus eliminating the normalization process and the concomitant inflationary adjustment to the DRG weights. This would prohibit upcoding and other coding improvements from having an impact on the DRG relative weight. To account for real case-mix increases, we have recommended an annual upward adjustment to the standardized amounts equal to the lesser of the total observed case-mix increase or 1.0 percent. Anticipated case-mix change due to upcoding would be accounted for through a prospective adjustment to the standardized amounts. This adjustment would be for one year at a time and would not be cumulative.

ProPAC recommends that an ongoing data base of reabstracted medical records be used to estimate the real and coding components of case-mix change and provide the basis for forecasting future coding changes. HCFA has recently implemented a record reabstracting process being conducted by two clinical data abstraction centers (CDACs) under contract with the Health Standards and Quality Bureau (HSQB). The CDACs will review a national random sample of 30,000 records per year from the National Case History file, gathered on a monthly basis. Registered Record Administrators (RRAs) and Associate Record Technicians (ARTs) will reabstract the medical record and perform complete record medical coding, which will be stored with the original coding.

We will evaluate the results of this reabstracting process before making a decision to base adjustments for anticipated coding changes only on this data base. Our estimate of an annual real case-mix increase of 1.0 percent is supported by past studies of case-mix change by the Rand Corporation. The most recent study by RAND, "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988", by G.M. Carter, J.P. Newhouse and D.A. Relles, R–4098–HCFA/ProPAC (1991), uses medical records from those Federal fiscal years, using consistent standards, to determine real case-mix change.

As we pursue options and alternatives to payment adjustments to account for real case-mix increases, we will take into consideration ProPAC's recommendations to limit adjustments to those occasions in which coding changes would increase aggregate payments by more than 0.25 percent or when forecasts differ from observed, actual experience by more than 0.1 percent. We note, also, that we are considering a number of related modifications to the calculation of the DRG relative weights that will have an impact on the prospective payment rates. (See response to ProPAC Recommendation 9, above.)

Comment: In its comment on our response to ProPAC Recommendation 9 and 10 (Improvements in the DRG Payment Rates and Annual Update Policies), the Commission indicated that it continues to believe that refinements to the DRG definitions and relative weights should be implemented as soon as possible. While the Commission agrees that adopting the refined DRGs could lead to changes in hospital coding behavior, it states that recalibrating the weights annually to 1.0 in not necessary to protect Medicare from the effects of coding change. ProPAC believes this may actually interfere with reducing the program's financial risk if it is perceived as an arbitrary means of reducing spending. Additionally, it does not believe that limiting future increases in payments to the lesser of the measured real change or 1.0 percent is plausible if the real change turns out to be higher.

The Commission, although stating appreciation of our desire to evaluate the new reabstracted data base, states that this data base exceeds the size and representativeness of any data base previously used to determine adjustments for coding change. ProPAC reiterates its recommendation that an adjustment, separate from the annual update, be applied in situations when changes in coding, anticipated in response to major revisions in the DRG definitions or the relative weights, are expected to lead to an increase in aggregate payments of at least 0.25 percent. The projected effect of changes in coding would be based on empirical analysis of the reabstracted medical records available to HCFA, and corrections would be made when significant forecast errors are detected.

Response: Although we agree with the Commission that these policy changes will improve equitable payment across hospitals, we believe it would be irresponsible for HCFA to implement the severity adjustment to the DRGs before we are able to predict or control the impact of coding changes on final DRG assignment and, thus, on payment. We do not agree that recalibration of the DRG relative weights to 1.0 will be perceived as arbitrary. With sufficient understanding of the rationale and results, as well as of the other modifications to the payment rate and DRG weights, the health care community should appreciate our efforts to identify and measure real case-mix increases. Nor do we agree that our rationale for limiting adjustments to the standardized amounts for real change in case mix to the lesser of the measured real change or 1.0 percent is not plausible. As stated in the proposed rule (60 FR 29247), our estimate of annual real case-mix increase of 1.0 percent is supported by past studies of case-mix change by RAND. We are willing to re-examine this issue, if empirical evidence provided through analysis of the reabstracted data from the clinical data abstraction centers (CDACs) demonstrates that real case-mix change is significantly more or less than 1.0 percent.

As discussed in section II.B. of this preamble, collection of data from the CDACs has recently been implemented, and we will evaluate the results of this reabstracting process. Only through this evaluation will we be able to confirm the reliability and validity of these data as a basis for predicting case-mix increases. We will consider ProPAC's recommendations to adjust the standardized amount only when coding changes increase aggregate payments by more than 0.25 percent. However, we believe it is prudent and responsible policy to defer DRG changes, as well as adjustments in anticipation of coding changes, until such adjustments can be based on empirical analysis of the reabstracted medical records. As noted by ProPAC in its recommendations, the current statute prevents us from making any adjustment to the standardized amount to account for coding improvements.

VIII. Other Required Information

A. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the two information collection requirements discussed below.

As discussed in detail in section IV.B of this preamble, we are eliminating the requirement under § 412.46(a) that a physician sign an attestation statement for each Medicare patient discharged from a hospital. When the prospective payment system for hospitals was established in 1983, we believed that the physician attestation statement was a valuable tool for ensuring the validity of DRG claims. Over the years, however, we have received many complaints from both hospitals and physicians concerning the administrative burden of completing the attestation statements. Moreover, in practice, review of attestation statements by the Peer Review Organizations (PROs) as a part of DRG validation review has resulted in less than a 0.01 percent denial rate of sampled claims. Therefore, we believe it is now appropriate to eliminate the physician attestation requirement. Also, we note that the Administration has identified the elimination of physician attestation as one of its health care regulatory reforms.

This change would reduce significantly the paperwork and information collection burden on physicians and hospitals. We estimate that currently physicians spend about 192,000 hours per year completing attestations. This estimate is based on 11,500,000 hospital inpatient claims per year and 1 minute of physician time per claim. In addition, any time that hospitals spend following up on overdue and unsigned attestations would also be saved.

The only remaining requirement under § 412.46 is that a hospital have on file a signed statement from each attending physician acknowledging that he or she has received a notice from the hospital explaining the penalties applicable for misrepresenting, falsifying, or concealing essential information required for payment. We estimate that this requirement imposes on physicians and hospitals a shared one-time burden of 5 minutes for acknowledgement for each physician that gains admitting privileges. We further estimate that no more than 1–2 percent of the nation's roughly 700,000 active physicians gain admitting privileges at a hospital each year, resulting in an estimated annual burden of approximately 1,200 hours.

Under § 412.106(b)(3), for purposes of the DSH adjustment, a hospital's Medicare Part A/SSI percentage may be calculated based on its cost reporting period rather than the Federal fiscal year. (See section IV.E of the preamble.) Under current policy, a hospital must submit, in machine-readable format, data on its Medicare Part A patients for its cost reporting period. As discussed in detail in the preamble, this process has not resulted in accurate recalculations of the disproportionate

patient percentages, and thus requiring hospitals to submit data has not proven useful or necessary. Therefore, we are revising this requirement to provide that hospitals need only make a written request for the recalculation and need not submit the data. We estimate that the current burden associated with submitting the data is approximately 24 hours per request. Under the revision, we estimate a burden of 1 hour per request. Based on an estimate of 12 requests per year, the total burden will be 12 hours, in comparison to the current total burden of approximately 288 hours.

These information collection and recordkeeping requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to submit comments on these information collection and recordkeeping requirements should direct them to the Office of Management and Budget, Human Resources and Housing Branch, Room 10235, New Executive Office Building, Washington, D.C., 20503, Attention: Allison Eydt, HCFA Desk Officer.

B. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape format or cartridges; however, some files are available on diskette. In our June 2, 1995 proposed rule, we published a list of data sets that are available for purchase (60 FR 29249). We received no comments concerning this process.

C. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in the Effective Date for the Elimination of the Physician Attestation Requirement

We ordinarily publish a notice of proposed rulemaking for a rule to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impractical, unnecessary, or contrary to public interest. We find good cause to implement this rule as a final rule because the delay involved in prior notice and comment procedures for the new provisions of this rule would be contrary to the public interest.

One provision of this rule that was not part of our June 2, 1995 proposed rule is the elimination of the requirement in 42 CFR § 412.46(a) that a physician sign an attestation statement for each Medicare patient discharged from a hospital. Although this change was not part of the proposed rule, we received close to 1,000 letters from physicians and hospitals requesting that we eliminate the physician attestation requirement. As discussed above, this change will reduce significantly the paperwork and information collection burden on physicians and hospitals. We believe that it is appropriate to implement this revision as part of this final rule as the most expeditious means of removing this burden on physicians and hospitals. Thus, particularly in view of the many unsolicited letters we have already received on this subject, we find that the delay involved in prior notice and comment would be contrary to the public interest. Therefore, we have concluded that it is appropriate to implement the revisions to § 412.46 as final in this instance.

We also normally provide a delay of 30 days in the effective date of a regulation. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date. We may also waive the delay in the case of a rule that grants an exemption or relieves a restriction. We find good cause to waive the usual 30-day delay in this instance. As explained above, it is in the public interest for the elimination of the physician attestation requirement to take effect as soon as possible. A 30-day delay in the effective date would only extend unnecessarily an onerous requirement on physicians and hospitals. Therefore, we believe that a 30-day delay in the effective date for this provision would be contrary to the public interest, and we find good cause to waive the usual 30-day delay in the effective date.

D. Waiver of Notice of Proposed Rulemaking for Allowing the Provision of Skilled Nursing Facility (SNF) Services by Rural Primary Care Hospitals (RPCHs)

In addition to the elimination of the physician attestation requirement under § 412.46, this final rule contains one other provision that was not included in the June 2, 1995 proposed rule. Specifically, the proposed rule did not include the changes contained in this final rule to § 485.645, Special requirements for RPCH providers of long-term care services ("swing beds"). As noted above, we ordinarily publish a notice of proposed rulemaking for a substantive rule to provide a period of public comment. Again, however, we may waive that procedure if we find good cause that prior notice and comment are impractical, unnecessary, or contrary to public interest.

As explained in detail in section IV.G of this preamble, effective October 31, 1994, section 102(c) of the Social Security Act Amendments of 1994 (SSAA '94) allows a hospital with a swing-bed agreement in effect when it applies for RPCH designation to maintain as many beds for the furnishing of SNF-level services as it had on its hospital license when it applied to the State for designation as a RPCH, minus the number of inpatient beds (not to exceed six) used for the provision of RPCH inpatient care. The new legislation further states that the number of beds the facility uses for SNF-level care is not to include any beds of a unit of the facility that is licensed as a distinct-part SNF at the time the facility applies to the State for designation as a RPCH. To implement this provision, we are amending § 485.645 to reflect the new statutory language. We also are providing that swing-bed RPCHs that applied for RPCH designation before October 31, 1994, may either continue to provide care in accordance with the prior provisions of the regulations or request redesignation under the new provisions.

The regulations published in final in this rule implement the provisions of section 102(c) of SSAA '94 as the statute intends. The statutory effective date of the provisions of section 102(c) is October 31, 1994, and several facilities have indicated an interest in being designated as RPCHs under the new provisions. Moreover, we believe these changes may be necessary to assure access to SNF-level care in rural areas. Thus, we believe that it is both unnecessary and contrary to the public interest to delay implementation of these provisions until the process of publishing both a proposed and a final rule can be completed. Therefore, we find good cause to waive proposed rulemaking for the revised requirements set forth under § 485.645 and to issue these regulations as final. However, we are providing a 60-day period for public comment, as indicated at the beginning of this rule, on the changes to § 485.645.

E. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and we will respond to these comments in subsequent rulemaking document. Comments on changes to the revised requirements under § 485.645 will be considered if we receive them by the date specified in the DATES section of this preamble. We will not consider comments concerning provisions that remain unchanged from the June 2, 1995 proposed rule or that were changed based on public comments.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

A. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1820, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395i–4, 1395hh, and 1395ww).

Subpart A—General Provisions

2. Section 412.4 is amended as follows:

a. In the first sentence of paragraph (d)(1), the phrase "is paid a per diem rate" is removed and the phrase "is paid a graduated per diem rate" is added in its place.

b. In paragraph (d)(1), a new sentence is added at the end of the paragraph.

The addition reads as follows:

§ 412.4 Discharges and transfers.

* * * * *

(d) *Payment to a hospital transferring an inpatient to another hospital.* (1) * * * Payment is graduated by paying twice the per diem amount for the first day of the stay, and the per diem amount for each subsequent day, up to the limit as described in paragraph (d)(1) of this section.

* * * * *

Subpart B—Hospital Services Subject to and Excluded from the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

3. Section 412.23 is amended as follows:

a. Paragraphs (e)(2) and (e)(3) are revised.

b. In paragraph (e)(4), the phrase "in paragraphs (e)(3) of this section" is removed and the phrase "in paragraph (e)(3) of this section" is added in its place.

The revisions read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(e) *Long-term care hospitals.* * * *

(2) The hospital must have an average length of inpatient stay greater than 25 days—

(i) As computed by dividing the number of total inpatient days (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period;

(ii) If a change in the hospital's average length of stay is indicated, as computed by the same method for the immediately preceding 6-month period; or

(iii) If a hospital has undergone a change of ownership (as described in § 489.18 of this chapter) at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare.

(3) Except as provided in paragraph (e)(4) of this section, for cost reporting periods beginning on or after October 1, 1994, a hospital that occupies space in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital, must meet the following criteria:

(i) *Separate governing body.* The hospital has a governing body that is separate from the governing body of the hospital occupying space in the same building or on the same campus. The hospital's governing body is not under the control of the hospital occupying space in the same building or on the same campus, or of any third entity that controls both hospitals.

(ii) *Separate chief medical officer.* The hospital has a single chief medical officer who reports directly to the governing body and who is responsible for all medical staff activities of the hospital. The chief medical officer of the hospital is not employed by or under contract with either the hospital occupying space in the same building or on the same campus or any third entity that controls both hospitals.

(iii) *Separate medical staff.* The hospital has a medical staff that is separate from the medical staff of the hospital occupying space in the same building or on the same campus. The hospital's medical staff is directly accountable to the governing body for the quality of medical care provided in the hospital, and adopts and enforces bylaws governing medical staff activities, including criteria and procedures for recommending to the governing body the privileges to be granted to individual practitioners.

(iv) *Chief executive officer.* The hospital has a single chief executive officer through whom all administrative authority flows, and who exercises control and surveillance over all administrative activities of the hospital. The chief executive office is not employed by, or under contract with, either the hospital occupying space in the same building or on the same campus or any third entity that controls both hospitals.

(v) *Performance of basic hospital functions.* The hospital meets one of the following criteria:

(A) The hospital performs the basic functions specified in §§ 482.21 through 482.27, 482.30, and 482.42 of this chapter through the use of employees or under contracts or other agreements with entities other than the hospital occupying space in the same building or on the same campus, or a third entity that controls both hospitals. Food and dietetic services and housekeeping, maintenance, and other services necessary to maintain a clean and safe physical environment could be obtained under contracts or other agreements with the hospital occupying space in the same building or on the same campus, or with a third entity that controls both hospitals.

(B) For the same period of at least 6 months used to determine compliance with the length-of-stay criterion in paragraph (e)(2) of this section, the cost of the services that the hospital obtained under contracts or other agreements

with the hospital occupying space in the same building or on the same campus, or with a third entity that controls both hospitals, is no more than 15 percent of the hospital's total inpatient operating costs, as defined in § 412.2(c). For purposes of this paragraph, however, the costs of preadmission services are those specified under § 413.40(c)(2) rather than those specified under § 412.2(b)(5).

(C) For the same period of at least 6 months used to determine compliance with the length-of-stay criterion in paragraph (e)(2) of this section, the hospital has an inpatient population of whom at least 75 percent were referred to the hospital from a source other than another hospital occupying space in the same building or on the same campus.

* * * * *

4. In § 412.29, the introductory text is republished, and paragraph (a) is revised to read as follows:

§ 412.29 Excluded rehabilitation units: Additional requirements.

In order to be excluded from the prospective payment systems, a rehabilitation unit must meet the following requirements:

(a) Have met either the requirements for—

(1) New units under § 412.30(a); or

(2) Converted units under § 412.30(b).

* * * * *

5. Section 412.30 is amended as follows:

a. Paragraph (a) is revised.

b. Paragraphs (b) and (c) are redesignated as paragraphs (c) and (d).

c. A new paragraph (b) is added.

d. Redesignated paragraph (c) is revised.

e. In redesignated paragraph (d), the phrase "under paragraph (b) of this section," is removed and the phrase "under paragraph (c) of this section," is added in its place.

The revisions and addition read as follows:

§ 412.30 Exclusion of new rehabilitation units and expansion of units already excluded.

(a) *New units.* (1) A hospital unit is considered a new unit if the hospital—

(i) Has not previously sought exclusion for any rehabilitation unit; and

(ii) Has obtained approval, under State licensure and Medicare certification, for an increase in its hospital bed capacity that is greater than 50 percent of the number of beds in the unit.

(2) A hospital that seeks exclusion of a new rehabilitation unit may provide a written certification that the inpatient population the hospital intends the unit to serve meets the requirements of § 412.23(b)(2) instead of showing that the unit has treated such a population during the hospital's most recent cost reporting period.

(3) The written certification described in paragraph (a)(2) of this section is effective for the first full cost reporting period during which the unit is used to provide hospital inpatient care. If the hospital has not previously participated in the Medicare program as a hospital, the written certification also is effective for any cost reporting period of not less than 1 month and not more than 11 months occurring between the date the hospital began participating in Medicare and the start of the hospital's regular 12-month cost reporting period.

(4) A hospital that has undergone a change of ownership or leasing as defined in § 489.18 of this chapter is not considered to have participated previously in the Medicare program.

(b) *Converted units.* A hospital unit is considered a converted unit if it does not qualify as a new unit under paragraph (a) of this section. A converted unit must have treated, for the hospital's most recent 12-month cost reporting period, an inpatient population of which at least 75 percent required intensive rehabilitation services for the treatment of one or more conditions listed under § 412.23(b)(2).

(c) *Expansion of excluded rehabilitation units.*

(1) *New bed capacity.* The beds that a hospital seeks to add to its excluded rehabilitation unit are considered new beds only if—

(i) The hospital's State-licensed and Medicare-certified bed capacity increases at the start of the cost reporting period for which the hospital seeks to increase the size of its excluded rehabilitation unit, or at any time after the start of the preceding cost reporting period; and

(ii) The number of beds the hospital seeks to add to its excluded rehabilitation unit is greater than 50 percent of the number of beds by which the hospital's State licensed and Medicare certified bed capacity increased under paragraph (c)(1)(i) of this section.

(2) *Conversion of existing bed capacity.*

(i) Bed capacity is considered to be existing bed capacity if it does not meet the definition of new bed capacity under paragraph (c)(1) of this section.

(ii) A hospital may increase the size of its excluded rehabilitation unit through conversion of existing bed capacity only if it shows that, for all of the hospital's most recent cost reporting period of at least 12 months, the beds have been used to treat an inpatient population meeting the requirements of § 412.23(b)(2).

* * * * *

Subpart C—Conditions for Payment Under the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

6. Section 412.46 is revised to read as follows:

§ 412.46 Medical review requirements: Physician acknowledgement.

(a) *Basis.* Because payment under the prospective payment system is based in part on each patient's principal and secondary diagnoses and major procedures performed, as evidenced by the physician's entries in the patient's medical record, physicians must complete an acknowledgement statement to this effect.

(b) *Content of physician acknowledgement statement.* When a claim is submitted, the hospital must have on file a signed and dated acknowledgement from the attending physician that the physician has received the following notice:

> Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

(c) *Completion of acknowledgement.* The acknowledgement must be completed by the physician at the time that the physician is granted admitting privileges at the hospital, or before or at the time the physician admits his or her first patient. Existing acknowledgements signed by physicians already on staff remain in effect as long as the physician has admitting privileges at the hospital.

Subpart D—Basic Methodology for Determining Prospective Payment Federal Rates for Inpatient Operating Costs

7. In § 412.63, a new paragraph (s)(5) is added to read as follows:

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.

* * * * *

(s) * * *

(5) If a judicial decision reverses a HCFA denial of a hospital's wage data revision request, HCFA pays the

hospital by applying a revised wage index that reflects the revised wage data as if HCFA's decision had been favorable rather than unfavorable.

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

§ 412.92 [Amended]

8. In paragraph (b)(5) of § 412.92, remove the phrase "under § 413.30(e)(1) of this chapter", wherever it appears.

9. In § 412.96, the first sentence of paragraph (c)(2)(ii) is revised to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(c) * * *

(2) * * *

(ii) For cost reporting periods beginning on or after January 1, 1986, an osteopathic hospital, recognized by the American Osteopathic Healthcare Association (or any successor organization), that is located in a rural area must have at least 3,000 discharges during its most recently completed cost reporting period to meet the number of discharges criterion. * * *

* * * * *

10. In § 412.105, paragraph (b) is revised to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(b) *Determination of number of beds.* For purposes of this section, the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period, not including beds or bassinets in the healthy newborn nursery, custodial care beds, or beds in excluded distinct part hospital units, and dividing that number by the number of days in the cost reporting period.

* * * * *

11. In § 412.106, paragraph (b)(3) is revised to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

* * * * *

(b) * * *

(3) *First computation: Cost reporting period.* If a hospital prefers that HCFA use its cost reporting period instead of the Federal fiscal year, it must furnish to HCFA, through its intermediary, a written request including the hospital's name, provider number, and cost reporting period end date. This exception will be performed once per hospital per cost reporting period, and the resulting percentage becomes the hospital's official Medicare Part A/SSI percentage for that period.

* * * * *

12. Section 412.109 is amended as follows:

a. Paragraph (a) is revised.

b. Paragraphs (b) through (e) are redesignated as paragraphs (c) through (f).

c. A new paragraph (b) is added.

d. Redesignated paragraphs (c)(1), (c)(2)(ii), (d) introductory text, and (d)(1) are revised.

e. The paragraph heading of redesignated paragraph (e) and redesignated paragraph (e)(1) are revised.

The revisions and addition read as follows:

§ 412.109 Special treatment: Essential access community hospitals (EACHs).

(a) *General rule.* For payment purposes, HCFA treats as a sole community hospital any hospital that is located in a rural area as described in paragraph (b) of this section and that HCFA designates as an EACH under the criteria in paragraph (c) of this section. The payment methodology for sole community hospitals is set forth at § 412.92(d).

(b) *Location in a rural area.* For purposes of this section, a hospital is located in a rural area if it—

(1) Is located outside any area that is a Metropolitan Statistical Area as defined by the Office of Management and Budget or that has been recognized as urban under § 412.62;

(2) Is not deemed to be located in an urban area under § 412.63;

(3) Is not classified as an urban hospital for purposes of the standardized payment amount by HCFA or the Medicare Geographic Classification Review Board; or

(4) Is not located in a rural county that has been redesignated to an adjacent urban area under § 412.232.

(c) *Criteria for HCFA designation.* (1) HCFA designates a hospital as an EACH if the hospital is located in a State that has received a grant under section 1820(a)(1) of the Act or in an adjacent State and is designated as an EACH by the State that has received the grant.

* * * * *

(2) * * *

(ii) Is not eligible for State designation solely because the hospital is located in a rural area, has fewer than 75 beds and is located 35 miles or less from any other hospital; and

* * * * *

(d) *Criteria for State designation.* A State that has received a grant under section 1820(a)(1) of the Act may designate as an EACH any hospital in the State or in an adjoining State that meets the criteria of this paragraph (d).

(1) *Geographic location.* The hospital meets one of the following requirements:

(i) If it is located in a rural area as described in paragraph (b) of this section, the hospital is located more than 35 miles from any hospital that either has been designated as an EACH, or has been classified as a rural referral center under § 412.96.

(ii) The hospital meets other criteria relating to geographic location, imposed by the State with HCFA's approval.

* * * * *

(e) *Adjustment to the hospital-specific rate for rural EACH's experiencing increased costs*—(1) *General rule.* HCFA increases the applicable hospital-specific rate of an EACH that it treats as a sole community hospital if, during a cost reporting period, the hospital experiences an increase in its Medicare inpatient operating costs per discharge that is directly attributable to activities related to its membership in a rural health network.

* * * * *

Subpart H—Payments to Hospitals Under the Prospective Payment Systems

§ 412.130 [Amended]

13. In paragraph (a)(3) of § 412.130, remove the reference "§ 412.30(b)" wherever it appears and add, in its place, the reference "§ 412.30(c)".

Subpart L—The Medicare Geographic Classification Review Board

14. In § 412.230, paragraph (a)(1) is revised and a new paragraph (a)(5) is added to read as follows:

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.

(a) *General*—(1) *Purpose.* Except as provided in paragraph (a)(5) of this section, an individual hospital may be redesignated from a rural area to an urban area, from a rural area to another rural area, or from an urban area to another urban area for the purposes of using the other area's standardized amount for inpatient operating costs, wage index value, or both.

* * * * *

(5) *Limitations on redesignation.* The following limitations apply to redesignation:

(i) An individual hospital may not be redesignated to another area for purposes of the wage index if the pre-reclassified average hourly wage for that area is lower than the pre-reclassified average hourly wage for the area in which the hospital is located.

(ii) A hospital may not be redesignated for purposes of the standardized amount if the area to which the hospital seeks redesignation does not have a higher standardized amount than the standardized amount the hospital currently receives.

(iii) A hospital may not be redesignated to more than one area.

* * * * *

15. In § 412.232, a new paragraph (a)(4) is added to read as follows:

§ 412.232 Criteria for all hospitals in a rural county seeking urban redesignation.

(a) * * *

(4) The hospitals may be redesignated only if one of the following conditions is met:

(i) The pre-reclassified average hourly wage for the area to which they seek redesignation is higher than the pre-reclassified average hourly wage for the area in which they are currently located.

(ii) The standardized amount for the area to which they seek redesignation is higher than the standardized amount for the area in which they are located.

* * * * *

16. In § 412.234, a new paragraph (a)(4) is added to read as follows:

§ 412.234 Criteria for all hospitals in an urban county seeking redesignation to another urban area.

(a) * * *

(4) The hospitals may be redesignated only if one of the following conditions is met.

(i) The pre-reclassified average hourly wage for the area to which they seek redesignation is higher than the pre-reclassified average hourly wage for the area in which they are currently located.

(ii) The standardized amount for the area to which they seek redesignation is higher than the standardized amount for the area in which they are currently located.

* * * * *

17. Section 412.266 is revised to read as follows:

§ 412.266 Availability of wage data.

A hospital may obtain the average hourly wage data necessary to prepare its application to the MGCRB from **Federal Register** documents published in accordance with the provisions of § 412.8(b).

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

18. In § 412.308, a new paragraph (b)(3) is added and paragraph (c)(1)(ii) is revised to read as follows:

§ 412.308 Determining and updating the Federal rate.

* * * * *

(b) * * *

(3) Effective FY 1996, the standard Federal rate used to determine the Federal rate each year under paragraph (c) of this section is reduced by 0.28 percent to account for the effect of the revised policy for payment of transfers under § 412.4(d).

(c) * * *

(1) * * *

(ii) *Effective FY 1996.* Effective FY 1996, the standard Federal rate is updated based on an analytical framework. The framework includes a capital input price index, which measures the annual change in the prices associated with capital-related costs during the year. HCFA adjusts the capital input price index rate of change to take into account forecast errors, changes in the case mix index, the effect of changes to DRG classification and relative weights, and allowable changes in the intensity of hospital services.

* * * * *

19. In § 412.328, a new paragraph (e)(4) is added to read as follows:

§ 412.328 Determining and updating the hospital-specific rate.

* * * * *

(e) * * *

(4) Effective FY 1996, the intermediary reduces the updated amount determined in paragraph (d) of this section by 0.28 percent to account for the effect of the revised policy for payment of transfers under § 412.4(d).

* * * * *

B. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart C—Limits on Cost Reimbursement

2. Section 413.30 is amended as follows:

a. Paragraph (e) is revised.

b. In paragraph (f) introductory text, the first sentence is revised.

c. Paragraphs (f)(5), (f)(6), (f)(7), and (f)(9) are removed and paragraph (f)(8) is redesignated as paragraph (f)(5).

The revisions read as follows:

§ 413.30 Limitations on reimbursable costs.

* * * * *

(e) *Exemptions.* Exemptions from the limits imposed under this section may be granted to a new provider. A new provider is a provider of inpatient services that has operated as the type of provider (or the equivalent) for which it is certified for Medicare, under present and previous ownership, for less than three full years. An exemption granted under this paragraph expires at the end of the provider's first cost reporting period beginning at least two years after the provider accepts its first patient.

(f) *Exceptions.* Limits established under this section may be adjusted upward for a provider under the circumstances specified in paragraphs (f)(1) through (f)(5) of this section. * * *

* * * * *

§ 413.35 [Amended]

3. In paragraph (b)(2) of § 413.35, remove the reference "§ 413.30(e)(2)" wherever it appears in the paragraph and add, in its place, the reference "§ 413.30(e)".

4. Section 413.40 is amended as follows:

a. In § 413.40(c)(2), remove the phrase "during the 3 days" wherever it appears in the paragraph and add, in its place, the phrase "on the calendar day".

b. Paragraph (e)(1) is revised.

c. A new sentence is added at the end of paragraph (g)(1).

The revision and addition read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(e) *Hospital requests regarding adjustments to the payment allowed under the rate-of-increase ceiling*—(1) *Timing of application.* A hospital may request an adjustment to the rate-of-increase ceiling imposed under this section. The hospital's request must be received by the hospital's fiscal intermediary no later than 180 days after the date on the intermediary's initial notice of amount of program reimbursement (NPR) for the cost reporting period for which the hospital requests an adjustment.

* * * * *

(g) * * *

(1) * * * The amount of payment made to a hospital after an adjustment under paragraph (e) of this section may not exceed the difference between the hospital's operating costs and the payment previously allowed.

* * * * *

Subpart E—Payments to Providers

5. In § 413.70, the first sentence of paragraph (b)(2)(i) is revised to read as follows:

§ 413.70 Payment for services of an RPCH.

* * * * *

(b) * * *

(2) * * * (i) *RPCH services.* Payment under this method for outpatient RPCH services is equal to the amounts described in section 1833(a)(2)(B) of the Act (which describes amounts paid for hospital outpatient services) and subject to the applicable principles of cost reimbursement in this part and in part 405, subpart D of this chapter, except for the principle of the lesser of costs or charges in § 413.13. * * *

* * * * *

C. Part 424 is amended as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870(e) and (f), 1871, 1872 and 1883(d) of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg(e) and (f), 1395hh, 1395ii and 1395tt(d)).

Subpart B—Physician Certification Requirements

2. In § 424.15, paragraph (a) is revised to read as follows:

§ 424.15 Requirements for inpatient RPCH services.

(a) *Content of certification.* Medicare Part A pays for inpatient RPCH services only if a physician certifies that the individual may reasonably be expected to be discharged or transferred to a hospital within 72 hours after admission to the RPCH.

* * * * *

D. Part 485 is amended as follows:

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart F—Conditions of Participation: Rural Primary Care Hospitals (RPCHs)

§ 485.603 [Amended]

2. In paragraph (a)(2)(i) of § 485.603, remove the reference "§ 412.109(c)" wherever it appears in the paragraph and add, in its place, the reference "§ 412.109(d)".

3. In § 485.606, paragraphs (a)(1), (b)(1), (b)(3), the paragraph heading of paragraph (c), (c)(1) introductory text, (c)(1)(i), (c)(2) introductory text, and (c)(2)(ii) are revised to read as follows:

§ 485.606 Designation of RPCHs.

(a) *Criteria for State designation*—(1) A State that has received a grant under section 1820(a)(1) of the Act may designate as an RPCH any hospital that—

(i) Is located in the State that has received the grant, or is located in an adjoining State and is a member of a rural health network that also includes one or more facilities located in the State that has received the grant;

(ii) Meets the RPCH conditions of participation in this subpart F; and

(iii) Applies to the State that has received the grant for designation as an RPCH.

* * * * *

(b) *Criteria for HCFA designation*—(1) HCFA designates a hospital as an RPCH if the hospital is designated as an RPCH by the State in which it is located or by an adjoining State that has received a grant.

* * * * *

(3) HCFA may also designate not more than 15 hospitals as RPCHs if the hospitals are not located in States that have received grants under section 1820(a)(1) of the Act and meet the requirements of paragraph (c)(1) of this section.

(c) *Special rule: Hospitals not designated by a State as RPCHs*—(1) HCFA may designate not more than 15 hospitals as RPCHs under this paragraph (c)(1). These hospitals must be located in a State that has not received a grant under section 1820(a)(1) of the Act, must not have been designated as RPCHs by a State that has received a grant under paragraph (a)(1) of this section, and must meet the requirements with regard to location, participation in the Medicare program, and emergency services as defined in §§ 485.610, 485.612, and 485.618, respectively. In designating a hospital as an RPCH under this paragraph (c)(1), HCFA—

(i) Gives preference to a hospital that has entered into an agreement with a rural health network as defined in § 485.603 that is located in a State that has received a grant under section 1820(a)(1) of the Act; and

* * * * *

(2) HCFA may designate a hospital as an RPCH if the hospital is located in a State that has received a grant under section 1820(a)(1) of the Act and is not eligible for State designation under paragraph (a) of this section solely because the hospital—

* * * * *

(ii) Has more than six inpatient beds or does not maintain an average length of stay for inpatients not greater than 72 hours for each 12-month cost reporting period, excluding periods of stays that exceeded 72 hours because transfer was precluded because of inclement weather or other emergency conditions, as described in § 485.620; or

* * * * *

4. Section 485.614 is revised to read as follows:

§ 485.614 Condition of participation: Termination of inpatient care services.

(a) *General rule.* The hospital has ceased providing inpatient hospital care or has agreed to cease providing inpatient hospital care upon approval of its application for designation as an RPCH except to the extent permitted under paragraph (b) of this section.

(b) *Limitations on inpatient care*—(1) If the RPCH does not have a swing-bed agreement under § 485.645, it provides not more than six inpatient beds for providing inpatient RPCH care to patients, but only if—

(i) The patient requires stabilization before discharge or transfer to a hospital;

(ii) The patient's attending physician certifies that the patient may reasonably be expected to be discharged or transferred to a hospital within 72 hours of admission to the facility; and

(iii) The RPCH complies with the limitation on inpatient surgery set forth in paragraph (b)(3) of this section.

(2) If the RPCH has a swing-bed agreement under § 485.645, it provides inpatient RPCH care as described under paragraph (b)(1) of this section and, under the swing-bed agreement, provides posthospital SNF care.

(3) The RPCH does not provide any inpatient hospital services consisting of surgery or any other service requiring the use of general anesthesia (other than surgical procedures specified by HCFA under § 416.65 of this chapter), unless the attending physician certifies that the risk associated with transferring the patient to a hospital for such services outweighs the benefits of transferring the patient to a hospital for such services.

(c) *Exception for RPCHs designated by HCFA.* If an RPCH is designated by HCFA under the specific criteria in § 485.606(c), the RPCH is not subject to the requirements in this section.

5. In § 485.620, paragraph (b) is revised to read as follows:

§ 485.620 Condition of participation: Number of beds and length of stay.

* * * * *

(b) *Standard: Length of stay.* The RPCH maintains an average length of stay for inpatients that is not greater than 72 hours for each 12-month cost reporting period. In determining the average length of stay, periods of stay of inpatients in excess of 72 hours are not taken into account to the extent such periods exceed 72 hours because transfer to a hospital is precluded because of inclement weather or other emergency conditions.

6. A new § 485.639 is added to read as follows:

§ 485.639 Condition of participation: Surgical services.

Surgical procedures must be performed in a safe manner by qualified practitioners who have been granted clinical privileges by the governing body of the RPCH in accordance with the designation requirements under paragraph (a) of this section.

(a) *Designation of qualified practitioners.* The RPCH designates the practitioners who are allowed to perform surgery for RPCH patients, in accordance with its approved policies and procedures, and with State scope of practice laws. Surgery is performed only by—

(1) A doctor of medicine or osteopathy, including an osteopathic practitioner recognized under section 1101(a)(7) of the Act;

(2) A doctor of dental surgery or dental medicine; or

(3) A doctor of podiatric medicine.

(b) *Anesthetic risk and evaluation.* A qualified practitioner, as described in paragraph (a) of this section, must examine the patient immediately before surgery to evaluate the risk of anesthesia and of the procedure to be performed. Before discharge from the RPCH, each patient must be evaluated for proper anesthesia recovery by a qualified practitioner as described in paragraph (a) of this section.

(c) *Administration of anesthesia.* The RPCH designates the person who is allowed to administer anesthesia to RPCH patients in accordance with its approved policies and procedures and with State scope of practice laws.

(1) Anesthetics must be administered only by—

(i) A qualified anesthesiologist;

(ii) A doctor of medicine or osteopathy other than an anesthesiologist, including an osteopathic practitioner recognized under section 1101(a)(7) of the Act;

(iii) A doctor of dental surgery or dental medicine;

(iv) A doctor of podiatric medicine;

(v) A certified registered nurse anesthetist, as defined in § 410.69(b) of this chapter;

(vi) An anesthesiologist's assistant, as defined in § 410.69(b) of this chapter; or

(vii) A supervised trainee in an approved educational program, as described in §§ 413.85 or 413.86 of this chapter.

(2) In those cases in which a certified registered nurse anesthetist administers the anesthesia, the anesthetist must be under the supervision of the operating practitioner. An anesthesiologist's assistant who administers anesthesia must be under the supervision of an anesthesiologist.

(d) *Discharge.* All patients are discharged in the company of a responsible adult, except those exempted by the practitioner who performed the surgical procedure.

7. In § 485.645, the introductory text and paragraph (a) are revised, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

§ 485.645 Special requirements for RPCH providers of long-term care services.

An RPCH that has a Medicare provider agreement to participate in Medicare as an RPCH must meet the following requirements in order to be granted an approval from HCFA to provide post-hospital SNF care, as specified in § 409.30 of this chapter, and to be paid for SNF-level services, in accordance with paragraph (b) of this section.

(a) *Eligibility.* An RPCH must meet the following eligibility requirements:

(1) Effective October 31, 1994, if an RPCH meets all other requirements of this section, and applies for approval as a provider of post-hospital SNF care, the RPCH uses no more beds for providing post-hospital SNF care than the total number of licensed hospital inpatient beds at the time it applied to the State for RPCH designation, minus the number of beds, not to exceed six, used for providing inpatient RPCH care in accordance with § 485.620(a).

(2) (i) Notwithstanding paragraph (a)(1) of this section, a hospital that applied for RPCH status before October 31, 1994, and was designated by the State (or HCFA), and that applied for swing-bed approval before October 31, 1994, and received approval from HCFA, may continue in that status under the same terms, conditions, and limitations that were applicable at the time those approvals were granted.

(ii) An RPCH that was granted swing-bed approval under paragraph (a)(2)(i) of this section may request that its application to be an RPCH and a swing-bed provider be re-evaluated under paragraph (a)(1) of this section. If this request is approved, the approval is effective not earlier than October 1994. As of the date of approval, the RPCH no longer has any status under paragraph (a)(2)(i) of this section, and may not request re-instatement under paragraph (a)(2)(i) of this section.

(3) Beds used for post-hospital SNF care in a separately participating "distinct part" unit may not be included in any determination under this section.

(b) *Payment.* Payment for inpatient RPCH services to an RPCH that has qualified as an RPCH under the provisions in paragraph (a) of this section is made in accordance with § 413.70(a) of this chapter. Payment for post-hospital SNF-level of care services is made in accordance with the payment provisions in § 413.114 of this chapter.

* * * * *

E. Part 489 is amended as follows:

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, and 1395hh).

Subpart E—Termination of Agreement and Reinstatement After Termination

2. In § 489.53, a new paragraph (a)(14) is added to read as follows:

§ 489.53 Termination by HCFA.

(a) * * *

(14) In the case of a rural primary care hospital as defined in part 485, subpart F of this chapter, the rural primary care hospital maintains an average length of stay for inpatients in its most recent 12-month cost reporting period that is in excess of 72 hours. In determining the length of stay of a rural primary care hospital for purposes of this paragraph, HCFA does not take into account periods of stay in excess of 72 hours that occurred because transfer to a hospital

was precluded because of inclement weather or other emergency conditions.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 23, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 23, 1995.

Donna E. Shalala,

Secretary.

[**Editorial Note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Schedule of Standardized Amounts Effective with Discharges On or After October 1, 1995 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1995

I. Summary and Background

In this addendum, we are setting forth the amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth new rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1995, except for sole community hospitals and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. For hospitals in Puerto Rico, the payment per discharge is based on the sum of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act).

As discussed below in section II, we are making changes to the prospective payment rates for Medicare inpatient operating costs. The changes, to be applied prospectively, will affect the calculation of the Federal rates. In section III, we discuss changes we are making in determining the prospective payment rates for Medicare inpatient capital-related costs. Section IV sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the final rule are presented at the end of this addendum in section V.

II. Changes to Prospective Payment Rates For Inpatient Operating Costs for FY 1996

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the manner in which we are changing some of the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes are effective for discharges occurring on or after October 1, 1995. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 1996.

In summary, the standardized amounts set forth in Tables 1a, 1b, and 1c of section V of this addendum reflect—

- Updates of 1.5 percent for all areas (that is, the market basket percentage increase of 3.5 percent minus 2.0 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1995 budget neutrality factor and applying a revised factor;
- An adjustment to apply the revised outlier offset by removing the FY 1995 outlier offsets and applying a new offset; and
- An adjustment to apply a budget neutrality factor for the change in the payment methodology for transfer cases.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since the standardized amounts have already been adjusted for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, no additional adjustments for these factors for FY 1996 were made. That is, the standardization adjustments reflected in the FY 1996 standardized amounts are the same as those reflected in the FY 1995 standardized amounts.

Sections 1886(d)(2)(H) and (d)(3)(E) of the Act require that, in making payments under the prospective payment system, the Secretary adjust the proportion (as estimated by the Secretary from time to time) of costs that are wages and wage-related costs. Beginning October 1, 1990, when the market basket was rebased, we have considered 71.40 percent of costs to be labor-related for purposes of the prospective payment system.

2. Computing Large Urban and Other Averages Within Geographic Areas

Section 1886(d)(3) of the Act requires the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for

hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in large urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban areas" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D). Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1994 population estimates published by the Bureau of the Census, 57 areas meet the criteria to be defined as large urban areas for FY 1996. These areas are identified by an asterisk in Table 4a.

Table 1a contains the two national standardized amounts that are applicable to most hospitals. Table 1b sets forth the 18 regional standardized amounts that will continue to be applicable for hospitals located in census areas subject to the regional floor. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is set forth in Table 1c. Table 1c also includes the standardized amounts that will be applicable to most hospitals in Puerto Rico.

We note that on June 30, 1995, the Office of Management and Budget announced the designation of the Flagstaff, Arizona-Utah MSA and the Grand Junction, Colorado MSA.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban and the other areas average standardized amounts for FY 1996 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XI) of the Act specifies that, for hospitals in all areas, the update factor for the standardized amounts for FY 1996 is the market basket percentage increase minus 2.0 percentage points.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the hospital market basket increase for FY 1996 is 3.5 percent. For FY 1996, this yields an update to the average standardized amounts of 1.5 percent (3.5 percent minus 2.0 percent).

As in the past, we are adjusting the FY 1995 standardized amounts to remove the effects of the FY 1995 geographic reclassifications and outlier payments before applying the FY 1996 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. After including the FY 1996 offsets to the standardized amounts for outliers and geographic reclassification, we estimate that there will be an actual increase of 1.2 percent to the large urban and other area standardized amounts.

Beginning in FY 1995, we revised the national average standardized amounts based on national average labor/nonlabor shares. In FY 1996, we will continue to adjust the labor and nonlabor proportions of the standardized amount to reflect the national average. As a result, the national average labor share (as reflected in the hospital market basket) will equal 71.4 percent of the standardized payment amounts. (We are revising the Puerto Rico standardized amounts by the average labor share in Puerto Rico of 82.8 percent.)

Although the update factor for FY 1996 is set by law, we were required by section 1886(e)(3)(B) of the Act to report to Congress on our initial recommendation of update factors for FY 1996 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we published the report to Congress as Appendix C to the proposed rule, as revised in the correction notice published on August 2, 1995 (60 FR 39305). That recommendation was based on an earlier forecast of the market basket increase. Our final recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) is set forth as Appendix C to this final rule.

Comment: One commenter urged that an add-on adjustment of not less than 7 percent be made to the Puerto Rico standardized amounts to account for the penalty resulting from the use of temporary cost allocation methods by government hospitals in Puerto Rico with a noncharge structure.

Response: At this time, we do not believe it is appropriate to adjust the standardized amounts of Puerto Rico for those government hospitals with a noncharge structure. However, as noted in section III.B.4, we will continue to study the issue of payments to Puerto Rico.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.

Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act specifies that the hospital wage index must be updated on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we compared aggregate payments using the FY 1995 relative weights and the wage index effective October 1, 1994, to aggregate payments using the FY 1996 relative weights and wage index. The same methodology was used for the FYs

1993, 1994, and 1995 budget neutrality adjustment. Based on this comparison, we computed a proposed budget neutrality adjustment factor equal to 0.999174. Based on the final FY 1996 relative weights and wage index, the final budget neutrality adjustment factor is equal to 0.999306. This budget neutrality adjustment factor is applied to the standardized amounts without removing the effects of the FY 1995 budget neutrality adjustment. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we will apply the same FY 1996 adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1995, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the FY 1996 DRG weights and updated wage index. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

Section 1886(d)(5)(I) of the Act, as amended by section 109 of the Social Security Act Amendments of 1994 (Public Law 103–432), authorizes the Secretary to make adjustments to the prospective payment system standardized amounts so that adjustments to the payment policy for transfer cases do not affect aggregate payments. As discussed in section IV.A of the preamble of this final rule, we are revising our payment methodology for transfer cases, so that we will pay double the per diem amount for the first day of a transfer case, and the per diem amount for each day after the first, up to the full DRG amount. For the data that we analyzed, this would result in additional payments for transfer cases of $159 million. To implement this change in a budget neutral manner, we adjusted the standardized amounts by applying a budget neutrality adjustment of 0.997583 in the proposed rule. The final budget neutrality adjustment factor for this transfer change is equal to 0.997575. This adjustment will be applied on a one-time basis to the FY 1996 standardized amounts. After FY 1996, there will be no need for a further budget neutrality adjustment unless or until we make further changes to the transfer payment methodology.

b. Reclassified Hospitals—Budget Neutrality Adjustment.

Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10), a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that estimated aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8) (B) and (C) and 1886(d)(10) of the Act are equal to the estimated aggregate prospective payments that would have been made absent these provisions. In the proposed rule, we applied an adjustment of 0.994125 to ensure that the effects of reclassification are budget neutral. The final budget neutrality adjustment factor is 0.994011.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 1995 budget neutrality adjustment factor. We note that the proposed FY 1996 adjustment reflected wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of March 14, 1995. The final budget neutrality adjustment factor reflects the effects of all reclassification decisions and changes in these decisions resulting from appeals and reviews of the MGCRB decisions for FY 1996 or from requests for withdrawal of a reclassification.

c. Outliers.

Section 1886(d)(5)(A) of the Act provides that, in addition to the basic prospective payment rates, for discharges occurring before October 1, 1997, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other areas national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Section 1886(d)(9)(B)(iv) of the Act requires that the large urban and other standardized amounts applicable to hospitals in Puerto Rico be reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, estimated outlier payments in any year may not be less than 5 percent nor more than 6 percent of total payments projected or estimated to be made based on DRG prospective payment rates.

Beginning with FY 1995, section 1886(d)(5)(A) of the Act requires the Secretary to reduce the proportion of total outlier payments paid under the day outlier methodology. Under the requirements of section 1886(d)(5)(A)(v) of the Act, the proportion of outlier payments made under the day outlier methodology, relative to the proportion of outlier payments made under the day outlier methodology in FY 1994 (which we estimated at 31.3 percent in our September 1, 1993 final rule (58 FR 46348)), will be 75 percent in FY 1995, 50 percent in FY 1996, and 25 percent in FY 1997. For discharges occurring after September 30, 1997, the Secretary will no longer pay for day outliers under the provisions of section 1886(d)(5)(A)(i) of the Act.

i. FY 1996 Outlier Thresholds.

For FY 1995, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 22 days or 3.0 standard deviations. The marginal cost factor for day outliers (or the percent of Medicare's average per diem payment paid for each outlier day) is equal to 47 percent in FY 1995. The fixed loss cost outlier threshold is equal to the prospective payment for the DRG plus $20,500 ($18,800 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (or the percent of costs paid after costs for the case exceed the threshold) is 80 percent. We applied an outlier adjustment to the FY 1995 standardized amounts of 0.948940 for the large urban and other areas rates and 0.9414 for the capital Federal rate.

For FY 1996, we proposed to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 23 days or 3.0 standard deviations. We also proposed to reduce the marginal cost factor for each outlier day from 47 percent to 45 percent in FY 1996. The thresholds that we are establishing in this final rule continue to be the geometric mean length of stay for each DRG plus the lesser of 23 days or 3.0 standard deviations. However, based on updated simulations, we are establishing in this final rule a marginal cost factor of 44 percent for each outlier day in FY 1996. We estimate that these policies will reduce the proportion of outlier payments paid to day outliers to approximately 16 percent in accordance with section 1886(d)(5)(A) of the Act.

We proposed a fixed loss cost outlier threshold in FY 1996 equal to the prospective payment rate for the DRG plus $16,700 ($15,200 for hospitals that have not yet entered the prospective

payment system for capital-related costs). In addition, we proposed to maintain the marginal cost factor for cost outliers at 80 percent. In this final rule, based on updated simulations, we are establishing a fixed loss cost outlier threshold in FY 1996 equal to the prospective payment rate for the DRG plus $15,150 ($13,800 for hospitals that have not yet entered the prospective payment system for capital-related costs). We are also establishing a marginal cost factor for cost outliers of 80 percent for FY 1996, as proposed.

As provided in section 1886(d)(5)(A)(iv) of the Act, we calculated outlier thresholds so that estimated outlier payments equal 5.1 percent of estimated total payments based on DRGs. The model that we use to determine the outlier thresholds necessary to meet the estimated outlier payment percentage for FY 1996 uses the June 1995 update of the FY 1994 MedPAR file and the July 1995 update of the provider-specific file used in the PRICER program, which contains information on hospital-specific payment parameters (such as the cost-to-charge ratios).

In simulating payments, we convert billed charges to costs for purposes of estimating cost outlier payments. As we explained in the September 1, 1993 final rule (58 FR 46347), prior to FY 1994, we used a charge inflation factor to adjust charges to costs; beginning with FY 1994, we are using a cost inflation factor to estimate costs. In other words, instead of inflating the FY 1994 charge data by a charge inflation factor for 2 years in order to estimate FY 1996 charge data and then applying the cost-to-charge ratio, we adjust the charges by the cost-to-charge ratio and then inflate the estimated costs for 2 years of cost inflation. In this manner, we automatically adjust for any changes in the cost-to-charge ratios that may occur, since the relevant variable is the costs estimated for a given case.

In setting the proposed FY 1996 outlier thresholds, we used a cost inflation factor of 1.02009. In setting the final FY 1996 outlier thresholds, we used a cost inflation factor of 1.00871. The difference is attributable to the use of the cost per case increase in cost reporting periods beginning in FY 1993 (referred to as PPS–X data) in setting the final FY 1996 outlier thresholds instead of the average increase in cost per case for cost reporting periods beginning in FY 1991 (PPS–VIII) through PPS–X. This modification was introduced after a review of the cost per case increase for 2700 hospitals in cost reporting periods beginning in FY 1994 (PPS–XI). The cost per case increase from PPS–X to PPS–XI was much closer to the increase from PPS–IX to PPS–X than the average increase between PPS–VIII through PPS–X. We believe it is more appropriate to use the increase from PPS–IX to PPS–X as our cost inflation factor in setting the final FY 1996 outlier thresholds. In the future, we still plan to use 2-year averages in computing the cost inflation factors, unless preliminary data from more recent years indicate that the 2-year average may be inaccurate.

When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a lower percentage of outlier payments for capital-related costs than for operating costs. We estimate the final thresholds for FY 1996 will result in outlier payments equal to 5.1 percent of operating DRG payments and 4.6 percent of capital payments based on the Federal rate.

As stated in the September 1, 1993 final rule (58 FR 46348), we have established outlier thresholds that will be applicable to both inpatient operating costs and inpatient capital-related costs. As explained earlier, we are applying a reduction of approximately 5.1 percent to the FY 1996 standardized amounts to account for the estimated proportion of outliers payments. The proposed outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1996 were as follows:

Operating standardized amounts	Capital Federal rate
0.949054	0.9526

The final outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1996 are as follows:

Operating standardized amounts	Capital Federal rate
0.948950	0.9536

As in the proposed rule, we apply the final outlier adjustment factors after removing the effects of the FY 1995 outlier adjustment factors on the standardized amounts and the capital Federal rate.

ii. Other Changes Concerning Outliers.

Table 5 of section V of this addendum contains the DRG relative weights, geometric and arithmetic mean lengths of stay, as well as the day outlier threshold for each DRG. When we recalibrate DRG weights, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight and geometric mean length of stay. DRGs that do not have at least 10 cases are considered to be low volume DRGs. For the low volume DRGs, we use the original geometric mean lengths of stay, because no arithmetic mean length of stay was calculated based on the original data.

Table 8a in section V of this addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. Effective October 1, 1995, these Statewide average ratios will replace the ratios published in the September 1, 1994 final rule (59 FR 45480). Table 8b contains comparable Statewide average capital cost-to-charge ratios. These average ratios will be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.25218 or greater than 1.32569 and capital cost-to-charge ratios lower than 0.012998 or greater than 0.21483. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. The cost-to-charge ratios in Tables 8a and 8b will be applied to all hospital-specific cost-to-charge ratios based on cost report settlements occurring during FY 1996.

iii. FY 1994 and FY 1995 Outlier Payments.

In the proposed rule, we estimated that actual FY 1994 outlier payments were approximately 3.5 percent of total DRG payments (60 FR 29260). Our estimates of actual outlier payments and actual total DRG payments were computed by simulating payments using actual FY 1994 bill data available at the time of the proposed rule. Our current estimate remains the same; that is, we estimate that actual FY 1994 outlier payments were approximately 3.5 percent of actual total DRG payments. These estimates are based on simulations using the July 1995 update of the provider-specific file and the June 1995 update of the MedPAR file.

In setting outlier policies for FY 1994, we began using a cost inflation factor rather than a charge inflation factor to update billed charges for purposes of estimating outlier payments. This refinement was made in order to improve our estimation methodology. We believe that actual FY 1994 outlier payments as a percentage of actual total

DRG payments may be lower than estimated because actual hospital costs may be lower than reflected in the estimation methodology. Our most recent data on hospital costs show a significant trend in declining rates of increase. Thus, the cost inflation factor of 8.3 percent used to estimate FY 1994 outlier payments (based on the best available data) appears to have been overstated. For FY 1995, we used a cost inflation factor of 2.5 percent. Based on more recent data, we are using a cost inflation factor of 0.871 percent to calculate outlier payments for FY 1996. Also, although we estimate that FY 1994 outlier payments will approximate 3.5 percent of total DRG payments, we note that the estimate of the market basket rate of increase used to set the FY 1994 rates was 4.3 percentage points, while the latest FY 1994 market basket rate of increase forecast is 2.5 percent. Thus, the net effect is that total FY 1994 payments are higher than they would have been if the market basket rate of increase and the outlier percentage were estimated with precise accuracy.

In the proposed rule (60 FR 29260), we estimated that actual FY 1995 outlier payments would be approximately 4.2 percent of actual FY 1995 total DRG payments. We currently estimate that FY 1995 outlier payments will approximate 4.0 percent of total DRG payment. This current estimate is based on simulations using the July 1995 update of the provider-specific file and the June 1995 update of the FY 1994 MedPAR file.

We believe that there are two main reasons why our current estimate of FY 1995 outlier payments is below 5.1 percent. First, in setting the outlier thresholds for FY 1995, we used 2.5 percent as our cost inflation factor to inflate FY 1993 bills to FY 1995 levels. Our current estimate of cost inflation is 0.871 percent. Thus, the rate of increase in costs continues to slow. We note that this factor is reflected in the estimation methodology used to set thresholds. Thus, the final FY 1996 cost outlier threshold is lower than the proposed cost outlier threshold.

Second, in setting the outlier thresholds for FY 1995, we used cost-to-charge ratios that had a mean value of 0.618. Our current estimate of cost-to-charge ratios for FY 1995 is down to 0.600. Thus, not only are costs not rising as fast as we estimated, but they also make up a lower percentage of charges than we estimated in setting FY 1995 thresholds. We are continuing to explore better ways to forecast the changes in cost inflation.

Comment: We received a number of comments expressing concern that the projected percentages of outlier payments for FYs 1994 and 1995 are lower than estimated when we set the thresholds. Some of the commenters requested that any difference between outlier payments and the amount set aside be used to offset the amount required in the next year. Other commenters requested that we monitor outlier payments during a fiscal year, so that we can change the thresholds in the middle of the year in the event that projected outlier payments are not between 5 and 6 percent of total DRG payments.

Response: We responded to similar comments in the final rules for FY 1993 (57 FR 39784), FY 1994 (58 FR 46347), and FY 1995 (59 FR 45404). In accordance with section 1886(d)(5)(A)(iv) of the Act, we set the FY 1994 and FY 1995 outlier thresholds so that the estimated proportion of outlier payments relative to total DRG payments is 5.1 percent. We used the most recent Medicare discharge and hospital-specific data available to estimate payments. This is necessarily a prospective process and the resulting estimate may prove to be inaccurate.

We believe that it would be inappropriate to revise in midyear any of the payment policies based on estimates. These policies include not only the outlier thresholds, but also factors such as the market basket rate of increase used to establish the update factors, the recalibration of the DRG weights, and the various required budget neutrality provisions. We also believe it would be inappropriate to reduce the standardized amounts to account for outlier cases in a fiscal year by an amount that differs from the estimated proportion of outlier payments in that fiscal year. Section 1886(d)(3)(B) of the Act requires the Secretary to "reduce each of the standardized amounts * * * by the factor *equal to* the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments)." (Emphasis added.) Thus, if we estimate that outlier payments will be 5.1 percent of total DRG payments in an upcoming fiscal year, we must reduce the standardized amounts by an "equal" percentage, not by some lower or higher percentage.

We believe the more appropriate action is to continue to examine the outlier policy and try to refine the methodology for setting outlier thresholds. To that end, as we did in FY 1995, we have attempted to improve our outlier projections in FY 1996. Normally, we would use the average increase in cost per case between PPS–VIII and PPS–X as the cost inflation factor in setting the FY 1996 outlier thresholds. However, as noted above, after reviewing the preliminary data for 2700 hospitals from PPS–XI, we found the cost per case increase of PPS–XI data to be much closer to the PPS–X data than the PPS–VIII data, indicating a continued downward trend in the rate of increase in hospital costs. Thus, for FY 1996, we have decided to use solely the PPS–X cost per case increase of 0.871 percent.

B. Adjustments for Area Wage Levels and Cost of Living

The adjusted standardized amounts are divided into labor and nonlabor portions. Tables 1a, 1b, and 1c, as set forth in this addendum, contain the labor-related and nonlabor-related shares used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble to this final rule, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a through 4e of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 1996, we are adjusting the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.225
County of Hawaii	1.15
County of Kauai	1.20
County of Maui	1.225
County of Kalawao	1.225

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II of the preamble to this final rule, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have calculated relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs.

Table 5 of section V of this addendum contains the relative weights that we will use for discharges occurring in FY 1996. These factors have been recalibrated as explained in section II.C of the preamble to this final rule.

D. Calculation of Prospective Payment Rates for FY 1996

General Formula for Calculation of Prospective Payment Rates for FY 1996

Prospective payment rate for all hospitals located outside Puerto Rico except sole community hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the updated FY 1982 hospital-specific rate, or 100 percent of the updated FY 1987 hospital-specific rate.

Prospective payment rate for Puerto Rico = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the national large urban standardized amount and the national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 1995 and before October 1, 1996, except for sole community hospitals and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal rate. Section 1866(d)(1)(A)(iii) of the Act provides that the Federal rate is comprised of 100 percent of the Federal national rate except for those hospitals in census regions that have a regional rate that is higher than the national rate. The Federal rate for hospitals located in census regions that have a regional rate that is higher than the national rate equals 85 percent of the Federal national rate plus 15 percent of the Federal regional rate. Based on the final rates, for discharges occurring on or after October 1, 1995, hospitals in regions I, IV, and VI are affected by the regional floor.

The Federal rates are determined as follows:

Step 1—Select the appropriate national adjusted standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Tables 1a and 1b, section V of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a, 4b, and 4c, section V of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5, section V of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals)

Sections 1886(d)(5)(D)(i) and (b)(3)(C) of the Act provide that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 1996.

We are increasing the hospital-specific rates by 1.5 percent (the hospital market basket percentage increase minus 2.0 percentage points) for sole community hospitals located in all areas in FY 1996. Section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(ii) of the Act, which, for FY 1996, is the market basket rate of increase minus 2.0 percentage points.

b. Calculation of Hospital-Specific Rate.

For sole community hospitals, the applicable FY 1996 hospital-specific rate will be calculated by multiplying a hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (1.5 percent), which is the same as the update for all prospective payment hospitals. In addition, the hospital-specific rate will be adjusted by the budget neutrality adjustment factor (that is, 0.999306) as discussed in section II.A.4.a of this addendum. This resulting rate will be used in determining under which rate a sole community hospital is paid for its discharges beginning on or after October 1, 1995, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1995 and Before October 1, 1996

a. Puerto Rico Rate.

The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1c, section V of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section V of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 75 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

b. National Rate.

The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c, section V of the addendum) by the appropriate wage index.

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 25 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Changes to Payment Rates for Inpatient Capital-Related Costs for FY 1996

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of the hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the Federal rate and the hospital-specific rates for FY 1996. The rates will be effective for discharges occurring on or after October 1, 1995.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992 we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of total capital payments under the Federal rate. Section 412.308(c)(3) further requires that the Federal rate be reduced by an adjustment factor equal to the estimated additional payments made for exceptions under § 412.348, and § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FY 1992 through FY 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that estimated aggregate payments for inpatient hospital capital costs will equal 90 percent of the estimated payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. As discussed below, that provision has now expired.

The hospital-specific rate for each hospital was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. The hospital-specific rate is updated each year after FY 1992 for inflation and for changes in the exceptions payment adjustment factor. For FY 1992 through FY 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor.

To determine the appropriate budget neutrality adjustment factors and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described more fully in Appendix B.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid under a special payment formula. These hospitals are paid a blended rate that is comprised of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital. Hospitals in Puerto Rico are paid based on 75 percent of the Puerto Rico rate and 25 percent of the Federal rate.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

For FY 1995, the Federal rate was $376.83. In the proposed rule, we stated that the proposed FY 1996 Federal rate was $457.11. In this final rule, we are establishing an FY 1996 Federal rate of $461.96.

In the discussion that follows, we explain the factors that were used to determine the FY 1996 Federal rate. In particular, we explain why the FY 1996 Federal rate has increased 22.59 percent compared to the FY 1995 Federal rate. We also explain that aggregate payments for capital in FY 1996 are estimated to increase by 20.56 percent.

The major factor contributing to the increase in the FY 1996 rate in comparison to FY 1995 is the expiration of the budget neutrality requirement. Section 412.352 required that estimated payments each year from FY 1992 through FY 1995 for capital costs equal 90 percent of the amount that would have been payable that year on a reasonable cost basis. Accordingly, each year from FY 1992 through FY 1995, we applied an adjustment to the Federal rate and the hospital-specific rate so that estimated capital prospective payments would equal 90 percent of estimated Medicare hospital inpatient capital-related costs.

Based on the most recent data, we now estimate that capital payments equalled 95.77 percent of reasonable costs in FY 1992, 90.99 percent of reasonable costs in FY 1993, 90.43 percent of reasonable costs in FY 1994, and 90.58 percent of reasonable costs in FY 1995. Thus, the data indicate that the budget neutrality adjustment for FY 1992 was not sufficient to meet the 90-percent target and, consequently, the Federal rate for FY 1992 was higher than it should have been. For FY 1993, FY 1994 and FY 1995, however, our estimates are that payments exceeded the budget neutrality target by less than one percentage point. We do not retroactively adjust the budget neutrality factor and the Federal rate for previous years to account for revised estimates. For FY 1996, we estimate that payments will exceed costs by 3.97 percent as a result of the expiration of the budget neutrality provision.

As we explain in section III.A.8 below, the predominant factor in the 22.59 percent increase in the Federal rate, as well as the 20.56 percent increase in payments, is the expiration

of the budget neutrality provision. For FY 1995, the budget neutrality adjustment was 0.8432, a 15.68 percent reduction to the rates. The expiration of that provision alone accounts for an 18.6 percent increase (1.00/.8432 = 1.186, or 18.6 percent) in the rate. The FY 1996 update factor and changes in the outlier and exceptions factors also contribute to the increase in the rate. The factors contributing to the increase in the rate were partially offset by a special adjustment to the rate to account for the effects of the new transfer policy, and by the effect of the DRG/GAF reduction factor.

Total payments to hospitals under the prospective payment system are relatively insensitive even to changes of such magnitude in the capital Federal rate. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Therefore, the large increase in the FY 1996 Federal rate can be expected to increase total payments to hospitals under the prospective payment system by only about 2.06 percent.

1. Special Federal Rate Adjustment for the Effects of the New Transfer Payment Policy

Section 412.312(d) provides that payment under the capital prospective payment system for transfer cases is made under the same rules governing transfer payments under the operating prospective payment system. Transfer cases under the prospective payment system for capital-related costs have been paid on a per diem basis, using the full prospective payment amount for the DRG (both Federal rate and hospital-specific rate, if appropriate) divided by the geometric mean length of stay for the DRG, but not to exceed the full prospective payment. Section IV.A of the preamble describes the implementation of a graduated per diem payment methodology for transfer cases. Beginning in FY 1996, we will pay double the per diem amount for the first day and the per diem amount for subsequent days, up to the full prospective payment amount. Section 109 of the Social Security Amendments of 1994 (Public Law 103–432) authorizes the Secretary to make adjustments to the operating prospective payment system rates so that adjustments to the payment policy for transfer cases do not affect aggregate payments. Section II of the addendum describes the methodology for making the adjustment to the operating rates.

In order to maintain consistency with the prospective payment system for operating costs, we believe that a parallel adjustment to the Federal capital rate and the hospital-specific capital rates is warranted. In this way, revision of the payment policy for transfer cases will not affect aggregate payments under the prospective payment system for capital-related costs. We describe the methodology for making this adjustment in Appendix B of this final rule. Following that methodology, we have determined that a special adjustment of .9972 (−0.28 percent) to the standard Federal rate and the hospital-specific rates is required.

2. Standard Federal Rate Update

Section 412.308(c)(1)(ii) provides that, effective FY 1996, the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index and other factors. We discuss the analytical framework and the derivation of the final FY 1996 update factor under that framework in section V.A of the preamble to this final rule. The final update factor for FY 1996 is 1.2 percent.

3. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 50 percent for cost reporting periods beginning in FY 1996 for hospitals paid under the fully prospective methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that estimated outlier payments are 5.1 percent of estimated total DRG payments. The inpatient capital-related outlier reduction factor is then set according to the estimated inpatient capital-related outlier payments that would be made if all hospitals were paid according to 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model all hospitals as if paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

In the September 1, 1994 final rule, we estimated that outlier payments for capital in FY 1995 would equal 5.86 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9414 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d of the addendum, we estimate that outlier payments will equal 4.64 percent of inpatient capital-related payments based on the Federal rate in FY 1996. We are, therefore, applying an outlier adjustment factor of 0.9536 to the Federal rate. Thus, estimated capital outlier payments for FY 1996 represent a lower percentage of total capital payments than in FY 1995.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the net change in the outlier adjustment to the Federal rate for FY 1996 is 1.0129 (.9536/.9414). Thus, the outlier adjustment increases the FY 1996 Federal rate by 1.29 percent (1.0129–1) compared with the FY 1995 outlier adjustment.

4. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that estimated aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor equal estimated aggregate payments that would have been made on the basis of the Federal rate without such changes. We use the actuarial model described in Appendix B to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the geographic adjustment factor. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the geographic adjustment factor.

For FY 1995, we calculated a GAF/DRG budget neutrality factor of 0.9998. In the proposed rule for FY 1996, we proposed a GAF/DRG budget neutrality factor of 0.9993. In this final rule, based on calculations using updated data, we are applying a factor of 0.9994 to meet this requirement. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the geographic adjustment factor. The incremental change in the adjustment from FY 1995 to FY 1996 is 0.9994. The cumulative change in the rate due to this adjustment is 1.0025 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, and FY 1996: .9980 × 1.0053 × .9998 × .9994 = 1.0025).

This factor accounts for DRG reclassifications and recalibration and for changes in the geographic adjustment factor. It also incorporates the effects on the geographic adjustment factor of FY 1996 geographic reclassification decisions made by the MGCRB compared to FY 1995 decisions. However, it does not account for changes in payments due to changes in the disproportionate share and indirect medical education adjustment factors or in the large urban add-on.

5. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments for exceptions under § 412.348 determined as a proportion of total payments under the hospital-specific rate and Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to estimate payments under the exceptions payment process and to determine the exceptions payment adjustment factor. We describe that model in Appendix B to this final rule.

For FY 1995, we estimated that exceptions payments would equal 2.66 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9734 (1–.0266) in determining the Federal rate. For FY 1996, we estimated in the June 2, 1995, proposed rule that exceptions payments would equal 1.60 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we proposed to apply an exceptions reduction factor of 0.9840 (1–0.0160) to determine the FY 1996 Federal rate. For this final rule, we estimate that exceptions payments for FY 1996 will equal 1.51 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are, therefore, applying an exceptions payment reduction factor of 0.9849 to the Federal rate for FY 1996.

The final exceptions reduction factor for FY 1996 is thus 1.18 percent higher than the factor for FY 1995, and 0.09 percent higher than the factor in the FY 1996 proposed rule. The reduced level of estimated exceptions payments for FY 1996 compared to FY 1995 is a result of the significant increases in the capital rates and in aggregate capital payments.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the net adjustment to the FY 1996 Federal rate is .9849/.9734, or 1.0118.

6. Expiration of Budget Neutrality Provision

For FY 1992 through FY 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that estimated aggregate payments for inpatient hospital capital costs would equal 90 percent of the estimated payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision has now expired. The expiration of the budget neutrality provision is the predominant factor in the 22.59 percent increase in the Federal rate, as well as the 20.56 percent increase in payments.

For FY 1995, the budget neutrality adjustment was 0.8432, a 15.68 percent reduction to the rates. The budget neutrality factors were not built permanently into the rates; that is, the factors were not applied cumulatively in determining the Federal rate. With the expiration of the budget neutrality provision, the net adjustment to the rate is thus 1.186 (1.00/.8432=1.186), or 18.6 percent. The expiration of the provision, therefore, accounts for an 18.6 percent increase in the rate.

7. Standard Capital Federal Rate for FY 1996

For FY 1995, the capital Federal rate was $376.83. With the changes we proposed to the factors used to establish the Federal rate, we proposed that the FY 1996 Federal rate would be $457.11. In this final rule, we are establishing an FY 1996 Federal rate of $461.96. The final Federal rate for FY 1996 was calculated as follows:

- The FY 1996 special adjustment to the standard Federal rate to account for the change in transfer payment policy is 0.9972.
- The FY 1996 update factor is 1.0120.
- The FY 1996 outlier adjustment factor is 0.9536.
- The FY 1996 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the geographic adjustment factor is 0.9994.
- The FY 1996 exceptions payments adjustment factor is 0.9849.
- The expiration of the budget neutrality provision requires that the FY 1995 budget neutrality adjustment be removed from the rate without further incremental adjustment.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost of living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we are making no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the geographic adjustment factor.

We are providing a chart that shows how each of the factors and adjustments for FY 1996 affected the computation of the final FY 1996 Federal rate in comparison to the FY 1995 Federal rate. The special adjustment to account for the effects of changes in transfer payment policy has the effect of reducing the rate by 0.28 percent. The final FY 1996 update factor has the effect of increasing the Federal rate 1.20 percent compared to the rate in FY 1995, while the final geographic and DRG budget neutrality factor has the effect of decreasing the Federal rate by 0.06 percent. The final FY 1996 outlier adjustment factor has the effect of increasing the Federal rate by 1.29 percent compared to FY 1995. The final FY 1996 exceptions reduction factor has the effect of increasing the Federal rate by 1.18 percent compared to the exceptions reduction for FY 1995. Finally, the expiration of the budget neutrality provision has the effect of increasing the final FY 1996 rate by 18.60 percent compared to the effect of the budget neutrality reduction in FY 1995. The combined effect of all the changes is to increase the Federal rate by 22.59 percent compared to the Federal rate for FY 1995.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 1995 FEDERAL RATE AND FY 1996 FEDERAL RATE

		Change	Percent change
Transfer adjustment:			
FY 1995	N/A	....	
FY 1996	0.9972	0.9972	−0.28
Update factor [1]:			
FY 1995	1.0344	....	....
FY 1996	1.0120	1.0120	1.20
GAF/DRG adjustment factor: [1]			
FY 1995	0.9998	....	....
FY 1996	0.9994	0.9994	−0.06
Outlier adjustment factor: [2]			
FY 1995	0.9414	....	....
FY 1996	0.9536	1.0129	1.29
Exceptions adjustment factor: [2]			
FY 1995	0.9734	....	....
FY 1996	0.9849	1.0118	1.18
Budget neutrality adjustment factor: [2]			
FY 1995	0.8432	....	....
FY 1996	1.0000	1.1860	18.60
Federal Rate:			
FY 1995	$376.83	....	....
FY 1996	$461.96	1.2259	22.59

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1995 to FY 1996 resulting from the application of the 0.9994 GAF/DRG budget neutrality factor for FY 1996 is 0.9994.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 1996 exceptions reduction factor is 0.9849/0.9734, or 1.0118. The result of the expiration of budget neutrality is that the FY 1995 budget neutrality factor is removed from the rate without further incremental adjustment (i.e., the FY 1996 adjustment of .8432 is divided out of the rate without further adjustment, for a net adjustment of 1.0000/.8432, or 1.1860).

We are also providing a chart that shows how the final FY 1996 Federal rate differs from the proposed FY 1996 Federal rate.

This chart shows that the major factor in the 1.06 percent increase in the rate since the proposed rule is the 1.15 percent increase due to our decision not to implement the proposed tax adjustment factor at this time. We discuss our reasons for this decision in section V.B. of the preamble. As the chart shows, the effect of this change, when compared to the proposed FY 1996 Federal rate, is to increase the rate by 1.15 percent. In addition, there have been small changes in the outlier and exceptions factors that contribute to the small increase in the rate. As the chart also shows, the effect of these changes was partially offset by a decrease in the final update factor compared to the update factor in the proposed rule.

COMPARISON OF FACTORS AND ADJUSTMENTS: PROPOSED FY 1996 FEDERAL RATE AND FINAL FY 1996 FEDERAL RATE

		Net adjustment	Percent change
Update factor:			
Proposed FY 1996	1.0150	....	....
Final FY 1996	1.0120	0.9970	−0.30
Transfer adjustment:			
Proposed FY 1996	0.9972	....	....
Final FY 1996	0.9972	1.0000	0.00
Tax adjustment:			
Proposed FY 1996	0.9886	....	....
Final FY 1996	1.0000	1.0115	1.15
Outlier reduction factor:			
Proposed FY 1996	0.9526	....	....
Final FY 1996	0.9536	1.0010	0.10
GAF/DRG reduction factor:			
Proposed FY 1996	0.9993	....	....
Final FY 1996	0.9994	1.0001	0.01
Exceptions reduction factor:			
Proposed FY 1996	0.9840	....	....
Final FY 1996	0.9849	1.0009	0.09
Budget neutrality adjustment factor:			
Proposed FY 1996	1.0000	....	....
Final FY 1996	1.0000	1.0000	0.00
Federal rate:			
Proposed FY 1996	$457.11	....	....
Final FY 1996	$461.96	1.0106	1.06

8. Special Rate for Puerto Rico Hospitals

For FY 1995, the special rate for Puerto Rico hospitals was $289.87. With the changes we proposed making to the factors used to determine the rate, the proposed FY 1996 special rate for Puerto Rico was $351.61. In this final rule, the FY 1996 capital rate for Puerto Rico is $355.35.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 1996 be determined by adjusting the FY 1995 hospital-specific rate by the following factors:

1. Special Adjustment for the Effects of the New Transfer Policy

Section 412.312(d) of the regulations provides that payment under the capital prospective payment system for transfer cases is made under the same rules governing transfer payments under the operating prospective payment system. Transfer cases under the prospective payment system for capital-related costs have been paid on a per diem basis, using the full prospective payment amount for the DRG (both Federal rate and hospital-specific rate, if appropriate) divided by the geometric mean length of stay for the DRG, but not to exceed the full prospective payment. Section IV.A of the preamble to this final rule describes our adoption of a graduated per diem payment methodology for transfer cases. Under this policy, we will pay double the per diem amount for the first day and the per diem amount for subsequent days, up to the full prospective payment amount. Section 109 of the Social Security Amendments of 1994 (Public Law 103–432) authorizes the Secretary to make adjustments to the operating prospective payment system rates so that adjustments to the payment policy for transfer cases do not affect aggregate payments. Section II of this Addendum describes the methodology for making the adjustment to the operating rates.

In order to maintain consistency with the prospective payment system for operating costs, we believe that a parallel adjustment to the Federal capital rate and the hospital-specific capital rates is warranted. In this way, revision of the payment policy for transfer cases will not affect aggregate payments under the prospective payment system for capital-related costs. We describe the methodology for making this adjustment in Appendix B of this proposed rule. Following that methodology, we have determined that a special adjustment of 0.9972 (−0.28 percent) to the standard Federal rate and the hospital-specific rates is required. We have revised § 412.328(e) accordingly.

2. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 1996, the hospital-specific rate will be updated by a factor of 1.012.

3. Exceptions Payment Adjustment Factor

For FY 1992 through FY 2001, the updated hospital-specific rate is multiplied by an adjustment factor to account for estimated exceptions payments for capital-related costs under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1996, we estimated in the proposed rule that exceptions payments would be 1.60 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We therefore proposed that the updated hospital-specific rate be reduced by a factor of 0.9840. In this final rule, we estimate that exceptions payments will be 1.51 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are therefore applying an exceptions reduction factor of 0.9849 to the hospital-specific rate. The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. Therefore, the proposed net adjustment to the FY 1996 hospital-specific rate is .9849/.9734, or 1.0118.

4. Expiration of the Budget Neutrality Provision

For FY 1992 through FY 1995, the updated hospital-specific rate was adjusted by a budget neutrality adjustment factor determined under § 412.352, so that estimated aggregate payments under the capital prospective payment system would equal 90 percent of estimated payments that would have been made on a reasonable cost basis. (The budget neutrality adjustment for changes in the DRG classifications and relative weights and in the geographic adjustment factor is not applied to the hospital-specific rate.) For FY 1995, the budget neutrality adjustment was 0.8432. The budget neutrality provision has now expired. Therefore, for FY 1996 there is no budget neutrality adjustment. The budget neutrality factor was not built permanently into the rates; that is, the factor was not applied cumulatively in determining the hospital-specific rate. Therefore, the net adjustment to the FY 1996 hospital-specific rate as a result of the expiration of the budget neutrality provision is 1.0000/.8432, or 1.1860.

5. Net Change to Hospital-Specific Rate

We are providing a chart to show the net change to the hospital-specific rate. The chart shows the factors for FY 1995 and FY 1996 and the net adjustment for each factor. It also shows that the proposed cumulative net adjustment from FY 1995 to FY 1996 is 1.2110, which represents an increase of 21.10 percent to the hospital-specific rate. The FY 1996 hospital-specific rate for each hospital is determined by multiplying the FY 1995 hospital-specific rate by the cumulative net adjustment of 1.2110.

FY 1996 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

		Net adjustment	Percent change
Update factor:			
FY 1995	1.0344	....	....
FY 1996	1.0120	1.0120	1.20
Transfer adjustment:			
FY 1995	N/A		
FY 1996	0.9972	0.9972	−0.28
Exceptions payment adjustment factor:			
FY 1995	0.9734	....	....
FY 1996	0.9849	1.0118	1.18
Budget neutrality factor:			
FY 1995	0.8432	....	....
FY 1996	1.0000	1.1860	18.60
Cumulative adjustments:			
FY 1995	0.8457	....	....
FY 1996	1.0241	1.2110	21.10

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 1995 to FY 1996 is 1.0120. In contrast, the exceptions payment adjustment factor and the budget neutrality factor are not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 1995 to FY 1996 is .9849/.9734, or 1.0118.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1996

During the capital prospective payment system transition period, a hospital is paid for inpatient capital-related costs under one of two alternative payment methodologies: the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate was determined by adjusting:

- For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's geographic adjustment factor, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, when appropriate).

If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG weight)
× (Geographic Adjustment Factor) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + Indirect Medical Education Adjustment Factor, if applicable).

The result is termed the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost reporting period beginning on or after October 1, 1994 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is the sum of:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
- The adjusted Federal rate multiplied by the Federal transition blend percentage.

The blend percentages for cost reporting periods beginning in FY 1996 are 50 percent of the adjusted Federal rate and 50 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the hospital's inpatient capital-related payments that is based on the Federal rate. For fully prospective hospitals, that portion is 50 percent Federal rate for discharges occurring in cost reporting periods beginning during FY 1996. Thus, a fully prospective hospital will receive 50 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1996. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid based on 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The outlier thresholds for FY 1996 are published in section II.A.4.c of this Addendum. For FY 1996, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus $15,150. A case qualifies as a day outlier for FY 1996 if the length of stay is greater than the geometric mean length of stay for the DRG plus the lesser of three standard deviations of the length of stay or 23 days.

During the capital prospective payment system transition period, a hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The minimum payment levels for portions of cost reporting periods occurring in FY 1996 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and,
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

IV. Changes for Excluded Hospitals and Units

A. Rate-of-Increase Percentages for Excluded Hospitals and Units

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Effective with cost reporting periods beginning on or after October 1, 1991, a hospital that has Medicare inpatient operating costs in excess of its ceiling is paid its ceiling plus 50 percent of its costs in excess of the ceiling. Total payment may not exceed 110 percent of the ceiling. A hospital that has inpatient operating costs less than its ceiling will continue to be paid its costs plus the lower of—

- Fifty percent of the difference between the allowable inpatient operating costs and the ceiling; or
- Five percent of the ceiling.

Each hospital's target amount is adjusted annually, at the beginning of its cost reporting period, by an applicable rate-of-increase percentage. Section 13502 of Public Law 103–66 amended section 1886(b)(3)(B) of the Act to provide that for cost reporting periods beginning on or after October 1, 1993 and before October 1, 1994, the applicable rate-of-increase percentage is the market basket percentage increase minus the lesser of one percentage point, or the percentage point difference between 10 percent and the hospital's "update adjustment percentage" except for hospitals with an "update adjustment percentage" of at least 10 percent. The rate-of-increase percentage for hospitals in the latter case will be the market basket percentage increase. The "update adjustment percentage" is the percentage by which a hospital's allowable inpatient operating costs exceeds the hospital's ceiling for the cost reporting period beginning in Federal fiscal year 1990. For cost reporting periods beginning on or after October 1, 1994 and before October 1, 1997, the update adjustment percentage is the update adjustment percentage from the previous year plus the previous year's applicable reduction. The applicable reduction and applicable rate-of-increase percentage are then determined in the same manner as for FY 1994. The most recent forecasted market basket increase for FY 1996 for hospitals and hospital units excluded from the prospective payment system is 3.4 percent.

B. Wage Index Exceptions for Excluded Hospitals and Units

In the August 30, 1991 final rule (56 FR 43232), we set forth our policy for target amount adjustments for significant wage increases. Effective with cost reporting periods beginning on or after April 1, 1990, significant increases in wages since the base period are recognized as a basis for an adjustment in the target amount under § 413.40(g).

To qualify for an adjustment, the excluded hospital or hospital unit must be located in a labor market area for which the average hourly wage increased significantly more than the national average hourly wage between the hospital's base period and the period subject to the ceiling. We use the hospital wage index for prospective payment hospitals to determine the rate of increase in the average hourly wage in the labor market area. For a hospital to qualify for an adjustment, the wage index value for the cost reporting period subject to the ceiling must be at least 8 percent higher than the wage index based on wage survey data collected for the base year cost reporting period. If survey data are not available for one (or both) of the cost reporting periods used in the comparison, the wage index based on the latest available survey data collected before that cost reporting period will be used. For example, to make the comparison between a 1983 base period and a hospital's cost reporting period beginning in FY 1993, we would use the rate of increase between the wage index based on 1982 wage data and the wage index based on the FY 1992 data, since the FY 1992 data are the most recent data that are currently available. Further, the comparison is made without regard to geographic reclassifications made by the MGCRB under sections 1886(d) (8) and (10) of the Act. Therefore, the comparison is made based on the wage index value of the labor market area in which the hospital is actually located.

We determine the amount of the adjustment for wage increases by considering three factors for the time between the base period and the period for which an adjustment is requested: the rate of increase in the hospital's average hourly wage; the rate of increase in the average hourly wage in the labor market area in which the hospital is located; and, the rate of increase in the national average hourly wage for hospital workers. The adjustment is limited to the amount by which the lower of the hospital's or the labor market area's rate of increase in average hourly wages significantly exceeds the national increase (that is, exceeds the national rate of increase by more than 8 percent). For purposes of computing the adjustment, the relative rate of increase in the average hourly wage for the labor market area is assumed to have been the

same over each of the intervening years between the wage surveys.

To determine the rate of increase in the national average hourly wage, we use the average hourly earnings (AHE) component of the wages and salaries portion of the market basket. This measure is derived from the 1982-based market basket since the 1987-based market basket uses the employment cost index (ECI) for hospital workers as the price proxy for this component. Unlike the AHE, the ECI for hospital workers can be measured historically only back to 1986. In addition, the ECI does not adjust for skill-mix shifts and, therefore, measures only the change in wage rates per hour.

The average hourly earnings for hospital workers as measured by the market basket show the following increases:

1992 = 4.8 percent
1993 = 3.7 percent
1994 = 2.8 percent
1995 = 3.4 percent
1996 = 4.3 percent

We note that this section merely provides updated information with respect to areas that would qualify for the wage index adjustment under § 413.30(g). This information was calculated in accordance with established policy and does not reflect any change in that policy. The geographic areas in which the percentage difference in wage indexes was sufficient to qualify for a wage index adjustment are listed in Table 10 of section V of the addendum to this final rule. The table is constructed with old MSAs instead of the revised MSAs effective October 1, 1993 because current adjustment requests are for years prior to FY 1995.

V. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1b, 1c, 1d, 3C, 4a, 4b, 4c, 4d, 4e, 5, 6a, 6b, 6c, 6d, 6e, 6f, 6G, 6H, 7A, 7B, 8A, 8B, and 10 are presented below. The tables presented below are as follows:

Table 1a—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1b—Regional Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1c—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1d—Capital Standard Federal Payment Rate
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1994 and Hospital Average Hourly Wage for Federal Fiscal Year 1996 Wage Index
Table 4a—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4b—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4c—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4d—Average Hourly Wage for Urban Areas
Table 4e—Average Hourly Wage for Rural Areas
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Length of Stay Outlier Cutoff Points Used in the Prospective Payment System
Table 6a—New Diagnosis Codes
Table 6b—New Procedure Codes
Table 6c—Invalid Diagnosis Codes
Table 6d—Invalid Procedure Codes
Table 6e—Revised Diagnosis Code Titles
Table 6f—Revised Procedure Code Titles
Table 6G—Additions to the CC Exclusions List
Table 6H—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 95 MEDPAR Update 06/95 GROUPER V12.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 94 MEDPAR Update 06/95 GROUPER V13.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) August 1995
Table 8B—Statewide Average Capital Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) August 1995
Table 10—Percentage Difference in Wage Indexes for Areas That Qualify for a Wage Index Exception for Excluded Hospitals and Units

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$2,741.39	$1,098.09	$2,697.99	$1,080.71

TABLE 1B.—REGIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	$2,874.14	$1,151.27	$2,828.62	$1,133.04
2. Middle Atlantic (PA, NJ, NY)	2,623.06	1,050.69	2,581.53	1,034.06
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,685.62	1,075.75	2,643.11	1,058.72
4. East North Central (IL, IN, MI, OH, WI)	2,926.45	1,172.22	2,880.12	1,153.66
5. East South Central (AL, KY, MS, TN)	2,537.85	1,016.56	2,497.67	1,000.47
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	2,743.19	1,098.81	2,699.76	1,081.41
7. West South Central (AR, LA, OK, TX)	2,669.98	1,069.49	2,627.71	1,052.55
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,652.82	1,062.62	2,610.82	1,045.79
9. Pacific (AK, CA, HI, OR, WA)	2,712.20	1,086.40	2,669.27	1,069.20

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor-related	Nonlabor—related	Labor-related	Nonlabor—related
National	$2,714.63	$1,087.37	$2,714.63	$1,087.37
Puerto Rico	2,444.77	509.50	2,406.07	501.43

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$461.96
Puerto Rico	355.35

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1994, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 1996 WAGE INDEX

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
010001	01.3968	14.70	010095	01.0332	10.66	030004	01.0179	13.13	040003	01.0705	13.33	040105	01.0662	11.86
010004	01.0413	11.54	010097	00.9261	12.23	030006	01.5839	17.32	040004	01.4025	13.86	040106	01.2166	11.16
010005	01.1775	13.61	010098	01.0799	11.19	030007	01.2521	16.55	040005	00.9579	11.37	040107	01.1231	15.18
010006	01.3889	14.23	010099	01.0329	14.74	030008	01.9610	20.06	040007	01.7232	16.81	040109	01.0766	12.13
010007	01.0911	12.03	010100	01.1814	13.72	030009	01.2256	15.42	040008	01.1067	10.45	040114	01.8042	16.23
010008	01.0538	09.78	010101	01.1089	12.72	030010	01.4044	17.40	040010	01.1910	13.08	040116	01.3377	18.71
010009	01.0803	15.47	010102	00.9127	11.42	030011	01.4903	20.19	040011	00.9909	10.41	040118	01.1197	13.58
010010	01.0761	13.64	010103	01.7143	16.47	030012	01.2311	15.06	040013	00.8034	11.75	040119	01.1364	13.45
010011	01.5164	19.89	010104	01.6688	16.63	030013	01.2419	19.04	040014	01.2134	15.72	040124	01.1769	13.61
010012	01.2603	14.67	010108	01.2172	11.76	030014	01.4902	17.79	040015	01.2060	11.77	040126	00.9480	11.00
010015	01.0453	15.13	010109	01.0546	11.54	030016	01.3304	16.82	040016	01.7332	15.81	040132	00.3512	14.00
010016	01.1906	15.10	010110	00.9496	12.21	030017	01.3986	18.43	040017	01.2172	10.52	050002	01.5615	26.17
010018	00.9544	15.60	010112	01.0969	13.96	030018	01.7243	17.74	040018	01.2122	15.74	050006	01.4001	19.22
010019	01.2751	13.87	010113	01.6285	13.09	030019	01.2442	18.78	040019	01.1123	11.20	050007	01.5879	26.63
010021	01.2588	13.21	010114	01.3117	15.41	030022	01.4806	17.27	040020	01.5105	13.74	050008	01.4323	24.86
010022	01.0256	15.65	010115	00.8513	10.12	030023	01.2911	16.24	040021	01.2130	15.42	050009	01.6649	26.93
010023	01.3805	14.44	010117	00.9347	18.73	030024	01.7625	18.77	040022	01.8066	14.21	050013	01.8480	20.87
010024	01.3726	15.01	010118	01.2246	15.42	030025	01.1006	13.38	040024	01.0180	11.62	050014	01.1446	22.82
010025	01.3813	12.75	010119	01.2015	15.12	030027	01.1208	14.29	040025	00.9354	10.69	050015	01.4331	20.74
010027	00.8467	13.11	010120	00.9965	14.36	030030	01.6996	20.88	040026	01.5494	15.05	050016	01.1496	14.51
010029	01.4704	14.06	010121	01.1896	14.23	030033	01.2155	15.50	040027	01.2685	12.06	050017	02.0952	24.17
010031	01.2567	13.51	010123	01.2321	16.17	030034	01.1710	15.72	040028	01.0217	10.19	050018	01.2508	18.71
010032	00.9701	13.69	010124	01.2794	15.36	030035	01.3011	19.44	040029	01.2031	13.07	050021	01.3600	21.85
010033	01.8757	17.51	010125	01.0446	12.25	030036	01.1317	17.49	040030	00.8998	11.86	050022	01.5018	22.19
010034	01.0149	12.69	010126	01.1157	12.54	030037	01.9258	19.15	040032	01.0062	10.37	050024	01.3482	23.48
010035	01.2169	14.72	010127	01.4863	16.01	030038	01.5022	17.78	040035	00.9926	09.69	050025	01.7235	21.46
010036	01.1364	15.26	010128	01.0313	10.97	030040	00.9810	15.24	040036	01.4043	15.86	050026	01.4341	20.43
010038	01.2308	16.94	010129	01.0641	13.39	030041	00.9523	16.41	040037	01.1119	11.56	050028	01.4066	15.18
010039	01.6205	15.05	010130	01.0484	15.47	030043	01.1729	17.72	040039	01.2264	11.89	050029	01.2872	25.93
010040	01.4682	17.28	010131	01.2518	17.42	030044	00.9940	13.57	040040	01.1993	17.12	050030	01.2790	19.28
010043	01.0564	12.55	010134	00.8447	12.38	030046	01.0471	16.87	040041	01.3374	14.18	050032	01.2640	22.74
010044	00.9582	12.54	010137	01.2210	15.71	030047	00.9475	18.93	040042	01.2984	12.26	050033	01.3994	24.02
010045	01.1387	11.95	010138	00.9878	09.88	030049	00.9609	14.29	040044	00.8731	10.10	050036	01.7580	20.22
010046	01.4552	13.93	010139	01.6156	20.00	030054	00.9290	12.19	040045	01.0710	13.23	050038	01.3353	28.61
010047	01.0735	08.72	010143	01.1710	16.12	030055	01.2152	16.00	040047	01.0339	14.05	050039	01.5925	20.33
010049	01.1096	14.18	010144	01.3054	15.54	030059	01.3347	20.15	040048	01.1791	13.54	050040	01.2773	22.38
010050	01.0179	11.94	010145	01.2130	15.36	030060	01.1092	13.06	040050	01.1429	11.01	050041	01.3654	21.68
010051	00.8267	09.81	010146	01.1608	15.74	030061	01.5941	16.25	040051	01.1125	10.19	050042	01.2517	20.06
010052	00.9528	11.56	010148	00.9487	10.54	030062	01.2600	14.57	040053	01.1313	12.40	050043	01.5396	27.78
010053	01.0421	12.58	010149	01.3465	15.90	030064	01.6330	16.62	040054	01.0770	11.90	050045	01.3028	17.13
010054	01.1530	15.11	010150	01.0127	13.86	030065	01.6023	18.78	040055	01.4478	14.04	050046	01.1768	24.46
010055	01.4397	14.98	010152	01.3346	15.42	030067	01.0531	15.23	040058	01.2358	13.05	050047	01.6769	28.05
010056	01.4021	17.64	010155	00.9590	09.48	030068	00.9663	13.92	040060	00.9532	12.70	050051	01.0947	17.01
010058	01.0147	12.39	020001	01.5075	25.13	030069	01.3595	16.55	040062	01.5209	14.64	050052	01.1447	....
010059	01.0348	13.89	020002	01.0097	24.19	030071	00.9416	....	040063	01.4946	14.95	050054	01.1528	19.64
010061	00.9669	13.39	020004	01.1323	23.34	030072	00.8611	....	040064	00.9489	09.57	050055	01.4117	29.68
010062	01.0039	11.97	020005	00.9083	23.80	030073	01.0810	....	040066	01.0779	13.90	050056	01.3677	23.16
010064	01.7903	17.53	020006	01.1710	21.93	030074	00.8502	....	040067	01.1361	11.31	050057	01.4622	19.73
010065	01.3665	14.14	020007	00.8393	17.74	030075	00.8573	....	040069	01.0798	13.04	050058	01.4523	21.90
010066	00.9197	09.11	020008	00.9996	26.65	030076	00.8694	....	040070	00.9387	13.28	050060	01.5727	19.17
010068	01.2297	18.14	020009	00.9280	19.88	030077	00.8113	....	040071	01.4674	15.11	050061	01.3814	22.35
010069	01.0778	13.08	020010	01.0303	18.60	030078	01.1209	....	040072	01.1259	14.24	050063	01.4300	21.08
010072	01.2032	12.45	020011	01.1331	21.26	030079	00.7942	....	040074	01.3112	13.79	050065	01.6178	22.56
010073	00.9006	10.82	020012	01.2973	22.82	030080	01.6610	21.27	040075	01.0563	10.99	050066	01.2551	24.33
010078	01.1694	15.06	020013	00.8540	21.66	030083	01.3676	21.02	040076	01.0433	13.39	050067	01.4056	21.52
010079	01.1115	14.56	020014	01.2972	19.97	030084	00.9965	....	040077	00.8759	10.34	050068	01.2515	18.27
010080	00.9621	13.13	020017	01.3934	25.88	030085	01.4980	17.85	040078	01.4179	15.29	050069	01.5984	23.54
010081	01.9629	16.46	020018	00.9100	....	030086	01.2409	18.35	040080	01.0214	14.94	050070	01.3123	28.83
010083	01.0402	12.57	020019	00.8722	....	030087	01.5981	17.23	040081	00.8802	09.81	050071	01.3070	28.37
010084	01.3687	15.98	020020	00.8894	....	030088	01.3666	18.08	040082	01.2322	12.53	050072	01.3191	29.11
010085	01.2525	15.87	020021	00.8976	....	030089	01.4360	18.51	040084	01.0970	14.26	050073	01.2552	29.08
010086	00.9830	13.22	020024	01.0720	22.25	030092	01.5477	18.71	040085	01.2523	14.29	050074	01.0875	31.87
010087	01.7658	16.49	020025	01.0426	21.61	030093	01.3513	17.76	040088	01.3551	13.14	050075	01.3402	28.71
010089	01.1268	15.32	020026	01.2538	....	030094	01.3531	17.83	040090	00.9673	11.94	050076	01.6600	28.90
010090	01.5515	15.76	020027	00.9528	....	030095	01.1298	14.39	040091	01.2662	17.58	050077	01.5894	22.97
010091	00.9581	12.37	030001	01.3021	19.25	030097	01.0287	....	040093	00.9748	10.17	050078	01.3994	22.74
010092	01.3781	15.31	030002	01.8140	20.27	040001	01.1696	11.25	040095	00.8388	11.17	050079	01.5499	29.43
010094	01.1698	17.54	030003	01.7302	19.73	040002	01.1882	12.09	040100	01.1610	13.63	050080	01.2743	23.03

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050081	01.6679	21.10	050177	01.2282	18.24	050286	00.9265	26.63	050407	01.3626	26.56	050528	01.2336	16.76
050082	01.4770	21.26	050179	01.2418	18.28	050289	01.7527	25.91	050410	01.1100	16.16	050531	01.2049	19.81
050084	01.5885	21.52	050180	01.5435	30.93	050290	01.5196	24.38	050411	01.3968	27.93	050534	01.3893	23.99
050088	01.0729	21.32	050181	01.2989	....	050291	01.2685	24.17	050414	01.2954	24.04	050535	01.4946	22.35
050089	01.3265	19.83	050183	01.2255	19.25	050292	01.1333	21.25	050417	01.2300	18.53	050537	01.2230	21.28
050090	01.3257	20.02	050186	01.3277	24.64	050293	00.8257	19.92	050418	01.3467	24.11	050539	01.1557	22.82
050091	01.1739	21.63	050188	01.4107	25.19	050295	01.4056	20.72	050419	01.2985	18.33	050541	01.5428	28.93
050092	00.9075	16.84	050189	00.9558	22.45	050296	01.2987	23.78	050420	01.4723	24.85	050542	01.1764	15.76
050093	01.5560	20.79	050191	01.5886	21.31	050298	01.2369	16.65	050421	01.4309	24.17	050543	00.9034	24.18
050095	00.9989	29.05	050192	01.2153	18.66	050299	01.2994	22.49	050423	01.0348	17.53	050545	00.8899	21.07
050096	01.1224	18.14	050193	01.4095	23.10	050300	01.2676	18.73	050424	01.7320	24.12	050546	00.8228	21.43
050097	01.4238	16.13	050194	01.1999	25.22	050301	01.4347	21.30	050425	01.2512	27.91	050547	00.9096	22.13
050099	01.4808	22.03	050195	01.5632	29.15	050302	01.3531	23.57	050426	01.3324	22.18	050549	01.7694	25.56
050100	01.8779	22.92	050196	01.4143	18.09	050305	01.6085	28.25	050427	00.9421	22.53	050550	02.3252	21.44
050101	01.4198	24.98	050197	01.8868	27.85	050307	01.3897	20.66	050430	00.9277	15.31	050551	01.3390	23.83
050102	01.5195	21.67	050199	01.0425	22.19	050308	01.5405	28.06	050431	01.1250	20.82	050552	01.3328	20.13
050103	01.6052	28.01	050204	01.3887	22.44	050309	01.3839	23.19	050432	01.5930	23.40	050557	01.5817	21.45
050104	01.3567	21.95	050205	01.4014	19.74	050310	01.2782	20.36	050433	01.0404	17.20	050559	01.3762	22.56
050107	01.4065	20.13	050207	01.3154	20.06	050312	01.8592	23.07	050434	01.1767	17.00	050560	01.5959	22.35
050108	01.5751	22.50	050208	01.2787	27.22	050313	01.2419	20.05	050435	01.2922	16.47	050561	01.2104	28.42
050109	02.2189	23.93	050211	01.3765	25.67	050315	01.3025	20.58	050436	00.9928	15.70	050564	01.2887	25.38
050110	01.2585	20.72	050213	01.4588	19.75	050317	01.2356	19.58	050438	01.6084	23.36	050565	01.2006	21.03
050111	01.3024	18.52	050214	01.5542	22.70	050320	01.3287	32.07	050440	01.3911	18.93	050566	00.9865	13.94
050112	01.5233	22.95	050215	01.5360	25.76	050324	01.8053	23.27	050441	01.8493	27.68	050567	01.6027	21.00
050113	01.3013	26.77	050217	01.3147	17.43	050325	01.2332	20.65	050443	00.9409	14.95	050568	01.3231	22.17
050114	01.4336	25.49	050219	01.2947	20.45	050327	01.5955	21.01	050444	01.3535	23.83	050569	01.4307	21.89
050115	01.5153	21.57	050222	01.5416	25.04	050328	01.5394	27.69	050446	00.9957	17.23	050570	01.5835	24.67
050116	01.4747	22.94	050224	01.5576	21.12	050329	01.2920	15.93	050447	01.0895	16.92	050571	01.3222	26.14
050117	01.3259	18.74	050225	01.3801	20.48	050331	01.4400	28.29	050448	01.0625	18.59	050573	01.6210	22.10
050118	01.2218	23.13	050226	01.3631	21.59	050333	00.9684	17.95	050449	01.3118	20.99	050575	01.2532	23.34
050121	01.5400	20.07	050228	01.4464	28.72	050334	01.5816	28.97	050454	01.8126	26.37	050577	01.3920	21.47
050122	01.6430	23.24	050230	01.3603	26.71	050335	01.2433	20.84	050455	01.8486	21.11	050578	01.2616	24.09
050124	01.2701	22.93	050231	01.6538	22.19	050336	01.2893	19.40	050456	01.2190	21.52	050579	01.5452	27.06
050125	01.3509	24.50	050232	01.8167	25.50	050337	01.2628	26.55	050457	01.9322	28.03	050580	01.4027	22.40
050126	01.4205	24.72	050233	01.2148	23.64	050342	01.3993	17.43	050458	00.7146	23.76	050581	01.4171	24.32
050127	01.2797	22.28	050234	01.3556	18.84	050343	01.1120	16.91	050459	01.1585	28.15	050583	01.6137	21.83
050128	01.5377	20.73	050235	01.4868	23.84	050348	01.6361	24.26	050464	01.8498	22.87	050584	01.2738	22.37
050129	01.5022	21.49	050236	01.5367	24.67	050349	00.9483	13.96	050468	01.3417	15.80	050585	01.3347	22.76
050131	01.2906	25.95	050238	01.5043	19.87	050350	01.3833	21.49	050469	01.1376	17.19	050586	01.3449	22.75
050132	01.3632	19.85	050239	01.5179	21.99	050351	01.4824	27.25	050470	01.1109	19.37	050587	01.2709	20.16
050133	01.3704	20.11	050240	01.4428	23.58	050352	01.2933	22.36	050471	01.6780	23.33	050588	01.2785	27.21
050135	01.2507	26.85	050241	01.3170	26.52	050353	01.5831	20.14	050476	01.2475	19.26	050589	01.3320	24.60
050136	01.4215	21.96	050242	01.3730	26.92	050355	00.9653	15.90	050477	01.4106	27.66	050590	01.4053	23.13
050137	01.3803	29.95	050243	01.5537	24.82	050357	01.7895	22.17	050478	00.9938	22.01	050591	01.1739	20.64
050138	01.7766	30.59	050245	01.3656	21.94	050359	01.0386	19.35	050481	01.4268	25.61	050592	01.3816	23.45
050139	01.3303	29.15	050248	01.1103	24.57	050360	01.5164	31.61	050482	00.9597	18.35	050593	01.5525	25.60
050140	01.4148	29.23	050251	01.1099	16.23	050366	01.2747	20.46	050483	01.1904	26.34	050594	02.0551	22.74
050144	01.6499	22.42	050253	00.8763	18.00	050367	01.2967	26.14	050485	01.6004	21.94	050597	01.2322	21.75
050145	01.3454	26.85	050254	01.1399	22.76	050369	01.3062	23.37	050486	01.4342	23.44	050598	01.4335	25.33
050146	01.3466	....	050256	01.8935	19.43	050373	01.3703	23.22	050488	01.4138	27.49	050599	01.7122	22.85
050147	00.7123	20.96	050257	01.1982	17.90	050376	01.3429	25.07	050489	01.0669	23.36	050601	01.3033	30.28
050148	01.0691	17.09	050260	00.9782	21.22	050377	00.9475	16.99	050491	01.1810	26.44	050603	01.4452	22.96
050149	01.3651	22.42	050261	01.1624	17.18	050378	01.1675	22.91	050492	01.1874	20.52	050604	01.5474	27.40
050150	01.3121	21.41	050262	01.8406	25.72	050379	01.0648	18.39	050494	01.1616	23.56	050607	01.3481	19.27
050152	01.4075	25.02	050263	01.2553	26.81	050380	01.6428	26.54	050496	01.7182	29.82	050608	01.1805	15.26
050153	01.6199	29.55	050264	01.4300	26.35	050382	01.3947	23.92	050497	00.9065	11.78	050609	01.3393	30.07
050154	01.0949	21.63	050267	01.5691	24.29	050385	01.4407	24.00	050498	01.2744	21.87	050613	01.1025	22.87
050155	01.1562	19.97	050270	01.3246	22.68	050388	00.9432	14.21	050502	01.6692	21.87	050615	01.4503	21.15
050158	01.5592	26.71	050272	01.3615	19.69	050390	01.2350	21.04	050503	01.3323	22.11	050616	01.2735	20.76
050159	01.2369	21.78	050274	01.0960	18.11	050391	01.3409	19.68	050506	01.4706	24.09	050618	01.0205	16.48
050167	01.3568	22.09	050276	01.2591	28.37	050392	00.9821	16.53	050510	01.3648	28.70	050623	01.2040	23.19
050168	01.5962	23.78	050277	01.3622	21.80	050393	01.3945	22.22	050512	01.3749	29.35	050624	01.2514	26.72
050169	01.5252	23.32	050278	01.5011	21.16	050394	01.5281	22.04	050515	01.3295	28.65	050625	01.5858	23.29
050170	01.5054	21.35	050279	01.2210	20.42	050396	01.5525	21.13	050516	01.6481	23.36	050630	01.2448	21.58
050172	01.3087	20.41	050280	01.6345	22.36	050397	01.0703	17.88	050517	01.2673	19.52	050633	01.2660	21.41
050173	01.2190	22.01	050281	01.4865	....	050401	01.2008	15.64	050522	01.3936	29.90	050635	01.3393	29.56
050174	01.7090	25.94	050282	01.3481	22.82	050404	01.1331	13.84	050523	01.2175	25.91	050636	01.3336	21.81
050175	01.3262	23.42	050283	01.3344	26.60	050406	01.1195	14.65	050526	01.3612	25.43	050637	01.0646	22.10

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050638	00.9513	24.17	060033	01.1476	11.24	070030	01.2535	23.06	100055	01.3743	17.82	100146	01.1447	14.10
050641	01.2117	15.92	060034	01.4987	19.01	070031	01.3049	19.23	100056	01.4899	20.15	100147	01.0930	13.00
050643	00.8711	....	060036	01.1813	12.48	070033	01.3033	24.24	100057	01.3746	15.39	100150	01.2948	16.60
050644	00.9872	24.48	060037	01.0516	12.26	070034	01.3458	24.14	100059	00.9153	16.60	100151	01.7793	18.68
050660	01.2866	....	060038	01.0530	11.85	070035	01.3917	22.12	100060	01.7354	16.88	100154	01.6427	18.00
050661	00.9135	20.77	060041	00.8964	15.38	070036	01.3278	25.69	100061	01.5117	20.28	100156	01.1459	17.50
050662	00.8619	21.30	060042	00.9425	17.68	070038	00.9919	....	100062	01.7513	16.20	100157	01.6054	18.71
050663	01.1139	22.11	060043	00.9975	14.76	080001	01.6573	23.28	100063	01.2214	15.65	100159	01.0322	14.28
050666	00.7638	23.70	060044	01.1525	14.89	080002	01.2698	16.99	100067	01.3722	15.72	100160	01.0625	17.34
050667	01.1809	23.89	060046	01.1237	15.46	080003	01.3084	19.43	100068	01.4318	17.17	100161	01.5648	19.20
050668	01.2274	26.93	060047	01.1030	09.96	080004	01.3271	16.96	100069	01.5169	15.21	100162	01.4159	16.74
050671	01.6203	27.00	060049	01.2107	17.19	080005	01.3183	15.82	100070	01.4353	17.16	100165	01.2363	13.51
050672	00.6349	21.17	060050	01.2676	13.15	080006	01.3653	16.48	100071	01.2737	15.51	100166	01.4690	19.88
050674	01.2495	28.26	060052	01.1344	12.88	080007	01.2784	17.63	100072	01.2463	16.34	100167	01.4139	20.48
050675	01.7051	15.00	060053	00.9301	12.60	090001	01.4960	19.94	100073	01.7678	20.14	100168	01.3765	18.12
050676	00.9870	13.25	060054	01.3476	15.54	090002	01.1416	15.96	100074	01.2361	19.00	100169	01.8741	18.22
050677	01.3405	31.12	060056	00.8988	12.65	090003	01.3455	21.55	100075	01.6388	16.40	100170	01.4112	15.90
050678	01.1794	24.63	060057	01.0220	20.40	090004	01.6239	22.47	100076	01.4024	16.43	100172	01.3624	13.54
050680	01.2553	25.39	060058	00.8994	10.18	090005	01.2725	25.88	100077	01.3380	15.83	100173	01.5814	15.59
050682	00.9270	13.61	060060	00.9656	12.38	090006	01.3232	19.62	100078	01.1723	14.56	100174	01.4758	18.74
050684	01.1759	21.43	060062	00.9881	14.10	090007	01.4799	19.96	100079	01.4619	18.80	100175	01.1062	15.14
050685	01.2662	27.06	060063	01.0031	11.07	090008	01.5653	19.96	100080	01.5393	18.32	100176	01.9867	25.81
050686	01.3631	29.52	060064	01.3900	20.49	090010	00.9357	20.65	100081	01.1737	12.91	100177	01.3286	17.48
050688	01.2056	28.71	060065	01.3782	17.83	090011	01.9895	24.31	100082	01.5720	16.76	100179	01.6306	17.87
050689	01.4343	28.59	060066	00.9691	12.11	100001	01.5587	17.27	100083	01.3813	16.09	100180	01.4820	16.54
050690	01.3986	28.26	060068	01.1369	14.76	100002	01.4599	18.36	100084	01.5159	16.83	100181	01.4152	15.91
050693	01.5106	27.22	060070	01.1233	15.55	100004	01.0642	11.43	100085	01.3516	19.23	100183	01.3405	17.45
050694	01.4369	21.73	060071	01.2613	13.96	100005	01.0143	17.36	100086	01.3887	20.43	100186	01.3865	14.90
050695	01.1047	24.12	060072	00.9310	....	100006	01.6473	18.18	100087	01.7370	19.99	100187	01.4505	19.93
050696	02.1885	26.95	060073	01.0637	14.30	100007	01.8060	18.70	100088	01.7194	16.94	100189	01.2663	21.83
050697	01.1355	16.30	060075	01.2280	18.89	100008	01.7161	19.32	100090	01.3598	15.22	100191	01.3230	18.97
050698	01.4891	21.28	060076	01.3825	16.07	100009	01.5540	19.83	100092	01.5115	16.62	100199	01.2982	18.97
050699	00.7489	25.39	060085	00.9265	10.79	100010	01.4427	19.21	100093	01.4388	14.09	100200	01.3820	21.22
050700	01.5233	30.13	060087	01.6314	20.20	100012	01.6373	17.94	100098	01.1755	16.49	100203	01.1492	18.76
050701	01.3466	27.27	060088	00.9716	13.54	100014	01.2434	17.55	100099	01.2245	15.33	100204	01.5986	17.77
050702	00.9229	16.26	060090	00.9339	14.20	100015	01.3079	16.81	100102	01.0695	15.80	100206	01.3467	20.26
050704	01.1765	....	060096	00.9593	19.72	100017	01.5767	16.31	100103	01.1072	15.50	100207	01.4218	23.04
050705	00.6755	....	060100	01.3764	20.85	100018	01.3236	18.69	100105	01.4167	17.66	100208	01.5597	21.28
050706	00.8631	....	060103	01.2065	20.37	100019	01.5037	18.79	100106	01.0533	14.76	100209	01.6023	22.01
050707	00.8651	....	060104	01.3098	19.86	100020	01.3154	19.55	100107	01.3184	17.58	100210	01.7086	15.89
050708	00.9092	....	060106	01.3945	....	100022	01.6583	22.47	100108	01.1084	15.65	100211	01.3203	17.57
050709	01.2686	....	070001	01.7362	23.62	100023	01.3773	15.61	100109	01.3226	16.41	100212	01.6271	18.04
060001	01.5030	17.31	070002	01.8127	24.21	100024	01.4214	18.53	100110	01.4002	16.69	100213	01.5981	17.94
060003	01.3096	16.54	070003	01.1701	24.23	100025	01.6538	15.42	100112	01.0009	11.56	100217	01.2339	18.31
060004	01.1473	18.71	070004	01.1546	23.01	100026	01.6173	15.46	100113	02.1328	16.92	100220	01.8434	19.78
060006	01.1401	16.47	070005	01.3231	24.75	100027	00.9427	10.01	100114	01.4707	17.68	100221	01.4373	18.35
060007	01.2317	12.87	070006	01.3732	25.94	100028	01.3008	16.01	100117	01.3068	17.02	100222	01.3493	16.57
060008	00.9879	13.68	070007	01.3763	22.95	100029	01.3803	18.94	100118	01.3114	16.43	100223	01.4700	16.34
060009	01.4330	19.83	070008	01.2804	22.85	100030	01.3109	17.44	100121	01.2688	14.78	100224	01.4555	18.76
060010	01.5768	21.01	070009	01.2496	23.96	100032	01.9713	17.17	100122	01.3418	15.71	100225	01.3723	19.52
060011	01.2375	18.74	070010	01.4502	22.35	100034	01.7876	17.67	100124	01.4069	18.25	100226	01.3627	17.20
060012	01.4260	16.50	070011	01.2736	22.16	100035	01.6278	16.30	100125	01.0866	16.78	100227	01.0034	17.78
060013	01.2804	17.06	070012	01.1874	22.30	100038	01.6744	20.22	100126	01.4434	18.61	100228	01.2587	18.85
060014	01.7292	20.66	070013	01.3474	23.92	100039	01.7057	20.59	100127	01.5845	18.03	100229	01.3333	17.11
060015	01.6044	18.45	070015	01.3807	23.42	100040	01.6897	16.11	100128	02.1609	19.42	100230	01.3649	18.43
060016	01.1611	12.48	070016	01.3213	24.30	100042	01.6015	20.23	100129	01.3096	17.71	100231	01.6877	17.03
060018	01.2240	14.91	070017	01.4158	23.47	100043	01.4283	19.94	100130	01.1928	17.18	100232	01.2221	17.96
060020	01.4952	15.53	070018	01.4256	25.83	100044	01.4447	19.01	100131	01.3138	19.27	100234	01.6152	18.45
060022	01.7419	16.71	070019	01.2680	23.06	100045	01.4428	16.70	100132	01.4097	15.18	100235	01.4317	16.20
060023	01.5247	17.84	070020	01.4289	23.68	100046	01.5106	16.91	100134	01.2156	14.50	100236	01.4542	17.71
060024	01.7207	21.41	070021	01.2994	25.55	100047	01.7854	20.80	100135	01.4709	15.53	100237	02.1813	22.74
060026	01.4299	18.52	070022	01.6980	24.10	100048	00.9565	11.55	100137	01.2745	16.08	100238	01.4226	16.85
060027	01.5313	19.14	070024	01.3199	21.90	100049	01.3153	16.74	100138	00.9682	11.92	100239	01.4527	18.66
060028	01.4606	20.00	070025	01.6953	23.66	100050	01.2729	15.06	100139	01.0334	15.70	100240	00.8556	14.86
060029	01.0333	14.09	070026	01.1185	23.44	100051	01.2310	16.21	100140	01.1773	16.00	100241	00.9113	12.29
060030	01.3159	18.40	070027	01.2450	24.05	100052	01.4041	14.82	100142	01.1827	16.26	100242	01.4018	15.55
060031	01.5071	18.31	070028	01.4651	22.94	100053	01.3238	16.23	100144	01.2243	11.94	100243	01.4662	16.92
060032	01.4381	20.01	070029	01.2874	20.71	100054	01.2994	17.88	100145	01.4725	12.24	100244	01.3863	17.40

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
100246	01.3230	20.75	110042	01.1790	14.31	110134	00.8704	10.30	120015	00.8598	20.16	140026	01.1449	14.78
100248	01.6328	18.68	110043	01.6250	15.19	110135	01.1388	12.78	120016	00.8970	20.47	140027	01.2762	15.39
100249	01.3119	18.19	110044	01.1797	13.21	110136	01.1520	17.56	120018	00.9883	19.81	140029	01.2988	18.41
100252	01.1810	18.33	110045	01.2493	21.95	110140	00.8058	16.43	120019	01.1558	18.50	140030	01.5387	20.92
100253	01.3866	18.25	110046	01.1838	15.37	110141	00.8796	10.46	120021	00.9286	20.79	140031	01.1847	12.51
100254	01.5036	16.89	110048	01.2613	13.55	110142	01.0386	11.73	120022	01.6897	16.62	140032	01.2774	15.20
100255	01.2985	20.20	110049	01.0212	14.46	110143	01.3255	18.71	120025	00.9278	18.26	140033	01.2441	17.93
100256	01.8114	19.59	110050	01.0553	12.45	110144	01.1549	12.85	120026	01.2765	21.37	140034	01.1618	15.80
100258	01.6527	21.05	110051	00.9820	16.34	110146	00.9561	12.45	120027	01.4535	20.92	140035	01.0554	11.09
100259	01.4100	16.77	110052	00.8726	14.34	110149	01.0717	11.53	130001	00.9695	15.35	140036	01.1506	14.74
100260	01.4001	19.49	110054	01.2733	16.58	110150	01.3285	15.62	130002	01.3383	14.89	140037	00.9955	11.93
100262	01.4017	18.35	110056	01.0644	11.70	110152	01.1220	12.64	130003	01.2345	17.34	140038	01.1754	15.57
100263	01.4215	16.60	110059	01.2402	13.14	110153	00.9568	16.74	130005	01.4022	17.25	140039	00.9621	12.57
100264	01.3949	16.86	110061	01.0319	10.55	110154	00.9795	13.79	130006	01.8193	16.88	140040	01.2404	13.67
100265	01.2985	17.52	110062	00.9472	10.27	110155	01.1836	14.04	130007	01.5553	17.89	140041	01.1593	15.42
100266	01.2182	15.99	110063	01.0362	11.52	110156	00.9738	12.03	130008	00.9091	11.92	140042	01.0276	13.28
100267	01.2953	19.12	110064	01.2695	15.88	110157	01.0805	15.98	130009	00.9481	15.96	140043	01.2443	15.96
100268	01.2190	22.57	110065	01.0563	11.99	110161	01.2316	19.75	130010	01.0134	14.43	140045	00.9734	12.36
100269	01.3820	21.84	110066	01.3146	15.99	110162	00.8777	....	130011	01.2663	15.29	140046	01.2920	15.06
100270	00.8854	08.60	110069	01.1375	16.05	110163	01.3592	18.05	130012	01.0033	17.91	140047	01.1556	12.83
100271	01.7876	16.19	110070	00.9918	10.92	110164	01.4399	18.67	130013	01.2907	16.78	140048	01.3210	21.62
100273	01.1555	16.72	110071	00.9799	09.13	110165	01.3380	16.78	130014	01.3583	16.02	140049	01.5612	18.55
100275	01.5128	21.10	110072	01.0385	11.97	110166	01.5044	16.62	130015	00.8456	11.94	140051	01.4159	19.71
100276	01.3266	21.04	110073	01.2536	12.73	110168	01.6390	19.01	130016	00.8863	16.82	140052	01.3254	15.64
100277	01.0704	13.45	110074	01.4550	17.30	110169	00.6684	19.82	130017	01.1662	14.08	140053	01.8281	17.25
100278	00.8470	17.64	110075	01.1944	14.67	110171	01.3974	21.21	130018	01.6857	18.13	140054	01.3179	22.79
100279	01.4017	19.25	110076	01.3738	18.20	110172	01.2170	....	130019	01.1462	13.98	140055	00.9762	13.01
100280	01.4128	17.83	110078	01.6419	20.48	110174	00.9987	13.50	130021	00.9430	10.36	140058	01.1683	14.76
100281	01.2713	19.04	110079	01.3867	19.71	110176	01.0961	19.01	130022	01.2896	15.71	140059	01.1460	13.34
100282	01.1035	....	110080	01.1510	15.47	110177	01.4732	18.73	130024	01.0074	15.03	140061	01.0905	13.15
100283	01.4423	....	110082	02.0423	20.22	110178	01.0701	19.58	130025	01.1165	16.20	140062	01.2773	21.56
110001	01.2829	16.74	110083	01.6304	20.25	110179	01.2084	21.20	130026	01.1560	16.79	140063	01.3587	20.34
110002	01.2029	14.85	110086	01.1579	13.70	110181	00.9605	11.66	130027	00.8922	16.96	140064	01.2366	15.63
110003	01.3085	12.29	110087	01.2659	18.36	110183	01.4004	18.69	130028	01.2052	15.05	140065	01.4654	23.04
110004	01.2453	16.00	110088	01.0863	10.58	110184	01.1402	17.71	130029	01.0312	15.58	140066	01.2979	13.08
110005	01.2307	17.68	110089	01.1961	14.54	110185	01.1390	12.05	130030	01.0209	14.67	140067	01.8106	17.15
110006	01.3275	17.10	110091	01.3517	17.32	110186	01.2511	15.58	130031	01.0486	11.89	140068	01.3772	17.79
110007	01.4301	15.73	110092	01.0992	12.26	110187	01.1357	17.43	130034	01.0508	14.58	140069	01.0914	14.27
110008	01.1769	14.50	110093	00.9452	09.30	110188	01.4760	17.46	130035	00.9454	13.51	140070	01.3464	15.36
110009	01.0443	15.28	110094	01.0216	11.93	110189	01.2039	18.59	130036	01.2470	09.19	140074	01.0354	15.11
110010	02.0526	23.06	110095	01.2630	12.81	110190	01.1387	13.01	130037	01.1733	15.01	140075	01.4482	17.74
110011	01.2551	15.54	110096	01.0913	12.34	110191	01.3062	17.97	130043	01.0364	14.00	140077	01.1222	14.95
110013	01.1134	13.82	110097	01.0512	14.03	110192	01.3434	20.20	130044	01.0674	10.65	140079	01.2611	20.63
110014	01.0738	13.26	110098	01.0322	12.30	110193	01.1627	15.60	130045	01.0030	12.30	140080	01.6786	18.56
110015	01.2788	16.72	110100	01.0601	11.30	110194	00.9472	12.58	130048	01.0330	10.31	140081	01.1023	12.45
110016	01.2194	14.43	110101	01.0740	10.28	110195	01.1321	10.00	130049	01.2151	16.73	140082	01.5490	20.34
110017	00.9514	11.20	110103	00.9390	09.39	110198	01.3765	22.76	130054	00.9330	18.69	140083	01.2899	15.67
110018	01.1881	15.66	110104	01.1922	12.01	110200	01.9396	15.32	130056	00.9020	09.97	140084	01.2165	18.03
110020	01.2051	17.27	110105	01.0766	14.09	110201	01.3759	16.18	130058	01.0275	13.32	140086	01.1518	11.92
110023	01.2964	16.89	110107	01.7532	17.13	110203	00.9931	15.24	130060	01.2292	17.97	140087	01.2902	17.36
110024	01.4085	16.46	110108	01.0779	10.44	110204	00.7983	16.64	140001	01.2446	14.00	140088	01.5977	23.06
110025	01.4202	15.36	110109	01.1110	13.54	110205	01.0713	13.28	140002	01.3090	16.16	140089	01.2351	15.16
110026	01.1955	13.12	110111	01.1008	13.66	110207	01.0576	13.48	140003	01.0231	12.69	140090	01.4626	24.80
110027	01.0801	14.33	110112	00.9810	15.61	110208	00.9109	12.52	140004	01.0152	14.64	140091	01.7797	16.35
110028	01.6087	17.60	110113	01.0754	12.69	110209	00.9130	....	140005	00.9445	09.86	140093	01.1615	15.98
110029	01.3243	17.70	110114	01.1082	13.17	110210	01.0869	....	140007	01.4546	20.34	140094	01.2618	17.89
110030	01.2231	17.52	110115	01.6517	18.21	120001	01.7122	23.07	140008	01.4279	20.25	140095	01.5124	18.79
110031	01.3455	20.47	110118	01.0138	11.40	120002	01.2031	17.55	140010	01.3181	21.78	140097	00.9517	12.93
110032	01.2138	14.40	110120	01.1050	11.39	120003	01.1117	21.38	140011	01.0968	13.89	140098	01.6019	18.91
110033	01.4241	20.02	110121	01.1562	12.05	120004	01.2411	19.86	140012	01.2725	15.85	140100	01.3360	17.74
110034	01.5155	15.82	110122	01.2984	15.88	120005	01.2737	18.43	140013	01.6368	15.47	140101	01.1394	17.56
110035	01.3200	18.11	110124	01.0454	14.58	120006	01.1713	22.51	140014	01.1626	15.87	140102	01.0394	13.57
110036	01.6154	18.45	110125	01.2007	15.34	120007	01.6238	19.33	140015	01.2858	13.12	140103	01.3496	17.19
110037	01.0626	09.72	110127	00.9893	12.30	120009	01.0106	18.94	140016	00.9209	10.97	140105	01.2716	19.12
110038	01.4567	14.12	110128	01.1836	17.25	120010	01.8065	21.30	140018	01.3546	18.18	140107	01.0636	11.30
110039	01.3732	17.07	110129	01.6398	12.75	120011	01.2612	28.18	140019	00.9450	12.11	140108	01.3514	20.09
110040	01.0515	15.13	110130	01.0589	09.58	120012	00.9554	19.45	140024	01.0061	13.82	140109	01.0897	12.38
110041	01.2778	13.87	110132	01.1404	12.55	120014	01.2507	20.16	140025	01.0811	15.57	140110	01.2892	15.34

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
140112	01.0965	13.56	140202	01.3426	19.33	150022	01.0980	17.53	150101	01.1104	15.07	160048	01.1233	11.75
140113	01.4687	17.23	140203	01.1739	17.40	150023	01.4769	16.92	150102	01.0650	13.94	160049	00.9284	11.56
140114	01.3274	17.70	140205	00.9214	13.44	150024	01.3035	15.60	150103	01.0279	15.64	160050	01.0311	13.62
140115	01.2848	16.57	140206	00.9779	18.13	150025	01.4971	17.14	150104	01.1084	14.82	160051	01.1187	14.21
140116	01.2435	17.79	140207	01.3688	19.80	150026	01.1675	16.48	150105	01.3107	15.63	160052	01.0489	12.86
140117	01.4090	16.72	140208	01.5927	22.03	150027	01.0157	15.66	150106	01.0815	15.53	160054	00.9694	11.05
140118	01.6957	21.24	140209	01.7149	16.20	150029	01.2769	17.73	150109	01.4210	14.54	160055	01.0271	12.02
140119	01.6578	20.94	140210	01.0283	11.46	150030	01.0675	15.26	150110	00.9954	14.35	160056	01.0362	12.73
140120	01.4814	14.18	140211	01.1928	18.69	150031	01.0304	13.82	150111	01.2159	13.31	160057	01.3290	14.53
140121	01.4762	10.01	140212	01.1562	21.62	150032	01.8129	18.37	150112	01.2079	16.65	160058	01.6641	17.91
140122	01.5373	20.90	140213	01.2707	21.23	150033	01.5682	18.86	150113	01.1647	16.07	160060	01.0516	13.01
140124	01.1333	21.99	140215	01.1481	13.29	150034	01.3594	18.13	150114	01.0006	12.64	160061	01.0052	12.04
140125	01.3141	14.30	140217	01.2000	20.19	150035	01.4091	17.89	150115	01.3358	16.31	160062	01.0359	11.11
140127	01.3094	16.12	140218	00.9759	13.27	150036	01.0182	16.72	150122	01.1316	16.92	160063	01.1735	12.72
140128	01.0912	15.47	140220	01.1237	14.02	150037	01.2532	16.88	150123	01.2559	13.21	160064	01.5804	16.66
140129	01.0377	13.55	140223	01.5250	21.42	150038	01.3406	15.77	150124	01.1502	14.29	160065	01.0796	13.11
140130	01.1725	19.93	140224	01.3763	20.01	150039	00.9542	14.21	150125	01.3991	17.70	160066	01.1325	13.51
140132	01.4217	18.36	140228	01.5757	16.72	150042	01.2377	14.39	150126	01.5033	18.93	160067	01.4111	15.81
140133	01.3843	19.25	140230	00.9812	14.89	150043	01.0398	18.18	150127	01.1534	12.34	160068	00.9913	13.55
140135	01.2412	13.86	140231	01.5483	19.72	150044	01.2436	17.15	150128	01.2294	17.33	160069	01.3977	15.53
140137	01.0158	13.42	140233	01.7552	15.55	150045	01.1638	15.56	150129	01.1748	19.71	160070	00.9804	13.02
140138	00.9707	11.80	140234	01.1921	15.04	150046	01.4977	16.06	150130	01.0588	13.99	160072	01.0797	12.24
140139	01.0718	13.33	140236	00.9891	11.86	150047	01.6539	17.32	150132	01.3503	18.09	160073	00.9651	10.93
140140	01.1676	12.45	140239	01.5695	17.90	150048	01.1741	15.68	150133	01.1933	15.64	160074	00.9967	12.64
140141	00.9239	12.09	140240	01.4712	21.75	150049	01.1587	12.40	150134	01.2884	15.24	160075	01.0724	13.49
140143	01.1190	15.80	140242	01.5193	20.44	150050	01.1485	14.30	150136	00.9179	18.60	160076	01.0566	15.24
140144	01.0202	13.85	140245	01.1141	12.96	150051	01.2735	15.96	150137	03.1313	....	160077	01.2005	10.22
140145	01.1235	15.06	140246	01.0607	11.58	150052	01.1241	11.23	150138	01.1910	....	160079	01.4063	15.08
140146	00.9399	14.65	140250	01.2721	21.19	150053	01.0216	15.93	150140	02.4842	....	160080	01.2127	15.51
140147	01.1689	13.02	140251	01.3111	17.14	150054	01.1266	13.30	150141	00.9198	....	160081	01.0831	13.91
140148	01.7026	16.79	140252	01.4481	21.67	150056	01.6530	19.66	150897	05.1218	....	160082	01.6924	16.88
140150	01.5334	22.42	140253	01.4610	14.43	150057	02.4338	14.55	160001	01.2439	16.04	160083	01.5064	16.82
140151	01.1688	16.06	140258	01.5165	20.74	150058	01.6757	17.54	160002	01.2061	12.61	160085	01.0754	11.90
140152	01.0932	21.14	140271	01.0467	13.77	150059	01.3249	18.15	160003	01.0308	12.40	160086	00.9602	12.15
140155	01.2094	16.91	140275	01.2155	15.26	150060	01.1564	15.01	160005	01.0538	12.42	160088	01.0433	13.89
140158	01.3335	20.44	140276	01.9959	19.03	150061	01.2447	14.90	160007	01.0184	12.24	160089	01.2073	13.54
140160	01.2063	14.61	140280	01.2762	16.62	150062	01.0233	14.82	160008	01.1335	14.26	160090	01.0580	14.34
140161	01.1250	16.18	140281	01.5943	19.85	150063	01.0873	19.83	160009	01.2106	13.13	160091	01.1695	10.55
140162	01.6805	17.28	140285	01.2309	14.65	150064	01.0346	16.55	160012	01.1292	13.88	160092	00.9649	12.70
140164	01.2497	15.27	140286	01.0922	16.58	150065	01.0989	16.08	160013	01.2580	14.28	160093	01.1424	12.92
140165	01.0894	12.83	140288	01.6787	21.28	150066	00.9891	13.07	160014	00.9703	12.72	160094	01.2097	14.65
140166	01.2670	15.81	140289	01.2885	14.43	150067	01.0729	13.96	160016	01.2622	15.22	160095	01.0123	15.81
140167	01.1570	13.88	140290	01.3203	19.56	150069	01.2194	16.18	160018	00.9108	12.92	160097	01.1814	13.10
140168	01.2012	14.64	140291	01.3419	22.01	150070	01.0530	14.00	160020	01.0625	11.57	160098	01.0188	12.41
140170	01.1306	11.77	140292	01.1778	18.63	150071	01.2019	11.71	160021	01.0819	14.23	160099	00.9949	11.94
140171	00.8944	10.42	140294	01.1511	15.03	150072	01.1576	15,53	160023	01.0941	13.47	160101	01.1236	17.13
140172	01.5026	17.11	140297	01.1950	21.49	150073	00.9918	17.12	160024	01.5923	16.25	160102	01.3050	15.06
140173	00.9836	12.88	140300	01.0367	....	150074	01.5594	18.05	160025	01.7778	15.89	160103	00.9911	12.23
140174	01.4124	17.67	150001	01.0972	16.90	150075	01.1754	13.29	160026	01.1442	14.15	160104	01.1581	16.70
140176	01.2493	19.10	150002	01.4373	17.08	150076	01.0745	16.60	160027	01.1974	12.61	160106	01.0904	13.40
140177	01.2799	15.29	150003	01.7331	16.59	150077	01.3123	15.22	160028	01.3029	17.45	160107	01.1461	14.31
140179	01.3034	18.61	150004	01.4468	18.37	150078	01.0196	18.19	160029	01.4799	16.57	160108	01.1020	13.59
140180	01.4730	20.05	150005	01.2178	16.87	150079	01.2034	13.37	160030	01.2650	15.65	160109	00.9338	11.85
140181	01.3412	17.28	150006	01.1904	15.77	150082	01.4896	16.98	160031	01.1968	12.60	160110	01.5430	17.18
140182	01.3058	19.45	150007	01.2625	17.48	150084	01.8655	21.52	160032	01.1969	14.22	160111	00.9992	10.53
140184	01.1675	13.87	150008	01.3341	18.07	150086	01.2770	15.03	160033	01.5017	15.45	160112	01.4460	14.36
140185	01.4725	15.34	150009	01.2833	16.85	150088	01.1849	16.25	160034	01.0027	13.04	160113	01.0071	11.13
140186	01.2813	17.46	150010	01.1806	16.38	150089	01.3686	17.27	160035	00.9960	11.50	160114	01.0526	13.89
140187	01.4143	15.70	150011	01.2160	15.65	150090	01.2297	17.84	160036	01.0488	13.58	160115	00.9897	12.83
140188	00.9687	10.93	150012	01.6434	18.77	150091	01.0696	15.33	160037	01.1651	14.19	160116	01.1879	14.80
140189	01.1508	15.87	150013	01.1117	12.68	150092	01.0246	12.84	160039	01.0370	14.71	160117	01.2924	14.70
140190	01.1530	13.53	150014	01.4271	18.85	150094	01.0291	16.14	160040	01.3268	15.44	160118	01.0051	11.77
140191	01.4154	20.56	150015	01.2677	16.77	150095	01.0866	15.17	160041	01.0084	12.61	160120	00.9931	09.44
140192	01.1322	16.11	150017	01.7977	15.68	150096	01.0528	17.76	160043	01.0207	13.56	160122	01.1748	14.31
140193	01.0104	11.79	150018	01.2591	16.65	150097	01.0892	16.38	160044	01.1698	12.51	160123	01.1808	14.15
140197	01.3690	16.76	150019	01.0382	13.59	150098	01.1575	11.86	160045	01.6667	16.35	160124	01.2394	14.80
140199	01.0260	14.73	150020	01.1643	12.34	150099	01.2997	16.16	160046	01.0636	11.86	160126	01.0838	16.15
140200	01.4494	20.10	150021	01.6412	17.52	150100	01.6382	17.23	160047	01.3421	15.29	160129	01.0127	12.82

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
160130	01.0625	12.49	170067	00.9103	11.65	170160	01.0407	11.13	180067	01.9277	15.27	190034	01.1602	14.41
160131	01.1371	12.28	170068	01.3094	14.11	170164	00.9906	13.92	180069	01.0350	15.39	190035	01.4469	17.61
160133	01.1892	17.39	170069	01.1645	13.12	170166	01.1623	13.71	180070	01.0759	13.59	190036	01.6233	18.08
160134	01.0327	12.24	170070	01.0065	12.24	170168	00.8805	10.83	180072	00.9953	14.39	190037	01.0251	10.21
160135	00.9953	10.69	170072	00.9187	10.54	170171	01.0870	10.44	180075	00.9673	12.29	190039	01.4452	17.58
160138	01.1205	12.71	170073	01.0171	12.99	170172	00.9598	12.70	180078	01.0960	16.85	190040	01.3872	17.91
160140	01.0812	14.30	170074	01.1095	12.85	170174	01.0175	10.87	180079	01.2252	13.16	190041	01.4886	16.84
160142	01.0411	13.08	170075	00.8614	10.41	170175	01.2756	17.46	180080	01.0560	13.90	190043	01.0919	12.42
160143	01.0401	12.58	170076	01.0513	10.87	170176	01.5076	19.27	180085	01.2867	16.89	190044	01.1587	17.86
160145	01.1178	11.55	170077	00.9750	10.85	170181	01.1767	....	180087	01.0977	13.07	190045	01.3452	18.67
160146	01.3788	14.96	170079	01.0894	10.45	180001	01.2221	15.86	180088	01.6293	18.09	190046	01.4675	16.26
160147	01.2215	14.07	170080	00.9829	11.16	180002	01.0469	16.25	180092	01.0862	13.78	190047	01.0592	16.48
160151	01.0912	13.10	170081	00.9978	10.32	180004	01.1119	13.38	180093	01.3382	14.08	190048	01.0642	13.69
160152	00.9447	12.41	170082	00.9942	10.30	180005	01.0618	17.26	180094	00.9419	11.42	190049	01.0172	13.95
160153	01.7242	16.90	170084	00.9622	10.65	180006	00.9274	08.63	180095	01.1899	12.50	190050	01.0694	13.14
170001	01.2131	14.88	170085	00.8999	11.95	180007	01.3845	14.33	180099	01.2077	10.89	190053	01.0354	12.25
170004	01.0693	12.69	170086	01.6679	17.55	180009	01.3240	16.50	180101	01.3186	18.68	190054	01.3615	13.23
170006	01.2010	15.19	170087	01.4303	18.81	180010	01.8396	16.23	180102	01.4368	14.54	190059	00.9426	13.39
170008	00.9801	12.92	170088	00.8977	09.76	180011	01.1454	15.42	180103	02.0493	17.52	190060	01.4785	15.16
170009	01.1155	17.18	170089	01.0612	12.95	180012	01.3085	16.85	180104	01.4735	15.55	190064	01.4974	16.92
170010	01.1763	14.08	170090	01.0082	09.95	180013	01.4626	15.12	180105	00.9012	12.43	190065	01.4931	17.04
170011	01.3537	14.19	170092	00.8129	11.15	180014	01.5910	17.73	180106	00.9012	11.83	190071	00.8498	11.85
170012	01.4645	15.64	170093	00.8838	11.10	180015	01.1845	14.35	180108	00.8747	12.16	190075	01.4543	18.92
170013	01.3540	13.97	170094	01.0632	13.44	180016	01.2633	14.75	180115	00.9720	14.02	190077	00.9541	11.73
170014	01.0794	14.53	170095	01.1095	13.17	180017	01.2913	13.27	180116	01.3169	15.01	190078	01.1817	11.43
170015	00.9806	13.60	170097	00.9789	10.48	180018	01.1740	13.63	180117	01.2367	15.41	190079	01.2300	14.73
170016	01.6091	19.51	170098	01.0225	15.18	180019	01.3293	16.80	180118	01.0391	11.92	190081	00.9047	08.99
170017	01.1922	15.10	170099	01.3189	10.77	180020	01.0556	15.49	180120	00.9822	12.26	190083	00.9672	11.08
170018	01.0161	11.92	170100	01.0247	13.48	180021	01.1618	12.98	180121	01.0719	12.71	190086	01.3024	14.53
170019	01.1399	14.63	170101	00.9913	13.45	180023	00.8798	10.99	180122	01.0623	12.63	190088	01.2370	16.36
170020	01.3110	14.68	170102	00.9680	12.36	180024	01.2590	15.48	180123	01.4446	17.30	190089	01.0711	09.26
170022	01.1413	13.47	170103	01.2817	14.83	180025	01.1179	15.19	180124	01.4142	15.91	190090	01.1668	14.43
170023	01.3799	15.56	170104	01.4279	19.34	180026	01.1606	11.76	180125	00.9599	15.97	190092	01.2573	12.24
170024	01.2165	11.95	170105	00.9750	13.23	180027	01.2141	14.17	180126	01.2179	11.31	190095	01.0284	13.52
170025	01.3789	14.29	170106	00.8751	12.19	180028	00.9833	16.46	180127	01.2600	16.63	190098	01.5166	17.10
170026	01.0526	13.40	170108	00.9812	10.51	180029	01.2220	15.43	180128	01.1607	13.00	190099	01.1300	17.03
170027	01.2573	14.72	170109	01.0068	13.96	180030	01.1336	09.54	180129	01.0456	15.03	190102	01.5245	15.33
170030	01.0235	13.67	170110	00.9179	15.29	180031	00.9296	12.11	180130	01.4167	17.27	190103	00.8384	09.39
170031	00.9325	11.65	170112	00.9238	12.74	180032	01.0559	15.53	180132	01.1821	14.40	190106	01.1220	15.42
170032	01.1074	13.49	170113	01.1925	13.04	180033	01.1073	12.13	180133	01.2386	17.31	190109	01.2162	14.04
170033	01.2882	14.68	170114	01.0133	12.48	180034	00.9890	14.93	180134	00.9786	12.39	190110	01.0315	11.76
170034	00.9131	13.26	170115	01.0216	10.73	180035	01.4971	16.92	180136	01.4161	16.84	190111	01.5568	17.17
170035	00.8750	12.11	170116	01.0387	13.57	180036	01.1477	16.65	180137	01.6839	17.08	190112	01.4902	17.35
170036	00.8821	11.44	170117	00.9050	12.83	180037	01.2434	19.20	180138	01.1826	16.52	190113	01.3396	17.08
170037	01.1169	15.23	170119	00.9649	10.20	180038	01.3562	14.14	180139	01.1051	15.33	190114	00.9851	12.28
170038	00.9551	11.29	170120	01.3299	14.75	180040	01.9301	19.09	190001	00.9644	16.01	190115	01.2542	17.60
170039	01.0968	12.22	170121	00.9411	11.71	180041	01.0478	13.28	190002	01.6374	18.16	190116	01.2858	13.30
170040	01.4401	16.25	170122	01.8098	18.62	180042	01.1672	12.00	190003	01.4074	18.23	190118	01.0092	12.00
170041	01.0143	11.04	170123	01.7901	18.27	180043	01.0935	15.39	190004	01.3544	14.02	190120	01.0309	13.37
170043	01.0640	12.94	170124	00.9830	12.46	180044	01.0544	13.83	190005	01.5020	15.78	190122	01.2919	13.38
170044	01.1084	14.61	170126	00.9847	10.58	180045	01.2217	16.28	190006	01.2258	13.74	190124	01.4639	18.66
170045	00.9976	12.44	170128	00.9854	13.53	180046	01.0915	16.36	190007	01.0434	12.27	190125	01.4620	15.18
170049	01.3162	17.80	170131	01.1350	09.38	180047	01.0650	13.71	190008	01.6475	16.82	190127	01.4558	19.90
170050	01.0199	10.54	170133	01.1703	14.32	180048	01.1869	15.40	190009	01.1425	13.81	190128	01.0642	16.60
170051	00.9951	12.83	170134	00.9502	12.07	180049	01.3278	14.26	190010	01.1244	13.57	190130	01.0520	11.86
170052	01.1045	12.81	170137	01.1506	16.18	180050	01.2987	15.06	190011	01.1585	13.25	190131	01.2964	14.32
170053	00.8956	11.99	170139	01.0518	11.91	180051	01.3456	13.60	190013	01.3692	15.51	190133	01.0540	10.90
170054	01.0671	12.27	170140	01.0645	11.61	180053	01.2163	13.52	190014	01.0595	13.49	190134	00.9924	11.85
170055	01.1158	14.16	170142	01.2551	15.60	180054	01.0523	12.43	190015	01.2040	16.70	190135	01.4554	20.08
170056	00.9899	10.07	170143	01.1521	13.23	180055	01.1054	13.29	190017	01.2604	14.98	190136	01.1399	12.08
170057	01.0076	14.13	170144	01.6074	14.82	180056	01.0784	15.70	190018	01.2232	15.07	190138	00.7376	18.82
170058	01.1368	16.33	170145	01.1826	13.74	180058	00.9120	12.01	190019	01.4599	15.79	190140	00.9870	11.41
170060	01.0095	12.67	170146	01.3553	17.87	180059	00.8790	11.19	190020	01.1434	16.43	190142	00.9693	13.12
170061	01.2333	11.89	170147	01.1927	17.94	180060	00.9768	11.01	190025	01.2407	12.09	190144	01.1976	14.30
170062	00.9532	11.22	170148	01.4374	17.40	180063	01.0505	09.44	190026	01.4204	14.85	190145	00.9489	13.28
170063	00.9660	09.03	170150	01.1431	14.56	180064	01.2302	12.70	190027	01.4175	15.44	190146	01.5725	17.87
170064	00.9331	11.28	170151	01.0535	11.47	180065	01.0596	09.61	190029	01.1868	15.59	190147	00.9619	12.68
170066	00.9185	11.39	170152	00.9490	13.46	180066	01.2304	17.26	190033	00.8818	09.88	190148	00.9425	11.65

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
190149	00.9929	10.60	200021	01.1487	17.17	210055	01.2113	26.02	220090	01.1993	20.51	230058	01.1252	15.97
190151	01.0876	11.14	200023	00.8912	15.25	210056	01.4275	15.73	220092	01.2503	20.92	230059	01.4661	18.12
190152	01.4102	19.90	200024	01.2557	18.55	210057	01.3256	22.56	220094	01.2099	18.76	230060	01.3317	16.27
190155	00.9849	14.75	200025	01.1783	18.48	210058	01.7447	17.53	220095	01.2315	17.94	230062	01.1130	14.71
190156	00.8862	11.37	200026	01.0457	15.56	210059	01.3134	21.97	220097	01.1025	19.24	230063	01.3458	17.81
190158	01.3048	20.92	200027	01.2207	15.52	210060	01.0967	21.07	220098	01.2361	17.34	230065	01.4526	18.13
190160	01.2539	14.82	200028	00.9634	15.57	210061	01.0430	....	220099	01.1392	16.77	230066	01.3152	18.55
190161	01.0117	13.12	200031	01.2310	14.32	220001	01.1976	20.13	220100	01.2219	21.66	230068	01.4296	20.00
190162	01.2364	21.67	200032	01.2057	17.73	220002	01.5483	21.50	220101	01.4460	23.37	230069	01.1205	18.20
190164	01.0920	16.49	200033	01.6984	19.02	220003	01.0701	16.57	220104	01.2209	22.59	230070	01.4620	18.67
190166	01.0211	13.69	200034	01.2233	16.82	220004	01.1907	19.23	220105	01.1869	21.38	230071	00.8421	20.02
190167	01.2466	17.25	200037	01.1715	15.27	220006	01.3611	20.97	220106	01.2377	21.02	230072	01.2440	17.55
190170	00.9827	12.41	200038	01.0836	17.59	220008	01.2043	18.57	220107	01.1978	18.62	230075	01.5034	18.69
190173	01.4630	20.83	200039	01.2581	16.94	220010	01.2376	20.19	220108	01.1328	20.00	230076	01.3257	18.86
190175	01.4110	....	200040	01.0808	15.62	220011	01.1200	28.03	220110	02.0106	29.37	230077	02.0001	18.35
190176	01.6417	17.06	200041	01.1404	16.98	220012	01.3024	26.53	220111	01.2194	19.33	230078	01.2068	14.77
190177	01.6197	20.78	200043	00.6087	16.71	220015	01.1897	19.96	220114	01.4568	18.43	230080	01.1882	18.22
190178	00.9582	10.79	200050	01.1492	15.77	220016	01.2459	19.14	220116	01.8553	23.87	230081	01.1626	16.37
190182	00.9566	20.15	200051	00.9912	17.33	220017	01.3072	23.11	220118	02.0244	25.34	230082	01.1171	14.65
190183	01.1614	12.24	200052	01.0230	13.59	220019	01.1584	18.25	220119	01.3055	23.40	230085	01.0995	16.38
190184	01.0158	11.69	200055	01.0929	15.03	220020	01.1232	17.89	220120	01.2446	18.85	230086	01.0390	14.27
190185	01.2193	19.21	200062	00.9693	14.32	220021	01.3770	22.08	220123	00.9948	22.88	230087	01.0361	13.82
190186	00.9482	12.11	200063	01.1759	16.86	220023	01.1947	18.44	220126	01.2639	17.78	230089	01.3695	21.88
190187	00.9318	12.65	200066	01.2341	14.87	220024	01.1843	18.45	220128	01.1216	22.23	230092	01.2787	17.42
190189	00.7764	16.06	210001	01.3646	17.18	220025	01.1360	17.91	220133	00.8589	28.96	230093	01.2534	18.00
190190	01.0161	18.85	210002	02.0515	16.27	220028	01.4387	20.23	220135	01.1607	22.89	230095	01.1863	15.62
190191	01.2715	20.41	210003	01.5173	26.44	220029	01.1282	21.86	220153	00.9800	17.41	230096	01.1620	18.32
190193	01.2707	19.19	210004	01.3041	24.62	220030	01.0843	15.28	220154	00.9489	19.60	230097	01.5679	17.19
190194	01.1518	18.53	210005	01.1988	18.75	220031	01.6928	25.43	220156	01.3161	19.38	230099	01.2435	18.35
190196	00.8489	16.88	210006	01.0805	16.17	220033	01.3632	19.43	220162	01.4775	....	230100	01.2387	14.49
190197	01.2858	17.69	210007	01.5575	19.41	220035	01.2434	20.33	220163	01.9504	22.98	230101	01.0969	15.97
190199	01.3781	12.37	210008	01.3734	19.80	220036	01.6474	21.93	220171	01.7211	22.19	230102	00.7834	....
190200	01.5574	18.93	210009	01.7273	18.18	220038	01.3326	20.40	220897	04.8013	....	230103	01.0500	16.10
190201	01.2697	17.92	210010	01.2191	15.74	220041	01.1978	20.15	230001	01.2107	15.09	230104	01.6245	19.92
190202	01.5201	18.78	210011	01.2655	19.58	220042	01.2521	22.65	230002	01.2674	18.51	230105	01.5944	18.07
190203	01.5031	19.57	210012	01.5475	20.57	220046	01.4143	21.28	230003	01.1446	17.63	230106	01.1545	16.99
190204	01.4792	20.13	210013	01.2654	20.26	220049	01.2639	21.92	230004	01.6481	20.75	230107	00.8769	11.85
190205	01.8112	16.91	210015	01.1746	18.47	220050	01.0680	16.72	230005	01.2896	17.44	230108	01.2212	15.90
190206	01.4616	20.80	210016	01.7430	19.90	220051	01.2295	20.11	230006	01.1046	15.62	230110	01.2393	16.49
190207	01.1994	18.41	210017	01.1089	15.93	220052	01.2703	23.12	230007	01.0047	16.93	230111	01.0595	14.14
190208	00.8324	09.96	210018	01.2700	20.00	220053	01.2871	19.36	230012	00.6001	12.54	230113	00.9922	17.34
190211	00.6056	11.52	210019	01.3205	16.54	220055	01.3639	19.25	230013	01.3303	19.57	230114	00.6287	20.38
190212	00.7321	12.23	210022	01.4198	19.43	220057	01.3603	22.51	230015	01.1594	18.65	230115	00.9767	14.41
190216	00.6297	18.37	210023	01.3483	19.46	220058	01.0610	18.83	230017	01.5654	20.01	230116	00.9194	14.42
190217	00.9191	....	210024	01.3754	17.35	220060	01.1489	23.11	230019	01.4946	20.56	230117	01.8754	22.68
190218	01.0516	....	210025	01.3202	17.00	220062	00.6790	18.68	230020	01.6382	19.60	230118	01.2164	15.76
190223	00.5207	....	210026	01.3603	22.97	220063	01.2217	18.81	230021	01.5867	16.12	230119	01.3453	22.01
190226	00.8135	....	210027	01.2333	15.59	220064	01.1869	20.35	230022	01.3133	16.98	230120	01.1522	23.67
190227	00.8873	....	210028	01.2118	16.10	220065	01.1891	19.93	230024	01.4936	23.87	230121	01.3023	18.60
190229	02.4642	....	210029	01.3271	17.21	220066	01.3085	18.74	230027	01.1037	14.80	230122	01.3015	17.81
190230	00.8400	....	210030	01.0685	18.36	220067	01.2643	22.39	230029	01.5937	20.50	230124	01.1111	16.69
190231	01.1981	....	210031	01.6197	17.91	220068	00.5785	15.96	230030	01.2668	16.14	230125	01.3058	13.25
190232	01.7205	....	210032	01.1992	18.14	220070	01.2733	17.86	230031	01.4708	18.10	230128	01.4402	19.92
200001	01.2566	14.52	210033	01.1728	17.70	220071	01.8242	24.13	230032	01.7439	18.41	230129	01.9293	19.58
200002	01.0559	16.63	210034	01.3497	19.13	220073	01.3852	23.80	230034	01.1872	15.14	230130	01.6340	21.89
200003	01.1171	15.66	210035	01.2142	20.18	220074	01.2794	20.97	230035	01.1903	16.81	230132	01.4283	21.06
200006	01.1701	15.38	210037	01.2548	15.17	220075	01.2079	18.15	230036	01.2920	18.69	230133	01.2463	14.88
200007	00.9811	14.93	210038	01.4342	19.79	220076	01.1689	21.63	230037	01.1725	16.35	230134	01.1369	16.43
200008	01.2424	18.02	210039	01.1532	15.16	220077	01.6349	21.71	230038	01.6738	20.24	230135	01.2139	19.52
200009	01.7323	19.47	210040	01.3767	19.85	220079	01.0974	20.24	230040	01.2196	17.05	230137	01.1843	17.53
200012	01.1162	15.58	210043	01.2576	20.43	220080	01.2793	17.64	230041	01.1727	17.55	230141	01.6069	20.25
200013	01.1207	14.58	210044	01.2302	20.56	220081	01.0455	21.45	230042	01.1831	18.66	230142	01.1826	19.33
200015	01.2633	16.46	210045	00.9736	11.99	220082	01.2554	17.24	230046	01.7722	25.27	230143	01.2154	15.80
200016	01.0159	16.05	210046	01.1333	12.11	220083	01.1952	19.46	230047	01.2937	19.18	230144	01.1448	20.99
200017	01.2461	17.38	210048	01.2058	21.96	220084	01.2206	23.28	230053	01.5048	23.90	230145	01.1262	14.78
200018	01.1752	14.04	210049	01.1165	16.76	220086	01.5367	24.89	230054	01.7859	18.80	230146	01.2901	19.28
200019	01.2513	17.59	210051	01.3824	13.41	220088	01.5488	21.94	230055	01.1569	16.59	230147	01.5230	19.33
200020	01.1539	19.52	210054	01.2555	19.16	220089	01.2981	23.19	230056	00.9682	13.06	230149	01.2085	14.21

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
230151	01.3233	19.88	240002	01.6725	19.53	240090	01.0732	13.12	240193	01.0606	14.44	250081	01.2292	14.24
230153	01.0349	14.92	240003	01.1479	23.37	240091	01.0937	10.92	240196	00.6031	18.69	250082	01.2324	12.01
230154	00.9714	12.93	240004	01.4625	19.26	240093	01.3102	15.75	240200	00.8656	12.36	250083	01.0859	11.71
230155	01.0761	13.24	240005	00.8750	13.13	240094	00.9900	16.21	240205	00.9024	....	250084	01.1326	12.46
230156	01.6534	21.08	240006	01.0912	18.30	240096	01.0972	15.05	240206	00.8925	....	250085	01.0384	11.38
230157	01.2631	18.67	240007	01.1001	14.77	240097	01.0203	16.73	240207	01.2148	20.96	250088	00.9623	14.19
230159	01.3273	18.09	240008	01.1026	13.42	240098	00.9520	14.88	240210	01.2573	21.49	250089	01.1194	11.05
230161	00.9933	12.75	240009	01.0008	15.30	240099	01.0626	11.12	240211	00.9051	11.55	250093	01.1480	12.10
230162	00.9084	14.55	240010	01.9591	20.03	240100	01.2660	18.09	250001	01.6028	15.00	250094	01.2904	13.80
230165	01.8106	20.30	240011	01.1175	15.51	240101	01.2004	16.22	250002	00.7930	12.37	250095	00.9758	12.64
230167	01.2554	18.08	240013	01.2838	15.46	240102	00.9699	13.30	250003	01.0075	12.86	250096	01.2819	15.13
230169	01.3305	20.76	240014	01.0662	16.73	240103	01.1370	14.12	250004	01.4407	14.26	250097	01.1086	13.52
230171	01.0332	14.03	240016	01.3937	14.72	240104	01.1893	19.56	250005	00.9885	09.59	250098	00.8759	11.22
230172	01.2727	22.25	240017	01.1536	14.77	240105	01.0763	13.71	250006	00.9874	13.07	250099	01.2391	11.86
230174	01.2418	17.96	240018	01.2886	15.31	240106	01.2773	22.45	250007	01.2429	16.54	250100	01.2131	12.66
230175	02.6753	14.23	240019	01.2248	19.80	240107	00.9785	13.40	250008	00.9665	10.63	250101	00.9434	09.57
230176	01.2043	19.69	240020	01.1723	17.23	240108	00.9827	11.10	250009	01.1540	12.76	250102	01.4660	13.97
230178	01.0119	14.97	240021	00.9716	12.83	240109	00.9555	13.75	250010	01.0241	11.13	250104	01.2793	14.47
230180	01.1001	14.82	240022	01.1386	16.66	240110	00.9468	14.99	250012	00.9571	14.17	250105	00.8550	11.42
230184	01.1705	16.11	240023	01.0863	15.38	240111	00.9794	12.94	250015	01.0999	12.36	250107	00.8983	13.99
230186	01.3015	15.69	240025	01.2377	13.94	240112	01.0860	13.13	250017	00.9522	12.98	250109	00.9693	12.07
230188	01.1288	15.61	240027	01.0029	12.39	240114	01.0045	10.23	250018	00.9424	10.22	250112	00.9521	12.65
230189	00.9168	14.34	240028	01.1422	15.53	240115	01.6327	21.28	250019	01.3283	16.89	250117	01.0319	12.65
230190	01.0148	20.60	240029	01.2204	15.39	240116	00.8833	12.64	250020	00.9812	09.79	250119	01.2539	11.54
230191	00.9038	14.34	240030	01.3116	16.01	240117	01.0892	16.56	250021	00.8899	07.83	250120	01.0502	11.96
230193	01.2146	16.81	240031	00.9538	12.78	240119	00.8532	16.27	250023	00.8958	09.70	250122	01.3088	14.29
230194	01.1621	13.35	240036	01.4871	18.61	240121	00.8919	17.30	250024	00.9704	08.93	250123	01.4131	18.33
230195	01.2654	21.05	240037	01.0790	15.12	240122	01.0333	16.04	250025	01.1605	14.21	250124	00.8930	11.34
230197	01.2729	20.03	240038	01.4674	21.40	240123	01.0160	12.31	250027	01.0442	10.04	250125	01.3329	15.75
230199	01.1844	16.77	240040	01.2418	18.94	240124	01.0500	15.19	250029	00.8985	11.10	250126	01.0024	12.25
230201	01.0422	13.64	240041	01.1943	14.12	240125	00.9073	10.62	250030	00.9668	11.80	250127	00.7908	....
230204	01.3354	19.61	240043	01.2025	16.03	240127	00.9941	11.24	250031	01.3816	17.69	250128	00.9436	10.61
230205	01.1139	15.36	240044	01.1743	15.76	240128	01.0878	13.49	250032	01.2589	15.96	250131	01.0283	09.45
230207	01.2058	19.06	240045	01.0584	16.81	240129	00.9651	11.01	250033	00.9355	12.59	250134	00.9520	11.58
230208	01.1852	14.67	240047	01.4203	17.39	240130	00.9793	14.34	250034	01.4922	12.38	250136	00.8671	16.62
230211	00.9695	13.41	240048	01.2660	20.88	240132	01.2199	21.55	250035	00.8666	12.03	250138	01.3257	16.03
230212	01.0473	19.14	240049	01.6889	20.76	240133	01.1223	15.52	250036	00.9908	10.24	250140	00.8057	09.41
230213	01.0531	11.90	240050	01.1268	17.74	240135	00.9209	11.04	250037	00.8841	08.83	250141	01.2412	14.89
230216	01.4062	14.96	240051	00.9170	16.00	240137	01.1889	14.43	250038	00.9733	09.93	250144	00.9467	....
230217	01.1401	17.17	240052	01.2359	16.24	240138	00.9656	11.55	250039	01.0067	10.13	250145	00.8829	....
230219	00.9667	12.74	240053	01.5047	19.08	240139	00.9549	14.97	250040	01.3264	14.88	250146	01.0100	....
230221	01.2982	18.57	240056	01.2934	19.39	240141	01.1105	19.61	250042	01.1532	13.22	250148	01.0637	....
230222	01.3345	17.89	240057	01.7457	21.23	240142	01.1063	14.42	250043	00.8809	10.27	250149	00.9111	....
230223	01.3148	19.52	240058	00.9587	09.56	240143	00.9185	11.41	250044	01.0076	12.85	260001	01.6498	15.91
230227	01.4498	20.47	240059	01.0818	17.97	240144	00.9655	13.73	250045	01.2115	15.80	260002	01.4327	19.48
230228	01.2890	17.02	240061	01.7137	19.93	240145	01.0049	11.38	250047	00.9196	08.87	260003	00.9751	12.78
230230	01.3845	20.01	240063	01.5305	20.52	240146	00.9799	14.99	250048	01.4047	12.62	260004	01.0432	12.06
230232	01.0545	16.94	240064	01.1601	17.31	240148	01.0008	10.45	250049	00.8974	10.42	260005	01.5844	19.17
230235	01.0046	14.62	240065	00.9338	10.64	240150	00.8780	10.86	250050	01.2596	11.28	260006	01.4804	16.01
230236	01.3262	20.31	240066	01.3795	19.06	240152	01.0006	17.14	250051	00.8750	08.96	260007	01.4060	16.14
230239	01.1482	14.99	240069	01.1330	17.24	240153	01.0192	14.24	250057	01.1491	12.74	260008	01.2376	13.90
230241	01.1550	16.43	240071	01.1292	17.46	240154	00.9905	14.61	250058	01.1665	12.27	260009	01.2653	15.01
230244	01.3835	18.88	240072	01.0019	15.57	240155	00.9286	16.12	250059	01.1891	11.77	260011	01.6051	16.63
230253	01.0636	16.84	240073	00.9783	14.01	240157	01.0225	12.12	250060	00.8058	11.28	260012	01.0636	11.88
230254	01.2272	21.93	240075	01.2057	18.33	240160	00.9496	14.46	250061	00.8775	09.15	260013	01.1493	13.50
230257	01.1250	17.12	240076	01.1450	19.11	240161	00.9605	14.31	250063	00.8500	12.49	260014	01.7535	17.79
230259	01.2698	18.67	240077	00.9211	12.69	240162	00.9630	14.88	250065	00.9011	10.82	260015	01.2443	12.97
230264	01.2471	16.92	240078	01.4412	19.92	240163	00.8630	13.46	250066	00.9326	12.03	260017	01.1937	12.42
230269	01.2450	21.14	240079	01.0116	13.47	240166	01.1232	14.50	250067	01.0946	12.22	260018	00.9428	08.66
230270	01.2233	18.95	240080	01.4123	19.62	240169	00.9513	13.93	250068	00.8683	12.14	260019	01.0687	13.01
230273	01.5933	19.35	240082	01.1392	14.18	240170	01.1212	14.12	250069	01.2544	12.65	260020	01.6841	19.79
230275	00.6409	15.75	240083	01.3350	17.68	240171	01.0074	13.83	250071	00.9869	11.25	260021	01.4693	16.68
230276	00.8837	15.48	240084	01.3215	16.20	240172	01.0814	14.56	250072	01.2924	15.11	260022	01.3476	14.85
230277	01.2088	18.95	240085	00.9135	15.23	240173	01.0091	14.49	250073	01.0574	09.16	260023	01.2169	14.03
230278	01.6978	17.19	240086	01.0879	14.33	240179	01.0502	14.05	250076	01.0126	11.04	260024	00.9975	11.71
230280	00.9203	....	240087	01.1561	14.21	240180	00.9111	10.44	250077	00.9418	10.20	260025	01.3026	13.16
230281	01.4676	....	240088	01.4415	17.29	240184	00.9037	11.75	250078	01.3897	13.77	260027	01.5904	18.65
240001	01.5227	20.18	240089	01.0048	14.73	240187	01.2634	15.97	250079	00.8444	12.64	260029	01.1107	17.08

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
260030	01.3033	09.37	260137	01.2883	14.24	270050	01.0455	16.53	280058	01.1987	13.63	290036	01.0268	....
260031	01.4678	18.03	260138	01.8420	19.32	270051	01.2741	18.12	280060	01.5876	18.29	290037	01.7750	....
260032	01.6073	13.18	260141	01.8940	17.33	270052	01.0618	13.84	280061	01.4422	14.63	290038	01.1870	....
260034	01.0152	12.93	260142	01.1868	14.08	270053	00.9970	07.13	280062	01.1923	10.12	300001	01.4047	19.78
260035	01.0652	11.41	260143	00.9867	09.51	270057	01.1713	15.18	280064	00.9693	12.15	300003	01.7941	21.09
260036	01.0897	14.27	260146	01.4828	19.71	270058	00.9807	10.66	280065	01.2507	15.96	300005	01.2685	17.44
260037	01.3303	14.40	260147	01.0149	12.16	270059	00.8267	13.66	280066	01.0279	11.07	300006	01.1101	15.99
260039	01.2388	10.72	260148	01.0073	12.55	270060	00.9644	13.42	280068	00.9847	08.59	300007	01.1781	17.72
260040	01.6153	14.88	260158	01.1788	11.40	270063	00.9125	13.15	280070	01.0000	09.86	300008	01.2270	16.18
260042	01.3286	15.75	260159	01.3434	18.30	270068	00.9184	12.25	280073	01.0751	12.53	300009	01.1985	15.47
260044	01.0828	13.78	260160	01.0914	12.54	270072	00.9576	12.39	280074	01.0409	12.24	300010	01.2030	17.36
260047	01.4248	13.91	260162	01.5099	16.23	270073	01.1034	10.27	280075	01.3095	11.50	300011	01.3272	21.08
260048	01.2491	17.03	260163	01.1785	13.51	270074	00.9035	....	280076	01.0748	12.42	300012	01.2920	21.68
260050	01.1065	13.74	260164	01.0462	11.93	270075	00.8783	....	280077	01.3632	16.20	300013	01.1784	16.16
260052	01.2727	16.70	260166	01.1547	18.14	270076	00.7732	....	280079	01.0096	08.85	300014	01.2554	17.01
260053	01.1634	09.81	260172	01.0140	11.31	270079	00.8806	13.15	280080	01.2501	10.50	300015	01.1415	16.94
260054	01.2584	15.10	260173	00.9894	10.67	270080	01.1206	14.02	280081	01.7016	18.52	300016	01.2632	19.06
260055	01.0724	12.81	260175	01.1485	13.86	270081	01.0037	10.21	280082	01.0906	11.81	300017	01.1739	19.63
260057	01.1608	13.77	260176	01.5967	15.21	270082	00.9086	16.06	280083	01.0470	12.63	300018	01.2143	18.68
260059	01.1236	12.90	260177	01.2822	18.47	270083	01.0332	11.82	280084	01.0205	10.55	300019	01.2254	18.15
260061	01.1071	11.10	260178	01.4986	19.19	270084	00.8579	13.29	280085	00.5745	13.22	300020	01.2443	18.81
260062	01.1874	15.30	260179	01.5429	20.22	270085	01.1363	....	280088	01.6955	17.05	300021	01.1653	15.20
260063	01.0964	14.23	260180	01.7170	17.79	280001	01.1549	14.18	280089	01.0291	13.15	300022	01.1082	16.54
260064	01.3736	14.63	260183	01.6342	15.54	280003	01.9107	17.34	280090	01.0387	11.51	300023	01.2794	19.11
260065	01.7362	14.50	260186	01.1915	14.51	280005	01.4470	16.78	280091	01.1348	14.23	300024	01.2872	17.09
260066	01.1245	12.18	260188	01.2978	16.33	280009	01.5926	15.76	280092	00.8866	11.69	300028	01.3059	15.13
260067	00.9050	10.16	260189	00.9718	09.35	280010	00.9153	13.81	280094	01.1289	13.71	300029	01.2839	20.32
260068	01.7168	18.00	260190	01.1852	18.20	280011	00.9466	11.03	280097	00.9848	12.08	300033	01.0583	13.69
260070	01.2656	11.28	260191	01.1932	16.21	280012	01.1851	13.28	280098	00.9036	09.92	300034	01.9240	21.01
260073	01.0078	11.49	260193	01.2087	17.30	280013	01.9950	20.71	280101	01.0669	09.77	310001	01.6930	23.44
260074	01.3208	14.05	260195	01.1672	13.70	280014	00.9454	10.97	280102	01.1276	10.31	310002	01.6575	24.76
260077	01.5591	16.08	260197	01.2675	22.49	280015	01.1157	12.78	280104	01.0155	10.32	310003	01.2015	21.26
260078	01.1100	14.31	260198	01.2556	14.73	280017	01.1947	13.37	280105	01.2556	15.99	310005	01.1831	20.09
260079	01.0374	11.13	260200	01.2580	20.58	280018	01.0064	12.08	280106	00.9271	13.01	310006	01.2093	20.07
260080	00.9466	09.28	260202	01.1449	17.37	280020	01.5132	17.44	280107	01.0584	10.79	310008	01.2635	19.90
260081	01.3870	17.21	260204	00.6808	....	280021	01.2597	14.03	280108	01.1035	12.56	310009	01.2280	20.09
260082	01.1706	13.16	270002	01.2061	14.67	280022	00.9537	10.41	280109	00.8849	10.22	310010	01.3079	17.46
260085	01.5221	18.65	270003	01.2427	17.35	280023	01.3719	14.33	280110	01.0153	10.55	310011	01.2881	19.99
260086	01.0078	12.28	270004	01.6741	16.44	280024	00.9370	10.93	280111	01.2565	15.55	310012	01.5330	22.98
260089	01.0433	12.88	270006	01.0315	11.79	280025	01.0059	10.58	280114	00.9330	10.07	310013	01.3256	19.19
260091	01.6144	18.97	270007	00.9035	12.34	280026	01.0774	12.62	280115	00.9760	13.60	310014	01.6329	22.95
260094	01.0888	14.92	270009	01.0522	18.56	280028	01.0505	12.46	280117	01.1662	14.07	310015	01.7741	23.86
260095	01.4311	16.21	270011	01.1422	14.69	280029	01.0102	12.23	280118	00.9862	13.25	310016	01.2302	21.83
260096	01.5493	19.82	270012	01.4573	17.25	280030	01.7873	22.60	280119	00.9944	....	310017	01.3436	21.36
260097	01.1488	14.83	270013	01.3235	16.27	280031	01.0720	12.01	280123	00.9270	15.00	310018	01.2156	21.47
260100	01.1269	12.77	270014	01.6560	15.12	280032	01.2383	14.78	290001	01.7427	21.82	310019	01.6949	21.25
260102	01.0363	15.72	270016	00.8256	10.20	280033	01.0153	13.52	290002	00.9190	17.72	310020	01.1972	18.78
260103	01.3221	17.08	270017	01.2740	16.23	280034	01.1911	13.66	290003	01.6587	20.91	310021	01.2836	19.65
260104	01.6613	18.27	270019	00.9937	12.23	280035	00.8819	11.62	290005	01.2678	19.56	310022	01.2485	18.19
260105	01.8256	18.29	270021	01.1369	14.71	280037	00.9979	12.06	290006	01.0337	16.63	310024	01.2319	21.47
260107	01.3910	17.90	270023	01.3182	17.63	280038	01.0597	12.86	290007	01.7782	22.22	310025	01.1869	20.24
260108	01.7513	17.38	270024	00.9847	11.35	280039	01.2712	13.10	290008	01.2063	17.86	310026	01.2706	21.12
260109	01.0046	11.51	270026	00.9131	12.56	280040	01.6146	18.26	290009	01.5580	20.26	310027	01.3144	17.61
260110	01.5467	14.55	270027	01.0305	12.04	280041	01.0572	10.95	290010	01.1552	17.50	310028	01.1385	19.28
260111	00.8939	10.83	270028	01.0693	14.45	280042	01.1705	13.58	290011	00.9691	13.05	310029	01.7872	20.90
260112	01.4469	17.09	270029	01.0320	14.46	280043	01.0597	12.23	290012	01.4465	19.66	310031	02.6050	23.85
260113	01.1577	13.08	270031	00.9049	09.71	280045	01.1825	13.09	290013	01.1414	15.42	310032	01.2557	19.04
260115	01.1768	14.97	270032	01.1444	15.72	280046	01.0708	10.66	290014	01.0009	16.60	310034	01.2014	18.21
260116	01.1359	12.68	270033	00.8783	21.10	280047	01.1624	16.07	290015	00.9889	12.99	310036	01.2138	17.92
260119	01.1926	13.52	270035	00.9894	14.73	280048	01.0499	10.85	290016	01.3306	15.75	310037	01.2388	24.01
260120	01.2261	14.49	270036	01.0120	09.12	280049	01.1043	13.00	290018	00.9628	22.74	310038	01.7727	22.21
260122	01.1602	12.04	270039	00.9390	12.62	280050	01.0174	11.53	290019	01.2518	17.47	310039	01.2783	19.78
260123	01.0178	10.06	270040	01.0903	19.48	280051	01.0446	14.71	290020	01.2240	18.37	310040	01.2683	21.87
260127	00.9980	14.37	270041	01.0725	10.12	280052	01.1260	10.91	290021	01.5718	20.67	310041	01.2889	20.71
260128	01.0173	08.68	270044	01.2618	14.10	280054	01.2447	14.44	290022	01.6200	23.07	310042	01.1596	20.03
260129	01.1495	13.09	270046	00.9502	15.13	280055	00.9253	10.12	290027	01.0027	13.90	310043	01.1812	20.19
260131	01.3359	15.39	270048	01.0910	12.39	280056	01.0855	10.24	290029	00.8842	....	310044	01.3145	19.51
260134	01.1840	13.51	270049	01.7658	16.51	280057	00.9872	14.21	290032	01.3433	19.50	310045	01.3120	24.22

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
310047	01.2978	21.60	320032	00.9776	20.28	330061	01.3120	22.35	330171	01.2992	21.23	330268	01.0090	14.96
310048	01.2227	20.26	320033	01.0818	19.40	330062	01.0664	15.08	330175	01.1063	13.41	330270	01.9642	27.18
310049	01.2908	20.19	320035	01.1660	13.24	330064	01.3911	27.78	330177	01.0514	12.91	330273	01.2855	21.42
310050	01.2017	20.51	320037	01.3899	12.74	330065	01.1624	16.59	330179	00.8581	12.51	330275	01.2081	18.08
310051	01.3227	22.94	320038	01.2002	14.49	330066	01.2995	17.69	330180	01.1690	15.30	330276	01.2082	16.38
310052	01.2366	19.79	320046	01.1906	18.36	330067	01.3225	20.03	330181	01.3008	27.47	330277	01.1319	16.03
310054	01.2848	22.08	320048	01.2872	14.65	330072	01.3563	26.92	330182	02.4742	26.72	330279	01.3510	16.78
310056	01.2278	18.60	320056	00.8819	....	330073	01.1841	13.26	330183	01.3763	18.32	330281	00.5568	23.06
310057	01.2648	18.67	320057	00.9639	....	330074	01.2524	16.33	330184	01.3472	23.65	330285	01.7116	20.80
310058	01.1165	22.53	320058	00.7808	....	330075	01.0753	16.05	330185	01.1723	22.73	330286	01.3041	22.10
310060	01.1764	15.81	320059	01.0425	....	330078	01.4389	16.68	330186	00.9130	19.17	330288	01.0139	17.60
310061	01.1722	18.96	320060	00.9410	....	330079	01.2684	15.57	330188	01.2063	16.77	330290	01.6417	27.25
310062	01.2970	26.34	320061	01.1664	....	330080	01.4665	23.97	330189	00.7331	12.31	330293	01.1276	13.51
310063	01.3226	20.46	320062	00.8931	....	330082	01.1808	17.10	330191	01.2892	18.01	330304	01.2716	23.24
310064	01.2668	20.47	320063	01.3211	15.46	330084	00.9833	15.94	330193	01.3482	24.81	330306	01.3707	24.98
310067	01.2594	20.36	320065	01.2430	17.01	330085	01.3460	17.68	330194	01.8210	24.97	330307	01.1721	17.04
310069	01.1730	17.01	320067	00.8539	10.32	330086	01.2503	23.08	330195	01.5873	27.49	330308	01.2466	25.87
310070	01.3502	21.60	320068	00.9034	16.83	330088	01.0977	22.97	330196	01.3950	24.75	330309	01.1999	23.47
310072	01.2374	19.41	320069	01.0835	13.56	330090	01.5160	16.20	330197	01.0524	14.34	330314	01.4338	20.37
310073	01.4817	21.39	320070	00.9428	....	330091	01.3705	17.15	330198	01.3620	25.91	330315	01.2292	23.02
310074	01.3262	20.59	320074	01.1259	17.57	330092	00.9957	14.04	330199	01.2860	23.44	330316	01.3096	24.11
310075	01.3128	20.53	320076	00.9991	16.21	330094	01.1855	14.91	330201	01.4531	24.83	330327	00.8781	15.44
310076	01.3226	26.50	320079	01.1685	18.53	330095	01.2824	16.28	330202	01.3373	24.50	330331	01.1813	25.65
310077	01.4994	22.03	320082	01.8075	....	330096	01.0596	14.40	330203	01.3430	18.69	330332	01.2836	22.41
310078	01.2791	22.48	330001	01.2027	23.04	330097	01.1475	14.94	330204	01.2933	23.88	330333	01.2926	23.11
310081	01.2164	19.38	330002	01.4124	23.83	330100	00.6684	24.57	330205	01.1975	17.54	330336	01.3502	27.66
310083	01.2378	21.39	330003	01.3158	17.46	330101	01.7755	29.73	330208	01.2274	22.74	330338	01.2396	22.06
310084	01.2075	20.18	330004	01.2561	19.60	330102	01.3522	16.65	330209	01.1848	20.53	330339	00.8669	17.94
310086	01.2176	19.38	330005	01.7620	18.94	330103	01.2524	15.29	330211	01.2925	15.74	330340	01.1608	23.73
310087	01.2313	18.62	330006	01.3185	23.17	330104	01.4242	25.67	330212	01.1932	19.47	330350	01.8072	26.95
310088	01.1789	21.00	330007	01.3208	16.57	330106	01.5662	31.07	330213	01.0876	15.58	330353	01.2882	28.01
310090	01.1946	21.38	330008	01.1370	16.15	330107	01.2052	22.95	330214	01.7088	27.08	330354	01.3874	....
310091	01.2415	18.79	330009	01.3261	27.98	330108	01.1972	15.71	330215	01.1519	16.55	330357	01.3452	29.51
310092	01.3962	19.24	330010	01.2191	14.38	330111	01.0845	14.47	330218	01.1659	15.36	330359	00.9345	19.17
310093	01.1435	19.43	330011	01.2428	16.56	330114	00.9193	15.00	330219	01.7195	18.75	330372	01.2575	21.28
310096	01.8860	21.72	330012	01.6258	25.68	330115	01.1851	14.41	330221	01.2718	25.64	330381	01.2114	26.55
310105	01.2351	20.43	330013	02.0631	17.16	330116	00.9613	13.66	330222	01.2469	15.21	330383	01.3259	....
310108	01.3621	19.59	330014	01.3639	26.33	330118	01.5979	17.36	330223	01.1104	15.86	330385	01.2184	25.67
310110	01.2191	19.32	330016	00.9847	15.57	330119	01.7237	28.24	330224	01.2700	19.31	330386	01.2294	19.79
310111	01.2455	18.13	330019	01.2313	23.83	330121	01.0667	13.42	330225	01.1576	23.75	330387	00.7536	36.27
310112	01.2943	19.42	330020	01.0911	14.70	330122	01.2895	21.37	330226	01.2811	16.82	330389	01.8055	28.55
310113	01.2243	19.35	330023	01.1830	21.41	330125	01.7519	18.89	330229	01.3299	14.48	330390	01.2316	24.96
310115	01.2390	19.80	330024	01.8062	27.93	330126	01.1469	19.06	330230	01.5420	25.52	330393	01.6790	25.15
310116	01.2166	20.61	330025	01.1635	13.45	330127	01.3574	24.53	330231	01.1472	26.40	330394	01.4862	17.28
310118	01.2191	21.18	330027	01.4312	29.92	330128	01.3303	25.17	330232	01.2389	14.65	330395	01.3351	26.58
310119	01.5589	29.46	330028	01.3524	23.16	330132	01.0796	13.15	330233	01.5462	30.00	330396	01.2611	23.98
310120	01.0810	17.02	330029	01.0937	16.36	330133	01.3290	28.20	330234	02.1509	27.03	330397	01.4810	23.47
310121	01.0724	17.85	330030	01.2392	15.26	330135	01.2226	16.47	330235	01.1618	16.46	330398	01.2131	25.84
320001	01.4366	16.14	330033	01.2024	13.36	330136	01.2683	19.79	330236	01.3663	25.32	330399	01.3136	27.41
320002	01.3563	21.36	330034	00.8669	29.10	330140	01.6881	17.07	330238	01.1419	13.64	340001	01.4375	18.69
320003	01.2298	14.20	330036	01.2237	21.09	330141	01.3453	23.29	330239	01.2266	14.38	340002	01.8274	17.46
320004	01.1229	16.38	330037	01.1795	14.71	330144	01.0398	13.45	330240	01.3143	26.41	340003	01.1539	17.44
320005	01.3257	18.36	330038	01.1869	13.86	330148	01.0294	13.70	330241	01.9309	20.81	340004	01.4844	16.48
320006	01.4173	14.16	330039	00.8701	13.51	330151	01.0525	12.53	330242	01.3377	20.60	340005	01.2380	12.65
320009	01.5156	16.90	330041	01.3624	26.36	330152	01.3980	26.57	330245	01.2460	17.22	340006	01.1128	14.19
320011	01.0249	17.65	330043	01.2325	24.15	330153	01.6410	17.53	330246	01.2726	22.67	340007	01.1584	14.94
320012	01.0428	17.37	330044	01.2066	16.10	330154	01.5523	....	330247	00.7884	25.42	340008	01.2193	15.82
320013	01.0889	17.38	330045	01.3974	23.27	330157	01.2584	18.01	330249	01.2357	15.87	340009	01.1741	19.21
320014	01.0454	09.02	330046	01.4962	26.80	330158	01.3006	22.12	330250	01.2316	15.80	340010	01.3038	15.46
320016	01.1562	14.52	330047	01.2200	16.37	330159	01.3142	17.37	330252	00.9099	15.14	340011	01.1066	13.94
320017	01.1504	17.38	330048	01.2674	15.50	330160	01.4544	27.75	330254	00.9916	15.51	340012	01.2143	15.39
320018	01.4185	16.77	330049	01.2673	17.22	330161	00.9392	15.60	330258	01.3589	23.96	340013	01.2166	14.57
320019	01.4846	18.67	330053	01.1259	14.20	330162	01.2563	24.16	330259	01.3537	21.55	340014	01.5912	18.83
320021	01.7030	20.73	330055	01.3713	27.96	330163	01.1593	16.79	330261	01.2206	23.08	340015	01.2407	15.33
320022	01.2443	17.51	330056	01.3550	27.22	330164	01.3538	18.48	330263	01.0437	15.85	340016	01.1503	14.55
320023	01.0444	14.13	330057	01.6043	17.28	330166	00.9855	13.97	330264	01.2549	19.42	340017	01.3015	14.65
320030	01.0646	18.67	330058	01.2642	15.35	330167	01.5896	26.67	330265	01.3454	14.34	340018	01.0825	14.66
320031	00.9696	11.41	330059	01.5861	27.24	330169	01.4497	29.07	330267	01.2471	21.54	340019	01.0463	10.97

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
340020	01.2214	19.33	340114	01.4370	18.91	350030	01.0782	15.42	360052	01.6706	17.01	360129	01.0212	13.31
340021	01.2429	15.10	340115	01.5516	17.01	350033	00.9414	13.28	360054	01.2364	14.87	360130	01.0803	13.93
340022	01.0861	14.07	340116	01.7556	19.43	350034	00.9862	14.00	360055	01.1887	17.02	360131	01.2766	16.41
340023	01.3551	16.96	340119	01.2827	14.92	350035	00.8461	10.06	360056	01.4023	14.80	360132	01.3067	18.64
340024	01.2088	14.35	340120	01.0627	12.83	350038	00.9999	13.01	360057	01.0616	12.70	360133	01.4340	17.01
340025	01.1085	14.27	340121	01.0948	13.86	350039	01.0331	13.63	360058	01.1741	15.10	360134	01.6313	17.77
340027	01.2066	14.87	340122	01.0074	12.44	350041	01.0451	11.63	360059	01.5386	19.71	360135	01.1456	15.15
340028	01.5189	16.47	340123	01.1032	14.48	350042	01.0138	13.85	360062	01.4513	18.00	360136	01.0358	14.10
340030	01.9236	18.03	340124	01.0598	13.16	350043	01.4085	15.08	360063	01.0436	17.30	360137	01.5633	17.61
340031	01.0073	11.38	340125	01.4126	16.38	350044	00.8723	10.01	360064	01.4685	18.71	360140	00.9977	15.13
340032	01.2722	16.65	340126	01.4006	16.98	350047	01.1514	15.96	360065	01.2562	16.05	360141	01.4459	19.09
340034	01.2862	17.26	340127	01.3145	15.68	350049	01.0973	09.92	360066	01.3256	16.87	360142	00.9941	14.51
340035	01.1055	14.26	340129	01.2768	18.25	350050	01.0007	10.35	360067	01.1115	11.73	360143	01.3138	17.32
340036	01.2272	16.44	340130	01.3380	15.99	350051	00.9666	11.29	360068	01.6362	20.80	360144	01.3278	19.94
340037	01.1607	14.58	340131	01.3791	16.02	350053	01.0840	09.16	360069	01.0676	15.90	360145	01.6473	15.96
340038	01.1622	14.65	340132	01.2661	12.80	350055	00.9493	11.52	360070	01.5784	16.33	360147	01.2733	14.83
340039	01.2728	17.98	340133	01.1294	14.24	350056	00.9567	12.07	360071	01.2933	15.64	360148	01.1734	15.29
340040	01.7442	17.23	340136	01.0903	16.92	350058	01.0054	11.46	360072	01.1550	14.77	360149	01.1353	16.99
340041	01.2497	15.28	340137	01.1904	13.07	350060	00.9061	07.20	360074	01.3468	18.13	360150	01.3102	16.70
340042	01.1070	13.11	340138	01.1282	14.31	350061	01.0508	14.13	360075	01.4104	18.42	360151	01.3471	16.20
340044	01.0368	12.58	340141	01.5336	18.20	350063	00.8168	....	360076	01.3080	17.06	360152	01.5274	17.02
340045	01.0070	08.49	340142	01.1924	15.16	350064	00.8453	....	360077	01.4463	18.22	360153	01.1435	13.32
340047	01.8771	17.46	340143	01.3424	18.36	350065	00.8966	09.89	360078	01.2808	18.19	360154	01.0543	12.01
340048	00.7695	08.62	340144	01.3526	16.96	350066	00.8594	....	360079	01.6831	19.06	360155	01.3084	18.30
340049	00.6050	15.68	340145	01.3006	15.79	360001	01.2737	16.58	360080	01.0833	14.79	360156	01.3318	16.30
340050	01.1906	16.12	340146	01.0912	12.76	360002	01.1539	14.90	360081	01.3730	18.30	360159	01.1477	17.70
340051	01.2434	15.76	340147	01.2928	16.80	360003	01.7163	19.44	360082	01.2993	18.90	360161	01.3554	18.52
340052	01.0229	18.45	340148	01.4258	17.75	360006	01.7248	19.60	360083	01.2953	15.60	360162	01.1934	15.50
340053	01.6219	18.66	340151	01.1784	13.81	360007	01.0537	15.57	360084	01.6280	17.52	360163	01.8277	18.81
340054	01.0768	12.74	340153	01.9573	19.41	360008	01.2393	15.77	360085	01.7866	18.85	360164	00.8939	13.53
340055	01.2107	16.29	340154	01.0753	14.94	360009	01.3585	17.14	360086	01.4650	15.62	360165	01.1586	14.66
340060	01.1365	15.32	340155	01.4445	19.22	360010	01.1699	15.09	360087	01.3579	17.19	360166	01.1803	16.68
340061	01.7024	18.17	340156	00.7886	....	360011	01.2316	17.13	360088	01.2297	15.09	360169	01.0152	16.77
340063	01.0854	14.50	340158	01.1620	16.37	360012	01.2575	18.10	360089	01.1095	16.46	360170	01.2081	17.19
340064	01.2236	15.48	340159	01.1374	15.06	360013	01.1234	15.10	360090	01.2171	18.32	360172	01.4144	16.01
340065	01.2563	11.40	340160	01.1423	12.04	360014	01.1305	16.24	360091	01.2693	18.20	360174	01.2615	16.86
340067	01.2050	13.69	340162	01.3232	16.41	360016	01.5690	17.58	360092	01.3081	17.29	360175	01.2606	17.31
340068	01.2906	12.83	340164	01.4023	17.72	360017	01.6623	19.27	360093	01.2115	15.93	360176	01.1864	13.50
340069	01.6454	17.99	340166	01.3806	18.12	360018	01.5828	18.43	360094	01.2319	19.09	360177	01.2503	15.44
340070	01.2856	16.22	340168	00.4892	16.61	360019	01.2602	18.17	360095	01.3224	15.76	360178	01.2477	15.16
340071	01.0192	13.98	340170	01.2903	....	360020	01.4408	17.58	360096	01.0972	15.60	360179	01.3059	18.53
340072	01.1001	13.96	340171	01.1886	....	360021	01.2308	17.68	360098	01.3847	17.38	360180	02.0926	22.00
340073	01.4140	19.33	350001	01.1048	11.68	360024	01.4150	17.78	360099	00.9965	15.45	360184	00.5635	15.74
340075	01.2118	15.40	350002	01.7422	16.34	360025	01.1647	16.65	360100	01.3185	15.79	360185	01.2250	16.35
340080	01.1487	10.79	350003	01.1706	15.20	360026	01.1441	15.74	360101	01.7121	19.44	360186	01.2001	15.60
340084	01.0637	13.21	350004	01.9130	17.61	360027	01.5510	18.78	360102	01.2239	18.95	360187	01.2755	15.63
340085	01.2350	14.60	350005	01.1536	11.38	360028	01.3557	15.35	360103	01.3601	19.18	360188	01.0228	14.47
340087	01.2050	16.57	350006	01.3190	15.87	360029	01.1328	15.69	360104	01.2382	18.94	360189	01.0674	14.86
340088	01.1530	16.20	350007	00.9819	11.64	360030	01.1077	14.24	360106	01.0728	14.17	360192	01.3026	18.10
340089	00.9587	11.53	350008	01.0282	17.11	360031	01.2692	14.01	360107	01.2622	15.52	360193	01.2990	14.39
340090	01.1072	15.15	350009	01.1700	15.04	360032	01.1041	15.63	360108	01.0507	14.22	360194	01.1138	15.67
340091	01.6938	18.09	350010	01.0948	11.48	360034	01.2332	12.05	360109	01.1010	16.95	360195	01.1665	16.12
340093	01.0960	12.41	350011	01.8078	16.90	360035	01.5032	19.25	360112	01.7037	21.03	360197	01.1624	16.55
340094	01.2541	16.46	350012	01.0559	11.94	360036	01.1697	17.01	360113	01.3399	17.68	360200	01.0671	12.61
340096	01.2466	15.59	350013	01.1172	14.23	360037	02.0688	19.75	360114	01.1335	15.45	360203	01.1252	15.23
340097	01.1638	14.13	350014	01.0793	10.84	360038	01.5302	16.88	360115	01.2330	18.39	360204	01.2108	15.84
340098	01.6534	17.84	350015	01.5962	15.49	360039	01.2972	15.46	360116	01.0463	15.21	360210	01.1859	18.60
340099	01.1570	13.04	350016	01.0047	10.29	360040	01.2865	17.57	360118	01.3302	16.33	360211	01.1862	17.02
340100	00.9781	....	350017	01.3945	14.02	360041	01.3229	17.13	360119	01.2505	16.21	360212	01.4129	18.54
340101	00.9994	11.37	350018	01.1037	10.15	360042	01.1307	15.94	360120	00.6082	....	360213	01.1319	15.72
340104	00.9394	10.52	350019	01.6020	17.70	360044	01.0998	15.06	360121	01.2473	16.95	360218	01.2494	15.77
340105	01.3234	17.43	350020	01.3474	15.80	360045	01.5166	19.48	360122	01.3128	17.15	360230	01.2932	19.39
340106	01.0977	16.14	350021	01.0671	10.47	360046	01.0676	17.35	360123	01.2101	17.96	360231	01.0985	12.30
340107	01.2666	15.88	350023	00.8750	14.45	360047	01.1655	13.68	360124	01.2525	16.62	360232	01.2411	20.25
340109	01.3020	15.08	350024	01.0840	12.46	360048	01.7585	20.91	360125	01.0866	15.71	360234	01.3135	17.37
340111	01.2307	13.16	350025	01.0046	13.17	360049	01.3468	17.28	360126	01.2385	18.24	360236	01.1914	16.82
340112	01.0315	12.98	350027	00.9939	13.76	360050	01.0922	11.62	360127	01.0931	15.24	360238	01.0788	12.57
340113	01.9539	19.22	350029	00.9491	10.79	360051	01.4681	19.97	360128	01.1129	13.39	360239	01.1676	18.44

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
360240	00.4529	09.64	370085	00.7965	12.79	380013	01.1950	19.76	390016	01.1958	15.75	390098	01.7221	19.80
360241	00.5971	16.19	370086	01.1603	09.31	380014	01.3873	18.00	390017	01.1833	13.74	390100	01.6581	18.56
360242	01.6504	....	370089	01.2840	11.32	380017	01.7679	21.74	390018	01.1902	18.44	390101	01.2352	15.40
360243	00.8333	15.66	370091	01.6606	15.44	380018	01.7785	18.54	390019	01.1196	15.02	390102	01.3553	19.54
360244	00.8182	14.72	370092	01.0516	11.97	380019	01.1920	17.57	390022	01.3562	20.09	390103	01.0890	16.83
360245	00.8606	14.97	370093	01.8102	18.31	380020	01.4631	19.42	390023	01.2620	20.25	390104	01.1238	13.92
360246	00.8831	....	370094	01.3503	16.33	380021	01.2003	19.11	390024	00.7630	21.76	390106	00.9494	16.62
370001	01.7432	18.38	370095	00.9025	10.78	380022	01.1792	17.88	390025	00.7561	15.82	390107	01.2140	17.78
370002	01.2128	13.52	370097	01.3556	18.32	380023	01.2933	16.49	390026	01.2627	20.06	390108	01.3539	17.21
370004	01.3050	13.98	370099	01.1988	13.57	380025	01.2496	21.04	390027	01.9362	22.10	390109	01.1417	13.32
370005	01.0163	11.81	370100	00.9930	10.79	380026	01.3246	16.19	390028	01.7661	18.59	390110	01.5526	18.76
370006	01.1880	14.35	370103	00.9353	11.13	380027	01.2259	18.77	390029	01.7547	17.52	390111	01.7889	26.50
370007	01.1282	13.12	370105	01.9314	16.18	380029	01.1923	15.70	390030	01.2137	15.42	390112	01.2051	12.38
370008	01.4032	14.97	370106	01.4815	16.09	380031	01.0018	14.64	390031	01.1392	17.02	390113	01.2139	14.98
370011	01.0534	13.17	370108	01.0799	10.32	380033	01.6739	21.91	390032	01.2170	17.70	390114	01.0997	20.24
370012	00.9141	11.46	370112	01.0585	11.98	380035	01.3441	18.88	390035	01.2980	17.23	390115	01.3237	20.80
370013	01.7263	17.86	370113	01.1333	13.21	380036	01.0279	16.34	390036	01.2563	16.92	390116	01.1823	19.21
370014	01.2868	17.05	370114	01.6294	14.92	380037	01.2562	19.57	390037	01.2991	17.90	390117	01.1278	15.07
370015	01.2342	13.90	370121	01.2113	13.37	380038	01.3261	20.34	390039	01.0821	15.36	390118	01.2364	15.74
370016	01.3725	15.42	370122	01.1492	09.31	380039	01.2600	20.17	390040	00.9405	12.87	390119	01.3644	17.02
370017	01.1287	10.87	370123	01.2248	13.70	380040	01.3376	18.06	390041	01.2776	17.41	390121	01.3191	17.22
370018	01.2937	16.87	370125	00.9676	11.42	380042	01.1747	21.92	390042	01.3876	20.08	390122	01.0374	15.47
370019	01.3530	11.35	370126	01.1557	09.48	380047	01.6487	19.29	390043	01.1087	14.27	390123	01.2533	19.42
370020	01.3032	11.92	370131	00.9570	12.42	380048	01.0224	13.14	390044	01.5701	18.24	390125	01.2123	15.75
370021	00.9264	10.11	370133	01.0789	09.65	380050	01.3167	16.38	390045	01.5158	16.69	390126	01.2807	20.35
370022	01.3140	15.01	370138	01.0804	15.13	380051	01.5315	18.38	390046	01.4888	17.71	390127	01.1718	19.86
370023	01.3457	14.52	370139	00.9646	09.78	380052	01.1595	15.90	390047	01.6328	22.95	390128	01.1729	17.17
370025	01.3493	14.57	370140	00.9612	11.36	380055	01.1802	23.98	390048	01.1701	15.25	390130	01.1049	17.23
370026	01.4655	15.54	370141	01.3618	19.76	380056	01.0308	15.19	390049	01.5133	19.09	390131	01.2505	15.35
370028	01.8025	17.10	370146	01.1923	10.18	380060	01.4607	21.21	390050	02.0254	20.30	390132	01.2306	18.08
370029	01.2379	11.52	370148	01.4229	17.76	380061	01.5092	21.74	390051	02.1917	23.77	390133	01.7637	20.23
370030	01.2303	11.25	370149	01.1566	14.18	380062	01.1219	13.68	390052	01.1552	15.52	390135	01.2401	19.41
370032	01.4686	14.67	370153	01.0837	14.50	380063	01.2709	22.15	390054	01.1515	13.42	390136	01.2190	15.59
370033	01.1587	10.89	370154	01.0306	12.64	380064	01.3409	18.16	390055	01.7095	20.40	390137	01.1696	17.43
370034	01.2251	12.87	370156	01.1282	12.99	380065	00.9805	17.74	390056	01.1719	15.60	390138	01.2397	16.41
370035	01.5390	14.70	370158	01.0248	12.52	380066	01.3503	17.09	390057	01.2912	18.37	390139	01.4632	21.08
370036	01.0287	09.08	370159	01.3498	13.48	380068	01.0131	18.61	390058	01.2889	16.75	390142	01.6767	21.77
370037	01.5897	16.07	370163	00.9111	10.33	380069	01.1321	17.14	390060	01.1142	15.65	390145	01.3345	18.30
370038	00.9678	10.86	370165	01.1694	11.10	380070	01.3005	19.47	390061	01.5073	20.59	390146	01.2340	15.37
370039	01.2989	15.91	370166	01.1522	16.13	380071	01.2980	19.74	390062	01.1205	14.75	390147	01.2315	18.19
370040	01.0664	11.17	370169	01.0487	10.14	380072	00.9304	14.25	390063	01.7188	18.14	390148	01.1846	17.53
370041	00.9314	13.21	370170	00.9331	....	380075	01.4127	19.35	390064	01.5206	15.84	390149	01.2472	19.33
370042	00.8323	11.93	370171	01.0282	....	380078	01.0299	16.80	390065	01.2194	17.97	390150	01.1446	17.62
370043	01.0171	11.72	370172	00.8595	....	380081	01.1232	16.57	390066	01.3031	16.55	390151	01.2996	17.35
370045	01.0563	10.29	370173	01.2978	....	380082	01.3175	20.54	390067	01.7360	18.65	390152	01.0265	15.13
370046	00.9411	11.89	370174	00.6125	....	380083	01.3362	17.08	390068	01.3209	17.00	390153	01.1973	21.16
370047	01.3164	13.84	370176	01.1825	16.22	380084	01.2653	18.54	390069	01.2822	18.31	390154	01.1643	13.88
370048	01.1517	12.59	370177	00.9262	10.16	380087	01.0074	13.59	390070	01.3131	19.08	390155	01.3050	17.65
370049	01.3213	15.14	370178	00.9819	10.53	380088	00.9674	15.05	390071	01.0983	13.09	390156	01.3758	21.65
370051	00.9489	13.39	370179	00.8489	13.14	380089	01.2979	20.02	390072	01.0753	15.84	390157	01.2559	16.75
370054	01.2306	14.66	370180	00.9753	....	380090	01.3074	21.62	390073	01.5189	17.44	390158	01.4547	18.63
370056	01.5068	15.57	370183	01.2609	12.03	380091	01.1984	23.39	390074	01.2306	16.29	390159	01.2909	19.66
370057	01.1350	14.30	370186	00.9700	10.36	380897	04.7366	....	390075	01.3391	15.51	390160	01.2003	17.44
370059	01.1386	12.80	370189	01.0967	11.81	390001	01.2957	17.00	390076	01.2601	20.04	390161	01.0387	13.71
370060	01.0833	14.13	370190	01.5659	16.45	390002	01.3114	17.45	390078	01.0443	14.92	390162	01.3081	19.03
370063	01.1256	10.89	370192	01.0518	....	390003	01.2089	16.14	390079	01.6752	15.99	390163	01.1829	16.45
370064	00.9724	09.12	370193	01.5813	....	390004	01.3574	16.37	390080	01.2217	17.76	390164	01.8500	18.93
370065	01.0831	14.46	380001	01.2941	18.46	390005	01.0234	13.53	390081	01.3066	20.10	390166	01.1614	16.81
370071	01.0248	10.53	380002	01.2496	17.64	390006	01.7687	17.25	390083	01.1851	20.41	390167	01.2638	20.38
370072	00.9459	11.97	380003	01.1800	17.46	390007	01.1626	20.95	390084	01.2284	14.79	390168	01.1943	17.18
370076	01.2870	11.71	380004	01.6210	22.25	390008	01.0940	15.45	390086	01.0903	15.51	390169	01.2157	17.22
370077	01.3610	15.34	380005	01.1604	19.10	390009	01.6057	17.97	390088	01.3463	19.25	390170	01.8561	23.09
370078	01.6915	14.53	380006	01.3742	16.46	390010	01.2048	16.98	390090	01.7218	19.42	390173	01.2147	17.58
370079	00.9190	11.99	380007	01.6261	20.55	390011	01.1973	16.82	390091	01.1478	18.41	390174	01.7096	23.29
370080	00.9794	11.31	380008	01.0644	16.93	390012	01.2118	18.59	390093	01.1830	14.61	390176	01.1355	16.28
370082	00.9188	10.54	380009	01.8099	21.55	390013	01.2043	15.89	390095	01.1731	14.43	390178	01.2800	17.36
370083	01.0320	10.95	380010	01.1001	19.18	390014	01.5661	15.29	390096	01.2822	16.50	390179	01.2574	20.80
370084	01.0538	08.49	380011	01.1580	14.12	390015	01.1363	12.32	390097	01.3255	20.69	390180	01.5909	22.45

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
390181	01.0567	16.51	400009	00.9585	07.08	420018	01.6744	17.26	430015	01.1953	13.84	440029	01.3354	15.62
390183	01.1579	17.62	400010	00.9770	10.23	420019	01.2114	14.47	430016	01.7002	17.29	440030	01.1477	12.68
390184	01.1162	17.14	400011	01.0729	06.77	420020	01.2550	16.07	430018	00.9508	13.20	440031	00.9745	11.83
390185	01.1728	15.64	400012	01.1136	07.24	420022	00.9393	15.80	430022	00.9341	10.22	440032	01.0065	12.50
390186	01.1975	12.18	400013	01.1634	09.09	420023	01.3918	18.61	430023	00.9430	09.74	440033	01.1147	14.66
390189	01.0744	16.34	400014	01.4222	07.31	420026	01.8511	17.80	430024	00.8545	11.51	440034	01.4727	17.16
390191	01.0451	14.03	400015	01.3962	10.35	420027	01.3601	14.55	430025	00.9418	10.29	440035	01.2814	14.81
390192	01.1105	16.42	400016	01.3551	09.54	420028	01.0490	14.33	430026	01.0159	10.38	440039	01.5604	16.47
390193	01.1499	15.76	400017	01.1630	06.80	420029	01.7205	14.74	430027	01.7393	16.35	440040	00.9573	11.47
390194	01.0783	18.49	400018	01.2999	08.93	420030	01.2787	17.01	430028	01.0746	12.21	440041	01.0356	12.55
390195	01.8149	21.40	400019	01.6166	09.45	420031	01.0044	10.97	430029	01.0015	12.56	440046	01.3480	14.06
390196	01.3571	....	400021	01.3458	07.96	420033	01.2457	19.01	430031	00.9411	10.95	440047	00.9832	12.05
390197	01.2759	18.62	400022	01.3107	09.75	420035	00.8101	11.93	430033	01.0803	11.10	440048	01.7516	15.85
390198	01.2288	14.41	400024	00.9882	07.75	420036	01.2244	15.01	430034	01.0196	10.93	440049	01.6359	15.45
390199	01.2242	14.46	400026	00.9404	07.20	420037	01.3233	19.81	430036	01.0422	09.44	440050	01.2307	13.86
390200	01.0074	12.74	400027	01.1225	06.87	420038	01.2403	14.65	430037	00.9525	12.46	440051	00.8902	13.44
390201	01.2922	18.28	400028	01.1413	07.08	420039	01.2260	13.96	430038	01.0411	10.31	440052	01.2700	17.91
390203	01.3020	18.63	400029	01.1113	07.59	420040	01.2120	14.36	430039	00.9738	10.63	440053	01.2982	16.09
390204	01.2596	18.31	400031	01.0365	07.37	420042	01.1943	13.01	430040	00.9048	11.88	440054	01.2513	13.93
390205	01.2210	22.42	400032	01.1747	07.75	420043	01.1777	16.87	430041	00.9680	11.58	440056	01.0740	10.33
390206	01.3668	19.80	400044	01.1248	09.07	420044	01.1942	15.94	430042	01.0001	10.28	440057	01.0255	10.50
390209	01.0381	14.45	400048	01.0912	08.01	420048	01.1167	13.96	430043	01.1190	12.47	440058	01.3908	18.36
390211	01.2078	16.56	400061	01.4735	12.57	420049	01.1468	14.52	430044	00.9331	12.62	440059	01.1604	13.84
390213	01.0973	14.10	400079	01.2413	09.48	420051	01.5754	16.86	430047	01.1161	11.03	440060	01.1519	13.95
390215	01.1567	20.50	400087	01.3227	08.37	420053	01.0676	14.06	430048	01.2139	15.58	440061	01.1571	14.49
390217	01.2291	17.56	400094	01.0188	07.41	420054	01.3914	16.63	430049	00.9343	11.35	440063	01.5537	17.05
390219	01.2478	15.84	400098	01.2470	07.68	420055	01.1239	12.86	430051	00.9707	11.88	440064	01.1859	15.87
390220	01.1967	18.50	400102	01.2005	07.47	420056	01.0941	13.40	430054	00.9389	14.12	440065	01.2217	14.09
390222	01.2922	19.29	400103	01.4900	10.21	420057	01.2682	12.58	430056	00.8709	08.95	440067	01.1662	15.85
390223	01.6287	22.05	400104	01.2323	09.13	420059	00.9558	13.16	430057	00.9123	10.35	440068	01.1840	16.22
390224	00.9142	13.29	400105	01.2642	07.81	420061	01.2214	15.80	430060	00.9948	08.97	440069	01.0893	13.34
390225	01.2212	15.41	400106	01.2411	07.28	420062	01.4737	15.07	430062	00.8308	10.10	440070	01.1199	13.07
390226	01.7113	22.03	400109	01.5822	08.85	420064	01.1420	12.36	430064	01.1525	11.35	440071	01.4836	15.35
390228	01.1936	17.98	400110	01.0953	08.90	420065	01.3499	16.17	430065	01.0287	09.01	440072	01.4293	13.45
390231	01.3451	20.59	400111	01.1494	07.90	420066	00.9394	13.87	430066	00.9826	10.61	440073	01.2767	16.09
390233	01.2767	17.67	400112	01.2510	07.00	420067	01.1965	15.84	430073	01.1944	13.35	440078	00.9790	12.17
390235	01.7664	23.05	400113	01.1838	07.07	420068	01.2582	15.36	430076	00.9618	08.60	440081	01.1398	14.51
390236	01.1535	16.00	400114	01.0673	07.53	420069	01.0854	13.87	430077	01.5420	15.65	440082	01.8991	19.65
390237	01.5568	18.82	400115	01.0127	08.28	420070	01.2534	15.79	430079	00.9545	10.60	440083	01.1648	10.26
390238	01.0894	16.51	400117	01.2052	08.75	420071	01.3360	15.95	430080	00.8917	08.87	440084	01.1705	11.11
390242	01.3227	18.78	400118	01.1427	07.88	420072	01.0021	09.92	430081	00.9763	....	440087	00.9796	11.67
390244	00.9153	12.37	400120	01.2844	08.63	420073	01.2975	17.80	430082	00.7899	....	440090	00.9808	13.53
390245	01.3582	20.14	400121	00.8973	07.05	420074	00.9444	09.76	430083	00.8400	....	440091	01.5310	16.83
390246	01.1577	15.60	400122	00.9790	06.35	420075	01.0336	13.97	430084	00.8592	....	440095	01.2178	19.62
390247	01.0044	16.83	400123	01.1528	08.39	420076	01.1230	20.04	430085	00.8528	....	440100	01.0220	12.92
390249	00.9992	11.06	400124	02.7935	....	420078	01.7109	18.68	430087	00.9462	09.28	440102	01.0894	12.32
390256	01.6957	20.51	410001	01.3181	21.94	420079	01.5207	17.23	440001	01.1438	11.96	440103	01.2356	16.26
390258	01.3229	19.30	410004	01.3535	20.28	420080	01.2176	17.43	440002	01.5819	16.12	440104	01.5496	17.72
390260	01.2454	17.74	410005	01.3614	20.46	420081	00.7967	18.94	440003	01.0982	14.90	440105	01.4359	16.93
390262	01.9001	17.06	410006	01.2126	21.65	420082	01.3460	18.34	440006	01.4833	16.87	440109	01.0518	12.33
390263	01.4742	18.55	410007	01.6863	19.83	420083	01.2177	17.28	440007	01.0100	11.40	440110	00.9963	14.21
390265	01.3075	17.62	410008	01.1749	20.30	420084	00.9239	12.71	440008	01.0294	14.41	440111	01.3776	18.41
390266	01.1996	15.69	410009	01.3416	20.77	420085	01.2801	17.16	440009	01.1191	12.87	440114	01.0168	11.73
390267	01.2662	19.03	410010	01.0352	24.28	420086	01.4018	16.97	440010	00.9290	10.52	440115	01.0917	13.98
390268	01.3883	19.24	410011	01.2176	21.48	420087	01.6123	15.64	440011	01.2479	15.18	440120	01.4814	15.84
390270	01.3047	16.33	410012	01.7204	18.98	420088	01.1687	16.05	440012	01.4314	16.29	440121	01.9731	....
390272	00.5347	20.70	410013	01.2564	24.87	420089	01.2401	19.72	440014	00.9936	10.17	440125	01.4135	16.36
390277	00.5685	19.80	420002	01.3076	20.09	420091	01.1896	15.91	440015	01.5414	15.38	440130	01.1216	13.51
390278	00.8123	16.44	420004	01.8572	17.72	430004	01.0162	14.56	440016	00.9709	10.91	440131	01.0820	13.17
390279	01.1355	....	420005	01.1291	14.18	430005	01.2522	13.79	440017	01.5885	17.33	440132	01.1216	13.29
390280	00.8687	....	420006	01.3106	15.86	430007	01.1290	11.45	440018	01.4879	15.33	440133	01.5290	17.70
400001	01.2171	08.19	420007	01.5047	15.99	430008	01.1381	13.47	440019	01.5921	18.39	440135	01.3506	19.68
400002	01.4419	10.77	420009	01.2531	15.89	430009	01.0883	10.81	440020	01.2181	16.73	440137	00.9636	11.88
400003	01.2195	08.34	420010	01.0854	13.22	430010	01.1134	08.78	440022	01.2003	12.79	440141	01.1777	12.78
400004	01.2103	08.02	420011	01.0971	14.00	430011	01.3615	14.10	440023	01.0157	11.52	440142	01.0517	10.83
400005	01.0871	06.34	420014	01.0714	13.05	430012	01.3050	14.13	440024	01.3814	16.35	440143	01.1010	16.30
400006	01.2516	06.86	420015	01.3661	16.20	430013	01.1996	15.09	440025	01.0818	12.19	440144	01.2163	17.90
400007	01.1884	07.19	420016	01.1283	13.46	430014	01.2671	16.05	440026	00.9153	15.63	440145	01.0539	13.40

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
440146	01.2978	12.03	450051	01.5096	18.04	450153	01.5438	17.33	450292	01.2600	17.64	450465	01.1813	11.39
440148	01.1549	15.81	450052	01.0230	13.39	450154	01.1285	10.93	450293	01.0277	12.90	450467	00.9691	13.77
440149	01.2150	15.70	450053	01.0703	15.65	450155	01.0107	10.09	450296	01.3571	16.97	450469	01.3473	15.87
440150	01.2583	18.75	450054	01.7336	21.09	450157	01.0311	14.31	450297	00.8956	13.66	450473	01.0491	15.90
440151	01.4156	15.89	450055	01.1093	11.71	450160	00.9356	17.51	450299	01.4096	17.66	450475	01.1874	14.99
440152	01.6578	17.32	450056	01.6499	17.62	450162	01.1984	17.13	450303	00.9720	10.74	450484	01.5173	17.72
440153	01.2633	14.46	450058	01.5208	14.43	450163	01.1423	16.18	450306	01.0838	11.84	450488	01.2219	19.43
440156	01.5231	18.76	450059	01.2787	12.62	450164	01.1333	12.97	450307	00.9772	13.59	450489	00.9989	14.86
440157	01.0053	13.12	450060	01.3766	19.96	450165	01.0054	14.05	450309	01.0505	11.15	450497	01.1596	12.54
440159	01.2421	....	450063	01.0234	11.54	450166	00.9211	11.39	450315	01.2119	19.84	450498	01.1296	13.21
440161	01.5951	20.02	450064	01.5106	15.53	450169	00.8607	14.45	450320	01.3603	17.73	450508	01.5551	15.68
440166	01.4014	17.40	450065	01.1189	13.86	450170	00.9895	12.30	450321	00.9793	10.98	450514	01.1878	16.22
440168	01.0191	13.32	450068	01.7833	17.27	450176	01.2578	14.33	450322	00.8870	15.26	450517	01.0115	11.00
440173	01.4900	16.51	450070	01.1662	13.40	450177	01.1371	12.72	450324	01.5522	15.53	450518	01.5165	15.17
440174	00.9730	14.29	450072	01.2259	17.28	450178	01.0836	15.65	450325	01.1881	09.56	450523	01.5622	20.04
440175	01.2420	17.24	450073	01.1191	10.92	450181	00.9133	15.39	450327	00.9869	10.00	450530	01.2882	19.74
440176	01.3017	17.31	450074	00.8492	16.51	450184	01.5011	19.61	450330	01.1758	14.47	450534	00.9344	17.01
440178	01.2129	18.01	450076	01.5227	....	450185	01.1232	09.25	450334	01.0079	11.79	450535	01.1966	16.74
440180	01.1306	16.13	450078	00.9592	10.69	450187	01.3348	15.83	450337	01.2726	14.42	450537	01.3800	18.07
440181	01.0368	12.30	450079	01.4470	19.51	450188	00.9806	12.13	450340	01.3364	14.79	450538	01.2233	18.62
440182	00.9087	14.69	450080	01.2576	14.43	450190	01.1818	17.82	450341	00.9763	16.17	450539	01.2718	14.11
440183	01.4914	15.92	450081	01.0910	12.40	450191	01.1079	15.11	450346	01.3821	15.86	450544	01.4394	19.57
440184	01.4104	18.05	450082	00.9799	14.21	450192	01.0655	15.77	450347	01.1385	14.95	450545	01.1893	16.75
440185	00.9987	17.19	450083	01.6927	16.91	450193	01.8455	20.78	450348	00.9936	10.99	450546	01.3009	15.56
440186	01.2154	16.59	450085	01.1191	13.44	450194	01.2628	16.17	450349	01.0976	25.54	450547	01.1799	13.04
440187	01.2318	16.58	450087	01.4765	20.99	450195	01.1649	17.01	450351	01.2378	20.82	450550	00.9777	17.28
440189	01.4607	16.08	450090	01.0814	11.92	450196	01.4781	13.63	450352	01.1492	15.51	450551	01.1352	12.64
440192	01.1078	14.00	450092	01.3766	12.51	450197	01.1513	18.21	450353	01.2989	17.12	450558	01.7485	18.18
440193	01.3105	17.42	450094	01.2950	17.42	450200	01.4362	15.19	450355	01.1550	11.43	450559	00.8703	10.67
440194	01.3026	17.11	450096	01.5012	18.60	450201	00.9844	14.55	450358	02.0824	19.02	450561	01.5458	16.77
440196	00.9296	14.68	450097	01.4119	17.99	450203	01.2264	15.81	450362	01.0825	11.91	450563	01.2669	21.61
440197	01.3620	19.48	450098	01.2552	13.96	450209	01.5849	16.60	450366	01.6443	18.85	450565	01.2714	14.73
440200	01.2074	16.77	450099	01.3037	16.51	450210	01.1197	12.40	450369	01.1403	10.97	450570	01.0643	12.15
440203	00.9627	11.16	450101	01.4061	14.92	450211	01.3930	14.50	450370	01.2110	11.99	450571	01.4160	14.67
440205	01.3025	14.19	450102	01.6381	17.29	450213	01.5335	15.73	450371	01.1823	10.92	450573	00.9645	13.22
440206	01.0764	13.22	450104	01.2372	13.07	450214	01.3888	17.29	450372	01.3285	22.86	450574	00.9827	13.75
450002	01.4686	18.34	450107	01.5476	18.16	450217	01.1331	11.65	450373	01.2235	13.96	450575	00.9515	14.24
450004	01.1281	12.11	450108	01.0272	12.16	450219	01.1040	13.42	450374	00.9039	11.71	450578	01.0238	14.27
450005	01.0692	14.37	450109	01.0396	16.18	450221	00.9863	13.35	450376	01.4734	14.76	450580	01.1179	12.70
450007	01.3197	13.04	450110	01.2341	14.61	450222	01.7067	17.58	450378	01.0687	18.25	450583	00.9814	12.02
450008	01.4103	14.15	450111	01.1514	18.57	450224	01.3981	15.77	450379	01.5572	20.78	450584	01.2182	12.25
450010	01.3556	14.39	450112	01.3449	12.60	450229	01.5394	15.30	450381	00.9491	12.16	450586	01.0168	12.00
450011	01.5223	16.73	450113	01.2319	14.59	450231	01.5327	17.95	450388	01.7306	17.23	450587	01.2802	15.54
450014	01.1081	13.51	450118	01.5353	15.96	450234	01.0317	11.57	450389	01.2099	17.39	450591	01.1080	15.20
450015	01.6382	14.59	450119	01.2988	15.78	450235	00.9859	12.40	450393	01.2470	21.55	450596	01.2924	16.49
450016	01.5859	18.64	450121	01.5746	18.89	450236	01.0705	13.45	450395	01.0148	14.21	450597	01.0598	15.32
450018	01.4858	19.82	450123	01.1617	16.60	450237	01.5886	15.96	450399	01.0278	12.52	450603	00.8258	11.74
450020	01.0466	14.94	450124	01.4856	18.15	450239	01.2557	12.21	450400	01.1214	13.83	450604	01.3711	12.85
450021	01.8443	19.58	450126	01.3582	16.49	450241	00.9480	13.71	450403	01.3371	19.91	450605	01.2926	18.17
450023	01.4041	15.21	450128	01.2520	13.45	450243	00.8275	11.52	450410	00.9614	16.52	450609	00.8993	11.00
450024	01.3873	14.47	450130	01.4833	16.85	450246	01.0125	10.82	450411	00.9623	11.26	450610	01.4896	17.33
450025	01.4725	15.12	450131	01.3207	17.06	450249	01.0282	10.84	450417	01.0110	13.74	450614	01.0715	12.13
450028	01.5375	17.21	450132	01.5960	15.46	450250	01.0189	12.12	450418	01.3733	16.29	450615	00.9254	11.97
450029	01.4012	11.81	450133	01.6059	17.50	450253	01.2030	12.54	450419	01.2552	20.88	450617	01.3368	18.17
450031	01.6419	18.78	450135	01.7237	19.83	450258	01.0849	10.82	450422	00.8158	23.68	450620	01.0358	13.85
450032	01.2840	13.14	450137	01.4452	21.51	450259	01.2156	17.92	450423	01.4053	22.35	450623	01.2321	17.54
450033	01.5984	16.13	450140	01.0268	12.94	450264	00.8617	09.77	450424	01.2098	16.01	450626	01.0232	13.74
450034	01.5650	16.34	450142	01.4624	19.12	450269	01,0790	13.32	450429	01.0802	12.22	450628	00.8951	11.43
450035	01.4950	19.26	450143	01.1229	11.76	450270	01.1067	10.66	450431	01.5647	17.87	450630	01.5789	22.91
450037	01.5437	16.93	450144	01.1095	15.44	450271	01.1987	14.76	450438	01.1417	13.61	450631	01.7397	18.06
450039	01.3673	17.94	450145	00.8879	12.61	450272	01.2222	15.51	450446	00.8057	13.57	450632	00.9909	10.90
450040	01.6012	16.80	450146	00.9990	16.15	450276	01.1137	11.27	450447	01.3466	17.04	450633	01.5675	17.65
450042	01.6252	15.24	450147	01.3675	17.10	450278	00.8682	11.11	450450	01.1208	13.64	450634	01.5775	20.13
450043	01.4123	17.52	450148	01.2850	18.70	450280	01.3411	19.11	450451	01.0779	16.31	450637	01.3732	17.24
450044	01.5738	19.16	450149	01.4000	18.97	450283	01.0279	13.57	450457	01.7418	16.53	450638	01.5845	21.91
450046	01.3278	16.83	450150	00.9221	12.55	450286	01.0489	13.54	450460	00.9999	11.81	450639	01.4385	23.61
450047	01.1284	14.89	450151	01.1844	12.12	450288	01.2387	13.72	450462	01.8365	18.04	450641	00.9502	11.53
450050	00.9784	13.70	450152	01.2996	14.41	450289	01.4874	16.97	450464	01.0067	13.17	450643	01.2894	16.86

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
450644	01.6088	21.23	450750	01.0246	11.13	460041	01.2248	18.67	490057	01.4890	16.35	500024	01.6083	21.17
450646	01.5906	18.64	450751	01.3272	21.86	460042	01.4963	15.69	490059	01.5998	17.16	500025	01.8684	22.05
450647	01.9884	22.49	450754	00.9098	11.72	460043	01.3741	19.57	490060	01.0575	17.44	500026	01.4016	21.54
450648	01.1125	12.96	450755	01.2089	13.35	460044	01.1648	18.10	490063	01.6387	22.05	500027	01.5390	21.51
450649	01.0969	12.57	450757	00.9885	12.42	460046	00.8607	12.57	490066	01.2549	17.26	500028	01.1284	14.22
450651	01.7432	22.45	450758	01.8822	20.89	460047	01.7937	18.94	490067	01.2556	14.34	500029	00.9587	12.95
450652	00.9632	12.52	450760	01.1644	18.92	460049	01.9333	15.66	490069	01.4348	14.22	500030	01.3685	24.00
450653	01.1757	16.49	450761	01.0223	09.89	460050	01.2337	....	490071	01.4542	17.65	500031	01.2640	19.54
450654	00.9469	11.33	450763	01.0199	15.67	460051	01.0445	....	490073	01.3843	21.85	500033	01.2449	17.29
450656	01.3727	15.58	450766	02.1856	19.39	470001	01.1934	17.49	490074	01.2589	16.61	500036	01.2776	18.39
450658	00.9981	10.98	450769	00.9727	12.82	470003	01.9247	17.39	490075	01.2964	16.02	500037	01.1897	17.16
450659	01.4943	19.28	450770	01.0467	12.94	470004	01.0722	14.19	490077	01.2149	17.00	500039	01.3377	19.49
450660	01.5981	20.17	450771	02.0587	18.83	470005	01.2108	18.33	490079	01.2757	14.03	500041	01.2747	21.21
450661	01.3065	18.06	450774	00.7538	21.30	470006	01.2015	18.12	490083	00.7547	13.47	500042	01.3098	20.40
450662	01.5933	16.63	450775	01.2005	17.45	470008	01.2928	16.29	490084	01.2941	16.33	500043	01.1372	16.16
450665	00.9971	11.26	450776	00.9537	10.12	470010	01.1493	17.20	490085	01.1576	12.49	500044	01.8736	19.89
450666	01.2396	17.31	450777	01.0057	14.24	470011	01.1925	18.92	490088	01.1847	14.26	500045	01.1212	18.22
450668	01.5522	18.60	450778	01.0640	15.29	470012	01.2697	15.64	490089	01.1042	14.82	500048	00.9117	15.45
450669	01.2481	19.18	450779	01.3064	21.26	470013	01.1390	18.59	490090	01.2200	13.95	500049	01.4899	16.56
450670	01.2784	16.66	450780	00.9836	22.14	470015	01.1457	16.60	490091	01.2392	21.12	500050	01.4060	19.25
450672	01.6395	19.60	450781	01.3563	17.80	470018	01.1609	17.36	490092	01.1705	14.20	500051	01.5384	21.26
450673	01.0761	11.01	450785	00.9009	....	470020	00.9563	13.25	490093	01.2825	13.84	500052	01.2712	....
450674	00.8953	21.14	450787	01.6643	....	470023	01.2131	16.94	490094	01.1699	14.92	500053	01.2515	18.75
450675	01.4186	18.92	450788	01.3734	....	470024	01.1176	17.30	490095	01.3280	15.08	500054	01.8258	19.36
450677	01.4547	17.98	450789	01.5166	....	490001	01.0841	18.15	490097	01.1514	13.16	500055	01.0515	19.51
450678	01.6001	20.58	450790	01.4639	....	490002	01.1122	13.81	490098	01.3214	11.28	500057	01.3245	15.53
450681	01.6741	16.31	450791	01.3605	....	490003	00.6435	17.00	490099	00.9238	14.45	500058	01.4327	18.94
450683	01.2986	18.99	450792	02.0245	....	490004	01.1979	16.16	490100	01.3493	15.30	500059	01.1171	19.10
450684	01.2701	19.08	450793	01.7205	....	490005	01.5122	15.84	490101	01.1264	22.88	500060	01.4666	20.13
450686	01.4767	14.11	450794	01.5005	....	490006	01.1536	11.33	490104	00.8991	13.15	500061	01.0210	18.41
450688	01.3862	18.04	450795	00.7983	....	490007	02.0030	16.84	490105	00.7117	14.49	500062	01.1748	16.66
450690	01.4546	20.68	450797	00.8211	....	490009	01.7149	17.43	490106	00.8530	14.71	500064	01.4821	20.82
450691	01.1341	17.17	450798	00.6737	....	490010	01.1081	16.48	490107	01.2127	21.41	500065	01.3304	16.86
450694	01.3398	18.17	450799	01.7205	....	490011	01.3387	16.63	490108	00.8585	....	500068	00.9814	17.47
450696	01.4552	25.42	450897	04.9398	....	490012	01.1697	15.28	490109	00.9591	15.20	500069	01.1385	17.48
450697	01.4442	16.21	460001	01.7298	18.59	490013	01.1924	14.26	490110	01.2966	17.10	500071	01.2496	18.61
450698	00.9526	11.08	460003	01.5949	18.81	490014	01.4385	20.38	490111	01.2268	15.12	500072	01.2221	20.50
450700	00.9540	12.44	460004	01.7192	19.08	490015	01.4857	15.02	490112	01.6762	18.77	500073	01.0568	15.12
450702	01.5786	18.31	460005	01.5937	17.62	490017	01.3020	16.09	490113	01.3532	20.37	500074	01.0883	14.41
450703	01.5413	19.25	460006	01.3874	17.64	490018	01.2041	16.62	490114	01.1088	14.33	500075	01.2828	19.27
450704	01.2670	17.67	460007	01.3090	17.38	490019	01.2498	14.91	490115	01.2261	13.65	500077	01.3492	20.78
450705	01.0180	17.17	460008	01.4032	17.62	490020	01.1735	14.05	490116	01.2469	15.71	500079	01.3578	19.43
450706	01.2046	20.86	460009	01.6060	18.12	490021	01.3480	16.28	490117	01.1112	12.95	500080	00.8344	11.39
450709	01.1943	20.28	460010	02.0221	18.98	490022	01.2783	17.26	490118	01.7075	20.83	500084	01.2294	20.02
450711	01.6186	17.54	460011	01.4052	15.54	490023	01.2035	16.32	490119	01.2866	15.88	500085	01.0260	16.17
450712	00.8013	13.61	460013	01.4857	17.85	490024	01.6911	16.18	490120	01.3466	15.75	500086	01.3689	17.97
450713	01.4662	18.26	460014	01.0888	13.89	490027	01.1650	12.79	490122	01.2872	20.90	500088	01.3266	22.26
450715	01.4731	18.76	460015	01.2749	18.76	490028	01.3394	18.38	490123	01.1430	14.54	500089	01.0004	13.34
450716	01.2218	19.00	460016	00.9499	11.00	490030	01.2407	11.35	490124	01.1661	15.26	500090	00.7866	11.74
450717	01.2784	21.01	460017	01.4383	17.16	490031	01.1795	12.64	490126	01.2848	14.21	500092	01.0572	15.00
450718	01.2203	18.08	460018	00.9576	12.68	490032	01.7158	17.92	490127	01.0520	14.36	500094	00.9085	14.32
450723	01.3063	18.47	460019	01.0413	12.47	490033	01.1833	14.44	490130	01.2888	15.51	500096	00.9781	17.15
450724	01.2219	15.86	460020	01.0260	13.72	490035	01.0368	....	490131	00.9910	14.07	500097	01.2091	15.19
450725	01.1353	17.82	460021	01.3642	18.22	490037	01.1718	12.63	500001	01.3060	20.75	500098	00.9354	13.14
450726	00.8698	13.38	460022	00.9921	18.32	490038	01.1871	12.51	500002	01.4361	17.37	500101	00.9677	15.87
450727	00.9143	11.28	460023	01.1554	19.51	490040	01.3958	20.53	500003	01.3129	19.31	500102	00.9781	17.18
450728	00.9353	11.43	460024	01.0223	13.10	490041	01.2628	17.07	500005	01.7732	21.79	500104	01.2642	19.06
450730	01.3395	20.38	460025	00.7899	13.76	490042	01.3552	14.57	500007	01.3550	19.61	500106	00.9461	14.69
450732	01.3497	18.21	460026	01.0403	16.26	490043	01.2576	19.59	500008	01.8774	22.18	500107	01.1150	14.46
450733	01.3875	18.33	460027	00.9741	17.65	490044	01.3074	16.12	500009	01.3107	20.51	500108	01.6565	21.71
450734	01.3020	16.26	460029	01.1357	14.92	490045	01.1758	18.21	500011	01.3536	22.04	500110	01.2379	17.96
450735	00.9322	11.77	460030	01.2052	15.88	490046	01.4569	16.95	500012	01.5160	19.95	500118	01.1807	19.87
450742	01.2757	19.64	460032	00.9608	14.10	490047	01.0538	17.13	500014	01.8057	22.08	500119	01.3366	19.61
450743	01.3731	20.69	460033	00.9525	16.93	490048	01.4629	16.87	500015	01.3083	19.91	500122	01.2713	18.49
450745	00.7868	20.44	460035	00.8922	12.40	490050	01.3959	20.10	500016	01.3773	21.55	500123	01.0450	15.07
450746	01.0246	12.27	460036	00.9189	18.64	490052	01.5704	14.59	500019	01.2746	19.53	500124	01.3300	21.30
450747	01.4159	14.21	460037	01.0249	13.35	490053	01.2549	13.56	500021	01.5192	19.18	500125	01.0634	10.72
450749	01.0392	12.03	460039	00.9759	19.55	490054	01.0939	13.83	500023	01.2135	19.80	500127	00.7012	14.81

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
500129	01.6435	20.99	520003	01.1019	14.95	520092	01.1009	15.89	530012	01.5259	15.96			
500132	00.9823	18.61	520004	01.1977	15.96	520094	01.0671	15.88	530014	01.2904	14.52			
500134	00.8256	15.48	520006	01.0303	17.00	520095	01.3481	17.75	530015	01.1431	18.14			
500137	00.6497	17.85	520007	01.0705	13.40	520096	01.5431	16.65	530016	01.1199	11.30			
500138	05.5857	....	520008	01.5038	20.21	520097	01.3461	16.82	530017	01.0566	15.09			
500139	01.4518	21.47	520009	01.6685	16.69	520098	01.8261	19.03	530018	01.0261	13.70			
500140	00.9789	13.96	520010	01.1333	18.74	520100	01.2401	15.22	530019	00.9964	12.98			
500141	01.3370	20.95	520011	01.1787	15.82	520101	01.1171	15.24	530022	01.0572	15.34			
500143	00.8363	14.99	520013	01.3440	17.39	520102	01.2258	18.37	530023	00.8340	16.19			
500145	01.8903	....	520014	01.1833	14.92	520103	01.3072	16.55	530025	01.3592	17.07			
500898	01.1447	....	520015	01.1939	16.10	520107	01.2720	15.90	530026	01.0587	13.67			
510001	01.6943	16.64	520016	01.0266	12.10	520109	01.0103	16.79	530027	00.8666	08.89			
510002	01.2607	17.53	520017	01.2182	16.17	520110	01.1029	16.26	530029	00.8700	13.80			
510004	00.9418	11.47	520018	00.9654	15.12	520111	01.0740	13.12	530031	00.8812	12.07			
510005	00.9081	12.40	520019	01.3228	15.81	520112	01.1233	17.91	530032	01.1554	16.45			
510006	01.2424	17.07	520021	01.3295	17.87	520113	01.1931	17.45						
510007	01.4216	16.92	520024	01.0301	12.06	520114	01.0922	12.56						
510008	01.0998	14.78	520025	01.0787	14.84	520115	01.2924	15.40						
510009	01.0048	12.02	520026	01.0610	16.62	520116	01.2584	16.86						
510012	01.0531	14.30	520027	01.1488	18.20	520117	01.0564	14.29						
510013	01.1930	14.68	520028	01.3486	16.60	520118	00.9485	09.62						
510015	00.9510	13.86	520029	00.9455	15.32	520120	00.9830	11.97						
510016	01.0213	11.19	520030	01.6743	18.99	520121	00.9330	13.81						
510018	01.0890	12.75	520031	01.1703	16.00	520122	01.0095	13.21						
510020	01.0922	09.36	520032	01.1521	14.19	520123	01.0554	15.20						
510022	01.7054	18.97	520033	01.1822	15.92	520124	01.1511	14.50						
510023	01.1019	15.21	520034	01.1919	16.24	520130	01.0949	12.36						
510024	01.3533	16.56	520035	01.2474	14.95	520131	01.0242	15.72						
510025	00.9456	10.06	520037	01.5852	17.92	520132	01.1825	13.60						
510026	00.9312	11.40	520038	01.3793	16.35	520134	01.0935	14.40						
510027	00.9817	13.01	520039	01.0054	15.55	520135	01.0064	12.70						
510028	01.0830	18.75	520040	01.4619	19.00	520136	01.5225	18.05						
510029	01.2924	15.75	520041	01.1965	14.44	520138	01.8502	17.66						
510030	01.0608	14.71	520042	01.0497	15.99	520139	01.2028	17.83						
510031	01.3136	15.41	520044	01.3539	15.83	520140	01.5559	18.24						
510033	01.2401	13.81	520045	01.6488	16.87	520141	01.1553	15.56						
510035	01.1549	17.54	520047	01.0317	14.12	520142	00.8153	11.71						
510036	00.9330	11.78	520048	01.4308	16.96	520144	01.0173	15.72						
510038	01.0459	13.86	520049	01.8222	17.11	520145	00.9640	16.59						
510039	01.3509	14.77	520051	01.9233	18.64	520146	01.0787	12.88						
510043	00.9749	10.23	520053	01.0459	14.95	520148	01.1487	14.99						
510046	01.2071	15.27	520054	01.0481	15.66	520149	00.9606	12.29						
510047	01.1461	16.64	520056	01.2856	17.61	520151	01.0828	13.81						
510048	01.1064	17.03	520057	01.1572	15.81	520152	01.1492	15.57						
510050	01.3072	14.07	520058	01.0289	17.40	520153	00.9151	12.42						
510053	00.9862	13.43	520059	01.2817	17.27	520154	01.1233	15.66						
510055	01.2700	18.38	520060	01.3379	14.70	520156	01.0988	17.35						
510058	01.2284	15.23	520062	01.2446	15.60	520157	01.0073	13.06						
510059	01.0506	13.61	520063	01.1934	16.74	520159	00.8912	15.84						
510060	01.1108	13.44	520064	01.6924	17.58	520160	01.7825	16.98						
510061	01.0267	13.23	520066	01.3684	17.75	520161	01.0499	14.34						
510062	01.2044	15.84	520068	00.9064	14.65	520170	01.3136	17.27						
510063	01.0554	13.39	520069	01.2244	15.89	520171	00.9780	13.38						
510065	00.9964	18.80	520070	01.4628	16.29	520173	01.2002	17.49						
510066	01.1021	11.29	520071	01.1162	16.28	520174	01.4623	19.90						
510067	01.2260	16.60	520074	01.1022	14.80	520177	01.5389	19.26						
510068	01.1324	14.26	520075	01.4723	16.74	520178	01.0619	13.83						
510070	01.1945	15.60	520076	01.0948	14.67	520186	02.1412	....						
510071	01.2602	14.58	520077	01.0475	13.87	530002	01.1018	16.35						
510072	01.0953	12.86	520078	01.4727	16.04	530003	00.8823	12.54						
510077	01.1439	13.21	520082	01.4075	15.87	530004	01.0189	12.81						
510080	01.1711	10.11	520083	01.6393	20.44	530005	01.0032	11.90						
510081	00.9772	12.88	520084	01.1026	14.57	530006	01.1623	16.90						
510082	01.1301	11.32	520087	01.6097	16.33	530007	01.0744	11.30						
510084	00.9945	12.23	520088	01.2813	16.17	530008	01.2067	16.29						
510085	01.2462	17.51	520089	01.5211	18.22	530009	01.0242	15.00						
510086	01.1086	14.08	520090	01.2264	15.59	530010	01.2322	16.82						
520002	01.2769	16.70	520091	01.2702	16.49	530011	01.0511	15.86						

Note: Case mix indexes do not include discharges from PPS-Exempt Units. Case mix indexes include cases received in HCFA Central Office through June 1995.

BILLING CODE 4120-01-P

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index	GAF
0040 Abilene, TX	0.8546	0.8980
Taylor, TX		
0060 Aguadilla, PR	0.4744	0.6001
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	0.9578	0.9709
Portage, OH		
Summit, OH		
0120 Albany, GA	0.8608	0.9024
Dougherty, GA		
Lee, GA		
0160 Albany-Schenectady-Troy, NY	0.8818	0.9175
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.9542	0.9684
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA ...	0.8010	0.8590
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	1.0198	1.0135
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.9007	0.9309
Blair, PA		
0320 Amarillo, TX	0.8759	0.9133
Potter, TX		
Randall, TX		
0380 Anchorage, AK ..	1.3373	1.2202
Anchorage, AK		
0440 Ann Arbor, MI	1.2116	1.1405
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.8158	0.8699
Calhoun, AL		
0460 Appleton-Oshkosh-Neenah, WI	0.8844	0.9193
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4498	0.5786
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9218	0.9458
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.9097	0.9372
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 *Atlanta, GA	1.0069	1.0047
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
De Kalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
0560 Atlantic City-Cape May, NJ	1.0935	1.0631
Atlantic City, NJ		
Cape May, NJ		
0600 Augusta-Aiken, GA-SC	0.8955	0.9272
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 Austin-San Marcos, TX	0.9255	0.9484
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 Bakersfield, CA .	1.0502	1.0341
Kern, CA		
0720 *Baltimore, MD ..	0.9866	0.9908
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Annes, MD		
0733 Bangor, ME	0.9360	0.9557
Penobscot, ME		
0743 Barnstable-Yarmouth, MA	1.3457	1.2255
Barnstable, MA		
0760 Baton Rouge, LA	0.8670	0.9069
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX	0.8603	0.9021
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA .	1.2681	1.1766
Whatcom, WA		
0870 Benton Harbor, MI	0.8304	0.8805
Berrien, MI		
0875 *Bergen-Passaic, NJ	1.1474	1.0987
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT	0.8705	0.9094
Yellowstone, MT		
0920 Biloxi-Gulfport-Pascagoula, MS	0.8448	0.8909
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 Binghamton, NY	0.9005	0.9307
Broome, NY		
Tioga, NY		
1000 Birmingham, AL .	0.9144	0.9406
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND	0.8299	0.8801
Burleigh, ND		
Morton, ND		
1020 Bloomington, IN .	0.8429	0.8896
Monroe, IN		
1040 Bloomington-Normal, IL	0.8740	0.9119
McLean, IL		
1080 Boise City, ID	0.9150	0.9410
Ada, ID		
Canyon, ID		
1123 *Boston-Brockton-Nashua, MA-NH ..	1.1685	1.1125
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont, CO	0.9780	0.9849
Boulder, CO		
1145 Brazoria, TX	0.8584	0.9007
Brazoria, TX		
1150 Bremerton, WA ..	1.0295	1.0201
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.8650	0.9055
Cameron, TX		
1260 Bryan-College Station, TX	0.8987	0.9295
Brazos, TX		
1280 *Buffalo-Niagara Falls, NY	0.9186	0.9435
Erie, NY		
Niagara, NY		
1303 Burlington, VT ...	0.9252	0.9482
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4706	0.5968
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
1320 Canton-Massillon, OH	0.8749	0.9125
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.8662	0.9063
Natrona, WY		
1360 Cedar Rapids, IA	0.8359	0.8845
Linn, IA		
1400 Champaign-Urbana, IL	0.8867	0.9210
Champaign, IL		
1440 Charleston-North Charleston, SC	0.8930	0.9254
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.9498	0.9653
Kanawha, WV		
Putnam, WV		
1520 *Charlotte-Gastonia-Rock Hill, NC-SC	0.9668	0.9771
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	0.9179	0.9430
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN-GA	0.9129	0.9395
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 Cheyenne, WY	0.7935	0.8535
Laramie, WY		
1600 *Chicago, IL	1.0632	1.0429
Cook, IL		
De Kalb, IL		
Du Page, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0531	1.0361
Butte, CA		
1640 *Cincinnati, OH-KY-IN	0.9418	0.9598
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN-KY	0.7542	0.8243
Christian, KY		
Montgomery, TN		
1680 *Cleveland-Lorain-Elyria, OH	0.9835	0.9887
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9294	0.9511
El Paso, CO		
1740 Columbia, MO	0.9461	0.9628
Boone, MO		
1760 Columbia, SC	0.9033	0.9327
Lexington, SC		
Richland, SC		
1800 Columbus, GA-AL	0.7756	0.8403
Russell, AL		
Chattanoochee, GA		
Harris, GA		
Muscogee, GA		
1840 *Columbus, OH	0.9734	0.9817
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8941	0.9262
Nueces, TX		
San Patricio, TX		
1900 Cumberland, MD-WV	0.8372	0.8854
Allegany, MD		
Mineral, WV		
1920 *Dallas, TX	0.9804	0.9865
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.8465	0.8922
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Rock Island-Moline, IA-IL	0.8347	0.8836
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9428	0.9605
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.8902	0.9234
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8180	0.8715
Lawrence, AL		
Morgan, AL		
2040 Decatur, IL	0.7790	0.8428
Macon, IL		
2080 *Denver, CO	1.0447	1.0304
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8792	0.9156
Dallas, IA		
Polk, IA		
Warren, IA		
2160 *Detroit, MI	1.0834	1.0564
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7751	0.8399
Dale, AL		
Houston, AL		
2190 Dover, DE	0.8960	0.9276
Kent, DE		
2200 Dubuque, IA	0.8054	0.8623
Dubuque, IA		
2240 Duluth-Superior, MN-WI	0.9660	0.9766
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	1.0697	1.0472
Dutchess, NY		
2290 Eau Claire, WI	0.8660	0.9062
Chippewa, WI		
Eau Claire, WI		
2320 El Paso, TX	0.9266	0.9491
El Paso, TX		
2330 Elkhart-Goshen, IN	0.8806	0.9166
Elkhart, IN		
2335 Elmira, NY	0.8460	0.8918
Chemung, NY		
2340 Enid, OK	0.8170	0.8707
Garfield, OK		
2360 Erie, PA	0.9196	0.9442
Erie, PA		
2400 Eugene-Springfield, OR	1.1184	1.0796
Lane, OR		
2440 Evansville-Henderson, IN-KY	0.8899	0.9232
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND-MN	0.8912	0.9242
Clay, MN		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Cass, ND		
2560 Fayetteville, NC	0.8843	0.9192
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.7090	0.7902
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ-UT	0.8619	0.9032
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.0738	1.0500
Genesee, MI		
2650 Florence, AL	0.7970	0.8561
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8537	0.8973
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0595	1.0404
Larimer, CO		
2680 *Ft. Lauderdale, FL	1.0952	1.0643
Broward, FL		
2700 Fort Myers-Cape Coral, FL	0.9666	0.9770
Lee, FL		
2710 Fort Pierce-Port St. Lucie, FL	1.0401	1.0273
Martin, FL		
St. Lucie, FL		
2720 Fort Smith, AR-OK	0.7608	0.8293
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 Fort Walton Beach, FL	0.8705	0.9094
Okaloosa, FL		
2760 Fort Wayne, IN	0.8691	0.9084
Adams, IN		
Allen, IN		
De Kalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 *Forth Worth-Arlington, TX	1.0052	1.0036
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.0522	1.0355
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8568	0.8996
Etowah, AL		
2900 Gainesville, FL	0.9007	0.9309
Alachua, FL		
2920 Galveston-Texas City, TX	1.0304	1.0207
Galveston, TX		
2960 Gary, IN	0.9452	0.9621
Lake, IN		
Porter, IN		
2975 Glens Falls, NY	0.9276	0.9498
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8165	0.8704
Wayne, NC		
2985 Grand Forks, ND-MN	0.8983	0.9292
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.7988	0.8574
Mesa, CO		
3000 Grand Rapids-Muskegon-Holland, MI	1.0055	1.0038
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9039	0.9331
Cascade, MT		
3060 Greeley, CO	0.9146	0.9407
Weld, CO		
3080 Green Bay, WI	0.9190	0.9438
Brown, WI		
3120 *Greensboro-Winston-Salem-High. Point, NC	0.9160	0.9417
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9102	0.9376
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.9047	0.9337
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	0.9074	0.9356
Washington, MD		
3200 Hamilton-Middletown, OH	0.8782	0.9149
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	0.9972	0.9981
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 *Hartford, CT	1.2391	1.1581
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 Hattiesburg, MS	0.7245	0.8020
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.7983	0.8570
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1212	1.0815
Honolulu, HI		
3350 Houma, LA	0.7596	0.8284
Lafourche, LA		
Terrebonne, LA		
3360 *Houston, TX	0.9874	0.9914
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV-KY-OH	0.8997	0.9302
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8113	0.8666
Limestone, AL		
Madison, AL		
3480 *Indianapolis, IN	0.9757	0.9833
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9371	0.9565
Johnson, IA		
3520 Jackson, MI	0.9132	0.9397
Jackson, MI		
3560 Jackson, MS	0.7642	0.8318
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.8511	0.8955
Madison, TN		
3600 Jacksonville, FL	0.8953	0.9271
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 Jacksonville, NC	0.6926	0.7776
Onslow, NC		
3610 Jamestown, NY	0.7535	0.8238
Chautaqua, NY		
3620 Janesville-Beloit, WI	0.8786	0.9152
Rock, WI		
3640 Jersey City, NJ	1.1039	1.0700
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8769	0.9140
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 Johnstown, PA	0.8521	0.8962
Cambria, PA		
Somerset, PA		
3710 Joplin, MO	0.7923	0.8526
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0657	1.0445
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.9114	0.9384
Kankakee, IL		
3760 *Kansas City, KS-MO	0.9351	0.9551
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.8872	0.9213
Kenosha, WI		
3810 Killeen-Temple, TX	1.0526	1.0357
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.8518	0.8960
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.8834	0.9186
Howard, IN		
Tipton, IN		
3870 La Crosse, WI-MN	0.8519	0.8960
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8498	0.8945
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.8328	0.8822
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.8094	0.8652
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.8668	0.9067
Polk, FL		
4000 Lancaster, PA	0.9569	0.9703
Lancaster, PA		
4040 Lansing-East Lansing, MI	1.0105	1.0072
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.6750	0.7640
Webb, TX		
4100 Las Cruces, NM	0.8861	0.9205
Dona Ana, NM		
4120 *Las Vegas, NV-AZ	1.0934	1.0631
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.8549	0.8982
Douglas, KS		
4200 Lawton, OK	0.8594	0.9014
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9433	0.9608
Androscoggin, ME		
4280 Lexington, KY	0.8348	0.8837
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.8863	0.9207
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9093	0.9370
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.8527	0.8966
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8653	0.9057
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 *Los Angeles-Long Beach, CA	1.2461	1.1626
Los Angeles, CA		
4520 Louisville, KY-IN	0.9327	0.9534
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8443	0.8906
Lubbock, TX		
4640 Lynchburg, VA	0.8205	0.8733
Amherst, VA		
Bedford City, VA		
Bedford, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.8991	0.9298
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0055	1.0038
Dane, WI		
4800 Mansfield, OH	0.8373	0.8855
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR	0.4644	0.5914
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8669	0.9068
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0162	1.0111
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	0.9323	0.9531
Brevard, Fl		
4920 *Memphis, TN-AR-MS	0.8399	0.8874
Crittenden, AR		
De Soto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA	1.0877	1.0593
Merced, CA		
5000 *Miami, FL	0.9552	0.9691
Dade, FL		
5015 *Middlesex-Somerset-Hunterdon, NJ	1.0583	1.0396
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 *Milwaukee-Waukesha, WI	0.9498	0.9653
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 *Minneapolis-St Paul, MN-WI	1.0744	1.0504
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5160 Mobile, AL	0.7706	0.8366
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0658	1.0446
Stanislaus, CA		
5190 *Monmouth-Ocean, NJ	1.0562	1.0382
Monmouth, NJ		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Ocean, NJ		
5200 Monroe, LA	0.7948	0.8545
Ouachita, LA		
5240 Montgomery, AL	0.7901	0.8510
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.9125	0.9392
Delaware, IN		
5330 Myrtle Beach, SC	0.7961	0.8554
Horry, SC		
5345 Naples, FL	0.9871	0.9911
Collier, FL		
5360 *Nashville, TN	0.9266	0.9491
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 *Nassau-Suffolk, NY	1.3128	1.2049
Nassau, NY		
Suffolk, NY		
5483 *New Haven-Bridgeport-StamfordDanbury-Waterbury, CT	1.2534	1.1673
Fairfield, CT		
New Haven, CT		
5523 New London-Norwich, CT	1.2088	1.1387
New London, CT		
5560 *New Orleans, LA	0.9454	0.9623
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 *New York, NY	1.3852	1.2500
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 *Newark, NJ	1.1241	1.0834
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY-PA	1.0619	1.0420
Orange, NY		
Pike, PA		
5720 *Norfolk-Virginia Beach-Newport News, VA-NC	0.8411	0.8883
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City, VA		
Williamsburg City, VA		
York, VA		
5775 *Oakland, CA	1.5203	1.3322
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.8942	0.9263
Marion, FL		
5800 Odessa-Midland, TX	0.8753	0.9128
Ector, TX		
Midland, TX		
5880 *Oklahoma City, OK	0.8358	0.8844
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.1109	1.0747
Thurston, WA		
5920 Omaha, NE-IA	0.9794	0.9858
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 *Orange County, CA	1.2299	1.1522
Orange, CA		
5960 *Orlando, FL	0.9515	0.9665
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.7498	0.8210
Daviess, KY		
6015 Panama City, FL	0.8182	0.8716
Bay, FL		
6020 Parkersburg-Marietta, WV-OH	0.7751	0.8399
Washington, OH		
Wood, WV		
6080 Pensacola, FL	0.8183	0.8717
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8619	0.9032
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 *Philadelphia, PA-NJ	1.1098	1.0739
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 *Phoenix-Mesa, AZ	0.9808	0.9868
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7985	0.8572
Jefferson, AR		
6280 *Pittsburgh, PA	0.9743	0.9823
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 Pittsfield, MA	1.0838	1.0567
Berkshire, MA		
6360 Ponce, PR	0.4780	0.6032
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9744	0.9824
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 *Portland-Vancouver, OR-WA	1.1248	1.0839
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 *Providence-Warwick, RI	1.1027	1.0692
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	0.9843	0.9892
Utah, UT		
6560 Pueblo, CO	0.8508	0.8953
Pueblo, CO		
6580 Punta Gorda, FL	0.8806	0.9166
Charlotte, FL		
6600 Racine, WI	0.8704	0.9093
Racine, WI		
6640 Raleigh-Durham-Chapel Hill, NC	0.9539	0.9682
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Wake, NC		
6660 Rapid City, SD	0.8267	0.8778
Pennington, SD		
6680 Reading, PA	0.9570	0.9704
Berks, PA		
6690 Redding, CA	1.1796	1.1198
Shasta, CA		
6720 Reno, NV	1.1087	1.0732
Washoe, NV		
6740 Richland-Kennewick-Pasco, WA	1.0011	1.0008
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	0.9055	0.9343
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
6780 *Riverside-San Bernardino, CA	1.1489	1.0997
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8570	0.8997
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.0545	1.0370
Olmsted, MN		
6840 *Rochester, NY	0.9585	0.9714
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.8872	0.9213
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.8836	0.9187
Edgecombe, NC		
Nash, NC		
6920 *Sacramento, CA	1.2539	1.1676
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9489	0.9647
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9549	0.9689
Benton, MN		
Stearns, MN		
7000 St. Joseph, MO	0.8457	0.8916
Andrews, MO		
Buchanan, MO		
7040 *St. Louis, MO-IL	0.8880	0.9219
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR	0.9575	0.9707
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.4263	1.2753
Monterey, CA		
7160 *Salt Lake City-Ogden, UT	0.9681	0.9780
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7777	0.8418
Tom Green, TX		
7240 *San Antonio, TX	0.8414	0.8885
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 *San Diego, CA	1.1856	1.1237
San Diego, CA		
7360 *San Francisco, CA	1.4288	1.2768
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 *San Jose, CA	1.4455	1.2870
Santa Clara, CA		
7440 *San Juan-Bayamon, PR	0.4514	0.5800
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1405	1.0942
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1136	1.0765
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.3944	1.2557
Santa Cruz, CA		
7490 Santa Fe, NM	1.1108	1.0746
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.2693	1.1774
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9824	0.9879
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.8968	0.9281
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8724	0.9108
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 *Seattle-Bellevue-Everett, WA	1.1307	1.0878
Island, WA		
King, WA		
Snohomish, WA		
7610 Sharon, PA	0.9093	0.9370
Mercer, PA		
7620 Sheboygan, WI	0.7981	0.8569
Sheboygan, WI		
7640 Sherman-Denison, TX	0.8780	0.9148
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.9007	0.9309
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA-NE	0.8436	0.8901
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD	0.8761	0.9134
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9475	0.9637
St. Joseph, IN		
7840 Spokane, WA	1.0377	1.0257
Spokane, WA		
7880 Springfield, IL	0.8940	0.9261
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.7896	0.8506
Christian, MO		
Greene, MO		
Webster, MO		
8003 Springfield, MA	1.0517	1.0351
Hampden, MA		
Hampshire, MA		
8050 State College, PA	1.0162	1.0111
Centre, PA		
8080 Steubenville-Weirton, OH-WV	0.8455	0.8914
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.1672	1.1117
San Joaquin, CA		
8140 Sumter, SC	0.8344	0.8834
Sumter, SC		
8160 Syracuse, NY	0.9531	0.9676
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.0828	1.0560
Pierce, WA		
8240 Tallahassee, FL	0.8321	0.8817
Gadsden, FL		
Leon, FL		
8280 *Tampa-St. Petersburg-Clearwater, FL	0.9311	0.9523
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 Terre Haute, IN	0.8672	0.9070
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR-Texarkana, TX	0.8257	0.8771
Miller, AR		
Bowie, TX		
8400 Toledo, OH	1.0330	1.0225
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.9735	0.9818
Shawnee, KS		
8480 Trenton, NJ	1.0033	1.0023
Mercer, NJ		
8520 Tucson, AZ	0.9291	0.9509
Pima, AZ		
8560 Tulsa, OK	0.8245	0.8762
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.8090	0.8649
Tuscaloosa, AL		
8640 Tyler, TX	0.9430	0.9606
Smith, TX		
8680 Utica-Rome, NY	0.8514	0.8957
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3040	1.1993
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.2330	1.1542
Ventura, CA		
8750 Victoria, TX	0.8435	0.8900
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	0.9966	0.9977
Cumberland, NJ		
8780 Visalia-Tulare-Porterville, CA	1.0446	1.0303
Tulare, CA		
8800 Waco, TX	0.7898	0.8508
McLennan, TX		
8840 *Washington, DC-MD-VA-WV	1.1075	1.0724
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpepper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8638	0.9046
Black Hawk, IA		
8940 Wausau, WI	1.0034	1.0023
Marathon, WI		
8960 West Palm Beach-Boca Raton, FL	1.0096	1.0066
Palm Beach, FL		
9000 Wheeling, OH-WV	0.7518	0.8225
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9562	0.9698
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.7763	0.8408
Archer, TX		
Wichita, TX		
9140 Williamsport, PA	0.8508	0.8953
Lycoming, PA		
9160 Wilmington-Newark, DE-MD	1.1539	1.1030
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9299	0.9514
New Hanover, NC		
Brunswick, NC		
9260 Yakima, WA	0.9951	0.9966
Yakima, WA		
9270 Yolo, CA	1.1615	1.1080
Yolo, CA		
9280 York, PA	0.9165	0.9420
York, PA		
9320 Youngstown-Warren, OH	0.9555	0.9693
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0611	1.0414
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.9769	0.9841
Yuma, AZ		

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7183	0.7973
Alaska	1.2034	1.1352
Arizona	0.7995	0.8579
Arkansas	0.6901	0.7757
California	1.0096	1.0066
Colorado	0.7988	0.8574
Connecticut	1.3117	1.2042
Delaware	0.9019	0.9317
Florida	0.8668	0.9067
Georgia	0.7721	0.8377
Hawaii	0.9847	0.9895
Idaho	0.8378	0.8859
Illinois	0.7497	0.8210
Indiana	0.8067	0.8632
Iowa	0.7352	0.8101
Kansas	0.7229	0.8007
Kentucky	0.7660	0.8331
Louisiana	0.7275	0.8042
Maine	0.8425	0.8893
Maryland	0.8463	0.8920
Massachusetts	1.0577	1.0392
Michigan	0.8744	0.9122
Minnesota	0.8129	0.8677
Mississippi	0.6697	0.7599
Missouri	0.7187	0.7976
Montana	0.8091	0.8650
Nebraska	0.7219	0.8000
Nevada	0.8788	0.9153
New Hampshire	1.0013	1.0009

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
New Jersey [1]		
New Mexico	0.8329	0.8823
New York	0.8647	0.9052
North Carolina	0.7983	0.8570
North Dakota	0.7265	0.8035
Ohio	0.8286	0.8792
Oklahoma	0.6985	0.7821
Oregon	0.9486	0.9645
Pennsylvania	0.8521	0.8962
Puerto Rico	0.4326	0.5634
Rhode Island [1]		
South Carolina	0.7738	0.8389
South Dakota	0.6987	0.7823
Tennessee	0.7409	0.8144
Texas	0.7302	0.8063
Utah	0.8652	0.9056
Vermont	0.9043	0.9334
Virginia	0.7801	0.8436
Washington	0.9775	0.9845
West Virginia	0.8069	0.8634
Wisconsin	0.8391	0.8868
Wyoming	0.8013	0.8592

[1] All counties within the State are classified urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area reclassified to	Wage index	GAF
Abilene, TX	0.8546	0.8980
Albuquerque, NM	0.9542	0.9684
Alexandria, LA	0.8010	0.8590
Allentown-Bethlehem-Easton, PA	1.0198	1.0135
Amarillo, TX	0.8759	0.9133
Anchorage, AK	1.3373	1.2202
Asheville, NC	0.9218	0.9458
Atlanta, GA	1.0069	1.0047
Augusta-Aiken, GA-SC	0.8955	0.9272
Baton Rouge, LA	0.8670	0.9069
Benton Harbor, MI	0.8304	0.8805
Benton Harbor, MI (Rural Michigan Hosp.)	0.8744	0.9122
Bergen-Passaic, NJ	1.1329	1.0892
Biloxi-Gulfport-Pascagoula, MS	0.8448	0.8909
Birmingham, AL	0.9144	0.9406
Bismarck, ND	0.8172	0.8709
Boise City, ID	0.9150	0.9410
Boston-Brockton-Nashua, MA-NH	1.1685	1.1125
Brazoria, TX	0.7724	0.8379
Casper, WY	0.8662	0.9063
Champaign-Urbana, IL	0.8664	0.9065
Charleston-North Charleston, SC	0.8930	0.9254
Charleston, WV	0.9317	0.9527
Charlotte-Gastonia-Rock Hill, NC-SC	0.9668	0.9771
Charlottesville, VA	0.9030	0.9325
Chattanooga, TN-GA	0.9015	0.9315
Chicago, IL	1.0511	1.0347
Cincinnati, OH-KY-IN	0.9418	0.9598
Cleveland-Lorain-Elyria, OH	0.9835	0.9887
Columbia, MO	0.9151	0.9411
Columbus, GA-AL	0.7756	0.8403
Columbus, OH	0.9734	0.9817
Dallas, TX	0.9804	0.9865
Davenport-Rock Island-Moline, IA-IL	0.8347	0.8836
Dayton-Springfield, OH	0.9428	0.9605
Denver, CO	1.0447	1.0304
Des Moines, IA	0.8684	0.9079
Detroit, MI	1.0834	1.0564
Duluth-Superior, MN-WI	0.9660	0.9766
Dutchess County, NY	1.0546	1.0371
Eau Claire, WI	0.8660	0.9062
Elkhart-Goshen, IN	0.8806	0.9166
Eugene-Springfield, OR	1.1184	1.0796
Fargo-Moorhead, ND-MN	0.8912	0.9242
Fayetteville, NC	0.8504	0.8950
Flint, MI	1.0738	1.0500
Florence, AL	0.7970	0.8561
Florence, SC	0.8537	0.8973
Fort Lauderdale, FL	1.0952	1.0643
Fort Pierce-Port St Lucie, FL	1.0069	1.0047
Fort Smith, AR-OK	0.7608	0.8293
Fort Walton Beach, FL	0.8705	0.9094
Fort Worth-Arlington, TX	1.0052	1.0036
Gadsden, AL	0.8568	0.8996
Grand Forks, ND-MN	0.8983	0.9292
Great Falls, MT	0.9039	0.9331
Greeley, CO	0.8993	0.9299
Green Bay, WI	0.9190	0.9438
Greenville-Spartanburg-Anderson, SC	0.9047	0.9337
Harrisburg-Lebanon-Carlisle, PA	0.9972	0.9981
Hartford, CT	1.2228	1.1477
Honolulu, HI	1.1212	1.0815
Houston, TX	0.9874	0.9914
Huntington-Ashland, WV-KY-OH	0.8997	0.9302
Huntsville, AL	0.7948	0.8545
Indianapolis, IN	0.9647	0.9757
Jackson, MS	0.7642	0.8318
Jacksonville, FL	0.8953	0.9271
Johnson City-Kingsport-Bristol, TN-VA	0.8769	0.9140
Joplin, MO	0.7923	0.8526
Kalamazoo-Battlecreek, MI	1.0449	1.0305
Kansas City, KS-MO	0.9351	0.9551
Knoxville, TN	0.8518	0.8960
Lafayette, LA	0.8498	0.8945
Lansing-East Lansing, MI	1.0105	1.0072
Las Vegas, NV-AZ	1.0934	1.0631
Lexington, KY	0.8348	0.8837
Lima, OH	0.8863	0.9207
Lincoln, NE	0.8885	0.9222
Little Rock-North Little Rock, AR	0.8527	0.8966
Longview-Marshall, TX	0.8479	0.8932
Los Angeles-Long Beach, CA	1.2461	1.1626
Louisville, KY-IN	0.9327	0.9534
Lubbock, TX	0.8443	0.8906
Madison, WI	1.0055	1.0038
Mansfield, OH	0.8373	0.8855
Medford-Ashland, OR	1.0162	1.0111
Memphis, TN-AR-MS	0.8292	0.8796
Middlesex-Somerset-Hunterdon, NJ	1.0355	1.0242
Milwaukee-Waukesha, WI	0.9498	0.9653
Minneapolis-St. Paul, MN-WI	1.0744	1.0504
Modesto, CA	1.0658	1.0446
Monroe, LA	0.7948	0.8545
Montgomery, AL	0.7901	0.8510
Nashville, TN	0.9266	0.9491
New London-Norwich, CT	1.2088	1.1387
New Orleans, LA	0.9454	0.9623
New York, NY	1.3852	1.2500
Newark, NJ	1.1241	1.0834
Newburgh, NY-PA	1.0619	1.0420
Oakland, CA	1.5203	1.3322
Odessa-Midland, TX	0.8753	0.9128
Oklahoma City, OK	0.8358	0.8844
Omaha, NE-IA	0.9794	0.9858
Orange County, CA	1.5593	1.3556
Peoria-Pekin, IL	0.8619	0.9032
Philadelphia, PA-NJ	1.1098	1.0739
Pittsburgh, PA	0.9743	0.9823
Portland, ME	0.9744	0.9824
Portland-Vancouver, OR-WA	1.1248	1.0839
Provo-Orem, UT	0.9646	0.9756
Raleigh-Durham-Chapel Hill, NC	0.9539	0.9682
Rapid City, SD	0.8267	0.8778
Richland-Kennewick-Pasco, WA	0.9768	0.9841
Roanoke, VA	0.8570	0.8997
Rochester, MN	1.0545	1.0370
Rockford, IL	0.8872	0.9213
Rocky Mount, NC	0.8836	0.9187
Sacremento, CA	1.2539	1.1676
Saginaw-Bay City-Midland, MI,	0.9489	0.9647
St. Cloud, MN	0.9549	0.9689
St. Louis, MO-IL	0.8880	0.9219
Salem, OR	0.9575	0.9707
Salinas, CA	1.4141	1.2678
Salt Lake City-Ogden, UT	0.9681	0.9780
San Diego, CA	1.1856	1.1237
San Francisco, CA	1.4288	1.2768
San Jose, CA	1.4455	1.2870
Santa Rosa, CA	1.2574	1.1698
Sarasota-Bradenton, FL	0.9824	0.9879
Savannah, GA	0.8968	0.9281
Seattle-Bellevue-Everett, WA	1.1307	1.0878
Sharon, PA	0.9093	0.9370
Sherman-Denison, TX	0.8436	0.8901
Sioux Falls, SD	0.8761	0.9134
South Bend, IN	0.9475	0.9637
Springfield, IL	0.8836	0.9187
Springfield, MO	0.7896	0.8506
Stockton, CA	1.1672	1.1117
Syracuse, NY	0.9531	0.9676
Tampa-St. Petersburg-Clearwater, FL	0.9311	0.9523
Texarkana, TX-Texarkana, AR	0.8257	0.8771
Topeka, KS	0.9401	0.9586
Trenton, NJ	1.2599	1.1714
Tucson, AZ	0.9291	0.9509
Tulsa, OK	0.8245	0.8762
Tyler, TX	0.9164	0.9420
Ventura, CA	1.2330	1.1542
Victoria, TX	0.8435	0.8900
Waco, TX	0.7898	0.8508
Washington, DC-MD-VA-WV	1.1075	1.0724
Waterloo-Cedar Falls, IA	0.8638	0.9046
Wausau, WI	0.9679	0.9779
Wichita, KS	0.9309	0.9521
Rural Alabama	0.7183	0.7973
Rural Arkansas	0.6901	0.7757
Rural Florida	0.8668	0.9067
Rural Kentucky	0.7660	0.8331
Rural Louisiana	0.7275	0.8042
Rural Michigan	0.8744	0.9122
Rural Minnesota	0.8129	0.8677
Rural Missouri	0.7187	0.7976
Rural New Hampshire	1.0013	1.0009
Rural North Carolina	0.7983	0.8570
Rural Virginia	0.7801	0.8436
Rural West Virginia	0.8069	0.8634
Rural Wyoming	0.8013	0.8592

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	16.1778
Aguadilla, PR	8.9796
Akron, OH	18.0935
Albany, GA	16.2942
Albany-Schenectady-Troy, NY	16.6927
Albuquerque, NM	18.0635
Alexandria, LA	14.9860
Allentown-Bethlehem-Easton, PA-NJ	19.3050
Altoona, PA	17.0490
Amarillo, TX	16.5798
Anchorage, AK	25.3141
Ann Arbor, MI	22.9356
Anniston, AL	15.4427
Appleton-Oshkosh-Neenah, WI	16.7413
Arecibo, PR	8.5149
Asheville, NC	17.4501
Athens, GA	17.2208
Atlanta, GA	19.0600
Atlantic City-Cape May, NJ	20.7004
Augusta-Aiken, GA-SC	16.9519
Austin-San Marcos, TX	17.5193
Bakersfield, CA	19.8792
Baltimore, MD	18.6758
Bangor, ME	17.7185
Barnstable-Yarmouth, MA	25.4728
Baton Rouge, LA	16.4123
Beaumont-Port Arthur, TX	16.2858
Bellingham, WA	24.0042
Benton Harbor, MI	15.6323
Bergen-Passaic, NJ	22.1050
Billings, MT	16.4779
Biloxi-Gulfport-Pascagoula, MS	15.9912
Binghamton, NY	17.0452
Birmingham, AL	17.3090
Bismarck, ND	15.7090
Bloomington, IN	15.9556
Bloomington-Normal, IL	16.5439
Boise City, ID	17.1324
Boston-Brockton-Nashua, MA-NH	22.1167
Boulder-Longmont, CO	18.5131
Brazoria, TX	16.6847
Bremerton, WA	19.4876
Brownsville-Harlingen-San Benito, TX	16.3732
Bryan-College Station, TX	17.0117
Buffalo-Niagara Falls, NY	17.3886
Burlington, VT	17.5139
Caguas, PR	8.9087
Canton-Massillon, OH	16.5610
Casper, WY	15.9558
Cedar Rapids, IA	15.8233
Champaign-Urbana, IL	16.7843
Charleston-North Charleston, SC	16.9003
Charleston, WV	17.9801
Charlotte-Gastonia-Rock Hill, NC-SC	18.3004
Charlottesville, VA	17.3750
Chattanooga, TN-GA	17.2815
Cheyenne, WY	15.0213
Chicago, IL	20.1255
Chico-Paradise, CA	19.9349
Cincinnati, OH-KY-IN	17.8270
Clarksville-Hopkinsville, TN-KY	14.2763
Cleveland-Lorain-Elyria, OH	18.6165
Colorado Springs, CO	17.5930
Columbia, MO	17.9090
Columbia, SC	17.0995
Columbus, GA-AL	14.6815
Columbus, OH	18.4253
Corpus Christi, TX	16.9241
Cumberland, MD-WV	15.8483
Dallas, TX	18.5580
Danville, VA	16.0243
Davenport-Moline-Rock Island, IA-IL	15.8012
Dayton-Springfield, OH	17.8462
Daytona Beach, FL	16.8507
Decatur, AL	15.4835
Decatur, IL	14.7466
Denver, CO	19.7749
Des Moines, IA	16.6435
Detroit, MI	20.4975
Dothan, AL	14.6729
Dover, DE	16.9613
Dubuque, IA	15.2452
Duluth-Superior, MN-WI	18.2853
Dutchess County, NY	20.2495
Eau Claire, WI	16.3926
El Paso, TX	17.5401
Elkhart-Goshen, IN	16.5895
Elmira, NY	16.0141
Enid, OK	15.4658
Erie, PA	17.4069
Eugene-Springfield, OR	21.0833
Evansville, Henderson, IN-KY	16.8454
Fargo-Moorhead, ND-MN	16.8702
Fayetteville, NC	16.7399
Fayetteville-Springdale-Rogers, AR	13.4214
Flagstaff, AZ-UT	16.3150
Flint, MI	20.3263
Florence, AL	14.5759
Florence, SC	16.1316
Fort Collins-Loveland, CO	20.0554
Fort Lauderdale, FL	19.8737
Fort Myers-Cape Coral, FL	18.2967
Fort Pierce-Fort St Lucie, FL	19.6884
Fort Smith, AR-OK	14.3640
Fort Walton Beach, FL	16.4775
Fort Wayne, IN	16.4522
Fort Worth-Arlington, TX	19.0148
Fresno, CA	19.9179
Gadsden, AL	16.2189
Gainesville, FL	17.0500
Galveston-Texas City, TX	19.5055
Gary, IN	18.0150
Glens Falls, NY	17.5596
Goldsboro, NC	15.4556
Grand Forks, ND-MN	16.9349
Grand Junction, CO	16.9556
Grand Rapids-Muskegon-Holland, MI	19.0334
Great Falls, MT	16.8712
Greeley, CO	17.3139
Green Bay, WI	16.8657
Greensboro-Winston-Salem-High Point, NC	17.3386
Greenville, NC	17.2294
Greenville-Spartanburg-Anderson, SC	17.1252
Hagerstown, MD	17.1762
Hamilton-Middletown, OH	16.6240
Harrisburg-Lebanon-Carlisle, PA	18.8766
Hartford, CT	23.4548
Hattiesburg, MS	13.7150
Hickory-Morganton-Lenoir, NC	16.4247
Honolulu, HI	21.2237
Houma, LA	14.3783
Houston, TX	18.6920
Huntington-Ashland, WV-KY-OH	17.0304
Huntsville, AL	15.3580
Indianapolis, IN	18.4690
Iowa City, IA	17.7396
Jackson, MI	17.2871
Jackson, MS	14.2875
Jackson, TN	16.1114
Jacksonville, FL	16.9472
Jacksonville, NC	13.1113
Jamestown, NY	14.2640
Janesville-Beloit, WI	16.6310
Jersey City, NJ	20.9167
Johnson City-Kingsport-Bristol, TN-VA	16.5566
Johnstown, PA	16.9376
Joplin, MO	14.9986
Kalamazoo-Battle Creek, MI	20.1733
Kankakee, IL	17.2516
Kansas City, KS-MO	17.7010
Kenosha, WI	16.7936
Killeen-Temple, TX	19.9249
Knoxville, TN	16.1236
Kokomo, IN	16.7227
LaCrosse, WI-MN	16.1256
Lafayette, LA	15.9831

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Lafayette, IN	15.7641
Lake Charles, LA	15.3213
Lakeland-Winter Haven, FL	16.8079
Lancaster, PA	18.1140
Lansing-East Lansing, MI	19.1281
Laredo, TX	12.7772
Las Cruces, NM	16.7732
Las Vegas, NV-AZ	20.6967
Lawrence, KS	16.1829
Lawton, OK	16.2688
Lewiston-Auburn, ME	17.8565
Lexington, KY	15.8030
Lima, OH	16.7765
Lincoln, NE	17.2129
Little Rock-North Little Rock, AR	16.1414
Longview-Marshall, TX	16.5201
Los Angeles-Long Beach, CA	23.6449
Louisville, KY-IN	17.6559
Lubbock, TX	15.9821
Lynchburg, VA	15.5313
Macon, GA	17.0204
Madison, WI	19.0333
Mansfield, OH	15.8496
Mayaguez, PR	8.7914
McAllen-Edinburg-Mission, TX	16.4091
Medford-Ashland, OR	18.8231
Melbourne-Titusville-Palm Bay, FL	17.6476
Memphis, TN-AR-MS	15.8992
Merced, CA	20.5898
Miami, FL	19.2390
Middlesex-Somerset-Hunterdon, NJ	20.4619
Milwaukee-Waukesha, WI	17.9801
Minneapolis-St Paul, MN-WI	20.3375
Mobile, AL	14.7679
Modesto, CA	21.1266
Monmouth-Ocean, NJ	19.9942
Monroe, LA	14.9551
Montgomery, AL	14.9130
Muncie, IN	17.2733
Myrtle Beach, SC	15.0700
Naples, FL	18.6860
Nashville, TN	17.5408
Nassau-Suffolk, NY	25.7257
New Haven-Bridgeport-Stamford-. Danbury-Waterbury, CT	23.7262
New London-Norwich, CT	22.5252
New Orleans, LA	17.8955
New York, NY	26.1508
Newark, NJ	22.5401
Newburgh, NY-PA	20.1006
Norfolk-Virginia Beach-Newport News, VA-NC	15.9211
Oakland, CA	28.7763
Ocala, FL	16.9266
Odessa-Midland, TX	16.5687
Oklahoma City, OK	15.8211
Olympia, WA	21.0283
Omaha, NE-IA	18.5393
Orange County, CA	23.2815
Orlando, FL	18.0111
Owensboro, KY	14.1939
Panama City, FL	15.4882
Parkersburg-Marietta, WV-OH	14.6723
Pensacola, FL	15.4904
Peoria-Pekin, IL	16.3153
Philadelphia, PA-NJ	21.0452
Phoenix-Mesa, AZ	18.5670
Pine Bluff, AR	15.1147
Pittsburgh, PA	18.4432
Pittsfield, MA	20.5161
Ponce, PR	9.0479
Portland, ME	18.4457
Portland-Vancouver, OR-WA	21.2923
Providence-Warwick, RI	20.8739
Provo-Orem, UT	18.6323
Pueblo, CO	16.1052
Punta Gorda, FL	17.7975
Racine, WI	16.4769
Raleigh-Durham-Chapel Hill, NC	18.0562
Rapid City, SD	15.6494
Reading, PA	18.1153
Redding, CA	22.3298
Reno, NV	20.9876
Richland-Kennewick-Pasco, WA	18.9500
Richmond-Petersburg, VA	17.1415
Riverside-San Bernardino, CA	21.9893
Roanoke, VA	16.0589
Rochester, MN	19.9607
Rochester, NY	18.1442
Rockford, IL	16.7939
Rocky Mount, NC	16.5823
Sacramento, CA	23.7352
Saginaw-Bay City-Midland, MI	17.9615
St Cloud, MN	18.0754
St Joseph, MO	16.0095
St Louis, MO-IL	16.8087
Salem, OR	18.1534
Salinas, CA	26.9989
Salt Lake City-Ogden, UT	18.3253
San Angelo, TX	14.7224
San Antonio, TX	15.9267
San Diego, CA	22.4200
San Francisco, CA	27.2835
San Jose, CA	27.3139
San Juan-Bayamon, PR	8.5450
San Luis Obispo-Atascadero-Paso Robles, CA	21.5899
Santa Barbara-Santa Maria-Lompoc, CA	21.0804
Santa Cruz-Watsonville, CA	26.3954
Santa Fe, NM	21.0277
Santa Rosa, CA	24.0268
Sarasota-Bradenton, FL	18.4321
Savannah, GA	16.9751
Scranton-Wilkes Barre-Hazleton, PA	16.5137
Seattle-Bellevue-Everett, WA	21.3995
Sharon, PA	16.8537
Sheboygan, WI	15.1072
Sherman-Denison, TX	16.6210
Shreveport-Bossier City, LA	17.0508
Sioux City, IA-NE	15.9684
Sioux Falls, SD	16.5847
South Bend,IN	17.9364
Spokane, WA	19.6432
Springfield, IL	16.9223
Springfield, MO	14.9476
Springfield, MA	19.9089
State College, PA	19.2360
Steubenville-Weirton, OH-WV	16.0044
Stockton-Lodi, CA	21.8377
Sumter, SC	15.7945
Syracuse, NY	18.0411
Tacoma, WA	20.4969
Tallahassee, FL	15.7519
Tampa-St Petersburg-Clearwater, FL	17.5324
Terre Haute, IN	16.4157
Texarkana, TX-Texarkana, AR	15.5180
Toledo, OH	19.7316
Topeka, KS	18.4279
Trenton, NJ	18.9912
Tucson, AZ	17.5838
Tulsa, OK	15.6073
Tuscaloosa, AL	15.3144
Tyler, TX	17.8508
Utica-Rome, NY	16.1173
Vallejo-Fairfield-Napa, CA	25.5228
Ventura, CA	22.5710
Victoria, TX	15.9679
Vineland-Millville-Bridgeton, NJ	18.8648
Visalia-Tulare-Porterville, CA	19.7741
Waco, TX	14.9500
Washington, DC-MD-VA-WV	20.9642
Waterloo-Cedar Falls, IA	16.2799
Wausau, WI	18.9938
West Palm Beach-Boca Raton, FL	19.3398
Wheeling, WV-OH	14.2319
Wichita, KS	18.0997
Wichita Falls, TX	14.6944
Williamsport, PA	16.1054
Wilmington-Newark, DE-MD	21.8419
Wilmington, NC	17.6028
Yakima, WA	18.8374
Yolo, CA	21.9861
York, PA	17.3484
Youngstown-Warren, OH	18.0869
Yuba City, CA	20.0865
Yuma, AZ	18.4923

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	13.5615
Alaska	22.7793
Arizona	15.1344
Arkansas	13.0557
California	19.1114
Colorado	15.1209
Connecticut	24.8299
Delaware	17.0720
Florida	16.4079
Georgia	14.6148
Hawaii	18.6401
Idaho	15.8589
Illinois	14.1915
Indiana	15.2704
Iowa	13.9176
Kansas	13.6838
Kentucky	14.4809
Louisiana	13.7719
Maine	15.9481
Maryland	16.0195
Massachusetts	20.0223
Michigan	16.5516
Minnesota	15.3842
Mississippi	12.6771
Missouri	13.6029
Montana	15.3151
Nebraska	13.6661

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Nevada	16.6350
New Hampshire	18.9536
New Jersey[1]	....
New Mexico	15.7665
New York	16.3687
North Carolina	15.1058
North Dakota	13.7514
Ohio	15.6847
Oklahoma	13.2228
Oregon	17.9571
Pennsylvania	16.1301
Puerto Rico	8.1889
Rhode Island[1]	....
South Carolina	14.6476
South Dakota	13.2255
Tennessee	14.0250
Texas	13.8226
Utah	16.3774
Vermont	17.1172
Virginia	14.7420
Washington	18.5043
West Virginia	15.2110
Wisconsin	15.8839
Wyoming	15.1685

[1] All counties within the State are classified urban.

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.0932	8.7	12.4	32
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.0095	9.0	12.6	32
3	01	SURG	*CRANIOTOMY AGE 0–17	1.8848	12.7	12.7	36
4	01	SURG	SPINAL PROCEDURES	2.3296	6.5	10.0	29
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.5798	4.0	5.2	27
6	01	SURG	CARPAL TUNNEL RELEASE	.8124	2.4	4.0	25
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC.	2.6017	9.3	14.7	32
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC.	1.1794	3.1	4.6	26
9	01	MED	SPINAL DISORDERS & INJURIES	1.3047	5.7	8.5	29
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2299	6.2	8.9	29
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8000	3.8	5.3	27
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9891	6.0	8.7	29
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7858	5.4	6.9	28
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA.	1.2065	6.0	8.2	29
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS.	.7227	3.8	4.9	27
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC.	1.0639	5.4	7.4	28
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC.	.6026	3.2	4.3	26
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9242	5.1	6.9	28
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.5990	3.6	4.7	27
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS.	2.1157	8.3	11.5	31
21	01	MED	VIRAL MENINGITIS	1.5350	6.5	8.7	30
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.8127	4.0	5.1	27
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8090	3.9	5.5	27
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9908	4.6	6.5	28
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5681	3.1	4.1	26
26	01	MED	SEIZURE & HEADACHE AGE 0–17	.8993	3.1	4.5	26
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3476	3.9	7.2	27
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC.	1.2001	5.2	7.9	28
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC.	.6217	3.1	4.4	26
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17.	.3187	2.0	2.0	17
31	01	MED	CONCUSSION AGE >17 W CC	.7934	3.8	5.7	27
32	01	MED	CONCUSSION AGE >17 W/O CC	.4819	2.4	3.3	22
33	01	MED	*CONCUSSION AGE 0–17	.2003	1.6	1.6	9
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0569	4.9	6.9	28
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5914	3.4	4.8	26
36	02	SURG	RETINAL PROCEDURES	.5930	1.4	1.7	7
37	02	SURG	ORBITAL PROCEDURES	.8821	2.6	4.1	26
38	02	SURG	PRIMARY IRIS PROCEDURES	.4243	2.0	2.7	17
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5036	1.5	1.9	9
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17.	.7000	2.3	3.6	25
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17.	.3244	1.6	1.6	7

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS.	.5615	1.6	2.2	12
43	02	MED	HYPHEMA	.3665	3.0	3.8	25
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6150	4.8	5.9	28
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6460	3.4	4.3	25
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7593	4.2	5.9	27
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4539	3.0	4.0	26
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0–17	.2859	2.9	2.9	26
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7701	4.7	7.0	28
50	03	SURG	SIALOADENECTOMY	.7522	1.8	2.4	12
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY.	.7325	2.0	3.0	23
52	03	SURG	CLEFT LIP & PALATE REPAIR	.8492	2.4	3.4	25
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	.9392	2.3	3.7	25
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0–17	.4634	3.2	3.2	22
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES.	.7238	1.9	3.0	22
56	03	SURG	RHINOPLASTY	.8195	2.1	3.0	21
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	1.0450	3.2	4.9	26
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2631	1.5	1.5	4
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.5963	2.1	2.9	19
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2004	1.5	1.5	4
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.2221	3.1	5.9	26
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0–17	.2837	1.3	1.3	5
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES.	1.1462	3.3	4.9	26
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1887	5.1	8.2	28
65	03	MED	DYSEQUILIBRIUM	.5162	2.9	3.7	22
66	03	MED	EPISTAXIS	.5306	3.0	3.9	24
67	03	MED	EPIGLOTTITIS	.8060	3.4	4.3	25
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.7094	4.2	5.2	27
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5270	3.4	4.1	21
70	03	MED	OTITIS MEDIA & URI AGE 0–17	.3129	2.4	3.0	17
71	03	MED	LARYNGOTRACHEITIS	.7206	3.6	4.4	25
72	03	MED	NASAL TRAUMA & DEFORMITY	.6419	3.0	4.7	26
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17.	.7730	4.0	5.4	27
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17.	.3223	2.1	2.1	20
75	04	SURG	MAJOR CHEST PROCEDURES	3.1034	9.3	11.9	32
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.5601	9.6	13.4	33
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.1219	3.9	5.9	27
78	04	MED	PULMONARY EMBOLISM	1.4136	7.4	8.8	30
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC.	1.6625	7.8	10.1	31
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC.	.9508	5.7	7.2	29
81	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17.	.9558	4.7	6.7	28
82	04	MED	RESPIRATORY NEOPLASMS	1.3166	6.0	8.4	29
83	04	MED	MAJOR CHEST TRAUMA W CC	.9557	5.2	6.9	28
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5002	3.0	4.2	25
85	04	MED	PLEURAL EFFUSION W CC	1.1917	5.9	7.9	29
86	04	MED	PLEURAL EFFUSION W/O CC	.6848	3.6	4.6	27
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3589	5.3	7.3	28
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0018	5.3	6.6	28
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.1211	6.2	7.6	29
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6996	4.7	5.5	26
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	.8366	4.4	6.0	27
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2000	6.0	7.7	29
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7550	4.2	5.3	27
94	04	MED	PNEUMOTHORAX W CC	1.2378	6.2	8.1	29
95	04	MED	PNEUMOTHORAX W/O CC	.6242	3.8	4.7	26
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.8390	4.9	5.9	28
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.6089	3.8	4.6	23
98	04	MED	BRONCHITIS & ASTHMA AGE 0–17	.6696	4.2	5.1	27

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6959	2.9	3.9	26
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5034	2.1	2.6	14
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.9120	4.5	6.0	27
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5595	2.9	4.0	26
103	05	SURG	HEART TRANSPLANT	13.8273	27.4	39.1	50
104	05	SURG	CARDIAC VALVE PROCEDURES W CARDIAC CATH	7.3143	13.3	16.0	36
105	05	SURG	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	5.6310	10.0	12.0	33
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.6187	11.2	12.7	34
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.1803	8.6	9.8	32
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9455	10.5	13.5	33
109			NO LONGER VALID	.0000	.0	.0	0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1308	8.7	11.6	32
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2584	6.3	7.2	29
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	1.9922	3.6	5.0	27
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.7536	11.6	16.0	35
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS.	1.5383	7.4	10.5	30
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK.	3.5513	9.5	11.8	33
116	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GENERATOR PROC.	2.3949	4.2	5.9	27
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT.	1.1454	3.0	4.5	26
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5260	2.2	3.4	25
119	05	SURG	VEIN LIGATION & STRIPPING	1.1247	3.4	5.9	26
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9531	5.8	10.1	29
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE.	1.6459	7.0	8.4	30
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE.	1.1614	4.9	5.8	28
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4370	2.8	4.9	26
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.2933	4.0	5.3	27
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	.8767	2.4	3.2	22
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.6049	12.3	16.3	35
127	05	MED	HEART FAILURE & SHOCK	1.0302	5.2	6.7	28
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7929	6.3	7.2	29
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.1376	2.1	3.7	25
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9384	5.6	7.2	29
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.6002	4.5	5.5	27
132	05	MED	ATHEROSCLEROSIS W CC	.6861	3.1	4.0	23
133	05	MED	ATHEROSCLEROSIS W/O CC	.5347	2.5	3.1	18
134	05	MED	HYPERTENSION	.5800	3.3	4.2	25
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC.	.8988	4.1	5.7	27
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	.5789	2.8	3.6	22
137	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17.	.7866	3.3	3.3	26
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC.	.8049	3.7	5.0	27
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC.	.4945	2.5	3.2	18
140	05	MED	ANGINA PECTORIS	.6312	3.1	3.8	22
141	05	MED	SYNCOPE & COLLAPSE W CC	.7149	3.7	5.0	27
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5216	2.7	3.5	20
143	05	MED	CHEST PAIN	.5159	2.3	2.8	15
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0689	4.3	6.1	27
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6204	2.7	3.5	22
146	06	SURG	RECTAL RESECTION W CC	2.5898	10.2	11.8	33
147	06	SURG	RECTAL RESECTION W/O CC	1.5368	7.2	7.9	29
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.3264	11.7	14.2	35
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC.	1.5654	7.4	8.1	26
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.6561	10.1	12.4	33
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2606	5.5	6.8	29
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.8860	8.0	9.7	31

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC.	1.1257	5.7	6.4	26
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.2102	12.6	16.1	36
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3885	5.4	6.7	28
156	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17.	.8101	6.0	6.0	29
157	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.1048	4.3	6.1	27
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.5789	2.3	3.0	18
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.1707	4.1	5.6	27
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.6746	2.5	3.1	17
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC.	.9554	3.1	4.5	26
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC.	.5365	1.8	2.2	11
163	06	SURG	HERNIA PROCEDURES AGE 0–17	.7578	3.5	5.0	27
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC.	2.2374	8.5	9.9	31
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC.	1.2365	5.3	6.1	25
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC.	1.3695	4.9	6.1	28
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC.	.7892	3.0	3.6	16
168	03	SURG	MOUTH PROCEDURES W CC	1.1761	3.6	5.6	27
169	03	SURG	MOUTH PROCEDURES W/O CC	.6434	2.0	2.7	17
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.7116	9.1	13.3	32
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC.	1.1628	4.4	6.2	27
172	06	MED	DIGESTIVE MALIGNANCY W CC	1.2898	6.1	8.8	29
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6569	3.2	4.6	26
174	06	MED	G.I. HEMORRHAGE W CC	.9880	4.7	6.0	28
175	06	MED	G.I. HEMORRHAGE W/O CC	.5457	3.1	3.8	19
176	06	MED	COMPLICATED PEPTIC ULCER	1.0563	5.0	6.5	28
177	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.8270	4.4	5.4	27
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5990	3.2	3.9	21
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0993	6.0	7.8	29
180	06	MED	G.I. OBSTRUCTION W CC	.9240	5.0	6.5	28
181	06	MED	G.I. OBSTRUCTION W/O CC	.5231	3.4	4.2	23
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7794	4.1	5.4	27
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5480	3.0	3.7	22
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17.	.3910	2.5	3.1	18
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8892	4.1	5.8	27
186	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	.3088	2.9	2.9	23
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.6473	2.8	3.8	26
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC.	1.0458	4.7	6.6	28
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC.	.5438	2.8	3.8	26
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	1.2379	4.6	6.5	28
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.4495	12.9	17.5	36
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7103	6.4	8.3	29
193	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.2131	12.3	14.9	35
194	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.6937	6.9	8.6	30
195	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.6147	9.4	11.2	32
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.5695	6.2	7.2	29
197	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.2034	7.9	9.7	31
198	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.1355	4.6	5.4	24

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY.	2.3309	9.2	12.4	32
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	3.0158	7.9	12.7	31
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES.	3.2951	11.7	16.1	35
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3177	6.1	8.3	29
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS.	1.2187	5.9	8.3	29
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2020	5.5	7.2	28
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W CC.	1.2276	5.8	8.0	29
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC.	.6801	3.6	5.0	27
207	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.0287	4.7	6.2	28
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.5943	2.8	3.6	23
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.2707	6.8	7.6	27
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8616	8.2	9.8	31
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2893	6.3	7.2	28
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17.	1.1296	4.3	5.2	27
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.7196	7.6	10.6	31
214	08	SURG	BACK & NECK PROCEDURES W CC	1.9184	5.7	7.4	29
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.0924	3.5	4.2	22
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.1075	8.6	12.2	32
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	2.8975	11.1	17.1	34
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.4231	5.3	6.9	28
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	.9179	3.4	4.1	22
220	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17.	.5611	5.3	5.3	28
221	08	SURG	KNEE PROCEDURES W CC	1.8463	6.3	8.8	29
222	08	SURG	KNEE PROCEDURES W/O CC	.9747	3.3	4.2	26
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.8364	2.3	3.0	17
224	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	.6983	2.0	2.4	11
225	08	SURG	FOOT PROCEDURES	.9504		5.1	26
226	08	SURG	SOFT TISSUE PROCEDURES W CC	1.3656		7.3	28
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.7273	2.4	3.2	20
228	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	.9315	2.4	3.8	25
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC.	.5965	1.8	2.4	14
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.0399	3.5	5.6	27
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.2131	3.5	5.5	26
232	08	SURG	ARTHROSCOPY	1.0578	2.6	4.5	26
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC.	1.9275	6.8	9.8	30
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC.	1.0039	3.3	4.5	26
235	08	MED	FRACTURES OF FEMUR	.8501	5.2	7.8	28
236	08	MED	FRACTURES OF HIP & PELVIS	.7818	5.2	7.1	28
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH.	.5711	3.7	4.9	27
238	08	MED	OSTEOMYELITIS	1.4356	8.4	11.5	31
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0219	6.3	8.4	29
240	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.1900	5.9	8.1	29
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.5986	3.8	4.9	27
242	08	MED	SEPTIC ARTHRITIS	1.1295	6.7	9.0	30

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
243	08	MED	MEDICAL BACK PROBLEMS	.7248	4.7	6.1	28
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7446	4.6	6.4	28
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC.	.5050	3.4	4.6	26
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5646	3.7	4.7	27
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5534	3.1	4.3	26
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.7275	4.1	5.7	27
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6558	3.1	4.7	26
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	.7193	3.9	5.7	27
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4423	2.4	3.2	21
252	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17.	.2438	1.8	1.8	15
253	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC.	.7637	4.7	6.6	28
254	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	.4365	3.0	4.1	26
255	08	MED	*FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17.	.2838	2.9	2.9	26
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.6419	3.2	4.4	26
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.8997	3.1	3.9	20
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6965	2.4	2.8	11
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.8765	2.6	4.1	26
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.5749	1.7	2.0	8
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.8080	1.9	2.6	13
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY.	.7115	2.6	4.0	26
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC.	2.2344	11.2	15.8	34
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.1633	6.7	9.2	30
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.4131	4.9	7.9	28
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.7451	2.8	3.9	26
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.8022	2.8	4.4	26
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES.	.9068	2.7	4.4	26
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6495	6.7	10.0	30
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.6796	2.4	3.6	25
271	09	MED	SKIN ULCERS	1.1157	7.2	9.5	30
272	09	MED	MAJOR SKIN DISORDERS W CC	1.0208	6.1	8.1	29
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.6403	4.5	6.1	27
274	09	MED	MALIGNANT BREAST DISORDERS W CC	1.0741	5.5	8.1	28
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.4845	2.4	3.5	25
276	09	MED	NON-MALIGNANT BREAST DISORDERS	.6418	4.2	5.4	27
277	09	MED	CELLULITIS AGE >17 W CC	.8703	5.9	7.3	29
278	09	MED	CELLULITIS AGE >17 W/O CC	.5822	4.6	5.5	27
279	09	MED	CELLULITIS AGE 0–17	.7070	4.2	5.9	27
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC.	.6847	4.0	5.6	27
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC.	.4523	2.8	3.9	26
282	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17.	.2467	2.2	2.2	19
283	09	MED	MINOR SKIN DISORDERS W CC	.7171	4.4	6.0	27
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4307	3.1	4.1	26
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	2.3880	11.0	15.4	34
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.3163	6.9	9.0	30
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	2.1126	10.7	15.5	34
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0397	5.9	8.0	29
289	10	SURG	PARATHYROID PROCEDURES	1.0385	3.0	4.5	26
290	10	SURG	THYROID PROCEDURES	.8537	2.3	3.0	16

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
291	10	SURG	THYROGLOSSAL PROCEDURES	.4657	1.4	1.6	6
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC.	2.6301	9.2	13.5	32
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC.	1.1866	4.6	6.4	28
294	10	MED	DIABETES AGE >35	.7579	4.7	6.2	28
295	10	MED	DIABETES AGE 0–35	.7634	3.7	5.1	27
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC.	.9166	5.1	7.0	28
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC.	.5353	3.5	4.6	27
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17.	.4756	2.8	3.8	26
299	10	MED	INBORN ERRORS OF METABOLISM	.9790	4.2	6.2	27
300	10	MED	ENDOCRINE DISORDERS W CC	1.0919	5.8	7.9	29
301	10	MED	ENDOCRINE DISORDERS W/O CC	.6181	3.6	4.8	27
302	11	SURG	KIDNEY TRANSPLANT	4.1370	11.9	14.0	35
303	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.6171	9.1	11.0	32
304	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3715	8.1	11.1	31
305	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1600	4.2	5.4	27
306	11	SURG	PROSTATECTOMY W CC	1.2441	4.9	7.1	28
307	11	SURG	PROSTATECTOMY W/O CC	.6639	2.7	3.3	17
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.4848	5.0	7.5	28
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.8061	2.5	3.2	21
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	.9694	3.3	4.9	26
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5486	1.9	2.4	12
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	.8891	3.3	5.1	26
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.5008	1.9	2.6	15
314	11	SURG	*URETHRAL PROCEDURES, AGE 0–17	.4756	2.3	2.3	25
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES.	2.0612	5.7	10.3	29
316	11	MED	RENAL FAILURE	1.2996	5.7	8.1	29
317	11	MED	ADMIT FOR RENAL DIALYSIS	.6556	2.7	4.1	26
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1007	5.2	7.6	28
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5432	2.2	3.4	25
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC.	.9320	5.6	7.1	29
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC.	.6104	4.2	5.1	25
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	.6651	3.9	5.4	27
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.7281	2.8	3.8	26
324	11	MED	URINARY STONES W/O CC	.3992	1.8	2.3	11
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC.	.6436	3.7	4.9	27
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC.	.4233	2.6	3.4	21
327	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17.	.2302	3.1	3.1	26
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	.6672	3.2	4.4	26
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4233	1.9	2.3	13
330	11	MED	*URETHRAL STRICTURE AGE 0–17	.3063	1.6	1.6	9
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC.	1.0122	4.9	6.8	28
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC.	.6176	3.1	4.2	26
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17.	.8701	4.2	6.0	27
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.6948	6.1	6.9	25
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.3044	4.8	5.3	20
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8802	3.6	4.6	25
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6128	2.6	3.0	12
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.0260	3.7	5.7	27
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.9330	3.1	4.7	26
340	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	.2723	2.4	2.4	13
341	12	SURG	PENIS PROCEDURES	1.0699	2.6	3.7	25
342	12	SURG	CIRCUMCISION AGE >17	.7360	2.8	4.2	26
343	12	SURG	*CIRCUMCISION AGE 0–17	.1479	1.7	1.7	6

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.0209	2.4	3.5	25
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	.8435	3.0	4.6	26
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC .	.9626	5.1	7.5	28
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC.	.4853	2.5	3.6	25
348	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.7106	3.8	5.3	27
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.4241	2.3	3.1	22
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM.	.6810	4.3	5.3	27
351	12	MED	*STERILIZATION, MALE	.2271	1.3	1.3	5
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES ..	.5932	3.1	4.2	26
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.9483	7.5	9.4	30
354	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.4609	5.6	6.8	29
355	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.8881	3.8	4.1	12
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7323	2.9	3.3	13
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.3679	8.5	10.6	31
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC.	1.1458	4.3	5.1	20
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC.	.8072	3.2	3.5	10
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8739	3.3	4.2	23
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION .	1.1984	3.2	5.0	26
362	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.2902	1.4	1.4	5
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY.	.6881	2.7	3.7	22
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.6667	2.6	3.8	26
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES.	1.7739	6.0	8.7	29
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC.	1.1405	5.5	8.2	29
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC.	.5179	2.5	3.7	25
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.9841	5.5	7.1	29
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5130	2.7	3.9	26
370	14	SURG	CESAREAN SECTION W CC	.9573	4.5	5.7	26
371	14	SURG	CESAREAN SECTION W/O CC	.6531	3.4	3.8	11
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5558	2.6	3.5	20
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3446	1.8	2.1	8
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.6721	2.3	2.8	13
375	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C.	.6587	4.4	4.4	27
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.4418	2.5	3.7	26
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	.8181	2.8	4.3	26
378	14	MED	ECTOPIC PREGNANCY	.7409	2.4	2.8	14
379	14	MED	THREATENED ABORTION	.3962	2.2	3.4	25
380	14	MED	ABORTION W/O D&C	.3742	1.6	2.0	9
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY.	.4673	1.5	2.1	11
382	14	MED	FALSE LABOR	.1922	1.2	1.9	7
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS.	.4587	3.1	4.4	26
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.2818	1.6	2.1	10
385	15		*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3219	1.8	1.8	25
386	15		*EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.3591	17.9	17.9	41
387	15		*PREMATURITY W MAJOR PROBLEMS	2.9772	13.3	13.3	36
388	15		*PREMATURITY W/O MAJOR PROBLEMS	1.7964	8.6	8.6	32
389	15		FULL TERM NEONATE W MAJOR PROBLEMS	2.3785	7.8	10.3	31

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
390	15		NEONATE W OTHER SIGNIFICANT PROBLEMS	.6218	2.7	4.4	26
391	15		*NORMAL NEWBORN	.1465	3.1	3.1	11
392	16	SURG	SPLENECTOMY AGE >17	3.1908	9.3	12.0	32
393	16	SURG	*SPLENECTOMY AGE 0–17	1.2949	9.1	9.1	32
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.6252	4.9	8.5	28
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8359	4.1	5.8	27
396	16	MED	RED BLOOD CELL DISORDERS AGE 0–17	.5980	2.8	4.2	26
397	16	MED	COAGULATION DISORDERS	1.2825	4.8	6.6	28
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC.	1.2360	5.6	7.2	29
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC.	.6934	3.8	4.7	27
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6034	7.2	11.2	30
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC.	2.4533	9.0	13.1	32
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	.9428	3.1	4.6	26
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6823	6.9	10.0	30
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8140	3.8	5.4	27
405	17		*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17.	1.8358	4.9	4.9	28
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC.	2.6558	8.6	12.0	32
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC.	1.1626	4.0	5.1	27
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC.	1.6840	5.2	8.8	28
409	17	MED	RADIOTHERAPY	.9475	4.9	7.0	28
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.7172	2.6	3.3	20
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.5015	2.5	3.4	25
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4530	2.1	2.9	24
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC.	1.3422	6.4	9.2	29
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC.	.7285	3.9	5.9	27
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES.	3.4769	12.4	17.3	35
416	18	MED	SEPTICEMIA AGE >17	1.4770	6.5	8.9	30
417	18	MED	SEPTICEMIA AGE 0–17	.8764	4.8	6.1	28
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9777	5.7	7.3	29
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.9223	4.8	6.2	28
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6258	3.8	4.6	25
421	18	MED	VIRAL ILLNESS AGE >17	.6982	3.8	4.9	27
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17.	.5446	3.3	4.3	26
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES.	1.5828	6.8	9.4	30
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS.	2.4543	12.1	20.0	35
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION.	.7129	3.9	5.5	27
426	19	MED	DEPRESSIVE NEUROSES	.5949	4.5	6.3	27
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5794	4.1	5.9	27
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL .	.6847	5.2	8.1	28
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION ..	.9537	6.6	10.4	30
430	19	MED	PSYCHOSES	.8670	7.5	10.7	30
431	19	MED	CHILDHOOD MENTAL DISORDERS	.6362	5.3	7.6	28
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7018	4.2	6.6	27
433	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3080	2.6	3.7	26
434	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC.	.7373	4.7	6.4	28
435	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC.	.4249	3.9	5.1	27
436	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY.	.8384	12.6	15.7	36
437	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY.	.7972	9.9	11.8	33
438			NO LONGER VALID	.0000	.0	.0	0

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.6599	5.6	9.3	29
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.7792	7.0	11.0	30
441	21	SURG	HAND PROCEDURES FOR INJURIES	.8785	2.3	4.3	25
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.0836	5.7	9.1	29
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.8130	2.4	3.4	25
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7290	4.4	5.8	27
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4664	2.9	3.9	26
446	21	MED	*TRAUMATIC INJURY AGE 0–17	.2846	2.4	2.4	22
447	21	MED	ALLERGIC REACTIONS AGE >17	.4976	2.3	3.1	20
448	21	MED	ALLERGIC REACTIONS AGE 0–17	.0896	1.0	1.0	1
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC.	.7886	3.3	4.8	26
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC.	.4329	1.9	2.6	15
451	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	.2527	2.1	2.1	17
452	21	MED	COMPLICATIONS OF TREATMENT W CC	.9127	3.9	5.6	27
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4752	2.6	3.5	24
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC.	.8906	3.8	6.1	27
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC.	.4689	2.3	3.5	25
456	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.9410	4.2	8.2	27
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.5849	2.5	5.1	26
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.4645	12.8	18.4	36
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC.	1.9398	8.2	13.2	31
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	.9369	5.1	7.3	28
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.0104	2.6	5.4	26
462	23	MED	REHABILITATION	1.4731	11.8	14.7	35
463	23	MED	SIGNS & SYMPTOMS W CC	.7416	4.2	5.9	27
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4972	3.0	4.0	26
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.4362	1.9	2.9	20
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.5601	2.5	4.6	26
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4291	2.6	5.0	26
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.5391	11.4	16.5	34
469	…………		**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS.	.0000	.0	.0	0
470	…………		**UNGROUPABLE	.0000	.0	.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.6458	8.0	9.6	31
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	10.6993	14.3	31.4	37
473	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17.	3.4797	8.9	15.3	32
474			NO LONGER VALID	.0000	.0	.0	0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT.	3.7015	9.1	13.1	32
476	…………	SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2703	11.5	15.1	35
477	…………	SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.5682	5.8	9.4	29
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.2709	6.0	9.0	29
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.3864	3.7	5.0	27
480	…………	SURG	LIVER TRANSPLANT	16.3066	24.4	33.8	47
481	…………	SURG	BONE MARROW TRANSPLANT	11.6796	27.2	31.2	50
482	…………	SURG	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES.	3.6620	12.4	16.3	35
483	…………	SURG	TRACHEOSTOMY EXCEPT FOR FACE,MOUTH & NECK DIAGNOSES.	16.1090	38.2	49.7	61
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.4488	10.9	17.1	34
485	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR.	3.2610	10.5	13.4	33
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA.	4.8763	9.6	15.1	33
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9932	6.8	10.1	30
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.2177	13.9	19.0	37
489	25	MED	HIV W MAJOR RELATED CONDITION	1.7856	7.8	11.7	31
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0476	4.7	7.3	28
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.6088	4.0	4.8	22
492	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	4.1529	11.8	18.4	35
493	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC.	1.6501	4.3	6.2	27
494	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC.	.8769	1.8	2.4	15
495	…………	SURG	LUNG TRANSPLANT	9.5678	18.2	23.2	41

* Medicare data have been supplemented by data from 19 states for low volume DRGS.

** DRGS 469 and 470 contain cases which could not be assigned to valid DRGS.

Note: Geometric mean is used only to determine payment for transfer cases.

Note: Arithmetic mean is used only to determine payment for outlier cases.

Note: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

Table 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
005.81	Food poisoning due to Vibrio vulnificus	N	6	182, 183, 184
005.89	Other bacterial food poisoning	N	6	182, 183, 184
041.86	Helicobacter pylori (H. pylori) infection	N	18	423
079.81	Hantavirus infection	N	18	421, 422
278.00	Obesity, unspecified	N	10	296, 297, 298
278.01	Morbid obesity	N	10	296, 297, 298
415.11	Iatrogenic pulmonary embolism and infarction	Y	4	78
			5	121, 124
			15	387, 389[1]
415.19	Other pulmonary embolism and infraction	Y	4	78
			5	121, 124
			15	387, 389[1]
435.3	Vertebrobasilar artery syndrome	N	1	15
458.2	Iatrogenic hypotension	N	5	141, 142
569.60	Colostomy and enterostomy complication, not otherwise specified	Y	6	188, 189, 190
569.61	Infection of colostomy or enterostomy	Y	6	188, 189, 190
569.69	Other colostomy and enterostomy complication	Y	6	188, 189, 190
690.10	Seborrheic dermatitis, unspecified	N	9	283, 284
690.11	Seborrhea capitis	N	9	283, 284
690.12	Seborrheic infantile dermatitis	N	9	283, 284
690.18	Other seborrheic dermatitis	N	9	283, 284
690.8	Other erythematosquamous dermatosis	N	9	283, 284
728.86	Necrotizing fasciitis	Y	8	248
787.91	Diarrhea	N	6	182, 183, 184
787.99	Other symptoms involving digestive system	N	6	182, 183, 184
989.81	Toxic effect of asbestos	N	21	449, 450, 451
989.82	Toxic effect of latex	N	21	449, 450, 451
989.83	Toxic effect of silicone	N	21	449, 450, 451
989.84	Toxic effect of tobacco	N	21	449, 450, 451
989.89	Toxic effect of other substance, chiefly nonmedicinal as to source, not elsewhere classified.	N	21	449, 450, 451
997.00	Nervous system complication, unspecified	Y	1	34, 35
			15	387, 389[1]
997.01	Central nervous system complication	Y	1	34, 35
			15	387, 389[1]
997.02	Iatrogenic cerebrovascular infarction or hemorrhage	Y	1	34, 35
			15	387, 389[1]
997.09	Other nervous system complications	Y	1	34, 35
			15	387, 389[1]
997.91	Complications affecting other specified body systems, hypertension	N	21	452, 453
997.99	Complications affecting other specified body systems, not elsewhere classified.	Y	21	452, 453
V12.50	Personal history of unspecified circulatory disease	N	23	467
V12.51	Personal history of venous thrombosis and embolism	N	23	467
V12.52	Personal history of thrombophlebitis	N	23	467
V12.59	Personal history of other diseases, of circulatory system, not elsewhere classified.	N	23	467
V15.84	Personal history of exposure to asbestos	N	23	467

Table 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
V15.85	Personal history of exposure to potentially hazardous body fluids	N	23	467
V15.86	Personal history of exposure to lead	N	23	467
V43.81	Larynx replacement status	N	23	467
V43.82	Breast replacement status	N	23	467
V43.89	Other organ or tissue replacement status, not elsewhere classified	N	23	467
V45.83	Breast implant removal status	N	23	467
V56.1	Fitting and adjustment of dialysis (extracorporeal) (peritoneal) catheter	N	11	317
V58.61	Long-term (current) use of anticoagulants	N	23	465, 466
V58.69	Long-term (current) use of other medications	N	23	465, 466
V58.82	Fitting and adjustment of non-vascular catheter, not elsewhere classified	N	23	465, 466
V59.01	Blood donor, whole blood	N	23	467
V59.02	Blood donor, stem cells	N	23	467
V59.09	Other blood donor	N	23	467
V59.6	Liver donor	N	7	205, 206

[1] Diagnosis code is classified as a "major problem" in these DRGs.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
05.25	Periarterial sympathectomy	Y	1	7, 8
			5	120
32.22	Lung volume reduction surgery	Y	4	75
33.50	Lung transplantation, not otherwise specified	Y	Pre	495
33.51	Unilateral lung transplantation	Y	Pre	495
33.52	Bilateral lung transplantation	Y	Pre	495
36.06	Insertion of coronary artery stent(s)	N	....	
37.65	Implant of an external, pulsatile heart assist system	Y	5	110, 111
37.66	Implant of an implantable, pulsatile heart assist system	Y	5	110, 111
39.50	Angioplasty or atherectomy of non-coronary vessel	Y	1	5
			5	478, 479
			9	269, 270
			10	292, 293
			11	315
			21	442, 443
			24	486
48.36	[Endoscopic] polypectomy of rectum	N[1]	17	412
59.72	Injection of implant into urethra and/or bladder neck	N[1]	11	308, 309
			13	356
60.21	Transurethral (ultrasound) guided laser induced prostatectomy (TULIP)	Y	11	306, 307
			12	336, 337
			....	476
60.29	Other transurethral prostatectomy	Y	11	306, 307
			12	336, 337
			....	476
92.3	Stereotactic radiosurgery	N[1]	1	1, 2, 3
			10	286
			17	400, 406, 407
99.00	Perioperative autologous transfusion of whole blood or blood components	N	....	

[1] Non-OR procedure that affects DRG assignment.

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
005.8	Other bacterial food poisoning	N	6	182, 183, 184
278.0	Obesity	N	10	296, 297, 298
415.1	Pulmonary embolism and infarction	Y	4	78
			15	387, 389
569.6	Colostomy and enterostomy malfunction	Y	6	188, 189, 190
690	Erythematosquamous dermatosis	N	9	283, 284
787.9	Other symptoms involving digestive system	N	6	182, 183, 184
989.8	Toxic effect of other substances, chiefly nonmedicinal as to source	N	21	449, 450, 451
997.0	Central nervous system complications	Y	1	34, 35
			15	387, 389
997.9	Complications affecting other specified body systems, not elsewhere classified.	Y	21	452, 453
V12.5	Personal history of diseases of circulatory system	N	23	467
V43.8	Organ or tissue replaced by other means, not elsewhere classified	N	23	467
V59.0	Blood donor	N	23	467

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
33.5	Lung transplant	Y	Pre	495
39.7	Periarterial sympathectomy	Y	5	478, 479
60.2	Transurethral prostatectomy	Y	11	306, 307
			12	336, 337, 476

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
441.00	Dissection of aorta, unspecified site	Y	5	121, 130, 131
441.01	Dissection of aorta, thoracic	Y	5	121, 130, 131
441.02	Dissection of aorta, abdominal	Y	5	121, 130, 131
441.03	Dissection of aorta, thoracoabdominal	Y	5	121, 130, 131
560.81	Intestinal or peritoneal adhesions with obstruction (postoperative) (postinfection).	Y	6	180, 181
568.0	Peritoneal adhesions (postoperative) (postinfection)	N	6	188, 189, 190
614.6	Pelvic peritoneal adhesions, female (postoperative) (postinfection)	N	13	358, 359, 369
650	Normal delivery	N	14	370, 371, 372, 373, 374, 375
780.6	Fever	N	18	419, 420, 422
997.4	Digestive system complication	Y	6	188, 189, 190
V52.4	Fitting and adjustment of breast prosthesis and implant	N	23	467
V53.5	Fitting and adjustment of other intestinal appliance	N	6	188, 189, 190
V58.81	Fitting and adjustment of vascular catheter	N	23	465, 466
V67.51	Follow-up examination following completed treatment with high-risk medications, not elsewhere classified.	N	23	467

TABLE 6F.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
99.02	Transfusion of previously collected autologous blood	N	....	

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TABLE 6G--ADDITIONS TO THE CC EXCLUSIONS LIST

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TABLE 6G--ADDITIONS TO THE CC EXCLUSIONS LIST

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TABLE 6H--DELETIONS TO THE CC EXCLUSIONS LIST

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BILLING CODE 4120-01-C

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY94 MEDPAR Update 06/95 Grouper V12.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
001	32563	12.4181	3	5	9	15	25
002	6318	12.5554	3	6	9	15	25
003	1	7.0000	7	7	7	7	7
004	5716	9.9696	2	3	7	13	21
005	69427	5.2597	2	3	4	6	10
006	501	4.0279	1	1	2	4	9
007	10150	14.6042	3	5	9	16	29
008	2567	4.4437	1	1	3	6	10
009	1736	8.2160	2	3	6	10	16
010	20459	8.7558	2	3	6	11	18
011	2983	5.0851	1	2	4	7	10
012	23793	8.6530	2	4	6	10	16
013	6352	6.9216	3	4	5	8	12
014	355976	8.1794	2	4	6	10	15
015	148758	4.9390	2	2	4	6	9
016	12186	7.4179	2	3	5	8	14
017	3269	4.1318	1	2	3	5	8
018	22386	6.8428	2	3	5	8	13
019	7310	4.5988	1	2	4	6	9
020	8255	11.2443	3	5	9	14	22
021	1176	8.6548	2	4	7	11	17
022	3015	5.1035	2	2	4	6	10
023	6002	5.4725	1	2	4	7	11
024	58588	6.4046	2	3	4	7	12
025	22077	4.0534	1	2	3	5	8
026	48	4.4792	1	2	3	5	11
027	3438	7.1175	1	1	4	9	16
028	10488	7.7212	1	3	5	9	16
029	3382	4.1824	1	2	3	5	8
030	1	20.0000	20	20	20	20	20
031	3665	5.5831	1	2	4	6	10
032	2081	3.2912	1	1	2	4	6
034	16015	6.8307	2	3	5	8	14
035	3372	4.6987	1	2	3	6	9
036	13095	1.7163	1	1	1	2	3
037	2216	4.1119	1	1	2	5	8
038	365	2.7342	1	1	2	3	6
039	4054	1.9171	1	1	1	2	4
040	2929	3.8631	1	1	2	5	8
041	1	2.0000	2	2	2	2	2
042	9820	2.1876	1	1	1	2	4
043	132	3.8409	1	2	3	5	7
044	1727	5.8871	2	3	5	7	10
045	2559	4.3118	1	2	3	5	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V12.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
046	3321	5.9377	1	3	4	7	11
047	1455	3.9072	1	2	3	5	7
049	2308	7.0156	2	3	5	8	14
050	3738	2.3767	1	1	2	3	4
051	376	3.0213	1	1	2	3	7
052	89	3.3596	1	1	2	4	7
053	3955	3.7067	1	1	2	4	8
054	2	4.0000	1	1	7	7	7
055	2311	2.9619	1	1	1	3	7
056	788	3.0089	1	1	2	4	6
057	663	4.8763	1	2	3	6	12
059	109	2.9174	1	1	2	3	6
060	2	1.5000	1	1	2	2	2
061	269	5.8513	1	1	3	8	14
063	4451	4.9155	1	2	3	6	10
064	3708	8.1238	1	2	5	10	18
065	35151	3.6832	1	2	3	4	7
066	7326	3.8463	1	2	3	5	7
067	482	4.3320	1	2	3	5	8
068	15474	5.1430	2	3	4	6	9
069	4123	4.0196	2	2	3	5	7
070	20	2.9500	1	1	2	3	4
071	131	4.3282	1	2	4	6	8
072	672	4.6652	1	2	3	5	8
073	6398	5.3993	1	2	4	7	10
074	1	5.0000	5	5	5	5	5
075	39140	11.8686	4	6	9	14	23
076	39566	13.3501	3	6	10	16	25
077	2515	5.6342	1	2	4	8	12
078	27898	8.7011	4	6	8	10	14
079	202654	10.0625	3	5	8	12	19
080	8161	6.9295	2	4	6	8	12
081	15	6.7333	1	2	7	9	14
082	71979	8.4061	2	4	6	11	17
083	7621	6.8267	2	3	5	8	13
084	1580	4.1968	1	2	3	5	7
085	18459	7.8104	2	4	6	10	15
086	1382	4.5224	1	2	4	6	9
087	56282	7.2175	1	3	6	9	14
088	362753	6.5711	2	4	5	8	12
089	452431	7.5640	3	4	6	9	13
090	40399	5.4006	2	3	5	7	9
091	84	6.0238	1	3	4	8	12
092	11561	7.6630	2	4	6	9	14
093	1306	5.2167	2	3	4	7	10
094	10591	8.0006	2	4	6	10	15
095	1141	4.6599	2	3	4	6	8
096	76006	5.8803	2	3	5	7	10
097	26848	4.5073	2	3	4	6	8
098	30	5.1000	2	3	4	8	9
099	27557	3.8826	1	2	3	5	7
100	10548	2.6031	1	1	2	3	5
101	19218	5.9849	2	3	5	7	12
102	3041	3.9596	1	2	3	5	7
103	404	39.0495	10	15	26	51	82
104	22320	16.0147	7	9	14	20	28
105	19215	11.9858	6	7	9	14	21
106	92000	12.7277	7	8	11	15	21
107	59494	9.7554	5	7	8	11	15
108	6459	13.4696	5	7	11	16	25
110	59003	11.4622	3	6	9	14	22
111	5083	6.9695	3	5	7	8	11
112	184483	4.9679	1	2	4	7	10
113	45403	15.9297	4	7	11	19	32
114	8940	10.4375	2	4	8	13	20
115	10550	11.7955	4	7	10	14	21
116	80447	5.8978	1	2	4	7	12
117	4411	4.4493	1	2	3	5	9
118	7528	3.4186	1	1	2	4	7
119	1966	5.9135	1	1	3	7	13

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V12.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
120	42953	10.1101	1	3	6	13	22
121	166750	8.0265	3	5	7	10	14
122	94088	5.5209	1	3	5	7	9
123	51365	4.8941	1	1	3	6	12
124	140645	5.2202	1	2	4	7	10
125	64294	3.1754	1	1	2	4	6
126	4717	15.9275	4	7	12	20	32
127	703314	6.7118	2	3	5	8	13
128	21635	7.2159	4	5	6	8	11
129	5134	3.7156	1	1	1	4	9
130	89825	7.1214	2	4	6	9	12
131	24718	5.3976	1	3	5	7	9
132	57611	3.9362	1	2	3	5	7
133	4868	3.0657	1	1	2	4	6
134	30488	4.2292	1	2	3	5	8
135	6938	5.6345	1	2	4	7	11
136	1136	3.5810	1	2	3	4	6
137	1	19.0000	19	19	19	19	19
138	208494	4.8987	1	2	4	6	9
139	66382	3.1027	1	2	2	4	6
140	274276	3.8055	1	2	3	5	7
141	78924	4.9675	1	2	4	6	9
142	34007	3.3981	1	2	3	4	6
143	139417	2.8478	1	1	2	3	5
144	66373	6.0168	1	2	4	7	12
145	6471	3.3973	1	2	3	4	7
146	8486	11.6614	6	8	10	13	19
147	1434	7.6974	4	6	8	9	11
148	150277	14.0788	6	8	11	16	25
149	14026	7.8700	5	6	7	9	11
150	23835	12.2790	5	7	10	15	22
151	4168	6.4614	2	3	6	9	11
152	4836	9.5604	4	6	8	11	16
153	1712	6.2693	3	4	6	8	9
154	38124	15.9926	6	8	12	19	30
155	3900	6.3703	2	3	6	8	11
156	7	14.2857	3	7	17	18	22
157	12182	6.0488	1	2	4	7	12
158	5934	2.8586	1	1	2	4	6
159	18175	5.5457	1	3	4	7	10
160	10370	2.9751	1	2	2	4	6
161	17004	4.5169	1	2	3	6	9
162	9529	2.1407	1	1	2	3	4
163	14	5.0000	1	2	3	7	11
164	5431	9.8404	4	6	8	12	17
165	1586	5.9010	3	4	5	7	9
166	3464	6.0141	2	3	5	7	11
167	2230	3.5422	1	2	3	4	6
168	2006	5.6306	1	2	3	7	13
169	1133	2.6946	1	1	2	3	6
170	13222	13.2743	3	6	10	17	27
171	1092	5.7830	1	2	5	7	11
172	32353	8.7210	2	3	6	11	18
173	2164	4.3170	1	2	3	6	9
174	243846	5.9482	2	3	5	7	11
175	23696	3.6676	1	2	3	4	6
176	16136	6.4648	2	3	5	8	12
177	13362	5.4526	2	3	4	7	10
178	4508	3.8434	1	2	3	5	7
179	10795	7.7602	2	4	6	9	14
180	83783	6.4540	2	3	5	8	12
181	19982	3.9407	1	2	3	5	7
182	245809	5.3597	2	3	4	6	10
183	69783	3.6047	1	2	3	5	7
184	81	3.0494	1	1	2	4	6
185	4072	5.7876	1	2	4	7	12
186	4	5.7500	3	3	5	6	9
187	947	3.8353	1	2	3	5	7
188	60746	6.5210	2	3	5	8	13
189	7663	3.5758	1	1	3	5	7

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V12.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
190	90	6.4556	2	3	4	8	14
191	10832	17.3060	5	8	13	21	34
192	787	7.9352	2	4	7	10	14
193	9766	14.8273	6	8	12	18	26
194	853	8.1184	3	5	7	10	14
195	11362	11.1542	5	7	9	13	19
196	877	6.9259	3	4	6	9	11
197	32416	9.5929	4	5	8	11	17
198	8653	5.1453	2	3	4	6	8
199	2540	12.4102	3	6	10	16	24
200	1620	12.6056	2	4	9	16	27
201	1615	16.0904	4	7	12	20	30
202	24533	8.2755	2	4	6	10	16
203	29689	8.2140	2	3	6	10	16
204	48970	7.1515	2	3	5	9	14
205	22352	7.9561	2	3	6	10	16
206	1749	4.6798	1	2	4	6	9
207	38216	6.0794	2	3	5	8	11
208	10442	3.4061	1	2	3	4	7
209	327144	7.6473	4	5	7	9	12
210	139525	9.7688	4	6	8	11	16
211	25044	7.0987	3	5	6	8	11
212	22	5.2273	2	3	4	9	10
213	6859	10.6336	3	4	8	13	21
214	53636	7.3683	2	4	6	8	14
215	41531	4.1269	2	2	3	5	7
216	6776	12.2010	3	5	9	15	25
217	19370	17.0114	3	6	11	20	36
218	24059	6.8165	2	3	5	8	13
219	19021	4.0634	2	2	3	5	7
220	5	4.8000	1	1	3	9	9
221	5129	8.7853	2	4	6	10	17
222	3855	4.1642	1	2	3	5	8
223	20648	3.0600	1	1	2	3	6
224	8807	2.3823	1	1	2	3	4
225	7067	5.0662	1	2	3	6	11
226	5949	7.2674	1	2	5	9	15
227	5229	3.1427	1	1	2	4	6
228	3268	3.7840	1	1	2	4	8
229	1575	2.4000	1	1	2	3	5
230	2717	5.5778	1	2	3	6	12
231	11115	5.5294	1	2	3	7	12
232	658	4.4848	1	1	2	5	10
233	4844	9.7967	2	4	7	12	19
234	2286	4.4383	1	2	3	5	9
235	6118	7.6857	2	3	5	8	15
236	40137	6.9930	2	3	5	8	13
237	1595	4.9292	1	2	4	6	9
238	7380	11.3585	3	5	8	13	22
239	62864	8.3598	3	4	6	10	16
240	12072	8.0041	2	4	6	10	16
241	3044	4.8288	1	2	4	6	9
242	2565	8.8881	3	4	7	11	17
243	88802	6.1276	2	3	5	8	11
244	11849	6.3984	2	3	5	8	12
245	4413	4.4829	1	2	3	6	8
246	1417	4.6789	2	2	4	6	8
247	10573	4.2631	1	2	3	5	8
248	6790	5.7025	2	3	4	7	10
249	9934	4.6467	1	2	3	6	9
250	3565	5.6230	1	2	4	6	11
251	2351	3.2157	1	1	2	4	6
252	1	1.0000	1	1	1	1	1
253	18681	6.5628	2	3	5	7	12
254	10004	4.0136	1	2	3	5	7
255	5	9.0000	3	3	8	10	20
256	9799	4.3950	1	2	3	5	9
257	26742	3.8993	2	2	3	4	7
258	20636	2.7720	1	2	2	3	5
259	4509	4.0734	1	1	2	4	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V12.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
260	5286	1.9799	1	1	2	2	3
261	2601	2.5698	1	1	2	3	5
262	810	4.0099	1	1	2	5	9
263	31179	15.7680	4	7	11	19	31
264	3564	9.0659	3	4	7	11	18
265	4760	7.9055	1	2	5	9	17
266	2987	3.8373	1	1	3	5	8
267	250	4.4360	1	1	2	5	9
268	1194	4.4422	1	1	2	5	9
269	11049	9.9436	2	4	7	13	20
270	3978	3.4947	1	1	2	4	7
271	21708	9.4615	3	5	7	11	17
272	6574	8.0613	2	4	6	10	15
273	1539	6.0754	2	3	4	7	12
274	2646	8.0567	1	3	6	10	16
275	246	3.3211	1	1	2	4	7
276	942	5.4055	2	3	4	7	10
277	82558	7.2729	3	4	6	9	13
278	25634	5.4291	2	3	5	7	9
279	14	5.8571	1	2	4	7	14
280	13922	5.5335	1	2	4	7	10
281	6217	3.8679	1	2	3	5	7
282	1	18.0000	18	18	18	18	18
283	5700	5.9395	2	3	4	7	11
284	1779	4.0596	1	2	3	5	8
285	4921	15.3534	4	7	11	19	29
286	1918	8.9724	3	5	6	10	17
287	6703	15.4899	4	6	10	18	31
288	844	7.9656	3	4	6	8	14
289	5118	4.5346	1	2	3	4	9
290	9053	2.9759	1	2	2	3	5
291	85	1.6235	1	1	1	2	3
292	5313	13.7899	3	5	10	17	27
293	291	6.2509	1	2	5	8	12
294	95175	6.1560	2	3	5	7	11
295	3733	5.1117	1	2	4	6	9
296	226917	7.0173	2	3	5	8	13
297	34165	4.5850	1	2	3	5	8
298	110	3.8636	1	2	3	5	7
299	934	6.1392	1	2	4	7	12
300	14035	7.8248	2	4	6	9	15
301	1905	4.5701	1	2	4	6	8
302	7927	14.0269	6	8	11	16	25
303	18561	11.0121	5	6	9	13	20
304	13534	11.0159	3	5	8	13	22
305	2574	5.2284	1	3	4	6	9
306	12148	7.0957	2	3	5	9	15
307	2922	3.2396	1	2	3	4	5
308	10029	7.5203	1	3	5	9	16
309	3547	3.1844	1	1	2	4	6
310	31805	4.8918	1	2	3	6	10
311	11801	2.3329	1	1	2	3	4
312	2346	5.1206	1	2	3	6	11
313	983	2.5239	1	1	2	3	5
314	1	5.0000	5	5	5	5	5
315	30593	10.2945	1	2	6	13	23
316	65609	7.9880	2	3	6	10	16
317	877	4.0718	1	1	2	4	8
318	6481	7.5303	2	3	5	9	16
319	519	3.4085	1	1	2	4	7
320	179201	7.0307	3	4	5	8	13
321	24147	4.9488	2	3	4	6	8
322	89	5.4270	1	2	4	6	12
323	19263	3.7542	1	2	3	5	7
324	9715	2.2297	1	1	2	3	4
325	8579	4.8887	1	2	4	6	9
326	2581	3.3266	1	2	3	4	6
327	6	1.8333	1	1	1	2	2
328	903	4.3810	1	2	3	5	8
329	147	2.2857	1	1	2	3	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V12.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
331	38189	6.7612	2	3	5	8	13
332	4970	4.0767	1	2	3	5	8
333	346	5.9711	1	2	4	7	14
334	23415	6.8661	4	5	6	8	10
335	10652	5.2443	3	4	5	6	8
336	71694	4.5883	2	2	3	5	8
337	45574	2.9658	1	2	3	4	4
338	6388	5.6464	1	2	4	7	12
339	2672	4.7178	1	2	3	6	10
340	1	2.0000	2	2	2	2	2
341	7825	3.7127	1	2	3	4	7
342	230	4.1783	1	1	2	5	9
344	5318	3.4810	1	1	2	4	7
345	1679	4.6176	1	2	3	5	10
346	5933	7.5142	2	3	5	9	15
347	562	3.4982	1	1	2	4	7
348	3299	5.2716	1	2	4	6	10
349	812	3.1022	1	1	2	4	6
350	7474	5.2455	2	3	4	6	9
352	718	4.2382	1	2	3	5	9
353	2662	9.3963	4	5	7	11	17
354	10561	6.7353	3	4	5	7	12
355	5601	3.9991	3	3	4	5	6
356	36835	3.3217	2	2	3	4	5
357	6765	10.6010	4	5	8	12	19
358	27871	5.0576	3	3	4	6	8
359	26945	3.4724	2	3	3	4	5
360	9750	4.2228	2	2	3	5	7
361	556	4.9730	1	2	3	6	10
363	4977	3.7261	1	2	2	4	7
364	1926	3.8089	1	1	2	5	8
365	2585	8.7060	2	3	6	11	19
366	4794	8.1264	2	3	6	10	17
367	582	3.5481	1	1	2	4	8
368	2177	7.1075	2	3	6	9	13
369	2475	3.8869	1	1	3	5	8
370	1055	5.7261	3	3	4	6	10
371	1020	3.7598	2	3	3	4	5
372	771	3.5175	1	2	2	3	6
373	3627	2.1012	1	1	2	2	3
374	149	2.8389	1	2	2	3	4
375	6	2.6667	1	2	3	3	3
376	198	3.7121	1	1	2	4	8
377	37	4.2973	1	1	2	5	10
378	195	2.8410	1	2	3	4	4
379	358	3.3715	1	1	2	4	7
380	79	1.9747	1	1	1	2	4
381	234	2.0556	1	1	1	2	3
382	62	1.8548	1	1	1	1	2
383	1290	4.3473	1	2	3	5	8
384	129	2.0543	1	1	1	2	4
385	4	9.2500	1	1	7	9	20
389	29	10.3448	1	5	9	14	18
390	20	4.4000	1	2	2	3	7
392	2618	12.0038	4	6	9	15	24
393	4	10.5000	4	4	7	12	19
394	1826	8.4869	1	2	5	10	20
395	69620	5.7869	1	2	4	7	11
396	25	4.1600	1	1	2	5	11
397	14099	6.6178	2	3	5	8	13
398	17210	7.1325	2	4	6	8	13
399	1330	4.5850	1	2	4	6	8
400	8054	11.1912	2	4	8	14	24
401	6917	13.0344	3	5	10	16	27
402	1773	4.3971	1	1	3	6	10
403	34463	9.9275	2	4	7	13	21
404	3962	5.1562	1	2	4	7	10
405	1	1.0000	1	1	1	1	1
406	3686	11.9745	3	5	9	15	24
407	801	4.9189	1	2	4	6	9

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V12.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
408	3384	8.8230	1	2	5	11	21
409	7060	6.9874	2	3	4	7	15
410	106214	3.3485	1	2	3	4	6
411	53	3.3585	1	1	3	5	7
412	66	2.9394	1	1	2	4	7
413	8956	9.1131	2	4	7	11	19
414	913	5.6396	1	2	4	7	11
415	38353	17.2555	4	8	13	21	34
416	183781	8.8472	2	4	7	11	17
417	43	6.1395	2	3	5	7	13
418	17185	7.2542	2	4	6	9	13
419	16932	6.1817	2	3	5	7	11
420	2916	4.5710	2	2	4	6	8
421	13445	4.8837	2	2	4	6	9
422	88	4.3295	1	2	3	5	9
423	8948	9.3368	3	4	7	11	19
424	2299	19.9696	3	7	13	24	41
425	17710	5.4580	1	2	4	7	11
426	5265	6.2494	1	3	4	8	13
427	2024	5.8384	1	2	4	7	12
428	1016	8.0807	1	3	5	10	17
429	36024	10.3797	2	4	6	11	20
430	59399	10.5850	2	4	8	14	21
431	223	7.5471	2	3	6	9	14
432	499	6.6092	1	2	4	7	13
433	7779	3.7063	1	1	2	4	8
434	21294	6.3439	2	3	5	7	12
435	14719	5.0931	1	3	4	6	9
436	2865	15.4918	4	9	14	21	28
437	14576	11.7871	4	7	10	15	21
439	944	9.2606	1	3	6	11	19
440	4613	10.9638	2	4	7	13	24
441	631	4.2504	1	1	2	4	7
442	13846	9.0475	1	3	6	11	19
443	3731	3.3251	1	1	2	4	7
444	3562	5.7381	2	3	4	7	11
445	1441	3.8709	1	2	3	5	7
447	3613	3.0576	1	1	2	4	6
448	58	1.0000	1	1	1	1	1
449	30844	4.7908	1	2	3	6	10
450	6631	2.5091	1	1	2	3	5
451	8	3.6250	1	1	2	5	7
452	19393	5.6265	1	2	4	7	12
453	3899	3.4047	1	1	2	4	7
454	4486	6.0105	1	2	4	7	12
455	1011	3.4649	1	1	2	4	7
456	199	8.2412	1	1	4	9	20
457	148	5.0811	1	1	1	6	13
458	1702	18.4036	4	8	14	24	37
459	605	13.1818	3	5	8	14	25
460	2470	7.3405	2	3	5	9	15
461	3604	5.4456	1	1	2	5	14
462	10537	14.5672	5	7	13	19	27
463	11242	5.8466	2	3	4	7	11
464	2675	3.9267	1	2	3	5	7
465	257	2.9144	1	1	2	3	5
466	2364	4.5998	1	1	2	4	10
467	2726	4.9409	1	1	2	5	9
468	61159	16.4808	3	7	13	21	32
471	8878	9.6683	4	6	8	11	16
472	187	31.3850	1	5	23	44	72
473	8347	14.9680	2	4	8	23	37
475	89293	12.9142	2	6	10	17	25
476	7977	15.0950	4	8	12	18	27
477	33933	9.3951	1	3	6	12	19
478	118706	9.0006	2	3	7	11	19
479	16953	4.8781	1	2	4	6	9
480	305	33.7836	11	14	22	41	73
481	136	31.1544	18	22	28	37	46
482	7250	16.2116	5	8	12	19	30

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V12.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
483	36919	49.3175	16	25	39	60	91
484	359	17.1142	2	6	13	22	33
485	3100	13.3335	5	7	10	15	25
486	2297	14.9495	1	6	11	19	30
487	3787	9.8590	2	4	7	12	19
488	1217	18.9836	5	8	14	23	36
489	13239	11.6630	3	4	8	14	24
490	3969	7.3263	1	3	5	8	15
491	9282	4.7884	2	3	4	6	8
492	2077	18.3524	4	5	12	28	38
493	53242	6.1192	1	2	5	8	12
494	28904	2.3069	1	1	1	3	5
495	145	23.2897	9	13	18	26	36
	11003466						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY94 MEDPAR Update 06/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
001	32563	12.4181	3	5	9	15	25
002	6317	12.5552	3	6	9	15	25
003	1	7.0000	7	7	7	7	7
004	5716	9.9696	2	3	7	13	21
005	69427	5.2597	2	3	4	6	10
006	501	4.0279	1	1	2	4	9
007	10054	14.6588	3	5	9	16	30
008	2662	4.5995	1	1	3	6	10
009	1736	8.2160	2	3	6	10	16
010	20281	8.7667	2	3	6	11	18
011	3161	5.2221	1	2	4	7	11
012	23793	8.6530	2	4	6	10	16
013	6352	6.9216	3	4	5	8	12
014	355976	8.1794	2	4	6	10	15
015	148758	4.9390	2	2	4	6	9
016	11897	7.4574	2	3	5	8	14
017	3558	4.2664	1	2	3	5	8
018	21928	6.8581	2	3	5	8	13
019	7768	4.6881	1	2	4	6	9
020	8255	11.2443	3	5	9	14	22
021	1176	8.6548	2	4	7	11	17
022	3015	5.1035	2	2	4	6	10
023	6002	5.4725	1	2	4	7	11
024	56785	6.4601	2	3	4	7	12
025	23880	4.0990	1	2	3	5	8
026	48	4.4792	1	2	3	5	11
027	3431	7.0982	1	1	4	8	16
028	10184	7.7692	1	3	5	9	16
029	3686	4.3416	1	2	3	5	9
030	1	20.0000	20	20	20	20	20
031	3525	5.6423	1	2	4	6	10
032	2221	3.3417	1	1	2	4	6
034	15768	6.8472	2	3	5	8	14
035	3619	4.7720	1	2	3	6	9
036	12400	1.6868	1	1	1	2	3
037	2216	4.1119	1	1	2	5	8
038	365	2.7342	1	1	2	3	6
039	4054	1.9171	1	1	1	2	4
040	3624	3.5524	1	1	2	4	8
041	1	2.0000	2	2	2	2	2
042	9820	2.1876	1	1	1	2	4
043	132	3.8409	1	2	3	5	7
044	1727	5.8871	2	3	5	7	10
045	2559	4.3118	1	2	3	5	8
046	3246	5.9640	1	3	4	7	11
047	1530	3.9510	1	2	3	5	8
049	2308	7.0156	2	3	5	8	14

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
050	3738	2.3767	1	1	2	3	4
051	376	3.0213	1	1	2	3	7
052	89	3.3596	1	1	2	4	7
053	3955	3.7067	1	1	2	4	8
054	2	4.0000	1	1	7	7	7
055	2311	2.9619	1	1	1	3	7
056	788	3.0089	1	1	2	4	6
057	663	4.8763	1	2	3	6	12
059	109	2.9174	1	1	2	3	6
060	2	1.5000	1	1	2	2	2
061	269	5.8513	1	1	3	8	14
063	4451	4.9155	1	2	3	6	10
064	3708	8.1238	1	2	5	10	18
065	35151	3.6832	1	2	3	4	7
066	7326	3.8463	1	2	3	5	7
067	482	4.3320	1	2	3	5	8
068	15027	5.1614	2	3	4	6	9
069	4570	4.0689	2	2	3	5	7
070	20	2.9500	1	1	2	3	4
071	131	4.3282	1	2	4	6	8
072	672	4.6652	1	2	3	5	8
073	6398	5.3993	1	2	4	7	10
074	1	5.0000	5	5	5	5	5
075	39140	11.8686	4	6	9	14	23
076	39373	13.3698	3	6	10	16	25
077	2708	5.8988	1	2	4	8	12
078	27898	8.7011	4	6	8	10	14
079	201195	10.0750	3	5	8	12	19
080	9620	7.1426	3	4	6	9	13
081	15	6.7333	1	2	7	9	14
082	71979	8.4061	2	4	6	11	17
083	7543	6.8481	2	3	5	8	13
084	1658	4.2232	1	2	3	5	7
085	18380	7.8162	2	4	6	10	15
086	1461	4.6283	1	2	4	6	9
087	56282	7.2175	1	3	6	9	14
088	362753	6.5711	2	4	5	8	12
089	446949	7.5767	3	4	6	9	13
090	45881	5.5353	2	3	5	7	9
091	84	6.0238	1	3	4	8	12
092	11454	7.6810	2	4	6	9	14
093	1413	5.2562	2	3	4	7	10
094	10540	8.0123	2	4	6	10	15
095	1192	4.6988	2	3	4	6	8
096	73149	5.9075	2	3	5	7	10
097	29705	4.5723	2	3	4	6	8
098	30	5.1000	2	3	4	8	9
099	26903	3.9009	1	2	3	5	7
100	11202	2.6338	1	1	2	3	5
101	19018	5.9986	2	3	5	7	12
102	3241	4.0040	1	2	3	5	7
103	404	39.0495	10	15	26	51	82
104	22320	16.0147	7	9	14	20	28
105	19215	11.9858	6	7	9	14	21
106	92000	12.7277	7	8	11	15	21
107	59494	9.7554	5	7	8	11	15
108	6459	13.4696	5	7	11	16	25
110	58130	11.5090	3	6	9	14	22
111	5956	7.1711	3	5	7	9	11
112	184483	4.9679	1	2	4	7	10
113	45403	15.9297	4	7	11	19	32
114	8942	10.4369	2	4	8	13	20
115	10550	11.7955	4	7	10	14	21
116	80447	5.8978	1	2	4	7	12
117	4411	4.4493	1	2	3	5	9
118	7528	3.4186	1	1	2	4	7
119	1966	5.9135	1	1	3	7	13
120	42958	10.1097	1	3	6	13	22
121	166593	8.0247	3	5	7	10	14
122	94245	5.5284	1	3	5	7	9

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
123	51365	4.8941	1	1	3	6	12
124	140582	5.2192	1	2	4	7	10
125	64357	3.1794	1	1	2	4	6
126	4717	15.9275	4	7	12	20	32
127	703314	6.7118	2	3	5	8	13
128	21635	7.2159	4	5	6	8	11
129	5134	3.7156	1	1	1	4	9
130	88588	7.1348	2	4	6	9	13
131	25955	5.4340	1	3	5	7	9
132	57370	3.9386	1	2	3	5	7
133	5109	3.0803	1	1	2	4	6
134	30488	4.2292	1	2	3	5	8
135	6876	5.6498	1	2	4	7	11
136	1198	3.5993	1	2	3	4	6
137	1	19.0000	19	19	19	19	19
138	203018	4.9328	1	2	4	6	9
139	71858	3.1432	1	2	2	4	6
140	274276	3.8055	1	2	3	5	7
141	76039	5.0041	2	2	4	6	9
142	36892	3.4454	1	2	3	4	6
143	139417	2.8478	1	1	2	3	5
144	65937	6.0300	1	2	4	7	12
145	6907	3.4368	1	2	3	4	7
146	8234	11.7471	6	8	10	13	19
147	1686	7.8713	4	6	8	9	11
148	147371	14.1723	6	8	11	17	25
149	16932	8.1214	5	6	8	9	12
150	23228	12.3597	5	7	10	15	22
151	4775	6.8084	2	4	6	9	12
152	4652	9.6466	4	6	8	11	16
153	1896	6.3771	3	5	6	8	10
154	37655	16.0775	6	8	12	20	30
155	4369	6.6709	2	4	6	8	12
156	7	14.2857	3	7	17	18	22
157	11925	6.0642	1	2	4	7	12
158	6191	2.9616	1	1	2	4	6
159	17740	5.5558	1	3	4	7	11
160	10805	3.0621	1	2	3	4	6
161	16711	4.5214	1	2	3	6	9
162	9822	2.2040	1	1	2	3	4
163	14	5.0000	1	2	3	7	11
164	5233	9.9318	4	6	8	12	17
165	1784	6.0701	3	4	6	7	9
166	3351	6.0624	2	3	5	8	11
167	2343	3.5924	2	2	3	4	6
168	1989	5.6310	1	2	3	7	13
169	1150	2.7374	1	1	2	3	6
170	13122	13.2964	3	6	10	17	27
171	1192	6.1678	1	3	5	8	12
172	32126	8.7343	2	3	6	11	18
173	2391	4.5575	1	2	3	6	9
174	241449	5.9594	2	3	5	7	11
175	26093	3.7730	1	2	3	5	7
176	16136	6.4648	2	3	5	8	12
177	13035	5.4607	2	3	4	7	10
178	4835	3.9305	1	2	3	5	7
179	10795	7.7602	2	4	6	9	14
180	80115	6.5037	2	3	5	8	12
181	23650	4.1622	1	2	4	5	7
182	237691	5.3815	2	3	4	7	10
183	77901	3.7210	1	2	3	5	7
184	81	3.0494	1	1	2	4	6
185	4072	5.7876	1	2	4	7	12
186	4	5.7500	3	3	5	6	9
187	947	3.8353	1	2	3	5	7
188	59776	6.5322	2	3	5	8	13
189	8633	3.8291	1	1	3	5	8
190	90	6.4556	2	3	4	8	14
191	10712	17.3836	5	8	13	22	35
192	907	8.2591	2	5	7	10	15

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
193	9602	14.8980	6	8	12	18	27
194	1017	8.5320	3	5	8	11	15
195	11225	11.1842	5	7	9	13	19
196	1014	7.1647	3	5	7	9	11
197	31505	9.6595	4	5	8	11	17
198	9564	5.3496	2	3	5	7	9
199	2540	12.4102	3	6	10	16	24
200	1620	12.6056	2	4	9	16	27
201	1615	16.0904	4	7	12	20	30
202	24533	8.2755	2	4	6	10	16
203	29689	8.2140	2	3	6	10	16
204	48970	7.1515	2	3	5	9	14
205	22181	7.9563	2	3	6	10	16
206	1920	4.9693	1	2	4	6	10
207	37149	6.1056	2	3	5	8	12
208	11509	3.5696	1	2	3	5	7
209	327144	7.6473	4	5	7	9	12
210	136786	9.8010	4	6	8	11	16
211	27783	7.2033	4	5	6	8	11
212	22	5.2273	2	3	4	9	10
213	6859	10.6336	3	4	8	13	21
214	52362	7.3958	2	4	6	9	14
215	42805	4.1898	2	2	3	5	7
216	6776	12.2010	3	5	9	15	25
217	19370	17.0114	3	6	11	20	36
218	23321	6.8681	2	3	5	8	13
219	19759	4.1052	2	2	3	5	7
220	5	4.8000	1	1	3	9	9
221	5000	8.8390	2	4	6	10	17
222	3984	4.2465	1	2	3	5	8
223	20206	3.0441	1	1	2	3	6
224	8998	2.4032	1	1	2	3	4
225	7067	5.0662	1	2	3	6	11
226	5814	7.3156	1	2	5	9	15
227	5364	3.1943	1	1	2	4	6
228	3483	3.8088	1	1	2	4	8
229	1608	2.4254	1	1	2	3	5
230	2717	5.5778	1	2	3	6	12
231	11115	5.5294	1	2	3	7	12
232	661	4.4781	1	1	2	5	10
233	4776	9.8306	2	4	7	12	20
234	2354	4.5242	1	2	3	6	9
235	6118	7.6857	2	3	5	8	15
236	40137	6.9930	2	3	5	8	13
237	1595	4.9292	1	2	4	6	9
238	7380	11.3585	3	5	8	13	22
239	62864	8.3598	3	4	6	10	16
240	11832	8.0401	2	4	6	10	16
241	3284	4.9315	1	2	4	6	9
242	2565	8.8881	3	4	7	11	17
243	88802	6.1276	2	3	5	8	11
244	11514	6.4164	2	3	5	8	12
245	4748	4.5746	1	2	3	6	8
246	1417	4.6789	2	2	4	6	8
247	10573	4.2631	1	2	3	5	8
248	6790	5.7025	2	3	4	7	10
249	9934	4.6467	1	2	3	6	9
250	3475	5.6636	1	2	4	6	11
251	2441	3.2466	1	1	2	4	6
252	1	1.0000	1	1	1	1	1
253	18273	6.5851	2	3	5	8	12
254	10412	4.0742	1	2	3	5	8
255	5	9.0000	3	3	8	10	20
256	9799	4.3950	1	2	3	5	9
257	26246	3.9084	2	2	3	4	7
258	21132	2.7872	1	2	2	3	5
259	4424	4.0995	1	1	2	4	8
260	5371	1.9916	1	1	2	2	3
261	2601	2.5698	1	1	2	3	5
262	810	4.0099	1	1	2	5	9

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
263	30957	15.8007	4	7	11	19	31
264	3786	9.1918	3	4	7	11	19
265	4698	7.9208	1	2	5	9	17
266	3049	3.8964	1	1	3	5	8
267	250	4.4360	1	1	2	5	9
268	1194	4.4422	1	1	2	5	9
269	10904	9.9901	2	4	7	13	21
270	4123	3.5986	1	1	2	4	8
271	21708	9.4615	3	5	7	11	17
272	6462	8.0888	2	4	6	10	15
273	1651	6.1024	2	3	4	7	13
274	2629	8.0738	1	3	6	10	16
275	263	3.4563	1	1	2	4	8
276	942	5.4055	2	3	4	7	10
277	80460	7.2966	3	4	6	9	13
278	27732	5.4998	2	3	5	7	9
279	14	5.8571	1	2	4	7	14
280	13633	5.5404	1	2	4	7	10
281	6506	3.9276	1	2	3	5	7
282	1	18.0000	18	18	18	18	18
283	5608	5.9627	2	3	4	7	11
284	1871	4.0823	1	2	3	5	8
285	4921	15.3534	4	7	11	19	29
286	1918	8.9724	3	5	6	10	17
287	6703	15.4899	4	6	10	18	31
288	844	7.9656	3	4	6	8	14
289	5118	4.5346	1	2	3	4	9
290	9053	2.9759	1	2	2	3	5
291	85	1.6235	1	1	1	2	3
292	5300	13.8000	3	5	10	17	27
293	304	6.3980	1	2	5	8	12
294	95175	6.1560	2	3	5	7	11
295	3733	5.1117	1	2	4	6	9
296	226402	7.0218	2	3	5	8	13
297	34680	4.5918	1	2	3	6	8
298	110	3.8636	1	2	3	5	7
299	934	6.1392	1	2	4	7	12
300	13699	7.8699	2	4	6	9	15
301	2241	4.7822	1	2	4	6	9
302	7927	14.0269	6	8	11	16	25
303	18561	11.0121	5	6	9	13	20
304	13350	11.0605	3	5	8	14	22
305	2758	5.3985	1	3	5	7	9
306	12058	7.0994	2	3	5	9	15
307	3012	3.3396	1	2	3	4	6
308	9940	7.5354	1	3	5	9	16
309	3636	3.2492	1	1	2	4	7
310	31553	4.8978	1	2	3	6	10
311	12053	2.3708	1	1	2	3	4
312	2334	5.1127	1	2	3	6	11
313	995	2.5739	1	1	2	3	5
314	1	5.0000	5	5	5	5	5
315	30593	10.2945	1	2	6	13	23
316	65609	7.9880	2	3	6	10	16
317	877	4.0718	1	1	2	4	8
318	6466	7.5396	2	3	5	9	16
319	534	3.4120	1	1	2	4	7
320	175172	7.0612	3	4	6	8	13
321	28176	5.0569	2	3	4	6	8
322	89	5.4270	1	2	4	6	12
323	18929	3.7670	1	2	3	5	7
324	10049	2.2562	1	1	2	3	4
325	8473	4.8960	1	2	4	6	9
326	2687	3.3651	1	2	3	4	6
327	6	1.8333	1	1	1	2	2
328	900	4.3789	1	2	3	5	8
329	150	2.3400	1	1	2	3	5
331	37821	6.7707	2	3	5	8	13
332	5338	4.1948	1	2	3	5	8
333	346	5.9711	1	2	4	7	14

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
334	22781	6.8779	4	5	6	8	10
335	11286	5.3115	3	4	5	6	8
336	70900	4.5949	2	2	3	5	8
337	46368	2.9836	1	2	3	4	5
338	6388	5.6464	1	2	4	7	12
339	2672	4.7178	1	2	3	6	10
340	1	2.0000	2	2	2	2	2
341	7825	3.7127	1	2	3	4	7
342	230	4.1783	1	1	2	5	9
344	5318	3.4810	1	1	2	4	7
345	1679	4.6176	1	2	3	5	10
346	5920	7.5142	2	3	5	9	15
347	575	3.5896	1	1	2	4	7
348	3277	5.2820	1	2	4	6	10
349	834	3.1187	1	1	2	4	6
350	7474	5.2455	2	3	4	6	9
352	718	4.2382	1	2	3	5	9
353	2662	9.3963	4	5	7	11	17
354	10205	6.7863	3	4	5	8	12
355	5957	4.0754	3	3	4	5	6
356	36835	3.3217	2	2	3	4	5
357	6765	10.6010	4	5	8	12	19
358	26783	5.0861	3	3	4	6	8
359	28033	3.5067	2	3	3	4	5
360	9750	4.2228	2	2	3	5	7
361	556	4.9730	1	2	3	6	10
363	4977	3.7261	1	2	2	4	7
364	1926	3.8089	1	1	2	5	8
365	2585	8.7060	2	3	6	11	19
366	4743	8.1564	2	3	6	10	17
367	633	3.6919	1	1	2	4	8
368	2177	7.1075	2	3	6	9	13
369	2475	3.8869	1	1	3	5	8
370	1052	5.7253	3	3	4	6	10
371	1023	3.7664	2	3	3	4	5
372	771	3.5175	1	2	2	3	6
373	3627	2.1012	1	1	2	2	3
374	149	2.8389	1	2	2	3	4
375	6	2.6667	1	2	3	3	3
376	198	3.7121	1	1	2	4	8
377	37	4.2973	1	1	2	5	10
378	195	2.8410	1	2	3	4	4
379	358	3.3715	1	1	2	4	7
380	79	1.9747	1	1	1	2	4
381	234	2.0556	1	1	1	2	3
382	62	1.8548	1	1	1	1	2
383	1290	4.3473	1	2	3	5	8
384	129	2.0543	1	1	1	2	4
385	4	9.2500	1	1	7	9	20
389	29	10.3448	1	5	9	14	18
390	20	4.4000	1	2	2	3	7
392	2618	12.0038	4	6	9	15	24
393	4	10.5000	4	4	7	12	19
394	1826	8.4869	1	2	5	10	20
395	69620	5.7869	1	2	4	7	11
396	25	4.1600	1	1	2	5	11
397	14099	6.6178	2	3	5	8	13
398	17056	7.1449	2	4	6	8	13
399	1484	4.7069	1	2	4	6	8
400	8054	11.1912	2	4	8	14	24
401	6822	13.0981	3	5	10	17	27
402	1868	4.6039	1	1	3	6	10
403	34099	9.9506	2	4	7	13	21
404	4326	5.3754	1	2	4	7	11
405	1	1.0000	1	1	1	1	1
406	3631	12.0353	3	5	9	15	24
407	856	5.1145	1	3	4	7	9
408	3384	8.8230	1	2	5	11	21
409	7060	6.9874	2	3	4	7	15
410	106214	3.3485	1	2	3	4	6

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
411	53	3.3585	1	1	3	5	7
412	66	2.9394	1	1	2	4	7
413	8869	9.1250	2	4	7	11	19
414	1000	5.8360	1	2	4	7	12
415	38353	17.2555	4	8	13	21	34
416	183781	8.8472	2	4	7	11	17
417	43	6.1395	2	3	5	7	13
418	17185	7.2542	2	4	6	9	13
419	16596	6.2037	2	3	5	7	12
420	3252	4.6248	2	3	4	6	8
421	13445	4.8837	2	2	4	6	9
422	88	4.3295	1	2	3	5	9
423	8948	9.3368	3	4	7	11	19
424	2299	19.9696	3	7	13	24	41
425	17710	5.4580	1	2	4	7	11
426	5265	6.2494	1	3	4	8	13
427	2024	5.8384	1	2	4	7	12
428	1016	8.0807	1	3	5	10	17
429	36024	10.3797	2	4	6	11	20
430	59399	10.5850	2	4	8	14	21
431	223	7.5471	2	3	6	9	14
432	499	6.6092	1	2	4	7	13
433	7779	3.7063	1	1	2	4	8
434	20506	6.3770	2	3	5	7	12
435	15507	5.1130	1	3	4	6	9
436	2865	15.4918	4	9	14	21	28
437	14576	11.7871	4	7	10	15	21
439	944	9.2606	1	3	6	11	19
440	4613	10.9638	2	4	7	13	24
441	631	4.2504	1	1	2	4	7
442	13715	9.0734	1	3	6	11	19
443	3862	3.4270	1	1	2	4	7
444	3496	5.7695	2	3	4	7	11
445	1507	3.8799	1	2	3	5	7
447	3613	3.0576	1	1	2	4	6
448	58	1.0000	1	1	1	1	1
449	30186	4.8263	1	2	3	6	10
450	7289	2.5681	1	1	2	3	5
451	8	3.6250	1	1	2	5	7
452	19238	5.6305	1	2	4	7	12
453	4054	3.4706	1	1	2	4	7
454	4384	6.0557	1	2	4	7	12
455	1113	3.5202	1	1	2	4	7
456	199	8.2412	1	1	4	9	20
457	148	5.0811	1	1	1	6	13
458	1702	18.4036	4	8	14	24	37
459	605	13.1818	3	5	8	14	25
460	2470	7.3405	2	3	5	9	15
461	3604	5.4456	1	1	2	5	14
462	10537	14.5672	5	7	13	19	27
463	10985	5.8645	2	3	4	7	11
464	2932	4.0280	1	2	3	5	7
465	257	2.9144	1	1	2	3	5
466	2364	4.5998	1	1	2	4	10
467	2726	4.9409	1	1	2	5	9
468	61093	16.4858	3	7	13	21	32
471	8878	9.6683	4	6	8	11	16
472	187	31.3850	1	5	23	44	72
473	8347	14.9680	2	4	8	23	37
475	89293	12.9142	2	6	10	17	25
476	7978	15.0978	4	8	12	18	27
477	33998	9.3991	1	3	6	12	19
478	117647	9.0174	2	3	7	11	19
479	18005	5.0104	1	2	4	6	9
480	305	33.7836	11	14	22	41	73
481	136	31.1544	18	22	28	37	46
482	7250	16.2116	5	8	12	19	30
483	36919	49.3175	16	25	39	60	91
484	360	17.1056	2	6	13	22	33
485	3100	13.3335	5	7	10	15	25

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY94 MEDPAR Update 06/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
486	2298	14.9500	1	6	11	19	30
487	3794	9.8714	2	4	7	12	19
488	1217	18.9836	5	8	14	23	36
489	13239	11.6630	3	4	8	14	24
490	3969	7.3263	1	3	5	8	15
491	9282	4.7884	2	3	4	6	8
492	2077	18.3524	4	5	12	28	38
493	51794	6.1615	1	2	5	8	12
494	30352	2.4166	1	1	1	3	5
495	145	23.2897	9	13	18	26	36
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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1995

State	Urban	Rural
ALABAMA	0.436	0.484
ALASKA	0.535	0.721
ARIZONA	0.459	0.643
ARKANSAS	0.552	0.516
CALIFORNIA	0.438	0.537
COLORADO	0.518	0.582
CONNECTICUT	0.557	0.576
DELAWARE	0.533	0.516
DISTRICT OF COLUMBIA	0.532	....
FLORIDA	0.435	0.432
GEORGIA	0.541	0.540
HAWAII	0.519	0.553
IDAHO	0.580	0.673
ILLINOIS	0.523	0.605
INDIANA	0.580	0.633
IOWA	0.554	0.716
KANSAS	0.506	0.688
KENTUCKY	0.522	0.562
LOUISIANA	0.497	0.559
MAINE	0.613	0.560
MARYLAND	0.764	0.806
MASSACHUSETTS	0.612	0.622
MICHIGAN	0.549	0.657
MINNESOTA	0.583	0.648
MISSISSIPPI	0.544	0.532
MISSOURI	0.474	0.531
MONTANA	0.544	0.661
NEBRASKA	0.529	0.694
NEVADA	0.343	0.628
NEW HAMPSHIRE	0.592	0.625
NEW JERSEY	0.543	....
NEW MEXICO	0.485	0.549
NEW YORK	0.633	0.721
NORTH CAROLINA	0.567	0.520
NORTH DAKOTA	0.652	0.695
OHIO	0.594	0.633
OKLAHOMA	0.506	0.572
OREGON	0.604	0.637

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1995—Continued

State	Urban	Rural
PENNSYLVANIA	0.455	0.579
PUERTO RICO	0.554	0.855
RHODE ISLAND	0.615	....
SOUTH CAROLINA	0.510	0.524
SOUTH DAKOTA	0.563	0.656
TENNESSEE	0.530	0.569
TEXAS	0.491	0.593
UTAH	0.591	0.648
VERMONT	0.627	0.611
VIRGINIA	0.513	0.549
WASHINGTON	0.657	0.676
WEST VIRGINIA	0.577	0.529
WISCONSIN	0.640	0.706
WYOMING	0.611	0.765

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) AUGUST 1995

State	Ratio
ALABAMA	0.053
ALASKA	0.075
ARIZONA	0.062
ARKANSAS	0.050
CALIFORNIA	0.041
COLORADO	0.051
CONNECTICUT	0.037
DELAWARE	0.055
DISTRICT OF COLUMBIA	0.043
FLORIDA	0.053
GEORGIA	0.050
HAWAII	0.063
IDAHO	0.075
ILLINOIS	0.049

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) AUGUST 1995—Continued

State	Ratio
INDIANA	0.059
IOWA	0.058
KANSAS	0.062
KENTUCKY	0.059
LOUISIANA	0.074
MAINE	0.042
MASSACHUSETTS	0.061
MICHIGAN	0.059
MINNESOTA	0.055
MISSISSIPPI	0.055
MISSOURI	0.054
MONTANA	0.067
NEBRASKA	0.061
NEVADA	0.036
NEW HAMPSHIRE	0.064
NEW JERSEY	0.051
NEW MEXICO	0.056
NEW YORK	0.061
NORTH CAROLINA	0.048
NORTH DAKOTA	0.075
OHIO	0.061
OKLAHOMA	0.059
OREGON	0.068
PENNSYLVANIA	0.047
PUERTO RICO	0.090
RHODE ISLAND	0.027
SOUTH CAROLINA	0.064
SOUTH DAKOTA	0.065
TENNESSEE	0.057
TEXAS	0.059
UTAH	0.050
VERMONT	0.050
VIRGINIA	0.058
WASHINGTON	0.068
WEST VIRGINIA	0.058
WISCONSIN	0.048
WYOMING	0.072

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCEPTION FOR EXCLUDED HOSPITALS AND UNITS

Area	1982–1992 difference	1984–1992 difference	1988–1992 difference	1990–1992 difference	1991–1992 difference
Rural Connecticut	26.405	28.914	10.079	....	....
Rural Hawaii	....	11.391	....	....	....
Rural Massachusetts	18.481	22.338	....	....	

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCEPTION FOR EXCLUDED HOSPITALS AND UNITS—Continued

Area	1982–1992 difference	1984–1992 difference	1988–1992 difference	1990–1992 difference	1991–1992 difference
Rural New Hampshire	9.086	12.861	....	....	....
Rural New Mexico	....	....	....	10.819	....
Rural South Carolina	....	8.253	....	....	....
Albany, GA	....	10.486	....	....	....
Anchorage, AK	....	....	....	9.498	....
Anderson, SC	....	....	....	14.207	....
Ann Arbor, MI	....	....	8.583	....	....
Arecibo, PR	....	....	13.672	21.305	18.431
Athens, GA	11.226	16.932	9.859	9.779	....
Atlanta, GA	....	8.942	....	....	....
Atlantic City, NJ	....	11.027	....	....	....
Bellingham, WA	11.423	16.929	20.702	13.649	12.901
Bergen-Passaic, NJ	9.510	11.379	13.314	....	....
Biloxi-Gulfport, MS	....	10.148	9.629	11.397	....
Boston-Lowell-Brockton-Lawrence-Salem, MA	....	10.756	....	....	....
Bridgeport-Stamford-Norwalk-Danbury, CT	....	11.180	....	....	....
Burlington, NC	12.654	16.034	10.822	....	....
Caguas, PR	....	18.450	....	....	....
Charlotte-Gastonia-Rock Hill, NC–SC	8.386	15.466	....	....	....
Clarksville-Hopkinsville, TN–KY	....	....	....	10.392	....
Danville, VA	....	10.958	12.671	....	....
Decatur, AL	....	10.600	9.169	....	....
Eugene-Springfield, OR	....	9.207	9.486	17.366	....
Fayetteville, NC	....	8.397	....	....	....
Florence, AL	....	8.604	....	....	....
Florence, SC	11.764	10.618	....	....	....
Gadsden, AL	....	....	....	10.612	....
Galveston-Texas City, TX	....	....	9.164	....	....
Hartford-Middletown-New Britain, CT	8.970	12.697	....	....	....
Jackson, TN	8.379	12.579	....	....	....
Killeen-Temple, TX	19.900	....	....	....	....
Lakeland-Winter Haven, FL	....	8.426	8.572	....	....
Las Cruces, NM	....	....	11.938	....	....
Lima, OH	....	....	9.827	....	....
Longview-Marshall, TX	....	8.646	....	....	....
Macon-Warner Robins, GA	....	15.225	....	....	....
Manchester-Nashua, NH	11.703	13.083	....	....	....
McAllen-Edinburg-Mission, TX	....	12.892	12.264	....	8.052
Merced, CA	....	8.186	....	8.434	10.359
Middlesex-Somerset-Hunterdon, NJ	....	8.863	....	....	....
Midland, TX	....	....	....	....	9.018
Monmouth-Ocean, NJ	....	12.517	....	....	....
Muncie, IN	....	....	13.003	....	....
Nassau-Suffolk, NY	....	12.249	....	....	....
New Bedford-Fall River-Attleboro, MA	11.576	14.390	8.311	....	....
New Haven-West Haven-Waterbury, CT	11.773	16.122	....	....	....
New London-Norwich, CT	8.025	11.529	....	....	....
Newark, NJ	....	10.378	....	....	....
Oakland, CA	....	8.361	....	....	....
Ocala, FL	....	9.812	....	....	....
Omaha, NE–IA	....	....	8.859	....	....
Orange County, NY	15.111	19.315	9.916	....	....
Panama City, FL	....	....	....	....	8.543
Portsmouth-Dover-Rochester, NH	8.033	....	....	....	....
Poughkeepsie, NY	....	9.961	....	....	....
Providence-Pawtucket-Woonsocket, RI	....	13.272	....	....	....
Reading, PA	....	....	8.479	....	....
Redding, CA	....	19.139	11.715	....	....
Richland-Kennewick, WA	....	....	....	8.544	....
Salinas-Seaside-Monterey, CA	14.360	13.360	9.278	8.053	....
Santa Cruz, CA	13.053	13.136	8.972	9.313	....
Santa Fe, NM	14.139	17.074	21.439	11.136	....
Sarasota, FL	....	9.833	....	....	....
Vallejo-Fairfield-Napa, CA	....	9.859	....	8.054	....
Wilmington, DE–NJ–MD	....	9.972	....	....	....
Worcester-Fitchburg-Leomister, MA	10.995	18.031	....	....	....
Yuma, AZ	....	....	9.850	....	12.611

Appendix A—Regulatory Impact Analysis

I. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSAs) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classified these hospitals as urban hospitals.

It is clear that the changes discussed in this document will affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

II. Changes in the Final Rule

With respect to the prospective payment system for capital-related costs, the major change in this final rule compared to the proposed rule is our decision not to proceed with the adjustment for capital-related taxes. We discuss the reasons for that decision in section V.B of the preamble to this final rule. With respect to the prospective payment system for operating costs, there are no significant policy changes in this final rule compared to the proposed rule.

Otherwise, the differences in the impact analysis of this final rule compared to that in the proposed rule are the result of using more recent or more complete hospital data. For example, a more complete FY 1994 MedPAR file (June 1995 update) is now available compared to the one available at the time of the proposed rule. In addition, more recent hospital-specific data, including cost reports, are used in this analysis. Finally, the final geographic reclassifications are included.

Our most recent hospital market basket forecast for prospective payment system hospitals, 3.5 percent, is unchanged from that reported in the proposed rule. However, the latest forecast for the excluded hospital market basket has decreased from 3.6 percent to 3.4 percent. Therefore, the applicable update factor for prospective payment hospital operating payments is unchanged from the proposed rule while the update factor for excluded hospitals and units has decreased by 0.2 percentage points from the proposed.

III. Limitations of Our Analysis

As has been the case in previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our policy changes, as well as statutory changes effective for FY 1996, on various hospital groups. We estimate the effects of each policy change by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case mix.

We received no comments on the methodology used for the impact analysis in the proposed rule.

IV. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 46 Indian Health Service Hospitals in our database, which we excluded from the analysis due to the special characteristics of the payment method for these hospitals. We also excluded the 49 short-term, acute care hospitals in Maryland from our analysis. These hospitals remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. (As of January 1, 1995, the hospitals participating in the New York Finger Lakes demonstration project began to be paid under the prospective payment system.) Thus, as of August 1995, just over 5,200 hospitals were receiving prospectively based payments for furnishing inpatient services. This represents about 82 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 18 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs, subject to a rate-of-increase ceiling on their inpatient operating costs per discharge. These hospitals include psychiatric, rehabilitation, long-term care, children's, and cancer hospitals. The impact on these hospitals of the changes implemented in this final rule is discussed below.

V. Impact on Excluded Hospitals and Units

As of August 1995, just over 1,100 specialty hospitals are excluded from the prospective payment system and are instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. In addition, approximately 2,250 psychiatric and rehabilitation units in hospitals that are subject to the prospective payment system are excluded from the prospective payment system and paid in accordance with § 413.40.

In accordance with section 1886(b)(3)(B)(ii)(V) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 1996 is the hospital market basket minus 1.0 percentage point, adjusted to account for the relationship between the hospital's allowable operating cost per case and its target amounts. We are currently projecting an increase in the excluded hospital market basket of 3.4 percent.

The impact on excluded hospitals and units of the proposed update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital and excluded unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limit, the major effect will be the amount of excess costs that the hospitals would have to absorb.

In this context, we note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed the rate-of-increase limit may receive the lower of its rate-of-increase ceiling plus 50 percent of reasonable costs in excess of the ceiling, or 110 percent of its ceiling. In addition, under the various provisions set forth in § 413.40, excluded hospitals and units may obtain payment adjustments for significant, yet justifiable, increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Impact of Changes In the Operating Prospective Payment System

A. Basis and Methodology of Estimates

In this final rule, we are implementing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We have prepared separate analyses of the changes to each system, beginning with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 1994 MedPAR file (updated through June 1995) and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate any actual cost data, the most recently available hospital cost report data were used to create some of the variables by which hospitals are categorized. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with a given change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1994 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service Hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here. Estimated payment impacts of the FY 1996 changes to the capital prospective payment system are discussed below in section VII of Appendix A.

The changes discussed separately below are the following:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the diagnosis-related group (DRG) relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in hospital wage index values reflecting the wage index update.
- The effects of changing the transfer payment policy to a graduated per diem payment methodology.
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that are effective in FY 1996.
- The effects of phasing out payments for extraordinarily lengthy cases (day outlier cases) (with a corresponding increase in payments for extraordinarily costly cases (cost outliers)), in accordance with section 1886(d)(5)(A)(v) of the Act.
- The total change in payments based on FY 1996 policies relative to payments based on FY 1995 policies.

To illustrate the impacts of the FY 1996 changes, our FY 1996 baseline simulation model uses: the FY 1995 GROUPER (version 12.0); the FY 1995 wage indexes; the current uniform per diem transfer payment policy; no effects of FY 1996 reclassifications; and current outlier policy (25 percent phase-out of day outlier payments). Outliers are estimated to be 5.1 percent of total DRG payments.

Each policy change is then added incrementally to this baseline model, finally arriving at an FY 1996 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 1995 to FY 1996. Three factors not displayed in the previous five columns have significant impacts here. First is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban and the other areas average standardized amounts for FY 1996 using the most recent forecasted hospital market basket increase for FY 1996 of 3.5 percent, minus 2.0 percentage points. Thus, the update to the large urban and other areas' standardized amounts is 1.5 percent. Similarly, section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals (SCHs) and essential access community hospitals (EACHs) (which are treated as SCHs for payment purposes) is also the market basket increase minus 2.0 percent, or 1.5 percent.

A second significant factor impacting upon changes in payments per case from FY 1995 to FY 1996 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 1995 that are no longer reclassified in FY 1996 may have a negative payment impact going from FY 1995 to FY 1996; conversely, hospitals not reclassified in FY 1995 and reclassified in FY 1996 may have a positive payment impact from FY 1995 to FY 1996. In some cases these impacts can be quite substantial, so that a relatively few number of hospitals in a particular category that lost their reclassification status can hold the average percentage change for the category below the mean.

Third, when comparing our estimated FY 1995 payments to FY 1996 payments, another significant consideration is that we currently estimate that actual outlier payments during FY 1995 will be 4.0 percent of actual total DRG payments. When the FY 1995 final rule was published September 1, 1994 (59 FR 45330), we estimated that FY 1995 outlier payments would be 5.1 percent of total DRG payments, and the standardized amounts were reduced correspondingly. The effects of the lower than expected outlier payments during FY 1995 are reflected in the analyses below comparing our current estimates of FY 1995 total payments to estimated FY 1996 payments.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 5,207 hospitals included in the analysis. This is 47 fewer hospitals than were included in the impact analysis in the FY 1995 final rule (59 FR 45496). Data for 106 hospitals that were included in last year's analysis were not available for analysis this year; however, data were available this year for 54 hospitals for which data were not available last year. In addition, 5 hospitals previously excluded from our analysis because they were participating in the Finger Lakes demonstration project are included in our analysis this year because the demonstration authority has expired and these hospitals are now being paid under the prospective payment system.

The next four rows of Table I contain hospitals categorized according to their geographic location (all urbans as well as large urban and other urban or rural). There are 2,942 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,647 hospitals located in large urban areas (populations over 1 million), and 1,295 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,265 hospitals in rural areas. The next two groupings are by bed size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows changes in payments based on hospitals' FY 1996 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show the numbers of hospitals being paid based on these categorizations, after consideration of geographic reclassifications, are 3,152; 1,835; 1,317; and 2,055, respectively.

The next three groupings examine the impacts of the changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an indirect medical education (IME) adjustment), receive disproportionate share (DSH) payments, or both. There are 4,135 nonteaching hospitals in our analysis, 841 with fewer than 100 residents, and 231 with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status. In the past, we have included as urban hospitals those that are located in a rural area but were reclassified as urban by the MGCRB for purposes of the standardized amount, since they have been considered urban in determining the amount of their DSH adjustment. This year, however, we have isolated these hospitals in separate rows to identify the payment impacts of reclassification solely for DSH. In these rows, labeled "Large Urban and DSH" and "DSH Only," under the heading "Reclassified Rural DSH," we group reclassified rural hospitals that receive DSH after reclassification based on whether they also receive the higher large urban amount, or are only benefitting from reclassification to an other urban area by receiving higher DSH payments. Hospitals in the rural DSH categories, therefore, including those in the rural referral center (RRC) and SCH categories, represent hospitals that were not reclassified for purposes of the standardized amount. They may, however, have been reclassified for purposes of assigning the wage index. The next category groups hospitals paid on the basis of the urban standardized amount in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next four rows examine the impacts of the changes on rural hospitals by special payment groups (SCHs, RRCs, and EACHs). Rural hospitals reclassified for FY 1996 for purposes of the standardized amount are not included here.

The RRCs (91), SCH/EACHs (623), and SCH/EACHs and RRCs (39) shown here were not reclassified for purposes of the standardized amount. There are 5 SCH/EACHs included in our analysis and 4 EACH/RRCs.

There are 7 RRCs and 12 SCHs that will be reclassified for the standardized amount in FY 1996 and are therefore not included in these rows. In addition, two hospitals that are SCH/RRCs will be reclassified for the standardized amount (one of these hospitals will also be reclassified for the wage index).

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken from the FY 1993 Medicare cost report files, the latest available. Data needed to calculate Medicare utilization percentages were unavailable for 122 hospitals. For the most part, these are either new hospitals or hospitals filing manual cost reports that are not yet entered into the data base.

The next series of groupings concern the geographic reclassication status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for either FY 1995 or FY 1996, or for both years, by urban/rural status. The next rows illustrate the overall number of reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1996 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Num. of hosps.[1] (0)	DRG recalibration[2] (1)	New wage data[3] (2)	New transfer policy[4] (3)	MGCRB reclassification[5] (4)	Day outlier policy changes[6] (5)	All FY 1996 changes[7] (6)
(BY GEOGRAPHIC LOCATION)							
ALL HOSPITALS	5,207	0.0	0.0	0.0	0.0	0.0	2.6
URBAN HOSPITALS	2,942	0.0	−0.1	0.0	−0.4	0.0	2.5
LARGE URBAN	1,647	0.1	−0.3	0.0	−0.5	−0.1	2.2
OTHER URBAN	1,295	−0.1	0.4	0.0	−0.1	0.1	3.0
RURAL HOSPITALS	2,265	0.2	0.3	0.3	2.3	0.0	3.1
BED SIZE (URBAN):							
0–99 BEDS	755	0.1	0.0	0.3	−0.5	0.2	2.8
100–199 BEDS	925	0.1	0.2	0.1	−0.4	0.1	3.0
200–299 BEDS	595	0.0	0.0	0.0	−0.3	0.0	2.7
300–499 BEDS	489	0.0	−0.1	−0.1	−0.4	0.0	2.4
500 OR MORE BEDS	178	0.0	−0.3	−0.2	−0.3	−0.3	2.0
BED SIZE (RURAL):							
0–49 BEDS	1,179	0.3	0.1	0.6	0.0	0.0	3.1
50–99 BEDS	665	0.2	0.2	0.4	0.9	0.1	3.4
100–149 BEDS	227	0.1	0.4	0.3	3.1	0.1	2.6
150–199 BEDS	109	0.2	0.2	0.1	2.8	0.0	3.3
200 OR MORE BEDS	85	0.0	0.4	0.0	5.4	0.0	3.2

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1996 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Num. of hosps.[1] (0)	DRG recalibration[2] (1)	New wage data[3] (2)	New transfer policy[4] (3)	MGCRB reclassification[5] (4)	Day outlier policy changes[6] (5)	All FY 1996 changes[7] (6)
URBAN BY CENSUS DIVISION:							
NEW ENGLAND	164	0.2	−0.3	0.0	−0.2	−0.2	2.1
MIDDLE ATLANTIC	441	0.4	−0.6	−0.1	−0.4	−0.8	1.8
SOUTH ATLANTIC	435	0.0	0.1	0.0	−0.5	0.1	2.6
EAST NORTH CENTRAL	490	−0.1	−0.1	0.0	−0.1	0.2	2.6
EAST SOUTH CENTRAL	164	−0.2	0.1	−0.1	−0.4	0.2	2.7
WEST NORTH CENTRAL	196	−0.1	−0.7	−0.1	−0.5	0.3	1.9
WEST SOUTH CENTRAL	387	−0.3	0.7	−0.1	−0.5	0.3	3.7
MOUNTAIN	132	−0.1	−0.5	−0.1	−0.4	0.3	2.2
PACIFIC	485	−0.1	0.4	0.0	−0.5	0.2	2.8
PUERTO RICO	48	0.0	2.7	−0.2	−0.5	0.0	5.5
RURAL BY CENSUS DIVISION:							
NEW ENGLAND	53	0.3	0.5	0.1	1.3	0.1	3.8
MIDDLE ATLANTIC	84	0.5	−0.5	0.1	1.5	−0.3	3.0
SOUTH ATLANTIC	300	0.1	0.6	0.3	3.2	0.0	3.0
EAST NORTH CENTRAL	305	0.2	0.5	0.4	1.9	0.1	3.6
EAST SOUTH CENTRAL	278	0.0	0.8	0.4	3.7	0.0	3.5
WEST NORTH CENTRAL	529	0.2	−0.2	0.3	2.0	0.1	2.9
WEST SOUTH CENTRAL	354	0.1	−0.4	0.3	3.1	0.1	2.6
MOUNTAIN	214	0.3	−0.1	0.1	−0.1	0.1	2.2
PACIFIC	143	0.3	0.6	0.2	1.4	0.1	3.4
PUERTO RICO	5	0.4	−0.6	−0.1	−0.5	0.1	2.3
(BY PAYMENT CATEGORIES)							
URBAN HOSPITALS	3,152	0.0	0.0	0.0	−0.2	0.0	2.5
LARGE URBAN	1,835	0.1	−0.3	0.0	−0.3	−0.1	2.3
OTHER URBAN	1,317	−0.1	0.4	0.0	−0.2	0.1	3.0
RURAL HOSPITALS	2,055	0.2	0.2	0.3	1.6	0.0	2.8
TEACHING STATUS:							
NON-TEACHING	4,135	0.1	0.1	0.1	0.3	0.1	3.0
LESS THAN 100 RES.	841	0.0	0.0	−0.1	−0.3	0.0	2.5
100+ RESIDENTS	231	0.0	−0.4	−0.1	−0.3	−0.4	1.8
DISPROPORTIONATE SHARE HOSPITALS (DSH):							
NON-DSH	3,234	0.1	0.0	0.1	0.1	0.1	2.8
URBAN DSH:							
100 BEDS OR MORE	1,370	0.0	0.0	−0.1	−0.4	−0.1	2.3
FEWER THAN 100 BEDS	120	0.0	0.2	0.3	−0.6	0.2	3.3
RECLASSIFIED RURAL DSH:							
LARGE URBAN AND DSH	22	0.0	0.2	0.1	11.1	0.1	5.9
DSH ONLY	69	0.1	0.5	0.2	8.6	0.0	5.0
RURAL DSH:							
SOLE COMMUNITY (SCH)	136	0.2	0.0	0.1	0.1	0.0	2.1
REFERRAL CENTERS (RRC)	29	0.1	0.4	0.1	3.0	−0.2	2.9
OTHER RURAL DSH HOSP.:							
100 BEDS OR MORE	82	0.1	0.5	0.4	2.2	0.1	1.5
FEWER THAN 100 BEDS	145	0.0	0.7	0.7	0.1	0.1	3.6
URBAN TEACHING AND DSH:							
BOTH TEACHING AND DSH	667	0.0	−0.1	−0.1	−0.5	−0.3	2.1
TEACHING AND NO DSH	356	0.0	−0.1	−0.1	−0.2	0.0	2.5
NO TEACHING AND DSH	914	0.0	0.2	0.0	0.2	0.1	3.0
NO TEACHING AND NO DSH	1,215	0.1	−0.1	0.1	−0.3	0.2	3.0
RURAL HOSPITAL TYPES:							
NONSPECIAL STATUS:							
HOSPITALS	1,302	0.2	0.4	0.6	1.4	0.1	2.9
RRC	91	0.1	0.3	0.1	4.9	0.1	3.5
SCH/EACH	623	0.3	0.0	0.1	0.0	0.0	2.2
SCH/EACH AND RRC	39	0.2	0.0	0.0	0.3	−0.1	2.2
TYPE OF OWNERSHIP:							
VOLUNTARY	3,149	0.1	−0.1	0.0	−0.1	−0.1	2.5
PROPRIETARY	718	−0.1	0.0	0.0	0.3	0.2	2.9
GOVERNMENT	1,340	0.0	0.2	0.1	0.3	0.0	2.9
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:							
0–25	267	0.0	−0.3	0.0	−0.1	−0.2	2.1
25–50	1,356	0.0	0.0	−0.1	−0.3	−0.1	2.3

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1996 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Num. of hosps.[1] (0)	DRG recalibration[2] (1)	New wage data[3] (2)	New transfer policy[4] (3)	MGCRB reclassification[5] (4)	Day outlier policy changes[6] (5)	All FY 1996 changes[7] (6)
50–65	2,217	0.1	0.1	0.0	0.1	0.0	2.8
OVER 65	1,245	0.2	−0.1	0.1	0.1	0.0	2.7
UNKNOWN	122	0.4	−0.5	0.0	−0.1	−1.2	1.7
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD							
RECLASSIFICATION STATUS DURING FY95 AND FY96:							
RECLASSIFIED DURING BOTH FY95 AND FY96	453	0.1	0.3	0.1	4.8	0.0	2.9
URBAN	163	0.1	0.2	0.0	2.7	0.0	3.0
RURAL	290	0.1	0.3	0.2	8.0	0.1	2.9
RECLASSIFIED DURING FY96 ONLY	147	0.2	0.1	0.1	4.0	0.0	8.4
URBAN	31	0.3	−0.1	0.1	2.1	−0.2	7.7
RURAL	116	0.1	0.3	0.2	5.6	0.1	9.0
RECLASSIFIED DURING FY95 ONLY	284	0.0	0.1	0.0	−1.4	0.1	−0.7
URBAN	112	0.0	0.1	−0.1	−1.8	0.1	−0.4
RURAL	172	0.2	0.1	0.3	−0.4	0.1	−1.5
FY 96 RECLASSIFICATIONS:							
ALL RECLASSIFIED HOSP	602	0.1	0.2	0.1	4.7	0.0	4.0
STAND. AMOUNT ONLY	210	0.1	0.6	0.1	2.0	0.0	3.9
WAGE INDEX ONLY	258	0.1	0.2	0.1	7.1	0.0	4.3
BOTH	134	0.1	−0.1	0.0	4.3	0.0	3.8
NONRECLASSIFIED	4,578	0.0	0.0	0.0	−0.6	0.0	2.4
ALL URBAN RECLASS	195	0.1	0.2	0.0	2.6	0.0	3.7
STAND. AMOUNT ONLY	68	0.0	0.7	0.0	0.8	0.0	3.7
WAGE INDEX ONLY	35	0.1	0.1	−0.1	5.9	−0.2	4.8
BOTH	92	0.1	−0.2	0.0	2.0	0.0	3.0
NONRECLASSIFIED	2,747	0.0	−0.1	0.0	−0.6	0.0	2.4
ALL RURAL RECLASS	407	0.1	0.3	0.2	7.4	0.1	4.4
STAND. AMOUNT ONLY	142	0.1	0.4	0.3	3.8	0.0	4.1
WAGE INDEX ONLY	223	0.1	0.2	0.2	7.9	0.1	4.0
BOTH	42	0.0	0.5	0.1	13.1	0.1	6.3
NONRECLASSIFIED	1,831	0.2	0.2	0.3	−0.4	0.0	2.4
OTHER RECLASSIFED HOSPITALS (SECTION 1886(d)(8)(B))	27	0.1	0.0	0.4	−0.1	0.1	3.3

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1994, and hospital cost report data are from reporting periods beginning in FY 1992 and FY 1993.

[2] This column displays the payment impacts of the recalibration of the DRG weights, based on FY 1994 MedPAR data and the DRG classification changes, in accordance with section 1886(d)(4)(C) of the Act.

[3] This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1992 cost reports.

[4] This column displays the payment impacts of revising the per diem methodology for transfer cases from the current flat per diem methodology to a graduated per diem methodology.

[5] Shown here are the combined effects of geographic reclassification by the Medicare Geographic Classification Review Board (MGCRB). The effects shown here demonstrate the FY 1996 payment impacts of going from no reclassifications to the reclassifications scheduled to be in effect for FY 1996. Reclassification for prior years has no bearing on the payment impacts shown here.

[6] This column illustrates the payment impacts of our changes affecting payments for outliers, in accordance with section 1886(d)(5) of the Act.

[7] This column shows changes in payments from FY 1995 to FY 1996. It incorporates all of the changes displayed in columns 1 through 5. It also displays the impacts of the updates to the FY 1996 standardized amounts, changes in hospitals' reclassification status in FY 1996 compared to FY 1995, and the difference in outlier payments from FY 1995 to FY 1996. The sum of the first five columns plus these effects may be slightly different from the percentage changes shown here, due to rounding errors and interactive effects.

B. The Impact of the Changes to the DRG Weights (Column 1)

In column 1 of Table I, we present the combined effects of the revised DRG classification system, and the subsequent recalibration of the DRG weights incorporating these revised DRGs, as discussed in section II of the preamble to this final rule. Section 1886(d)(4)(C)(i) of the Act requires us each year to make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The impact of reclassification and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral.

The first row of Table I shows that the overall effect of these changes is budget neutral. That is, the percentage change when adding the FY 1996 GROUPER (version 13.0) to the FY 1996 baseline is 0.0. As described previously, all of the other payment parameters are held constant for the comparison in column 1, only the version of the GROUPER is different.

Consistent with the minor changes we are making to the FY 1996 GROUPER, the redistributional impacts across hospital groups are very small (an increase of 0.1 for large urban and 0.2 for rural hospitals and a decrease of 0.1 for other urban hospitals). Among other hospital categories, the net effects are positive changes for small and medium-size (up to 200 beds) rural hospitals and slightly positive changes for small (up to 200 beds) urban hospitals.

The largest single effect on any of the hospital categories examined is a 0.5 percent increase for rural hospitals in the Middle Atlantic census division. We note that urban hospitals in this census division also show a positive increase, 0.4 percent. We attribute this to the changes in our methodology for identifying the statistical outliers that are eliminated from the data used to recalibrate the DRG weights (described in section II.C of the preamble to this final rule). In previous recalibrations, we eliminated all cases outside 3.0 standard deviations from the geometric mean of standardized charges per case for each DRG. In the DRG recalibration set forth in this final rule, we eliminated only cases that met both this current criterion and an additional criterion that the cases fall outside 3.0 standard deviations from the geometric mean of standardized charges *per day* for each DRG. Because hospitals in the Middle Atlantic census division have longer lengths of stay (as demonstrated by the impacts of phasing out the day outliers—see the discussion below concerning column 5), they would be likely to have cases that exceed the 3.0 standard deviation threshold for average charges per case but not the per day threshold. Thus, costly cases previously eliminated would be left in the recalibration, thereby influencing the weights of the DRGs to which they are assigned.

We also note that rural hospitals in Puerto Rico experience a 0.4 increase in payments. This is a function of the fact that only five hospitals are included in this category, making it susceptible to the influence of two hospitals whose case-mix index values increased by 0.8 percent.

Rural hospitals overall exhibit a positive effect in column 1. Because rural hospitals send out relatively more transfers, this effect is probably a reflection of the modification in the way we count transfer cases in the recalibration methodology (see section II.C of the preamble to this final rule). A study by the RAND Corporation for HCFA, "An Evaluation of Medicare Payments for Transfer Cases" (Contract Number 500–92–0023), identified 10 DRGs that account for more than half of all transfer cases. These DRGs experience, on average, almost an 8 percent increase in their relative weights under the recalibration, which contributes to the increases experienced by rural hospitals and select urban hospitals. In comparison, the average absolute change in the weights of all DRGs from FY 1994 to FY 1995 is approximately 1 percent.

C. The Impact of Updating the Wage Data (Column 2)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the wage index for FY 1996 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 2 shows the percentage changes in payments when going from our FY 1996 baseline—using the FY 1995 wage index (based on 1991 wage data) before geographic reclassifications and incorporating the FY 1996 GROUPER—to a model substituting the FY 1996 prereclassification wage index (based on FY 1992 data).

Section 1886(d)(3)(E) of the Act also requires that any updates or adjustments to the wage index be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index. To comply with the requirements that the DRG and wage index changes must be implemented in a budget neutral manner, we compute a budget neutrality adjustment factor to apply to the standardized amounts. For the FY 1996 standardized amounts, this adjustment factor is 0.999306. This factor is applied to the standardized amounts reflected in this column to ensure that the overall effect of the wage index changes are budget neutral.

The results indicate that the new wage data do not have a significant overall impact on urban and rural hospitals. Virtually all prospective payment system hospitals (94 percent) would experience a change in their wage index of less than 5 percent. This column demonstrates that hospitals with significant changes in their wage indexes are not concentrated within any particular hospital group. For FY 1996, some of the largest changes are evident among both urban and rural hospitals grouped by census division. More census divisions experience payment increases, of greater magnitude, for rural hospitals than for urban hospitals. With the exception of urban Puerto Rico, all payments change by less than 1.0 percent. Although a degree of variation across census categories is evident in this column, our review of the wage data (as described below) indicates that most of the significant changes were attributable to improved reporting.

Besides urban Puerto Rico, the greatest increases are for rural hospitals in the East South Central division, 0.8 percent, and urban hospitals in West South Central, 0.7 percent. The greatest decreases are 0.7 and 0.6 percent for urban hospitals in the West North Central and Middle Atlantic regions, respectively, as well as 0.6 percent for rural Puerto Rico. This effect contributes to the 0.4 percent decline among major teaching hospitals—New York City's wage index falls by nearly 2.0 percent. The Middle Atlantic region also experiences a payment decrease of 0.5 percent for its rural hospitals. The Pacific region experiences an increase in payments to both urban and rural hospitals, with increases of 0.4 and 0.6 percent, respectively. The most dramatic shift occurs in urban Puerto Rico, where payments increase 2.7 percent. Of the six urban areas in Puerto Rico, five experience large increases in wage while only one experiences a slight decline. We note that while rural Puerto Rico had a decrease of 6.9 percent in the impact for the proposed rule, better reporting of data has greatly improved the rural Puerto Rico wage index values so the decrease is only 0.6 percent in the impact analysis for this final rule.

The FY 1996 wage index represents the third annual update to the wage data, and continues to include salaries, fringe benefits, home office salaries, and certain contract labor salaries. In the past, updates to the wage data have resulted in significant payment shifts among hospitals. Since the wage index is now updated annually and there are no changes to the types of costs included in the wage index data, we expect these payment fluctuations will be minimized.

Based on the FY 1996 wage index calculation (after reclassifications under sections 1886(d)(8)(B) and 1886(d)(10) of the Act) compared to the FY 1995 wage index, there are more labor markets that experience an increase of 5 percent or more in their wage index values, and fewer labor markets that experience a significant decrease of 5 percent or more. We reviewed the data for any area that experiences a wage index change of 10 percent or more to determine the reason for the fluctuation. When necessary, we contacted the intermediaries to determine the validity of the data or to obtain an explanation for the change. The following chart compares the shifts in wage index values (after reclassifications) for labor markets for FY 1996 with those experienced as a result of last year's wage index update.

Percentage change in area wage index values	Number of labor market areas	
	FY 1996	FY 1995
Increase more than 10 percent	10	5
Increase between 5 and 10 percent	21	17
Decrease between 5 and 10 percent	6	13
Decrease more than 10 percent	0	10

Under the FY 1996 wage index, 92.7 percent of rural prospective payment hospitals and 95.0 percent of urban hospitals experience a change in their wage index value of less than 5.0 percent. Approximately 3.4 percent (2.1 percent of rural hospitals and 4.4 percent of urban hospitals) experience a change of between 5 and 10 percent, and 2.6 percent (5.3 percent of rural hospitals and 0.6 percent of urban hospitals) experience a change of more than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Percent of hospitals (by urban/rural)	
	Rural	Urban
Decrease more than 10 percent	1.5	0.1
Decrease between 5 and 10 percent	1.1	1.6
Change between −5 and +5 percent	92.7	95.0
Increase between 5 and 10 percent	1.0	2.8
Increase more than 10 percent	3.8	0.5

D. Transfer Changes (Column 3)

Column 3 of Table I shows the impacts of the change we are implementing in transfer payment policy. This change revises our methodology for payment for transfer cases under the prospective payment system to more appropriately compensate transferring hospitals for the higher costs they incur, on average, on the first day of a hospital stay prior to transfer. Our previous transfer policy paid a flat per diem amount for each day prior to transfer up to the full DRG amount. The per diem was calculated by dividing the full DRG amount by the geometric mean length of stay for that DRG. We are replacing this flat per diem methodology with a graduated methodology that pays twice the per diem amount for the first day, and the per diem amount for each day beyond the first up to the full DRG amount.

The payment impacts shown in column 3 illustrate the effects of this change, relative to the baseline simulation based on previous policy (a flat per diem transfer payment methodology). In order to simulate the effects of the changes, it was first necessary to identify current transfer cases. Current transfers are identifiable by the discharge destination code on the patient bill (see the RAND study for a thorough discussion of identifying transfer cases on the MedPAR file).

Next, to determine whether payment would be made under the per diem methodology, we compared the actual length of stay prior to transfer to the geometric mean length of stay for the DRG to which the case is assigned. A full discharge or a transfer case that received the full discharge payment would be counted as 1.0, while, under our current transfer policy, a transfer case that stayed 2 days in a DRG with a geometric mean length of stay of 5 days would count as 0.4 of a discharge, and would be paid 40 percent of the full DRG amount. In this manner, transfer cases are counted only to the extent that the transferring hospital received payment for them. To simulate our change to the per diem payment methodology, we added 1 day to the actual length of stay for transfer cases, thereby replicating paying double the per diem for the first stay and the flat per diem, up to the full DRG amount, for subsequent days.

Finally, we calculated transfer-adjusted case-mix indexes for each hospital. The adjusted case-mix indexes are calculated by summing the transfer-adjusted DRG weights and dividing by the transfer-adjusted number of cases. The transfer-adjusted DRG weights are calculated by multiplying the DRG weight by the lesser of 1 or the fraction of the length of stay for the case divided by the geometric mean length of stay for the DRG. By adjusting the DRG weights, nontransfer cases and transfer cases that have a length of stay at least as long as the geometric mean length of stay will be represented by the full DRG weight, while transfer cases with lengths of stay below the geometric mean length of stay for the DRG will be represented by a lower number, reflective of their payment.

The FY 1996 baseline model reflected in columns 1 and 2 incorporates transfer-adjusted discharges and case-mix indexes based on current policies. That is, cases transferred prior to reaching the geometric mean length of stay received payments based on the flat per diem. In column 3, our model substitutes transfer-adjusted discharges and case-mix indexes that reflect our policy change.

The first row in column 3 shows that the net effect of our change is budget neutral compared to total payments under current transfer policy. As specified in section 109 of the Social Security Act Amendments of 1994 (Pub. L. 103–432), the Secretary is authorized to make adjustments to the standardized amounts so that adjustments to the payment policy for transfer cases do not affect aggregate payments. As described in section II.A.4.a of the Addendum to this final rule, we applied a budget neutrality factor of 0.997575 to the standardized amounts to account for the higher payments going to transfer cases based on our new payment policy.

The distributional effects of these changes are to increase payments to rural hospitals by 0.3 percent and decrease urban hospitals' payments by less than 0.1 percent (the overall change is 0.0 percent). Rural hospitals clearly benefit from the change in transfer payment methodology. RAND found that rural hospitals as a whole transfer 4.5 percent of their patients, compared to 1.7 percent in large urban hospitals and 1.6 percent in other urban hospitals. Therefore, one would expect rural hospitals to benefit from the change in the transfer payment methodology.

The impact on small hospitals is also positive, consistent with RAND's finding that hospitals with fewer than 50 beds transfer 6.1 percent of their cases, and hospitals with 50 to 99 beds transfer 4.9 percent of cases. Rural hospitals with fewer than 50 beds receive a 0.6 percent increase in per case payments, and rural hospitals with 50 to 99 beds receive a 0.4 percent increase. Urban hospitals with fewer than 100 beds experience a 0.3 percent rise in payments. Among rural hospital groups, nonspecial status hospitals benefit by 0.6 percent and hospitals receiving DSH payments that are not SCHs or RRCs receive increases of 0.4 percent for hospitals with 100 or more beds and 0.7 percent for hospitals with fewer than 100 beds.

E. Impacts of MGCRB Reclassifications (Column 4)

By March 30 of each year, the MGCRB makes reclassification decisions that will be effective for the next fiscal year, which begins on October 1. The MGCRB may reclassify a hospital for the purposes of using the other area's standardized amount, wage index value, or both.

To this point, all of the simulation models have assumed hospitals are paid on the basis of their geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as RRCs and hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 4 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 1996. As noted above, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, hospitals reclassified for the standardized amount also qualify to be treated as urban for purposes of the DSH adjustment.

The FY 1996 standardized payment amounts and wage index values incorporate all of the MGCRB reclassification decisions that will be effective for FY 1996. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions and any reclassification withdrawal requests that were received by the MGCRB. These Administrator decisions and withdrawals may affect the number of reclassified hospitals relative to those shown in the June 2, 1995 proposed rule. They may also determine whether a redesignated hospital receives the wage index of the area to which it is redesignated or a combined wage index that includes the data for both the hospitals already in the area and the redesignated hospitals.

The overall effect of geographic reclassification is required to be budget neutral by section 1886(d)(8)(D) of the Act. Therefore, we applied an adjustment of 0.994011 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this final rule).

Rural hospitals benefit from geographic reclassification. Their payments rise 2.3 percent, while payments to urban hospitals decline 0.4 percent. Large urban hospitals lose 0.5 percent because, as a group, they have the smallest percentage of hospitals that are reclassified, approximately 4 percent. Enough hospitals in other urban areas are reclassified to limit the decline in payments stemming from the budget neutrality offset to 0.1 percent. Among urban hospitals grouped by bedsize, payments fall between 0.3 and 0.5 percent.

Rural hospitals that reclassify for purposes of the standardized amount and receive DSH payments experience a significant increase in payments as a result of receiving higher DSH payments as urban hospitals. Rural hospitals reclassifying to large urban areas and also receiving DSH receive an 11.1 percent increase in payments. The difference between the large urban standardized amount and the other urban amount is 1.6 percent, and the remainder is due to DSH payments and to any wage index increase that hospitals reclassified for both the wage index and the standardized amount receive.

Rural hospitals reclassifying to other urban areas for purposes of the standardized amount receive an 8.6 percent increase in payments. Since there are no longer separate rural and other urban standardized amounts, this large increase is attributable to the higher DSH payments these 69 hospitals receive as a result of being classified as urban (as well as any increase in their wage index for those hospitals reclassified for both the wage index and standardized amount). Under our revised rules for MGCRB reclassification, these hospitals will no longer be eligible to reclassify solely to receive higher DSH payments effective with reclassifications for FY 1997.

Among rural hospitals designated as RRCs, 57 hospitals are reclassified for the wage index only and experience a 4.9 percent increase in payments overall. This positive impact on RRCs also appears in the category of rural hospitals with 200 or more beds, which have a 5.4 percent increase in payments.

Rural hospitals reclassified for FY 1995 and FY 1996 experience an 8.0 percent increase in payments, the greatest of any group in the category. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 1996 alone experience a 5.6 percent increase in payments. Urban hospitals reclassified for FY 1995 but not FY 1996 experience a 1.8 percent decline in payments overall. This appears to be due to the combined impacts of the budget neutrality adjustment and a number of hospitals in this category that experience a 6 percent drop in their wage index after reclassification. Urban hospitals reclassified for FY 1996 but not for FY 1995 experience a 2.1 percent increase in payments.

The FY 1996 reclassification section of Table I shows the changes in payments per case for all FY 1996 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). It illustrates that the large impact for reclassified rural hospitals is due to reclassifications for both the [illegible]zed amount and the wage ind[illegible]e hospitals receive a 13.1 percent increase. In addition, rural hospitals reclassified for the wage index only receive a 7.9 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 4.7 percent for FY 1996.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of about 0.6 percent, approximately the geographic reclassification budget neutrality factor. Rural nonreclassified hospitals decrease slightly less, experiencing a 0.4 percent decrease. This occurs because the wage index values in some rural areas increase after reclassified hospitals are excluded from the calculation of those values.

The number of reclassifications for the standardized amount, or for both the standardized amount and the wage index, has declined from 496 in FY 1995 to 344 in FY 1996. This is not surprising because the rural standardized amount is now equal to the standardized amount for other urban areas. Some rural hospitals are reclassifying for purposes of the large urban amount, thereby receiving a payment rate even higher than they would receive from the other national amount. Rural hospitals also may be reclassifying for the standardized amount even though they are only eligible to reclassify to an other urban area in order to either meet the lower eligibility requirements for DSH payments, or to receive higher DSH payments. The payment impact upon hospitals reclassified for the standardized amount only, however, is significantly lower than it is for hospitals reclassifying for either the wage index alone, or for both the wage index and the standardized amount.

F. Outlier Changes (Column 5)

Medicare provides extra payment in addition to the regular DRG payment amount for extremely costly or extraordinarily lengthy cases (cost outliers and day outliers, respectively). Section 1886(d)(5)(A)(v) of the Act requires the Secretary to phase out payment for day outliers in 25 percent increments beginning in FY 1995 from FY 1994 day outlier levels. Day outliers in FY 1996 will account for approximately 16 percent of total outlier payments (50 percent of 1994 levels). This reduction in day outlier payments will be offset by an increase in payments for cost outliers. For FY 1996, we are setting the day outlier threshold equal to the geometric mean length of stay for each DRG, plus the lesser of 23 days or 3.0 standard deviations. The marginal cost factor for day outliers will be 44 percent.

The statute also authorizes the Secretary to set a fixed loss per case threshold for cost outliers. For FY 1996, a case will receive cost outlier payments if its costs exceed the DRG amount plus $15,150. We are also maintaining the marginal cost factor for cost outliers at 80 percent.

The payment impacts of these changes are minimal. The largest impacts appear to be related to geographic location in terms of census divisions. Urban hospitals in the Middle Atlantic census division have payment reductions of 0.8 percent per case. Rural Middle Atlantic hospitals have a 0.3 percent decline. In New England, urban hospitals experience decreases of 0.2 percent. Since the changes to outlier policy result in a shift in payments from cases paid as day outliers to cases paid as cost outliers, this indicates that these areas have higher percentages of day outliers. This is consistent with our previous analysis indicating above average impacts related to day outlier policy changes in the northeastern portion of the country. (See the June 4, 1992 proposed rule (57 FR 23824).)

The largest negative impact occurs among hospitals for which we could not determine Medicare utilization rates. This group experiences a 1.2 percent fall in payments per case. The bulk of the decline is attributable to a group of New York hospitals included in this category that experience significant drops in outlier payments.

G. All Changes (Column 6)

Column 6 compares our estimate of payments per case for FY 1996 to our estimate of payments per case in FY 1995. It includes the 1.5 percent update to the standardized amounts and the hospital-specific rates for SCHs and EACHs, and the 1.1 percent lower than estimated outlier payments during FY 1995, as described in the introduction and the Addendum.

A single geographic reclassification budget neutrality factor of 0.994011 was applied to the FY 1996 standardized amounts, compared to the FY 1995 factor of 0.994055. The budget neutrality adjustment factor for the updated wage index and the DRG recalibration is 0.999306, compared to the FY 1995 factor of 0.998050. Although the net effect of these changes is small, they are reflected in the payment differences shown in this column.

There may also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 6 may not equal the sum of the previous columns plus the other impacts that we are able to identify.

We also note that column 6 includes the impacts of FY 1995 geographic reclassifications compared to the payment impacts of FY 1996 reclassifications. Therefore, the percent changes due to FY 1996 reclassifications shown in column 4 may be offset by the effects of reclassification on hospitals' FY 1995 payments. For example, the impact of MGCRB reclassifications on rural hospitals' FY 1995 payments was a 2.2 percent increase, compared to a 2.3 percent increase for FY 1996. Therefore, the net increase for rural hospitals in FY 1996 payments due to reclassification is 0.1 percent.

The overall payment increase from FY 1995 to FY 1996 for all hospitals is a 2.6 percent increase. This reflects the 0.0 percent net change in total payments due to the changes for FY 1996 shown in columns 1 through 5, the 1.5 percent update for FY 1996, and the 1.1 percent higher outlier payments in FY 1996 compared to FY 1995, as discussed above.

Hospitals in rural areas experience the largest payment increase, a 3.1 percent rise in payments per case over FY 1995. The increase in estimated outlier payments over FY 1995 for rural hospitals is 0.7 percent, below the 1.1 percent difference for all hospitals. As noted above, the net increase for rural hospitals in FY 1996 due to geographic reclassification is 0.1 percent. They also benefit from DRG recalibration, the new wage index, and the change in the transfer payment policy.

Urban hospitals' overall payments increase 2.5 percent. Hospitals in large and other urban areas experience 2.2 percent and 3.0 percent increases, respectively. Both large and other urban hospitals experience 1.1 percent increases in payments for FY 1996 due to the larger outlier payout, plus the 1.5 percent update. In addition, large urban hospitals' 0.5 percent decline due to reclassification is identical to the FY 1995 impact of reclassification, thus the net impact is 0.0. The FY 1995 reclassification impact on other urban hospitals was also 0.0 percent, compared to the 0.1 percent decline in column 4 of Table I, for a net decrease of 0.1 percent from FY 1995 to FY 1996.

Among urban bed size groups, column 6 shows changes in payments are higher for the smallest urban hospitals compared to larger urban hospitals. The relatively smaller increases for the larger urban hospitals appears to be due to the negative impacts of the new wage data, as shown in column 2, and to the new transfer policy (column 4). Among rural bed size groups the impacts are less varied, ranging from 2.6 percent to 3.4 percent.

Two census divisions are well below the average payment increase: urban Middle Atlantic and urban West North Central (both increase less than 2.0 percent). The reason for the relatively small increase for urban hospitals in the Middle Atlantic is that they have sizeable negative impacts due to the new wage data and the phase-out of day outliers. Urban hospitals in the West North Central division also experience a negative impact from the new wage data.

Conversely, rural New England hospitals experience a 3.8 percent increase, and urban West South Central hospitals see a 3.7 percent payment increase. By far the largest increase among all of the census divisions is in urban Puerto Rico, with a 5.5 percent increase. This large increase is primarily attributable to the effects of the new wage data, as discussed above.

The only hospital groups with negative payment impacts from FY 1995 to FY 1996 are hospitals that were reclassified for FY 1995 and are not reclassified for FY 1996. Overall, these hospitals lose 0.7 percent, with 112 urban hospitals in this category losing 0.4 percent and 172 rural hospitals losing 1.5 percent. On the other hand, hospitals reclassified for FY 1996 that were not reclassified for FY 1995 would experience the greatest payment increase: 7.7 percent for 31 urban hospitals in this category and 9.0 percent for 116 rural hospitals.

Reclassification appears to be a significant factor influencing the payment increases for a number of rural hospital groups with above average overall payment increases in column 6. For example, among hospital groups identified in the discussion of the impacts of MGCRB reclassifications for FY 1996 (column 4), almost all have overall increases of 3.0 or greater. This outcome highlights the redistributive effects of reclassification decisions upon hospital payments. This impact is illustrated even more clearly when one examines the rows categorizing hospitals by their reclassification status for FY 1996. All nonreclassified hospitals have an average payment increase of 2.4 percent. The average

payment increase for all reclassified hospitals is 4.0 percent.

Major teaching hospitals with 100 or more residents have a payment increase of only 1.8 percent. This is attributable to the combined negative impacts of the new wage data, reclassification, and the continued phase-out of day outliers. As discussed above, teaching hospitals located in New York City account for much of this impact. (They also account for much of the below average increase for hospitals for which we do not have Medicare utilization data (1.7 percent increase), along with several Puerto Rico hospitals.)

Finally, among hospitals that are SCH/EACHs, and those that are both SCH/EACH and RRCs, the payment increase is 2.2 percent. The primary reason for this below average increase is the minimal impact upon these hospitals of the higher FY 1996 outlier payments. Because these hospital groups receive their hospital-specific rate if it exceeds the applicable Federal amount (including outliers), there is less of an impact due to changes in outlier payment levels, which are not applied to the hospital-specific rate.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1996 OPERATING PROSPECTIVE PAYMENT SYSTEM

[PAYMENTS PER CASE]

	Number of hospitals (1)	Average FY 1995 payment per case (2)[1]	Average FY 1996 payment per case (3)[1]	All changes (4)
(BY GEOGRAPHIC LOCATION)				
ALL HOSPITALS	5,207	6,274	6,436	2.6
URBAN HOSPITALS	2,942	6,772	6,940	2.5
LARGE URBAN AREAS	1,647	7,284	7,443	2.2
OTHER URBAN AREAS	1,295	6,073	6,255	3.0
RURAL AREAS	2,265	4,259	4,391	3.1
BED SIZE (URBAN):				
0–99 BEDS	755	4,596	4,727	2.8
100–199 BEDS	925	5,733	5,903	3.0
200–299 BEDS	585	6,266	6,432	2.7
300–499 BEDS	489	7,198	7,369	2.4
500 OR MORE BEDS	178	8,794	8,971	2.0
BED SIZE (RURAL):				
0–49 BEDS	1,179	3,533	3,643	3.1
50–99 BEDS	665	3,965	4,097	3.4
100–149 BEDS	227	4,449	4,562	2.6
150–199 BEDS	109	4,508	4,657	3.3
200 OR MORE BEDS	85	5,235	5,404	3.2
URBAN BY CENSUS DIV.:				
NEW ENGLAND	164	7,205	7,359	2.1
MIDDLE ATLANTIC	441	7,464	7,598	1.8
SOUTH ATLANTIC	435	6,448	6,617	2.6
EAST NORTH CENTRAL	490	6,500	6,668	2.6
EAST SOUTH CENTRAL	164	5,920	6,083	2.7
WEST NORTH CENTRAL	196	6,432	6,557	1.9
WEST SOUTH CENTRAL	387	6,260	6,491	3.7
MOUNTAIN	132	6,619	6,767	2.2
PACIFIC	485	7,793	8,009	2.8
PUERTO RICO	48	2,473	2,609	5.5
RURAL BY CENSUS DIV.:				
NEW ENGLAND	53	5,142	5,334	3.8
MIDDLE ATLANTIC	84	4,735	4,875	3.0
SOUTH ATLANTIC	300	4,396	4,530	3.0
EAST NORTH CENTRAL	305	4,240	4,394	3.6
EAST SOUTH CENTRAL	278	3,816	3,950	3.5
WEST NORTH CENTRAL	529	4,018	4,132	2.9
WEST SOUTH CENTRAL	354	3,846	3,947	2.6
MOUNTAIN	214	4,797	4,904	2.2
PACIFIC	143	5,314	5,494	3.4
PUERTO RICO	5	1,961	2,006	2.3
(BY PAYMENT CATEGORIES)				
URBAN HOSPITALS	3,152	6,682	6,852	2.5
LARGE URBAN AREAS	1,835	7,123	7,287	2.3
OTHER URBAN AREAS	1,317	5,983	6,163	3.0
RURAL AREAS	2,055	4,216	4,333	2.8
TEACHING STATUS:				
NON-TEACHING	4,135	5,165	5,318	3.0
FEWER THAN 100 RESIDENTS	841	6,680	6,848	2.5
100 OR MORE RESIDENTS	231	10,346	10,531	1.8
DISPROPORTIONATE SHARE HOSPITALS (DSH):				
NON-DSH	3,234	5,475	5,628	2.8

Table II.—Impact Analysis of Changes for FY 1996 Operating Prospective Payment System—Continued
[Payments per case]

	Number of hospitals (1)	Average FY 1995 payment per case (2)[1]	Average FY 1996 payment per case (3)[1]	All changes (4)
URBAN DSH:				
100 BEDS OR MORE	1,370	7,414	7,587	2.3
FEWER THAN 100 BEDS	120	4,689	4,844	3.3
RECLASS. RURAL DSH:				
LARGE URBAN AND DSH	22	4,764	5,047	5.9
DSH ONLY	69	4,474	4,696	5.0
RURAL DSH:				
SOLE COMMUNITY (SCH)	136	4,747	4,848	2.1
REFERRAL CENTERS (RRC)	29	5,319	5,474	2.9
OTHER RURAL DSH HOSP.:				
100 BEDS OR MORE	82	3,933	3,992	1.5
FEWER THAN 100 BEDS	145	3,298	3,417	3.6
URBAN TEACHING AND DSH:				
BOTH TEACHING AND DSH	667	8,386	8,564	2.1
TEACHING AND NO DSH	356	6,831	6,998	2.5
NO TEACHING AND DSH	914	5,841	6,014	3.0
NO TEACHING AND NO DSH	1,215	5,275	5,434	3.0
RURAL HOSPITAL TYPES:				
NONSPECIAL STATUS HOSPITALS	1,302	3,616	3,722	2.9
RRC	91	4,869	5,038	3.5
SCH/EACH	623	4,758	4,864	2.2
SCH/EACH AND RRC	39	5,547	5,668	2.2
TYPE OF OWNERSHIP:				
VOLUNTARY	3,149	6,442	6,602	2.5
PROPRIETARY	718	5,688	5,852	2.9
GOVERNMENT	1,340	5,837	6,006	2.9
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:				
0–25	267	8,264	8,440	2.1
25–50	1,356	7,601	7,779	2.3
50–65	2,217	5,739	5,899	2.8
OVER 65	1,245	4,930	5,065	2.7
UNKNOWN	122	7,744	7,877	1.7
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD				
RECLASSIFICATION STATUS DURING FY95 AND FY96:				
RECLASSIFIED DURING BOTH FY95 AND FY96	453	5,674	5,840	2.9
URBAN	163	6,593	6,789	3.0
RURAL	290	4,738	4,874	2.9
RECLASSIFIED DURING FY96 ONLY	147	5,222	5,661	8.4
URBAN	31	6,687	7,201	7.7
RURAL	116	4,430	4,828	9.0
RECLASSIFIED DURING FY95 ONLY	284	5,964	5,924	−0.7
URBAN	112	6,956	6,931	−0.4
RURAL	172	4,239	4,175	−1.5
FY 96 RECLASSIFICATIONS:				
ALL RECLASSIFIED HOSP	602	5,580	5,803	4.0
STAND. AMT. ONLY	210	5,060	5,256	3.9
WAGE INDEX ONLY	258	5,707	5,952	4.3
BOTH	134	6,042	6,269	3.8
NONRECLASS	4,578	6,381	6,534	2.4
ALL URBAN RECLASS	195	6,605	6,851	3.7
STAND. AMT. ONLY	68	5,833	6,050	3.7
WAGE INDEX ONLY	35	8,463	8,871	4.8
BOTH	92	6,383	6,578	3.0
NONRECLASS	2,747	6,785	6,947	2.4
ALL RURAL RECLASS	407	4,659	4,862	4.4
STAND. AMT. ONLY	142	4,240	4,415	4.1
WAGE INDEX ONLY	223	4,801	4,992	4.0
BOTH	42	5,050	5,370	6.3
NONRECLASS	1,831	4,052	4,149	2.4
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B))	27	4,391	4,535	3.3

[1] These payment amounts per case do not reflect any estimates of annual case mix increase.

Table II presents the projected average payments per case under the changes for FY 1996 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the projected payments per case for FY 1996 with the average estimated per case payments for FY 1995. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 6 of Table I.

VII. Impact of Changes in the Capital Prospective Payment System

A. General Considerations

We now have data that were unavailable for analyzing the impact changes in the capital prospective payment system for previous fiscal years. Specifically, we have cost report data for the second year of the capital prospective payment system (cost reports beginning in FY 1993) available through the June 1995 update of the Hospital Cost Report Information System (HCRIS). We also have information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year. The lack of such information affects our impact analysis in the following ways:

- Major investment in hospital capital assets (for example in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for an individual hospital.
- Moreover, our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments to be used in the FY 1996 capital cost projections. We discuss in Appendix B the assumptions and computations we employ to generate the amount of obligated capital commitments for use in the FY 1996 capital cost projections.

In Table III of this appendix, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 1996. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of FY 1996 capital payment policies by the standard prospective payment system hospital groupings. We caution that while we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. This means that we continue to be unable to predict accurately an individual hospital's FY 1996 capital costs; however, with the more recent data on the experience to date under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

We present the transition payment methodology by hospital grouping in Table IV. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model. This table presents the aggregate impact of the FY 1996 payment policies.

B. Projected Impact Based on the FY 1996 Actuarial Model

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1995 to FY 1996 using a capital acquisition model. The FY 1996 model, described in Appendix B of this final rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1993 received through the June 1995 HCRIS update, interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through July 1, 1995 in the Provider-Specific file. We used this data to determine the FY 1996 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1993, and we age that capital by a formula described in Appendix B. We therefore need to randomly generate only new capital acquisitions for any year after FY 1993. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the FY 1996 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will increase at the following rates during these periods:

Average Percentage Increase in Capital

Fiscal year	Costs per discharge
1995	4.91
1996	5.03

- The Medicare case-mix index will increase by 1.4 percent in FY 1995 and 0.8 percent in FY 1996.
- The Federal capital rate as well as the hospital-specific rate will be updated by an analytical framework that considers changes in the prices associated with capital-related costs, and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 1996 update factor was 1.50 percent. In this final rule, the FY 1996 update factor is 1.20 percent (see section V.A of the preamble to this final rule).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1995 to FY 1996. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY

Type of hospital	Percent of hospitals	FY 1996 percent of discharges	FY 1996 percent of capital costs	FY 1996 percent of capital payments
Low Cost Hospital	65	62	51	55
High Cost Hospital	35	38	49	45

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital in use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we have continued to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from FY 1995 to FY 1996 using the above described actuarial model.

TABLE III.—IMPACT OF FINAL RULE CHANGES FOR FY 1996 ON PAYMENTS PER DISCHARGE

[FY 1995 Payments Per Discharge]

	Number of hospitals	Discharges	Adjusted Federal payment	Average Federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment
Low Cost Hospitals	3,400	6,602,508	$259.45	43.00	$195.17	$45.18	$14.62	$514.42
Fully Prospective	1,703	3,344,802	240.13	40.00	230.91		4.65	475.69
Rebase—Fully Prosp.	1,352	2,385,894	239.62	40.00	216.38		32.61	488.61
Rebase—100% Fed Rate	154	427,893	655.26	100.00			2.19	657.45
Rebase—Hold Harmless	191	443,918	130.12	21.69		671.91	5.02	807.05
High Cost Hospitals	1,797	4,116,329	357.04	56.85		385.28	3.41	745.72
100% Federal Rate	684	1,735,792	650.39	100.00			0.35	650.74
Hold Harmless	1,113	2,380,537	143.14	23.40		666.20	5.63	814.97
Total Hospitals	5,197	10,718,837	296.93	48.45	120.22	175.78	10.31	603.25

[FY 1996 Payments Per Discharge]

	Number of hospitals	Discharges	Adjusted Federal payment	Average Federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change
Low Cost Hospitals	3,400	6,602,508	$401.00	53.74	$198.52	$33.50	$12.90	$645.93	25.56
Fully Prospective	1,703	3,344,802	371.28	50.00	234.90		5.11	611.29	28.50
Rebase—Fully Prosp.	1,352	2,385,894	370.33	50.00	220.06		26.10	616.49	26.17
Rebase—100% Fed Rate	214	594,762	791.33	100.00			7.35	799.08	21.54
Rebase—Hold Harmless	131	277,050	185.05	24.97		798.45	5.31	988.81	22.52
High Cost Hospitals	1,797	4,116,329	577.66	74.25		277.19	2.86	857.71	15.02
100% Federal Rate	1,027	2,631,255	783.04	100.00			0.48	783.52	20.40
Hold Harmless	770	1,485,074	213.78	27.80		768.33	7.07	989.18	21.38
Total Hospitals	5,197	10,718,837	468.84	61.82	122.28	127.09	9.05	727.26	20.56

Under section 1886(g)(1)(A) of the Act, estimated aggregate payments under the capital prospective payment system for FY 1992 through 1995 respectively, were to equal 90 percent of estimated payments that would have been payable on a reasonable cost basis in each year. With the expiration of the capital budget neutrality provision, we

estimate that there will be an aggregate 20.56 percent increase in FY 1996 Medicare capital payments over the FY 1995 payments.

We project that low capital cost hospitals will experience an average increase in payments per case of 25.56 percent, and high capital cost hospitals will experience an average increase of 15.02 percent.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 40 percent to 50 percent and the hospital-specific rate payment percentage will decrease from 60 to 50 percent in FY 1996.

The Federal rate payment percentage for a hospital paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for hospitals receiving a hold-harmless payment for old capital will increase from 23.40 percent to 27.80 percent.

Despite the reduction in the hospital-specific rate blend percentage from 60 percent in FY 1995 to 50 percent in FY 1996, we expect that the average hospital-specific rate payment per discharge will increase from $120.22 in FY 1995 to $122.28 in FY 1996. This is due to the large increase (21.10 percent) in the FY 1996 hospital-specific rate compared to FY 1995.

We proposed no changes in our exceptions policies for FY 1996. As a result, the minimum payment levels will be:

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or beds and a disproportionate share patient percentage of 20.2 percent or more; or,
- 70 percent for all other hospitals.

We estimate that exceptions payments will decrease from 1.71 percent of total capital payments in FY 1995 to 1.24 percent of payments in FY 1996. This is due to the large increase in the rates—as rate-based payments increase, exceptions payments decrease. The projected distribution of the payments is shown in the table below:

ESTIMATED FY 1996 EXCEPTIONS PAYMENTS

Type of hospital	No. of hospitals	Percent of exceptions payments
Low Capital Cost	217	88
High Capital Cost	118	12
Total	335	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	5,197	17.3	23.9	58.8
Large urban areas (populations over 1 million)	1,640	20.2	31.3	48.5
Other urban areas (populations of 1 million or fewer)	1,294	21.8	27.9	50.3
Rural areas	2,263	12.7	16.2	71.1
Urban hospitals	2,934	20.9	29.8	49.3
0–99 beds	749	24.8	21.9	53.3
100–199 beds	923	25.0	31.4	43.6
200–299 beds	595	17.0	35.5	47.6
300–499 beds	489	14.7	32.3	53.0
500 or more beds	178	13.5	28.7	57.9
Rural hospitals	2,263	12.7	16.2	71.1
0–49 beds	1,177	10.0	11.1	78.8
50–99 beds	665	14.4	18.8	66.8
100–149 beds	227	17.2	29.1	53.7
150–199 beds	109	17.4	20.2	62.4
200 or more beds	85	17.6	27.1	55.3
By Region:				
Urban by Region	2,934	20.9	29.8	49.3
New England	163	9.2	23.3	67.5
Middle Atlantic	441	12.7	28.3	59.0
South Atlantic	433	25.4	34.6	40.0
East North Central	490	15.3	26.3	58.4
East South Central	164	29.9	28.7	41.5
West North Central	196	19.9	27.6	52.6
West South Central	387	37.2	37.2	25.6
Mountain	128	20.3	38.3	41.4
Pacific	484	18.6	27.3	54.1
Puerto Rico	48	20.8	12.5	66.7
Rural by Region	2,263	12.7	16.2	71.1
New England	53	11.3	11.3	77.4
Middle Atlantic	84	8.3	16.7	75.0
South Atlantic	300	15.3	22.3	62.3
East North Central	305	11.5	10.2	78.4
East South Central	278	14.7	25.9	59.4
West North Central	529	8.7	12.7	78.6

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
West South Central	352	14.2	18.8	67.0
Mountain	214	14.0	13.1	72.9
Pacific	143	18.2	10.5	71.3
By Payment Classification:				
All hospitals	5,197	17.3	23.9	58.8
Large urban areas (populations over 1 million)	1,828	19.7	31.0	49.3
Other urban areas (populations of 1 million or fewer)	1,316	22.0	27.4	50.7
Rural areas	2,053	12.2	15.3	72.4
Teaching Status:.				
Non-teaching	4,125	17.8	23.0	59.2
Fewer than 100 Residents	841	17.0	27.7	55.3
100 or more Residents	231	10.4	26.0	63.6
Disproportionate share hospitals (DSH):				
Non-DSH	3,225	17.1	20.1	62.8
Urban DSH:				
100 or more beds	1,436	18.9	33.1	47.9
Less than 100 beds	144	20.8	25.7	53.5
Rural DSH:				
Sole Community (SCH/EACH)	136	13.2	14.7	72.1
Referral Center (RRC/EACH)	29	17.2	17.2	65.5
Other Rural:				
100 or more beds	82	14.6	32.9	52.4
Less than 100 beds	145	8.3	20.0	71.7
Urban teaching and DSH:				
Both teaching and DSH	667	13.5	30.3	56.2
Teaching and no DSH	356	18.3	23.9	57.9
No teaching and DSH	913	23.2	34.1	42.7
No teaching and no DSH	1,208	23.4	27.2	49.4
Rural Hospital Types:				
Non special status hospitals	1,300	8.8	16.8	74.5
RRC/EACH	91	20.9	23.1	56.0
SCH/EACH	623	17.7	11.4	70.9
SCH, RRC and EACH	39	20.5	12.8	66.7
Type of Ownership:				
Voluntary	3,139	17.2	24.1	58.8
Proprietary	718	30.4	39.3	30.4
Government	1,340	10.7	15.2	74.0
Medicare Utilization as a Percent of Inpatient Days:				
0–25	267	24.0	21.0	55.1
25–50	1,356	19.5	28.5	52.0
50–65	2,217	16.2	24.3	59.5
Over 65	1,245	13.9	18.7	67.4

As we explain in Appendix B, we were not able to determine a hospital-specific rate for 10 of the 5,207 hospitals in our data base. Consequently, the payment methodology distribution is based on 5,197 hospitals. This data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) geographic location, (2) region, and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and under the hold-harmless methodology.

The percentage of hospitals paid fully Federal (100 percent of Federal rate) is expected to increase to 23.9 percent in FY 1996. As noted above, these hospitals constitute approximately 58 percent of all hold-harmless hospitals. In comparison, only 16.6 percent of hospitals were paid fully Federal in FY 1995, representing only about 39 percent of all hold-harmless hospitals. The cause of this increase is the expiration of the budget neutrality provision, which resulted in a large rate increase in the capital Federal rate. Due to the increase in the Federal rate, more hold-harmless hospitals will fare better under the fully Federal payment method.

Table IV indicates that 58.8 percent of hospitals are paid under the fully prospective payment methodology. (This figure, unlike the figure of 65 percent for low cost capital hospitals in the previous section, takes account of the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (72.4 percent and 74.0 percent, respectively by payment classification) are being paid under the fully prospective methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 30.4 percent of proprietary hospitals are being paid under the fully prospective methodology. This is a reflection of their higher than average capital costs per case. (We found at the time of the August 30, 1991 final rule (56 FR 43430) that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 1996 actuarial model to estimate the potential impact of our changes for FY 1996 on total capital payments per case, using a universe of 5,197 hospitals. The individual hospital payment parameters are taken from the best available data, including: the July 1, 1995 update to the Provider-Specific file, cost report data, and audit information supplied by intermediaries. Table V presents estimates of payments per case for FY 1995 and FY 1996 (columns 2 and 3). Column 4 shows the total percentage change in payments from FY 1995 to FY 1996. Column 5 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 5 include the 22.6 percent increase in the Federal rate, a 0.8 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the Medicare Geographic Classification Review Board. Column 4 includes the effects of the Federal rate changes represented in column 3. Column 4 also includes the effects of all other changes. Those other changes include: the change from 40 percent to 50 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) geographic location and (2) payment classification and payment region.

The simulation results show that, on average, capital payments per case can be expected to increase 20.6 percent in FY 1996. The results show that the effect of the Federal rate changes alone is to increase payments by 11.7 percent. In addition to the increase attributable to the Federal rate changes, an 8.9 percent increase is attributable to the effects of all other changes.

Our comparison by geographic location shows that urban hospitals will gain slightly less than rural hospitals from the final rule changes (rates of increase of 20.4 percent and 21.6 percent, respectively). Urban hospitals will gain at approximately the same rate as rural hospitals (11.7 and 11.6 percent) from the Federal rate changes. Urban hospitals will gain slightly less than rural hospitals (8.7 percent compared to 10.0 percent) from the effects of all other changes.

By region, there is relatively little variation compared to some previous years. All regions are estimated to receive large increases in total capital payments per case, due to the expiration of the budget neutrality provision. Increases by region vary from a low of 15.3 and 16.0 percent (rural Mountain and urban East South Central regions respectively) to a high of 26.1 and 25.9 percent (rural hospitals of the New England and Middle Atlantic regions respectively).

By type of ownership, proprietary hospitals are projected to have the lowest rate of increase (16.7 percent, of which 11.7 percent is due to Federal rate changes and 5.0 percent to the effects of all other changes). In our proposed rule, proprietary hospitals had the highest rate of increase. We believe that one factor contributing to the higher estimated rate of increase for proprietary hospitals in the proposed rule was the treatment of tax costs. Proportionately more proprietary hospitals are subject to capital-related taxes than other categories of hospitals. Proprietary hospitals experience the same rate of increase attributable to Federal rate changes as all other hospitals (11.7 percent). Since this final rule does not incorporate the proposed adjustment to the Federal rate for capital-related taxes, the estimated rate of increase for proprietary hospitals is lower than that in the proposed rule. Payments to voluntary hospitals will increase 21.0 percent (11.6 percent due to the Federal rate changes and 9.4 percent due to the effects of all other changes) and payments to government hospitals will increase 21.5 percent (12.3 percent due to Federal rate changes and 9.2 percent due to the effects of all other changes).

Section 1886(d)(10) of the Act established the Medicare Geographic Classification Review Board (MGCRB). Hospitals may apply for reclassification for purposes of the wage index, standardized amount, or both. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor since that factor is constructed from the hospital wage index.

To present the effects of reclassification on the hospitals being reclassified for FY 1996 compared to the effects of reclassification for FY 1995, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 1996 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

As a whole, hospitals reclassified during FY 1996 are projected to experience a 22.5 percent increase in payments (12.2 percent attributable to Federal rate changes and 10.3 percent attributable to the effects of all other changes). Nonreclassified hospitals will gain less (20.3 percent) than reclassified hospitals (22.5 percent) overall. Nonreclassified hospitals will gain slightly less than reclassified hospitals from the Federal rate changes (11.6 percent compared to 12.2 percent); they will also gain slightly less from the effects of all other changes (8.7 percent compared to 10.3 percent).

In the proposed rule, Table V included two additional categories of hospitals, according to whether they paid property taxes. We showed these two additional categories of hospitals because of the expected differences in the impact on each category of hospital of our proposed changes with regard to capital-related taxes. Since we are not implementing the proposed change concerning capital-related taxes, we are not showing these categories of hospitals in Table V of this final rule.

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 1995 Payments Compared to FY 1996 Payments]

	Number of hospitals	Average FY 1995 payments/case	Average FY 1996 payments/case	All changes	Portion attributable to Federal rate change
By Geographic Location					
All hospitals	5,197	603	727	20.6	11.7
Large urban areas (populations over 1 million)	1,640	690	835	21.1	12.0
Other urban areas (populations of 1 million or fewer)	1,294	605	721	19.3	11.2
Rural areas	2,263	396	482	21.6	11.6
Urban hospitals	2,934	654	787	20.4	11.7
0–99 beds	749	501	596	18.9	10.6
100–199 beds	923	597	709	18.8	11.1
200–299 beds	595	615	739	20.2	12.1
300–499 beds	489	668	810	21.1	12.0
500 or more beds	178	806	978	21.4	11.5
Rural hospitals	2,263	396	482	21.6	11.6
0–49 beds	1,177	298	373	25.4	12.0
50–99 beds	665	362	440	21.7	11.9
100–149 beds	227	429	517	20.4	12.1
150–199 beds	109	429	520	21.1	10.7
200 or more beds	85	510	616	20.7	11.1
By Region					
Urban by Region	2,934	654	787	20.4	11.7
New England	163	633	778	22.8	12.9
Middle Atlantic	441	683	842	23.3	12.1
South Atlantic	433	661	777	17.6	10.6
East North Central	490	602	732	21.6	11.9
East South Central	164	615	714	16.0	9.2
West North Central	196	640	770	20.2	11.5
West South Central	387	687	799	16.2	11.5
Mountain	128	652	779	19.4	13.6
Pacific	484	724	886	22.5	12.4
Puerto Rico	48	263	315	19.6	10.8
Rural by Region	2,263	396	482	21.6	11.6
New England	53	524	661	26.1	9.6
Middle Atlantic	84	400	503	25.9	13.4
South Atlantic	300	414	499	20.5	12.3
East North Central	305	385	470	21.9	11.1
East South Central	278	372	447	20.2	11.6
West North Central	529	368	453	23.2	12.1
West South Central	352	380	460	21.1	11.2
Mountain	214	445	513	15.3	9.2
Pacific	143	449	558	24.3	11.7
By Payment Classification					
All hospitals	5,197	603	727	20.6	11.7
Large urban areas (populations over 1 million)	1,828	677	821	21.3	12.0
Other urban areas (populations of 1 million or fewer)	1,316	598	711	18.9	11.1
Rural areas	2,053	382	465	21.7	11.6
Teaching Status:					
Non-teaching	4,125	525	627	19.3	11.6
Fewer than 100 Residents	841	632	767	21.2	11.6
100 or more Residents	231	885	1,087	22.8	12.0
Disproportionate share hospitals (DSH):					
Non-DSH	3,225	547	661	20.8	11.4
Urban DSH:					
100 or more beds	1,436	684	823	20.3	11.9
Less than 100 beds	144	467	554	18.6	12.4
Rural DSH:					
Sole Community (SCH/EACH)	136	370	439	18.8	10.2
Referral Center (RRC/EACH)	29	456	547	20.0	10.6
Other Rural:					
100 or more beds	82	376	463	23.2	13.3
Less than 100 beds	145	297	369	24.5	14.6
Urban teaching and DSH:					
Both teaching and DSH	667	749	911	21.6	12.0
Teaching and no DSH	356	650	795	22.2	11.2
No teaching and DSH	913	594	701	18.1	11.7

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 1995 Payments Compared to FY 1996 Payments]

	Number of hospitals	Average FY 1995 payments/case	Average FY 1996 payments/case	All changes	Portion attributable to Federal rate change
No teaching and no DSH	1,208	567	678	19.4	11.5
Rural Hospital Types:					
Non special status hospitals	1,300	336	417	24.1	13.0
RRC/EACH	91	476	575	20.9	11.0
SCH/EACH	623	392	466	19.0	10.0
SCH, RRC and EACH	39	494	583	17.9	9.1
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY95 and FY96:					
Reclassified During Both FY95 and FY96	453	549	669	21.8	11.7
Reclassified During FY96 Only	147	499	626	25.4	14.2
Reclassified During FY95 Only	275	636	727	14.3	9.0
FY96 Reclassifications:					
All Reclassified Hospitals	602	539	660	22.5	12.2
All Nonreclassified Hospitals	4,568	613	738	20.3	11.6
All Urban Reclassified Hospitals	195	624	766	22.9	12.0
Urban Nonreclassified Hospitals	2,739	656	789	20.2	11.7
All Reclassified Rural Hospitals	407	462	564	22.0	12.4
Rural Nonreclassified Hospitals	1,829	362	439	21.4	11.1
Other Reclassified Hospitals (Section 1886(D)(8)(B))	27	438	527	20.4	10.5
Type of Ownership:					
Voluntary	3,139	616	745	21.0	11.6
Proprietary	718	634	740	16.7	11.7
Government	1,340	507	616	21.5	12.3
Medicare Utilization as a Percent of Inpatient Days:					
0–25	267	669	820	22.5	11.1
25–50	1,356	719	869	20.9	11.6
50–65	2,217	561	674	20.2	11.7
Over 65	1,245	500	600	20.2	11.9

Appendix B—Technical Appendix on the Capital Acquisition Model and Required Adjustments

Section 1886(g)(1)(A) of the Act requires that for FY 1992 through FY 1995 aggregate prospective payments for operating costs under section 1886(d) of the Act and prospective payments for capital costs under section 1886(g) of the Act be reduced each year in a manner that results in a 10 percent reduction of the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expires effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor, and the reduction in the Federal and hospital-specific rates for exceptions payments. We continue to use the capital acquisition model to determine these factors.

The following data are used in the capital acquisition model: the June 1995 update of the PPS–IX (cost reporting periods beginning in FY 1992) and PPS–X (cost reporting periods beginning in FY 1993) cost reports, the July 1, 1995 update of the provider-specific file, and the March 1994 update of the intermediary audit file. The available data still lack certain items that were required for the determination of budget neutrality, including each hospital's projected new capital costs for each year, its projected old capital costs for each year, and the projected obligated capital amounts that will be put in use for patient care services and recognized as old capital each year.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective payment system, we excluded these hospitals from our model.

We then developed FY 1992, FY 1993, FY 1994, and FY 1995 hospital-specific rates using the provider-specific file, the intermediary audit file, and when available, cost reports. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We also ensured that the FY 1993 increase in the hospital-specific rate was at least 0.62 percent (the net FY 1993 update), that the FY 1994 hospital-specific rate was at least as large as the FY 1993 hospital-specific rate decreased by 2.16 percent (the net FY 1994 update), and that the FY 1995 increase in the hospital-specific rate was at least 0.05 percent (the net FY 1995 update). We were able to match hospitals to the files as shown in the following table.

Source	Number of hospitals
Provider-Specific File Only	97
Provider-Specific and Audit File	5109
Neither File	1
Total	5207

Seventy-one of these hospitals had unusable or missing data. We were able to backfill a hospital-specific rate for 61 of these hospitals from the cost reports as shown in the following table.

Source	Number of hospitals
PPS–V Cost Reports	3
PPS–VII Cost Reports	2
PPS–VIII Cost Reports	1
PPS–IX Cost Reports	9
PPS–X Cost Reports	21

Source	Number of hospitals
PPS–XI Cost Reports	25
Total	61

We did not have data for 10 hospitals, and had to eliminate them from the capital analysis. These hospitals likely are new hospitals or hospitals with very few Medicare admissions. This leaves us with 5197 hospitals and should not affect the precision of the required adjustment factors.

Next, we determined old and new capital amounts for FY 1992 using the PPS–IX cost reports as the first source of data. For FY 1993 we used PPS–IX and PPS–X cost reports as the first source of data, weighting each cost report by the number of days in FY 1993. We were able to match 5,125 PPS–IX cost reports and 5,090 PPS–X cost reports. In cases where cost reports could not be matched, we used the provider-specific file for old capital information. Even in cases where a cost report was available, the breakout of old and new capital was not always available. In these cases, we used the old capital amounts and new capital ratios from the provider-specific file. If these were missing, we derived the old capital amount from the hospital-specific rate.

Finally, we used the intermediary audit file to develop obligated capital amounts. Since the obligated amounts are aggregate projected amounts, we computed a Medicare capital cost per admission associated with these amounts. We adjusted the aggregate amounts by the following factors:

(1) Medicare inpatient share of capital. This was derived from cost reports and was limited to the Medicare share of total inpatient days. It was necessary to limit the Medicare share because of data integrity problems. Medicare share of inpatient days is a reasonably good proxy for allocating capital. However, it may be understated if Medicare utilization is high, and may be overstated because it does not reflect the outpatient share of capital.

(2) Capitalization factor. This factor allocates the aggregate amount of obligated capital to depreciation and interest amounts. Consistent with the assumptions in the capital input price index, we used a 25-year life for fixed capital and a 10-year life for movable capital, and an average projected interest rate of 6.7 percent. We also assumed that fixed capital acquisitions are about one-half of total capital. In conjunction with the useful life and interest rate assumptions, the resulting capitalized fixed capital is about one-half of total capitalization. This is consistent with the allocations between fixed and movable capital found on the cost reports. The ratio we developed is 0.137, which produces the first year capitalization based on the aggregate amount.

(3) A divisor of Medicare admissions to derive the capital per discharge amount. Since we must project capital amounts for each hospital, we continued to use a Monte Carlo simulation to develop these amounts. (This model is described in detail in the August 30, 1991 final rule (56 FR 43517).) The Monte Carlo simulation is now used only to project capital costs per discharge amounts for each hospital. We analyzed the distributions of capital increases, and noted a slightly negative correlation between the dollar level of capital cost per admission, and the rate of increase in capital. To determine the rate of increase in capital cost per admission, we multiplied the lesser of $3,000 or the capital cost per admission by .00006 and subtracted this result from 1.2. (Increases for capital levels over $3,000 were not influenced by the level of capital, so this part of the calculation was capped at $3,000.) We selected a random number from the normal distribution, multiplied it by 0.17 (the standard deviation) and added it to −0.04 (the mean) and then added 1 to create a multiplier. This random result was multiplied by the previous result to assign a rate of increase factor which was multiplied by the prior year's capital per discharge amount to develop a capital per discharge amount for the projected year.

To model a projected year, we used the old and new capital for the prior year multiplied by 0.96 (aging factor). The 0.96 aging factor is the average of changes in capital over its life. The aged new and old capital is subtracted from the projected capital described in the previous paragraph. The difference represents newly acquired capital. We assume that the hospital would accrue only a half year of costs for newly acquired capital in the year in which the capital comes on line. This is because, on average, new capital will come on line in the middle of the year. We make the same assumption for obligated capital. If the hospital has obligated capital, the lesser of one half of the adjusted costs (as described in the succeeding paragraph) for newly acquired capital or one half of the costs (for FY 1993, all of the costs) for obligated capital are deemed to apply to the current year. The full year's costs for new or obligated capital are assumed to apply for the following year. For FY 1994, one half of the costs for any outstanding obligated capital were deemed to apply to FY 1994; a full year's costs were deemed to apply to FY 1995. With the exception of certain hospitals about whom we have information to the contrary, we assume that hospitals would meet the expiration dates provided under the obligated capital provision. The on-line obligated amounts are added to old capital and subtracted from the newly acquired capital to yield residual newly acquired capital, which is then added to new capital. The residual newly acquired capital is never permitted to be less than zero.

Next, we computed the average total capital cost per discharge from the capital costs that were generated by the model and compared the results to total capital costs per discharge that we had projected independently of the model. We adjusted the newly acquired capital amounts proportionately, so that the total capital costs per discharge generated by the model match the independently projected capital costs per discharge.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital. If available, the model uses the payment methodology indicated in the PPS–IX cost reports or the provider-specific file. Otherwise, the model determines the methodology by comparing the hospital's FY 1992 hospital-specific rate to the adjusted Federal rate applicable to the hospital. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the FY 1994 MedPAR file using the FY 1996 DRG relative weights published in this rule. The case-mix index is increased each year after FY 1994 consistent with the continuing trend in case-mix increase.

We analyzed the case-mix increases for the recent past and found that case-mix increases have decelerated to about 1.53 percent in FY 1992, 0.80 percent in FY 1993, and 0.75 percent in FY 1994. It appears that the case-mix increase for FY 1995 will be around 1.4 percent. It is too early to determine if the FY 1995 increase is a one time event, or if it is the start of an accelerating trend. Because case-mix increases have been

decelerating, we expect future case-mix increases to be moderate. Therefore, in the model we have used a case-mix increase of 1.4 percent in FY 1995 and a projected case-mix increase of 0.8 percent in FY 1996. (Since we are using FY 1994 cases for our analysis, the FY 1994 increase in case mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 1886(g)(1)(A) of the Act requires that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. Consequently, the model reduces the unadjusted standard Federal rate by 7.4 percent effective in FY 1994. Since budget neutrality expires effective with FY 1996, this adjustment affects the Federal rate starting in FY 1996.

The change in the method of paying transfer cases affects total capital payments. We are making the effect of this change budget neutral. To determine the budget neutrality adjustment factor for transfers, we followed the methodology described in section VI.D of Appendix A to this proposed rule. We computed the transfer-adjusted number of discharges and case-mix under the current transfer policy, and the proposed transfer policy for each hospital. We multiplied the corresponding number of discharges and case-mix numbers for each hospital and added all hospitals together. The number computed under the current transfer policy divided by the number computed under the proposed transfer policy yielded the transfer adjustment factor of 0.9972. This adjustment factor is applied to both the hospital-specific rate and the Federal rate.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 1995, the budget neutrality adjustment factor was 1.0031. To determine the factor for FY 1996, we first determined the portion of the Federal rate that would be paid for each hospital in FY 1996 based on its applicable payment methodology. We then compared estimated aggregate Federal rate payments based on the FY 1995 DRG relative weights and FY 1995 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 1996 relative weights and the FY 1996 geographic adjustment factor. In making the comparison, we held the FY 1996 Federal rate portion constant and set the other budget neutrality adjustment factor and exceptions reduction factor to 1.00. We determined that to achieve budget neutrality for the changes in the geographic adjustment factor and DRG classifications and relative weights, an incremental budget neutrality adjustment of 0.9994 for FY 1996 should be applied to the previous cumulative FY 1995 adjustment of 1.0031 (the product of the FY 1993 incremental adjustment of 0.9980, the FY 1994 incremental adjustment of 1.0053, and the FY 1995 incremental adjustment of 0.9998), yielding a cumulative adjustment of 1.0025 through FY 1996.

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low income patients or the large urban add-on.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate estimated exceptions payments and the exceptions reduction factor. This exceptions reduction factor ensures that estimated aggregate payments under the capital prospective payment system, including exceptions payments, equal estimated aggregate payments under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for FY 1992, FY 1993, FY 1994, FY 1995, FY 1996, and the estimated factors that would be applicable through FY 2000. We caution that, except with respect to FY 1992, FY 1993, FY 1994, FY 1995 and FY 1996, these are estimates only, and are subject to revisions resulting from continued methodological refinements, more recent data, and any payment policy changes that may occur. In this regard, we note that in making these projections we have assumed that the cumulative DRG/GAF adjustment factor will remain at 1.0025 for FY 1996 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 1996.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	Federal rate (after outlier reduction)
1992	N/A	0.9813	0.9602	415.59
1993	6.07	.9756	.9162	[1] 417.29
1994	3.04	.9485	.8947	[2] 378.34
1995	3.44	.9734	.8432	[3] 376.83
1996	1.20	.9849	N/A	[4] 461.96
1997	1.70	.9822	N/A	468.53
1998	1.90	.9747	N/A	473.78
1999	1.90	.9608	N/A	475.90

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	Federal rate (after outlier reduction)
2000	1.90	.9406	N/A	474.75

[1] Note: Includes the DRG/GAF adjustment factor of 0.9980 and the change in the outlier adjustment from 0.9497 in FY 1992 to 0.9496 in FY 1993.

[2] Note: Includes the 7.4 percent reduction in the unadjusted standard Federal rate. Also includes the DRG/GAF adjustment factor of 1.0033 and the change in the outlier adjustment from 0.9496 in FY 1993 to 0.9454 in FY 1994.

[3] Note: Includes the DRG/GAF adjustment factor of 1.0031 and the change in the outlier adjustment from 0.9454 in FY 1994 to 0.9414 in FY 1995.

[4] Note: Includes the transfer adjustment of .9972. Also includes the DRG/GAF adjustment factor of 1.0025 and the change in the outlier adjustment from 0.9414 in FY 1995 to 0.9536 in FY 1996. Future adjustments are, for purposes of this projection, assumed to remain at the same level.

Appendix C—Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Social Security Act (the Act) address the setting of update factors for services furnished in FY 1996 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XI) of the Act sets the FY 1996 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 2.0 percentage points for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 1996 percentage increase to the hospital-specific rate applicable to sole community hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 2.0 percentage points. Section 1886(b)(3)(B)(ii) of the Act sets the FY 1996 percentage increase in the rate of increase limits for hospitals excluded from the prospective payment system equal to the rate of increase in the excluded hospital market basket minus the applicable reduction or, in the case of a hospital in a fiscal year for which the hospital's update adjustment percentage is at least 10 percent, the excluded hospital market basket percentage increase. Under section 1886(b)(3)(B)(v) of the Act, a hospital's update percentage increase for FY 1996 is the percentage increase by which the hospital's allowable operating costs of inpatient hospital services recognized under this title for the cost reporting period beginning in FY 1990 exceed the hospital's target amount for such cost reporting period, increased for each fiscal year (beginning with FY 1994) by the sum of any of the hospital's applicable reductions for previous years. The applicable reduction with respect to a hospital for FY 1996 is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for FY 1996.

In accordance with section 1886(d)(3)(A) of the Act, we are updating the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals excluded for the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the second quarter 1995 forecasted market basket increase of 3.5 percent for hospitals subject to the prospective payment system, the updates in the standardized amounts are 1.5 percent for hospitals in both large urban and other areas. The update in the hospital-specific rate applicable to sole community hospitals is 1.5 percent (that is, the market basket rate of increase of 3.5 percent minus 2.0 percentage points). The update for hospitals excluded from the prospective payment system is based on the percentage increase in the excluded hospital market basket (currently estimated at 3.4 percent) minus the applicable reduction factor. The applicable reduction factor is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage. Therefore, for excluded hospitals, the hospital-specific update can vary between 2.4 and 3.4 percent.

Sections 1886(e) (2)(A) and (3)(A) of the Act require that the Prospective Payment Assessment Commission (ProPAC) recommend to the Congress by March 1 of each year an update factor that takes into account changes in the market basket rate of increase index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we published the FY 1996 update factors recommended pursuant to section 1886(e)(4) of the Act as Appendix D of the June 2, 1995 proposed rule (60 FR 29380).

II. Secretary's Final Recommendations for Updating the Prospective Payment System Standardized Amounts

We received several public comments concerning our proposed recommendations. After consideration of the arguments presented, we have decided that our final recommendation will be the same as our proposed recommendation. That is, we are recommending that the standardized amounts be increased by an amount equal to the market basket rate of increase minus 2.0 percentage points for hospitals located in large urban and other areas. We are also recommending an update of the market basket rate of increase minus 2.0 percentage points to the hospital-specific rate for sole community hospitals. These figures are consistent with the President's budget recommendation.

In recommending these increases, we have followed section 1886(e)(4) of the Act, which requires that we take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC. We believe our analyses, which measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix, support our recommendations.

Comment: One commenter expressed concern with what appears to be a systematic bias in estimation of the market basket forecast. Because we have overestimated the market basket for several years, the commenter believes that our model is likely to be incorrect in its parameters or methodology and suggested that we continue to revise the model or change the underlying estimation methodology.

Response: We agree with the commenter that there has been a pattern of high forecasts over the past few years in the market basket estimation. We have been working with our contractor during the past year to thoroughly review the forecast equations for the hospital input price indexes. This review produced substantial improvements in both the forecast equations and the processes used to forecast. HCFA and its contractor will closely monitor the future forecasts for accuracy. In this final rule, we present input price indexes that are forecasted using the improved forecast equations.

Comment: We received one comment recommending an adjustment to the market basket for new technologies. The commenter stated that this adjustment would reflect the change in the use of new resources that may increase costs and productivity.

Response: The hospital market basket is an input price index that measures changes in the prices paid for a fixed set of goods and services. We do not believe an adjustment to the market basket for changes resulting from use of new technology is appropriate. Although we do not adjust the hospital market basket for new technology, the update framework accounts for the role of new technologies in two ways. First, we account for cost-increasing, quality-enhancing new technologies in the intensity component of our update recommendation (which is an add-on to the market basket rate of increase). Second, we account for cost-decreasing new technologies through a productivity adjustment. This adjustment allows for those technologies that permit hospitals to treat their patients at lower cost.

Comment: We received two comments strongly urging us to consider how hospital-specific wages and benefits are incorporated into the market basket. They suggest increasing the internal hospital wage and benefit shares to 50 percent.

Response: We responded to a similar comment in detail in the September 4, 1990 final rule (55 FR 36047), when the current hospital market basket was implemented. We prefer to use 100 percent economy-wide proxies for those occupations that are generally employed inside and outside hospitals, such as managers, administrators, clerical, and maintenance workers. We believe that the economy-wide rate of increase is the more appropriate measure for these types of employees, since that is the relevant labor market for these employees. In contrast, we use a 50/50 blend of hospital-industry proxies and economy-wide proxies for professional and technical workers. We believe this is appropriate because the group includes workers, such as registered nurses, that are not hired in large numbers in other sectors of the economy.

Comment: ProPAC's comment stated several concerns about the single intensity adjustment included in HCFA's update framework and believes that each element should be quantified separately.

Response: We continue to disagree with ProPAC that accounting separately for changes in within-DRG complexity, science and technology changes, and practice patterns would be more accurate. In view of the interactive nature of these elements, we believe it is difficult to measure accurately the effects of each element separately. Instead, we believe that it is more appropriate and accurate to account for all three elements in a single measure. Thus, our intensity measure is designed to encompass the net effect of all three changes. With regard to practice pattern changes, which are also reflected in our intensity adjustment, we do not adjust for changes that have not taken place.

Comment: ProPAC questioned HCFA's continued use of projected case-mix change in the update formula instead of actual case-mix change.

Response: Our update analysis takes into account changes in case mix adjusted for changes attributable to improved coding practices and DRG reclassification and recalibration. In the past, we used the observed increase in case mix for the most recent year available. For example, we based our FY 1994 update on the observed increase in case mix from FY 1992. Recent data on case-mix change demonstrates that the growth of case-mix severity has slowed.

The use of projected case mix allows us to take into account emerging trends in case mix more quickly. We note that ProPAC uses an estimate of the total case-mix index in the year prior to the update as part of its update framework. We have decided it is best to use our estimate of what case-mix change will be in the year of the update. This is consistent with the use of the forecasted value of change in the market basket over the coming year.

Comment: ProPAC believes it is inappropriate to adjust the prospective payment amounts separately for case-mix changes that HCFA attributes to reclassification or recalibration, either through changing the weights or the standardized amounts.

Response: We believe that it is appropriate to account for case-mix index changes attributed to reclassification or recalibration within the update framework. This adjustment is determined by comparing the average case weight for the actual cases in a given year based on the DRG relative weights for that year with the average case weight for the same cases based on the DRG relative weights for the previous year. Since the same cases are used on both sides of the comparison, the difference in case-mix index reflects the change in aggregate payments attributable solely to the new GROUPER and relative weights.

III. Secretary's Final Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals and Units

Our final recommendation will be that hospitals and hospital units excluded from the prospective payment system receive an update equal to the percentage increase in the market basket that measures input price increases for services furnished by excluded hospitals minus 1.0 percentage point. Thus, given the current estimate of the change in rate of increase in the market basket for excluded hospitals of 3.4 percent (compared with an earlier estimate of 3.6 percent used in the proposed rule), our final recommendation is for an update of 2.4 percent. We note that the updates for hospitals and units excluded from the prospective payment system as set in Public Law 103–66 is the market basket rate of increase minus 1.0 percentage point, adjusted to account for the relationship between the provider's allowable operating cost per case and its target amount.

We received the following comments concerning our proposed recommendation on the update factor for excluded hospitals and hospital units.

Comment: One commenter states that the Secretary provides no explicit framework to support her recommendation beyond what is included in current law. This commenter is concerned about forecasting errors that have resulted in updates that are too high and believes an explicit framework should be used in developing future recommendations. Another commenter recommends that we include an upward adjustment to the market basket rate of increase to account for new technology.

Response: The update for the prospective payment system for inpatient operating costs adjusts the market basket for a number of factors including case mix, productivity and intensity. Currently, in the absence of any adjustment for patient severity, there is no mechanism for determining case mix for excluded hospitals and units. Nevertheless, we will examine the feasibility of establishing a framework for an appropriate rate-of-increase limit for services paid on the basis of reasonable costs. Changes in some factors, such as new services or more resources, may be more appropriately accommodated through the exceptions process. As we study developing an update framework for excluded hospitals and units, we will consider an adjustment for technology, if its impact on hospital costs can be accurately measured.

With regard to forecasting errors, as discussed above, we have been working with our contractor to review and make improvements in hospital input price indices. This review has produced substantial improvements in forecast equations and procedures, and we have implemented these changes in developing the input price indices used in this final rule.

[FR Doc. 95–21541 Filed 8–31–95; 8:45 am]

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federal register

Friday
September 1, 1995

Part III

Environmental Protection Agency

40 CFR Parts 9 and 63

National Emission Standards for Hazardous Air Pollutants for Source Categories; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD-FRL-5273-9]

RIN 2060-AE02

National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: National emission standards for hazardous air pollutants (NESHAP) for aerospace manufacturing and rework facilities were proposed in the **Federal Register** on June 6, 1994. This **Federal Register** action announces the EPA's final decisions on the rule and promulgates the NESHAP for aerospace manufacturing and rework facilities. Aerospace manufacturing and rework operations emit many of the pollutants identified in the Clean Air Act (Act) list of 189 hazardous air pollutants (HAP). The intent of the standards is to protect public health by requiring existing and new major sources to control emissions to the level achievable by the maximum achievable control technology (MACT) consistent with section 112(d) of the Act.

The HAP listed in Section 112(b)(1) emitted by aerospace facilities that would be covered by this final rule include, chromium, cadmium, methylene chloride, toluene, xylene, methyl ethyl ketone, ethylene glycol and glycol ethers. This rule will reduce nationwide emissions of HAP from at least 2,869 major source aerospace manufacturing and rework facilities by approximately 112,600 Mg (123,700 tons).

DATES: This regulation is effective on September 1, 1995. The incorporation by reference of certain publications listed in the regulation is approved by the Office of the Federal Register as of September 1, 1995. See the **SUPPLEMENTARY INFORMATION** section concerning judicial review.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161, telephone (703) 487-4650. Please refer to "Hazardous Air Pollutant Emissions from Aerospace Manufacturing and Rework Operations—Background Information for Promulgated Standards" (EPA-453/R-94-036b). The BID contains: (1) a summary of all the public comments made on the proposed standards and the Administrator's responses to the comments, and (2) a summary of the changes made to the standards since proposal.

An electronic version of the promulgation BID as well as this preamble and final rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541-5742 for data transfer of up to a 14,400 bits per second (bps) modem. If more information on the TTN is needed, contact the systems operator at (919) 541-5384.

Docket. Docket No. A-92-20, containing supporting information used in developing the promulgated standards, is available for public inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, including all non-Government holidays, at the EPA's Air and Radiation Docket and Information Center (formerly known as the Air Docket), Waterside Mall, room M-1500, Ground Floor, 401 M Street, S.W., Washington, DC 20460; telephone (202) 260-7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general or technical information concerning the standards, contact Ms. Vickie Boothe, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-0164.

SUPPLEMENTARY INFORMATION: Under section 307(b)(1) of the Act, judicial review of NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements. The information presented in this preamble is organized as follows:

I. The Standards
II. Summary of Considerations in Developing the Rule
A. Purpose of Regulation
B. Summary of Impacts
III. Significant Changes to the Proposed Standards
A. Public Participation
B. Comments on the Proposed Standards
C. Significant Changes
IV. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Regulatory Flexibility Act
E. Regulatory Review
F. Unfunded Mandate Act

I. The Standards

National emission standards for hazardous air pollutants established under section 112 of the Act must

> reflect the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies . . . [section 112(d)(2)].

The promulgated standards include multiple alternatives to allow owners or operators maximum compliance flexibility. A summary of the final standards is contained in Table 1.

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES

Affected Source and Requirement	Description
Aerospace Facilities	
Applicability:	
General Information	This rule applies to facilities engaged in original equipment manufacture and/or rework of aerospace components and assemblies and that are major sources as defined in 40 CFR part 63. Specific operations are covered by the rule. (63.741)
Estimated Number of Facilities.	Over 2,800 facilities are expected to be affected by the rule. Applicable SIC codes include 3720, 3721, 3724, 3728, 3760, 3761, 3764, 3765, and 4581.

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected Source and Requirement	Description
Permit Requirements	Major sources required to obtain operating permit in State where facility is located according to procedures in 40 CFR part 70 and applicable State regulations. (63.741(d))
All Affected Sources	
Standards	1. Comply with §63.4 through §63.6 of the General Provisions of 40 CFR part 63, subpart A.[a] (63.743(a)) 2. Submit an operation and maintenance plan, except for new sources or filter systems operated per manufacturer's instructions. (63.743(b)) 3. Obtain approval to use control device not listed in this subpart. (63.743(c))
Compliance Dates	As provided for in the General Provisions, within 3 years after the effective date for existing sources and no later than the standards' effective date or upon startup, as appropriate, for new and reconstructed sources. (63.749(a))
Test Methods and Procedures.	See individual affected sources. Also, comply with §63.7 of the General Provisions. (63.750(o))
Monitoring Requirements	See individual affected sources. Also, generally same as in §63.8(f) and (g) of the General Provisions. (63.751(e) and (f))
Recordkeeping Requirements.	Comply with parts of §63.10 of the General Provisions. (63.752(a))
Reporting Requirements	1. See individual affected sources. Comply with parts of §63.9 and §63.10 of the General Provisions. Semiannual reports or annual if compliant. (63.753(a)(1) and (3)) 2. Operating permit application can be used for initial notification. (63.753(a)(2))
Cleaning Operations:	
Standards	Housekeeping measures for all cleaning operations at a facility subject to this subpart. Measures address placing solvent laden cloth or paper in closed containers, storing fresh and used cleaning solvent in closed containers, and minimizing spills during handling and transfer. (63.744(a))
Test Methods and Procedures.	See individual affected sources.
Monitoring Requirements	See individual affected sources.
Recordkeeping Requirements.	The name and vapor pressure of each cleaning solvent, and supporting documentation. (63.752(b)(1))
Hand-Wipe Cleaning Operations:	
Standards	1. Except for spray gun and flush cleaning, all HAP or VOC hand-wipe cleaning solvents must meet a composition requirement, have a vapor pressure less than 45 mm Hg at 20°C, or meet the requirements specified in an alternative compliance plan administered by the permitting authority and approved under Section 112(l) of the Clean Air Act. (63.744(b)) 2. List of cleaning operations exempt from composition and vapor pressure requirements. (63.744(e))
Test Methods and Procedures.	1. Composition determination through manufacturer's data. (63.750(a)) 2. Vapor pressure determination through readily available sources if single component; ASTM E 260-91 and composite vapor pressure determination procedure for multiple component solvents. (63.750(b))
Monitoring Requirements	None.
Recordkeeping Requirements.	1. If complying with composition requirements, name, data/calculations, and annual volumes. (63.752(b)(2)) 2. If complying with vapor pressure limit, the name, vapor pressure, data/calculations/test results, and monthly volumes. (63.752(b)(3)) 3. For noncompliant cleaning solvents used in exempt operations, monthly volumes by operation, and master list of processes. (63.752(b)(4))
Reporting Requirements	*Semiannual* 1. Noncompliant solvent usage. (63.753(b)(1)(ii)) 2. New solvents and vapor pressure or composition. (63.753(b)(1)(iii))
Hand-Wipe Cleaning Operations (cont.)Reporting Requirements (cont.) 3. Statement certifying everything is in compliance. (63.753(b)(2))	
Spray Gun Cleaning:	
Standards	1. Use one of four specified techniques or an equivalent. (63.744(c)) 2. For enclosed spray gun cleaners, repair as soon as practicable, but within 15 days. (63.744(c)(1)(ii))
Test Methods and Procedures.	None.
Monitoring Requirements	Visual inspection for leaks at least once per month. (63.751(a))
Recordkeeping Requirements.	Record all leaks, including source identification and dates leaks found and repaired. (63.752(b)(5))
Reporting Requirements	Semiannual 1. Noncompliant spray gun cleaning method used. (63.753(b)(1)(iii)) 2. Leaks of enclosed spray gun cleaners not repaired within 15 days of detection. (63.753(b)(1)(iv)) 3. Statement certifying everything is in compliance. (63.753(b)(1)(v))
Flush Cleaning:	
Standards	Operating procedures specify emptying into enclosed container, collection system, or equivalent. (63.744(d)) Flush Cleaning (cont.)
Test Methods and Procedures.	None.

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected Source and Requirement	Description
Monitoring Requirements	None.
Recordkeeping Requirements.	None.
Reporting Requirements	Semiannual Statement certifying everything is in compliance. (63.753(b)(2))
Primer and Topcoat Application Operations:	
Standards	Minimize spills during handling and transfer. (63.745(b)) Uncontrolled Primers 1. Organic HAP content limit: 350 g/l (2.9 lb/gal) (less water) as applied. (63.745(c)(1)) 2. VOC content limit: 350 g/l (2.9 lb/gal) (less water and exempt solvents) as applied. (63.745(c)(2)) 3. Achieve compliance through: (1) use coatings below content limits, or (2) use monthly volume-weighted averaging to meet content limits. (63.745(e)) *Uncontrolled Topcoats* 4. Organic HAP content limit: 420 g/l (3.5 lb/gal) (less water) as applied. (63.745(c)(3)) 5. VOC content limit: 420 g/l (3.5 lb/gal) (less water and exempt solvents). (63.745(c)(4))6. 6. Achieve compliance as in 3. above. (63.745(e)) *Controlled Primers and Topcoats* 7. If control system is used, must be designed to capture and control all emissions from the application operation and must achieve an overall control efficiency of at least 81%. (63.745(d)) *All Primers and Topcoats* 8. Specific application techniques must be used. If alternative is sought, can only be used if emissions are less than or equal to HVLP or electrostatic spray application techniques. (63.745(f)(1)) 9. All application equipment must be operated according to manufacturer's specifications, company procedures, or locally specified operating procedures. (63.745(f)(2)) 10. Exemptions from No. 8 above provided for in certain situations. (63.745(f)(3)) 11. Operating requirements for the application of primers or topcoats that contain inorganic HAP, including control with either particulate filters or waterwash, and shutdown if operated outside manufacturer's specified limits. (63.745(g)(1) through (3)) 12. Exemptions from No. 11 provided for certain application operations. (63.745(g)(4))
Performance Test Periods and Tests.	1. For "compliant" coatings: each 30-day period. For "averaged" coatings: each 30-day period. For "controlled" coatings, non-carbon adsorber: three 1-hour runs. For "controlled" coatings, carbon adsorber: each rolling period. (63.749(e)(1)) 2. Initial performance test for all control devices to demonstrate compliance with overall control efficiency requirement. (63.749(e)(2))
Test Methods and Procedures.	1. Organic HAP level determination procedures. (63.750(c) and (d)) 2. VOC level determination procedures. (63.750(e) and (f)) 3. Overall control efficiency of carbon adsorber system determined using provided procedures; for other control devices, determine capture efficiency and destruction efficiency. For capture efficiency, use Procedure T in Appendix B to 40 CFR 52.741 for total enclosures and 40 CFR 52.741(a)(4)(iii) procedures for all other enclosures. (63.750(g) and (h)) 4. For alternative application methods, first determine emission levels for initial 30-day period or five aircraft using only HVLP or electrostatic, or a time period specified by the permitting agency. Then use alternative application method for period of time necessary to coat equivalent amount of parts with same coatings. Alternative application method may be used when emissions generated during the test period are less than or equal to the emissions generated during the initial 30-day period or five aircraft. Dried film thickness must be within specification for initial 30-day period or five aircraft as demonstrated under actual production conditions. (63.750(i))
Monitoring Requirements	1. Temperature sensors with continuous recorders for incinerators, and install, calibrate, maintain, and operate temperature monitors according to manufacturer's specifications. Use CEMS as an alternative. (63.751(b)) 2. Continuously monitor pressure drop across filter or water flow rate through waterwash. (63.751(c))
Recordkeeping Requirements.	1. Name and VOC content for all primers and topcoats. If coating contains exempt solvents, calculate total HAP content. (63.752(c)(1)) 2. For "compliant" coatings, organic HAP and VOC contents as applied, data/calculations or Method 24 used to determine them, and monthly usage. (63.752(c)(2)) 3. For "low-HAP/VOC" primers, annual purchase records, and data/calculations or Method 24 used to determine H_i. (63.752(c)(3)) 4. For "averaged" coatings, monthly values of VOC content (H_a and G_a), and data/calculations or Method 24 used to calculate H_a and G_a. (63.752(c)(4)) 5. For "controlled" coatings (incinerator), overall control efficiency and incinerator temperature(s). (63.752(c)(5)) 6. For "controlled" coatings (carbon adsorber), overall control efficiency and length of rolling period and all supporting data/calculations. (63.752(c)(6)) 7. Pressure drop across filter or water flow rate through waterwash once per shift, and acceptable limits. (63.752(d) (1) through (3)) 8. For new sources with chromated coatings, documentation that filters meet multistage or HEPA requirements. (63.752(d)(4))
Reporting Requirements	Semiannual

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected Source and Requirement	Description
	1. All instances where organic HAP/VOC limits were exceeded. (63.753(c)(1)(i), (ii), and (viii)) 2. Control device exceedances (out-of-compliance). (63.753(c)(1)(iii), (iv), and (v)) 3. Periods when operation not immediately shut down due to pressure drop or water flow rate being outside limits. (63.753(c)(1)(vi)) 4. Statement certifying everything is in compliance. (63.753(c)(vii)) Annual 5. Number of times the pressure drop or water flow rate limits were exceeded. (63.753(c)(2))
Depainting Operations:	
Applicability	Applies to the outer surface of aerospace vehicles. Does not apply to parts or units normally removed. Fuselage, wings, and stabilizers always covered. Radomes, parts normally removed are exempt. (63.746(a))
Standards	1. Unless exempted, no organic HAP are to be emitted from chemical strippers or softeners. (63.746(b)(1)) 2. Minimize inorganic HAP emissions during periods of non-chemical based equipment malfunction. (63.746(b)(2)) 3. Use of organic HAP-containing strippers for spot stripping and decal removal limited to 26 gallons per aircraft per year for commercial aircraft and 50 gallons per aircraft per year for military aircraft. (63.746(b)(3)) 4. Operating requirements for depainting operations generating airborne inorganic HAP, including control with particulate filters or waterwash systems. Mechanical and hand sanding are exempt. (63.746(b)(4) and (b)(5)) 5. Non-exempt organic HAP emissions controlled at 81% efficiency for systems installed before effective date. For newer systems, control at 95%. (63.746(c))
Performance Test Periods and Tests.	1. For demonstrating no organic HAP emissions: each 24-hour period. (63.749(g)(1)) 2. For spot stripping and decal removal usage limits: each calendar year. (63.749(g)(1)) 3. Initial performance test for all control devices to demonstrate compliance with overall control efficiency requirement. (63.749 (g)(1), (g)(2), and (g)(3))
Test Methods and Procedures.	1. Procedures provided for determining gallons of HAP-containing stripper used for aircraft. (63.750(j))
....	2. Overall control efficiency of carbon adsorber system determined using specified procedures; for other control devices, determine capture efficiency and destruction efficiency. For capture efficiency, use Procedure T in Appendix B to 40 CFR 52.741 for total enclosures and 40 CFR 52.741(a)(4)(iii) procedures for all other enclosures. (63.750 (g) and (h))
Monitoring Requirements	Continuously monitor pressure drop across filter or water flow rate through waterwash. (63.751(d))
Recordkeeping Requirements.	1. Name and monthly volume of all organic HAP-containing chemical strippers. (63.752(e)(1)) 2. For controlled chemical strippers (carbon adsorber), overall control efficiency and length of rolling period and all supporting data/calculations. (63.752(e)(2)) 3. For controlled chemical strippers (other control devices), overall control efficiency and supporting documentation. (63.752(e)(3)) 4. List of parts/assemblies normally removed. (63.752(e)(4))
Recordkeeping Requirements.	5. For non-chemical based equipment, name and type, and malfunction information including dates, description, and alternative methods used. (63.752(e)(5)) 6. For spot stripping and decal removal, annual volume used, annual average volume per aircraft, and all data/calculations used to calculate volume per aircraft. (63.752(e)(6)) 7. Pressure drop across filter or water flow rate through waterwash once per shift and acceptable limits. (63.752(e)(7))
Reporting Requirements	Semiannual 1. 24-hour periods where organic HAP were emitted from depainting operations in violation of rule. (63.753(d)(1)(i)) 2. New and reformulated chemical strippers and HAP contents. (63.753(d)(1)(ii), (iii), and (iv)) 3. New non-chemical based depainting techniques. (63.753(d)(1)(v)) 4. Malfunction information on non-chemical based techniques including da.es, description, and alternative methods used. (63.753(d)(1)(vi)) 5. Periods when operation not immediately shut down due to pressure drop or water flow rate being outside limits. (63.753(d)(1)(vii)) 6. List of new/discontinued aircraft models and, for new models, list of parts normally removed for depainting. (63.753(d)(1)(viii)) 7. Organic HAP control device exceedances. (63.753(d)(3)) 8. Statement certifying everything is in compliance. (63.753(d)(2)(ii)) Annual 9. Exceedances of average annual volume limits for spot stripping and decal removal. (63.753(d)(2)(i)) 10. Number of times the pressure drop or water flow rate limits were exceeded. (63.753(d)(2)(iii))
Chemical Milling Maskant Application Operations:	
Applicability	Applies only to operations using Type II chemical milling etchants. (63.747(a))
Standards	Minimize spills during handling and transfer. (63.747(b)) Uncontrolled Maskants

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected Source and Requirement	Description
	1. Organic HAP emissions: ≤ 160 g/l (1.3 lb/gal) (less water) as applied. (63.747(c)(1)) 2. VOC emissions: ≤ 160 g/l (1.3 lb/gal) (less water and exempt solvents) as applied. (63.747(c)(2)) 3. Achieve compliance through: (1) use maskants below content limits, or (2) use monthly volume-weighted averaging to meet content limits. (63.747(e)) Controlled Maskants 4. If control device is used, system must be designed to capture and control all emissions from maskant operation and must achieve an overall control efficiency of at least 81% for systems installed before effective date. For new systems, control at 95%. (63.747(d))
Performance Test Periods and Tests.	1. For compliant maskants: each 30-day period. For averaged maskants: each 30-day period. For controlled coatings, carbon adsorber: each rolling period. For controlled coatings, non-carbon adsorber: three 1-hour runs. (63.749(i)(1)) 2. Initial performance test required for all control devices to demonstrate compliance with overall control efficiency requirement. (63.749 (i)(2) and (i)(3))
Test Methods and Procedures.	Procedures provided essentially identical to those for primers and topcoats for organic HAP and VOC content levels. (63.750 (g), (h), and (k)–(n))
Monitoring Requirements	Same as for primers and topcoats if incinerators are used. (63.751(b))
Recordkeeping Requirements.	Same as for primers and topcoats. (63.752(f))
Reporting Requirements	*Semiannual* 1. Exceedances of organic HAP/VOC limits. (63.753(e)(1), (2) and (7)) 2. Control device exceedances (out of compliance). (63.753(e)(3)) 3. New maskants. (63.753(e)(4)) 4. New control devices. (63.753(e)(5)) 5. Everything is in compliance. (63.753(e)(6))
Waste Handling and Storage Operations:	
Standards	Minimize spills during handling and transfer. (63.748)
Test Methods and Procedures.	None.
Monitoring Requirements	None.
Recordkeeping Requirements.	None.
Reporting Requirements	None.

[a] The EPA promulgated regulations for subpart A of 40 CFR part 63, which were published in the **Federal Register** on March 16, 1994 at 59 FR 12408.

Section 114(a)(3) of the Act requires enhanced monitoring and compliance certifications of all major stationary sources. The annual compliance certifications certify whether compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emission limitation or standard with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness to determine if compliance is continuous during a reporting period. The monitoring in this regulation satisfies the requirements of enhanced monitoring.

Owners or operators of all commercial, civil, or military aerospace original equipment manufacturing (OEM) and rework operations with an initial startup date before September 1, 1998 that are subject to the emission standards are required to achieve compliance with the control requirements of the standards within 3 years from September 1, 1995. Owners or operators of new commercial, civil, or military aerospace OEM and rework operations with initial startup after September 1, 1998 will be required to comply with all requirements upon startup.

II. Summary of Considerations in Developing the Rule

A. Purpose of Regulation

The Act was developed, in part,

> to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population [the Act, section 101(b)(1)].

Aerospace facilities are major sources of HAP emissions. The HAP listed in Section 112(b)(1) emitted by aerospace facilities that would be covered by this final rule include, chromium, cadmium, methylene chloride, toluene, xylene, methyl ethyl ketone, ethylene glycol and glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The range of adverse health effects include cancer and a number of other chronic health disorders (e.g., aplastic anemia, pancytopenia, pernicious anemia, pulmonary (lung) structural changes) and a number of acute health disorders (e.g., dyspnea (difficulty in breathing) upper respiratory tract irritation with cough, conjunctivitis, neurotoxic effects (e.g., visual blurring, tremors, delirium, unconsciousness, coma, convulsions). These adverse health effects are associated with a wide range of ambient concentrations and exposure times and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status (e.g., the presence of pre-existing disease) and lifestyle.

B. Summary of Impacts

These standards will reduce nationwide emissions of HAP from at least 2,869 major source aerospace manufacturing and rework facilities by approximately 112,600 Mg (123,700 tons), or 59 percent, in 1998 compared to the emissions that would occur in the absence of the standards. No significant adverse secondary air, water, solid waste, or energy impacts are anticipated from the promulgation of these standards.

Capital costs will be incurred due to implementation of the required control measures. The EPA performed a capital equipment cost analysis based on a 15-year equipment life and a 7 percent annual interest rate, and calculated annualized capital costs for equipment expenditures. It is estimated that implementation of this regulation will result in nationwide annual operating and equipment costs for existing aerospace manufacturing and rework facilities of $15.3 million for control of hand-wipe and flush cleaning, $164 million for solvent-based chemical milling maskants controlled by a carbon adsorber, $146 million for water-reducible chemical milling maskants, $622 million for depainting with dry media blasting (or a net savings of $38.8 million if all affected sources use chemical strippers that contain no organic HAP), $2.3 million for control of inorganic HAP emissions from primer and topcoat spray application, and $7.8 million for control of inorganic HAP emissions from blast depainting operations.

Total nationwide annual costs, depending on the specific mix of control options chosen, are estimated to range from a net savings of $49.2 million per year to a net cost of $660 million per year. The higher cost figure shown reflects a scenario in which all affected sources use blast depainting methods rather than chemical strippers that contain no organic HAP. However, due to the high capital cost of blast depainting equipment, very few facilities are expected to use this option other than those that already own the equipment. Therefore, the EPA anticipates the total annual cost of the final rule to be approximately $21 million.

III. Significant Changes to the Proposed Standards

A. Public Participation

Throughout the rulemaking process, the EPA sought and received information and views from a broad representation of the public on all aspects of the regulation. On May 4 and 5, July 20 and 21, and October 5 and 6, 1993, and March 7 and 8, 1995, public meetings were held to discuss results of the Agency's analysis of control options and associated impacts.

The standards were proposed and the preamble was published in the **Federal Register** on June 6, 1994 (59 FR 29216). The preamble to the proposed standards discussed the availability of the regulatory text and proposal BID, which described the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the regulatory text and BID were distributed to interested parties. Electronic versions of the preamble, regulation, and BID were made available to interested parties via the EPA's TTN (see ADDRESSES section of this preamble).

To provide interested persons the opportunity for oral presentation of data, views, and arguments concerning the proposed standards, a public hearing was offered at proposal. A public hearing was requested and was held August 15, 1994. Eleven industry sources presented comments at the hearing. The public comment period extended from June 6, 1994 to September 15, 1994.

In addition to the original proposal, the EPA also requested supplemental information and comment in a **Federal Register** notice on November 22, 1994 (59 FR 60101). The issues on which additional information was solicited included the level of control for chemical depainting operations, applicability to general aviation facilities, VOC and HAP content of exterior primers for commercial aircraft, the rolling material balance period for proposed EPA Method 309, regulation of chemical milling maskants used with Type I etchants, use of HEPA filters to control inorganic HAP emissions from primer and topcoat application operations, and reduced recordkeeping requirements for facilities using a 2.1 lb/gal or lower organic HAP content primer.

B. Comments on the Proposed Standards

Comments on the proposed standards and the November 22, 1994 notice were received from 57 commenters composed mainly of States, environmental groups, control device vendors, industry, and trade associations. Most of the 80 comment letters contained multiple comments. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID served as the basis for the revisions that have been made to the standards between proposal and promulgation. The comments have been divided into the following areas:

(1) Clarification of and additions to rule applicability and exemptions.

(2) Identification of the specialty coatings that are exempt from the rule.

(3) Exemption of non-HAP, non-VOC cleaning solvents from the rule requirements.

(4) Addition of organic HAP and VOC limitations for self-priming topcoats.

(5) Addition of a low-usage exemption for non-compliant primers, topcoats, and chemical milling maskants.

(6) Acceptable primer/topcoat application techniques.

(7) New source MACT for inorganic HAP control for application of chromium-containing coatings.

(8) Operating procedures for coating application equipment and inorganic HAP control systems.

(9) Monitoring requirements for organic or inorganic HAP control systems.

(10) Addition of organic HAP emission control requirements for HAP-containing chemical strippers used in depainting operations.

(11) Deletion of 99 percent control requirement and EPA Method 5 test requirement for non-chemical based depainting operations.

(12) Deletion of waste storage provision for non-RCRA HAP-containing waste because it was a duplication of RCRA requirements.

(13) Reduction in recordkeeping for exempt cleaning solvent usage from daily to monthly.

C. Significant Changes

Several changes have been made to these standards since the time they were proposed to the public. The majority of the changes have been made to clarify portions of the rule that were unclear to the commenters. Other changes to the rule were made after reviewing the data and arguments submitted by commenters. A summary of the major changes is presented below.

(1) To clarify the coverage of the NESHAP and to respond to comments requesting additional exemptions for specialized operations, several changes have been made to the rule. While major HAP sources containing any degree of aerospace activity are still covered, § 63.741 now explicitly states that only aerospace operations at these facilities are covered. This section also now clarifies that vehicles designed to operate outside the limit of the earth's atmosphere will not be covered. Further, only parts and assemblies of aerospace vehicles that are critical to structural integrity or flight performance are regulated. (This excludes non-flight items such as tray tables, etc.) Additional items and processes exempted from the final rule include aircraft transparencies, electronic parts and assemblies, research and development activities as identified in

Section 112(c)(7), and wastewater treatment operations. These items were exempted because they are currently regulated under an existing EPA regulation or will be covered in a separate NESHAP.

Comments were received requesting that cleaning solvents containing no HAP or VOC be exempted from the housekeeping and composition requirements of the standard for cleaning operations. The EPA agrees that these formulations should not be covered and has exempted them from the rule.

The inorganic HAP control requirements will not be applicable to the painting of non-operational vehicles and components meant for display purposes. Additional exemptions will be granted for the painting of specific parts that the permitting authority (through a 40 CFR part 70 permit) has determined cannot be painted in a spray booth. The EPA has deleted the proposed exemption cutoff of 4 ft^2/vehicle for touch-up painting and spot stripping with chemical based paint removers, due to the difficulty of determining the exact surface areas processed on vehicles within a facility. In lieu of the exemption, a more specific definition of touch-up and repair painting has been adopted such that these operations will be easily identifiable.

Hand and mechanical sanding depainting operations have been specifically deleted from the inorganic HAP control requirements for non-chemical depainting.

For chemical milling maskant operations, the rule will continue to cover only those maskants used in Type II etchants (Type I operations exempted). The data and information received indicate that compliant maskants are not suitable for use in the Type I etchants. Touch-up maskants are also now excluded from coverage by the rule. The control techniques guideline (CTG) for aerospace operations will address all exempted maskants.

(2) Several commenters requested that the EPA clarify which specialty coatings would be exempt from the NESHAP requirements, and also asked that definitions be provided in the final rule. The EPA has added Appendix B to the rule, which includes definitions for the principal specialty coatings that have been identified. The aerospace control techniques guideline (CTG) under development by the EPA will contain recommended VOC content limits for these coatings.

(3) The housekeeping, composition, and vapor pressure requirements of the cleaning operations standard will now not apply to cleaning solvents that do not contain any HAP or VOC. This change will clarify that non-polluting cleaners, such as plain water, will not be subject to these requirements.

(4) Self-priming topcoats have been added as a distinct subcategory of topcoats with their own HAP and VOC content limits (which are the same as for general topcoats). Commenters were concerned that the technology for these coatings could proceed at a different rate than for other topcoats, necessitating that different limits be set for the two classes of topcoats.

(5) The EPA has added a low-usage exemption to § 63.741 for non-compliant primers, topcoats, and maskants. This is expected to relieve the burden on facilities that have small usage requirements for certain non-compliant coatings that are not already exempted as "specialty coatings." This exemption allows an annual use of up to 189 l (50 gal) per separate formulation, with a combined facility cap of 757 l (200 gal) per year.

(6) Electrodeposition dip coating, a high transfer efficiency coating process, has been added to the list of acceptable application techniques in § 63.745. Additional techniques now deemed acceptable due to the difficulty of control and to their very small emissions are cotton-tipped swab application, certain airbrush applications, and use of hand-held spray (aerosol) cans.

(7) Data available on advanced filtration techniques indicate that the new source MACT control level for application of chromium-containing coatings consists of either a 3-stage filter system, high efficiency particulate air (HEPA) filters, or approved equivalent control. These control technologies will be required for spray application of chromium-containing coatings at new facilities.

(8) The proposal contained a requirement to operate coating application equipment and inorganic HAP control equipment (dry filters and waterwash systems) according to the manufacturer's specifications. To respond to comments that many manufacturers' instructions are not complete, the EPA has revised these provisions to also allow use of either the facility's own procedures or local specified operating procedures. Dry filter systems will be exempt from the requirement for a startup, shutdown, and malfunction plan. Any painting equipment modified by the facility must maintain a transfer efficiency equivalent to HVLP and electrostatic spray equipment.

(9) The proposed monitoring requirement for incinerators in § 63.751 has been revised in response to comments to allow the alternative of a CEMS in addition to the proposed requirement for a temperature monitor. The requirement to monitor the pressure drop across waterwash particulate control systems has been deleted because this would not provide an indication of performance. Instead, a means of continuously monitoring the water flow rate must be installed on the system and operated during paint application or removal operations. Once per operating shift, the operator must record the flow rate and perform a visual check of the continuity and flow characteristics of the water curtain, and then shut down the operation immediately if problems are noted and take corrective action before restarting the operation. Alternative monitoring methods may be approved if the source is infrequently operated or the alternative provides a sufficiently accurate indication of performance.

(10) A provision has been added to the final rule that allows the use of chemical strippers containing HAP when the emissions are reduced by the use of a control system (such as a carbon adsorber). Control systems installed before September 1, 1995 will be required to reduce HAP and VOC emissions by 81 percent or greater. Systems installed on or after this date must achieve a control efficiency of 95 percent or greater. These percentage reductions take into account capture and destruction or removal efficiencies, as well as the volume of chemical stripper used (i.e., a reduction in stripper usage from baseline levels will be counted as a credit in determining the effective control efficiency of the control system).

(11) The proposal contained a 99 percent particulate control requirement for dry filter systems used to control inorganic HAP emissions from depainting. Several commenters took issue with the basis for this requirement. The proposal to use EPA Method 5 to verify compliance with the requirement was also disputed on the basis that the effluent grain loading from these filter systems cannot be measured. The EPA agrees with these arguments and has deleted both the 99 percent requirement and the use of Method 5. Work practice standards have been substituted for these requirements which include maintaining the system in good working order, installing a differential pressure gauge across the filter media, and replacing the media when the pressure drop is outside of the manufacturer's recommended limits.

(12) In response to numerous comments that the proposed requirement to store all HAP-containing waste in closed containers was duplicative in light of existing RCRA requirements, the EPA has deleted this provision. However, the "housekeeping" provision requiring handling of waste so as to minimize spills has been retained in § 63.748.

(13) In response to comments, the records pertaining to non-compliant cleaning solvents used in the specified exempt cleaning operations now need not list the parts and assemblies cleaned, but only the exempt processes where these solvents were used.

Three additional issues are being addressed in a supplemental rulemaking. They include an expanded emissions averaging scheme that would encompass topcoats, primers and maskants; inorganic particulate controls; and emission limitations for certain maskants which were originally exempt from the proposed NESHAP. Additionally, EPA is working with the South Coast Air Quality Management District (SCAQMD) and Region IX to ensure that this regulation does not interfere with SCAQMD's volatile organic compound trading program. Any revisions to Aerospace NESHAP that may be required to mesh the regulation with the trading program will also be included in the supplemental rulemaking. The proposal for the supplemental notice should appear in the **Federal Register** no later than November, 1995.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all of the information submitted to or otherwise considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A) of the Act].

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control number (2060–0341). An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1687.02) to reflect the changed information requirements of the final rule.

This collection of information has an estimated reporting burden per affected facility of about 73 hours for the first year. In subsequent years, the burden will be approximately 55 hours per affected facility. These burden estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Director, Regulatory Information Division; U.S. Environmental Protection Agency (Mail code 2136); 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the EPA is required to determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" within the meaning of the Executive Order.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of regulations on small business "entities." If a preliminary analysis indicates that a regulation would have a significant economic impact on 20 percent or more of small entities, a regulatory flexibility analysis must be prepared. Since the final rule applies only to major sources as defined in section 112(a) of the Act, the EPA certifies that there will not be a significant impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required and has not been prepared.

E. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the Act, this regulation will be reviewed within 8 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods of control, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

F. Unfunded Mandate Act

The economic impact analysis performed prior to proposal showed that the economic impacts from implementation of the proposed standards would not be "significant" as defined in Executive Order 12866 (see Section IV.C). No changes have been made to the proposed rule that would increase the economic impacts to a level that would be considered significant.

This final rule is estimated to result in a total cost of $21 million per year, however, expenditures by State, local, and tribal governments or the private sector are estimated at more than $100 million in any one year. The lower costs are the result of the savings incurred by the pollution prevention measures used as the basis for the rule.

The Agency has prepared the following statement of impact to be considered in response to the requirements of the Unfunded Mandates Act.

There are no federal funds available to assist State, local, and tribal governments in meeting these costs. There are important benefits from VOC and HAP emission reductions because these compounds have significant, adverse impacts on human health and welfare and on the environment. The rule does not have any disproportionate budgetary effects on any particular region of the nation, any State, local, or tribal government, or urban or rural or other type of community. On the contrary, the rule will result in only a minimal increase in the average product rates (less than 1 percent). Moreover, the rule will not have a material effect on the national economy.

Prior to issuing this rule, the EPA provided numerous opportunities (e.g. public comment period; public hearing; Roundtable meetings with industry, trade associations, state and local air pollution representatives; environmental groups; State, local, and tribal governments; and concerned citizens) for consultation with interested parties. In general, State and local environmental agencies advocated that EPA adopt more stringent environmental controls. The Agency evaluated the comments and concerns, and the final rule reflects, to the extent consistent with section 112 of the Act, those comments and concerns. While small governments are not significantly or uniquely affected by the rule, these procedures, as well as additional public conferences and meetings, gave small governments an opportunity to give meaningful and timely input and obtain information, education, and advice on compliance.

The Agency considered several regulatory options in developing the rule. The options selected in the final rule are the least costly and least burdensome alternatives currently available for achieving the objectives of section 112 of the Act. The cost effectiveness for this regulation is $170 per ton and all but one of the regulatory options selected are based on pollution prevention measures. Finally, after careful consideration of the costs, the environmental impacts and the comments, the Agency decided that the MACT floor was the appropriate level of control for this regulation.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: July 31, 1995.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, parts 9 and 63 of title 40, chapter I, of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	* *
National Emission Standards for Hazardous Air Pollutants for Source Categories.	
* * * * *	* *
63.752–63.753	2060–0341
* * * * *	* *

PART 63—[AMENDED]

3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

4. Part 63 is amended by adding a new subpart GG consisting of §§ 63.740 through 63.759 to read as follows:

Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities

Sec.

63.741 Applicability and designation of affected sources.
63.742 Definitions.
63.743 Standards: General.
63.744 Standards: Cleaning operations.
63.745 Standards: Primer and topcoat application operations.
63.746 Standards: Depainting operations.
63.747 Standards: Chemical milling maskant application operations.
63.748 Standards: Handling and storage of waste.
63.749 Compliance dates and determinations.
63.750 Test methods and procedures.
63.751 Monitoring requirements.
63.752 Recordkeeping requirements.
63.753 Reporting requirements.
63.754–63.759 Reserved.

SUBPART GG—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES

§ 63.741 Applicability and designation of affected sources.

(a) This subpart applies to facilities that are engaged, either in part or in whole, in the manufacture or rework of commercial, civil, or military aerospace vehicles or components and that are major sources as defined in § 63.2.

(b) The owner or operator of an affected source shall comply with the requirements of this subpart and of subpart A of this part, except as specified in § 63.743(a).

(c) *Affected sources.* The affected sources to which the provisions of this subpart apply are specified in § 63.741(c)(1) through (6). The activities subject to this subpart are limited to the manufacture or rework of aerospace vehicles or components as defined in this subpart, except for requirements pertaining to cleaning solvents. Paragraphs (c)(2) through (c)(6) of this section are not applicable to non-aerospace activities.

(1) Each cleaning operation as follows:

(i) All hand-wipe cleaning operations constitute an affected source.

(ii) Each spray gun cleaning operation constitutes an affected source.

(iii) All flush cleaning operations constitute an affected source.

(2) Each primer application operation, which is the total of all primer applications at the facility.

(3) Each topcoat application operation, which is the total of all topcoat applications at the facility.

(4) Each depainting operation, which is the total of all depainting at the facility.

(5) Each chemical milling maskant application operation, which is the total of all chemical milling maskant applications at the facility.

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(6) Each waste storage and handling operation, which is the total of all waste handling and storage at the facility.

(d) An owner or operator of an affected source subject to this subpart shall obtain an operating permit from the permitting authority in the State in which the source is located. The owner or operator shall apply for and obtain such permit in accordance with the regulations contained in part 70 of this chapter and in applicable State regulations.

(e) All wastes that are determined to be hazardous wastes under the Resource Conservation and Recovery Act of 1976 (PL 94–580) (RCRA) as implemented by 40 CFR parts 260 and 261, and that are subject to RCRA requirements as implemented in 40 CFR parts 262 through 268, are exempt from the requirements of this subpart.

(f) This subpart does not contain control requirements for use of specialty coatings, adhesives, adhesive bonding primers, or sealants at aerospace facilities. It also does not regulate research and development, quality control, and laboratory testing activities, chemical milling, metal finishing, electrodeposition (except for electrodeposition of paints), composites processing (except for cleaning and coating of composite parts or components that become part of an aerospace vehicle or component as well as composite tooling that comes in contact with such composite parts or components prior to cure), electronic parts and assemblies (except for cleaning and topcoating of completed assemblies), manufacture of aircraft transparencies, and wastewater operations at aerospace facilities. These requirements also do not apply to parts and assemblies not critical to the vehicle's structural integrity or flight performance or to vehicles that are designed to travel beyond the limit of the earth's atmosphere. The requirements of this subpart also do not apply to primers, topcoats, chemical milling maskants, strippers, and cleaning solvents containing HAP or VOC at a concentration less than 0.1% for carcinogens or 1.0% for noncarcinogens, as determined from manufacturer's representations. Additional specific exemptions from regulatory coverage are set forth in § 63.741(e), .744(a)(1), (b), (e), .745(a), (f)(3), (g)(4), .746(a), (b)(5), .747(c)(3), and .749(d).

(g) The requirements for primers, topcoats, and chemical milling maskants in § 63.745 and § 63.747 do not apply to the use of low-volume coatings in these categories for which the annual total of each separate formulation used at a facility does not exceed 189 l (50 gal), and the combined annual total of all such primers, topcoats, and chemical milling maskants used at a facility does not exceed 757 l (200 gal). Primers and topcoats exempted under paragraph (f) of this section and under § 63.745(f)(3) and (g)(4) are not included in the 50 and 200 gal limits. Chemical milling maskants exempted under § 63.747(c)(3) are also not included in these limits.

§ 63.742 Definitions.

Terms used in this subpart are defined in the Act, in subpart A of this part, or in this section as follows:

Aerospace facility means any facility that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

Aerospace vehicle or component means any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles.

Aircraft fluid systems means those systems that handle hydraulic fluids, fuel, cooling fluids, or oils.

Aircraft transparency means the aircraft windshield, which is typically constructed of laminated layers of glass and other transparent materials.

Carbon adsorber means one vessel in a series of vessels in a carbon adsorption system that contains carbon and is used to remove gaseous pollutants from a gaseous emission source.

Carbon Adsorber control efficiency means the total efficiency of the control system, determined by the product of the capture efficiency and the control device efficiency.

Chemical milling maskant means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type II etchant. This does not include maskants used with Type I etchants, bonding maskants, line sealers, and critical use and seal coat maskants. Additionally, maskants that must be used on an individual part or subassembly with a combination of Type II etchants and any of the above types of maskants (e.g. Type I compatible, bonding, line sealers, and critical use and seal coat) are also exempt from this subpart.

Chemical milling maskant application operation means application of chemical milling maskant for use in Type II chemical milling etchants.

Cleaning operation means collectively spray gun, hand-wipe, and flush cleaning operations.

Cleaning solvent means a liquid material used for hand-wipe, spray gun, or flush cleaning. This definition does not include solutions that contain no HAP or VOC.

Coating means a material that is applied to the surface of an aerospace vehicle or component to form a decorative or functional solid film, or the solid film itself.

Coating operation means the use of a spray booth, tank, or other enclosure or any area, such as a hangar, for the application of a single type of coating (e.g., primer); the use of the same spray booth for the application of another type of coating (e.g., topcoat) constitutes a separate coating operation for which compliance determinations are performed separately.

Coating unit means a series of one or more coating applicators and any associated drying area and/or oven wherein a coating is applied, dried, and/or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating. It is not necessary to have an oven or flashoff area in order to be included in this definition.

Confined space means a space that: (1) Is large enough and so configured that an employee can bodily enter and perform assigned work; (2) has limited or restricted means for entry or exit (for example, fuel tanks, fuel vessels, and other spaces that have limited means of entry); and (3) is not suitable for continuous employee occupancy.

Control device means destruction and/or recovery equipment used to destroy or recover HAP or VOC emissions generated by a regulated operation.

Control system means a combination of pollutant capture system(s) and control device(s) used to reduce discharge to the atmosphere of HAP or VOC emissions generated by a regulated operation.

Depainting means the removal of a permanent coating from the outer surface of an aerospace vehicle or component, whether by chemical or non-chemical means. For non-chemical means, this definition excludes hand and mechanical sanding, and any other non-chemical removal processes that do not involve blast media or other mechanisms that would result in airborne particle movement at high velocity.

Depainting operation means the use of a chemical agent, media blasting, or any other technique to remove permanent coatings from the outer surface of an aerospace vehicle or components. The depainting operation includes washing of the aerospace vehicle or component to remove residual stripper, media, or coating residue.

Electrodeposition of paint means the application of a coating using a water-based electrochemical bath process. The component being coated is immersed in a bath of the coating. An electric potential is applied between the component and an oppositely charged electrode hanging in the bath. The electric potential causes the ionized coating to be electrically attracted, migrated, and deposited on the component being coated.

Electrostatic spray means a method of applying a spray coating in which an electrical charge is applied to the coating and the substrate is grounded. The coating is attracted to the substrate by the electrostatic potential between them.

Exempt solvent means specified organic compounds that have been determined by the EPA to have negligible photochemical reactivity and are listed in 40 CFR 51.100.

Flush cleaning means the removal of contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component or coating equipment by passing solvent over, into, or through the item being cleaned. The solvent may simply be poured into the item being cleaned and then drained, or be assisted by air or hydraulic pressure, or by pumping. Hand-wipe cleaning operations where wiping, scrubbing, mopping, or other hand action are used are not included.

Hand-wipe cleaning operation means the removal of contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component by physically rubbing it with a material such as a rag, paper, or cotton swab that has been moistened with a cleaning solvent.

Hazardous air pollutant (HAP) means any air pollutant listed in or pursuant to section 112(b) of the Act.

High efficiency particulate air (HEPA) filter means a filter that has a 99.97 percent reduction efficiency for 0.3 micron aerosol.

High volume low pressure (HVLP) spray equipment means spray equipment that is used to apply coating by means of a spray gun that operates at 10.0 psig or less at the air cap and a fluid delivery pressure of 100 psig or less.

Inorganic hazardous air pollutant (HAP) means any HAP that is not organic.

Leak means any visible leakage, including misting and clouding.

Limited access space means internal surfaces or passages of an aerospace vehicle or component that cannot be reached without the aid of an airbrush or a spray gun extension for the application of coatings.

Mechanical sanding means aerospace vehicle or component surface conditioning which uses directional and random orbital abrasive tools and aluminum oxide or nylon abrasive pads for the purpose of corrosion rework, substrate repair, prepaint surface preparation, and other maintenance activities.

Natural draft opening means any opening in a room, building, or total enclosure that remains open during operation of the facility and that is not connected to a duct in which a fan is installed. The rate and direction of the natural draft through such an opening is a consequence of the difference in pressures on either side of the wall containing the opening.

Non-chemical based depainting equipment means any depainting equipment or technique, including, but not limited to, media blasting equipment, that can depaint an aerospace vehicle or component in the absence of a chemical stripper. This definition does not include mechanical sanding or hand sanding.

Nonregenerative carbon adsorber means a carbon adsorber vessel in which the spent carbon bed does not undergo carbon regeneration in the adsorption vessel.

Operating parameter value means a minimum or maximum value established for a control device or process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation.

Organic hazardous air pollutant (HAP) means any HAP that is organic.

Primer means the first layer and any subsequent layers of identically formulated coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance, and adhesion of subsequent coatings. Coatings that are defined as specialty coatings are not included under this definition.

Radome means the non-metallic protective housing for electromagnetic transmitters and receivers (e.g., radar, electronic countermeasures, etc.).

Research and Development means an operation whose primary purpose is for research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and is not involved in the manufacture of final or intermediate products for commerical purposes, except in a de mimnimis manner.

Self-priming topcoat means a topcoat that is applied directly to an uncoated aerospace vehicle or component for purposes of corrosion prevention, environmental protection, and functional fluid resistance. More than one layer of identical coating formulation may be applied to the vehicle or component. The coating is not subsequently topcoated with any other product formulation.

Semi-aqueous cleaning solvent means a solution in which water is a primary ingredient (″ 60 percent of the solvent solution as applied must be water.)

Softener means a liquid that is applied to an aerospace vehicle or component to degrade coatings such as primers and topcoats specifically as a preparatory step to subsequent depainting by non-chemical based depainting equipment. Softeners may contain VOC but shall not contain any HAP as determined from MSDS's or manufacturer supplied information.

Solids means the non-volatile portion of the coating which after drying makes up the dry film.

Space vehicle means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with test, transport, and storage, which through contamination can compromise the space vehicle performance.

Specialty coating means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

Spot stripping means the depainting of an area where it is not technically feasible to use a non-chemical depainting technique.

Spray gun means a device that atomizes a coating or other material and projects the particulates or other material onto a substrate.

Stripper means a liquid that is applied to an aerospace vehicle or component to remove permanent coatings such as primers and topcoats.

Surface preparation means the removal of contaminants from the surface of an aerospace vehicle or component, or the activation or reactivation of the surface in preparation for the application of a coating.

Temporary total enclosure means a total enclosure that is constructed for the sole purpose of measuring the emissions from an affected source that are not delivered to an emission control device. A temporary total enclosure must be constructed and ventilated (through stacks suitable for testing) so that it has minimal impact on the performance of the permanent emission capture system. A temporary total enclosure will be assumed to achieve total capture of fugitive emissions if it conforms to the requirements found in § 63.750(g)(4) and if all natural draft openings are at least four duct or hood equivalent diameters away from each exhaust duct or hood. Alternatively, the owner or operator may apply to the Administrator for approval of a temporary enclosure on a case-by-case basis.

Topcoat means a coating that is applied over a primer on an aerospace vehicle or component for appearance, identification, camouflage, or protection. Coatings that are defined as specialty coatings are not included under this definition.

Total enclosure means a permanent structure that is constructed around a gaseous emission source so that all gaseous pollutants emitted from the source are collected and ducted through a control device, such that 100% capture efficiency is achieved. There are no fugitive emissions from a total enclosure. The only openings in a total enclosure are forced makeup air and exhaust ducts and any natural draft openings such as those that allow raw materials to enter and exit the enclosure for processing. All access doors or windows are closed during routine operation of the enclosed source. Brief, occasional openings of such doors or windows to accommodate process equipment adjustments are acceptable, but if such openings are routine or if an access door remains open during the entire operation, the access door must be considered a natural draft opening. The average inward face velocity across the natural draft openings of the enclosure must be calculated including the area of such access doors. The drying oven itself may be part of the total enclosure. An enclosure that meets the requirements found in § 63.750(g)(4) is a permanent total enclosure.

Touch-up and repair operation means that portion of the coating operation that is the incidental application of coating used to cover minor imperfections in the coating finish or to achieve complete coverage. This definition includes out-of-sequence or out-of-cycle coating.

Two-stage filter system means a dry particulate filter system using two layers of filter media to remove particulate. The first stage is designed to remove the bulk of the particulate and a higher efficiency second stage is designed to remove smaller particulate.

Type II etchant means a chemical milling etchant that is a strong sodium hydroxide solution containing amines (Type I etchants contain varying amounts of dissolved sulfur and do not contain amines).

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100. This includes any organic compound other than those determined by the EPA to be an exempt solvent. For purposes of determining compliance with emission limits, VOC will be measured by the approved test methods. Where such a method also inadvertently measures compounds that are exempt solvent, an owner or operator may exclude these exempt solvents when determining compliance with an emission standard.

Waterwash system means a control system that utilizes flowing water to remove particulate emissions from the exhaust air stream in spray coating application or dry media blast depainting operations.

Nomenclature for determining carbon adsorber efficiency—The nomenclature defined below is used in § 63.750(g):

(1) A_k = the area of each natural draft opening (k) in a total enclosure, in square meters.

(2) C_{aj} = the concentration of HAP or VOC in each gas stream (j) exiting the emission control device, in parts per million by volume.

(3) C_{bi} = the concentration of HAP or VOC in each gas stream (i) entering the emission control device, in parts per million by volume.

(4) C_{di} = the concentration of HAP or VOC in each gas stream (i) entering the emission control device from the affected source, in parts per million by volume.

(5) C_{fk} = the concentration of HAP or VOC in each uncontrolled gas stream (k) emitted directly to the atmosphere from the affected source, in parts per million by volume.

(6) C_{gv} = the concentration of HAP or VOC in each uncontrolled gas stream entering each individual carbon adsorber vessel (v), in parts per million by volume. For the purposes of calculating the efficiency of the individual carbon adsorber vessel, C_{gv} may be measured in the carbon adsorption system's common inlet duct prior to the branching of individual inlet ducts to the individual carbon adsorber vessels.

(7) C_{hv} = the concentration of HAP or VOC in the gas stream exiting each individual carbon adsorber vessel (v), in parts per million by volume.

(8) E = the control device efficiency achieved for the duration of the emission test (expressed as a fraction).

(9) F = the HAP or VOC emission capture efficiency of the HAP or VOC capture system achieved for the duration of the emission test (expressed as a fraction).

(10) FV = the average inward face velocity across all natural draft openings in a total enclosure, in meters per hour.

(11) H_v = the individual carbon adsorber vessel (v) efficiency achieved for the duration of the emission test (expressed as a fraction).

(12) H_{sys} = the efficiency of the carbon adsorption system calculated when each carbon adsorber vessel has an individual exhaust stack (expressed as a fraction).

(13) M_{ci} = the total mass in kilograms of each batch of coating (i) applied, or of each coating applied at an affected coating operation during a 7 to 30-day period, as appropriate, as determined from records at the affected source. This quantity shall be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or if ingredients are added after the mass of the coating has been determined, appropriate adjustments shall be made to account for them.

(14) M_r = the total mass in kilograms of HAP or VOC recovered for a 7 to 30-day period.

(15) Q_{aj} = the volumetric flow rate of each gas stream (j) exiting the emission control device in either dry standard cubic meters per hour when EPA Method 18 in appendix A of part 60 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration.

(16) Q_{bi} = the volumetric flow rate of each gas stream (i) entering the emission control device, in dry standard cubic meters per hour when EPA Method 18 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration.

(17) Q_{di} = the volumetric flow rate of each gas stream (i) entering the emission control device from the affected source in either dry standard cubic meters per hour when EPA Method 18 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration.

(18) Q_{fk} = the volumetric flow rate of each uncontrolled gas stream (k) emitted directly to the atmosphere from the affected source in either dry standard cubic meters per hour when EPA Method 18 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration.

(19) Q_{gv} = the volumetric flow rate of each gas stream entering each individual carbon adsorber vessel (v) in either dry standard cubic meters per hour when EPA Method 18 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration. For purposes of calculating the efficiency of the individual carbon adsorber vessel, the value of Q_{gv} can be assumed to equal the value of Q_{hv} measured for that carbon adsorber vessel.

(20) Q_{hv} = the volumetric flow rate of each gas stream exiting each individual carbon adsorber vessel (v) in either dry standard cubic meters per hour when EPA Method 18 is used to measure HAP or VOC concentration or in standard cubic meters per hour (wet basis) when EPA Method 25A is used to measure HAP or VOC concentration.

(21) Q_{ini} = the volumetric flow rate of each gas stream (i) entering the total enclosure through a forced makeup air duct in standard cubic meters per hour (wet basis).

(22) Q_{outj} = the volumetric flow rate of each gas stream (j) exiting the total enclosure through an exhaust duct or hood in standard cubic meters per hour (wet basis).

(23) R = the overall HAP or VOC emission reduction achieved for the duration of the emission test (expressed as a percentage).

(24) RS_i = the total mass in kilograms of HAP or VOC retained in the coating after drying.

(25) W_{oi} = the weight fraction of VOC in each batch of coating (i) applied, or of each coating applied at an affected coating operation during a 7- to 30-day period, as appropriate, as determined by EPA Method 24 or formulation data. This value shall be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or if ingredients are added after the weight fraction of HAP or VOC in the coating has been determined, appropriate adjustments shall be made to account for them.

§ 63.743 Standards: General.

(a) Except as provided in paragraphs (a)(4) through (a)(9) of this section and in Table 2 (included in Appendix B to this subpart), each owner or operator of an affected source subject to this subpart is also subject to the following sections of subpart A of this part:

(1) § 63.4, Prohibited activities and circumvention;

(2) § 63.5, Construction and reconstruction; and

(3) § 63.6, Compliance with standards and maintenance requirements.

(4) For the purposes of this subpart, all affected sources shall submit any request for an extension of compliance not later than 120 days before the affected source's compliance date. The extension request should be requested for the shortest time necessary to attain compliance, but in no case shall exceed 1 year.

(5)(i) For the purposes of this subpart, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of his/her intention to deny approval of a request for an extension of compliance submitted under either § 63.6(i)(4) or § 63.6(i)(5) within 60 calendar days after receipt of sufficient information to evaluate the request.

(ii) In addition, for purposes of this subpart, if the Administrator does not notify the owner or operator in writing of his/her intention to deny approval within 60 calendar days after receipt of sufficient information to evaluate a request for an extension of compliance, then the request shall be considered approved.

(6)(i) For the purposes of this subpart, the Administrator (or the State) will notify the owner or operator in writing of the status of his/her application submitted under § 63.6(i)(4)(ii) (that is, whether the application contains sufficient information to make a determination) within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted, rather than 15 calendar days as provided for in § 63.6(i)(13)(i).

(ii) In addition, for the purposes of this subpart, if the Administrator does not notify the owner or operator in writing of the status of his/her application within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted, then the information in the application or the supplementary information is to be considered sufficient upon which to make a determination.

(7) For the purposes of this subpart, each owner or operator who has submitted an extension request application under § 63.6(i)(5) is to be provided 30 calendar days to present additional information or arguments to the Administrator after he/she is notified that the application is not complete, rather than 15 calendar days as provided for in § 63.6(i)(13)(ii).

(8) For the purposes of this subpart, each owner or operator is to be provided 30 calendar days to present additional information to the Administrator after he/she is notified of the intended denial of a compliance extension request submitted under either § 63.6(i)(4) or § 63.6(i)(5), rather than 15 calendar days as provided for in § 63.6(1)(12)(iii)(B) and § 63.6(i)(13)(iii)(B).

(9) For the purposes of this subpart, a final determination to deny any request for an extension submitted under either § 63.6(i)(4) or § 63.6(i)(5) will be made within 60 calendar days after presentation of additional information or argument (if the application is complete), or within 60 calendar days after the final date specified for the presentation if no presentation is made, rather than 30 calendar days as provided for in § 63.6(i)(12)(iv) and § 63.6(i)(13)(iv).

(b) *Operation and maintenance plan.* Each owner or operator that uses an air pollution control device or equipment to control HAP emissions shall prepare and operate in accordance with a startup, shutdown, and malfunction plan in accordance with § 63.6. Dry particulate filter systems operated per the manufacturer's instructions are exempt from a startup and shutdown plan. A startup and shutdown plan shall be prepared for facilities using locally prepared operating procedures. In addition to the information required in § 63.6, this plan shall also include the following provisions:

(1) The plan shall specify the operation and maintenance criteria for each air pollution control device or equipment and shall include a standardized checklist to document the operation and maintenance of the equipment;

(2) The plan shall include a systematic procedure for identifying malfunctions and for reporting them immediately to supervisory personnel; and

(3) The plan shall specify procedures to be followed to ensure that equipment or process malfunctions due to poor maintenance or other preventable conditions do not occur.

(c) An owner or operator who uses an air pollution control device or equipment not listed in this subpart shall submit a description of the device or equipment, test data verifying the performance of the device or equipment in controlling organic HAP and/or VOC emissions, as appropriate, specific operating parameters that will be monitored to establish compliance with the standards, and a copy of the operation and maintenance plan referenced in paragraph (b) of this section to the Administrator for approval.

§ 63.744 Standards: Cleaning operations.

(a) *Housekeeping measures.* Each owner or operator of a new or existing cleaning operation subject to this subpart shall comply with the requirements in this paragraphs unless the solvent used is classified as a cleaning solvent that contains no organic HAP or VOC as identified in Table 3.

TABLE 3.—COMPOSITION REQUIREMENTS FOR APPROVED CLEANING SOLVENTS

Cleaning solvent type	Composition requirements
Aqueous	Cleaning solvents in which water is the primary ingredient (≥80 percent of solvent solution as applied must be water). Detergents, surfactants, and bioenzyme mixtures and nutrients may be combined with the water along with a variety of additives such as organic solvents (e.g., high boiling point alcohols), builders, saponifiers, inhibitors, emulsifiers, pH buffers, and antifoaming agents. Aqueous solutions must have a flash point greater than 93 °C (200 °F) (as reported by the manufacturer) and the solution must be miscible with water.
Hydrocarbon-Based	Cleaners that are composed of a mixture of photochemically reactive hydrocarbons and oxygenated hydrocarbons and have a maximum vapor pressure of 7 mm Hg at 20 °C (3.75 in. H_2O at 68 °F). These cleaners also contain no HAP or ozone depleting compounds.

(1) Place solvent-laden cloth, paper, or any other absorbent applicators used for cleaning aerospace vehicles or components in bags or other closed containers immediately after use. Ensure that these bags and containers are kept closed at all times except when depositing or removing these materials from the container. Use bags and containers of such design so as to contain the vapors of the cleaning solvent. Cotton-tipped swabs used for very small cleaning operations are exempt from this requirement.

(2) Store fresh and spent cleaning solvents used in aerospace cleaning operations in closed containers.

(3) Conduct the handling and transfer of cleaning solvents to or from enclosed systems, vats, waste containers, and other cleaning operation equipment that hold or store fresh or spent cleaning solvents in such a manner that minimizes spills.

(b) *Hand-wipe cleaning.* Each owner or operator of a new or existing hand-wipe cleaning operation (excluding cleaning of spray gun equipment performed in accordance with paragraph (c)(3) of this section) subject to this subpart shall use cleaning solvents that meet one of the requirements specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section. Cleaning solvent solutions that contain no HAP or VOC are exempt from the requirements in paragraphs (b)(1), (b)(2), and (b)(3).

(1) Meet one of the composition requirements in Table 3;

(2) Have a composite vapor pressure of 45 mm Hg (24.1 in. H_2O) or less at 20 °C (68 °F); or

(3) Demonstrate that the volume of hand-wipe solvents used in cleaning operations has been reduced by at least 60% from a baseline adjusted for production. The baseline shall be established as part of an approved alternative plan administered by the State. The alternative plan shall be submitted by the State under section 112(l) of the Act and approved by the Administrator, and shall demonstrate that the 60% volume reduction in cleaning solvents provides equivalent reductions to the requirements in paragraph (b)(1) or (b)(2).

(c) *Spray gun cleaning.* Each owner or operator of a new or existing spray gun cleaning operation subject to this subpart in which spray guns are used for the application of coatings or any other materials that require the spray guns to be cleaned shall use one or more of the techniques, or their equivalent, specified in paragraphs (c)(1) through (c)(4) of this section.

(1)(i) Enclosed system. Clean the spray gun in an enclosed system that is closed at all times except when inserting or removing the spray gun. Cleaning shall consist of forcing solvent through the gun.

(ii) If leaks are found during the monthly inspection required in § 63.751(a), repairs shall be made as soon as practicable, but no later than 15 days after the leak was found. If the leak is not repaired by the 15th day after detection, the solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired or its use is permanently discontinued.

(2) Nonatomized cleaning. Clean the spray gun by placing solvent in the pressure pot and forcing it through the gun with the atomizing cap in place. No atomizing air is to be used. Direct the solvent from the spray gun into a vat, drum, or other waste container that is closed when not in use.

(3) Disassembled spray gun cleaning. Disassemble the spray gun and clean the components by hand in a vat, which shall remain closed at all times except when in use. Alternatively, soak the components in a vat, which shall remain closed during the soaking period and when not inserting or removing components.

(4) Atomizing cleaning. Clean the spray gun by forcing the solvent through the gun and direct the resulting atomized spray into a waste container that is fitted with a device designed to capture the atomized solvent emissions.

(d) *Flush cleaning.* Each owner or operator of a flush cleaning operation subject to this subpart (excluding those in which Table 3 or semi-aqueous cleaning solvents are used) shall empty the used cleaning solvent each time an aerospace part or assembly, or a component of a coating unit (with the exception of spray guns) is flush cleaned into an enclosed container or collection system that is kept closed when not in use or into a system with equivalent emission control.

(e) *Exempt cleaning operations.* The following cleaning operations are exempt from the requirements of paragraph (b) of this section:

(1) Cleaning during the manufacture, assembly, installation, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen;

(2) Cleaning during the manufacture, assembly, installation, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, or hydrazine);

(3) Cleaning and surface activation prior to adhesive bonding;

(4) Cleaning of electronic parts and assemblies containing electronic parts;

(5) Cleaning of aircraft and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems;

(6) Cleaning of fuel cells, fuel tanks, and confined spaces;

(7) Surface cleaning of solar cells, coated optics, and thermal control surfaces;

(8) Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used in the interior of the aircraft;

(9) Cleaning of metallic and non-metallic materials used in honeycomb cores during the manufacture of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components;

(10) Cleaning of polycarbonate or glass substrates; and

(11) Cleaning and solvent usage associated with research and development, quality control, and laboratory testing.

(12) Cleaning operations, using nonflamable liquids, conducted within five feet of energized electrical systems. Energized electrical systems means any AC or DC electrical circuit on an assembled aircraft once electrical power is connected, including interior passenger and cargo areas, wheel wells and tail sections.

§ 63.745 Standards: Primer and topcoat application operations.

(a) Each owner or operator of a new or existing primer or topcoat application operation subject to this subpart shall comply with the requirements specified in paragraph (c) of this section for those coatings that are uncontrolled (no control device is used to reduce organic HAP emissions from the operation), and in paragraph (d) of this section for those coatings that are controlled (organic HAP emissions from the operation are reduced by the use of a control device). Aerospace equipment that is no longer operational, intended for public display, and not easily capable of being moved is exempt from the requirements of this section.

(b) Each owner or operator shall conduct the handling and transfer of primers and topcoats to or from containers, tanks, vats, vessels, and piping systems in such a manner that minimizes spills.

(c) *Uncontrolled coatings—organic HAP and VOC content levels.* Each owner or operator shall comply with the organic HAP and VOC content limits specified in paragraphs (c)(1) through (c)(4) of this section for those coatings that are uncontrolled.

(1) Organic HAP emissions from primers shall be limited to an organic HAP content level of no more than 350 g/l (2.9 lb/gal) of primer (less water) as applied.

(2) VOC emissions from primers shall be limited to an VOC content level of no more than 350 g/l (2.9 lb/gal) of primer (less water and exempt solvents) as applied.

(3) Organic HAP emissions from topcoats shall be limited to an organic HAP content level of no more than 420 g/l (3.5 lb/gal) of coating (less water) as applied. Organic HAP emissions from self-priming topcoats shall be limited to an organic HAP content level of no more than 420 g/l (3.5 lb/gal) of self-priming topcoat (less water) as applied.

(4) VOC emissions from topcoats shall be limited to a VOC content level of no more than 420 g/l (3.5 lb/gal) of coating (less water and exempt solvents) as applied. VOC emissions from self-priming topcoats shall be limited to a VOC content level of no more than 420 g/l (3.5 lb/gal) of self-priming topcoat (less water and exempt solvents) as applied.

(d) *Controlled coatings—control system requirements.* Each control system shall reduce the operation's organic HAP and VOC emissions to the atmosphere by 81% or greater, taking into account capture and destruction or removal efficiencies, as determined using the procedures in § 63.750(g) when a carbon adsorber is used and in § 63.750(h) when a control device other than a carbon adsorber is used.

(e) *Compliance methods.* Compliance with the organic HAP and VOC content limits specified in paragraphs (c)(1) through (c)(4) of this section shall be accomplished by using the methods specified in paragraphs (e)(1) and (e)(2) of this section either by themselves or in conjunction with one another.

(1) Use primers and topcoats with HAP and VOC content levels equal to or less than the limits specified in paragraphs (c)(1) through (c)(4) of this section.

(2)(i) Use any combination of primers or topcoats such that the monthly volume-weighted average organic HAP and VOC contents of the combination of primers or topcoats comply with the specified content limits, unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program.

(ii) Averaging primers together with topcoats is prohibited under this subsection.

(iii) Averaging is allowed only for uncontrolled primers or topcoats.

(iv) Each averaging scheme shall be approved in advance by the permitting agency and be adopted as part of the facility's title V permit.

(f) *Application Equipment.* Except as provided in paragraph (f)(3) of this section, each owner or operator of a new or existing primer or topcoat application operation subject to this subpart in which any of the coatings contain organic HAP or VOC shall comply with the requirements specified in paragraphs (f)(1) and (f)(2) of this section.

(1) All primers and topcoats shall be applied using one or more of the application techniques specified in paragraphs (f)(1)(i) through (f)(1)(viii) of this section.

(i) Flow/curtain coat application;

(ii) Dip coat application;

(iii) Roll coating;

(iv) Brush coating;

(v) Cotton-tipped swab application;

(vi) Electrodeposition (dip) coating;

(vii) High volume low pressure (HVLP) spraying;

(viii) Electrostatic spray application; or

(ix) Other coating application methods that achieve emission reductions equivalent to HVLP or electrostatic spray application methods, as determined according to the requirements in § 63.750(i).

(2) All application devices used to apply primers or topcoats shall be operated according to company procedures, local specified operating procedures, and/or the manufacturer's specifications, whichever is most stringent, at all times. Equipment modified by the facility shall maintain a transfer efficiency equivalent to HVLP and electrostatic spray application techniques.

(3) The following situations are exempt from the requirements of paragraph (f)(1) of this section:

(i) Any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces;

(ii) The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that the permitting agency has determined cannot be applied by any of the application methods specified in paragraph (f)(1) of this section;

(iii) The application of coatings that normally have a dried film thickness of

less than 0.0013 centimeter (0.0005 in.) and that the permitting agency has determined cannot be applied by any of the application methods specified in paragraph (f)(1) of this section;

(iv) The use of airbrush application methods for stenciling, lettering, and other identification markings;

(v) The use of hand-held spray can application methods; and

(vi) Touch-up and repair operations.

(g) *Inorganic HAP emissions.* Except as provided in paragraph (g)(4) of this section, each owner or operator of a new or existing primer or topcoat application operation subject to this subpart in which any of the coatings that are spray applied contain inorganic HAP, shall comply with the applicable requirements in paragraphs (g)(1) through (g)(3) of this section.

(1) Apply these coatings in a booth or hangar in which air flow is directed downward onto or across the part or assembly being coated and exhausted through one or more outlets.

(2) Control the air stream from this operation as follows:

(i) For existing sources, pass the air stream through either a dry particulate filter system or a waterwash system before exhausting it to the atmosphere.

(ii) Waterwash booths shall remain in operation during all coating application operations.

(iii) Dry filter booths shall include two-stage filter systems or the equivalent, as determined by the permitting agency.

(iv) For new sources, pass the air stream through either a two-stage dry particulate filter system or a waterwash system before exhausting it to the atmosphere. If the primer or topcoat contains chromium or cadmium, control shall consist of either a three-stage filter system, HEPA filter system, or other equivalent control system as approved by the permitting agency.

(v) If a dry particulate filter system is used, the following requirements shall be met:

(A) Maintain the system in good working order;

(B) Install a differential pressure gauge across the filter banks;

(C) Continuously monitor the pressure drop across the filter; and

(D) Take corrective action when the pressure drop exceeds or falls below the filter manufacturer's recommended limit(s).

(vi) If a waterwash system is used, continuously monitor the water flow rate.

(3) If the pressure drop across the dry particulate filter system, as recorded pursuant to § 63.752(d)(1), is outside the limit(s) specified by the filter manufacturer or in locally prepared operating procedures, shut down the operation immediately and take corrective action. If the water path in the waterwash system fails the visual continuity/flow characteristics check, or the water flow rate recorded pursuant to § 63.752(d)(2) exceeds the limit(s) specified by the booth manufacturer or in locally prepared operating procedures, or the booth manufacturer's or locally prepared maintenance procedures for the filter or waterwash system have not been performed as scheduled, shut down the operation immediately and take corrective action. The operation shall not be resumed until the pressure drop or water flow rate is returned within the specified limit(s).

(4) The requirements of paragraphs (g)(1) through (g)(3) of this section do not apply to the following:

(i) Touch-up of scratched surfaces or damaged paint;

(ii) Hole daubing for fasteners;

(iii) Touch-up of trimmed edges;

(iv) Coating prior to joining dissimilar metal components;

(v) Stencil operations performed by brush or air brush;

(vi) Section joining;

(vii) Touch-up of bushings and other similar parts;

(viii) Sealant detackifying; and

(ix) Painting parts in an area identified in a title V permit, where the permitting authority has determined that it is not technically feasible to paint the parts in a booth.

§ 63.746 Standards: Depainting Operations.

(a) *Applicability.* Each owner or operator of a new or existing depainting operation subject to this subpart shall comply with the requirements in paragraphs (a)(1) through (a)(3) of this section, and with the requirements specified in paragraph (b) where there are no controls for organic HAP, or paragraph (c) where organic HAP are controlled using a control system. This subpart does not apply to an aerospace manufacturing facility that depaints 6 or less completed aerospace vehicles in a calendar year.

(1) The provisions of this section apply to the depainting of the outer surface areas of completed aerospace vehicles, including the fuselage, wings, and vertical and horizontal stabilizers of the aircraft, and the outer casing and stabilizers of missiles and rockets. These provisions do not apply to the depainting of parts or units normally removed from the aerospace vehicle for depainting. However, depainting of wings and stabilizers is always subject to the requirements of this section regardless of whether their removal is considered by the owner or operator to be normal practice for depainting.

(2) Aerospace vehicles or components that are intended for public display, no longer operational, and not easily capable of being moved are exempt from the requirements of this section.

(3) The following depainting operations are exempt from the requirements of this section:

(i) Depainting of radomes; and

(ii) Depainting of parts, subassemblies, and assemblies normally removed from the primary aircraft structure before depainting.

(b)(1) *HAP emissions—non-HAP chemical strippers and technologies.* Except as provided in paragraph (b)(3) of this section, each owner or operator of a new or existing aerospace depainting operation subject to this subpart shall emit no organic HAP from chemical stripping formulations and agents or chemical paint softeners.

(2) Where non-chemical based equipment is used to comply with paragraph (b)(1) of this section, either in total or in part, each owner or operator shall operate and maintain the equipment according to the manufacturer's specifications or locally prepared operating procedures. During periods of malfunctions of such equipment, each owner or operator may use substitute materials during the repair period provided the substitute materials used are those available that minimize organic HAP emissions. In no event shall substitute materials be used for more than 15 days annually, unless such materials are organic HAP-free.

(3) Each owner or operator of a new or existing depainting operation complying with paragraph (b)(1) shall not, on an annual average basis, use more than 26 gallons of organic HAP-containing chemical strippers per commercial aircraft depainted or more than 50 gallons of organic HAP-containing chemical strippers per military aircraft depainted for spot stripping and decal removal.

(4) Each owner or operator of a new or existing depainting operation complying with paragraph (b)(2), that generates airborne inorganic HAP emissions from dry media blasting equipment, shall also comply with the requirements specified in paragraphs (b)(4)(i) through (b)(4)(v) of this section.

(i) Perform the depainting operation in an enclosed area.

(ii) Pass any air stream removed from the enclosed area through a dry particulate filter system, baghouse, or waterwash system before exhausting it to the atmosphere.

(iii) If a dry particulate filter system is used, the following requirements shall be met:

(A) Maintain the system in good working order;

(B) Install a differential pressure gauge across the filter banks;

(C) Continuously monitor the pressure drop across the filter; and

(D) Take corrective action when the pressure drop exceeds or falls below the filter manufacturer's recommended limits.

(iv) If a waterwash system is used, continuously monitor the water flow rate.

(v) If the pressure drop, as recorded pursuant to § 63.752(e)(7), is outside the limit(s) specified by the filter manufacturer or in locally prepared operating procedures, whichever is more stringent, shut down the operation immediately and take corrective action. If the water path in the waterwash system fails the visual continuity/flow characteristics check as recorded pursuant to § 63.752(e)(7), or the water flow rate, as recorded pursuant to § 63.752(d)(2), exceeds the limit(s) specified by the booth manufacturer or in locally prepared operating procedures, or the booth manufacturer's or locally prepared maintenance procedures for the filter or waterwash system have not been performed as scheduled, shut down the operation immediately and take corrective action. The operation shall not be resumed until the pressure drop or water flow rate is returned within the specified limit(s).

(5) Mechanical and hand sanding operations are exempt from the requirements in paragraph (b)(4) of this section.

(c) *Organic HAP emissions—organic HAP-containing chemical strippers.* Each owner or operator of a new or existing organic HAP-containing chemical stripper depainting operation subject to this subpart shall comply with the requirements specified in this paragraph.

(1) All organic HAP emissions from the operation shall be reduced by the use of a control system. Each control system that was installed before the effective date shall reduce the operations' organic HAP emissions to the atmosphere by 81% or greater, taking into account capture and destruction or removal efficiencies, as determined using the procedures in § 63.750(g) when a carbon adsorber is used or § 63.750(h) when a control device other than a carbon adsorber is used. Each control system installed on or after the effective date shall reduce organic HAP emissions to the atmosphere by 95% or greater. Reduction shall take into account capture and destruction or removal efficiencies, and the volume of chemical stripper used (e.g., the 95% efficiency may be achieved by controlling emissions at 81% efficiency with a control system and using 74% less stripper than in baseline applications). The baseline shall be calculated using data from 1996 and 1997, which shall be on a usage per aircraft or usage per square foot of surface basis.

§ 63.747 Standards: Chemical milling maskant application operations.

(a) Each owner or operator of a new or existing chemical milling maskant operation subject to this subpart shall comply with the requirements specified in paragraph (c) of this section for those chemical milling maskants that are uncontrolled (no control device is used to reduce organic HAP emissions from the operation) and in paragraph (d) of this section for those chemical milling maskants that are controlled (organic HAP emissions from the operation are reduced by the use of a control device).

(b) Each owner or operator shall conduct the handling and transfer of chemical milling maskants to or from containers, tanks, vats, vessels, and piping systems in such a manner that minimizes spills.

(c) *Uncontrolled maskants—organic HAP and VOC content levels.* Each owner or operator shall comply with the organic HAP and VOC content limits specified in paragraphs (c)(1) and (c)(2) of this section for each chemical milling maskant that is uncontrolled.

(1) Organic HAP emissions from chemical milling maskants shall be limited to an organic HAP content level of no more than 160 grams of organic HAP per liter (1.3 lb/gal) of chemical milling maskant (less water) as applied.

(2) VOC emissions from chemical milling maskants shall be limited to a VOC content level of no more than 160 grams of VOC per liter (1.3 lb/gal) of chemical milling maskant (less water and exempt solvents) as applied.

(3) The requirements of paragraphs (c)(1) and (c)(2) of this section do not apply to the following:

(i) Touch-up of scratched surfaces or damaged maskant; and

(ii) Touch-up of trimmed edges.

(d) *Controlled maskants—control system requirements.* Each control system shall reduce the operation's organic HAP and VOC emissions to the atmosphere by 81% or greater, taking into account capture and destruction or removal efficiencies, as determined using the procedures in § 63.750(g) when a carbon adsorber is used and in § 63.750(h) when a control device other than a carbon adsorber is used.

(e) *Compliance methods.* Compliance with the organic HAP and VOC content limits specified in paragraphs (c)(1) and (c)(2) of this section may be accomplished by using the methods specified in paragraphs (e)(1) and (e)(2) of this section either by themselves or in conjunction with one another.

(1) Use chemical milling maskants with HAP and VOC content levels equal to or less than the limits specified in paragraphs (c)(1) and (c)(2) of this section.

(2)(i) Use any combination of chemical milling maskants such that the monthly volume-weighted average organic HAP and VOC contents of the maskants comply with the specified content limits, unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program.

(ii) Averaging is allowed only for uncontrolled chemical milling maskants.

(iii) Each averaging scheme shall be approved in advance by the permitting agency and be adopted as part of the facility's title V permit.

§ 63.748 Standards: Handling and storage of waste.

Except as provided in § 63.741(e), the owner or operator of each facility subject to this subpart that produces a waste that contains HAP shall conduct the handling and transfer of the waste to or from containers, tanks, vats, vessels, and piping systems in such a manner that minimizes spills.

§ 63.749 Compliance dates and determinations.

(a) *Compliance dates.* Each owner or operator of an existing source subject to this subpart shall comply with the requirements of this subpart within 3 years after the effective date. Owners or operators of new sources subject to this subpart shall comply on the effective date or upon startup, whichever is later. In addition, each owner or operator shall comply with the compliance dates specified in § 63.6(b) and § 63.6(c).

(b) *General.* Each facility subject to this subpart shall be considered in noncompliance if the owner or operator fails to submit an operation and maintenance plan as required by § 63.743(b) or uses a control device other than one specified in this subpart that has not been approved by the Administrator, as required by § 63.743(c).

(c) *Cleaning operations.* Each cleaning operation subject to this subpart shall be considered in noncompliance if the owner or operator fails to institute and carry out the housekeeping measures required under § 63.744(a). Incidental emissions resulting from the activation of pressure release vents and valves on enclosed cleaning systems are exempt from this paragraph.

(1) *Hand-wipe cleaning.* An affected hand-wipe cleaning operation shall be considered in compliance when all hand-wipe cleaning solvents, excluding those used for hand cleaning of spray gun equipment under § 63.744(c)(3), meet either the composition requirements specified in § 63.744(b)(1) or the vapor pressure requirement specified in § 63.744(b)(2).

(2) *Spray gun cleaning.* An affected spray gun cleaning operation shall be considered in compliance when each of the following conditions is met:

(i) One of the four techniques specified in § 63.744 (c)(1) through (c)(4) is used;

(ii) The technique selected is operated according to the procedures specified in § 63.744 (c)(1) through (c)(4) as appropriate; and

(iii) If an enclosed system is used, monthly visual inspections are conducted and any leak detected is repaired within 15 days after detection. If the leak is not repaired by the 15th day after detection, the solvent shall be removed and the enclosed cleaner shall be shut down until the cleaner is repaired or its use is permanently discontinued.

(3) *Flush cleaning.* An affected flush cleaning operation shall be considered in compliance if the operating requirements specified in § 63.744(d) are implemented and carried out.

(d) *Organic HAP and VOC content levels—primer and topcoat application operations.*

(1) *Performance test periods.* For uncontrolled coatings that are not averaged, each 24 hours is considered a performance test. For compliant and non-compliant coatings that are averaged together, each 30-day period is considered a performance test, unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program. When using a control device other than a carbon adsorber, three 1-hour runs constitute the test period for the initial and any subsequent performance test. When using a carbon adsorber, each rolling material balance period is considered a performance test.

(2) *Initial performance tests.* If a control device is used, each owner or operator shall conduct an initial performance test to demonstrate compliance with the overall reduction efficiency specified in paragraph § 63.745, unless a waiver is obtained under either § 63.7(e)(2)(iv) or § 63.7(h). The initial performance test shall be conducted according to the procedures and test methods specified in § 63.7 and § 63.750(g) for carbon adsorbers and in § 63.750(h) for control devices other than carbon adsorbers. For carbon adsorbers, the initial performance test shall be used to establish the appropriate rolling material balance period for determining compliance. The procedures in paragraphs (d)(2)(i) through (d)(2)(vi) of this section shall be used in determining initial compliance with the provisions of this subpart for carbon adsorbers.

(i)(A) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual carbon adsorber vessels pursuant to § 63.750(g) (2) or (4), the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all of the individual carbon adsorber vessels.

(B) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with individual exhaust stacks for each carbon adsorber vessel pursuant to § 63.750(g) (3) or (4), each carbon adsorber vessel shall be tested individually. The test for each carbon adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(ii) EPA Method 1 or 1A of appendix A of part 60 is used for sample and velocity traverses.

(iii) EPA Method 2, 2A, 2C, or 2D of appendix A of part 60 is used for velocity and volumetric flow rates.

(iv) EPA Method 3 of appendix A of part 60 is used for gas analysis.

(v) EPA Method 4 of appendix A of part 60 is used for stack gas moisture.

(vi) EPA Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

(3) The primer application operation is considered in compliance when the conditions specified in paragraphs (d)(3)(i) through (d)(3)(iv) of this section, as applicable, and in paragraph (e) of this section are met. Failure to meet any one of the conditions identified in these paragraphs shall constitute noncompliance.

(i) For all uncontrolled primers, all values of H_i and H_a (as determined using the procedures specified in § 63.750 (c) and (d)) are less than or equal to 350 grams of organic HAP per liter (2.9 lb/gal) of primer (less water) as applied, and all values of G_i and G_a (as determined using the procedures specified in § 63.750 (e) and (f)) are less than or equal to 350 grams of organic VOC per liter (2.9 lb/gal) of primer (less water and exempt solvents) as applied.

(ii) If a control device is used:

(A) The overall control system efficiency, E_k, as determined using the procedures specified in § 63.750(g) for control systems containing carbon adsorbers and in § 63.750(h) for control systems with other control devices, is equal to or greater than 81% during the initial performance test and any subsequent performance test;

(B) If an incinerator other than a catalytic incinerator is used, the average combustion temperature for all 3-hour periods is greater than or equal to the average combustion temperature established under § 63.751(b)(11); and

(C) If a catalytic incinerator is used, the average combustion temperatures for all 3-hour periods are greater than or equal to the average combustion temperatures established under § 63.751(b)(12).

(iii)(A) Uses an application technique specified in § 63.745 (f)(1)(i) through (f)(1)(viii), or

(B) Uses an alternative application technique, as allowed under § 63.745(f)(1)(ix), such that the emissions of both organic HAP and VOC for the implementation period of the alternative application method are less than or equal to the emissions generated during the initial 30-day period, the period of time required to apply primer to five completely assembled aircraft, or a time period approved by the permitting agency, using HVLP or electrostatic spray application methods as determined using the procedures specified in § 63.750(i).

(iv) Operates all application techniques in accordance with the manufacturer's specifications or locally prepared operating procedures, whichever is more stringent.

(4) The topcoat application operation is considered in compliance when the conditions specified in paragraphs (e)(4)(i) through (e)(4)(iv) of this section, as applicable, and in paragraph (f) of this section are met. Failure to meet any of the conditions identified in these paragraphs shall constitute noncompliance.

(i) For all uncontrolled topcoats, all values of H_i and H_a(as determined using the procedures specified in § 63.750(c) and (d)) are less than or equal to 420 grams organic HAP per liter (3.5 lb/gal) of topcoat (less water) as applied, and all values of G_i and G_a (as determined using the procedures specified in

§ 63.750(e) and (f)) are less than or equal to 420 grams organic VOC per liter (3.5 lb/gal) of topcoat (less water and exempt solvents) as applied.

(ii) If a control device is used,

(A) The overall control system efficiency, E_k, as determined using the procedures specified in § 63.750(g) for control systems containing carbon adsorbers and in § 63.750(h) for control systems with other control devices, is equal to or greater than 81% during the initial performance test and any subsequent performance test;

(B) If an incinerator other than a catalytic incinerator is used, the average combustion temperature for all 3-hour periods is greater than or equal to the average combustion temperature established under § 63.751(b)(11); and

(C) If a catalytic incinerator is used, the average combustion temperatures for all 3-hour periods are greater than or equal to the average combustion temperatures established under § 63.751(b)(12).

(iii)(A) Uses an application technique specified in § 63.745(f)(1)(i) through (f)(1)(ix) or

(B) Uses an alternative application technique as allowed under § 63.745(f)(1)(ix) such that the emissions of both organic HAP and VOC for the implementation period of the alternative application method are less than or equal to the emissions generated during the initial 30-day period, the period of time required to apply topcoat to five completely assembled aircraft, or a time period approved by the permitting agency, using HVLP or electrostatic spray application methods as determined using the procedures specified in § 63.750(i).

(iv) Operates all application techniques in accordance with the manufacturer's specifications or locally prepared operating procedures.

(e) *Inorganic HAP emissions—primer and topcoat application operations.* For each primer or topcoat application operation that emits inorganic HAP, the operation is in compliance when:

(1) It is operated according to the requirements specified in § 63.745(g)(1) through (g)(3); and

(2) It is shut down immediately whenever the pressure drop or water flow rate is outside the limit(s) established for them and is not restarted until the pressure drop or water flow rate is returned within these limit(s), as required under § 63.745(g)(3).

(f) *Organic HAP emissions—Depainting operations.*

(1) *Performance test periods.* When using a control device other than a carbon adsorber, three 1-hour runs constitute the test period for the initial and any subsequent performance test. When a carbon adsorber is used, each rolling material balance period is considered a performance test. Each 24-hour period is considered a performance test period for determining compliance with § 63.746(b)(1). For uncontrolled organic emissions from depainting operations, each calendar year is considered a performance test period for determining compliance with the HAP limits for organic HAP-containing chemical strippers used for spot stripping and decal removal.

(2) *Initial performance tests.* If a control device is used, each owner or operator shall conduct an initial performance test to demonstrate compliance with the overall reduction efficiency specified in § 63.746(c), unless a waiver is obtained under either § 63.7(e)(2)(iv) or § 63.7(h). The initial performance test shall be conducted according to the procedures and test methods specified in § 63.7 and § 63.750(g) for carbon adsorbers and in § 63.750(h) for control devices other than carbon adsorbers. For carbon adsorbers, the initial performance test shall be used to establish the appropriate rolling material balance period for determining compliance. The procedures in paragraphs (2)(i) through (2)(vi) of this section shall be used in determining initial compliance with the provisions of this subpart for carbon adsorbers.

(i)(A) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual carbon adsorber vessels pursuant to § 63.750(g)(2) or (4), the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all of the individual carbon adsorber vessels.

(B) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with individual exhaust stacks for each carbon adsorber vessel pursuant to § 63.750(g) (3) or (4), each carbon adsorber vessel shall be tested individually. The test for each carbon adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(ii) EPA Method 1 or 1A of appendix A of part 60 is used for sample and velocity traverses.

(iii) EPA Method 2, 2A, 2C, or 2D of appendix A of part 60 is used for velocity and volumetric flow rates.

(iv) EPA Method 3 of appendix A of part 60 is used for gas analysis.

(v) EPA Method 4 of appendix A of part 60 is used for stack gas moisture.

(vi) EPA Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

(3) An organic HAP-containing chemical stripper depainting operation is considered in compliance when the conditions specified in paragraph (g)(3)(i) of this section are met.

(i) If a carbon adsorber (or other control device) is used, the overall control efficiency of the control system, as determined using the procedures specified in § 63.750(g) (or other control device as determined using the procedures specified in § 63.750(h)), is equal to or greater than 81% for control systems installed before the effective date, or equal to or greater than 95% for control systems installed on or after the effective date, during the initial performance test and all subsequent material balances (or performance tests, as appropriate).

(ii) For non-HAP depainting operations complying with § 63.746(b)(1);

(A) For any spot stripping and decal removal, the value of C, as determined using the procedures specified in § 63.750(j), is less than or equal to 26 gallons of organic HAP-containing chemical stripper per aircraft depainted for commercial aircraft and is less than or equal to 50 gallons of organic HAP-containing chemical stripper per aircraft depainted for military aircraft calculated on a yearly average; and

(B) The requirements of § 63.746(b)(2) are carried out during malfunctions of non-chemical based equipment.

(g) *Inorganic HAP emissions—depainting operations.* Each depainting operation is in compliance when:

(1) The operating requirements specified in § 63.746(b)(4) are followed; and

(2) It is shut down immediately whenever the pressure drop or water flow rate is outside the limit(s) established for them and is not restarted until the pressure drop or water flow rate is returned within these limit(s), as required under § 63.746(b)(4)(v).

(h) *Chemical milling maskant application operations.*—(1) *Performance test periods.* For uncontrolled chemical milling maskants that are not averaged, each 24-hour period is considered a performance test. For compliant and noncompliant chemical milling maskants that are averaged together, each 30-day period is considered a performance test, unless the permitting agency specifies a shorter period as part of an ambient ozone

control program. When using a control device other than a carbon adsorber, three 1-hour runs constitute the test period for the initial and any subsequent performance test. When a carbon adsorber is used, each rolling material balance period is considered a performance test.

(2) *Initial performance tests.* If a control device is used, each owner or operator shall conduct an initial performance test to demonstrate compliance with the overall reduction efficiency specified in § 63.747(d), unless a waiver is obtained under either § 63.7(e)(2)(iv) or § 63.7(h). The initial performance test shall be conducted according to the procedures and test methods specified in § 63.7 and § 63.750(g) for carbon adsorbers and in § 63.750(h) for control devices other than carbon adsorbers. For carbon adsorbers, the initial performance test shall be used to establish the appropriate rolling material balance period for determining compliance. The procedures in paragraphs (h)(2) (i) through (vi) of this section shall be used in determining initial compliance with the provisions of this subpart for carbon adsorbers.

(i)(A) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual carbon adsorber vessels pursuant to § 63.750(g) (2) or (4), the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all of the individual carbon adsorber vessels.

(B) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with individual exhaust stacks for each carbon adsorber vessel pursuant to § 63.750(g) (3) or (4), each carbon adsorber vessel shall be tested individually. The test for each carbon adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(ii) EPA Method 1 or 1A of appendix A of part 60 is used for sample and velocity traverses.

(iii) EPA Method 2, 2A, 2C, or 2D of appendix A of part 60 is used for velocity and volumetric flow rates.

(iv) EPA Method 3 of appendix A of part 60 is used for gas analysis.

(v) EPA Method 4 of appendix A of part 60 is used for stack gas moisture.

(vi) EPA Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

(3) The chemical milling maskant application operation is considered in compliance when the conditions specified in paragraphs (i)(3)(i) and (i)(3)(ii) of this section are met.

(i) For all uncontrolled chemical milling maskants, all values of H_i and H_a (as determined using the procedures specified in § 63.750 (k) and (l)) are less than or equal to 160 grams of organic HAP per liter (1.3 lb/gal) as applied (less water) and all values of G_i and G_a (as determined using the procedures specified in § 63.750 (m) and (n)) are less than or equal to 160 grams of VOC per liter (1.3 lb/gal) of chemical milling maskant (less water and exempt solvents) as applied.

(ii) If a carbon adsorber (or other control device) is used, the overall control efficiency of the control system, as determined using the procedures specified in § 63.750(g) (or systems with other control devices as determined using the procedures specified in § 63.750(h)), is equal to or greater than 81% during the initial performance test period and all subsequent material balances (or performance tests, as appropriate).

(i) *Handling and storage of waste.* For those wastes subject to this subpart, failure to comply with the requirements specified in § 63.748 shall be considered a violation.

§ 63.750 Test methods and procedures.

(a) *Composition determination.* Compliance with the hand-wipe cleaning solvent approved composition list specified in § 63.744(b)(1) for hand-wipe cleaning solvents shall be demonstrated using data supplied by the manufacturer of the cleaning solvent. The data shall identify all components of the cleaning solvent and shall demonstrate that one of the approved composition definitions is met.

(b) *Vapor pressure determination.* The composite vapor pressure of hand-wipe cleaning solvents used in a cleaning operation subject to this subpart shall be determined as follows:

(1) For single-component hand-wipe cleaning solvents, the vapor pressure shall be determined using MSDS or other manufacturer's data, standard engineering reference texts, or other equivalent methods.

(2) The composite vapor pressure of a blended hand-wipe solvent shall be determined by quantifying the amount of each organic compound in the blend using manufacturer's supplied data or a gas chromatographic analysis in accordance with ASTM E 260–91 (incorporated by reference as specified in § 63.14 of subpart A of this part) and by calculating the composite vapor pressure of the solvent by summing the partial pressures of each component. The vapor pressure of each component shall be determined using manufacturer's data, standard engineering reference texts, or other equivalent methods. The following equation shall be used to determine the composite vapor pressure:

$$PP_c=\sum_{i=1}^{n}\frac{(W_i)(VP_i)/MW_i}{\dfrac{W_w}{MW_w}+\dfrac{W_e}{MW_e}+\sum_{i=1}^{n}\dfrac{W_i}{MW_i}}$$

where:

W_i=Weight of the "i"th VOC compound, grams.
W_w=Weight of water, grams.
W_e=Weight of non-HAP, nonVOC compound, grams.
MW_i=Molecular weight of the "i"th VOC compound, g/g-mole.
MW_w=Molecular weight of water, g/g-mole.
MW_e=Molecular weight of exempt compound, g/g-mole.
PP_c=VOC composite partial pressure at 20 °C, mm Hg.
VP_i=Vapor pressure of the "i"th VOC compound at 20 °C, mm Hg.

(c) *Organic HAP content level determination—compliant primers and topcoats.* For those uncontrolled primers and topcoats complying with the primer and topcoat organic HAP content limits specified in § 63.745(c) without being averaged, the following procedures shall be used to determine the mass of organic HAP emitted per volume of coating (less water) as applied.

(1) For coatings that contain no exempt solvents, determine the total organic HAP content using manufacturer's supplied data or Method 24 of 40 CFR part 60, appendix A to determine the VOC content. The VOC content shall be used as a surrogate for total HAP content for coatings that contain no exempt solvent. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance shall be based on the results from the Method 24 analysis.

When Method 24 is used to determine the VOC content of water-reducible coatings, the precision adjustment factors in Reference Method 24 shall be used. If the adjusted analytical VOC content is less than the formulation solvent content, then the analytical VOC content should be set equal to the formulation solvent content.

(2) For each coating formulation as applied, determine the organic HAP weight fraction, water weight fraction (if

applicable), and density from manufacturer's data. If these values cannot be determined using the manufacturer's data, the owner or operator shall submit an alternative procedure for determining their values for approval by the Administrator. Recalculation is required only when a change occurs in the coating formulation.

(3) For each coating as applied, calculate the mass of organic HAP emitted per volume of coating (lb/gal) less water as applied using equations 1, 2, and 3:

$$V_{wi} = \frac{D_{ci} W_{wi}}{D_w} \qquad \text{Eq. 1}$$

where

V_{wi}=volume (gal) of water in one gal of coating i.
D_{ci}=density (lb of coating per gal of coating) of coating i.
W_{wi}=weight fraction (expressed as a decimal) of water in coating i.
D_w=density of water, 8.33 lb/gal.

$$M_{Hi} = D_{ci} W_{Hi} \qquad \text{Eq. 2}$$

where

M_{Hi}=mass (lb) of organic HAP in one gal of coating i.
D_{ci}=density (lb of coating per gal of coating) of coating i.
W_{Hi}=weight fraction (expressed as a decimal) of organic HAP in coating i.

$$H_i = \frac{M_{Hi}}{(1 - V_{wi})} \qquad \text{Eq. 3}$$

where

H_i=mass of organic HAP emitted per volume of coating i (lb/gal) less water as applied.
M_{Hi}=mass (lb) of organic HAP in one gal of coating i.
V_{wi}=volume (gal) of water in one gal of coating i.

(d) *Organic HAP content level determination—averaged primers and topcoats.* For those uncontrolled primers and topcoats that are averaged together in order to comply with the primer and topcoat organic HAP content limits specified in § 63.745(c), the following procedure shall be used to determine the monthly volume-weighted average mass of organic HAP emitted per volume of coating (less water) as applied, unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program.

(1)(i) Determine the total organic HAP weight fraction as applied of each coating. If any ingredients, including diluent solvent, are added to a coating prior to its application, the organic HAP weight fraction of the coating shall be determined at a time and location in the process after all ingredients have been added.

(ii) Determine the total organic HAP weight fraction of each coating as applied each month.

(A) If no changes have been made to a coating, either as supplied or as applied, or if a change has been made that has a minimal effect on the organic HAP content of the coating, the value previously determined may continue to be used until a change in formulation has been made by either the manufacturer or the user.

(B) If a change in formulation or a change in the ingredients added to the coating takes place, including the ratio of coating to diluent solvent, prior to its application, either of which results in a more than minimal effect on the organic HAP content of the coating, the total organic HAP weight fraction of the coating shall be redetermined.

(iii) Manufacturer's formulation data may be used to determine the total organic HAP content of each coating and any ingredients added to the coating prior to its application. If the total organic HAP content cannot be determined using the manufacturer's data, the owner or operator shall submit an alternative procedure for determining the total organic HAP weight fraction for approval by the Administrator.

(2)(i) Determine the volume both in total gallons as applied and in total gallons (less water) as applied of each coating. If any ingredients, including diluent solvents, are added prior to its application, the volume of each coating shall be determined at a time and location in the process after all ingredients (including any diluent solvent) have been added.

(ii) Determine the volume of each coating (less water) as applied each month, unless the permitting agency specifies a shorter period as part of an ambient ozone control program.

(iii) The volume applied may be determined from company records.

(3)(i) Determine the density of each coating as applied. If any ingredients, including diluent solvent, are added to a coating prior to its application, the density of the coating shall be determined at a time and location in the process after all ingredients have been added.

(ii) Determine the density of each coating as applied each month, unless the permitting agency specifies a shorter period as part of an ambient ozone control program.

(A) If no changes have been made to a coating, either as supplied or as applied, or if a change has been made that has a minimal effect on the density of the coating, then the value previously determined may continue to be used until a change in formulation has been made by either the manufacturer or the user.

(B) If a change in formulation or a change in the ingredients added to the coating takes place, including the ratio of coating to diluent solvent, prior to its application, either of which results in a more than minimal effect on the density of the coating, then the density of the coating shall be redetermined.

(iii) The density may be determined from company records, including manufacturer's data sheets. If the density of the coating cannot be determined using the company's records, including the manufacturer's data, then the owner or operator shall submit an alternative procedure for determining the density for approval by the Administrator.

(4) Calculate the total volume in gallons as applied (less water) by summing the individual volumes of each coating (less water) as applied, which were determined under paragraph (d)(2) of this section.

(5) Calculate the volume-weighted average mass of organic HAP in coatings emitted per unit volume (lb/gal) of coating (less water) as applied during each 30-day period using equation 4:

$$H_a = \frac{\sum_{i=1}^{n} W_{Hi} D_{ci} V_{ci}}{C_{lw}} \qquad \text{Eq. 4}$$

where

H_a=volume-weighted average mass of organic HAP emitted per unit volume of coating (lb/gal) (less water) as applied during each 30-day period for those coatings being averaged.
n=number of coatings being averaged.
W_{Hi}=weight fraction (expressed as a decimal) of organic HAP in coating i as applied that is being averaged during each 30-day period.
D_{ci}=density (lb of coating per gal of coating) of coating i as applied that is being averaged during each 30-day period.
V_{ci}=volume (gal) of coating i as applied that is being averaged during the 30-day period.
C_{lw}=total volume (gal) of all coatings (less water) as applied that are being averaged during each 30-day period.

(e) *VOC content level determination—compliant primers and topcoats.* For those uncontrolled primers and topcoats complying with the primer and topcoat VOC content levels specified in § 63.745(c) without being averaged, the following procedure shall be used to determine the mass of VOC emitted per volume of coating (less water and exempt solvents) as applied.

(1) Determine the VOC content of each formulation (less water and exempt solvents) as applied using manufacturer's supplied data or Method 24 of 40 CFR part 60, appendix A to determine the VOC content. The VOC content shall be used as a surrogate for total HAP content for coatings that contain no exempt solvent. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance shall be based on the results from the Method 24 analysis.

When Method 24 is used to determine the VOC content of water-reducible coatings, the precision adjustment factors in Reference Method 24 shall be used. If the adjusted analytical VOC content is less than the formulation solvent content, then the analytical VOC content should be set equal to the formulation solvent content.

(2) For each coating applied, calculate the mass of VOC emitted per volume of coating (lb/gal) (less water and exempt solvents) as applied using equations 5, 6, and 7:

$$V_{wi} = \frac{D_{ci} W_{wi}}{D_w} \qquad \text{Eq. 5}$$

where

V_{wi}=volume (gal) of water in one gal of coating i.
D_{ci}=density (lb of coating per gal of coating) of coating i.
W_{wi}=weight fraction (expressed as a decimal) of water in coating i.
D_w=density of water, 8.33 lb/gal.

$$M_{Vi} = D_{ci} W_{Vi} \qquad \text{Eq. 6}$$

where

M_{Vi}=mass (lb) of VOC in one gal of coating i.
D_{ci}=density (lb of coating per gal of coating) of coating i.
W_{Vi}=weight fraction (expressed as a decimal) of VOC in coating i.

$$G_i = \frac{M_{Vi}}{(1 - V_{wi})} \qquad \text{Eq. 7}$$

where

G_i=mass of VOC emitted per volume of coating i (lb/gal) (less water and exempt solvents) as applied.
M_{Vi}=mass (lb) of VOC in one gal of coating i.
V_{wi}=volume (gal) of water in one gal of coating i.
V_{Xi}=volume (gal) of exempt solvents in one gal of coating i.

(3)(i) If the VOC content is found to be different when EPA Method 24 is used during an enforcement inspection from that used by the owner or operator in calculating G_a, compliance shall be based, except as provided in paragraph (e)(3)(ii) of this section, upon the VOC content obtained using EPA Method 24.

(ii) If the VOC content of a coating obtained using Method 24 would indicate noncompliance as determined under either § 63.749 (d)(3)(i) or (d)(4)(i), an owner or operator may elect to average the coating with other uncontrolled coatings and (re)calculate G_i (using the procedure specified in paragraph (f) of this section), provided appropriate and sufficient records were maintained for all coatings included in the average (re)calculation. The (re)calculated value of G_i (G_a in paragraph (f)) for the averaged coatings shall then be used to determine compliance.

(f) *VOC content level determination—averaged primers and topcoats.* For those uncontrolled primers and topcoats that are averaged within their respective coating category in order to comply with the primer and topcoat VOC content limits specified in § 63.745 (c)(2) and (c)(4), the following procedure shall be used to determine the monthly volume-weighted average mass of VOC emitted per volume of coating (less water and exempt solvents) as applied, unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program.

(1)(i) Determine the VOC content (lb/gal) as applied of each coating. If any ingredients, including diluent solvent, are added to a coating prior to its application, the VOC content of the coating shall be determined at a time and location in the process after all ingredients have been added.

(ii) Determine the VOC content of each coating as applied each month, unless the permitting agency specifies a shorter period as part of an ambient ozone control program.

(A) If no changes have been made to a coating, either as supplied or as applied, or if a change has been made that has a minimal effect on the VOC content of the coating, the value previously determined may continue to be used until a change in formulation has been made by either the manufacturer or the user.

(B) If a change in formulation or a change in the ingredients added to the coating takes place, including the ratio of coating to diluent solvent, prior to its application, either of which results in a more than minimal effect on the VOC content of the coating, the VOC content of the coating shall be redetermined.

(iii) Determine the VOC content of each primer and topcoat formulation (less water and exempt solvents) as applied using EPA Method 24 or from manufacturer's data.

(2)(i) Determine the volume both in total gallons as applied and in total gallons (less water and exempt solvents) as applied of each coating. If any ingredients, including diluent solvents, are added prior to its application, the volume of each coating shall be determined at a time and location in the process after all ingredients (including any diluent solvent) have been added.

(ii) Determine the volume of each coating (less water and exempt solvents) as applied each day.

(iii) The volume applied may be determined from company records.

(3) Calculate the total volume in gallons (less water and exempt solvents) as applied by summing the individual volumes of each coating (less water and exempt solvents) as applied, which were determined under paragraph (f)(2) of this section.

(4) Calculate the volume-weighted average mass of VOC emitted per unit volume (lb/gal) of coating (less water and exempt solvents) as applied for each coating category during each 30-day period using equation 8:

$$G_a = \frac{\sum_{i=1}^{n} (VOC)_{ci} V_{ci}}{C_{lwes}} \qquad \text{Eq. 8}$$

where

G_a=volume weighted average mass of VOC per unit volume of coating (lb/gal) (less water and exempt solvents) as applied during each 30-day period for those coatings being averaged.
n=number of coatings being averaged.
$(VOC)_{ci}$=VOC content (lb/gal) of coating i (less water and exempt solvents) as applied (as determined using the procedures specified in paragraph (f)(1) of this section) that is being averaged during the 30-day period.
V_{ci}=volume (gal) of coating i (less water and exempt solvents) as applied that is being averaged during the 30-day period.
C_{lwes}=total volume (gal) of all coatings (less water and exempt solvents) as applied during each 30-day period for those coatings being averaged.

(5)(i) If the VOC content is found to be different when EPA Method 24 is used during an enforcement inspection from that used by the owner or operator in calculating G_a, recalculation of G_a is required using the new value. If more than one coating is involved, the recalculation shall be made once using all of the new values.

(ii) If recalculation is required, an owner or operator may elect to include in the recalculation of G_a uncontrolled coatings that were not previously included provided appropriate and sufficient records were maintained for these other coatings to allow daily recalculations.

(iii) The recalculated value of G_a under either paragraph (f)(5)(i) or (f)(5)(ii) of this section shall be used to determine compliance.

(g) *Overall VOC and/or organic HAP control efficiency—carbon adsorber.* Each owner or operator subject to the requirements of § 63.745(d), § 63.746(c), or § 63.747(d) shall demonstrate initial compliance with the requirements of this subpart by following the procedures of paragraph (g)(1), (2), (3), (4), or (5) as applicable and paragraphs (6), (7), and (8) of this section. When an initial compliance demonstration is required by this subpart, the procedures in paragraphs (g)(9) through (g)(14) of this section shall be used in determining initial compliance with the provisions of this subpart.

(1) To demonstrate initial and continuous compliance with § 63.745(d), § 63.746(c), or § 63.747(d) when emissions are controlled by a dedicated solvent recovery device, each owner or operator of the affected operation may perform a liquid-liquid HAP or VOC material balance over rolling 7- to 30-day periods in lieu of demonstrating compliance through the methods in paragraph (g)(2), (g)(3), or (g)(4) of this section. Results of the material balance calculations performed to demonstrate initial compliance shall be submitted to the Administrator with the notification of compliance status required by § 63.9(h) and by § 63.753 (c)(1)(iv), (d)(3)(i), and (e)(3). When demonstrating compliance by this procedure, § 63.7(e)(3) of subpart A does not apply. The amount of liquid HAP or VOC applied and recovered shall be determined as discussed in paragraph (g)(1)(iii) of this section. The overall HAP or VOC emission reduction (R) is calculated using equation 9:

$$R = \frac{M_r}{\sum_{i=1}^{n} [W_{oi} M_{ci} - RS_i]} \times 100 \qquad \text{Eq. 9}$$

(i) The value of RS_i is zero unless the owner or operator submits the following information to the Administrator for approval of a measured RS_i value that is greater than zero:

(A) Measurement techniques; and

(B) Documentation that the measured value of RS_i exceeds zero.

(ii) The measurement techniques of paragraph (g)(1)(i)(A) of this section shall be submitted to the Administrator for approval with the notification of performance test required under § 63.7(b).

(iii) Each owner or operator demonstrating compliance by the test method described in paragraph (g)(1) of this section shall:

(A) Measure the amount of coating or stripper as applied;

(B) Determine the VOC or HAP content of all coating and stripper applied using the test method specified in § 63.750(c) (1) through (3) or (e) (1) and (2) of this section;

(C) Install, calibrate, maintain, and operate, according to the manufacturer's specifications, a device that indicates the amount of HAP or VOC recovered by the solvent recovery device over rolling 7- to 30-day periods; the device shall be certified by the manufacturer to be accurate to within ±2.0 percent, and this certification shall be kept on record;

(D) Measure the amount of HAP or VOC recovered; and

(E) Calculate the overall HAP or VOC emission reduction (R) for rolling 7- to 30-day periods using equation 9.

(F) Compliance is demonstrated if the value of R is equal to or greater than the overall HAP control efficiencies required by § 63.745(d), § 63.746(c), or § 63.747(d).

(2) To demonstrate initial compliance with § 63.745(d), § 63.746(c), or § 63.747(d) when affected HAP emission points are controlled by an emission control device other than a fixed-bed carbon adsorption system with individual exhaust stacks for each carbon adsorber vessel, each owner or operator of an affected source shall perform a gaseous emission test using the following procedures.

(i) Construct the overall HAP emission reduction system so that all volumetric flow rates and total HAP or VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 63.750(g) (9) through (14).

(ii) Determine capture efficiency from the HAP emission points by capturing, venting, and measuring all HAP emissions from the HAP emission points. During a performance test, the owner or operator of affected HAP emission points located in an area with other gaseous emission sources not affected by this subpart shall isolate the affected HAP emission points from all other gaseous emission points by one of the following methods:

(A) Build a temporary total enclosure around the affected HAP emission point(s); or

(B) Shut down all gaseous emission points not affected by this subpart and continue to exhaust fugitive emissions from the affected HAP emission points through any building ventilation system and other room exhausts such as drying ovens. All ventilation air must be vented through stacks suitable for testing.

(iii) Operate the emission control device with all affected HAP emission points connected and operating.

(iv) Determine the efficiency (E) of the control device using equation 10:

(v) Determine the efficiency (F) of the capture system using equation 11:

$$E = \frac{\sum_{i=1}^{n} Q_{bi} C_{bi} - \sum_{j=1}^{P} Q_{aj} C_{aj}}{\sum_{i=1}^{n} Q_{bi} C_{bi}} \qquad \text{Eq. 10}$$

$$F = \frac{\sum_{i=1}^{n} Q_{di} C_{di}}{\sum_{i=1}^{n} Q_{di} C_{di} + \sum_{k=1}^{P} Q_{fk} C_{fk}} \qquad \text{Eq. 11}$$

(vi) For each HAP emission point subject to § 63.745(d), § 63.746(c), or § 63.747(d), compliance is demonstrated if the product of (E) × (F) is equal to or greater than the overall HAP control efficiencies required under § 63.745(d), § 63.746(c), or § 63.747(d).

(3) To demonstrate compliance with § 63.745(d), § 63.746(c), or § 63.747(d) when affected HAP emission points are controlled by a fixed-bed carbon adsorption system with individual exhaust stacks for each carbon adsorber vessel, each owner or operator of an affected source shall perform a gaseous emission test using the following procedures:

(i) Construct the overall HAP emission reduction system so that each volumetric flow rate and the total HAP emissions can be accurately determined by the applicable test methods and procedures specified in § 63.750(g) (9) through (14);

(ii) Assure that all HAP emissions from the affected HAP emission point(s) are segregated from gaseous emission points not affected by this subpart and that the emissions can be captured for measurement, as described in § 63.705(g)(2)(ii) (A) and (B);

(iii) Operate the emission control device with all affected HAP emission points connected and operating;

(iv) Determine the efficiency (H_v) of each individual carbon adsorber vessel (v) using equation 12:

$$H_v = \frac{Q_{gv} C_{gv} - Q_{hv} C_{hv}}{Q_{gv} C_{gv}} \qquad \text{Eq. 12}$$

(v) Determine the efficiency of the carbon adsorption system (H_{sys}) by computing the average efficiency of the individual carbon adsorber vessels as weighted by the volumetric flow rate (Q_{hv}) of each individual carbon adsorber vessel (v) using equation 13:

$$H_{sys} = \frac{\sum_{v=1}^{q} H_v Q_{hv}}{\sum_{v=1}^{q} Q_{hv}} \qquad \text{Eq. 13}$$

(vi) Determine the efficiency (F) of the capture system using equation 11.

(vii) For each HAP emission point subject to § 63.745(d), § 63.746(c), or § 63.747(d), compliance is demonstrated if the product of (H_{sys}) × (F) is equal to or greater than the overall HAP control efficiency required by § 63.745(d), § 63.746(c), or § 63.747(d).

(4) An alternative method of demonstrating compliance with § 63.745(d), § 63.746(c), or § 63.747(d) is the installation of a total enclosure around the affected HAP emission point(s) and the ventilation of all HAP emissions from the total enclosure to a control device with the efficiency specified in paragraph (g)(4)(iii) of this section. If this method is selected, the compliance test methods described in paragraphs (g)(1), (g)(2), and (g)(3) of this section are not required. Instead, each owner or operator of an affected source shall:

(i) Demonstrate that a total enclosure is installed. An enclosure that meets the requirements in paragraphs (g)(4)(i) (A) through (D) of this section shall be considered a total enclosure. The owner or operator of an enclosure that does not meet these requirements may apply to the Administrator for approval of the enclosure as a total enclosure on a case-by-case basis. The enclosure shall be considered a total enclosure if it is demonstrated to the satisfaction of the Administrator that all HAP emissions from the affected HAP emission point(s) are contained and vented to the control device. The requirements for automatic approval are as follows:

(A) The total area of all natural draft openings shall not exceed 5% of the total surface area of the total enclosure's walls, floor, and ceiling;

(B) All sources of emissions within the enclosure shall be a minimum of four equivalent diameters away from each natural draft opening;

(C) The average inward face velocity (FV) across all natural draft openings shall be a minimum of 3,600 meters per hour as determined by the following procedures:

(*1*) All forced makeup air ducts and all exhaust ducts are constructed so that the volumetric flow rate in each can be accurately determined by the test methods and procedures specified in § 63.750(g) (10) and (11); volumetric flow rates shall be calculated without the adjustment normally made for moisture content; and

(*2*) Determine FV by equation 14:

$$FV = \frac{\sum_{j=1}^{n} Q_{out\,j} - \sum_{i=1}^{p} Q_{in\,i}}{\sum_{k=1}^{q} A_k} \qquad \text{Eq. 14}$$

(D) The air passing through all natural draft openings shall flow into the enclosure continuously. If FV is less than or equal to 9,000 meters per hour, the continuous inward flow of air shall be verified by continuous observation using smoke tubes, streamers, tracer gases, or other means approved by the Administrator over the period that the volumetric flow rate tests required to determine FV are carried out. If FV is greater than 9,000 meters per hour, the direction of airflow through the natural draft openings shall be presumed to be inward at all times without verification.

(ii) Determine the control device efficiency using equation 10 or equations 12 and 13, as applicable, and the test methods and procedures specified in § 63.750(g) (9) through (14).

(iii) Compliance shall be achieved if the installation of a total enclosure is demonstrated and the value of E determined from equation 10 (or the value of H_{sys} determined from equations 12 and 13, as applicable) is equal to or greater than the overall HAP control efficiencies required under § 63.745(d), § 63.746(c), or § 63.747(d).

(5) When nonregenerative carbon adsorbers are used to comply with § 63.745(d), § 63.746(c), or § 63.747(d), the owner or operator may conduct a design evaluation to demonstrate initial compliance in lieu of following the compliance test procedures of paragraphs (g)(1), (2), (3), and (4) of this section. The design evaluation shall consider the vent stream composition, component concentrations, flow rate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, capacity of the carbon bed, type and working capacity of activated carbon used for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and the emission point operating schedule.

(6)(i) To demonstrate initial compliance with § 63.745(d), § 63.746(c), or § 63.747(d) when hard piping or ductwork is used to direct VOC and HAP emissions from a VOC and HAP source to the control device, each owner or operator shall demonstrate upon inspection that the criteria of paragraph (g)(6)(i)(A) and paragraph (g)(6)(i) (B) or (C) of this section VR/FD are met.

(A) The equipment shall be vented to a control device.

(B) The control device efficiency (E or H_{sys}, as applicable) determined using equation 10 or equations 12 and 13, respectively, and the test methods and procedures specified in § 63.750(g) (9) through (14), shall be equal to or greater than the overall HAP control efficiency required by § 63.745(d), § 63.746(c), or § 63.747(d).

(C) When a nonregenerative carbon adsorber is used, the ductwork from the affected emission point(s) shall be vented to the control device and the carbon adsorber shall be demonstrated, through the procedures of § 63.750(g) (1), (2), (3), (4), or (5), to meet the requirements of § 63.745(d), § 63.746(c), or § 63.747(d).

(7) Startups and shutdowns are normal operation for this source category. Emissions from these activities are to be included when determining if the standards specified in § 63.745(d), § 63.746(c), or § 63.747(d) are being attained.

(8) An owner or operator who uses compliance techniques other than those specified in this subpart shall submit a description of those compliance procedures, subject to the Administrator's approval, in accordance with § 63.7(f) of subpart A.

(9) Either EPA Method 18 or EPA Method 25A of appendix A of part 60, as appropriate to the conditions at the site, shall be used to determine VOC and HAP concentration of air exhaust streams as required by § 63.750(g) (1) through (6). The owner or operator shall submit notice of the intended test method to the Administrator for approval along with the notification of the performance test required under § 63.7(b). Method selection shall be based on consideration of the diversity of organic species present and their total

concentration and on consideration of the potential presence of interfering gases. Except as indicated in paragraphs (g)(9) (i) and (ii) of this section, the test shall consist of three separate runs, each lasting a minimum of 30 minutes.

(i) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual carbon adsorber vessels pursuant to § 63.750(g) (2) or (3), the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all of the individual carbon adsorber vessels.

(ii) When either EPA Method 18 or EPA Method 25A is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with individual exhaust stacks for each carbon adsorber vessel pursuant to § 63.750(g) (3) or (4), each carbon adsorber vessel shall be tested individually. The test for each carbon adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(10) EPA Method 1 or 1A of appendix A of part 60 is used for sample and velocity traverses.

(11) EPA Method 2, 2A, 2C, or 2D of appendix A of part 60 is used for velocity and volumetric flow rates.

(12) EPA Method 3 of appendix A of part 60 is used for gas analysis.

(13) EPA Method 4 of appendix A of part 60 is used for stack gas moisture.

(14) EPA Methods 2, 2A, 2C, 2D, 3, and 4 shall be performed, as applicable, at least twice during each test period.

(h) *Overall VOC and/or organic HAP control efficiency—control devices other than carbon adsorbers.* Calculate the overall control efficiency of a control system with a control device other than a carbon adsorber using the following procedure.

(1) Calculate the overall control efficiency using equation 15:

$$E_k = R_k F_k \qquad \text{Eq. 15}$$

where

E_k=overall VOC and/or organic HAP control efficiency (expressed as a decimal) of control system k.

R_k=destruction or removal efficiency (expressed as a decimal) of total organic compounds or total organic HAP for control device k as determined under paragraph (h)(2) of this section.

F_k=capture efficiency (expressed as a decimal) of capture system k as determined under paragraph (h)(3) of this section.

(2) The organic HAP destruction or removal efficiency R_k of a control device other than a carbon adsorber shall be determined using the procedures described below. The destruction efficiency may be measured as either total organic HAP or as TOC minus methane and ethane according to these procedures.

(i) Use Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, to select the sampling sites.

(ii) Determine the gas volumetric flow rate using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(iii) Use Method 18 of 40 CFR part 60, appendix A, to measure either TOC minus methane and ethane or total organic HAP. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of this part may be used.

(iv) Use the following procedure to calculate the destruction or removal efficiency:

(A) The destruction or removal efficiency test shall consist of three runs. The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, the samples shall be taken at approximately equal intervals in time such as 15-minute intervals during the run.

(B) Calculate the mass rate of either TOC (minus methane and ethane) or total organic HAP (E_i, E_o using equations 16 and 17:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij} M_{ij}\right) Q_i \qquad \text{Eq. 16}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj} M_{oj}\right) Q_o \qquad \text{Eq. 17}$$

where

E_i, E_o=mass rate of TOC (minus methane and ethane) or total organic HAP at the inlet and outlet of the control device, respectively, dry basis, kg/hr.

K_2=constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature for (gram-mole per standard cubic meter) is 20° C.

n=number of sample components in the gas stream.

C_{ij}, C_{oj}=concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

M_{ij}, M_{oj}=molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o=flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

(*1*) Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by EPA Method 18 shall be summed using equation 16 in paragraph (h)(2)(iv)(B) of this section.

(*2*) Where the mass rate of total organic HAP is being calculated, only the organic HAP species shall be summed using equation 17 in paragraph (h)(2)(iv)(B) of this section. The list of organic HAP is provided in § 63.104 of subpart F of this part.

(C) Calculate the destruction or removal efficiency for TOC (minus methane and ethane) or total organic HAP using equation 18:

$$R = \frac{E_i - E_o}{E_i} \times 100 \qquad \text{Eq. 18}$$

where

R=destruction or removal efficiency of control device, percent.

E_i=mass rate of TOC (minus methane and ethane) or total organic HAP at the inlet to the control device as calculated under paragraph (h)(2)(iv)(B) of this section, kg TOC per hour or kg organic HAP per hour.

E_o=mass rate of TOC (minus methane and ethane) or total organic HAP at the outlet of the control device, as calculated under paragraph (h)(2)(iv)(B) of this section, kg TOC per hour or kg organic HAP per hour.

(3) Determine the capture efficiency F_k of each capture system to which organic HAP and VOC emissions from coating operations are vented. The capture efficiency value shall be determined using Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure as found in appendix B to § 52.741 of part 52 of this chapter for total enclosures, and the capture efficiency protocol specified in § 52.741(a)(4)(iii) of part 52 of this chapter for all other enclosures.

(i)(1) *Alternative application method—primers and topcoats.* Each owner or operator seeking to use an alternative application method (as allowed in § 63.745(f)(1)(ix)) in complying with the standards for

primers and topcoats shall use the procedures specified in paragraphs (i)(2) and (i)(3) of this section to determine the organic HAP and VOC emission levels of the alternative application technique as compared to either HVLP or electrostatic spray application methods.

(2)(i) For the process or processes for which the alternative application method is to be used, the total organic HAP and VOC emissions shall be determined for an initial 30-day period, the period of time required to apply coating to five completely assembled aircraft, or a time period approved by the permitting agency. During this initial period, only HVLP or electrostatic spray application methods shall be used. The emissions shall be determined based on the volumes, organic HAP contents (less water), and VOC contents (less water and exempt solvents) of the coatings as applied.

(ii) Upon implementation of the alternative application method, use the alternative application method in production on actual production parts or assemblies for a period of time sufficient to coat an equivalent amount of parts and assemblies with coatings identical to those used in the initial 30-day period. The actual organic HAP and VOC emissions shall be calculated for this post-implementation period.

(iii) Calculate both the organic HAP and VOC emission reduction using equation 19:

$$P = \frac{E_b - E_a}{E_b} \times 100 \qquad \text{Eq. 19}$$

where

P=organic HAP or VOC emission reduction, percent.

E_b=organic HAP or VOC emissions, in pounds, before the alternative application technique was implemented, as determined under paragraph (i)(2)(i) of this section.

E_a=organic HAP or VOC emissions, in pounds, after the alternative application technique was implemented, as determined under paragraph (i)(2)(ii) of this section.

(3) Each owner or operator seeking to demonstrate that an alternative application method achieves emission reductions equivalent to HVLP or electrostatic spray application methods shall comply with the following:

(i) Each coating shall be applied such that the dried film thickness is within the range specified by the applicable specification(s) for the aerospace vehicle or component being coated.

(ii) If no such dried film thickness specification(s) exists, the owner or operator shall ensure that the dried film thickness applied during the initial 30-day period is equivalent to the dried film thickness applied during the alternative application method test period for similar aerospace vehicles or components.

(iii) Failure to comply with these dried film thickness requirements shall invalidate the test results obtained under paragraph (i)(2)(i) of this section.

(j) *Spot stripping and decal removal.* Each owner or operator seeking to comply with § 63.746(b)(3) shall determine the volume of organic HAP-containing chemical strippers used per aircraft using the procedure specified in paragraphs (j)(1) through (j)(3) of this section.

(1) For each chemical stripper used for spot stripping and decal removal, determine for each annual period the total volume as applied using the procedure specified in paragraph (d)(2) of this section.

(2) Determine the total number of aircraft for which depainting operations began during the annual period as determined from company records.

(3) Calculate the annual average volume of organic HAP used for spot stripping and decal removal per aircraft using equation 20:

$$C = \frac{\sum_{i=1}^{n} V_{si}}{A} \qquad \text{Eq. 20}$$

where

C=annual average volume (gal per aircraft) of organic HAP-containing chemical stripper used for spot stripping and decal removal.

n=number of organic HAP-containing chemical strippers used in the annual period.

V_{si}=volume (gal) of organic HAP-containing chemical stripper i used during the annual period.

A=number of aircraft for which depainting operations began during the annual period.

(k) *Organic HAP content level determination—compliant chemical milling maskants.* For those uncontrolled chemical milling maskants complying with the chemical milling maskant organic HAP content limit specified in § 63.747(c)(1) without being averaged, the following procedures shall be used to determine the mass of organic HAP emitted per volume of coating (less water) as applied.

(1) For coatings that contain no exempt solvents, determine the total organic HAP content using manufacturer's supplied data or Method 24 of 40 CFR part 60, appendix A to determine the VOC content. The VOC content shall be used as a surrogate for total HAP content for coatings that contain no exempt solvent. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance shall be based on the results from the Method 24 analysis.

When Method 24 is used to determine the VOC content of water-reducible coatings, the precision adjustment factors in Reference Method 24 shall be used. If the adjusted analytical VOC content is less than the formulation solvent content, then the analytical VOC content should be set equal to the formulation solvent content.

(l) *Organic HAP content level determination—averaged chemical milling maskants.* For those uncontrolled chemical milling maskants that are averaged together in order to comply with the chemical milling maskant organic HAP content level specified in § 63.747(c)(1), the procedure specified in paragraphs (l)(1) through (l)(4) of this section shall be used to determine the monthly volume-weighted average mass of organic HAP emitted per volume of chemical milling maskant (less water) as applied, unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program.

(1) Determine the total organic HAP weight fraction as applied of each chemical milling maskant used during each 30-day period using the procedure specified in paragraph (d)(1) of this section.

(2) Determine for each 30-day period:

(i) The individual volume of each chemical milling maskant applied in terms of total gallons (less water) (using the procedure specified in paragraph (d)(2) of this section), and

(ii) The total volume in gallons of all chemical milling maskants (less water) as applied by summing the individual volumes of each chemical milling maskant as applied (less water).

(3) Determine the density of each chemical milling maskant as applied used during each 30-day period using the procedure specified in paragraph (d)(3) of this section.

(4) Calculate the volume-weighted average mass of organic HAP emitted per unit volume (lb/gal) of chemical milling maskant (less water) as applied for all chemical milling maskants during each 30-day period using equation 21:

$$H_a = \frac{\sum_{i=1}^{n} W_{Hi} D_{mi} V_{mi}}{M_{lw}} \qquad \text{Eq. 21}$$

where

H_a=volume-weighted mass of organic HAP emitted per unit volume of chemical milling maskants (lb/gal) (less water) as applied during each 30-day period for those chemical milling maskants being averaged.

n=number of chemical milling maskants being averaged.

W_{Hi}=weight fraction (expressed as a decimal) of organic HAP in chemical milling maskant i (less water) as applied during each 30-day period that is averaged.

D_{mi}=density (lb chemical milling maskant per gal coating) of chemical milling maskant i as applied during each 30-day period that is averaged.

V_{mi}=volume (gal) of chemical milling maskant i (less water) as applied during the 30-day period that is averaged.

M_{lw}=total volume (gal) of all chemical milling maskants (less water) as applied during each 30-day period that is averaged.

(m) *VOC content level determination—compliant chemical milling maskants*. For those uncontrolled chemical milling maskants complying with the chemical milling maskant VOC content limit specified in § 63.747(c)(2) without being averaged, the procedure specified in paragraphs (m)(1) and (m)(2) of this section shall be used to determine the mass of VOC emitted per volume of chemical milling maskant (less water and exempt solvents) as applied.

(1) Determine the mass of VOC emitted per unit volume of chemical milling maskant (lb/gal) (less water and exempt solvents) as applied, G_i, for each chemical milling maskant using the procedures specified in paragraphs (e)(1) and (e)(2) of this section.

(2)(i) If the VOC content is found to be different when EPA Method 24 is used during an enforcement inspection from that used by the owner or operator in calculating G_i, compliance shall be based, except as provided in paragraph (m)(2)(ii) of this section, upon the VOC content obtained using EPA Method 24.

(ii) If the VOC content of a chemical milling maskant obtained using EPA Method 24 would indicate noncompliance as determined under § 63.749(h)(3)(i), an owner or operator may elect to average the chemical milling maskant with other uncontrolled chemical milling maskants and (re)calculate G_a (using the procedure specified in paragraph (n) of this section), provided appropriate and sufficient records were maintained for all chemical milling maskants included in the average recalculation. The (re)calculated value of G_a for the averaged chemical milling maskants shall then be used to determine compliance.

(n) *VOC content level determination—averaged chemical milling maskants.* For those uncontrolled chemical milling maskants that are averaged together in order to comply with the chemical milling maskant VOC content limit specified in § 63.747(c)(2), the procedure specified in paragraphs (n)(1) through (n)(4) of this section shall be used to determine the monthly volume-weighted average mass of VOC emitted per volume of chemical milling maskant (less water and exempt solvents) as applied, unless the permitting agency specifies a shorter averaging period as part of an ambient ozone control program.

(1) Determine the VOC content of each chemical milling maskant (less water and exempt solvents) as applied used during each 30-day period using the procedure specified in paragraph (f)(1) of this section.

(2)(i) Determine the individual volume of each chemical milling maskant applied in terms of total gallons (less water and exempt solvents) using the procedure specified in paragraph (f)(2) of this section, and

(ii) Calculate the total volume in gallons of all chemical milling maskants (less water and exempt solvents) as applied by summing the individual volumes of each chemical milling maskant (less water and exempt solvents) as applied.

(3) Calculate the volume-weighted average mass of VOC emitted per unit volume (lb/gal) of chemical milling maskant (less water and exempt solvents) as applied during each 30-day period using equation 22:

$$G_a = \frac{\sum_{i=1}^{n} (VOC)_{mi} V_{mi}}{M_{lwes}} \qquad \text{Eq. 22}$$

where

G_a=volume-weighted average mass of VOC per unit volume of chemical milling maskant (lb/gal) (less water and exempt solvents) as applied during each 30-day period for those chemical milling maskants that are averaged.

n=number of chemical milling maskants being averaged.

$(VOC)_{mi}$=VOC content (lb/gal) of chemical milling maskant i (less water and exempt solvents) as applied during the 30-day period that is averaged.

V_{mi}=volume (gal) of chemical milling maskant i (less water and exempt solvents) as applied during the 30-day period that is averaged.

M_{lwes}=total volume (gal) of all chemical milling maskants (less water and exempt solvents) as applied during each 30-day period that is averaged.

(4)(i) If the VOC content is found to be different when EPA Method 24 is used during an enforcement inspection from that used by the owner or operator in calculating G_a, recalculation of G_a is required using the new value. If more than one chemical milling maskant is involved, the recalculation shall be made once using all of the new values.

(ii) If recalculation is required, an owner or operator may elect to include in the recalculation of G_a uncontrolled chemical milling maskants that were not previously included provided appropriate and sufficient records were maintained for these other chemical milling maskants to allow daily recalculations.

(iii) The recalculated value of G_a under either paragraph (n)(4)(i) or (n)(4)(ii) of this section shall be used to determine compliance.

§ 63.751 Monitoring requirements.

(a) *Enclosed spray gun cleaners.* Each owner or operator using an enclosed spray gun cleaner under § 63.744(c)(1) shall visually inspect the seals and all other potential sources of leaks associated with each enclosed gun spray cleaner system at least once per month. Each inspection shall occur while the system is in operation.

(b) *Incinerators and carbon adsorbers—initial compliance demonstrations.* Each owner or operator subject to the requirements in this subpart must demonstrate initial compliance with the requirements of § 63.745(d), § 63.746(c), and § 63.747(d) of this subpart. Each owner or operator using a carbon adsorber to comply with the requirements in this subpart shall comply with the requirements specified in paragraphs (b)(1) through (b)(7) of this section. Each owner or operator using an incinerator to comply with the requirements in this subpart shall comply with the requirements specified in paragraphs (b)(9) through (b)(12) of this section.

(1) Except as allowed by paragraph (b)(2) or (b)(5) of this section, for each control device used to control organic HAP or VOC emissions, the owner or operator shall fulfill the requirements of paragraph (b)(1) (i) or (ii) of this section.

(i) The owner or operator shall establish as a site-specific operating parameter the outlet total HAP or VOC concentration that demonstrates

compliance with § 63.745(d), § 63.746(c), or § 63.747(d) as appropriate; or

(ii) The owner or operator shall establish as the site-specific operating parameter the control device efficiency that demonstrates compliance with § 63.745(d), § 63.746(c), or § 63.747(d).

(iii) When a nonregenerative carbon adsorber is used to comply with § 63.745(d), § 63.746(c), or § 63.747(d), the site-specific operating parameter value may be established as part of the design evaluation used to demonstrate initial compliance. Otherwise, the site-specific operating parameter value shall be established during the initial performance test conducted according to the procedures of § 63.750(g).

(2) For each nonregenerative carbon adsorber, in lieu of meeting the requirements of § 63.751(b)(1), the owner or operator may establish as the site-specific operating parameter the carbon replacement time interval, as determined by the maximum design flow rate and organic concentration in the gas stream vented to the carbon adsorption system. The carbon replacement time interval shall be established either as part of the design evaluation to demonstrate initial compliance or during the initial performance test conducted according to the procedures in § 63.750(g) (1), (2), (3), or (4).

(3) Each owner or operator venting solvent HAP emissions from a source through a room, enclosure, or hood, to a control device to comply with § 63.745(d), § 63.746(c), or § 63.747(d) shall:

(i) Submit to the Administrator with the compliance status report required by § 63.9(h) of the General Provisions a plan that:

(A) Identifies the operating parameter to be monitored to ensure that the capture efficiency measured during the initial compliance test is maintained;

(B) Discusses why this parameter is appropriate for demonstrating ongoing compliance; and

(C) Identifies the specific monitoring procedures;

(ii) Set the operating parameter value, or range of values, that demonstrate compliance with § 63.745(d), § 63.746(c), or § 63.747(d), as appropriate; and

(iii) Conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(4) Owners or operators subject to § 63.751(b) (1), (2), or (3) shall calculate the site-specific operating parameter value, or range of values, as the arithmetic average of the maximum and/or minimum operating parameter values, as appropriate, that demonstrate compliance with § 63.745(d), § 63.746(c), or § 63.747(d) during the multiple test runs required by § 63.750 (g)(2) and (g)(1).

(5) For each solvent recovery device used to comply with § 63.745(d), § 63.746(c), or § 63.747(d), in lieu of meeting the requirements of paragraph (b)(1) of this section, the results of the material balance calculation conducted in accordance with § 63.750(g)(1) may serve as the site-specific operating parameter that demonstrates compliance with § 63.745(d), § 63.746(c), or § 63.747(d).

(6) *Continuous compliance monitoring.* Following the date on which the initial compliance demonstration is completed, continuous compliance with § 63.745(d), § 63.746(c), or § 63.747(d) of this subpart shall be demonstrated as outlined in this paragraph.

(i) Each owner or operator of an affected source subject to § 63.745(d), § 63.746(c), or § 63.747(d) of this subpart shall monitor the applicable parameters specified in paragraph (b)(6)(ii), (b)(6)(iii), or (b)(6)(iv) of this section depending on the type of control technique used.

(ii) Compliance monitoring shall be subject to the following provisions:

(A) Except as allowed by paragraph (b)(7)(iii)(A)(*3*) of this section, all continuous emission monitors shall comply with performance specification (PS) 8 or 9 in 40 CFR part 60, appendix B, as appropriate depending on whether VOC or HAP concentration is being measured. The requirements in appendix F of 40 CFR part 60 shall also be followed. In conducting the quarterly audits required by appendix F, owners or operators shall challenge the monitors with compounds representative of the gaseous emission stream being controlled.

(B) If the effluent from multiple emission points are combined prior to being channeled to a common control device, the owner or operator is required only to monitor the common control device, not each emission point.

(iii) Owners or operators complying with § 63.745(d), § 63.746(c), or § 63.747(d) through the use of a control device and establishing a site-specific operating parameter in accordance with paragraph (b)(1) shall fulfill the requirements of paragraph (b)(7)(iii)(A) of this section and paragraph (b)(7)(iii)(B) or (C) of this section, as appropriate.

(A) The owner or operator shall install, calibrate, operate, and maintain a continuous emission monitor.

(*1*) The continuous emission monitor shall be used to measure continuously the total HAP or VOC concentration at both the inlet and the outlet whenever HAP from coating and paint stripping operations are vented to the control device, or when continuous compliance is demonstrated through a percent efficiency calculation; or

(*2*) For owners or operators using a nonregenerative carbon adsorber, in lieu of using continuous emission monitors as specified in paragraph (b)(7)(iii)(A)(*1*) of this section, the owner or operator may use a portable monitoring device to monitor total HAP or VOC concentration at the inlet and outlet, or the outlet of the carbon adsorber, as appropriate.

(*a*) The monitoring device shall be calibrated, operated, and maintained in accordance with the manufacturer's specifications.

(*b*) The monitoring device shall meet the requirements of part 60, appendix A, Method 21, sections 2, 3, 4.1, 4.2, and 4.4. The calibration gas shall either be representative of the compounds to be measured or shall be methane, and shall be at a concentration associated with 125% of the expected organic compound concentration level for the carbon adsorber outlet vent.

(*c*) The probe inlet of the monitoring device shall be placed at approximately the center of the carbon adsorber outlet vent. The probe shall be held there for at least 5 minutes during which flow into the carbon adsorber is expected to occur. The maximum reading during that period shall be used as the measurement.

(B) If complying with § 63.745(d), § 63.746(c), or § 63.747(d) through the use of a carbon adsorption system with a common exhaust stack for all of the carbon vessels, the owner or operator shall not operate the control device at an average control efficiency less than that required by § 63.745(d), § 63.746(c), or § 63.747(d) for three consecutive adsorption cycles.

(C) If complying with § 63.745(d), § 63.746(c), or § 63.747(d) through the use of a carbon adsorption system with individual exhaust stacks for each of the multiple carbon adsorber vessels, the owner or operator shall not operate any carbon adsorber vessel at an average control efficiency less than that required by § 63.745(d), § 63.746(c), or § 63.747(d) as calculated daily using a 7 to 30-day rolling average.

(D) If complying with § 63.745(d), § 63.746(c), or § 63.747(d) through the use of a nonregenerative carbon adsorber, in lieu of the requirements of paragraph (b)(7)(iii)(B) or (C) of this section, the owner or operator may replace the carbon in the carbon adsorber system with fresh carbon at a regular predetermined time interval as determined in accordance with paragraph (b)(2) of this section.

(iv) Owners or operators complying with § 63.745(d), § 63.746(c), or § 63.747(d) by capturing emissions through a room, enclosure, or hood shall install, calibrate, operate, and maintain the instrumentation necessary to measure continuously the site-specific operating parameter established in accordance with paragraph (b)(3) of this section whenever VOC and HAP from coating and stripper operations are vented through the capture device. The capture device shall not be operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with paragraph (b)(3) of this section for any 3-hour period.

(7) Owners or operators complying with paragraph (b)(4) or (b)(5) of this section shall calculate the site-specific operating parameter value as the arithmetic average of the minimum operating parameter values that demonstrate compliance with § 63.745(d)and § 63.747(d) during the three test runs required by § 63.750(h)(2)(iv).

(8) All temperature monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications. Every 3 months, facilities shall replace the temperature sensors or have the temperature sensors recalibrated. As an alternative, a facility may use a continuous emission monitoring system (CEMS) to verify that there has been no change in the destruction efficiency and effluent composition of the incinerator.

(9) Where an incinerator other than a catalytic incinerator is used, a thermocouple equipped with a continuous recorder shall be installed and continuously operated in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(10) Where a catalytic incinerator is used, thermocouples, each equipped with a continuous recorder, shall be installed and continuously operated in the gas stream immediately before and after the catalyst bed.

(11) For each incinerator other than a catalytic incinerator, each owner or operator shall establish during each performance test during which compliance is demonstrated, including the initial performance test, the minimum combustion temperature as a site-specific operating parameter. This minimum combustion temperature shall be the operating parameter value that demonstrates compliance with § 63.745(d) and § 63.747(d).

(12) For each catalytic incinerator, each owner or operator shall establish during each performance test during which compliance is demonstrated, including the initial performance test, the minimum gas temperature upstream of the catalyst bed and the minimum gas temperature difference across the catalyst bed as site-specific operating parameters. These minimum temperatures shall be the operating parameter values that demonstrate compliance with § 63.745(d) and § 63.747(d).

(c) *Dry particulate filter, HEPA filter, and waterwash systems—primer and topcoat application operations.*

(1) Each owner or operator using a dry particulate filter system or a HEPA filter system to meet the requirements of § 63.745(g)(2) shall continuously monitor the pressure drop across the system.

(2) Each owner or operator using a waterwash system to meet the requirements of § 63.745(g)(2) shall continuously monitor the water flow rate through the system.

(d) *Particulate filters and waterwash booths—depainting operations.* Each owner or operator using a dry particulate filter or waterwash system in accordance with the requirements of § 63.746(b)(4) shall continuously monitor the pressure drop across the particulate filters or the water flow rate through the waterwash system.

(e) *Use of an alternative monitoring method.*

(1) *General.* Until permission to use an alternative monitoring method has been granted by the Administrator under this paragraph, the owner or operator of an affected source shall remain subject to the requirements of this section.

(2) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring methods or procedures of this section including, but not limited to, the following:

(i) Alternative monitoring requirements when the affected source is infrequently operated; or

(ii) Alternative locations for installing continuous monitoring systems when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements; or

(iii) Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified in this section.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in this section. If the results of the specified and the alternative method, requirement, or procedure do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(4)(i) *Request to use alternative monitoring method.* An owner or operator who wishes to use an alternative monitoring method shall submit an application to the Administrator as described in paragraph (e)(4)(ii) of this section. The application may be submitted at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring method is to be used to demonstrate compliance with a relevant standard, the application shall be submitted not later than with the site-specific test plan required in § 63.7(c) (if requested) or with the site-specific performance evaluation plan (if requested), or at least 60 days before the performance evaluation is scheduled to begin.

(ii) The application shall contain a description of the proposed alternative monitoring system and information justifying the owner's or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.

(iii) The owner or operator may submit the information required in this paragraph well in advance of the submittal dates specified in paragraph (e)(4)(i) of this section to ensure a timely review by the Administrator in order to meet the compliance demonstration date specified in this subpart.

(5) *Approval of request to use alternative monitoring method.*

(i) The Administrator will notify the owner or operator of his/her intention to deny approval of the request to use an alternative monitoring method within 60 calendar days after receipt of the original request and within 60 calendar days after receipt of any supplementary information that is submitted. If notification of intent to deny approval is not received within 60 calendar days, the alternative monitoring method is to be considered approved. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intent to disapprove the request together with:

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of his or her intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(ii) If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (e)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until approval is received from the Administrator to use another monitoring method as allowed by paragraph (e) of this section.

(f) *Reduction of monitoring data.*

(1) The data may be recorded in reduced or nonreduced form (e.g., parts per million (ppm) pollutant and % O_2 or nanograms per Joule (ng/J) of pollutant).

(2) All emission data shall be converted into units specified in this subpart for reporting purposes. After conversion into units specified in this subpart, the data may be rounded to the same number of significant digits as used in this subpart to specify the emission limit (e.g., rounded to the nearest 1% overall reduction efficiency).

§ 63.752 Recordkeeping requirements.

(a) *General.* Each owner or operator of a source subject to this subpart shall fulfill all recordkeeping requirements specified in § 63.10 (a), (b), (d), and (f).

(b) *Cleaning operation.* Each owner or operator of a new or existing cleaning operation subject to this subpart shall record the information specified in paragraphs (b)(1) through (b)(5) of this section, as appropriate.

(1) The name, vapor pressure, and documentation showing the organic HAP constituents of each cleaning solvent used at the facility.

(2) For each cleaning solvent used in hand-wipe cleaning operations that complies with the composition requirements specified in § 63.744(b)(1) or for semi-aqueous cleaning solvents used for flush cleaning operations:

(i) The name of each cleaning solvent used;

(ii) All data and calculations that demonstrate that the cleaning solvent complies with one of the composition requirements; and

(iii) Annual records of the volume of each solvent used, as determined from facility purchase records or usage records.

(3) For each cleaning solvent used in hand-wipe cleaning operations that does not comply with the composition requirements in § 63.744(b)(1), but does comply with the vapor pressure requirement in § 63.744(b)(2):

(i) The name of each cleaning solvent used;

(ii) The composite vapor pressure of each cleaning solvent used;

(iii) All vapor pressure test results, if appropriate, data, and calculations used to determine the composite vapor pressure of each cleaning solvent; and

(iv) The amount (in gallons) of each cleaning solvent used each month at each operation.

(4) For each cleaning solvent used for the exempt hand-wipe cleaning operations specified in § 63.744(e) that does not conform to the vapor pressure or composition requirements of § 63.744(b):

(i) The identity and amount (in gallons) of each cleaning solvent used each month at each operation; and

(ii) A list of the processes set forth in § 63.744(e) to which the cleaning operation applies.

(5) A record of all leaks from enclosed spray gun cleaners identified pursuant to § 63.751(a) that includes for each leak found:

(i) Source identification;

(ii) Date leak was discovered; and

(iii) Date leak was repaired.

(c) *Primer and topcoat application operations—organic HAP and VOC.* Each owner or operator required to comply with the organic HAP and VOC content limits specified in § 63.745(c) shall record the information specified in paragraphs (c)(1) through (c)(6) of this section, as appropriate.

(1) The name and VOC content as received and as applied of each primer and topcoat used at the facility.

(2) For uncontrolled primers (organic HAP content less than 350 g/l (2.9 lb/gal) less water as applied and VOC content less than 350 g/l (2.9 lb/gal) less water and exempt solvents as applied) and topcoats that meet the organic HAP and VOC content limits in § 63.745(c)(1) through (c)(4) without averaging:

(i) The mass of organic HAP emitted per unit volume of coating as applied (less water) (H_i) and the mass of VOC emitted per unit volume of coating as applied (less water and exempt solvents) (G_i) for each coating formulation within each coating category used each month (as calculated using the procedures specified in § 63.750(c) and (e));

(ii) All data, calculations, and test results (including EPA Method 24 results) used in determining the values of H_i and G_i; and

(iii) The volume (gal) of each coating formulation within each coating category used each month.

(3) For "low HAP content" uncontrolled primers with organic HAP content less than or equal to 250 g/l (2.1 lb/gal) less water as applied and VOC content less than or equal to 250 g/l (2.1 lb/gal) less water and exempt solvents as applied:

(i) Annual purchase records of the total volume of each primer purchased; and

(ii) All data, calculations, and test results (including EPA Method 24 results) used in determining the organic HAP and VOC content as applied. These records shall consist of the manufacturer's certification when the primer is applied as received, or the data and calculations used to determine H_i if not applied as received.

(4) For primers and topcoats complying with the organic HAP or VOC content level by averaging:

(i) The monthly volume-weighted average masses of organic HAP emitted per unit volume of coating as applied (less water) (H_a) and of VOC emitted per unit volume of coating as applied (less water and exempt solvents) (G_a) for all coatings (as determined by the procedures specified in § 63.750(d) and (f)); and

(ii) All data, calculations, and test results (including EPA Method 24 results) used to determine the values of H_a and G_a.

(5) For primers and topcoats that are controlled by a control device other than a carbon adsorber:

(i) The overall control efficiency of the control system (as determined using the procedures specified in § 63.750(h)) and all test results, data, and calculations used in determining the overall control efficiency;

(ii) If an incinerator other than a catalytic incinerator is used, continuous records of the firebox temperature recorded under § 63.751(b)(9) and all calculated 3-hour averages of the firebox temperature; and

(iii) If a catalytic incinerator is used, continuous records of the temperature recorded under § 63.751(b)(10) and all calculated 3-hour averages of the recorded temperatures.

(6) For primer and topcoats that are controlled by a carbon adsorber:

(i) The overall control efficiency of the control system (as determined using the procedures specified in § 63.750(g)) and all test results, data, and calculations used in determining the overall control efficiency. The length of the rolling material balance period and all data and calculations used for determining this rolling period. The record of the certification of the accuracy of the device that measures the amount of HAP or VOC recovered; or

(ii) For nonregenerative carbon adsorbers, the overall control efficiency of the control system (as determined using the procedures specified in § 63.750(g)) and all test results, data, and calculations used in determining the overall control efficiency. The record of the carbon replacement time established as the site-specific operating parameter to demonstrate compliance.

(d) *Primer and topcoat application operations—inorganic HAP emissions.*

(1) Each owner or operator complying with § 63.745(g) for the control of inorganic HAP emissions from primer and topcoat application operations through the use of a dry particulate filter system or a HEPA filter system shall record the pressure drop across the operating system once each shift during which coating operations occur.

(2) Each owner or operator complying with § 63.745(g) through the use of a waterwash system shall record the water flow rate through the operating system once each shift during which coating operations occur.

(3) This log shall include the acceptable limit(s) of pressure drop or water flow rate, as applicable, as specified by the filter or booth manufacturer or in locally prepared operating procedures.

(4) If 3-stage or HEPA filters are used at a new facility to control emissions from chromated primers or topcoats, records shall be kept of documentation supplied by the filter manufacturer that the filters in use meet the 3-stage or HEPA filter requirements.

(e) *Depainting operations.* Each owner or operator subject to the depainting standards specified in § 63.746 shall record the information specified in paragraphs (e)(1) through (e)(7) of this section, as appropriate.

(1) *General.* For all chemical strippers used in the depainting operation:

(i) The name of each chemical stripper; and

(ii) Monthly volumes of each organic-HAP containing chemical stripper used.

(2) For HAP-containing chemical strippers that are controlled by a carbon adsorber:

(i) The overall control efficiency of the control system (as determined using the procedures specified in § 63.750(g)) and all test results, data, and calculations used in determining the overall control efficiency. The length of the rolling material balance period and all data and calculations used for determining this rolling period. The record of the certification of the accuracy of the device that measures the amount of HAP or VOC recovered; or

(ii) For nonregenerative carbon adsorbers, the overall control efficiency of the control system (as determined using the procedures specified in § 63.750(g)) and all test results, data, and calculations used in determining the overall control efficiency. The record of the carbon replacement time established as the site-specific operating parameter to demonstrate compliance.

(3) For HAP-containing chemical strippers that are controlled by a control device other than a carbon adsorber:

(i) The overall control efficiency of the control system (as determined using the procedures specified in § 63.750(h)) and all test results, data, and calculations used in determining the overall control efficiency;

(4) For each type of aircraft depainted at the facility, a listing of the parts, subassemblies, and assemblies normally removed from the aircraft before depainting. Prototype, test model or aircraft that exist in low numbers (i.e., less than 25 aircraft of any one type) are exempt from this requirement.

(5) *Non-chemical based equipment.* If dry media blasting equipment is used to comply with the organic HAP emission limit specified in § 63.746(b)(1):

(i) The names and types of non-chemical based equipment; and

(ii) For periods of malfunction,

(A) The non-chemical method or technique that malfunctioned;

(B) The date that the malfunction occurred;

(C) A description of the malfunction;

(D) The methods used to depaint aerospace vehicles during the malfunction period;

(E) The dates that these methods were begun and discontinued; and

(F) The date that the malfunction was corrected.

(6) *Spot stripping and decal removal.* For spot stripping and decal removal, the volume of organic HAP-containing chemical stripper used, the annual average volume of organic HAP-containing stripper used per aircraft, the annual number of aircraft stripped, and all data and calculations used.

(7) *Inorganic HAP emissions.* The actual pressure drop across the particulate filters or the visual continuity of the water curtain and water flow rate for waterwash systems, once each shift in which the depainting process is in operation. This log shall include the acceptable limit(s) of the pressure drop as specified by the filter manufacturer and the visual continuity of the water curtain and water flow rate for waterwash systems as specified by the booth manufacturer or in locally prepared operating procedures.

(f) *Chemical milling maskant application operations.* Each owner or operator seeking to comply with the organic HAP and VOC content limits for the chemical milling maskant application operation, as specified in § 63.747(c), shall record the information specified in paragraphs (f)(1) through (f)(4) of this section, as appropriate.

(1) For uncontrolled chemical milling maskants that meet the organic HAP or VOC content limit without averaging:

(i) The mass of organic HAP emitted per unit volume of chemical milling maskant as applied (less water) (H_i) and the mass of VOC emitted per unit volume of chemical milling maskant as applied (less water and exempt solvents) (G_i) for each chemical milling maskant formulation used each month (as determined by the procedures specified in § 63.750 (k) and (m));

(ii) All data, calculations, and test results (including EPA Method 24 results) used in determining the values of H_i and G_i; and

(iii) The volume (gal) of each chemical milling maskant formulation used each month.

(2) For chemical milling maskants complying with the organic HAP or VOC content level by averaging:

(i) The monthly volume-weighted average masses of organic HAP emitted per unit volume of chemical milling maskant as applied (less water) (H_a) and of VOC emitted per unit volume of chemical milling maskant as applied (less water and exempt solvents) (G_a) for all chemical milling maskants (as determined by the procedures specified in § 63.750 (l) and (n)); and

(ii) All data, calculations, and test results (including EPA Method 24 results) used to determine the values of H_a and G_a.

(3) For chemical milling maskants that are controlled by a carbon adsorber:

(i) The overall control efficiency of the control system (as determined using the procedures specified in § 63.750(g)) and all test results, data, and calculations used in determining the overall control efficiency. The length of the rolling material balance period and all data and calculations used for determining this rolling period. The record of the certification of the accuracy of the device that measures the amount of HAP or VOC recovered; or

(ii) For nonregenerative carbon adsorbers, the overall control efficiency of the control system (as determined using the procedures specified in § 63.750(g)) and all test results, data, and calculations used in determining the overall control efficiency. The record of the carbon replacement time established as the site-specific operating parameter to demonstrate compliance.

(4) For chemical milling maskants that are controlled by a control device other than a carbon adsorber:

(i) The overall control efficiency of the control system (as determined using the procedures specified in § 63.750(h)) and all test results, data, and calculations used in determining the overall control efficiency;

(ii) If an incinerator other than a catalytic incinerator is used, continuous records of the firebox temperature recorded under § 63.751(b)(9) and all calculated 3-hour averages of the firebox temperature; and

(iii) If a catalytic incinerator is used, continuous records of the temperature recorded under § 63.751(b)(10) and all calculated 3-hour averages of the recorded temperatures.

§ 63.753 Reporting requirements.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, each owner or operator subject to this subpart shall fulfill the requirements contained in § 63.9 (a) through (e) and (h) through (j), Notification requirements, and § 63.10 (a), (b), (d), and (f), Recordkeeping and reporting requirements, of the General Provisions, 40 CFR part 63, subpart A, except that the initial notification requirements for new or reconstructed affected sources in § 63.9(b) (3) through (5) shall not apply. In addition to the requirements of § 63.9(h), the notification of compliance status shall include:

(i) Information detailing whether the source has operated within the specified ranges of its designated operating parameters.

(ii) For each coating line, where averaging will be used along with the types and quantities of coatings the facility expects to use in the first year of operation. Averaging schemes shall be approved by the Administrator or delegated State authority and shall be included as part of the facility's title V or part 70 permit.

(2) For the purposes of this subpart, a title V or part 70 permit application may be used in lieu of the initial notification required under § 63.9(b)(2), provided the same information is contained in the permit application as required by § 63.9(b)(2), and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA. Permit applications shall be submitted by the same due dates as those specified for the initial notifications.

(3) For the purposes of this subpart, the Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment to a particular time period or postmark deadline submitted under § 63.9(i) within 30 calendar days of receiving sufficient information to evaluate the request, rather than 15 calendar days as provided for in § 63.9(i)(3).

(b) *Cleaning operation.* Each owner or operator of a cleaning operation subject to this subpart shall submit the following information:

(1) Semiannual reports occurring every 6 months from the date of the notification of compliance status that identify:

(i) Any instance where a noncompliant cleaning solvent is used for a non-exempt hand-wipe cleaning operation;

(ii) A list of any new cleaning solvents used for hand-wipe cleaning in the previous 6 months and, as appropriate, their composite vapor pressure or notification that they comply with the composition requirements specified in § 63.744(b)(1);

(iii) Any instance where a noncompliant spray gun cleaning method is used;

(iv) Any instance where a leaking enclosed spray gun cleaner remains unrepaired and in use for more than 15 days; and

(v) If the operations have been in compliance for the semiannual period, a statement that the cleaning operations have been in compliance with the applicable standards. Sources shall also submit a statement of compliance signed by a responsible company official certifying that the facility is in compliance with all applicable requirements.

(c) *Primer and topcoat application operations.* Each owner or operator of a primer or topcoat application operation subject to this subpart shall submit the following information:

(1) Semiannual reports occurring every 6 months from the date of the notification of compliance status that identify:

(i) For primers and topcoats where compliance is not being achieved through the use of averaging or a control device, each value of H_i and G_i, as recorded under § 63.752(c)(2)(i), that exceeds the applicable organic HAP or VOC content limit specified in § 63.745(c);

(ii) For primers and topcoats where compliance is being achieved through the use of averaging, each value of H_a and G_a, as recorded under § 63.752(c)(4)(i), that exceeds the applicable organic HAP or VOC content limit specified in § 63.745(c);

(iii) If incinerators are used to comply with the standards, all periods when the 3-hour average combustion temperature(s) is (are) less than the average combustion temperature(s) established under § 63.751(b) (11) or (12) during the most recent performance test during which compliance was demonstrated;

(iv) If a carbon adsorber is used;

(A) each rolling period when the overall control efficiency of the control system is calculated to be less than 81%, the initial material balance calculation, and any exceedances as demonstrated through the calculation; or,

(B) for nonregenerative carbon adsorbers, submit the design evaluation, the continuous monitoring system performance report, and any excess emissions as demonstrated through deviations of monitored values.

(v) For control devices other than an incinerator or carbon adsorber, each exceedance of the operating parameter(s) established for the control device under the initial performance test during which compliance was demonstrated;

(vi) All times when a primer or topcoat application operation was not immediately shut down when the pressure drop across a dry particulate filter or HEPA filter system, or the water flow rate through a waterwash system, as appropriate, was outside the limit(s) specified by the filter or booth manufacturer or in locally prepared operating procedures;

(vii) If the operations have been in compliance for the semiannual period, a statement that the operations have been in compliance with the applicable standards; and,

(2) Annual reports beginning 12 months after the date of the notification of compliance status listing the number of times the pressure drop or water flow rate for each dry filter or waterwash system, as applicable, was outside the limit(s) specified by the filter or booth manufacturer or in locally prepared operating procedures.

(d) *Depainting operation.* Each owner or operator of a depainting operation subject to this subpart shall submit the following information:

(1) Semiannual reports occurring every 6 months from the date of the notification of compliance status that identify:

(i) Any 24-hour period where organic HAP were emitted from the depainting of aerospace vehicles, other than from the exempt operations listed in § 63.746 (a), (b)(3), and (b)(5).

(ii) Any new chemical strippers used at the facility during the reporting period;

(iii) The organic HAP content of these new chemical strippers;

(iv) For each chemical stripper that undergoes reformulation, its organic HAP content;

(v) Any new non-chemical depainting technique in use at the facility since the notification of compliance status or any subsequent semiannual report was filed;

(vi) For periods of malfunctions:

(A) The non-chemical method or technique that malfunctioned;

(B) The date that the malfunction occurred;

(C) A description of the malfunction;

(D) The methods used to depaint aerospace vehicles during the malfunction period;

(E) The dates that these methods were begun and discontinued; and

(F) The date that the malfunction was corrected;

(vii) All periods where a non-chemical depainting operation subject to § 63.746 (b)(2) and (b)(4) for the control of inorganic HAP emissions was not immediately shut down when the pressure drop or water flow rate was outside the limit(s) specified by the filter or booth manufacturer or in locally prepared operational procedures;

(viii) A list of new and discontinued aircraft models depainted at the facility over the last 6 months and a list of the parts normally removed for depainting for each new aircraft model being depainted; and

(ix) If the depainting operation has been in compliance for the semiannual period, a statement signed by a responsible company official that the operation was in compliance with the applicable standards.

(2) Annual reports occurring every 12 months from the date of the notification of compliance status that identify:

(i) The average volume per aircraft of organic HAP-containing chemical strippers used for spot stripping and decal removal operations if it exceeds the limits specified in § 63.746(b)(3); and

(ii) The number of times the pressure drop limit(s) for each filter system or the number of times the water flow rate limit(s) for each waterwash system were outside the limit(s) specified by the filter or booth manufacturer or in locally prepared operating procedures.

(3) Where a control device is used to control organic HAP emissions, semiannual reports that identify:

(i) If a carbon adsorber is used,

(A) each rolling period when the overall control efficiency of the control system is calculated to be less than 81% for existing systems or less than 95% for new systems, the initial material balance calculation, and any exceedances as demonstrated through the calculation; or,

(B) for nonregenerative carbon adsorbers, submit the design evaluation, the continuous monitoring system performance report, and any excess emissions as demonstrated through deviations of monitored values.

(ii) For control devices other than a carbon adsorber, each exceedance of the operating parameter(s) established for the control device under the initial performance test during which compliance was demonstrated;

(iii) Descriptions of any control devices currently in use that were not listed in the notification of compliance status or any subsequent report.

(e) *Chemical milling maskant application operation.* Each owner or operator of a chemical milling maskant application operation subject to this subpart shall submit semiannual reports occurring every 6 months from the date of the notification of compliance status that identify:

(1) For chemical milling maskants where compliance is not being achieved through the use of averaging or a control device, each value of H_i and G_i, as recorded under § 63.752(f)(1)(i), that exceeds the applicable organic HAP or VOC content limit specified in § 63.747(c);

(2) For chemical milling maskants where compliance is being achieved through the use of averaging, each value of H_a and G_a, as recorded under § 63.752(f)(2)(i), that exceeds the applicable organic HAP or VOC content limit specified in § 63.747(c);

(3) Where a control device is used,

(i) If incinerators are used to comply with the standards, all periods when the 3-hour average combustion temperature(s) is (are) less than the average combustion temperature(s) established under § 63.751(b) (11) or (12) during the most recent performance test during which compliance was demonstrated;

(ii) If a carbon adsorber is used,

(A) each rolling period when the overall control efficiency of the control system is calculated to be less than 81%, the initial material balance calculation, and any exceedances as demonstrated through the calculation; or,

(B) for nonregenerative carbon adsorbers, submit the design evaluation, the continuous monitoring system performance report, and any excess emissions as demonstrated through deviations of monitored values.

(iii) For control devices other than an incinerator or carbon adsorber, each exceedance of the operating parameter(s) established for the control device under the initial performance test during which compliance was demonstrated;

(4) All chemical milling maskants currently in use that were not listed in the notification of compliance status or any other subsequent semiannual report;

(5) Descriptions of any control devices currently in use that were not listed in the notification of compliance status or any subsequent report; and

(6) If the operations have been in compliance for the semiannual period, a statement that the chemical milling maskant application operation has been in compliance with the applicable standards.

§§ 63.754–63.759 [Reserved]

3. Section 63.14 is amended by adding paragraph (b)(7) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(7) ASTM E 260–91, Standard Practice for Packed Column Gas Chromatography, IBR approved for § 63.750(b)(2) of subpart GG of this part.

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[FR Doc. 95–21505 Filed 8–31–95; 8:45 am]

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federal register

Friday
September 1, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 63

Indian Child Protection and Family Violence Prevention; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 63

RIN 1076–AC 97

Indian Child Protection and Family Violence Prevention

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to establish regulations as mandated by the Indian Child Protection and Family Violence Prevention Act that prescribe minimum standards of character and suitability of employment for individuals whose duties and responsibilities allow them regular contact with or control over Indian children, and establish the method for distribution of funds appropriated for Indian child protection and family violence prevention programs, including appropriate caseload standards and staffing requirements for these tribally operated programs.

DATES: Comments must be received on or before October 31, 1995.

ADDRESSES: Mail comments to Betti A. Delrow, Child Protection Coordinator, Department of the Interior, Bureau of Indian Affairs, 1849 C St. NW, Mail Stop 4603–MIB, Washington, DC 20240; OR, hand deliver them to Room 4603 at the above address.

FOR FURTHER INFORMATION CONTACT: Joann Sebastian Morris, Acting Director, Office of Tribal Services, telephone (202) 208–3463.

SUPPLEMENTARY INFORMATION:

Background

In enacting the Indian Child Protection and Family Violence Prevention Act (Act), Pub. L. 101–630, 104 Stat. 4544, 25 U.S.C. 3201–3211, the Congress recognized there is no resource more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.

The purpose of these proposed regulations is:

- To propose minimum standards of character and suitability for employment for individuals whose duties and responsibilities allow them regular contact with or control over Indian children as required by Title IV, Section 408 of the Act, 25 U.S.C. 3207(b).
- To propose the method for distribution of funds to support tribally operated programs to protect Indian children and reduce the incidents of family violence in Indian country as authorized by Title IV, Section 411 of the Act, 25 U.S.C. 3210(f)(3).
- To propose appropriate caseload standards and staffing requirements for Indian child protection and family violence prevention programs as required by Title IV, Section 411 of the Act, 25 U.S.C. 3210(f)(2).

These proposed regulations were developed in consultation with tribes. A working group of tribal and BIA representatives developed a draft of each section which was then presented to participants at a national tribal consultation meeting in Oklahoma City, Oklahoma, August 31 through September 1, 1994.

The transcript of the national tribal consultation meeting indicates that, after lengthy discussion, participants accepted a two part formula in which 49% of appropriated funds are distributed equally to all tribes and 49% is distributed on a per capita basis according to the population of children residing in the service area (25 U.S.C. 3210(f)(3) a & b)), with a two percent set aside for special circumstances (25 U.S.C. 3210(f)(3)(d)). In any year appropriations do not exceed fifty percent of the authorization, funds will be equitably distributed (25 U.S.C. 3210(f)(5)), with a two percent set aside for special circumstances (25 U.S.C. 3210(f)(3)(d)).

Participants agreed that the proposed formula should *not* include projected number of cases per month because many tribes have not had the opportunity to develop statistics. It was recommended the proposed formula serve as an interim formula until the BIA has developed baseline data using the standard assessment methodology developed for the Indian Child Welfare Act program. It was also recommended that Indian Child Protection and Family Violence Prevention Program grants be combined with ICWA grants to avoid duplication of effort and paperwork.

Participants acknowledged that the Act requires caseload standards be developed as a part of the funding formula, but indicated that caseload standards do not represent the variety of activities contemplated by the Act, e.g., prevention and public education. Participants agreed that caseload standards can indicate whether funding is sufficient to support a child protection and family violence prevention program, but such standards should dictate program design and staffing requirements at the local level.

Representatives of the 1994 tribal consultation meeting were then asked to assist the tribal/BIA working group with the revision of the draft regulations. The revision was completed October 23, 1994, and rewritten in "Plain English" in January, 1995.

It is with appreciation to the many tribal representatives who gave of their time and experience that these proposed regulations are published.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This proposed rule is a significant regulatory action under Executive Order 12866 and requires review by the Office of Management and Budget.

Depending upon the number of positions for which determinations of suitability for employment are required, the cost of background investigations (including the current $22 fee for each Federal Bureau of Investigation fingerprint check) may have an economic effect on each tribal government and tribal organization under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and require additional outlays by tribal governments, tribal organizations, and the Federal Government. However, these costs are not projected to exceed $100,000 and are minimal when compared to the long-term societal and economic impact on families and communities when children are the victims of crimes of violence, sexual assault, molestation, exploitation, contact or prostitution.

In accordance with Executive Order 12630, the Department has determined that this proposed rule does not have "significant takings" implications. The proposed rule does not pertain to "taking" of private property interests, nor does it impact private property.

The Department has determined that this proposed rule does not have significant federalism effects under Executive Order 12612 and will not interfere with the roles, rights and responsibilities of states.

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collection requirements contained in this part will be approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* This information is necessary to conduct background investigations of individuals in positions that involve regular contact with or control over Indian children. The information collected includes an annual program report and statistical data as required by the contract or grant award agreement.

Public reporting for this information collection is estimated to average 32 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collected, and completing the required reports.

Drafting Information

The primary authors of this document are Judy A. Baggett, Division of Social Services, Office of Tribal Services, Janice Ruffin, Division of Law Enforcement Services, Bureau of Indian Affairs, Department of Interior, and Bettie Rushing, Division of Tribal Government Services.

List of Subjects in 25 CFR Part 63

Child welfare, Employment, Indians, Maternal and child health.

For the reasons given in the preamble, part 63 of title 25, chapter I of the Code of Federal Regulations is proposed to be added as set forth below.

PART 63—INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION

Subpart A—Purpose, Policy, and Definitions

Sec.
63.1 Purpose.
63.2 Policy.
63.3 Definitions.
63.4–63.9 [Reserved].

Subpart B—Minimum Standards of Character and Suitability for Employment

63.10 Purpose.
63.11 What is a determination of suitability for employment and efficiency of service?
63.12 What are minimum standards of character?
63.13 Who is required to determine suitability for employment and efficiency of service?
63.14 What positions require a determination of suitability for employment or retention?
63.15 What questions should an employer ask?
63.16 Who conducts the background investigation and prepares determinations of suitability for employment?
63.17 How does an employer determine suitability for employment and efficiency of service?
63.18 Are the requirements for Bureau of Indian Affairs adjudication different from the requirements for Indian tribes and tribal organizations?
63.19 When should an employer deny employment or dismiss an employee?
63.20 What should an employer do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?
63.21 Are there other factors that may disqualify an applicant, volunteer or employee from placement in a sensitive position?
63.22 What rights does an applicant, volunteer or employee have during this process?
63.23 What protections must employers provide to applicants, volunteers and employees?
63.24–63.29 [Reserved].

Subpart C—Indian Child Protection and Family Violence Prevention Program

63.30 What is the purpose of the Indian child protection and family violence prevention program?
63.31 Can both the Bureau of Indian Affairs and tribes operate Indian child protection and family violence prevention programs?
63.32 Under what authority are Indian child protection and family violence prevention funds awarded?
63.33 What must an application for Indian child protection and family violence funds include?
63.34 How are Indian child protection and family violence prevention program funds distributed?
63.35 How may Indian child protection and family violence prevention program funds be used?
63.36 What are the special requirements for Indian child protection and family violence prevention programs?
63.37–63.50 [Reserved].

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 200, 3201 *et seq.*

Subpart A—Purpose, Policy, and Definitions

§ 63.1 Purpose.

The purpose of these regulations is to prescribe minimum standards of character and suitability for employment for individuals whose duties and responsibilities allow them regular contact with or control over Indian children, and to establish the method for distribution of funds to support tribally operated programs to protect Indian children and reduce the incidents of family violence in Indian country as authorized by the Indian Child Protection and Family Violence Prevention Act of 1990, Pub. L. 101–630, 104 Stat. 4544, 25 U.S. C. 3201–3211.

§ 63.2 Policy.

In enacting the Indian Child Protection and Family Violence Prevention Act, the Congress recognized there is no resource more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. The minimum standards of character and suitability of employment for individuals ensure that Indian children are protected, and the Indian child protection and family violence prevention programs will emphasize the unique values of Indian culture and community involvement in the prevention and treatment of child abuse, child neglect and family violence.

§ 63.3 Definitions.

Bureau means the Bureau of Indian Affairs of the Department of the Interior;

Child means an individual who is not married, and has not attained 18 years of age.

Child abuse includes but is not limited to any case in which a child is dead, or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone; subdural hematoma, or soft tissue swelling, and this condition is not justifiably explained or may not be the product of an accidental occurrence; and any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

Child neglect includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened.

Family violence means any act, or threatened act, of violence, including any forceful detention of an individual, which results, or threatens to result, in physical or mental injury, and is committed by an individual against another individual to whom such person is, or was, related by blood or marriage or otherwise legally related, or with whom such person is, or was, residing.

Indian means any individual who is a member of an Indian tribe.

Indian child means any unmarried person who is under age eighteen and is either a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

Indian country The term "Indian country" is used instead of "Indian reservation" for consistency. Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian reservation means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or lands held by incorporated Native groups, regional corporations, or village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Inter-tribal consortium means a partnership between an Indian tribe or tribal organization of an Indian tribe, and one or more Indian tribes or tribal organizations of one or more Indian tribes.

Must is used in place of shall and indicates a mandatory or imperative act or requirement.

Local child protective services agency is an agency of the Federal Government, state, or Indian tribe that has the primary responsibility for child protection on any Indian reservation, or within any community in Indian country.

Local law enforcement agency is that Federal, tribal, or state law enforcement agency that has primary responsibility for the investigation of an instance of alleged child abuse within the involved Indian jurisdiction.

Person responsible for a child's welfare is any person who has legal or other recognized duty for the care and safety of a child, and may include any employee or volunteer of a children's residential facility, and any person providing out-of-home care, education, or services to children.

Related assistance means the counseling and self-help services for abusers, victims, and dependents in family violence situations; referrals for appropriate health-care services (including alcohol and drug abuse treatment); and may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents.

Secretary means the Secretary of the Interior.

Service means the Indian Health Service of the Department of Health and Human Services.

Shelter means the temporary refuge and related assistance in compliance with applicable Federal and tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents.

Tribal organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided,* That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe must be a prerequisite to the letting or making of such contract or grant.

§ 63.4–63.9 [Reserved]

Subpart B Minimum Standards of Character and Suitability for Employment

§ 63.10 Purpose.

The purpose of this part is to establish:

(a) Procedures for determining suitability for employment and efficiency of service as mandated by the Indian Child Protection and Family Violence Prevention Act; and

(b) *Minimum standards of character* to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes or acted in a manner that placed others at risk or raised questions about their trustworthiness.

§ 63.11 What is a determination of suitability for employment and efficiency of service?

(a) *Determinations of suitability measure the fitness or eligibility* of an applicant, volunteer, or employee for a particular position. Suitability for employment does not evaluate an applicant's education, skills, knowledge, experience, etc. Rather, it requires that the employer investigate the background of each applicant, volunteer, and employee to:

(1) Determine the degree of risk the applicant, volunteer, or employee brings to the position; and

(2) Certify that the applicant's, volunteer's, or employee's past conduct would not interfere with his/her performance of duties, nor would it create an immediate or long-term risk for any Indian child.

(b) *Efficiency of service* is the employer's verification that the applicant or employee is able to perform the duties and responsibilities of the position, and his/her presence on the job will not inhibit other employees or the agency from performing their functions.

§ 63.12 What are minimum standards of character?

Minimum standards of character are established by an employer and refer to identifiable character traits and past conduct. An employer may use character traits and past conduct to determine whether an applicant, volunteer, or employee can effectively perform the duties of a particular position without risk of harm to others. Minimum standards of character ensure that no applicant, volunteer, or employee will be placed in a position with regular contact with or control over Indian children if he/she has been found guilty of or entered a plea of nolo contendere or guilty to any offense under Federal, state, or tribal law involving crimes of violence, sexual assault, molestation, exploitation, contact or prostitution, or crimes against persons.

§ 63.13 Who is required to determine suitability for employment and efficiency of service?

(a) *The Bureau of Indian Affairs* must compile a list of all authorized positions which involve regular contact with or control over Indian children; investigate the character of each individual who is employed, or is being considered for employment; and, prescribe minimum standards of character which each individual must meet to be appointed to such positions.

(b) All Indian tribes or tribal organizations receiving funds under the

authority of the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 must conduct a background investigation for individuals whose duties and responsibilities would allow them regular contact with or control over Indian children, and employ only individuals who meet standards of character that are no less stringent than those prescribed for the Bureau of Indian Affairs.

§ 63.14 What positions require a determination of suitability for employment or retention?

All positions that allow an applicant, employee, or volunteer regular contact with or control over Indian children are subject to a background investigation and determination of suitability for employment.

§ 63.15 What questions should an employer ask?

Employment applications must:

(a) Ask whether the applicant, volunteer, or employee has been arrested or convicted of a crime involving a child, violence, sexual assault, molestation, exploitation, contact or prostitution, or crimes against persons;

(b) Ask the disposition of the arrest or charge;

(c) Require that an applicant, volunteer or employee sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application; and,

(d) Inform the applicant, volunteer or employee that a criminal history record check is a condition of employment and require the applicant, volunteer or employee to consent, in writing, to a record check.

§ 63.16 Who conducts the background investigation and prepares determinations of suitability for employment?

(a) The Bureau of Indian Affairs must use the OPM to conduct background investigations for Federal employees. The BIA must designate qualified security personnel to adjudicate the results of background investigations.

(b) Indian tribes and tribal organizations may conduct their own background investigations, contract with private firms, or request the United States Office of Personnel Management (OPM) to conduct an investigation. The investigation should cover the past five years of the individual's employment, education, etc.

§ 63.17 How does an employer determine suitability for employment and efficiency of service?

(a) Adjudication is the process employers use to determine suitability for employment and efficiency of service. The adjudication process protects the interests of the employer and the rights of applicants and employees. Adjudication requires uniform evaluation to ensure fair and consistent judgment.

(b) Each case is judged on its own merits. All available information, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

(c) An adjudicating official conducts the adjudication. Each Federal agency, Indian tribe, or tribal organization must appoint an adjudicating official, who must first have been the subject of a favorable background investigation.

(1) Indian tribes and tribal organizations must ensure that persons charged with the responsibility for adjudicating employee background investigations are well-qualified and trained.

(2) Indian tribes and tribal organizations should also ensure that individuals who are not trained to adjudicate these types of investigations are supervised by someone who is experienced and receive the training necessary to perform the task.

(d) Each adjudicating official must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for suitability.

(e) The adjudicating official must review the background investigation to determine the character, reputation, and trustworthiness of the individual. At a minimum, the background investigation must:

(1) Review each security investigation form and employment application and compare the information provided;

(2) Review the results of written record searches requested from local law enforcement agencies, former employers, former supervisors, employment references, and schools; and

(3) Review the results of the fingerprint charts maintained by the Federal Bureau of Investigation or other law enforcement information maintained by other agencies.

(f) Relevancy is a key objective in evaluating investigative data. The adjudicating official must consider prior conduct in light of:

(1) The nature and seriousness of the conduct in question;

(2) The recency and circumstances surrounding the conduct in question;

(3) The age of the individual at the time of the incident;

(4) Societal conditions that may have contributed to the nature of the conduct;

(5) The probability that the individual will continue the type of behavior in question;

(6) The individual's commitment to rehabilitation and a change in the behavior in question; and

(7) The degree of public trust and the possibility the public would be placed at risk if the individual is appointed to the position.

§ 63.18 Are the requirements for Bureau of Indian Affairs adjudication different from the requirements for Indian tribes and tribal organizations?

(a) Yes. In addition to the minimum requirements for background investigations found in § 63.12, Bureau of Indian Affair's adjudicating officials must review the results of searches by state human services agencies, the OPM National Agency Check and Inquiries plus Credit, which includes a search of the OPM Security/Suitability Investigations Index (SII) and the Defense Clearance and Investigations Index (DCII).

(b) All Bureau of Indian Affairs employees who have regular contact with or control over Indian children must be reinvestigated every five years during their employment in that or any other position which allows regular contact with or control over Indian children.

§ 63.19 When should an employer deny employment or dismiss an employee?

(a) An employer may deny employment or dismiss an employee when an individual has been found guilty of or entered a plea of guilty or nolo contendere to any Federal, state or tribal offense involving a crime of violence, sexual assault, molestation, child exploitation, sexual contact, prostitution, or crimes against persons.

(b) An employer may deny employment or dismiss an employee when an individual has been convicted of an offense involving a child victim, sex crime or violence against a person.

§ 63.20 What should an employer do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The employer may deny the applicant employment until the charge has been resolved.

(b) The employer may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The employer may detail or reassign the employee to other duties that do not involve contact with children.

(d) The employer may place the employee on administrative leave until the court has disposed of the charge.

§ 63.21 Are there other factors that may disqualify an applicant, volunteer or employee from placement in a sensitive position?

(a) An applicant, volunteer, or employee may be disqualified from consideration or continuing employment if it is found that:

(1) The individual's misconduct or negligence interfered with or affected a prior employer's performance of duties and responsibilities.

(2) The individual's criminal or dishonest conduct affected the individual's performance or the performance of others.

(3) The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment.

(4) The individual has refused to furnish testimony or cooperate with an investigation.

(5) The individual's alcohol or substance abuse is of a nature and duration that suggests the individual could not perform the duties of the position or would directly threaten the property or safety of others.

(6) The individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation.

(7) The individual knowingly and willfully engaged in an act or activities designed to disrupt government programs.

(b) An individual must be disqualified for Federal employment if any statutory or regulatory provision would prevent his/her lawful employment.

(c) An employer may still certify that the individual is suitable for employment in a non-sensitive or sensitive position having no contact with children if the prior conduct would not interfere with performance of duties and the position does not involve a high degree of public trust or potential for risk for Indian children.

§ 63.22 What rights does an applicant, volunteer, or employee have during this process?

(a) The applicant, volunteer, or employee must be provided an opportunity to explain, deny, or refute unfavorable and incorrect information gathered in an investigation, before the adjudication is final. The applicant, volunteer, or employee should receive a written summary of all derogatory information and be informed of the process for explaining, denying, or refuting unfavorable information.

(b) Employers and adjudicating officials must *not* release the actual background investigative report to an applicant, volunteer, or employee. However, they may issue a written summary of the derogatory information.

(c) The applicant, volunteer, or employee who is the subject of a background investigation may obtain a copy of the reports from the originating (Federal, state, or other tribal) agency and challenge the accuracy and completeness of any information maintained by that agency.

(d) The results of an investigation cannot be used for any purpose other than to determine suitability for employment in a position that involves regular contact with or control over Indian children.

(e) Investigative reports contain information of a highly personal nature and should be maintained confidentially and secured in locked files. Investigative reports should be seen only by those officials who in performing their official duties need to know the information contained in the report.

§ 63.23 What protections must employers provide to applicants, volunteers and employees?

(a) Indian tribes and tribal organizations must comply with the privacy requirements of any Federal, state, or other tribal agency providing background investigations. Indian tribes and tribal organizations must establish and comply with personnel policies that safeguard information derived from background investigations.

(b) The Bureau of Indian Affairs must comply with all policies, procedures, criteria, and guidance contained in the Bureau of Indian Affairs Manual or other appropriate guidelines.

(c) Federal agencies exercising authority under this part by delegation from OPM must comply with OPM policies, procedures, criteria, and guidance.

§§ 63.24–63.29 [Reserved]

Subpart C—Indian Child Protection and Family Violence Prevention Program

§ 63.30 What is the purpose of the Indian child protection and family violence prevention program?

The purpose of this program is to develop tribally-operated programs to protect Indian children and reduce the incidents of family violence on Indian reservations.

§ 63.31 Can both the Bureau of Indian Affairs and tribes operate Indian child protection and family violence prevention programs?

Yes. However, tribes are encouraged to develop and operate programs to protect Indian children and reduce the incidence of family violence in Indian country.

§ 63.32 Under what authority are Indian child protection and family violence funds awarded?

The Secretary is authorized to enter into contracts with Indian tribes, tribal organizations, or tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450, *et seq.*, for the development and establishment of Indian child protection and family violence prevention programs. This includes compacting with tribes under the Self-Governance program procedures.

§ 63.33 What must an application for Indian child protection and family violence funds include?

In addition to the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450, et seq., contracting requirements, each application must provide the following information:

(a) The name and address of the agency or official to be responsible for the investigation of reported cases of child abuse and child neglect, the treatment and prevention of incidents of family violence, and the provision of immediate shelter and related assistance for victims of family violence and their dependents;

(b) Projected service population of the program;

(c) Projected service area of the program; and

(d) Projected number of cases per month.

§ 63.34 How are Indian child protection and family violence prevention program funds distributed?

(a) Funds will be distributed, subject to the availability of appropriations, and:

(1) In any fiscal year that the appropriation exceeds 50 percent of the level of funding authorized for this purpose by the Act, 49 percent must be distributed equally to all tribes and tribal organizations and 49 percent must be distributed on a per capita basis according to the population of children residing in the service area. Two percent of the annual appropriation will be set aside for distribution to tribes demonstrating special circumstances.

(2) In any fiscal year that the appropriation does not exceed 50 percent the level of funding authorized for this purpose by the Act, funding must be distributed in equal amounts to all tribes. Two percent of the annual appropriation will be set aside for distribution to tribes demonstrating special circumstances.

(3) Special circumstances include but are not limited to a high incidence of child sexual abuse, a high incidence of violent crimes, a high incidence of violent crimes against women, or the existence of a significant victim population within the community.

(i) This 2 percent will be subject to discretionary distribution by the Assistant Secretary—Indian Affairs, or his or her designee. Tribes may request these funds through their respective area offices. All requests must demonstrate a high incidence of child sexual abuse, a high incidence of violent crimes, a high incidence of violent crimes against women, or the existence of a significant victim population within the community.

(ii) Funds will remain available through the third quarter of each fiscal year; in the fourth quarter, unallocated funds will be redistributed based upon the criteria set forth in this section.

(b) Any tribe not wishing to receive Indian child protection and family violence prevention funds must inform its respective area office in writing within 90 days after receiving notice of the allocation from the area office. Each area office may reallocate unused Indian child protection and family violence prevention program funds as provided by § 63.35.

(c) Funds may be used as matching shares for other federally funded programs which contribute to and promote prevention of child abuse, child neglect, and family violence on Indian reservations, but may not be used to supplant funds available for the same general purposes.

(d) Any income resulting from the operation of Indian child protection and family violence prevention programs may be retained and used to promote prevention of child abuse, child neglect, and family violence on Indian reservations.

§ 63.35 How may Indian child protection and family violence prevention program funds be used?

Indian child protection and family violence prevention program funds may be used to:

(a) Establish child protective services programs.

(b) Establish family violence prevention and treatment programs.

(c) Develop and implement multidisciplinary child abuse investigation and prosecution programs.

(d) Provide immediate shelter and related assistance to victims of family violence and their dependents, including construction or renovation of facilities to establish family violence shelters.

(e) Purchase of equipment to assist in the investigation of cases of child abuse and child neglect.

(f) Develop protocols and intergovernmental or interagency agreements among tribal, Federal, state law enforcement, courts of competent jurisdiction, and related agencies to ensure investigations of child abuse cases to minimize the trauma to the child victim, to define and specify each party's responsibilities, and to provide for the coordination of services to victims and their families.

(g) Develop child protection codes and regulations that provide for the care and protection of children and families on Indian reservations.

(h) Establish community education programs for tribal members and school children on issues of family violence, child abuse, and child neglect.

(i) Establish training programs for child protective services, law enforcement, judicial, medical, education, and related services personnel in the investigation, prevention, protection, and treatment of child abuse, child neglect, and family violence.

(j) Establish other innovative and culturally relevant programs and projects that show promise of successfully preventing and treating family violence, child abuse, and child neglect.

§ 63.36 What are the special requirements for Indian child protection and family violence prevention programs?

(a) Each tribe must develop appropriate standards of service, including caseload standards and staffing requirements. The following caseload standards and staffing requirements are comparable to those recommended by the Child Welfare League of America, and are included to assist tribes in developing standards for Indian child protection and family violence prevention programs:

(1) Caseworkers providing services to abused and neglected children and their families have a caseload of 20 active ongoing cases and five active investigations per caseworker.

(2) Caseworkers providing services to strengthen and preserve families with children have a caseload of 20 families. If intensive family-centered crisis services are provided, a caseload of 10 families per caseworker is recommended.

(3) It is recommended that there be one supervisor for every six caseworkers.

(b) The negotiation and award of contract and grant agreements under these regulations must include the following requirements:

(1) Performance of background investigations to ensure that only those individuals who meet the standards of character contained in § 63.1 2 are employed in positions which involve regular contact with or control over Indian children.

(2) Submission of an annual report to the contracting officer's representative which details program activities, number of children and families served, and the number of child abuse, child neglect, and family violence reports received.

(3) Assurance that the identity of any person making a report of child abuse or child neglect will not be disclosed, without the consent of the individual, and that all reports and records collected pursuant to these regulations are confidential and to be disclosed only as provided by Federal or tribal law.

(4) Assurance that persons who, in good faith, report child abuse or child neglect will not suffer retaliation from their employers.

§§ 63.37–63.50 [Reserved]

Dated: August 9, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–21606 Filed 8–31–95; 8:45 am]

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September 1, 1995

Part V

Department of Agriculture

Food and Consumer Service

7 CFR Part 271, et al.

Food Stamp Program; Collecting Food Stamp Recipient Claims From Federal Income Tax Refunds and Federal Salaries; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272 and 273

[Amdt. No. 367]

RIN 0584–AB89

Food Stamp Program: Collecting Food Stamp Recipient Claims From Federal Income Tax Refunds and Federal Salaries

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes methods of collecting two types of Food Stamp Program (FSP) recipient claims from Federal income tax refunds and from Federal salaries. The two types of recipient claims are inadvertent household error (IHE) and intentional Program violation (IPV) claims. These claims represent amounts of benefits which households received but to which they were not entitled. Under this rule claims of these types will be collected from individuals who are no longer participating in the FSP. This rule establishes operating procedures, due-process notices, and appeal rights and other rights and responsibilities of individuals.

DATES: This final rule is effective and must be implemented by October 2, 1995 except that State agencies currently participating in the Federal Income Tax Refund Offset Program (FTROP) must implement 7 CFR 272.2(d)(1)(xii) no later than November 30, 1995.

FOR FURTHER INFORMATION CONTACT: James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 907, Alexandria, Virginia 22302, telephone (703) 305–2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects the State and local agencies which administer the Food Stamp Program and certain individuals who have received excess food stamp benefits. Half of substantially all State and local administrative costs for administering the Food Stamp Program are reimbursed by the Department.

Executive Order 12778

This rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

The information collection requirements in this rule were approved by the Office of Management and Budget (OMB) in connection with the test of FTROP and were assigned OMB Control #0584–0446. This rule makes some changes in those requirements. An estimate of the revised burden associated with this collection will be submitted to OMB according to the requirements of the Paperwork Reduction Act. Comments regarding the information collection requirements in this rule, including suggestions to reduce this burden may be sent to: U.S. Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250 and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0584–0446), Washington, DC 20503.

Background

A. General

The Department published a proposed rule on FTROP and the Federal Salary Offset Program (salary offset) on June 28, 1995 at 60 FR 33612. A total of nine comment letters were received on this proposed rule, eight from State agencies and one from a research and action group concerned with nutrition and related issues (an action group). Those comments are discussed below.

The abbreviated citations in the subheadings of section B of this preamble correspond to paragraphs in section 272.18(g)(5), the subheadings in part C correspond to paragraphs in section 273.18(g)(6).

Three State agencies expressed concern that there would not be sufficient time to implement a final rule for the 1996 offset year and recommended that the final rule be phased in for 1997. With the exception of the 60-day notice, the Department believes that State agencies can implement the requirements of the final rule within the 30-day implementation period. As discussed later in this preamble, for October 1, 1995 State agencies which cannot implement the 60-day notice specified in the proposed rule and made final here may use the format and contents for the 60-day notice as used during the test of FTROP.

B. Federal Income Tax Refund Offset Program (FTROP)

Types of claims referable under FTROP—(ii)(A)(1): The action group objected to the inclusion of IHE claims as a type of claim subject to FTROP because it believes such inclusion conflicts with the Food Stamp Act (7 U.S.C. § 2011, et seq.) (the Act). In B.2.c. of the preamble to the proposed rule, the Department explained that Section 13 of the Act authorizes State agencies to use "other means of collection" such as FTROP for both IHE and IPV claims when households do not pay them through voluntary allotment reduction, a cash repayment schedule or involuntary allotment reduction. Consequently, under the final rule IHE claims continue to be subject to collection under FTROP.

Properly established claims—(ii)(A)(1): One State agency supported the deletion of the term "delinquency" in favor of listing criteria for determining claims past due and legally enforceable, and cited support for the deletion of the three-month "delinquency period." One State agency objected to the proposed requirement that claims be properly established, including the requirement that additional demand letters be provided prior to initiating other collection actions. The State agency believed that this language required additional work for State agencies and was ineffective. The requirement as proposed was intended only to incorporate current requirements for recipient claim demand letters. Claims for which applicable FSP requirements were met would be considered properly established, and no greater number of demand letters would be required for them to be considered subject to FTROP than are required under current food stamp regulations. To avoid confusion on this point, the final rule deletes the reference to additional demand letters from section 273.18(g)(5)(ii)(A)(*1*).

The action group objected that the proposed rule did not set a minimum period for which a claim must be overdue before it could be referred for offset. The group suggested 90 days, since in some cases, such as where demand letters are hand delivered, the group contended that required notices might be delivered and after only a few days a determination made that the debt was past due. Regardless of how delivered, demand letters provide the household with 90 days to request a fair hearing. In addition to this 90-day period, as the action group acknowledges in its comment, under proposed FTROP procedures, at least 60 more days will elapse before a claim can actually be referred for offset, since under FTROP individuals have 60 days to request a State agency review. Furthermore, just prior to when offsets actually begin in late January, State agencies are required to submit lists of claims to be deleted from IRS offset files due to payments and other adjustments made after the end of the 60-day period. Consequently, individuals have ample opportunity to challenge the intended offset under the procedures as proposed, and the final rule does not specify a 90-day minimum "delinquency period."

Joint and several liability—(ii)(A)(2): The proposed rule required that, for claims to be considered past due and legally enforceable (referable under FTROP), State agencies must verify that there is no individual who is jointly and severally liable for the claim also currently participating in the FSP in the State. One State agency supported this requirement, stating that such verification is a part of their on-line claims tracking system. Another State agency objected because they did not have the capability for such verification. While food stamp regulations do not specify a method for such verification, 7 CFR 273.18(a) is clear that State agencies are required to establish claims against all households which received more food stamp benefits than they were entitled to receive or which have a household member who received an overissuance as part of another household. Current food stamp regulations at 7 CFR 273.18(d) specify that households which otherwise fail to pay IHE and IPV claims will have their allotments reduced. Consequently, the verification criteria stated in the proposed rule should be information available to State agencies as part of their ongoing claims collection activities.

The action group also suggested that if an individual begins participating in the FSP after a claim is referred but before it is actually offset, the State agency should be required to collect the claim by implementing an allotment reduction and withdrawing the referral. FCS agrees, which is one reason why the proposed rule at section 273.18(g)(5)(ii)(A)(2) provided that a claim cannot be referred under FTROP where any individual liable for the claim is participating within the State. If the individual is (re)certified after the claim has been referred but before it is offset, as stated in section 273.18(g)(5)(ix)(A), the State agency is obligated to delete the claim from the IRS file. Should an overpayment occur because there is not sufficient time to delete the claim, as stated in section 273.18(g)(5)(ix)(B), the State agency is required to refund any resulting overpayment. The Department believes these provisions address the concerns raised by the group.

The action group raised a number of other objections relating to the impact of joint and several liability for food stamp overissuances on the proposed rule. Section 13(a)(2) of the Act (7 U.S.C. 2022(a)(2)) provides that all adult members of a household at the time of an overissuance are jointly and severally liable for the overissuance. The group felt that in some instances the proposal to collect the claim first by allotment reduction if any person liable for the claim is currently participating in the program is unfair, for example, where a nonparticipating former household member was actually culpable for the overissuance. The action group stated that the equities favor apportioning the claim against the nonparticipating party that actually caused the overissuance. The Department believes that this issue was decided by Congress in Section 13 of the Act when it established joint and several liability for overissuances and the requirement that the remaining household members must repay any overissuance by allotment reduction. The Act makes allotment reduction mandatory for all IPV and IHE claims unless the household agrees to an alternate form of repayment. Moreover, Sections 6 and 13 of the Act clearly contemplate that, in the case of an IPV, the culpable party will be disqualified from participating in the FSP, leaving the claim to be paid by remaining household members.

10-year period—(ii)(A)(4): The proposed rule provided several criteria for determining if a claim was subject to FTROP. One such criteria was that the initial claim demand letter must be dated within 10 years of January 31 of the offset year. As stated in B.3.b of the preamble to the proposed rule, the Department believes that the demand letter establishes when the right of action accrues on recipient claims. Two State agencies stated that the 10-year period should be measured back to the date of the last payment (assuming some were made). The action group objected to the proposal because it felt that it was inconsistent with what the group termed the statute of limitation of six years for pursuing IPV claims and IHE claims. It recommended that the period should begin with the date of the last overpayment.

The Department believes the policy as stated in the proposed rule is consistent with the concept of a "right of action" under the IRS tax offset regulations, as that term has been interpreted by a number of reviewing courts. See, e.g. *Grider* v. *Cavasos*, 911 F2d 1158 (5th Cir., 1990); *Jones* v. *Cavasos*, 889 F.2d 1043 (11 Cir., 1989). The courts have permitted tax offset for administrative claims not reduced to judgment even where the judicial statute of limitations has already expired, reasoning that the Federal Government's right of action does not necessarily accrue until the claim is assigned to the Federal Government, or where the judicial statue of limitation has expired but the 10-year FTROP administrative limitation has not.

In addition, the Department believes the proposed rule is also consistent with discovery-tolled statutes of limitation, such as that in 28 U.S.C. 2416. Moreover, the IRS modified its FTROP regulations, substituting the phrase "right of action" for "date of delinquency," in order to clarify that in cases such as defaulted student loans, the 10 years for FTROP referral is counted from the date the defaulted loan is assigned to the Federal Government, and not the earlier date on which the actual default occurred. See 57 FR 13035, 13036. The State agency would still be required to establish and calculate the claim by including only those overissuances which occurred within six years of the discovery of the claim as required by 7 CFR 273.18(b) for IHE claims and 7 CFR 273.18(c)(2) for IPV claims. Once the claim is established, however, the State would have 10 years to try to collect it under FTROP. Accordingly, the final rule makes no change in the language of the proposed rule on the matter of the 10-year period for determining a claim subject to FTROP.

Voluntary payments—(ii)(A)(5): One State agency stated that individuals often regularly pay on claims without signing an agreement to do so. They believed such individuals are indicating willingness to pay the claim as much as if they had signed an agreement. They recommended that the rule language be revised to delete reference to 7 CFR 272.18(g)(2), where payment schedules are discussed. The Department agrees that whether a written agreement exists is not as important as whether a claim is being repaid and that State agencies should have the flexibility to decide if claims are being repaid regularly and so are not subject to FTROP. Accordingly, the final rule makes the recommended change. For consistency, the adjective "scheduled" as applied in the proposed rule to involuntary payments is replaced with "regular."

The proposed rule stated that claims for which the State agency has received voluntary payments and scheduled, involuntary payments would be considered past due and legally enforceable 30 days after the due date for a regular payment which was not received. The action group contended that the proposed 30-day period for a default on a payment agreement does not permit sufficient time for the State agency to issue the required notice of such default under section 273.18(g)(2). That section of FSP regulations requires that State agencies provide households notice when an installment payment is not received and an opportunity to negotiate a new payment schedule before other collection actions are initiated. These requirements apply to claims which State agencies may want to refer for collection under FTROP. To clarify this matter, in section 273.18(g)(5)(ii)(A)(5) this final rule replaces the proposed 30-day default period with the provision that claims for which State agencies have been receiving regular payments will be deemed past due and legally enforceable if the individual does not respond to a notice of default of a payment agreement and remedy the default as specified in section 273.18(g)(2).

Combined claims/judgment claims—(ii)(B)(2): The proposed rule stated that claims reduced to judgment cannot be combined with other claims. The preamble explained the reason: the IRS requires that judgment claims, which are not subject to the 10-year limit for referral under FTROP, be identified as such. One State agency recommended that the rule be changed to allow combining judgment claims and other claims if the judgment claim is less than 10 years past due. This cannot be done due to the IRS requirement that judgment claims be separately identified. (See IRS Revenue Procedure, "Magnetic Media Reporting for Federal Income Tax Refund Offset Program (Debtor Master File).)

Another State agency asked if, when an individual owes a judgment claim and another claim and the judgment claim is referred, can the other claim also be referred. In such a case, the other claim cannot be referred for that individual. The IRS would identify those referrals as duplicate records and both would be rejected. In these circumstances, the State agency must refer either the judgment claim or the other claim. Multiple, non-judgment claims may be consolidated.

One State agency asked for a definition of judgment, in particular whether it refers to a civil or criminal action. The word "judgment" generally refers to debts resulting from civil actions but restitutionary orders may also result from criminal actions. Since circumstances vary and depend on State and local law, State agencies should consult with their legal counsel if they have questions about how a judgment on a recipient claim affects the 10-year period for being subject to collection from FTROP.

The action group urged that FTROP be limited to collecting debts reduced to judgment. However, the group acknowledged that Congress and the courts have not required this. The group argued that to permit tax offset of non-judgment debts is inconsistent with the Act, and in particular with the provisions in Section 13(c)(2) (7 U.S.C. 2022(c)(2)) which provide for garnishment of State unemployment benefits to recover FSP overissuances. That provision requires either consent of the individual or a "writ, order, summons, or other similar process in the nature of a garnishment from a court * * *" The Department believes that the judicial process requirement in Section 13(c)(2) was intended to recognize that unemployment benefits are paid by individual States from State funds, and that it is necessary to follow State procedures to garnish them. In contrast, FTROP involves funds held by another Federal agency, the IRS, for which Congress itself has established the necessary requirements to effect a "garnishment." The Department believes its proposed procedures meet these requirements.

Undelivered 60-day notices—(iii)(D): The proposed rule stated that claims for which 60-day notices are returned as undeliverable may be referred for collection under FTROP. One State agency supported this provision. The action group opposed it on the grounds that it violates due process. As discussed in B.3.c. of the preamble to the proposed rule, IRS regulations provide that the use of the most current address for the debtor provided by the IRS constitutes a reasonable effort to notify the individual about the intended referral for offset. As mentioned in the background to the August 1991 General Notice, the IRS requires that taxpayers notify the IRS of their current address. The Department recognizes that taxpayers may not always comply with this requirement and may move before a timely submitted change of address is processed. For these reasons, among others, in B.3.d. of the preamble to the proposed rule when discussing requests for review, the Department pointed out that State agencies are required to refund over collections if after the 60-day period for requesting such reviews individuals document that a claim collected through FTROP is not past due and legally enforceable. The proposed rule incorporated a reference to this requirement at section 273.18(g)(5)(viii)(B). Consequently, this final rule makes no change in the provision that claims for which 60-day notices are returned as undeliverable may be referred for collection under FTROP.

Contents of the 60-day notice—(iv): Two State agencies supported the inclusion of information and instructions about requesting reviews. One State agency included recommendations for certain editorial changes and reorganization. We considered those recommendations and as a result modified the final rule in section 273.18(g)(5)(iv)(I) to replace the acronym "FTROP" with the phrase "the Federal Income Tax Refund Offset Program." The action group also suggested some editorial changes to the proposed 60-day notice language. We are adopting their suggestion to move the second sentence of section 273.18(g)(5)(iv)(D) so it becomes the first sentence of section 273.18(g)(5)(iv)(E) in the final rule. We agree that this change improves the clarity of the notice.

One State agency opposed the proposed 60-day notice on the grounds that the notice would be two pages long and in their experience individuals did not read the information provided in the shorter notice during the test of FTROP. The Department believes that the additional information should be provided for the reasons stated in B.3.d. of the preamble to the proposed rule.

The action group recommended other changes and additions to the 60-day notice, specifically that it contain a statement of the standard for when offset is proper, an explicit offer to renegotiate an installment plan, and a list of possible defenses to offset. As discussed above, the final rule clarifies that current FSP regulations on renegotiating installment plans apply to determining if claims may be referred for collection under FTROP. As the action group acknowledges, the Department proposed the addition of a substantive amount of information to help individuals determine why their claim is considered subject to FTROP and how to request a review of the intended collection action. (The reasons for the additional information were discussed in B.3.d. of the preamble to the proposed rule with respect to the contents of the 60-day notice in general and documenting that a claim is not referrable under FTROP.) The Department has reviewed the action group's suggestions and believes that the additions would not improve the 60-day notice with respect to helping individuals understand the basis for the intended collection action or how to request a review. For example, the action group suggests defining "jointly and severally liable" and emphasizing that the notice recipient had to be an *adult* household member at the time of the overissuance in order to be liable for the claim. The proposed rule at section 273.18(g)(5)(iv)(D) required that the 60-day notice state that all adults who were household members when excess food stamp benefits were issued to the household are jointly and severally liable for the value of those benefits, and that collection of claims for such benefits may be pursued against all such individuals. The language clearly states the policy of liability with respect to adult household members, and the Department believes that stating that "collection of claims for such benefits may be pursued against all such individuals" is sufficient explanation of "joint and several liability" for purposes of the 60-day notice. Consequently, the final rule makes no changes in the proposed rule with respect to this provision. The Department has carefully reviewed all of the action group's suggestions and believes that they would unnecessarily lenghten the 60-day notice. Accordingly, the Department is not adopting them.

One State agency commented that if this rule were published thirty days after the end of the comment period, there would be insufficient time to revise the content of the 60-day notice in time for mailing prior to October 1, 1995. The Department recognizes that this may be a problem for some State agencies and has decided to allow State agencies which cannot make the necessary changes in time to use the same notice format used during the test of FTROP in previous years for offset year 1996. Section 273.18(g)(5)(iii)(A) has been revised to reflect this option. While the Department believes that the previous notice format was sufficient to provide adequate notice to persons potentially subject to offset, because the new format is an improvement in that it provides more information, the Department urges all State agencies to use the new format for the 1996 offset year if possible. All State agencies will be required to use the new format for the 1997 and subsequent offset years.

Tax refunds subject to offset—(iv)(B): The action group asserted that tax refunds which represent an Earned Income Tax Credit (EITC) should not be subject to offset because such an action is at cross purposes with the EITC. As discussed in B.2.c. of the preamble to the proposed rule, the Department does not agree with this position since Congress has not enacted legislation excluding EITC from such debt collection as FTROP. Additionally, the Department wishes to point out that the Supreme Court resolved this issue by holding in *Sorenson* v. *Secretary of the Treasury*, 475 U.S. 851 (1986), that an EITC refund is subject to offset under FTROP.

Offset fee—(iv)(C): The proposed rule stated that the 60-day notice must advise individuals that a charge for the administrative cost of collection would be added to their claims and that amount would also be deducted if the claim, or any portion of the claim, was deducted from their tax refund. Two State agencies supported this proposal. The action group opposed it on the grounds that it is burdensome, that the IRS could increase the amount of the charge, and that there is no authority for it in the Act. As stated in B.3.d. of the preamble to the proposed rule, individuals can avoid paying the fee by paying the claim voluntarily. The IRS bases the amount of the offset fee on the cost of operating FTROP. Section 13(a) of the Act (5 U.S.C. 2022(a)) gives the Secretary general authority with respect to recipient claims, and the Department believes that this entails authority to impose reasonable administrative charges for collecting claims. Accordingly, the final rule makes no change in this provision for assessing offset fees against individuals.

There are instances during a particular offset year when more than one offset for a food stamp claim is made against a tax refund due an individual. One State agency asked whether in such cases the IRS charges a second offset fee. The IRS currently charges an offset fee each time it makes an offset, and they deduct that fee from the amount offset before sending funds to FCS. FCS will add the amount of the IRS fee to a claim referred under FTROP only once for a particular offset year. The Department will advise State agencies about funding additional offset fees.

One State agency commented that notifying individuals about the amount of the offset fee would be burdensome to State agencies and increase Federal costs. The proposed rule required that State agencies notify individuals about the amount of the offset fee when they notify them about the amount of any offset. (See section 273.18(g)(5)(viii)(A).) As stated in the preamble to the proposed rule, FCS will advise State agencies of the amount of the fee. FCS expects to so in December or early January. This should give State agencies sufficient time to insert the amount in offset notices to be sent to individuals. State agencies would need to redesign current offset notices to accommodate this information. State agencies should be able to use their current offset notices to inform individuals about any second offsets made.

One State agency suggested that IRS should be able to determine the amount of the fee in time for it to be included in the 60-day notice or that a flat $10 fee be charged. FCS will not know the amount of the fee in time to provide it to State agencies for those notices. As a result, the Department believes the 60-day notice should advise individuals of the approximate amount of the fee. Accordingly, the final rule requires that 60-day notices include such information. For the foreseeable future, the amount to be used is $10.00. FCS will advise State agencies should that amount need to be changed.

In light of State agency comments indicating that implementation of the offset fee would be difficult to accomplish for the 1996 offset year and the fact that this final rule is being published later in the tax cycle than was originally hoped, the Department has decided to delay implementation of the offset fee until the 1997 offset year. State agencies which elect to utilize the new 60-day notice as discussed above will be required to delete any reference in the notice to the collection of the fee.

Toll-free/collect phone numbers—(iv)(E) and (vii)(B): The proposed rule required that, because of IRS requirements, the telephone number of the State agency contact in both the 60-day notice and the notice to individuals about offsets must be either toll-free or collect. One State agency objected to these requirements. The final rule retains them because of the IRS requirements.

Review requests—(iv)(F): The proposed rule required that 60-day notices advise individuals that review requests must be in writing. One State agency supported that requirement. The action group favored allowing oral requests. The group stated that requiring written requests imposes a burden on people with limited literacy skills. As discussed in B.3.d. of the preamble to the proposed rule, we continue to believe that review requests must be submitted in writing to avoid the difficulty of discerning whether an oral or telephonic contact is simply to inquire about the claim or constitutes a formal review request. Individuals with limited literacy skills could obtain assistance from whomever helps with their other written communications. They might also advise State agencies about their difficulty so that a solution appropriate to the particular circumstances could be worked out.

The action group also questioned whether it is appropriate to require documentation to be submitted along with the request for review since it may take time for an individual to obtain the necessary documentation and this could cause them to miss the 60-day deadline for a review. The action group suggested that adjournment for good cause should be allowed to provide time to obtain documents. As the Department explained in B.3.e. of the preamble to the proposed rule, DEFRA requires that the State agency consider any evidence that the debt is not past due or legally enforceable which is submitted within 60 days of the notice. The 60-day limit in the proposed rule complies with this requirement. Moreover, as the Department stressed in B.3.h. of the proposed rule, if after the 60-day period the individual produces documentation showing the claim is not past-due or legally enforceable, existing FSP regulations require that any amount collected on the claim be refunded. Accordingly, the final rule does not change the requirement that documentation or evidence be submitted with the review request.

Bankruptcy—(iv)(G): The proposed rule stated that the 60-day notice must state that a claim is not legally enforceable if a bankruptcy prevents collection of the claim. Under the August 1991 General Notice, the individual was required to document an assertion of bankruptcy. Three State agencies commented on the proposed change. They asked what the new language meant, objected to it on the grounds that individuals' bankruptcy petitions were often denied, and stated that individuals should be required to document bankruptcy. As discussed in B.3.d. of the preamble to the proposed rule, bankruptcy law prohibits requiring documentation of bankruptcy. If it is necessary to validate an individual's assertion of bankruptcy, a State agency should check the records of the appropriate bankruptcy court.

State agency action on review requests—(v): One State agency reported that when a review request is received without documentation, it reviews its case files to determine whether the claim is past due and legally enforceable. They found this burdensome and difficult to accomplish within the 60-day period. They recommended a two stage response for such situations, the first a notice that adequate documentation was not received, the second detailing information about the claim from the case file.

The proposed rule provided for expanded guidance to individuals (in 60-day notices) about documenting the status of their claim, and stated that State agencies must determine whether or not claims are past due and legally enforceable based on a review of their records, and of documentation, evidence or other information from the individual. The proposed rule also stated that a reason for a determination that a claim was past due and legally enforceable is the individual's failure to provide documentation to the contrary. The Department expects that the scope of State agency file review will be sufficient to respond to the issues raised by the documentation, evidence and/or explanation provided with the review request. One State agency supported the requirement for stating the reason for the decision on the review, including citing inadequate documentation. The final rule makes no change in the requirement.

The action group contended that the review by the State agency of a proposed tax refund offset must be a full hearing when an individual alleges in the FTROP review process that they never received a demand letter. As discussed above in connection with review requests, and as discussed in B.3.d. of the preamble to the proposed rule, the Department believes that the review rights provided in the proposed rule comply with statutory and regulatory requirements. The group also argued for an additional full fair hearing on the grounds that some households which are not participating when they receive their fair hearing notice do not respond because they believe the State agency has no way to collect the overpayment except by allotment reduction if the household again participates in the program. The Department does not find that the equities in such a situation favor providing an additional opportunity for a fair hearing merely because a household now views the collection threat as credible.

One State agency stated that referring claims denied for lack of documentation to FCS will be a waste of FCS time since in such situations individuals will have no more documentation to provide FCS than they did the State agency. Individuals, not State agencies, request FCS reviews of State agency decisions. The opportunity for such review is required in IRS rules as discussed in B.3.e. of the preamble to the proposed rule. Accordingly, the requirement is retained in the final rule.

October 31 cut-off—(v)(E): In the FTROP process there are two important due-process time frames, the 60-day period individuals have to request a State agency review and the 30-day period to request an FCS review. To accommodate these time frames and to provide State agencies time to prepare and submit certified files in early December of each year, the proposed rule provided that State agencies could not refer for offset a claim for which a timely State agency review request is received unless by October 31 preceding the offset year the State agency determined the claim past due and legally enforceable, and notified the individual of that decision.

Two State agencies objected to the October 31 cut-off date because of the number of claims for which review requests are received between October 31 and November 30. The Department is concerned that the October 31 cut-off will reduce the number of claims which might otherwise be referable for collection under FTROP. Because more time is needed to give due consideration to alternatives for dealing with this matter, this rule makes no change in proposed rule with respect to the cut-off. The Department intends to address the cut-off date in a later rulemaking.

Actions on offsets—(viii): The action group urged the Department to provide post-deprivation hearings in addition to the two pre-offset reviews which are available, particularly to insure that claims which are mistakenly offset are repaid promptly. The Department believes that the proposed system of a State agency review followed by an FCS review is sufficient to provide adequate due process to individuals. Moreover, section 273.18(g)(5)(viii)(B) of this rule references the provision at section 273.18(i)(4) of food stamp regulations which requires that the State agency return overpayments as soon as possible after the overpayment becomes known.

Reporting—(ix)(C): The proposed rule eliminated the management report required by the August 1991 General Notice and replaced it with a requirement that annually and no later than the tenth of October of the year prior to the offset year State agencies report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of the claims associated with those notices. One State agency supported this change. To be consistent with change in the mailing date of 60-day notices, this final rule requires that the report be submitted no later than 10 days after 60-day notices are mailed.

Alternate 60-day notice—(x): The required contents for this 60-day notice are set forth in section 273.18(g)(5)(x). This section contains the specifications from the August 1991 General Notice, updated to reflect a statutory change and slightly modified in response to experience during the test of FTROP. FCS has previously provided State agencies language for this notice and has discussed it during training sessions.

C. Federal Salary Offset

As stated in the proposed rule, the Department tested salary offset under the authority of a General Notice published August 29, 1994 at 59 FR 44400. The Department received one formal comment on that General Notice and is responding to that comment in this preamble. In addition, the Department used experience from the test of salary offset as well as comments received on the proposed rule in developing these final salary offset regulations.

Claims subject to salary offset—(i): One State agency recommended that, because of the overall work required of State agencies in connection with salary offset, only those claims owed by Federal employees which are not collected by offset from tax refunds should be pursued through salary offset. All claims submitted for FTROP are matched against Federal employee records to identify claims owed by Federal employees. The IRS requires that all such claims be stripped from the files of claims which will be referred for collection through FTROP. Consequently, to the extent that they are identified by this procedure, claims owed by Federal employees may not be referred for collection by FTROP and are accordingly subject to the salary offset procedures.

Two State agencies commented that State agencies should not be required to participate in salary offset as a condition of participating in tax offset. They argued that the salary collection effort is burdensome and not cost effective. FCS is requiring State agencies to participate to ensure that Federal employees are held to the same standards of repayment as other citizens. Although FCS has not changed the requirement in the proposed rule that State agencies participating in tax offset also participate in salary offset, FCS wants to clarify what the required participation entails for State agencies. Particularly, FCS does not intend this rule to change current policy at 7 CFR 273.18(d)(4)(iv), and 7 CFR 273.18 (e)(1) and (e)(2) which allow State agencies to cease collection activities when they are not cost effective.

FCS acknowledges that to date experience with salary offset is limited. FCS intends to work with State agencies in partnership to apply new experience and new technologies to develop the most cost effective collection methods possible. In support of that goal, FCS wants to clarify that just as State agencies would not be required to pursue collection of every claim no matter how small, FCS will not necessarily refer every claim identified as being owed by a Federal employee to State agencies for the collection effort specified in the salary offset regulation.

The action group was concerned that the State agency may collect an amount which exceeds the claim by continuing other means of collection while salary offset procedures are pending, including food stamp allotment reductions. All claims referred for salary offset must also meet the eligibility requirements for FTROP, including the requirements in section 273.18(G)(5)(ii) that the portion of the claim referred under FTROP or salary offset must not be simultaneously subject to other forms of collection and that no individual liable for the claim is currently participating in the FSP.

Confidentiality requirements—(ii)(C): One State agency stated that, since personnel have been advised of the confidentiality requirements for FTROP data, repeating the security agreements would not serve a useful purpose. The IRS specifies data security requirements for FTROP, the Department of Defense and the United States Postal Service for salary offset. Security procedures for FTROP and salary offset data may be identical in a State agency, but State agencies should review the security procedures for salary offset to make sure that they meet the requirements of this final rule and take steps to assure that personnel understand that salary offset data must be accorded the specified confidentiality and security protection.

Notices—(iii) and (v)(E): The action group urged the Department to require the same level of detail in what the group called the "notice of impending salary offset" as in the 60-day notice used for FTROP. As proposed, salary offset utilizes two notices. First, the proposed rule requires State agencies to provide individuals with an "advance notice of salary offset." This notice is provided so that the State agency may offer the debtor a chance to voluntarily pay the debt before it is referred to FCS. The second notice is required by Departmental rules at 7 CFR 3.55 which details the contents of the "Notice of Intent" of salary offset. The proposed rule specified that the FSP notice of intent would comply with Departmental requirements subject to several modifications. The Departmental regulations detail the information which is required to be provided debtors in the notice of intent to assure that, among other things, they have sufficient information about appealing the intent salary offset. The Department believes that the contents of these two notices provide ample information for debtors about their rights and responsibilities with respect to salary offset. Accordingly, the final rule makes no changes in the proposed requirements for the two salary offset notices.

Referrals to FCS—(iii)(B): The proposed rule required that within 90 days of the date of the advance notice, the State agency refer to FCS all claims for which the State agency does not receive timely and adequate response as specified in the advance notice. The advance notice gave debtors 30 days to respond to State agencies. Consequently, State agencies had 60 days to refer "no-response" claims to FCS. One State agency commented that this 60-day period was inconsistent with the 30 days for determining a voluntary payment for a claim under FTROP overdue. There was no inconsistency since the two time periods applied to two different types of action.

The State agency commenting on the General Notice stated that the requirements for documentation of salary offset claims referred to FCS were excessive. This same concern was expressed during the test of FTROP by State agencies in connection with the requirements for documenting claims appealed to FCS regional offices. The proposed rule modified the requirements for documentation in both situations to allow for copies of electronic records of demand letters, for example. One State agency commenting on the proposed rule stated that the documentation requirements for salary offset claims were still burdensome. The Department believes that the documentation requirements for referred salary offset claims give State agencies significant flexibility to provide documents and records in the way most feasible for their paper and electronic record systems. Accordingly, the final rule makes no change in the requirement as proposed.

$50 minimum—(iii)(C)(3): The action group suggested that the proposed $50 per month minimum voluntary payment to avoid salary offset is too high. They recommend $50 or 10 percent of disposable income, whichever is less. The Department set the $50 level of payment to be consistent with the standards for involuntary salary withholding established at 7 CFR 3.64 of USDA regulations and for this reason has retained the $50 minimum payment in this final rule.

Information encouraged in the advance notice—(iii)(C)(1): The proposed rule encouraged State agencies to include certain information about the specific claim in their advance notice to the debtor. One State agency commented that including the encouraged information with the advance notice would make automated notices impossible. Including the information is not required. State agencies are encouraged to include such information in order to demonstrate that the claim is valid. Accordingly, the final rule includes the language unchanged.

Appeals to FCS—(iii)(C)(5): One State agency stated that providing an appeal to FCS delays collection of the debts. The right to a Federal level hearing is provided by statute (5 U.S.C. 5514(a)(2)), which also provides that debtors must request such hearings within 30 days of receipt of the notice of intent from FCS, and the hearing must be concluded within 60 days of the date of the debtor's request. The final rule makes no changes in the proposed regulations for hearings on collections of recipient claims through salary offset.

FCS actions on referred claims—(v): The action group urged the Department to adopt a "post-taking hearing" so that employees will have an opportunity to appeal over collections from their salary which may occur if collection continues beyond the amount of the claim, or if collections are made and the employee did not receive the initial notice of offset. With respect to collections beyond the amount of the claim, Departmental regulations at 7 CFR 3.67 require that any over collection be promptly refunded. Employees will have verified records of their claim amounts and pay stubs reflecting the offsets from salaries. Refunds of collections beyond the amount of the claims would be made if employees bring any such errors to the attention of their employing agency.

With respect to the action group's second comment, there may be instances where employees do not receive the notice of intent from FCS. Departmental regulations at 7 CFR 3.56(c) provide that appeals received after the 30-day opportunity to make such appeals may be granted if the employee shows that he or she did not receive the notice of intent.

Implementation

State agencies must implement this rule by October 2, 1995, except that State agencies currently participating in FTROP must submit the amendment to the Plan of Operation required at 7 CFR 272.2(d)(1)(xii) no later than November 30, 1995.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 271, 272 and 273 are amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. The authority citation for parts 271, 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 271.2, the definition of *Offset year* is added in alphabetical order to read as follows:

§ 271.2 Definitions.

* * * * *

Offset year means the calendar year during which offsets may be made to collect certain recipient claims from individuals' Federal income tax refunds.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(143) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(143) *Amendment 367.* The provisions of Amendment 367 must be implemented no later than October 2, 1995 except that State agencies currently participating in the Federal Income Tax Refund Offset Program (FTROP) must implement section 272.2(d)(1)(xii), which relates to the submission of the Plan of Operations, within November 30, 1995.

4. In § 272.2, a new sentence is added to the end of paragraph (a)(2) and a new paragraph (d)(1)(xii) is added to read as follows:

§ 272.2 Plan of operation.

(a) *General Purpose and Content.* * * *

(2) *Content.* * * * The Plan's attachments shall also include the commitment to conduct the optional Federal Income Tax Refund Offset Program and the Federal Salary Offset Program.

* * * * *

(d) *Planning Documents.*

(1) * * *

(xii) If the State agency chooses to implement the Federal Income Tax Refund Offset Program and the Federal Salary Offset Program, the Plan's attachments shall include a statement in which the State agency states that it will comply with the provisions of Sections 273.18 (g)(5) and (g)(6) of this chapter.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.18 new paragraphs (g)(5) and (g)(6) are added to read as follows:

§ 273.18 Claims against households.

* * * * *

(g) *Method of collecting payments.* * * *

(5) *Federal income tax refund offset program.*

(i) *General requirements.* State agencies which choose to implement the Federal income tax refund offset program (FTROP) shall:

(A) Submit an amendment to their Plan of Operation as specified in Section 272.2(d)(1)(xii) of this chapter stating that they will comply with the requirements for FTROP and with the requirements for the Federal Salary Offset Program (salary offset). Such amendments shall be submitted to the appropriate FCS regional office no later than twelve months before the beginning of a State agency's first offset year.

(B) Submit data for FTROP to FCS in the record formats specified by FCS and/or the Internal Revenue Service (IRS), and according to schedules and by means of magnetic tape, electronic data transmission or other method specified by FCS.

(ii) *Claims referable for offset.* State agencies may submit for collection from Federal income tax refunds recipient claims which are past due and legally enforceable.

(A) Such claims must be:

(*1*) Only inadvertent household error claims or intentional Program violation claims. These claims shall be properly established according to the requirements of this section (which pertains to claims against households) and the requirements of section 273.16 (which pertains to disqualification for intentional Program violations). In addition, these claims shall be properly established no later than the date the State transmits its final request for IRS addresses for the particular offset year. Furthermore, the State agency shall have electronic records and/or paper documents showing that the claim was properly established. These records and documents include such items as claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments.

(*2*) Claims for which the State agency has verified that no individual who is jointly and severally liable as specified in paragraph (a) of this section is also currently participating in the FSP in the State.

(*3*) Claims which meet at least the minimum dollar amount established by the IRS.

(*4*) Claims for which the date of the initial demand letter is within 10 years of January 31 of the offset year, except that claims reduced to final court judgments ordering individuals to pay the debt are not subject to this 10-year limitation.

(*5*) Claims for which the State agency is receiving neither regular voluntary payments nor regular, involuntary payments such as wage garnishment. Claims for which a State agency has been receiving regular payments under paragraph (g)(2) of this section are considered past due and legally enforceable if the individual does not respond to a notice of default as specified in paragraph (g)(2) of this section.

(*6*) Claims for which collection is not barred by a bankruptcy.

(*7*) Claims for which the State agency has provided the individual with all of the notification and opportunities for review as specified in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section.

(B) In addition:

(*1*) All claims to be submitted for collection under FTROP shall be reduced by any amounts subject to collection from State income tax refunds or from other sources which may result in collections during the offset year.

(*2*) If a claim to be submitted for collection under FTROP is a combination of two or more recipient claims, the date of the initial demand letter for each claim combined shall be within the 10-year range specified in paragraph (g)(5)(ii)(A)(*4*) of this section. Claims reduced to judgment shall not be combined with claims which are not reduced to judgment.

(*3*) If a claim to be submitted under FTROP is apportioned between two or more individuals who are jointly and severally liable for the claim pursuant to paragraphs (a) and (f) of this section, the sum of the amounts submitted shall not exceed the total amount of the claim.

(iii) *60-Day notice to individuals.* (A) Prior to referring claims for collection under FTROP, the State agency shall provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice. For offset year 1996, State agencies have the option of providing the 60-day notice specified in paragraph (g)(5)(iv) of this section or in paragraph (g)(5)(x) of this section. For offset year 1997 and subsequent years, State agencies shall provide the 60-day notice specified in paragraph (g)(5)(iv).

(B) With the exception of such State-specific information as names and job titles and information required for State agency contacts, a State agency's 60-day notice shall contain only the information specified in paragraph (g)(5)(iv) of this section. In the certification letter required in paragraph (g)(5)(vii) of this section, the State agency shall include a statement that its 60-day notice conforms to this requirement. This requirement shall not apply to State agencies which choose to use the 60-day specified in paragraph (g)(5)(x) of this section for offset year 1996.

(C) Unless otherwise notified by FCS, the State agency shall mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset.

(D) The State agency shall mail 60-day notices using the address information provided by the IRS unless the State agency receives clear and concise notification from the taxpayer that notices from the State agency are to be sent to an address different from the address obtained from the IRS. Such clear and concise notification shall mean that the taxpayer has provided the State agency with written notification including the taxpayer's name and identifying number (which is generally the taxpayer's SSN), the taxpayer's new address, and the taxpayer's intent to have notices from the State agency sent to the new address. Claims for which 60-day notices addressed as required in this paragraph are returned as undeliverable may be referred for collection under FTROP.

(iv) *Contents of the 60-day notice.* Except that the language set out in paragraph (g)(5)(iv)(C) of this section shall not be included in the notice for offset year 1996, the State agency's 60-day notice shall state that:

(A) [Name of the State agency or an equivalent phrase] has records documenting that you, [the name of the individual], Social Security Number: [the individual's Social Security Number] are liable for [the unpaid balance of the recipient claim(s) the State agency intends to refer] resulting from overissued food stamp benefits. [The name of the State agency or equivalent phrase] has previously mailed or otherwise delivered demand letters notifying you about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts.

(B) The Deficit Reduction Act of 1984, as amended, authorizes the Internal Revenue Service (IRS) to deduct such debts from tax refunds if they are past due and legally enforceable. [Name of the State agency or an equivalent phrase] has determined that your debt is past due and legally enforceable as specified by the Deficit Reduction Act of 1984, the IRS regulations, and Food Stamp Program (FSP) regulations. We intend to refer the claim for deduction from your Federal income tax refund unless you pay the claim within 60 days of the date of the notice or make other repayment arrangements acceptable to us.

(C) If we refer your claim to the IRS, a charge for the administrative cost of collection will be added to your claim and that amount will also be deducted if the claim, or any portion of the claim, is deducted from your tax refund. This charge will be approximately [the amount provided by FCS].

(D) All adults who were household members when excess food stamp benefits were issued to the household are jointly and severally liable for the value of those benefits, and collection of claims for such benefits may be pursued against all such individuals.

(E) Our records do not show that the claim is being paid according to either a voluntary agreement with us or through scheduled, involuntary payments. To pay the claim voluntarily or to discuss it, you should contact: [an office, administrative unit and/or individual, the contact's street address or post office box, and a toll-free or collect telephone number].

(F) You are entitled to request a review of the intended collection action. We must receive your request for review within 60 days of the date of this notice. Such a request must be written, must be submitted to the address provided in this notice and must contain your Social Security Number. We will not refer your claim for offset while our review is pending.

(G) The claim is not legally enforceable if a bankruptcy prevents collection of the claim.

(H) You may want to contact your local office of the IRS before filing your Federal income tax return. This is true where you are filing a joint return, and your spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances your spouse may be entitled to receive his or her portion of any joint refund. Your own liability for this claim, including any charge for administrative costs, may still be collected from your share of such a joint refund.

(I) If you request a review of our intent to collect the claim from your income tax refund, you should provide documentation showing that at least one of the items listed below is incorrect for the claim cited in this notice. If you do not have such documentation, for example a cancelled check, you should explain in detail why you believe that the claim is not collectible under the Federal Income Tax Refund Offset Program.

(J) The claim cited in this notice is subject to collection from your tax refund for the following reasons:

(*1*) The claim was properly established according to Food Stamp Program regulations and was caused by an inadvertent household error or an intentional Program violation;

(*2*) No individual who is jointly and severally liable for the claim is also currently participating in the Food Stamp Program in [the name of State initiating the collection action];

(*3*) The claim is for at least [the minimum dollar amount required by the IRS];

(*4*) The date of the initial demand letter for the claim is within 10 years of January 31, [the offset year]. If the claim was reduced to a final court judgment ordering you to pay the debt, this 10-year period does not apply, and the date of the initial demand letter may be older than 10 years; and

(*5*) We are neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in current Food Stamp Program regulations nor are we receiving scheduled, involuntary payments such as wage garnishment. Claims for which we have been receiving regular payments under current Food Stamp Program regulations are considered past due and legally enforceable if you did not respond to a notice of default.

(K) In addition, collection of the claim is not barred by bankruptcy.

(v) *State agency action on requests for review.* (A) For all written requests for review received within 60 days of the date of the 60-day notice, the State agency shall determine whether or not the subject claims are past due and legally enforceable, and shall notify individuals in writing of the result of such determinations.

(B) The State agency shall determine whether or not claims are past due and legally enforceable based on a review of its records, and of documentation, evidence or other information the individual may submit.

(C) If the State agency decides that a claim for which a review request is received is past due and legally enforceable, it shall notify the individual that:

(*1*) The claim was determined past due and legally enforceable, and the reason for that determination. Acceptable reasons for such a determination include the individual's failure to provide adequate documentation that the claim is not past due or legally enforceable;

(*2*) The State agency intends to refer the claim to the IRS for offset;

(*3*) The individual may ask FCS to review the State agency decision. FCS must receive the request for review within 30 days of the date of the State agency decision. FCS will provide the individual a written response to such a request stating its decision and the reasons for its decision. The claim will not be referred to the IRS for offset pending the FCS decision; and

(*4*) A request for an FCS review must include the individual's SSN and must be sent to the appropriate FCS regional office. The State agency decision shall provide the address of that regional office, including in that address the phrase "Tax Offset Review."

(D) If the State agency determines that the claim is not past due or legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency shall take any actions required by food stamp regulations with respect to establishing the claim, including holding appropriate hearings and initiating collection action.

(E) The State agency shall not refer for offset a claim for which a timely State agency review request is received unless by October 31 preceding the offset year the State agency determines the claim past due and legally enforceable, and notifies the individual of that decision as specified in paragraphs (g)(5)(v)(C)(*1*), (g)(5)(v)(C)(*2*), and (g)(5)(v)(C)(*3*) of this section.

(vi) *FCS action on appeals of State agency reviews.*

(A) FCS shall act on all timely requests for FCS reviews of State agency review decisions as specified in paragraph (g)(5)(v)(C) of this section. A request for FCS review is timely if it is received by FCS within 30 days of the date of the State agency's review decision.

(B) If a timely request for FCS review is received, and the State agency's decision is dated on or before October 31 of the year prior to the offset year, FCS shall:

(*1*) Complete a review and notification as specified in paragraphs (g)(5)(vi)(C), (g)(5)(vi)(D), and (g)(5)(vi)(E) of this section, including providing State agencies and individuals the required notification of its decision; or

(*2*) Notify the State agency that it has not completed its review and that the State agency must delete the claims in question from files to be certified to FCS according to paragraph (g)(5)(vii) of this section. If FCS fails to timely notify the State agency and because of that failure a claim is offset which FCS later finds does not meet the criteria specified in paragraph (g)(5)(ii) of this section, FCS will provide funds to the State agency for refunding the charge for the offset fee.

(C) If a timely request for FCS review is received, and the State agency's decision is dated after October 31 of the year prior to the offset year, FCS shall complete a review as specified in paragraphs (g)(5)(vi)(D), (g)(5)(vi)(E) and (g)(5)(vi)(F) of this section, but the claim shall not be referred for offset as

specified in paragraph (g)(5)(v)(E) of this section.

(D) When FCS receives an individual's request to review a State agency decision, FCS shall:

(*1*) Request pertinent documentation from the State agency about the claim. Such documentation shall include such things as printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, 60-day notices, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations; and

(*2*) Decide whether the State agency correctly determined the claim in question is past due and legally enforceable.

(E) If FCS finds that the State agency correctly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision, including notice to the individual that any further appeal must be made through the courts.

(F) If FCS finds that the State agency incorrectly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision. FCS will also notify the State agency about any corrective action the State agency must take with respect to the claim and related procedures.

(vii) *Referral of claims for offset.* (A) State agencies shall submit to FCS a certified file of claims for collection through FTROP by the date specified by FCS in schedules which FCS will provide as stated in paragraph (g)(5)(i) of this section. At the same time State agencies shall also provide to their FCS regional office a letter which specifically certifies that all claims contained in that certified file meet the criteria for claims referable for FTROP as specified in paragraph (g)(5)(ii) of this section, and that for all such claims a notice and opportunity to request a review as required in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section have been provided. The certification letter shall also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed a timely requested review, or for which the State agency has not completed a timely requested review. Finally, the certification letter shall also state that with the exception of State-specific information such as names and positions and State-specific information required for State agency contacts, the State agency's 60-day notice contains only the information specified in paragraph (g)(5)(iv) of this section.

(B) The State agency shall provide to FCS the name, address and toll-free or collect telephone numbers of State agency contacts to be included in IRS notices of offset. State agencies shall state in the letter required in paragraph (g)(5)(vii)(A) of this section how they determined that such information is accurate and shall provide FCS updates of that information if and when that information changes.

(viii) *State agency actions on offsets made.* (A) Promptly after receiving notice from FCS that offsets have been made, the State agency shall notify affected individuals of offsets made, including the amount charged for offset fees, and the status of the claims in question.

(B) As close in time as possible to the notice of offset required in paragraph (g)(5)(viii)(A) of this section, the State agency shall refund to the individual (as required by paragraph (i)(4) of this section) any over collection which resulted from the offset of the individual's Federal income tax refund.

(C) If an offset results from a State agency including in the certified file of claims required by paragraph (g)(5)(vii)(A) of this section a claim which does not meet the criteria specified in paragraph (g)(5)(ii) of this section, the State agency shall refund the amount offset to the individual, including any amounts collected to pay for the offset fee charged by the IRS. The State agency may claim any such latter amount as an allowable administrative cost under Part 277 of this chapter. The State agency shall not be responsible for refunding any portion of the charges for offset fees incurred for IRS reversals of offsets when, for example, the IRS refunds amounts offset, including offset fees, to taxpayers who properly notified the IRS that they are not liable for claims which were collected in whole or part from their share of a joint Federal income tax refund.

(ix) *Monitoring and reporting offset activities.* State agencies shall monitor FTROP activities and shall take all necessary steps to:

(A) Update IRS files, reducing the amounts of or deleting claims from those files to reflect payments made after referral to FCS, or deleting claims which for other reasons no longer meet the criteria for being collectible under FTROP.

(B) Promptly refund to the individual any over collection of claims as required in paragraph (g)(5)(viii)(B) of this section.

(C) Annually and no later than the tenth of October of the year prior to the offset year report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of the claims associated with those notices.

(D) Submit data security and voluntary payment reports as required by FCS and the IRS.

(E) Report collections of all recipient claims collected under the procedures of paragraph (g)(5) of this section as required by paragraph (i)(2) of this section.

(x) *Contents of the alternate 60-day notice.* As specified in paragraph (g)(5)(iii)(A) of this section, for offset year 1996 State agencies may use a 60-day notice specifying the following information:

(A) The State agency has records documenting that the individual, identified with his or her Social Security Number, is liable for a specified, unpaid balance of a claim for overissued food stamp benefits, and that the State agency has notified the individual about the claim and made prior collection efforts as required by the Food Stamp Program. The notice must also state that the claim is past due and legally enforceable.

(B) The Deficit Reduction Act of 1984, as amended by the Emergency Unemployment Act of 1991, authorizes the Internal Revenue Service to deduct such debts from tax refunds, and the State agency intends to refer the claim for such deduction unless the individuals pays the claim within 60 days of the date of the notice, or makes other repayment arrangements acceptable to the State agency.

(C) Instructions about how to pay the claim, including the name, address and telephone number of an office, administrative unit or person in the State agency who can discuss the claim and the intended offset with the individual.

(D) The following information about requesting a review of the intended offset:

(*1*) The individual is entitled to request a review of the intended referral for offset;

(*2*) The State agency will not act on review requests which it receives later than 60 days after the date of the 60-day notice;

(*3*) Claims for which timely review requests have been received will not be referred for offset while under review;

(*4*) A review request must provide evidence or documentation why the individual believes that the claim is not past due or is not legally enforceable;

(*5*) A review request is not considered received until the State agency receives such evidence or documentation; and

(*6*) A review request must contain the individual's Social Security Number.

(E) The individual should contact the State agency if he or she believes that a bankruptcy proceeding prevents collection of the claim or if the claim has been discharged in bankruptcy.

(F) The individual may want to contact the Internal Revenue Service before filing his or her Federal income tax return if the individual is married, filing a joint return, and if his or her spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances the spouse may be entitled to receive his or her portion of any joint refund. False claims concerning such liability may subject individuals to legal action.

(G) All individuals are jointly and severally liable for overpayment of food stamps if they were adult household members when the food stamps were overissued.

(6) *Federal salary offset program.*

(i) *Claims subject to salary offset.* All recipient claims submitted by State agencies participating in the Federal income tax refund offset program (FTROP) shall be subject to the matching procedures specified in this paragraph. Individuals identified by the match shall be subject to the salary offset procedures specified in this paragraph.

(ii) *Identification of recipient claims owed by Federal employees.* (A) FCS will match all recipient claims submitted by State agencies participating in FTROP against Federal employment records maintained by the Department of Defense and the United States Postal Service. FCS will remove recipient claims matched during this procedure from the list of recipient claims to be referred to the Internal Revenue Service (IRS) for collection through FTROP.

(B) When FCS receives a list of Federal employees matched against recipient claims for a particular State agency, it will notify the State agency in writing accompanied by a data security and confidentiality agreement containing the requirements specified in paragraph (g)(6)(ii)(C) of this section for the State agency to sign and return. When that agreement is returned, signed by an appropriate official of the State agency, FCS will provide the list of matched Federal employees to the State agency.

(C) State agencies which receive lists of matched employees shall take the actions specified in this paragraph to ensure the security and confidentiality of information about those employees and their apparent debts, and shall ensure that any contractors or other non-State agency entities to which the records may be disclosed also take these actions:

(*1*) By such means as card keys, identification badges and security personnel, limit access to computer facilities handling the data to persons who need to perform official duties related to the salary offset procedures. By means of a security package, limit access to the computer system itself to such persons;

(*2*) During off-duty hours, keep magnetic tapes and other hard copy records of data in locked cabinets in locked rooms. During on-duty hours, maintain those records under conditions that restrict access to persons who need them in connection with official duties related to salary offset procedures;

(*3*) Use the data solely for salary offset purposes as specified in paragraph (g)(6) of this section, including not extracting, duplicating or disseminating the data except for salary offset purposes;

(*4*) Retain the data only as long as needed for salary offset purposes as specified in paragraph (g)(6) of this section, or as otherwise required by FCS;

(*5*) Destroy the data by shredding, burning or electronic erasure; and

(*6*) Advise all personnel having access to the data about the confidential nature of the data and their responsibility to abide by the security and confidentiality provisions stated in paragraph (g)(6)(ii)(C) of this section.

(D) Prior to taking any action to collect recipient claims as specified in paragraph (g)(6)(iii) of this section, State agencies shall review the claims records of matched Federal employees to verify the amount of the recipient claim owed, and to remove from the list of claims any recipient claims which have been paid, which are being paid according to an agreed to schedule, or which for other reasons are not collectible.

(iii) *State agency advance notice of salary offset.* (A) Following the review specified in paragraph (g)(6)(ii)(D) of this section, State agencies shall provide each Federal employee verified as owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice shall be mailed to the debtor at the address provided by FCS, or shall be otherwise provided, within 60 days of State agency receipt of the list specified in paragraph (g)(6)(ii)(B) of this section.

(B) Within 90 days of the date of the advance notice, the State agency shall refer to FCS all claims for which the State agency does not receive timely and adequate response as specified in the advance notice. Such referrals shall consist of a copy of the advance notice sent to the debtor and copies of records relating to the recipient claim. Records relating to the recipient claims include such things as copies of printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

(C) The advance notice shall state that:

(*1*) According to State agency records the debtor is liable for a claim for a specified dollar amount due to receiving excess food stamp benefits. State agencies are encouraged to include as much other information about the claim as possible, including such things as whether it was caused by household error or intentional Program violation, the date of the initial demand letter, any hearings or court actions which relate to the claim, and what, if any, payments have reduced the amount of the original claim;

(*2*) Through a computer match the debtor was found to be employed by [the name and address of the employing agency of the debtor]. The computer match was conducted under the authority of and according to procedures required by the Privacy Act of 1974, as amended;

(*3*) Collection from the wages of Federal and USPS employees for debts such as food stamp recipient claims is authorized by the Debt Collection Act of 1982. The claim will be referred to FCS for such collection action unless within 30 days of the date of the advance notice the State agency receives either:

(*i*) Payment of the claim in full. Claims of $50 or less shall be paid in full within 30 days or they will be referred to FCS for collection from the individual's Federal salary; or

(*ii*) The first installment payment for the claim. Claims of more than $50, if not paid in full within 30 days, must be paid in installments of at least $50 a month. Debtors may pay more than $50 on any installment payment. The advance notice shall state the monthly due date of installment payments and that if a monthly installment payment of at least $50 is not received by the due date, the claim will be referred to FCS for offset from the individual's Federal salary with no further opportunity to enter a voluntary repayment agreement;

(*4*) The name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for repayment and/or discussion of the claim; and

(*5*) Debtors may submit documentation to State agencies showing such things as payments of claims or other circumstances which would prevent collection of claims. Unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency shall refer the claim to FCS for collection from the debtor's salary. The State agency shall notify debtors in writing when claims for which an advance notice was issued will not be referred for collection from salaries. Debtors have the right to a formal appeal to FCS. Notification about how to make such appeals is required and will be provided to debtors before any collection action from salaries is taken.

(iv) *State agency retention and reporting of collections.* (A) State agencies shall retain collections of recipient claims paid voluntarily to State agencies and to FCS through salary offsets at the rates specified in paragraph (h) of this section for the appropriate reporting period. From time to time as volume warrants, FCS will report and transfer amounts collected from salaries to State agencies. Collections by State agencies and by FCS on all such claims shall be reported as appropriate.

(B) If a debtor fails to make an installment payment, within 60 days of the date the payment was due, State agencies shall refer the claim to FCS, reporting the default, the dollar amount collected and the balance due.

(v) *FCS actions on claims referred by State agencies.* Departmental procedures at 7 CFR 3.51–3.68 shall apply to claims referred by State agencies to FCS as required by paragraphs (g)(6)(iii)(B) and (g)(6)(iv)(B) of this section subject to the following modifications:

(A) In addition to the definitions set forth at 7 CFR 3.52, the term "debts" shall further be defined to include recipient claims established according to this section; and the terms "State agency" and "FCS" shall be defined as set forth in section 271.2 of this chapter.

(B) Pursuant to 7 CFR 3.34(c)(4) and 7 CFR 3.55(d), the Secretary has determined that collection of interest, penalties and administrative costs provided at 7 CFR 3.65 is not in the best interests of the United States and hereby waives collection of such charges.

(C) In addition to providing the right to inspect and copy Departmental records as specified at 7 CFR 3.60(a), the Secretary shall provide copies of records relating to the debt in response to timely requests. For a request to be timely, FCS must receive it within 30 calendar days of the date of the notice of intent.

(D) Pursuant to 5 CFR 550.1104(d)(6), an opportunity to establish a written repayment agreement provided at 7 CFR 3.61 shall not be provided.

(E) The notice of intent for FSP salary offset shall comply with the requirements of the Departmental notice of intent which are set forth at 7 CFR 3.55, subject to the following modifications:

(*1*) In addition to the statement that the debtor has the right to inspect and copy Departmental records relating to the debt, the notice of intent shall state that if timely requested by the debtor, the Secretary shall provide the debtor copies of such records. It shall further advise, as required by 7 CFR 3.60(a), that to be timely such requests must be received within 30 days of the date of the notice of intent; and

(*2*) The statement of the right to enter a written repayment agreement provided by 7 CFR 3.55(f) shall not be included.

* * * * *

Dated: August 29, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 95–21780 Filed 8–31–95; 8:45 am]

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Friday
September 1, 1995

Part VI

Department of Education

34 CFR Part 75
Direct Grant Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA69

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These proposed amendments would reduce the need for specific regulations governing individual programs. The proposed amendments would authorize the Secretary to establish selection criteria for a discretionary grant program based on provisions in the statute authorizing that program and on existing selection criteria in EDGAR. The amendments also would clarify the Secretary's authority to establish annual funding priorities for grant competitions.

DATES: Comments must be received on or before October 2, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Jacinta Ma, U.S. Department of Education, 600 Independence Avenue SW., Washington, DC 20202. Comments also may be sent through the Internet to Selection _ Criteria@ed.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Jacinta Ma, U.S. Department of Education, 600 Independence Avenue SW., Washington, DC 20202–2241. Telephone: (202) 401–8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed amendments would allow the Secretary to establish selection criteria based on statutory provisions, clarify the Secretary's authority to establish one or more annual priorities, and allow the Secretary to establish the maximum score for each selection criterion on a competition-by-competition basis. The proposed amendments also would conform existing regulations in §§ 75.1 and 75.200 to reflect the additional method for establishing selection criteria.

In addition, the proposed amendments would eliminate requirements in § 75.101(c) that are unnecessary. The inclusion of the information required by § 75.101(c) in an application notice is already adequately provided for in § 75.101(a).

The following is a summary of the major provisions of the proposed amendments.

Section 75.105 Annual Priorities

The Secretary proposes to amend § 75.105 to clarify that if a statute authorizing a program includes one or more specific priorities, the Secretary may establish those priorities as annual funding priorities without first submitting them to public comment. Statutory priorities include provisions that require the Secretary to give preference or special consideration to certain applicants. Because these priorities are established by statute, public comment could affect only the way the Department implements the statutory priority, e.g., what weight to give to the priority or choosing among priorities. This amendment would codify the Department's long-standing interpretation of the current provisions in § 75.105 regarding priorities. In addition, the proposed regulations would allow the Secretary to establish without public comment annual funding priorities selected from allowable activities specified in a program statute assuming that there is legal authority to establish this type of priority. Through these amendments, the Secretary would be able to assign an appropriate weight to the statutory priority or priority selected from allowable activities, and, in an application notice published in the **Federal Register**, indicate how the priority will apply to the particular competition.

Sections 75.200, 75.201, 75.209, and 75.210 Selection Criteria

EDGAR provides selection criteria for choosing among competing grant applications (34 CFR 75.210) under programs that do not have implementing regulations or have implementing regulations that do not include selection criteria. However, the EDGAR selection criteria are necessarily very general, and for some programs the EDGAR criteria may not adequately enable reviewers to evaluate the extent to which grant applications respond to specific provisions contained in the program statutes that govern the competitions. Therefore, in an effort to create more targeted selection criteria in appropriate situations and to reduce the amount of rulemaking for discretionary grant programs, the Secretary proposes these amendments to Part 75 to authorize the Secretary to establish selection criteria for a grant competition based on the authorizing statute. The Secretary believes these amendments will reduce the amount of rulemaking for discretionary programs because, in the past, the Department regularly had to develop program-specific regulations to meet the need for more specific selection criteria.

The Secretary proposes a new provision (§ 75.209) that would allow the Secretary to establish selection criteria based on statutory provisions. For example, the Secretary could establish criteria based on provisions such as specified statutory selection criteria, allowable activities, application content requirements, or other pre-award or post-award conditions. The new selection criteria would mirror statutory language and the Secretary would evaluate each application to determine how well the applicant's proposed project meets each of the criteria. The Secretary has already published a notice in the **Federal Register** (March 7, 1995 at 60 FR 12648) authorizing this procedure for conducting certain FY 1995 grant competitions under the Improving America's Schools Act of 1994.

If a program does not have implementing regulations establishing selection criteria or has implementing regulations that do not include selection criteria, these amendments would authorize the Secretary to evaluate applications by applying the general selection criteria in part 75, selection criteria based on provisions in the authorizing statute for the program, or a combination of these criteria. These amendments would also allow the Secretary the flexibility to weigh the criteria according to the needs of each individual competition.

Rather than establishing in regulations the total number of points an application may receive and the maximum number of points that an application may receive for a particular selection criterion (either established from a statutory provision or found in EDGAR), the Secretary will notify applicants of the total possible score and the maximum points for each selection criterion in the application package. If no point allocation is specified, the Secretary would assign an equal maximum value to each selection criterion.

Because the selection criteria would be included in an application package, the criteria would be subject to prior public comment in accordance with the Paperwork Reduction Act of 1995. That statute requires the Department to publish in the **Federal Register** a notice of proposed information collection that solicits public comment. Anyone who wishes to comment may contact the

Department and obtain a copy of the proposed application package.

The Secretary proposes to preserve § 75.210 of EDGAR, which establishes general selection criteria, except that the maximum point value assigned to each selection criterion would be removed to allow for the proposed process of assigning a maximum possible point value to each criterion according to the needs of the competition. In addition, because the Secretary would be able to weigh each criterion by establishing the total number of points and assigning a maximum possible point value to each selection criterion, there would no longer be a need to retain § 75.210(c), which allows for the distribution of an unassigned 15 points among the criteria in § 75.210(b).

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These regulations could affect States, State agencies, and individuals. States, State agencies, and individuals, however, are not defined as "small entities" in the Regulatory Flexibility Act.

The small entities that could be affected by these regulations are institutions of higher education, local educational agencies, community-based organizations, and nonprofit organizations receiving Federal funds under a direct grant program. The proposed regulations, however, would not have a significant economic impact on these entities, if affected, because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements for the Secretary to select grantees.

Paperwork Reduction Act of 1980

The proposed amendments have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

Some of the programs that would be affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 5100, 600 Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Continuation funding, Education, Grant programs—education, Grants administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: August 28, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend part 75 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.1 is amended by revising the Note to read as follows:

§ 75.1 Programs to which part 75 applies.

* * * * *

Note: See part 76 for the general regulations that apply to programs that allocate funds among eligible States. For a description of the two kinds of direct grant programs see § 75.200(b) for a description of a discretionary grant program and § 75.200(c) for a description of a formula grant program. Also see §§ 75.201, 75.209, and 75.210 for the selection criteria for discretionary grant programs that do not have implementing regulations or whose implementing regulations do not include selection criteria.

§ 75.101 [Amended]

3. Section 75.101 is amended by removing paragraph (c).

4. Section 75.105 is amended by removing the word "or" following paragraph (b)(2)(ii), replacing the period at the end of paragraph (b)(2)(iii) with a semicolon, adding new paragraphs (b)(2)(iv) and (b)(2)(v), and revising the first sentence in paragraph (c)(2)(i) to read as follows:

§ 75.105 Annual priorities.

* * * * *

(b) * * *

(2) * * *

(iv) The program statute requires or authorizes the Secretary to establish specified priorities; or

(v) The annual priorities are chosen from allowable activities specified in the program statute.

(c) * * *

(2) * * *

(i) The Secretary may award some or all bonus points to an application depending on the extent to which the application meets the priority. * * *

5. Section 75.200 is amended by revising paragraph (b)(3) to read as follows:

§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

* * * * *

(b) * * *

(3) If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the Secretary uses one of the following to evaluate applications for new grants under the program:

(i) Selection criteria established under § 75.209.

(ii) Selection criteria in § 75.210.

(iii) A combination of selection criteria established under § 75.209 and selection criteria in § 75.210.

* * * * *

6. Section 75.201 is revised to read as follows:

§ 75.201 How to use the selection criteria.

(a) If points are assigned to the selection criteria, the Secretary informs applicants of—

(1) The total possible score for all of the criteria for a program; and

(2) The maximum possible score for each criterion.

(b) If no points are assigned to the selection criteria, the Secretary evaluates each criterion equally.

(Authority: 20 U.S.C. 1221e–3 and 3474)

7. A new § 75.209 is added to read as follows:

§ 75.209 Selection criteria based on statutory provisions.

(a) If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the Secretary may evaluate applications by—

(1) Establishing selection criteria based on particular statutory provisions that may include but are not limited to—

(i) Specific statutory selection criteria;

(ii) Allowable activities;

(iii) Application content requirements; or

(iv) Other pre-award and post-award conditions; and

(2) Assigning the maximum possible score for each of the criteria established under paragraph (a)(1) of this section.

(b) The Secretary reviews each application to determine how well the applicant's proposed project meets each of the criteria established under paragraph (a)(1) of this section.

Example: If a program statute requires that each application address how the applicant will serve the needs of limited English proficient children, under § 75.209 the Secretary could establish a criterion and evaluate applications based on how well the applicant's proposed project meets that statutory provision. The Secretary might decide to award up to 10 points for this criterion. Applicants who have the best proposals to serve the needs of limited English proficient children would score the highest under the criterion in this example.

(Authority: 20 U.S.C. 1221e–3 and 3474)

8. Section 75.210 is amended by revising the heading, removing paragraphs (a) and (c), removing the point designations following the italicized headings in paragraphs (b) (1), (2), (3), (4), (5), (6), and (7), adding undesignated introductory text, removing "*The criteria—*" in paragraph (b), and redesignating paragraphs (b) (1), (2), (3), (4), (5), (6), and (7) as paragraphs (a), (b), (c), (d), (e), (f), and (g), respectively, to read as follows:

§ 75.210 General selection criteria.

The Secretary may use one or more of the following selection criteria, together with one or more criteria established under § 75.209, if any, to evaluate applications for new grants under a discretionary grant program:

(a) *Meeting the purposes of the authorizing statute.* * * *

(b) *Extent of need for the project.* * * *

(c) *Plan of operation.* * * *

(d) *Quality of key personnel.* * * *

(e) *Budget and cost effectiveness.* * * *

(f) *Evaluation plan.* * * *

(g) *Adequacy of resources.* * * *

(Authority: 20 U.S.C. 1221e–3 and 3474)

[FR Doc. 95–21773 Filed 8–31–95; 8:45 am]

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federal register

Friday
September 1, 1995

Part VII

Department of the Interior

Bureau of Indian Affairs

Mission Valley Power Utility, Montana; Power Rate Adjustment; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, Montana; Power Rate Adjustment

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of rate change.

SUMMARY: The Bureau of Indian Affairs (BIA) is increasing the cost of electric power to customers of Mission Valley Power (MVP), the entity operating the power facility of the Flathead Irrigation and Power Project of the Flathead Reservation. The BIA has been informed by the Bonneville Power Administration (BPA) that it is increasing its wholesale power and transmission rates by 4.0 percent through an interim surcharge. At the present time, the BPA supplies the majority of MVP's wholesale power requirements through a contract, which will expire in the year 2001.

Accordingly, the BIA is adjusting MVP rates and charges to reflect the increased cost of service and power provided to MVP by the BPA. The rate change will impact MVP's Basic Charge, Demand Charge, Horsepower Charge and various energy rates within each rate class. The effective date of the BPA rate change is October 1, 1995, through September 30, 1996. MVP will adjust its rates and charges effective October 1, 1995, through September 30, 1996, accordingly.

DATES: These rates will become effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702; or, General Manager, Mission Valley Power, P.O. Box 890, Polson, Montana 59860–0890. Telephone (406) 883–5361 or 1–800–823–3758 (in-State Watts). For further specific information on the surcharge to be imposed by the Bonneville Power Administration please contact the Bonneville Power Administration, Corporate Communications, P.O. Box 12999, Portland, Oregon, or call them at (503) 230–4201.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8. 1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

A notice of proposed rate change was published in the **Federal Register** on July 6, 1995 (60 FR 35315–35317). A 30-day comment period was allowed. The Bureau received 1 comment.

The single comment received addressed concerns on the equitable application of the 4% increase throughout the rate structure. The application of the increase was reviewed and determined to be appropriate. The BIA will respond directly to the commentator. This rate increase is necessary to recover costs passed on to the BIA by BPA.

The following table illustrates the impact of the surcharge.

BPA WHOLESALE POWER RATE REVISION FROM BPA TO MVP

Rate class	Present rate	Retail rate Oct. 1, 1995
Residential:		
Basic charge	$11.00/mo.(includes 127 kwh)	$11.00(includes 125 kwh).
Energy charge	$0.04724/kwh (over 127 kwh)	$0.04817/kwh(over 125 kwh).
#2 General:		
Basic charge	$11.00/mo.(includes 109 kwh)	$11.00/mo.(includes 107 kwh).
Energy charge	$0.05511/kwh (over 109 kwh)	$0.05604/kwh(over 107 kwh).
Irrigation:		
Horsepower charge	$10.84/HP	$11.25/HP.
Energy charge	$0.03605/kwh	$0.03638/kwh.
Minimum seasonal charge:	$132.00 or $6.00/HP, whichever is greater	Same.
Small and large commercial:		
Basic charge	None	None.
Monthly minimum	$38.00	$38.00.
Demand rate	$4.34/KW of billing demand	$4.50/KW of billing demand.
Energy charge	$0.04269/kwh—First 18,000 kwh	$0.04305/kwh—First 18,000 kwh.
	0.03551/kwh—Over 18,000 kwh	$0.03588/kwh—Over 18,000 kwh.
	Monthly rate	Monthly rate
Area lights installed on existing pole or structure:		
7,000 lumen unit, M.V.*	$6.98	$7.00.
20,000 lumen unit, M.V.*	$9.73	$10.00.
9,000 lumen unit, H.P.S	$6.30	$6.50.
22,000 lumen unit, H.P.S	$8.58	$8.75.
Area lights installed with new pole:		
7,000 lumen unit, M.V.*	$8.70	$8.75.
20,000 lumen unit, M.V.*	$11.43	$11.50.
9,000 lumen unit, H.P.S	$8.01	$8.25.
22,000 lumen unit, H.P.S	$10.28	$10.50.
Street lighting (metered):		
Basic charge	$11.00/mo.(over 109 kwh)	$11.00/mo.(for 107 kwh).
Energy charge	$0.05511(over 109 kwh)	$0.05604(over 107 kwh).
Street lighting (unmetered): This rate class applies to municipalities or communities where there are ten or more lighting units billed in a group. This rate schedule is subject to a negotiated contract with MVP.		

*Continuing Service Only.

Dated: August 29, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–21778 Filed 8–31–95; 8:45 am]

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federal register

Friday
September 1, 1995

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Federal Indian Reservations and Ceded Lands; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AC79

Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1995-96 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This is in response to tribal requests for Service recognition of their authority to regulate hunting under established guidelines. This rule is necessary to allow establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

EFFECTIVE DATE: This rule takes effect on September 1, 1995.

ADDRESSES: Comments received, if any, on the proposed special hunting regulations and tribal proposals are available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. Communications regarding the documents should be sent to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Room 634-ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel or Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358-1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 17, 1995 **Federal Register** (60 FR 42960), the U.S. Fish and Wildlife Service (Service) proposed special migratory bird hunting regulations for the 1995-96 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) on-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines have to be consistent with the March 10-September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

Tribes that desired special hunting regulations in the 1995-96 hunting season were requested in the March 24, 1995, **Federal Register** (60 FR 15642) to submit a proposal that included details on: (1) requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985-86 hunting season, and they were made final beginning with the 1988-89 hunting season (August 18, 1988; 53 FR 31612).

Although the proposed rule includes generalized regulations for both early and late season hunting, this rulemaking addresses only the early season proposals. Late season hunting will be addressed in the rulemaking to follow in September 1995. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons are those that begin about October 1 or later each year and have a primary emphasis on waterfowl.

Comments and Issues Concerning Tribal Proposals

For the 1995-96 migratory bird hunting season, the Service proposed regulations for seventeen tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes have both early and late season elements. However, as noted earlier, only those with early season proposals are included in this final rulemaking; 9 tribes have proposals with early seasons. Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 18, 1995, closed on August 28, 1995. Because of the brief comment period that was necessary, any comments received on the proposed rule and/or these early season regulations not responded to herein will be addressed in the late season final rule to be published in September.

Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

To date, the Service has received one letter regarding the proposal of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC). The State of Wisconsin Department of Natural Resources (WIDNR) July 6, 1995 letter to the GLIFWC, was copied to the Service. In this letter, the WIDNR communicated concerns regarding: (1) Canada goose bag limits of 10 per day, and concern for the harvest of local giant Canada geese. With regard to giant Canada geese, WIDNR cited 10 or more years of effort to restore breeding populations that could be jeopardized by overharvest locally; (2) the length of other goose seasons and bag limits for the GLIFWC in comparison to those required for non-tribal hunters by the State of Wisconsin. The WIDNR thought that GLIFWC goose seasons and bag limits should be consistent with those of the State; (3) the September 15 opening of the duck season. The WIDNR continues to oppose the early duck season opener in concern for late nesting hens and their broods that might still be in molt or just recovering from the molt that would make them especially vulnerable to harvest; (4) the proposed duck daily bag limit to 20. The WIDNR believes that the proposed bag limits may negatively impact efforts by the State and others, including the GLIFWC, to restore local duck breeding populations in northern Wisconsin; and (5) honoring the noon opening for shooting hours for the first day of the State's duck season.

It is necessary to place this proposal by the GLIFWC in the context of a tribal entity having court established legal rights on ceded lands. Further, it is the policy of the Service to recognize treaty rights wherever there is substantial proof that they occur, e.g., more recently in the Michigan 1836 Treaty area. Thus, the GLIFWC proposal has as its umbrella the recognition by the Federal Government of those reserved rights by bands to an unquantified amount of any harvestable migratory bird surpluses in the ceded areas. Our position derives from the special status that Native Americans have with regard to the Federal Government's trust responsibility, as well as precedent setting court decisions in Wisconsin and elsewhere when these reserved treaty rights have been at issue.

As to the details of the proposal comments, our response continues to be that while the Commission's proposed bag limits are somewhat greater than they were several years ago, we disagree that they are "inconsistent with past FWS harvest and population management strategies" and "excessive" for geese. The Service's position is that the current populations of birds can support the limited harvest of the bands. In past years, the numbers of ducks and geese taken annually by the Commission's member bands have been about 2,000 and 500, respectively. In 1994-95, under nearly identical regulations, 1901 ducks and 719 geese were taken. Under the proposed regulations, the annual harvest is anticipated to be approximately 3,000 ducks and 900 geese. Further, the Commission has proposed specific sex and species considerations, in line with current management concerns. If approved, the Commission will be obligated to monitor the harvest to ensure that local breeding populations of ducks are not being adversely affected.

The September 15 opening date for the GLIFWC meets the framework the Service has established for approval of tribal duck seasons. This date should provide ample time for even late broods and molting ducks to be flighted. These referenced guidelines were originally established by the Service's Region 3 Office in the Twin Cities, Minnesota, for use in the Great Lakes areas but have been generally applied elsewhere in the States, as appropriate. The Service also requests that tribal members honor both the noon opening for shooting hours for the first day of the State's duck season and Wisconsin's open water hunting restrictions.

As these regulations are being approved in this early season final rule, it is incumbent upon the GLIFWC to continue to closely monitor both the duck and goose harvests to ensure that local and/or regional breeding populations are not being negatively impacted by an increased harvest.

In summary, this rule amends section 20.110 of 50 CFR to make current for the early 1995-96 migratory bird hunting season the regulations that will apply on Federal Indian reservations, off-reservation trust lands and ceded lands. These regulations take into account the improved status of ducks and the need to maintain somewhat restrictive regulations to reduce harvest on some migratory bird populations.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75-74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88-14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat..." Thus, the Service initiated Section 7 consultation for the proposed migratory bird hunting seasons including those which occur on Federally recognized Indian reservations and ceded lands. The Service's biological opinion resulting from its consultation under Section 7 of the ESA may be inspected by the public in, and will be available from, the Service's address given under the caption **ADDRESSES**.

In an August 1995 finding, the Service concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Among other reasons, hunting regulations are designed to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act.

In the **Federal Register** dated March 24, 1995 (60 FR 15642), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis (FRIA), and publication of a summary of the latter. Although a FRIA is no longer required, the economic analysis contained in the FRIA was reviewed and the Service determined that it met the requirements of E.O. 12866. In addition, the Service prepared a Small Entity Flexibility Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), which further document the significant beneficial economic effect on a substantial number of small entities. This rule was not subject to review by the Office of Management and Budget under E.O. 12866.

These regulations contain no information collections subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). However, the Service does utilize information acquired through other various information collections in the formulation of migratory game bird hunting regulations. These information collection requirements have been approved by OMB and assigned clearance numbers 1018-0005, 1018-0006, 1018-0008, 1018-0009, 1018-0010, 1018-0015, 1018-0019, and 1018-0023.

Authorship

The primary authors of this early season final rule are Ron W. Kokel and Dr. Keith A. Morehouse, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on August 18, 1995, the Service established the longest possible period for public comments. In doing this, the Service recognized that time would be of the essence. However, the comment period provided the maximum amount of time possible while ensuring that this final rule would be published before the beginning of the early hunting season beginning on September 1, 1995.

Under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 et seq.), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl.

Therefore, for the reasons set out above, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule will take effect on September 1, 1995.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20–[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

AUTHORITY: 16 U.S.C. 703-711, 16 U.S.C. 712, and 16 U.S.C. 742 a-j. (Editorial Note: The following hunting regulations provided for by §20.110 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is revised to read as follows:

§20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nonmembers)

Doves

Season Dates: Open September 1, close September 10, 1995; then open November 25, close January 14, 1996.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate per day. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

Canada Geese

Michigan, 1836 Treaty Zone:

Season Dates: Open September 1, close November 30, 1995, and open January 1, close February 7, 1996.

Daily Bag Limit: The daily bag limit is 5.

General Conditions: A valid Grand Traverse Band Tribal license is required for all persons 12 years and older and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(c) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

Wisconsin and Minnesota 1837, 1842 and 1854 Zones:

Season Dates: Open September 15, close November 7, 1995.

Daily Bag Limit: The daily bag limit is 20, including no more than 10 mallards; only 5 of which may be hen mallards; 4 black ducks; 4 redheads, 4 pintails and 2 canvasbacks.

Mergansers

Wisconsin and Minnesota Zones:

Season Dates: Open September 15, close November 7, 1995.

Daily Bag Limit: The daily bag limit is 5.

Canada Geese

Wisconsin and Minnesota Zones:

Season Dates: Open September 15, close December 1, 1995.

Daily Bag Limit: The daily bag limit is 10, minus the number of blue, snow or white-fronted geese taken.

Michigan, 1842 Treaty Zone:

Season Dates: Open September 1, close September 10, 1995.

Daily Bag Limit: The daily bag limit is 5.

Michigan, 1836 Treaty Zone:

Season Dates: Open September 1, close September 10, 1995, except for that small portion of the ceded territory which coincides with the State of Michigan's Southern Zone will open September 1 and close on September 15.

Daily Bag Limit: The daily bag limit is 5.

Other Geese (Blue, Snow, and White-fronted)

Wisconsin and Minnesota 1837, 1842 and 1854 Zones:

Season Dates: Open September 15, close December 1, 1995.

Daily Bag Limit: The daily bag limit is 10, minus the number of Canada geese taken.

Coots and Common Moorhens (Gallinule)

Wisconsin and Minnesota 1837, 1842 and 1854 Zones:

Season Dates: Open September 15, close November 7, 1995.

Daily Bag Limit: The daily bag limit is 20, singly or in the aggregate.

Sora and Virginia Rails

Wisconsin and Minnesota 1837, 1842 and 1854 Zones:

Season Dates: Open September 15, close November 7, 1995.

Daily Bag Limit: The daily bag limit is 25, singly or in the aggregate. The possession limit is 25.

Michigan, 1842 and 1836 Zones:

Season Dates: Open September 15, close November 14, 1995.

Daily Bag and Possession Limits: The daily bag limit is 25, singly or in aggregate. The possession limit is 25.

Common Snipe

Wisconsin and Minnesota 1837, 1842 and 1854 Zones:

Season Dates: Open September 15, close November 7, 1995.

Daily Bag Limit: The daily bag limit is 8.

Michigan, 1842 and 1836 Zones:

Season Dates: Open September 15, close November 14, 1995.

Daily Bag Limit: The daily bag limit is 8.

Woodcock

Wisconsin and Minnesota 1837, 1842 and 1854 Zones:

Season Dates: Open September 5, close November 30, 1995.

Daily Bag Limit: The daily bag limit is 5.

Michigan, 1842 and 1836 Zones:

Season Dates: Open September 15, close November 14, 1995.

Daily Bag Limit: The daily bag limit is 5.

General Conditions:

(i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(ii) Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in Lac Courte Oreilles v. State of Wisconsin regarding migratory bird hunting. Except as modified herein, these amended regulations parallel Federal requirements, 50 CFR Part 20, and shooting hour regulations in 50 CFR Part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

(iii) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(iv) Minnesota and Michigan–Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to applicable State statutes. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(v) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise specified.

(vi) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State statutes. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(d) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers).

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 1995.

Daily Bag and Possession Limits: The daily bag limit is 5 and the possession limit is 10.

Mourning Doves

Season Dates: Open September 1, close September 30, 1995.

Daily Bag and Possession Limits: The daily bag limit is 10 and the possession limit is 20.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(e) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members).

Ducks

Season Dates: Open September 15, close November 30, 1995.

Daily Bag and Possession Limits: Daily bag limit is 5, including no more than 3 mallards (only 1 of which can be a mallard hen), 4 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, close November 30, 1995.

Daily Bag and Possession Limits: Daily bag limit is 2 Canada geese, that must be tagged after harvest with tribal tags. The tribe will reissue tags upon registration of the daily bag limit. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Mourning Dove

Season Dates: Open September 1, close November 30, 1995.

Daily Bag and Possession Limits: Daily bag limit is 10, and the possession limit is 20.

Woodcock

Season Dates: Open September 1, close November 30, 1995.

Daily Bag and Possession Limits: Daily bag limit is 6, and the possession limit is 12.

General Conditions: Indians and non-Indians hunting on the Oneida Indian Reservation or on lands under the jurisdiction of the Oneida Nation will observe all basic Federal migratory bird hunting regulations found in 50 CFR. Indian hunters are exempt from the requirement to purchase a Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp) and the plugging of shotgun to limit capacity to 3 shells.

(f) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal and Non-tribal Members).

Mourning Doves

Season Dates: Open September 20, 1995, close January 15, 1996.

Daily Bag and Possession Limits: The daily bag limit is 12 and the possession limit is 24.

General Conditions: Hunting would be on Sundays only from 1:00 p.m. to sunset. All other Federal regulations contained in 50 CFR part 20 would apply.

(g) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members)

Ducks

Season Dates: Open September 15, 1995, close January 15, 1996.

Daily Bag and Possession Limits: Daily bag limit is 5, including no more than 1 canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 1995, close January 15, 1996.

Daily Bag and Possession Limits: Daily bag limit is 4 birds per day and can include no more than 2 snow geese and 1 dusky Canada goose. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, close December 31, 1995.

Daily Bag and Possession Limits: Daily bag limit is 2, and the possession limit is 4.

Coots

Season Dates: Open September 15, 1995, close January 15, 1996.

Daily Bag and Possession Limits: Daily bag limit is 25.

Snipe

Season Dates: Open September 15, 1995, and close January 15, 1996.

Daily Bag and Possession Limits: The daily bag limit is 8, with 16 in possession.

Band-tailed Pigeons

Season Dates: Open September 15, close December 1, 1995.

Daily Bag and Possession Limits: Daily bag limit is 2, and the possession limit is 4.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(h) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members)

Ducks/Coot

Season Dates: Open September 15, 1995, and close February 1, 1996.

Daily Bag and Possession Limits: The daily bag limit is 6, with 12 in possession; except that bag and possession limits are restricted for blue-winged teal, canvasback, harlequin, pintail and wood duck to those established for the Pacific Flyway by final Federal frameworks, to be announced.

Geese

Season Dates: Open September 15, 1995, and close February 1, 1996.

Daily Bag and Possession Limits: The daily bag limit is 6, with 12 in possession; except that the bag limits for brant and cackling and dusky Canada geese are those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. The tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

Snipe

Season Dates: Open September 1, 1995, and close February 1, 1996.

Daily Bag and Possession Limits: The daily bag limit is 6, with 12 in possession.

General Conditions: All waterfowl hunters, members and non-members, must obtain and possess while hunting a valid hunting permit from the Tulalip tribes. Also, non-tribal members sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a validated Federal Migratory Bird Hunting and Conservation Stamp and a validated State of Washington Migratory Waterfowl Stamp. All Tulalip tribal members must have in their possession while hunting, or accompanying another, their valid tribal identification card. All hunters are required to adhere to a number of other special regulations enforced by the tribes and available at the tribal office.

(i) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nonmembers).

Band-tailed Pigeons

Season Dates: Open September 1, close September 10, 1995.

Daily Bag and Possession Limits: The daily bag limit is 3 and the possession limit is 6.

Mourning Doves

Season Dates: Open September 1, close September 10, 1995.

Daily Bag and Possession Limits: The daily bag limit is 8 and the possession limit is 16.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 29, 1995

George T. Frampton, Jr.,

George T. Frampton, Jr., Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–21788 Filed 8-31-95; 8:45 am]

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Vol. 60, No. 170

Friday, September 1, 1995

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45647–46016............................1

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September 7	September 22	October 10	October 23	November 6	December 6
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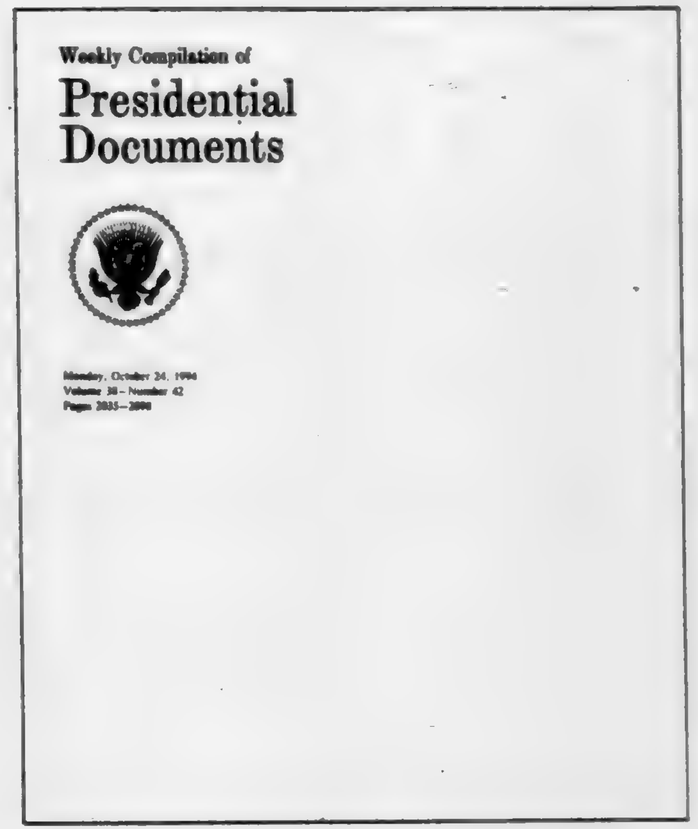

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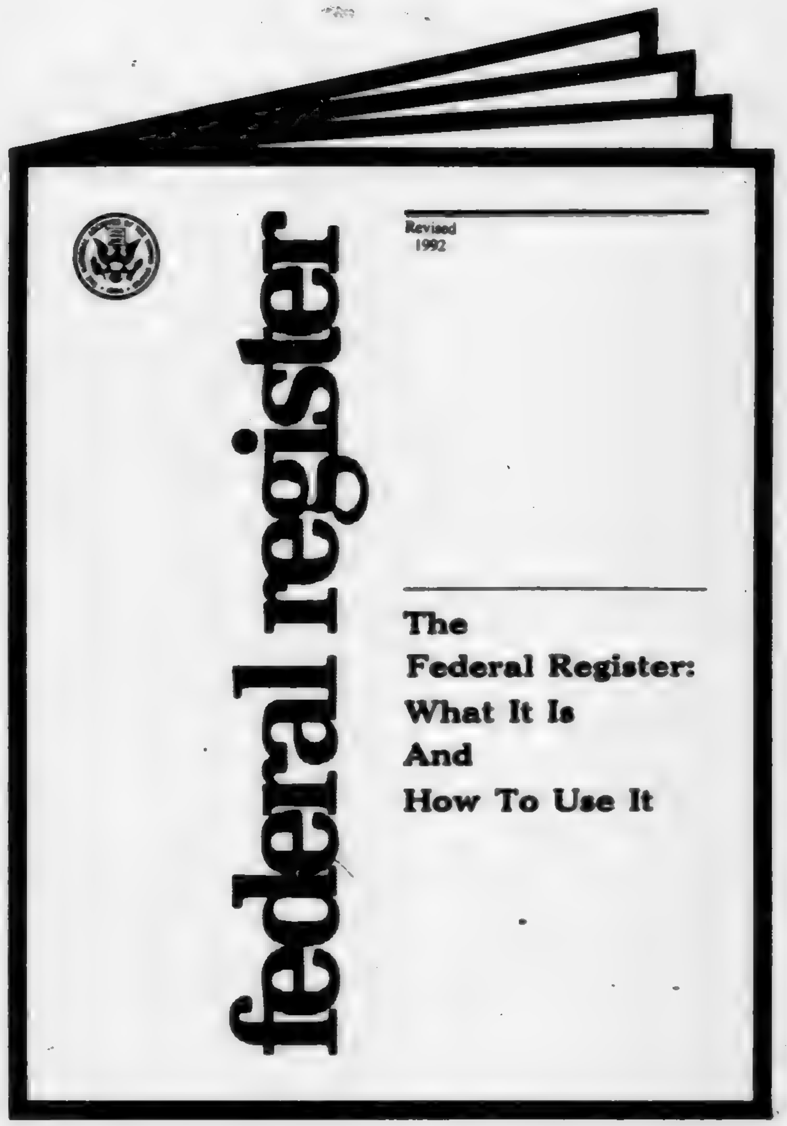
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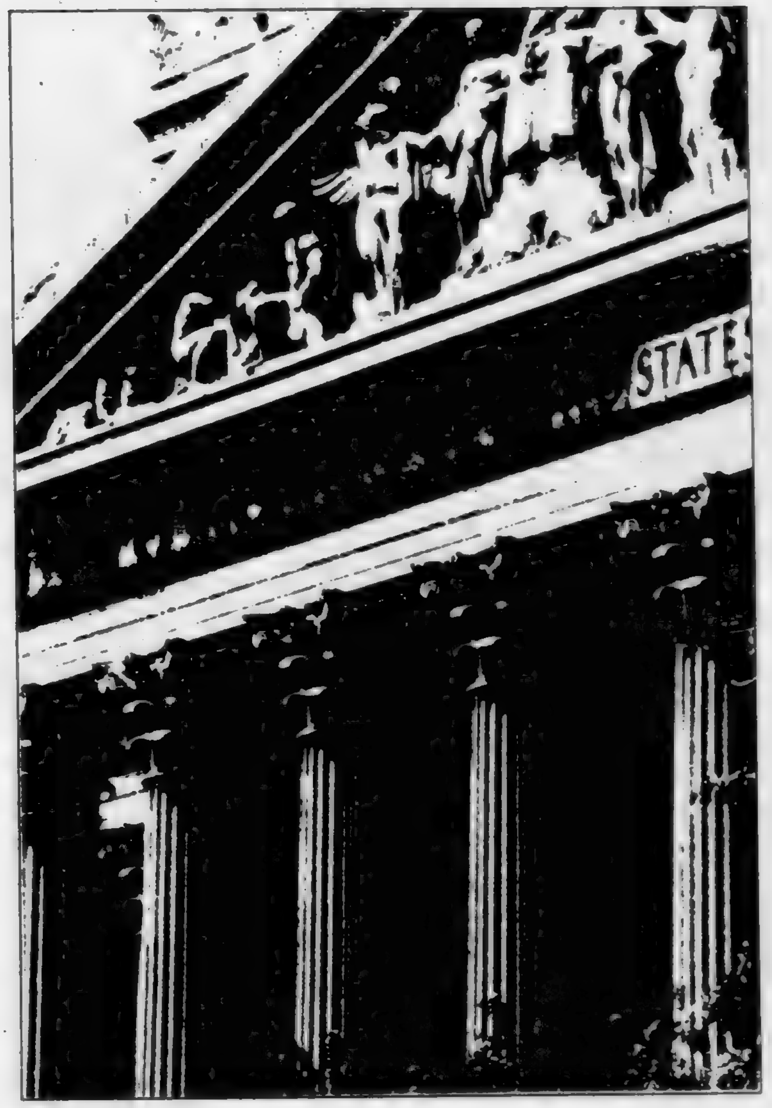

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Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Vol. 60, No. 171
Tuesday, September 5, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV95–945–1FIR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses under Marketing Order No. 945 for the 1995–96 fiscal period. That rule also increased the level of authorized expenses for the 1993–94 fiscal period. Authorization of this budget enables the Idaho-Eastern Oregon Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Authorization of the increase in the level of authorized expenses for the 1993–94 fiscal period is necessary because the Committee exceeded its budget for that period. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: Section 945.248 is effective August 1, 1995, through July 31, 1996. The amendment to § 945.246 was effective August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97205, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in designated counties in Idaho, and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Idaho-Eastern Oregon potatoes are subject to assessments. Funds to administer the Idaho-Eastern Oregon potato marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes handled during the 1995–96 fiscal period, which began August 1, 1995, and ends July 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 2,100 producers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 60 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Idaho-Eastern Oregon potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Idaho-Eastern Oregon Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Idaho-Eastern Oregon potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Idaho-Eastern Oregon potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 6, 1995, and unanimously recommended a 1995–96 budget of $111,732, $11,853 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Salaries, $63,232 ($55,479), meetings and miscellaneous, $2,500 ($2,000), Federal payroll taxes, $5,300 ($4,700), and reserve/auto purchase, $9,000 ($6,000). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.0026 per hundredweight, the same as each year for the past decade. This rate, when applied to anticipated shipments of 34,000,000 hundredweight, will yield $88,400 in assessment income. This, along with $23,332 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1995–96 fiscal period, estimated at about $80,000, will be within the maximum permitted by the order of one fiscal period's expenses.

The 1993–94 budget was published in the **Federal Register** as an interim final rule on July 16, 1993 (58 FR 38274) and finalized on October 28, 1993 (58 FR 57957). That rule authorized Committee expenses of $98,942. The Committee exceeded its authorized expenses by $713, for total expenses of $99,655. Funds to cover this increase were taken from the Committee's authorized reserve. The 1993–94 budget is amended to cover this increase.

An interim final rule was published in the **Federal Register** on July 17, 1995 (60 FR 36339). That interim final rule added § 945.248 to authorize expenses and establish an assessment rate for the Committee. That rule also amended § 945.246 to increase the level of authorized expenses for the 1993–94 fiscal period. That rule provided that interested persons could file comments through August 16, 1995. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on August 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 956

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

Accordingly the interim final rule amending § 945.246 and adding § 945.248, which was published at 60 FR 36339 on July 17, 1995, is adopted as a final rule without change.

Dated: August 29, 1995.

Ron Cioffi,

Acting Deputy, Director, Fruit and Vegetable Division.

[FR Doc. 95–21936 Filed 9–1–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. OST–95–397]

RIN 2105–AC–27

Aviation Economic Rules; Correction

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule (Docket OST–95–397) published Tuesday, August 22, 1995 (60 FR 43521). The regulation at issue—14 CFR 399.21—sets forth the policy of the Department concerning requests for exemptions from 49 U.S.C. 41102 by air carriers seeking to perform charter air transportation.

EFFECTIVE DATE: September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Background

By final rule (Docket OST–95–397) published on August 22, 1995 (60 FR 43521), the Department amended various provisions regarding aviation economic rules in order to eliminate obsolete provisions and correct outdated organizational and statutory references.

Need for Correction

As published, the final rule contains an error which may prove to be misleading and is in need of correction. Specifically, the rule (at page 43531, second column, paragraph 172) states erroneously that § 399.21 is being removed; rather, that section is being amended in the manner stated in the following paragraph on that page (paragraph 173).

Correction of Publication

Accordingly, the publication on August 22, 1995, of the final rule (Docket OST–95–397) that was the subject of 60 FR 43521, is corrected as follows:

§ 399.21 [Corrected]

1. On page 43531, second column, paragraph 172, remove the reference "399.21".

Dated: August 29, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–21956 Filed 9–1–95; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF JUSTICE

28 CFR Part 0

[DEA–136F]

Redelegation of Functions; Delegation of Authority to Drug Enforcement Administration Official

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Under delegated authority, the Administrator of the Drug Enforcement Administration (DEA), Department of Justice, is amending the appendix to the Justice Department regulations to redelegate certain functions and authority which were vested in the Attorney General by the Controlled Substances Act and subsequently redelegated to the Administrator and to make a technical correction to reflect a change in position title.

EFFECTIVE DATE: August 21, 1995.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) establishes a comprehensive system of controls over the manufacture, distribution, dispensing, importation and exportation of controlled substances and listed chemicals. The CSA requires that persons who manufacture, distribute, dispense, import or export controlled substances or certain listed chemicals obtain a registration from DEA and make certain records and reports concerning their activities with controlled substances and listed chemicals. On June 22, 1995, DEA published a Final Rule to implement the Domestic Chemical Diversion Control Act of 1993 in the **Federal Register**. In part, the final rule amended Chapter II of Title 21, Code of Federal Regulations, to add a new Part 1309, relating to the registration of manufacturers, distributors, importers and exporters of List I chemicals. The amendment becomes effective on August 21, 1995.

The Attorney General has delegated her functions under the CSA to the Administrator of the Drug Enforcement Administration and authorized the Administrator to redelegate any of his functions to any of his subordinates. See 21 U.S.C. 871(a), 28 CFR 0.100(b) and 28 CFR 0.104. To further enhance the administration of the CSA and its attendant regulations, the Administrator is redelegating to the Deputy Assistant Administrator of the DEA Office of Diversion Control the authority to exercise all necessary functions with respect to the promulgation and implementation of the regulations in Part 1309 of Chapter II, title 21, Code of Federal Regulations incident to the registration of manufacturers, distributors, importers and exporters of List I chemicals, except that final orders in connection with suspension, denial, or revocation of registration shall be made by the Deputy Administrator of DEA.

In a separate matter, Section 9 of the Appendix to Subpart R is being amended to redelegate the authority to furnish, or cause to be furnished, descriptions of persons with whom regulated transactions may not be completed without prior approval of the DEA; to approve such transactions pursuant to 21 U.S.C. 830(b) and 21 CFR 1310.05(b); and to approve or disapprove regular customer or regular importer status under 21 U.S.C. 971 and 21 CFR 1313.15 and 1313.24 to the Chief of Operations of the DEA, Operations Division. This redelegation reflects a recent organizational change within DEA. Prior to the reorganization, the Deputy Assistant Administrator, Office of Diversion Control reported to the Deputy Assistant Administrator of Operations, Operations Division; the Deputy Assistant Administrator, Office of Diversion now reports to the Chief of Operations of the DEA, Operations Division. The redelegation also reflects the removal of regular supplier status and addition of regular importer status to the regulations by the Domestic Chemical Diversion Control Act of 1993.

The Administrator certifies that this action will have no impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601). Pursuant to Executive Order 12866, this is not a significant regulatory action since it relates only to the organization of functions within DEA. Accordingly, it has not been reviewed by the Office of Management and Budget and does not require certification under Executive Order 12778. This action has been analyzed in accordance with Executive Order 12616. It has been determined that this matter has no federalism implications which would require preparation of a federalism assessment.

List of Subjects in 28 CFR Part 0

Authority Delegations (Government Agencies), Organizations and functions (Government Agencies).

For the reasons set forth above, and pursuant to the authority vested in the Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104, and 21 U.S.C. 871, title 28 of the Code of Federal Regulations, part 0, appendix to subpart R, Redelegation of Functions, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301: 28 U.S.C. 509, 510, 515–519.

2. The Appendix to subpart R is amended by redesignating paragraphs 7(h) through 7(k) as 7(i) through 7(l), inserting a new paragraph 7(h), and revising Section 9 to read as follows:

Appendix to Subpart R—Redelegation of Functions

* * * * *

Sec. 7. * * *

(h) Part 1309, incident to the registration of manufacturers, distributors, importers and exporters of List I chemicals, except that final orders in connection with suspension, denial or revocation of registration shall be made by the Deputy Administrator of DEA.

* * * * *

Sec. 9. *Chemical Diversion Act Functions.* The Chief of Operations of the DEA, Operations Division, is authorized to furnish, or cause to be furnished, descriptions of persons with whom regulated transactions may not be completed without prior approval of the DEA; to approve such transactions pursuant to 21 U.S.C. 830(b) and 21 CFR 1310.05(b); and to approve or disapprove regular customer or regular importer status under 21 U.S.C. 971 and 21 CFR 1313.15 and 1313.24.

* * * * *

Dated: August 24, 1995.

Thomas A. Constantine,

Administrator.

[FR Doc. 95–21932 Filed 9–1–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 92

Military Whistle Protection; Removal of Part

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes the Department of Defense's rule concerning the Military Whistleblower Protection. The part has served the purpose for which it was intended for the Code of Federal Regulations, and is no longer necessary.

EFFECTIVE DATE: September 5, 1995.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION: At the present time, there are two(2) documents codified as 32 CFR part 92. The Military Whistleblower Protection document should be removed. DoD Directive 7050.6, same title, is presently available from the National Technical Information Service. The most current version, August 12, 1995, will be available from NTIS at a later date. Requests for the Directive should be forwarded to: National Technical

Information Service, 5285 Port Royal Road, Springfield, VA 22161. On August 19, 1994, 59 FR 42752, the Department of Defense published 32 CFR part 92. However, on August 8, 1995, 60 FR 40277, DoD duplicated the use of part 92 before they removed the original part 92. Part 92 published at 60 FR 40277 remains unchanged and should not be connected in any manner with the document to be removed.

List of Subjects in 32 CFR Part 92

Administrative practice and procedure; Investigations; Military personnel; Whistleblowing

PART 92—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 92 published at 59 FR 42752, is removed.

Dated: August 29, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–21840 Filed 9–1–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–071–1–6960a; FRL–5269–5]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 14, 1994, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, submitted a revision to the North Carolina State Implementation Plan (SIP). This revision is the adoption of an amendment to rule 15A NCAC 2D .0518 Miscellaneous Volatile Organic Compounds Emissions. This amendment was included to define that diacetone alcohol is considered to be a nonphotochemically reactive solvent. This rule is applicable to all sources of VOC emissions for which no other VOC emission standards are applicable.

DATES: This final rule is effective November 6, 1995 unless notice is received by October 5, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by the NCDEHNR may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

North Carolina Department of Environment, Health and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4212.

SUPPLEMENTARY INFORMATION: On October 14, 1994, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, submitted a revision covering the adoption of an amendment to rule 15A NCAC 2D .0518 Miscellaneous Volatile Organic Compound Emissions. This amendment was included to define that diacetone alcohol is considered to be a nonphotochemically reactive solvent. This rule is applicable to all sources of VOC emissions for which no other VOC emission standards are applicable. This revision was the subject of public hearings held on March 28 and 30, 1994. EPA is approving the amendment of rule 15A NCAC 2D .0518 because this revision is consistent with the requirements of the Clean Air Act and EPA guidance.

Final Action

EPA is approving the above referenced revision to the North Carolina SIP. This action is being taken without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 6, 1995 unless, by October 5, 1995 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 6, 1995.

Under Section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2)).

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the

State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2) and 7410 (k)(3).

Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector. EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this or final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: July 25, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart II

2. Section 52.1770, is amended by adding paragraph (c)(81) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(81) The VOC revision to the North Carolina State Implementation Plan which were submitted on October 14, 1994.

(i) Incorporation by reference. Addition of new North Carolina regulations 15A NCAC 2D .0518 which was state effective on September 1, 1994.

(ii) Other material. None.

* * * * *

[FR Doc. 95–20596 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[AK–8–1–6733a; FRL–5286–8]

Approval and Promulgation of Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the State of Alaska Implementation Plan (SIP) revision submitted by the State of Alaska for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The implementation plan was submitted by the State to satisfy the Federal mandate of the Clean Air Act (CAA or Act), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated below.

DATES: This final rule is effective on November 6, 1995 unless notice is received by October 5, 1995, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, WA 98101, and Alaska Department of Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: David J. Dellarco, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in Section 507 of Title V of the CAA. In January 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Alaska has submitted a SIP revision to EPA in order to satisfy the requirements of Section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) the establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements[1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State of Alaska has met this requirement by developing its SBAP with both proactive and reactive components. The proactive element will use outreach techniques to develop and distribute compliance and technical information to small businesses, including details on their rights and obligations, alternative control technologies, and compliance methods. These techniques will include direct mail, public service announcements, and meetings with small businesses. The reactive element will use a telephone hot line to receive questions from small businesses. In addition, the SBAP will maintain a clearinghouse of information, in the form of a library of documents and computer files, relevant to the compliance alternatives available to small businesses.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by planning to provide small businesses with information and assistance on accidental release prevention and detection. This information may include requirements under the accidental release provisions of the CAA, requirements of the Superfund Amendments and Reauthorization Act title III, Occupational Safety and Health administration process safety standards, as well as general information on prevention practices and technologies. The State of Alaska's non-regulatory pollution prevention program will provide the SBAP with direct pollution prevention support and expertise. The pollution prevention office will utilize both State and regional pollution prevention resources to provide direct pollution prevention technical assistance to small businesses.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by planning to develop its SBAP with a main emphasis on assisting small businesses in obtaining any necessary air quality operating permits. The SBAP plans to use workshops to guide small businesses through the air quality operating permit application process. In addition, the SBAP will develop source specific outreach materials on the responsibilities of small businesses established through existing and future CAA requirements.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulations or standards issued under the Act. The State has met this requirement by planning to use direct mailing, public service announcements, and meetings with small businesses to notify them of their rights and obligations under air quality requirements in a timely manner.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement by planning to establish a voluntary on-site evaluation program to help small businesses determine if their operations comply with the Act.

The sixth requirement is to develop procedures for consideration of requests from small business stationary sources for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by planning to develop procedures, by regulation, to respond to requests from small businesses for work practice modifications. The State of Alaska will develop these procedures concurrently with its revisions to Alaska's air quality regulations, and follow the requirements of Alaska's Administrative Procedure Act. The regulations that address requirements for work practice modification requests will be submitted by Alaska with its Title V Operating Permits Program, and become effective upon EPA approval of Alaska's Title V Operating Permits Program.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by establishing the position of Small Business Advocate, which will promote the rights and concerns of small businesses. The Small Business Advocate is separate from the SBAP and independent from Alaska's Air Quality Management Program.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by appointing its CAP in accordance with the above requirements.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) to render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act[2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by directing its CAP to meet the above areas of responsibility.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

In addition, under Section 507(c)(2) of the CAA a State may, upon petition by a source and after notice and opportunity for comment, include as a "small business stationary source" any source that does not meet the provisions of Sections 507(c)(1) (C), (D), and (E) of the CAA but does not emit more than 100 tpy of all regulated pollutants.

Under Alaska's PROGRAM, a facility is a "small business facility" and thus eligible for assistance under the PROGRAM if the facility:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in 15 U.S.C. 631 (Small Business Act); and

(C) Emits less than 100 tpy of regulated air contaminants. Alaska Statutes 46.14.990(22). Alaska has therefore expanded PROGRAM eligibility by statute to include all sources that could apply for eligibility on a case-by-case basis under Section 507(c)(2) of the CAA after notice and opportunity for comment. Based on assurances from the State, EPA believes that Alaska's definition of eligible sources will not interfere with the State's obligation to provide assistance to "small business stationary sources" as defined under Section 507(c)(1) of the CAA and that it is therefore consistent with Section 507(c) of the Clean Air Act.

In addition, the State of Alaska has provided, as required by Section 507(3) of the CAA, for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA. The State of Alaska has also established a mechanism based on direct assistance from the Small Business Advocate for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility under Section 507(c) of the CAA.

III. This Action

In this action, EPA approves the SIP revision submitted by the State of Alaska.

The State of Alaska has submitted a SIP revision implementing each of the PROGRAM elements required by Section 507 of the CAA. At this time, the SBAP, Small Business Advocate, and CAP are in place.

IV. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, the EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved in this action does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small business entities affected.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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[1] A seventh requirement of Section 507(a), establishment of an Ombudsman office, is discussed in the next section.

[2] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 6, 1995 unless, by October 5, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 6, 1995.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small Business Assistance Program.

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: August 15, 1995.

Jane S. Moore,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c) (20) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(20) On April 18, 1994, the Commissioner of the Alaska Department of Environmental Conservation (ADEC) submitted "The Alaska Air Quality Small Business Assistance Program State Air Quality Control Plan Amendment," adopted April 8, 1994, as a revision to the Alaska SIP.

(i) Incorporation by reference.

(A) Letter dated April 8, 1994, from the Commissioner of ADEC to the Regional Administrator of EPA, submitting "The Alaska Air Quality Small Business Assistance Program State Air Quality Control Plan Amendment" to EPA; the Alaska Air Quality Small Business Assistance Program State Air Quality Control Plan Amendment (which includes Appendix A the Alaska Statutes Title 46, Chapter 14, Article 3), dated April 1994, and adopted April 8, 1994.

(ii) Additional information.

(A) Letter dated July 24, 1995, from Alaska Department of Environmental Conservation, submitting information necessary for approval of the SBAP revision to EPA; the July 1995 SBAP Update, Responses to EPA Comments, and the Air Quality/Small Business Assistance Compliance Advisory Panel Board Information.

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[FR Doc. 95–21875 Filed 9–1–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[AZ 17–1–6710; FRL–5279–8]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department—Air Pollution Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on March 10, 1994. The revisions concern rules from the Maricopa County Environmental Services Department—Air Pollution Control (Maricopa County). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). This final action serves as a final determination that the findings of non-submittal that were issued for these rules have been corrected and that any sanctions or Federal Implementation Plan (FIP) obligations triggered by such non-submittal are permanently stopped. These rules control VOC emissions from graphic arts printing and coating operations and from the storage, loading, and transport of organic liquids. Thus, EPA is finalizing the approval of these rules into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATES: This action is effective on October 5, 1995.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, D.C. 20460.

Maricopa County Environmental Services Department, 2406 South 24th Street, Suite E–214, Phoenix, AZ 85034–6822.

Arizona Department of Environmental Quality, Air Quality Planning Office, 3003 N. Central Avenue, Fifth Floor, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Erik H. Beck, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1190. Internet E-mail: beck.erik@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1994, EPA proposed approval of the following rules into the Arizona SIP: 337 ("Graphic Arts"), 350 ("Storage of Organic Liquids at Bulk Plants and Terminals"), 351 ("Loading of Organic Liquids"), and 352 ("Gasoline Delivery Vessels"), as

adopted by Maricopa County on April 6, 1992 (Rules 337, 350, and 351) and November 16, 1992 (Rule 352). These rules were submitted by the Arizona Department of Environmental Quality to EPA on June 29, 1992 (Rules 337, 350, and 351) and February 4, 1993 (Rule 352). These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the Notice of Proposed Rulemaking (NPRM) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and with EPA's regulations and interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable requirements. A detailed discussion of the rule provisions and evaluations has been provided in 59 FR 11228 and in technical support documents (TSDs) available at EPA's Region IX office. These TSDs are dated: June 23, 1993 (Rule 337) and July 30, 1993 (Rules 350, 351, and 352).

Response to Public Comments

A 30-day public comment period was provided in 59 FR 11228. EPA did not receive comments on any of the rules.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the Arizona SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

On June 12, 1991 EPA notified Maricopa County that required elements of the SIP had not been submitted to EPA, thus beginning a FIP clock (under section 110(c) of the CAA) and a sanction clock (under section 179(a) of the CAA). These missing elements included the following source categories: Fixed Roof Storage (Rule 350), Gasoline Bulk Plants and Loading Terminals (Rule 351), Stage I: Service Stations Gasoline Transfer (Rule 353), and Graphic Arts (337). The section 179(a) sanction clock associated with these elements was terminated upon submittal of the rules to EPA. This Final Rule permanently terminates the section 110(c) FIP clock that commenced upon Maricopa County's failure to submit rules 337, 350, and 351.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 8, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c) (70) and (78) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(70) New and amended regulations for the Maricopa County Environmental Services Department—Air Pollution Control were submitted on June 29, 1992, by the Governor's designee.

(i) Incorporation by reference.

(A) New Rules 337, 350, and 351, adopted on April 6, 1992.

* * * * *

(78) New and amended regulations for the Maricopa County Environmental Services Department—Air Pollution Control were submitted on February 4, 1993, by the Governor's designee.

(i) Incorporation by reference.

(A) New Rule 352, adopted on November 16, 1992.

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[FR Doc. 95–21883 Filed 9–1–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[OR–31–1–5932a; FRL–5283–4]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the State of Oregon Implementation Plan (SIP) revision submitted by the State of Oregon for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The implementation plan was submitted by the State to satisfy the Federal mandate, found in Section 507 of the Clean Air Act (CAA or the Act), to ensure that small businesses have access to the

technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this notice; additional information is available at the address indicated below.

DATES: This final rule is effective November 6, 1995 unless notice is received by unless adverse or critical comments are received by October 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT–082), EPA, OR–31–1–5932, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: David J. Dellarco, Air and Radiation Branch (AT–082), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA or Act), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in Section 507 of Title V of the CAA. In January 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Oregon has submitted a SIP revision to EPA in order to satisfy the requirements of Section 507. Section 468.330 of the Oregon Revised Statutes establishes a Small Business Stationary Source Technical and Environmental Compliance Assistance Program and requires the Program to include each element specified in section 507(a) of the Act. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) the establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements[1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement through participation in a Pacific Northwest regional effort designed to ensure collection and development of compliance methods and technologies for small businesses. In addition, Oregon's SBAP has an information component and a technical assistance component. The information component advises small business about air quality regulations that may affect them, through education, outreach, and toll-free telephone access. The technical assistance component helps small businesses through direct consultation and site visits.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by coordinating and integrating SBAP activities with its pollution prevention activities, in particular the toxics use and waste reduction program. In addition, Oregon's SBAP will coordinate with the State Fire Marshal, Oregon-OSHA, and local emergency response programs in order to ensure small businesses receive assistance and information on accidental release detection and prevention.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by training staff in regulatory and permitting requirements, informing small businesses of their responsibilities through outreach, and providing compliance assistance through the SBAP.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by ensuring that small business rights are included in education and outreach materials and activities, as well as during the delivery of technical assistance. Oregon follows a policy of providing the regulated community with at least 30 calendar days advance notice before applicable requirements take effect.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement through a policy of providing the regulated community with at least 30 calendar days advanced notice of their obligations under state law, developing a program for qualified outside auditors to provide compliance assessments upon request, and providing compliance assistance through the Compliance Assessment Program.

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[1] A seventh requirement of Section 507(a), establishment of an Ombudsman office, is discussed in the next section.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by developing standardized criteria and administrative procedures for considering such requests.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by establishing and filling a new technical assistance coordinator position located in the administration section of the Department's Regional Operations Division. The technical assistance coordinator is assigned the responsibilities of the Small Business Ombudsman.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by establishing a Compliance Advisory Panel comprised of these individuals. *See* ORS 468A.330(3).

In addition to establishing the minimum membership of the CAP, the CAA delineates four responsibilities of the Panel: (1) to render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;[2] (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by authorizing its CAP to address these responsibilities. *See* ORS 468A.330(2).

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Oregon has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in Section 507(c)(1) of the CAA.

The State of Oregon has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of Sections 507(c)(1) (C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The State of Oregon has provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

5. Onsite Technical Assistance

The statute establishing the Oregon Small Business Program, ORS 468A.330, provides that onsite technical assistance for the development and implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall not result in inspections or enforcement actions except where there is reasonable cause to believe that a clear and immediate danger to the public health and safety or to the environment exists. *See* ORS 468A.330(4)(a). On August 12, 1994, EPA issued a guidance memorandum entitled "Enforcement Response Policy for Treatment of Information Obtained Through Clean Air Act Section 507 Small Business Assistance Programs" signed by Steven A. Herman (herein referred to as the "SBA Enforcement Guidance"), which sets forth EPA's enforcement response policy on the treatment of violations detected during compliance assistance visits under State Small Business Assistance Programs. The SBA Enforcement Guidance endorses State PROGRAMS that either (1) voluntarily seek compliance assistance a limited period to correct violations observed or revealed as a result of compliance assistance or (2) if the PROGRAM is independent of the delegated State air enforcement program, keep confidential information that identifies the names and locations of specific small businesses with violations revealed through compliance assistance.

The Oregon statute does not satisfy the requirements of the first option of the SBA Enforcement Guidance in that ORS 468A.330(4)(a) does not simply give sources that receive onsite technical assistance a limited opportunity to correct a violation, but instead prohibits further enforcement inspections and enforcement actions that result from onsite technical assistance. On May 16, 1995, the State or Oregon submitted to EPA a guidance document entitled "Air Quality Guidance: Restriction of Information Obtained by the AQ Small Business Assistance Program" (hereinafter, "Oregon's SBAP Confidentiality Guidance"). This document requires the PROGRAM to be operated independently of Oregon's air program enforcement efforts and requires the PROGRAM to restrict access by Oregon air enforcement staff to information regarding violations detected through onsite technical assistance visits to small businesses.

EPA has reviewed Oregon's SBAP Confidentiality Guidance and believes that it meets the conditions that apply to State's choosing the confidentiality option. Specifically, Oregon's SBAP Confidentiality Guidance is an official policy that establishes independence between the PROGRAM and the Oregon air enforcement program; it restricts access by Oregon air enforcement staff to information regarding violations detected through onsite technical assistance visits to small businesses; it requires the PROGRAM to report general statistical and other information about small business compliance to the Department of Environmental Quality and requires the PROGRAM to track compliance progress where it identifies violations during onsite technical assistance; the Department retains full discretion to take enforcement action against violations documented independently of onsite technical assistance visits; and Oregon's PROGRAM is subject to the eligibility requirements of Section 507(c) of the Clean Air Act. In summary, EPA believes that ORS 468A.330(4)(a), when implemented in accordance with Oregon's SBA Confidentiality Guidance, is consistent with EPA's SBA Enforcement Guidance.

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[2] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

III. This Action

In this action, EPA approves the SIP revision submitted by the State of Oregon. The State of Oregon has submitted a SIP revision implementing each of the required PROGRAM elements required by Section 507 of the CAA. The Program is currently being implemented. EPA is therefore approving this submittal.

IV. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, the EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved in this action does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small business entities affected.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 6, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 6, 1995.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Small Business Assistance Program.

Dated: August 8, 1995.

Charles Findley,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (112) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(112) On November 16, 1992, the Director for the Oregon Department of Environmental Quality (ODEQ) submitted the Oregon State Small Business Stationary Source Technical and Environmental Compliance Assistance Program and on May 16, 1995, the Administrator for ODEQ submitted the Small Business Assistance Program Confidentiality Option as revisions to the Oregon State Implementation Plan.

(i) Incorporation by reference.

(A) The November 16, 1992 letter from the Director of the Oregon Department of Environmental Quality submitting the Small Business Stationary Source Technical and Environmental Compliance Assistance Program to EPA; The Oregon Air Quality Small Business Assistance Program State Implementation Plan Revision adopted on October 16, 1992, and evidence that the State has the necessary legal authority, Oregon Revised Statutes 468A.330 (Small Business Stationary Source Technical and Environmental Compliance Assistance Program).

(B) The May 16, 1995 letter from the Administrator of the Oregon Department of Environmental Quality, Air Quality Division, submitting the Small Business Assistance Program confidentiality option to EPA; The Air Quality Guidance, Restriction of Information Obtained by the AQ Small Business Assistance Program adopted on May 16, 1995.

[FR Doc. 95–21884 Filed 9–1–95; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 52

[WV31–1–7063a; FRL–5278–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia, 45CSR35, Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and Part D of the Clean Air Act (CAA). The intended effect of this action is to approve the SIP revision of West Virginia General Conformity Rule. This action is being taken under section 110 of the CAA.

DATES: This final rule is effective November 6, 1995 unless notice is received on or before October 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597–3164, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On November 23, 1994, the State of West Virginia submitted a formal revision to its State Implementation Plan (SIP) to EPA for the purpose of meeting the requirements of 40 CFR 51.851, General Conformity. West Virginia had adopted an emergency rule (45CSR35) that adopts the provisions of federal General Conformity Rule (40 CFR Part 93, Subpart B), which was effective on November 16, 1994. The exact same version of 45CSR35, the General Conformity Rule, was submitted to the West Virginia legislature for permanent authorization. On May 16, 1995, the State of West Virginia submitted the final SIP revision of 45CSR35 to EPA, promulgated as final legislative rule in accordance to West Virginia law, that became effective on May 1, 1995. (Note: The Transportation Conformity Rule submitted on May 16, 1995 is the subject of a separate rulemaking action.)

Summary of SIP Revision

West Virginia's rule 45CSR35, Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity), adopts the requirements of 40 CFR Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans by incorporating these federal regulations by reference. The federal rule was promulgated by EPA to implement Section 176(c) of the CAA, as amended (42 U.S.C. 7401 et seq.) which requires that all federal actions conform to applicable air quality implementation plans. This rule only applies to areas designated nonattainment or maintenance areas under the CAA, as amended.

This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and Part D of the CAA. The rule generally applies to federal actions except: (1) Those required under the transportation conformity rule (40 CFR Part 93, Subpart A); (2) Actions with associated emissions below specified de minimis levels; and (3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

Some examples of federal actions requiring conformity determination include: Airport Construction/Modification grants; Leasing of Federal Land; Granting a Permit; Construction of Federal Office Buildings; Private Construction on Federal Land; Prescribed Burning; Reuse of Military Bases; and Water Treatment Plants.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document elsewhere in this **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 6, 1995 unless, by 30 days of October 5, 1995 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 6, 1995.

Final Action

EPA is approving the final SIP revision of 45CSR35, submitted by the State of West Virginia on May 16, 1995, which was effective on May 1, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 176 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action to approve West Virginia's General Conformity Rule must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 19, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(37) to read as follows:

§ 52.2520 Identification of Plan.

* * * * *

(c) * * *

(37) Revisions to the West Virginia State Implementation Plan submitted on May 16, 1995 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of May 16, 1995 from West Virginia Division of Environmental Protection, transmitting the General Conformity Rule.

(B) Title 45, Legislative Rule, Series 35 (45CSR35), Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity), effective May 1, 1995.

(ii) Additional material.

(A) Remainder of May 16, 1995 State submittal pertaining to 45CSR35 referenced in paragraph (c)(37) of this section.

[FR Doc. 95–21881 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7624]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date,

contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Connecticut:				
Clinton, town of, Middlesex County	090061	Mar. 2, 1973, Emerg; Sept. 30, 1980 Reg; Sept. 6, 1995, Susp.	Sept. 6, 1995	Sept. 6, 1995.
Region III				
Pennsylvania:				
California, borough of, Washington County.	420848	July 5, 1974, Emerg; June 15, 1981, Reg; Sept. 6, 1995, Susp.	......do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Coal Center, borough of, Washington County.	422131	Apr. 17, 1975, Emerg; Sept. 30, 1981, Reg; Sept. 6, 1995, Susp.	......do	Do.
Greensboro, borough of, Greene County	420477	Dec. 2, 1975, Emerg; Mar. 2, 1989, Reg; Sept. 6, 1995, Susp.	......do	Do.
Hamilton, township of, Monroe County	421888	Mar. 31, 1978, Emerg; Feb. 4, 1988, Reg; Sept. 6, 1995, Susp.	......do	Do.
Nicholson, township of, Fayette County	422420	July 29, 1975, Emerg; Sept. 4, 1991, Reg; Sept. 6, 1995, Susp.	......do	Do.
Washington, township of, Fayette County.	421641	Feb. 21, 1975. Emerg; Jan. 20, 1982, Reg; Sept. 6, 1995, Susp.	......do	Do.
West Brownsville, borough of, Washington County.	425391	Dec. 3, 1971, Emerg; Apr. 27, 1973, Reg; Sept. 6, 1995, Susp.	......do	Do.
Region V				
Illinois:				
Beecher, village of, Will County	170696	Dec. 12, 1974, Emerg; Oct. 15, 1982, Reg; Sept. 6, 1995, Susp.	......do	Do.
Bolingbrook, village of, Will County	170812	June 28, 1974, Emerg; Oct. 15, 1980, Reg; Sept. 6, 1995, Susp.	......do	Do.
Braidwood, city of, Will County	170848	Mar. 20, 1991, Emerg; Dec. 1, 1992, Reg; Sept. 6, 1995, Susp.	......do	Do.
Channahon, village of, Will County	170698	Sept. 12, 1975, Emerg; Feb. 15, 1983 Reg; Sept. 6, 1995 Susp.	......do	Do.
Crest Hill, city of, Will County	170699	Aug. 5, 1974, Emerg; July 16, 1979, Reg; Sept. 6, 1995, Susp.	......do	Do.
Crete, village of, Will County	170700	May 21, 1975, Emerg; Mar. 2, 1981, Reg; Sept. 6, 1995, Susp.	......do	Do.
Elwood, village of, Will County	170849	Dec. 23, 1982, Reg; Sept. 6, 1995, Susp.	......do	Do.
Frankfort, village of, Will County	170701	Apr. 11, 1974, Emerg; Nov. 1, 1979, Reg; Sept. 6, 1995 Susp.	......do	Do.
Joliet, city of, Will County	170702	Apr. 13, 1973, Emerg; Feb. 4, 1981, Reg; Sept. 6, 1995, Susp.	......do	Do.
Lockport, city of, Will County	170703	Apr. 22, 1975, Emerg; Nov. 17, 1982, Reg; Sept. 6, 1995, Susp.	......do	Do.
Manhattan, village of, Will County	170704	June 12, 1975, Emerg; Oct. 15, 1982, Susp; Sept. 6, 1995, Susp.	......do	Do.
Minooka, village of, Will County	171019	Mar. 12, 1992, Reg; Sept. 6, 1995, Susp	......do	Do.
Mokena, village of, Will County	170705	June 12, 1974, Emerg; Aug. 1, 1979, Reg; Sept. 6, 1995, Susp.	......do	Do.
New Lenox, village of, Will County	170706	Sept. 19, 1974, Emerg; May 1, 1980, Reg; Sept. 6, 1995, Susp.	......do	Do.
Peotone, village of, Will County	170709	Aug. 14, 1974, Emerg; Jan. 14, 1983, Reg; Sept. 6, 1995, Susp.	......do	Do.
Plainfield, village of, Will County	170771	May 21, 1975, Emerg; Nov. 17, 1982, Reg; Sept. 6, 1995, Susp.	......do	Do.
Rockdale, village of, Will County	170710	May 27, 1975, Emerg; Sept. 15, 1983, Reg; Sept. 6, 1995, Susp.	......do	Do.
Romeoville, village of, Will County	170711	July 2, 1975, Emerg; Nov. 3, 1982, Reg; Sept. 6, 1995, Susp.	......do	Do.
Shorewood, village of, Will County	170712	May 15, 1974, Emerg; Nov. 1, 1979, Reg; Sept. 6, 1995, Susp.	......do	Do.
Symerton, village of, Will County	170714	Apr. 18, 1975, Emerg; June 30, 1976, Reg; Sept. 6, 1995, Susp.	......do	Do.
University Park, village of, Will County	170708	Sept. 24, 1974, Emerg; July 16, 1980, Reg; Sept. 6, 1995, Susp.	......do	Do.
Wilmington, city of, Will County	170715	Aug. 7, 1974, Emerg; July 16, 1981, Reg; Sept. 6, 1995, Susp.	......do	Do.
Will County, unincorporated areas	170695	Apr. 22, 1974, Emerg; Apr. 15, 1982, Reg; Sept. 6, 1995, Susp.	......do	Do.
Michigan:				
Brownstown, charter township, Wayne County.	260218	Aug. 23, 1974, Emerg; Aug. 16, 1982, Reg; Sept. 6, 1995, Susp.	......do	Do.
Region VI				
New Mexico:				
Dona Ana County, unincorporated areas	350012	Jan. 19, 1976, Emerg; Sept. 27, 1991, Reg; Sept. 6, 1995, Susp.	......do	Do.
Las Cruces, city of, Dona Ana County.	355332	July 24, 1970, Emerg. June 11, 1971, Reg; Sept. 6, 1995, Susp.	......do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VIII				
Utah:				
Riverdale, city of, Weber County	490190	Oct. 4, 1974, Emerg; Feb. 3, 1982, Reg; Sept. 6, 1995, Susp.	......do	Do.
Weber County, unincorporated areas	490187	Mar. 25, 1975, Emerg; July 19, 1982, Reg; Sept. 6, 1995, Susp.	......do	Do.
Region I				
Massachusetts:				
Avon, town of, Norfolk County	250231	Nov. 14, 1975, Emerg; May 15, 1980, Reg; Sept. 20, 1995, Susp.	Sept. 20, 1995	Sept. 20, 1995.
Region II				
New Jersey:				
Allendale, borough of, Bergen County	340019	June 2, 1972, Emerg; July 2, 1979, Reg; Sept. 20, 1995, Susp.	......do	Do.
Bergenfield, borough of, Bergen County	340020	Jan. 7, 1972, Emerg; June 1, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
Bogota, borough of, Bergen County	340021	July 7, 1975, Emerg; Apr. 1, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Carlstadt, borough of, Bergen County	340022	June 9, 1975, Emerg; Aug. 31, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Closter, borough of, Bergen County	340023	June 5, 1975, Emerg; Apr. 18, 1983 Reg; Sept. 20, 1995, Susp..	......do	Do.
Cresskill, borough of, Bergen County	340024	May 30, 1975, Emerg; Dec. 1, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Demarest, borough of, Bergen County	340025	June 24, 1975, Emerg; Sept. 30, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Dumont, borough of, Bergen County	340026	Jan. 14, 1972, Emerg; Sept. 15, 1977 Reg; Sept. 20, 1995, Susp.	......do	Do.
East Rutherford, borough of, Bergen County.	340028	June 4, 1975, Emerg; Dec. 16, 1980, Reg; Sept. 20, 1995, Susp.	......do	Do.
Edgewater, borough of, Bergen County	340029	Sept. 25, 1975, Emerg; Apr. 1, 1983, Reg; Sept. 20, 1995, Susp.	......do	Do.
Elmwood Park, borough of, Bergen County.	340500	May 26, 1972, Emerg; Nov. 15, 1979, Reg; Sept. 20, 1995, Susp.	......do	Do.
Emerson, borough of, Bergen County	340030	Feb. 25, 1972, Emerg; Sept. 30, 1980, Reg; Sept. 20, 1995, Susp.	......do	Do.
Englewood, city of, Bergen County	340031	Dec. 29, 1972, Emerg; Feb. 19, 1986 Reg; Sept. 20, 1995, Susp.	......do	Do.
Fair Lawn, borough of, Bergen County	340033	Apr. 4, 1974, Emerg; July 2, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Fairview, borough of, Bergen County	340034	July 16, 1975, Emerg; Aug. 2, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Franklin Lakes, borough of, Bergen County.	340036	May 6, 1975, Emerg; Aug. 15, 1984, Reg; Sept. 20, 1995, Susp.	......do	Do.
Garfield, city of, Bergen County	340037	May 5, 1972, Emerg; Apr. 15, 1980, Reg; Sept. 20, 1995, Susp.	......do	Do.
Glen Rock, borough of, Bergen County	340038	Feb. 12, 1975, Emerg; July 2, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Hackensack, city of, Bergen County	340039	Oct. 2, 1974, Emerg; Dec. 1, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Hackensack Meadowlands District, Bergen County.	340570	Jan. 3, 1975, Emerg; Dec. 15, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Harrington Park, borough of, Bergen County.	340040	Apr. 16, 1975, Emerg; Apr. 15, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Hasbrouck Heights, borough of, Bergen County.	340041	July 8, 1975, Emerg; June 30, 1976, Reg; Sept. 20, 1995, Susp.	......do	Do.
Haworth, borough of, Bergen County	340042	Mar. 31, 1975, Emerg; Oct. 15, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Hillsdale, borough of, Bergen County	340043	Nov. 19, 1971, Emerg; Dec. 15, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Ho-Ho-Kus, borough of, Bergen County	340044	Jan. 14, 1972, Emerg; June 1, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
Leonia, borough of, Bergen County	340045	Aug. 25, 1975, Emerg; July 5, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Little Ferry, borough of, Bergen County	340046	July 21, 1975, Emerg; June 15, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Lodi, borough of, Bergen County	340047	Apr. 21, 1972, Emerg; Feb. 15, 1978, Reg; Sept. 20, 1995, Susp.	......do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Lyndhurst, township of, Bergen County	340048	July 2, 1975, Emerg; June 15, 1978, Reg; Sept. 20, 1995, Susp.	......do	Do.
Mahwah, township of, Bergen County	340049	Oct. 13, 1972, Emerg; Nov. 3, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Maywood, borough of, Bergen County	340050	May 26, 1972, Emerg; Aug. 15, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
Midland Park, borough of, Bergen County.	340051	May 26, 1972, Emerg; Sept. 30, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
Montvale, borough of, Bergen County	340052	May 2, 1975, Emerg; Sept. 30, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
Moonachie, borough of, Bergen County	340053	Apr. 30, 1975, Emerg; Mar. 18, 1983, Reg; Sept. 20, 1995, Susp.	......do	Do.
New Milford, borough of, Bergen County	340054	Feb. 25, 1972, Emerg; Apr. 1, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
North Arlington, borough of, Bergen County.	340055	July 3, 1975, Emerg; Apr. 3, 1978, Reg; Sept. 20, 1995, Susp.	......do	Do.
Northvale, borough of, Bergen County	340056	Jan. 15, 1974, Emerg; Jan. 20, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Norwood, borough of, Bergen County	340057	May 30, 1975, Emerg; Apr. 18, 1983, Reg; Sept. 20, 1995, Susp.	......do	Do.
Oakland, borough of, Bergen County	345309	June 30, 1970, Reg; Sept. 20, 1995, Susp	......do	Do.
Old Tappan, borough of, Bergen County	340059	Oct. 6, 1972, Emerg; Apr. 15, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
Oradell, borough of, Bergen County	340060	Nov. 24, 1972, Emerg; Mar. 15, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
Palisades Park, borough of, Bergen County.	340061	May 22, 1975, Emerg; June 1, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Paramus, borough of, Bergen County	340062	Feb. 11, 1972, Emerg; June 1, 1984, Reg; Sept. 20, 1995, Susp.	......do	Do.
Park Ridge, borough of, Bergen County	340063	Feb. 19, 1975, Emerg; May 5, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Ramsey, borough of, Bergen County	340064	Jan. 21, 1974, Emerg; Sept. 2, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Ridgefield, borough of, Bergen County	340065	Jan. 14, 1972, Emerg; Mar. 15, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
Ridgefield Park, village of, Bergen County.	340066	May 8, 1975, Emerg; Oct. 15, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Ridgewood, village of, Bergen County	340067	Nov. 12, 1971, Emerg; Dec. 15, 1983, Reg; Sept. 20, 1995, Susp.	......do	Do.
River Edge, borough of, Bergen County	340068	Feb. 9, 1973, Emerg; Feb. 1, 1984, Reg; Sept. 20, 1995, Susp.	......do	Do.
River Vale, township of, Bergen County	340069	Jan. 7, 1972, Emerg; Oct. 15, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Rochelle Park, township of, Bergen County.	340070	Feb. 16, 1973, Emerg; Mar. 28, 1980, Reg; Sept. 20, 1995, Susp.	......do	Do.
Rockleigh, borough of, Bergen County	340071	Jan. 20, 1975, Emerg; May 17, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Rutherford, borough of, Bergen County	340072	July 2, 1975, Emerg; June 1, 1978, Reg; Sept. 20, 1995, Susp.	......do	Do.
Saddle Brook, township of, Bergen County.	340074	June 10, 1974, Emerg; Apr. 15, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Saddle River, borough of, Bergen County.	340073	Mar. 10, 1972, Emerg; May 16, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
South Hackensack, township of, Bergen County.	340515	Aug. 11, 1975, Emerg; Mar. 2, 1983, Reg; Sept. 20, 1995, Susp.	......do	Do.
Teaneck, township of, Bergen County	340075	May 2, 1975, Emerg; Oct. 16, 1984, Reg; Sept. 20, 1995, Susp.	......do	Do.
Tenafly, borough of, Bergen County	340076	Apr. 21, 1975, Emerg; Feb. 17, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Upper Saddle River, borough of, Bergen County.	340077	Apr. 12, 1974, Emerg; Sept. 15, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
Waldwick, borough of, Bergen County	340078	Mar. 31, 1972, Emerg; Mar. 1, 1979, Reg; Sept. 20, 1995, Susp.	......do	Do.
Wallington, borough of, Bergen County	340079	June 18, 1975, Emerg; June 4, 1980, Reg; Sept. 20, 1995, Susp.	......do	Do.
Washington, township of, Bergen County.	340080	Sept. 17, 1975, Emerg; Nov. 19, 1980, Reg; Sept. 20, 1995, Susp.	......do	Do.
Westwood, borough of, Bergen County	340081	Dec. 17, 1971, Emerg; Feb. 4, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Wood-Ridge, borough of, Bergen County.	340083	Sept. 1, 1972, Emerg; Aug. 11, 1978, Reg; Sept. 20, 1995, Susp.	......do	Do.
Woodcliff Lake, borough of, Bergen County.	340082	July 15, 1975, Emerg; Sept. 2, 1981, Reg; Sept. 20, 1995, Susp.	......do	Do.
Wyckoff, township of, Bergen County	340084	Dec. 17, 1971, Emerg; Aug. 1, 1977, Reg; Sept. 20, 1995, Susp.	......do	Do.
Virgin Islands:				
Island of St. John	780000	Oct. 6, 1975, Emerg; Oct. 15, 1980, Reg; Sept. 20, 1995, Susp.	......do	Do.
Region III				
Pennsylvania:				
Cumberland, township of, Greene County.	421188	Jan. 27, 1976, Emerg; July 1, 1986, Reg; Sept. 20, 1995, Susp.	......do	Do.
Dunkard, township of, Greene County	422431	Feb. 22, 1984, Emerg; Oct. 5, 1984, Reg; Sept. 20, 1995, Susp.	......do	Do.
Luzerne, township of, Fayette County	421631	Feb. 10, 1975, Emerg; Mar. 1, 1982, Reg; Sept. 20, 1995, Susp.	......do	Do.
Monongahela, city of, Washington County.	420856	May 14, 1971, Emerg; July 3, 1986, Reg; Sept. 20, 1995, Susp.	......do	Do.
Rivesville, town of, Marion County	540105	Apr. 18, 1975, Emerg; Mar. 16, 1988, Reg; Sept. 20, 1995, Susp.	......do	Do.
Region IV				
South Carolina:				
Edgefield County, unincorporated areas	450229	July 12, 1991, Emerg; Apr. 1, 1993, Reg; Sept. 20, 1995, Susp.	......do	Do.
Region V				
Ohio:				
Bluffton, village of, Allen County	390004	June 19, 1975, Emerg; Sept. 20, 1995, Susp.	......do	Do.
Region IX				
California:				
Shasta County, unincorporated areas	060358	Feb. 21, 1979, Emerg; Sept. 27, 1985, Reg; Sept. 20, 1995, Susp.	......do	Do.
Region I				
Connecticut:				
New Britain, city of, Hartford County	090032	Aug. 22, 1973, Emerg; July 16, 1981, Reg; Sept. 30, 1995, Susp.	9–30–95	Sept. 30, 1995.
Massachusetts:				
Mattapoisett, town of, Plymouth County	255214	June 18, 1971, Emerg; Mar. 16, 1973, Reg; Sept. 30, 1995, Susp.	......do	Do.
Rhode Island:				
Charlestown, town of, Washington County.	445395	Oct. 30, 1970, Emerg; July 13, 1972, Reg; Sept. 30, 1995, Susp.	......do	Do.
New Shoreham, town of, Washington County.	440036	Oct. 16, 1975, Emerg; Apr. 3, 1985, Reg; Sept. 30, 1995 Susp.	......do	Do.
Portsmouth, town of, Newport County	445405	July 30, 1971, Emerg; Aug. 24, 1973, Reg; Sept. 30, 1995, Susp.	......do	Do.
South Kingstown, town of, Washington County.	445407	Sept. 11, 1970, Emerg; June 23, 1972, Reg; Sept. 30, 1995, Susp.	......do	Do.
Tiverton, town of, Newport County	440012	Aug. 18, 1972, Emerg; May 2, 1977, Reg; Sept. 30, 1995, Susp.	......do	Do.
Region II				
New Jersey: Monroe, township of, Middlesex County	340269	Feb. 25, 1973, Emerg; Apr. 17, 1985, Reg; Sept. 30, 1995, Susp.	......do	Do.
Region III				
Pennsylvania:				
Donora, borough of, Washington County	420851	July 29, 1974, Emerg; June 10, 1980, Reg; Sept. 30, 1995, Susp.	......do	Do.
Fallowfield, township of, Washington County.	422148	Oct. 15, 1975, Emerg; Feb. 17, 1989, Reg; Sept. 30, 1995, Susp.	......do	Do.
Jefferson, township of, Fayette County	421629	Feb. 28, 1977, Emerg; June 1, 1979, Reg; Sept. 30, 1995, Susp.	......do	Do.
Orange County, unincorporated areas	510203	Apr. 7, 1975, Emerg; Sept. 10, 1984, Reg; Sept. 30, 1995, Susp.	......do	Do.
Monongalia County, unincorporated areas.	540139	Oct. 31, 1975, Emerg; May 1, 1984, Reg; Sept. 30, 1995, Susp.	......do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IV				
Tennessee:				
Franklin County, unincorporated areas ..	470344	June 12, 1991, Emerg; Jan. 2, 1992, Reg; Sept. 30, 1995, Susp.	......do	Do.
Hamilton County, unincorporated areas .	470071	Mar. 3, 1972, Emerg; Aug. 1, 1979, Reg; Sept. 30, 1995, Susp.	......do	Do.
Region V				
Michigan:				
Port Austin, township of, Huron County .	260290	Apr. 17, 1974, Emerg; Jan. 1, 1992 Reg; Sept. 30, 1995, Susp.	......do	Do.
Minnesota:				
Brooklyn Park, city of, Hennepin County	270152	Feb. 5, 1974, Emerg; May 17, 1982, Reg; Sept. 30, 1995, Susp.	......do	Do.
Ohio:				
Highland Heights, city of, Cuyahoga County..	390110	Nov. 10, 1976, Emerg; June 1, 1979, Reg; Sept. 30, 1995, Susp.	......do	Do.
Region VII				
Kansas:				
Dodge City, city of, Ford County	205184	June 4, 1971, Emerg; May 19, 1972, Reg; Sept. 30, 1995, Susp.	......do	Do.
Ford County, unincorporated areas	200101	Mar. 26, 1981, Emerg; July 3, 1986, Reg; Sept. 30, 1995, Susp.	......do	Do.
Region IX				
Arizona:				
Avondale, city of, Maricopa County	040038	Aug. 25, 1975, Emerg; June 15, 1979, Reg; Sept. 30, 1995, Susp.	......do	Do.
Buckeye, town of, Maricopa County	040039	Dec. 17, 1974, Emerg; Feb. 15, 1980, Reg; Sept. 30, 1995, Susp.	......do	Do.
Carefree, town of, Maricopa County	040126	Dec. 31, 1970, Emerg; July 2, 1979, Reg; Sept. 30, 1995, Susp.	......do	Do.
Cave Creek, town of, Maricopa County .	040129	June 9, 1988, Reg; Sept. 30, 1995, Susp ...	......do	Do.
Chandler, city of, Maricopa County	040040	May 16, 1975, Emerg; July 16, 1980, Reg; Sept. 30, 1995, Susp.	......do	Do.
Coconino County, unincorporated areas	040019	Feb. 18, 1975, Emerg; Nov. 16, 1983, Reg; Sept. 30, 1995, Susp.	......do	Do.
El Mirage, city of, Maricopa County	040041	Aug. 8, 1975, Emerg; Dec. 1, 1978, Reg; Sept. 30, 1995, Susp.	......do	Do.
Flagstaff, city of, Maricopa County	040020	Jan. 15, 1975, Emerg; Jan. 19, 1983, Reg; Sept. 30, 1995, Susp.	......do	Do.
Gila Bend, town of, Maricopa County	040043	May 16, 1975, Emerg; Dec. 4, 1979, Reg; Sept. 30, 1995, Susp.	......do	Do.
Gilbert, town of, Maricopa County	040044	June 10, 1975, Emerg; Jan. 16, 1980, Reg; Sept. 30, 1995, Susp.	......do	Do.
Glendale, city of, Maricopa County	040045	Mar. 20, 1975, Emerg; Apr. 16, 1979, Reg; Sept. 30, 1995, Susp.	......do	Do.
Goodyear, city of, Maricopa County	040046	Aug. 8, 1975, Emerg; July 17, 1979, Reg; Sept. 30, 1995, Susp.	......do	Do.
Guadalupe, town of, Maricopa County ...	040011	Apr. 1, 1994, Reg; Sept. 30, 1995, Susp	......do	Do.
Litchfield Park, city of, Maricopa County	040128	Aug. 19, 1988, Reg; Sept. 30, 1995, Susp ..	......do	Do.
Maricopa County, unincorporated areas	040037	Dec. 31, 1970, Emerg; July 2, 1979, Reg; Sept. 30, 1995, Susp.	......do	Do.
Paradise Valley, town of, Maricopa County.	040049	Sept. 15, 1972, Emerg; May 1, 1980, Reg; Sept. 30, 1995, Susp.	......do	Do.
Phoenix, city of, Maricopa County	040051	Dec. 17, 1971, Emerg; Dec. 4, 1979, Reg; Sept. 30, 1995, Susp.	......do	Do.
Scottsdale, city of, Maricopa County	045012	Mar. 26, 1971, Emerg; Sept. 21, 1973, Reg; Sept. 30, 1995, Susp.	......do	Do.
Surprise, town of, Maricopa County	040053	Mar. 26, 1976, Emerg; Dec. 15, 1978, Reg; Sept. 30, 1995, Susp.	......do	Do.
Tempe, city of, Maricopa County	040054	Nov. 17, 1974, Emerg; Aug. 15, 1980, Reg; Sept. 30, 1995, Susp.	......do	Do.
Hawaii:				
Honolulu, city and county of, Honolulu County.	150001	June 5, 1970, Emerg; Sept. 3, 1980, Reg; Sept. 30, 1995, Susp.	......do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Kauai County, unincorporated areas	150002	Apr. 2, 1971, Emerg; Nov. 4, 1981, Reg; Sept. 30, 1995, Susp.	......do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: August 25, 1995.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–21925 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–21–P

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44 CFR Part 64

[Docket No. FEMA–7625]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies a community where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that is suspended on the effective date listed within this rule because of failure to enforce floodplain management requirements of the program. If FEMA receives documentation of remedial measures taken prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The effective date of the community's suspension is the third date ("Susp.") listed in the fourth column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The community listed in this document no longer meet the statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the community will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, the community may submit the required documentation of the remedial measures taken after this rule is published but prior to the actual suspension date. The community will not be suspended and will continue its eligibility for the sale of insurance. A notice withdrawing the suspension of the community will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in the community by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the community listed on the date shown in the last column.

The Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because the community listed in this final rule have been adequately notified.

This community received a 90-day and two 30-day notifications addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Asssociate Director certified that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Regulatory Classification

This rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987, 3 CFR, 1987 Comp., p.252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VI				
Texas:				
Hunt County, unincorporated areas	480363	June 15, 1990, Emerg; Sept. 4, 1991, Reg. Sept. 6, 1995, Susp.	Sept. 4, 1991	Sept. 6, 1995

Code for reading third column: Emerg.— Emergency; Reg.— Regular; Rein.— Reinstatement; Susp.— Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: August 25, 1995.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–21927 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–21–P

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44 CFR Part 65

[Docket No. FEMA–7152]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Coconino	City of Flagstaff	July 20, 1995, July 27, 1995, *Arizona Daily Sun.*	The Honorable Chris Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	June 19, 1995	040020
Pima	Unincorporated Areas.	July 7, 1995, July 14, 1995, *Tucson Citizen.*	The Honorable Paul Marsh, Chairman, Pima County Board of Supervisors, 130 West Congress Street, Tucson, Arizona 85701.	June 14, 1995	040073
Pima	City of Tucson	July 13, 1995, July 20, 1995, *Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85710–7210.	June 26, 1995	040076
California:					
Riverside	City of Corona	July 19, 1995, July 26, 1995, *Corona Independent.*	The Honorable Jeff Bennett, Mayor, City of Corona, P.O. Box 940, Corona, California 91718.	June 20, 1995	060250
Alameda	City of Livermore	July 13, 1995, July 20, 1995, *Tri-Valley Herald.*	The Honorable Cathie Brown, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550–4899.	June 19, 1995	060008
Riverside	City of Riverside	July 19, 1995, July 26, 1995, *Press Enterprise.*	The Honorable Ron Loveridge, Mayor, City of Riverside, 3900 Main Street, Riverside, California 92522.	June 19, 1995	060260
Riverside	Unincorporated Areas.	July 19, 1995, July 26, 1995, *Press Enterprise.*	The Honorable Kay Ceniceros, Chairperson, Riverside County Board of Supervisors, P.O. Box 1359, Riverside, California 92502–1359.	June 19, 1995	060245
Colorado:					
Arapahoe	Unincorporated Areas.	July 13, 1995, July 20, 1995, *The Villager.*	The Honorable Thomas R. Eggert, Chairperson, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166.	June 20, 1995	080011
Boulder	City of Boulder	July 13, 1995, July 20, 1995, *Daily Camera.*	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	June 14, 1995	080024
Boulder	Unincorporated Areas.	July 20, 1995, July 27, 1995, *Daily Camera.*	The Honorable Homer Page, Chairperson, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306.	June 19, 1995	080023
Boulder	City of Longmont	July 20, 1995, July 27, 1995, *Times Call.*	The Honorable Leona Stoecker, Mayor, City of Longmont, Civic Center Complex, 350 Kimbark Street, Longmont, Colorado 80501.	June 19, 1995	080027
Louisiana:					
St. Mary Parish .	City of Morgan City .	July 19, 1995, July 26, 1995, *Daily Review.*	The Honorable Timothy I. Matte, Mayor, City of Morgan City, P.O. Box 1218, Morgan City, Louisiana 70381.	June 28, 1995	220196
New Mexico:					

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Bernalillo	City of Albuquerque	July 18, 1995, July 25, 1995, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	June 23, 1995	350002
Texas:					
Dallas	City of Dallas	July 13, 1995, July 20, 1995, *Dallas Morning News.*	The Honorable Steve Bartlett, Mayor, City of Dallas, 1500 Marilla Street, Room 5E North, Dallas, Texas 75201.	June 14, 1995	480171
El Paso	City of El Paso	July 14, 1995, July 21, 1995, *El Paso Times.*	The Honorable Larry Francis, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	June 16, 1995	480214
Lubbock	City of Lubbock	July 20, 1995, July 27, 1995, *Lubbock Avalanche-Journal.*	The Honorable David Langston, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457.	June 29, 1995	480452

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21923 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

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44 CFR Part 65

[Docket No. FEMA–7148]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Tolland	Town of Somers	June 30, 1995, July 7, 1995, *Journal Enquirer.*	Mr. Robert Pereoski, First Selectman of the Town of Somers, Town Hall, P.O. Box 308, Somers, Connecticut 06071.	June 16, 1995	090112
Maryland: Queen Annes.	Unincorporated Areas	June 28, 1995, July 5, 1995, *The Star-Democrat and Bay Times.*	Mr. Mark Belton, President of the Queen Annes County Commissioners, 107 North Liberty Street, Centreville, Maryland 21617.	June 22, 1995	240054 C
Minnesota: Hennepin	City of Hopkins	June 28, 1995, July 5, 1995, *Hopkins Sun Sailor.*	Mr. Steve Mielke, Manager of the City of Hopkins, 1010 1st Street South, Hopkins, Minnesota 55343.	Dec. 19, 1995	270166 B
Mississippi:					
Madison	City of Madison	June 8, 1995, June 15, 1995, *Madison County Herald.*	The Honorable Mary Hawkins, Mayor of the City of Madison, P.O. Box 40, Madison, Mississippi 39138–0040.	May 31, 1995	280229 D
Madison	Unincorporated Areas	June 8, 1995, June 15, 1995, *Madison County Herald.*	Mr. David Richardson, President of the Board of Supervisors for Madison County, P.O. Box 404, Canton, Mississippi 39046.	May 31, 1995	280228 D
New Hampshire: Grafton.	Town of Littleton	June 14, 1995, June 21, 1995, *The Courier.*	Mr. Donald A. Craigie, Chairman of the Board of Selectmen, 1 Union Street, Littleton, New Hampshire 03561.	June 9, 1995	330064
South Carolina: Richland.	Unincorporated Areas	June 16, 1995, June 23, 1995, *The State.*	Mr. W. Anthony McDonald, Richland County Administrator, P.O. Box 192, Columbia, South Carolina 29202.	June 9, 1995	450170 G
Tennessee:					
Shelby	City of Memphis	June 23, 1995, June 30, 1995, *The Commercial Appeal.*	The Honorable W. W. Herenton, Mayor of the City of Memphis, City Hall, Room 200, 125 North Main Street, Memphis, Tennessee 38103.	June 15, 1995	470177 E
Shelby	Unincorporated Areas	June 23, 1995, June 30, 1995, *The Commercial Appeal.*	Mr. Jim Kelly, Shelby County Chief Administrative Officer, 160 North Main Street, Memphis, Tennessee 38103.	June 15, 1995	470214 E

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21917 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

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44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Montana: Flathead (FEMA Docket No. 7139).	Unincorporated Areas .	March 16, 1995, March 23, 1995, *Daily Inter Lake*.	The Honorable Sharon L. Stratton, Chairman, Flathead County Board of Commissioners, 800 South Main Street, Kalispell, Montana 59901.	Mar. 3, 1995	300023

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21924 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

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44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Indiana: Hamilton (FEMA Docket No. 7104).	Town of Westfield.	July 6, 1994, July 13, 1994, *Daily Ledger*.	Mr. Jerry Rosenberger, Westfield Town Manager, 130 Penn Street, Westfield, Indiana 46074.	June 28, 1994	180083 C
Michigan: Macomb County (FEMA Docket No. 7135).	City of Sterling Heights.	February 12, 1995, February 19, 1995, *The Source*.	The Honorable Richard J. Notte, Mayor of the City of Sterling Heights, 40555 Utica Road, P.O. Box 8009, Sterling Heights, Michigan 48311–8009.	February 2, 1995	260128 E

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Mississippi: Oktibbeha County (FEMA Docket No. 7135).	Unincorporated Areas.	February 15, 1995, February 22, 1995, *Starkville Daily News*.	Mr. David Oswalt, President of the Oktibbeha County, Board of Supervisors, 101 East Main Street, Starkville, Mississippi 39759.	February 8, 1995	280277 B
New Hampshire: Belknap County (FEMA Docket No. 7135).	Town of Tilton.	February 15, 1995, February 22, 1995, *Laconia Citizen*.	Mr. Kenneth Money, Senior Selectman for the Town of Tilton, 145 East Main Street, Tilton, New Hampshire 03276.	February 8, 1995	330009 B
Rhode Island: Bristol County (FEMA Docket No. 7135).	Town of Barrington.	February 22, 1995, March 1, 1995, *Barrington Times*.	Mr. Dennis M. Phelan, Barrington Town Manager, 283 County Road, Barrington, Rhode Island 02806.	February 14, 1995	445392 E
South Carolina: Richland County (FEMA Docket No. 7135).	Unincorporated Areas.	February 10, 1995, February 17, 1995, *The State*.	Mr. W. Anthony McDonald, Richland County Administrator, P.O. Box 192, Columbia, South Carolina 29202.	May 18, 1995	450170 G

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21918 Filed 9–1–95; 8:45 am]

BILLING CODE 6718-03-P

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44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
DELAWARE	
Dewey Beach (town), Sussex County (FEMA Docket No. 7124)	
Atlantic Ocean:	
Approximately 100 feet east of intersection of Read Avenue and State Route 1.	Depth 2′
Maps available for inspection at the Town Hall, 105 Rodney Avenue, Dewey Beach, Delaware.	
Fenwick Island (town), Sussex County (FEMA Docket No. 7124)	
Atlantic Ocean:	
Approximately 500 feet east of the intersection of James Street and State Route 1.	*13
Approximately 100 feet west of the intersection of Essex Street and Bunting Avenue.	Depth 2′
Maps available for inspection at the Town Hall, 800 Coastal Highway, Fenwick Island, Delaware.	
Sussex County, (unincorporated areas) (FEMA Docket No. 7124)	
Atlantic Ocean:	
Approximately 100 feet east of the intersection of Palmer Avenue and State Route 1.	Depth 2′
Maps available for inspection at the Planning and Zoning Office, Courthouse Circle, Georgetown, Delaware.	
MAINE	
Anson (town), Somerset County (FEMA Docket No. 7136)	
Kennebec River:	
Approximately 5,580 feet downstream of U.S. Route 201A, and U.S. Route 8, 43, and 148.	*201
Approximately 3 miles upstream of the confluence of Carrabassett River.	*275
Carrabassett River:	
At the confluence with Kennebec River.	*270
Approximately 0.56 mile upstream of the confluence with Big Brook.	*345
Getchell Brook:	
Approximately 180 feet downstream of State Routes 43 and 148 (Main Street).	*258
Approximately 545 feet upstream of State Routes 43 and 148 (Main Street).	*258
Maps available for inspection at the Anson Town Hall, Main Street, Anson, Maine.	
Holden (town), Penobscot County (FEMA Docket No. 7136)	
Brewer Lake:	
Entire shoreline within community.	*112
Davis Pond:	
Entire shoreline within community.	*199
Holbrook Pond:	
Entire shoreline within community.	*199
Maps available for inspection at the Holden Town Office, 1460 Main Road, East Holden, Maine.	
Madison (town), Somerset County (FEMA Docket No. 7128)	
Kennebec River:	
At downstream corporate limits.	*193
At Approximately 500 feet upstream of upstream corporate limits.	*275
Jones Brook:	
At confluence with Kennebec River.	*234
At approximately 0.66 mile downstream of Jones Street.	**276
Cold Brook:	
At approximately 1,800 feet downstream of Snowmobile bridge.	*205
At approximately 30 feet upstream of Snowmobile bridge.	*206
Hayden Brook:	
Approximately 50 feet upstream of the confluence with Wesserunsett (Hayden) Lake.	*338
At approximately 60 feet upstream of U.S. Route 201.	*357
Unnamed Brook:	
At approximately 0.3 mile downstream of U.S. Route 201.	*267
At approximately 0.24 mile upstream of U.S. Route 201.	*319
Maps available for inspection at 26 Weston Avenue, Madison, Maine.	
MICHIGAN	
Plymouth (charter township), Wayne County (FEMA Docket No. 7130)	
Middle River Rouge:	
Approximately 2,100 feet downstream of I–275 (At downstream corporate limits).	*667
Approximately 1,000 feet upstream of Pheonix Dam (At upstream corporate limits).	*731
Maps available for inspection at the Township Hall, 42350 Ann Arbor Road, Plymouth, Michigan.	
Plymouth (city), Wayne County (FEMA Docket No. 7130)	
Middle River Rouge:	
Approximately 400 feet downstream of Edward Hines Drive (Downstream of corporate limits).	*671
Approximately 600 feet upstream of Mill Street.	*709
Maps available for inspection at the City Hall, 201 South Main Street, Plymouth, Michigan.	
NEW YORK	
Potsdam (village), St. Lawrence County (FEMA Docket No. 7136)	
Raquette River:	
Approximately 240 feet upstream of downstream corporate limits.	*399
Approximately 320 feet downstream of upstream corporate limits.	*411
Maps available for inspection at the Code Enforcement Office, Park and Elm Streets, Potsdam, New York.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OHIO	
Oakwood (village), Paulding County (FEMA Docket No. 7130)	
Auglaize River:	
Approximately 0.5 mile downstream of Norfolk and Southern Railroad.	*711
Approximately 0.6 mile upstream of State Route 613.	*712
Maps available for inspection at the Village Hall, 228 North First Street, Oakwood, Ohio.	
Paulding County, (unincorporated areas) (FEMA Docket No. 7130)	
Maumee River:	
Approximately 0.6 mile downstream of downstream county boundary.	*695
Approximately 0.2 mile upstream of upstream county boundary.	*724
Auglaize River:	
Approximately 880 feet upstream of confluence of Flatrock Creek.	*704
At upstream county boundary.	*715
Flatrock Creek/Auglaize River Overflow Channel:	
At upstream of County Route 171.	*704
At diversion from Auglaize River.	*706
Maps available for inspection at the Paulding County Commissioners Office, 115 North William Street, Paulding, Ohio.	
PENNSYLVANIA	
Fayette City (borough), Fayette County (FEMA Docket No. 7128)	
Monongahela River:	
At the downstream corporate limits (Approximately 675 feet downstream of Downers Run).	*766
At the upstream corporate limits (Approximately 1,050 feet upstream of Lamb Lick Run).	*767
Maps available for inspection at the Borough Hall, 238 Main Street, Fayette City, Pennsylvania.	
Dickinson (township), Cumberland County (FEMA Docket No. 7128)	
Yellow Breeches Creek:	
Approximately 1,050 feet downstream of Burnthouse Road (T–474).	*533
At upstream corporate limits	*597
Yellow Breeches Creek Northern Split:	
At confluence with Yellow Breeches Creek.	*558
At divergence from Yellow Breeches Creek.	*569
Maps available for inspection at the Township Building, 219 Mountain View Road, Mount Holly Springs, Pennsylvania.	
Hampden (township), Cumberland County (FEMA Docket No. 7130)	
Navy Ship Parts Control Center Drainage Channel:	
At the confluence with Trindle Spring Run.	*378
Approximately 0.4 mile upstream of the second Gabion Dam.	*417
Maps available for inspection at the Hampden Township Building, 230 South Sporting Hill Road, Mechanicsburg, Pennsylvania.	
Mount Holly Springs (borough), Cumberland County (FEMA Docket No. 7130)	
Mountain Creek:	
Approximately 900 feet downstream of Conrail.	*538
Approximately 300 feet downstream of upstream corporate limits.	*601
Maps available for inspection at the Mount Holly Springs Municipal Building, 200 Harmon Street, Mount Holly Springs, Pennsylvania.	
North Charleroi (borough), Washington County (FEMA Docket No. 7128)	
Monongahela River:	
Downstream corporate limits (approximately 1,000 feet downstream of Monessen-North Charleroi bridge).	*761
Upstream corporate limits (approximately 1,600 feet upstream of Monessen-North Charleroi bridge).	*762
Maps available for inspection at the Borough Secretary's Office, 301 Isabelle Avenue, North Charleroi, Pennsylvania.	
Oneida (township), Huntingdon County (FEMA Docket No. 7130)	
Juniata River:	
At the Borough of Huntingdon northern corporate limits.	*638
Approximately 1,100 feet upstream of the northern corporate limits of the Borough of Huntingdon.	*639
Standing Stone Creek:	
At the southern corporate limits of the Borough of Huntingdon.	*615
Approximately 500 feet upstream of the southeastern corporate limits of the Borough of Huntingdon	*615
Maps available for inspection at the Township of Oneida, Stone Creek Road, Oneida, Pennsylvania.	
Orange (township), Columbia County (FEMA Docket No. 7116)	
Fishing Creek:	
Approximately 280 feet downstream of State Route 487.	*581
Approximately 0.46 mile upstream of State Route 487.	*591
Maps available for inspection at the Township Municipal Building. By appointment—call Suzanne Moore (717) 683–5564.	
Rices Landing (borough), Greene County (FEMA Docket No. 7128)	
Monongahela River:	
Approximately 0.9 mile downstream of the confluence of Pumpkin Run (At the downstream corporate limits).	*785
Approximately 0.88 mile upstream of the confluence of Pumpkin Run (At the upstream corporate limits).	*788
Maps available for inspection at the Borough Building, 100 Water Street, Rices Landing, Pennsylvania.	
South Middleton (township), Cumberland County (FEMA Docket No. 7130)	
Mountain Creek:	
Approximately 650 feet upstream of confluence with Yellow Breeches Creek.	*506

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1.1 miles upstream of the Borough of Mount Holly Springs southern corporate limits.	*613
Maps available for inspection at the Township Building, 520 Park Drive, Boiling Springs, Pennsylvania.	
Speers (borough), Washington County (FEMA Docket No. 7116)	
Monongahela River:	
Approximately 0.70 mile downstream of CONRAIL bridge.	*764
Approximately 0.75 mile upstream of Interstate 70 ramp.	*765
Maps available for inspection at the Borough Building, 300 Phillips Street, Speers, Pennsylvania.	
Stockdale (borough), Washington County (FEMA Docket No. 7128)	
Monongahela River:	
Downstream corporate limits.	*767
Upstream corporate limits ...	*768
Maps available for inspection at the Borough Building, 438 Locust Street, Stockdale, Pennsylvania.	
Union (township), Washington County (FEMA Docket No. 7128)	
Monongahela River:	
At downstream corporate limits.	*752
At upstream corporate limits	*755
Maps available for inspection at the Municipal Building, Finleyville-Elrama Road, Union, Pennsylvania.	
WEST VIRGINIA	
Westover (city), Monongalia County (FEMA Docket No. 7128)	
Monongahela River:	
At confluence of Dents Run	*813
Approximately 560 feet upstream of U.S. Route 19 (Westover Bridge).	*814
Dents Run:	
At confluence with Monongahela River.	*813
Approximately 0.71 mile above confluence with Monongahela River.	*813
Maps available for inspection at the City Hall, 500 Dupont Road, Westover, West Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21916 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 94–07]

Financial Reporting Requirements and Rate of Return Methodology in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations governing financial reporting requirements and rate of return methodology applicable to vessel-operating common carriers by water in the domestic offshore trades to discontinue use of the comparable earnings test in determining the reasonableness of a carrier's return on rate base. In its place, the Commission will use the weighted average cost of capital methodology. The Commission is modifying the calculation of the rate of return on rate base to a before-tax basis. In addition, the Commission is amending its rules pertaining to the computation of working capital. The rule addresses a number of shipper and carrier concerns regarding the Commission's current rate of return methodology and would align the Commission's ratemaking methodologies more closely with those used by numerous other regulatory agencies. The intent is to improve the Commission's methodology for evaluating the reasonableness of rates filed by carriers in the domestic offshore trades.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT:

Richard R. Speigel or Anne M. McAloon, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, 202–523–5845 or 523–5790

C. Douglass Miller, Office of the General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, 202–523–5740

SUPPLEMENTARY INFORMATION: On April 7, 1994, the Federal Maritime Commission ("FMC" or "Commission") published a Notice of Proposed Rulemaking ("NPR" or "proposed rule") (59 FR 16592) which proposed to amend the regulations governing financial reporting requirements and rate of return methodology applicable to vessel-operating common carriers by water in the domestic offshore trades. The Commission proposed to change the method of determining the reasonableness of a carrier's return on rate base from the comparable earnings test ("CET") to the weighted average cost of capital ("WACC") methodology. At the request of Matson Navigation Company ("Matson"), the Commission extended the comment period for interested parties to file until July 20, 1994 (59 FR 27002). The following seven parties filed comments on the NPR: American President Lines ("APL"), Crowley Maritime Corporation ("Crowley"), Matson, Puerto Rico Maritime Shipping Authority ("PRMSA"), the Department of Transportation ("DOT"), Marsoft Incorporated ("Marsoft"), and the State of Hawaii ("Hawaii").

By notice published November 4, 1994, 59 FR 55232 ("Request for Reply Comments"), the Commission invited reply comments on four specific issues—the calculation of the cost of capital, working capital, the selection of proxy groups, and the deletion of alternative methodologies. The Commission extended the time for reply comments until January 6, 1995, partially granting a request of NPR, Inc. (59 FR 62372). Reply comments were received from APL, Crowley, Matson, PRMSA, Hawaii, and Tobias E. Seaman ("Seaman"), president of the National Association of Shippers, Consignees, and Consumers for Maritime Affairs. With the exception of Seaman, all reply commenters had submitted initial comments on the proposed rule.

PRMSA and NPR filed a motion for an evidentiary hearing on December 2, 1994. The Commission does not believe that there is a need te hold an evidentiary hearing as suggested by PRMSA and NPR. There have been two rounds of comments which have given all interested parties, including PRMSA and NPR, adequate opportunity to comment on the proposed rule.

The commenters raised concerns with many provisions of the proposed rule. The Commission has addressed all relevant comments. Any comment not specifically addressed has nevertheless been considered.

The Weighted Average Cost of Capital Approach

Comments: The commenters generally support the adoption of the WACC methodology for determining the allowable rate of return on rate base. Crowley does not support, however, the change to the WACC methodology for the following reasons. Crowley argues that the WACC methodology contained in the NPR does not correct the alleged shortcomings of the CET, because the WACC methodology will also rely on a proxy group to determine the regulated carrier's cost of capital. Crowley further urges caution in the Commission's deliberations because of the uncertainty over the Interstate Commerce Commission's ("ICC") continued jurisdiction over intermodal services and the Government of Puerto Rico's continued attempts to sell PRMSA. Crowley also contends that the rule would raise the cost of regulatory compliance substantially. Crowley disputes, as being too low, the Commission's estimate of the additional regulatory burden of the proposed rule (*i.e.*, 1.5 weeks), because substantially more effort would be required in the first years as the carriers learn the new system. In his comments, Seaman echoes Crowley's opposition to the proposed rule.

In its initial comments, PRMSA urged the Commission to require carriers initially to provide parallel testimony and information which would permit analysis under both the CET and the WACC methodologies. In its reply comments, however, PRMSA states that no need exists for the parallel CET analysis should the FMC decide to be less restrictive in specifying the permissible evidence in rate-of-return proceedings, and instead, permit carriers to submit evidence as to their demonstrated risk and, hence, their required rate of return.

Both PRMSA and Matson argue that setting the maximum allowable rate of return on rate base equal to the carrier's weighted average cost of capital would not provide the regulated carriers with sufficient earnings to fund their operations and attract capital. PRMSA urges the Commission to adopt provisions which would allow an earnings "cushion" above the before-tax weighted average cost of capital ("BTWACC").[1] PRMSA states that its required rate of return was less than that of the CET reference group, because it is 100 percent debt-financed and tax-exempt. Thus, it is said that PRMSA gained a tax advantage over the CET reference group. The earnings which the reference group devoted to tax payments was allegedly the "cushion" for PRMSA. The result, PRMSA states, is that the CET allows earnings levels which, when achieved, provide PRMSA with the ability to remain in business.

However, PRMSA maintains that the proposed BTWACC yields an untenable result for PRMSA, because it would strip away the earnings cushion which provides the ability to service debt which was acquired to finance past losses. PRMSA argues that this lack of an earnings "cushion" would be potentially harmful to any company with substantial debt in its capital structure. PRMSA contends that the allowable rate of return must provide a sufficient cushion above the cost of overall debt to permit the carrier to weather a downturn in its business.

Matson states that the Commission's definition of the cost of capital is the minimum rate of return necessary to attract capital to an investment. Matson also notes that in the proposed rule the maximum allowable return on rate base is the weighted average cost of capital. Matson claims that using the cost of capital to determine the allowable return on rate base sets the Commission's BTWACC as both the minimum and the maximum rate of return for the regulated carrier. Matson claims that for this to be correct, capital markets must be perfectly efficient. Matson claims that since it is recognized that capital markets are not perfectly efficient, by itself the BTWACC is not an adequate measure of the return on capital necessary to attract capital to the regulated carrier.

Matson claims that since the cost of capital is a minimum rate of return necessary to attract capital to the regulated firm, the Commission should allow carriers to earn returns equal to their cost of capital plus a specified margin in excess. Matson states that the extra earnings above the cost of capital that carriers in the domestic trades would be given the opportunity to earn would not be "gouging" the public. Matson states that the carriers in the domestic offshore trades face competitive market conditions, and thus the carrier's ability to meet customer needs will determine what return the carrier will earn from its operations. Matson claims that modifying the proposed rule to allow for a cushion above the BTWACC would permit Matson to attract capital to finance the assets necessary to continue and to enhance its operations.

Discussion: Crowley is correct that both the CET and BTWACC methodologies generally need to use some form of proxy group. However, for the following reasons, the Commission is convinced that the types of information used to calculate the BTWACC provide a better estimate than the CET of the allowable rate of return for each individual carrier. First, the BTWACC uses information specific to the regulated carrier's capital structure to calculate the carrier's required rate of return. Second, the BTWACC uses either the regulated carrier's cost of common-stock equity or a related proxy group's cost of common-stock equity to determine the required rate of return on equity, rather than the averages derived from all manufacturing firms that are used under the CET. Similarly, the BTWACC calculates the actual coupon payments for debt paid by the regulated carrier, rather than a proxy derived from a rolling average of Baa-rated corporate bonds. Therefore, the specificity that the BTWACC gives in determining the cost of capital of the individual regulated carrier is a vast improvement over the CET.

Crowley's claims of additional regulatory burden appear to be overstated. Under the proposed rule, if a carrier filed a general rate increase, the extra regulatory burden is estimated to be 24 staff-hours. An additional 41 staff-hours would have been required for the annual filing of the proxy group. Thus, the proposed rule estimated the increase in regulatory burden to be 41 to 65 staff-hours. The additional regulatory burden under the proposed rule, then, was quite modest. The Commission believes these estimates to be accurate approximations of the additional time necessary to comply with the final rule. Some firms may take more time while other firms may take less time, but on average the Commission believes that the estimates are accurate for the typical firm.

However, the Commission is concerned that any additional regulatory burden required under the final rule be minimized. Therefore, as will be discussed later, the requirement that carriers annually file a proxy group has been dropped in the final rule and the procedure for estimating the cost of equity has been changed. Under the final rule, a carrier that does not file a general rate increase will incur no extra regulatory burden because it need not file a proxy group. In addition, one of the three methods used to estimate the cost of equity, the Capital Asset Pricing Model, will no longer be required. These modifications to the proposed rule will result in a significant lessening of the regulatory burden. If the carrier does file a general rate increase, the extra regulatory burden remains 65 staff-hours. The Commission believes that the improvement in rate-of-return regulation which will occur under the BTWACC methodology more than compensates for the extra staff-hours of regulatory burden which will be incurred by those carriers which file a general rate increase. Therefore, the Commission rejects the suggestion by Crowley and Seaman that the Commission abandon its proposal to implement a BTWACC approach to determine the allowable rate of return in the domestic trades.

As will be discussed in the following sections, the Commission is modifying its proposed rule to allow for greater flexibility in the determination of the cost of common-stock equity. This modification should eliminate the need perceived by PRMSA in its initial comments that both the BTWACC and CET be utilized initially to determine an appropriate rate of return.

The NPR explained the legal and economic rationale for setting the allowable rate of return equal to the regulated carrier's cost of capital. Two landmark Supreme Court cases[2] established that investors in companies subject to rate regulation must be allowed an opportunity to earn returns sufficient to attract capital comparable to investments in other firms having the same amount of risk, and that revenues must not only cover operating expenses, but capital costs as well. The economic rationale for setting the allowable rate of return of a regulated company equal to its cost of capital is that in the long run the regulated firm's customers will pay the lowest cost for service while at the same time the company's earnings will be sufficient to attract capital so that the company is able to provide the customers' desired level of service. Based on the legal decisions and economic rationale, the Commission considers the BTWACC an appropriate measure of the allowable rate of return for regulated carriers. The Commission believes that the BTWACC methodology will allow carriers to attract adequate capital, thereby negating the concerns expressed by Matson. However, as PRMSA noted, a carrier with only debt financing would be allowed only to earn the cost of its long-term debt under the BTWACC.[3] It appears that such a capital structure is highly unusual and unlikely to occur without substantial government backing of the carrier (as has been the case with PRMSA).

PRMSA is unique among ocean carriers in the domestic offshore trades in that, until its recent sale to NPR in January 1995, it was government owned and 100 percent debt-financed. PRMSA contends that it lost money year after year and part of its debt was used to finance past losses.[4] While a regulatory commission should minimize regulatory risk by ensuring that regulated firms are given the opportunity to earn a reasonable return on capital, it is the responsibility of the firm to achieve a viable capital structure and operate the business efficiently. The BTWACC is an appropriate measure of the cost of capital for carriers having a broad range of capital structures. The Commission cannot prevent a carrier from departing from the broad range of capital structures that are generally used. However, the Commission must assure that ratepayers do not pay a premium for such a decision by the carrier. Therefore, the Commission believes that ratepayers should not be required to pay for an additional "cushion" due to PRMSA's unique capital structure.

Lastly, as a further clarification the Commission will state in its rule that the BTWACC is the "allowable" rate of return rather than the "maximum allowable" rate of return.

Accessibility of Carrier Financial Data

Hawaii argues that the adoption of the BTWACC methodology will require that all parties have access to information regarding the carrier's financing and capitalization. Such information is company specific and can be obtained only through the carriers' annual financial reports filed with the Commission. Hawaii recommends that the Commission reverse its present policy of not requiring the carriers' annual reports to be made available to all parties.[5] However, the issue was not raised in the NPR and there has been no opportunity for the other parties to comment on Hawaii's recommendation. Accordingly, it would not be proper for the Commission to rule on the merits of Hawaii's recommendation here.

Hawaii also requests the right of discovery by all parties, so that any questions which may arise concerning the carrier's financial situation may be pursued. Rule 67 of the Commission's rules of practice and procedure (46 CFR 502.67) currently provides for discovery in proceedings under section 3(a) of the Intercoastal Shipping Act, 1933 ("1933 Act") 46 U.S.C. app. 845 (a). Hawaii's request fails to explain why Rule 67 is deficient. In any event, an amendment to Rule 67 is outside the scope of this proceeding and cannot be properly addressed here.

Deletion of Alternative Methodologies

The proposed rule revised paragraph (b) of § 552.1 by deleting the provision that the methodology employed in each case will depend on the nature of the relevant carrier's operations and financial structure. Also, the proposed rule added language to the paragraph that specifies the extent of possible alternative methodologies. Paragraph (b) reads:

> (b) In evaluating the reasonableness of a VOCC's overall level of rates, the Commission will use return on rate base as its primary standard. A carrier's allowable rate of return on rate base will be set equal to its before-tax weighted average cost of capital. However, the Commission may also employ the other financial methodologies set forth in § 552.6(f) in order to achieve a fair and reasonable result.

Paragraph (d) of the same section has been deleted. That paragraph provided that the Commission may use some other basis for allocation and calculation and may consider other operational factors in any instance where it is deemed necessary to achieve a fair and reasonable result.

APL advised, in its initial comments, that these provisions are at the heart of a major dispute in FMC Docket No. 89–26, The Government of the Territory of Guam, et al. v. Sea-Land Service, Inc. and American President Lines, Ltd. It pointed out that the NPR does not give any reasons for the proposed changes to § 552.1 and argued that the changes cannot be legally adopted unless and until the FMC identifies its reasons for such a change and allows opportunity for comment. Further, APL pointed out that the proposed changes could have no effect on a pending complaint docket focused on a prior time period.

In the Request for Reply Comments, the Commission explained that the Guam trade is unique in that the trade is a very small portion of the carriers' overall service. Whether the current method of allocation is appropriate in such a case need not be decided in this proceeding because the two carriers serving Guam, APL and Sea-Land Service, Inc., currently file most of their rates with the ICC. Neither carrier files full financial reports under 46 CFR part 552. If in the future a carrier serves Guam under FMC regulation, the Commission could address the need for any change in 46 CFR part 552 in a separate rulemaking proceeding. Paragraph (d) of § 552.1 was eliminated because the Commission did not want such determinations to be made on an ad hoc basis during a rate investigation. It is essential that significant issues relating to the underlying methodology to be employed in determining the reasonableness of rates be settled prior to any rate investigation. The 180-day limit specified by section 3 of the 1933 Act cannot be met if parties are permitted to change methodologies during the course of a rate investigation. Moreover, the Commission stated in its Request for Reply Comments that parties to a rate proceeding are entitled to rely on the Commission's rules. They should not have to respond to ever-changing methodologies proposed by other parties. The Commission also explained that any changes that may be made to part 552 as a result of this proceeding will only be applied prospectively and will have no application in pending cases such as Docket No. 89–26.

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[1] The BTWACC is a before-tax version of the WACC.

[2] *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923) and Federal Power Commission v. Hope Natural Gas Company,* 320 U.S. 391 (1944).

[3] If a carrier is 100% debt-financed, the equity portion of the BTWACC equation equals 0.

[4] Similar to Crowley, PRMSA has filed many of its rates in ICC-regulated or exempt tariffs since 1981, the last year in which that carrier's rates were subject to an FMC investigation.

[5] Section 552.4(c) of the Commission's regulations protects the carrier's annual reports from public disclosure and treats them as confidential information in the files of the Commission.

Both APL and Matson support the proposed changes to § 552.1. APL urges the FMC, in discussing the reply comments in this proceeding, to "avoid overbroad statements that might be argued to have application to pre-existing complaint dockets as opposed to GRI proceedings." (APL Reply at 3.) Matson concurs with the Commission that it is essential that significant issues relating to the underlying methodology to be used in determining the reasonableness of rates be settled prior to any investigation.

Crowley argues that it is not clear that the Commission has adequately preserved its option of using other rate-of-return methodologies "in order to achieve a fair and reasonable result." The carrier suggests that, while certainty in predicting the Commission's reaction to a proposed rate increase is important, it should not be achieved at the expense of the Commission's flexibility to consider legitimate alternatives for measuring a carrier's rate of return.

Seaman does not comment on the merits of the proposed changes to this section, but rather repeats his opinion that the alternative methodologies should be applied to Matson's operations in the Hawaii trade. He further claims, as APL did in its initial comments, that because the NPR did not give any explanation for the proposed changes, the due process rights of those affected are violated.

Crowley's and Seaman's concerns that methodologies other than rate of return on rate base be available appear to be overstated. The Commission believes that the proposed methodology should be appropriate for almost any conceivable situation. Moreover, neither Crowley nor Seaman provide sufficient reasons for altering the proposed changes to § 552.1. The flexibility they appear to seek simply cannot be accommodated within the 180-day limit specified by section 3 of the 1933 Act. Further, neither Crowley nor Seaman have addressed the fact that it is not fair to require parties to respond to ever-changing methodologies proposed by other parties. Therefore, unless the Commission prescribes an alternative methodology in its order commencing a rate investigation, all parties will be limited to the use of rate of return on rate base throughout the proceeding. The changes to § 552.1 will be adopted as proposed.

Capital Structure

The Proposed Rule

The proposed rule provided that a regulated domestic offshore carrier's expected capital structure is to be used in calculating that carrier's BTWACC. In the case of a regulated carrier that is a subsidiary of a larger parent company, the proposed rule provided that a subsidiary carrier's capital structure be used in computing the BTWACC unless, after notice and opportunity for comment, the Commission determines that the carrier may use the capital structure of the parent company (i.e., the consolidated system). Such a determination would require that: (1) The subsidiary carrier's parent company issues publicly traded common stock equity; (2) no substantial minority interest in the subsidiary exists;[6] and (3) the risks are similar between the subsidiary carrier and the parent company.[7] The NPR also proposed that the capitalization ratios (i.e., the weights) used in calculating the BTWACC be based on the test-year average book value.

Comments: Hawaii agrees that the expected capital structure should be used when a company is an independent company. In the case of wholly owned subsidiaries,[8] however, Hawaii recommends that the FMC allow greater flexibility in adopting the appropriate capital structure. Hawaii suggests that the Commission not declare a preference for either the subsidiary or consolidated financial data but avail itself of the option to decide, on a case-by-case basis, whether to use the subsidiary, consolidated system,[9] or a hypothetical capital structure. By deciding on a case-by-case basis, Hawaii contends that the FMC will avoid prejudging which method will allow the most accurate estimation of the carrier's cost of capital.

Hawaii points out two potential drawbacks of using subsidiary data. The first drawback would be the need for a portfolio of comparable companies. Hawaii contends that finding a comparable group may be problematic or impossible within the framework of the proposed rule.

The second drawback would be the possible artificiality of the capital structure of a subsidiary. Hawaii points out a situation it has encountered in which the capital structure of a subsidiary is reported to consist of all equity. The parent company holds and sells all debt, but the proceeds of the debt are used by the subsidiary. Hawaii states that it has

> no *a priori* reason to believe that data from a portfolio of comparable companies is a better base from which to estimate a carrier's cost of capital than data from the consolidated system of which a carrier is a part. There are necessarily pros and cons in a choice between the characteristics of a consolidated company, within which the characteristics of the relevant company are hidden, and a portfolio of proxy companies which may bear little resemblance to the relevant company.

(Hawaii at 7). Hawaii suggests that the choice between two inappropriate capital structures could be avoided by using a hypothetical capital structure.

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[6] Under the proposed rule, no substantial minority interest in a subsidiary carrier would exist when a parent company owns 90 percent or more of the subsidiary's voting shares of stock.

[7] In considering the similarity of both business and financial risks facing the parent and subsidiary, the following will be considered: Financial risk measures, such as total capitalization and debt/equity ratios, investment quality ratings on short and long term debt instruments; and coverage ratios, such as times interest earned and fixed charges coverage ratios, and the degree to which the regulated subsidiary comprises the parents' holding.

[8] Hawaii couched its comments on a wholly owned subsidiary in terms of Matson Navigation Co., Inc., which is a subsidiary of Alexander & Baldwin, Inc.

[9] Hawaii requested clarification on the issue of whether all parties have the option to apply for the use of the consolidated system. The Commission anticipates that only the regulated carrier will be able to apply for use of the consolidated system's capital structure. In addition, the Commission's staff may also recommend the use of the consolidated system. Such application or recommendation will be subject, however, to notice and comment prior to Commission approval. It appears that interested parties will be provided with ample opportunity to comment on this issue.

Hawaii also points out the interrelationship between the capital structure and the required rate of return on equity. As the share of equity increases in the capital structure, financial risk and total risk are lessened. Thus, the required rate of return on equity declines as the proportion of equity increases, all other things being equal.

With respect to the NPR's provision for basing the capitalization ratios and amounts on average book values, PRMSA asserts that the capital structure using historic book valuation may differ significantly from a capital structure computed using market valuation.[10] Depending on how the book value of equity deviates from its market value, the Commission may be allowing a rate of return that is either too high or too low.

Discussion: The Commission is not persuaded by Hawaii's argument to decide the capital structure on a case-by-case basis. The Commission believes the capital structure of the subsidiary will generally be the most direct measure of the regulated carrier's capital structure. However, where the regulated carrier can show that the business and financial risk of the parent company and the subsidiary are similar, the Commission may allow the use of the consolidated system's capital structure because its cost of capital will likely be the same as the subsidiary's cost of capital. Moreover, the calculation of the consolidated system's cost of capital will be more direct because there will be no need to select a proxy group to estimate the cost of common-stock equity. Thus, in some cases, the use of the consolidated system's capital structure will likely give the best measure of the regulated carrier's capital structure.

With respect to hypothetical capital structures, some regulatory commissions do use a hypothetical capital structure. However, the Commission believes that good reasons exist for using the actual capital structure rather than a hypothetical capital structure. First, capital structures are the products of decisions, which may be assumed to be logical and efficient at the time they are made, although a different capitalization might be consistent with a lower BTWACC at the time of investigation and hearing. Second, the hypothetical capital structure substitutes the judgment of the regulator for the judgment of those operating the business as to the best mix of debt and equity for the company. The initial decision as to the best debt/equity mix should be left to the company management, with regulatory oversight by the Commission.

A review of regulatory commission practice indicates that, in general, the actual capital structure is used, unless that structure is wasteful or not otherwise in the long-term public interest. In cases where the Commission might find evidence of wasteful or imprudent investment, it is permitted to deduct such investment from the carrier's rate base.[11] Therefore, the Commission believes that it has ample authority to deal with imprudent or wasteful investment without employing a hypothetical capital structure.

In situations in which the Commission determines that the capital structure of a subsidiary does not represent the true capitalization of a carrier (e.g., debt "hidden" in a parent company's capital structure), the Commission believes that it has adequate options for ensuring that the subsidiary's capital structure reflects its financing. First, the Commission can order that the capital structure of the consolidated system be used. If the consolidated system consists of a number of subsidiaries or its capital structure is very complex, the Commission can fashion an appropriate proceeding to determine the appropriate capital structure. At the conclusion of the proceeding, the Commission would weigh all the information it had collected to determine the most realistic and meaningful capital structure possible for the regulated carrier. The Commission does not believe, however, that such proceedings will be necessary in most cases.

The NPR recognized that valid theoretical reasons exist for measuring the capital structure on the basis of the market value of its components. However, the common practice of regulatory commissions is to compute capitalization ratios on the basis of book values for a number of practical considerations. First, a regulated firm is believed to raise capital in such a fashion that a target capitalization ratio expressed on the basis of book values is maintained by the company over time. Consequently, regulators must compute the firm's overall cost of capital on the same basis to ensure that the company's capital costs are adequately covered. Second, effective regulation is said to result in book and market values approaching equality. Last, and most importantly, book-value capitalization ratios are stable, removing the problems that volatile market prices can present when determining the appropriate capitalization ratio. The Commission remains convinced that the practical considerations outweigh the theoretical issues involved in using book-value capitalization ratios. Therefore, the process of determining the regulated carrier's capital structure is adopted without change from the proposed rule.

Calculation of the Before-Tax Weighted Average Cost of Capital

In its initial comments, PRMSA pointed out that the formula for the BTWACC[12] is inconsistent with the Commission's formula for the rate of return on rate base.[13] This inconsistency resulted from computing the cost of capital on a before-tax basis while the rate of return on rate base is computed on an after-tax basis. PRMSA further commented that the after-tax rate of return formula currently used by the Commission and retained in the proposed rule is technically deficient; because, in the numerator, it adds the full amount of interest expense to income. PRMSA noted that more modern financial analysis recognizes that only the after-tax cost of interest should be added back to the numerator in computing after-tax rate of return. PRMSA suggested either changing the cost of capital to an after-tax basis so it can be compared to the after-tax return on rate base, or retaining the BTWACC

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[10] PRMSA's initial comments on this issue continued its characterization of the Commission's reasons for proposing a change from the CET to the BTWACC as resulting from a desire to eschew the use of accounting data in favor of the use of market data. PRMSA contends that because the proposed rule relies extensively on historic accounting data, the shortcomings of the CET are perpetuated in the proposed rule.

[11] Likewise, the Commission may disallow questionable expense items for a carrier's income statement.

[12] The proposed rule states the before-tax weighted average cost of capital will be calculated using the following equation.

$$BTWACC=(D/D+P+E)K_d+(P/D+P+E)K_p(1/1-T)+(E/D+P+E)K_e\ (1/1-T)$$

where:

K_d is the regulated firm's cost of long-term debt capital;

K_p is the regulated firm's cost of preferred stock capital;

K_e is the regulated firm's cost of common-stock equity capital;

D is the value of the regulated firm's long-term debt outstanding;

P is the value of the regulated firm's preferred stock outstanding;

E is the value of the regulated firm's common-stock equity outstanding;

T is the corporate income tax rate

[13] Current FMC regulations (46 CFR 552.6 (d)(2)) provide that return on rate base is computed by dividing Trade net income plus interest expense by Trade rate base.

and changing the rate of return on rate base to a before-tax basis.

In the Request for Reply Comments, the Commission proposed retaining the BTWACC contained in the NPR and changing the calculation of the rate of return on rate base to a before-tax basis. Comments were sought on the following change to § 552.6(d)(2):

> (2) Return on Rate Base. The return on rate base will be computed by dividing Trade net income plus interest expense plus provision for income taxes by Trade rate base.

In its reply comments, Hawaii recognizes the basis for PRMSA's concern that the proposed BTWACC and the rate of return on rate base are not directly comparable. However, Hawaii prefers that the proposed rule be changed so the weighted average cost of capital is computed on an after-tax basis and the rate of return on rate base remain as it is currently defined in the Commission's rule. According to Hawaii, the Commission's current definition of return on rate base embodies the conventional idea of payment (or return) to lenders and equity holders who have advanced the money for capital purchases. Payments to governments in taxes on revenue and earnings from the employment of the purchased capital are not strictly "returns" and it would distort the concept to include tax payments in the definition.

Crowley and Matson comment favorably on the proposed change to the rate of return on rate base. Although Seaman opposes the proposed methodology for calculating the allowable rate of return, he acknowledges the comparability problem.

All parties have recognized that a change must be made to either the calculation of the BTWACC or the calculation of the rate of return on rate base to make the two terms compatible. The Commission believes that putting the BTWACC and the rate of return on rate base on a before-tax basis will result in the appropriate determination of the allowable rate of return. The Commission's research indicates that most regulatory agencies determine the allowable rate of return on a before-tax basis. While Hawaii expresses a preference for using the after-tax calculation, it agreed that putting the weighted average cost of capital and the rate of return on rate base either on a before-tax basis or after-tax basis is correct as long as the two terms are compatible. Therefore, the Commission will adopt a BTWACC and modify the calculation of the return on rate base as indicated in the Request for Reply Comments.

Cost of Equity Estimation

The NPR specified that three methods of determining the cost of common-stock equity—the discounted cash flow ("DCF"), capital asset pricing model ("CAPM"), and risk premium ("RP") methods—would be used to produce separate estimates in arriving at a final estimate of a regulated carrier's cost of common-stock equity capital. The Commission would thereby avoid any inappropriate judgments that could be embodied in any one of the individual estimates.

Both Matson and PRMSA contend that the DCF is unsuitable for FMC-regulated carriers, because most of those carriers are either subsidiaries of larger entities or privately owned firms. PRMSA avers that choosing a proxy group for the regulated carriers is impossible, therefore, the DCF and also the CAPM methods are not valid methods for the FMC to use in estimating the cost of equity.

In both sets of comments, PRMSA criticizes the derivation of the expected annual growth in dividends per share, or "g", as specified in the NPR. The NPR provides that in the DCF model three methods of estimating "g" would be used: (a) The average of the historical growth rate of dividends per share, earnings per share, and book value per share; (b) the average of (1) the five-year dividend, earnings and book value forecasts published by Value Line Investment Survey ("Value Line"), and (2) the five-year earnings forecast published by the Institutional Brokers Estimation Service ("IBES"); and (c) the use of the sustainable growth rate method, which relies on forecasted values of the earnings retention rate. To derive a final estimate of "g" the separate estimates of "g" would be averaged.

PRMSA states that there is no certain method to ascertain "g" directly. To the extent that "g" is wrong, the cost of capital is incorrectly estimated. Further, PRMSA states that the proposed averaging of the estimates has no theoretical or practical basis and might be "contra-indicated" when the disparities between the estimates are large. In its comments, PRMSA used data from one carrier, Overseas Shipping Group, to derive an estimate of "g" based on the methodology prescribed in the proposed rule. PRMSA showed that the historic growth rate method resulted in an estimate for "g" of 20.4 percent, while the sustainable growth rate estimate of "g" was 11.2 percent. According to PRMSA, the results of its study demonstrate that the methodology used in the proposed rule will likely result in widely divergent results among the three estimation procedures. PRMSA asserts that averaging these numbers results in a meaningless estimate. It argues that since many of the numbers are derived from historical book value, the proposed methodology offers no advantage over the CET, which involves looking directly at history and basing judgments directly thereon. PRMSA contends that the frailties of the methodology cannot be remedied by averaging.

Several commenters point out deficiencies in the CAPM model. Hawaii does not oppose its use, but notes that many regulatory analysts are moving away from using the CAPM as a cost of equity model. Hawaii suggests that the use of the CAPM in a regulatory rate setting removes it from its intended purposes.[14] Hawaii also states that the most salient criticisms of CAPM lie with its central element, beta.[15] Hawaii states that these criticisms include the following: (1) Beta is a measure of variability not risk; (2) beta is not forward looking (in keeping with a future test year); (3) betas typically have very low correlation coefficients; and (4) recently it has been shown that there is no statistical relationship between beta and return. PRMSA also notes that the CAPM literature has begun to question the model's empirical underpinnings. Matson advises that it is widely acknowledged that the CAPM does not adequately account for firm size in determining expected return.

Matson concurs with the NPR which stated that the DCF, CAPM, and RP each have strengths and weaknesses. However, according to Matson, the RP has an advantage that compels its use. The RP can be adjusted to reflect the fact that the cost of common stock equity is a function of firm size. Matson argues that the NPR's use of the RP [16] is deficient because the risk of investment in a small company, such as Matson, is not the same as that of a Standard & Poor's 500 Stock Index ("S&P 500") firm.

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[14] Hawaii states that the CAPM was developed for, and is widely used in, the estimation of the return probabilities of a diversified stock portfolio relative to the return of the theoretical market.

[15] Beta is the coefficient of regression of a stock's price variability relative to the variability of the whole stock market. It gauges the degree to which an individual stock price moves relative to the overall stock market.

[16] The NPR proposed that the RP method was to be used in its generic form without any adjustments for any possible differences in the risks of the firms contained in the Standard & Poor's 500 Stock Index and that of the regulated carrier.

In both its initial and reply comments, Matson advocates the Commission's adoption of one method to calculate the cost of common-stock equity and urges the adoption of the RP model adjusted for firm size. Matson comments that neither the explanatory text nor the rule language in the NPR indicates how the three estimation methods are to be "blended" to arrive at a final cost of common-stock equity estimate. It believes there is inefficiency and unfairness in any system that determines a regulated company's allowable earnings by taking the results of three separate calculations and then, using some unexplained process, arrives at a single result. According to Matson, this unexplained process cannot be understood by the regulated carriers and financial markets. Further, effective judicial review would be problematic.

The RP model advocated by Matson is the arithmetic average return differential between rates of return actually earned on investments in firms of the same size as the carrier, and the five-year Treasury Note. Matson states that the risk premium in such a model should be based on the historical data series "Decile Portfolios of the NYSE" published annually in Stocks, Bonds, Bills and Inflation ("Ibbotson Yearbook"), and should directly correspond to that decile that matches the carrier's own size.

Likewise, in its reply comments, PRMSA urges the Commission to use only the RP method to estimate the cost of common-stock equity. PRMSA recommends that the proposed RP method be modified to allow for several adjustments for risk. One such adjustment would be for firm size, similar to that suggested by Matson. It also recommends adjustments for illiquidity (in the case of privately-owned carriers), industry risk, and individual carrier risk (as compared to the industry average for publicly traded firms).

Marsoft comments that the RP model is designed to reflect the return on equity of the large, diverse range of companies included in the S&P 500. Marsoft, therefore, contends that the NPR puts a heavy weight on the assumption that all regulated companies are identical and are no more or less risky than companies included in the S&P 500. In contrast to the suggestions of Matson and PRMSA, Marsoft recommends that the Commission give lower weight to non-specific standards such as the RP model.

In addition to commenting on the specific provisions of the cost of equity estimation models, several commenters contend that the process of estimating the cost of equity is too rigidly prescribed in the NPR. Most commenters point out the importance of allowing judgment to enter into the estimation process.

Marsoft states that the proposed cost of equity methodology is excessively restrictive and is likely to result in biased estimates of the appropriate rate of return on equity. Under the BTWACC methodology, it believes that the Commission will need to exercise considerable judgment in determining the appropriate estimate for the cost of common-stock equity. Marsoft suggests the Commission use information from security analysts, management reports, and other industry-based sources in determining the appropriate rate of return on equity.

Hawaii points out that the NPR's specification of using a six-month average stock price as a base for calculating dividend yield may limit appropriate subjective judgments and preclude Commission consideration of valid information.[17] It suggests that in addition to prescribing that the average stock prices be used in the DCF (and interest rates in the CAPM and RP models), the Commission should also allow parties to use the most recent stock price in calculating the DCF model. Hawaii contends that some financial analysts argue that the use of average stock prices and interest rates may lead to greater forecast error in determining the test year stock price and interest rate than will occur when the most recent stock price and interest rate are used. According to Hawaii, allowing parties to calculate these models using both a six-month average stock price and interest rate, as well as the most recent stock price and interest rate, would add flexibility to the proposed rule and increase the information upon which the Commission could base its judgment.

Hawaii also states in its initial comments that access to several data sources is required to determine the cost of common-stock equity under the proposed rule. One of the required data sources used to compute the DCF model is published by IBES. In addition, data from Ibbotson Associates must be used to compute the CAPM and RP models. Hawaii requests that, depending on the cost of acquiring the necessary data, the Commission consider making both the IBES and Ibbotson Associates data available to non-subscribing parties.

In drafting the proposed rule, the Commission attempted to specify in detail the calculation of the cost of common-stock equity in order to prevent prolonged debate that would accompany more subjective and flexible methodologies. Under section 3 of the 1933 Act not only must the FMC rule within 180 days, but also carriers and protestants have similar time limits in that hearings must be completed within 60 days.

The commenters have taken issue with the NPR's specification of the estimation methods and have suggested that the proposed rule would unduly limit the amount of information that the Commission could consider in the course of a proceeding, to the detriment of obtaining a just and reasonable result. The Commission believes that these comments have merit. If a party to a proceeding follows a predetermined formula in preparing testimony, the resultant testimony may not contain the necessary judgment required in using these estimating techniques. There are many different applications of these methodologies, and an important part of the estimating procedure is the skill with which the practitioner implements the methodology. As a consequence, the Commission, as decision maker, would not be making the fullest use of the expertise that the testimony could provide in arriving at an appropriate determination of the cost of common-stock equity for the regulated carrier.

The Commission has decided, therefore, to modify the cost of equity estimation procedures contained in § 552.6 of the proposed rule. Carriers will still be required to use the DCF and RP methods to determine the cost of common-stock equity. However, they will not be required to follow the proposed rule's detailed specifications in implementing the techniques.

The Commission has decided to strike the requirement to use the CAPM method. As the NPR explained, the CAPM is actually the company-specific form of the general RP model. The central feature of the CAPM model, beta, has been commented upon disparagingly not only by the instant commenters, but also by an increasing number of academicians. The major criticisms of Beta are that: beta measures variability not risk; beta is not forward looking; and no statistical relationship exists between a firm's beta and its return. Given that the merits of beta and, therefore, the CAPM are increasingly suspect, the Commission does not believe that this deletion will negatively impact upon the FMC's responsibilities under the 1933 Act.

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[17] Hawaii commented similarly on the CAPM and RP models. In those models, the NPR specified the use of a six-month average of five-year Treasury note yields.

The Commission is not persuaded that the selection of the proxy group is so problematic that the requirement to use the DCF model should be eliminated. The DCF method remains a standard tool used by regulatory agencies to determine cost of common-stock equity in rate cases. The Commission acknowledges that selecting a proxy group may be an extremely controversial matter, given that no two companies have exactly the same risk characteristics. Nevertheless, any alleged arbitrariness should be able to be overcome by a judicious determination of the business and financial risk factors of the regulated carrier. Further, with the requirement to use the CAPM being eliminated, the Commission does not believe that it should limit itself to only one method of estimating the cost of common-stock equity.

The proposed rule provided that the estimate produced by the RP method was to be used as a check on, and in combination with, the company-specific estimates produced using the DCF and CAPM models. With the CAPM being deleted, however, the RP will become more prominent in the determination of the cost of equity. In order to produce a more representative estimate of the risk premium required by investors for a particular carrier, the final rule will permit, but not require, carriers to argue for a risk adjustment for firm size. The final rule also allows for an RP model in its generic form.

In contrast to most commenters, Matson states that the Commission's process of determining the cost of capital is not spelled out clearly enough. The Commission does not agree with Matson on this point. The Commission requires the flexibility to consider all issues relevant to estimating the regulated carrier's cost of capital. The Commission recognizes that each of the methodologies are estimates only and that reasoned judgment is necessary in the process of determining the final estimate of the regulated company's cost of capital. Therefore, the process of combining the estimates of the cost of equity in the final rule will remain as it is in the proposed rule, though only the DCF and RP estimates of the cost of equity will be used to reach a final determination.

If a proceeding is initiated, the Commission will evaluate the testimony of the carrier, the FMC staff, and all protesters in arriving at its decision on the allowable rate of return. The Commission will then issue a ruling that spells out its reasoning so that the parties can see how the Commission arrived at its decision. Therefore, the Commission does not accept Matson's assertion that the process of combining the two estimates of common-stock equity is unfair. The combining process will be arrived at openly and will take into account the vagaries of cost of capital estimation.

With regard to the use of average prices, the Commission stated in the proposed rule that regulatory agencies often use average prices over time rather than a price on a particular day to remove aberrations in stock price movements. Such aberrations could be the result of events internal to the company (e.g., the stock may go ex-dividend) or due to factors external to the company (e.g., political events that affect the price of a firm's stock). The Commission continues to believe that the use of an average will be appropriate in most instances to filter out potential aberrations in stock prices and interest rates. However, to avoid the possibility that use of an average may serve to blind the Commission to significant changes or trends, the rule will permit, but not require, parties to calculate these models using both a six month average stock price and interest rate as well as the most recent stock price and interest rate as suggested by Hawaii.

With respect to the suggestion that the FMC consider providing access to the required data, the Commission has considered this, but has decided that the costs of such information are not prohibitive. Under the final rule no particular data source is required for the DCF analysis. IBES data can be obtained inexpensively from Compuserve, an on-line information provider. The Ibbotson Yearbook and Value Line are available at many libraries or through subscription at nominal cost.

Proxy Group

If a carrier is an independent company which issues no publicly-traded common-stock equity or is a subsidiary that obtains its common-stock equity capital through a parent company, a proxy group of companies must be selected to impute the carrier's cost of common-stock equity. Under the proposed rule, the proxy group is selected from companies listed in Value Line that operate and derive a major portion of their gross revenues primarily as common carriers in the business of freight transportation, and own and operate transportation vehicles or vessels. Further, under the proposed rule, carriers relying on proxy companies are to use the prescribed risk criteria in selecting proxy companies and are to submit their selection of proxy companies, along with their annual report of financial and operating data, as required in § 552.2.

In its initial comments, Hawaii was concerned that the companies in Value Line which satisfy the Commission's criteria for the proxy group do not have business risks similar to those of Matson. Hawaii claimed that these companies are generally consolidated companies; are not dominant in their markets; and do not operate in industries with statutory barriers to entry.

Marsoft stated that according to its research only three marine transportation companies and four trucking companies meet the proposed guidelines for the proxy group. Marsoft did not believe that airlines, railroads, or full-load trucking companies should be included in the proxy group, because they do not provide comparable services. Marsoft also stated that in many cases large, geographically and operationally diverse companies will be compared to small, highly specialized private carriers. Marsoft contends that the comparison may not be credible in some cases. Further, Marsoft urged the Commission to allow non-U.S. based firms to be included in the proxy group.

PRMSA commented that the proxy group should not be restricted to the freight transportation business. PRMSA asserted that equity capital in the regulated carrier competes against the broad spectrum of companies in the economy, not just against companies involved in freight transportation. PRMSA stated that the nature of a company's business is only one ingredient of business risk, not the sole determinant. PRMSA noted that as of June 1994, there were a total of 39 companies listed in Value Line involved in transport by air, truck, water, and railroad. Allegedly, not all of these companies were involved in freight transportation as required by the proposed rule. PRMSA concluded from this that the potential list of comparable companies is highly limited.

In its Request for Reply Comments, the Commission sought specific suggestions on industries other than freight transportation to be added to the current proxy group criteria. In its reply comments, Hawaii concurs with the parties who have suggested that dependence on data for proxy groups reported in Value Line and IBES imposes a limitation on finding appropriate proxy group members. Hawaii is unable to suggest other sources from which the required financial data would be available. However, Hawaii urges the Commission not to unduly limit the data that may be used to present evidence, especially with respect to the proxy group. Hawaii also points out that undue limitation of the companies that may be used as proxies might introduce the statistical problems inherent in small samples.

Hawaii states that the Commission should not expect to be able to apply the results of estimations based on proxy groups directly to the regulated carrier. It urges the Commission to allow the introduction of information which relates to the comparability of the proxy group and the applicant company. In addition, Hawaii states that if each expert witness is allowed to provide estimates based on different proxy groups, the Commission would gain valuable insight into the impact of various risk characteristics on the cost of common-stock equity.

Matson argues that the Commission should retain the proxy group identified in the NPR and not add other industries. According to Matson, business risk is dependent on the diversification of a business, the cyclicality of its operations, and the operating leverage employed in its business. It suggests that transportation companies generally have similar levels of cyclicality and degrees of operating leverage. Matson claims that it would be extremely difficult to identify companies outside of the transportation industry that have the same amount of cyclicality and degree of leverage as transportation companies.

In its reply comments, PRMSA notes that the most serious deficiency of the proposed rule is the use of the proxy groups to compensate for the lack of market data for non-publicly traded companies. PRMSA points out that most domestic offshore carriers are either privately owned or subsidiaries of larger consolidated systems for which no market data exists. PRMSA asserts that the Commission has embarked on an impossible task in attempting to enumerate specific companies and/or industries to serve as a proxy for the regulated company. PRMSA says that the selection of proxy companies will necessarily be arbitrary, negating the mathematical exactitude that can be achieved under the DCF model.

With respect to the annual submission of proxy groups, PRMSA contends that this proposal would actually require a greater use of agency resources than are currently devoted to rate-of-return analysis in the domestic offshore trades. PRMSA argues that the proposed selection process raises serious due process issues, because it attempts to bar members of the public from challenge at a time when their interests are at stake, because of their failure to have made a challenge when no injury could be alleged.

Crowley advocates opening up the proxy group to companies outside the freight transportation business because, it contends, the key comparison is not the line of business. Crowley notes that companies within the same industry may have different business characteristics, and different attractions to investors. Crowley would, however, restrict the selection to any company listed in Value Line. Crowley also states that other suitable industries would be those characterized by large initial capital investments, seasonal markets, and common carrier operations. Crowley proposes that passenger transportation and certain telecommunications industries might be possible sources of proxy groups.

In Seaman's comments, he notes that the commenting parties have given ample reason why the selection of a proxy group is flawed. Seaman contends that without a comparable portfolio of companies, estimates of the cost of common-stock equity are meaningless. He concludes, therefore, that the Commission will not be able to determine a fair rate of return under the BTWACC methodology.

The Commission does not agree with the contention that the proxy group selection is unworkable. The use of proxy groups is a common regulatory practice, especially in conjunction with the DCF model in estimating cost of common-stock equity. Selecting a proxy group will require, however, an assessment of the regulated carrier's operations and financial status in order to determine the appropriate business and financial risk. The results of this assessment will be used to select companies to be included in the proxy group. Because no two companies will be identical in all aspects of risk, the proposed rule specified a number of risk indicators that might be used in selecting a proxy group.

After carefully reviewing all of the comments on comparable risk companies, the Commission has determined to drop three proposals. First, the Commission has decided that requiring the annual submission of a proxy group of companies which would be subject to notice and approval would expend considerable resources. Little benefit would be gained from the exercise if the regulated carrier were not to file any rate increases during its fiscal year. Thus, the final rule allows for the submission of the proxy group of companies at the same time as the submission of direct testimony in support of a proposed general rate increase.

Second, the Commission has decided not to limit the selection of the proxy group only to companies followed by Value Line. The proposed rule required Value Line to be used because it contains all the data necessary to complete the cost of equity calculations specified in the proposed rule. Since the final rule will not be as specific as the proposed rule in delineating the methods and data sources to be used in estimating the cost of common-stock equity, the Commission believes the need to use only Value Line data is lessened. Therefore, in addition to Value Line, other data sources will be permitted for proxy group selection.

Nevertheless, the Commission believes that Value Line provides the best overall data available for determining a proxy group. It provides analysis of many factors necessary for the selection of comparable risk companies. While Value Line does not cover every company that issues stock, the Commission expects that most proxy group companies will be found in it. The Commission does not want to proscribe the use of companies not followed by Value Line that would make good proxy group members. However, if a party selects proxy group members based on data from sources other than Value Line, the burden is on that party to prove that the data source is reliable and the data are sufficiently detailed to calculate the BTWACC.

Finally, the Commission has decided not to limit the allowable proxy group members only to companies which operate in the transportation industry. The final rule will require that the majority of the proxy companies be companies which operate in the transportation industry. This will allow those giving testimony some latitude in selecting proxy group members from outside the transportation industry.

Crowley is the only commenter suggesting other industries that might be included as candidates for the proxy group. Crowley suggests that proxy group members could be selected from the passenger transportation and telecommunications industries. Crowley offered very little analysis as to why these industries should be included. A thorough analysis would be required to persuade the Commission that companies in these industries would make acceptable proxy group members.

The Commission is concerned that the difficulty commenters had in suggesting alternative industries from which proxy group members might be selected is illustrative of the difficulties that may be found in attempting to find proxy group members outside the transportation industry. Most commenters, however, were quite concerned that in some cases it may be difficult to select an adequate list of proxy group members within the confines of the transportation industry. To balance these two concerns, some of the proxy group members will be permitted to come from outside the transportation industry. However, a majority of the proxy group members will be required to come from the transportation industry. Those seeking to include companies outside the transportation industry in the proxy group shall have the burden of establishing that the firms selected have business risks comparable to the regulated carrier.

The final rule will continue to require that the proxy group be limited to U.S. companies. In many instances foreign accounting procedures are different from U.S. accounting practices. In order to ensure that accurate estimates of the cost of common-stock equity can be made from the proxy group, the exclusion of foreign companies will continue. Lastly, based on the prior discussion of the concerns regarding the use of beta, two of the risk indicators specified in the proposed rule to be used in selecting the proxy group will be eliminated, the volatility of a company's common-stock price changes as measured by both beta and standard deviation.

Deferred Taxes and the Capital Construction Fund

The proposed rule provided for two amendments to allow for the treatment of deferred taxes in the calculation of rate base. First, the cost of an asset included in the rate base would be reduced by the amount of funds withdrawn from the ordinary income and capital gains components of the Capital Construction Fund ("CCF").[18] Second, the rate base would be reduced by the amount of deferred taxes, except that portion resulting from the CCF or the expired Investment Tax Credit.

Capital Construction Fund

Matson, Crowley and DOT oppose the Commission's proposal to exclude CCF withdrawals from the rate base. Hawaii's comments appear to support the proposal, although most of its comments address deferred taxes.

The opposition to the proposed treatment of the CCF falls into two main areas. First, several commenters contend that the proposed changes are contrary to the Congressional intent behind the Merchant Marine Act, 1936, 46 U.S.C. app. section 1100, et seq., as amended, which governs the CCF. Matson points out that the Commission recognized the Congressional intent in Docket No. 78–46, Part 512. Financial Reports of Common Carriers by Water in the Domestic Offshore Trades. In that proceeding, Matson states that the Commission gave the reasons for its complete rejection of methodologies which penalized the carrier for using the financing benefits provided by the Merchant Marine Act, 1970. That legislation amended the 1936 Act and, inter alia, extended the CCF provisions to include the domestic offshore carriers. Matson points out that, in Docket No. 78–46, the Commission stated that:

> The Commission is persuaded that the Congress, in enacting the Merchant Marine Act, 1970 sought to provide carriers with tax incentives in order to encourage investment aimed at modernizing and expanding the fleet serving the domestic offshore trades. As MARAD indicated [in its comments], the adoption of the flow-through methodology would not be in accordance with the Congressional intent. Docket No. 78–46, 19 SRR at 1305. (Matson at 8).

Crowley adds that it "makes no sense for the FMC to take away the benefit of the CCF program, or to steer CCF funds away from the domestic trades, when the program is a part of the basic U.S. government policy to support the U.S. Merchant Marine." (Crowley at 8). DOT asserts that the proposed rule would frustrate Congress' intent in establishing the CCF program by directly penalizing companies that participate in the program, which would in turn impede DOT's efforts to maintain and expand the U.S.-flag fleet.

Second, the carriers and DOT contend that the proposed changes in the accounting treatment of the CCF and accumulated deferred taxes are based on a misunderstanding of the actual financial and tax consequences of the CCF and deferred taxes. Crowley argues that the Commission has misconstrued the character of the contributions to the three components of the CCF. In its comments, DOT explained that under the CCF program both deposits from taxable income and any subsequent investment earnings are temporarily sheltered from federal income taxes. These tax benefits are assured only if the deposits and earnings thereon are withdrawn to meet the company's CCF program objectives, principally vessel construction or reconstruction. Any unauthorized withdrawals are fully taxable. The recovery of the tax benefit of CCF deposits is accomplished by reducing the income tax basis of a vessel built with CCF monies. The reduction of the taxable basis of the CCF vessel reduces otherwise allowable depreciation over time which, in turn, increases taxable income, thereby recovering the initial benefits of the CCF deposit. DOT points out that this tax deferral has no connection to the cost of a vessel and therefore, should have no impact on the FMC's determination of a carrier's rate base for setting an allowable rate of return.

Matson contends that the Commission has grossly overstated the benefit of the CCF investment. According to Matson, the sole economic benefit which flows from the use of a CCF is the interest-free use of the deferred tax monies until the taxes are paid through the loss of tax-depreciation on the CCF investment. Matson points out that the tax repayment period is 10 years for vessels, and 5 years for containers. According to Matson, not only has the FMC overstated the benefit but also, the duration of the benefit because its proposal would "exclude forever 100% of the CCF investment."

Based on the comments received, the Commission is abandoning the proposed treatment of the CCF. The NPR indicated that of the three accounts comprising the CCF (capital account, capital gains account, and ordinary income account) the capital account is the only account containing carrier contributions to the CCF. The NPR likewise indicated that the capital gains and ordinary income accounts were comprised solely of the carriers' earnings on money contributed to the CCF. Several commenters clarified that the capital gains account consists of capital gains from the sale of CCF vessels as well as earnings from that account, and the ordinary income account consists of CCF vessel income plus earnings from that account. Only the capital gains and ordinary income accounts are tax deferred. Given the commenters' clarifications that the capital gains and ordinary income accounts are comprised of carrier contributions along with earnings, it appears that to require carriers to reduce the cost of the vessel by the amount of funds withdrawn from these two components of the CCF would indeed penalize CCF carriers and serve as a disincentive to carrier participation in the CCF. Such disincentive would appear to be contrary to the Congressional intent in establishing the CCF program.

Deferred Taxes

Hawaii supports the changes to the treatment of deferred taxes in the proposed rule. The State points out that the Commission appropriately decided in Docket No. 78–46 to require carriers to calculate their income tax expense at the applicable statutory rate. Before issuing the final rule in Docket No. 78–46, the Commission had ordered deferred income taxes deducted from rate base in two rate investigations.[19] However, in Docket No. 78–46, the Commission reversed its prior rulings and decided not to require carriers to deduct accumulated deferred income taxes from rate base. Hawaii also notes that the proposed treatment of deferred taxes conforms with the policy of a majority of state regulatory commissions, as well as the Federal Communications Commission and the Federal Energy Regulatory Commission.

In its initial comments, Matson asserts that the deferred taxes account arises only due to the different treatment of depreciation for tax purposes than for expense purposes. According to Matson, when an asset is allowed to depreciate faster for tax accounting purposes than for book accounting purposes, a timing difference occurs and is reflected in deferred taxes. The differences in taxes booked versus taxes paid is recorded as a "book" liability. Matson claims that this is not a real liability but only the recognition that more taxes have been expensed than have yet to be paid. If the generally accepted accounting principles ("GAAP") allowed for recording as an expense only the amount of taxes paid, no book liability for deferred taxes would occur. Matson argues that the value of deferred taxes is only in the time value of money, and this value reverses over a relatively few years. Matson claims that the benefit that the Commission refers to in the proposed rule does not exist. It is merely a philosophical difference between GAAP and the Internal Revenue Service code.

In its reply comments, Matson addresses Hawaii's statement that the majority of regulatory agencies surveyed by the National Association of Regulatory Utility Commissioners treat deferred taxes similarly to the Commission's proposed treatment. Matson argues that such treatment of deferred taxes by state regulatory agencies resulted from the requirements of the Tax Reform Act of 1969 that required utilities to deduct deferred taxes from the rate base, if the utilities planned to use accelerated depreciation.

PRMSA argues that the proposed rule would negate the stimulating effect on investment that was intended by public policy. It further argues that prohibiting returns on shipping assets financed by funds generated through the tax treatment of accelerated depreciation creates a disincentive to investment in the regulated shipping trades. PRMSA suggests that it is clear that a firm's decision to invest funds provided by deferred taxes is a decision that puts its investor-provided equity at risk. Therefore, PRMSA contends that the FMC should focus on providing a rate of return on deferred taxes more akin to that provided by equity. Nevertheless, PRMSA suggests that the return could be adjusted downward to recognize the fact that the initial funds are not investor provided, although once the firm uses those funds its own equity is at risk and some reward is required.

DOT avers that the proposed treatment of deferred taxes is unfair to CCF companies. DOT states that a consequence of participation in the CCF program is that companies tend to have large deferred tax liabilities. Therefore, the Commission's proposal would penalize CCF vessels, which are all U.S. flag, by reducing the rate base by the amount of the tax benefit, which would directly devalue the CCF incentive conferred by Congress. DOT takes issue with the statement in the NPR that accumulated deferred taxes should be eliminated from the rate base, because "unlike debt, preferred stock, and common-stock equity, deferred taxes cost the carrier nothing." (NPR at 52). In its discussion of the CCF, DOT argues that deferred taxes are not cost free to the carrier, because over the life of a vessel, CCF companies will tend to pay higher taxes in later years than those carriers not participating in the CCF program.

The Commission views the issue of deducting deferred taxes arising from accelerated depreciation from the rate base as being similar to that of deducting CCF withdrawals from the cost of a vessel or equipment. The Commission believes that carriers should not be penalized for using accelerated depreciation by deducting accumulated deferred taxes from the rate base and that such a deduction would likely serve to reduce the incentive of carriers to invest in the industry. Congress clearly intended companies to benefit from the use of accelerated depreciation and the Commission does not believe it should take any action which would minimize that benefit. Therefore, the Commission will not require carriers to deduct accumulated deferred taxes arising from accelerated depreciation from the rate base as was proposed. This is in conformance with current Commission policy determined in Docket 78–46, Financial Reports of Common Carriers by Water in the Domestic Offshore Trades.

Working Capital

In the NPR, the Commission proposed to amend its regulations governing the computation of working capital to remove the extraordinary treatment of insurance expense. Only Hawaii commented on the proposed change. In addition to supporting the proposed change, Hawaii proposed two additional changes. First, Hawaii suggested that, in determining the amount of working capital to be included in rate base, the Commission adopt what it termed a "modified lead-lag approach". Hawaii's second proposal is to exclude interest expense from the calculation of working capital.

In Docket No. 78–46, and Docket No. 91–51, Financial Reports of Common Carriers by Water in the Domestic Offshore Trades, Hawaii recommended the use of a "lead-lag study" in calculating the amount of working capital to be included in rate base. Taking into account the complexities inherent in adopting such an approach, the Commission declined to abandon average voyage expense as the basis for calculating working capital.[20]

Hawaii stated that "the modified lead-lag approach compares the lag in paying for major operating expenses (excluding depreciation and amortization, and interest expense) with the lag in receiving the revenues to pay for these expenses." (Hawaii at 19) Although Hawaii downplays the complexity of this method, its very description of the process belies this conclusion. The Commission can envision carriers spending inordinate amounts of time analyzing various accounts to develop the working capital component of rate base. On the other hand, the Commission believes that the average voyage expense calculation is straightforward and uniquely suited for the maritime industry.

Hawaii also proposed removing interest expense from the calculation of working capital. In its initial comments, Hawaii stated:

> Interest expenses should also be excluded from the working capital computation because they represent a *source* of working

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[18] The Capital Construction Fund is comprised of three components: the capital account, the capital gains account, and the ordinary income account.

[19] See FMC Docket No. 75–57, *Matson Navigation Co.—Proposed Rate Increase in the United States Pacific Coast/Hawaii Domestic Offshore Trade* and FMC Docket No. 76–43, *Matson Navigation Company—Proposed Rate Increase in the United States Pacific Coast/Hawaii Domestic Offshore Trade.*

[20] In Docket No. 78–46, the Commission wrote, "There is no persuasive evidence in this proceeding or otherwise available which would indicate that average voyage expense incurred by a carrier utilizing self-propelled vessels is not a fair measure of that carrier's working capital requirements."

> capital funds. Interest is not paid to bondholders until after the related revenue is received by the carrier. Thus, interest expense does not create a need for working capital.

(Hawaii at 20).

Crowley and Seaman comment on this proposal. Crowley opposes Hawaii's suggested treatment of interest. Crowley argues that interest expense is a cost of doing business not unlike any other liability for which working capital is required, such as employee costs, equipment acquisition and maintenance and repair, and similarly accrues on the carrier's books. Seaman merely endorses Hawaii's position.

The Commission agrees with Crowley that interest expense is no different from a carrier's other liabilities for which working capital is required. The Commission believes that the working capital component of the rate base is intended to provide for a return on the cash required for the carrier's day-to-day operations and that interest expense meets this criteria. Therefore, the final rule eliminates only the extraordinary treatment of insurance expense from the calculation of the working capital component of rate base.

The Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule will not have a significant economic impact on a substantial number of small entities; including small businesses, small organizational units and small government jurisdictions. The Commission grants a waiver of the detailed reporting requirements to carriers which earn gross revenues of $25 million or less in a particular trade in accordance with 46 CFR 552.2(e).

The collection of information requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0008. Under the proposed rule the incremental public reporting burden for this collection of information was estimated to range from an average of 41 hours to 65 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual filing of a proxy group was estimated to require 41 man-hours while Schedule F was estimated to require 24 man-hours to complete. Since the final rule no longer requires that a proxy group of companies be filed annually, carriers which do not file a general rate increase as described in 46 CFR 552.2(f) will incur no additional regulatory burden. To be conservative, the estimated regulatory burden for carriers which file a general rate increase is still estimated to be 65 man-hours. However, the cost of equity estimation has been simplified by eliminating the requirement that a capital asset pricing model be used in deriving the final estimate of the cost of equity. Thus, an extra cushion of time within the 65 man-hours has been created for carriers which file a general rate increase. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Bruce Dombrowski, Deputy Managing Director, Federal Maritime Commission, Washington, DC 20573 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Part 552

Maritime carriers, Reporting and recordkeeping requirements, Uniform system of accounts.

Therefore, pursuant to 5 U.S.C. 553, sections 18 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817 and 841a, and sections 2 and 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844 and 845, part 552 of Title 46, Code of Federal Regulations, is to be amended as follows:

PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

1. The authority citation for part 552 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

2. In § 552.1, paragraph (b) is revised to read as follows and paragraph (d) is removed:

§ 552.1 Purpose.

* * * * *

(b) In evaluating the reasonableness of a VOCC's overall level of rates, the Commission will use return on rate base as its primary standard. A carrier's allowable rate of return on rate base will be set equal to its before-tax weighted average cost of capital. However, the Commission may also employ the other financial methodologies set forth in § 552.6(f) in order to achieve a fair and reasonable result.

* * * * *

3. In § 552.2, paragraph (a) is amended by revising the filing address contained therein, paragraph (b) is revised, paragraph (f)(1)(iv) is amended by removing "and," from the end thereof, paragraph (f)(1)(v) is amended by changing the period at the end thereof to a semicolon and adding "and," to the end of the paragraph, and a new paragraph (f)(1)(vi) is added reading as follows:

§ 552.2 General requirements.

(a) * * *

Federal Maritime Commission, Bureau of Economics and Agreement Analysis, 800 North Capitol Street, NW, Washington, DC 20573–0001

(b) Annual statements under this part shall consist of Exhibits A, B, and C, as described in § 552.6, and shall be filed within 150 days after the close of the carrier's fiscal year and be accompanied by a company-wide balance sheet and income statement having a time period coinciding with that of the annual statements. A specific format is not prescribed for the company-wide statements.

* * * * *

(f) * * *

(1) * * *

(vi) Projected schedules for capitalization amounts and ratios (Schedule F–I); cost of long-term debt capital calculation (Schedules F–II and F–III); cost of preferred (and preference) stock capital calculation (Schedules F–IV and F–V); corporate income tax rate (Schedule F–VI); and flotation costs (Schedule F–VII) for the 12-month period used to compute projected midyear rate base in paragraph (f)(1)(ii) of this section.

* * * * *

4. In § 552.5, paragraphs (b) and (c) are revised, and paragraphs (v), (w), (x), (y), (z), (aa), and (bb) are added to read as follows:

§ 552.5 Definitions.

* * * * *

(b) *The service* means those voyages and/or terminal facilities in which cargo subject to the Commission's regulation under 46 CFR 514.1(c)(2) is either carried or handled.

(c) *The trade* means that part of the Service subject to the Commission's regulation under 46 CFR 514.1(c)(2), more extensively defined below under Domestic Offshore Trade.

* * * * *

(v) *Book value* means the value at which an asset is carried on a balance sheet.

(w) *Capital structure* means a company's financial framework, which is composed of long-term debt, preferred (and preference) stock, and common-stock equity capital (par value plus earned and capital surplus).

(x) *Capitalization ratio* means the percentage of a company's capital structure that is long-term debt, preferred (and preference) stock, and common stock-equity capital.

(y) *Consolidated system* means a parent company and all of its subsidiaries.

(z) *Subsidiary company* means a company of which more than 50 percent of the voting shares of stock are owned by another corporation, called the parent company.

(aa) *Long-term debt* means a liability due in a year or more.

(bb) *Times-interest-earned ratio* means the measure of the extent to which operating income can decline before a firm is unable to meet its annual interest costs. It is computed by dividing a firm's earnings before interest and taxes by the firm's annual interest expense.

5. In § 552.6, paragraph (a)(1), the first sentence of paragraph (a)(2), (b)(5), and the heading of paragraph (b)(9) are revised; paragraphs (c)(5) and (c)(10) are revised; paragraphs (d)(1) and (d)(2) are revised; paragraphs (e) and (f) are redesignated (g) and (h); a new paragraph (e) is added and paragraphs (d)(3) and (d)(4) are redesignated (f)(1) and (f)(2) and the paragraph headings thereof revised reading as follows:

§ 552.6 Forms

(a) *General.* (1) The submission required by this part shall be submitted in the prescribed format and shall include General Information regarding the carrier, as well as the following schedules as applicable:

Exhibit A—Rate Base and supporting schedules;
Exhibit B—Income Account and supporting schedules;
Exhibit C—Rate of Return and supporting schedules;
Exhibit D—Application for Waiver;
Exhibit E—Initial Tariff Filing Supporting Data; and
Exhibit F—Allowable Rate of Return schedules.

(2) Statements containing the required exhibits and schedules are described in paragraphs (b), (c), (d), (e), (g), and (h) of this section and are available upon request from the Commission. * * *

(b) * * *

(5) *Working Capital (Schedule A–V).* Working capital for vessel operators shall be determined as average voyage expense. Average voyage expense shall be calculated on the basis of the actual expenses of operating and maintaining the vessel(s) employed in the Service (excluding lay-up expenses) for a period represented by the average length of time of all voyages (excluding lay-up periods) during the period in which any cargo was carried in the Trade. Expenses for operating and maintaining vessels employed in the Trade shall include: Vessel Operating Expense, Vessel Port Call Expense, Cargo Handling Expense, Administrative and General Expense, and Interest Expense allocated to the Trade as provided in paragraphs (c) (2), (4) and (5) of this section.

* * * * *

(9) *Capitalization of leases (Schedules A–VII and A–VII(A)).* * * *

(c) * * *

* * * * *

(5) *Interest expense and debt payments (Schedules B–IV and B–IV(A)).* This schedule shall set forth the total interest and debt payments, apportioned between principal and interest, short and long-term, on debt and lease obligations. Payments on long-term debt are to be calculated consistent with the method set forth in § 552.6(e)(7) for computing the cost of long-term debt capital. Principal and interest shall be allocated to the Trade in the ratio that Trade rate base less working capital bears to company-wide assets less current assets. Where related company assets are employed by the filing company, the balance sheet figures on the related company's books for such assets shall be added to the company-wide total in computing the ratio. In those instances where interest expenses are capitalized in accordance with paragraph (b)(9) of this section, a deduction shall be made for the amount so capitalized.

* * * * *

(10) *Provision for income tax.* Federal, State, and other income taxes shall be listed separately. If the company is organized outside the United States, it shall indicate the entity to which it pays income taxes and the rate of tax applicable to its taxable income for the subject year. Federal, State and other income taxes shall be calculated at the statutory rate. Such tax rates are to be identical to those set forth in Schedules F–VI or F–VI(A) used in determining the carrier's allowable rate of return.

* * * * *

(d) *Rate of Return (Exhibits C and C(A))*—(1) *General.* All carriers are required to calculate rate of return on rate base. However, the Commission or individual carriers, at the Commission's discretion, may also employ fixed charges coverage and/or operating ratios as provided for in paragraph (f) of this section.

(2) *Return on rate base.* The return on rate base will be computed by dividing Trade net income plus interest expense plus provision for income taxes by Trade rate base.

(e) *Allowable rate of return on rate base (Exhibits F and F(A))*—(1) *General.* A carrier's allowable rate of return on rate base shall be set equal to the carrier's weighted average cost of capital calculated on a before-tax basis ("BTWACC"). The BTWACC is defined mathematically by the following expression:

$$\mathrm{BTWACC} = \left(\frac{D}{D+P+E}\right)K_d + \left(\frac{P}{D+P+E}\right)K_P\left(\frac{1}{1-T}\right) + \left(\frac{E}{D+P+E}\right)K_e\left(\frac{1}{1-T}\right)$$

where:

K_d is the carrier's cost of long-term debt capital;
K_p is the carrier's cost of preferred (and preference) stock capital;
K_e is the carrier's cost of common-stock equity capital;
D is the average book value of the carrier's long-term debt capital outstanding;
P is the average book value of the carrier's preferred (and preference) stock capital outstanding;
E is the average book value of the carrier's common-stock equity capital (par value plus earned and capital surplus) outstanding; and
T is the carrier's composite statutory corporate income tax rate.

A carrier's BTWACC shall be calculated in precise accordance with the rules set forth in this section.

(2) *Subsidiary carrier's capital structure.* Where a carrier is a subsidiary that obtains its common-stock equity capital through a parent company, the capital structure of the subsidiary shall be used in computing the BTWACC unless the carrier has received prior approval by the Commission to use the consolidated capital structure. The subsidiary carrier's cost of common-stock equity capital, the subsidiary carrier's cost of long-term debt capital, the subsidiary carrier's cost of preferred stock capital, and the subsidiary carrier's composite statutory corporate

income tax rate shall also be used in computing the BTWACC. The subsidiary carrier's cost of common-stock equity capital shall be inferred as the cost of common-stock equity capital estimated for a sample of firms having business and financial risk comparable to the subsidiary carrier when the subsidiary carrier's capital structure is used in calculating the BTWACC.

(3) *Comparable risk companies.* (i) A proxy group of companies shall be selected to impute the carrier's cost of common-stock equity capital where:

(A) The carrier is an independent company (i.e., it has no corporate parent) which issues no publicly-traded common-stock equity, or

(B) The carrier is a subsidiary that obtains its common-stock equity capital through a parent company.

(ii) The selection of the proxy group of companies shall be based on the following criteria:

(A) The proxy companies shall be based in the United States.

(B) The proxy companies shall be listed in The Value Line Investment Survey or equivalent data source. If a party uses data from sources other than The Value Line Investment Survey, the burden is on that party to prove that the data source is reliable and the data are sufficiently detailed to calculate the BTWACC.

(C) A majority of the proxy companies shall operate and derive a major portion of their gross revenues primarily as common carriers in the business of freight transportation, and shall own or operate transportation vehicles or vessels. Companies with gross annual revenues equal to or less than $25,000,000 shall be excluded from the proxy group. Proxy group companies whose businesses are not in the transportation industry must clearly be demonstrated to have business risk equivalent to the regulated carrier's business risk.

(D) In addition, comparable risk companies shall be selected by examining some, but not necessarily all, of the following risk indicators:

(1) A company's total capitalization ratio and/or debt-to-equity ratio;

(2) The investment quality ratings of a company's long-term debt instruments;

(3) The investment safety ranking of a company's common-stock equity;

(4) The rating of a company's financial strength;

(5) Other such valid indicators deemed appropriate by the Commission.

(4) *Consolidated capital structure.* (i) Upon application, after notice and opportunity for comment, the Commission may authorize use of the capital structure of the consolidated system (i.e., the parent company and all of its subsidiaries) in computing the BTWACC. The application must show that:

(A) The subsidiary carrier's parent company issues publicly traded common-stock equity;

(B) The subsidiary carrier's parent company owns 90 percent or more of the subsidiary's voting shares of stock; and

(C) The business and the financial risks of the subsidiary carrier and the parent company are similar.

(ii) The similarity of the parent company's and subsidiary carrier's business risk shall be evaluated by examining the degree to which the consolidated system's profits, revenues, and expenses are composed of those of the subsidiary carrier, and the extent to which the parent's holdings are diversified into lines of business unrelated to those of the subsidiary carrier, and/or other indicators of business risk deemed appropriate by the Commission. The similarity of the parent company's and subsidiary carrier's financial risk shall be evaluated by examining the consolidated system's and the subsidiary's total capitalization ratios, debt-to-equity ratios, investment quality rankings on short- and long-term debt instruments, times-interest-earned ratios, fixed charges coverage ratios (calculated to include both FMC and non-FMC regulated operations), and/or other measures of financial risk deemed appropriate by the Commission.

(iii) When the consolidated capital structure is used, the consolidated system's cost of common-stock equity capital (issued by the parent company), the consolidated system's cost of long-term debt capital, the consolidated system's cost of preferred (and preference) stock capital, and the consolidated system's composite statutory corporate income tax rate shall also be used in estimating the subsidiary's BTWACC.

(iv) Where the Commission has approved the use of a consolidated capital structure, such use will not be subject to challenge in a subsequent rate investigation brought under section (3) of the Intercoastal Shipping Act, 1933.

(5) *Book-value, average capitalization ratios.* Capitalization ratios representing the capital structure used in deriving a carrier's BTWACC shall be computed on the basis of average projected book value outstanding over the 12-month period used to calculate projected midyear rate base in § 552.2(b)(1)(ii). The average amount of any class of capital outstanding used in determining the capitalization ratios is computed by adding the amount of a particular type of capital expected to be outstanding as of the beginning of the 12-month period to the amount of that same type of capital expected to be outstanding as of the end of the 12-month period, and dividing the sum by two.

(6) *Capitalization amounts and ratios (Schedules F–I and F–I(A)).* A carrier shall show its long-term debt, preferred stock, and common-stock equity capitalization amounts outstanding, stated in book value terms, as of the beginning and as of the end of the 12-month period used to calculate projected midyear rate base, and the average amounts and average ratios for that 12-month period. Where a carrier is a subsidiary of a parent company, the carrier shall show its own capitalization amounts and ratios unless the carrier has applied for and has been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the carrier shall show instead the consolidated system's capitalization amounts and ratios.

(7) *Cost of long-term debt capital (Schedules F–II, F–II(A), F–III, and F–III(A)).* (i) The cost of long-term debt capital [1] shall be calculated by the carrier for the 12-month period used to compute projected mid-year rate base on the basis of:

(A) Embedded cost for existing long-term debt; and

(B) Current cost for any new long-term debt expected to be issued on or before the final day of the 12-month period.

(ii) The arithmetic average annual percentage rate cost of long-term debt capital calculated on the basis of all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be the cost of long-term debt capital used in computing the BTWACC.

(iii) The annual percentage rate cost of long-term debt capital for all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be calculated separately for the two dates by:

(A) Multiplying the cost of money for each issue under paragraph (e)(7)(v)(A)(*10*) of this section by the principal amount outstanding for each issue, which yields the annual dollar cost for each issue; and

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[1] The cost of sinking fund preferred stock shall be computed in accordance with the regulations for calculating the cost of long-term debt.

(B) Adding the annual dollar cost of each issue to obtain the total dollar cost for all issues, which is divided by the total principal amount outstanding for all issues to obtain the annual percentage rate cost of long-term debt capital for all issues.

(iv) The arithmetic average annual percentage rate cost of long-term debt capital for all issues to be used as the cost of long-term debt capital in computing the BTWACC shall be calculated by:

(A) Adding the total annual dollar cost for all issues of long-term debt capital expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total annual dollar cost for all issues of long-term debt capital expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total annual dollar cost of long-term debt for all issues for the 12-month period;

(B) Adding the total principal amount outstanding for all long-term debt issues expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total principal amount outstanding for all long-term debt issues expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total principal amount expected to be outstanding for all issues for the 12-month period; and

(C) Dividing the average total annual dollar cost of long term debt for all issues for the 12-month period by the average total principal amount expected to be outstanding for all issues for the 12-month period, which yields the average annual percentage rate cost of long-term debt capital for all issues to be used in computing the BTWACC.

(v)(A) *Cost of long-term debt capital calculation (Schedules F–II, F–II(A), F–III and F–III(A)).* The carrier shall calculate the annual percentage rate cost of long-term debt capital for all issues of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base separately for the two dates, and shall also calculate the average annual percentage rate cost of long-term debt for all issues for the 12-month period. The carrier shall support these calculations by showing in tabular form the following for each class and series of long-term debt expected to be outstanding as of the beginning and as of the end of the 12-month period separately for the two dates:

(*1*) Title;

(*2*) Date of issuance;

(*3*) Date of maturity;

(*4*) Coupon rate (%);

(*5*) Principal amount issued ($);

(*6*) Discount or premium ($);

(*7*) Issuance expense ($);

(*8*) Net proceeds to the carrier ($);

(*9*) Net proceeds ratio (%), which is the net proceeds to the carrier divided by the principal amount issued;

(*10*) Cost of money (%), which, for existing long-term debt issues, shall be the yield-to-maturity at issuance based on the coupon rate, term of issue, and net proceeds ratio determined by reference to any generally accepted table of bond yields; and, for long-term debt issues to be newly issued on or before the final day of the 12-month period, shall be based on the average current yield (published in such a publication as Moody's Bond Survey) on long-term debt instruments similar in maturity and investment quality as the long-term debt security that is to be issued;

(*11*) Principal amount outstanding (%);

(*12*) Annual cost ($); and

(*13*) Name and relationship of issuer to carrier.

(B) Where a carrier is a subsidiary of a parent company, the carrier shall show the cost of long-term debt calculations and information required in this paragraph for its own cost of long-term debt unless the carrier has applied for and received prior permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the subsidiary carrier shall show the required cost of long-term debt calculations and information for the consolidated system's long-term debt.

(vi) In the event that new long-term debt is to be issued on or before the final day of the 12-month period used to compute projected mid-year rate base, the carrier shall submit a statement explaining the methods used to estimate information required under paragraph (e)(7)(v)(A) (*1*) through (*13*) of this section.

(8) *Cost of preferred (and preference) stock capital (Schedules F–IV, F–IV(A), F–V, and F–V(A)).* (i) The cost of preferred (and preference) stock capital shall be calculated by the carrier for the 12-month period used to compute projected mid-year rate base on the basis of:

(A) Embedded cost for existing preferred (and preference stock); and

(B) Current cost for any new preferred (and preference) stock to be issued on or before the final day of the 12-month period.

(ii) The arithmetic average annual percentage rate cost of preferred (and preference) stock capital calculated on the basis of all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to calculate projected mid-year rate base shall be the cost of preferred (and preference) stock capital used in computing the BTWACC.

(iii) The annual percentage rate cost of preferred (and preference) stock capital for all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base shall be calculated separately for the two dates by:

(A) Multiplying the cost of money for each issue under paragraph (e)(8)(v)(A)(*9*) of this section by the par or stated amount outstanding for each issue, which yields the annual dollar cost for each issue; and

(B) Adding the annual dollar cost of each issue to obtain the total for all issues, which is divided by the total par or stated amount outstanding for all issues to obtain the annual percentage rate cost of preferred (and preference) stock capital for all issues.

(iv) The arithmetic average annual percentage rate cost of preferred (and preference) stock capital for all issues to be used as the cost of preferred (and preference) stock capital in computing the BTWACC shall be calculated by:

(A) Adding the total annual dollar cost for all issues of preferred (and preference) stock capital expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total annual dollar cost for all issues of preferred (and preference) stock capital expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total annual dollar cost of preferred (and preference) stock for all issues for the 12-month period;

(B) Adding the total par or stated amount outstanding for all preferred (and preference) stock issues expected to be outstanding as of the beginning of the 12-month period used to compute projected mid-year rate base to the total par or stated amount outstanding for all issues expected to be outstanding as of the end of the 12-month period, and dividing the resulting sum by two, which yields the average total par or stated amount expected to be outstanding for all issues for the 12-month period;

(C) Dividing the average total annual dollar cost of preferred (and preference) stock for all issues for the 12-month period by the average total par or stated amount expected to be outstanding for all issues for the 12-month period, which yields the average annual percentage rate cost of preferred (and preference) stock capital for all issues to be used in computing the BTWACC.

(v)(A) *Cost of preferred (and preference) stock capital calculation (Schedules F–IV, F–IV(A), F–V and F–V(A)).* The carrier shall calculate the annual percentage rate cost of preferred (and preference) stock capital for all issues of preferred (and preference) stock expected to be outstanding as of the beginning and as of the end of the 12-month period used to compute projected mid-year rate base separately for the two dates, and shall also calculate the average annual percentage rate cost of preferred (and preference) stock for all issues for the 12-month period. The carrier shall support these calculations by showing in tabular form the following for each issue of preferred (and preference) stock as of the beginning and as of the end of the 12-month period separately for the two dates:

(*1*) Title;
(*2*) Date of issuance;
(*3*) Dividend rate (%);
(*4*) Par or stated amount of issue ($);
(*5*) Discount or premium ($);
(*6*) Issuance expense ($);
(*7*) Net proceeds to the carrier ($);
(*8*) Net proceeds ratio (%), which is the net proceeds to the carrier divided by the par or stated amount issued;
(*9*) Cost of money (%), which, for existing preferred (and preference) stock issues, shall be the dividend rate divided by the net proceeds ratio; and, for preferred (and preference) stock issues to be newly issued on or before the final day of the 12-month period, shall be the estimated dividend rate divided by the estimated net proceeds ratio;
(*10*) Par or stated amount outstanding ($);
(*11*) Annual cost ($); and
(*12*) If issue is owned by an affiliate, name and relationship of owner.

(B) Where a carrier is a subsidiary of a parent company, the carrier shall show the cost of preferred (and preference) stock calculations and information required in this paragraph for its own preferred (and preference) stock unless the carrier has applied for and been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the subsidiary carrier shall show the required cost of preferred (and preference) stock calculations and information for the consolidated system's preferred (and preference) stock.

(vi) In the event that new preferred (and preference) stock is to be issued on or before the final day of the 12-month period used to compute projected mid-year rate base, the carrier shall submit a statement explaining the methods used to estimate information required under paragraph (e)(8)(v)(A) (*1*) through (*12*) of this section.

(9) *Cost of common-stock equity capital.* A carrier's cost of common-stock equity capital shall be calculated using the Discounted Cash Flow ("DCF") and the Risk Premium ("RP") methods. A final estimate of that cost shall be derived from the separate estimates obtained using each of the methods.

(10) *DCF method.* (i) The DCF model that shall be used in calculating a carrier's cost of common-stock equity is defined algebraically as follows:

$$K_e = \frac{D_o}{P_o}(1+.5g)+g$$

where:

K_e is the carrier's cost of common-stock equity capital;
D_o is the carrier's current annualized dividend (defined as four times the current quarterly installment) per share;
P_o is the current market price per share of the carrier's common stock; and
g is the constant expected annual rate of growth in the carrier's dividends per share.

(ii) *Current market price per share of common stock.* A DCF analysis in which the current market price per share of the carrier's common stock is an average of the monthly high and low market prices during a six-month period commencing not more than nine months prior to the date on which the proposed rates are filed is required. Supplemental DCF analysis using the most recent stock price as a basis for the current market price per share of common stock may also be used.

(iii) *Additional Studies.* Other analysis or forms of the DCF model may be included in the computation and determination of the DCF estimate of the cost of common-stock equity.

(11) *RP method.* (i) The RP model that shall be used in calculating a carrier's cost of common-stock equity is defined mathematically as follows:

$$K_e=K_d+RP$$

where:

K_e is the regulated carrier's cost of common-stock equity capital;
K_d is the incremental cost of debt; and
RP is the risk premium.

(ii) *Risk Premium.* The risk premium used in the RP model shall be the historical arithmetic average return differential between rates of return actually earned on investments in the Standard and Poor's 500 Stock Index and the five-year Treasury note. A risk adjustment specific to the carrier for firm size may be included in the computation and determination of the risk premium. The risk premium shall be based on the complete historical data series published annually in the Stocks, Bonds, Bills and Inflation Yearbook, for the period 1926 through the most recent date for which the specified data are available.

(iii) *Incremental cost of debt.* A six-month average of five-year Treasury Note yields computed over a period commencing not more than nine months prior to the date on which the proposed rates are filed shall be the estimate of the incremental cost of debt in the RP model. Supplemental RP analysis using the most recent five-year Treasury Note yield as a basis for the incremental cost of debt may also be used.

(12) *Corporate income tax rate (Schedules F–VI and F–VI(A)).* The corporate income tax rate used in computing the BTWACC shall be the carrier's composite statutory corporate income tax rate for the 12-month period used to compute projected midyear rate base. Such rate shall be a composite of the carrier's Federal and State income tax rates, and of any other income tax rate to be applied to the carrier's income by any other entity to which the carrier is to pay income taxes. The carrier shall calculate and show its composite statutory corporate income tax rate as well as its Federal, State, and any other applicable statutory income tax rates separately for the 12-month period used to compute projected midyear rate base. The carrier shall also state the name of any entity other than the Federal and State governments to which it is to pay taxes. Where a carrier is a subsidiary of a parent company, the carrier shall show its own statutory corporate income tax rates unless the carrier has applied for and been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC. Where such permission has been granted, the carrier shall show instead the consolidated system's statutory corporate income tax rates.

(13) *Flotation costs (Schedules F–VII and F–VII(A)).* (i) A carrier's cost of common-stock equity capital shall be adjusted to reflect those costs of floating new issues that are actually incurred, but only in the event that new common stock is to be issued to the general

public during the 12-month period used to compute projected midyear rate base. Those flotation costs for which an allowance shall be made must be identifiable, and must be directly attributable to underwriting fees, and printing, legal, accounting, and/or other administrative expenses. No allowance shall be made for any hypothetical costs such as those associated with market pressure and market break effects. The allowance shall be applied solely to the new common-stock equity and shall not be applied to the existing common-stock equity balance. The formula that shall be used to compute such an allowance is as follows:

$$k = Fs/(1+s)$$

where:

k is the required increment to the cost of the carrier's common stock equity capital that will allow the company to recover its flotation costs;
F is the flotation costs expressed as a decimal fraction of the dollar value of new common-stock equity sales; and
s is the new common-stock equity sales expressed as a decimal fraction of the dollar value of existing common-stock equity capital.

(ii) *Flotation costs data (Schedules F–VII and F–VII(A)).* (A) In the event that new common-stock equity is to be issued during the 12-month period used to compute projected midyear rate base, the carrier shall show separately by category the estimated costs of floating the new issues to the extent that such costs are identifiable and are directly attributable to actual underwriting fees, and to printing, legal, accounting, and/or other administrative expenses that must be paid by the carrier. The carrier shall submit a statement explaining the method used in estimating the flotation costs. The carrier shall also show estimates of the date of issuance; number of shares to be issued; gross proceeds at issuance price; and net proceeds to the carrier.

(B) Where a carrier is a subsidiary that obtains its common-stock equity capital through a parent company, and the parent company intends to issue new common-stock equity during the 12-month period, the carrier shall show separately by category the estimated costs to the parent company of floating the new issues, and estimates of the above items relative to the parent company's issuance of new common-stock equity, provided that such carrier has applied for and been granted permission from the Commission to use a consolidated capital structure in computing the BTWACC.

(f) *Financial ratio methods*—(1) *Fixed charges coverage ratio.* * * *

(2) *Operating ratio.* * * *

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By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 95–21845 Filed 9–1–95; 8:45 am]

BILLING CODE 6730–01–W

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–66; RM–8625]

Radio Broadcasting Services; Dayton, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Steven C. Hoffman, allots Channel 272A at Dayton, Washington, as the community's second local FM transmission service. *See* 60 FR 26712, May 18, 1995. Channel 272A can be allotted at Dayton in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.0 kilometers (1.9 miles) southwest to avoid short-spacings to the construction permit site for Station KRAO(FM), Channel 273C3, Colfax, Washington, and the licensed site for Station KORD(FM), Channel 274C, Richland, Washington. The coordinates for Channel 272A at Dayton are North Latitude 46–17–57 and West Longitude 117–59–52. Since Dayton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been received.

DATES: Effective October 16, 1995. The window period for filing applications will open on October 16, 1995 and close on November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–66, adopted August 24, 1995, and released August 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 272A at Dayton.

Federal Communications Commission.

John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–21908 Filed 9–1–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–48; RM–8590]

Television Broadcasting Services; Weaverville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 32 to Weaverville, California, as that community's first local television broadcast service, in response to a petition for rule making filed by Mark C. Allen. *See* 60 FR 20950, April 28, 1995. Coordinates used for Channel 32 at Weaverville are 40–54–45 and 122–52–15. *See* Supplementary Information, *infra*. With this action the proceeding is terminated.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–48, adopted August 23, 1995, and released August 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Weaverville is located within the prohibited co-channel minimum distance separation of 280.8 kilometers (174.5 miles) to the Sacramento-Stockton television market, one of the designated television markets affected by the Commission's current freeze on allotments and applications pending the outcome of an inquiry into the use of advanced television systems in broadcasting. (*See Order, Advanced Television Systems and Their Impact on Existing Television Broadcasting Service*, 52 Fed. Reg. 28346, July 29, 1987). However, Channel 32 is allotted to Weaverville in compliance with the terms of the freeze *Order* at a restricted site. Interested parties should note that any application submitted for Channel 32 at Weaverville which does not specify a site beyond the "freeze zone" governing the allotment will not be accepted for filing.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under California, is amended by adding Weaverville, Channel 32.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–21907 Filed 9–1–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–37; Notice 2]

RIN 2127–AF 22

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts amendments to the Federal Motor Vehicle Safety Standard on lighting to replace the currently incorporated SAE J576c with the more recent SAE J576 JUL91 as the referenced standard on plastics materials, to replace ASTM D 1003–61 with the more recent ASTM D 1003–92 in the test procedures, and to allow alternative processing techniques, sample sizes and thickness tolerances to those presently specified. These amendments represent the choice of Option 1 from the notice of proposed rulemaking published in November 1994.

DATES: The effective date of the final rule is March 1, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Rulemaking, NHTSA (202–366–6987).

SUPPLEMENTARY INFORMATION: Heraeus DSET Laboratories, Inc. ("DSET"), of Phoenix, Arizona, petitioned NHTSA for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Specifically, DSET asked that paragraph S5.1.2 be amended "to update the test specimen processing requirements of plastic material used for optical parts such as lenses and reflectors." Currently, these materials are required to conform to Society of Automotive Engineers (SAE) Recommended Practice J576c, May 1970. DSET wants NHTSA

> to allow alternative processing techniques besides injection molding to produce test specimens, to allow test specimen sizes other than a 3 inch diameter disc and to change the specimen thickness tolerances from ±0.005 inch to ±.010 inch.

Those requirements for injection molding and for the diameter and thickness of the test specimen are set forth in J576c, May 1970.

NHTSA granted the petition and published a notice of proposed rulemaking in response to it on November 2, 1994 (59 FR 54881). The notice proposed two alternative amendments of S5.1.2 as a means of implementing its grant of DSET's petition. The agency asked commenters for their views on each of the alternatives.

Option 1. This option would substitute SAE J576 JUL91 for SAE J576c, May 1970, and make conforming amendments in the text of S5.1.2. Option 1 would also replace American Society for Testing and Materials (ASTM) D 1003–61 with ASTM D 1003–92 with respect to measurement of haze (which, as currently specified, would not exceed 7 percent). A specimen thickness tolerance of ±0.25 mm (0.010 in.) would also be allowed as there is no technical reason to limit the test specimen thickness tolerance to ±0.005 in., and the value proposed by NHTSA as recommended by DSET appears to be a more reasonable tolerance for test specimens.

Option 2. This option would retain the current SAE and ASTM specifications but would allow processing techniques other than injection molding to produce equivalent test specimens, test specimens other than a disc of 3-inch diameter, and a test specimen thickness tolerance of ±0.010 inch.

Seven comments were received, five of which supported Option 1. These were from Flxible Corporation ("Flxible"), Transportation Safety Equipment Institute ("TSEI"), Robert Bosch, GmbH ("Bosch"), American Automobile Manufacturers Association ("AAMA"), and Ford Motor Company ("Ford"). Miles, Inc. opposed Option 1 and supported Option 2. The Plastics Division of General Electric Corporation ("GE") did not express a preference for either alternative.

Each of the commenters supporting Option 1 had a different concern. Flxible suggested that NHTSA adopt the base number of each SAE and ASTM standard/recommended practice, with the suffix notation "Latest Revision." In the company's view, this would eliminate the need to revise older materials and ensure that the safety standards reflect contemporary industry practice.

While this is an attractive notion, there are legal constraints against it. The SAE and ASTM materials per se are only guidelines and advisory in nature. Once they are incorporated into the Federal motor vehicle safety standards, they become "the law of the land", and a manufacturer must comply with them or face civil sanctions. Under the Administrative Procedure Act, a regulation imposing a substantive burden cannot be adopted in the absence of adequate public notice and an opportunity to comment. Under the approach suggested by Flxible, automatic updating of the safety standards to incorporate the latest SAE and ASTM revisions would occur with no prior public notice or opportunity to comment, and hence violate the Administrative Procedure Act. Further, NHTSA has found that many updated and revised materials change the previous materials in substantive ways. Some changes may not be in the interests of safety; the elimination of the heat test from SAE J576 JUL91 is one example of this. Other changes may increase, rather than reduce, a substantive burden upon industry. Regulated persons and the public must

be apprised of these changes before they are adopted.

NHTSA may, however, adopt an updated version without prior notice where there appears to be no substantive change since such an adoption is in the nature of a technical amendment. The agency is adopting an updated version in this final rule on the basis of a comment from TSEI. Under proposed paragraph S5.1.2(e), after exposure to the heat test, the samples shall conform to the color requirements of SAE J578a October 1966. TSEI pointed out that current paragraph S5.1.5 references SAE J578c February 1977. It recommended that NHTSA change both references to the specification of J578 MAY88.

NHTSA has compared the 1988 and 1977 versions of J578 with that of 1966. It finds no substantive difference between the 1966 and 1977 versions. The 1988 version, however, contains a third method of color measurement to be used "as a referee approach when the commonly used methods produce questionable results." In addition, the Appendix in the latter has added a section of "Color Measurements of Gaseous Discharge Lighting Devices." NHTSA ought to have comment on these changes before adopting SAE J578 MAY88, and, for this reason, has not followed TSEI's suggestion. On the other hand, because of the lack of substantive change between the other two versions, paragraph S5.1.2(e) is added with an update of the J578 reference to 1977 from the 1966 version which was proposed.

The wording of present paragraph S5.2.1 concerned Ford and AAMA. Under this paragraph, phrases such as "It is recommended that" and "should be," which appear in materials incorporated by reference, are to be read as setting forth mandatory requirements. Ford and AAMA commented that these phrases should not be interpreted as applying to SAE J576 JUL91. In NHTSA's view, the result of adopting Ford's and AAMA's comments would be to make compliance of plastic materials used for optical parts a voluntary affair. This would defeat the purpose of the rulemaking.

Proposed paragraph S5.1.2(e) would require test samples, after the heat test, to "show no discernable change in shape and general appearance when compared with an unexposed specimen." This language comes from J576 itself, with the exception that the SAE uses "significant" rather than "discernable." Ford and AAMA objected to this substitution, arguing that it would establish a higher standard to be met by plastics, and that there is no need to change language that has been a requirement for years. They recommended use of the word "significant." In their view, a change that is "discernable" is not necessarily one that is "significant."

In its proposal, NHTSA had no intention of increasing the burden on any regulated party. The agency proposed the word "discernable" with care, because it is objective, while "significant" is not. Motor vehicle safety standards are required by law to be "objective", 49 U.S.C. 30111(a). The agency has concluded that "discernable" is more appropriate for a requirement specifically expressed in the text of Standard No. 108 (as compared with one incorporated by reference). However, NHTSA wishes to make clear that it views the words as essentially synonymous in this context. If a post-test change in shape or general appearance is discernable, NHTSA considers that to be significant. Such a change indicates the potential for degradation of a lens in use, with a corresponding effect upon color and photometrics of the lamp on which it is installed. To add even greater objectivity, the final rule expresses the requirement as "discernable to the naked eye." Should a change be discernable to the naked eye after testing, and a manufacturer believe that such a change is not "significant," the manufacturer may file a Part 573 Noncompliance Notification Report simultaneously with an application to NHTSA for a determination that the change resulting from that testing is inconsequential to motor vehicle safety.

GE did not choose between the alternatives in its comment. It did, however, recommend the adoption of SAE J576 JUL91 in its entirety, and that NHTSA not carry over the heat test from the previous version of J576. In its view, the heat tests of SAE J575 are adequate until further work is done on thermal issues suitable for incorporation into J576.

Having considered the comments in response to the NPRM, NHTSA is amending Standard No. 108 to add the two new paragraphs proposed, maintaining the performance requirements required of plastic materials by SAE J576c for the heat test and specifying positioning of test samples during the test. These have been omitted by the SAE from J576 JUL91. NHTSA has chosen to retain the existing heat test as one that is familiar to industry and one which meets the need for motor vehicle safety. It is a minimum requirement, intended to establish a margin of safety between the temperatures at which plastic reflectors and lenses may fail from internal heat, and temperatures on the exterior surface induced by exposure to sunlight. Lamp manufacturers use J575 or similar tests to determine whether the particular design characteristics of their lamps require use of premium materials in the lenses. It is a test of the finished lens as installed on the lamp, rather than a test of the materials used in finished products. Use of material with insufficient high temperature performance can result in reflectors that lose color and reflectivity.

The positioning of test samples will allow the sample to droop if its strength is adversely affected by the test.

In order to retain the current 3-year outdoor exposure time test requirements for plastic lenses used or covered by another material and not exposed directly to sunlight, NHTSA is adding a new paragraph S5.1.2(g) to specify that paragraph 3.3.3.1 of SAE J576 JUL91 does not apply as regards protected materials. For the same reason, NHTSA is not adopting paragraph 3.3.3.2. of SAE J576 JUL91 which allows an accelerated 6-month outdoor exposure test time. New paragraph S5.1.2(g) will not change the stringency or flexibility of the standard as it exists, but will ensure that the integrity of plastic materials is maintained by not permitting a lesser exposure time for materials which may be protected when in use.

Miles, Inc., a manufacturer of polycarbonate resin used as a material in lenses and reflectors, objected to Option 1. In its view, this alternative places an additional testing burden on the resin manufacturer, as compared with the present requirements. For this reason, it supported Option 2. Specifically, Miles opposes SAE J576 JUL91 because of Section 3.1 *Materials to be Tested*. This section reads:

> Outdoor exposure tests shall be made on each material * * * offered for use in optical parts * * *. Concentrations of polymer components and additives such as plasticizer, lubricants, colorants, weathering stabilizers, and antioxidants in plastic materials and/or coatings may be changed without outdoor exposure testing if: the changes are within the limits of composition represented by higher and lower concentrations of these polymer components and additives have been tested in accordance with 3.3 and found to meet the requirements of Section 4.

Miles interprets this language to mean that changes in dye concentrations would only be permissible if samples containing lower and higher concentrations of dye had been exposure tested. Miles believes that this, in effect, would double the samples to be tested when compared with the present requirements.

The present requirements are those of section 3.1 of SAE J576c, May 1970. These state, in pertinent part, that "[a] test of one color and formulation shall cover variations in dye concentration, but shall not cover changes in dye materials or changes in polymers." Miles interprets this as meaning that a new exposure test need not be conducted under the 1970 version if the only change in the product is a variation in dye concentration. Its present practice is to test for exposure materials incorporating new dyes only at the expected concentration level of the dye. One exposure test covers each new dye, but Miles will accept the test results as valid when there are small variations in dye concentration.

Miles is correct that SAE J576c allows a single test to cover variations in dye concentration. SAE J576 JUL91 may be interpreted as calling for the testing of two samples by specifying that dye concentrations in material to be used in motor vehicle optical parts must fall within the upper and lower limits of dye concentrations tested if there are variations in dye concentration. Miles believes the newer requirement will double its testing burden.

NHTSA does not agree that this is the inevitable result of the adoption of this portion of SAE J576 JUL 91. What paragraph S5.1.2 is intended to ensure is that lenses and reflectors, as manufactured for use on motor vehicles, are fabricated from plastic materials that meet SAE J576. The key issue is whether the equipment satisfies the performance requirements of the standard, not the number of tests conducted on the materials used in the equipment. Ultimately, the manufacturer of the vehicle in certifying compliance with all applicable Federal motor vehicle safety standards, is certifying that the lenses and reflectors on the vehicle are made from plastics materials that meet J576. If the lens or reflector is manufactured as replacement equipment, the certification responsibility is that of the manufacturer of the equipment. Thus, it is incumbent upon the vehicle or equipment manufacturer to assure itself that the materials it obtains from the plastics manufacturer comply with SAE J576 (and, furthermore, not to change the composition of the plastics materials so obtained in a manner that would cause it to be noncomplying). The documentation needed for such assurance, including the quantum of testing performed by the plastics manufacturer and by the vehicle or equipment manufacturer, is a decision that each equipment or vehicle manufacturer must make under the particular circumstances. NHTSA, of course, expects manufacturers to exercise reasonable care in certifying their products, and, in the event of a noncompliance, the manufacturer may claim that it had no reason to know, despite exercising reasonable care, that the vehicle or equipment failed to comply. However, the allocation of that responsibility is a matter of contract between the manufacturer with the Federal certification responsibility and its plastic materials supplier. Plastic materials are not completed items of motor vehicle equipment subject to Standard No. 108 so the Federal certification responsibility does not fall upon Miles. If Miles or other materials manufacturers are satisfied, based on their extensive experience with dyes, that changes in dye concentration would not cause the plastic material to fail the specified performance requirements, they may be able to persuade their purchasers that additional testing is not needed.

Effective Date

The effective date of the final rule is March 1, 1996.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures. This final rule was not reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to update testing procedures. Since the final rule will have no significant cost or other impacts, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act. NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The final rule will not have a significant effect upon the environment. The composition of plastic materials used in optical parts will not change from those presently in production.

Regulatory Flexibility Act. The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action does not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle equipment, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected because the price of new vehicles and vehicle equipment will not be impacted.

Executive Order 12612 (Federalism). This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient Federalism implications to warrant the preparation of a federalism Assessment.

Civil Justice. The final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by revising paragraph S5.1.2, to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5.1.2 Plastic materials used for optical parts such as lenses and reflectors shall conform to SAE Recommended Practice J576 JUL91, except that:

(a) Plastic lenses (other than those incorporating reflex reflectors) used for inner lenses or those covered by another material and not exposed directly to sunlight shall meet the requirements of paragraphs 3.3 and 4.2 of SAE J576 JULY91 when covered by the outer lens or other material;

(b) After the outdoor exposure test, the haze and loss of surface luster of

plastic materials (other than those incorporating reflex reflectors) used for outer lenses shall not be greater than 30 percent haze as measured by ASTM D 1003–92, *Haze and Luminous Transmittance of Transparent Plastic;*

(c) After the outdoor exposure test, plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors shall not show surface deterioration, crazing, dimensional changes, color bleeding, delamination, loss of surface luster, or haze that exceeds 7 percent as measured under ASTM D 1003–92.

(d) The thickness of the test specimens specified in paragraph 3.2.2 of SAE J576 JUL91 may vary by as much as ±0.25 mm.

(e) After exposure to the heat test as specified in subparagraph (f) of this paragraph, and after cooling to room ambient temperature, a test specimen shall show no change in shape and general appearance discernable to the naked eye when compared with an unexposed specimen. The trichromatic coefficients of the samples shall conform to the requirements of SAE J578c, "Color Specification for Electric Signal Lighting Devices", February 1977.

(f) Two samples of each thickness of each plastic material are used in the heat test. Each sample is supported at the bottom, with at least 51 mm. of the sample above the support, in the vertical position in such a manner that, on each side, the minimum uninterrupted area of exposed surface is not less than 3225 sq. mm. The samples are placed for two hours in a circulating air oven at 79 ± 3 degrees C.

(g) All outdoor exposure tests shall be 3 years in duration, whether the material is exposed or protected. Accelerated weathering procedures are not permitted.

* * * * *

Issued on August 29, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–21865 Filed 9–1–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 082895A]

Groundfish of the Gulf of Alaska; Pacific Cod with Jig and Pot Gear for Processing by the Inshore Component in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod with jig and pot gear for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to use the total allowable catch (TAC) for Pacific cod in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 1, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the inshore component in the Central Regulatory Area of the GOA was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8470, February 14, 1995) as 41,085 metric tons (mt). The directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA was closed under § 672.20(c)(2)(ii) on March 22, 1995, in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (60 FR 15521, March 24, 1995). NMFS has determined that as of August 8, 1995, 4,313 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1995 TAC for Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. All other closures remain in full force and effect.

This action opens the directed fishery for Pacific cod by vessels catching Pacific cod with jig and pot gear for processing by the inshore component in the Central Regulatory Area of the GOA. Directed fishing for groundfish with hook-and-line and trawl gear is currently prohibited (60 FR 26694, May 18, 1995; 60 FR 37600, July 21, 1995; 60 FR 37601, July 21, 1995).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 29, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–21948 Filed 8–30–95; 3:43 pm]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 082995A]

Groundfish of the Gulf of Alaska; Trawling in the Western Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment closing the season for all groundfish by vessels using trawl gear, except fishing for pollock by vessels using pelagic trawl gear, in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent overfishing of Pacific ocean perch (POP).

DATES: Effective 12 noon, Alaska local time (A.l.t.), September 1, 1995, until 12 midnight, A.l.t., December 31, 1995. Comments must be received no later than 4:30 p.m., A.l.t., September 18, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn. Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The Magnuson Act requires that conservation and management measures prevent overfishing. The 1995 overfishing level for POP in the Western Regulatory Area of the GOA is established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 1,482 metric tons (mt). The directed fishery for POP closed in the Western Regulatory Area on July 20, 1995 (60 FR 37601, July 21, 1995). As of July 29, 1995, 1,420 mt of POP have been caught.

Substantial trawl fishing effort will be directed at remaining amounts of groundfish in the GOA during 1995. These fisheries can have significant catches of POP.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.22(a)(1)(i) and (a)(4), that closing the season by prohibiting directed fishing for all groundfish by vessels using trawl gear, except fishing for pollock by vessels using pelagic trawl gear, in the Western Regulatory Area of the GOA is necessary to prevent overfishing of POP and is the least restrictive measure to achieve that purpose. Without this prohibition of directed fishing, significant incidental catch of POP would occur by trawl vessels.

Therefore, NMFS is closing the season for all groundfish by vessels using trawl gear, except fishing for pollock by vessels using pelagic trawl gear, in the Western Regulatory Area of the GOA.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, POP in the Western Regulatory Area of the GOA will be overfished, jeopardizing the long-term capacity of that stock. Under § 672.22(c)(2), interested persons are invited to submit written comments on this action until September 18, 1995 (see **ADDRESSES**).

Classification

This action is taken under § 672.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 29, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–21863 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 171
Tuesday, September 5, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–95–017]

RIN 2115–AE47

Drawbridge Operation Regulation; Sabine River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Kansas City Southern Railway Company, the Coast Guard is proposing a change to the regulation governing the operation of the swing span railroad bridge over the Sabine River, mile 36.2 near Ruliff, Texas, by permitting the draw to remain closed to navigation at all times. The draw presently opens on call with 24 hours advance notice, however, there is no significant navigation on the waterway and there have been no requests to open the bridge for passage of marine traffic for over 44 years with the exception of a single request made in 1995.

DATES: Comments must be received on or before November 6, 1995.

ADDRESSES: Comments should be mailed to Commander(ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396 or may be delivered to Room 1313 at the same address between 8 a.m. and 3:30 p.m., Monday through Friday except Federal holidays. The comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments: Interested parties are invited to participate in the rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give the reason for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. John Wachter at the address under "**ADDRESSES**." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information. The drafters of this regulation are Mr. John Wachter, Project Officer and Lieutenant Elisa Holland, Project Attorney.

Background and Purpose: Upon request by the bridge owner, the Coast Guard is proposing to permit the draw of the swing span railroad bridge over the Sabine River, mil. 36.2, near Ruliff, TX to remain permanently closed. Navigation requiring openings is nonexistent and the bridge has not been opened for passage of navigation for 44 years.

Discussion of Proposed Rules

There is no commercial navigation on the waterway in the vicinity of the bridge crossing. Vertical clearance of the bridge in the closed position is 4 feet above mean high water and 18 feet above low water. The occasional small recreational boat which uses the waterway can transit the bridge without requiring an opening. The single request in 1995 was made for a boat that was constructed upstream of the bridge over a period of several years. The private individual that constructed the vessel needed to move it to the mouth of the river for sale to a prospective buyer. The bridges were opened to pass this vessel. There are no known similar projects planned. This bridge is on the KCS Main Line from Kansas City, Missouri to Beaumont and Houston, Texas and also forms an integral part of Union Pacific Railroad's transcontinental line from Los Angeles to New Orleans. This line carries over 30 million gross tons of freight each year. There is also a fiber optic cable mounted to the bridge which serves as part of a nationwide communications link. Permitting the permanent closure of the draw would result in a significant savings in maintenance costs and avoidance of an exorbitant cost of removing the cable with no adverse effect on navigational traffic.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040); February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) government jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the need of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information: This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Implications: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment: The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.493 is revised to read as follows:

§ 117.493 Sabine River.

(a) The draw of the Southern Pacific railroad bridge, mile 19.3 near Echo, shall open on signal if at least 24 hours notice is given.

(b) The draw of the Kansas City Southern Railway bridge, mile 36.2 near Ruliff and the draw of the S12 bridge, mile 40.8, at Starks, need not be opened for the passage of vessels.

Dated: August 16, 1995.

R.C. North,

Read Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–21963 Filed 9–1–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–71–1–6960b; FRL–5269–6]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 14, 1994, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the North Carolina State Implementation Plan (SIP). This revision is the adoption of an amendment to an existing air quality rule that was the subject of public hearings held on March 28 and 30, 1994. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 5, 1995.

ADDRESSES: Written comments on this action should be addressed to Mr. Randy Terry at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 443, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

North Carolina Department of Environmental, Health, and Natural Resources, Division of Environmental Management, Raleigh, North Carolina 27626–0535.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides, and Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4212.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 25, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–20597 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[AK–8–1–6733b; FRL–5286–9]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Oregon for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by October 5, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below.

Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The Alaska Department of Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: David J. Dellarco, Air and Radiation Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: August 15, 1995.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 95–21876 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OR–31–1–5932b; FRL–5283–5]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Oregon for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate, found in Section 507 of the Clean Air Act. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by October 5, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

Oregon Department of Environmental Quality, Air Quality Division, 811 SW Sixth Avenue, Portland, Oregon, 97204.

FOR FURTHER INFORMATION CONTACT: David Dellarco, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: August 8, 1995.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 95–21885 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[WV31–1–7063b; FRL–5279–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia: Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing the requirements for determining conformity of general federal actions to applicable air quality implementation plans (General Conformity). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 5, 1995.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mail Code [illegible], U.S. Environmental Protection Agency, Region III, 841 C[illegible] Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597–3164, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (West Virginia General Conformity Rule) which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Carbon monoxide; Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 19, 1995.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 95–21882 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[KY-95-01-FRL-5290-4]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Kentucky Natural Resources and Environmental Protection Cabinet

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes source category-limited interim approval of the operating permits program submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 5, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of Kentucky's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location:

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 347–3555, Ext. 4149.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the state's submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional material. EPA received Kentucky's title V operating permit program submittal on January 18, 1994. The Commonwealth provided EPA with additional material in supplemental submittals dated November 15, 1994, April 14, 1995, May 3, 1995, and May 22, 1995. Because these supplements materially changed the Commonwealth's title V program submittal, EPA has extended the review period and will work expeditiously to promulgate a final decision on Kentucky's program.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to two years. Where a state requests source category-limited interim approval and demonstrates compelling reasons in support thereof, the EPA may also grant such an interim approval. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed source category-limited interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the Commonwealth of Kentucky would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the Commonwealth of Kentucky. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if the Commonwealth of Kentucky failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the Commonwealth of Kentucky then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the Commonwealth of Kentucky had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the Commonwealth of Kentucky, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the Commonwealth of Kentucky had come into compliance. In any case, if, six months after application of the first sanction, Kentucky still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove Kentucky's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Kentucky had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the Commonwealth of Kentucky, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the Commonwealth of Kentucky had come into compliance. In all cases, if, six months after EPA applied the first sanction, Kentucky had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Kentucky has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to Kentucky's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the Commonwealth of Kentucky upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

The Commonwealth of Kentucky has requested source category-limited interim approval of its part 70 operating permits program. EPA has concluded that the operating permit program submitted by Kentucky substantially meets the requirements of title V and part 70, and proposes to grant source category-limited interim approval to the program. For detailed information on the analysis of Kentucky's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Support Materials

Pursuant to section 502(d) of the Clean Air Act as amended (1990 Amendments), the Governor of each state must develop and submit to the Administrator an operating permits program under state or local law or under an interstate compact meeting the requirements of title V of the Act. Kentucky submitted, under the signature of Governor Brereton C. Jones, the operating permits program, prepared by the NREPC, to be implemented in all areas of the Commonwealth of Kentucky, except Jefferson County. Kentucky has requested that the EPA approve its operating permit program as a source category-limited interim program for a period of two years.

The Kentucky Federal Operating Permits program description, Section II of the submittal, addresses 40 CFR 70.4(b)(1) by describing how the NREPC intends to carry out its responsibilities under the part 70 regulations. This program description has been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the attorney general (or the attorney for the state air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The Commissioner of the Department of Law, who qualifies as independent legal counsel for the Kentucky Natural Resources and Environmental Protection Cabinet, submitted such an opinion in Section IV of the submittal, demonstrating adequate legal authority as required by Federal law and regulation for interim approval.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the implementation of the permit program. Section V of the NREPC submittal includes the permit application form with instructions, and Section 4 of the Title V Addendum includes a model permit. It has been determined that the application forms and model permit substantially meet the requirements of 40 CFR 70.5(c).

2. Regulations and Program Implementation

The Commonwealth of Kentucky has submitted Rule 401 KAR 50:034, "Permit Application Form", Rule 401 KAR 50:035, "Permits," and Rule 401 KAR 50:038, "Air Emissions Fee," for implementing the Kentucky part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption is included in Sections 1 and 4 of Kentucky's Title V Plan Addendum. Copies of all applicable Commonwealth statutes and regulations which authorize the part 70 program, including those governing Commonwealth administrative procedures, were submitted with Kentucky's program.

The Kentucky program, in Rule 401 KAR 50:035 Section 2, substantially meets the requirements of 40 CFR 70.2 and 70.3 with regard to applicability. However, Kentucky's definitions of "emissions unit", and "stationary source" do not include emissions of any pollutant listed under section 112(b) of the Act. Therefore, Kentucky's program does not require emissions of all hazardous air pollutants (HAP) listed pursuant to section 112(b) to be counted for major source applicability. The pollutants listed in section 112(b) are not considered regulated air pollutants until addressed by an applicable requirement, such as a maximum achievable control technology (MACT) standard; therefore, this omission in Kentucky's definitions prevents issuance of permits to sources that emit section 112(b) pollutants which are not yet covered by an applicable requirement. In addition, Kentucky's definition of "regulated air pollutant" found in 401 KAR 50:035, Section 1(28)(a)4., omits the phrase in the part 70 definition of regulated air pollutant "* * * or other requirements established under Section 112 of the Act,* * *"; therefore, Kentucky's program does not require permits for all major sources. Since these omissions in Kentucky's definitions could cause certain part 70 major sources to be exempted from the permit process, Kentucky's program is eligible for receiving source category-limited interim approval (SCL).

Section 503(c) of the Act requires that permitting authorities, including those implementing an interim program, establish a schedule for issuing the permits subject to the program such that "at least one-third of such permits will be acted on by such authority annually over a period not to exceed 3 years after such effective date." By rulemaking, the EPA spelled out an option by which it can make SCL interim approval. Thus, although the State is required to issue permits within 3 years to all sources subject to the interim approval, some sources will not be subject to the requirement to obtain a permit until full approval is granted. Because those part 70 sources not addressed until the full approval are also subject to the 3-year phase-in required by section 503(c), completion of the initial permitting of all part 70 sources might not be completed until as late as 5 years after the granting of interim approval.

Kentucky submitted a request dated May 22, 1995, for the EPA to grant SCL interim approval of its part 70 operating permit program. The EPA policy memo from John Seitz, Director of the Office of Air Quality Planning and Standards dated August 2, 1993, entitled "Interim Title V Program Approvals" establishes the criteria for granting interim approvals. EPA can grant SCL interim approval to states whose programs do not provide for permitting all required sources if the state makes a showing that two criteria were met: (1) That there were "compelling reasons" for the exclusions and (2) that all required sources will be permitted on a schedule that "substantially meets" the requirements of part 70.

EPA considers the omissions in Kentucky's definitions of "emissions unit", "stationary source", and "regulated air pollutant", as compelling reasons for granting SCL interim approval. Kentucky's SCL interim approval request included a revised transition schedule that demonstrates the Commonwealth will permit at least 60% of its sources and at least 80% of its emissions during the first three years. The revised transition plan demonstrates that all part 70 sources will be permitted on a schedule that substantially meets the requirements of part 70.

The EPA is therefore proposing to grant Kentucky SCL interim approval.

SCL interim approval will allow Kentucky to implement the revised transition schedule to permit all part 70 sources during the transition period after the permit regulations have been revised. Revision of the aforementioned definitions is a condition of full program approval.

Kentucky's program meets the following requirements set out in EPA's part 70 operating permits program review. These requirements are addressed in Kentucky's Rule 401 KAR 50:035 as follows: (A) Permit applications (40 CFR 70.5), Section 3; (B) Provisions for permit content (40 CFR 70.6), Section 4; (C) Operational flexibility provisions (40 CFR 70.4(b)(12)), Sections 4 and 6; (D) Provisions for permit renewals, reopenings, and public participation (40 CFR 70.7), Sections 5, 6, and 7; (E) Permit review by EPA and affected states (40 CFR 70.8), Sections 8 and 9. The Kentucky Revised Statutes, Chapter 224, satisfy the requirements of 40 CFR 70.11 for enforcement authority. The Kentucky program substantially meets the requirements of 40 CFR 70.7 with regard to permit issuance and revisions. Rule 401 KAR 50:035 Section 5(2)(a) allows for the incorporation of a preconstruction permit into the title V permit as an administrative amendment. Section 1(3)(e) defines administrative amendment as a revision to a permit that incorporates into the part 70 permit requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those that would be applicable to the change if it were subject to review as a permit revision (i.e., requirements of 40 CFR 70.7 and 70.8). Even though Section 5(2)(a) details the actual procedural requirements necessary to incorporate preconstruction permits into part 70 permits, it does not provide for EPA review consistent with 40 CFR 70.8. For full approval of the Commonwealth's program, Kentucky would need to revise Rule 401 KAR 50:035 Section 5(2)(a) to provide for EPA review consistent with 40 CFR 70.8.

Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state must request and EPA may approve as part of that state's program any activity or emission level that the state wishes to consider insignificant.

Kentucky establishes criteria for insignificant activities in Rule 401 KAR 50:035, Subsection 2(3); however, these criteria require that all activities be included in the application. By requiring description in the application, Kentucky's rule nullifies the effect of allowing for insignificant activities as contemplated by the part 70 rule, which would allow no or minimal description in the application. Since part 70 does not require a State to establish provisions for insignificant activities, this does not create a program approval issue. However, Kentucky has indicated to EPA that it plans to revise these provisions to take advantage of the flexibility allowed by Part 70. EPA will evaluate such revisions when they are submitted.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations. Rule 401 KAR 50:035, Subsection 4(1)(c)3.b. states that Kentucky will define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements.

Subsection 2(6) of Kentucky's general compliance requirements regulation, Rule 401 KAR 50:055, provides the Commonwealth the authority to grant individual variances for opacity standards for emissions from a stack or a control device. The Commonwealth provides that it will grant this variance upon a demonstration by the owner or operator that the affected facility and associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests. The EPA regards this provision as wholly external to the program submitted for approval under Part 70, and consequently proposes to take no action on these provisions of Commonwealth law in this rulemaking. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. In other words, a variance does not affect the title V source until the title V permit is modified pursuant to the procedures in part 70. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a Part 70 permit in a manner inconsistent with Part 70 procedures. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with. the applicable requirements on which it is based."

The complete Kentucky operating permits program submittal and the TSD are available for review for more detailed information. The TSD contains the detailed analysis of Kentucky's program and describes the manner in which Kentucky's program meets all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (Consumer Price Index (CPI) adjusted from 1989). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum."

Kentucky has opted to adopt an approach similar to the "presumptive minimum" of $25/ton (annually adjusted by the CPI) approach. Emission fees will be collected from all sources subject to title V for actual emissions of each regulated pollutant, except carbon monoxide. Also, fees will be assessed on the first 4,000 tons per regulated pollutant per facility. A minimum fee of $150 is assessed for sources emitting less than 25 tons per year.

A unique feature of the Kentucky emission fee is that the amount of fee to be collected is established in regulation. Kentucky Rule 401 KAR 50:038 provides for the collection of $6,594,700 during state fiscal year 1995–96. It further provides the authority to collect an amount during each subsequent fiscal year, increased in direct proportion to the CPI if needed to fund the program. While this guarantees that Kentucky will continue to have the funds necessary to operate the title V program at a level at least equal to the 1995–96 level, it does not guarantee that the cost per ton of emissions will increase at a rate equal to the CPI.

For 1995–96, Kentucky estimates the total billable emissions to be 211,919 tons. Based upon that estimate, the average cost per ton for all sources, including any non-major sources subject to the title V program, in 1995–96 will be $31.19 per ton. If the fee was collected only from major sources, the estimated cost per ton would be $34.32 per ton. Kentucky has demonstrated that the fees collected will be sufficient to administer the program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation. Kentucky has demonstrated in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements. This legal authority is contained in Kentucky's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. Kentucky has further supplemented its broad legal authority with a commitment to "take action, following promulgation by EPA of regulations implementing section 112 of Title III of the Clean Air Act to either incorporate such new or revised provisions by reference into Kentucky rules or submit Kentucky-drafted rules, for EPA approval, to implement these provisions." EPA has determined that this commitment, in conjunction with Kentucky's broad statutory and regulatory authority, adequately assures compliance with all section 112 requirements. EPA regards this commitment as an acknowledgement by Kentucky of its obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that Kentucky is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this proposed interim approval.

b. Implementation of Section 112(g) Upon Program Approval. EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Kentucky must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Commonwealth regulations.

EPA is aware that Kentucky lacks a program designed specifically to implement section 112(g). However, Kentucky does have a preconstruction review program within its permits rule that can serve as an adequate implementation vehicle during the defined transition period because it would allow the Commonwealth to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of Kentucky's preconstruction review program found in Rule 401 KAR 50:035, under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a Commonwealth rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until Commonwealth regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the Commonwealth to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the Commonwealth's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the Commonwealth's program for receiving delegation of future section 112 standards that are unchanged from the Federal standards as promulgated. In addition, EPA proposes delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[1]

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[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Kentucky has informed EPA that it intends to accept delegation of section 112 standards through adoption by reference. The details of the Commonwealth's use of these delegation mechanisms are set forth in a letter dated April 14, 1995, submitted by Kentucky as a title V program addendum.

d. Commitment to implement Title IV of the Act. The Commonwealth of Kentucky developed acid rain permit regulations as Rule 401 KAR 50:072, which was submitted to EPA on April 19, 1995, as part of the operating permits program. The Commonwealth also submitted standard acid rain permit application forms which will be revised as updated forms are provided by the EPA. These rules and permit application forms meet the requirements of the acid rain program.

B. Proposed Actions

1. Source Category-Limited Interim Approval

The EPA is proposing to grant SCL interim approval to the operating permit program submitted by Kentucky on December 27, 1993, and as supplemented on November 15, 1994, April 14, 1995, May 3, 1995, and May 22, 1995. If this approval is promulgated, the State must make the following changes to receive full approval: (1) Revise the definitions of "emissions unit" and "stationary source" to include emissions of any pollutant listed under section 112(b) of the Act; (2) revise the definition of "regulated air pollutant" to include any pollutant subject to any requirements established under section 112 of the Act; and (3) revise Rule 401 KAR 50:035 section 5(2)(a) to provide for EPA review consistent with 40 CFR 70.8. in order to allow for requirements from preconstruction review permits to be incorporated into part 70 permits via administrative amendments.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the Commonwealth is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the Commonwealth. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

2. Program for Straight Delegation of Section 112 Standards

As discussed above in section II.A.4.c, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the Commonwealth's program for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated. Additionally, EPA is proposing to delegate existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the Commonwealth's submittal and other information relied upon for the proposed interim approval are contained in docket number KY–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by October 5, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 22, 1995.

Patrick M. Tobin,
Acting Regional Administrator.

[FR Doc. 95–21938 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 372

[OPPTS–400096; FRL–4970–5]

Diethyl Phthalate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is granting a petition by proposing to delete diethyl phthalate (DEP) from the list of chemicals subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). Specifically, EPA is proposing to delete DEP because the Agency has preliminarily concluded that it meets the deletion criteria of EPCRA section 313(d)(3).

DATES: Written comments on this proposed rule must be received by EPA on or before November 6, 1995.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Nonconfidential Information Center (NCIC), (7407), Environmental Protection Agency, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number for this proposal, OPPTS–400096.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–400096. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VI. of this document.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202–260–9592, e-mail: doa.maria@epamail.epa.gov, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. DEP was included in the initial list of chemicals and chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (November 30, 1994; 59 FR 61439).

II. Description of Petition and General Information

On February 7, 1995, the Fragrance Materials Association petitioned the Agency to delete DEP (Chemical Abstract Service (CAS) No. 84–66–2) from the EPCRA section 313 list of toxic chemicals. The petitioner contends that DEP, which is mainly used as a plasticizer, should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria.

DEP is listed on several environmental statutory lists other than EPCRA. It is on the list of hazardous substances (40 CFR 302.4) under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601–9675) with a reportable quantity of 1,000 pounds and is listed under section 3001 of the Resource Conservation and Recovery Act (42 U.S.C. 6921). In addition, DEP is a priority water pollutant under section 307(a) of the Clean Water Act (33 U.S.C. 1317).

III. EPA's Technical Review of DEP

The technical review of the petition to delete DEP includes an analysis of production, release, health and environmental effects, and exposure and fate (Refs. 1, 2, 3, 4, and 5).

A. Chemistry.

DEP has low volatility (boiling point: 295 °C; vapor pressure: 0.00165 torr), and high water solubility (1 gram/liter (g/L)).

B. Toxicological Evaluation

1. *Absorption and metabolism.* There is evidence from a toxicity study that DEP is absorbed from the gastrointestinal tract. There are no data on lung absorption of DEP following inhalation. A dermal absorption study using rats indicated that 50 percent of the dermal dose was absorbed in 7 days. *In vitro* studies indicate that the major metabolite of DEP is the monoester.

2. *Acute toxicity.* DEP has low acute toxicity. The oral median lethal dose (LD_{50}) in rabbits is 1 gram/kilogram (g/kg); intraperitoneal LD_{50} values in rats and mice are greater than 5.6 and 2.8 g/kg, respectively.

3. *Carcinogenicity.* There is insufficient evidence to reasonably anticipate that DEP would cause cancer in humans. In a National Toxicology Program dermal bioassay, there was no evidence of carcinogenicity in male and female rats. However, there were increased incidences of hepatocellular adenomas (benign tumors) in male and female mice. These findings were considered equivocal because: (1) The incidence of hepatocellular neoplasms in control and dosed males was within the historical range; and (2) in the females, there was no clear dose-response relationship. In an initiation-promotion study, there was no evidence of initiating activity of DEP in male mice.

4. *Mutagenicity.* The overall weight of evidence from several mutagenicity assays indicates that DEP is not of concern for mutagenicity. DEP did not induce gene mutations in prokaryotes or chromosome mutations in mammalian cells in culture. The only positive mutagenicity data are for DNA effects (sister chromatid exchanges) in mammalian cells in culture.

5. *Systemic toxicity.* Based on subchronic and chronic feeding studies in rats, DEP has low systemic toxicity. Body weight loss was the primary effect in all available studies and it was seen only at the highest dose, 5 percent of the diet or approximately 3,160 milligrams/kilogram/day (mg/kg/day). The no-observed-adverse-effect-level (NOAEL) was 750 mg/kg/day.

6. *Developmental/reproductive toxicity.* The available animal data indicate that DEP does cause developmental effects, but only at high doses (greater than 3,000 mg/kg/day). The reproductive effects seen in

animals, also at high doses, were not biologically significant.

Supernumerary ribs were noted in the offspring of rats fed DEP in the diet at 5 percent concentration (about 3,210 mg/kg/day). The NOAEL for developmental toxicity was 2.5 percent of the diet (about 1,910 mg/kg/day), and the NOAEL for maternal toxicity was about 0.25 percent of the diet (about 200 mg/kg/day). In another study, supernumerary ribs and other skeletal abnormalities were noted in rats administered 568, 1,136, and 1,793 mg/kg of DEP intraperitoneally on gestation days 5, 10, and 15. This study is limited, however, because the animals were not dosed throughout gestation.

In a reproduction study in mice, dietary administration of DEP at 2.5 percent of the diet (approximately 3,750 mg/kg/day) produced decreases in sperm concentration and body weight, and increases in prostate weight in the F$_1$ generation. There was no biologically significant impairment of fertility or development after fertilization. Therefore, the highest dose tested, 2.5 percent of the diet, was considered as the NOAEL for reproductive effects.

7. *Neurotoxicity*. There are no data to support a concern for neurotoxicity.

8. *Environmental effects*. DEP does not pose a significant environmental hazard. It exhibits low toxicity to aquatic organisms and it is not likely to bioconcentrate. The fish 96–hr median lethal concentration (LC$_{50}$) values range from 12 to 110 milligrams/liter (mg/l). Daphnid 48-hr LC$_{50}$ values range from 50 to 90 mg/l, and algae 96–hr median effective concentration (EC$_{50}$) values range from 30 to 86 mg/l. The bioconcentration factor (BCF) in fish is 117, which indicates low bioconcentration potential. In the environment, DEP will undergo hydrolysis to the monoester, which is less toxic than DEP to aquatic organisms.

C. Production, Use and Release

DEP is produced by refluxing one equivalent of phthalic anhydride with a greater than two-fold excess of ethanol in the presence of one percent of concentrated sulfuric acid. The U. S. production volume in 1989 was 11 million kilograms (24.2 million pounds) with an estimated annual import volume of 100,000 kilograms (220,000 pounds). The primary use of DEP (90 percent consumption) is as a plasticizer for cellulose-based products used in making recording tapes, photographic films, food wrap, and molded and extruded plastic articles. It is also used as a carrier or fixative in cosmetics in concentrations ranging from 0.1 percent to 50 percent. In addition, DEP is also used in solvents, varnishes, dyes, coating agents for foodstuffs, and insect repellents.

The Toxic Release Inventory (TRI) data indicate that during 1993 a total of 159,386 pounds of DEP were released to the environment. Of that total, 93,471 pounds were released to air, 260 pounds were released to water, and 505 pounds were released to land. In addition, a total of 851,894 pounds of DEP were transferred to various off-site locations. Of that total, 302,115 pounds were transferred to public owned treatment works (POTWs) prior to being discharged to surface waters.

D. Exposure and Fate Analysis

The two principal and relevant fate processes for DEP in the environment are reaction with photochemically-generated hydroxyl radicals in the atmosphere and aerobic biodegradation in soil and water. A half-life of 22.2 hours at 25 °C was estimated from reaction of DEP vapor with photochemically-generated hydroxyl radicals. When DEP is aerobically biodegraded in a semicontinuous activated sludge system (SCAS), greater than 95 percent was degraded in 24 hours. In a screening test, a half-life of 2.2 days was measured when DEP is incubated with a mixed microbial population. Removal of DEP by anaerobic biodegradation, oxidation, chemical hydrolysis, and direct photolysis, as well as, from volatilization and bioaccumulation in aquatic organisms should not be significant.

Because DEP has low chronic mammalian toxicity, the Agency conducted an exposure assessment for chronic human exposure. Nationwide releases to air and surface water retrieved from the TRI data base were modeled using TRIAIR and TRIWATER models.

Based on 1992 TRI data, the highest estimated DEP air concentration to which people are expected to be exposed is 3.5 micrograms/cubic meter (ug/m^3); about 129 people live in the area in which this concentration is expected to occur. The Lifetime Average Daily Potential Dose (LADD$_{pot}$) calculated based on the estimated atmospheric concentrations is 0.001 mg/kg/day. Based on 1992 data, the highest estimated DEP acute concentration at five drinking water utility intakes under low flow conditions is about 2 parts per billion (ppb); this results in a LADD$_{pot}$ of about 4.5-6.5 x 10^{-5} mg/kg/day; about 40,160 people are potentially exposed at this level. The highest estimated DEP chronic concentration at five drinking water utility intakes under medium flow conditions is about 0.3 ppb; this results in a LADD$_{pot}$ of about 1 x 10^{-5} mg/kg/day; about 40,160 people are potentially exposed at this level.

The above estimated doses are well below the Agency's reference dose (RfD) of 0.8 mg/kg/day that is considered significantly protective of human health. This observation further suggests that the exposure estimates are not likely to result in adverse health risks in humans from acute or chronic exposure to DEP from the atmosphere or from drinking water as a result of continuous or frequently, recurring releases from facility sites.

E. Summary of EPA's Assessment

EPA's toxicological evaluation of the current data on DEP indicates that it exhibits acute, systemic, and developmental and reproductive toxicities only at relatively high doses. Furthermore, DEP exhibits low toxicity to aquatic organisms, and is not likely to bioconcentrate. Releases of DEP will not result in exposures of concern for adverse human health risks. Based on the total weight of available data, DEP cannot reasonably be anticipated to cause a significant adverse effect on human health or the environment.

F. Rationale for Granting

EPA is granting the petition by proposing to delete DEP from the EPCRA section 313 list. Based on current data, EPA preliminarily concludes that DEP does not meet the toxicity criteria of EPCRA section 313(d)(2)(A) because DEP exhibits acute oral toxicity only at levels that greatly exceed estimated resultant exposures. Specifically, DEP cannot reasonably be anticipated to cause "... significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases."

EPA has preliminarily concluded that there is not sufficient evidence to establish that DEP meets the criterion of EPCRA section 313(d)(2)(B), because it cannot reasonably be anticipated to cause teratogenic effects, immunotoxicity, neurotoxicity, or liver or kidney toxicity, and it cannot be anticipated to cause reproductive or developmental toxicity except at relatively high dose levels. EPA believes that DEP has low chronic toxicity and accordingly has considered exposure factors. As stated above, EPA believes that anticipated exposure concentrations of DEP are not expected to result in significant adverse effects. Therefore, EPA has preliminarily

concluded that DEP does not meet the EPCRA section 313(d)(2)(B) listing criterion.

EPA has also preliminarily determined that DEP does not meet the toxicity criterion of EPCRA section 313(d)(2)(C) because it cannot reasonably be anticipated to cause adverse effects on the environment of sufficient seriousness to warrant continued reporting.

Thus, in accordance with EPCRA section 313(d)(3), EPA is proposing to delete DEP from the section 313 list of toxic chemicals.

IV. Request for Public Comment

EPA requests public comment on this proposal to delete DEP from the list of chemicals subject to EPCRA section 313. Comments should be submitted to the address listed under the ADDRESSES unit. All comments must be received by EPA on or before [Insert date 60 days after date of publication in the **Federal Register**].

V. Rulemaking Record

A record has been established for this proposal under docket number "OPPTS–400096" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this proposal, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulmaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

VI. References

(1) USEPA, OPPTS. 1995. Chemistry Report on Diethyl Phthalate by Stephen C. DeVito, Industrial Chemistry Branch, Economics, Exposure, and Technology Division. Office of Pollution Prevention and Toxics. (May 8, 1995).

(2) USEPA, OPPTS. 1995. Economic Analysis of the Proposed Deletion of Diethyl Phthalate from the EPCRA Section 313 List of Toxic Chemicals by Fred Arnold, Regulatory Impacts Branch, Economics, Exposure, and Technology Division, Office of Pollution Prevention and Toxics. (April 5, 1995).

(3) USEPA, OPPTS. 1995. Memorandum from Lorraine M. Randecker, Hazard Integrator, Chemical Screening and Risk Assessment Division, with attachments, re: Petition to Delist Diethyl Phthalate. (April 24, 1995).

(4) USEPA, OPPTS. 1995. Engineering Report for the Proposed Delisting of Diethyl Phthalate from the EPCRA Section 313 List of Toxic Chemicals by Monica Sweet, Chemical Engineering Branch, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics. (April 3, 1995).

(5) USEPA, OPPTS. 1995. Memorandum from Andrew Mamantov, Exposure Assessment Branch, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics, with attachments, re: Diethyl Phthalate (DEP) Delisting Petition Fate and Exposure Assessment. (June 15, 1995).

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and therefore not subject to OMB review.

EPA estimated that the delisting of DEP from the EPCRA section 313 toxic chemical list would result in a total annual cost savings to industry of $124,200. The cost savings to EPA are estimated at $3,000.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the proposed rule. Because this proposed rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local, or tribal governments, and the private sector. This action does not result in the expenditure of $100 million or more by any State, local, or tribal governments, or by anyone in the private sector. The costs associated with this action are described in the Executive Order 12866 unit above.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: August 27, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 372 be amended to read as follows:

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by removing the entire entry for diethyl phthalate under paragraph (a) and removing the entire CAS No. entry for 86–66–2 under paragraph (b).

[FR Doc. 95–21943 Filed 9–1–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7149]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the

floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Illinois	Aurora (City) Kane and DuPage Counties.	Blackberry Creek	At Jericho Road	*665	*666
			Approximately 0.8 mile upstream of confluence of Blackberry Creek Tributary A.	None	*676
		Blackberry Creek Tributary A.	At confluence with Blackberry Creek	None	*674
			Approximately 0.4 mile upstream of Indian Trail Road.	None	*674
		Blackberry Creek Tributary H.	Approximately 0.7 mile downstream of Prairie Street.	None	*666
			At Galena Boulevard	None	*673

Maps available for inspection at the Planning Department, City Hall, 44 East Downer Place, Aurora, Illinois.

Send comments to The Honorable David Pierce, Mayor of the City of Aurora, 44 East Downer Place, Aurora, Illinois 60507–2067.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Illinois	Kane County (Unincorporated Areas).	Blackberry Creek	At State Route 30	*659	*661
			At downstream side of State Route 38	None	*846
		Blackberry Creek Tributary A.	Approximately 2,450 feet downstream of Indian Trail Road.	*673	*674
			At East-West Tollway	*678	*679
		Blackberry Creek Tributary B.	At confluence with Blackberry Creek	*675	*679
			Approximately 0.6 mile upstream of Seavey Road.	*696	*698
		Blackberry Creek Tributary C.	At confluence with Blackberry Creek	*706	*707
			Approximately 1.7 miles upstream of Seavey Road.	*721	*723
		Blackberry Creek Tributary D.	At confluence with Blackberry Creek	*739	*740
			At Keslinger Road	*807	*810
		Blackberry Creek Tributary E.	At Hankes Road	*678	*680
			Approximately 4,400 feet upstream of Winthrop Drive.	None	*688
		Blackberry Creek Tributary F.	At confluence with Blackberry Creek Tributary B.	*695	*698
			Approximately 210 feet upstream of Main Street.	None	*735
		Blackberry Creek Tributary G.	Approximately 150 feet downstream of State Route 30.	None	*657
			Approximately 1,650 feet downstream of Jericho Road.	*663	*664
		Blackberry Creek Tributary H.	At confluence with Blackberry Creek	*665	*666
			Approximately 2,400 feet upstream of Burlington Northern Railway.	None	*670
		Bowes Creek	At the confluence with Stoney Creek	None	*793
			Approximately 200 feet upstream of Dittman Road.	None	*918
		Bowes Creek Tributary	At the confluence with Bowes Creek	None	*909
			Approximately 200 feet upstream of Dittman Road.	None	*914
		Ferson Creek	At Bolcum Road	*752	*753
			Approximately 75 feet upstream of State Route 64 (North Avenue).	None	*873
		Fitchie Creek	At the confluence with Otter Creek	None	*782
			Approximately 200 feet upstream of Russell Road.	None	*878
		Hampshire Creek	Approximately 1,225 feet downstream of confluence of Hampshire Creek Tributary.	None	*869
			Approximately 1,225 feet upstream of 500 Line Railroad.	None	*966
		Hampshire Creek Tributary	Approximately 345 feet downstream of Field Bridge.	*868	*874
			Approximately 100 feet upstream of Field Bridge.	*873	*874
		Hampshire Creek Tributary 1.	At the confluence with Hampshire Creek.	None	*898
			Approximately 725 feet upstream of Keyes Drive.	None	*904
		Hampshire Creek Tributary 2.	Approximately 100 feet upstream of the confluence with Hampshire Creek.	None	*907
			Approximately 70 feet upstream of Prairie Farm Road.	None	*980
		Hampshire Creek Tributary 3.	At the confluence with Hampshire Creek Tributary No. 2.	None	*963
			Approximately 1,280 feet upstream of confluence with Hampshire Creek Tributary No. 2.	None	*996
		Hampshire Creek Tributary 4.	At the confluence with Hampshire Creek.	None	*965
			Approximately 640 feet upstream of confluence with Hampshire Creek.	None	*967
		Mill Creek	Approximately 0.5 mile downstream of Kaneville Road.	*705	*704
			Approximately 250 feet upstream of State Route 64 (Wasco Road).	None	*823
		Mill Creek Tributary No. 2	At the confluence with Mill Creek Diversion Channel.	None	*792

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Approximately 0.4 mile upstream of confluence with Mill Creek Diversion Channel.	None	*793	
		Mill Creek	At the confluence with Mill Creek	None	*784
		Diverson Channel	Approximately 0.9 mile upstream of confluence with Mill Creek.	None	*796
		Otter Creek	At the confluence with Ferson Creek	None	*756
			Just downstream of Randall Road	None	*797
		Otter Creek Tributary	At the confluence with Otter Creek	None	*760
			Approximately 1.1 miles upstream of Falcons Trail.	None	*840
		Stoney Creek	At the confluence with Otter Creek	None	*773
			Approximately 1.0 mile upstream of Crawford Road.	None	*873

Maps available for inspection at the Government Center, 719 Batavia Avenue, Geneva, Illinois.

Send comments to Mr. Warren Kammerer, Jr., Chairman of the Kane County Board of Supervisors, Government Center, 719 Batavia Avenue, Geneva, Illinois 60134

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Indiana	La Porte County (unincorporated areas).	Pine Lake	Entire shoreline within county	None	*802

Maps available for inspection at the La Porte County Complex, 5th Floor, 822 East Lincoln Way, La Porte, Indiana.

Send comments to Mr. Michael Quinn, La Porte County Commissioner, 822 East Lincoln Way, La Porte, Indiana 46350.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Indiana	La Porte (City) La Porte County.	Pine Lake	Entire shoreline within community	None	*802
		Stone Lake	Entire shoreline within community	None	*802
		Lily Lake	Entire shoreline within community	None	*802
		Clear Lake	Entire shoreline within community	None	*802

Maps available for inspection at the City Engineer's Office, La Porte City Hall, 801 Michigan Avenue, La Porte, Indiana.

Send comments to The Honorable Elmo Gonzales, Mayor of the City of La Porte 801 Michigan Avenue, La Porte, Indiana 46350.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maine	Starks (Town) Somerset County	Kennebec River	At the confluence of Sandy River	None	*193
			Approximately 1.7 miles upstream of the confluence of Sandy River (upstream corporate limits)	None	*201
		Sandy River	At the confluence with Kennebec River	None	*193
			Approximately 2.5 miles upstream of Sandy River Dam.	None	*202
				None	

Maps available for inspection at the Starks Town Hall, R.R.1 Box 241, Starks, Maine.

Send comments to Ms. Anita Reichenbach, First Selectman for the Town of Starks, R.R.1 Box 241, Starks, Maine 04911.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Mississippi	Columbus (City) Lowndes County.	Moore Creek	Approximately 900 feet upstream of Willowbrook Road.	*176	*177
			At the upstream corporate limits of the City of Columbus.	*176	*180

Maps available for inspection at the City Hall, 523 Main Street, Columbus, Mississippi.

Send comments to The Honorable Jimmy Fannon, Mayor of the City of Columbus, P.O. Box 1408, Columbus, Mississippi 39703.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Mississippi	Lowndes County (Unincorporated Areas).	Moore Creek	At Columbus and Greenville Railway	*182	*181
			Approximately 250 feet upstream of Columbus and Greenville Railway.	*182	*181
		Ellis Creek Tributary	Approximately 3,400 feet upstream of the confluence with Ellis Creek.	*187	*188
			At Hildreth Road	*211	*206

Maps available for inspection at the Lowndes County Inspection Department, 17 Airline Road, Columbus, Mississippi.

Send comments to Mr. Johnny MacCrary, President of Lowndes County Board of Supervisors, P.O. Box 1364, Columbus, Mississippi 39703.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
North Carolina	Asheville (City) Buncombe County.	Bull Creek	At confluence with Swannanoa River	None	*2108
	xl	At Bull Creek Road	None	*2289	
		Beaverdam Creek	Approximately 500 feet downstream of Elkwood Avenue.	*2055	*2056
			At Governors Drive	None	*2259
		Sweeten Creek	At confluence with Swannanoa River	*1999	*1998
			Approximately 900 feet upstream of Rock Hill Road.	None	*2192
		Tributary No. 3 to Sweeten Creek.	At confluence with Sweeten Creek	None	*2018
			At Taft Street	None	*2136
		Ross Creek	At confluence with Swannanoa River	*2001	*2002
			At Howland Road	*2333	*2345
		Haw Creek	Approximately 0.1 mile upstream of confluence with Swannanoa River.	*2007	*2008
			At Mann Drive		
		Smith Mill Creek	Approximately 685 feet upstream of Southern Railway.	*1980	*1981
			Approximately 0.2 mile downstream of Johnston School Road.	*2161	*2162
		Swannanoa River	Approximately 1,425 feet downstream of U.S. 25 Viaduct.	*1991	*1992
			At U.S. Highway 70	*2059	*2060
		Tributary No. 1 to Sweeten Creek.	At confluence with Sweeten Creek	*2085	*2082
			Approximately 105 feet upstream of the confluence with Sweeten Creek.	*2085	*2082
		Hominy Creek	At 0.29 mile upstream of Sand Hill Road	*2055	*2056
			Approximately 0.75 mile upstream of Sand Hill Road.	*2057	*2058
		Moore Creek	Approximately 53 feet upstream of State Route 1241.	*2062	*2061
			Approximately 550 feet upstream of Interstate 40.	*2131	*2129

Maps available for inspection at the Planning Department, 70 Court Plaza, Asheville, North Carolina.

Send comments to The Honorable Russell M. Martin, Mayor of the City of Asheville, P.O. Box 7149, Asheville, North Carolina 28802–7148

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
North Carolina	Black Mountain (Town). Buncombe County.	Flat Creek	At confluence with Swannanoa River	*2359	*2358
			At downstream side of Cotton Avenue	*2404	*2403
		Swannanoa River	Approximately 200 feet upstream of confluence with North Fork Swannanoa River.	*2231	*2233
			Approximately 1,003 feet downstream of Old Toll Circle.	*2399	*2398

Maps available for inspection at the Building Inspector's Office, 106 Montreat Road, Black Mountain, North Carolina.

Send comments to The Honorable Carl Bartlett, Mayor of the Town of Black Mountain, 102 Montreat Road, Black Mountain, North Carolina 28711.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
North Carolina	Buncombe County (Unincorporated Areas).				
		Tributary to Beaverdam Creek.	At Hillcrest Road	None	*2098
			Approximately 800 feet upstream of Hillcrest Road.	None	*2107
		Hominy Creek	At Interstate Route 40	*2020	*2021
			At Luther Road	None	*2178
		Smith Mill Creek	At Johnston School Road	None	*2165
			Approximately 0.44 mile upstream of Johnston School Road.	None	*2205
		Newfound Creek	Approximately 1.0 mile downstream of State Road 63 (Leicester Highway).	None	*1968
			At Morgan Branch Road (State Route 1220).	None	*2155
		Moore Creek	Approximately 0.46 mile (2,428 feet) downstream of Interstate 40.	*2083	*2084
			At Monte Vista Road (State Route 1224)	*2200	*2202
		Swannanoa River	At U.S. Highway 70	*2059	*2060

<table>
<tr><th rowspan="2">State</th><th rowspan="2">City/town/county</th><th rowspan="2">Source of flooding</th><th rowspan="2">Location</th><th colspan="2">#Depth in feet above ground. *Elevation in feet (NGVD)</th></tr>
<tr><th>Existing</th><th>Modified</th></tr>
<tr><td></td><td></td><td></td><td>Approximately 0.8 mile upstream of County Road.</td><td>*2516</td><td>*2519</td></tr>
<tr><td></td><td></td><td>Bull Creek</td><td>Approximately 150 feet upstream of confluence with Swannanoa River.</td><td>None</td><td>*2108</td></tr>
<tr><td></td><td></td><td></td><td>At Bull Creek Road</td><td>None</td><td>*2289</td></tr>
<tr><td></td><td></td><td>McKinnish Branch</td><td>Upstream side of Cove Road</td><td>None</td><td>*2158</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 370 feet upstream of Cove Road.</td><td>None</td><td>*2165</td></tr>
<tr><td></td><td></td><td>Pole Creek</td><td>At confluence with Hominy Creek</td><td>*2085</td><td>*2086</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 330 feet downstream of U.S. Routes 19 and 23.</td><td>*2085</td><td>*2086</td></tr>
<tr><td colspan="6">Maps available for inspection at the Office of Emergency Management Services, 60 Courthouse Plaza, Asheville, North Carolina.
Send comments to Mr. Bill McElrath, Buncombe County Manager, 1 Oak Plaza, Asheville, North Carolina 28801.</td></tr>
<tr><td>North Carolina</td><td>Woodfin (Town) Buncombe County.</td><td>Beaverdam Creek</td><td>At confluence with French Broad River</td><td>*1942</td><td>*1941</td></tr>
<tr><td></td><td></td><td></td><td>Just downstream of U.S. Highway 19 and 23.</td><td>*2041</td><td>*2040</td></tr>
<tr><td></td><td></td><td>Tributary to Beaverdam Creek.</td><td>At confluence with Beaverdam Creek</td><td>*2048</td><td>*2049</td></tr>
<tr><td></td><td></td><td></td><td>At Hillcrest Road</td><td>*2095</td><td>*2098</td></tr>
<tr><td colspan="6">Maps available for inspection at the Town Administrator's Office, 90 Elk Mountain Road, Woodfin, North Carolina.
Send comments to The Honorable Steven R. Henderson, Mayor of the Town of Woodfin, 90 Elk Mountain Road, Woodfin, North Carolina 28804.</td></tr>
<tr><td>Ohio</td><td>Fairfield County (Unincorporated Areas).</td><td>Raccoon Run</td><td>At the upstream face of State Route 664.</td><td>*792</td><td>*791</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 400 feet upstream of Zion Road.</td><td>*807</td><td>*806</td></tr>
<tr><td colspan="6">Maps available for inspection at the Regional Planning Office, Fairfield County Courthouse, 210 East Main Street, Lancaster, Ohio.
Send comments to Ms. Judith K. Shupe, President of the Fairfield County Board of Commissioners, Fairfield County Courthouse, 210 East Main Street, Room 301, Lancaster, Ohio 43130.</td></tr>
<tr><td>Ohio</td><td>Kenton (City) Hardin County.</td><td>Scioto River</td><td>At County Road 175</td><td>*None</td><td>*959</td></tr>
<tr><td></td><td></td><td></td><td>At a point approximately 0.56 mile upstream of Leighton Street.</td><td>*None</td><td>*966</td></tr>
<tr><td colspan="6">Maps available for inspection at the Kenton City Hall, 111 West Franklin Street, Kenton, Ohio.
Send comments to The Honorable Clay Flinn, Mayor of the City of Kenton, 111 West Franklin Street, Kenton, Ohio 43326.</td></tr>
<tr><td>Pennsylvania</td><td>German (Township) Fayette County.</td><td>Monongahela River</td><td>At confluence of Antram Run</td><td>*790</td><td>*789</td></tr>
<tr><td></td><td></td><td></td><td>At upstream corporate limits</td><td>*None</td><td>*2798</td></tr>
<tr><td colspan="6">Maps available for inspection at the German Township Building, R.D. #1, Box 287, McClellandtown, Pennsylvania.
Send comments to Mr. Vincent Serra, Secretary of the German Township Board of Supervisors, R.D. #1, Box 287, McClellandtown, Pennsylvania 15458.</td></tr>
<tr><td>Pennsylvania</td><td>Smithfield (Township) Huntingdon County.</td><td>Juniata River</td><td>Approximately 2,650 feet above confluence of Raystown Branch Juniata River.</td><td>*614</td><td>*608</td></tr>
<tr><td></td><td></td><td></td><td>Upstream corporate limits</td><td>*642</td><td>*639</td></tr>
<tr><td></td><td></td><td>Crooked Creek</td><td>At confluence with Juniata River</td><td>*620</td><td>*619</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 0.71 mile upstream of confluence with Juniata River.</td><td>*620</td><td>*619</td></tr>
<tr><td colspan="6">Maps available for inspection at the Smithfield Township Building, 13th and Mt. Vernon Avenue, Huntingdon, Pennsylvania.
Send comments to Mr. Robert Kepner, Chairman of the Smithfield Township Board of Supervisors, Smithfield Township Building, 13th and Mt. Vernon Avenue, Huntingdon, Pennsylvania 16652.</td></tr>
<tr><td>Puerto Rico</td><td>Commonwealth</td><td>Espiritu Santo River</td><td>Approximately 0.65 kilometer upstream of the confluence with the Atlantic Ocean.</td><td>*2.1</td><td>*2.2</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 4.61 kilometers upstream of the confluence with the Atlantic Ocean.</td><td>*2.8</td><td>*6.9</td></tr>
</table>

<table>
<tr><th rowspan="2">State</th><th rowspan="2">City/town/county</th><th rowspan="2">Source of flooding</th><th rowspan="2">Location</th><th colspan="2">#Depth in feet above ground. *Elevation in feet (NGVD)</th></tr>
<tr><th>Existing</th><th>Modified</th></tr>
<tr><td></td><td></td><td>Rio Guanajibo</td><td>Approximately 1,200 meters downstream of Puerto Rico Highway 2.</td><td>*80.1</td><td>*80.0</td></tr>
<tr><td></td><td></td><td></td><td>Approximately 920 meters downstream of Puerto Rico Highway 368.</td><td>*None</td><td>$100.8</td></tr>
<tr><td colspan="6">/*/Elevation in meters (Mean Sea Level)
Maps available for inspection at the North Minillas Building, Dediezo Avenue, 22 Top, Santurce, Puerto Rico.
Send comments to Ms. Norma N. Burgos, Chairwoman of the Puerto Rico Planning Board, Minillas Station, P.O. Box 41119, San Juan, Puerto Rico 00940–1119.</td></tr>
<tr><td>Virginia</td><td>Smyth County (Unincorporated Areas).</td><td>Middle Fork Holston River.</td><td>North of Interstate 81 and southwest of the Town of Chilhowie corporate limits.</td><td>*None</td><td>*1944</td></tr>
<tr><td colspan="6">Maps available for inspection at the Smyth County Courthouse, Building Inspector's Department, 109 West Main, Marion, Virginia.
Send comments to Mr. Rhea B. Lawrence, Smyth County Board of Supervisors, P.O. Box 188, Marion, Virginia 24354.</td></tr>
</table>

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21921 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

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44 CFR Part 67

[Docket No. FEMA–7153]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) Existing	#Depth in feet above ground. *Elevation in feet. (NGVD) Modified
Kansas	Derby (City), Sedgwick County.	Spring Creek	Just upstream of State Highway 15	*1,251	*1,251
			At the confluence of Dry Creek	*1,266	*1,265
			Just downstream of Rock Road	None	*1,269
			Approximately 4,300 feet upstream of Rock Road, at the City of Derby corporate limits.	None	*1,275
		Dry Creek	Approximately 1,300 feet downstream of Meadowlark Road.	*1,283	*1,284
			Just downstream of Meadowlark Road	*1,287	*1,287
			Approximately 4,500 feet downstream of 63rd Street.	None	*1,296
			Just downstream of 63rd Street	None	*1,307

Maps are available for inspection at Derby City Hall, 611 North Mulberry, Derby, Kansas.

Send comments to The Honorable K.O. LaVergne, Mayor, City of Derby, 611 North Mulberry, Derby, Kansas 67037.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) Existing	#Depth in feet above ground. *Elevation in feet. (NGVD) Modified
Oklahoma	Pauls Valley (City), Garvin County.	Rush Creek	Approximately 2,700 feet downstream of the Gulf, Colorado and Santa Fe Railroad, at the extraterritorial limits.	*856	*856
			At U.S. Highway 77 (Chickasaw Avenue)	*873	*873
			Just downstream of South Paul Street	*878	*877
			Approximately 500 feet upstream of Interstate Highway 35.	*884	*886
			Approximately 1,800 feet upstream of Interstate Highway 35.	*885	*887
		Rush Creek (Area North of Levee).	On the projection of Leslie Avenue, between Rush Creek and the railroad.	*869	*869
			At intersection of Garvin Avenue and Chickasaw Street.	*871	*873
			At intersection of Grant Avenue and Pine Street.	None	*875
			At intersection of Agnew Avenue and Pine Street.	None	*878

Maps are available for inspection at City Hall, City of Pauls Valley, 220 West Paul Avenue, Pauls Valley, Oklahoma.

Send comments to The Honorable Kirk Dunham, Mayor, City of Pauls Valley, P.O. Box 778, Pauls Valley, Oklahoma 73075.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) Existing	#Depth in feet above ground. *Elevation in feet. (NGVD) Modified
Oklahoma	Stillwater (City), Payne County.	Boomer Creek	At confluence with Stillwater Creek	*857	*858
			Just upstream of East 19th Avenue (corporate limits).	*859	*859
			Approximately 500 feet upstream of East 12th Avenue.	*862	*863
			Approximately 950 feet downstream of South Perkins Road.	*865	*865
			At confluence of East and West Boomer Creeks.	*870	*866
		East Boomer Creek	At confluence with Boomer Creek	*870	*866
			Approximately 100 feet upstream of Virginia Avenue.	*876	*872
			Approximately 100 feet upstream of Hall of Fame Avenue.	*878	*877
			Approximately 300 feet downstream of East McElroy Road.	*880	*880
		West Boomer Creek	At confluence with Boomer Creek	*870	*866
			Approximately 100 feet upstream of Virginia Avenue.	*876	*876
			Approximately 200 feet upstream of South Husband Street.	*885	*885
			Approximately 200 feet downstream of Knoblock Street.	*893	*892
			Just downstream of Moore Avenue	*899	*904
			Approximately 700 feet upstream of Washington Street.	*905	*906
			Approximately 50 feet upstream of Lakeview Road.	*913	*915

Maps are available for inspection at the Public Works Department, City of Stillwater, 723 South Lewis Street, Stillwater, Oklahoma.

Send comments to The Honorable Terry Miller, Mayor, City of Stillwater, City Hall, P.O. Box 1449, Stillwater, Oklahoma 74076.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–21922 Filed 9–1–95; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 40 and 154

[CGD 82–058]

Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking was initiated to amend the Coast Guard's regulations concerning safety standards for self-propelled vessels carrying bulk liquefied gases. The proposed rules would have aligned the regulations with the amendments to the International Maritime Organization (IMO) Code on which the regulations were based. At this time, the Coast Guard wishes to focus its available resources on actions of higher priority. Therefore, the Coast Guard is terminating further rulemaking under docket number 82–058.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas J. Felleisen, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267–1217.

SUPPLEMENTARY INFORMATION: On June 6, 1994, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (59 FR 29259). The Coast Guard received one letter commenting on the NPRM. No public hearing was requested, and none was held.

After a comprehensive review of its active regulatory program, the Coast Guard has determined that this rulemaking is of relatively low priority at this time. International rules for gas carriers are sufficient, and no new gas carrier building in this country is anticipated in the near future. The Coast Guard wishes to focus its available resources on actions of the highest priority and has determined that the best course of action is to terminate further rulemaking under docket number 82–058. In keeping with the President's direction to Federal agencies to review their regulations, the Coast Guard will reexamine this issue at some point in the future to determine if further rulemaking is necessary. Based on these considerations, the Coast Guard is terminating further rulemaking under docket number 82–058.

Dated: August 18, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–21962 Filed 9–1–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13 and 17

RIN 1018–AC57

Fish and Wildlife Service, General Provisions and General Permit Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Fish and Wildlife Service (Service) general permit procedures providing uniform rules, conditions, and procedures relating to the application, issuance, denial, suspension, revocation, and general administration of the Service permit program. This revision of the Service's general permit procedures is intended to more clearly explain the procedures for permit application and the criteria used by the Service in making issuance determinations. This revision provides regulations that establish qualitative eligibility factors and provides standards for the fair disqualification of inappropriate applicants. This revision also effects the Service criteria for suspension and revocation of permits and the procedures for appealing the denial, suspension, or revocation of permits. The processing fee rate for a permit application is also amended to provide for increased rates to recover a larger percentage of the costs of processing the permits and to provide for fee exemptions for several permit categories.

The Service is also revising its regulations prescribing its general procedures and its regulations implementing the Endangered Species Act of 1973 in order to revise certain Service addresses provided therein.

DATES: Comments must be submitted on November 6, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas Striegler, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, Department of Interior, Washington, D.C. 20240, Telephone Number (703) 358–1949 or Maggie Tieger, Chief, Branch of Permits, Office of the Management Authority, Telephone Number (703) 358–2104.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) has oversight responsibilities under Federal wildlife conservation statutory and regulatory authorities to provide uniform rules, conditions, and procedures for the application, issuance, denial, suspension, revocation, and general administration of the Service wildlife permit program. The Service in accordance with this responsibility is proposing the following changes to the general permit procedures of Part 13. Section 13.1, a general introductory section to the regulations of Part 13, describes in initial terms the requirements for making a permit application. This section has been revised, for it has been the source of some confusion to applicants, to explain when the Service will accept a single permit application to satisfy the separate permit requirements of activities requiring more than one permit.

Several administrative changes have been made to § 13.3, entitled "scope of regulations." This section outlines the general scope of Part 13 and provides an explanation of the term "permit" for regulatory purposes. This section has been revised to more clearly state the scope of its requirements. Specifically, the titles of several parts of the Code of Federal Regulations (CFR) in Title 50, that are referenced within this section, have been brought up to date. In addition the explanation provided for the term "permit" has been restated. The term "permit," as the term is applied in Part 13, will not refer to "a license, permit, or certificate as the context may require and to all such documents issued by the Service or other authorized United States or foreign government agencies." This change in § 13.3 was needed to correctly reference within this section the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The requirements of CITES are applicable, in this particular instance, because CITES requirements necessitate that all permits issued pursuant to Part 23 will automatically become void upon the expiration of their stated duration.

The permit application procedures of Part 13 are found in § § 13.11. Several changes have been made in these application procedures. The last sentence of the introductory paragraph of this section, which states that "applicants do not have to submit a separate application for each permit unless otherwise required by this Subchapter," has been deleted, for it is redundant and has caused unnecessary confusion among applicants. The Service's provisions for the acceptance of a single permit application for multiple-permitted activities is now to be addressed within the revised § 13.1.

In § 13.11(b) the Service provides forwarding instructions for permit applications. The instructions in § 13.11(b)(2) and § 13.11(b)(3) are being revised, and a new forwarding instruction in § 13.11(b)(4) is added for endangered and threatened species incidental take permits and native endangered and threatened species take and interstate commerce permits. This change is being made in order to update the mailing addresses for permit applications. An equivalent change has been made to § 17.22(a)(1), § 17.22(b)(1), § 17.32(a)(1), § 17.32(b)(1), and § 17.72(a)(1) that sets forth the specific submission requirements for endangered and threatened species permits.

The time notice requirements for making an application are set forth in § 13.11(c). This section advises applicants of the time necessary for the processing of a permit. This section is being revised to advise applicants that the time required for the processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects and may require more than 90 calendar days. Permit applicants are also now informed that the time required for the processing of their permits may be increased by the procedural requirements of the National Environmental Policy Act (NEPA).

In implementing its responsibilities under the Endangered Species Act (ESA), CITES, Marine Mammal Protection Act (MMPA), Lacey Act, and Wild Bird Conservation Act (WBCA), the Service charges a user fee for the processing of permits and certificates. These permits and certificates authorize the holders to engage in certain wildlife-related activities, such as the import or export of fish, wildlife, or plants whose trade is regulated by treaty or by other laws of the United States. The general statutory authority to charge fees for permits and certificates is found in 31 U.S.C. 483(a), that provides that any Federal agency may charge fees for services including permits and certificates to make these services "self-sustaining to the full extent possible." The authority to charge fees is also found under wildlife laws. Specifically, the ESA 16 U.S.C. § 1540(f), authorizes the Secretary to "charge reasonable fees for expenses to the government connected with permits or certificates authorized by the Act including processing applications and reasonable inspection * * *." The MMPA, 16 U.S.C. § 1374(g), also provides that the "Secretary shall establish, and charge a reasonable fee for permits" issued pursuant to the Act.

The current schedule of fees was published in the **Federal Register** on July 15, 1982 (47 FR 30785). In accordance with fee policies in effect at the time of the publication of the notice, the total cost of processing each application was not expected to be fully borne by the applicant. The Service, therefore, set what was believed to be a reasonable fee for most permit applications to help defray processing costs.

A recent internal analysis of user fees revealed a need to increase import/export license and permit fees. This determination is supported by the fact that the Service has not increased fees since 1982 despite a 48.2 percent increase in the cost of living between August 1982 to August 1993, according to the index published by the Bureau of Labor Statistics. In Fiscal Year 1992 the cost to the Service for issuing 3,066 permits in the Office of Management Authority was approximately $1 million, excluding the costs associated with ESA Section 7 consultations, NEPA compliance activities, or regional review of permit applications. Revenues generated in user fees for the same year amounted to approximately $61,000, or 6 percent of expenditures.

The Service is therefore proposing to implement a new fee schedule, given the shortfall between program costs and fee collection and the fact that there has been no increase in fees for over 12 years. The Service proposes to increase the standard permit processing fee as set forth in a new table to be designated at § 13.11(d)(4)(i) from the $25 per application level to $50 per application. The Service also proposes to itemize nonstandard fees in a redesignated and revised table at § 13.11(d)(4)(ii) as follows: To increase the marine mammal permit fee to $250 for public display and scientific research permits; to increase the marine mammal registered tanner/agent permit fee to $75; to increase the ESA captive-bred wildlife registration fees to $175 for a 3-year period for new requests, and to $75 for a 3-year period for ESA captive-bred wildlife registration renewal and pheasant registrations; to increase the ESA import, take, and interstate commerce permit fee to $175; to increase the ESA export and foreign commerce permit fee to $100; to increase the CITES import permit fee to $150; to increase the CITES trophy import permit fee to $50; to increase CITES reissuance, pre-Convention certificate, captive-bred certificate, certificate for artificially propagated plants, and certificate of origin fees to $75; to increase the permit fee for CITES pet export/re-export to $35; to increase CITES export permit fee to $125; to increase the CITES Appendix II export permit fee for native American furbearers and alligators (excluding live) to $75; to increase CITES Appendix II and III re-export certificate fees to $125; to revise the import/export license fee from its current level to $55; to increase the injurious wildlife permit fee to $75; to increase the WBCA personal pets (import) permit fee to $50; to increase the WBCA permit fee to $150 for scientific research, zoological breeding or display, and cooperative breeding; to set the fee for approval of cooperative breeding programs to $200; to set the fee for approval of Foreign breeding facilities to $250/species; to waive the Migratory Bird Treaty Act (MBTA), bird-banding/marking permit fee; to waive the MBTA special purpose-rehabilitation/educational permit fee; to set the fee for MBTA special purpose-depredation permits for private citizens (non-commercial) at $25; to waive the permit fee for bald and golden eagles; and to waive the permit fee for bald and golden eagle, Indian religious or ceremonial use. The ceremonial use. The Service is providing for these several permit fee exemptions or reductions in order to facilitate activities either regarded as beneficial to wildlife resources or to facilitate the exercise of religious freedom.

The difference in the rates in the above user fees reflects the level of complexity that the Service encounters in processing the various types of permits, based on the estimated costs to the Federal Government of providing these special services. The proposed fees are to be established at 30 percent of the calculated actual processing cost of each permit type. Fees for marine mammal permits, for example, are set at the rate of $250 since they are the most burdensome to process. These permit applications are often complex and require Service coordination with the National Marine Fisheries Service and the Marine Mammal Commission as well as publication of notices in the **Federal Register**. Permits to import marine mammals generally require a greater allocation of Service administrative and professional resources to process than a comparable CITES Appendix I permit and are significantly more complex to process than a pet permit application. These proposed fee increases are intended to proportionately reflect a percentage of the level of Service personnel resources and working hours required to process them rather than the entire actual cost for processing.

The Service's proposed new fee schedule is intended to recover a greater portion of the direct and indirect costs to the Federal Government of providing special services than is currently being recovered. The proposed fee schedule will also serve to more fully implement the Federal user fee policy that calls for cost recovery where special services provided by the Service impart a special benefit to an identifiable recipient.

In § 13.11(d)(3) the Service provides for a waiver of permit fees for certain governmental entities. This section provides that a fee will not be charged to any Federal, State, or local government agency, nor to any individual or institution under contract to such agency for the proposed activity. Fees have traditionally been waived or reduced for public institutions provided that proof of their status as a "public institution" accompanied the permit application. The Service is now proposing to limit the fee waiver provided for public institutions to only qualifying Federal and State governmental agencies and to individuals or institutions under contract to such agencies. The Service finds it necessary to limit this exemption at this time in order to more equitably recover a fair share of permit costs within a substantial sector of the Service's processing workload. The Service believes this change is reasonable since the affected institutions receive significant benefits from Service permits beyond those that accrue to the general public or to Federal or State governments.

Several other changes are made in the existing table of nonstandard fees in § 13.11(d)(4). These changes are intended to correct administrative errors in reference and to update this table in accordance with the previously proposed changes to the Service's import/export license fee rates (59 FR 47212). In addition, changes are also made in the table to indicate the exemption to the standard fee requirement to be provided for migratory bird special purpose rehabilitation and educational permits authorized under § 21.27; for American Indian religious or ceremonial use permits authorized under Part 21 and § 22.22; and for special purpose depredation permits for private individual non-commercial purposes that are authorized under § 21.27.

The Service's requirements for abandoned or incomplete applications are stated in § 13.11(e). This section has been revised to notify applicants that the Service may return substantially incomplete or improperly executed applications, and to further instruct applicants of the importance of providing complete and accurate information.

Applications for permits are required under § 13.12 to contain certain general information. Several changes are being made to the requirements of this section. Section 13.12(a)(4) is being revised to include the word "export." This change is intended to inform applicants of the required documentation necessary for the exportation of wildlife. In addition to the general information requirements required on permit applications, certain additional applicant information is also required on permit applications in accordance with § 13.12(b). These additional requirements may be found by making reference to the specific type of permit within the table provided in § 13.12(b). Within this section several obsolete or redundant references to discontinued wildlife permit types are being deleted, and missing references to permit types are being added. These changes include: the deletion of the heading "Marking of package or container;" the deletion of references under the heading "Marking of package or container" that were made to "Symbol marking" permits; a correction in the position of a reference to the "Import/export license" from its present position under the heading "Marking of package or container" to its proper position under "Importation at Nondesignated Ports;" the addition of the heading "Wild Bird Conservation Act Permits" with a listing of the four types of available permits; the deletion of a reference made under the heading "Threatened wildlife and plant permits" that was made to "American alligator-buyer or tanner" permits; the addition of a reference under the heading "Marine mammal permits" of "Registered agent or tanner;" and the deletion of a reference under the heading "Migratory bird permits" that was made to "Special aviculturist" permits.

The terms and conditions under that the Service issues or refuses to issue a permit are indicated in § 13.21. This section is being updated to correct obsolete references to the "Bureau" and by inserting the abbreviated name the "Service," to refer to the Fish and Wildlife Service.

Several additional changes are being made to the text of § 13.21. One important change is the addition of certain "factors," to a new section to be designated § 13.21(a)(2), that will be considered by the Service when making a determination whether an individual applicant and/or permittee has failed to exercise responsibility. Such evaluations are to include consideration of one or more of the following factors: the competence, ability, skill, knowledge, training, and experience of the applicant and the suitability of facilities; whether there have been prior wildlife violations; whether there has been a failure to qualify or to fulfill any criteria or condition in law or regulation applicable to the permit; and whether there have been prior violations involving misrepresentation of material facts, falsified documents, false labeling or invoicing, failure to present documents or wildlife for examination or inspection, or other circumstances involving concealing, evading or circumventing detection of wildlife violations.

In certain instances a permit will not be issued, despite the proper execution of a wildlife permit application. This may arise when an applicant has failed to meet the applicable issuance conditions stipulated in § 13.21(b). Specifically, the issuance requirements stipulated in § 13.21(b)(3) are being revised to properly distinguish two distinct prerequisite conditions as independent and separate operative requirements. These stipulated requirements, as they presently read, are that the applicant has demonstrated a valid justification for a permit and that the applicant has made a showing of responsibility. A change is being made to separate these two requirements by amending § 13.21(b)(3) to allow non-issuance of a permit for failure to demonstrate a valid justification for a permit and by creating a new § 13.21(b)(8) to allow non-issuance of a permit for failing to demonstrate a showing of responsibility. The Service notes in making this change that there should be no automatic linkage: Where the satisfaction of one requirement or element could be interpreted to automatically meet the requirements of the second element; or between an applicant's showing of responsibility and the separate and logically independent requirement of an applicant being able to demonstrate a justification for a permit.

In addition to the above-mentioned changes, three new "issuance criteria" requirements have been added at § 13.21(b)(6), § 13.21(b)(7), and § 13.21(b)(9) respectively, to require the applicant to fulfill all applicable requirements necessary for the filing of a complete application prior to the Director's or Regional Director's issuance of the appropriate permit, to require the applicant to have complied with the conditions of previously held permits, and to provide for non-issuance where the applicant has conducted the activity prior to the issuance of the permit required by Subchapter B. This correction was considered necessary in order to further explain the criteria that the Director or Regional Director must consider before reviewing and issuing a permit.

The requirements of § 13.21(b) list certain factors that will disqualify a person from obtaining a permit. A disqualification, under this section, is to be instituted when an applicant has been determined, under certain specified criteria, to have been in violation of certain listed wildlife laws.

A change to the scope of the factors is being made in § 13.21(c) by the inclusion of additional "disqualifying factors." This section has been reorganized as follows. First, the existing disqualification factor in § 13.21(c)(1) for a conviction or entry of a plea of guilty or nolo contendere for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act that disqualifies a person from receiving or exercising the privileges of a permit is being amended to encompass all criminal violations of these Acts, to establish a 5-year duration of disqualification, and to include within this regulation equivalent violations of the ESA, CITES, Airborne Hunting Act, the MMPA, the WBCA, and the African Elephant Conservation Act. This disqualification factor is being redesignated to appear as § 13.21(c)(1)(i). Second, an additional factor is being added at a newly designated § 13.21(c)(1)(ii) to include as a basis for disqualification an assessment of one or more civil penalties for a violation(s) of the Lacey Act, the Eagle Act, the ESA, CITES, Airborne Hunting Act, MMPA, the WBCA, or the African Elephant Conservation Act, where such assessment(s) evidence a lack of responsibility in accordance with § 13.21(a)(2). Third, changes are being made within § 13.21(c)(2) to disqualify an applicant from receiving or exercising the privilege of a permit for a period of 5 years where an individual has had a similar permit previously revoked for reasons found in §§ 13.28 (a)(1), (a)(2), or (a)(3). The effect of this change is to include as a basis for a permit disqualification any prior revocation received pursuant to these three sections. These changes are intended to include as a basis for disqualification other kinds of wildlife violation(s) and to fairly equate comparable levels of violation(s) to allow disqualification in certain instances where violation(s) clearly evidence a lack of responsibility. Changes to the scope of revocation actions encompassed under these three sections will be covered later in the preamble discussion of changes to permit revocations in § 13.28.

The conditions of issuance and acceptance of a permit are set forth in § 13.21(e). The provisions of § 13.21(e)(2) are intended to inform applicants of their responsibilities as holders of Fish and Wildlife Service permits, and that by accepting or holding a permit the applicant acknowledges the necessity for close regulation and monitoring of the activity permitted. It is further explained within this provision that by the act of acceptance of a permit the permittee consents to and will allow the entry by agents or employees of the Service, or other authorized State Government official upon the premises where the permitted activity is conducted at any "reasonable hour". This paragraph is being revised by the addition of the words "as established or evidenced by actual operation or by the normal hours of operation for similar types of business, trade or operations." This change is made to clearly delineate what is meant by the use of the operative term "reasonable hour". In addition, this section is also being revised to allow Service agents or employees or other authorized State governmental officials to audit or copy any books, records, or permits required to be kept in accordance with Subchapter B.

The requirements for a denial of a permit application are set out in § 13.21(g). Under the terms of § 13.21(g), "Denial", an issuing/reviewing office may deny a permit to any applicant who fails to meet the applicable Service issuance criteria. This section is being revised to provide that the issuing/reviewing office will provide the applicant with a written explanation stating the basis for a permit denial. Although the Service has generally provided such explanations as a matter of policy in the past, this change is being made to require such notification by regulation.

Section 13.21(g) is also amended by the inclusion of the requirement that, "except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process." This change is intended to establish a fair and effective duration for a Service permit denial and to place the burden upon the previously denied applicant to correct conditions prior to any resubmission of their application.

The Service's requirements for renewal of permits are established in § 13.22. Section 13.22 sets forth in detail the procedure to be used by applicants for the renewal of existing permits. Changes made within this section include the addition of a new introductory text to the section stating that "generally a permit issued under this Subchapter B may be renewed, provided the activity authorized thereunder has not been completed." This change is being made to explain to applicants the permits are issued for a particular or discrete permitted activity or act and that such permits will only be renewed when the particular permitted individual activity or act has not been completed. This section was intended to enable the permittee to fully

complete a single permitted activity and was never intended to authorize an additional or successive activity or act of the same kind.

Other changes made in this section were made to remind the applicant of the basic requirement that all applications must be completely filled out prior to the initiation of processing of a renewal. An additional change made in this section was the inclusion of a provision to read "Any renewal application information remaining unchanged for a period of more than 4 years may be regarded as outdated, and the applicant required to provide new and complete application information upon request." This change was necessary to ensure that all information contained within permit application files is current and updated on a regular basis.

Section 13.22 has also caused some confusion among applicants concerning the special requirements of CITES. Section 13.22(c) is being amended to clarify the provision allowing continuation of a permitted activity while a permit renewal is pending. As currently written, the permit must be valid and renewable to continue the activity; as proposed, the permit also must not have been suspended or revoked. In addition, the proposal reflects that continuation does not apply to permits issued under CITES, as CITES permits are void upon expiration. Another change made was in § 13.22(d) to require a written explanation for any denial of a permit renewal. The Service has routinely provided such explanations and is amending the regulations to provide such notice by regulation.

The Service's provisions for the amendment of permits are established in § 13.23. This section sets forth the procedures to be used by applicants in modifying the conditions of a permit. This section is being revised to replace the word "his" with the words "his/her" in § 13.23(a) to make this reference gender neutral.

The procedures for the change of name or address of a permittee are set forth in § 13.23(c). Under the requirements of this section, a permittee is required to notify the issuing office within 10 calendar days of a change of name or address. This section is being revised by the addition of a provision informing the permittee that a failure to notify the office that issued the permit of a change of address may result in the cancellation of a permit. This situation arises in cases where reasonable efforts to contact the permittee by certified or registered mail have failed. A canceled permit may be reinstated if the permittee subsequently contacts the issuing office within 90 calendar days of the date of cancellation.

A new section has been established at § 13.23(d) to explain that the issuing/reviewing office may deny amendments of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21, or in the sections specifically governing the activities for that the amendment has been requested.

The Service's criteria and procedures for suspension, revocation, and review are established in § 13.27, § 13.28, and § 13.29, respectively. Sections § 13.27 and § 13.28 are being corrected to conform with the provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*). In accordance with the requirements of the APA these sections will not be prefaced by a sentence stating "the following criteria will apply, except: pursuant to a court order; or in cases of willfulness; or in cases in which the public health, interest, or safety requires otherwise . . . ." This change is intended to inform applicants that permits issued by the Service may be immediately suspended or revoked pursuant to: a sentence or order of a court; or in cases where the permittee has intended by act or omission to willfully, intentionally, knowingly, or voluntarily violate applicable law; or where the public health, interest, or safety requires.

The Service's criteria and procedures for permit suspension are stated in § 13.27. These procedures are applicable when the Service has determined it necessary and proper to take the appropriate action of suspending a permit. The procedural steps within the Service's administrative remedies, in cases of permit suspension, have been amended to conform with those now made available in cases of permit revocations pursuant to § 13.28(b). This change is intended to equate the administrative remedies available in cases of permit suspensions with those of permit revocations and to eliminate repetitive procedures.

In addition to these changes, the last sentence of § 13.27(a) is being deleted for it has resulted in a permit suspension remaining in effect for an indefinite period of time or in the existing language of the regulation "until the permittee had corrected deficiencies." This change was necessary because the terms of this provision are not in agreement with the provisions of § 13.28(a)(2), that allow a permittee 60 days to correct any deficiencies that resulted in a suspension or face possible revocation of the permit.

Several small changes are being made in the procedures for suspension in § 13.27(b). Pursuant to § 13.27(b)(2) a permittee, upon receipt of a notice of proposed suspension, may file a written objection to the proposed suspension action. The procedural specifications for this objection have been amended. This change is accomplished by the insertion of the word "postmarked" to replace the deleted word "filed." A provision regarding the requirements for making a written objection is also added to read as follows: "Such objection must be in writing, must be postmarked within 45 calendar days of the date of the notice of proposal, must state the reason why the permittee objects to the proposed suspension, and may include supporting documentation and any new information."

An additional change to the permit suspension procedures was made in § 13.27(b)(3) to read: "A decision on the suspension will be made within 45 calendar days after the receipt of the objection, or the end of the objection period if the permittee does not respond within the objection period, unless extended for good cause and the permittee is notified of the extension. In the event of an adverse decision, the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons thereof. The issuing/reviewing office will also provide the applicant with information concerning the right to appeal and the procedures thereof. The Service is making this change to standardize available administrative remedies within Part 13 in an effort to minimize the delays caused by overly repetitious procedures.

Changes have been made to the procedures for permit revocation in § 13.28. The Service's procedures for revocation will not be divided, according to applicability, into two procedurally distinct and independent categories of revocation action. These actions can be categorized as: first, revocation procedures that will apply in ordinary or usual "revocation" actions; and second, special revocation procedures that will apply only to revocation of a suspended permit when the permittee fails to correct deficiencies that were the cause of the permit suspension within the required period of time.

The first type of revocation action is established in the present § 13.28(b). This section has been otherwise revised with changes being made to several procedural steps and by the substitution of the word "appeal" for the word "reconsideration." This change will replace the redundant step of having a permittee make a request for reconsideration upon receiving notice of a Service decision on the revocation. A step that in sequence followed the permittees prior right to make a written objection upon receipt of a notice of proposed revocation. This change is intended to eliminate the overly repetitious re-review of the permit revocation by the initial revoking office. The regulations will now replace this administrative step with the more consequential administrative step of providing the permittee with the right of immediately appealing an adverse decision to the appropriate Director or Regional Director in accordance with § 13.29(e). These changes were also necessary to provide comparable procedural uniformity between the permit revocation procedures of this section and the procedures to be established for suspension as stated in § 13.27.

In the newly proposed second type of revocation action, the Service will seek revocation in instances where there are valid grounds for revocation of a suspended permit for failure to correct deficiencies in accordance with § 13.28(a)(3). The procedures for this type of revocation action are to be set forth in § 13.28(c). These new procedures are intended to provide finality or closure to the availability of administrative procedures in instances where a suspended permittee has failed within the required period of time to correct deficiencies that resulted in the suspension of their permit. In such cases the suspended permittee who is effectively in violation of their suspension for failing to act in good faith, will be barred from availing themselves of further Service procedures and will therefore, be compelled to seek any redress through non-administrative means. This change is intended to demonstrate the importance of full compliance with all suspension orders and the necessary consequences for failing to exercise good faith. The Service believes that this change is necessary, fair, and equitable in light of the seriousness of a failure to abide by the terms of a suspension order.

The Service is also amending and reorganizing § 13.28(a), which provides the applicable criteria for permit revocations. The existing criteria in § 13.28(a)(1) provides that a permit may be revoked when "the permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity." The Service is amending the scope of § 13.28(a)(1) to provide for revocation for violation of any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country that involves a violation of the conditions of the permit or the laws or regulations governing the permitted activity and which results in a felony conviction, or entry of a plea of guilty or nolo contendre.

In order to present all applicable revocation criteria in logical sequence the Service proposes to redesignate the existing §§ 13.28 (a)(2), (a)(3), (a)(4), and (a)(5) to become §§ 13.28 (a)(3), (a)(4), (a)(5), and (a)(6) respectively, and to insert additional criteria for permit revocation in new § 13.28(a)(2) and § 13.28(a)(7). The new permit revocation criteria at § 13.28(a)(2) will provide that a permit may be revoked when "the permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the laws or regulations governing the permitted activity resulting in a conviction, entry of a plea of guilty or nolo contendere for any misdemeanor violation, or the assessment of a penalty for a civil violation if such assessment(s) or conviction(s) evidences a lack of responsibility."

In Sections 13.28 (a)(7), (a)(8), (a)(9), and (a)(10) the Service would add four additional criteria for permit revocation. The new criteria at § 13.28(a)(7) would read as follows: "It is determined that the permittee failed to disclose material information required or made false statements as to any material fact in connection with his application or the conduct of activities under his or her permit." This change is intended to inform the applicant of the necessity of making a full and accurate permit application and the consequences of their failing to do so. The new criteria at § 13.28(a)(8) would read as follows: "Evidence showing failure to exercise responsibility in accordance with § 13.21(a)(2)." This change is intended to provide for revocations in situations where the permittee has clearly evidenced a failure to exercise responsibility. The new criteria to be set forth at § 13.28(a)(9) would read as follows: "The Director or Regional Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified." This change will allow the Service to revoke permits when conditions, that would have disqualified the permittee at the time of application, are discovered after a permit has been issued. The new criteria to be set forth at § 13.28(a)(10) would read as follows: "the applicant has failed to fulfill the applicable requirements of Subchapter B." This change would allow the Service to revoke permits upon a finding that the permittee is not in compliance with the required conditions for holding a permit.

An additional change to the permit revocation procedures in § 13.28(b)(3) would read: "A decision on the suspension will be made within 45 calendar days after the receipt of the objection or the end of the objection period, whichever is applicable, unless extended for good cause and the permittee is notified of the extension. In the event of an adverse decision on the permittee's written objection, revoking the permit, the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons therefore, together with the information concerning the right to appeal the decision under § 13.29(e) of this part, and the procedures for appeal." The Service proposes this change to standardize available administrative remedies within Part 13 in an effort to minimize the delays caused by overly repetitious procedures.

An important change proposed to § 13.28(d) is the addition of a special reference table to be entitled "Time allocated for administrative procedures." The Service is proposing this section to assist permittees in complying with the time restrictions provided for the availability of suspension, revocation and other review procedures.

In revising the review procedures in section 13.29, the Service has attempted to eliminate certain redundancy with the suspension, revocation, and the procedures for the appeal of a permit denial. To accomplish this change, the Service is proposing to make two procedural changes: first, to provide the permittee whose permit has been revoked or suspended with the immediate right to directly appeal to the Director or Regional Director in lieu of a repetitious request for reconsideration before the same issuing/reviewing office who initiated the revocation or suspension action; and second, to allow the Service to proceed in an orderly fashion from permit suspension to permit revocation in situations where a permittee has failed within the required period of time to remedy the deficiencies that caused the suspension. These changes are necessary because the procedures as currently written are overly repetitious and delaying to

permittees seeking redress. The review procedures as written have also inappropriately allowed applicants falling under § 13.29(a) (1), (2), and (3) to request a reconsideration of proposed suspension or revocation actions, even when there was no lawful authority to issue a permit. The Service believes that a request for reconsideration of suspensions or revocations is unnecessarily repetitive in such instances, especially in light of the applicant's existing available procedural remedies of objecting to any suspension or revocation action in accordance with § 13.27(b)(2) and § 13.28(b)(2), respectively, and challenging any adverse answer to such action with a timely appeal.

Other changes have been proposed in the text of § 13.29. These include: the clarification of the requirements for the submission of certification in § 13.29(b)(4); administrative changes in § 13.29(d); and the inclusion of certain exceptions to this section in § 13.29(a) and § 13.29(e). Several additional changes are being made to the provisions of § 13.29(f), which would be re-numbered and administratively revised. Section 13.29(f)(1) would be amended to read "the Director or the Regional Director may designate any staff member(s) to assist in analyzing the issues and may include the recommendations of the issuing/reviewing office." This change is intended to clarify the respective role of the issuing/reviewing office in providing assistance and recommendations to the Director or Regional Director considering an appeal.

The Service, in an effort to simplify its regulations, is adding a reference section in a new section to be designated § 13.30. The intent of this section is to provide the user with a reference to clearly illustrate: the exercise of responsibility determinations; the effects of disqualification; procedures for denial; the procedures for permit amendment(s) initiated by the Service; the procedures for suspension of a permit; the general procedures for revocation of a permit; the special procedures for revocation of a suspended permit, where the applicant has failed to correct deficiencies that were the cause of a suspension; and the effects of a prior revocation on subsequent permits.

Section 13.41 sets forth the requirement that wildlife possessed in accordance with permit conditions must be maintained under humane and healthful conditions. This section would be revised to read "any live wildlife or plants possessed, held, transported, and/or imported under a permit must be maintained under humane and healthful conditions." This change is intended to insure that all wildlife and plants under a Service permit are adequately maintained under applicable regulations.

The Service requirements regarding the maintenance of records is stated in § 13.46. This section would be revised to require that such records now include information on the specifics of any death or escape of permitted wildlife. In addition such records will now be required "to include names and addresses of persons by or with whom any plant (to include seeds) or wildlife has been purchased, sold, bartered, or otherwise transferred . . . ." This change is intended to include the seeds of plants that are regulated by permit with applicable record keeping requirements.

In § 13.47 the Service sets out the inspection requirements applicable to any person holding a permit pursuant to Part 13. This section would be revised by the addition of the words "as established or evidenced by actual operation, or normal or expected hours of operation for the type of similar type of business, trade, operation or activity." This change is made in order to more clearly delineate what is meant by the use of the operative term "reasonable hour." The equivalent provision in Section § 13.21(e)(2) would also be similarly revised.

In addition to the changes being made in Part 13, the Service would revise Part 10 to add a necessary reference to the appropriate Regional Office addresses and to also update the existing list of Division of Law Enforcement, Regional Office addresses provided in § 10.22. The Service would also update the mailing address in § 17.22, 17.32, 17.62, and 17.72 as noted earlier, for the submission of applications for permits for Native Endangered and Threatened Species Take, Interstate Commerce, and Incidental Taking permits. Finally, the Service is considering additional regulatory provisions for the identification of trade secrets or confidential business information (CBI) contained in permit applications. The Service invites additional comments on how it may consider the views of applicants as to the protection and identification of such information, when requested under the Freedom of Information Act.

Background

On Thursday, November 14, 1991, the Service published in the **Federal Register** (56 FR 57873) a Notice of Intent to Review 50 CFR Part 13. The Service, in this notice, requested that all interested parties submit written comments. In response to this request, the Service received comments from a total of 66 individuals and organizations.

Specifically, written comments were received from 36 individuals, 11 government agencies, 8 sportsman associations, 1 American Indian tribe, 3 scientific associations, and 7 wildlife management and conservation associations. Only 10 of the comments received pertained to Part 13. The Service has carefully considered all comments received in response to the Notice in proposing these changes to Part 10, 13, and 14.

Summary of Comments and Information Received

Comments Pertaining to 50 CFR Section 13.3

Scope of Regulations

Several commenters noted that the term "permit" should also include foreign documents such as export permits, commodity clearances, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permits, and certificates of origin. One commenter noted that currently the Service has no real regulations that pertain to the specific requirements of foreign permits. The Service finds considerable merit in these comments and is proposing to amend this section accordingly to encompass such permits.

Comments Pertaining to 50 CFR Section 13.11 and 13.12

Application Procedures, General Information Requirements on Permits

A few comments were received on 50 CFR § 13.11. One commenter representing a scientific association suggested, in regards to § 13.11(a), that a letter describing a researcher's activities be allowed instead of the present requirement of filling out a Service permit application form. In issuing/reviewing permits and applications, the Service needs to quickly ascertain a permittee's or applicant's status or eligibility. To best accomplish this task, a uniform permit application has been routinely used. The Service believes that a continuation of the use of this standard form is the best and most efficacious method of processing applications and ensuring all required information has been provided.

Several comments from scientific and wildlife associations requested a review of 50 CFR § 13.11(b)(2). This section references the designated port of entry requirement of Part 14. One commenter suggested that the Service's regulations should include an exception to designated port of entry requirements for scientific specimens and raptors used in the practice of falconry. The Service finds insufficient merit in the suggested exemptions for scientific specimens and of falconry birds from the designated port requirements. The Service has strived in its administration of permits under Part 13 to treat all permit applicants fairly and uniformly without regard to the status of the permittee. Procedurally, the requirements of § 13.11(b)(2) are intended to identify the appropriate issuing/reviewing office for a permit. This section was not intended as a list of exceptions to other regulations.

One commenter noted that delays in the issuance of permits caused by the time notice requirements in 50 CFR § 13.11(c) has imposed a hardship upon permit applicants. Other commenters also expressed similar concerns about perceived delays in the permit review process. The Service is concerned about any delays encountered in its permit programs. The permit process, however, is a deliberative process and therefore, requires careful, individual analysis and review by the Service. Importers of scientific specimens, captive-bred raptors, and wildlife importers in general should take this consideration into account and plan ahead for their importation and or exportation needs.

One comment on § 13.12, the general information requirements of permit applications, requested that a timely notification be given to all applicants with incomplete permit applications. The commenter further noted that such notice would serve to prevent the penalization of the applicant for relatively inconsequential or unintended omissions. It is the considered opinion of the Service that such additional "formal" procedures are not warranted at this time. The Service is not convinced that such additional procedures would result in any consequential saving in time. The Service, however, will continue to notify the applicant informally in all such cases.

Comments Pertaining to 50 CFR Section 13.21

Issuance of Permits, Denials

One commenter suggested that under certain limited circumstances, verbal authorization to undertake a permitted scientific project should be allowed. The commenter further qualified this suggestion, however, by noting that applicants should not have to bear legal liability when misleading oral representations are given within such verbal authorizations. The Service believes that such verbal authorizations would be ill advised for the same vagueness and accountability problems noted by the commenter.

One commenter questioned the qualifications of persons making a determination as to the relative validity of a permit justification under § 13.21(b)(3). This section generally conditions the issuance of a permit by the Director or Regional Director to the applicant's demonstration of a valid justification for a permit and an independent showing of responsibility. Service permit applications are reviewed in an ordered and sequential process whereby permits are examined by qualified Service staff working under direct guidance and supervision of Service managers. Permit issuance decisions are reviewed for consistency with established permit policy. Applicants who are dissatisfied with the justifications given for any Service permit decision may readily seek recourse and remedy through available Service administrative procedures.

One commenter suggested deleting the first sentence of § 13.21(e)(2) for, as the commenter stated, "the first sentence implies a mistrust * * * of the permittee." In response to this comment, the Service can only state that no such implication of mistrust is intended. The intent of this requirement is to clearly set forth the responsibility of the permittee to allow for compliance inspections of permitted activities by the Service. Such inspection requirements are essential for the exercise of due diligence in the preservation of fish and wildlife resources.

One commenter noted that the officer should be required to provide applicants with a written indication of the reasons for any denial of a permit or the non-renewal of a permit under §§ 13.21(g) and 13.22(d) respectively. The Service appreciates the concerns of the commenter and is proposing to change the regulations to include a provision in § 13.21(g) and § 13.22(d), to be similar to those provided in § 13.27(b)(3) and § 13.28(b)(3), to read as follows: "the issuing/reviewing office will notify the permittee in writing of the Service's decision for denial or non-renewal of the permit." Generally, the Service has provided the basis of its decisions to applicants in the past as a matter of policy. This notice would now be required by regulation.

Comments pertaining to 50 CFR Section 13.28

Permit Revocation

One commenter noted that the criteria for permit revocation should also include the complete civil and criminal prior violation history of the permittee. The commenter further noted that whether a felony violation is willful, as stated in § 13.28(a)(1), should not be the only consideration in permit revocations. The commenter noted that many repeat offenders assert their violations are a result of ignorance of the regulations although, as the commenter elaborated, these are the same regulations to which the violators have affirmed knowledge when they sign their permit application. The Service finds considerable merit in the commenter's suggestion. The Service in its revocation procedures has attempted to strike a balance in favor of fairness. The revocation of an individual's permit is a punitive measure of final resort that rightfully demands that the Service provide sufficient justification for its permit revocation determinations and provides the applicant with a fair process. The present criterion in § 13.28(a)(1) require the proof of the causal element of "willfulness" in the commission of certain listed felonies. This element has presented the Service with an extremely difficult legal burden of proof in permit revocation actions. This burden of proof has tended to limit the effectiveness of revocation as a deterrent. The Service, in an effort to construct a greater deterrent, is proposing to amend the regulations to allow for additional criteria for permit revocation. These additional criteria would be set forth in a new § 13.28(a)(2) that would provide that a permit may be revoked when "the permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the laws or regulations governing the permitted activity resulting in a conviction, or entry of a plea of guilty or nolo contendere for any misdemeanor violation, or the assessment of a penalty for a civil violation if such assessment or conviction evidences a lack of responsibility."

Comments pertaining to 50 CFR Section 13.29

Review Procedures

One commenter recommended the amendment of 50 CFR § 13.29(f) by the addition of the following suggested

language "The applicant will be provided in writing all presentations, whether oral or written, made by the issuing/reviewing office, or other Service divisions or employees, to higher authority regarding the merits of the appeal, which presentations shall be included in the appeal record. The deciding officer will state in the decision the date and contents of any discretionary policy adopted by the Service and applied in that matter, and state the facts justifying why that policy applies and should be adopted or applied in that appeal." The Service finds this proposal to be impractical and undesirable. The term "discretionary policy" is ambiguous and an inaccurate representation. Where an appeal is successful, the applicant will receive their permit and the record will substantiate why the issuing/reviewing office's decision has been reversed. Where an appeal is rejected, the applicant will receive notice providing the basis for that determination.

Comments pertaining to 50 CFR § 13.42

Permits are Specific

One commenter noted that scientific collecting permits should be written in such a way as to allow for scientific opportunism. The rationale for this suggestion, as noted by the commenter, is that scientists cannot always predict the particular species they will find or what species they will find useful for research purposes. The commenter further noted that this problem is of special concern when invertebrate and plant species are involved. The Service is sympathetic to the concerns expressed herein and otherwise by the scientific community. The Service continues to recognize the essential need to facilitate the study of science. The Service, however, must carefully weigh these concerns pursuant to its mandate to carefully monitor the collection of scientific wildlife specimens. The Service is hesitant to issue scientific collecting permits without sufficient species specificity. Therefore, the Service does not anticipate making any changes in the regulations pertaining to scientific collecting permits at the present time. The applicant should always have an idea of what their intended target species will be. Where the collection of additional species is anticipated, the applicant is simply required to add them to the list of those species in the application justification.

One representative of an association of scientists suggested several changes to the regulation involving special permit provisions for scientists. One request was for the Service to provide for "temporary verbal authorization" to be given while a research application is being processed. Another commenter suggested that permit application information be only required for what was termed "a randomly sampled subset of applicants, with clearly defined research objectives." The commenter also suggested that application fees should be waived for scientific or educational institutions and, that under certain limited circumstances, verbal permit authorization to undertake a permitted scientific project or the modification thereof be provided. The Service is cognizant of the special requirements of scientist and researchers; however, the Service is hesitant at this time to provide for such special permit procedures in the absence of adequate safeguards. In regard to the issue of fees, the cost incurred by the Service in processing permits is substantial and should not be dependent upon the status, purpose, or funding source of the recipient.

Other comments to Part 13 included the recommendation that there be greater national uniformity in the Service's interpretation and enforcement of regulations. Specific recommendations addressed: the need for uniformity in the issuance of permits; the need to establish uniform renewal, non-renewal, and revocation criteria; and the recommendation that the permit process be simplified, expedited, and administered through a centralized permit process rather than the current regional system.

In this review of Part 13, the Service is attempting to update the regulatory provisions that provide uniform procedures applicable to the permit process. The Service in its general permit procedures has attempted to achieve a desirable level of specificity in its regulations and uniformity in the issuance of permits throughout the seven Regional Offices. There is, however, a limit to the degree of specificity and centralization that can be achieved by the Service without making the regulations and the permit issuance process more complex and extensive than necessary. The Service has made an effort in the past to decentralize the permit process to make it more responsive to users and efficient in operation. The process was once centralized in the Washington office of the Division of Law Enforcement. This was found to be unsatisfactory as the Service was unable to make accurate judgments about applications that were specific to diverse regional conditions. In addition the Service's ability to take an adverse action when necessary was also limited, depending on the type of permit involved, by its ability to ascertain the specific facts and circumstances involved in each case. The variables relating to the issuance of the permit are often unique to the locale and situation. The Service's responsibilities for the permit process require its careful evaluation of all the facts, circumstances and local conditions related to a permit's issuance. In order for the Service to be fair to everyone, it can only provide the basic procedural guidelines for taking those adverse actions. It is not in the best interest of the permittees or the Service to impose the unique variables of one situation to every case.

Several additional comments were received on Part 13; these include a recommendation that changes be made to permit procedures that affect museum and scientific specimens. One commenter suggested that permit requirements are too complicated, especially in such instances where scientific specimens or materials on loan to parties outside the United States are returned. The Service is concerned about any delays encountered by applicants and permittees in its permit functions. The Service, however, must process the requests of all members of the public fairly and equitably without regard to their individual status on a first in, first out basis.

One commenter noted that the Service should determine whether the provisions of § 13.41 regarding the humane conditions for wildlife possessed under a permit are adequate to cover conditions of falconry birds. This, in the commenter's opinion, would be particularly true in the event the facilities standards of § 21.21 are removed or changed. The Service in § 21.29 and § 21.30 has established standard criteria for falconers and raptor propagators. These include the requirements for falconry facilities. Any requirements beyond these are imposed by the respective individual states.

Another commenter suggested that the Service's requirements for alteration of a permit in § 13.43 should allow the "reasonable" copying of permits for use as records and for other limited purposes. The Service, in reply to the above comment, is justifiably concerned about the integrity of its permit system. Any proliferation of copies would tend to undermine the system and lead to increased doubt as to the authenticity of permits. Therefore, to continue to safeguard the permit system the ban on the copying of permits, except where specifically permitted on the face of the permit, will remain in effect.

One commenter noted that the requirements for the maintenance of records in § 13.46 were too burdensome on permittees. The Service fully realizes that there is some burden imposed upon the permittee by the requirement of § 13.46 to maintain records. The Service, however, believes that this burden is at a minimum level and reasonably necessary for the maintenance of a sound permit program and to preserve wildlife resources. Finally, a few commenters requested the Service define the terms "reasonable hour" and "sale." The term, "reasonable hour" as it is used in § 13.47 invokes a reasonable standard of interpretation and is given its common meaning in light of the facts and circumstances of each case. The Service has carefully considered the suggestion to provide greater clarification to this term and proposes making changes in the language of this and the equivalent section in § 13.21(e)(2) accordingly. The term "sale" includes offers, or possess for sale, barter, exchange, or trade. The Service invites further comment on the merits of the addition of such a definition.

Need for Proposed Rulemaking

The Fish and Wildlife Service (Service) is updating the general permit procedures. In addition the Service is correcting errors in the amended uniform rules and procedures for the application, issuance, denial, suspension, revocation, and general administration of permits issued pursuant to 50 CFR Part 13. Definitions have been added and several errors and missing references have been corrected. Changes were necessary in several sections for the purposes of eliminating ambiguities and to more clearly articulate procedural requirements, to circumscribe applicable exceptions to requirements, and to provide for greater clarity.

Changes in the Service permit user fee policies and rates were made in order to more fully recover the cost of maintaining the permit system. The Service is revising its overall user fee policies and rates and is attempting in general to recover a fair or more reasonable proportion of the cost of special services provided to individuals and businesses. The demands of providing such special services have required a proportionately greater allocation of Service resources than the services provided to the public at large. Federal guidelines indicate that the entire cost of providing such special services should be realized by the recipient, the Service at this time is simply attempting to recover a larger portion of permit issuance costs through more realistic user fees.

The Service is also amending 50 CFR Part 10 and 50 CFR Part 17. The Service is making limited changes to these parts to correct addresses provided therein.

Required Determinations

This rule was not subject to review by the Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior (Department) has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Small entities are presently required to comply with the current regulations. This revision will have a beneficial effect upon small entities by simplifying general permit procedures. This action is not expected to have significant "taking" implications, as per Executive Order 12630. This proposed rule does not contain any additional information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Department has certified to OMB that these proposed regulations meet the applicable standards provided in Section 2(a) and 2(b)(2) of Executive Order 12778. This action does not contain any federalism impacts as described in Executive Order 12612. These proposed changes in the regulations in Parts 10, 13, and 17 are regulatory and enforcement actions that are covered by a categorical exclusion from National Environmental Policy Act procedures under Section 516 of the Department Manual and an Environmental Action Memorandum is on file at the Service's office in Arlington, Virginia. A determination has been made pursuant to Section 7 of the Endangered Species Act that the revision of Part 14 will not affect federally listed species.

Author

The originator of this proposed rule is Law Enforcement Specialist Paul McGowan working in cooperation with the staff of the Division of Law Enforcement and the Office of Management Authority, Fish and Wildlife Service, Washington, D.C.

List of Subjects

50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set out in the preamble, Title 50, Chapter I, Subchapter B of the Code of Federal Regulations, is proposed to be amended as set forth below:

1. The authority citation for Part 10 is revised to read as follows:

Authority: 16 U.S.C. 668a–d, 703–712, 742a–742j–1, 1361–1384, 1401–1407, 1531–1543, 3371–3378; 18 U.S.C. 42; 19 U.S.C. 1202.

Subpart C—Addresses [Amended]

2. Section 10.22 is revised to read as follows:

§ 10.22 Regional and law enforcement offices.

Service Regional and Law Enforcement offices and their areas of responsibility follow:

(a) Mail forwarded for the attention of the Regional Director for the U.S. Fish and Wildlife Service should be addressed: Regional Director, Attention: Endangered/Threatened Species Permits (see appropriate address in the table in paragraph (b) of this section);

(b) Mail forwarded for the attention of the Division of Law Enforcement should be addressed: Assistant Regional Director, Division of Law Enforcement, (see appropriate address in the following table):

TABLE—AREAS OF RESPONSIBILITY AND OFFICE ADDRESSES

Jurisdiction	Regional directors	Assistant regional directors for law enforcement
Region 1: California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, the Marshall Islands, Northern Mariana Islands, and the Trust Territory of the Pacific Islands.	U.S. Fish and Wildlife Service 911 N.E. 11th Avenue, Portland, OR 97232–4181, Telephone: (503) 231–6241.	U.S. Fish and Wildlife Service, Law Enforcement, 911 N.E. 11th Avenue, Portland, OR 97232–4181, Telephone: (503) 231–6125.
Region 2: Arizona, New Mexico, Oklahoma, and Texas.	U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103, Telephone: (505) 766–3972.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 329, Albuquerque, NM 87102, Telephone: (505) 766–2091.
Region 3: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, Fort Snelling, MN 55111–4056, Telephone: (612) 725–3583.	U.S. Fish and Wildlife Service, Law Enforcement, Bishop Henry Whipple Federal Building, Fort Snelling, MN 55111–4056, Telephone: (612) 725–3530.
Region 4: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands.	U.S. Fish and Wildlife Service, 1875 Century Center Blvd., Suite 200, Atlanta, GA 30345, Telephone: (404) 679–7088.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 49226, Atlanta, GA 30303, Telephone: (404) 331–5872.
Region 5: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035, Telephone: (413) 253–8627.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 779, Hadley, MA 01035–0779, Telephone: (413) 253–8274.
Region 6: Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Suite 550, Denver, CO 80225, Telephone: (303) 236–7920.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 25486–DFC, Denver, CO 80225, Telephone: (303) 236–5270.
Region 7: Alaska	U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, Telephone: (907) 786–3542.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 92597, Anchorage, AK 99509–2597, Telephone: (907) 786–3311.
Region 9: Any foreign country (Washington Office).	U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, VA 22203, Telephone: (703) 358–2104 or 1–(800) 358–2104.	U.S. Fish and Wildlife Service, Law Enforcement, P.O. Box 3247, Arlington, VA 22203–3247, Telephone: (703) 358–1949.

50 CFR Part 13 [Amended].

3. The authority citation for Part 13 is revised to read as follows:

Authority: 16 U.S.C. 668a; 704, 712; 742j–1; 1374(g); 1382; 1538(d); 1539, 1540(f); 3374; 4901–1916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 483(a), 9701; E.O. 11911, 41 FR 15683.

4. Section 13.1 is revised to read as follows:

§ 13.1 General.

Each person intending to engage in an activity for which a permit is required by this subchapter B will, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by this subchapter must make application for such permit in accordance with the requirements of this part 13 and the other regulations in this subchapter that set forth the additional requirements for the specific permits desired. If the activity for which a permit is sought is covered by the requirements of more than one part of this subchapter, the requirements of each part must be met. A single permit authorizing an activity under several parts of this subchapter B may be issued. A single application for such a permit will be accepted if it includes all of the information required to justify each specific permitted activity to be authorized.

5. Section 13.3 is revised to read as follows:

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Importation, Exportation and Transportation of Wildlife" (Part 14), "Wild Bird Conservation Act" (Part 15), "Injurious Wildlife" (Part 16), "Endangered Wildlife and Plants" (Part 17), "Marine Mammals" (Part 18), "Migratory Bird Permits" (Part 21), "Eagle Permits" (Part 22), and "Endangered Species Convention" (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) (Part 23)—except as provided in § 13.22(c). As used in this part 13 the term "permit" will refer to a license, permit, or certificate as the context may require and to all such documents issued by the Service or other authorized United States or foreign government agencies.

6. Section 13.11 is amended by revising the introductory text to the section, by revising paragraphs (b)(2) and (b)(3), by adding paragraph (b)(4), by revising paragraphs (c), (d)(2), (d)(3), (d)(4) and (e) to read as follows:

§ 13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this subchapter B unless the applicant has filed an application in accordance with the following procedures:

* * * * *

(b) * * *

(2) Exception to designated port (50 CFR part 14), import/export license (50 CFR 14.93), migratory bird permit other than banding (50 CFR part 21), and bald or golden eagle permits (50 CFR part 22) may be obtained by writing to the Assistant Regional Director for Law Enforcement of the Region in which the applicant resides (see 50 CFR 10.22 for addresses and boundaries of the Regions).

(3) Wild Bird Conservation Act (50 CFR part 15); injurious wildlife (50 CFR part 16); endangered and threatened species, except incidental take, and native species take and interstate commerce (50 CFR part 17); marine mammals (50 CFR part 18); and permits and certificates for the Convention on International Trade in Endangered Species of Wild Fauna and Flora

(CITES), (50 CFR part 23) may be obtained by writing to: Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420C, Arlington, Virginia 22203.

(4) Endangered and threatened species incidental take permits (50 CFR 17.22(b)), and native endangered and threatened species take and interstate commerce permits may be obtained by writing to: Regional Director (Attention: *Endangered/Threatened Species Permits*) of the Region where the activity is to take place (see 50 CFR 10.22 for addresses and boundaries of the Regions).

(c) *Time notice.* The Service will process all applications as quickly as possible. However, it cannot guarantee final action within the time limits the applicant requests. Applications for permits for marine mammals and/or endangered and threatened species should be postmarked at least 90 calendar days prior to the requested effective date. Time required for the processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects. Applications for all other permits should be submitted to the issuing/reviewing office and be postmarked at least 60 calendar days prior to the requested effective date. The processing time of permits may be increased by the procedural requirements of the National Environmental Policy Act (NEPA). When applicable, the Service may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with the procedural requirements of NEPA.

(d) * * *

(2) If regulations in this subchapter require more than one type of permit for an activity and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity pursuant to § 13.1. The issuing office in such instance may charge only the highest single fee for the activity permitted.

(3) A fee will not be charged to any Federal or State government agency nor to any individual or institution under contract to such agency for the proposed activities. The fee may be waived or reduced for public institutions (see 50 CFR 10.12). Proof of status as a Federal or State government agency must accompany the application. Except as otherwise authorized or waived, the failure to submit evidence of such status with the application will require the submission of all processing fees prior to the acceptance of the application for processing.

(4) *User fees.*

(i) Standard user fee.

Type of permit	Fee
Except as provided in paragraph (d)(4)(ii) of this section, the standard fee for processing any application	$50

(ii) Nonstandard user fees.

Marine Mammals	
Public Display and Scientific Research (18.31)	$250
Registered Tanners/Agents (18.23(d))	75
Endangered Species Act (ESA)	
Captive-bred Wildlife:	
New Requests	175/3 years
Renewals and Pheasants	75/3 years
ESA Import, Take, and Interstate Commerce	175
ESA Export and Foreign Commerce	100
CITES Import	150
CITES Trophy Import	50
CITES Reissuance, Pre-Convention, Captive-bred, Artificially Propagated Plants, and Certificate of Origin	75
CITES Pet Export/Re-Export	35
CITES Export	125
CITES Appendix II Export of native furbearers and alligators (excluding live)	75
CITES Appendix II, III Re-Export	125
Import/Export License (14.93)	55
Injurious Wildlife (Part 16)	75
Wild Bird Conservation Act (Part 15)	
Personal Pet Import (15.25)	50
Scientific Research, Zoological Breeding or Display, and Cooperative Breeding (15.22, 15.23, 15.24)	150
Approval of Cooperative Breeding Programs	200
Approval of Foreign Breeding Facilities	250/species
Migratory Bird (Part 21)	
Bird-Banding/Marking (21.22)	None
Special Purpose—Rehabilitation/Educational (21.27)	None
Special Purpose—Depredation, Private Individuals (Non-Commercial) (21.27)	25
Bald and Golden Eagles (Part 22)	None
Indian Religious or Ceremonial Use (Part 21, 22.22)	None

(e) *Abandoned or incomplete applications.* Substantially incomplete or improperly executed applications may be returned to the applicant. If the application is only lacking minor information or the proper fees, the issuing/reviewing office will accept the application for processing and notify the applicant of the deficiency. If the applicant fails to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, the Service will consider the application abandoned. The Service will not refund fees for an abandoned application.

7. Section 13.12 is amended by revising paragraphs (a)(4) and (b) to read as follows:

§ 13.12 General information requirements on applications for permits.

(a) * * *

(4) If the requested permit activity involves the import, export, or re-export

of wildlife or plants from or to any foreign country, and the country of origin or the country of export or re-export restricts the taking, possession, transportation, exportation, or sale of wildlife or plants, documentation as indicated in § 14.52(c) of this subchapter B;

* * * * *

(b) *Additional information required on permit applications.* As stated in paragraph (a)(3) of this section certain additional information is required on all applications. These additional requirements may be found by referring to the section of this subchapter B cited after the type of permit for which application is being made:

Type of permit	Section
Importation at Nondesignated Ports:	
Scientific	14.31
Deterioration Prevention	14.32
Economic Hardship	14.33
Import/Export License	14.93
Wild Bird Conservation Act Permits:	
Scientific Research	15.22
Zoological Breeding or Display	15.23
Cooperative Breeding	15.24
Personal Pets	15.25
Injurious Wildlife: Importation or Shipment	16.22
Endangered Wildlife and Plant Permits:	
Similarity of Appearance	17.52
Scientific, Enhancement of Propagation or Survival, Incidental Taking of Wildlife	17.22
Scientific, Enhancement of Propagation or Survival for Plants	17.62
Economic Hardship for Wildlife	17.23
Economic Hardship for Plants	17.63
Threatened Wildlife and Plant Permits:	
Similarity of Appearance	17.52
General for Wildlife	17.32
General for Plants	17.72
Marine Mammals Permits:	
Scientific Research	18.31
Public Display	18.31
Registered Agent or Tanner	18.23(d)
Migratory Bird Permits:	
Banding or Marking	21.22
Scientific Collecting	21.23
Taxidermist	21.24
Waterfowl Sale and Disposal	21.25
Special Purpose	21.27
Falconry	21.28
Raptor Propagation Permit	21.30
Depredation Control	21.41
Eagle Permits:	
Scientific or Exhibition	22.21
Indian Religious Use	22.22
Depredation Control	22.23
Falconry Purposes	22.24
Take of Golden Eagle Nests	22.25
Endangered Species Convention Permits (CITES)	23.15

8. Section 13.21 is amended by revising paragraphs (a), (b), (c)(1), (c)(2), (e)(2), and (g) as follows:

§ 13.21 Issuance of permits.

(a)(1) No permit may be issued prior to the receipt of a written application unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Service. An oral or written representation of an employee or agent of the United States Government or an action of such employee or agent will not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(2) For the purpose of this part, a determination as to an applicant's exercise of responsibility is to include consideration of such factors as:

(i) Level of competence, ability, skill, knowledge, training, and/or the suitability of facilities, particularly for live animals and plants;

(ii) Prior wildlife or plant violations;

(iii) Failure to qualify or fulfill any criteria or conditions applicable to the permit; or

(iv) Prior violations involving misrepresentation of material facts; falsified documents; false labeling or invoicing; failure to present documents, wildlife, or plants for examination or inspection; or other circumstances involving concealing, evading, or circumventing detection of wildlife or plant violations.

(b) *Issuance criteria.* Upon receipt of a properly executed application for a permit, the Director or Regional Director will issue the appropriate permit unless:

(1) The applicant has been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility in accordance with paragraph (a)(2) of this section.

(2) The applicant has failed to disclose material information required or has made false statements as to any material fact in connection with his/her application.

(3) The applicant has failed to demonstrate a valid justification for the permit;

(4) The authorization requested potentially threatens a wildlife or plant population;

(5) The Director or Regional Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified;

(6) The applicant has failed to fulfill the applicable requirements of this subchapter B;

(7) The applicant has failed to comply with the conditions of previously held permits;

(8) The applicant has failed to exercise responsibility in accordance with § 13.21(a)(2); or

(9) The applicant has conducted the activity prior to the issuance of the permit required by subchapter B.

(c) * * *

(1)(i) A conviction or entry of a plea of guilty or nolo contendere for a criminal violation of the Lacey Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, Endangered Species Act, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Airborne Hunting Act, Marine Mammal Protection Act, Wild Bird Conservation Act, or African Elephant Conservation Act will disqualify such person from receiving or exercising the privileges of a permit for a period of 5 years from the date of most recent conviction or entry of judgment, unless such disqualification has been expressly waived by the Director or Regional Director in response to a written petition.

(ii) The assessment of one or more civil penalties for violation(s) of the Lacey Act, Bald and Golden Eagle Protection Act, Endangered Species Act, CITES, Airborne Hunting Act, Marine Mammal Protection Act, Wild Bird Conservation Act, or African Elephant Conservation Act will disqualify such person from receiving or exercising the privileges of a permit for a period of 5 years, from the date of most recent assessment, where such assessment(s) evidences a lack of responsibility in accordance with paragraph (a)(2) of this section, unless such disqualification has been expressly waived by the Director or Regional Director in response to a written petition.

(2) The revocation of a permit for reasons found in § 13.28 (a)(1), (a)(2), or (a)(3) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of 5 years from the date of the final agency decision on such revocation, unless such disqualification has been expressly waived by the Director or Regional Director in response to a written petition.

* * * * *

(e) * * *

(2) Any person accepting and holding a permit under this subchapter B acknowledges the necessity for close regulation and monitoring of the permitted activity by the Government. By accepting such permit, the permittee consents to and will allow entry by agents or employees of the Service, or authorized State official upon premises where the permitted activity is conducted at any reasonable hour, as established or evidenced by actual operation, or normal or expected hours of operation for the type or similar type of business, trade, operation, or activity. Service agents or employees may enter such premises to inspect the location; and inspect, audit or copy any books, records, or permits required to be kept by this subchapter B; and inspect any wildlife or plants kept under authority of the permit.

(f) * * *

(g) *Denial*. The issuing/reviewing office may deny a permit to any applicant who fails to meet the issuance criteria set forth in this section or in the part(s) or section(s) specifically governing the activity for which the permit is requested. The applicant will be provided with a written explanation stating the basis for the denial and of the right to request reconsideration. Except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process.

9. Section 13.22 is amended by adding introductory text to the section and by revising paragraphs (a), (c), and (d) to read as follows:

§ 13.22 Renewal of permits.

Generally, a permit under this subchapter B may be renewed provided the specified permit activity authorized thereunder has not been completed.

(a) *Application for renewal*. Applicants to renewal of a permit must submit a written application, complete in all regards, at least 30 calendar days prior to the expiration date of the current permit. Applicants for renewal must certify in the form required by § 13.12(a)(5) that all statements and information in the original application remain current and correct, unless previously changed or corrected. If such information is no longer current or correct, the applicant must provide corrected information. Except where otherwise provided by written authorization, any renewal of application information remaining unchanged for a period of more than 4 years may be regarded as outdated, and the applicant required to provide a new and complete application information upon request.

* * * * *

(c) *Continuation of permitted activity*. Any person holding a valid and renewable permit, currently in force and not suspended or revoked, who has complied with this section may continue the activities authorized by the expired permit until the Service has acted on such person's application for renewal. The terms of this provision do not apply to permits or certificates issued under CITES in accordance with part 23, which are void upon expiration.

(d) *Denial*. The issuing/reviewing office may deny renewal of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21 of this part or in the part(s) or section(s) specifically governing the activity for which the renewal is requested. The applicant will be provided a written explanation of the basis for the denial and of the right to request reconsideration. Upon receipt of a denial the applicant will be required to cease all activities authorized by the permit. Except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process.

10. Section 13.23 is amended by revising paragraph (a), by revising paragraph (c), and by adding paragraph (d) to read as follows:

§ 13.23 Amendment of permits.

(a) *Permittee's request*. Where circumstances have changed so that a permittee desires to have any condition of his/her permit modified, such permittee must submit a full written justification and supporting information in conformance with this part and the part under which the permit was issued.

* * * * *

(c) *Change of name or address*. A permittee is not required to obtain a new permit if there is a change in the legal individual or business name or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of any such change. Where the issuing office is not so notified and reasonable efforts to contact the permittee by certified and/or registered mail have failed, the permit will be canceled. The canceled permit may be reinstated if the permittee subsequently contacts the issuing office within 90 calendar days. This provision does not authorize any change in location of the conduct of the permit activity when approval of the location is a qualifying condition of the permit.

(d) *Denial*. The issuing/reviewing office may deny amendments of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21 of this part or in the part(s) or section(s) specifically governing the activity for which the amendment is requested. The applicant will be provided a written explanation of the basis for the denial and of the right to request reconsideration. Except where otherwise provided, a permit denial will be presumed to remain in effect for a period of 1 year after the date of denial, unless granted the permit during the review process.

11. Section 13.27 is amended by revising paragraph (a), by revising paragraph (b)(2), and by revising paragraph (b)(3) and by adding paragraph (b)(4) to read as follows:

§ 13.27 Permit suspension.

(a) *Criteria for suspension*. The following criteria will apply except: pursuant to a court order; in cases of willfulness; or in cases where the public health, interest, or safety requires otherwise. In general the privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit or with any applicable laws or regulations governing the conduct of the permitted activity. The issuing/reviewing office may also suspend all or part of the privileges authorized by a permit if the permittee fails to pay any fees, penalties, or costs owed to the Government.

(b) * * *

(2) Upon receipt of a notice of proposed suspension the permittee may file a written objection to the proposed action. Such objection must be in writing, must be postmarked within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed suspension, and may include supporting documentation and any new information.

(3) A decision on the proposed suspension will be made within 45 calendar days after receipt of the objection, or the end of the objection period if the permittee does not respond within the objection period, unless extended for good cause and the permittee is notified of the extension. In the event of an adverse decision on the permittee's written objection, the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons thereof together with the information concerning the right to appeal the decision under § 13.29(e) of this part, and the procedures thereof.

(4) A permit suspended under paragraph (b)(3) of this section will be subject to revocation in accordance with § 13.28(c) when the permittee fails to correct the deficiencies that were the cause of the permit suspension within 45 calendar days of the following: (i)(A) Receipt of the suspension action under paragraph (b) of this section; or (B) the date of adverse decision under the appeal process set forth in § 13.29(e). (ii) Where the permittee has provided written notification to clearly show the deficiencies that were the cause of permit suspension have been corrected within the 45 days of this subparagraph, a decision on the revocation will be made within 45 calendar days after receipt of the notice of correction.

12. Section 13.28 is amended by revising paragraph (a) and the heading of paragraph (b); adding paragraph (b) introductory text revising paragraphs (b)(2), (b)(3), and (b)(4); by adding paragraphs (c) and (d) to read as follows:

§ 13.28 Permit revocation.

(a) *Criteria for revocation*. The following criteria will apply, except: pursuant to a court order; or in cases of willfulness; or in cases where the public health, interest, or safety require otherwise. A permit may be revoked for any of the following reasons:

(1) The permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the law(s) or regulation(s) governing the permitted activity, that results in a felony conviction, or entry of a plea of guilty or nolo contendere. The revocation will disqualify any such person in accordance with § 13.21(c)(2) from receiving or exercising the privileges of a similar permit for a period of 5 years; or

(2) The permittee has violated any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, that involves a violation of the condition(s) of the permit or of the laws or regulations governing the permitted activity resulting in a conviction, or entry of a plea of guilty or nolo contendere for any misdemeanor violation, or the assessment of a penalty for a civil violation if such assessment or conviction evidences a lack of responsibility. The revocation will disqualify any such person in accordance with § 13.21(c)(2) from receiving or exercising the privileges of a similar permit for a period of 5 years; or

(3) The permittee fails to correct deficiencies that were the cause of a permit suspension, within 45 calendar days of receipt of the suspension action in accordance with § 13.27(b) or, if appealed, within 45 calendar days of the date of an adverse decision under the appeal process set forth in § 13.29(e). The revocation will disqualify any such person, in accordance with § 13.21(c)(2), from receiving or exercising the privileges of a similar permit for a period of 5 years; or

(4) The permittee becomes disqualified under § 13.21(c) of this part; or

(5) A change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by the Service; or

(6) The population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population;

(7) The permittee failed to disclose material information required or made false statements as to any material fact in connection with his or her permit application or as to the conduct of activities under his or her permit;

(8) The permittee has failed to exercise responsibility in accordance with § 13.21(a)(2);

(9) The Director or Regional Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified; or

(10) The permittee has failed to fulfill the applicable requirements of this subchapter B.

(b) *General procedures for revocation*. Except as provided in paragraph (c) of this section, the following procedures will apply.

* * * * *

(2) Upon receipt of a notice of proposed revocation the permittee may file a written objection to the proposed action. Such objection must be in writing, must be postmarked within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed revocation, and may include supporting documentation and any new information.

(3) A decision on the proposed revocation will be made within 45 calendar days after receipt of the objection or the end of the objection period if the permittee does not respond within the objection period, unless

extended for good cause and the permittee is notified of the extension. In the event of an adverse decision on the permittee's written objection the issuing/reviewing office will notify the permittee in writing of the Service's decision and the reasons therefor, together with the information concerning the right to appeal the decision under § 13.29(e) of this part, and the procedures for appeal.

(4) Unless a permittee files a timely appeal as set forth in § 13.29(e), any wildlife or plants held under authority of a permit that is revoked must be disposed of in accordance with instructions of the issuing/reviewing office. If a permittee files a timely appeal of a permit revocation, such permittee may retain possession of any wildlife or plants held under authority of the permit until final disposition of the appeal process.

(c) *Special procedures for revocation.* A suspension permit will be subject to revocation when a permittee fails to correct deficiencies that were the cause of the permit suspension, in accordance with § 13.28(a)(3) and the procedures of this section:

(1) When the issuing/reviewing office believes there are valid grounds for the revocation of a permit suspended under the criteria of § 13.27(a) for reasons found in § 13.28(a)(3), the permittee will be notified in writing of the revocation by certified or registered mail. This notice will identify: the permit that has been revoked; the reason(s) for such revocation; the effective date of revocation; the proposed disposition of the wildlife or plants, if any; and inform the permittee that such revocation is without recourse to further administrative procedures and of the permittee disqualification for 5 years in accordance with § 13.21(c)(2). The issuing/reviewing office may amend any notice of revocation at any time.

(2) Any wildlife or plants held under authority of a permit that has been subjected to permit suspension in accordance with § 13.27, where the permittee has failed to correct deficiencies that were the cause of the permit suspension in accordance with § 13.28(a)(3) must be disposed of in accordance with instructions of the issuing/reviewing office.

(d) *Time allocated for administrative procedures.*

(1) *Suspension (§ 13.27(b)).*

(i) Written objection postmarked within 45 calendar days of the date of proposed suspension (§ 13.27(b)(2)).

(ii) Service decision within 45 calendar days after receipt of the objection or end of the objection period (§ 13.27(b)(3)).

(iii) Correct deficiencies within 45 calendar days of the date of the suspension (§ 13.27(b)(4)).

(iv) Appeal of adverse decision postmarked within 45 calendar days of the date of the notification (§ 13.27(b)(3)).

(v) Correct deficiencies within 45 calendar days of the date of the denial of the appeal (§ 13.27(b)(4)).

(2) *Revocation (§ 13.28(b)).*

(i) Written objection postmarked within 45 calendar days of the date of proposed revocation (§ 13.28(b)(2)).

(ii) Service decision within 45 calendar days after receipt of the objection or end of the objection period (§ 13.28(b)(3)).

(iii) Appeal of adverse decision postmarked within 45 calendar days of the date of the notification (§ 13.28(b)(3)).

(iv) The decision of the Director or the Regional Director will constitute the final administrative decision of the Department of the Interior (§ 13.29(f)(e)).

(3) *Revocation of suspended permit (§ 13.28(c)).*

(i) Occurs if permittee has failed to correct deficiencies that resulted in suspension under § 13.27(b)(3) within 45 calendar days of either: the receipt of the suspension action in accordance with § 13.28(a)(3) or, if the suspension is appealed, the date of a final adverse decision under the appeal process set forth in § 13.29(e).

(ii) The permittee will be notified in writing of the permit revocation by certified or registered mail. Revocation under 13.28(c) is without recourse to further administrative procedures (§ 13.28(c)(1)).

(4) *Other review procedures.* Denial under § 13.29(a)(1), or denial of renewal § 13.29(a)(2), amendment § 13.29(c) or required amendment § 13.29(a)(3), and partial denial of permit issued, renewed, or amended § 13.29(a)(4).

(i) Written reconsideration (include certification) postmarked within 45 calendar days of notification of the decision (§ 13.29(b)(2), § 13.29(b)(4)).

(ii) Service decision within 45 calendar days after receipt of the request for reconsideration (§ 13.29(d)).

(iii) Appeal of an adverse decision postmarked within 45 calendar days of the date of notification (§ 13.29(e)).

(iv) The decision of the Director or the Regional Director will constitute the final administrative decision of the Department of the Interior (§ 13.29(f)(e)).

13. Section 13.29 is amended by revising (a) introductory text, (a)(3), (a)(4), (b)(2), (b)(4), (d) and (e), by redesignating the existing paragraphs (f) (1), (2) and (3) as (f) (2), (3), and (4), by adding a new paragraph (f)(1) and by revising newly designated paragraphs (f) (2), (3) and (4) to read as follows:

§ 13.29 Review procedures.

(a) *Request for reconsideration.* Except when the activity requested is one for which there is no lawful authority to issue a permit and in actions revoking a suspended permit in accordance with § 13.28(a)(3) for failure to correct the deficiencies that were the cause of permit suspension, any person may request reconsideration of an action under this part if that person is one of the following:

* * * * *

(3) A permittee who has a permit amended, except for those actions that are required by changes in statutes or regulations or are emergency changes of limited applicability for which an expiration date is set within 90 calendar days of the permit change; or

(4) A permittee who has a permit issued, renewed, or amended, but has not been granted authority by the permit to perform all activities requested in the application.

(b) * * *

(2) The request for reconsideration must be postmarked within 45 calendar days of the date of notification of the decision for which reconsideration is being requested.

* * * * *

(4) The request for reconsideration will contain a certification in substantially the same form as that provided by § 13.12(a)(5). If a request for reconsideration does not contain such certification, but is otherwise timely and appropriate, it will be held, and the person submitting the request will be given written notice of the need to submit the certification within 15 calendar days of the date of the notice. Failure to submit certification will result in the request being rejected as insufficient in form and content.

* * * * *

(d) *Determination of grant or denial of a request for reconsideration.* The issuing/reviewing office will notify the applicant or permittee of the Service's decision within 45 calendar days of the receipt of the request for reconsideration or the certification, if submitted separately, unless extended for good cause and the applicant or permittee is notified of the extension. This notification will be in writing, will state the reasons for the decision, and will contain a description of the evidence that was relied upon by the issuing/reviewing office. If the decision is adverse, the notification will also provide information concerning the right to appeal, the official to whom an appeal may be addressed, and the procedures for making an appeal.

(e) *Appeal.* Except for actions revoking a suspended permit in accordance with § 13.27(a), § 13.28(a)(3), and § 13.28(c), a person who has received an adverse decision following submission of either a written objection to a suspension or revocation or a request for reconsideration may submit a written appeal to the Regional Director for the region in which the issuing/reviewing office is located or to the Director, for offices that report directly to the Director. An appeal when submitted must be postmarked within 45 calendar days of the date of the notification of the decision on the objection to a suspension or revocation, or the request for reconsideration. The appeal will state the reason(s) and issue(s) upon which the appeal is based and may contain any additional evidence or arguments to support the appeal.

(f) * * * (1) The Director or the Regional Director may designate any staff member(s) to assist in analyzing the issues and may include the recommendations of the issuing/reviewing office.

(2) Before a decision is made concerning the appeal, the appellant may present oral arguments before the Director or the Regional Director, as appropriate, if such official judges oral arguments are necessary to clarify issues raised in the written record.

(3) The Service will notify the appellant in writing of its decision within 45 calendar days of receipt of the appeal, unless extended for good cause and the appellant is notified of the extension.

(4) The decision of the Director or the Regional Director will constitute the final administrative decision of the Department of the Interior.

14. Section 13.30 is added to subpart C to read as follows:

§ 13.30 Table of references.

(a) Exercise of Responsibility Determinations: A determination as to whether an applicant or permittee has exercised responsibility under the considerations of § 13.21(a)(2).	Will be made for the reasons specified in § 13.21(b)(1), § 13.21(b)(3), § 13.21(b)(8), § 13.21(c)(1)(ii), or § 13.28(a)(2).1
(b) The Effects of Disqualification: A disqualification for reasons specified in § 13.21(c).	Will result in denial of a new permit [§ 13.21(g)], renewal of a permit [§ 13.22(b)], and amendment of a permit [§ 13.23(c)], or revocation of any existing permit [§ 13.28(a)(4)].
(c) Procedures for Denial: Permit under § 13.21(g), Renewal under § 13.22(d), Amendment under § 13.23(c), or Partial Denial under § 13.29(a)(4). An applicant for a permit who has received a written notice of denial.	May file a request for reconsideration under the procedures specified in § 13.29(b) and may then file a timely appeal when appropriate under § 13.29(e).
(d) Procedures for Permit Amendment(s) Initiated by the Service: A permittee [see § 13.29(a)(3)] who has a permit amended under § 13.23(b).	May file a request for reconsideration under the procedures specified in § 13.29(b) and may then file a timely appeal when appropriate under § 13.29(e).
(e) Procedures for Suspension of a Permit: A permittee who has a permit suspended in accordance with § 13.27.	May file a written objection as specified in § 13.27(b)(2) and may then file a timely appeal in accordance with § 13.27(b)(3) when appropriate under § 13.29(e).
(f) General Procedures for Revocation of a Permit: A permittee who has received a proposed revocation for reasons specified in § 13.28(a)(1), § 13.28(a)(2), § 13.28(a)(4), § 13.28(a)(5), § 13.28(a)(6), § 13.28(a)(7), § 13.28(a)(8), § 13.28(a)(9), or § 13.28(a)(10).	May file a written objection as specified in § 13.28(b)(2) and may then file a timely appeal in accordance with 13.28(b)(3) when appropriate under § 13.29(e).
(g) Special Procedures for Revocation of a Suspended Permit, Where Applicant Has Failed to Correct Deficiencies That Were the Cause of a Suspension: A suspended permit revoked for reasons specified in § 13.28(a)(3).	Will follow the revocation procedures specified in § 13.28(c).
(h) The Effects of a Prior Revocation on Subsequent Permits:	Will result in disqualification for a permit under § 13.21(c)(2).
A prior revocation for reason specified in § 13.28(a)(1), § 13.28(a)(2), or § 13.28(a)(3).	

15. Section 13.41 is revised to read as follows:

§ 13.41 Humane conditions.

Any live wildlife or plants possessed, held, transported and/or imported under a permit must be maintained under humane and healthful conditions to include 9 CFR subchapter A, 50 CFR part 14, subpart J, and other conditions of a permit that may apply.

16. Section 13.46 is revised to read as follows:

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee will maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of plants or wildlife pursuant to such permit. Such records will be kept current and will include names and addresses of persons from or with whom any plant or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction; date of death or escape; and such other information as may be required or appropriate. Such records will be legibly written or reproducible in English and will be maintained for 5 years from the date of expiration of the permit.

17. Section 13.47 is revised to read as follows:

§ 13.47 Inspection requirement.

Any person holding a permit under this subchapter B will allow the Director's or Regional Director's agent to enter his premises at any reasonable hour, as established or evidenced by actual operation, or normal or expected hours of operation for the type or similar type of business, trade, operation, or activity, to inspect any wildlife or plant held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of this subchapter B.

18. The authority citation for Part 17 is revised to read as follows:

Authority: 16 U.S.C. 1361–1407, 1531–1544, 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Subpart C—Endangered Wildlife [Amended]

19. Section 17.22 is amended by revising paragraphs (a)(1) introductory text and (b)(1) introductory text to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* Applications for permits under this paragraph for native endangered species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the activity prohibited by § 17.21 (c) and (e). Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native endangered species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the activity prohibited by § 17.21. Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment, all of the following information:

* * * * *

(b)(1) *Application requirements for permits for incidental taking.* Applications for permits under this paragraph must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the activity is to take place (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the activity prohibited by § 17.21(c). Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment all of the following information:

* * * * *

Subpart D—Threatened Wildlife [Amended]

20. Section 17.32 is amended by revising paragraphs (a)(1) introductory text and (b)(1)(i) to read as follows:

§ 17.32 Permits—general.

* * * * *

(a)(1) *Application requirements for scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or special purposes consistent with the purposes of the Act.* Applications for permits under this paragraph for native threatened species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the prohibited activity. Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native threatened species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management and Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the prohibited activity. Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment, as much of the following information that relates to the purpose for which the applicant is requesting a permit:

* * * * *

(b)(1) *Application requirements for permits for incidental taking.* (i) Applications for permits under this paragraph must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the activity is to take place (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the activity prohibited by § 17.31.

* * * * *

Subpart F—Endangered Plants [Amended]

21. Section 17.62 is amended by revising paragraph (a) introductory text to read as follows:

§ 17.62 Permits for scientific purposes or for the enhancement of propagation or survival.

* * * * *

(a) *Application requirements.* An application for a permit under this section for native endangered species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the prohibited activity. Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native endangered species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the prohibited activity. The permit for activities involving interstate commerce must be obtained by the seller if the plants are derived from cultivated stock, and by the buyer if the plants are taken from the wild. The application must be submitted on an official application form (Form 3–200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. Requirements differ for the issuance of a permit for activities dealing with plants obtained from the wild (excluding seeds), seeds and cultivated plants, or herbarium specimens. The applicant must provide in an attachment the following required information and any other information that is requested by the Director or Regional Director.

* * * * *

Subpart G—Threatened Plants [Amended]

22. Section 17.72 is amended by revising paragraph (a) introductory text to read as follows:

§ 17.72 Permits—general.

* * * * *

(a) *Application requirements.* An application for a permit under this section for native threatened species take and interstate commerce must be submitted to the Regional Director, U.S. Fish and Wildlife Service, Attention: Endangered/Threatened Species Permits, for the Region where the applicant resides or where the take is to occur (for appropriate address see 50 CFR 10.22), by the person wishing to engage in the prohibited activity. Applications for permits under this paragraph for prohibited activities with foreign species and import, export, and foreign commerce with native threatened species must be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420c, Arlington, Virginia 22203, by the person wishing to engage in the prohibited activity. The permit for activities involving interstate commerce must be obtained by the seller if the plants are derived from cultivated stock, and by the buyer if the plants are taken from the wild. The application must be submitted on an official application form (Form 3–200) provided by the Service, or must contain the general information and certification required by § 13.12(a) of this subchapter. Requirements differ for the issuance of a permit for activities dealing with plants obtained from the wild (excluding seeds), seeds and cultivated plants, or herbarium specimens. The applicant must provide in an attachment the following required information and any other information that is requested by the Director or Regional Director.

* * * * *

Date: November 9, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950822210–5210–01; I.D. 081195A]

RIN 0648–AH94

Summer Flounder Fishery; Amendment 7

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement measures proposed in Amendment 7 to the Summer Flounder Fishery Management Plan (FMP). This amendment would revise the fishing mortality rate reduction schedule for summer flounder, with the intended effect of still rebuilding summer flounder stock abundance, while reducing short-term economic losses for participants in the fishery.

DATES: Comments on the proposed rule must be received on or before October 16, 1995.

ADDRESSES: Comments on the proposed rule should be sent to Dr. Andrew A. Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on Summer Flounder Plan."

Copies of Amendment 7, the environmental assessment, and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508-281-9221.

SUPPLEMENTARY INFORMATION:

Background

Amendment 7 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC) and the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed amendment was published in the **Federal Register** on August 17, 1995 (60 FR 42830). Copies of the amendment are available from the Council upon request (see **ADDRESSES**). The amendment revises management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

The management unit continues to be summer flounder in U.S. waters in the western Atlantic Ocean from North Carolina northward. The objectives of the FMP are unchanged by this amendment: (1) Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur; (2) reduce fishing mortality of immature summer flounder to increase spawning stock biomass; (3) improve the yield from the fishery; (4) promote compatible management regulations between state and Federal jurisdictions; (5) promote uniform and effective enforcement of regulations; and (6) minimize regulations to achieve the management objectives stated above.

The regulations implementing the FMP, and its amendments, enact a broad spectrum of measures to stop overfishing and allow the stock to rebuild. These measures include a fishing mortality rate (F) reduction schedule. The reduction schedule was set at F of 0.53 for 1993–95, and F_{max} (0.23) in 1996 and thereafter. F_{max} is the biological reference point that corresponds to the level of fishing mortality that produces the maximum yield per recruit. The schedule was developed and adopted by the Council and ASMFC after lengthy deliberations. It was deemed an appropriate balance between effective reduction in fishing mortality and short-term economic burdens placed on participants in the fishery.

The Council and ASMFC conducted analyses of the fishing mortality rate reduction schedules during the development of Amendment 2. This reduction in fishing mortality was to be accomplished through a combination of minimum mesh size and minimum fish size restrictions and a coastwide annual quota divided between the recreational and commercial fisheries. Based on these analyses, the Council believed that by the fourth year of the rebuilding schedule (1996), the level of rebuilding in the stock would offset any significant reductions in quota. That is, it was assumed that the stock growth from years 1 to 3 would be large enough, so that by 1996 the quota would not be significantly different from the 1995 level.

However, although the stock has rebuilt from its 1989 low level, it has not recovered to the extent projected. Lower than expected recruitment levels in 1993 and redirected exploitation patterns on more ages–0 and –1 fish produced a higher F than expected. Thus, in order to reach the target F of 0.23 in 1996, given our current knowledge of stock abundance and age distribution, the resulting quota would be approximately 11 million lb (4,990 mt), or about a 50 percent reduction from the 1995 quota. Because of the magnitude of this reduction, and the resulting short-term losses to the industry, the Council and ASMFC initiated a re-examination of the fishing mortality rate reduction schedule for summer flounder.

This examination included analyses of the impacts of proposed changes on future spawning stock biomass (SSB) and recruitment success. Based on virtual population analysis (VPA) results, there is a near linear relationship between summer flounder SSB and recruitment. Thus, as SSB increases, recruitment should also increase. Lower levels of recruitment from 1983 to 1993 were associated with SSB estimates ranging from 11 to 33 million lb (4,990 to 14,969 mt). The SSB estimates above 33 million lb (14,969 mt) were associated with higher recruitment levels. With the proposed amendment, the SSB for 1996 is estimated at 46 million lb (20,865 mt). Thus, the chance of recruitment failure associated with this proposed regulation is minimal.

Amendment 7, if approved, would revise the fishing mortality rate by deferring attainment of F_{max} until 1998. This revision would allow for more stable landings from one year to the next. The change would alleviate short-term economic burdens on the industry, yet slow the rate of stock rebuilding only slightly. The Council and ASMFC have adopted the following strategy: The fishing mortality rate would be reduced from the 1995 target (0.53) to 0.41 in 1996, 0.3 in 1997, and F_{max} in 1998 and beyond. In addition, the amendment specifies that the quota for 1996 and 1997 could not exceed 18.51 million lb (8,396 mt). This cap on the quota could result in an F in 1996 and 1997 lower than 0.41 and 0.3, respectively, but would not exceed these values. A quota level above the cap could be set in 1996 or 1997, but only if the resulting quota had an associated F of 0.23.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time, NMFS has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) as a supplement to the regulatory impact review prepared by the Council, which describes the economic impacts this proposed rule would have on small entities, if adopted. Compared to the projected ex-vessel revenues for the 1995 summer flounder commercial fishery, estimated ex-vessel revenues would be only 20.1% less in 1996 if Amendment 7 is implemented, whereas under the existing regulations, estimated 1996 ex-vessel revenues would be 48.5% less than those in 1995. Anticipated ex-vessel revenues for the commercial fishery would thus decrease less under Amendment 7 than they would under existing regulations, resulting in an economic benefit to the fishery. Under Amendment 7, it is estimated that in 1996, an additional $6.7 million in ex-vessel revenues will be available, compared to the status quo, for distribution among as many as 1,098 permitted vessels. Copies of the IRFA are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 625

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 30, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is proposed to be amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 625.20, paragraph (a) introductory text is revised to read as follows:

§ 625.20 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee will review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.53 in 1993 through 1995, 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18.51 million lb (8,396 mt), unless such fishing levels have an associated F of 0.23:

* * * * *

[FR Doc. 95–21947 Filed 8–30–95; 3:43 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 171
Tuesday, September 5, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–041–2]

Availability of Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Monsanto Company's corn line designated as MON 80100 that has been genetically engineered for insect resistance is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Monsanto Company in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Monsanto Company petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: August 22, 1995.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1995, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 95–093–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination that corn designated as MON 80100 that has been genetically engineered for insect resistance does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On June 7, 1995, APHIS published a notice in the **Federal Register** (60 FR 30061–30062, Docket No. 95–041–1) announcing that the Monsanto petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency (EPA), and the Food and Drug Administration in regulating the subject corn line and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether corn line MON 80100 posed a plant pest risk. The comments were to have been received by APHIS on or before August 7, 1995.

APHIS received nine comments on the Monsanto petition, from farmers, industry, universities, a growers association, and a State department of agriculture. All the commenters expressed support for the subject petition.

Analysis

Monsanto's corn line MON 80100 has been genetically engineered to express a CryCIA(b) insect control protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kurstaki* (*Btk*). *Btk* proteins are effective against certain lepidopteran insects, including European corn borer (ECB), a major corn pest. Results of field tests conducted by Monsanto under permits and notifications granted by APHIS and under an experimental use permit obtained from EPA indicate that corn plants producing the CryCIA(b) protein were protected throughout the growing season from leaf and stalk feeding damage caused by ECB. In addition to expressing the CryCIA(b) protein, the plants also express the selectable marker enzyme 5-enolpyruvylshikimate-3-phosphate synthase (CP4 EPSPS). The *cryIA(b)* gene and the CP4 EPSPS marker gene were introduced into the subject corn line by a particle acceleration method and their expression is under the control of the enhanced 35S promoter derived from the plant pathogen cauliflower mosaic virus.

The subject corn line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains certain gene sequences derived from plant-pathogenic sources. However, evaluation of field data reports from field tests of corn line MON 80100 conducted since 1992 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the subject corn plants' release into the environment.

Determination

Based on its analysis of the data submitted by Monsanto and a review of other scientific data, comments received from the public, and field tests of the subject corn, APHIS has determined that corn line MON 80100: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than lepidopteran-insect-resistant corn developed through traditional breeding techniques; (3) is unlikely to increase the weediness potential of any other cultivated plant or native wild species with which it can interbreed; (4) should not cause damage to raw or processed agricultural commodities; (5) is unlikely to harm organisms beneficial to the agricultural ecosystem; and (6) when cultivated, should not reduce the ability to control insects in corn and other crops. APHIS has also concluded that there is a reasonable certainty that new varieties developed from corn line MON 80100 will not exhibit new plant pest properties, i.e., properties substantially different from any observed in the field tested corn line MON 80100, or those observed in corn in traditional breeding programs.

The effect of this determination is that an insect-resistant corn line designated as MON 80100 is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of corn line MON 80100 or its progeny. However, the importation of the subject corn line or seed capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000–6005). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the subject corn line and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 28th day of August 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–21847 Filed 9–1–95; 8:45 am]

BILLING CODE 3410–34–P

Cooperative State Research, Education, and Extension Service

National Sustainable Agriculture Advisory Council; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the Cooperative State Research, Education, and Extension Service announces the following meeting:

Name: National Sustainable Agriculture Advisory Council.

Date: September 25–26, 1995.

Time: 8:30 am to 4:30 pm, Sept. 25, 8:30 am to 2 pm Sept. 26.

Place: Governor's House Hotel, Rhode Island Ave., 17th St., NW., Washington, DC.

Type of Meeting: Open to public.

Comments: The public may file written comments before or after the meeting with the contact person listed below. A specific time for public comments will be scheduled for the afternoon of September 25, 1995.

Purpose: To serve as an annual meeting for the National Sustainable Agriculture Advisory Council, and to advise the Secretary of Agriculture with respect to initiatives and priorities related to sustainable agriculture.

Contact Person for Agenda and More Information: Dr. Robert Myers, Director, Office of Sustainable Agriculture Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, South Building, Room 3863, 14th & Independence Ave., SW., Washington, DC 20250, Telephone 202–720–5623.

Done at Washington, DC this 25th day of August, 1995.

Alma Hobbs,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–21850 Filed 9–1–95; 8:45 am]

BILLING CODE 3410–22–M

Grain Inspection, Packers and Stockyards Administration

Designation for the Louisiana and North Carolina Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Louisiana Department of Agriculture and Forestry (Louisiana) and North Carolina Department of Agriculture (North Carolina) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 31, 1995, **Federal Register** (60 FR 16602), GIPSA asked persons interested in providing official services in the geographic areas assigned to Louisiana and North Carolina to submit an application for designation. Applications were due by May 1, 1995. There were three applicants: Louisiana and North Carolina each applied for designation to provide official services in the entire areas currently assigned to them; Saybolt-South Texas Inspection Service, Inc., main office located in Galena Park, Texas, applied for the entire Louisiana area.

GIPSA requested comments on the applicants in the June 1, 1995, **Federal Register** (60 FR 28571). Comments were due by June 30, 1995. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Louisiana is better able to provide official services in the geographic area for which they applied, and North Carolina is able to provide official services in the geographic area for which they applied. Effective October 1, 1995, and ending September 30, 1998, Louisiana is designated to provide official inspection and Class X and Class Y weighing services, and North Carolina is designated to provide official inspection services in the geographic areas specified in the March 31, 1995, **Federal Register**.

Interested persons may obtain official services by contacting Louisiana at 318–487–5088 and North Carolina at 919–733–4491.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: August 25, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–21855 Filed 9–1–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Grand Forks (ND) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: Grand Forks Grain Inspection, Inc. (Grand Forks), asked that their designation be terminated on December 31, 1995, due to a change in ownership and the dissolution of the company. GIPSA is asking persons interested in providing official services in the specified geographic area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before September 11, 1995.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the GIPSA Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

GIPSA designated Grand Forks, main office located in Grand Forks, North Dakota, to provide official inspection services, under the Act on February 1, 1995.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Grand Forks is scheduled to end on January 31, 1998. However, Grand Forks asked GIPSA to end its designation effective December 31, 1995, as a result of a change in ownership and dissolution of the corporation. Accordingly, GIPSA is announcing the end of the Grand Forks designation on December 31, 1995, and is asking for applications from interested parties.

The geographic area presently assigned to Grand Forks, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State Route 200 west-northwest to the western Traill County Line; the western Traill County line; the southern Grand Forks and Nelson County lines; the southern Eddy County line west to U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Exceptions to Grand Forks' assigned geographic area are the following locations inside Grand Forks' area which have been and will continue to be serviced by the following official agencies:

1. Grain Inspection, Inc.: Farmers Coop Elevator, Fessenden; Farmers Union Elevator, and Manfred Grain, both in Manfred; all in Wells County; and
2. Minot Grain Inspection, Inc.: Harvey Farmers Elevator, Harvey, Wells County.

Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning January 1, 1996, and ending October 31, 1998. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*)

Dated: August 25, 1995.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 95–21852 Filed 9–1–95; 8:45 am]

BILLING CODE 3410–EN–M

ARMS CONTROL AND DISARMAMENT AGENCY

Announcement of the Hubert H. Humphrey Fellowship Competition for the 1996–97 Academic Year

The United States Arms Control and Disarmament Agency will conduct a competition in 1996 for one-year Hubert H. Humphrey Fellowships in support of unclassified doctoral dissertation research in arms control, nonproliferation and disarmament studies. Law candidates for the Juris Doctor are also eligible if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for the Ph.D. candidates will be $8,000 plus reimbursement for tuition and fees up to a maximum of $6,000. Stipends and tuition for law candidates will be prorated according to the number of credits given for the research paper.

Qualified applicants must be citizens of the United States and degree candidates at a U.S. college or university. Candidates are asked to submit an application, a five-page thesis abstract with bibliography, three letters of reference, transcripts of all graduate course work, and university approval of the dissertation topic. The application deadline for the 1996 competition is March 15, 1996. Awards will be for a twelve month period beginning in September 1996 or January 1997.

For information and application materials please write to: Hubert H. Humphrey Doctoral Fellowship Program, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451; or call (703) 302–7714.

Dated: August 18, 1995.

Ambassador James Sweeney,

Chief Science Advisor.

[FR Doc. 95–21897 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–32–M

Announcement of the William C. Foster Fellows Visiting Scholars Program for the 1996–97 Academic Year

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition to select visiting scholars to serve at the Agency during the 1996–97 academic year. University faculty from a variety of fields are sought, including those in the physical sciences, international relations, economics, engineering, chemistry, biology, mathematics and computer science.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568), as amended, provides that "a program for visiting scholars in the field of arms control, nonproliferation, and disarmament shall be established by the Director in order to obtain the services of scholars from the faculties of recognized institutions of higher learning." The law states that "the purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control, nonproliferation, and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer * * *" Scholars are known as William C. Foster

Fellows, in honor of the first Director of ACDA, who served from 1961 to 1969.

Up to six fellows will be selected in 1996. Assignments are available in the Bureaus of Strategic and Eurasian Affairs (SEA); Multilateral Affairs (MA); Intelligence, Verification and Information Management (IVI); and Nonproliferation Policy and Regional Arms Control (NP). Visiting scholars participate in a wide range of Agency activities, such as performing arms control research and analyses, evaluating data relating to compliance with treaties in force, supporting interagency development of arms control policy, and taking part in international arms control and disarmament negotiations.

Visiting scholars will be detailed to ACDA by their universities for one full year. The institutions will be compensated for the scholars' salaries and benefits in accordance with the Intergovernmental Personnel Act of 1970 and within Agency budgetary limitations. Each Fellow will receive reimbursement for travel to and from the Washington, DC area for his/her one year assignment and either a per diem allowance during the one year detail or relocation costs.

Qualified candidates must be citizens of the United States, on the faculty of a recognized U.S. institution of higher learning, and tenured or on a tenure track. ACDA is an equal opportunity employer. Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap that does not interfere with performance of duties. Prior to appointment, all candidates will be subject to a full-field background investigation for a Top Secret security clearance, as required by Section 45 of the Arms Control and Disarmament Act, as amended. Visiting scholars will be subject to applicable Federal conflict of interest laws and standards of conduct.

To apply, candidates must submit a letter outlining their interests and qualifications, a curriculum vitae, copies of two publications, and optional supporting material such as letters of reference. Applicants will be evaluated based on their potential to provide expertise or to perform services critical to ACDA's mission. The application deadline for assignments for the 1996–97 academic year is January 31, 1996, subject to extension at the Agency's discretion. ACDA expects to announce tentative selections in June 1996.

For an information brochure, please write to: Foster Fellows Program, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451; or call (703) 302–7714.

Dated: August 18, 1995.

Ambassador James Sweeney,

Chief Science Advisor.

[FR Doc. 95–21898 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–32–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, September 28, 1995, at the Embassy Suites, 110 W. Washington, Indianapolis, Indiana 46204. The purpose of the meeting is to review the draft report, "The Enforcement of Affirmative Action Compliance in Indiana under Executive Order 11246," and discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Paul Chase, 317–920–3190, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 29, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–21856 Filed 9–1–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 4 p.m. and adjourn at 8 p.m. on Thursday, September 21, 1995, at the Crown Sterling Suites, 425 S. 7th Street, Minneapolis, Minnesota 55415. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Karon J. Rogers at 612–661–4713, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 29, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–21857 Filed 9–1–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Thursday, September 28, 1995, at the Marietta Tower, Social Security Training Room, Suite 2801, 101 Marietta Street, NW, in Atlanta, Georgia 30303. The purpose of this meeting is to: discuss a civil rights conference proposal, discuss the monitoring project on preparations for the 1996 Olympics, review current activities, and discuss civil rights problems and/or progress in State and nation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Elaine Alexander, 404–233–8414, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 25, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–21858 Filed 9–1–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology.

Title: National Voluntary Laboratory Accreditation Program (NVLAP)-NVLAP Information Collection System.

Form Number(s): None.

Agency Approval Number: 0693–0003.

Type of Request: Extension of a currently approved collection.

Burden: 2,400 hours.

Number of Respondents: 200.

Avg Hours Per Response: 2 hours.

Needs and Uses: The National Voluntary Laboratory Accreditation Program (NVLAP)-NVLAP Information Collection System collects information that is required from all laboratories applying for NVLAP accreditation. Applicants provide the minimum information, required by published accreditation criteria, to achieve effective on-site assessments and informed evaluations leading to sound accreditation decisions.

Affected Public: Business of other for–profit organizations, Not–for–profit institutions, Federal Government and State, Local or Tribal Government.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Virginia Huth, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Virginia Huth, OMB Desk Officer, Room 10236 New Executive Office Building, Washington, DC 20503.

Dated: August 30, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–21961 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–CW–F

Economic Development Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

John E. Corrigan
Awilda R. Marquez
Craig M. Smith
Chester J. Straub, Jr.
Stephen C. Browning

Anthony J. Calza,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 95–21899 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–BS–M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's Visiting Committee on Advanced Technology (NIST) will meet on Tuesday, September 12, 1995, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on NIST programs, the Advanced Technology Program: progress report and program definition, the Manufacturing Extension Partnerships, laboratory tours, and a discussion of the Institute budget.

Discussions on the NIST budget, including funding of the Applied Technology Program and the Manufacturing Extension Partnership and the staffing of management positions at NIST scheduled to begin at 8:30 a.m. and to end at 9:30 a.m. on September 12, 1995, will be closed.

DATES: The meeting will convene September 12, 1995, at 8:30 a.m. and will adjourn at 5 p.m. on September 12, 1995.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, at the National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 25, 1995, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the ATP and the MEP Programs may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 27, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–21844 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[Docket No. 950616159–5216–02; I.D. 081695E]

The Fishing Capacity Reduction Demonstration Program Funding Availability; Revisions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of program revision.

SUMMARY: A prior notice in the **Federal Register** announced the Fishing Capacity Reduction Demonstration Program (FCRDP) that provides $2 million for a pilot test approach for permanently reducing the fishing capacity in the Northeast multispecies groundfish fishery. NMFS adds sinking as a method of disposal for fishing vessels under the FCRDP. NMFS also extends the closing date by 2 weeks for submission or resubmission of applications to give applicants time to consider this alternative.

DATES: Effective August 30, 1995. Applications must be postmarked by September 19, 1995.

ADDRESSES: Applications should be sent to the Northeast Financial Services Branch, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Bruce Morehead, (301) 713–2358 or Leo Erwin, (508) 281–9203.

SUPPLEMENTARY INFORMATION:

Background

The FCRDP was described in an earlier notice: Notice of program for financial assistance (60 FR 32504, June 22, 1995).

Changes to the Program

In the previous notice, successful applicants were required to scrap their vessels as a condition of receiving funding under the FCRDP. Supervised sinking will be considered as an acceptable method of vessel disposal. The closing date for submission or resubmission of applications is extended for 2 weeks to allow applicants time to consider this alternative method of vessel disposition.

Alternative to Scrapping

The previous notice described scrapping of vessels as a required part of the consideration from vessel owners to qualify to receive payment under the FCRDP. Scrapping is one way to remove the vessel from the fishery. A second alternative, voluntary sinking, also exists and is an acceptable alternative under this notice. Voluntary sinking must be conducted within the confines and in compliance with all applicable Federal, state, and local environmental laws and regulations. Approval from Federal, state, and local authorities, as applicable, is required.

Classification

Applications under this program are subject to E.O. 12372, "Intergovernmental Review of Federal Programs."

This notice involves a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget (OMB control number 0648–0289).

This action has been determined to be not significant for purposes of E.O. 12866.

Authority: 15 U.S.C. 713c–3(d).

Dated: August 28, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–21854 Filed 8–30–95; 9:11 am]

BILLING CODE 3510–22–F

[I.D. 082295A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team will hold a public meeting.

DATES: The meeting will be held on September 12 beginning at 10:00 a.m. and going into the evening until business for the day is completed, on September 13 from 8:00 a.m. until 5:00 p.m., and on September 14 from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the draft stock assessments, prepare the annual stock assessment and fishery evaluation document, and complete assignments arising from the August 15–18, 1995 Council meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Amanda Bennett at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 29, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–21950 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 081895A]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meeting.

SUMMARY: The Pacific Northwest Crab Industry Advisory Group, formed by the North Pacific Fishery Management Council as a forum for Pacific Northwest participants in the Alaska crab fisheries to review and comment on crab issues, will meet.

DATES: The meeting will be held on September 25, 1995, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held in the Ranier Room of the Radisson Hotel, 17001 Pacific Highway South, Seattle, WA.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Arni Thomson, Alaska Crab Coalition, 3901 Leary Way NW., Suite 6, Seattle, WA, 98107; telephone: (206) 547–7560.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following subjects:

1. Consultation with staffs of the Alaska Department of Fish and Game and NMFS on Alaska crab fishery issues.
2. Review of the status of Alaska crab stocks.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 29, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–21949 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 081895B]

North Pacific Fishery Management Council; Committee Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings.

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Observer Oversight Committee (OOC) and Insurance Technical Committee (ITC) will meet.

DATES: The OOC will meet on September 11–13, 1995, and the ITC will meet on September 14. Exact starting times have not yet been determined; call the NPFMC office for details (see **ADDRESSES**).

ADDRESSES: Both meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA. Exact room numbers have not yet been determined; call the NPFMC office for details at (907) 271–2809.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, NPFMC; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agendas for the meetings will include the following subjects:

1. The OOC will address all issues of concern regarding the full implementation of the NPFMC Fisheries Research Plan and current Observer Program in general.
2. The ITC will continue discussions on insurance issues relating to the Observer Program and the NPFMC Fisheries Research Plan.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: August 29, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–21951 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 082995C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of two applications for scientific research permits P596 and P521B.

SUMMARY: Notice is hereby given that the New Jersey Division of Fish, Game and Wildlife (P596), and Dr. James Spotila (P521B) have applied in due form for permits to take listed sea turtles for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on these application must be received on or before October 5, 1995.

ADDRESSES: The applications and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Applications P596 and P521B request permits under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The New Jersey Division of Fish, Game and Wildlife (P596) requests authorization to capture five listed loggerhead sea turtles (*Caretta caretta*) per year by trawling, to be measured, weighed, tagged, and released. Dr. James Spotila (P521B) requests authorization to capture six listed leatherback sea turtles (*Dermochelys coriacea*) in the North Atlantic, for metabolic rate measurement.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on that particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: August 30, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–21952 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

Carol C. Darr
Michele C. Farquhar
William Gamble
Bernadette McGuire-Rivera
Richard D. Parlow
Neal B. Seitz
William Utlaut
Barbara S. Wellbery
Stephen C. Browning

Anthony J. Calza,

Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 95–21900 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–BS–M

Economics and Statistics Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration Senior Executive Service (SES) Performance Appraisal System:

Frederick T. Alt
O. Bryant Benton
Sally C. Ericsson
Arnold A. Jackson
Frederick T. Knickerbocker
John S. Landefeld
Robert W. Marx
Stanley D. Matchett
Martha F. Riche
Harry A. Scarr
Paula J. Schneider
Charles V. St. Lawrence
Charles Waite
Katherine K. Wallman

Anthony J. Calza,

Executive Secretary, Economics and Statistics Administration, Performance Review Board.

[FR Doc. 95–21901 Filed 9–1–95; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 12–13 September 1995.

Time of Meeting: 0800–1700, 12 September 1995; 0800–1300, 13 September 1995.

Place: USASSDC Headquarters—Arlington, VA.

Agenda: The Army Science Board Independent Assessment on "Hit-To-Kill Interceptor Lethality" will meet to receive an intelligence threat capabilities update and warhead lethality briefing from representatives of various national intelligence sources (CIA, DIA, NRO). This will be followed by a review of study group direction, identification of future briefings, outlining action items and defining a future schedule. The last major topic of this meeting will be to define special study group activities. The open portions of these meetings are open to the public. Any person may attend, appear before or file statements with the committee. The closed portions of these meetings will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–21976 Filed 9–1–95; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Proposed DoD/NASA Initiative: Use of Common Processes at Contractor Facilities

AGENCY: Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Department of Defense (DoD) and National Aeronautics and Space Administration (NASA) desire to achieve cost and schedule benefits, and improve quality, from maximum use of common processes for all programs in a contractor facility. Mutual recognition and acceptance of common processes will require concerted effort by interested contractors, their principal customers, and contract administration personnel. NASA, as well as other agencies, have committed to join with DoD in using common quality processes at shared contractor facilities.

The quality process is an ideal starting point for implementation because of its potential to apply commercial standards (e.g., ISO–9000/ ANSI–ASQC Q9000) and advanced quality practices. Other common process opportunities also exist which may offer significant potential as well.

Initial contractor response to this announcement should be in the form of a brief concept paper outlining the transition approach and process that is proposed. The proposed process(es) should result in significant cost, schedule, or performance benefits. The concept paper should be submitted to the DPRO, the cognizant Defense Contract Management Area Office (DCMAO), or other Contract Administration Service (CAS) activity. The DPRO, DCMAO or cognizant CAS activity will work with the principal plant customers and contractor to achieve concurrence on the concept paper.

Once the approach for transitioning to common process has been established contractors may develop preliminary proposals. Contractor preliminary proposals for a common process should include the following information: Specify those processes that would be candidates for facility-wide application, describe the impact on your present system (contracts, programs and buying offices affected) any associated risks and/or anticipated benefits to you and the Government.

Submit your preliminary proposal to affected principal Government buying activities and the cognizant Contract Administration Services office. Proposals will be evaluated in order of receipt.

Should a common process be defined and accepted, individual contracts will be modified as appropriate. The Defense Contract Management Command (DCMC) office (or cognizant CAS activity) will facilitate the formulation of interface teams at the facility level to coordinate customer review and approval.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Zell, HQ Defense Contract Management Command, Product and Manufacturing Team, (703) 767–3395.

SUPPLEMENTARY INFORMATION:

A. Background

DoD is committed to improving the efficiency and effectiveness of our suppliers. The proposed initiative will facilitate the elimination of military unique process reviews.

B. Regulatory Flexibility Act

The proposed guidance will not have a significant economic impact on small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it does not require any additional time or cost on the part of the contractor. Any contractor effort is voluntary.

C. The proposed notice does not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501 et seq. and as such, the Paperwork Reduction Act does not apply.

John A. Merkwan,

LTC, USA, Executive Officer.

[FR Doc. 95–21889 Filed 9–1–95; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 6, 1995.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address *FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 28, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Performance Report for the Student Services Program.
Frequency: One time.
Affected Public: Not for profit institutions.
Reporting Burden:
  Responses: 1.
  Burden Hours: 3,181.
Recordkeeping Burden:
  Recordkeepers: 0.
  Burden Hours: 0.
Abstract: Data assures that grantees have conducted the project for which funded, signals problems of implementation, and indicates extent and quality of performance. The Department uses reports in evaluating projects for continuation, assessing technical assistance needs, determining future funding levels and in assigning scores to projects in competition for new grants.

[FR Doc. 95–21886 Filed 9–1–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–410–001]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Change in FERC Gas Tariff

August 29, 1995.

Take notice that Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) on August 23, 1995, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Sub. 3rd Revised Sheet No. 4A

Alabama-Tennessee proposes that this tariff sheet be made effective September 1, 1995.

According to Alabama-Tennessee, the purpose of this submission is to correct the filing made by Alabama-Tennessee on August 1, 1995 in the above-referenced docket. In particular, Alabama-Tennessee determined that it had not properly reflected the crediting of take-or-pay costs with respect to one of its customers, the Packaging Corporation of America ("PCA"). Alabama-Tennessee states that the instant filing properly accounts for the increase in take-or-pay charges billed Alabama-Tennessee by its upstream pipeline supplier, Tennessee Gas Pipeline Company, and allocated to PCA, as the same is affected by the discount Alabama-Tennessee is providing PCA and the limitations imposed by the settlement in Docket No. RP91–103 which the Commission approved on October 17, 1991.

Alabama-Tennessee requests that the Commission grant such waivers as may be required to accept and approve its filing as submitted.

Alabama-Tennessee states that copies of its filing were served upon the Company's jurisdictional customers and interested public bodies as well as all the parties shown on the Commission's official service list established in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21868 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–82–000]

Barranquilla Lease Holding, Inc.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 29, 1995.

Take notice that on August 21, 1995, Barranquilla Lease Holding, Inc. (Barranquilla), c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

According to its application, Barranquilla is a Delaware corporation formed to acquire all of the voting shares of Los Amigos Leasing Company Ltd. (Leaseco), a Bermuda corporation which has been formed to purchase and lease certain equipment, including combustion and steam turbines, to Termobarranquilla S.A., Empresa de Servicios Publicos, a Colombian corporation, for use in an eligible facility being developed in Soledad, near Barranquilla, Colombia. Barranquilla further states that Corporacion Electrica de la Costa Atlantica, a Colombian utility, will purchase all of the electrical output from the facility.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 15, 1995 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21869 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–83–000]

El Power, Inc.; Notice of Application for Determination of Exempt Wholesale Generator Status

August 29, 1995.

On August 21, 1995, El Power, Inc. ("El Power"), c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's Regulations.

According to its application, El Power is a Delaware corporation formed to engage in project development activities associated with the direct or indirect acquisition of ownership interests in one or more eligible facilities and/or EWGs. El Power further states that it has previously been determined to be an EWG. 68 FERC ¶ 61,023 (1994). El Power states that this filing is occasioned because El Power intends to acquire all of the voting capital stock of (i) El Barranquilla, Inc., a Delaware corporation, (ii) Guaracachi America, Inc., a Delaware corporation, (iii) Barranquilla Lease Holding, Inc., a Delaware corporation and (iv) International Power Advisors, Inc., a Delaware corporation.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 15, 1995 and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21870 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–84–000]

International Power Advisors, Inc.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 29, 1995.

Take notice that on August 21, 1995, International Power Advisors, Inc. (International Power), c/o Energy Initiatives, Inc, One Upper Pond Road, Parsippany, New Jersey 07054, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

According to its application, International Power, a Delaware corporation, was formed to operate and maintain, together with El Services Colombia, Ltd., a gas fired electric generating facility with a capacity of up to 980 MW to be located in Soledad near Barranquilla, Colombia (the Facility). The Applicant intends to operate the Facility together with El Services Colombia pursuant to an operation and maintenance agreement with the Facility's owner, Termobarranquilla S.A., Empresa de Servicios Publicos ("TEBSA"), a Colombia corporation. All of the Facility's electricity will be sold at wholesale to Corporacion Electrica de la Costa Atlantica, a Colombian entity.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 15, 1995 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21871 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–75–000]

Kva Resources, Inc.; Errata to Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 22, 1995.

Take notice that the Notice issued in the above-referenced docket on August 17, 1995 (60 FR 44332, August 25, 1995), should be disregarded and the following language should be replaced for the Notice in that docket:

On August 11, 1995, Kva Resources, Inc. (Applicant), 11100 Northeast 8th Street, Suite 550, Bellevue, Washington 98004, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a Delaware corporation engaged in the business of independent power development, intends to own and operate all or part of eligible facilities including an 838 MW electric generating facility located in the vicinity of Creston, Washington.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 12, 1995 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21872 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–86–000]

Pacific Gas Transmission Company; Notice of Annual Charge Adjustment

August 29, 1995.

Take notice that on August 23, 1995, Pacific Gas Transmission Company (PGT), tendered for filing and acceptance Eighth Revised Sheet Nos. 4 and 5, and Second Revised Sheet No. 6C to be included in its FERC Gas Tariff, First Revised Volume No. 1–A and Seventh Revised Sheet No. 7 to be included in its FERC Gas Tariff, Second Revised Volume No. 1.

The above tariff sheets have been revised to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to PGT.

PGT requests that the proposed tariff sheets become effective October 1, 1995.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21873 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–705–000]

Shell Offshore Inc.; Notice of Petition for Declaratory Order

August 29, 1995.

Take notice that on August 23, 1995, Shell Offshore Inc. (Shell), P.O. Box 576, Houston, Texas 77001, filed a petition for declaratory order in Docket No. CP95–705–000 requesting that the Commission declare that, following Shell's purchase of certain offshore facilities from Natural Gas Pipeline Company of America (Natural), that those facilities are gathering facilities exempt from the Commission's Regulations pursuant to Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Shell states that the facilities consist of currently-certificated interstate transmission facilities owned by Natural along with associated metering facilities. It is indicated that the facilities consist of (1) 2.8 miles of 8-inch pipeline that extends between Shell's "A" and "B" platforms in Eugene Island Block 331, offshore Louisiana, (2) a dual 8-inch meter and appurtenant facilities located on Shell's "A" platform in Eugene Island Block 331, offshore Louisiana, (3) a 10-inch dual meter and appurtenant facilities located on Shell's platform in Vermilion Block 321, offshore Louisiana, (4) a dual 6-inch meter and appurtenant facilities located on Shell's platform in Vermilion Block 340, offshore Louisiana, and (5) a dual 8-inch meter and appurtenant facilities located on Shell's platform in West Cameron Block 565, offshore Louisiana.

Shell asserts that once it acquires the facilities their primary function will be gathering as set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983), as later modified by *Amerada Hess Corp., et al.*, 52 FERC ¶ 61,268 (1990), (*Amerada Hess*). It is indicated that under that test the Commission applies six criteria to determine the jurisdictional status of a facility: (1) the diameter and length of a facility; (2) the extension of facilities beyond a central point in the field; (3) the geographic configuration of the system; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facility; and (6) the operating pressure of the line. In *Amerada Hess*, the Commission indicated that it would consider other factors, in addition to the *Farmland* criteria, especially for offshore facilities, including the changing technical and geographic nature of exploration and production, the purpose, location and operation of the facility, the general business activity of the facility, and whether the jurisdictional determination is consistent with the objectives of the Natural Gas Act and the Natural Gas Policy Act of 1978. Shell also points out that an application of the non-physical factors set out in *Amerada Hess* demonstrates that the facilities should be classified as gathering facilities.

Shell asserts that the acquired facilities will perform gathering functions. Lateral line 331 is relatively short length and small diameter, as is characteristic of traditional offshore gathering lines. It is stated that, the geographic configuration of Lateral 331 is "intrafield" a gathering line feeding production from one platform in one portion of the offshore block to another platform in another portion of the same offshore block, where the production can be measured and delivered to an interstate pipeline for transportation to shore. It is further stated that, Lateral 331 is located entirely behind the onshore processing plants, in federal offshore waters. Shell indicates that, Lateral 331 will be owned by a producer and will be used by the producer to gather production from one of its production platforms to another. Shell avers that, the proposed new owner of Lateral 331 is primarily engaged in exploration and production activities and will use the facilities in furtherance of its exploration and production activities to gather production. It is indicated that, the measurement facilities to be acquired are located on four of Shell's production platforms, and will be used by Shell to measure the volume of gas produced and collected at each of the four platforms prior to delivery to the pipeline company for transportation, thus performing a production related function.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 19, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21874 Filed 9–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2444–002 Wisconsin]

Northern States Power Company-Wisconsin; Notice of Availability of Final Environmental Assessment

August 29, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the White River Hydroelectric Project, located in Ashland County, Wisconsin, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21867 Filed 9–1–95; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5291–7]

Underground Injection Control Program; Hazardous Waste Land Disposal Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Well, Monsanto Chemical Company

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on exemption reissuance.

SUMMARY: Notice is hereby given that a Petition for reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Monsanto Chemical Company, for the Class I injection wells located at the Alvin, Texas facility. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Monsanto Chemical Company of the specific restricted hazardous waste identified in the petition for reissuance, into the Class I hazardous waste injection wells at the Alvin, Texas facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued on June 14, 1995. The public comment period ended on July 31, 1995. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of August 17, 1995.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Phil Dellinger, Unit Leader, Ground Water/UIC, EPA—Region 6, telephone (214) 665–7142.

Oscar Ramirez, Jr.,

Acting Director, Water Quality Protection Division (6WQ).

[FR Doc. 95–21942 Filed 9–1–95; 8:45 am]

BILLING CODE 6560-50-P

[FRL–5291–6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection—BASF Corporation (BASF)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to BASF, for the Class I injection wells located at Freeport, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows BASF, to inject specific restricted hazardous wastes identified in the exemption, into the Class I hazardous waste injection wells at the Freeport, Texas facility, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued June 22, 1995. The public comment period ended on August 7, 1995. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of August 17, 1995.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Phil Dellinger, Unit Leader Ground Water/UIC, EPA—Region 6, telephone (214) 665–7142.

William B. Hathaway,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 95–21941 Filed 9–1–95; 8:45 am]

BILLING CODE 6560-50-P

[FRL–52909]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Computers and Electronics Section Subcommittee—Open Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Computers and Electronics Subcommittee of the Common Sense Initiative Council will meet on the dates and times described below. All times noted are Eastern Time. The meeting is open to the public. Seating at the meeting will be on a first-come basis.

Computers and Electronics Subcommittee—September 27–28, 1995

The Common Sense Initiative Council, Computers and Electronics Subcommittee (CSIC–CES) is convening an open meeting on Wednesday, September 27, from 8:30 a.m. to 5 p.m., and Thursday, September 28, from 8:30 a.m. to 3 p.m., at the Radisson Barcelo Hotel, 2121 P Street, NW., Washington, DC 20037. The phone number of the hotel is (202) 293–3100.

The first day of the meeting will consist primarily of breakout sessions for subcommittee workgroups (Reporting and Information Access; Barriers to Pollution Prevention, Recycling and Product Stewardship; and Integrated and Sustainable Alternative Strategies for Electronics), reports to the full subcommittee from those workgroups, and discussion of administrative and procedural issues of interest to the full subcommittee. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

FURTHER INFORMATION: For further information concerning this meeting of the Computer and Electronics Subcommittee, please contact Gina Bushong, (202) 260–3797, FAX (202) 260–1096, or by mail at US EPA (7405), 401 M Street SW., Washington, DC 20460; Mark Mahoney, Region 1, US EPA (617) 565–1155; or David Jones, Region 9, US EPA, (415) 744–2266.

INSPECTION OF CSIC DOCUMENTS: Documents relating to the above Sector Subcommittee announcement will be publicly available at the meeting. Thereafter, these documents, together with the CSIC–CES meeting minutes, will be available for public inspection in room 2417 Mall of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street SW., Washington, DC 20460, phone (202) 260–7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.epa.gov.

Dated: August 22, 1995.

Gina Bushong,

Designated Federal Official.

[FR Doc. 95–21939 Filed 9–1–95; 8:45 am]

BILLING CODE 6560-50-M

[FRL–5289–8]

Proposed Settlement Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA"), Region II, announces a proposed administrative settlement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), relating to the Muratti Environmental Superfund Site ("Site"). The Site is located in the town of Penuelas, Tallaboa Ward, Commonwealth of Puerto Rico. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. The proposed administrative settlement has been memorialized in an Administrative Order on Consent ("Order") between EPA and twelve settling parties ("Respondents"). This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate, and EPA, in accordance with Section 122(i)(3) of CERCLA, modifies or withdraws its consent to this Agreement. Under the Order, the Respondents will be obligated to pay an aggregate of $525,000 to the Hazardous Substance Superfund in reimbursement of EPA's response costs relating to the Site.

Pursuant to CERCLA Section 122(h)(1), the Order may not be issued without the prior written approval of the Attorney General or her designee. In accordance with that requirement, the Attorney General or her designee has approved the proposed administrative order in writing.

EPA intends to settle with other potentially responsible parties concerning reimbursement of EPA's remaining response costs.

DATE: Comments must be provided on or before October 5, 1995.

ADDRESS: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: "Muratti Environmental Superfund Site, U.S. EPA Index No. II CERCLA–94–0301". For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Jean H. Regna, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3164.

Dated: August 10, 1995.

Conrad Simon,

Acting Regional Administrator.

[FR Doc. 95–21940 Filed 9–1–95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

August 28, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. You are not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0169.

Expiration Date: 08/31/98.

Title: Sections 43.51 and 43.53 - Reports and Records of Communications Common Carriers and Certain Affiliates.

Estimated Annual Burden: 6,029 total annual hours; 16.12 hours per response; 71 respondents.

Description: Sections 211 and 215 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 211 and 215 require that the FCC examine transactions of any common carriers relating to the activities of that carrier which may affect the charges and/or services rendered under the Act. The reports required by Sections 43.51 and 43.53 are the means by which the FCC gathers information concerning the activities of carriers which it examines. The information is used by the FCC to determine whether the activities reported have affected or are likely to affect adversely the carrier's service to the public or whether these activities result in undue or unreasonable increases in changes.

OMB Control No.: 3060–0643.

Expiration Date: 08/31/98.

Title: Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes.

Estimated Annual Burden: 50,000 total annual hours; 5000 hours per response; 10 respondents.

Description: Section 151, 154, 201–205, 218–220 and 403 of the Communications Act of 1934, as amended, provide the Commission with authority to prescribe an interstate rate of return. The prescribed rate of return must reflect a proper balance of regulatory goals by allowing a carrier "to maintain its credit and to attract capital" and by ensuring that ratepayers are charged reasonable rates for interstate access services. Part 65 of the Commission's rules set forth the procedures and methodologies for prescribing and enforcing the rate of return certain local exchange carriers (LECs) may earn on interstate access service. In the Report and Order issued in CC Docket No. 92–133, the Commission reformed its rules. Specifically, the Order replaces the existing rule, which initiates represcription proceedings biennially, with a semiautomatic trigger activated by changes in capital costs; modifies the paper hearing rules set out in Part 65; streamlines the methodologies used to estimate the cost of capital; and removes the automatic refund rule.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–21906 Filed 9–1–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL HOUSING FINANCE BOARD

[No. 95–9]

Privacy Act of 1974; Systems of Records

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the Privacy Act, the Federal Housing Finance Board (Finance Board) is publishing a notice of its systems of records.

DATES: The Finance Board invites interested parties to submit comments on the proposed routine uses of the systems of records described in this notice on or before October 5, 1995. The systems of records described in this notice will be effective 30 days from the date of publication unless the Finance Board receives comments on the routine uses that would result in a contrary determination.

ADDRESSES: Please submit comments to: Executive Secretariat, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: David A. Guy, Associate General Counsel, Office of General Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), the Finance Board is publishing a notice of the existence and character of its systems of records maintained on individuals. As further described below, the Finance Board maintains the following systems of records:

FHFB–1 Employee Attendance Records
FHFB–2 General Travel and Transportation Files
FHFB–3 Administrative Grievance Files
FHFB–4 Federal Home Loan Bank Directors Financial Disclosure Records
FHFB–5 Finance Board Director Financial Disclosure Records
FHFB–6 Board of Directors
FHFB–7 Agency Personnel Investigative Records

In addition, the Finance Board intends to adopt the previously published **Federal Register** notices of the existence and character of the following governmentwide systems of records established by the Office of Personnel Management (OPM), the Office of Government Ethics (OGE), and the Equal Employment Opportunity Commission (EEOC):

OPM/GOVT–1 General Personnel Records
OPM/GOVT–2 Employee Performance File System Records
OPM/GOVT–3 Records of Adverse Actions, Performance-Based Reduction in Grade and Removal Actions, and Termination of Probationers
OPM/GOVT–5 Recruiting, Examining, and Placement Records
OGE/GOVT–1 Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records
OGE/GOVT–2 Confidential Statements of Employment and Financial Interests
EEOC/GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeals Records

These governmentwide systems of records include records that are in the temporary custody of the Finance Board, but which are owned by the OPM, the EEOC, or the OGE, respectively. Since the OPM, the OGE, and the EEOC have published notices in the **Federal Register** of the existence and character of these systems of records, it is unnecessarily duplicative for the Finance Board to include a description of these systems of records in its **Federal Register** notice.

Individuals are referred to the OPM's **Federal Register** notice of the existence and character of OPM/GOVT–1, OPM/GOVT–2, OPM/GOVT–3, and OPM/GOVT–5. The citation is 57 FR 35705–35716, August 10, 1992, as amended from time to time.

Individuals are referred to the OGE's **Federal Register** notice of the existence and character of OGE/GOVT–1 and OGE/GOVT–2. The citation is 55 FR 6328–6331, February 22, 1990, as amended from time to time.

Individuals are referred to the EEOC's **Federal Register** notice on the existence and character of EEOC/GOVT–1. The citation is 59 FR 11068, March 9, 1994, as amended from time to time.

FHFB–1

SYSTEM NAME:

Employee Attendance Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Finance Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of: (1) Time and attendance sheets showing employee attendance for two-week pay periods and the amount of leave used; and (2) employee applications for leave.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1422b(b)(1).

PURPOSES:

Records are used for management and payroll purposes for approval and documentation of employees' attendance and use of leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records, or information therefrom, may be disclosed as a routine use to:

1. Finance Board personnel having a need for access to perform their official functions.
2. Another federal agency for payroll purposes.
3. The Department of Labor when processing a claim for compensation regarding a job connected injury or illness.
4. A state unemployment compensation office regarding a claim.
5. The appropriate agency, whether federal, state, or local, where there is an indication of a violation, or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or implementing the statute, rule, regulation, or order issued pursuant thereto.
6. The appropriate person in the event that information in the record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal.
7. The OPM or the General Accounting Office (GAO) when the information is required for evaluation of leave administration.
8. The General Services Administration in connection with its responsibilities for records management.
9. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Office of Human Resources, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendment of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual and Finance Board employees who approve leave applications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFB–2

SYSTEM NAME:

General Travel and Transportation Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Finance Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of travel vouchers, petty cash forms, and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1422b(a)(3), 41 CFR part 101–41.

PURPOSES:

Records document payment for travel expenses of Finance Board employees incurred in the performance of their official functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records, or information therefrom, may be disclosed as a routine use to:

1. Finance Board personnel having a need for access to perform their official functions.
2. Internal agency auditors and auditors of the GAO.
3. The appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting a violation or potential violation of law or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto, in the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto.
4. The appropriate person in the event that information in this record system is needed in the course of presenting evidence to a court, magistrate, or administrative tribunal.
5. A federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.
6. A federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
7. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file folders.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Office of Human Resources, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFB–3

SYSTEM NAME:

Administrative Grievance Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Finance Board employees who have filed a grievance pursuant to the agency's administrative grievance procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain documents related to the grievances, including the written grievance filed by the employee, statements of witnesses, records, the report of a hearing if one is held, the report of a fact finder when fact-finding is used, statements made by the parties to the grievance, and the agency's decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 771.

PURPOSES:

Records document grievance proceedings brought pursuant to the Finance Board's administrative grievance procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records, or information therefrom, may be disclosed as a routine use:

1. To Finance Board personnel having a need for access to perform their official functions.
2. In litigation to respond to process issued under authority of a court of competent jurisdiction and to parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the Finance Board's administrative grievance procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.
3. To request information from a federal, state, or local agency or private individual if necessary to obtain information relevant to a Finance Board decision within the purposes of this system of records.
4. To the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting a violation or potential violation of law or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto, in the event that information in this record system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto.
5. A federal, state, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a grant or other benefit.
6. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file folders.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are destroyed five years after closure of a case.

SYSTEM MANAGER AND ADDRESS:

Personnel Security Officer, Office of Human Resources, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendments of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual, Finance Board personnel records, and statements and testimony of witnesses and related correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFB–4

SYSTEM NAME:

Federal Home Loan Bank Directors Financial Disclosure Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the boards of directors of the 12 Federal Home Loan Banks (Banks).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain: (1) Information describing the financial relationships, as defined in 12 CFR 931.30, of current and former members of the boards of directors of the Banks; and (2) certifications of eligibility by current and former members of the boards of directors of the Banks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1427(a), (b), (d).

PURPOSES:

Records are collected to determine whether Bank directors are in compliance with applicable statutory and regulatory eligibility requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records, or information therefrom, may be disclosed as a routine use to Finance Board personnel having a need for access to perform their official functions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file folders.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are retained for three years or until the subject individual leaves office as a FHLBank director, whichever is longer.

SYSTEM MANAGER AND ADDRESS:

Associate Director, District Banks Secretariat, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendment of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFB–5

SYSTEM NAME:

Finance Board Director Financial Disclosure Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the Board of Directors of the Finance Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

RECORDS CONTAIN: (1) INFORMATION DESCRIBING THE FINANCIAL RELATIONSHIPS, AS DEFINED IN 12 CFR 931.30, OF CURRENT AND FORMER FINANCE BOARD DIRECTORS; AND (2) CERTIFICATIONS OF ELIGIBILITY BY CURRENT AND FORMER FINANCE BOARD DIRECTORS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1422a(b)(2)(C).

PURPOSES:

Records are collected to determine whether Finance Board Directors are in compliance with applicable statutory and regulatory eligibility requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records, or information therefrom, may be disclosed as a routine use to Finance Board personnel having a need for access to perform their official functions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file jackets.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Records are stored in a safe secured by a combination lock. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are retained for seven years and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Designated Agency Ethics Official, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendment of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. FHFB–6

SYSTEM NAME:

Board of Directors.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the Board of Directors of the Finance Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain photographs and biographies of current and former members of the Board of Directors of the Finance Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1422a(b)(1).

PURPOSES:

Records are used to provide information to the press and other interested persons or agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records, or information therefrom, may be disclosed as a routine use to:

1. The press and other interested persons or agencies.
2. Finance Board personnel having a need for access to perform their official functions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are contained in file jackets.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Files are kept in areas that are locked after business hours. Access is limited to Finance Board personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Records are transferred to the National Archives two years after a Finance Board Director leaves office.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Public Affairs, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

CONTESTING RECORD PROCEDURES:

Requests for amendment of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

The subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFB–7

SYSTEM NAME:

Agency Personnel Investigative Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Finance Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain information relating to the subject individual, including name, address, date and place of birth, Social Security number, citizenship, residence, foreign travel and contacts, education, personal references, organizational membership and security clearance history, reports from commercial credit agencies, and personal security investigative reports from either the OPM or the Federal Bureau of Investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 5 CFR parts 5, 731, 736, E.O. 10577.

PURPOSE:

Records are collected in order to make a determination as to the suitability of the subject individual for federal employment. The records are maintained in order to provide documentation, if necessary, to OPM in order to support the Finance Board's determination of the suitability of the subject individual for federal employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records, or information therefrom, may be disclosed as a routine use to:

1. Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the federal government, having a need to evaluate qualifications, suitability, and loyalty to the United States government and/or a security clearance or access determination.

2. Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the federal government, and the District of Columbia government, when such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States government, or access to classified information or restricted areas.

3. Designated officers and employees of agencies, offices, and other establishments in the executive, judicial, or legislative branches of the federal government, having the responsibility to grant clearances, to make determination regarding access to classified information or restricted areas, or to evaluated qualifications, suitability, or loyalty to the United States government, in connection with performance of a service to the federal government under a contract or other agreement.

4. Intelligence agencies for use in intelligence activities;

5. Any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

6. The federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation.

7. An agency, office or other establishment in the executive, legislative, or judicial branches of the federal government, or the District of Columbia government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency.

8. Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

9. A congressional office in response to an inquiry made at the request of that individual.

10. In litigation before a court or in an administrative proceeding being conducted by a federal agency.

11. The National Archives and Records Administration for records management inspections.

12. The Office of Management and Budget in connection with private relief legislation.

13. Respond to a request for discovery or for appearance of a witness.

14. The Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, in connection with functions vested in those agencies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are contained in file jackets and stored in a safe secured by a combination lock.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Records are in the custody of the Personnel Security Officer and are maintained in a safe secured by a combination lock. The room where the records are stored is locked when not in use.

RETENTION AND DISPOSAL:

Records are retained until the subject individual terminates employment at the Finance Board, at which time the records are sent to the OPM.

SYSTEM MANAGER AND ADDRESS:

Personnel Security Officer, Office of Human Resources, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD ACCESS PROCEDURES:

Requests for access to a record shall be directed to the Office of Personnel Management, Federal Investigations Processing Center, FOI/PA, Boyers, Pennsylvania 16018.

CONTESTING RECORD PROCEDURES:

Requests for amendment of a record shall be directed to Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 909.

RECORD SOURCE CATEGORIES:

Subject individual; police, military, or naval reports; former employees; and references supplied to the Personnel Security Officer by the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records contained in this system are exempt from disclosure, pursuant to the provisions 5 U.S.C. 552a(k)(5), to the extent that disclosure would reveal the identity of a source who furnished information to the government under an express promise that the identification of the source would be held in confidence, or, prior to September 1, 1975, under an implied promise that the identity of the source would be held in confidence.

Dated: August 28, 1995.

By the Federal Housing Finance Board.

Rita I. Fair,
Managing Director.

[FR Doc. 95–21849 Filed 9–1–95; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Crestar Financial Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 18, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Crestar Financial Corporation, Richmond, Virginia; to merge with Loyola Capital Corporation, Baltimore, Maryland, and thereby indirectly acquire Loyola Federal Savings Bank, Baltimore, Maryland, and thereby engage in mortgage origination, mortgage servicing, real estate appraisal, investment counseling and securities brokerage services, insurance brokerage services, and the traditional activities of a federal savings bank, pursuant to §§ 225.25(b)(1), (b)(13), (b)(4), (b)(15), (b)(8)(vii), and (b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Carroll County Bancshares, Inc., Carroll, Iowa; to acquire Carroll Credit, Inc., Carroll, Iowa, and thereby engage in owning and operating a finance company, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Castle Rock Bank Holding Company, Castle Rock, Colorado; to acquire Colorado Imaging Company, Inc., Castle Rock, Colorado, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 29, 1995.

William W. Wiles,
Secretary of the Board.

[FR Doc. 95-21894 Filed 9-1-95; 8:45 am]

BILLING CODE 6210-01-F

First Bank System, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 20, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to merge with Midwestern Services, Inc., Omaha, Nebraska, and thereby indirectly acquire First Bank, Omaha, Nebraska.

2. *First Bank System, Inc.*, Minneapolis, Minnesota; to merge with Southwest Holdings, Inc., Omaha, Nebraska, and thereby indirectly acquire Southwest Bank and Trust Company of Omaha, Omaha, Nebraska.

In connection with this application, Applicant also has applied to acquire SWH & K Partnership, Omaha, Nebraska, and thereby engage in reinsurance of credit life and disability insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. The geographic scope for these activities is Nebraska.

In connection with both applications described above, Applicant also has applied to acquire FBS Interim Bank, FSB, Omaha, Nebraska, and thereby engage in operating a thrift subsidiary, pursuant to § 225.25(b)(9) of the Board's Regulation Y. This interim thrift will be used to facilitate the purchase of First Bank, Omaha, Nebraska and Southwest Bank and Trust Company of Omaha, Omaha, Nebraska. After these acquisitions, the thrift will be merged into a newly chartered national bank and will cease to exist. The geographic scope for these activities is Nebraska.

Board of Governors of the Federal Reserve System, August 29, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–21895 Filed 9–1–95; 8:45 am]

BILLING CODE 6210–01–F

Lenox Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 28, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Lenox Bancorp, Inc.*, St. Bernard, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Lenox Savings Bank, St. Bernard, Ohio.

2. *Peoples of Fleming County Bancorp, Inc.*, Flemingsburg, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank of Fleming County, Flemingsburg, Kentucky.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Milton Bancshares, Inc.*, Milton, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Milton, Milton, Wisconsin.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hoeme Family Partnership*, Scott City, Kansas; to acquire an additional 1.05 percent, for a total of 35.49 percent, of the voting shares of First National Bancshares of Scott City, Ltd., Scott City, Kansas, and thereby indirectly acquire First National Bank of Scott City, Scott City, Kansas.

Board of Governors of the Federal Reserve System, August 29, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–21896 Filed 9–1–95; 8:45 am]

BILLING CODE 6210–01–F

NBD Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 29, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit Michigan (NBD Bancorp); to acquire First Chicago Corporation, Chicago,

Illinois, and American National Corporation, Chicago, Illinois, and thereby indirectly acquire First National Bank of Chicago, Chicago, Illinois, FCC National Bank, Wilmington, Delaware, and American National Bank & Trust Company, Chicago, Illinois.

In connection with this application, NBD Bancorp also has applied to acquire ANB Mezzanine Corporation, Chicago, Illinois, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Cash Station, Inc., Chicago, Illinois, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y; First Capital Corporation of Chicago, Chicago, Illinois, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y; First Chicago Capital Markets, Inc., Chicago, Illinois, and thereby engage in providing financial and transaction advice, in providing full-service securities brokerage services, and in underwriting and dealing in securities that state member banks are permitted to underwrite and deal in, pursuant to § 225.25(b)(4), (15), and (16), as well as the following: underwriting and dealing, to a limited extent, in certain debt securities that a state member bank may not underwrite or deal in, purchasing and selling securities as a "riskless principal," and acting as an agent in the private placement of securities, all pursuant to *First Chicago Corporation*, 74 Federal Reserve Bulletin 706 (1988) and *First Chicago Corporation*, 80 Federal Reserve Bulletin 448 (1994); *First Chicago Investment Corporation*, Chicago, Illinois, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y; First Chicago Lease Holding, Inc., Chicago, Illinois, and thereby engage in commercial leasing activities, pursuant to § 225.25(b)(5) of the Board's Regulation Y; First Chicago Leasing Corporation, Chicago, Illinois, and thereby engage in making, acquiring, and servicing loans, or other extensions of credit, commercial leasing activities, and community development activities, pursuant to § 225.25(b)(1), (5), and (6) of the Board's Regulation Y; First Chicago Realty Corporation, Chicago, Illinois, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Palo Verde Lease Holdings, Inc., Chicago, Illinois, and thereby engage in commercial leasing activities, pursuant to § 225.25(b)(5) of the Board's Regulation Y; First Chicago Trust Company of New York, New York, New York, and thereby engage in performing functions and activities that may be performed by a trust company, pursuant to § 225.25(b)(3); and G-W Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting credit life, accident and health insurance related to certain extensions of credit, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

NBD Bancorp, Inc., also has applied to exercise an option to acquire up to 19.9 percent of the voting shares of First Chicago Corporation, and American National Corporation, both of Chicago, Illinois.

In addition, First Chicago Corporation, Chicago, Illinois (First Chicago), has applied to exercise an option to acquire up to 19.9 percent of the voting shares of NBD Bancorp, Inc., Detroit, Michigan, NBD Indiana, Inc., Indianapolis, Indiana, and NBD Illinois, Inc., Park Ridge, Illinois, and thereby acquire NBD Bank, Detroit, Michigan, NBD Bank, N.A., Indianapolis, Indiana, NBD Bank, Elkhart, Indiana, NBD Bank, Wheaton, Illinois, NBD Bank, N.A., Skokie, Illinois, NBD Bank, Columbus, Ohio, and National Bank of Detroit-Dearborn, Dearborn, Michigan.

In connection with this application, First Chicago also has applied to acquire NBD Bank, FSB, Venice, Florida, and Deerfield Federal Savings & Loan Association, Deerfield, Illinois, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of Regulation Y; ML Inc., Detroit, Michigan, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y; NBD Insurance Agency, Inc., Detroit, Michigan, and thereby engage in insurance agency activities related to extensions of credit, pursuant to § 225.25(b)(8)(i) of Regulation Y; NBD Insurance Company, Detroit, Michigan, and thereby engage in insurance agency activities related to extensions of credit, pursuant to § 225.25(b)(8)(i) of Regulation Y; BHC Financial, Inc., Philadelphia, Pennsylvania, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15); NBD Mortgage Company, Detroit, Michigan, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of Regulation Y; NBD Service Corporation, Belleville, Michigan, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y; NBD Securities, Inc., Detroit, Michigan, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y; FNW Capital, Inc., Mount Prospect, Illinois, and thereby engage in commercial leasing, pursuant to § 225.25(b)(5) of Regulation Y; NBD Community Development Corporation, Detroit, Michigan, and thereby engage in community development activities, pursuant to § 225.25(b)(6) of Regulation Y; NBD Financial Services of Michigan, Inc., Traverse City, Michigan, and thereby engage in providing investment or financial advice, pursuant to § 225.25(b)(4) of Regulation Y; NBD Brokerage Services, Inc., Indianapolis, Indiana, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y; Charter Agency, Incorporated, Northfield, Illinois, and thereby engage in insurance agency activities, pursuant to § 225.25(b)(8) of Regulation Y; Corporate Funding Inc., Grand Rapids, Michigan, and thereby engage in commercial leasing, pursuant to § 225.25(b)(5) of Regulation Y; NBD Leasing, Inc., Indianapolis, Indiana, and thereby engage in commercial leasing, pursuant to § 225.25(b)(5) of Regulation Y; NBD Neighborhood Revitalization Corporation, Indianapolis, Indiana, and thereby engage in community development activities, pursuant to § 225.25(b)(6) of Regulation Y; and NBD Real Estate Services, Indianapolis, Indiana, and thereby engage in making, acquiring, and servicing loans or other extensions of credit, leasing real property, insurance agency activities related to extensions of credit, management consulting, and real estate appraising, pursuant to § 225.25(b)(1), (5), (8), (11), and (13) of Regulation Y.

Board of Governors of the Federal Reserve System, August 30, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-21981 Filed 9-1-95; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Public Hearing

AGENCY: General Accounting Office.

ACTION: Notice of public hearing.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that a public hearing of the Federal Accounting Standards Advisory Board will be held on Wednesday, September 20, 1995 from 9 a.m. to 4 p.m. in room 7C13 of

the General Accounting Office, 441 G Street NW., Washington, DC.

The purpose of the hearing is to hear testimony from interested parties on the *Accounting for Revenue and Other Financing Sources* exposure draft, issued in July 1995.

Any interested person may attend the hearing as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First Street NE., Room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, sec. 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: August 29, 1995.

Ronald S. Young,

Executive Director.

[FR Doc. 95–21851 Filed 9–1–95; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review; Proposed Information Collection Submitted for Public Comment and Recommendations

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Administration for Children and Families (ACF) is publishing the following summary(ies). To request copies of the proposed collection of information write to The Administration for Children and Families, Office of Information Systems, 370 L'Enfant Promenade SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Proposed Project(s):

Title: National Study of Outcomes for Children Placed in Foster Care with Relatives.

OMB No.: New Request.

Description: This is a series of interview forms for use with state administrators, case workers, and foster parents in seven states selected for the study. State administrators are the Chief Child Welfare Administrator, the fiscal administrator, and management information system specialist in each state. The National Study of outcomes for Children Placed in Foster Care with Relatives will be used to describe policies, practices and characteristics regarding placement of children in foster care with relatives; to describe outcomes of children placed in foster care with relatives compared to children placed in non-relative foster care; and to examine the associated costs of relative foster care compared to non-relative foster care.

Respondents: State governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
Administrator Interview	7	1	1	7
Casework Interview	140	1	1	140
Foster Parent Interview	280	1	.75	210
Demographic Information Report	7	1	.5	3.5
Fiscal Information Report	7	.5	3.5	3.5

Estimated Total Annual Burden Hours: 364.

Dated: August 29, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–21861 Filed 9–1–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

The National Center for Environmental Health Meeting: Change of Location

Federal Register Citation of Previous Announcement: 60 FR 42169—dated August 15, 1995.

SUMMARY: Notice is given that the meeting location for the National Center for Environmental Health (NCEH), of the Centers for Disease Control and Prevention (CDC), together with cosponsors, the European Commission, the Agency for Toxic Substances and Disease Registry (ATSDR), the National Institute of Diabetes, Digestive, and Kidney Diseases (NIDDK), the National Institute of Environmental Health Sciences (NIEHS), and the Oregon Health Sciences University Foundation has changed. The meeting times, dates, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

ORIGINAL LOCATION: Terrace Garden Inn-Buckhead, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

NEW LOCATION: The Marque of Atlanta, Perimeter Center, 111 Perimeter Center West, Atlanta, Georgia 30346.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Mueller, Ph.D., Chief, Health Effects Laboratory (F50), Molecular Biology Branch, Division of Environmental Health Laboratory Sciences, NCEH, CDC, 4770 Buford Highway NE., Atlanta, Georgia 30341–3724, telephone 404/488–7983.

Dated: August 28, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–21887 Filed 9–1–95; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–3917–N–19]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 18, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Letter of Transmittal/Servicing Agreement/Resolution of Borad Director and Certificate of Authorized Signatures

Office: Government National Mortgage Association

Description of the Need for the Information and its Proposed Use: Form HUD–11700, Letter of Transmittal, is used by issuers to transmit to GNMA required materials to request approval of all applications to become a mortgage-backed securities issuer. Form HUD–11702, Resolution of Board of Directors and Certificate of Authorized Signatures, is used to provide GNMA with names and signatures of the Board of Directors of the issuer's organization. Form HUD–11707, Servicing Agreement, is used by the issuer to provide assurance to GNMA that servicing of the mortgages backing the securities will be performed at an acceptable standard.

Form Number: HUD–11700, 11702 and 17707

Respondents: Business or Other For-Profit

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11700	900		6		.17		918
HUD–11702	900		1		.17		160
HUD–11707	900		34		.17		5,222

Total Estimated Burden Hours: 6,300

Status: Extension with changes

Contact: Brenda Countee, HUD, (202) 708–2234; Joseph F. Lackey, Jr., OMB (202) 395–7316.

Dated: August 18, 1995.

[FR Doc. 95–21859 Filed 9–1–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3917–N–20]

Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: November 6, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 4240, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202)–708–0846, (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Statement of Voucher for Basic Annual Contribution—Leased Housing

OMB Control Number, if applicable: 2577–0061. Description of the need for the information and proposed use: This form is needed to provide essential financial information on the operations of PHAs, which is used for multiple purposes by HUD including identification of debts owed to the Department.

Agency form numbers, if applicable: HUD–52981.

Members of affected public: State, Local or Tribal Government Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 125 respondents, annually, .88 hours per response, 110 hours for a total reporting burden.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 29, 1995.

Michael B. Janis,

General Deputy.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–21860 Filed 9–1–95; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision; Final Environmental Impact Statement/General Management Plan; Grand Canyon National Park; Coconino and Mohave Counties, AZ

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, has prepared a Record of Decision on the Final Environmental Impact Statement/General Management Plan for Grand Canyon National Park, Coconino and Mohave Counties, Arizona. This Record of Decision is a concise statement of what decisions were made, what alternatives were considered, the basis for the decision, and the mitigating measures developed to avoid or minimize environmental impacts.

Decision: The National Park Service will implement the proposed general management plan for Grand Canyon National Park, as detailed in Alternative 2 of the Final General Management Plan and Environmental Impact Statement issued in July 1995. The draft plan and environmental impact statement was issued in March 1995. The proposal is described below as the Selected Action.

Selected Action: The selected action is a comprehensive proposal for future management and use of the park, including a regional, ecosystem planning focus, park management zones, visitor experience, expanded provision of alternative visitor transportation services, interpretation planning, park operations, and park facilities development.

Summary of Actions: The regional context of Grand Canyon National Park will be emphasized, and proposals for resource preservation and visitor use will take into account environmental effects on the park as well as the region. Planning outside the park will be done cooperatively, with an emphasis on disseminating information, preserving regional and park resources, and providing a quality visitor experience. The National Park Service will work jointly with adjacent entities to provide for many park needs outside park boundaries. A gateway information center, some community services, and up to 500 employee housing units will be provided in Tusayan. The most appropriate locations for facilities will be considered in a regional context, taking into consideration principles of sustainable design and the need to preserve resources while providing for a quality visitor experience.

Alternative modes of transportation (public transit, hiking, and biking) will be emphasized within the park. A primary orientation center and public transit hub will be constructed near Mather Point. From there several shuttle routes will provide efficient and quiet visitor transportation to Grand Canyon Village and other points on the South Rim. Visitor parking and a shuttle system will also be established on the North Rim.

To minimize impacts on natural and cultural resources within the park, existing structures will be adaptively reused, and required new facilities will be built in previously disturbed areas wherever possible. The Kachina and Thunderbird lodges will be removed and the number and size of gift shops on the South Rim will be reduced. The RV campground and the existing helicopter base will be redesigned. Some disturbed areas will be revegetated.

To ensure a quality experience, the number of visitors admitted to certain areas will be limited during peak visitation periods based on recommendations derived from a carrying capacity monitoring program. The methodology for determining use limits will be the same throughout the developed areas of the park; however, visitor use limits for specific areas will vary considerably, and visitor use may be limited sooner in some areas than in others. Day use on the South Rim and the corridor trails will not need to be limited during the life of this plan, provided the recommended alternative visitor transportation services are fully funded and operational; day visitation on the North Rim will be limited by the year 2005 or 2010, depending on the effectiveness of management actions; and day use at Tuweep may be limited during peak times. In areas where reservations become necessary, visitors will be able to obtain reservations ahead of time (their reservations will be checked at park entrances). A monitoring system will be established to measure resource impacts, facility use, visitor satisfaction, and levels of visitor attendance in each park developed area. The reservation system will be adjusted as needed.

Summary of Impacts: A stable situation for the future will be provided for all the developed areas of the park, significantly improving management's ability to preserve and protect the natural and cultural resources, provide a high-quality visitor experience, and ensure quality living and operating conditions for park employees. Most development will in-fill on already disturbed areas. Historic structures will be adaptively reused, resource damage will be minimized, and local economies will be enhanced. Sustainable planning, design, and implementation will be encouraged within a regional context.

Alternatives Considered

No-Action Alternative—Existing Conditions / Ongoing Programs

Summary of Actions: Unlimited day visitation would continue in all park developed areas, with nearly every visitor facility in developed areas of the South Rim continuing to be

overcapacity during peak use periods. No major facilities would be built, and no major park functions would be relocated. Any required facility changes would be done in or adjacent to existing disturbed areas. The number of overnight accommodations, campsites, and all other visitor services remain the same in each developed area. Minor adjustments in management would be made to help reduce resource damage and to provide a safer visitor experience. Planning would be focused inside the park, primarily to solve existing problems. Issues related to planning and land management practices in areas immediately outside the park would be handled individually as the need arose, without an overall area vision or cooperative regional planning effort to guide the direction. Limited cooperative planning to distribute regional information to visitors would occur.

Summary of Impacts: Uncontrolled growth would continue within the park, with only limited improvements to visitor services. Damage to natural and cultural resources would continue to worsen, and the visitor experience would become degraded. Communication with visitors to help them plan their trip so they could have a quality experience in the park would continue to be minimal, resulting in negative experiences for park visitors. Extensive quantities of substandard housing would remain, along with an ever-increasing shortage of park housing, forcing more and more employees to find housing in adjacent areas, perhaps long distances from the workplace. The lack of operational space would become severe, reducing employee effectiveness. Over the long term the economy of the area could be damaged due to the worsening image of Grand Canyon National Park and the poor visitor experience.

Alternative 1—Minimum Requirements

Summary of Actions: Unlimited day visitation would continue in all developed areas of the park until visitor congestion, resource damage, and public safety warranted restricting access during peak visitation. This would be accomplished by implementing reservation systems based on the capacity of existing parking and eating facilities on the South and North Rims. Regional information programs would explain the park's reservation systems to visitors. Overnight accommodations would not be affected. Visitor use at Tuweep and on the corridor trails would not be limited under this alternative.

Existing land use patterns would be retained—no major facilities would be built, no major park functions would be relocated, and most park facilities would remain where they are now. A few minor facilities would be added. Any required facility changes would be done in or adjacent to existing disturbed areas. Planning would be focused inside the park, primarily to solve existing problems. Issues related to planning and land management practices in adjacent areas outside the park would be handled individually as the need arose, without an overall area vision or integrated regional planning effort to guide the direction.

Summary of Impacts: Park resource damage and a worsening visitor experience at Grand Canyon would be alleviated by limiting the number of people visiting developed areas on the North and South Rims at any one time. Tuweep would continue to experience uncontrolled use, possibly leading to deteriorated natural resources and a degraded visitor experience over the long term. Some impacted areas would be rehabilitated, helping to restore resources within the park. The visitor experience would improve compared to the no-action alternative because fewer people would be competing to use facilities. However, visitors would continue to be frustrated by not being able to easily find places they want to see. Information, orientation, and education about park themes would remain ineffective because of inadequate and poorly located facilities. Visitors would not be well distributed throughout the park, reducing the number of people who could enjoy the park at any one time, and more and more visitors would be turned away.

An increasing number of employees would not be able to live in the park, and many would have to find their own housing, often over an hour from the park. Housing in some developed areas would be improved, and the need for additional housing would be reduced by limiting visitation. Some improvements would occur outside the park due to NPS assistance to outside entities for regional visitor information. However, many park problems would fall to regional entities, for example, visitors parking outside the park and using private transit services to enter the park, disappointed visitors being turned away at the gate, and housing for park employees.

Alternative 3—Reduced Development Within the Park

Summary of Actions: Alternative 3 would emphasize the preservation of park resources by placing all new facilities and relocating many existing functions outside the park. Cooperative regional planning would ensure that NPS functions occurring outside park boundaries demonstrated environmentally sensitive planning and design. The National Park Service would expand its regional information services, as described for alternative 2. On the South Rim all day visitor vehicles would be removed, and a major public transit system would be provided. No new lands within the park would be disturbed, and historic uses of existing structures would be retained wherever possible. Overnight accommodations would be reduced on the South Rim but increased on the North Rim by adaptively reusing historic structures. Planning for the park would be done in a regional context to minimize negative impacts resulting from park uses being placed in areas outside the park. Communications would be expanded, as described for alternative 2. Wherever possible, facilities placed outside the park would be clustered in disturbed areas and linked to existing systems. Alternative modes of transportation would be emphasized regionally as well as in major high use areas of the park, the same as alternative 2.

Summary of Impacts: There would be an emphasis on preserving natural and cultural resources within the park, and many park disturbed areas would be rehabilitated. The visitor experience within the park would be highly controlled on the South Rim, and strict limitations of the number of visitors on the North Rim and at Tuweep would force many visitors to plan far in advance to experience those areas. Many more acres would be disturbed outside the park than any other alternative as a result of park-related facility development; services, housing, and operational facilities within the park would be limited. Many visitors would be inconvenienced since no private vehicles could be driven through the park.

Alternative 4—Increased Development Within the Park

Summary of Actions: Alternative 4 proposes actions to improve visitor convenience by placing major park visitor services inside the park wherever reasonable and by distributing visitors throughout the developed areas of the park. No day use limitations would be established unless the visitor experience was being significantly degraded. The type of vehicular use allowed in some areas would be restricted, and high use areas would be accessible only by transit vehicles or hiking or biking (the same as alternative 2); other developed areas would be accessible by private vehicles. Overnight accommodations would be increased in all developed areas on the North and South Rims by constructing some new facilities and adaptively reusing existing structures. New facilities would be placed either in or adjacent to disturbed areas. Planning outside the park would emphasize regional information, as described for alternative 2. Cooperative planning with outside entities would focus on disseminating information, providing trip planning assistance, and distributing visitor use.

Summary of Impacts: Allowing all visitors to enter the park and developing facilities to accommodate their needs would result in continuing resource damage. This alternative would produce more resource impacts inside the park than any alternative and would set a precedent for continued resource impacts in the future. The greatest resource impacts would be caused by widening roads and developing additional parking. Visitor convenience would be significantly enhanced. Park operations and development would continue to expand to meet visitor demand. After 2010 the visions and management objectives for the developed areas might not be attainable due to the increases in facilities and visitors. Impacts to regional resources would increase over the long term as a result of growth inside and outside the park to meet visitor needs. Due to ever-increasing needs for park construction, new employee housing, and larger visitor facilities, the regional economy would continue to increase.

Basis for Decision: The selected action was formulated to address problems and management concerns related to the protection and preservation of natural and cultural resources, the provision of appropriate visitor experiences, and the fulfillment of identified management objectives. The management objectives reflect the park purpose, significance, and park area vision statements. They provide a standard against which progress on the implementation of the plan can be measured. The management zoning concept set forth in the March 1995 draft plan (and refined in the July 1995 final plan) is adopted, which will enhance management's ability to direct future park actions in specific areas within the context of an overall management philosophy.

The selected action also adopts the ongoing implementation plans within the park (for example, the Resource Management Plan, Backcountry Management Plan, Colorado River Management Plan, Fire Management Plan, and Land Protection Plan), and provides direction, through the management objectives, for future revisions of those plans. The selected action provides for a monitoring program that will provide an appropriate park management presence and an adjustable, sustainable carrying capacity for people and vehicles in developed areas within the park with minimal disturbance to park resources.

No protests or other comments were received on the final plan and environmental impact statement during the 30-day no action period that the document was available to the public.

Environmentally Preferred Alternative: Alternative 2 is the environmentally preferred alternative. It balances the statutory mission of the National Park Service to provide long-term resource preservation while still allowing for appropriate levels of visitor use and appropriate means or forms for visitor enjoyment. Within the range of alternatives presented in the plan, alternative 2 corrects the existing infrastructure deficiencies in the park and provides for the projected growth in visitation through the year 2010 by adaptive use of existing historical structures and provision of visitor transportation services other than private automobiles. A long-term monitoring program to determine appropriate use levels and carrying capacities within the developed areas of the park will be established to ensure protection of the natural and cultural resources of the park and to maintain a quality visitor experience.

Alternative 2 also provides the best combination of long- and short-term regional economic and community proposals that will favorably affect the tourism industry and communities in northern Arizona and southern Utah. An emphasis in alternative 2 is to promote economic development in surrounding communities by not providing all tourist related facilities inside the park.

Measures to Minimize Harm: All practicable measures to avoid or minimize environmental impacts that could result from implementation of the selected action have been identified and incorporated into the selected action. These include, but are not limited to, protection of viewsheds and wilderness values, and natural resources including the protection of populations of threatened plant species in the developed zone. As specific aspects of the selected action are further developed or implemented, the National Park Service will consult with the Fish and Wildlife Service regarding threatened or endangered species. Also impacts to the integrity of historic properties, ethnographic resources, and archeological sites will be avoided or minimized. A programmatic agreement has been signed by the Arizona State Historic Preservation Office, the Advisory Council on Historic Preservation, and the National Park Service which provides a framework for further consultation and discussion when implementing the selected action.

Conclusion: The above factors and considerations warrant selecting Alternative 2, identified as the proposed action in the draft document (and as modified in the final general management plan and environmental impact statement). Additional copies of the approved Record of Decision may be obtained from the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023. The officials responsible for implementing the selected action are the Field Director, Intermountain Field Area, National Park Service and the Superintendent, Grand Canyon National Park.

Approved: August 21, 1995.

Stanley T. Albright,

Field Director, Pacific West Field Area.

[FR Doc. 95–21964 Filed 9–1–95; 8:45 am]

BILLING CODE 4310–70–P

Interagency Desert Management Plan Northern and Eastern Mojave Desert Inyo and San Bernardino Counties, CA; Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with 40 CFR 1501.7 and 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act (Pub. L. 91–190), the National Park Service (NPS), Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (FWS) are initiating the preparation of a management plan and environmental impact statement for the Northern and Eastern Mojave Desert.

Background

The purposes of this interagency desert management plan are to guide protection, public use, and development of a 7.7 million acre region in parts of Inyo and San Bernardino counties of southern California. Once approved, the plan will provide broad guidance over the next two decades for management of federally owned lands in the Northern and Eastern Mojave Desert. The plan also will contain more detailed plans for two major units of the National Park System and for BLM lands. Specifically, the existing Death Valley general

management plan of 1988 will be amended, the first general management plan for Mojave National Preserve will be prepared, and management decisions for BLM wilderness areas will amend the California Desert Conservation Area Plan of 1980.

The principal issues proposed to be resolved through this planning effort include the following topics: Access to public lands; infrastructure necessary for managing these areas; habitat management, including the habitat of the threatened desert tortoise and other sensitive species; wilderness management; management of wild horses, burros, and alien/exotic plant and animal species; proposed expansion of Fort Irwin; visitor information facilities; recreational opportunities; mining activities and utility corridors.

The project will be conducted by an interagency, multidisciplinary planning team with offices in Barstow, California. Federal and state government agencies, as well as county and city officials, will be invited to consult with the team throughout the project process. Interested individuals and organizations will be able to participate during the planning process through a series of public meetings and review periods. The expected three year planning effort will commence immediately.

The public will be invited to workshops and open houses at three different stages of the project—scoping/issues identification, development of alternatives, and review of the draft and final documents. The first set of workshops, intended to listen to and record public input on the planning issues, will be held in late September, 1995, in Las Vegas, Nevada and in Baker, Barstow, Furnace Creek, Independence, Lone Pine, Needles, Pasadena, Ridgecrest, and San Bernardino in California. The team will also welcome any written comments during this scoping phase.

SUPPLEMENTARY INFORMATION: Requests for a map of the Northern and Eastern Mojave planning area, as well as comments and inquires about this project, should be directed to: Mr. Dennis Schramm, Planning Team Leader, National Park Service, Mojave National Preserve, 222 East Main Street, Suite 202, Barstow, CA 92311 [(619)255–8840].

Dated: August 22, 1995.

Stephen G. Crabtree,

Acting Field Director, Pacific West Field Area.

[FR Doc. 95–21965 Filed 9–1–95; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

[FES 95–30]

Josephine County Water Management Improvement, Fish Passage Improvements, Savage Rapids Dam, OR

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of planning report/final environmental statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, and the Reclamation Act of 1902, as amended, the Bureau of Reclamation has prepared a planning report/final environmental statement (PR/FES) on a proposed project to improve fish passage at Savage Rapids Dam located on the Rogue River in southwest Oregon near the city of Grants Pass. The report presents an evaluation of two alternatives for improving fish passage and reducing loss of salmon and steelhead.

ADDRESSES: Copies of the PR/FES may be requested from the following:

- Regional Director, Bureau of Reclamation, Attention: PN–6309, Pacific Northwest Region, 1150 North Curtis Road, Boise, ID 83706–1234. Telephone (208) 378–5087.
- Secretary/Manager, Grants Pass Irrigation District, 200 Fruitdale Drive, Grants Pass OR 97527–5268. Telephone (503) 476–2582.
- Area Manager, Bureau of Reclamation, Lower Columbia Area Office, 1503 NE 78th, Suite 15, Vancouver, WA 98664. Telephone (206) 576–8858.

Copies of the PR/FES are available for inspection and review at the following locations:

- Josephine County Public Library, Grants Pass, Oregon.
- Medford Public Library, Medford, Oregon.
- Rogue River Public Library, Rogue River, Oregon.

SUPPLEMENTARY INFORMATION: The federally preferred plan proposes replacement of existing pumping and diversion facilities with two electrically-powered pumping plants, removal of the dam and appurtenant structures, and forgiveness of the remaining debt to the Federal Government. No significant changes have been made to the preferred plan as presented in the Bureau of Reclamation's planning report/draft environmental statement (DES 94–51).

The PR/FES presents the preferred plan, an alternative plan that retains the dam, and the no Federal action plan and describes the existing environment and environmental consequences of plan implementation. Comments received during the 90-day review of the PR/DES and Reclamation's responses are documented. It is Reclamation's intention to defer further action or recommendations until State of Oregon initiatives and recommendations regarding Savage Rapids Dam are completed. We anticipate that those questions will be resolved in mid-1996.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Pacific Northwest Region, Attention: PN–6309, 1150 North Curtis Road, Boise, Idaho 83706–1234. Telephone (208) 378–5087.

Dated: August 18, 1995.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 95–21903 Filed 9–1–95; 8:45 am]

BILLING CODE 4310–85–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Ellen R. Keys, (202) 927–5673. Comments regarding this information collection should be addressed to Ellen R. Keys, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Room 2209, Washington, DC 20423–0001 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Office: Office of Compliance and Enforcement.

Title of Form: Owner-operator Annual Report Form.

OMB Form Number: 3120–0061.

Agency Form Number: OCCA–143.

No. of Respondents: 1,045.

Total Burden Hours: 52.25 (estimated 3 minutes per response).

Vernon A. Williams,

Secretary.

[FR Doc. 95–21915 Filed 9–1–95; 8:45 am]

BILLING CODE 7035–01–P

[Ex Parte No. 388 (Sub-No. 26)]

Intrastate Rail Rate Authority—Oklahoma

AGENCY: Interstate Commerce Commission.

ACTION: Extension of certification.

SUMMARY: By decision served August 30, 1990, the State of Oklahoma, through the Oklahoma Corporation Commission, was certified to regulate intrastate rail rates, classifications, rules, and practices for the 5-year period ending August 30, 1995. Pursuant to a request from Oklahoma, the Commission extends certification for an additional 60 days so that Oklahoma can complete an application for recertification in compliance with *State Intrastate Rail Rate Authority,* 5 I.C.C.2d 680 (1989).

DATES: Oklahoma's certification is extended to October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: August 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21913 Filed 9–1–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32756]

Union Pacific Railroad Company and Burlington Northern Railroad Company—Joint Relocation Project Exemption—in Fort Collins, CO

On August 2, 1995, Union Pacific Railroad Company (UP) and Burlington Northern Railroad Company (BN) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad over the BN in Fort Collins, Larimer County, CO. The proposed transaction was expected to be consummated on, or soon after August 9, 1995.

UP and BN are class I rail carriers that own and operate separate lines of railroad in and near the City of Fort Collins, CO. UP's tracks are located on its line of railroad known as the Fort Collins Branch which extends from LaSalle, CO westward to Fort Collins. Also, LaSalle at milepost 47.2, is a station on UP's mainline known as the Greeley Branch, which is generally a north-south route.

The rail lines located at Fort Collins between Mulberry Street and Lemay Avenue, are the subject of this joint relocation project. Both BN and UP have rail lines that extend past Mulberry Street to other points in Fort Collins and past Lemay Avenue, the BN line extending to Greeley, CO and the UP line extending to LaSalle.

Under the joint relocation project, UP and BN propose the following transactions: (1) BN will grant UP overhead trackage rights over BN's track between BN mileposts 75.48, near Mulberry Street, and BN milepost 76.04, near Lemay Avenue, a distance of 0.56 mile at Fort Collins; (2) UP's incidental abandonment and discontinuance of operation over a segment of UP's Fort Collins branch line between milepost 31.23, near Mulberry Street, and milepost 30.66, near Lemay Avenue, at Fort Collins, a distance of approximately 0.57 mile; and (3) the incidental construction of connecting tracks between existing UP and BN rail lines. One of the connections is located near Mulberry Street and the other connection near Lemay Avenue. The portion of the track to be constructed is located on the respective parties' property. The notice states that construction of the connector tracks are an important part of the relocation in order for UP to operate the trackage rights over BN.

The line relocation project is to improve operational and maintenance practices for UP and BN, and will benefit the City of Fort Collins. UP's two road crossings at the major streets of Mulberry Street and Lemay Avenue will be eliminated.

UP and BN state that there are no UP rail stations on the segment of the line in the incidental abandonment, no new traffic will be generated by the proposed transaction and there will be no extension of rail service into new territory. The notice also states that there will be no adverse effect on shippers and no impact or change in the competitive situation of rail carriers in the area.

The Commission will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993). The Commission has determined that line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the embraced incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Decided: August 28, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21914 Filed 9–1–95; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee

AGENCY: National Communications Systems (NCS), Joint Secretariat.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held on Friday, September 22, 1995, from 9 a.m. to 3 p.m. The meeting will be held at the Mitre-Hayes Building, 7525 Colshire Dr., McLean VA 27006. The agenda is as follows:.

A. Call to Order/Welcoming Remarks.

B. National Information Infrastructure Task Force.

C. Wireless Services Task Force.

D. Legislative & Regulatory Working Group.

E. Information Assurance Task Force.

F. Network Security Group.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense.

FOR FURTHER INFORMATION CONTACT: Telephone (703) 607–6221 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204–2198.

Dennis Bodson,

Assistant Manager, Technology and Standards.

[FR Doc. 95–21902 Filed 9–1–95; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting an expedited notice of information collection that will affect the public. Interested persons are invited to submit comments by September 15, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Customer Service Satisfaction by Sponsored Research Offices at Academic Institutions.

Affected Public: Not-for-profit institutions.

Respondents/Reporting Burden: 150 respondents, 75 total burden hours.

Abstract: Purpose of the survey is to obtain views of officials in sponsored research offices at academic institutions about their satisfaction with critical aspects of the NSF proposal and award process, in particular, timeliness and clarity of information about programs and processes and responsiveness in processing proposals and awards. Method of obtaining is an e-mail survey questionnaire to individuals on the NSF electronic grants bulletin board and request responses from individuals in sponsored research offices. The bulletin board reaches the sponsored research offices of about 350 universities and colleges, with which NSF does the bulk of its proposal and award business.

Dated: August 30, 1995.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 95–21891 Filed 9–1–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–424]

Georgia Power Company, et al. (Vogtle Electric Generating Plant, Unit 1); Exemption

I

Georgia Power Company, et al. (the licensee) is the holder of Facility Operating License No. NPR–68, which authorizes operation of the Vogtle Electric Generating Plant (VEGP), Unit 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor, VEGP Unit 1, at the licensee's site located near Waynesboro, Georgia.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs), at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shutdown for the 10-year inservice inspection of the primary containment.

III

By letter dated May 12, 1995, as supplemented by letter dated June 6, 1995, the licensee requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 18 months (from the March, 1996, refueling outage, to the September, 1997, refueling outage) and would permit the third Type A test of the second 10-year inservice inspection period to not correspond with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2) (ii), (iii) and (vi) as the basis for the exemption. They point out that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the experience at Vogtle Unit 1 during the three Type A tests (one preoperational and two during the first 10 year inservice inspection period) conducted from 1986 to date, that any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have only been confirmatory of the results of the Type B and C test results. Therefore, application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

Additionally, the licensee stated that their exemption request meets the requirements of 10 CFR 50.12 for the following reasons:

10 CFR 50.12 Requirements

In accordance with 10 CFR 50.12, the Commission may grant an exemption to the requirements of the regulations of 10 CFR 50 if the exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and special circumstances are present.

The Requested Exemption is Authorized by Law

There is no known law that would be violated by the granting of the proposed exemption. 10 CFR 50.12 provides the basis for granting exemptions to the requirements of 10 CFR 50 regulations. The NRC has granted similar exemptions in the past. Therefore, the exemption is authorized by law.

The Requested Exemption Does Not Present an Undue Risk to the Public Health and Safety

10 CFR 50, Appendix J states that the purpose of the regulation is to assure that leakage through primary containment and systems and components penetrating containment does not exceed allowable values, as specified in the Technical Specifications or associated bases, and that proper maintenance and repair are performed throughout the service life of the containment boundary components. The ILRT history for VEGP, Unit 1 during the first 10 year service period inspection interval indicated that the containment structure has not experienced degradation. The NRC has conducted a detailed study of integrated leak rate tests performed from 1987 to 1993. That study, documented in draft NUREG–1493, determined that 97% of the leakage rate tests that exceed the acceptance criteria are identified by LLRT programs. The LLRT program at VEGP, Unit 1 has been successful in maintaining low Type B and C containment leakage. Since there has been no identified containment structural leakage, the

LLRT program has contributed to the successful ILRTs. Therefore, as shown in the NRC study and as indicated by the VEGP, Unit 1 containment performance history, postponing the ILRT by one refueling cycle remains consistent with the intent of the regulation and will not present an undue risk to the public health and safety.

The Requested Exemption Will Not Endanger the Common Defense and Security

GPC interprets the term "common defense and security" as referring principally to the safeguarding of special nuclear material, the absence of foreign control over the applicant, and the protection of restricted data. The granting of the requested exemption will not affect any of those matters, and thus, the granting of the exemption is consistent with the common defense and security of the United States.

Special Circumstances are Present Which Necessitate the Request for an Exemption to the Regulations of 10 CFR 50, Appendix J, Section III.A.5(b)(2)

The special circumstances of 10 CFR 50.12(a)(2) (ii), (iii), and (vi) apply to this requested exemption.

50.12(a)(2)(ii)—Application of the Regulation is Not Necessary to Achieve the Underlying Purpose of the Rule

The underlying purpose of 10 CFR 50, Appendix J will still be served if a third ILRT is not conducted during the first 10-year service period. Appendix J states that the leakage test requirements provide for periodic verification by tests of the leak tight integrity of the primary reactor containment. The Appendix further states that the purpose of the tests is to assure that leakage through the primary reactor containment shall not exceed the allowable leakage rate values as specified in the Technical Specifications or associated bases.

10 CFR 50, Appendix J, Section III.D.1(a) states that a set of three periodic tests shall be performed at approximately equal intervals during each 10-year period and that the third test shall be conducted when the plant is shut down for the 10-year plant inservice inspections. The proposed exemption would permit delaying of the scheduled Type A test and permit performance of the Type A test after the completion of the first 10-year inservice inspection interval in accordance with the schedule to be provided in the proposed revision to Appendix J. The methodology, acceptance criteria, and Technical Specifications leakage limits for performance of the Type A test will not change.

The testing history, structural capability of the containment, and the risk assessment discussed previously establish that 1) VEGP, Unit 1 has had acceptable containment leakage rate test results, 2) the structural integrity of containment is assured, and 3) there is negligible risk impact in changing the Type A test schedule on a one-time basis.

Thus, there is significant assurance that the extended interval between Type A tests in concert with the Type B and C testing continue to provide periodic verification of the leak tight integrity of the containment.

10 CFR 50.12(a)(2)(iii)—Compliance With the Regulation Would Result in Undue Hardship or Other Costs That Are Significantly in Excess of Those Contemplated When the Regulation Was Adapted

Postponing the ILRT for VEGP, Unit 1 will eliminate unnecessary testing without any reduction in plant safety. The ILRT typically requires two-to-three days to perform, with the possibility of significant extended time requirements. Outage activities are severely impacted during the preparation period prior to the ILRT and during the performance of the ILRT. A cost savings can be realized by a reduction in outage time, eliminating the impact of the ILRT on other outage activities, and direct costs related to obtaining equipment and services necessary for performance of the ILRT. This proposed exemption could result in a total cost benefit of about $1,100,000, by eliminating one ILRT.

10 CFR 50.12(a)(2)(vi)—Presence of Material Circumstances Not Considered When the Regulation Was Adopted

Certain material circumstances were not considered when the regulation was adopted. The benefit of time has provided experience and information that give a better perspective about containment integrity. Two important material circumstances are testing history and the development of probabilistic risk assessments (PRAs).

Since the promulgation of 10 CFR 50, Appendix J, in 1973, more than 20 years of nuclear power plant operating experience has been obtained. A review of industry data did not find any instances where a Type A test failed to meet Appendix J acceptance criteria as a result of a containment structural leak not due to initial fabrication or a plant modification. That operating history provides a significant indicator that containment structural integrity (passive structure) is not a significant safety concern.

Plant specific PRAs were not available in 1973, and therefore, were not considered when the regulation requiring compliance with Appendix J [10 CFR 50.54(o)] was adopted. Overall plant risk due to containment leakage is relatively small given the small probability of containment leakage itself. The predominant contributor to degraded containment integrity is the phenomenological effects of a severe accident, not pre-existing containment integrity conditions. An assessment of the risk impact in the exemption request indicates that there is no undue risk to the public health and safety as a result of the proposed scheduler extension of the Type A test.

There have been no modifications to the containment structure or liner that would impact the overall containment integrity and leak tightness.

IV

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the Type A test by approximately 18 months. The Commission has determined that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption. Specifically, these circumstances are that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The purpose of the tests is to assure that leakage through the primary reactor containment shall not exceed allowable leakage rate values. The staff has concluded, for the reasons set forth herein, that the purpose of the rule will continue to be achieved with the licensee's proposed exemption.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. All of the Type A tests have passed and the licensee has noted that the results of the Type A testing have been confirmatory of the Type B and C tests which will continue to be performed. The licensee will perform the general containment inspection although it is only required by Appendix J (Section V.A.) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The NRC staff has also made use of a draft staff report, NUREG–1493, which provides the technical jusification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3% of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to asssist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs, the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493).

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix Type A test to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 44514).

This Exemption is effective upon issuance and shall expire at the completion of the 1997 refueling outage.

Dated at Rockville, Maryland, this 29th day of August 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21929 Filed 9–1–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92–463), notice is hereby given that the forty-sixth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATES: September 28, 1995, at 10:00 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary System Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–21572 Filed 9–1–95; 8:45 am]

BILLING CODE 6325–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Clinton Woods, Passaic County, NJ, Chapel Farms, Talbot County, MD

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Clinton Woods, located in West Milford, Passaic County, New Jersey, and Chapel Farms, located in Easton, Talbot County, Maryland, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notice of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until December 4, 1995.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person:

For the Clinton Woods property: Mr. Steve Kilduff, Resolution Trust Corporation, c/o RPC-Mitchell/Titus, Inc., 440 East Sweedsford Road, Suite 2000, Wayne, PA 19087, (610) 254–0400; Fax (610) 254–0363.

For the Chapel Farms property: Mr. Dan Hummer, Resolution Trust Corporation, Atlanta Field Office, 245 Peachtree Center Avenue, NE, Marquis One Tower, 10th Floor, Atlanta, GA 30303, (404) 230–6594; Fax (404) 230–8159.

SUPPLEMENTARY INFORMATION: The Clinton Woods property is located in the northern portion of Passaic County, approximately 2 miles northeast of the Town of West Milford and is situated east of Brook Road, south of Lookover Drive and Mount Laurel Lake. The site consists of approximately 90.9 acres of undeveloped land and contains wetlands. This property is adjacent to Wawayanda State Park and the Bearfort Mountain Natural Area, both of which are managed by the State of New Jersey for recreational and natural resource conservation purposes.

The Chapel Farms property is located in Easton, Maryland, and is accessible via Chapel Farms Drive and Laurel Street to the north or Plum Street to the west. The site has recreational value, contains wetlands, and consists of approximately 58.46 acres of undeveloped land with portions of the property being used for farming. This property is adjacent to a State-owned railroad right-of-way to be leased by the Town of Easton as a hiking and biking trail for recreational purposes. These properties are covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before December 4, 1995. by the Resolution Trust Corporation at the appropriate address stated above.

Those entitles eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government;
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]
Federal Register Publication Date:

[insert **Federal Register** publication date]

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer for all or any

portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects: Environmental protection.

Dated: August 29, 1995.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 95–21864 Filed 9–1–95; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36162; File No. SR–OCC–95–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Making the Stock Loan/Hedge Program Available to Market-Maker and Specialist Accounts Established and Maintained by Clearing Members

August 29, 1995.

On January 13, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–95–02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on April 11, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

The primary purpose of the proposed rule change is to make OCC's Stock Loan/Hedge Program [3] available to accounts established and maintained with OCC by clearing members for market-makers and specialists.[4] Pursuant to OCC's By-Laws and Rules regarding its Stock Loan/Hedge Program, clearing members are permitted to carry stock loan and borrow positions in market-maker accounts.[5] However, at the time OCC proposed its Stock Loan/Hedge Program, OCC was concerned that its market-maker agreements [6] did not adequately accommodate stock loans. Accordingly, in the original Stock/Loan Hedge filing OCC appended an Interpretation to Article XXI, section 5 of its By-Laws stating that OCC would not permit stock loan positions and stock borrow positions to be maintained in a market-maker's account unless the market-maker had entered into an account agreement authorizing stock loan positions and stock borrow positions to be maintained in the account. In addition, OCC stated in that filing that it intended to submit revised versions of the various forms of market-maker agreements to the Commission in a separate proposed rule change in the near future.

OCC has reviewed its current market-maker agreement forms and has concluded that the current forms do adequately accommodate the Stock Loan/Hedge Program. Section 1 of each market-maker agreement causes the market-maker and the clearing member to each agree that OCC has a lien "on all long positions, securities, margin and other funds and assets in the Account." OCC believes that stock loan and borrow positions are "securities, margin and other funds and assets" and accordingly has concluded that this language adequately establishes its rights with respect to stock loan and borrow positions carried in market-maker accounts.

In addition, OCC has concluded that section 3 of its market-maker agreements causes market-makers signing the agreement to authorize the clearing member to lend assets (*i.e.*, stock) in the account and to authorize OCC to rely on the terms on which the assets are loaned.[7] Therefore, OCC now believes that the Interpretation to Article XXI, section 5 of its By-Laws is unnecessary and proposes to delete the Interpretation.

II. Discussion

Section 17A(a)(1)(B) of the Act [8] sets forth Congress' finding that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors. Under Section 17A(a)(2),[9] Congress directs the Commission to use its authority to carry out the objectives set forth in section 17A(a)(1). As discussed below, the Commission believes that OCC's proposed rule change is consistent with the objectives established by Congress under the Act because it should remove inefficient procedures from the clearance and settlement system.

Stock loan positions for which the loaned stock is held for the account of

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35567 (April 5, 1995), 60 FR 18433.

[3] For a description of OCC's Stock Loan/Hedge Program, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 (File No. SR–OCC–92–34) (order granting permanent approval of the Stock Loan/Hedge Program).

[4] Market-makers and specialists are collectively referred to in this order as "market-makers," and accounts established and maintained with OCC by clearing members for market-makers, including separate market-maker's or specialist's accounts, combined market-makers' or specialists' accounts, registered trader's accounts, and stock market-maker's or stock specialist's accounts (as described in Article VI, Section 3 of OCC's By-Laws) are collectively referred to in this order as "market-maker accounts."

[5] For examples of permitted stock loan and borrow positions, refer to OCC By-Laws Article XXI, section 5 stating that a stock loan position may not be maintained in a market-maker's account unless the loaned stock to which the stock loan position relates is held for the account of the market-maker; OCC Rule 601(c) setting out margin requirements for market-maker accounts in which stock loan and borrow positions are carried; and OCC Rules 2209 and 2210 describing the treatment of stock loan and borrow positions of a suspended clearing member, including stock loan and borrow positions carried in a market-maker's account.

[6] The term "market-maker agreements" is used in this order to refer collectively to the three forms of agreement for market-maker accounts (*i.e.*, separate market-maker's accounts, combined market-makers' accounts, and joint accounts).

[7] A stock loan is not the result of an "exchange transaction" for purposes of OCC's rules because it does not arise from a transaction on an exchange. Therefore, OCC was concerned that the language of section 1 of the market-maker agreements did not adequately accommodate stock loans because the language is limited to exchange transactions of market-makers for whom an account is established. However, a stock borrow or loan position is established by a lending clearing member or borrowing clearing member and not by a market-maker. As defined in Article I, section 1(S)(8), the term "stock borrow position" means the position of a borrowing clearing member with respect to a stock loan. In addition, in Article I, section 1(S)(11), the term "stock loan position" means the position of a lending clearing member with respect to a stock loan. A borrowing clearing member does not need any authorization from market-makers because the position is entirely the responsibility of the clearing member. Similarly, a stock loan position is entirely the responsibility of the lending clearing member. However, because a stock loan position in a market-maker account may arise only from a clearing member's lending of stock held for a market-maker for whom the account is carried (pursuant to Article XXI, section 5(d) of OCC's By-Laws), a lending clearing member does not need authority from a market-maker to permit the clearing member to lend the market-maker's stock, and OCC needs authority from the market-maker to rely upon the terms of the loan. As described in the text, OCC believes the current form of the market-maker agreements cause market-makers to provide this authority to both the clearing member and OCC.

[8] 15 U.S.C. 78q–1(a)(1)(B) (1988).

[9] 15 U.S.C. 78q–1(a)(2) (1988).

a customer other than a market-maker must be carried in the clearing member's customers' account. Stock loan positions for which the loaned stock is held for the account of a market-maker may be carried in the lending clearing member's customers' account or market-maker's account. Currently, stock loan and borrow positions may not be maintained in a market-maker's account unless the market-maker has entered into a market-maker's account agreement that specifically authorizes stock loan and borrow positions to be maintained in the account. Additionally, in the case of a combined market-makers' account, stock loan and borrow positions may not be maintained therein unless each market-maker that is a participant in the account has entered into an account agreement that specifically authorizes stock loan and borrow positions to be maintained in such an account. Because OCC has determined that its market-maker's account agreement does accommodate stock loans, OCC is proposing to amend its By-Laws and Rules to allow stock loan and borrow positions to be maintained in market-maker accounts without the execution of an additional agreement.

OCC continues to employ its monitoring and risk reduction procedures which are subject to Commission review and approval. Under the Stock Loan/Hedge Program, OCC has a lien and right of set off against stock loan and borrow positions, and the clearing members' margin requirements will reflect the increase or decrease in risk to OCC associated with stock loan and borrow positions. Open stock loan positions of clearing members will continue to be taken into account in calculating their stock clearing fund obligations. OCC's stock clearing fund is available to cover losses suffered by OCC as a result of the failure of a clearing member to perform any of its obligation to OCC with respect to stock loan and borrow positions.

OCC requires each participating clearing member to instruct OCC as to which accounts the stock loan and borrow positions are to be carried.[10] Clearing members may maintain stock loan positions in a customer's account, a market-maker's account, or a firm account. An instruction from a clearing member to OCC designating a customer's account or a market-maker's account as the account in which a stock loan position is to be carried will constitute a representation (1) that the loaned securities to which the stock loan position relates are carried for the account of a customer and that the hypothecation of such loaned stock to OCC does not contravene any provision of Commission Rules 8c–1 and 15c2–1 [11] and (2) that the lending of the securities is consistent with Commission Rule 15c3–3.[12]

Because OCC has assured itself that its market-maker agreements are adequate to accommodate the entry of market-makers into the Stock Loan/Hedge Program, the Commission believes that the removal of OCC's interpretation to its By-Laws that requires a market-maker to execute a separate agreement in order to participate in the Stock Loan/Hedge Program will expedite the process of a market-maker's entry into the program. Thus, the Commission believes that the rule change is consistent with Congress' objective under section 17A(a) (1) (B) of the Act [13] because it removes inefficient procedures for clearance and settlement thereby eliminating unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors. Additionally, the Commission believes OCC's proposal is consistent with section 17A(a) (2) (A) of the Act [14] because the Stock Loan/Hedge Program extends the availability of intermarket clearing facilities by further linking and coordinating the clearance and settlement of securities and securities options.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of section 17A(b) (3) (F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) (2) of the Act, that the proposed rule change (File No. SR–OCC–95–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21935 Filed 9–1–95; 8:45 am]

BILLING CODE 8010-01-M

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[10] Clearing members may submit standing instructions stating the account or accounts in which all of the clearing member's stock loan or borrow positions are to be carried.

[11] Rules 8c–1 and 15c2–1 (17 CFR 240.8c–1 and 240.15c2–1) prohibit the hypothecation and commingling of customer securities without first obtaining the written consent of each customer whose securities are to be hypothecated or commingled.

[12] Because Rule 15c3–3 (17 CFR 240.15c3–3) requires that a broker-dealer maintain possession or control of all customer fully-paid and excess margin securities, such securities can not be the subject of a stock loan. However, customer securities that the broker-dealer clearing member is permitted to lend may be the subject of a stock loan conducted through the Stock Loan/Hedge Program.

[13] 15 U.S.C. 78q–1(a) (1) (B) (1988).

[14] 15 U.S.C. 78q–1(a) (2) (B) (1988).

[15] 17 CFR 200.30–3(a) (12) (1994).

DEPARTMENT OF STATE

[Public Notice No. 2251]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Fire Protection; Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on Tuesday, October 3, 1995 at 9:30 a.m. in Room 6319 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of the meeting is to discuss the outcome of the Fortieth Session of the International Maritime Organization's Sub-Committee on Fire Protection, held on July 17, 1995.

The meeting will focus on proposed amendments to SOLAS for the fire safety of commercial vessels. Specific discussion areas include: smoke and toxicity, closing mechanisms of fire doors, heat radiation through windows and glass partitions, sprinkler systems and fixed water spraying systems, emergency escape breathing devices, high speed craft, criteria for maximum fire loads, fire safety measures for deep fat cooking equipment, foam concentrates, phasing out of halons, interpretations to SOLAS 74, role of the human element in maritime casualties, safety of passenger submersible craft, smoke control and ventilation, fire safety aspects of composite materials used on board ships, and matters relating to tanker safety.

Members of the public may attend up to the seating capacity of the room. For further information regarding the meeting of the SOLAS Working Group on Fire Protection contact Mr. Jack Booth at (202) 267–2997.

Dated: August 24, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–21841 Filed 9–1–95; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice No. 2250]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m., on Thursday, September 28, 1995, in Room 6319 of U.S. Coast Guard Headquarters, 2100

Second Street, SW., Washington, DC. The purpose of this meeting is to assist the United States Delegation in preparing for the eighth session of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages (JIGE), to be held October 9–10, 1995, and the 73rd session of the International Maritime Organization (IMO) Legal Committee, to be held October 11–13, 1995. Public comment will also be sought at the meeting regarding the acceptability of the International Convention on Maritime Liens and Mortgages, 1993 (93 MLM Convention).

To facilitate the attendance of those participants who may be interested in only certain aspects of the public meeting, the first subject addressed will be the status of the JIGE negotiations to revise the International Convention on the Unification of Certain Rules Related to the Arrest of Seagoing Ships, 1952 (1952 Arrest Convention). The principal focus of the JIGE will be: (1) Expanding the list of maritime claims for which a vessel may be arrested; (2) whether personal liability of the owner is a prerequisite to arrest, particularly when the claim is secured by a maritime lien; (3) the obligation of contracting parties to recognize and permit enforcement of national maritime liens granted under Article 6 of the 93 MLM Convention; (4) whether the arresting court should decide the merits of the case; and (5) the extent to which the Convention should be applied to vessels of non-contracting States. The United States has not ratified the 1952 Arrest Convention. However, the interests of United States owners of foreign flag vessels, cargo owners, and maritime claimants may be affected by changes to the Convention.

The second major group of subjects, which will be considered at approximately 10:30 a.m., will be the agenda items set for discussion at the 73rd session of the Legal Committee. The first agenda item will be preparations for the upcoming diplomatic conference that will adopt the draft Convention on Liability and Compensation in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) and the Protocol to amend the International Convention on Limitation of Liability for Maritime Claims (76 LLMC). Substantive agenda items for the 73rd session of the Legal Committee include consideration of a draft convention on offshore mobile craft, possible work on a draft convention on wreck removal, and consideration of a liability and compensation regime for bunker fuel incidents.

Last, at approximately 11:30 a.m., the public will be invited to comment on the acceptability of the 93 MLM Convention. In May 1993, the new Convention was adopted by delegations from sixty-five nations at a diplomatic conference convened under the joint auspices of the IMO and the United Nations Conference on Trade and Development (UNCTAD). The United States is not a signatory to the 93 MLM Convention, but the interests of United States shipowners and lienholders could be affected once the Convention enters into force abroad, particularly regarding ship financing and the recognition, priority, and extinction of maritime liens.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information or to submit views concerning the subjects of discussion, contact either Captain David J. Kantor or Lieutenant Commander Steven D. Poulin, U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: August 24, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–21842 Filed 9–1–95; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice No. 2248]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea and Associated Bodies Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 1 p.m. on Tuesday, October 3, 1995, in room 4513, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This meeting will discuss the upcoming 40th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on Sept. 2–6, 1996, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. The role of human factors in marine casualties;

b. Harmonization of probabilistic damage stability provisions for all ship types;

c. Technical revisions to the 1966 Load Line Convention;

d. Probabilistic oil outflow;

e. Ro-ro passenger vessel safety.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen or Mr. William Hayden, U.S. Coast Guard Headquarters, Commandant (G–MMS–2), Room 1308, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–2988.

Dated: August 24, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–21843 Filed 9–1–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF THE TREASURY

Customs Service

AES Satellite Broadcast

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Satellite Broadcast on the Automated Export System (AES).

SUPPLEMENTARY INFORMATION: On Thursday, September 7, 1995, from 2 to 3 p.m. EDT, there will be a satellite broadcast on the Automated Export System, what it is and what it does.

The broadcast includes interviews with members of the export trade community, partnership agencies and Customs field personnel. It will also include a roundtable discussion on the current status and future direction of AES. Participating in the roundtable discussion will be:

Michael Lane, Deputy Commissioner

Sharon Mazur, Director AES Development Team

Harvey Monk, Chief Foreign Trade Division, Bureau of the Census

Ray Pechacek, Texas Instruments

Dennis Murphy, District Director, Norfolk—(Moderator)

The broadcast will also include a dial-in question and answer session. An "800" number will be provided on screen during the broadcast for anyone interested in calling in to ask a question or to offer suggestions regarding AES.

Tune in to C band, Galaxy 4, Transponder 7, or Ku band, Galaxy 4, Transponder 12 to view the broadcast. Members of the trade are also welcome to view the broadcast on a space available basis at a local Customs office. Contact the nearest Customs District office for more information.

Dated: August 24, 1995.

Mary C. King,

Acting Director, AES Development Team

[FR Doc. 95–21911 Filed 9–1–95; 8:45 am]

BILLING CODE 4820–02–P

Notice of Issuance of Final Determination Concerning Carddock Units

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain CardDock units which are being offered to the U.S. Air Force ("Air Force"), under a procurement designated under Air Force Solicitation No. F01620–94–R–A430. The final determination found that based upon the facts presented, the country of origin of CardDock units which are manufactured in the U.S. from U.S. and foreign components is the U.S.

DATES: The final determination was issued on August 21, 1995. Any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of September 5, 1995. A copy of the nonconfidential portions of this final determination will be published in the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Anthony A. Tonucci, Attorney-Advisor, Office of Regulations and Rulings, (202) 482–7073.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 21, 1995, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), Customs issued a final determination concerning the country of origin of certain CardDock units which are being offered to the Air Force, under a procurement designated under Air Force Solicitation No. F01620–94–R–A430. The U.S. Customs ruling number is HQ 559255. This final determination was issued at the request of one of the offerors under procedures set forth at 19 CFR 177 subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that based upon the facts presented, ISA boards, frame assemblies and connector cables are substantially transformed in the U.S. as a result of being assembled with U.S. origin Bay Boards into CardDock units. Accordingly, the country of origin of the CardDock units is the U.S. This document gives notice pursuant to section 177.29, Customs Regulations, (19 CFR 177.29), of that final determination. Any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of September 5, 1995.

Dated: August 21, 1995.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 95–21910 Filed 9–1–95; 8:45 am]

BILLING CODE 4820–02–P

Notice to Test the Use of Reconciliation for Adjustments Made to the Price of Imported Merchandise by Related Party Companies under 26 U.S.C. 482

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final notice.

SUMMARY: This notice announces Customs plan to conduct a test regarding the use of reconciliation for those related party importers which have reason to believe upward adjustments may be made to the price of imported merchandise for tax purposes pursuant to 26 U.S.C. 482. This notice invites public participation in the test, and sets out the eligibility requirements for voluntary participation in the testing of reconciliation, for this purpose, and describes the basis on which Customs will select participants.

DATES: The test will commence no earlier than October 1, 1995, and will run until December 31, 1996. To participate in this reconciliation test, the application must be filed and approved by Customs on or before October 1, 1995.

ADDRESSES: To be considered for voluntary participation in this test applications should be submitted to Mr. William F. Inch, Director, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2311, Washington, DC 20229–0001.

FOR FURTHER INFORMATION CONTACT: Matthew Krimski 202–927–0411.

SUPPLEMENTARY INFORMATION:

Background

Section 1059A of the Internal Revenue Code

Section 1059A of the Internal Revenue Code provides that in related party transactions the amount of any costs—

(1) Which are taken into account in computing the basis or inventory cost of such property by the purchaser, and

(2) Which are also taken into account in computing the customs value of such property shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

The legislative history of section 1059A indicates that Congress intended to preclude the "whipsaw" effect on U.S. revenue which occurs when a party is allowed to claim a price for "computing the customs value of such property by the purchaser" that is lower than the price claimed for tax purposes.

When section 1059A was enacted, Congress was aware that the Customs value statute recently had been amended to make price paid the critical cost factor taken into account by the Customs Service in valuing goods for duty purposes. The legislative history of section 1059A also indicates that Congress wanted section 1059A to address this situation by attempting to place a ceiling on "the amount of any (such) costs" that can be claimed for tax purposes. All of the applicable legislative reports indicate, without exception, that Congress intended that section 1059A would instill some uniformity on the amount of costs which may be claimed to the IRS for tax purposes by limiting the amount of such costs to the amount claimed to, and taken into account by, the Customs Service in computing the Customs value.

The legislative history did state that appropriate adjustments may be made in cases where customs pricing rules differ from appropriate tax rules—as, for example, with the inclusion or exclusion of freight charges. Finally, the history states section 1059A applies to transfer prices subject to section 482 of the Internal Revenue Code.

In July of 1994, the Internal Revenue Service (IRS) issued final regulations implementing 26 U.S.C. 482. The IRS subsequently began considering whether and to what extent the 1059A regulations should be amended in the context of the new section 482 regulations. The section 482 regulations, specifically 26 CFR 1.482–1(a)(3), permits a controlled taxpayer, if necessary to reflect an "arm's length result," to "report on timely filed U.S. income tax return (including extensions) the results of its controlled transactions based upon prices different from those actually charged." The IRS is considering whether the 1059A regulations should be amended to allow the taxpayer, under appropriate circumstances, to make the upward section 482 adjustment.

This document announces a test that will facilitate the IRS/Customs decision as to whether reconciliation procedures provide a viable and appropriate circumstance for a taxpayer/importer to make a post entry upward adjustment to the price of imported merchandise.

Customs Value Law

For Customs purposes the appraised value of imported merchandise is determined pursuant to section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act (TAA) of 1979. Transaction value is the primary basis of appraisement. Transaction value is defined in section 402(b)(1) as the "price actually paid or payable for the merchandise when sold for exportation to the United States" plus specified statutory additions.

Pursuant to section 402(b)(2)(A)(iv) the transaction value of imported merchandise shall be the appraised value only if the buyer and seller are not related, or if the buyer and the seller are related, the transaction value is acceptable under 402(b)(2)(B). Section 402(b)(2)(B) provides that transaction value between a related buyer and seller is acceptable if the buyer demonstrates that the declared transaction value meets one of the following two tests: (1) Circumstances of the Sale or (2) Test Values.

The reconciliation test, announced in this document, is designed for participants that engage in related party transactions.

Related Party Transactions

Under section 402(g) of the TAA the following persons are treated as related:

(1) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(2) Any officer or director of an organization and such organization.

(3) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(4) Partners.

(5) Employer and employee.

(6) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(7) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

For purposes of 402(g)(G), the phrase "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person" is understood to cover the following situations:

(1) Where one of them directly or indirectly controls the other;

(2) Where both of them are directly or indirectly controlled by a third person; or

(3) Where together they directly or indirectly control a third person.

For purposes of this test, Customs will consider the fact that the related party importer has reason to believe that an upward adjustment may be made to the price as evidence that the relationship may have affected the price actually paid or payable for the imported merchandise. Therefore, transaction value may not be acceptable.

Rather, the merchandise may be appraised under section 402(f). The appraised value pursuant to section 402(f) will be derived from the transaction value method. That is, the appraised value will be the price for the imported merchandise after the upward section 482 adjustment is undertaken by the importer/taxpayer plus the applicable statutory additions: Packing, selling commissions, assists, royalties/license fees and proceeds of subsequent resale. In order to participate in the test, the importer/taxpayer must agree that 402(f) is the proper basis of appraisement, in the event an upward section 482 adjustment is, in fact, claimed for tax purposes.

Title VI of the North American Free Trade Agreement Implementation Act

In order for the importer to comply with Customs value law, when making upward adjustments, a mechanism must be established that permits the importer to submit information related to the upward adjustment after the time of entry. Customs has determined that the reconciliation provisions of the North American Free Trade Agreement Implementation Act (the Act) create a possible vehicle permitting these circumstances. Specifically, Title VI of the Act, Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of Title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 637 in Subtitle B of the Act amends section 484 of the Tariff Act of 1930 by establishing a new subsection (b) entitled "Reconciliation". Reconciliation is a planned component of the NCAP. Section 631 of the Act authorizes tests of planned NCAP components. Section 101.9(b) of the Customs Regulations, provides the regulations governing the testing of NCAP components. See T.D. 95–21 (60 FR 14211, March 16, 1995). This test is established pursuant to those regulations.

Reconciliation

Reconciliation will allow an importer to provide Customs with information not available at the time of entry summary filing and which is necessary to ascertain the final classification and appraisement of imported merchandise. The reconciliation must be filed no later than 15 months from the date of the first entry summary filed under that reconciliation.

A reconciliation permits the liquidation of an entry summary/summaries despite the fact that undetermined information will be transmitted to Customs at a later time through the reconciliation process. Assuming there are no other outstanding issues, the entry summaries will be liquidated for all purposes other than that which is identified by the importer as pending reconciliation. The reconciliation will be liquidated in accordance with 19 U.S.C. 1500. The liquidation of the reconciliation may be protested, in accordance with 19 U.S.C. 1514, but the protest may only pertain to issues covered by the liquidated reconciliation.

A draft notice was published requesting comments from interested parties on July 5, 1995. We received ten comments and the following is Customs analysis and response to those comments.

Discussion of Comments

Bond Requirement

Comment: The commenter, a surety company, states that language should be added to clearly define the bond requirements for the reconciliation entry.

Customs Response: All entries which are pending reconciliation must be secured by a continuous bond. Customs will allow only one surety for all entries under the reconciliation. If a participant changes sureties during the reconciliation period, Customs must be notified before the change is actually made. No additional entries will be added to the first reconciliation, and a new reconciliation entry will be initiated. In this situation, Customs will issue a separate reconciliation entry number for the future entries to be filed during the remainder of the reconciliation period. Both reconciliation summaries will be due at the close of the reconciliation period.

A separate bond will not be required for the reconciliation entry. The continuous bond on the subject entries will provide coverage for the

reconciliation entry. The Basic Importation and Entry Bond Conditions under 19 CFR 113.62 provide for an agreement of the principal and surety to pay, as demanded by Customs, all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by the bond. The bond conditions as prescribed by regulation also provide for agreement by the principal to file within the time and in the manner prescribed by law and regulation, documentation to enable Customs to properly assess duties on the merchandise, collect accurate statistics with respect to the merchandise, and determine whether applicable law and regulation are met.

Bond Sufficiency

Comment: The commenter, a surety company, is concerned that a continuous bond may not adequately cover the amount due on the reconciliation entry.

Customs Response: For purposes of this test, Customs believes the continuous bond for the entry summaries will adequately cover the amount due on the reconciliation entry. Customs will monitor each reconciliation individually and should additional coverage be deemed necessary, it will be requested. Customs is conducting research into bond sufficiency from the standpoint of the Chief Financial Officers Act, with respect to all programs under the Mod Act.

Notice to Sureties

Comment: The commenter, a surety company, states that Customs must notify the surety bonding the entries subject to reconciliation that the importer is using reconciliation. Accordingly, the commenter suggests that Customs advises the surety, electronically if possible, as to which entries are subject to reconciliation as well as the specific issue pending reconciliation.

Customs Response: Upon acceptance into this reconciliation prototype, Customs will issue a confirmation letter to the participant. This letter will provide the reconciliation entry number which is to be utilized. In this document, Customs will also confirm that all entries filed on behalf of the applicant, within the designated time frame, meeting the scope as defined by the applicant, will be subject to reconciliation of the entered value pending upward adjustments in accordance with 26 U.S.C. 482. A courtesy copy of this confirmation letter will be sent to the surety company, which is designated in the application. This will serve as the notice to the surety that all entries filed within the designated time frame, meeting the scope as defined by the applicant, will be subject to reconciliation of the entered value. The value element on the subject entries will be liquidated on the reconciliation entry.

Identification of Reconciliation

Comment: The commenter, a surety company, asks how Customs will identify such reconciliation.

Customs Response: Each reconciliation will be identified by a separate entry number issued by Customs.

Scope of Reconciliation

Comment: The commenter, a surety company, is concerned that Customs will be withholding liquidation pending reconciliation of the valuation on all entries filed by the applicant, when in fact, not all merchandise on those entries may be subject to the possible upward adjustment.

Customs Response: For the purposes of this reconciliation prototype, the importer is required to provide, in the application, the scope of the reconciliation. The scope will be defined in the application to include the importer, filer, surety, merchandise (by Harmonized Tariff Schedule number) which will be subject to the reconciliation, and reconciliation time frame (October 1, 1995 through March 31, 1996, or the end of their tax year, whichever comes first). During the reconciliation period, the entered value, with respect to upward 482 adjustments, on the entries meeting the designated scope criteria will be held open pending the reconciliation.

Liquidation

Comment: The commenter, a surety company, requests information regarding the liquidation of the reconciliation.

Customs Response: The reconciliation is an entry, identified by entry type 09. The reconciliation will permit the liquidation of the entries despite the fact that the undetermined value information will be provided to Customs at a later time. Upon liquidation of the entries, any Customs decision entering into that liquidation, e.g., classification, may be protested pursuant to 19 U.S.C. 1514. When the value information is provided in the reconciliation, the reconciliation will be treated as an entry and liquidated. The liquidation of the reconciliation may also be protested but the protest may only pertain to elements contained in the liquidated reconciliation, i.e., the protest may not re-visit elements previously liquidated in the entries.

Customs will take action to liquidate all reconciliation entries filed pursuant to this prototype, and extend the liquidation if necessary. Should the reconciliation NOT be filed, the importer will be subject to liquidated damages as the terms of the bond have been breached. In such a case, Customs will analyze the individual situation and liquidate the reconciliation appropriately.

Possible Abuse of Reconciliation

Comment: The commenter, a surety company, states that Customs should limit the number of reconciliations an importer can use, so as to avoid separate reconciliations for each issue for each entry.

Customs Response: For the purposes of this test, the only element open for reconciliation is valuation, specifically an adjustment to the price made to comply with 26 U.S.C. 482. Customs will be able to adequately monitor the amount of reconciliations requested through the application process. The intent of the reconciliation is to link all entries with common, undetermined value information to one reconciliation entry.

Expansion to Include Downward Adjustments

Comment: The test should be expanded to include both upward and downward adjustments.

Customs Response: This test is designed to address a specific issue identified by the Internal Revenue Service. That is, if an importer must make an upward adjustment to its transfer price in order to comply with 26 U.S.C. 482, section 1059A acts as a bar to such adjustment if the lower price was declared to Customs. The section 1059A bar does not apply to situations in which the importer contemplates making a downward adjustment to the price. Given the restricted scope of the test, Customs has concluded that the test will continue to be limited to importers that contemplate making an upward adjustment to their transfer prices to comply with 26 U.S.C. 482. However, Customs is analyzing whether downward adjustments to prices can and should be addressed in future reconciliation tests.

Bases of Appraisement

Comment: There is no reason why section 1401a(a)(I)(f) must be the applicable basis of appraisement in the proposed test.

Customs Response: As was stated in the initial notice, Customs considers the fact that the related party importer has reason to believe that an upward adjustment may be made to the price of the imported merchandise as evidence that the relationship may have affected the price actually paid or payable for the merchandise. Therefore, transaction value will not be considered to be the proper basis of appraisement. The importer continues to have the right to have the hierarchy of appraisement applied to its transactions. However, if the importer claims another basis of appraisement, such as deductive value, then the importer will not be able to participate in the proposed test. This is due to the fact that the test is designed to determine how Customs can use the prices that the importer paid to the seller and the upward adjustments to those prices by using reconciliation. If a basis of appraisement is used that does not use these adjusted prices then the information is meaningless, for purposes of this test. Appraisement under section 402(f) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 allows Customs to utilize the importer's information on the price it paid, and to reasonably appraise the merchandise using that information.

Providing Customs With IRS Form 5472

Comment: One commenter responded with a suggestion that the Internal Revenue Service routinely provide the U.S. Customs Service with the IRS Form 5472 which requests information on import transactions and the related party status of the exporter/importer. The information on the Form 5472 would identify differences between the basis or inventory costs of imported goods as carried for IRS purposes and the Customs value of the imported goods. If such differences did exist, IRS Form 5472 requires an explanation for such differences and if supporting documentation exists in the United States.

Customs Response: Under existing IRS confidentiality statutes, the routine transfer of IRS information to the U.S. Customs Service is prohibited. Only in cases where the Customs Service has a Customs Regulatory Audit planned or in progress, can Customs request certain specific information from the IRS and only in cases when the importer has refused to provide the information voluntarily. The existing provisions for these transfers are contained in Public Law 103–182 passed December 8, 1993.

Description of Test

This test will be limited to participants who meet the eligibility criteria set forth below. It will cover entry summaries filed by those participants from October 1, 1995 to March 31, 1996 or the end of the participant's tax year, whichever comes first. Each reconciliation is limited to one importer/filer/surety combination.

By statute, reconciliation must be filed within 15 months of the entry summary. The reconciliation entry (i.e. the intent to file the reconciliation) is considered filed when the application is submitted to Customs. For purposes of this test, participants must file the reconciliation summary, which provides the outstanding value information, within 15 months of the filing of the first affected entry summary or by December 31, 1996, whichever comes first. All reconciliation entries will be filed to the attention of Matthew Krimski, Office of Regulatory Audit, Office of Strategic Trade, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, DC 20229. Customs will advise participants where additional duties resulting from the reconciliation are to be tendered.

All entries which are pending reconciliation must be secured by a continuous bond. Customs will allow only one surety for all entries under the reconciliation. If a participant changes sureties during the reconciliation period, Customs must be notified before the change actually is made. No additional entries will be added to the first reconciliation, and a new reconciliation entry will be initiated. In this situation, Customs will issue a separate reconciliation entry number for the future entries to be filed during the remainder of the reconciliation period. Both reconciliation summaries will be due at the close of the reconciliation period.

The continuous bond on the subject entries will provide coverage for the reconciliation entry. The Basic Importation and Entry Bond Conditions under 19 CFR 113.2 provide for an agreement of the principal and surety to pay as demanded by Customs all additional duties, taxes, and charges subsequently found due, legally fixed and imposed on any entry secured by the bond. The bond conditions as prescribed by regulation also provide for agreement by the principal to file within the time and in the manner prescribed by law and regulation, documentation to enable Customs to properly assess duties on the merchandise, collect accurate statistics with respect to the merchandise and determine whether applicable law and regulation are met.

The reconciliation is an entry identified by entry type 09. The reconciliation will permit the liquidation of the entries despite the fact that the undetermined value information will be provided to Customs at a later time. Upon liquidation of the entries, any Customs decision entering into liquidation e.g. classification, may be protested pursuant to 19 U.S.C. 1514. When the value information is provided in the reconciliation, the reconciliation will be treated as an entry and liquidated. The liquidation of the reconciliation also may be protested, but the protest may only pertain to elements contained in the liquidated reconciliation, i.e. the protest may not re-visit elements previously liquidated in the entry.

Note: In those cases in which the Harmonized Tariff Schedule (HTS) classification is determined by the unit value, the classification for those commodities also will be held open pending the reconciliation.

Customs will take action to liquidate all reconciliation entries filed pursuant to this prototype and extend the liquidation if necessary. Should the reconciliation not be filed, the importer will be subject to liquidation damages as the terms of the bond have been breached. In such cases, Customs will analyze the individual situation and liquidate the reconciliation appropriately.

Application

Applications will be submitted to Mr. William F. Inch, Director, Office of Regulatory Audit, United States Customs Service, 1301 Constitution Ave. NW., Room 2311, Washington, DC 20229–0001. All applicants will be notified in writing of approval or disapproval regarding test participation. All applicants who meet the eligibility criteria will be chosen to participate in this test. The application must address the ability to meet the eligibility requirements. The applicant must consent, in the application, to all the conditions set forth in the description of this test and eligibility criteria. The applicant must set forth in the application the date on which the applicant's tax year ends. The following information must be included in the application:

1. Importer and IR number;
2. Filer;
3. Surety;
4. Reconciliation Time frame (October 1, 1995 through end of tax year or March 31, 1996, whichever comes first;
5. Merchandise, by Harmonized Tariff Schedule number, impacted by the possible 482 adjustment;
6. Countries of origin of impacted merchandise; and
7. Ports of entry through which the subject merchandise will be imported during the reconciliation period.

By applying, applicants agree that the value for merchandise covered by all entry summaries filed by them or on their behalf on or after October 1, 1995 until the end of the tax year or March 31, 1996, whichever comes first, shall be finally determined by the liquidation of the reconciliation filed in accordance with the test. The Office of Regulatory Audit will review the application to determine that the applicant has met all eligibility requirements.

Documentation Required to Support Reconciliation

The approved participant shall maintain and produce upon Customs request all relevant documentation to support the change in the entered value. The reconciliation shall include the following information:

1. The entry numbers and entry dates, total entered value and ports of entry of all entries filed with Customs falling within the scope of the test.
2. Broken down by entry number, a cumulative list of units imported by classification number and the change (final entered value) to that entered value.
3. Proposed duty due pursuant to reconciliation.

In order to support the reconciliation, the approved applicant shall maintain and produce upon Customs request all relevant documentation to support the change in entered value. The approved applicant may be required to provide any or all of the following documentation:

1. The IRS Schedule M–1, and the Form 1120 Corporate Tax Return.
2. Any and all other supporting documentation filed along with the M–1 and the Form 1120 that was furnished to the IRS.
3. Any or all IRS documents or communications with the participant regarding the relevant 482 adjustment.
4. Any and all documentation including any books and records or computerized data to relate the 482 adjustment to the entries filed with Customs.

Such information and supporting material should be provided in a format or electronic media commonly in use. Examples are an IBM compatible computer 3.5 disk utilizing a software product such as Access or Excel or other similar spreadsheet or database application such as Lotus 1, 2, 3.

Verification

Customs Regulatory Audit, in conjunction with other Customs disciplines, will determine if any verification effort is necessary to establish the accuracy of the details submitted. The extent of the verification will be determined by Regulatory Audit, and if an audit is required, established Regulatory Audit procedures will be followed.

Eligibility Criteria

In order to qualify for this test of reconciliation, importers must have reason to believe they may invoke the IRS regulations to make upward adjustments to the price of the imported merchandise. Importers must provide, on an entry-by-entry basis, the electronic entry of merchandise and the electronic entry summary of required information (ABI). Other requirements and conditions are as follows:

1. The test only applies to the related party transactions engaged in by participants who qualify under Internal Revenue Service Section 482 requirements to make upward adjustments and which are not subject to Antidumping/Countervailing Duty proceedings.
2. Participants' tax year must end between October 31, 1995 and March 31, 1996.
3. Customs decision to allow a company to participate in the test program will be made in consultation with the Internal Revenue Service.
4. Each participant must provide U.S. Customs with the methodology that will be used to arrive at the final price of the imported merchandise.
5. Each participant agrees that appraisement is under section 402(f) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, if, in fact, an upward section 482 adjustment is made for tax purposes.
6. Entries involving merchandise under this test will not be eligible for drawback.

Selectivity Criteria

The Office of Regulatory Audit, in conjunction with other Customs disciplines, will review the application to ensure the eligibility requirements are met. All applicants who meet the eligibility criteria will be allowed to participate, provided no other Customs office objects.

Objectives of the Test

The objectives of this test are:

1. To work with the trade community to further compliance in the value area regarding related party transactions.
2. To allow companies intending to make Internal Revenue Service Section 482 adjustments, which may ultimately result in an upward adjustment to the price for merchandise, the opportunity to reconcile their business operations regarding U.S. Customs and Internal Revenue Service requirements applicable to related party transactions.
3. To determine if reconciliation is a viable method to ensure a coordinated and consistent Customs response to Internal Revenue Section 482 adjustments which result in the upward adjustment of the Customs valuation under Section 1059A.
5. To test the type of information needed by Customs to process a reconciliation.

Test Evaluation Criteria

The criteria which will be used to evaluate whether or not reconciliation is a viable means to allow importers which make upward adjustments to the price of imported merchandise will be based on measurable outcomes which include:

1. The number of participants;
2. Customs resources expended to administer and monitor the program;
3. Customs resources expended to verify final reconciliation entry claims and the methodologies applied;
4. Amount of additional revenue collected;
5. Survey of participants on the conduct of the test and its effect on their business operations; and
6. IRS and Census satisfaction with the results of the test.

Dated: August 30, 1995.

Edward F. Kwas,

Assistant Commissioner, Office of Strategic Trade.

[FR Doc. 95–21909 Filed 9–1–95; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Pandora's Box: Women in Classical Greece" (see list[1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition of the objects at the Walters Art Gallery, Baltimore, MD, from on or about November 5, 1995, to on or about January 7, 1996, and, at the Dallas Museum of Art, Dallas, TX, from on or about February 4, 1996, to on or about March 31, 1996, is in the national interest.

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[1] A copy of this list may be obtained by contacting Ms. Carol Epstein of the Office of the General Counsel of USIA. The telephone number is 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 29, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–21930 Filed 9–1–95; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Impression of France: Monet, Renoir, Pisarro, and their Rivals" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Museum of Fine Arts, Boston, Massachusetts from on or about October 4, 1995, to on or about January 14, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 30, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–21931 Filed 9–1–95; 8:45 am]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Ms. Carol B. Epstein of the Office of the General Counsel of USIA. The telephone number is 202 619–6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 60, No. 171
Tuesday, September 5, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORDS REVIEW BOARD

Government in the Sunshine Act Meeting Notice

SUMMARY: On August 30, 1995, at 2:45 p.m., the Assassination Records Review Board determined that it would need to hold an emergency meeting for the afternoon of the same day. The Review Board determined that it needed to take immediate action to withdraw from Presidential consideration its recommendations regarding the release of certain Federal Bureau of Investigation documents. The Review Board determined that discussion of and voting on the issue could not be delayed for seven days in order to give the public seven days notice of the meeting pursuant to the Government in the Sunshine Act. Thus, pursuant to 5 U.S.C. 552b(e)(1), a majority of the members of the Review Board voted by recorded vote to hold an emergency meeting on August 30, 1995. The Review Board is issuing this notice of the meeting at the earliest practicable time—on the same day that the Review Board is meeting—pursuant to the requirements of the Government in the Sunshine Act.

DATE: August 30, 1995.

PLACE: Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Motion to withdraw from Presidential consideration the Review Board's recommendations regarding the release of certain Federal Bureau of Investigation documents.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, N.W., Second Floor, Washington, D.C. 20530. Telephone: (202) 724–0088. Fax: (202) 724–0457.

Dated: August 30, 1995.

David G. Marwell,

Executive Director.

[FR Doc. 95–22022 Filed 8–31–95; 9:02 am]

BILLING CODE 6820-TD-M

Corrections

Federal Register
Vol. 60, No. 171
Tuesday, September 5, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1320

Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act

Correction

In rule document 95–21235 beginning on page 44978 in the issue of Tuesday, August 29, 1995, make the following correction:

§ 1320.5 [Corrected]

Due to printing errors, page 44988 is being reprinted in its entirety as follows:

BILLING CODE 1505–01–D

(2)(i) the agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(ii) An agency shall provide the information described in paragraph (b)(2)(i) of this section in a manner that is reasonably calculated to inform the public.

(A) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency includes it either on the form, questionnaire or other collection of information, or in the instructions for such collection.

(B) in the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency places the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent.

(C) in the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency publishes such information in the **Federal Register** (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of such information in the Code of Federal Regulations constitutes an alternative means of providing it "in a manner that is reasonably calculated to inform the public." In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease of future reference that, even where an agency has already provided such information "in a manner that is reasonably calculated to inform the public" by publishing it in the **Federal Register** as a separate notice or in the preamble for the final rule (rather than in the regulatory text for the final rule or in a technical amendment to the final rule), the agency also publish such information along with a table or codified section of OMB control numbers to be included in the Code of Federal Regulations (see § 1320.3(f)(3)).

(D) in other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means that are reasonably calculated to inform the public of the information described in paragraph (b)(2)(i) of this section.

(c)(1) Agencies shall submit all collections of information, other than those contained in proposed rules published for public comment in the **Federal Register** or in current regulations that were published as final rules in the **Federal Register**, in accordance with the requirements in § 1320.10. Agencies shall submit collections of information contained in interim final rules or direct final rules in accordance with the requirements of § 1320.10.

(2) Agencies shall submit collections of information contained in proposed rules published for public comment in the **Federal Register** in accordance with the requirements in § 1320.11.

(3) Agencies shall submit collections of information contained in current regulations that were published as final rules in the **Federal Register** in accordance with the requirements in § 1320.12.

(4) Special rules for emergency processing of collections of information are set forth in § 1320.13.

(5) For purposes of time limits for OMB review of collections of information, any submission properly submitted and received by OMB after 12:00 noon will be deemed to have been received on the following business day.

(d)(1) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information:

(i) is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(ii) is not duplicative of information otherwise accessible to the agency; and

(iii) has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public.

(2) Unless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information—

(i) requiring respondents to report information to the agency more often than quarterly;

(ii) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(iii) requiring respondents to submit more than an original and two copies of any document;

(iv) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

(v) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

(vi) requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

(vii) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

(viii) requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

(e) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria set forth in paragraph (d) of this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under § 1320.11 or § 1320.12, but will independently assess any such collection of

federal register

Tuesday
September 5, 1995

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Administration

48 CFR Part 2401 et al.

HUD Acquisition Regulations: Miscellaneous Amendments and Competition Advocate Designation; Interim Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2401, 2402, 2404, 2405, 2406, 2413, 2415, 2416, 2419, 2426, 2428, 2429, 2432, 2436, 2437, 2452 and 2453

[Docket No. FR–3887–I–01]

RIN 2535–AA23

HUD Acquisition Regulation; Field Reorganization, Streamlining, and Simplification

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule makes changes to the HUD Acquisition Regulation (HUDAR) required to implement: the Department's Field reorganization, particularly the establishment of the Administrative Service Centers; the Federal Acquisition Streamlining Act of 1994 (FASA); and Departmental efforts to streamline and simplify the procurement process.

DATES: Effective Date: October 5, 1995.

Comment due date: Comments on this interim rule must be submitted on or before November 6, 1995.

ADDRESSES: Send written comments to Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh St., SW, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Room 5262, 451 Seventh Street, SW., Washington, DC 20410–3000 (voice (202) 708–0294, TDD (202) 708–1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 9, 1985 (50 FR 42097); and the general authorization in FAR 1.301.

The purpose of this interim rule is to amend the HUDAR to update existing coverage with respect to the Department's structure and organizational responsibilities; to implement FASA (Pub. L. 103–355, approved October 13, 1994); and to streamline Departmental procurement practices.

The heading of HUDAR subpart 2401.6 is revised to read "Career Development, Contracting Authority, and Responsibilities".

HUDAR 2401.601–73 is retitled "Administrative Service Centers" and is revised to reflect HUD's current field structure and to eliminate content which duplicates published delegations of procurement authority.

HUDAR 2401.602–3 is revised to conform to the structure of FAR 1.602–3 and provide greater discretion to the HCA in handling ratifications.

HUDAR 2402.101 is revised to add definitions for the "accounting office", and the "best value" and "lowest-priced technically acceptable proposal" approaches to source selection; to correct the HCA designation for field procurements; to provide a more generic definition for "Legal Counsel"; to add the "General Counsel" to the list of "Primary Organization Heads"; and to clarify the definition of "Source Selection Official".

The heading of HUDAR Subpart 2404.8 is revised to read "Government Contract Files".

HUDAR 2404.805–1 is renumbered and retitled to conform to recent FAR changes, and the content is revised to grant the contracting officer greater discretion in managing the disposition of unsuccessful proposals.

HUDAR subpart 2405.3 and section 2405.301 are removed in their entirety. HUD's practices in synopsizing contract awards will conform to the FAR.

HUDAR 2406.304–70 is revised to establish an approval official (Director, Office of Procurement and Contracts) for field contracts at a level consistent with that required by FAR 6.304.

HUDAR 2406.304–71 is removed in its entirety. HUD's practices in reviewing and approving justifications for other than full and open competition will conform to the FAR.

HUDAR 2406.501 is revised to state that the Senior Procurement Executive will designate the Department's Competition Advocate by **Federal Register** notice and to authorize each HCA to appoint contracting activity-level competition advocates.

HUDAR Part 2413 is retitled to conform to the FAR.

HUDAR 2413.107 is redesignated as 2413.106–2 and retitled to conform to the FAR. The regulation text is unchanged.

HUDAR 2413.403 is redesignated as 2413.402 to conform to the FAR, and revised to remove an obsolete directive and add correct information regarding the operation of imprest funds.

HUDAR 2413.404 is redesignated as 2413.403 to conform to the FAR and the text is revised to avoid duplication of imprest fund transaction limits stated in the FAR.

HUDAR 2413.505–2 is redesignated as 2413.505–1(b) and retitled to conform to the FAR. Its text is revised to authorize the use of Form HUD–2542, Purchase Order and Payment Authorization, for any small purchase charged to the FHA Fund, and to remove information that is internal in nature.

HUDAR subpart 2413.6 and section 2413.601 are added to reference HUD's internal directive governing use of the Government-wide commercial credit card to make micro-purchases.

HUDAR 2414.406–4 is revised to clarify that the concurrence of counsel should be obtained at headquarters or the field, depending on the location of the contracting activity.

HUDAR 2415.407 is revised to separate the basic provision dealing with proposal content from those cases requiring cost and pricing data. When the latter are required, new Alternate I is prescribed for use. In addition, contracting officers are granted the latitude to adapt Alternate I or develop additional text to deal with situations when partial cost and pricing data may be needed as provided in FAR 15.804–6(a)(2).

HUDAR 2415.408 is removed because adequate coverage on issuing solicitations is contained in the FAR.

HUDAR 2415.411 and 2415.411–70 are removed in their entirety. The prescribed use of the Form HUD–4056, Abstract of Proposals, is an internal agency matter.

HUDAR subpart 2415.6 contains numerous revisions to simplify HUD's source selection practices. While each section change is explained in turn below, the general thrust of these revisions is to move to one procedure for the evaluation of proposals, and to clarify distinctions in procedures when using the "lowest-priced technically acceptable proposal" or "best value" approach to source selection.

HUDAR 2415.604 is revised to establish a single procedure for the

evaluation of proposals and to distinguish responsibility for the source selection decision under the two possible source selection approaches—"best value" or "lowest-priced technically acceptable proposal".

HUDAR 2415.605 is revised to require that each solicitation identify the source selection approach to be used in evaluating proposals, and to provide a distinction between the types of evaluation factors available for use.

HUDAR 2415.608 is revised to clarify procedural differences in the evaluation of proposals under the two possible source selection approaches, and to eliminate information adequately covered in the FAR.

HUDAR 2415.609 is removed. The content of this section was removed in an earlier HUDAR amendment; the section title was overlooked.

HUDAR 2415.611 is added to clarify requirements for documentation of the source selection decision.

HUDAR 2415.612 and 2415.612–70 are removed in their entirety. In order to streamline and expedite the procurement process, HUD will not use formal source selection procedures.

HUDAR 2415.613–70 is revised to clarify that the alternative procedures authorized by this section use the best value approach to source selection. That same section and 2415.613–72 are both revised to eliminate references to Source Evaluation Boards, a formal procedure that will no longer be used.

HUDAR Subpart 2416.3, Cost-Reimbursement Contracts, and sections 2416.301 and 2416.301–3 are removed in their entirety. Recent changes to the FAR to implement FASA eliminated the requirement for determinations and findings to support the selection of contract type.

HUDAR subpart 2426.1 is redesignated as subpart 2426.70 to conform to the FAR. Accordingly, HUDAR 2426.101, 2426.102, and 2426.103 are redesignated as 2426.701, 2426.702, and 2426.703 (the regulation text of the latter two sections is unchanged). HUDAR 2426.701 is revised to delete the list of ethnic groups designated as "Minority Business Enterprises", and instead rely on definitions established by the Small Business Administration pursuant to Section 8(d) of the Small Business Act.

HUDAR subpart 2426.2 and section 2426.201 are removed.

HUDAR Subpart 2428.2, Sureties, the heading of section 2428.204, and section 2428.204–70 are removed in their entirety. FAR 28.203–2 contains adequate information regarding the use of irrevocable letters of credit.

HUDAR 2429.101 is revised to conform the section title to the FAR and clarify that coordination with legal counsel may be at headquarters or in the field, depending on the location of the contracting activity.

HUDAR 2432.402, 2432.906 and 2432.908 are revised to correct references to HUD field components consistent with the Department's reorganization.

HUDAR 2436.602–2 and 2436.602–4 are revised to: authorize the appointment of non-voting advisors to architect-engineer evaluation boards; change appointment and selection authorities consistent with the Department's field reorganization; correct references to HUD's Standards of Conduct; and, clarify that referral of matters to legal counsel may occur at headquarters or in the field, as appropriate.

HUDAR 2437.205 is revised to remove the requirement for higher-level review of contracts for advisory and assistance services contracts consistent with recent changes to the FAR. In addition, the use of Form HUD–24003, GTR Performance Assessment (Final) is prescribed to document the utility of products or services delivered by the contractor, as required by FAR 37.205.

HUDAR 2452.215–70 is revised to separate the requirement for cost and pricing data from the basic provision concerning proposal content. A new Alternate I has been added to deal with situations when cost and pricing data are required, in conformance with recent FAR changes increasing the threshold for submission of cost and pricing data to $500,000.

HUDAR 2452.219–70 is revised to eliminate repetition and clarify the content of Alternate I.

HUDAR 2452.226–70 is revised to make a conforming change in a reference from 2426.103 to 2426.703, and to delete "Hasidic Jewish Americans" from the ethnic groups listed as "Minority Business Enterprises". Their inclusion was based on an improper application of the Minority Business Development Agency's regulations at 15 CFR 1400.1 which defines groups eligible for MBDA assistance. Those regulations do not establish eligibility for other Federal or Federally-funded programs.

HUDAR 2452.232–70 and 2452.232–71 are revised to allow discretion in their application and to correct the reference to field components in Alternate I to both clauses.

HUDAR 2453.213–71 is removed because Form HUD–24001, Order for Supplies or Services, is no longer in use.

HUDAR 2453.213–72 is renumbered as 2453.213–71 and is revised to authorize the use of Form HUD–2542, Purchase Order and Payment Authorization, for any small purchase charged to the FHA Fund.

HUDAR 2453.237–70 is added to define the use of Form HUD–24002, GTR Performance Assessment (Final), to document contractor performance and the utility of products or services delivered.

Other Matters

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more persons. There are no new information collection requirements contained in these amendments to the HUDAR. The OMB Approval Number is 2535–0091.

Justification for Interim Rulemaking

The Department has determined that this rule should be adopted without the delay occasioned by requiring prior notice and comment because the majority of the changes either: implement FAR revisions already in effect that must be followed by HUD contracting personnel immediately; or, simply correct references to HUD organizational components consistent with the Department's field reorganization. Since this interim rule only makes conforming and clarifying changes to existing provisions, prior notice and comment are unnecessary under 24 CFR Part 10.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to the performance of accounting, auditing and fiscal functions and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility Act

As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely makes amendments to the Department's acquisition regulations that: simplify HUD's procurement process, revise internal HUD component references, and implement FAR revisions without adding additional requirements.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule makes technical revisions and corrections to the agency's regulations. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves Departmental procurement procedures only.

Semiannual Agenda of Regulations

This rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368,) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Parts 2401, 2402, 2404, 2405, 2406, 2413, 2415, 2416, 2419, 2426, 2428, 2429, 2432, 2436, 2437, 2452 and 2453

Government procurement, HUD acquisition regulations.

Accordingly, title 48, Chapter 24 of the Code of Federal Regulations, is amended as follows:

PART 2401—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 2401 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2. The heading of subpart 2401.6 is revised to read as follows:

Subpart 2401.6—Career Development, Contracting Authority, and Responsibilities

3. Section 2401.601–73 is revised to read as follows:

2401.601–73 Administrative Service Centers.

Procurement of supplies and services for HUD field components is accomplished at the three Administrative Service Centers, each of which has a Contracting Division. The ASC Contracting Division Director may redelegate contracting authority to qualified personnel within their service area jurisdiction, consistent with the Department's published delegations of procurement authority and 2401.603.

4. Section 2401.602–3 is revised to read as follows:

2401.602–3 Ratification of unauthorized commitments.

(b)(1) *Policy.* A request for ratification shall be sent to the Contracting Officer through the Head of the Contracting Activity (HCA). The request will include an explanation as to the need for the service, the reason why normal procurement procedures were not followed, to what extent price competition was received or the price otherwise justified, and, corrective management actions to avoid ratifications in the future. If the justification is adequate, the ratification will be signed by the Contracting Officer and forwarded to the HCA or designee for approval.

(b)(3) The HCA may delegate authority to approve ratifications below the simplified acquisition threshold to:

(i) Contracting division directors (Headquarters); or,

(ii) Contracting branch chiefs (Field).

(c)(5) Legal concurrence may be requested if there is a legal issue involved, e.g. the propriety of the funding source, appropriateness of the expense, etc.

PART 2402—DEFINITIONS OF WORDS AND TERMS

5. The authority citation for part 2402 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

6. In § 2402.101, the definitions of *Head of Contracting Activity, Primary Organization Heads,* and *Source Selection Official* are revised, and the definitions of *Accounting Office, Best Value, Legal Counsel,* and *Lowest-Priced Technically Acceptable Proposal* are added in alphabetical order, to read as follows:

2402.101 Definitions.

Accounting Office means the Office of Finance and Accounting in headquarters or the Field Accounting Divisions in the field.

Best Value is an approach to source selection that considers the appropriate balance of technical merit, management capability, and cost/price factors in deciding which proposal offers the overall "best value" to the Government. A best value procurement permits the government to award a contract to an offeror with a higher price in order to obtain a better technical product or service with a lower risk that performance will be unsuccessful. The selection decision may be based on a determination of whether to tradeoff paying a higher price to obtain the added value of a particular proposal.

* * * * *

Head of Contracting Activity (HCA) is defined in accordance with the FAR. The following HUD officials are designated HCAs:

(1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement;

(2) The Directors, Administrative Service Center Contracting Divisions for field procurement;

(3) The President, Government National Mortgage Association (GNMA), for procurement transactions that are conducted by GNMA in accordance with 2401.601–72(c).

Legal Counsel means the Office of General Counsel in Headquarters, or the cognizant Assistant General Counsel in the field.

Lowest-Priced Technically Acceptable Proposal is an approach to source selection under which all evaluation factors, except price, are evaluated on a "Pass-Fail" basis. It is used when price will be the deciding factor once the technical acceptability of proposals has been determined.

Primary Organization Heads are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Deputy Secretary. The Primary Organization Heads of HUD include: the Assistant Secretaries, the Inspector General, and the General Counsel.

* * * * *

Source Selection Official means the head of the office initiating and providing funding for the procurement, or his/her designee. This role may also be delegated to the contracting officer.

PART 2404—ADMINISTRATIVE MATTERS

7. The authority citation for part 2404 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

8. The heading of subpart 2404.8 is revised to read as follows:

Subpart 2404.8—Government Contract Files

9. Section 2404.805–1 is redesignated as 2404.805 and amended by revising the section heading and paragraph (a), to read as follows:

2404.805 Storage, handling and disposal of contract files.

(a) Unsuccessful cost and technical proposals shall be retained in the contracting activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the contracting office shall either:

(1) Retain one copy of each such proposal with the official contract file; or,

(2) Ship one copy of each unsuccessful bid or proposal to the Federal Records Center unless a debriefing has been requested but not held, or a protest is pending concerning the procurement. In no event shall these documents be destroyed before expiration of the retention periods in FAR 4.805.

* * * * *

PART 2405—PUBLICIZING CONTRACT ACTIONS

10. The authority citation for part 2405 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d); and FAR class deviation approved November 15, 1990.

Subpart 2405.3—[Removed]

11. and 12. Subpart 2405.3 *Synopses of Contract Awards* is removed.

PART 2406—COMPETITION REQUIREMENTS

13. The authority citation for part 2406 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

14. Section 2406.304–70 is revised to read as follows:

2406.304–70 Approval of the justification—field procurements.

(a) The justification for other than full and open competition for field procurements shall be approved in writing—

(3) For a proposed contract more than $1 million but not exceeding $10 million, by the Director, Office of Procurement and Contracts.

2406.304–71 [Removed]

15. Section 2406.304–71 is removed.

16. Section 2406.501 is revised to read as follows:

2406.501 Requirement.

The Senior Procurement Executive shall designate the Department's competition advocate by **Federal Register** notice. Contracting activity-level competition advocates shall be appointed by each HCA.

PART 2413—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASING PROCEDURES

17. The authority citation for part 2413 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

18. The heading of part 2413 is revised to read as follows:

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES

2413.107 [Redesignated as 2413.106–2]

19. Section 2413.107 is redesignated as 2413.106–2 and revised to read as follows:

2413.106–2 Data to support purchases.

(d) Contracting officers may use Form HUD–24007, Purchase/Delivery Order Data File, to record all relevant data pertaining to a small purchase, including recording written and oral quotations received and documenting orders against GSA contracts.

2413.403 [Redesignated as 2413.402]

20. Section 2413.403 is redesignated as 2413.402 and revised to read as follows:

2413.402 Agency responsibilities.

(c) Policies and procedures governing the operation of imprest funds are established in internal directives issued by HUD's Office of the Chief Financial Officer.

2413.404 [Redesignated as 2413.403]

21. Section 2413.404 is redesignated as 2413.403 and revised to read as follows:

2413.403 Conditions for use.

(a) Transaction limits above that established in FAR 13.403(a) may be approved by the Senior Procurement Executive.

2413.505–2 [Redesignated as 2413.505–1]

22. Section 2413.505–2 is redesignated as 2413.505–1 and revised to read as follows:

2413.505–1 Optional Form (OF) 347, order for supplies and services, and Optional Form 348, order for supplies and services schedule-continuation.

(b) For small purchases charged to the FHA Fund, contracting officers may use Form HUD–2542, Purchase Order and Payment Authorization.

23. A new subpart 2413.6 and a new section 2413.601 are added to read as follows:

Subpart 2413.6—Micro-Purchase

2413.601 General.

(c) HUD's procedures concerning the use of the government-wide commercial purchase card are contained in its Handbook on the Government-wide Commercial Credit Card Program.

PART 2414—SEALED BIDDING

24. The authority citation for part 2414 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

25. Section 2414.406–4 is revised to read as follows:

2414.406–4 Mistakes after award.

(d) For determinations under FAR 14.406–4(b)(1) and (2), the Head of the Contracting Activity will obtain the concurrence of legal counsel before notification to the Contractor. The Contracting Officer shall be notified promptly of action to be taken.

PART 2415—CONTRACTING BY NEGOTIATION

26. The authority citation for part 2415 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

27. In section 2415.407, new paragraphs (b) and (c) are added, to read as follows:

2415.407 Solicitation provisions.

* * * * *

(b) The contracting officer shall use the language at Alternate I to request cost and pricing data when it is anticipated that a contract or subcontract resulting from this solicitation will exceed $500,000 in value. This language shall also be used for those instances when the contracting officer determines that full cost and pricing data are required pursuant to FAR 15.804–2(a)(3).

(c) In those instances when certified cost and pricing data are not required because an action is $500,000 or less, the contracting officer may request partial or limited data in order to determine a reasonable price (see FAR 15.804–6(a)(2)). The contracting officer shall request only that data which is considered necessary to determine a reasonable price. If partial or limited data is required, the contracting officer may adapt the content of Alternate I to suit the circumstances of the procurement, or develop additional text as required.

2415.408 [Removed]

28. Section 2415.408 is removed.

2415.411 [Removed]

29. Section 2415.411 is removed.

2415.411–70 [Removed]

30. Section 2415.411–70 is removed.

31. Section 2415.604 is revised to read as follows:

2415.604 Responsibilities.

(b) The technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). Generally, a TEP will consist of three to five voting members, with one member serving as the chairperson. For more complex procurements, the TEP may add advisors and/or a committee structure to focus on specific technical issues or concerns. For inexpensive or routine acquisitions of equipment, supplies or services, the TEP may consist of one technical representative. The TEP is responsible for documenting the evaluation of all proposals as appropriate to the source selection approach in use, and for making the source selection recommendation(s).

(c)(4) The selection of the source(s) for contract award shall be made by:

(i) The contracting officer for awards using the "lowest-priced technically-acceptable proposal" approach; or,

(ii) The Source Selection Official (SSO) for awards based on the "best value" approach.

32. Section 2415.605 is revised to read as follows:

2415.605 Evaluation factors.

(c) The solicitation shall state the basis for the source selection decision as either "lowest-priced technically-acceptable proposal" (LPTAP) or "best value" (see 2402.1, Definitions).

(e) When using the best value approach, each technical evaluation factor and subfactor shall be assigned a numerical weight (except for pass-fail factors) which shall appear in the RFP. When using LPTAP, each evaluation factor is applied on a "pass-fail" basis; numerical scores are not assigned. "Pass-Fail" evaluation factors define a standard of comparison for solicitation/contract requirements which proposals either completely satisfy or fail to meet.

33. In section 2415.608, paragraph (a) is revised to read as follows:

2415.608 Proposal evaluation.

(a) After receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the TEP Chairperson or his or her designee. The cost/price portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the TEP.

(2) *Technical evaluation.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being either acceptable, unacceptable but capable of being made acceptable, or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Under the best value approach, predetermined cut-off scores designed to determine a threshold level of acceptability of proposals shall not be employed. However, under solicitations where mandatory requirements are established, those proposals that do not meet the mandatory requirements may be found unacceptable without further review.

(3) A technical evaluation report, which complies with FAR 15.608(a)(2), shall be prepared and signed by the technical evaluator(s), furnished to the contracting officer, and maintained as a permanent record in the official procurement file.

* * * * *

2415.609 [Removed]

34. Section 2415.609 is removed.

35. A new section 2415.611 is added to read as follows:

2415.611 Best and final offers.

(d) After receipt and evaluation of best and final offers, the TEP shall document its selection recommendation(s) in a final written report. The final report shall include sufficient information to support the recommendation(s) made, appropriate to the source selection approach and type and complexity of the acquisition.

2415.612 [Removed]

36. Section 2415.612 is removed.

2415.612–70 [Removed]

37. Section 2415.612–70 is removed.

38. In section 2415.613, paragraph (a) is revised to read as follows:

2415.613 Alternative source selection procedures.

(a) The Department of Housing and Urban Development uses procedures authorized by FAR 15.613 for all research and development contracts and other contracts where the contractor's proposed methodology of carrying out the work is a significant selection factor and the award decision will follow the best value approach.

* * * * *

39. Section 2415.613–70 is revised to read as follows:

2415.613–70 Technical evaluation.

The TEP shall perform the required technical evaluation of proposals received in accordance with 2415.608.

40. In section 2415.613–72, paragraph (a) is revised to read as follows:

2415.613–72 Selection and final negotiation.

(a) *Selection.* After the close of discussions and receipt of best and final offers, the TEP shall perform a final evaluation and prepare its selection recommendation for the SSO. Based on this evaluation, the SSO shall select for final contract negotiation the offeror(s) whose proposal is most advantageous to the Government in terms of price/cost, technical and other relevant factors included in the solicitation.

* * * * *

PART 2416—TYPES OF CONTRACTS

41. The authority citation for part 2416 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

Subpart 2416.3—[Removed]

42–44. Subpart 2416.3—*Cost-Reimbursement Contracts* is removed.

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

45. The authority citation for part 2426 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2426.1—[Redesignated as Subpart 2426.70]

46. The heading, subpart 2426.1—*Minority Business Enterprises,* is redesignated as subpart 2426.70.

2426.101 [Removed]

47. Section 2426.101 is removed.

2426.102 [Removed]

48. Section 2426.102 is removed.

2426.103 [Removed]

49. Section 2426.103 is removed.

Subpart 2426.2—[Removed]

50–51. Subpart 2426.2—*Historically Black Colleges and Universities* is removed.

52. A new section 2426.701 is added, to read as follows:

2426.701 Policy.

It is the policy of the Department to foster and promote Minority Business Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission. A "minority business enterprise" is a business which is at least 51 percent owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members are those groups of U.S. citizens found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act.

53. A new section 2426.702 is added, to read as follows:

2426.702 Responsibility.

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) develops Departmental MBE plans and policies in accordance with Executive Orders 11625 and 12432 and by directive from the Secretary. He or she provides advice and guidance to the Secretary and Primary Organization Heads on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals, monitors and evaluates the Department's MBE program, and reports on MBE program performance to the Department of Commerce.

54. A new section 2426.703 is added, to read as follows:

2426.703 Solicitation provision.

Contracting officers shall request all interested contractors, bidders, or offerors (including those responding to requests for quotations) to complete the certification at 2452.226–70, Certification of Status as a Minority Business Enterprise. Completion of this certification is voluntary and is not a condition of eligibility for contract award.

PART 2428—BONDS AND INSURANCE

55. The authority citation for part 2428 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2428.2—[Removed]

56.–58. Subpart 2428.2—*Sureties* is removed.

PART 2429—TAXES

59. The authority citation for part 2429 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

60. Section 2429.101 is revised to read as follows:

2429.101 Resolving tax problems.

In order to have uniformity in HUD's treatment of the tax aspects of contracting and ensure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within HUD for handling all those tax problems. Therefore, the contracting activity will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the Contracting Officer shall request, in writing, the assistance of legal counsel. The request shall detail the problem and be accompanied by appropriate backup data. Counsel shall report to the Contracting Officer as to the necessary disposition of the tax problem. The Contracting Officer will notify the contractor of the outcome of the tax problem. Counsel is responsible for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

PART 2432—CONTRACT FINANCING

61. The authority citation for part 2432 continues to read as follows:

Authority: 31 U.S.C. 3901–3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

62. Section 2432.402 is revised to read as follows:

2432.402 General.

(e)(1) The Determination and Findings required by FAR 32.402(c)(1)(iii) shall be made by the Director, Office of Procurement and Contracts for Headquarters contracts, or the cognizant Director, Administrative Services Center Contracting Division for field contracts.

(2) Each advance payment situation shall be coordinated with the head of the cognizant accounting office, before authorization may be given, to ensure that there are controls in place to assure proper administration of advance payments.

63. Section 2432.906 is revised to read as follows:

2432.906 Contract financing payments.

Except for construction contracts (see FAR 52.232–27), periods for payment shorter than 30 days shall not be specified in contracts without the prior approval of the cognizant accounting office to ensure that procedures are in place to allow timely payment.

64. Section 2432.908 is revised to read as follows:

2432.908 Contract clauses.

(a) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232–70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts. The clause with its Alternate I may be used for solicitations and contracts issued by the Administrative Service Centers.

(b) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232–71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office. The clause with its Alternate I may be used for solicitations and contracts issued by the Administrative Service Centers.

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

65. The authority citation for part 2436 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

66. In section 2436.602–2, paragraphs (a) introductory text, (a)(2), and (c) are revised, and paragraph (a)(3) is removed, to read as follows:

2436.602–2 Evaluation boards.

(a) Each architect-engineer evaluation board, whether permanent or ad hoc (which may include preselection boards), shall consist of at least three voting members who are Federal employees from the appropriate program area or from Federal offices outside the program area as appropriate. One member of each board shall be appointed chairperson. Non-voting advisors may also be appointed, including private practitioners in architecture, engineering and related professions. The members of a permanent board shall be appointed for a period of two years. Appointment shall be made by the following authorities with copies of appointment memoranda furnished to the appropriate contracting activity:

(1) * * *

(2) The cognizant program office head within the State or Area Office for boards appointed at the field level.

(c) *Conflict of interest.* Each board member, whether voting or nonvoting, shall be advised of, and presumed to be familiar with the regulations at 24 CFR Part 0, Standards of Conduct, regarding conflicts of interest. If at any time during the selection process a board member encounters a situation with one or more of the firms being considered that might be or might appear to be a conflict of interest, he or she will disqualify him or herself and call it to the attention of the chairperson for resolution and proper action. The chairperson will refer the matter to legal counsel.

* * * * *

67. Section 2436.602–4 is revised to read as follows:

2436.602–4 Selection authority.

(a) The final selection decision shall be made by the appropriate Primary Organization Head (Headquarters) or the appropriate program office head at the cognizant State or Area Office (Field).

PART 2437—SERVICE CONTRACTING

68. The authority citation for part 2437 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

69. Section 2437.205 is revised to read as follows:

2437.205 Management controls.

Documentation of the contractor's performance and the utility of products or services delivered shall be recorded on Form HUD–24002, GTR Performance Assessment (Final) by the responsible Government Technical Representative. This form may also be used to document contractor performance on other contracts.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

70. The authority citation for part 2452 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

71. Section 2452.215–70 is revised to read as follows:

2452.215–70 Proposal content and outline.

As prescribed in 2415.407(a), insert the following solicitation provision in all negotiated solicitations over the small purchase limitation:

PROPOSAL CONTENT AND OUTLINE
(Insert Month, Year)

(a) Proposals shall be submitted in two separate parts as further described below and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The envelope must show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror. Part I shall consist of the technical and management submittal of the proposed work. Part II shall consist of a business proposal comprised of, cost and pricing data, (if required), and the offeror's representations and certifications. Each part of the proposal shall be complete in itself so that the evaluation of both parts can be accomplished concurrently, and the evaluation of the technical and management submittal can be made strictly on the basis of its merit.

(b) Proposals shall be submitted in [insert number] copies of each Part I and [insert number] copies of Part II.

(c) Part I—Technical and Management

Section 1: Proposal Coverage. Cover the scope of work and general objectives which the proposal addresses.

Section 2: Tasks and Methods. Describe the principal tasks or sub-projects to be undertaken together with a discussion of their relationships to each other. Discuss the considerations for selecting, performing and the time sequencing of the tasks or sub-projects. Describe and discuss the method of personnel training and field personnel recruitment and the method of project control to be applied to the project to ensure timely, professional and quality performance. The Contractor must clearly state his/her plans for project management and in providing current and updated project progress to HUD during those phases of Contractor performance that require substantial coordination with HUD personnel.

Section 3: Organization and Staffing. Include an organizational chart for the project showing the name of the project manager and the names of key personnel. Include a brief resume for each person shown on the special qualifications applicable to the performance of the project. Describe the specific effort to be contributed to the project by each of the key personnel and include a statement expressed either in percentage or person-hours that each will devote to the effort. Include a summation of the minimum person-hours or person-months of professional effort to be used in completing the project. Describe the physical facilities to be used. If consultants, advisors or subcontractors are to be used, describe the arrangements and include resumes of the Key personnel.

Section 4: Prior and Current Experience. Include a list of projects currently in progress and/or completed within the last two years which are relevant to this procurement. Include names, addresses, and telephone numbers of contact points with these clients. The Government reserves the right to request information from any source so named.

Section 5: Conflicting or Multiple Use of Contractor Resources. Include a description of the contractor's current or planned projects that may draw upon resources or personnel, including top management, proposed to be committed to this project. Explain how such conflicting or multiple uses will be resolved to avoid impairing the timely, professional, and high-quality performance of this project. If the proposer has one or more existing HUD projects that will run concurrently with this project, explain how the level of attention described in the proposal will be preserved across projects.

The Government reserves the right to downgrade the related Factor for Award score for any proposal that does not adequately and credibly address such conflicts or multiple uses.

Section 6: Security Investigation. The offeror shall address in its technical proposal how it intends to manage the security of automated systems as required by HUDAR clause 2452.237–76. This includes developing security procedures, requesting background investigations for employees and subcontractors as required, and requesting investigations for replacements of such individuals as necessary due to turnover, rotation, or other reasons.

(d) Part II—Business Proposal

Section 1: Representations and Certifications. The Offeror's Representations and Certifications provided in Section K of this solicitation shall be included in this section.

(End of provision)

ALTERNATE I (Insert Month, Year)

This alternate shall be used as prescribed at 2415.407(b) when the submission of cost and pricing data are required. In such cases, add the following Section 2 to paragraph (d) of the basic provision:

Section 2: Cost and Pricing Data. The offeror shall furnish cost or pricing data using the SF–1411, Contract Pricing Proposal, provided in Section L of this solicitation, and the instructions attached to it, which are also printed at FAR 15.804–6. Round all amounts to the nearest dollar. Your data will be subject to review and evaluation by various Government personnel, and thus the estimates furnished on the SF–1411 should be supported by the required supplementary data so that the review and evaluation can be conducted with a minimum amount of delay and effort. In particular, ensure that the following essential elements are provided:

(i) A summary of total cost by cost element cross-referenced to each proposed contract line item (instruction number 1).

(ii) Identification of the basis for the kinds, quantities, and cost of all material elements proposed; and a consolidated priced summary of individual material quantities, or a consolidated priced bill of material (BOM), for the entire proposal. A well prepared BOM includes: part number/description, unit cost, quantity required, any nonrecurring costs, extended cost, and basis for the proposed price (quotation, prior buy, similar item, etc.) (instruction number 1, Materials).

(iii) For each subcontract over $500,000 show: source, deliverable, quantity, price, type of subcontract, degree of competition, basis for selecting vendor and establishing reasonableness of price. When required, the subcontractor's cost or pricing data must be submitted with the offeror's initial proposal. If available and if required by FAR 15.806, the contractor should provide the results of review and evaluation of subcontract proposals. Though not required, the offeror should provide reasons for omitted data/reviews with dates when the data/reviews will be available (instruction number 1, Materials).

(iv) A Justification, submitted on an SF–1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when claiming an exemption from submitting cost or pricing data (instruction number 1, Materials).

(v) A time phased, e.g., quarterly, annual, breakdown of labor rates and hours by category or skill level, and the basis for the estimates of rates and hours, e.g., historical experiences, engineering estimates, learning curves, etc. If labor is the allocation base for indirect costs, summarize for each overhead pool and year (instruction number 1, Direct Labor).

(vi) In the absence of a forward pricing rate agreement or indirect rate proposal, the contractor should show how indirect rates were estimated and applied as a basis for evaluating the reasonableness of the proposed rates. Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data (instruction number 1, Indirect Costs).

(vii) Identification of all other costs by category and basis for pricing (instruction number 1, Other Costs).

(viii) When claiming cost of money, the contractor must submit Form CASB–CMF and show the calculation of the proposed amount (instruction number 1, Facilities Capital Cost of Money).

(ix) Identification of cost or pricing data, i.e., data that are verifiable and factual, and an explanation of the estimating process. When applicable, the following items should be specifically identified:

(A) Judgmental factors and the methods used in the estimate, including those used in projecting from known data; and

(B) The nature and amount of any contingencies (instruction number 2).

(x) An index referencing all cost or pricing data and information accompanying or identified in the proposal (instruction number 4).

(xi) For change order proposals: an estimate of the cost to complete deleted work not yet performed; identification of the actual or estimated cost of deleted work already performed; and an estimate of the cost of work added (instruction number 7B).

(End of provision)

72. In section 2452.219–70, the section heading and Alternate I are revised to read as follows (and footnote 8 is removed):

2452.219–70 Small Business and Small Disadvantaged Business Subcontracting Plan.

* * * * *

ALTERNATE I (DEC 1992)

This alternate is required for all sealed bid solicitations exceeding $500,000 ($1,000,000 for construction) that are not set aside for small business. In such cases, insert the following paragraph (d) for that in the basic clause:

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219–9, "Small Business and Small Disadvantaged Business Subcontracting Plan (Alternate I)." The offeror submitting the apparent low bid, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a part of the resultant contract. The Contracting Officer will review the adequacy of the subcontracting plan as part of the responsibility determination (FAR subpart 9.1). Failure to submit an adequate subcontracting plan where applicable shall make the offeror ineligible for the contract award.

(End of provision)

73. Section 2452.226–70 is revised to read as follows:

2452.226–70 Certification of status as a minority business enterprise.

As prescribed in 2426.703, insert the following provision in all solicitations:

CERTIFICATION OF STATUS AS A MINORITY BUSINESS ENTERPRISE

(August 1995)

Bidder, Offeror or Supplier certifies that he or she ______ is, ______ is not, (check one), a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the box applicable to you)

[ ] Black Americans
[ ] Hispanic Americans
[ ] Native Americans
[ ] Asian Pacific Americans
[ ] Asian Indian Americans

74. In section 2452.232–70, Alternate I is revised to read as follows:

2452.232–70 Payment schedule and invoice submission (fixed-price).

* * * * *

ALTERNATE I (MAR 1988)

This alternate may be used in fixed-price contracts awarded by the Administrative Service Centers. In such cases, substitute the following paragraph (c) for that in the basic clause:

(c) Invoices shall be submitted in an original and three (3) copies to the office identified on the cover page of the contract (SF–26 or SF–33). To constitute a proper invoice, the invoice must include all items per FAR 52.232–25, "Prompt Payment."

75. In section 2452.232–71, Alternate I is revised to read as follows:

2452.232–71 Voucher submission (cost-reimbursement).

* * * * *

ALTERNATE I (MAR 1988)

This alternate may be used in cost-reimbursement contracts awarded by the Administrative Service Centers. In such cases, substitute the following paragraph (a) for that in the basic clause:

(a) The Contractor shall submit, on a monthly basis [Contracting Officer may substitute a different time frame, if appropriate], an original and three (3) copies of each voucher. In addition to the items necessary per FAR 52.232–25, "Prompt Payment," the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the Contracting Officer specified on the cover page of the contract (SF–26 or SF–33).

75a. In section 2452.237–77, footnote 9 is redesignated as footnote 8.

PART 2453—FORMS

76. The authority citation for part 2453 is revised to read as follows:

2452.237–77 [Footnote 9 redesignated as Footnote 8]

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

77. Section 2453.213–71 is revised to read as follows:

2453.213–71 HUD Form 2542, Purchase Order and Payment Authorization.

As prescribed in 2413.505–2(b), Contracting Officers may use HUD Form 2542 for small purchases charged to the FHA Fund.

2453.213–72 [Removed]

78. Section 2453.213–72 is removed.

79. A new section 2453.237–70 is added, to read as follows:

2453.237–70 HUD Form 24002, GTR Performance Assessment (Final).

As prescribed in 2437.205, Government Technical Representatives shall use HUD Form 24002 to document the contractor's performance and the utility of products or services delivered. This form may also be used for other contracts.

Dated: August 2, 1995.

Marilynn A. Davis,
Assistant Secretary for Administration.

[FR Doc. 95–21767 Filed 9–1–95; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[Docket No. FR-3887-N-02]

Notice of Competition Advocate Designation Under the HUD Acquisition Regulation

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of competition advocate designation.

SUMMARY: This notice designates the Deputy Assistant Secretary for Resource Management and Operations of the Office of the Assistant Secretary for Administration as the HUD Competition Advocate in accordance with the newly-revised 24 CFR 2406.501.

EFFECTIVE DATE: October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Room 5262, 451 Seventh Street, SW., Washington, DC 20410-3000 (voice (202) 708-0294, TDD (202) 708-1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. The HUD Acquisition Regulation (HUDAR) was first promulgated to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 9, 1985 (50 FR 42097); and the general authorization in FAR 1.301.

The purpose of this notice is to implement a recent change to the HUDAR at 48 CFR 2406.501, which provides that the Senior Procurement Executive shall designate the Department's Competition Advocate by **Federal Register** notice.

Accordingly, the Assistant Secretary for Administration, HUD, designates the Deputy Assistant Secretary for Resource Management and Operations of the Office of the Assistant Secretary for Administration as the HUD Competition Advocate.

Dated: August 2, 1995.

Marilynn A. Davis,

Assistant Secretary for Administration.

[FR Doc. 95-21768 Filed 9-1-95; 8:45 am]

BILLING CODE 4210-01-M

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federal register

Tuesday
September 5, 1995

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

Federal Acquisition Regulation (FAR); Agency Information Collection Activities Under OMB Review; Notices

DEPARTMENT OF DEFENSE

GERERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0097]

Clearance Request for Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0097).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number).

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Subpart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the provision at 52.204–3, Taxpayer Identification, implement statutory and regulatory requirements pertaining to taxpayer identification and reporting. This amendment further revises 4.9 and the provision at 52.204–3 to require the collection and reporting of the Taxpayer Identification Number (TIN) of certain contract modifications. A determination was made that additional FAR coverage was necessary in order to ensure that these contract actions are reported to the Internal Revenue Service.

When the Internal Revenue Service issued its final regulations implementing section 6050M of the Tax Reform Act of 1986 (Pub. L. 99–514), the reporting requirements included the requirement to report certain modifications to contracts that were awarded before January 1, 1989. It was determined that additional FAR coverage was required.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *6* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *250,000*; responses per respondent, *12*; total annual responses, *3,000,000*; preparation hours per response, *.10*; and total response burden hours, *300,000*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number), in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21790 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0037]

Clearance Request for Presolicitation Notice and Response, Standard Form 1417

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0037).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Presolicitation Notice and Response, Standard Form 1417.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time, and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice response is used to determine the number of solicitation documents needed and to assure that interested offerors receive the solicitation documents. The responses are placed in the contract file and referred to when solicitation documents are ready for mailing. After mailing, the responses remain in the contract file and become a matter of record.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *5,900*; responses per respondent, *8*; total annual responses, *47,200*; preparation hours per response, *.167*; and total response burden hours, *7,882*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0037, Presolicitation Notice and Response, Standard Form 1417, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21791 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0036]

Clearance Request for Information Regarding Previous Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0036).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Information Regarding Previous Contracts.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the same item or class of items is being acquired by more than one agency, the exchange and coordination of pertinent information, particularly cost and pricing data, is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. For this reason, the contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, must request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components. This information is particularly beneficial during the period of acquisition planning, presolicitation, evaluation, and preaward survey. The information is used to determine a firm's responsibility.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *2,000*; responses per respondent, *10*; total annual responses, *20,000*; preparation hours per response, *.25*; and total response burden hours, *5,000*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0036, Information Regarding Previous Contracts, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21792 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0033]

Clearance Request for Contractor's Signature Authority

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0033).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor's Signature Authority.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Entities doing business with the Government must identify those persons who have authority to bind the principal. This information is needed to ensure that Government contracts are legal and binding. The information is used by the contracting officer to ensure that authorized persons sign contracts.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 minute per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *12,000*; responses per respondent, *10*; total annual responses, *120,000*; preparation hours per response, *.017*; and total response burden hours, *2,040*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0033, Contractor's Signature Authority, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21793 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0030]

Clearance Request for Sale of Used Items to the Government

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0030).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Sale of Used Items to the Government.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Government does not normally purchase used items. Therefore, when a contractor proposes the substitution of a used item for a new item, data must be furnished to the contracting officer so the proposal can be properly evaluated. A description of the item, quantity, date of acquisition, source, and monetary advantages to the Government are the basic data necessary to evaluate the proposal. Upon completion of the contracting officer's evaluation and determination, the data is placed in the contract file and becomes a matter of record.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.25* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *790;* responses per respondent; *4;* total annual responses, *3,160;* preparation hours per response, *.25;* and total response burden hours, *790.*

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0030, Sale of Used Items to the Government, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21794 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0029]

Clearance Request for Extraordinary Contractual Action Requests

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0029).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Extraordinary Contractual Action Requests.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This request covers the collection of information as a first step under Public Law 85–804, as amended by Public Law 93–155 and Executive Order 10789 dated November 14, 1958, that allows contracts to be entered into, amended, or modified in order to facilitate national defense. In order for a firm to be granted relief under the Act, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract.

The information is used by the Government to determine if relief can be granted under the Act and to determine the appropriate type and amount of relief.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *16* hours (or minutes) per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *100*; responses per respondent, *1*; total annual responses, *100*; preparation hours per response, *16*; and total response burden hours, *1,600*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0029, Extraordinary Contractual Action Requests, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21795 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0028]

Clearance Request for Termination Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0028).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Termination Requirements.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Contracting officers terminate contracts, for default or convenience, only when it is in the best interest of the Government to do so. After receipt of the notice of termination, contractors are required to terminate subcontracts, advise the contracting officer of any special circumstances, submit any requests for an equitable adjustment, submit a settlement proposal, and take other action as directed. Records regarding the terminated contract must be maintained for 3 years.

The information submitted or retained in connection with contract termination is used to reach an equitable settlement with firms and to protect the interests of the Government and the terminated contractor.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *3* hours per termination, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *2,920*; responses per respondent, *1*; total annual responses, *2,920*; preparation hours per response, *3*; and total response burden hours, *8,760*; and total recordkeeping hours, *2,920*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB

applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0028, Termination Requirements, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21796 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0025]

Clearance Request for Buy American Act, Trade Agreements Act, Balance of Payments Program Certificate

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0025).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act, Trade Agreements Act, Balance of Payments Program Certificate.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Trade Agreements Act of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation not to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic end products. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the Untied States or a designated country of the Act.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *1,140;* responses per respondent, *10;* total annual responses, *11,400;* preparation hours per response, *.167;* and total response burden hours, *1,904.*

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0025, Buy American Act, Trade Agreements Act, Balance of Payments Program Certificate, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21797 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0024]

Clearance Request for Buy American Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0024).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Certificate.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Buy American Act requires that only domestic end products be acquired for public use unless specifically authorized by statute or regulation, provided that the cost of the domestic products is reasonable.

The Buy American Certificate provides the contracting office with the information necessary to identify which products offered are domestic end products and which are of foreign origin. Components of unknown origin are considered to have been supplied from outside the United States.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th and F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *2,663*; responses per respondent, *20*; total annual responses, *53,260*; preparation hours per response, *167*; and total response burden hours, *8,894*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0024, Buy American Certificate, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21798 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0022]

Clearance Request for Customs and Duties

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0022).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management

and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Customs and Duties.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. These exemptions are used whenever the anticipated savings outweigh the administrative costs associated with processing required documentation. When a Government contractor purchases foreign supplies, it must notify the contracting officer to determine whether the supplies should be duty-free. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

The contracting officer analyzes the information submitted by the contractor to determine whether or not supplies should enter the country duty-free. The information, the contracting officer's determination, and the U.S. Customs forms are placed in the contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *1,330*; responses per respondent, *10*; total annual responses, *13,300*; preparation hours per response, *.5*; and total response burden hours, *6,650*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0022, Customs and Duties, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21799 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0018]

Clearance Request for Certification of Independent Price Determination and Parent Company and Identifying Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0018).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Certification of Independent Price Determination and Parent Company and Identifying Data.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (*e.g.*, collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General.

As a first step in assuring that Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.04 hours for the first completion, .0083 hours for subsequent completions, or an average of .01 hours per completion*, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *64,250*; responses per respondent, *20*; total annual responses, *1,285,000*; preparation hours per response, *.02*; and total response burden hours, *25,700*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21800 Filed 9–1–95; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0001]

Clearance Request for Standard Form 28, Affidavit of Individual Surety

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0001).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form 28, Affidavit of Individual Surety.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Affidavit of Individual Surety (Standard Form (SF) 28) will be used by all executive agencies, including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds.

In order to qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other formats exist for the collection of this information.

The information on SF 28 will be used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.4* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *500*; responses per respondent, *1.43*; total annual responses, *715*; preparation hours per response, *.4*; and total response burden hours, *286*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0001, Standard Form 28, Affidavit of Individual Surety, in all correspondence.

Dated: August 2, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–21801 Filed 9–01–95; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Tuesday
September 5, 1995

Part IV

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 3

Federal Reserve System
12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation
12 CFR Part 325

Risk-Based Capital Standards: Derivative Transactions; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–20]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0845]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB43

Risk-Based Capital Standards: Derivative Transactions

AGENCIES: Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The OCC, the Board, and the FDIC (the banking agencies) are amending their respective risk-based capital standards for banks and bank holding companies (banking organizations, institutions). This final rule implements a recent revision to the Basle Accord revising and expanding the set of conversion factors used to calculate the potential future exposure of derivative contracts and recognizing the effects of netting arrangements in the calculation of potential future exposure for derivative contracts subject to qualifying bilateral netting arrangements. The effect of this final rule is threefold. First, long-dated interest rate and exchange rate contracts are subject to higher conversion factors and new conversion factors are set forth that specifically apply to derivative contracts related to equities, precious metals, and other commodities. Second, institutions are permitted to recognize a reduction in potential future credit exposure for transactions subject to qualifying bilateral netting arrangements. Third, derivative contracts related to equities, precious metals and other commodities may be recognized in bilateral netting arrangements for risk-based capital purposes.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT:

OCC: For issues relating to netting and the calculation of risk-based capital ratios, Roger Tufts, Senior Economic Advisor (202/874–5070), Office of the Chief National Bank Examiner. For legal issues, Eugene H. Cantor, Senior Attorney, Securities and Corporate Practices (202/874–5210), or Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202/874–5090), Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Roger Cole, Deputy Associate Director (202/452–2618), Norah Barger, Manager (202/452–2402), Robert Motyka, Supervisory Financial Analyst (202)/452–3621), Barbara Bouchard, Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation; or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the Hearing Impaired only, Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544), 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: William A. Stark, Assistant Director, (202/898–6972), Curtis Wong, Capital Markets Specialist, (202/898–7327), Division of Supervision, or Jeffrey M. Kopchik, Counsel, (202/898–3872), Legal Division, FDIC, 550 17th St., N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Basle Accord [1] established a risk-based capital framework for assessing capital adequacy that was implemented in the United States by the banking agencies in 1989. Under this framework, off-balance-sheet transactions are incorporated into the risk-based structure by converting each item into a credit equivalent amount that is then assigned to the appropriate credit risk category according to the identity of the obligor or counterparty, or if relevant, the guarantor or the nature of collateral.

The credit equivalent amount of an off-balance-sheet interest rate or exchange rate contract (rate contract) is determined by adding together the current replacement cost (current exposure) of the contract and an estimate of the possible increase in future replacement cost (potential future exposure, also referred to as the add-on) in view of the volatility of the current exposure of the contract. The maximum risk category for rate contracts is 50 percent.[2]

Current Exposure

For risk-based capital purposes, a rate contract with a positive mark-to-market value has a current exposure equal to that market value. If the mark-to-market value is zero or negative, then the current exposure is zero. The sum of current exposures for a defined set of contracts is sometimes referred to as the gross current exposure for that set of contracts. When they were initially issued, the Basle Accord and the banking agencies' risk-based capital standards provided, generally, that current exposure would be determined individually for each rate contract entered into by a banking organization.

In July 1994 the Basle Accord was revised to permit institutions to net, that is, offset, positive and negative mark-to-market values of rate contracts entered into with a single counterparty subject to a qualifying, legally enforceable, bilateral netting arrangement. Effective at year-end 1994, the banking agencies each amended, in a uniform manner, their risk-based capital standards to implement the revision to the Accord.[3] Accordingly, U.S. banking organizations with qualifying, legally enforceable, bilateral netting arrangements may replace the gross current exposure of a set of contracts included in such an arrangement with a single net current exposure for purposes of determining the credit equivalent amount for the included contracts.

Potential Future Exposure

The potential future exposure portion of the credit equivalent amount for rate contracts is an estimate of the additional credit exposure that may arise as a result of fluctuations in prices or rates. The add-on for potential future exposure is estimated by multiplying the notional principal amount [4] of the contract by a credit conversion factor that is determined by the remaining maturity of the contract and the type of contract. The original conversion factors in the Basle Accord and the banking agencies' risk-based capital standards are set forth in the following matrix:

Remaining maturity	Interest rate (in percent)	Exchange rate (in percent)
One year or less	0	1.0
Over one year	0.5	5.0

An individual add-on for potential future exposure is calculated for all rate contracts regardless of whether the market value is zero, positive, or negative, or whether the current exposure is calculated on a gross or net basis. The banking agencies' recent amendments to expand the recognition of bilateral netting arrangements did not revise the calculation of the add-on for potential future exposure. Accordingly, an add-on is calculated separately for each individual contract subject to a qualifying bilateral netting arrangement. These individual potential future exposures are added together to arrive at a gross add-on amount. The gross add-on amount is added to the net current exposure to determine one credit equivalent amount for the contracts subject to the qualifying bilateral netting arrangement.

Commenters to the Basle proposal to expand the recognition of bilateral netting arrangements urged regulators to also recognize reductions in potential future credit exposure arising from such arrangements. They also commented that commodity and equity derivative transactions should be eligible for netting for risk-based capital purposes. Accordingly, in July 1994 the Basle Supervisors Committee proposed revisions to the Basle Accord regarding the risk-based capital treatment of derivative transactions.[5] Under the proposed revision, the matrix of conversion factors used to calculate potential future exposure would be expanded to take into account innovations in the derivatives markets. Specifically, the Basle Committee proposed that higher conversion factors be added to address long-dated transactions (that is, contracts with remaining maturities over five years) and new conversion factors be added to explicitly cover certain types of derivatives transactions not directly mentioned by the Accord when it was endorsed in 1988. These include commodity-, precious metal-, and equity-linked derivative transactions.[6] The proposed revision also would have formally extended the recognition of qualifying bilateral netting arrangements to commodity, precious metal, and equity derivative contracts so that these types of transactions could be netted when determining current exposure for the netting contract. In addition, the proposed revision set forth a formula for institutions to employ in recognizing reductions in the potential future exposure of derivatives contracts that can result from entering into qualifying bilateral netting arrangements.

II. The Agencies' Proposals

After the Basle Supervisors Committee issued its proposed revisions to the Basle Accord, the banking agencies each issued for public comment proposals to amend their respective risk-based capital standards based on the international proposal.[7] The agencies' proposed conversion factor matrix is set forth below:

CONVERSION FACTOR MATRIX [1]

[Amounts in percent]

Residual maturity	Interest rate	Foreign exchange and gold	Equity [2]	Precious metals, except gold	Other commodities
Less than one year	0.0	1.0	6.0	7.0	12.0
One to five years	0.5	5.0	8.0	7.0	12.0
Five years or more	1.5	7.5	10.0	8.0	15.0

[1] For contracts with multiple exchanges of principal, the factors are to be multiplied by the number of remaining payments in the contract.

[2] For contracts that automatically reset to zero value following a payment, the remaining maturity is set equal to the time remaining until the next payment.

The proposed matrix was designed to accommodate a variety of contracts and was intended to provide a reasonable balance between precision, on the one hand, and complexity and burden, on the other.

The agencies also proposed the same methodology as the Basle Supervisors Committee to calculate a reduction in the add-on amount for contacts subject to qualifying bilateral netting arrangements. Under the agencies' proposals, institutions would apply the following formula [8] to adjust the amount of the add-on for potential future exposure:

$$A_{net} = 0.5(A_{gross} + (NGR \times A_{gross}))$$

Where A_{net} is the adjusted add-on for all contracts subject to the netting arrangement, A_{gross} is the amount of the add-on as calculated under the current agency standards, and NGR is the ratio of the net current exposure of the set of contracts included in the netting arrangement to the gross current exposure of those contracts. The proposals would have given partial credit to the effect of the NGR by applying a weighted averaging factor of 0.5.

Under the proposals, institutions would calculate a separate NGR for each counterparty with which it has a qualifying bilateral netting contract. The proposals requested general comments as well as specific comment as to whether the NGR should be calculated on a counterparty-by-counterparty basis or on an aggregate basis for all contracts subject to qualifying bilateral netting arrangements.

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[1] The Basle Accord is a risk-based framework that was proposed by the Basle Committee on Banking Supervision (Basle Supervisors Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Basle Supervisors Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] Exchange rate contracts with an original maturity of 14 calendar days or less and instruments traded on exchanges that require daily receipt and payment of cash variation margin are excluded from the risk-based capital ratio calculations.

[3] The Board issued its amendment on December 7, 1994 (59 FR 62987), the OCC and FDIC issued their amendments on December 28, 1994 (59 FR 66645 for the OCC final rule and 59 FR 66656 for the FDIC final rule).

[4] The notional principal amount is a reference amount of money used to calculate payment streams between counterparties.

[5] The proposed revisions are contained in a document entitled "The capital adequacy treatment of the credit risk associated with certain off-balance-sheet items" that is available upon request from the Board's or OCC's Freedom of Information Offices or the FDIC's Office of the Executive Secretary.

[6] In general terms, these are off-balance-sheet derivative contracts that have a return, or a portion of their return, linked to the price or an index of prices for a particular commodity, precious metal, or equity. These types of transactions were not specifically addressed in the 1988 Accord (or in the banking agencies' original risk-based capital standards) because they were not prevalent in the derivatives markets at that time.

[7] The Board issued its proposal on August 24, 1994 (59 FR 43508), the OCC issued its proposal on September 1, 1994 (59 FR 45243), and the FDIC issued its proposal on October 19, 1994 (59 FR 52714).

[8] This formula may also be expressed as: $A_{net} = (1-P)A_{gross} + P(NGR \times A_{gross})$ [P or policy factor = 0.5].

III. Comments Received

The banking agencies together received nineteen public comments on their proposed amendments. Fifteen of the commenters were banks and bank holding companies and four were industry trade associations and other organizations. Commenters generally supported the proposed amendments, in particular the recognition of the effects of bilateral netting arrangements in the calculation of potential future exposure, and several urged adoption of the amendments as soon as possible. Commenters offered suggestions and opinions on several aspects of the proposals including the conversion factors, the formula for recognizing potential future exposure, ways of calculating the NGR, and recognizing additional risk-reducing techniques.

Expanded Matrix

Over one half of the commenters addressed the proposed expanded conversion factor matrix. Of these commenters, most indicated the proposed factors were generally reasonable and acceptable. Several commenters discussed the underlying assumptions used in the simulation models for arriving at the proposed factors for commodity transactions and expressed concern that the conversion factors for certain commodity derivative transactions were too high. One commenter suggested the conversion factor for commodity contracts across all time bands should be twelve percent. Another commenter expressed the view that the proposed conversion factor for interest rate contracts with remaining maturities greater than five years (1.5 percent) was an excessive increment over the current 0.5 percent conversion factor for interest rate contracts with remaining maturities greater than one year. This commenter suggested an additional time band for interest rate contracts with five to eight years remaining maturity and a corresponding conversion factor of 1.0 percent. Another commenter suggested there should be no capital charge for potential future exposure for commodity contracts based on two floating indices.

One commenter supported continuing the existing time band of "one year or less" as opposed to the proposed time band of "less than one year." Two commenters expressed the view that the proposed time band for contracts with remaining maturities greater than five years was unnecessary. One commenter suggested adding a time band and appropriate conversion factors for contracts with remaining maturities between one and two years.

Several commenters discussed the matrix footnotes. One suggested extending the footnote applicable to equity contracts with automatic reset features following a payment to any derivative contract with effective early termination or periodic reset features. With regard to the footnote pertaining to contracts with multiple exchanges of principal, one commenter requested further clarification on the types of contracts included, while another expressed the view that multiplying the conversion factor by the number of remaining payments in a contract was too conservative. A few commenters recommended clarification as to the appropriate capital treatment when transactions are leveraged or enhanced by a stated multiple.

Netting and Potential Future Exposure

A number of commenters discussed the proposed formula for recognizing the effects of bilateral netting arrangements in the calculation of potential future exposure. Most of these commenters supported the use of the NGR as a reasonable proxy to estimate the risk-reducing benefits of netting arrangements. Several commenters supported giving full weight to the NGR or, alternatively, weighting the NGR with a higher averaging factor than the proposed 0.5 factor. Another commenter offered a revised formula that would weight the netting portion of the formula by two and divide the entire formula by three. This commenter stated the revised formula would effectively reduce the credit equivalent amount and place greater emphasis on the portion of the formula affected by a netting arrangement. One commenter suggested that net credit risk should be the basis for the add-on amount.

Several commenters addressed the proposal's specific request for comment on whether the NGR should be calculated on a counterparty-by-counterparty basis or on an aggregate basis across all portfolios eligible for capital netting treatment. A few commenters supported a counterparty-by-counterparty NGR as providing a more accurate indication of credit risks. Other commenters preferred an aggregate NGR, characterizing an aggregate NGR as less burdensome to calculate. Two commenters suggested applying a single NGR to all counterparties within each risk weight classification.

Other Comments

Several commenters encouraged recognizing other risk reducing techniques such as margin and collateral agreements, frequent settlement of mark-to-market values, and periodic resetting of terms and early termination agreements. One commenter suggested there should be no capital charge for potential future exposure when current exposure is less than a certain level (e.g., negative $1 million). One commenter suggested using negative net mark-to-market values to offset potential future exposure. A few commenters supported the use of internal systems to calculate capital requirements and recommended continued monitoring of developments in the banking industry.

IV. Final Rule

After consideration of the comments received and further deliberation on the issues involved, the banking agencies have determined to adopt a final rule that is substantially the same as proposed. The final rule amends the matrix of conversion factors used to calculate potential future exposure and permits institutions to recognize the effects of qualifying bilateral netting arrangements in the calculation of potential future exposure. The final rule is consistent with a revision to the Basle Accord announced by the Basle Supervisors Committee in April 1995.[9]

Expanded Matrix

The banking agencies believe that the proposed conversion factors generally provide a reasonable measure of potential future exposure for long-dated interest rate and exchange rate contracts and for other derivative instruments not addressed in the original Accord. In addition, the banking agencies believe that the proposed matrix adequately accommodates a variety of contracts and appropriately provides a reasonable balance between precision, and complexity and burden. The agencies, however, have taken into consideration issues raised by commenters regarding the simulation methods used to arrive at the conversion factors for other commodities. After additional simulation analysis, the agencies have concluded that the conversion factor for other commodity transactions with maturities of one year or less should be lowered from 12 percent to 10 percent. Any off-balance-sheet derivative contract not explicitly covered by the expanded matrix is subject to the add-on conversion factors for other commodities. Furthermore, in response to commenters' concerns, the banking agencies have revised the proposed time band of "less than one year" to "one year or less" to maintain consistency with the existing time bands for remaining maturity.

The proposed matrix included a footnote applicable to equity contracts that automatically reset market value to zero following a payment. Under the proposal, the remaining maturity of such contracts would be the time until the next payment. Several commenters asserted this treatment should extend to a wider range of contacts. The agencies have determined that for contracts structured to settle outstanding exposure to zero following specified payment dates and where the terms of the contract are reset so that the market value of the contract is zero on these dates, the remaining maturity may be set equal to the time until the next reset date. However, the agencies believe that a long-dated interest rate swap, with, for example, a six-month zero reset provision, represents a greater risk than an interest rate swap that terminates after six months. The final rule provides that the minimum add-on conversion factor for interest rate contacts with remaining maturities of greater than one year is 0.5 percent.

Under the final rule, which is identical to the proposal in this regard, gold derivative contracts are accorded the same conversion factors as exchange rate contracts. However, while exchange rate contracts with original maturities of fourteen calendar days or less may be excluded from the risk-based ratio calculation,[10] gold contracts with such original maturities are to be included.

Finally, the agencies note that the conversion factors are to be regarded as provisional and may be subject to amendment as a result of changes in the volatility of rates and prices.

Netting and Potential Future Exposure

The final rule adopts, in substantially the same form, the proposed methodology for reducing potential future exposure for contracts subject to qualifying bilateral netting arrangements. The agencies have considered the argument presented by several commenters that the proposed formula did not give sufficient recognition to reductions in credit risk resulting from participating in qualifying netting arrangements. These commenters suggested giving full weight to the NGR or, alternatively, that it be weighted at 90 percent. The agencies believe that only partial weight should be given to the NGR as it is neither a precise, nor a stable indicator of future changes in net exposure relative to changes in gross exposure. The agencies agree, to a limited extent, with commenters that a 0.5 averaging factor (referred to as the policy or P factor) may not sufficiently recognize reductions in potential future exposure resulting from qualifying bilateral netting arrangements and have determined that the P factor should be raised to 0.6. This weight represents an appropriate compromise between recognizing effects of bilateral netting arrangements in calculating the add-on and providing a cushion against additional exposure that may arise as a result of fluctuations in prices or rates. The formula adopted by the agencies is expressed as:

$$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$$

The agencies have also considered comments discussing whether the NGR should be calculated on a counterparty-by-counterparty basis (that is, an individual NGR for each bilateral netting contract) or on an aggregate basis for all contracts subject to legally enforceable netting arrangements. The agencies have determined that an institution may elect to calculate separate NGRs for each of its bilateral netting arrangements or an aggregate NGR so long as the method chosen is used consistently and is subject to examiner review.

Regardless of the method employed by an institution to calculate its NGR(s), the NGR should be applied separately and individually to each of the institution's bilateral netting arrangements. If an institution calculates an NGR for each bilateral netting arrangement, then it should use a different NGR when determining the potential future exposure for each bilateral netting arrangement. If an institution aggregates its net and gross replacement costs across all bilateral netting contracts to determine a single NGR, then it should use the same NGR when determining the potential future exposure for each bilateral netting arrangement.

Institutions with equity, precious metal, and other commodity contracts included in bilateral netting contracts should now include those types of transactions when determining the net current exposure for the bilateral netting contract and when determining potential future exposure in accordance with this final rule.

The final rule permits, subject to certain conditions, institutions to take into account qualifying collateral when assigning the credit equivalent amount of a netting arrangement to the appropriate risk category in accordance with the procedures and requirements currently set forth in each agency's risk-based capital standards.

Finally, the agencies note that the methodology for recognizing the effects of qualifying bilateral netting arrangements is subject to review and revision as determined to be appropriate.

V. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies do not believe that this final rule will have a significant impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In this regard, while some institutions with limited derivative portfolios may experience an increase in capital charges, for most of these institutions the final rule will have no effect. For institutions with more developed derivative portfolios, the overall effect of the rule will likely be to reduce regulatory burden and decrease the capital charge for certain derivative transactions. In addition, because the risk-based capital standards generally do not apply to bank holding companies with consolidated assets of less than $150 million, this final rule will not affect such companies.

VI. Paperwork Reduction Act and Regulatory Burden

The agencies have determined that this final rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulation that imposes additional requirements on insured depository institutions. As noted above, the rule may result in higher capital charges for some institutions and lower charges for others, but any additional paperwork or recordkeeping burden should be minimal. The rule provides a more accurate measure of risks related to derivative contracts and the capital required to cover those risks.

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[9] The revision to the Basle Accord is in an annex with the heading "Forwards, swaps, purchased options and similar derivative contracts" that was issued along with the Basle Supervisors Committee's consultative proposal on Market Risk on April 12, 1995. This document is available upon request from the Board's and OCC's Freedom of Information Offices and the FDIC's Office of the Executive Secretary.

[10] Exchange rate contracts with original maturities of 14 calendar days or less are normally excluded from the risk-based capital ratio. When such contracts are included in a bilateral netting arrangement, however, the institution may elect consistently either to include or exclude all mark-to-market values of those contracts when determining net current exposure. These contracts should continue to be excluded when determining potential future exposure.

Section 302 also requires such a rule to become effective on the first day of the calendar quarter following publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate. Accordingly, the agencies have determined that an effective date of October 1, 1995 is appropriate.

VII. OCC Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866.

VIII. OCC Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that certain agencies prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this joint agency final rule will not result in expenditures by state, local and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

As discussed in the preamble, this joint agency final rule amends the risk-based capital guidelines to (1) revise and expand the credit conversion factors used to calculate the potential future credit exposure for derivative contracts and long-dated interest rate and foreign exchange rate contracts and (2) permit banks to net multiple derivative contracts subject to a qualifying bilateral netting contract when calculating the potential future credit exposure. While the impact of this final rule on any particular national bank will depend on the composition of its derivatives portfolio, the OCC believes that this final rule generally will have little or no impact on most banks since most banks have limited derivative portfolios. For those banks with more developed derivatives portfolios, the OCC believes that the effect of this final rule will likely be a decrease in the capital requirements for certain derivative contracts.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

Authority and Issuance

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

For the reasons set out in the joint preamble, appendix A to part 3 of title 12, chapter 1 of the Code of Federal Regulations is amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A, to part 3, section 1 is revised by redesignating paragraphs (c)(10) through (c)(30) as paragraphs (c)(11) through (c)(31) and adding new paragraph (c)(10) to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(10) *Derivative contract* means generally a financial contract whose value is derived from the values of one or more underlying assets, reference rates or indexes of asset values. Derivative contracts include interest rate, foreign exchange rate, equity, precious metals and commodity contracts, or any other instrument that poses similar credit risks.

* * * * *

3. In appendix A, to part 3, section 3 is amended:

a. By revising paragraph (a)(1)(viii);

b. In paragraph (a)(3)(ii) by removing the words "interest rate and exchange rate contracts," and adding in their place the words "derivative contracts,"; and

c. In paragraph (b) by revising the introductory text and paragraph (b)(5).

The revisions read as follows:

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items.

* * * * *

(a) * * *

(1) * * *

(viii) That portion of assets and off-balance sheet transactions [9a] collateralized by cash or securities issued or directly and unconditionally guaranteed by the United States Government or its agencies, or the central government of an OECD country, provided that: [9b]

* * * * *

(b) *Off-Balance Sheet Activities.* The risk weight assigned to an off-balance sheet item is determined by a two-step process. First, the face amount of the off-balance sheet item is multiplied by the appropriate credit conversion factor specified in this section. This calculation translates the face amount of an off-balance sheet item into an on-balance sheet credit equivalent amount. Second, the resulting credit equivalent amount is then assigned to the proper risk category using the criteria regarding obligors, guarantors, and collateral listed in section 3(a) of this appendix A. Collateral and guarantees are applied to the face amount of an off-balance sheet item; however, with respect to derivative contracts under section 3(b)(5) of this appendix A, collateral and guarantees are applied to the credit equivalent amounts of such derivative contracts. The following are the credit conversion factors and the off-balance sheet items to which they apply.

* * * * *

(5) *Derivative contracts.* (i) *Calculation of credit equivalent amounts.* The credit equivalent amount of a derivative contract equals the sum of the current credit exposure and the potential future credit exposure of the derivative contract. The calculation of credit equivalent amounts must be measured in U.S. dollars, regardless of the currency or currencies specified in the derivative contract.

[9a] See footnote 22 in section 3(b)(5)(iii) of this appendix A (collateral held against derivative contracts).

[9b] Assets and off-balance sheet transactions collateralized by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country include, but are not limited to, securities lending transactions, repurchase agreements, collateralized letters of credit, such as reinsurance letters of credit, and other similar financial guarantees. Swaps, forwards, futures, and options transactions are also eligible, if they meet the collateral requirements. However, the OCC may at its discretion require that certain collateralized transactions be risk weighted at 20 percent if they involve more than a minimal risk.

(A) *Current credit exposure.* The current credit exposure for a single derivative contract is determined by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market is zero or negative, then the current credit exposure is zero. The current credit exposure for multiple derivative contracts executed with a single counterparty and subject to a qualifying bilateral netting contract is determined as provided by section 3(b)(5)(ii)(A) of this appendix A.

(B) *Potential future credit exposure.* The potential future credit exposure for a single derivative contract, including a derivative contract with negative mark-to-market value, is calculated by multiplying the notional principal [19] of the derivative contract by one of the credit conversion factors in Table A—Conversion Factor Matrix of this appendix A, for the appropriate category.[20] The potential future credit exposure for gold contracts shall be calculated using the foreign exchange rate conversion factors. For any derivative contract that does not fall within one of the specified categories in Table A—Conversion Factor Matrix of this appendix A, the potential future credit exposure shall be calculated using the other commodity conversion factors. Subject to examiner review, banks should use the effective rather than the apparent or stated notional amount in calculating the potential future credit exposure. The potential future credit exposure for multiple derivatives contracts executed with a single counterparty and subject to a qualifying bilateral netting contract is determined as provided by section 3(b)(5)(ii)(A) of this appendix A.

TABLE A—CONVERSION FACTOR MATRIX[1]

Remaining maturity[2]	Interest rate	Foreign exchange rate and gold	Equity[2]	Precious metals	Other commodity
One year or less	0.0	1.0	6.0	7.0	10.0
Over one to five years	0.5	5.0	8.0	7.0	12.0
Over five years	1.5	7.5	10.0	8.0	15.0

[1] For derivative contracts with multiple exchanges of principal, the conversion factors are multiplied by the number of remaining payments in the derivative contract.

[2] For derivative contracts that automatically reset to zero value following a payment, the remaining maturity equals the time until the next payment. However, interest rate contracts with remaining maturities of greater than one year shall be subject to a minimum conversion factor of 0.5 percent.

(ii) *Derivative contracts subject to a qualifying bilateral netting contract.* (A) *Netting calculation.* The credit equivalent amount for multiple derivative contracts executed with a single counterparty and subject to a qualifying bilateral netting contract as provided by section (3)(b)(5)(ii)(B) of this appendix A is calculated by adding the net current credit exposure and the adjusted sum of the potential future credit exposure for all derivative contracts subject to the qualifying bilateral netting contract.

(*1*) *Net current credit exposure.* The net current credit exposure is the net sum of all positive and negative mark-to-market values of the individual derivative contracts subject to a qualifying bilateral netting contract. If the net sum of the mark-to-market value is positive, then the net current credit exposure equals that net sum of the mark-to-market value. If the net sum of the mark-to-market value is zero or negative, then the net current credit exposure is zero.

(*2*) *Adjusted sum of the potential future credit exposure.* The adjusted sum of the potential future credit exposure is calculated as:

$$A_{net}=0.4\times A_{gross}+(0.6\times NGR\times A_{gross})$$

A_{net} is the adjusted sum of the potential future credit exposure, A_{gross} is the gross potential future credit exposure, and NGR is the net to gross ratio. A_{gross} is the sum of the potential future credit exposure (as determined under section 3(b)(5)(i)(B) of this appendix A) for each individual derivative contract subject to the qualifying bilateral netting contract. The NGR is the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under section 3(b)(5)(i)(A) of this appendix A) of all individual derivative contracts subject to the qualifying bilateral netting contract.

(B) *Qualifying bilateral netting contract.* In determining the current credit exposure for multiple derivative contracts executed with a single counterparty, a bank may net derivative contracts subject to a qualifying bilateral netting contract by offsetting positive and negative mark-to-market values, provided that:

(*1*) The qualifying bilateral netting contract is in writing.

(*2*) The qualifying bilateral netting contract is not subject to a walkaway clause.

(*3*) The qualifying bilateral netting contract creates a single legal obligation for all individual derivative contracts covered by the qualifying bilateral netting contract. In effect, the qualifying bilateral netting contract must provide that the bank would have a single claim or obligation either to receive or to pay only the net amount of the sum of the positive and negative mark-to-market values on the individual derivative contracts covered by the qualifying bilateral netting contract. The single legal obligation for the net amount is operative in the event that a counterparty, or a counterparty to whom the qualifying bilateral netting contract has been assigned, fails to perform due to any of the following events: default, insolvency, bankruptcy, or other similar circumstances.

(*4*) The bank obtains a written and reasoned legal opinion(s) that represents, with a high degree of certainty, that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, the relevant court and administrative authorities would find the bank's exposure to be the net amount under:

(*i*) The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(*ii*) The law of the jurisdiction that governs the individual derivative contracts covered by the bilateral netting contract; and

(*iii*) The law of the jurisdiction that governs the qualifying bilateral netting contract.

(*5*) The bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the qualifying bilateral netting contract continues to satisfy the requirement of this section.

(*6*) The bank maintains in its files documentation adequate to support the netting of a derivative contract.[21]

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[19] For purposes of calculating either the potential future credit exposure under section 3(b)(5)(i)(B) of this appendix A or the gross potential future credit exposure under section 3(b)(5)(ii)(A)(2) of this appendix A for foreign exchange contracts and other similar contracts in which the notional principal is equivalent to the cash flows, total notional principal is the net receipts to each party falling due on each value date in each currency.

[20] No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating indices, so-called floating/floating or basis swaps; the credit equivalent amount is measured solely on the basis of the current credit exposure.

[21] By netting individual derivative contracts for the purpose of calculating its credit equivalent amount, a bank represents that documentation adequate to support the netting of a set of derivative contract is in the bank's files and available for inspection by the OCC. Upon determination by the OCC that a bank's files are inadequate or that a qualifying bilateral netting contract may not be legally enforceable in any one of the bodies of law described in section 3(b)(5)(ii)(B)(*3*)(*i*) through (*iii*) of this appendix A, the underlying derivative contracts may not be netted for the purposes of this section.

(iii) *Risk weighting*. Once the bank determines the credit equivalent amount for a derivative contract or a set of derivative contracts subject to a qualifying bilateral netting contract, the bank assigns that amount to the risk weight category appropriate to the counterparty, or, if relevant, the nature of any collateral or guarantee.[22] However, the maximum weight that will be applied to the credit equivalent amount of such derivative contract(s) is 50 percent.

(iv) *Exceptions*. The following derivative contracts are not subject to the above calculation, and therefore, are not part of the denominator of a national bank's risk-based capital ratio:

(A) An exchange rate contract with an original maturity of 14 calendar days or less;[23] and

(B) A derivative contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

* * * * *

4. Table 3, at the end of appendix A, is revised to read as follows:

* * * * *

Table 3—Treatment of Derivative Contracts

1. The current exposure method is used to calculate the credit equivalent amounts of derivative contracts. These amounts are assigned a risk weight appropriate to the obligor or any collateral or guarantee. However, the maximum risk weight is limited to 50 percent. Multiple derivative contracts with a single counterparty may be netted if those contracts are subject to a qualifying bilateral netting contract.

CONVERSION FACTOR MATRIX [1]

[Percent]

Remaining maturity [2]	Interest rate	Foreign exchange rate and gold	Equity [2]	Precious metals	Other commodity
One year or less	0.0	1.0	6.0	7.0	10.0
Over one to five years	0.5	5.0	8.0	7.0	12.0
Over five years	1.5	7.5	10.0	8.0	15.0

[1] For derivative contracts with multiple exchanges of principal, the conversion factors are multiplied by the number of remaining payments in the derivative contract.

[2] For derivative contracts that automatically reset to zero value following a payment, the remaining maturity equals the time until the next payment. However, interest rate contracts with remaining maturities of greater than one year shall be subject to a minimum conversion factor of 0.5 percent.

2. The following derivative contracts will be excluded:

a. Exchange rate contract with an original maturity of 14 calendar days or less; and

b. Derivative contract traded on exchanges and subject to daily margin requirements.

Dated: August 24, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

For the reasons set out in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR parts 208 and 225 as set forth below.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p-1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b.

2. In part 208, appendix A is amended by revising the last paragraph of section III.C.3. and footnote 40 in the introductory text of section III.D. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

C. * * *

3. * * *

Credit equivalent amounts of derivative contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

* * * * *

D. * * * [40] * * *

* * * * *

3. In part 208, appendix A is amended by revising the section III.E. heading and section III.E. to read as follows:

* * * * *

III. * * *

E. Derivative Contracts (Interest Rate, Exchange Rate, Commodity— (including precious metals) and Equity-Linked Contracts)

1. *Scope*. Credit equivalent amounts are computed for each of the following off-balance-sheet derivative contracts:

a. Interest Rate Contracts. These include single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars, and floors purchased), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward forward deposits accepted).

b. Exchange Rate Contracts. These include cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased, and any other instrument linked to exchange rates that gives rise to similar credit risks.

c. Equity Derivative Contracts. These include equity-linked swaps, equity-linked options purchased, forward equity-linked contracts, and any other instrument linked to equities that gives rise to similar credit risks.

d. Commodity (including precious metal) Derivative Contracts. These include commodity-linked swaps, commodity-linked options purchased, forward commodity-linked contracts, and any other instrument

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[22] Derivative contracts are an exception to the general rule of applying collateral and guarantees to the face value of off-balance sheet items. The sufficiency of collateral and guarantees is determined on the basis of the credit equivalent amount of derivative contracts. However, collateral and guarantees held against a qualifying bilateral netting contract is not recognized for capital purposes unless it is legally available for all contracts included in the qualifying bilateral netting contract.

[23] Notwithstanding section 3(b)(5)(B) of this appendix A, gold contracts do not qualify for this exception.

[40] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

linked to commodities that gives rise to similar credit risks.

e. Exceptions. Exchange rate contracts with an original maturity of fourteen or fewer calendar days and derivative contracts traded on exchanges that require daily receipt and payment of cash variation margin may be excluded from the risk-based ratio calculation. Gold contracts are accorded the same treatment as exchange rate contracts except that gold contracts with an original maturity of fourteen or fewer calendar days are included in the risk-based ratio calculation. Over-the-counter options purchased are included and treated in the same way as other derivative contracts.

2. *Calculation of credit equivalent amounts*. a. The credit equivalent amount of a derivative contract that is not subject to a qualifying bilateral netting contract in accordance with section III.E.3. of this appendix A is equal to the sum of (i) the current exposure (sometimes referred to as the replacement cost) of the contract; and (ii) an estimate of the potential future credit exposure of the contract.

b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in underlying rates, prices, and indices, as well as counterparty credit quality.

c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. Banks should use, subject to examiner review, the effective rather than the apparent or stated notional amount in this calculation. The credit conversion factors are:

CONVERSION FACTORS

[In percent]

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Commodity, excluding precious metals	Precious metals, except gold
One year or less	0.0	1.0	6.0	10.0	7.0
Over one to five years	0.5	5.0	8.0	12.0	7.0
Over five years	1.5	7.5	10.0	15.0	8.0

d. For a contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity is equal to the time until the next reset date. For an interest rate contract with a remaining maturity of more than one year that meets these criteria, the minimum conversion factor is 0.5 percent.

e. For a contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the contract. A derivative contract not included in the definitions of interest rate, exchange rate, equity, or commodity contracts as set forth in section III.E.1. of this appendix A, is subject to the same conversion factors as a commodity, excluding precious metals.

f. No potential future exposure is calculated for a single currency interest rate swap in which payments are made based upon two floating rate indices (a so called floating/floating or basis swap); the credit exposure on such a contract is evaluated solely on the basis of the mark-to-market value.

g. The Board notes that the conversion factors set forth above, which are based on observed volatilities of the particular types of instruments, are subject to review and modification in light of changing volatilities or market conditions.

3. *Netting*. a. For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values when determining a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of derivative contracts is recognized for purposes of calculating the credit equivalent amount provided that:

i. The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the bank would have a claim to receive, or obligation to pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, liquidation, or similar circumstances.

ii. The bank obtains a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, insolvency, liquidation, or similar circumstances—the relevant court and administrative authorities would find the bank's exposure to be the net amount under:

1. The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

2. The law that governs the individual contracts covered by the netting contract; and

3. The law that governs the netting contract.

iii. The bank establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law.

iv. The bank maintains in its files documentation adequate to support the netting of derivative contracts, including a copy of the bilateral netting contract and necessary legal opinions.

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[49]

c. A bank netting individual contracts for the purpose of calculating credit equivalent amounts of derivative contracts, represents that it has met the requirements of this appendix A and all the appropriate documents are in the bank's files and available for inspection by the Federal Reserve. The Federal Reserve may determine that a bank's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in section III.E.3.a.ii. of this appendix A. If such a determination is made, the netting contract may be disqualified from recognition for risk-based capital purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

d. The credit equivalent amount of contracts that are subject to a qualifying bilateral netting contract is calculated by adding (i) the current exposure of the netting contract (net current exposure) and (ii) the sum of the estimates of potential future credit exposures on all individual contracts subject to the netting contract (gross potential future exposure) adjusted to reflect the effects of the netting contract.[50]

e. The net current exposure is the sum of all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the net current exposure is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the net current exposure is zero. The Federal Reserve may determine that a netting contract qualifies for risk-based capital netting treatment even though certain individual contracts included under the netting contract may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

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[49] A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

[50] For purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency.

f. Gross potential future exposure, or A_{gross} is calculated by summing the estimates of potential future exposure (determined in accordance with section III.E.2 of this appendix A) for each individual contract subject to the qualifying bilateral netting contract.

g. The effects of the bilateral netting contract on the gross potential future exposure are recognized through the application of a formula that results in an adjusted add-on amount (A_{net}). The formula, which employs the ratio of net current exposure to gross current exposure (NGR) is expressed as:

$$A_{net} = (0.4 \times A_{gross}) + 0.6(NGR \times A_{gross})$$

h. The NGR may be calculated in accordance with either the counterparty-by-counterparty approach or the aggregate approach.

i. Under the counterparty-by-counterparty approach, the NGR is the ratio of the net current exposure for a netting contract to the gross current exposure of the netting contract. The gross current exposure is the sum of the current exposures of all individual contracts subject to the netting contract calculated in accordance with section III.E.2. of this appendix A. Net negative mark-to-market values for individual netting contracts with the same counterparty may not be used to offset net positive mark-to-market values for other netting contracts with that counterparty.

ii. Under the aggregate approach, the NGR is the ratio of the sum of all of the net current exposures for qualifying bilateral netting contracts to the sum of all of the gross current exposures for those netting contracts (each gross current exposure is calculated in the same manner as in section III.E.3.h.i. of this appendix A). Net negative mark-to-market values for individual counterparties may not be used to offset net positive mark-to-market values for other counterparties.

iii. A bank must consistently use either the counterparty-by-counterparty approach or the aggregate approach to calculate the NGR. Regardless of the approach used, the NGR should be applied individually to each qualifying bilateral netting contract to determine the adjusted add-on for that netting contract.

i. In the event a netting contract covers contracts that are normally excluded from the risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen or fewer calendar days or instruments traded on exchanges that require daily payment and receipt of cash variation margin—a bank may elect to either include or exclude all mark-to-market values of such contracts when determining net current exposure, provided the method chosen is applied consistently.

4. *Risk Weights.* Once the credit equivalent amount for a derivative contract, or a group of derivative contracts subject to a qualifying bilateral netting contract, has been determined, that amount is assigned to the risk category appropriate to the counterparty, or, if relevant, the guarantor or the nature of any collateral.[51] However, the maximum risk weight applicable to the credit equivalent amount of such contracts is 50 percent.

5. *Avoidance of double counting.* a. In certain cases, credit exposures arising from the derivative contracts covered by section III.E. of this appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the derivative instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating a bank's risk-based capital ratios.

b. Examples of the calculation of credit equivalent amounts for contracts covered under this section III.E. are contained in Attachment V of this appendix A.

* * * * *

4. In appendix A to part 208, Attachments IV and V are revised to read as follows:

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Attachment IV—Credit Conversion Factors for Off-Balance-Sheet Items for State Member Banks

100 Percent Conversion Factor

1. Direct credit substitutes. (These include general guarantees of indebtedness and all guarantee-type instruments, including standby letters of credit backing the financial obligations of other parties.)

2. Risk participations in bankers acceptances and direct credit substitutes, such as standby letters of credit.

3. Sale and repurchase agreements and assets sold with recourse that are not included on the balance sheet.

4. Forward agreements to purchase assets, including financing facilities, on which drawdown is certain.

5. Securities lent for which the bank is at risk.

50 Percent Conversion Factor

1. Transaction-related contingencies. (These include bid-bonds, performance bonds, warranties, and standby letters of credit backing the nonfinancial performance of other parties.)

2. Unused portions of commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines.

3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and similar arrangements.

20 Percent Conversion Factor

Short-term, self-liquidating trade-related contingencies, including commercial letters of credit.

Zero Percent Conversion Factor

Unused portions of commitments with an original maturity of one year or less, or which are unconditionally cancellable at any time, provided a separate credit decision is made before each drawing.

Credit Conversion for Derivative Contracts

1. The credit equivalent amount of a derivative contract is the sum of the current credit exposure of the contract and an estimate of potential future increases in credit exposure. The current exposure is the positive mark-to-market value of the contract (or zero if the mark-to-market value is zero or negative). For derivative contracts that are subject to a qualifying bilateral netting contract, the current exposure is, generally, the net sum of the positive and negative mark-to-market values of the contracts included in the netting contract (or zero if the net sum of the mark-to-market values is zero or negative). The potential future exposure is calculated by multiplying the effective notional amount of a contract by one of the following credit conversion factors, as appropriate:

CONVERSION FACTORS

[In percent]

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Commodity, excluding precious metals	Precious metals, except gold
One year or less	0.0	1.0	6.0	10.0	7.0
Over one to five years	0.5	5.0	8.0	12.0	7.0
Over five years	1.5	7.5	10.0	15.0	8.0

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[51] For derivative contracts, sufficiency of collateral or guarantees is generally determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

For contracts subject to a qualifying bilateral netting contract, the potential future exposure is, generally, the sum of the individual potential future exposures for each contract included under the netting contract adjusted by the application of the following formula:

$$A_{net}=(0.4 \times A_{gross})+0.6(NGR \times A_{gross})$$

NGR is the ratio of net current exposure to gross current exposure.

2. No potential future exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating indices, that is, so called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of fourteen days or fewer are excluded. Instruments traded on exchanges that require daily receipt and payment of cash variation margin are also excluded.

ATTACHMENT V—CALCULATING CREDIT EQUIVALENT AMOUNTS FOR DERIVATIVE CONTRACTS

Type of contract	Notional principal amount	Conversion factor	Potential exposure (dollars)	Mark-to-market	Current exposure (dollars)	Credit equivalent amount
(1) 120-day forward foreign exchange	5,000,000	0.01	50,000	100,000	100,000	150,000
(2) 4-year forward foreign exchange	6,000,000	0.05	300,000	−120,000	0	300,000
(3) 3-year single-currency fixed & floating interest rate swap	10,000,000	0.005	50,000	200,000	200,000	250,000
(4) 6-month oil swap	10,000,000	0.10	1,000,000	−250,000	0	1,000,000
(5) 7-year cross-currency floating & floating interest rate swap	20,000,000	0.075	1,500,000	−1,500,000	0	1,500,000
Total			2,900,000	+	300,000	3,200,000

a. If contracts (1) through (5) above are subject to a qualifying bilateral netting contract, then the following applies:

Contract	Potential future exposure	Net current exposure	Credit equivalent amount
(1)	50,000		
(2)	300,000		
(3)	50,000		
(4)	1,000,000		
(5)	1,500,000		
Total	2,900,000	+0	2,900,000

NOTE: The total of the mark-to-market values from the first table is −$1,370,000. Since this is a negative amount, the net current exposure is zero.

b. To recognize the effects of bilateral netting on potential future exposure the following formula applies:

$$A_{net}=(.4 \times A_{gross})+.6(NGR \times A_{gross})$$

c. In the above example where the net current exposure is zero, the credit equivalent amount would be calculated as follows:

$NGR=0=(0/300,000)$

$A_{net}=(0.4 \times \$2,900,000)+0.6\ (0 \times \$2,900,000)$

$A_{net}=\$1,160,000$

The credit equivalent amount is $1,160,000+0=$1,160,000.

d. If the net current exposure was a positive number, for example $200,000, the credit equivalent amount would be calculated as follows:

$NGR=.67=(\$200,000/\$300,000)$

$A_{net}=(0.4 \times \$2,900,000)+0.6(.67 \times \$2,900,000)$

$A_{net}=\$2,325,800.$

The credit equivalent amount would be $2,325,800+$200,000=$2,525,800.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In part 225, appendix A is amended by revising the last paragraph of section III.C.3. and footnote 43 in the introductory text of section III.D. to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

C. * * *

3. * * *

Credit equivalent amounts of derivative contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

* * * * *

D. * * *[43] * * *

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3. In part 225, appendix A is amended by revising the section III.E. heading and section III.*E.* to read as follows:

* * * * *

III. * * *

E. Derivative Contracts (Interest Rate, Exchange Rate, Commodity- (including

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[43] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

precious metals) and Equity-Linked Contracts)

1. *Scope.* Credit equivalent amounts are computed for each of the following off-balance-sheet derivative contracts:

a. Interest Rate Contracts. These include single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars, and floors purchased), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward forward deposits accepted).

b. Exchange Rate Contracts. These include cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased, and any other instrument linked to exchange rates that gives rise to similar credit risks.

c. Equity Derivative Contracts. These include equity-linked swaps, equity-linked options purchased, forward equity-linked contracts, and any other instrument linked to equities that gives rise to similar credit risks.

d. Commodity (including precious metal) Derivative Contracts. These include commodity-linked swaps, commodity-linked options purchased, forward commodity-linked contracts, and any other instrument linked to commodities that gives rise to similar credit risks.

e. Exceptions. Exchange rate contracts with an original maturity of fourteen or fewer calendar days and derivative contracts traded on exchanges that require daily receipt and payment of cash variation margin may be excluded from the risk-based ratio calculation. Gold contracts are accorded the same treatment as exchange rate contracts except that gold contracts with an original maturity of fourteen or fewer calendar days are included in the risk-based ratio calculation. Over-the-counter options purchased are included and treated in the same way as other derivative contracts.

2. *Calculation of credit equivalent amounts.* a. The credit equivalent amount of a derivative contract that is not subject to a qualifying bilateral netting contract in accordance with section III.E.3. of this appendix A is equal to the sum of (i) the current exposure (sometimes referred to as the replacement cost) of the contract; and (ii) an estimate of the potential future credit exposure of the contract.

b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract and should reflect changes in underlying rates, prices, and indices, as well as counterparty credit quality.

c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. Banking organizations should use, subject to examiner review, the effective rather than the apparent or stated notional amount in this calculation. The credit conversion factors are:

Conversion Factors

[In percent]

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Commodity, excluding precious metals	Precious metals, except gold
One year or less	0.0	1.0	6.0	10.0	7.0
Over one to five years	0.5	5.0	8.0	12.0	7.0
Over five years	1.5	7.5	10.0	15.0	8.0

d. For a contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity is equal to the time until the next reset date. For an interest rate contract with a remaining maturity of more than one year that meets these criteria, the minimum conversion factor is 0.5 percent.

e. For a contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the contract. A derivative contract not included in the definitions of interest rate, exchange rate, equity, or commodity contracts as set forth in section III.*E.*1. of this appendix A is subject to the same conversion factors as a commodity, excluding precious metals.

f. No potential future exposure is calculated for a single currency interest rate swap in which payments are made based upon two floating rate indices (a so called floating/floating or basis swap); the credit exposure on such a contract is evaluated solely on the basis of the mark-to-market value.

g. The Board notes that the conversion factors set forth above, which are based on observed volatilities of the particular types of instruments, are subject to review and modification in light of changing volatilities or market conditions.

3. *Netting.* a. For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values when determining a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of derivative contracts is recognized for purposes of calculating the credit equivalent amount provided that:

i. The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the banking organization would have a claim to receive, or obligation to pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, liquidation, or similar circumstances.

ii. The banking organization obtains a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, insolvency, liquidation, or similar circumstances—the relevant court and administrative authorities would find the banking organization's exposure to be the net amount under:

1. The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

2. The law that governs the individual contracts covered by the netting contract; and

3. The law that governs the netting contract.

iii. The banking organization establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law.

iv. The banking organization maintains in its files documentation adequate to support the netting of derivative contracts, including a copy of the bilateral netting contract and necessary legal opinions.

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[53]

c. A banking organization netting individual contracts for the purpose of calculating credit equivalent amounts of derivative contracts represents that it has met the requirements of this appendix A and all the appropriate documents are in the banking organization's files and available for inspection by the Federal Reserve. The Federal Reserve may determine that a banking organization's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in section III.*E.*3.a.ii. of this appendix A. If such a determination is made, the netting contract may be disqualified from recognition for risk-based capital purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

d. The credit equivalent amount of contracts that are subject to a qualifying bilateral netting contract is calculated by adding (i) the current exposure of the netting contract (net current exposure) and (ii) the sum of the estimates of potential future credit exposures on all individual contracts subject to the netting contract (gross potential future exposure) adjusted to reflect the effects of the netting contract.[54]

e. The net current exposure is the sum of all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the net current exposure is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the net current exposure is zero. The Federal Reserve may determine that a netting contract qualifies for risk-based capital netting treatment even though certain individual contracts included under the netting contract may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

f. Gross potential future exposure, or A_{gross} is calculated by summing the estimates of potential future exposure (determined in accordance with section III.*E.*2 of this appendix A) for each individual contract subject to the qualifying bilateral netting contract.

g. The effects of the bilateral netting contract on the gross potential future exposure are recognized through the application of a formula that results in an adjusted add-on amount (A_{net}). The formula, which employs the ratio of net current exposure to gross current exposure (NGR), is expressed as:

$$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$$

h. The NGR may be calculated in accordance with either the counterparty-by-counterparty approach or the aggregate approach.

i. Under the counterparty-by-counterparty approach, the NGR is the ratio of the net current exposure for a netting contract to the gross current exposure of the netting contract. The gross current exposure is the sum of the current exposures of all individual contracts subject to the netting contract calculated in accordance with section III.*E.*2. of this appendix A. Net negative mark-to-market values for individual netting contracts with the same counterparty may not be used to offset net positive mark-to-market values for other netting contracts with the same counterparty.

ii. Under the aggregate approach, the NGR is the ratio of the sum of all of the net current exposures for qualifying bilateral netting contracts to the sum of all of the gross current exposures for those netting contracts (each gross current exposure is calculated in the same manner as in section III.*E.*3.h.i. of this appendix A). Net negative mark-to-market values for individual counterparties may not be used to offset net positive current exposures for other counterparties.

iii. A banking organization must use consistently either the counterparty-by-counterparty approach or the aggregate approach to calculate the NGR. Regardless of the approach used, the NGR should be applied individually to each qualifying bilateral netting contract to determine the adjusted add-on for that netting contract.

i. In the event a netting contract covers contracts that are normally excluded from the risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen or fewer calendar days or instruments traded on exchanges that require daily payment and receipt of cash variation margin—an institution may elect to either include or exclude all mark-to-market values of such contracts when determining net current exposure, provided the method chosen is applied consistently.

4. *Risk Weights.* Once the credit equivalent amount for a derivative contract, or a group of derivative contracts subject to a qualifying bilateral netting contract, has been determined, that amount is assigned to the risk category appropriate to the counterparty, or, if relevant, the guarantor or the nature of any collateral.[55] However, the maximum risk weight applicable to the credit equivalent amount of such contracts is 50 percent.

5. *Avoidance of double counting.* a. In certain cases, credit exposures arising from the derivative contracts covered by section III.*E.* of this appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the derivative instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating a banking organization's risk-based capital ratios.

b. Examples of the calculation of credit equivalent amounts for contracts covered under this section III.*E.* are contained in Attachment V of this appendix A.

* * * * *

4. In appendix A to part 225, Attachments IV and V are revised to read as follows:

* * * * *

Attachment IV—Credit Conversion Factors for Off-Balance-Sheet Items for Bank Holding Companies

100 Percent Conversion Factor

1. Direct credit substitutes. (These include general guarantees of indebtedness and all guarantee-type instruments, including standby letters of credit backing the financial obligations of other parties.)

2. Risk participations in bankers acceptances and direct credit substitutes, such as standby letters of credit.

3. Sale and repurchase agreements and assets sold with recourse that are not included on the balance sheet.

4. Forward agreements to purchase assets, including financing facilities, on which drawdown is certain.

5. Securities lent for which the banking organization is at risk.

50 Percent Conversion Factor

1. Transaction-related contingencies. (These include bid-bonds, performance bonds, warranties, and standby letters of credit backing the nonfinancial performance of other parties.)

2. Unused portions of commitments with an original maturity exceeding one year, including underwriting commitments and commercial credit lines.

3. Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and similar arrangements.

20 Percent Conversion Factor

Short-term, self-liquidating trade-related contingencies, including commercial letters of credit.

Zero Percent Conversion Factor

Unused portions of commitments with an original maturity of one year or less, or which are unconditionally cancellable at any time, provided a separate credit decision is made before each drawing.

Credit Conversion for Derivative Contracts

1. The credit equivalent amount of a derivative contract is the sum of the current credit exposure of the contract and an estimate of potential future increases in credit exposure. The current exposure is the positive mark-to-market value of the contract (or zero if the mark-to-market value is zero or negative). For derivative contracts that are subject to a qualifying bilateral netting contract, the current exposure is, generally, the net sum of the positive and negative mark-to-market values of the contracts included in the netting contract (or zero if the net sum of the mark-to-market values is zero or negative). The potential future exposure is calculated by multiplying the effective notional amount of a contract by one of the following credit conversion factors, as appropriate:

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[53] A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

[54] For purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency.

[55] For derivative contracts, sufficiency of collateral or guarantees is generally determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.*B.* of this appendix A.

CONVERSION FACTORS

[In percent]

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Commodity, excluding precious metals	Precious metals, except gold
One year or less	0.0	1.0	6.0	10.0	7.0
Over one to five years	0.5	5.0	8.0	12.0	7.0
Over five years	1.5	7.5	10.0	15.0	8.0

For contracts subject to a qualifying bilateral netting contract, the potential future exposure is, generally, the sum of the individual potential future exposures for each contract included under the netting contract adjusted by the application of the following formula:

$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$

NGR is the ratio of net current exposure to gross current exposure.

2. No potential future exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating indices, that is, so called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market value. Exchange rate contracts with an original maturity of fourteen or fewer days are excluded. Instruments traded on exchanges that require daily receipt and payment of cash variation margin are also excluded.

ATTACHMENT V—CALCULATING CREDIT EQUIVALENT AMOUNTS FOR DERIVATIVE CONTRACTS

Type of Contract	Notional principal amount	Conversion factor	Potential exposure (dollars)	Mark-to-market	Current exposure (dollars)	Credit equivalent amount
(1) 120-day forward foreign exchange	5,000,000	.01	50,000	100,000	100,000	150,000
(2) 4-year forward foreign exchange	6,000,000	.05	300,000	−120,000	0	300,000
(3) 3-year single-currency fixed & floating interest rate swap	10,000,000	.005	50,000	200,000	200,000	250,000
(4) 6-month oil swap	10,000,000	.10	1,000,000	−250,000	0	1,000,000
(5) 7-year cross-currency floating & floating interest rate swap	20,000,000	.075	1,500,000	−1,500,000	0	1,500,000
Total			2,900,000	+	300,000	3,200,000

a. If contracts (1) through (5) above are subject to a qualifying bilateral netting contract, then the following applies:

Contract	Potential future exposure	Net current exposure	Credit equivalent amount
(1)	50,000		
(2)	300,000		
(3)	50,000		
(4)	1,000,000		
(5)	1,500,000		
Total	2,900,000	+0	2,900,000

Note: The total of the mark-to-market values from the first table is −$1,370,000. Since this is a negative amount the net current exposure is zero.

b. To recognize the effects of bilateral netting on potential future exposure the following formula applies:

$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$

c. In the above example, where the net current exposure is zero, the credit equivalent amount would be calculated as follows:

$NGR=0=(0/300,000)$

$A_{net}=(0.4\times \$2,900,000)+.6(0\times \$2,900,000)$

$A_{net}=\$1,160,000$

The credit equivalent amount is $1,160,000+0=$1,160,000.

d. If the net current exposure was a positive number, for example $200,000, the credit equivalent would be calculated as follows:

$NGR=.67=(\$200,000/\$300,000)$

$A_{net}=(0.4\times \$2,900,000)+0.6(.67\times \$2,900,000)$

$A_{net}=\$2,325,800$

The credit equivalent amount would be $2,325,800+$200,000=$2,525,800.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR CHAPTER III

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends 12 CFR part 325 as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(I), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note) Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix A to part 325, section II is amended by:

a. Revising the last sentence in section II.C. Category 3;

b. Redesignating footnotes 35 through 38 as footnotes 36 through 39;

c. Adding new footnote 35 at the end of the introductory text of section II.*D.*; and

d. Revising section II.E. to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

C. * * *

Category 3 * * * In addition, the credit equivalent amount of derivative contracts that do not qualify for a lower risk weight are assigned to the 50 percent risk category.

* * * * *

D. * * *[35] * * *

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E. Derivative Contracts (Interest Rate, Exchange Rate, Commodity (including precious metal) and Equity Derivative Contracts)

1. Credit equivalent amounts are computed for each of the following off-balance-sheet derivative contracts:

(a) Interest Rate Contracts

(i) Single currency interest rate swaps.

(ii) Basis swaps.

(iii) Forward rate agreements.

(iv) Interest rate options purchased (including caps, collars, and floors purchased).

(v) Any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

(b) Exchange Rate Contracts

(i) Cross-currency interest rate swaps.

(ii) Forward foreign exchange contracts.

(iii) Currency options purchased.

(iv) Any other instrument linked to exchange rates that gives rise to similar credit risks.

(c) Commodity (including precious metal) or Equity Derivative Contracts

(i) Commodity- or equity-linked swaps.

(ii) Commodity- or equity-linked options purchased.

(iii) Forward commodity- or equity-linked contracts.

(iv) Any other instrument linked to commodities or equities that gives rise to similar credit risks.

2. Exchange rate contracts with an original maturity of 14 calendar days or less and derivative contracts traded on exchanges that require daily receipt and payment of cash variation margin may be excluded from the risk-based ratio calculation. Gold contracts are accorded the same treatment as exchange rate contracts except gold contracts with an original maturity of 14 calendar days or less are included in the risk-based calculation. Over-the-counter options purchased are included and treated in the same way as other derivative contracts.

3. *Credit Equivalent Amounts for Derivative Contracts.* (a) The credit equivalent amount of a derivative contract that is not subject to a qualifying bilateral netting contract in accordance with section II.*E*.5. of this appendix A is equal to the sum of:

(i) The current exposure (which is equal to the mark-to-market value,[40] if positive, and is sometimes referred to as the replacement cost) of the contract; and

(ii) An estimate of the potential future credit exposure.

(b) The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero.

(c) The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. Banks should, subject to examiner review, use the effective rather than the apparent or stated notional amount in this calculation. The credit conversion factors are:

CONVERSION FACTOR MATRIX

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Precious metals, except gold	Other commodities
One year or less	0.0%	1.0%	6.0%	7.0%	10.0%
More than one year to five years	0.5%	5.0%	8.0%	7.0%	12.0%
More than five years	1.5%	7.5%	10.0%	8.0%	15.0%

(d) For contracts that are structured to settle outstanding exposure on specified dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the remaining maturity is equal to the time until the next reset date. For interest rate contracts with remaining maturities of more than one year and that meet these criteria, the conversion factor is subject to a minimum value of 0.5 percent.

(e) For contracts with multiple exchanges of principal, the conversion factors are to be multiplied by the number of remaining payments in the contract. Derivative contracts not explicitly covered by any of the columns of the conversion factor matrix are to be treated as "other commodities."

(f) No potential future exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices (so called floating/floating or basis swaps); the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

4. *Risk Weights and Avoidance of Double Counting.* (a) Once the credit equivalent amount for a derivative contract, or a group of derivative contracts subject to a qualifying bilateral netting agreement, has been determined, that amount is assigned to the risk category appropriate to the counterparty, or, if relevant, the guarantor or the nature of any collateral. However, the maximum weight that will be applied to the credit equivalent amount of such contracts is 50 percent.

(b) In certain cases, credit exposures arising from the derivative contracts covered by these guidelines may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the types of instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating a bank's risk-based capital ratio.

(c) The FDIC notes that the conversion factors set forth in section II.*E*.3. of appendix A, which are based on observed volatilities of the particular types of instruments, are subject to review and modification in light of changing volatilities or market conditions.

(d) Examples of the calculation of credit equivalent amounts for these types of contracts are contained in Table IV of this appendix A.

5. *Netting.* (a) For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values when determining a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of derivative contracts is recognized for purposes of calculating the credit equivalent amount provided that:

(i) The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the bank would have a claim or obligation to receive or pay, respectively, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to default, bankruptcy, liquidation, or similar circumstances;

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[35] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section II.*B*. of this appendix A.

[40] Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract and should reflect changes in both underlying rates, prices and indices, and counterparty credit quality.

(ii) The bank obtains a written and reasoned legal opinion(s) representing that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy or similar circumstances, the relevant court and administrative authorities would find the bank's exposure to be such a net amount under:

(*1*) The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities and, if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(*2*) The law that governs the individual contracts covered by the netting contract; and

(*3*) The law that governs the netting contract.

(iii) The bank establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law; and

(iv) The bank maintains in its file documentation adequate to support the netting of derivative contracts, including a copy of the bilateral netting contract and necessary legal opinions.

(b) A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[41]

(c) By netting individual contracts for the purpose of calculating its credit equivalent amount, a bank represents that it has met the requirements of this appendix A and all the appropriate documents are in the bank's files and available for inspection by the FDIC. Upon determination by the FDIC that a bank's files are inadequate or that a netting contract may not be legally enforceable under any one of the bodies of law described in paragraphs (ii)(1) through (3) of section II.E.5.(a) of this appendix A, underlying individual contracts may be treated as though they were not subject to the netting contract.

(d) The credit equivalent amount of derivative contracts that are subject to a qualifying bilateral netting contract is calculated by adding:

(i) The net current exposure of the netting contract; and

(ii) The sum of the estimates of potential future exposure for all individual contracts subject to the netting contract, adjusted to take into account the effects of the netting contract.[42]

(e) The net current exposure is the sum of all positive and negative mark-to-market values of the individual contracts subject to the netting contract. If the net sum of the mark-to-market values is positive, then the net current exposure is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the net current exposure is zero.

(f) The effects of the bilateral netting contract on the gross potential future exposure are recognized through application of a formula, resulting in an adjusted add-on amount (A_{net}). The formula, which employs the ratio of net current exposure to gross current exposure (NGR) is expressed as:

$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$

The effect of this formula is that A_{net} is the weighted average of A_{gross}, and A_{gross} adjusted by the NGR.

(g) The NGR may be calculated in either one of two ways—referred to as the counterparty-by-counterparty approach and the aggregate approach.

(i) Under the counterparty-by-counterparty approach, the NGR is the ratio of the net current exposure of the netting contract to the gross current exposure of the netting contract. The gross current exposure is the sum of the current exposures of all individual contracts subject to the netting contract calculated in accordance with section II.E. of this appendix A.

(ii) Under the aggregate approach, the NGR is the ratio of the sum of all of the net current exposures for qualifying bilateral netting contracts to the sum of all of the gross current exposures for those netting contracts (each gross current exposure is calculated in the same manner as in section II.*E*.5.(g)(i) of this appendix A). Net negative mark-to-market values to individual counterparties cannot be used to offset net positive current exposures to other counterparties.

(iii) A bank must use consistently either the counterparty-by-counterparty approach or the aggregate approach to calculate the NGR. Regardless of the approach used, the NGR should be applied individually to each qualifying bilateral netting contract to determine the adjusted add-on for that netting contract.

3. In appendix A to part 325, Table III is amended by:

a. In the last sentence, removing "II.E.3." and adding in its place "II.*E*.5."; and

b. Revising the chart and its heading to read as follows:

Table III. * * *

* * * * *

Credit Conversion for Derivative Contracts

* * * * *

CONVERSION FACTOR MATRIX

Remaining maturity	Interest rate	Exchange rate and gold	Equity	Precious metals, except gold	Other commodities
One year or less	0.0%	1.0%	6.0%	7.0%	10.0%
More than one year to five years	0.5%	5.0%	8.0%	7.0%	12.0%
More than five years	1.5%	7.5%	10.0%	8.0%	15.0%

* * * * *

4. Appendix A to part 325, Table IV, is revised to read as follows:

TABLE IV.—CALCULATION OF CREDIT EQUIVALENT AMOUNTS FOR DERIVATIVE CONTRACTS

Potential exposure	+	Current exposure	=	Credit equivalent amount		Credit equivalent amount
Type of contract (remaining maturity)	Notional principal (dollars)	Conversion factor	Potential exposure (dollars)	Mark-to market value	Current exposure (dollars)	
(1) 120-Day Forward Foreign Exchange	5,000,000	.01	50,000	100,000	100,000	150,000
(2) 4-Year Forward Foreign Exchange	6,000,000	.05	300,000	−120,000	0	300,000
(3) 3-Year Single-Currency Fixed/Floating Interest Rate Swap	10,000,000	.005	50,000	200,000	200,000	250,000
(4) 6-Month Oil Swap	10,000,000	.10	1,000,000	−250,000	0	1,000,000
(5) 7-Year Cross-Currency Floating/Floating Interest Rate Swap	20,000,000	.075	1,500,000	−1,500,000	0	1,500,000
Total			2,900,000		300,000	3,200,000

(1) If contracts (1) through (5) above are subject to a qualifying bilateral netting contract, then the following applies:

	Potential future exposure (from above)		Net current exposure*		Credit equivalent amount
(1)	50,000				
(2)	300,000				
(3)	50,000				
(4)	1,000,000				
(5)	1,500,000				
Total	2,900,000	+	0	=	2,900,000

*The total of the mark-to-market values from above is −1,370,000. Since this is a negative amount, the net current exposure is zero.

(2) To recognize the effects of netting on potential future exposure, the following formula applies:

$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$

(3) In the above example:

$NGR=0=(0/300,000)$
$A_{net}=(0.4\times 2,900,000)+0.6(0\times 2,900,000)$
$A_{net}=1,160,000$
Credit Equivalent Amount: 1,160,000+0=1,160,000

(4) If the net current exposure was a positive amount, for example, $200,000, the credit equivalent amount would be calculated as follows:

$NGR=.67=(200,000/300,000)$
$A_{net}=(0.4\times 2,900,000)+0.6(.67\times 2,900,000)$
$A_{net}=2,325,800$
Credit Equivalent Amount: 2,325,800+200,000=2,525,800

By order of the Board of Directors.

Dated at Washington, D.C. this 25th day of August, 1995.

Federal Deposit Insurance Corporation.
Jerry L. Langley,
Executive Secretary.

[FR Doc. 95–21608 Filed 9–1–95; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P

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[41] For purposes of this section, a walkaway clause means a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if a defaulter or the estate of a defaulter is a net creditor under the contract.

[42] For purposes of calculating potential future credit exposure for foreign exchange contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency.

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Tuesday
September 5, 1995

Part V

Department of the Treasury

Customs Service

19 CFR Parts 10, 12, 102 and 178
Rules of Origin for Textile and Apparel Products; Final Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 102 and 178

[T.D. 95–69]

RIN 1515–AB71

Rules of Origin for Textile and Apparel Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth final amendments to the Customs Regulations to implement the provisions of section 334 of the Uruguay Round Agreements Act ("the Act") regarding the country of origin of textile and apparel products. Except for the purpose of identifying products of Israel, the regulations will govern the determination of the country of origin of imported textile and apparel products for purposes of laws enforced by the Customs Service. The regulations also implement the provisions of section 334 of the Act regarding the treatment of components that are cut to shape in the United States from foreign fabric, exported for assembly, and returned to the United States. This document also sets forth regulations implementing previously-enacted provisions regarding the treatment of articles assembled or produced in a Caribbean Basin Initiative beneficiary country wholly from U.S.-produced components, materials or ingredients.

EFFECTIVE DATE: Final rule effective October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Office of Regulations and Rulings (202–482–7029).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1994, President Clinton signed into law the Uruguay Round Agreements Act ("the Act"), Public Law 103–465, 108 Stat. 4809. Subtitle D of Title III of the Act deals with textiles and includes section 334 (codified at 19 U.S.C. 3592) which concerns rules of origin for textile and apparel products.

Paragraph (a) of section 334 provides that the Secretary of the Treasury shall prescribe rules implementing the principles contained in paragraph (b) for determining the origin of "textiles and apparel products".

Paragraph (b) of section 334 incorporates the following provisions: (1) for purposes of the customs laws and the administration of quantitative restrictions and except as otherwise provided for by statute, general rules for determining when a "textile or apparel product" originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession; (2) special origin rules for goods classifiable under certain specified tariff headings and subheadings; (3) a "multicountry rule" for determining origin when the origin of a good cannot be determined under the preceding provisions of paragraph (b); (4) special rules governing the treatment of components that are cut to shape in the United States from foreign fabric, exported for assembly, and returned to the United States; and (5) an exception to the application of section 334 that specifically provides for the continued application of the administrative practices that were applied immediately before the enactment of the Act to determine the origin of textile and apparel products from Israel, unless such practices are modified by the mutual consent of the United States and Israel.

Paragraph (c) of section 334 provides that section 334 shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. Paragraph (c) further provides that section 334 shall not apply to goods entered or withdrawn from warehouse on or before January 1, 1998, that are covered by contracts of sale which were entered into, with all material terms fixed, before July 20, 1994, and which are filed, with an accompanying certification, with the Commissioner of Customs within 60 days after the date of the enactment of the Act. On January 27, 1995, Customs published in the **Federal Register** (60 FR 5457) a notice setting forth the procedures for filing such contracts and certifications.

On May 23, 1995, Customs published in the **Federal Register** (60 FR 27378) a notice of proposed rulemaking setting forth proposed amendments to the Customs Regulations to implement the rules of origin principles of section 334(b) of the Act. In that document Customs proposed to implement those provisions of section 334(b) of the Act that have broad application under the terms of the statute by amending Part 102 of the Customs Regulations (19 CFR Part 102) and by amending other regulatory provisions as necessary to conform to those Part 102 changes. With regard to the remaining provisions of section 334(b) (that is, the special rules governing the treatment of components that are cut to shape in the United States from foreign fabric, exported for assembly, and returned to the United States), Customs proposed to implement those provisions through amendments to Part 10 of the Customs Regulations (19 CFR Part 10). In addition, Customs proposed to make a number of amendments to existing regulatory provisions to ensure that those existing provisions will be consistent with the new regulatory proposals implementing section 334(b) of the Act. Finally, Customs included in the proposed Part 10 amendments a text to implement U.S. Note 2(b), Subchapter II, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS), which had not been previously treated in the regulations and which is similar in operation and effect to the cut-to-shape components provision of section 334(b)(4)(B) of the Act.

The May 23, 1995, notice of proposed rulemaking invited the public to submit comments on the proposed regulatory amendments for consideration by Customs before adoption of the proposals as a final rule. The public comment period closed on June 22, 1995.

Discussion of Comments

A total of 43 commenters responded to the solicitation of public comments in the May 23, 1995, notice of proposed rulemaking. The comments submitted, and the Customs responses thereto, are set forth below.

Effective date

Comment: Five commenters were concerned about the effective date of § 334 and the regulations implementing that statute. They stated that sometimes it is not possible to know the exact date goods will arrive in the United States. As a result, goods will be arriving after July 1, 1996, with the wrong visa. In order to avoid this problem, four commenters requested that Customs establish a grace period delaying the application of § 334 for such goods. One commenter suggested that the new regulations should only be applicable to goods shipped after July 1, 1996.

Customs Response: The effective date of § 334 is expressly set out in that statute. Section 334(c) provides that the provisions of § 334 "shall apply to goods entered, or withdrawn for warehouse, for consumption on or after July 1, 1996." Section 334(c) contains an exception to that effective date only for goods contracted for prior to July 20, 1994, if a copy of the contract containing all material terms of sale was filed with Customs within 60 days after enactment of § 334 and the goods are entered, or withdrawn from warehouse, for consumption on or before January 1, 1998.

While Customs recognizes the potential problem faced by importers receiving land or sea shipments, the statute is clear as regards the effective date of its provisions, and Customs has no authority to deviate from the express terms of the statute. As regards the suggestion for a grace period to allow the entry of goods imported with incorrect visas, that issue falls within the jurisdiction of, and thus should be more properly addressed to, the Committee for the Implementation of Textile Agreements (CITA).

Scope of "textile or apparel product"

Comment: Several commenters stated that the Customs decision to utilize the Agreement on Textiles and Clothing of the Agreement Establishing the World Trade Organization (the WTO Agreement) to determine the scope of section 334 of the Act constitutes an unauthorized broadening of that legislation. These commenters believe there is nothing to indicate that Congress meant to enlarge the scope of textiles and apparel products. The commenters noted the present position of Customs that the textile and apparel rules of origin contained in § 12.130 of the Customs Regulations (19 CFR 12.130) cover all goods classifiable in Section XI (Chapters 50 though 63), HTSUS, and any headings or subheadings outside Section XI for which a textile and apparel category number has been designated. On the other hand, these commenters noted that the Agreement on Textiles and Clothing of the WTO Agreement lists several HTSUS headings and subheadings outside Section XI which do not have a textile and apparel category number designation and which have not traditionally been considered within the class of goods known as textiles and apparel.

Customs response: Customs disagrees with the position advocated by these commenters. As noted in our discussion of this point in the May 23, 1995, notice of proposed rulemaking, the United States is a signatory to both the WTO Agreement and the Agreement on Textiles and Clothing annexed thereto. The latter agreement specifically defines the scope of "textiles and clothing" by a listing of headings and subheadings in the international Harmonized System. Customs also pointed out in the May 23, 1995, notice that three provisions of the Act outside section 334 specifically refer to the Agreement on Textiles and Clothing of the WTO Agreement. One of those provisions is section 332 which amended section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854) to specifically cite the Agreement on Textiles and Clothing of the WTO Agreement as a multilateral agreement concluded under the authority of section 204. Section 204, as amended, refers to world trade in "the articles with respect to which the agreement [that is, any multilateral agreement concluded under the authority of section 204] was concluded" and authorizes the President to issue regulations governing the entry or withdrawal from warehouse of "the same articles" which are products of countries not parties to the agreement or countries to which the United States does not apply the agreement. Thus, the product coverage of section 204 and of the regulations issued thereunder is a function of the agreements concluded under section 204, including the Agreement on Textiles and Clothing of the WTO Agreement. Since section 12.130 of the Customs Regulations was promulgated under the authority of section 204, the product coverage of § 12.130 must be the same as that of section 204.

Customs believes that it would be inappropriate to conclude that Congress, in drafting section 334 of the Act, was unmindful of the adoption of the Agreement on Textiles and Clothing of the WTO Agreement and the changes to section 204 made by section 332 of the Act, with the result that the regulations mandated by section 334 of the Act could be promulgated without regard to the product coverage of the Agreement on Textiles and Clothing of the WTO Agreement. In light of the context in which section 334 of the Act was enacted, Customs believes it is more proper to conclude that Congress intended that the regulations implementing section 334 of the Act include the products covered by the Agreement on Textiles and Clothing of the WTO Agreement for the specific and limited purpose of section 334 of the Act, that is, the determination of the country of origin of textile and apparel products, while recognizing that such products would also be covered by any regulations governing entry or withdrawal from warehouse that may be separately issued under the authority of section 204. Therefore, Customs does not believe that the scope of the regulations implementing section 334 of the Act should be controlled by the traditional scope of § 12.130 of the Customs Regulations. On the contrary, it seems clear that the product coverage of § 12.130 has been effectively expanded by the adoption of the Agreement on Textiles and Clothing of the WTO Agreement and by the amendment of section 204 effected by section 332 of the Act. Accordingly, Customs believes that the May 23, 1995, notice of proposed rulemaking reflects the correct position on this issue.

Section 102.21(b)(3)—Definition of "knit to shape"

Comment: Section 334(b)(2)(B) of the Act provides that, notwithstanding the assembly rule contained in section 334(b)(1)(D), "a textile or apparel product which is knit to shape shall be considered to originate in, and be the growth, product, or manufacture of, the country, territory, or possession in which it is knit." A number of comments were submitted regarding the proposed definition of "knit to shape" in § 102.21(b)(3). That definition would require a good to have its entire exterior surface area, except for trimming around the neck and on the front opening, to be comprised of fabrics that have been knit or crocheted directly to the shape used in the good.

Two commenters suggested that Customs should maintain its present position, that is, that a good is knit to shape if any single major part has been knit to shape.

One commenter suggested that the term "components" be substituted for the term "fabrics".

Two commenters thought that the proposed definition was too rigid in that the incorporation into a garment of added components such as trim or pockets would disqualify a good from being considered "knit to shape". These commenters suggested that the definition be amended by adding the words "or in principal part" so that the definition would read ". . . with an exterior surface area wholly or in principal part comprised of one or more fabrics knitted or crocheted directly to the shape used in the good . . ."

Three commenters noted that socks, pantyhose, tights, and other hosiery articles are knit to shape and their country of origin should be determined by where they were knit with no account taken of minor operations such as closing toes. One commenter specifically referred to gussets and top elastics in pantyhose, saying that the addition of those components should not change the country of origin from the country of knitting. One commenter wanted to ensure that tube-type T-shirts (T-shirts without side seams) were not considered to be knit to shape.

Customs response: Customs cannot agree to the suggestion to maintain the present position, because that position does not accurately reflect the language of section 334(b)(2)(B) of the Act. Customs does not believe that it was the intent of Congress, in providing a special rule for knit to shape products, that a good should qualify as being knit to shape where that good contains only one panel knit or crocheted to shape.

Customs agrees that the word "fabrics" may be confusing and thus should not be used in the definition. However, Customs believes that "parts" would be preferable to "components".

Customs agrees that the proposed definition of "knit to shape" is too tightly drawn and thus unnecessarily restricts application of section 334(b)(2)(B) of the Act. However, Customs believes that the suggested additional language is imprecise and overly broad and thus would create uncertainty in the application of the definition.

Customs agrees that socks, pantyhose, tights, and other knitted hosiery goods should be covered by the definition of "knit to shape" without regard to minor finishing operations such as closing toes or adding gussets or top elastics. Whether a good such as a T-shirt is knit to shape depends on that particular good; however, Customs would not normally consider the knitting of a tube with no definitive contours to constitute the creation of a knit-to-shape good within the meaning of these origin rules.

In order to address the points made in the above comments on which Customs is in substantial agreement, the definition of "knit to shape" in § 102.21(b)(3) has been modified as set forth below to cover a good of which "50 percent or more" of the exterior surface area is formed by "major parts" knitted or crocheted directly to the shape as used in the good. The modified definition specifically excludes from consideration certain exterior features (that is, patch pockets, appliques, or the like) but includes "sewing" as one of the specified permisible minor operations. In addition, a new paragraph (b)(4) has been included in § 102.21 as set forth below to define "major parts"; this definition is essentially the same as the definition of "major parts" set forth in Note (1)b in the Section XI rules under § 102.20 of the Customs Regulations (19 CFR 102.20). Under these definitions, there should be no uncertainty concerning the treatment of hosiery and similar goods that include features such as gussets and top elastics or that have been subjected to a toe closing operation.

Section 102.21(c)(2)—Goods Consisting of Materials That Meet the § 102.21(e) Tariff Shift and Other Requirements

Comment: Under proposed § 102.21(c)(2), where a good is not wholly the product of a single country, territory, or insular possession, the country of origin of the good is the single country, territory, or insular possession in which "each foreign material" in the good underwent an applicable change in tariff classification, and/or met any other requirement, specified in § 102.21(e). One commenter noted that this is inconsistent with the §§ 102.21 (b)(3) and (b)(5) definitions of "knit to shape" and "wholly assembled", which do not require that all of the materials in the good be knit to shape or wholly assembled in a single country, territory, or insular possession. This commenter suggested that only the portion of the good which imparts the essential character to that good should be required to comply with the applicable § 102.21(e) requirements.

Customs response: Customs does not agree. This comment appears to reflect a misunderstanding of the operation of the general rule in paragraph (c)(2) and the tariff shift and other requirements under paragraph (e). In this regard Customs notes that the definitions of "knit to shape" (as modified as discussed above) and "wholly assembled" make allowances (or exceptions) for some materials so that the presence of such materials will not affect the status of the good as "knit to shape" or "wholly assembled". Those exceptions are solely for the purpose of applying any § 102.21 general rule, tariff shift rule or other requirement in which the defined terms are used; they do not affect the question of whether a requisite tariff shift rule under paragraph (e) has been met. In other words, if a good in fact consists of "knit to shape" or "wholly assembled" components and those components meet the requisite tariff shift rule, any foreign materials (as defined in § 102.1(e)) incorporated in the good at issue that are excepted from the definitions in question would also undergo the requisite tariff shift.

Section 102.21(d)—Treatment of Sets

Comment: One commenter stated that since it is necessary to determine the origin of each textile and apparel component in a set, there is little point in referring to the origin of the entire set in § 102.21(d).

Customs response: Customs believes the wording of § 102.21(d) is correct. Section 102.21(d) covers situations in which two or more of the components in the set were produced in different countries. If all the components in a set are produced in a single country, there would be no need for separate determination of the origin of any textile or apparel components of the set.

Assembly

Comment: With regard to the definition of "wholly assembled" in § 102.21(b)(5), one commenter argued that Customs should be more specific concerning which subassemblies will not preclude a good from being "wholly assembled". This commenter suggested that this could be done by including in the regulation a specific listing of the assemblies that will qualify a good to be "wholly assembled", in the same manner as the Government of Hong Kong has done. In the alternative, this commenter suggested that the joining of all components of a good in one country would always be at least as important as the joining of components into a subassembly and, therefore, under the second multicountry rule (§ 102.21(c)(5), the last place where important processing occurs) the country of origin would be the place where the components of the good are assembled.

Customs response: Customs does not believe that it would be appropriate to have a rigid set of rules in the context mentioned by this commenter. In the opinion of Customs it would be preferable to address these interpretive issues on a case-by-case basis through the Customs ruling program whereby prospective importers may obtain appropriate advance guidance according to their particular needs. This will result in the eventual development of a body of decisions for the general guidance of importers based on consideration of a multitude of factors that cannot be anticipated at the present time. As regards the alternative suggestion of this commenter, Customs agrees with this interpretation and notes that the comment does not appear to warrant a change to the regulatory texts.

Fabric

Comment: Six commenters expressed the view that substantial finishing of greige fabric (*e.g.* dyeing and/or printing combined with other finishing processes) results in a new article of commerce and, therefore, the country of origin of such fabric should be the country in which those processes were performed. One commenter made essentially the same argument for yarns.

Customs response: Sections 334(b)(1)(B) and 334(b)(1)(C) of the Act set forth specific rules for determining the country of origin of yarns and fabric. Section 334(b)(1)(B) states that the country of origin of staple yarns is the country where the yarns were spun and that the country of origin of filament yarns is the country where the filaments were extruded. Section 334(b)(1)(C)

states that the country of origin of a fabric is the country in which the constituent fibers, filaments, or yarns were transformed (that is, into a fabric) by a fabric-making process. The language of §§ 334(b)(1)(B) and 334(b)(1)(C) is clear and unambiguous. Accordingly, it would be inappropriate for Customs to prescribe rules that would lead to results inconsistent with that statutory language.

Subheadings 5810.91–5810.99—Embroidery

Comment: Three commenters took issue with the proposed tariff shift rule for subheadings 5810.91 through 5810.99. They stated that it is unreasonable for the United States to consider the country of origin of embroidery in the piece or in strips to be the country where the base fabric was formed. These commenters argued that the embroidering of fabrics is a highly complex operation that requires a great deal of skill and expense. They also pointed out that the HTSUS refers to embroidery as "embroidery" or as "Embroidery in the piece, [or] in strips," not as "fabric".

Customs response: Section 334(b)(1)(C) of the Act provides that the country of origin of a fabric is the country where the fabric was created by a fabric-making process. It is the view of Customs that embroidery, whether in the piece or in strips, is fabric. It is commonly known in the United States as embroidered fabric. If Customs were to agree that embroidery cannot be considered to be a fabric because the relevant tariff provisions do not specifically refer to embroidery as fabric, Customs would have to take the same position in regard to other fabrics which are not specifically referred to as such, *i.e.* netting, lace, gauze, felt, nonwovens, terry toweling, labels in the piece, belting, and hosepiping, all of which are imported as fabrics.

Customs also notes that the industry definition of piece goods supports the conclusion that embroidery in the piece is fabric. *Fairchild's Dictionary of Textiles,* 1970, defines "Piece Goods" as "a general term for fabrics woven in lengths to be sold by the yard in retail stores. May also mean all goods which are not cut" (at page 435). *The Modern Textile and Apparel Dictionary,* 4th Edition, 1973, defines "Piece Goods" as "Cloth sold by the yard or some definite cut length" (at page 422). Both dictionaries define "Piece" as standard lengths of woven fabric or cloth.

Although the commenters would have Customs distinguish embroidery in strips from other forms of embroidery, Customs believes that embroideries on base fabrics in strips are just as much fabrics as those strips without embroidery. Customs perceives no distinction between embroidering wide lengths of fabric and embroidering fabric strips. In either case, the process starts with fabric and ends with embroidered fabric.

The terms of § 334(b)(1)(C) of the Act are clear and Customs has no choice but to adhere to the express wording of that provision—the country of origin of embroidered fabric classifiable in subheadings 5810.91 through 5810.99 is the country in which the base fabric was formed by a fabric-making process.

However, in reviewing this area, Customs has determined that the proposed tariff shift rule for subheadings 5810.91 through 5810.99 does not accurately effectuate § 334(b)(1)(C) of the Act. In this regard Customs notes that under the proposed rule the country of origin of the embroidered fabric would not always be the country where the base fabric was formed. This is because the proposed rule refers to "A change to subheading 5810.91 through 5810.99 * * *", and where fabric is embroidered in a second country there has been no change to embroidered fabric in the country where the fabric was formed. Accordingly, the proposed tariff shift rule for subheadings 5810.91 through 5810.99 has been divided into three rules as set forth below with the first rule intended to address this problem (with regard to the other two rules, see the discussion below regarding embroidered badges, emblems, and similar articles).

Subheading 5810.10—Embroidery Without Visible Ground

Comment: A commenter complained that the country of origin of embroidery without a visible ground, classifiable in subheading 5810.10, should be the country where the embroidery was applied to the base fabric. The tariff shift rule proposed for subheading 5810.10 provided for a change to that subheading from any other heading.

Customs response: Customs agrees that the rule for subheading 5810.10 does not accomplish what was intended. The proposed tariff shift rule in question reflected the application of § 334(b)(3)(A) of the Act, the first multicountry rule. Customs believes that embroidery without a visible ground is a fabric that is not made by a fabric-making process because it comes into commercial existence after a base fabric is embroidered and the base fabric is removed. In the opinion of Customs, the most important manufacturing process in the production of embroidery without a visible ground is the application of the embroidery and not the removal of the ground. Accordingly, Customs intentionally required a shift from another heading so that the production prior to the removal of the base fabric would confer origin, because a change within the heading would allow the removal of the base fabric to confer origin. However, the proposed rule was inadvertently drafted to refer to a change "to subheading 5810.10". Thus, if fabric from country A were embroidered in country B and the ground fabric removed in country C, the tariff shift rule would not be satisfied and one would be required to go to the next applicable general rule to determine origin. In this circumstance, country B would properly be determined to be the country of origin by application of § 102.21(c)(4). However, Customs believes that for purposes of transparency, it is desirable, to the greatest extent possible, for a country of origin to be determinable by application of the rules referred to in § 102.21(c)(2) and contained in § 102.21(e) rather than by application of the multicountry rules of §§ 102.21(c)(4) and (5). Accordingly, the rule specified for subheading 5810.10 has been modified as set forth below to reflect these considerations.

Embroidered Badges, Emblems, and Similar Articles

Comment: One commenter expressed the view that embroidered badges or emblems are not fabrics and should not be treated as such.

Customs response: Customs agrees that badges, emblems, and similar embroidered articles are not imported in the form of fabric. However, the country of origin of badges, emblems, and similar embroidered articles is not necessarily where those goods were embroidered. Pursuant to § 334(b)(1)(D) of the Act, the country of origin of badges, emblems, and the like, which consist of two or more layers of fabric assembled together by gluing, sewing, or other means, is the country where the good was wholly assembled. A new second rule has been included in the rules for subheadings 5810.91 through 5810.99 as set forth below to reflect the application of § 334(b)(1)(D).

However, badges, emblems, and similar embroidered articles which are processed in more than one country and which do not have multiple components present certain other problems. Customs believes that there is a difference between emblems created by embroidery and printed emblems on which embroidery may be present merely to enhance the printed design.

Where embroidery forms the entire design and, therefore, creates the emblem, the determination of the country of origin of the emblem is governed by the first multicountry rule (§ 334(b)(3) of the Act and § 102.21(c)(4) of the regulations). With reference to the requirements of § 334(b)(3) and § 102.21(c)(4), the embroidery is the most important manufacturing process in the production of the good and, as a result, the country of origin of that good is the country, territory, or insular possession where the embroidery was created. However, where embroidery does not create the motif, but is present merely to enhance a printed design on the emblem, Customs does not believe that application of the embroidery should confer origin.

Customs has not been able to draft a tariff shift rule that adequately distinguishes between the two types of badges, emblems, and similar embroidered articles mentioned above. Accordingly, it was decided to make the tariff shift rule applicable to such goods (the proposed rule for subheadings 5810.91 through 5810.99, which is set forth below in modified form as the third rule for those subheadings) difficult to satisfy, that is, by requiring all manufacturing, from the forming of the fabric forward, to be done in a single country, territory, or insular possession. Thus, if an emblem, badge, etc., is produced in country A from fabric formed in country B, the tariff shift rule will not be satisfied and, in the hierarchy of rules, the next applicable rule is the first multicountry rule, § 102.21(c)(4), which provides that the country of origin will be the country, territory, or insular possession where the most important manufacturing process occurred. While Customs believes it is preferable in principle to employ the objective, specific tariff shift or related rules under §§ 102.21(c) (2) and (e), in some instances, as here, Customs has been unable to avoid a certain degree of subjectivity in the application of the appropriate rule of origin.

Application of § 334(b)(2)(A)—Special Rules for Specified Headings and Subheadings

Comment: Section 334(b)(2)(A) of the Act provides that the origin of goods classifiable under certain specified tariff provisions "shall be determined under subparagraph (A), (B), or (C) of paragraph (1), as appropriate". The May 23, 1995, notice of proposed rulemaking stated that since all of the headings and subheadings specified in § 334(b)(2)(A) cover goods that have been advanced beyond yarn or fabric form, the origin of those goods should be determined by the yarns (in the case of heading 5609) or the fabrics which comprise the good. Three commenters concurred with that position, stating that the majority of time, labor, and cost is in the greige fabric. One commenter specifically stated that § 334(b)(2)(A) is clear that the origin of the goods classifiable under the listed headings and subheadings is determined by the origin of the fabric from which the goods are constructed. However, six commenters objected to taking a restrictive interpretation of the words "as appropriate" and one, without mentioning the interpretation of those words, stated that the origin of goods of subheading 9404.90 should be determined by where they are assembled.

One commenter noted that the proposed tariff shift rule for subheading 9404.90, which covers comforters, quilts, etc., would result in the goods having their country of origin in the country where those goods are assembled. The commenter stated that this would be contrary to the terms of § 334(b)(2)(A) under which, notwithstanding the general assembly rule in § 334(b)(1)(D), the country of origin of goods classifiable under any of the headings or subheadings listed in that section will be the country that produced the yarns or fabrics, as appropriate, from which those goods are made.

Customs response: After reviewing all of the comments and the commenters' suggestions as to how the words "as appropriate" should be interpreted, Customs adheres to the position set forth in the May 23, 1995, notice. No commenter in opposition to the position proposed by Customs offered an acceptable legal alternative to that position. While several of the commenters cited judicial case law concerning the interpretation of statutes, all of their citations and quotations involved statutory language that was not the same as, or similar to, the language of § 334(b)(2)(A). Moreover, none of the interpretations suggested by those commenters adequately addressed the fact that all of the headings and subheadings listed in § 334(b)(2)(A) provide for goods made from materials and that, therefore, the most reasonable interpretation of that section is that it is *appropriate* to determine the origin of those goods according to § 334(b)(1)(B), the rule for yarns, or § 334(b)(1)(C), the rule for fabrics.

The comment regarding the tariff shift rule for subheading 9404.90 prompted Customs to review the proposed tariff shift rules for all of the headings and subheadings listed in § 334(b)(2)(A). That review disclosed that Customs erred in the proposal for subheading 9404.90 and in the proposed rules for the other 15 listed headings or subheadings because, in each instance, the proposed rule both referred to a change to the named heading or subheading and included a proviso regarding the process by which the change must result. For example, if a fabric is woven in one country and wholly assembled in a second country into a good subject to § 334(b)(2)(A), the required tariff shift change does not occur in the country in which the fabric was formed (in other words, the change does not result from a fabric-making process as prescribed in the applicable proposed rule). As a result and as the above commenter noted, the terms of the tariff shift rule would not be met and the next relevant general rule, § 102.21(c)(3)(ii), would cause the country of origin of that good to be the country of assembly. Therefore, each of the rules for the headings and subheadings listed in § 334(b)(2)(A) has been modified as set forth below to provide that the country of origin of a good classifiable under those headings or subheadings is either the country of origin of the yarns (in the case of heading 5609) or of the fabric (for the rest of the listed headings or subheadings) from which those goods are made.

In addition, since the clear intent of § 334(b)(2)(A) is to eliminate assembly from conferring origin in the case of goods classifiable under any of the provisions listed in that section, § 102.21(c)(3)(ii) has been modified as set forth below to preclude assembly from automatically conferring origin on those goods when the § 102.21(c)(2) tariff shift or other requirements are not met (*e.g.* when a good is made from fabrics originating in different countries).

Multicountry rules

Comment: Eight commenters stated, in one fashion or another, that the proposed multicountry rules (§§ 102.21(c) (4) and (5)) should be made clearer, either by adding definitions or by adding examples.

Customs response: Given the wide variety of textile and apparel products and the multiplicity of manufacturing processes involving those products, Customs is adverse to defining the terms "most important assembly or manufacturing process" and "important assembly or manufacturing process" which form the basis of the multicountry rules. Customs recognizes that the concern underlying the submitted comments revolves around the meaning of the word "important", and, in fact, during the development of the proposed regulatory texts Customs decided to eschew use of definitions calling for comparisons of such criteria as time involved in processing, labor and other costs of processing, complexity, and value added. Customs views the word "important" as referring to the relative significance of the manufacturing or assembly processes involved in the production of a good; thus, the word "important," has the same connotation as the word "meaningful". Accordingly, in determining relative importance, a manufacturing operation in a low wage country is no less important to the production of a good than that same manufacturing operation in a high wage country, nor is a manufacturing operation done by an expensive machine more important than that same manufacturing operation done by hand.

There is only one example, discussed elsewhere in this document, on which Customs has reached a definitive conclusion regarding relative importance of manufacturing processes: forming a fabric is a more important process than cutting that fabric. Decisions on all other comparisons must be made on a case-by-case basis according to the specific facts presented. Customs recognizes that this may appear to leave importers with a degree of uncertainty. However, Customs believes that a large proportion of multicountry processing is unnecessary from a manufacturing standpoint and thus is done more for quota-engineering purposes, that is, for the primary purpose of avoiding quantitative restraints imposed by international agreements. Moreover, if a manufacturer or importer has any doubts about which country, territory, or insular possession is the country of origin of its goods, that party may obtain appropriate advance guidance under the Customs ruling program.

Cutting and Products of Insular Possessions

Comment: The May 23, 1995, notice of proposed rulemaking stated that Customs believes cutting was not intended to play any role in determining the country of origin of textile and apparel products. That statement raised the question, both within Customs and among members of the importing public, of whether Customs would continue the current tariff treatment of garments that are cut and assembled in insular possessions.

General Note 3(a)(iv), HTSUS, provides that goods of insular possessions are excepted from duty if, among other requirements, they are "manufactured or produced in any such possession from materials the growth, product, or manufacture" of that insular possession. Customs has ruled that this portion of General Note 3(a)(iv) may be satisfied by *two* significant manufacturing or processing operations. Under existing rulings, the cutting of fabric into garment parts and the assembly of those parts into garments are normally considered by Customs to constitute the required two significant manufacturing or processing operations that would qualify the garments for duty-free treatment.

One commenter wanted Customs to retain cutting as a process that confers origin. Nine commenters were concerned that the language in the May 23, 1995, notice of proposed rulemaking meant that garments cut and assembled in insular possessions would no longer be eligible for duty-free entry. Two commenters argued that cutting is equal to, or more important than, forming fabric while three commenters stated that cutting fabric is a very small part of producing a garment. One commenter referred specifically to the importance, for origin purposes, of the high degree of precision and expense involved in cutting components for men's tailored clothing. Many of the commenters pointed out that there is no evidence to indicate that Congress intended to change the tariff status of apparel goods cut and assembled in insular possessions. Other commenters noted that General Note 3(a)(iv) was intended by Congress to benefit insular possessions and should, therefore, be liberally construed. A number of commenters were concerned that Customs would never consider cutting when determining the origin of textiles and apparel products and expressed their disagreement with that position. Several commenters noted that there is nothing in § 334 of the Act that requires Customs to ignore entirely the role cutting plays in the manufacture of textile and apparel articles. Some commenters also pointed out that General Note 3(a)(iv) concerns preferential duty status of goods rather than the determination of their origin.

Customs response: Customs concurs with most of the commenters on this issue that, since § 334 deals with the country of origin of textile and apparel products and not with value requirements for purposes of duty preferences, § 334 will not affect either foreign material value determinations required under General Note 3(a)(iv) or value-added requirements contained in other statutory provisions. Accordingly, Customs intends to continue its current tariff treatment of garments which are cut and assembled in insular possessions.

Nevertheless, Customs believes that the position that cutting is not an origin-conferring process is correct for *country of origin* determinations. While cutting is a process which may be considered to be an important manufacturing process, as between the production of fabric and the cutting of that fabric to shape, fabric production is considered to be the more important process. The intent of Congress to not allow cutting of fabric to confer origin is demonstrated by the adoption of § 334(b)(4) of the Act which continues the present tariff treatment of components cut to shape in the United States from imported fabric and sent abroad for assembly: if Congress had intended the cutting of components from fabric to confer origin, there would have been no need for § 334(b)(4). Thus, when applying the first multicountry rule (§ 102.21(c)(4), which provides that the most important assembly or manufacturing process will determine the country of origin), the country which produced the fabric will be determined to be the country of origin of unassembled components merely cut from fabric in another country.

Components Cut in the United States

Comment: Three commenters wrote in support of the continuation of the treatment accorded goods by subheading 9802.00.80, HTSUS.

Customs response: These comments reflect some apparent confusion regarding the overall effect of § 334 of the Act in this area.

Under the present rules of origin, cutting apparel components from fabric (regardless of the country of origin of that fabric) will usually result in the cut components being considered a product of the country where the cutting is performed. Thus, when foreign fabric is imported into the United States and cut into apparel components, the United States is the country of origin of those components. Accordingly, if apparel components cut from foreign fabric in the United States are exported for assembly and the assembled goods are then imported into the United States, pursuant to subheading 9802.00.80, HTSUS, duty may be assessed on the full value of the imported goods less the cost or value of the components cut in the United States.

As previously noted, Congress adopted § 334(b)(4) because §§ 334(b) (1) and (2) of the Act in effect eliminate cutting as a process conferring origin for most purposes. Under § 334(b)(4), where goods are assembled abroad from components cut in the United States from foreign fabric (even though under the § 334 rules the cut components are not products of the United States and the assembling country is the country of origin), the assembled goods, when imported into the United States, will continue to receive the same duty treatment presently accorded to such goods under subheading 9802.00.80, HTSUS. Thus, because § 334(b)(4) serves to preserve a tariff treatment that otherwise would no longer be available under the § 334 origin rules, this statutory provision in effect addresses the concern of these commenters.

World Trade Organization and NAFTA Obligations

Comment: Twelve commenters believed that the proposed rules are in violation of the Uruguay Round Agreement and the obligations the United States agreed to when it became a member of the World Trade Organization (WTO). While some commenters questioned why the United States is making significant changes in its textile origin rules at the same time that the WTO is embarking on a project involving the development of international uniform rules of origin, two other commenters expressed the view that the proposed rules will simplify the WTO work on harmonized rules of origin. Several commenters stated that the new origin rules will change the applicable textile restraint categories for many products, creating problems in the administration of international textile agreements.

A number of commenters referred to the obligations the United States incurred under the North American Free Trade Agreement (NAFTA). Two commenters made the general statement that § 334(b)(2)(A) of the Act was contrary to the NAFTA, and a third commenter made the same statement but with specific reference to Article 309(1) of the NAFTA. Four commenters noted that the proposed rules conflicted with the NAFTA marking rules, and one of these commenters argued that Canada has a reasonable expectation that established marking rules will continue in effect. Another commenter observed that the proposed rules will cause some goods now subject to Tariff Preference Levels (TPLs) under the NAFTA to no longer be considered products of a NAFTA party, with the result that those goods will not be allowed entry into the United States under a TPL.

One commenter stated that if the country in which down comforters are assembled is not the country of origin of those goods, in order to avoid an unfair advantage for Canadian and Mexican comforter manufacturers, Customs should clearly state that the NAFTA preference rules do not govern goods processed in a NAFTA country that fall within the scope of § 334 of the Act.

Another commenter thought that the wording of proposed § 102.21 is ambiguous concerning the application of § 102.19 (the "NAFTA preference override" provision) to "originating goods" under the NAFTA.

Customs response: In discussing § 334, both the President's Statement of Administrative Action and the relevant Senate report stated that § 334 would more accurately reflect where the most significant production activity occurs, would help combat transshipment and other circumvention of textile and apparel quotas, would bring the U.S. rules of origin in line with rules employed by other major textile and apparel importing countries and by U.S. trading partners, and would advance the goal of harmonizing international rules of origin set out in the WTO Agreement on Rules of Origin. It was also noted that, pursuant to Article 4 of the Agreement on Textiles and Clothing which provides for consultations in the case of a disruption of trade or an adverse affect on market access, the Administration will undertake consultations "where appropriate".

It is not the function of Customs to determine whether the enactment of § 334 constitutes a breach of either the WTO Agreement or the NAFTA. Both agreements have specified procedures for signatory parties to follow if it is believed that another signatory has violated its commitments. Accordingly, the question of whether there has been a violation of a provision of the WTO Agreement on Rules of Origin or of the NAFTA is a matter to be decided within the framework of those agreements.

With regard to the comment on down comforters, Customs is unable to accede to this commenter's request. Section 334(b)(1) of the Act opens with the words "[e]xcept as otherwise provided for by statute," and Customs followed this statutory language by including in the first sentence of proposed § 102.21(a) the words "except as otherwise provided for by statute"; thus, origin rules contained in other statutes will take precedence over the origin rules in § 334 and in § 102.21 of the regulations. The NAFTA rules of origin for duty preference purposes are set forth in 19 U.S.C. 3332 and in General Note 12, HTSUS. Accordingly, if, as in the case of down comforters, the NAFTA origin rule for duty preference purposes is less restrictive than the corresponding rule contained in § 334 of the Act and in § 102.21 of the regulations, then the NAFTA origin rule will control for NAFTA duty preference purposes.

As regards the alleged ambiguity between § 102.19 and § 102.21, Customs does not believe that any change to the proposed regulatory texts is appropriate in this regard. Section 102.19 was originally adopted in a strictly NAFTA context in order to clarify the relationship between the Part 102 NAFTA marking rules and the separate rules of origin that apply under the NAFTA for duty preference purposes. Proposed § 102.21(c) included § 102.19 among the existing Part 102 provisions that may apply for purposes of the § 102.21(c) general rules because a failure to mention § 102.19 in this context might incorrectly give the impression, contrary to the express terms of § 334 as discussed in the preceding comment response, that the rules of origin applicable to "originating goods" under the NAFTA do not take precedence over the § 102.21 provisions.

Miscellaneous Goods

Comment: One commenter stated that the manufacture of goods classifiable in headings 5604–5609, 5808–5809, 5901–5903, 5905–5908 and 5910 and in subheading 5911.90 requires special equipment and knowledge and, therefore, the tariff shift rule for those provisions should prescribe a change from any other heading.

Customs response: The proposed tariff shift rules for each of the mentioned headings and subheading were carefully drafted to reflect the express requirements of § 334(b) of the Act. Most of those headings mentioned by the commenter provide specifically for yarns, cordage, braids, or fabrics, and § 334(b) is very specific regarding the rules for determining the origin of those goods. In some instances, the proposed tariff shift rule was drafted to reflect that assembly (under § 334(b)(1)(D) of the Act) confers origin. In a very few instances (*e.g.* fishing nets of heading 5608), the tariff shift rule was drafted to reflect the application of the first multicountry rule (§ 334(b)(3)(A) of the Act and § 102.21(c)(4) of the regulations). To do as this commenter suggested would cause the application of the tariff shift rules to result, for some goods, in determinations of origin not consistent with the requirements of § 334(b).

Miscellaneous Issues

Comment: Five commenters referred to the substantial transformation concept, noting variously that there is no definition of "substantial transformation" in the proposed regulatory texts, that the proposed texts

do not comply with accepted principles of what constitutes a substantial transformation, or that the United States should retain substantial transformation as the basis for determining the origin of imported goods. One commenter also noted that there is no value-added criterion. In addition, while two commenters noted that the rules in § 334 of the Act are more similar to the rules followed by the rest of the industrialized nations than are the present rules applied by Customs, another commenter noted that § 334(b)(2)(A) of the Act (the special rule of origin listing 16 provisions which are not subject to the assembly rule) is not consistent with rules applied by Canada. One commenter pointed out that § 334 conflicts with past practices and rulings of Customs. Finally, one commenter expressed concern that the rules of origin contained in § 334 are inconsistent with the Federal Trade Commission Regulation in 16 CFR 303.33(a)(3) which requires that each textile product made in the United States in whole or part of imported materials contain a label disclosing those facts.

Customs response: Section 334 is a Congressionally enacted statute and, as such, it prevails over all prior U.S. regulations, rulings, and judicial decisions that are inconsistent with its terms, and it applies without regard to the laws of other countries. It provides an objective set of rules to be applied without reference to the substantial transformation concept, which is the present basis applied generally by the courts and by Customs for determining the origin of merchandise processed in more than one country. While § 334 may represent the view of Congress concerning how it believes the substantial transformation principle should be applied, when the origin provisions of § 334 take effect on July 1, 1996, they will effectively remove from consideration the question of whether or not a processing or manufacturing operation constitutes a substantial transformation for most Customs and related purposes. With regard to the cited Federal Trade Commission regulations, Customs would also note that those regulations are promulgated under separate statutory authority applicable to that agency and, therefore, the issue of the alleged inconsistency is not a matter that can be unilaterally addressed by Customs in the regulations implementing § 334.

Other Changes to the Regulatory Texts

In addition to the changes to the proposed regulatory texts discussed above in connection with the public comments, Customs has determined that a number of other changes should be made to the proposed texts based on further internal review. These changes are discussed below.

Section 10.26(c)(3)

In proposed new § 10.26, paragraph (a) implemented the provisions of U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS, paragraph (b) implemented the provisions of § 334(b)(4)(B) of the Act, and paragraph (c) set forth definitions or rules for purposes of the section as a whole. In paragraph (c)(3) which set forth a rule regarding entry into the commerce of a non-beneficiary country, reference was made to a "component" (which is the term used in § 334(b)(4)(B) of the Act) but references to a "material" and an "ingredient" (which are terms used in U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS) were inadvertently omitted. The text of § 10.26(c)(3) as set forth below has been modified to correct this oversight.

Section 102.21(b)(2)—Definition of "fabric-making process"

In reviewing proposed § 102.21(b)(2), Customs discovered that fabric strips were inadvertently omitted from the list of materials which may comprise a fabric. It has been the experience of Customs that a fabric may be formed (usually woven) with narrow fabric strips. While fabric strips are not a material specifically mentioned in § 334(b)(1)(C) of the Act, Customs is of the view that the formation of a fabric from fabric strips is a fabric-making process and should be treated as such in the regulations, in particular for purposes of applying those § 102.21(e) tariff shift or other requirements that specifically refer to a "fabric-making process". Customs also notes that the first multicountry rule (§ 334(b)(3)(A) of the Act and § 102.21(c)(4) of the regulations) would yield the same result because, in the case of a fabric, the most important manufacturing process is the actual forming of the fabric. Accordingly, § 102.21(b)(2) as set forth below has been modified to reflect that a fabric-making process may include a manufacturing operation which begins with fabric strips.

Subheading 5808.10

Customs inadvertently omitted the word "other" before the word "heading" in the first proposed tariff shift rule for subheading 5808.10. In order to eliminate any possible confusion and conform the wording to that used in other tariff shift rules, the first tariff shift for subheading 5808.10 as set forth below has been modified accordingly.

Heading 5904

Since lamination of preexisting components is considered to be an assembly, the proposed tariff shift rule for heading 5904 provided a meaningful rule for goods that have been manufactured by a lamination process. However, that tariff shift rule did not provide for goods of heading 5904 that have been produced by means of a coating process. In view of the various manufacturing processes used in the production of such coated goods and the differences in materials that may be used, Customs does not believe that it is feasible to craft a tariff shift rule for those goods. Consequently, the country of origin of goods of heading 5904 produced by means of a coating process must be determined by application of the multicountry rules in §§ 102.21(c)(4) and (5). Accordingly, the proposed tariff shift rule for heading 5904 has been replaced by two rules as set forth below to reflect these considerations, the first rule covering goods that are wholly assembled by means of a laminating process and the second rule covering all other goods.

Subheadings 5911.10–5911.40

On further review of the proposed tariff shift rule for subheadings 5911.10 through 5911.40, Customs found that no provision was made for application of the assembly rule (§ 334(b)(1)(D) of the Act) to goods classifiable in subheadings 5911.31 through 5911.32 fitted with linking devices. Customs notes in this regard that the combining of linking devices with textile fabrics or felts may constitute an assembly, in which case § 334(b)(1)(D) would apply to determine the country of origin. Accordingly, the proposed tariff shift rule for subheadings 5911.10 through 5911.40 has been modified as set forth below (1) by setting forth a rule separately both for subheading 5911.10 through 5911.20 and for subheading 5911.40 and with no change in substance and (2) by including two separate rules for subheadings 5911.31 through 5911.32, the first of which follows the originally proposed rule and the second of which is intended to cover goods incorporating such linking devices.

Subheading 5911.90

On further review of the three tariff shift rules proposed for subheading 5911.90, Customs has determined that the first and third rules overlap in terms of goods covered. The first rule is for "goods of yarn, rope, cord, braid" and thus includes made up articles which, using normal classification principles, would be considered to be "of" the named materials. The third rule specifically covers goods which are made up articles. To eliminate this overlap, the third tariff shift rule for subheading 5911.90 has been modified as set forth below by the addition of an exception clause for goods subject to the first tariff shift rule.

Headings 6501 and 6503

Headings 6501 and 6503 cover goods of felt. When the proposed tariff shift rules for these headings were drafted, Customs inadvertently included, in the exception clause in the second tariff shift rule for each heading, a reference to heading 5603 which covers nonwovens; the reference should have been to heading 5602 which provides for felts. Accordingly, the second tariff shift rule for each of these headings has been modified as set forth below to correct this error.

Issuance of Rulings During the Interim Period

Although this final rule action is effective 30 days after its publication in the **Federal Register**, Customs notes that the final regulatory provisions set forth herein that implement the provisions of section 334 of the Act apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, in keeping with the effective date set forth in section 334. Customs recognizes that the realities of the textile and apparel trade often require sourcing and production decisions long in advance of the ultimate date of importation of the goods. In order to ensure that prospective importers may have appropriate advance guidance regarding the Customs interpretation of the final regulations set forth in this document, Customs has determined that the Customs ruling program should accommodate ruling requests regarding those regulatory texts during the interim period between the effective date of this final rule action and the applicability date for the regulatory texts rather than only after the section 334(b) provisions take effect. Accordingly, Customs will accept requests for rulings on the regulatory texts set forth herein, submitted in accordance with the provisions of Part 177 of the Customs Regulations (19 CFR Part 177), commencing 30 days after the date of publication of this final rule document in the **Federal Register**.

Conclusion

Accordingly, based on the comments received and the analysis of those comments and based on the additional considerations as discussed above, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes thereto as discussed above and set forth below. As a consequence of the adoption of these substantive regulatory amendments, this document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) under control number 1515–0207. The estimated average annual burden associated with this collection is 1.5 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, D.C. 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 12

Customs duties and inspection, Labeling, Marking, Reporting and recordkeeping requirements, Textiles and textile products.

19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

19 CFR Part 178

Collections of information, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, for the reasons stated above, Parts 10, 12, 102 and 178, Customs Regulations (19 CFR Parts 10, 12, 102 and 178), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and the specific authority citations for §§ 10.191–10.198 continue to read, and a specific authority citation for §§ 10.25 and 10.26 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.25 and 10.26 also issued under 19 U.S.C. 3592;

* * * * *

Sections 10.191–10.198 also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

2. Sections 10.25 and 10.26 are added under the heading "Articles assembled abroad with United States components" to read as follows:

§ 10.25 Textile components cut to shape in the United States and assembled abroad.

Where a textile component is cut to shape (but not to length, width, or both) in the United States from foreign fabric and exported to another country, territory, or insular possession for assembly into an article that is then returned to the United States and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, the value of the textile component shall not be included in the dutiable value of the article. For purposes of determining whether a reduction in the dutiable value of an imported article may be allowed under this section:

(a) The terms "textile component" and "fabric" have reference only to goods covered by the definition of "textile or apparel product" set forth in § 102.21(b)(4) of this chapter;

(b) The operations performed abroad on the textile component shall conform to the requirements and examples set forth in § 10.16 insofar as they may be applicable to a textile component; and

(c) The valuation and documentation provisions of §§ 10.17, 10.18, 10.21 and 10.24 shall apply.

§ 10.26 Articles assembled or processed in a beneficiary country in whole of U.S. components or ingredients; articles assembled in a beneficiary country from textile components cut to shape in the United States.

(a) No article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710, Harmonized Tariff Schedule of the United States (HTSUS)) shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled or processed in a beneficiary country in whole of fabricated components that are a product of the United States; or

(2) If the article is processed in a beneficiary country in whole of ingredients (other than water) that are a product of the United States; and

(3) Neither the fabricated components, materials or ingredients after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(b) No article (except a textile or apparel product) entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled in a beneficiary country in whole of textile components cut to shape (but not to length, width, or both) in the United States from foreign fabric; or

(2) If the article is assembled in a beneficiary country in whole of both textile components described in paragraph (b)(1) of this section and components that are products of the United States; and

(3) Neither the components after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(c) For purposes of this section:

(1) The terms "textile article", "apparel article", and "textile or apparel product" cover all articles, other than footwear and parts of footwear, that are classifiable in an HTSUS subheading which carries a textile and apparel category number designation;

(2) The term "beneficiary country" has the meaning set forth in § 10.191(b)(1); and

(3) A component, material, ingredient, or article shall be deemed to have not entered into the commerce of any foreign country other than a beneficiary country if:

(i) The component, material, or ingredient was shipped directly from the United States to a beneficiary country, or the article was shipped directly to the United States from a beneficiary country, without passing through the territory of any non-beneficiary country; or

(ii) Where the component, material, ingredient, or article passed through the territory of a non-beneficiary country while en route to a beneficiary country or the United States:

(A) The invoices, bills of lading, and other shipping documents pertaining to the component, material, ingredient, or article show a beneficiary country or the United States as the final destination and the component, material, ingredient, or article was neither sold at wholesale or retail nor subjected to any processing or other operation in the non-beneficiary country; or

(B) The component, material, ingredient, or article remained under the control of the customs authority of the non-beneficiary country and was not subjected to operations in that non-beneficiary country other than loading and unloading and activities necessary to preserve the component, material, ingredient, or article in good condition.

3. In § 10.195, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f) respectively and a new paragraph (d) is added to read as follows:

§ 10.195 Country of origin criteria.

* * * * *

(d) *Textile components cut to shape in the U.S.* The percentage referred to in paragraph (c) of this section may be attributed in whole or in part to the cost or value of a textile component that is cut to shape (but not to length, width, or both) in the U.S. (including the Commonwealth of Puerto Rico) from foreign fabric and exported to a beneficiary country for assembly into an article that is then returned to the U.S. and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. For purposes of this paragraph, the terms "textile component" and "fabric" have reference only to goods covered by the definition of "textile or apparel product" set forth in § 102.21(b)(4) of this chapter.

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.130 and 12.131 also issued under 7 U.S.C. 1854;

* * * * *

2. In § 12.130:

a. the last sentence of paragraph (b) is amended by adding after "Mexico" the words ", and the origin of textile and apparel products covered by § 102.21 of this chapter,";

b. the last sentence of the introductory text of paragraph (d) is amended by adding after "Mexico" the words ", and the origin of textile and apparel products covered by § 102.21 of this chapter,"; and

c. the introductory text of paragraph (e)(1) is amended by adding after "Mexico" the words "and except for textile and apparel products".

PART 102—RULES OF ORIGIN

1. The authority citation for Part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

2. Section 102.0 is amended by removing the word "This" at the beginning of the first sentence and adding, in its place, the words "Except in the case of goods covered by § 102.21, this" and by adding a sentence at the end to read as follows:

§ 102.0 Scope.

* * * The rules for determining the country of origin of textile and apparel products set forth in § 102.21 apply for the foregoing purposes and for the other purposes stated in that section.

3. Section 102.11 is amended by adding an introductory paragraph before paragraph (a) to read as follows:

§ 102.11 General rules.

The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

* * * * *

4. Section 102.21 is added to read as follows:

§ 102.21 Textile and apparel products.

(a) *Applicability.* Except for purposes of determining whether goods originate in Israel or are the growth, product, or manufacture of Israel, and except as otherwise provided for by statute, the provisions of this section shall control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws and the administration of quantitative restrictions. The provisions of this section shall apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996.

(b) *Definitions.* The following terms shall have the meanings indicated when used in this section:

(1) *Country of origin.* The term country of origin means the country, territory, or insular possession in which a good originates or of which a good is the growth, product, or manufacture.

(2) *Fabric-making process. A fabric-making process* is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric.

(3) *Knit to shape.* The term *knit to shape* applies to any good of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the good, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether a good is "knit to shape."

(4) *Major parts.* The term *major parts* means integral components of a good but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts.

(5) *Textile or apparel product.* A *textile or apparel product* is any good classifiable in Chapters 50 through 63, Harmonized Tariff Schedule of the United States (HTSUS), and any good classifiable under one of the following HTSUS headings or subheadings:

3005.90
3921.12.15
3921.13.15
3921.90.2550
4202.12.40–80
4202.22.40–80
4202.32.40–95
4202.92.15–30
4202.92.60–90
6405.20.60
6406.10.77
6406.10.90
6406.99.15
6501
6502
6503
6504
6505.90
6601.10–99
7019.10.15
7019.10.28
7019.20
8708.21
8804
9113.90.40
9404.90.10
9404.90.80–95
9502.91
9612.10.9010

(6) *Wholly assembled.* The term "wholly assembled" when used with reference to a good means that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or insular possession. Minor attachments and minor embellishments (for example, appliques, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as "wholly assembled" in a single country, territory, or insular possession.

(c) *General rules.* Subject to paragraph (d) of this section, the country of origin of a textile or apparel product shall be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.

(1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.

(2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

(3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

(d) *Treatment of sets.* Where a good classifiable in the HTSUS as a set includes one or more components that are textile or apparel products and a single country of origin for all of the components of the set cannot be determined under paragraph (c) of this section, the country of origin of each component of the set that is a textile or apparel product shall be determined separately under paragraph (c) of this section.

(e) *Specific rules by tariff classification.* The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

HTSUS	Tariff shift and/or other requirements
3005.90	If the good contains pharmaceutical substances, a change to subheading 3005.90 from any other heading; or If the good does not contain pharmaceutical substances, a change to subheading 3005.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5601 through 5603, 5801 through 5804, 5806, 5809, 5903, 5906 through 5907, and 6001 through 6002.
3921.12.15	A change to subheading 3921.12.15 from any other heading.
3921.13.15	A change to subheading 3921.13.15 from any other heading.
3921.90.2550	A change to subheading 3921.90.2550 from any other heading.
4202.12.40–4202.12.80	A change to subheading 4202.12.40 through 4202.12.80 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.22.40–4202.22.80	A change to subheading 4202.22.40 through 4202.22.80 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.32.40–4202.32.95	A change to subheading 4202.32.40 through 4202.32.95 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.15–4202.92.30	A change to subheading 4202.92.15 through 4202.92.30 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.60–4202.92.90	A change to subheading 4202.92.60 through 4202.92.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5001–5002	A change to heading 5001 through 5002 from any other chapter.
5003	A change to heading 5003 from any other heading, provided that the change is the result of garnetting. If the change to heading 5003 is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5004–5006	(1) If the good is of staple fibers, a change to heading 5004 through 5006 from any heading outside that group, provided that the change is the result of a spinning process. (2) If the good is of filaments, a change to heading 5004 through 5006 from any heading outside that group, provided that the change is the result of an extrusion process.
5007	A change to heading 5007 from any other heading, provided that the change is the result of a fabric-making process.
5101–5103	A change to heading 5101 through 5103 from any other chapter.
5104	A change to heading 5104 from any other heading.
5105	A change to heading 5105 from any other chapter.
5106–5110	A change to heading 5106 through 5110 from any heading outside that group, provided that the change is the result of a spinning process.
5111–5113	A change to heading 5111 through 5113 from any heading outside that group, provided that the change is the result of a fabric-making process.
5201	A change to heading 5201 from any other chapter.
5202	A change to heading 5202 from any other heading, provided that the change is the result of garnetting. If the change to heading 5202 is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5203	A change to heading 5203 from any other chapter.
5204–5207	A change to heading 5204 through 5207 from any heading outside that group, provided that the change is the result of a spinning process.
5208–5212	A change to heading 5208 through 5212 from any heading outside that group provided the change is the result of a fabric-making process.
5301–5305	(1) Except for waste, a change to heading 5301 through 5305 from any other chapter. (2) For waste, a change to heading 5301 through 5305 from any heading outside that group, provided that the change is the result of garnetting. If the change is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5306–5307	A change to heading 5306 through 5307 from any heading outside that group, provided that the change is the result of a spinning process.
5308	(1) Except for paper yarns, a change to heading 5308 from any other heading, provided that the change is the result of a spinning process. (2) For paper yarns, a change to heading 5308 from any other heading, except from heading 4707, 4801 through 4806, 4811, and 4818.
5309–5311	A change to heading 5309 through 5311 from any heading outside that group, provided that the change is the result of a fabric-making process.
5401–5406	A change to heading 5401 through 5406 from any other heading, provided that the change is the result of an extrusion process.
5407–5408	A change to heading 5407 through 5408 from any heading outside that group, provided that the change is the result of a fabric-making process.
5501–5502	A change to heading 5501 through 5502 from any other chapter, provided that the change is the result of an extrusion process.
5503–5504	A change to heading 5503 through 5504 from any other chapter, except from Chapter 54.
5505	A change to heading 5505 from any other heading, provided that the change is the result of garnetting. If the change is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5506–5507	A change to heading 5506 through 5507 from any other chapter, except from Chapter 54.
5508–5511	A change to heading 5508 through 5511 from any heading outside that group, provided that the change is the result of a spinning process.
5512–5516	A change to heading 5512 through 5516 from any heading outside that group, provided that the change is the result of a fabric-making process.
5601	(1) A change to wadding of heading 5601 from any other heading, except from heading 5105, 5203, and 5501 through 5507. (2) A change to flock, textile dust, mill neps, or articles of wadding, of heading 5601 from any other heading or from wadding of heading 5601.
5602–5603	A change to heading 5602 through 5603 from any heading outside that group, provided that the change is the result of a fabric-making process.
5604	(1) If the textile component is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5604 from any other heading, except from heading 5001 through 5007, 5401 through 5408, and 5501 through 5502, and provided that the change is the result of an extrusion process.

HTSUS	Tariff shift and/or other requirements
	(2) If the textile component is of staple fibers, a change of those fibers to heading 5604 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5605–5606	If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5605 through 5606 from any other heading, except from heading 5001 through 5007, 5401 through 5408, and 5501 through 5502, and provided that the change is the result of an extrusion process; or If the good is of staple fibers, a change of those fibers to heading 5605 through 5606 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5607	If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5607 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5511, and provided that the change is the result of an extrusion process; or If the good is of staple fibers, a change of those fibers to heading 5607 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5608	(1) A change to netting of heading 5608 from any other heading, except from heading 5804, and provided that the change is the result of a fabric-making process. (2) A change to fishing nets or other made up nets of heading 5608: (a) If the good does not contain nontextile attachments, from any other heading, except from heading 5804 and 6002, and provided that the change is the result of a fabric-making process; or (b) If the good contains nontextile attachments, from any heading, including a change from another good of heading 5608, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5609	(1) If of continuous filaments, including strips, the country of origin of a good classifiable under heading 5609 is the country, territory, or insular possession in which those filaments, including strips, were extruded. (2) If of staple fibers, the country of origin of a good classifiable under heading 5609 is the country, territory, or insular possession in which those fibers were spun into yarns.
5701–5705	A change to heading 5701 through 5705 from any other chapter.
5801–5803	A change to heading 5801 through 5803 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 6002, and provided that the change is the result of a fabric-making process.
5804.10	A change to subheading 5804.10 from any other heading, except from heading 5608, and provided that the change is the result of a fabric-making process.
5804.21–5804.30	A change to subheading 5804.21 through 5804.30 from any other heading, provided that the change is the result of a fabric-making process.
5805	A change to heading 5805 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process.
5806	A change to heading 5806 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 5801 through 5803, and provided that the change is the result of a fabric-making process.
5807	The country of origin of a good classifiable under heading 5807 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
5808.10	(1) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to subheading 5808.10 from any other heading, except from heading 5001 through 5007, 5401 through 5406, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change of those fibers to heading 5808.10 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process.
5808.90	(1) For ornamental fabric trimmings, a change to subheading 5808.90 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process. (2) For nonfabric ornamental trimmings: (a) If the trimming is of continuous filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5408, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process; or (b) If the trimming is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process. (3) For tassels, pompons and similar articles: (a) If the good has been wholly assembled in a single country, territory, or insular possession, a change to subheading 5808.90 from any other heading; (b) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5604 through 5607, and provided that the change is the result of a spinning process; or (c) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process.
5809	A change to heading 5809 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5802, 5804, and 5806, and provided that the change is the result of a fabric-making process.

HTSUS	Tariff shift and/or other requirements
5810.10	The country of origin of goods of subheading 5810.10 is the single country, territory, or insular possession in which the embroidery was performed.
5810.91–5810.99	(1) For embroidered fabric, the country of origin is the country, territory, or insular possession in which the fabric was produced by a fabric-making process. (2) For embroidered badges, emblems, insignia, and the like, comprised of multiple components, the country of origin is the place of assembly, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (3) For embroidered badges, emblems, insignia, and the like, not comprised of multiple components, a change to subheading 5810.91 through 5810.99 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5903, 5907, 6001 through 6002, and provided that the change is the result of a fabric-making process.
5811	The country of origin of a good classifiable under heading 5811 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
5901–5903	A change to heading 5901 through 5903 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5904	(1) For goods that have been wholly assembled by means of a lamination process, a change to heading 5904 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) For all other goods, the country of origin of the good will be determined by application of § 102.21(c)(4) or, if the country of origin cannot be determined under that section, by application of § 102.21(c)(5).
5905	A change to heading 5905 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5906–5907	A change to heading 5906 through 5907 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5908	(1) Except for yarns, twine, cord, and braid, a change to heading 5908 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5802, 5806, 5808, and 6001 through 6002. (2) For yarns, twine, cord, and braid: (a) If the good is of continuous filaments, including strips, a change to heading 5908 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change to heading 5908 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5605 through 5607, and provided that the change is the result of a spinning process.
5909	A change to heading 5909 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5804, 5806, 5808, and 6001 through 6002, and provided that the good does not contain armor or accessories of nontextile material and provided that the change is the result of a fabric-making process; or A change to textile hosepiping with armor or accessories of nontextile material, of heading 5909, from any heading, including a change from another good of heading 5909, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5910	(1) For belts and belting of braid, rope, or cord: (a) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5910 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change of those fibers to heading 5910 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process. (2) For fabric belting and belts, not braids and not combined with nontextile components, whether or not reinforced with metal or other material, a change to heading 5910 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5808 through 5809, and 6001 through 6002, and provided the change is the result of a fabric-making process. (3) For fabric belts, including belts of braided materials, combined with nontextile components, whether or not reinforced with metal or other material, a change to heading 5910 from any heading, including a change from another good of heading 5910, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5911.10–5911.20	A change to subheading 5911.10 through 5911.20 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
5911.31–5911.32	(1) For goods not combined with nontextile components, a change to subheading 5911.31 through 5911.32 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6002, and provided that the change is the result of a fabric-making process. (2) For goods combined with nontextile components, a change to subheading 5911.31 through 5911.32 from any other heading, provided that the change is the result of the good being wholly assembled in single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
5911.40	A change to subheading 5911.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
5911.90	(1) For goods of yarn, rope, cord, or braid: (a) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to subheading 5911.90 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change of those fibers to subheading 5911.90 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process. (2) If the good is a fabric, a change to subheading 5911.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809, and 6001 through 6002, and provided that the change is the result of a fabric-making process. (3) If the good is a made up article other than a good of yarn, rope, cord, or braid, a change to subheading 5911.90 from any heading, including a change from another good of heading 5911, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6001–6002	A change to heading 6001 through 6002 from any heading outside that group, provided that the change is the result of a fabric-making process.
6101–6117	(1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6101 through 6117 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good is not knit to shape and does not consist of two or more component parts, a change to heading 6101 through 6117 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process. (3) If the good is knit to shape, a change to heading 6101 through 6117 from any heading outside that group, provided that the knit-to-shape components are knit in a single country, territory, or insular possession.
6201–6208	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6201 through 6208 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6201 through 6208 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6209.10.0000–6209.20.5035	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.10.0000 through 6209.20.5035 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 6209.10.0000 through 6209.20.5035 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6209.20.5040	The country of origin of a good classifiable in subheading 6209.20.5040 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6209.20.5045–6209.90.9000	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.20.5045 through 6209.90.9000 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 6209.20.5045 through 6209.90.9000 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6210–6212	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6210 through 6212 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6002, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6213–6214	The country of origin of a good classifiable under heading 6213 through 6214 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6215–6217	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6215 through 6217 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6215 through 6217 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.

HTSUS	Tariff shift and/or other requirements
6301–6306	The country of origin of a good classifiable under heading 6301 through 6306 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6307.10	The country of origin of a good classifiable under subheading 6307.10 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6307.20	A change to subheading 6307.20 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6307.90	The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6308	The country of origin of a good classifiable under heading 6308 is the country, territory, or insular possession in which the woven fabric component of the good was formed by a fabric-making process.
6309–6310	The country of origin of a good classifiable under heading 6309 through 6310 is the country, territory, or insular possession in which the good was last collected and packaged for shipment.
6405.20.60	A change to subheading 6405.20.60 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6406.10.77	(1) If the good consists of two or more components, a change to subheading 6406.10.77 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.10.77 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6406.10.90	(1) If the good consists of two or more components, a change to subheading 6406.10.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.10.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 58[illegible]8 thr[illegible]10, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6406.99.15	(1) If the good consists of two or more components, a change to subheading 6406.9[illegible] any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.99.15 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6501	(1) If the good consists of two or more components, a change to heading 6501 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6501 from any other heading, except from heading 5602, and provided that the change is the result of a fabric-making process.
6502	(1) If the good consists of two or more components, a change to heading 6502 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6502 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6503	(1) If the good consists of two or more components, a change to heading 6503 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6503 from any other heading, except from heading 5602, and provided that the change is the result of a fabric-making process.
6504	(1) If the good consists of two or more components, a change to heading 6504 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6504 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6505.90	(1) If the good consists of two or more components, a change to subheading 6505.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6505.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
6601.10–6601.91	A change to subheading 6601.10 through 6601.91 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
7019.10.15	(1) If the good is of filaments, a change to subheading 7019.10.15 from any other heading, provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change to subheading 7019.10.15 from any other subheading, except from subheading 7019.10.30 through 7019.10.90 and 7019.31 through 7019.90, and provided that the change is the result of a spinning process.

HTSUS	Tariff shift and/or other requirements
7019.10.28	(1) If the good is of filaments, a change to subheading 7019.10.28 from any other heading, provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change to subheading 7019.10.28 from any other subheading, except from subheading 7019.10.30 through 7019.10.90 and 7019.31 through 7019.90, and provided that the change is the result of a spinning process.
7019.20	A change to subheading 7019.20 from any other heading, provided that the change is the result of a fabric-making process.
8708.21	(1) For seat belts not combined with nontextile components, a change to subheading 8708.21 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process. (2) For seat belts combined with nontextile components, a change to an assembled good of subheading 8708.21 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
8804	(1) If the good consists of two or more component parts, a change to an assembled good of heading 8804 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 8804 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5804, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9113.90.40	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 9113.90.40 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 9113.90.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5802, 5806, 5809, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9404.90	The country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
9502.91	A change to an assembled good of subheading 9502.91 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
9612.10.9010	A change to subheading 9612.10.9010 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5806, 5903, 5906 through 5907, and 6002, and provided that the change is the result of a fabric-making process.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding to the table a new listing for § 10.25 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
	* * * * *	
§ 10.25	Declaration by foreign assembler and endorsement by importer that articles were assembled in whole or in part from textile components cut to shape in the U.S.	1515–0207
	* * * * *	

George J. Weise,
Commissioner of Customs.

Approved: August 16, 1995.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–21905 Filed 9–1–95; 8:45 am]

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federal register

Tuesday
September 5, 1995

Part VI

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not Covered by Subpart H; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–5290–8]

RIN 2060–AE38

National Emission Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not Covered by Subpart H

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is rescinding subpart I of 40 CFR part 61 as it applies to nuclear power reactors, pursuant to section 112(d)(9) of the Clean Air Act Amendments of 1990. This section allows EPA to decline to regulate Nuclear Regulatory Commission (NRC) licensees if the Administrator determines by rule, and in consultation with the NRC, that the regulatory program established by the NRC pursuant to the Atomic Energy Act provides an ample margin of safety to protect the public health.

A proposed rule to rescind subpart I as it applies to nuclear power reactors was published on August 5, 1991. Based upon the record compiled in the subsequent rulemaking, EPA has concluded that the NRC regulatory program controlling air emissions of radionuclides from nuclear power reactors will assure that the resultant doses will consistently and predictably be below the levels which EPA has determined are necessary to provide an ample margin of safety to protect the public health.

EFFECTIVE DATE: This final rule is effective on September 5, 1995. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of the publication of this rule.

FOR FURTHER INFORMATION CONTACT: Fran Jonesi, Risk Assessment and Air Standards Branch, Criteria and Standards Division (6602J), Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, DC 20460, (202) 233–9300.

SUPPLEMENTARY INFORMATION:

Docket

The rulemaking record is contained in Docket No. A–94–61 (cross-referenced with A–79–11) and contains all information considered by EPA in determining the doses associated with radionuclide emissions from NRC-licensed nuclear power reactors. It also contains all comments received from the public during the comment period, and a document describing the Agency's responses to the comments received. This docket is available for public inspection and copying between 8 a.m. and 5 p.m. on weekdays. A fee may be charged for copying.

A single copy of a Background Information Document (BID) (EPA/520/1–89–006–1,2,5,7) containing information on airborne radionuclide emissions to the environment from nuclear power reactors has been included in the docket. Copies of the BID may also be obtained by writing to: Director, Criteria and Standards Division (6602J), Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, DC 20460.

A. Background

1. Regulatory History

On October 31, 1989, EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPS) under Section 112 of the Clean Air Act to control radionuclide emissions to the ambient air from a number of different source categories. 54 FR 51654 (December 15, 1989). Subpart I of 40 CFR part 61 covers two groups of facilities: (1) Facilities licensed and regulated by the Nuclear Regulatory Commission (NRC) and its individual Agreement States, and (2) federal facilities which are not licensed by the NRC and are not owned or operated by the Department of Energy. The first group is quite diverse, and includes facilities which have received a license to use or possess nuclear materials such as hospitals, medical research facilities, radiopharmaceutical manufacturers, laboratories and industrial facilities, as well as facilities involved in the uranium fuel cycle (the conversion of uranium ore to electric power) such as uranium mills (other than radon releases), fuel fabrication plants, and nuclear power reactors. It is a subset of the uranium fuel cycle facilities, nuclear power reactors, which is the subject of today's action. The second group consists of federal facilities such as naval nuclear facilities which are not licensed by the NRC and are not affected in any way by the proposals to rescind subpart I with respect to NRC licensees.

Subpart I limits radionuclide emissions to the ambient air to amounts which would not cause any member of the public to receive in any year an effective dose equivalent (ede) greater than 10 millirem, of which no more than 3 millirem ede may be caused by radioiodines.

When subpart I was originally promulgated in December 1989, EPA simultaneously granted reconsideration of subpart I based on information received late in the rulemaking on the subject of duplicative regulation by NRC and EPA of NRC-licensed facilities and on the potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and granted a 90-day stay of subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B). That stay expired on March 15, 1990. EPA subsequently extended the stay of the effective date of subpart I on several occasions pursuant to the authority provided by section 10(d) of the Administrative Procedure Act, 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (See 55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990). On July 26, 1991, EPA issued a final rule staying the effectiveness of subpart I of 40 CFR part 61 for NRC-licensed commercial nuclear power reactors pending completion of today's rulemaking. See 56 FR 37158 (September 26, 1991), and 40 CFR 61.109(b).

EPA also stayed subpart I for NRC and Agreement State licensees other than nuclear power reactors while EPA was collecting additional information necessary to make a determination under section 112(d)(9) of the 1990 Clean Air Act Amendments. See 56 FR 18735 (April 24, 1991), and 40 CFR 61.109(a). However, on September 25, 1992, the D.C. Court of Appeals issued a decision that EPA had exceeded its authority by staying subpart I while EPA was collecting information needed to make a determination under section 112(d)(9). *Natural Resources Defense Council* v. *Reilly,* 976 F.2d 36 (D.C. Cir. 1992). The stay for licensees other than nuclear power reactors expired before the *NRDC* decision could be implemented on November 15, 1992, and subpart I took effect for these licensees on November 16, 1992.

2. New Authority in the Clean Air Act Amendments

In November of 1990, Congress enacted amendments to the Clean Air Act. Section 112(d)(9) of the Clean Air Act Amendments allows EPA to decline to regulate NRC-licensed facilities if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

The legislative history of section 112(d)(9) indicates the manner in which Congress intended that EPA interpret the phrase "an ample margin of safety to protect the public health" when making the finding required by section 112(d)(9). The Conference Report indicates that the "ample margin of safety" the Administrator must find under section 112(d)(9) is the same "ample margin of safety" that governed the development of standards promulgated under section 112 prior to the 1990 amendments. H.R. Rep. 952, 101st Cong., 2d Sess. 339 (1990). The two-step process by which EPA identified an "ample margin of safety" was described in detail in a U.S. Court of Appeals decision, *NRDC* v. *EPA,* 824 F.2d 1146 (D.C.Cir 1987) (the Vinyl Chloride decision). The 1989 NESHAPs standard represents the Agency's application of the *Vinyl Cloride* decision and is consistent with the Agency's approach for regulating hazardous air pollutants under section 112 of the Clean Air Act.

3. Construction of Section 112(d)(9)

From the language of section 112(d)(9), it is apparent that where EPA has already specifically determined what level of emissions must be achieved to provide an "ample margin of safety," that level is the benchmark by which EPA must evaluate the adequacy of the NRC program. In the present case, EPA specifically found when it promulgated 40 CFR part 61, subpart I, that an emission level that would result in a dose no greater than 10 mrem/year was necessary to provide the requisite "ample margin of safety." 54 FR 51654 (December 15, 1989).

Section 112(d)(9) does not, however, require exact equivalence between the EPA and NRC programs applicable to a particular category of licensees before EPA may decline to regulate radionuclide emissions from that category. Rather, it requires that EPA conclude that implementation of the NRC program as a whole will achieve substantive protection of the public health equivalent to or better than that which would be achieved by enforcement of an EPA standard. Thus, if the NRC program as a whole will assure that emissions from all affected licensees remain below the EPA standard, the NRC program may be deemed to provide an ample margin of safety, regardless of whether this results from enforcement by NRC of a single numerical standard.

In deciding whether EPA may decline to regulate a particular category or subcategory of NRC or Agreement State licensees, EPA construes section 112(d)(9) as requiring that EPA determine: (1) That emissions from NRC licensees (or Agreement State licensees when authority to regulate the licensees has been relinquished by NRC) in that category or subcategory will be consistently and predictably at or below a level resulting in a dose of 10 mrem/year, and (2) that NRC (or the Agreement States) can and will require any individual licensee in that category or subcategory with emissions that cause a dose exceeding 10 mrem/year to reduce the emissions sufficiently that the dose will not exceed 10 mrem/year.

4. Reconsideration of Subpart I

After the adoption of section 112(d)(9), EPA reviewed the information available to the Agency, including the information provided during the Agency's reconsideration of subpart I, to decide whether it could determine, for particular categories of licensees, that the NRC regulatory program protects public health with an ample margin of safety. EPA's initial analysis focused on two general issues: (1) Whether the NRC regulatory program in practice results in sufficiently low doses to protect the public health with an ample margin of safety; and (2) whether the NRC program is sufficiently comprehensive and thorough and administered in a manner which will continue to protect public health in the future.

a. Nuclear Power Reactors

During its initial assessment of the NRC program under section 112(d)(9), EPA concluded that the Agency had sufficient information concerning NRC regulation of nuclear power reactors to enable EPA to make the requisite finding concerning the adequacy of the NRC program. For nuclear power reactors, EPA made a preliminary determination that the NRC regulatory program protects public health with an ample margin of safety. On March 13, 1991, EPA issued an Advanced Notice of Proposed Rulemaking announcing the Agency's intention to enter into a rulemaking to rescind subpart I as applied to nuclear power reactors. (56 FR 10524). This was followed on August 5, 1991 by a Proposed Rule to rescind subpart I with respect to nuclear power reactors. (56 FR 37196).

b. Licensees other than Nuclear Power Reactors

After reviewing the available information for licensees other than nuclear power reactors, EPA concluded that it lacked sufficient information concerning actual emissions from these facilities to make the substantive determination contemplated by section 112(d)(9). Accordingly, EPA undertook an extensive study in order to determine the doses resulting from radionuclide emissions at these facilities. EPA surveyed a randomly selected subset of all licensed facilities, as well as a group of "targeted" facilities chosen because of an expectation that they would have higher emissions.

EPA evaluated the results of its study of NRC and Agreement State licensees other than nuclear power reactors using the COMPLY computer program. None of the facilities evaluated appeared to cause a dose exceeding the 10 mrem/year level established by subpart I. When the results of the survey were statistically extrapolated to the entire population of NRC and Agreement State licensees, EPA concluded that virtually all of the facilities would cause doses to members of the public which are below 10 mrem/year.

After reviewing the current NRC regulatory program, and considering the likely effect of additional measures which NRC had agreed to adopt pursuant to a Memorandum of Understanding, EPA proposed to rescind subpart I for NRC and Agreement State licensees other than nuclear power reactors on December 1, 1992. See 57 FR 56877 (December 1, 1992). However, EPA subsequently identified several concerns regarding the Agency's ability to make the substantive finding for these licensees required by section 112(d)(9). In particular, EPA was concerned that the present NRC program would not assure that radionuclide emissions from each such licensee would cause a dose no greater than 10 mrem/year, and that NRC or the individual Agreement State might not be able to require a particular licensee exceeding 10 mrem/year to reduce its emissions.

EPA initiated consultations with the NRC intended to resolve these concerns, and EPA and NRC have recently agreed on proposals which, when fully implemented, should provide a satisfactory basis for rescission of subpart I for NRC and Agreement State licensees other than nuclear power reactors. In a forthcoming notice, EPA will reaffirm its proposal to rescind subpart I for NRC and Agreement State licensees other than nuclear power reactors, describe the revisions to the NRC program which NRC has proposed, and provide an additional opportunity for comment concerning the sufficiency of the proposed revisions to support the finding required by section 112(d)(9).

B. Assessment of the NRC Program Controlling Air Emissions of Radionuclides From Nuclear Power Reactors

In order to determine whether the NRC regulatory program controlling air emissions from NRC-licensed commercial nuclear power reactors provides an ample margin of safety as required under section 112(d)(9), EPA has evaluated the doses which result from such emissions as well as the specific elements of the NRC program which operate to control or limit such emissions. In performing this analysis, EPA has focussed on the following questions:

(1) Do current radionuclide emissions during routine operations of nuclear power reactors licensed by NRC result in doses no greater than 10 mrem/year?

(2) Will the NRC regulatory program assure that routine radionuclide emissions from licensed nuclear power reactors in the future result in doses which are consistently and predictably no greater than 10 mrem/year?

(3) If at some point an individual nuclear power reactor has routine radionuclide emissions resulting in a dose greater than 10 mrem/year, will NRC require that the facility in question take actions which will reduce emissions to a level resulting in a dose no greater than 10 mrem/year?

1. Doses Resulting From Radionuclide Emissions From Nuclear Power Reactors

Of the 100 light-water-cooled commercial nuclear power reactors operating in the United States at the time that EPA's analysis was conducted, 63 are pressurized water reactors (PWRs) and 37 are boiling water reactors (BWRs). These facilities are licensed by the NRC and involve operations with the potential for large releases of radionuclides.

During the rulemaking that resulted in the promulgation of the final rule in 1989, EPA performed exposure and risk assessments for radionuclide releases from Uranium Fuel Cycle (UFC) facilities, a category which includes nuclear power reactors. The results of these analyses showed that the most exposed individual receives a lifetime dose associated with a risk of fatal cancer of 1.5×10^{-4}. Almost all individuals in the exposed population received a lifetime risk of less than 1×10^{-6}. These estimated risks are for UFC facilities as a whole. For the models used for PWRs and BWRs, the values were much lower. The risk to the most exposed individuals were 3×10^{-6} and 5×10^{-6} for the model PWR and BWR, respectively. The predicted incidences of fatal cancers per year in the populations surrounding these model plants were 7×10^{-4} and 1×10^{-3} for the PWR and BWR, respectively. EPA determined that baseline emissions from the UFC category were at a safe level, i.e., protected the maximally exposed individual to a lifetime risk level of approximately one in ten thousand.

EPA independently calculated doses for every site with one or more operating nuclear power reactor using 1988 emissions data, the most recent year for which a complete set of data was available at that time. If a plant had below normal emissions in 1988, emissions data for a more typical year were used in the analysis. Site-specific data were obtained to the maximum extent practical and used as input to the CAP–88 computer codes. In all cases, the calculated doses to the maximally exposed individual did not exceed 1.0 mrem/year ede. This is equivalent to a maximum lifetime individual risk of approximately 3 in 100,000. Thus, the NRC regulatory program, for the years examined, resulted in doses which are at least 10 times lower than the 10 mrem/year ede standard established by subpart I.

EPA also compared the 1988 data with historical data, dating back to 1975, to determine if the 1988 data were representative of long term trends in population and individual doses. Although the populations around the reactor facilities and the facility capacity factors have increased over the last fifteen years, EPA determined that the average annual collective population doses had steadily declined.

During the present rulemaking, EPA conducted a review of the nuclear power reactor segment of the uranium fuel cycle and determined that the individual doses associated with radionuclide emissions from nuclear power reactors are even lower than were previously estimated. This latest analysis estimates that the most exposed individuals receive doses from nuclear power plants of less than 1.0 mrem/year ede from all radionuclides and a dose of less than 0.01 mrem/year ede from radioiodines. The highest estimated dose in these more recent analyses remains at least an order of magnitude below the 10 mrem/year ede standard established by subpart I.

Thus, the evidence clearly demonstrates that current radionuclide emissions from nuclear power reactors licensed by NRC result in doses no greater than 10 mrem/year. The remaining questions considered by EPA require assessment of the elements of the NRC program which control and limit air emissions from nuclear power reactors. An assessment of the NRC regulatory framework which applies to licensed nuclear power reactors follows.

2. The NRC Regulatory Program for Nuclear Power Reactors

Section 2 of the Atomic Energy Act of 1954 (AEA), as amended, 42 USC 2012, emphasizes that an important national goal in regulating utilization facilities, which would include all nuclear power reactors, is protecting the "health and safety of the public." Pursuant to that mandate, NRC has an extensive regulatory program covering all facets of reactor design, construction, and operation, including regulations specifically addressing the release, airborne and otherwise, of radionuclides.

a. Regulations Governing Radionuclide Emissions

There are three regulations which control routine Radionuclide emissions from commercial nuclear power plants: (1) 10 CFR part 50, Appendix I, "Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion 'As Low As is Reasonably Achievable' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents"; (2) 40 CFR part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations"; and (3) 10 CFR part 20, "Standards for Protection Against Radiation."

10 CFR part 50, Appendix I, provides numerical guides for design objectives and limiting conditions for operation to assist licensees in meeting the requirements of §§ 50.34a and 50.36a that radioactive material in effluents released to unrestricted areas be kept as low as is reasonably achievable (ALARA). The licensee satisfies the design objectives, in part, by demonstrating that the gaseous radionuclide releases to the atmosphere from each reactor on site will not result in an estimated average annual air dose in excess of 10 millirad (absorbed dose) for gamma exposure and 20 millirad (absorbed dose) for beta exposure. These limits are air doses, resulting from exposure to noble gases in unrestricted areas, which could be occupied by an individual. Lower radionuclide release rates may be required to satisfy the design objectives if it appears that the releases are likely to result in an estimated annual external dose from gaseous effluents, to any individual in an unrestricted area, in excess of 5 mrem/year. Alternatively, higher release rates may be acceptable if the applicant can provide reasonable assurance that the external dose to any individual in an unrestricted area, from noble gases, will not exceed 5 mrem/year to the whole body. [For noble gases, the whole body dose is the same as the effective dose equivalent.] The applicant must also demonstrate that the calculated annual total quantity of all radioiodines and radioactive particulates released to the atmosphere from each reactor will not cause exposures to any individual in unrestricted areas from all pathways in excess of 15 mrem/year to any organ. A dose of 15 mrem/year to the thyroid from radioiodines will result in an effective dose equivalent of less than 0.5 mrem/year, as the organ weighting factor for calculating the ede for the thyroid is 0.03. Thus, 10 CFR part 50, Appendix I, limits the total effective dose equivalent to approximately 6 mrem/year because essentially all of the internal emitters are radioiodines.

The limiting conditions of operation (LCOs) set forth in Appendix I are used to develop technical specifications which are included in the facility's license. The technical specifications assure that radionuclide releases during operations are consistent with the design objectives to maintain off-site doses ALARA. The technical specifications are enforceable requirements under NRC's enforcement policy (10 CFR part 2, Appendix C).

40 CFR part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," requires uranium fuel cycle operations to be conducted in such a manner that there is reasonable assurance that the annual radiation dose equivalent to any member of the public from all uranium fuel cycle sources does not exceed 25 mrem to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ. The standard applies to gaseous and liquid effluent pathways and direct radiation from these facilities.

In 1981, the NRC amended its regulations to incorporate these standards. Sections 20.105(c) and 20.106(g) specifically required licensees engaged in uranium fuel cycle operations to comply with the 40 CFR part 190 dose limits.

10 CFR part 20, "Standards for Protection Against Radiation," consists of standards for protection against radiation hazards arising out of activities conducted under licenses issued pursuant to the AEA of 1954, as amended. The portions of part 20 that applied to radionuclide emissions from licensed facilities were contained in § 20.105, which set permissible levels of radiation in unrestricted areas, and § 20.106, which established limits on radioactivity in effluents to unrestricted areas. On May 21, 1991 (56 FR 23360), major revisions to part 20 were published by the NRC, and compliance with the revisions became mandatory for all licensees on January 1, 1994. The revised rule implements 1987 Presidential guidance on occupational radiation protection and the recommendations of scientific organizations to establish risk-based limits and a system of dose limitation in accordance with the guidance published by the International Commission on Radiation Protection. In adopting the risk-based methodology, the NRC established an explicit dose limit for members of the public of 2 mrem/hr not to exceed 100 mrem/year ede, and extended an explicit ALARA requirement to all licensees. Doses resulting from direct radiation and radionuclides released in gaseous and liquid effluents must be evaluated in determining compliance with the numerical limits. The revised part 20 also requires licensees to comply with the standards set forth in 40 CFR part 190 for the uranium fuel cycle (10 CFR 20.1301(d)).

In addition to these numerical standards, part 20 also requires that each licensee make every reasonable effort to maintain radiation exposures, and releases of radioactive material in effluents to unrestricted areas, to levels which are ALARA (10 CFR 20.1101(b)).

The principal radionuclides routinely released in the gaseous effluents from commercial light-water reactors are noble gases and radioiodines. The whole body dose from noble gas emissions per reactor is limited by the 5 mrem/year limit of Appendix I. The organ doses from radioiodines and particulates are limited to 15 mrem/year. For radioiodines, where the thyroid gland is the critical organ, 15 mrem/yr effective dose equivalent equates to 0.45 mrem/year. Thus, the total ede allowed under Appendix I is even less than 6 mrem/year. The guidelines set forth in Appendix I and the standards set forth in 40 CFR part 190 together establish a regulatory framework that provides a high level of assurance that the routine emissions from commercial light water reactors will not result in exposures in excess of the EPA 10 mrem/year ede standard.

b. Monitoring

Compliance with 10 CFR part 50, Appendix I, and with 40 CFR part 190 is demonstrated through the establishment of Limiting Conditions of Operation (LCOs) and Radiological Effluent Technical Specifications (RETS) for each nuclear power reactor in accordance with 10 CFR 50.36a. The LCOs and associated RETS require that if the quantity of radioactive material actually released in effluents to unrestricted areas in any calendar quarter results in radiation exposure, calculated on the same basis as the design objectives, exceeding one half the annual design objectives, the licensee is required to investigate the cause of the release, define and initiate corrective actions to prevent a recurrence, and report these actions to the NRC within 30 days from the end of the quarter in which the release occurred.

The LCOs and RETS also require licensees to initiate effluent and environmental monitoring programs to provide (1) data on the types and quantities of radionuclides released, (2) the levels of radiation and radioactive materials in the environment, and (3) changes in land use and demography in the vicinity of the site that pertain to compliance with the LCOs. If the monitoring data reveal that the relationship between the quantities of radioactive materials released and the doses to individuals in unrestricted areas is significantly different than that assumed in the calculations used to assess compliance with the design objectives, the NRC may require a modification of the RETS.

In order to provide assistance to licensees in complying with the LCOS and preparing their RETS, the NRC has issued the following guidance: NUREG–0472 and –0473, "Standard Radiological Effluent Technical Specifications for PWRs (and BWRs)," U.S. NRC, January 1983; NUREG–0133, "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants," U.S. NRC, October 1978; NUREG–1301 and NUREG–1302, "Offsite Dose Calculation Manual Guidance: Standard Radiological Effluent Controls for Pressurized Water Reactors (and Boiling Water Reactors)," U.S. NRC, April 1991; and U.S. NRC Regulatory Guide 1.21, "Measuring, Evaluating, and Reporting Radioactivity in Solid Waste and Releases of Radioactive Material in Liquid and Gaseous Effluents from Light-Water-Cooled Nuclear Power Plants".

These documents provide highly detailed standard RETS and procedures for implementing them. Detailed guidance is provided in the areas of effluent monitoring instrumentation; specific equations, assumptions and methodologies addressing short- and long-term radioactive releases; and the use of gaseous radwaste treatment systems.

c. Inspections

To ensure that licensees are meeting all regulatory and license-specific effluent and environmental protection requirements, each facility receives approximately 2 radiation protection inspections per year by regional NRC inspectors. Along with the plants' reporting requirements, the inspections determine the degree to which each plant is in compliance with its license and technical specifications, including its RETS. If problem areas are identified, follow-up inspections are scheduled in order to ensure that deficiencies are corrected. If a facility appears to have persistent problems in particular areas, the facility is subjected to inspections on a more frequent basis.

The periodic inspections of the RETS include a review of records and procedures, interviews with plant personnel, and audits of the licensee's effluent and environmental measurements program. The results of these analyses not only indicate the level of radioactive material in the effluent, but also indicate the degree of accuracy and precision of the facility's own effluent monitoring equipment.

Each operating commercial power plant has at least one full time NRC Senior Resident Inspector who provides continuous health and safety oversight of plant operations. Sites with multiple reactors have at least one Resident Inspector per reactor. If problem areas arise pertaining to compliance with the RETS, the Resident Inspector may request special inspections and/or audits of related plant operations on a more frequent basis.

All inspections performed by either on-site Resident Inspectors or inspectors from the NRC Regional offices or NRC Headquarters are fully documented. These reports are made available to the public in the NRC Public Document Rooms located in the host community, the regional offices, and in Washington, DC. The reports are filed in the separate docket established for each reactor site. Reportable licensee events include exceeding effluent release rates, worker overexposures, procedure violations, and accidents. If detailed event information is desired, it can be obtained from the LER filed in the individual docket.

C. Summary of Major Comments and EPA Responses

This section contains a brief description of the major comments received relating to the Agency's rescission of 40 CFR part 61, subpart I for nuclear power reactors. During the comment period for other rulemakings, such as the proposed stays for subpart I, the Agency received additional comments on the specific issue of whether to rescind subpart I for nuclear power reactors. EPA stated at the time that such substantive comments would be addressed at the appropriate time following a proposed rule to rescind subpart I. These comments are now extensively discussed in the Response to Comments Document which has been placed in the docket for public review. The Response to Comment document also addresses those comments received during the 60-day comment period for the subject rulemaking as well as comments presented at the September 1991 public hearings held in Washington, DC and in Seattle, Washington.

A major concern expressed by commenters relates to the regulatory authority of the states and how action such as this rescission, taken pursuant to section 112(d)(9), might affect the states' authority under the CAA to establish radionuclide air emission standards. This issue was recently addressed in a July 2, 1993 letter from Robert M. Bernero, Director of the Office of Nuclear Material Safety and Safeguards to Margo Oge, Director of EPA's Office of Radiation and Indoor Air. Mr. Bernero states that the NRC's Office of the General Counsel has examined the CAA, and relevant portions of the legislative history, "and has concluded that the passage of the 1990 CAA amendments had no effect on the preexisting power of the States under section 116 to establish radionuclide air emission standards, regardless of any action EPA might take pursuant to section 112(d)(9)." EPA concurs with NRC's construction. In addition, this issue was extensively discussed by the Senate during floor debate for the Clean Air Act Amendments of 1990. Passage of the "Simpson amendment" failed on the first vote due to similar concern that the amendment somehow affected states' rights and required resolution before the amendment ultimately succeeded in passage. As explained by Senator Burdick, the bill does not affect existing states' rights. "Section 112(d)(9) provides for State authority for radionuclide emissions in the same manner and to the same extent as does existing section 116" of the Clean Air Act, which contains the provision that "nothing in this Act shall preclude or deny the right of any state or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of air pollutants * * *" April 3, 1990 Congressional Record-page S3798.

Another significant issue which arose during the comment period concerned whether the performance and testing requirements imposed on licensees to assure that the regulatory requirements for stack emissions monitoring and off-site air monitoring are being met. After carefully reviewing NRC's regulatory requirements for airborne effluent and environmental monitoring, the Standard Review Plan and Regulatory Guides, and the inspection procedures that the NRC uses to assure that licensees have installed and are maintaining monitoring systems in conformance with the regulatory requirements, EPA concluded that NRC's program assured that these factors were being adequately addressed and does not preclude EPA's rescission of Subpart I.

D. Final Action

This final rule rescinding subpart I for commercial nuclear power reactors licensed by the NRC is the culmination of the Agency's reconsideration of Subpart I for this category of licensees. EPA has determined that current radionuclide emissions from NRC-licensed nuclear power reactors during routine operations are consistently well below levels which would result in doses exceeding 10 mrem/year ede. Moreover, EPA has comprehensively evaluated the individual elements of the NRC regulatory program which control radionuclide emissions from these facilities. Based on this evaluation, EPA has determined that radionuclide emissions during routine operations of NRC-licensed nuclear power reactors are expected to remain well below levels which would result in a dose exceeding 10 mrem/year. EPA has further determined that NRC can and will require any licensed nuclear power reactor which has radionuclide emissions resulting in a dose exceeding 10 mrem/year to take specific actions which will reduce emissions to a level which results in a dose below 10 mrem/year. Based on these determinations, EPA finds under section 112(d)(9) that the NRC regulatory program for licensed commercial nuclear power reactors provides an ample margin of safety to protect public health.

This finding with respect to licensed commercial nuclear power reactors does not apply to other NRC or Agreement State licensees. Although EPA anticipates that the revisions to the NRC program for licensees other than nuclear power reactors proposed by NRC as part

of recent consultations with EPA will be sufficient to support the finding required by section 112(d)(9) for these licensees as well, EPA does not intend to conclude the rulemaking concerning rescission of Subpart I for these other licensees until NRC has taken final action concerning its proposals.

EPA is prepared to proceed with rescission for nuclear power reactors immediately due to several factors which are unique to this category of facilities. NRC has established an ALARA guideline for nuclear power reactors which equates to approximately 6 mrem/year ede, and the individual facilities have consistently committed to achieving this level. Measured emissions from nuclear power reactors have also been consistently well below this target level.

In addition, NRC-licensed nuclear power reactors are a relatively small, homogeneous and well-characterized group of facilities. EPA knows enough about the magnitude of routine emissions from nuclear power reactors, the technology utilized to limit such emissions, and the administration of the NRC program to control such emissions to conclude that NRC will not accept or countenance ALARA emissions from these facilities which would result in a dose exceeding 10 mrem/year. NRC itself maintains direct oversight of licensed nuclear power reactors. In contrast, NRC licensees other than nuclear power reactors are a heterogeneous category and consists of a variety of different types of facilities. Based on the available database in EPA's 1992 BID, about 6,000 licensees are administered by NRC and about 12,000 licensees are administered by the NRC Agreement States.

In determining whether the NRC regulatory program for a given category of licensees provides an ample margin of safety to protect the public health, EPA need not establish exact equivalence between the EPA regulatory program under the Clean Air Act and the NRC regulatory program. Instead, EPA has examined the enforceable elements in the NRC program to determine whether they will assure an equivalent degree of protection for public health. EPA is confident that the NRC regulatory program for nuclear power reactors provides protection as stringent as subpart I, and thereby protects public health with an ample margin of safety. Based on this conclusion, EPA is today rescinding 40 CFR part 61, subpart I, as it applies to NRC-licensed commercial nuclear power reactors.

Today's action is based upon the Agency's determinations concerning present emissions from licensed nuclear power reactors, and on the Agency's evaluation of the elements of the current NRC regulatory program. If the NRC program were to change in the future in a manner which permitted radionuclide emissions from routine operations of nuclear power reactors to cause doses exceeding 10 mrem/year, EPA would consider repromulgating subpart I for such licensees at that time.

D. Judicial Review

Any petition for judicial review of this final rule must be filed in the United States Court of Appeals for the District of Columbia within 60 days from the date this rule is published in the **Federal Register**. Only an objection to the rule which was raised with reasonable specificity during the period for public comment (including public hearings) may be raised as part of any petition for judicial review.

E. Miscellaneous

1. Paperwork Reduction Act

The reporting and record keeping requirements rescinded in today's notice were approved by OMB as part of the Information Collection Request for the Radionuclide NESHAP, OMB control number 2060–0191. The EPA has submitted an Information Correction Worksheet to OMB to delete the burden associated with these requirements from that clearance.

2. Executive Order 12866

Under Executive Order 12866, (58 FR 57735, October 4, 1993) the Agency must determine whether this regulation, if promulgated, is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action will not result in an annual effect on the economy of $100 million or another adverse economic impact, does not create a serious inconsistency or interfere with another agency's action, and does not materially alter the budgetary impacts of entitlements, grants, user fees, etc. However, EPA has concluded that this action may be construed as raising novel legal or policy issues. Accordingly, EPA has submitted this action to OMB and has obtained the requisite approval under the terms of Executive Order 12866.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities. However, section 605(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant impact on a substantial number of small entities.

It was found in the 1989 rule for 40 CFR part 61, subpart I, that there was no significant impact on small business entities. There has been no change in this finding. Because the changes ease the regulatory burdens associated with provisions of the existing final rule, EPA believes that this rule will have no adverse effect on small businesses. For the preceding reason, I certify that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Radionuclides, Vinyl Chloride.

Dated: August 28, 1995.

Carol M. Browner,
Administrator.

Part 61 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Section 61.100 is revised to read as follows:

§ 61.100 Applicability.

The provisions of this subpart apply to facilities other than nuclear power reactors which are licensed by the Nuclear Regulatory Commission. This subpart also applies to facilities owned or operated by any Federal agency other than the Department of Energy, except that this subpart does not apply to disposal at facilities regulated under 40 CFR part 191, subpart B, or to any uranium mill tailings pile after it has been disposed of under 40 CFR part 192, or to low energy accelerators, or to any NRC-licensee that possesses and uses radionuclides only in the form of sealed sources.

§ 61.107 [Amended]

3. Section 61.107 is amended by removing paragraph (c)(1) and by redesignating paragraphs (c)(2) and (3) as (c)(1) and (2).

§ 61.109 [Removed]

4. Section 61.109 is removed.

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CFR Index and Findings Aids	(869-026-00053-1)	36.00	Jan. 1, 1995
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

[9] Note: Title 19, CFR Parts 141-199, revised 4-1-95 volume is being republished to restore inadvertently omitted text.

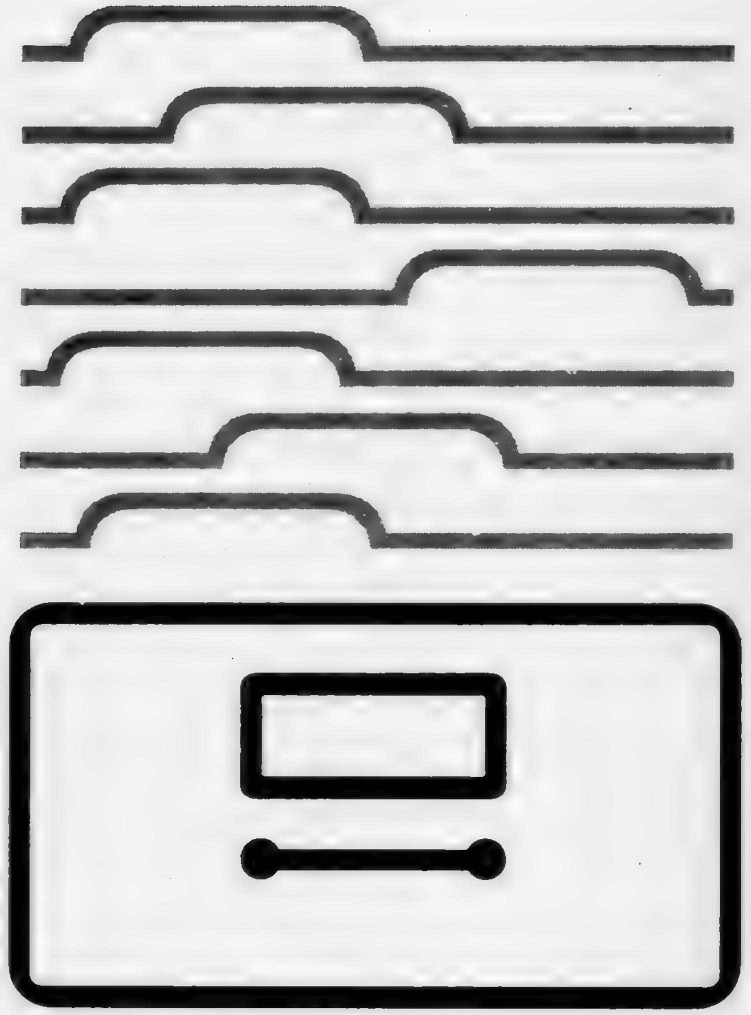

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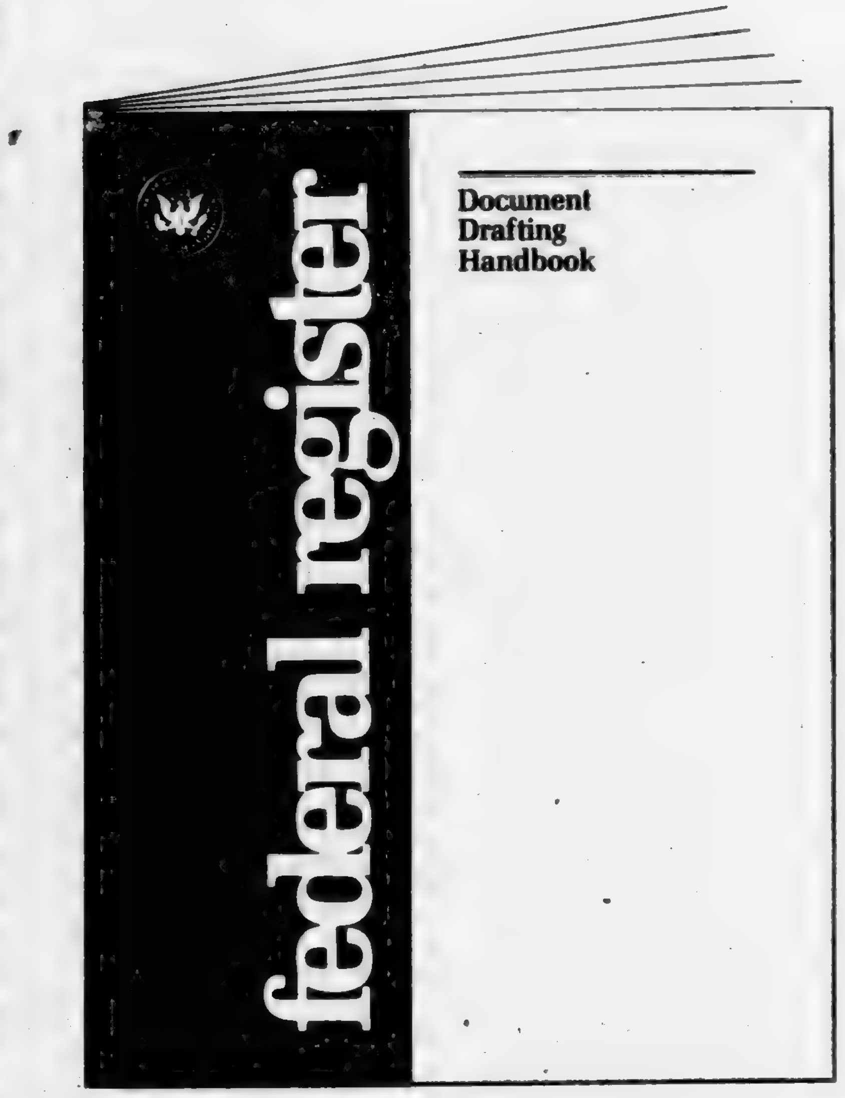

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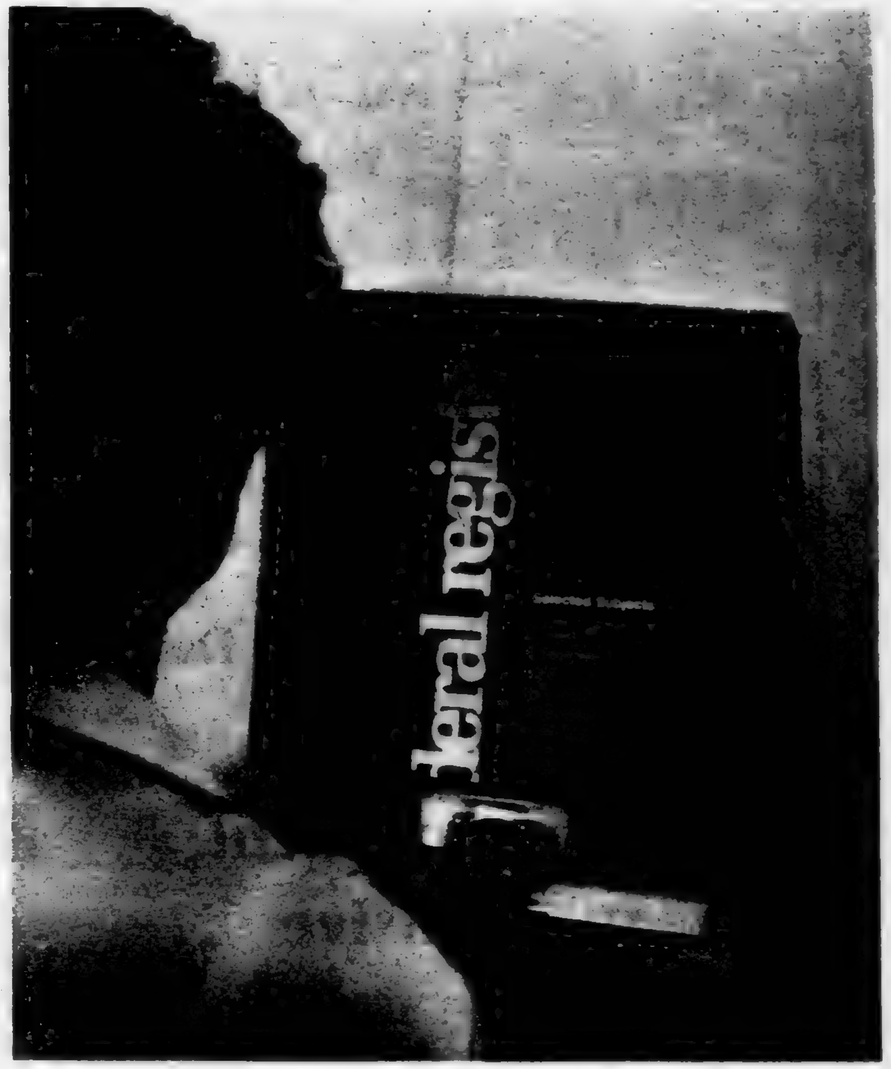

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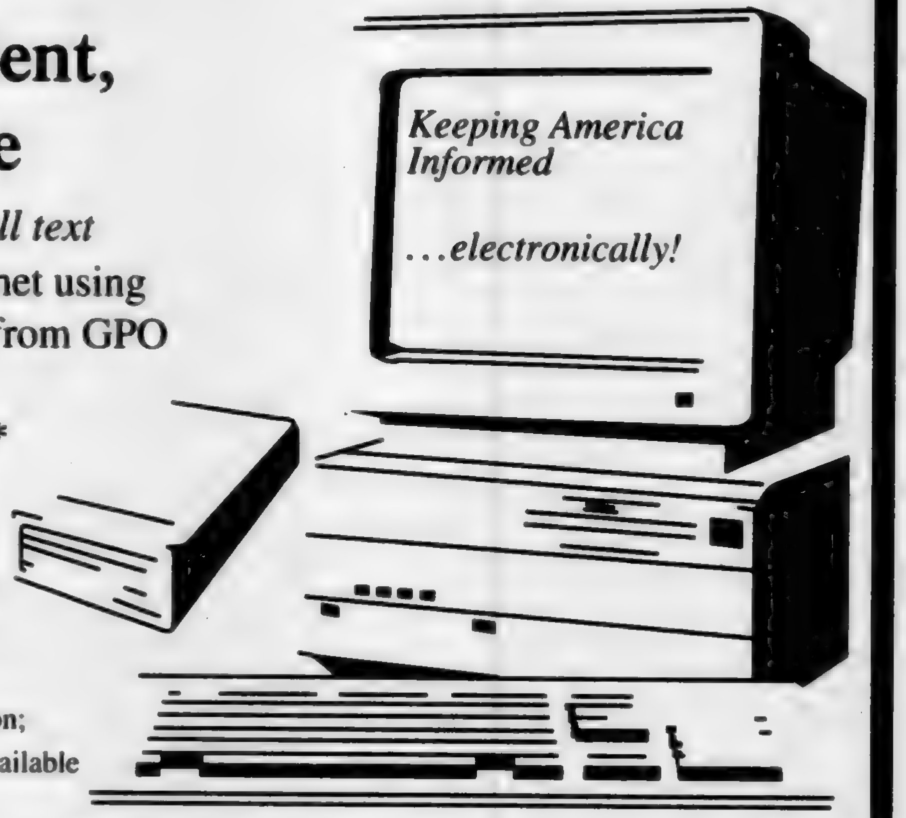

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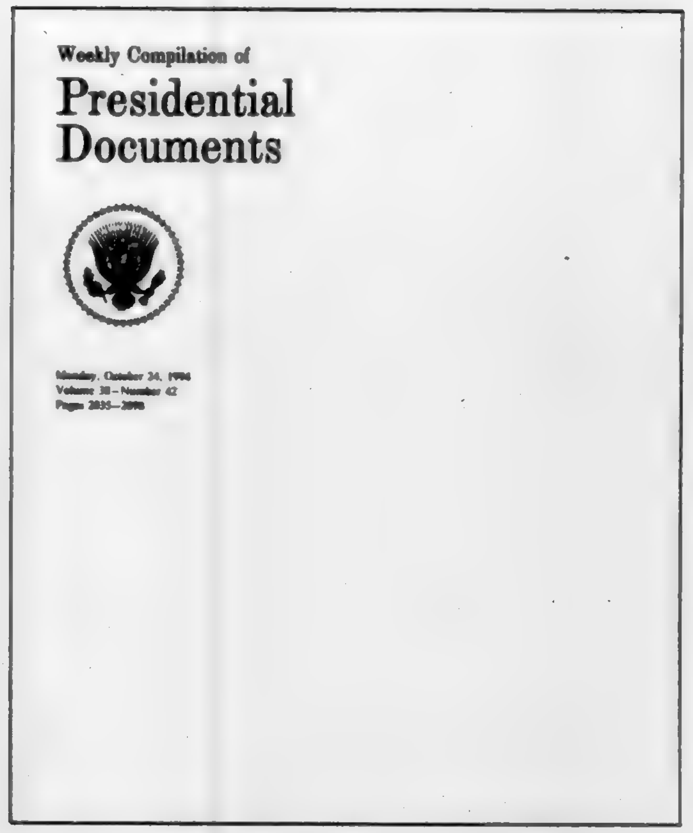
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Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 60, No. 172
Wednesday, September 6, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulauons, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG53

Prevailing Rate Systems; Abolishment of Certain Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Federal Wage System special wage schedules for printing positions in the Los Angeles, California; San Diego, California; San Francisco, California; and Seattle-Everett-Tacoma, Washington, wage areas. Printing and lithographic employees in these wage areas will now be paid rates from the regular wage schedule for their respective wage area.

DATES: This interim rule becomes effective on September 6, 1995. Comments must be received by October 6, 1995. Employees paid rates from special wage schedules for printing positions in these areas will continue to to paid rates from those schedules until their conversion to the regular wage schedules for their respective wage areas effective on the first day of the first full pay period beginning on or after September 6, 1995.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the Los Angeles, San Diego, San Francisco, and Seattle-Everett-Tacoma Printing and Lithographic wage schedules be abolished and that the regular wage schedule for each area apply to printing employees. Federal employment in printing and lithographic occupations in these wage areas has declined in recent years. Only a small number of employees are now paid from these special wage schedules, and only a few of these employees actually benefit by being paid from the special schedule rather than the regular wage schedule. Most of the covered employees are paid "floor rates" established under the 5 CFR 532.279 provision that no maximum rate on a special printing schedule may be less than the maximum rate for the corresponding grade on the regular wage schedule for the wage area. In addition, with the reduced number of employees, it has been difficult to comply with the requirement that workers paid from the special printing schedule participate in the special wage survey process.

Los Angeles, California: Federal employment in printing and lithographic occupations in the Los Angeles wage area declined from 49 in 1993 to a current total of 16 in 1995. The special printing and lithographic wage schedule for the Los Angeles wage area now applies to 15 Defense Printing Service employees and 1 Department of Agriculture employee. The last full-scale survey involved the substantial work effort of contacting 72 printing establishments spread over Los Angeles County. Upon abolishment of the Los Angeles special printing schedule, three employees will become entitled to pay retention when converted to the regular wage schedule. The remaining 13 employees will benefit upon conversion by receiving higher regular wage rates.

San Diego, California: Federal employment in printing and lithographic occupations in the San Diego wage area declined from 46 in 1993 to a current total of 23 in 1995. The special printing and lithographic wage schedule for the San Diego wage area now applies to 23 Defense Printing Service employees. The last full-scale survey involved the substantial work effort of contracting 65 printing establishments spread over San Diego County. Upon abolishment of the San Diego special printing schedule, six employees will become entitled to pay retention when converted to the regular wage schedule. The remaining 17 employees will benefit upon conversion by receiving higher regular wage rates.

San Francisco, California: Federal employment in printing and lithographic occupations in the San Francisco wage area declined from 55 in 1993 to a current total of 16 in 1995. The special printing and lithographic wage schedule for the San Francisco wage area now applies to seven General Services Administration employees, five Defense Printing Service employees, two National Aeronautics and Space Administration employees, one Department of Agriculture employee, and one United States Coast Guard employee. The last full-scale survey involved the substantial work effort of contacting 71 printing establishments spread over 8 counties in the San Francisco metropolitan area. Upon abolishment of the San Francisco special printing schedule, two employees will become entitled to pay retention when converted to the regular wage schedule. The remaining 14 employees will benefit upon conversion by receiving higher regular wage rates.

Seattle-Everett-Tacoma, Washington: Federal employment in printing and lithographic occupations in the Seattle-Everett-Tacoma wage area declined from 45 in 1994 to a current total of 19 in 1995. The special printing and lithographic wage schedule for the Seattle-Everett-Tacoma wage area now applies to 11 Defense Printing Service employees and 8 General Services Administration employees. The last full-scale survey involved the substantial work effort of contacting 100 printing establishments spread over 4 counties. Upon abolishment of the Seattle-Everett-Tacoma special schedule, all 19 employees will benefit when converted to the regular wage schedule by receiving higher regular wage rates.

Upon abolishment of these special printing schedules, the printing and lithographic employees will be converted to the regular schedule for their wage area on a grade-for-grade basis. Their new rate of pay will be set at the applicable step of the regular schedule that equates to the employees' existing scheduled rate of pay. When the existing rate falls between two steps, the employee's new rate will be set at the rate of the higher of those two steps.

This conversion does not constitute an equivalent increase for within-grade increase purposes. In accordance with the OPM Operating Manual, *The Guide to Processing Personnel Actions*, this pay plan change will be processed as a "Pay Adjustment," Nature of Action Code 894, authority code ZLM, citing this **Federal Register** notice as authority. Pay retention provisions will apply for employees not receiving increases upon conversion.

The Federal Prevailing Rate Advisory Committee has reviewed this recommendation and by consensus has recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the September 1995 wage surveys in Los Angeles, San Diego, San Francisco, and Seattle-Everett-Tacoma must begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Amended]

2. In § 532.279, paragraphs (j) (5) through (8) are removed.

[FR Doc. 95–21904 Filed 9–5–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

[DA–95–21]

Milk in the Eastern Colorado Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain performance standards of the Eastern Colorado Federal milk order. Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs, requested the suspension. The suspension will make it easier for handlers to qualify milk for pool status and will prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the market.

EFFECTIVE DATES: The suspension to § 1137.7 is effective from September 1, 1995, through February 29, 1996. The suspensions to § 1137.12 are effective from September 1, 1995, through August 31, 1996.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued July 24, 1995; published July 28, 1995 (60 FR 38767).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who have been historically associated with this market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this rule in conformance with Executive Order 12866.

This suspension of rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act, as amended, and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on July 28, 1995 (60 FR 38767), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting the suspension was filed and no opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comment received and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1, 1995, through February 29, 1996: In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August"; and

2. For the months of September 1, 1995, through August 31, 1996: In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence, the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing".

Statement of Consideration

This rule suspends certain portions of the pool plant and producer definitions of the Eastern Colorado order. The suspension will make it easier for handlers to qualify milk for pooling under the order.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers on the Eastern Colorado order for several years. Mid-Am requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers who have been historically associated with the Eastern Colorado order.

For the months of September 1995 through February 1996, the restriction on the months when automatic pool plant status applies for supply plants will be removed. For the months of September 1995 through August 1996, the touch-base requirement will not apply and the diversion allowance for cooperatives will be raised.

These provisions have been suspended for several years to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. The marketing conditions which justified the prior suspensions continue to exist.

Mid-Am asserts that they have made a commitment to supply the fluid milk requirements of distributing plants if the suspension request is granted. Without the suspension action, to qualify certain of its milk for pooling, it would be necessary for the cooperative to ship milk from distant farms to Denver-area bottling plants. The distant milk would displace milk produced on nearby farms that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas.

There are ample supplies of locally produced milk that can be delivered directly from farms to distributing plants to meet the market's fluid needs without requiring shipments from supply plants.

This suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to ensure that producers whose milk has long been associated with the Eastern Colorado marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting and no comments opposing the suspension were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1137, are amended as follows:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1137.7 [Suspended in part]

2. In § 1137.7(b), the second sentence is amended by suspending the words "plant which has qualified as a" and "of March through August" from September 1, 1995, through February 29, 1996.

§ 1137.12 [Suspended in part]

3. In § 1137.12(a)(1), the first sentence is amended by suspending the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant" from September 1, 1995, through August 31, 1996.

4. In § 1137.12(a)(1), the second sentence is amended by suspending the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing" from September 1, 1995, through August 31, 1996.

Dated: August 29, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–22005 Filed 9–5–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Part 1942

RIN 0572–AB11

Community Facility Loans and Grants—Timber-Dependent Communities

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The regulations that are utilized by the Rural Utilities Service (RUS) and the Rural Housing and Community Development Service (RHCDS) in administering Community Facility Loans and Grants are being amended. This action is necessary to implement provisions of Public Law 103–427, provides for a temporary increase in the maximum population for eligibility for certain loans and grants as contained in the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) (CONACT) for certain timber-dependent communities in the Pacific Northwest. The temporary expanded eligibility applies to the following programs; (1) Water and Waste Disposal (WWD) loans and grants, (2) Community Facilities Loans (CF), and (3) Local Technical Assistance and Planning Grants.

DATES: This final rule is effective on September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Utilities Service, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Intergovernmental Review

These programs are listed in the Catalog of Federal Domestic Assistance under number 10.760, Water and Waste Systems For Rural Communities and 10.766, Community Facilities Loans and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." It has been determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR Part 1900 Subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the information collection requirements included in this rule have been approved through 7 CFR 1942–A. The assigned OMB control number is 0575–0015. This rule does not revise or impose any new information collection or recordkeeping requirements from those approved by the Office of Management and Budget.

Background

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking because they are merely following the specific directions of Public Law 103–427 and no discretion is left with the agency as to the population eligibility of certain timber-dependent communities in the Pacific Northwest. Good cause is found that notice and public procedure thereon are impractical, unnecessary and contrary to the public interest.

Public Law 103–427 addresses the financial needs of rural communities in the Pacific Northwest that are struggling to retool their economies in the face of necessary changes in timber-cutting policies. Certain rural communities in the Pacific Northwest are experiencing significant economic difficulties as a result of their proximity to the range of the northern spotted owl will benefit from the expanded loan and grant eligibility.

The CONACT caps the eligibility of cities or towns at 10,000 inhabitants for RUS WWD loans and grants and 20,000 inhabitants for RHCDS CF loans. Public Law 103–427 temporarily expands, until September 30, 1998, the population to 25,000 inhabitants if the cities or towns meet certain criteria. The communities must; (1) lie within 100 miles of the boundary of a national forest covered by the Federal document entitled "Forest Plan for a Sustainable Economy and a Sustainable Environment," dated July 1, 1993; and (2) be located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

The Local Technical Assistance and Planning Grant program is impacted by this legislation. However, there are no existing regulations for this program, and therefore, that program is not included in this amendment.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Grant programs—Housing and community development, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. Section 1942.17 is amended by adding paragraph (b)(6) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(b) * * *

(6) Expanded eligibility for timber-dependent communities in Pacific Northwest. In the Pacific Northwest, defined as an area containing national forest covered by the Federal document entitled, "Forest Plan for a Sustainable Economy and a Sustainable Environment," dated July 1, 1993; the population limits contained § 1942.17(b) are expanded to include communities with not more than 25,000 inhabitants until September 30, 1998, if:

(i) Part or all of the community lies within 100 miles of the boundary of a national forest covered by the Federal document entitled, "Forest Plan for a Sustainable Economy and a Sustainable Environment," dated July 1, 1993; and

(ii) The community is located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

* * * * *

Dated: August 4, 1995.

Michael V. Dunn,

Acting Under Secretary for Rural Economic and Community Development.

[FR Doc. 95–22006 Filed 9–5–95; 8:45 am]

BILLING CODE 3410–32–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–51; Amendment 39–9361; AD 95–18–14]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6 series turbofan engines. This action requires a more detailed fluorescent penetrant inspection process for GE CF6 series high pressure compressor rotor (HPCR) stage 3–9 spools. This amendment is prompted by an uncontained failure of the HPCR stage 3–9 spool attributed to a material defect located in the hub to web transition area of the stage 6 disk. The actions specified in this AD are intended to prevent an uncontained HPCR engine failure, which can result in damage to the aircraft.

DATES: Effective September 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1995.

Comments for inclusion in the Rules Docket must be received on or before November 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–51, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7136, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received a report of an uncontained failure of a General Electric Company (GE) CF6–50 high pressure compressor rotor (HPCR) stage 3–9 spool. The failure resulted from a low cycle fatigue crack originating from a material defect located in the hub to web transition area of the stage 6 disk. The FAA has determined that a more detailed fluorescent penetrant inspection process is required for these high pressure compressor rotor stage 3–9 spools. This condition, if not corrected, could result in an uncontained HPCR engine failure, which can result in damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE All Operators' Wire, Subject: FPI of Deep Disk Spools, Best Practices, dated August 10, 1995, that describes a more detailed fluorescent penetrant inspection process for HPCR stage 3–9 spools.

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6 series engines of the same type design, this AD is being issued to prevent an uncontained HPCR engine failure, which can result in damage to the aircraft. This AD requires that a more detailed fluorescent penetrant inspection of the HPCR stage 3–9 spool be used whenever fluorescent penetrant inspection of these spools is accomplished. The actions are required to be accomplished in accordance with the All Operators' Wire described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–51." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–18–14 General Electric Company: Amendment 39–9361. Docket 95–ANE–51.

Applicability: General Electric Company (GE) CF6 series engines. These engines are installed on but not limited to Airbus Industries A300, A310, and A330 series; Boeing 747 and 767 series; and McDonnell Douglas DC10 and MD11 series aircraft.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained high pressure compressor rotor (HPCR) engine failure, which can result in damage to the aircraft, accomplish the following:

(a) After the effective date of this AD all fluorescent penetrant inspections of HPCR stage 3–9 spools must be accomplished in accordance with the process described in GE All Operators' Wire, Subject: FPI of Deep Disk Spools, Best Practices, dated August 10, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) The actions required by this AD shall be accomplished in accordance with the following GE All Operators' Wire:

Document	Pages	Date
Subject: FPI of Deep Disk Spools, Best Practices.	1–3	Aug. 10, 1995.
Total pages: 3.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on September 21, 1995.

Issued in Burlington, Massachusetts, on August 29, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–21955 Filed 9–1–95; 3:38 pm]

BILLING CODE 4910–13–U

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14 CFR Part 97

[Docket No. 28315; Amdt. No. 1682]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting

these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on August 25, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME VOR or TACAN, and VOR/DME, or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective September 14, 1995*

Willimantic, CT, Windham, VOR OR GPS–A, Amdt 8
Willimantic, CT, Windham, LOC RWY 27, Amdt 2
Memphis, TN, General Dewitt Spain, VOR RWY 16, Orig
Millington, TN, Charles W. Baker, VOR/DME RWY 18, Orig
Rutland, VT, Rutland State, GPS RWY 19, Orig

* * * *Effective October 12, 1995*

Grand Canyon, AZ, Grand Canyon National Park, ILS/DME 1 RWY 3, Orig, CANCELLED
Columbus, GA, Columbus Metropolitan, LOC BC RWY 23, Amdt 13, CANCELLED
Columbus, GA, Columbus Metropolitan, ILS RWY 5, Amdt 24
Vincennes, IN, O'Neal, NDB or GPS–A, Amdt 5
Bellaire, MI, Antrim County, GPS RWY 2, Orig
Roseau, MN, Roseau Muni, VOR or GPS–A, Amdt 7A, CANCELLED
Roseau, MN, Roseau Muni, VOR or GPS RWY 34, Orig
Roseau, MN, Roseau Muni, VOR or GPS RWY 16, Amdt 7
Piqua, OH, Piqua, VOR/DME RNAV or GPS RWY 26, Amdt 7
Piqua, OH, Piqua, VOR RWY 26, Amdt 6
Piqua, OH, Piqua, VOR or GPS–A, Amdt 12
Spokane, WA, Felts Field, GPS–A, Orig

* * * *Effective November 9, 1995*

Anvik, AK, Anvik, NDB RWY 35, Orig
Noatak, AK, Noatak, NDB/DME RWY 36, Orig
Selawik, AK, Selawik, VOR RWY 3, Orig
Selawik, AK, Selawik, VOR RWY 21, Orig
Freeport, IL, Albertus, VOR or GPS RWY 24, Amdt 6
Freeport, IL, Albertus, VOR/DME RNAV or GPS RWY 6, Amdt 5
Ely, NV, Ely Airport/Yelland Field, GPS RWY 18, Orig
Santa Fe, NM, Santa Fe County Muni, GPS RWY 28, Orig
Albany, NY, Albany County, ILS RWY 1, Amdt 8
Port Clinton, OH, Carl R Keller Field, VOR/DME or GPS–A, Amdt 7
Port Clinton, OH, Carl R Keller Field, NDB or GPS RWY 27, Amdt 11
Danville, VA, Danville Regional, VOR RWY 24, Amdt 9, CANCELLED

* * * *Effective Upon Publication*

Baltimore, MD, Baltimore-Washington Intl, ILS RWY 28 Amdt 10

[FR Doc. 95–22068 Filed 9–5–95; 8:45 am]

BILLING CODE 4910–13–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Final rule.

SUMMARY: EEOC is revising its procedural regulations at 29 CFR sections 1601.70 and .71 to rescind the delegations of authority to the Director of the Office of Program Operations to designate a State or local agency as a Fair Employment Practices (FEP) agency and to determine whether a FEP agency's designation shall be withdrawn. Those authorities are now vested in the full Commission. These changes are the result of a Motion adopted by the Commission on May 22, 1995.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or John D. Norquist, General Attorney, at (202) 663–4669 (voice) or (202) 663–7026 (TDD). This rule is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this rule in an alternative format should be made to the Office of Equal Employment Opportunity at (202) 663–7081 (voice) or (202) 663–7002 (TDD).

SUPPLEMENTARY INFORMATION: Section 706 of Title VII of the Civil Rights Act of 1964 recognizes a State or a political subdivision of a State that has a state or local law prohibiting unlawful employment discrimination and a State or local authority empowered to grant or seek relief from such practice or to institute criminal proceedings. The Commission's regulations allow such a State or local authority to apply for formal designation as a "FEP Agency." The Commission's procedural regulations at 29 CFR 1601, Subpart G, sections 1601.70–.71 set forth the procedures for a FEP Agency to request designation and for the Commission to determine if a designation should be rescinded.

The current 1601.70 provides that any State or local agency or authority seeking FEP agency designation should submit a written request to the Program Director, Office of Program Operations. It also provides that the Program Director will provide to the State attorney general and to any corporation counsel of an involved local government an opportunity to comment upon aspects of State or local law which might affect the qualifications of any new agency. The Commission has determined that it needs to be more involved in the designation process. The Commission is therefore substituting the words "Chairman of the Commission" for "Program Director, Office of Program Operations" in 1601.70.

The current 1601.71 provides that the Program Director, Office of Program Operations, has the authority to determine whether State and local agencies should be designated as FEP agencies. It also provides that when the

Program Director becomes aware of events that lead him or her to believe that a deferral agency no longer meets the requirements for deferral or designation, the Director should notify the agency and request a response. Based on the response or after a hearing, the Program Director is authorized to render a final determination regarding continuation of the agency as a FEP agency. The Commission has determined that these decisions are better made by the full Commission. At its meeting on May 22, 1995, the Commission rescinded the delegation of authority to the Director of the Office of Program Operations to make determinations affecting the designation of a State or local fair employment practices agency as a FEP agency. As a result of this action, the Commission is substituting "Commission" or "Chairman of the Commission" for "Program Director, Office of Program Operations" in 1601.71 and making conforming grammatical adjustments.

This rule is not a significant regulatory action for the purposes of Executive Order 12866. Under the Regulatory Flexibility Act, this rule will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Individuals with disabilities.

For the Commission,

Gilbert F. Casellas,

Chairman.

For the reasons set forth in the preamble, EEOC is amending 29 CFR part 1601 as follows:

PART 1601—[AMENDED]

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

§ 1601.70 [Amended]

2. Paragraph (b) of section 1601.70 is amended by substituting the words "Chairman of the Commission" for the words "Program Director, Office of Program Operations" in the first sentence.

3. Paragraph (e) of section 1601.70 is amended by substituting the words "Chairman or his or her designee" for the words "Program Director, Office of Program Operations," in the first sentence.

4. Paragraph (a) of section 1601.71 is amended by:

(a) substituting the word "Commission" for the words "Program Director, Office of Program Operations,"; and

(b) substituting the words "the Commission" for the words "he or she".

5. Paragraph (b) of section 1601.71 is amended by substituting the word "Commission" for the words "Program Director, Office of Program Operations," in both places where it is found in the first sentence.

6. Paragraph (c) of section 1601.71 is amended by:

(a) substituting the word "Chairman" for the words "Program Director, Office of Program Operations," in the first sentence;

(b) substituting the words "the Chairman" for the words "such Director" in the first sentence;

(c) substituting the word "Chairman" for the word "Director" in the second sentence; and

(d) substituting the word "Commission" for the word "Director" in the third sentence.

[FR Doc. 95–22025 Filed 9–5–95; 8:45 am]

BILLING CODE 6760–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 95–7–6789a; FRL–5280–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the South Coast Air Quality Management District (SCAQMD) which control oxides of nitrogen (NO_X) from industrial, commercial, and institutional boilers, steam generators, and process heaters. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on November 6, 1995 unless adverse or critical comments are received by October 6, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: SCAQMD Rule 1146, Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters; and Rule 1146.1, Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. These rules were submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a Notice of Proposed Rulemaking (NPRM) entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General

Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). 57 FR 55620. The NO_X Supplement should be referred to for further information on the NO_X requirements and is incorporated into this notice of direct final rulemaking by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compound (VOC) emissions, in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin Area is classified as extreme;[1] therefore this area was subject to section 182(f), the RACT requirements of section 182(b)(2), and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by either a pre-enactment or post-enactment control technologies guideline (CTG) document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NOx sources and submitted as SIP revisions, are expected to require final installation of the actual NOx controls as expeditiously as practicable, but no later than May 31, 1995.

SCAQMD Rule 1146 and Rule 1146.1 were adopted by SCAQMD on May 13, 1994, and were submitted by CARB to EPA on July 13, 1994. These submitted rules were found to be complete on July 22, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[2] By today's notice, EPA is taking direct final action to approve these rules into the Federally approved SIP.

SCAQMD Rule 1146 and 1146.1 control emissions of NO_X from industrial, commercial, and institutional boilers, steam generators and process heaters. NO_X emissions contribute to the production of ground level ozone and smog. The rules were adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards for ozone and in response to the CAA requirements cited above. The following section contains EPA's evaluation and final action for these rules.

EPA Evaluation

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), which identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1146, Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, contains the following significant changes from the current SIP rule:

1. Expands applicability beyond steam generators with rated heat input capacity (RHIC) of 50 MBtu/hr or more.
2. Lowers emission limits.
3. Adds definitions, control plan requirements, recordkeeping, compliance determination provisions, a compliance schedule, and an equipment tuning procedure.

SCAQMD Rule 1146.1, Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, is a new rule which controls emissions from units between 2 and 5 million Btu per hour. The major provisions of this rule include: emission limits, recordkeeping, compliance determination provisions, a compliance schedule, and an equipment tuning procedure.

For the source category of industrial, commercial, and institutional boilers, steam generators, and process heaters, CARB has made a determination on the emission levels that constitute RACT, and CARB has published a guidance document concerning their determination for this source category. EPA believes that the emission limits in Rule 1146 and Rule 1146.1 are consistent with guidance and policy for making RACT determinations, and that these limits satisfy the RACT requirement. A more detailed discussion of the sources controlled,[4] the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD) for each rule, available from the U.S. EPA Region IX office.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, SCAQMD Rule 1146 and Rule 1146.1 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

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[1] The Los Angeles-South Coast Air Basin Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

[4] Rule 1146 and Rule 1146.1 will apply to sources which are not covered in the SCAQMD NO_X RECLAIM program.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document elsewhere in this **Federal Register**, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 6, 1995, unless, by October 6, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 6, 1995.

Regulatory Process

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind state, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under state law. Therefore, no additional costs to state, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

Small Businesses

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. U.S. E.P.A. , 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: August 8, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (198)(i)(H)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(198) * * *

(i) * * *

(H) South Coast Air Quality Management District.

(*1*) Rule 1146 and Rule 1146.1, adopted May 13, 1994.

* * * * *

[FR Doc. 95–21877 Filed 9–5–95; 8:45 am]

BILLING CODE 6560-50-W

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40 CFR Part 52

[SD6–1–6947a and SD5–1–6191a; FRL–5279–3]

Clean Air Act Approval and Promulgation of State Implementation Plan for South Dakota; Revisions to the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the State of South Dakota on November 12, 1993 and March 7, 1995. EPA is replacing the existing rules approved in the SIP with the following chapters of the Administrative Rules of South Dakota (ARSD), as requested by the State: 74:36:01–74:36:04, 74:36:06; 74:36:07, 74:36:10–74:36:13, and 74:36:15, as in effect on January 5, 1995. The State's submittals included revisions to the State's definitions, minor source construction and federally enforceable state operating permit (FESOP) rules, source category emission limitations, sulfur dioxide (SO_2) rules, new source performance standards (NSPS), new source review (NSR) requirements for new and modified major sources impacting nonattainment areas, and enhanced monitoring and compliance certification requirements.

In addition, EPA is approving the State's construction and operating permit program under section 112(l) of the Clean Air Act (Act) for the purposes of creating federally enforceable permit conditions for sources of hazardous air pollutants (HAPs).

DATES: This final rule is effective on November 6, 1995 unless adverse comments are received by October 6, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; South Dakota Department of Environment and Natural Resources, Division of Environmental Regulation, Joe Foss Building, Pierre, South Dakota 57501; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, D.C. 20460.

Written comments should be addressed to Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1993, the State of South Dakota submitted revisions to its SIP. Specifically, the State requested that the existing State rules approved in the SIP be replaced with the most recent codification of the ARSD, Chapters 74:36:01–04 and 74:36:06–13 inclusive. In addition to recodification, the State made numerous revisions to its air quality regulations, including definitions, minor source construction and operating permit rules, source category emission limitations, NSPS, national emission standards for hazardous air pollutants (NESHAPs), NSR requirements for new and modified sources impacting nonattainment areas, and other minor revisions.

In a July 13, 1994 letter, EPA noted many deficiencies in the State's November 12, 1993 submittal and requested that the State correct the major deficiencies before EPA would proceed with approval. The State made those corrections to its rules and submitted the rule corrections to EPA on March 7, 1995. In that submittal, the State also addressed EPA's July 7, 1994 call for revision of the South Dakota SIP to comply with the enhanced monitoring and compliance certification program requirements of sections 110, 113, and 114 of the Act. In addition, the State adopted other revisions to its rules, including its acid rain rules and updates to its incorporation by reference of the Federal requirements for NSPS and HAPs.

The March 7 submittal requested that the previous regulations approved in the SIP be replaced with ARSD Chapters 74:36:01–74:36:04, 74:36:06; 74:36:07, 74:36:10–74:36:13, and 74:36:15, as in effect on January 5, 1995. The following State regulations were not included in the State's March 7 SIP submittal: ARSD 74:36:05 Operating Permits for Part 70 Sources, for which EPA granted interim approval on March 22, 1995 (see 60 FR 15066–15069); ARSD 74:36:08 National Emission Standards for Hazardous Air Pollutants, which the State has taken out of the SIP and has instead requested delegation of authority for these standards; ARSD 74:36:09 Prevention of Significant Deterioration (PSD), which incorporates by reference the corresponding Federal rules at 40 CFR 52.21 that EPA delegated authority to the State to implement on July 6, 1994 (see September 15, 1994 **Federal Register**, 59 FR 47260); ARSD 74:36:14 Variances, which the State did not include in the SIP because such a provision could not be approved as part of the SIP as it is inconsistent with section 110(i) of the amended Act; and ARSD 74:36:16 Acid Rain Program, which will be acted on by EPA separate from this SIP approval.

This document evaluates the State's submittal for conformity with the corresponding Federal regulations and the requirements of the Act.

II. This Action

A. Analysis of State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565, April 16, 1992]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

The State of South Dakota held public hearings on February 18, 1993 and November 17, 1994 to entertain public comment on the SIP revisions, at which the rule revisions were adopted by the State. These rule revisions were formally submitted to EPA for approval in the SIP on November 12, 1993 and on March 7, 1995.

The SIP revisions were reviewed by EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria referenced above. The submittals were found to be complete, and letters dated January 12, 1994 and June 28, 1995 were forwarded to the Governor indicating the completeness of the submittals and the next steps to be taken in the processing of the SIP submittals.

2. Evaluation of State's Submittals

The following summarizes the State's submittals and EPA's review for approvability:

a. ARSD 74:36:01 Definitions

The State made numerous revisions to its definitions in ARSD 74:36:01 in order to make the definitions consistent with other provisions in the State's rules and with the corresponding Federal regulations, including the State's recently adopted title V permitting program in ARSD 74:36:05 and the acid rain program in ARSD 74:36:16.

EPA has reviewed the definitions included in this chapter against the corresponding Federal definitions in 40 CFR parts 51, 60, and 70 and for conformity with the State's regulations. EPA believes the revised definitions are consistent with the corresponding Federal definitions, with the following clarifications.

As discussed in EPA's January 12, 1995 **Federal Register** notice of proposed interim approval of South Dakota's title V program (see 60 FR 2919), EPA believes clarification regarding two of the State's definitions is necessary to ensure that the provisions are interpreted consistently with the Federal regulations:

(1) The definition of "federally enforceable" which appears at ARSD 74:36:01:01(28) reads as follows:

> "Federally enforceable," all limits and conditions that are enforceable by the administrator of EPA pursuant to federal law. These limits and conditions include those requirements developed pursuant to this article, those appearing in 40 CFR 60 and 61 (July 1, 1993), requirements within the state implementation plan and permit requirements established pursuant to this article or 40 CFR 51 Subpart I (July 1, 1993). The use of this term does not impede the Department's authority under state law to enforce these limits and conditions.

This definition is significant for determining whether a source is subject to preconstruction and operating permitting requirements as a major source or as a minor source, because it is used in defining the "potential to emit" of a source. To be consistent with EPA's definition of "federally enforceable," the second sentence of the above definition cannot and should not be read to expand on the first sentence of the definition. For example, requirements developed pursuant to ARSD Article 74:36 might be, but would not necessarily be, federally enforceable. Such Federal enforceability would depend on whether such requirements had been included in a source's preconstruction or operating permit issued under an EPA-approved program, whether such requirements had been approved by EPA as part of the SIP, or whether such requirements were already considered Federal regulations (such as NSPS promulgated in 40 CFR part 60 which South Dakota has incorporated by reference in ARSD 74:36:07). EPA's interpretation is that the requirements delineated in the second sentence of the definition are only federally enforceable if they are enforceable by the administrator of EPA pursuant to Federal law.

(2) The second sentence of the definition of "major source" in ARSD 74:36:01:08(1) reads as follows:

> Emissions from any oil exploration or production well and its associated equipment and emissions from any pipeline compressor or pump station may not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

To be consistent with the Federal regulations, this sentence must be read as only being applicable to a determination of whether a source is major under section 112 of the Act. This language cannot be applied when determining whether a source is major under other sections of the Act.

With these interpretations, EPA believes the definitions in ARSD 74:36:01 are consistent with the corresponding Federal regulations. EPA is approving all of the definitions in ARSD 74:36:01, with the exception of two definitions related to the State's acid rain program which EPA will be acting on separately: "acid rain permit" and "acid rain program" in ARSD 74:36:01:01(2) and (3).

b. ARSD 74:36:02 Ambient Air Quality

This chapter was revised to refer to the Federal regulations for the National Ambient Air Quality Standards (NAAQS), methods of sampling and analysis, air quality monitoring networks, and ambient air monitoring in 40 CFR parts 50, 53, and 58. The State's regulation is consistent with the relevant Federal requirements and is approvable.

c. ARSD 74:36:03 Air Quality Episodes

This chapter was revised to refer to the Federal guidelines for emergency episode plans in 40 CFR 51.151–153 and appendix L. The State's regulation is consistent with the relevant Federal requirements and is approvable.

d. ARSD 74:36:04 Operating Permits for Minor Sources

This chapter was revised extensively to combine the State's existing minor source construction permit and FESOP requirements into one permitting system and to ensure compliance with the Federal requirements for both construction permit programs and FESOP programs. This chapter only applies to sources which are not considered to be 40 CFR part 70 sources (i.e., sources which are not required to obtain a title V operating permit). (Note that the State's construction permitting program for new and modified major sources is the State's PSD permitting program in ARSD 74:36:09.) Specifically, a new source in South Dakota must obtain an operating permit prior to construction, and an existing source must obtain a permit in order to operate the source. Such operating permits will be valid for five years and must be renewed.

(1) Construction Permit Program.

The minor source construction permit element of the State's permitting program must meet the corresponding Federal requirements in 40 CFR 51.160–164, in order to be approved by EPA. As detailed in the Technical Support Document (TSD) accompanying this notice, EPA believes the State's construction permit requirements meet all of the corresponding Federal requirements in 40 CFR 51.160–164.

(2) FESOP Program.

On June 28, 1989, EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of FESOPs (see 54 FR 27282). Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered federally enforceable. The EPA has encouraged States to develop such FESOP programs in conjunction with title V operating permit programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the September 18, 1992 guidance document entitled, "Limitation of Potential to Emit with Respect to Title V Applicability Thresholds," from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) In addition, on November 3, 1993, EPA announced in a guidance document entitled, "Approaches to Creating Federally Enforceable Emissions Limits," from John S. Seitz, Director, OAQPS, that this mechanism could be extended to create federally enforceable limits for emissions of HAPs if the program were approved pursuant to section 112(l) of the Act. (See Section III. below for further details on EPA's section 112(l) approval of South Dakota's FESOP program.)

As detailed in the TSD, EPA has reviewed the State's permitting program for conformity with the FESOP criteria outlined in the June 28, 1989 **Federal Register** notice and believes the State's program adequately meets those requirements, although one clarification regarding their rules needs to be made:

South Dakota's rules do not specifically provide for submittal of each proposed and final permit to EPA on a timely basis. However, EPA has established procedures in the annual State-EPA agreement requiring the State to submit to EPA proposed and final permits which would limit the potential to emit of a source so that it would not be considered major. EPA reiterates that requirement in this document. That is, for any operating permit issued by the State to be considered federally enforceable, the State must submit the proposed and final permit to EPA in a timely manner, as well as meet all of the other requirements of its program and the June 28, 1989 **Federal Register**.

Thus, EPA is approving South Dakota's construction permit/FESOP program because it adequately meets the requirements of the June 28, 1989 **Federal Register** and 40 CFR 51.160–164. Permits issued by the State that conform to the State's rules and corresponding Federal requirements will be considered federally enforceable. See the TSD accompanying this document for further details.

e. ARSD 74:36:06 Regulated Air Pollutants

In this chapter, the State combined its Control of Particulate Emissions regulation previously codified in ARSD 74:26:06 and its Control of Sulfur Compound Emissions regulation previously codified in ARSD 74:26:07 into one chapter. The State made minor revisions to simplify its particulate matter emission regulations, which EPA believes are consistent with the Act and approvable.

In addition, the State made revisions to its regulations controlling SO_2 emissions in this chapter, as a result of EPA's nationwide effort to have SO_2 enforceability deficiencies identified

and corrected in SIPs before title V operating permit programs become effective. Because the title V operating permits will initially incorporate underlying SIP requirements, it is important that the underlying SIP is enforceable so that the permits themselves will be enforceable. Thus, on March 8, 1991, EPA provided a list of enforceability deficiencies in South Dakota's SO_2 emission control rules. The Region used the "SO_2 SIP Enforceability Checklist" when reviewing South Dakota's SO_2 rules for enforceability deficiencies. This checklist was included as an attachment to the November 28, 1990 memorandum from Robert Bauman and Rich Biondi to the Air Branch Chiefs, and it focused on the following topics:

(1) Clarity;

(2) Averaging times consistent with protection of the SO_2 NAAQS;

(3) Clear compliance determinations;

(4) Continuous emission monitoring;

(5) Adequate reporting and recordkeeping requirements;

(6) Director's discretion issues; and

(7) Stack height issues.

The State of South Dakota subsequently adopted revisions to address the deficiencies outlined in EPA's March 8, 1991 letter. Those revisions include: clarifying the applicability of this chapter to include units required to be permitted under article 74:36; specifying a 3-hour rolling averaging time, consistent with the SO_2 NAAQS, for the SO_2 emission limitations of this chapter; and referring to test methods listed in chapter 74:36:11 and including appropriate reference methods in that chapter. Recordkeeping and reporting requirements are addressed through the operating permit rules in ARSD 74:36:05:16.

EPA believes the State has adequately addressed the SO_2 deficiencies identified in EPA's March 8, 1991 letter. Therefore, EPA is approving the State's SO_2 regulations.

f. ARSD 74:36:07 New Source Performance Standards

In this chapter, the State has adopted new NSPS by incorporating by reference the Federal NSPS for subparts Dc, QQ, RR, VV, XX, AAA, JJJ, NNN, and SSS of 40 CFR part 60, as in effect on July 1, 1993. Also, the State updated the incorporation by reference citations of its existing NSPS to reflect the July 1, 1993 version of 40 CFR part 60. In addition, the State added a provision clarifying that the term "administrator," as used in the Federal regulations incorporated into the State's regulations, means the State except for those authorities which cannot be delegated to the State, in which case "administrator" means both EPA and the State. Since this chapter incorporates by reference the Federal NSPS in 40 CFR part 60, it is consistent with Federal requirements and approvable.

g. ARSD 74:36:10 New Source Review

In this chapter, the State adopted provisions for new and modified major stationary sources proposing to locate in attainment/unclassified areas but which cause or contribute to a violation of the NAAQS, in accordance with the requirements in 40 CFR 51.165(b). The State currently has no areas designated nonattainment for the NAAQS, so the State is currently not required to adopt nonattainment NSR provisions. EPA has reviewed the provisions in this chapter against the corresponding Federal requirements in 40 CFR 51.165 and found it to be consistent and therefore approvable.

h. ARSD 74:36:11 Stack Performance Testing

This chapter was revised to refer to the Federal test methods in 40 CFR part 51, appendix M, and 40 CFR part 60 as the test methods required to be used by sources and to make other minor revisions. EPA has reviewed the revisions to this chapter and has found they are consistent with the corresponding Federal requirements and approvable.

i. ARSD 74:36:12 Control of Visible Emissions

Minor revisions were made to this chapter, mainly to update the incorporation by reference of 40 CFR part 60, appendix A to reflect the July 1, 1993 version. EPA has reviewed the revisions to this chapter and has found they are consistent with the corresponding Federal requirements.

j. ARSD 74:36:13 Continuous Emission Monitoring Systems

(1) Continuous Emission Monitoring Requirements.

This new chapter was added to authorize the State to require major sources to install continuous emission monitors (CEMs) and to require that such CEMs meet the Federal performance specifications in 40 CFR part 60. EPA has reviewed these requirements adopted in ARSD 74:36:13:01–05 and has found these rules to be consistent with the corresponding Federal requirements and approvable.

(2) Enhanced Monitoring and Compliance Certification.

This regulation also address EPA's nationwide SIP call regarding the new enhanced monitoring and compliance certification requirements of the amended Act. On October 22, 1993, EPA announced in the **Federal Register** that SIP calls pursuant to section 110(k)(5) of the Act would be issued in order to implement the enhanced monitoring requirements of section 114(a)(3) of the Act and the periodic monitoring requirements for operating permits under sections 502(b)(2) and 504 of the Act (see 58 FR 54677). This SIP call is required because existing SIPs are inadequate in that they may be interpreted to limit the types of testing or monitoring data that may be used for determining compliance and establishing violations.

On July 7, 1994, the EPA notified the Governor of South Dakota that a SIP revision was necessary to meet the aforementioned requirements of the Act. EPA's letter provided the States with two options for regulatory language that, if adopted by the State and submitted to EPA for approval in the SIP, would satisfy the requirements of this SIP call. In Sections 74:36:13:06–07 of the ARSD, the State has adopted provisions which are essentially identical to the regulatory language provided in option 2 of the attachment to EPA's July 7, 1994 letter, as follows:

(a) In ARSD 74:36:13:06, the State has added a provision stating that, when submitting compliance certifications, an owner or operator of a source may use monitoring as required under 40 CFR 70.6(a)(3) in addition to any specified compliance methods. The practical effect of this provision is that the SIP is now more flexible and inclusive and does not preclude the use of enhanced monitoring.

(b) In ARSD 74:36:13:07, the State has added provisions stating that any credible evidence may be used to determine if a violation has occurred at a source. The rule provides that information from monitoring methods approved in a federally enforceable operating permit or in the SIP, as well as from any other federally enforceable monitoring and testing methods (including those in 40 CFR Parts 51, 60, 61, and 75), may be used by the State as credible evidence to determine compliance.

EPA believes the State has adequately satisfied the requirements of that SIP call letter and, therefore, is approving Sections 74:36:13:06–07 regarding enhanced monitoring and compliance certifications.

k. ARSD 74:36:15 Open Burning

The State made revisions to this chapter by further detailing those items that could not be disposed of by open burning, and by providing ability for small municipalities to burn solid wastes. Other minor revisions were also made. EPA has reviewed the revisions and believes they are consistent with the requirements of the Act and approvable.

III. Approval of South Dakota's Construction and Operating Permit Program Under Section 112(l) of the Act

In this action, EPA is also approving South Dakota's combined construction/FESOP permit program in ARSD 74:36:04 under section 112(l) of the Act for the purpose of creating federally enforceable limits on the potential to emit of HAPs listed pursuant to section 112(b) of the Act. Approval under section 112(l) is necessary to allow the State to create federally enforceable limits on the potential to emit of HAPs, because SIP approval of this permitting program only extends to the control of HAPs which are photochemically reactive organic compounds or particulate matter. Federally enforceable limits on photochemically reactive organic compounds or particulate matter may have the incidental effect of limiting certain HAPs.[1] As a legal matter, no additional program approval by EPA is required in order for these "criteria" pollutant limits to be recognized as federally enforceable. However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

As discussed above and in the TSD, the criteria which are used in approving minor source construction permit programs are located in 40 CFR 51.160–164. EPA believes the most significant criteria in 40 CFR part 51 for creating federally enforceable limits through construction permits are those in 40 CFR 51.160–162. Further, as discussed in EPA's January 25, 1995 memorandum from John S. Seitz, Director of the Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director of the Office of Regulatory Enforcement, entitled "Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act," in order for EPA to consider any construction permit terms federally enforceable, such permit conditions must be enforceable as a practical matter. South Dakota's permitting program will allow the State to issue permits that are enforceable as a practical matter. Thus, any permits issued in accordance with South Dakota's construction permit program and which are practically enforceable would be considered federally enforceable.

EPA believes that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving such programs under section 112(l). The requirements outlined in the June 28, 1989 notice need not be unique to criteria pollutants since the reason that the notice does not address HAPs is simply that it was written prior to the 1990 Amendments to section 112.

In addition to meeting the criteria in 40 CFR 51.160–164 for construction permits and the criteria in the June 28, 1989 **Federal Register** notice for FESOPs, a permitting program that addresses HAPs must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAPs through amendments to subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) EPA believes it has the authority under section 112(l) to approve programs to limit the potential to emit of HAPs directly under section 112(l) prior to this revision to subpart E of 40 CFR part 63. Given the timing problems posed by impending deadlines under section 112 and title V, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. EPA is therefore approving South Dakota's combined construction permit/FESOP program now so that South Dakota may begin to issue federally enforceable synthetic minor permits as soon as possible. EPA also plans to codify programs approved under section 112(l) without further rulemaking once the revisions to subpart E are promulgated.

As discussed in Section II.A.2.d. above and in the TSD, EPA believes South Dakota's combined construction permit/FESOP program meets the applicable Federal criteria for approval of such programs in the SIP. In addition, South Dakota's construction and operating permit program meets the statutory criteria for approval under section 112(l)(5), as follows:

Regarding the statutory criteria of section 112(l)(5), EPA believes South Dakota's permitting program contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989 notice is met, i.e., since the State's program does not provide for waiving any section 112 requirement. Sources that become minor through a permit issued pursuant to these programs would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, the State has committed to provide for adequate resources to implement and enforce the program. EPA will monitor the State's implementation of the program to assure that adequate resources continue to be available.

EPA also believes that South Dakota's construction and operating permit program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit so as to avoid being subject to a Federal requirement applicable on a particular date. Nothing in the State's program would allow a source to avoid or delay compliance with the Federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline.

Finally, EPA believes it is consistent with the intent of the section 112 and the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a federally enforceable limit on potential to emit.

Accordingly, EPA finds that South Dakota's construction permit/FESOP program satisfies the applicable criteria for establishing federally enforceable limitations on potential to emit both criteria and hazardous air pollutants. Thus, EPA is approving South Dakota's construction permit/FESOP program in ARSD 74:36:04 under section 112(l) of the Act.

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[1] EPA issued guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAPs to below section 112 major source levels. Please refer to the January 25, 1995 EPA policy from John Seitz and Robert Van Heuvelen entitled "Options for Limiting the Potential to Emit of a Stationary Source under Section 110 and Title V of the Clean Air Act," available at the EPA office listed at the beginning of this document.

IV. Final Action

EPA is approving the revisions to the South Dakota SIP which were submitted by the State on March 7, 1995 and on November 12, 1993. Specifically, EPA is replacing the existing State regulations approved in the SIP with the following chapters of the ARSD, effective on January 5, 1995: 74:36:01–74:36:04, 74:36:06; 74:36:07, 74:36:10–74:36:13, and 74:36:15. However, EPA is not taking action at this time on two definitions in ARSD 74:36:01 related to the State's acid rain program which EPA will be acting on separately: "acid rain permit" and "acid rain program" in ARSD 74:36:01:01(2) and (3).

In addition to approving South Dakota's construction permit/FESOP program in ARSD 74:36:04 as part of the SIP, EPA is also approving this program under section 112(l) of the Act for the purposes of creating federally enforceable permit conditions on HAPs. Note that in order for EPA to consider operating permits issued under ARSD 74:36:04 to be federally enforceable, the State must submit the proposed and final permits to EPA in a timely manner, as well as meet the other requirements of its program and the June 28, 1989 **Federal Register**.

This approval provides the State with the authority for implementation and enforcement of the following subparts of 40 CFR part 60: A, D, Da, Db, Dc, E, Ea, F, I, K, Ka, Kb, O, Y, DD, GG, HH, LL, QQ, RR, VV, XX, AAA, JJJ, NNN, OOO, and SSS, effective July 1, 1993. However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective November 6, 1995 unless, by October 6, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 6, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 10, 1995.

Jack W. McGraw,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart QQ—South Dakota

2. Section 52.2170 is amended by adding paragraph (c)(16) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(16) On November 12, 1993 and March 7, 1995, the designee of the Governor of South Dakota submitted revisions to the plan, which included revised regulations for definitions, minor source construction and federally enforceable state operating permit (FESOP) rules, source category emission limitations, sulfur dioxide rule corrections, new source performance standards (NSPS), new source review (NSR) requirements for new and modified major sources impacting nonattainment areas, and enhanced monitoring and compliance certification requirements. The State also requested that the existing State regulations approved in the South Dakota SIP be replaced with the following chapters of the recently recodified Administrative Rules of South Dakota (ARSD): 74:36:01–74:36:04, 74:36:06; 74:36:07, 74:36:10–74:36:13, and 74:36:15, as in effect on January 5, 1995.

(i) Incorporation by reference.

(A) Revisions to the Administrative Rules of South Dakota, Air Pollution Control Program, Chapters 74:36:01 (except 74:36:01:01(2) and (3)); 74:36:02–74:36:04, 74:36:06; 74:36:07, 74:36:10–74:36:13, and 74:36:15, effective April 22, 1993 and January 5, 1995.

3. A new section 52.2184 is added to read as follows:

§ 52.2184 Operating permits for minor sources.

Emission limitations and related provisions established in South Dakota minor source operating permits, which are issued in accordance with ARSD 74:36:04 and which are submitted to EPA in a timely manner in both proposed and final form, shall be enforceable by EPA. EPA reserves the right to deem permit conditions not federally enforceable. Such a determination will be made according to appropriate procedures and will be based upon the permit, permit approval procedures, or permit requirements which do not conform with the operating permit program requirements of EPA's underlying regulations.

[FR Doc. 95–21879 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OMC–014–FC]

Medicare Program; Payments to HMOs and CMPs and Appeals: Technical Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule clarifies and updates portions of the HCFA regulations that pertain to payment for services furnished to Medicare enrollees by health maintenance organizations (HMOs) and competitive medical plans (CMPs); appeals by Medicare enrollees concerning payment for those services; and appeals by HMOs and CMPs with regard to their Medicare contracts.

This rule completes the special project aimed at the total technical revision of part 417. Part 417 contains the regulations applicable to all prepaid health care organizations, that is, HMOs, CMPs, and health care prepayment plans (HCPPs).

These are technical and editorial changes that do not affect the substance of the regulations. They are intended to make it easier to find particular provisions, to eliminate needless repetition and remove obsolete content, and to better ensure uniform understanding of the rules.

DATES: *Effective dates:* These rules are effective as of October 1, 1995.

Comment date: We will consider comments received by October 6, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OMC–014–FC, PO Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or
Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OMC–014–FC.

Written comments received timely will be available for public inspection as they are received—generally beginning approximately 3 weeks after publication of the document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, Monday through Friday, from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Although we cannot respond to individual comments, if we revise this rule as a result of comments, we will discuss all timely comments in the preamble to the revised rule.

FOR FURTHER INFORMATION CONTACT: Tracy Jensen, (410) 786–1033.

SUPPLEMENTARY INFORMATION:

A. Background

The previous 4 technical regulations of the special project have—

- Removed obsolete content;
- Designated the remaining text under 17 subparts that identify the different program aspects so that it is easier to refer to those aspects and to find particular rules;
- Through nomenclature and definition changes, established certain terms to be used throughout part 417, so as to preclude confusion, make clear that responsibility for the prepaid health care programs has been delegated to HCFA, and ensure use of the most precise terms available;
- Redesignated certain portions of part 417 to free section numbers needed so that new rules can be incorporated in logical order; and
- Established a separate subpart C to set forth the many requirements for the organization and operation of HMOs. Under previous rules, these were compressed into a single section (§ 417.107).

As a result of the redesignations, §§ 417.107 through 417.119 were made available for new rules that are required because of statutory amendments that affect the furnishing of services by Federally qualified HMOs, or may be needed because of future changes in the statute. Similarly, §§ 417.128 through 417.139 are available for additional rules on the organization and operation of those HMOs.

B. Changes made by this rule

This technical rule affects the following subparts:

Subpart N—Medicare Payment to HMOs and CMPs—General Rules
Subpart O—Medicare Payment: Cost Basis;
Subpart P—Medicare Payment: Risk Basis;
Subpart Q—Beneficiary Appeals; and,
Subpart R—Contract Appeals.

Changes to the first three subparts reflect a general change of approach—

use of the term "payment" rather than "reimbursement". Changes in all five subparts, such as use of the active voice, are intended to improve clarity. They also provide more headings, revise confusing word order, and remove obsolete provisions (rules that applied to contract periods that began before 1986).

In subpart Q, the revisions add a paragraph explaining the statutory basis for the beneficiary appeals rules and expand the "Scope" paragraph to reference a recently added provision that gives the beneficiary the right to request immediate PRO review of a determination that he or she no longer needs inpatient hospital care.

Other Required Information

Waiver of Proposed Rulemaking and Delayed Effective Date

The changes made by this rule are technical and editorial in nature. Their aim is to simplify, clarify, and update subparts N through R of part 417 without substantive change.

Accordingly, we find that notice and opportunity for public comment are unnecessary and that there is good cause to waive proposed rulemaking procedures.

In addition, it is important, for the convenience of the public, that these changes be effective as of October 1, 1995, so that they can be included in the 1995 edition of the Code of Federal Regulations on which the public relies. Therefore, we find good cause to also waive the usual 30-day delay in the effective date

As previously indicated, however, we will consider timely comments from anyone who believes that, in making the technical and editorial changes, we have unintentionally altered the substance.

Paperwork Reduction Act

Sections 417.558, 417.576, and 417.600 of the regulations amended by this technical rule contain requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The requirement for a certified cost report (§ 417.576(b)) has OMB approval under number 0938–0165, with an expiration date of 9–30–95. The burden for this report is estimated at 200 hours for record keeping and 260 hours for completing the report. The requirements for justification of exception to cost limits (§ 417.558(c)) and for grievance and appeals procedures (§ 417.600(b)) are being submitted for OMB approval. If you comment on these requirements, please send a copy directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, Executive Office Building, Washington, DC 30503.

Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

The RFA defines "small entity" as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define small rural hospital as a hospital that has fewer than 50 beds, and is not located in a metropolitan statistical area.

We have not prepared a regulatory flexibility analysis because we have determined and we certify that these rules (which make only technical and editorial changes with no substantive effect) will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this rule was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMO), Medicare.

42 CFR part 417 is amended as set forth below.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. The authority citation for part 417 continues to read as follows:

Authority: secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), Secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

B. Subpart N is amended as set forth below.

Subpart N—Medicare Payment to HMOs and CMPs: General Rules

1. Section 417.524 is revised to read as follows:

§ 417.524 Payment to HMOs or CMPs: General.

(a) *Basic rule.* The payments that HCFA makes to an HMO or CMP under this subpart and subparts O and P of this part for furnishing covered Medicare services are in place of any payment that HCFA would otherwise make to a beneficiary or the HMO or CMP under sections 1814(b) and 1833(a) of the Act.

(b) *Basis of payment.* (1) HCFA pays the HMOs or CMPs on either a reasonable cost basis or a risk basis depending on the type of contract the HMO or CMP has with HCFA.

(2) In certain cases a risk HMO or CMP also receives payments on a reasonable cost basis for certain Medicare enrollees who retain nonrisk status, as provided in § 417.444, after the HMO or CMP enters into a risk contract.

§ 417.526 [Amended]

2. In § 417.526, "reimbursement" is revised to read "payment" each time it appears.

3. Section 417.528 is amended to revise the section heading to revise, paragraphs (a) through (c) and to add a heading to paragraph (d) to read as follows:

§ 417.528 Payment when Medicare is not primary payer.

(a) *Limits on payments and charges.* (1) HCFA may not pay for services to the extent that Medicare is not the primary payer under section 1862(b) of the Act and part 411 of this chapter.

(2) The circumstances under which an HMO or CMP may charge, or authorize a provider to charge, for covered Medicare services for which Medicare is not the primary payer are stated in paragraphs (b) and (c) of this section.

(b) *Charge to other insurers or the enrollee.* If a Medicare enrollee receives from an HMO or CMP covered services that are also covered under State or Federal worker's compensation, automobile medical, or any no-fault insurance, or any liability insurance policy or plan, including a self-insured plan, the HMO or CMP may charge, or authorize a provider that furnished the service to charge—

(1) The insurance carrier, employer, or other entity that is liable to pay for these services; or

(2) The Medicare enrollee, to the extent that he or she has been paid by the carrier, employer, or other entity.

(c) *Charge to group health plans (GHPs) or large group health plans (LGHPs).* An HMO or CMP may charge a GHP or LGHP for covered services it furnished to a Medicare enrollee and may charge the Medicare enrollee to the extent that he or she has been paid by the GHP or LGHP for these covered services if—

(1) The Medicare enrollee is covered under the plan; and

(2) Under section 1862(b) of the Act, HCFA is precluded from paying for the covered services .

(d) *Responsibilities of HMO or CMP.* * * *

C. Subpart O is amended as set forth below.

Subpart O—Medicare Payment: Cost Basis

1. Section 417.530 is revised to read as follows:

§ 417.530 Basis and scope.

This subpart sets forth the principles that HCFA follows to determine the amount it pays for services furnished by a cost HMO or CMP to its Medicare enrollees. These principles are based on sections 1861(v) and 1876 of the Act and are, for the most part, the same as those set forth—

(a) In part 412 of this chapter, for paying the costs of inpatient hospital services which, for cost HMOs and CMPs, are considered "reasonable" only if they do not exceed the amounts allowed under the prospective payment system; and

(b) In part 413 of this chapter, for the costs of all other covered services.

§ 417.531 [Amended]

2. In § 417.531, the following changes are made:

a. In paragraph (a), "reimbursement" is revised to read "payment", and "participating in the Medicare program" is removed.

b. In paragraph (b), introductory text, "the HMO or CMP may be reimbursed" is revised to read "HCFA pays the HMO or CMP".

§ 417.532 [Amended]

3. In § 417.532, the following changes are made:

a. Throughout § 417.532, "reimbursement" is revised to read "payment" and "reimburses" is revised to read "pays".

b. In paragraph (a)(3), "Except as specified in paragraph (a)(4) of this section," is removed and "in judging" is revised to read "In judging".

c. Paragraph (a)(4) is removed.

d. In paragraph (f), "will determine" is revised to read "determines".

e. Paragraph (g) is revised to read as follows:

§ 417.532 General considerations.

* * * * *

(g) *Direct payment by HCFA.* (1) If the HMO or CMP elects to have HCFA pay for provider services, HCFA pays each provider on a reasonable cost basis or under the PPS system, whichever is appropriate for the particular provider under part 412 or part 413 of this chapter.

(2) In computing the Medicare payment to the HMO or CMP, HCFA deducts these payments and any other payments made by the Medicare intermediary or carrier on behalf of the HMO or CMP (such as payment for emergency or urgently needed services under § 417.558).

§ 417.533 [Amended]

4. In § 417.533, the following changes are made:

a. In the introductory text, the phrase "is responsible for" is revised to read "must".

b. In paragraphs (a), (b), and (c), "Determining", "Making", and "Carrying" are revised to read "Determine", "Make", and "Carry", respectively.

§ 417.536 [Amended]

5. In § 417.536, the following changes are made:

a. The section heading is revised to read "*Cost payment principles.*"

b. In paragraph (a), first sentence, the phrase "or reasonable cost reimbursement" is removed.

c. In paragraphs (a), (f)(3), and (m), "reimbursement" is revised to read "payment".

d. In paragraph (m), the heading is revised to read "*Limitations on payment.*"; in the introductory text, "reimbursed" is revised to read "paid"; and "subpart E of part 405, and" is removed.

§ 417.538 [Amended]

6. In § 417.538, the following changes are made:

a. Paragraph (a) is revised to read as set forth below.

b. The heading of paragraph (b) is revised to read "*Included costs.*"

c. The heading of paragraph (d) is revised to read "*Limitation on payment.*" and in the last sentence, "such costs" is revised to read "those costs".

§ 417.538 Enrollment and marketing costs.

(a) *Principle.* Costs incurred by an HMO or CMP in performing the enrollment and marketing activities described in subpart k of this part are allowable.

* * * * *

§ 417.544 [Amended]

7. In § 417.544, in paragraph (a), the paragraph designations (1), (2), and (3) are added, preceding the first, second, and third sentences and in paragraph (b), the paragraph designations (1) and (2) are added preceding the first and second sentences.

§ 417.548 [Amended]

9. In § 417.548, the following changes are made:

a. In paragraph (a), "reimbursable" is revised to read "payable".

b. In paragraph (b), in the second sentence, "For example, in" is removed and "(c) *Example.* In" is inserted in its place, and the parenthetical phrase is revised to read "(rather than the payment amounts determined under part 412 or part 413 of this chapter)".

10. Section 417.550 is revised to read as follows:

§ 417.550 Special Medicare program requirements.

(a) *Principle.* HCFA pays the full reasonable cost incurred by an HMO or CMP for activities that are solely for Medicare purposes and unique to Medicare contracts under section 1876 of the Act.

(b) *Application.* HCFA pays the full reasonable cost of the following activities:

(1) Reporting increases and decreases in the number of Medicare enrollees.

(2) Obtaining independent certification of the HMO's or CMP's cost report to the extent that it is for Medicare purposes.

(3) Reporting special data that HCFA requires solely for program planning and evaluation.

(c) *Prior approval requirement.* The costs specified in paragraph (b) of this section must be separately budgeted and approved by HCFA before the contract period begins.

(d) *Limit on full payment.* Full payment is limited to the costs specified in paragraph (b) of this section. All other administrative costs must be apportioned in accordance with § 417.552.

§ 417.552 [Amended]

11. In § 417.552, the following changes are made:

a. In the introductory text of paragraph (a), "Except as provided in § 417.556(c)" is removed and "the" is revised to read "The".

b. In paragraph (a)(1), "§§ 417.530 through 417.576; and" is revised to read "this subpart; and".

§ 417.554 [Amended]

12. In § 417.554, the regulation citations at the end are revised to read "§ 405.480, part 412, and §§ 413.5 and 413.24 of this chapter."

13. Section 417.558 is revised to read as follows:

§ 417.558 Emergency, urgently needed, and out-of-area services for which the HMO or CMP accepts responsibility.

(a) *Source of payment.* Either HCFA or the HMO or CMP may pay a provider for emergency or urgently needed services or other covered out-of-area services for which the HMO or CMP accepts responsibility.

(b) *Limits on payment.* If the HMO or CMP pays, the payment amount may not exceed the amount that is allowable under part 412 or part 413 of this chapter.

(c) *Exception to limit on payment.* Payment in excess of the limit imposed by paragraph (b) of this section is allowable only if the HMO or CMP demonstrates to HCFA's satisfaction that it is justified on the basis of advantages gained by the HMO or CMP, as set forth in § 417.548.

§ 417.560 [Amended]

14. In § 417.560, the following changes are made:

a. In paragraph (a) introductory text, "will base" is revised to read "bases".

b. In paragraph (d)(1), "(1) Except as provided in paragraph (d)(2) of this section," is removed, and "the Medicare share" is revised to read "The Medicare share".

c. Paragraph (d)(2) is removed.

15.–16. Section 417.564 is revised to read as follows:

§ 417.564 Apportionment and allocation of administrative and general costs.

(a) *Costs not directly associated with providing medical care.* Enrollment, marketing, and other administrative and general costs that benefit the total enrollment of the HMO or CMP and are not directly associated with furnishing medical care must be apportioned on the basis of a ratio of Medicare enrollees to the total HMO or CMP enrollment.

(b) *Costs significantly related to providing medical services.* (1) The following administrative and general costs, which bear a significant relationship to the services furnished, are not apportioned to Medicare directly; they must be allocated or distributed to the HMO or CMP components and then apportioned to Medicare in accordance with §§ 417.552 through 417.560:

(i) Facility costs.

(ii) Interest expense.

(iii) Medical record costs.

(iv) Centralized purchasing costs.

(v) Accounting and data processing costs.

(vi) Other administrative and general costs that are not included in paragraph (a) of this section.

(2) The allocation or distribution process must be as follows:

(i) If a separate entity or department of an HMO or CMP performs administrative functions the benefit of which can be quantitatively measured (such as centralized purchasing and data processing), the total allowable costs of this entity or department must be allocated or distributed to the components of the HMO or CMP in reasonable proportion to the benefits received by these components.

(ii) If a separate entity or department of an HMO or CMP performs administrative functions the benefit of which cannot be quantitatively measured (such as facility costs), the total allowable costs of this entity or department must be allocated or distributed to the components of the HMO or CMP on the basis of a ratio of total incurred and distributed costs per component to the total incurred and distributed costs for all components.

§ 417.568 [Amended]

17. In § 417.568, the following changes are made:

a. In paragraph (a)(1), "payable by Medicare" is revised to read "payable by HCFA", and the comma after "enrollees" is removed.

b. In paragraph (a)(2), the phrase "the HMO or CMP must follow" is added immediately before "standardized definitions * * *", and the last three words "must be followed." are removed.

c. In paragraph (b)(2), "as described in this paragraph" is revised to read "as provided in paragraph (b)(3) of this section".

d. In paragraph (b)(3), "based on this basis" is revised to read "developed on this basis" and "will be acceptable" is revised to read "is acceptable".

e. Paragraph (c) is revised to read as set forth below.

f. In paragraph (d), "the HMO or CMP", the last time it appears, is revised to read "it".

§ 417.568 Adequate financial records, statistical data, and cost finding.

* * * * *

(c) *Provider services furnished directly by the HMO or CMP.* If the HMO or CMP furnishes provider services directly, the provider is subject to the cost-finding and cost-reporting requirements set forth in parts 412 and 413 of this chapter. The provider must use an approved cost-finding method described in § 413.24 of this chapter to determine the actual cost of these covered services.

* * * * *

§ 417.576 [Amended]

18. In § 417.576, the following changes are made:

a. In the following paragraphs, "reimbursement" is revised to read "payment": paragraphs (b)(2)(ii), (c)(1), (c)(2)(ii), (d) heading, introductory text, and (d)(1), and (e)(1).

b. In the following paragraphs, "reimbursable" is revised to read "payable": paragraphs (c)(1) and (d)(2).

c. In paragraph (b)(2), "§§ 417.532 through 417.566" is revised to read "this subpart".

d. In paragraph (c)(1), "providing" is revised to read "furnishing".

e. In paragraph (c)(2)(ii), "an insignificant amount" is revised to read "an insignificant portion".

f. Paragraphs (b)(3) and (e)(3) are revised to read as set forth below:

§ 417.576 Final settlement.

* * * * *

(b) *Certified cost report as basis for final settlement.* * * *

(3) *Failure to report required financial information.* If the HMO or CMP fails to submit the required cost report and supporting documents within 180 days (or an extended period approved by HCFA under paragraph (b)(1) of this section), HCFA may—

(i) Consider the failure to report as evidence of likely overpayment; and

(ii) Initiate recovery of amounts previously paid, or reduce interim payments, or both.

* * * * *

(e) *Basis for retroactive adjustment.* * * *

(3) Any withholding continues until the earliest of the following occurs:

(i) The overpayment is liquidated.

(ii) The HMO or CMP enters into an agreement with HCFA to refund the overpaid amount.

(iii) HCFA, on the basis of subsequently acquired information, determines that there was no overpayment.

(iv) The decision of a hearing specified in paragraph (d)(4) of this section is that there was no overpayment.

D. Subpart P is amended as set forth below.

Subpart P—Medicare Payment: Risk Basis

§ 417.580 [Amended]

1. In § 417.580, paragraph (a), "reimbursed" is revised to read "pays".

§ 417.582 [Amended]

2. In § 417.582 the heading is revised and three definitions are added in alphabetical order, to read as follows:

§ 417.582 Definitions.

AAPCC stands for adjusted average per capita cost.

ACR stands for adjusted community rate.

* * * * *

APCRP stands for average of per capita rates of payment.

* * * * *

§ 417.584 [Amended]

3. In § 417.584, the following changes are made.

a. The introductory text of the section and paragraph (c) are revised to read as set forth below.

b. In paragraph (d), "§ 417.592(e)" is revised to read "§ 417.592(b)(2)"; "will reduce" is revised to read "reduces"; and the last sentence is removed.

§ 417.584 Payment to HMOs and CMPs with risk contracts.

Except in the circumstances specified in § 417.440(d) for inpatient hospital care, and as provided in § 417.585 for hospice care, HCFA makes payment for covered services only to the HMO or CMP.

* * * * *

(c) *Adjustments to payments.* If the actual number of Medicare enrollees differs from the estimated number on which the amount of advance monthly payment was based, HCFA adjusts subsequent monthly payments to take account of the difference.

* * * * *

§ 417.585 [Amended]

4. In § 417.585, the following changes are made:

a. The section heading is revised to read: "*Special rules: Hospice care.*"

b. In paragraph (a), "No payment is made effective the first day" is revised to read: "This no-payment rule is effective from the first day".

c. In paragraph (b), Introductory text, "for only" is revised to read "but only for".

d. In paragraph (b)(2), "hospice care was elected" is revised to read "the enrollee elected hospice care".

e. In paragraph (c), the clause "are made to the hospice participating in Medicare elected by the enrollee" is revised to read "is made to the Medicare-participating hospice elected by the enrollee".

§ 417.586 [Removed]

5. Section 417.586 is removed.

§ 417.588 [Amended]

6. In § 417.588, the following changes are made.

a. In paragraph (a), "resulting in an AAPCC" is revised to read "to establish an AAPCC".

b. In paragraph (c)(2), "A further adjustment is made by HCFA" is revised to read "HCFA makes a further adjustment".

7. Section 417.592 is revised to read as follows:

§ 417.592 Additional benefits requirement.

(a) *General rules.* (1) An HMO or CMP that has an APCRP (as determined under § 417.590) greater than its ACR (as determined under § 417.594) must elect one of the options specified in paragraph (b) of this section.

(2) The dollar value of the elected option must, over the course of a contract period, be at least equal to the difference between the APCRP and the proposed ACR.

(b) *Options*—(1) *Additional benefits.* Provide its Medicare enrollees with additional benefits in accordance with paragraph (c) of this section.

(2) *Payment reduction.* Request HCFA to reduce its monthly payments.

(3) *Combination of additional benefits and payment reduction.* Provide fewer than the additional benefits required under paragraph (b)(1) of this section and request HCFA to reduce the monthly payments by the remaining difference between the APCRP and the ACR.

(4) *Combination of additional benefits and withholding in a stabilization fund.* Provide fewer than the additional benefits required under paragraph (b)(1) of this section, and request HCFA to withhold in a stabilization fund (as provided in § 417.596) the remaining difference between the APCRP and the ACR.

(c) *Special rules: Additional benefits option.* (1) The HMO or CMP must determine additional benefits separately for enrollees entitled to both Part A and Part B benefits and those entitled only to Part B.

(2) The HMO or CMP may elect to provide additional benefits in any of the following forms—

(i) A reduction in the HMO's or CMP's premium or in other charges it imposes in the form of deductibles or coinsurance.

(ii) Health benefits in addition to the required Part A and Part B covered services.

(iii) A combination of reduced charges and additional benefits.

(d) *Notification to HCFA.* (1) The HMO or CMP must give HCFA notice of its ACR and its weighted APCRP at least 45 days before its contract period begins.

(2) An HMO or CMP that elects the option of providing additional benefits must include in its submittal—

(i) A description of the additional benefits it will provide to its Medicare enrollees; and

(ii) Supporting evidence to show that the selected benefits meet the requirements of paragraph (a)(2) of this section with respect to dollar value equivalence.

8. Section 417.594 is amended to revise paragraphs (a), (b)(1) and (b)(2), (c), (d), and (e) to read as follows:

§ 417.594 Computation of adjusted community rate (ACR).

(a) *Basic rule.* Each HMO or CMP must compute its basic rate as follows:

(1) Compute an initial rate in accordance with paragraph (b) of this section.

(2) Adjust and reduce the initial rate in accordance with paragraphs (c) and (d) of this section.

(b) *Computation of initial rates.* (1) The HMO or CMP must compute its initial rate using either of the following systems:

(i) A community rating system as defined in § 417.104(b); or

(ii) A system, approved by HCFA, under which the HMO or CMP develops an aggregate premium for all its enrollees and weights the aggregate by the size of the various enrolled groups that compose its enrollment.

(For purposes of this section, enrolled groups are defined as employee groups or other bodies of subscribers that enroll in the HMO or CMP through payment of premiums.)

(2) Regardless of which method the HMO or CMP uses—

(i) The initial rate must be equal to the premium it would charge its non-Medicare enrollees for the Medicare-covered services;

(ii) The HMO or CMP must compute the rates separately for enrollees entitled to Medicare Part A and Part B and for those entitled only to Part B; and

(iii) The HMO or CMP must identify and take into account anticipated revenue from health insurance payers for those services for which Medicare is not the primary payer as provided in § 417.528.

* * * * *

(c) *Adjustment of initial rates*—(1) *Purpose of adjustment.* The purpose of adjustment is to reflect the utilization characteristics of Medicare enrollees.

(2) *Adjustment by the HMO or CMP.* The HMO or CMP may adjust the rate for a particular service using more than one of the following factors if they do not duplicate each other:

(i) *Unit of service.* If the HMO or CMP purchases or identifies services on a unit of service basis and the unit of service is defined the same for all enrollees, the HMO or CMP may make an adjustment in its initial rate to reflect the number of units of services furnished to its Medicare enrollees in comparison to those furnished to other enrollees.

(ii) *Complexity or intensity of services.* The HMO or CMP may make an adjustment to reflect the differences in the complexity or intensity of services furnished to its Medicare enrollees if the calculation of its initial rate includes the elements of this adjustment.

(3) *Support documentation.* All adjustments made by the HMO or CMP must be accompanied by adequate supporting data. If an HMO or CMP does not have sufficient enrollment experience to develop this data, it may, during its initial contract period, use documented statistics from a nationally recognized statistical source.

(4) *Adjustment by HCFA.* If the HMO or CMP does not have adequate data to adjust the initial rate calculated under paragraph (b) of this section to reflect the utilization characteristics of its Medicare enrollees, HCFA will, at the HMO's or CMP's request, adjust the initial rate. HCFA adjusts the rate on the basis of differences in the utilization characteristics of—

(i) Medicare and non-Medicare enrollees in other HMOs or CMPs; or

(ii) Medicare beneficiaries (in the HMO's or CMP's area, or State, or the United States) who are eligible to enroll in an HMO or CMP and other individuals in that same area, or State, or the United States.

(d) *Reduction of adjusted rates.* The HMO or CMP or HCFA further reduces the adjusted rates by the actuarial value of applicable Medicare deductibles and coinsurance.

(e) *HCFA review*—(1) *Submission of data.* The HMO or CMP must submit its ACR and the methodology used to compute it for HCFA review and approval, and must include adequate supporting data.

(2) *Appeals procedures.* (i) If HCFA determines that an HMO's or CMP's ACR computation is not acceptable, the HMO or CMP may, within 30 days after receipt of notice of the determination, file with HCFA a request for a hearing.

(ii) The request must state why the HMO or CMP believes the determination is incorrect, and include any supporting evidence the HMO or CMP considers pertinent.

(iii) A hearing officer designated by HCFA conducts the hearing in accordance with the hearing procedures set forth in §§ 405.1819 through 405.1833 of this chapter.

§ 417.596 [Amended]

9. In § 417.596, the following changes are made:

a. In paragraphs (a), (b), and (c)(1), "the average of its per capita rates of payment" is revised to read "its APCRP".

b. In paragraphs (c)(1) and (c)(2), "will not" is revised to read "does not".

c. In paragraph (d), "for the purpose of establishing and maintaining" is revised to read "to establish and maintain".

§ 417.597 [Amended]

10. In paragraph (a) of § 417.597, in the introductory text, "the average of its per capita rates of payment" is revised to read "its APCRP".

§ 417.598 [Amended]

11. In § 417.598, "will conduct" is revised to read "conducts".

E. Subpart Q is amended as set forth below.

Subpart Q—Beneficiary Appeals

1. Section 417.600 is revised to read as follows:

§ 417.600 Basis and scope.

(a) *Statutory basis.* (1) Section 1869 of the Act provides the right to a hearing and to judicial review for any individual dissatisfied with a determination regarding his or her Medicare benefits.

(2) Section 1876 of the Act provides for Medicare payments to HMOs and CMPs that contract with HCFA to enroll Medicare beneficiaries and furnish Medicare-covered health care services to them. Section 1876(c)(5) provides that—

(i) An HMO or CMP must establish grievance and appeals procedures; and

(ii) Medicare enrollees dissatisfied because they do not receive health care services to which they believe they are entitled, at no greater cost than they believe they are required to pay, have the following appeal rights:

(A) The right to an ALJ hearing if the amount in controversy is $100 or more.

(B) The right to judicial review of the hearing decision if the amount in controversy is $1000 or more.

(iii) The Medicare enrollee and the HMO or CMP are parties to the hearing and to the judicial review.

(b) *Scope.* This subpart sets forth—

(1) The appeals procedures, as required by section 1876(c)(5)(B) of the Act for Medicare enrollees who are dissatisfied with an "organization determination" as defined in § 417.606;

(2) The applicability of grievance procedures established by the HMO or CMP under section 1876(c)(5)(A) of the Act and § 417.604(a) for complaints that do not involve an organization determination;

(3) The responsibility of the HMO or CMP—

(i) To develop and maintain procedures; and

(ii) To ensure that all Medicare enrollees have a complete written explanation of their grievance and appeal rights, of the steps to follow, and of the time limits for each step of the procedures; and

(4) The special rules that apply when a beneficiary requests immediate PRO review of a determination that he or she no longer needs inpatient hospital care.

§ 417.602 [Amended]

2. In § 417.602, the heading is revised to read "*§ 417.602 Definitions.*" and the definition of "enrollee" is removed.

3. Section 417.604 is revised to read as follows:

§ 417.604 General provisions.

(a) *Responsibilities of the HMO or CMP.* (1) The HMO or CMP must establish and maintain—

(i) Appeals procedures that meet the requirements of this subpart for issues that involve organization determinations; and

(ii) Grievance procedures for dealing with issues that do not involve organization determinations.

(2) The HMO or CMP must ensure that all enrollees receive written information about the grievance and appeals procedures that are available to them.

(b) *Limits on applicability of this subpart.* (1) If an enrollee requests immediate PRO review (as provided in § 417.605) of a determination of noncoverage of inpatient hospital care—

(i) The enrollee is not entitled to subsequent review of that issue under this subpart; and

(ii) The PRO review decision is subject to the appeals procedures set forth in part 473 of this chapter.

(2) Any determination regarding services that were furnished by the HMO or CMP, either directly or under arrangement, for which the enrollee has no further liability for payment are not subject to appeal.

(3) Services included in an optional supplemental plan under (§ 417.440(b)(2)) are subject only to a grievance procedure.

(4) Physicians and other individuals who furnish services under arrangement with an HMO or CMP have no right of appeal under this subpart.

(c) *Applicability of other regulations.* Unless otherwise provided in this subpart, regulations at 20 CFR, part 404, subparts J and R, (pertaining respectively to conduct of hearings and representation of parties under title II of the Act) are applicable under this subpart.

§ 417.628 [Removed]

4. Section 417.628 is removed.

5. In § 417.632, paragraphs (c) and (d) are revised to read as follows:

§ 417.632 Request for hearing.

* * * * *

(c) *Parties to a hearing.* (1) The parties to a hearing must be the parties to the reconsideration and any other person or entity whose rights with respect to the reconsideration may be affected by the hearing, as determined by the ALJ.

(2) The HMO or CMP must be made a party to the hearing but does not have a right to request a hearing.

(d) *ALJ action when the amount in controversy is less than $100.* (1) If the request plainly shows that the amount in controversy is less than $100, the ALJ dismisses the request.

(2) If, after a hearing is initiated, the ALJ finds that the amount in controversy is less than $100, he or she discontinues the hearing and does not rule on the substantive issues raised in the appeal.

F. Subpart R is amended as set forth below.

Subpart R—Medicare Contract Appeals

§ 417.644 [Amended]

1. In § 417.644, the following changes are made:

a. In paragraph (a), "will notify the HMO or CMP in writing" is revised to read "gives the HMO or CMP written notice".

b. In paragraph (c), "Notice of an initial determination specified in § 417.640 is mailed to the HMO or CMP" is revised to read "HCFA mails the notice to the HMO or CMP".

2. Section 417.648 is revised to read as follows:

§ 417.648 Reconsideration: Applicability.

(a) Reconsideration is the first step for appealing an organization determination specified in § 417.640 (a) or (b).

(b) HCFA reconsiders either of the specified determinations if the HMO or CMP files a written request in accordance with § 417.650.

§ 417.652 [Amended]

3. In § 417.652, "will provide" is revised to read "provides".

4. Section 417.656 is revised to read as follows:

§ 417.656 Notice of reconsidered determination.

(a) HCFA gives the parties written notice of the reconsidered determination.

(b) The notice—

(1) Contains findings with respect to the HMO's or CMP's qualifications to enter into a contract with HCFA under section 1876 of the Act;

(2) States the specific reasons for the reconsidered determination; and

(3) Informs the party of its right to a hearing if it is dissatisfied with the determination.

§ 417.666 [Amended]

5. In § 417.666, "will designate" is revised to read "designates".

§ 417.668 [Amended]

6. In § 417.668, "will designate" is revised to read "designates".

§ 417.670 [Amended]

7. In § 417.670, the following changes are made:

a. In paragraph (a), "will fix", "send", and "must also inform" are revised to read "fixes", "sends", and "also informs", respectively.

b. In paragraph (c), "any change in time or place or of adjournment" is revised to read "any change in time or place of hearing, or of adjournment or postponement".

§ 417.676 [Amended]

8. In § 417.676, the following changes are made:

a. In paragraph (a), "will be open" is revised to read "is open".

b. In paragraph (b), "will inquire" is revised to read "inquires", and "must receive" is revised to read "receives".

c. In paragraph (c), "The parties will be provided" is revised to read "The hearing officer provides the parties".

d. In paragraph (d), "will decide" is revised to read "decides".

§ 417.678 [Amended]

9. In § 417.678, "will rule" is revised to read "rules".

§ 417.680 [Amended]

10. In § 417.680, paragraph (b), "will be" is revised to read "are".

§ 417.682 [Amended]

11. In § 417.682, in paragraphs (a) and (c), "will be" is revised to read "is".

§ 417.686 [Amended]

12. In § 417.686, in paragraph (a), "will be" is revised to read "is".

§ 417.690 [Amended]

13. In § 417.690, the following changes are made:

a. In paragraph (a), "will issue" is revised to read "issues".

b. In paragraph (b), "will provide" is revised to read "provides".

§ 417.692 [Amended]

14. In § 417.692, the following changes are made:

a. In paragraph (c)(1), "will be" is revised to read "is".

b. In paragraph (c)(2), "will specify" is revised to read "specifies".

§ 417.694 [Amended]

15. In § 417.694, "final and binding" is revised to read "binding".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 31, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–21695 Filed 9–5–95; 8:45 am]

BILLING CODE 4120-01-P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Final rule with request for comments.

SUMMARY: The National Science Foundation is amending its regulations to designate additional Antarctic Specially Protected Areas, to redesignate one site as a Specially Protected Area which was formerly designated as a Site of Special Scientific Interest, and to revise the designations of Specially Protected Areas consistent with Antarctic Treaty Consultative meeting recommendations. These regulations, issued pursuant to section 6(b)(3) of the Antarctic Conservation Act of 1978 (16 U.S.C. 2405(b)(3)), are being revised to reflect recommendations adopted by the Antarctic Treaty parties at the 16th Antarctic Consultative Meeting.

EFFECTIVE DATE: September 6, 1995.

ADDRESSES: Comments should be sent to Joyce A. Jatko, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko at the address above or by telephone at (703) 306–1030.

SUPPLEMENTARY INFORMATION: Since these regulations were originally issued

in 1979, several Antarctic Treaty Consultative Meetings have been held in accordance with Article IX of the Antarctic Treaty. The regulations have been amended from time to time based on recommendations adopted at these meetings. The amendments that are the subject of this rule implement recommendations XVI–4, XVI–8 and XVI–9 of the 16th Antarctic Treaty Consultative Meeting (16th ATCM). Because the amendments merely implement recommendations adopted at the 16th ATCM, public comments were not obtained before making the amendment effective.

The recommendations which are the subject of this amendment are as follows:

Recommendation XVI–4 re-designates Site of Special Scientific Interest No. 30, Avian Island, Marguerite Bay, Antarctic Peninsula as Specially Protected Area No. 21 and provides that it be subject to the management plan accompanying the description of the protected area.

Recommendation XVI–8 provides that Cryptogram Ridge, Mount Melbourne, Victoria Land, be designated as Specially Protected Area No. 22 and be subject to the management plan annexed thereto.

Recommendation XVI–9 provides that Forlidas Pond and Davis Valley Ponds be designated as Specially Protected Area No. 23 and be subject to the management plan annex thereto.

Specially Protected Area No. 21: Avian Island (67°46′ S, 68°54′ W) lies 0.25 km south of the south-west tip of Adelaide Island in north-west Marguerite Bay, south-west Antarctic Peninsula. The Area consists of Avian Island together with its littoral zone. It is 1.45 km long by 0.8 km at its widest (total area about 49 ha), and rises to just over 40 m altitude in the south. It is almost entirely ice-free in summer. There are several shallow melt pools, the largest being on the eastern raised beach terrace. There are two small dilapidated refuge huts, one near the north-west and the other near the mid-east shores of the island. The Area is unique in the Antarctic Peninsula region for its abundance and diversity of breeding seabirds. The Blue-eyed shag colony is one of the largest known in the Antarctic, and the Adelie penguin colony is the largest on the Antarctic Peninsula.

Specially Protected Area No. 22: Mount Melbourne (74°21′ S, 164°42′ W lies between Wood Bay and Campbell Glacier, northern Victoria Land, on the western side of the Ross Sea. The Area includes most of Cryptogram Ridge on the southern rim of the main summit crater (2,733 m altitude), and extends to about 1,200 m by 500 m. Geothermal activity occurs along about 300–400 m of the ridge and is marked by discontinuous areas of ice-free ground, surrounded by numerous ice hummocks up to 1 m high and scattered hollow ice towers up to several meters in diameter and 4 m high. The warm ice-free areas are mostly gently sloping with narrow terraces up to 1.5 m wide. The geothermal ground within the Area supports a unique community of bryophytes, algae and microbiota, including the only known occurrence in the Antarctic of the moss *Campylopus pyriformis.*

Specially Protected Area No. 23: Forlidas Pond, about 100 m in diameter, is situated near the east end of the Dufek Massif in a small unnamed dry valley about 1 km to the east of the northern edge of the Forlidas Ridge and about 1 km northwest of Davis Valley. The unnamed dry valley is separated from Davis Valley by a northeast trending ridge several kilometers long. The position of Forlidas Pond is 82°27′15″ S, 15°21′ W. The Area includes smaller ponds that occur along the ice margin at the northern edge of Davis Valley, a short distance east of Forlidas Pond. The Area consists of two parts about 500 meters apart and includes all that area within 500 m of the center of Forlidas Pond and all that area within a 500 m radius of several meltwater ponds at the ice margin along the northern edge of Davis Valley. The Area contains some of the most southerly freshwater ponds known in Antarctica containing plant life.

Determinations

I have determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. I have also determined that this rule involves a foreign affairs function of the United States and is, therefore, exempt from the notice requirements of section 553 of the Administrative Procedure Act and from regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Finally, I have reviewed this rule in light of section 2 of Executive Order 12778 and certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 670

Antarctica, Conservation.

Pursuant to the authority granted by 16 U.S.C. 2405(b)(3), NSF hereby amends 45 CFR Part 670 as set forth below.

PART 670—[AMENDED]

1. The authority citation for Part 670 continues to read as follows:

Authority: 16 U.S.C. 2405, as amended.

2. Section 670.30 is revised to read as follows:

§ 670.30 Designation of specially protected areas.

The Act states that the Director shall designate as a specially protected area, each area identified under the Agreed Measures as needing special protection. The following areas have been so identified and designated as Specially Protected Areas:

(a) SPA 1, Taylor Rookery, MacRobertson Land
(b) SPA 2, Rookery Islands, Holme Bay
(c) SPA 3, Ardrey Island and Odbert Island, Budd Coast
(d) SPA 4, Sabrina Island, Balleny Islands
(e) SPA 5, Beaufort Island, Ross Sea
(f) SPA 7, Cape Hallett, Victoria Land
(g) SPA 8, Dion Islands, Marguerite Bay, Antarctic Peninsula
(h) SPA 9, Green Island, Berthelot Islands, Antarctic Peninsula
(i) SPA 13, Moe Island, South Orkney Islands
(j) SPA 14, Lynch Island, South Orkney Islands
(k) SPA 15, Southern Powell Island and adjacent islands, South Orkney Islands
(l) SPA 16, Coppermine Peninsula, Robert Island
(m) SPA 17, Litchfield Island, Arthur Harbor, Palmer Archipelago
(n) SPA 18, North Coronation Island, South Orkney Islands
(o) SPA 19, Lagotellerie Island, Marguerite Bay
(p) SPA 20, 'New College Valley', Caughley Beach, Cape Bird, Ross Island
(q) SPA 21, Avian Island, North-west Marguerite Bay
(r) SPA 22, Cryptogram Ridge, Mount Melbourne, Victoria Land
(s) SPA 23, Forlidas Pond and Davis Valley Ponds

Note: Maps specifying these areas in greater detail may be obtained from the Director.

§ 670.34 [Amended]

3. Section 670.34 is amended by removing paragraph (b)(30) and redesignating paragraphs (b)(31)–(b)(36) as paragraphs (b)(30)–(b)(35).

Dated: August 18, 1995.

Lawrence Rudolph,

General Counsel, National Science Foundation.

[FR Doc. 95–21978 Filed 9–5–95; 8:45 am]

BILLING CODE 7555-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–94–9]

RIN 2125–AD37

Parts and Accessories Necessary for Safe Operation; Automatic Brake Adjusters and Brake Adjustment Indicators

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting a final rule requiring the use of automatic brake adjusters (ABAs) on hydraulically-braked commercial motor vehicles (CMVs) and air-braked CMVs manufactured on or after October 20, 1993, and October 20, 1994, respectively. This rulemaking is intended to: Ensure that the operational standards for brakes in the Federal Motor Carrier Safety Regulations (FMCSRs) are consistent with the manufacturing standards in the Federal Motor Vehicle Safety Standards (FMVSSs), Nos. 105 and 121, which now require the installation of automatic brake adjusters and adjustment indicators on certain CMVs manufactured on or after these dates; and improve the safety of operation of CMVs by reducing the incidence of brakes that are out of adjustment.

EFFECTIVE DATE: October 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994, the FHWA published a notice of proposed rulemaking in the **Federal Register** (59 FR 39518) to require the use of ABAs on hydraulically-braked CMVs manufactured on or after October 20, 1993, and air-braked CMVs manufactured on or after October 20, 1994. These were the effective dates of the National Highway Traffic Safety Administration's (NHTSA) amendments to its Federal Motor Vehicle Safety Standards (FMVSSs) Nos. 105 and 121. The FHWA also proposed a requirement for brake adjustment indicators (BAIs) on air-braked CMVs with external adjustment mechanisms manufactured on or after October 20, 1994.

Because the FHWA also believed there were opportunities for improvements to the operational safety of CMVs manufactured prior to the effective dates of the amendments to FMVSS Nos. 105 and 121, the agency requested information regarding the potential impacts of requiring CMVs subject to the FMCSRs to be retrofitted with ABAs, and of requiring air-braked CMVs with external adjustment mechanisms to be retrofitted with BAIs. The FHWA requested comments on eight questions specifically concerning the issue of retrofits:

1. Should air-braked CMVs manufactured before the effective date of NHTSA's rule be required to be retrofitted with ABAs?

2. Should all air-braked CMVs with external brake adjustment mechanisms be required to be retrofitted with brake adjustment indicators?

3. If certain CMVs are to be retrofitted, how much time should be allowed for installation of the new equipment?

4. Are there certain types or configurations of air-braked vehicles that cannot be equipped with ABAs because of space limitations around the axles and wheels?

5. Should different periods be specified for retrofitting single-unit trucks, tractors, converter dollies, and trailers?

6. The requirements proposed by this NPRM would exclude air-braked vehicles that were not subject to FMVSS No. 121 on the date of manufacture. (Vehicles not subject to the requirements are listed under paragraph S3 of § 571.121, and include certain types of limited- or specialized-use vehicles such as wide trailers, vehicles equipped with an axle with a gross axle weight rating of 13,154 kilograms (29,000 pounds) or more, any truck or bus that has a speed attainable in 3.2 kilometers (2 miles) of not more than 53 km/hr (33 mph), heavy hauler trailer sets, and load divider dollies.) Should specific types of CMVs, or CMVs used in unique operations, (i.e., CMVs that are *not* subject to the requirements of FMVSS 121, but are subject to the FMCSRs) be exempt from a requirement to be retrofitted with ABAs? Should these specific types of air-braked CMVs manufactured on or after October 20, 1994, be required to be *equipped* with ABAs prior to being placed in operation in interstate commerce? Please provide details.

7. What are the costs associated with retrofitting an ABA compared to replacement of a manual brake adjuster (MBA)? Please include the cost of the device, the time required to complete the installation, and a representative hourly salary of the mechanic performing the installation. Please also include a "loss of use" cost figure if a CMV were to be taken out of revenue service for retrofitting at some time other than a time when a brake adjuster would normally be due for replacement. How often do tractors and trailers visit a facility where retrofitting could take place?

8. Should the FHWA consider a retrofitting requirement for hydraulically-braked CMVs? Please address the cost questions asked in Question 7.

Discussion of Comments

Twenty-seven commenters responded to the notice: The Heavy Duty Brake Manufacturers Council (HDBMC), an association of 10 heavy duty brake component manufacturers; 3 manufacturers of brake components (Rockwell International, Haldex Corporation, Midland-Grau Heavy Duty Systems); a manufacturer of brake adjustment indicators (Tattle-Tale); a motor carrier using a brake adjustment indicator of its own design (Sebring Container Corporation); a private motor carrier (Wilbur-Ellis); a manufacturer of trucks and truck-tractors (Volvo GM Heavy Truck Corporation); a manufacturer of heavy construction equipment (Cedarapids Inc.); 6 national transportation and trade associations (Steamship Operators Intermodal Committee (SOIC), American Trucking Associations (ATA), National Automobile Dealers Association (NADA), National Private Truck Council (NPTC), National School Transportation Association (NSTA), Petroleum Marketers Association of America (PMAA); 2 CMV leasing companies (Riteway Leasing Company and XTRA Corporation); a drivers' organization (the Owner Operator Independent Drivers Association (OOIDA)); a public transportation authority (Metro-Dade Transit Authority); an intermodal transportation provider (Union Pacific Railroad Company); the Commercial Vehicle Safety Alliance (CVSA), an association of Federal, State, and Provincial officials responsible for the administration and enforcement of motor carrier safety regulations in the United States, Canada, and Mexico; the European Union, which submitted its comments via the European Commission General Agreement on Tariffs and Trade (GATT) Enquiry Point; 2 State highway safety enforcement agencies (Maine State Police, State of

Connecticut Department of Motor Vehicles); 2 highway safety organizations (Insurance Institute for Highway Safety (IIHS) and Advocates for Highway and Auto Safety (AHAS)); and 1 private individual.

In-Use Requirement

Almost without exception, commenters who addressed the proposed requirement to adopt rules parallel to the NHTSA's recent amendments to FMVSSs Nos. 105 and 121 responded favorably. These commenters included the Maine State Police, the State of Connecticut Department of Motor Vehicles; HDBMC; Wilbur-Ellis; IIHS, NPTC, AHAS, OOIDA, NSTA, and Midland-Grau. Haldex and Rockwell International limited their comments to air-braked vehicles.

The ATA noted that manufacturers have provided, and motor carriers voluntarily used, automatic brake adjusters for a number of years, and that, even in the absence of Federal regulations, the marketplace is adopting this technology on its merits. Although it generally favored the proposed in-use requirement, the ATA raised several arguments concerning ABAs and brake maintenance. It stated that out-of-adjustment brakes are a maintenance problem that "can be compounded if the addition of such equipment causes fleets to determine that they will no longer need to look at their brakes as frequently and if the automatic adjusters are not serviced." The ATA also quoted a NHTSA study, which noted that carefully-maintained manual brake adjusters (MBAs) can keep strokes within tolerances comparable to ABAs. The ATA added that MBAs "can be set to a closer adjustment" than ABAs because ABAs "must provide extra stroke to prevent over-adjustment when brake drums are hot."

The FHWA generally agrees with this portion of the ATA's comment; however, the cited research performed by the NHTSA ("Automatic Brake Adjusters for Heavy Vehicle Air Brake Systems," February 1991, report DOT–HS–807–724 (PB 91–215814)) and the National Transportation Safety Board ("Heavy Vehicle Airbrake Performance," April 29, 1992, report NTSB/SS–92/01 (PB 92–917003)) has demonstrated that not all MBAs are well maintained. (Copies of both of these reports have been placed in the docket.) The preambles to the FHWA's NPRM and the NHTSA's rulemakings on ABAs clearly stated that "automatic" brake adjusters do not in any way imply that they are "maintenance-free" devices. Nevertheless, the FHWA continues to believe that ABAs can reduce instances of brakes out-of-adjustment, and CMVs being declared out-of-service, due to this condition.

The ATA asserted that ABAs "are not mandatory for safety." It argued that, should a regulation be imposed prohibiting the replacement of an ABA with an MBA, the vehicle should not be placed out of service because of the substitution unless the vehicle's brakes are found to be out of adjustment.

The FHWA's intent in issuing this rulemaking is to require an ABA installed in accordance with the requirements of FMVSS Nos. 105 or 121 to be replaced in kind, so the vehicle continues to perform as originally manufactured. Motor carriers have considerable experience selecting replacement parts; the replacements must be chosen to ensure that the systems in which they are installed continue to operate safely.

Regarding the ATA's concern about a CMV equipped with an MBA (where an ABA is required by the FMVSSs and the FMCSRs) being placed out of service, the FHWA notes that, under the current provisions of the CVSA's North American Uniform Out-of-Service Criteria, the presence of an MBA would not be a cause for placing a CMV out-of-service unless the condition of the brake, or its state of adjustment, were such that it would be likely to cause an accident or a breakdown. The FHWA notes that the CVSA's comments to this docket did not address changing the criteria with respect to the presence or absence of ABAs.

Finally, while the ATA agreed with the intent of the NPRM, it expressed concern that the proposed language would specifically reference an FMVSS. The ATA stated that, by requiring vehicle users to ensure that replacement parts meet the FMVSS, the FHWA would, in effect, require consumers [motor carriers, CMV operators] to "create the technical expertise of manufacturers for themselves." The ATA asserted that, if the FHWA wants CMV users to purchase parts which meet the FMVSS, then the FHWA must work with the NHTSA to assure that new parts are labeled with compliance information or a code, similar to the requirements for fuel tanks under § 393.67(f) of the FMCSRs.

An in-use requirement for a CMV part or accessory that references an FMVSS does not place any unique burden on the CMV's operator. For example, § 393.11 provides an in-use standard for lighting devices and reflectors; it states that CMVs must meet the requirements of 49 CFR 571.108 (FMVSS 108) in effect at the time of manufacture of the vehicle. Commercial motor vehicle operators have ample experience in obtaining replacement parts for vehicle subsystems. In fact, at least one ABA manufacturer (Gunite) provides cross-reference lists to show appropriate replacements for original equipment manufacturers' devices.

In closing, the ATA recommended that the FHWA and the NHTSA work together to focus the FMVSSs and the FMCSRs on CMV maintenance difficulties. The ATA stated that such items as wear indicators, component identification, and access for inspection have been largely ignored in the Federal standards, yet they play a major role in equipment operation and ease of inspection. The FHWA takes these concerns into account to the greatest extent practicable, and will continue to do so as the agency works to develop performance-based regulations through its Zero-Base Regulatory Review Program.

The CVSA did not take a position on the proposed in-use requirements. It noted that most inspectors are familiar with ABAs, although they may need some minimal "recognition" training for new or different systems. The CVSA was concerned that BAIs provide consistent information to motor carrier personnel throughout the BAI's service life. The CVSA made the observation that some BAIs use paint on the pushrod to indicate adjustment status, and that, when the paint wears, it may give a false reading.

The FHWA has consulted with the NHTSA regarding this matter. Some manufacturers use epoxy and baked-on coatings for marking/color-coding pushrods, but it is possible that some may use paint. If a BAI is not maintained to provide an accurate reading of brake adjustment status, the motor carrier will be in violation of the FMCSRs.

Sebring Container Corporation commented on their favorable experience with BAIs. Two commenters noted that many buses are equipped with ABAs: the NSTA indicated that its members who responded to a small survey all used ABAs, and Metro-Dade Transit Authority buses all have ABAs. Union Pacific Railroad Company favored the in-use rule. The European Commission expressed a concern that the FMVSS requirement was more restrictive than European requirements.

Volvo and the ATA addressed the wording of the proposed rule. Volvo suggested the language be modified to define more clearly the class of vehicles subject to the requirement, specifically CMVs with air brake systems that meet the requirements of FMVSS No. 121 (49

CFR 571.121, paragraph S5.1.8) at the time of manufacture. It pointed out that FMVSS No. 121 exempts some vehicles, such as those with gross axle weight ratings in excess of 13,154 kg (29,000 lbs.), and that the language originally proposed would have required ABAs on all CMVs, irrespective of the FMVSS No. 121 requirements. This would necessitate retrofitting for which components may not exist.

The FHWA has revised the language of § 393.53(a) and § 393.53(b) to clarify their applicability to CMVs that are subject to the requirements of FMVSS Nos. 105 and 121, respectively, at the time of their manufacture.

The ATA also offered alternative language for the proposed rule: "Each commercial motor vehicle manufactured with a hydraulic brake system on or after October 20, 1993, and equipped with an automatic means of brake adjustment to comply with FMVSS 105, shall remain equipped with an automatic brake adjustment system." Similarly for CMVs equipped with air brakes: "Each commercial motor vehicle manufactured with an air brake system on or after October 20, 1994, and equipped with an automatic means of brake adjustment to comply with FMVSS 121, shall remain equipped with an automatic brake adjustment system."

The FHWA disagrees with the ATA's suggested rewording because it could be interpreted to permit devices that do not comply with the ABA requirements of FMVSSs Nos. 105 and 121 at the time when the CMV was manufactured to be used as replacement parts. The agency's intent, in proposing an in-use rule, was to require that replacement ABAs continue to conform to the FMVSSs, much as replacement lighting devices and reflectors must continue to conform to the requirements of FMVSS No. 108.

Retrofitting ABAs on Hydraulically-Braked CMVs

The following commenters addressed the questions concerning a potential retrofitting requirement, but did not address the proposed in-use requirement: Riteway Leasing Company, SOIC, Tattle-Tale, NADA, PMAA, Cedarapids, Michael J. Meyer, and XTRA Corporation.

With two exceptions, those who commented on this issue were strongly opposed to a retrofitting requirement for these vehicles. Most cited potential major engineering changes that would be required for axles as well as brakes. For example, HDBMC stated that hydraulic disc brakes inherently provide automatic adjustment. It added that automatically-adjusted hydraulic drum brakes have internal adjustment mechanisms, and retrofitting would, in most cases, require replacement of the entire brake assembly. In some cases, the hub and drum, or even the entire axle, would have to be replaced. The HDBMC noted that, since the 1983 model year, all class 6, 7, and 8 hydraulic brake trucks [1] manufactured by major U.S. manufacturers have had automatic adjustment features. Mandating a retrofit would therefore be superfluous except for a very few vehicles, and their retrofitting costs would be exorbitant.

Both Rockwell International and Wilbur-Ellis noted that hydraulically-braked CMVs provide the driver an indication of brake adjustment through the brake pedal travel.

The ATA's comments reiterated many of the points made by others. It noted that adjustment systems for hydraulic drum brakes are internal to the brakes, integral to their design, and cannot practically be retrofitted.

The NADA and the NPTC were opposed to a retrofit for hydraulically-braked CMVs. Haldex stated that retrofit is impractical for hydraulic brakes. The NSTA was concerned with potential retrofitting problems, including safety and voiding of the FMVSS certification applicable at the time of manufacture. It also questioned whether retrofit kits would be available for older buses in fleets, some of which are over 20 years old, and whether they could be installed and made to operate properly. Midland-Grau Heavy Duty Systems noted that the majority of hydraulically-braked CMVs already are equipped with ABAs. Union Pacific Railroad Company recommended against retrofits for hydraulically-braked CMVs because of the high costs involved. It noted that hydraulically-braked vehicles have had self-adjusting brakes on most units for many years, and that relatively few CMVs currently in service are not so equipped. The CVSA commented that hydraulic brake systems are not disassembled to inspect their component parts during the course of inspecting a CMV, and that a decision regarding hydraulic brake systems would not affect inspection procedures.

Commenting in favor of a retrofit requirement for hydraulically-braked CMVs, the AHAS stated that ABAs are necessary for all CMVs. The AHAS was "convinced that the benefits gained by retrofitting ABAs and BAIs to the entire existing commercial fleet would far outweigh any costs to industry, especially if a reasonable phase-in program was put in place." The AHAS did not, however, provide any figures to substantiate this statement. The AHAS also stated that it was unsure of the benefits of BAIs for hydraulic or air-over-hydraulic systems, and that it did not know how BAIs could be retrofitted.

The Maine State Police (Maine) also stated that retrofits should be required, without differentiating between air-braked and hydraulically-braked CMVs. It recommended effective dates of October 20, 1996, for tractors and trucks, and October 20, 1997, for trailers, semitrailers, and converter dollies. Maine also recommended that limited- or specialized-use vehicles also be subject to a retrofitting requirement, but it provided no additional information or technical material to support this viewpoint.

The FHWA acknowledges the concerns expressed by the commenters over retrofitting hydraulically-braked CMVs. The engineering work required to accomplish this retrofit would be complex and costly. The engineering complexity of designing and installing a retrofitted system would potentially go beyond the maintenance capabilities of all but the most sophisticated organizations. Because the design of hydraulic brakes is generally not amenable to this type of modification, an engineering retrofit, if done improperly, could actually degrade the performance of the brake system, or render it inoperative. Therefore, in view of the possible adverse safety impacts, the FHWA has decided not to require retrofitting for hydraulically-braked CMVs.

Questions Concerning Retrofitting of ABAs and BAIs on Air-Braked CMVs

The remaining questions posed by the NPRM covered retrofitting ABAs and BAIs on air-braked CMVs. While few commenters expressed strong opinions for or against retrofitting, nearly all voiced concerns. Commenters cited the current limited production capacity of ABA manufacturers, potential engineering modifications required for brake system component mountings because of the limited space around brake chambers on some vehicles, and potential difficulty in locating the vehicles and taking them out of revenue service to retrofit ABAs. Specific comments on each of the numbered questions asked in the NPRM follow, along with the FHWA's response:

1. Should air-braked CMVs manufactured before the effective date of NHTSA's rule be required to be retrofitted with ABAs?

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[1] Class 6: 8,846–11,794 kg (19,501–26,000 lbs); Class 7: 11,795–14,969 kg (26,001–33,000 lbs); and Class 8: over 14,969 kg (33,000 lbs).

In Favor

The AHAS stated it would strongly support such an initiative as an appropriate complement to the FMVSSs. The AHAS strongly believes that the FHWA should not consider mandating ABAs without also requiring (1) the use of BAIs, and (2) submissions of certifications by interstate carriers of their preventive maintenance programs which ensure optimal maintenance and operation of ABAs.

Maine believed that retrofits should be required.

Metro-Dade stated it would support an ABA retrofit proposal, noting that its urban bus fleet is equipped with ABAs.

Sebring stated that it will install ABAs as replacements for manual brake adjusters, as needed.

Opposed

Wilbur-Ellis opposed retrofitting because the cost would not justify the safety benefit, and ABAs must still be maintained and brake clearances checked. It recommended aggressive roadside enforcement.

The ATA opposed mandatory retrofit for existing equipment, reasoning that motor carriers lack technical expertise to assure replacement parts comply with the FMVSSs; this is the responsibility of the manufacturer. It stated that hydraulic brakes and some air brakes cannot be retrofitted, and that motor carriers are "unable to redesign equipment which was built not having to comply * * *." The ATA stated that most tractors manufactured since the late 1980s have ABAs, but that ABAs have not been standard equipment on most trailers. It contended that the current rule requiring brakes to be kept in adjustment is "actually more comprehensive" than a retrofit requirement, because the mere presence of ABAs does not guarantee that brakes will be kept in adjustment. The ATA added that retrofits should not be required because many installations lack the space to make the substitution; there may be design limitations within the initial system; and current systems operate safely but may not do so after retrofitting. It stated that consumer reworking of vehicles could create legal liability issues: an example would be a retrofit that could require removing brackets from heat-treated axles, potentially leading to a structural failure. Finally, the ATA asserted that the record demand for ABAs for new CMVs subject to FMVSS No. 121 has rationed aftermarket supply.

The NADA believed the requirements would be unduly burdensome to the motor carrier industry.

The NPTC stated "There is still some concern surrounding the effectiveness of ABAs * * *. (T)he technology still has room for improvement * * *." While it opposed retrofitting, the NPTC proposed that vehicles that had already been retrofitted be required to maintain their ABAs.

The OOIDA stated that it was adamantly opposed to a retrofit requirement. "Time and cost are not justified by the marginal safety benefit that would result." It believed that retrofitting would be cost-prohibitive "for a vast portion of the trucking industry, especially owner-operators," and that the FHWA should defer to the opinion and expertise of the NHTSA.

Haldex was concerned that retrofitted ABAs might not be able to keep air chambers operating within allowable limits due to wear and lack of maintenance of other brake components. It stated that "Improvement in overall operational safety of these retrofitted vehicles may be less than expected unless other brake maintenance is performed at the time of the retrofit." Haldex also stated that, although the company would benefit from a requirement to retrofit all CMVs, it could not enthusiastically support such a proposal because of the potential high costs to the trucking industry and because it believed that past maintenance histories would lead to uncertain future benefits from the devices.

The NSTA was concerned that retrofitting could affect safety and potentially void the FMVSS certification applicable at time of manufacture. It questioned whether retrofit kits would be available for older buses (up to 20 years old), and whether the ABAs could be installed and made to operate properly.

The PMAA cited safety and economic concerns, particularly for small businesses. The PMAA believed that current regulations requiring brake inspection and adjustment were sufficient.

Union Pacific cited an extremely high cost burden, and added that the time during which vehicles would be out of revenue service would jeopardize the transportation system's ability to move the Nation's freight on a timely basis.

Mr. Michael J. Meyer, a mechanic with 14 years of experience and 14 additional years as an owner-operator, believed a retrofitting requirement would lead drivers to ignore brakes, as well as to miss other potential equipment problems, because they would take shortcuts in performing under-vehicle inspections.

XTRA Corporation cited cost, possible customer non-awareness of the applicability of a retrofitting requirement to leased trailers, and the difficulty of customers in "obtaining adequate compliance with the technical aspects of retrofitting." It added that a substantial number of its trailers are not used in long-distance hauls, but are drayed to and from intermodal ramps. It also noted that many of its trailers are leased for storage and for use as offices, and should not be required to be retrofitted.

Other Commenters' Concerns

The HDBMC believed that the FHWA should consider air-braked CMV ABA retrofits "when physically possible and economically feasible." While the HDBMC declared that consideration of retrofitting "is laudable," it cautioned that many concerns would need to be addressed; for example, not all automatic slack adjusters interchange with manual slack adjusters.

Volvo echoed the HDBMC's view, stating that retrofits will, in some cases, require more than a one-for-one replacement. Volvo noted that design changes go "forward" to new products, and that not all are backward-compatible for use as service replacements with older equipment.

Midland-Grau stated that a complete analysis of all combinations of ABAs and foundation brake set-ups must be made. It urged an evaluation of the risk of incomplete or incorrect installation against potential safety benefits, and advised the FHWA to review past experiences with retrofit requirements, such as that for steering axle brakes. Midland-Grau also recommended that the FHWA include requirements to use devices that meet the appropriate SAE Recommended Practices, and to perform technical evaluations to prevent safety degradation for incomplete or incorrect retrofits.

The State of Connecticut Department of Motor Vehicles supported a retrofit proposal, provided confirmation of compatibility could be made in advance.

Rockwell believed that ABAs "do not function in exactly the same manner and that adjustment rate and clearance can affect brake certification," although it stated that it did not have data to validate its concern. Rockwell asserted it would be prudent to recommend that replacement ABAs and BAIs be of the same type with which the brake was originally equipped. Rockwell contended that "new, small, unproven suppliers" may introduce devices designed to conform to "somewhat ambiguous NHTSA requirements," and that their lack of knowledge and experience may result in the introduction of ineffective and non-conforming devices. If retrofitting were to be mandated, Rockwell asks the FHWA to consider (1) production capabilities and parts availability, (2) expense and inconvenience to CMV owners, and (3) such technical and performance issues as fit, possible mechanical incompatibility, and mixing of different types of ABAs on a single vehicle.

The CVSA questioned whether there would be a sufficient supply of ABAs over a short retrofit period. It suggested that "[o]ne alternative to consider is the discontinuance of the manufacture of non-ABAs and when replacing systems, replace them with ABAs."

Agency's Response to These Comments

It is certainly not the FHWA's intent to force CMV operators to attempt to redesign brake systems or axles in order to accommodate ABAs. If a motor carrier is considering retrofitting ABAs, it should consult with appropriate technical experts (such as the original-equipment manufacturers of the vehicle and the brake system) to ensure that the CMV and its brakes will continue to operate safely.

As for the AHAS' recommendation for certification of preventive-maintenance programs, it should be noted that § 396.3(a)(1) of the FMCSRs requires that: "Parts and accessories shall be in safe operating condition *at all times*" (emphasis added). Preventive maintenance is a central element of a CMV maintenance program, and FHWA compliance reviews include an assessment of motor carrier maintenance records. Furthermore, CMVs are subject to roadside inspection programs, using uniform CVSA inspection procedures, and to the periodic inspection requirement of § 396.17. In addition, § 396.25 requires brake inspectors to be capable of performing brake service or inspection tasks through brake-related training, experience, or a combination thereof totaling at least one year. The FHWA believes that an additional program to "certify" motor carriers' preventive maintenance programs would achieve little.

The agency disagrees with CVSA's comment that the manufacture of MBAs should be halted. The FHWA does not have the regulatory authority to place such a requirement on manufacturers. Also, as other commenters have pointed out, some CMVs were never designed to accept ABAs, even as an option. Replacing MBAs with ABAs could require engineering modifications to the affected CMVs.

In view of the potential adverse safety impact of a retrofit rule, should it be performed incorrectly, and the significant costs of such a rule, the FHWA will not require retrofitting ABAs on air-braked CMVs.

2. Should all air-braked CMVs with external brake adjustment mechanisms be required to be retrofitted with brake adjustment indicators?

In Favor

The HDBMC stated it would support BAI retrofit when it is physically possible and economically feasible. It asked that the FHWA consider specifying SAE standards designating BAI markings and identification. It also suggested that replacement brake chambers with SAE-marked BAIs be mandated.

Connecticut would strongly support BAI retrofit for air brakes to ease pretrip inspections and reduce the time necessary for maintenance and roadside inspections.

Riteway recommended that all tractors, trailers, trucks, and buses be equipped with "air brake stroke indicators." It noted that the company has used indicators "for some time" and has not had a BAI-equipped unit cited for out of adjustment brakes.

Lindy's Enterprise Inc., manufacturer of Tattle-Tale, a visual brake stroke indicator, enclosed product literature and a partial list of customers. "Our products have been on many over-the-road tractors, trailers, and trucks with great success. We not only feel that our product could save annual inspection costs but help achieve safety results as well."

Sebring developed a BAI for its own fleet. It believes that its brake maintenance and adjustment programs have improved.

Wilbur-Ellis recommended BAI retrofit for s-cam brakes.

The NPTC stated it would support a BAI retrofit requirement, but that the method used to indicate brake out-of-adjustment status should not be specified.

Metro-Dade supported a BAI retrofit requirement.

The CVSA stated that retrofit of BAIs would be desirable as it would aid in recognizing brake adjustment problems.

Opposed

Maine opposed BAI retrofitting because benefits would be very limited.

Rockwell believed that the benefit of BAIs is marginal compared to ABAs. It cited factors such as the expense of the devices, control of the placement accuracy of retrofit marks/indicators, safety issues from owners improperly disassembling or assembling a brake chamber, and the production capability of established suppliers.

The ATA believed that internal system BAIs using air chamber assemblies incorporating marked pushrods are the most satisfactory arrangement. It feared that required retrofitting might involve replacing brake chambers to achieve a proper match of size and brake stroke. It was also concerned that aftermarket BAIs may be easily knocked out of position by road debris, dirt, snow, and physical contact with other vehicle parts.

The NADA opposed BAI retrofitting for the same reasons it opposed ABA retrofitting.

The AHAS believed that ABAs will not correct chronic problems with out-of-adjustment air brakes unless used with easily-seen adjustment indicators and "vigorous educational campaigns by Federal and State authorities." It stated that the FHWA should not consider mandating ABAs without also requiring the use of BAIs. The AHAS expressed particular concern on retrofitting CMVs with "boot-covered" air brake pushrods, because it believed that BAIs were probably not feasible for that design. The AHAS added that "this proprietary approach to air brake chamber design can permanently forswear the considerable additional benefits of supplementing ABAs with BAIs on air brakes," and recommended that the FHWA coordinate with the NHTSA.

The OOIDA opposed any requirement for retrofitting of brake components. It believed that, given the "typical useful life" of Class 7 or 8 motor vehicles, and allowing for "any reasonable" amount of time fully to implement a retrofit rule, a manufacturing standard would achieve virtually the same result.

Haldex cited fleet turnover in its opposition to BAI retrofit. It believed that a mandate for stroke indicators could be made without one for ABAs, but that an ABA retrofit without including BAIs could create a false sense of security due to maintenance concerns on older vehicles.

Midland-Grau cautioned that a complete brake system analysis would be required, as for an ABA retrofit.

Union Pacific and XTRA Corporation would oppose retrofit of BAIs for the same reasons that they would oppose ABA retrofit.

Agency's Response to These Comments

As several of the brake manufacturers pointed out, the original design of the brake system must be considered in

determining whether or not a retrofitted item would function properly. The accuracy, precision, and, most notably, the durability of most retrofitted BAIs is questionable. While marked pushrods on replacement air chamber assemblies might prove the most durable, it is not reasonable to expect a motor carrier to replace an air chamber in proper operating condition for that sole purpose.

The FHWA has consulted with the NHTSA on the matter of BAIs on boot-covered pushrods. Very few CMVs use boot-covered pushrods. Those CMVs that are so equipped are generally used for operations where the brake chambers could be contaminated with dust and debris. They are exempt from the FMVSS BAI requirement because they do not have an exposed pushrod. This is not a loophole for manufacturers, but a recognition that certain operating environments require enclosed pushrods.

3. If certain CMVs are to be retrofitted, how much time should be allowed for installation of the new equipment?

Comments

Commenters suggested phase-in periods ranging from one to seven years. Metro Dade suggested that only one year would be necessary to retrofit a transit fleet. The NPTC suggested a minimum two-year retrofit period for hydraulically-braked CMVs and a minimum of a five-year retrofit for air-braked CMVs. The OOIDA and Union Pacific recommended at least three years, while the ATA and the AHAS recommended four years. The SOIC and Haldex recommended at least five years. XTRA Corporation stated that the responsibility to retrofit would fall upon their customers because it has relinquished control to the lessee. It noted that most leases run five to six years, so its commercial situation dictated against requiring retrofitting in a shorter period than seven years.

Midland-Grau commented that retrofit time required would be a function of the specific products selected, and any vehicle modifications needed, such as brake chamber pushrod length changes to fit a new ABA and clevis, interference rework, and brake chamber modifications to fit stroke indicator components.

Other factors cited by commenters that would affect a phase-in period included the ability of manufacturers to meet the demands for new CMVs as well as retrofitted ones, time lags in distribution channels, scheduling of vehicles for retrofit, and costs to CMV operators. In particular, Haldex and the ATA contended that ABA manufacturers currently have inadequate capacity to simultaneously supply "record levels" of new CMVs and a large retrofit demand.

The AHAS recommended two alternative phased-in schedules. In the first, 10 percent of the entire existing commercial fleet would be retrofitted beginning one year following the promulgation of the final rule, followed by 25 percent in the second year, 60 percent in the third year, with 100 percent compliance by the end of the fourth year. The AHAS also suggested, as an alternative choice for motor carriers, a two-year implementation delay after a final rule was issued, followed by a requirement for 100 percent compliance in the third year.

Agency Response to These Comments

Since the agency has decided not to require retrofitting of any kind, a discussion of these comments is unnecessary.

4. Are there certain types or configurations of air-braked vehicles that cannot be equipped with ABAs because of space limitations around the axles and wheels?

Comments

Rockwell, Haldex, the PMAA, and the ATA stated that space limitations can prevent installation of ABAs, and have in fact done so. Rockwell added that an improperly installed ABA may impair brake performance by limiting brake chamber stroke, and that use of long stroke chambers may influence performance as well.

Haldex noted that, in the last five years, most U.S.-built CMVs offered ABAs at least as an option, but, because of design differences, not all manufacturers' ABAs fit each application. Haldex stated that some vehicles built over 15 years ago, as well as some Japanese vehicles, use a "camshaft spline" with uncommon dimensions which is not currently available from any ABA manufacturer. (Haldex did not provide specifics on the design.) Haldex stated that it has had difficulties retrofitting other Japanese vehicles which were not originally designed to offer ABAs as an option.

The ATA commented that slack adjusters, which it believes comprise at least 95 percent of the adjustment mechanisms used for air brakes, must fit into cramped quarters between brake, axle, suspension, and frame components. "This problem is particularly difficult on tractors but also occurs with trailers, especially those of a specialty nature." The OOIDA repeated this concern, adding that "[t]he modifications that would be necessary to accommodate ABAs on such vehicles vary from relatively small machining operations to outright wheel replacement."

The PMAA also expressed concerns about space and necessary clearances for retrofitted ABAs to work effectively. The PMAA believes that "[w]hile a newly-designed vehicles could easily accommodate the variety of components on the market, older vehicles would not be able to follow suit. This is primarily due to the fact that the brake and structural system of the existing vehicle or trailer is already fixed in place during the manufacturing process. Adding adjusters to these vehicles and trailers would require extensive alterations requiring cutting welded bracket anchors from the brake system and engineering a completely redesigned brake system." The PMAA believed that such redesign is beyond the technical capabilities of operators like petroleum marketers and truck/trailer service facilities. It believed that a leading cause of ABA failure is improper installation, and that, even when performed by factory-trained personnel, many units still fail. "It is reasonable to surmise that the more technically-difficult retrofit by untrained personnel would yield a higher rate of brake failure * * *."

The NADA and the NPTC also believed that some CMVs cannot be equipped with ABAs. XTRA Corporation stated that it owned approximately 1,000 older remanufactured trailers which cannot be converted.

Several commenters did not view a potential retrofitting requirement as a problem. Sebring believed that all its tractors and trailers could be easily equipped. Union Pacific stated that it was not aware of any type of trucks, tractors, or trailers that cannot be equipped due to space limitations. The HDBMC, Midland-Grau, Metro Dade, and the CVSA recommended that the FHWA defer to the judgement of CMV manufacturers.

While it opposed the notion of a retrofitting requirement, the ATA suggested that the requirement only apply to those CMVs which, when new, had ABAs offered as a substitute option for MBAs. The ATA stated that it recognized that there may be problems identifying those vehicles.

Agency's Response to These Comments

The FHWA agrees with the commenters' concerns regarding the difficulty of making engineering modifications (relocation of welded brackets, replacement of atypical components, reconfiguration of components in tight quarters) to permit some CMVs originally equipped with MBAs to retrofit ABAs. With the exception of Haldex, none of the commenters provided information on specific classes of CMVs that could be readily identified as presenting unique retrofit challenges.

As discussed in the agency's response to the comments to Question 1, it has never been the FHWA's intent to promulgate a rule which would force CMV operators to attempt to redesign brake systems or axles in order to accommodate an ABA. The FHWA will not prohibit retrofitting of ABAs. Nevertheless, motor carriers considering retrofitting ABAs when MBAs are replaced should consult the appropriate technical experts to ensure that the brake system of the affected CMV will continue to operate safely.

5. Should different periods be specified for retrofitting single-unit trucks, tractors, converter dollies, and trailers?

Comments

Maine recommended that trucks and tractors be retrofitted by October 20, 1996, and that trailers, semitrailers, and converter dollies be retrofitted by October 20, 1997.

Rockwell suggested that the FHWA might set priorities for vehicle types based on model years and benefit-risk analysis.

The HDBMC and Haldex advised that any retrofitting requirement be phased-in by vehicle type and year of manufacture. Haldex believed that trailers should have priority over tractors because they have longer useful lives, but receive less maintenance during their lives. Haldex cautioned that combination vehicles are susceptible to jackknife accidents if the tractor brakes are in better working order than trailer brakes. Haldex also noted that new vehicles accumulate more miles, and older vehicles would be retired from service before a retrofit were to be required.

While the NADA indicated that its survey respondents were universally opposed to retrofits, it requested that the time-frame for a potential requirement consider limitations in labor, parts, and shop facilities.

The AHAS believed that its recommended phase-in period discussed earlier should apply simultaneously to tractors, trailers, and single-unit tankers that carry hazardous materials. It suggested that additional lead time be provided for other CMVs and non-air-braked CMVs.

While opposing retrofitting, the OOIDA maintained that different periods should not be specified because they would lead to confusion, needless enforcement activity, and penalties for mistakes of fact.

Sebring said that different periods may be needed but did not elaborate on that statement.

Midland-Grau believed that different periods should be specified according to potential installation problems, but it did not elaborate.

Metro-Dade stated that this issue was not applicable to transit agencies.

Union Pacific opposed the notion of different retrofit periods for different types of CMVs because it would require excessive management to enforce.

The CVSA asked that the FHWA consider a phase-in period and the need for mechanic training.

XTRA Corporation urged that no retrofitting requirements be imposed on intermodal containers, trailers, or chassis, or on remanufactured trailers, or on mobile storage trailers.

Agency's Response to This Comment

As stated earlier in this notice, retrofitting requirements will not be imposed.

6. Should specific types of CMVs, or CMVs used in unique operations, (i.e., CMVs that are *not* subject to the requirements of FMVSS 121, but are subject to the FMCSRs) be exempt from a requirement to be retrofitted with ABAs? Should these specific types of air-braked CMVs manufactured on or after October 20, 1994, be required to be *equipped* with ABAs prior to being placed in operation in interstate commerce?

Comments

Maine and Sebring believed that limited or specialized use vehicles not subject to the FMVSS No. 121 requirements should be subject to a requirement for retrofit of ABAs. Neither provided elaboration. The CVSA recommended that CMVs currently equipped with slack adjusters be required to have ABAs unless there is a specific retrofitting problem for that type of vehicle. Those situations should be handled as exceptions.

The HDBMC, Rockwell, Haldex, Midland-Grau, and the ATA recommended against including CMVs not subject to the FMVSSs. Rockwell believed it "might be awkward" to require ABAs on vehicles "not subject to other federal braking requirements." Haldex argued that there was insufficient justification for ABAs on limited- and specialized-use vehicles, noting that there is little industry experience with ABAs on these vehicles, and that retrofitting might be impractical because of installation difficulties.

The ATA stated that specialized vehicles which are exempt from FMVSS No. 121 requirements have been given this status by the NHTSA "based on the facts that doing so will not compromise public safety and that these vehicles cannot be constructed in a manner consistent with more 'normal' equipment." The ATA added that these vehicles could not have been readily built with ABAs, that retrofit should not be considered, and that these vehicles must still meet the FMCSR's requirements for inspection and safe operation.

The NADA stated that its members support "maximum possible grandfathering" of non-FMVSS 121 CMVs as part of their universal opposition to a retrofit mandate.

The NPTC stated that a member had suggested that trucks and trailers over 8,165 kg (18,000 lbs) GVW, which have been equipped with ABAs, be required to maintain the ABAs or improve them, but that any retrofitting requirement exempt trucks under 8,165 kg (18,000 lb) GVW because the benefits of ABAs on those vehicles are not clear. The NPTC did not elaborate on that comment.

The AHAS believed that no vehicle or load-carrying dolly should be exempted if it can sustain highway speeds. However, it allowed that low-speed vehicles that usually operate for short distances and under special permit can be considered as long as the FHWA "will avoid the creation of a loophole for exploitation."

The OOIDA opposed retrofitting of any air-braked vehicles, and stated that the FHWA "should defer to NHTSA" on this issue.

Union Pacific stated that certain vehicles should be excluded.

Cedarapids opposed retrofitting construction equipment, citing an economic impact without an increase in highway safety. It was concerned that ABAs could exacerbate brake problems because dirt and dust would cause high failure rates of ABAs while providing a false sense of security to construction equipment operators. However, "[f]or normal highway vehicles, we agree and applaud your efforts to increase highway safety."

XTRA Corporation urged that no retrofitting requirements be imposed on intermodal containers, trailers, or chassis, or on remanufactured trailers, or on mobile storage trailers.

Agency's Response to This Comment

As noted above, this final rule does not require retrofitting of any kind.

Some of the comments nonetheless deserve a brief response.

The FHWA agrees with the ATA's and Cedarapids' comments. The NHTSA is responsible for determining compliance with, or exemptions from, FMVSS No. 121. The definition of off-road construction equipment is to be narrowly construed and limited to equipment which, by its design, appearance, and function, is obviously not intended for use on a public road. The FHWA has provided regulatory guidance (58 FR 60734, November 17, 1993) concerning the applicability of the FMCSRs to "off road" motorized construction equipment, i.e., motor scrapers, backhoes, compactors, excavators, tractors, trenchers, and bulldozers (Question 6 to § 390.5, Definitions), as follows:

> Such equipment is routinely found at construction sites and is operated by personnel requiring specialized skills. Occasionally, such equipment is moved to or from construction sites by "driving" the "vehicles" short distances on public highways. Their appearance on the highway is only incidental to their primary function, they are not designed to operate in traffic, and their mechanical manipulation often requires a different set of knowledge and skills. The types of construction equipment discussed above do not come within the definition of a "CMV" and hence the operators and equipment are not subject to the FMCSRs.

As for the NPTC's comment concerning an exemption for CMVs under 8,165 kg (18,000 lbs) GVWR, the general applicability of the FMCSRs to CMVs over 4,536 kg (10,000 lbs) GVWR is required by statute (49 U.S.C. 31132(1)).

The FHWA cannot "defer to NHTSA" on operational standards for CMVs, as OOIDA suggested, because that agency's regulatory authority is limited to manufacturing standards. However, the FHWA and the NHTSA work closely together on regulations of common interest to both agencies.

7. What are the costs associated with retrofitting an ABA compared to replacement of an MBA? Include: the cost of the device, installation time, mechanic's hourly salary, and a "loss of use" cost figure if a CMV were to be taken out of revenue service for retrofitting at some time other than a time when a brake adjuster would normally be due for replacement. How often do tractors and trailers visit a facility where retrofitting could take place?

Comments

The HDBMC stated that detailed answers to this question would be furnished in individual responses from HDBMC member companies.

The SOIC estimated a range of labor and materials costs for each intermodal chassis from $185 to $275, averaging around $220. It estimated a cost of $48 million for its members to retrofit, and questioned the "indeterminate reductions in traffic accidents" that would result. The SOIC stated that it anticipated no technical problems related to a retrofitting requirement, but that administrative difficulties of locating, capturing, and transporting chassis to repair facilities may be significant and difficult to quantify. It suggested a program of conversion "in association with annual inspections required by the FMCSRs."

Sebring estimated that in 1990 a local repair shop needed one hour per wheel to install four automatic slack adjusters (ASAs). Labor charges were $25 per hour, and the ASAs cost approximately $55 each. The first retrofit of a BAI of Sebring's own design took 30 minutes, and others took 10 minutes/wheel.

Rockwell estimated the cost of parts and labor to replace MBAs at $50 per wheel; to retrofit an ABA, $100 per wheel.

Wilbur-Ellis estimated costs at around $80 for an ASA, installation time of 0.75 to one hour each, and a labor rate of $45 to $50 per hour. Downtime was estimated at one day per truck, and perhaps more. The total retrofitting cost for three-axle delivery truck would be approximately $700. Most of Wilbur-Ellis' locations are in rural areas where air brake repair facilities are not readily available.

The ATA believed that "re-engineering" systems to accommodate ABAs on CMVs not originally designed for them would be a major cost element of retrofitting. The ATA stated that, "in many instances, the vehicle would have to be either scrapped or sold somewhere else in the world where it could be used, since the retrofit could not be economically justified." The ATA estimated the following costs for retrofit of vehicles originally designed to accommodate ASAs: One hour per brake, assuming no severe corrosion or other interfering factor; labor, $25 per hour (different in various parts of the country); $65 for an ABA, $12.50 for an MBA. If brake chambers needed to be replaced to accomplish a BAI retrofit, they would cost an additional $55 each. The ATA believed that costs for parts and labor alone would make retrofit cost-prohibitive; it did not include costs of vehicle down-time in these figures. The ATA estimated that 3.8 million trailers would require 12 million ABAs to be retrofitted "within the given period" at a cost of $108 million.

The NADA estimated costs at from $75/brake to $250/tandem and believed there would be considerable CMV-to-CMV variation.

The NPTC estimated costs at $200 to $750 for straight trucks and single axle trailers, and $900 to $1000 for tandem-axle tractors.

While the AHAS was "convinced that the benefits gained by retrofitting ABAs and BAIs to the entire existing commercial fleet would far outweigh any costs to industry, especially if a reasonable phase-in program was put in place," it did not provide any figures to substantiate this statement.

The OOIDA stated that costs can vary considerably, depending on application, configuration of foundation brake mounting, make and type of ABA, and where the work is performed. It provided the following information, based on discussions with several midwest truck dealerships: ABAs, $35 to $75; hourly shop rates from $47 to $49.50; time to simply remove brake adjusters and install ABAs, from 20 to 90 minutes. The OOIDA added that retrofit may require replacement of other system components to conform to ABA design and various mounting configurations. The OOIDA asserted that owner-operators are already operating on thin profit margins, and that any that any loss of use of a CMV would be an unjustifiable burden.

Haldex stated that ABAs retail for approximately 4 to 5 times the cost of an MBA; aftermarket prices range from $50 to $75. It estimated installation time at around 15 minutes per wheel; however, the potential need to change air chamber pushrod length could double that time. "On the average, a vehicle would be out of [revenue] service for no less than 90 minutes for an ABA retrofit." Haldex also stated that data available to the company indicated that major fleets generate an average of approximately $100 to $150 per hour in revenue, so each vehicle undergoing retrofit would also cost the motor carrier $150 to $225 in revenue foregone.

Metro-Dade stated that the "Cost to retrofit would be insignificant if done in conjunction with a brake rebuild."

The PMAA believed that costs might include re-engineering of brake and structural systems to provide additional space needed for installation. It believed that, in many cases, retrofitting may not be economically feasible because of the complexity of the redesign. In other cases, redesign would not be technically possible. It stated "In cases such as these, the cost of compliance would equal the cost of the vehicle and trailer." The PMAA estimated the following costs for CMVs that could be retrofitted: $65 for ABAs; labor, $40 per hour; 6 hours for installation if there is no extensive corrosion; total: $670. For a complex brake system redesign, it estimated costs up to $2300 per vehicle. The PMAA estimated costs for its industry segment at $14,740,000.

Midland-Grau stated that it was difficult to estimate a typical cost, and that an evaluation was needed.

Union Pacific provided the following cost estimates. Tandem tractors: material, $400; labor, 2 hours at $60 per hour; total $520. Tandem trailers: material, $300; 3 hours labor at $60 per hour; total $480.

XTRA Corporation estimated direct costs of approximately $300/unit for its entire fleet of trailers and chassis, including materials and an average of 2.5 hours of labor. It noted that additional costs that needed to be considered included loss of revenue, recordkeeping, and customers' costs resulting from temporary removal of their trailers from service. Logistical considerations would be XTRA Corporation's time to locate the CMV and to plan and schedule its retrofit, and their customers' cooperation in accomplishing it.

Agency's Response to This Comment

The ABAs were estimated to cost between $35 and $75; most commenters estimated a range of $50 to $75. They might take from 20 minutes to 1.5 hours to install; 45 minutes to one hour was the most common range noted. Mechanics' hourly salaries were figured at $25 to $60, with $40 to $45 most commonly noted.

At the low end of the range, a $50 ABA that takes a mechanic earning $40 per hour 0.75 hour to install would cost the motor carrier $80. At the high end, a $75 ABA that takes a $45 per hour mechanic one hour to install would cost the motor carrier $120. For purposes of estimating, the FHWA will use a rounded average of $100 per ABA installed, excluding the motor carrier's revenue loss for the time the CMV is not in service.

Estimates of the numbers of registered CMVs from the FHWA's 1993 edition of *Highway Statistics* are as follows: Commercial and private trucks (excluding truck tractors, and light and farm trucks), 2.4 million; truck tractors, 1.3 million; private and commercial trailers and semitrailers, 3.9 million; and private and commercial buses, 115,000. However, many of these 7.6 million CMVs are not in interstate commerce. The FHWA estimated in 1993 that there were 3.6 million CMVs operating in interstate commerce. The agency believes that the ATA's estimate of 3.8 million CMVs potentially subject to a retrofitting requirement may be somewhat high because single-unit trucks and buses with hydraulic brake systems would not have been included in such a proposal. The ATA estimated slightly more than three retrofitted ABAs per vehicle (12 million ABAs/3.8 million CMVs=3.15 ABAs/CMV). This also might be a low estimate: Most semitrailers would need 4 ABAs, and one-axle semitrailers would need two ABAs, but tractors would need up to 6. However, using the ATA's estimate of 12 million ABAs, the cost for parts and labor would be $1.2 billion, rather than the $108 million figure stated in its docket comment. If we were to exclude tractors and air-braked single-unit CMVs, some 2.7 million trailer retrofits (two-thirds of the U.S. trailer and semitrailer fleet), requiring four ABAs each, would cost an estimated $1.08 billion for parts and labor.

Some commenters noted, and the FHWA agrees, that the logistical costs of locating a CMV for retrofitting and removing it from revenue service could exceed the costs of labor and materials. On the other hand, the cost of retrofitting ABAs probably would not exceed the value of the CMV unless the vehicle was at or past the end of its useful life. In general, however, the data and cost estimates show that retrofitting ABAs would involve significant expense to the motor carrier industry.

While ABAs have real advantages over MBAs, the FHWA has determined that the costs associated with a retrofitting requirement do not clearly exceed the benefits that could be anticipated. This is especially true given that the estimated $1 billion retrofit cost would only apply to trailers, and semitrailers, not to truck-tractors or air-braked single-unit trucks. Even with several years of lead time, the annual cost to the motor carrier industry would be several hundred million dollars. None of the commenters that favored a retrofit requirement provided an analysis or estimate of its expected impact on CMV accidents. The FHWA, therefore, will not require retrofitting.

Discussion of Final Rule

Proper brake adjustment is critical to safe CMV operation. The NHTSA has estimated that nearly 4,000 CMV accidents per year are caused by out-of-adjustment brakes. The NTSB's review of 97 serious heavy truck accidents investigated from 1969 to 1981 cited out-of-adjustment brakes as a causal or contributing factor in 28 percent of those accidents. Out-of-adjustment brakes are also the primary equipment-related cause for CMVs to be placed out of service during roadside inspections; for Fiscal Year 1992, 36.2 percent of vehicles placed out-of-service were cited for this deficiency.

Aside from the clear safety benefits of maintaining proper brake adjustment, ABAs can have a positive benefit on motor carrier productivity by preventing CMVs from being placed out of service, reducing roadside service calls and the resulting delays to transportation operations.

Virtually all commenters to the NPRM who responded to the in-use requirement were in favor of it. The ATA noted that manufacturers have provided, and motor carriers voluntarily have been using, ABAs for a number of years. Even in the absence of Federal regulations, the marketplace was adopting the technology on its merits.

Finally, the FHWA strives to maintain consistency between the manufacturing standards for commercial motor vehicles contained in the NHTSA's Federal Motor Vehicle Safety Standards (FMVSSs), and the operations and maintenance regulations contained in the FMCSRs.

The FHWA has concluded that both motor carriers and the traveling public may derive substantial operational and safety benefits from the use of automatic brake adjusters and brake adjustment indicators.

The final rule, therefore, amends the FMCSRs by adding a new § 393.53, Automatic Brake Adjusters and Brake Adjustment Indicators, to Subpart C, Brakes.

The provisions of paragraphs (a), (b), and (c) require that automatic brake adjusters and brake adjustment indicators installed on newly manufactured CMVs to comply with the requirements of FMVSS Nos. 105 and 121 be maintained by the motor carriers operating those CMVs.

These provisions will apply to all CMVs operated in the United States, irrespective of the country where the CMV is based. Canadian and Mexican vehicles manufactured on or after the effective dates of the NHTSA rules will be required to conform to this regulation.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This rule makes the operational standards for brakes in the FMCSRs consistent with the manufacturing standards in the FMVSS Nos. 105 and 121. It requires automatic brake adjusters and brake adjustment indicators installed on newly manufactured CMVs in accordance with those manufacturing standards to be maintained by the motor carriers operating those vehicles. The FHWA believes that promulgation of this final rule is necessary to assure that the safety benefits of the NHTSA rule are fully realized. Based on the NHTSA's research, the FHWA believes that operation and maintenance costs of the automatic brake adjusters and adjustment indicators required under the new FMVSSs will be lower than costs of the devices previously required. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. This rule modifies the operational standards for brakes in the FMCSRs to make them consistent with the manufacturing standards in the FMVSS Nos. 105 and 121, which now require the installation of automatic brake adjusters and adjustment indicators on certain newly-manufactured CMVs. Under this final rule, motor carriers are only required to maintain these devices. The final rule does not impose a retrofitting requirement for vehicles manufactured prior to the effective date of the NHTSA's rules. This is consistent with other requirements linking the FMCSRs to the FMVSS Nos. 105 and 121. The FHWA believes that operation and maintenance costs of the vehicles equipped with automatic brake adjusters and adjustment indicators will be lower than costs of the manual devices previously required. Therefore, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

To be eligible for Motor Carrier Safety Assistance Program funds, a State's regulations for interstate transportation must be the same as the FMCSRs and Federal Hazardous Materials Regulations. Regulations for intrastate transportation may be at variance only so long as they fall within the parameters of the Tolerance Guidelines in 49 CFR part 350, Appendix C.

The FHWA intends to provide training and informational materials to the States to aid them in this process. The FHWA works with the Commercial Vehicle Safety Alliance on training and enforcement issues, and will continue to do so.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Freight transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, part 393, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 is revised to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. In subpart C, § 393.53 is added to read as follows:

§ 393.53 Automatic brake adjusters and brake adjustment indicators.

(a) *Automatic brake adjusters (hydraulic brake systems).* Each commercial motor vehicle manufactured on or after October 20, 1993, and equipped with a hydraulic brake system, shall meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 105 (49 CFR 571.105, S5.1) applicable to the vehicle at the time it was manufactured.

(b) *Automatic brake adjusters (air brake systems).* Each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system shall meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

(c) *Brake adjustment indicator (air brake systems).* On each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system which contains an external automatic adjustment mechanism and an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator conforming to the requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

Issued on August 30, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–22077 Filed 9–5–95; 8:45 am]

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Proposed Rules

Federal Register
Vol. 60, No. 172
Wednesday, September 6, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 23

[95–21]

RIN 1557–AB45

Leasing

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise its regulation governing the personal property lease financing transactions of national banks. This proposal is another component of the OCC's Regulation Review Program to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens. The proposal revises the regulation to improve its clarity. In addition, the OCC has identified several areas where substantive changes may be appropriate based upon comments received in this rulemaking.

DATES: Comments must be received by November 6, 1995.

ADDRESSES: Comments should be directed to: Communications Division, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 95–21. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Morris Morgan, Credit and Management Policy, Chief National Bank Examiner's Office 202/874–5170; Jacqueline Lussier, Senior Attorney, Legislative and Regulatory Activities 202/874–5090, Aline J. Henderson, Senior Attorney, Bank Activities and Structure, Chief Counsel's Office 202/874–5300.

SUPPLEMENTARY INFORMATION:

Introduction

The OCC is proposing to revise 12 CFR part 23, which governs personal property lease financing transactions by national banks. This proposal is another component of the OCC's Regulation Review Program. The principal goal of the Program is to review all of the OCC's rules with a view toward eliminating provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another important goal is to clarify regulations so that they more effectively convey the standards the OCC seeks to apply.

The OCC first adopted part 23 in mid-1991.[1] The OCC's experience to date suggests that a complete, substantive rewrite of the regulation is not warranted at this time, but that revisions to improve its clarity would be useful. Accordingly, the proposal revises the regulation by shortening and streamlining its text; reorganizing many of its provisions and adding paragraph headings; and conforming its style to that of the OCC's other rules. In addition, the OCC has identified several areas, described in the Discussion section below, where substantive changes may be appropriate based upon the comments received in response to this proposal.

Background

National banks may engage in leasing activities pursuant to two independent sources of authority. First, under 12 U.S.C. 24(Seventh), national banks may engage in personal property lease financing transactions (Section 24(Seventh) Leases) when the lease is the functional equivalent of a loan.[2] The OCC has interpreted the functional equivalency standard to mean that Section 24(Seventh) Leases must be "net, full-payout leases." Under the current regulation, the net lease requirement means that the lessor national bank may not provide certain enumerated services such as repairs, maintenance, or insurance in connection with the leased property. The full-payout requirement means that the bank must expect to recover the full acquisition and financing costs of the leasing transaction from sources that include the estimated, unguaranteed residual value of the leased property, but that the bank may rely on estimated residual value only to a limited extent. There is no aggregate limit on a national bank's investment in Section 24(Seventh) Leases.

In 1987, Congress gave national banks a second, explicit source of authority to engage in the personal property lease financing. The Competitive Equality Banking Act (CEBA)[3] amended 12 U.S.C. 24 by adding a new paragraph Tenth, which allows national banks to invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, and furniture, for lease financing transactions on a net lease basis. Investment in personal property to be leased under the authority of 12 U.S.C. 24(Tenth) (CEBA Leases) may not exceed 10 percent of a national bank's assets. Although a national bank must expect to recover its full acquisition and financing costs in a CEBA leasing transaction from the same sources as the regulation specifies for a Section 24(Seventh) leasing transaction, CEBA Leases are not subject to a maximum estimated residual value limit.

Both Section 24(Seventh) Leases and CEBA Leases are governed by standards set forth in part 23. The current version of part 23 contains three subparts: subpart A applies to all lease financing transactions; subpart B contains additional requirements applicable only to CEBA Leases; and subpart C contains additional requirements applicable only to Section 24(Seventh) Leases. The proposal retains the three-subpart structure, but revises and reorganizes the rule's provisions to enhance clarity. A derivation table showing these changes appears at the conclusion of this preamble.

The *Discussion* portion of the preamble contains a section-by-section description of the proposed revisions.

Discussion

Subpart A—General Provisions

Authority, Purpose, and Scope (Proposed § 23.1)

Current Section 23.1(a) sets out the authority of national banks to engage in personal property lease financing transactions. The proposal does not change the authority provision, but it adds subsections describing the purpose of part 23 and the scope of its respective subparts. Current 23.1(b), which authorizes a national bank to recover its acquisition and financing costs from rentals, tax benefits, and the residual value of the leased property, is relocated to proposed § 23.3.

Definitions (Proposed § 23.2)

The current regulation does not contain a definitions section. Proposed § 23.2 defines several terms, including "CEBA Lease," "conforming lease," "off-lease property," and "Section 24(Seventh) Lease" for the purpose of making the operative provisions of the regulation shorter and easier to read.

Current § 23.2 contains both a definition of the term "net lease" and operative provisions, including the so-called "distress clauses," which allow a national bank to take reasonable action to protect its interest in leased property, and a provision that allows a national bank to arrange for a third party to provide operational services that the bank is precluded from providing under a net lease. The definition of "net lease" is retained in proposed § 23.2(d) without substantive change; the operative provisions are moved to proposed § 23.4.

Proposed § 23.2(c) contains a definition of the term "full-payout lease." The term is defined as a lease financing transaction in which the unguaranteed portion of the estimated residual value of the leased property[4] on which a bank relies for recovery of its acquisition and financing costs is no greater than 25 percent of the cost of the leased property to the lessor. This estimated residual value limit is the same as the limit that currently appears at § 23.11(a) of the current regulation. Other, operative provisions of the current regulation that pertain to residual value are retained in subpart C of part 23, as described below.

The purpose of a residual value limit is to ensure that a lessor bank relies primarily on the creditworthiness of the lessee to recover its entire investment in the leased property. When the OCC adopted the current residual value limit in 1979, it selected 25 percent as the level that best protected national banks from the increased risk that results from excessive reliance on residual value. That amount was based in part on the OCC's experience at that time in examining and supervising banks engaged in Section 24(Seventh) lease financing activities. *See* 44 FR 22388, 22390 (April 13, 1979) (adoption of interpretive rule establishing estimated residual value limit of 25 percent).[5]

Since then, national banks have been given authority to enter into CEBA Leases, which are not subject to a maximum residual value limit (but are restricted in aggregate amount to 10 percent of a national bank's total consolidated assets). National banks do not appear to be engaged in CEBA leasing to the full extent of their statutory authority, and liberalization of the residual value limit for Section 24(Seventh) Leases may therefore be unnecessary.

The OCC is interested in commenters' views on this question, and specifically invites comment on whether the residual value limit for Section 24(Seventh) Leases should be modified. In addressing this question, commenters may wish to discuss the effect of Financial Accounting Standards Board Statement of Financial Accounting Standard 13, "Accounting for Leases," which, as a practical matter, may affect the extent to which a national bank relies on residual value. Commenters who support a more flexible limit on residual value for Section 24(Seventh) Leases are asked to identify any increased risk that may accompany a new limit and to discuss how the OCC should address that risk.

Recovery of Investment (Proposed § 23.3)

Proposed § 23.3 is the same as current § 23.1(b), which requires that a national bank entering into a lease financing transaction must reasonably expect to recover its full investment in the leased property as well as its estimated financing costs over the life of the lease from three sources: rentals, estimated tax benefits, and the estimated residual value of the leased property.

As its placement in subpart A of part 23 indicates, the recovery of investment provision applies both to CEBA Leases and to Section 24(Seventh) Leases. The maximum estimated residual value requirement that appears in the definition of the term "full-payout lease," however, applies only to Section 24(Seventh) Leases. Neither the current regulation nor the proposal limits the extent to which a national bank may rely on residual value to recover its acquisition and financing costs in a CEBA Lease transaction.

Net Lease Requirement (Proposed § 23.4)

A new paragraph (a) is added to proposed § 23.4. This paragraph contains an explicit statement of the requirement that national banks may engage in a lease financing transaction, and in activities incidental to the transaction, only if the lease is a net lease. The current rule does not contain a plain statement of this basic requirement. The statement is added for purposes of clarity and completeness; it is not intended to change the requirement.

The incidental activities clause in proposed § 23.4(a) reflects the OCC's long-standing interpretations authorizing national banks to engage in activities incidental to leasing. As the placement of the incidental activities reference within subpart A of part 23 indicates, the OCC takes the position that a national bank may engage in incidental activities with respect both to Section 24(Seventh) Leases and CEBA Leases.

The activities incidental to leasing that the OCC has authorized to date for national banks acting as lessors include:[6] providing management, marketing, and administrative services through an operating subsidiary; offering credit life insurance to lessees; and acquiring rights under maintenance contracts associated with purchased leases.[7] The OCC does not propose to include a list of permissible activities incidental to leasing in part 23. Commenters are, however, invited to address the desirability of retaining this case-by-case approach and to discuss incidental activities that may be appropriate for OCC consideration. In particular, the OCC is seeking comment on whether it should, on a case-by-case basis, permit national banks to lease real estate when the real estate lease is incidental to a personal property lease financing transaction. This issue may arise, for example, when a bank wishes to lease personalty, such as machinery, that is affixed to the land on which it sits.

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[1] 56 FR 28314 (June 20, 1991). The final regulation replaced the OCC's interpretive ruling on lease financing transactions, which had been codified at 12 CFR 7.3400. Much of the substance of this interpretive ruling was retained, however, in the portions of part 23 that apply to Section 24(Seventh) Leases.

[2] *See M & M Leasing Corp.* v. *Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) (upholding national banks' authority under 12 U.S.C. 24(Seventh) to engage in personal property lease financing transactions if the lease is the functional equivalent of a loan).

[3] Pub. L. 100–86, § 108, 101 Stat. 552, 579 (August 10, 1987). *See also* S. Rep. No. 100–19, 100th Cong., 1st Sess. 43 (1987) (CEBA expanded national banks' leasing authority in order to enable them to respond to customer demand for a broader range of lease financing transactions and to compete with thrift and other nonbank lessors).

[4] The "estimated residual value" is the estimated market value of leased property at the end of the lease term; the "unguaranteed portion" of the estimated residual value is the estimated residual value at the end of the lease term less any portion of the estimated residual value guaranteed by the lessee, the manufacturer, or a third party. *See* 12 CFR 23.1(b), 23.11.

[5] In 1979, the regulations promulgated by the Board of Governors of the Federal Reserve System (FRB) that authorized a bank holding company or its subsidiary to engage in lease financing activities limited the reliance placed on residual value to a maximum of 20 percent of the cost of the property. In 1982, the FRB decided to conform its residual value provisions to the OCC's limit for Section 24(Seventh) Leases. The FRB based its decision, in part, on the fact that the OCC had not identified any significant increased risk from permitting reliance on the slightly higher level of 25 percent. *See* 57 FR 20958, 20959–60 (May 18, 1982) (final regulation; discussion of bases for FRB action). The FRB's regulation appears at 12 CFR 225.25(b)(5).

[6] The OCC has also authorized national banks to engage in incidental activities with respect to lease financing transactions to which the bank is not a party. These activities include acting as finder or performing similar functions as agent or broker. *See* 12 CFR 7.7200. They also include providing lease consulting services such as financial advice; providing management, brokerage, and finder services; and performing lease servicing for third parties. *See, e.g.*, OCC Interpretive Letter No. 567 (Oct. 29, 1991) *reprinted in* [1991–92 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,337; Letter from Wallace S. Nathan (Oct. 28, 1985) (unpublished); Letter from Peter Liebesman (June 15, 1981) (unpublished).

Copies of unpublished letters are available in the OCC's public comment file for this rulemaking.

The substance of proposed § 23.4(b) is the same as that of current § 23.2(b), (c), and (d), but the text has been revised so that it is shorter and simpler. For example, the provisions specifying the conditions under which a national bank may take appropriate action to protect its interests have been amended so that they no longer require that a change in condition be "unexpected" or that a bank's increased exposure to risk be "significant." As is the case in current § 23.2, proposed § 23.4(b) provides that the actions a national bank may take to salvage or protect its investment under the distress clauses include the actions described in the definition of net lease at § 23.2(d).

Investment in Personal Property (Proposed § 23.5)

Current § 23.3, which governs the acquisition of property to be leased, the disposition of the property at the conclusion of the lease term or upon the lessee's default, and the use of short-term leases, has been moved to proposed § 23.5 with certain clarifying changes. For example, the text of the provision covering bridge or interim leases has been rewritten to state more clearly the current rule that a bank's use of a bridge or interim lease pending the long-term disposition of off-lease property does not extend the off-lease holding period. Property is "off-lease" at the expiration of the lease term or upon the lessee's default on the lease agreement prior to expiration.

Current § 23.3(b) requires that a national bank dispose of or re-lease off-lease property as soon as practicable, but not later than two years from the date the lease expires. Proposed § 23.5(b) is substantively the same but contains new language to clarify that the two-year holding period runs either from the date the lease expires or from the date of the lessee's default, depending on the reason that the national bank takes possession or control of the leased property.

Both Section 24(Seventh) Leases and CEBA Leases are subject to this holding period limitation for off-lease assets. Property that the bank retains in anticipation of re-leasing must be revalued when it comes off-lease at the lower of current fair market value or book value. Upon the expiration of the two-year period, national banks are required to write-off any remaining book value for off-lease assets.

The OCC has considered whether it should extend the holding period for off-lease property. For example, a longer holding period may be appropriate where markets for particular types of property become depressed, and the two-year period might be insufficient to allow national banks to proceed with the orderly liquidation or re-lease of the property. The OCC, however, lacks empirical data on the experiences national banks have had in attempting to liquidate or re-lease specific kinds of off-lease property within the current holding period and, accordingly, is not now proposing any change.

The OCC would consider modifying the holding period in the final revisions of part 23 if commenters present persuasive reasons, supported by empirical evidence, for doing so. Accordingly, the OCC requests comment on the following issues: (1) Should the holding period for off-lease assets be extended and, if so, should it be extended for all categories of assets or only for particular categories? (2) If the holding period were extended, what is a reasonable additional time period, in general or for particular categories of assets? (3) What evidence supports extension of the holding period? (4) If the holding period were extended, how should the OCC ensure that banks do not use the longer period to retain property for essentially speculative purposes? The OCC invites specific comment on the experiences of national banks in attempting to liquidate or re-lease specific kinds of off-lease personal property that are relevant to the issue of extending the holding period requirement.

Requirement for Separate Records (Proposed § 23.6)

Proposed § 23.6 retains the requirement in current § 23.4 that national banks maintain separate records for CEBA Leases and Section 24(Seventh) Leases. Minor revisions have been made to shorten and clarify the text.

Applicability of Consumer Laws (Current § 23.6; Removed in Proposal)

Current § 23.6 states that nothing in part 23 shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 12 U.S.C. 1667 *et seq.* (CLA). The OCC is proposing to remove this section because other consumer protection laws and regulations may also apply to personal property lease financing, making the cross-reference potentially misleading. Of course, this change does not affect the applicability of the CLA or any other consumer credit laws to national banks' lease financing activities, and national banks must know and comply with the full range of requirements that govern these activities.

Application of Lending Limits; Restrictions on Transactions With Affiliates (Proposed § 23.7)

The proposal continues to subject lease financing transactions to lending limits and transactions with affiliates restrictions, but clarifies that the transactions with affiliates restrictions apply only if the lessee is an affiliate of the lessor bank. The proposal also retains the reservation of the OCC's authority to impose other limits or restrictions. These provisions currently appear at § 23.5; they are relocated in the proposal to § 23.7.

Subpart B—CEBA Leases

Provisions Applicable to CEBA Leases (Proposed §§ 23.8, 23.9, and 23.10)

Proposed §§ 23.8, 23.9, and 23.10 contain the requirements applicable to CEBA Leases, including a statement of the general rule authorizing investment in CEBA Leases, the limits placed on banks' exercise of their CEBA leasing authority, and a transition rule for CEBA Leases entered into after CEBA's enactment but before the effective date of the OCC's final implementing rule. The substance of these provisions is the same as that of current §§ 23.7, 23.8, and 23.9. Minor changes have been made to shorten and clarify the text.

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[7] See Letter from H. Joe Selby, Nov. 24, 1976 (unpublished) (management, marketing, and administrative services through an operating subsidiary); Letter from Peter Liebesman, Jan. 14, 1985 (unpublished) (credit life insurance); Letter from J.T. Watson, May 14, 1975 (unpublished) (rights under maintenance contracts associated with purchased leases).

Subpart C—Section 24(Seventh) Leases

General Rule (Proposed § 23.11)

Current § 23.10 states the general rule authorizing national banks to engage in lease financing pursuant to 12 U.S.C 24(Seventh). The substance of proposed § 23.11 is the same as this current rule. The reference to incidental activities in the current rule has been deleted as redundant, however, given the treatment of incidental activities in proposed § 23.4. Other, minor revisions have been made to shorten and clarify the text.

Estimated Residual Value (Proposed § 23.12)

Current § 23.11 prescribes not only the residual value limit that applies to Section 24(Seventh) Leases but also certain other provisions that apply to a bank's reliance on or estimate of residual value. First, the amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party that is not an affiliate of the bank may exceed 25 percent of the original cost of the property if the bank has determined that the guarantor has the resources to meet the guarantee and the bank can document its determination. Second, the estimated residual value amounts must be reasonable given the type of property leased and the relevant circumstances, so that realization of the lessor bank's full investment and the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item. Finally, when a bank leases personal property to a government entity, its estimates of residual value may be based on future transactions that it reasonably anticipates will occur.

The estimated residual value limit has been incorporated into a definition of the term "full-payout lease" that appears in proposed § 23.2. The other provisions remain substantively unchanged but have been moved to proposed § 23.12 with minor revisions to shorten and clarify the text.

Transition Rule (Proposed § 23.13)

Current § 23.12 provides that leases executed before June 12, 1979,[8] are not subject to part 23 and prescribes rules for renewing those leases. Proposed § 23.13 retains these provisions with minor revisions to shorten and clarify the text.

The OCC welcomes comments on any aspect of the proposed regulation, particularly on those issues specifically noted in this preamble.

DERIVATION TABLE

[This table directs readers to the provision(s) of the current regulation, if any, upon which the proposed revision is based.]

Revised provision	Original provision	Comments
§ 23.1	§ 23.1(a)	Modified.
§ 23.2(a), (b), (c)		Added.
§ 23.2(d)	§ 23.2(a)	Modified.
§ 23.3	§ 23.1(b)	Modified.
§ 23.4(a)		Added.
§ 23.4(b)	§ 23.2 (b), (c), (d).	Modified.
§ 23.5	§ 23.3	Modified.
§ 23.6	§ 23.4	Modified.
§ 23.7	§ 23.5	Modified.
	§ 23.6	Removed.
§ 23.8	§ 23.7	Modified.
§ 23.9	§ 23.8	Modified.
§ 23.10	§ 23.9	Modified.
§ 23.11	§ 23.10	Modified.
§ 23.12	§ 23.11	Modified.
§ 23.13	§ 23.12	Modified.

Regulatory Flexibility Act

It is hereby certified that this proposal, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This proposal, if adopted as a final rule, will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that the requirements of this proposal will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 12 CFR Part 23

National banks, Banking, Leasing, Lease financing transactions.

Authority and Issuance

For the reasons set out in the preamble, part 23 of title 12, chapter I, of the Code of Federal Regulations is proposed to be amended as set forth below:

1. Part 23 is revised to read as follows:

PART 23—LEASING

Subpart A—General Provisions

Sec.
23.1 Authority, purpose, and scope.
23.2 Definitions.
23.3 Recovery of investment.
23.4 Net lease requirement.
23.5 Investment in personal property.
23.6 Requirement for separate records.
23.7 Application of lending limits; restrictions on transactions with affiliates.

Subpart B—CEBA Leases

23.8 General rule.
23.9 Lease term.
23.10 Transition rule.

Subpart C—Section 24(Seventh) Leases

23.11 General rule.
23.12 Estimated residual value.
23.13 Transition rule.

Authority: 12 U.S.C. 1; 12 U.S.C. 24(Seventh) and 24(Tenth); 12 U.S.C. 93a.

Subpart A—General Provisions

§ 23.1 Authority, purpose, and scope.

(a) *Authority.* A national bank may engage in personal property lease financing transactions pursuant to 12 U.S.C. 24(Seventh) and 12 U.S.C. 24(Tenth).

(b) *Purpose.* The purpose of this part is to set forth standards for personal property lease financing transactions authorized for national banks.

(c) *Scope.* A national bank that enters into a lease under the authority of 12 U.S.C. 24(Seventh) must comply with subparts A and C of this part. A national bank that enters into a lease under the authority of 12 U.S.C. 24(Tenth) must comply with subparts A and B of this part.

§ 23.2 Definitions.

(a) *CEBA Lease* means a personal property lease entered into under the authority of 12 U.S.C. 24(Tenth).

(b) *Conforming lease* means:

(1) A CEBA Lease that conforms with the requirements of subparts A and B of this part; or

(2) A Section 24(Seventh) Lease that conforms with the requirements of subparts A and C of this part.

(c) *Full-payout lease* means a lease financing transaction in which any unguaranteed portion of the estimated residual value relied upon by the bank to yield the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25 percent of the original cost of the property to the lessor.

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[8] June 12, 1979, was the effective date of the OCC's final rule amending 12 CFR 7.3400 to reflect the Ninth Circuit's decision in the *M&M Leasing* case.

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(d) *Net lease* means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

(1) Servicing, repair, or maintenance of the leased property during the lease term;

(2) Purchasing parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon the lessee's request in accordance with any applicable requirements for maximum estimated residual value;

(3) Loan of replacement or substitute property while the leased property is being serviced;

(4) Purchasing insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; or

(5) Renewal of any license or registration for the property unless renewal by the bank is necessary to protect its interest as owner or financier of the property.

(e) *Off-lease property* means personal property that reverts to a national bank's possession or control upon the expiration of a lease or upon the default of the lessee.

(f) *Section 24(Seventh) Lease* means a personal property lease entered into under the authority of 12 U.S.C. 24(Seventh).

§ 23.3 Recovery of investment.

A national bank that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from:

(1) Rentals;

(2) Estimated tax benefits; and

(3) The estimated residual value of the property at the expiration of the term of the lease.

§ 23.4 Net lease requirement.

(a) *General rule.* A national bank may engage in a lease financing transaction and activities incidental to the transaction only if the lease qualifies as a net lease.

(b) *Exceptions*—(1) *Change in conditions.* If, in good faith, a national bank believes that there has been a change in conditions that threatens its financial position by increasing its exposure to loss, then the bank may:

(i) As the owner and lessor under a net lease, take reasonable and appropriate action (including the actions specified in § 23.2(d)) to salvage or protect the value of the property or its interests arising under the lease;

(ii) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual rights, or take any reasonable and appropriate action (including the actions specified in § 23.2(d)) to salvage or protect the value of the property or its interests arising under the lease.

(2) *Provisions to protect the bank's interests.* A national bank may include any provisions in a lease, or make any additional agreements, to protect its financial position or investment in the event of a change in conditions that would increase its exposure to loss.

(3) *Arranging for services by a third party.* A national bank may arrange for any of the services enumerated in § 23.2(d) to be provided to a lessee by a third party at the expense of the lessee.

§ 23.5 Investment in personal property.

(a) *Requirement for written agreement.* A national bank may acquire specific personal property to be leased only after the bank has entered into either:

(1) A legally binding written agreement that indemnifies the bank against loss in connection with its acquisition of the property; or

(2) A legally binding written commitment to enter into a conforming lease.

(b) *Two-year holding period.* At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a national bank shall either liquidate the property or re-lease it under a conforming lease as soon as practicable. In any event, liquidation or re-lease shall occur not later than two years from the date of the expiration of the lease or the date of the lessee's default. Property that the bank retains in anticipation of re-leasing must be revalued at the lower of current fair market value or book value before the bank enters into any subsequent lease.

(c) *Bridge or interim leases.* During the two-year holding period allowed by paragraph (b) of this section, a bank may enter into a short-term bridge or interim lease pending the sale of off-lease property or the re-lease of the property under a long-term conforming lease. A short-term bridge or interim lease must be a net lease, but it need not comply with any other requirement of subpart B or C of this part.

§ 23.6 Requirement for separate records.

If a national bank enters into both CEBA Leases and Section 24(Seventh) Leases, the bank's records must distinguish the CEBA Leases from the Section 24(Seventh) Leases.

§ 23.7 Application of lending limits; restrictions on transactions with affiliates.

A national bank's lease financing transactions are subject to the lending limits prescribed by 12 U.S.C. 84 or, if the lessee is an affiliate of the bank (as defined by 12 U.S.C. 371c), to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1. The OCC may also determine that other limits or restrictions apply.

Subpart B—CEBA Leases

§ 23.8 General rule.

Pursuant to 12 U.S.C. 24(Tenth), a national bank may invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture for lease financing transactions, or may become the owner and lessor of tangible personal property by purchasing the property from another lessor in connection with the bank's purchase of the related lease, provided that: the lease is a conforming lease; and the aggregate book value of all tangible personal property held for lease under the authority of 12 U.S.C. 24(Tenth) does not exceed 10 percent of the bank's consolidated assets.

§ 23.9 Lease term.

(a) *Initial term.* A CEBA Lease must have an initial term of not less than 90 days.

(b) *Exception.* The 90-day term requirement prescribed by paragraph (a) of this section does not apply to the acquisition of property subject to an existing lease with a remaining maturity of less than 90 days, provided that, at its inception the lease was a conforming lease.

§ 23.10 Transition rule.

(a) *General rule.* CEBA Leases entered into prior to July 22, 1991, may continue to be administered in accordance with the lease financing terms agreed to by the bank/lessor and the lessee. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.7, however, a bank that enters into a new extension of credit to a customer, including a lease, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a CEBA Lease that was entered into prior to July 22, 1991, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the CEBA Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith and demonstrates by appropriate documentation that renewal of the lease is necessary to avoid financial loss and to recover its investment in and its cost of financing the property.

Subpart C—Section 24(Seventh) Leases

§ 23.11 General rule.

Pursuant to 12 U.S.C. 24(Seventh), a national bank may become the legal or beneficial owner and lessor of, or otherwise acquire, personal property; or may become the owner and lessor of personal property by purchasing the property from another lessor in connection with the bank's purchase of the related lease, provided that: the lease is a net, full-payout lease representing a noncancelable obligation of the lessee (notwithstanding the possible early termination of that lease); and the lease is a conforming lease.

§ 23.12 Estimated residual value.

(a) *Recovery of investment and costs.* A national bank's estimates of the residual value of the property and the portion of the estimated residual value that the bank relies upon to satisfy the requirements of a full-payout lease, as defined in § 23.2(c), must be reasonable in light of the nature of the leased property and all circumstances relevant to the transaction. The bank's realization of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, must depend primarily on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual value of the leased item.

(b) *Estimated residual value subject to guarantee.* The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or a third party may exceed 25 percent of the original cost of the property if the bank determines and demonstrates by appropriate documentation that the guarantor has the resources to meet the guarantee and the guarantor is not an affiliate of the bank, as defined by 12 U.S.C. 371c.

(c) *Leases to government entities.* Calculations of estimated residual value on leases of personal property to Federal, State, or local government entities may be based on future transactions or renewals that the bank reasonably anticipates will occur.

§ 23.13 Transition rule.

(a) *Exclusion.* Subpart A and this subpart shall not apply to any § 24(Seventh) Leases executed prior to June 12, 1979. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.7, however, a bank that enters into a new extension of credit to a customer, including a lease shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a Section 24(Seventh) Lease that was entered into prior to June 12, 1979, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the Section 24(Seventh) Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith and demonstrates by appropriate documentation that renewal of the lease is necessary to avoid financial loss and to recover its investment in and its cost of financing the property.

Dated: August 14, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–21983 Filed 9–5–95; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 895 and 898

[Docket No. 94N–0078]

Medical Devices; Proposed Performance Standards for Electrode Lead Wires and Proposed Banning of Unprotected Electrode Lead Wires; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 20, 1995, the comment period on a proposed rule that published in the **Federal Register** of June 21, 1995 (60 FR 32406). The document proposed to establish a performance standard for electrode lead wires, and to make unprotected electrode lead wires a banned device upon the effective date of the standard. FDA is taking this action in response to two requests for an extension of the comment period.

DATES: Written comments by October 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 145.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 21, 1995 (60 FR 32406), FDA issued a proposed rule to establish a performance standard for electrode lead wires, and to make unprotected electrode lead wires a banned device upon the effective date of the standard.

FDA has received two requests from trade associations for a 90-day extension of the comment period. The reasons given for the requests are that the proposed rule has raised potential implications beyond those previously anticipated, and additional time is needed for the consideration of these issues and the preparation of meaningful comments.

The agency agrees in part with the requests, however, it believes that due to the public health significance of this issue, an extension for the entire length of time requested is not appropriate. The agency is extending the comment period for 45 days, to October 20, 1995.

Interested persons may, on or before October 20, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 30, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–22104 Filed 8–31–95; 4:29 pm]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 95–7–6789b; FRL–5280–2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which control oxides of nitrogen (NO_x) from industrial, commercial, and institutional boilers, steam generators, and process heaters. The intended effect of proposing approval of these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 6, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 1146, Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, and Rule 1146.1, Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. Both of these rules were submitted to EPA on July 13, 1994 by the California Air Resources Board. For further information, please see the information provided in the direct final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 8, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–21878 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[SD6–1–6947b and SD5–1–6191b; FRL–5279–4]

Clean Air Act Approval and Promulgation of State Implementation Plan for South Dakota; Revisions to the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing approval of revisions to the South Dakota State Implementation Plan (SIP) submitted by the State of South Dakota on November 12, 1993 and March 7, 1995. The submittals included regulatory revisions to the State's definitions, minor source construction and federally enforceable state operating permit (FESOP) rules, source category emission limitations, sulfur dioxide (SO_2) rules, new source performance standards (NSPS), new source review (NSR) requirements for new and modified major sources impacting nonattainment areas, and enhanced monitoring and compliance certification requirements. In the final rules section of this **Federal Register**, the EPA is acting on the State's SIP submittals in a direct final rule without prior proposal because the Agency views these submittals as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed action must be received in writing by October 6, 1995.

ADDRESSES: Written comments should be addressed to Vicki Stamper, 8ART–AP, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and South Dakota Department of Environment and Natural Resources, Division of Environmental Regulation, Joe Foss Building, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules Section of this **Federal Register**.

Dated: August 10, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–21880 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–P–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 95–117; FCC 95–285]

Satellite Application and Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has proposed rules and policies to streamline application and licensing requirements for satellite space and earth stations under the commission's rules regarding satellite communications. Among other things, this document proposes to waive the construction permit requirement for satellite space stations and modify the license term for temporary fixed earth stations and the implementation period for Very Small Aperture Terminal ("VSAT") earth stations. The item also proposes amendments concerning minor modifications for earth stations, inclined orbit operations of space stations, and application and licensing forms. Comments are requested on all aspects of the proposals.

DATES: Comments must be submitted on or before October 4, 1995; reply comments must be submitted on or before October 25, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paula Ford, International Bureau, Satellite Policy Branch, (202) 739–0733; Frank Peace, International Bureau, Satellite Engineering Branch, (202) 739–0513; Kathleen Campbell, International Bureau, Satellite Policy Branch, (202) 739–0729.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 95–117; FCC 95–285, adopted July 13, 1995 and released August 11, 1995. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC and also may be purchased from the Commissions's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The following collection of information contained in the *Notice* has been submitted to the Office of Management and Budget for review under Section 3507(d) of the Paperwork Reduction Act (44 U.S.C. 3507(d)). For copies of the submissions contact Dorothy Conway at (202) 418–0217 or access our fax on demand system at 202–418–0177 from the handset on your fax machine and using the document retrieval number 6000000. Persons wishing to comment on this collection of information should direct their comments to Timothy Fain (202) 395–3561, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. Specifically, the Commission requests that parties provide comments on: (1) The necessity of the proposed collection of information for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collection of information; (3) enhancing the quality, utility, and clarity of the information to be collected; and (4) minimizing the burden of the collection of information on parties responding. Comments must be filed with the Office of Management and Budget within sixty days of publication of this summary in the **Federal Register**. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, Room 234, Paperwork Reduction Project, Washington, DC 20554. For further information contract Judy Boley, (202) 418–0210.

Title: In the Matter of Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures.

Action: Proposed new and revised collection.

Affected Public/Respondents: Businesses or other for profit, including small businesses.

Frequency of Response: On occasion, annually.

REPORTING REQUIREMENTS

Proposed sections	No. of respondents	Hours per response	Total annual reporting hours
Space Stations: 25.113, 25.114, 25.140, 25.210, 25.280, 25.300	125	9.5	1,187.5
Earth Stations: 25.115, 25.118, 25.134, 25.277, 25.300	500	2.5	1,250
Proposed FCC Form 312 (used by both space and earth stations)	300	4	1,200
Information for Adjacent Satellite Interference Analysis Database	50	24	*1,200

*Represents the hours for the periodic reporting of information. We propose to collect the information whenever there is a new processing round. The 1,200 figure represents reporting hours for the year in which information is collected.

Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in granting various authorizations and determining the technical, legal, and financial qualifications of a satellite applicant or licensee.

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document.

Summary of Notice of Proposed Rulemaking

In light of the evolving satellite technology, the Commission commenced a review of its operations in order to eliminate outdated regulations and unnecessary burdens that impede the introduction of satellite services to the public and the efficient processing of satellite applications and licenses. As a result of this review, the Commission created the International Bureau. Soon after its creation, the new International Bureau held a roundtable discussion in February with representatives of industry and members of the public to solicit suggestions on ways to improve satellite application and licensing policies and procedures. Many of the recommendations made during that roundtable discussion have been incorporated in this Notice of Proposed Rulemaking.

The proposals amend or eliminate existing requirements, and codify in Part 25 of the Commission's rules, various technical and procedural policies and guidelines that have not yet been specifically codified. Among other things, the *Notice* proposes to waive the construction permit requirement for satellite space stations; increase the license term, from one year to ten years, for temporary fixed earth stations operating in the C-band; eliminate the four year implementation period for VSATs allowing VSAT licensees to construct their network over the course of their ten year license term; eliminate the annual reporting requirement for VSATs; simplify the earth and space station application process by revising and consolidating FCC Forms 430, 493, 702, and 704; eliminate redundant reporting requirements for earth and space stations; allow earth station operators to make minor technical modifications to their stations without prior authorization from the Commission; and allow satellites to operate in inclined orbits without prior authorization from the Commission.

Given the large outlay of capital and long-term planning necessary to establish satellite systems, it is necessary to ensure that potential applicants and service providers are not hampered by unnecessary and sometimes redundant regulations. The proposed amendments recognize the need of the satellite industry to operate in an environment defined by growth, innovation, efficiency, and competition. Comments are requested on all aspects of these proposals. Specific proposals and recommendations are requested for any additional streamlining rule changes.

Ordering Clauses

Accordingly, *It is Ordered* that pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ (4)(i) and 303, NOTICE IS HEREBY GIVEN of our intent to adopt the rule revisions set forth below and the proposed form set forth below.

It is Further Ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory, Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq* (1981).

Administrative Matters

This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a). The Sunshine Agenda period is the period of time that commences with the release of public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 CFR 1.1202(f). During the Sunshine Agenda period, no presentations, ex parte or otherwise, are permitted unless specifically exempted. 47 CFR 1.1203.

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before October 4, 1995 and reply comments on or before October 25, 1995. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments send additional copies to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. For further information concerning this rulemaking contact Paula Ford at (202) 739–0733.

Initial Regulatory Flexibility Act Statement

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Part 25 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Sections 101–404, 76 Stat. 419–427; 47 U.S.C. 701–744, Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303.

2. Section 25.113 is amended by revising paragraphs (a) and (d) to read as follows:

§ 25.113 Construction permits.

(a) Except as provided in paragraph (b) of this section or in § 25.131, construction permits must be obtained for all fixed or temporary fixed earth stations governed by this part. Simultaneous application for a construction permit and station license may be made for all earth station facilities governed by this part.

* * * * *

(d) A launch authorization must be applied for and granted before a space station may be launched and operated in orbit. Request for launch authorization may be included in an application for space station license. A launch authorizaiton and station license may also be requested at any time for a space station constructed as an on-ground spare satellite. However, an application for authority to launch and operate an on-ground spare domestic satellite will be considered to be a newly filed application for cut-off purposes, except where the space station to be launched is determined to be an emergency replacement for a previously authorized space station that has been lost as a result of a launch failure or a catastrophic in-orbit failure.

3. Section 25.114 is revised to read as follows:

§ 25.114 Applications for space station authorizations.

(a) A comprehensive proposal shall be submitted for each proposed space station in narrative form with attached exhibits as described in paragraph (c) of this section. If an applicant is proposing more than one space station, information common to all space stations may be submitted in a consolidated system proposal.

(b) Each application for a new or modified space station authorization must constitute a concrete proposal for Commission evaluation, although the applicant may propose altrnatives that increase flexibility in accommodating the satellite in orbit. Each application must also contain the formal waiver required by Section 304 of the Communications Act, 47 U.S.C. 304.

The technical information for a proposed satellite system need not be filed on any prescribed form but should be complete in all pertinent details. The format of the applications should conform to the specifications of § 1.49 of this chapter.

(c) The following information shall be contained in each application:

(1) Name, address, and telephone number of the applicant.

(2) Name, address, and telephone number of the person(s), including counsel, to whom inquiries or correspondence should be directed.

(3) Type of authorization requested (*e.g.*, launch authority, station license, modification of authorization).

(4) General description of overall system facilities, operations and services.

(5) Radio frequencies and polarization plan (including beacon, telemetry, and telecommand functions), center frequency and polarization of transponders (both receiving and transmitting frequencies), emission designators and allocated bandwidth of emission, final amplifier output power (identify any net losses between output of final amplifier and input of antenna and specify the maximum EIRP for each antenna beam), identification of which antenna beams are connected or switchable to each transponder and TT&C function, receiving system noise temperature, the relationship between satellite receive antenna gain pattern and gain-to-temperature ratio and saturation flux density for each antenna beam (may be indicated on antenna gain plot), the gain of each transponder channel (between output of receiving antenna and input of transmitting antenna) including any adjustable gain step capabilities, and predicted receiver and transmitter channel filter response characteristics.

(6)(i) For satellites in geostationary-satellite orbit, orbital location, or locations if alternatives are proposed, requested for the satellite, the factors that support such an orbital assignment, the range of orbital locations from which adequate service can be provided and the basis for determining that range of orbital locations, and a detailed explanation of all factors that would limit the orbital arc over which the satellite could adequately serve its expected users.

(ii) For satellites in non-geostationary-satellite orbits, the number of space stations and applicable information relating to the number of orbital planes, the inclination of the orbital plane(s), the orbital period, the apogee, the perigee, the argument(s) of perigee, active service arc(s), and right ascension of the ascending node(s).

(iii) For 1.6/2.4 GHz Mobile-Satellite Service space stations, the feeder link frequencies requested for the satellite, together with the demonstration required by § 25.203 (j) and (k).

(7) Predicted space station antenna gain contour(s) for each transmit and each receive antenna beam and nominal orbital location requested. These contour(s) should be plotted on an area map at 2 dB intervals down to 10 dB below the peak value of the parameter and at 5 dB intervals between 10 dB and 10 dB below the peak values, with the peak value and sense for polarization clearly specified on each plotted contour.

(8) A description of the types of services to be provided, and the areas to be served, including a description of the transmission characteristics and performance objectives for each type of proposed service, details of the link noise budget, typical or baseline earth station parameters, modulation parameters, an overall link performance analysis (including an analysis of the effects of each contributing noise and interference source).

(9) For satellites in geostationary-satellite orbit, accuracy with which the orbital inclination, the antenna axis attitude, and longitudinal drift will be maintained.

(10) Calculation of power flux density levels within each coverage area and of the energy dispersal, if any, needed for compliance with § 25.208.

(11) Arrangement for tracking, telemetry, and control.

(12) Physical characteristics of the space station including weight and dimensions of spacecraft, detailed mass (on ground and in-orbit) and power (beginning and end of life) budgets, and estimated operational lifetime and reliability of the space station and the basis for that estimate.

(13) Detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications for domestic fixed-satellite systems and mobile-satellite systems shall provide the financial information required by § 25.140 (b) through (e), § 25.142(a)(4), or § 25.143(b)(3), as appropriate. Applications for international satellite systems authorized pursuant to *Establishing of Satellite Systems Providing International Communications*, 101 FCC 2d 1046 (1985), *recon.*, 61 RR 2d 649 (1986), *further recon.*, 1 FCC Rcd 439 (1986) (available at the Commission's Library in Washington, DC), shallprovide the information required by that decision.

(14) Qualifications of applicant. FCC Form 312, Main Form. If FCC Form 312, Main Form, is already on file, indicate date, radio service and file number of most recent filing.

(15) A clear and detailed statement of whether the space station is to be operated on a common carrier basis, or whether noncommon carrier transactions are proposed. If noncommon carrier transactions are proposed, describe the nature of the transactions and specify the number of transponders to be offered on a noncommon carrier basis.

(16) Dates by which construction will be commenced and completed, launch date, and estimated date of placement into service.

(17) Public interest considerations in support of grant.

(18) Applications for authorizations for domestic fixed-satellite space stations shall also include the information specified in § 25.140.

(19) Applications for international fixed-satellite authorizations shall also provide all information necessary to comply with the policies and procedures set forth in Establishing of Satellite Systems Providing International Communications, 101 FCC 2d 1046 (1985) (available at the Commission's Library in Washington, DC), as modified by Permissible Services of U.S. license International Communications Satellite Systems, Order, FCC 92–95 released April 8, 1992 (available through the Commission's Public Reference Room in Washington, DC).

(20) Applications for authorizations in the Radiodetermination Satellite Service shall also include the information specified in § 25.141.

(21) Applications for authorizations in the Mobile Satellite Service in the 1545–1559/1646.5–1660.5 MHz frequency bands shall also provide all information necessary to comply with the policies and procedures set forth in *Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service*, 2 FCC Rcd 485 (1987) (available at the Commission's Library in Washington, DC).

(22) Applications to license multiple space station systems in the non-voice, non-geostationary mobile-satellite service under blanket operating authority shall also provide all information specified in § 25.142.

(23) Applications for authorizations in the 1.6/2.4 GHz Mobile-Satellite Service shall also provide all information specified in § 25.143.

(d) Applicants requesting authority to construct and/or launch a system comprised of technically identical, non-geostationary satellite orbit mobile-satellite service space stations may file a single "blanket" application containing the information specified in paragraph (c) of this section for each representative space station.

4. Section 25.115 is amended by revising paragraphs (a), (b), and (c)(1), (c)(2) and (d) to read as follows:

§ 25.115 Application for earth station authorizations.

(a) Transmitting earth stations. Except as provided under § 25.113(b), Commission authorization must be obtained for authority to construct and/or operate a transmitting earth station. Applications shall be filed on FCC Form 312, Main Form and Schedule C, and include the information specified in § 25.130.

(b) Receive-only earth stations. Applications to license or register receive only earth stations shall be filed on FCC Form 312, Main Form and Schedule C, and conform to the provisions of § 25.131.

(c) * * *

(1) An FCC Form 312, Main Form and Schedule B, for each large (5 meters or larger) hub station operating with the network.

(2) An FCC Form 312, Main Form and Schedule B, for each representative type of small antenna (less than 5 meters).

* * * * *

(d) User transceivers in the non-voice, non-geostationary mobile-satellite service need not be individually licensed. Service vendors may file blanket applications for transceivers units using FCC Form 312, Main Form and Schedule C, and specifying the number of units to be covered by the blanket license. Each application for a blanket license under this section shall include the information described in § 25.135.

5. Section 25.117 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 25.117 Modification of station license.

(a) Except as provided for in § 25.118 (Modifications not requiring prior authorization), no modification of a radio station governed by this part which affects the parameters or terms and conditions of the station authorization shall be made except upon application to and grant of such application by the Commission. * * *

* * * * *

6. Section 25.118 through 25.120 are redesignated as §§ 25.119 through 25.121, respectively.

7. A new § 25.118 is added to read as follows:

§ 25.118 Modifications not requiring prior authorization.

(a) Equipment in an authorized earth station may be replaced without prior authorization or notification if the replacement equipment is electrically identical to the replaced equipment.

(b) A licensee providing service on a private carrier basis may change its operations to common carrier status without obtaining prior Commission authorization by notifying the Commission by letter within 30 days after the completed change to common carrier status.

(c) Earth station licensees may make facility changes without obtaining prior Commission authorization, by notifying the Commission by letter within 30 days after the modification is completed, if frequency coordination procedures, as necessary, are complied with in accordance with § 25.251, and the modification does not involve:

(1) An increase in EIRP or EIRP density;

(2) An increase in transmitter power;

(3) A change in coordinates for stations operating in C–Band;

(4) A change in coordinates of 10 seconds or greater for stations operating in Kuband;

(5) A change or addition to antenna facilities.

8. The newly designated § 25.119 is amended by revising the first sentences of paragraph (c) and (d) and the last sentence of paragraph (f) to read as follows:

§ 25.119 Assignment or transfer of control of station authorization.

* * * * *

(c) Assignment of license. FCC Form 312, Main Form and Schedule A, shall be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station authorization. * * *

(d) Transfer of control of corporation holding license. FCC Form 312, Main Form and Schedule A, shall be submitted in order to transfer voluntarily or involuntarily (*de jure or de facto*) control of a corporation holding any licenses. * * *

* * * * *

(f) * * * Within 30 days of consummation, the Commission shall be notified by letter of the date of consummation and the file numbers of the applications involved in the transaction.

9. The newly designated § 25.120 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 25.120 Application for special temporary authorization.

(a) * * * A copy of the request for special temporary authority also shall be forwarded to the Commission's Columbia Operations Center in Columbia, Maryland.

* * * * *

10. The newly designated § 25.121 is amended by revising paragraph (a) to read as follows:

§ 25.121 License term and renewals.

(a) License term. Licenses for facilities governed by this part will be issued for a period of 10 years.

* * * * *

11. Section 25.130 is amended by revising paragraph (a) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

(a) Application for a new or modified transmitting earth station facility shall be submitted on FCC Form 312, Main Form and Schedule C, accompanied by any required exhibits.

* * * * *

12. Section 25.131 is amended by revising paragraphs (a), (d), and (j) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

(a) Except as provided in paragraphs (b) and (j) of this section, applications for a license for a receive-only earth station shall be submitted on FCC Form 312, Main Form and Schedule C, accompanied by any required exhibits.

* * * * *

(d) Applications for registration shall be filed on FCC Form 312, Main Form and Schedule C, accompanied by the coordination exhibit required by 25.203, and any other required exhibits. Any application that is deficient or incomplete in any respect shall be immediately returned to the applicant without processing.

* * * * *

(j) Receive-only earth stations operating with (1) INTELSAT space stations, (2) international space stations, or (3) U.S. domestic and non-U.S. space stations for reception of services from other countries, shall file an FCC Form 312, Main Form and Schedule C, requesting a license for such station. Receive-only earth stations used to receive INTELNET I services from INTELSAT space stations need not file for licenses. *See Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global* Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86–214 (released May 19, 1986) (available through the Commission's Reference Center in Washington, D.C.).

13. Section 25.134 is amended by revising the first sentences of paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 25.134 Licensing Provisions of Very Small Aperture Terminal (VSAT) Networks.

(a) All applications for digital VSAT networks with maximum outbound downlink EIRP densities of +6.0 dBW/4 kHz per carrier and earth station antennas with maximum input power densities of −14 dBW/4 kHz and maximum hub EIRPs of 78.3 dBW will be processed routinely. * * *

(b) Each applicant for digital and/or analog VSAT network authorization proposing to use transmitted satellite carrier EIRP densities in excess of +6.0 dBW/4 kHz per carrier and +13.0 dBW/4 kHz, respectively, and/or maximum antenna input power densities of −14.0 dBW/4 kHz dBW and −8.0 dBW/4 kHz, respectively, shall conduct an engineering analysis using the Sharp, Adjacent Satellite Interference Analysis (ASIA) program. * * *

* * * * *

(d) An application for VSAT authorization shall be filed on FCC Form 312. Main Form and Schedule B. A VSAT licensee applying to renew its license must include on FCC Form 405, the number of constructed VSAT units in its network.

14. Section 25.140 is revised to read as follows:

§ 25.140 Qualifications of domestic fixed-satellite space stations.

(a) Each applicant for a space station authorization in the domestic fixed-satellite service must demonstrate, on the basis of the documentation contained in its application, that it is legally, financially, technically, and otherwise qualified to proceed expeditiously with the construction, launch and/or operation of each proposed space station facility immediately upon grant of the requested authorization.

(b) Each applicant must provide the following information:

(1) The information specified in § 25.114.

(2) An interference analysis to demonstrate the compatibility of its proposed system 2 degrees from any authorized space station. An applicant should provide details of its proposed r.f. carriers which it believes should be taken into account in this analysis. At a minimum, the applicant must include, for each type of r.f. carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See, e.g., appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service, Docket No. 81–704, FCC No. 83–184 (released August 16, 1983) (available through the Commission's Reference Center in Washington, D.C.))

(3) The applicant's current financial ability to meet the:

(i) Estimated costs of proposed construction and/or launch, and any other initial expenses for the space station(s); and

(ii) Estimated operating expenses for one year after launch of the proposed space station(s).

(c) Each application for authority to construct and/or launch a space station shall demonstrate the applicant's current financial ability to meet the costs specified in paragraph (b)(3) of this section by submitting the following financial information verified by affidavit:

(1) A balance sheet current for the latest fiscal year and documentation of any financial commitments reflected in the balance sheet (such as, for example, loan agreements and service contracts) together with an exihibit demonstrating that the applicant has current assets and operating income sufficient to satisfy the requirements of paragraph (c) of this section. If the applicant is owned by more than one corporate parent, it must submit evidence of a commitment to the proposed satellite program by management of the corporate parent upon whom it is relying for financial resources;

(2) If the submissions of paragraph (c)(1) of this section do not satisfy paragraph (b)(3) of this section, the applicant shall submit additional information as listed in paragraphs (c)(2) (i) through (iv) to satisfy paragraph (b)(3) of this section.

(i) The terms of any fully negotiated loan or other form of credit arrangement intended to be used to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor (or creditors), the amount committed, letters of commitment, detailed terms of the transaction, including the details of any contingencies, and a statement that the applicant complies with paragraph (d) of this section.

(ii) The terms of any fully negotiated sale or placement of any equity or other form of ownership interest, including the sale, or long-term lease for the lifetime of the satellite, of proposed satellite transponder capacity in the level of detail as specified in paragraph (c)(2)(i) of this section.

(iii) The terms of any grant or other external funding commitment intended to be used to finance the proposed construction, acquisition, or operation of the requested facilities, including such information as the identity of the grantor(s), the amount committed, letters of commitment, and detailed terms of the transaction, including the details of any contingencies;

(iv) Any financing arrangements contingent on further performance by either party, such as marketing of satellite capacity or raising additional financing, will not satisfy the requirements of paragraph (b)(3) of this section.

(3)Whatever other information or details the Commission may require with regard to a specific application or applicant;

(d) Any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under any default provision of the agreement.

(e) An applicant found to be qualified pursuant to paragraph (a) of this section may be initially assigned up to two orbital locations in each pair of frequency bands proposed. Authorizations to construct ground spares are at the applicant's risk that launch authorization will not be granted by the Commission.

(f) Each applicant found to be qualified pursuant to paragraph (a) of this section may be assigned no more than one additional orbital location beyond its current authorizations in each frequency band in which it is authorized to operate, provided that its in-orbit satellites are essentially filled and that it has no more than two unused orbital locations for previously authorized but unlaunched satellites in that band.

(g) In the event that one or more applications satisfying the requirements of this section are ready for grant, any orbital location occupied by a satellite that is determined to be a part of a system that is not essentially filled may be cancelled and colocation of in-orbit satellites may be required. The Commission may take this action if, in so doing, it would allow the grant of pending applications that satisfy the requirements of this section. If a cancellation is made, the licensee will be afforded a period of 30 days to notify the Commission which of its assigned locations should be cancelled.

15. Section 25.141 is amended by revising paragraph (c) to read as follows:

§ 25.141 Licensing provisions for the radiodetermination satellite service.

* * * * *

(c) User transceivers. Individual user transceivers will not be licensed. Service vendors may file blanket applications for transceiver units using FCC Form 312, Main Form and Schedule C, and specifying the number of units to be covered by the blanket license. Each application must demonstrate that transceiver operations will not cause interference to other users of the spectrum.

* * * * *

16. Section 25.142 is amended by revising paragraph (c) introductory text to read as follows:

§ 25.142 Licensing provisions for the non-voice, non-geostationary mobile-satellite service.

* * * * *

(c) Reporting requirements. All operators of non-voice, non-geostationary mobile-satellite service systems shall, on June 30 of each year, file a report with the International Bureau and the Commission's Columbia Operations Center in Columbia, Maryland containing the following information:

* * * * *

17. Section 25.143 is amended by revising paragraph (e)(1) introductory text to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz Mobile-Satellite Service.

* * * * *

(e) * * *

(1) All operators of 1.6/2.4 GHz mobile-satellite systems shall, on June 30 of each year, file with the International Bureau and the Commission's Columbia Operations Center, Columbia, Maryland a report containing the following information:

* * * * *

18. Section 25.155 is amended by revising paragraph (b) to read as follows:

§ 25.155 Mutually exclusive applications.

* * * * *

(b) A space station application will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with another application; and

(2) The application is received by the Commission in a condition acceptable for filing by the "cut-off" date specified in a public notice.

19. Section 25.210 is amended by revising paragraphs (j) introductory text and (j)(3), to read as follows:

§ 25.210 Technical requirements for space stations in the Fixed-Satellite Service.

* * * * *

(j) All operators of space stations shall, on June 30 of each year, file a report with the International Bureau and the Commission's Columbia Operations Center in Columbia, Maryland containing the following information.

* * * * *

(3) A detailed description of the utilization made of each transponder on each of the in-orbit satellites. That description should identify the total capacity or the percentage of time each transponder is actually used for transmission, and the amount of unused system capacity in the transponder.

* * * * *

20. Section 25.211 is amended by adding paragraph (d), to read as follows:

§ 25.211 Video Transmissions in the Domestic Fixed-Satellite Service.

* * * * *

(d) In the 6 GHz band, an earth station with an equivalent diameter of 9 meters or smaller may be routinely licensed for transmission of full transponder services if the maximum power into the antenna does not exceed 450 watts (26.5 dBW). In the 14 GHz band, an earth station with an equivalent diameter of 5 meters or smaller may be routinely licensed for transmission of full transponder services if the maximum power into the antenna does not exceed 500 watts (27 dBW).

21. Section 25.212 is amended by adding paragraphs (c) and (d), to read as follows:

§ 25.212 Narrowband transmissions in the Fixed-Satellite Service.

* * * * *

(c) In the 14 GHz band, and earth station with an equivalent diameter of 1.2 meters or greater may be routinely licensed for transmission of narrowband analog services with bandwidths up to 200 kHz if the maximum power densities into the antenna do not exceed −8 dBW/4 kHz and the maximum transmitted satellite carrier power densities do not exceed 13 dBW/4 kHz.

(d) In the 6 GHz band, an earth station with an equivalent diameter of 4.5 meters or greater may be routinely licensed for transmission of SCPC services if the maximum power densities into the antenna do not exceed +0.5 dBW/4 kHz for analog SCPC carriers with bandwidths up to 200 kHz, and do not exceed −2.7 dBW/4 kHz for digital SCPC carriers.

22. Section 25.251 is revised to read as follows:

§ 25.251 Special requirements for coordination.

(a) The administrative aspects of the coordination process are set forth in §§ 21.100(d) and 21.706 (c) and (d) of this chapter in the case of coordination of terrestrial stations with earth stations, and in § 25.203 in the case of coordination of earth stations with terrestrial stations.

(b) The technical aspects of coordination are based on Appendix 28 of the International telecommunications Union Radio Regulations and certain recommendations of the ITU Radiocommunication Sector ("ITU–R") which may be obtained through the International Telecommunication Union, General Secretariat—Sales Section, Places des Nations, CH–1211 Geneva 20, Switzerland or by phone 011–41–22–730–6141 or fax 011–41–22–730–5194. Applicants and operators will find it helpful to be aware of the latest revisions of these documents.

§§ 25.252 through 25.256 [Removed and reserved]

23. Sections 25.252 through 25.256 are removed and reserved.

24. Section 25.272 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 25.272 General inter-system coordination procedures.

* * * * *

(b) Each space station licensee shall maintain on file with the Commission and with its Columbia Operations Center in Columbia, Maryland a current listing of the names, titles, addresses and telephone numbers of the points of contact for resolution of interference problems. * * *

* * * * *

25. Section 25.274 is amended by revising the first sentence of paragraph (f) to read as follows:

§ 25.274 Procedures to be followed in the event of harmful interference.

* * * * *

(f) At any point, the system control center operator may contact the Commission's Columbia Operations Center in Columbia, Maryland to assist in resolving the matter. * * *

* * * * *

26. Section 25.277 is amended by revising paragraph (c) introductory text to read as follows:

§ 25.277 Temporary fixed earth station operations.

* * * * *

(c) The licenses of an earth station which is authorized to conduct temporary fixed operations in bands shared co-equally with terrestrial fixed stations shall provide the following information to the Director of the Columbia Operations Center at P.O. Box 250, Columbia, Maryland 21045 (phone number 301–725–3474 and fax number 301–206–2896) and to the licensees of all terrestrial facilities lying within the coordination contour of the proposed temporary fixed earth station site before beginning transmissions:

* * * * *

27. A new § 25.280 is added to read as follows:

§ 25.280 Inclined orbit operations.

Satellite operators may commence operation in incline orbit mode without obtaining prior Commission authorization provided that the Commission is notified by letter within 30 days after commencement. The notification shall include:

(a) The date of commencement of included orbit operation;

(b) The initial inclination;

(3) The rate of change in inclination per year; and

(4) The expected end-of-life of the satellite accounting for inclined orbit operation.

28. Section 25.308 is redesignated as § 25.281.

29. Subpart E is removed and reserved.

[FR Doc. 95–22168 Filed 9–5–95; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 52

Federal Acquisition Regulation; Use and Charges Clause Class Deviation

AGENCY: Department of Defense (DoD).

ACTION: Notice of proposed class deviation.

SUMMARY: The Department of Defense (DoD) is proposing a class deviation from the Federal Acquisition Regulation (FAR) that simplifies the method of determining rental charges for government property. The proposed class deviation will allow defense contractors to propose rental charges for the commercial use of government property and real property while revisions to the FAR are being drafted.

DATES: Comments on the proposed class deviation should be submitted in writing at the address shown below on or before November 6, 1995 to be considered in the formulation of the final class deviation.

ADDRESSES: Interested parties should submit written comments to: Ms. Angelena Moy, MPI, Room 3E144, Pentagon, Washington, DC 20301–3000. FAX (703) 695–7596.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, telephone (703) 695–1099.

SUPPLEMENTARY INFORMATION:

A. Background

On September 16, 1994 (59 FR 47583) the Director of Defense Procurement announced an initiative to rewrite FAR Part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and the Government. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of public meetings in the **Federal Register**. Interested parties were invited to provide written suggestions or comments in the notice of public hearing dated September 16, 1994 (59 FR 47583). Twenty-two commentors provided approximately 500 comments, including a recommendation that simplifying the procedures for computing rental charges for government property would reduce administrative burdens and provide cost savings.

In order to expedite implementation of simplified government property rental procedures, DoD is proposing a class deviation from current FAR methods of determining rental charges for commercial use of government property. The proposed class deviation was included in discussions during the public hearings that have been held on the rewrite of FAR Part 45. DoD proposes to deviate from the clause at FAR 52.245–9 as follows:

Part 52—Solicitation Provisions and Contract Clauses

52.245–9 Use and Charges

- Deviation authorizes DoD to use the following clause in lieu of the clause at 52.245–9. This clause requires contractors, for real property and associated fixtures, to obtain certified property appraisals that compute a monthly, daily, or hourly rental rate for comparable commercial property. Rental charges would be determined by multiplying the rental time by an appraisal rental rate expressed as a rate per hour. For other government property, rental charges will be the smaller of two percent of the property's acquisition cost multiplied by the ratio of rental time to time available for use, or by the method described for real property and associated fixtures.

Use and Charges (APR 1984) (Deviation)

(a) *Deviations.*

As used in this clause—

Acquisition cost means the acquisition cost recorded in the contractor's property control system or, in the absence of such record, the value attributed by the Government to a government property item for purposes of determining a reasonable rental charge.

Government property means property owned, licensed, or leased by the Government.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Rental period means the calender period during which government property is made available for commercial purposes.

Rental time means the number of hours, to the nearest whole hour, rented property is actually used for commercial purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental.

Time available for use means the number of hours, to the nearest whole hour, in the rental period.

(b) *General.* (1) Rental requests must be submitted to the administrative Contracting Officer, identify the property desired, propose a rental period, and calculate an estimated rental charge.

(2) The Contractor shall not use government property for commercial purposes until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property may be used only on a non-interference basis.

(3) Notwithstanding any other provision of this contract, the Contractor is responsible for any loss, theft, or destruction of, or damage to, government property during its use for commercial purposes.

(c) *Estimated rental charge.* The estimated rental charge submitted with the Contractor's rental request shall be computed by substituting the Contractor's best estimate of the time the property might be used for commercial purposes for rental time in the formulae described in paragraph (d) of this clause.

(d) *Final rental charge*—(1) *Real property and associated fixtures*—(i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property no more than one year prior to the date the property is desired for commercial use and submit the appraisal to the administrative Contracting Officer at least 30 days prior to that date. Except as provided in paragraph (d)(1)(iv) of this clause, the administrative Contracting Officer shall use the appraisal rental rate to determine an equitable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) The Contractor may request consideration of an alternate basis for computing the rental charge if it considers a time based rental unreasonable or impractical.

(iv) When the administrative Contracting Officer has reason to believe the appraisal rental rate is not reasonable, he or she shall promptly notify the Contractor and provide his or her rationale. The parties may agree on an alternate means for computing a reasonable rental charge.

(2) *Other government property.* The final rental charge shall be the smaller of—

(i) Two percent (2%) of the property's acquisition cost multiplied by the ratio of rental time to time available for use where time shall be expressed in increments not less than one hour; or,

(ii) A rental charge based upon the appraisal method described in paragraph (d)(1) of this clause subject to the constraints of that paragraph.

(e) *Rental payments.* (1) Rent is due at the time and place specified by the Contracting Officer. If a time is not specified, the rental is due 60 days following completion of the rental period. The Contractor shall calculate the rental due, and furnish records or other supporting data in sufficient detail to permit the administrative Contracting Officer to verify the rental time.

(2) Interest will be charged if payment is not made by the specified payment date or, in the absence of a specified date, the sixty-first day following completion of the rental period. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) At any time during the rental period, the Government may revoke commercial use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition, or both.

(f) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of government property or any other failure to perform this contract according to its terms.

(End of clause)

List of Subjects in 48 CFR Part 52

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–22001 Filed 9–5–95; 8:45 am]

BILLING CODE 5000-04-M

Notices

Federal Register
Vol. 60, No. 172
Wednesday, September 6, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act) 44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: U.S. Industry Reporting Requirements for Compliance with the Chemical Weapons Treaty.

Agency Form Number(s): None assigned.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 15,620 hours.

Number of Respondents: 3,000.

Avg Hours Per Response: Varies but ranges between 2.5 and 9 hours depending on the requirement.

Needs and Uses: The Chemical Weapons Convention is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons. Under this treaty, each participating country will be required to make initial and annual declarations on facilities producing, processing, consuming, importing or exporting specified toxic chemicals and precursors. This collection will not go into effect until the treaty is ratified.

Affected Public: Businesses or other for–profit organizations, Federal Government, State, Local or Tribal Government.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Quarterly Report on Exports of Parts to Service Equipment Shipped Against a Validated Export License.

Agency Form Number: None.

OMB Approval Number: 0694–0003.

Type of Request: Extension of a currently approved collection.

Burden: 5 hours.

Number of Respondents: 2.

Avg Hours Per Response: 30 minutes (4 reports for each respondent).

Needs and Uses: This reporting requirement allows exporters to export parts to service U.S. equipment to proscribed countries provided that the equipment was previously exported from the U.S. under a validated license. Exporters are required to submit quarterly reports providing basic information on shipments. BXA uses this information to make sure that there are no excessive shipments of spare parts.

Affected Public: Businesses or other for–profit organizations.

Frequency: Quarterly.

*Respondent's Obligation:*Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Ocean Service (NOS) Customer Needs Survey.

Agency Form Number: None assigned.

OMB Approval Number: None

Type of Request: New Collection.

Burden: 25 hours.

Number of Respondents: 50.

Avg Hours Per Response: 30 minutes.

Needs and Uses: This survey is designed to ascertain customer needs for National Ocean Service products and services. The information will be used as a basis for modifying or supplementing the organization's current product and service offerings.

Affected Public: Individuals, Businesses or other for–profit organizations, Not–for–profit institutions, Federal Government, State, Local or Tribal Government.

Frequency: One–time survey.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application for Fisheries Obligation Guarantee.

Agency Form Number: NOAA 88–1.

OMB Approval Number: 0648–0012.

Type of Request: Extension of a currently approved collection.

Burden: 10,400 hours.

Number of respondents: 1,300.

Avg Hours Per Response: 8 hours.

Needs and Uses: An application form is needed from commercial fishermen who wish to obtain guaranteed financing under the Fisheries Obligation Guarantee Program. The information is used to determine eligibility and monitor program participation.

Affected Public: Individuals, Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.

Title: Marine Recreational Fishery Statistics Survey.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0052.

Type of Request: Extension of a currently approved collection.

Burden: 23,118 hours.

Number of Respondents: 571,233.

Avg Hours Per Response: Varies but averages between 1 and 7 minutes depending on the requirement.

Needs and Uses: This survey conducts random telephone interviews of residents of coastal county households to obtain data on marine recreational fishing effort and it conducts random field interviews of anglers returning from fishing trips. The data obtained are used to calculate bimonthly estimates of marine recreational fishing participation, effort and catch by species. The effort and catch estimates are used in the development, implementation and monitoring of fishery management programs by the National Marine Fisheries Service, regional fishery management councils, interstate marine fishery commissions and state fishery agencies.

Affected Public: Individuals, Businesses or other–for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishermen's Contingency Fund.

Agency Form Number: NOAA 88–164, 88–166.

OMB Approval Number: 0648–0082.

Type of Request: Extension of a currently approved collection.

Burden: 13,650 hours.

Number of Respondents: 1,065.

Avg Hours Per Response: Ranges between 5 minutes and approximately 13 hours depending on the requirement.

Needs and Uses: Title IV of the Outer Continental Shelf Lands Act Amendments established the Fishermen's Contingency Fund to compensate commercial fishermen for property or economic loss caused by oil and gas obstructions on the U.S. Outer Continental Shelf. An application and a report are needed from commercial fishermen to apply for compensation. The information is used in making a decision on the claimants's eligibility for compensation and to determine the amount of payment.

Affected Public: Individuals, Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishing Vessel and Gear Damage Compensation Fund.

Agency Form Number: 88–178.

OMB Approval Number: 0648–0094.

Type of Request: Extension of a currently approved collection.

Burden: 8.000 hours.

Number of Respondents: 400.

Avg Hours Per Response: 20 hours.

Needs and Uses: An application form is needed from commercial fishermen who wish to file a claim under Section 10 of the Fishermen's Protective Act. The purpose of the fund is to compensate fishermen for fishing vessel or fishing gear damage or loss caused by foreign or domestic vessels.

Affected Public: Individuals, Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 25, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22024 Filed 9–5–95; 8:45 am]

BILLING CODE 3510-CW-F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Field Representative Exit Questionnaire.

Form Number(s): BC–1294.

Agency Approval Number: 0607–0404.

Type of Request: Extension of a currently approved collection.

Burden: 13 hours.

Number of Respondents: 160.

Avg Hours Per Response: 5 minutes.

Needs and Uses: In a continuous effort to devise policy and practice aimed at reducing turnover among field representatives (FR)s--our field interviewing staff–the Census Bureau needs to collect data on the reasons FRs leave the Bureau. The exit questionnaire helps the Census Bureau identify specific reasons for the turnovers. Approximately every quarter, a sample of one--half of all FRs voluntarily resigning within the period will be contacted by telephone to complete a questionnaire. Interviewers hired to conduct the census enumeration or related tests are not included in the sample. Based on the survey results the Census Bureau can develop both general and specific plans to reduce turnover.

Affected Public: Individuals or households.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, Room 10202 New Executive Office Building,Washington, DC 20503.

Dated: August 31, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22072 Filed 9–5–95; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of State Government Pass–through Expenditures.

Form Number(s): CF–1.

Agency Approval Number: 0607–0505.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 795 hours.

Number of Respondents: 1,060.

Avg Hours Per Response: 45 minutes.

Needs and Uses: The Census Bureau plans to reinstate this survey to again collect data from all state governments on how they allocate (pass–through) Federal formula grant funds to recipients at the county level, and how pass–through allocations change from year to year. We plan to collect this data annually from state governments over the next three years. Data collected will be used in estimating these pass–through expenditures in future years in the Consolidated Federal Funds Report which the Census Bureau provides annually to Congress. Current estimating procedures are based on data last collected for fiscal year 1986 and are outdated.

Affected Public: State, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, Room 10202 New Executive Office Building, Washington, DC 20503.

Dated: August 31, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22071 Filed 9–5–95; 8:45 am]

BILLING CODE 3510-07-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment of Import Limits and Amendment of a Restraint Period for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

August 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits and amending a restraint period.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6718. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on June 23, 1995 (60 FR 32656) announces a limit for cotton and man-made fiber underwear in Categories 352/652 for the period March 28, 1995 through March 27, 1996. In an exchange of notes dated July 26, 1995 and August 23, 1995, the Governments of the United States and the Republic of Turkey agreed, pursuant to Article 6 of the Uruguay Round Agreements Act and the Uruguay Round Agreement of Textiles and Clothing (ATC), to establish a limit for textile products in Categories 352/652 for a three-year term—March 28, 1995 through December 31, 1995; January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through March 27, 1998. Also, the two governments agreed to increase the 1995 base sublimit for Categories 338–S/339–S/638–S/639–S.

The 1995 limits for Categories 335, 338/339/638/639, 338–S/339–S/638–S/639–S, 350 and 351/651 are being adjusted, variously, for special shift and carryforward.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current limit for Categories 352/652 to begin on March 28, 1995 and extend through December 31, 1995 at an increased level and to adjust the current limits for Categories 335, 338/339/638/639, 338–S/339–S/638–S/639–S, 350 and 351/651.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17338, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 16, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textile products in Categories 352/652, produced or manufactured in Turkey and exported during the twelve-month period which began on March 28, 1995 and extends through March 27, 1996.

This directive also amends, but does not cancel, the directive issued to you on March 30, 1995 concerning imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 7, 1995, you are directed to amend the restraint period for Categories 352/652 to end on December 31, 1995 at a level of 1,681,644 dozen[1] and to adjust the limits for the following categories for the period January 1, 1995 through December 31, 1995, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[a]
Limits not in group	
335	265,523 dozen.
338/339/638/639	4,960,608 dozen of which not more than 3,562,811 dozen shall be in Categories 338–S/339–S/638–S/639–S[b].
350	524,320 dozen.
351/651	770,144 dozen.

[a]1 The limits have not been adjusted to account for any imports exported after December 31, 1994.

[b]1 Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22023 Filed 9–5–95; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange as a Contract Market in Mexico 30 Stock Index Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in Mexico 30 stock index futures and option contracts. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation

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[1] The limit has not been adjusted to account for any imports exported after March 27, 1995.

140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before October 6, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME contract markets in Mexico 30 stock index futures and options.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: According to the CME, the Mexico 30 stock index is designed to be representative of the Mexican stock market, and is an adjusted capitalization-weighted index of 30 large and liquid Mexican stocks traded on the Bolsa Mexicana de Valores. The capitalizations of component stocks are adjusted to keep their individual index weights equal to or smaller than 25%. The computation of the index will be the responsibility of the Bridge company. The CME and the Chicago Board Options Exchange will maintain the index jointly.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the Exchange in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552 (1987)) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the Exchange in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 30, 1995.

John Mielke,

Acting Director.

[FR Doc. 95–21971 Filed 9–5–95; 8:45 am]

BILLING CODE 6351-01-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection Proposal

AGENCY: Corporation for National and Community Service (CNS).

ACTION: Information Collection Request submitted to the Federal Office of Management and Budget for Review.

SUMMARY: This notice provides information about an information collection proposal by the Corporation for National Service, AmeriCorps Recruitment Office, currently under review by the Office of Management and Budget (OMB).

DATES: OMB and CNS will consider comments on the proposed collection of information and recordkeeping requirements received within 20 days from the date of publication. Copies of the proposed forms and supporting documents may be obtained by contacting the Corporation for National Service.

ADDRESSES: Send comments to both:

Bruce J. Cohen, Director, AmeriCorps Recruitment, 1201 New York Ave., NW., Washington, DC 20525

and

Debra Bond, Desk Officer for CNS, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bruce Cohen, (202) 606–5000.

SUPPLEMENTARY INFORMATION:

Office of CNS Issuing Proposal: AmeriCorps Recruitment.

Title of Form: AmeriCorps Referral Form.

Need and Use: The AmeriCorps Referral form is used by the AmeriCorps Recruitment Office to meet requirements mandated by federal law (National and Community Service Act of 1993). The information collected via the form assists with AmeriCorps Member recruitment and placement for program management, planning, and required recordkeeping.

Type of Request: Revision of currently approved collection.

Respondent's Obligation to Reply: Voluntary.

Frequency of Data Collection: On occasion.

Estimated Number of Responses: 50,000 (annually).

Average Burden Hours per Response: 0.05 Hours (3 minutes).

Estimated Annual Reporting or Disclosure Burden: 2,500 hours.

Regulatory Authority: 42 U.S.C. 12592 (Pub. L. 103–82).

Dated: August 31, 1995.

Bruce J. Cohen,

Director, AmeriCorps Recruitment.

[FR Doc. 95–22059 Filed 9–5–95; 8:45 am]

BILLING CODE 6050-28-M

Information Collection Proposal

AGENCY: The Corporation for National and Community Service (CNS).

ACTION: Information Collection Request Submitted to the Office of Management and Budget (OMB) for Review.

SUMMARY: This notice provides information about an information proposal by CNS, currently under review by OMB.

DATES: OMB and CNS will consider comments on the proposed collection of information and record keeping requirements received within 10 days from the date of publication. Copies of the proposed forms and supporting documents may be obtained by contacting CNS.

ADDRESSES: Send comments to both:

Chuck Helfer, Study Director, CNS, 1201 New York Ave., NW., Washington, DC 20525

and

Debra Bond, Desk Officer, OMB, 3002 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Chuck Helfer, (202) 606–5000, extension 248.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service Issuing Notice: Office of Evaluation.

Titles of Forms: RSVP Project Director Survey, RSVP Station Supervisor Survey; RSVP Volunteer Survey.

Need and Use: The Domestic Volunteer Service Act (as amended) (Pub. L. 93–13) requires the Corporation for National and Community Service to evaluate its programs every three years. This information is needed for

program management, program planning, and required record keeping.

Type of Request: Submission of a new collection.

Respondents Obligation to Reply: Voluntary.

Frequency of Data Collection: Annual.

Estimated Number of Responses: 1,900 Responses.

Average Burden Hours per Response: 0.58 Hours.

Estimated Annual Reporting or Disclosure Burden: 1,100 Hours.

Regulatory Authority: 42 U.S.C. 5056(a).

Dated: August 30, 1995.

Anne Ostberg,

Acting Director, Office of the Vice President.

[FR Doc. 95–22060 Filed 9–5–95; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice of open meeting.

1. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–462), announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date: October 12–13, 1995.

Time: 0800–1630.

Place: U.S. Army Center for Health Promotion and Preventive Medicine (Provisional), Edgewood Area, Aberdeen Proving Ground, Maryland.

Proposed Agenda: 12–13 October 1995—Service preventive medicine reports and issues in infectious disease, vaccines, and behavioral risk factors.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Acting Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258.

FOR FURTHER INFORMATION CONTACT: Colonel Francis L. O'Donnell, USA, MC, Acting Executive Secretary, Armed Forces Epidemiological Board, (703) 681–8012/3.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–21979 Filed 9–5–95; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: September 28, 1995.

Time of Meeting: 0930–1230.

Place: Ft. Detrick-Frederick, MD.

Agenda: The Army Science Board (ASB) Personnel and Medical Panel will meet for initial discussions on the design and staffing required to support the medical research, development, test and evaluation (RDT&E) programs of the proposed Army and Navy consolidated laboratory management organization currently proposed to be called the Armed Forced Medical Research and Development Agency (AFMRDA). This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–21975 Filed 9–5–95; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: September 27, 1995.

Time of Meeting: 0800–1700.

Place: Alexandria, VA.

Agenda: The Army Science Board (ASB) Independent Assessment Panel on "Lead-based Paint" will meet to review information provided during earlier briefings and site visits regarding the Army Program for the management and abatement of lead-based paint. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–21977 Filed 9–5–95; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM96–1–91–000]

ANR Storage Company; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 30, 1995.

Take notice that on August 25, 1995, ANR Storage Company (ANR Storage) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, Seventh Revised Sheet No. 1(a), with a proposed effective date of October 1, 1995.

ANR Storage states that Seventh Revised Sheet No. 1(a) reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by ANR Storage will be effective October 1, 1995.

ANR Storage states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21985 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–2–91–000]

ANR Storage Company; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 30, 1995.

Take notice that on August 25, 1995, ANR Storage Company (ANR Storage) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 5, with a proposed effective date of October 1, 1995.

ANR Storage states that Third Revised Sheet No. 5 reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by ANR Storage will be effective October 1, 1995.

ANR Storage states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21986 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–112–000]

Blue Lake Gas Storage Co.; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 30, 1995.

Take notice that on August 25, 1995, Blue Lake Gas Storage Company (Blue Lake) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 5, with a proposed effective date of October 1, 1995.

Blue Lake states that Third Revised Sheet No. 5 reflects the new ACA rate to be charged per the Annual Charge Adjustment Clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Blue Lake will be effective October 1, 1995.

Blue Lake states that copies of the filing were served upon the company's jurisdictional customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21987 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91–143–031 and RP95–422–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Tariff Filing

August 30, 1995.

Take notice that on August 25, 1995, Great Lakes Gas Transmission Limited Partnership (Great Lakes), tendered for filing proposed changes in its FERC Gas Tariff, to become effective October 1, 1995, as more fully described in its Description of Prospective Tariff Sheets contained in its filing. The tariff sheets submitted are as follows:

Second Revised Volume No. 1

Second Revised Sheet No. 4
First Revised Sheet No. 4A
First Revised Sheet No. 5
Second Revised Sheet No. 6

Original Volume No. 2

Seventeenth Revised Sheet No. 151
Fourteenth Revised Sheet No. 223
Fourteenth Revised Sheet No. 245
Eighth Revised Sheet No. 269
Fourteenth Revised Sheet No. 294
Ninth Revised Sheet No. 603
Sixth Revised Sheet No. 604

Great Lakes states that the above tariff sheets are filed to reinstate systemwide rolled-in rates on its system, in compliance with the Commission's July 26, 1995, Order on Remand, in which it reversed its prior incremental rate decisions.

Any person desiring to be heard or to protest the above referenced tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room.

Also in compliance with the Order on Remand, Great Lakes tendered for filing pro forma tariff sheets reflecting systemwide rolled-in rates on its system for the period November 1, 1991 through September 30, 1995, during which incremental rates were required to be charged by the Commission's Opinion Nos. 367 and 368, which the Commission has now reversed. The following is a listing of the pro forma tariff sheets and the dates they are to become effective:

Second Revised Volume No. 1

Pro Forma Sheet No. 4—November 1, 1994; November 1, 1993
Pro Forma Sheet No. 4A—November 1, 1994
Pro Forma Sheet No. 5—November 1, 1993

First Revised Volume No. 1

Pro Forma Sheet No. 4—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 57(i)—April 1, 1993; November 1, 1991

Original Volume No. 2

Pro Forma Sheet No. 53—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 77—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 78—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 151—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 223—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 245—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 269—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 294—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 603—November 1, 1993; April 1, 1993; November 1, 1991

Pro Forma Sheet No. 604—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 865—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 866—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 905—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 906—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 1008—April 1, 1993; November 1, 1991

Original Volume No. 3

Pro Forma Sheet No. 2—October 1, 1993; April 1, 1993; January 1, 1993; October 1, 1992; January 1, 1992; November 1, 1991
Pro Forma Sheet No. 3—October 1, 1993; April 1, 1993; January 1, 1993; October 1, 1992; May 1, 1992; January 1, 1992; November 1, 1991

In addition, Great Lakes included its Refund and Surcharge Plan, and supporting schedules, in its filing.

Any person desiring to be heard or to protest the above referenced pro forma tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Great Lakes states that copies of the filing were served upon all parties to these proceedings, each of Great Lakes customers, and the Public Service Commissions of the States of Michigan, Minnesota and Wisconsin.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22050 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–65–000]

Jupiter Energy Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 30, 1995.

Take notice that on August 23, 1995, Jupiter Energy Corporation (Jupiter Energy) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1995:

Ninth Revised Sheet No. 4A
Ninth Revised Sheet No. 5A
Ninth Revised Sheet No. 6A

Jupiter Energy states that the filed tariff reflect revision, pursuant to Section 154.38(d)(6) of the Commission's Regulations, of Jupiter Energy's Annual Charge Adjustment ("ACA") surcharge. The new surcharge rate is 0.23¢ Mcf.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 95–21988 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95–421–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 30, 1995.

Take notice that on August 24, 1995, Koch Gateway Pipeline Company (Koch Gateway), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1995:

Sixth Revised Sheet No. 20
Sixth Revised Sheet No. 21
Sixth Revised Sheet No. 22
Sixth Revised Sheet No. 24
Second Revised Sheet No. 3904
First Revised Sheet No. 3905
Original Sheet No. 3906

Koch Gateway states that this filing is submitted as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission.

Koch Gateway states that on August 4, 1995, it filed an application for the Commission's special permission to withdraw the filing in Docket No. RP95–295–000 which would have permitted the recovery of Koch Gateway's Account No. 191 costs through a direct bill mechanism.

Koch Gateway states that the above tariff sheets are being submitted in order to permit recovery of pre-July 31, 1991 costs in its Account No. 191 through prospective surcharges on transportation service under Rate Schedules FTS, FTS–SCO, NNS, NNS–SCO and ITS. Koch Gateway proposes that ninety percent of the stranded Account No. 191 costs be allocated to firm service with the remaining ten percent being allocated to interruptible transportation service.

Koch Gateway also states that copies of its filing are being served upon Koch Gateway customers, state commissions, all intervenors in RP95–295–000 and other interested parties.

Any person desiring to be heard or to protest seid filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21989 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95–714–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

August 30, 1995.

Take notice that on August 28, 1995, NorAm Gas Transmission Company (Applicant), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP95–714–000 for approval under §§ 157.205 and 157.212 of the Commission's Regulations to construct and operate, delivery points for Arkla, a division of NorAm Energy Corp. (Arkla), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the following facilities for deliveries of natural gas to Arkla, to serve its new domestic and commercial customers: (a) One 1-inch delivery tap and first cut regulatory on Applicant's Line T to serve Metropolitan Life Insurance Company in Philips County, Arkansas; (b) one 1-inch delivery tap and first-cut regulator on Applicant's Line T to serve Ray Fuller Farms in Monroe County, Arkansas. The estimated annual volumes through these facilities are 2,550 MMBtu annually and 48 MMBtu on a peak day. The cost of construction is $4,598.00, which will be reimbursed by Arkla.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21990 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95–185–006]

Northern Natural Gas Company; Notice of Petition To Place Tariff Sheets Into Effect

August 30, 1995.

Take notice that on August 25, 1995, Northern Natural Gas Company (Northern) filed a motion to place the following tariff sheet into effect on September 1, 1995:

Substitute Twenty-First Revised Sheet No. 53

Northern states that the filing moves into effect as of September 1, 1995, the gathering rate previously accepted and suspended by the Commission's March 30, 1995, suspension order.

Northern further states that copies of the motion have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21991 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–41–000]

Paiute Pipeline Company; Notice of Change in Annual Charge Adjustment

August 30, 1995.

Take notice that on August 24, 1995, Paiute Pipeline Company (Paiute) tendered for filing and acceptance the following tariff sheet to be a part of its FERC Gas Tariff:

Second Revised Volume No. 1–A

Second Revised Sheet No. 10

Paiute states that the purpose of said filing is to revise its annual charge adjustment surcharge in order to recover the Commission's annual charges for the 1995 fiscal year.

Paiute has requested that the Commission accept its tariff sheet to become effective on October 1, 1995.

Paiute states that copies of this filing have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21992 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–111–000]

Steuben Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 30, 1995.

Take notice that on August 25, 1995, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Third Revised Sheet No. 1(A), with a proposed effective date of October 1, 1995.

Steuben states that Third Revised Sheet No. 1(A) reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Steuben will be effective October 1, 1995.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21993 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95–699–000]

Trailblazer Pipeline Company; Notice of Request Under Blanket Authorization

August 30, 1995.

Take notice that on August 21, 1995, Trailblazer Pipeline Company (Trailblazer), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–699–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new natural gas delivery point under Trailblazer's blanket certificate issued in Docket No. CP82–

497–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trailblazer proposes to construct and operate a new delivery point located in Gage County, Nebraska for Farmland Industries, Inc. (Farmland). Trailblazer states that it would deliver, on an interruptible basis, up to 30,000 Mcf of gas per day to Farmland for use as feedstock. Trailblazer estimates that the new facilities, consisting of a 4-inch sidetap, a 6-inch meter and approximately 3,500 feet of 6-inch pipeline, would cost $222,000. Trailblazer asserts that it has sufficient capacity to provide the proposed services without detriment or disadvantage to its peak day and annual delivery capacity.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21994 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–119–000]

Young Gas Storage Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 30, 1995.

Take notice that on August 25, 1995, Young Gas Storage Company, Ltd. (Young) submitted for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 5, with a proposed effective date of October 1, 1995.

Young states that the tariff sheets reflect a decrease of $0.0001 per Mcf in the ACA adjustment charge, resulting in a new ACA rate of $0.0023 per Mcf based on Young's 1995 ACA billing.

Young requested that the new $0.0023 cent per Mcf ACA charge be effective October 1, 1995.

Young states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such petitions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21997 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92–236–005]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 30, 1995.

Take notice that on August 24, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing, under protest, certain revised tariff sheets to First and Second Revised Volume Nos. 1 and Original Volume Nos. 1–A, 1–B and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's "Order Affirming in part and Reversing in Part Initial Decision" issued July 25, 1995 in Docket Nos. RP9 2–236–000, et al. as more fully described in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 7, 1995. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21995 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–76–000]

Wyoming Interstate Company, Ltd.; Notice of Filing

August 30, 1995.

Take notice that on August 25, 1995, Wyoming Interstate Company, Ltd. (WIC) submitted for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 5, and to become part of its FERC Gas Tariff, Second Revised Volume No. 2, Third Revised Sheet No. 4 and Fourth Revised Sheet No. 5 to become effective October 1, 1995.

WIC states that the tariff sheets reflect a decrease of $0.0001 per Mcf in the ACA adjustment charge, resulting in a new ACA rate of $0.0023 per Mcf based on WIC's 1995 ACA billing.

WIC requested that the new $0.0023 cent per Mcf ACA charge be effective October 1, 1995.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Pubic Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21996 Filed 9–5–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG95–87–000, et al.]

Entergy Power Marketing Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Marketing Corporation

[Docket No. EG95–87–000]

Take notice that on August 23, 1995, Entergy Power Marketing Corporation (EPMC), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

EPMC is a Delaware corporation that will be engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

EPMC intends to own, control or hold with the power to vote at least 5% of the voting securities of Entergy Power Development Corporation (EPDC). The Commission previously has determined that EPDC is an EWG. EPDC owns (i) 100% of Entergy Richmond Power Corporation (Entergy Richmond) and (ii) interests in a number of foreign EWGs. Entergy Richmond is an EWG and owns and operates an eligible facility consisting of a 250 MW electric generating facility that is located in Richmond, Virginia.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Rig Gas Inc.

[Docket No. ER95–480–002]

Take notice that on August 24, 1995, Rig Gas Inc. (Rig) filed certain information as required by the Commission's March 16, 1995, letter order in Docket No. ER95–480–000. Copies of Rig's informational filing are on file with the Commission and are available for public inspection.

3. Southwestern Electric Power Company

[Docket No. ER95–1301–000]

Take notice that on August 24, 1995, Southwestern Electric Power Company (SWEPCO), provided additional information in this docket.

SWEPCO served copies of the filing on all parties to the proceeding and the Public Utility Commission of Texas. Copies are also available for inspection at SWEPCO's offices in Shreveport, Louisiana.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER95–1360–000]

Take notice that on August 23, 1995, New England Power Company filed an amendment clarifying its earlier submission in this docket.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER95–1489–000]

Take notice that on August 23, 1995, Southern California Edison Company (Edison), tendered for filing supplements to its initial filing in the above docket. The supplements amend the rate to be effective June 1, 1995 for the Edison-Riverside Washington Water Power Firm Transmission Service Agreement between Edison and the City of Riverside, correct the losses stated for the Edison-IID Firm Transmission Service Agreement between Edison and Imperial Irrigation District, and correct a typographical error in the losses shown for the Edison-AEPCO Firm Transmission Service Agreement between Edison and the Arizona Electric Power Cooperative.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Illinova Power Marketing, Inc.

[Docket No. ER95–1577–000]

Take notice that on August 17, 1995, Illinova Power Marketing, Inc. (IPMI) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving IPMI's application for membership in the WSPP. IPMI requests it be permitted to become a member of the WSPP. In order to receive the benefits of pool membership, IPMI requests waiver of the Commission's prior notice requirement to allow its WSPP membership to become effective August 15, 1995, but in no event later than 60 days from this filing.

A copy of the filing was served on WSPP.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER95–1596–000]

Take notice that on August 21, 1995, the American Electric Power Service Corporation (AEPSC), tendered for filing, as an Initial Rate Schedule, a Power Sales Tariff.

The Power Sales Tariff and the associated service schedule provides for the sale of operating capacity and energy that the AEP Companies are willing to make available, from AEP System resources on a firm or non-firm basis. AEPSC requests an effective date of September 1, 1995.

A copy of the filing was served upon the Eligible Entities listed in Appendix II to the filing and the state regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER95–1597–000]

Take notice that on August 21, 1995, New England Power Company (NEP), tendered for filing an Agreement with Pepperell Power Associates Limited Partnership (Pepperell) regarding the disconnection of the interconnection of Pepperell's 40 megawatt cogeneration facility with NEP's transmission system.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Kentucky Utilities Company

[Docket No. ER95–1599–000]

Take notice that on August 21, 1995, Kentucky Utilities Company tendered for filing an executed Service Agreement for Power Services with CNG Power Services Corporation.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Houston Lighting & Power Company

[Docket No. ER95–1605–000]

Take notice that on August 21, 1995, Houston Lighting & Power Company (HL&P) tendered for filing three executed transmission service agreements (TSA) and LG&E Power Marketing, Inc. (LG&E) for Economy Energy Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. The three TSAs provide for the transmission of economy energy supplied, respectively, by South Texas Electric Cooperative, Inc. (STEC), Air Liquide and The Dow Chemical Company (Dow), and scheduled to and over the East HVDC Interconnection. HL&P has requested effective dates of August 15, 1995 for the TSA covering energy supplied by STEC, August 16, 1995 for the TSA covering energy supplied by Air Liquide, and August 18, 1995 for the TSA covering energy supplied by Dow.

Copies of the filing were served on LG&E and the Public Utility Commission of Texas.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Rochester Gas and Electric Corporation

[Docket No. ER95–1606–000]

Take notice that on August 22, 1995, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and GPU Service Corporation. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279. RG&E also has requested waiver of the 60-day notice provisions pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Union Electric Company

[Docket No. ER95–1607–000]

Take notice that on August 22, 1995, Union Electric Company (UE), tendered for filing a Transmission Service Agreement dated August 23, 1995 between LG&E Power Marketing Inc. (LPMI) and UE. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for transactions from UE to LPMI.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER95–1610–000]

Take notice that on August 23, 1995, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial rate schedule to provide fully interruptible transmission service to North American Energy Conservation, Inc., for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Public Service Company

[Docket No. ER95–1611–000]

Take notice that on August 23, 1995, Central Illinois Public Service Company (CIPS) submitted a Service Agreement, dated September 1, 1995, establishing Stand Energy Corporation as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of September 1, 1995, for the service agreement and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Stand Energy Corporation and the Illinois Commerce Commission.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Central Power and Light Company

[Docket No. ER95–1612–000]

Take notice that on August 23, 1995, Central Power and Light Company (CPL) filed a one-time rate decrease to the Public Utilities Board of the City of Brownsville, Texas, Kimble Electric Cooperative, Inc., Magic Valley Electric Cooperative, Inc., Madina Electric Cooperative, Inc., Robstown Utilities of the City of Robstown, Texas, and South Texas Electric Cooperative, Inc.

CPL requests an effective date of August 24, 1995, for the tariff sheets implementing the one-time rate decrease and, accordingly, CPL seeks waiver of the Commission's notice requirements. CPL served copies of the filing on each of the affected customers, Rio Grande Electric Cooperative, Inc. and the Public Utility Commission of Texas.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Tampa Electric Company

[Docket No. ER95–1613–000]

Take notice that on August 23, 1995, Tampa Electric Company (Tampa Electric) tendered for filing three agreements with the Orlando Utilities Commission (OUC): (1) A Transmission Facilities Purchase and Sale Agreement; (2) an Agreement to Coordinate Construction of Interconnecting Facilities; and (3) an Operating Agreement With Respect to Interconnection.

Tampa Electric proposes that the agreements be made effective as of August 23, 1995, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served on OUC and the Florida Public Service Commission.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Acme POSDEF Partners, L.P.

[Docket No. QF85–311–003]

On August 14, 1995, Acme POSDEF Partners, L.P. (Applicant) submitted for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95–21984 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1614–000, et al.]

Vantus Energy Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 30, 1995.

Take notice that the following filings have been made with the Commission:

1. Vantus Energy Corporation

[Docket No. ER95–1614–000]

Take notice that on August 23, 1995, Vantus Energy Corporation (Vantus), tendered for filing an application for waivers and blanket approvals under regulations of the Commission and for an order accepting its Electric Rate Schedule FERC No. 1. Vantus is a wholly-owned, indirect subsidiary of Pacific Gas and Electric Company.

Vantus intends to engage in electric capacity and energy transactions as a marketer. In these transactions Vantus intends to charge market rates as mutually agreed to by Vantus and the purchaser. All other terms of the transaction would also be determined by negotiation between the parties. All sales and purchases will be arms-length transactions.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Power Marketing Corporation

[Docket No. ER95–1615–000]

Take notice that on August 23, 1995, Entergy Power Marketing Corporation filed Rate Schedule No. 1, which would permit it to make sales of capacity and energy at market-based rates, as more fully described in the filing.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Coastal Electric Services Company

[Docket No. ER95–1616–000]

Take notice that on August 23, 1995, Coastal Electric Services Company (CESC), tendered for filing its request that the Commission recognize CESC as a member of the Western Systems Power Pool (WSPP), amend the WSPP Agreement to include CESC, and, pursuant to 18 CFR 35.3 and 35.11, waive notice requirements for good cause shown. CESC requests an effective date of one day after filing for the proposed amendment.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Koch Power Services, Inc.

[Docket No. ER95–1617–000]

Take notice that on August 24, 1995, Koch Power Services, Inc. (KPSI), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, a letter requesting FERC approval of KPSI's membership within the Western Systems Power Pool (WSPP), a copy of a letter dated August 17, 1995, indicating that the WSPP Executive Committee approved KPSI's WSPP membership application and an executed copy of the signatory page to the WSPP Agreement.

A copy of the filing was served to the WSPP Executive Committee Chairman and General Counsel.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Georgia Power Company

[Docket No. ER95–1618–000]

Take notice that on August 24, 1995, Georgia Power Company (Georgia Power), submitted for filing revised tariff sheets to Rate Schedules "C" and "D" to its Partial Requirements Tariff. The purpose of this filing is to amend energy rates contained in the foregoing tariff to reflect the energy-related costs incurred by Georgia Power to ensure compliance with the Phase I sulfur dioxide emissions limitations of the Clean Air Act Amendment of 1990.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. MidAmerican Energy Company

[Docket No. ER95–1619–000]

Take notice that on August 24, 1995, MidAmerican Energy Company (MidAmerican) filed with the Commission three Service Agreements with Heartland Energy Services, Inc. (Heartland) dated August 3, 1995, Enron Power Marketing, Inc. (Enron) dated August 14, 1995, and InterCoast Power Marketing Company (InterCoast) dated August 14, 1995, entered into pursuant to Section 4.0 of MidAmerican's Non-Firm Point-to-Point Transmission Service Tariff which was accepted for filing by the Commission in Docket No. ER95–188–000.

MidAmerican requests an effective date of August 3, 1995, for the Agreement with Heartland, August 14, 1995 for the Agreement with Enron, and August 14, 1995, for the Agreement with InterCoast, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Heartland, Enron, InterCoast, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. MidAmerican Energy Company

[Docket No. ER95–1620–000]

Take notice that on August 24, 1995, MidAmerican Energy Company (MidAmerican) filed with the Commission three Umbrella Service Agreements with Heartland Energy Services, Inc. (Heartland) dated August 3, 1995, Enron Power Marketing, Inc. (Enron) dated August 14, 1995 and InterCoast Power Marketing Company (InterCoast) dated August 14, 1995, entered into pursuant to Section 5.2 of MidAmerican's Firm Point-to-Point Transmission Service Tariff which was accepted for filing by the Commission in Docket No. ER95–188–000.

MidAmerican requests an effective date of August 3, 1995 for the Agreement with Heartland, August 14, 1995 for the Agreement with Enron, and August 14, 1995 for the Agreement with InterCoast, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Heartland, Enron, InterCoast, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER95–1621–000]

Take notice that on August 24, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Transmission Service Agreements with Energy Resource Marketing, Inc. (ERM) and Coastal Electric Services Company (Coastal) under, PacifiCorp's FERC Electric Tariff, Original Volume No. 5, Service Schedule TS–5.

Copies of this filing were supplied to ERM, Coastal, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22051 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2431–008 Michigan and Wisconsin]

Wisconsin Electric Power Company; Notice of Availability of Final Environmental Assessment

August 30, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the existing Brule Hydroelectric Project located on the Brule River in Iron County, Michigan and Florence County, Wisconsin, near Crystal Falls, Wisconsin, and has prepared a final Environmental Assessment (EA) for the existing project. In the EA, the Commission's staff has analyzed the potential environmental effects of the existing project and has concluded that approval of the project, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

On June 29, 1994, a draft EA was issued and distributed to all parties, and comments were requested on the draft EA to be filed within 45 days. All comments have been considered in this final EA.

Copies of the final EA are available for review in the Public Reference Branch, Room 3104 of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22003 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2522–002, et al.]

Hydroelectric Applications [Wisconsin Public Service Corporation, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New Major License.

b. *Project No.:* 2522–002.

c. *Date Filed:* December 18, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Johnson Falls Project.

f. *Location:* On the Peshtigo River (river mile 60) in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed Johnson Falls Project is a peaking project that consists of the following: (1) A reservoir with a surface area of 130.5 acres with a maximum depth of 40 feet, and a volume of 2500 acre-feet at elevation 814.0 feet NGVD; (2) two earth embankments with a 2-foot-thick concrete core wall and a combined length of 188 feet; (3) an unregulated spillway section consisting of a concrete gravity overflow dam with crest length of 9 feet and crest elevation 814.45; (4) a concrete gated spillway section 117-feet-long with (a) conventional ogee overflow segment at elevation 802.40; and (b) six 12-foot-high by 14-foot-wide radial gates; (5) a nonoverflow concrete gravity dam with a vertical upstream face and crest elevation of 818.0 feet; (6) three 4-foot-square sluice gates, located in the nonoverflow dam; (7) a 66.5-foot-wide power intake with six gates; and (8) a powerhouse consisting of (a) a 34-foot-wide by 66.5-foot-long by 42-foot-high concrete, steel, and brick structure, (b) two identical 3-phase 60-cycle, Allis-Chalmers vertical shaft generators rated at 1,760 kW, directly connected to (c) two Allis-Chalmers vertical shaft 2,500-horsepower turbines operating at 150 rpm.

The existing license requires the Wisconsin Public Service Corporation (WPSC) to operating in a peaking mode and provide a minimum release of 29 cubic feet per second (cfs). The applicant may elect to operate the Project in a run-of-river mode when daily flows are projected to be less than 200 cfs for an extended period of time.

WPSC proposes to: (1) Operate in a peaking mode but increase the minimum flow from 29 cfs to 150 cfs year long; (2) place all of the shoreline on this reservoir, from the high water mark back 400 feet, in an old growth classification as well as the five miles of river shoreline downstream from the project; (3) work with the fishery resource agencies to attempt to establish or enhance a population of both brown trout and brook trout (4) monitor the recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reprod[illegible]tion at the Commissio[illegible] Pu[illegible]ference and Files Maint[illegible]an[illegible]ch, located at 941 North C[illegible]et, N.E., Room 3104, Washin[illegible].C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

2a. *Type of Application:* New Major License.

b. *Project No.:* 2525–004.

c. *Date filed:* December 18, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Caldron Falls Project.

f. *Location:* On the Peshtigo River (river mile 70) in Marinette County, Wisconsin.

g. *Filed pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed Caldron Falls Project is a peaking project that consists of the following: (1) A reservoir with a surface area of 1,180 acres, a maximum depth of 40 feet and a volume of 11,570 acre-feet at elevation 982.0 feet NGVD; (2) two earth embankments with a 2-foot-thick concrete core wall and a combined length of 1,250 feet; (3) an unregulated spillway section consisting of a concrete gravity overflow dam 121 feet long; (4) a concrete gated spillway section 110 feet long with (a) conventional ogee overflow segment, and (b) six 12-foot-high by 14 foot-wide radial gates; (5) a nonoverflow concrete gravity dam with crest at elevation 986 and vertical upstream face; (6) two 4-foot-square sluice gates, located in the nonoverflow dam; (7) a 7-foot-wide gated concrete trash sluice, located adjacent to the power intake; (8) a 52-foot-wide power intake with four 10.3-foot-high by 10.5-foot-wide gates; (9) one 10-foot diameter penstock 210 feet long; (10) one 10-foot diameter penstock 220 feet long; and (11) a powerhouse consisting of (a) a 29-foot-wide by 76-foot-long by 35-foot-high steel and brick structure, and (b) two identical 3 phase, 60 cycle Allis-Chalmers vertical umbrella type generators rated at 3,200 kW directly connected to (c) two Allis-Chalmers type FV 4,650 horsepower vertical turbines operating at 225 rpm.

The existing license requires Wisconsin Public Service Corporation (WPSC) to operate in a peaking mode and provide a minimum release of 23 cubic feet per second (cfs). The applicant may also elect to operate the Project in a run-of-river mode when daily flows are projected to be less than 200 cfs for an extended period of time.

WPSC currently proposes to: (1) Continue operating in a peaking mode; (2) increase the minimum release flow from 23 cfs to 50 cfs from June through March; (3) increase the minimum release flow to 350 cfs from April through May; and (4) monitor the recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

3a. *Type of Application:* New Major License.

b. *Project No.:* 2546–001.

c. *Date filed:* December 19, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Sandstone Rapids Project.

f. *Location:* On the Peshtigo River (river mile 50) in Marinette County, Wisconsin.

g. *Filed pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed Sandstone Rapids Project is a peaking project that consists of the following: (1) A reservoir with a surface area of 150 acres with a maximum depth of 39 feet, and a volume of 1,400 acre-feet at elevation 724.1 feet NGVD; (2) two earth embankments with a 2-foot-thick concrete core wall and a combined length of 420 feet and crest elevation of 729.50; (3) an unregulated spillway section consisting of a concrete gravity overflow dam with a crest length of 26 feet at elevation 724.1; (4) a concrete gated spillway section with (a) conventional ogee overflow crest at elevation 712.1; and (b) six 12-foot-high by 14-feet-wide radial gates; (5) an 85.5-foot-long nonoverflow dam concrete gravity structure with a vertical upstream face and crest elevation 729.50; (6) two 4-foot-square sluice gates, located in the nonoverflow dam; (7) a power intake with four gates; and (8) a powerhouse consisting of (a) 41-foot-wide by 85.6-foot-long by 42-foot-high concrete and brick structure; (b) two identical 3-phase 60-cycle, Allis-Chalmers vertical shaft generators rated at 1,920 kW directly connected to (c) two Allis-Chalmers vertical shaft 2,500-horsepower turbines operating at 150 rpm.

The existing license requires the Wisconsin Public Service Corporation (WPSC) to operate in a peaking mode and provide a minimum release of 31 cubic feet per second (cfs). The applicant may elect to operate the Project in a run-of-river mode when daily flows are projected to be less than 200 cfs for an extended period of time.

WPSC currently proposes to: (1) Operate in a peaking mode but increase the minimum flow from 31 cfs to a minimum flow of 200 cfs; (2) establish an old growth/no cut area from the river shoreline back to the top of the slope of the land that is oriented to the river; and (3) monitor the recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

4a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2560–001.

c. *Date Filed:* December 19, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Potato Rapids Project.

f. *Location:* On the Peshtigo River (river mile 15) in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed Potato Rapids Project is a run-of-river project that consists of the following: (1) A reservoir with a surface area of 350 acres with a maximum depth of 20 feet, and a volume at elevation 621.5 feet of 3,100 acre-feet; (2) Three earth dikes with a combined length of 4,134 feet and a crest elevation of 625 feet; (3) a concrete gated spillway section with (a) 225-foot-long conventional concrete gravity section, (b) three 15-foot-high by 26-foot-wide radial gates, and (c) four 6.5-foot-high and 20-foot-wide radial gates; (4) a 217-foot-long nonoverflow concrete gravity dam with a vertical upstream face and crest elevation of 623.7; (5) a 8-foot-wide trash sluiceway, located adjacent to the powerhouse; (6) a 56-foot-wide power intake with three gates; and (7) a powerhouse consisting of (a) a 34-foot-wide by 56-foot-long by 31-foot-high concrete powerhouse; (b) one 3-phase, 60-cycle Allis-Chalmers umbrella type generator rated at 500 kW, directly connected to (c) one Leffel vertical shaft 780-horsepower turbine operating at 128.5 rpm, and (d) two 3-phase, 60-cycle General Electric umbrella type generators rated at 440 kW, directly connected to (e) two S Morgan Smith vertical shaft 676-horsepower turbines operating at 128.5 rpm.

The existing license requires the Wisconsin Public Service Corporation (WPSC) to operate in a run-of-river mode maintaining a target reservoir level of 621.25 (NGVDS) ± 0.25 feet.

WPSC currently proposes to: (1) Continue operating in a run of river mode with no changes to the flow; and (2) monitor recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

5a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2581–002.

c. *Date filed:* December 19, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Peshtigo Project.

f. *Location:* On the Peshtigo River (river mile 12) in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed Peshtigo Project is a run-of-river project that consists of the following: (1) A reservoir with a surface area of 460 acres with a maximum depth of 15 feet and a volume of 4,600 acre-feet at elevation 603.0 feet NGVD; (2) a concrete spillway which consists of (a) an ungated section with 61 foot-long crest at elevation 603.0, and (b) a gated section with crest at elevation 591 that includes six 12-foot-high by 14-foot-wide radial gates; (3) a 96-foot-long nonoverflow concrete gravity dam with a vertical upstream face and crest at elevation 605.75; (4) a 96-foot-wide power intake with eight gates; and (5) a powerhouse consisting of (a) 41-foot-wide by 96.5-foot-long by 28-foot-high concrete powerhouse, (b) one 3-phase, 60-cycle General Electric vertical shaft generator rated at 224 Kw directly connected to (c) a 410-horsepower turbine operating at 109 rpm, and (d) one 3-phase, 60-cycle General Electric vertical shaft generator rated at 360 Kw, directly connected to (e) a Francis type Z, 560-horsepower turbine operating at 100 rpm.

WPSC currently proposes: (1) to operate in a run-of-river mode with no changes to the flow; and (2) monitor recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

6a. *Type of Application:* New Major License.

b. *Project No.:* 2595–005.

c. *Date Filed:* December 18, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC)

e. *Name of Project:* High Falls Project.

f. *Location:* On the Peshtigo River (river mile 62) in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r)

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed High Falls Project is a peaking project that consists of the following: (1) A reservoir with a surface area of 1,670 acres with a maximum depth of 54 feet, and a volume of 15,810 acre-feet at elevation 897.0 feet NGVD; (2) two earth embankments with a 2-foot-thick-concrete core wall and a combined length of 4,025 feet; (3) an unregulated spillway section consisting of a concrete gravity overflow dam 128 feet long with crest at elevation 897.0; (4) a concrete gated spillway section 105 feet long with (a) a conventional ogee overflow segment, and (b) six 12-foot-high by 14-foot-wide radial gates; (5) a nonoverflow concrete gravity dam with a vertical upstream face and crest at elevation 902.0; (6) two non-operating 4-foot-square sluice gates, located in the nonoverflow dam; (7) a 125-foot-wide power intake with eight gates; (8) five 8-foot-diameter, 60-foot-long steel penstocks; (9) two 3-foot-diameter, 60-foot-long steel penstocks; and (10) a powerhouse consisting of (a) an 83-foot-wide by 136-foot-long by 36-foot-high structural steel and brick structure, and (b) five identical 3-phase, 60-cycle Allis-Chalmers horizontal shaft generators rated at 1,400 Kw directly connected to (c) five Allis-Chalmers horizontal shaft 1,900 horsepower turbines operating at 360 rpm.

The existing license requires Wisconsin Public Service Corporation (WPSC) to operate in a peaking mode and provide a minimum release of 25 cubic feet per second (cfs). The applicant may elect to operate the Project in a run-of-river mode when daily flows are projected to be less than 200 cfs for an extended period of time.

WPSC currently proposes to: (1) Continue operating in a peaking mode, but with no defined or set minimum release flow (instead, WPSC proposes to operate the project in coordination with upstream and downstream projects to maintain target reservoir water levels); and (2) monitor the recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (October 13, 1995 for all projects). All reply comments must be filed with the Commission within 105 days from the date of this notice (November 27, 1995 for all projects).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: August 30, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22049 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–P

Office of Fossil Energy

[FE Docket No. 95–56–NG]

Brymore Energy Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Brymore Energy Inc. authorization to import and export up to a combined total of 200 Bcf of natural gas from and to Canada over a two-year term beginning the date of first import or export delivery after August 13, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 16, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–22053 Filed 9–5–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–55–NG]

Canada Imperial Oil Limited; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Canada Imperial Oil Limited blanket authorization to import and export a combined total of up to 146 Bcf of natural gas from and to Canada. This authorization is for a period of two years beginning on the date of the initial import or export, whichever occurs first, after October 31, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 16, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–22052 Filed 9–5–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5292–5]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the Santa Barbara Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that a reduction in expenditures of non-Federal funds for the Santa Barbara Air Pollution Control District (SBAPCD) in Goleta, California is a result of a non-selective reduction in expenditures. This determination, when final, will permit the SBAPCD to keep the financial assistance awarded to it for FY–94 by EPA under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by October 6, 1995.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Laurie Amaro, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415)744–1076.

FOR FURTHER INFORMATION CONTACT: Laurie Amaro, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1247.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance to the SBAPCD, whose jurisdiction includes Santa Barbara County in California, to aid in the operation of its air pollution control programs. In FY–94, EPA awarded the SBAPCD $459,086, which represented approximately 10% of the SBAPCD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–94 section 105 application, which EPA reviewed in early 1994, the SBAPCD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $4,221,583. This MOE would have been sufficient to meet the MOE requirements of the CAA. In January of 1995, however, the SBAPCD submitted to EPA documentation which shows that its actual FY–94 MOE was $3,450,870. This amount represents a shortfall of $736,219 from the MOE of $4,187,089 for the preceding fiscal year (FY–93). In order for the SBAPCD to be eligible to keep its FY–94 grant, EPA must make a determination under section 105(c)(2).

In FY–94, the SBAPCD was an operating department within the County of Santa Barbara under the direction of the County Board of Supervisors. The Board of Supervisors, during the fiscal years of 91/92, 92/93 and 93/94, issued policies directing county-wide budget cuts. These budget cuts were necessary as a result of declining economic conditions which caused the business community to curtail operations, resulting in a decline of county revenues from sources such as permit fees and taxes. The SBAPCD submitted documentation to EPA which shows that over the last three years county-wide budget cuts became severe enough in 93/94 that SBAPCD instituted a number of cost cutting measures including: eliminating a position, freezing all hiring, and instituting new programs to reduce costs such as permit streamlining and computer-assisted permit processing.

The SBAPCD's MOE reductions resulted from a loss of county revenues, including permit fees, due to circumstances beyond its control. The budget cuts instituted by the Board of Supervisors, affected all county agencies equally. EPA proposes to determine that the SBAPCD's lower FY–94 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SBAPCD to keep the funds received from EPA for FY–94.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by October 6, 1995 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by October 6, 1995. If no written request for a hearing is received, EPA will proceed to a final determination.

Dated: August 18, 1995.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 95–22058 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5292–8]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing its Fall meeting of the Ozone Transport Commission to be held on September 28, 1995.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on September 28, 1995 from 10:00 a.m. to 4:00 p.m.

PLACE: The meeting will be held at: The Inn at Essex, 70 Essex Way, Essex Junction, VT 05452.

FOR FURTHER INFORMATION CONTACT: EPA: Doug Gutro, State Relations Coordinator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3383.

THE STATE CONTACT: Host Agency: Dick Valentinetti, Vermont Department of Environmental Conservation, 103 South Main Street, Building 3 South, Waterbury, VT 05671–0402, (802) 241–3840.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 604, Washington, DC 20001, (202) 508–3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on September 28, 1995. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: Copies of the final agenda will be available from Stephanie Cooper of the OTC office, (202) 508–3840 on Wednesday, September 20, 1995. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, consider the development of market-based programs in the region, and to discuss stationary and mobile source portions of ozone State Implementation Plans.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 95–22057 Filed 9–5–95; 8:45 am]

BILLING CODE 6560-50-P

[OPP–34081; FRL 4972–4]

Certain Chemicals; Availability of Reregistration Eligibility Decision Documents for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and opening of public comment period.

SUMMARY: This notice announces the availability of the Reregistration Eligibility Decision (RED) documents for the pesticide chemicals cases Chloro-*m*-xylenol, Dowicil CTAC, Fosamine Ammonium, Piperalin, Polybutene, Terbuthylazine, and (*Z*)-9-tricosene. It also begins a 60–day public comment period of these documents. The REDs are the Agency's summary documents of its scientific assessments of the human health and environmental data bases for these pesticide chemicals. They also include the Agency's regulatory conclusions regarding the future registration of uses and products containing these chemicals as active ingredients.

DATES: Written comments on these decisions must be submitted by October 6, 1995.

ADDRESSES: Three copies of comments identified with the docket number "OPP–34081" and the case number (noted below), should be submitted to: By mail: OPP Pesticide Docket, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: OPP Pesticide Docket, Rm. 1132, Crystal Mall 2 (CM#2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–34081". No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in "SUPPLEMENTARY INFORMATION" of this document.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the above listed RED documents should be directed to the appropriate Chemical Review Managers:

Chemical Name	Case No.	Chemical Review Manager	Telephone No.	E-mail Address
Chloro-*m*-xylenol	3045	Yvonne Brown	(703) 308–8073	Brown.yvonne@epamail.epa.gov
Dowicil CTAC	3069	Ron Kendall	(703) 308–8068	Kendall.ron@epamail.epa.gov
Fosamine Ammonium	2355	Kathy Davis	(703) 308–8156	Davis.kathy@epamail.epa.gov
Piperalin	3114	Barbara Briscoe	(703) 308–8177	Briscoe.barbara@epamail.epa.gov
Polybutene	4076	Mark Wilhite	(703) 308–8586	Wilhite.mark@epamail.epa.gov
Terbuthylazine	2645	Virginia Dietrich	(703) 308–8157	Dietrich.virginia@epamail.epa.gov
(*z*)-9-Tricosene	4112	Tom Myers	(703) 308–8074	Myers.tom@epamail.epa.gov

To request a copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Response and Program Resources Branch, in Rm. 1132 at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticide chemical cases listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting a reregistration program to reevaluate older pesticides, those initially registered prior to November 1, 1984, to make sure they meet current scientific and regulatory standards. If necessary, modifications to use patterns and application methods may be required to reduce risks to appropriate levels. All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally-mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at 703–308–7224, and also can be reached on the Internet via fedworld.gov and EPA's gopher server, gopher.epa.gov.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection.

Dated: August 29, 1995.

Richard D. Schmitt,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 95–22055 Filed 9–5–95; 8:45 am]

BILLING CODE 6560-50-F

[OPP–64028; FRL 4972–6]

Notice of Receipt of Voluntary Cancellation Request of Registration of VAPAM-B Foaming Fumigant Containing the Active Ingredient Metam-Sodium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), announces EPA's receipt of a request from Zeneca Ag Products to cancel the registration for VAPAM-B Foaming Fumigant (EPA Registration Number 10182–185).

DATES: Written comments must be submitted on or before October 6, 1995.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–64028]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Wilhelmena Livingston, Special Review Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA. (703) 308–8025; e-mail: livingston wilhelmena@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This Notice announces the receipt of a request from Zeneca Ag Products to cancel its registration of VAPAM-B Foaming Fumigant.

I. Background

Pursuant to section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Administrator may seek cancellation of a product if a pesticide or its labeling or other material required to be submitted for registration does not comply with the provisions of this act. The Agency issued a letter to Zeneca Ag Products (Zeneca) on March 15, 1995, notifying the registrant that a Confidential Statement of Formula (CSF) was not on file with the Agency for VAPAM-B Foaming Fumigant, a product that contains metam-sodium. The letter indicated that an up-to-date CSF or a request for voluntary cancellation must be received by the Agency within 30 days of receipt of the March 15, 1995 letter.

II. Request for Voluntary Cancellation

On March 28, 1995, Zeneca Ag Products submitted a letter to EPA requesting voluntary cancellation of the registration for VAPAM-B Foaming Fumigant (EPA registration number 10182–185), pursuant to FIFRA section 6(f)(1). Zeneca indicated in the letter that the subject product has not been manufactured or distributed in many years, therefore, Zeneca requests voluntary cancellation of the registration for VAPAM-B Foaming Fumigant. EPA intends to approve the proposed voluntary cancellation unless Zeneca withdraws or amends its request before the end of the comment period.

III. Procedures for Withdrawal of Request

If Zeneca chooses to withdraw its request for cancellation, it must submit such withdrawal in writing to Wilhelmena Livingston, Special Review Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460, postmarked on or before October 6, 1995. This written withdrawal of the request for cancellation must include a current CSF for the product, and a commitment to pay any reregistration or registration maintenance fees due, as well as to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Existing Stocks

Under the authority of FIFRA section 6(a)(1), EPA will establish certain limitations on the distribution and use of exiting stocks of VAPAM-B Foaming Fumigant subject to any final cancellation notice. EPA defines the term "existing stock" to mean any quantity of VAPAM-B Foaming Fumigant in the United States on the effective date of the cancellation of a registration granted by the Agency. Such existing stocks include VAPAM-B Foaming Fumigant that have been formulated, packaged, and labeled and are being held for shipment or release or have been shipped or released into commerce.

Consistent with the Agency's established policy for determinations concerning existing stocks (56 FR 29362), the Agency will permit Zeneca to sell and distribute existing stocks of this product for up to 1 year after the effective date of this cancellation. Any sale or distribution of the product by Zeneca after that 1 year period will be a violation of federal law. Any existing stocks remaining in the possession of all other persons after 1 year may continue to be sold, distributed, and used until such existing stocks are exhausted.

V. Comments

Persons interested in commenting on the proposed cancellation are invited to submit their written comments on or before October 6, 1995 to the address given above.

VI. Public Docket

A record has been established for this notice under docket number "[OPP–64028]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: August 22, 1995.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 95–21944 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59348; FRL–4975–2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–95–10. The test marketing conditions are described below.

DATES: This notice becomes effective August 28, 1995. Written comments will be received until September 21, 1995.

ADDRESSES: Written comments, identified by the docket number [OPPTS–59348] and the specific TME number should be sent to: TSCA Non-Confidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, D.C. 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPTS–59348]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

FOR FURTHER INFORMATION CONTACT: Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447H, 401 M St. SW., Washington, D.C. 20460, (202) 260–3780.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–95–10. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and within the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Advance notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–95–10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–95–10

Date of Receipt: July 18, 1995. The extended comment period will close September 21, 1995.

Applicant: Riechhold Chemicals, Inc.

Chemical: (G) Polyurethane Adhesives.

Use: (G) Laminate Adhesive and Veneer Adhesive.

Production Volume: 90,900 kg/yr.

Number of Customers: Confidential.

Test Marketing Period: 12 months, Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

A record has been established for this notice under docket number [OPPTS–59348] (including comments and data submitted electronically as described above). A public version of this record, including printed, pager versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA nonconfidential information center (NCIC), Rm. NEB–607, 401 M St., SW., Washington, D.C. 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: August 28, 1995.

Mary E. Cushmac,

Acting Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 95–22056 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Correction to Report No. 2094; Petition for Reconsideration of Actions in Rulemaking Proceedings

August 31, 1995.

Report No. 2094, released August 24, 1995 published at 60 FR 4480, August 29, 1995 inadvertently omitted the below petition for reconsideration. Therefore this petition is hereby added.

Subject: Replacement of Part 80 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services. (PR Docket No. 92–235)

Number of Petitions Filed: 22.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

FR Doc. 95–22032 Filed 9–5–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

CNB Bancshares of Victoria, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 29, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. CNB Bancshares of Victoria, Inc., Victoria, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bancorp of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Citizens National Bank, Victoria, Texas.

In connection with this application, Citizens Bancorp of Delaware, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank, Victoria, Texas.

2. Magnolia Partnership Investments, Ltd, Beaumont, Texas; to become a bank holding company by acquiring 44.3 percent of the voting shares of First of Groves Corporation, Groves, Texas, and thereby indirectly acquire First Bank & Trust Company, Groves, Texas, and First National Bank, Silsbee, Texas.

Board of Governors of the Federal Reserve System, August 30, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–21999 Filed 9–5–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Application to Engage in Nonbanking Activities

Norwest Corporation, Minneapolis, Minnesota, and its wholly owned subsidiary Norwest Financial Services, Inc., Des Moines, Iowa (NFS) (together, Applicants), have given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through NFS's wholly owned subsidiaries, Orlandi Valuta, Los Angeles, California, and Orlandi Valuta Nacional, Boulder City, Nevada (together, Companies), in the activity of transmitting money for customers within the United States, including Puerto Rico, the U.S. Virgin Islands, and Guam (domestic money transmission).

Orlandi currently engages solely in the activity of transmitting money to a foreign country (Mexico) on behalf of customers. The activity is conducted through Orlandi's office locations and Orlandi's network of outside representatives. Companies will use this network following the acquisition and, subject to licensing and other regulatory requirements, intend to expand the network to include Applicants' consumer finance offices. A "hotline" telephone will be located at the office of the outside representative. This telephone will be connected directly to Companies' office and the customer will speak directly with an employee of Companies. The customer will provide the information regarding the recipient and the dollar amount to be transferred. The outside representative will collect the money from the customer and deposit the funds in a designated account at a local bank chosen by the outside representative. These funds will be held *in trust* for the benefit of the remitting customer and will not be commingled with any other funds of Companies or the outside representative. Companies will collect the funds deposited in the outside representative's account by means of an ACH transaction or similar transaction. Companies will deposit an amount equal to the transmitted funds in an account at a bank at a location near the disbursement site. The local disbursement site will notify the recipient that the funds are available to be picked up. When the recipient comes to the disbursement site, a check drawn on the local bank will be issued to the recipient with funds immediately available for the recipient to cash or deposit the check.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

The Board has not previously approved money transmission activiteswithun the United States. The Board has previously approved, by order, however, the activity of transmitting money for customers to a foreign county. *See Philippine Commercial International Bank*, Federal Reserve Bulletin 270 (1991); *Berger Bank A/S*, 76 Federal Reserve Bulletin 457 (1990); *Skandinaviska Enskilda Banken*, 69 Federal Reserve Bulletin 42 (1983); *European-American Bancorp, European-American Bancorp*, 63 Federal Reserve Bulletin 595 (1977). In this regard, on August 28, 1995, the Board approved the notice by Applicants to acquire Orlandi and thereby engage in the activity of transmitting money for customers to Mexico. Applicants believe that the proposed activities meet the *National Courier* standard because the activity of domestic money transmission is identical to the previously approved activity of transmitting money for customers to a foreign country, except that the recipient will be located in the United States.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 4, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Minneapolis.

Board of Governors of the Federal Reserve System, August 30, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-22000 Filed 9-5-95; 8:45 am]

BILLING CODE 6210-01-F

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act, this notice is hereby given to announce an open meeting concerning the Presidential Advisory Committee on Gulf War Veterans' Illnesses. The panel will meet in open session to discuss various clinical issues related to Gulf War veterans' illnesses. Captain Marguerite Knox, Clinical Assistant Professor in the College of Nursing, University of South Carolina, will chair this panel meeting of the committee.

DATES: September 18, 1995, 9:00 a.m.–5:00 p.m.

TENTATIVE AGENDA:

Monday, September 18, 1995

9:00 a.m. Panel convenes to hear presentations on the VA and DoD clinical care systems

12:30 p.m. Lunch

2:00 p.m. Panel reconvenes to take public comment

5:00 p.m. Panel adjourns

A final agenda will be available at the meeting.

PLACE: The Radisson Plaza Hotel, 101 South Tyron Street, Charlotte, North Carolina.

FOR FURTHER INFORMATION CONTACT: Michael E. Kowalok, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, D.C. 20005, telephone 202–761–0066, fax: 202–761–0310.

PUBLIC PARTICIPATION: Members of the public who wish to present oral statements during the panel meeting should contact the Advisory Committee at the address or telephone number listed above at least five business days prior to the meeting. This panel has a particular interest in hearing about the experiences of veterans of the Persian Gulf War with the DoD and VA clinical systems. Reasonable provisions will be made to include presentations on the agenda, and requests from individuals who have not yet had an opportunity to address the Advisory Committee will take priority. The panel Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so at any time.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The committee reports to the President through the Secretary of Defense, Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members are individuals with expertise relevant to the functions of the committee, and are appointed by the President from non-Federal sectors.

Dated: September 1, 1995.

L.M. Bynum,

Designated Federal Officer.

[FR Doc. 95-22176 Filed 9-5-95; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement 13655.911]

Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), OS, HHS.

ACTION: Announcement of availability of funds and opportunity to apply under the Older Americans Act, Title VI, Grants for Native Americans, Part A–Indian Program.

SUMMARY: The Administration on Aging will accept applications for funding in Fiscal Year 1996 under the Older Americans Act, title VI, Grants for Native Americans, part A–Indian Program, from all current title VI, part A grantees, current grantees who wish to leave a consortium and apply as a new grantee, and eligible federally recognized Indian tribal organizations that are not now participating in title VI. Successful applications from new grantees will be funded if funds permit.

DATES: December 5, 1995.

ADDRESSES: See Appendix A.

FOR FURTHER INFORMATION CONTACT: M. Yvonne Jackson, Ph.D., Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, Room 4257, 330 Independence Avenue, SW, Washington, DC 20201, telephone (202) 619–2713.

SUPPLEMENTARY INFORMATION:

1. Background and Program Purpose

The Administration on Aging (AoA) is responsible for administering title VI, part A of the Older Americans Act, which provides for grants to Indian tribal organizations representing federally recognized Tribes for the provision of nutritional and supportive services to Indian elders.

The 1978 Amendments to the Older Americans Act created title VI, Grants for Indian Tribal Organizations. The purpose of this title is to promote the delivery of supportive and nutritional services for Indian elders that are comparable to services provided under title III of the Older American Act. (Title III of the Older Americans Act, entitled "Grants for State and Community Programs on Aging" is the nationwide program of supportive and nutritional services which serves persons over age 60 of all ethnic groups.)

In the Older Americans Act Amendments of 1987, the name of title VI was changed to Grants for Native Americans, and part B—Native Hawaiian Programs—was added.

Nutritional services and information and assistance services are required by the Act. Nutritional services include congregate meals and home-delivered meals. Supportive services include information and assistance, transportation, chore services, and other supportive services which contribute to the welfare of older Native Americans.

2. Eligibility of an Indian Tribal Organization or Indian Tribe To Receive a Grant

To be eligible to receive a grant, a tribal organization or Indian tribe must meet the application requirements contained in sections 612(a) and 612(b) of the Act, which are: "(1) the tribal organization represents at least 50 individuals who are 60 years of age or older; and (2) the tribal organization demonstrates the ability to deliver supportive services, including nutritional services." For purposes of title VI, part A, the terms "Indian tribe" and "tribal organization" have the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

This announcement concerns all federally recognized Indian tribal organizations, those currently participating in title VI, part A individually or as members of a consortium and those that are not currently participating in title VI, part A.

3. Available Funds

Distribution of funds among tribal organizations is subject to the availability of appropriations to carry out title VI, part A. As stated in section 614A(b) of the Act the amount of the grant made under this part to a tribal organization for fiscal year 1992 and for each subsequent fiscal year shall be not less than the amount of the grant made under this part to the tribal organization for fiscal year 1991 as stated under section 614A(a) of the Act. If the funds appropriated to carry out this part in a fiscal year subsequent to fiscal year 1991 exceed the funds appropriated to carry out this part in fiscal year 1991, then the amount of the grant (if any) made under this part to a tribal organization for the subsequent fiscal year shall be: (1) Increased by such amount as the Assistant Secretary considers to be appropriate, in addition to the amount of any increase required by subsection (a), so that the grant equals or more closely approaches the amount of the grant made under this part to the tribal organization for fiscal year 1980; or (2) an amount the Assistant Secretary considers to be sufficient if the tribal organization did not receive a grant under this part for either fiscal year 1980 or fiscal year 1991.

Applications from current grantees who are a part of a consortium and wish to leave the consortium will be treated as new grant applications. Successful new grant applications for both current grantees who are leaving a consortium and tribal organizations who are not current grantees will be funded pending availability of additional funds.

Information on typical grant levels in Fiscal Year 1994 is given below as a guide to POSSIBLE funding levels for Tribes representing the following documented numbers of Indian elders over age 60:

Population range (No. of older Indians age 60 years and over, represented by the tribal organization).	Amounts of awards in FY 1994
50 to 100	$49,000
101 to 200	56,000
201 to 300	64,500
301 to 400	73,000
401 to 500	81,600
501 to 1500	95,000
1501+	125,000

4. Application Process

Applicants should submit applications, describing their proposed plans for nutritional and supportive services for older Indians for *project period April 1, 1996–March 31,1999*, as described in section 5 below, "Content of the Application."

A three year project period was chosen in order to reduce the paperwork burden on the grantees. It is the intent of this agency to conduct on site monitoring at least once during the three year project period.

The Program Performance and Financial Status reports, due on a semi-annual basis, will be reviewed for compliance with the program regulations. Failure to submit the required reports during the project period may result in loss of future funds and possibly termination of the grant within the project period.

Thirty days prior to the end of each budget period within the three year project period grantees shall notify AoA as to their desire to continue as a grantee. Failure to submit this documentation within the required timeframe may result in loss of grant funding. At the beginning of each budget period within the three year project period grantees will be notified of the funding level for the subsequent year.

One original application, signed by the principal official of the Tribe, and two copies of the complete application including all attachments must be submitted to the Administration on Aging, Grants Management Division, Margaret Tolson, Director, 330 Independence Avenue, SW., Washington, DC 20201. Incomplete applications will not be considered for funding.

5. Content of the Application

The application must meet the criteria in sections 614(a) and (b) of the Act, and title 45 of the Code of Federal Regulations, § 1326.19. The application may be presented in any format selected by the tribal organization. Contact the AoA Regional Office in your geographic area if you have questions concerning the content of the application. The application must include the following information:

A. Objectives and Need for Assistance

This section must include objectives, expressed in measurable terms, which are related to the current supportive and nutrition service needs of the elders to be represented by the Tribal Organization. This section must also include a discussion of how the needs were evaluated.

B. Results or Benefits Expected

The application should describe the results or benefits expected from each service proposed.

C. Approach

(1) Description and Method of Delivery of Each Service

(a) Nutrition. Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the estimated number of persons to be served. The nutrition services provided, either directly or by way of a grant or contract, must be substantially in compliance with the provisions of part C, title III, which include:

1. Provide at least one hot or other appropriate meal a day, 5 or more days a week in a congregate setting, and any additional meals which the recipient of a grant may elect to provide. A "meal", as used in section 307(a)(13), 308(b)(7), 311(a)(4), 331(1), 336, 338(a)(1), and 339, 339A of the Act and § 1321.17, § 1321.59 and § 1321.64, is a planned event in a day at which a variety of prepared foods are provided to an individual. These foods shall comply with the U.S. Dietary Guidelines for Americans published by the Secretary of the Department of Health and the Secretary of the Department of Agriculture and provide the nutrients specified in the current, daily Recommend Dietary Allowances, as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences as specified in Section 339(2) unless the meal is a special meal provided to meet the health, religious, or ethnic considerations of eligible individuals. Snacks, partial meals, and second helpings are not considered meals.

2. Provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental food (with a satisfactory storage life) meal per day, 5 or more days a week, and any additional meals which the recipient of a grant may elect to provide. The above definition of a meal also applies here. Thus, neither individual grocery items nor food vouchers may not be used in lieu of home delivered meals.

If no title VI, part A funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) Information and Assistance. Information and assistance services are required. They must be available for older Indians living in the title VI part A service area and there should be a description of what information and assistance services will be provided and how they will be provided. The estimated number of individuals to be served should be stated. If no title VI, part A funds are to be used for information and assistance services, the application must state how such services are provided in other ways, and how they are financed.

(C) Other Supportive Services. The application must describe any other supportive services to be provided wholly or partly by title VI, part A funds. The description should include what supportive services will be provided and how they will be provided. The approximate number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be reported as "Supportive Services."

If a tribal organization elects to provide legal services, it must substantially comply with the requirements in title 45 of the Code of Federal Regulations § 1321.71, and all legal assistance providers must comply fully with the requirements in § 1321.71(d) through § 1321.71(k).

Transportation of persons to nutrition sites or other places is to be considered as a "Supportive Service."

(D) Coordination with title III. The application should provide a description of how title VI and title III resources are to be coordinated within the title VI service area, including information and assistance service.

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, based on the objective indicated in Item A above. It will also explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in Item B above are being achieved.

D. Geographic Location

The application must include both a narrative description of the title VI, part A service area, and a map with the service area identified. The area to be served by title VI, part A must have clear geographic boundaries. If the geographic area overlaps with another current title VI, part A grantee or new applicant then coordination of services without duplication must be developed between the two applicants and clearly outlined in the application. This agreement must be signed by the principal official of both tribal organizations. A "Consortium Agreement" is included in the attachments of this **Federal Register** announcement. There is no prohibition, however, on its overlapping with areas served by title III.

E. Additional Information

(1) Older Indians in the Title VI, Part A Service Area

The law requires that a tribal organization must represent at least 50 persons aged 60 years or over in order to be eligible for title VI funding. Therefore, the number of persons aged 60 or over living in the proposed title VI service area must be stated in the application. The tribal organization may use Bureau of Statistics population figures, or may develop its own population statistics, but they must be certified from the Bureau of Indian Affairs in order to establish eligibility. The amount of the grant is based on this

number of Indians or Alaskan Natives aged 60 years or over in the proposed service area. Thus, the application should include only the number of Indians and Alaskan Natives aged 60 years or over in the proposed service area and not the total population census of all tribal members, age 60 and above, if not all the tribal members live in the proposed service area. If there is overlap between two or more title VI, part A applicants, as stated under "Geographic Location", the eligible elders can only be counted once and included in one application. The applicants are responsible for determining how the eligible elders will be counted. The same elder may not be counted by both applicants. This must be stated clearly in the application and signed by the principal official of the tribal organization.

As a separate matter, the regulations allow a Tribe to define, based on its own criteria, who the Tribe will consider to be an "older Indian" for purposes of eligibility to receive title VI services. If a Tribe selects a different definition of "older Indian" for service delivery, the application must state the age selected, and the number of Indians under age 60 eligible to be served. If more than one Tribe is included in the application, this information must be stated separately for each Tribe. All Tribes in a consortium must use the same age for "older Indian."

(2) Resolution

The tribal organization representing a federally recognized Tribe must submit an original copy of the Tribal council resolution authorizing participation in title VI, part A. If the tribal organization represents a consortium of more than one Tribe, a resolution is required from each participating Tribe, specifically authorizing representation by the tribal organization for the purpose of title VI, part A of the Older Americans Act.

(3) Program Assurances

Title VI, part A Program Assurances must be included in the application. The title VI, part A Program Assurances are those provisions identified in section 614(a) of the Older Americans Act, and in title 45 of the Code of Federal Regulations § 1326.19(d), issued August 31, 1988 (see Appendix B). The tribal organization must state that it agrees to abide by all the provisions for the entire project period being applied for April 1, 1993–March 31, 1996.

Copies of the title III and title VI current law and regulations, and of part 92, may be obtained from the Regional Program Director for the Administration on Aging. (See appendix A)

(4) Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

(5) Identifying Information

Applications must identify both the principal official of the tribal organization, and the proposed title VI program director: Name, Title, Address including Zip Code, Telephone Number, and, if available, the FAX Number. The tribal organization's EIN (Employer Identification Number) must also be included.

If the applicant tribal organization is a consortium, the applicant must list the federally recognized tribes which are included. A copy of each tribal resolution must be enclosed.

6. Closing Date for Application

To be eligible for consideration, applications must be received or postmarked on or before December 5, 1995. (Applicants are cautioned to request a legibly dated U.S. Postal service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

7. Action on Applications

Awards will be made by the Assistant Secretary on Aging Funding decisions will be announced as soon as possible.

Catalog of Federal Domestic Assistance Program #93.655 Grants to Indian Tribes and Native Hawaiians. This Program Announcement is not subject to E.O. 12372.

Dated: July 7, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

Appendix A

Regional Offices

Region 1 (CT, MA, ME, NH, RI, VT)

Thomas Hooker, Regional Administrator,
John F. Kennedy Building, Room 2075,
Boston, Massachusetts 02203, (617)565–1158, FAX (617)565–4511

Region II (NY, NJ, PR, VI)

Judith Rackmill, Regional Administrator, 26
Federal Plaza, Room 38–102, New York,
New York 10278, (212)264–2976, FAX
(212)264–0114

Region III (DC, MD, VA, DE, PA, WV)

Paul E. Ertel, Jr., Regional Administrator,
3535 Market Street, P.O. Box 13716–Stop
23, Philadelphia, Pennsylvania 19101,
(215)596–6891, FAX (215)596–0614

Region IV (AL, FL, MS, SC, TN, NC, KY, GA)

Frank Nicholson, Regional Administrator,
101 Marietta Tower, Suite 1702, Atlanta,
Georgia 30323, (404)331–5900, FAX
(404)331–2017

Region V (IL, IN, MI, MN, OH, WI)

Marion Mengert, Acting Regional
Administrator, 105 West Adams Street,
10th Floor, Chicago, Illinois 60603,
(312)353–3141, FAX (312)886–8533

Region VI (AR, LA, OK, NM, TX)

John Diaz, Regional Administrator, 1200
Main Tower Building, Room 1000, Dallas,
Texas 75202, (214)767–2971, FAX
(214)767–2951

Region VII (IA, KS, MO, NE)

Larry Brewster, Regional Administrator, 1150
Grand Avenue, suite 600, Kansas City,
Missouri 64106, (816)374–6015, FAX
(816)374–6024

Region VIII (CO, MT, UT, WY, ND, SD)

Percy Devine, Regional Administrator, 1961
Stout Street, Room 308, Federal Office
Building, Denver, Colorado 80294,
(303)844–2951, FAX (303)844–2943

Region IX (CA, NV, AZ, HI, GU, TTPI, CNMI, AS)

Frank Cardenas, Regional Administrator, 50
United Nations Plaza, Room 480, San
Francisco, California 94102, (415)556–6003, FAX (415)556–7393

Region X (AK, ID, OR, WA)

Chisato Kawabori, Regional Administrator,
Blanchard Plaza, RX–33; Room 1202, 2201
Sixth Avenue, Seattle, Washington 98121,
(206)615–2298, FAX (206)615–2305

Appendix B

Older Americans Act—Section 614(a)—No grant may be made under this part unless the eligible tribal organization submits an application to the Assistant Secretary which meets such criteria as the Assistant Secretary may by regulation prescribe. Each such application shall—

(1) Provide that the eligible tribal organization will evaluate the need for supportive and nutrition services among older Indians to be represented by the tribal organizations;

(2) Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) Provide that the tribal organization will make such reports in such form and containing such information, as the Assistant Secretary may reasonably require, and comply with such requirements as the Assistant Secretary may impose to assure the correctness of such reports;

(4) Provide for periodic evaluation of activities and projects carried out under the application;

(5) Establish objectives consistent with the purposes of this part toward which activities under the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the tribal organization proposes to overcome such obstacles;

(6) Provide for establishing and maintaining information and assistance

services to assure that older Indians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(7) Provide a preference for Indians aged 60 and older for full or part-time staff positions whenever feasible;

(8) Provide assistance that either directly or by way of grant or contact with appropriate entities nutrition services will be delivered to older Indians represented by the tribal organization substantially in compliance with the provisions of part C of title III, except that in any case in which the need for nutritional services for older Indians represented by the tribal organization is already met from other sources, the tribal organization may use the funds otherwise required to be expended under this clause for supportive services;

(9) Contain assurance that the provision of sections 307(a)(14)(A) (i) and (iii), 307(a)(14)(B), and 307(a)(14)(C) will be complied with whenever the application contains provisions for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers;

(10) Provide that any legal or ombudsman services made available to older Indians represented by the tribal organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(11) Provide satisfactory assurance that fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the tribal organization, including any funds paid by the tribal organization to a recipient of a grant or contract.

45 CFR 1326.19 * * * The application shall provide that:

(d) Assurances as prescribed by the Assistant Secretary that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through § 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

Consortium Agreement

It is agreed by all participating Principal Officials that coordination of services, without duplication within a specified geographic area, has been developed between the two or more Tribal Organizations applying for this grant. The application and map of service area reflect this understanding.

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Signature and Date

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Title

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Tribal Organization

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Tribal Organization

(Additional pages for signatures may be added if needed.)

U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements—Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act Of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studies.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs, and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation or a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, of every grant officer or other designee on whose grant activity the convicted employee was working unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (Use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) ______________
Check ______ if there are workplaces on file that are not identified here.

Sections 76.630 (c) and (d)(2) and 76.635 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the, central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW., Washington, DC 20201.

Signature ______________________
Date ______________________
Title ______________________
Organization ______________________

DGMO Form #2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department of agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services" (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participants shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Signature ______________________
Date ______________________
Title ______________________
Organization ______________________

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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Organization

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Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201–0001.

[FR Doc. 95–22054 Filed 9–5–95; 8:45 am]

BILLING CODE 4130–01–M

Food and Drug Administration

[Docket No. 95M-0240]

Wesley-Jessen; Premarket Approval of Wesley-Jessen® COE–405 Disinfection Tablet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Wesley-Jessen, Des Plaines, IL, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Wesley-Jessen® COE–405 Disinfection Tablet. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter on June 7, 1995, of the approval of the application.

DATES: Petitions for administrative review by October 6, 1995.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On February 13, 1991, Wesley-Jessen, Des Plaines, IL 60018, submitted to CDRH an application for premarket approval of Wesley-Jessen® COE–405 Disinfection Tablet. When the Wesley-Jessen® COE–405 Disinfection Tablet is dissolved in a sterile contact lens saline solution, the solution is indicated for use in the chemical (not heat) disinfection of soft (hydrophilic) contact lenses.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On June 7, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 6, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 24, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–21973 Filed 9–5–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPO–133–PN]

Medicare Program; Data, Standards, and Methodology Used to Establish Fiscal Year 1996 Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice describes the data, standards, and methodology that would be used to establish fiscal intermediary and carrier budgets for the Federal fiscal year (FY) 1996, that begins October 1, 1995. Fiscal intermediaries and carriers are public or private entities that participate in the administration of the Medicare program by performing claims processing and benefit payment functions. This notice is published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act, which require us to publish for public comment the data, standards, and methodology we intend to use to establish budgets for Medicare fiscal intermediaries and carriers.

In addition, we respond to the single public comment we received in response to our proposed notice of October 21, 1994, and we announce the data, standards, and methodology we proposed to use to establish the Medicare fiscal intermediary and carrier budgets for FY 1995, beginning October 1, 1994, as final.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 6, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–133–PN, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or
Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPO–133–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Leslie Trazzi, (410) 786–7544

SUPPLEMENTAL INFORMATION:

I. Background

Preparation of Contractor Budgets—Under sections 1816(a) and 1842(a) of the Social Security Act (the Act), public or private organizations and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with the Secretary. These Medicare contractors are known as fiscal intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act). Fiscal intermediaries perform bill processing and benefit payment functions for Part A of the program (Hospital Insurance), and carriers perform claim processing and benefit payment functions for Part B of the program (Supplementary Medical Insurance). When bills are submitted by providers, and claims by beneficiaries, physicians, and suppliers of services, fiscal intermediaries and carriers are responsible for—

- Determining the eligibility status of a beneficiary;
- Determining whether the services on the submitted claims or bills are covered under Medicare and, if so, the correct payment amounts; and
- Making appropriate payments to the provider, beneficiary, physician, and/or other supplier of services.

Fiscal intermediary and carrier performance is monitored by us at the central office staff and regional office levels. In general, the central office staff address issues that affect policies on a national level, and the regional office staff address issues dealing with regional and local policies, as well as those of an operational nature. Continuous communication between us and the fiscal intermediaries and carriers is maintained through consultation workgroups that meet on a regular basis and are comprised of representatives from the central office, regional offices, and Medicare contractors.

HCFA's central office is responsible for developing a national contractor budget for Part A and Part B of the Medicare program. The budget is formulated over an 18-month period, beginning in March of the calendar year preceding the fiscal year to which it applies. The central office receives input from the contractor community, our regional offices, the Department of Health and Human Services, and the Office of Management and Budget (OMB) before the budget is submitted to the President for approval and forwarding to the Congress. Once the national contractor budget has been approved, we issue Budget and Performance Requirements (BPRs). BPRs specify the level of effort required for contractor functions and serve as the statement of work for contractor use in preparing their individual budgets for submission to us.

The regional offices review the budgets submitted by contractors during a budget level determination process that is based on current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by the Congress. Subsequently, we allocate funding within these constraints.

Requirements to Publish Contractor Budget Information—Sections 1816(c)(1) and 1842(c)(1)(A) of the Act require us to publish for public comment the data, standards, and methodology we intend to use to establish budgets for Medicare fiscal intermediaries and carriers at least 90 days before September 1. The statute further requires that we publish the final data, standards, and methodology no later than September 1. In the past, when preparing the Medicare contractor budget for each fiscal year, every attempt was made to publish the proposed and final notices as timely as possible. However, because of the time involved in developing the budget and the lengthy review and clearance process, we have been unable to publish both proposed and final notices before the beginning of the fiscal year. (See, for example, the notices for FYs 1993 and 1994 published in the **Federal Register** at 59 FR 13491 and 35933.) However, because of our continuous communications with contractors, we do not believe that the publication date of the **Federal Register** document has any negative effect on the fiscal intermediaries or carriers. The BPRs issued to all intermediaries and carriers discuss in detail the work, level of effort, and activities we expect them to perform in the coming fiscal year. Further, we provide a discussion and explanation of the bottom-line unit cost target established for each intermediary and carrier at the time the BPRs are issued.

Sections II and III of this notice contain proposed data, standards, and methodology we intend to use to establish budgets for Medicare fiscal intermediaries and carriers for FY 1996. If comments are received during the comment period, we will address those comments in a final notice and, if necessary, make revisions to the FY 1996 data, standards, and methodology. If no comments are received, the data, standards, and methodology proposed for FY 1996 will become final, effective October 1, 1995.

FY 1995 Budget Information—A proposed notice describing the data, standards, and methodology we proposed to use to establish contractor budgets for FY 1995 was published in the **Federal Register** (59 53187) on October 21, 1994. In response to our request for public comment in the proposed notice, we received one timely item of correspondence. Based on our review of the comment submitted, we are making no changes to the data, standards, and methodology we proposed to use. As noted earlier, it has been our practice to issue separate notices dealing with proposed and final budget data. Because no changes are being made to the proposed budget data included in the October 21 notice, we believe it appropriate to combine in this document the final notice announcing the contractor budget for FY 1995, and the proposed contractor budget elements for FY 1996. Therefore, through this notice, we announce that the data, standards, and methodology we proposed to use to establish the contractor budget for FY 1995 are final.

A discussion of the October 21, 1994, proposed notice and our response to the public comment received appears in section IV. of this document.

II. Overview of FY 1996 National Medicare Contractor Budget

A. Data, Standards, and Methodology

We submitted the FY 1996 national Medicare contractor budget proposal to the Congress in February 1995. The workload for the FY 1996 request is expressed in terms of work processed. For Part A, the FY 1996 estimated workload (140.6 million bills) is 8.8 percent more than the FY 1995 estimate. For Part B, the FY 1996 estimated workload (681.4 million claims) is a 3.9 percent increase over the FY 1995 estimate.

Our estimates involved the use of a regression model that uses the last 36 months of actual contractor workload data. For the FY 1996 projections, we used November 1994 data, which were the latest available to us at the time. We will continue to update the resulting projections monthly to ensure that the most timely data are available for budgeting purposes.

The FY 1996 unit costs for processing bills and claims were calculated based on the FY 1995 level adjusted for savings achieved due to productivity, electronic media claims, and reduced funding for incremental workload. This calculation resulted in a new unit cost, which, when multiplied by the Part A or Part B workloads, determines the total amount required for bill or claim processing in FY 1996.

Feedback received from contractors and regional offices during the past several years has led us to believe that contractors can make major improvements in performance if given the authority to manage their budgets. The FY 1994 BPRs gave the regional offices the authority to set a budget and the contractors the authority to manage their budgets on a bottom-line basis. Once funding was issued, each contractor had the flexibility to optimally manage the budget consistent with the statement of work contained in the BPRs. Before FY 1993, contractors were not allowed to "shift" more than 5 percent of funds from one line item to another in their budget, as determined by the lesser of the two line items. That restriction was intended to allow us to maintain control over the national budget, but still give contractors some latitude with regard to reporting their costs. With the exception of the "Payment Safeguards," "Productivity Investments," and "Other" line items, contractors now have total flexibility in the use of funds. There is a 5 percent limitation on the amount of funds that may be shifted out of individual "Payment Safeguards," with unlimited shifting into "Payment Safeguards." Shifting into or out of "Productivity Investments" and "Other" line item funding, not governed by contract modifications, may not exceed 5 percent. Each "Other" line item is treated separately. The "Productivity Investment" line item is treated as a whole and not as separate projects. Funding that is governed by contract modifications may not be shifted to other functions or line items.

B. Medicare Contractor Functional Areas

The Medicare contractor budget consists of functional areas of responsibility that are performed by the fiscal intermediaries for Part A and the carriers for Part B. The eight functional areas of responsibility for fiscal intermediaries under Part A are—

- Bill Payment;
- Reconsideration and Hearing;
- Medicare Secondary Payer;
- Medical Review and Utilization Review;
- Provider Audit (Desk Review, Field Audit, and Provider Settlement);
- Provider Payment;
- Productivity Investments; and
- Benefits Integrity.

The nine functional areas of responsibility for carriers under Part B are—

- Claim Payment;
- Review and Hearing;
- Beneficiary or Physician Inquiry;
- Provider (physician/supplier) Education and Training;
- Medicare Review and Utilization Review;
- Medicare Secondary Payer;
- Participating Physicians;
- Productivity Investments; and
- Benefits Integrity.

The Hospital Insurance and Supplementary Medical Insurance Trust Funds and appropriations provide funding for these functions. Discussions concerning the data, standards, and methodology for these functional areas are in section III of this notice. In the following national budget summary, we combine the discussion of functional areas that are common to fiscal intermediaries and carriers. However, we list specific data for Part A or Part B under each heading. In developing the budget, we provide workload estimates for all functional areas that are predominantly workload driven. We do not provide workload estimates for those functional areas that are not predominantly workload driven or for an uncertain workload until final negotiations with the Medicare contractors are complete.

1. Bill and Claim Payment (Parts A and B)

We currently estimate the Part A processed workload to be 140.6 million bills in FY 1996. The Part B processed workload is currently projected at 681.4 million claims.

2. Reconsideration (Part A), Review (Part B), and Hearing (Parts A and B)

Beneficiaries, providers, physicians, and other suppliers are entitled by law to appeal, through reconsiderations, formal reviews, or hearings, as appropriate, the various payment determinations made by Medicare contractors. We project that Part B reviews and hearings workloads for FY 1996 will not exceed FY 1995 levels, while workload for Part A reconsiderations and hearings will have a moderate increase. We expect contractors to control and respond to requests for appeal and to control receipt of Administrative Law Judge hearing requests.

We continue to maintain efficiencies achieved in prior years through the use of shorter decision letters and the experimental use of the telephone to conduct reviews and reconsiderations.

3. Medicare Secondary Payer (Parts A and B)

The Medicare secondary payer function is the first of four initiatives (Medicare secondary payer, medical review and utilization review, benefits integrity, and provider audit) we developed as "payment safeguards" for the Medicare program. Our continuing Medicare secondary payer program is designed to identify situations in which other insurers are the primary payers, to pay all claims correctly the first time, and to recover Medicare dollars in instances in which mistaken conditional payments have occurred.

We aggressively pursue the identification of secondary payer situations through the collection and matching of beneficiary-specific health care data through the Internal Revenue Service/Social Security Administration/HCFA (IRS/SSA/HCFA) data match authorized by section 1862(b)(5) of the Act. The FY 1996 budget includes funding to process the workloads based on the IRS/SSA/HCFA data match project. We allocate the funds based on the number of report identification numbers we expect a contractor to process.

In addition to the IRS/SSA/HCFA data match, we continue to pursue other data matches with State Motor Vehicle Administrations, Workers' Compensation, Medicaid Agencies, and the Departments of Defense, Labor, and Veterans Affairs. Further, our use of the initial enrollment questionnaire is an important part of our commitment to capturing vital health care coverage data on beneficiaries and their spouses at the time of Medicare enrollment and before any claims are filed.

4. Medical Review and Utilization Review (Parts A and B)

In addition to processing and paying claims from providers of services and Medicare beneficiaries, contractors perform medical and utilization reviews of claims to determine whether services are covered under the program and are medically necessary. The distribution of Medicare contractor funding is based on each contractor's proportion of the workload and individual contractor medical review/utilization review projects.

Specifically, our contractors are required to work with the medical community to develop clear medical review policies and communicate those policies to the providers of services. Moreover, we also emphasize the need for systematic and ongoing analysis of

claims data to focus prepayment and postpayment medical review. To meet this requirement, intermediaries and carriers currently analyze local and national data to identify practice patterns, trends, and aberrancies that may reflect areas of potential abuse, inappropriate care, and overutilization. This data-driven approach allows us to target and direct our efforts to our greatest risk of inappropriate program payment.

Part A medical reviews by fiscal intermediaries focus on preventing inappropriate billing through provider education and on targeting reviews of providers who fail to change inappropriate behavior. Through analysis of national and local data, areas of abuse and overutilization are identified and payment is denied for services that are not covered under the Medicare program. Reviews are targeted where they will be most effective in protecting the program.

Part B medical reviews by carriers identify areas of abuse and overutilization and focus on preventing Medicare payment for medically unnecessary or noncovered services. Carriers use computerized methods of analyzing utilization, epidemiologic, and demographic data to detect trends in physician and other supplier activities and the delivery of health care. This is accomplished through prepayment and postpayment analysis of Medicare Part B claims.

In FY 1996, we will continue to support the medical review activities of the four Durable Medical Equipment Regional Carriers (DMERCs). The DMERCs will conduct prepayment and postpayment review of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) claims to identify areas of potential abuse and overutilization and prevent payment for noncovered items and services.

The DMERCs will identify aberrancies from an analysis of national and local databases. The DMERCs will initiate corrective action for overpayment recoupment, target supplier claims for services most frequently billed, and continue to revise regional medical review policies and screens for referral to the Office of the Inspector General (OIG). This targeting principle will assist in developing regional medical review policies to address identified problem areas or trends in new technologies. In addition to educating suppliers, DMERCs need to educate the referring/ordering physicians responsible for prescribing DMEPOS items and include them in the medical policy development process.

5. Provider Audit (Part A only)

The audit of provider cost reports is our primary instrument to help ensure the integrity of Part A Medicare payments. Funding priorities are directed toward the use of limited desk reviews where low cost/low utilization providers are involved and toward the use of onsite focused reviews to expand the overall examination of high cost/high payment issues. Program savings remain relatively flat, while the FY 1996 funding level remains constant.

In FY 1996, budget estimates allow for a relatively consistent level of reviews and audits for all types of providers, although an increasing number of providers require both desk review and settlement. Full desk reviews and field audits are directed toward high cost/high utilization providers and past poor performers. Contractors will retain a knowledgeable audit staff and provide training in accordance with government auditing standards.

Contractors will also respond to provider appeals by conducting intermediary hearings and by filing position papers and attending hearings at the Provider Reimbursement Review Board (PRRB). Contractors will also reopen and revise prior period settlements based on provider requests, as well as PRRB and HCFA directives and resolve problems identified on provider cost reports.

6. Provider Payment (Part A only)

In FY 1996, Medicare contractors will provide payment services to approximately 31,500 health care providers. These payment services include establishing and adjusting interim rates, recouping provider overpayments, and providing consultative services to providers for maintaining and adjusting their accounting systems to ensure accurate data for preparing Part A bills and cost reports.

We will distribute funds in proportion to workload by provider type.

7. Productivity Investments (Parts A and B)

We refer to the costs of implementing legislation and new initiatives that are designed to improve the effectiveness of Medicare program administration as productivity investments. Productivity investments generally provide start-up funds for new or revised contractor activities. Once these projects are operational, their funding becomes part of the contractor's ongoing costs. The criteria for selecting productivity investments vary. For example, the statute or regulations require some productivity investments. We also fund projects that will improve administrative cost efficiency, such as administrative simplification.

There is no single distribution methodology for the allocation of productivity investment funds. After we determine the national cost of a productivity investment, we distribute funds among the contractors. These funds are based on the contractors' cost estimates or through formulas that we derive based on project specifications. Other productivity investment initiatives require equal effort by all contractors regardless of size and, therefore, funds are distributed equally among contractors. Finally, some productivity investments, such as administrative simplification and the Medicare Transaction System, are given only to contractors that are involved in the specific projects.

8. Beneficiary or Physician Inquiry (Part B only)

The Medicare contractors are the direct link between beneficiaries, providers, physicians and other suppliers, and the Medicare program. It is the responsibility of HCFA and the contractors to provide the most effective and efficient service to beneficiaries, providers, physicians, and other suppliers, and to continue to expand their awareness and understanding of the Medicare program.

We are currently revising all benefit notices into a single, easy to read summary format. Carriers will begin using the new notice format in FY 1996. Beneficiary and provider feedback is used to modify the format, as necessary, to ensure maximum beneficiary comprehension. We and our contractors will conduct extensive outreach to ensure a smooth transition to the new format.

Our Carrier Customer Service Plan initiative is expanded to include—

- Tone/clarity self-assessment;
- Initiatives to improve service to blind, deaf, and disabled beneficiaries;
- An automated inquiries analysis program;
- Improvements to the internal review process;
- Partnerships with local beneficiary counseling and assistance organizations;
- The expansion of beneficiary advisory committees; and
- Initiatives designed to improve service to Spanish speaking individuals.

Also, carriers use Audio Response Units as the initial contact for providers, and a beneficiary Audio Response Unit script is offered to all carriers. In FY 1996, carriers will expand the use of Audio Response Units. The Audio

Response Units will provide improved service, accuracy, and consistency through the use of expanded standardized scripts and equipment enhancements.

In FY 1996, carriers will receive an estimated 40.1 million inquiries by telephone, in writing, or through direct contact, an increase of 1 percent over the current FY 1995 projection of 39.6 million inquiries.

9. Participating Physicians/Suppliers (Part B only)

Participating physicians and suppliers are those who agree to accept assignment on all Medicare claims in return for certain incentives or benefits. All physicians are given an opportunity to enroll or disenroll in the program annually.

Carriers must perform several activities including: (1) Conducting annual participation enrollment; (2) Distributing the Medicare Participating Physician/Supplier Directories; (3) Upgrading and maintaining direct electronic media claim lines for participants; and (4) Monitoring and enforcing the program requirements for participants and nonparticipants, which includes the comprehensive limiting charge compliance program.

10. Physician/Supplier Education and Training (Part B only)

Increasing numbers of physicians, nonphysician practitioners, and other suppliers who furnish health care services rely on information gained through communications with carriers about Medicare program provisions. To respond to this need, we have fostered interaction between suppliers of health care services and carriers to promote efficient, economic claims activities. For example, these activities include: (1) Communicating with suppliers of health care services; (2) Educating suppliers to eliminate the submission of erroneous or underdocumented claims; (3) Distributing newsletters to all suppliers of services detailing changes in coverage, payment, or billing policy; and (4) Educating carrier staff members, on a regularly scheduled basis, to ensure compliance with legislative and policy changes affecting the coding and submission of claims.

11. Benefits Integrity (Parts A and B)

We will continue to deter and detect Medicare fraud and abuse activities through concerted efforts with the OIG, the Federal Bureau of Investigation, Medicaid Fraud Control Units, the Department of Justice, and other HCFA partners. As in FY 1995, we will continue to improve the quality of referrals to the OIG by increasing our fraud detection capabilities through expanded data analysis and improvements in fraud detection by the carriers and intermediaries.

In addition, the National Claims History Database continues to be available to focus postpayment review on practitioners and suppliers that appear to be billing fraudulently or that are misrepresenting to Medicare the services or items they are furnishing.

In FY 1996, Medicare carriers will focus their detection activities on medical laboratory, radiology, anesthesia, physician services, and ambulance claims. Also, in FY 1996, Medicare carriers will upgrade their fraud detection capabilities by making better use of available databases and expanded relationships with other fraud detection organizations.

12. Printing Claim Forms (Parts A and B)

Although this activity is not among the nine Part A and eight Part B contractor functional areas, it is a part of the national Medicare contractor budget. In the interest of maintaining standard formats and quality of Medicare entitlement and report forms, we supply beneficiary enrollment and provider cost reporting forms. The use of these forms is essential for beneficiary notification and for effective and efficient contractor operations. We will print 50 million copies of these forms for FY 1996.

C. Contractor Unit Cost Calculations

A key step in the contractor budget process is the development of contractor unit costs for processing Part A bills and Part B claims. These bottom-line unit costs encompass all budget line items except "Provider Audit," "Provider Reimbursement," "Productivity Investments," and, "Other."

As first implemented in FY 1992, the complexity index was designed to improve efficiency and reduce contractor-by-contractor cost inequities and was based on the application of the Industrial Engineering study commissioned by us. The Industrial Engineering study provided us with an actual weighted unit cost for each claim type; that is, inpatient or outpatient, and method of submission of a bill or a claim. After adjustment for changes in program emphasis, these unit costs were applied to each contractor's individual workload mix to develop a weighted unit cost that reflects the complexity of its workload mix. We published an explanation of the complexity index in a **Federal Register** notice published on January 2, 1992 (57 FR 57). After adjusting for various savings and increases associated with initiatives, we then arrayed the contractors' unit costs and identified the high cost contractors.

We believe that the use of the complexity index has enabled us to successfully achieve the goals of improving efficiency in contractor operations and reducing contractor-by-contractor cost inequities. Since we have achieved these goals, and believe that costs can be controlled, we will base each contractor's FY 1996 unit cost on the FY 1995 level, adjusted for inflation and for savings achieved as a result of increased productivity, and on reduced funding for incremental workload.

D. Overall Budget Considerations

We note that limitations on the FY 1996 budget could require across-the-board cost cutting measures. In that case, each regional office will determine the amount of budget reduction for its contractors.

III. FY 1996 National Medicare Contractor Budget: Data, Standards, and Methodology

Since the submission of the President's FY 1996 Medicare contractor budget request to the Congress in February 1995, we have developed and issued BPRs to the contractors. These requirements outline the statement of work and level of effort that fiscal intermediaries and carriers are expected to perform during the upcoming fiscal year in each of the functional areas for which they are responsible.

Our schedule is that draft BPRs are released to the regional offices in April, and the final BPRs are released in June 1995. At the time of release, each fiscal intermediary and carrier is given the individual requirements to be used in preparing their FY 1996 budget request. The regional offices will send any additional information that is pertinent to the fiscal intermediaries and carriers within their region. Fiscal intermediaries and carriers must submit their budget requests to us no later than 6 weeks after the issuance of the BPRs.

After the fiscal intermediaries and carriers review the BPRs, they prepare their budget requests. The central office and regional office staff review the fiscal intermediary and carrier budget requests as they are submitted. The regional office staff negotiates a final and mutually-acceptable budget, within the limits of the funding available to us, with each fiscal intermediary and carrier. The central office prepares a financial operating plan for each regional office that provides total regional funding authority for each functional area. The regional offices, in turn, prepare a Notice of Budget Approval for each fiscal intermediary and carrier that provides a full year budget plan subject to quarterly cash draw limitations.

A. Standards

The basic statement of work, along with new and special activities that fiscal intermediaries and carriers are expected to perform, is described in the BPR package. Fiscal intermediaries and carriers are expected to perform the work as described in the BPR package and in accordance with the standards included in the Contractor Performance Evaluation for FY 1996. For consideration in developing their initial budget requests, a copy of the draft Contractor Performance Evaluation standards will be sent to contractors. Final FY 1996 Contractor Performance Evaluation standards will be published in the **Federal Register**.

B. Data

The following data contain various workload volumes, functional costs, and manpower information that are used in developing the individual fiscal intermediary and carrier budgets for FY 1996:

- Forms HCFA–1523/1524 (a multipurpose form that serves as the Budget Request, Notice of Budget Approval, and Interim Expenditure Report).
- Forms HCFA–1523A/1524A (Schedule of Productivity Investments and Other).
- Forms HCFA–1523B/1524B (Schedule of Credits, Electronic Data Processing, and Overhead).
- Forms HCFA–1523C/1524C (Schedule of Appeals).
- Forms HCFA–1523D/1524D (Schedule of Medicare Secondary Payer Costs).
- Forms HCFA–1523E/1524E (Schedule of Medical Review Costs).
- Forms HCFA–1523G/1524G (Schedule of Fraud and Abuse).
- Form HCFA–1525A/1525A (Contractor Audit Settlement Report).
- Schedules A, B, & C.
- Provider Payment Profile.
- Schedule of Providers Serviced.
- Medicare Secondary Payer Savings Report.
- Medical Review/Utilization Review Savings Report.
- Form HCFA–2580 (Cost Classification Report).
- Forms HCFA–1565/1566 (Carrier Performance Report/Intermediary Monthly Workload Report).
- OMB's economic assumptions of 3.2 Percent.
- Savings from prior productivity investments.
- New legislation costs.
- Regional Office recommendations.
- Contract provisions.

C. Methodology

The Medicare contractor budget is organized around the previously listed functional areas that are performed by the fiscal intermediaries for Part A and the carriers for Part B. In 1992, we developed a bottom-line unit cost for each individual contractor. The following narrative describes the methodology used to calculate individual line-item costs. This methodology will be considered as general reference for contractors as they develop their FY 1996 budgets and also provides additional explanation in determining how certain costs and savings were determined. The regional offices will negotiate with the fiscal intermediaries and carriers to resolve any differences within the limits of the funding available to us.

1. Bill and Claim Payment

A statistical forecasting model determines the individual fiscal intermediary and carrier workload levels for FY 1996. Using the same data, we are also projecting the number of bills or claims a fiscal intermediary and carrier may expect to have pending at the end of FY 1995. We will then combine the FY 1996 receipt estimate with the anticipated end of FY 1995 pending level, and subtract the estimated FY 1996 pending for each fiscal intermediary and carrier to establish a processed workload; that is, Estimated FY 1996 receipts + Estimated end of FY 1995 pending − Estimated end of FY 1996 pending = Estimated FY 1996 Processed Workload.

In order to price individual contractor bill and claim workload, we develop a unit cost that is the cost of processing a single bill or claim. The individual fiscal intermediary and carrier unit costs for FY 1996 are calculated from the unit costs in the FY 1995 Notice of Budget Approvals. Savings achieved from operating efficiencies also are part of the formula employed in computing FY 1996 target unit costs.

2. Reconsiderations (Part A), Reviews (Part B), and Hearings (Parts A and B)

We will allocate funding based on the dollar amount spent (line 2 of Forms HCFA–1523/1524) in the prior years, adjusted for inflation and changes in volume. Specifically, we will adjust the previous year's costs for reconsiderations and hearings by the estimated percentage change in workload.

We estimate the individual fiscal intermediary and carrier budget allocations for reconsiderations, reviews, and hearings by multiplying forecast workloads by the adjusted unit costs.

3. Beneficiary and Provider Inquiries (Part B only)

To establish a budgeted amount for beneficiary and provider inquiries, we increase the prior year's cost by the projected workload change. We also consider special conditions unique to specific carriers in negotiating the budget. We will use the data to develop a budgeted cost for beneficiary and provider inquiries by multiplying forecasted processed volume by the unit cost.

4. Provider Payment (Part A only)

In determining individual fiscal intermediary budgets for reimbursement activities, we took into consideration the FY 1995 budgeted figures, the projected funding for FY 1996, and the projected workload based on the workload reported on the Schedule of Providers Serviced. The Schedule of Providers Serviced is a listing of all the facilities serviced by the fiscal intermediary. The Schedule of Providers Serviced is submitted with each initial budget request so that a part of the analysis is the comparison of the composition of the provider community serviced by the fiscal intermediary and any change reported between fiscal years.

5. Provider Audit (Part A only)

For FY 1996, the provider audit function is divided into three major activities: field audits, desk reviews, and settlements. The Contractor Auditing and Settlement Report (Form HCFA–1525/1525A) provides a breakout of audit activities and costs by type of provider and documents the savings incurred as a result of audit activity. Using this as a base, we develop the desk review costs by projecting the number of providers serviced by the unit cost per desk review (developed for the latest Contractor Auditing and Settlement Report for FY 1994) to determine the cost of handling the FY 1996 workload at the FY 1994 unit cost. We base the settlement costs on the workload projected in the fiscal intermediary's budget request, multiplied by the unit cost for settlements found in the most recent Contractor Auditing and Settlement Report for FY 1994.

The first priority of all audit efforts is the completion of any special activities required by legislation. The second priority is that all cost reports be reviewed and, to the extent possible, settled.

6. Medicare Secondary Payer

We will review the estimated workload data, reported backlog data, and any other items, for example, proposed Medicare secondary payer systems enhancements, to determine Medicare secondary payer funding allocations. Each contractor's case mix will be analyzed to adjust for specialized workloads such as home health claims or durable medical equipment (DME). In FY 1996, we will allocate the budget based on the above considerations, adjustments created by shifts in the DME workload from all carriers to the four specialty carriers, and other shifts in workload that may require adjustments.

7. Medical Review/Utilization Review

The individual fiscal intermediary and carrier medical review/utilization review budgets for FY 1996 will be calculated in three segments: (1) Prepayment medical review; (2) Postpayment medical review activities; and (3) Data analysis and screen development. The BPR describes the activities and workload requirements that the fiscal intermediaries and carriers are expected to meet. As part of the BPRs, we will ask the fiscal intermediaries and carriers to estimate the level of funding that will be necessary to meet such requirements. We will allocate prepayment and postpayment medical review funding to contractors based upon the workload that a fiscal intermediary or carrier projects for FY 1996.

8. Participating Physicians/Suppliers (Part B only)

In determining the individual carrier funding levels for the participating physician/supplier program for FY 1996, we considered the following factors:

- The number of physicians/suppliers in the carrier's service area.
- The carrier's current participation rate.
- The carrier's recent performance in increasing its participation rate.
- The statement of work to be performed as outlined in the BPRs.
- FY 1995 cost experience.

Since participating physicians/suppliers are eligible for toll-free telephone lines for electronic billing, allowance will be made for these expenses. Carriers with lower participation rates will receive greater funding for the limiting charge violation monitoring. We have discontinued carrier monitoring of the elective surgery disclosure requirement. We now require carriers to investigate beneficiary complaints on a case-by-case basis.

We allocate carrier monitoring funds based on the national percentage of nonparticipating physicians/suppliers. All carriers will receive the same funding amount for reporting participation statistics.

9. Productivity Investments

We refer to the costs of implementing legislation and new initiatives that are designed to improve the effectiveness of Medicare program administration as productivity investments. Several allocation methodologies will be employed in calculating the productivity investment budgets for individual fiscal intermediaries and carriers. For those projects involving only single contractors or small groups of contractors, we will allocate funds based upon the specifications of the particular project. For those projects involving all fiscal intermediaries or carriers, if the costs are driven by bill or claim volume, we will distribute the funding based upon our workload projections for each contractor. Finally, for those projects involving all fiscal intermediaries or carriers that require equal effort, regardless of the contractor's size, we derive a standard allocation to be given to all contractors.

10. Physician/Supplier Education and Training (Part B only)

Distribution of funds made available to HCFA for physician/supplier education and training is based upon the ratio of physicians and suppliers in each carrier's service area to the national total of physicians and suppliers.

11. Benefits Integrity

In allocating the FY 1996 benefits integrity budget to individual fiscal intermediaries and carriers, we will consider the following:

- The prior year's effectiveness in initiating fraud referrals to the OIG.
- Initiating overpayment recoveries when appropriate.
- Prioritizing workload to concentrate on high dollar and multi-state fraud.
- The extracted workload and cost data from the Schedule of Fraud and Abuse (Forms HCFA–1523G/1524G).
- The Medicare Fraud Unit Workload Report.
- The fraud unit's level of sophistication to determine benefits integrity funding allocations.
- The completion of any special activity required by legislation which will be an overriding priority.
- The networking costs, which will be determined by the personnel cost to support the Medicare Fraud and Abuse Information Coordinator, travel costs, and the other expenses needed to conduct networking for the area assigned.

IV. Data, Standards, and Methodology Used to Establish the Medicare Contractor Budgets for FY 1995

The October 21, 1994, notice described the budget development process in general and gave an overview of how we intended to use the contractor budget data, standards, and methodology to establish the FY 1995 budgets.

Based on our review of the comments submitted, we are making no changes to the proposed data, standards, and methodology as published on October 21, 1994. Therefore, we announce provisions of the proposed notice as final.

Provisions of the Proposed Notice

We indicated in the proposed notice that the contractor budget would be structured to coincide with the eight functional areas of responsibilities performed by fiscal intermediaries for Part A and nine functional areas of responsibilities performed by carriers for Part B of the Medicare program. We proposed that final funding for the contractor functions would be allocated in accordance with the current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by the Congress. While the contractors were preparing their budget requests, we developed preliminary budget allocations for the 17 functional areas that were based on historical patterns, workload growth, inflation assumptions, statistical forecasting reports, and any other available information.

A key step in the contractor's budget process is the development of contractor unit costs for processing Part A bills and Part A claims. As in FY 1994, the FY 1995 budget process used a bottom line unit cost approach. All budget line items except Provider Audit, Productivity Investments, Other, and in FY 1995, Provider Payment, are part of the bottom line unit cost calculation. In FY 1995, the complexity index was not used as it was in prior years. We believe that the use of the complexity index over the last 3 fiscal years has enabled us to successfully achieve the goals of improving efficiency in contractor operations and reducing contractor-by-contractor cost inequities. Since we have achieved these goals, and believe that costs can be controlled, we based each contractor's unit cost on their FY 1994 level, adjusted for savings achieved due to increased productivity, electronic media claims, and reduced funding for incremental workload. Because of reduced funding in FY 1995 inflation was not given.

The Medicare secondary payer function is the first of four initiatives we developed as "Payment Safeguards" for the Medicare program. The focus of the Medicare secondary payer initiative is to ensure that the Medicare program pays for covered care only to the extent required after payment by the primary insurer. We proposed that the standard for determining the amount of Medicare secondary payer funding a contractor would receive in FY 1995 would be based on workload volumes, required systems changes, and any special projects that may be assigned to contractors.

Based on actuarial analysis, we developed specific savings goals for each contractor. The goals were developed on estimates of savings to be achieved by contractors for the Medicare secondary payer categories of working aged, disabled, workers' compensation, end-stage renal disease, and liability or no-fault insurance. After assigning goals to contractors, funds were allocated based on the various Medicare secondary payer activities a contractor must perform such as processing prepayment claims, postpayment claims, inquiries, outreach, and hospital reviews.

We proposed that in FY 1995, the Initial Enrollment Questionnaire would be operational. The Initial Enrollment Questionnaire eliminates the need for first claim development on approximately 85 percent of new enrollees. This initiative improves service to beneficiaries on a national basis by providing detailed information on the Medicare secondary payer program at the time a beneficiary enrolls in Medicare.

We proposed to include funding to process the workloads based on the IRS/SSA/HCFA data match project. The funds would be allocated on the basis of the number of report identification numbers a contractor will process. We would review the estimated workload data, reported backlog data, and proposed Medicare secondary payer systems enhancements to determine Medicare secondary payer funding allocations. Each contractor's case mix would be analyzed to adjust for specialized workloads such as home health claims or DME.

In FY 1995, we proposed the budget be allocated based on adjustments created by shifts in the DME workload from all carriers to the four specialty carriers and by other shifts in workload that may require adjustments. The regional offices would negotiate with the fiscal intermediaries and carriers to resolve any differences between our allocations and their requests within the limits of the funding available to us.

Analysis of and Response to Public Comment

In response to our request for public comment in the October 21, 1994 notice, we received one timely item of correspondence from a health insurance company. Several issues that were raised by the commenter are outside the scope of the proposed notice and are not addressed in this notice. The proposed notices are intended to address only the data, standards, and methodology to be used to establish budgets for fiscal intermediaries and carriers for a particular fiscal year. Specific instructions on how to implement and monitor certain initiatives (for example, beneficiary inquiries, participating physician and benefits integrity) are presented through program memoranda, manual instructions, BPR, and other means.

Comment: The commenter was concerned that the proposed notice was published after the beginning of FY 1995. The commenter believed that untimely publication of the proposed notice denied interested parties the opportunity to comment before implementation of the budget.

Response: In the preparation of the Medicare contractor budget each fiscal year, we attempt to publish the proposed and final notices timely. However, because of the time involved in reviewing data and developing the budget and the lengthy review and clearance process, we were not able to publish the proposed and final notices before the beginning of the 1995 fiscal year. We regret that we were unable to publish the proposed notice timely, but we do not believe that our actions substantively penalized or prejudiced the fiscal intermediaries or carriers. The BPRs issued to all intermediaries and carriers discuss in detail the work, level of effort, and activities we expect them to perform in the coming fiscal year. Further, we provide a discussion and explanation of the bottom-line unit cost target established for each intermediary and carrier at the time the BPRs are issued. The intermediaries and carriers have ample time to identify and resolve any problems before they finalize their budget requests for the fiscal year.

Comment: The commenter indicated that the use of the complexity index in prior years provided a methodologically flawed basis for calculating the contractor unit costs in FY 1995.

Response: We do not agree. As stated in the proposed notice, we believe that the complexity index is useful in helping to control contractor costs by providing funding on the basis of workload complexity. The use of the complexity index over the last 3 fiscal years has enabled us to successfully achieve the goals of improving efficiency in contractor operations and reducing contractor-by-contractor cost inequities. Since we have achieved the above goals, we believe it is reasonable for FY 1995 contractor unit costs to be based on each contractor's FY 1994 level.

Comment: The commenter expressed concern about the process used to develop specific Medicare secondary payer savings goals for each contractor for FY 1995 as well as how funding was determined for each contractor for Medicare secondary payer activities. The commenter believed that Medicare secondary payer funds are allocated after assigning Medicare secondary payer savings goals.

Response: The President's budget estimate that was published in February 1994 covers the entire Medicare contractor budget. Although the budget estimate mentions Medicare secondary payer savings, it does not define specific savings per contractor. Further, we have not assigned savings goals to intermediaries and carriers since FY 1993. Therefore, Medicare secondary payer funds are not allocated after assigning Medicare secondary payer savings goals to contractors.

The factors that affect Medicare secondary payer funding for individual contractors are: the national Medicare secondary payer budget; the priority of the Medicare secondary payer activities; individual contractor Medicare secondary payer budget requests and workload estimates (a contractor's estimated Medicare secondary payer workload and budget request is compared to its previous workload and expenditures for Medicare secondary payer activities); an analysis of a contractor's Medicare secondary payer budget request and that of similar contractors with similar workloads (intermediaries and carriers are compared separately); the ability of a contractor to justify and document its request for additional funding, or for funding we believe is out of its peer grouping; and negotiations between the regional offices and the individual contractors.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date specified in the DATES section of this notice, and we will respond to the comments in a subsequent published notice. To the extent that we receive comments during the comment period, we will address those comments in a final notice and, if necessary, make revisions to the proposed data, standards, and methodology for FY 1996. If no comments are received, we will simply adopt the proposed data, standards, and methodology for FY 1996 as final, effective October 1, 1995.

In accordance with the provisions of Executive Order 12866, this proposed rule was not reviewed by the Office of Management and Budget.

Authority: Sections 1816(c)(1) and 1842(c)(1) of the Social Security Act (42 U.S.C. 1395h(c)(1) and 1395u(c)(1)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: August 16, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–22029 Filed 9–5–95; 8:45 am]

BILLING CODE 4120–01–P

Office of Inspector General

Program Exclusions: July 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of July 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, city, State	Effective date
PROGRAM-RELATED CONVICTIONS	
AHMAD, MIRZA N, DEWITT, NY	08/16/95
BAKER, DALE, DAYTON, OH	08/14/95
BEGG, CYNTHIA L, ALBANY, NY	08/16/95
BEGG, CAROL J, KINDERHOOK, NY	08/16/95
BELL, DOROTHY S, BRYAN, TX	08/14/95
BOLAN, BERT WAYNE, EL RENO, OK	08/03/95
BORREGO, ORESTES T, MIAMI, FL	08/14/95
BRIZ, PAZ, PIEDMONT, CA	08/03/95
CAMBRIA MEDICAL ASSOCIATES, PHILADELPHIA, PA	08/14/95
CASE, DAVID A, EUGENE, OR	07/18/95
CHAN, JUAN M, FREMONT, CA	08/03/95
CLARK, MAUREEN E, PHILADELPHIA, PA	08/14/95
CLARK'S FAMILY PHARMACY, PHILADELPHIA, PA	08/14/95
CLINE, DARRELL E, AUBURN, WA	08/03/95
FONSECA, MARIO, MIAMI LAKES, FL	08/14/95
GRECO, ISABEL, SANTE FE, NM	08/10/95
HAMILTON, ROSS, BRONX, NY	08/16/95
HARR, ROBERT L, FORT WORTH, TX	08/10/95
HERNANDEZ, MARILYN SUE, OKLAHOMA CITY, OK	08/10/95
HERZOG, BRUCE, ROSLYN, NY	08/16/95
HOLSTON AMBULANCE SERVICE, INC, LAKE CHARLES, LA	08/03/95
HOWARD, ROBERT L, ROSSVILLE, GA	08/14/95
HUFF, MARY ANN, GRAND PRAIRIE, TX	08/10/95
JOHN R WHITE DRUGS, INC, FAYETTEVILLE, NC	08/14/95
JOHNSON, DEBRA A, GALVESTON, TX	08/10/95
KANSAGRA, RAY, MARLTON, NJ	08/16/95
KIMBRO, WILLIAM D, SLAUGHTER, LA	08/10/95
KURTZ, JOSEPH A, PHILADELPHIA, PA	08/14/95
M.A.S. TRANSIT, INC, COLUMBIA, LA	08/10/95
MANGA, GREGORY M, YORK, PA	08/14/95
MANIK, GOLAM, FLORAL PARK, NY	08/16/95
MATHIS, JIMMY RONALD, PARKER, TX	08/10/95
MERKOW, LEONARD, PITTSBURGH, PA	08/14/95
PILARCZYK, DONNA, PAINESVILLE, OH	08/14/95
RAO, MOHAN KONAKONDRA, LONGVIEW, TX	08/10/95
SANDERS, DEBORAH, LITTLE ROCK, AR	08/03/95
SLON, TIMOTHY, AMHERST, NY	08/16/95
VAOESEA, SIAKI L, SEATTLE, WA	08/03/95
VILLARD, JOSEPH JR, ALEXANDRIA, LA	08/03/95
WALTER, DONALD M III, PALM BEACH, FL	08/14/95
WALTER, LUCILLE H, WINCHESTER, VA	08/14/95
WALTER, FRANCINE P, PALM BEACH, FL	08/14/95
PATIENT ABUSE/NEGLECT CONVICTIONS	
BORDELON, BRADLEY JAMES, MOREAUVILLE, LA	08/10/95
BROWN, MICHELLE, ADAMS, NY	08/16/95
BROWN, CYNTHIA M, PLAQUEMINE, LA	08/10/95
CARAVAGLIO, JOSEPH F, TRUMANSBURG, NY	08/16/95
CAVINESS, GEORGE E, RAMSEUR, NC	08/14/95
COPELAND, MARY LOIS, MAYFLOWER, AR	08/03/95
DAVIS, KEVIN EARL, GRANBURY, TX	08/10/95
DEAN, CHARLOTTE REBECCA, NATCHITOCHES, LA	08/10/95
FORSYTHE, RONALD J, HOT SPRINGS, AR	08/10/95
GRIFFIS, CHARLES LAMAR, OKLAHOMA CITY, OK	08/10/95
HASAN, LEA, STATEN ISLAND, NY	08/16/95
JACKSON, JASON L, COLUMBIA, LA	08/03/95
KNIGHT, CARLA JEAN, TALLULAH, LA	08/10/95
OLSEN, CHERYL ANN, OCEAN SPRINGS, MS	08/10/95
PARHAM, REGINA L, FORDYCE, AR	08/10/95
PEGUES, CLIFTON CURTIS, DUNN, NC	08/14/95
PHILLIPS, QUINITA AMELIA, LAFAYETTE, LA	08/10/95
PITCHER, DONALD, BAKERSFIELD, MO	08/03/95
SIMMONS, LARRY, NEW BERN, NC	08/14/95
SIMMONS, MICHAEL LEON, NEW BERN, NC	08/14/95
THOMAS, BERNICE, SPRING LAKE, NC	08/14/95
UZZLE, CARLTON BERNARD, GOLDSBORO, NC	08/14/95
WEATHERS, JAMES EDWARD, GULFPORT, MS	08/10/95
WITHERS, URSULA M, PHILADELPHIA, MS	08/10/95
YANICK, JEAN, LYNN, MA	08/16/95
CONVICTION FOR HEALTH CARE FRAUD	
GOLDSMITH, PAUL EDWARD JR, WAGGAMAN, LA	08/10/95
JONES, PAMELA W, GRETNA, LA	08/03/95
LIPSIE, SHARON R, BUCKLEY, WA	08/03/95
LORIO, TERRI L, HARVEY, LA	08/03/95
MCTEAR, CAROLYN, NEW ORLEANS, LA	08/03/95
NUNNERY, TAMERA J, FAYETTEVILLE, NC	08/14/95
PORTER, ANGERRIAN J, GRETNA, LA	08/10/95
SINGLETON, ROSALIND, MARRERO, LA	08/03/95
TOWNSEND, BETH ANGELA, BOONE, NC	08/14/95
VU, DAM, BEAVERTON, OR	08/03/95
CONTROLLED SUBSTANCE CONVICTIONS	
BROCK, CHARLES F, CHARLEVOIX, MI	08/14/95
JOHNSON, KEITHLEY E, LAPEER, MI	08/14/95
LAURICELLA, ELAINE M, SAN BRUNO, CA	08/03/95
MILLER, STUART M, FPC ELGIN AFB, FL	08/14/95
NOCK, THOMAS RUFUS, FORT DIX, NJ	08/14/95
NOVICK, SALLY A, COTTAGE GROVE, MN	08/14/95
PAUL, JAY M, JAMISON, PA	08/14/95
LICENSE REVOCATION/SUSPENSION/SURRENDER	
BARR, EDDIE F, STOCKTON, CA	08/03/95
BILLINGTON, LUANNE LEE, WESLACO, TX	08/03/95
BOURLAND, REGINA A, GARLAND, TX	08/10/95
BRADFIELD, LLOYD E, BACKUS, MN	08/14/95
BURKE-DUDLEY, MARY E, MILFORD, MA	08/16/95
CALDWELL, PATRICIA, ALBUQUERQUE, NM	08/10/95
CERILLI, PAULA, BRAINTREE, MA	08/16/95
CHAPA, TAMMY JO, ALAMAGORDO, NM	08/10/95
CHAVEZ, SHANNON V, LOMPOC, CA	08/03/95
COGEN, MICHAEL, LAFAYETTE, CA	08/03/95
DELONG, DENISE A, LOS FRESNOS, TX	08/10/95
ELLIOTT, NELLIE R, BEAUMONT, TX	08/10/95
FLIEDNER, EUSTACE CONWAY, ARLINGTON, TX	08/10/95
FRENCH, ROBERT LEE, WHITE DEER, TX	08/10/95
GOOD, CLIFFORD N, ARLINGTON, TX	08/10/95
GREENE, VIRGINIA, MALDEN, MA	08/16/95
HART, ALRUNDUS, TRUTH OR CONSEQUENCE, NM	08/10/95
HERRING, DIANE, BROOKLINE, MA	08/16/95
HOLLIMAN, DANIEL, SAN ANDREAS, CA	08/03/95
IONASCU, NATHAN, CHAPPAQUA, NY	08/16/95
JACKSON, DORIS D, IRVING, TX	08/03/95
JOHNSON, MARILYNN L, ROCHESTER, MN	08/14/95
KASCHUB, TONI L, ARLINGTON, TX	08/10/95
KOSER, WILLIAM J, ALBANY, CA	08/03/95
LANKFORD, JAMES E JR, UPPERCO, MD	08/14/95
LOCKHART, JOYCE BASDAI, SILSBEE, TX	08/10/95
McMICHAEL, RITA FAYE, LITTLE ROCK, AR	08/10/95
MOHLER, MARSHA MARGUERITE, AUSTIN, TX	08/10/95
MOKLER, JOYCE, WINCHESTER, MA	08/16/95
NAYAK, KRISHEN K, BETHEL PARK, PA	08/14/95
PINE, MICHAEL J, BROOKINGS, OR	08/03/95
POHL, MALCOLM W, WEYMOUTH, MA	08/16/95
REMSBURG, LAURA ELLEN, PARIS, TX	08/10/95
ROBERTS, EDWIN A, HAYWARD, CA	08/03/95
SHLIMBAUM, CHARLES, BRIGHTWATERS, NY	08/16/95
STEWART, DONNA LOUISE, HOUSTON, TX	08/10/95
STRUCK, RAYMOND, LITCHFIELD, MN	08/14/95
TURK, MARY KATHERINE, KILLEEN, TX	08/10/95
WATHEN, BRUCE D, MUSKEGON, MI	08/14/95
FEDERAL/STATE EXCLUSION/SUSPENSION	
BUSH, KRISTY, ALVARADO, TX	08/10/95
CLARK, LINDA KAY, KERMIT, TX	08/10/95
NEWTON, JOEL LANE, KAUFMAN, TX	08/10/95
POLLEY, SUZANNE M, AUSTIN, TX	08/10/95
SAXMAN, MICHAEL, NAMPA, ID	08/03/95
SCHULD, JOHN T, PHILADELPHIA, PA	08/14/95
WESTWIND MANOR, CROWN POINT, IN	08/14/95
ENTITIES OWNED/CONTROLLED BY CONVICTED/EXCLUDED	
CARDIO MARKETING, PARKER, TX	08/10/95
CENTER FOR HUMAN GROWTH, EL RENO, OK	08/03/95
HEALTH EDUCATION SERVICES, EL RENO, OK	08/03/95
R M MEDICAL SUPPLY, PARKER, TX	08/10/95
WAYNE BOLAN & ASSOCIATES, EL RENO, OK	08/03/95
WAYNE BOLAN, PH.D. & ASSOC, EL RENO, OK, DEFAULT ON HEAL LOAN	08/03/95
ABDAL-ALIM, KHALID B, HOUSTON, TX	08/10/95
CHMELIK, GREGORY J, FAIRBAULT, MN	08/14/95
COBY, MICHAEL E, AMHERST, MA	08/16/95
COGGINS, CHERYL R, ANTIOCH, TN	08/14/95
ELLIS, ROBERT W, TERRELL, TX	08/10/95
HATTER, MARCUS A, LANSING, MI	08/14/95
HOLMES, CLARENCE J, SPOKANE, WA	08/03/95
JEWETT, CHARLES D, VERSAILLES, KY	08/14/95
JORDAN, MARTIN E, CLEVELAND, OH	08/14/95
MACHARA, KATHERINE L, ENTERPRISE, FL	08/14/95
SMITH, TIMOTHY L, SAN ANTONIO, TX	08/10/95
URKEVIC, JAN P, BROOKLINE, MA	08/16/95
WILLIAMS, EDWARD JR, FT LAUDERDALE, FL	08/14/95
WOOD, CAROL S, INDIANOLA, WA	08/03/95

Dated: August 25, 1995.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95–22045 Filed 9–5–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3831–N–02]

Announcement of Funding Awards for the HUD-Administered Small Cities Community Development Block Grant Program Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department under the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program for Fiscal Year 1995. The announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Stephen Rhodeside, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708–1322 (voice) or (202) 708–2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title I of the Housing and Community Development Act of 1974, as amended (the HCD Act), authorizes the Community Development Block Grant (CDBG) Program. Section 106 provides that HUD will administer the CDBG Program for nonentitled units of local government within a State which does not elect to assume the administrative responsibility for the program. As such HUD, continues to operate the nonentitlement CDBG Program in Hawaii and New York in accordance with 24 CFR part 570, subpart F. In Hawaii, HUD distributes funds in Hawaii on a formula basis since there are only three nonentitlement entities. In New York State, HUD conducts an annual competition in which nonentitled units of general local government may apply for nonentitled CDBG funds allocated to New York State.

The Fiscal Year 1995 competition in New York State was announced in a notice of funding availability (NOFA) published in the **Federal Register** on December 5, 1994 (59 FR 62474). The NOFA announced the availability of allocation of $50,616,000 for nonentitled communities in New York State. The NOFA also announced the allocation of this funding amount between the New York Office and the Buffalo Office.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names and addresses of the grantees, and the amount of the award made to each grantee. This information is provided in Appendix A to this document.

Dated: August 30, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

APPENDIX A—1995 SMALL CITIES GRANTEES

Grantee	Grant No.	Amount
New York Office		
Town of Bethel, Box 300, White Lake, New York 12786	B–95–DH–36–0109	$250,000
Town of Fallsburg, P.O. Box 830, South Fallsburg, New York 12779	B–95–DH–36–0111	155,000
Village of Highland Falls, 180 Main Street, Highland Falls, New York 10928	B–96–DH–36–0102	400,000
City of Kingston, City Hall, 1 Garraghan Drive, Kingston, New York 12401	B–95–DH–36–0107	900,000
Town of Liberty, 120 North Main Street, Liberty, New York 12754	B–95–DH–36–0116	400,000
Town of Marlborough, Route 9W, Milton, New York 12547	B–95–DH–36–0117	400,000
Village of New Paltz, 25 Plattekill Avenue, P.O. Box 877, New Paltz, New York 12561	B–95–DH–36–0123	400,000
Village of New Square, 766 North Main Street, New Square, New York 10977	B–95–DH–36–0103	400,000
City of Port Jervis, Municipal Building, 20 Hammond Street, Port Jervis, New York 12771	B–95–DH–36–0122	696,000
Town of Rockland, Town Hall, Livingston Manor, New York 12758	B–95–DH–36–0112	275,000
Town of Rosendale, Box 423, Rosendale, New York 12472	B–95–DH–36–0101	400,000
Town of Shawangunk, P.O. Box 247, Wallkill, New York 12589	B–95–DH–36–0104	400,000
Town of Ulster, Town Hall, Neighborhood Road, Lake Katrine, New York 12449	B–95–DH–36–0118	400,000
Village of Walden, 8 Scofield Street, Walden, New York 12586	B–95–DH–36–0106	400,000
Village of Woodridge, P.O. Box 655, Woodridge, New York 12789	B–95–DH–36–0114	302,000
Buffalo Office		
Village of Weedsport, P.O. Box 190, Weedsport, NY 13166	B–95–DH–36–0002	$400,000
Village of Randolph, 26 Jamestown Street, Randolph, NY 14772	B–95–DH–36–0003	600,000
Town of Northampton, Northampton Municipal Bldg, South Main Street, Northville, NY 12134	B–95–DH–36–0006	400,000
Town of Mooers, Town Hall, P.O. Box 238, Mooers, NY 12958	B–95–DH–36–0008	400,000
Town of Bellmont, Star Route, Merrill, NY 12955	B–95–DH–36–0009	400,000
County of Lewis, Court House, 7660 State Street, Lowville, NY 13367	B–95–DH–36–0010	600,000
Town of Willet, Town Hall, P.O. Box 37, Willet, NY 13863	B–95–DH–36–0011	400,000
City of Watertown, Watertown Municipal Building—Room 302, 245 Washington Street, Watertown, NY 13601.	B–95–DH–36–0013	400,000
Village of Addison, P.O. Box B, Addison, NY 14801	B–95–DH–36–0017	810,791
Town of New Hudson, Town Hall, Black Creek, NY 14714	B–95–DH–36–0018	400,000
County of St. Lawrence, County Courthouse, 48 Court Street, Canton, NY 13617	B–95–DH–36–0019	400,000
Town of Montezuma, RD #1, Montezuma, NY 13034	B–95–DH–36–0021	399,360
Town of Pittsfield, RD #3 P.O. Box 231, Pittsfield, NY 13411	B–95–DH–36–0023	400,000
Town of Brookfield, Town Hall, Main Street, Brookfield, NY 13314	B–95–DH–36–0024	400,000
Town of Westville, RD 3, Malone, NY 12953	B–95–DH–36–0027	400,000
Town of Plattsburgh, Town Office, 152 Banker Road, Plattsburgh, NY 12901	B–95–DH–36–0028	400,000
Village of Canastota, Village Hall, 205 South Petersboro Street, Canastota, NY 13032	B–95–DH–36–0029	830,000

APPENDIX A—1995 SMALL CITIES GRANTEES—Continued

Grantee	Grant No.	Amount
Village of Penn Yan, P.O. Box 426, 3 Maiden Lane, Penn Yan, NY 14527	B–95–DH–36–0030	91,500
Village of Northville, Village Offices, North Third Street, Northville, NY 12134	B–95–DH–36–0031	400,000
Town of Palmyra, 201 East Main Street, Palmyra, NY 14552	B–95–DH–36–0032	400,000
City of Oswego, City Hall, Oswego, NY 13126	B–95–DH–36–0036	900,000
Village of Saranac Lake, Power & Light Building, 2 Main Street—3rd Floor, Saranac Lake, NY 12983	B–95–DH–36–0038	400,000
Town of Black Brook, Town Offices, Main Street AuSable, Forks, NY 12921	B–95–DH–36–0039	400,000
Town of Dannemora, P.O. Box 658, Cook Street, Dannemora, NY 12929	B–95–DH–36–0040	400,000
Town of AuSable, Town Hall, South Sable Street, Keeseville, NY 12944	B–95–DH–36–0041	400,000
Town of Franklin, Box 73, Franklin, NY 12989	B–95–DH–36–0042	400,000
City of Lockport, Lockport Municipal Building, One Locks Plaza, Lockport, NY 14094	B–95–DH–36–0043	400,000
City of Amsterdam, City Hall, 61 Church Street, Amsterdam, NY 12010	B–95–DH–36–0044	400,000
Town of Ohio, R.R. #1, Box 561, Cold Brook, NY 13324	B–95–DH–36–0046	400,000
Town of Yates, 8 South Main Street, P.O. Box 197, Lyndonville, NY 14098	B–95–DH–36–0047	400,000
City of Hornell, City Hall, 108 Broadway, Hornell, NY 14843	B–95–DH–36–0050	400,000
City of Batavia, 10 West Main Street, City Hall, Batavia, NY 14020	B–95–DH–36–0051	400,000
Village of Albion, 35–37 East Bank Street, Albion, NY 14411	B–95–DH–36–0052	400,000
Village of Holley, 72 Public Square, Holley, NY 14470	B–95–DH–36–0053	390,000
City of Geneva, 47 Castle Street, P.O. Box 273, Geneva, NY 14456	B–95–DH–36–0058	900,000
City of Canandaigua, 2 North Main Street, Canandaigua, NY 14424	B–95–DH–36–0059	900,000
City of Little Falls, City Hall, 659 Main Street, Little Falls, NY 13365	B–95–DH–36–0060	400,000
Town of Dryden, 65 East Main Street, Dryden, NY 13053	B–95–DH–36–0061	400,000
Town of Cincinnatus, Town Hall, Main Street, Cincinnatus, NY 13040	B–95–DH–36–0062	338,000
Village of Clyde, South Park Street, Clyde, NY 14433	B–95–DH–36–0065	400,000
Town of Dickinson, P.O. Box 101, Dickinson Center, NY 12930	B–95–DH–36–0067	400,000
County of Seneca, County Hall, One DePronio Drive, Waterloo, NY 13165	B–95–DH–36–0068	291,000
County of Niagara, 59 Park Avenue, Lockport, NY 14094	B–95–DH–36–0069	600,000
Town of Summit, Town Hall, P.O. Box 132, Summit, NY 12175	B–95–DH–36–0070	400,000
City of Gloversville, City Hall, Frontage Road, Gloversville, NY 12078	B–95–DH–36–0071	400,000
Town of Ticonderoga, 324 Champlain Avenue, Ticonderoga, NY 12883	B–95–DH–36–0075	400,000
City of Plattsburgh, 41 City Hall Place, Plattsburgh, NY 12901	B–95–DH–36–0079	900,000
County of Tompkins, Tompkins County Courthouse, 320 North Tioga Street, Ithaca, NY 14850	B–95–DH–36–0080	118,500
Town of Groton, 101 Conger Boulevard, Groton, NY 13073	B–95–DH–36–0081	315,000
Town of Gaines, 14087 Ridge Road, Albion, NY 14411	B–95–DH–36–0083	500,000
Town of Barre, 14317 West Barre Road, Albion, NY 14411	B–95–DH–36–0084	400,000
County of Ontario, Ontario County Courthouse, 27 North Main Street, Canandiagua, NY 14424	B–95–DH–36–0086	600,000
Village of Frankfort, P.O. Box 188, 126 East Orchard Street, Frankfort, NY 13340	B–95–DH–36–0087	400,000
Village of Cold Brook, P.O. Box 215, Cold Brook, NY 13324	B–95–DH–36–0088	400,000
County of Montgomery, Park Street, P.O. Box 1500, County Annex Building, Fonda, NY 12068	B–95–DH–36–0089	600,000
County of Wayne, Wayne County Courthouse, 26 Church Street, Lyons, NY 14489	B–95–DH–36–0091	350,000
City of Fulton, 141 South First Street, Fulton, NY 13069	B–95–DH–36–0092	900,000
City of Ithaca, City Hall, 108 East Green Street, Ithaca, NY 14850	B–95–DH–36–0094	900,000
County of Cattaraugus, 303 Court Street, Little Valley, NY 14755	B–95–DH–36–0095	550,000
City of North Tonawanda, City Hall, 216 Payne Avenue, North Tonawanda, NY 14120	B–95–DH–36–0096	600,000
Town of Starkey, Starkey Town Hall, 40 Seneca Street, Dundee, NY 14837	B–95–DH–36–0097	400,000
Town of Allegany, Town Hall Building, 5 Mile Road, Allegany, NY 14706	B–95–DH–36–0099	400,000
Village of Medina, 600 Main Street, Medina, NY 14103	B–95–DH–36–0200	400,000
Village of Remsen, P.O. Box 335, Remsen, NY 13438	B–95–DH–36–0208	400,000
Town of Ephratah, 5799 Southway 29, St. Johnsville, NY 13452	B–95–DH–36–0209	400,000
Town of Hague, Town Hall, Hague, NY 12836	B–95–DH–36–0210	400,000
City of Rensselaer, City Hall, 505 Broadway, Rensselaer, NY 12144	B–95–DH–36–0212	900,000
Village of Hudson Falls, 220 Main Street, Hudson Falls, NY 12839	B–95–DH–36–0214	400,000
Town of Gouverneur, RD #5—Box 10, Gouverneur, NY 13642	B–95–DH–36–0215	400,000
Village of Fort Plain, Village Hall, 168 Canal Street, Fort Plain, NY 13339	B–95–DH–36–0217	400,000
Town of Barton, 304 NYS Route 17c, Waverly, NY 14892	B–95–DH–36–0218	194,000
City of Cohoes, City Hall, 97 Mohawk Street, Cohoes, NY 12047	B–95–DH–36–0220	400,000
Town of Moriah, Town Offices, Park Street, Port Henry, NY 12974	B–95–DH–36–0224	400,000
County of Madison, P.O. Box 606, Madison County Office Bldg, Wampsville, NY 13163	B–95–DH–36–0225	225,000
County of Rensselaer, Ned Pattison Govment Ct, 1600 7th Avenue, Troy, NY 12180	B–95–DH–36–0227	380,000
Town of Meredith, Turnpike Road, Meredith Square, Meridale, NY 13806	B–95–DH–36–0228	400,000
County of Chenango, 5 Court Street, County Office Building, Norwich, NY 13815	B–95–DH–36–0231	600,000
City of Oneonta, City Hall, 258 Main Street, Oneonta, NY 13820	B–95–DH–36–0232	310,000
Town of Chateaugay, Town Hall, 45 East Main Street, Chateaugay, NY 12920	B–95–DH–36–0233	400,000
City of Ogdensburg, City Hall, 330 Ford Street, Ogdensburg, NY 13669	B–95–DH–36–0236	900,000
Town of Edinburg, Town Hall, 47 Military Road, Edinburg, NY 12134	B–95–DH–36–0237	362,000
County of Madison, P.O. Box 606, Madison County Office Bldg, Wampsville, NY 13163	B–95–DH–36–0242	600,000
Village of Gouverneur, 33 Clinton Street, Gouverneur, NY 13642	B–95–DH–36–0244	400,000
County of Tompkins, Tompkins County Courthouse, 320 North Tioga Street, Ithaca, NY 14850	B–95–DH–36–0247	270,000
Village of Keeseville, Civic Center, Main Street, Keeseville, NY 12944	B–95–DH–36–0248	255,000
Town of Poestenkill, P.O. Box 210, Poestenkill, NY 12140	B–95–DH–36–0250	382,000
County of Washington, County Office Building, Upper Broadway, Fort Edward, NY 12828	B–95–DH–36–0251	600,000
County of Columbia, 401 State St. Office Bldg, Hudson, NY 12534	B–95–DH–36–0254	200,000
County of Columbia, 401 State St. Office Bldg, Hudson, NY 12534	B–95–DH–36–0255	400,000

APPENDIX A—1995 SMALL CITIES GRANTEES—Continued

Grantee	Grant No.	Amount
Village of Dresden, One Firehouse Avenue, Dresden, NY 14441	B–95–DH–36–0256	400,000
Village of Warsaw, P.O. Box 49, Warsaw, NY 14569	B–95–DH–36–0259	400,000
Town of Southport, 1139 Pennsylvania Avenue, Town Hall, Elmira, NY 14904	B–95–DH–36–0261	233,000
County of Tioga, 56 Main Street, Owego, NY 13827	B–95–DH–36–0262	600,000
Town of Chesterfield, Town Hall, Keeseville, NY 12944	B–95–DH–36–0263	400,000
Town of Prattsburgh, 15 Chapel Street, Prattsburgh, NY 14873	B–95–DH–36–0264	400,000
Village of McGraw, P.O. Box 676—Cemetery Street, McGraw, NY 13101	B–95–DH–36–0265	793,407
Village of Potsdam, Civic Center, P.O. Box 5168, Potsdam, NY 13676	B–95–DH–36–0266	600,000
Town of Colchester, Town Hall—Main Street, P.O. Box 554, Downsville, NY 13755	B–95–DH–36–0267	162,520
Town of Malone, 12 Elm Street, Malone, NY 12953	B–95–DH–36–0270	350,000
Village of Harrisville, State Street, P.O. Box 249, Harrisville, NY 13648	B–95–DH–36–0272	400,000
City of Oneida, City Hall-109 N. Main St, P.O. Box 550, Oneida, NY 13421	B–95–DH–36–0273	900,000
Town of Preston, RR 2—Box 288, Oxford, NY 13830	B–95–DH–36–0275	400,000
Town of New Berlin, 21 North Main Street, P.O. Box 163, New Berlin, NY 13411	B–95–DH–36–0278	339,600
City of Cortland, City Hall, 25 Court Street, Cortland, NY 13045	B–95–DH–36–0279	400,000
Town of Verona, Germany Road, Road #1—Box 249, Durhamville, NY 13054	B–95–DH–36–0280	400,000
County of St. Lawrence, County Courthouse, 48 Court Street, Canton, NY 13617	B–95–DH–36–0282	600,000
Town of Middletown, P.O. Box 577, Margaretville, NY 12455	B–95–DH–36–0283	81,750
Town of Elizabethtown, Town Hall, Court Street, Elizabethtown, NY 12932	B–95–DH–36–0286	400,000
Town of Hornellsville, Park Avenue, Arkport, NY 14807	B–95–DH–36–0287	248,892
Town of Independence, P.O. Box 38, Marietta Avenue, Whitesville, NY 14897	B–95–DH–36–0288	400,000
City of Johnstown, City Hall, 33-41 East Main Street, Johnstown, NY 12095	B–95–DH–36–0294	900,000
Village of Whitehall, 1 Saunders Street, Village Hall, Whitehall, NY 12877	B–95–DH–36–0295	842,680

[FR Doc. 95–21980 Filed 9–5–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY985–01–0777–64]

Change of Address/Relocation and Office Closure: Wyoming

SUMMARY: Effective on or about September 25, 1995, the Wyoming State Office will be relocating to 5353 Yellowstone, Cheyenne, Wyoming 82009–4137. The mailing address will remain: Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003. Please address all correspondence to this address.

Because of the relocation of the BLM Wyoming State Office, records will be unavailable for inspection, and the Public Room will be closed on the following dates: September 25 through September 27, 1995. We plan to have the Public Room open for business and records review on September 28, 1995 from 9:00 a.m. to 4:00 p.m., normal Public Room hours.

EFFECTIVE DATE: September 25, 1995.

FOR FURTHER INFORMATION CONTACT: Susan Bennett, Supervisory Contact Representative, BLM, Wyoming State Office, 307–775–6131.

Alan R. Pierson,

State Director.

[FR Doc. 95–21974 Filed 9–5–95; 8:45 am]

BILLING CODE 4310–84–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 26, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by September 21, 1995.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Barbour County

Grace Episcopal Church, Louisville St. S of Courthouse Sq., Clayton, 95001116

ARKANSAS

Franklin County

Franklin County Courthouse, 211 W. Commercial St., Ozark, 95001123

Johnson County

Dickerson, N. E., Store, E of AR 215, Ozark, 95001124

Logan County

Burnett Springs, End of Co. Rd. 704, approximately one mi. E of Corley, Corley vicinity, 95001126

Schriver House, Leo Ave., N of jct. with AR 22, Subiaco vicinity, 95001125

Lonoke County

Coy Mound Site, Address Restricted, Coy vicinity, 95001120

Pulaski County

Boyle Park (Facilities Constructed by Civilian Conservation Corps in Arkansas MPS), Roughly bounded by 38th St., Dorchester Dr., Covewood Cir., Glenmere Dr., Kanis Rd. and W. 12th St., Little Rock, 95001119

Sharp County

Hardy Downtown Historic District, Roughly bounded by Kelly, Front, Church and 3rd Sts., Hardy, 95001121

COLORADO

Douglas County

Louviers Village Club, Jct. of Louviers Blvd. and First St., Louviers, 95001117

MISSOURI

Platte County

Banneker, Benjamin, School, 31 W. Eighth St., Parkville, 95001115

NORTH CAROLINA

Lincoln County

Sales Union Church and Cemetery, Jct. of NC 1005 (Startown Rd.) and NC 1274 (Maiden—Salem Rd.), SE corner, Maiden vicinity, 95001118

SOUTH DAKOTA

Davison County

Kibbee—Nepstad House, 409 E. Fifth Ave., Mitchell, 95001122

[FR Doc. 95–21972 Filed 9–5–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32689]
[Finance Docket No. 32689 (Sub-No. 1); Finance Docket No. 32690]

Patrick D. Broe, OmniTRAX, Inc., and Chicago Rail Link, L.L.C.—Control—Calumet Western Railway Company in Cook County, IL; Calumet Western Railway Company Restructuring in Cook County, IL; Indiana Harbor Belt Railroad Company—Acquisition Exemption—Calumet Western Railway Company in Cook County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: In Finance Docket No. 32689, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the acquisition of control by Patrick D. Broe, OmniTRAX,Inc., and Chicago Rail Link, L.L.C. (CRL), of Calumet Western Railway Company (Cal West) through purchase of its outstanding stock. In Finance Docket No. 32689 (Sub-No. 1), the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the acquisition by Cal West of certain track and the acquisition by CRL of certain operating and trackage rights. In Finance Docket No. 32690, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the acquisition by Indiana Harbor Belt Railroad Company of a segment of track and certain operating and trackage rights. The exemptions are subject to standard employee protective conditions.

DATES: The exemptions will be effective on September 21, 1995. Petitions for stay must be filed by September 18, 1995, and petitions to reopen must be filed by September 26, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32689, Finance Docket No. 32689 (Sub-No. 1), and Finance Docket No. 32690, to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Louis E. Gitomer, Ball, Janik & Novack, Suite 1035, 1101 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 22, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22028 Filed 9–5–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Records and Reports of Registrants: Changes in Record Requirements for Individual Practitioners.

(2) Form: None. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Individuals or households. Other: Individuals or households. Required information is needed to maintain a closed system of records by requiring the individual practitioner to keep records of (1) complimentary samples of controlled substances dispensed to patients and (2) controlled substances which are both administered and dispensed to patients.

(4) 100,500 respondents/recordkeepers with .5 hours per response.

(5) 50,250 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22007 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Roberts B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Import/Export Declaration: Precursor and Essential Chemicals.

(2) Form: DEA Form 486. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individual or households. The Chemical Diversion and Trafficking Act of 1988 requires those who import/export certain chemicals to notify DEA 15 days prior to shipment. Information will be used to prevent shipments not intended for legitimate purposes.

(4) 1,800 respondents .20 hours per response.

(5) 364 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22008 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 295–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Regional Coordination Initiative/Regional Field Coordinator Application Form.

(2) Form: None. Office for Victims of Crime, Office of Justice Programs, United States Department of Justice.

(3) Primary: Not-for-profit institutions. Other: State, Local, or Tribal Government. The information requested is necessary to identify Regional Field Coordinators who, with support from the Office for Victims of Crime, will develop and implement regional training and technical assistance projects on victim issues. Victims of Crime Agency administrators and victim service providers across the nation will be given an opportunity to respond via this application.

(4) 70 responses per year at .5 hours per response.

(5) 50 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22009 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems

Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Report of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

(2) Form: None. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individual or households. The Domestic Chemical Diversion Control Act of 1993 amends DEA's chemical recordkeeping requirements to remove the exemption for certain drugs which contain ephedrine. Persons who previously were not required to keep records or make reports regarding sales of these products now must do so.

(4) 20,600 responses per year at .17 hours per response. 6,000 records at 1 minute per record.

(5) 1,003,502 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22010 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Reporting on Psychotropic Substances.

(2) Form: None. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: None. Pursuant to the Economic and Social Council of the United Nations resolution (1991/44) under the United Nations Convention on Psychotropic Substances, the United States must provide to the International Narcotics Control Board of the United Nations certain information concerning psychotropic substances. This collection will provide necessary data to be reported to the United Nations.

(4) 750 responses per year at 1.0 hours per response.

(5) 750 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22011 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill, on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Diversion Control Act.

(2) Form: DEA Form 510, DEA Form 510a. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individuals or households. The Domestic Chemical Diversion Control Act requires that distributors, importers, and exporters of listed chemicals which are being diverted in the United States for the production of illicit drugs must register with the DEA. Registration provides a system to aid in the tracking of the distribution of list I chemicals.

(4) 11,500 responses per year at .5 hours per response.

(5) 5,750 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22012 Filed 9–5–95; 8:45 am]

BILLING CODE 4410-09-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Removal of Restrictions on Employing Certain Individuals.

(2) Form: None. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government. The information is necessary to maintain a closed system of distribution by requiring notification from DEA registrants of their intent to employ persons convicted of a felony offense.

(4) 100 responses per year at .5 hours per response.

(5) 50 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22013 Filed 9–5–95; 8:45 am]

BILLING CODE 4410-09-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 95–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill, on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Report of Theft or Loss of Controlled Substances.

(2) DEA Form 106. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individuals or households. DEA Form 106 was designed to provide a standardized format with which DEA registrants could use to report a discovery of a theft or loss of a controlled substance. The purpose is to maintain an accurate accounting of all controlled substances, monitor substances diverted into illicit markets and develop leads for criminal investigations.

(4) 8398 annual respondents at .5 hours per response.

(5) 4199 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22014 Filed 9–5–95; 8:45 am]

BILLING CODE 4410-09-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) ARCOS Transaction Reporting.

(2) DEA Form 333. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: None. The information is necessary for the United States to meet obligations under two international treaties: Single convention on Narcotic Drugs and Convention of Psychotropic Substances. Treaties require information on the manufacture and consumption of certain substances. Information tracks substances from manufacture to sale to dispensing level.

(4) 2,468 annual respondents at 1.0 hours per response.

(5) 2,468 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22015 Filed 9–5–95; 8:45 am]

BILLING CODE 4410-09-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you for prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Permit to Export Controlled Substances.

(2) DEA Form 161. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: None. 21 CFR Section 1312.22 requires individuals who export controlled substances in Schedules I and II to obtain a permit from DEA. The information collected is used to issue export permits and exercise control over the exportation of controlled substances and compile data for submission to the United Nations for treaty requirements.

(4) 67 respondents with an average of 13 responses per year at .247 hours per response.

(5) 215 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22016 Filed 9–05–95; 8:45 am]

BILLING CODE 4410-09-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer Mr. J[illegible] on (202) 395–7340 an[illegible] th[illegible]artment of

Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Registrants Inventory of Drugs Surrendered.

(2) DEA Form 41. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: None. Section 1307.21 of 21 CFR requires that any registrant desiring to voluntarily dispose of controlled substances shall list these controlled substances on DEA Form 41 and submit it to the nearest DEA office. The DEA 41 is used to account for surrendered destroyed controlled substances, and its use is mandatory.

(4) 20,000 respondents with .5 hours per response.

(5) 10,000 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22017 Filed 9–5–95; 8:45 am]

BILLING CODE 4410-09-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Office, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Office, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Controlled Substances Import/Export Declaration.

(2) DEA Form 236. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: None. DEA Form 236 provides the Drug Enforcement Administration with control measures over the importation and exportation of controlled substances as required by both domestic and international drug control laws. Affected public consists of businesses or other nonprofit organizations.

(4) 2,760 respondents with .25 hours per response.

(5) 690 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated; August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22018 Filed 9–5–95; 8:45 am]

BILLING CODE 4410-09-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) United States Official Order Forms for Schedule I and II Controlled Substances (ACCOUNTABLE FORMS). Order Form Requisition.

(2) DEA Form 222, DEA Form 222a. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individuals or households, Federal Government, State, Local or Tribal Government. DEA Form 222 is used to transfer or purchase schedule I and II controlled substances and the data is needed to provide an audit of the transfer and purchase. DEA Form 222a is used to obtain DEA 222 order form. Respondents are DEA registrants desiring to handle these controlled substances.

(4) 436,000 respondents with .25 hours per response.

(5) 109,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22019 Filed 9–5–95; 8:45 am]

BILLING CODE 4410-09-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Registration and Application for Registration Renewal.

(2) DEA Form 363, DEA Form 363a. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Individuals or households. Other: Business or Other for-profit. All firms and individuals who distribute or dispense controlled substances must register with DEA under the Controlled Substance Act. Registration via DEA Form 224 and DEA Form 224a are necessary for adequate oversight control over legal handlers of controlled substances and is used to monitor their activities.

(4) 275,000 responses with .20 hours per response.

(5) 55,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22020 Filed 9–5–95; 8:45 am]

BILLING CODE 4410-09-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Registration and Application for Registration Renewal.

(2) DEA Form 363, DEA Form 363a. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: State, Local or Tribal Government. Other: Business or Other for-profit, Not-for-profit institutions. Practitioners who dispense narcotic drugs to individuals for maintenance or detoxification treatment must register with DEA under the Narcotic Addict Treatment Act of 1974. Registration is needed for control measures and is used to prevent diversion.

(4) 900 respondents with .50 hours per response.

(5) 450 annual burden hours.

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(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comments on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22021 Filed 9–5–95; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

President's Committee on the International Labor Organization; Notice of Postponement of Closed Meeting

This document postpones the September 8, 1995 closed meeting of the President's Committee on the ILO until September 14, 1995. Notice of this closed meeting was previously published in the **Federal Register** on August 16, 1995, 60 FR 42588. The meeting is being postponed because of the scheduling difficulties of certain participants.

The closed meeting will now take place on Thursday, September 14, 1995 at 10:00 am at the U.S. Department of Labor, Third & Constitution Avenue, N.W., Room S–2508, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Joaquin F. Otero, President's Committee on the International Labor Organization, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2235, Washington, DC 20210, Telephone (202) 219–6043.

Signed at Washington, D.C. this 31st day of August, 1995.

Andrew J. Samet,

Associate Deputy Under Secretary International Affairs.

[FR Doc. 95–22080 Filed 9–5–95; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

National Skill Standards Board; Notice of Open Meeting

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the Goals 2000: Educate America Act of 1994, Title V, Pub. L. 103–227. The 28-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

Time and Place: The meeting will be held from 2 p.m. to approximately 5:30 p.m. on Wednesday, September 20, 1995, in the Auditorium of the Francis Perkins Building, Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Agenda: The agenda for the Board Meeting will include presentations on a variety of methods for occupational clusters.

Public Participation: The meeting from 2 p.m. to approximately 5:30 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Ed Rugenstein at (301) 495–1591, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Ed Rugenstein at (301) 495–1591.

Signed at Washington, DC., this 30th day of August, 1995.

Judy Gray,

Executive Director, National Skill Standards Board.

[FR Doc. 95–22047 Filed 9–5–95; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–76; Exemption Application No. D–09819, et al.]

Grant of Individual Exemptions; John B. Toomey Rollover IRA (the IRA), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

John B. Toomey Rollover IRA (the IRA), Located in Lorton, Virginia

[Prohibited Transaction Exemption 95–76; Exemption Application No. D–09819]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the installment sale of 36.2 shares of common stock (the Stock) in JBT Holding Corporation (JBT) by the IRA [1] to JBT, a disqualified person with respect to the IRA; provided that: (a) The purchase price JBT pays for the Stock is the greater of $410,146 or the fair market value of the Stock on the date of the sale; (b) the fair market value of the Stock is determined by a qualified independent appraiser, as of the date of the sale; (c) the terms of the transaction are no less favorable to the IRA than those negotiated at arm's length with unrelated third parties in similar circumstances; (d) the trustee of the IRA monitors compliance with the terms of the transaction throughout the duration of the installment sale; (e) the IRA receives a cash downpayment of no less than $210,146 on the date of the sale and thereafter receives three (3) equal annual installment payments of $66,667, the first of which is due and payable December 31, 1995, plus interest at the fair market rate of interest, as determined by an independent, qualified third party, as of the date of the transaction, on the outstanding balance of the installment payments, payable annually until all the installment payments have been made by JBT on or before December 31, 1997; (f) the outstanding balance of the installment payments at no time exceeds 25 percent (25%) of the value of the assets of the IRA; (g) the outstanding balance on the installment payments is secured by a recorded first mortgage interest in real property pledged by JBT in favor of the IRA; (h) the collateral which secures the installment payments has a value, as determined by an independent, qualified appraiser, which at all times is no less than 150 percent (150%) of the outstanding balance of the installment payments; and (i) the IRA pays no commissions, fees, or other expenses in connection with the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 21, 1995, at 58 FR 37682.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department (202) 219–8883. (This is not a toll-free number.)

Phillips Petroleum Company (Phillips) Located in Bartlesville, OK

[Prohibited Transaction Exemption 95–77; Exemption Application No. D–09907]

Exemption

The restrictions of sections 406(a), 406(b) (1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the making of interest-free loans to the Thrift Plan of Phillips Petroleum Company (the Plan) by Phillips, the Plan sponsor pursuant to the terms of a credit facility arrangement; and (2) the repayment of such loans by the Plan to Phillips.

This exemption is conditioned on the following requirements:

(a) Each loan executed under the proposed credit facility arrangement provides short-term funds to the Plan in connection with inter-fund transfers, withdrawals and participant loans and permits the orderly disposal of Phillips common stock.

(b) Each loan made under the proposed credit facility arrangement is unsecured and no interest, commissions or expenses are paid by the Plan.

(c) In the event of a loan default or delinquency, Phillips has no recourse against the Plan.

(d) Each loan is initiated, accounted for and administered by an independent fiduciary who monitors the terms and conditions of the exemption.

Written Comments

The Department received six written comments with respect to the notice of proposed exemption and no requests for a public hearing. Of the written comments received, five commenters recommended that the Department grant the proposed exemption. The sixth commenter questioned whether the proposed credit facility arrangement would be in the best interest of the Plan since it would allow no recourse against Plan assets. The commenter also raised several questions about the Plan's participant loan program.

In response to the sixth commenter, Bankers Trust Company (BTC), the Plan trustee and independent fiduciary with respect to the proposed transactions, notes that the purpose of the credit facility arrangement is to facilitate participant directions regarding their account balances on a more timely basis. According to BTC, receiving the loans on an interest-free basis from Phillips meets this purpose and it allows the Plan to avoid the expense of its current credit facility arrangement with NationsBank of Dallas, Texas. BTC further represents that by requiring that the loans be on a non-recourse basis provides an additional safeguard to the Plan and ensures that participant account balances will not be impacted adversely.

With respect to the Plan's participant loan program, the commenter has inquired about the (a) number of participants in the Plan having outstanding participant loans, (b) the frequency of loan repayments, (c) the percentage of such loans that are in arrears or default, and (d) what safeguards can and should be implemented to prevent depreciation in the value of Phillips common stock.

Phillips has responded to each of the commenter's concerns on these matters. In this regard, Phillips represents that as of July 17, 1995, approximately 2,000 participants had outstanding participant loans with the Plan. Phillips notes that for these loans, repayment schedules range from three months to 180 months in duration depending upon the election of the participant. Phillips further explains that virtually none of the loans are in arrears or default since the Plan requires that loan repayments be made by payroll deduction or repaid in full. However, should a participant loan be in default, Phillips states that there will be no impact on Plan participants since the participant's account will serve as security for the loan and the event of default will become a taxable distribution to the participant. Finally, Phillips notes that neither the Plan nor BTC can control the value of Phillips common stock that is held by the Plan and that the intent of the exemption is to allow participants the flexibility of moving into or out of stock funds with the value of the stock established as of the transaction valuation date.

Technical Correction

The Department notes that the correct application number for the subject request is "D–09907" and not "D–09909" as it appeared in the proposed exemption. Therefore, the Department has incorporated this revision into the grant notice.

After giving full consideration to the entire record, including the written comment that was submitted and the responses made by BTC and Phillips, the Department has decided to grant the exemption as described and revised above. The comment letter and responses have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 7, 1995 at 60 FR 30106.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

KeyCorp 401(k) Savings Plan (the Plan), Located in Cleveland, Ohio

[Prohibited Transaction Exemption 95–78; Exemption Application No. D–10023]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the

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[1] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of funds (the Loan) to the Plan by KeyCorp the sponsor of the Plan, with respect to Guaranteed Investment Contract No. 62149 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the potential repayment by the Plan of the Loan upon receipt of payments under the GIC; provided the following conditions are satisfied: (a) No interest and/or other expenses are paid by the Plan in connection with the Loan; (b) All of the terms and conditions of the Loan are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (c) The Loan will be no less than the amount described in paragraph 4 of the Notice of Proposed Exemption; (d) The repayment of the Loan will not exceed the total amount of the Loan; (e) The repayment of the Loan by the Plan will be restricted to funds paid to the Plan under the GIC by Confederation or other responsible third parties with respect to the GIC; and (f) The repayment of the Loan will be waived to the extent the amount of the Loan exceeds the proceeds the Plan receives from the GIC.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1995 at 60 FR 33871.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Bank of New York (the Bank) Located in New York, New York

[Prohibited Transaction Exemption 95–79; Application No. D–10030]

Exemption

Section I—Exemption for the Acquisition, Holding and Disposition of BNY Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding or disposition of the common stock of the Bank's parent corporation, The Bank of New York Company, Inc. (BNY Stock), by Index or Model-Driven Funds, if the following conditions and the General Conditions of Section II are met:

(a) The Index or Model-Driven Fund is based on an index which represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating and maintaining the index must be (1) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients, (2) a publisher of financial news or information, or (3) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of the Bank and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of the Bank or its affiliates.

(b) The acquisition or disposition of the BNY Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based.

(c) All acquisitions comply with Rule 10b–18 of the Securities and Exchange Commission, including the limitations regarding the price paid or received for such stock.

(d) Aggregate daily purchases of BNY Stock constitute no more than the greater of: (1) 10 percent of the stock's average daily trading volume for the previous five days; or (2) 10 percent of the stock's trading volume on the date of the transaction.

(e) If the necessary number of shares of BNY Stock cannot be acquired within 10 business days from the date of the event which causes the particular Index or Model-Driven Funds to require BNY Stock, the Bank appoints a fiduciary which is independent of the Bank and its affiliates to design acquisition procedures and monitor the Bank's compliance with such procedures.

(f) All purchases and sales of BNY Stock are executed on the national exchange on which BNY Stock is primarily traded.

(g) No transactions involve purchases from, or sales to, the Bank or any affiliate (including officers, directors and employees of the Bank, as defined in Section III(c) below), or any party in interest with respect to a plan which has invested in an Index or Model-Driven Fund.

(h) No more than five (5) percent of the total amount of BNY Stock issued and outstanding at any time is held in the aggregate by the Index and Model-Driven Funds.

(i) BNY Stock constitutes no more than two (2) percent of the value of any independent third-party index on which the investments of an Index or Model-Driven Fund are based.

(j) A plan fiduciary independent of the Bank and its affiliates authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds BNY Stock.

(k) A fiduciary independent of the Bank and its affiliates directs the voting of the BNY Stock held by an Index or Model-Driven Fund on any matter in which shareholders of BNY Stock are required or permitted to vote.

Section II—General Conditions

(a) The Bank maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504 (a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(B) through (D) shall be authorized to examine trade secrets of the Bank, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) Index Fund—Any investment fund, account or portfolio sponsored, maintained and/or trusteed by the Bank, or an affiliate of the Bank, in which one or more investors invest which is designed to replicate the capitalization-weighted composition of a stock index which satisfies the conditions of Section I(a) and (i).

(b) Model-Driven Fund—Any investment fund, account or portfolio sponsored, maintained and/or trusteed by the Bank, or an affiliate of the Bank, in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independent third-party stock index which satisfies the conditions of Section I (a) and (i).

(c) Affiliate—Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or a sister of such person; and any corporation or partnership of which such person is an officer, director, or partner.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 12, 1995, at 60 FR 35944.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Rollover Individual Retirement Accounts for Joseph Shepard, Located in Jacksonville, Florida; William Haspel, Located in Bethesda, Maryland; and Richard Geisendaffer, Paul Petryszak, William Kroh and Rolf Graage, Located in Baltimore, Maryland (Collectively, the IRAs)

[Prohibited Transaction Exemption 95–80; Exemption Application Nos. D–10054–10059]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the IRAs of all the common stock (the Stock) of Purchase Port Services, Inc. (PPS) held by the IRAs to PPS, provided that the following conditions were satisfied: (1) The sale of Stock by each IRA was a one-time transaction for cash; (2) no commissions or other expenses were paid by the IRAs in connection with the sale; and (3) the IRAs received the greater of: (a) the fair market value of the Stock as determined by a qualified independent appraiser as of May 31, 1995, or (b) the fair market value of the Stock as of the time of the sale.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 21, 1995 at 60 FR 37688.

EFFECTIVE DATE: This exemption is effective July 28, 1995.

WRITTEN COMMENT: The Department received one written comment with respect to the proposed exemption, which was submitted by the applicants. The applicants had represented (see notice of proposed exemption, rep. 4) when they filed their exemption application that "Business and income tax considerations have compelled PPS to consider making an election to be treated as a 'Subchapter S' Corporation under section 1362(a) of the Code." The applicants noted in their comment letter that subsequent to the filing of the exemption request, PPS determined that, rather than electing Subchapter S Corporation status itself, PPS would merge into its subsidiary, Hobelmann Port Services, Inc. (HPS), and that HPS would elect Subchapter S Corporation status. That merger was concluded effective July 31, 1995, and HPS elected Subchapter S Corporation status effective August 1, 1995. The applicants represent that the decision to make HPS rather than PPS the entity to elect Subchapter S status was made for business purposes unrelated to the redemption of the IRAs' shares, and is not material to the requested exemption.

The applicants also requested that the exemption be made effective July 28, 1995, instead of July 31, 1995, as had been proposed. The sale of shares from the IRAs to PPS occurred on July 28, 1995 to allow sufficient time before July 31, 1995 to complete other steps relating to the Subchapter S Corporation election. The applicants represent that the sale was made in accordance with all of the conditions set forth in the proposed exemption.

The Department has considered the entire record, including the comment submitted by the applicants, and has determined to grant the exemption effective July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 31st day of August, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–22042 Filed 9–5–95; 8:45 am]

BILLING CODE 4510–29–P

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[2] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[Application No. D–09958, et al.]

Proposed Exemptions; TSC International Ltd., Custom Marketing and Import Profit Sharing Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request; and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

TSC International Ltd., Custom Marketing and Import Profit Sharing Plan (the Plan) Located in Kansas City, MO

[Application No. D–09956]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed (1) redemption by TSC International Merchandising Ltd., Custom Marketing and Import Company (TSC) of 19,000 shares of common stock issued by TSC and held by the Plan; and (2) the extension of credit by the Plan to TSC in connection with the redemption of the stock.[1]

The proposed exemption is conditioned on the following requirements:

(1) The redemption price for the stock is determined by a qualified, independent appraiser.

(2) The note which evidences the redemption price for the stock represents not more than 25 percent of the Plan's assets.

(3) The terms of the note are based upon terms that are comparable to those that would be extended by a third party lender.

(4) The stock, which secures TSC's obligations under the note, at all times represents 200 percent of the outstanding balance of the note; however, if the value of the stock ever falls below the 200 percent level, TSC will pledge additional collateral.

(5) The Plan is not required to pay any fees or commissions in connection with the redemption of the stock or the administration of the note.

(6) Boatmen's First National Bank of Kansas City (Boatmen's) holds certificates representing the stock in an escrow account until TSC pays the redemption price in full.

(7) The Plan increases its liquidity and investment yield by disposing of an asset and receives cash to promote asset diversification.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with Mr. Jack Hardgree as its only participant. As of December 12, 1994, the Plan had net assets of $565,500. The trustee of the Plan and the decisionmaker with respect to the Plan's investments is Mr. Hardgree.

2. TSC is a "C" corporation that maintains its principal place of business in Prairie Village, Kansas. It is engaged in the import business and primarily deals in metal products for U.S. manufacturers. Mr. Hardgree is the sole director, officer and employee of TSC.

3. The Plan currently holds 19,000 shares of common stock of TSC. The stock has a stated par value of $10 per share and it is not publicly-traded. The shares of stock that are held by the Plan represent 97 percent of the issued and outstanding stock of TSC. The 3 percent remaining shares of stock are owned by Mr. Hardgree.

4. Prior to the incorporation of TSC in January 1984, Mr. Hardgree was a manufacturer's representative with an unrelated company, Merchandise International, Inc. (MII). That company had a money purchase pension plan (the MII Plan) with individually-directed accounts. In late 1983, Mr. Hardgree resigned from his employment with MII, having been bought out by the two remaining principals of MII. Although Mr. Hardgree had no further connections with MII as an employee or owner after his resignation, he continued to participate in the MII Plan.

5. In January 1984, Mr. Hardgree formed TSC. At the time of incorporation of TSC, Mr. Hardgree, in his personal capacity, acquired 500 shares of TSC common stock directly from TSC for $10 per share. This amount represented the par value of such stock. In May 1985, Mr. Hardgree directed the trustee of the MII Plan to acquire, from TSC, 9,500 shares of TSC common stock for his individually-directed account in such Plan. The acquisition price for the stock was $10 per share. Although the stock had been authorized in TSC's corporate charter, it had not been been issued.

In 1986, Mr. Hardgree again directed the trustee of the MII Plan to acquire, from TSC, an additional 9,500 shares of TSC's authorized but unissued common stock, for his individually-directed account in the MII Plan. The acquisition price for the stock was also established at $10 per share. It is represented that at the time of both stock acquisitions, Mr. Hardgree had no interest in MII other than as a participant in the MII Plan. It is also represented that following the stock acquisitions, TSC common stock constituted the majority of the assets of Mr. Hardgree' account in the MII Plan.[2]

6. In January 1991, TSC established the Plan by adopting the Mid American Bank & Trust Company Defined Contribution Master Plan. Soon after the establishment of the Plan, the trustee of the MII Plan transferred all 19,000 shares of TSC common stock to Mid American Bank & Trust Company, the former trustee of the Plan, in a "trustee-to-trustee transfer." It is represented that Mr. Hardgree was advised that the stock transfer which was made on behalf of the Plan did not constitute a prohibited transaction.[3]

7. Mid American Bank & Trust Company later became part of Johnson County Bank which was thereafter acquired by Mercantile Bank. In December 1994, Mercantile Bank became the custodian for the Plan and Mr. Hardgree, the trustee.

8. TSC paid an unrelated third-party investment banking firm, Stern Brothers & Co. of Kansas City, Missouri for a valuation report of the 19,000 shares of TSC common stock that are held by the Plan. According to the appraisal report dated December 14, 1994, which was prepared by Messrs. John C. Korschot, CFA, ASA, CBA and David K. Jones, CBA of the firm, as of December 2, 1994, the 19,000 shares of TSC common stock held by the Plan had a fair market value of $535,500 or $27.46 per share. The appraisers stated that they used the adjusted book value approach and the market comparison approach in rendering their opinion as to the fair market value of the Plan's controlling interest in the stock. In addition, the appraisers explained that they applied a discount factor of 15 percent to the initial value of $640,000 they had determined for the stock due to its lack of marketability. The appraisers further noted that a control premium was implied in the $640,000 initial value.

9. Although the value of TSC common stock and Plan assets have increased significantly, it is represented that by holding only TSC stock, the Plan is in an illiquid position should assets be needed for distributions. Moreover, it is represented that TSC cannot promise that its stock will hold or increase in value. Therefore, TSC requests an administrative exemption from the Department in order to redeem the shares of TSC common stock that are held by the Plan in return for cash and a promissory note.

10. TSC proposes to redeem the stock held by the Plan by giving the Plan a cash downpayment of $394,125 and a promissory note in the principal amount of $141,375. The note will bear a fixed rate of interest of 11 percent per annum. The note will also provide for monthly installments of principal and interest over a period of two years after the date of the redemption. The note may be prepayable without penalty at any time by TSC. In addition, the Plan will not be required to pay any fees or commissions in connection with the redemption of the TSC common stock or with respect to the administration of the proposed loan.

11. The note will be secured by the shares of the TSC common stock that are redeemed from the Plan. The security interest in such shares will be a first security interest and it will be governed by an escrow agreement (the Escrow Agreement) between TSC and Boatmen's, with whom TSC currently has a revolving loan arrangement, as escrow agent. At all times, the fair market value of the stock will represent 200 percent of the outstanding principal balance of the note. If, however, the fair market value of the stock should ever fall below this level, TSC will pledge additional collateral to cover the loan payments made under the note. As further security, Mr. Hardgree will assign a portion of his life insurance policy in the amount of the note.

12. By letter dated June 23, 1995, TSC received a loan commitment in the amount of $141,375 from an unrelated lender, Missouri Bank & Trust Company of Kansas City (Missouri Bank & Trust). The terms offered by Missouri Bank & Trust are comparable to the terms of the note.

13. Under the Escrow Agreement, TSC will pledge all 19,000 shares of the stock that are redeemed from the Plan by the delivery of certificates evidencing such pledged shares to Boatman's. Boatmen's will hold the certificates until the loan is repaid. If at any time TSC defaults in the payment of principal or interest on the note, and the default remains uncured for two months after written notice, the entire unpaid principal amount of the note and accrued interest thereon will become immediately due and payable. Then, the Plan will have all of the certificates on deposit delivered to it. At the end of 20 days after receipt of a written demand from the Plan, together with evidence that the notice of the demand has been given to TSC, Boatmen's will deliver to the Plan the certificates held by Boatmen's. If, however, satisfactory proof is presented to Boatmen's that all installments of the note have been paid, Boatmen's will deliver to TSC, the shares remaining in its possession. Afterwards, all obligations between the Plan, TSC and Boatmen's will cease.

The Plan will not be required to pay any fees or expenses in connection with the administration of the Escrow Agreement. Further, no parties to the Escrow Agreement will grant a security interest in any of the securities deposited with Boatmen's or create a lien, encumbrance, or other claim against monies or borrow from such stock.

14. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The redemption price for the stock has been determined by a qualified, independent appraiser.

(b) The note which evidences the redemption price for the stock will represent 25 percent of the Plan's assets.

(c) The terms of the note are based upon terms that are comparable to those that would be extended by a third party lender.

(d) The stock, which secures TSC's obligations under the note, at all times will represent 200 percent of the outstanding balance of the note.

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[1] Because Mr. Jack Hardgree is the sole participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[2] The Department expresses no opinion herein on whether the acquisition of TSC common stock by Mr. Hardgree's individually-directed account in the MII Plan violated any of the provisions of Part 4 of Title I of the Act.

[3] The Department expresses no opinion herein on whether the transfer of the TSC common stock from the MII Plan to the Plan violated the exclusive benefit rule of section 401(a) of the Code.

(e) The Plan will not be required to pay any fees or commissions in connection with the redemption of the stock or the administration of the note.

(f) Boatmen's will hold certificates representing the stock in an escrow account until TSC pays the redemption price for the stock in full.

(g) The Plan will increase its liquidity and investment yield by disposing of an asset and receive cash to promote greater asset diversification.

Notice to Interested Persons

Because Mr. Hardgree is the only participant in the Plan who will be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of pendency to interested persons. Therefore, comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 31st day of August, 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–22043 Filed 9–5–95; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–094]

NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors meeting.

DATES: October 17, 1995, 8:30 a.m. to 4:30 p.m.; October 18, 1995, 8:30 a.m. to 4:30 p.m.; and October 19, 1995, 8:30 a.m. to 11:30 a.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1268A, Room 2120, Hampton, VA 23681–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5567.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—NASA Actions on Committee's Previous Recommendations
—NASA Human Factors Overview and Updates on Ames Research Center and Langley Research Center Programs
—Crew-Centered Design Philosophy
—Aviation Safety and Automation Program
—Human Engineering Methods
—Air Traffic Management Human Factors

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: August 31, 1995.

Danalee Green,

Management Controls Office.

[FR Doc. 95–22076 Filed 9–5–95; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that the President's Committee on the Arts and the Humanities will hold five Regional Planning Meetings in the month of September 1995.

The date, times, and locations are as follows:

Dates/times	Locations
September 13 from 2:30 p.m. to 4:30 p.m.	Lyndon Baines Johnson Library, 2313 Red River Street, Austin, TX 78705.
September 15 from 1:30 p.m. to 3:30 p.m.	J. Paul Getty Trust, 401 Wilshire Boulevard, Santa Monica, CA 90401.
September 18 from 2:30 p.m. to 4:30 p.m.	Room 527, Nancy Hanks Center, 1100 Pennsylvania Avenue, Washington, DC 20506.
September 19 from 2:00 p.m. to 4:00 p.m.	American Express Company, 200 Vesey Street, New York, NY 10285.
September 22 from 2:00 p.m. to 4:00 p.m.	Sara Lee Corporation, Three First National Plaza, Chicago, IL 60602.

These meetings will be open to the public on a space available basis for the purpose of planning for the future.

If, in the course of discussion, it becomes necessary for the Committee to discuss nonpublic commercial or financial information of intrinsic value, the committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the committee in closed session, in accordance with subsection (c)(6) of U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited in meeting rooms and it is suggested that individuals wishing to attend notify the staff of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506.

Dated: August 30, 1995.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–22075 Filed 9–5–95; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 070-925]

Consideration of Amendment Request for Decommissioning the Cimarron Corporation Facility in Crescent, Okla., and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Consideration of Amendment Request for Decommissioning the Cimarron Corporation Facility in Crescent, Oklahoma, and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Special Nuclear Material License No. SNM–928, issued to the Cimarron Corporation (the Licensee), for the decommissioning of its former nuclear fuel fabrication facility in Crescent, Oklahoma.

The Licensee requested the amendment in a letter dated May 4, 1995, requesting that License No. SNM–928 be amended to incorporate the decommissioning plan (DP) for the Cimarron facility submitted to NRC in April 1995. Radioactive contamination at the Cimarron facility resulted from operations to produce enriched uranium reactor fuels conducted from 1965 through 1977. The Licensee also submitted a site characterization report in support of the DP. The license amendment would authorize the Licensee to decommission the Cimarron facility in accordance with the DP.

The NRC will require the Licensee to remediate the Cimarron facility to meet NRC's criteria, and, during the decommissioning activities, to maintain effluents and doses as low as reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Cimarron Corporation, Kerr-McGee Center, P.O. Box 25861, Oklahoma City, OK, 73125, Attention: Mr. Jess Larsen, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, MD, this 23rd day of August 1995.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–22039 Filed 9–5–95; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 50–344]

Portland General Electric Co.; Trojan Nuclear Power Station; Federal Court Decision and Opportunity for Public Comments

On July 20, 1995, the United States Court of Appeals for the First Circuit issued a decision granting a petition by the Citizens Awareness Network ("CAN") for review of a decision by the Nuclear Regulatory Commission. *See Citizens Awareness Network, Inc. v. NRC*, No. 94–1562, _____ F.3d _____, 1995 WL 419188 (1st Cir., July 20, 1995). The First Circuit found that the Commission erred when it rejected CAN's request for a hearing on the component removal project ("CRP") that Yankee Atomic Electric Power Company ("YAEC") is carrying out as part of decommissioning the Yankee Nuclear Power Station, located in Rowe, Massachusetts. The Court held that "CAN was entitled to a hearing under section 189a [of the Atomic Energy Act of 1954] in connection with the NRC decision to permit YAEC's early CRP." Slip op. at 26. The Court also held that the Commission had violated the National Environmental Policy Act by permitting YAEC to initiate the CRP before the agency had prepared an environmental assessment or impact statement. The Court remanded the case to the Commission for further action in accordance with these holdings.

In reaching these results the Court criticized the Commission's change in interpretation of its 1988 decommissioning regulations [1] that it announced in a staff requirements memorandum dated January 14, 1993. In that memorandum, the Commission decided to allow its licensees to conduct "any decommissioning activity" prior to NRC approval of a decommissioning plan, so long as the activity did not "violate the terms of the licensee's existing license * * * or 10 CFR 50.59 as applied to the existing license." Previously, the Commission had required that "major dismantling and other activities * * * must await NRC approval of a decommissioning plan." *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI–91–2, 33 NRC 61, 73 n.5 (1991). *Accord, Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI–92–2, 35 NRC 47, 61 n.7 (1992). Relying on the Commission's new interpretation, YAEC began removing major components from its Yankee reactor before obtaining approval of a decommissioning plan.[2] In its decision, the First Circuit held (among other things) that the Commission had failed to give an adequate explanation for its shift in policy.

The Commission will not seek either rehearing of this decision by the First Circuit or review in the United States Supreme Court. When the First Circuit's mandate issues, the Commission will comply with the decision.[3] The Commission currently believes that, pending completion of its ongoing rulemaking on decommissioning, further decommissioning activities must be conducted under existing NRC regulations as the Commission interpreted and applied them prior to the 1993 change in interpretation that the court rejected.[4] Prior to January, 1993, NRC licensees could not initiate major dismantling activities prior to Commission approval of a decommissioning plan. Furthermore, prior to 1993 the Commission consistently offered opportunities for hearings on proposed decommissioning plans.[5]

By a separate notice published today the Commission is soliciting public comments on how to proceed on remand in the Yankee proceeding itself. But other nuclear power plants contemplating or engaged in decommissioning may also be affected by the First Circuit decision. The most notable of these is the Trojan Nuclear Power Station, located near Portland, Oregon, and operated by Portland General Electric ("PGE"). Currently, PGE is engaged in a program of dismantlement and removal of large components in advance of receiving NRC approval of the Trojan decommissioning plan. The Trojan decommissioning plan was submitted to the NRC in January, 1995, and review by the NRC staff is currently in progress.

In view of the First Circuit decision the Commission intends to issue a **Federal Register** notice offering an opportunity for a hearing on whether to approve the Trojan plan. In addition, the Commission is considering whether it is necessary to halt any decommissioning activity at Trojan, pending a hearing. The First Circuit decision does not require the Commission to take affirmative action halting dismantling activities currently being conducted in reliance on the interpretation rejected by the court. Nonetheless, the Commission's prior interpretation of its rules precludes major dismantling activities prior to approval of a decommissioning plan.

Comments submitted at this time by interested persons should address the Commission's legal authority to allow or forbid further decommissioning activity at Trojan and should address the current balance of equities, including (1) any consequences for public health and safety and the environment, (2) the costs to PGE and others from interrupting decommissioning activities, and (3) the public interest. The Commission also requests comments on the Commission's proposed response to the First Circuit decision as a general matter. Alternative suggestions on how the Commission should oversee decommissioning in the wake of the First Circuit decision are welcome.

The NRC requests PGE to submit its comments no later than 10 calendar days after publication of this notice. The NRC requests other interested members of the public to submit comments as soon thereafter as possible, but no later than 17 calendar days after publication of this notice. The NRC promptly will place copies of all comments in its Public Document Room and in the Local Public Document Room at the Trojan site.

In addition, PGE and the parties to the Oregon state proceeding reviewing the Trojan CRP should serve their comments directly on each other and on the NRC staff. All comments should be addressed to: Emile Julian, Chief, Docketing and Service Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Service of comments on the NRC Staff may be accomplished by addressing them to: Seymour H. Weiss, Chief, Non-Power Reactors and Decommissioning Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Lawrence J. Chandler, Esq., Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand-delivered to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal Workdays.

FOR FURTHER INFORMATION CONTACT: Charles Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 415–1606.

Dated at Rockville, MD, this 30th day of August, 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 95–22034 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

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[1] *See* 53 FR 24018 (June 27, 1988).

[2] Subsequently, on February 14, 1995, the NRC approved a decommissioning plan for Yankee Rowe. *See* 60 FR 9870 (February 22, 1995). During the approval process, the NRC staff held an informal public meeting to receive comments about the plan.

[3] Pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the Court's mandate will issue no later than September 12, 1995, unless the intervenor YAEC petitions for rehearing or obtains a stay of mandate pending a petition for Certiorari.

[4] The Commission has published for comment a proposed decommissioning rule that would introduce significant changes in the present regulations. *See* 60 FR 37374 (July 20, 1995). Because this new rulemaking is underway, the Commission does not intend to undertake procedures to reinstate the 1993 policy change.

[5] The NRC staff offered an opportunity for hearings on proposed orders approving the Shoreham, Fort St. Vrain, and Rancho Seco decommissioning plans, which were the only plans approved under the Commission's 1988 decommissioning regulations. *See, e.g.*, 56 FR 66459 (December 23, 1991); 57 FR 8940 (Mar. 13, 1992); and 57 FR 9577 (Mar. 19, 1992). A hearing was requested on the Rancho Seco plan and was being conducted when the case was settled. A hearing was requested on the Shoreham plan, but the case was settled before the hearing opened.

[Docket No. 50–29]

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Federal Court Decision and Opportunity for Public Comments

On July 20, 1995, the United States Court of Appeals for the First Circuit issued a decision granting a petition by the Citizens Awareness Network ("CAN") for review of a decision by the Nuclear Regulatory Commission. *See Citizens Awareness Network, Inc. v. NRC,* No. 94–1562, ———F.3d———, 1995 WL 419188 (1st Cir., July 20, 1995). The First Circuit found that the Commission erred when it rejected CAN's request for a hearing on the component removal project ("CRP") that Yankee Atomic Electric Power Company ("YAEC") is carrying out as part of decommissioning the Yankee Nuclear Power Station, located in Rowe, Massachusetts. The Court held that "CAN was entitled to a hearing under section 189a (of the Atomic Energy Act of 1954) in connection with the NRC decision to permit YAEC's early CRP." Slip op. at 26. The Court also held that the Commission had violated the National Environmental Policy Act by permitting YAEC to initiate the CRP before the agency had prepared an environmental assessment or impact statement. The Court remanded the case to the Commission for further action in accordance with these holdings.

In reaching these results the Court criticized the Commission's change in interpretation of its 1988 decommissioning regulations [1] that it announced in a staff requirements memorandum dated January 14, 1993. In that memorandum, the Commission decided to allow its licensees to conduct "any decommissioning activity" prior to NRC approval of a decommissioning plan, so long as the activity did not "violate the terms of the licensee's existing license * * * or 10 CFR 50.59 as applied to the existing license." Previously, the Commission had required that "major dismantling and other activities * * * must await NRC approval of a decommissioning plan." *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI–91–2, 33 NRC 61, 73 n.5 (1991). *Accord, Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI–92–2, 35 NRC 47, 61 n.7 (1992). Relying on the Commission's new interpretation, YAEC began removing major components from its Yankee reactor before obtaining approval of a decommissioning plan.[2] In its decision, the First Circuit held (among other things) that the Commission had failed to give an adequate explanation for its shift in policy.

The Commission will not seek either rehearing of this decision by the First Circuit or review in the United States Supreme Court. When the First Circuit's mandate issues, the Commission will comply with the decision.[3] By this notice the Commission intends (1) to inform persons with an interest in decommissioning activities at Yankee about the Commission's present views on what compliance likely will entail and (2) to solicit those persons' views on the compliance issue.

The Commission currently believes that, pending completion of its ongoing rulemaking on decommissioning, further decommissioning activities must be conducted under NRC decommissioning regulations as the Commission interpreted and applied them prior to the 1993 change in interpretation that the court rejected.[4] Prior to January, 1993, NRC licensees could not initiate major dismantling activities prior to Commission approval of a decommissioning plan. Furthermore, prior to 1993 the Commission consistently offered opportunities for hearings on proposed decommissioning plans.[5]

Thus, after the mandate issues, the Commission intends to issue a **Federal Register** notice that will offer an opportunity for a hearing on the Yankee decommissioning plan and on whatever remains to be done under the CRP. In addition, the Commission is considering whether it is necessary to halt any decommissioning activity at Yankee, pending a hearing. The First Circuit's decision does not require the Commission to take affirmative action halting dismantling activities YAEC currently is conducting in reliance on the interpretation rejected by the court. Nevertheless, the Commission's prior interpretation of its rules precludes major dismantling activities prior to approval of a decommissioning plan.

Comments submitted at this time by interested persons should address the Commission's legal authority to allow or forbid further decommissioning activity at Yankee and should address the current balance of equities, including (1) any consequences for public health and safety and the environment, (2) the costs to YAEC and others from interrupting decommissioning activities, and (3) the public interest. The Commission also requests comments on the Commission's proposed response to the First Circuit decision as a general matter. Alternative suggestions on how the Commission should oversee decommissioning in the wake of the First Circuit decision are welcome.

The NRC requests YAEC to submit its comments no later than 10 calendar days after publication of this notice. The NRC requests other interested members of the public, including CAN, to submit comments as soon thereafter as possible, but no later than 17 calendar days after publication of this notice. The NRC promptly will place copies of all comments in its Public Document Room and in the Local Public Document Room at the Yankee site.

In addition, CAN and YAEC should serve their comments on each other and on the NRC staff. All comments should be addressed to: Emile Julian, Chief, Docketing and Service Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Service of comments on the NRC Staff may be accomplished by addressing them to: Seymour H. Weiss, Chief, Non-Power Reactors and Decommissioning Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Lawrence J. Chandler, Esq., Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand-delivered to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland 20852.

FOR INFORMATION CONTACT: Charles Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission,

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[1] *See* 53 FR 24018 (June 27, 1988).

[2] Subsequently, on February 14, 1995, the NRC approved a decommissioning plan for Yankee Rowe. *See* 60 FR 9870 (February 22, 1995). During the approval process, the NRC staff held an informal public meeting to receive comments about the plan.

[3] Pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the Court's mandate will issue no later than September 12, 1995, unless the intervenor YAEC petitions for rehearing or obtains a stay of mandate pending a petition for Certiorari.

[4] The Commission has published for comment a proposed decommissioning rule that would introduce significant changes in the present regulations. *See* 60 FR 37374 (July 20, 1995). Because this new rulemaking is underway, the Commission does not intend to undertake procedures to reinstate the 1993 policy change.

[5] The NRC staff offered an opportunity for hearings on proposed orders approving the Shoreham, Fort St. Vrain, and Rancho Seco decommissioning plans, which were the only plans approved under the Commission's 1988 decommissioning regulations. *See, e.g.*, 56 FR 66459 (December 23, 1991); 57 FR 8940 (Mar. 13, 1992); and 57 FR 9577 (Mar. 19, 1992). A hearing was requested on the Rancho Seco plan and was being conducted when the case was settled. A hearing was requested on the Shoreham plan, but the case was settled before the hearing opened.

Washington, DC 20555, telephone (301) 415–1606.

Dated at Rockville, MD, this 30th day of August, 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 95–22035 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No.: 070–3073]

Consideration of Amendment Request for Decommissioning the Kerr-McGee Corp. Cushing Facility in Cushing, Okla., and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Consideration of Amendment Request for Decommissioning the Kerr-McGee Corporation Cushing Facility in Cushing, Oklahoma, and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Special Nuclear Material License No. SNM–1999, issued to the Kerr-McGee Corporation (the Licensee), for the decommissioning of its former enriched uranium and thorium processing facility in Cushing, Oklahoma.

The Licensee requested the amendment in a letter dated May 9, 1995, requesting that License No. SNM–1999 be amended to incorporate the decommissioning plan (DP) for the Cushing facility submitted to NRC in April 1994. Radioactive contamination at the Cushing facility resulted from operations to convert uranium hexafluoride or other compounds and/or scrap to nuclear fuel materials, and operations to process thorium to produce thorium pellets. These operations were conducted from 1962 through mid-1966. The license amendment would authorize the Licensee to decommission the Cushing facility in accordance with the DP.

The NRC will require the Licensee to remediate the Cushing facility to meet NRC's criteria, and, during the decommissioning activities, to maintain effluents and doses as low as reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or
2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kerr-McGee Corporation, Kerr-McGee Center, Oklahoma City, OK, 73125, Attention: Mr. Jess Larsen, and
2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Md., this 23rd day of August, 1995.

For the Nuclear Regulatory Commission,

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–22038 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–271]

In the Matter of: Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Exemption

I

The Vermont Yankee Nuclear Power Corporation (VYNPC, the licensee) is the holder of Facility Operating License No. DPR–28 which authorizes operation of the Vermont Yankee Nuclear Power Station (the facility) at power levels no greater than 1593 megawatts thermal. The facility is a single-unit boiling water reactor (BWR) located at the licensee's site in Windham County, Vermont.

The License provides, among other things, that the Vermont Yankee Nuclear Power Station is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants. The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Subsection III.J is the subject of the licensee's exemption request.

Section III.J of Appendix R requires that emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

III

By letter dated June 29, 1995, the licensee requested an exemption from Section III.J of Appendix R. In particular, the licensee stated that it cannot meet the requirements for emergency lighting units with at least an 8- hour battery power supply in the following areas:

(1) A portion of general yard areas for access and egress to the Intake

Structure, the Northwest Cooling Tower valve pit, and the fuel oil transfer pump building, and

(2) In those areas needed for manual hookup of a portable fuel oil transfer pump.

The licensee proposes to utilize the security perimeter lighting for outdoor egress routes and one outdoor task. Based on the staff's review of the information provided by the licensee, the staff has concluded that, given that the security lighting is powered from a separate power source, the security lighting is not vulnerable to fire loss. The security lighting is inspected and maintained as part of the plant security requirements. The licensee has confirmed that the illumination levels in the affected areas of the plant are adequate to enable operators to implement the actions required for safe shutdown.

Therefore, the staff considers the licensee's alternative lighting configuration to be equivalent to that achieved by literal conformance with Appendix R to 10 CFR part 50 and, therefore, meets the underlying purpose of Section III.J of Appendix R. Therefore, the licensee's request for exemption from the requirements of Section III.J in the subject locations should be granted.

IV

Pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption unless special circumstances are present. Item (ii) of the subject regulation includes special circumstances where application of the subject regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of Section III.J of Appendix R is to provide adequate illumination to assure the capability of performing all necessary safe shutdown functions as well as provide illumination for required movements into and out of the plant. In lieu of the 8-hour battery powered units specified by Appendix R, the licensee has proposed using existing security lighting. The staff has reviewed the proposed alternative and has concluded, as described above, that the security lighting system would be a reliable alternative and would provide an adequate level of illumination to assure that all required safe shutdown functions and required personnel movements can be performed. Therefore, the staff concludes that special circumstances exist for the licensee's requested exemption in that imposition of the literal requirements of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of Appendix R to 10 CFR part 50.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances exist in that existing levels of emergency lighting satisfy the underlying purpose of Appendix R to 10 CFR part 50. Further, the staff has concluded that the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants the exemption request from the requirements of Section III.J of Appendix R to 10 CFR part 50 described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the quality of the human environment (60 FR 44086).

This Exemption is effective upon issuance.

Dated at Rockville, Md., this 30th day of August 1995.

For the Nuclear Regulatory Commission,

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22036 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–271]

In the Matter of: Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Revocation of Exemption

I

The Vermont Yankee Nuclear Power Corporation (VYNPC, the licensee) is the holder of Facility Operating License No. DPR–28 which authorizes operation of the Vermont Yankee Nuclear Power Station (the facility) at power levels no greater than 1593 megawatts thermal. The facility is a single-unit boiling water reactor (BWR) located at the licensee's site in Windham County, Vermont.

The License provides, among other things, that the Vermont Yankee Nuclear Power Station is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Subsection III.J is the subject of the licensee's request.

Section III.J of Appendix R requires that emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto. On June 26, 1989, the NRC granted an exemption from these requirements for specified areas of the Reactor Building.

By letter dated June 29, 1995, the licensee requested revocation of that exemption.

III

Since the issuance of the exemption from the emergency lighting requirements of Appendix R, the licensee has installed conforming 8-hour battery powered lighting in the affected areas. As a result, these areas conform to the lighting requirements of the regulation and the exemption is no longer needed by the licensee. The licensee has therefore requested revocation of the exemption.

The NRC staff has reviewed the information submitted by the licensee and concludes that the conditions for which the exemption for emergency lighting was granted no longer exist because the licensee has installed 8-hour battery powered lighting which conform to Section III.J of Appendix R to 10 CFR part 50.

IV

Accordingly, the Commission has determined that the specific exemption from 10 CFR part 50, Appendix R, granted on June 26, 1989, for emergency lighting is hereby revoked in that it is no longer needed.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this Revocation of Exemption will have no significant impact on the quality of the human environment (60 FR 44088).

This Revocation of Exemption is effective upon issuance.

Dated at Rockville, MD., this 30th day of August 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II,Office of Nuclear Reactor Regulation.

[FR Doc. 95–22037 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–302]

Florida Power Co.; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–72, issued to Florida Power Corporation, (the licensee), for operation of the Crystal River Unit 3 Nuclear Generating Plant (CR3), located in Citrus County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated May 19, 1995, as supplemented August 8, 1995, for exemption from certain requirements of Title 10 Code of Federal Regulations, part 50 (10 CFR part 50), Appendix J, "Primary Reactor Containment Leakage Testing for Water Cooled Power Reactors," Paragraph III.D.1.(a), relating to Integrated Leak Rate Test (ILRT) frequency. The proposed exemption would allow CR3 a one-time interval extension for the Type A test (containment integrated leak rate test) by approximately 24 months from the spring 1996 refueling outage to the spring 1998 refueling outage.

The Need for the Proposed Action

Pursuant to 10 CFR part 50, Appendix A, "General Design Criteria for Nuclear Power Plants," criterion 16, "Containment design," the "[r]eactor containment and associated systems shall be provided to establish an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment and to assure that the containment design conditions important to safety are not exceeded for as long as postulated accident conditions require." 10 CFR 50.54, "Conditions of License," paragraph O, states that "[p]rimary reactor containments for water cooled power reactors shall be subject to the requirements set forth in Appendix J to this part." 10 CFR part 50, Appendix J, requires periodic verification by tests of the leak-tight integrity of the primary reactor containment and establishes the acceptance criteria for such tests. The purposes of the tests are to assure that periodic surveillance of reactor containment penetrations is performed so that proper maintenance and repairs are made during the service life of the containment and leakage through the primary reactor containment shall not exceed allowable leakage rate values as specified in the technical specifications or associated bases. Paragraph III.D.1 specifies that a set of three Type A tests is to be performed at approximately equal intervals during each 10-year service period. Such tests are to be limited to periods when the plant is non-operational and secured in the shutdown condition under the administrative controls and in accordance with the safety procedures defined in the license.

For CR3, the next available opportunity for performing the ILRT would be in Spring 1996. The licensee requested a one-time interval extension for the ILRT by approximately 24 months from the Spring 1996 refueling outage to the Spring 1998 refueling outage. The licensee indicated that approval of its request would save over two million dollars and would reduce personnel radiation exposure. The proposed action is needed to permit the licensee to defer the ILRT.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents.

In support of its exemption request, the licensee submitted information pertaining to Types A, B and C testing history, structural capability, and risk assessment.

Two ILRTs have been performed during the last seven years with successful results. There have been no permanent or temporary modifications to the containment structure, liner or penetrations since the last Type A test, and no future modifications are planned prior to the 1998 refueling outage which could adversely affect the Type A test results.

The licensee will continue to be required to conduct the Type B and C local leak rate tests which are, in general, the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. Types B and C testing history at CR3 shows that the overall combined as-found leakage has been less than the allowed combined leakage rate of 0.6 La (266,431 SCCM) at the calculated maximum peak containment pressure as specified in Appendix J. The NRC staff considers that these inspections provide the necessary level of confidence in the continued integrity of the containment boundary. It is also noted that the licensee, as a condition of the proposed exemption, will perform the visual containment inspection although it is required by Appendix J to be performed only in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of Crystal River Unit 3, dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on August 28, 1995, the NRC staff consulted with the State of Florida official, Dr. Lyle Jerretti, Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated May 19, 1995, as supplemented August 8, 1995, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, MD, this 28th day of August 1995.

For the Nuclear Regulatory Commission,

David B. Matthews,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22041 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 040–8801]

Organization, Functions, and Authority Delegations; West Lake Landfill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Deferral of Regulatory Oversight to the U.S. Environmental Protection Agency for the West Lake Landfill, Bridgeton, Missouri, and Removal of West Lake Landfill From SDMP List.

This notice is to inform the public that, on June 16, 1995, the U.S. Nuclear Regulatory Commission (the Commission) deferred regulatory oversight to the U.S. Environmental Protection Agency (EPA) for the remedial actions at the West Lake Landfill site in Bridgeton, Missouri. The site contains both hazardous and radioactive waste, is currently being remediated by EPA, and does not hold a current NRC license.

NRC and EPA conduct regulatory programs for site remediation under the Atomic Energy Act and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), respectively. Based on the reviews to date, NRC concluded that the remedial program being administered by EPA at the West Lake Landfill site under CERCLA is adequate to protect the public and the environment from the risks associated with the radioactive contamination at the site. Therefore, NRC oversight of remediation at the site would be burdensome and duplicative. Consequently, NRC is deferring to EPA regulatory oversight of the remedial actions at West Lake Landfill. In addition, the West Lake Landfill site will be removed from NRC's Site Decommissioning Management Plan list. NRC staff does not plan to take any further action on the West Lake Landfill site unless specifically requested by EPA. Any questions regarding NRC's deferral decision should be forwarded to Ron Uleck by mail at Mail Stop T8F37, U.S. Nuclear Regulatory Commission, Washington, DC 20555 or by phone at (301) 415–6722.

Dated at Rockville, Maryland, this 28th day of August 1995.

For the U.S. Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–22040 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Notice of Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, September 12 and 13, 1995 at the Madison Hotel, 15th & M Streets, NW., Washington, DC.

The Full Commission will convene at 9:00 a.m. on September 12, 1995, and adjourn at approximately 5 p.m. On Wednesday, September 13, 1995, the meeting will convene at 8 a.m. and adjourn at noon. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

All meetings are open to the public.

Molly Ryan,

Executive Officer.

[FR Doc. 95–22030 Filed 9–5–95; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21324; 811–6021]

American Adjustable Rate Term Trust Inc.—1995; Notice of Application

August 29, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: American Adjustable Rate Term Trust Inc.—1995.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 25, 1995 and amended on August 17, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 222 South Ninth Street, Piper Jaffray Tower, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified investment company organized as a Minnesota corporation. On January 5, 1990, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective and applicant's initial public offering commenced on February 15, 1990.

2. Applicant is a "term trust" established and managed by Piper Capital Management Incorporated (the "Adviser") with a scheduled termination date of April 15, 1995. No action was needed by shareholders, the Board of Directors, or under state law, to effect the liquidation.

3. Applicant's investment objective was to provide a high level of current income and to return $10 per Trust share (the initial offering price per Trust share) to investors. The planned and

orderly liquidation of securities began in October 1994 and such securities were sold in the ordinary course of business at their then current market values. The proceeds of such liquidations then were invested in short-term securities which matured on or before April 17, 1995.

4. In connection with its scheduled liquidation, on April 17, 1995 applicant distributed approximately $105,800,000, which represented approximately 10,828,926 shares at $9.76922 net asset value, to its security holders. There are 15 security holders to whom payment has not been made because they have not yet submitted their stock certificates. This represents approximately 7,274 shares with a value of $68,314.52 which is being held in a non-interest bearing bank account at the transfer agent. Letters requesting the certificates have been mailed to each such security holder and payment will be made as soon as practicable after the submission of the certificates. The distribution to shareholders was based on net asset value.

5. Applicant has retained $126,575 in cash to pay estimated expenses for transfer agent fees, tax reporting, auditing, accounting and legal expenses. If expenses are greater than the amount retained, the Adviser will pay the excess amount.

6. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant is neither engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22066 Filed 9–5–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–21325; No. 812–9506]

IDS Life Insurance Company, et al.

August 29, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: IDS Life Insurance Company ("IDS") and IDS Life Variable Life Separate Account ("Separate Account").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4) thereunder.

SUMMARY OF APPLICATION: Applicants request an order that will permit the Separate Account, and any future separate accounts established by IDS ("Future Accounts"), to deduct from premium payments of certain flexible premium variable life insurance policies, an amount that is reasonably related to the IDS's increased Federal tax burden resulting from the receipt of those premium payments pursuant to the application of Section 848 of the Internal Revenue Code of 1986, as amended.

FILING DATE: The application was filed on March 1, 1995, and was amended on July 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 25, 1995, and should be lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants: Mary Ellyn Minenko, Counsel, IDS Life Insurance Company, IDS Tower 10, Minneapolis, Minnesota 55440.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. IDS is a stock life insurance company, organized in Minnesota, and is an indirect subsidiary of American Express Company.

2. The Separate Account is a separate account established by IDS and registered under the 1940 Act as a unit investment trust. Currently, the Separate Account has 6 subaccounts each of which invests in a corresponding portfolio of IDS Life Series Fund, Inc., a registered open-end management investment company. The Separate Account is used to fund: (1) Certain individual flexible premium variable life insurance contracts ("Existing Policies"); (2) certain flexible survivorship variable life insurance policies ("Current Policies") for which a registration statement has been filed recently with the Commission to register interests in the Current Policies under the Securities Act of 1933; and (3) certain flexible variable life insurance policies developed by IDS Life in the future ("Future Policies") (Current Policies, together with Future Policies, "Policies").

3. IDS is the principal underwriter for the Policies. IDS is a registered broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

4. Applicants propose to deduct a charge to reimburse IDS for the increase in its Federal income taxes resulting from the application of Section 848 of the Internal Revenue Code of 1986 ("Code"), as amended. The charge will be reasonably related to IDS's increased Federal tax burden, and will be deducted from premiums received.

5. The Omnibus Budget Reconciliation Act of 1990 ("OBRA 1990"), amending Section 848 of the Code, requires life insurance companies to capitalize and amortize over ten years certain general expenses for the current year. Prior law allowed these expenses to be deducted in full from the current year's gross income. Section 848, as amended, effectively accelerates the realization of income from specified contracts and, consequently, the payment of taxes on that income. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the amount of general deductions that must be capitalized and amortized is measured by the premiums received under the Policies.

6. The amount of deductions subject to Section 848 equals a percentage of the current year's net premiums received (*i.e.,* gross premiums minus return premiums and reinsurance premiums) under life insurance or other contracts categorized under this Section. The Policies will be categorized under Section 848 as life insurance contracts requiring 7.7% of the net premiums received to be capitalized and amortized under the schedule set forth in Section 848(c)(1).

7. The increased tax burden on every $10,000 of net premiums received under the Policies is quantified by Applicants as follows. For each $10,000 of net premiums received in a given year, IDS

must capitalize $770 (i.e., 7.7% of $10,000), and $38.50 of this amount may be deducted in the current year. The remaining $731.50 ($770 less $38.50) is subject to taxation at the corporate tax rate of 35% and results in $256.02 (.35% × $731.50) more in taxes for the current year than IDS otherwise would have owed prior to OBRA 1990. However, the current tax increase will be offset partially by deductions allowed during the next ten years, which result from amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

8. It is IDS's business judgment that it is appropriate to use a discount rate of at least 10% in evaluating the present value of its future tax deductions for the following reasons. Capital that IDS must use to pay its increased federal tax burden under Section 848 will be unavailable for investment. The cost of capital used to satisfy this increased tax burden essentially will be IDS's after-tax rate of return (i.e., the return sought on invested capital), which is in excess of 10%. Accordingly, Applicants submit that the targeted rate of return is appropriate for use in this present value calculation.

9. In determining the rate of return used in arriving at the discount rate, IDS considered a number of factors. These factors include current market rates, inflation, and expected future interest rate trends.

10. Using a federal corporate tax rate of 35%, and assuming a discount rate of 10%, the present value of the increased tax burden resulting from Section 848 on each $10,000 of net premium is $95.62.

11. IDS does not incur incremental federal income tax when it passes on state premium taxes to Policy owners because state premium taxes are deductible in computing federal income taxes. Conversely, federal income taxes are not deductible in computing IDS's federal income taxes. To compensate IDS fully for the impact of Section 848, IDS must impose an additional charge to make it whole for the $95.62 additional tax burden attributable to Section 848, as well as the tax on the additional $95.62 itself, which can be determined by dividing $95.62 by the complement of 35% federal corporate income tax rate (i.e., 65%), resulting in an additional charge of $147.11 for each $10,000 of net premiums, or 1.47%.

12. Based on its prior experience, IDS reasonably expects to fully take almost all future deductions. It is IDS's judgment that a 1.25% charge would reimburse it for the increased federal income tax liabilities under Section 848. Applicants represent that the 1.25% charge will be reasonably related to IDS's increased federal income tax burden under Section 848. This representation takes into account the benefit to IDS of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to IDS's targeted rate of return) in computing the future deductions resulting from such amortization. IDS also may add this 1.25% charge to the Existing Policies, but only with respect to sales of new policies, not on additional premiums paid to currently-held policies. (SEC File Nos. 811–4298/33–11165).[1]

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act granting exemptions from Sections 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) to allow the deduction of a charge from premiums to compensate IDS for its increased federal tax burden based on receipt of these premiums under the Policies, and under the Existing Policies. The charge will be in an amount that is reasonably related to IDS's increased federal tax burden. Applicants assert that it is appropriate to deduct a charge for an insurer's increased tax burden attributable to premiums received, and to exclude the deduction of this charge from sales load, because it is a legitimate expense of the company and not for sales and distribution expenses.

2. Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an exemption is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]."

3. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, and IDS (as depositor and principal underwriter) are deemed to be subject to Section 27 of the 1940 Act.

4. Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the following conditions are met. The proceeds of all payments (except amounts deducted for "sales load") must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of unit investment trusts. These proceeds also must be held under an indenture or agreement that conforms with the provisions of Section 26(a)(2) and Section 26(a)(3) of the 1940 Act.

5. "Sales load" is defined under Section 2(a)(35), in relevant part, as:

> The difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Sales loads on periodic payment plan certificates are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments.

6. Certain provisions of Rule 6e–3(T) provide a range of exemptive relief. Rule 6e–3(T) provides exemptive relief if the separate account issues flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule.

7. Applicants state that paragraph (b)(13)(iii)(E) of Rule 6e–3(T) provides exemptive relief from Section 27(c)(2) to permit an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by other governmental entities. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by subparagraph (b)(13)(iii) of Rule 6e–3(T). Applicants note, however, that the language of paragraph (c)(4) of the Rule appears to require that deductions for federal tax obligations from receipt of premium payments be treated as "sales load."

8. Applicants state that paragraph (b)(1), together with paragraph (c)(4), of Rule 6e–3(T) provides an exemption from the Section 2(a)(35) definition of "sales load" by substituting a new definition to be used for the purposes of the Rule. Rule 6e–3(T)(c)(4) defines "sales load" during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rule, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions,

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[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

arguably causing the deduction to be treated as part of "sales load."

9. Applicants state that the public policy that underlies paragraph (b)(13) of Rule 6e–3(T), and particularly subparagraph (b)(13)(i), like that which underlies paragraphs (a)(1) and (h)(1) of Section 27, is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants submit that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses.

10. Applicants assert that the standards of Section 6(c) are satisfied because the requested relief is appropriate in the public interest and consistent with the purposes of the 1940 Act and the protection of investors. The exemptive relief would eliminate the need for IDS to file additional exemptive applications for each Policy or Future Policy to be issued through a Future Account with respect to the same issues under the 1940 Act that have been addressed in this application, and thus would promote competitiveness in the variable life insurance market by avoiding delay, reducing administrative expenses, and maximizing efficient use of resources. Applicants further assert that the exemptive relief would enhance IDS's ability to effectively take advantage of business opportunities as they arise. If IDS were required to repeatedly seek exemptive relief with respect to the same issues addressed in the application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses.

Conditions for Relief

1. IDS will monitor the reasonableness of the 1.25% charge.

2. The registration statement for each Policy under which the 1.25% charge is deducted will: (a) disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to IDS's increased federal tax burden under Section 848 of the Code.

3. The registration statement for each Policy providing for the 1.25% deduction will contain as an exhibit an actuarial opinion as to: (a) The reasonableness of the charge in relation to IDS's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (b) the reasonableness of the targeted rate of return that is used in calculating such charge; and (c) the appropriateness of the factors taken into account by IDS in determining such targeted rate of return.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions to permit IDS to deduct 1.25% of premium payments under the Policies are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22067 Filed 9–5–95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 21323; International Series Release No. 846; 812–9640]

Societe Generale; Notice of Application

August 29, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Societe Generale.

RELEVANT ACT SECTIONS: Order under section 6(c) of the Act for an exemption from section 17(f) of the Act.

SUMMARY OF APPLICATION: Societe Generale requests an order that would permit United States registered investment companies other than investment companies registered under section 7(d) (a "U.S. Investment Company"), for which Societe Generales serve as custodian or subcustodian, to maintain foreign securities and other assets in the Ivory Coast with Societe General de Banques en Cote d'Ivoire ("SGBCI"), in Morocco with Societe Generale Marocaine de Banques ("SGMB"), and in South Africa with Societe Generale South Africa Limited ("SGSA"), subsidiaries of Societe Generale (collectively, the "Foreign Subsidiaries").

FILING DATES: The application was filed on June 23, 1995 and amended on August 28, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant: Societe Generale, Securities Operations, 32, rue du Champ de Tir, 44300 Nantes, France; cc: Bruce E. Clubb, Esq., Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C., 20006–4078.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Societe Generale requests an order to permit Societe Generale, the Foreign Subsidiaries, any U.S. Investment Company, and any custodian for a U.S. Investment Company to maintain foreign securities, cash, and cash equivalents (collectively, "Assets") in the custody of the Foreign Subsidiaries. For the purposes of this application, "foreign securities" includes: (a) Securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

2. Societe Generale is a bank organized and existing under the laws of France. Societe Generale is regulated in France by the Ministere de l'Economie at des Finances and is subject to law No. 8846 of June 24, 1984 Relating to the Activities and Regulation of Credit Institutions. Societe Generale is one of the leading financial services institutions in France and currently

provides worldwide custody services that include holding Assets of U.S. Investment Companies or their custodians. In the United States, Societe Generale has branch banking operations, representative offices, and as a result, is subject to the Bank Holding Company Act of 1956 and the International Banking Act of 1978. As of December 31, 1994, Societe Generale had consolidated shareholders' equity in excess of the equivalent of $10,000,000,000.

3. SGBCI was incorporated in Abidjan in 1962. It is a 37% owned direct subsidiary of Societe Generale. Other major shareholders include the Ivory Coast government and Credit Suisse. SGBCI is regulated by the Ministry of the Economy, Finance and Planning of the Ivory Coast under law No. 90–589 of July 25, 1990 Regarding Bank Regulation. The Ivory Coast is a member of the West African Monetary Union ("WAMU") and, as a result, SGBCI is supervised by the WAMU central bank.

4. Societe Generale commenced banking operations in Morocco in 1913, which operations it incorporated into a subsidiary in 1962. After acquiring another bank in 1965, the merged entity was renamed SGMB. SGMB is a 35% owned direct subsidiary of Societe Generale. Other major shareholders include Societe Marseillaise de Credit and Credit Suisse. SGMB is regulated by the Ministry of Finance of Morocco and Bank al-Maghrib, the Moroccan central bank, under Law No. 93–147 of June 7, 1993 Relating to the Activities and Regulation of Credit Institutions.

5. SGSA is a bank incorporated in South Africa in 1981. SGSA was acquired by Societe Generale in 1991. It is a wholly owned subsidiary of Societe Generale. SGSA is regulated by the Registrar of Banks of South Africa and the Reserve Bank of South Africa under Banks Act No. 94 of 1990.

6. Societe Generale requests relief to permit Societe Generale, as custodian or subcustodian for a U.S. Investment Company, when custody services are required in the Ivory Coast, Morocco, or South Africa, to deposit, or cause or permit the U.S. Investment Company to deposit, its Assets with the appropriate Foreign Subsidiary as delegate for Societe Generale.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including a bank having at all times aggregate capital, surplus, and undivided profits of at least $500,000. A "bank", as that term is defined in section 2(a)(5) of the Act, includes: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, which is supervised or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

2. The only entities located outside the United States that section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified U.S. banks. Rule 17f–5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(i) defines the term "Eligible Foreign Custodian" to include a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000 or its equivalent. Societe Generale is an Eligible Foreign Custodian under the rule.

3. The Foreign Subsidiaries satisfy the requirements of rule 17f–5, with the exception of meeting the minimum shareholders' equity requirement. Accordingly, they are not Eligible Foreign Custodians and, absent exemptive relief, could not serve as a custodian for U.S. Investment Company Assets.

4. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Societe Generale submits that its request satisfies this standard.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed regarding each Foreign Subsidiary satisfy the requirements of rule 17f–5 in all respects other than the Foreign Subsidiary's level of shareholder equity.

2. Societe Generale, any U.S. Investment Company, and any custodian for a U.S. Investment Company, will deposit Assets with a Foreign Subsidiary only in accordance with one of the two contractual arrangements described below, which arrangement will remain in effect at all times (during which the Foreign Subsidiary fails to satisfy the requirements of rule 17f–5 and during which such Assets remain deposited with the Foreign Subsidiary).

a. *The Three-Party Agreement Arrangement.* Under this arrangement, the agreement will be a three-party agreement (the "Three-Party Agreement") among (i) Societe Generale, (ii) the Foreign Subsidiary and (iii) the U.S. Investment Company, or the custodian for a U.S. Investment Company pursuant to which Societe Generale will undertake to provide specified custody services, and will delegate to the Foreign Subsidiary such of the duties and obligations of Societe Generale as will be necessary to permit the Foreign Subsidiary to hold in custody the U.S. Investment Company's Assets. The Three-Party Agreement further will provide that Societe Generale will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by the Foreign Subsidiary of its responsibilities under the Three-Party Agreement to the same extent as if Societe Generale had itself been required to provide custody services under the Three-Party Agreement.

b. *The Custody Agreement/Subcustody Agreement Arrangement.* Societe Generale will deposit Assets with a Foreign Subsidiary in accordance with the Custody Agreement and Subcustody Agreement described below.

i. The Custody Agreement will be between Societe Generale and the U.S. Investment Company or any custodian for a U.S. Investment Company. In that agreement, Societe Generale will undertake to provide specified custody or subcustody services, and the U.S. Investment Company (or its custodian) will authorize Societe Generale to delegate to the Foreign Subsidiary such of Societe Generale's duties and obligations as will be necessary to permit the Foreign Subsidiary to hold in custody the assets of U.S. Investment Companies. The Custody Agreement further will provide that Societe Generale will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by the Foreign Subsidiary

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of its responsibilities to the same extent as if Societe Generale had itself been required to provide custody services under the Custody Agreement.

ii. A Subcustody Agreement will be executed by Societe Generale and the Foreign Subsidiary. Pursuant to this agreement, Societe Generale will delegate to the Foreign Subsidiary such of Societe Generale's duties and obligations as will be necessary to permit the Foreign Subsidiary to hold Assets in custody in the country in which it operates. The Subcustody Agreement will explicitly provide that (i) the Foreign Subsidiary is acting as a foreign custodian for Assets that belong to a U.S. Investment Company pursuant to the terms of an exemptive order issued by the SEC and (ii) the U.S. Investment Company or its custodian (as the case may be) that has entered into a Custody Agreement will be entitled to enforce the terms of the Subcustody Agreement and can seek relief directly against the Foreign Subsidiary. Further, the Subcustody Agreement will be governed either by New York law or French law, or by Ivory Coast law for SGBCI, Moroccan law for SGMB, or South African law for SGSA. If it is governed by French, Ivory Coast, Moroccan, or South African law, Societe Generale shall obtain an opinion of counsel in France, the Ivory Coast, Morocco, or South Africa, as the case may be, opining as to the enforceability of the rights of a third party beneficiary under the laws of such country.

3. Societe Generale currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22065 Filed 9–5–95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2807]

Texas; Declaration of Disaster Loan Area

Gray County and the contiguous counties of Armstrong, Carson, Collingsworth, Donley, Hemphill, Hutchinson, Roberts, and Wheeler in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms and tornadoes which occurred on June 8, 1995. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 30, 1995, and for economic injury until the close of business on May 30, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155 or other locally announced locations.

The interest rates are:

For Physical Damage:	Percent
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	8.000
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 280712 and for economic injury the number is 863200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 30, 1995.

John T. Spotila,

Acting Administrator.

[FR Doc. 95–22063 Filed 9–5–95; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 25, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–418.

Date filed: August 21, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 15, 1995.

Description: Application of Florida West International Airways, Inc., pursuant to 49 U.S.C. Section 41105, and Subpart Q of the Regulations, requests the transfer to FWIA of Florida West Gateway, Inc.'s existing certificate and exemption authority as well as the scheduled and charter all-cargo service allocations relating to U.S. South American markets.

Docket Number: OST–95–423.

Date filed: August 21, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1995

Description: Application of USAir, Inc., pursuant to 49 U.S.C. Sections 41101 and 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail between the terminal point Philadelphia, Pennsylvania and the coterminal points Rome and Milan, Italy.

Docket Number: OST–95–427.

Date filed: August 21, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1995.

Description: Application of Skyjet, Inc. dba Skyjet Antigua & Barbuda, pursuant to U.S.C. and Subpart Q of the Regulations, requests a foreign air carrier permit authorizing Skyjet Antigua to perform passenger, property and mail charter service between Antigua and Barbuda and the United States.

Docket Number: OST–95–431.

Date filed: August 21, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1995.

Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity authorizing scheduled service of persons, property and mail between Los Angeles, California, and Guadalajara, Mexico.

Docket Number: OST–95–449.

Date filed: August 22, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 19, 1995.

Description: Amendment to the Application of Balkan Bulgarian Airlines, pursuant to Subpart Q of the Regulations, request that it be allowed

to provide foreign scheduled air transportation of persons property and mail between a point or points in Bulgaria and the coterminal points New York, New York, and Detroit, Michigan, United States of America, via Malta, with local traffic rights between Malta, on the one hand, and Detroit and New York, on the other hand.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–22061 Filed 9–5–95; 8:45 am]

BILLING CODE 4910-62-P

Aviation Proceedings; Agreements Filed During the Week Ended August 25, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–432.

Date filed: August 21, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC1 Reso/P 0456 dated August 18, 1995.

Expedited TC1 Longhaul Resos r-1 to r-12.

Proposed Effective Date: Expedited October 15, 1995.

Docket Number: OST–95–433.

Date filed: August 21, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC1 Reso/P 0457 dated August 18, 1995.

Within South America Expedited Reso 002e.

Proposed Effective Date: Expedited October 15, 1995.

Docket Number: OST–95–434.

Date filed: August 21, 1995.

Parties: Members of the International Air Transport Association.

Subject: COMP Reso/P 1058 dated August 18, 1995.

Composite Expedited Resolutions r-1 to r-8.

Effective Date: Expedited October 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–22062 Filed 9–5–95; 8:45 am]

BILLING CODE 4910-62-P

Coast Guard

[CGD 95–064]

National Environmental Policy Act: Agency Procedures for Categorical Exclusions

AGENCY: Coast Guard, DOT.

ACTION: Notice of agency policy.

SUMMARY: The Coast Guard is announcing a change to its policy concerning agency actions that are categorically excluded from additional environmental analysis under the National Environmental Policy Act (NEPA). The change concerns operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.

FOR FURTHER INFORMATION CONTACT: Mr. David Reese, Environmental Compliance and Restoration Branch, (202) 267–1942.

SUPPLEMENTARY INFORMATION:

Background

Under regulations implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500 through 1508), each Federal agency is required to adopt procedures to supplement those regulations (40 CFR 1507.3). The Coast Guard's procedures and policies are published as a Commandant instruction entitled, "National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts" (COMDTINST M16475.1B). On July 29, 1994, the Coast Guard published a notice in the **Federal Register** (59 FR 38654) announcing the revision of section 2.B.2 of the instruction. Section 2.B.2 lists the proposed agency actions that are categorically excluded from the requirement that the actions undergo the analysis that accompanies preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

Discussion of Change

The Coast Guard is amending section 2.B.2.e.(22) (the section) of COMDTINST M16475.1B, which categorically excludes operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs that have been the subject of a programmatic NEPA analysis and documentation. It is being amended to remove the phase "that have been the subject of a programmatic NEPA analysis and documentation."

A review of the implementation of the section disclosed that the phrase "that have been the subject of a programmatic NEPA analysis and documentation" imposes a requirement for a specific level of NEPA analysis and documentation (i.e., a programmatic level) that may not be necessary or appropriate for the actions included in the section. By removing the phrase, the Coast Guard can eliminate unnecessary documentation and provide itself flexibility in determining the appropriate means of complying with NEPA for the listed activities. By removing the phrase, the Coast Guard will have the flexibility to use the section, a programmatic EA or EIS, or an EA or EIS for the specific activity, depending on the nature of the activity being planned. This change also brings the section more in line with the stated purpose and intent of NEPA and the Council on Environmental Quality regulations, which include the requirement in 40 CFR part 1500.4(p) to reduce excessive paperwork by using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment. This change does not effect the Coast Guard's responsibility to comply fully with NEPA before engaging in an activity listed in the section. It can be applied only if there are no extraordinary circumstances, as described in section 2.B.2.b., that would limit its use.

For the reasons set out in the preamble, the Coast Guard announces the following amendment to section 2.B.2.e.(22) of COMDTINST M16475.1B:

2.B.2.e. Categorical Exclusion List

* * * * *

(22) Operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.

* * * * *

Dated: August 30, 1995.

RADM Edward J. Barrett,

Chief, Office of Engineering Logistics and Development.

[FR Doc. 95–22026 Filed 9–5–95; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenues From a Passenger Facility Charge (PFC) at Baltimore Washington International Airport, Baltimore, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent To Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenues from a PFC at Baltimore Washington International Airport under the

provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 6, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Theodore E. Mathison, Administrator of the Maryland Aviation Administration at the following address: P.O. Box 8766, BWI Airport, Baltimore, Maryland 21240–0766.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Maryland Aviation Administration under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Baltimore Washington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 10, 1995, the FAA determined that the application to use the revenue from a PFC submitted by Maryland Aviation Administration was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 11, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: April 31, 2009.

Total estimated PFC revenue: $286,057,383.

Brief description of proposed project(s): This application requests the authority to use the PFC revenues previously authorized to impose for the design and construction of a new ARFF facility to be located southwest of the intersection of Runways 10–28 and 15R–33L.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Maryland Aviation Administration.

Issued in Jamaica, New York on August 28, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–22069 Filed 9–5–95; 8:45 am]

BILLING CODE 4910–13–M

FAA Approval of Noise Compatibility Program; Fort Worth Spinks Airport; Fort Worth, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Fort Worth under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 13, 1995, the FAA determined that the noise exposure maps submitted by the city of Fort Worth under Part 150 were in compliance with applicable requirements. On August 11, 1995, the Administrator approved the Fort Worth Spinks Airport noise compatibility program. All of the recommendations of the program were approved. No program elements relating to mandatory new or revised flight procedures for noise abatement were proposed by the city of Fort Worth.

EFFECTIVE DATE: The effective date of the FAA's approval of the Fort Worth Spinks Airport noise compatibility program is August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, DOT/FAA, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0653, (817) 222–5606. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Fort Worth Spinks Airport, effective August 11, 1995

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable

airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the Federal Aviation Administration, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650.

The city of Fort Worth submitted to the FAA on February 3, 1994, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1991 through January 1995. The Fort Worth Spinks Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 13, 1995. Notice of this determination was published in the **Federal Register** on March 6, 1995.

The Fort Worth Spinks Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 1998. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 13, 1995, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained seven proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 11, 1995.

Outright approval was granted for all of the specific program elements. The following is a listing of the approved actions on and off the airport:

a. Modify arrival and departure flight tracks (approved as voluntary);

b. Voluntary use of noise abatement departure and arrival procedures for aircraft weighing over 12,500 Pounds (approved as voluntary);

c. Maintain current zoning ordinance;

d. Amend and expand the land use plan for noise compatibility;

e. Assign a noise abatement officer for noise program management for all three city of Fort Worth airports;

f. Continue public involvement program;

g. Conduct noise review and update as required.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 11, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Fort Worth Department of Aviation Offices.

Issued in Fort Worth, Texas on August 22, 1995.

Otis T. Welch,

Manager, Texas Airport Development Office.

[FR Doc. 95–22070 Filed 9–5–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. (95–67)]

Crystallinity of Ceramic Tile

AGENCY: Customs Service, Department of the Treasury.

ACTION: Request for comments on the percent of crystallinity necessary to satisfy the Harmonized Tariff Schedules of the United States criteria that a "*ceramic article*" be a shaped product "of crystalline or substantially crystalline structure."

SUMMARY: Customs is attempting to identify the amount of crystallinity necessary to satisfy the aforementioned phrase "substantially crystalline" as it applies to ceramic floor and wall tile. Ceramic articles of this nature are normally imported under Subheading numbers covered by U.S. Note 1 to Chapter 69 of the Harmonized Tariff Schedule of the United States (HTSUS).

DATES: Comments must be received on or before October 1, 1995.

COMMENTS: Written comments (preferably in triplicate) may be addressed to and inspected at the offices of Laboratories and Scientific Services, room 7113, 1301 Constitution Ave., NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Zimmerman, Jr., Office of Laboratories & Scientific Services, (202) 927–1060.

SUPPLEMENTARY INFORMATION:

Background

U.S. Note 1 to Chapter 69 reads in pertinent part "For the purposes of this chapter, a "*ceramic article*" is a shaped article having a glazed or unglazed body of crystalline or substantially crystalline structure * * *". The U.S. Customs Service wishes to define the concept of "substantially crystalline" in scientific terms based on state-of-the-art ceramic technology. In this request for comments, Customs is limiting the scope in defining the phrase to floor and wall tile. For this purpose Customs is soliciting comments from any interested party.

In a recent study of nearly 300 floor and wall tiles, Customs has found that the percent crystallinity for this group of tiles was never less than 30 percent as determined by x-ray diffraction. Furthermore, over 90 percent of the tiles studied demonstrated a crystallinity in the range of 50 to 90 percent.

The scientific literature indicates that the degree of crystallinity a ceramic attains is critically dependent on the raw materials used to make the tile and the heat treatment to which these materials are subjected. Often ceramic materials are engineered to meet the physical requirements for an intended use. Again in the case at hand, Customs is interested in ceramic floor and wall tiles. Two issues that Customs would consider in making the final determination of the degree of crystallinity include: the percent crystallinity necessary to impart resiliency to the tile for its intended use; the percent crystallinity at which a ceramic becomes a glass or a glass-ceramic. Customs does not wish to limit discussions to these two issues. All information provided will be given full consideration.

A.W. Tennant,

Director, Laboratories and Scientific Services.

[FR Doc. 95–22078 Filed 9–5–95; 8:45 am]

BILLING CODE 4820–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

1995–96 Allocation of the Tariff-rate Quota for Raw Cane Sugar

AGENCY: Office of the United States Trade Representative; 600 17th Street, N.W., Washington, D.C. 20508.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocation of the in-quota quantity of the tariff-rate quota for imported raw cane sugar for the period that begins October 1, 1995, and ends September 30, 1996.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Inquiries may be mailed or delivered to Tom Perkins, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Tom Perkins, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of raw sugar. The in-quota quantity of the tariff-rate quota for the period October 1, 1995-September 30, 1996, has been established by the Secretary of Agriculture at 1,117,195 metric tons, raw value (1,231,496 short tons).

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007).

Accordingly, the 1,117,195 metric tons for raw cane sugar are being allocated to the following countries in metric tons, raw value:

Country	FY 1996 allocation
Argentina	45,281
Australia	87,402
Barbados	7,371
Belize	11,583
Bolivia	8,424
Brazil	152,691
Colombia	25,273
Congo	7,258
Cote d'Ivoire	7,258
Costa Rica	15,796
Dominican Republic	185,335
Eucador	11,583
El Salvador	27,379
Fiji	9,477
Gabon	7,258
Guatemala	50,546
Guyana	12,636
Haiti	7,258
Honduras	10,530
India	8,424
Jamaica	11,583
Madagascar	7,258
Malawi	10,530
Mauritius	12,636
Mexico	7,258
Mozambique	13,690
Nicaragua	22,114
Panama	30,538
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,175
Philippines	142,160
South Africa	24,220
St. Kitts & Nevis	7,258
Swaziland	16,849
Taiwan	12,636
Thailand	14,743
Trinidad-Tobago	7,371
Uruguay	7,258
Zimbabwe	12,636
Total	1,117,195

The allocation includes the following minimum quota-holding countries: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–22031 Filed 9–5–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 172

Wednesday, September 6, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 11, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–2225 Filed 9–1–95; 3:47 pm]

BILLING CODE 6210–01–P

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 28, 1995.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the North Smithfield Municipal Annex, 575 Smithfield Road, North Smithfield, Rhode Island, for the following reasons:

1. Presentation from Town of North Smithfield, Rhode Island.
2. Annual Report.
3. Commission Business.
4. Other.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to:

James R. Pepper, Executive Director,
Blackstone River Valley National
Heritage Corridor Commission, One/
Depot Square, Woonsocket, RI 02895,
Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

James R. Pepper,

Executive Director, BRVNHCC.

[FR Doc. 95–22224 Filed 9–1–95; 3:56 pm]

BILLING CODE 4310–70–P

NUCLEAR REGULATORY COMMISSION

DATE: Week of September 4, 11, 18, and 25, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of September 4

There are no meetings scheduled for the Week of September 4.

Week of September 11—Tentative

Monday, September 11

1:30 p.m.
Briefing on Status of Watts Bar Licensing (Public Meeting)
(Contact: Steve Varga, 301–415–1403)

3:30 p.m.
Affirmation Session (Public Meeting)
(Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
- a. Revisions to Regulatory Requirements for Reactor Pressure Vessel Integrity in 10 CFR Part 50 (Tentative)
- b. Final Amendment to 10 CFR Part 50, Appendix J. "Containment Leakage Testing," to Adopt Performance-Oriented and Risk-Based Approaches (Tentative)

(Contact: Andrew Bates, 301–415–1963)

Tuesday, September 12

10:30 a.m. and 1:30 p.m.
All Employees Meetings (Public Meetings) on "The Green" Plaza Area between buildings at White Flint
(Contact: Beth Hayden, 301–415–8200)

Week of September 18—Tentative

There are no meetings scheduled for the Week of September 18.

Week of September 25—Tentative

There are no meetings scheduled for the Week of September 25.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: August 31, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–22177 Filed 9–1–95; 2:34 pm]

BILLING CODE 7590–01–M

federal register

Wednesday
September 6, 1995

Part II

Department of the Treasury

Customs Service

19 CFR Parts 10, 12, 24, et al.

North American Free Trade Agreement (NAFTA): Implementation of Interim Amendments; Final Rule

Regulatory Standards For Implementation of the North American Free Trade Agreement; Notice

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178, 181 and 191

[T.D. 95–68]

RIN 1515–AB33

North American Free Trade Agreement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to the Customs Regulations which were published in the **Federal Register** on December 30, 1993, as T.D. 94–1 to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement entered into by the United States, Canada and Mexico.

EFFECTIVE DATE: October 1, 1995.

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SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the United States, Canada and Mexico (the "Parties") entered into an agreement, the North American Free Trade Agreement (NAFTA). The stated objectives of the NAFTA are to: Eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties; promote conditions of fair competition in the free trade area; increase substantially investment opportunities in the territories of the Parties; provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory; create effective procedures for the implementation and application of the NAFTA, for its joint administration and for the resolution of disputes; and establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of the NAFTA.

The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act (the "Act"], Pub. L. 103–182, 107 Stat, 2057.

The principal role of the U.S. Customs Service is to administer the provisions of the NAFTA and the Act which relate to the importation of goods into the United States from Canada and Mexico. Those Customs-related NAFTA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Three (National Treatment and Market Access for Goods) and the provisions of Chapter Four (Rules of Origin) and Chapter Five (Customs Procedures).

The tariff-related provisions within NAFTA Chapter Three which require regulatory action by Customs are Article 303 (Restriction on Drawback and Duty Deferral Programs), Article 305 (Temporary Admission of Goods), Article 306 (Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials) and Article 307 (Goods Re-Entered after Repair or Alteration). The non-tariff provisions of Chapter Three requiring Customs regulatory action are Article 310 (Customs User Fees), Article 311 (Country of Origin Marking) and Annex 300–B (Textile and Apparel Goods).

Chapter Four of the NAFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States, Canada or Mexico (NAFTA country) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as provided for under Article 302(2) and Annex 302.2 of the NAFTA. Under Article 401 within that Chapter, originating goods may be grouped in two broad categories: (1) Goods which are wholly obtained or produced entirely in one or more NAFTA countries; and (2) goods which are produced entirely in one or more NAFTA countries exclusively from materials that originate in those countries, or goods which are produced entirely in those countries and which satisfy the specific rules of origin in NAFTA Annex 401 (change in tariff classification requirement and/or regional value-content requirement). Article 402 sets forth the methods for calculating the regional value content of a good and the rules for determining the value of materials used in the production of a good. Article 403 sets forth special rules for calculating the regional value content in the case of automotive goods. Article 404 provides for accumulation of production by two or more producers. Article 405 provides a de minimis criterion. The remaining Articles within Chapter Four consist of additional sub-rules, applicable to the originating good concept, involving fungible materials, packaging materials, packing materials, transshipment, and non-qualifying operations.

Chapter Five sets forth the procedural and other customs requirements which apply under the NAFTA, in particular with regard to claims for preferential tariff treatment. Articles 501–506 of this Chapter provide for use of a Certificate of Origin for purposes of certifying that an exported good qualifies as an originating good under the Chapter Four origin rules, set forth the rights and obligations of importers regarding imported goods and of exporters and producers regarding exported goods, and set forth the rights and obligations of the customs administration of the importing country when conducting a verification of the origin of a good and when denying a claim for preferential tariff treatment. Article 507 sets forth confidentiality principles regarding business information collected pursuant to Chapter Five. Article 508 requires each Party to maintain penalties for violations of its laws and regulations relating to Chapter Five. Article 509 sets forth the obligations for the issuance and application of advance rulings by the customs administration of the importing country regarding whether a good meets the country of origin marking requirements of Article 311 or the origin rules of Chapter Four or other NAFTA requirements that apply to certain goods at the time of importation. Article 510 extends to exporters and producers of goods substantially the same rights of review and appeal accorded to importers regarding advance rulings or marking determinations of origin or country of origin determinations for purposes of preferential tariff treatment. Article 511 requires the Parties to establish, and implement through their respective laws or regulations, Uniform Regulations regarding the interpretation, application and administration of Chapter Four, Chapter Five and any other matter as agreed by the Parties. Finally, Articles 512 and 513 set forth procedures for cooperation between the Parties regarding the implementation and administration of the customs-related aspects of the NAFTA.

Pursuant to Article 511 of the NAFTA, representatives of the Parties engaged in a series of trilateral discussions for the purpose of formulating uniform regulatory texts or principles in respect of Chapters Four and Five and in respect of certain provisions within Chapter Three. As regards Chapter Three, agreement was reached on certain principles to be applied for purposes of implementing

the drawback provisions of Article 303. With regard to the remaining Chapter Three provisions, including the country of origin marking provisions of Article 311 and its companion Annex 311 (which provide for the establishment of "Marking Rules" for purposes of determining whether a good constitutes, and thus may be marked as, a good of a Party and which set forth disciplines on the methods and procedures for the country of origin marking of goods), those provisions were to be implemented by each Party independently and as appropriate within each Party's statutory and regulatory structure; the U.S. Marking Rules, contained in Part 102 of the Customs Regulations, were adopted on an interim basis in T.D. 94–4 which was published in the **Federal Register** on January 3, 1994 (59 FR 110). As concerns Chapter Four, the Parties agreed, by an exchange of letters dated December 30, 1993, to implement substantively verbatim texts of interim regulations covering all of the provisions of that Chapter. Finally, in recognition of the different existing customs legal and procedural requirements in the three countries, in the case of Chapter Five and some provisions of Chapter Three the Parties agreed, by an exchange of letters dated December 30, 1993, to use a standards approach whereby agreement was reached on certain minimum principles to be reflected in each Party's regulations, with each Party being left free to implement those principles, and any other requirements not inconsistent therewith, in accordance with the needs of the Party's particular statutory and regulatory framework. The trilaterally-agreed standards are set forth in a document entitled "Uniform Regulations for the Interpretation, Application, and Administration of Chapters Three (National Treatment and Market Access for Goods) and Five (Customs Procedures) of the North American Free Trade Agreement"; the text of that standards document is reproduced for the information of the public in a general notice also appearing in this issue of the **Federal Register**.

On December 30, 1993, Customs published T.D. 94–1 in the **Federal Register** (58 FR 69460) setting forth interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the NAFTA in accordance with the implementation principles agreed to by the Parties as discussed above. In order to provide transparency and facilitate their use, the majority of the NAFTA implementing regulations set forth in T.D. 94–1 were included within one new Part 181. However, in those cases in which NAFTA implementation was more appropriate in the context of an existing regulatory provision, the NAFTA regulatory text was incorporated in an existing Part within the Customs Regulations. T.D. 94–1 also set forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the NAFTA implementing regulations. Although the interim regulatory amendments were promulgated pursuant to the foreign affairs function exception to the general notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 and took effect on January 1, 1994, in order to coincide with the entry into force of the NAFTA, T.D. 94–1 nevertheless provided for the submission of public comments thereon which would be considered before adoption of the interim regulations as a final rule, and the prescribed public comment period closed on March 30, 1994. In addition, two correction documents pertaining to T.D. 94–1 were published in the **Federal Register**, one on February 24, 1994 (59 FR 8852) and the other on March 31, 1994 (59 FR 15047).

Discussion of Comments

A total of 15 commenters responded to the solicitation of comments on the interim regulations set forth in T.D. 94–1. The comments submitted, and the Customs responses thereto, are set forth below.

Part 12, § 12.132 (Textile and Apparel Goods Under the NAFTA)

Comment: One commenter noted that whereas paragraph (b) of this section provides only for preparation of the country of origin declaration by the manufacturer or producer of the textile or apparel goods, in the case of non-NAFTA goods the declaration may also be prepared by the exporter or importer under § 12.130(f). Since the NAFTA provision imposes a more strict requirement, this commenter suggested that the NAFTA text be aligned on § 12.130(f) so as to provide for preparation by the manufacturer, producer, exporter or importer.

Customs response: The U.S. importer should not be allowed to prepare the declaration in this context because the importer often lacks sufficient knowledge of the actual production and origin of the goods. However, when the importer cannot obtain a declaration from the manufacturer or producer, Customs would be willing to accept a declaration prepared by the exporter, and paragraph (b) (redesignated in this document as paragraph (a)(2) as explained below) has been modified accordingly.

Part 134, § 134.22 (General Rules for Marking of Containers or Holders)

Comment: One commenter expressed approval of the approach taken in new § 134.22(d) regarding the country of origin marking of usual containers, in particular with reference to paragraph (d)(2) which, in the case of a good of a NAFTA country, removes from consideration the additional issue of whether a particular container is capable of reuse in determining whether a container must be marked. Notwithstanding the fact that this NAFTA rule was specifically intended to implement Annex 311(7) of the NAFTA, this commenter stated that this approach should not be limited to NAFTA goods but rather should be applied universally. In support of this suggestion the commenter argued that: (1) The standards applicable to usual containers are regulatory rather than specifically required by the marking statute (19 U.S.C. 1304) and thus can be changed; (2) the NAFTA does not require that its provisions be limited to NAFTA trade; and (3) no public policy purpose is served by having different usual container marking rules because they create confusion for importers and may mislead the consumer regarding the origin of the product packaged in the container when it has a different marking than that of the container.

Customs response: The definition of "usual container" provided in § 134.22(d)(1) applies to all containers, whether they are goods of a non-NAFTA country or goods of a NAFTA country. However, different regulatory requirements are provided in Part 134 of the Customs Regulations for determining whether a usual container is excepted from country of origin marking.

Section 304(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1304(b)), states in part that:

> . . . Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

Thus, although a container may not be a good of a NAFTA country, if it is a "usual container" as defined in § 134.22(d)(1) of the Customs Regulations it may be excepted from marking pursuant to 19 U.S.C. 1304(b) provided that the conditions of that statutory provision are satisfied, as

Customs has ruled in HQ 735548 dated February 14, 1995.

The Part 134 regulations relating to marking of containers from non-NAFTA countries (§§ 134.23 and 134.24) generally draw a distinction between reusable and disposable containers in determining whether they must be marked to indicate their own country of origin. If the containers are determined to be reusable, they are treated as separate articles of commerce and are required to be individually marked with their country of origin. However, if the containers are determined to be disposable, they are not treated as separate articles of commerce and are excepted from country of origin marking.

However, for containers which are determined to be "goods of a NAFTA country", the distinction between reusable and disposable is not applicable in determining the marking requirements for the containers. The country of origin marking requirements for containers which are "goods of a NAFTA country" are based primarily on whether the container is considered to be a "usual container". If it is determined to be a "usual container", as defined in § 134.22(d)(1) of the regulations, the container is not required to be marked with its own origin. The fact that a container is capable of repeated use does not preclude it from being considered a "usual container".

Section 134.22(d) was included in the interim regulations solely to implement Annex 311(7) of the NAFTA, which applies to containers which are goods of NAFTA countries. Customs does not believe that the NAFTA implementing regulations are the proper vehicle for effecting a change in the marking requirements for containers which are goods of non-NAFTA countries. Such a change (applying to imports from non-NAFTA countries the § 134.22(d)(2) NAFTA "usual container" marking exception) should be the subject of a separate notice of proposed rulemaking to amend §§ 134.23 and 134.24, so as to give affected parties an opportunity to submit any comments they may have.

Part 181, Subpart B (Export Requirements)

Section 181.11

Comment: With regard to the preparation and use of Certificates of Origin in general, one commenter noted that the instructions for field 6 (Harmonized System tariff classification number) specify use of the 8-digit number of the country into which the good is imported if the good is subject to a specific rule of origin that requires eight digits. This commenter suggested that this creates an unnecessary burden on exporters because it requires them to cross-reference and cross-document the seventh and eighth digits of tariff numbers for each NAFTA country and may mean in some cases that three separate Certificates would have to be prepared for one part number. Since the tariff numbers in field 6 simply identify the rule of origin that the exporter used to certify the goods and because the seventh and eighth digits in all three countries identify the same goods and the same rule of origin, this commenter suggested the following alternative solutions: (1) The three governments could publish a single conversion list of the tariff numbers for each country for distribution to customs officials and the public; or (2) the exporter could be allowed to indicate with a "U", "C" or "M" prefix the country of the tariff number used in field 6.

Customs response: Customs does not agree with the proposal of allowing classification to be reported at the 6-digit level. Many of the specific rules of origin were written at the 7th and 8th digit level to capture a desired processing condition. Where this is the case, a NAFTA claimant must indicate that the processing it performed accomplished the required tariff shift. Reporting a classification number at a lesser level would not satisfy this requirement.

The proposal for publishing a list of all of the rules together with references to the 8-digit item numbers may have some merit. It should be noted that the tariff items in these rules are reflected either in the rules themselves or in the Appendix to Annex 401 of the NAFTA. Currently, the NAFTA Parties are exploring within the trilateral working groups created under the NAFTA the most appropriate means to keep the trading public aware of the changes to the rules, including those that involve changes at the 8-digit level. The commenter's suggestion will be kept in mind in that context.

Finally, Customs is of the opinion that the suggestion of utilizing a letter prefix to a 6-digit classification number to designate which country's tariff schedule is being applied would not be workable. An enterprise wishing to take advantage of NAFTA in any one of the NAFTA countries must classify according to the actual tariff schedule of the importing country at the 7th or 8th digit level as shown in that tariff in any case in which the specific origin rule requires a change at that level.

Comment: One commenter raised two issues regarding paragraph (d) which provides that if a U.S. exporter or producer has reason to believe that a Certificate of Origin completed and signed by him contains incorrect information affecting its validity or accuracy, he shall within 30 calendar days so notify in writing all persons to whom the Certificate was given. First, this commenter suggested a problem with the "within 30 calendar days" language in that significant controversy could arise in trying to pin down exactly on which day the exporter or producer had the requisite "reason to believe". Second, the commenter expressed some confusion as to whether a Certificate could be deemed to be incorrect if the information provided thereon was accurate when the Certificate was signed, and in this regard the commenter questioned whether the notice had to be provided in the following circumstances: (1) Whenever there is a change in the product, even if a recipient of the Certificate no longer receives the product; and (2) where the exporter or producer is uncertain as to which of its products the recipient intends to apply the Certificate. Stating that the duty to ascertain inaccuracies and search for all Certificate recipients is unrealistic and fraught with pitfalls for well-intentioned exporters or producers, this commenter suggested that paragraph (d) be redrafted to more specifically define the obligations of Certificate creators.

Customs response: The comment with regard to the commencement of the 30-day period appears to have merit. Accordingly, paragraph (d) of § 181.11, as set forth below, has been modified by inserting the phrase "after the date of discovery of the error" immediately after the phrase "30 calendar days". This additional language would encompass the discovery of an error by any involved party: the exporter, producer or verifying customs administration. The condition that no formal investigation be begun should be unaffected by the addition of this phrase. For purposes of consistency and based on the same considerations, a similar modification has been made to the text of § 181.21(b) regarding the correction of a declaration.

With regard to the issue of the specific circumstances in which notice of an incorrect Certificate of Origin must be provided, Customs would first point out that where information believed by the preparer of the Certificate to be accurate is found to be incorrect by a verifying customs administration, such information constitutes incorrect information which might affect the granting of preferential tariff treatment. Accordingly, all recipients of the

Certificate must be notified of the incorrect information so that a NAFTA claim is not made based on erroneous information.

Where there is a change to a product and the recipient of the Certificate covering that product no longer receives the product, it is the position of Customs that if the product change affects the eligibility of the product retroactively and if the recipient based its claim of NAFTA treatment for that product on an incorrect Certificate, the recipient must be sent a corrected Certificate so that it might correct its entry. Prospective shipments of the product should be covered by a new Certificate given to current importers of the product.

Finally, as regards a case in which the exporter or producer is uncertain as to the specific products to which the recipient intends to apply the Certificate, it is the position of Customs that an exporter or producer must assume that each recipient of its Certificate intends to utilize it for all products listed thereon and thus must be notified of any incorrect information appearing on the Certificate.

Section 181.12

A commenter stated that this section imposes overly broad and burdensome recordkeeping requirements on U.S. exporters and producers whose goods qualify as originating goods under an origin criterion that does not involve a regional value-content requirement. Since in such a case data as to cost, value and payment are irrelevant in qualifying as an originating good, this commenter states that § 181.12 should be written so as to require only that recordkeeping which is necessary to demonstrate the correctness of the basis upon which originating status is claimed.

Customs response: The recordkeeping requirements contained in paragraph (a) of this section, including the specific types of records to be maintained, reflect the provisions of Article 505 of the Agreement which was implemented by an amendment to 19 U.S.C. 1508 effected by section 205 of the Act. Moreover, this comment fails to recognize a basic problem that could arise from use of the suggested minimalist approach: a customs administration may have no choice but to deny a claim for preferential tariff treatment if the claimed basis for originating status is not valid and no records have been maintained to support an applicable alternative basis involving a regional value-content requirement.

Part 181, Subpart C (Import Requirements)

Section 181.21

Comment: With regard to the requirement under paragraph (a) that the claim for preferential tariff treatment be based on a Certificate of Origin in the possession of the importer, one commenter stated that the regulatory provision is unclear as to whether possession of a copy of the Certificate would satisfy this requirement. This commenter stated that permitting use of copies of a Certificate is necessary where there are multiple importer customers, where goods are exported to two NAFTA countries, and where a supplier provides a Certificate to a central location of a producer which has subsidiaries operating in more than one NAFTA country.

Customs response: Customs believes that this commenter makes a valid point. Accordingly, paragraph (a) of § 181.21, as set forth below, has been modified to provide for possession of a copy of a Certificate of Origin.

Comment: With regard to the written declaration under paragraph (a) and the written correction of a declaration under paragraph (b), a commenter suggested that additional provision should be made for effecting both actions by electronic means in order to reflect the Customs Modernization provisions of the Act.

Customs response: Although the suggestion has some merit in principle, Customs believes that it would be premature at this time to revise these paragraphs to provide for electronic means for complying with their provisions. As Customs implements the Customs Modernization provisions of the Act, it will identify which regulatory activities may be performed electronically and will amend the regulations accordingly. At that time, these NAFTA provisions will be reviewed and, if necessary, brought into line with whatever changes are made elsewhere in the Customs Regulations with respect to the electronic filing of entry information.

Comment: One commenter stated that paragraph (b) should require that Customs send to the importer's surety a copy of the importer's corrected declaration because, if the importer fails to pay the required duties, the surety will not be aware of this circumstance until the entry is liquidated and demand is made upon the surety.

Customs response: Customs does not now notify sureties during the entry process, and that policy should continue to be applied in the context mentioned by this commenter.

It should also be noted that the failure to deposit estimated duties when due is a bond breach, and Customs may make an immediate demand in the event of a breach. There is no basis for a different procedure when the bond principal breaches that provision at the time of entry or when the bond principal breaches that provision at the time of filing a corrected declaration.

Section 181.22

Comment: For purposes of submitting a Certificate of Origin to Customs under paragraph (b), one commenter stated that, by referring to a Certificate "signed by the exporter or producer", the regulation appears to permit the exporter to simply provide the producer's Certificate to the importer. This commenter suggested that, if this is so and if the producer were allowed to execute a single Certificate and provide copies thereof to its customer exporters who then could provide copies to their customer importers, the following benefits could be realized: (1) A producer Certificate would not have to be re-executed by exporters; (2) a possessor of a Certificate would always know who the producer of the goods was; and (3) administrative effort would be reduced by requiring creation of only a single Certificate.

Customs response: While the commenter's suggestion has some logic and merit under the regulatory text as written, Article 501(3) of the Agreement (and § 181.11(b) in a U.S. export context) are quite clear that an importer's claim for preferential NAFTA tariff treatment can only be based on a Certificate of Origin prepared by the exporter of the good. Moreover, any Certificate completed by a producer is done voluntarily whereas that prepared by the exporter is a requirement for claiming NAFTA treatment. In order to remove any ambiguity and ensure consistency with the terms of the Agreement, paragraph (b)(2) of § 181.22, as set forth below, has been modified by removing the two references to "or producer".

Comment: One commenter stated that this section should be modified to require that Customs provide notification to the importer's surety whenever the importer fails to comply with a request for submission of a Certificate of Origin. This would enable a surety to minimize its risk in cases involving a series of related importations which result in denial of preferential tariff treatment and issuance of a claim for increased duty under the surety's bond.

Customs response: The comment response under § 181.21 above regarding notice to a surety applies equally to this comment. Moreover, the principal may pay the duty so that no bond breach would occur. In any event, the requested change would inject Customs into the contractual relationship between the surety and its bond principal. The submission of document copies is a matter that is best resolved between the principal and its surety.

Part 181, Subpart D (Post-Importation Duty Refund Claims)

Section 181.31

Comment: One commenter stated that this section should be amended to expressly permit sureties to submit post-importation NAFTA claims so that sureties may protect their interests, for example in a case where the importer is out of business and the surety has a liability on the transaction. This commenter argued that this would be a logical and much needed extension of surety rights under the administrative process, noting in this regard that sureties presently can file protests, petitions for relief from liquidated damage claims and petitions under 19 U.S.C. 1520(c).

Customs response: Both Article 502(3) of the Agreement and the U.S. implementing statute specifically provide for the filing of a post-importation claim by the importer. While 19 U.S.C. 1514(c) expressly provides for the filing of a protest by a surety in its own right, no corresponding surety right is reflected in 19 U.S.C. 1520(d) which was added by section 206 of the Act. Of course, a surety or any other party acting as a duly authorized agent may file a post-importation claim on behalf of its importer principal.

Section 181.32

Comment: One commenter complained of the post-importation refund claim documentary requirements in paragraphs (b)(3)–(5) of this section, pointing out that the written statements specified therein constitute added and burdensome requirements that are not applied either in the case of a NAFTA claim made at the time of entry or in the case of any other post-importation claim procedure under Part 173 or 174 of the Customs Regulations. This commenter therefore suggested removal of these requirements.

Customs response: The written statement requirements for post-importation claims are designed to prevent an overpayment of a duty refund such as drawback. Customs notes that there are parallel NAFTA requirements for drawback and duty deferral program participants under Part 181 (see §§ 181.47 (b) and (c) and § 181.53(a)(3)). Accordingly, Customs believes that these requirements must be retained.

Section 181.33

Comment: Two commenters referred to paragraph (d)(3) which provides that where the entry covering the good has been liquidated, whether or not the liquidation has become final, a post-importation refund claim may be denied without reliquidating the entry. One of these commenters stated that this section and Part 174 of the Customs Regulations should include the right to file a protest within 90 days of the denial of the claim whether or not the liquidation has become final. The other commenter stated that the regulations do not, but should, provide for an administrative appeal process in the case of a denial issued more than 90 days after liquidation of the entry.

Customs response: Customs agrees that a claimant has a right to file a protest based on a denial of a NAFTA post-importation claim, including in cases in which the claim is denied more than 90 days after liquidation of the entry and without reliquidation of the entry, and Customs also agrees that the regulations should explicitly reflect this right. Accordingly, § 174.12(e)(2), which specifies when the 90-day time period for filing a protest begins in the case of a protest against a decision not involving a liquidation or reliquidation, has been modified as set forth below by the inclusion of a specific reference to a claim filed under 19 U.S.C. 1520(d).

Customs notes that in the case of a denial of a post-importation claim on the merits (that is, where the denial is based on a negative origin determination rather than on procedural grounds), a person who signed a Certificate of Origin relating to the good at issue has a right to file a protest against the denial (see 19 U.S.C. 1514(c)(2)(E) and interim § 174.12(a)(5) as republished below). In order to reflect current Customs practice, §§ 181.33 (d)(2) and (d)(3), as set forth below, have been modified to provide that the notice of denial of the claim in such cases shall include a statement regarding the right to file a protest against the denial under Part 174 of the regulations.

Part 181, Subpart E (Restrictions on Drawback And Duty-Deferral Programs)

Section 181.41

Comment: Two commenters stated that this section implies that the effective dates of 1996 and 2001 apply only where preferential tariff treatment under NAFTA is claimed. This is not correct and therefore it should be made clear that these effective dates apply to all merchandise whether or not NAFTA preferential treatment is involved.

Customs response: Customs agrees that the subpart covers all exports to Canada or Mexico, whether a claim for preferential tariff treatment is made or not. Accordingly, the second sentence of § 181.41, as set forth below, has been modified by inserting a period after "January 1, 2001" and removing the rest of the sentence.

Section 181.44(a)

Comment: A commenter pointed out that it is too difficult for the drawback claimant to "discover" the duty paid on the merchandise when it is imported into the United States and when it is imported into Canada and Mexico. As an alternative, this commenter suggested that a NAFTA control number be placed on the commercial invoice when a drawback claim is expected to be filed. Each U.S. exporter could use its tax identification number (from the Certificate of Origin) followed by a date code and a sequential number. This control number should become part of the import records associated with NAFTA claims in Canada or Mexico.

This commenter went on to state that whenever this sequential NAFTA drawback control number appears, Canadian or Mexican Customs should enter the amount of duty from the import entry, together with the control number, into a database which could be downloaded into the U.S. Customs computer system. The data could then be accessed by U.S. Customs through ABI to determine duties paid upon importation into Canada or Mexico. Upon liquidation of the import transaction in Canada or Mexico, the computer record would be updated. The drawback claimant should be allowed to waive the right to claim a refund of the amount equal to the additional duties that would be owed to Canadian or Mexican Customs. This would set the date of entry when duties have been paid in Canada or Mexico for drawback purposes. The commenter suggested that without a link between the three Customs administrations, drawback claims will be delayed.

Customs response: This commenter recognizes that the Agreement and the statute require the amount of duty paid in Canada or Mexico to be reported. The commenter's proposal to require a drawback control number to be placed on the commercial invoice and for the Customs Services of the three countries to monitor that number would be extremely burdensome. In addition, Customs is aware that many U.S. importers have alleged an inability to obtain the foreign invoice. Such inability can only result from a failure of the commercial participants to address the issues in a timely manner. Drawback claims require that the commercial participants resolve these information issues in the terms of the sale before the export so that the required information on the completed transaction can be presented to Customs to establish any drawback eligibility. Paragraph (c) of § 181.47 lists the required evidence.

Comment: A commenter stated that any claim based on estimates (that is, the NAFTA duty rate multiplied by the invoice value) would not take into account duty exemptions that may be available to Canadian and Mexican importers and that may not be apparent on the face of the commercial documents (for example, articles assembled abroad and returned). If there are no such exemptions and value can be determined on the face of the commercial documents, then the claimant should be allowed to base the duty amount on the appropriate NAFTA duty rate in Canada or Mexico multiplied by the FOB value.

Customs response: Drawback claimants cannot base their claims on estimates; rather, each claim must be based on the liquidated amount of duty paid on the import entry for goods entered into Canada or Mexico.

Section 181.44(b)

Comment: Two commenters stated that this section is unclear as to the calculation of drawback when two or more components are used in the process of manufacture. One of these commenters raised the question of whether the comparison of duty paid must be between the duty paid on each component part and the duty paid on the finished article exported to Canada or Mexico or between the total duty paid on all component parts and the duty paid on the finished article exported to Canada or Mexico. This commenter provided the following example:

> Two parts, X and Z, are imported duty-paid into the United States at $2.00 and $4.00, respectively. Assume article Y is manufactured and exported to Canada or Mexico and duty of $5.00 is due. Does the lesser of the two duties apply to X and Z individually (resulting in $6.00 in drawback) or collectively (resulting in $5.00 in drawback)?

Customs response: With respect to the duty comparisons, the comparison should be made on an individual basis regardless of whether two components are used to make one export article or one component, such as a chemical, is split into two export articles. Section 181.44, as set forth below, has been modified by redesignating paragraphs (b)–(e) as (c)–(f) and adding a new paragraph (b) which sets forth the relative value calculation and individual comparison principle and includes the following example:

> Upon importation of Chemical X into the United States, Company A entered Chemical X and paid $2.00 in duties. Company A processed Chemical X into Products Y and Z, each having the same relative value; that is, $1.00 in duty is attributable to Product Y and $1.00 in duty is attributable to Product Z. Company A exported Product Y to Canada and Canada assessed a free rate of duty. Company A exported Product Z to Mexico and Mexico assessed the equivalent of US$2.00 in duty. There is no entitlement to drawback on the export of Product Y to Canada because zero is the lesser amount when compared to the $1.00 in duty attributable to Product Y as a result of the separation of Chemical X into Products Y and Z. There would be entitlement to drawback on the export to Mexico, consisting of the $1.00 duty attributable to Product Z, because that amount is the lesser amount when comparing the duty paid to the United States and the US$ equivalent duty paid to Mexico.

Section 181.44(c)

Comment: Three commenters expressed concern about the statement in § 181.44(c) (redesignated in this document as § 181.44(d) as discussed above) that "same kind and quality" is synonymous with "identical or similar good". They stated that this terminology should not restrict or eliminate rulings and court cases related to same kind and quality. Another commenter stated that making the term "same kind and quality" synonymous with the terms "identical" or "similar" seems to eliminate substitution drawback since identical or similar goods are defined in part as "goods that were produced in the same country as that good". If this is true, then the example in this section is incorrect because it allows for the substitution of foreign and domestic goods. On a related subject, a commenter raised the point that the statement that the two terms are synonymous leaves the door open for narrowing the scope of the "same kind and quality" provision to that of "identical or similar." This commenter was of the view that it should be stated that all rulings, court cases or other determinations pertaining to same kind and quality will be the guiding force in understanding the meaning of "identical and similar good."

Customs response: Although it is true that the term "same kind and quality" is considered to have the same meaning as the term "identical or similar", Customs does not intend to require that the substituted merchandise come from the same country to qualify for manufacturing drawback under the NAFTA. Section 181.44(d), as set forth below, has been modified to clarify these points.

Section 181.45

Comment: With regard to the reference in this section to "same condition" instead of "unused merchandise", three commenters questioned whether a third unique type of drawback is contemplated by this regulation, that is, same condition drawback for NAFTA countries and unused drawback or manufacturing drawback for all other countries. Otherwise, they stated that the terminology used in [illegible] NAFTA and in 19 U.S.C. 131[illegible] [illegible] amended by section 632 of the Act, [illegible] harmonized. Also on this subject, another commenter stated that, for consistency, the term "same condition drawback" should be replaced with "unused merchandise drawback."

Customs response: The Agreement was signed by the United States on December 17, 1992. The United States could not, without reopening negotiations with the two other Governments, incorporate changes made to its national laws subsequent to December 17, 1992, in its obligation to implement the Agreement. Consequently, with respect to trade between the three NAFTA parties there will be unavoidable inconsistencies when compared with trade between the United States and countries outside the Agreement. It is simply impossible to eliminate all differences between the provisions of sections 203 and 632 of the Act by regulation. In trade between NAFTA countries the provisions of section 203 of the Act control. Subpart E can do no more than to implement section 203 of the Act.

Section 181.45(b)

Comment: Two commenters stated that the second sentence of the example should be amended to simply read "X immediately exports the desk to Z in Mexico" because, whether or not duties are owed in Mexico, the mere fact of exportation will allow X to obtain a refund of 99% of the $25.00 in duty paid upon importation of the desk into the United States. These commenters went on to state that the fact that Z pays duty of $10.00 in Mexico is moot: 19 U.S.C. 1313(j)(1) contains no limitation based upon payment of duties in the NAFTA country of import. Thus, including the $10.00 Mexican duty in the example rather than a "whether or not" phrase regarding payment of duty in Mexico, will be confusing to industry and to Customs personnel. Since the amount of duty is only germane in calculating the "lesser of two duties" under a manufacturing scenario, these commenters stated that the suggested modifications of the example would more accurately reflect the law.

Customs response: The sentence which precedes the example, together with the example, illustrates precisely the point made by the comment.

Comment: A commenter stated that the term "commercially interchangeable" should be substituted for "completely fungible" in subparagraph (2) of this section.

Customs response: In order to avail oneself of full drawback under direct identification, the Agreement and implementing legislation permit identification of the exported good as the imported good by means of a recordkeeping system only if the goods are fungible and commingled. Section 181.45(b)(2)(i), as set forth below, has been modified as explained below in the response to the comments submitted regarding Schedule X of the Appendix to Part 181, and the modified text does not include the superfluous word "completely" before "fungible".

Section 181.45(c)

Comment: One commenter stated that the statement "X exports it within 90 days" in the example under this section should be changed to refer to "within 3 years".

Customs response: The period for exportation is clearly stated in § 181.45(c). An example cannot impose a further qualification on either the statute or implementing regulation. So long as the period is less than 3 years the example correctly illustrates the provision.

Section 181.46(b)

Comment: Two commenters stated that the existing exporter's summary procedure and waiver of prior notice provisions and the new provisions for "unused merchandise drawback" eliminate the need to inspect the goods prior to export because it would be too difficult for Customs to determine "unused" status by visual inspection. These two commenters, after stating that the Office of Trade Operations has indicated that the required 5 days of prior notice may be shortened to 48 hours, suggested that any change to this time period in Part 191 of the Customs Regulations should be reflected in the corresponding provision in Part 181. In addition, one of these commenters pointed out that there never existed a requirement for filing at the port of exportation.

Customs response: Although the exporter's summary procedure and waiver of prior notice provisions are not specifically provided for in the NAFTA, they are not new to the Drawback Program. Therefore, the existence of these two privileges would not be a basis for eliminating the physical inspection of the goods. With respect to shortening the prior notice period from 5 days to 48 hours, this principle already has been considered by Customs in connection with a pending proposed revision of Part 191 of the Customs Regulations. Section 181.46(b), as set forth below, has been modified to specify a prior notice period of 2 working days rather than 5 days.

Comment: One commenter pointed out that the statement in this section that "[g]enerally, for same condition drawback, the claim would be filed with the Customs port where the examination would take place" is not practical and not required by law.

Customs response: Because there are currently no requirements that claimants file same condition claims at the port where the examination will take place, Customs agrees that this statement should be replaced by the following: "To facilitate expedited processing of claims, claimants should file same condition drawback claims in the port where the examination would take place". Section 181.46(b) as set forth below has been modified accordingly.

Comment: A commenter requested that the text of this section be replaced by the appropriate sections from Part 191 of the regulations. The commenter did not explain the basis for this comment.

Customs response: Customs believes that the new language set forth in the preceding response will at least in part address this comment.

Section 181.47(a)

Comment: Two commenters stated that this section places an undue burden on the claimant because it requires the claimant to monitor the enforcement of the Canadian or Mexican Customs regulations. These commenters also argued that the section is also unfair in that it requires the claimant to have access to duty payment information to which it is not privileged, when sometimes the claimant does not even know who the ultimate importer is in Canada or Mexico.

Customs response: The Agreement provides that the amount of the duties paid in the destination NAFTA country must be presented by the person seeking a refund of that duty from the exporting NAFTA country. In order to obtain the refund, the claimant must obtain the cooperation of its customer in Canada or Mexico.

Section 181.47(b)(1)

Comment: Two commenters complained that the Canadian or Mexican Customs entry and the document referred to as the "certification", which are required to be submitted under this section, are too difficult for the U.S. exporter to obtain. Two other commenters stated that requiring both documents is redundant and contradictory to the paperless entry concept. Another commenter suggested that the entry documents should not be required but rather should be used only if available and that certification should only be provided in the event of an audit.

Customs response: The provision reflects a basic and necessary component of a proper NAFTA drawback claim and is not redundant since alternative methods may be used to establish that amount as set forth in paragraph (c) of § 181.47. As regards the alleged burden imposed by this provision, and as noted elsewhere, a drawback claimant will need the cooperation of its Mexican or Canadian customer in order to benefit under the agreement.

Section 181.47(b)(2)(i)

Comment: Two commenters believed that the documents required in Part 191 of the regulations satisfy the NAFTA requirements. They stated that commercial invoices, proof of payment of duties and import documents relating to an exportation to a foreign country have never been required with drawback claims under Part 191 and should only be required in the event of an audit. These two commenters also stated that these documents would not be required at the time of filing the claim under the exporter's summary procedure.

Customs response: Paragraph (c) of § 181.47 does not require filing of the Canadian or Mexican Customs entry because, under subparagraph (4), the drawback claimant may file an affidavit in lieu of the Canadian or Mexican entry document provided that certain specified information is also submitted. The requirement for these new documents is a result of the new "lesser of the two" system which is part of the NAFTA Agreement. The documents required in Part 191 of the regulations would not enable either the claimant or Customs to have knowledge of the

amount of duties paid upon importation into Canada or Mexico.

Section 181.47(b)(2)(ii)(G) provides an alternative means for a drawback claimant under 19 U.S.C. 1313(j)(1) to show exportation.

Section 181.47(b)(2)(i)(A)

Comment: Four commenters stated that it is unclear why the tariff classification number of the imported merchandise is needed when the drawback is based upon the duty paid (regardless of the tariff number). These commenters further stated that tariff numbers have never played a significant role in drawback before.

Customs response: The tariff classification number will facilitate processing drawback claims by Customs. The use of a number rather than a textual description is better adapted to automated processing procedures. In the near future, tariff numbers will be required for all drawback claims, not just for NAFTA claims. These numbers are needed for compiling profiles as part of the planned selectivity system for drawback.

Because drawback claims under the Agreement require a comparison on an individual basis, as noted by these same commenters, with respect to § 181.45, the line item information is needed in order to process a claim under the Agreement.

Section 181.47(b)(2)(i)(B)

Comment: An objection was raised by three commenters regarding the requirement of submission of the commercial invoice because many importers do not have a hard copy of this document. These commenters argued that submission of the commercial invoice is contrary to the Customs modernization provisions of the Act and to the principles of automation, and they further stated that the commercial invoice is difficult to obtain because it contains proprietary information. Two of these commenters also pointed out that Customs will not have sufficient staff to review all of this documentation.

Customs response: Customs agrees that claimants should not be required to submit Customs Form 7501 and copies of commercial invoices with their claims unless they are requested by Customs. Accordingly, § 181.47(b)(2)(i)(B), as set forth below, has been modified to specify only "Customs Form 7501 or the import entry number". It should be noted, however, that claimants (and other parties who provide information on which a claim is based) must continue to maintain records to support the claim and make them available upon request. This includes records of importation and invoice-level information.

Section 181.47(b)(2)(i)(C)

Comment: Three commenters objected to the inclusion of the Canadian and Mexican entry numbers on the exporter's summary procedure because: (1) These numbers are not available to the exporter; (2) the exporter's summary procedure was not intended for this purpose; and (3) the courts have ruled that when information such as this is impossible to obtain the "best evidence available" must be accepted.

Customs response: These numbers are needed in order for the NAFTA countries to implement a data exchange system which will be used to verify the requested amount of drawback based on the "lesser of the two" system. The NAFTA parties will provide each with a tape of entry numbers and corresponding duty payments so that claimed amounts may be verified on a spot-check basis. Entry numbers are needed for this system to work.

Section 181.47(b)(2)(i)(D)

Comment: Three commenters stated that the NAFTA regulations should require only "evidence of exportation", as is required in Part 191 of the regulations, rather than the "proof of exportation" provided for in this section and in other sections of these NAFTA regulations.

Customs response: Customs agrees that the term "evidence" should be substituted for the term "proof" in each such context in order to be consistent with Part 191 of the regulations, and the Subpart E texts, as set forth below, have been appropriately modified throughout.

Section 181.47(b)(2)(i)(E)

Comment: Three commenters stated that waivers of rights to drawback are already available in the form of certificates of delivery and certificates of manufacture, and therefore any additional waiver requirement is redundant.

Customs response: The certificate of delivery does not waive any right to drawback particularly in light of the right to transfer substitute merchandise. This certificate makes it absolutely clear to the certifier that it may not claim any drawback with respect to the merchandise covered by the waiver.

Comment: A commenter questioned the validity of the waiver of the right to drawback by the importer in favor of the exporter when § 181.48(a) clearly states that the exporter is entitled to drawback.

Customs response: A waiver is needed from the importer who transfers any merchandise to a manufacturer and issues a certificate of delivery. A manufacturer who transfers merchandise to an exporter and issues a certificate of manufacture and delivery also needs to issue a waiver.

Section 181.47(b)(2)(i)(F)

Comment: Three commenters stated that the requirement that the drawback claimant provide a certification that he has not issued a Certificate of Origin for the goods to another party, or that he will notify Customs if he does so, is not valid because there is no NAFTA provision that precludes drawback when NAFTA preference is taken. One commenter stated that the separate certification or affidavit is not needed because it is well known that double dipping is illegal.

Customs response: The requirement is necessary since it is far from obvious that providing a Certificate of Origin which enables a Mexican or Canadian importer to obtain a duty reduction or refund from Mexico or Canada would be considered illegal double-dipping by a United States drawback claimant since that claimant would not necessarily benefit directly from the actions of its customers.

Comment: Another commenter took issue with the requirement for an affidavit by a manufacturing claimant certifying that no other claim has been filed on the goods. This commenter stated that once the claimant receives either a certificate of delivery or a certificate of manufacture and delivery, he can only certify that he has not made any other claim on the goods. The manufacturing claimant will not know whether the importer or any other party makes a claim on the goods.

Customs response: The commenter appears to compare the requirements of § 181.47(b)(2)(i)(F) and § 181.51(b). The Customs recordkeeping statute, 19 U.S.C. 1508, as amended by section 205 of the Act, does not prohibit a drawback claimant from providing an affidavit on the preparation of a Certificate of Origin with the drawback claim. It does require a drawback claimant to report such facts within 30 days of filing a drawback claim if that claimant has not already done so.

Informed compliance means that the Government is under an obligation to inform persons who deal with it which acts are proscribed. The regulation which requires a certification that the same import entry for the same designation of goods has not been used in more than one claim fulfills that obligation.

Section 181.47(b)(2)(ii)(A)

Comment: Two commenters stated that the requirement for the tariff classification at entry is superfluous.

Customs response: As already pointed out, in the near future tariff numbers will be required for all drawback claims, not just for NAFTA claims. These numbers are needed for compiling profiles as part of the planned selectivity system for drawback.

Section 181.47(b)(2)(ii)(B)

Comment: Four commenters stated that the requirement regarding submission of commercial invoices is in conflict with the requirements of the Customs modernization provisions of the Act and is a step backwards in the automation process. These commenters further argued that these documents are impossible to obtain when the claimant is not the importer. One of these commenters suggested requiring a pro forma invoice instead for same condition claims in order to resolve the latter problem. Another of these commenters stated that the detail required in this section may not be available due to automation and paperless entries and that it should be changed to refer to Customs Form 7501 and any appropriate documentation which identifies the subject goods. Another commenter stated that the entry documents (such as Customs Form 7501) may not be available because of confidentiality considerations.

Customs response: Again, Customs agrees that claimants should not be required to submit commercial invoices with their claims. Accordingly, § 181.47(b)(2)(ii)(B), as set forth below, has been modified by removing the two references to commercial invoices, and § 181.47(b)(2)(iii)(B), as set forth below, has been similarly modified for purposes of consistency. However, Customs would again point out that claimants (and other parties who provide information on which a claim is based) must possess and maintain records to support the claim and make them available upon request. This includes records of importation and invoice-level information.

Section 181.47(b)(2)(ii)(G)

Comment: Two commenters stated that this section should begin with the words "If exporter summary procedures are not in force". In addition, two commenters stated that the words "* * * and signed in ink" should be deleted because obtaining an original ink signature on a nonnegotiable copy of a document is an unnecessary burden. Finally, one commenter stated that this section does not take into account claimants using procedures under § 191.51 of the regulations and that it should be amended to reflect that fact.

Customs response: Customs agrees that where the exporter's summary procedure is approved for the claimant, the requirement in § 181.47(b)(2)(ii)(G) is not applicable; accordingly, this section as set forth below has been modified by adding at the beginning of the first sentence the words "If a claimant is not approved for the exporter's summary procedure,". In addition, while the evidence of export document must be signed, Customs agrees that the signature need not be in ink; accordingly, the section as set forth below has been modified by removing the words "and signed in ink" from the first sentence. Finally, Customs agrees that this section should reflect that evidence of exportation may also be established in accordance with the provisions of § 191.51; accordingly, § 181.47(b)(2)(ii)(G), as set forth below, has been modified by adding at the end of the first sentence the words ", or any other evidence of exportation provided for in § 191.51 of this chapter".

Section 181.47(b)(2)(ii)(H)

Comment: Three commenters stated that providing a waiver from the importer is redundant since a certificate of delivery already serves the same purpose. One of these commenters suggested that if Customs must have it, it should be provided for directly on the certificate of delivery.

Customs response: A certificate of delivery does not in itself constitute a waiver of the right to claim drawback. Thus, an explicit waiver is necessary.

Customs agrees in principle that the waiver could be incorporated into the certificate of delivery form. However, until that form is revised to include the waiver, a separate waiver is needed.

Section 181.47(b)(2)(ii)(I)

Comment: One commenter recommended that the affidavit be incorporated onto the "J" side of Customs Form 7539, but with reference to "designated goods" changed to "identified goods". Another commenter stated that the affidavit is unnecessary but that if Customs must have it, it should be included on the drawback entry form instead.

Customs response: So long as the affidavit is included with the drawback entry, the legal requirement will be satisfied.

Section 181.47(b)(2)(iii)(B)

Comment: One commenter objected to the requirement of submission of the commercial invoice because it will not be available in hard copy. This commenter stated that a pro forma invoice would solve this problem.

Customs response: Customs took the position in promulgating 19 CFR 191.142(b)(6) that drawback under 19 U.S.C. 1313(c) is payable to an exporter claimant who is the importer of record or the actual owner named in the import entry. There is nothing in section 203 or 632 of the Act which would require a change to that position. As such, it is unclear why the person who ordered the merchandise and who determined that the merchandise did not meet the order specifications would not have the original invoice issued by the foreign supplier.

Section 181.47(b)(2)(iii)(C)

Comment: It was pointed out by a commenter that import documents for foreign countries are not available to the U.S. seller and that it is virtually impossible for the U.S. seller to obtain proof of payment and final duty determination notices.

Customs response: The commenter has misread the section. Subparagraph (C) states the evidence needed to show that the specifications were not met.

Section 181.47(c)

Comment: Two commenters stated that the phrase "for purposes of evidence of duties paid" is confusing in that § 181.47(a) also refers to "evidence of exportation". They also suggested that Customs may want to consider a single definition for "evidence of exportation" as has always been done under Part 191 of the regulations and introduce specific requirements only for 19 U.S.C. 1313 (a) or (b) drawback for "evidence of duties paid" since this information is germane only to manufacturing drawback when calculating the "lesser of the two duties".

Customs response: It would be quite difficult for Customs to draft an affidavit for the parties. The language needed to demonstrate that the claimant's goods were received by its Mexican or Canadian customer and the amount of duty paid to Canada or Mexico by that customer would depend on that customer's statement.

There is a difference between the provision on exportation in § 181.47(b)(2)(ii)(G) (which has specific reference to 19 U.S.C. 1313(j)(1)) and the provision in § 181.47(c). Because in the former case there is full drawback available without a comparison between the duty that was paid in the United States and the duty paid in Canada or Mexico, the provisions necessarily differ. The provisions of § 181.47(c) also apply in a NAFTA context to other duty reduction programs such as temporary importations under bond, bonded warehouses, and foreign trade zones (*see* § 181.53(a)(3)).

Section 181.48

Comment: With regard to paragraphs (b) and (c), two commenters pointed out that the wording is confusing and not consistent with "mainline" drawback in that, under Part 191 of the regulations and under the Customs modernization provisions of the Act, it is always the exporter of record who is entitled to drawback. One of these commenters suggested the following alternative language: "The exporter of record is entitled to the drawback unless the exporter directs in writing that another entity receive the drawback refund."

Customs response: The provision in § 181.48(b) follows the position set forth in 19 CFR 191.142(b)(6). Section 181.48(c) is consistent with current law regarding the identity of the claimant for same condition drawback. The Customs modernization provisions of the Act followed this interpretation with respect to the identity of the claimant for unused merchandise drawback.

Section 181.49

Comment: One commenter stated that this section does not specify which records are required to be kept by the exporter, importer, manufacturer or producer. This commenter argued that Customs recordkeeping requirements are strictly limited to those records which are referenced in the statute and that this is consistent with Congressional intent under H.R. 3450. This commenter also suggested that Customs review the commentary in the House Report with regard to section 632 of the Act and that Customs also compare § 181.49 to § 181.53(g).

Customs response: The types of records are set forth in § 181.47(b); this section simply sets the retention period. Since payment occurs in most instances under the accelerated payment program before liquidation takes place, the period starts and ends earlier. In any event, § 181.49 follows the existing policy set forth in 19 CFR 191.5. Customs notes that 19 U.S.C. 1313(t), which was added by section 632 of the Act, makes the general recordkeeping requirements set forth in 19 U.S.C. 1508(c) applicable in the context of drawback certificates and provides that the retention period starts on the date the certificate is issued in the case of a person who issues a certificate relating to another person's drawback claim. Accordingly, § 181.49, as set forth below, has been modified by adding at the end the following sentence: "However, any person who issues a drawback certificate that enables another person to make or perfect a drawback claim shall keep records in support of that certificate commencing on the date that the certificate is issued and shall retain those records for three years following the date of payment of the claim."

Section 181.50(a)

Comment: A commenter raised the issue that whereas the regulations require that the amount of duties paid to Canada or Mexico be "established" as a prerequisite to the completion of the claim, they do not provide instructions as to how these duty amounts will be established and they do not prescribe a time frame in which the duty amounts will be settled for the purpose of finalizing the claim.

Customs response: This section describes generally the process by which Customs will determine the amount of drawback to be paid. A directive for the guidance of Customs officers will address the internal Customs procedures that will implement the process in detail. With regard to the time frame issue, see the discussion of § 181.50(b) below.

Section 181.50(b)

Comment: Two commenters stated that requiring liquidation of entries made in Mexico and Canada before a drawback claim is liquidated eliminates most drawback claims from the Customs modernization act bypass system. In a related comment, another commenter stated that this section is in conflict with the Customs modernization provisions of the Act in a bypass (selectivity) system context because the liquidation of all designated import entries is no longer required for drawback liquidation. This commenter argued that requiring that there be prior liquidation of the import entry in Canada or Mexico undermines the process and conflicts with the requirement for fair and reasonable procedures as described in the legislative history accompanying the Customs modernization provisions of the Act.

Customs response: Customs will not be able to determine the "lesser of" the two duties unless the final amount of duties paid upon entry to Canada or Mexico is available. See also the response to the next comment.

Comment: A commenter stated that a time limit for liquidations is needed and that the current indefinite time period is in conflict with the intent expressed by Congress in the new drawback provisions contained in section 632 of the Act. In this regard this commenter referred to the accompanying House Report in which it was stated that "the Committee expects that Customs should issue drawback regulations which take into consideration the various time limitations for recordkeeping, filing claims, amendments and clarifications and for auditing and liquidating drawback claims."

Customs response: There is no requirement under the law that provides for a specific time period for liquidation of drawback claims, and practical considerations (including differences in the entry laws of the three NAFTA Parties) militate against imposing a strict time limit for liquidation of a drawback claim.

On a related subject, the United States and Canada have agreed that each import transaction involving goods subject to a NAFTA drawback claim in the exporting country should be monitored for a period of 3 years so that appropriate information may be provided to the exporting country for purposes of applying the "lesser of" rule; this 3-year period was chosen because it represents in most cases the time during which all factors affecting ultimate finalization of the import entry (including changes to the entry made by the importer after importation) would be set. Accordingly, § 181.50(b) as set forth below has been modified to provide that a drawback claim shall not be liquidated for a period of 3 years after the date of entry of the goods in Canada or Mexico.

Comment: A commenter made the following suggestion with respect to the policy that liquidation of the drawback claim not occur until the liquidation of the Canadian or Mexican customs entry has become final: In order to avoid a long waiting period, a waiver of the right to challenge the amount of estimated Canadian or Mexican duties should be established. Under this procedure, the claimant would agree to waive the right to claim any additional duties owed to Canadian or Mexican Customs.

Customs response: The commenter alleges that liquidation of a drawback claim can be done more quickly if the right to challenge the amount of duties assessed by Canada or Mexico is waived. However, a U.S. drawback claimant, unless it is also the importer into Mexico or Canada, has no right to waive the amount of duty paid by the Mexican or Canadian importer. Also, a system involving payment of drawback claims based upon the waiving of rights to challenge the Canadian or Mexican duty amounts could result in the United

States issuing an overpayment to the drawback claimant each time the import entry was liquidated for a lower amount of duties. The change to § 181.50(b) discussed in the response to the preceding comment represents Customs view regarding the proper time period during which liquidation of a drawback claim should not take place.

Section 181.50(c)

Comment: With respect to the requirement that a person who receives a drawback refund through accelerated payment must repay the duties if a NAFTA claim is adversely affected thereafter, a commenter stated that this should be amended to state that repayment is not required until the adverse decision has been made final by the courts and/or by operation of law.

Customs response: The suggestion that a claimant who receives an accelerated payment before liquidation need not repay it until the adverse action which makes that accelerated payment erroneous would be acceptable if the bond required the recipient to repay the principal sum with interest running from the date that Customs made the accelerated payment and until repaid. Since that process could take years, the bond amounts would have to be increased accordingly to protect the revenue. Accordingly, Customs concludes that the obligation to repay arises whenever an administrative action occurs which affects the NAFTA drawback claim.

Section 181.51(a)

Comment: Three commenters noted that certifying that an entry was not designated and paid on a prior drawback claim is unnecessary because a claimant that knowingly does this is guilty of fraud, and the Compliance Program and the civil penalties should offer sufficient protection against fraudulent claims.

Customs response: Customs believes that the regulation serves a useful purpose in reminding the claimant to exercise care to make certain that double claims are not made.

Section 181.51(b)

Comment: A commenter stated that the requirement for the claimant to state that no Certificate of Origin has been provided for the goods should be changed to a statement that no other "NAFTA" Certificate of Origin has been provided for the goods. This is because sometimes exporters may use Certificates of Origin for other purposes (for example, for enforcement of trade sanctions).

Customs response: The first sentence under § 181.51(b) refers to a Certificate of Origin "provided for under § 181.11(a)", and the second sentence refers to "any such" Certificate of Origin; as such the Certificate of Origin cannot be mistaken for any other certificate of origin that may apply to other laws. Therefore, use of "NAFTA" as suggested would be redundant and thus inappropriate.

Comment: A commenter referred specifically to the requirement that the claimant provide notice of whether another person has prepared a NAFTA Certificate of Origin for those goods. This commenter stated that this is in conflict with the new regulation that the claimant provide an affidavit that no Certificate of Origin has been provided for those goods.

Customs response: Section 181.47(b)(2)(i)(F) requires a claimant to affirm that no NAFTA Certificate of Origin was provided "except as stated on the drawback claim". Section 181.51(b) supplements that provision and makes it clear that a claimant who provides a NAFTA Certificate of Origin must report that fact to Customs.

Comment: A commenter stated that new subsection (t) of 19 U.S.C. 1313 provides that "any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued" and that the interim regulations are deficient in that they do not implement the language of this statutory provision. This commenter stated that subsection (t) would be helpful because it would establish a retention period beginning on the date the certificate was issued, instead of the date of payment.

Customs response: The NAFTA Certificate of Origin record retention period is set forth in § 181.12. *See* 19 U.S.C. 1508(c). The NAFTA Certificate of Origin is not a certificate that would enable another person to claim drawback. The certificates covered by 19 U.S.C. 1313(t) are the certificate of delivery and the certificate of manufacture and delivery.

Comment: A commenter stated that should this regulation remain as is, the 30-day window for filing the Certificate of Origin after filing the claim will create another administrative nightmare for Customs because all of the affidavits regarding Certificates issued (which may come in at various times after submission of the drawback entry) will have to be matched with previously filed drawback entries. This commenter stated that some adjustment should be made in the regulatory text to meet this problem.

Customs response: This comment is unclear because there is no "30-day window for filing the Certificate of Origin." There are, however, two 30-day windows established in this section which involve notifying Customs of the existence of a Certificate of Origin for goods on which drawback has been paid. These two notification periods are necessary because if a drawback claimant prepares a Certificate of Origin for its Canadian or Mexican customer, it could result in a reduction of duty paid to Canada or Mexico on the goods for which the claimant is basing its drawback claim. Therefore, it must be reported to Customs so that Customs will be able to track and adjust that drawback claim. A drawback claimant who makes a drawback claim and then provides a Certificate of Origin to its customer jeopardizes its drawback claim.

Section 181.52

Comment: Two commenters stated that this provision creates contingent liabilities on every claim filed that could go on for a significant amount of time and that, therefore, the time frames allowed under NAFTA Article 502(3) for duty refunds in Canada and Mexico should be clearly indicated. These two commenters also stated that Customs will not be able to comply with this requirement without automation, or without recording the Canadian or Mexican entry number at the time the drawback claim is filed. In this regard, they referred to language pertaining to Title VI of H.R. 3450 which states that monitoring of drawback information can only be carried out effectively through exchange of electronic information.

Customs response: The commenters are correct. The very nature of the Agreement creates that contingent liability because of the differences in national laws and the right of an importer to make a post-entry NAFTA claim that is expressly provided in the Agreement. The alternative that was considered by the three Governments was to prohibit all refunds on goods moving from one NAFTA party to another NAFTA party. Permitting limited refunds necessarily increases uncertainty.

Section 181.53

General comments: The following general comments were made with regard to the operation of this section:

1. A commenter requested that the effective dates of this section be stated at the beginning of the section.

2. One commenter stated that the regulations should address the importation of goods from NAFTA countries covered by U.S. duty deferral programs, even though there will be some duties which could be deferred under these programs until all of the staged duty reductions and eliminations under NAFTA have been completed. This commenter also asked, if a claim for preferential tariff treatment is filed upon importation, whether an importer may file a warehouse entry or application for admission to a foreign trade zone and, if the claim is valid, whether it will be honored upon warehouse withdrawal or foreign trade zone entry for consumption.

3. A commenter asked whether the "lesser of the two" method will apply when zero payment of duties is an issue.

4. A commenter stated that this section does not address originating goods which are entered into a bonded warehouse, manipulated to the point where they are deemed produced in the bonded warehouse, and subsequently withdrawn for consumption in the United States.

5. Three commenters stated that the 60-day allowance for obtaining proof of exportation and duty payment in Canada or Mexico should be extended to a longer period, and one of these commenters suggested a 120-day period.

Customs response: The effective dates are already stated at the beginning of Subpart E.

The comment dealing with imports from NAFTA countries is beyond the scope of Subpart E.

Zero payment of duty into Canada or Mexico will be considered in making the comparison. If no duty is paid into Canada or Mexico, there will be no duty refund or deferral. Under the agreement, Canada and Mexico are required to provide reciprocal treatment of goods sent to the United States.

The treatment of originating goods entered into a warehouse and withdrawn for consumption is beyond the scope of Subpart E.

The 60-day time period was set by Article 303(5) of the Agreement. Knowing of the time frame, there is no reason why the beneficiary of the refund cannot structure its transfer to ensure that it can comply with the time period.

Section 181.53(a)(1)

Comment: One commenter took issue with the definition of "duty deferral" provided in this section, stating that Class 2 and 3 customs bonded warehouses are excluded from this list, whereas their counterparts, "warehousing/distribution foreign-trade zones" are not excluded. This commenter stated that the initial sentence in § 181.53(e) provides a better definition of "a good that is manufactured or otherwise changed in condition in a foreign-trade zone * * *"

Customs response: The comment seems to state that a class 2/8 warehouse or a class 3/8 warehouse is excluded from coverage of § 181.53. Such warehouses are included under § 181.53(b).

Section 181.53(a)(2)

Comment: A commenter suggested adding to this section the following phrase: "except for a good eligible for full drawback as provided for by section 181.45 of this Subpart". In this regard, this commenter stated that NAFTA Article 303(6) provides for several import transactions that are unaffected by any limitations on drawback refunds or duty-deferral programs. This commenter also stated that § 181.45 captures these Article 303(6) transactions for drawback refund purposes. This commenter also stated that the regulations should clearly state that a good departing a foreign-trade zone for export to Mexico or Canada under circumstances included in Article 303(6) and/or § 181.45 shall not be subject to treatment "* * * as if it had been entered or withdrawn for domestic consumption, and thus subject to duty."

Customs response: Customs agrees that goods entitled to full drawback under § 181.45 should be excluded from this provision. Accordingly, § 181.53(a)(2), as set forth below, has been modified by the addition of the following sentence: "However, the provisions of this paragraph shall not apply to goods covered by § 181.45."

Comment: A commenter questioned the meaning of the phrase "treatment as withdrawn for consumption." This commenter stated that, from an operations standpoint in the case of merchandise shipments from foreign trade zones, a "pro-forma" Customs Form 3461 and/or Customs Form 7501 must be prepared. Since there is no legal provision for a pro-forma version of these two forms, this commenter stated that the exact methodology of how to do this should be provided in the regulations.

Customs response: With respect to the meaning of "treatment as withdrawn for consumption" the provision informs the person who withdraws that it will be liable for duties on a good withdrawn for exportation to Canada or Mexico unless it is exempted by the Agreement or statute. As regards documentation requirements, Customs agrees that the regulations should incorporate specific provisions setting forth the procedural (including documentary) requirements that would apply for purposes of § 181.53. However, Customs believes that it would be preferable to deal with this matter in a separate **Federal Register** document rather than include such provisions in this final rule document. Accordingly, Customs intends to publish in the near future a separate document amending § 181.53 to address these procedural issues with a view to having appropriate regulations in place on January 1, 1996, when the Subpart E provisions go into effect.

Section 181.53(a)(3)

Comment: A commenter posed several questions about the process of "waiver or reduction" as provided for in this section. Will a pro forma Customs entry be prepared and held or will it be filed in some manner with Customs? How will the structure of the paperwork be organized? Because merchandise that is the subject of the pro forma entry will also be the subject of a Customs Form 7512 and Customs Form 7525, how will the Census reporting structure be organized?

Customs response: The section sets the legal requirement for Customs to waive or reduce the duties paid or owed on goods sent to Canada or Mexico. As indicated in the response to the preceding comment, the documentary and other procedural aspects of § 181.53 will be addressed in a separate document.

Section 181.53(e)

General comments: The following general comments were made with regard to the operation of this section:

1. One commenter stated that, by requiring actual payment of duties to Mexico or Canada, these regulations defeat the purpose for which this 60-day hiatus was created for foreign trade zones. This purpose was to address the paperwork and procedural burden the proposed "NAFTA Drawback" would impose on Customs and on companies that use foreign trade zones and export to Canada and/or Mexico. This commenter saw the burden as follows:

Step One—Merchandise shipped from a zone to Mexico and/or Canada with an appropriate tariff payment to U.S. Customs.
Step Two—Merchandise arrives in Mexico or Canada with appropriate tariff payments made.
Step Three—The U.S. exporter files for NAFTA Drawback with the evidence of payment(s) made in Canada or Mexico.

This commenter went on to state that, originally, the 60-day hiatus was

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expected to provide an opportunity to combine steps one and three but that, by requiring payments to be made, this section forces a return back to the three-step procedure. As it is, the potential for this situation already exists when a Mexican or Canadian importer decides to use a deferral program that extends his payment of duties owed beyond the 60-day schedule imposed on the U.S. exporter. The regulations and H.R. 3450 provide adequate anti-fraud provisions to protect against the opportunity for any abuses that the suggested modifications might otherwise provide. Moreover, § 181.52 provides for the adjustment of drawback payments pursuant to a NAFTA preference claim made subsequent to the payment of a NAFTA drawback refund. This commenter therefore suggested that in similar fashion such a protection could become part of the § 181.53(e) procedures so that evidence of duty paid could be based on the duty owed (but not yet paid) in Mexico or Canada.

2. The same commenter requested that the phrase "as calculated under paragraph (e)(1) or (e)(2)" in the introductory paragraph of this section be replaced by the phrase "as calculated consistent with the provisions of 19 CFR 146 Section 146.65".

3. Another commenter stated that this section does not take into account that the Customs modernization provisions of the Act allow for periodic entry procedures for goods transferred from foreign trade zones to be expanded to a monthly timeframe instead of submission of entry-by-entry paperwork.

4. Two commenters stated that the examples provided in this section are convoluted and should be replaced. One commenter suggested that the examples should set forth the following facts: The imported products HTSUS classification; the rate of duty in the United States and in Mexico or Canada; dutiable value; and total value. Moreover, it was suggested that there should also be an example illustrating NAFTA treatment for a good departing a foreign trade zone for Mexico or Canada that combines both privileged and non-privileged foreign components and/or materials.

5. A commenter pointed out that there is no provision for mixed status merchandise (privileged and nonprivileged). This commenter also stated that there is no provision for zone restricted status merchandise. Since no production can occur in zone restricted status, if storage distribution were not included in the special actions under § 181.53, new special provisions for this status would not be necessary but should be mentioned.

6. Two commenters stated that the provision under section 202(a)(2)(A) of H.R. 3450 should be included in this section or it will be misinterpreted. These commenters believed that it should be interpreted only to mean that a foreign trade zone cannot be used to create a NAFTA originating good qualifying for NAFTA duty reduction. On a related subject, another commenter stated that this section does not address goods which are processed but not produced in a foreign trade zone (processed with non-originating materials). This commenter asked whether privileged foreign status would be permitted to "lock in" NAFTA preferential tariff treatment.

7. A commenter requested further clarification of the valuation methodology included in this section. This commenter further believed that weight should not be a factor other than when it is a factor for HTSUS purposes and therefore suggested using the language "in its condition and HTSUS quantity."

8. A commenter asked what the date of exportation is for NAFTA purposes.

9. A commenter requested that a definition of "assessed" be provided.

10. A commenter believed that the requirement for proof of exportation in this section is an unnecessary paperwork burden and suggested that a summary procedure similar to the one used in drawback should be established.

Customs response: The requirement for the collection of duties is set forth in Article 303(5)(a) of the Agreement.

The inclusion of paragraphs (e)(1) and (2) facilitate having the zone withdrawal NAFTA requirements in one part.

Whether a good is removed under the current weekly entry procedure or some other periodic entry procedure will not change the concepts set forth in the provision.

Creating complex examples will tend to obscure the principles sought to be illustrated: That is, which duty amounts are to be compared? The use of oil is appropriate since the principle is illustrated when privileged foreign status is claimed. There is no need for a separate example of merchandise consisting of nonprivileged and privileged status merchandise since the principles set in both examples would apply to such merchandise.

Export to Canada or Mexico of zone restricted status merchandise will not require an entry for consumption. It will require the goods so exported to be treated as a withdrawal for consumption for the sole purpose of computing whether there should be a reduction or waiver of duty.

The comment on section 202(a)(2) of the Act is beyond the scope of Subpart E. It deals with goods that are entered for consumption from a zone.

With respect to the use of weight as part of the valuation methodology, Customs does not concur with the suggested change because the provisions of this section follow the provisions of the Foreign Trade Zones Act (*see* 19 U.S.C. 81c(a)).

In the case of a shipment from the United States to Canada or Mexico, the date of exportation would be the date on which the goods leave the United States with evidence that the person sending those goods to Canada or Mexico intends to join them to the commerce of Canada or Mexico (*see* 19 CFR 101.1(k)).

The common meaning of the term "assessed" applies. As such, there is no need to provide for a separate definition that repeats the common meaning.

With respect to the proof of export burden under NAFTA, the comment fails to recognize that unlike drawback for shipments to non-NAFTA countries, the basis for entitlement to a refund, waiver or reduction in duty there depends entirely on the article and the amount of duty paid to Canada or Mexico. Also, the comment confuses the distinction between one drawback claim which may involve many exportations of merchandise on which duty was previously paid and specific withdrawals on which potential duty liability starts when that merchandise is withdrawn from a zone.

Section 181.53(e)(1)

Comment: A commenter stated that there are imported goods in foreign trade zones destined for Canada and/or Mexico under zone restricted status (19 CFR 146.44). This commenter stated that a general exemption from 19 CFR 146.63(b) should be provided for these goods because, for these goods to be entered or withdrawn for domestic consumption from an FTZ, § 146.63(b) provides that merchandise in zone restricted status may be entered for consumption only when the Foreign Trade Zone Board has ruled that the merchandise can be entered for consumption. To require rulings on such a routine matter will impose an unnecessary procedural burden on the Foreign Trade Zone Board, zone users and on Customs.

Customs response: The issue of goods in a zone restricted status will be addressed in the separate document regarding § 181.53 procedures to be published in the near future as mentioned above.

Section 181.53(e)(2)

Comment: A commenter took issue with the implication of this section that payments may be refunded only up to the limits established by § 181.44. Specifically, this commenter stated that under these regulations the exporter is required to make payments to U.S. Customs that might otherwise be unnecessary or larger in amount than is legally required for reasons of failure to meet the 60-day deadline. There should be an explicit provision that provides for the refund of these unnecessary or excessive payments in whole or in part when the evidence required by § 181.53 becomes available.

Customs response: There is no allowance for a time extension or a reconsideration of the initial determination in the NAFTA legislation. As regards available remedies for any "unnecessary or excessive" payments referred to by this commenter, this issue will be addressed in the separate § 181.53 document to be published as mentioned above.

Comment: A commenter stated that the 60-day period should be defined on a business month basis, not on a daily basis.

Customs response: As previously stated, the 60-day period was set by the three Governments in the Agreement. The purpose of the 60-day requirement was to enable the refund claimant to provide the Canadian or Mexican entry information so that the appropriate duty comparison could be made.

Comment: A commenter pointed out that separately defining duty calculations when treating exports from foreign trade zones as domestic entries provides for many questions and potentially disparate procedures. To diminish the likelihood for both these questions and procedures, this commenter suggested that this section be amended to reflect current FTZ regulations that cover entries for consumption.

Customs response: These procedural issues will be addressed in the separate § 181.53 document to be published as mentioned above.

Comment: A commenter alleged that there is a conflict in this section in that the section states that duty is assessed on privileged foreign status goods at the time of admission to the zone but in the example refers to duty assessed one month after admission.

Customs response: The commenter is correct. Accordingly, § 181.53(e)(2), as set forth below, has been modified by replacing the words "at the time of its admission to" with the words "at the time privileged status is granted in".

Section 181.53(g)

Comment: A commenter stated that the recordkeeping period is unclear, and therefore this commenter assumed that the normal recordkeeping periods apply to drawback claims and to import entries. Two other commenters stated that the 3-year period for record retention should be stated to avoid confusion.

Customs response: Under 19 U.S.C. 1508(c) and the regulations thereunder, the periods for record retention vary according to the type of transaction involved. With respect to warehouse withdrawals, foreign trade zone entries, and temporary importation bond transactions, the period is five years from the date of entry. With respect to drawback, the period is three years from the payment of drawback to the claimant.

Section 181.53(i)

Comment: A commenter stated that if this section relates to waiver or reduction of duty under duty deferral programs, it is inappropriate to state that "* * * Customs shall reliquidate the NAFTA drawback claim" because that issue already is addressed in § 181.52.

Customs response: The reference in this section is necessary because, while § 181.52 is limited to traditional drawback, § 181.53 includes all of the other contexts which are included in the term "NAFTA drawback" as defined in § 181.1(o) of the regulations.

Section 181.54

Comment: A commenter stated that the open-ended time period for U.S. Customs to verify Canadian and Mexican documentation creates indefinite contingent liabilities. This commenter suggested that a definite time period should be clearly indicated.

Customs response: Because the national laws differ and because the Agreement expressly provides for post-entry claims to be filed up to one year after entry, it is impossible to fix one time limit that will cover all situations.

Appendix to Part 181

Additional comments were submitted regarding the relationship between the Subpart E provisions and the provisions of Schedule X of the Appendix to Part 181. Those comments are addressed below in connection with the discussion of the Appendix comments.

Part 181, Subpart G (Origin Verifications and Determinations)

Section 181.72

Comment: In order to enable sureties to better protect their interests, one commenter stated that the regulations should be modified to require Customs to provide notice to the surety: (1) When Customs commences an origin verification under paragraph (a) involving the bond principal's goods; (2) when Customs makes an inquiry of the importer under paragraph (c); and (3) whenever the foreign producer or exporter or the U.S. importer fails to cooperate during an origin verification.

Customs response: Requiring such notices to sureties would impose an unnecessary burden on Customs. Accordingly, this is a matter more appropriate for the surety and its principal to resolve in the context of their contractual relationship.

Section 181.75

Comment: One commenter stated that the regulations should be modified to require Customs to provide notice to a surety when a negative origin determination is issued to the surety's bond principal under paragraph (b).

Customs response: A negative determination of origin does not necessarily result in a bond breach. Consequently, no useful purpose under these regulations would be served by obligating Customs to provide such notice to the surety. This is a matter that is best left to the private parties to resolve as a part of their contractual relationship.

Part 181, Appendix (Rules of Origin Regulations)

Section 2

Comment: The following comments were submitted on the definitions and interpretation set forth in section 2:

1. With regard to the definition of "direct labor costs", one commenter noted that many companies include direct labor fringe benefits as part of their burden, not as part of their direct labor costs. Thus, it would be more correct to indicate that the defined term "may" include fringe benefits in costs that are associated with employees who are directly involved in the production of a good.

2. In the definition of "light-duty vehicle", a commenter stated that the second reference to "8702.10.60" should read "8702.90.60".

3. One commenter noted that the definitions and interpretation of "similar goods" and "similar materials" are important parts in determining

eligibility for averaging costs over time where goods are produced in the same facility. Given this purpose, this commenter argued that these definitions and interpretation are unduly restrictive because goods and materials should qualify as "similar" for purposes of averaging if they simply serve identical functions. For example, if both automatic and manual transmissions are otherwise eligible for averaging, the fact that these two transmissions may not meet the "similar characteristics and component materials" definitional standard should not disqualify them from averaging. To accomplish this result this commenter suggested (1) that the two definitions should be revised to encompass goods and materials that "although not alike in all respects, serve the same function" and (2) that the interpretation should be eliminated because it suggests that only identical goods or materials qualify as "similar".

Customs response: With regard to the first comment, the commenter is correct that some companies may include direct labor "fringe benefits" as part of their overhead. However, for purposes of allocating direct labor, the United States, Canada and Mexico agreed that the cost of fringe benefits for direct labor must be included in the "direct labor costs". Salaries and fringe benefits for other than direct labor employees may be included as overhead and would be allocated according to the methods for overhead in Schedule VII.

Customs agrees that the second reference to "8702.10.60" should read "8702.90.60" in the definition for "light-duty vehicle", and the definition, as set forth below, has been modified accordingly.

Customs disagrees with the statement that goods should be considered "similar" if they merely serve identical functions. Averaging in section 6(15) for regional value content purposes is allowed so that a producer would not have to segregate the value of its materials and its production costs when there is very little difference in the materials and the production costs that would be allocated to goods for which NAFTA preference is to be claimed and to goods which are to be consumed in a domestic or non-NAFTA market. The use of the term "similar" provides the necessary balance between the intended benefit and the need for assurance that the averaged costs will have a real relationship to the goods. For example, although an electric motor and a gasoline motor may serve the same function in a model toy, averaged costs for non-originating materials and for net costs for these two motors would not provide a meaningful measure of the regional value content for each type of motor. When this issue was discussed trilaterally, it was agreed that the current reference to "similar" should not be changed.

Section 4

Comment: With regard to section 4(4) which sets forth exceptions to the change in tariff classification requirement for originating goods, one commenter stated that subparagraph (b)(iii) should be removed because it imposes a further qualification that is not reflected in the NAFTA provisions as set forth in General Note 12(b)(iv)(B), HTSUS. Specifically, whereas the NAFTA text simply refers to a case where the undivided tariff headings or the tariff subheadings for the goods "provide for and specifically describe both the goods themselves and their parts", the Appendix text at issue adds a further requirement that the non-originating materials and the good "are not both classified as parts of goods under the heading or subheading" under consideration. This commenter suggested that this limiting Appendix text is not required by either the language or the purpose of the NAFTA provision and that the "specifically describe" language of the NAFTA text could reasonably apply where the tariff provision is a "parts" provision because the minimum regional value content requirement would still apply.

Customs response: Customs disagrees. Note 22 to the NAFTA clearly states that the phrase "specifically describes" in Article 401(d) was intended to exclude situations in which both the good and the non-originating material are classifiable as "parts" in the heading or subheading under consideration.

Section 6

Comment: The following comments were submitted on the regional value content provisions of section 6:

1. With regard to subsection (14) which concerns non-allowable interest costs, one commenter agreed that the "700 basis points" standard (above which interest would not be countable toward total cost) was appropriately high. However, this commenter stated that, by referring to the yield on debt obligations of comparable maturities issued by the federal government of "the country in which the producer is located", this provision could result in disparate treatment of similarly situated companies located in different NAFTA countries. In order to avoid the possibility that two companies with similar interest costs on a debt of the same denomination may face different interest caps because their production occurs in different NAFTA countries, this commenter stated that subsection (14) should be modified to reflect linkage of the interest rate on a debt to the interest rate on government debt obligations of the country that issues the debt, so that the amount of allowable interest costs would depend on the denomination of the debt rather than the location of the company.
2. One commenter pointed out that in subsection (18) the reference to the period chosen in "subsection (14)(a)" should properly refer to "subsection 15(a)".
3. With regard to the examples contained in subsection (20), a commenter stated that Example 9 would be more clear if it explained that the tooling expensed on the books of Producer A is considered as non-originating because the material that the tooling produced is non-originating.

Customs response: With regard to the first comment, Customs agrees that disparate treatment may arise because the interest caps in the NAFTA countries may be different. However, in order to provide certainty and stability in this area, the United States, Canada and Mexico agreed to apply the interest cap of the NAFTA country in which the producer is located.

Customs agrees that the reference to "subsection (14)(a)" should properly read "subsection (15)(a)" in subsection (18) which, as set forth below, has been modified accordingly.

Although Customs agrees that Example 9 in section 6(20) could be more illustrative by addressing the treatment of the cost of tooling as a "non-originating cost" because it is included in the cost of the non-originating material produced by the tooling, Customs also notes that this example was merely intended to illustrate how the cost must be captured and that it cannot be counted twice. This commenter's suggestion, however, has been incorporated as a new Example 8 which has been added to section 7(18) (renumbered from 7(17)) as set forth below.

Section 7

Comment: With regard to section 7(17), one commenter pointed out that in the first paragraph of Example 4 the reference to "Material A" should read "Material X".

Customs response: This typographical error was corrected in a document published in the **Federal Register** on March 31, 1994 (59 FR 15047).

Section 9

Comment: With regard to Example 6 under section 9(10), one commenter

noted that although the example states that the producer designates the short block as an intermediate material, the example does not explain why this designation is made or what its effect might be on the origin of the part or the traced value in the vehicle.

Customs response: The purpose of Example 6 in section 9(10) is to illustrate section 9(9)(a) which provides that the designation of a self-produced material as an intermediate material is only effective with regard to the calculation of the net cost of the light-duty automotive good and, therefore, does not permit the producer to ignore the value of the traced materials for purposes of the calculation of the value of non-originating materials in the light duty automotive good. Customs agrees that, in this case, it may be clearer to state that the intermediate material qualifies as an originating material. Accordingly, Example 6, as set forth below, has been modified as follows: (1) By adding a sentence immediately after the second sentence in the first paragraph to read "The intermediate material qualifies as an originating material"; and (2) by changing the last clause in the first sentence of the second paragraph to read "even though the intermediate material is an originating material."

Section 10

Comment: One commenter alleged that the language of section 10, and in particular the language of sections 10(1) and 10(2), is contrary to the wording of Article 403(2) of the NAFTA in that the Appendix language appears to require only tracing of the value of non-originating listed materials of the producer of the engine and transmission (the components), with two different results depending on the factual circumstances: (1) If the producer of the components is also the producer of the vehicle, then the tracing must be made through to the vehicle; or (2) if the producer of the components and vehicle are different, then the tracing stops at the production of the components. In other words, where the producer of the vehicle is not the producer of the component, that vehicle producer simply applies the normal rules of NAFTA Annex 401 to his product because he by definition does not "use" any material listed in NAFTA Annex 403(2) within the meaning of Article 403(2)(a) (it is the component producer who uses the listed material, that is, to produce the component, while the vehicle producer uses that component to produce the vehicle): thus, the component, not being a listed material, becomes the "other material" referred to in Article 403(2)(b) and is either originating or non-originating as far as calculation of the regional value content of the vehicle is concerned. This commenter, apparently concerned by the appearance of a narrower tracing rule under the Appendix text, stated that section 10 should be revised to reflect the correct, broader rule under the NAFTA text, that is, that the value of non-originating listed materials must be traced to the original-equipment engine and transmission and through them to the vehicle for purposes of calculating the regional value content of the vehicle.

In the event that the revision suggested above is not done, this commenter made the following additional recommendations regarding section 10:

1. As regards subsection (4) concerning the option of using the light-duty tracing rules for heavy-duty components, three suggestions were made. First, the materials covered by the subsection should be expanded to include listed materials and subcomponents. Second, if light-duty and heavy-duty vehicles are produced in the same plant, the producer should have the option of using the light-duty rules for calculating regional value content. Third, paragraph (b) should be removed because even if a producer knows the final use of the component, he should still have the option of using the light-duty rules.
2. As regards subsection (9)(c) which provides that section 10 does not apply to a subcomponent for purposes of calculating its regional value content before it is incorporated into a heavy-duty automotive good, this commenter questioned the authority for this subsection and stated that, if there is no authority for it, then Situation 1 of Example 6 under subsection (10) is incorrect. Furthermore, this commenter suggested that if there is authority for subsection (9)(c), then there is a basis for setting up separate manufacturing companies to convert non-originating cost to originating for determining the regional value content of a subcomponent that crosses a border, because the tracing requirement is eliminated.

Customs response: Customs disagrees with the commenter's conclusion that the text of section 10 does not reflect Article 403(2) of the NAFTA which requires that the value of a listed non-originating material be "traced" through to any heavy-duty automotive good in which it is used. The rules in section 10(1) are cumulative. If a producer of a heavy-duty automotive good "uses" a listed non-originating material, then paragraph (a), (b) or (c) would apply, depending, of course, on the specific facts. If a producer uses an automotive component assembly, automotive component or subcomponent, then paragraph (d) or (e) would apply, resulting in the "tracing" of either the values of all non-originating materials that were incorporated into that material acquired and used by the producer or the entire value of that material acquired and used by the producer. The structure of section 10(1) eliminates any doubt that, regardless of the stage in which a listed non-originating material is used, the value of that listed material must always be included in the value of non-originating materials when calculating the regional value content of any heavy-duty automotive good into which the listed material is subsequently incorporated.

Customs disagrees with this commenter's proposals for redrafting section 10(4) because the regulation reflects the relevent NAFTA provisions and the intent of the Parties. First, Article 403(2), which provides the rule for determining the value of non-originating materials in heavy-duty automotive goods, does not apply to listed materials or to subcomponents. Second, Article 403 is very clear in that it provides a specific rule for light-duty vehicles and a specific rule for heavy-duty vehicles. Third, with the exception of the situation in which averaging is permitted under Article 403(4) (see section 12 of the Appendix), Article 403(2) does not provide for the alternative use of the light-duty tracing rule for heavy-duty automotive components. In view of the fact that it may be impossible to identify interchangeable heavy-duty components and light-duty components that are produced in the same plant, the United States, Canada and Mexico agreed that the regulations should specifically address this situation.

With regard to the comment on section 10(9)(c) that there is no authority to exclude subcomponents from the regional value content calculation in section 10, Customs simply notes that the special rule set out in Article 403(2) of the NAFTA is for vehicles and components. Furthermore, the use of a listed non-originating material in the production of a subcomponent does not defeat the "tracing" requirement applicable to heavy-duty automotive goods. The regulations set out in section 10(1) make it clear that the value of a listed non-originating material will always be traced through to any heavy-duty automotive good into which it is incorporated. For example, section

10(1)(d) requires the "tracing" of a listed non-originating material even if it was used in the production of an originating subcomponent.

Section 13

Comment: The following comments were submitted on the special regional value-content requirements contained in section 13:

1. Two commenters referred to subsection (4) which concerns the averaging period for calculation of regional value content for vehicles of a new plant or a refit plant.

One of these commenters noted that paragraph (a)(i) would allow a producer to use launch and start-up cost for a period up to 23 months as originating content in computing the regional value content. This commenter suggested that the cost incurred from the first prototype date to the end of the fiscal year in which the first prototype was produced should be used for the regional value content calculation for the vehicles produced in the first fiscal year.

The second commenter concluded that subsection (4) allows a motor vehicle producer to elect one of the following three periods over which regional value content is calculated by averaging: (1) Paragraph (a)(i) allows averaging from the date of the production of a prototype through the end of the first fiscal year that begins after that date, thus allowing the producer to roll the first partial year into the first full fiscal year for averaging purposes; (2) paragraph (a)(ii) allows averaging over any fiscal year that begins after production of a prototype and ends before the end of the special regional value content period (the 5-year or 2-year period specified in section 13(2)); and (3) paragraph (a)(iii) allows averaging over part of a fiscal year up to the last day of that 5-year or 2-year special regional value content period. However, this commenter stated that the exact time periods covered by these three alternative averaging periods are not clear in the Appendix text as written. In addition, this commenter suggested that the end of an averaging period involving a special regional value content period should coincide with the end of the producer's fiscal year because significant accounting problems will arise if the averaging period cuts off before the fiscal year end. Thus, for example, a 5-year period under section 13(2) would allow averaging for full five fiscal years plus that portion of a year beginning with the date of production of the first qualifying prototype.

2. One commenter noted that subsection (5)(h) requires that the document in which the election to average is made must be filed at least 10 days before the first day of the producer's fiscal year, or such other shorter period that the concerned customs administration may accept. This commenter recommended that this provision be amended to specify "10 days before the shipment of the first vehicle intended for sale".

Customs response: Customs agrees that section 13(4)(a)(i) would permit a producer to average over a period of up to 23 months. In the interest of aligning the averaging period with the period for which the special RVC is effective for production from a new plant or a refit plant, it was considered to be more practical to combine the initial "stub" period with the first full fiscal year. Paragraphs (a)(ii) and (a)(iii) provide for the subsequent full fiscal years and for the final stub period, if any.

Concerning the second comment on section 13(4)(a), Customs first notes that the commenter has referred to subparagraphs (i), (ii) and (iii) as "alternative averaging periods". This is not correct. One, two or all three of these subparagraphs could apply in any given situation, depending on the length of the special RVC period and the relationship of the first year of that period to the beginning of the producer's fiscal year.

In response to the remainder of this commenter's remarks, Customs notes that under Article 403(6), the "years" in the periods for which a special RVC applies to vehicles of a new plant or vehicles of a refit plant are not necessarily coterminous with the fiscal year of a producer. Under Article 403(6) the "year" in the special RVC period begins when the first prototype motor vehicle is produced in the new or refit plant. Under Article 403(3), the "year" in the averaging period for the RVC calculation is the fiscal year of a producer. It was the intent of the drafters of the regulations to align the averaging period with the special RVC period in order to allow a producer to obtain the maximum benefit from the statutory 5-year or 2-year special RVC period. Customs has no authority to extend or reduce these NAFTA periods which are also reflected in section 202(c)(6) of the Act.

As regards the comment on section 13(5), Customs does not disagree entirely with the idea behind the commenter's proposal. Inasmuch as the first averaging period would not include the full fiscal year (if the first prototype of a motor vehicle is produced in a plant on a date after the beginning of the producer's fiscal year), it would appear reasonable to allow the producer to file at least 10 days before the beginning of the period which will constitute the first period in which the producer must average. However, the United States, Canada and Mexico agreed that the election should be filed at the same time that other elections to average under section 11 must be filed. The requirement does not impose an unnecessary hardship on a producer because the producer will have the requisite knowledge as to when such prototypes will be produced.

Section 15

Comment: One commenter made the following observations regarding section 15 which concerns the inability of a supplier, exporter or producer to provide sufficient information during a verification of the origin of a good:

1. Whereas section 15 sets forth alternative means to verify the origin or value of a material used in the production of a good when the person from whom the producer obtained the material is unable to provide sufficient verifying information, when a producer supplies verifying information the relevant customs administration should accept it. Moreover, the customs administration should have the obligation to explain in writing any refusal to accept the offered information supporting the origin of the material.

2. While section 15 properly provides that the customs administration shall take into consideration whether the customs administration of the importing country issued an advance ruling under Article 509 of the NAFTA which concluded that the material is an originating material, a provision should be added to authorize a "retroactive ruling" that a material is an originating material (for U.S. purposes, this could be done as a request for internal advice as provided for in Part 177 of the Customs Regulations). A producer often learns of a supplier's financial weakness in advance of problems that would make it impossible to obtain the information necessary to verify the origin of a material, and a "retroactive ruling" provision would allow the producer to obtain a ruling that would cover prior periods. The procedure for obtaining such a ruling should be consistent with the advance ruling provisions, except that the supplier of the material should provide exact historical data, including exporter's certificates of origin, rather than projected costs. Addition of a retroactive ruling provision would also reduce the need to rely on the other section 15

alternative means to verify the origin of a material.

Customs response: With regard to the first comment, Customs notes that subsection (1) of section 15 provides for factors to be considered by a customs administration where, during a verification of a good, a *producer of a material* is unable to supply sufficient verifying information for reasons beyond that person's control. The regulation thus contemplates the situation in which a verification requires information from the producer of the material, perhaps, for example, in the form of that person's books or records. It is unclear what the commenter's reference is to accepting the information offered. Of course, nothing in section 15 precludes the customs administration from considering information from the producer of the good or from any other source; rather, the section enumerates certain sources of information which may provide relevant information. Normally, of course, the verification process proceeds by seeking information from the producer of that good and, if necessary, from the producer of a material. If the customs administration is satisfied with respect to the origin of a material by virtue of information provided by the producer of the good, then presumably the situation identified in section 15 will not occur. The NAFTA countries did not perceive the need to provide for an obligation to accept proffered information or to explain any unwillingness to do so. Customs does not believe that any amendment in this regard is necessary or appropriate.

As regards the second comment, the commenter accurately observes that section 15(1)(a) provides that, among the factors to be considered, is whether an advance ruling under Article 509 of the NAFTA has been issued with respect to the material. The commenter appears to be seeking a separate procedure through which the producer of the good could obtain a decision with respect to the origin of a material which would presumably affect the origin determination with respect to the good. Such a procedure is intrinsic to the verification process. Thus, if the outcome of the verification depends on the origin of the material, it would be expected that the producer of the good would provide such information in its possession to demonstrate where the material originated. The customs adminstration would then apply the conclusion to the goods subject to the verification. Accordingly, it does not appear that there is any need for the regulations to be amended in order to meet the concern identified by the commenter.

Schedule III

Comment: One commenter stated that the valuation provisions of the interim regulations should be reviewed and revised to more accurately reflect the terms of General Note 12(c), HTSUS, which specifically refers to the legal standards set forth in section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a). This commenter cited the following specific examples in this regard:

1. Under section 3 of Schedule III, subsection (4) provides for the acceptance of transaction value between related parties when the producer demonstrates "that the transaction value of the good in that sale closely approximates a test value referred to in subsection (5)." However, the "test value" referred to in subsection (5) is limited to "the transaction value of identical goods or similar goods sold at or about the same time as the good being valued is sold to an unrelated buyer who is located in the territory of the NAFTA country in which the buyer is located." This commenter stated that this is much more limited than the comparable statutory provision (19 U.S.C. 1401a(b)(2)(B)) that applies under General Note 12(c), HTSUS, which includes other "test values" that can be used to demonstrate the acceptability of the transaction value between related parties.

2. Also under section 3 of Schedule III, subsection (8) appears to require that the "test value" has been "previously accepted by the customs administration". This commenter stated that this requirement is not contained in the U.S. valuation statute referred to in General Note 12(c), HTSUS.

Customs response: Schedules II, III and VIII of the Appendix to Part 181 of the interim NAFTA regulations were based on the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the "Customs Valuation Code," or "Code"), rather than on the U.S. valuation statute (19 U.S.C. 1401a), or the valuation statutes of Canada or Mexico. Since the Code is a neutral document common to all three NAFTA parties, it was therefore decided that the Code should form the basis of that part of the regulations that is concerned with how to determine regional value content under the transaction value method.

In regard to the specific points raised by the commenter, the test value referred to in Schedule III, section 3(5), is based on the transaction value of identical or similar goods since the purpose of the test value is to establish whether a transaction value between a related producer and seller, determined in accordance with Schedule II, is acceptable. Since transaction value is the only method of determining the value of a good under Schedule II, there is no justification for any alternative bases of determining test values as there is under the Code. Just as test values under the Code must be based on a value previously accepted by a customs administration, so too NAFTA requires that a test value shall have been previously accepted.

Schedule VII

Comment: The following comments were submitted in regard to the reasonable allocation of costs provisions contained in Schedule VII:

1. Two commenters referred specifically to sections 3(1)–(3) which concern methods used for internal management purposes by a producer of a good to reasonably allocate to that good direct material costs, direct labor costs or overhead.

One of these commenters noted that although the text in each case sets forth the criterion of "benefit, cause or ability to bear" for purposes of determining the reasonableness of the method used, the elements of this criterion are neither defined anywhere in the Appendix nor further explained in the examples under Schedule VII. This commenter suggested that: (1) This criterion should be eliminated, on the theory that a cost allocation method used for a (true) internal management purpose (that is, as stated in section 7 of Schedule VII, not solely for the purpose of qualifying a good as an originating good) should satisfy the reasonableness requirement; or (2) at the least, a definition or explanation of "benefit, cause or ability to bear" should be included in the final Appendix texts.

The second commenter expressed similar views and stated that the following interpretation of section 3 should be expressly affirmed in the final Appendix text: (1) That section 3 requires a customs administration to accept an allocation method that is used by the producer of a good for an internal management purpose, unless the allocation method is determined to be manifestly unreasonable; and (2) that a customs administration bears a heavy burden to disqualify any allocation method based on lack of relation to the criterion of benefit, cause or ability to bear because an allocation method that is used for internal management purposes is presumptively reasonable since a company is unlikely to rely on an allocation method for internal decision-making if it does not meet the benefit, cause or ability to bear criterion. Consistent with this interpretation, this commenter further suggested that section 3 should be revised to reflect a pure internal use test because the "reasonableness" requirement, based on the benefit, cause or ability to bear criterion, does not add meaningfully to the rule, injects an unnecessary degree of subjectivity into the cost allocation approval process, and is adequately provided for by the terms of section 7 of Schedule VII. Finally, this commenter recommended that, at a minimum, the following definitions be added to the Appendix to clarify the meaning of the "benefit, cause or ability to bear" criterion:

Benefit or benefits received: This criterion identifies the beneficiaries of the outputs of the cost pool and allocates the costs in proportion to the benefits received.

Cause or cause and effect: This criterion identifies the outputs of the cost pool (any grouping of individual costs) and allocates the costs in proportion to the services provided.

Ability to bear: This criterion advocates allocating costs in proportion to the cost objective's ability to bear.

2. With regard to section 6, one commenter stated that paragraph (d) should be eliminated so as to permit allocation of a gain or loss from the sale of a capital asset consistent with Generally Accepted Accounting Principles (GAAP) because, under GAAP, a gain or loss from the disposal of an asset constitutes a legitimate element of the total cost of the asset. Thus, a gain or loss on depreciation does not represent an extraordinary cost, and any write-off on sale or disposal of an asset should be reflected in total cost.

3. One commenter argued that section 7 should be eliminated for several reasons. First, section 7 is ambiguous when taken in context with section 4, which applies when an allocation method does not satisfy section 3 and which requires use of an allocation method that is reasonable based on the criterion of benefit, cause or ability to bear. The ambiguity exists because, if an internally used allocation method is deemed not to satisfy the reasonableness requirement in section 3 by virtue of the restriction in section 7, section 4 requires the producer of a good to use an alternative allocation method that does meet the benefit, cause or ability to bear reasonableness criterion. Given the rejection of the internally used allocation method under section 3, the only solution under section 4 is to use an allocation method that is solely for the purpose of qualifying a good as an originating good. This is precisely what section 7 is designed to prevent. Second, section 7 is unnecessary because, so long as an allocation method meets the reasonableness test under the benefit, cause or ability to bear criterion, the purpose of the allocation method is irrelevant. Finally, section 7 is redundant given the non-qualifying operations provision in section 17 of the Appendix as regards any production or pricing practice the object of which is to circumvent the Appendix. This commenter also suggested that if section 7 is to be retained, it should, at a minimum, provide specific and objective criteria for determining whether a cost allocation method is used solely to qualify a good as an originating good.

Customs response: Customs disagrees with the commenters' suggestions that the criteria of "benefit, cause or ability to bear" are not necessary in section 3, or, in the alternative, that the terms should be defined. The terms are recognized principles used in the cost accounting industry. They are broad principles that provide a measure by which Customs can determine the reasonableness of a cost allocation method for an internal management purpose. Customs does not dispute the fact that most producers, for one or more internal management purposes, are likely to rely on allocation methods that satisfy one of these criteria. The regulation, however, is intended to capture all situations and, therefore, must necessarily identify criteria against which the regulatory requirement is to be measured.

Concerning the comment on section 6(d), Customs agrees with the commenter's analysis of the treatment, for cost accounting purposes, of the gain or loss from the sale of a capital asset. However, in this case the Parties agreed that, for purposes of a "reasonable" allocation of costs in the calculation of total cost, such gains or losses are not reasonably allocated to a good.

The commenter's remarks concerning section 7 are understandable because the criteria of "benefit, cause or ability to bear" are used in both sections 3 and 4 to determine whether a cost allocation is reasonable. Nevertheless, Customs does not agree that section 7 should be eliminated. The structure of Schedule VII requires that, under section 3, an allocation method for an internal management purpose is to be used if it is a reasonable allocation. However, section 7 states that any allocation method for an internal management purpose will, on its face, not be accepted as "reasonable" if it is solely for the purpose of qualifying a good as an originating good. If costs are not reasonably allocated under section 3, then the producer is required to comply with section 4. Section 4 provides for the use of a method set out in the addenda to Schedule VII and/or any method based on one of the criteria of benefit, cause or ability to bear.

Schedule VIII

Comment: With regard to Schedule VIII (value of materials), one commenter raised an issue concerning section 3 which operates as an exception to the general rule that the transaction value of a material is unacceptable if, among other things, the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material. Referring specifically to the first sentence of subsection (7) which states that "[s]ubsection (4) provides an opportunity for the seller or the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located, and is therefore acceptable under subsection (1)", the commenter suggested the following interpretation thereof: the customs administration of the NAFTA country into which a good is imported is required to accept (and thus may not audit) the transaction value of a material used in the production of the good if the customs administration of the country into which the material was imported (and where the material was incorporated into the exported good) approved that transaction value during a valuation audit performed on the material when it was imported. This commenter stated that because section 3 is ambiguous, the provision should be clarified to reflect this interpretation. In addition, this commenter recommended that section 3 be modified to expressly state that the customs administration attempting to verify the value of a good that incorporates a material must accept any pre-approval or advance ruling concerning the value of the material by the customs administration of the country into which the material was first imported.

Customs response: For the purposes of Schedule VIII, unless otherwise stated, the term "customs administration" is defined as "the customs administration of the NAFTA country into whose territory the good, in the production of which the material being valued is used, is imported." Section 3 sets forth the basis for

determining whether the transaction value of a material determined under section 2(1) is acceptable. One basis under section 3 for validating a transaction value of a material is for a seller or producer to demonstrate to a customs administration (that is, a customs administration as defined above) that the transaction value determined in accordance with section 2(1) closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located. Accordingly, the regulations permit the customs administration of one NAFTA country to accept the transaction value of a material if it closely approximates a test value determined by the customs administration of another NAFTA country. However, this must be demonstrated to the satisfaction of the customs administration (as defined for purposes of Schedule VIII), and there is no requirement that a customs administration must accept any test value put forward by a particular seller or producer.

Schedule X

Comment: The following comments were submitted regarding Schedule X, principally in the context of the drawback and duty-deferral program provisions of Subpart E of Part 181:

1. With respect to the commingling of fungible goods and the inventory methods that are allowable to determine the origin of materials, one commenter stated that Schedule X excludes identification procedures (inventory methods) that have been allowed in drawback such as "lower to higher", "higher to lower" and blanket identification. This commenter also stated that FIFO is administratively unworkable and economically unfeasible for most companies, in part because the association of entry numbers with imported part numbers which is needed under FIFO is too detailed. On this same subject, two commenters stated that Schedule X is unworkable and not consistent with the intent of Congress which, as stated in Ways and Means Report 103–361, was "* * * to provide sufficient flexibility in the inventory accounting methods for such goods to make them administratively workable for industry." Another commenter stated that the words "completely fungible" should be changed to "commercially interchangeable" because of the redefinition of the term "fungible" in the Customs modernization provisions of the Act.

2. Three commenters raised the issue of commingled fungible goods that are 100 percent imported, two of them stating that, in such a case, entries for goods (within the appropriate time period) may be designated under the inventory averaging procedure and that this is supported by the legislative history relating to the Customs modernization provisions of the Act. These commenters also stated that, in such circumstances, the "high-to-low" method or any other Customs approved accounting method may be used.

3. Another commenter stated that the Appendix should not be used for the purposes of determining inventory methods because the Appendix is generally for rules of origin purposes. This commenter also stated that the inventory methods used to support a same condition drawback claim should be set forth separately because Article 303 of the NAFTA is not subject to the uniform regulations requirement of Chapter 5 of the NAFTA.

4. Two commenters pointed out that Customs should give some thought to companies that must keep extremely detailed records such as those dealing in footwear, eye wear, finished clothing and other articles that are produced in a wide variety of styles, sizes and colors. This commenter stated that the requirements of Schedule X are so onerous that companies that produce or distribute these types of articles will not be able to export to Canada and Mexico for lack of ability to comply with these requirements. This commenter also suggested that Customs should address the area of former 19 U.S.C. 1313(j)(2) substitution drawback claimants in a NAFTA context. In this regard, the commenter stated that, assuming such claimants meet the requirements for drawback under 19 U.S.C. 1313(j)(1), Customs should recognize that they do not need to resubmit any applications for purposes of obtaining drawback under 19 U.S.C. 1313(j)(1) in a NAFTA context but rather would simply file the claims in accordance with the applicable regulations. This commenter, after stating that Customs officials from the Office of Trade Operations have indicated that the Schedule X inventory procedures will be applied to all 19 U.S.C. 1313(j)(1) drawback claims, expressed the view that Schedule X should apply only in the context of Part 181.

5. A commenter pointed out that §§ 191.141(e) and 191.22, taken together, also provide for storage and identification methods and provide more options for approved accounting methods than Schedule X does. For example, these sections allow use of "high-to-low", but Schedule X does not. This commenter therefore suggested that the provisions of § 191.22 should be used instead of Schedule X.

6. Two commenters stated that the inventory methods authorized for foreign trade zone procedures (§ 146.23) should be included in Schedule X in order to avoid the need for multiple inventory systems as the price for using both trade programs. These commenters cited, as an example that these two provisions are not in agreement (at least with respect to terminology), the fact that Schedule X calls for a specific identification method whereas § 146.23 requires a unique identification number. If these two requirements are the same, these commenters suggested that the regulatory text should state that this is the case.

7. Another commenter asked whether LIFO and average methods are acceptable for drawback and, if so, whether they can be used on exports to non-NAFTA countries. If not, this commenter asked whether claimants must switch to FIFO or maintain different accounting methods for the same goods.

Customs response: These comments principally address an allegedly impractical and unworkable application of the inventory management methods of Schedule X as required under § 181.45(b)(2)(i). In sum, the commenters argue that the Customs-approved methods in §§ 191.121(e) and 191.22 (drawback) and in § 146.23 (foreign trade zones) of the Customs Regulations should be allowed in place of the methods set forth in Schedule X.

Customs disagrees with these comments to the extent that they propose an expansion of the allowable methods for determining which commingled goods are eligible for full drawback under § 181.45(b). Schedule X was promulgated under NAFTA Article 511 and applies, by operation of NAFTA Article 303(6)(b), to imported goods which have been commingled with fungible goods and which are exported to Canada or Mexico in the same condition as when imported into the United States.

Nevertheless, the number of comments submitted on this point suggests that the text of § 181.45(b)(2)(i) could be improved. Accordingly, § 181.45(b)(2)(i), as set forth below, has been modified to more clearly reflect the intended effect of Article 303(6)(b), that is, as a narrow exception to the broad operation of Article 303 which restricts drawback to the amount determined under the "lesser of" rule. Beginning in 1996 (for exports to Canada) and in 2001 (for exports to Mexico), same condition substitution drawback will be prohibited altogether. The only exceptions are for the goods described in Article 303(6). Thus, "same condition" drawback for imported goods commingled with fungible goods is allowed, but only to the extent that the identity of the imported goods is determined by use of one of the approved inventory management methods set forth in Schedule X.

Additional Changes to the Regulations

In addition to the changes to the interim regulatory texts discussed above, this document modifies the interim texts to set forth changes that are necessary (1) to reflect subsequent trilateral discussion and agreement regarding regulatory standards pursuant to Article 511 of the NAFTA or (2) based on an independent review of the interim texts within Customs. These changes are discussed below.

Changes Pursuant to Trilateral Discussions

Subsequent to the publication of the interim regulations in T.D. 94–1, and in keeping with the principle of ongoing cooperation in the implementation and administration of the NAFTA as provided for in Section F of Chapter Five of the NAFTA, representatives of the United States, Canada and Mexico held further meetings which resulted in agreement regarding (1) use of the definition of "conspicuous" as set forth in Annex 311 of the NAFTA, (2) the adoption of an additional standard covering denial of preferential tariff treatment based on a failure to provide certain documentation in transshipment cases, (3) the adoption of additional standards for origin verifications, (4) the adoption of additional standards to be applied with regard to requests for advance rulings under Article 509 of the NAFTA, and (5) the modification of the substantively verbatim texts implementing the rules of origin provisions of Chapter Four of the NAFTA. The agreed changes, as reflected in the final regulatory texts set forth in this document, are summarized below.

Definition of "Conspicuous"

During the trilateral discussions it was pointed out that the interim amendments to Part 134 did not set forth the definition of "conspicuous" contained in the country of origin marking provisions of Annex 311 of the NAFTA. Accordingly, § 134.1 has been modified, as set forth below, by the addition of that definition as a new paragraph (k). Customs believes that this definition is appropriate for both NAFTA and non-NAFTA contexts since the NAFTA definition reflects existing Customs practice and regulatory standards (see, for example, the last sentence of § 134.41(b)).

Failure to Provide Documents in Transshipment Cases

The new standard regarding shipping documents provides that preferential tariff treatment may be denied to an originating good if the good is shipped through or transshipped in a non-NAFTA country and the importer does not provide, upon request, copies of the customs control documents showing that the good remained under customs control while in that non-NAFTA country. Section 181.23, as set forth below, has been modified by the addition of a new paragraph (b) to reflect this new standard, and § 181.31 (regarding post-importation claims) and § 181.71 (regarding origin verifications), as set forth below, have been appropriately modified as a consequence of the adoption of this new standard.

Origin Verifications

The Parties agreed to a new standard for origin verifications that permits verification of the applicable rate of duty applied to an originating good in accordance with NAFTA Annex 302.2 and determination of whether a good is a qualifying good for purposes of NAFTA Annex 703.2. Accordingly, § 181.72 as set forth below has been modified by the addition of a new paragraph (a)(2) to reflect this standard.

In addition, the new standard for origin verifications provides that a questionnaire may be completed, at the option of the exporter or producer, either in the language of the importing country or in the language of the country in which the exporter or producer is located. Paragraph (a)(3)(ii) (paragraph (a)(2)(ii) in the interim texts) of § 181.72, as set forth below, has been modified accordingly.

Requests for Advance Rulings

The new trilaterally-agreed standards regarding advance ruling requests concern the information required to be submitted with the request and therefore only affect § 181.93 of the interim regulations. The substantive changes reflected in § 181.93, as set forth below, are as follows:

1. In paragraph (b)(1), which concerns general information to be included in the request, the following requirements have been added: identification of the specific subject matter of the request; inclusion of a statement regarding the accuracy and completeness of the information submitted; inclusion of the name and address of the exporter and producer of the good where the importer is the requesting party; inclusion of the name and address of the producer and importer of the good where the exporter is the requesting party; inclusion of the name and address of the exporter and importer of the good where the producer is the requesting party; submission of copies of advance rulings or other rulings issued to the requesting party by Customs regarding the tariff classification of the good, if relevant to the issue in the advance ruling request; and, if no ruling on tariff classification was issued to the requesting party, sufficient information to enable Customs to classify the good if relevant to the issue in the advance ruling request.

2. Paragraph (b)(2)(ii), which concerns tariff change rulings, has been changed by designating the interim text as subparagraph (A) in order to facilitate the addition of a new subparagraph (B) setting forth information that must be in an advance ruling request which involves an origin issue requiring an assessment of whether materials undergo an applicable change in tariff classification.

3. In paragraph (b)(2)(iii), which concerns rulings on regional value content, the following changes have been made: in the first sentence, the words "or under both methods" have been added to reflect the fact that satisfaction of a regional value content requirement may involve use of both the transaction value method and the net cost method as well as the fact that a ruling on both issues may be sought; the second sentence, which sets forth the information to be submitted for purposes of the transaction value method, has been changed by inserting specific references to relevant provisions of the Appendix to Part 181, by adding a requirement for information sufficient to calculate the value of each material for which the origin is unknown and that is used in the production of the good, by adding a requirement for specific information regarding each material that is claimed to be an originating material and is used in the production of the good, and by adding a requirement specifying information to be submitted where the advance ruling request involves an issue as to whether the transaction value is acceptable with respect to the good; the third sentence, which sets forth the information to be submitted for purposes of the net cost method, has been changed by inserting specific references to relevant provisions of the Appendix to Part 181, by adding references to lists of all "product, period and other" costs and of all "excluded"

costs, by limiting the required materials value information to non-originating materials or materials for which the origin is unknown and that are used in the production of the good, and by requiring a statement regarding the period over which the net cost calculation is to be made; and a new sentence has been added at the end to limit the information required to be submitted where the advance ruling request concerns only the calculation of an element of a regional value content formula.

4. A new paragraph (b)(2)(iv), with the heading "NAFTA rulings on producer materials", has been added to specify information that must be submitted where the advance ruling request either involves an issue with respect to an intermediate material or is submitted by a Canadian or Mexican producer of a material and concerns only the origin of such material.

5. Paragraph (b)(5), which requires the submission of information regarding prior or current transactions, has been reconfigured to facilitate the addition of references to information regarding the following: judicial or quasi-judicial review in Canada or Mexico; a verification of origin performed in the United States, Canada or Mexico; an administrative appeal in the United States, Canada or Mexico; a request for an advance ruling in the United States, Canada or Mexico; and the status or disposition of any current or prior judicial or quasi-judicial review, verification of origin, administrative appeal, or advance ruling request.

Chapter Four Rules of Origin

With regard to the substantively verbatim regulatory texts covering the rules of origin provisions of Chapter Four of the NAFTA, which were set forth in the interim regulations in the Appendix to Part 181, the trilaterally-agreed changes thereto concern clarifications of ambiguous provisions, corrections in grammar or punctuation and, in certain cases, textual additions to remedy instances in which the original trilateral text was incomplete or the intent of the Parties was not adequately expressed. These changes, which are incorporated in the text of the Appendix to Part 181 as set forth below, are as follows:

Calculation of Total Cost

Calculation of total cost is required for purposes of the *de minimis* rule in section 5, the net cost method in section 6 and the valuation of intermediate materials in sections 7 and 10. However, references in the original trilateral texts to the calculation of total cost were incomplete in sections 5, 7 and 10. Therefore, in order to make it clear as to what costs are included in the "total cost" as that term is used in the trilateral texts, new subsection (6) has been added to section 2, new sections 5(10), 7(7) and 10(9)(f) have been added, and consequential changes have been made to the following provisions in sections 5, 6 and 7: sections 5(9) (a) and (b) (sections 5(8) (a) and (b) in the interim texts); section 6(12); and sections 7(6)(a) and (b).

Effect of Choice to Average

Throughout the trilateral texts there are references to "averaging" for purposes of determining the net cost of goods, the value of materials or the value of traced materials. Whenever a producer makes the choice to average, the period over which that producer averages cannot be changed, and the duration of the choice to average must extend to the end of the fiscal year of that producer. Although these requirements were implicit in the original trilateral texts, it became apparent that it was necessary to state them explicitly. Therefore, new subsections (7) through (10) have been added to section 2, and the following changes have been made to the related provisions in sections 6 and 12 and in Schedule X: revision of section 6(15)(a)(ii); addition of new sections 6(18) and 6(19) and redesignation of interim sections 6(18) and 6(19) as 6(20) and 6(21); in sections 12(5) (a) and (b), addition of the words "that is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period"; addition of new sections 12(6) through 12(9) and redesignation of interim sections 12(6) and 12(7) as 12(10) and 12(11); and revision of sections 3 and 12 of Schedule X.

Averaging For De Minimis and Accumulation

The original trilateral texts failed to provide specifically for the use of averaging in determining the value of the non-originating materials in subsections (1) and (5) of section 5 (*de minimis*), and in determining the net cost and value of non-originating materials in subsection (2) of section 14 (accumulation). To provide guidance on the use of averaging in situations involving *de minimis* or accumulation, new subsections (11) and (12) have been added to section 5 and new subsection (3) has been added to section 14. Consequential amendments, such as redesignation of subsections and internal references, have also been made.

Section 4

Section 7(10) provides for the situation in which a self-produced material may be designated as an intermediate material if it is used in the production of a good that is subject to a regional value content requirement. It was not clear under the original trilateral texts that a self-produced material, used in a good which is not subject to a regional value content requirement, could be considered as a material for purposes of the NAFTA rules of origin. Accordingly, a new subsection (8) has been added to section 4 in order to make it clear that a self-produced material may be considered as a material used in the production of a good even if the good is not subject to a regional value content requirement. Such a self-produced material must have either originating or non-originating status under the NAFTA rules of origin, and that status will influence the application of a particular NAFTA rule of origin to the good produced from that material. In addition, a new subsection (9) has been added to section 4 setting forth an example to illustrate such a situation.

Section 6

Article 403 of the NAFTA specifically provides a producer with the option to use an averaging method for calculating the net cost for automotive goods, and sections 11, 12 and 13 of the trilateral regulations implement the specific provisions of Article 403 for automotive goods. The NAFTA does not specifically provide for averaging with respect to any other goods. However, because it was recognized that in many situations non-automotive producers will have to use standard or projected costs to calculate the net cost and the value of non-originating materials in their goods, an averaging method was included in section 6(15) of the trilateral texts in order to permit, in a commercially practicable manner, averaging of the values required under the net cost method for non-automotive goods. The introductory text of section 6(15) as set forth in this document has been amended to more clearly state the intent of the Parties, that is, that the regional value content calculation for certain automotive goods may not be calculated by the "averaging" permitted under section 6(15). Although this exclusion of automotive goods from the application of section 6(15) appears to be a limitation, this is not the case. The category of goods for which averaging may be chosen under section 6(15) is restricted to goods which are "identical or similar" as defined in section 2, whereas the various categories of automotive goods for which averaging may be chosen under section 11, 12 or 13 are not so restricted. Thus, this amendment will provide greater textual clarity but will have minimal adverse effect on producers of automotive goods for which averaging may be chosen under section 11, 12 or 13.

Section 7

Under Article 402(9) of the NAFTA, the value of materials is either the transaction value (as defined in Article 415) or, if there is no transaction value or the transaction value is unacceptable, the value determined in accordance with the Articles 2 through 7 of the Customs Valuation Code. Section 7(1) and Schedule VIII of the trilateral regulations implement the NAFTA with respect to the valuation of materials. Section 7(1) states that, if the producer of the good is the importer of a material, the value of that material for NAFTA purposes is the customs value. However, "transaction value" or other value used as the basis for the customs value may not, in fact, reflect the transaction value "of the producer" or other applicable value as defined in the NAFTA. Section 7(2) as set forth in this document has been revised to make it clear that if the customs value for the materials referred to in section 7(1) was not determined in a manner consistent with Schedule VIII, then the customs value may not be used as the value of the material: in such a case the value of the material must be determined according to Schedule VIII. In addition, in order to illustrate this principle, a new Example 1 has been added in section 7(20) (section 7(17) in the interim texts) and interim Examples 1 through 6 have been renumbered as Examples 2 through 7. For the same reasons, similar references to the use of "customs value" as the value of a material have been clarified by revising sections 9(3) and 10(3) and section 1(2) of Schedule VIII.

Paragraph (b) of section 7(12) in the original trilateral texts (renumbered in this document as section 7(13)) could have been incorrectly interpreted as requiring that self-produced packaging materials or containers be valued under subparagraphs (i) or (ii). Under such an interpretation, the value of a self-produced material would always have to be treated as a non-originating value if the self-produced material were a non-originating material. However, under the NAFTA a producer is not required to treat a self-produced material as a material or to designate a self-produced material as an intermediate material. Therefore, this unnecessary and potentially confusing paragraph (b) has been removed. This change does not affect a producer's option to designate self-produced packaging materials as intermediate materials if it is in the producer's interest to do so, and this point has been clarified by the addition of a new section 7(14). Similarly, a new section 7(19) has been added to cover accessories, spare parts and tools that are self-produced. Consequential amendments have also been made by renumbering the subsections which follow these new provisions.

A new Example 8 has also been added to section 7(20) (section 7(17) in the interim texts) in order to illustrate the effects of section 7(1) and section 7(11) (section 7(10) in the interim texts) on a situation in which a producer of a good provides an indirect material, which is also an assist in this example, to a material producer for use in the production of a material that is subsequently used in the production of the good. If the indirect material is provided free of charge and the cost of the indirect material is not recorded on the books of that material producer, section 7(11) provides that the value of the indirect material is not included in the regional value content calculation under the net cost method for the material when determining whether or not the material is originating. However, if, as in this example, the indirect material is also an assist and the material that is made with benefit of the indirect material is subsequently used in the production of a good by the producer who supplied the indirect material, section 7(1) provides that the value of the indirect material (assist) is included in the value of that material (whether or not originating) when calculating the regional value content of the good.

Section 9

If a traced material has been incorporated into an originating material that is then acquired by the producer of a light duty automotive good, the value of that traced material may be determined by one of the methods set out in section 9(2)(e) or 9(2)(f) of the trilateral regulations. Paragraph (e) requires information on the actual value of a traced material. Paragraph (f) provides an alternative which will always result in a value that represents the maximum value of a traced material allowable in the originating acquired material.

In order to provide the supplier of an acquired material with an option to pass forward a value that is closer to the actual value of the traced material, but which does not require revealing the actual value as required in paragraph (e), it was determined that a third option should be allowed. Accordingly, a new paragraph (f) has been added to provide that the value of the traced material may be an amount that is based on the actual regional value content (RVC) of the acquired material (rather than the regional value content requirement, or RVCR), the amount being represented by the formula $VM \times (1 - RVC)$. As a consequence of the addition of this new paragraph (f), interim paragraphs (f) through (h) have been redesignated as (g) through (i), the internal cross-references in these paragraphs have been revised to reflect these changes, and, in section 9(10), Example 9 has been amended and Examples 12 and 13 have been added in order to reflect the new option for determining the value of a traced material which has been incorporated into an originating material acquired by a producer of a light duty automotive good.

Section 10

A new section 10(1)(d)(ii) has been added to provide, as in the case of new section 9(2)(f), for a third alternative method to determine the value of a listed non-originating material incorporated into an originating material that is acquired for use in the production of a heavy duty automotive good. Necessary consequential changes have also been made involving renumbering interim subparagraphs (ii) and (iii) as (iii) and (iv), changing the affected internal cross-references in the texts, and making changes in Examples 1, 2 and 4 under section 10(10) to reflect the new method.

A new text of Example 10 replaces the interim text in section 10(10) in order to illustrate the application of section 10(8) which allows the use of averaging under the principles of section 12(3) in order to determine the value of a non-originating material for purposes of the statement required in section 10(1)(b)(ii), section 10(1)(d)(i) or section 10(1)(e)(i). The value of a non-originating material, in such a case, would not be the value of the acquired material which is a listed non-originating material; it would be the value of the non-originating material incorporated into the listed non-originating material by the producer of that listed material.

Section 11

A new subsection (11) has been added to section 11 setting forth an Example to illustrate the options available under section 11(9)(b) in the event that a producer of a motor vehicle chooses to

average only those motor vehicles to be exported to the territory of only one NAFTA country or to the territories of more than one NAFTA country.

Section 12

Section 12(1) has been amended in order to remove an ambiguous reference to the averaging of the regional value content for automotive component assemblies, automotive components, sub-components or listed materials and thereby avoid any misunderstanding with respect to the goods that may be averaged together if produced in the same plant. Specifically, the words "any or all automotive component assemblies, automotive components, sub-components or listed materials" have been replaced by the words "an automotive component assembly, an automotive component, a subcomponent or a listed material". The text as amended more closely follows the language of NAFTA Article 403(4) (which refers to "a component" or "a listed material" of Annex 403.2) and thus makes it clear, for example, that engines and transmissions may not be grouped together for purposes of averaging regional value content.

Section 16

Section 16(1) has been revised in order to provide a clearer interpretation with respect to the nature of operations that, when performed on an originating good during transshipment through a non-NAFTA country, do not cause the good to lose its status as an originating good. The revised text in subsection (1)(a) further makes it clear that, except for goods covered by section 16(3), a good is considered *not* to be an originating good if it is removed from customs control when outside the territories of the NAFTA countries.

Schedule VII

The definition of "discontinued operations" in section 1 has been revised in both scope and meaning in order to link the term, when used with respect to a producer's operations that are located in a NAFTA country, to the meaning set out in that NAFTA country's Generally Accepted Accounting Principles. This maintains the consistent treatment given in the NAFTA to issues related to allocation of costs.

For similar reasons, the reference in section 6(c) to "cumulative effect of accounting changes" has been amended to reflect that such changes are those reported in accordance with a specific requirement of the applicable Generally Accepted Accounting Principles.

Schedule VIII

The texts of sections 10(1)(c) and 10(3) have been revised in order to resolve an ambiguity with respect to which word is modified by the phrase "in the country in which the material is produced". These changes reflect the understanding that the determination of the amount added for profit and general expenses depends on whether the material is imported by the producer or acquired from another person in the territory in which the producer is located. In both cases the amount added should be based on sales of materials of the same class or kind as that being valued. However, in regard to the former, the determination should be based on sales of such materials by producers located in the country in which the imported material was produced, whereas in the latter, the determination should be based on sales by producers located in the same country as the producer of the material being valued.

Schedule X

During the trilateral discussions, it was noted that the first table in Addendum A as set forth in the interim Appendix was incomplete in that the trilaterally-agreed table included a third column "Total Value" under the heading "Materials inventory sales (Receipts of material A)". Accordingly, the first table in Addendum A has been corrected to reflect the trilateral text.

Technical Amendments

Many additional amendments reflected in the texts set forth in this document concern simply technical changes relating to matters such as punctuation, cross references, typographical format and consequential renumbering of provisions. These changes are not intended to have any effect on the substance or content of the texts.

Section 181.131

In light of certain of the trilaterally-agreed changes to the Appendix texts as discussed above, the Parties also agreed that it would be necessary to have a rule covering the transition from the interim Appendix texts to the new Appendix texts in the case of producers for whom an averaging period started prior to, and would extend beyond, the agreed October 1, 1995, effective date of the new Appendix texts. Accordingly, § 181.131 as set forth below has been modified by designating the interim text as paragraph (a) and by adding new paragraphs (b) and (c) to reflect the agreed-upon transitional rules.

Other Changes

Based on further internal review of the interim regulatory texts, Customs has determined that the following additional changes thereto should be made.

Section 10.8(a)

The interim regulatory amendments in T.D. 94–1 included the addition of a new paragraph (a) to § 10.8 of the Customs Regulations (19 CFR 10.8) to clarify that the provisions of that section do not apply in the case of goods returned to the United States after exportation for repairs or alterations in Canada or Mexico, for which separate provisions were set forth in interim § 181.64. Subsequently, on May 17, 1994, Customs published in the **Federal Register** (59 FR 25563) as T.D. 94–47 a final rule document which included a complete revision of § 10.8. However, the text of this revised § 10.8 did not carry forward the substance of the interim NAFTA amendment. Accordingly, this document amends the introductory text of § 10.8(a) as published in T.D. 94–47 to incorporate the substance of that NAFTA provision.

Section 12.132

The interim regulatory amendments in T.D. 94–1 included the addition of a new § 12.132 to clarify the use of country of origin declarations, which were provided for in § 12.130(f) of the Customs Regulations (19 CFR 12.130(f)), in the case of textile and apparel goods which are subject to the provisions of Annex 300–B of the NAFTA. Subsequently, on June 20, 1994, Customs published in the **Federal Register** (59 FR 31519) as T.D. 94–52 an interim rule document which amended interim § 12.132 by adding thereto a new paragraph (b) requiring submission of a Certificate of Eligibility in connection with a claim for NAFTA preferential tariff treatment involving non-originating textile and apparel goods subject to the tariff preference level provisions of Appendix 6.B. to Annex 300–B of the NAFTA. In order to ensure that this document accurately reflects current regulatory requirements, the text of § 12.132 is republished below to incorporate the interim amendment effected by T.D. 94–52. Customs intends to publish a separate final rule document in the near future which will specifically address T.D. 94–52, including any public comments submitted in response thereto.

Section 181.22(a)

Interim § 181.22(a) provided that the importer must maintain documentation relating to an imported good for five years after the date of "importation" of the good. In order to reflect the requirements of U.S. law (19 U.S.C. 1508(c), as amended by section 614 of the Act), § 181.22(a) as set forth below has been modified to refer to five years after the date of "entry" of the good.

Section 181.22(b)(2)

In addition to the removal of the references to a "producer" as discussed above, § 181.22(b)(2), as set forth below, has been modified to refer to signature of the Certificate of Origin by the exporter's authorized agent "having knowledge of the relevant facts". Customs believes that this change is appropriate to ensure that the signature has substantive relevance that goes beyond that of a mere agency relationship.

Section 181.22(d)

The following changes have been made to § 181.22(d) which specifies circumstances in which a Certificate of Origin is not required:

1. For editorial and citation purposes, the text as set forth below has been rearranged and divided into paragraph (d)(1) (which sets forth the general rules for when a Certificate is not required) and paragraph (d)(2) (which covers the exception regarding a series of importations).
2. The introductory text of newly designated paragraph (d)(1) has been modified as set forth below by replacing the words "a Certificate of Origin shall not be required for" with the words "an importer shall not be required to have a Certificate of Origin in his possession". Customs believes that this change is necessary to clarify the intent which relates to the basic requirement for possession of a Certificate when a claim for preferential tariff treatment is made (see the last sentence of § 181.21(a)) rather than to the requirement for submission of the Certificate to Customs when requested under § 181.21(b).
3. In order to provide for proper notification and related procedural safeguards in a case where a Certificate is required because the importation is determined to be part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a certification requirement, the text of newly designated paragraph (d)(2), as set forth below, has been modified (1) to require written notice to the importer that possession of a Certificate covering the importation at issue is required, (2) to allow the importer 30 calendar days to obtain a valid Certificate, and (3) to specify the consequence of a failure to timely obtain the Certificate (denial of the claim for preferential tariff treatment).

Section 181.41

In § 181.41, which prescribes the applicability of the Subpart E "NAFTA drawback" (as defined in § 181.1(o)) provisions, the first sentence has been changed as set forth below by the addition of a reference to "any good that is a 'good subject to NAFTA drawback' within the meaning of 19 U.S.C. 3333" in order to (1) incorporate by reference the terms of NAFTA Article 303(6) as implemented in U.S. law and (2) clarify that those NAFTA Article 303 and U.S. statutory standards are applicable under Subpart E both for drawback purposes and for purposes of the § 181.53 duty-deferral provisions. In addition, for similar clarification purposes, the first sentence of § 181.53(a)(2) as set forth below has been changed to refer to a "'good subject to NAFTA drawback' within the meaning of 19 U.S.C. 3333".

Section 181.44

In § 181.44, which specifies the circumstances in which drawback is calculated under the NAFTA "lesser of the two" rule, a new paragraph (g) has been added as set forth below to cover goods that are "unused" within the meaning of 19 U.S.C. 1313(j)(1) but have changed in condition after importation into the United States so as not to be eligible for full drawback under § 181.45(b).

Section 181.47

In order to facilitate Customs processing of NAFTA drawback claims, the following changes have been made to the text of interim § 181.47 which concerns the completion of claims for drawback under Subpart E: (1) In paragraph (a), language has been added at the end of the second sentence to provide that claims under Subpart E must be filed separately from non-NAFTA claims filed under Part 191; and (2) a sentence has been added at the end of paragraph (b)(1) to provide for inclusion of the word "NAFTA" at the top of each drawback entry form filed under Subpart E.

Section 181.50

In § 181.50, which concerns payment and liquidation of drawback claims, paragraph (b) as set forth below has been modified (1) to refer to when a drawback claim is to be liquidated (rather than when it becomes "final") and (2) by the addition of a sentence at the end to refer to adjustments of drawback claims under 19 U.S.C. 1508(b)(2)(B)(iii).

Section 181.62

With regard to interim § 181.62 which concerns duty-free treatment of commercial samples of negligible value imported from Canada or Mexico, Customs notes that paragraphs (b)(3) and (c) thereof, which specifically addressed textile samples, did not devolve from a specific statutory provision whereas the remainder of the section did reflect the terms of an underlying U.S. statutory provision (subheading 9811.00.60, HTSUS). Since implementation of the commercial sample provision in Article 306 of the NAFTA is a function of what is permissible or required under applicable U.S. law (in this case, subheading 9811.00.60, HTSUS), § 181.62 as set forth below has been modified by the removal of paragraphs (b)(3) and (c).

Section 181.63

Interim § 181.63, which concerned duty-free treatment of printed advertising materials imported from Canada or Mexico, reflected both the terms of Article 306 of the NAFTA and the definition of "printed advertising materials" in Article 318 of the NAFTA; thus, the regulatory text referred generically to "goods classified in Chapter 49, HTSUS", which chapter covers some goods for which duty-free treatment is not provided. Since U.S. duty treatment of goods covered by NAFTA Article 306 is controlled by the terms of the HTSUS, Customs has determined that § 181.63 serves no effective purpose and therefore should be removed and reserved until such time as appropriate changes are made to the HTSUS to reflect the terms of NAFTA Article 306.

Section 181.64(c)(1)(ii)

With regard to interim § 181.64 which concerns goods returned after repair or alteration in Canada or Mexico, Customs notes that paragraph (c)(1)(ii) thereof provides for a declaration by the owner, importer, consignee, or agent stating that, among other things, "the goods were not previously imported in bond or admitted into a foreign trade zone or imported in similar status". This statement was included in the declaration to address the exception for "goods subject to NAFTA drawback" in U.S. Note 1 to Subchapter II of Chapter 98, HTSUS. That note, which applies to the whole subchapter and thus pertains, *inter alia,* to all articles returned after repair or alteration abroad (including those goods repaired or altered in Canada or Mexico and covered by § 181.64), sets forth four circumstances in which articles may not be classified and thus receive the duty treatment prescribed in the subchapter (under subheading 9802.00.40 or 9802.00.50 in the case of repaired or altered goods). The note, which prior to the NAFTA did not contain the "NAFTA drawback" exception language, was intended to ensure that goods imported into the United States in certain circumstances in which duty is not paid or is later refunded (for example, duty-free under a temporary importation bond or with subsequent drawback of duties upon exportation), and which are subsequently exported (for example, for repair or alteration) and then returned, do not re-enter the commerce of the United States and again escape full duty assessment by virtue of their classification in a reduced-duty provision under Subchapter II. The exception in the note for "goods subject to NAFTA drawback" was added in connection with the adoption of the NAFTA in consideration of the fact that the NAFTA drawback and duty-deferral provisions (see Subpart E of Part 181 below) render the note unnecessary in a NAFTA context because assessment of duty is required prior to exportation to Canada or Mexico under the NAFTA drawback provisions (see the definition of "NAFTA drawback" in § 181.1(o) below).

On further review, Customs believes that the language in the declaration quoted above does not adequately address the basic issue under U.S. Note 1 to Subchapter II of Chapter 98, HTSUS, that is, whether the imported goods were subject to NAFTA drawback. In other words, if the goods were subject to NAFTA drawback, then none of the restrictions in the note would apply and the note would not be a bar to classification of the repaired or altered goods in the subchapter. On the other hand, if the goods were not subject to NAFTA drawback and one of the restrictions in the note applied to the goods, then the note would operate as a bar to classification of the repaired or altered goods in the subchapter. Accordingly, the declaration in § 181.64(c)(1)(ii), as set forth below, has been modified in this regard to more accurately reflect the minimum information that Customs must have to ensure compliance with the applicable statutory standard.

Section 181.72(a)(2)(i)

In order to provide necessary flexibility to Customs and at the same time reflect the method most often employed by Customs, § 181.72(a)(2)(i), which concerns origin verification letters, has been modified as set forth below to provide that the verification letter "may be on Customs Form 28 or other appropriate format".

Section 181.72(d)(2)(ii)

In § 181.72(d)(2)(ii) which concerns the consequences of a failure on the part of the exporter or producer of a good to respond to a follow-up verification letter or questionnaire, the introductory text has been modified as set forth below to provide that Customs may "consider the good to be non-originating and consequently may" deny preferential tariff treatment on the good. Customs believes that the reference to non-originating status in this context is necessary if the follow-up letter or questionnaire is to include the "written determination" (that is, a determination as to whether the good is an originating good) referred to in paragraphs (d)(1)(i) and (d)(2)(ii)(A).

Section 181.73(a)

Section 181.73(a), which requires written notification prior to conducting a verification visit in Canada or Mexico, has been modified as set forth below by removing from the first sentence the words ", including a follow-up to an earlier visit,". On further review, Customs has determined that this requirement is neither reflected in the text of the Agreement nor otherwise necessary since the procedural safeguards afforded by the notification requirement are covered by the notification given prior to the initial visit. Moreover, requiring written notification (and, thus, written consent under § 181.74) prior to each follow-up visit would impose an unreasonable administrative burden on Customs and could compromise the overall effectiveness of the verification visit process.

Section 181.75(a)(2)

Section 181.75(a)(2) requires that a written origin determination include a statement setting forth the findings of fact made in connection with the origin verification and upon which the origin determination is based. An exception has been added to this section as set forth below to cover the case of a negative origin determination where specific findings of fact cannot be made because of a failure to respond to a follow-up verification letter or questionnaire. Customs believes that this change is necessary because, under modified § 181.72(d)(2)(ii) as discussed above, the negative origin determination may result merely from a failure on the part of the exporter or producer of the good to respond to the follow-up letter or questionnaire.

Section 181.75(b)(2)(iv)

Section 181.75(b)(2)(iv) as set forth below has been modified by the addition of language at the end to cover cases where an exporter or producer would protest the negative origin determination itself rather than the liquidation of an entry (for example, where the importer's NAFTA claim was made in a protest rather than as part of the entry process).

Section 181.76(a)

Section 181.76(a) has been modified as set forth below to provide that an origin determination "may be applied" (rather than "shall be effective") upon issuance of the determination, and the provisions regarding the negative origin determination exception to this general rule have been set forth as a new paragraph (b). Customs believes that these editorial changes are necessary to align on terminology used elsewhere in § 181.76 and to reflect the fact that a Customs decision regarding a rate of duty takes effect only when actually applied to a transaction (that is, in connection with the liquidation of an entry).

Section 181.76(c)

In § 181.76(c) (§ 181.76(b) in the interim texts), which concerns the application of origin determinations where there is a pattern of conduct by an exporter or producer involving false or unsupported representations on Certificates of Origin that a good qualifies as an originating good, the first sentence as set forth below has been modified (1) to state that Customs may "deny subsequent claims for" (rather than "withhold") preferential tariff treatment and (2) by adding at the end the words ", provided that advance written notice of the intent to deny such claims is given to the importer." The first change is intended both to conform the text to the legal responsibility of Customs in connection with the entry and liquidation process and to reflect the intent of the underlying NAFTA provision which is prospective in nature. The second change is simply intended to ensure that the importer will receive appropriate notice of the intended action by Customs. In addition, as a consequence of the replacement of the word "withhold" in § 181.76(c), § 181.71 as set forth below has been modified by removing the words "or withhold" before the words "preferential tariff treatment".

Section 181.76(e)

In § 181.76(e) (§ 181.76(d) in the interim texts), which limits the application of negative origin determinations to prior importations in certain specified circumstances, the first sentence as set forth below has been modified by adding at the end the words "and on which that person did in fact rely." Customs believes that this change is necessary because the underlying NAFTA provision is founded on the principle of equitable relief based on detrimental reliance, and there can be no occasion for equitable relief if no reliance, and thus no detriment, has occurred.

Section 181.76(f)

Section 181.76(f) (§ 181.76(e) in the interim texts) has been modified as set forth below (1) by replacing "denies" with "proposes to deny", (2) by replacing "effective date of the denial" with "application of the determination", and (3) and by adding after "90 calendar days" the words "from the date of issuance of the determination". Customs believes that these changes are appropriate for purposes of precision as regards the procedures discussed in the section.

Section 181.81

Interim § 181.81 concerned the applicability of penalties to NAFTA transactions and consisted of a general statement (paragraph (a)) and a specific provision regarding false certifications by U.S. exporters or producers (paragraph (b)). On further review of this section, Customs believes that interim paragraph (b) is redundant and thus unnecessary because its purpose is already achieved by the general interim paragraph (a) statement. Accordingly, § 181.81 as set forth below has been modified to reflect only the text contained in interim paragraph (a).

Section 181.100(b)(3)

Section 181.100(b)(3) concerns the effective date for a modification or revocation of an advance ruling and provides for a delayed effective date of up to 90 days in some circumstances. In a case where the delay is requested by the party to whom the ruling letter was issued, the text, as set forth below, has been modified to refer to reliance "in good faith" rather than to reliance that is "reasonable". This change aligns the text on the standard set forth in Article 509(8) of the NAFTA.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and based on the additional considerations discussed above, Customs believes that the interim regulations published in T.D. 94–1 should be adopted as a final rule with certain changes thereto as discussed above and as set forth below. Although this document sets forth the majority of the interim regulatory amendments adopted herein as a final rule and thus both republishes portions of the interim texts without change and amends other portions of the interim texts to incorporate the changes discussed above, it does not republish those unchanged interim amendments, involving the following provisions, which were set forth in T.D. 94–1 within an amendatory instruction rather than in full regulatory text format: §§ 10.36a, 10.66, 10.67, 134.1, 134.22, 134.23, 134.24, 134.32, 134.35, 134.43, 134.44, 174.12, 174.29, 177.0, and 177.1. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Inapplicability of Public Notice and Comment Procedures and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice and comment procedures are inapplicable to these final regulations because they are within the foreign affairs function of the United States. In addition, for the above reason and because the Parties have agreed to promulgate final NAFTA implementing regulations with effect from October 1, 1995, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a 30-day delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Based on the supplementary information set forth above and because these regulations implement obligations of international agreements and statutory requirements relating thereto, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) under control number 1515–0205. The estimated average annual burden associated with this collection is 6.31 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 12

Canada, Customs duties and inspection, Marking, Mexico, Reporting and recordkeeping requirements, Textiles and textile products, Trade agreements.

19 CFR Part 24

Accounting, Canada, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 123

Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 134

Canada, Country of origin, Customs duties and inspection, Labeling, Marking, Mexico, Packaging and containers, Trade agreements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 177

Administrative practice and procedure, Courts, Judicial proceedings, Rulings, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free-Trade Agreement).

19 CFR Part 191

Canada, Commerce, Customs duties and inspection, Drawback, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

Accordingly, the interim rule amending Parts 10, 12, 24, 123, 134, 162, 174, 177, 178 and 191 (19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178 and 191) and adding Part 181, Customs Regulations (19 CFR Part 181), which was published at 58 FR 69460–69565 on December 30, 1993, and which was corrected at 59 FR 8852 on February 24, 1994, and at 59 FR 15047 on March 31, 1994, and the interim rule amending Part 12, Customs Regulations (19 CFR Part 12), which was published at 59 FR 31519–31521 on June 20, 1994, are adopted as a final rule with certain changes set forth below. The final texts, except for those amendments published in T.D. 94–1 which were set forth within an amendatory instruction rather than in full regulatory text format, are either republished below without change or are set forth below with the amendments discussed above under SUPPLEMENTARY INFORMATION.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

2. Section 10.8 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 10.8 Articles exported for repairs or alterations.

(a) Except as otherwise provided for in this section and except in the case of goods covered by § 181.64 of this chapter, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for repairs or alterations and which are claimed to be subject to duty only on the value of the repairs or alterations performed abroad under subheading 9802.00.40 or 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS):

* * * * *

3. The last sentence of § 10.31(f) is republished to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada or Mexico and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security shall be required if the entered article is a good originating in Canada or Mexico within the meaning of General Note 12, HTSUS.

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

2. Section 12.132 is republished to read as follows:

§ 12.132 Textile and apparel goods under the North American Free Trade Agreement.

(a) *Country of origin declaration.* The provisions of § 12.130(f) of this part regarding submission of a country of origin declaration shall apply to all textile and apparel goods which are subject to the provisions of Annex 300–B of the North American Free Trade Agreement (NAFTA). Although a separate country of origin declaration shall not be required for such goods for NAFTA purposes, the following additional requirements shall apply for purposes of this section:

(1) All commercial importations of textile and apparel goods shall be accompanied by the appropriate declaration;

(2) A declaration by each U.S., Canadian, and/or Mexican manufacturer or producer of the goods, or by the exporter of the goods if a declaration cannot be obtained from the manufacturer or producer, and, if there are multiple manufacturers or producers, a separate declaration by each manufacturer, producer or exporter, shall be furnished by the importer. Packaging operations shall not be considered manufacture or production for purposes of this paragraph; and

(3) If the district director is unable to determine the country of origin of the goods because the information contained in a declaration is incomplete, the shipment to which that declaration pertains shall not be entitled to preferential tariff treatment or any other benefit under the NAFTA for which it would otherwise be eligible.

(b) *Certificate of Eligibility.* In connection with a claim for NAFTA preferential tariff treatment involving non-originating textile and apparel goods subject to the tariff preference level provisions of Appendix 6.B. to Annex 300–B of the NAFTA and Additional U.S. Notes 3 through 6 to Section XI, Harmonized Tariff Schedule of the United States, the importer shall submit to Customs a Certificate of Eligibility covering the goods. The Certificate of Eligibility shall be properly completed and signed by an authorized official of the Canadian or Mexican government and shall be presented to Customs at the time the claim for preferential tariff treatment is filed under § 181.21 of this chapter. Failure to timely submit the required Certificate of Eligibility will result in a denial of the claim.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701.

* * * * *

2. In § 24.22, paragraph (g)(1), the introductory text of paragraph (g)(2)(i)(A), and paragraph (g)(2)(iv) are republished to read as follows:

§ 24.22 Fees for certain services.

* * * * *

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fee.* Except as provided in paragraph (g)(2) of this section:

(i) For the period from January 1, 1994 through September 30, 1997, a fee of $6.50 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States; and

(ii) Commencing on October 1, 1997, a fee of $5 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States.

(2) * * *

(i)(A) Except during the period from January 1, 1994 through September 30, 1997, persons whose journey:

* * * * *

(iv) Except during the period from January 1, 1994 through September 30, 1997, persons departing from and returning to the United States without having touched a foreign port or place;

* * * * *

3. Section 24.23(c)(3) is republished to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(3) The ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply either to goods originating in Canada within the meaning of General Note 9, HTSUS, or to goods originating in Canada within the meaning of General Note 12, HTSUS, where such goods qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement and without regard to whether the goods are marked. Where originating goods as described in the preceding sentence are entered or released with other goods that are not originating goods, the ad valorem, surcharge, and specific fees shall apply only to those goods which are not originating goods.

* * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624.

* * * * *

2. The last sentence of § 123.0 is republished to read as follows:

§ 123.0 Scope.

* * * Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter.

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. The last sentence of § 134.0 is republished to read as follows:

§ 134.0 Scope.

* * * Provisions regarding the review and appeal rights of exporters and producers resulting from adverse North American Free Trade Agreement marking decisions are contained in subpart J of part 181 of this chapter.

3. In § 134.1, the last sentence of paragraph (d)(2) and paragraphs (g), (h), (i) and (j) are republished, and a new paragraph (k) is added, to read as follows:

§ 134.1 Definitions.

* * * * *

(d) * * *

(2) * * * With respect to a good of a NAFTA country, if the manufacturing process does not result in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ultimate purchaser.

* * * * *

(g) *Good of a NAFTA country.* A "good of a NAFTA country" is an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

(h) *NAFTA.* "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada and Mexico on December 17, 1992.

(i) *NAFTA country.* "NAFTA country" means the territory of the United States, Canada or Mexico, as defined in Annex 201.1 of the NAFTA.

(j) *NAFTA Marking Rules.* The "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.

(k) *Conspicuous.* "Conspicuous" means capable of being easily seen with normal handling of the article or container.

4. Section 134.22(d) is republished to read as follows:

§ 134.22 General rules for marking of containers or holders.

* * * * *

(d) *Usual containers*—(1) *"Usual container" defined.* For purposes of this subpart, a usual container means the container in which a good will ordinarily reach its ultimate purchaser. Containers which are not included in the price of the goods with which they are sold, or which impart the essential character to the whole, or which have significant uses, or lasting value independent of the contents, will generally not be regarded as usual containers. However, the fact that a container is sturdy and capable of repeated use with its contents does not preclude it from being considered a usual container so long as it is the type of container in which its contents are ordinarily sold. A usual container may be any type of container, including one which is specially shaped or fitted to contain a specific good or set of goods such as a camera case or an eyeglass case, or packing, storage and transportation materials.

(2) *A good of a NAFTA country which is a usual container.* A good of a NAFTA country which is a usual container, whether or not disposable and whether or not imported empty or filled, is not required to be marked with its own country of origin. If imported empty, the importer must be able to provide satisfactory evidence to Customs at the time of importation that it will be used only as a usual container (that it is to be filled with goods after importation and that such container is of a type in which these goods ordinarily reach the ultimate purchaser).

* * * * *

5. In § 134.32, paragraphs (p) and (q) are republished to read as follows:

§ 134.32 General exceptions to marking requirements.

* * * * *

(p) Goods of a NAFTA country which are original works of art; and

(q) Goods of a NAFTA country which are provided for in subheading 6904.10 or heading 8541 or 8542 of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

* * * * *

6. Section 134.35(b) is republished to read as follows:

§ 134.35 Articles substantially changed by manufacture.

* * * * *

(b) *Goods of a NAFTA country.* A good of a NAFTA country which is to be processed in the United States in a manner that would result in the good becoming a good of the United States under the NAFTA Marking Rules is excepted from marking. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accord with this part.

7. Section 134.45(a) is republished to read as follows:

§ 134.45 Approved markings of country name.

(a) *Language.* (1) Except as otherwise provided in paragraph (a)(2) of this section, the markings required by this part shall include the full English name of the country of origin, unless another marking to indicate the English name of the country of origin is specifically authorized by the Commissioner of Customs. Notice of acceptable markings other than the full English name of the country of origin shall be published in the **Federal Register** and the Customs Bulletin.

(2) A good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish.

* * * * *

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

2. The last sentence of § 162.0 is republished to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the North American Free Trade Agreement are contained in part 181 of this chapter.

PART 174—PROTESTS

1. The authority citation for Part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

2. The last sentence of § 174.0 is republished to read as follows:

§ 174.0 Scope.

* * * Provisions applicable to Canadian and Mexican exporters and producers regarding administrative review and appeal of adverse marking decisions under the North American Free Trade Agreement are contained in part 181 of this chapter.

3. Section 174.12(a)(5) is republished to read as follows:

§ 174.12 Filing of protests.

(a) * * *

(5) With respect to a determination of origin under subpart G of part 181 of this chapter, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a Certificate of Origin covering the merchandise as provided for in § 181.11(a) of this chapter; or

* * * * *

4. Section 174.12(e)(2) is revised to read as follows:

§ 174.12 Filing of protests.

* * * * *

(e) * * *

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (e.g., the date of an exaction, the date of written notice excluding merchandise from entry or delivery under any provision of the Customs laws, the date of a refusal to reliquidate under section 520(c)(1) of the Tariff Act of 1930, as amended, or the date of written notice of a denial of a claim filed under section 520(d) of the Tariff Act of 1930, as amended); or

* * * * *

15. Section 174.15 is republished to read as follows:

§ 174.15 Consolidation of protests filed by different parties.

(a) *General.* Subject to paragraph (b) of this section, separate protests relating to one category of merchandise covered by an entry shall be considered as a single protest whether filed as a single protest or filed as separate protests relating to the same category by one or more parties in interest or an authorized agent.

(b) *NAFTA transactions.* The following rules shall apply to a consolidation of multiple protests concerning a determination of origin under subpart G of part 181 of this chapter if one of the protests is filed by or on behalf of an exporter or producer described in § 174.12(a)(5) of this part:

(1) If consolidation under paragraph (a) of this section is pursuant to specific written requests for consolidation received from all interested parties who filed protests under this part, those interested parties shall be deemed to have waived their rights to confidentiality as regards business information within the meaning of § 181.121 of this chapter. In such cases, a separate notice of the decision will be issued to each interested party under this part but without regard to whether the notice reflects confidential business information obtained from one but not all of those interested parties.

(2) If consolidation under paragraph (a) of this section is done by the district director in the absence of specific written requests for consolidation from all interested parties who filed protests under this part, no waiver of confidentiality by those interested parties shall be deemed to have taken place. In such cases, a separate notice of the decision will be issued to each interested party and each such notice shall adhere to the principle of confidentiality set forth in § 181.121 of this chapter.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding new listings to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
	* * * * *	
§ 12.132	Country of origin declaration covering textile and apparel goods under the North American Free Trade Agreement.	1515–0205
	* * * * *	
§ 181.11	Certificate of Origin for purposes of the North American Free Trade Agreement	1515–0205
§§ 181.22 and 181.32	Claim for preferential tariff treatment under the North American Free Trade Agreement.	1515–0205
§§ 181.47 and 181.53	Claim for refund, waiver or reduction of duty under the drawback and duty deferral provisions of the North American Free Trade Agreement.	1515–0205
§ 181.64	Claim for duty-free or reduced-duty treatment on repaired or altered goods under the North American Free Trade Agreement.	1515–0205
§ 181.72	Submission of information in connection with origin verifications under the North American Free Trade Agreement.	1515–0205
§ 181.82	Statement accompanying corrected declaration or notification of incorrect certification under the North American Free Trade Agreement.	1515–0205
§§ 181.93–181.96 and 181.102	Submission of information in connection with requests for issuance or review of advance rulings under the North American Free Trade Agreement.	1515–0205
§§ 181.113, 181.115 and 181.116	Submission of information in connection with the review and appeal of adverse marking decisions under the North American Free Trade Agreement.	1515–0205
§ 181.131	Claim for preferential tariff treatment under the North American Free Trade Agreement.	1515–0205
	* * * * *	

1. Part 181 is revised to read as follows:

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

Sec.
181.0 Scope.

Subpart A—General Provisions

181.1 Definitions.

Subpart B—Export Requirements

181.11 Certificate of Origin.
181.12 Maintenance and availability of records.
181.13 Failure to comply with requirements.

Subpart C—Import Requirements

181.21 Filing of claim for preferential tariff treatment upon importation.
181.22 Maintenance of records and submission of Certificate by importer.
181.23 Effect of noncompliance; failure to provide documentation regarding transshipment.

Subpart D—Post-Importation Duty Refund Claims

181.31 Right to make post-importation claim and refund duties.
181.32 Filing procedures.
181.33 Customs processing procedures.

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

181.41 Applicability.
181.42 Duties and fees not subject to drawback.
181.43 Eligible goods subject to drawback.
181.44 Calculation of drawback.
181.45 Goods eligible for full drawback.
181.46 Time and place for filing drawback claim.
181.47 Completion of claim for drawback.
181.48 Person entitled to receive drawback.
181.49 Retention of records.
181.50 Liquidation and payment of drawback claims.
181.51 Prevention of improper payment of claims.
181.52 Subsequent claims for preferential tariff treatment.
181.53 Waiver or reduction of duty under duty-deferral programs.
181.54 Verification of claim for drawback, waiver or reduction of duties.

Subpart F—Commercial Samples and Goods Returned After Repair or Alteration

181.61 Applicability.
181.62 Commercial samples of negligible value.
181.63 [Reserved]
181.64 Goods re-entered after repair or alteration in Canada or Mexico.

Subpart G—Origin Verifications and Determinations

181.71 Denial of preferential tariff treatment dependent on origin verification and determination.
181.72 Verification scope and method.
181.73 Notification of verification visit.
181.74 Verification visit procedures.
181.75 Issuance of origin determination.
181.76 Application of origin determinations.

Subpart H—Penalties

181.81 Applicability to NAFTA transactions.
181.82 Exceptions to application of penalties.

Subpart I—Advance Ruling Procedures

181.91 Applicability.
181.92 Definitions and general NAFTA advance ruling practice.
181.93 Submission of advance ruling requests.
181.94 Nonconforming requests for advance rulings.
181.95 Oral discussion of issues.
181.96 Change in status of transaction.
181.97 Withdrawal of NAFTA advance ruling requests.
181.98 Situations in which no NAFTA advance ruling may be issued.
181.99 Issuance of NAFTA advance rulings or other advice.
181.100 Effect of NAFTA advance ruling letters; modification and revocation.
181.101 Publication of decisions.
181.102 Administrative and judicial review of advance rulings.

Subpart J—Review and Appeal of Adverse Marking Decisions

181.111 Applicability.
181.112 Definitions.
181.113 Request for Basis of Adverse Marking Decision.
181.114 Customs response to request.
181.115 Intervention in importer's protest.
181.116 Petition regarding adverse marking decision.

Subpart K—Confidentiality of Business Information

181.121 Maintenance of confidentiality.
181.122 Disclosure to government authorities.

Subpart L—Rules of Origin

181.131 Rules of origin.

Appendix to Part 181—Rules of Origin Regulations

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

§ 181.0 Scope.

This part implements the duty preference and related Customs

provisions applicable to imported goods under the North American Free Trade Agreement (the NAFTA) entered into on December 17, 1992, and under the North American Free Trade Agreement Implementation Act (107 Stat. 2057) (the Act). Except as otherwise specified in this part, the procedures and other requirements set forth in this part are in addition to the Customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the NAFTA and the Act are contained in parts 10, 12, 24, 134 and 174 of this chapter.

Subpart A—General Provisions

§ 181.1 Definitions.

As used in this part, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular subpart, section or other portion of this part:

(a) *Canada. Canada,* when used in a geographical rather than governmental context, means the territory of Canada as defined in Annex 201.1 of the NAFTA.

(b) *Commercial importation. Commercial importation* means the importation of a good into the United States, Canada or Mexico for the purpose of sale, or any commercial, industrial or other like use.

(c) *Customs administration. Customs administration* means the competent authority that is responsible under the law of the United States, Canada or Mexico for the administration of its customs laws and regulations.

(d) *Customs duty. Customs duty* means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, other than any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the General Agreement on Tariffs and Trade, or any equivalent provision of a successor agreement to which the United States, Canada and Mexico are party, in respect of like, directly competitive or substitutable goods of the United States, Canada or Mexico, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to the domestic law of the United States, Canada or Mexico and that is not applied inconsistently with Chapter Nineteen of the NAFTA;

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(4) Premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels; and

(5) Fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to the provisions of Chapter Seven of the NAFTA.

(e) *Determination of origin. Determination of origin* means a determination as to whether a good qualifies as a good originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(f) *Exporter. Exporter* means an exporter located, and required under this part to maintain records regarding exportations of a good, in the United States, Canada or Mexico.

(g) *Generally Accepted Accounting Principles. Generally Accepted Accounting Principles* means the recognized consensus or substantial authoritative support in the United States, Canada or Mexico with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Generally Accepted Accounting Principles under this definition may encompass broad guidelines of general application as well as detailed standards, practices and procedures.

(h) *HTSUS. HTSUS* means the Harmonized Tariff Schedule of the United States.

(i) *Importer. Importer* means an importer located, and required under this part to maintain records regarding importations of a good, in the United States, Canada or Mexico.

(j) *Intermediate material. Intermediate material* means an "intermediate material" as defined in the appendix to this part.

(k) *Marking Rules. Marking Rules* means the "NAFTA Marking Rules" as defined in § 134.1(j) of this chapter.

(l) *Measure. Measure* means any law, regulation, procedure, requirement or practice.

(m) *Mexico. Mexico,* when used in a geographical rather than governmental context, means the territory of Mexico as defined in Annex 201.1 of the NAFTA.

(n) *NAFTA. NAFTA* means the North American Free Trade Agreement approved by the Congress under section 101(a) of the North American Free Trade Agreement Implementation Act (107 Stat. 2057).

(o) *NAFTA drawback. NAFTA drawback* means any drawback, waiver or reduction of U.S. customs duty provided for in subpart E of this part.

(p) *Net cost of a good. Net cost of a good* means the "net cost of a good" as defined in the appendix to this part.

(q) *Originating. Originating,* when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(r) *Person. Person* means a natural person or an enterprise.

(s) *Preferential tariff treatment. Preferential tariff treatment* means the duty rate applicable to an originating good or to a good to which Appendix 6.B. to Annex 300–B of the NAFTA applies.

(t) *Producer. Producer* means a *producer* as defined in the appendix to this part.

(u) *Production. Production* means *production* as defined in the appendix to this part.

(v) *Transaction value. Transaction value* means transaction value as defined in the appendix to this part.

(w) *United States. United States,* when used in a geographical rather than governmental context, means the territory of the United States as defined in Annex 201.1 of the NAFTA.

(x) *Used. Used* means *used* as defined in the appendix to this part.

(y) *Value. Value* means the value of a good or material for purposes of calculating customs duties or for purposes of applying the provisions of the appendix to this part.

Subpart B—Export Requirements

§ 181.11 Certificate of Origin.

(a) *General.* A Certificate of Origin shall be employed to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

(b) *Preparation of Certificate in the United States.* An exporter in the United States who completes and signs a Certificate of Origin for the purpose set forth in paragraph (a) of this section shall use Customs Form 434 or such other medium or format as approved by the Canadian or Mexican customs administration for that purpose. Where the U.S. exporter is not the producer of the good, that exporter may complete and sign a Certificate on the basis of:

(1) Its knowledge of whether the good qualifies as an originating good;

(2) Its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or

(3) A completed and signed Certificate for the good voluntarily provided to the exporter by the producer.

(c) *Submission of Certificate to Customs.* An exporter in the United States, and a producer in the United States who has voluntarily provided a copy of a Certificate of Origin to that exporter pursuant to paragraph (b)(3) of this section, shall provide a copy of the Certificate to Customs upon request.

(d) *Notification of errors in Certificate.* An exporter or producer in the United States who has completed and signed a Certificate of Origin, and who has reason to believe that the Certificate contains information that is not correct, shall within 30 calendar days after the date of discovery of the error notify in writing all persons to whom the Certificate was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate.

§ 181.12 Maintenance and availability of records.

(a) *Maintenance of records*—(1) *General.* An exporter or producer in the United States who completes and signs a Certificate of Origin shall maintain in the United States, for five years after the date on which the Certificate was signed, all records relating to the origin of a good for which preferential tariff treatment may be claimed in Canada or Mexico, including records associated with:

(i) The purchase of, cost of, value of, and payment for, the good that is exported from the United States;

(ii) The purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from the United States; and

(iii) The production of the good in the form in which the good is exported from the United States.

(2) *Method of maintenance.* The records referred to in paragraph (a) of this section shall be maintained in accordance with the Generally Accepted Accounting Principles applied in the United States and may be maintained in hard-copy form, on microfilm or microfiche or in automated record storage devices (for example, magnetic discs and tapes) if associated computer programs are available to facilitate retrieval of the data in a usable form.

(b) *Availability of records*—(1) *To Customs.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section shall be made available for examination and inspection by the port director or other appropriate Customs officer in the same manner as provided in § 162.1d of this chapter in the case of U.S. importer records.

(2) *To the Canadian or Mexican customs administration.* If a U.S. exporter or producer receives notification of, and consents to, an origin verification visit by the Canadian or Mexican customs administration under Article 506 of the NAFTA (see § 181.74(e) of this part), such consent shall constitute agreement by the U.S. exporter or producer to make available to an officer of that customs administration all records required to be maintained under this section and to provide facilities for the inspection thereof. If, during the course of an origin verification of a U.S. producer, the Canadian or Mexican customs administration finds that the U.S. producer has failed to maintain its records in accordance with the Generally Accepted Accounting Principles applied in the United States, that customs administration will so inform the U.S. producer in writing and will give the U.S. producer 60 calendar days to conform the records to those Principles. If a U.S. exporter or producer fails to maintain records or make records available to the Canadian or Mexican customs administration in accordance with the provisions of this section, or if a U.S. producer fails to conform its records to Generally Accepted Accounting Principles as provided in this paragraph, the Canadian or Mexican customs administration may deny preferential tariff treatment to the good that is the subject of the verification visit.

§ 181.13 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part.

Subpart C—Import Requirements

§ 181.21 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration.* In connection with a claim for preferential tariff treatment for a good under the NAFTA, the U.S. importer shall make a written declaration that the good qualifies for such treatment. The written declaration may be made by including on the entry summary, or equivalent documentation, the symbol "CA" for a good of Canada, or the symbol "MX" for a good of Mexico, as a prefix to the subheading of the HTSUS under which each qualifying good is classified. Except as otherwise provided in § 181.22 of this part and except in the case of a good to which Appendix 6.B. to Annex 300–B of the NAFTA applies (see, however, § 12.132 of this chapter), the declaration shall be based on a complete and properly executed original Certificate of Origin, or copy thereof, which is in the possession of the importer and which covers the good being imported.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section or under § 181.32(b)(2) of this part, the U.S. importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer shall within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration shall be effected by submission of a letter or other written statement to the Customs office where the original declaration was filed.

§ 181.22 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential tariff treatment for a good imported into the United States shall maintain in the United States, for five years after the date of entry of the good, all documentation relating to the importation of the good. Such documentation shall include a copy of the Certificate of Origin and any other relevant records as specified in § 162.1a(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential tariff treatment on a good under § 181.21 of this part shall provide, at the request of the port director, a copy of each Certificate of Origin pertaining to the good which is in the possession of the importer. A Certificate of Origin submitted to Customs under this paragraph or under § 181.32(b)(3) of this part:

(1) Shall be on Customs Form 434, including privately-printed copies thereof, or on such other form as approved by the Canadian or Mexican customs administration, or, as an alternative to Customs Form 434 or such other approved form, in an approved computerized format or such other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 434;

(2) Shall be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Shall be completed either in the English language or in the language of the country from which the good is exported. If the Certificate is completed in a language other than English, the importer shall also provide to the port director, upon request, a written English translation thereof;

(4) Shall be accepted by Customs for four years after the date on which the Certificate was signed by the exporter or producer; and

(5) May be applicable to:

(i) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical goods into the United States that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer.

(c) *Acceptance of Certificate.* A Certificate of Origin shall be accepted by the port director as valid for the purpose set forth in § 181.11(a) of this part, provided that the Certificate is completed, signed and dated in accordance with the requirements of paragraph (b) of this section. If the port director determines that a Certificate is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer shall be given a period of not less than five working days to submit a corrected Certificate. Acceptance of a Certificate will result in the granting of preferential tariff treatment to the imported good unless, in connection with an origin verification initiated under subpart G of this part or based on a pattern of conduct within the meaning of § 181.76(c) of this part, the port director determines that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this part. A Certificate shall not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(5)(ii) of this section if, based on an origin verification under subpart G of this part, the port director determined that a previously imported identical good covered by the Certificate did not qualify as an originating good.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer shall not be required to have a Certificate of Origin in his possession for:

(i) An importation of a good for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the good qualifies for preferential tariff treatment under the NAFTA;

(ii) A non-commercial importation of a good; or

(iii) A commercial importation of a good whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

> I hereby certify that the good covered by this shipment qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.
>
> Check One:
> ( ) Producer
> ( ) Exporter
> ( ) Importer
> ( ) Agent
>
> ____________________________
> Name
>
> ____________________________
> Title
>
> ____________________________
> Address
>
> ____________________________
> Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a certification requirement set forth in this part, the port director shall notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer shall have 30 calendar days from the date of the written notice to obtain a valid Certificate, and a failure to timely obtain the Certificate will result in denial of the claim for preferential tariff treatment. For purposes of paragraph (d)(2) of this section, a "series of importations" means two or more entries covering goods arriving on the same day from the same exporter and consigned to the same person.

§ 181.23 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this part, including submission of a Certificate of Origin under § 181.22(b) or submission of a corrected Certificate under § 181.22(c), the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this part are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than the United States, Canada or Mexico and the importer of the good does not provide, at the request of the port director, copies of the customs control documents that indicate to the satisfaction of the port director that the good remained under customs control while in such other country.

Subpart D—Post-Importation Duty Refund Claims

§ 181.31 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, including the right to amend an entry so long as liquidation of the entry has not become final, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment on that originating good was made at that time under § 181.21(a) of this part, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 181.32 of this part. Subject to the provisions of § 181.23 of this part, Customs may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 181.33(c) of this part.

§ 181.32 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 181.31 of this part shall be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund shall be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry covering the good;

(2) Subject to § 181.22(d) of this part, a copy of each Certificate of Origin (see § 181.11 of this part) pertaining to the good;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement shall identify each recipient by name, Customs identification number and address and shall specify the date on which the documentation was provided;

(4) A written statement indicating whether or not the importer of the good is aware of any claim for refund, waiver or reduction of duties relating to the good within the meaning of Article 303 of the NAFTA (see subpart E of this part). If the importer is aware of any such claim, the statement shall identify each claim by number and date and shall identify the person who made the claim by name, Customs identification number and address; and

(5) A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law, and if any such protest or petition or request for reliquidation has been filed, the statement shall identify the protest, petition or request by number and date.

§ 181.33 Customs processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 181.32 of this part, the port director shall determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition or request for reliquidation or judicial review.* If the port director determines that any protest or any petition or request for reliquidation relating to the good has not been finally decided, the port director shall suspend action on the claim filed under this subpart until the decision on the protest, petition or request becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director shall suspend action on the claim filed under this subpart until judicial review has been completed.

(c) *Allowance of claim.*—(1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director shall take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, the port director shall reliquidate the entry taking into account the claim for refund under this subpart.

(3) *Information to be provided to Canada or Mexico.* If any information is provided to Customs pursuant to § 181.32(b) (4) or (5) of this part, that information, together with notice of the allowance of the claim and the amount of duty refunded pursuant to this subpart, shall be provided by the port director to the customs administration of the country from which the good was exported.

(d) *Denial of claim*—(1) *General.* The port director may deny a claim for a refund filed under this subpart if the claim was not filed timely, if the importer has not complied with the requirements of this subpart, if the Certificate of Origin submitted under § 181.32(b)(3) of this part cannot be accepted as valid (see § 181.22(c) of this part), or if, following initiation of an origin verification under § 181.72(a) of this part, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 181.72(d), § 181.74(c) or § 181.76(c) of this part.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director shall deny the claim in connection with the liquidation of the entry, and written notice of the denial and the reason therefor shall be given to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

(3) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director shall give written notice of the denial and the reason therefor to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

§ 181.41 Applicability.

This subpart sets forth the provisions regarding drawback claims and duty-deferral programs under Article 303 of the NAFTA and applies to any good that is a "good subject to NAFTA drawback" within the meaning of 19 U.S.C. 3333. Except in the case of § 181.42(d), the provisions of this subpart apply to goods which are imported into the United States and then subsequently exported from the United States to Canada on or after January 1, 1996, or to Mexico on or after January 1, 2001. The requirements and procedures set forth in this subpart for NAFTA drawback are in addition to the general definitions, requirements and procedures for all drawback claims set forth in part 191 of this chapter, unless otherwise specifically provided in this subpart. Also, the requirements and procedures set forth in this subpart for NAFTA duty-deferral programs are in addition to the requirements and procedures for manipulation, manufacturing and smelting and refining warehouses contained in part 19 and part 144 of this chapter, for foreign trade zones under part 146 of this chapter, and for temporary importations under bond contained in part 10 of this chapter.

§ 181.42 Duties and fees not subject to drawback.

The following duties or fees which may be applicable to a good entered for consumption in the Customs territory of the United States are not subject to drawback under this subpart:

(a) Antidumping and countervailing duties;

(b) A premium offered or collected on a good with respect to quantitative import restrictions, tariff rate quotas or tariff preference levels;

(c) Fees applied under section 22 of the U.S. Agricultural Adjustment Act; and

(d) Customs duties paid or owed under unused merchandise substitution drawback. There shall be no payment of such drawback under 19 U.S.C. 1313(j)(2) on goods exported to Canada or Mexico on or after January 1, 1994.

§ 181.43 Eligible goods subject to drawback.

Except as otherwise provided in this subpart, drawback is authorized for an imported good that is entered for consumption and is:

(a) Subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(j)(1));

(b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(a)); or

(c) Substituted by a good of the same kind and quality as defined in § 181.44(c) of this subpart and used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(b)).

§ 181.44 Calculation of drawback.

(a) *General.* Except in the case of goods specified in § 181.45 of this part, drawback of the duties previously paid upon importation of a good into the United States may be granted by the United States, upon presentation of a NAFTA drawback claim under this subpart, on the lower amount of:

(1) The total duties paid or owed on the good in the United States; or

(2) The total amount of duties paid on the exported good upon subsequent importation into Canada or Mexico.

(b) *Individual relative value and duty comparison principle.* For purposes of this section, relative value shall be determined, and the comparison between the duties referred to in paragraph (a)(1) of this section and the duties referred to in paragraph (a)(2) of this section shall be made, separately with reference to each individual exported good, including where two components or materials are used to produce one exported good or one component or material is divided among multiple exported goods.

Example. Upon importation of Chemical X into the United States, Company A entered Chemical X and paid $2.00 in duties. Company A processed Chemical X into Products Y and Z, each having the same relative value; that is, $1.00 in duty is attributable to Product Y and $1.00 in duty is attributable to Product Z. Company A exported Product Y to Canada and Canada assessed a free rate of duty. Company A exported Product Z to Mexico and Mexico assessed the equivalent of US$2.00 in duty. There is no entitlement to drawback on the export of Product Y to Canada because zero is the lesser amount when compared to the $1.00 in duty attributable to Product Y as a result of the separation of Chemical X into Products Y and Z. There would be entitlement to drawback on the export to Mexico, consisting of the $1.00 duty attributable to Product Z, because that amount is the lesser amount when comparing the duty paid to the United States and the US$ equivalent duty paid to Mexico.

(c) *Direct identification manufacturing drawback under 19 U.S.C. 1313(a).* Upon presentation of the NAFTA drawback claim under 19 U.S.C. 1313(a), in which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback refunded shall not exceed 99 percent of the duty paid on such imported merchandise into the United States.

Example 1. Upon the importation of Product X to the United States from Japan, Company A paid $2.00 in duties. Company A manufactured the imported Product X into Product Y, and subsequently exported it to Mexico. Mexico assessed the equivalent of US$11.00 in duties upon importation of Product Y. Upon presenting a drawback claim in the United States, in accordance with 19 U.S.C. 1313(a), Company A would be entitled to a refund of 99 percent of the $2.00, or $1.98. The $2.00 paid by Company A (less 1 percent) on the importation of Product X into the United States is a lesser amount of duties than the total amount of customs duties paid to Mexico (the equivalent of US$11.00) on Product Y.

Example 2. Upon the importation of Product X into the United States from Hong Kong, Company A entered Product X and paid $5.00 in duties. Company A manufactured Product X into Product Y, sold it to Company B in Mexico and subsequently exported it to Mexico. Company A reserved its right to drawback. Upon Product Y's importation, Company B was assessed a free rate of duty. Company A's claim for drawback will be denied because Company A is entitled to zero drawback for the reason that, as between the duty paid in the United States and the duty paid in Mexico, the duty in Mexico was zero.

(d) *Substitution manufacturing drawback under 19 U.S.C. 1313(b).* Upon presentation of a NAFTA drawback claim under 19 U.S.C. 1313(b), on which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback is the same as that which would have been allowed had the substituted merchandise used in manufacture been itself imported. For purposes of drawback under this subpart, the term "same kind and quality" used in § 1313(b) (see § 191.2(m) of this chapter) shall have the same meaning as the term "identical or similar good" used in Article 303 of the NAFTA except that there shall be no requirement that the good be manufactured in the same country.

Example 1. Upon importation of Product X from Japan to the United States, Company A paid $5.00 in duties. Company A substituted a same kind and quality domestic Product X for the Japanese Product X in its production of Product Y under its 19 U.S.C. 1313(b) drawback contract. Company A sold Product Y to Company B which subsequently exported it to Canada. On the importation of Product Y by Company B, Company B paid the equivalent of US$2.00 in duties assessed by Revenue Canada and waived its right to drawback to Company A. Company A is entitled to obtain drawback under 19 U.S.C. 1313(b) in the United States in the amount of $1.98 (or 99 percent of the US$2.00 equivalent Company B paid in duty to Canada) since that $2.00 was the lesser of the total amount of customs duties paid on the product to either Canada or the United States.

Example 2. Same facts as above example, but Company B paid the equivalent of US$5.00 to Revenue Canada. Company A is entitled to obtain $4.95 in drawback (a refund of 99 percent of $5.00 paid to the United States). Since the same amount of duty was assessed by each country, drawback is allowable because the drawback paid does not exceed the lesser amount paid.

(e) *Meats cured with imported salt.* Meats, whether packed or smoked, which have been cured with imported salt may be eligible for drawback in aggregate amounts of not less than $100 in duties paid on the imported salt upon exportation of the meats to Canada or Mexico (see 19 U.S.C. 1313(f)).

Example. Company Z produced Virginia smoked ham on its Smithfield, Virginia farm, using 4,000 pounds of imported salt in curing the meat. The salt was imported from an HTSUS Column 2 country, with a duty of $200. Upon exportation of the hams to Mexico, Company Z pays the equivalent of US$250.00 in duties to Mexico. Company Z is entitled to drawback of the full 100 percent of the $200.00 in duties it paid on the importation of the salt into the United States because that $200.00 is a lesser amount than the total amount of customs duties paid to Mexico on the exported meat.

(f) *Jet aircraft engines.* A foreign-built jet aircraft engine that has been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, may be eligible for drawback of duties paid on the imported merchandise in aggregate amounts of not less than $100 upon exportation of the engine to Canada or Mexico (19 U.S.C. 1313(h)).

Example. A Swedish-made jet aircraft engine is repaired in the United States using imported parts from Korea on which $160.00 in duties have been paid by Company W. The engine is subsequently exported to Canada by Company W and Company W pays the equivalent of US$260.00 in duties to Canada. Upon showing the country in which the engine was manufactured and a description of the processing performed thereon in the United States on Customs Form 7575–A, appropriately modified, Company W is entitled to the full refund of the duties paid to the United States since that $160.00 was a lesser amount than the duties paid on the engine to Canada.

(g) *Unused goods under 19 U.S.C. 1313(j)(1) that have changed in condition*. An imported good that is unused in the United States under 19 U.S.C. 1313(j)(1) and that is shipped to Canada or Mexico not in the same condition within the meaning of § 181.45(b)(1) may be eligible for drawback under this section, except when the shipment to Canada or Mexico does not constitute an exportation under 19 U.S.C. 1313(j)(4).

Example. Upon importation of Product X from Spain to the United States, the U.S. importer pays $10.00 in duties. While in the original package in the importer's warehouse, Product X becomes damaged. A Canadian purchaser buys Product X and imports it into Canada and pays the equivalent of US$5.00 in duties assessed by Revenue Canada. The Canadian purchaser who exported Product X from the United States to Canada and who otherwise qualifies for drawback is entitled to drawback under 19 U.S.C. 1313(j)(1) in the amount of $4.95 (99 percent of the US$5.00 equivalent in duties paid to Canada). Eligibility for full drawback of the $10.00 in U.S. duties under § 181.45(b) would be precluded because Product X, although unused, was not exported to Canada in the same condition as when imported into the United States within the meaning of § 181.45(b)(1).

§ 181.45 Goods eligible for full drawback.

(a) *Goods originating in Canada or Mexico*. A Canadian or Mexican originating good that is dutiable and is imported into the United States is eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part if that originating good is:

(1) Subsequently exported to Canada or Mexico;

(2) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or

(3) Substituted by a good of the same kind and quality and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

Example. Company A imports a dutiable (3 percent rate) Canadian originating good. During Company A's manufacturing process, Company A substitutes a German good of the same kind and quality (on which duty was paid at a 2.5 percent rate) in the production of another good that is subsequently exported to Canada. Company A may designate the dutiable Canadian entry and claim full drawback (99 percent) on the 3 percent duty paid under 19 U.S.C. 1313(b). (Note: NAFTA originating goods will continue to receive full drawback as they cross NAFTA borders for successive stages of production until NAFTA tariffs are fully phased out.)

(b) *Claims under 19 U.S.C 1313(j)(1) for goods in same condition*. A good imported into the United States and subsequently exported to Canada or Mexico in the same condition is eligible for drawback under 19 U.S.C. 1313(j)(1) without regard to the limitation on drawback set forth in § 181.44 of this part.

Example. X imports a desk into the United States from England and pays $25.00 in duty. X immediately exports the desk to Z in Mexico and Z pays the equivalent of US$10.00 in Mexican duties. X can obtain a refund of 99 percent of the $25.00 paid upon importation of the desk into the United States.

(1) *Same condition defined*. For purposes of this subpart, a reference to a good in the "same condition" includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

(i) Mere dilution with water or another substance;

(ii) Cleaning, including removal of rust, grease, paint or other coatings;

(iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;

(iv) Trimming, filing, slitting or cutting;

(v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or

(vi) Testing, marking, labelling, sorting or grading.

(2) *Commingling of fungible goods*—(i) *General*. Commingling of fungible goods in inventory, such as parts, is permissible (see § 191.141(e) of this chapter), provided that the entries for designation for same condition drawback are identified on the basis of an approved inventory method set forth in the appendix to this part.

(ii) *Exception*. Agricultural goods imported from Mexico may not be commingled with fungible agricultural goods in the United States for purposes of same condition drawback under this subpart.

(c) *Goods not conforming to sample or specifications or shipped without consent of consignee under 19 U.S.C. 1313(c)*. An imported good exported to Canada or Mexico by reason of failure of the good to conform to sample or specification or by reason of shipment of the good without the consent of the consignee is eligible for drawback under 19 U.S.C. 1313(c) without regard to the limitation on drawback set forth in § 181.44 of this part. Such a good must be returned to Customs custody for exportation under Customs supervision within three years after the release from Customs custody.

Example. X orders, after seeing a sample in the ABC Company's catalog, a certain quantity of 2-by-4 lumber from ABC Company located in Honduras. ABC Company, having run out of the specific lumber, ships instead a different kind of lumber. X rejects the lumber because it did not conform to the sample and is asked to send it to a customer of ABC in Canada. X exports it within 90 days of its release from Customs custody. X may recover 99 percent of the $500 duties it paid to U.S. Customs upon the exportation of the lumber, or $495.00.

(d) *Certain goods exported to Canada*. Goods identified in Annex 303.6 of the NAFTA and in sections 203(a) (7) and (8) of the North American Free Trade Agreement Implementation Act, if exported to Canada, are eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part.

§ 181.46 Time and place for filing drawback claim.

(a) *Time of filing*. A drawback claim under this subpart shall be filed or applied for, as applicable, within 3 years after the date of exportation of the goods on which drawback is claimed. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing. Drawback shall be allowed only if the completed good is exported within 5 years after importation of the merchandise identified or designated to support the claim. A good subject to a claim for same condition drawback must be exported before the close of the 3-year period beginning on the date of importation of the good into the United States.

(b) *Place of filing*. A drawback claim must be filed at the port(s) where the manufacturing drawback contract is on file, whether a general rate or specific rate, but exportation need not occur from that port. To facilitate expedited processing of claims, claimants should file same condition drawback claims in the port where the examination would take place (see § 191.141(b)(3) (ii) and (iii) of this chapter). Customs must be notified at least 2 working days in advance of the intended date of

exportation in order to have the opportunity to examine the goods.

§ 181.47 Completion of claim for drawback.

(a) *General*. A claim for drawback shall be granted, upon the submission of appropriate documentation to substantiate compliance with the drawback laws and regulations of the United States, evidence of exportation to Canada or Mexico, and satisfactory evidence of the payment of duties to Canada or Mexico. Unless otherwise provided in this subpart, the documentation, filing procedures, time and place requirements and other applicable procedures required to determine whether a good qualifies for drawback shall be in accordance with the provisions of part 191 of this chapter; however, a drawback claim subject to the provisions of this subpart shall be filed separately from any part 191 drawback claim (that is, a claim that involves goods exported to countries other than Canada or Mexico). Claims inappropriately filed or otherwise not completed within the 3-year period specified in § 181.46 of this part shall be considered abandoned.

(b) *Complete drawback claim*—(1) *General*. A complete drawback claim under this subpart shall consist of the filing of the appropriate completed drawback entry form, evidence of exportation (a copy of the Canadian or Mexican customs entry showing the amount of duty paid to Canada or Mexico) and its supporting documents, certificate(s) of delivery, when necessary, or certificate(s) of manufacture and delivery, and a certification from the Canadian or Mexican importer as to the amount of duties paid. Each drawback entry form filed under this subpart shall be conspicuously marked at the top with the word "NAFTA".

(2) *Specific claims*. The following documentation, for the drawback claims specified below, must be submitted to Customs in order for a drawback claim to be processed under this subpart. Missing documentation or incorrect or incomplete information on required customs forms or supporting documentation will result in an incomplete drawback claim.

(i) *Manufacturing drawback claim*. The following shall be submitted in connection with a claim for direct identification manufacturing drawback or substitution manufacturing drawback:

(A) A completed Customs Form 331, to establish the manufacture of goods made with imported merchandise and, if applicable, the identity of substituted domestic, duty-paid or duty-free merchandise, and including the tariff classification number of the imported merchandise;

(B) Customs Form 7501 or the import entry number;

(C) Exporter's summary procedure, if applicable. For purposes of this subpart, the exporter's summary procedure must include the Canadian or Mexican customs entry number and the amount of duty paid to Canada or Mexico;

(D) Evidence of exportation and satisfactory evidence of the payment of duties in Canada or Mexico, as provided in paragraph (c) of this section;

(E) Waiver of right to drawback. If the person exporting to Canada or Mexico was not the importer or the manufacturer, written waivers executed by the importer or manufacturer and by any intervening person to whom the good was transferred shall be submitted in order for the claim to be considered complete; and

(F) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods, that such party has not provided an exporter's Certificate of Origin pertaining to the exported goods to another party except as stated on the drawback claim, and that the party agrees to notify Customs if he subsequently provides such an exporter's Certificate of Origin to any person.

(ii) *Same condition drawback claim under 19 U.S.C. 1313(j)(1)*. The following shall be submitted in connection with a drawback claim covering a good in the same condition:

(A) A completed Customs Form 7539J. In addition, the tariff classification number of the imported goods shall be recorded on the form;

(B) Customs Form 7501. The form must show the entry number, date of entry, port of importation, date of importation, importing carrier, and importer of record or ultimate consignee name and Customs or taxpayer identification number. Explicit line item information shall be clearly noted on the Customs Form 7501 so that the subject goods are easily discernible;

(C) Customs Form 7505, if applicable, to trace the movement of the imported goods after importation;

(D) The certificate of delivery portion of Customs Form 331, if applicable, for purposes of tracing the transfer of ownership of the imported goods from the importer to the claimant. This is required if the drawback claimant is not the original importer of the merchandise which is the subject of a same condition claim;

(E) Customs Form 7512, if applicable. This is required for merchandise which is examined at one port but exported through border points outside of that port. Such goods must travel in bond from the location where they were examined to the point of the border crossing (exportation). If examination is waived, in-bond transportation is not required;

(F) Notification of intent to export or waiver of prior notice;

(G) Evidence of exportation. If a claimant is not approved for the exporter's summary procedure, either a certified Customs Form 7511 or an uncertified Customs Form 7511 supported by documentary evidence of exportation to Canada or Mexico such as a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier, or any other evidence of exportation provided for in § 191.51 of this chapter. Supporting documentary evidence shall establish fully the time and fact of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

(H) Waiver of right to drawback. If the party exporting to Canada or Mexico was not the importer, a written waiver from the importer and from each intermediate person to whom the goods were transferred shall be required in order for the claim to be considered complete; and

(I) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods.

(iii) *Nonconforming or improperly shipped goods drawback claim*. The following shall be submitted in the case of goods not conforming to sample or specifications or shipped without the consent of the consignee and subject to a drawback claim under 19 U.S.C. 1313(c):

(A) Customs Form 7539C, completed and submitted at the time the goods are returned to Customs custody;

(B) Customs Form 7501 to establish the fact of importation, the receipt of the imported goods and the identity of the party to whom drawback is payable (see § 181.48(c) of this part);

(C) Documentary evidence to support the claim that the goods did not conform to sample or specifications or were shipped without [illegible] consent of the consignee. In the [illegible] nonconforming goods, such documentation may include a copy of a purchase order and any related documents such as a specification sheet, catalogue or advertising brochure from the supplier, the basis for which the order was placed, and copy of a letter or telex or credit memo from the supplier indicating acceptance of the returned merchandise. This documentation is necessary to establish that the goods are, in fact, being returned to the party from which they were procured or that they are being sent to the supplier's other customer directly;

(D) Customs Form 7512, if applicable; and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(G) of this section.

(iv) *Meats cured with imported salt.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on meats cured with imported salt filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart, and the forms referred to in that paragraph shall be modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

(v) *Jet aircraft engines.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on foreign-built jet aircraft engines repaired or reconditioned in the United States filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of subpart L of part 191 of this chapter.

(c) *Evidence of exportation and of duties paid in Canada or Mexico.* For purposes of this subpart, evidence of exportation and satisfactory evidence of payment of duties in Canada or Mexico shall consist of one of the following types of documentation, provided that, for purposes of evidence of duties paid, such documentation includes the import entry number, the date of importation, the tariff classification number, the rate of duty and the amount of duties paid:

(1) In the case of Canada, the Canadian entry document, referred to as the Canada Customs Invoice or B–3, presented with either the K–84 Statement or the Detailed Coding Statement. A Canadian customs document that is not accompanied by a valid receipt is not adequate evidence of exportation and payment of duty in Canada;

(2) In the case of Mexico, the Mexican entry document (the "pedimento");

(3) The final customs duty determination of Canada or Mexico, or a copy thereof, respecting the relevant entry; or

(4) An affidavit, from the person claiming drawback, which is based on information received from the importer of the good in Canada or Mexico.

§ 181.48 Person entitled to receive drawback.

(a) *Manufacturing drawback.* The person named as exporter on the notice of exportation or on the bill of lading, air waybill, freight waybill, Canadian or Mexican customs manifest, cargo manifest, or certified copies of these documents, shall be considered the exporter and entitled to manufacturing drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. Drawback also may be granted to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive the drawback of duties.

(b) *Nonconforming or improperly shipped goods drawback.* Only the importer of record or the actual owner of the merchandise or its agent may claim drawback under 19 U.S.C. 1313(c).

(c) *Same condition drawback.* The importer of record on the consumption entry is entitled to claim same condition drawback under 19 U.S.C. 1313(j)(1) unless he has in writing waived his right to claim drawback.

§ 181.49 Retention of records.

All records required to be kept by the exporter, importer, manufacturer or producer under this subpart with respect to manufacturing drawback claims, and all records kept by others which complement the records of the importer, exporter, manufacturer or producer (see § 191.5 of this chapter) shall be retained for at least three years after payment of such claims. However, any person who issues a drawback certificate that enables another person to make or perfect a drawback claim shall keep records in support of that certificate commencing on the date that the certificate is issued and shall retain those records for three years following the date of payment of the claim.

§ 181.50 Liquidation and payment of drawback claims.

(a) *General.* When the drawback claim has been fully completed by the filing of all required documents, and exportation of the articles has been established and the amount of duties paid to Canada or Mexico has been established, the entry will be liquidated to determine the proper amount of drawback due either in accordance with the limitation on drawback set forth in § 181.44 of this part or in accordance with the regular drawback calculation. The liquidation procedures of subpart G of part 191 of this chapter shall control for purposes of this subpart.

(b) *Time for liquidation.* A drawback claim shall not be liquidated until either a written waiver of the right to protest under 19 U.S.C. 1514 is filed with Customs or the liquidation of the import entry has become final under U.S. law. In addition, except in the case of goods covered by § 181.45 of this part, a drawback claim shall not be liquidated for a period of 3 years after the date of entry of the goods in Canada or Mexico. A drawback claim may be adjusted pursuant to 19 U.S.C. 1508(b)(2)(B)(iii) even after liquidation of the U.S. import entry has become final.

(c) *Accelerated payment.* Accelerated drawback payment procedures shall apply as set forth in § 191.72 of this chapter. However, a person who receives drawback of duties under this procedure shall repay the duties paid if a NAFTA drawback claim is adversely affected thereafter by administrative or court action.

§ 181.51 Prevention of improper payment of claims.

(a) *Double payment of claim.* The drawback claimant shall certify to Customs that he has not earlier received payment on the same import entry for the same designation of goods. If, notwithstanding such a certification, such an earlier payment was in fact made to the claimant, the claimant shall repay any amount paid on the second claim.

(b) *Preparation of Certificate of Origin.* The drawback claimant shall, within 30 calendar days after the filing of the drawback claim under this subpart, submit to Customs a written statement as to whether he has prepared, or has knowledge that another person has prepared, a Certificate of Origin provided for under § 181.11(a) of this part and pertaining to the goods which are covered by the claim. If, following such 30-day period, the claimant prepares, or otherwise learns of the existence of, any such Certificate of Origin, the claimant shall, within 30 calendar days thereafter, disclose that fact to Customs.

§ 181.52 Subsequent claims for preferential tariff treatment.

If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA (post-importation claim) or under any other circumstance after drawback has been granted under this subpart, the appropriate Customs officer shall reliquidate the drawback claim and obtain a refund of the amount paid in drawback in excess of the amount permitted to be paid under § 181.44 of this part.

§ 181.53 Waiver or reduction of duty under duty-deferral programs.

(a) *General*—(1) *Duty-deferral program defined.* For purposes of this section, a "duty-deferral program" means a measure which postpones duty payment upon arrival of a good in the United States, including a measure governing manipulation warehouses, manufacturing warehouses, smelting and refining warehouses, foreign trade zones, or temporary importations under bond under Chapter 98, HTSUS, until withdrawn or removed for exportation to Canada or Mexico.

(2) *Treatment as entered or withdrawn for domestic consumption.* Where a "good subject to NAFTA drawback" within the meaning of 19 U.S.C. 3333 is imported into the United States pursuant to a duty-deferral program and is subsequently exported to Canada or Mexico or is used as a material in the production of another good that is subsequently exported to Canada or Mexico, the exported good shall be treated, for purposes of this section, as if it had been entered or withdrawn for domestic consumption and thus subject to duty. However, the provisions of this paragraph shall not apply to goods covered by § 181.45.

(3) *Adjustment to duties paid.* Customs shall waive or reduce the duties paid or owed under paragraph (a)(2) of this section by the person who exports the good to Canada or Mexico in accordance with paragraphs (b) through (f) of this section, provided that evidence of exportation and satisfactory evidence of duties paid in Canada or Mexico (see § 181.47(c) of this part) are submitted within 60 calendar days of the date of exportation.

(b) *Manipulation in warehouse.* Where a good subject to NAFTA drawback under this subpart is withdrawn from a bonded warehouse (19 U.S.C. 1562) after manipulation for exportation to Canada or Mexico, duty shall be assessed on the good in its condition and quantity, and at its weight, at the time of such withdrawal from the warehouse and with such additions to, or deductions from, the final appraised value as may be necessary by reason of its change in condition. Such duty shall be paid no later than 60 calendar days after the date of exportation except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company B imports toys in bulk and makes a warehouse entry into a Class 8 warehouse, whereupon Company B repackages the toys for retail sale. Upon withdrawal of the goods from the warehouse, $200 in U.S. duty is assessed. Company B exports this merchandise to Mexico and pays the equivalent of US$300 in duties. Thirty days after exportation from the United States, Company B submits to Customs evidence of exportation and a copy of the Mexican consumption entry ("pedimento") as evidence of the payment of the US$300 equivalent to Mexico. Customs will waive the collection of the $200 assessment since $200 is a lesser amount than the total amount of duties paid to Mexico.

(c) *Bonded manufacturing warehouse.* Where a good is manufactured in a bonded warehouse (19 U.S.C. 1311) with imported materials and is then withdrawn for exportation to Canada or Mexico, duty shall be assessed on the materials in their condition and quantity, and at their weight, at the time of their importation into the United States. Such duty shall be paid no later than 60 calendar days after the date of exportation except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company N imports tea into the United States and makes a Class 6 warehouse entry. Company N manufactures sweetened ice tea mix by combining the imported tea with refined cane sugar and other flavorings and packaging it in retail size canisters. Upon withdrawal of the ice tea mix from the warehouse for immediate exportation to Canada, U.S. duty is assessed on the basis of the unmanufactured tea in the amount of $900. Company N, however, does not pay the duties at this time. Canada assesses the equivalent of US$800 on the exported ice tea mix. Company N submits to Customs both evidence of exportation to Canada and a Canadian K–84 Statement showing payment of the US$800 equivalent in duties to Canada. Company N will only be required to pay $100 in U.S. duties out of the original $900 bill.

(d) *Bonded smelting or refining warehouse.* For any qualifying imported metal-bearing materials (19 U.S.C. 1312), duty shall be assessed on the imported materials and the charges against the bond canceled no later than 60 calendar days after the date of exportation of the treated materials to Canada or Mexico either from the bonded smelting or refining warehouse or from such other customs bonded warehouse after the transfer of the same quantity of material from a bonded smelting or refining warehouse. However, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported treated materials, the duty on the imported materials shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the imported materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company Z imports 47 million pounds of electrolytic zinc which is entered into a bonded smelting and refining warehouse (Class 7) for processing. Thereafter, Company Z withdraws the merchandise and pays $90,000 in U.S. duty on the dutiable quantity of metal contained in the imported metal-bearing materials and Customs cancels the bond charges. Two weeks later, Company Z secures a buyer, Company B, in Canada and exports the merchandise. Upon importation of the processed zinc into Canada, the equivalent of US$50,000 in duties are assessed against Company B. Company Z would like to claim a NAFTA refund under this section. Company Z must secure from Company B the necessary Canadian documentation to show exportation and to show that the US$50,000 equivalent in duties was paid to Revenue Canada in order for Company Z to obtain a refund of that amount from Customs.

(e) *Foreign trade zone.* For a good that is manufactured or otherwise changed in condition in a foreign trade zone (19 U.S.C. 81c(a)) and then exported from the zone to Canada or Mexico, the duty assessed, as calculated under paragraph (e)(1) or (e)(2) of this section, shall be paid no later than 60 calendar days after the date of exportation of the good to Canada or Mexico except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(1) *Nonprivileged foreign status.* In the case of a nonprivileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its exportation from the zone to Canada or Mexico.

Example. CMG imports $1,000,000 worth of auto parts from Korea and admits them into Foreign-Trade Subzone number 00, claiming nonprivileged foreign status. (If the auto parts had been regularly entered they would have been dutiable at 4 percent, or $40,000.) CMG manufactures subcompact automobiles. Automobiles are dutiable at 2.5 percent ($25,000) if entered for consumption in the United States. CMG withdraws the automobiles from the zone and sells them to XYZ who ships them to Mexico. XYZ enters the automobiles in Mexico, pays the equivalent of US$20,000 in duty, and does not claim NAFTA preferential tariff treatment. Before the expiration of 60 calendar days from exportation, CMG submits the required documentation showing exportation and payment of duty in Mexico and pays $5,000 in duty to Customs representing the difference between the $25,000 which would have been paid if the automobiles had been entered for consumption from the zone and the US$20,000 equivalent paid to Mexico by XYZ.

(2) *Privileged foreign status.* In the case of a privileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time privileged status is granted in the zone.

Example. O&G, Inc. admits Kuwaiti crude petroleum into its zone and requests, one month later, privileged foreign status on the crude before refining the crude into motor gasoline and kerosene. Upon entry of the refined goods from the zone by O&G, Inc., U.S. duty is assessed on the imported crude petroleum in the amount of $700 rather than on the refined goods (which would have been assessed $1,200). O&G, Inc. then ships the refined goods to Canada. D&O is the consignee in Canada and pays the Canadian customs duty assessment of the equivalent of US$1,500 on the goods. D&O claims NAFTA preferential tariff treatment in Canada. O&G, Inc. potentially is entitled to a duty remission of the full $700 assessed in the United States. However, if D&O's NAFTA claim is approved and results in a refund of duty by Canada, O&G, Inc.'s actual duty remission or refund will be reduced by that amount of refund received by D&O in excess of $800.

(f) *Temporary importation under bond.* Where a good, regardless of its origin, was imported temporarily free of duty for repair, alteration or processing (subheading 9813.00.05, HTSUS) and is subsequently exported to Canada or Mexico, duty shall be assessed on the good on the basis of its condition at the time of its importation into the United States. Such duty shall be paid no later than 60 calendar days after the date of exportation except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company A imports glassware under subheading 9813.00.05, HTSUS. The glassware is from France and would be dutiable under a regular consumption entry at $6,000. Company A alters the glassware by etching hotel logos on the glassware. Two weeks later, Company A sells the glassware to Company B, a Mexican company, and ships the glassware to Mexico. Company B enters the glassware and is assessed duties in an amount equivalent to US$6,200 and claims NAFTA preferential tariff treatment. Company B provides a copy of the Mexican landing certificate to Company A showing that the US$6,200 equivalent in duties was assessed but not yet paid to Mexico, and Customs sends a bill to Company A for the $6,000 in U.S. duty which Company A pays. If Mexico ultimately denies Company B's NAFTA claim and the Mexican duty payment becomes final, Company A, upon submission to Customs of evidence of the finality of the collection of the US$6,200 equivalent by Mexico, is entitled to a refund of the full $6,000 in U.S. duty.

(g) *Recordkeeping requirements.* If a person intends to claim a waiver or reduction of duty on goods under this section, that person shall maintain records concerning the value of all involved goods or materials at the time of their importation into the United States and concerning the value of the goods at the time of their exportation to Canada or Mexico. Failure to maintain adequate records will result in denial of the claim for waiver or reduction of duty.

(h) *Failure to timely provide evidence of duties paid or owed to Canada or Mexico.* If the person who exports the goods to Canada or Mexico fails to provide satisfactory evidence of duties paid or owed to Canada or Mexico within the 60-day period specified in this section, that person will be liable for payment of the full duties assessed under this section and without any waiver or reduction thereof.

(i) *Subsequent claims for preferential tariff treatment.* If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA or under any other circumstance after duties have been waived or reduced under this section, Customs shall reliquidate the NAFTA drawback claim and obtain a refund of the amount waived or reduced in excess of the amount permitted to be waived or reduced under this section.

§ 181.54 Verification of claim for drawback, waiver or reduction of duties.

The allowance of a claim for drawback, waiver or reduction of duties submitted under this subpart shall be subject to such verification, including verification with the Canadian or Mexican customs administration of any documentation obtained in Canada or Mexico and submitted in connection with the claim, as Customs may deem necessary.

Subpart F—Commercial Samples and Goods Returned After Repair or Alteration

§ 181.61 Applicability.

This subpart sets forth the rules which apply for purposes of duty-free entry of commercial samples of negligible value as provided for in Article 306 of the NAFTA and for purposes of the re-entry of goods after repair or alteration in Canada or Mexico as provided for in Article 307 of the NAFTA.

§ 181.62 Commercial samples of negligible value.

(a) *General.* Commercial samples of negligible value imported from Canada or Mexico may qualify for duty-free entry under subheading 9811.00.60, HTSUS. For purposes of this section, "commercial samples of negligible value" means commercial samples which have a value, individually or in the aggregate as shipped, of not more than US$1, or the equivalent amount in the currency of Canada or Mexico, or which are so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples.

(b) *Qualification for duty-free entry.* Commercial samples of negligible value imported from Canada or Mexico will qualify for duty-free entry under subheading 9811.00.60, HTSUS, only if:

(1) The samples are imported solely for the purpose of soliciting orders for foreign goods; and

(2) If valued over US$1, the samples are properly marked, torn, perforated or otherwise treated prior to arrival in the United States so that they are unsuitable for sale or for use except as commercial samples.

§ 181.63 [Reserved]

§ 181.64 Goods re-entered after repair or alteration in Canada or Mexico.

(a) *General.* This section sets forth the rules which apply for purposes of

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obtaining duty-free or reduced-duty treatment on goods returned after repair or alteration in Canada or Mexico as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Mexico, whether or not pursuant to a warranty, and goods returned after having been repaired or altered in Canada pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. Goods returned after having been repaired or altered in Canada other than pursuant to a warranty are subject to duty upon the value of the repairs or alterations using the applicable duty rate under the United States-Canada Free-Trade Agreement (see § 10.301 of this chapter), provided that the requirements of this section are met. For purposes of this section, "repairs or alterations" means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

Example. Glass mugs produced in the United States are exported to Canada for etching and tempering operations, after which they are returned to the United States for sale. The foreign operations exceed the scope of an alteration because they are manufacturing processes which create commercially different products with distinct new characteristics.

(b) *Goods not eligible for duty-free or reduced-duty treatment after repair or alteration.* The duty-free or reduced-duty treatment referred to in paragraph (a) of this section shall not apply to goods which, in their condition as exported from the United States to Canada or Mexico, are incomplete for their intended use and for which the processing operation performed in Canada or Mexico constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

Example. Unflanged metal wheel rims are exported to Canada for a flanging operation to strengthen them so as to conform to U.S. Army specifications for wheel rims; although the goods when exported from the United States are dedicated for use in the making of wheel rims, they cannot be used for that purpose until flanged. The flanging operation does not constitute a repair or alteration because that operation is necessary for the completion of the wheel rims.

(c) *Documentation*—(1) *Declarations required.* Except as otherwise provided in this section, the following declarations shall be filed in connection with the entry of goods which are returned from Canada or Mexico after having been exported for repairs or alterations and which are claimed to be duty free or subject to duty only on the value of the repairs or alterations performed abroad:

(i) A declaration from the person who performed such repairs or alterations, in substantially the following form:

I/We, ____________, declare that the goods herein specified are the goods which, in the condition in which they were exported from the United States, were received by me (us) on ____________, 19________, from ____________ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that such repairs or alterations were (were not) performed pursuant to a warranty; that the full cost or (when no charge is made) value of such repairs or alterations is correctly stated below; and that no substitution whatever has been made to replace any of the goods originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of goods and of repairs or alterations	Full cost or (when no charge is made) value of repairs or alterations (see Subchapter II, Chapter 98, HTSUS)	Total value of goods after repairs or alterations

____

Date

Signature

____

Address

____

____

Capacity

____

(ii) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, ______________, declare that the (above) (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the goods ________ were ________ were not (check one) subject to NAFTA drawback; that such goods were exported from the United States for repairs or alterations from ________ (port) on ________, 19____; and that the goods entered in their repaired or altered condition are the same goods that were exported on the above date and that are identified in the (above) (attached) declaration.

____

Date

Signature ______________________

Address ______________________

____

Capacity

____

(2) *Additional documentation.* The port director may require such additional documentation as is deemed necessary to prove actual exportation of the goods from the United States for repairs or alterations, such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill.

(3) *Waiver of declarations.* If the port director concerned is satisfied, because of the nature of the goods or production of other evidence, that the goods are imported under circumstances meeting the requirements of this section, he may waive submission of the declarations provided for in paragraph (c)(1) of this section.

(4) *Deposit of estimated duties.* For goods returned after having been repaired or altered in Canada other than pursuant to a warranty, the port director shall require a deposit of estimated duties based upon the full cost or value of the repairs or alterations. The cost or value of the repairs or alterations performed in Canada other than pursuant to a warranty, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty for such goods, shall be limited to the cost or value of the repairs or alterations actually performed in Canada, which shall include all domestic and foreign articles furnished for the repairs or alterations but shall not include any of the expenses incurred in the United States whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations in Canada, or otherwise.

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Subpart G—Origin Verifications and Determinations

§ 181.71 Denial of preferential tariff treatment dependent on origin verification and determination.

Except where a Certificate of Origin either is not submitted when requested under § 181.22(b) of this part or is not acceptable and a corrected Certificate is not submitted or accepted as provided in § 181.22(c) of this part and except as otherwise provided in § 181.23 of this part and except in the case of a pattern of conduct provided for in § 181.76(c) of this part, Customs shall deny preferential tariff treatment on an imported good, or shall deny a post-importation claim for a refund filed under subpart D of this part, only after initiation of an origin verification under § 181.72(a) of this part which results in a determination that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this part.

§ 181.72 Verification scope and method.

(a) *General.* Subject to paragraph (e) of this section, Customs may initiate a verification in order to determine whether a good imported into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA as stated on the Certificate of Origin pertaining to the good. Such a verification:

(1) May also involve a verification of the origin of a material that is used in the production of a good that is the subject of a verification under this section;

(2) May include verification of the applicable rate of duty applied to an originating good in accordance with Annex 302.2 of the NAFTA and may include a determination of whether a good is a qualifying good for purposes of Annex 703.2 of the NAFTA; and

(3) Shall be conducted only by means of one or more of the following:

(i) A verification letter which requests information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, and which identifies the good or material that is the subject of the verification. The verification letter may be on Customs Form 28 or other appropriate format and may be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) By any other method, regardless of whether it produces proof of receipt by the exporter or producer;

(ii) A written questionnaire sent to an exporter or a producer, including a producer of a material, in Canada or Mexico. The questionnaire:

(A) May be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) May be sent by any other method, regardless of whether it produces proof of receipt by the exporter or producer; and

(C) May be completed by the Canadian or Mexican exporter or producer either in the English language or in the language of the country in which that exporter or producer is located;

(iii) Visits to the premises of an exporter or a producer, including a producer of a material, in Canada or Mexico to review the types of records referred to in § 181.12 of this part and observe the facilities used in the production of the good or material; and

(iv) Any other method which results in information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, that is relevant to the origin determination. The information so obtained may form a basis for a negative determination regarding a good (see § 181.75(b) of this part) only if the information is in writing and is signed by the exporter or producer.

(b) *Applicable accounting principles.* Any verification of a regional value-content requirement undertaken pursuant to paragraph (a) of this section shall be conducted in accordance with the Generally Accepted Accounting Principles applied in the country from which the good was exported to the United States.

(c) *Inquiries to importer not precluded.* Nothing in paragraph (a) of this section shall preclude Customs from directing inquiries or requests to a U.S. importer for documents or other information regarding the imported good. If such an inquiry or request involves requesting the importer to obtain and provide written information from the exporter or producer of the good or from the producer of a material that is used in the production of the good, such information shall be requested by the importer and provided to the importer by the exporter or producer only on a voluntary basis, and a failure or refusal on the part of the importer to obtain and provide such information shall not be considered a failure of the exporter or producer to provide the information and shall not constitute a ground for denying preferential tariff treatment on the good.

(d) *Failure to respond to letter or questionnaire.*—(1) *Nonresponse to initial letter or questionnaire.* If the exporter or producer, including a producer of a material, fails to respond to a verification letter or questionnaire sent under paragraph (a)(2)(i) or (a)(2)(ii) of this section within 30 calendar days from the date on which the letter or questionnaire was sent, or such longer period as may be specified in the letter or questionnaire, Customs shall send a follow-up verification letter or questionnaire to that exporter or producer. The follow-up letter or questionnaire:

(i) Except where the verification letter or questionnaire only involved the origin of a material used in the production of a good and was sent to the producer of the material, may include the written determination referred to in § 181.75 of this part, provided that the information specified in paragraph (b) of that section is also included; and

(ii) Shall be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; or

(B) By any method, if no request under paragraph (d)(1)(ii)(A) of this section has been made by the Canadian or Mexican customs administration.

(2) *Nonresponse to follow-up letter or questionnaire*—(i) *Producer of a material.* If a producer of a material fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the material to be non-originating for purposes of determining whether the good to which that material relates is an originating good.

(ii) *Exporter or producer of a good.* If the exporter or producer of a good fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the good to be non-originating and consequently may deny preferential tariff treatment on the good as follows:

(A) If the follow-up letter or questionnaire included a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified therein:

(*1*) From the date on which the follow-up letter or questionnaire and

written determination were received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) From the date on which the follow-up letter or questionnaire and written determination were either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section; or

(B) Provided that the procedures set forth in §§ 181.75 and 181.76 of this part are followed, if the follow-up letter or questionnaire does not include a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified in the letter or questionnaire:

(*1*) From the date on which the follow-up letter or questionnaire was received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) From the date on which the follow-up letter or questionnaire was either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section.

(e) *Calculation of regional value content under net cost method*—(1) *General.* Where a Canadian or Mexican producer of a good elects to calculate the regional value content of a good under the net cost method as set forth in General Note 12, HTSUS, and in the appendix to this part, Customs may not, during the time period over which that net cost is calculated, conduct a verification under § 181.72(a) of this part with respect to the regional value content of that good.

(2) *Cost submission for motor vehicles.* Where, pursuant to General Note 12, HTSUS, and the appendix to this part, a Canadian or Mexican producer of a light duty vehicle or heavy duty vehicle, as defined in the appendix to this part, elects to average its regional value content calculation over its fiscal year, Customs may request, in writing, that the producer provide a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made. Such a written request shall constitute a verification letter under paragraph (a)(2)(i) of this section, and the requested cost submission shall be submitted to Customs within 180 calendar days after the close of the producer's fiscal year or within 60 days from the date on which the request was made, whichever is later.

§ 181.73 Notification of verification visit.

(a) *Written notification required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall give written notification of the intention to conduct the visit. Such notification shall be delivered:

(1) By certified or registered mail, or by any other method that produces a confirmation of receipt, to the address of the Canadian or Mexican exporter or producer whose premises are to be visited;

(2) To the customs administration of the country in which the visit is to occur; and

(3) If requested by the country in which the visit is to occur, to the embassy of that country located in the United States.

(b) *Contents of notification.* The notification referred to in paragraph (a) of this section shall include:

(1) The identity of the Customs office and officer issuing the notification;

(2) The name of the Canadian or Mexican exporter or producer of the good, or producer of the material, whose premises are to be visited;

(3) The date and place of the proposed verification visit;

(4) The object and scope of the proposed verification visit, including specific reference to the good or material that is the subject of the verification;

(5) The names and titles of the Customs officers performing the proposed verification visit;

(6) The legal authority for the proposed verification visit; and

(7) A request that the Canadian or Mexican exporter or producer of the good, or producer of the material, provide its written consent for the proposed verification visit.

§ 181.74 Verification visit procedures.

(a) *Written consent required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall obtain the written consent of the Canadian or Mexican exporter or producer of the good or producer of the material whose premises are to be visited.

(b) *Written consent procedures.* The written consent provided for in paragraph (a) of this section shall be delivered by certified or registered mail, or by any other method that generates a reliable receipt, to the Customs officer who gave the notification provided for in § 181.73 of this part.

(c) *Failure to provide written consent or to cooperate or to maintain records.* Except as otherwise provided in paragraph (d) of this section, where a Canadian or Mexican exporter or producer of a good, or a Canadian or Mexican producer of a material, has not given its written consent to a proposed verification visit within 30 calendar days of receipt of notification pursuant to § 181.73 of this part, Customs may deny preferential tariff treatment to that good, or for purposes of determining whether a good is an originating good may consider as non-originating that material, that would have been the subject of the visit, provided that, as regards the good, notice of intent to deny such treatment is given to that exporter or producer of the good and to the U.S. importer thereof prior to taking such action. A failure on the part of the Canadian or Mexican exporter or producer of a good, or on the part of the Canadian or Mexican producer of a material, to maintain records or provide access to such records or otherwise cooperate during the verification visit shall mean that the verification visit never took place and may be treated by Customs in the same manner as a failure to give written consent to a verification visit. However, in the case of a Canadian or Mexican producer of a good who is found during a verification visit to have not maintained records in accordance with the Generally Accepted Accounting Principles applied in the producer's country, Customs may deny preferential tariff treatment on the good based solely on a failure to so maintain those records only if the producer does not conform the records to those Principles within 60 calendar days after Customs informs the producer in writing of that failure.

(d) *Postponement of visit in Canada or Mexico.* Following receipt of the notification provided for in § 181.73 of this part, the Canadian or Mexican customs administration may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Customs officer who issued the notification of the verification visit, unless a longer period is requested and agreed to by Customs. Such a postponement shall not constitute a failure to provide written consent within the meaning of paragraph (c) of this section and shall not otherwise by itself constitute a valid basis upon which Customs may:

(1) Consider a material that is used in the production of a good to be a non-originating material; or

(2) Deny preferential tariff treatment to a good.

(e) *Verification visits within the United States*—(1) *Notification and consent procedure*. When the Canadian or Mexican customs administration intends to conduct a verification visit in the United States, notification of such intent will be given, and consent will be required, as provided for under Article 506 of the NAFTA. For purposes of the required notification to Customs, such notification shall be sent to Project North Star Coordination Center, P.O. Box 400, Buffalo, New York 14225–0400.

(2) *Postponement of visit*. Following receipt of notification from the Canadian or Mexican customs administration of its intention to conduct a verification visit in the United States, Customs may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Canadian or Mexican customs administration.

(3) *Designation of observers*. A U.S. exporter or producer, including a producer of a material, whose good or material is the subject of a verification visit by the Canadian or Mexican customs administration shall be allowed to designate two observers to be present during the visit, subject to the following conditions:

(i) The U.S. exporter or producer shall not be required to designate observers;

(ii) There shall be no restriction on the class of persons that may be designated as observers by the U.S. exporter or producer;

(iii) The observers to be present are designated in the written consent to the proposed visit or subsequent thereto;

(iv) The observers do not participate in the verification visit in a manner other than as passive observers;

(v) The presence of observers shall in no way affect the right to have legal counsel or other advisors present during the visit;

(vi) There shall be no obligation on the part of the United States government or on the part of the Canadian or Mexican government to designate observers from its staff, even when the U.S. exporter or producer fails to, or specifically declines to, designate observers; and

(vii) The failure of the U.S. exporter or producer to designate observers shall not result in the postponement of the visit.

§ 181.75 Issuance of origin determination.

(a) *General*. Except in the case of a pattern of conduct within the meaning of § 181.76(c) of this part, following receipt and analysis of the results of an origin verification initiated under § 181.72(a) of this part in regard to a good imported into the United States and prior to denying preferential tariff treatment on the import transaction which gave rise to the origin verification, Customs shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good. Subject to paragraph (b) of this section, the written origin determination shall be sent within 60 calendar days after conclusion of the origin verification process, unless circumstances require additional time, and shall set forth:

(1) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(2) Subject to the provisions of § 181.131 of this part and except in the case of a negative origin determination where specific findings of fact cannot be made because of a failure to respond to a follow-up verification letter or questionnaire sent under § 181.72 of this part, a statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(3) With specific reference to the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in the appendix to this part, the legal basis for the determination.

(b) *Negative origin determinations*. If Customs determines, as a result of an origin verification initiated under § 181.72(a) of this part, that the good which is the subject of the verification does not qualify as an originating good, the written determination required under paragraph (a) of this section:

(1) Shall be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; and

(2) Shall, in addition to the information specified in paragraph (a) of this section, set forth the following:

(i) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination;

(ii) The specific date after which preferential tariff treatment will be denied, as established in accordance with § 181.76(a)(1) of this part;

(iii) The period, established in accordance with § 181.76(a)(1) of this part, during which the exporter or producer of the good may provide written comments or additional information regarding the determination; and

(iv) A statement advising the exporter or producer of the right to file a protest under 19 U.S.C. 1514 and part 174 of this chapter:

(A) Within 90 days after notice of liquidation is provided pursuant to part 159 of this chapter; or

(B) In cases where the negative origin determination does not result in a liquidation, within 90 days after the date of issuance of the written determination.

§ 181.76 Application of origin determinations.

(a) *General*. Except as otherwise provided in this section, an origin determination may be applied upon issuance of the determination under § 181.75 of this part.

(b) *Negative origin determinations*. In the case of a negative origin determination issued under § 181.75(b) of this part:

(1) The date on which preferential tariff treatment may be denied shall be no earlier than 30 calendar days from the date on which:

(i) Receipt of the written determination by the exporter or producer is confirmed, if a request under § 181.75(b)(1) of this part has been made; or

(ii) The written determination is sent by Customs, if no request under § 181.75(b)(1) of this part has been made; and

(2) Before denying preferential tariff treatment, Customs shall take into account any comments or additional information provided by the exporter or producer during the period established in accordance with paragraph (b)(1) of this section.

(c) *Cases involving a pattern of conduct*. Where multiple origin verifications initiated under § 181.72(a) of this part indicate a pattern of conduct by an exporter or producer involving false or unsupported representations on Certificates of Origin that a good imported into the United States qualifies as an originating good, Customs may deny subsequent claims for preferential tariff treatment on identical goods exported or produced by such person until that person establishes compliance with the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in this part, provided that advance written notice of the intent to deny such claims is given to the importer. For purposes of this paragraph, a "pattern of conduct" means repeated instances of

false or unsupported representations by an exporter or producer as established by Customs on the basis of not fewer than two origin verifications of two or more importations of the good that result in the issuance of not fewer than two written determinations issued to that exporter or producer pursuant to § 181.75 of this part which conclude, as a finding of fact, that Certificates of Origin completed and signed by that exporter or producer with respect to identical goods contain false or unsupported representations.

(d) *Differing determinations*. Where Customs determines, either as a result of an origin verification initiated under § 181.72(a) of this part or under any other circumstance, that a certain good imported into the United States does not qualify as an originating good based on a tariff classification or a value applied in the United States to one or more materials used in the production of the good, including a material used in the production of another material that is used in the production of the good, which differs from the tariff classification or value applied to the materials by the country from which the good was exported, the Customs determination shall not become effective until Customs provides written notification thereof both to the U.S. importer of the good and to the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based.

(e) *Applicability of a determination to prior importations*. Customs shall not apply a determination made under paragraph (c) of this section to an importation made before the effective date of the determination if, prior to notification of the determination, the customs administration of the country from which the good was exported either issued an advance ruling under Article 509 of the NAFTA or any other ruling on the tariff classification or on the value of such materials, or gave consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely and on which that person did in fact rely. For purposes of this paragraph, the person who received notification of the determination shall demonstrate to the satisfaction of Customs, in writing within 30 calendar days of receipt of the notification, that the conditions set forth herein have been met. For purposes of this paragraph:

(1) A "ruling" on which a person is entitled to rely in the case of Canada must be issued pursuant to section 43.1(1) of the Customs Act (Advance Rulings) or in accordance with Departmental Memorandum 11–11–1 (National Customs Rulings) and in the case of Mexico must be issued pursuant to Article 34 of the Codigo Fiscal de la Federacion and pursuant to Article 30 of the Ley Aduanera or the applicable provision of Mexican law related to advance rulings under Article 509 of the NAFTA; and

(2) "Consistent treatment" means the established application by the Canadian or Mexican customs administration that can be substantiated by the continued acceptance by the customs administration of the tariff classification or value of identical materials on importations of the materials into Canada or Mexico by the same importer over a period of not less than two years immediately prior to the date of signature of the Certificate of Origin for the good that is the subject of the determination referred to in paragraph (d) of this section, provided that with regard to those importations:

(i) The tariff classification or value of the materials was not the subject of a verification, review or appeal by that customs administration on the date of the determination under paragraph (d) of this section; and

(ii) The materials had not been accorded a different tariff classification or value by one or more district, regional or local offices of that customs administration on the date of the determination under paragraph (d) of this section.

(f) *Detrimental reliance*. If Customs proposes to deny preferential tariff treatment to a good pursuant to a determination made under paragraph (d) of this section, Customs shall postpone the application of the determination for a period not exceeding 90 calendar days from the date of issuance of the determination where the U.S. importer of the good, or the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based, demonstrates to the satisfaction of Customs that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the country from which the good was exported.

Subpart H—Penalties

§ 181.81 Applicability to NAFTA transactions.

Except as otherwise provided in § 181.82 of this part, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the Customs and related laws and regulations shall also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the NAFTA.

§ 181.82 Exceptions to application of penalties.

(a) *General*. A U.S. importer who makes a corrected declaration under § 181.21(b) of this part shall not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made. In addition, civil or administrative penalties provided for under the U.S. Customs laws and regulations shall not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 181.11(d) of this part with respect to the making of an incorrect certification.

(b) *"Voluntarily" defined*—(1) *General*. For purposes of paragraph (a) of this section, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(i) Done before the commencement of a formal investigation;

(ii) Done before any of the events specified in § 162.74(g) of this chapter have occurred;

(iii) Done within 30 calendar days after either the U.S. importer with respect to a declaration that an imported good qualified as an originating good, or the U.S. exporter or producer with respect to a certification pertaining to a good exported to Canada or Mexico, had reason to believe that the declaration or certification was not correct;

(iv) Accompanied by a written statement setting forth the information specified in paragraph (b)(3) of this section; and

(v) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties in accordance with paragraph (b)(5) of this section.

(2) *Cases involving fraud*. Notwithstanding paragraph (b)(1) of this section, a person who acted by means of fraud in making an incorrect declaration or certification may not make a voluntary correction thereof. For purposes of this paragraph (b)(2), the term "fraud" shall have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(3) *Written statement*. For purposes of paragraph (a) of this section, each corrected declaration or notification of an incorrect certification shall be

accompanied by a written statement which:

(i) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(ii) Identifies each import or export transaction affected by the incorrect declaration or certification with reference to each port of importation or exportation and the approximate date of each importation or exportation. A U.S. producer who provides written notification that certain information in a Certificate of Origin is incorrect and who is unable to identify the specific export transactions under this paragraph shall provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(iii) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(iv) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30-day period as Customs may permit in order for the person to obtain the information or data.

(4) *Substantial compliance.* For purposes of this section, a person shall be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (b)(3) of this section, provided that:

(i) Customs is satisfied that the information was provided before the commencement of a formal investigation; and

(ii) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (b)(3) of this section.

(5) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration shall tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as Customs may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(6) *Applicability of prior disclosure provisions.* Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and the regulations issued thereunder.

Subpart I—Advance Ruling Procedures

§ 181.91 Applicability.

This subpart sets forth the rules which govern the issuance and application of advance rulings under Article 509 of the NAFTA and the procedures which apply for purposes of review of advance rulings under Article 510 of the NAFTA. Importers in the United States and exporters and producers located in Canada or Mexico may request and obtain an advance ruling on a NAFTA transaction only in accordance with the provisions of this subpart whenever the requested ruling involves a subject matter specified in § 181.92(b)(6) of this part. Accordingly, the provisions of this subpart shall apply in lieu of the administrative ruling provisions contained in subpart A of part 177 of this chapter except where the request for a ruling involves a subject matter not specified in § 181.92(b)(6).

§ 181.92 Definitions and general NAFTA advance ruling practice.

(a) *Definitions.* For purposes of this subpart:

(1) An *advance ruling* is a written statement issued by the Headquarters Office or the National Commodity Specialist Division or by such other office as designated by the Commissioner of Customs that interprets and applies the provisions of NAFTA to a specific set of facts involving any subject matter specified in § 181.92(b)(6) of this part. An "advance ruling letter" is an advance ruling issued in response to a written request and set forth in a letter addressed to the person making the request or his designee. A "published advance ruling" is an advance ruling which has been published in full text in the Customs Bulletin.

(2) An *authorized agent* is a person expressly authorized by a principal to act on his or her behalf. An advance ruling requested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before Customs as an agent in connection with an advance ruling request may be required to present evidence of his or her authority to represent the principal. The foregoing requirements will not apply to an individual representing his or her full-time employer or to a bona-fide officer, director or other qualified representative of a corporation, association, or organized group.

(3) The term *Headquarters Office,* means the Office of Regulations and Rulings at Headquarters, United States Customs Service, Washington, DC.

(4) An *information letter* is a written statement issued by the Headquarters Office or the National Commodity Specialist Division or by such other office as designated by the Commissioner of Customs that does no more than call attention to a well-established interpretation of principles under the NAFTA, without applying it to a specific set of facts. If Customs believes that general information may be of some benefit to the person making the request, an information letter may be issued in response to a request for an advance ruling when:

(i) The request suggests that general information, rather than an advance ruling, is actually being sought;

(ii) The request is incomplete or otherwise fails to meet the requirements set forth in this subpart; or

(iii) The requested advance ruling cannot be issued for any other reason.

(5) A *NAFTA transaction* is an act or activity to which the NAFTA provisions apply. A "prospective" NAFTA transaction is one that is merely contemplated or is currently being undertaken but has not resulted in any arrival or in the filing of any entry or entry summary or other document or in any other act so as to bring the transaction, or any part of it, under the jurisdiction of any Customs office. A "current" NAFTA transaction is one which is presently under consideration by a field office of Customs. A "completed" NAFTA transaction is one which has been acted upon by a Customs field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest or other review as provided in the applicable Customs laws and regulations. An "ongoing" NAFTA transaction is a series of identical, recurring transactions, consisting of current and completed transactions where future transactions are contemplated.

(6) The term *National Commodity Specialist Division* means the National Commodity Specialist Division, United States Customs Service, New York, New York.

(b) *General advance ruling practice.* An advance ruling may be requested under the provisions of this subpart with respect to prospective NAFTA transactions. An advance ruling will be based on the facts and circumstances presented by the requester.

(1) *Prospective NAFTA transactions.* It is in the interest of the sound administration of the NAFTA that persons engaging in any transaction affected by NAFTA fully understand the consequences of that transaction prior to its consummation. For this reason, Customs will give full and careful consideration to written requests from importers in the United States and exporters or producers in Canada or Mexico for advance rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law or other appropriate information.

(2) *Current or ongoing NAFTA transactions.* A question arising in connection with a NAFTA transaction already before a Customs field office by reason of arrival, entry or otherwise will be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the NAFTA or the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the Customs Bulletin, that field office may, if it believes it appropriate, forward the question to the Headquarters Office for consideration.

(3) *Completed NAFTA transactions.* A question arising in connection with an entry of merchandise which has been liquidated, or in connection with any other completed NAFTA transaction, may not be the subject of an advance ruling request under this subpart.

(4) *Oral advice.* Customs will not issue an advance ruling in response to an oral request. Oral opinions or advice of Customs personnel are not binding on Customs. However, oral inquiries may be made to Customs offices regarding existing advance rulings, the scope of such advance rulings, the types of transactions with respect to which Customs will issue advance rulings, the scope of the advance rulings which may be issued, or the procedures to be followed in submitting advance ruling requests, as prescribed in this subpart.

(5) *Who may request an advance ruling.* An advance ruling may be requested by any of the following persons (individuals, corporations, partnerships, associations, or other entities or groups) having a direct and demonstrable interest in the question or questions presented in the advance ruling request, or by the authorized agent of any such person:

(i) An importer in the United States;

(ii) An exporter or a producer of a good in Canada or Mexico; or

(iii) A Canadian or Mexican producer of a material that is used in the production of a good imported into the United States, but only with regard to that material and only in regard to a matter described in paragraphs (b)(6)(i) through (v) and (vii) of this section.

(6) *Subject matter of advance rulings.* Customs shall issue advance rulings under this subpart concerning the following:

(i) Whether materials imported from a country other than the United States, Canada or Mexico and used in the production of a good undergo an applicable change in tariff classification set forth in General Note 12, HTSUS, as a result of production occurring entirely in the United States, Canada and/or Mexico;

(ii) Whether a good satisfies a regional value-content requirement under the transaction value method or under the net cost method as provided for in General Note 12, HTSUS, and in this part;

(iii) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for value to be applied by an exporter or a producer in Canada or Mexico, in accordance with the principles set forth in the appendix to this part, for calculating the transaction value of the good or of the materials used in the production of the good;

(iv) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set forth in the appendix to this part, for calculating the net cost of the good or the value of an intermediate material;

(v) Whether a good qualifies as an originating good under General Note 12, HTSUS, and under the appendix to this part;

(vi) Whether a good that re-enters the United States after having been exported from the United States to Canada or Mexico for repair or alteration qualifies for duty-free treatment in accordance with § 181.64 of this part;

(vii) Whether the proposed or actual marking of a good satisfies country of origin marking requirements under part 134 of this chapter and under the Marking Rules set forth in part 102 of this chapter;

(viii) Whether an originating good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 and Chapter Seven of the NAFTA; and

(ix) Whether a good is a qualifying good under Chapter Seven of the NAFTA.

§ 181.93 Submission of advance ruling requests.

(a) *Form.* A request for an advance ruling should be written in the English language and in the form of a letter. For any subject matter specified in § 181.92(b)(6) (i), (v), (vi), (vii), (viii) or (ix) of this part, the request may be directed either to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, or to the National Commodity Specialist Division, United States Customs Service, 6 World Trade Center, New York, NY 10048. For any subject matter specified in § 181.92(b)(6)(ii), (iii) or (iv) of this part, the request must be directed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229.

(b) *Content*—(1) *General.* Each request for an advance ruling must identify the specific subject matter under § 181.92(b)(6) of this part to which the request relates, must contain a complete statement of all relevant facts relating to the NAFTA transaction and must state that the information presented is accurate and complete. The following facts must be included: the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any good involved in the transaction will be imported or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the subject matter of the requested advance ruling. Where the request for an advance ruling is submitted by or on behalf of the importer of the good involved in the transaction, the request must include the name and address of the exporter and, if known, producer of the good. Where the request for an advance ruling is submitted by or on behalf of the exporter of the good involved in the transaction, the request must include the name and address of the producer and importer of the good, if known. Where the request for an advance ruling is submitted by or on behalf of the producer of the good involved in the transaction, the request must include the name and address of the exporter and importer of the good, if known. In addition, where relevant to the issue that is the subject of the request for an advance ruling, and regardless of the specific nature of the advance ruling requested, the request must include:

(i) A copy of any advance ruling or other ruling with respect to the tariff classification of the good that has been issued by Customs to the person submitting the request; or

(ii) Sufficient information to enable Customs to classify the good where no advance ruling or other ruling with respect to the tariff classification of the good has been issued by Customs to the person submitting the request. Such information includes a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation, and product literature, drawings, photographs or schematics.

(2) *Description of transaction*—(i) *General.* The prospective Customs transaction to which the advance ruling request relates must be described in sufficient detail to permit proper application of the relevant NAFTA provisions.

(ii) *Tariff change rulings*—(A) *General.* If the transaction involves the importation of a good or material for which a ruling is requested as to whether a change in tariff classification has occurred, the request should set forth: The principal or chief use of the good or material in the United States and the commercial, common, or technical designation of the good or material; if the good or material is composed of two or more substances, the relative quantity (by both weight and by volume) and value of each substance; any applicable special invoicing requirements set forth in part 141 of this chapter (if known); and any other information which may assist in determining the appropriate tariff classification of the good or material. The advance ruling request should also note, whenever germane, the purchase price of the good or material, and its approximate selling price in the United States. Each individual request for an advance ruling must be limited to five merchandise items, all of which must be of the same class or kind. Only NAFTA tariff change rulings will be issued under this subpart. Tariff classification rulings which do not involve the application of the NAFTA shall be issued under part 177 of this chapter.

(B) *Issues involving a change in tariff classification of a material.* Where the request for the advance ruling involves the application of a rule of origin that requires an assessment of whether materials used in the production of an imported good undergo an applicable change in tariff classification, the request must list each material used in the production of the good and must:

(*1*) Identify each material which is claimed to be an originating material and provide a complete description of each such material, including the basis for the claim as to originating status;

(*2*) Identify each material which is a non-originating material, or for which the origin is unknown, and provide a complete description of each such material, including its tariff classification if known; and

(*3*) Describe all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.

(iii) *NAFTA rulings on regional value content.* NAFTA advance ruling requests, if involving the issue of whether a good satisfies a regional value content requirement under the transaction value method or under the net cost method, or under both methods, as provided for in General Note 12, HTSUS, and in the appendix to this part, must specify each method under which eligibility is sought. Where the transaction value method is specified, the advance ruling request must include: information sufficient to calculate the transaction value of the good in accordance with schedule II of the appendix to this part with respect to the transaction of the producer of the good, adjusted to an F.O.B. basis; information sufficient to calculate the value of each non-originating material, or material the origin of which is unknown, that is used by the producer in the production of the good in accordance with the provisions of section 7 and, where applicable, section 6(10) of the appendix to this part; a complete description of each material that is claimed to be an originating material and that is used in the production of the good, including the basis for the claim as to originating status; information sufficient to permit an examination of the factors enumerated in schedule III or VIII of the appendix to this part where the advance ruling request involves an issue of whether, with respect to the good or material under the applicable schedule, the transaction value is acceptable; and information sufficient for any other circumstance to make any determination relevant to the application of the regional value content requirement to the good. Where the net cost method is specified, the advance ruling request must include: a list of all product, period and other costs relevant to determining the total cost of the good as defined in the appendix to this part; a list of all excluded costs to be subtracted from the total cost of the good as provided in the appendix to this part; information sufficient to calculate the value of each non-originating material, or material the origin of which is unknown, that is used in the production of the good, in accordance with section 7 of the appendix to this part; the basis for any allocation of costs in accordance with schedule VII of the appendix to this part; the period over which the net cost calculation is to be made; and any other information relevant to determining the appropriate value of any cost under this part. Where the advance ruling request concerns only the calculation of an element of a regional value content formula, and with regard to the information specified in paragraphs (b)(1) through (b)(5) of this section, the request need only contain the following: the information in paragraph (b)(1), other than the information specified in paragraph (b)(1)(i) or (b)(1)(ii); the information in paragraph (b)(5); and any information in this paragraph (b)(2)(iii) which is relevant to the issue that is the subject of the request.

(iv) *NAFTA rulings on producer materials.* Where the advance ruling request involves an issue with respect to an intermediate material under Article 402(10) of the NAFTA (see section 7(4) of the appendix to this part), the request must contain sufficient information to determine the origin and value of the material in accordance with Article 402(11) of the NAFTA (see section 7(6) of the appendix to this part). Where the advance ruling request is submitted by a Canadian or Mexican producer of a material under § 181.92(b)(5)(iii) of this part and concerns only the origin of such material, and with regard to the information specified in paragraphs (b)(1) through (b)(5) of this section, the request need only include the following: the information in paragraph (b)(1), including any information specified in paragraph (b)(1)(i) or (b)(1)(ii) which is relevant to the issue that is the subject of the request; any information in paragraph (b)(2)(ii)(B) which is relevant to the issue that is the subject of the request; a sample as provided for in paragraph (b)(3) if relevant to the issue that is the subject of the request; and the information in paragraph (b)(5).

(3) *Samples.* Each request for an advance ruling should be accompanied by photographs, drawings, or other

pictorial representations of the good and, whenever possible, by a sample of the good unless a precise description of the good is not essential to the advance ruling requested. Any good consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis, flow charts, CAS number, and related information. A sample submitted in connection with a request for an advance ruling becomes a part of the Customs file in the matter and will be retained until the advance ruling is issued or the advance ruling request is otherwise disposed of. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the advance ruling request.

(4) *Related documents.* If the question or questions presented in the advance ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the advance ruling request become a part of the Customs file in the matter and cannot be returned.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the advance ruling request.

(5) *Prior or current transactions.—(i) General.* Each request for an advance ruling must state:

(A) Whether, to the knowledge of the person submitting the request, the same transaction or issue, or one identical to it, has ever been considered, or is currently being considered by any Customs office;

(B) Whether, to the knowledge of the person submitting the request, the issue involved has ever been, or is currently, the subject of:

(*1*) Review by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom, or review by a judicial or quasi-judicial body in Canada or Mexico;

(*2*) A verification of origin performed in the United States, Canada or Mexico;

(*3*) An administrative appeal in the United States, Canada or Mexico; or

(*4*) A request for an advance ruling under this subpart, or a request for an advance ruling in Canada or Mexico under an appropriate authority referred to in § 181.76(d)(1) of this part;

(C) The status or disposition of any matter on which an affirmative statement is made under paragraph (b)(5)(i)(B) of this section; and

(D) Whether the transaction described in the advance ruling request is but one of a series of similar and related transactions.

(ii) *Change in status of transaction.* If a prospective transaction which is the subject of an advance ruling request becomes a current transaction, the person who submitted the request shall so notify the office processing the request.

(6) *Statement of position.* If the request for an advance ruling asks that a particular determination or conclusion be reached in the advance ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party) must be identified clearly, and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party), must be set forth. An advance ruling will not be issued until all trade secret, privilege or confidentiality issues are resolved (see § 181.99(a)(3) of this part).

(c) *Signing; instruction as to reply.* The request for an advance ruling must be signed by a person authorized to make the request, as described in § 181.92(b)(5) of this part. An advance ruling requested by a principal or authorized agent may direct that the advance ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* Customs will normally process requests for advance rulings in the order they are received and as expeditiously as possible, as specified in § 181.99 of this part. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram or electronic transmission will be treated in the same manner as requests made by letter, but advance rulings will not be issued by telegram or electronic transmission. A telegram or electronic transmission must be followed up with a signed original within 14 calendar days of the submission of the telegram or electronic transmission. In no event can any assurance be given that a particular request for an advance ruling will be acted upon by the time requested.

§ 181.94 Nonconforming requests for advance rulings.

A person submitting a request for an advance ruling that does not comply with all of the provisions of this subpart will be so notified in writing, and the requirements that have not been met will be pointed out. Such person will be given a period of 30 calendar days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise conform the advance ruling request to the requirements referred to in the notice. The Customs file with respect to advance ruling requests which are not brought into compliance with the provisions of this subpart within the period of time allowed will be administratively closed and the request removed from active consideration. A request for an advance ruling that is removed from active consideration by reason of failure to comply with the provisions of this subpart may be treated as withdrawn. A failure to comply with the provisions of this subpart will result in the rejection of the advance ruling request with the notice specifying the deficiencies.

§ 181.95 Oral discussion of issues.

(a) *General.* A person submitting a request for an advance ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the advance ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the advance ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the advance ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of an advance ruling letter.

(b) *Time, place and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in an advance ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, additional conferences are necessary.

(c) *Representation.* A person whose request for a conference has been granted may be accompanied at that conference by counsel or other representatives, or may designate such persons to attend the conference in his or her place.

(d) *Additional information presented at conferences.* It will be the responsibility of the person submitting the request for an advance ruling to provide for inclusion in the Customs file in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the advance ruling request. Such information, documents and exhibits shall be given consideration only if received by Customs within 30 calendar days following the conference.

§ 181.96 Change in status of transaction.

Each person submitting a request for an advance ruling in connection with a NAFTA transaction must immediately advise Customs in writing of any change in the status of that transaction upon becoming aware of the change. In particular, Customs must be advised when any transaction described in the advance ruling request as prospective becomes current and under the jurisdiction of a Customs field office. In addition, any person engaged in a NAFTA transaction coming under the jurisdiction of a Customs field office who has previously requested a NAFTA advance ruling with respect to that transaction must advise the field office of that fact.

§ 181.97 Withdrawal of NAFTA advance ruling requests.

Any request for an advance ruling may be withdrawn by the person submitting it at any time before the issuance of an advance ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs file and will not be returned. In addition, the Headquarters Office may forward, to Customs field offices which have or may have jurisdiction over the transaction to which the advance ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs file.

§ 181.98 Situations in which no NAFTA advance ruling may be issued.

(a) *General.* No advance ruling letter will be issued in response to a request therefor which fails to comply with the provisions of this subpart. No advance ruling letter will be issued in regard to a completed transaction.

(b) *Pending matters.* Where a request for an advance ruling involves an issue that is under review in connection with an origin verification under subpart G of this part or that is the subject of an administrative review procedure provided for in subpart J of this part or in part 174 of this chapter, Customs may decline to issue the requested advance ruling. In addition, no NAFTA advance ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of an advance ruling letter, provided neither Customs nor any of its officers or agents is named as a party to the action.

§ 181.99 Issuance of NAFTA advance rulings or other advice.

(a) *NAFTA advance ruling letters*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, Customs will, within 120 calendar days of receipt of a request, including any required information supplemental thereto, issue an advance ruling letter in the English language setting forth the position of Customs and the reasons therefor with respect to a specifically described Customs transaction whenever a request for such an advance ruling is submitted in accordance with the provisions of this subpart and it is in the sound administration of the NAFTA provisions to do so. Otherwise, a request for an advance ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no advance ruling can be issued. In the course of evaluating the advance ruling request Customs may solicit supplemental information from the person requesting the advance ruling. The submission of supplemental information will extend the time for response. The time for response will also be extended if it is necessary to obtain information from other government agencies or in the form of a laboratory analysis.

(2) *Submission of NAFTA advance ruling letters to field offices.* Any importer engaging in a NAFTA transaction with respect to which an advance ruling letter has been issued under this subpart either must ensure that a copy of the advance ruling letter is attached to the documents filed with the appropriate Customs office in connection with that transaction or must otherwise indicate with the information filed for that transaction that an advance ruling has been received. Any person receiving an advance ruling stating Customs determination must set forth such determination in the documents or information filed in connection with any subsequent entry of that merchandise; failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. An advance ruling received after the filing of such documents or information must immediately be brought to the attention of the appropriate Customs field office.

(3) *Disclosure of NAFTA advance ruling letters.* No part of the advance ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), and part 103 of this chapter, or shall be deemed to be subject to the confidentiality principle set forth in § 181.121 of this part, unless, as provided in § 181.93(b)(7) of this part, the information claimed to be exempt from disclosure is clearly identified and a valid basis for nondisclosure is set forth. Before the issuance of the advance ruling letter, the person submitting the advance ruling request will be notified of any decision adverse to his request for nondisclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the advance ruling request. If in the opinion of Customs an impasse exists on the issue of confidentiality and the person who submitted the advance ruling request does not withdraw the request, Customs

will decline to issue the advance ruling. All advance ruling letters issued by Customs will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(4) *Penalties for misrepresented or omitted material facts or for noncompliance.* If Customs determines that an issued advance ruling was based on incorrect information, the person to whom the advance ruling was issued may be subject to appropriate penalties unless that person demonstrates that he used reasonable care and acted in good faith in presenting the facts and circumstances on which the advance ruling was based. In addition, Customs may apply such measures as the circumstances may warrant in a case where a person to whom an advance ruling was issued has failed to act in accordance with the terms and conditions of the advance ruling.

(b) *Other NAFTA advice and guidance.* The Headquarters Office may on its own initiative from time to time issue other external advice and guidance with respect to issues or transactions arising under the NAFTA which come to its attention. Such NAFTA advice and guidance, which represent the official position of Customs and which are likely to be of widespread interest and application, are published in the Customs Bulletin, as described in § 181.101 of this part. Nothing in this subpart shall preclude Customs from issuing advice and guidance to its field offices concerning the application of the NAFTA.

§ 181.100 Effect of NAFTA advance ruling letters; modification and revocation.

(a) *Effect of NAFTA advance ruling letters*—(1) *General.* An advance ruling letter issued by Customs under the provisions of this subpart represents the official position of Customs with respect to the particular transaction or issue described therein and is binding on all Customs personnel in accordance with the provisions of this subpart until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the advance ruling set forth in the advance ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. An advance ruling letter is generally effective on the date it is issued or such later date as may be specified in the advance ruling and, commencing on its effective date, may be applied to entries for consumption and warehouse withdrawals for consumption which are unliquidated, or to other transactions with respect to which Customs has not taken final action on that date. See, however, paragraph (b) of this section (ruling letters which modify previous advance ruling letters) and § 181.101 of this part (advance ruling letters published in the Customs Bulletin).

(2) *Application of NAFTA rulings to transactions*—(i) *General.* Each NAFTA ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of an advance ruling letter by a Customs field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the advance ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the advance ruling was based, and if the facts are materially different or a condition has not been satisfied, the treatment specified in the advance ruling will not be applied to the actual transaction. If, in the opinion of any Customs field office by whom the transaction is under consideration or review, the advance ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, prior to any final disposition with respect to the transaction by that office. If the transaction described in the NAFTA advance ruling letter and the actual transaction are the same, and any and all conditions set forth in the advance ruling letter have been satisfied, the advance ruling will be applied to the transaction.

(ii) *Tariff change rulings.* Each advance ruling letter concerning whether a change in tariff classification has occurred will be applied only with respect to transactions involving either articles which are identical to the sample submitted with the advance ruling request and reflect the same processing or articles which conform to the description set forth in the advance ruling letter.

(iii) *Regional value content rulings.* Each advance ruling letter concerning the application of a regional value content requirement will be applied only with respect to transactions involving the same merchandise and identical facts.

(3) *Reliance on NAFTA advance rulings by others.* An advance ruling letter is subject to modification or revocation without notice to any person other than the person to whom the letter was addressed. Accordingly, no other person may rely on the advance ruling letter or assume that the principles of that advance ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request an advance ruling under § 181.92(b)(5) of this part may request information as to whether a previously-issued advance ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, and either enclosing a copy of the advance ruling letter or furnishing other information sufficient to permit the advance ruling letter in question to be identified.

(b) *Modification or revocation of NAFTA advance ruling letters*—(1) *General.* Any NAFTA advance ruling letter may be modified or revoked by Customs Headquarters in any of the following circumstances or for any of the following purposes, provided that written notice of the modification or revocation is given to the person to whom the advance ruling letter was addressed:

(i) If the ruling letter reflects or is based on an error:

(A) Of fact;

(B) In the tariff classification of a good or material that is the subject of the ruling;

(C) In the application of a regional value-content requirement under General Note 12, HTSUS, and under this part;

(D) In the application of the rules for determining whether a good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 or Chapter Seven of the NAFTA;

(E) In the application of the rules for determining whether a good is a qualifying good under Chapter Seven of the NAFTA; or

(F) In the application of the rules for determining whether a good qualifies for duty-free treatment under § 181.64 of this part when the good re-enters the United States after having been exported to Canada or Mexico for repair or alteration;

(ii) If the ruling letter is not in accordance with an interpretation agreed on by the United States, Canada and Mexico regarding Chapter Three or Chapter Four of the NAFTA;

(iii) If there is a change in the material facts or circumstances on which the ruling is based;

(iv) To conform to a modification of Chapter Three, Four, Five or Seven of the NAFTA, or of the Marking Rules, or of the regulations set forth in this part; or

(v) To conform to a judicial decision or change in domestic law.

(2) *Application of modification or revocation of NAFTA advance ruling letters.* The modification or revocation of a NAFTA advance ruling letter will not be applied to entries or warehouse withdrawals for consumption which were made prior to the effective date of such modification or revocation, except where the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

(3) *Effective dates.* Generally, a NAFTA letter modifying or revoking an earlier advance ruling will be effective on the date it is issued. However, Customs may, upon request or on its own initiative, delay the effective date of such a modification or revocation for a period of up to 90 calendar days from the date of issuance. Such a delay may be granted at the request of the party to whom the ruling letter was issued, provided such party can demonstrate to the satisfaction of Customs that it relied on the earlier advance ruling in good faith and to its detriment. The evidence of such reliance must cover the period from the date of the letter modifying or revoking the advance ruling back to the date of that advance ruling and must list all transactions claimed to be covered by the modified or revoked advance ruling by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by Customs. Such evidence must also include contracts, purchase orders, or other materials tending to establish that future transactions were arranged based on the earlier advance ruling. The request for delay must specifically identify the prior ruling on which reliance is claimed. All persons requesting a delay will be issued a separate letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, Customs may decide to make its decision, with respect to a delay, applicable to all persons, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the **Customs Bulletin** and individual ruling letters will not be issued.

§ 181.101 Publication of decisions.

Within 90 days after issuing any precedential decision relating to any NAFTA transaction, Customs shall publish the decision in the **Customs Bulletin** or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1, part 103 of this chapter, and § 181.99(a)(3) of this part.

§ 181.102 Administrative and judicial review of advance rulings.

(a) *Administrative review*—(1) *Submission of request for review.* Any person who received an advance ruling issued under this subpart, or an authorized agent of such person, may request administrative review, at Customs Headquarters, of that advance ruling, including any modification or revocation thereof, by letter addressed to the Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, Washington, DC 20229. Such request shall be filed within 30 calendar days after issuance of the advance ruling and shall set forth the following information:

(i) The name and address of the person seeking review and the name and address of his authorized agent if the request is signed by such an agent;

(ii) The Customs identification number or employer identification number in the case of a U.S. importer and authorized agent thereof, the employer number or importer/exporter number assigned by Revenue Canada in the case of a Canadian exporter or producer and authorized agent thereof, and the federal taxpayer registry number (RFC) in the case of a Mexican exporter or producer and authorized agent thereof;

(iii) The number and date of the advance ruling at issue;

(iv) The numbers and dates of any involved entries for consumption or warehouse withdrawals for consumption;

(v) The nature of, and justification for, the objection to the advance ruling set forth distinctly and specifically with respect to each aspect of the advance ruling for which administrative review is sought; and

(vi) Whether an oral discussion of the issues, as provided in § 181.95 of this part, is desired.

(2) *Issuance of review decision.* Customs will normally issue a written decision within 120 days of receipt of the request for administrative review submitted under this section. However, Customs will, upon a reasonable showing of business necessity, issue a written decision within 60 days of receipt of the request for administrative review. For purposes of this paragraph, the date of receipt of the request for administrative review shall be the date on which all information necessary to process the request, including any information provided after submission of the request in connection with a conference, is filed with Customs.

(b) *Judicial review.* Any person whose claims with regard to a request for administrative review of an advance ruling have been denied in whole or in part under this section may seek judicial review by filing a civil action in the United States Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after the date of mailing of notice of the denial.

Subpart J—Review and Appeal of Adverse Marking Decisions

§ 181.111 Applicability.

This subpart sets forth the circumstances and procedures under which exporters and producers of merchandise imported into the United States may obtain information about, and administrative and judicial review of, an adverse marking decision, as provided for in Article 510 of the NAFTA. This subpart does not apply to the review of advance rulings issued under Article 509 of the NAFTA (see subpart I of this part) or to the review of determinations that a good is not an originating good under General Note 12, HTSUS, and the appendix to this part (see part 174 of this chapter).

§ 181.112 Definitions.

For purposes of this subpart, the following words and phrases have the meanings indicated:

(a) *Adverse marking decision* means a decision made by the port director which an exporter or producer of merchandise believes to be contrary to the provisions of Annex 311 of the NAFTA and which may be protested by the importer pursuant to § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter. Notification of an adverse marking decision is given to an importer in the form of a Customs Form 4647 (Notice to Mark and/or Notice to Redeliver) and/or by assessing marking duties on improperly marked merchandise. Examples of adverse marking decisions include determinations by the port director: that an imported article is not a good of a NAFTA country, as determined under the Marking Rules, and that it therefore cannot be marked "Canada" or "Mexico"; that a good of a NAFTA country is not marked in a manner which is sufficiently permanent; and that a good of a NAFTA country does not qualify for an exception from marking specified in Annex 311 of the NAFTA. Adverse marking decisions do not include: decisions issued in response to requests for advance rulings under subpart I of

this part or for internal advice under part 177 of this chapter; decisions on protests under part 174 of this chapter; and determinations that an article does not qualify as an originating good under General Note 12, HTSUS, and the appendix to this part.

(b) An *exporter* of merchandise is an exporter located in Canada or Mexico who must maintain records in that country relating to the transaction to which the adverse marking decision relates. The records must be sufficient to enable Customs to evaluate the merits of the exporter's claim(s) regarding the adverse marking decision.

(c) A *producer* of merchandise is a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles such merchandise in Canada or Mexico.

§ 181.113 Request for basis of adverse marking decision.

(a) *Request; form and filing.* The exporter or producer of the merchandise which is the subject of an adverse marking decision may request a statement concerning the basis for the decision by filing a typewritten request, in English, with the port director who issued the decision. The request should be on letterhead paper in the form of a letter and clearly designated as a "Request for Basis of Adverse Marking Decision" and shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(b) *Content.* The Request for Basis of Adverse Marking Decision letter shall set forth the following information:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) A statement that the inquirer is the exporter or producer of the merchandise that was the subject of the adverse marking decision;

(3) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(4) The number and date of each entry involved in the request;

(5) A specific description of the merchandise which is the subject of the adverse marking decision; and

(6) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision.

§ 181.114 Customs response to request.

(a) *Time for response.* The port director will issue a written response to the requestor within 30 days of receipt of a request containing the information specified in § 181.113 of this part. If the request is incomplete, such that the transaction in question cannot be identified, the port director will notify the requestor in writing within 30 days of receipt of the request regarding what information is needed.

(b) *Content.* The response by the port director shall include the following:

(1) A statement concerning the basis for the adverse marking decision;

(2) A copy of the relevant Customs Form 4647 (Notice to Mark and/or Notice to Redeliver), if one was issued to the importer and is available. If the basis for the adverse marking decision is indicated on the Customs Form 4647, no statement under paragraph (b)(1) of this section is required;

(3) A statement as to whether the importer has filed a protest regarding the adverse marking decision and, if so, where the protest was filed and the protest number; and

(4) A statement concerning the exporter's or producer's right to either intervene in the importer's protest as provided in § 181.115 of this part or file a petition as provided in § 181.116 of this part.

§ 181.115 Intervention in importer's protest.

(a) *Conditional right to intervene.* An exporter or producer of merchandise does not have an independent right to protest an adverse marking decision. However, if an importer protests the adverse marking decision in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which is the subject of the adverse marking decision may intervene in the importer's protest. Such intervention shall not affect any time limits applicable to the protest or delay action on the protest.

(b) *Form and filing of intervention.* In order to intervene in an importer's protest, as provided for in paragraph (a) of this section, the exporter or producer of the merchandise shall file, in triplicate, a typewritten statement of intervention, in English, with the port director with whom the protest was filed. The statement should be on letterhead paper in the form of a letter and should be clearly designated "NAFTA Exporter or Producer Intervention in Protest". The statement shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The NAFTA Exporter or Producer Intervention in Protest letter shall include the following:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(3) The number and date of each entry involved in the adverse marking decision;

(4) A specific description of the merchandise which is the subject of the adverse marking decision;

(5) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision;

(6) A detailed statement of position regarding why the exporter or producer believes the adverse marking decision is contrary to the provision of Annex 311 of the NAFTA;

(7) A statement as to whether a Request for Basis of Adverse Marking Decision was filed under § 181.113 of this part, and if so, the date of such Request and of any Customs response thereto issued under § 181.114 of this part. Copies of the Request and the Customs response shall be submitted, if available;

(8) The number assigned to the importer's protest;

(9) A statement that the intervenor is the exporter or producer of the merchandise that was the subject of the adverse marking decision being protested by the importer and, if the intervenor is the exporter, a statement that it maintains sufficient records to enable Customs to evaluate the merits of its claim(s) regarding the adverse marking decision; and

(10) If the intervenor prefers that the principle of confidentiality set forth in § 181.121 of this part be applied to the information submitted under this section, a statement to that effect. If no such statement is included in the letter, the intervention and information submitted in connection therewith shall be subject to the same treatment as that

provided in the case of requests by all interested parties for consolidation of protests as set forth in § 174.15(b)(1) of this chapter.

(d) *Effect of Intervention.* The rights of the intervenor under this section are subordinate to the importer's protest rights. Accordingly, intervention by an exporter or producer of merchandise will not affect the procedures under part 174 of this chapter, and the importer's elections concerning accelerated disposition and application for further review of the protest will govern how the protest is handled and how the intervention is considered. If the importer withdraws or settles the protest, the exporter or producer has no right to continue the intervention action.

(e) *Action by port director.* If final administrative action has already been taken with respect to the importer's protest at the time the intervention is filed, the port director shall so advise the exporter or producer and, if the importer has filed a civil action in the Court of International Trade as a result of a denial of the protest, the port director shall advise the exporter or producer of that filing and of the exporter's or producer's right to seek to intervene in such judicial proceeding. If final administrative action has not been taken on the protest, the port director shall forward the intervention letter to the Customs office which has the importer's protest under review for consideration in connection with the protest.

(f) *Final disposition.* The intervenor shall be notified in writing of the final disposition of the protest. If the protest is denied in whole or in part, the intervenor shall be furnished a copy of the notice given to the importer under § 174.29.

§ 181.116 Petition regarding adverse marking decision.

(a) *Right to petition.* If the importer does not protest an adverse marking decision in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which was the subject of the adverse marking decision may file a petition with Customs requesting reconsideration of the decision. The petition may not be filed until after the importer's time to protest the adverse marking decision has expired (see § 174.12(e) of this chapter for the time limits for filing protests). If the importer filed a protest upon which final administrative action has been taken, the exporter or producer may file a petition under this section, provided that the exporter or producer was not given notice of the pending protest pursuant to § 181.114 of this part. If the importer filed a protest on which final administrative action has not been taken and notice of the pending protest was not provided to the exporter or producer under § 181.114 of this part, a petition filed under this section shall be treated by the port director as an intervention under § 181.115 of this part.

(b) *Form and filing of petition.* A petition under this section shall be typewritten, in English, and shall be filed, in triplicate, with the port director who issued the adverse marking decision. The petition under this subpart should be on letterhead paper in the form of a letter, clearly designated as a "Petition for NAFTA Review of Adverse Marking Decision" and shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The Petition for NAFTA Review of Adverse Marking Decision letter shall contain all the information specified § 181.115 of this part, except for the protest number. It shall also include a statement that petitioner was not notified by Customs in writing of a pending protest.

(d) *Review of petition*—(1) *Review by port director.* Within 60 days of the date of receipt of the petition, the port director shall determine if the petition is to be granted or denied, in whole or in part. If, after reviewing the petition, the port director agrees with all of the petitioner's claims and determines that the initial adverse marking decision was not correct, a written notice granting the petition shall be issued to the petitioner. A description of the merchandise, a brief summary of the issue(s) and the port director's findings shall be forwarded to the Director, Tariff Classification Appeals Division, Customs Headquarters, for publication in the Customs Bulletin. If, after reviewing the petition, the port director determines that the initial adverse marking decision was correct in its entirety, a written notice shall be issued to the petitioner advising that the matter has been forwarded to the Director, Tariff Classification Appeals Division, Customs Headquarters, for further review and decision. All relevant background information, including available samples, a description of the adverse marking decision and the reasons for the decision, and the port director's recommendation shall be furnished to Headquarters.

(2) *Review by Headquarters.* Within 120 days of the date the petition and background information are received at Customs Headquarters, the Director, Tariff Classification Appeals Division, shall determine if the petition is to be granted or denied, in whole or in part, and the petitioner shall be notified in writing of the determination. If the petition is granted in whole or in part, a description of the merchandise, a brief summary of the issue(s) and the director's findings will be published in the Customs Bulletin.

(3) *Effect of granting the petition.* The decision on the petition, if contrary to the initial adverse marking decision, will be implemented with respect to merchandise entered or withdrawn from warehouse for consumption after 30 days from the date on which the notice of determination is published in the Customs Bulletin.

(e) *Pending litigation.* No decision on a petition will be issued under this section with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a decision on a petition under this section, provided neither Customs nor any of its officers or agents is named as a party to the action.

(f) *Judicial review of denial of petition.*

Any person whose petition under this section has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade within 30 days after the date of mailing of the notice of denial.

Subpart K—Confidentiality of Business Information

§ 181.121 Maintenance of confidentiality.

The port director or other Customs officer who has possession of confidential business information collected pursuant to this part shall, in accordance with part 103 of this chapter, maintain its confidentiality and protect it from any disclosure that could prejudice the competitive position of the persons providing the information.

§ 181.122 Disclosure to government authorities.

Nothing in § 181.121 of this part shall preclude the disclosure of confidential business information to governmental authorities in the United States responsible for the administration and enforcement of determinations of origin and of customs and revenue matters.

Subpart L—Rules of Origin

§ 181.131 Rules of origin.

(a) The regulations effective October 1, 1995, implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA are contained in the appendix to this part.

(b) If the fiscal year of a producer of goods begins before October 1, 1995, the producer may choose to have the regulations implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA that were in effect prior to October 1, 1995 (see 19 CFR chapter I, 1994 edition, appendix to part 181) continue to apply in regard to all goods produced by that producer for the remainder of that fiscal year.

(c) If a motor vehicle producer's fiscal year that has been chosen by a producer of goods pursuant to section 12(5) of the regulations referred to in paragraph (b) of this section begins before October 1, 1995, the producer of the goods may choose to have those regulations continue to apply in regard to the goods produced by that producer for the remainder of that fiscal year, provided that:

(1) The producer of the goods has made an election under section 12(1) of those regulations or has provided a statement referred to in section 9(6) or 10(8) of those regulations that states the value of non-originating materials determined in accordance with section 12(3) of those regulations; and

(2) The period chosen under section 12(5) of those regulations is the fiscal year of the motor vehicle producer to whom those goods are sold.

Appendix to Part 181—Rules of Origin Regulations

SECTION 1. CITATION

This Appendix may be cited as the *NAFTA Rules of Origin Regulations.*

PART I

SECTION 2. DEFINITIONS AND INTERPRETATION

Definitions

(1) For purposes of this Appendix,

"accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools" means goods that are delivered with a good, whether or not they are physically affixed to that good, and that are used for the transport, protection, maintenance or cleaning of the good, for instruction in the assembly, repair or use of that good, or as replacements for consumable or interchangeable parts of that good;

"adjusted to an F.O.B. basis" means, with respect to a good, adjusted by
  (a) deducting
    (i) the costs of transporting the good after it is shipped from the point of direct shipment,
    (ii) the costs of unloading, loading, handling and insurance that are associated with that transportation, and
    (iii) the cost of packing materials and containers,
  where those costs are included in the transaction value of the good, and
  (b) adding
    (i) the costs of transporting the good from the place of production to the point of direct shipment,
    (ii) the costs of loading, unloading, handling and insurance that are associated with that transportation, and
    (iii) the costs of loading the good for shipment at the point of direct shipment,
  where those costs are not included in the transaction value of the good;

"Agreement" means the *North American Free Trade Agreement;*

"applicable change in tariff classification" means, with respect to a non-originating material used in the production of a good, a change in tariff classification specified in a rule set out in Schedule I for the tariff provision under which the good is classified;

"automotive component" means a good that is referred to in column I of an item of Schedule V;

"automotive component assembly" means a good, other than a heavy-duty vehicle, that incorporates an automotive component;

"costs incurred in packing" means, with respect to a good or material, the value of the packing materials and containers in which the good or material is packed for shipment and the labor costs incurred in packing it for shipment, but does not include the costs of preparing and packaging it for retail sale;

"customs value" means
  (a) in the case of Canada, value for duty as defined in the *Customs Act*, except that for purposes of determining that value the reference in section 55 of that Act to "in accordance with the regulations made under the *Currency Act*" shall be read as a reference to "in accordance with subsection 3(1) of these Regulations",
  (b) in the case of Mexico, the *valor en aduana* as determined in accordance with the *Ley Aduanera,* converted, in the event such value is not expressed in Mexican currency, to Mexican currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations, and
  (c) in the case of the United States, the value of imported merchandise as determined by the Customs Service in accordance with section 402 of the *Tariff Act of 1930,* as amended, converted, in the event such value is not expressed in United States currency, to United States currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations.

"days" means calendar days, and includes weekends and holidays;

"direct labor costs" means costs, including fringe benefits, that are associated with employees who are directly involved in the production of a good;

"direct material costs" means the value of materials, other than indirect materials and packing materials and containers, that are used in the production of a good;

"direct overhead" means costs, other than direct material costs and direct labor costs, that are directly associated with the production of a good;

"enterprise" means any entity constituted or organized under applicable laws, whether or not for profit and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

"excluded costs" means sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs;

"fungible goods" means goods that are interchangeable for commercial purposes and the properties of which are essentially identical;

"fungible materials" means materials that are interchangeable for commercial purposes and the properties of which are essentially identical;

"Harmonized System" means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes and Chapter Notes, as set out in

(a) in the case of Canada, the *Customs Tariff*,

(b) in the case of Mexico, the *Tarifa de la Ley del Impuesto General de Importación*, and

(c) in the case of the United States, the *Harmonized Tariff Schedule of the United States;*

"heavy-duty vehicle" means a motor vehicle provided for in any of heading 8701, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and heading 8705 and 8706;

"identical goods" means, with respect to a good, goods that

(a) are the same in all respects as that good, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

"identical materials" means, with respect to a material, materials that

(a) are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that material, and

(c) were produced

(i) by the producer of that material, or

(ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

"incorporated" means, with respect to the production of a good, a material that is physically incorporated into that good, and includes a material that is physically incorporated into another material before that material or any subsequently produced material is used in the production of the good;

"indirect material" means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, and includes

(a) fuel and energy,

(b) tools, dies and molds,

(c) spare parts and materials used in the maintenance of equipment and buildings,

(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings,

(e) gloves, glasses, footwear, clothing, safety equipment and supplies,

(f) equipment, devices and supplies used for testing or inspecting the other goods,

(g) catalysts and solvents, and

(h) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be part of that production;

"interest costs" means all costs paid or payable by a person to whom credit is, or is to be advanced, for the advancement of credit or the obligation to advance credit;

"intermediate material" means a self-produced material that is used in the production of a good and is designated as an intermediate material under section 7(4) ;

"light-duty automotive good" means a light-duty vehicle or a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use as original equipment in the production of a light-duty vehicle;

"light-duty vehicle" means a motor vehicle provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8703.21 through 8703.90, 8704.21 and 8704.31;

"listed material" means a good that is referred to in column II of an item of Schedule V;

"location of the producer" means,

(a) where the warehouse or other receiving station at which a producer receives materials for use by the producer in the production of a good is located within a radius of 75 km (46.60 miles) from the place at which the producer produces the good, the location of that warehouse or other receiving station, and

(b) in any other case, the place at which the producer produces the good in which a material is to be used;

"material" means a good that is used in the production of another good, and includes a part or ingredient;

"motor vehicle assembler" means a producer of motor vehicles and any related person with whom, or joint venture in which, the producer participates with respect to the production of motor vehicles;

"month" means a calendar month;

"NAFTA country" means a Party to the Agreement;

"national" means a natural person who is a citizen or permanent resident of a NAFTA country, and includes

(a) with respect to Mexico, a national or citizen according to Articles 30 and 34, respectively, of the Mexican Constitution, and

(b) with respect to the United States, a "national of the United States" as defined in the *Immigration and Nationality Act* on the date of entry into force of the Agreement;

"net cost method" means the method of calculating the regional value content of a good that is set out in section 6(3);

"non-allowable interest costs" means interest costs incurred by a producer on the producer's debt obligations that are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located;

"non-originating good" means a good that does not qualify as originating under this Appendix;

"non-originating material" means a material that does not qualify as originating under this Appendix;

"original equipment" means a material that is incorporated into a motor vehicle before the first transfer of title or consignment of the motor vehicle to a person who is not a motor vehicle assembler, and that is

(a) a good of a tariff provision listed in Schedule IV, or

(b) an automotive component assembly, automotive component, sub-component or listed material;

"originating good" means a good that qualifies as originating under this Appendix;

"originating material" means a material that qualifies as originating under this Appendix;

"other costs," with respect to total cost, means all costs that are not product costs or period costs;

"packaging materials and containers" means materials and containers in which a good is packaged for retail sale;

"packing materials and containers" means materials and containers that are used to protect a good during transportation, but does not include packaging materials and containers;

"payments" means, with respect to royalties and sales promotion, marketing and after-sales service costs, the costs expensed on the books of a producer, whether or not an actual payment is made;

"period costs" means costs, other than product costs, that are expensed in the period in which they are incurred;

"person" means a natural person or an enterprise;

"person of a NAFTA country" means a national, or an enterprise constituted or organized under the laws of a NAFTA country;

"point of direct shipment" means the location from which a producer of a good normally ships that good to the buyer of the good;

"producer" means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

"product costs" means costs that are associated with the production of a good, and includes the value of materials, direct labor costs and direct overhead;

"production" means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good;

"related person" means a person related to another person on the basis that

(a) they are officers or directors of one another's businesses,

(b) they are legally recognized partners in business,

(c) they are employer and employee,

(d) any person directly or indirectly owns, controls or holds 25 percent or more of the outstanding voting stock or shares of each of them,

(e) one of them directly or indirectly controls the other,

(f) both of them are directly or indirectly controlled by a third person, or

(g) they are members of the same family (members of the same family are natural or adopted children, brothers, sisters, parents, grandparents, or spouses);

"reusable scrap or by-product" means waste and spoilage that is generated by the producer of a good and that is used in the production of a good or sold by that producer;

"right to use," for purposes of the definition of royalties, includes the right to sell or distribute a good;

"royalties" means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as

(a) personnel training, without regard to where performed, and

(b) if performed in the territory of one or more of the NAFTA countries, engineering, tooling, die-setting, software design and similar computer services, or other services;

"sales promotion, marketing and after-sales service costs" means the following costs related to sales promotion, marketing and after-sales service:

(a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
(g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
(h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;
(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and
(j) payments by the producer to other persons for warranty repairs;
"self-produced material" means a material that is produced by the producer of a good and used in the production of that good;
"shipping and packing costs" means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;
"similar goods" means, with respect to a good, goods that
  (a) although not alike in all respects to that good, have similar characteristics and component materials that enable the goods to perform the same functions and to be commercially interchangeable with that good,
  (b) were produced in the same country as that good, and
  (c) were produced
    (i) by the producer of that good, or
    (ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;
"similar materials" means, with respect to a material, materials that
  (a) although not alike in all respects to that material, have similar characteristics and component materials that enable the materials to perform the same functions and to be commercially interchangeable with that material,
  (b) were produced in the same country as that material, and (c) were produced
    (i) by the producer of that material, or
    (ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;
"subject to a regional value-content requirement" means, with respect to a good, that the provisions of this Appendix that are applied to determine whether the good is an originating good include a regional value-content requirement;
"sub-component" means a good that comprises a listed material and one or more other materials or listed materials;
"tariff provision" means a heading, subheading or tariff item;
"territory" means, with respect to
  (a) Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources,
  (b) Mexico,
    (i) the states of the Federation and the Federal District,
    (ii) the islands, including the reefs and keys, in adjacent seas,
    (iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean,
    (iv) the continental shelf and the submarine shelf of such islands, keys and reefs,
    (v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters,
    (vi) the space located above the national territory, in accordance with international law, and
    (vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources, and
  (c) the United States,
    (i) the customs territory of the United States, which includes the 50 states, the District of Columbia and Puerto Rico,
    (ii) the foreign trade zones located in the United States and Puerto Rico, and
    (iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;
"total cost" means the total of all product costs, period costs and other costs incurred in the territory of one or more of the NAFTA countries;
"transaction value method" means the method of calculating the regional value content of a good that is set out in subsection 6(2);
"used" means used or consumed in the production of a good;
"verification of origin" means a verification of origin of goods under
  (a) in the case of Canada, paragraph 42.1(1)(a) or subsection 42.2(2) of the *Customs Act*,
  (b) in the case of Mexico, Article 506 of the Agreement, and
  (c) in the case of the United States, section 509 of the *Tariff Act* of 1930, as amended.

Interpretation: "similar"

(2) For purposes of the definitions of "similar goods" and "similar materials," the quality of the goods or materials, their reputation and the existence of a trademark are among the factors to be considered for purposes of determining whether goods or materials are similar.

Interpretation: terms used to refer to HTSUS; use of term "books"

(3) For purposes of this Appendix,
  (a) "chapter," unless otherwise indicated, refers to a chapter of the Harmonized System;
  (b) "heading" refers to any four-digit number, or the first four digits of any number, set out in the column "Heading/Subheading" in the Harmonized System;
  (c) "subheading" refers to any six-digit number, or the first six digits of any number, set out in the column "Heading/Subheading" in the Harmonized System;
  (d) "tariff item" refers to any eight-digit number set out in the column "Heading/Subheading" in the Harmonized System;
  (e) any reference to a tariff item in Chapter Four of the Agreement or this Appendix that includes letters shall be reflected as the appropriate eight-digit number in the Harmonized System as implemented in each NAFTA country; and
  (f) "books" refers to,
    (i) with respect to the books of a person who is located in a NAFTA country,
      (A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule XII with respect to the territory of the NAFTA country in which the person is located, and
      (B) financial statements, including note disclosures, that are prepared in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule XII with respect to the territory of the NAFTA country in which the person is located, and
    (ii) with respect to the books of a person who is located outside the territories of the NAFTA countries,
      (A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards, and
      (B) financial statements, including note disclosures, that are prepared in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards.

Use of Examples to illustrate the application of a provision

(4) Where an example, referred to as an "Example," is set out in this Appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency.

References to domestic laws

(5) Except as otherwise provided, references in this Appendix to domestic laws of the NAFTA countries apply to those laws as they may be amended or superseded.

Calculation of total cost

(6) For purposes of sections 5(9), 6(11) and 7(6) and sections 10(1)(a) (i) and (ii),
  (a) total cost consists of all product costs, period costs and other costs that are recorded, except as otherwise provided in paragraphs (b) (i) and (ii), on the books of the producer without regard to the location of the persons to whom payments with respect to those costs are made;
  (b) in calculating total cost,
    (i) the value of materials, other than intermediate materials, indirect materials and packing materials and containers, shall be the value determined in accordance with section 7(1),
    (ii) the value of intermediate materials used in the production of the good or material with respect to which total cost is being calculated shall be calculated in accordance with section 7(6),
    (iii) the value of indirect materials and the value of packing materials and containers shall be the costs that are recorded on the books of the producer for those materials, and
    (iv) product costs, period costs and other costs, other than costs referred to in subparagraphs (i) and (ii), shall be the costs thereof that are recorded on the books of the producer for those costs;
  (c) total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;
  (d) gains related to currency conversion that are related to the production of the good shall be deducted from total cost, and losses related to currency conversion that are related to the production of the good shall be included in total cost; and
  (e) the value of materials with respect to which production is accumulated under section 14 shall be determined in accordance with that section.
(7) For purposes of calculating total cost under sections 5(9) and 7(6) and sections 10(1)(a) (i) and (ii),
  (a) where the regional value content of the good is calculated on the basis of the net cost method and the producer has chosen under section 6(15), 11 (1), (3) or (6), 12(5) or 13(4) to calculate the regional value content over a period, the total cost shall be calculated over that period; and
  (b) in any other case, the producer may choose that the total cost be calculated over
    (i) a month,
    (ii) any consecutive three month or six month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or
    (iii) the producer's fiscal year.
(8) A choice made under subsection (7) may not be rescinded or modified with respect to the good or material, or the period, with respect to which the choice is made.

(9) Where a producer chooses a one, three or six month period under subsection (7) with respect to a good or material, the producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to that good or material.

(10) With respect to a good exported to a NAFTA country, a choice to average is considered to have been made

(a) in the case of a choice referred to in section 11 (1), (3) or (6) or 13(4), if the choice is received by the customs administration of that NAFTA country; and

(b) in the case of a choice referred to in section 2(7), 6(15) or 12(1), if the customs administration of that NAFTA country is informed in writing during the course of a verification of the origin of the good that the choice has been made.

SECTION 3. CURRENCY CONVERSION

(1) Where the value of a good or a material is expressed in a currency other than the currency of the country in which the producer of the good is located, that value shall be converted to the currency of the country in which that producer is located on the basis of

(a) in the case of the sale of that good or the purchase of that material, the rate of exchange used by the producer for purposes of recording that sale or purchase, as the case may be; and

(b) in the case of a material that is acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording another transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion*, under the title "*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*", for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

(2) Where a producer of a good has a statement referred to in section 9, 10 or 14 that includes information in a currency other than the currency of the country in which that producer is located, the currency shall be converted to the currency of the country in which the producer is located on the basis of

(a) if the material was purchased by the producer in the same currency as the currency in which the information in the statement is provided, the rate of exchange used by the producer for purposes of recording the purchase;

(b) if the material was purchased by the producer in a currency other than the currency in which the information in the statement is provided,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion*, under the title "*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*", for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer; and

(c) if the material was acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion*, under the title "*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*", for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

PART II

SECTION 4. ORIGINATING GOODS

Identification of goods which are "wholly obtained or produced"

(1) A good originates in the territory of a NAFTA country where the good is

(a) a mineral good extracted in the territory of one or more of the NAFTA countries;

(b) a vegetable or other good harvested in the territory of one or more of the NAFTA countries;

(c) a live animal born and raised in the territory of one or more of the NAFTA countries;

(d) a good obtained from hunting, trapping or fishing in the territory of one or more of the NAFTA countries;

(e) fish, shellfish or other marine life taken from the sea by a vessel registered or recorded with a NAFTA country and flying its flag;

(f) a good produced on board a factory ship from a good referred to in paragraph (e), where the factory ship is registered or recorded with the same NAFTA country as the vessel that took that good and flies that country's flag;

(g) a good taken by a NAFTA country or a person of a NAFTA country from or beneath the seabed outside the territorial waters of that country, where a NAFTA country has the right to exploit that seabed;

(h) a good taken from outer space, where the good is obtained by a NAFTA country or a person of a NAFTA country and is not processed outside the territories of the NAFTA countries;

(i) waste and scrap derived from

(i) production in the territory of one or more of the NAFTA countries, or

(ii) used goods collected in the territory of one or more of the NAFTA countries, where those goods are fit only for the recovery of raw materials; or

(j) a good produced in the territory of one or more of the NAFTA countries exclusively from a good referred to in any of paragraphs (a) through (i), or from the derivatives of such a good, at any stage of production.

Goods made from non-originating materials: change in tariff classification requirement; regional value-content requirement

(2) A good originates in the territory of a NAFTA country where

(a) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a change in tariff classification, and the good satisfies all other applicable requirements of this Appendix;

(b) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries and the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies both a change in tariff classification and a regional value-content requirement, and the good satisfies all other applicable requirements of this Appendix; or

(c) the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a regional value-content requirement, and the good satisfies all other applicable requirements of this Appendix.

Goods made exclusively from originating materials

(3) A good originates in the territory of a NAFTA country where the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials.

Exceptions to the change in tariff classification requirement

(4) A good originates in the territory of a NAFTA country where

(a) except in the case of a good provided for in any of Chapters 61 through 63,

(i) the good is produced entirely in the territory of one or more of the NAFTA countries,

(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because the materials were imported together, whether or not with originating materials, into the territory of a NAFTA country as an unassembled or disassembled good, and were classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System,

(iii) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and

(iv) the good satisfies all other applicable requirements of this Appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I; or

(b) except in the case of a good provided for in any of Chapters 61 through 63,

(i) the good is produced entirely in the territory of one or more of the NAFTA countries,

(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because

(A) those materials are provided for under the Harmonized System as parts of the good, and

(B) the heading for the good provides for both the good and its parts and is not further subdivided into subheadings, or the subheading for the good provides for both the good and its parts,

(iii) the non-originating materials that do not undergo a change in tariff classification in the circumstances described in subparagraph (ii) and the good are not both classified as parts of goods under the heading or subheading referred to in subparagraph (ii)(B),

(iv) each of the non-originating materials that is used in the production of the good and is not referred to in subparagraph (iii) undergoes an applicable change in tariff classification or satisfies any other applicable requirement set out in Schedule I,

(v) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and

(vi) the good satisfies all other applicable requirements of this Appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I.

Interpretation: heading or subheading which provides for both a good and parts of the good

(5) For purposes of subsection (4)(b),

(a) the determination of whether a heading or subheading provides for a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and

(b) where, in accordance with the Harmonized System, a heading includes parts of goods by application of a Section Note or Chapter Note of the Harmonized System and the subheadings under that heading do not include a subheading designated "Parts", a subheading designated "Other" under that heading shall be considered to cover only the goods and parts of the goods that are themselves classified under that subheading.

(6) For purposes of subsection (2), where Schedule I sets out two or more alternative rules for the tariff provision under which a good is classified, if the good satisfies the requirements of one of those rules, it need not satisfy the requirements of another of the rules in order to qualify as an originating good.

Special rule for certain goods

(7) A good originates in the territory of a NAFTA country if the good is referred to in Table 308.1.1 of Section B of Annex 308.1 to Chapter Three of the Agreement and is imported from the territory of a NAFTA country at a time when the NAFTA countries' most-favored-nation rate of duty for that good is in accordance with paragraph 1 of Section A of that Annex.

Self-produced material may be a material for determining applicability of rules of origin

(8) For purposes of determining whether non-originating materials undergo an applicable change in tariff classification, a self-produced material may, at the choice of the producer of a good into which the self-produced material is incorporated, be considered as an originating material or non-originating material, as the case may be, used in the production of that good.

(9) The following example is an "Example" as referred to in section 2(4).

Example: section 4(8), Self-produced Materials as Materials for Purposes of Determining Whether Non-originating Materials Undergo an Applicable Change in Tariff Classification

Producer A, located in a NAFTA country, produces Good A. In the production process, Producer A uses originating Material X and non-originating Material Y to produce Material Z. Material Z is a self-produced material that will be used to produce Good A.

The rule set out in Schedule I for the heading under which Good A is classified specifies a change in tariff classification from any other heading. In this case, both Good A and the non-originating Material Y are of the same heading. However, the self-produced Material Z is of a heading different than that of Good A.

For purposes of determining whether the non-originating materials that are used in the production of Good A undergo the applicable change in tariff classification, Producer A has the option to consider the self-produced Material Z as the material that must undergo a change in tariff classification. As Material Z is of a heading different than that of Good A, Material Z satisfies the applicable change in tariff classification and Good A would qualify as an originating good.

SECTION 5. DE MINIMIS

De minimis rule for non-originating materials that do not undergo subject to authorization, a required tariff change

(1) Except as otherwise provided in subsection (4), a good shall be considered to originate in the territory of a NAFTA country where the value of all non-originating materials that are used in the production of the good and that do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries is not more than seven percent

(a) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(b) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule,

provided that,

(c) if, under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement, the value of those non-originating materials shall be taken into account in calculating the regional value content of the good in accordance with the method set out for that good, and

(d) the good satisfies all other applicable requirements of this Appendix.

(2) For purposes of subsection (1), where

(a) Schedule I sets out two or more alternative rules for the tariff provision under which the good is classified, and

(b) the good, in accordance with subsection (1), is considered to originate under one of those rules,

the good is not required to satisfy the requirements specified in any alternative rule referred to in paragraph (a).

(3) For purposes of subsection (1), in the case of a good that is provided for in heading 2402, the percentage shall be nine percent instead of seven percent.

Exceptions

(4) Subsections (1) and (2) do not apply to

(a) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in Chapter 4;

(b) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in any of tariff items 1901.10.10 (infant preparations containing over 10 percent by weight of milk solids), 1901.20.10 (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids), heading 2105 and tariff items 2106.90.05, 2106.90.13, 2106.90.41, 2106.90.51 and 2106.90.61 (preparations containing over 10 percent by weight of milk solids), 2202.90.10 and 2202.90.20 (beverages containing milk) and 2309.90.31 (animal feeds containing over 10 percent by weight of milk solids);

(c) a non-originating material provided for in any of heading 0805 and subheadings 2009.11 through 2009.30 that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.30 and tariff items 2106.90.16 and 2106.90.17 (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) and 2202.90.30, 2202.90.35 and 2202.90.36 (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins);

(d) a non-originating material provided for in Chapter 9 that is used in the production of a good provided for in tariff item 2101.10.21 (instant coffee, not flavored);

(e) a non-originating material provided for in Chapter 15 that is used in the production of a good provided for in any of headings 1501 through 1508, 1512, 1514 and 1515;

(f) a non-originating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703;

(g) a non-originating material provided for in Chapter 17 or heading 1805 that is used in the production of a good provided for in subheading 1806.10; (h) a non-originating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in any of headings 2207 through 2208;

(i) a non-originating material that is used in the production of a good provided for in any of tariff item 7321.11.30 (gas stove or range), subheadings 8415.10, 8415.81 through 8415.83, 8418.10 through 8418.21, 8418.29 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 and 8451.21 through 8451.29, Mexican tariff item 8479.82.03 (trash compactors) or Canadian or U.S. tariff item 8479.89.55 (trash compactors), and tariff item 8516.60.40 (electric stove or range);

(j) a printed circuit assembly that is a non-originating material used in the production of a good, where the applicable change in tariff classification for the good places restrictions on the use of that non-originating material, such as by prohibiting, or limiting the quantity of, that non-originating material;

(k) a non-originating material that is a single juice ingredient provided for in heading 2009 that is used in the production of a good provided for in any of subheading 2009.90 and tariff items 2106.90.18 (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) and 2202.90.37 (mixtures of fruit or vegetable juices, fortified with minerals or vitamins);

(l) a non-originating material that is used in the production of a good provided for in any of Chapters 1 through 27, unless the non-originating material is of a different subheading than the good for which origin is being determined under this section; or

(m) a non-originating material that is used in the production of a good provided for in any of Chapters 50 through 63.

De minimis rule for regional value-content requirement

(5) A good that is subject to a regional value-content requirement shall be considered to originate in the territory of a NAFTA country and shall not be required to satisfy that requirement where

(a) the value of all non-originating materials used in the production of the good is not more than seven percent

(i) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(ii) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule; and

(b) the good satisfies all other applicable requirements of this Appendix.

De minimis rule for textile goods

(6) A good provided for in any of Chapters 50 through 63, that does not originate in the territory of a NAFTA country because certain fibers or yarns that are used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries, shall be considered to originate in the territory of a NAFTA country if

(a) the total weight of all those fibers or yarns is not more than seven percent of the total weight of that component; and

(b) the good satisfies all other applicable requirements of this Appendix.

(7) For purposes of subsection (6),

(a) the component of a good that determines the tariff classification of that good shall be identified in accordance with the first of the following General Rules for the Interpretation of the Harmonized System under which the identification can be determined, namely, Rule 3(b), Rule 3(c) and Rule 4; and

(b) where the component of the good that determines the tariff classification of the good is a blend of two or more yarns or fibers, all yarns and fibers used in the production of the component shall be taken into account in determining the weight of fibers and yarns in that component.

(8) For purposes of subsections (1) and (5), the value of non-originating materials shall be determined in accordance with sections 7(1) through (4).

Calculation of "total cost" for de minimis rules: choice of methods

(9) For purposes of subsection (1)(b) and subsection (5)(a)(ii), the total cost of a good shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that good in accordance with Schedule VII; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that good that can be reasonably allocated to that good in accordance with Schedule VII.

Calculation of total cost; application of Schedules IX and X for determining value of non-originating materials

(10) Total cost under subsection (9) consists of the costs referred to in section 2(6), and is calculated in accordance with that subsection and section 2(7).

(11) For purposes of determining the value under subsection (1) of non-originating materials that do not undergo an applicable change in tariff classification, where Schedule X is not being used to determine the value of those non-originating materials,

(a) if the value of those non-originating materials is being determined as a percentage of the transaction value of the good and the producer chooses under section 6(10) that one of the methods set out in Schedule IX be used to determine the value of those non-originating materials for purposes of calculating the regional value content of the good, the value of those non-originating materials shall be determined in accordance with that method;

(b) if

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement and subsection (5)(a) does not apply with respect to that good,

(iii) the regional value content of the good is calculated on the basis of the net cost method, and

(iv) the producer chooses under section 6(15), 11(1), (3) or (6), 12(1) or 13(4) that the regional value content of the good be calculated over a period,

the value of those non-originating materials shall be the sum of the values of non-originating materials determined in accordance with that choice, divided by the number of units of the goods with respect to which the choice is made;

(c) if

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is not also subject to a regional value-content requirement or subsection (5)(a) applies with respect to that good, and

(iii) the producer chooses under section 2(7)(b) that, for purposes of section 5(9), the total cost of the good be calculated over a period,

the value of those non-originating materials shall be the sum of the values of non-originating materials divided by the number of units produced during that period; and

(d) in any other case, the value of those non-originating materials may, at the choice of the producer, be determined in accordance with one of the methods set out in Schedule IX.

(12) For purposes of subsection (5), the value of the non-originating materials used in the production of the good may, at the choice of the producer, be determined in accordance with one of the methods set out in Schedule IX.

Examples illustrating de minimis rules

(13) Each of the following examples is an "Example" as referred to in section 2(4).

Example 1: section 5(1)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of copper anodes provided for in heading 7402. The rule set out in Schedule I for heading 7402 specifies a change in tariff classification from any other chapter. There is no applicable regional value-content requirement for this heading. Therefore, in order for the copper anode to qualify as an originating good under the rule set out in Schedule I, Producer A may not use in the production of the copper anode any non-originating material provided for in Chapter 74.

All of the materials used in the production of the copper anode are originating materials, with the exception of a small amount of copper scrap provided for in heading 7404, that is in the same chapter as the copper anode. Under section 5(1), if the value of the non-originating copper scrap does not exceed seven percent of the transaction value of the copper anode or the total cost of the copper anode, whichever is applicable, the copper anode would be considered an originating good.

Example 2: section 5(2)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of ceiling fans provided for in subheading 8414.51. There are two alternative rules set out in Schedule I for subheading 8414.51, one of which specifies a change in tariff classification from any other heading. The other rule specifies both a change in tariff classification from the subheading under which parts of the ceiling fans are classified and a regional value-content requirement. Therefore, in order for the ceiling fan to qualify as an originating good under the first of the alternative rules, all of the materials that are classified under the subheading for parts of ceiling fans and used in the production of the completed ceiling fan must be originating materials.

In this case, all of the non-originating materials used in the production of the ceiling fan satisfy the change in tariff classification set out in the rule that specifies a change in tariff classification from any other heading, with the exception of one non-originating material that is classified under the subheading for parts of ceiling fans. Under section 5(1), if the value of the non-originating material that does not satisfy the change in tariff classification specified in the first rule does not exceed seven percent of the transaction value of the ceiling fan or the total cost of the ceiling fan, whichever is applicable, the ceiling fan would be considered an originating good. Therefore, under section 5(2), the ceiling fan would not be required to satisfy the alternative rule that specifies both a change in tariff classification and a regional value-content requirement.

Example 3: section 5(2)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of plastic bags provided for in subheading 3923.29. The rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification from any other heading, except from subheadings 3920.20 or 3920.71, under which certain plastic materials are classified, and a regional value-content requirement. Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the plastic bag to qualify as an originating good, any plastic materials that are classified under subheading 3920.20 or 3920.71 and that are used in the production of the plastic bag must be originating materials.

In this case, all of the non-originating materials used in the production of the plastic bag satisfy the specified change in tariff classification, with the exception of a small amount of plastic materials classified under subheading 3920.71. Section 5(1) provides that the plastic bag can be considered an originating good if the value of the non-originating plastic materials that do not satisfy the specified change in tariff classification does not exceed seven percent of the transaction value of the plastic bag or the total cost of the plastic bag, whichever is applicable. In this case, the value of those non-originating materials that do not satisfy the specified change in tariff classification does not exceed the seven percent limit.

However, the rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification and a regional value-content requirement. Therefore, under section 5(1)(c), in order to be considered an originating good, the plastic bag must also, except as otherwise provided in section 5(5), satisfy the regional value-content requirement specified in that rule. As provided in section 5(1)(c), the value of the non-originating materials that do not satisfy the specified change in tariff classification, together with the value of all other non-originating materials used in the production of the plastic bag, will be taken into account in calculating the regional value content of the plastic bag.

Example 4: section 5(5)

Producer A, located in a NAFTA country, primarily uses originating materials in the production of shoes provided for in heading 6405. The rule set out in Schedule I for heading 6405 specifies both a change in tariff classification from any subheading other than subheadings 6401.10 through 6406.10 and a regional value-content requirement.

With the exception of a small amount of materials provided for in Chapter 39, all of the materials used in the production of the shoes are originating materials.

Under section 5(5), if the value of all of the non-originating materials used in the production of the shoes does not exceed seven percent of the transaction value of the shoes or the total cost of the shoes, whichever is applicable, the shoes are not required to satisfy the regional value-content requirement specified in the rule set out in Schedule I in order to be considered originating goods.

Example 5: section 5(5)

Producer A, located in a NAFTA country, produces barbers' chairs provided for in subheading 9402.10. The rule set out in Schedule I for goods provided for in heading 9402 specifies a change in tariff classification from any other chapter. All of the materials used in the production of these chairs are originating materials, with the exception of a small quantity of non-originating materials that are classified as parts of barbers' chairs. These parts undergo no change in tariff classification because subheading 9402.10 provides for both barbers' chairs and their parts.

Although Producer A's barbers' chairs do not qualify as originating goods under the rule set out in Schedule I, section 4(4)(b) provides, among other things, that, where there is no change in tariff classification from the non-originating materials to the goods because the subheading under which the goods are classified provides for both the goods and their parts, the goods shall qualify as originating goods if they satisfy a specified regional value-content requirement.

However, under section 5(5), if the value of the non-originating materials does not exceed seven percent of the transaction value of the barbers' chairs or the total cost of the barbers' chairs, whichever is applicable, the barbers' chairs will be considered originating goods and are not required to satisfy the regional value-content requirement set out in section 4(4)(b)(v).

Example 6: sections 5 (6) and (7)

Producer A, located in a NAFTA country, produces women's dresses provided for in subheading 6204.41 from fine wool fabric of heading 5112. This fine wool fabric, also produced by Producer A, is the component of the dress that determines its tariff classification under subheading 6204.41.

The rule set out in Schedule I for subheading 6204.41, under which the dress is classified, specifies both a change in tariff classification from any other chapter, except from those headings and chapters under which certain yarns and fabrics, including combed wool yarn and wool fabric, are classified, and a requirement that the good be cut and sewn or otherwise assembled in the territory of one or more of the NAFTA countries.

Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the dress to qualify as an originating good, the combed wool yarn and the fine wool fabric made therefrom that are used by Producer A in the production of the dress must be originating materials.

At one point Producer A uses a small quantity of non-originating combed wool yarn in the production of the fine wool fabric. Under section 5(6), if the total weight of the non-originating combed wool yarn does not exceed seven percent of the total weight of all the yarn used in the production of the component of the dress that determines its tariff classification, that is, the wool fabric, the dress would be considered an originating good.

PART III

SECTION 6. REGIONAL VALUE CONTENT

(1) Except as otherwise provided in subsection (6), the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method or the net cost method.

Transaction Value Method

(2) The transaction value method for calculating the regional value content of a good is as follows:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

TV is the transaction value of the good, determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with section 7.

Net Cost Method

(3) The net cost method for calculating the regional value content of a good is as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;
NC is the net cost of the good, calculated in accordance with subsection (11); and
VNM is the value of non-originating materials used by the producer in the production of the good, determined, except as otherwise provided in sections 9 and 10, in accordance with section 7.

VNM does not include value of non-originating materials used in originating material

(4) Except as otherwise provided in section 9 and section 10(1)(d), for purposes of calculating the regional value content of a good under subsection (2) or (3), the value of non-originating materials used by a producer in the production of the good shall not include

(a) the value of any non-originating materials used by another producer in the production of originating materials that are subsequently acquired and used by the producer of the good in the production of that good; or

(b) the value of any non-originating materials used by the producer in the production of a self-produced material that is an originating material and is designated as an intermediate material.

(5) For purposes of subsection (4),

(a) in the case of any self-produced material that is not designated as an intermediate material, only the value of any non-originating materials used in the production of the self-produced material shall be included in the value of non-originating materials used in the production of the good; and

(b) where a self-produced material that is designated as an intermediate material and is an originating material is used by the producer of the good with non-originating materials (whether or not those non-originating materials are produced by that producer) in the production of the good, the value of those non-originating materials shall be included in the value of non-originating materials.

Net Cost Method required in certain circumstances

(6) The regional value content of a good shall be calculated only on the basis of the net cost method where

(a) there is no transaction value for the good under section 2(1) of Schedule III;

(b) the transaction value of the good is unacceptable under section 2(2) of Schedule III;

(c) the good is sold by the producer to a related person and the volume, by units of quantity, of sales by that producer of identical goods or similar goods, or any combination thereof, to related persons during the six month period immediately preceding the month in which the goods are sold exceeds 85 percent of the producer's total sales to all persons, whether or not related and regardless of location, after "the producer's total sales"of identical goods or similar goods, or any combination thereof, during that period;

(d) the good is

- (i) a motor vehicle provided for in any of headings 8701 and 8702, subheadings 8703.21 through 8703.90 and headings 8704, 8705 and 8706,
- (ii) a good provided for in a tariff provision listed in Schedule IV or an automotive component assembly, automotive component, sub-component or listed material, and is for use in a motor vehicle referred to in subparagraph (i), either as original equipment or as an after-market part,
- (iii) a good provided for in any of subheadings 6401.10 through 6406.10, or
- (iv) a good provided for in tariff item 8469.10.40 (word processing machines);

(e) the exporter or producer chooses to accumulate with respect to the good in accordance with section 14; or

(f) the good is an intermediate material and is subject to a regional value-content requirement.

Option to change from TVM to NCM for calculation of regional value content

(7) If the exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that

(a) the transaction value of the good, as determined by the exporter or producer, is required to be adjusted under section 4 of Schedule II or is unacceptable under section 2(2) of Schedule III, there is no transaction value for the good under section 2(1) of Schedule III or the transaction value method may not be used because of the application of subsection (6)(c), or

(b) the value of any material used in the production of the good, as determined by the exporter or producer, is required to be adjusted under section 5 of Schedule VIII or is unacceptable under section 2(3) of Schedule VIII, or there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value method may not be used to calculate the regional value content of the material because of the application of subsection (6)(c),

the exporter or producer may choose that the regional value content of the good be calculated on the basis of the net cost method, in which case the calculation must be made within 60 days after the producer receives the notification, or such longer period as that customs administration specifies.

Change from NCM to TVM not permitted

(8) If the exporter or producer of a good chooses that the regional value content of the good be calculated on the basis of the net cost method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that the good does not satisfy the applicable regional value-content requirement, the exporter or producer of the good may not recalculate the regional value content on the basis of the transaction value method.

(9) Nothing in subsection (7) shall be construed as preventing any review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, of an adjustment to or a rejection of

(a) the transaction value of the good; or

(b) the value of any material used in the production of the good.

Application of Schedule IX for determining value of "identical" non-originating materials under TVM

(10) For purposes of the transaction value method, where non-originating materials that are the same as one another in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, are used in the production of a good, the value of those non-originating materials may, at the choice of the producer of the good, be determined in accordance with one of the methods set out in Schedule IX.

Options for calculating the net cost of a good

(11) For purposes of subsection (3), the net cost of a good may be calculated, at the choice of the producer of the good, by

(a) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any excluded costs that are included in that total cost, and reasonably allocating, in accordance with Schedule VII, the remainder to the good;

(b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating, in accordance with Schedule VII, that total cost to the good, and subtracting any excluded costs that are included in the amount allocated to that good; or

(c) reasonably allocating, in accordance with Schedule VII, each cost that forms part of the total cost incurred with respect to the good so that the aggregate of those costs does not include any excluded costs.

Calculation of total cost

(12) Total cost under subsection (11) consists of the costs referred to in section 2(6), and is calculated in accordance with that subsection.

Calculation of net cost; excluded costs

(13) For purposes of calculating net cost under subsection (11),

(a) excluded costs shall be the excluded costs that are recorded on the books of the producer of the good;

(b) excluded costs that are included in the value of a material that is used in the production of the good shall not be subtracted from or otherwise excluded from the total cost; and

(c) excluded costs do not include any amount paid for research and development services performed in the territory of a NAFTA country.

Non-allowable interest; determination under Schedule XI

(14) For purposes of calculating non-allowable interest costs, the determination of whether interest costs incurred by a producer are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located shall be made in accordance with Schedule XI.

Use of "averaging" over a period to calculate RVC under NCM; period cannot be changed

(15) For purposes of the net cost method, the regional value content of the good, other than a good with respect to which a choice to average may be made under section 11(1), (3) or (6), 12(1) or 13(4), may be calculated, where the producer chooses to do so, by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the good with respect to the good and identical goods or similar goods, or any combination thereof, produced in a single plant by the producer over

- (i) a month,
- (ii) any consecutive three month or six month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or
- (iii) the producer's fiscal year; and

(b) using the sums referred to in paragraph (a) as the net cost and the value of non-originating materials, respectively.

(16) The calculation made under subsection (15) shall apply with respect to all units of the good produced during the period chosen by the producer under subsection (15)(a).

(17) A choice made under subsection (15) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

Choice of averaging period cannot be changed for remainder of fiscal year

(18) Where a producer chooses a one, three or six month period under subsection (15) with respect to goods, the producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to those goods.

Choice of net cost method cannot be changed for remainder of the fiscal year

(19) Where the net cost method is required to be used or has been chosen and a choice has been made under subsection (15), the regional value content of the good shall be calculated on the basis of the net cost method over the period chosen under that subsection and for the remainder of the producer's fiscal year.

Obligation to perform self-analysis and give notification of changed circumstance if RVC calculated on basis of estimated costs

(20) Except as otherwise provided in sections 11(10), 12(11) and 13(10), where the producer of a good has calculated the regional value content of the good under the net cost method on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen in subsection (15)(a), the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value-content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

Option to treat any material as non-originating

(21) For purposes of calculating the regional value content of a good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material.

Examples of Calculation of RVC under TVM and NCM

(22) Each of the following examples is an "Example" as referred to in section 2(4).

Example 1: example of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has only one factory, at which the producer manufactures finished office chairs. Because the factory is located close to transportation facilities, all units of the finished good are stored in a factory warehouse 200 meters from the end of the production line. Goods are shipped worldwide from this warehouse. The point of direct shipment is the warehouse.

Example 2: examples of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has six factories, all located within the territory of one of the NAFTA countries, at which the producer produces garden tools of various types. These tools are shipped worldwide, and orders usually consist of bulk orders of various types of tools. Because different tools are manufactured at different factories, the producer decided to consolidate storage and shipping facilities and ships all finished products to a large warehouse located near the seaport, from which all orders are shipped. The distance from the factories to the warehouse varies from 3 km to 130 km. The point of direct shipment for each of the goods is the warehouse.

Example 3: examples of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has only one factory, located near the center of one of the NAFTA countries, at which the producer manufactures finished office chairs. The office chairs are shipped from that factory to three warehouses leased by the producer, one on the west coast, one near the factory and one on the east coast. The office chairs are shipped to buyers from these warehouses, the shipping location depending on the shipping distance from the buyer. Buyers closest to the west coast warehouse are normally supplied by the west coast warehouse, buyers closest to the east coast are normally supplied by the warehouse located on the east coast and buyers closest to the warehouse near the factory are normally supplied by that warehouse. In this case, the point of direct shipment is the location of the warehouse from which the office chairs are normally shipped to customers in the location in which the buyer is located.

Example 4: section 6(3), net cost method

A producer located in NAFTA country A sells Good A that is subject to a regional value-content requirement to a buyer located in NAFTA country B. The producer of Good A chooses that the regional value content of that good be calculated using the net cost method. All applicable requirements of this Appendix, other than the regional value-content requirement, have been met. The applicable regional value-content requirement is 50 percent.

In order to calculate the regional value-content of Good A, the producer first calculates the net cost of Good A. Under section 6(11)(a), the net cost is the total cost of Good A (the aggregate of the product costs, period costs and other costs) per unit, minus the excluded costs (the aggregate of the sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs) per unit. The producer uses the following figures to calculate the net cost:

Product costs:	
Value of originating materials	$30.00
Value of non-originating materials	40.00
Other product costs	20.00
Period costs	10.00
Other costs	0.00
Total cost of Good A, per unit	$100.00
Excluded costs:	
Sales promotion, marketing and after-sales service cost	$5.00
Royalties	2.50
Shipping and packing costs	3.00
Non-allowable interest costs	1.50
Total excluded costs	$12.00

The net cost is the total cost of Good A, per unit, minus the excluded costs.

Total cost of Good A, per unit:	$100.00
Excluded costs	−12.00
Net cost of Good A, per unit	$88.00

The value for net cost ($88) and the value of non-originating materials ($40) are needed in order to calculate the regional value content. The producer calculates the regional value content of Good A under the net cost method in the following manner:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{88 - 40}{88} \times 100$$

$$= 54.5\%$$

Therefore, under the net cost method, Good A qualifies as an originating good, with a regional value-content of 54.5 percent.

Example 5: section 6(6)(c), net cost method required for certain sales to related persons

On January 15, 1994, a producer located in NAFTA country A sells 1,000 units of Good A to a related person, located in NAFTA country B. During the six month period beginning on July 1, 1993 and ending on December 31, 1993, the producer sold 90,000 units of identical goods and similar goods to related persons from various countries, including that buyer. The producer's total sales of those identical goods and similar goods to all persons from all countries during that six month period were 100,000 units.

The total quantity of identical goods and similar goods sold by the producer to related persons during that six month period was 90 percent of the producer's total sales of those identical goods and similar goods to all persons. Under section 6(6)(c), the producer must use the net cost method to calculate the regional value content of Good A sold in January 1994, because the 85 percent limit was exceeded.

Example 6: section 6(11)(a)

A producer in a NAFTA country produces Good A and Good B during the producer's fiscal year.

The producer uses the following figures, which are recorded on the producer's books and represent all of the costs incurred with respect to both Good A and Good B, to calculate the net cost of those goods:

Product costs:	
Value of originating materials	$2,000
Value of non-originating materials	1,000
Other product costs	2,400
Period costs: (including $1,200 in excluded costs)	3,200
Other costs	400
Total cost of Good A and Good B	$9,000
The net cost is the total cost of Good A and Good B, minus the excluded costs incurred with respect to those goods.	
Total cost of Good A and Good B	$9,000
Excluded costs	−1,200
Net cost of Good A and Good B	$7,800

The net cost must then be reasonably allocated, in accordance with Schedule VII, to Good A and Good B.

Example 7: section 6(11)(b)

A producer located in a NAFTA country produces Good A and Good B during the producer's fiscal year. In order to calculate the regional value content of Good A and Good B, the producer uses the following figures that are recorded on the producer's books and incurred with respect to those goods:

Product costs:	
Value of originating materials	$2,000
Value of non-originating materials	1,000
Other product costs	2,400
Period costs: (including $1,200 in excluded costs)	3,200
Other costs	400
Total cost of Good A and Good B	$9,000

Under section 6(11)(b), the total cost of Good A and Good B is then reasonably allocated, in accordance with Schedule VII, to those goods. The costs are allocated in the following manner:

	Allocated to Good A	Allocated to Good B
Total cost ($9,000 for both Good A and Good B)	$5,220	$3,780

The excluded costs ($1,200) that are included in total cost allocated to Good A and Good B, in accordance with Schedule VII, are subtracted from that amount.

		Excluded Cost Allocated to Good A	Excluded Cost Allocated to Good B
Total excluded costs:			
Sales promotion, marketing and after-sale service costs	500	290	210
Royalties	200	116	84
Shipping and packing costs	500	290	210
Net cost (total cost minus excluded costs)	....	$4,524	$3,276

The net cost of Good A is thus $4,524, and the net cost of Good B is $3,276.

Example 8: section 6(11)(c)

A Producer located in a NAFTA country produces Good C and Good D. The following costs are recorded on the producer's books for the months of January, February and March, and each cost that forms part of the total cost are reasonably allocated, in accordance with Schedule VII, to Good C and Good D.

	Total cost: Good C and Good D (in thousands of dollars)	Allocated to Good C (in thousands of dollars)	Allocated to Good D (in thousands of dollars)
Product costs:			
Value of originating materials	100	0	100
Value of non-originating materials	900	800	100
Other product costs	500	300	200
Period costs (including $420 in excluded costs)	5,679	3,036	2,643
Minus Excluded Costs	420	300	120
Other costs	0	0	0
Total cost (aggregate of product costs, period costs and other costs)	6,759	3,836	2,923

Example 9: section 6(12)

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country. Material X is a non-originating material and is used in the production of Good A. [illegible] A provides Producer B, at no charge, with tools to be used in the production of Material X. The cost of the tools that is recorded [illegible] the books of Producer A has been expensed in the current year. Pursuant to section 5(1)(b)(ii) of Schedule VIII, the value of [illegible] included in the value of Material X. Therefore, the cost of the tools that is recorded on the books of Producer A and that has be[illegible]ed in the current year cannot be included as a separate cost in the net cost of Good A because it has already been included in the value of Material X.

Example 10: section 6(12)

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method and averages the calculation over the producer's fiscal year under section 6(15). Producer A determines that during that fiscal year Producer A incurred a gain on foreign currency conversion of $10,000 and a loss on foreign currency conversion of $8,000, resulting in a net gain of $2,000. Producer A also determines that $7,000 of the gain on foreign currency conversion and $6,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A, and $3,000 of the gain on foreign currency conversion and $2,000 of the loss on foreign currency conversion is not related to the production of Good A. The producer determines that the total cost of Good A is $45,000 before deducting the $1,000 net gain on foreign currency conversion related to the production of Good A. The total cost of Good A is therefore $44,000. That $1,000 net gain is not included in the value of non-originating materials under section 7(1).

Example 11: section 6(12)

Given the same facts as in example 10, except that Producer A determines that $6,000 of the gain on foreign currency conversion and $7,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A. The total cost of Good A is $45,000, which includes the $1,000 net loss on foreign currency conversion related to the production of Good A. That $1,000 net loss is not included in the value of non-originating materials under section 7(1).

PART IV

SECTION 7. MATERIALS

Valuation of materials used in the production of a good other than certain automotive goods

(1) Except as otherwise provided for non-originating materials used in the production of a good referred to in section 9(1) or 10(1), and except in the case of indirect materials, intermediate materials and packing materials and containers, for purposes of calculating the regional value content of a good and for purposes of sections 5(1) and (5), the value of a material that is used in the production of the good shall be

- (a) except as otherwise provided in subsection (2), where the material is imported by the producer of the good into the territory of the NAFTA country in which the good is produced, the customs value of the material with respect to that importation, or
- (b) where the material is acquired by the producer of the good from another person located in the territory of the NAFTA country in which the good is produced
  - (i) the transaction value, determined in accordance with section 2(1) of Schedule VIII, with respect to the transaction in which the producer acquired the material, or
  - (ii) the value determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction in which the producer acquired the material, there is no transaction value under section 2(2) of that Schedule or the transaction value is unacceptable under section 2(3) of that Schedule,

and shall include the following costs if they are not included under paragraph (a) or (b):

- (c) the costs of freight, insurance and packing and all other costs incurred in transporting the material to the location of the producer,
- (d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,
- (e) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and
- (f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

Valuation of material if customs value is not in accordance with Schedule VIII

(2) For purposes of subsection (1)(a), where the customs value of the material referred to in that paragraph was not determined in a manner consistent with Schedule VIII, the value of the material shall be determined in accordance with Schedule VIII with respect to the importation of that material and, where the costs referred to in subsections (1)(c) through (f) are not included in that value, those costs be added to that value.

Costs recorded on books

(3) For purposes of subsection (1), the costs referred to in subsections (1)(c) through (f) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the good.

Designation of self-produced material as an intermediate material; limitation on designations; designation is optional

(4) Except for purposes of determining the value of non-originating materials used in the production of a light-duty automotive good and except in the case of an automotive component assembly, automotive component or sub-component for use as original equipment in the production of a heavy-duty vehicle, for purposes of calculating the regional value content of a good the producer of the good may designate as an intermediate material any self-produced material that is used in the production of the good, provided that where an intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is incorporated into that intermediate material is also designated by the producer as an intermediate material.

(5) For purposes of subsection (4),

(a) in order to qualify as an originating material, a self-produced material that is designated as an intermediate material must qualify as an originating material under these Regulations;

(b) the designation of a self-produced material as an intermediate material shall be made solely at the choice of the producer of that self-produced material; and

(c) except as otherwise provided in section 14(4), the proviso set out in subsection (4) does not apply with respect to an intermediate material used by another producer in the production of a material that is subsequently acquired and used in the production of a good by the producer referred to in subsection (4).

Valuation of an intermediate material

(6) The value of an intermediate material shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that intermediate material in accordance with Schedule VII; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material in accordance with Schedule VII.

Calculation of total cost

(7) Total cost under subsection (6) consists of the costs referred to in section 2(6), and is calculated in accordance with that section and section 2(7).

Rescission of a designation during course of verification; option to designate another intermediate material

(8) Where a producer of a good designates a self-produced material as an intermediate material under subsection (4) and the customs administration of a NAFTA country into which the good is imported determines during a verification of origin of the good that the intermediate material is a non-originating material and notifies the producer of this in writing before the written determination of whether the good qualifies as an originating good, the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated.

(9) A producer of a good who rescinds a designation under subsection (8)

(a) shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(b) may, not later than 30 days after the customs administration referred to in subsection (8) notifies the producer in writing that the self-produced material referred to in paragraph (a) is a non-originating material, designate as an intermediate material another self-produced material that is incorporated into the good, subject to the proviso set out in subsection (4).

(10) Where a producer of a good designates another self-produced material as an intermediate material under subsection (9)(b) and the customs administration referred to in subsection (8) determines during the verification of origin of the good that that self-produced material is a non-originating material,

(a) the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated;

(b) the producer shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(c) the producer may not designate another self-produced material that is incorporated into the good as an intermediate material.

Indirect Materials; deemed originating; value as recorded on books of producer

(11) For purposes of determining whether a good is an originating good, an indirect material that is used in the production of the good

(a) shall be considered to be an originating material, regardless of where that indirect material is produced; and

(b) if the good is subject to a regional value-content requirement, for purposes of calculating the net cost under the net cost method, the value of the indirect material shall be the costs of that material that are recorded on the books of the producer of the good.

Packaging Materials and Containers; origin disregarded for tariff change rules

(12) Packaging materials and containers, if classified under the Harmonized System with the good that is packaged therein, shall be disregarded for purposes of

(a) determining whether all of the non-originating materials used in the production of the good undergo an applicable change in tariff classification; and

(b) determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification.

Actual originating status considered for RVC requirement; valuation of packaging

(13) Where packaging materials and containers are classified under the Harmonized System with the good that is packaged therein and that good is subject to a regional value-content requirement, the value of those packaging materials and containers shall be taken into account as originating materials or non-originating materials, as the case may be, for purposes of calculating the regional value content of the good.

(14) For purposes of subsection (13), where packaging materials and containers are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (4).

Packing materials and containers; disregarded for tariff change rule and for RVC requirement; value as recorded on books

(15) For purposes of determining whether a good is an originating good, packing materials and containers in which the good is packed

(a) shall be disregarded for purposes of determining whether

(i) the non-originating materials used in the production of the good undergo an applicable change in tariff classification, and

(ii) the good satisfies a regional value-content requirement; and

(b) if the good is subject to a regional value-content requirement, the value of the packing materials and containers shall be the costs thereof that are recorded on the books of the producer of the good.

Fungible materials; fungible commingled goods; inventory management methods for determining whether originating

(16) For purposes of determining whether a good is an originating good,

(a) where originating materials and non-originating materials that are fungible materials are used in the production of the good, the determination of whether the materials are originating materials may, at the choice of the producer of the good or the person from whom the producer acquired the materials, be made on the basis of any of the applicable inventory management methods set out in Schedule X; and

(b) where originating goods and non-originating goods that are fungible goods are physically combined or mixed in inventory and prior to exportation do not undergo production or any other operation in the territory of the NAFTA country in which they were physically combined or mixed in inventory, other than unloading, reloading or any other operation necessary to preserve the goods in good condition or to transport the goods for exportation to the territory of another NAFTA country, the determination of whether the good is an originating good may, at the choice of the exporter of the good or the person from whom the exporter acquired the good, be made on the basis of any of the applicable inventory management methods set out in Schedule X.

Accessories, spare parts and tools; deemed originating for tariff change rule; actual origin applicable for RVC requirement

(17) Accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools are originating materials if the good is an originating good, and shall be disregarded for purposes of determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification or determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification, provided that

(a) the accessories, spare parts or tools are not invoiced separately from the good; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good, within the industry that produces the good.

(18) Where a good is subject to a regional value-content requirement, the value of accessories, spare parts and tools that are delivered with that good and form part of the good's standard accessories, spare parts or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

(19) For purposes of subsection (18), where accessories, spare parts and tools are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (4).

Examples illustrating the provisions on materials

(20) Each of the following examples is an "Example" as referred to in section 2(4).

Example 1: section 7(2), Customs Value not Determined in a Manner Consistent with Schedule VIII

Producer A, located in NAFTA country A, imports material A into NAFTA country A. Producer A purchased material A from a middleman located in country B. The middleman purchased the material from a manufacturer located in country B. Under the laws in NAFTA country A that implement the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade,* the customs value of material A was based on the price actually paid or payable by the middleman to the manufacturer. Producer A uses material A to produce Good C, and exports Good C to NAFTA country D. Good C is subject to a regional value-content requirement.

Under section 4(1) of Schedule VIII, the price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. Section 1 of that Schedule defines producer and seller for purposes of the Schedule. A producer is the person who uses the material in the production of a good that is subject to a regional value-content requirement. A seller is the person who sells the material being valued to the producer.

The customs value of material A was not determined in a manner consistent with Schedule VIII because it was based on the price actually paid or payable by the middleman to the manufacturer, rather than on the price actually paid or payable by Producer A to the middleman. Thus, section 7(2) applies and material A is valued in accordance with Schedule VIII.

Example 2: section 7(5), Value of Intermediate Materials

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement under section 4(2)(b). The producer also produces Material A, which is used in the production of Good B. Both originating materials and non-originating materials are used in the production of Material A. Material A is subject to a change in tariff classification requirement under section 4(2)(a). The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs (including $0.30 in royalties)	0.50
Other costs	0.10
Total cost of Material A	$10.60

The producer designates Material A as an intermediate material and determines that, because all of the non-originating materials that are used in the production of Material A undergo an applicable change in tariff classification set out in Schedule I, Material A would, under paragraph 4(2)(a) qualify as an originating material. The cost of the non-originating materials used in the production of Material A is therefore not included in the value of non-originating materials that are used in the production of Good B for the purpose of determining the regional value content of Good B. Because Material A has been designated as an intermediate material, the total cost of Material A, which is $10.60, is treated as the cost of originating materials for the purpose of calculating the regional value content of Good B. The total cost of Good B is determined in accordance with the following figures:

Product costs:	
Value of originating materials	
—intermediate materials	$10.60
—other materials	3.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs	2.50
Other costs	0.10
Total cost of Good B	$28.20

Example 3: section 7(5), Effects of the Designation of Self-produced Materials on Net Cost

The ability to designate intermediate materials helps to put the vertically integrated producer who is self-producing materials that are used in the production of a good on par with a producer who is purchasing materials and valuing those materials in accordance with subsection 7(1). The following situations demonstrate how this is achieved:

Situation 1

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer purchases Material A, which is used in the production of Good B, from a supplier located in a NAFTA country. The value of Material A determined in accordance with subsection 7(1) is $11.00. Material A is an originating material. All other materials used in the production of Good B are non-originating materials. The net cost of Good B is determined as follows:

Product costs:	
Value of originating materials (Material A)	$11.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Good B	$23.60
Excluded costs: (included in period costs)	−0.20
Net cost of Good B	$23.40

The regional value content of Good B is calculated as follows:

$$\begin{aligned} RVC &= \frac{NC - VNM}{NC} \times 100 \\ &= \frac{\$23.40 - \$5.50}{\$23.40} \times 100 \\ &= 76.5\% \end{aligned}$$

The regional value content of Good B is 76.5 percent, and Good B, therefore, qualifies as an originating good.

Situation 2

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A which is used in the production of Good B. The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Material A	$10.60

Additional costs to produce Good B are the following:

Product costs:	
Value of originating materials	$0.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total additional costs	$12.60

The producer does not designate Material A as an intermediate material under subsection 7(4). The net cost of Good B is calculated as follows:

	Costs of Material A (not designated as an intermediate material)	Additional Costs to Produce Good B	Total
Product costs:			
Value of originating materials	$1.00	$0.00	$1.00
Value of non-originating materials	7.50	5.50	13.00
Other product costs	1.50	6.50	8.00
Period costs (including $0.20 in excluded costs)	0.50	0.50	1.00
Other costs	0.10	0.10	0.20
Total cost of Good B	$10.60	$12.60	$23.20
Excluded costs (in period costs)	0.20	0.20	−0.40
Net cost of Good B (total cost minus excluded costs)			$22.80

The regional value content of Good B is calculated as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$22.80 - \$13.00}{\$22.80} \times 100$$

$$= 42.9\%$$

The regional value content of Good B is 42.9 percent, and Good B, therefore, does not qualify as an originating good.

Situation 3

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A, which is used in the production of Good B. The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Material A	$10.60

Additional costs to produce Good B are the following:

Product costs:	
Value of originating materials	$0.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total additional costs	$12.60

The producer designates Material A as an intermediate material under subsection 7(4). Material A qualifies as an originating material under paragraph 4(2)(a). Therefore, the value of non-originating materials used in the production of Material A is not included in the value of non-originating materials for the purposes of calculating the regional value content of Good B. The net cost of Good B is calculated as follows:

	Costs of Material A (designated as an intermediate material)	Additional Costs to Produce Good B	Total
Product costs:			
Value of originating materials	$10.60	$0.00	$10.60
Value of non-originating materials	....	5.50	5.50
Other product costs	....	6.50	6.50
Period costs (including $0.20 in excluded costs)	....	0.50	0.50
Other costs	....	0.10	0.10
Total cost of Good B	$10.60	$12.60	$23.20
Excluded costs (in period costs)	....	.20	−0.20
Net cost of Good B (total cost minus excluded costs)	....	....	$23.00

The regional value content of Good B is calculated as follows:

$$RVC=\frac{NC-VNM}{NC}\times 100$$

$$=\frac{\$23.00-\$5.50}{\$23.00}\times 100$$

$$=76.1\%$$

The regional value content of Good B is 76.1 percent, and Good B, therefore, qualifies as an originating good.

Example 4: Originating Materials Acquired from a Producer Who Produced Them Using Intermediate Materials

Producer A, located in NAFTA country A, produces switches. In order for the switches to qualify as originating goods, Producer A designates subassemblies of the switches as intermediate materials. The subassemblies are subject to a regional value-content requirement. They satisfy that requirement, and qualify as originating materials. The switches are also subject to a regional value-content requirement, and, with the subassemblies designated as intermediate materials, are determined to have a regional value content of 65 percent.

Producer A sells the switches to Producer B, located in NAFTA country B, who uses them to produce switch assemblies that are used in the production of Good B. The switch assemblies are subject to a regional value-content requirement. Producers A and B are not accumulating their production within the meaning of section 14. Producer B is therefore able, under section 7(4), to designate the switch assemblies as intermediate materials.

If Producers A and B were accumulating their production within the meaning of section 14, Producer B would be unable to designate the switch assemblies as intermediate materials, because the production of both producers would be considered to be the production of one producer.

Example 5: Single Producer and Successive Designations of Materials Subject to a Regional Value-Content Requirement as Intermediate Materials

Producer A, located in NAFTA country, produces Material X and uses Material X in the production of Good B. Material X qualifies as an originating material because it satisfies the applicable regional value-content requirement. Producer A designates Material A as an intermediate material.

Producer A uses Material X in the production of Material Y, which is also used in the production of Good B. Material Y is also subject to a regional value-content requirement. Under the proviso set out in section 7(4), Producer A cannot designate Material Y as an intermediate material, even if Material Y satisfies the applicable regional value-content requirement, because Material X was already designated by Producer A as an intermediate material.

Example 6: Single Producer and Multiple Designations of Materials as Intermediate Materials

Producer X, who is located in NAFTA country X, uses non-originating materials in the production of self-produced materials A, B, and C. None of the self-produced materials are used in the production of any of the other self-produced materials.

Producer X uses the self-produced materials in the production of Good O, which is exported to NAFTA country Y. Materials A, B and C qualify as originating materials because they satisfy the applicable regional value-content requirements.

Because none of the self-produced materials are used in the production of any of the other self-produced materials, then even though each self-produced material is subject to a regional value-content requirement, Producer X may, under section 7(4), designate all of the self-produced materials as intermediate materials. The proviso set out in section 7(4) only applies where self-produced materials are used in the production of other self-produced materials and both are subject to a regional value-content requirement.

Example 7: section 7(17)

The following are examples of accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools:

(a) consumables that must be replaced at regular intervals, such as dust collectors for an air-conditioning system,
(b) a carrying case for equipment,
(c) a dust cover for a machine,
(d) an operational manual for a vehicle,
(e) brackets to attach equipment to a wall,
(f) a bicycle tool kit or a car jack,
(g) a set of wrenches to change the bit on a chuck,
(h) a brush or other tool to clean out a machine, and
(i) electrical cords and power bars for use with electronic goods.

Example 8: Value of Indirect Materials that are Assists

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country, and uses it in the production of Good A. Producer A provides to Producer B, at no charge, tools to be used in the production of Material X. The tools have a value of $100 which is expensed in the current year by Producer A.

Material X is subject to a regional value-content requirement which Producer B chooses to calculate using the net cost method. For purposes of determining the value of non-originating materials in order to calculate the regional value content of Material X, the tools are considered to be an originating material because they are an indirect material. However, pursuant to section 7(11) they have a value of nil because the cost of the tools with respect to Material X is not recorded on the books of Producer B.

It is determined that Material X is a non-originating material. The cost of the tools that is recorded on the books of producer A is expensed in the current year. Pursuant to section 5 of Schedule VIII, the value of the tools (see section 5(1)(b)(ii) of Schedule VIII) must be included in the value of Material X by Producer A when calculating the regional value content of Good A. The cost of the tools, although recorded on the books of producer A, cannot be included as a separate cost in the net cost of Good A because it is already included in the value of Material X. The entire cost of Material X, which includes the cost of the tools, is included in the value of non-originating materials for purposes of the regional value content of Good A.

PART V

AUTOMOTIVE GOODS

SECTION 8. DEFINITIONS AND INTERPRETATION

For purposes of this Part,

"after-market parts" means goods that are not for use as original equipment in the production of light-duty vehicles or heavy-duty vehicles and that are
  (a) goods provided for in a tariff provision listed in Schedule IV, or
  (b) automotive component assemblies, automotive components, sub-components or listed materials;

"class of motor vehicles" means any one of the following categories of motor vehicles:
  (a) motor vehicles provided for in any of subheading 8701.20, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and headings 8705 and 8706,
  (b) motor vehicles provided for in any of subheadings 8701.10 and 8701.30 through 8701.90,
  (c) motor vehicles provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8704.21 and 8704.31, and
  (d) motor vehicles provided for in any of subheadings 8703.21 through 8703.90;

"complete motor vehicle assembly process" means the production of a motor vehicle from separate constituent parts, which parts include the following:
  (a) a structural frame or unibody,
  (b) body panels,
  (c) an engine, a transmission and a drive train,
  (d) brake components,
  (e) steering and suspension components,
  (f) seating and internal trim,
  (g) bumpers and external trim,
  (h) wheels, and
  (i) electrical and lighting components;

"first prototype" means the first motor vehicle that
  (a) is produced using tooling and processes intended for the production of motor vehicles to be offered for sale, and
  (b) follows the complete motor vehicle assembly process in a manner not specifically designed for testing purposes;

"floor pan of a motor vehicle" means a component, comprising a single part or two or more parts joined together, with or without additional stiffening members, that forms the base of a motor vehicle, beginning at the firewall or bulkhead of the motor vehicle and ending
  (a) where there is a luggage floor panel in the motor vehicle, at the place where that luggage floor panel begins, and
  (b) where there is no luggage floor panel in the motor vehicle, at the place where the passenger compartment of the motor vehicle ends;

"heavy-duty automotive good" means a heavy-duty vehicle or a heavy-duty component;

"heavy-duty component" means an automotive component or automotive component assembly that is for use as original equipment in the production of a heavy-duty vehicle;

"marque" means a trade name used by a marketing division of a motor vehicle assembler that is separate from any other marketing division of that motor vehicle assembler;

"model line" means a group of motor vehicles having the same platform or model name;

"model name" means the word, group of words, letter, number or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler
  (a) to differentiate the motor vehicle from other motor vehicles that use the same platform design,
  (b) to associate the motor vehicle with other motor vehicles that use different platform designs, or
  (c) to denote a platform design;

"new building" means a new construction to house a complete motor vehicle assembly process, where that construction includes the pouring or construction of a new foundation and floor, the erection of a new frame and roof, and the installation of new plumbing and electrical and other utilities;

"plant" means a building, or buildings in close proximity but not necessarily contiguous, machinery, apparatus and fixtures that are under the control of a producer and are used in the production of any of the following:
  (a) light-duty vehicles and heavy-duty vehicles,
  (b) goods of a tariff provision listed in Schedule IV, and
  (c) automotive component assemblies, automotive components, sub-components and listed materials;

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"platform" means the primary load-bearing structural assembly of a motor vehicle that determines the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monocoques;

"received in the territory of a NAFTA country" means, with respect to section 9(2), the location at which a traced material arrives in the territory of a NAFTA country and is documented for any customs purpose, which, in the case of a traced material imported into

(a) Canada,

(i) where the traced material is imported on a vessel, as defined in section 2 of the *Reporting of Imported Goods Regulations*, is the location at which the traced material is last unloaded from the vessel and reported, under section 12 of the *Customs Act*, to a customs office, including reported for transportation under bond by a conveyance other than that vessel, and

(ii) in any other case, is the location at which the traced material is reported, under section 12 of the *Customs Act*, to a customs office, including reported for transportation under bond,

(b) Mexico,

(i) where the traced material is imported on a vessel, the location at which the traced material is last unloaded from the vessel and reported for any customs purpose, and

(ii) in any other case, the location at which the traced material is reported for any customs purpose, and

(c) the United States, is the location at which the traced material is entered for any customs purpose, including entered for consumption, entered for warehouse or entered for transportation under bond, or admitted into a foreign trade zone;

"refit" means a closure of a plant for a period of at least three consecutive months that is for purposes of plant conversion or retooling;

"size category", with respect to a light-duty vehicle, means that the total of the interior volume for passengers and the interior volume for luggage is

(a) 85 cubic feet (2.38 m^3) or less,

(b) more than 85 cubic feet (2.38 m^3) but less than 100 cubic feet (2.80 m^3),

(c) 100 cubic feet (2.80 m^3) or more but not more than 110 cubic feet (3.08 m^3),

(d) more than 110 cubic feet (3.08 m^3) but less than 120 cubic feet (3.36 m^3), or

(e) 120 cubic feet (3.36 m^3) or more;

"traced material" means a material, produced outside the territories of the NAFTA countries, that is imported from outside the territories of the NAFTA countries and is, when imported, of a tariff provision listed in Schedule IV;

"underbody" means the floor pan of a motor vehicle.

SECTION 9. LIGHT-DUTY AUTOMOTIVE GOODS

VNM determined by tracing of certain non-originating materials

(1) For purposes of calculating the regional value content of a light-duty automotive good under the net cost method, the value of non-originating materials used by the producer in the production of the good shall be the sum of the values of the non-originating materials that are traced materials and are incorporated into the good.

Valuation of traced materials for VNM in the RVC

(2) Except as otherwise provided in subsections (3) and (6) through (8), the value of each of the traced materials that is incorporated into a good shall be

(a) where the producer imports the traced material from outside the territories of the NAFTA countries and has or takes title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(b) where the producer imports the traced material from outside the territories of the NAFTA countries and does not have or take title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was when the producer takes title in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(c) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person has or takes title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(d) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person does not have or take title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was located when the first person in the territory of a NAFTA country takes title, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(e) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires the traced material or a material that incorporates the traced material from a person in the territory of a NAFTA country who has title to it, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material or the material that incorporates it, and

(ii) states the value of the traced material or a material that incorporates the traced material, determined in accordance with subsection (5), with respect to a transaction that occurs after the customs value of the traced material was determined,

the value of the traced material or the material that incorporates the traced material, determined in accordance with subsection (5), with respect to the transaction referred to in that statement;

(f) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material and states the regional value content of the material,

an amount equal to VM × (1 − RVC)

where

VM is the value of the acquired material, determined in accordance with subsection (5), with respect to the transaction in which the producer acquired that material, and

RVC is the regional value content of the acquired material, expressed as a decimal;

(g) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material but does not state any value with respect to the traced material,

an amount equal to VM × (1 − RVCR)

where

VM is the value of the acquired material, determined in accordance with subsection (5), with respect to the transaction in which the producer acquired that material, and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal;

(h) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires a material that

(i) incorporates that traced material,

(ii) was produced in the territory of a NAFTA country, and

(iii) with respect to which an amount was determined in accordance with paragraph (f) or (g),

if the producer of the good has a statement signed by the person from whom the producer acquired that material that states that amount, the amount as determined in accordance with paragraph (f) or (g), as the case may be; and

(i) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer does not have a statement described in any of paragraphs (c) through (h), the value of the traced material or any material that incorporates it, determined in accordance with subsection (5) with respect to the transaction in which the producer acquires the traced material or any material that incorporates it.

Value of traced material if customs value is not in accordance with Schedule VIII

(3) For purposes of subsections (2) (a) through (d), where the customs value of the traced material referred to in those paragraphs was not determined in a manner consistent with Schedule VIII, the value of the material shall be the sum of

(a) the value of the material determined in accordance with Schedule VIII with respect to the transaction in which the person who imported the material from outside the territories of the NAFTA countries acquired it; and

(b) where not included in that value, the costs referred to in subsections (2)(a) (ii) and (iii), subsections (2)(b) (ii) and (iii), subsections (2)(c)(ii) (B) and (C) or subsections (2)(d)(ii) (B) and (C), as the case may be.

Additional costs included in traced value if not already included in customs value

(4) The costs referred to in subsections (2) (a) through (d) and subsection (3) are the following:

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(a) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(b) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries.

Value of traced material determined under Schedule VIII if value is not customs value

(5) For purposes of subsections (2) (e) through (g) and (i) and subsections (6) and (7), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that paragraph or subsection, or

(b) shall be determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction referred to in that paragraph or subsection, there is no transaction value for the material under section 2(2) of that Schedule, or the transaction value of the material is unacceptable under section 2(3) of that Schedule,

and, where not included under paragraph (a) or (b), shall include taxes, other than duties paid on an importation of a material from a NAFTA country, paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than taxes that are waived, refunded, refundable or otherwise recoverable, including credit against tax paid or payable.

(6) Where it is determined, during the course of a verification of origin of a light-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (2) (f) or (g), that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (2), be determined in accordance with subsection (5) with respect to the transaction in which that producer acquired it.

Effect on value of traced material if value on a statement cannot be verified

(7) Where any person who has information with respect to a statement referred to in any of subsections (2)(c) through (h) does not allow a customs administration to verify that information during a verification of origin, the value of the material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (5) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

Use of value of VNM as determined under section 12(3) for traced material incorporated into another material

(8) Where a traced material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a light-duty automotive good, the statement referred to in subsection (2)(c), (d) or (e) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the traced material.

Interpretations and clarifications for provisions applicable to tracing rules for light-duty automotive goods

(9) For purposes of this section,

(a) where a producer, in accordance with section 7(4), designates as an intermediate material any self-produced material used in the production of a light-duty automotive good,

(i) the designation applies solely to the calculation of the net cost of that good, and

(ii) the value of a traced material that is incorporated into that good shall be determined as though the designation had not been made;

(b) the value of a material not listed in Schedule IV, when imported from outside the territories of the NAFTA countries,

(i) shall not be included in the value of non-originating materials that are used in the production of a light-duty automotive good, and

(ii) shall be included in calculating the net cost of a light-duty automotive good that incorporates that material;

(c) except as otherwise provided in section 12(10), this section does not apply with respect to after-market parts;

(d) the costs referred to in subsections (2)(a)(ii) and (b)(ii), subsections (2)(c)(ii)(B) and (d)(ii)(B) and subsections (4) and (5) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the light-duty automotive good;

(e) for purposes of calculating the regional value content of a light-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (5) with respect to the transaction in which the producer acquired it; and

(f) any information set out in a statement referred to in subsection (2) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located.

Examples of application of tracing for light-duty automotive goods

(10) Each of the following examples is an "Example" as referred to in section 2(4).

Example 1:

Nuts and bolts provided for in heading 7318 are imported from outside the territories of the NAFTA countries and are used in the territory of a NAFTA country in the production of a light-duty automotive good referred to in section 9(1). Heading 7318 is not listed in Schedule IV so the nuts and bolts are not traced materials.

Because the nuts and bolts are not traced materials the value, under section 9(1), of the nuts and bolts is not included in the value of non-originating materials used in the light-duty automotive good even though the nuts and bolts are imported from outside the territories of the NAFTA countries.

The value, under section 9(9)(b), of the nuts and bolts is included in the net cost of the light-duty automotive good for the purposes of calculating, under section 9(1), regional value content of the motor vehicle.

Example 2:

A rear view mirror provided for in subheading 7009.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

Subheading 7009.10 is listed in Schedule IV. The rear view mirror is a traced material. For purposes of calculating, under section 9(1), regional value content of the light-duty vehicle, the value of the mirror is included in the value of non-originating materials in accordance with sections 9(2) through (9).

Example 3:

Glass provided for in heading 7005 is imported from outside the territories of the NAFTA countries and is used in the territory of NAFTA country A in the production of a rear view mirror. The rear view mirror is a non-originating good because it fails to satisfy the applicable change in tariff classification.

That rear view mirror is exported to NAFTA country B where it is used as original equipment in the production of a light-duty vehicle. Even though the rear view mirror is a non-originating material and is provided for in a tariff item listed in Schedule IV, it is not a traced material because it was not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle in which the rear view mirror is incorporated, the value of the rear view mirror, under section 9(1), is not included in the value of non-originating materials used in the production of the light-duty vehicle.

Even though the glass provided for in heading 7005 that was used in the production of the rear view mirror and incorporated into the light-duty vehicle was imported from outside the territories of the NAFTA countries, the glass is not a traced material because heading 7005 is not listed in Schedule IV. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the glass, the value of the glass is not included in the value of non-originating materials used in the production of the light-duty vehicle. The value of the rear view mirror would be included in the net cost of the light-duty vehicle, but the value of the imported glass would not be separately included in the value of non-originating materials of the light-duty vehicle.

Example 4:

An electric motor provided for in subheading 8501.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country in the production of a seat frame provided for in subheading 9401.90. The seat frame, with the electric motor attached, is sold to a producer of seats provided for in subheading 9401.20. The seat producer sells the seat to a producer of light-duty vehicles. The seat is to be used as original equipment in the production of that light-duty vehicle.

Subheadings 8501.10 and 9401.20 are listed in Schedule IV; subheading 9401.90 is not. The electric motor is a traced material; the seat is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The seat is a light-duty automotive good referred to in section 9(1). For purposes of calculating, under section 9(1), the regional value content of the seat, the value of traced materials incorporated into it is included in the value of non-originating materials used in the production of the seat. The value of the electric motor is included in that value. (However, the value of the motor would not be included separately in the net cost of the seat because the value of the motor is included as part of the cost of the seat frame.)

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the electric motor is included in the value of non-originating materials used in the production of the light-duty vehicle, even if the seat is an originating material.

Example 5:

Cast blocks, cast heads and connecting rod assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer, who has title to them at the time of importation, and are used by the producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. After the regional value content of the engine is calculated, the engine is an originating good. It is not a traced material because it was not imported from outside the territories of the NAFTA countries. The engine is exported to NAFTA country B, to be used as original equipment by a producer of light-duty vehicles.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine, because heading 8409 is listed in Schedule IV and because the cast blocks, cast heads and connecting rod assemblies were imported into the territory of a NAFTA country and are incorporated into the light-duty vehicle, the value of those materials, which are traced materials, is included in the value of non-originating materials used in the production of the light-duty vehicle, even though the engine is an originating material.

The producer of the light-duty vehicle did not import the traced materials. However, because that producer has a statement referred to in section 9(2)(c) and that statement states the value of non-originating materials of the traced materials in accordance with section 12(2), the producer of the light-duty vehicle may, in accordance with section 9(8), use that value as the value of non-originating materials of the light-duty vehicle with respect to that engine.

Example 6:

Aluminum ingots provided for in subheading 7601.10 and piston assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer and are used by that producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. The aluminum ingots are used by the producer to produce an engine block; the piston assembly is then incorporated into the engine block and the producer designates, in accordance with section 7(4), a short block provided for in heading 8409 as an intermediate material. The intermediate material qualifies as an originating material. The engine that incorporates the short block is exported to NAFTA country B and used as original equipment in the production of a light-duty vehicle. The piston assemblies provided for in heading 8409 are traced materials; neither the engine nor the short block are traced materials because they were not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of the engine, the value of the piston assemblies is included, under section 9(9)(a)(ii), in the value of non-originating materials, even if the intermediate material is an originating material. However, the value of the aluminum ingots is not included in the value of non-originating materials because subheading 7601.10 is not listed in Schedule IV. The value of the aluminum ingots does not need to be included separately in the net cost of the engine because that value is included in the value of the intermediate material, and the total cost of the intermediate material is included in the net cost of the engine.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine (and the piston assemblies), the value of the piston assemblies incorporated into that light-duty vehicle is included in the value of non-originating materials of the light-duty vehicle.

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An engine provided for in heading 8407 is imported from outside the territories of the NAFTA countries. The producer of the engine, located in the country from which the engine is imported, used in the production of the engine a piston assembly provided for in heading 8409 that was produced in a NAFTA country and is an originating good. The engine is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The engine is a traced material.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle that incorporates that engine, the value of the engine is included in the value of non-originating materials of that light-duty vehicle. The value of the piston assembly, which was, before its exportation to outside the territories of the NAFTA countries, an originating good, shall not be deducted from the value of non-originating materials used in the production of the light-duty vehicle. Under section 18 (transshipment), the piston assembly is no longer considered to be an originating good because it was used in the production of a good outside the territories of the NAFTA countries.

Example 8:

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hoses provided for in heading 4009, which is listed in Schedule IV. The wholesaler takes title to the goods at the wholesaler's place of business in City A. The customs value of the imported goods is $500. All freight, taxes and duties associated with the good to the wholesaler's place of business total $100; the cost of the freight, included in that $100, from the place where it was received in the territory of a NAFTA country to the location of the wholesaler's place of business in City A is $25. The wholesaler sells the rubber hoses for $850 to a producer of light-duty vehicles who uses the goods in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The light-duty vehicle producer pays $50 to have the goods shipped from the location of the wholesaler's place of business in City A to the location at which the light-duty vehicle is produced.

The rubber hoses are traced materials and they are incorporated into a light-duty automotive good. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle,

(1) if the wholesaler takes title to the goods before the first place at which they were received in the territory of a NAFTA country, then the value of non-originating materials, where the light-duty vehicle producer has a statement referred to in section 9(2)(c), would not include the cost of freight from the place where they were received in the territory of a NAFTA country to the location of the wholesaler's place of business: in this situation, the value of non-originating materials would be $575;

(2) if the producer has a statement referred to in section 9(2)(d) that states the customs value of the traced material and, where not included in that price, the cost of taxes, duties, fees and transporting the goods to the place where title is taken, the light-duty vehicle producer may use those values as the value of non-originating materials with respect to the goods: in this situation, the value of non-originating materials would be $600; or

(3) if the wholesaler is unwilling to provide the light-duty vehicle producer with such a statement, the value of non-originating materials with respect to the traced materials will be the value of the materials with respect to the transaction in which the producer acquired them, as provided for in section 9(2)(i), in this instance $850; the costs of transporting the goods from the location of the wholesaler's place of business to the location of the producer will be included in the net cost of the goods, but not in the value of non-originating materials.

Example 9:

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV. The wholesaler sells the good to a producer located in the territory of the NAFTA country who uses the hose to produce a power steering hose assembly, also provided for in heading 4009. The power steering hose assembly is then sold to a producer of light-duty vehicles who uses that good in the production of a light-duty vehicle. The rubber hose is a traced material; the power steering hose assembly is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The wholesaler who imported the rubber hose from outside the territories of the NAFTA countries has title to it at the time of importation. The customs value of the good is $3, including freight and insurance and all other costs incurred in transporting the good to the first place at which it was received in the territory of the NAFTA country. Duties and fees and all other costs referred to in section 9(4), paid by the wholesaler with respect to the good, total an additional $1. The wholesaler sells the good to the producer of the power steering hose assemblies for $5, not including freight to the location of that producer. The power steering hose producer pays $2 to have the good delivered to the location of production. The value of the power steering hose assembly sold to the light-duty vehicle producer is $10, including freight for delivery of the goods to the location of the light-duty vehicle producer.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle:

(1) if the motor vehicle producer has a statement referred to in section 9(2)(c) from the producer of the power steering hose assembly that states the customs value of the imported rubber hose incorporated in the power steering hose assembly, and the value of the duties, fees and other costs referred to in section 9(4), the producer may use those values as the value of non-originating materials with respect to that traced good: in this situation, that value would be the customs value of $3 and the cost of duties and fees of $1, provided that the wholesaler has provided the producer of the power steering hose assembly with the information regarding the customs value of the imported good and the other costs;

(2) if the light-duty vehicle producer has a statement from the producer of the power steering hose assembly that states the value of the imported hose, with respect to the transaction in which the power steering hose assembly producer acquires the imported hose from the wholesaler, the light-duty vehicle producer may include that value as the value of non-originating materials, in accordance with section 9(2)(e): in this situation, that value is $5; and the $2 cost of transporting the good from the location of the wholesaler to the location of the producer, because that cost is separately identified, would not be included in the value of non-originating materials of the light-duty vehicle;

(3) if the light-duty vehicle producer has a statement referred to in section 9(2)(f) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(f) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value content is 55 per cent, the value of non-originating materials would be $4.50; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identified, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(f) does not allow for the deduction of transportation costs that would otherwise not be non-originating;

(4) if the light-duty vehicle producer has a statement referred to in section 9(2)(g) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(g) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value-content requirement is 50 per cent, the value of non-originating materials would be $5; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identified, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(g) does not allow for the deduction of transportation costs that would otherwise not be non-originating; or

(5) if the light-duty vehicle producer does not have a statement referred to in any of sections 9(2)(c) through (h) from the producer of the power steering hose assembly, the light-duty vehicle producer includes in the value of non-originating materials of the vehicles the value, determined in accordance with section 9(2)(i), of the power steering hose assembly: in this situation, that amount would be $10, the cost to the producer of acquiring that material.

Example 10:

A producer of light-duty vehicles located in City C in the territory of a NAFTA country imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV, and uses that good as original equipment in the production of a light-duty vehicle.

The rubber hose arrives at City A in the NAFTA country, but the producer of the light-duty vehicle does not have title to the good; it is transported under bond to City B, and on its arrival in City B, the producer of the light-duty vehicle takes title to it and the good is received in the territory of a NAFTA country. The good is then transported to the location of the light-duty vehicle producer in City C.

The customs value of the imported good is $4, the transportation and other costs referred to in subparagraph 9(2)(b)(ii) to City A are $3 and to City B are $2, and the cost of duties, taxes and other fees referred to in section 9(4) is $1. The cost of transporting the good from City B to the location of the producer in City C is $1. The rubber hose is traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value, under section 9(2)(b), of non-originating materials of that vehicle is the customs value of the traced material and, where not included in that value, the cost of taxes, duties, fees and the cost of transporting the traced material to the place where title is taken. In this situation, the value of non-originating materials would be the customs value of the traced material, $4, the cost of duties taxes and other fees, $1, the cost of transporting the material to City A, $3, and the cost of transporting that material from City A to City B, $2, for a total of $10. The $1 cost of transporting the good from City B to the location of the producer in City C would not be included in the value of non-originating materials of the light-duty vehicle because a person of a NAFTA country has taken title to the traced material.

Example 11:

A radiator provided for in subheading 8708.91 is imported from outside the territories of the NAFTA countries by a producer of light-duty vehicles and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

The radiator is transported by ship from outside the territories of the NAFTA countries and arrives in the territory of the NAFTA country at City A. The radiator is not, however, unloaded at City A and although the radiator is physically present in the territory of the NAFTA country, it has not been received in the territory of a NAFTA country.

The ship sails in territorial waters from City A to City B and the radiator is unloaded there. The light-duty vehicle producer files, from City C in the same country, the entry for the radiator; the radiator enters the territory of the NAFTA country at City B.

Subheading 8708.91 is listed in Schedule IV. The radiator is a traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the radiator is included in the value of non-originating materials of the light-duty vehicle. The costs of any freight, insurance, packing and other costs incurred in transporting the radiator to City B are included in the value of non-originating materials of the light-duty vehicle, including the cost of transporting the radiator from City A to City B. The costs of any freight, insurance, packing and other costs that were incurred in transporting the radiator from City B to the location of the producer are not included in the value of non-originating materials of the light-duty vehicle.

Example 12:

Producer X, located in NAFTA country A, produces a car seat of subheading No. 9401.20 that is used in the production of a light-duty vehicle. The only non-originating material used in the production of the car seat is an electric motor of subheading No. 8501.20 that was imported by Producer X from outside the territories of the NAFTA countries. The electric motor is a material of a tariff provision listed in Schedule IV and thus is a traced material.

Producer X sells the car seat as original equipment to Producer Y, a light-duty vehicle producer, located in NAFTA country B. The car seat is an originating good because the non-originating material in the car seat (the electric motor) undergoes the applicable change in tariff classification set out in a rule that specifies only a change in tariff classification. Consequently, Producer X does not choose to calculate the regional value content of the car seat in accordance with section 12(1).

For purposes of determining, under section 9(1), the value of non-originating materials used in the production of the light-duty vehicle that incorporates the car seat, the value of the electric motor is included even though the car seat qualifies as an originating material.

Producer X provides Producer Y with a statement described in section 9(2)(c), with the value of non-originating material used in the production of the car seat determined in accordance with section 12(3), as is permitted by section 9(8). Producer Y uses that value as the value of non-originating materials used in the production of the light-duty vehicle with respect to the car seat.

Example 13:

This example has the same facts as in Example 12, except that the car seat does not qualify as an originating good under the rule that specifies only a change in tariff classification. Instead, it qualifies as an originating good under a rule that specifies a regional value-content requirement and a change in tariff classification. For purposes of that rule, Producer X chose to calculate the regional value content of the car seat in accordance with section 12(1) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(a).

For purposes of the statement described in section 9(2)(c), Producer X determined, as is permitted under section 9(8), the value of non-originating material used in the production of the car seat in accordance with section 12(3) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(e).

SECTION 10. HEAVY-DUTY AUTOMOTIVE GOODS

Determining VNM for the calculation of the RVC for heavy-duty automotive goods

(1) Except as otherwise provided in subsections (3) through (8) and section 12(10)(a), for purposes of calculating the regional value content of a heavy-duty automotive good under the net cost method, the value of non-originating materials used by the producer of the good in the production of the good shall be the sum of

(a) for each listed material that is a non-originating material, is a self-produced material and is used by the producer in the production of the good, at the choice of the producer, either

(i) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that listed material in accordance with Schedule VII,

(ii) the aggregate of each cost that forms part of the total cost incurred with respect to that listed material that can be reasonably allocated to that listed material in accordance with Schedule VII, or

(iii) the sum of

(A) the customs value of each non-originating material imported by the producer and used in the production of the listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(B) the value of each non-originating material that is not imported by the producer of the listed material and is used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired it;

(b) for each listed material that is a non-originating material, is produced in the territory of a NAFTA country and is acquired and used by the producer in the production of the good, at the choice of the producer, either

(i) the value of that non-originating listed material, determined in accordance with subsection (2), with respect to the transaction in which the producer acquired the listed material, or

(ii) where the producer of the good has a statement described in clause (A) or (B) with respect to each material that is a non-originating material used in the production of that listed material, the sum of

(A) the customs value of each non-originating material imported by the producer of the listed material and used in the production of that listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), if the producer of the good has a statement signed by the producer of the listed material that states the customs value of that non-originating material and the costs referred to in subsections (2)(c) through (f) that the producer of the listed material incurred with respect to the non-originating material, and

(B) the value of each non-originating material that is not imported by the producer of the listed material, and is acquired and used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired that non-originating material, if the producer of the good has a statement signed by the producer of the listed material that states the value of the acquired material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired the non-originating material;

(c) for each listed material, automotive component assembly, automotive component or sub-component that is imported from outside the territories of the NAFTA countries, and is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating listed material, automotive component assembly, automotive component or sub-component, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating listed material, automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(d) for each automotive component assembly, automotive component or sub-component that is an originating material and is acquired and used by the producer in the production of the good, at the choice of the producer,

(i) the sum of

(A) the value of each non-originating listed material used in the production of the originating material, determined under paragraphs (a) and (b),

(B) the value of each non-originating material incorporated into the originating material, determined under paragraph (c),

(C) the value of each non-originating listed material used in the production of a material referred to in paragraph (e) that is used in the production of the originating material, determined under paragraphs (a) and (b), and

(D) where the value of a non-originating listed material referred to in clause (C), and used in the production of a non-originating automotive component assembly, automotive component or sub-component that is used in the production of the originating material, is not included under clause (C), the value of that automotive component assembly, automotive component or sub-component, determined under paragraph (e)(ii),

if the producer has a statement, signed by the person from whom the originating material was acquired, that states the sum of the values, as determined by the producer of the originating material under paragraphs (a), (b), (c) and (e) of each non-originating material referred to in any of clauses (A) through (D) that is incorporated into that originating material;

(ii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVC)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material, and

RVC is the regional value content of the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material and states the regional value content of the material,

(iii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVCR)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material, and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material but does not state the value of non-originating materials with respect to that acquired material; or

(iv) the value of that automotive component assembly, automotive component or sub-component determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material;

(e) for each automotive component assembly, automotive component or sub-component that is a non-originating material produced in the territory of a NAFTA country and that is acquired by the producer and used by the producer in the production of the good, at the choice of the producer, either

(i) the sum of the values of the non-originating materials incorporated into that non-originating material that is acquired by the producer, determined under paragraphs (a), (b), (c), (d) and (f), if the producer has a statement, signed by the person from whom the non-originating material was acquired, that states the sum of the values of the non-originating materials incorporated into that non-originating material, determined by the producer of the non-originating material in accordance with paragraphs (a), (b), (c), (d) and (f), or

(ii) the value of that non-originating automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material; and

(f) for each non-originating material that is not referred to in paragraph (a), (b), (c) or (e) and that is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating material, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material.

Application of Schedule VIII to determine VNM; additional costs to be included

(2) For purposes of subsection (1)(a)(ii)(B), subsection (1)(b)(i), subsection (1)(b)(ii)(B), subsections (1)(c)(ii), (1)(d)(ii) through (iv), (1)(e)(ii) and subsection (1)(f)(ii), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that clause, subparagraph or paragraph, or

(b) where, with respect to the transaction referred to in that clause, subparagraph, or paragraph, there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value of the material is unacceptable under section 2(3) of that Schedule, shall be determined in accordance with sections 6 through 11 of that Schedule,

and shall include the following costs where they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing, and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(e) customs brokerage fees, including the cost of in-house customs brokerage and customs clearance services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

Value of imported material if customs value is not in accordance with Schedule VIII

(3) For purposes of subsections (1)(a)(ii)(A) and (b)(ii)(A) and subsections (1)(c)(i) and (f)(i), where the customs value of an imported material referred to in those clauses or paragraphs was not determined in a manner consistent with Schedule VIII, the value of the material shall be determined in accordance with Schedule VIII with respect to the importation for which that customs value was determined and, where the costs referred to in sections (2)(c) through (f) are not included in that value, those costs shall be added to the value of the material.

Option to use section 9 tracing rules in certain circumstances

(4) For purposes of calculating the regional value content of a heavy-duty component, where

(a) a heavy-duty component is produced in the same plant as an automotive component assembly or automotive component that is of the same heading or subheading as that heavy-duty component and is for use as original equipment in a light-duty vehicle, and

(b) it is not reasonable for the producer to know which of the production will constitute a heavy-duty component for use in a heavy-duty vehicle,

the value of the non-originating materials used in the production of the heavy-duty component in that plant may, at the choice of the producer, be determined in the manner set out in section 9.

(5) For purposes of calculating the regional value content of a heavy-duty vehicle, where a producer of such a vehicle acquires, for use by that producer in the production of the vehicle, a heavy-duty component with respect to which the value of non-originating materials has been determined in accordance with subsection (4), the value of the non-originating materials used by the producer with respect to that heavy-duty component is the value of non-originating materials determined under that subsection.

VNM may be redetermined for certain acquired materials

(6) Where it is determined, during the course of a verification of origin of a heavy-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (1)(d)(ii) or (iii) that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (1), be determined in accordance with subsection (2) with respect to the transaction in which that producer acquired it.

Effect on value of traced material if value on a statement cannot be verified

(7) Where any person who has information with respect to a statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) does not allow a customs administration to verify that information during a verification of origin, the value of any material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (2) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

Use of value of VNM as determined under section 12(3) for traced material incorporated into another material

(8) Where a heavy-duty component, sub-component or listed material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a heavy-duty automotive good, the statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the heavy-duty component, sub-component or listed material.

Interpretations and clarifications for provisions applicable to rules for determining VNM for heavy-duty automotive goods

(9) For purposes of this section,

(a) for purposes of calculating the regional value content of a heavy-duty automotive good, sub-component or listed material, a producer of such a good may, in accordance with section 7(4), designate as an intermediate material any self-produced material, other than a heavy-duty component or sub-component, that is used in the production of that good;

(b) except as otherwise provided in section 12(10), this section does not apply with respect to after-market parts;

(c) this section does not apply to a sub-component for purposes of calculating its regional value content before it is incorporated into a heavy-duty automotive good;

(d) for purposes of calculating the regional value content of a heavy-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(e) any information set out in a statement referred to in subsections (1)(b)(ii), (d)(i) through (iii) or (e)(i) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located; and

(f) total cost under subsections (1)(a)(i) and (ii) consists of the costs referred to section 2(6), and is calculated in accordance with that section and section 2(7).

Examples of application of rules for determining VNM for heavy-duty automotive goods

(10) Each of the following examples is an "Example" as referred to in section 2(4).

Example 1: A listed material is imported from outside the territories of the NAFTA countries

A cast head, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The cast head is a listed material; the engine is an automotive component.

Situation 1: Use of the listed material in an automotive component

For purposes of calculating the regional value content of the engine, the value of listed materials imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the engine. Because the cast head was produced outside the territories of the NAFTA countries, its value, under section 10(1)(c), is included in the value of non-originating materials used in the production of the engine.

Situation 2: Use of an originating automotive component incorporating the listed material

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1) (a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value content, expressed as a decimal, of the engine;

(c) the value, determined under section 10(1)(d)(iii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value-content requirement, expressed as a decimal, for the engine; or

(d) the value, determined under section 10(1)(d)(iv), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value, determined under section 10(1)(c), of the cast head, is included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the cast head will be included in the amount determined under section 10(1)(d)(ii) and is, consequently, included in the value of non-originating materials used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the third option if that producer has a statement, referred to in section 10(1)(d)(iii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the cast head will be included in the amount determined under section 10(1)(d)(iii) and is, consequently, included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Situation 3: Use of a non-originating automotive component incorporating the listed material

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1)(a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the cast head, as determined under section 10(1)(c), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

Example 2: A material is imported from outside the territories of the NAFTA countries

A rocker arm assembly, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The rocker arm assembly is neither a listed material nor a sub-component; the engine is an automotive component.

Situation 1: Use of the material in an automotive component

For purposes of calculating the regional value content of the engine, the value of non-originating materials that are not listed materials is included in the value of non-originating materials used in the production of the engine. Because the rocker arm assembly was produced outside the territories of the NAFTA countries, it is a non-originating material and its value, under section 10(1)(f), is included in the value of non-originating materials used in the production of the engine.

Situation 2: Use of an originating automotive component incorporating the material

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1) (a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value content, expressed as a decimal, of the engine;

(c) the value, determined under section 10(1)(d)(iii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value-content requirement, expressed as a decimal, for the engine; or

(d) the value, determined under section 10(1)(d)(iv), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is not included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(ii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the third option if that producer has a statement, referred to in section 10(1)(d)(iii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(iii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Situation 3: Use of a non-originating automotive component incorporating the material

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1) (a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

Situation 4: Use of the material in a self-produced automotive component

If the engine is a self-produced material rather than an acquired material, the heavy-duty vehicle producer is using the rocker arm assembly in the production of the heavy-duty vehicle rather than in the production of the engine, because, under section 7(4), the engine cannot be designated as an intermediate material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value, under section 10(1)(f), of the rocker arm assembly is included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Example 3: An automotive component is imported from outside the territories of the NAFTA countries

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component.

Situation: Use of the automotive component

For purposes of calculating the regional value content of the heavy-duty vehicle in which the transmission is used, the value of the transmission is included in the value of the non-originating materials under section 10(1)(c), regardless of whether the producer imported the transmission or acquired it from someone else in the territory of a NAFTA country.

Example 4: An automotive component is imported from outside the territories of the NAFTA countries

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and combined with an engine to produce an engine-transmission assembly that will be used as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component; the engine-transmission assembly is an automotive component assembly.

Situation: Use of the automotive component assembly

The automotive component assembly is acquired by a producer who uses it in the production of a heavy-duty vehicle. If the automotive component assembly that incorporates the imported transmission is an originating material, the value of non-originating materials used in the production of the automotive component assembly is determined, at the choice of the producer, under any of section 10(1)(d) (i), (ii), (iii) and (iv). (See example 1 for more detailed explanations of these provisions.) If the automotive component assembly that incorporates the imported transmission is a non-originating material, the value of non-originating materials used in the production of the automotive component assembly is determined, at the choice of the producer, under section 10(1)(e) (i) or (ii). (See example 1 for more detailed explanations of these provisions.)

Regardless of whether the automotive component assembly is an originating material or a non-originating material, the value of the automotive component that was imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the heavy-duty vehicle. The transmission is a non-originating material, and, for purposes of calculating the regional value content of an automotive component assembly or heavy-duty vehicle that incorporates that transmission, the value of the transmission is included in the value of non-originating materials used in the production of the automotive component assembly or heavy-duty vehicle that incorporates it.

Example 5: A material is imported from outside the territories of the NAFTA countries

An aluminum ingot, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of cast block that will be used in an engine that will be used as original equipment in the production of a heavy-duty vehicle. The aluminum ingot is not a listed material; the cast block is a listed material; the engine is an automotive component.

Situation 1: Use of the material in an intermediate material that is a listed material

The engine producer designates the cast block as an intermediate material under section 7(4). For purposes of determining the origin of that cast block, because the aluminum ingot is classified under a different heading than the cast block, the cast block satisfies the applicable change in tariff classification and is an originating material.

Situation 2: Use of the listed material incorporating the material

For purposes of calculating the regional value content of the engine that incorporates that cast block (and thus incorporates the aluminum ingot), the value of non-originating materials is determined under section 10(1). Because none of sections 10(1) (a) through (f) require that a listed material that is an originating material be included in the value of non-originating materials used in the production of a good, the value of the cast block is not included in the value of non-originating materials used in the production of the engine or in the value of non-originating materials used in the production of an automotive component assembly or heavy-duty vehicle that incorporates the engine.

Because section 10(1)(d) does not refer to a listed material that is an originating material, the value of the non-originating aluminum ingot used in the production of the originating cast block is not included in the value of non-originating materials used in the production of any good or material that incorporates the originating cast block.

Example 6: A non-originating listed material is used to produce a sub-component that is used to produce another sub-component

A crankshaft, produced in the territory of NAFTA country A from a forging imported from outside the territories of the NAFTA countries, is a non-originating material. The crankshaft is sold to another producer, located in the same country, who uses it to produce an originating block assembly. That block assembly is sold to another producer, also located in the same country, who uses it to produce a finished block. The finished block is sold to a producer of engines, who is located in NAFTA country B, for use in the production of a heavy-duty vehicle. The crankshaft is a listed material; the block assembly is a sub-component, as is the finished block.

Situation 1: Calculating the regional value content of the finished block

A sub-component is not a heavy-duty automotive good. As referred to in section 10(9)(c), for purposes of calculating the regional value content of the sub-component before it is incorporated into a heavy-duty automotive good, such as when the sub-component is exported from the territory of one NAFTA country to the territory of another NAFTA country, the value of non-originating materials of the sub-component includes only the value of non-originating materials used in the production of that sub-component. Because the block assembly is an originating material, its value is not included in the value of non-originating materials of the finished block, nor is the value of the non-originating crankshaft included in the value of non-originating materials used in the production of the finished block because the crankshaft was used in the production of the block assembly and was not used in the production of the finished block.

Situation 2: Calculating the regional value content of the component that incorporates the finished block

For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates a sub-component, the value of non-originating materials used in the production of the sub-component is determined under section 10(1) (d) or (e) with respect to that sub-component. In this situation, the value, under section 10(1)(b), of the non-originating crankshaft is included in the value of non-originating materials used in the production of the engine. (See examples 1 and 2 for more detailed explanations of sections 10(1) (d) and (e).)

Example 7: A non-listed material is imported from outside the territories of the NAFTA countries and is used in the production of another non-listed material

A bumper part, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and is used in the production of a bumper. The bumper is used in the territory of a NAFTA country as original equipment in the production of a heavy-duty vehicle. Neither a bumper part nor a bumper is a listed material, sub-component, automotive component or automotive component assembly.

Situation 1: The non-listed material is an originating material

The bumper is an originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, neither the value of the imported bumper part nor the value of the bumper is included in the value of the non-originating materials.

Situation 2: The non-listed material is a non-originating material

The bumper is a non-originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(f) with respect to the bumper. In this situation, the value of the bumper is included in the value of non-originating materials of the heavy-duty vehicle. Because a bumper is not a listed material, the producer of the heavy-duty vehicle does not have the option, under section 10(1)(b)(ii), to include only the value of the imported bumper part in the value of non-originating materials used in the production of the heavy-duty vehicle.

Example 8:

Situation: Transhipment of a listed material

A producer, located in the territory of a NAFTA country, produces, in that country, a cast head that is an originating good. The producer exports the cast head to outside the territories of the NAFTA territories, where valves, springs, valve lifters, a camshaft and gears are added to it to create a cast head assembly. An engine producer, located in the territory of a NAFTA country, imports the cast head assembly into that country and uses it in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. A cast head is a listed material; a cast head assembly is a sub-component.

For purposes of calculating the regional value content of the engine, the value of the imported cast head assembly is included in the value of non-originating materials under section 10(1)(c). The value of the cast head cannot be deducted from the value determined under section 10(1)(c). Although the cast head was once an originating good, under section 18 when further production was performed with respect to the cast head outside the territories of the NAFTA countries, it was no longer an originating good.

Example 9: A material is imported from outside the territories of the NAFTA countries and a heavy-duty vehicle producer self-produces a non-originating listed material

A material, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of a water pump that will be used as original equipment by the same producer in the production of a heavy-duty vehicle. Although the producer, under section 7(4), designates the water pump as an intermediate material it is a non-originating material because it fails to satisfy the regional value-content requirement. A water pump is a listed material.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the total cost, determined under section 10(1)(a)(i), of the water pump or the value, determined under section 10(1)(a)(iii)(A), of the material imported from outside the territories of the NAFTA countries.

Example 10: A material is acquired and used to produce a non-originating listed material

A material, produced outside the territories of the NAFTA countries, is acquired in the territory of a NAFTA country and is used in that country in the production of a water pump that will be used as original equipment in the production of a heavy-duty vehicle. The producer of the water pump and the producer of the heavy-duty vehicle are separate, unrelated producers, located in the same country. A water pump is a listed material. The producer of the water pump chose to calculate the regional value content of the water pump in accordance with section 12(1) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(b). The water pump is a non-originating material because it fails to satisfy the regional value-content requirement.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the value, determined under section 10(1)(b)(i), of the water pump or, if the producer has a statement referred to in section 10(1)(b)(ii)(B), the value, determined under that section, of the material imported from outside the territories of the NAFTA countries.

The producer has a statement referred to in section 10(1)(b)(ii)(B) and chooses to use the value of non-originating material determined under that section. The statement states, as is permitted under section 10(8), the value of non-originating material used in the production of the water pump in accordance with section 12(3) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(e).

SECTION 11. MOTOR VEHICLE AVERAGING

NC and VNM for motor vehicles may be averaged over producer's fiscal year

(1) For purposes of calculating the regional value content of light-duty vehicles or heavy-duty vehicles, the producer of those motor vehicles may choose that

(a) the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year with respect to the motor vehicles that are in any one of the categories set out in subsection (5) that is chosen by the producer; and

(b) the sums referred to in paragraph (a) be used in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

Information required when producer chooses to average for motor vehicles

(2) A choice made under subsection (1) shall

(a) state the category chosen by the producer, and

(i) where the category referred to in subsection (5)(a) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,

(ii) where the category referred to in subsection (5)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(iii) where the category referred to in subsection (5)(c) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the locations of the plants at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (3);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) be dated and signed by an authorized officer of the producer; and

(g) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

Averaging period

(3) Where the fiscal year of a producer begins after the date of the entry into force of the Agreement but before one year after that date, the producer may choose that the calculation of regional value content referred to in subsection (1) or (6) be made under that subsection over the period beginning on the date of the entry into force of the Agreement and ending at the end of that fiscal year, in which case the choice shall be filed with the customs administration of each NAFTA country to which vehicles are to be exported during the period covered by the choice not later than 10 days after the entry into force of the Agreement, or such longer period as that customs administration may accept.

(4) Where the fiscal year of a producer begins on the date of the entry into force of the Agreement, the producer may make the choice referred to in subsection (1) not later than 10 days after the entry into force of the Agreement, or such longer period as the customs administration referred to in subsection (2)(g) may accept.

Categories of motor vehicles for averaging

(5) The categories referred to in subsection (1) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(c) the same model line of motor vehicles produced in the territory of a NAFTA country.

(6) Where applicable, a producer may choose that the calculation of the regional value content of motor vehicles referred to in Schedule VI be made in accordance with that schedule.

Timely filing of choice to average

(7) Subject to section 5(4) of Schedule VI, the choice referred to in subsection (6) shall be filed with the customs administration of the NAFTA country to which vehicles referred to in that schedule are to be exported, at least 10 days before the first day of the producer's fiscal year with respect to which that choice is to apply or such shorter period as the customs administration may accept.

Choice to average cannot be rescinded

(8) A choice filed for the period referred to in subsection (1) or (3) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

Averaged net cost and VNM included in calculation of RVC on the basis of producer's option to include all vehicles of category or only certain exported vehicles of category

(9) For purposes of this section, where a producer files a choice under subsection (1), (3) or (4), including a choice referred to in section 13(9), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (5).

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

(11) The following example is an "Example" as referred to in section 2(4).

Example:

A motor vehicle producer located in NAFTA country A produces vehicles that fall within a category set out in section 11(5) that is chosen by the producer. The motor vehicles are to be sold in NAFTA countries A, B and C, as well as in country D, which is not a NAFTA country. Under section 11(1), the motor vehicle producer may choose that the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year. The producer may state in the choice the basis of the calculation as described in section 11(9)(a), in which case the calculation would be on the basis of all the motor vehicles produced regardless of where they are destined. Alternatively, the producer may state in the choice the basis of the calculation as described in section 11(9)(b). In this case, the producer would also need to state that the calculation is on the basis of

(a) the motor vehicles produced that are for export to NAFTA countries B and C;

(b) the motor vehicles produced that are for export to only NAFTA country B; or

(c) the motor vehicles produced that are for export to only NAFTA country C.

The calculation would be on the basis as described in the choice.

SECTION 12. AUTOMOTIVE PARTS AVERAGING

NC and VNM for automotive parts may be averaged to determine RVC of parts

(1) The regional value content of any or all goods that are of the same tariff provision listed in Schedule IV, or an automotive component assembly, an automotive component, a sub-component or a listed material, produced in the same plant, may, where the producer of those goods chooses to do so, be calculated by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the goods over the period set out in subsection (5) that is chosen by the producer with respect to any or all of those goods in any one of the categories set out in subsection (4) that is chosen by the producer; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

(2) The calculation of the regional value content made under subsection (1) shall apply with respect to each unit of the goods in the category set out in subsection (4) that is chosen by the producer and produced during the period chosen by the producer under subsection (5).

VNM for each unit in a category of goods for which averaging used

(3) The value of non-originating materials of each unit of the goods

(a) in the category set out in subsection (4) chosen by the producer, and

(b) produced during the period chosen by the producer under subsection (5),

shall be the sum of the values of non-originating materials referred to in subsection (1)(a) divided by the number of units of the goods in that category and produced during that period.

Categories of automotive parts for averaging

(4) The categories referred to in subsection (1)(a) are the following:

(a) original equipment for use in the production of light- duty vehicles;

(b) original equipment for use in the production of heavy-duty vehicles;

(c) after-market parts;

(d) any combination of goods referred to in paragraphs (a) through (c);

(e) goods that are in a category set out in any of paragraphs (a) through (d) and are sold to one or more motor vehicle producers; and

(f) goods that are in a category set out in any of paragraphs (a) through (e) and are exported to the territory of one or more of the NAFTA countries.

Periods for averaging RVC for automotive parts

(5) The period referred to in subsection (1)(a) is,

(a) with respect to goods referred to in subsection (4) (a), (b) or (d), or subsection (4) (e) or (f) where the goods in that category are in a category referred to in subsection (4) (a) or (b), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period or the fiscal year of the motor vehicle producer to whom those goods are sold; and

(b) with respect to goods referred to in subsection (4)(c), or subsection (4) (e) or (f) where the goods in that category are in a category referred to in subsection (4)(c), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, the fiscal year of that producer or the fiscal year of the motor vehicle producer to whom those goods are sold.

Choice to average may not be rescinded

(6) A choice made under subsection (1) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

(7) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(a), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for

(a) the remainder of the fiscal year of the motor vehicle producer to whom those goods are sold, where the producer chooses under subsection (9)(a) the fiscal year of that motor vehicle producer; and

(b) the remainder of the fiscal year of the producer of those goods, where the producer does not choose under subsection (9)(a) the fiscal year of the motor vehicle producer to whom the goods are sold.

(8) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(b), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of, at the choice of the producer, the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold.

(9) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods, the producer may,

(a) with respect to goods referred to in subsection (5)(a), at the end of the fiscal year of the motor vehicle producer to whom those goods are sold, choose the fiscal year of that motor vehicle producer; and

(b) with respect to goods referred to in subsection (5)(b), at the end of the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold, as the case may be, choose the producer's fiscal year or the fiscal year of that motor vehicle producer.

Applicable method for averaging VNM under different categories

(10) Where a producer chooses that the regional value content of goods be calculated in accordance with subsection (1) and the goods are in any of the categories set out in subsections (4) (d) through (f), the value of non-originating materials

(a) shall be determined in the manner set out in section 9, where any of those goods are light-duty automotive goods;

(b) shall be determined in the manner set out in section 10, where any of those goods are heavy-duty automotive goods but none of the goods are light-duty automotive goods; and

(c) shall be determined in the manner set out in section 7, where none of those goods are light-duty automotive goods or heavy-duty automotive goods.

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Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status

(11) Where the producer of a good has calculated the regional value content of the good on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen under subsection (1), the producer shall conduct an analysis, at the end of the producer's fiscal year following the end of that period, of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

SECTION 13. SPECIAL REGIONAL VALUE-CONTENT REQUIREMENTS

Changes in regional value content level for automotive goods

(1) Notwithstanding the regional value-content requirement set out in Schedule I, and except as otherwise provided in subsection (2), the regional value-content requirement for a good referred to in paragraph (a) or (b) is as follows.

(a) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 56 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 62.5 percent, in the case of

(i) a light-duty vehicle, and

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40, that is for use in a light-duty vehicle; and

(b) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 55 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 60 percent, in the case of

(i) a heavy-duty vehicle,

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40 that is for use in a heavy-duty vehicle, and

(iii) except in the case of a good referred to in paragraph (a)(ii) or provided for in any of subheadings 8482.10 through 8482.80, 8483.20 and 8483.30, a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use in a light-duty vehicle or a heavy-duty vehicle.

Regional value content level for motor vehicles produced in a new plant or in a refit plant

(2) Notwithstanding the regional value-content requirement set out in Schedule I, the regional value-content requirement for a light-duty vehicle or a heavy-duty vehicle that is produced in a plant is as follows:

(a) not less than 50 percent for five years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler, if

(i) the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries,

(ii) the plant consists of, or includes, a new building in which the motor vehicle is assembled, and

(iii) the value of machinery that was never previously used for production, and that is used in the new building or buildings for the purposes of the complete motor vehicle assembly process with respect to that motor vehicle, is at least 90 percent of the value of all machinery used for purposes of that process; and

(b) not less than 50 percent for two years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler following a refit of that plant, if the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not assembled by the motor vehicle assembler in the plant before the refit.

Value of machinery in a new plant

(3) For purposes of subsection (2)(a)(iii), the value of machinery shall be

(a) where the machinery was acquired by the producer of the motor vehicle from another person, the cost of that machinery that is recorded on the books of the producer;

(b) where the machinery was used previously by the producer of the motor vehicle in the production of another good, the cost of the machinery that is recorded on the books of the producer minus accumulated depreciation of that machinery that is recorded on those books; and

(c) where the machinery was produced by the producer of the good, the total cost incurred with respect to that machinery, calculated on the basis of the costs that are recorded on the books of the producer.

Averaging period for calculation of RVC for vehicles of new plant or refit plant

(4) For purposes of calculating the regional value content of a motor vehicle referred to in subsection (2) that is in any one of the categories set out in subsection (7) that is chosen by the producer, the producer may file with the customs administration of the NAFTA country into the territory of which vehicles in that category are to be imported a choice to calculate the regional value content of such vehicles by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer with respect to all of such motor vehicles in the category chosen over

(i) the period beginning on the day on which the first prototype of the motor vehicle is produced and ending on the last day of the producer's first fiscal year that begins on or after the beginning of the period,

(ii) a fiscal year of the producer that starts after the period referred to in subparagraph (i) and ends on or before the end of the period referred to in subsection (2)(a) or (b), or

(iii) the period beginning on the first day of the producer's fiscal year that begins before the end of the period referred to in subsection (2)(a) or (b) and ending at the end of that period; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

Information required on document filed when choosing to average; timely filing;

(5) A choice made under subsection (4) shall

(a) state the category chosen by the producer and

(i) where the category referred to in subsection (7)(a) is chosen, the model name, model line, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(ii) where the category referred to in subsection (7)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the plant location at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (8);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) state whether the choice is with respect to a motor vehicle referred to in subsection (2)(a) or (b);

(g) be dated and signed by an authorized officer of the producer; and

(h) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

No rescission or modification permitted

(6) A choice filed for the period referred to in subsection (4) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

Categories of motor vehicles for averaging

(7) The categories referred to in subsection (4) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country.

(8) For purposes of subsection (4), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (7).

Period for averaging RVC of motor vehicles of new or refit plant

(9) Where the period referred to in subsection (4) ends on a day other than the last day of the producer's fiscal year, the producer may, for purposes of section 11, make the choice referred to in that section with respect to

(a) the period beginning on the day following the end of that period and ending on the last day of that fiscal year; or

(b) the period beginning on the day following the end of that period and ending on the last day of the following full fiscal year.

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value-content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

PART VI

GENERAL PROVISIONS

SECTION 14. ACCUMULATION

Option to determine origin of good by accumulating the production of a material with production of the good in which the material is used

(1) Subject to subsections (2) and (4), for purposes of determining whether a good is an originating good, an exporter or producer of a good may choose to accumulate the production, by one or more producers in the territory of one or more of the NAFTA countries, of materials that are incorporated into that good so that the production of the materials shall be considered to have been performed by that exporter or producer.

Statement required; information as to net cost and value of non-originating materials from production of material if accumulating for regional value content requirement

(2) Where a good is subject to a regional value-content requirement and an exporter or producer of the good has a statement signed by a producer of a material that is used in the production of the good that

(a) states the net cost incurred and the value of non-originating materials used by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the net cost incurred by the producer of the material plus, where not included in the net cost incurred by the producer of the material, the costs referred to in sections 7(1)(c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of non-originating materials used by the producer of the material; or

(b) states any amount, other than an amount that includes any of the value of non-originating materials, that is part of the net cost incurred by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

Averaging of costs from accumulated production

(3) Where a good is subject to a regional value-content requirement and an exporter or producer of the good does not have a statement described in subsection (2) but has a statement signed by a producer of a material that is used in the production of the good that

(a) states the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material shall be the sum of the net costs incurred by the producer of the material with respect to that material and the identical materials or similar materials, divided by the number of units of materials with respect to which the statement is made, plus, where not included in the net costs incurred by the producer of the material, the costs referred to in sections 7(1) (c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the sum of the values of non-originating materials used by the producer of the material with respect to that material and the identical materials or similar materials divided by the number of units of materials with respect to which the statement is made; or

(b) states any amount, other than an amount that includes any of the values of non-originating materials, that is part of the sum of the net costs incurred by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

Accumulated production considered to be production of a single producer

(4) For purposes of section 7(4), where a producer of the good chooses to accumulate the production of materials under subsection (1), that production shall be considered to be the production of the producer of the good.

(5) For purposes of this section,

(a) in order to accumulate the production of a material,

(i) where the good is subject to a regional value-content requirement, the producer of the good must have a statement described in subsection (2) or (3) that is signed by the producer of the material, and

(ii) where an applicable change in tariff classification is applied to determine whether the good is an originating good, the producer of the good must have a statement signed by the producer of the material that states the tariff classification of all non-originating materials used by that producer in the production of that material and that the production of the material took place entirely in the territory of one or more of the NAFTA countries;

(b) a producer of a good who chooses to accumulate is not required to accumulate the production of all materials that are incorporated into the good; and

(c) any information set out in a statement referred to in subsection (2) or (3) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located.

Examples of accumulation of production

(6) Each of the following examples is an "Example" as referred to in section 2(4).

Example 1: section 14(1)

Producer A, located in NAFTA country A, imports unfinished bearing rings provided for in subheading 8482.99 into NAFTA country A from a non-NAFTA territory. Producer A further processes the unfinished bearing rings into finished bearing rings, which are of the same subheading. The finished bearing rings of Producer A do not satisfy an applicable change in tariff classification and therefore do not qualify as originating goods. The net cost of the finished bearing rings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.15
Value of non-originating materials	0.75
Other product costs	0.35
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the finished bearing rings, per unit	$1.45
Excluded costs: (included in period costs)	0.05
Net cost of the finished bearing rings, per unit	$1.40

Producer A sells the finished bearing rings to Producer B who is located in NAFTA country A for $1.50 each. Producer B further processes them into bearings, and intends to export the bearings to NAFTA country B. Although the bearings satisfy the applicable change in tariff classification, the bearings are subject to a regional value-content requirement.

Situation A:

Producer B does not choose to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials (value, per unit, of the bearing rings purchased from Producer A)	1.50
Other product costs	0.75
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$\begin{aligned} RVC &= \frac{NC - VNM}{NC} \times 100 \\ &= \frac{\$2.85 - \$1.50}{\$2.85} \times 100 \\ &= 47.4\% \end{aligned}$$

Therefore, the bearings are non-originating goods.

Situation B:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides a statement described in section 14(2)(a) to Producer B. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.15)	$0.60
Value of non-originating materials (value, per unit, of the unfinished bearing rings imported by Producer A)	0.75
Other product costs ($0.75 + $0.35)	1.10
Period costs: (($0.15 + $0.15), including $0.10 in excluded costs)	0.30
Other costs: ($0.05 + $0.05)	0.10
Total cost of the bearings, per unit	$2.85
Excluded costs: (included in period costs)	0.10
Net cost of the bearings, per unit	$2.75

Under the net cost method, the regional value content of the bearings is

$$\begin{aligned} RVC &= \frac{NC-VNM}{NC}\times 100 \\ &= \frac{\$2.75-\$0.75}{\$2.75}\times 100 \\ &= 72.7\% \end{aligned}$$

Therefore, the bearings are originating goods.

Situation C:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the net cost minus the value of non-originating materials used to produce the finished bearing rings ($1.40 − $0.75 = $0.65). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.65)	$1.10
Value of non-originating materials ($1.50 − $0.65)	0.85
Other product costs	0.75
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$\begin{aligned} RVC &= \frac{NC-VNM}{NC}\times 100 \\ &= \frac{\$2.85-\$0.85}{\$2.85}\times 100 \\ &= 70.2\% \end{aligned}$$

Therefore, the bearings are originating goods.

Situation D:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the value of other product costs used in the production of the finished bearing rings ($0.35). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials ($1.50 − $0.35)	1.15
Other product costs ($0.75 + $0.35)	1.10
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$\begin{aligned} RVC &= \frac{NC-VNM}{NC}\times 100 \\ &= \frac{\$2.85-\$1.15}{\$2.85}\times 100 \\ &= 59.7\% \end{aligned}$$

Therefore, the bearings are originating goods.

Example 2: section 14(1)

Producer A, located in NAFTA country A, imports non-originating cotton, carded or combed, provided for in heading 5203 for use in the production of cotton yarn provided for in heading 5205. Because the change from cotton, carded or combed, to cotton yarn is a change within the same chapter, the cotton does not satisfy the applicable change in tariff classification for heading 5205, which is a change from any other chapter, with certain exceptions. Therefore, the cotton yarn that Producer A produces from non-originating cotton is a non-originating good.

Producer A then sells the non-originating cotton yarn to Producer B, also located in NAFTA country A, who uses the cotton yarn in the production of woven fabric of cotton provided for in heading 5208. The change from non-originating cotton yarn to woven fabric of cotton is insufficient to satisfy the applicable change in tariff classification for heading 5208, which is a change from any heading outside headings 5208 through 5212, except from certain headings, under which various yarns, including cotton yarn provided for in heading 5205, are classified. Therefore, the woven fabric of cotton that Producer B produces from non-originating cotton yarn produced by Producer A is a non-originating good.

However, under section 14(1), if Producer B chooses to accumulate the production of Producer A, the production of Producer A would be considered to have been performed by Producer B. The rule for heading 5208, under which the cotton fabric is classified, does not exclude a change from heading 5203, under which carded or combed cotton is classified. Therefore, under section 15(1), the change from carded or combed cotton provided for in heading 5203 to the woven fabric of cotton provided for in heading 5208 would satisfy the applicable change of tariff classification for heading 5208. The woven fabric of cotton would be considered as an originating good.

Producer B, in order to choose to accumulate Producer A's production, must have a statement described in section 14(4)(a)(ii).

SECTION 15. INABILITY TO PROVIDE SUFFICIENT INFORMATION

Supplier of material unable to provide information; beyond control of supplier; procedure to be followed by Customs

(1) Where, during a verification of origin of a good, the person from whom a producer of the good acquired a material used in the production of that good is unable to provide the customs administration that is conducting the verification with sufficient information to substantiate that the material is an originating material or that the value of the material declared for purpose of calculating the regional value content of the good is accurate, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin or value of the material, consider, where relevant, the following:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that material that concluded that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(b) whether an independent auditor has confirmed the accuracy of

(i) any signed statement referred to in this Appendix with respect to the material,

(ii) the information that was used by the person from whom the producer acquired the material to substantiate whether the material is an originating material, or

(iii) the information submitted by the producer of the material with an application for an advance ruling where, on the basis of that information, the customs administration concluded that the material is an originating material or that the value declared for the purpose of calculating the regional value content of the good is accurate;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical materials or similar materials produced by the producer of the material and determined that

(i) the identical materials or similar materials are originating materials, or

(ii) any signed statement referred to in this Appendix with respect to those identical materials or similar materials is accurate;

(d) whether the producer of the good has exercised due diligence to ensure that any signed statement that is referred to in this Appendix with respect to the material and that was provided by the person from whom the producer acquired the material is accurate;

(e) where the customs administration has access only to partial records of the person from whom the producer acquired the material, whether the records provide sufficient evidence to substantiate that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin or value of the material from the customs administration of the NAFTA country in the territory of which the person from whom the producer acquired the material was located; and

(g) whether the producer of the good, the person from whom the producer acquired the material or a representative of that person or producer agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the material.

"Reasons beyond control" of supplier

(2) For purposes of subsection (1), "reasons beyond the control" of the person from whom the producer of the good acquired the material includes

(a) the bankruptcy of the person from whom the producer acquired the material or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the material is an originating material or the value of the material declared for the purpose of calculating the regional value content of the good;
(b) any other reason that results in partial or complete loss of records of that producer that the producer could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

Exporter or producer of good unable to provide information; reasons beyond control of exporter or producer; procedure to be followed by Customs

(3) Where, during a verification of origin of a good, the exporter or producer of the good is unable to provide the customs administration conducting the verification with sufficient information to substantiate that the good is an originating good, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin of the good, consider, where relevant, the following:
(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that good that concluded that the good is an originating good;
(b) whether an independent auditor has confirmed the accuracy of an origin statement with respect to the good;
(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical goods or similar goods produced by the producer of the good and determined that the identical goods or similar goods are originating goods;
(d) whether the exporter or producer of the good has exercised due diligence to ensure that the information provided to substantiate that the good is an originating good is sufficient; and
(e) where the customs administration has access only to partial records of the exporter or producer of the good, whether the records provide sufficient evidence to substantiate that the good is an originating good;
(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin of the good from the customs administration of the NAFTA country in the territory of which the exporter or producer of the good was located; and
(g) whether the exporter or producer of the good or a representative of that person agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the good.

"Reasons beyond control"

(4) For purposes of subsection (3), "reasons beyond the control" of the exporter or producer of the good includes
(a) the bankruptcy of the exporter or producer or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the good is an originating good;
(b) any other reason that results in partial or complete loss of records of that exporter or producer that that person could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

SECTION 16. TRANSSHIPMENT

Effect of subsequent processing outside the territory of a NAFTA country; loss of originating good status

(1) A good is not an originating good by reason of having undergone production that occurs entirely in the territory of one or more of the NAFTA countries that would enable the good to qualify as an originating good if subsequent to that production
(a) the good is withdrawn from customs control outside the territories of the NAFTA countries; or
(b) the good undergoes further production or any other operation outside the territories of the NAFTA countries, other than unloading, reloading or any other operation necessary to preserve the good in good condition, such as inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulphur dioxide or other aqueous solutions, replacing damaged packing materials and containers and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a NAFTA country.

Transshipped good considered entirely non-originating

(2) A good that is a non-originating good by application of subsection (1) is considered to be entirely non-originating for purposes of this Appendix.

Exceptions for certain goods

(3) Subsection (1) does not apply with respect to a good provided for in any of subheadings 8541.10 through 8541.60 and 8542.11 through 8542.80 where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to a subheading outside subheadings 8541.10 through 8542.90.

SECTION 17. NON-QUALIFYING OPERATIONS

Mere dilution; production or pricing practice to circumvent the provisions of this Appendix

17. A good is not an originating good merely by reason of
(a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or
(b) any production or pricing practice with respect to which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Appendix.

SCHEDULE I

Schedule I shall be the text of Annex 401 to the Agreement as implemented in General Note 12 of the HTSUS.

SCHEDULE II
VALUE OF GOODS

SECTION 1. Definitions.

For purposes of this Schedule, unless otherwise stated:
"buyer" refers to a person who purchases a good from the producer;
"buying commissions" means fees paid by a buyer to that buyer's agent for the agent's services in representing the buyer in the purchase of a good;
"producer" refers to the producer of the good being valued.

SECTION 2.

For purposes of Article 402(2) of the Agreement, as implemented by section 6(2) of this Appendix, the transaction value of a good shall be the price actually paid or payable for the good, determined in accordance with section 3 and adjusted in accordance with section 4.

SECTION 3.

(1) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the producer. The payment need not necessarily take the form of a transfer of money; it may be made by letters of credit or negotiable instruments. The payment may be made directly or indirectly to the producer. For an illustration of this, the settlement by the buyer, whether in whole or in part, of a debt owed by the producer is an indirect payment.
(2) Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in section 4, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the producer. For an illustration of this, the buyer, by agreement with the producer, undertakes activities relating to the marketing of the good. The costs of such activities shall not be added to the price actually paid or payable.
(3) The transaction value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable:
(a) charges for construction, erection, assembly, maintenance or technical assistance related to the good undertaken after the good has been sold to the buyer; or
(b) duties and taxes paid in the country in which the buyer is located with respect to the good.
(4) The flow of dividends or other payments from the buyer to the producer that do not relate to the purchase of the good are not part of the transaction value.

SECTION 4.

(1) In determining the transaction value of a good, the following shall be added to the price actually paid or payable:
(a) to the extent that they are incurred by the buyer, or by a related person on behalf of the buyer, with respect to the good being valued and are not included in the price actually paid or payable
(i) commissions and brokerage fees, except buying commissions,
(ii) the costs of transporting the good to the producer's point of direct shipment and the costs of loading, unloading, handling and insurance that are associated with that transportation, and
(iii) where the packaging materials and containers in which the good is packaged for retail sale are classified with the good under the Harmonized System, the value of the packaging materials and containers;
(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the producer by the buyer, free of charge or at reduced cost for use in connection with the production and sale of the good, to the extent that the value is not included in the price actually paid or payable:
(i) a material, other than an indirect material, used in the production of the good,
(ii) tools, dies, molds and similar indirect materials used in the production of the good,
(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition "indirect material" set out in Article 415 of the Agreement, as implemented by section 2(1) of this Appendix, used in the production of the good, and
(iv) engineering, development, artwork, design work, and plans and sketches necessary for the production of the good, regardless of where performed;
(c) the royalties related to the good, other than charges with respect to the right to reproduce the good in the territory of one or more of the NAFTA countries, that the buyer must pay directly or indirectly as a condition of sale of the good, to the extent that such royalties are not included in the price actually paid or payable; and
(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the good that accrues directly or indirectly to the producer.
(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.
(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2.
(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.
(5) The amounts to be added under subsections (1)(a) (i) and (ii) shall be
(a) those amounts that are recorded on the books of the buyer, or
(b) where those amounts are costs incurred by a related person on behalf of the buyer and are not recorded on the books of the buyer, those amounts that are recorded on the books of that related person.
(6) The value of the packaging materials and containers referred to in subsection (1)(a)(iii) and the value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are imported from outside the territory of the NAFTA country in which the producer is located, the customs value of the packaging materials and containers or the elements,

(b) where the buyer, or a related person on behalf of the buyer, purchases the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located, the price actually paid or payable for the packaging materials and containers or the elements,

(c) where the buyer, or a related person on behalf of the buyer, acquires the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located other than through a purchase, the value of the consideration related to the acquisition of the packaging materials and containers or the elements, based on the cost of the consideration that is recorded on the books of the buyer or the related person, or

(d) where the packaging materials and containers or the elements are produced by the buyer, or by a related person, in the territory of the NAFTA country in which the producer is located, the total cost of the packaging materials and containers or the elements, determined in accordance with subsection (7),

and shall include the following costs that are recorded on the books of the buyer or the related person supplying the packaging materials and containers or the elements on behalf of the buyer, to the extent that such costs are not included under paragraphs (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the packaging materials and containers or the elements to the location of the producer,

(f) duties and taxes paid or payable with respect to the packaging materials and containers or the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the packaging materials and containers or the elements, and

(h) the cost of waste and spoilage resulting from the use of the packaging materials and containers or the elements in the production of the good, less the value of renewable scrap or by-product.

(7) For purposes of subsection (6)(d), the total cost of the packaging materials and containers referred to in subsection (1)(a)(iii) or the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are produced by the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by the buyer, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the buyer that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII; and

(b) where the packaging materials and containers or the elements are produced by a person who is related to the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the buyer, or

(b) where such elements are provided by another person on behalf of the buyer and the cost is not recorded on the books of the buyer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the buyer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the buyer or a person related to the buyer, the value of the elements shall be the cost of the lease as recorded on the books of the buyer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the good the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the good in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a buyer provides the producer with a mold to be used in the production of the good and contracts with the producer to buy 10,000 units of that good. By the time the first shipment of 1,000 units arrives, the producer has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of a good only where that single shipment comprises all of the units of the good acquired by the buyer under the contract or commitment for that number of units of the good between the producer and the buyer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the buyer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the buyer or the producer.

SCHEDULE III

UNACCEPTABLE TRANSACTION VALUE

SECTION 1. Definitions.

For purposes of this Schedule, unless otherwise stated

"buyer" refers to a person who purchases a good from the producer;

"customs administration" refers to the customs administration of the NAFTA country into whose territory the good being valued is imported;

"producer" refers to the producer of the good being valued.

SECTION 2.

(1) There is no transaction value for a good where the good is not the subject of a sale.

(2) The transaction value of a good is unacceptable where

(a) there are restrictions on the disposition or use of the good by the buyer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the buyer is located,

(ii) limit the geographical area in which the good may be resold, or

(iii) do not substantially affect the value of the good;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the good;

(c) part of the proceeds of any subsequent resale, disposal or use of the good by the buyer will accrue directly or indirectly to the producer, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 4(1)(d) of Schedule II; or

(d) except as provided in section 3, the producer and the buyer are related persons and the relationship between them influenced the price actually paid or payable for the good.

(3) The conditions or considerations referred to in subsection (2)(b) include the following circumstances:

(a) the producer establishes the price actually paid or payable for the good on condition that the buyer will also buy other goods in specified quantities;

(b) the price actually paid or payable for the good is dependent on the price or prices at which the buyer sells other goods to the producer of the good; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the good, such as where the good is a semi-finished good that has been provided by the producer to the buyer on condition that the producer will receive a specified quantity of the finished good from the buyer.

(4) For purposes of subsection (2)(b), conditions or considerations relating to the production or marketing of the good shall not render the transaction value unacceptable, such as where the buyer undertakes on the buyer's own account, even though by agreement with the producer, activities relating to the marketing of the good.

(5) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 4(1) of Schedule II, the transaction value cannot be determined under the provisions of section 2 of that Schedule. For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased good and partially on other factors that have nothing to do with that good, such as when the purchased good is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the producer and the buyer, it would be inappropriate to add the royalty and the transaction value of the good could not be determined. However, if the amount of the royalty is based only on the purchased good and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SECTION 3.

(1) In determining whether the transaction value is unacceptable under section 2(2)(d), the fact that the producer and the buyer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the producer and the buyer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the [illegible]ustom[illegible]ministration. If that producer so requests, the customs administration shall communicate in writing the groun[illegible] on [illegible] it considers that the relationship between the producer and the buyer influenced the price actually paid or pay[illegible]

(2) Subsection (1) provides that, where the producer and the buyer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the producer and the buyer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the producer and the buyer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the producer and the buyer, or it may already have detailed information concerning the relationship between the producer and the buyer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the producer and the buyer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the producer and the buyer organize their commercial relations and the way in which the price actually paid or payable for the good being valued was arrived at, in order to determine whether the relationship between the producer and the buyer influenced that price actually paid or payable. Where it can be shown that the producer and the buyer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the good had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the producer settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the buyer and the producer. As another illustration, where it is shown that the price actually paid or payable for the good is adequate to ensure recovery of the total cost of producing the good plus a profit that is representative of the producer's overall profit realized over a representative period of time, such as on an annual basis, in sales of goods of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the buyer.

(4) In a sale between a producer and a buyer who are related persons, the transaction value shall be accepted and determined in accordance with section 2 of Schedule II wherever the producer demonstrates that the transaction value of the good in that sale closely approximates a test value referred to in subsection (5).

(5) The value to be used as a test value shall be the transaction value of identical goods or similar goods sold at or about the same time as the good being valued is sold to an unrelated buyer who is located in the territory of the NAFTA country in which the buyer is located.

(6) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 4(1)(b) of Schedule II and the costs incurred by the producer in sales to unrelated buyers that are not incurred by the producer in sales to a related person.

(7) The application of the test value referred to in subsection (4) shall be used at the initiative of the producer and shall be used only for comparison purposes to determine whether the transaction value of the good is acceptable. The test value shall not be used as the transaction value of that good.

(8) Subsection (4) provides an opportunity for the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration, and is therefore acceptable under subsections (1) and (4). Where the application of a test value under subsection (4) demonstrates that the transaction value of the good being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the producer and the buyer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates a test value referred to in subsection (4), the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(9) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical goods or similar goods closely approximates the transaction value of the good being valued. These factors include the nature of the good, the nature of the industry itself, the season in which the good is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of good could be unacceptable, while a large difference in a case involving another type of good might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

SCHEDULE IV
LIST OF TARIFF PROVISIONS FOR THE PURPOSES OF SECTION 9 OF THE APPENDIX

4009
4010.10
4011
4016.93.10
4016.99.30 and 4016.99.55
7007.11 and 7007.21
7009.10
8301.20
8407.31
8407.32

8407.33
8407.34.05, 8407.34.15 and 8407.34.25
8407.34.35, 8407.34.45 and 8407.34.55
8408.20
8409
8413.30
8414.59.30
8414.80.05
8415.81 through 8415.83
8421.39.40
8481.20, 8481.30 and 8481.80
8482.10 through 8482.80
8483.10 through 8483.40
8483.50
8501.10
8501.20
8501.31
8501.32.45
8507.20.40, 8507.30.40, 8507.40.40 and 8507.80.40
8511.30
8511.40
8511.50
8512.20
8512.40
8519.91
8527.21
8527.29
8536.50
8536.90
8537.10.30
8539.10
8539.21
8544.30
8706
8707
8708.10.30
8708.21
8708.29.20
8708.29.10
8708.29.15
8708.39
8708.40
8708.50
8708.60
8708.70.05, 8708.70.25 and 8708.70.45
8708.80
8708.91
8708.92
8708.93.15 and 8708.93.60
8708.94
8708.99.03, 8708.99.27 and 8708.99.55
8708.99.06, 8708.99.31 and 8708.99.58
8708.99.09, 8708.99.34 and 8708.99.61
8708.99.12, 8708.99.37 and 8708.99.64
8708.99.15, 8708.99.40 and 8708.99.67
8708.99.18, 8708.99.43 and 8708.99.70
8708.99.21, 8708.99.46 and 8708.99.73
8708.99.24, 8708.99.49 and 8708.99.80
9031.80
9032.89
9401.20

SCHEDULE V

LIST OF AUTOMOTIVE COMPONENTS AND MATERIALS FOR THE PURPOSES OF SECTION 10 OF THE APPENDIX

Item	Column I automotive components	Column II listed materials
1.	Engines provided for in heading 8407 or 8408	Cast blocks, cast heads, fuel nozzles, fuel injector pumps, glow plugs, turbochargers, superchargers, electronic engine controls, intake manifolds, exhaust manifolds, intake valves, exhaust valves, crankshafts, camshafts, alternators, starters, air cleaner assemblies, pistons, connecting rods and assemblies made therefrom, rotor assemblies for rotary engines, flywheels (for manual transmissions), flexplates (for automatic transmissions), oil pans, oil pumps, pressure regulators, water pumps, crankshaft gears, camshaft gears, radiator assemblies, charge-air coolers.
2.	Gear boxes (transmissions) provided for in subheading 8708.40.	(a) For manual transmissions: transmission cases and clutch housings; clutches; internal shifting mechanisms; gear sets, synchronizers and shafts; and (b) For torque convertor type transmissions: transmission cases and convertor housings; torque convertor assemblies; gear sets and clutches; electronic transmission controls.

SCHEDULE VI
REGIONAL VALUE-CONTENT CALCULATION FOR CAMI

SECTION 1. Definitions.

In this Schedule,

"closed" means, with respect to a plant, a closure

(a) for purposes of re-tooling for a change in model line, or

(b) as a result of any event or circumstance (other than the imposition of antidumping duties or countervailing duties, or an interruption of operations resulting from a labor strike, lock-out, labor dispute, picketing or boycott of or by employees of CAMI Automotive, Inc. or General Motors of Canada Limited) that CAMI Automotive, Inc. or General Motors of Canada Limited could not reasonably have been expected to avert by corrective action or by exercise of due care and diligence, including a shortage of materials, failure of utilities, or inability to obtain or a delay in obtaining raw materials, parts, fuel or utilities;

"GM" means General Motors of Canada Limited, General Motors Corporation, General Motors de Mexico, S.A. de C.V., and any subsidiary directly or indirectly owned by any of them, or by any combination thereof;

"producer" means CAMI Automotive, Inc.

SECTION 2.

For purposes of section 11 of this Appendix, for purposes of determining the regional value content, in a fiscal year, of a motor vehicle of a class of motor vehicles or a model line produced by the producer in the territory of Canada and imported into the territory of the United States, the producer may choose to calculate the regional value content by

(a) calculating

(i) the sum of

(A) the net cost incurred by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 3 that is chosen by the producer, and

(B) the net cost incurred by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(ii) the sum of

(A) the value, determined in accordance with section 9 of this Appendix for light-duty vehicles and section 10 of this Appendix for heavy-duty vehicles, of the non-originating materials that are used by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 2.1 that is chosen by the producer, and

(B) the value, determined in accordance with section 9 of this Appendix for light-duty vehicles and section 10 of this Appendix for heavy-duty vehicles, of the non-originating materials that are used by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(b) using the sums referred to in paragraphs (a)(i) and (ii) as the net cost and the value of non-originating materials, respectively, in the calculation referred to in section 6(3) of this Appendix,

provided that

(c) at the beginning of the producer's fiscal year, General Motors of Canada Limited owns 50 percent or more of the voting common stock of the producer, and

(d) GM acquires 75 percent or more by unit of quantity of the class of motor vehicles or model line, as the case may be, that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

SECTION 3.

The categories referred to in clauses 2(a)(i)(A) and (ii)(A) are the following:

(a) the class of motor vehicles that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries; and

(b) the model line that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

SECTION 4.

Where GM does not satisfy the requirement set out in section 2(d), the producer may choose that the regional value content be calculated in accordance with section 2 only for those motor vehicles that are acquired by GM for distribution under the GEO marque or another GM marque.

SECTION 5.

(1) The producer may choose that the calculation referred to in section 2 be made over a period of two fiscal years where

(a) any plant operated by the producer or by General Motors of Canada Limited is closed for more than two consecutive months; and

(b) the motor vehicles of a category referred to in section 3, with respect to which the producer chooses that the regional value content be calculated in accordance with section 2, are produced in that plant.

(2) Subject to subsection (3), the period of two fiscal years referred to in subsection (1) corresponds to the fiscal year in which the plant is closed and, at the choice of the producer, the preceding or the subsequent fiscal year.

(3) Where the plant is closed for a period that spans two fiscal years, the calculation referred to in section 2 may be made only over those two fiscal years.

(4) Where the producer has chosen that the regional value content be calculated over two fiscal years under this section, the choice referred to in section 11(6) of this Appendix shall be filed not later than 10 days after the end of the period during which the plant is closed, or at such later time as the customs administration may accept.

SECTION 6.

For purposes of this Schedule, a motor vehicle producer shall be deemed to be GM where, as a result of an amalgamation, reorganization, division or similar transaction, that motor vehicle producer

(a) acquires all or substantially all of the assets used by GM, and

(b) directly or indirectly controls, or is controlled by, GM, or both that motor vehicle producer and GM are controlled by the same person.

SCHEDULE VII
REASONABLE ALLOCATION OF COSTS

SECTION 1. Definitions.

For purposes of this Schedule,

"costs" means any costs that are included in total cost and that need to be allocated pursuant to sections 5(9), 6(11) and 7(6) and sections 10(1)(a)(i) and (ii) of these Regulations, section 4(7) of Schedule II and sections 5(7) and 10(2) of Schedule VIII;

"discontinued operations", in the case of a producer located in a NAFTA country, has the meaning set out in that NAFTA country's Generally Accepted Accounting Principles;

"indirect overhead" means period costs and other costs;

"internal management purpose" means any purpose relating to tax reporting, financial reporting, financial planning, decision-making, pricing, cost recovery, cost control management or performance measurement; and

"overhead" means costs, other than direct material costs and direct labor costs.

SECTION 2. Interpretation.

(1) In this Schedule, reference to "producer" shall, for purposes of section 4(7) of Schedule II, be read as a reference to "buyer".

(2) In this Schedule, reference to "good" shall,

(a) for purposes of section 6(14) of this Appendix, be read as a reference to "identical goods or similar goods, or any combination thereof";

(b) for purposes of section 7(6) of this Appendix, be read as a reference to "intermediate material";

(c) for purposes of section 11 of this Appendix, be read as a reference to "category of vehicles that is chosen pursuant to section 11(1) of this Appendix";

(d) for purposes of section 12 of this Appendix, be read as a reference to "category of goods chosen pursuant to section 12(1) of this Appendix";

(e) for purposes of section 13(4) of this Appendix, be read as a reference to "category of vehicles chosen pursuant to section 13(4) of this Appendix";

(f) for purposes of section 4(7) of Schedule II, be read as a reference to "packaging materials and containers or the elements"; and

(g) for purposes of section 5(7) of Schedule VIII, be read as a reference to "elements".

Methods to Reasonably Allocate Costs

SECTION 3.

(1) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct material costs, or part thereof, and that method reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

(2) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct labor costs, or part thereof, and that method reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

(3) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good overhead, or part thereof, and that method is based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

SECTION 4.

Where costs are not reasonably allocated to a good under section 3, those costs are reasonably allocated to the good if they are allocated,

(a) with respect to direct material costs, on the basis of any method that reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear;

(b) with respect to direct labor costs, on the basis of any method that reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear; and

(c) with respect to overhead, on the basis of any of the following methods:

(i) the method set out in Addendum A, Addendum B or Addendum C,

(ii) a method based on a combination of the methods set out in Addenda A and B or Addenda A and C, and

(iii) a cost allocation method based on the criterion of benefit, cause or ability to bear.

SECTION 5.

Any cost allocation method referred to in section 3 or 4 that is used by a producer for the purposes of this Appendix shall be used throughout the producer's fiscal year.

Costs Not Reasonably Allocated

SECTION 6.

The allocation to a good of any of the following is considered not to be reasonably allocated to the good:

(a) costs of a service provided by a producer of a good to another person where the service is not related to the good;

(b) gains or losses resulting from the disposition of a discontinued operation;

(c) cumulative effects of accounting changes reported in accordance with a specific requirement of the applicable Generally Accepted Accounting Principles; and".

(d) gains or losses resulting from the sale of a capital asset of the producer.

SECTION 7.

Any costs allocated under section 3 on the basis of a cost allocation method that is used for an internal management purpose that is solely for the purpose of qualifying a good as an originating good are considered not to be reasonably allocated.

ADDENDUM A
COST RATIO METHOD

Calculation of Cost Ratio

For the overhead to be allocated, the producer may choose one or more allocation bases that reflect a relationship between the overhead and the good based on the criterion of benefit, cause or ability to bear.

With respect to each allocation base that is chosen by the producer for allocating overhead, a cost ratio is calculated for each good produced by the producer in accordance with the following formula:

$$CR = \frac{AB}{TAB}$$

where

CR is the cost ratio with respect to the good;

AB is the allocation base for the good; and

TAB is the total allocation base for all the goods produced by the producer.

Allocation to a Good of Costs Included in Overhead

The costs with respect to which an allocation base is chosen are allocated to a good in accordance with the following formula:

$$CAG = CA \times CR$$

where

CAG is the costs allocated to the good;

CA is the costs to be allocated; and

CR is the cost ratio with respect to the good.

Excluded Costs

Under section 6(11)(b) of this Appendix, where excluded costs are included in costs to be allocated to a good, the cost ratio used to allocate that cost to the good is used to determine the amount of excluded costs to be subtracted from the costs allocated to the good.

Allocation Bases for Costs

The following is a non-exhaustive list of allocation bases that may be used by the producer to calculate cost ratios:

Direct Labor Hours
Direct Labor Costs
Units Produced
Machine-hours
Sales Dollars or Pesos
Floor Space

"Examples"

The following examples illustrate the application of the cost ratio method to costs included in overhead.

Example 1: Direct Labor Hours

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor hours spent to produce Good A and Good B. A total of 8,000 direct labor hours have been spent to produce Good A and Good B: 5,000 hours with respect to Good A and 3,000 hours with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:

Good A: 5,000 hours/8,000 hours = .625
Good B: 3,000 hours/8,000 hours = .375

Allocation of overhead to Good A and Good B:

Good A: $6,000,000 × .625 = $3,750,000
Good B: $6,000,000 × .375 = $2,250,000

Example 2: Direct Labor Costs

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor costs incurred in the production of Good A and Good B. The total direct labor costs incurred in the production of Good A and Good B is $60,000: $50,000 with respect to Good A and $10,000 with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:

Good A: $50,000/$60,000 = .833
Good B: $10,000/$60,000 = .167

Allocation of Overhead to Good A and Good B:

Good A: $6,000,000 × .833 = $4,998,000
Good B: $6,000,000 × .167 = $1,002,000

Example 3: Units Produced

A producer of Good A and Good B may allocate overhead on the basis of units produced. The total units of Good A and Good B produced is 150,000: 100,000 units of Good A and 50,000 units of Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:

Good A: 100,000 units/150,000 units = .667
Good B: 50,000 units/150,000 units = .333

Allocation of Overhead to Good A and Good B:

Good A: $6,000,000 x .667 = $4,002,000
Good B: $6,000,000 x .333 = $1,998,000

Example 4: Machine-hours

A producer who produces Good A and Good B may allocate machine-related overhead on the basis of machine-hours utilized in the production of Good A and Good B. The total machine-hours utilized for the production of Good A and Good B is 3,000 hours: 1,200 hours with respect to Good A and 1,800 hours with respect to Good B. The amount of machine-related overhead to be allocated is $6,000,000.

Calculation of the Ratios:

Good A: 1,200 machine-hours/3,000 machine-hours = .40
Good B: 1,800 machine-hours/3,000 machine-hours = .60

Allocation of Machine-Related Overhead to Good A and Good B:

Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

Example 5: Sales Dollars or Pesos

A producer who produces Good A and Good B may allocate overhead on the basis of sales dollars. The producer sold 2,000 units of Good A at $4,000 and 200 units of Good B at $3,000. The amount of overhead to be allocated is $6,000,000.

Total Sales Dollars for Good A and Good B:

Good A: $4,000 × 2,000 = $8,000,000
Good B: $3,000 × 200 = $600,000
Total Sales Dollars: $8,000,000 + $600,000 = $8,600,000

Calculation of the Ratios:

Good A: $8,000,000/$8,600,000 = .93
Good B: $600,000/$8,600,000 = .07
Allocation of Overhead to Good A and Good B:
Good A: $6,000,000 × .93 = $5,580,000
Good B: $6,000,000 × .07 = $420,000

Example 6: Floor Space

A producer who produces Good A and Good B may allocate overhead relating to utilities (heat, water and electricity) on the basis of floor space used in the production and storage of Good A and Good B. The total floor space used in the production and storage of Good A and Good B is 100,000 square feet: 40,000 square feet with respect to Good A and 60,000 square feet with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 40,000 square feet/100,000 square feet = .40
Good B: 60,000 square feet/100,000 square feet = .60
Allocation of Overhead (Utilities) to Good A and Good B:
Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

ADDENDUM B
DIRECT LABOR AND DIRECT MATERIAL RATIO METHOD

Calculation of Direct Labor and Direct Material Ratio

For each good produced by the producer, a direct labor and direct material ratio is calculated in accordance with the following formula:

$$\mathrm{DLDMR} = \frac{\mathrm{DLC} + \mathrm{DMC}}{\mathrm{TDLC} + \mathrm{TDMC}}$$

where
DLDMR is the direct labor and direct material ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
TDLC is the total direct labor costs of all goods produced by the producer; and
TDMC is the total direct material costs of all goods produced by the producer.

Allocation of Overhead to a Good

Overhead is allocated to a good in accordance with the following formula:

$$\mathrm{OAG} = \mathrm{O} \times \mathrm{DLDMR}$$

where
OAG is the overhead allocated to the good;
O is the overhead to be allocated; and
DLDMR is the direct labor and direct material ratio for the good.

Excluded Costs

Under section 6(11)(b) of this Appendix, where excluded costs are included in overhead to be allocated to a good, the direct labor and direct material ratio used to allocate overhead to the good is used to determine the amount of excluded costs to be subtracted from the overhead allocated to the good.

"Examples"

Example 1:

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this Appendix.

A producer produces Good A and Good B. Overhead (O) minus excluded costs (EC) is $30 and the other relevant costs are set out in the following table:

	Good A	Good B	Total
Direct labor costs (DLC)	$5	$5	$10
Direct material costs (DMC)	10	5	15
Totals	$15	$10	$25

Overhead Allocated to Good A
OAG (Good A) = O ($30) × DLDMR ($15/$25)
OAG (Good A) = $18.00
Overhead Allocated to Good B
OAG (Good B) = O ($30) × DLDMR ($10/$25)
OAG (Good B) = $12.00

Example 2:

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(b) of this Appendix and where excluded costs are included in overhead.

A producer produces Good A and Good B. Overhead (O) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table of Example 1.

Overhead Allocated to Good A

OAG (Good A) = [O ($50) × DLDMR ($15/$25)] − [EC ($20) × DLDMR ($15/$25)]
OAG (Good A) = $18.00
Overhead Allocated to Good B
OAG (Good B) = [O ($50) × DLDMR ($10/$25)] − [EC ($20) × DLDMR ($10/$25)]
OAG (Good B) = $12.00

ADDENDUM C
DIRECT COST RATIO METHOD

Direct Overhead

Direct overhead is allocated to a good on the basis of a method based on the criterion of benefit, cause or ability to bear.

Indirect Overhead

Indirect overhead is allocated on the basis of a direct cost ratio.

Calculation of Direct Cost Ratio

For each good produced by the producer, a direct cost ratio is calculated in accordance with the following formula:

$$\mathrm{DCR} = \frac{\mathrm{DLC} + \mathrm{DMC} + \mathrm{DO}}{\mathrm{TDLC} + \mathrm{TDMC} + \mathrm{TDO}}$$

where
DCR is the direct cost ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
DO is the direct overhead of the good;
TDLC is the total direct labor costs of all goods produced by the producer;
TDMC is the total direct material costs of all goods produced by the producer; and
TDO is the total direct overhead of all goods produced by the producer;

Allocation of Indirect Overhead to a Good

Indirect overhead is allocated to a good in accordance with the following formula:

$$\mathrm{IOAG} = \mathrm{IO} \times \mathrm{DCR}$$

where
IOAG is the indirect overhead allocated to the good;
IO is the indirect overhead of all goods produced by the producer; and
DCR is the direct cost ratio of the good.

Excluded Costs

Under section 6(11)(b) of this Appendix, where excluded costs are included in
(a) direct overhead to be allocated to a good, those excluded costs are subtracted from the direct overhead allocated to the good; and
(b) indirect overhead to be allocated to a good, the direct cost ratio used to allocate indirect overhead to the good is used to determine the amount of excluded costs to be subtracted from the indirect overhead allocated to the good.

"Examples"

Example 1:

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this Appendix.

A producer produces Good A and Good B. Indirect overhead (IO) minus excluded costs (EC) is $30. The other relevant costs are set out in the following table:

	Good A	Good B	Total
Direct labor costs (DLC)	$5	$5	$10
Direct material costs (DMC)	10	5	15
Direct overhead (DO)	8	2	10
Totals	$23	$12	$35

Indirect Overhead Allocated to Good A
IOAG (Good A) = IO ($30) × DCR ($23/$35)
IOAG (Good A) = $19.71
Indirect Overhead Allocated to Good B
IOAG (Good B) = IO ($30) × DCR ($12/$35)
IOAG (Good B) = $10.29

Example 2:

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer has chosen to calculate the net cost of the good in accordance with section 6(11)(b) of this Appendix and where excluded costs are included in indirect overhead.

A producer produces Good A and Good B. The indirect overhead (IO) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table to Example 1.

Indirect Overhead Allocated to Good A
IOAG (Good A) = [IO ($50) × DCR ($23/$35)] − [EC ($20) × DCR ($23/$35)]

OL
60
SS
1
7
2
SE
6
995
UMI

IOAG (Good A) = $19.72

Indirect Overhead Allocated to Good B

IOAG (Good B) = [IO ($50) × DCR ($12/$35)] − [EC ($20) × DCR ($12/$35)]

IOAG (Good B) = $10.28

SCHEDULE VIII
VALUE OF MATERIALS

SECTION 1. Definitions.

(1) For purposes of this Schedule, unless otherwise stated,

"buying commissions" means fees paid by a producer to that producer's agent for the agent's services in representing the producer in the purchase of a material;

"customs administration" refers to the customs administration of the NAFTA country into whose territory the good, in the production of which the material being valued is used, is imported;

"materials of the same class or kind" means, with respect to materials being valued, materials that are within a group or range of materials that

- (a) is produced by a particular industry or industry sector, and
- (b) includes identical materials or similar materials;

"producer" refers to

- (a) in the case of section 10(1)(b)(i) of these Regulations, the producer of the listed material, and
- (b) in any other case, the producer who used the material in the production of a good that is subject to a regional value-content requirement;

"seller" refers to a person who sells the material being valued to the producer.

Interpretation

(2) Where it is to be determined under section 9(3) of these Regulations whether the customs value of a material was determined in a manner consistent with this Schedule for purposes of section 9(2) (c) or (d) of these Regulations, a reference in this Schedule to "producer" shall be read as a reference to "person other than the producer who imports the traced material from outside the territories of the NAFTA countries.

SECTION 2.

(1) Except as provided under subsections (2) and (3), the transaction value of a material under Article 402(9)(a) of the Agreement, as implemented by section 7(1)(b) and sections 9(5) and 10(2) of this Appendix, shall be the price actually paid or payable for the material determined in accordance with section 4 and adjusted in accordance with section 5.

(2) There is no transaction value for a material where the material is not the subject of a sale.

(3) The transaction value of a material is unacceptable where

- (a) there are restrictions on the disposition or use of the material by the producer, other than restrictions that
  - (i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the producer of the good or the seller of the material is located,
  - (ii) limit the geographical area in which the material may be used, or
  - (iii) do not substantially affect the value of the material;
- (b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the material;
- (c) part of the proceeds of any subsequent disposal or use of the material by the producer will accrue directly or indirectly to the seller, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 5(1)(d); and
- (d) except as provided in section 3, the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material.

(4) The conditions or considerations referred to in subsection (3)(b) include the following circumstances:

- (a) the seller establishes the price actually paid or payable for the material on condition that the producer will also buy other materials or goods in specified quantities;
- (b) the price actually paid or payable for the material is dependent on the price or prices at which the producer sells other materials or goods to the seller of the material; and
- (c) the price actually paid or payable is established on the basis of a form of payment extraneous to the material, such as where the material is a semi-finished material that has been provided by the seller to the producer on condition that the seller will receive a specified quantity of the finished material from the producer.

(5) For purposes of subsection (3)(b), conditions or considerations relating to the use of the material shall not render the transaction value unacceptable, such as where the producer undertakes on the producer's own account, even though by agreement with the seller, activities relating to the warranty of the material used in the production of a good.

(6) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 5(1), the transaction value cannot be determined under the provisions of section 2(1). For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that is produced by using a material that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased material and partially on other factors that have nothing to do with that material, such as when the purchased material is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the seller and the producer, it would be inappropriate to add the royalty and the transaction value of the material could not be determined. However, if the amount of the royalty is based only on the purchased material and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SECTION 3.

(1) In determining whether the transaction value is unacceptable under section 2(3)(d), the fact that the seller and the producer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the seller and the producer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the seller and the producer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the seller and the producer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the seller and the producer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the seller and the producer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the seller and the producer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the seller and the producer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the seller and the producer, or it may already have detailed information concerning the relationship between the seller and the producer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the seller and the producer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the seller and the producer organize their commercial relations and the way in which the price actually paid or payable by that producer for the material being valued was arrived at, in order to determine whether the relationship between the seller and the producer influenced that price actually paid or payable. Where it can be shown that the seller and the producer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the material had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the seller settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the seller. For another illustration of this, where it is shown that the price actually paid or payable for the material is adequate to ensure recovery of the total cost of producing the material plus a profit that is representative of the seller's overall profit realized over a representative period of time, such as on an annual basis, in sales of materials of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the seller and the producer.

(4) In a sale between a seller and a producer who are related persons, the transaction value shall be accepted and determined in accordance with section 2(1), wherever the seller or the producer demonstrates that the transaction value of the material in that sale closely approximates one of the following test values that occurs at or about the same time as the sale and is chosen by the seller or the producer:

- (a) the transaction value in sales to unrelated buyers of identical materials or similar materials, as determined in accordance with section 2(1);
- (b) the value of identical materials or similar materials, as determined in accordance with section 9; or
- (c) the value of identical materials or similar materials, as determined in accordance with section 10.

(5) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 5(1)(b) and the costs incurred by the seller in sales to unrelated buyers that are not incurred by the seller in sales by the seller to a related person.

(6) The application of a test value referred to in subsection (4) shall be used at the initiative of the seller, or at the initiative of the producer with the consent of the seller, and shall be used only for comparison purposes to determine whether the transaction value of the material is acceptable. The test value shall not be used as the transaction value of that material.

(7) Subsection (4) provides an opportunity for the seller or the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located, and is therefore acceptable under subsection (1). Where the application of a test value under subsection (4) demonstrates that the transaction value of the material being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the seller and the producer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates one of the test values determined under subsection (4), the seller or the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(8) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical materials or similar materials closely approximates the transaction value of the material being valued. These factors include the nature of the material, the nature of the industry itself, the season in which the material is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of material could be unacceptable, while a large difference in a case involving another type of material might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

SECTION 4.

(1) The price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. The payment need not necessarily take the form of a transfer of money: it may be made by letters of credit or negotiable instruments. Payment may be made directly or indirectly to the seller. For an illustration of this, the settlement by the producer, whether in whole or in part, of a debt owed by the seller, is an indirect payment.

(2) Activities undertaken by the producer on the producer's own account, other than those for which an adjustment is provided in section 5, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the seller.

(3) The transaction value shall not include charges for construction, erection, assembly, maintenance or technical assistance related to the use of the material by the producer, provided that they are distinguished from the price actually paid or payable.

(4) The flow of dividends or other payments from the producer to the seller that do not relate to the purchase of the material are not part of the transaction value.

SECTION 5.

(1) In determining the transaction value of the material, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the producer with respect to the material being valued and are not included in the price actually paid or payable,

(i) commissions and brokerage fees, except buying commissions, and

(ii) the costs of containers which, for customs purposes, are classified with the material under the Harmonized System;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the seller by the producer free of charge or at reduced cost for use in connection with the production and sale of the material, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the material being valued,

(ii) tools, dies, molds and similar indirect materials used in the production of the material being valued,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition "indirect material" set out in Article 415 of the Agreement, as implemented by section 2(1) of this Appendix, used in the production of the material being valued, and

(iv) engineering, development, artwork, design work, and plans and sketches performed outside the territory of the NAFTA country in which the producer is located that are necessary for the production of the material being valued;

(c) the royalties related to the material, other than charges with respect to the right to reproduce the material in the territory of the NAFTA country in which the producer is located that the producer must pay directly or indirectly as a condition of sale of the material, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent disposal or use of the material that accrues directly or indirectly to the seller.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2(1).

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subsection (1)(a) shall be those amounts that are recorded on the books of the producer.

(6) The value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the elements are imported from outside the territory of the NAFTA country in which the seller is located, the customs value of the elements,

(b) where the producer, or a related person on behalf of the producer, purchases the elements from an unrelated person in the territory of the NAFTA country in which the seller is located, the price actually paid or payable for the elements,

(c) where the producer, or a related person on behalf of the producer, acquires the elements from an unrelated person in the territory of the NAFTA country in which the seller is located other than through a purchase, the value of the consideration related to the acquisition of the elements, based on the cost of the consideration that is recorded on the books of the producer or the related person, or

(d) where the elements are produced by the producer, or by a related person, in the territory of the NAFTA country in which the seller is located, the total cost of the elements, determined in accordance with subsection (7),

and shall include the following costs, that are recorded on the books of the producer or the related person supplying the elements on behalf of the producer, to the extent that such costs are not included under paragraph (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the elements to the location of the seller,

(f) duties and taxes paid or payable with respect to the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the elements, and

(h) the cost of waste and spoilage resulting from the use of the elements in the production of the material, minus the value of reusable scrap or by-product.

(7) For the purposes of subsection (6)(d), the total cost of the elements referred to in subsection (1)(b)(i) shall be

(a) where the elements are produced by the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by the producer, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the producer that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII; and

(b) where the elements are produced by a person who is related to the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the producer; or

(b) where such elements are provided by another person on behalf of the producer and the cost is not recorded on the books of the producer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the producer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the producer or a person related to the producer, the value of the elements shall be the cost of the lease that is recorded on the books of the producer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the material the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the material in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a producer provides the seller with a mold to be used in the production of the material and contracts with the seller to buy 10,000 units of that material. By the time the first shipment of 1,000 units arrives, the seller has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of material only where that single shipment comprises all of the units of the material acquired by the producer under the contract or commitment for that number of units of the material between the seller and the producer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the producer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the producer or the seller.

SECTION 6.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be the transaction value of identical materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of identical materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of identical materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only identical materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of identical materials is found, the lowest such value shall be used to determine the value of the material under this section.

SECTION 7.

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(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be the transaction value of similar materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of similar materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of similar materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only similar materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of similar materials is found, the lowest such value shall be used to determine the value of the material under this section.

SECTION 8.

If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6 or 7, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be determined under section 9 or, when the value cannot be determined under that section, under section 10 except that, at the request of the producer, the order of application of sections 9 and 10 shall be reversed.

SECTION 9.

(1) Under this section, if identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be based on the unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity by the producer or, where the producer does not sell those identical materials or similar materials, by a person at the same trade level as the producer, at or about the same time as the material being valued is received by the producer, to persons located in that territory who are not related to the seller, subject to deductions for the following:

- (a) either the amount of commissions usually earned or the amount generally reflected for profit and general expenses, in connection with sales, in the territory of that NAFTA country, of materials of the same class or kind as the material being valued; and
- (b) taxes, if included in the unit price, payable in the territory of that NAFTA country, which are either waived, refunded or recoverable by way of credit against taxes actually paid or payable.

(2) If neither identical materials nor similar materials are sold at or about the same time the material being valued is received by the producer, the value shall, subject to the deductions provided for under subsection (1), be based on the unit price at which identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, at the earliest date within 90 days after the date the material being valued was received by the producer.

(3) The expression "unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity" in subsection (1) means the price at which the greatest number of units is sold in sales between unrelated persons. For an illustration of this, materials are sold from a price list which grants favorable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	100	10 sales of 5 units	65
		5 sales of 3 units	
11–25 units	95	5 sales of 11 units	55
		1 sale of 20 units	
Over 25 units	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at a particular price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

As another illustration of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this illustration, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

(4) Any sale to a person who supplies, directly or indirectly, free of charge or at reduced cost for use in connection with the production of the material, any of the elements specified in section 5(1)(b), shall not be taken into account in establishing the unit price for the purposes of this section.

(5) The amount generally reflected for profit and general expenses referred to in subsection (1)(a) shall be taken as a whole. The figure for the purposes of deducting an amount for profit and general expenses shall be determined on the basis of information supplied by or on behalf of the producer unless the figures provided by the producer are inconsistent with those usually reflected in sales, in the country in which the producer is located, of materials of the same class or kind as the material being valued. Where the figures provided by the producer are inconsistent with those figures, the amount for profit and general expenses shall be based on relevant information other than that supplied by or on behalf of the producer.

(6) For the purposes of this section, general expenses are the direct and indirect costs of marketing the material in question.

(7) In determining either the commissions usually earned or the amount generally reflected for profit and general expenses under this section, the question as to whether certain materials are materials of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. Sales in the country in which the producer is located of the narrowest group or range of materials of the same class or kind as the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, "materials of the same class or kind" includes materials imported from the same country as the material being valued as well as materials imported from other countries or acquired within the territory of the NAFTA country in which the producer is located.

(8) For the purposes of subsection (2), the earliest date shall be the date by which sales of identical materials or similar materials are made, in sufficient quantity to establish the unit price, to other persons in the territory of the NAFTA country in which the producer is located.

SECTION 10.

(1) Under this section, the value of a material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be the sum of

- (a) the cost or value of the materials used in the production of the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material,
- (b) the cost of producing the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material, and
- (c) an amount for profit and general expenses equal to that usually reflected in sales
  - (i) where the material being valued is imported by the producer into the territory of the NAFTA country in which the producer is located, to persons located in the territory of the NAFTA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced, and
  - (ii) where the material being valued is acquired by the producer from another person located in the territory of the NAFTA country in which the producer is located, to persons located in the territory of the NAFTA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the producer is located,
- (d) the value of elements referred to in section 5(1)(b)(i), determined in accordance with section 5(6), and
- (e) the value of elements referred to in sections 5(1)(b)(ii) through (iv), determined in accordance with section 5(8) and reasonably allocated to the material in accordance with section 5(12).

(2) For purposes of subsections (1)(a) and (b), where the costs recorded on the books of the producer of the material relate to the production of other goods and materials as well as to the production of the material being valued, the costs referred to in subsections (1)(a) and (b) with respect to the material being valued shall be those costs recorded on the books of the producer of the material that can be reasonably allocated to that material in accordance with Schedule VII.

(3) The amount for profit and general expenses referred to in subsection (1)(c) shall be determined on the basis of information supplied by or on behalf of the producer of the material being valued unless the profit and general expenses figures that are supplied with that information are inconsistent with those usually reflected in sales by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced or the producer is located, as the case may be. The information supplied shall be prepared in a manner consistent with generally accepted accounting principles of the country in which the material being valued is produced. Where the material is produced in the territory of a NAFTA country, the information shall be prepared in accordance with the Generally Accepted Accounting Principles set out in the authorities listed for that NAFTA country in Schedule XII.

(4) For purposes of subsection (1)(c) and subsection (3), general expenses means the direct and indirect costs of producing and selling the material that are not included under subsections (1)(a) and (b).

(5) For purposes of subsection (3), the amount for profit and general expenses shall be taken as a whole. Where, in the information supplied by or on behalf of the producer of a material, the profit figure is low and the general expenses figure is high, the profit and general expense figures taken together may nevertheless be consistent with those usually reflected in sales of materials of the same class or kind as the material being valued. Where the producer of a material can demonstrate that it is taking a nil or low profit on its sales of the material because of particular commercial circumstances, its actual profit and general expense figures shall be taken into account, provided that the producer of the material has valid commercial reasons to justify them and its pricing policy reflects usual pricing policies in the branch of industry concerned. For an illustration of this, such a situation might occur where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where the producers sell the material to complement a range of materials and goods being produced in the country in which the material is sold and accept a low profit to maintain competitiveness. A further illustration is where a material was being launched and the producer accepted a nil or low profit to offset high general expenses associated with the launch.

(6) Where the figures for the profit and general expenses supplied by or on behalf of the producer of the material are not consistent with those usually reflected in sales of materials of the same class or kind as the material being valued that are made by other producers in the country in which that material is sold, the amount for profit and general expenses may be based on relevant information other than that supplied by or on behalf of the producer of the material.

(7) Where a customs administration uses information other than that supplied by or on behalf of the producer of the material for the purposes of determining the value of a material under this section, the customs administration shall communicate to the producer, if that producer so requests, the source of such information, the data used and the calculations based upon such data, subject to the provisions on confidentiality under Article 507 of the Agreement, as implemented in each NAFTA country.

(8) Whether certain materials are of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. For purposes of determining the amount for profit and general expenses usually reflected under the provisions of this section, sales of the narrowest group or range of materials of the same class or kind, which includes the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, the materials of the same class or kind must be from the same country as the material being valued.

SECTION 11.

(1) Where there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the materials cannot be determined under sections 6 through 10, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be determined under this section using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the country in which the producer is located.

(2) The value of the material determined under this section shall not be determined on the basis of

- (a) a valuation system which provides for the acceptance of the higher of two alternative values;
- (b) a cost of production other than the value determined in accordance with section 10;
- (c) minimum values;
- (d) arbitrary or fictitious values;
- (e) where the material is produced in the territory of the NAFTA country in which the producer is located, the price of the material for export from that territory; or
- (f) where the material is imported, the price of the material for export to a country other than to the territory of the NAFTA country in which the producer is located.

(3) To the greatest extent possible, the value of the material determined under this section shall be based on the methods of valuation set out in sections 2 through 10, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of this section. For an illustration of this, under section 6, the requirement that the identical materials should be sold at or about the same time as the time the material being valued is shipped to the producer could be flexibly interpreted. Similarly, identical materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of identical materials already determined under section 9 could be used. For another illustration, under section 7, the requirement that the similar materials should be sold at or about the same time as the material being valued are shipped to the producer could be flexibly interpreted. Likewise, similar materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of similar materials already determined under the provisions of section 9 could be used. For a further illustration, under section 9, the ninety days requirement could be administered flexibly.

SCHEDULE IX

METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

Definitions and Interpretation

SECTION 1. Definitions.

For purposes of this Schedule,

"FIFO method" means the method by which the value of non-originating materials first received in materials inventory, determined in accordance with section 7 of this Appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

"identical materials" means, with respect to a material, materials that are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance;

"LIFO method" means the method by which the value of non-originating materials last received in materials inventory, determined in accordance with section 7 of this Appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

"materials inventory" means, with respect to a single plant of the producer of a good, an inventory of non-originating materials that are identical materials and that are used in the production of the good; and

"rolling average method" means the method by which the value of non-originating materials used in the production of a good that is shipped to the buyer of the good is based on the average value, calculated in accordance with section 4, of the non-originating materials in materials inventory.

General

SECTION 2.

For purposes of sections 5(11) and (12) and 6(10) of this Appendix, the following are the methods for determining the value of non-originating materials that are identical materials and are used in the production of a good:

- (a) FIFO method;
- (b) LIFO method; and

- (c) rolling average method.

SECTION 3.

(1) Where a producer of a good chooses, with respect to non-originating materials that are identical materials, any of the methods referred to in section 2, the producer may not use another of those methods with respect to any other non-originating materials that are identical materials and that are used in the production of that good or in the production of any other good.

(2) Where a producer of a good produces the good in more than one plant, the method chosen by the producer shall be used with respect to all plants of the producer in which the good is produced.

(3) The method chosen by the producer to determine the value of non-originating materials may be chosen at any time during the producer's fiscal year and may not be changed during that fiscal year.

Average Value for Rolling Average Method

SECTION 4.

(1) The average value of non-originating materials that are identical materials and that are used in the production of a good that is shipped to the buyer of the good is calculated by dividing

(a) the total value of non-originating materials that are identical materials in materials inventory prior to the shipment of the good, determined in accordance with section 7 of this Appendix,

by

(b) the total units of those non-originating materials in materials inventory prior to the shipment of the good.

(2) The average value calculated under subsection (1) is applied to the remaining units of non-originating materials in materials inventory.

ADDENDUM

"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

The following "examples" are based on the figures set out in the table below and on the following assumptions:

- (a) Materials A are non-originating materials that are identical materials that are used in the production of Good A;
- (b) one unit of Materials A is used to produce one unit of Good A;
- (c) all other materials used in the production of Good A are originating materials; and
- (d) Good A is produced in a single plant.

Date (M/D/Y)	Materials inventory (Receipts of materials A)		Sales (Shipments of good A)
	Quantity (units)	Unit cost *	Quantity (units)
01/01/94	200	$1.05	
01/03/94	1,000	1.00	
01/05/94	1,000	1.10	
01/08/94			500
01/09/94			500
01/10/94	1,000	1.05	
01/14/94			1,500
01/16/94	2,000	1.10	
01/18/94			1,500

* Unit cost is determined in accordance with section 7 of this Appendix.

Example 1: FIFO method

By applying the FIFO method:

(1) the 200 units of Materials A received on 01/01/94 and valued at $1.05 per unit and 300 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $510 [(200 unit × $1.05) + ($300 units × $1.00)];

(2) 500 units of the remaining 700 units of Materials A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $500 (500 units × $1.00);

(3) the remaining 200 units of the 1,000 of Materials A received on 01/03/94 and valued at $1.00 per unit, the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit, and 300 units of the 1,000 Materials A received on 01/10/94 and valued at $1.05 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(200 units × $1.00) + (1,000 units × $1.10) + (300 units × $1.05)]; and

(4) the remaining 700 units of the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 800 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(700 × $1.05) + (800 × $1.10)].

Example 2: LIFO method

By applying the LIFO method:

(1) 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(2) the remaining 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);
(3) the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 500 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,550 [(1,000 units × $1.05) + (500 units × $1.00)]; and
(4) 1,500 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,650 (1,500 units × $1.10).

Example 3: Rolling average method

The following table identifies the average value of non-originating Materials A as determined under the rolling average method. For purposes of this example, a new average value of non-originating Materials A is calculated after each receipt.

Materials inventory

	Date (M/D/Y)	Quantity (units)	Unit cost*	Total value
Beginning Inventory	1/1/94	200	$1.05	$210
Receipt	1/3/94	1,000	1.00	1,000
AVERAGE VALUE		1,200	1.008	1,210
Receipt	1/5/94	1,000	1.10	1,100
AVERAGE VALUE		2,200	1.05	2,310
Shipment	1/8/94	500	1.05	525
AVERAGE VALUE		1,700	1.05	1,785
Shipment	1/9/94	500	1.05	525
AVERAGE VALUE		1,200	1.05	1,260
Receipt	1/16/94	2,000	1.10	2,200
AVERAGE VALUE		3,200	1.08	3,460

* Unit cost is determined in accordance with section 7 of this Appendix.

By applying the rolling average method:
(1) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/08/94 is considered to be $525 (500 units × $1.05); and
(2) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/09/94 is considered to be $525 (500 units × $1.05).

SCHEDULE X
INVENTORY MANAGEMENT METHODS

PART I
FUNGIBLE MATERIALS

Definitions and Interpretation

SECTION 1. Definitions.

For purposes of this Part,
"average method" means the method by which the origin of fungible materials withdrawn from materials inventory is based on the ratio, calculated under section 5, of originating materials and non-originating materials in materials inventory;
"FIFO method" means the method by which the origin of fungible materials first received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;
"LIFO method" means the method by which the origin of fungible materials last received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;
"materials inventory" means,
  (a) with respect to a producer of a good, an inventory of fungible materials that are used in the production of the good, and
  (b) with respect to a person from whom the producer of the good acquired those fungible materials, an inventory from which fungible materials are sold or otherwise transferred to the producer of the good;
"opening inventory" means the materials inventory at the time an inventory management method is chosen;
"origin identifier" means any mark that identifies fungible materials as originating materials or non-originating materials.

General

SECTION 2.

The inventory management methods for determining whether fungible materials referred to in section 7(16)(a) of this Appendix are originating materials are the following:
  (a) specific identification method;
  (b) FIFO method;
  (c) LIFO method; and
  (d) average method.

SECTION 3.

Where a producer of a good or a person from whom the producer acquired the materials that are used in the production of the good chooses an inventory management method referred to in section 2, that method, including the averaging period chosen in the case of the average method, shall be used from the time the choice is made until the end of the fiscal year of the producer or person.

Specific Identification Method

SECTION 4.

(1) Except as otherwise provided under subsection (2), where the producer or person referred to in section 3 chooses the specific identification method, the producer or person shall physically segregate, in materials inventory, originating materials that are fungible materials from non-originating materials that are fungible materials.
(2) Where originating materials or non-originating materials that are fungible materials are marked with an origin identifier, the producer or person need not physically segregate those materials under subsection (1) if the origin identifier remains visible throughout the production of the good.

Average Method

SECTION 5.

Where the producer or person referred to in section 3 chooses the average method, the origin of fungible materials withdrawn from materials inventory is determined on the basis of the ratio of originating materials and non-originating materials in materials inventory that is calculated under sections 6 through 8.

SECTION 6.

(1) Except as otherwise provided in sections 7 and 8, the ratio is calculated with respect to a month or three-month period, at the choice of the producer or person, by dividing
  (a) the sum of
    (i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and
    (ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period,
by
  (b) the sum of
    (i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and
    (ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period.
(2) The ratio calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the preceding month or three-month period.

SECTION 7.

(1) Where the good is subject to a regional value-content requirement and the regional value content is calculated under the net cost method and the producer or person chooses to average over a period under sections 6(15), 11(1), (3) or (6), 12(1) or 13(4) of this Appendix, the ratio is calculated with respect to that period by dividing
  (a) the sum of
    (i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and
    (ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that period,
by
  (b) the sum of
    (i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and
    (ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that period.
(2) The ratio calculated with respect to a period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the period.

SECTION 8.

(1) Where the good is subject to a regional value-content requirement and the regional value content of that good is calculated under the transaction value method or the net cost method, the ratio is calculated with respect to each shipment of the good by dividing
  (a) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory prior to the shipment,
by
  (b) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory prior to the shipment.
(2) The ratio calculated with respect to a shipment of a good under subsection (1) is applied to the fungible materials remaining in materials inventory after the shipment.

Manner of Dealing With Opening Inventory

SECTION 9.

(1) Except as otherwise provided under subsections (2) and (3), where the producer or person referred to in section 3 has fungible materials in opening inventory, the origin of those fungible materials is determined by
  (a) identifying, in the books of the producer or person, the latest receipts of fungible materials that add up to the amount of fungible materials in opening inventory;

(b) determining the origin of the fungible materials that make up those receipts; and

(c) considering the origin of those fungible materials to be the origin of the fungible materials in opening inventory.

(2) Where the producer or person chooses the specific identification method and has, in opening inventory, originating materials or non-originating materials that are fungible materials and that are marked with an origin identifier, the origin of those fungible materials is determined on the basis of the origin identifier.

(3) The producer or person may consider all fungible materials in opening inventory to be non-originating materials.

PART II
FUNGIBLE GOODS

Definitions and Interpretation

SECTION 10. Definitions.

For purposes of this Part,

"average method" means the method by which the origin of fungible goods withdrawn from finished goods inventory is based on the ratio, calculated under section 12, of originating goods and non-originating goods in finished goods inventory;

"FIFO method" means the method by which the origin of fungible goods first received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

"finished goods inventory" means an inventory from which fungible goods are sold or otherwise transferred to another person;

"LIFO method" means the method by which the origin of fungible goods last received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

"opening inventory" means the finished goods inventory at the time an inventory management method is chosen; and

"origin identifier" means any mark that identifies fungible goods as originating goods or non-originating goods.

General

SECTION 11.

The inventory management methods for determining whether fungible goods referred to in section 7(16)(b) of this Appendix are originating goods are the following:

(a) specific identification method;
(b) FIFO method;
(c) LIFO method; and
(d) average method.

SECTION 12.

Where an exporter of a good or a person from whom the exporter acquired the good chooses an inventory management method referred to in section 11, that method, including the averaging period chosen in the case of the average method, shall be used from the time the choice is made until the end of the fiscal year of the exporter or person.

Specific Identification Method

SECTION 13.

(1) Except as provided under subsection (2), where the exporter or person referred to in section 12 chooses the specific identification method, the exporter or person shall physically segregate, in finished goods inventory, originating goods that are fungible goods from non-originating goods that are fungible goods.

(2) Where originating goods or non-originating goods that are fungible goods are marked with an origin identifier, the exporter or person need not physically segregate those goods under subsection (1) if the origin identifier is visible on the fungible goods.

Average Method

SECTION 14.

(1) Where the exporter or person referred to in section 12 chooses the average method, the origin of each shipment of fungible goods withdrawn from finished goods inventory during a month or three-month period, at the choice of the exporter or person, is determined on the basis of the ratio of originating goods and non-originating goods in finished goods inventory for the preceding one-month or three-month period that is calculated by dividing

(a) the sum of
  (i) the total units of originating goods or non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and
  (ii) the total units of originating goods or non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period,

by

(b) the sum of
  (i) the total units of originating goods and non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and
  (ii) the total units of originating goods and non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period.

(2) The calculation with respect to a preceding month or three-month period under subsection (1) is applied to the fungible goods remaining in finished goods inventory at the end of the preceding month or three-month period.

Manner of Dealing with Opening Inventory

SECTION 15.

(1) Except as otherwise provided under subsections (2) and (3), where the exporter or person referred to in section 12 has fungible goods in opening inventory, the origin of those fungible goods is determined by

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(a) identifying, in the books of the exporter or person, the latest receipts of fungible goods that add up to the amount of fungible goods in opening inventory;

(b) determining the origin of the fungible goods that make up those receipts; and

(c) considering the origin of those fungible goods to be the origin of the fungible goods in opening inventory.

(2) Where the exporter or person chooses the specific identification method and has, in opening inventory, originating goods or non-originating goods that are fungible goods and that are marked with an origin identifier, the origin of those fungible goods is determined on the basis of the origin identifier.

(3) The exporter or person may consider all fungible goods in opening inventory to be non-originating goods.

ADDENDUM A
"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE MATERIALS

The following "examples" are based on the figures set out in the table below and on the following assumptions:

(a) originating Material A and non-originating Material A that are fungible materials are used in the production of Good A;
(b) one unit of Material A is used to produce one unit of Good A;
(c) Material A is only used in the production of Good A;
(d) all other materials used in the production of Good A are originating materials; and
(e) the producer of Good A exports all shipments of Good A to the territory of a NAFTA country.

Date (M/D/Y)	Materials inventory (Receipts of material A)			Sales (Shipments of good A)
	Quantity (units)	Unit cost*	Total value	Quantity (units)
12/18/93	100 (O[1])	$1.00	$100	
12/27/93	100 (N[2])	1.10	110	
01/01/94	200 (OI[3])			
01/01/94	1,000 (O)	1.00	1,000	
01/05/94	1,000 (N)	1.10	1,100	
01/10/94				100
01/10/94	1,000 (O)	1.05	1,050	
01/15/94				700
01/16/94	2,000 (N)	1.10	2,200	
01/20/94				1,000
01/23/94				900

* Unit cost is determined in accordance with section 7 of this Appendix.

[1] "O" denotes originating materials.

[2] "N" denotes non-originating materials.

[3] "OI" denotes opening inventory.

Example 1: FIFO method

Good A is subject to a regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A.

By applying the FIFO method:

(1) the 100 units of originating Material A in opening inventory that were received in materials inventory on 12/18/93 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $0;

(2) the 100 units of non-originating Material A in opening inventory that were received in materials inventory on 12/27/93 and 600 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $110 (100 units x $1.10);

(3) the remaining 400 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $660 (600 units x $1.10); and

(4) the remaining 400 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 and 500 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $440 (400 units x $1.10).

Example 2: LIFO method

Good A is subject to a change in tariff classification requirement and the non-originating Material A used in the production of Good A does not undergo the applicable change in tariff classification. Therefore, where originating Material A is used in the production of Good A, Good A is an originating good and, where non-originating Material A is used in the production of Good A, Good A is a non-originating good.

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94.

Example 3: Average method

Good A is subject to an applicable regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A. Producer A determines the average value of non-originating Material A and the ratio of originating Material A to total value of originating Material A and non-originating Material A in the following table.

	Date (M/D/Y)	Materials inventory						Sales (Shipments of good A)
		(Receipts of material A)			(Non-originating material)			
		Quantity (units)	Total value	Unit cost *	Quantity (units)	Total value	Ratio	Quantity (units)
Receipt	12/18/93	100 (O[1])	$100	$1.00				
Receipt	12/27/93	*100 (N[2])*	*110*	*1.10*	*100*	*$110.00*		
NEW AVERAGE INV. VALUE.		200 (OI[3])	210	1.05	100	105.00	0.50	
Receipt	01/01/94	*1,000 (O)*	*1,000*	*1.00*				
NEW AVERAGE INV. VALUE.		1,200	1,210	1.01	100	101.00	0.08	
Receipt	01/05/94	*1,000 (N)*	*1,100*	*1.10*	*1,000*	*1,100.00*		
NEW AVERAGE INV. VALUE.		2,200	2,310	1.06	1,100	1,155.00	0.50	
Shipment	01/10/94	(100)	(105)	1.05	(50)	(52.50)		100
Receipt	01/10/94	*1,000 (O)*	*1,050*	*1.05*				
NEW AVERAGE INV. VALUE.		3,100	3,255	1.05	1,050	1,102.50	0.34	
Shipment	01/15/94	(700)	(735)	1.05	(238)	(249.90)		700
Receipt	01/16/94	*2,000 (N)*	*2,200*	*1.10*	*2,000*	*2,000.00*		
NEW AVERAGE INV. VALUE.		4,400	4,720	1.07	2,816	3,013.20	0.64	
Shipment	01/20/94	(1,000)	(1,070)	1.07	(640)	(648.80)		1,000
Shipment	01/23/94	*(900)*	*(963)*	*1.07*	*(576)*	*(616.32)*		900
NEW AVERAGE INV. VALUE.		2,500	2,687	1.07	1,596	1,707.24	0.64	

* Unit cost is determined in accordance with section 7 of this Appendix.

[1] "O" denotes originating materials.

[2] "N" denotes non-originating materials.

[3] "OI" denotes opening inventory.

By applying the average method:

(1) before the shipment of the 100 units of Material A on 01/10/94, the ratio of units of originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units); based on those ratios, 50 units (100 units × .50) of originating Material A and 50 units (100 units × .50) of non-originating Material A are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $52.50 [100 units × $1.05 (average unit value) × .50]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,050 units (2,100 units × .50) are considered to be originating materials and 1,050 units (2,100 units × .50) are considered to be non-originating materials;

(2) before the shipment of the 700 units of Good A on 01/15/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 66% (2,050 units/3,100 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 34% (1,050 units/3,100 units); based on those ratios, 462 units (700 units × .66) of originating Material A and 238 units (700 units × .34) of non-originating Material A are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $249.90 [700 units × $1.05 (average unit value) × 34%]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,584 units (2,400 units × .66) are considered to be originating materials and 816 units (2,400 units × .34) are considered to be non-originating materials;

(3) before the shipment of the 1,000 units of Material A on 01/20/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,584 units/4,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,816 units/4,400 units); based on those ratios, 360 units (1,000 units × .36) of originating Material A and 640 units (1,000 units × .64) of non-originating Material A are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originiating Material A used in the production of those goods is considered to be $684.80 [1,000 units × $1.07 (average unit value) × 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,224 units (3,400 units × .36) are considered to be originating materials and 2,176 units (3,400 units × .64) are considered to be non-originating materials;

(4) before the shipment of the 900 units of Good A on 01/23/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,224 units/3,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,176 units/3,400 units; based on those ratios, 324 units (900 units × .36) of originating Material A and 576 units (900 units × .64) of non-originating Material A are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $616.32 [900 units × $1.07 (average unit value) × 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 900 units (2,500 units × .36) are considered to be originating materials and 1,600 units (2,500 units × .64) are considered to be non-originating materials.

Example 4: Average method

Good A is subject to an applicable regional value-content requirement. Producer A is using the net cost method and is averaging over a period of one month under section 6(15)(a) of this Appendix to determine the regional value content of Good A.

By applying the average method:

the ratio of units of originating Material A to total units of Material A in materials inventory for January 1994 is 40.4% (2,100 units/ 5,200 units);

based on that ratio, 1,091 units (2,700 units × .404) of originating Material A and 1,609 units (2,700 units-1,091 units) of non-originating Material A are considered to have been used in the production of the 2,700 units of Good A shipped in January 1994; therefore, the value of non-originating materials used in the production of those goods is considered to be $0.64 per unit [$5,560 (total value of Material A in materials inventory)/ $5,200 (units of Material A in materials inventory) = $1.07 (average unit value) × (1-.404)] or $1,728 ($0.64 × 2,700 units); and

that ratio is applied to the units of Material A remaining in materials inventory on January 31, 1994: 1,010 units (2,500 units × .404) are considered to be originating materials and 1,490 units (2,500 units-1,010 units) are considered to be non-originating materials.

ADDENDUM B

"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE GOODS

The following "examples" are based on the figures set out in the table below and on the assumption that Exporter A acquires originating Good A and non-originating Good A that are fungible goods and physically combines or mixes Good A before exporting those goods to the buyer of those goods.

Date (M/D/Y)	Finished goods inventory (receipts of good A)	Sales (shipments of good A)
	Quantity (units)	Quantity (units)
12/18/93	100 (O[1])	
12/27/93	100 (N[2])	
01/01/94	200 (OI[3])	
01/01/94	1,000 (O)	
01/05/94	1,000 (N)	
01/10/94		100
01/15/94	1,000 (O)	
01/16/94		700
01/20/94	2,000 (N)	
01/20/94		1,000
01/23/94		900

[1] "O" denotes originating goods.

[2] "N" denotes non-originating goods.

[3] "OI" denotes opening inventory.

Example 1: FIFO method

By applying the FIFO method:

(1) the 100 units of originating Good A in opening inventory that were received in finished goods inventory on 12/18/93 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) the 100 units of non-originating Good A in opening inventory that were received in finished goods inventory on 12/27/93 and 600 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) the remaining 400 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) the remaining 400 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 and 500 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 900 units of Good A shipped on 01/23/94.

Example 2: LIFO method

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 900 units of Good A shipped on 01/23/94.

Example 3: Average method

Exporter A chooses to determine the origin of Good A on a monthly basis. Exporter A exported 3,000 units of Good A during the month of February 1994. The origin of the units of Good A exported during that month is determined on the basis of the preceding month, that is January 1994.

By applying the average method:

the ratio of originating goods to all goods in finished goods inventory for the month of January 1994 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,212 units (3,000 units × .404) of Good A shipped in February 1994 are considered to be originating goods and 1,788 units (3,000 units − 1,212 units) of Good A are considered to be non-originating goods; and

that ratio is applied to the units of Good A remaining in finished goods inventory on January 31, 1994: 1,010 units (2,500 units × .404) are considered to be originating goods and 1,490 units (2,500 units − 1,010 units) are considered to be non-originating goods.

SCHEDULE XI

METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS

Definitions and Interpretation

SECTION 1. Definitions.

For purposes of this Schedule,

"fixed-rate contract" means a loan contract, installment purchase contract or other financing agreement in which the interest rate remains constant throughout the life of the contract or agreement;

"linear interpolation" means, with respect to the yield on federal government debt obligations, the application of the following mathematical formula:

$$A+[((B-A)\times(E-D))/(C-D)]$$

where

A is the yield on federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of the payment schedule under the fixed-rate contract or variable-rate contract to which they are being compared,

B is the yield on federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

C is the maturity of federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

D is the maturity of federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of that payment schedule, and

E is the weighted average principal maturity of that payment schedule; "payment schedule" means the schedule of payments, whether on a weekly, bi-weekly, monthly, yearly or other basis, of principal and interest, or any combination thereof, made by a producer to a lender in accordance with the terms of a fixed-rate contract or variable-rate contract;

"variable-rate contract" means a loan contract, installment purchase contract or other financing agreement in which the interest rate is adjusted at intervals during the life of the contract or agreement in accordance with its terms;

"weighted average principal maturity" means, with respect to fixed-rate contracts and variable-rate contracts, the number of years, or portion thereof, that is equal to the number obtained by

(a) dividing the sum of the weighted principal payments,

(i) in the case of a fixed-rate contract, by the original amount of the loan, and

(ii) in the case of a variable-rate contract, by the principal balance at the beginning of the interest rate period for which the weighted principal payments were calculated, and

(b) rounding the amount determined under paragraph (a) to the nearest single decimal place and, where that amount is the midpoint between two such numbers, to the greater of those two numbers;

"weighted principal payment" means,

(a) with respect to fixed-rate contracts, the amount determined by multiplying each principal payment under the contract by the number of years, or portion thereof, between the date the producer entered into the contract and the date of that principal payment, and

(b) with respect to variable-rate contracts

(i) the amount determined by multiplying each principal payment made during the current interest rate period by the number of years, or portion thereof, between the beginning of that interest rate period and the date of that payment, and

(ii) the amount equal to the outstanding principal owing, but not necessarily due, at the end of the current interest rate period, multiplied by the number of years, or portion thereof, between the beginning and the end of that interest rate period;

"yield on federal government debt obligations" means

(a) in the case of a producer located in Canada, the yield for federal government debt obligations set out in the Bank of Canada's *Weekly Financial Statistics*

(i) where the interest rate is adjusted at intervals of less than one year, under the title "Treasury Bills", and

(ii) in any other case, under the title "Selected Government of Canada benchmark bond yields",

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract,

(b) in the case of a producer located in Mexico, the yield for federal government debt obligations set out in *La Seccion de Indicadores Monetarios, Financieros, y de Finanzas Publicas, de los Indicadores Economicos,* published by the Banco de Mexico under the title *"Certificados de la Tesoreria de la Federacion"* for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract, and

(c) in the case of a producer located in the United States, the yield for federal government debt obligations set out in the Federal Reserve statistical release (H.15) *Selected Interest Rates*

(i) where the interest rate is adjusted at intervals of less than one year, under the title "U.S. government securities, Treasury bills, Secondary market", and

(ii) in any other case, under the title "U.S. Government Securities, Treasury constant maturities",

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract.

General

SECTION 2.

For purposes of calculating non-allowable interest costs

(a) with respect to a fixed-rate contract, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary);

(b) with respect to a variable-rate contract

(i) in which the interest rate is adjusted at intervals of less than or equal to one year, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities closest in length to the interest rate adjustment period of the contract, and

(ii) in which the interest rate is adjusted at intervals of greater than one year, the interest rate under the contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary); and

(c) with respect to a fixed-rate or variable-rate contract in which the weighted average principal maturity of the payment schedule under the contract is greater than the maturities offered on federal government debt obligations, the interest rate under the contract shall be compared to the yield on federal government debt obligations that have maturities closest in length to the weighted average principal maturity of the payment schedule under the contract.

ADDENDUM

"EXAMPLE" ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A FIXED-RATE CONTRACT

The following example is based on the figures set out in the table below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a fixed-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year on the declining principal balance;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.36 over the life of the contract;

(d) there are no federal government debt obligations that have maturities equal to the 6-year weighted average principal maturity of the contract; and

(e) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are of 5- and 7-year maturities, and the yields on them are 4.7 percent and 5.0 percent, respectively.

Years of loan	Principal balance [1]	Interest payment [2]	Principal payment [3]	Payment schedule	Weighted principal payment [4]
1	$924,132.04	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	843,712.00	55,447.92	80,420.04	135,867.96	160,840.08
3	758,466.76	50,622.72	85,245.24	135,867.96	255,735.72
4	668,106.81	45,508.01	90,359.95	135,867.96	361,439.82
5	572,325.26	40,086.41	95,781.55	135,867.96	478,907.76
6	470,796.81	34,339.52	101,528.44	135,867.96	609,170.67
7	363,176.66	28,247.81	107,620.15	135,867.96	753,341.06
8	249,099.30	21,790.60	114,077.36	135,867.96	912,618.88
9	128,177.30	14,945.96	120,922.00	135,867.96	1,088,298.02
10	(0.00)	7,690.66	128,177.32	135,867.96	1,281,773.22
					$5,977,993.19

[1] The principal balance represents the loan balance at the end of each full year the loan is in effect and is calculated by subtracting the current year's principal payment from the prior year's ending loan balance.

[2] Interest payments are calculated by multiplying the prior year's ending loan balance by the contract interest rate of 6 percent.

[3] Principal payments are calculated by subtracting the current year's interest payments from the annual payment schedule amount.

[4] The weighted principal payment is determined by, for each year of the loan, multiplying that year's principal payment by the number of years the loan had been in effect at the end of that year.

[5] The weighted average principal maturity of the contract is calculated by dividing the sum of the weighted principal payments by the original loan amount and rounding the amount determined to the nearest decimal place.

Weighted Average Principal Maturity

$5,977,993.19/$1,000,000=5.977993 or 6 years[5]

By applying the above method:

(1) the weighted average principal maturity of the payment schedule under the 6 percent contract is 6 years;

(2) the yields on the closest maturities for comparable federal government debt obligations of 5 years and 7 years are 4.7 percent and 5.0 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the contract is 4.85 percent. This number is calculated as follows:

4.7+[((5.0−4.7)×(6−5))/(7−5)]
=4.7+0.15
=4.85%; and

(3) the producer's contract interest rate of 6 percent is within 700 basis points of the 4.85 percent yield on the comparable federal government debt obligation; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition "non-allowable interest costs."

"EXAMPLE" ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A VARIABLE-RATE CONTRACT

The following example is based on the figures set out in the tables below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a variable-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year for the first two years and 8 percent per year for the next two years on the principal balance, with rates adjusted each two years after that;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.96 for the first two years of the loan, and of $146,818.34 for the next two years of the loan;

(d) there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the first two years of the contract;

(e) there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the third and fourth years of the contract; and

(f) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 percent and 3.5 percent respectively.

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	1,848,264.08
						$1,924,132.04

Weighted Average Principal Maturity

$1,924,132.04/$1,000,000=1.92413204 or 1.9 years

By applying the above method:

(1) the weighted average principal maturity of the payment schedule of the first two years of the contract is 1.9 years;

(2) the yield on the closest maturities of federal government debt obligations of 1 year and 2 years are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

3.0+[((3.5−3.0)×(1.9−1.0))/(2.0−1.0)]
=3.0+0.45
=3.45%; and

(3) the producer's contract rate of 6 percent for the first two years of the loan is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule of the first two years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition "non-allowable interest costs".

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	
3	843,712.01	8.00	67,496.96	79,321.38	146,818.34	$79,321.38
4	764,390.62	8.00	61,151.25	85,667.09	146,818.34	1,528,781.24
						$1,608,102.62

Weighted Average Principal Maturity

$1,608,102.62/$843,712.01=1.905985 or 1.9 years

By applying the above method:

(1) the weighted average principal maturity of the payment schedule under the first two years of the contract is 1.9 years;

(2) the federal government debt obligations that are nearest in maturities to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

3.0+[((3.5−3.0)×(1.9−1.0))/(2.0−1.0)]
=3.0+0.45
=3.45%

(3) the producer's contract interest rate, for the third and fourth years of the loan, of 8 percent is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule under the third and fourth years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition "non-allowable interest costs".

SCHEDULE XII
GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

SECTION 1.

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures.

SECTION 2.

For purposes of Generally Accepted Accounting Principles, the recognized consensus or authoritative support are referred to or set out in the following publications:

(a) with respect to the territory of Canada, *The Canadian Institute of Chartered Accountants Handbook*, as updated from time to time;

(b) with respect to the territory of Mexico, *Los Principios de Contabilidad Generalmente Aceptados*, issued by the *Instituto Mexicano de Contadores Públicos A.C. (IMCP)*, including the *boletines complementarios*, as updated from time to time; and

(c) with respect to the territory of the United States,
  (i) the following publications of the American Institute of Certified Public Accountants (AICPA), as updated from time to time:
    (A) AICPA Professional Standards,
    (B) Committee on Accounting Procedure Accounting Research Bulletins,
    (C) Accounting Principles Board Opinions and Statements,
    (D) APB Accounting and Auditing Guides,
    (E) AICPA Statements of Position, and
    (F) AICPA Issues Papers and Practice Bulletins,
  (ii) the following publications of the Financial Accounting Standards Board (FASB), as updated from time to time:
    (A) FASB Accounting Standards and Interpretations,
    (B) FASB Technical Bulletins, and
    (C) FASB Concepts Statements.

PART 191—DRAWBACK

1. The general authority citation for Part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

2. The last sentence of § 191.0 is republished to read as follows:

§ 191.0 Scope.

* * * Additional drawback provisions relating to the North American Free Trade Agreement are contained in subpart E of part 181 of this chapter.

Dated: August 16, 1995.

George J. Weise,
Commissioner of Customs.

Approved:

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–21716 Filed 8–30–95; 9:56 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Customs Service

Regulatory Standards for Implementation of the North American Free Trade Agreement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document publishes for the information of the general public the text of a document setting forth uniform regulatory standards adopted by the United States, Canada and Mexico for purposes of implementing the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement (NAFTA). The final Customs Regulations implementing the NAFTA, which are based in part on the standards set forth herein, also appear in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Myles Harmon, Office of Regulations and Rulings (202–482–7000).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the United States, Canada and Mexico (the "Parties") entered into an agreement, the North American Free Trade Agreement (NAFTA). The stated objectives of the NAFTA included elimination of barriers to trade in, and facilitation of the cross-border movement of, goods and services between the territories of the Parties. The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057.

Prior to the entry into force of the NAFTA on January 1, 1994, representatives of the Parties engaged in a series of trilateral discussions pursuant to Article 511 of the NAFTA for the purpose of formulating uniform regulatory texts or principles in respect of Chapters Four and Five of the NAFTA and in respect of certain provisions within Chapter Three of the NAFTA. As concerns Chapter Four which sets forth the rules of origin and related provisions for purposes of preferential duty treatment under the NAFTA, the Parties agreed, by an exchange of letters dated December 30, 1993, to implement substantively verbatim texts covering all of the provisions of that Chapter. However, in recognition of the different existing customs legal and procedural requirements in the three countries, in the case of Chapter Five and some provisions of Chapter Three the Parties agreed, by an exchange of letters dated December 30, 1993, to use a standards approach whereby agreement was reached on certain minimum principles to be reflected in each Party's regulations, with each Party being left free to implement those principles, and any other requirements not inconsistent therewith, in accordance with the needs of the Party's particular statutory and regulatory framework.

On December 30, 1993, Customs published T.D. 94–1 in the **Federal Register** (58 FR 69460) setting forth interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the NAFTA in accordance with the implementation principles agreed to by the Parties as discussed above. Subsequent to the publication of T.D. 94–1, the Parties engaged in additional trilateral discussions with a view to modifying the Chapter Four substantively verbatim texts and the standards adopted for purposes of Chapters Three and Five, and those modifications were formally agreed to by the Parties through an exchange of letters in June 1995. The substantively verbatim texts relating to Chapter Four and the standards adopted for purposes of Chapters Three and Five, as so modified, have been incorporated in the provisions of the Customs Regulations implementing the NAFTA that are published as a final rule also in this issue of the **Federal Register**.

The purpose of this document is to set forth for the information of the general public the current text of the NAFTA Chapter Three and Chapter Five regulatory standards document as agreed to by the Parties.

Dated: August 24, 1995.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

Accordingly, the document containing the regulatory standards relating to Chapters Three and Five of the NAFTA, as discussed above, is reproduced below:

Uniform Regulations for the Interpretation, Application, and Administration of Chapters Three (National Treatment and Market Access for Goods) and Five (Customs Procedures) of the North American Free Trade Agreement

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, pursuant to Article 511(1) of the North American Free Trade Agreement, adopt the following Uniform Regulations regarding the interpretation, application and administration of Chapters Three and Five of the North American Free Trade Agreement:

Section A—Certification of Origin

1. The Certificate of Origin referred to in Article 501(1) of the North American Free Trade Agreement (hereinafter "the Agreement") shall be:

(a) equivalent in substance to the Certificate of Origin set out in Annex I.1a;

(b) in a printed format or in such other medium or format as may be approved by the customs administration of the Party into whose territory the good is imported;

(c) completed by the exporter in accordance with these Uniform Regulations, including any instructions contained in the Certificate of Origin set out in Annex I.1a; and

(d) at the option of the exporter, completed in either the language of the Party into whose territory the good is imported or the language of the Party from whose territory the good is exported in accordance with Annex I.1d.

2. For purposes of Article 501(5)(a) of the Agreement, a single Certificate of Origin may be used for:

(a) a single shipment of goods that results in the filing of one or more entries on the importation of the goods into the territory of a Party; or

(b) more than one shipment of goods that result in the filing of one entry on the importation of the goods into the territory of a Party.

Article II: Obligations Regarding Importations

1. For purposes of Article 502(1)(a) of the Agreement, "valid Certificate of Origin" means a Certificate of Origin that the exporter of the good in a territory of a Party completes in accordance with the requirements set out in Article I of these Uniform Regulations.

2. For purposes of Article 502(1)(c) of the Agreement:

(a) the importer shall, upon the request of the customs administration of the Party into whose territory the good is imported, provide a written translation of the Certificate of Origin in the language of that Party; and

(b) where the customs administration of the Party into whose territory the good is imported determines that a Certificate of Origin is illegible, defective on its face or has not been completed in accordance with Article I of these Uniform Regulations, the importer shall be granted a period of not less than five working days to provide the customs administration with a copy of the corrected Certificate.

3. An importer that makes a corrected declaration of origin pursuant to Article 502(1)(d) and (2)(b) of the Agreement and pays any duties owing shall not, in accordance with Article 502(2)(b), be subject to penalties, as set out in Annex II.3.

4. Where as a result of an origin verification conducted under Article 506 of the Agreement, the customs administration of a Party determines that a good that is covered by a Certificate of Origin that is applicable to multiple importations of identical goods in accordance with Article 501(5)(b) does not qualify as an originating good, such Certificate may not be used to claim preferential tariff treatment for those identical goods after the date that the written determination is provided under Article 506(9).

Article III: Exceptions

1. The statement referred to in Article 503(a) of the Agreement shall, where required by the customs administration of the Party into whose territory the good is imported, be attached to, or handwritten, stamped or typed on, the commercial invoice covering the good.

2. For purposes of Article 503 of the Agreement, "series of importations" is defined in Annex III.2.

Article IV: Obligations Regarding Exportations

1. For purposes of Article 504(1)(b) of the Agreement, "promptly" is defined in Annex IV.1.

2. For purposes of Article 504(3) of the Agreement, no Party may impose civil or administrative penalties on an exporter or producer of a good in its territory where the exporter or producer, prior to the commencement of an investigation by officials of that Party with authority to conduct a criminal investigation regarding the Certificate of Origin, provides the written notification referred to in Article 504(1)(b).

3. For purposes of Article 504(1)(b) of the Agreement, where the customs administration of a Party provides an exporter or producer of a good with a determination under Article 506(9) that the good is a non-originating good, the exporter or producer shall notify all persons to whom it gave a Certificate of Origin in respect of that good of the determination.

Section B—Administration and Enforcement

Article V: Records

1. The documentation and records required to be maintained under Article 505 of the Agreement shall be kept in such a manner as to enable an officer of the customs administration of a Party, in conducting a verification of origin under Article 506, to perform detailed verifications of the documentation and records to verify the information on the basis of which:

(a) in the case of an importer, a claim for preferential tariff treatment was made with respect to a good imported into its territory; and

(b) in the case of an exporter or producer, a Certificate of Origin was completed with respect to a good exported to the territory of another Party.

2. Importers, exporters and producers in the territory of a Party that are required to maintain documentation or records under Article 505 of the Agreement shall be permitted, in accordance with that Party's law, to maintain such documentation and records in machine-readable form, provided that the documentation or records can be retrieved and printed.

3. Exporters and producers that are required to maintain records pursuant to Article 505(a) of the Agreement shall, subject to the notification and consent requirements provided for in Article 506(2), make those records available for inspection by an officer of the customs administration of a Party conducting a verification visit and provide facilities for inspection thereof.

4. A Party may deny preferential tariff treatment to a good that is the subject of an origin verification where the exporter, producer or importer of the good that is required to maintain records or documentation under Article 505 of the Agreement:

(a) subject to paragraph 5, fails to maintain records or documentation relevant to determine the origin of the good in accordance with the requirements of the Agreement, these Uniform Regulations or the Uniform Regulations under Chapter Four of the Agreement; or

(b) denies access to the records or documentation.

5. Where the customs administration of a Party finds during the course of an origin verification that a producer of a good in the territory of another Party has failed to maintain its records in accordance with the Generally Accepted Accounting Principles applied in the territory of the Party in which the good is produced as required by Article 413(e) of the Agreement, the producer shall be given an opportunity to record its costs in accordance with those Generally Accepted Accounting Principles within 60 days of being informed in writing by the customs administration that the records have not been maintained in accordance with those Generally Accepted Accounting Principles.

6. For purposes of Article 505 of the Agreement and these Uniform Regulations, "records" include books as referenced in the Uniform Regulations under Chapter Four.

Article VI: Origin Verifications

1. For purposes of Article 506(1)(c) of the Agreement, the customs administration of a Party may conduct a verification of origin with respect to a good that is imported into its territory by means of:

(a) A verification letter that requests information from the exporter or producer of the good in the territory of another Party, provided that it contains specific reference to the good that is the subject of the verification; or

(b) any other method of communication customarily used by the customs administration of the Party in conducting a verification.

2. Subject to paragraph 3, where the customs administration of a Party conducts a verification under paragraph 1(b), it may, on the basis of a response of an exporter or producer to a communication referred to in paragraph 1(b), issue a determination under Article 506(9) of the Agreement:

(a) that the good does not qualify as an originating good, provided that the response is in writing and is signed by that exporter or producer; or

(b) that the good qualifies as an originating good.

3. Where the producer of a good chooses to calculate the regional value content of a good under that net cost method as set out in the Uniform Regulations under Chapter Four of the Agreement, the customs administration of the Party into whose territory the good was imported may not, during the time period over which the net cost has been calculated, verify the regional value content in respect of that good.

4. The customs administration of a Party, in conducting a verification visit under Article 506(1)(b) of the Agreement, shall send the notice referred to in Article 506(2)(a) by certified or registered mail, or any other method that produces a confirmation of receipt by the exporter or producer whose premises are to be visited.

5. When the exporter or producer of a good that is the subject of a proposed

verification visit by the customs administration of a Party has not given its written consent to a visit under Article 506(4) of the Agreement, the customs administration may determine that the good does not qualify as an originating good and may deny preferential tariff treatment to that good.

6. For purposes of Article 506(7) of the Agreement, an exporter or producer of a good shall identify to the customs administration conducting a verification visit any observers designated to be present during such visit.

7. Each Party shall identify to the other Parties, by January 1, 1994, the office to which notice shall be sent under Article 506(2)(a)(ii) of the Agreement.

8. For purposes of Article 506(5) of the Agreement, a notice of postponement of a verification visit shall be made in writing and shall be sent to the address of the customs office that sent the notice of intention to conduct a verification visit.

9. The common standards for the written questionnaires referred to in Article 506(1)(a) of the Agreement are set out in Annex VI.9.

10. Where, pursuant to Article 403(3) of the Agreement, a producer of a motor vehicle identified in Article 403 (1) or (2) elects to average its regional value-content calculation over its fiscal year, the customs administration of the Party into whose territory the motor vehicle was imported may request, in writing, that the producer submit a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made.

11. Where the customs administration of a Party requests that a cost submission be submitted by the producer of a motor vehicle under paragraph 10, such cost submission shall be submitted within 180 days after the close of that producer's fiscal year or within 60 days from the date on which the request was made, whichever is later.

12. Where the customs administration of a Party sends a written request under paragraph 10, such request shall constitute a verification letter under paragraph 1(a).

13. The customs administration of a Party may, for purposes of verifying the origin of a good, request that the importer of the good voluntarily obtain and supply written information voluntarily provided by the exporter or producer of the good in the territory of another Party, provided that the failure or refusal of the importer to obtain and supply such information shall not be considered as a failure of the exporter or producer to supply the information or as a ground for denying preferential tariff treatment.

14. Nothing in this Article shall limit any right accorded under Chapter Five of the Agreement to the exporter or producer of a good in the territory of a Party by virtue of the fact that such exporter or producer is also the importer of the good in the territory of the Party in which preferential tariff treatment is claimed.

15. Where a customs administration conducts a verification of origin of a good under Article 506(1)(a) of the Agreement or paragraph 1(a), it may send the verification letter or questionnaire by:

(a) certified or registered mail, or any other method that produces confirmation of receipt by the exporter or producer; or

(b) any other method, regardless of whether it produces proof of receipt from the exporter or producer of the good.

16. Where the customs administration of a Party has sent a verification letter or questionnaire to an exporter or producer of a good in the territory of another Party and such exporter or producer fails to respond within the period specified therein, which shall be no less than 30 days from the date on which the verification letter or questionnaire was sent, the customs administration:

(a) shall send a subsequent verification letter or questionnaire:

(i) if requested by the Party from whose territory the good was exported, by the method set out in paragraph 15(a), or

(ii) if not requested by the Party from whose territory the good was exported, by the method set out in paragraph 15 (a) or (b); and

(b) may send, with that subsequent verification letter or questionnaire, the written determination referred to in Article 506(9) of the Agreement, including a notice of intent to deny preferential tariff treatment referred to in paragraph 19.

17. Where the customs administration of a Party sends a written determination under paragraph 16(b) and the exporter or producer fails to respond to the subsequent verification letter or questionnaire within 30 days:

(a) from the date of its receipt by the exporter or producer, where it was sent in accordance with paragraph 16(a)(i); or

(b) from the date of its receipt by the exporter or producer or from the date it was sent by the customs administration, as the case may be, in accordance with paragraph 16(a)(ii),

the customs administration may deny preferential tariff treatment to the good.

18. Where the customs administration of a Party does not send a written determination under paragraph 16(b) and the exporter or producer fails to respond to the subsequent verification letter or questionnaire within 30 days:

(a) from the date of its receipt by the exporter or producer, where it was sent in accordance with paragraph 16(a)(i), or

(b) from the date of its receipt by the exporter or producer or from the date it was sent by the customs administration, as the case may be, in accordance with paragraph 16(a)(ii),

the customs administration may deny preferential tariff treatment to the good in accordance with paragraph 19.

19. Where the customs administration of a Party determines, as a result of an origin verification, that a good that is the subject of the verification does not qualify as an originating good, the written determination provided for under Article 506(9) of the Agreement shall:

(a) include a notice of intent to deny preferential tariff treatment with respect to that good that specifies the date after which preferential tariff treatment will be denied and the period during which the exporter or producer of the good may provide written comments or additional information regarding the determination; and

(b) if requested by the Party from whose territory the good is exported, be sent by certified or registered mail or by any other method that produces confirmation of receipt by the exporter or producer of the good.

20. Where the customs administration of a Party determines on the basis of information obtained during a verification that a good does not qualify as an originating good:

(a) the date on which preferential tariff treatment may be denied pursuant to the notice referred to in paragraph 19, shall be no earlier than 30 days from the date on which

(i) receipt of the written determination is confirmed by the exporter or producer, if a request has been made under subparagraph 19(b), and

(ii) the customs administration sends the written determination, if no such request has been made; and

(b) before denying preferential tariff treatment, the customs administration shall take into account any comments or additional information provided by the exporter or producer during the period referred to in subparagraph (a).

21. For purposes of Article 506(10) of the Agreement, "pattern of conduct" means repeated instances of false or unsupported representations by an exporter or producer of a good in the territory of a Party that are established by the customs administration of another Party on the basis of not fewer than two origin verifications of two or more importations of the goods that result in not fewer than two written determinations being sent to that exporter or producer pursuant to Article 506(9) that conclude, as a finding of fact, that Certificates of Origin completed by that exporter or producer with respect to identical goods contain false or unsupported representations.

22. For purposes of Article 506(12) of the Agreement, "consistent treatment" means the established application by the customs administration of a Party that can be substantiated by the continued acceptance by that customs administration of the tariff classification or value of identical materials on importations of the materials into its territory by the same importer over a period of not less than two years immediately prior to the date that the Certificate of Origin for the good that is the subject of the determination under Article 506(11) was completed, provided that with respect to those importations:

(a) such materials had not been accorded a different tariff classification or value by one or more district, regional or local offices of that customs administration on the date of such determination; and

(b) the tariff classification or value of such materials is not the subject of a verification, review or appeal by that customs administration on the date of such determination.

23. For purposes of Article 506(12) of the Agreement, a person shall be entitled to rely on a ruling or advance ruling in accordance with Annex VI.23.

24. A ruling or advance ruling referred to in paragraph 23 that is issued by the customs administration of a Party shall remain in force until modified or revoked.

25. No modification or revocation of a ruling referred to in paragraph 23, other than an advance ruling, may be applied to a good that was the subject of the ruling and that was imported prior to the date of such modification or revocation unless:

(a) the person to whom the ruling was issued has not acted in accordance with its terms and conditions; or

(b) there has been a change in the material facts or circumstances on which the ruling was based.

26. For purposes of Article 506(11) of the Agreement, reference to the phrase, "one or more materials used in the production of the good" means materials that are used in the production of the good or that are used in the production of a material that is used in the production of the good.

27. Article 506(12)(a) of the Agreement in relation to Article 506(11) includes:

(a) a ruling or advance ruling that is issued with respect to a material that is used in the production of the good or that is used in the production of a material that is used in the production of the good; or

(b) the consistent treatment given on the entry of a material that is used in the production of the good or that is used in the production of a material used in the production of the good.

28. Where the customs administration of a Party, in conducting a verification of origin of a good imported into its territory under Article 506 of the Agreement, conducts a verification of the origin of a material that is used in the production of the good, the verification of the material shall be conducted in accordance with the procedures set out in:

(a) Article 506 (1), (2), (3), (5), (7) and (8); and

(b) paragraphs 1, 2, 3, 4, 6, 8, 13, 14, 15 and 16(a).

29. The customs administration of a Party, in conducting a verification of a material that is used in the production of a good pursuant to paragraph 28, may consider the material to be non-originating in determining whether the good is an originating good where the producer or supplier of that material does not allow the customs administration access to information required to make a determination of whether the material is an originating material by the following or other means:

(a) denial of access to its records;

(b) failure to respond to a verification questionnaire or letter; or

(c) refusal to consent to a verification visit within 30 days of receipt of notification under Article 506(2) of the Agreement, as made applicable by paragraph 28.

30. A Party shall not consider a material that is used in the production of a good to be a non-originating material solely on the basis of a postponement of a verification visit under Article 506(5) of the Agreement as made applicable by paragraph 28(a).

31. Where the customs administration of a Party conducts a verification under Article 506 of the Agreement, it may also verify:

(a) the applicable rate of customs duty applied to an originating good in accordance with the rules set out in Annex 302.2 of the Agreement; and

(b) whether a good is a qualifying good for the purposes of Annex 703.2 of the Agreement.

Section C—Advance Rulings

Article VII: Advance Rulings

1. For purposes of Article 509 of the Agreement, the customs administration of a Party shall issue an advance ruling to a producer in the territory of another Party of a material that is used in the production of a good in the territory of another Party, provided that the good is to be subsequently imported into the territory of the Party issuing the ruling, concerning any matter covered by Article 509(1) (a) through (e) and (g) with respect to that material.

2. The common standards regarding the information to be submitted in an application for an advance ruling are set out in Annex VII.2.

3. For purposes of Article 509 of the Agreement, an application to the customs administration of a Party for an advance ruling shall be completed in the language of that Party as set out in Annex I.1d.

4. Subject to paragraph 5 and 6, the customs administration to which the application is made shall issue an advance ruling within 120 days of its receipt of all information reasonably required to process the application, including any supplemental information that may be requested.

5. Each Party may provide that where an application for an advance ruling is made to its customs administration that involves an issue that is the subject of:

(a) a verification of origin,

(b) a review by or appeal to the customs administration, or

(c) judicial or quasi-judicial review in its territory,

the customs administration may decline to issue the ruling.

6. For purposes of Article 509(3) of the Agreement, where the customs administration of a Party determines that an application for an advance ruling is incomplete, it may decline to further process the application provided that:

(a) it has notified the applicant of any supplemental information required and of the period, which shall not be less than 30 days, within which the applicant must provide the information; and

(b) the applicant has failed to provide the information within the period specified.

7. Nothing in paragraph 5 or 6 shall be construed so as to prevent a person from re-applying for an advance ruling.

8. For purposes of Article 509(7) of the Agreement, "importations of a good" is defined in Annex VII.8.

Section D—Review and Appeal

Article VIII: Review and Appeal

1. A denial of preferential tariff treatment to a good by the customs administration of a Party under these Uniform Regulations may be appealed under Article 510 of the Agreement by the exporter or producer of the good who completed the Certificate of Origin for the good in respect of which a claim for preferential tariff treatment was denied, including a denial of preferential tariff treatment under Article 506(4).

2. Where an advance ruling is issued under Article 509 of the Agreement or paragraph 1 of Article VII of these Uniform Regulations, a modification or revocation of the advance ruling shall be subject to review and appeal under Article 510.

3. Where a Party denies preferential tariff treatment to a good on the basis:

(a) that a corrected Certificate of Origin has not been provided within that period set out in Article II(2)(b) of these Uniform Regulations, or

(b) of a failure to comply with a time limit under these Uniform Regulations or under the Agreement, except for the time limit under Article 502(3) of the Agreement, with respect to the furnishing of records or other information to the customs administration of that Party,

the decision rendered on review and appeal under Article 510(2)(a) of that determination shall be on the merits of whether the good qualifies as an originating good, provided that in the case of subparagraph (a) above, a corrected Certificate of Origin is provided to the customs administration of the Party.

Section E—Tariff Elimination

Article IX: Tariff Elimination

1. For purposes of Annex 302.2 and Annex 300–B of the Agreement, Annex 302.2 (4), (5), (6), (8), (10), (11), (12) and (13) and Annex 300–B, Section 2, paragraph 2(b) do not apply where a Party gives duty free treatment to all other Parties in respect of an originating good imported into its territory.

2. For purposes of Annex 302.2 and Annex 300–B of the Agreement, the customs administration of the Party into whose territory an originating good is imported shall determine the applicable preferential tariff rate of duty under Annex 302.2 (8), (10), (11), (12) and (13) and Annex 300–B, Section 2, paragraph 2(b) on the basis of the Marking Rules established under Annex 311 only where:

(a) materials used in the production of the good are obtained from, or

(b) processing of the good occurs in,

the territory of a Party other than the Party from whose territory the good is exported or the Party into whose territory the good is imported, provided that the good has been improved in condition or advanced in value in the territory of the Party from which it is exported. Otherwise, the customs administration shall apply the preferential tariff rate of duty that is applicable to the Party from whose territory the good is exported, provided that the good has been improved in condition or advanced in value in that territory.

3. For purposes of Annex 302.2 of the Agreement, each Party may, notwithstanding that the requirements of Article 502 and any other legal requirements imposed under its law have been satisfied, deny the applicable preferential tariff rate of duty set out in that Annex to an originating good imported into its territory:

(a) if, where contrary to the laws of that Party, the claim for preferential tariff treatment for the good is not supported by documentary evidence such as invoices, bills of lading or waybills that indicate the shipping route and all points of shipment and transshipment prior to the importation of the good into its territory, and

(b) if, where the good is shipped through or transshipped in the territory of a country that is not a Party under the NAFTA, the importer of the good does not provide, on the request of that Party's customs administration, a copy of the customs control documents that indicate, to the satisfaction of the customs administration, that the good remained under customs control while in the territory of such country,

Section F—Drawback and Duty Deferral Programs

Article X: Drawback and Duty Deferral Programs

1. For purposes of Article 303 of the Agreement, "identical or similar" means "identical" and "similar" as defined in Article 15, subsections 2 (a) and (b) of the Customs Valuation Code, and as further defined in Annex IX.1.

2. For purposes of Article 303(1) of the Agreement, "the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party" means the customs duties that are paid in respect of the entry for consumption of the good in the customs territory of a Party, including any change referred to under paragraph 7(b).

3. For purposes of Article 303(1) of the Agreement, where a good is exported from the territory of a Party to the territory of another Party and entered into a duty deferral program in that other Party:

(a) the good shall not be considered to have been exported to the territory of that other Party unless and until such time as the good is withdrawn from the duty deferral program for consumption in the customs territory of that other Party, and

(b) where the good or another good incorporating that good is subsequently exported directly from the duty deferral program to a non-NAFTA country, Article 303 shall not apply to the good, and a refund, waiver or reduction of duties may be granted upon presentation of satisfactory evidence of the exportation of the good or that other good to the non-NAFTA country.

4. In accordance with paragraph (d) of the definition of "satisfactory evidence" under Article 318, "satisfactory evidence" includes an affidavit from the person claiming, subject to Article 303 of the Agreement, a refund, waiver or reduction of customs duties, where such affidavit is based on information received from the importer of the good in the territory of the Party into which the good was subsequently exported.

5. Satisfactory evidence, in the form of one or more of the documents referred to in the definition in Article 318 of the Agreement and paragraph 4, shall contain:

(a) the import entry number,

(b) the date of importation,

(c) the tariff classification number,

(d) the rate of duty, and

(e) the amount of duties paid,

in respect of the importation of the good into the territory of the Party to which the good was subsequently exported.

6. The Party to whom a claim for refund of the amount of customs duties paid, or a waiver or reduction of the amount of customs duties owed, is made may request that the Party to whose territory the good was subsequently exported examine the information referred to under paragraph 5 (a) through (e) that was provided in connection with that claim.

7. The Party to whom a request was made under paragraph 6 shall:

(a) where it determines that the information referred to under paragraph 5 is not correct at the time of the request, provide the requesting Party with the corrected information, and

(b) monitor the importations in respect of the goods that were the

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subject of a request and notify the requesting Party of any change in respect of the duties paid in connection therewith.

8. For purposes of Article 303.6(b) of the Agreement, the circumstances under which a good shall be considered to be in same condition include the following:

(a) mere dilution with water or another substance;

(b) cleaning, including removal of rust, grease, paint or other coatings;

(c) application of preservative, including lubricants, protective encapsulation, or preservation paint;

(d) trimming, filing, slitting or cutting;

(e) putting up in measured doses, or packing, repacking, packaging ; repackaging; or

(f) testing, marking, labelling, sorting, or grading,

provided that such operations do not materially alter the characteristics of the good.

Section G—Final Provisions

Article XI: Final Provisions

1. For purposes of Chapter Five of the Agreement and these Uniform Regulations, "completed" means completed, signed and dated.

2. Each Party shall ensure that its customs procedures governed by the Agreement are in accordance with Chapter Five of the Agreement and these Uniform Regulations.

3. These Uniform Regulations shall enter into force on the date of the entry into force of the Agreement.

4. For purposes of Chapter Five of the Agreement and these Uniform Regulations, any reference to "materials that are used in the production of the good" or "that are used in the production of a material that is used in the production of the good" shall include materials that are incorporated into a good or material as defined in the Uniform Regulations for Chapter Four.

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Annex I.1a

North American Free Trade Agreement
Certificate of Origin

(Instructions Attached)

Please print or type

1.EXPORTER NAME AND ADDRESS: TAX IDENTIFICATION NUMBER:	2.BLANKET PERIOD (DD/MM/YR) FROM: TO:
3. PRODUCER NAME AND ADDRESS: TAX IDENTIFICATION NUMBER:	4.IMPORTER NAME AND ADDRESS: TAX IDENTIFICATION NUMBER:

5.DESCRIPTION OF GOOD(S):	6.H.S. TARIFF CLASSIFICATION NUMBER	7.PREFERENCE CRITERION	8.PRODUCER	9.NET COST	10.COUNTRY OF ORIGIN

I CERTIFY THAT:

- THE INFORMATION ON THIS DOCUMENT IS TRUE AND ACCURATE AND I ASSUME THE RESPONSIBILITY FOR PROVING SUCH REPRESENTATIONS. I UNDERSTAND THAT I AM LIABLE FOR ANY FALSE STATEMENTS OR MATERIAL OMISSIONS MADE ON OR IN CONNECTION WITH THIS DOCUMENT;

- I AGREE TO MAINTAIN, AND PRESENT UPON REQUEST, DOCUMENTATION NECESSARY TO SUPPORT THIS CERTIFICATE, AND TO INFORM, IN WRITING, ALL PERSONS TO WHOM THE CERTIFICATE WAS GIVEN OF ANY CHANGES THAT COULD AFFECT THE ACCURACY OR VALIDITY OF THIS CERTIFICATE;

- THE GOODS ORIGINATED IN THE TERRITORY OF ONE OR MORE OF THE PARTIES, AND COMPLY WITH THE ORIGIN REQUIREMENTS SPECIFIED FOR THOSE GOODS IN THE NORTH AMERICAN FREE TRADE AGREEMENT, AND UNLESS SPECIFICALLY EXEMPTED IN ARTICLE 411 OR ANNEX 401, THERE HAS BEEN NO FURTHER PRODUCTION OR ANY OTHER OPERATION OUTSIDE THE TERRITORIES OF THE PARTIES; AND

- THIS CERTIFICATE CONSISTS OF ______ PAGES, INCLUDING ALL ATTACHMENTS.

11. AUTHORIZED SIGNATURE:	COMPANY:	
NAME (PRINT OR TYPE):	TITLE:	
DATE: (DD/MM/YR)	TELEPHONE:	FAX:

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NORTH AMERICAN FREE TRADE AGREEMENT

CERTIFICATE OF ORIGIN INSTRUCTIONS

For purposes of obtaining preferential tariff treatment, this document must be completed legibly and in full by the exporter and be in the possession of the importer at the time the declaration is made. This document may also be completed voluntarily by the producer for use by the exporter. Please print or type:

Field 1: State the full legal name, address (including country) and legal tax identification number of the exporter. Legal tax identification number is: in Canada, employer number or importer/exporter number assigned by Revenue Canada; in Mexico, federal taxpayer's registry number (RFC); and in the United States, employer's identification number or Social Security number.

Field 2: Complete field if the Certificate covers multiple shipments of identical goods as described in Field #5 that are imported into a NAFTA country for a specified period of up to one year (blanket period). "FROM" is the date upon which the Certificate becomes applicable to the good covered by the blanket Certificate (it may be prior to the date of signing this Certificate). "TO" is the date upon which the blanket period expires. The importation of a good for which preferential tariff treatment is claimed based on this Certificate must occur between these dates.

Field 3: State and full legal name, address (including country) and legal tax identification number, as defined in field #1, of the producer. If more than one producer's good is included on the Certificate, [illegible] a list of the additional producers, including the legal name, address (including country) and legal tax identification number, cross referenced to the good described in field #5. If you wish this information to be confidential, it is acceptable to state "Available to Customs upon request". If the producer and the exporter are the same, complete field with "SAME". If the producer is unknown, it is acceptable to state "UNKNOWN".

Field 4: State the full legal name, address (including country) and legal tax identification number, as defined in field #1, of the importer. If the importer is not known, state "UNKNOWN"; if multiple importers, state "VARIOUS".

Field 5: Provide a full description of each good. The description should be sufficient to relate it to the invoice description and to the Harmonized System (H.S.) description of the good. If the Certificate covers a single shipment of a good, include the invoice number as shown on the commercial invoice. If not known, indicate another unique reference number, such as the shipping order number.

Field 6: For each good described in field #5, identify the H.S. tariff classification to six digits. If the good is subject to a specific rule of origin in Annex 401 that requires eight digits, identify to eight digits, using the H.S. tariff classification of the country into whose territory the good is imported.

Field 7: For each good described in field #5, state which criterion (A through F) is applicable. The rules of origin are contained in Chapter Four and Annex 401. Additional rules are described in Annex 703.2 (certain agricultural goods), Annex 300–B, Appendix 6A (certain textile goods) and Annex 308.1 (certain automatic data processing goods and their parts). NOTE: In order to be entitled to preferential tariff treatment, each good must meet at least one of the criteria below.

Preference Criteria

A—The good is "wholly obtained or produced entirely" in the territory of one or more of the NAFTA countries, as referred to in Article 415. NOTE: The purchase of a good in the territory does not necessarily render it "wholly obtained or produced". If the good is an agricultural good, see also criterion F and Annex 703.2. *(Reference: Article 401(a) and 415)*

B—The good is produced entirely in the territory of one or more of the NAFTA countries and satisfies the specific rule of origin, set out in Annex 401, that applies to its tariff classification. The rule may include a tariff classification change, regional value-content requirement or a combination thereof. The good must also satisfy all other applicable requirements of Chapter Four. If the good is an agricultural good, see also criterion F and Annex 703.2 *(Reference: Article 401(b))*

C—The good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials. Under this criterion, one or more of the materials may not fall within the definition of "wholly produced or obtained", as set out in Article 415. All materials used in the production of the good must qualify as "originating" by meeting the rules of Article 401(a) through (d). If the good is an agricultural good, see also criterion F and Annex 703.2 *(Reference: Article 401(c))*

D—Goods are produced in the territory of one or more of the NAFTA countries but do not meet the applicable rule of origin, set out in Annex 401, because certain non-originating materials do not undergo the required change in tariff classification. The goods do nonetheless meet the regional value-content requirement specified in Article 401(d). This criterion is limited to the following two circumstances:

1. The good was imported into the territory of a NAFTA country in an unassembled or disassembled form but was classified as an assembled good, pursuant to H.S. General Rule of Interpretation 2(a); or
2. The good incorporated one or more non-originating materials, provided for as parts under the H.S., which could not undergo a change in tariff classification because the heading provided for both the good and its parts and was not further subdivided into subheadings, *or* the subheading provided for both the good and its parts and was not further subdivided. NOTE: This criterion does not apply to Chapters 61 through 63 of the H.S. *(Reference: Article 401(d))*

E—Certain automatic data processing goods and their parts, specified in Annex 308.1 that do not originate in the territory are considered originating upon importation into the territory of a NAFTA country from the territory of another NAFTA country when the most-favoured-nation tariff rate of the good conforms to the rate established in Annex 308.1 and is common to all NAFTA countries *(Reference: Annex 308.1)*

F—The good is an originating agricultural good under preference criterion A, B, or C above and is not subject to a quantitative restriction in the importing NAFTA country because it is a "qualifying good" as defined in Annex 703.2, Section A or B (please specify). A good listed in Appendix 703.2.B.7 is also exempt from quantitative restrictions and is eligible for NAFTA preferential tariff treatment if it meets the definition of "qualifying good" in Section A of Annex 703.2. NOTE 1: This criterion does not apply to goods that wholly originate in Canada or the United States and are imported into either country. NOTE 2: A tariff rate quota is not a quantitative restriction.

Field 8: For each good described in field #5, state "YES" if you are the producer of the good. If you are not the producer of the good, state "NO" followed by (1), (2) or (3), depending on whether this certificate was based upon: (1) your knowledge of whether the good qualifies as an originating good; (2) your reliance on the producer's written representation (other than a Certificate of Origin) that the good qualifies as an originating good; or (3) a completed and signed Certificate for the good, voluntarily provided to the exporter by the producer.

Field 9: For each good described in field #5, where the good is subject to a regional value content (RVC) requirement, indicate "NC" if the RVC is calculated according to the net cost method; otherwise, indicate "NO". If the RVC is calculated according to the net cost method over a period of time, further identify the beginning and ending date (DD/MM/YR) of that period. *(Reference: Articles 402.1, and 402.5)*

Field 10: Identify the name of the country ("MX" or "US" for agricultural and textile goods exported to Canada; "US" or "CA" for all goods exported to Mexico; or "CA" or "MX" for all goods exported to the United States) to which the preferential rate of customs duty applies, as set our in Annex 302.2, in accordance with the Marketing Rules or in each Party's schedule of tariff elimination.

For all other originating goods exported to Canada, indicate appropriately "MX" or "US" if the goods originate in that NAFTA country, within the meaning of the NAFTA Rules of Origin Regulations,, and any subsequent processing in the other NAFTA country does not increase the transaction value of the goods by more than seven percent; otherwise indicate "JNT" for joint production. *(Reference: Annex 302.2).*

Field 11: This field must be completed, signed and dated by the exporter. When the Certificate is completed by the producer for use by the exporter, it must be completed, signed and dated by the producer. The date must be the date the Certificate was completed and signed.

Annex I.1d

Language of a Party

For purposes of these Uniform Regulations the language of a Party shall be, in the case of:

(a) Canada, English or French;
(b) Mexico, Spanish; and
(c) the United States, English.

Annex II.3

Corrected Declaration of Origin

An importer shall not be subject to penalties if, in the case of:

(a) Canada, the importer makes the corrected declaration within ninety days from the date on which the importer has reason to believe that the declaration is incorrect;

(b) Mexico, the importer makes the corrected declaration before the customs administration begins an investigation regarding an incorrect declaration or initiates the exercise of its auditing powers on the accuracy of a declaration or an inspection pursuant to the application of the random selection procedures; and

(c) United States, the importer makes the corrected declaration within thirty days from the date on which the importer has reason to believe that the declaration is incorrect and such corrected declaration is make before the commencement of a formal investigation of the incorrect declaration.

Annex III.2

Country-Specific Definitions of "Series of Importations"

For purposes of Article 503 of the Agreement, "series of importations" means, in the case of:

(a) Canada, two or more importations of a good accounted for separately but covered by one commercial invoice issued by the seller of the good to the purchaser of the good;

(b) Mexico, two or more customs entries covering a good arriving the same day or released the same day, and consigned to, or imported by any person, but covered by one commercial invoice; and

(c) the United States, two or more customs entries covering a good arriving the same day from the same exporter and consigned to the same person.

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Annex IV.1

Country-Specific Definitions of "Promptly"

For purposes of Article 504(1)(b) of the Agreement, "promptly" means, in the case of:

(a) Canada, immediately;

(b) Mexico, prior to the commencement of an investigation by officials with authority to conduct criminal investigations regarding the Certificate of Origin; and

(c) the United States, within 30 days.

Annex VI.9

Common Standards for Written Questionnaires

1. For purposes of Article VI.9 of these Uniform Regulations, the Parties will seek to agree on uniform questions to be included in a general questionnaire.

2. Subject to paragraph 3, where the customs administration of a Party conducts a verification under Article 506(1)(a) of the Agreement, it shall send the general questionnaire referred to in paragraph 1 of this Annex.

3. For purposes of Article 506(1)(a) of the Agreement, where the customs administration of a Party requires specific information not reflected in the general questionnaire, it may send a more specific questionnaire, according to the information required to determine whether the good that is the subject of the verification is an originating good.

4. For purposes of Article VI of these Uniform Regulations, the verification questionnaires may, at the option of the exporter or producer, be completed in either the language of the Party into whose territory the good is imported, or the language of the Party in the territory in which the exporter or producer is located.

5. Nothing in this Annex shall be interpreted to constrain the customs administration of a Party from requesting additional information in accordance with Article 506(1)(a) of the Agreement and these Uniform Regulations.

Annex VI.23

Rulings and Advance Rulings

A person shall be entitled to rely on a ruling or advance ruling that is issued, in the case of:

(a) Canada, in accordance with Departmental Memorandum 11–11–1 (National Customs Rulings) or pursuant to section 43.1(1) of the Customs Act (Advance Rulings);

(b) Mexico, pursuant to Article 34 of the Código Fiscal de la Federación and to Article 30 of the Ley Aduanera or the applicable provision of Mexican law related to advance rulings under Article 509 of the Agreement; and

(c) the United States, pursuant to 5 U.S.C. 301, 19 U.S.C. 66, or 19 U.S.C. 1624.

Annex VII.2

Common Standards for Information Required in the Application for an Advance Ruling

1. For purposes of Article 509(2) of the Agreement, each Party shall provide that a request for an advance ruling shall contain:

(a) the name and address of the exporter, producer or importer of the good requesting the issuance of the ruling, as the case may be, hereinafter referred to as the applicant,

(b) where the applicant is

(i) the exporter of the good, the name and address of the producer and importer of the good, if known,

(ii) the producer of the good, the name and address of the exporter and importer of the good, if known, or

(iii) the importer of the good, the name and address of the exporter and, if known, the producer of the good.

(c) where the request is made on behalf of an applicant, the name and address of the person requesting the issuance of the advance ruling and either

(i) a written statement from the person requesting the issuance of the advance ruling, or

(ii) upon the request of the customs administration of that Party, such person provide, in accordance with its laws, evidence from the applicant on whose behalf the ruling is being requested,

that indicates that the person is duly authorized to transact business as the agent of the applicant.

(d) a statement, on the basis of the applicant's knowledge, as to whether the issue that is the subject of the request for an advance ruling is, or has been, the subject of

(i) a verification of origin

(ii) an administrative review or appeal

(iii) a judicial or quasi-judicial review, or

(iv) a request for an advance ruling

in the territory of any Party, and if so, a brief statement setting forth the status or disposition of the matter.

(e) a statement, on the basis of the applicant's knowledge, as to whether the good that is the subject of the request for an advance ruling has previously been imported into the territory of the Party to whom the request for the advance ruling has been made.

(f) a statement that the information presented is accurate and complete, and

(g) a complete description of all relevant facts and circumstances relating to the issue that is the subject of the request for the advance ruling, including,

(i) a concise statement, within the scope of Article 509(1) of the Agreement, setting forth the issue on which the advance ruling is sought, and

(ii) a general description of the good.

2. Where relevant to the issue that is the subject of the request for an advance ruling, the request shall include, in addition to the information referred to in paragraph 1,

(a) a copy of any advance ruling or other ruling with respect to the tariff classification of the good that has been issued to the applicant by the Party to whom the request for an advance ruling is made, and

(b) if no previous advance ruling or other ruling with respect to the tariff classification of the good has been issued by the Party to whom the request for the advance ruling is made, sufficient information to enable the customs administration of that Party to classify the good, including,

(i) a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation, product literature, drawings, photographs, or schematics, and

(ii) where practical and useful, a sample of the good.

3. Where the request for the advance ruling involves the application of a rule of origin that requires an assessment of whether materials used in the production of the good undergo an applicable change in tariff classification, the request shall include:

(a) a listing of each material that is used in the production of the good,

(b) with respect to each material referred to in paragraph (a) that is claimed to be an originating material, a complete description of the material, including the basis on which it is considered that the material originates,

(c) with respect to each material referred to in paragraph (a) that is a non-originating material or the origin of which is unknown, a complete description of the material, including its tariff classification, if known, and

(d) a description of all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.

4. Where the request for an advance ruling involves the application of a regional value-content requirement, the applicant shall indicate whether the request is based on the use of the transaction value or the net cost method, or both.

5. Where the request for an advance ruling involves the use of the transaction value method, the request shall include:

(a) information sufficient to calculate the transaction value of the good in accordance with Schedule II of the NAFTA Rules of Origin Regulations with respect to the transaction of the producer of the good, adjusted to a F.O.B. basis,

(b) information sufficient to calculate the value of each material that is a non-originating material or the origin of which is unknown that is used in the production of the good in accordance with Section 7, and, where applicable, section 6(10) of the NAFTA Rules of Origin Regulations, and

(c) with respect to each material that is claimed to be an originating material that is used in the production of the good, a complete description of the material including the basis on which it is considered that the material originates.

6. Where the request for an advance ruling involves the use of the net cost method, the request shall include:

(a) a listing of all product, period and other costs relevant to determining the total cost of the good referred to under the NAFTA Rules of Origin Regulations,

(b) a listing of all excluded costs to be subtracted from the total cost referred to under the NAFTA Rules of Origin Regulations,

(c) information sufficient to calculate the value of each material that is a non-originating material or the origin of which is unknown that is used in the production of the good in accordance with section 7 of the NAFTA Rules of Origin Regulation,

(d) the basis for any allocation of costs in accordance with Schedule VII of the NAFTA Rules of Origin Regulations, and

(e) the period over which the net cost calculation is to be made.

7. Where the request for an advance ruling involves an issue of whether, with respect to a good or a material that is used in the production of a good, the transaction value of the good or the material is acceptable, the request shall include information sufficient to permit an examination of the factors enumerated in Schedules III or VIII of the NAFTA Rules of Origin Regulations, as applicable.

8. Where the request for an advance ruling involves an issue with respect to an intermediate material under Article 402(10) of the Agreement, the request shall contain sufficient information to determine the origin and value of the material in accordance with Article 402(11).

9. Where the request for an advance ruling is limited to the calculation of an element of a regional value content formula, in addition to the information required under paragraph 1, only that information set out under paragraph 4, 5 and 6 which is relevant to the issue that is the subject of the request for an advance ruling need be contained in the request.

10. Where the request for an advance ruling is limited to the origin of a material that is used in the production of a good in accordance with Article VII.1 of these Uniform Regulations, in addition to the information required under paragraph 1, only that information set out under paragraph 2 and 3 which is relevant to the issue that is the subject of the advance ruling need be contained in the request.

Annex VII.8

Country-Specific Definitions of "importations of a good"

For purposes of Article 509(7) of the Agreement, "importations of a good" means importations of a good:

(a) which, in the case of Canada, has been released pursuant to section 31 of the Customs Act;

(b) for which, in the case of Mexico, an entry document has been presented pursuant to Article 25 of the Ley Aduanera (Customs Act); and

(c) which, in the case of the United States, has been entered pursuant to section 1484 of title 19, United States Code.

Annex IX.1

United States Definition of "identical or similar"

For purposes of Article 303 of the Agreement, in the case of the United States "identical or similar" shall have the same meaning as "same kind and quality" as set forth in 19 U.S.C. § 1313(b).

[FR Doc. 95–21717 Filed 9–5–95; 8:45 am]

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federal register

Wednesday
September 6, 1995

Part III

Department of Justice

Bureau of Prisons

28 CFR Parts 541 and 548

Control Unit Programs; Religious Beliefs and Practices: Final Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[BOP-1025-F]

Control Unit Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on Control Unit Programs to reflect changes in staffing assignments or the mission of specific institutions, to conform to revisions for Federal Prison Industries work assignments, and to make an editorial amendment.

EFFECTIVE DATE: September 6, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Control Unit Programs. A final rule on this subject was published in the **Federal Register** August 17, 1984 (49 FR 32991) and was amended June 20, 1985 (50 FR 25662).

This document makes the following changes to the Bureau's regulations on control unit programs to reflect changes in staffing assignments or the mission of specific institutions, and changes in the Bureau's regulations on Federal Prison Industries work assignments.

In § 541.46, paragraph (c), obsolete references to Federal Prison Industries industrial good time have been removed. Regulations on Federal Prison Industries work programs (28 CFR part 345) were revised on March 27, 1995 (60 FR 15826). Paragraph (g) is revised for the sake of clarity by dividing the existing text into two sentences. There is no change in the intent of this paragraph.

In § 541.48, paragraph (b) is revised to remove specific reference to the Marion Control Unit, which is currently being deactivated. The procedures in revised paragraph (a) for the inmate's request that an X-ray be taken in lieu of digital search are therefore applicable for any control unit. Revised paragraph (b) now specifies the institution's Clinical Director or Acting Clinical Director (rather than the Chief or Acting Chief of Health Programs) as the official responsible for making a medical determination regarding cumulative X-ray exposure for the requesting inmate. This change is intended to make more efficient use of Bureau staff.

In § 541.49, paragraph (a) is revised to specify additional staff (namely, the officer-in-charge or lieutenant) on the control unit team.

In § 541.50, paragraph (b)(2) is revised for editorial purposes. There is no change in the intent of this section.

Because these changes are administrative in nature and are not more restrictive on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 541

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 541 in subchapter C of 28 CFR, chapter V is amended as set forth below.

Subchapter C—Institutional Management

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for 28 CFR part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 541.46, paragraph (c) is amended by revising the first sentence (the paragraph heading is republished) and paragraph (g) is revised to read as follows:

§ 541.46 Programs and services.

* * * * *

(c) *Industries (UNICOR).* If an industry program exists in a control unit each inmate participating in this program may earn industrial pay, subject to the regulations of Federal Prison Industries, Inc. (UNICOR). * * *

* * * * *

(g) *Counselor services.* The unit counselor ordinarily handles phone call requests, special concerns and requests of inmates, and requests for administrative remedy forms. The unit counselor is also available for consultation and for counseling as recommended in the mental health evaluation (see paragraph (i) of this section—Mental Health Services).

* * * * *

3. In § 541.48, paragraph (b) is revised to read as follows:

§ 541.48 Search of control unit inmates.

* * * * *

(b) An inmate in a control unit may request in writing that an X-ray be taken in lieu of the digital search discussed in paragraph (a) of this section. The Warden shall approve this request, provided it is determined and stated in writing by the institution's Clinical Director or Acting Clinical Director (may not be further delegated) that the amount of X-ray exposure previously received by the inmate, or anticipated to be given the inmate in the immediate future, does not make the proposed X-ray medically unwise. Staff are to place documentation of the X-ray, and the inmate's signed request for it, in the inmate's central and medical files. The Warden's authority may not be delegated below the level of Acting Warden.

* * * * *

4. In § 541.49, paragraph (a) is amended by revising the second sentence to read as follows:

§ 541.49 Review of control unit placement.

(a) * * * Once every 30 days, the control unit team, comprised of the control unit manager and other members designated by the Warden (ordinarily to include the officer-in-charge or lieutenant, case manager, and education staff member assigned to the unit), shall meet with an inmate in the control unit. * * *

* * * * *

5. In § 541.50, paragraph (b)(2) is revised to read as follows:

§ 541.50 Release from a control unit.

* * * * *

(b) * * *

(2) To another federal or non-federal institution; or

* * * * *

[FR Doc. 95–21933 Filed 9–5–95; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 548

[BOP 1011–I]

RIN 1120–AA17

Religious Beliefs and Practices

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this interim rule, the Bureau of Prisons is amending its regulations on Religious Beliefs and Practices in order to provide for the uniform implementation of a common fare religious diet menu and to simplify and update procedures relating to religious beliefs and practices.

DATES: Effective September 6, 1995; comments due by November 6, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Religious Beliefs and Practices. A final rule on this subject was published in the **Federal Register** December 14, 1984 (49 FR 48902).

The Bureau of Prisons is updating its regulations on Religious Beliefs and Practices to include provisions for the implementation of a common fare religious diet. In addition, the regulations have been revised and reorganized for the sake of clarity. A discussion of the specific changes follows.

In § 548.10, paragraph (a) has been revised for the sake of clarity. Paragraph (b) has been revised for the sake of clarity and to provide examples of religious activity or practice. Paragraph (c) has been revised to clarify that an inmate may request at any time to change religious preference by notifying the chaplain in writing. This revision is necessary to provide for adequate documentation (i.e., requiring the notification in writing) of the inmate's request. The change will then be effected in a timely fashion.

The material in §§ 548.12 through 548.15 has been revised and reorganized as §§ 548.12 through 548.20.

New § 548.12 restates material formerly in old § 548.12(a). As revised, this section on chaplains now also specifies that pastoral care and counseling from representatives in the community are available in accordance with the provisions of new §§ 548.14 and 548.19.

New § 548.13 restates material formerly in old §§ 548.12 (b) and 548.15 (b). As revised, new § 548.13 emphasizes that chaplains are responsible for directing the institution's religious activities and that each institution shall have space designated for the conduct of religious activities.

New § 548.14 restates material formerly in old § 548.12 (c) regarding pastoral care and counseling available from representatives in the community. As revised these provisions may require verification of a volunteer's or contractor's religious credentials from a recognized member of the faith group.

New § 548.15 consolidates material from old § 548.12 (d) and (e). As revised, this section now specifies that attendance at religious activities is voluntary and, unless otherwise specifically determined by the Warden, is open to all.

New § 548.16 consolidates material from old § 548.12 (f) and (g). As revised, paragraph (a) of new § 548.16 clarifies that religious items are considered to be part of the inmate's personal property and are subject to normal considerations of safety and security. This paragraph also provides that the chaplain is to verify the religious significance for the Warden's approval. Paragraph (b) restates the provisions of former § 548.12(f) regarding the wearing of religious items during religious services, ceremonies, and meetings in the chapel or within the institution. Paragraph (c) of new § 548.16 restates the provisions of former § 548.12(g). Revised paragraph (c) also requires that the distribution to inmates of religious literature purchased by or donated to the Bureau is contingent upon the approval of the institution's chaplain. This change is intended to ensure that inmates are not coerced or harassed to change religious affiliation.

New § 548.17 restates provisions from former § 548.14 covering work assignments. As revised, this section broadens applicability by covering instances where a religious tenet is jeopardized by a particular work assignment and designates the chaplain as being responsible for verifying the specific religious tenets. The revised section clarifies procedures by specifying that the inmate makes the request in writing.

New § 548.18 restates provisions from former § 548.15(a) regarding religious observances. As revised, this section clarifies procedures for the submission of an inmate's request for time off from work to observe a religious holy day and requires that the chaplain work with requesting inmates to accommodate a proper observance of the holy day celebration.

New § 548.19 derives from an expansion of provisions from former § 548.12(c) regarding pastoral visits. As added, this section requires that the chaplain facilitate arrangements for pastoral visits by a clergyperson or representative of the inmate's faith if requested by an inmate and gives the chaplain the discretion to request an NCIC check and documentation of such person's religious credentials when necessary. The revised section specifies that such visits are not considered social visits, in accordance with existing Bureau policy on visiting regulations (see 28 CFR 540.48), and provides for administrative details on the location of such visits.

New § 548.20 restates provisions contained in former § 548.13 (a) and (b) on dietary practices, including religious diets. In the past, religious diets offered by the Bureau were limited to kosher diets and a pilot program offering a common fare menu (i.e., a diet designed to meet nutritional standards and the basic requirements of religious dietary norms).

As revised, paragraph (a) of new § 548.20 specifies procedures for consideration of requests for a religious diet under a common fare menu. References to nutritional standards have been removed because the Bureau believes it is unnecessary in this regulation to restate its basic policy of providing nutritionally adequate meals. The Bureau initially piloted operation of a common fare menu at institutions in its South Central Region and gradually expanded operation of the program nationwide. Review of the small number of inmate complaints on this subject filed under the Administrative Remedy Program has demonstrated the benefits and practicability of the common fare menu. Documentation requirements for processing a request include a written statement from the inmate articulating the religious motivation for participating in the common fare program. Paragraph (b) specifies procedures for withdrawal or removal from a requested religious diet. The process of reapproving a religious diet ordinarily may extend up to thirty days. Repeated withdrawals may result in longer waiting periods (up to one year). This delay for reinstatement is intended to preserve the integrity and orderly operation of the religious diet program and to prevent fraud. Paragraph (c) contains provisions for accommodations to be made for an annual ceremonial or commemorative meal which specify that such meal is for the members of the particular religious group. The discretionary provisions contained in former § 548.13(b) on the purchase of food to be used for these meals have been removed from the revised regulations because the Bureau believes them to be administrative in nature. Internal staff guidelines specify that Bureau Food Service staff are responsible for procuring such special foods.

Because implementation of a common fare menu provides wider accommodation to the religious needs of inmates and has generally shown its benefits and practicability (based upon the small number of Administrative Remedy filings), the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, and delay in effective date, and is implementing this change as an interim rule. Other regulatory changes in this document are administrative in nature or are restatements or reorganizations made for the sake of clarity. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 548

Prisoners.

Kathleen M. Hawk,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 548 in subchapter C of 28 CFR, chapter V is amended as set forth below.

Subchapter C—Institutional Management

PART 548—RELIGIOUS PROGRAMS

1. The authority citation for 28 CFR part 548 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 42 U.S.C. 1996; 28 CFR 0.95–0.99.

2. Subpart B, consisting of §§ 548.10 through 548.15, is revised to consist of §§ 548.10 through 548.20 as follows:

Subpart B—Religious Beliefs and Practices of Committed Offenders

Sec.
548.10 Purpose and scope.
548.11 Definition.
548.12 Chaplains.
548.13 Schedules and facilities.
548.14 Community involvement (volunteers, contractors).
548.15 Equity.
548.16 Inmate religious property.
548.17 Work assignments.
548.18 Observance of religious holy days.
548.19 Pastoral visits.
548.20 Dietary practices.

Subpart B—Religious Beliefs and Practices of Committed Offenders

§ 548.10 Purpose and scope.

(a) The Bureau of Prisons provides inmates of all faith groups with reasonable and equitable opportunities to pursue religious beliefs and practices, within the constraints of budgetary limitations and consistent with the security and orderly running of the institution and the Bureau of Prisons.

(b) When considered necessary for the security or good order of the institution, the Warden may limit attendance at or discontinue a religious activity. Opportunities for religious activities are open to the entire inmate population, without regard to race, color, nationality, or ordinarily, creed. The Warden, after consulting with the institution chaplain, may limit participation in a particular religious activity or practice to the members of that religious group. Ordinarily, when the nature of the activity or practice (e.g., religious fasts, wearing of headwear, work proscription, ceremonial meals) indicates a need for such a limitation, only those inmates whose files reflect the pertinent religious preference will be included.

(c) The Bureau of Prisons does not require an inmate to profess a religious belief. An inmate may designate any or no religious preference at his/her initial team screening. By notifying the chaplain in writing, an inmate may request to change this designation at any time, and the change will be effected in a timely fashion.

§ 548.11 Definition.

For purposes of this subpart, the term "religious activity" includes religious diets, services, ceremonies, and meetings.

§ 548.12 Chaplains.

Institution chaplains are available upon request to provide pastoral care and counseling to inmates through group programs and individual services. Pastoral care and counseling from representatives in the community are available in accordance with the provisions of §§ 548.14 and 548.19.

§ 548.13 Schedules and facilities.

(a) Under the general supervision of the Warden, chaplains shall schedule and direct the institution's religious activities.

(b) The Warden may relieve an inmate from an institution program or assignment if a religious activity is also scheduled at that time.

(c) Institutions shall have space designated for the conduct of religious activities.

§ 548.14 Community involvement (volunteers, contractors).

(a) The institution's chaplain may contract with representatives of faith groups in the community to provide specific religious services which the chaplain cannot personally deliver due to, ordinarily, religious prescriptions or ecclesiastical constraints to which the chaplain adheres.

(b) The institution's chaplain may secure the services of volunteers to assist inmates in observing their religious beliefs.

(c) The Warden or the Warden's designee (ordinarily the chaplain) may require a recognized representative of the faith group to verify a volunteer's or contractor's religious credentials prior to approving his or her entry into the institution.

§ 548.15 Equity.

No one may disparage the religious beliefs of an inmate, nor coerce or harass an inmate to change religious affiliation. Attendance at all religious activities is voluntary and, unless otherwise specifically determined by the Warden, open to all.

§ 548.16 Inmate religious property.

(a) Inmate religious property includes but is not limited to rosaries and prayer beads, oils, prayer rugs, phylacteries, medicine pouches, and religious medallions. Such items, which become part of an inmate's personal property, are subject to normal considerations of safety and security. If necessary, their religious significance shall be verified by the chaplain prior to the Warden's approval.

(b) An inmate ordinarily shall be allowed to wear or use personal religious items during religious services, ceremonies, and meetings in the chapel, unless the Warden determines that the wearing or use of such items would threaten institution security, safety, or good order. Upon request of the inmate, the Warden may allow the wearing or use of certain religious items throughout the institution, consistent with considerations of security, safety, or good order. The Warden may request the chaplain to obtain direction from representatives of the inmate's faith group or other appropriate sources concerning the religious significance of the items.

(c) An inmate who wishes to have religious books, magazines or periodicals must comply with the general rules of the institution regarding ordering, purchasing, retaining and accumulating personal property. Religious literature is permitted in accordance with the procedures governing incoming publications. Distribution to inmates of religious literature purchased by or donated to the Bureau of Prisons is contingent upon the chaplain's granting his or her approval.

§ 548.17 Work assignments.

When the religious tenets of an inmate's faith are violated or jeopardized by a particular work assignment, a different work assignment ordinarily shall be made after it is requested in writing by the inmate, and the specific religious tenets have been verified by the chaplain. Maintaining security, safety, and good order in the institution are grounds for denial of such request for a different work assignment.

§ 548.18 Observance of religious holy days.

Consistent with maintaining security, safety, and good order in the institution, the Warden shall endeavor to facilitate the observance of important religious holy days which involve special fasts, dietary regulations, worship, or work proscription. The inmate must submit a written request to the chaplain for time off from work to observe a religious holy day. The Warden may request the chaplain to consult with community representatives of the inmate's faith group and/or other appropriate sources to verify the religious significance of the requested observance. The chaplain will work with requesting inmates to accommodate a proper observance of the holy day. The Warden will ordinarily allow an inmate to take earned vacation days, or to make up for missed work, or to change work assignments in order to facilitate the observance of the religious holy day.

§ 548.19 Pastoral visits.

If requested by an inmate, the chaplain shall facilitate arrangements for pastoral visits by a clergyperson or representative of the inmate's faith.

(a) The chaplain may request an NCIC check and documentation of such clergyperson's or faith group representative's credentials.

(b) Pastoral visits may not be counted as social visits. They will ordinarily take place in the visiting room during regular visiting hours.

§ 548.20 Dietary practices.

(a) The Bureau provides inmates requesting a religious diet reasonable and equitable opportunity to observe their religious dietary practice within the constraints of budget limitations and the security and orderly running of the institution and the Bureau through a common fare menu. The inmate will provide a written statement articulating the religious motivation for participation in the common fare program. Any approval of a request for religious diets must be documented in writing by the chaplain, who will forward a copy of the approval form to the food service administrator.

(b) An inmate who has been approved for a common fare menu must notify the chaplain in writing if the inmate wishes to withdraw from the religious diet. Approval for an inmate's religious diet may be withdrawn by the chaplain if the inmate is documented as being in violation of the terms of the religious diet program to which the inmate has agreed to in writing. In order to preserve the integrity and orderly operation of the religious diet program and to prevent fraud, inmates who withdraw (or are removed) may not be immediately reestablished back into the program. The process of reapproving a religious diet for an inmate who voluntarily withdraws or who is removed ordinarily may extend up to thirty days. Repeated withdrawals (voluntary or otherwise), however, may result in inmates being subjected to a waiting period of up to one year.

(c) The chaplain may arrange for inmate religious groups to have one appropriate ceremonial or commemorative meal each year for their members as identified by the religious preference reflected in the inmate's file. An inmate may attend one religious ceremonial meal in a calendar year.

[FR Doc. 95–21934 Filed 9–5–95; 8:45 am]
BILLING CODE 4410–05–P

federal register

Wednesday
September 6, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approved Tribal/State Compact; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal/State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal/State Gaming Compact between the Skokomish Indian Tribe and the State of Washington, which was executed on May 25, 1995.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: August 25, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–22040 Filed 9–5–95; 8:45 am]

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federal register

Wednesday
September 6, 1995

Part V

Department of Education

34 CFR Parts 74, 75, 76, and 81

Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations; Direct Grant Programs; State-Administered Programs; and General Provisions Act Enforcement: Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 75, 76, and 81

RIN 1880–AA64

Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations; Direct Grant Programs; State-Administered Programs; and General Provisions Act—Enforcement

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary makes technical amendments to the Education Department General Administrative Regulations (EDGAR) to implement amendments to the General Education Provisions Act (GEPA) made by the Improving America's Schools Act (IASA). The provisions will diminish the paperwork burden for recipients, permit the Secretary to approve State plans for a period longer than three years, authorize the Secretary to take actions other than termination actions if, after a hearing, the Secretary determines that a State plan is not substantially approvable, improve the procedures and requirements governing hearings for the recovery of funds, implement other statutory requirements and make other technical changes to EDGAR.

EFFECTIVE DATE: These regulations take effect October 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ronelle Holloman, U.S. Department of Education, 600 Independence Avenue, SW., Room 3636, ROB–3, Washington, DC 20202–4700. Telephone: (202) 205–3501. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary is amending sections in 34 CFR Parts 74, 75, 76, and 81 to implement the Improving America's Schools Act of 1994 (Pub. L. 103–382), enacted October 20, 1994, and to make other technical changes. The Improving America's Schools Act extends the authorization for programs under the Elementary and Secondary Education Act of 1965 and, as it relates to these amendments, diminishes paperwork burden for educators and clarifies procedures handled by the Office of Administrative Law Judges. Other technical changes to EDGAR are also being made.

Section-by-Section Analysis

Section 74.53 establishes record retention and access requirements for discretionary grants and cooperative agreements awarded on or after October 1, 1994. The section is amended by removing "five" and adding in its place "three" in all appropriate places to reflect IASA removal of the GEPA requirement that recipients under applicable programs maintain records for five years. In addition, the remaining paragraphs are revised by removing "5" wherever it appears and adding in its place "3".

Section 75.125 is amended by revising the heading and authority citation to eliminate reference to the Joint Funding Simplification Act which no longer exists.

Section 75.734 is removed because the IASA amended GEPA to remove the former requirement that recipients under applicable programs maintain records for five years. The removal of § 75.734 allows recipients of discretionary grant programs to rely on the rules in Parts 74 and 80, which require that records be maintained for only three years.

Section 76.101 is amended to reflect the new section number for the section of the General Education provisions Act (GEPA) that specifies the content of the single State application.

Section 76.103 is revised to change the effective period for a state plan from a three-year State plan to give the Secretary the flexibility to establish a multi-year State plan period. Under the amended regulation, the Secretary could establish a State plan period for more than three years.

Section 76.301 is amended to reflect the new section number for the section of GEPA that authorizes the single State application.

Section 76.401 specifies procedures that States must follow in disapproving local applications and specifies actions the Secretary may take if it's determined that a State did not comply with any of the provisions in § 76.401. The section is amended by revising paragraph (d)(8) to include language that will allow the Secretary additional measures to achieve compliance other than immediate termination of assistance to the State.

Section 76.734 is removed because the IASA amended GEPA to remove the former requirement that recipients maintain records for five years. The removal of § 76.734 allows recipients under state administered programs to rely on the rules in Parts 74 and 80, which require that records be maintained for only three years.

Section 81.24 is amended to implement section 250(a)(1) of the IASA by revising § 81.24(b)(1) to require the Secretary, in issuing a notice of a preliminary departmental decision, to establish a prima facie case.

Section 81.27 is amended to implement section 250(a)(1) of the IASA, to allow a recipient 60 days to file an application for review of a preliminary departmental decision in place of the 30 days allowed in the current requirement.

Section 81.33 is amended to implement section 250(a)(3)(B) of the IASA so that, during the Secretary's review of a decision of the Office of Administrative Law Judges, ex parte communication between employees of the Secretary's office and individuals representing the Department or the recipient are prohibited.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

Some programs affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary has determined that this document does not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since these changes merely incorporate statutory amendments into the regulations and do not implement policy changes over which the Secretary has discretion, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C.

553(b)(B) that public comment on these regulations is unnecessary and contrary to the public interest.

List of Subjects

34 CFR Part 74

Administrative practice and procedure, Education Department, Grant programs-education, Grant Administration, Hospitals, Institutions of higher education, Non-profit organizations, Reporting and recordkeeping requirements.

34 CFR Part 75

Education Department, Grant programs-education, Grant administration, Incorporation by reference.

34 CFR Part 76

Education Department, Grant programs-education, Grant administration, Intergovernmental relations, State-administered programs.

34 CFR Part 81

Enforcement, General Education Provisions Act.

Dated: August 30, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Parts 74, 75, 76, and 81 of Title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for Part 74 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474; OMB Circular A–110, unless otherwise noted.

2. In section 74.53, the introduction to paragraph (b) is amended by removing "five" and adding in its place, "three", in paragraph (b) (1) and (3) and (g) (1) and (2) removing "5–" and adding, in its place, "3–"; in paragraph (b)(3) by removing "5" and adding in its place "3"; and by revising the authority citation to read as follows:

§ 74.53 Qualifications and exceptions

* * * * *

(Authority: 20 U.S.C. 1221e–3 and 3474; OMB Circular A–110)

3. The authority citation for sections 74.1, 74.2, 74.3, 74.4, 74.5, 74.10, 74.11, 74.12, 74.13, 74.14, 74.15, 74.16, 74.17, 74.20, 74.21, 74.22, 74.23, 74.24, 74.25, 74.26, 74.27, 74.28, 74.30, 74.31, 74.32, 74.33, 74.34, 74.35, 74.36, 74.37, 74.40, 74.41, 74.42, 74.43, 74.44, 74.45, 74.46, 74.47, 74.48, 74.50, 74.51, 74.52, 74.60, 74.61, 74.62, 74.70, 74.71, 74.72, and 74.73 and Appendix A to Part 74 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 3474; OMB Circular A–110)

PART 75—DIRECT GRANT PROGRAMS

4. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

5. Section 75.125 is amended by revising the heading and the authority citation to read as follows:

§ 75.125. Submit a seperate application to each program.

* * * * *

(Authority: 20 U.S.C. 1221e–3 and 3474)

§ 75.734 [Removed]

6. Section 75.734 and the note and cross-reference following the section are removed.

7. Section 75.740 is amended in paragraph (a) by removing the number "438" and adding in its place the number "444" and in paragraph (b) by removing the number "439" and adding in its place the number "445" and revising the authority citation to read as follows:

§ 75.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

* * * * *

(Authority: 20 U.S.C. 1221e–3, 1232g, 1232h, and 3474)

8. The authority citation for sections 75.1, 75.2, 75.4, 75.50, 75.51, 75.60, 75.61, 75.62, 75.100, 75.101, 75.102, 75.103, 75.104, 75.105, 75.109, 75.112, 75.117, 75.119, 75.125, 75.126, 75.127, 75.128, 75.129, 75.155, 75.156, 75.158, 75.159, 75.190, 75.191, 75.192, 75.200, 75.201, 75.210, 75.215, 75.216, 75.217, 75.218, 75.219, 75.220, 75.222, 75.230, 75.231, 75.232, 75.233, 75.234, 75.235, 75.236, 75.250, 75.251, 75.253, 75.260, 75.261, 75.262, 75.500, 75.511, 75.515, 75.516, 75.517, 75.519, 75.524, 75.525, 75.530, 75.531, 75.532, 75.533, 75.534, 75.560, 75.561, 75.562, 75.563, 75.564, 75.590, 75.591, 75.592, 75.600, 75.601, 75.602, 75.603, 75.604, 75.605, 75.606, 75.607. 75.608, 75.609, 75.610, 75.611, 75.612, 75.613, 75.614, 75.615, 75.618, 75.620, 75.621, 75.622, 75.626, 75.650, 75.681, 75.682, 75.683, 75.700, 75.701, 75.702, 75.703, 75.707, 75.708, 75.720, 75.730, 75.731, 75.732, 75.900, 75.901, 75.903, and 75.910 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3 and 3474)

9. The authority citation for section 75.580 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 2890, and 3474)

10. The authority citation for section 75.616 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3 and 3474, 42 U.S.C. 8373(b), and E.O. 12185)

11. The authority citation for section 75.617 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3 and 3474, 31 U.S.C. 3504, 3505)

PART 76—STATE-ADMINISTERED PROGRAMS

12. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a) unless otherwise noted.

13. Section 76.101 is amended by removing "Section 435" and adding, in its place, "Section 441" and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1232d, and 3474)

14. Section 76.103 is amended by revising the heading and paragraph (a); and by removing "three-year" in paragraph (b) and adding, in its place, "multi-year" to read as follows:

§ 76.103 Multi-year State plans.

(a) Beginning with fiscal year 1996, each State plan will be effective for a period of more than one fiscal year, to be determined by the Secretary or by regulations.

* * * * *

(Authority: 20 U.S.C. 1221e–3, 1231g(a), and 3474)

15. Section 76.301 is amended by removing "Section 436" and adding, in its place, "Section 442" and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1232d, and 3474)

16. Section 76.401 is amended by revising paragraph (d)(8) and the authority citation to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

* * * * *

(d) * * *

(8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary terminates all assistance to the State educational agency under the applicable program or issues such other orders as the Secretary deems appropriate to achieve compliance.

* * * * *

(Authority: 20 U.S.C. 1221e–3, 1231b–2, 3474, and 6511(a))

§ 76.734 [Removed]

17. Section 76.734 and the note following the section are removed.

18. The authority citation for § 76.1 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

19. The authority citation for §§ 76.2, 76.50, 76.51, 76.500, 76.532, 76.533, 76.534, 76.563, 76.600, 76.703, 76.704, and 76.707 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

20. The authority citation for §§ 76.100, 76.102, 76.104, 76.106, 76.125, 76.141, 76.142, 76.201, 76.202, 76.235, 76.261, 76.300, 76.302, 76.303, 76.400, 76.650, 76.651, 76.652, 76.653, 76.654, 76.655, 76.656, 76.657, 76.658, 76.659, 76.660, 76.661, 76.662, and 76.770 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3 and 3474)

21. The authority citation for § 76.140 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1231g(a), and 3474)

22. The authority citation for § 76.304 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1232e, and 3474)

23. The authority citation for §§ 76.530, 76.560, 76.561, 76.681, 76.683, 76.700, 76.701, 76.702, 76.720, 76.722, 76.731, 76.760, 76.761, and 76.902 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

24. The authority citation for § 76.580 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 2890, and 3474)

25. The authority citation for § 76.591 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1226c, 1231a, 3474, and 6511(a))

26. The authority citation for § 76.677 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 2727(b)(3)(D), 2972(f), and 3474)

27. The authority citation for § 76.705 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1225(b), and 3474)

28. The authority citation for § 76.740 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1232g, 1232h, 3474, and 6511(a))

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

29. The authority citation for part 81 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3, 1234–1234i, and 3474(a), unless otherwise noted.

30. Section 81.24 is amended by revising paragraph (b)(1) and the authority citation to read as follows:

§ 81.34 Notice of a disallowance decision.

* * * * *

(b)(1) The notice must establish a prima facie case for the recovery of funds, including an analysis reflecting the value of the program services actually obtained in a determination of harm to the Federal interest.

* * * * *

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(a), and 3474(a))

31. Section 81.37 is amended by removing "30" in paragraph (b) and adding, in its place, "60" and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(b)(1), and 3474(a))

32. Section 81.43 is amended by redesignating paragraph (a) as paragraph (a)(1); adding a new paragraph (a)(2); and revising the authority citation to read as follows:

§ 81.43 Review by the Secretary.

(a)(1) * * *

(2) During the Secretary's review of the initial decision there shall not be any *ex parte* contact between the Secretary and individuals representing the Department or the recipient.

* * * * *

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(d), and 3474(a))

33. The authority citation for sections 81.1, 81.7, 81.8, 81.11, 81.12, 81.17, and 81.19 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

34. The authority citation for section 81.2 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234 (b), (c), and (f)(1), 1234a(a)(1), 1234i, and 3474(a))

35. The authority citation for section 81.4 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234 (b) and (c), and 3474(a))

36. The authority citation for section 81.5 is revised to read as follows:

(Authority: 5 U.S.C. 556(b); 20 U.S.C. 1221e–3, 1234 (d), (f)(1) and (g)(1), and 3474(a))

37. The authority citation for section 81.6 is revised to read as follows:

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474)

38. The authority citation for section 81.9 is revised to read as follows:

(Authority: 5 U.S.C. 554(b); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

39. The authority citation for section 81.10 is revised to read as follows:

(Authority: 5 U.S.C. 554(d)(1), 557(d)(1)(A); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

40. The authority citation for section 81.13 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234 (f)(1) and (h), and 3474(a))

41. The authority citation for section 81.14 is revised to read as follows:

(Authority: 20 U.S.C. 554(c)(1), 1221e–3, 1234(f)(1), and 3474(a))

42. The authority citation for section 81.15 is revised to read as follows:

(Authority: 5 U.S.C. 556 (d) and (e); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

43. The authority citation for section 81.21 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(k), 1234b (a) and (b), and 3474(a))

44. The authority citation for section 81.22 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234b(a), and 3474(a))

45. The authority citation for section 81.23 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234b(b), and 3474(a))

46. The authority citation for section 81.24 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(a), and 3474(a))

47. The authority citation for section 81.25 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(j), and 3474(a); 31 U.S.C. 3711)

48. The authority citation for section 81.26 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a (j), and 3474(a))

49. The authority citation for section 81.27 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(b)(1), and 3474(a))

50. The authority citation for section 81.28 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234 (e) and (f)(1), 1234a(b), and 3474(a))

51. The authority citation for section 81.29 is revised to read as follows:

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(c), and 3474(a))

52. The authority citation for section 81.30 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(b)(3), 1234b(b)(1), and 3474(a))

53. The authority citation for section 81.31 is revised to read as follows:

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

54. The authority citation for section 81.32 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(e), and 3474(a))

55. The authority citation for section 81.33 is revised to read as follows:

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(d), and 3474(a))

56. The authority citation for section 81.34 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(g), and 3474(a))

57. The authority citation for the appendix to Part 81 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234b(a), and 3474(a))

[FR Doc. 95–21998 Filed 9–5–95; 8:45 am]

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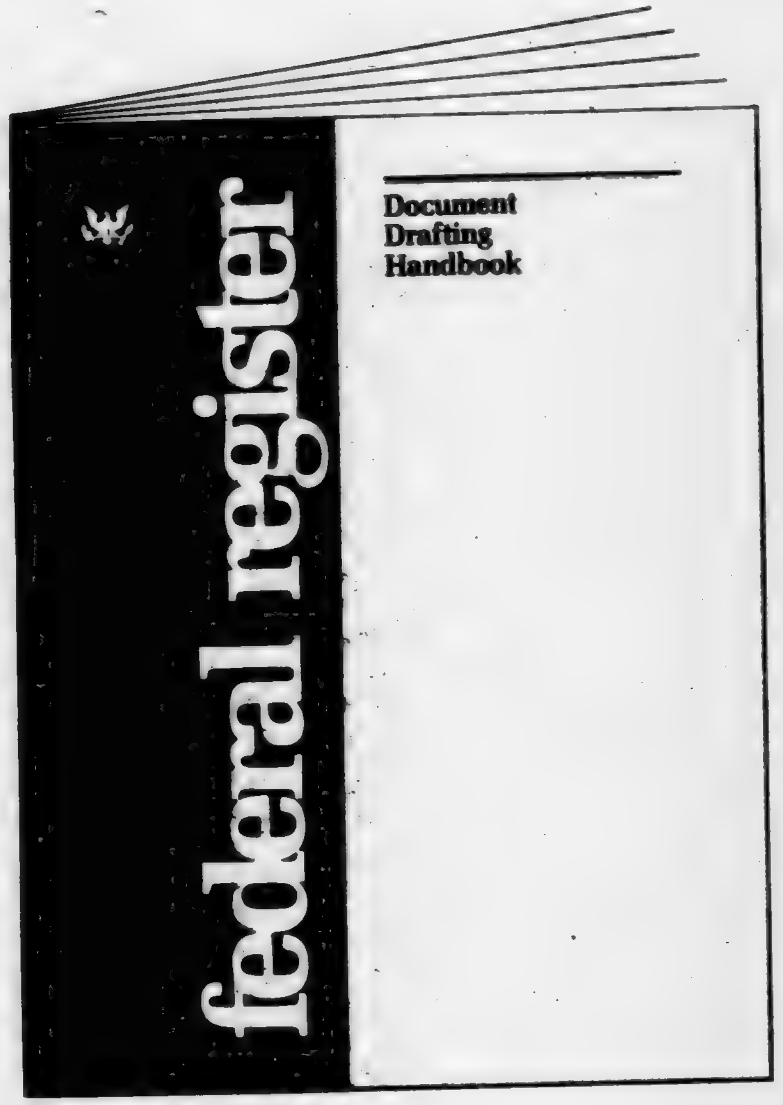

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AF36

Changes to Nuclear Power Plant Security Requirements Associated With Containment Access Control

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to delete certain security requirements for controlling the access of personnel and materials into reactor containment during periods of high traffic such as refueling and major maintenance. This action relieves nuclear power plant licensees of the requirement to separately control access to reactor containments during these periods. Deletion of this requirement decreases the regulatory burden for the licensees without degradation of physical security.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6261, e-mail sdf@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1991, the Commission re-examined the NRC's nuclear power plant security requirements associated with an internal threat contained in 10 CFR Part 73, "Physical Protection of Plants and Materials." In a report to the Commission dated August 4, 1992 (SECY–92–272), the NRC staff identified requirements that were redundant, out of date, or marginal to safety. Following public meetings held to discuss these requirements, the NRC staff submitted a subsequent report to the Commission dated December 12, 1993 (SECY–93–326), with recommended changes to § 73.55. One of the recommended changes was the deletion of § 73.55(d)(8), which contained a requirement for separate access control to reactor containments, which is unneeded, and a requirement for locks and alarms, which is contained elsewhere in 10 CFR Part 73. The Commission has decided to remove this paragraph to provide burden relief to licensees without compromising the physical protection of licensed activities against radiological sabotage. The other recommendations contained in SECY–93–326 will be addressed in another NRC rulemaking action.

Proposed Rule and Public Comments

On May 10, 1995 (60 FR 24803), the NRC published, with a public comment period of 30 days, a proposed rule that would delete § 73.55(d)(8). Twenty-two comments were received: 20 from utilities, 1 from an industry group, and 1 from a labor union. All commenters supported the proposed rule. The commenters agreed that the proposed action would reduce the regulatory burden but would not degrade the physical security of nuclear power plants. The industry group further commented that significant savings could result from this rulemaking. One of the utilities commented that it would enable utilities to make more efficient use of their resources.

One utility questioned whether the same relief would apply when access to containment is from an area provided with access controls and other security features but not formally designated as a vital area. The same relief would not generically apply to these situations because the level of control varies for each area. However, the NRC will consider each situation on a case-by-case basis.

Another utility asked if its approved security plan, which already had requirements for access to containment directly from a protected area, was affected by this rulemaking. This rule affects access controls only from vital areas into containment. This rule does not affect access controls from protected areas into containment, thus, it does not affect any approved security plan for access to containment from a protected area. When access from a protected area into containment is necessary, existing access controls must remain in effect at the entrances to containment.

Final Rule

Based on the public comments, the NRC staff considers that no change to the final rule is necessary. Thus, the final rule remains the same as the proposed rule.

The final rule deletes paragraph (d)(8) of § 73.55. This amendment relieves licensees of an unnecessary burden, without degrading physical security. Moreover, since security personnel are no longer required to be assigned to a radiation control area, there will be a decrease in occupational exposure. NRC notes that this change applies only to access control from vital areas into reactor containment for the purpose of physical security and does not relieve a licensee of requirements established for the purpose of radiological control and emergency planning.

Environmental Impact: Categorical Exclusion

The Commission has determined that this rule is the type of action described as a categorical exclusion in 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0002.

Regulatory Analysis

Elimination of § 73.55(d)(8) relieves licensees of the requirement to station security personnel at entrances to containment during periods of high traffic. The potential savings to the licensees from the elimination of this requirement are substantial. Assuming, on the average, two security personnel are needed to control access to containment during the time the reactor is open, and assuming that the containment is open 50 days per major outage, with 2 major outages every 3 years, and a wage of approximately $30 per hour (loaded) for security personnel,

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Thursday
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NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AF36

Changes to Nuclear Power Plant Security Requirements Associated With Containment Access Control

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to delete certain security requirements for controlling the access of personnel and materials into reactor containment during periods of high traffic such as refueling and major maintenance. This action relieves nuclear power plant licensees of the requirement to separately control access to reactor containments during these periods. Deletion of this requirement decreases the regulatory burden for the licensees without degradation of physical security.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6261, e-mail sdf@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1991, the Commission re-examined the NRC's nuclear power plant security requirements associated with an internal threat contained in 10 CFR Part 73, "Physical Protection of Plants and Materials." In a report to the Commission dated August 4, 1992 (SECY–92–272), the NRC staff identified requirements that were redundant, out of date, or marginal to safety. Following public meetings held to discuss these requirements, the NRC staff submitted a subsequent report to the Commission dated December 12, 1993 (SECY–93–326), with recommended changes to § 73.55. One of the recommended changes was the deletion of § 73.55(d)(8), which contained a requirement for separate access control to reactor containments, which is unneeded, and a requirement for locks and alarms, which is contained elsewhere in 10 CFR Part 73. The Commission has decided to remove this paragraph to provide burden relief to licensees without compromising the physical protection of licensed activities against radiological sabotage. The other recommendations contained in SECY–93–326 will be addressed in another NRC rulemaking action.

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Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0002.

Regulatory Analysis

Elimination of § 73.55(d)(8) relieves licensees of the requirement to station security personnel at entrances to containment during periods of high traffic. The potential savings to the licensees from the elimination of this requirement are substantial. Assuming, on the average, two security personnel are needed to control access to containment during the time the reactor is open, and assuming that the containment is open 50 days per major outage, with 2 major outages every 3 years, and a wage of approximately $30 per hour (loaded) for security personnel, the total savings per reactor per year will be:

2 guards/reactor × 50 days/outage × ⅔ outages/year × $30/hr-guard × 24 hrs/day = $48,000/year-reactor.

With 110 operating nuclear power reactors, the total savings for the industry are potentially $5,280,000/year. Moreover, deletion of § 73.55(d)(8) results in a decrease in occupational exposure because security personnel will no longer be required to be within the radiation controlled area directly adjacent to containment.

Reactor containment or adjacent areas that provide access to containment are already vital areas. Thus, access of personnel into containment is already controlled. In addition, having security personnel control access of materials into containment provides no substantial benefit since material access into the protected area is already controlled and the containment is located within the protected area. Furthermore, after reactor containment is secured following periods of heavy traffic, existing NRC requirements for walkdown inspections and security searches apply and assure the security of the containment. Hence, the requirement that access into the reactor containment itself be separately controlled provides little or no additional security.

In addition, because a reactor containment is a vital area, it is subject to the vital area requirements for locks and alarms contained in other sections of § 73.55, as well as all other policies and procedures related to vital areas and equipment. Thus, the requirement for locks and alarms in paragraph (d)(8) is redundant.

Based on the above discussion, the NRC concludes that eliminating § 73.55(d)(8) provides relief to the licensees and lowers occupational exposure without compromising physical protection of licensed activities against radiological sabotage at nuclear power reactors.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because this amendment does not impose new requirements on existing 10 CFR Part 50 licensees. It is voluntary and should the licensee decide to implement this amendment, it is a reduction in burden to the licensee. Therefore, a backfit analysis has not been prepared for this amendment.

List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended; sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended; sec. 204, 88 Stat. 1242, as amended, 1245; sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

§ 73.55 [Amended]

2. In § 73.55, paragraph (d)(8) is removed and paragraph (d)(9) is redesignated as (d)(8).

Dated at Rockville, Maryland, this 21st day of August 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–22187 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 34–36174; File No. S7–40–92]

RIN 3235–AF91

Rules of Practice; Technical Amendments and Corrections

AGENCY: Securities and Exchange Commission.

ACTION: Technical amendments and corrections to final rules.

SUMMARY: This document contains technical amendments and corrected comments for the Securities and Exchange Commission's Rules of Practice adopted on June 9, 1995 and published Friday, June 23, 1995 (60 FR 32738). The Rules of Practice are the procedural rules that govern Commission administrative proceedings.

EFFECTIVE DATE: September 5, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew Z. Glickman, Office of the General Counsel at (202) 942–0870; U.S. Securities and Exchange Commission; 450 Fifth Street, NW., Stop 6–6; Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Background

The Commission recently consolidated its inspection and examination functions from the Divisions of Market Regulation and Investment Management into a new office—the Office of Compliance Inspections and Examinations. *See* 60 FR 39643 (Aug. 3, 1995) (establishment of office and delegation of authority). This release contains technical amendments to reflect these changes in the Rules of Practice and corrections to the comments associated with the changed rules. This release also corrects a citation error.

Comments (a) and (b) to Rule 230 (which originally appeared in the Supplementary Information section on page 32762, in the tenth line of the first column) are corrected to read as follows:

Comment (a): A respondent's right to inspect and copy documents under this rule is automatic; the respondent does not need to make a formal request for access through the hearing officer. Generally, the rule requires that the Division of Enforcement make available for inspection and copying documents obtained by the Division from persons not employed by the Commission during the course of its investigation prior to the institution of proceedings.

Final inspection or examination reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market Regulation or the Division of Investment Management, may be attorney work product, and other privileges may apply to such reports. Nonetheless, the Commission has determined as a general matter that these final reports will be made available, but only to named respondents in Commission-initiated adjudicative proceedings. This rule does not restrict the Commission's ability to withhold these reports from public disclosure in other contexts, such as pursuant to a request under the Freedom of Information Act. 5 U.S.C. 552.

Rule 230 is not the exclusive means by which a respondent may obtain access to or production of documents. Production of documents prepared by the staff may be required under the doctrine of *Brady v. Maryland,* 373 U.S. 83 (1963), or pursuant to Jencks Act requirements made applicable to the Commission pursuant to Rule 231, or may be sought by subpoena pursuant to Rule 232 or through other procedures. *See, e.g.*, Freedom of Information Act, 5 U.S.C. 552.

The Rule states that the Division of Enforcement shall (1) make available for inspection and copying (2) documents (3) obtained by the Division (4) in connection with the investigation leading to the institution of proceedings.

(1) The Division of Enforcement is required to make documents available for inspection and copying. It is not required to produce a copy of the documents to each respondent.

(2) The definition of the term "documents" in paragraph (a) is modeled on the definition of documents in Rule 34 of the Federal Rules of Civil Procedure.

(3) The Division of Enforcement's obligation under this rule relates to documents obtained by the Division of Enforcement. Documents located only in the files of other divisions or offices are beyond the scope of the rule.

(4) The "investigation leading to the Division's recommendation to institute proceedings" ordinarily is delineated by the investigation number or numbers under which requests for documents, testimony or other information were made. When an investigation is initiated by the Division of Enforcement it is assigned a number, often referred to as the "case" or "investigation" number. Each request for documents, testimony or other information from persons not employed by the Commission specifies the investigation or preliminary investigation number to which it relates. In turn, each written recommendation by the Division of Enforcement to institute proceedings identifies on its cover page, by investigation number, the source investigation or investigations to which it relates. Accordingly, the identity and content of the appropriate investigation file or files from which documents must be made available can be based on objective criteria.

Comment (b): Under paragraph (b), the Division can withhold documents under four exceptions. Exception (1) shields information subject to a claim of privilege. Exception (2) protects as attorney work product internal documents prepared by Commission employees, which will not be offered in evidence. Work product includes any notes, working papers, memoranda or other similar materials, prepared by an attorney in anticipation of litigation. *See Hickman v. Taylor*, 329 U.S. 495 (1947); *see also* Fed. R. Civ. P. 26 (b)(3) and (b)(5). Except to the limited extent specifically provided in paragraph (a), documents prepared by Commission staff are treated as attorney work product, and do not have to be made available pursuant to this rule. Accountants, paralegals and investigators who work on an investigation do so at the direction of the director, an associate director, an associate regional administrator or another supervisory attorney, and their work product is therefore shielded by the rule. A respondent's claim that work product should be turned over will necessarily be evaluated on a case-by-case basis.

Exception (3) protects the identity of a confidential source. *See* 5 U.S.C. 552(b)(7) (C) and (D). Exception (4) protects any other document or category of documents that the hearing officer determines may be withheld as not relevant to the subject matter of the proceeding, or otherwise for good cause shown. This exception provides a mechanism to address a situation where a single investigation involves a discrete segment or segments that are related only indirectly, or not at all, to the recommendations ultimately made to the Commission with respect to the particular respondents in a specific proceeding. To require that documents not relevant to the subject matter of the proceeding be made available, simply because they were obtained as part of a broad investigation, burdens the respondent as well as the Division of Enforcement with unnecessary costs and delay.

For example, a single investigation may encompass inquiry into an issuer's allegedly false accounting disclosure and an unrelated manipulation of the issuer's securities by a third party. If the recommendation to the Commission and resulting administrative proceeding involve only the accounting disclosures, the Division could seek leave to withhold trading records, transcripts and other documents related to the manipulation investigation.

Comment (a) to Rule 430 (which originally appeared in the Supplementary Information section on page 32777, in the fifth line of the second column) is corrected to read as follows:

Comment (a): Congress granted the Commission explicit authority to delegate certain functions to an individual commissioner, division directors and others in 1962. Pub. L. No. 87–592, 76 Stat. 394. This authority appears in Sections 4A and 4B of the Exchange Act, 15 U.S.C. 78d–1 and 78d–2, and was amended most recently in 1987. *See* Pub. L. No. 100–181, Title III, section 308(a), 101 Stat. 1254. The predecessor rule to Rules 430 and 431, former Rule 26, was adopted in 1963. *See* Securities Act Release No. 4586 (Mar. 8, 1963) (adopting release).

Due to the different nature of matters delegated to hearing officers, senior staff or the duty officer, the Commission's rules provide different mechanisms for review of such actions. *See* Rules 410 and 411 (procedures relating to initial decisions by a hearing officer); 17 CFR 200.42 (procedures relating to duty officer). Rule 430 relates to certain delegations made to staff. It applies only to review of actions taken pursuant to authority delegated in 17 CFR 200.30–1 through 200.30–18. Authority delegated by other provisions—for example, the delegation of authority to issue subpoenas pursuant to a private order directing investigation ("formal order")—is not subject to the Rule.

Correction of Publication

Accordingly, the publication on June 23, 1995 of the final Rules of Practice, which were the subject of FR Doc. 95–14750, is corrected as follows:

§ 201.100 [Corrected]

1. On page 32797, in the eighth line of the first column, in § 201.100(b)(2) "17 CFR 200.42." is corrected to read "17 CFR 200.43."

§ 201.230 [Corrected]

2. On page 32807, in the first column, in § 201.230, paragraph (a)(1)(vi) is corrected to read as follows:

"(vi) Any final examination or inspection reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market

Regulation, or the Division of Investment Management."

§ 201.430 [Corrected]

3. On page 32814, in the first column, last line, in § 201.430(a) the reference to "200.30–17" is corrected to read "200.30–18".

4. On page 32814, in the second column, in § 201.430(c) the reference to "200.30–17" is corrected to read "200.30–18".

§ 201.431 [Corrected]

5. On page 32814, in the second column, in the sixth line of § 201.431(a) "200.30–17" is corrected to read "200.30–18".

Dated: August 31, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22110 Filed 9–6–95; 8:45 am]

BILLING CODE 8010–01–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 206

Implementing Rules for the Uruguay Round Agreements Act

AGENCY: International Trade Commission.

ACTION: Adoption of interim rules as final rules.

SUMMARY: The Commission has adopted as final rules, without change, interim rules that amend part 206 of the Commission's rules to conform its rules of practice and procedure with amendments made to sections 201–204 of the Trade Act of 1974 (19 U.S.C. 2251–2254) by the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809 (1994)). The URAA, among other things, amended sections 201–204 of the Trade Act to bring U.S. law into conformity with the Uruguay Round Agreement on Safeguards.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

The interim rules were published in the **Federal Register** on January 3, 1995 (60 FR 10). The interim amendment to section 206.17 was effective January 3, 1995; all other amendments were effective January 1, 1995. Comments on the interim rules were required to be received on or before April 3, 1995. No comments were received.

Accordingly, the Commission has adopted as final rules, without change, the interim rules amending 19 CFR part 206 that were published at 60 FR 10 on January 3, 1995.

List of Subjects in 19 CFR Part 206

Administrative practice and procedure, Investigations, Imports.

Authority: 19 U.S.C. 1335; 19 U.S.C. 2251–2254, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

By order of the Commission.

Issued: August 30, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–22235 Filed 9–6–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 4 and 602

[TD 8618]

RIN 1545–AM15

Definition of a Controlled Foreign Corporation, Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations governing the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation. These regulations are necessary because of changes made to the prior law by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989, and the Omnibus Budget Reconciliation Act of 1993. Certain conforming changes in the regulations were necessary because of changes made by the Deficit Reduction Act of 1984. The regulations will provide the public with the guidance to comply with those acts and will affect United States shareholders of controlled foreign corporations.

DATES: These regulations are effective September 7, 1995.

For dates of applicability, see § 1.954–0(a).

FOR FURTHER INFORMATION CONTACT: Valerie Mark of the Office of Associate Chief Counsel (International), within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:INTL:2 (INTL–0362–88). Telephone (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1068. The estimated average burden per respondent associated with the collection of information in this regulation is one hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR Part 1) under sections 954(b), 954(c) and 957(a) of the Internal Revenue Code (Code). Sections 954 and 957 were amended by sections 1201, 1221, 1222 and 1223 of the Tax Reform Act of 1986 (Pub. L. 99–514), by section 1012 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), by section 7811 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239) and by section 13233 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). These regulations are also issued under authority contained in section 7805 of the Code.

Temporary regulations (TD 8216) and a cross-referenced notice of proposed rulemaking (INTL–362–88) under sections 954 and 957 of the Code were published in the **Federal Register** on July 21, 1988 (53 FR 27489 and 53 FR 27532, respectively). Numerous written comments on the proposed and temporary regulations were received from the public. As explained below, the comments were considered in the drafting of the final regulations.

Discussion of Major Comments and Changes to the Regulations

Section 1.954–1: Foreign Base Company Income

Section 1.954–1T(a)(3) and (5) (temporary regulations) apply the de minimis and full inclusion tests of section 954(b)(3) before the high tax exception of section 954(b)(4). Commenters have expressed concern that, in certain cases, the only amounts required to be included in the gross income of the United States shareholders of a controlled foreign corporation may be full inclusion income. This result may occur when subpart F income, other than full inclusion foreign base company income, qualifies for the high tax exception. In response to these comments, § 1.954–1(d)(6) provides that an amount that otherwise would be included as full inclusion foreign base company income, pursuant to the operation of the full inclusion test of section 954(b)(3)(B), will be excluded from full inclusion foreign base company income if more than 90 percent of the adjusted gross foreign base company and adjusted gross insurance income qualifies for the high tax exception described in section 954(b)(4) and the high tax election is actually made.

Section 1.954–1T(a)(4) provides that in computing net foreign base company income, foreign personal holding company income is reduced by related person interest expense before allocating and apportioning other expenses in accordance with § 1.904(d)–5(c)(2). Commenters understood this rule to be at variance with § 1.904(d)–5(c)(2), which requires related person interest expense to be allocated to passive foreign personal holding company income after the allocation of directly related expenses. In response to this comment, the rule regarding allocation of related person interest expense was removed from § 1.954–1T(a)(4) and (c) was amended to clarify that foreign base company income is reduced by directly related expenses before passive foreign personal holding company income is reduced by related person interest expense.

Section 1.954–1T(a)(7) treats amounts recharacterized as foreign base company income or insurance income under section 952(c) as adjusted net foreign base company income or adjusted net insurance income. Thus, these amounts are not included in net foreign base company income or net insurance income for purposes of applying the high tax exception. Commenters argued that the rules of paragraph (a)(7) should be amended to provide that amounts that are recharacterized under section 952(c)(2) should not be treated as adjusted net foreign base company income or adjusted net insurance income if the amounts would have qualified for the high tax exception. This comment was rejected because section 952(c)(2) does not incorporate the exclusions and special rules of section 954(b)(4). Additional rules regarding the coordination of sections 952(c) and 954 are being proposed under section 952 in a separate document published elsewhere in this issue of the **Federal Register.**

Several comments were made concerning the anti-abuse rules of § 1.954–1T(b)(4), which require aggregation of gross income of related controlled foreign corporations for purposes of the de minimis and full inclusion tests. One comment suggested that the aggregation rules of paragraph (b)(4) should be applied only if a purpose of first importance (as opposed to a principal purpose) is to avoid the application of the de minimis or full inclusion tests described in section 954(b)(3). This comment was rejected because the standard suggested is significantly more subjective than that of the regulations and is therefore unadministrable. However, it was determined that it was unnecessary to make the aggregation rules of paragraph (b)(4) applicable to the full inclusion test, for which there is not the same opportunity for tax avoidance.

One commenter suggested that the anti-abuse rules of § 1.954–1T(b)(4) should be amended to provide that the gross income of separate controlled foreign corporations is aggregated only if a substantial portion of the activities of the separate corporations would comprise a single branch, and that the presumptions described in paragraph (b)(4)(ii) should be eliminated. The commenter also suggested that the definition of related person for purposes of these rules should refer to the provisions of section 954(d)(3), rather than the broader provisions of section 267. These comments were rejected because the suggested amendments would unduly restrict the application of the anti-abuse rules. The presumptions described in paragraph (b)(4)(ii) may be rebutted, for example, by establishing reliance on the requirements of foreign law. The anti-abuse rules are necessary to prevent the misuse of the de minimis rule of section 954(b)(3), and do not impose a significant limitation or burden on the activities of controlled foreign corporations.

Section 1.954–1T(c) provides that in computing net foreign base company income, the gross amount in each category of foreign base company income may not be reduced below zero. Section 1.954–2T(e) provides that the excess of losses over gains from the sale or exchange of certain property may not be allocated to any other category of foreign personal holding company income. Section 1.954–2T (f) and (g) contain similar provisions with regard to excess losses from commodities and foreign currency transactions, respectively. Because the categories of foreign base company income described in section 954(a) and the categories of foreign personal holding company income described in section 954(c)(1) (B), (C) and (D) are defined in terms of net income, the temporary regulations interpreted the statutory scheme as generally precluding the allocation of excess losses from categories of foreign personal holding company income described in paragraph (e), (f), or (g) against other foreign personal holding company income categories. Commenters contended that by preventing any category of subpart F income from being reduced below zero, paragraph (c) caused inappropriate tax credit results and failed to harmonize the subpart F provisions with section 904(f)(5). Commentators stated that paragraphs (e), (f) and (g) should be amended to allow excess losses described in those paragraphs to be allocated to other categories of foreign personal holding company income.

Paragraph (c) has been amended to clarify that, in determining net income, if the amount in any category of foreign base company income (including any category of foreign personal holding company income) is less than zero, the loss may not reduce any other categories of foreign base company income (or foreign personal holding company income) except by operation of the earnings and profits limitation. Proposed regulations published elsewhere in this issue of the **Federal Register** will provide rules concerning the application of the earnings and profits limitation.

Section 1.954–1T(d) provides that the effective rate of foreign income tax on an item of income is determined in a manner consistent with the existing foreign tax credit regime under sections 904 and 960. In some cases, the amount of an item of income for foreign law purposes with respect to which foreign income tax is paid will be different from the amount for United States tax purposes. As a result, the effective rate of tax with respect to the item of income may be affected. In addition, because pursuant to section 960 the foreign income taxes of a controlled foreign corporation more than three tiers below a United States shareholder are not considered, the high tax exception will never apply to items of income of such corporations.

Commenters suggested that certain foreign law accounting practices should be considered in determining the effective rate of tax on an item of income, for purposes of applying the high tax exception of section 954(b)(4) and paragraph (d) of the regulations. Commenters also contended that it is inappropriate to use section 960 to determine the effective rate of foreign tax and thus prevent consideration of taxes paid by controlled foreign corporations more than three tiers below the United States shareholder.

The comment that the high tax exception should not be limited to creditable taxes under section 960 was rejected. The high tax exception is not intended to apply to the extent that an item of income would be subject to residual United States tax if such item were included in the gross income of the United States shareholder. The taxes paid with respect to such item of income should be considered for purposes of the high tax exception only to the extent they are otherwise considered for United States taxing purposes. See Joint Committee on Taxation Staff, *General Explanation of the Tax Reform Act of 1986*, 99th Cong., 2d Sess. 970–71 (1986).

The comment that foreign law accounting practices should be considered in determining the effective rate of tax on an item of income, for purposes of applying the high tax exception, was also rejected. Such a rule would impose a significant burden on the IRS. It would require the IRS to monitor and apply foreign tax and accounting principles, and to reconcile their application with United States tax and accounting principles, both in the current tax year and in later tax years to prevent an item of income, deduction, credit, gain or loss from being duplicated or omitted. Further, the IRS would have to consider and identify the particular foreign tax and accounting principles that could be taken into account for purposes of these rules.

Section 1.954–1T(d)(4) defines the term *item of income* for purposes of the high tax exception by reference to the foreign tax credit and subpart F income categories to which the income relates. Thus, it is possible that amounts attributable to separate transactions may be included in the same item of income. If the income from the separate transactions were subject to foreign income tax at different rates, the effective rate of tax for the income item would reflect an average of the two (or more) rates of tax. One commenter has suggested that additional categories of income be created within the existing foreign tax credit and subpart F income groups to limit the effect of this tax rate blending.

The regulations rely on existing guidance under the foreign tax credit and subpart F provisions generally to define *item of income* for purposes of section 954(b)(4). To identify items of income on a transaction-by-transaction basis is inconsistent with the separate limitation categories of income described in section 904, and adds complexity by requiring different computations for purposes of these rules and the rules under the foreign tax credit provisions of the Code. Moreover, there is no bias in the existing rules toward a particular result.

Commenters suggested that the consistency rule of § 1.954–1T(d)(4)(ii)(B) be eliminated, to allow taxpayers to apply the high tax exception on an item-by-item basis. The consistency rule prohibits a taxpayer from selectively applying the high tax exception with respect to foreign personal holding company income that is passive income under section 904(d). Elimination of the consistency rule would provide a result that is incompatible with the foreign tax credit provisions of the Code, and thus the comment was rejected.

The final regulations clarify how the rules of paragraph (d) coordinate with the earnings and profits limitation of section 952(c)(1). Under § 1.954–1(d)(4)(ii), if the amount of income included in subpart F income for the taxable year is reduced by the earnings and profits limitation, the amount of income that is an item of income, for purposes of paragraph (d), is determined after the application of the rules of section 952(c)(1). An example was added to illustrate this rule.

Section 1.954–1T(d)(5) provides that the election to apply the high tax exception must be made by the controlling United States shareholders and is binding on all United States shareholders of the controlled foreign corporation. Commenters argued that the Secretary does not have the authority to bind all United States shareholders to a single election. This comment was rejected because it was determined that section 954(b)(4) provides the authority. Further, allowing each United States shareholder to separately elect the high tax exception would add undue complexity to the operation of the foreign tax credit rules.

Section 1.954–1(f) provides guidance on the definition of related person under section 954(d)(3).

Section 1.954–2: Foreign Personal Holding Company Income

Section 1.954–2T(a)(2)(i) provides that amounts that fall within the definition of income equivalent to interest, under paragraph (h), will be so treated though such amounts may also fall within the definition of gain from certain property transactions under paragraph (e), gain from a commodities transaction under paragraph (f) or foreign currency gain under paragraph (g). Paragraph (a)(2)(i) provides that amounts will be treated as income equivalent to interest even if these amounts are excluded from the computation of foreign personal holding company income under paragraphs (e), (f), or (g) because they are derived from certain qualifying business transactions. A commenter suggested that paragraph (a)(2)(i) should not treat income from qualifying business transactions excluded under paragraphs (e), (f), or (g) as income equivalent to interest. This comment was rejected. The rules regarding qualifying business transactions in paragraphs (e), (f) and (g) do not operate to exclude interest income from characterization as foreign personal holding company income. Income equivalent to interest within the meaning of section 954(c)(1)(E) and paragraph (h) generally should be treated like interest for purposes of subpart F.

Several commenters suggested that the test described in § 1.954–2T(a)(3) to determine the use for which property is held (for purposes of determining the character of the income, gain or loss realized from a disposition of such property) should not focus solely on the use of the property immediately prior to its disposition, but instead should consider the predominant use for which the property was held. This comment was accepted. Section 1.954–2(a)(3) provides that the use for which property is held is the use for which it was held for more than one-half of the period during which the controlled foreign corporation held the property. If there has been a change in use, however, and a principal purpose for such change in use was to avoid characterizing income or gain attributable to the property as foreign personal holding company income, then the change in use will be disregarded.

Section 1.954–2T(a)(3)(ii), *Examples 2* and *3* illustrate the rules regarding change in use for which property is

held. The final regulations delete these examples because *Example 1* sufficiently illustrated the rules of this paragraph. *Examples 4* and *5* of paragraph (a)(3)(ii) illustrate the change in use rules with respect to hedging transactions. The final regulations delete these examples because the rules governing hedging transactions are now generally contained in paragraph (a)(4)(ii).

Section 1.954–2T(a)(4)(i) lists some of the types of income that are included in the term *interest*. To clarify that this list was not meant to be exclusive, paragraph (a)(4)(i) has been amended to provide that the term *interest* includes all amounts that are treated as interest (including tax-exempt interest) under the Code and regulations or any other provision of law. A new sentence illustrates the types of income that would be treated as interest.

Section 1.954–2T(a)(4)(ii) provides that certain hedging transactions that reduce the risk of price changes in the cost of inventory and similar property are included within the definition of *inventory and similar property* if certain requirements are met and if they are so identified by the fifth day after which they are entered into. Paragraphs (f)(4) and (g)(4) of the temporary regulations contain definitions of the term *qualified hedging transaction* that have similar five-day identification requirements. These several definitions of a hedging transaction have been consolidated in § 1.954–2(a)(4)(ii) which contains a definition of *bona fide hedging transaction* and new identification requirements for bona fide hedging transactions that apply for purposes of computing foreign personal holding company income under § 1.954–2.

Section 1.954–2(a)(4)(ii)(A) generally defines a bona fide hedging transaction as a transaction that meets the requirements of § 1.1221–2 (a) through (c) with two exceptions. First, the risk being hedged may be with respect to ordinary property, section 1231 property or a section 988 transaction. Second, a transaction that hedges the liabilities, inventory or other assets of a related person, or that is entered into to assume or reduce risks of a related person, will not be treated as a bona fide hedging transaction. Several commenters had sought to expand the definition of qualified hedging transactions to include hedging transactions conducted by a controlled foreign corporation that is a currency coordination center, i.e., a controlled foreign corporation that aggregates the currency exposures of related controlled foreign corporations and hedges such exposures. The statute provides, however, that a transaction must satisfy the business needs of the particular controlled foreign corporation. See also Joint Committee on Taxation Staff, *General Explanation of the Tax Reform Act of 1986*, 99th Cong., 2d Sess. 976 (1986).

Section 1.954–2(a)(4)(ii)(B) provides identification requirements for a bona fide hedging transaction. The same-day identification and the recordkeeping requirements of § 1.1221–2 apply for transactions entered on or after March 7, 1996. For bona fide hedging transactions entered into prior to this date and after July 22, 1988, the transaction must be identified by the close of the fifth day after the day on which it is entered into. For bona fide hedging transactions entered into prior to July 22, 1988, the transaction must be identified reasonably contemporaneously with the date it is entered into but no later than within the normal period prescribed under the method of accounting of the controlled foreign corporation used for financial reporting purposes.

Section 1.954–2(a)(4)(ii)(C) describes the treatment of transactions that are misidentified as hedging transactions, and hedging transactions that the taxpayer fails to identify as such. Paragraph (a)(4)(ii)(C) also provides relief for taxpayers that have identified, or failed to identify, a hedging transaction due to inadvertent error. These misidentification rules are substantially similar to the rules in § 1.1221–2(f), modified for purposes of the subpart F regime.

Section 1.954–2T(a)(4)(iii) defines regular dealer, and states that, "purchasing and selling property through a regulated exchange or off-exchange market (for example, engaging in futures transactions) is not actively engaging as a merchant" for purposes of these rules. This provision was intended to mean that such purchasing and selling activity alone, in the absence of other activities, will not qualify a controlled foreign corporation as a regular dealer within the meaning of paragraph (a)(4)(iii). Because commenters indicated that this reference to purchasing and selling through a regular exchange or off-exchange market was confusing, this provision was removed. Further, the definition of regular dealer was amended. Section 1.954–2(a)(4)(iv) provides that a controlled foreign corporation will be a regular dealer if it regularly and actively offers to, and in fact does, engage in certain specified activities with customers who are not related persons (as defined in section 954(d)(3)) with respect to the CFC. Examples were added to clarify that a controlled foreign corporation that qualifies as a dealer under § 1.954–2(a)(4)(iv) will not be disqualified from being treated as a regular dealer because it also engages in transactions with related persons.

The temporary regulations define *dealer property* as property held by a controlled foreign corporation that is a regular dealer in property of such kind in its capacity as a dealer. The temporary regulations also state that property held for investment or speculation is not dealer property. A commenter suggested that property should be considered dealer property within the meaning of § 1.954–2T(a)(4)(iv) if the controlled foreign corporation holding the property is a regular dealer in such property. This comment was rejected because it proposes an unduly expansive definition of dealer property. Paragraph (a)(4), therefore, generally continues to define dealer property in the same manner as the temporary regulations.

The final regulations do clarify, however, that if a controlled foreign corporation qualifies as a regular dealer, all of the property held in a dealer capacity by that corporation is treated as dealer property. Thus, dealer property includes property arising from a transaction entered into with a related person, as long as the controlled foreign corporation is a regular dealer and holds the property [illegible] its [illegible] as a dealer, and not for investment or speculation. The examples [illegible]4–2(a)(4)(vi) illustrate this [illegible] rule has been added for licensed securities dealers under which only securities identified as held for investment under section 475(b) or 1236 will be treated as held for investment or speculation. Also, to conform to amendments to section 954(c)(1)(B) made by the Technical and Miscellaneous Revenue Act of 1988, § 1.954–2(a)(4)(v)(C) provides that a bona fide hedging transaction with respect to dealer property is treated as a transaction in dealer property.

Section 954(c)(2)(B) and § 1.954–2T(b)(2) exclude from foreign personal holding company income export financing interest that is derived in the active conduct of a banking business. A commenter suggested that paragraph (b)(2) should treat a controlled foreign corporation as engaged in the conduct of a banking business even if it transfers the servicing of loans to related or unrelated parties. This comment was rejected because servicing of loans is a fundamental element of banking activity that gives rise to export financing interest for which an exception from foreign personal holding company income is intended.

Section 1.954–2T(b)(2) references the definition of export financing interest contained in section 904(d)(2)(G). Under section 904(d)(2)(G), the property that is financed must be manufactured, produced, grown or extracted in the United States by the taxpayer or a related person. Section 1.954–2(b)(2) clarifies that § 1.927(a)–1T(c)(1) applies for purposes of determining whether property is manufactured, produced, grown or extracted in the United States.

Section 1.954–2T(b)(2) also provides that the term *export financing interest* does not include income from related party factoring that is treated as interest under section 864(d)(1) or (6). The final regulations contain examples that clarify that if amounts are not treated as interest under section 864(d)(1) or (6) because the exception under section 864(d)(7) applies, these amounts may be export financing interest under paragraph (b)(2).

Section 954(c)(3)(A) and § 1.954–2T(b) (3) and (4) provide that certain dividend, interest, rent or royalty income received from related corporate payors is not included in foreign personal holding company income. To reflect amendments to section 954(c)(3)(A) by the Revenue Reconciliation Act of 1989, the final regulations provide that if a partnership with one or more corporate partners makes a payment of interest, rent or royalties, the interest, rent or royalty payment will be treated as paid by a corporate partner to the extent the payment gives rise to a partnership item of deduction that is allocable to the corporate partner or to the extent that a partnership item reasonably related to the payment would be allocated to the corporate partner under an existing allocation under the partnership agreement. To the extent the payment is treated as made by the corporate partner, it will be excluded from the foreign personal holding company income of the recipient if the corporate partner otherwise satisfies the conditions of section 954(c)(3)(A).

Under § 1.954–2T(b)(3)(ii), interest may not be excluded from foreign personal holding company income of the recipient to the extent the deduction for interest is allocated to the payor's subpart F income. To clarify how this rule is to be applied when a controlled foreign corporation is both the recipient and payor of interest, § 1.954–2(b)(4)(ii)(B)(*2*) was added, which parallels the rule contained in § 1.904–5(k)(2).

Section 1.954–2T(b)(3) provides that, to exclude dividends and interest received from related corporate payors from foreign personal holding company income, a substantial part of the payor's assets must be used in a trade or business in the payor's country of incorporation. Section 1.954–2T(b)(3)(iv) provides that a substantial part of the payor's assets will be considered to be used in a trade or business in the payor's country of incorporation if, for each quarter of the taxable year, the average value of its assets which are so used is over 50 percent of the average value of all of its assets (determined as of the beginning and end of the quarter). To simplify the application of this rule, § 1.954–2(b)(4)(iv) provides that the average value of assets is to be determined on a yearly rather than a quarterly basis by averaging the values of assets as of the close of each quarter.

Section 1.954–2T(b)(3)(vi)(A) provides that for purposes of the substantial assets test, tangible property (other than inventory) is generally considered located where it is physically located. Paragraph (b)(3)(vi)(B) contains an exception for property temporarily located elsewhere for inspection or repair. A commenter suggested that, in addition to this exception, the regulations should restore the exception contained in prior regulations that treated purchased property located abroad and intended for prompt shipment to the country of incorporation as property located in the country of incorporation. This comment was rejected because this provision would have been inconsistent with the rule that property purchased for use in a trade or business is not considered used in a trade or business until it is placed in service.

Section 1.954–2T(b)(3)(vii)(A) provides that for purposes of the substantial assets test, the location of intangible property is determined based on the site of the activities conducted by the payor during the taxable year in connection with the use or exploitation of the property. The country in which services are performed is determined under the principles of section 954(e) and § 1.954–4(c). This rule was amended to provide more comprehensive guidance to determine the situs of activities in connection with the use or exploitation of intangible property. Section 1.954–2(b)(4)(vii)(B) provides that the country in which the activities connected to the use or exploitation of property are conducted is the country in which the expenses associated with these activities are incurred by the payor or its agent or an independent contractor.

Section 1.954–2T(b)(3)(vii)(A) provides that the intangible property is considered located in the payor's country of incorporation during each quarter of the taxable year if the activities connected with its use or exploitation are conducted in its country of incorporation during the entire taxable year. A commenter argued that this test is inconsistent with the quarterly determination required by the substantial assets test of § 1.954–2T(b)(3)(iv). Changes were made to the location of property rules (§ 1.954–2(b)(4)(vi) through (ix)) so that relevant determinations are made for each quarter separately.

The final regulations continue to reserve on the provision of special rules regarding the location of assets of banks and insurance companies for purposes of the same-country exception. Comments are invited regarding the need for special guidance on this issue.

Several comments questioned the application of the rules of § 1.954–2T(b)(6), pursuant to which interest income of a controlled foreign corporation that is described in section 103 is included in foreign personal holding company income but is characterized as tax-exempt interest when included in the gross income of the United States shareholders. The purpose of this rule was to prevent a person from avoiding the consequences of the alternative minimum tax provisions by investing in tax-exempt obligations described in section 103 through a controlled foreign corporation.

The final regulations reserve on the treatment of tax-exempt interest. The administrative complexity of applying the rule described in the temporary regulations, and the potential for double taxation that it creates, argue against its continued application. Proposed regulations, published elsewhere in this issue of the **Federal Register**, will provide rules regarding the treatment of tax-exempt interest. In the interim, the rules of the temporary regulations continue to apply.

Section 1.954–2T(b)(5) provides that the determination whether rents and royalties are derived from the active conduct of a trade or business is made under the facts and circumstances of each case, and refers to paragraphs (c) and (d) for the application of its provisions. Commenters have asked whether only the facts and circumstances described in paragraphs (c) and (d) may be considered. The final regulations are clarified to reflect that whether rents or royalties are derived in the active conduct of a trade or business is determined solely under the provisions of paragraphs (c) and (d).

Section 1.954–2T(c)(2)(iii) defines *active leasing expenses* for purposes of determining whether rental income is derived in the active conduct of a trade or business. A commenter suggested that paragraph (c)(2)(iii) be amended to state that if a corporation sells property of the same type as the property that is leased, the corporation's expenses that are of the type described in that paragraph may be pro-rated on any reasonable basis between the leasing and the sales function. It was determined that the change requested by this commenter was unnecessary because paragraph (c)(2)(iii) already defines active leasing expenses as deductions properly allocable to rental income.

A commenter suggested that an example be added to § 1.954–2T(c) to illustrate that expenses such as payments to third parties for insurance, utilities and repairs are considered active leasing expenses and not amounts paid to agents or independent contractors. The regulations were amended in response to this comment. Section 1.954–2(c)(2)(iii)(D) provides that the term *active leasing expenses* does not include payments to agents or independent contractors other than payments for insurance, utilities and other expenses for like services or capitalized property. A similar change was made to the definition of the term *adjusted leasing profit*.

Section 954(c)(1)(B) and § 1.954–2T(e) include in foreign personal holding company income the excess of gains over losses from certain property transactions. Section 1.954–2T(e)(1)(i) provides that gain or loss that is treated as capital gain or loss under section 988(a)(1)(B) is not foreign currency gain or loss but rather gain or loss from a property transaction under paragraph (e). A commenter contended that gain or loss from transactions described in section 988(a)(1)(B) should be characterized as gain or loss described in section 954(c)(1)(C) and § 1.954–2T(f) rather than in section 954(c)(1)(B) and paragraph (e). This comment was rejected, because the capital transactions described in section 988(a)(1)(B) are more appropriately subject to the provisions of section 954(c)(1)(B) and paragraph (e). This provision is now contained in § 1.954–2(g)(5).

A commenter asked that gain from a disposition of stock of a subsidiary be excluded from foreign personal holding company income to the extent that gain from the subsidiary's disposition of its assets would be so excluded. There is no statutory authority for the position recommended by the commenter, however. In addition, the look-through treatment proposed by the commenter is inconsistent with the treatment prescribed for dispositions of interests in a partnership or trust under section 954(c)(1)(B)(ii). For these reasons, the comment was rejected.

Pursuant to § 1.954–2T(e)(3)(vi), gain from a disposition of non-depreciable intangible property or goodwill is characterized as foreign personal holding company income unless the intangible property is disposed of in connection with a disposition of the entire trade or business of the controlled foreign corporation. Commenters have argued that the gain should be excluded from foreign personal holding company income if such property is used in the trade or business of the controlled foreign corporation, without regard to whether an entire trade or business of the controlled foreign corporation is sold.

The regulations were modified in response to this comment. Section 1.952–2(e)(3)(iv) excludes from foreign personal holding company income any gain or loss of a controlled foreign corporation from a disposition of intangible property, goodwill or going concern value to the extent used or held for use in the trade or business of the controlled foreign corporation.

Section 1.954–2T(e)(4) provides that gain or loss from the sale, exchange or retirement of a debt instrument is included in the computation of foreign personal holding company income under paragraph (e) with certain exceptions. However, a loss on a debt instrument taken in consideration for the sale or exchange of property is excluded from foreign personal holding company income if the gain or loss from that underlying sale or exchange is not includible in foreign base company income. This rule was eliminated from the final regulations because it was inconsistent to prevent a controlled foreign corporation from using these losses to offset subpart F income when gain from such debt instruments was not excepted from the general inclusion rule.

Section 1.954–2T(e)(5) provides that rights to acquire property, other than certain property that is dealer property or inventory property, are characterized as property that does not give rise to income for purposes of section 954(c)(1)(B). One commenter has suggested that such rights should not be characterized as property that does not give rise to income. This comment was rejected because any gain that may arise upon a disposition of an option, warrant, or other right to acquire property, other than gain from a disposition of inventory or dealer property, is income of the type intended to be characterized as foreign personal holding company income for purposes of section 954(c)(1)(B). The provisions of § 1.954–2T(e)(5) are now incorporated into the definition of property that does not give rise to income under § 1.954–2(e)(3). However, the final regulations clarify that notional principal contracts are excluded from the definition of property that does not give rise to income. (But see § 1.954–2 (f), (g) and (h).)

Section 954(c)(1)(C) and § 1.954–2T(f) provide rules for including the excess of gains over losses from commodities transactions in foreign personal holding company income. Several commenters argued that § 1.954–2T(f)(2)(i) defines *commodity* too broadly, and that, like sections 553 and 864, the regulations should apply only to commodities that are actively traded on a regulated exchange. This comment was rejected because the statute and its legislative history make clear that section 954(c)(1)(C) is intended to apply broadly to any commodity of a kind that is actively traded. Thus, there is no reason to distinguish income from a disposition of a commodity actively traded on a regulated exchange from income from a disposition of a commodity of a kind that is otherwise actively traded.

Although § 1.954–2(f)(2)(i) no longer explicitly provides that nonfunctional currency is a commodity, nonfunctional currency continues to fall within the general definition of *commodity*. Consequently, foreign currency is still treated as a commodity if the currency is actively traded or if contractual interests in the currency are actively traded. Under the ordering rules of paragraph (a)(2), however, paragraph (g) (foreign currency transactions) continues to apply before paragraph (f). Thus, unless an election is made under section 988(c)(1)(D)(ii), a currency futures contract is treated as a commodities transaction, while a currency forward contract is generally treated as a foreign currency transaction.

Section 1.954–2T(f)(1) excludes gains and losses from qualified active sales and qualified hedging transactions from the computation of foreign personal holding company income under paragraph (f). In defining *qualified active sale*, paragraph (f)(3) requires substantially all of the controlled foreign corporation's business to be as an active producer, processor, merchant or handler of commodities of like kind. Commenters argued that by using the phrase "of like kind," § 1.954–2T(f)(3) defines *qualified active sales* too narrowly. The "of like kind" language was not intended to require that all of the commodities be of one kind, but rather that the controlled foreign corporation must be an active producer, etc., with respect to each kind of commodity. To avoid confusion, the "of like kind" language has been eliminated from the definition of the term *qualified active sale*.

Section 1.954–2T(f)(3)(ii) defines the term *sale of commodities*. Commenters questioned the requirement, incorporated in the definition of this term, that the corporation hold the commodity in physical form. This comment was accepted. The final regulations no longer require the controlled foreign corporation to hold the commodity in physical form. Section 1.954–2(f)(2)(iii)(B) requires only that the controlled foreign corporation hold the commodity directly and not through an independent contractor. The retention of this requirement is consistent with the legislative history of section 954(c)(1)(C), which makes clear that the exclusion from foreign personal holding company income was intended to apply only with respect to commodities for which controlled foreign corporations are active producers, processors, handlers or merchants. Section 1.954–2(f)(2)(iii)(D) provides that activities of employees of entities related to the controlled foreign corporation may be treated as activities directly engaged in by the controlled foreign corporation if the employees are paid and supervised by the controlled foreign corporation.

Section 1.954–2(f)(2)(iii)(B) also amends the definition of the term *active conduct of a commodities business* by clarifying that the requirements specified in that paragraph must be satisfied with respect to each commodity and that property may be held either as dealer property or as inventory or similar property.

Section 954(c)(1)(C)(ii) and § 1.954–2T(f) (1) and (3) exclude income attributable to commodities transactions from foreign personal holding company income if substantially all of the business of a controlled foreign corporation is as an active producer, processor, merchant or handler of commodities. Section 1.954–2T(f)(3)(iv) provides that the controlled foreign corporation will satisfy the substantially all requirement if 85 percent of its taxable income for the taxable year is attributable to qualified active sales and qualified hedging transactions. Several commenters argued that this test could fail to reflect the nature of the controlled foreign corporation's business accurately in some years because of the volatility of certain commodities markets.

To accommodate this concern, § 1.954–2(f)(2)(iii)(C) modifies the definition of the term *substantially all* by applying the 85 percent test to gross receipts rather than taxable income. To prevent manipulation of this modified test, a provision was added under which the District Director may disregard any sale or hedging transaction that has as a principal purpose manipulation of the 85 percent test.

Section 1.954–2T(f)(4) defines the term *qualified hedging transaction* as a bona fide hedging transaction that is entered into primarily to reduce the risk of price change with respect to commodities sold or to be sold in qualified active sales. A commenter argued that a bona fide hedging transaction should not be required to relate to a qualified active sale to be treated as a qualified hedging transaction. This comment was rejected because this provision is based on the statutory requirement that qualified hedging transactions must arise out of the business of the controlled foreign corporation as an active producer, processor, merchant or handler of commodities. Thus, the rule of the temporary regulations is retained.

Section 954(c)(1)(D) and § 1.954–2T(g) include in foreign personal holding company income the net foreign currency gains attributable to section 988 transactions. The rules in § 1.954–2T(g)(2)(i) governing the treatment of gain or loss attributable to foreign currency transactions in hyperinflationary currencies have been removed. Section 1.954–2(g)(5)(iii) provides that the applicable rules of section 985 will apply to such transactions.

Section 1.954–2T(g)(2)(ii) excludes from foreign personal holding company income gain or loss from qualified business transactions that are separately identified, and gain or loss from qualified hedging transactions that are identified with, or traced to, a qualified business transaction. Many commenters argued that these rules are too cumbersome to apply. They contended that a controlled foreign corporation that has a large number of qualified business transactions may not hedge such transactions individually, and that it is difficult or impossible in such cases to relate a hedge to one or even several qualified business transactions. The commenters also argued that the alternative election to treat all currency gain (or loss) as foreign personal holding company income (or loss allocable to foreign personal holding company income) does not provide adequate relief for controlled foreign corporations whose hedging activities relate to qualified business transactions on a net basis but give rise to foreign currency gain that is treated as foreign personal holding company income.

The regulations are modified in response to those comments. Section 1.954–2(g)(2)(ii) excludes from foreign personal holding company income foreign currency gain or loss directly related to the business needs of the controlled foreign corporation. Foreign currency gain or loss is directly related to the business needs of the corporation, first, if it can be clearly determined that it arises from a transaction entered into or property used in the normal course of the corporation's trade or business and the transaction or property does not itself give rise to subpart F income (other than foreign currency gain or loss), or, second, if it arises from a bona fide hedging transaction with respect to such a transaction or property. To exclude gain or loss from a hedging transaction from foreign personal holding company income under this rule, corporations need not trace a hedging transaction to a specific transaction or property if all (or all but a de minimis amount) of the aggregate risks being hedged are within the business needs exception and the hedging transaction otherwise satisfies the requirements of section 1221, as modified for this purpose.

Section 1.954–2(g)(2)(ii)(C) provides a specific dealer exception under which transactions described in section 988(c)(1)(B)(iii) and (C) that are entered into by a regular dealer, in its capacity as a dealer, are treated as directly related to its business needs for purposes of the exclusion under § 1.954–2(g)(2)(ii). Because a corporation's borrowings support all of its activities, paragraph (g)(2)(iii) provides that foreign currency gain or loss attributable to an interest-bearing liability that is not covered by paragraph (g)(5)(iv) is characterized as subpart F income and non-subpart F income on the same basis as interest expense is allocated and apportioned. Thus, for example, exchange gain or loss from an unhedged interest-bearing liability may fall under this rule.

Section 1.954–2T(g)(3) provides that a transaction will not be treated as a qualified business transaction if the foreign currency gain or loss from the transaction is attributable to property or an activity of a kind that gives rise to subpart F income. Commenters have argued that this requirement is too restrictive because it may cause the gain or loss from the underlying transaction, and the foreign currency gain or loss attributable to the transaction, to be in

different separate categories for foreign tax credit purposes.

In response to this comment, a new election was added to paragraph (g). Under § 1.954–2(g)(3), the controlling United States shareholders may elect to have the controlled foreign corporation include foreign currency gain or loss that would otherwise be included in foreign personal holding company income under paragraph (g) in the category of subpart F income to which such gain or loss relates. This election works in conjunction with the general rules of paragraph (g)(2). Thus, for example, this election may apply to currency gain or loss that would otherwise be treated as foreign personal holding company income under paragraph (g) even if other currency gain or loss is excluded under the business needs exception of paragraph (g)(2)(ii).

As described above, the temporary regulations permit taxpayers to elect to treat all foreign currency gain or loss as foreign personal holding company income. The final regulations retain this election, with modifications. Under § 1.954–2(g)(4), the controlling United States shareholders of the controlled foreign corporation may elect to include in the computation of foreign personal holding company income net foreign currency gains or losses attributable to any section 988 transaction and any section 1256 contract that would be a section 988 transaction but for section 988(c)(1)(D). Shareholders are not permitted to make separate elections for section 1256 contracts and section 988 transactions. An election under paragraph (g)(4) supersedes an election under paragraph (g)(3).

Section 1.954–2(g)(5)(iv) reserves on the treatment of gain or loss allocated under § 1.861–9. It is anticipated that when § 1.861–9 is finalized, a provision will be added to this paragraph to indicate that gain or loss that is allocated or apportioned under section 861 in the same manner as interest expense is not foreign currency gain or loss under paragraph (g).

Section 954(c)(1)(E) and § 1.954–2T(h) include income equivalent to interest in foreign personal holding company income. A commenter argued that the term *income equivalent to interest* might be read to include income from a wide range of interest rate sensitive transactions entered into by a securities dealer or commodities producer, processor, merchant or handler in the ordinary course of its business. The commenter suggested that the regulations should be modified to confirm that such income is not income equivalent to interest.

The final regulations do not contain a general dealer exception that applies to all income equivalent to interest because income equivalent to interest is generally treated like interest, for which no general dealer exception is provided. However, consistent with Notice 89–90 (1989–2 C.B. 407), § 1.954–2(h)(3)(ii) provides a specific dealer exception for income from notional principal contracts.

Section 1.954–2T(h)(1) provides that income equivalent to interest does not include income attributable to notional principal contracts except to the extent that such contracts are part of an integrated transaction that gives rise to income equivalent to interest. Notice 89–90 stated, however, that final regulations would provide that income equivalent to interest would include income from notional principal contracts regardless of whether the notional principal contract is integrated with an investment, because notional principal contracts generally affect the all-in cost of interest-bearing liabilities or the return on interest-bearing assets. Accordingly, § 1.954–2(h)(3) provides that income from notional principal contracts based solely on interest rates or interest rate indices is income equivalent to interest, and paragraph (h)(1)(ii) provides that income from a notional principal contract covered by § 1.861–9T is not income equivalent to interest. Paragraph (f) continues to apply to notional principal contracts based on commodities (or a commodities index), and paragraph (g) continues to apply to notional principal contracts covered by section 988.

Section 1.954–2T(h)(3) treats factoring income as income equivalent to interest, with certain exceptions. Commenters have argued that income realized by a credit card company from factoring its receivables (which is attributable to the discount at which it acquires the receivables from the business establishments honoring its credit card) does not represent an interest equivalent amount, but instead represents other types of income, such as compensation for services.

This comment was rejected. It is true that the income attributable to the discount at which a controlled foreign corporation acquires a receivable reflects not only the time value of money, but also certain other elements (for example, collection risk and cost). However, the factoring income derived by the controlled foreign corporation is analogous to interest income derived from a loan made by a bank, which reflects not only the time value of money, but also the other elements of the discount income received in the factoring transaction described above. The Tax Reform Act of 1986 repealed the exclusion from foreign personal holding company income of such interest income derived by a bank. The repeal of this provision indicates that interest income is not intended to be excluded from foreign personal holding company income merely because it may reflect more than the time value of money. Income equivalent to interest should not be treated differently.

Some of the rules described in the final regulations are inconsistent with provisions of §§ 1.954–3 through 1.954–8, as well as the regulations under other provisions of subpart F. In such cases, these final regulations are intended to apply instead of the regulations under other provisions of section 954 and of subpart F generally. Section 1.952–3 is removed because the rules of that section are replaced by § 1.954–1. Other conforming changes are being considered in a separate regulations project.

Many nonsubstantive structural and editorial changes were made to these final regulations for clarity.

Drafting Information

The principal authors of these regulations are Valerie Mark and, with respect to financial products, Elissa Shendalman of the Office of the Associate Chief Counsel (International), IRS. However, personnel from other offices of the IRS and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Parts 1 and 4

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 4 and 602 are amended to read as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by removing the authority citation for "Section 1.954–0T, 1.954–1T, 1.954–2T and 1.957–1T" and adding the following citations in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.954–0 also issued under 26 U.S.C. 954 (b) and (c).

Section 1.954–1 also issued under 26 U.S.C. 954 (b) and (c).

Section 1.954–2 also issued under 26 U.S.C. 954 (b) and (c).

* * * * *

Section 1.957–1 also issued under 26 U.S.C. 957. * * *

§ 1.952–3 [Removed]

Par. 2. Section 1.952–3 is removed.

Par. 3. Sections 1.954–0, 1.954–1 and 1.954–2 are added to read as follows:

§ 1.954–0 Introduction.

(a) *Effective dates*—(1) *Final regulations*—(i) *In general.* Except as otherwise specifically provided, the provisions of §§ 1.954–1 and 1.954–2 apply to taxable years of a controlled foreign corporation beginning after November 6, 1995. If any of the rules described in §§ 1.954–1 and 1.954–2 are inconsistent with provisions of other regulations under subpart F, these final regulations are intended to apply instead of such other regulations.

(ii) *Election to apply final regulations retroactively*—(A) *Scope of election.* An election may be made to apply the final regulations retroactively with respect to any taxable year of the controlled foreign corporation beginning on or after January 1, 1987. If such an election is made, these final regulations must be applied in their entirety for such taxable year and all subsequent taxable years. All references to section 11 in the final regulations shall be deemed to include section 15, where applicable.

(B) *Manner of making election.* An election under this paragraph (a)(1)(ii) is binding on all United States shareholders of the controlled foreign corporation and must be made—

(*1*) By the controlling United States shareholders, as defined in § 1.964–1(c)(5), by attaching a statement to such effect with their original or amended income tax returns for the taxable year of such United States shareholders in which or with which the taxable year of the CFC ends, and including any additional information required by applicable administrative pronouncements, or

(*2*) In such other manner as may be prescribed in applicable administrative pronouncements.

(C) *Time for making election.* An election may be made under this paragraph (a)(1)(ii) with respect to a taxable year of the controlled foreign corporation beginning on or after January 1, 1987 only if the time for filing a return or claim for refund has not expired for the taxable year of any United States shareholder of the controlled foreign corporation in which or with which such taxable year of the controlled foreign corporation ends.

(D) *Revocation of election.* An election made under this paragraph (a)(1)(ii) may not be revoked.

(2) *Temporary regulations.* The provisions of §§ 4.954–1 and 4.954–2 of this chapter apply to taxable years of a controlled foreign corporation beginning after December 31, 1986 and on or before November 6, 1995. However, the provisions of § 4.954–2(b)(6) of this chapter continue to apply. For transactions entered into on or before October 10, 1995, taxpayers may rely on Notice 89–90, 1989–2 C.B. 407, in applying the temporary regulations.

(3) *§§ 1.954A–1 and 1.954A–2.* The provisions of §§ 1.954A–1 and 1.954A–2 (as contained in 26 CFR part 1 edition revised April 1, 1995) apply to taxable years of a controlled foreign corporation beginning before January 1, 1987. All references therein to sections of the Code are to the Internal Revenue Code of 1954 prior to the amendments made by the Tax Reform Act of 1986.

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§ 1.954–1 Foreign base company income.

(a) *In general*—(1) *Purpose and scope.* Section 954 and §§ 1.954–1 and 1.954–2 provide rules for computing the foreign base company income of a controlled foreign corporation. Foreign base company income is included in the subpart F income of a controlled foreign corporation under the rules of section 952. Subpart F income is included in the gross income of a United States shareholder of a controlled foreign corporation under the rules of section 951 and thus is subject to current taxation under section 1, 11 or 55 of the Internal Revenue Code. The determination of whether a foreign corporation is a controlled foreign corporation, the subpart F income of which is included currently in the gross income of its United States shareholders, is made under the rules of section 957.

(2) *Gross foreign base company income.* The gross foreign base company income of a controlled foreign corporation consists of the following categories of gross income (determined after the application of section 952(b))—

(i) Foreign personal holding company income, as defined in section 954(c);

(ii) Foreign base company sales income, as defined in section 954(d);

(iii) Foreign base company services income, as defined in section 954(e);

(iv) Foreign base company shipping income, as defined in section 954(f); and

(v) Foreign base company oil related income, as defined in section 954(g).

(3) *Adjusted gross foreign base company income.* The term *adjusted gross foreign base company income* means the gross foreign base company income of a controlled foreign corporation as adjusted by the de minimis and full inclusion rules of paragraph (b) of this section.

(4) *Net foreign base company income.* The term *net foreign base company income* means the adjusted gross foreign base company income of a controlled foreign corporation reduced so as to take account of deductions (including taxes) properly allocable or apportionable to such income under the rules of section 954(b)(5) and paragraph (c) of this section.

(5) *Adjusted net foreign base company income.* The term *adjusted net foreign base company income* means the net foreign base company income of a controlled foreign corporation reduced, first, by any items of net foreign base company income excluded from subpart F income pursuant to section 952(c) and, second, by any items excluded from subpart F income pursuant to the high tax exception of section 954(b). See paragraph (d)(4)(ii) of this section. The term *foreign base company income* as used in the Internal Revenue Code and elsewhere in the Income Tax Regulations means adjusted net foreign base company income, unless otherwise provided.

(6) *Insurance income.* The term *gross insurance income* includes all gross income taken into account in determining insurance income under section 953. The term *adjusted gross insurance income* means gross insurance income as adjusted by the de minimis and full inclusion rules of paragraph (b) of this section. The term *net insurance income* means adjusted gross insurance income reduced under section 953 so as to take into account deductions (including taxes) properly allocable or apportionable to such income. The term *adjusted net insurance income* means net insurance income reduced by any items of net insurance income that are excluded from subpart F income pursuant to section 952(b) or pursuant to the high tax exception of section 954(b). The term *insurance income* as used in subpart F of the Internal Revenue Code and in the regulations under that subpart means adjusted net insurance income, unless otherwise provided.

(7) *Additional items of adjusted net foreign base company income or adjusted net insurance income by reason of section 952(c).* Earnings and profits of the controlled foreign corporation that are recharacterized as foreign base company income or insurance income under section 952(c) are items of adjusted net foreign base company income or adjusted net insurance income, respectively. Amounts subject to recharacterization under section 952(c) are determined after adjusted net foreign base company income and adjusted net insurance income are otherwise determined under subpart F and are not again subject to any exceptions or special rules that would affect the amount of subpart F income. Thus, for example, items of gross foreign base company income or gross insurance income that are excluded from adjusted gross foreign base company income or adjusted gross insurance income because the de minimis test is met are subject to recharacterization under section 952(c). Further, the de minimis and full inclusion tests of paragraph (b) of this section, and the high tax exception of paragraph (d) of this section, for example, do not apply to such amounts.

(b) *Computation of adjusted gross foreign base company income and adjusted gross insurance income*—(1) *De minimis and full inclusion tests*—(i) *De minimis test*—(A) *In general.* Except as provided in paragraph (b)(1)(i)(C) of this section, adjusted gross foreign base company income and adjusted gross insurance income are equal to zero if the sum of the gross foreign base company income and the gross insurance income of a controlled foreign corporation is less than the lesser of—

(*1*) 5 percent of gross income; or

(*2*) $1,000,000.

(B) *Currency translation.* Controlled foreign corporations having a functional currency other than the United States dollar shall translate the $1,000,000 threshold using the exchange rate provided under section 989(b)(3) for amounts included in income under section 951(a).

(C) *Coordination with sections 864(d) and 881(c).* Adjusted gross foreign base company income or adjusted gross insurance income of a controlled foreign corporation always includes income from trade or service receivables described in section 864(d) (1) or (6), and portfolio interest described in section 881(c), even if the de minimis test of this paragraph (b)(1)(i) is otherwise satisfied.

(ii) *Seventy percent full inclusion test.* Except as provided in section 953, adjusted gross foreign base company income consists of all gross income of the controlled foreign corporation other than gross insurance income and amounts described in section 952(b), and adjusted gross insurance income consists of all gross insurance income other than amounts described in section 952(b), if the sum of the gross foreign base company income and the gross insurance income for the taxable year exceeds 70 percent of gross income. See paragraph (d)(6) of this section, under which certain items of full inclusion foreign base company income may nevertheless be excluded from subpart F income.

(2) *Character of gross income included in adjusted gross foreign base company income.* The gross income included in the adjusted gross foreign base company income of a controlled foreign corporation generally retains its character as foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income, or foreign base company oil related income. However, gross income included in adjusted gross foreign base company income because the full inclusion test of paragraph (b)(1)(ii) of this section is met is termed *full inclusion foreign base company income,* and constitutes a separate category of adjusted gross foreign base company income for purposes of allocating and apportioning deductions under paragraph (c) of this section.

(3) *Coordination with section 952(c).* Income that is included in subpart F income because the full inclusion test of paragraph (b)(1)(ii) of this section is met does not reduce amounts that, under section 952(c), are subject to recharacterization.

(4) *Anti-abuse rule*—(i) *In general.* For purposes of applying the de minimis test of paragraph (b)(1)(i) of this section, the income of two or more controlled foreign corporations shall be aggregated and treated as the income of a single corporation if a principal purpose for separately organizing, acquiring, or maintaining such multiple corporations is to prevent income from being treated as foreign base company income or insurance income under the de minimis test. A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately).

(ii) *Presumption.* Two or more controlled foreign corporations are presumed to have been organized, acquired or maintained to prevent income from being treated as foreign

base company income or insurance income under the de minimis test of paragraph (b)(1)(i) of this section if the corporations are related persons, as defined in paragraph (b)(4)(iii) of this section, and the corporations are described in paragraph (b)(4)(ii)(A), (B), or (C) of this section. This presumption may be rebutted by proof to the contrary.

(A) The activities carried on by the controlled foreign corporations, or the assets used in those activities, are substantially the same activities that were previously carried on, or assets that were previously held, by a single controlled foreign corporation. Further, the United States shareholders of the controlled foreign corporations or related persons (as determined under paragraph (b)(4)(iii) of this section) are substantially the same as the United States shareholders of the one controlled foreign corporation in a prior taxable year. A presumption made in connection with the requirements of this paragraph (b)(4)(ii)(A) may be rebutted by proof that the activities carried on by each controlled foreign corporation would constitute a separate branch under the principles of § 1.367(a)–6T(g)(2) if carried on directly by a United States person.

(B) The controlled foreign corporations carry on a business, financial operation, or venture as partners directly or indirectly in a partnership (as defined in section 7701(a)(2) and § 301.7701–3 of this chapter) that is a related person (as defined in paragraph (b)(4)(iii) of this section) with respect to each such controlled foreign corporation.

(C) The activities carried on by the controlled foreign corporations would constitute a single branch operation under § 1.367(a)–6T(g)(2) if carried on directly by a United States person.

(iii) *Related persons.* For purposes of this paragraph (b), two or more persons are related persons if they are in a relationship described in section 267(b). In determining for purposes of this paragraph (b) whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). In determining for purposes of this paragraph (b) whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

(iv) *Example.* The following example illustrates the application of this paragraph (b)(4).

Example. (i)(1) *USP* is the sole United States shareholder of three controlled foreign corporations: *CFC1, CFC2* and *CFC3.* The three controlled foreign corporations all have the same taxable year. The three controlled foreign corporations are partners in *FP,* a foreign entity classified as a partnership under section 7701(a)(2) and § 301.7701–3 of the regulations. For their current taxable years, each of the controlled foreign corporations derives all of its income other than foreign base company income from activities conducted through *FP,* and its foreign base company income from activities conducted both jointly through *FP* and separately without *FP.* Based on the facts in the table below, the foreign base company income derived by each controlled foreign corporation for its current taxable year, including income derived from *FP,* is less than five percent of the gross income of each controlled foreign corporation and is less than $1,000,000:

	CFC1	CFC2	CFC3
Gross income	$4,000,000	$8,000,000	$12,000,000
Five percent of gross income	200,000	400,000	600,000
Foreign base company income	199,000	398,000	597,000

(2) Thus, without the application of the anti-abuse rule of this paragraph (b)(4), each controlled foreign corporation would be treated as having no foreign base company income after the application of the de minimis test of section 954(b)(3)(A) and paragraph (b)(1)(i) of this section.

(ii) However, under these facts, the requirements of paragraph (b)(4)(i) of this section are met unless the presumption of paragraph (b)(4)(ii) of this section is successfully rebutted. The sum of the foreign base company income of the controlled foreign corporations is $1,194,000. Thus, the amount of gross foreign base company income of each controlled foreign corporation will not be reduced by reason of the de minimis rule of section 954(b)(3)(A) and this paragraph (b).

(c) *Computation of net foreign base company income*—(1) *General rule.* The net foreign base company income of a controlled foreign corporation (as defined in paragraph (a)(4) of this section) is computed under the rules of this paragraph (c)(1). The principles of § 1.904–5(k) shall apply where payments are made between controlled foreign corporations that are related persons (within the meaning of section 954(d)(3)). Consistent with these principles, only payments described in § 1.954–2(b)(4)(ii)(B)(*2*) may be offset as provided in § 1.904–5(k)(2).

(i) *Deductions against gross foreign base company income.* The net foreign base company income of a controlled foreign corporation is computed first by taking into account deductions in the following manner:

(A) First, the gross amount of each item of income described in paragraph (c)(1)(iii) of this section is determined.

(B) Second, any expenses definitely related to less than all gross income as a class shall be allocated and apportioned under the principles of sections 861, 864 and 904(d) to the gross income described in paragraph (c)(1)(i)(A) of this section.

(C) Third, foreign personal holding company income that is passive within the meaning of section 904 (determined before the application of the high-taxed income rule of § 1.904–4(c)) is reduced by related person interest expense allocable to passive income under § 1.904–5(c)(2); such interest must be further allocated and apportioned to items described in paragraph (c)(1)(iii)(B) of this section.

(D) Fourth, the amount of each item of income described in paragraph (c)(1)(iii) of this section is reduced by other expenses allocable and apportionable to such income under the principles of sections 861, 864 and 904(d).

(ii) *Losses reduce subpart F income by operation of earnings and profits limitation.* Except as otherwise provided in § 1.954–2(g)(4), if after applying the rules of paragraph (c)(1)(i) of this section, the amount remaining in any category of foreign base company income or foreign personal holding company income is less than zero, the loss in that category may not reduce any other category of foreign base company income or foreign personal holding company income except by operation of the earnings and profits limitation of section 952(c)(1).

(iii) *Items of income*—(A) *Income other than passive foreign personal holding company income.* A single item of income (other than foreign personal holding company income that is passive) is the aggregate amount from all transactions that falls within a single separate category (as defined in § 1.904–5(a)(1)), and either—

(*1*) Falls within a single category of foreign personal holding company income as—

(*i*) Dividends, interest, rents, royalties and annuities;

(*ii*) Gain from certain property transactions;

(*iii*) Gain from commodities transactions;

(*iv*) Foreign currency gain; or

(*v*) Income equivalent to interest; or

(*2*) Falls within a single category of foreign base company income, other than foreign personal holding company income, as—

(*i*) Foreign base company sales income;

(*ii*) Foreign base company services income;

(*iii*) Foreign base company shipping income;

(*iv*) Foreign base company oil related income; or

(*v*) Full inclusion foreign base company income.

(B) *Passive foreign personal holding company income.* A single item of foreign personal holding company income that is passive is an amount of income that falls within a single group of passive income under the grouping rules of § 1.904–4(c) (3), (4) and (5) and a single category of foreign personal holding company income described in paragraphs (c)(1)(iii)(A)(*1*) (*i*) through (*v*).

(2) *Computation of net foreign base company income derived from same country insurance income.* Deductions relating to foreign base company income attributable to the issuing (or reinsuring) of any insurance or annuity contract in connection with risks located in the country under the laws of which the controlled foreign corporation is created or organized shall be allocated and apportioned in accordance with the rules set forth in section 953.

(d) *Computation of adjusted net foreign base company income or adjusted net insurance income*—(1) *Application of high tax exception.* Adjusted net foreign base company income (or adjusted net insurance income) equals the net foreign base company income (or net insurance income) of a controlled foreign corporation, reduced by any net item of such income that qualifies for the high tax exception provided by section 954(b)(4) and this paragraph (d). Any item of income that is foreign base company oil related income, as defined in section 954(g), or portfolio interest, as described in section 881(c), does not qualify for the high tax exception. See paragraph (c)(1)(iii) of this section for the definition of the term *item of income.* For rules concerning the treatment for foreign tax credit purposes of amounts excluded from subpart F under section 954(b)(4), see § 1.904–4(c). A net item of income qualifies for the high tax exception only if—

(i) An election is made under section 954(b)(4) and paragraph (d)(5) of this section to exclude the income from the computation of subpart F income; and

(ii) It is established that the net item of income was subject to foreign income taxes imposed by a foreign country or countries at an effective rate that is greater than 90 percent of the maximum rate of tax specified in section 11 for the taxable year of the controlled foreign corporation.

(2) *Effective rate at which taxes are imposed.* The effective rate with respect to a net item of income shall be determined separately for each controlled foreign corporation in a chain of corporations through which a distribution is made. The effective rate at which taxes are imposed on a net item of income is—

(i) The United States dollar amount of foreign income taxes paid or accrued (or deemed paid or accrued) with respect to the net item of income, determined under paragraph (d)(3) of this section; divided by

(ii) The United States dollar amount of the net item of foreign base company income or insurance income, described in paragraph (c)(1)(iii) of this section, increased by the amount of foreign income taxes referred to in paragraph (d)(2)(i) of this section.

(3) *Taxes paid or accrued with respect to an item of income—(i) Income other than passive foreign personal holding company income.* The amount of foreign income taxes paid or accrued with respect to a net item of income (other than an item of foreign personal holding company income that is passive) for purposes of section 954(b)(4) and this paragraph (d) is the United States dollar amount of foreign income taxes that would be deemed paid under section 960 with respect to that item if that item were included in the gross income of a United States shareholder under section 951(a)(1)(A) (determined, in the case of a United States shareholder that is an individual, as if an election under section 962 has been made, whether or not such election is actually made). For this purpose, in accordance with the regulations under section 960, the amounts that would be deemed paid under section 960 shall be determined separately with respect to each controlled foreign corporation and without regard to the limitation applicable under section 904(a). The amount of foreign income taxes paid or accrued with respect to a net item of income, determined in the manner provided in this paragraph (d), will not be affected by a subsequent reduction in foreign income taxes attributable to a distribution to shareholders of all or part of such income.

(ii) *Passive foreign personal holding company income.* The amount of income taxes paid or accrued with respect to a net item of foreign personal holding company income that is passive for purposes of section 954(b)(4) and this paragraph (d) is the United States dollar amount of foreign income taxes that would be deemed paid under section 960 and that would be taken into account for purposes applying the provisions of § 1.904–4(c) with respect to that net item of income.

(4) *Special rules*—(i) *Consistency rule.* An election to exclude income from the computation of subpart F income for a taxable year must be made consistently with respect to all items of passive foreign personal holding company income eligible to be excluded for the taxable year. Thus, high-taxed passive foreign personal holding company income of a controlled foreign corporation must either be excluded in its entirety, or remain subject to subpart F in its entirety.

(ii) *Coordination with earnings and profits limitation.* If the amount of income included in subpart F income for the taxable year is reduced by the earnings and profits limitation of section 952(c)(1), the amount of income that is a net item of income, within the meaning of paragraph (c)(1)(iii) of this section, is determined after the application of the rules of section 952(c)(1).

(iii) *Example.* The following example illustrates the provisions of paragraph (d)(4)(ii) of this section. All of the taxes referred to in the following example are foreign income taxes. For simplicity, this example assumes that the amount of taxes that are taken into account as a deduction under section 954(b)(5) and the amount of the gross-up required under sections 960 and 78 are equal. Therefore, this example does not separately illustrate the deduction for taxes and gross-up.

Example. During its 1995 taxable year, *CFC*, a controlled foreign corporation, earns $100 of royalty income that is foreign personal holding company income. *CFC* has no expenses associated with this royalty income. *CFC* pays $20 of foreign income taxes with respect to the royalty income. For 1995, *CFC* has current earnings and profits of $50. *CFC's* subpart F income, as determined

prior to the application of this paragraph (d), exceeds its current earnings and profits. Thus, under paragraph (d)(4)(ii) of this section, the amount of *CFC's* only net item of income, the royalty income, will be limited to $50. The remaining $50 will be subject to recharacterization in a subsequent taxable year under section 952(c)(2). Because the amount of foreign income taxes paid with respect to this net item of income is $20, the effective rate of tax on the item, for purposes of this paragraph (d), is 40 percent. Accordingly, an election under paragraph (d)(5) of this section may be made to exclude the item of income from the computation of subpart F income.

(5) *Procedure.* An election made under the procedure provided by this paragraph (d)(5) is binding on all United States shareholders of the controlled foreign corporation and must be made—

(i) By the controlling United States shareholders, as defined in § 1.964–1(c)(5), by attaching a statement to such effect with their original or amended income tax returns, and including any additional information required by applicable administrative pronouncements; or

(ii) In such other manner as may be prescribed in applicable administrative pronouncements.

(6) *Coordination of full inclusion and high tax exception rules.* Notwithstanding paragraph (b)(1)(ii) of this section, full inclusion foreign base company income will be excluded from subpart F income if more than 90 percent of the adjusted gross foreign base company income and adjusted gross insurance company income of a controlled foreign corporation (determined without regard to the full inclusion test of paragraph (b)(1) of this section) is attributable to net amounts excluded from subpart F income pursuant to an election to have the high tax exception described in section 954(b)(4) and this paragraph (d) apply.

(7) *Examples.* (i) The following examples illustrate the rules of this paragraph (d). All of the taxes referred to in the following examples are foreign income taxes. For simplicity, these examples assume that the amount of taxes that are taken into account as a deduction under section 954(b)(5) and the amount of the gross-up required under sections 960 and 78 are equal. Therefore, these examples do not separately illustrate the deduction for taxes and gross-up. Except as otherwise stated, these examples assume there are no earnings, deficits, or foreign income taxes in the post-1986 pools of earnings and profits or foreign income taxes.

Example 1. (i) *Items of income.* During its 1995 taxable year, controlled foreign corporation *CFC* earns from outside its country of operation portfolio dividend income of $100 and interest income, net of taxes, of $100 (consisting of a gross payment of $150 reduced by a third-country withholding tax of $50). For purposes of illustration, assume that *CFC* incurs no expenses. None of the income is taxed in *CFC's* country of operation. The dividend income was not subject to third-country withholding taxes. Pursuant to the operation of section 904, the interest income is high withholding tax interest and the dividend income is passive income. Accordingly, pursuant to paragraph (c)(1)(iii) of this section, *CFC* has two net items of income—

(1) $100 of foreign personal holding company (FPHC)/passive income (the dividends); and

(2) $100 of FPHC/high withholding tax income (the interest).

(ii) *Effective rates of tax.* No foreign tax would be deemed paid under section 960 with respect to the net item of income described in paragraph (i)(1) of this *Example 1.* Therefore, the effective rate of foreign tax is 0, and the item may not be excluded from subpart F under the rules of this paragraph (d). Foreign tax of $50 would be deemed paid under section 960 with respect to the net item of income described in paragraph (i)(2) of this *Example 1.* Therefore, the effective rate of foreign tax is 33 percent ($50 of creditable taxes paid, divided by $150, consisting of the net item of foreign base company income ($100) plus creditable taxes paid thereon ($50)). The highest rate of tax specified in section 11 for the 1995 taxable year is 34 percent. Accordingly, the net item of income described in paragraph (i)(2) of this *Example 1* may be excluded from subpart F income if an election under paragraph (d)(5) of this section is made, since it is subject to foreign tax at an effective rate that is greater than 30.6 percent (90 percent of 34 percent). However, for purposes of section 904(d), it remains high withholding tax interest.

Example 2. (i) The facts are the same as in *Example 1*, except that *CFC's* country of operation imposes a tax of $50 with respect to *CFC's* dividend income (and thus *CFC* earns portfolio dividend income, net of taxes, of only $50). The interest income is still high withholding tax interest. The dividend income is still passive income (without regard to the possible applicability of the high tax exception of section 904(d)(2)). Accordingly, *CFC* has two items of income for purposes of this paragraph (d)—

(1) $50 of FPHC/passive income (net of the $50 foreign tax); and

(2) $100 of FPHC/high withholding tax interest income.

(ii) Each item is taxed at an effective rate greater than 30.6 percent. The net item of income described in paragraph (i)(1) of this *Example 2*: foreign tax ($50) divided by sum ($100) of net item of income ($50) plus creditable tax thereon ($50) equals 50 percent. The net item of income described in paragraph (i)(2) of this *Example 2*: foreign tax ($50) divided by sum ($150) of income item ($100) plus creditable tax thereon ($50) equals 33 percent. Accordingly, an election may be made under paragraph (d)(5) of this section to exclude either or both of the net items of income described in paragraphs (i) (1) and (2) of this *Example 2* from subpart F income. If no election is made the items would be included in the subpart F income of *CFC.*

Example 3. (i) The facts are the same as in *Example 1*, except that the $100 of portfolio dividend income is subject to a third-country withholding tax of $50, and the $150 of interest income is from sources within *CFC's* country of operation, is subject to a $10 income tax therein, and is not subject to a withholding tax. Although the interest income and the dividend income are both passive income, under paragraph (c)(1)(iii)(B) of this section they constitute separate items of income pursuant to the application of the grouping rules of § 1.904–4(c). Accordingly, *CFC* has two net items of income for purposes of this paragraph (d)—

(1) $50 (net of $50 tax) of FPHC/non-country of operation/greater than 15 percent withholding tax income; and

(2) $140 (net of $10 tax) of FPHC/country of operation income.

(ii) The item described in paragraph (i)(1) of this *Example 3* is taxed at an effective rate greater than 30.6 percent, but Item 2 is not. The net item of income described in paragraph (i)(1) of this *Example 3:* Foreign tax ($50) divided by sum ($100) of net item of income ($50) plus creditable tax thereon ($50) equals 50 percent. The net item of income described in paragraph (i)(2) of this *Example 3:* Foreign tax ($10) divided by sum ($150) of net item of income ($140) plus creditable tax thereon ($10) equals 6.67 percent. Therefore, an election may be made under paragraph (d)(5) of this section to exclude the net item of income described in paragraph (i)(1) of this *Example 3* but not the net item of income described in paragraph (i)(2) of this *Example 3* from subpart F income.

Example 4. The facts are the same as in *Example 3*, except that the $150 of interest income is subject to an income tax of $50 in *CFC's* country of operation. Accordingly, *CFC's* items of income are the same as in Example 3, but both items are taxed at an effective rate greater than 30.6 percent. The net item of income described in paragraph (i)(1) of *Example 3*: Foreign tax ($50) divided by sum ($100) of net item of income ($50) plus creditable tax thereon ($50) equals 50 percent. The net item of income described in paragraph (i)(2) of *Example 3*: Foreign tax ($50) divided by sum ($150) of net item of income ($100) plus creditable tax thereon ($50) equals 33 percent. Pursuant to the consistency rule of paragraph (d)(4)(i) of this section, an election made by *CFC's* controlling United States shareholders must exclude from subpart F income both items of FPHC income under the high tax exception of section 954(b)(4) and this paragraph (d). The election may not be made only with respect to one item.

Example 5. The facts are the same as in *Example 1*, except that *CFC* earns $5 of portfolio dividend income and $150 of interest income. In addition, *CFC* earns $45 for performing consulting services within its country of operation for unrelated persons. *CFC's* gross foreign base company income for 1995 of $155 ($150 of gross interest income and $5 of portfolio dividend income) is greater than 70 percent of its gross income of $200. Therefore, under the full inclusion test of paragraph (b)(1)(ii) of this section, *CFC's* adjusted gross foreign base company income is $200, and under paragraph (b)(2) of this section, the $45 of consulting income is full inclusion foreign base company income. If *CFC* elects, under paragraph (d)(5) of this section, to exclude the interest income from subpart F income pursuant to the high tax exception, the $45 of full inclusion foreign base company income will be excluded from subpart F income under paragraph (d)(6) of this section because the $150 of gross interest income excluded under the high tax exception is more than 90 percent of *CFC's* adjusted gross foreign base company income of $155.

(ii) The following examples generally illustrate the application of paragraph (c) of this section and this paragraph (d). *Example 1* illustrates the order of computations. *Example 2* illustrates the computations required by sections 952 and 954 and this § 1.954–1 if the full inclusion test of paragraph (b)(1)(ii) of this section is met and the income is not excluded from subpart F income under section 952(b). Computations in these examples involving the operation of section 952(c) are included for purposes of illustration only and do not provide substantive rules concerning the operation of that section. For simplicity, these examples assume that the amount of taxes that are taken into account as a deduction under section 954(b)(5) and the amount of the gross-up required under sections 960 and 78 are equal. Therefore, these examples do not separately illustrate the deduction for taxes and gross-up.

Example 1. (i) *Gross income. CFC,* a controlled foreign corporation, has gross income of $1000 for the current taxable year. Of that $1000 of income, $100 is interest income that is included in the definition of foreign personal holding company income under section 954(c)(1)(A) and § 1.954–2(b)(1)(ii), is not income from a trade or service receivable described in section 864(d)(1) or (6), or portfolio interest described in section 881(c), and is not excluded from foreign personal holding company income under any provision of section 952(b) or section 954(c). Another $50 is foreign base company sales income under section 954(d). The remaining $850 of gross income is not included in the definition of foreign base company income or insurance income under sections 954 (c), (d), (e), (f) or (g) or 953, and is foreign source general limitation income described in section 904(d)(1)(I).

(ii) *Expenses.* For the current taxable year, *CFC* has expenses of $500. This amount includes $8 of interest paid to a related person that is allocable to foreign personal holding company income under section 904, and $2 of other expense that is directly related to foreign personal holding company income. Another $20 of expense is directly related to foreign base company sales. The remaining $470 of expenses is allocable to general limitation income that is not foreign base company income or insurance income.

(iii) *Earnings and losses. CFC* has earnings and profits for the current taxable year of $500. In the prior taxable year, *CFC* had losses with respect to income other than gross foreign base company income or gross insurance income. By reason of the limitation provided under section 952(c)(1)(A), those losses reduced the subpart F income (consisting entirely of foreign source general limitation income) of *CFC* by $600 for the prior taxable year.

(iv) *Taxes.* Foreign income tax of $30 is considered imposed on the interest income under the rules of section 954(b)(4), this paragraph (d), and § 1.904–6. Foreign income tax of $14 is considered imposed on the foreign base company sales income under the rules of section 954(b)(4), paragraph (d) of this section, and § 1.904–6. Foreign income tax of $177 is considered imposed on the remaining foreign source general limitation income under the rules of section 954(b)(4), this paragraph (d), and § 1.904–6. For the taxable year of *CFC,* the maximum United States rate of taxation under section 11 is 34 percent.

(v) *Conclusion.* Based on these facts, if CFC elects to exclude all items of income subject to a high foreign tax under section 954(b)(4) and this paragraph (d), it will have $500 of subpart F income as defined in section 952(a) (consisting entirely of foreign source general limitation income) determined as follows:

Step 1—Determine gross income:	
(1) Gross income	$1000
Step 2—Determine gross foreign base company income and gross insurance income:	
(2) Interest income included in gross foreign personal holding company income under section 954(c)	100
(3) Gross foreign base company sales income under section 954(d)	50
(4) Total gross foreign base company income and gross insurance income as defined in sections 954 (c), (d), (e), (f) and (g) and 953 (line (2) plus line (3))	150
Step 3—Compute adjusted gross foreign base company income and adjusted gross insurance income:	
(5) Five percent of gross income (.05 × line (1))	50
(6) Seventy percent of gross income (.70 × line (1))	700
(7) Adjusted gross foreign base company income and adjusted gross insurance income after the application of the de minimis test of paragraph (b) (line (4), or zero if line (4) is less than the lesser of line (5) or $1,000,000) (if the amount on this line 7 is zero, proceed to Step 8)	150
(8) Adjusted gross foreign base company income and adjusted gross insurance income after the application of the full inclusion test of paragraph (b) (line (4), or line (1) if line (4) is greater than line (6))	150
Step 4—Compute net foreign base company income:	
(9) Expenses directly related to adjusted gross foreign base company sales income	20
(10) Expenses (other than related person interest expense) directly related to adjusted gross foreign personal holding company income	2
(11) Related person interest expense allocable to adjusted gross foreign personal holding company income under section 904	8
(12) Net foreign personal holding company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (2) reduced by lines (10) and (11))	90
(13) Net foreign base company sales income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (3) reduced by line (9))	30
(14) Total net foreign base company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (12) plus line (13))	120
Step 5—Compute net insurance income:	
(15) Net insurance income under section 953	0
Step 6—Compute adjusted net foreign base company income:	
(16) Foreign income tax imposed on net foreign personal holding company income (as determined under section 954(b)(4) and this paragraph (d))	30
(17) Foreign income tax imposed on net foreign base company sales income (as determined under section 954(b)(4) and this paragraph (d))	14
(18) Ninety percent of the maximum United States corporate tax rate	30.6%
(19) Effective rate of foreign income tax imposed on net foreign personal holding company income ($90 of interest) under section 954(b)(4) and this paragraph (d) (line (16) divided by line (12))	33%
(20) Effective rate of foreign income tax imposed on $30 of net foreign base company sales income under section 954(b)(4) and this paragraph (d) (line (17) divided by line (13))	47%
(21) Net foreign personal holding company income subject to a high foreign tax under section 954(b)(4) and this paragraph (d) (zero, or line (12) if line (19) is greater than line (18))	90
(22) Net foreign base company sales income subject to a high foreign tax under section 954(b)(4) and this paragraph (d) (zero, or line (13) if line (20) is greater than line (18))	30
(23) Adjusted net foreign base company income after applying section 954(b)(4) and this paragraph (d) (line (14), reduced by the sum of line (21) and line (22))	0
Step 7—Compute adjusted net insurance income:	
(24) Adjusted net insurance income	0
Step 8—Additions to or reduction of adjusted net foreign base company income by reason of section 952(c):	
(25) Earnings and profits for the current year	500
(26) Amount subject to being recharacterized as subpart F income under section 952(c)(2) (excess of line (25) over the sum of lines (23) and (24)); if there is a deficit, then the limitation of section 952(c)(1) may apply for the current year	500
(27) Amount of reduction in subpart F income for prior taxable years by reason of the limitation of section 952(c)(1)	600
(28) Subpart F income as defined in section 952(a), assuming section 952(a)(3), (4), and (5) do not apply (the sum of line (23), line (24), and the lesser of line (26) or line (27))	500
(29) Amount of prior year's deficit to be recharacterized as subpart F income in later years under section 952(c) (excess of line (27) over line (26)	100

Example 2. (i) *Gross income.* CFC, a controlled foreign corporation, has gross income of $1000 for the current taxable year. Of that $1000 of income, $720 is interest income that is included in the definition of foreign personal holding company income under section 954(c) (1)(A) and § 1.954–2(b)(1)(ii), is not income from trade or service receivables described in section 864(d)(1) or (6), or portfolio interest described in section 881(c), and is not excluded from foreign personal holding company income under any provision of section 954(c) and § 1.954–2 or section 952(b). The remaining $280 is services income that is not included in the definition of foreign base company income or insurance income under sections 954 (c), (d), (e), (f), or (g) or 953, and is foreign source general limitation income for purposes of section 904(d)(1)(I).

(ii) *Expenses.* For the current taxable year, *CFC* has expenses of $650. This amount includes $350 of interest paid to related persons that is allocable to foreign personal holding company income under section 904, and $50 of other expense that is directly related to foreign personal holding company income. The remaining $250 of expenses is allocable to services income other than foreign base company income or insurance income.

(iii) *Earnings and losses. CFC* has earnings and profits for the current taxable year of $350. In the prior taxable year, CFC had losses with respect to income other than foreign base company income or insurance income. By reason of the limitation provided under section 952(c)(1)(A), those losses reduced the subpart F income of CFC (consisting entirely of foreign source general limitation income) by $600 for the prior taxable year.

(iv) *Taxes.* Foreign income tax of $120 is considered imposed on the $720 of interest income under the rules of section 954(b)(4), paragraph (d) of this section, and § 1.904–6. Foreign income tax of $2 is considered imposed on the services income under the rules of section 954(b)(4), paragraph (d) of this section, and § 1.904–6. For the taxable year of *CFC,* the maximum United States rate of taxation under section 11 is 34 percent.

(v) *Conclusion.* Based on these facts, if *CFC* elects to exclude all items of income subject to a high foreign tax under section 954(b)(4) and this paragraph (d), it will have $350 of subpart F income as defined in section 952(a), determined as follows.

Step 1—Determine gross income:	
(1) Gross income	$1000
Step 2—Determine gross foreign base company income and gross insurance income:	
(2) Gross foreign base company income and gross insurance income as defined in sections 954 (c), (d), (e), (f) and (g) and 953 (interest income)	720
Step 3—Compute adjusted gross foreign base company income and adjusted gross insurance income:	
(3) Seventy percent of gross income (.70 × line (1))	700
(4) Adjusted gross foreign base company income and adjusted gross insurance income after the application of the full inclusion rule of this paragraph (b)(1) (line (2), or line (1) if line (2) is greater than line (3))	1000
(5) Full inclusion foreign base company income under paragraph (b)(1)(ii) (line (4) minus line (2))	280
Step 4—Compute net foreign base company income:	
(6) Expenses (other than related person interest expense) directly related to adjusted gross foreign personal holding company income	50
(7) Related person interest expense allocable to adjusted gross foreign personal holding company income under section 904	350
(8) Deductions allocable to full inclusion foreign base company income under section 954(b)(5) and paragraph (c) of this section	250
(9) Net foreign personal holding company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (2) reduced by line (6) and line (7))	320
(10) Full inclusion foreign base company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (5) reduced by line (8))	30
(11) Total net foreign base company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (9) plus line (10))	350
Step 5—Compute net insurance income:	
(12) Net insurance income under section 953	0
Step 6—Compute adjusted net foreign base company income:	
(13) Foreign income tax imposed on net foreign personal holding company income (interest)	120
(14) Foreign income tax imposed on net full inclusion foreign base company income	2
(15) Ninety percent of the maximum United States corporate tax rate	30.6%
(16) Effective rate of foreign income tax imposed on $320 of net foreign personal holding company income under section 954(b)(4) and this paragraph (d) (line (13) divided by line (9))	38%
(17) Effective rate of foreign income tax imposed on $30 of net full inclusion foreign base company income under section 954(b)(4) and this paragraph (d) (line (14) divided by line (10))	7%
(18) Net foreign personal holding company income subject to a high foreign tax under section 954(b)(4) and this paragraph (d) (zero, or line (9) if line (16) is greater than line (15))	320
(19) Net full inclusion foreign base company income subject to a high foreign tax under section 954(b)(4) and this paragraph (d) (zero, or line (10) if line (17) is greater than line (15))	0
(20) Adjusted net foreign base company income after applying section 954(b)(4) and this paragraph (d) (line (11) reduced by the sum of line (18) and line (19))	30
Step 7—Compute adjusted net insurance income:	
(21) Adjusted net insurance income	0

Step 8—Reduction of adjusted net foreign base company income or adjusted net insurance income by reason of paragraph (d)(6) of this section:	
(22) Adjusted gross foreign base company income and adjusted gross insurance income (determined without regard to the full inclusion test of paragraph (b)(1) of this section) (line (4) reduced by line (5))	720
(23) Ninety percent of adjusted gross foreign base company income and adjusted gross insurance income (determined without regard to the full inclusion test of paragraph (b)(1)(ii) of this section) (90% of the amount on line (22))	648
(24) Net foreign base company income and net insurance income excluded from subpart F income under section 954(b)(4), increased by the amount of expenses that reduced this income under section 954(b)(5) and paragraph (c) of this section (line (18) increased by the sum of line (6) and line (7))	720
(25) Adjusted net full inclusion foreign base company income excluded from subpart F income under paragraph (d)(6) of this section (zero, or line (10) reduced by line (19) if line (24) is greater than line (23))	30
(26) Adjusted net foreign base company income after application of paragraph (d)(6) of this section (line (20) reduced by line (25))	0
Step 9—Additions to or reduction of subpart F income by reason of section 952(c):	
(27) Earnings and profits for the current year	350
(28) Amount subject to being recharacterized as subpart F income under section 952(c)(2) (excess of line (27) over the sum of line (21) and line (26)); if there is a deficit, then the limitation of 952(c)(1) may apply for the current year	350
(29) Amount of reduction in subpart F income for prior taxable years by reason of the limitation of section 952(c)(1)	600
(30) Subpart F income as defined in section 952(a), assuming section 952(a) (3), (4), and (5) do not apply (the sum of line (21) and line (26) plus the lesser of line (28) or line (29))	350
(31) Amount of prior years' deficit remaining to be recharacterized as subpart F income in later years under section 952(c) (excess of line (29) over line (28))	250

(e) *Character of income*—(1) *Substance of the transaction.* For purposes of section 954, income shall be characterized in accordance with the substance of the transaction, and not in accordance with the designation applied by the parties to the transaction. For example, an amount that is designated as rent by the taxpayer but actually constitutes income from the sale of property, royalties, or income from services shall not be characterized as rent but shall be characterized as income from the sale of property, royalties or income from services, as the case may be. Local law shall not be controlling in characterizing income.

(2) *Separable character.* To the extent the definitional provisions of section 953 or 954 describe the income or gain derived from a transaction, or any portion or portions thereof, that income or gain, or portion or portions thereof, is so characterized for purposes of subpart F. Thus, a single transaction may give rise to income in more than one category of foreign base company income described in paragraph (a)(2) of this section. For example, if a controlled foreign corporation, in its business of purchasing personal property and selling it to related persons outside its country of incorporation, also performs services outside its country of incorporation with respect to the property it sells, the sales income will be treated as foreign base company sales income and the services income will be treated as foreign base company services income for purposes of these rules.

(3) *Predominant character.* The portion of income or gain derived from a transaction that is included in the computation of foreign personal holding company income is always separately determinable and thus must always be segregated from other income and separately classified under paragraph (e)(2) of this section. However, the portion of income or gain derived from a transaction that would meet a particular definitional provision under section 954 or 953 (other than the definition of foreign personal holding company income) in unusual circumstances may not be separately determinable. If such portion is not separately determinable, it must be classified in accordance with the predominant character of the transaction. For example, if a controlled foreign corporation engineers, fabricates, and installs a fixed offshore drilling platform as part of an integrated transaction, and the portion of income that relates to services is not accounted for separately from the portion that relates to sales, and is otherwise not separately determinable, then the classification of income from the transaction shall be made in accordance with the predominant character of the arrangement.

(4) *Coordination of categories of gross foreign base company income or gross insurance income*—(i) *In general.* The computations of gross foreign base company income and gross insurance income are limited by the following rules:

(A) If income is foreign base company shipping income, pursuant to section 954(f), it shall not be considered insurance income or income in any other category of foreign base company income.

(B) If income is foreign base company oil related income, pursuant to section 954(g), it shall not be considered insurance income or income in any other category of foreign base company income, except as provided in paragraph (e)(4)(i)(A) of this section.

(C) If income is insurance income, pursuant to section 953, it shall not be considered income in any category of foreign base company income except as provided in paragraph (e)(4)(i) (A) or (B) of this section.

(D) If income is foreign personal holding company income, pursuant to section 954(c), it shall not be considered income in any other category of foreign base company income, other than as provided in paragraph (e)(4)(i) (A), (B) or (C) of this section.

(ii) Income excluded from other categories of gross foreign base company income. Income shall not be excluded from a category of gross foreign base company income or gross insurance income under this paragraph (e)(4) by reason of being included in another category of gross foreign base company income or gross insurance income, if the income is excluded from that other category by a more specific provision of section 953 or 954. For example, income derived from a commodity transaction that is excluded from foreign personal holding company income under § 1.954–2(f) as income from a qualified active sale may be included in gross foreign base company income if it also meets the definition of foreign base company sales income. See § 1.954–2(a)(2) for the coordination of overlapping categories within the definition of foreign personal holding company income.

(f) *Definition of related person*—(1) *Persons related to controlled foreign corporation.* Unless otherwise provided, for purposes of section 954 and §§ 1.954–1 through 1.954–8 inclusive, the following persons are considered under section 954(d)(3) to be related persons with respect to a controlled foreign corporation:

(i) *Individuals.* An individual, whether or not a citizen or resident of the United States, who controls the controlled foreign corporation.

(ii) *Other persons.* A foreign or domestic corporation, partnership, trust or estate that controls or is controlled by the controlled foreign corporation, or is controlled by the same person or persons that control the controlled foreign corporation.

(2) *Control*—(i) *Corporations.* With respect to a corporation, control means the ownership, directly or indirectly, of stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or of the total value of the stock of the corporation.

(ii) *Partnerships.* With respect to a partnership, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the capital or profits interest in the partnership.

(iii) *Trusts and estates.* With respect to a trust or estate, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the beneficial interest in the trust or estate.

(iv) *Direct or indirect ownership.* For purposes of this paragraph (f), to determine direct or indirect ownership, the principles of section 958(a) shall be applied without regard to whether a corporation, partnership, trust or estate is foreign or domestic or whether or not an individual is a citizen or resident of the United States.

§ 1.954–2 Foreign personal holding company income.

(a) *Computation of foreign personal holding company income*—(1) *Categories of foreign personal holding company income.* For purposes of subpart F and the regulations under that subpart, foreign personal holding company income consists of the following categories of income—

(i) Dividends, interest, rents, royalties, and annuities as described in paragraph (b) of this section;

(ii) Gain from certain property transactions as described in paragraph (e) of this section;

(iii) Gain from commodities transactions as described in paragraph (f) of this section;

(iv) Foreign currency gain as described in paragraph (g) of this section; and

(v) Income equivalent to interest as described in paragraph (h) of this section.

(2) *Coordination of overlapping categories under foreign personal holding company provisions*—(i) *In general.* If any portion of income, gain or loss from a transaction is described in more than one category of foreign personal holding company income (as described in paragraph (a)(2)(ii) of this section), that portion of income, gain or loss is treated solely as income, gain or loss from the category of foreign personal holding company income with the highest priority.

(ii) *Priority of categories.* The categories of foreign personal holding company income, listed from highest priority (paragraph (a)(2)(ii)(A) of this section) to lowest priority (paragraph (a)(2)(ii)(E) of this section), are—

(A) Dividends, interest, rents, royalties, and annuities, as described in paragraph (b) of this section;

(B) Income equivalent to interest, as described in paragraph (h) of this section without regard to the exceptions in paragraph (h)(1)(ii)(A) of this section;

(C) Foreign currency gain or loss, as described in paragraph (g) of this section without regard to the exclusion in paragraph (g)(2)(ii) of this section;

(D) Gain or loss from commodities transactions, as described in paragraph (f) of this section without regard to the exclusion in paragraph (f)(1)(ii) of this section; and

(E) Gain or loss from certain property transactions, as described in paragraph (e) of this section without regard to the exceptions in paragraph (e)(1)(ii) of this section.

(3) *Changes in the use or purpose for which property is held*—(i) *In general.* Under paragraphs (e), (f), (g) and (h) of this section, transactions in certain property give rise to gain or loss included in the computation of foreign personal holding company income if the controlled foreign corporation holds that property for a particular use or purpose. The use or purpose for which property is held is that use or purpose for which it was held for more than one-half of the period during which the controlled foreign corporation held the property prior to the disposition.

(ii) *Special rules*—(A) *Anti-abuse rule.* If a principal purpose of a change in use or purpose of property was to avoid including gain or loss in the computation of foreign personal holding company income, all the gain or loss from the disposition of the property is treated as foreign personal holding company income. A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately).

(B) *Hedging transactions.* The provisions of paragraph (a)(3)(i) of this section shall not apply to bona fide hedging transactions, as defined in paragraph (a)(4)(ii) of this section. A transaction will be treated as a bona fide hedging transaction only so long as it satisfies the requirements of paragraph (a)(4)(ii) of this section.

(iii) *Example.* The following example illustrates the application of this paragraph (a)(3).

Example. At the beginning of taxable year 1, *CFC*, a controlled foreign corporation, purchases a building for investment. During taxable years 1 and 2, *CFC* derives rents from the building that are included in the computation of foreign personal holding company income under paragraph (b)(1)(iii) of this section. At the beginning of taxable year 3, *CFC* changes the use of the building by terminating all leases and using it in an active trade or business. At the beginning of taxable year 4, *CFC* sells the building at a gain. The building was not used in an active trade or business of *CFC* for more than one-half of the period during which it was held by *CFC*. Therefore, the building is considered to be property that gives rise to rents, as described in paragraph (e)(2) of this section, and gain from the sale is included in the computation of *CFC*'s foreign personal holding company income under paragraph (e) of this section.

(4) *Definitions and special rules.* The following definitions and special rules apply for purposes of computing foreign personal holding company income under this section.

(i) *Interest.* The term *interest* includes all amounts that are treated as interest income (including interest on a tax-exempt obligation) by reason of the Internal Revenue Code or Income Tax Regulations or any other provision of law. For example, interest includes stated interest, acquisition discount, original issue discount, de minimis original issue discount, market discount, de minimis market discount, and unstated interest, as adjusted by any amortizable bond premium or acquisition premium.

(ii) *Bona fide hedging transaction*—(A) *Definition.* The term *bona fide hedging transaction* means a transaction that meets the requirements of § 1.1221–2 (a) through (c) and that is identified in accordance with the requirements of paragraph (a)(4)(ii)(B) of this section, except that in applying § 1.1221–2(b)(1), the risk being hedged may be with respect to ordinary property, section 1231 property, or a section 988 transaction. A transaction that hedges the liabilities, inventory or other assets of a related person (as defined in section 954(d)(3)), that is entered into to assume or reduce risks of a related person, or that is entered into by a person other than a person acting in its capacity as a regular dealer (as defined in paragraph (a)(4)(iv) of this section) to reduce risks assumed from a related person, will not be treated as a bona fide hedging transaction. For an illustration of how this rule applies with respect to foreign currency transactions, see paragraph (g)(2)(ii)(D) of this section.

(B) *Identification.* The identification requirements of this section shall be satisfied if the taxpayer meets the identification and recordkeeping requirements of § 1.1221–2(e). However, for bona fide hedging transactions entered into prior to March 7, 1996 the identification and recordkeeping requirements of § 1.1221–2 shall not apply. Rather, for bona fide hedging transactions entered into on or after July 22, 1988 and prior to March 7, 1996 the identification and recordkeeping requirements shall be satisfied if such transactions are identified by the close of the fifth day after the day on which they are entered into. For bona fide hedging transactions entered into prior to July 22, 1988, the identification and recordkeeping requirements shall be satisfied if such transactions are identified reasonably contemporaneously with the date they are entered into, but no later than within the normal period prescribed under the method of accounting of the controlled foreign corporation used for financial reporting purposes.

(C) *Effect of identification and non-identification*—(*1*) *Transactions identified.* If a taxpayer identifies a transaction as a bona fide hedging transaction for purposes of this section, the identification is binding with respect to any loss arising from such transaction whether or not all of the requirements of paragraph (a)(4)(ii)(A) of this section are satisfied. Accordingly, such loss will be allocated against income that is not subpart F income (or, in the case of an election under paragraph (g)(3) of this section, against the category of subpart F income to which it relates) and apportioned among the categories of income described in section 904(d)(1). If the transaction is not in fact a bona fide hedging transaction described in paragraph (a)(4)(ii)(A) of this section, however, then any gain realized with respect to such transaction shall not be considered as gain from a bona fide hedging transaction. Accordingly, such gain shall be treated as gain from the appropriate category of foreign personal holding company income. Thus, the taxpayer's identification of the transaction as a hedging transaction does not itself operate to exclude gain from the appropriate category of foreign personal holding company income.

(*2*) *Inadvertent identification.* Notwithstanding paragraph (a)(4)(ii)(C)(*1*) of this section, if the taxpayer identifies a transaction as a bona fide hedging transaction for purposes of this section, the characterization of the loss is determined as if the transaction had not been identified as a bona fide hedging transaction if—

(*i*) The transaction is not a bona fide hedging transaction (as defined in paragraph (a)(4)(ii)(A) of this section);

(*ii*) The identification of the transaction as a bona fide hedging transaction was due to inadvertent error; and

(*iii*) All of the taxpayer's transactions in all open years are being treated on either original or, if necessary, amended returns in a manner consistent with the principles of this section.

(*3*) *Transactions not identified.* Except as provided in paragraphs (a)(4)(ii)(C) (*4*) and (*5*) of this section, the absence of an identification that satisfies the requirements of paragraph (a)(4)(ii)(B) of this section is binding and establishes that a transaction is not a bona fide hedging transaction. Thus, subject to the exceptions, the characterization of gain or loss is determined without reference to whether the transaction is a bona fide hedging transaction.

(*4*) *Inadvertent error.* If a taxpayer does not make an identification that satisfies the requirements of paragraph (a)(4)(ii)(B) of this section, the taxpayer may treat gain or loss from the transaction as gain or loss from a bona fide hedging transaction if—

(*i*) The transaction is a bona fide hedging transaction (as defined in paragraph (a)(4)(ii)(A) of this section);

(*ii*) The failure to identify the transaction was due to inadvertent error; and

(*iii*) All of the taxpayer's bona fide hedging transactions in all open years are being treated on either original or, if necessary, amended returns as bona fide hedging transactions in accordance with the rules of this section.

(*5*) *Anti-abuse rule.* If a taxpayer does not make an identification that satisfies all the requirements of paragraph (a)(4)(ii)(B) of this section but the taxpayer has no reasonable grounds for treating the transaction as other than a bona fide hedging transaction, then loss from the transaction shall be treated as realized with respect to a bona fide hedging transaction. Thus, a taxpayer may not elect to exclude loss from its proper characterization as a bona fide hedging transaction. The reasonableness of the taxpayer's failure to identify a transaction is determined by taking into consideration not only the requirements of paragraph (a)(4)(ii)(A) of this section but also the taxpayer's treatment of the transaction for financial accounting or other purposes and the taxpayer's identification of similar transactions as hedging transactions.

(iii) *Inventory and similar property*—(A) *Definition.* The term *inventory and similar property* (or *inventory or similar property*) means property that is stock in trade of the controlled foreign corporation or other property of a kind that would properly be included in the inventory of the controlled foreign corporation if on hand at the close of the taxable year (if the controlled foreign corporation were a domestic corporation), or property held by the controlled foreign corporation primarily for sale to customers in the ordinary course of its trade or business.

(B) *Hedging transactions.* A bona fide hedging transaction with respect to inventory or similar property (other than a transaction described in section 988(c)(1) without regard to section 988(c)(1)(D)(i)) shall be treated as a transaction in inventory or similar property.

(iv) *Regular dealer.* The term *regular dealer* means a controlled foreign corporation that—

(A) Regularly and actively offers to, and in fact does, purchase property from and sell property to customers who are not related persons (as defined in section 954(d)(3)) with respect to the controlled foreign corporation in the ordinary course of a trade or business; or

(B) Regularly and actively offers to, and in fact does, enter into, assume, offset, assign or otherwise terminate positions in property with customers who are not related persons (as defined in section 954(d)(3)) with respect to the controlled foreign corporation in the ordinary course of a trade or business.

(v) *Dealer property*—(A) *Definition.* Property held by a controlled foreign corporation is *dealer property* if—

(*1*) The controlled foreign corporation is a regular dealer in property of such kind (determined under paragraph (a)(4)(iv) of this section); and

(*2*) The property is held by the controlled foreign corporation in its capacity as a dealer in property of such kind without regard to whether the property arises from a transaction with a related person (as defined in section 954(d)(3)) with respect to the controlled foreign corporation. The property is not held by the controlled foreign corporation in its capacity as a dealer if the property is held for investment or speculation on its own behalf or on behalf of a related person (as defined in section 954(d)(3)).

(B) *Securities dealers.* If a controlled foreign corporation is a licensed securities dealer, only the securities that it has identified as held for investment in accordance with the provisions of section 475(b) or section 1236 will be considered to be property held for investment or speculation under this section. A licensed securities dealer is a controlled foreign corporation that is both a securities dealer, as defined in section 475, and a regular dealer, as defined in paragraph (a)(4)(iv) of this section, and that is either—

(*1*) registered as a securities dealer under section 15(a) of the Securities Exchange Act of 1934 or as a Government securities dealer under section 15C(a) of such Act; or

(*2*) licensed or authorized in the country in which it is chartered, incorporated, or organized to purchase and sell securities from or to customers who are residents of that country. The conduct of such securities activities must be subject to bona fide regulation, including appropriate reporting, monitoring, and prudential (including capital adequacy) requirements, by a securities regulatory authority in that country that regularly enforces compliance with such requirements and prudential standards.

(C) *Hedging transactions.* A bona fide hedging transaction with respect to dealer property shall be treated as a transaction in dealer property.

(vi) *Examples.* The following examples illustrate the application of paragraphs (a)(4)(ii), (iv) and (v) of this section.

Example 1. (i) *CFC1* and *CFC2* are related controlled foreign corporations (within the meaning of section 954(d)(3)) located in Countries F and G, respectively. *CFC1* and *CFC2* regularly purchase securities from and sell securities to customers who are not related persons with respect to *CFC1* or *CFC2* (within the meaning of section 954(d)(3)) in the ordinary course of their businesses and regularly and actively hold themselves out as being willing to, and in fact do, enter into either side of options, forward contracts, or other financial instruments. *CFC1* uses securities that are traded in securities markets in Country G to hedge positions that it enters into with customers located in Country F. *CFC1* is not a member of a securities exchange in Country G, so it purchases such securities from *CFC2* and unrelated persons that are registered as securities dealers in Country G and that are members of Country G securities exchanges. Such hedging transactions qualify as bona fide hedging transactions under paragraph (a)(4)(ii) of this section.

(ii) Transactions that *CFC1* and *CFC2* enter into with each other do not affect the determination of whether they are regular dealers. Because *CFC1* and *CFC2* regularly purchase securities from and sell securities to customers who are not related persons within the meaning of section 954(d)(3) in the ordinary course of their businesses and regularly and actively hold themselves out as being willing to, and in fact do, enter into either side of options, forward contracts, or other financial instruments, however, they qualify as regular dealers in such property within the meaning of paragraph (a)(4)(iv) of this section. Moreover, because *CFC1* purchases securities from *CFC2* as bona fide hedging transactions with respect to dealer property, the securities are dealer property under paragraph (a)(4)(v)(C) of this section. Similarly, because *CFC2* sells securities to *CFC1* in the ordinary course of its business as a dealer, the securities are dealer property under paragraph (a)(4)(v)(A) of this section.

Example 2. (i) *CFC* is a controlled foreign corporation located in Country B. *CFC* serves as the currency coordination center for the controlled group, aggregating currency risks incurred by the group and entering into hedging transactions that transfer those risks outside of the group. *CFC* regularly and actively holds itself out as being willing to, and in fact does, enter into either side of options, forward contracts, or other financial instruments with other members of the same controlled group. *CFC* hedges risks arising from such transactions by entering into transactions with persons who are not related persons (within the meaning of section 954(d)(3)) with respect to *CFC*. However, *CFC* does not regularly and actively hold itself out as being willing to, and does not, enter into either side of transactions with unrelated persons.

(ii) *CFC* is not a regular dealer in property under paragraph (a)(4)(iv) of this section and its options, forwards, and other financial instruments are not dealer property within the meaning of paragraph (a)(4)(v) of this section.

(vii) *Debt instrument.* The term *debt instrument* includes bonds, debentures, notes, certificates, accounts receivable, and other evidences of indebtedness.

(b) *Dividends, interest, rents, royalties, and annuities*—(1) *In general.* Foreign personal holding company income includes—

(i) Dividends, except certain dividends from related persons as described in paragraph (b)(4) of this section and distributions of previously taxed income under section 959(b);

(ii) Interest, except export financing interest as defined in paragraph (b)(2) of this section and certain interest received from related persons as described in paragraph (b)(4) of this section;

(iii) Rents and royalties, except certain rents and royalties received from related persons as described in paragraph (b)(5) of this section and rents and royalties derived in the active conduct of a trade or business as defined in paragraph (b)(6) of this section; and

(iv) Annuities.

(2) *Exclusion of certain export financing interest*—(i) *In general.* Foreign personal holding company income does not include interest that is export financing interest. The term *export financing interest* means interest that is derived in the conduct of a banking business and is export financing interest as defined in section 904(d)(2)(G). Solely for purposes of determining whether interest is export financing interest, property is treated as manufactured, produced, grown, or extracted in the United States if it is so treated under § 1.927(a)–1T(c).

(ii) *Exceptions.* Export financing interest does not include income from related party factoring that is treated as interest under section 864(d) (1) or (6) after the application of section 864(d)(7).

(iii) *Conduct of a banking business.* For purposes of this section, export financing interest is considered derived in the conduct of a banking business if, in connection with the financing from which the interest is derived, the corporation, through its own officers or staff of employees, engages in all the activities in which banks customarily engage in issuing and servicing a loan.

(iv) *Examples.* The following examples illustrate the application of this paragraph (b)(2).

Example 1. (i) *DS*, a domestic corporation, manufactures property in the United States. In addition to selling inventory (property described in section 1221(1)), *DS* occasionally sells depreciable equipment it manufactures for use in its trade or business, which is property described in section 1221(2). Less than 50 percent of the fair market value, determined in accordance with section 904(d)(2)(G), of each item of inventory or equipment sold by *DS* is attributable to products imported into the United States. *CFC*, a controlled foreign corporation with respect to which *DS* is a related person (within the meaning of section 954(d)(3)), provides loans described in section 864(d)(6) to unrelated persons for the purchase of property from *DS*. This property is purchased exclusively for use or consumption outside the United States and outside *CFC*'s country of incorporation.

(ii) If, in issuing and servicing loans made with respect to purchases from *DS* of depreciable equipment used in its trade or business, which is property described in section 1221(2) in the hands of *DS*, *CFC* engages in all the activities in which banks customarily engage in issuing and servicing loans, the interest accrued from these loans would be export financing interest meeting the requirements of this paragraph (b)(2) and, thus, not included in foreign personal holding company income. However, interest from the loans made with respect to purchases from *DS* of property that is inventory in the hands of *DS* cannot be export financing interest because it is treated as income from a trade or service receivable under section 864(d)(6) and the exception under section 864(d)(7) does not apply. Thus the interest from loans made with respect to this inventory is included in foreign personal holding company income under paragraph (b)(1)(ii) of this section.

Example 2. (i) *DS*, a domestic corporation manufactures property in the United States. *DS* wholly owns two controlled foreign corporations organized in Country A, *CFC1* and *CFC2*. *CFC1* has a substantial part of its assets used in its trade or business in Country A. *CFC1* purchases the property that *DS* manufactures and sells it without further manufacture for use or consumption within Country A. This property is inventory property, as described in section 1221(1), in the hands of *CFC1*. Less than 50 percent of the fair market value, determined in accordance with section 904(d)(2)(G), of each item of inventory sold by *CFC1* is attributable to products imported into the United States. *CFC2* provides loans described in section 864(d)(6) to unrelated persons in Country A for the purchase of the property from *CFC1*.

(ii) If, in issuing and servicing loans made with respect to purchases from *CFC1* of the inventory property, *CFC2* engages in all the activities in which banks customarily engage in issuing and servicing loans, the interest accrued from these loans would be export financing interest meeting the requirements of paragraph (b)(2) of this section. It is not treated as income from a trade or service receivable under section 864(d)(6) because the exception under section 864(d)(7) applies. Thus the interest is excluded from foreign personal holding company income.

Example 3. The facts are the same as in *Example 2* except that the property sold by *CFC1* is manufactured by *CFC1* in Country A from component parts that were manufactured by *DS* in the United States. The interest accrued from the loans by *CFC2* is not export financing interest as defined in section 904(d)(2)(G) because the property is not manufactured in the United States under § 1.927(a)–1T(c). No portion of the interest is export financing interest as defined in this paragraph (b)(2). The full amount of the interest is, therefore, included in foreign personal holding company income under paragraph (b)(1)(ii) of this section.

(3) *Treatment of tax-exempt interest.* [Reserved] For guidance, see § 4.954–2(b)(6) of this chapter.

(4) *Exclusion of dividends or interest from related persons*—(i) *In general*—(A) *Corporate payor.* Foreign personal holding company income received by a controlled foreign corporation does not include dividends or interest if the payor—

(*1*) Is a corporation that is a related person with respect to the controlled foreign corporation, as defined in section 954(d)(3);

(*2*) Is created or organized under the laws of the same foreign country (the *country of incorporation*) as is the controlled foreign corporation; and

(*3*) Uses a substantial part of its assets in a trade or business in its country of incorporation, as determined under this paragraph (b)(4).

(B) *Payment by a partnership.* For purposes of this paragraph (b)(4), if a partnership with one or more corporate partners makes a payment of interest, a corporate partner will be treated as the payor of the interest—

(*1*) If the interest payment gives rise to a partnership item of deduction under the Internal Revenue Code or Income Tax Regulations, to the extent that the item of deduction is allocable to the corporate partner under section 704(b); or

(*2*) If the interest payment does not give rise to a partnership item of deduction under the Internal Revenue Code or Income Tax Regulations, to the extent that a partnership item reasonably related to the payment would be allocated to that partner under an existing allocation under the partnership agreement (made pursuant to section 704(b)).

(ii) *Exceptions*—(A) *Dividends.* Dividends are excluded from foreign personal holding company income under this paragraph (b)(4) only to the extent that they are paid out of earnings and profits that are earned or accumulated during a period in which—

(*1*) The stock on which dividends are paid with respect to which the exclusion is claimed was owned by the recipient controlled foreign corporation directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of paragraph (b)(4)(i)(A) of this section; and

(*2*) Each of the requirements of paragraph (b)(4)(i)(A) of this section is satisfied or, to the extent earned or accumulated during a taxable year of the related foreign corporation ending on or before December 31, 1962, during a period in which the payor was a related corporation as to the controlled foreign corporation and the other requirements of paragraph (b)(4)(i)(A) of this section were substantially satisfied.

(*3*) This paragraph (b)(4)(ii)(A) is illustrated by the following example:

Example. *A*, a domestic corporation, owns all of the stock of *B*, a corporation created and organized under the laws of Country Y, and *C*, a corporation created and organized under the laws of Country X. The taxable year of each of the corporations is the calendar year. In Year 1, *B* earns $100 of income from the sale of products in Country Y that it manufactured in Country Y. *C* had no earnings and profits in Year 1. On January 1 of Year 2, *A* contributes all of the stock of *B* and *C* to Newco, a Country Y corporation, in exchange for all of the stock of Newco. Neither *B* nor *C* earns any income in Year 2, but at the end of Year 2 *B* distributes the $100 accumulated earnings and profits to Newco. Newco's income from the distribution, $100, is foreign personal holding company income because the earnings and profits distributed by *B* were not earned or accumulated during a period in which the stock of *B* was owned by Newco and in which each of the requirements of paragraph (b)(4)(i)(A) of this section was satisfied.

(B) *Interest paid out of adjusted foreign base company income or insurance income*—(*1*) *In general.* Interest may not be excluded from the foreign personal holding company income of the recipient under this paragraph (b)(4) to the extent that the deduction for the interest is allocated under § 1.954–1(a)(4) and (c) to the payor's adjusted gross foreign base company income (as defined in § 1.954–1(a)(3)), adjusted gross insurance income (as defined in § 1.954–1(a)(6)), or any other category of income included in the computation of subpart F income under section 952(a).

(*2*) *Rule for corporations that are both recipients and payors of interest.* If a controlled foreign corporation is both a recipient and payor of interest, the interest that is received will be characterized before the interest that is paid. In addition, the amount of interest paid or accrued, directly or indirectly, by the controlled foreign corporation to a related person (as defined in section 954(d)(3)) shall be offset against and eliminate any interest received or accrued, directly or indirectly, by the controlled foreign corporation from that related person. In a case in which the controlled foreign corporation pays or accrues interest to a related person, as defined in section 954(d)(3), and also receives or accrues interest indirectly from the related person, the smallest interest payment is eliminated and the amounts of all other interest payments are reduced by the amount of the smallest interest payment.

(C) *Coordination with sections 864(d) and 881(c).* Income of a controlled foreign corporation that is treated as interest under section 864(d) (1) or (6), or that is portfolio interest, as defined by section 881(c), is not excluded from foreign personal holding company income under section 954(c)(3)(A)(i) and this paragraph (b)(4).

(iii) *Trade or business requirement.* Except as otherwise provided under this paragraph (b)(4), the principles of section 367(a) apply for purposes of determining whether the payor has a trade or business in its country of incorporation and whether its assets are used in that trade or business. Property purchased or produced for use in a trade or business is not considered used in a trade or business before it is placed in service or after it is retired from service as determined in accordance with the principles of sections 167 and 168.

(iv) *Substantial assets test.* A substantial part of the assets of the payor will be considered to be used in a trade or business located in the payor's country of incorporation for a taxable year only if the average value of the payor's assets for such year that are used in the trade or business and are

located in such country equals more than 50 percent of the average value of all the assets of the payor (including assets not used in a trade or business). The average value of assets for the taxable year is determined by averaging the values of assets at the close of each quarter of the taxable year. The value of assets is determined under paragraph (b)(4)(v) of this section, and the location of assets used in a trade or business of the payor is determined under paragraphs (b)(4) (vi) through (xi) of this section.

(v) *Valuation of assets.* For purposes of determining whether a substantial part of the assets of the payor are used in a trade or business in its country of incorporation, the value of assets shall be their fair market value (not reduced by liabilities), which, in the absence of affirmative evidence to the contrary, shall be deemed to be their adjusted basis.

(vi) *Location of tangible property*—(A) *In general.* Tangible property (other than inventory and similar property as defined in paragraph (a)(4)(iii) of this section, and dealer property as defined in paragraph (a)(4)(v) of this section) used in a trade or business is considered located in the country in which it is physically located.

(B) *Exception.* An item of tangible personal property that is used in the trade or business of a payor in the payor's country of incorporation is considered located within the payor's country of incorporation while it is temporarily located elsewhere for inspection or repair if the property is not placed in service in a country other than the payor's country of incorporation and is not to be so placed in service following the inspection or repair.

(vii) *Location of intangible property*—(A) *In general.* Intangible property (other than inventory and similar property as defined in paragraph (a)(4)(iii) of this section, dealer property as defined in paragraph (a)(4)(v) of this section, and debt instruments) is considered located entirely in the payor's country of incorporation for a quarter of the taxable year only if the payor conducts all of its activities in connection with the use or exploitation of the property in that country during that entire quarter. For this purpose, the country in which the activities connected to the use or exploitation of the property are conducted is the country in which the expenses associated with these activities are incurred. Expenses incurred in connection with the use or exploitation of an item of intangible property are included in the computation provided by this paragraph (b)(4) if they would be deductible under section 162 or includible in inventory costs or the cost of goods sold if the payor were a domestic corporation. If the payor conducts such activities through an agent or independent contractor, then the expenses incurred by the payor with respect to the agent or independent contractor shall be deemed to be incurred by the payor in the country in which the expenses of the agent or independent contractor were incurred by the agent or independent contractor.

(B) *Exception for property located in part in the payor's country of incorporation.* If the payor conducts its activities in connection with the use or exploitation of an item of intangible property, including goodwill (other than inventory and similar property, dealer property and debt instruments) during a quarter of the taxable year both in its country of incorporation and elsewhere, then the value of the intangible considered located in the payor's country of incorporation during that quarter is a percentage of the value of the item as of the close of the quarter. That percentage equals the ratio that the expenses incurred by the payor (described in paragraph (b)(4)(vii)(A) of this section) during the entire quarter by reason of activities that are connected with the use or exploitation of the item of intangible property and are conducted in the payor's country of incorporation bear to all expenses incurred by the payor during the entire quarter by reason of all such activities worldwide.

(viii) *Location of inventory and dealer property*—(A) *In general.* Inventory and similar property, as defined in paragraph (a)(4)(iii) of this section, and dealer property, as defined in paragraph (a)(4)(v) of this section, are considered located entirely in the payor's country of incorporation for a quarter of the taxable year only if the payor conducts all of its activities in connection with the production and sale, or purchase and resale, of such property in its country of incorporation during that entire quarter. If the payor conducts such activities through an agent or independent contractor, then the location of such activities is the place in which they are conducted by the agent or independent contractor.

(B) *Inventory and dealer property located in part in the payor's country of incorporation.* If the payor conducts its activities in connection with the production and sale, or purchase and resale, of inventory or similar property or dealer property during a quarter of the taxable year both in its country of incorporation and elsewhere, then the value of the inventory or similar property or dealer property considered located in the payor's country of incorporation during each quarter is a percentage of the value of the inventory or similar property or dealer property as of the close of the quarter. That percentage equals the ratio that the costs and expenses incurred by the payor during the entire quarter by reason of activities connected with the production and sale, or purchase and resale, of inventory or similar property or dealer property that are conducted in the payor's country of incorporation bear to all costs or expenses incurred by the payor during the entire quarter by reason of all such activities worldwide. A cost incurred in connection with the production and sale or purchase and resale of inventory or similar property or dealer property is included in this computation if it—

(*1*) Would be included in inventory costs or otherwise capitalized with respect to inventory or similar property or dealer property under section 61, 263A, 471, or 472 if the payor were a domestic corporation; or

(*2*) Would be deductible under section 162 if the payor were a domestic corporation and is definitely related to gross income derived from such property (but not to all classes of gross income derived by the payor) under the principles of § 1.861–8.

(ix) *Location of debt instruments.* For purposes of this paragraph (b)(4), debt instruments, other than debt instruments that are inventory or similar property (as defined in paragraph (a)(4)(iii) of this section) or dealer property (as defined in paragraph (a)(4)(v) of this section) are considered to be used in a trade or business only if they arise from the sale of inventory or similar property or dealer property by the payor or from the rendition of services by the payor in the ordinary course of a trade or business of the payor, and only until such time as interest is required to be charged under section 482. Debt instruments that arise from the sale of inventory or similar property or dealer property during a quarter are treated as having the same location, proportionately, as the inventory or similar property or dealer property held during that quarter. Debt instruments arising from the rendition of services in the ordinary course of a trade or business are considered located on a proportionate basis in the countries in which the services to which they relate are performed.

(x) *Treatment of certain stock interests.* Stock in a controlled foreign corporation (lower-tier corporation) that is incorporated in the same country as the payor and related to the payor within the meaning of section 954(d)(3) shall be considered located in the payor's country of incorporation in proportion to the value of the assets of the lower-tier corporation. The location of assets used in a trade or business of the lower-tier corporation shall be determined under the rules of this paragraph (b)(4).

(xi) *Treatment of banks and insurance companies.* [Reserved]

(5) *Exclusion of rents and royalties derived from related persons*—(i) *In general*—(A) *Corporate payor.* Foreign personal holding company income received by a controlled foreign corporation does not include rents or royalties if—

(*1*) The payor is a corporation that is a related person with respect to the controlled foreign corporation, as defined in section 954(d)(3); and

(*2*) The rents or royalties are for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation receiving the payments is created or organized (the country of incorporation).

(B) *Payment by a partnership.* For purposes of this paragraph (b)(5), if a partnership with one or more corporate partners makes a payment of rents or royalties, a corporate partner will be treated as the payor of the rents or royalties—

(*1*) If the rent or royalty payment gives rise to a partnership item of deduction under the Internal Revenue Code or Income Tax Regulations, to the extent the item of deduction is allocable to the corporate partner under section 704(b); or

(*2*) If the rent or royalty payment does not give rise to a partnership item of deduction under the Internal Revenue Code or Income Tax Regulations, to the extent that a partnership item reasonably related to the payment would be allocated to that partner under an existing allocation under the partnership agreement (made pursuant to section 704(b)).

(ii) *Exceptions*—(A) *Rents or royalties paid out of adjusted foreign base company income or insurance income.* Rents or royalties may not be excluded from the foreign personal holding company income of the recipient under this paragraph (b)(5) to the extent that deductions for the payments are allocated under section 954(b)(5) and § 1.954–1(a)(4) and (c) to the payor's adjusted gross foreign base company income (as defined in § 1.954–1(a)(3)), adjusted gross insurance income (as defined in § 1.954–1(a)(6)), or any other category of income included in the computation of subpart F income under section 952(a).

(B) *Property used in part in the controlled foreign corporation's country of incorporation.* If the payor uses the property both in the controlled foreign corporation's country of incorporation and elsewhere, the part of the rent or royalty attributable (determined under the principles of section 482) to the use of, or the privilege of using, the property outside such country of incorporation is included in the computation of foreign personal holding company income under this paragraph (b).

(6) *Exclusion of rents and royalties derived in the active conduct of a trade or business.* Foreign personal holding company income shall not include rents or royalties that are derived in the active conduct of a trade or business and received from a person that is not a related person (as defined in section 954(d)(3)) with respect to the controlled foreign corporation. For purposes of this section, rents or royalties are derived in the active conduct of a trade or business only if the provisions of paragraph (c) or (d) of this section are satisfied.

(c) *Excluded rents*—(1) *Active conduct of a trade or business.* Rents will be considered for purposes of paragraph (b)(6) of this section to be derived in the active conduct of a trade or business if such rents are derived by the controlled foreign corporation (the lessor) from leasing any of the following—

(i) Property that the lessor has manufactured or produced, or has acquired and added substantial value to, but only if the lessor is regularly engaged in the manufacture or production of, or in the acquisition and addition of substantial value to, property of such kind;

(ii) Real property with respect to which the lessor, through its own officers or staff of employees, regularly performs active and substantial management and operational functions while the property is leased;

(iii) Personal property ordinarily used by the lessor in the active conduct of a trade or business, leased temporarily during a period when the property would, but for such leasing, be idle; or

(iv) Property that is leased as a result of the performance of marketing functions by such lessor if the lessor, through its own officers or staff of employees located in a foreign country, maintains and operates an organization in such country that is regularly engaged in the business of marketing, or of marketing and servicing, the leased property and that is substantial in relation to the amount of rents derived from the leasing of such property.

(2) *Special rules*—(i) *Adding substantial value.* For purposes of paragraph (c)(1)(i) of this section, the performance of marketing functions will not be considered to add substantial value to property.

(ii) *Substantiality of foreign organization.* For purposes of paragraph (c)(1)(iv) of this section, whether an organization in a foreign country is substantial in relation to the amount of rents is determined based on all of the facts and circumstances. However, such an organization will be considered substantial in relation to the amount of rents if active leasing expenses, as defined in paragraph (c)(2)(iii) of this section, equal or exceed 25 percent of the adjusted leasing profit, as defined in paragraph (c)(2)(iv) of this section.

(iii) *Active leasing expenses.* The term *active leasing expenses* means the deductions incurred by an organization of the lessor in a foreign country that are properly allocable to rental income and that would be allowable under section 162 to the lessor if it were a domestic corporation, other than—

(A) Deductions for compensation for personal services rendered by shareholders of, or related persons (as defined in section 954(d)(3)) with respect to, the lessor;

(B) Deductions for rents paid or accrued;

(C) Deductions that, although generally allowable under section 162, would be specifically allowable to the lessor (if the lessor were a domestic corporation) under any section of the Internal Revenue Code other than section 162; and

(D) Deductions for payments made to agents or independent contractors with respect to the leased property other than payments for insurance, utilities and other expenses for like services, or for capitalized repairs.

(iv) *Adjusted leasing profit.* The term *adjusted leasing profit* means the gross income of the lessor from rents, reduced by the sum of—

(A) The rents paid or incurred by the lessor with respect to such rental income;

(B) The amounts that would be allowable to such lessor (if the lessor were a domestic corporation) as deductions under sections 167 or 168 with respect to such rental income; and

(C) The amounts paid by the lessor to agents or independent contractors with respect to such rental income other than payments for insurance, utilities and other expenses for like services, or for capitalized repairs.

(3) *Examples.* The application of this paragraph (c) is illustrated by the following examples.

Example 1. Controlled foreign corporation *A* is regularly engaged in the production of office machines which it sells or leases to others and services. Under paragraph (c)(1)(i) of this section, the rental income of Corporation *A* from these leases is derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 2. Controlled foreign corporation *D* purchases motor vehicles which it leases to others. In the conduct of its short-term leasing of such vehicles in foreign country X, Corporation *D* owns a large number of motor vehicles in country X which it services and repairs, leases motor vehicles to customers on an hourly, daily, or weekly basis, maintains offices and service facilities in country X from which to lease and service such vehicles, and maintains therein a sizable staff of its own administrative, sales, and service personnel. Corporation *D* also leases in country X on a long-term basis, generally for a term of one year, motor vehicles that it owns. Under the terms of the long-term leases, Corporation *D* is required to repair and service, during the term of the lease, the leased motor vehicles without cost to the lessee. By the maintenance in country X of office, sales, and service facilities and its complete staff of administrative, sales, and service personnel, Corporation *D* maintains and operates an organization therein that is regularly engaged in the business of marketing and servicing the motor vehicles that are leased. The deductions incurred by such organization satisfy the 25-percent test of paragraph (c)(2)(ii) of this section; thus, such organization is substantial in relation to the rents Corporation *D* receives from leasing the motor vehicles. Therefore, under paragraph (c)(1)(iv) of this section, such rents are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 3. Controlled foreign corporation *E* owns a complex of apartment buildings that it has acquired by purchase. Corporation *E* engages a real estate management firm to lease the apartments, manage the buildings and pay over the net rents to Corporation *E*. The rental income of Corporation *E* from such leases is not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 4. Controlled foreign corporation *F* acquired by purchase a twenty-story office building in a foreign country, three floors of which it occupies and the rest of which it leases. Corporation *F* acts as rental agent for the leasing of offices in the building and employs a substantial staff to perform other management and maintenance functions. Under paragraph (c)(1)(ii) of this section, the rents received by Corporation *F* from such leasing operations are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 5. Controlled foreign corporation *G* owns equipment that it ordinarily uses to perform contracts in foreign countries to drill oil wells. For occasional brief and irregular periods it is unable to obtain contracts requiring immediate performance sufficient to employ all such equipment. During such a period it sometimes leases such idle equipment temporarily. After the expiration of such temporary leasing of the property, Corporation *G* continues the use of such equipment in the performance of its own drilling contracts. Under paragraph (c)(1)(iii) of this section, rents Corporation *G* receives from such leasing of idle equipment are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

(d) *Excluded royalties*—(1) *Active conduct of a trade or business.* Royalties will be considered for purposes of paragraph (b)(6) of this section to be derived in the active conduct of a trade or business if such royalties are derived by the controlled foreign corporation (the licensor) from licensing—

(i) Property that the licensor has developed, created, or produced, or has acquired and added substantial value to, but only so long as the licensor is regularly engaged in the development, creation, or production of, or in the acquisition of and addition of substantial value to, property of such kind; or

(ii) Property that is licensed as a result of the performance of marketing functions by such licensor if the licensor, through its own officers or staff of employees located in a foreign country, maintains and operates an organization in such country that is regularly engaged in the business of marketing, or of marketing and servicing, the licensed property and that is substantial in relation to the amount of royalties derived from the licensing of such property.

(2) *Special rules*—(i) *Adding substantial value.* For purposes of paragraph (d)(1)(i) of this section, the performance of marketing functions will not be considered to add substantial value to property.

(ii) *Substantiality of foreign organization.* For purposes of paragraph (d)(1)(ii) of this section, whether an organization in a foreign country is substantial in relation to the amount of royalties is determined based on all of the facts and circumstances. However, such an organization will be considered substantial in relation to the amount of royalties if active licensing expenses, as defined in paragraph (d)(2)(iii) of this section, equal or exceed 25 percent of the adjusted licensing profit, as defined in paragraph (d)(2)(iv) of this section.

(iii) *Active licensing expenses.* The term *active licensing expenses* means the deductions incurred by an organization of the licensor in a foreign country that are properly allocable to royalty income and that would be allowable under section 162 to the licensor if it were a domestic corporation, other than—

(A) Deductions for compensation for personal services rendered by shareholders of, or related persons (as defined in section 954(d)(3)) with respect to, the licensor;

(B) Deductions for royalties paid or incurred;

(C) Deductions that, although generally allowable under section 162, would be specifically allowable to the licensor (if the controlled foreign corporation were a domestic corporation) under any section of the Internal Revenue Code other than section 162; and

(D) Deductions for payments made to agents or independent contractors with respect to the licensed property.

(iv) *Adjusted licensing profit.* The term *adjusted licensing profit* means the gross income of the licensor from royalties, reduced by the sum of—

(A) The royalties paid or incurred by the licensor with respect to such royalty income;

(B) The amounts that would be allowable to such licensor as deductions under section 167 or 197 (if the licensor were a domestic corporation) with respect to such royalty income; and

(C) The amounts paid by the licensor to agents or independent contractors with respect to such royalty income.

(3) *Examples.* The application of this paragraph (d) is illustrated by the following examples.

Example 1. Controlled foreign corporation *A*, through its own staff of employees, owns and operates a research facility in foreign country X. At the research facility employees of Corporation *A* who are scientists, engineers, and technicians regularly perform experiments, tests, and other technical activities, that ultimately result in the issuance of patents that it sells or licenses. Under paragraph (d)(1)(i) of this section, royalties received by Corporation *A* for the privilege of using patented rights that it develops as a result of such research activity are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A), but only so long as the licensor is regularly engaged in the development, creation, or production of, or in the acquisition of and addition of substantial value to, property of such kind.

Example 2. Assume that Corporation *A* in *Example 1*, in addition to receiving royalties for the use of patents that it develops, receives royalties for the use of patents that it acquires by purchase and licenses to others without adding any value thereto. Corporation *A* generally consummates royalty agreements on such purchased patents as the result of inquiries received by it from prospective licensees when the fact becomes known in the business community, as a result of the filing of a patent, advertisements in trade journals, announcements, and contacts by employees of Corporation *A*, that Corporation *A* has acquired rights under a patent and is interested in licensing its rights. Corporation *A* does not, however, maintain and operate an organization in a foreign country that is regularly engaged in the business of marketing the purchased patents. The royalties received by Corporation *A* for the use of the purchased patents are not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 3. Controlled foreign corporation *B* receives royalties for the use of patents that it acquires by purchase. The primary business of Corporation *B*, operated on a regular basis, consists of licensing patents that it has purchased raw from inventors and, through the efforts of a substantial staff of employees consisting of scientists, engineers, and technicians, made susceptible to commercial application. For example, Corporation *B*, after purchasing patent rights covering a chemical process, designs specialized production equipment required for the commercial adaptation of the process and, by so doing, substantially increases the value of the patent. Under paragraph (d)(1)(i) of this section, royalties received by Corporation *B* from the use of such patent are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 4. Controlled foreign corporation *C* receives royalties for the use of a patent that it developed through its own staff of employees at its facility in country X. Corporation *C* has developed no other patents. It does not regularly employ a staff of scientists, engineers or technicians to create new products to be patented. Further, it does not purchase and license patents developed by others to which it has added substantial value. The royalties received by Corporation *C* are not derived from the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example 5. Controlled foreign corporation *D* finances independent persons in the development of patented items in return for an ownership interest in such items from which it derives a percentage of royalty income, if any, subsequently derived from the use by others of the protected right. Corporation *D* also attempts to increase its royalty income from such patents by contacting prospective licensees and rendering to licensees advice that is intended to promote the use of the patented property. Corporation *D* does not, however, maintain and operate an organization in a foreign country that is regularly engaged in the business of marketing the patents. Royalties received by Corporation *D* for the use of such patents are not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

(e) *Certain property transactions*—(1) *In general*—(i) *Inclusions*. Gain from certain property transactions described in section 954(c)(1)(B) includes the excess of gains over losses from the sale or exchange of—

(A) Property that gives rise to dividends, interest, rents, royalties or annuities, as described in paragraph (e)(2) of this section;

(B) Property that is an interest in a partnership, trust or REMIC; and

(C) Property that does not give rise to income, as described in paragraph (e)(3) of this section.

(ii) *Exceptions*. Gain or loss from certain property transactions described in section 954(c)(1)(B) and paragraph (e)(1)(i) of this section does not include gain or loss from the sale or exchange of—

(A) Inventory or similar property, as defined in paragraph (a)(4)(iii) of this section;

(B) Dealer property, as defined in paragraph (a)(4)(v) of this section; or

(C) Property that gives rise to rents or royalties described in paragraph (b)(6) of this section that are derived in the active conduct of a trade or business from persons that are not related persons (as defined in section 954(d)(3)) with respect to the controlled foreign corporation.

(iii) *Treatment of losses*. Section 1.954–1(c)(1)(ii) provides for the treatment of losses in excess of gains from the sale or exchange of property described in paragraph (e)(1)(i) of this section.

(iv) *Dual character property*. Property may, in part, constitute property that gives rise to certain income as described in paragraph (e)(2) of this section or, in part, constitute property that does not give rise to any income as described in paragraph (e)(3) of this section. However, property that is described in paragraph (e)(1)(i)(B) of this section cannot be dual character property. Dual character property must be treated as two separate properties for purposes of paragraph (e)(2) or (3) of this section. Accordingly, the sale or exchange of such dual character property will give rise to gain or loss that in part must be included in the computation of foreign personal holding company income under paragraph (e)(2) or (3) of this section, and in part is excluded from such computation. Gain or loss from the disposition of dual character property must be bifurcated under this paragraph (e)(1)(iv) pursuant to the method that most reasonably reflects the relative uses of the property. Reasonable methods may include comparisons in terms of gross income generated or the physical division of the property. In the case of real property, the physical division of the property will in most cases be the most reasonable method available. For example, if a controlled foreign corporation owns an office building, uses 60 percent of the building in its trade or business, and rents out the other 40 percent, then 40 percent of the gain recognized on the disposition of the property would reasonably be treated as gain that is included in the computation of foreign personal holding company income under this paragraph (e)(1). This paragraph (e)(1)(iv) addresses the contemporaneous use of property for dual purposes. For rules concerning changes in the use of property affecting its classification for purposes of this paragraph (e), see paragraph (a)(3) of this section.

(2) *Property that gives rise to certain income*—(i) *In general*. Property the sale or exchange of which gives rise to foreign personal holding company income under this paragraph (e)(2) includes property that gives rise to dividends, interest, rents, royalties or annuities described in paragraph (b) of this section, including—

(A) Property that gives rise to export financing interest described in paragraph (b)(2) of this section; and

(B) Property that gives rise to income from related persons described in paragraph (b) (4) or (5) of this section.

(ii) *Gain or loss from the disposition of a debt instrument*. Gain or loss from the sale, exchange, or retirement of a debt instrument is included in the computation of foreign personal holding company income under this paragraph (e) unless—

(A) In the case of gain—

(*1*) It is interest (as defined in paragraph (a)(4)(i) of this section); or

(*2*) It is income equivalent to interest (as described in paragraph (h) of this section); and

(B) In the case of loss—

(*1*) It is directly allocated to, or treated as an adjustment to, interest income (as described in paragraph (a)(4)(i) of this section) or income equivalent to interest (as defined in paragraph (h) of this section) under any provision of the Internal Revenue Code or Income Tax Regulations; or

(*2*) It is required to be apportioned in the same manner as interest expense under section 864(e) or any other provision of the Internal Revenue Code or Income Tax Regulations.

(3) *Property that does not give rise to income*. Except as otherwise provided in this paragraph (e)(3), for purposes of this section, the term *property that does not give rise to income* includes all rights and interests in property (whether or not a capital asset) including, for example, forwards, futures and options. Property that does not give rise to income shall not include—

(i) Property that gives rise to dividends, interest, rents, royalties or annuities described in paragraph (e)(2) of this section;

(ii) Tangible property (other than real property) used or held for use in the controlled foreign corporation's trade or business that is of a character that would be subject to the allowance for depreciation under section 167 or 168 and the regulations under those sections (including tangible property described in § 1.167(a)–2);

(iii) Real property that does not give rise to rental or similar income, to the extent used or held for use in the controlled foreign corporation's trade or business;

(iv) Intangible property (as defined in section 936(h)(3)(B)), goodwill or going concern value, to the extent used or held for use in the controlled foreign corporation's trade or business;

(v) Notional principal contracts (but see paragraphs (f)(2), (g)(2) and (h)(3) of this section for rules that include income from certain notional principal contracts in gains from commodities transactions, foreign currency gains and income equivalent to interest, respectively); or

(vi) Other property that is excepted from the general rule of this paragraph (e)(3) by the Commissioner in published guidance. See § 601.601(d)(2) of this chapter.

(f) *Commodities transactions*—(1) *In general*—(i) *Inclusion in foreign personal holding company income*. Foreign personal holding company income includes the excess of gains over losses from commodities transactions.

(ii) *Exception*. Gains and losses from qualified active sales and qualified hedging transactions are excluded from the computation of foreign personal holding company income under this paragraph (f).

(iii) *Treatment of losses*. Section 1.954–1(c)(1)(ii) provides for the treatment of losses in excess of gains from commodities transactions.

(2) *Definitions*—(i) *Commodity*. For purposes of this section, the term *commodity* includes tangible personal property of a kind that is actively traded or with respect to which contractual interests are actively traded.

(ii) *Commodities transaction*. The term *commodities transaction* means the purchase or sale of a commodity for immediate (spot) delivery or deferred (forward) delivery, or the right to purchase, sell, receive, or transfer a commodity, or any other right or obligation with respect to a commodity accomplished through a cash or off-exchange market, an interbank market, an organized exchange or board of trade, or an over-the-counter market, or in a transaction effected between private parties outside of any market. Commodities transactions include, but are not limited to—

(A) A futures or forward contract in a commodity;

(B) A leverage contract in a commodity purchased from a leverage transaction merchant;

(C) An exchange of futures for physical transaction;

(D) A transaction, including a notional principal contract, in which the income or loss to the parties is measured by reference to the price of a commodity, a pool of commodities, or an index of commodities;

(E) The purchase or sale of an option or other right to acquire or transfer a commodity, a futures contract in a commodity, or an index of commodities; and

(F) The delivery of one commodity in exchange for the delivery of another commodity, the same commodity at another time, cash, or nonfunctional currency.

(iii) *Qualified active sale*—(A) *In general*. The term *qualified active sale* means the sale of commodities in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities if substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant or handler of commodities. The sale of commodities held by a controlled foreign corporation other than in its capacity as an active producer, processor, merchant or handler of commodities is not a qualified active sale. For example, the sale by a controlled foreign corporation of commodities that were held for investment or speculation would not be a qualified active sale.

(B) *Active conduct of a commodities business*. For purposes of this paragraph, a controlled foreign corporation is engaged in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities only with respect to commodities for which each of the following conditions is satisfied—

(*1*) It holds the commodities directly, and not through an agent or independent contractor, as inventory or similar property (as defined in paragraph (a)(4)(iii) of this section) or as dealer property (as defined in paragraph (a)(4)(v) of this section); and

(*2*) With respect to such commodities, it incurs substantial expenses in the ordinary course of a commodities business ffom engaging in one or more of the following activities directly, and not through an independent contractor—

(*i*) Substantial activities in the production of the commodities, including planting, tending or harvesting crops, raising or slaughtering livestock, or extracting minerals;

(*ii*) Substantial processing activities prior to the sale of the commodities, including the blending and drying of agricultural commodities, or the concentrating, refining, mixing, crushing, aerating or milling of commodities; or

(*iii*) Significant activities as described in paragraph (f)(2)(iii)(B)(*3*) of this section.

(*3*) For purposes of paragraph (f)(2)(iii)(B)(*2*)(*iii*) of this section, the significant activities must relate to—

(*i*) The physical movement, handling and storage of the commodities, including preparation of contracts and invoices, arranging freight, insurance and credit, arranging for receipt, transfer or negotiation of shipping documents, arranging storage or warehousing, and dealing with quality claims;

(*ii*) Owning and operating facilities for storage or warehousing; or

(*iii*) Owning or chartering vessels or vehicles for the transportation of the commodities.

(C) *Substantially all*. Substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities if the sum of its gross receipts from all of its qualified active sales (as defined in this paragraph (f)(2)(iii) without regard to the substantially all requirement) of commodities and its gross receipts from all of its qualified hedging transactions (as defined in paragraph (f)(2)(iv) of this section, applied without regard to the substantially all requirement of this paragraph (f)(2)(iii)(C)) equals or exceeds 85 percent of its total gross receipts for the taxable year (computed as though the corporation were a domestic corporation). In computing gross receipts, the District Director may disregard any sale or hedging transaction that has as a principal purpose manipulation of the 85 percent gross receipts test. A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately).

(D) *Activities of employees of a related entity*. For purposes of this paragraph (f), activities of employees of an entity related to the controlled foreign corporation, who are made available to and supervised on a day-to-day basis by, and whose salaries are paid by (or reimbursed to the related entity by), the controlled foreign corporation, are treated as activities engaged in directly by the controlled foreign corporation.

(E) *Financial activities*. For purposes of this paragraph (f), a corporation is not engaged in a commodities business as a producer, processor, merchant, or handler of commodities if its business is primarily financial. For example, the business of a controlled foreign corporation is primarily financial if its principal business is making a market in notional principal contracts based on a commodities index.

(iv) *Qualified hedging transaction*—(A) *In general*. The term *qualified hedging transaction* means a bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section, with respect to qualified active sales (other than transactions described in section 988(c)(1) without regard to section 988(c)(1)(D)(i)).

(B) *Exception*. The term *qualified hedging transaction* does not include transactions that are not reasonably necessary to the conduct of business of the controlled foreign corporation as a producer, processor, merchant or handler of a commodity in the manner in which such business is customarily and usually conducted by others.

(g) *Foreign currency gain or loss*—(1) *Scope and purpose*. This paragraph (g) provides rules for the treatment of foreign currency gains and losses. Paragraph (g)(2) of this section provides the general rule. Paragraph (g)(3) of this section provides an election to include foreign currency gains or losses that would otherwise be treated as foreign personal holding company income under this paragraph (g) in the computation of another category of subpart F income. Paragraph (g)(4) of this section provides an alternative election to treat any net foreign currency gain or loss as foreign personal holding company income. Paragraph (g)(5) of this section provides rules for certain gains and losses not subject to this paragraph (g).

(2) *In general*—(i) *Inclusion*. Except as otherwise provided in this paragraph (g), foreign personal holding company income includes the excess of foreign currency gains over foreign currency losses attributable to any section 988 transactions (foreign currency gain or loss). Section 1.954–1(c)(1)(ii) provides rules for the treatment of foreign currency losses in excess of foreign currency gains. However, if an election is made under paragraph (g)(4) of this section, the excess of foreign currency losses over foreign currency gains to which the election would apply may be apportioned to, and offset, other categories of foreign personal holding company income.

(ii) *Exclusion for business needs*—(A) *General Rule*. Foreign currency gain or loss directly related to the business needs of the controlled foreign corporation is excluded from foreign personal holding company income.

(B) *Business needs*. Foreign currency gain or loss is directly related to the business needs of a controlled foreign corporation if—

(*1*) The foreign currency gain or loss—

(*i*) Arises from a transaction (other than a hedging transaction) entered into, or property used or held for use, in the normal course of the controlled foreign corporation's trade or business;

(*ii*) Arises from a transaction or property that does not itself (and could not reasonably be expected to) give rise to subpart F income other than foreign currency gain or loss;

(*iii*) Does not arise from a transaction described in section 988(c)(1)(B)(iii); and

(*iv*) Is clearly determinable from the records of the controlled foreign corporation as being derived from such transaction or property; or

(*2*) The foreign currency gain or loss arises from a bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section, with respect to a transaction or property that satisfies the requirements of paragraph (g)(2)(ii)(B)(*1*)of this section. For purposes of this paragraph (g)(2)(ii)(B)(*2*), a hedging transaction will satisfy the aggregate hedging rules of § 1.1221–2(c)(7) only if all (or all but a de minimis amount) of the aggregate risk being hedged arises in connection with transactions that satisfy the requirements of paragraph (g)(2)(ii)(B)(*1*) of this section.

(C) *Regular dealers*. Transactions in dealer property (as defined in paragraph (a)(4)(v) of this section) described in section 988(c)(1) (B) or (C) that are entered into by a controlled foreign corporation that is a regular dealer (as defined in paragraph (a)(4)(iv) of this section) in such property in its capacity as a dealer will be treated as directly related to the business needs of the controlled foreign corporation under paragraph (g)(2)(ii)(A) of this section.

(D) *Example*. The following example illustrates the provisions of this paragraph (g)(2).

Example. (i) *CFC1* and *CFC2* are controlled foreign corporations located in Country B, and are members of the same controlled group. *CFC1* is engaged in the active conduct of a trade or business that does not produce any subpart F income. *CFC2* serves as the currency coordination center for the controlled group, aggregating currency risks incurred by the group and entering into hedging transactions that transfer those risks outside of the group. Pursuant to this arrangement, and to hedge the currency risk on a non-interest bearing receivable incurred by *CFC1* in the normal course of its business, on Day 1 *CFC1* enters into a forward contract to sell Japanese Yen to CFC2 in 30 days. Also on Day 1, *CFC2* enters into a forward contract to sell Yen to unrelated Bank X on Day 30. *CFC2* is not a regular dealer in Yen spot and forward contracts, and the Yen is not the functional currency for either *CFC1* or *CFC2*.

(ii) Because the forward contract entered into by *CFC1* to sell Yen hedges a transaction entered into in the normal course of *CFC1*'s business that does not give rise to subpart F income, it qualifies as a bona fide hedging transaction as defined in paragraph (a)(4)(ii) of this section. Therefore, *CFC1*'s foreign exchange gain or loss from that forward contract will not be treated as foreign personal holding company income or loss under this paragraph (g).

(iii) Because the forward contract to purchase Yen was entered into by *CFC2* in order to assume currency risks incurred by *CFC1* it does not qualify as a bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section. Thus, foreign exchange gain or loss recognized by *CFC2* from that forward contract will be foreign personal holding company income. Because *CFC2* entered into the forward contract to sell Yen in order to hedge currency risks of *CFC1*, that forward contract also does not qualify as a bona fide hedging transaction. Thus, *CFC2*'s foreign currency gain or loss arising from that forward contract will be foreign personal holding company income.

(iii) *Special rule for foreign currency gain or loss from an interest-bearing liability*. Except as provided in paragraph (g)(5)(iv) of this section, foreign currency gain or loss arising from an interest-bearing liability is characterized as subpart F income and non-subpart F income in the same manner that interest expense associated with the liability would be allocated and apportioned between subpart F income and non-subpart F income under §§ 1.861–9T and 1.861–12T.

(3) *Election to characterize foreign currency gain or loss that arises from a specific category of subpart F income as gain or loss in that category*—(i) *In general*. For taxable years of a controlled foreign corporation beginning on or after November 6, 1995, the controlling United States shareholders of the controlled foreign corporation may elect, under this paragraph (g)(3), to exclude foreign currency gain or loss otherwise includible in the computation of foreign personal holding company income under this paragraph (g) from the computation of foreign personal holding company income under this paragraph (g) and include such foreign currency gain or loss in the category (or categories) of subpart F income (described in section 952(a), or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*)) to which such gain or loss relates. If an election is made under this paragraph (g)(3) with respect to a category (or categories) of subpart F income described in section 952(a), or,

in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*), the election shall apply to all foreign currency gain or loss that arises from—

(A) A transaction (other than a hedging transaction) entered into, or property used or held for use, in the normal course of the controlled foreign corporation's trade or business that gives rise to income in that category (or categories) and that is clearly determinable from the records of the controlled foreign corporation as being derived from such transaction or property; and

(B) A bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section, with respect to a transaction or property described in paragraph (g)(3)(i)(A) of this section. For purposes of this paragraph (g)(3)(i)(B), a hedging transaction will satisfy the aggregate hedging rules of § 1.1221–2(c)(7) only if all (or all but a de minimus amount) of the aggregate risk being hedged arises in connection with transactions or property that generate the same category of subpart F income described in section 952(a), or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*).

(ii) *Time and manner of election*. The controlling United States shareholders, as defined in § 1.954–1(c)(5), make the election on behalf of the controlled foreign corporation by filing a statement with their original income tax returns for the taxable year of such United States shareholders ending with or within the taxable year of the controlled foreign corporation for which the election is made, clearly indicating that such election has been made. If the controlling United States shareholders elect to apply these regulations retroactively, under § 1.954–0(a)(1)(ii), the election under this paragraph (g)(3) may be made by the amended return filed pursuant to the election under § 1.954–0(a)(1)(ii). The controlling United States shareholders filing the election statement described in this paragraph (g)(3)(ii) must provide copies of the election statement to all other United States shareholders of the electing controlled foreign corporation. Failure to provide copies of such statement will not cause an election under this paragraph (g)(3) to be voidable by the controlled foreign corporation or the controlling United States shareholders. However, the District Director has discretion to void the election if it is determined that three was no reasonable cause for the failure to provide copies of such statement. The statement shall include the following information—

(A) The name, address, taxpayer identification number, and taxable year of such United States shareholder;

(B) The name, address, and taxable year of the controlled foreign corporation for which the election is effective; and

(C) Any additional information required by the Commission by administrative pronouncement.

(iii) *Revocation of election*. This election is effective for the taxable year of the controlled foreign corporation for which it is made and all subsequent taxable years of such corporation unless revoked by or with the consent of the Commissioner.

(iv) *Example*. The following example illustrates the provisions of this paragraph (g)(3).

Example. (i) *CFC*, a controlled foreign corporation, is a sales company that earns foreign base company sales income under section 954(d). *CFC* makes an election under this paragraph (g)(3) to treat foreign currency gains or losses that arise from a specific category (or categories) of subpart F income (as described in section 952(a), or, in the case of foreign base company income, as described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*)) as that type of income. *CFC* aggregates the currency risk on all of its transactions that generate foreign base company sales income and hedges this net currency exposure.

(ii) Assuming no more than a de minimus amount of risk in the pool of risks being hedged arises from transactions or property that generate income other than foreign base company sales income, pursuant to its election under (g)(3), *CFC*'s net foreign currency gain from the pool and the hedging transactions will be treated as foreign base company sales income under section 954(d), rather than as foreign personal holding company income under section 954(c)(1)(D). If the pool of risks and the hedging transactions generate a net foreign currency loss, however, *CFC* must apply the rules of § 1.954–1(c)(1)(ii).

(4) *Election to treat all foreign currency gains or losses as foreign personal holding company income*—(i) *In general*. If the controlling United States shareholders make an election under this paragraph (g)(4), the controlled foreign corporation shall include in its computation of foreign personal holding company income the excess of foreign currency gains over losses or the excess of foreign currency losses over gains attributable to any section 988 transaction (except those described in paragraph (g)(5) of this section) and any section 1256 contract that would be a section 988 transaction but for section 988(c)(1)(D). Separate elections for section 1256 contracts and section 988 transactions are not permitted. An election under this paragraph (g)(4) supersedes an election under paragraph (g)(3) of this section.

(ii) *Time and manner of election*. The controlling United States shareholders, as defined in § 1.964–1(c)(5), make the election on behalf of the controlled foreign corporation in the same time and manner as provided in paragraph (g)(3)(ii) of this section.

(iii) *Revocation of election*. This election is effective for the taxable year of the controlled foreign corporation for which it is made and all subsequent taxable years of such corporation unless revoked by or with the consent of the Commissioner.

(5) *Gains and losses not subject to this paragraph*—(i) *Capital gains and losses*. Gain or loss that is treated as capital gain or loss under section 988(a)(1)(B) is not foreign currency gain or loss for purposes of this paragraph (g). Such gain or loss is treated as gain or loss from the sale or exchange of property that is included in the computation of foreign personal holding company income under paragraph (e)(1) of this section. Paragraph (a)(2) of this section provides other rules concerning income described in more than one category of foreign personal holding company income.

(ii) *Income not subject to section 988*. Gain or loss that is not treated as foreign currency gain or loss by reason of section 988 (a)(2) or (d) is not foreign currency gain or loss for purposes of this paragraph (g). However, such gain or loss may be included in the computation of other categories of foreign personal holding company income in accordance with its characterization under section 988 (a)(2) or (d) (for example, foreign currency gain that is treated as interest income under section 988(a)(2) will be included in the computation of foreign personal holding company income under paragraph (b)(ii) of this section).

(iii) *Qualified business units using the dollar approximate separate transactions method*. This paragraph (g) does not apply to any DASTM gain or loss computed under § 1.985–3(d). Such gain or loss is allocated under the rules of § 1.985–3 (e)(2)(iv) or (e)(3). However, the provisions of this paragraph (g) do apply to section 988 transactions denominated in a currency other than the United States dollar or the currency that would be the qualified business unit's functional currency were it not hyperinflationary.

(iv) *Gain or loss allocated under § 1.861–9*. [Reserved]

(h) *Income equivalent to interest*—(1) *In general*—(i) *Inclusion in foreign personal holding company income*. Except as provided in this paragraph (h), foreign personal holding company income includes income equivalent to interest as defined in paragraph (h)(2) of this section.

(ii) *Exceptions*—(A) *Liability hedging transactions.* Income, gain, deduction or loss that is allocated and apportioned in the same manner as interest expense under the provisions of § 1.861–9T is not income equivalent to interest for purposes of this paragraph (h).

(B) *Interest.* Amounts treated as interest under section 954(c)(1)(A) and paragraph (b) of this section are not income equivalent to interest for purposes of this paragraph (h).

(2) *Definition of income equivalent to interest*—(i) *In general.* The term *income equivalent to interest* includes income that is derived from—

(A) A transaction or series of related transactions in which the payments, net payments, cash flows, or return predominantly reflect the time value of money;

(B) Transactions in which the payments (or a predominant portion thereof) are, in substance, for the use or forbearance of money;

(C) Notional principal contracts, to the extent provided in paragraph (h)(3) of this section;

(D) Factoring, to the extent provided in paragraph (h)(4) of this section;

(E) Conversion transactions, but only to the extent that gain realized with respect to such a transaction is treated as ordinary income under section 1258;

(F) The performance of services, to the extent provided in paragraph (h)(5) of this section;

(G) The commitment by a lender to provide financing, whether or not such financing actually is provided;

(H) Transfers of debt securities subject to section 1058; and

(I) Other transactions, as provided by the Commissioner in published guidance. See § 601.601(d)(2) of this chapter.

(ii) *Income from the sale of property.* Income from the sale of property will not be treated as income equivalent to interest by reason of paragraph (h)(2)(i) (A) or (B) of this section. Income derived by a controlled foreign corporation will be treated as arising from the sale of property only if the corporation in substance carries out sales activities. Accordingly, an arrangement that is designed to lend the form of a sales transaction to a transaction that in substance constitutes an advance of funds will be disregarded. For example, if a controlled foreign corporation acquires property on 30-day payment terms from one person and sells that property to another person on 90-day payment terms and at prearranged prices and terms such that the foreign corporation bears no substantial economic risk with respect to the purchase and sale other than the risk of non-payment, the foreign corporation has not in substance derived income from the sale of property.

(3) *Notional principal contracts*—(i) *In general.* Income equivalent to interest includes income from notional principal contracts denominated in the functional currency of the taxpayer (or a qualified business unit of the taxpayer, as defined in section 989(a)), the value of which is determined solely by reference to interest rates or interest rate indices, to the extent that the income from such transactions accrues on or after August 14, 1989.

(ii) *Regular dealers.* Income equivalent to interest does not include income earned by a regular dealer (as defined in paragraph (a)(4)(iv) of this section) from notional principal contracts that are dealer property (as defined in paragraph (a)(4)(v) of this section).

(4) *Income equivalent to interest from factoring*—(i) *General rule.* Income equivalent to interest includes factoring income. Except as provided in paragraph (h)(4)(ii) of this section, the term *factoring income* includes any income (including any discount income or service fee, but excluding any stated interest) derived from the acquisition and collection or disposition of a factored receivable. The amount of income equivalent to interest realized with respect to a factored receivable is the difference (if a positive number) between the amount paid for the receivable by the foreign corporation and the amount that it collects on the receivable (or realizes upon its sale of the receivable). The rules of this paragraph (h)(4) apply only with respect to the tax treatment of factoring income derived from the acquisition and collection or disposition of a factored receivable and shall not affect the characterization of an expense or loss of either the person whose goods or services gave rise to a factored receivable or the obligor under a receivable.

(ii) *Exceptions.* Factoring income shall not include—

(A) Income treated as interest under section 864(d) (1) or (6) (relating to income derived from trade or service receivables of related persons), even if such income is treated as not described in section 864(d)(1) by reason of the same-country exception of section 864(d)(7);

(B) Income derived from a factored receivable if payment for the acquisition of the receivable is made on or after the date on which stated interest begins to accrue, but only if the rate of stated interest equals or exceeds 120 percent of the Federal short-term rate (as defined under section 1274) (or the analogous rate for a currency other than the dollar) as of the date on which the receivable is acquired by the foreign corporation; or

(C) Income derived from a factored receivable if payment for the acquisition of the receivable by the foreign corporation is made only on or after the anticipated date of payment of all principal by the obligor (or the anticipated weighted average date of payment of a pool of purchased receivables).

(iii) *Factored receivable.* For purposes of this paragraph (h)(4), the term *factored receivable* includes any account receivable or other evidence of indebtedness, whether or not issued at a discount and whether or not bearing stated interest, arising out of the disposition of property or the performance of services by any person, if such account receivable or evidence of indebtedness is acquired by a person other than the person who disposed of the property or provided the services that gave rise to the account receivable or evidence of indebtedness. For purposes of this paragraph (h)(4), it is immaterial whether the person providing the property or services agrees to transfer the receivable at the time of sale (as by accepting a third-party charge or credit card) or at a later time.

(iv) *Examples.* The following examples illustrate the application of this paragraph (h)(4).

Example 1. *DP*, a domestic corporation, owns all of the outstanding stock of *FS*, a controlled foreign corporation. *FS* acquires accounts receivable arising from the sale of property by unrelated corporation *X*. The receivables have a face amount of $100, and after 30 days bear stated interest equal to at least 120 percent of the applicable Federal short-term rate (determined as of the date the receivable is acquired by *FS*). *FS* purchases the receivables from *X* for $95 on Day 1 and collects $100 plus stated interest from the obligor under the receivable on Day 40. Income (other than stated interest) derived by *FS* from the factored receivables is factoring income within the meaning of paragraph (h)(4)(i) of this section and, therefore, is income equivalent to interest.

Example 2. The facts are the same as in *Example 1*, except that, rather than collecting $100 plus stated interest from the obligor under the factored receivable on Day 40, *FS* sells the receivable to controlled foreign corporation *Y* on Day 15 for $97. Both the income derived by *FS* on the factored receivable and the income derived by *Y* (other than stated interest) on the receivable are factoring income within the meaning of paragraph (h)(4)(i) of this section, and

therefore, constitute income equivalent to interest.

Example 3. The facts are the same as in *Example 1*, except that *FS* purchases the receivables from *X* for $98 on Day 30. Income derived by *FS* from the factored receivables is excluded from factoring income under paragraph (h)(4)(ii)(B) of this section and, therefore, does not give rise to income equivalent to interest.

Example 4. The facts are the same as in *Example 3*, except that it is anticipated that all principal will be paid by the obligor of the receivables by Day 30. Income derived by *FS* from this maturity factoring of the receivables is excluded from factoring income under paragraph (h)(4)(ii)(C) of this section and, therefore, does not give rise to income equivalent to interest.

Example 5. The facts are the same as in *Example 4*, except that *FS* sells the factored receivable to *Y* for $99 on day 45, at which time stated interest is accruing on the unpaid balance of $100. Because interest was accruing at the time *Y* acquired the receivable at a rate equal to at least 120 percent of the applicable Federal short-term rate, income derived by *Y* from the factored receivable is excluded from factoring income under paragraph (h)(4)(ii)(B) of this section and, therefore, does not give rise to income equivalent to interest.

Example 6. *DP*, a domestic corporation engaged in an integrated credit card business, owns all of the outstanding stock of *FS*, a controlled foreign corporation. On Day 1 individual *A* uses a credit card issued by *DP* to purchase shoes priced at $100 from *X*, a foreign corporation unrelated to *DP*, *FS*, or *A*. On Day 7, *X* transfers the receivable (which does not bear stated interest) arising from *A*'s purchase to *FS* in exchange for $95. *FS* collects $100 from *A* on Day 45. Income derived by *FS* on the factored receivable is factoring income within the meaning of paragraph (h)(4)(i) of this section and, therefore, is income equivalent to interest.

(5) *Receivables arising from performance of services.* If payment for services performed by a controlled foreign corporation is not made until more than 120 days after the date on which such services are performed, then the income derived by the controlled foreign corporation constitutes income equivalent to interest to the extent that interest income would be imputed under the principles of section 483 or the original issue discount provisions (sections 1271 through 1275), if—

(i) Such provisions applied to contracts for the performance of services;

(ii) The time period referred to in sections 483(c)(1) and 1274(c)(1)(B) were 120 days rather than six months; and

(iii) The time period referred to in section 483(c)(1)(A) were 120 days rather than one year.

(6) *Examples.* The following examples illustrate the application of this paragraph (h).

Example 1. *CFC*, a controlled foreign corporation, promises that Corporation *A* may borrow up to $500 in principal for one year beginning at any time during the next three months at an interest rate of 10 percent. In exchange, Corporation *A* pays *CFC* a commitment fee of $2. The entire $2 fee is included in the computation of *CFC*'s foreign personal holding company income under paragraph (h)(2)(i)(G) of this section, regardless of whether Corporation *A* actually borrows from *CFC*.

Example 2. (i) At the beginning of its current taxable year, *CFC*, a controlled foreign corporation, purchases at face value a one-year debt instrument issued by Corporation *A* having a $100 principal amount and bearing a floating rate of interest set at the London Interbank Offered Rate (LIBOR) plus one percentage point. Contemporaneously, *CFC* borrows $100 from Corporation *B* for one year at a fixed interest rate of 10 percent, using the debt instrument as security.

(ii) During its current taxable year, *CFC* accrues $11 of interest from Corporation *A* on the bond. Because interest is excluded from the definition of income equivalent to interest under paragraph (h)(1)(ii)(B) of this section, the $11 is not income equivalent to interest.

(iii) During its current taxable year, *CFC* incurs $10 of interest expense with respect to the borrowing from Corporation *B*. That expense is allocated and apportioned to, and reduces, subpart F income to the extent provided in section 954(b)(5) and §§ 1.861–9T through 1.861–12T and 1.954–1(c).

Example 3. (i) On January 1, 1994, *CFC*, a controlled foreign corporation with the United States dollar as its functional currency, purchases at face value a 10-year debt instrument issued by Corporation *A* having a $100 principal amount and bearing a floating rate of interest set at the London Interbank Offered Rate (LIBOR) plus one percentage point payable on December 31st of each year. *CFC* subsequently determines that it would prefer receiving a fixed rate of return. Accordingly, on January 1, 1995, *CFC* enters into a 9-year interest rate swap agreement with Corporation *B* whereby Corporation *B* promises to pay *CFC* on December 31st of each year an amount equal to 10 percent on a notional principal amount of $100. In exchange, *CFC* promises to pay Corporation *B* an amount equal to LIBOR plus one percentage point on the notional principal amount.

(ii) On December 31, 1995, *CFC* receives $9 of interest income from Corporation *A* with respect to the debt instrument. On the same day, *CFC* receives a total of $10 from Corporation *B* and pays $9 to Corporation *B* with respect to the interest rate swap.

(iii) The $9 of interest income is foreign personal holding income under section 954(c)(1). Pursuant to § 1.446–3(d), *CFC* recognizes $1 of swap income for its 1995 taxable year that is also foreign personal holding company income because it is income equivalent to interest under paragraph (h)(2)(i)(C) of this section.

Example 4. (i) *CFC*, a controlled foreign corporation, purchases commodity X on the spot market for $100 and, contemporaneously, enters into a 3 month forward contract to sell commodity X for $104, a price set by the forward market.

(ii) Assuming that substantially all of *CFC*'s expected return is attributable to the time value of the net investment, as described in section 1258(c)(1), the transaction is a conversion transaction under section 1258(c). Accordingly, any gain treated as ordinary income under section 1258(a) will be foreign personal holding company income because it is income equivalent to interest under paragraph (h)(2)(i)(E) of this section.

Par. 4. Section 1.957–1 is amended by adding paragraphs (a), (c) *Examples 8* through *10*, and (d) to read as follows:

§ 1.957–1 Definition of controlled foreign corporation.

(a) *In general.* The term *controlled foreign corporation* means any foreign corporation of which more than 50 percent (or such lesser amount as is provided in section 957(b) or section 953(c)) of either—

(1) The total combined voting power of all classes of stock of the corporation entitled to vote; or

(2) The total value of the stock of the corporation, is owned within the meaning of section 958(a), or (except for purposes of section 953(c)) is considered as owned by applying the rules of section 958(b) and § 1.958–2, by United States shareholders on any day during the taxable year of such foreign corporation. For the definition of the term *United States shareholder*, see sections 951(b) and 953(c)(1)(A). For the definition of the term *foreign corporation*, see § 301.7701–5 of this chapter (Procedure and Administration Regulations). For the treatment of associations as corporations, see section 7701(a)(3) and §§ 301.7701–1 and 301.7701–2 of this chapter. For the definition of the term *stock*, see sections 958(a)(3) and 7701(a)(7). For the classification of a member in an association, joint stock company, or insurance company as a shareholder, see section 7701(a)(8).

* * * * *

(c) * * *

Example 8. For its prior taxable year, *JV*, a foreign corporation, had outstanding 1000 shares of class A stock, which is voting common, and 1000 shares of class B stock, which is nonvoting preferred. *DP*, a domestic corporation, and *FP*, a foreign corporation, each owned precisely 500 shares of both class A and class B stock, and each elected 5 of the 10 members of *JV*'s board of directors. The other facts and circumstances were such that *JV* was not a controlled foreign corporation on any day of the prior taxable year. On the first day of the current taxable year, *DP* purchased one share of class B stock from *FP*. *JV* was a controlled foreign corporation on that day because over 50 percent of the total value in the corporation

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was held by a person that was a United States shareholder under section 951(b).

Example 9. The facts are the same as in *Example 8* except that the stock of *FP* was publicly traded, *FP* had one class of stock, and on the first day of the current taxable year *DP* purchased one share of *FP* stock on the foreign stock exchange instead of purchasing one share of *JV* stock from *FP. JV* became a controlled foreign corporation on that day because over 50 percent of the total value in the corporation was held by a person that was a United States shareholder under section 951(b).

Example 10. *X*, a foreign corporation, is incorporated under the laws of country *Y*. Under the laws of country *Y, X* is considered a mutual insurance company. *X* issues insurance policies that provide the policyholder with the right to vote for directors of the corporation, the right to a share of the assets upon liquidation in proportion to premiums paid, and the right to receive policyholder dividends in proportion to premiums paid. Only policyholders are provided with the right to vote for directors, share in assets upon liquidation, and receive distributions. United States policyholders contribute 25 percent of the premiums and have 25 percent of the outstanding rights to vote for the board of directors. Based on these facts, the United States policyholders are United States shareholders owning the requisite combined voting power and value. Thus, *X* is a controlled foreign corporation for purposes of taking into account related person insurance income under section 953(c).

(d) *Effective date*. Paragraphs (a) and (c) *Examples 8* through *10* of this section are effective for taxable years of a controlled foreign corporation beginning after November 6, 1995.

§ 1.954A–1 and 1.954A–2 [Removed]

Par. 5. Sections 1.954A–1 and 1.954A–2 are removed.

§ 1.957–1T [Removed]

Par. 6. Section 1.957–1T is removed.

PART 4—[ADDED]

Par. 7. 26 CFR part 4 is added to read as follows:

PART 4—TEMPORARY INCOME TAX REGULATIONS UNDER SECTION 954 OF THE INTERNAL REVENUE CODE

Sec.
4.954–0 Introduction.
4.954–1 Foreign base company income; taxable years beginning after December 31, 1986.
4.954–2 Foreign personal holding company income; taxable years beginning after December 31, 1986.

Authority: 26 U.S.C. 7805.

Sec.
4.954–0 also issued under 26 U.S.C. 954 (b) and (c).
4.954–1 also issued under 26 U.S.C. 954 (b) and (c).
4.954–2 also issued under 26 U.S.C. 954 (b) and (c).

§§ 1.954–0T, 1.954–1T and 1.954–2T [Redesignated as §§ 4.954–0, 4.954–1 and 4.954–2]

Par. 8. Sections 1.954–0T, 1.954–1T and 1.954–2T are redesignated as §§ 4.954–0, 4.954–1 and 4.954–2, respectively, and the language "temporary" is removed at the end of each section heading.

Par. 9. Newly designated § 4.954–0 is amended by:

1. Removing the language "§§ 1.954–1T and 1.954–2T" from the first sentence of paragraph (a)(1) and adding "§§ 4.954–1 and 4.954–2" in its place.

2. Adding a sentence at the end of paragraph (a)(1) to read as set forth below.

3. In paragraph (b) by removing the entries numbered (I), (II), and (III) and adding in their places entries for the headings of §§ 4.954–0 through 4.954–2 as follows:

§ 4.954–0 Introduction.

(a) * * * (1) * * * For further guidance, see § 1.954–0(a) of this chapter.

(b) * * *

Sec.
4.954–0 Introduction.

* * * * *

4.954–1 Foreign base company income.

* * * * *

4.954–2 Foreign personal holding company income.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In § 602.101, paragraph c is amended by:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
• • • •	•
1.954–1T	1545–1068
1.954–2T	1545–1068
• • • •	•
1.954A–2	1545–0755

2. Adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
• • • •	•
1.954–1	1545–1068
1.954–2	1545–1068
• • • •	•
4.954–1	1545–1068
4.954–2	1545–1068
• • • •	•

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: August 22, 1995.

Cynthia Gibson Beerbower,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–21838 Filed 9–6–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 801

Application of the Employee Polygraph Protection Act of 1988

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The purpose of this document is to change the address which is used to request an administrative hearing on a civil money penalty assessment. This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based.

EFFECTIVE DATE: This rule is effective September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur M. Kerschner Branch of Child Labor and Polygraph Standards, Wage and Hour Division, Employment

Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 219–7640. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

II. Background

Employers who violate any of the provisions of the Employee Polygraph Protection Act (EPPA) may be assessed civil money penalties up to $10,000. Under § 801.53, any person desiring to request an administrative hearing on a civil money penalty assessment must do so in writing within 30 days after the date of receipt of the notice. Additionally, § 801.53 specifies that the written hearing request shall be made to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

This revision is being made in order to streamline the process by which hearing requests are acknowledged by consolidating all aspects of processing hearing requests into the operations of the office which issued the administrative determination upon which the request for a hearing is based. Accordingly, all such hearing requests are now to be made to the Wage and Hour official that issued the determination in care of the address of the office that originated the determination.

III. Summary of Rule

Section 801.53 of Regulations, 29 CFR part 801, is amended to provide for a new address for purposes of requesting administrative hearings. Hearing requests are now directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Under the amended regulation, these requests will be directed to the Wage and Hour Division official who issued the determination, at the address appearing on the determination notice.

Executive Order 12868/Section 202 of the Unfunded Mandates Reform Act of 1995

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866, nor does it require a section 202 statement under the Unfunded Mandates Reform Act of 1995. The rule merely adopts a technical address change, which will facilitate the timeliness and handling of the hearing process. Accordingly, these changes are not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 et seq. pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). The rule simplifies the handling of hearing requests and will not have a significant economic impact on a substantial number of small entities.

Administrative Procedure Act

This regulation is procedural in nature. Accordingly, the Secretary, for good cause, finds pursuant to 5 U.S.C. 553(b)(3), that prior notice and public comment are unnecessary, impracticable, and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule should take effect immediately because it is merely a technical procedural change which does not affect any substantive rights.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 801

Employment, Investigations, Labor, Law enforcement, Penalties.

For the reasons set forth above, 29 CFR part 801 is amended as set forth below.

Signed at Washington, DC, on this 31st day of August 1995.

Maria Echaveste,
Administrator, Wage and Hour Division.

PART 801—[AMENDED]

1. The authority citation for part 801 continues to read as follows:

Authority: Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. 2001–2009.

2. Paragraph (a) of § 801.53 is revised to read as follows:

§ 801.53 Request for hearing.

(a) Any person desiring to request an administrative hearing on a civil money penalty assessment pursuant to this part shall make such request in writing to the official who issued the determination at the Wage and Hour Division address appearing on the determination notice, no later than 30 days after the date of receipt of the notice referred to in § 801.51 of this part.

* * * * *

[FR Doc. 95–22140 Filed 9–6–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG85

Evidence Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, an interim rule that amends Department of Veterans Affairs (VA) adjudication regulations concerning the evidence required to establish birth, death, marriage, or relationship. This amendment was necessary to expedite the payment of benefits by allowing VA to accept photocopies of documents necessary to establish birth, death, marriage, or relationship. The intended effect of this amendment is to improve the efficiency and timeliness of claims processing.

EFFECTIVE DATE: This document is effective September 7, 1995 (The interim rule was effective September 8, 1994).

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: On September 8, 1994, VA published in the **Federal Register** an interim rule with request for comments (59 FR 46337). The rule revised VA regulations concerning evidence requirements to permit claimants to use uncertified photocopies of documents to establish birth, death, marriage, and relationship. Previous regulations required that a copy of a document be certified over the signature and official seal of the custodian of the record. We requested that comments to the interim rule be submitted on or before November 7, 1994. We received 11 comments, most from officials of state agencies charged with maintaining and issuing vital records.

The commenters were unanimous in their opinion that by accepting photocopies VA increases the likelihood that it will erroneously award benefits based on altered documents.

We currently have adequate safeguards against erroneously awarding benefits on the basis of altered photocopies. Under 38 CFR 3.216, we require all compensation, pension, or dependency and indemnity compensation recipients or claimants to furnish VA the social security numbers of all dependents on whose behalf benefits are claimed or received. Under the authority of 38 U.S.C. 5317, VA may exchange data with other federal agencies to verify information from VA beneficiaries concerning family members and family income. As an additional safeguard, we have retained in this rule the right to request a certified copy of a document if we are not satisfied that the photocopy submitted is genuine or unaltered. In light of these safeguards, we can, in our judgment, accept uncertified copies without compromising the integrity of our benefit programs.

Several commenters saw no need for VA to accept uncertified copies as a measure to expedite claims processing. Six of these remarked that it is generally not difficult to obtain certified copies, and 8 stated that many states provide copies free of charge if they are to be used to pursue a claim for VA benefits.

Our experience shows that VA's former requirement for certified copies did delay claims processing. Claimants spent additional time trying to satisfy that requirement, partly because many did not understand what VA meant by a certified copy or how to obtain one, especially from a state other than where they live. We realize that some states do provide VA claimants certified copies at no cost. However, if claimants are unaware that certified copies for VA claims are free or fail to indicate that the copies are needed to obtain VA benefits, they may be charged. VA claimants should not incur the delay, expense, or inconvenience of obtaining certified copies of documents if uncertified photocopies will satisfy VA's needs.

Four commenters remarked that, inasmuch as some states have laws that prohibit copying certified copies of vital records, VA's acceptance of uncertified copies could encourage claimants to violate state laws.

This rule does not require that claimants submit photocopies of vital records. It merely provides that option to simplify the proof of claims. Responsibility for obeying state laws lies with the persons subject to those laws. In any event, the fact that some states prohibit copying certified copies is no reason to hold all claimants to higher evidentiary standards.

One commenter suggested that VA request certified copies, photocopy them for the claimants' records, and return them to the claimants, since claimants must have a certified copy to photocopy in the first place.

Many claimants submit original documents in conjunction with benefit claims, which we routinely return after making copies for our records. If a claimant submits a certified copy and requests its return after we have copied it for our records, we honor that request. However, the claimant still has the responsibility of submitting an original document or a certified copy, and, consequently, the procedure does nothing to expedite claims processing. Furthermore, under this procedure, the original document or the certified copy might be lost in the mail and have to be replaced. Under this new rule, the claimant could keep the original or certified copy and submit a photocopy to VA.

One commenter suggested that, if VA's main concern is improving public service without regard to cost, VA eliminate the requirement for any form of documentation other than a signature on a claims form.

In fact, section 301(a) of the "Veterans' Benefits Improvements Act of 1994," Public Law 103–446, approved November 2, 1994, authorizes VA to accept the written statement of a claimant as proof of marriage, dissolution of a marriage, birth of a child, and death of any family member. The statute further provides that VA may require documentation in certain situations. This law was enacted after publication of our interim rule on evidence requirements. Whether VA should accept claimants' statements as proof of relationships is a separate issue that we may address in future rulemaking.

Three commenters expressed concerns that the members of the Blue Ribbon Panel on Claims Processing (the Panel), which made the recommendation implemented by this rulemaking, had little operational experience dealing with vital records. The commenters felt that the Panel would have benefited from the advice and recommendations of other federal agencies that use vital records or of members of the Association for Vital Records and Health Statistics (AVRHS), who are the primary keepers of vital records.

The mandate of the Panel was to develop recommendations to shorten the time it takes VA to make decisions on disability claims and reduce the backlog of claims, which had reached critical levels at many regional offices. Accordingly, the Panel's membership comprised VA officials and representatives from veterans' service organizations with extensive knowledge of VA claims adjudication. The Panel made 43 recommendations covering a broad spectrum of claims-processing procedures, including measures to expedite development of evidence needed for the adjudication of pending claims. The Panel neither included anyone with expertise in vital records nor sought the advice of such experts, but we are unaware of how such expertise would have helped the Panel to develop recommendations to shorten VA's claims processing time and to reduce the claims backlog. Furthermore, although the Panel did not seek advice from vital-records experts, the comment period provided by the interim rule that implemented the Panel's recommendation gave the opportunity for such input.

One commenter stated that many state and county Vital Records offices rely on the revenue obtained from issuing certified copies. Wide-spread acceptance of uncertified photocopies would decrease this revenue and possibly force some of these self-supporting offices to increase the price of certified copies.

Although we understand the commenter's concerns, the purpose of this rule is to improve the efficiency and timeliness of processing claims for VA benefits. We find that the possible decrease in vital records offices' revenue does not warrant imposing on claimants more stringent evidence requirements than are necessary, in our judgment, to establish entitlement.

VA appreciates the interest of the commenters and thanks them for their thoughtful remarks. We are here affirming as a final rule, without change, the interim rule published at 59 FR 46337.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not directly affect small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605 (b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

(The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

The interim rule published September 8, 1994, in the **Federal Register** (59 FR 46337) amending 38 CFR part 3 is adopted as final without change.

Approved: August 28, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–22128 Filed 9–6–95; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG98

Veterans Education: Increases in Rates Payable in the Educational Assistance Test Program

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1991–92 academic year should be increased by 6% over the rates payable for the 1990–91 academic year; the rates for the 1992–93 academic year should be increased by 8% over the rates payable for the 1991–92 academic year; the rates for the 1993–94 academic year should be increased by 7% over the rates payable for the 1992–93 academic year; and the rates for the 1994–95 academic year should be increased by 8% over the rates payable for the 1993–94 academic year. The regulations dealing with these rates are amended accordingly.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 6% in the 1990–91 academic year, by 8% in the 1991–92 academic year, by 7% in the 1992–93 academic year, and by 8% in the 1993–94 academic year. Accordingly, this revision changes 38 CFR 21.5820 and 21.5822 to reflect each increase in the rates payable in the subsequent academic year.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 there is good cause for finding that notice and public procedure are impractical, unnecessary, and contrary to the public interest and there is good cause for dispensing with a 30 day delay of the effective date. The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test program are determined based on a statutory formula and, in essence, the calculation of rates merely constitute a non discretionary ministerial act.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to the 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, claims, Education, Grant programs-education, Loan programs-education, Reporting and record keeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 27, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

Approved: August 28, 1995.

Samuel E. Ebbesen,

Lieutenant General, USA, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart H is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H continues to read as follows:

Authority: 10 U.S.C. Ch. 107, Pub. L. 96–342.

2. In § 21.5820, paragraph (b) is revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of educational assistance.* (1) The amount of educational assistance shall be adjusted annually by regulation.

(i) For the 1991–92 standard academic year the amount of this assistance may not exceed $2,087.

(ii) For the 1992–93 standard academic year the amount of this assistance may not exceed $2,254.

(iii) For the 1993–94 standard academic year the amount of this assistance may not exceed $2,412.

(iv) For the 1994–95 standard academic year the amount of this assistance may not exceed $2,605.

(2) The amount of educational assistance payable to a servicemember, veteran, spouse or dependent child of a living servicemember or veteran for an

enrollment period shall be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period.

(ii) For the 1991–92 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $231.89 for a full-time student or by $115.94 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $7.73 for a full-time student or by $115.94 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by 1¢ for a full-time student and increased by 4¢ for a part-time student.

(iii) For the 1992–93 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $250.44 for a full-time student or by $125.22 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $8.35 for a full-time student or by $4.17 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be increased by 4¢ for a full-time student and increased by 2¢ for a part-time student.

(iv) For the 1993–94 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $268.00 for a full-time student or by $134.00 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $8.93 for a full-time student or by $4.47 for a part-time student; and

(C) Adding the two results.

(v) For the 1994–95 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $289.44 for a full-time student or by $144.72 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $9.65 for a full-time student or by $4.82 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be increased by 4¢ for a full-time student and increased by 2¢ for a part-time student.

(3) The amount of educational assistance payable to each surviving spouse or dependent child of a decreased servicemember or veteran for an enrollment period shall be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period.

(ii) For the 1991–92 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $231.89 for a full-time student or by $115.94 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $7.73 for a full-time student or by $3.86 for a part-time student;

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by 1¢ for a full-time student and increased by 4¢ for a part-time student; and

(D) Dividing the amount determined in paragraph (b)(3)(ii)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(ii)(C) of this section will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided.

(iii) For the 1992–93 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $250.44 for full-time student or by $125.22 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $8.35 for a full-time student or by $4.17 for a part-time student;

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be increased by 4¢ for a full-time student and increased by 2¢ for a part-time student; and

(D) Dividing the amount determined in paragraph (b)(3)(iii)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(iii)(C) of this section will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided.

(iv) For the 1993–94 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $268.00 for a full-time student or by $134.00 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $8.93 for a full-time student or by $4.47 for a part-time student;

(C) Adding the two results; and

(D) Dividing the amount determined in paragraph (b)(3)(iv)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(iv)(C) of this section will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided.

(v) For the 1994–95 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $289.44 for a full-time student or by $144.72 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $9.65 for a full-time student or by $4.82 for a part-time student;

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be increased by 4¢ for a full-time student and increased by 2¢ for a part-time student; and

(D) Dividing the amount determined in paragraph (b)(3)(v)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(v)(C) of this section will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will be divided.

* * * * *

3. In § 21.5822, paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii) are revised, to read as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(b) *Amount of subsistence allowance.* (1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is:

(A) $520 per month for training pursued during the 1991–92 academic year;

(B) $562 per month for training pursued during the 1992–93 academic year;

(C) $601 per month for training pursued during the 1993–94 academic year; and

(D) $649 per month for training pursued during the 1994–95 academic year.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is:

(A) $260 per month for training pursued during the 1991–92 academic year;

(B) $281 per month for training pursued during the 1992–93 academic year;

(C) $300.50 per month for training pursued during the 1993–94 academic year; and

(D) $324.50 per month for training pursued during the 1994–95 academic year.

* * * * *

(2) * * *

(i) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time as follows:

(A) For the 1991–92 academic year VA will divide $520 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day;

(B) For the 1992–93 academic year VA will divide $562 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day;

(C) For the 1993–94 academic year VA will divide $601 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day; and

(D) For the 1994–95 academic year VA will divide $649 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than full-time basis as follows:

(A) For the 1991–92 academic year VA will divide $281 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day;

(B) For the 1992–93 academic year VA will divide $281 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day;

(C) For the 1993–94 academic year VA will divide $300.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day; and

(D) For the 1994–95 academic year VA will divide $324.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

* * * * *

[FR Doc. 95–22004 Filed 9–6–95; 8:45 am]
BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 95–8–7057; FRL–5279–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District, San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on December 2, 1993 and February 2, 1995. The revisions concern rules from the following: Placer County Air Pollution Control District (PCAPCD), San Diego County Air Pollution Control District (SDCAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). This final action serves as a final determination that the deficiencies in the rules that started sanctions clocks have been corrected and that any sanctions or Federal Implementation Plan (FIP) obligations triggered by those deficiencies have been permanently stopped. The rules control VOC emissions from marine vessel coating; graphic arts operations; paper, fabric and film coating; and storage of organic liquids. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on October 10, 1995.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Placer County Air Pollution Control District, 11464 B. Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Erik H. Beck, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1190. Internet E-mail: beck.erik@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1993 EPA proposed approval of VCAPCD Rule 74.3, "Paper, Fabric, and Film Coating Operations," 58 FR 63545. On February 2, 1995, 60 FR 6467, EPA proposed approval of the following rules into the California SIP: Rule 4607, "Graphic Arts," as adopted by SJVUAPCD on May 19, 1994; Rule 212, "Storage of Organic Liquids," as adopted by PCAPCD on November 3, 1994; and Rules 67.16 ("Graphic Arts Operations") and 67.18 ("Marine Coating Operations"), as adopted by SDCAPCD on September 20, 1994, and December 13, 1994, respectively. These rules were submitted by the California Air Resources Board to EPA on: June 19, 1992 (VCAPCD Rule 74.3); July 13, 1994 (SJVUAPCD Rule 4607); October 19, 1994 (SDCAPCD Rule 67.16); December 19, 1994 (PCAPCD Rule 212); and December 22, 1994 (SDCAPCD Rule 67.18). These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the Notice of Proposed Rulemaking (NPRM) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA, and EPA's regulations and interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 58 FR 63545 and 60 FR 6467 and in technical support documents (TSDs) available at EPA's Region IX office. These TSDs are dated: September 23, 1993 (VCAPCD 74.3), December 28, 1994 (PCAPCD Rule 212), and January 20, 1995 (SDCAPCD Rules 67.16 and 67.18, and SJVUAPCD Rule 4607).

Response to Public Comments

A 30-day public comment period was provided in 58 FR 63545 and 60 FR 6467. EPA did not receive comments on any of the rules.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

In 60 FR 6401, EPA published an Interim Final Rule that served to temporarily defer the imposition of sanctions associated with SJVUAPCD Rule 4607, PCAPCD Rule 212, and SDCAPCD Rules 67.16 and 67.18. As discussed in the Interim Final Rule, two sanctions clocks were started for each of these rules as a result of EPA's limited disapproval of a previous version of the rules. This Final Rule serves to permanently remove both sanctions clocks associated with the above rules. VCAPCD Rule 74.3 does not have any sanctions associated with it.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 8, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(188)(i)(D)(*3*), (198)(i)(C)(*3*), (202)(i)(C)(*2*), (208)(i)(A)(*2*), and (210)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(188) * * *
(i) * * *
(D) * * *
(*3*) Rule 74.3, adopted on December 10, 1991.

* * * * *

(198) * * *
(i) * * *
(C) * * *
(*3*) Rule 4607, adopted on May 19, 1994.

* * * * *

(202) * * *
(i) * * *
(C) * * *
(*2*) Rule 67.16, adopted on September 20, 1994.

* * * * *

(208) * * *
(i) * * *
(A) * * *
(*2*) Rule 212, adopted on November 3, 1994.

* * * * *

(210) * * *
(i) * * *
(B) San Diego County Air Pollution Control District.
(*1*) Rule 67.18, adopted on December 13, 1994.

* * * * *

[FR Doc. 95–22136 Filed 9–6–95; 8:45 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 69

[CC Docket No. 91–141; DA 95–1287]

Expanded Interconnection With Local Telephone Company Facilities; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule [FCC 94–190, 9 FCC Rcd 5154], which was summarized and published in the **Federal Register** on Monday, August 1, 1994 [59 FR 38922]. The rule related to the Commission's policies on expanded interconnection with local telephone company facilities.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: David Sieradzki (202) 418–1576 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

In the Memorandum Opinion and Order that is the subject of these corrections, the FCC reaffirmed its commitment to its expanded interconnection policy, which creates new opportunities for competitive provision of access services that the local telephone companies traditionally have provided on a monopoly basis, and required certain companies to provide expanded interconnection through virtual collocation.

Need for Correction

As published, the document contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

In the last sentence of paragraph 62 on page 38929 of the Synopsis of Memorandum Opinion and Order [59 FR 38922, Aug. 1, 1994], FR Doc. 94–18589 is corrected to read as follows:

> We delegate authority to the Chief, Common Carrier Bureau, to modify the threshold point for switched transport volume and term discounts in unusual circumstances where a change in the strict requirements would advance the Commission's objectives.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22002 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 89–552, GN Docket No. 93–252, and PP Docket No. 93–253; FCC 95–312]

Wireless Telecommunications Services; Private Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this *Second Memorandum Opinion and Order* portion of the adopted *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, the Commission denies a Petition for Reconsideration filed by SunCom Mobile & Data, Inc., denies waiver requests filed by Northeast Florida Telephone Company, Wireless Plus, Inc., and the 220 MHz QO Coalition, grants a Petition to Sever filed by SunCom Mobile & Data, Inc., and extends the deadline for non-nationwide 220 MHz licensees authorized within Line A of the Canadian border to construct and operate their stations to a date 12 months after the date that the terms of an agreement with Canada are released. These actions are taken in response to these requests and petitions.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Martin Liebman, Wireless Telecommunications Bureau (202) 418–1310, or Rhonda Lien, Wireless Telecommunications Bureau (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Memorandum Opinion and Order* portion of the Commission's *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking* in PR Docket No. 89–552, GN Docket No. 93–252, and PP Docket No. 93–253, FCC 95–312, adopted July 28, 1995, and released August 28, 1995. The summary of the *Third Notice of Proposed Rulemaking* portion of this decision may be found elsewhere in this edition of the **Federal Register**. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of the Second Memorandum Opinion and Order Portion of the Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking

1. The Commission, in a *Third Report and Order* in GN Docket 93–252 (59 FR 59945, November 21, 1994) denied a Request for Declaratory Ruling filed by SunCom Mobile & Data, Inc. (SunCom) which sought approval to aggregate non-nationwide 220 MHz five-channel blocks on a regional basis to provide multiple-market service on a single system. The Commission denied a concurrently filed waiver request by SunCom to allow an extended period for the construction of its system. SunCom filed a Petition for Reconsideration of these decisions. Wireless Plus, Inc., a manager of 220 MHz stations, filed a waiver request similar to SunCom's Request for Declaratory Ruling. The Commission now denies these three requests.

2. SunCom also filed a Petition to Sever its Requests for Declaratory Ruling and for Waiver from GN Docket No. 93–252, and from other petitions for reconsideration of the *Third Report and Order* in GN Docket 93–252. SunCom asked that the Commission act expeditiously on its Petition for Reconsideration. The Commission is incorporating SunCom's Petition for Reconsideration into this proceeding for disposition, and its Petition to Sever is therefore granted.

3. The Commission received waiver requests from the 220 MHz QO Coalition and Northeast Florida Telephone Company seeking waiver of our rules to permit licensees authorized on Channels 171–180 to operate in the trunked mode. The Commission denies both of these requests.

4. The Commission extends the construction deadline for Phase I non-nationwide 220 MHz licensees located within Line A of the Canadian border until 12 months after the signing of an agreement with Canada on the sharing of 220–222 MHz channels near the border.

5. Authority for issuance of the decision is contained in Sections 4(i), 303(r), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 303(r), and 332.

Ordering Clauses

6. Accordingly, IT IS ORDERED that the Petition to Sever filed by SunCom Mobile & Data, Inc., IS GRANTED.

7. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by SunCom Mobile & Data, Inc., IS DENIED.

8. IT IS FURTHER ORDERED that the Request for Rule Waiver filed by Wireless Plus, Inc., IS DENIED.

9. IT IS FURTHER ORDERED that the Request for Rule Waiver filed by the 220 MHz QO Coalition IS DENIED.

10. IT IS FURTHER ORDERED that the Petition for Rule Waiver filed by Northeast Florida Telephone Company IS DENIED.

11. IT IS FURTHER ORDERED that the deadline for non-nationwide 220 MHz licensees authorized within Line A of the Canadian border to construct and operate their stations is extended to a date 12 months after the date that the terms of an agreement with Canada are released.

List of Subjects in 47 CFR Part 90

Business and industry, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22295 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 941265–4365; I.D. 083095B]

Pacific Coast Groundfish Fishery; Thornyhead Trip Limits and Nontrawl Sablefish Mop-Up Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustments and nontrawl sablefish mop-up fishery; request for comments.

SUMMARY: NMFS announces adjustments to the management measures for the Pacific coast groundfish fishery off Washington, Oregon, and California. This action will reduce the limited entry trip limits for thornyheads, establish beginning and ending dates and trip limits applicable to the mop-up fishery for nontrawl limited entry sablefish, and set trip limits for the nontrawl limited entry sablefish fishery after the mop-up fishery. These actions are intended to extend the thornyhead fishery as long as possible during the year, and to provide for harvest of the remainder of the limited entry nontrawl allocation for sablefish.

DATES: The thornyhead trip limits are effective from 0001 hours (local time), September 1, 1995, until the effective date of the 1996 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. The nontrawl sablefish mop-up fishery will begin at 1201 hours (local time), September 1, 1995, and will end at 1200 hours (local time), September 30, 1995, at which time the daily trip limits resume. The daily trip limits for the nontrawl sablefish fishery will remain in effect until the effective date of the 1996 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted until Septemnber 18, 1995.

ADDRESSES: Comments on these actions should be sent to Mr. William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Ms. Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these actions has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney R. McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION:

Thornyheads. The Annual Specifications and Management Measures for the Pacific Coast Groundfish Fishery (60 FR 2331–2344, January 9, 1995), as amended, established management measures for the 1995 limited entry fishery for Dover sole, thornyheads, and trawl-caught sablefish (the DTS complex). At its August 1995 meeting in San Francisco, CA, the Pacific Fishery Management Council (Council) considered the best available scientific information, comments from its advisory committees, and public testimony before recommending adjustments to the management measures for the thornyhead fishery, as explained below.

The DTS complex is managed collectively because the four species often are caught together in the trawl fishery. (Thornyheads include both shortspine and longspine thornyheads.) In 1995, the 1,500 metric ton (mt) harvest guideline for shortspine thornyheads was set higher than the 1,000–mt acceptable biological catch (ABC), largely because of uncertainty in the new stock assessment. The stock assessment indicates that the shortspine thornyhead biomass is below the level consistent with maximum sustainable yield (MSY). The harvest guideline for shortspine thornyheads is near the MSY level, but below its overfishing level of about 1,800 mt. In contrast, longspine thornyheads remain above MSY and are being fished down to the level that would produce MSY. However, the 6,000–mt harvest guideline for longspine thornyheads in 1995 is set below its ABC of 7,000 mt, primarily to protect the fully exploited shortspine thornyheads.

At the beginning of 1995, the cumulative trip limit for thornyheads combined was set at 20,000 lb (9,072 kg) per vessel per month, of which no more than 4,000 lb (1,814 kg) could be shortspine thornyheads (60 FR 2331, January 9, 1995). On April 1, 1995 (60 FR 16811, April 3, 1995), the monthly cumulative trip limit for combined thornyheads was reduced by 25 percent to 15,000 lb (6,804 kg), of which no more than 3,000 lb (1,361 kg) could be shortspine thornyheads. Landings have not slowed significantly.

The best available information at the August 1995 Council meeting indicated that if landing rates are not slowed the harvest guidelines for both thornyhead species, and the overfishing level for shortspine thornyheads, will be exceeded by the end of the year. If landing rates are not slowed, the harvest guideline for shortspine thornyheads will be reached by September 20, 1995, and exceeded by 39 percent by the end of the year. The overfishing level for shortspine thornyheads will be exceeded by 16 percent by the end of the year. The harvest guideline for longspine thornyheads will be reached by November 7, 1995, and exceeded by 19 percent by the end of the year. To stay within the harvest guidelines for both species, landings will need to be reduced by 84 percent for shortspine thornyheads, and 46 percent for longspine thornyheads.

The Council considered several alternatives, including immediate prohibition of landings of shortspine thornyheads or the entire DTS complex, and a reduction in trip limits. The Council recommended that the cumulative monthly trip limits for thornyheads be cut almost in half, from 15,000 lb (6,804 kg) to 8,000 lb (3,629 kg) for thornyheads combined, and from 3,000 lb (1,361 kg) to 1,500 lb (680 kg) for shortspine thornyheads. The level of discards that would result from such a small trip limit on shortspine thornyheads is unknown. It is intended that fishers move their operations to deeper water where shortspine

thornyheads are not as abundant. That way, the catch of shortspine thornyheads and discards in excess of the trip limit would be reduced. Under this option, the shortspine thornyhead harvest guideline would be exceeded by about 10 percent by the end of November, but the overfishing level would not be reached. The Council will again consider thornyhead and DTS management at its October 1995 meeting in Portland, OR, and may recommend additional restrictions at that time, including possible closure of the DTS fishery before the end of the year.

NMFS concurs with the Council's recommendation to avoid reaching the overfishing level for shortspine thornyheads, while extending the fishery as long as possible and providing for achievement of the harvest guideline for longspine thornyheads. This action is intended to minimize trip limit induced discards of shortspine thornyheads by encouraging the use of different fishing strategies. No change is made to the cumulative monthly trip limit for the DTS complex or trawl-caught sablefish. As a result, the amount of Dover sole that may be landed increases, compensating for the reduction in the cumulative limits for thornyheads. A cumulative monthly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a calendar month, without a limit on the number of landings or trips.

Nontrawl Sablefish Mop-Up Fishery. The regulations at 50 CFR 663.23(b)(2) established a new season structure for the limited entry nontrawl sablefish fishery in 1995. The beginning of the "regular season," a derby fishery during which the only trip limit is for sablefish smaller than 22 inches (56 cm), was unlinked from the start of the sablefish fishery in the Gulf of Alaska (which could have been as early as late February in 1995) and changed to August 6. Because of expected increases in effort and the difficulty in projecting catch rates during a short, intense season (7 days in 1995), the regular season was designed to harvest only 70 percent of the limited entry nontrawl allocation. The remainder of the nontrawl allocation was set aside as a buffer in case landings were much higher than projected. The Regional Director is authorized to release the buffer, if sufficient amounts remain, about 3 weeks after the end of the regular season, to be taken in a mop-up fishery consisting of one cumulative trip limit for each vessel.

Following the mop-up fishery, daily trip limits are reimposed until the end of the year. A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24–hour period. Daily trip limits may not be accumulated. If a trip lasts more than one day, only one daily trip limit is allowed.

The best available information on September 28, 1995, indicated that approximately 2,274 mt of sablefish had been landed through August 19, 1995, and that about 78 percent of the limited entry nontrawl allocation of 2,754 mt was taken during the regular season. (This includes one week under daily trip limits after the end of the regular season.) Therefore, 480 mt remains to be caught after August 19, 1995. The Regional Director, after consulting with the Council's Groundfish Management Team, has determined that the mop-up fishery will occur in September 1995, and that a cumulative monthly trip limit of 5,500 lb (2,495 kg) would provide for approximately 175 participating vessels, leaving enough for small daily trip limits between August 19 and September 1, 1995, and from 1200 hours September 30, 1995, until the end of the year. The trip limit for sablefish smaller than 22 inches (56 cm) total length (or 15.5 inches (39 cm) for sablefish that are headed) that was in effect during the regular season continues during the mop-up season, but not under the daily trip limits. This trip limit is described in the paragraph preceding the Classification section. Once a vessel has landed its 5,500–lb (2,495 kg) cumulative limit, it may not land more sablefish until the daily trip limits resume on September 30, 1995. A cumulative trip limit applies per limited entry vessel. Therefore, acquiring additional limited entry permits does not entitle a vessel to more than one cumulative limit. (See the definition for a cumulative trip limit at the end of the discussion on thornyheads.)

The daily trip limits for the limited entry fishery after the mop-up season are the same as those in effect before the mop-up season. Since the daily trip limits apply to a 24–hour day starting at 0001 hours, but the mop-up fishery begins and ends at 1200 hours, it will be legal for a vessel in the limited entry fishery to land a daily trip limit between 0001 hours and 1200 hours on September 1, 1995, just before the start of the mop-up season, and between 1201 hours and 2400 hours on September 30, 1995 following the mop-up season.

As specified in the annual management measures (60 FR 2331, January 9, 1995) at paragraph IV.I., a vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery or for the same gear and/or subarea in the limited entry fishery.

NMFS Actions

NMFS announces: (1) The following changes to the management measures for the limited entry fishery for thornyheads (60 FR 2331–2344, January 9, 1995) as modified (60 FR 16811, April 3, 1995), and (2) the dates of the nontrawl sablefish limited entry mop-up fishery and the amounts of sablefish that may be taken with nontrawl gear during and after the limited entry mop-up fishery in 1995 (60 FR 34472, July 3, 1995). All other provisions remain in effect.

1. *Thornyheads.* In paragraphs IV.E.(3)(b)(ii)(*A*) and (*B*), the cumulative monthly trip limits for thornyheads are revised as follows:

(*A*) *North of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 35,000 lb (15,876 kg) per vessel per month. Within this cumulative trip limit, no more than 7,000 lb (3,175 kg) may be sablefish, and no more than 8,000 lb (3,629 kg) may be thornyheads. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads.

(*B*) *South of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 50,000 lb (22,680 kg) per vessel per month. Within this cumulative trip limit, no more than 7,000 lb (3,175 kg) may be sablefish, and no more than 8,000 lb (3,629 kg) may be thornyheads. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads. (Note: Cape Mendocino, CA, is at 40°30′ N. lat.)

2. *Nontrawl sablefish mop-up season.* In paragraph IV.E.(3)(c), the trip limits for sablefish caught with nontrawl gear in the limited entry fishery are revised as follows:

(i) *Mop-Up Fishery.* Effective 1201 hours September 1, 1995, until 12 noon September 30, 1995, the cumulative trip limit for sablefish caught with nontrawl gear in the limited entry fishery is 5,500 lb (2,495 kg) per vessel.

(Note: The States of Washington, Oregon, and California use a conversion factor of 1.6 to convert dressed sablefish to its round-weight equivalent. Therefore, 5,500 lb (2,495 kg) round weight corresponds to 3,438 lb (1,559 kg) for dressed sablefish.)

(ii) *Daily trip limits.* Effective 1201 hours September 30, 1995, daily trip limits, which apply to sablefish of any size, are reimposed as follows:

(*A*) *North of 36°* N. lat. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36° N. lat. is 300 lb (136 kg).

(*B*) *South of 36°* N. lat. The daily trip limit for sablefish taken and retained with nontrawl gear south of 36° N. lat. is 350 lb (159 kg).

(iii) During the regular and mop-up seasons the trip limit for sablefish smaller than 22 inches (56 cm) total length is 1,500 lb (680 kg) or 3 percent of all legal sablefish on board, whichever is greater, per vessel per fishing trip. (See paragraph IV.A.(6) of the annual management measures at (60 FR 2331, January 9, 1995) regarding length measurement.

Classification

These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Director (see **ADDRESSES**) during business hours. Because of the need for immediate action to reduce the harvest of shortspine thornyheads and to start the mop-up fishery for sablefish, and because the public had an opportunity to comment on these actions at the August 1995 Council meeting, NMFS has determined that good cause exists for this notice to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 663.(b)(2) and (c)(1)(i)(G), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 31, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22188 Filed 9–1–95; 3:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 173
Thursday, September 7, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–196–AD]

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes. This proposal would require a functional flow test and leak test to verify if the pressure reducing valve in the cargo fire extinguishing system is in a serviceable condition, and replacement of any faulty valve with a new valve prior to extended range twin-engine operations of the airplane. This proposal is prompted by a report that, during a scheduled maintenance check, an inoperative pressure reducing valve was found in the cargo fire extinguishing system. The actions specified by the proposed AD are intended to ensure that a faulty pressure reducing valve is not installed, which could result in reduced fire protection of the cargo compartment of the airplane.

DATES: Comments must be received by October 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–196–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Model A310 and A300–600 series airplanes. The DGAC advises that it received a report indicating that, during a scheduled maintenance check, an inoperative pressure reducing valve was found in the cargo fire extinguishing system. The valve had accumulated 10,587 total flight hours. The cargo fire extinguishing system is equipped with two fire extinguishing bottles. In a smoke warning incident, bottle number one is manually activated. After 60 minutes, bottle number two is discharged to maintain the required halon concentration for an additional 200 minutes for extended range twin-engine operations (ETOPS), yielding (giving) a total cargo fire protection time of 260 minutes. The discharge of bottle number two is regulated by the pressure reducing valve. A faulty pressure reducing valve, if not corrected, could result in reduced fire protection of the cargo compartment of the airplane from 260 minutes to 60 minutes.

Airbus has issued All Operators Telex AOT 26–13, dated June 28, 1994, which describes procedures for a functional flow test and leak test to verify if the pressure reducing valve in the cargo fire extinguishing system is in a serviceable condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 94–186–164(B), dated August 17, 1994, in order to assure the continued airworthiness of these airplanes in France. In addition, the French airworthiness directive specifies that ETOPS flights are not permitted if a faulty valve is found and not replaced.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a functional flow test and leak test to verify if the pressure reducing valve in the cargo fire extinguishing system is in a serviceable condition. The tests would be required to be accomplished in accordance with the all operators telex described previously.

The proposed AD would also require that, if a faulty pressure reducing valve is installed, it must be replaced with a new valve prior to further operation of the airplane under ETOPS. The replacement would be required to be accomplished in accordance with the aircraft maintenance manual.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,880, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 94–NM–196–AD.

Applicability: Model A310 and A300–600 series airplanes on which Airbus Modification 6403 (reference Airbus Service Bulletin A310–26–2010 or A300–600–26–6011) has been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it otherwise has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that a faulty pressure reducing valve in the cargo fire extinguishing system is not installed, which could result in reduced fire protection of the cargo compartment of the airplane from 260 minutes to 60 minutes, accomplish the following:

(a) Prior to the accumulation of 600 total flight hours after the effective date of this AD, perform a functional flow test and leak test to verify if the pressure reducing valve in the cargo fire extinguishing system is in a serviceable condition, in accordance with paragraph 4.2., Description, of Airbus All Operators Telex AOT 26–13, dated June 28, 1994. If a faulty pressure reducing valve is installed, prior to extended range twin-engine operations (ETOPS), replace it with a new valve, in accordance with the aircraft maintenance manual, reference 26–23–14, Page block 401.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22210 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–53–AD]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that currently requires replacement of electrical wiring to the fuel shutoff valve for each engine. This action would require replacement of the fuel shutoff valve wire and sleeve with a wire in two non-metallic sleeves in the conduit in the struts of each engine. This proposal is prompted by reports of additional occurrences of chafing and shorting of the wiring of the engine fuel shutoff valves. The actions specified by the proposed AD are intended to prevent such chafing and shorting, which could result in the pilot's inability to shut off the supply of fuel in the event of an engine fire.

DATES: Comments must be received by November 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2793; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–53–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 12, 1989, the FAA issued AD 89–14–04, amendment 39–6246 (54 FR 27157, June 28, 1989), applicable to certain Boeing Model 747–400 series airplanes, to require replacement of electrical wiring to the fuel shutoff valve for each engine. That action was prompted by reports of the fuel shutoff valve wiring shorting to the surrounding electrical conduit, which resulted in circuit breaker tripping and inability to operate the associated fuel shutoff valve. The requirements of that AD are intended to preserve the pilot's ability to shut off the supply of fuel in the event of an engine fire.

Since the issuance of that AD, the FAA has received reports of additional occurrences of chafing and shorting of the wiring of the engine fuel shutoff valves on Model 747–400 series airplanes. Subsequently, Boeing developed a new installation consisting of a wire in two sleeves (non-metallic, open weave braided sleeve inside industrial wall thickness teflon) that will improve the protection of the fuel shutoff valve wire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–28A2186, dated January 19, 1995, which describes procedures for replacement of the fuel shutoff valve wire and sleeve with a wire in two non-metallic sleeves in the conduit in the struts of each engine.

The FAA has determined that accomplishment of this replacement of the fuel shutoff valve wire and sleeve with a wire with two non-metallic sleeves in the conduit in the struts of each engine will positively address the unsafe condition identified as inability to shut off the supply of fuel to an engine.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 89–14–04 to require replacement of the wire and sleeve with a single wire in two non-metallic sleeves in the conduit in the struts of each engine. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

The modification that was previously required by AD 89–14–04 will effectively be removed when the modification required by this proposed AD is installed. Additionally, those airplanes on which the previously-required modification had not been accomplished will require no additional work with the installation of the new proposed modification.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 311 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $673 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $207,974, or $5,473 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6246 (54 FR 27157, June 28, 1989), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–53–AD. Supersedes AD 89–14–04, Amendment 39–6246.

Applicability: Model 747–400 series airplanes; line positions 696 through 1046 inclusive, except airplane variable numbers RT502 and RU032 (airplane serial numbers 24062 and 25780, respectively); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to shut off the supply of fuel in the event of an engine fire, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace the fuel shutoff valve wire and sleeve with a wire in two non-metallic sleeves in the conduit in the struts of each engine, in accordance with Boeing Alert Service Bulletin 747–28A2186, dated January 19, 1995.

Note 2: Replacements accomplished prior to the effective date of this amendment in accordance with Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, or Revision 1, dated August 3, 1995; or Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, or Revision 1, dated July 20, 1995; are considered acceptable for compliance with the replacements specified in this amendment.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22211 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–244–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), which would have superseded an existing AD that is applicable to McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. The existing AD currently requires the implementation of a program of structural inspections to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. The previously proposed action would have required, among other things, clarification of some Principle Structural Elements (PSE) and some non-destructive inspection (NDI) procedures. The previously proposed action was prompted by new data submitted by the manufacturer indicating that certain revisions to the program are necessary in order to clarify some PSE's and some NDI procedures. This action revises the proposed rule by deleting the requirement to perform visual inspections of Fleet Leader Operator Sampling (FLOS) PSE's. The actions specified by this proposed AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: Comments must be received by October 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Contract Data Management C1–255 (35–22) This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–244–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 17, 1995 (60 FR 19185). That NPRM would have required the implementation of a program of structural inspections to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. That NPRM was prompted by new data submitted by the manufacturer indicating that certain revisions to the program are necessary in order to clarify some Principle Structural Elements (PSE) and some non-destructive inspection (NDI) procedures. Fatigue cracking in PSE's could compromise the structural integrity of these airplanes.

Since the issuance of that NPRM, the FAA has received several comments from the manufacturer that have caused the FAA to reconsider its position on certain aspects of the proposed rule.

Changes to the Proposal

McDonnell Douglas requests a revision of paragraph (b)(1) of the proposal for purposes of clarification. The manufacturer notes that the proposal states that operators are required to inspect aircraft before the threshold (N_{th}); however, the proposal does not clearly indicate that operators do not receive credit for these inspections in the Supplemental Inspection Document (SID) program, unless the aircraft has exceeded one-half of that threshold ($N_{th}/2$). The FAA concurs. The FAA has revised proposed paragraph (b)(1) to indicate that the inspections are to be performed prior to reaching the threshold (N_{th}), but no earlier than $N_{th}/2$.

McDonnell Douglas also requests the deletion of the requirement to visually inspect fleet leader-operator sampling (FLOS) PSE's that are proposed in paragraph (b)(3). The manufacturer states that these requirements are redundant to those required by AD 92–22–09 R1, amendment 39–8590 (58 FR 32278, June 9, 1993), which requires the implementation of a corrosion prevention and control program to inspect all primary structures, including all PSE's.

The FAA concurs. Paragraph (b)(3) of this supplemental NPRM [which was designated paragraph (b)(2) in the original NPRM] has been revised to indicate that these visual inspections are not required. However, the visual inspections that are part of the NDI procedures specified in Section 2 of Volume II of the SID are still required by this AD action. Additionally, paragraph (b)(4) from the originally proposed rule, which would have required general visual inspections, has been deleted from this supplemental NPRM since the requirement to perform visual inspections of FLOS PSE's are no longer necessary. Therefore, references to Section 4, "Normal Maintenance Visual Inspections," of Volume II of the SID have been removed since those inspections are no longer required.

Since these changes significantly revise the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Although other comments were received in response to the original NPRM, those comments, as well as any others received in response to this supplemental NPRM, will be addressed in the final rule.

Cost Impact

There are approximately 419 Model DC–10 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 249 airplanes of U.S. registry and 13 U.S. operators would be affected by this proposed AD.

Incorporation of the SID program into an operator's maintenance program, as required by AD 93–17–09 is estimated to necessitate 1,270 work hours (per operator), at an average labor rate of $60 per work hour. Based on these figures, the cost to the 13 affected U.S. operators to incorporate the SID program is estimated to be $990,600.

The incorporation of the revised procedures proposed in this AD action would require approximately 20 additional work hours per operator to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost to the 13 affected U.S. operators to incorporate these revised procedures into the SID program into an operator's maintenance program is estimated to be $15,600.

The recurring inspection costs, as required by AD 93–17–09, are estimated to be 365 work hours per airplane per year, at an average labor rate of $60 per work hour. Based on these figures, the recurring inspection costs required by AD 93–17–09 are estimated to be $21,900 per airplane, or $5,453,100 for the affected U.S. fleet.

Since no new recurring inspection procedures have been added to the program by this proposed AD action, there would be no additional economic burden on affected operators to perform additional recurrent inspections.

Based on the above figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,468,700 for the first year, and $5,453,100 for each year thereafter. These "total cost impact" figures assume that no operator has yet accomplished any of the requirements of this AD. However, it can be reasonably assumed that a majority of the affected operators have already initiated the SID program (as required by AD 93–17–09).

Additionally, the number of required work hours for each proposed inspection (and the SID program), as indicated above, is presented as if the accomplishment of those actions were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Further, any cost associated with special airplane scheduling can be expected to be minimal.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8680 (58 FR 54949, October 25, 1993), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 94–NM–244–AD. Supersedes AD 93–17–09, Amendment 39–8680.

Applicability: Model DC–10 series airplanes and KC–10A (military) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within 6 months after November 24, 1993 (the effective date of AD 93–17–09, amendment 39–8680), incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection(s) of the Principal Structural Elements (PSE's) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26–012, "DC–10 Supplemental Inspection Document (SID)," Revision 3, dated December 1992, in accordance with Section 2 of Volume III–92, dated October 1992, of the SID. The non-destructive inspection (NDI) techniques set forth in Section 2 and Section 4 of Volume II, Revision 3, dated December 1992, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions contained in Section 2 of Volume III–92, dated October 1992, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For those Fleet Leader Operator Sampling (FLOS) PSE's that do not have a Normal Maintenance Visual Inspection specified in Section 4 of Volume II, Revision 3, dated December 1992, of the SID, the procedure for general visual inspection is as follows: Perform an inspection of the general PSE area for cleanliness, presence of foreign objects, security of parts, cracks, corrosion, and damage.

(2) For PSE's 53.10.031E/.032E, 53.10.047E/.048E, and 57.10.029E/.030E: The ENDDATE for these PSE's is October 1993. (For these PSE's disregard the June 1993 ENDDATE specified in Section 2 of Volume III–92, dated October 1992, of the SID.)

(b) Within 6 months after the effective date of this AD, replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD with a revision that provides for inspection(s) of the PSE's defined in Section 2 of Volume I of McDonnell Douglas Report No. L26–012, "DC–10 Supplemental Inspection Document (SID)," Revision 5, dated October 1994, in accordance with Section 2 of Volume III–94, dated November 1994, of the SID. The NDI techniques set forth in Section 2 of Volume II, Revision 5, dated October 1994, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph.

(1) Prior to reaching the threshold (N_{th}), but no earlier than one-half of the threshold ($N_{th}/2$), specified for all PSE's listed in Volume III–94, dated November 1994, of the SID, inspect each PSE sample in accordance with the NDI procedures set forth in Section 2 of Volume II, Revision 5, dated October 1994. Thereafter, repeat the inspection for that PSE at intervals not to exceed DNDI/2 of the NDI procedure that is specified in Volume III–94, dated November 1994, of the SID.

(2) This AD does not require visual inspections of FLOS PSE's on airplanes listed in Volume III–94, dated November 1994, of the SID planning data at least once during the specified inspection interval, in accordance with Section 2 of Volume III–94, dated November 1994, of the SID.

(3) For PSE's 53.10.055/.056E, 55.10.013/.014B, 53.10.005/.006E, 53.10.031/.032E, 53.10.047/.048E, 57.10.029/.030E: The EDATE for these PSE's is June 1998. (For these PSE's, disregard the June 1996 EDATE specified in Section 2, of Volume III–94, dated November 1994, of the SID.)

(4) All inspection results (negative or positive) must be reported to McDonnell Douglas in accordance with the instructions contained in Section 2 of Volume III–94, dated November 1994, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) Any cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 1: Requests for approval of any PSE repair that would affect the FAA-approved maintenance inspection program required by this AD should include a damage tolerance assessment for that PSE repair.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Note 3: Alternative methods of compliance previously granted for AD 93–17–09, amendment 39–8680, continue to be considered as acceptable alternative methods of compliance with this amendment.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22209 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AAL–2]

Proposed Amendment of G–8 and V–328; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the designations of Colored Federal Airway G–8 and Alaskan Federal Airway V–328. The FAA is proposing to realign Colored Federal Airway G–8 to avoid certain restricted areas. Alaskan Federal Airway V–328 would be realigned from Dillingham, AK, and Kipnuk, AK, resulting in a lower minimum en route altitude (MEA) of 9,000 feet. This action would enhance the flow of air traffic.

DATES: Comments must be received on or before September 29, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 95–AAL–2, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AAL–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the designations of Colored Federal Airway G–8 and Alaskan Federal Airway V–328. This action would realign Colored Federal Airway G–8 to avoid restricted areas R–2203A, R–2203B, and R–2203C. Realigning V–328, as a direct route between Dillingham, AK, and Kipnuk, AK, would result in a lower MEA of 9,000 feet. This proposal would enhance the flow of air traffic. Green Colored Federal airways are published in paragraph 6009(a) and Alaskan Federal airways are published in paragraph 6010(b) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway and the Alaskan Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6009(a)—Green Federal Airways

* * * * *

G–8 [Revised]

From Shemya, AK, NDB, 20 AGL Adak, AK, NDB; 20 AGL Dutch Harbor, AK, NDB; 20 AGL INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings; 20 AGL Elfee NDB; 20 AGL Saldo, AK, NDB; INT Saldo NDB 054° and Kachemak, AK, NDB 269° bearings, to Kachemak NDB. From Campbell Lake, AK, NDB; INT Campbell Lake NDB 032°T(006°M) and Glenallen, AK, NDB 253°T(227°M) bearings; Glenallen NDB; INT Glenallen NDB 052° and Nabesna, AK, NDB 252° bearings; Nabesna NDB.

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Paragraph 6010(b)—Alaskan VOR Federal Airways

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V–328 [Revised]

From Dillingham, AK; to Kipnuk, AK.

* * * * *

Issued in Washington, DC, on August 25, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–22200 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0075–92]

RIN 1545–AR31

Definition of Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed Income Tax Regulations relating to the definitions of subpart F income and foreign personal holding company income of a controlled foreign corporation and the allocation of deficits for purposes of computing the deemed-paid foreign tax credit. These proposed regulations are necessary to provide guidance that coordinates with guidance provided in final regulations under section 954, published elsewhere in this issue of the **Federal Register**. These regulations will affect United States shareholders of controlled foreign corporations. This document also contains a notice of hearing on these regulations.

DATES: Written comments must be received by December 6, 1995. Outlines of topics to be discussed at the public hearing scheduled for January 4, 1996 at 10 a.m. must be received by December 14, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (INTL–0075–92), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (INTL–0075–92), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Valerie Mark, (202) 622–3840; concerning submissions and the hearing, Michael Slaughter (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This notice of proposed rulemaking does not contain collections of information and, therefore, it has not been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Background

This document contains proposed regulations amending the Income Tax Regulations (26 CFR Part 1) under sections 952, 954(c) and 960 of the Internal Revenue Code. These regulations are also issued under authority contained in section 7805 of the Internal Revenue Code. In final regulations under section 954, published elsewhere in this issue of the **Federal Register**, the section relating to the treatment of tax-exempt interest under the foreign personal holding company income rules was reserved. These proposed regulations would provide rules for the treatment of tax-exempt interest and would also provide guidance under sections 952 and 960 to coordinate with the final regulations.

Explanation of Provisions

Sections 1.952–1 (e) and (f) and 1.960–1(i)

Section 1.954–1(c)(1)(ii), published elsewhere in this issue of the **Federal Register**, provides generally that if the amount in any category of foreign base company income or foreign personal holding company income is less than zero, the loss may not reduce any other category of foreign base company income or foreign personal holding company income except by operation of the earnings and profits limitation of section 952(c)(1). The earnings and profits limitation will apply when subpart F income exceeds current earnings and profits. This notice of proposed rulemaking provides rules under section 952(c)(1)(A) to determine how the excess of subpart F income over current earnings and profits will reduce categories of foreign base company income or foreign personal holding company income.

These rules apply both to determine the amount that is included in the U.S. shareholder's gross income in each category of subpart F income under section 951(a)(1)(A) from each section 904(d) separate category, and to determine the subpart F category and the section 904(d) separate category from which an amount will be recharacterized as subpart F income under section 952(c)(2). Separate rules are provided in this notice of proposed rulemaking to compute post-1986 undistributed earnings under section 960.

Section 1.952–1(e) provides that for post-1986 years, when the subpart F income of a controlled foreign corporation exceeds its current earnings and profits, this excess, first, proportionately reduces subpart F income in each separate category in which current earnings and profits are zero or less than zero, second, proportionately reduces subpart F income in each separate category in which subpart F income exceeds current earnings and profits, and third, proportionately reduces subpart F income in other separate categories. If a single separate category contains more than one category of subpart F income, the categories of subpart F income in the separate category will be proportionately reduced.

Section 1.952–1(f) provides that the amount and category of subpart F income in each separate category that is reduced by operation of the earnings and profits limitation, as determined under paragraph (e), constitutes a recapture account. In any year in which earnings and profits exceed subpart F income, the recapture accounts in each separate category of the corporation will be recharacterized, on a proportionate basis, as subpart F income to the extent of this excess. An amount that is recharacterized as subpart F income is treated as income in the same separate category as the recapture account from which it was derived.

Under paragraph (f), a recapture account is reduced either when amounts in the account are recharacterized as subpart F income or when the corporation makes an actual distribution from the separate category containing the recapture account. A distribution out of section 959(c)(3) earnings and profits is treated as made first on a proportionate basis out of the recapture accounts in each separate category. If a distribution from earnings and profits described in section 959(c)(3) occurs in the same year that an amount is recharacterized, the recharacterization rules will apply first. Examples are provided to illustrate the rules of paragraphs (e) and (f).

Regulations are proposed under section 960 that apply the principles of section 902 to determine the portion of the controlled foreign corporation's post-1986 foreign income taxes deemed to be paid by a United States corporate shareholder in connection with a subpart F inclusion. If the corporate shareholder computes an amount under both sections 902 and 960 for a taxable year, section 960 is applied first.

These proposed regulations also provide rules to determine how deficits in post-1986 undistributed earnings are allocated for purposes of sections 902 and 960. In accordance with the approach of Notice 88–70 (1988–2 C.B 369), § 1.960–1(i)(4) provides that a post-1986 accumulated deficit in a separate category is allocated pro rata against post-1986 undistributed earnings in other separate categories to compute post-1986 undistributed earnings. The deficit does not permanently reduce earnings in these other separate categories. Rather, after deemed-paid taxes are computed, it is carried forward in the same separate category in which it was incurred. Paragraph (i)(3) clarifies that the numerator of the deemed-paid credit fraction cannot exceed the denominator because deemed-paid taxes may not exceed taxes paid or accrued by the controlled foreign corporation. Examples are provided to illustrate these rules.

The proposed regulations attempt to coordinate, to the extent possible, the allocation of deficits for purposes of determining the amounts of subpart F inclusions and deemed-paid taxes out of the controlled foreign corporation's separate foreign tax credit limitation categories under sections 952, 954, and 960. Complete coordination is not possible in all cases, because subpart F income and the earnings and profits limitation of section 952(c)(1)(A) are determined on the basis of earnings and profits of only the current year, whereas deemed-paid taxes are calculated under section 960 on the basis of multi-year pools of earnings and profits and taxes. In addition, potential differences in the calculation of income and earnings and profits, cf. section 952(c)(3), complicate the coordination.

The proposed rules attempt to minimize the incidence of subpart F inclusions out of separate categories with no current earnings which, in the absence of sufficient accumulated earnings, may carry no deemed-paid taxes. Comments are requested as to whether the proposed allocation methods or some alternative approach would best achieve appropriate foreign tax credit results.

Section 1.954–2(b)(3)

Under § 1.954–2T(b)(6), interest income that is exempt from tax under section 103 is included in the foreign personal holding company income of the controlled foreign corporation. However, the net foreign base company income that is attributable to tax-exempt interest is treated as tax-exempt interest in the hands of the United States shareholder upon a deemed distribution under subpart F. Therefore, for regular tax purposes, the tax-exempt interest is not currently included in the gross income of the United States shareholder under subpart F. However, the deemed distribution of tax-exempt interest may subject the United States shareholder to the alternative minimum tax.

Section 1.954–2(b)(3) of the proposed regulations would amend the rule in the temporary regulations to provide that foreign personal holding company income includes interest income that is exempt from tax under section 103. The tax-exempt interest would not retain its character as such in the hands of the United States shareholder upon a deemed distribution under subpart F. This proposed rule closely parallels the domestic rule for tax-exempt interest. The controlled foreign corporation realizes the tax benefit associated with the receipt of interest income described in section 103 because no United States withholding tax is collected on the income when it is paid to the controlled foreign corporation. As in the domestic context, however, this tax benefit is limited to the corporate level and is not retained when the tax-exempt interest is distributed to the United States shareholders or included in their gross income under subpart F. This rule simplifies the interaction of the tax-exempt interest and alternative minimum tax provisions, and avoids the double-taxation and administrative problems associated with the current rule.

These regulations are proposed to be effective for taxable years of the foreign corporation beginning after 60 days after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 4, 1996, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit written comments by December 6, 1995 and submit an outline of topics to be discussed and time to be devoted to each topic (signed original and eight (8) copies) by December 14, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information. The principal authors of these regulations are Barbara Felker and Valerie Mark of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for Part 1 is amended by adding the following citation in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.960–1 also issued under 26 U.S.C. 960(a). * * *

Par. 2. Section 1.952–1 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1.952–1 Subpart F income defined.

* * * * *

(e) *Application of current earnings and profits limitation*—(1) *In general.* If the subpart F income (as defined in section 952(a)) of a controlled foreign corporation exceeds the foreign corporation's earnings and profits for the taxable year, the subpart F income includible in the income of the corporation's United States shareholders is reduced under section 952(c)(1)(A) in accordance with the following rules. The excess of subpart F income over current year earnings and profits shall—

(i) First, proportionately reduce subpart F income in each separate category of the controlled foreign corporation, as defined in § 1.904–5(a)(1), in which current earnings and profits are zero or less than zero;

(ii) Second, proportionately reduce subpart F income in each separate category in which subpart F income exceeds current earnings and profits; and

(iii) Third, proportionately reduce subpart F income in other separate categories.

(2) *Allocation to a category of subpart F income.* An excess amount that is allocated under paragraph (e)(1) of this section to a separate category must be further allocated to a category of subpart F income if the separate category contains more than one category of subpart F income described in section 952(a) or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*). In such case, the excess amount that is allocated to the separate category must be allocated to the various categories of subpart F income within that separate category on a proportionate basis.

(3) *Recapture of subpart F income reduced by operation of earnings and profits limitation.* Any amount in a category of subpart F income described in section 952(a) or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*) that is reduced by operation of the current year earnings and profits limitation of section 952(c)(1)(A) and this paragraph (e) shall be subject to recapture in a subsequent year under the rules of section 952(c)(2) and paragraph (f) of this section.

(4) *Coordination with sections 953 and 954.* The rules of this paragraph (e) shall be applied after the application of sections 953 and 954 and the regulations under those sections, except as provided in § 1.954–1(d)(4)(ii).

(5) *Earnings and deficits retain separate limitation character.* The income reduction rules of paragraph (e)(1) of this section shall apply only for purposes of determining the amount of an inclusion under section 951(a)(1)(A) from each separate category as defined in § 1.904–5(a)(1) and the separate categories in which recapture accounts are established under section 952(c)(2) and paragraph (f) of this section. For rules applicable in computing post-1986 undistributed earnings, see generally section 902 and the regulations under that section. For rules relating to the allocation of deficits for purposes of computing foreign taxes deemed paid under section 960 with respect to an inclusion under section 951(a)(1)(A), see § 1.960–1(i).

(f) *Recapture of subpart F income in subsequent taxable year*—(1) *In general.* If a controlled foreign corporation's subpart F income for a taxable year is reduced under the current year earnings and profits limitation of section 952(c)(1)(A) and paragraph (e) of this section, recapture accounts will be established and subject to recharacterization in any subsequent taxable year to the extent the recapture accounts were not previously recharacterized or distributed, as provided in paragraphs (f) (2) and (3) of this section.

(2) *Rules of recapture*—(i) *Recapture account.* If a category of subpart F income described in section 952(a) or, in the case of foreign base company income, described in § 1.954–1(c)(1)(iii)(A) (*1*) or (*2*) is reduced under the current year earnings and profits limitation of section 952(c)(1)(A) and paragraph (e) of this section for a taxable year, the amount of such reduction shall constitute a recapture account.

(ii) *Recapture.* Each recapture account of the controlled foreign corporation will be recharacterized, on a proportionate basis, as subpart F income in the same separate category (as defined in § 1.904–5(a)(1)) as the recapture account to the extent that current year earnings and profits exceed subpart F income in a taxable year. The United States shareholder must include his pro rata share (determined under the rules of § 1.951–1(e)) of each recharacterized amount in income as subpart F income in such separate category for the taxable year.

(iii) *Reduction of recapture account and corresponding earnings.* Each recapture account, and post-1986 undistributed earnings in the separate category containing the recapture account, will be reduced in any taxable year by the amount which is recharacterized under paragraph (f)(2)(ii) of this section. In addition, each recapture account, and post-1986 undistributed earnings in the separate category containing the recapture account, will be reduced in the amount of any distribution out of that account (as determined under the ordering rules of section 959(c) and paragraph (f)(3)(ii) of this section).

(3) *Distribution ordering rules*—(i) *Coordination of recapture and distribution rules.* If a controlled foreign corporation distributes an amount out of earnings and profits described in section 959(c)(3) in a year in which current year earnings and profits exceed subpart F income and there is an amount in a recapture account for such year, the recapture rules will apply first.

(ii) *Distributions reduce recapture accounts first.* Any distribution made by a controlled foreign corporation out of earnings and profits described in section 959(c)(3) shall be treated as made first on a proportionate basis out of the recapture accounts in each separate category to the extent thereof (even if the amount in the recapture account exceeds post-1986 undistributed earnings in the separate category containing the recapture account). Any remaining distribution shall be treated as made on a proportionate basis out of the remaining earnings and profits of the controlled foreign corporation in each separate category. See section 904(d)(3)(D).

(4) *Examples.* The application of paragraphs (e) and (f) of this section may be illustrated by the following examples:

Example 1. (i) *A*, a U.S. person, is the sole shareholder of *CFC*, a controlled foreign corporation formed on January 1, 1996, whose functional currency is the *u*. In 1996, *CFC* earns 100u of foreign base company sales income that is general limitation income described in section 904(d)(1)(I) and incurs a (200u) loss attributable to activities that would have produced general limitation income that is not subpart F income. In 1996

CFC also earns 100u of foreign personal holding company income that is passive income described in section 904(d)(1)(A), and 100u of foreign personal holding company income that is dividend income subject to a separate limitation described in section 904(d)(1)(E) for dividends from a noncontrolled section 902 corporation. *CFC*'s subpart F income for 1996, 300u, exceeds *CFC*'s current earnings and profits, 100u, by 200u. Under section 952(c)(1)(A) and paragraph (e) of this section, subpart F income is limited to *CFC*'s current earnings and profits of 100u, all of which is included in *A*'s gross income under section 951(a)(1)(A). The 200u of *CFC*'s 1996 subpart F income that is not included in *A*'s income in 1996 by reason of section 952(c)(1)(A) is subject to recapture under section 952(c)(2) and paragraph (f) of this section.

(ii) For purposes of determining the amount and type of income included in *A*'s gross income and the amount and type of income in *CFC*'s recapture account, the rules of paragraphs (e)(1) and (2) of this section apply. Under paragraph (e)(1)(i), the amount by which *CFC*'s subpart F income exceeds its earnings and profits for 1996, 200u, first reduces from 100u to 0 *CFC*'s subpart F income in the general limitation category, which has a current year deficit of (100u) in earnings and profits. Next, under paragraph (e)(1)(iii) of this section, the remaining 100u by which *CFC*'s 1996 subpart F income exceeds earnings and profits is applied proportionately to reduce *CFC*'s subpart F income in the separate categories for passive income (100u) and dividends from the noncontrolled section 902 corporation (100u). Thus, A includes 50u of passive limitation/foreign personal holding company income and 50u of dividends from the noncontrolled section 902 corporation/foreign personal holding company income in gross income in 1996. *CFC* has 100u in its general limitation/foreign base company sales income recapture account attributable to the 100u of foreign base company sales income that is not included in *A*'s income by reason of the earnings and profits limitation of section 952(c)(1)(A). *CFC* also has 50u in its passive limitation recapture account, all of which is attributable to foreign personal holding company income, and 50u in its recapture account for dividends from the noncontrolled section 902 corporation, all of which is attributable to foreign personal holding company income.

(iii) For purposes of computing post-1986 undistributed earnings, the rules of sections 902 and 960, including the rules of § 1.960–1(i), apply. Under § 1.960–1(i), the general limitation deficit of (100u) is allocated proportionately to reduce passive limitation earnings of 100u and noncontrolled section 902 dividend earnings of 100u. Thus, passive limitation earnings are reduced by 50u to 50u (100u passive limitation earnings/200u total earnings in positive separate categories ×(100u) general limitation deficit =50u reduction), and the noncontrolled section 902 corporation earnings are reduced by 50u to 50u (100u noncontrolled section 902 corporation earnings/200u total earnings in positive separate categories ×(100u) general limitation deficit=50u reduction). All of *CFC*'s post-1986 foreign income taxes with respect to passive limitation income and dividends from the noncontrolled section 902 corporation are deemed paid by A under section 960 with respect to the subpart F inclusions (50u inclusion/50u earnings in each separate category). After the inclusion and deemed-paid taxes are computed, at the close of 1996 *CFC* has a (100u) deficit in general limitation earnings (100u subpart F earnings + (200u) nonsubpart F loss), 50u of passive limitation earnings (100u of earnings attributable to foreign personal holding company income − 50u inclusion) with a corresponding passive limitation/foreign personal holding company income recapture account of 50u, and 50u of earnings subject to a separate limitation for dividends from the noncontrolled section 902 corporation (100u earnings − 50u inclusion) with a corresponding noncontrolled section 902 corporation/foreign personal holding company income recapture account of 50u.

Example 2. (i) The facts are the same as in *Example 1* with the addition of the following facts. In 1997, *CFC* earns 100u of foreign base company sales income that is general limitation income and 100u of foreign personal holding company income that is passive limitation income. In addition, *CFC* incurs (10u) of expenses that are allocable to its separate limitation for dividends from the noncontrolled section 902 corporation. Thus, *CFC*'s subpart F income for 1997, 200u, exceeds *CFC*'s current earnings and profits, 190u, by 10u. Under section 952(c)(1)(A) and paragraph (e) of this section, subpart F income is limited to *CFC*'s current earnings and profits of 190u, all of which is included in *A*'s gross income under section 951(a)(1)(A).

(ii) For purposes of determining the amount and type of income included in *A*'s gross income and the amount and type of income in *CFC*'s recapture accounts, the rules of paragraphs (e) (1) and (2) of this section apply. While *CFC*'s general limitation post-1986 undistributed earnings for 1997 are 0 ((100u) opening balance + 100u subpart F income), *CFC*'s general limitation subpart F income (100u) does not exceed its general limitation current earnings and profits (100u) for 1997. Accordingly, under paragraph (e)(1)(iii) of this section, the amount by which *CFC*'s subpart F income exceeds its earnings and profits for 1997, 10u, is applied proportionately to reduce *CFC*'s subpart F income in the separate categories for general limitation income, 100u, and passive income, 100u. Thus, *A* includes 95u of general limitation foreign base company sales income and 95u of passive limitation foreign personal holding company income in gross income in 1997. At the close of 1997 *CFC* has 105u in its general limitation/foreign base company sales income recapture account (100u from 1996 + 5u from 1997), 55u in its passive limitation/foreign personal holding company income recapture account (50u from 1996 + 5u from 1997), and 50u in its dividends from the noncontrolled section 902 corporation/foreign personal holding company income recapture account (all from 1996).

(iii) For purposes of computing post-1986 undistributed earnings in each separate category, the rules of sections 902 and 960, including the rules of § 1.960–1(i), apply. Thus, post-1986 undistributed earnings (or an accumulated deficit) in each separate category are increased (or reduced) by current earnings and profits or current deficits in each separate category. The accumulated deficit in *CFC*'s general limitation earnings and profits (100u) is reduced to 0 by the addition of 100u of 1997 earnings and profits. *CFC*'s passive limitation earnings of 50u are increased by 100u to 150u, and *CFC*'s noncontrolled section 902 corporation earnings of 50u are decreased by (10u) to 40u. After the addition of current year earnings and profits and deficits to the separate categories there are no deficits remaining in any separate category. Thus, the allocation rules of § 1.960–1(i)(4) do not apply in 1997. Accordingly, in determining the post-1986 foreign income taxes deemed paid by *A*, post-1986 undistributed earnings in each separate category are unaffected by earnings in the other categories. Foreign taxes deemed paid under section 960 for 1997 would be determined as follows for each separate category: with respect to the inclusion of 95u of foreign base company sales income out of general limitation earnings, the section 960 fraction is 95u inclusion/0 total earnings; with respect to the inclusion of 95u of passive limitation income the section 960 fraction is 95u inclusion/150u passive earnings. Thus, no general limitation taxes would be associated with the inclusion of the general limitation earnings because there are no accumulated earnings in the general limitation category. After the deemed-paid taxes are computed, at the close of 1997 *CFC* has a (95u) deficit in general limitation earnings and profits ((100u) opening balance + 100u current earnings—95u inclusion), 55u of passive limitation earnings and profits (50u opening balance + 100u current foreign personal holding company income—95u inclusion), and 40u of earnings and profits subject to the separate limitation for dividends from the noncontrolled section 902 corporation (50u opening balance + (10u) expense).

Example 3. (i) *A*, a U.S. person, is the sole shareholder of *CFC*, a controlled foreign corporation whose functional currency is the *u*. At the beginning of 1996, *CFC* has post-1986 undistributed earnings of 275u, all of which are general limitation earnings described in section 904(d)(1)(I). *CFC* has no previously-taxed earnings and profits described in section 959 (c)(1) or (c)(2). In 1996, *CFC* has a (200u) loss in the shipping category described in section 904(d)(1)(D), 100u of foreign personal holding company income that is passive income described in section 904(d)(1)(A), and 125u of general limitation manufacturing earnings that are not subpart F income. *CFC*'s subpart F income for 1996, 100u, exceeds *CFC*'s current earnings and profits, 25u, by 75u. Under section 952(c)(1)(A) and paragraph (e) of this section, subpart F income is limited to *CFC*'s current earnings and profits of 25u, all of which is included in *A*'s gross income under section 951(a)(1)(A). The 75u of *CFC*'s 1996 subpart F income that is not included in *A*'s income in 1996 by reason of section 952(c)(1)(A) is subject to recapture under section 952(c)(2) and paragraph (f) of this section.

(ii) For purposes of determining the amount and type of income included in *A*'s gross income and the amount and type of income in *CFC*'s recapture account, the rules of paragraphs (e) (1) and (2) of this section apply. Under paragraph (e)(1) of this section, the amount of *CFC*'s subpart F income in excess of earnings and profits for 1996, 75u, reduces the 100u of passive limitation foreign personal holding company income. Thus, *A* includes 25u of passive limitation foreign personal holding company income in gross income, and *CFC* has 75u in its passive limitation/foreign personal holding company income recapture account.

(iii) For purposes of computing post-1986 undistributed earnings in each separate category the rules of sections 902 and 960, including the rules of § 1.960–1(i), apply. Under § 1.960–1(i), the shipping limitation deficit of (200u) is allocated proportionately to reduce general limitation earnings of 400u and passive limitation earnings of 100u. Thus, general limitation earnings are reduced by 160u to 240u (400u general limitation earnings/500u total earnings in positive separate categories × (200u) shipping deficit = 160u reduction), and passive limitation earnings are reduced by 40u to 60u (100u passive earnings/500u total earnings in positive separate categories × (200u) shipping deficit = 40u reduction). Five-twelfths of *CFC*'s post-1986 foreign income taxes with respect to passive limitation earnings are deemed paid by *A* under section 960 with respect to the subpart F inclusion (25u inclusion/60u passive earnings). After the inclusion and deemed-paid taxes are computed, at the close of 1996 *CFC* has 400u of general limitation earnings (275u opening balance + 125u current earnings), 75u of passive limitation earnings (100u of foreign personal holding company income − 25u inclusion), and a (200u) deficit in shipping limitation earnings.

Example 4. (i) The facts are the same as in *Example 3* with the addition of the following facts. In 1997, *CFC* earns 50u of general limitation earnings that are not subpart F income and 75u of passive limitation income that is foreign personal holding company income. Thus, *CFC* has 125u of current earnings and profits. *CFC* distributes 200u to *A*. Under paragraph (f)(3)(ii) of this section, the recapture rules are applied first. Thus, the amount by which 1997 current earnings and profits exceed subpart F income, 50u, is recharacterized as passive limitation foreign personal holding company income. *CFC*'s total subpart F income for 1997 is 125u of passive limitation foreign personal holding company income (75u current earnings plus 50u recapture account), and the passive limitation/foreign personal holding company income recapture account is reduced from 75u to 25u.

(ii) *CFC* has 150u of previously-taxed earnings and profits described in section 959(c)(2) (25u attributable to 1996 and 125u attributable to 1997), all of which is passive limitation earnings and profits. Under section 959(c), 150u of the 200u distribution is deemed to be made from earnings and profits described in section 959(c)(2). The remaining 50u is deemed to be made from earnings and profits described in section 959(c)(3). Under paragraph (f)(3)(i) of this section, the dividend distribution is deemed to be made first out of the passive limitation recapture account to the extent thereof (25u). Under paragraph (f)(2)(iii) of this section, the passive limitation recapture account is reduced from 25u to 0. The remaining distribution of 25u is treated as made out of *CFC*'s general limitation earnings and profits.

(iii) For purposes of computing post-1986 undistributed earnings, the rules of section 902 and 960, including the rules of § 1.960–1(i), apply. Thus, the shipping limitation accumulated deficit of (200u) reduces general limitation earnings and profits of 450u and passive limitation earnings and profits of 150u on a proportionate basis. Thus, 100% of *CFC*'s post-1986 foreign income taxes with respect to passive limitation earnings are deemed paid by *A* under section 960 with respect to the 1997 subpart F inclusion of 125u (100u inclusion (numerator limited to denominator)/100u passive earnings). No post-1986 foreign income taxes remain to be deemed paid under section 902 in connection with the 25u distribution from the passive limitation/foreign personal holding company income recapture account. One-twelfth of *CFC*'s post-1986 foreign income taxes with respect to general limitation earnings are deemed paid by *A* under section 902 with respect to the distribution of 25u general limitation earnings and profits described in section 959(c)(3) (25u inclusion/300u general limitation earnings). After the deemed-paid taxes are computed, at the close of 1997 *CFC* has 425u of general limitation earnings and profits (400u opening balance + 50u current earnings − 25u distribution), 0 of passive limitation earnings (75u recapture account +75u current foreign personal holding company income − 125u inclusion − 25u distribution), and a (200u) deficit in shipping limitation earnings.

Par. 3. In § 1.952–2, paragraph (c)(1) is revised to read as follows:

§ 1.952–2 Determination of gross income and taxable income of a foreign corporation.

* * * * *

(c) *Special rules for purposes of this section*—(1) *Nonapplication of certain provisions*. Except where otherwise distinctly expressed, the provisions of section 103 and subchapters F, G, H, L, M, N, S, and T of chapter 1 of the Internal Revenue Code shall not apply.

* * * * *

Par. 4. In § 1.954–2, the text of paragraph (b)(3) is added to read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(b) * * *

(3) *Treatment of tax exempt interest*. Foreign personal holding company income includes all interest income, including interest that is described in section 103 (see § 1.952–2(c)(1)).

* * * * *

Par. 5. In § 1.960–1, paragraph (i) is added to read as follows:

§ 1.960–1 Foreign tax credit with respect to taxes paid on earnings and profits of controlled foreign corporations.

* * * * *

(i) *Computation of deemed-paid taxes in post-1986 taxable years*—(1) *General rule*. If a domestic corporation is eligible to compute deemed-paid taxes under section 960(a)(1) with respect to an amount included in gross income under section 951(a), then, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 and the regulations under that section in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)).

(2) *Ordering rule for computing deemed-paid taxes under sections 902 and 960*. If a domestic corporation computes deemed-paid taxes under both section 902 and section 960 in the same taxable year, section 960 shall be applied first. After the deemed-paid taxes are computed under section 960 with respect to a deemed income inclusion, post-1986 undistributed earnings and post-1986 foreign income taxes in each separate category shall be reduced by the appropriate amounts before deemed-paid taxes are computed under section 902 with respect to a dividend distribution.

(3) *Computation of post-1986 undistributed earnings*. Post-1986 undistributed earnings (or an accumulated deficit in post-1986 undistributed earnings) are computed under section 902 and the regulations under that section.

(4) *Allocation of accumulated deficits*. For purposes of computing post-1986 undistributed earnings under sections 902 and 960, a post-1986 accumulated deficit in a separate category shall be allocated proportionately to reduce post-1986 undistributed earnings in the other separate categories. However, a deficit in any separate category shall not permanently reduce earnings in other separate categories, but after the deemed-paid taxes are computed the separate limitation deficit shall be carried forward in the same separate category in which it was incurred. In addition, because deemed-paid taxes may not exceed taxes paid or accrued by the controlled foreign corporation, in computing deemed-paid taxes with

respect to an inclusion out of a separate category that exceeds post-1986 undistributed earnings in that separate category, the numerator of the deemed-paid credit fraction (deemed inclusion from the separate category) may not exceed the denominator (post-1986 undistributed earnings in the separate category).

(5) *Examples*. The application of this paragraph (i) may be illustrated by the following examples. See § 1.952–1(f)(4) for additional illustrations of these rules.

Example 1. (i) *A*, a U.S. person, is the sole shareholder of *CFC*, a controlled foreign corporation formed on January 1, 1996, whose functional currency is the *u*. In 1996 *CFC* earns 100u of general limitation income described in section 904(d)(1)(I) that is not subpart F income and 100u of foreign personal holding company income that is passive income described in section 904(d)(1)(A). In 1996 *CFC* also incurs a (50u) loss in the shipping category described in section 904(d)(1)(D). *CFC*'s subpart F income for 1996, 100u, does not exceed *CFC*'s current earnings and profits of 150u. Accordingly, all 100u of *CFC*'s subpart F income is included in A's gross income under section 951(a)(1)(A). Under section 904(d)(3)(B) of the Code and paragraph (i)(1) of this section, *A* includes 100u of passive limitation income in gross income for 1996.

(ii) For purposes of computing post-1986 undistributed earnings under sections 902, 904(d) and 960 with respect to the subpart F inclusion, the shipping limitation deficit of (50u) is allocated proportionately to reduce general limitation earnings of 100u and passive limitation earnings of 100u. Thus, general limitation earnings are reduced by 25u to 75u (100u general limitation earnings/200u total earnings in positive separate categories × (50u) shipping deficit = 25u reduction), and passive limitation earnings are reduced by 25u to 75u (100u passive earnings/200u total earnings in positive separate categories × (50u) shipping deficit = 25u reduction). All of *CFC*'s post-1986 foreign income taxes with respect to passive limitation earnings are deemed paid by *A* under section 960 with respect to the 100u subpart F inclusion of passive income (75u inclusion (numerator limited to denominator under paragraph (i)(4) of this section)/75u passive earnings). After the inclusion and deemed-paid taxes are computed, at the close of 1996 *CFC* has 100u of general limitation earnings, 0 of passive limitation earnings (100u of foreign personal holding company income—100u inclusion), and a (50u) deficit in shipping limitation earnings.

Example 2. (i) The facts are the same as in *Example 1* with the addition of the following facts. In 1997, *CFC* distributes 150u to *A*. *CFC* has 100u of previously-taxed earnings and profits described in section 959(c)(2) attributable to 1996, all of which is passive limitation earnings and profits. Under section 959(c), 100u of the 150u distribution is deemed to be made from earnings and profits described in section 959(c)(2). The remaining 50u is deemed to be made from earnings and profits described in section 959(c)(3). The entire dividend distribution of 50u is treated as made out of *CFC*'s general limitation earnings and profits. See section 904(d)(3)(D).

(ii) For purposes of computing post-1986 undistributed earnings under section 902 with respect to the 1997 dividend of 50u, the shipping limitation accumulated deficit of (50u) reduces general limitation earnings and profits of 100u to 50u. Thus, 100% of *CFC*'s post-1986 foreign income taxes with respect to general limitation earnings are deemed paid by *A* under section 902 with respect to the 1997 dividend of 50u (50u dividend/50u general limitation earnings). After the deemed-paid taxes are computed, at the close of 1997 *CFC* has 50u of general limitation earnings (100u opening balance − 50u distribution), 0 of passive limitation earnings, and a (50u) deficit in shipping limitation earnings.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 95–21839 Filed 9–6–95; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF LABOR

Office of the Secretary

Wage and Hour Division

29 CFR Parts 4 and 5

41 CFR Parts 50–201 and 50–206

RIN 1215–AA96

Amendments to Federal Contract Labor Laws by the Federal Acquisition Streamlining Act of 1994

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: The Federal Acquisition Streamlining Act of 1994 amends the Contract Work Hours and Safety Standards Act (CWHSSA) and the Walsh-Healey Public Contracts Act (PCA). This document proposes to conform applicable regulations to the statutory amendments that raise the coverage threshold of CWHSSA and, among other things, eliminate the eligibility requirements of the PCA.

DATES: Comments are due on or before October 10, 1995.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502 200 Constitution Avenue NW.; Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Acting Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

II. Background

The Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355, 108 Stat. 3243) was enacted into law on October 13, 1994. Section 4104(c) of this Act amends sections 103 and 107 of the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. 327 *et seq.*, to establish a threshold of $100,000 or more for contracts subject to CWHSSA's overtime provisions. Prior to this amendment, Federal and Federally assisted construction contracts of $2,000 or less, and purchases and contracts other than construction contracts of $2,500 or less, were exempt from CWHSSA's weekly overtime and related provisions pursuant to the variation in §§ 5.15(b) (1) and (2) of 29 CFR part 5. The new statutory threshold of $100,000 requires conforming revisions to §§ 5.5(b) and 5.15(b) (1) and (2) of 29 CFR part 5 and § 4.181(b) of 29 CFR part 4.

Contracting agencies and contractors should be aware that contractors awarded contracts in amounts less than $100,000 may continue to have obligations to pay certain of their employees weekly overtime, at one and one-half the regular rate for hours worked in excess of forty (40) per week, pursuant to section 7 of the Fair Labor Standards Act, 29 U.S.C. 207.

With respect to amendments affecting the Walsh-Healey Public Contracts Act (PCA), sections 3023 and 7201 of FASA (1) repeal 10 U.S.C. sec. 7299 to eliminate the applicability of the PCA to contracts for the construction, alternation, furnishing, or equipping of naval vessels; (2) repeal section 1(a) of

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the PCA to eliminate the requirement that covered contractors must be either a "regular dealer" or "manufacturer" and renumbers subsections (b), (c), (d) and (e) to (a), (b), (c) and (d) respectively; (3) amend section 10 (b) of the PCA to substitute the term "supplier of" for the terms "regular dealer" and "manufacturer;" (4) amend section 10(c) of the PCA to strike the terms "regular dealer" and "manufacturer;" and (5) adds subsections (a) and (b) to section 11 of the PCA to retain the Secretary's authority to define the terms "regular dealer" and "manufacturer."

This rule proposes to amend applicable PCA regulations to delete a "regular dealer" or "manufacturer" eligibility requirement for bidders on contracts subject to the Act. Under the Act as amended, an eligible bidder includes, in addition to a manufacturer or regular dealer, any supplier or distributor of the materials, supplies, articles, or equipment to be manufactured or supplied under the contract. Specifically, § 50–201.1 of 41 CFR part 50–201 relating to contract stipulations is proposed to be renumbered as § 50–201.3, the paragraph currently designated as § 50–201.1(a) is proposed to be deleted to remove the "manufacturer of or regular dealer in" requirement, and the subsequent paragraphs of this section are proposed to be renumbered. In addition, § 50–201.101 relating to definitions of the terms "manufacturer" and "regular dealer" is proposed to be deleted in its entirety, as is § 50–201.604 relating to partial administrative exemptions from the manufacturer or regular dealer requirement. Also, the entire Part 50–206, which relates primarily to the qualifications of contractors and interpretations of the terms "manufacturer" and "regular dealer," is proposed to be deleted except that §§ 50–206.1 and .2 are proposed to be incorporated into the general regulations at part 50–201 as new §§ 50–201.1 and .2, respectively.

With respect to the amendment concerning contracts for the construction, alteration, furnishing, or equipping of naval vessels, the repeal of 10 U.S.C. sec. 7299 to eliminate PCA coverage of such contracts requires no changes in the regulations. Contracting agencies and contractors should be aware that such contracts may now be subject to the Davis-Bacon Act, which applies to contracts in excess of $2,000 for the construction, alteration, and/or repair, including painting and decorating, of a public building or a public work. Marine vessels have historically been regarded as "public works" for purposes of the Davis-Bacon Act.

While section 7201(a) of FASA repealed the bidder eligibility requirements of PCA, section 7201(b) added a new provision which provided that the Secretary of Labor "* * * *may* (emphasis added) prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by * * * (the United States)." The new section also provides for judicial review of any legal question regarding the interpretation of manufacturer or regular dealer as promulgated under this new section. According to the legislative history of FASA's section 7201(b), authorizing the Secretary of Labor to define the terms "regular dealer" and "manufacturer" was considered appropriate because the terms have been incorporated by reference into a number of other statutes. (See H.R. Conf. Rep. No. 712, 103d Cong., 2d Sess. 225 (1994).)

In a review of other statutes, however, the Department only found one statute which explicitly incorporates PCA's definition of the term "manufacturer" and/or "regular dealer" by reference. This statute, 15 U.S.C. 637, concerns contracting authority of the Small Business Administration and the awarding of subcontracts to small businesses owned and controlled by socially and economically disadvantaged individuals. It provides at 15 U.S.C. 637(a)(17) that a responsible business concern may be the actual manufacturer or processor of the product to be supplied under a contract or "* * * be a regular dealer, as defined pursuant to section 35(a) of Title 41 (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government * * *." (See 15 U.S.C. 637(a)(17)(B)(iii).) The effect of the proposed deletion of the regulatory definitions on this program is unclear.

A review of the Code of Federal Regulations (CFR) disclosed numerous regulations with references to the "manufacturer" or "regular dealer" provisions of the PCA which, in large part, have the purpose of implementing these requirements through the procurement process. The Department, nevertheless, is concerned that there may be other regulations or programs that may require eligible bidders or contractors to be either manufacturers or regular dealers of products sold to the Federal government as defined in accordance with the PCA, for reasons independent of the PCA requirement.

It is the Department's belief that the promulgation of special rules defining these terms is not necessary, and that the former definitions may be adapted, if appropriate, by other Federal agencies. The definitions will also be used to resolve questions of PCA eligibility in contracts awarded prior to the promulgation of this rule. However, the Department, for the reasons discussed above, is particularly interested in obtaining public comment on the appropriateness and feasibility of its proposal not to issue special rules defining the terms "manufacturer" or "regular dealer," and any adverse effect this might have on any other Federal programs, such as those of the Small Business Administration.

This rule does not address the FASA amendments to certain laws that waive the Davis-Bacon Act's (DBA) prevailing wage requirements for certain volunteers on Federally-assisted construction projects. Subtitle C of Title VII of FASA (sections 7301–7306, cited as the "Community Improvement Volunteer Act of 1994) amends the Library Services and Construction Act, the Indian Self-Determination and Education Act, sections 329 and 330 of the Public Health Services Act, the Indian Health Care Improvement Act, and the Housing and Community Development Act of 1974 to provide an exception from DBA prevailing wage requirements for individuals who volunteer services to State and local public entities and to nonprofit entities. The Department expects to publish a notice of proposed rulemaking which will address the implementation of these provisions during 1995.

As a point of information, contracting agencies and contractors should also be aware that section 4104(b) of FASA amended the Miller Act to establish a threshold of $100,000 for construction contracts covered by its bonding requirements. While this law is often associated with the DBA, the Department has no responsibility for its administration.

Executive Order 12866/Section 202 of the Unfunded Mandate Reform Act of 1995

This proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12866, nor does it require a section 202 statement under the Unfunded Mandates Reform Act of 1995. The rule merely adopts technical changes in regulations mandated by FASA. While the new statutory threshold of $100,000 under the Contract Work Hours and

Safety Standards Act can be expected to reduce procurement burdens on purchases under $100,000, contractors awarded such contracts continue to be obligated to pay weekly overtime under the Fair Labor Standards Act. Likewise, the repeal of the "manufacturer" and "regular dealer" requirements under PCA may be expected to increase competition for certain supply contracts; however, the impact on procurement costs resulting from an enlarged pool of eligible bidders is not clearly apparent, and could be minimal. Accordingly, these changes are not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 and section 202 of the Unfunded Mandate Reform Act of 1995. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The Department has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule implements statutory changes enacted by FASA, and furthers its streamlining objectives. The repeal of the "manufacturer" and "regular dealer" requirements under PCA will likely increase the number of eligible bidders on supply contracts, many of whom would be small entities, which would have beneficial effects consistent with the purpose of the Regulatory Flexibility Act. The elimination of PCA bidder requirements will also simplify the processing of eligibility protests on bidder eligibility and will otherwise streamline the procurement process. While these and other benefits of the rule would be difficult, if not impossible, to quantify, the rule is not expected to have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act, and the Department has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. A regulatory flexibility analysis is not required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 4

Administrative practice and procedure, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

29 CFR Part 5

Administrative practice and procedures, Government contracts, Investigations, Labor, Minimum wages, penalties, Reporting and recordkeeping requirements, Wages.

41 CFR Parts 50–201 and 50–206

Administrative practice and procedures, Child labor, Government contracts, Government procurement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

For the reasons set forth above, 29 CFR part 4, 29 CFR part 5, 41 CFR part 50–201, and 41 CFR part 50–206 are proposed to be amended as set forth below.

Signed at Washington, DC., on this 31st day of August, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

Accordingly, the following parts of the Code of Federal Regulations are proposed to be amended:

(a) Part 4, Title 29, Code of Federal Regulations (29 CFR part 4);

(b) Part 5, Subpart A, Title 29, Code of Federal Regulations (29 CFR part 5);

(c) Part 50–201, Chapter 50 of Title 41, Code of Federal Regulations (41 CFR part 50–201); and

(d) Part 50–206, Chapter 50 of Title 41, Code of Federal Regulations (41 CFR part 50–206), as set forth below.

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

1. Authority citation for part 4 continues to read as follows:

Authority: 41 U.S.C. 351, *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; and 5 U.S.C. 301.

2. In § 4.181, paragraph (b)(1) is proposed to be revised to read as follows:

* * * * *

(b) *Contract Work Hours and Safety Standards Act.* (1) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332) applies generally to Government contracts, including services contracts in excess of $100,000, which may require or involve the employment of laborers and mechanics. Guards, watchmen, and many other classes of service employees are laborers or mechanics within the meaning of such Act. However, employees rendering only professional services, seamen, and as a general rule those whose work is only clerical or supervisory or nonmanual in nature, are not deemed laborers or mechanics for purposes of the Act. The wages of every laborer and mechanic for performance of work on such contracts must include compensation at a rate not less than 1½ times the employee's basic rate of pay for all hours worked in any workweek in excess of 40. Exemptions are provided for certain transportation and communications contracts, contracts for the purchase of supplies ordinarily available in the open market, and work, required to be done in accordance with the provisions of the Walsh-Healey Act.

* * * * *

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

3. The authority citation for part 5 continues to read as follows:

Authority: 40 U.S.C. 276a–176a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; and the statutes listed in section 5.1(a) of this part.

4. In § 5.5, paragraph (b) is proposed to be revised to read as follows:

§ 5.5 Contract provisions and related matters.

* * * * *

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

* * * * *

§ 5.15 [Amended]

5. In § 5.15, paragraph (b) is proposed to be amended by removing paragraphs (b)(1) and (2), and by redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(1), (2), and (3), respectively.

Title 41—Public Contracting and Property Management

CHAPTER 50—PUBLIC CONTRACTS, DEPARTMENT OF LABOR

PART 50–201—GENERAL REGULATIONS

6. The authority citation for part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40.

7. Sections 50–201.1 and 50–201.2 are proposed to be redesignated as §§ 50.201.3 and 50–201.4, respectively, and paragraph (a) of the clause in § 50–201.3, as newly redesignated, is proposed to be removed, and paragraphs (b) through (j) are proposed to be redesignated as paragraphs (a) through (i), respectively, and the title of the clause is proposed to be amended to read as follows:

REPRESENTATIONS AND STIPULATIONS PURSUANT TO PUBLIC LAW 846, 74TH CONGRESS, AS AMENDED

§ 50–201.101 [Removed]

§ 50–201.102 through 50–201.106 [Redesignated as §§ 50–201.101 through 50–201.105]

8. Section 50–201.101 is proposed to be removed, and §§ 50–201.102 through 50–201.106 are proposed to be redesignated as §§ 50–201.101 through 50–201.105, respectively.

§ 50–201.604 [Removed]

9. Section 50–201.604 is proposed to be removed.

PART 50–206—THE WALSH-HEALEY PUBLIC CONTRACTS ACT INTERPRETATIONS

10. The authority citation for part 50–206 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038, 41 U.S.C. 38, Secretary of Labor's Order No. 16–75, 40 FR 55913, and Employment Standards Order 2–76, 41 FR 9016.

§§ 50–206.1 and 50–206.2 [Redesignated as 50–201.1 and 50–201.2]

§§ 50–206.3 and 50–206.50 through 50–206.56 [Removed]

11. In part 50–206, §§ 50–206.1 and 50–206.2 are proposed to be redesignated as §§ 50–201.1 and 50.201.2 in part 50–201, respectively, and the remainder of part 50–206 is proposed to be removed.

[FR Doc. 95–22139 Filed 9–6–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established an Indian Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Indian gas valuation under its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA.

This notice establishes meeting times and location for October and November 1995.

DATES: The Committee will have meetings on the dates and the times shown below:

Tuesday, October 17, 1995—9:30 a.m. to 5 p.m.
Wednesday, October 18, 1995—8 a.m. to 5 p.m.
Thursday, October 19, 1995—8 a.m. to 5 p.m.
Tuesday, November 7, 1995—9:30 a.m. to 5 p.m.
Wednesday, November 8, 1995—8 a.m. to 5 p.m.
Thursday, November 9, 1995—8 a.m. to 5 p.m.

ADDRESSES: These meetings will be held in the building 85 auditorium, Denver Federal Center, located at West 6th Avenue and Kipling Streets, Lakewood, Colorado.

Written statements may be submitted to Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, Colorado, 80225–0165, telephone number (303) 231–3899, fax number (303) 231–3194.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days after each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: August 31, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–22204 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA13

Proposed Amendment to the Bank Secrecy Act Regulations—Requirement to Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN") is proposing rules for the centralized filing with it of reports of suspicious transactions under the Bank Secrecy Act. The proposal is a key to the creation of a new method for the reporting, on a uniform "Suspicious Activity Report," of suspicious transactions and known or suspected criminal violations by depository institutions; related rules have been or will be issued by the five federal financial supervisory agencies that examine and regulate the safety and soundness of depository institutions. The new centralized reporting system will eliminate the need for burdensome filing of multiple copies of reports with various federal regulatory and law enforcement agencies and will ensure more effective use of the information reported to such agencies.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before October 10, 1995.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, *Attention:* NPRM—Suspicious Transaction Reporting.

Submission of Comments: An original and four copies of any comment must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

Inspection of Comments: Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the Treasury Library, which is located in room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment at the Treasury Library by telephoning (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Charles Klingman, Office of Financial Institutions Policy, FinCEN, at (703) 905–3920, or Joseph M. Myers, Attorney-Advisor, Office of Legal Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document proposes to add a new section 103.21 to 31 CFR Part 103 to require banks and other depository institutions [1] to report to the Department of the Treasury any suspicious transaction relevant to a possible violation of law or regulation. The amendments are proposed by FinCEN, to implement the authority granted to the Secretary of the Treasury by 31 U.S.C. 5318(g), in coordination with the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), the Office of Thrift Supervision (the "OTS"), and the National Credit Union Administration (the "NCUA").

The proposed regulation creates a single coordinated process for the reporting of suspicious transactions under the Bank Secrecy Act and known or suspected criminal violations involving such institutions under the regulations of the regulatory agencies. The new process represents a fundamental change in the manner in which potential violations and suspicious activities are reported by banks and other depository institutions to the federal government.

II. Background

A. Statutory Provisions

The Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The authority to require reporting of suspicious transactions was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act ("Annunzio-Wylie"), Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the "Money Laundering Suppression Act"), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, to require designation of a single government recipient for reports of suspicious transactions.

The provisions of 31 U.S.C. 5318(g) deal with the reporting of suspicious transactions by financial institutions subject to the Bank Secrecy Act and the protection from liability to customers of persons who make such reports. Subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

> A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that neither a financial institution, nor any director, officer, employee, or agent

> That makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority . . . shall . . . be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, "to the extent practicable and appropriate," to designate "a single officer or agency of the United States to whom such reports shall be made." This designation is not to preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency "under any other applicable provision of law." 31 U.S.C. 5318(g)(4)(C). The designated agency is in turn responsible for referring any report of a suspicious transaction to "any appropriate law enforcement agency." *Id.*, at subsection (g)(4)(B).

B. Coordinated Process for Reporting Suspicious Transactions

At present, banks report transactions that indicate the existence of "known or suspected violations of federal law" by filing multiple copies of criminal referral forms with their respective primary federal financial regulator and with federal law enforcement agencies (including in most cases the Federal Bureau of Investigation, the United States Secret Service, and the Criminal Investigation Division of the Internal Revenue Service). The referral forms (each promulgated by a different regulator, under independent but parallel authority) are not uniform, and the requirement for multiple filings imposes a considerable administrative burden on filers. In the absence of a central repository, law enforcement and regulatory agencies—receiving different forms from different filers in different regions of the country—struggle to analyze and correlate the filings and to coordinate investigations.

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[1] References to "bank" include not only commercial banks, but also thrift institutions, credit unions, and other types of depository institutions. See 31 CFR 103.11(b) (defining "bank" for purposes of 31 CFR Part 103).

At the same time, banks (and other financial institutions) are required under the Bank Secrecy Act to file a Currency Transaction Report (or "CTR") to report transactions in currency of more than $10,000. The CTR form includes a box that can be checked to indicate that the currency transaction is "suspicious."[2] The box on the CTR may also be used to report suspicious currency transactions in amounts less than $10,000. In practice, some financial institutions have also used the CTR form to report non-currency transactions that they believed to be "suspicious" but did not rise to the level of a known or suspected violation of law. Still other financial institutions reported such transactions by telephone to local offices of federal law enforcement or regulatory agencies. In many cases, financial institutions that were uncertain what to do naturally and commendably filed all possibly applicable reports.

As also discussed in proposed regulations issued in connection with the creation of the unified reporting system by the Office of the Comptroller of the Currency, 60 FR 34,476 (July 3, 1995), and the Board of Governors of the Federal Reserve System, 60 FR 34,481 (July 3, 1995), the current criminal referral system is cumbersome and burdensome, for both regulators and depository institutions. Moreover, it does not maximize the amount of usable information available to law enforcement officials and bank regulators. Therefore, beginning in 1991, the regulatory agencies began working on a project to improve the criminal referral process, with the goal of creating a single form and placing all referrals in an automated information system, managed on their behalf by FinCEN, to which all regulators and FinCEN would have access. The purpose of that project, begun under the auspices of the inter-agency Bank Fraud Working Group, was to assure that information generated by referrals of banking crimes would be uniformly available both as a basis for regulatory decisions and for analysis of the effectiveness of the reporting process and banking crime enforcement efforts.

A year later, Annunzio-Wylie vested broad suspicious transaction reporting authority in the Department of the Treasury. Soon thereafter, a "Money Laundering Review Task Force," made up of enforcement and regulatory officials, was established in the Office of the then-Assistant Secretary (Enforcement) to examine the effectiveness of Treasury's anti-money laundering policies. The Task Force's analysis emphasized that identification and reporting of suspicious activity can and should be one of law enforcement's most effective tools against money laundering, so long as the reporting is not burdensome and reflects as much guidance about money laundering transactions and methods as government can provide. The work of the Task Force resulted in a consensus at Treasury that a reasoned implementation of Treasury's expanded suspicious transaction reporting authority (together with the accompanying "know your customer" rule) would increase the effectiveness of counter-money laundering efforts and permit significant reduction in mechanical currency transaction reporting requirements.

The single integrated system of which this proposed rule is a part thus reflects (i) the effect on the pre-existing criminal referral process of the statutory grant of central authority to Treasury, under the Bank Secrecy Act, to require reporting of all suspicious transactions (not merely transactions in currency or its equivalents) involving financial institutions, (ii) the mutual desire of Treasury and the financial regulators to simplify and reduce the burdensomeness of the reporting process, and (iii) the centrality of suspicious transaction reporting to Treasury counter-money laundering policy.

The central feature of the integrated reporting system is the creation of a single reporting form, filing point, and information system for all reports of suspicious activity made by depository institutions. The single form standardizes filing requirements and facilitates the creation of a single, automated data base containing information from all filings. The single filing point not only eliminates the need for multiple copies but also permits magnetic filing of reports by most institutions capable of and accustomed to making such filings with the Internal Revenue Service. (In a related development, as explained more fully below, the requirement that supporting documentation be filed with the report has been eliminated.) Finally, the single data base will permit rapid dissemination to appropriate law enforcement agencies of reports within their jurisdiction, more thorough analysis and tracking of those reports, and, in time, the provision to the financial communities of information about trends and patterns gleaned from the information reported.

Each agency involved has issued or shortly will issue a proposed rule requiring reporting under its respective authority. It is anticipated that those proposed rules will be conformed to one another in their final form and that they will be identical with Treasury's suspicious transaction reporting rules. Thus a financial institution will file a suspicious activity report in satisfaction of both the rules of FinCEN and the rules of the applicable banking regulator or regulators.

The selection of a single term—Suspicious Activity Report ("SAR")—for the new report reflects the overlap and consolidation of the two reporting requirements. There will be a significant group of activities that are required to be reported both under the authority of 31 U.S.C. 5318(g) and under the financial regulatory agencies own administrative requirements. A single filing, however, will suffice to comply with all requirements.

C. Importance of Suspicious Transaction Reporting in Treasury's Anti-Money Laundering Program

The Congressional mandate to require reporting of suspicious transactions recognizes two basic points that have increasingly become central to Treasury's anti-money laundering and anti-financial crime programs. First, it is to financial institutions that money launderers must go. Second, the officials of those institutions are more likely than government officials to have a sense as to what transactions appear to lack commercial justification or otherwise cannot be explained as falling within the usual methods of legitimate commerce. Money laundering transactions are often designed to appear legitimate in order to avoid detection. Under these circumstances, the creation of a meaningful system for detection and prevention of money laundering is impossible without the cooperation of financial institutions.

The provisions of Annunzio-Wylie and the Money Laundering Suppression Act recognize that the traditional reliance of Treasury counter-money laundering programs on the reporting of currency transactions between financial institutions and their customers and the transportation of currency and certain monetary instruments into or out of the United States is neither adequate nor

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[2] The revised and simplified CTR that goes into effect on October 1, 1995 eliminates the box in anticipation of the adoption of the Suspicious Activity Report for reporting of, *inter alia*, suspicious currency transactions. An advance copy of the revised CTR was issued by FinCEN in early May 1995. *See* "FinCENnews", May 10, 1995.

cost effective. The change in emphasis from routine reporting of all currency transactions above a certain amount to reporting of information most likely to be of use to law enforcement officials and financial regulators is a key component of the flexible and cost-efficient compliance system required to prevent the use of the nation's financial system for illegal purposes.

The placement of illegally-derived currency into the financial system and the smuggling of such currency out of the country remain two of the most serious issues facing financial law enforcement efforts in the United States and around the world. But banks and other depository institutions, in cooperation with law enforcement agencies and federal and state banking regulators, have responded in many positive ways to the challenges posed by money laundering. It is now far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed and far easier to identify and isolate those institutions and officials still willing to assist or ignore money launderers.

Moreover, the placement of currency into the financial system is at most only the first stage in the money laundering process. While many currency transactions are *not* indicative of money laundering or other violations of law, many non-currency transactions *can* indicate illicit activity, especially in light of the breadth of the statutes that make money laundering itself a crime. *See* 18 U.S.C. 1956 and 1957.

No system for the reporting of suspicious transactions can be effective unless information flows *from* as well as *to* the government. Thus, Treasury recognizes its responsibility to issue and update guidelines about patterns of suspicious activity.

The reporting of suspicious transactions is also a key to the emerging international consensus on the prevention of money laundering. One of the central recommendations in the Report of the Financial Action Task Force of the G–7 nations (the United States, The United Kingdom, Germany, France, Italy, Japan, and Canada) is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be permitted or required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Report (April 19, 1990), Section III(B)(3) (Recommendation 16). The European Community's *Directive on prevention of the use of the financial system for the purpose of money laundering* calls for member states to

> Ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering . . . by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States*, OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[3]

D. Suspicious Transaction Reporting by Financial Institutions Other Than Banks

31 U.S.C. 5318(g) authorizes the Treasury to require the reporting of suspicious transactions by all financial institutions, and extends to financial institutions other than banks. FinCEN intends to extend the obligation to report suspicious transactions to such other institutions in the near future. However, this proposed rule applies only to reporting of suspicious transactions by banks and other depository institutions.

III. Specific Provisions

A. 103.11(qq) FinCEN

FinCEN is specifically defined for the first time in the Bank Secrecy Act regulations, because FinCEN is being designated by the Secretary of the Treasury as the central recipient of SARs filed pursuant to 31 U.S.C. 5318.

B. 103.11(r) Transaction

The definition of "transaction in currency" in the Bank Secrecy Act regulations has been changed to a definition of "transaction." The definition conforms to the definitions in 18 U.S.C. 1956 used when Congress criminalized money laundering in 1986.[4] This definition of transaction is broad enough to cover all activity that will be reported on an SAR.

Treasury does not believe that the change varies the substance of the requirement to report currency transactions under 31 CFR 103.22, other than in the case of deposits of cash in safe deposit boxes, and the change is not intended to make any other modifications in that requirement. Treasury would be interested in comments concerning the safe deposit box issue and other instances in which financial institution personnel believe that application of the new definition, required for implementation of the suspicious transaction reporting rule, would unintentionally alter the separate currency transaction reporting requirement.

C. 103.20 Determination by the Secretary

Section 103.21 is redesignated as section 103.20 in order to make room in Subpart B, "Reports Required To Be Made," for the suspicious transaction reporting requirement in this proposed rule.

D. 103.21 Reports of Suspicious Transactions

New section 103.21 contains the rules setting forth the obligation of banks to file reports of suspicious transactions. Paragraph (a) contains the general statement of the obligation to file, and a general definition of the term "suspicious transaction." The obligation extends only to transactions conducted or attempted by, at, through, or otherwise involving, the bank; however, it is important to recognize that transactions are reportable under this rule and 31 U.S.C. 5318(g) whether or not they involve currency.

The proposed rule designates three classes of transactions as requiring reporting. The first class, described in proposed paragraph (a)(2)(i), includes transaction involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class, described in proposed paragraph (a)(2)(ii), involves transactions designed to evade the requirements of the Bank Secrecy Act. The third class, described in proposed paragraph (a)(2)(iii), involves transactions that appear to have no business purpose or vary so substantially from normal commercial activities or activities appropriate for the particular customer or class of customer as to have no reasonable explanation.

Of course, determinations as to whether a report is required must be based on all the facts and circumstances relating to the transaction and bank customer in question. Different fact patterns will require different types of judgments. In some cases, the facts of the transaction may clearly indicate the need to report. For example, continued payments or withdrawals of currency in amounts each beneath the currency transaction reporting threshold applicable under 31 CFR 103.22, or multiple exchanges of small denominations of currency into large denominations of currency, can indicate that a customer is involved in suspicious activity. Similarly, the fact that a customer refuses to provide information necessary for the bank to make reports or keep records required by this Part or other regulations, provides information that a bank determines to be false, or seeks to change or cancel the transaction after such person is informed of reporting requirements relevant to the transaction or of the bank's intent to file reports with respect to the transaction, would all indicate that an SAR should be filed.

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[3] The OAS reporting requirement is linked to the provision of the Model Regulations that institutions "shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose." OAS Model Regulation, Article 13, section 1.

[4] *See* Pub. L. 99–570, Title XIII, 1352(a), 100 Stat. 3207–18 (Oct. 27, 1986).

In other situations a more involved judgment may need to be made whether a transaction is suspicious within the meaning of the rule. Transactions that raise the need for such judgments may include, for example, (i) funds transfers, payments or withdrawals that are not commensurate with the stated business or other activity of the person conducting the transaction or on whose behalf the transaction is conducted; (ii) transmission or receipt of funds transfers without normal identifying information or in a manner that indicates an attempt to disguise or hide the country of origin or destination or the identity of the customer sending the funds or of the beneficiary to whom the funds are sent; or (iii) repeated use of an account as a temporary resting place for funds from multiple sources without a clear business purpose therefor. The judgments involved will also extent to whether the facts and circumstances and the institution's knowledge of its customer provide a reasonable explanation for the transaction that removes it from the suspicious category.

The means of commerce and the techniques of money launderers are continually evolving, and there is no way to provide an exhaustive list of suspicious transactions. For these reasons, Treasury ultimately must rely on creation of a working partnership that enables the financial community to apply its knowledge of both its customers and of the developments in financial commerce to identify and report suspicious activity. At the same time, Treasury intends to provide meaningful guidance to the banking community concerning the particular circumstances and types of behavior that Treasury believes indicate suspicious activity.

31 U.S.C. 5318(g)(1) authorizes Treasury to require suspicious transaction reporting not only by financial institutions but by "any director, officer, employee, or agent of any financial institution." This proposed rule addresses reporting by banks, but it is not intended to reduce the obligations of bank employees or agents, within the context of a bank's reporting and Bank Secrecy Act compliance obligations, but simply to avoid at this time creating an obligation on the part of bank employees and agents independent of those general obligations. It is anticipated that a forthcoming notice of proposed rulemaking on anti-money laundering compliance programs will contain additional guidance on this matter.

Paragraph (b) sets forth the filing procedures to be followed by banks making reports of suspicious transactions. Reports are to be made within 30 days after the bank becomes aware of the suspicious transaction by completing an SAR and filing it in a central location, to be determined by FinCEN. Supporting documentation is to be collected and maintained separately by the bank, and made available to law enforcement, as necessary. Special provision is made for situations requiring immediate attention, in which case banks are to telephone the appropriate law enforcement authority in addition to filing an SAR. These filing procedures represent a significant improvement over the procedures currently followed by banks filing criminal referral forms. There is no requirement to file multiple copies of forms with multiple agencies, and no requirement to file supporting documentation with the SAR itself.

Paragraph (c) continues in effect the longstanding exception from the obligation to file in the case of a robbery or burglary that is otherwise reported to appropriate law enforcement authorities. Treasury and the financial regulators recognize that bank robbery and burglary require the immediate attention of the appropriate police authorities, and are not the types of crimes about which this regulation is directly concerned.

Paragraph (d) states the obligation of filing banks to maintain copies of SARs and the original related documentation for a period of ten years from the date of filing. As indicated above, supporting documentation is to be made available to FinCEN and appropriate law enforcement authorities on request.

Paragraph (e) incorporates the terms of 31 U.S.C. 5318 (g)(2) and (g)(3). This paragraph thus specifically prohibits those filing SARs from making any disclosure, except to authorized law enforcement and regulatory agencies, about either the reports themselves, the information contained therein, or the supporting documentation. This paragraph thus also restates the broad protection from liability for making reports of suspicious transactions, and for failures to disclose the fact of such reporting, contained in the statute. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because Treasury recognizes the importance of these statutory provisions to the overall effort to encourage meaningful reports of suspicious transactions, they are described in the regulation in order to remind compliance officers and others of their existence.

Finally, paragraph (f) notes that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule shall constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations, which may subject non-complying banks to enforcement action. The paragraph also notes that compliance with the obligation to report suspicious transactions will have no direct bearing on a bank's potential exposure under the criminal provisions of Title 18 of the U.S. Code. The "safe harbor" provisions of 31 U.S.C. 5318(g) do not protect against criminal prosecutions.

IV. Comments

FinCEN invites public comment on all aspects of this proposal. FinCEN is particularly interested in, and specifically requests that financial institutions comment on, the following issues.

1. Consolidating information reported on the existing criminal referral form (CRF) with that reported on suspicious currency transaction reports was done to eliminate confusion and avoid duplicate reporting. Currently, in the absence of specific guidelines, each financial institution has developed internal and specific thresholds and procedures for reporting different types of activity on each form. In this proposed rule, Treasury has attempted to describe instances where, and circumstances in which, a financial institution would determine a transaction to be suspicious and file a report. However, no regulation could possibly cover all instances of potential suspicious activity. Conversely, a regulation should not be crafted so broadly as to provide no parameters or guidelines to follow. Treasury needs to know if the terms set forth in this proposed regulation are clear, specific, and sufficient as a basis for financial institutions to determine when activity is suspicious. If not, Treasury requests specific, detailed suggestions for

substitute language that should be considered.

2. In addition, over 100 predicate offenses may serve as the basis for a criminal money laundering charge under 18 U.S.C. 1956. The instructions for the SAR, as well as the proposed notices issued by the regulatory agencies, provide specific thresholds for reporting particular types of violations. Treasury is interested in the industry's position as to whether similar types of thresholds should be imposed for reporting Bank Secrecy Act and money laundering violations.

3. Finally, Treasury understands that, after filing a report on a particular customer, a financial institution may be confronted with a decision as to whether to terminate its relationship with that customer. Treasury believes that unless instructed by an authorized official, this is a decision which must be made by the financial institution. However, Treasury is interested in working with the industry to develop procedures which could help frame such decisions.

The comment period for this rule is 30 days. Although the comment period is shorter than that which would normally be employed, many of the terms reflected in this rule are also contained in the rules already proposed by the financial regulators. FinCEN will have access to those comments, and it is believed that on that basis the short comment period is justified, in light of the desire of the agencies involved to commence the operation of the less burdensome single form reporting system on October 1, 1995.

V. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant financial impact on a substantial number of small depository institutions.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to OMB, Paperwork Reduction Project, Washington, DC 20503, with copies to FinCEN, Office of Financial Institutions Policy, 2070 Chain Bridge Road, Suite 200, Vienna, Virginia 22182.

VII. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendment

For the reasons set forth above in the preamble, 31 CFR Part 103 is proposed to be amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. In § 103.11, paragraph (r) is revised and paragraph (qq) is added to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(r) *Transaction.* Transaction means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

(qq) *FinCEN.* FinCEN means the Financial Crimes Enforcement Network, an office within the Office of the Under Secretary (Enforcement) of the Department of the Treasury.

3. Section 103.21 is redesignated as § 103.20.

4. New § 103.21 is added to read as follows:

§ 103.21 Reports of suspicious transactions.

(a) *General.* (1) Every bank shall file with the Treasury Department, as required by this § 103.21, a report of any suspicious transaction relevant to a possible violation of law or regulation.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through, or otherwise involves, the bank, and

(i) The bank knows, suspects, or has reason to suspect that the transaction involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under federal law;

(ii) The bank knows, suspects, or has reason to suspect that the transaction is designed to evade any requirements of this Part or of any other regulations promulgated under the Bank Secrecy Act; or

(iii) The transaction or its details appear to have no business purpose, the transaction varies from the normal methods of financial commerce, or the transaction is not the sort in which the particular customer or class of customer would normally be expected to engage, and, in each case, the bank knows of no reasonable explanation for the transaction.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing, in accordance with the instructions, a Suspicious Activity Report ("SAR"), and collecting and maintaining supporting documentation related information, in accordance with this rule.

(2) *Where to file.* The SAR shall be filed in a central location, to be determined by FinCEN.

(3) *When to file.* A bank is required to file each SAR not later than 30 calendar days after the first date on which the bank becomes aware of the facts constituting the transaction to which the report relates. If no suspect is identified on the date of detection of the incident triggering the filing, a bank may delay

filing an SAR for an additional 30 calendar days, but in no case shall reporting be delayed more than 60 calendar days after the date of the transaction. In situations involving violations that require immediate attention, such as when a reportable violation is ongoing, the bank shall immediately notify by telephone the appropriate law enforcement authority in addition to filing an SAR.

(c) *Exception.* A bank is not required to file a suspicious transaction report for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) *Retention of records.* A bank shall maintain a copy of any SAR filed and the original of any related documentation for a period of ten years from the date of filing the SAR, unless the bank is informed by FinCEN in writing that the bank may discard the materials sooner. Supporting documentation shall be identified, segregated, and treated as filed with the SAR. A bank shall make all supporting documentation available to FinCEN and any appropriate law enforcement agencies upon request.

(e) *Confidentiality of reports; limitation of liability.* No financial institution, nor any director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this Part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose an SAR, the information contained in an SAR or any information contained in the documentation supporting an SAR, except where such disclosure is requested by a law enforcement agency, shall refuse to produce the SAR or such other information. *See* 31 U.S.C. 5318(g)(2). A bank, and any director, officer, employee, or agent of such bank, that make a report pursuant to this § 103.21 shall be protected from liability for any disclosure contained, for failure to disclosure the fact of such report, or both, to the extent provided by 31 U.S.C. section 5318(g)(3).

(f) *Compliance.* Compliance with these rules shall be audited by the Department of the Treasury or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this rule shall be a violation of the reporting rules of the Bank Secrecy Act and of 31 CFR Part 103. Such failure may also violate provisions of Titles 12 and 15 of the Code of Federal Regulations. Whether or not a bank satisfies the requirements of this reporting rule has no direct bearing on the obligations or possible liabilities of such bank or its directors, officers, employees, or agents, under provisions of Title 18 of the United States Code.

Dated: August 30, 1995.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 95–22223 Filed 9–6–95; 8:45 am]

BILLING CODE 4820-03-P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Advisory Committee

AGENCY: National Park Service.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act (5 U.S.C., Appendix), that a meeting of the Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Advisory Committee will be held on Thursday and Friday, September 14 and 15, 1995.

The Committee members will meet at 9 a.m. at the Sheraton Eastham, Route 6, Eastham, MA for the first of three, two-day meetings which will be held for the following reasons:

September 14, 1995—Thursday

1. Welcoming Remarks by National Park Service.
2. Discussion of Proposed Agenda.
3. Presentation by each member of their group's perspective.
4. Adoption of Organizational Protocols.
5. Public Participation Period.
6. Adjournment.

September 15, 1995—Friday

1. Data Presentation by NPS on Off-Road Vehicles.
2. Distribution of Proposed Draft Rule.
3. Review and Discussion of Draft Rule.
4. Public Participation Period.
5. Discussion of Agenda for Next Meeting.
6. Set Date for Third Set of two-day Sessions.
7. Adjournment.

The meeting is open to the public. It is expected that 75 persons will be able to attend the meeting in addition to the Committee members.

Due to an unintentional mis-routing of this notice while it was being processed within the National Park Service, the notice could not be published at least 15 days prior to the meeting dates. The National Park Service regrets this error, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of committee members who have adjusted their schedules to accommodate the proposed meeting dates, and the high level of anticipation by all parties who will be affected by the outcome of the committee's actions. Since the proposed meeting dates have received widespread publicity in area news media and among the parties most affected, the National Park Service believes that the public interest will not be adversely affected by the less-than-15-days advance notice in the **Federal Register**.

The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to advise the National Park Service with regard to proposed rulemaking governing off-road vehicle use at Cape Cod National Seashore.

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Such presentations may be made to the Committee during the Public Participation Period the day of the meeting, or in writing to the Park Superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Bernard C. Fagan,

Acting Chief, Office of Policy, National Park Service.

[FR Doc. 95–22368 Filed 9–6–95; 8:45 am]

BILLING CODE 4310-70-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–142; RM–8685]

Radio Broadcasting Services; Zapata, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Arturo Lopez requesting the allotment of Channel 228A to Zapata, Texas. Channel 228A can be allotted to Zapata, Texas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 228A at Zapata are 26–54–30 and 99–16–18. Mexican concurrence will be requested for this proposal.

DATES: Comments must be filed on or before October 23, 1995, and reply comments on or before November 7, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arturo Lopez, 1401 West Main Street, Rio Grande City, Texas 78582 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–142, adopted August 23, 1995, and released August 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22093 Filed 9–6–95; 8:45 am]

BILLING CODE 6712-01-F

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47 CFR Part 73

[MM Docket No. 95–141; RM–8642]

Radio Broadcasting Services; Frederiksted, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jose J. Arzuaga proposing the allotment of Channel 298B1 at Frederiksted, Virgin Islands, as the community's third local FM transmission service. An engineering analysis has determined that Channel 298B1 can be allotted to Frederiksted in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 298B1 at Frederiksted North Latitude 17–42–48 and West Longitude 64–53–00.

DATES: Comments must be filed on or before October 23, 1995 and reply comments on or before November 7, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James L. Oyster, Esq., Route 1, Box 203A, Castleton, Virginia 22716 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–141, adopted August 24, 1995, and released August 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex *parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22092 Filed 9–6–95; 8:45 am]

BILLING CODE 6712-01-F

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47 CFR Part 73

[MM Docket No. 93–48; DA 95–1870]

Children's Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission granted a request filed jointly by the National Broadcasting Company, Inc., CBS Inc. and Capital Cities/ABC, Inc., for a 30-day extension of time to file comments and reply comments in this proceeding. The initial deadline for filing comments was June 16, 1995, and the initial deadline for filing reply comments was July 17, 1995. By *Order* released June 1, 1995, the time for filing comments was extended to September 14, 1995, and the time for filing reply comments was extended to October 16, 1995. The Commission determined that an additional extension of time was warranted in order to facilitate the development of a full and complete record.

DATES: Comments are now due on October 16, 1995, and reply comments are now due on November 15, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Mass Media Bureau (202) 776–1653.

SUPPLEMENTARY INFORMATION:

Adopted: August 25, 1995.

Released: August 25, 1995.

By the Chief, Mass Media Bureau.

Comment Date: October 16, 1995.

Reply Comment Date: November 15, 1995.

1. On April 5, 1995, the Commission adopted a *Notice of Proposed Rule in Making* MM Docket 93–48 (60 FR 20586, April 26, 1995) seeking comment on proposals to amend the Commission's rules implementing the Children's Television Act of 1990. Comments on the *Notice* were initially due on June 16, 1995, and reply comments were initially due on July 17, 1995. By *Order* released June 1, 1995 (60 FR 30506, June 9, 1995), the time for filing comments in this proceeding was extended to September 14, 1995, and the time for filing reply comments was extended to October 16, 1995.

2. On August 24, 1995, the National Broadcasting Company, Inc., CBS Inc. and Capital Cities/ABC, Inc. ("Petitioners") filed a joint request for an additional extension of time to file comments and reply comments in this proceeding, until October 16, 1995, and

November 16, 1995, respectively. Petitioners argue that additional time is needed to review a study being prepared by the National Association of Broadcasters relevant to the issues raised by the Commission in the *Notice*.

3. As set forth in Section 1.46 of the Commission's Rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. Moreover, a 90-day extension of time has already been granted in this proceeding. However, in view of the circumstances outlined by Petitioners, we believe that an additional 30-day extension of time to file comments and reply comments is warranted in order to facilitate the development of a full and complete record.

4. Accordingly, it is ordered that the Request for Extension of Time filed in MM Docket No. 93–48 by the National Broadcasting Company, Inc., CBS Inc., and Capital Cities/ABC, Inc. is Granted.

5. It is further ordered that the time for filing comments in this proceeding is extended to October 16, 1995, and the time for filing reply comments is extended to November 15, 1995.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 0.204(b), 0.283 and 1.45 of the Commission's Rules, 47 CFR 0.204(b), 0.283 and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95–22094 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 89–552, GN Docket No. 93–252, PP Docket No. 93–253; FCC 95–312]

Wireless Services; Private Land Mobile Radio

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission adopts a *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking,* which proposes a new framework for the operation and licensing of the 220–222 MHz band (220 MHz service). (The summary of the *Second Memorandum Opinion and Order* portion of this decision may be found elsewhere in this edition of the **Federal Register**.) This action is taken as part of the Commission's continuing implementation of the new regulatory framework for mobile radio services enacted by Congress in Section 6002(b) the Omnibus Budget Reconciliation Act of 1993. The primary goal of this proceeding is to establish a flexible regulatory framework that will allow for more efficient licensing of the 220–222 MHz band, eliminate unnecessary regulatory burdens on both existing and future licensees, and enhance the competitive potential of the 220 MHz service in the mobile services marketplace.

DATES: Comments are due on or before September 27, 1995, and reply comments are due on or before October 12, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Martin Liebman, Wireless Telecommunications Bureau (202) 418–1310, or Rhonda Lien, Wireless Telecommunications Bureau (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Third Notice of Proposed Rule Making* (Third NPRM) portion of the Commission's *Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order* in PR Docket No. 89–552, GN Docket No. 93–252, PP Docket No. 93–253; FCC 95–312, adopted July 28, 1995, and released August 28, 1995. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Third Notice of Proposed Rulemaking Portion of Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking

1. The Commission, in this *Third NPRM,* proposes a new framework for the operation and licensing of the 220–222 MHz band (220 MHz service).[1] This action is taken as part of our continuing implementation of the new regulatory framework for mobile radio services enacted by Congress in Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (Budget Act), which amended Sections 3(n) and 332 of the Communications Act of 1934.[2] The Commission began the implementation of the provisions of the Budget Act with the adoption of a Notice of Proposed Rule Making in GN Docket 93–252 (58 FR 53169, October 14, 1993. In that proceeding, the Commission adopted rules governing the commercial and private mobile radio services, including the 220 MHz service, consistent with the policy of regulatory parity as reflected in the Congressional revisions to Section 332 of the Act. The proceeding the Commission is initiating with this *Third NPRM* is an outgrowth of the CMRS *Third Report and Order* (59 FR 59945, November 21, 1994), which deferred a comprehensive examination of the 220 MHz service to a separate rulemaking proceeding.

2. The Commission's primary goal in this proceeding is to establish a flexible regulatory framework that will allow for more efficient licensing of the 220–222 MHz band, eliminate unnecessary regulatory burdens on both existing and future licenses, and enhance the competitive potential of the 220 MHz service in the mobile services marketplace. In addition, the Commission seeks to ensure that licenses are granted to those who value the spectrum most highly and will maximize its use to provide the best quality and variety of service to consumers. The Commission believes its proposals strike a fair balance between the interests of current licensees and licensees to be authorized under the new rules. The adoption of the rules set forth in this *Third NPRM* will enable the continued development of the 220 MHz radio service and the implementation of a variety of new communications services to meet the future needs of the American public.

Proposals Contained in the Third NPRM

3. The *Third NPRM* invites comment on a number of issues relevant to operation and licensing of the 220 MHz service. In the category of nationwide licensing, the Commission seeks comment on whether to resolve pending mutually exclusive, non-commercial, nationwide applications by lottery, comparative hearing, or to return the applications and adopt a new licensing scheme for the 30 channels associated with the applications. If the Commission returns the applications, it makes the following proposals for Phase II nationwide licensing of these channels: (1) To license the 30 channels on a nationwide basis to all applicants—*i.e.,* applicants that intend to use the channels to offer commercial services as well as applicants that intend to use the channels for their private internal use; and (2) To assign these channels, in the form of three 10-channel authorizations, through competitive bidding pursuant to our tentative conclusion that the principal use of the spectrum will be for the provision of for-profit, subscriber-based services.

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[1] The Commission will refer herein to any licenses granted to this new framework as Phase II licenses. Licenses granted under the current rules are referred to herein as Phase 1 licenses.

[2] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993).

4. Also, the *Third NPRM* makes the following proposals for Phase II, non-nationwide licensing of the 220 MHz band. It first proposes to assign 60 channels in the 172 geographic areas defined as Economic Areas by the Bureau of Economic Analysis, Department of Commerce ("EA licenses") and 65 channels in the geographic areas defined by five "220 MHz Regions" ("Regional licenses") in the following manner:

Non-Nationwide 220 MHz, Proposed Channel Allocation Plan

EA Block	Channels
Channels 61–70	10
Channels 71–80	10
Channels 91–100	10
Channels 101–110	10
Channels 121–125	5
Channels 126–130	5
Channels 131–135	5
Channels 136–140	5
Total	60
Regional Block	
Channels 171–180	10
Channels 186–200	15
Channels 1–10	10
Channels 11–20	10
Channels 31–50	20
Total	65

5. The *Third NPRM* also proposes: (1) To allow all applicants to apply for these channels—*i.e.,* applicants that intend to use the channels for private, internal use as well as applicants that intend to use the channels to offer commercial services; (2) To assign these channels through competitive bidding based on our tentative conclusion that the principal use of the spectrum will be for the provision of for-profit, subscriber-based services; (3) To permit EA and Regional licensees to operate stations anywhere within their geographic borders, provided that their transmissions do not exceed a predicted field strength of 38 dBuV/m at their border and they protect Phase I licensees in accordance with existing co-channel separation criteria; (4) To provide a 10-year license term for EA and Regional licensees and require EA and Regional licensees to meet five and ten-year construction benchmarks; (5) To eliminate existing channel use restrictions, *i.e.,* the "data-only" and "non-trunked" channel designations; (6) To continue to assign, on a single-station basis, 10 channels exclusively to applicants eligible in the Public Safety Radio Service (the "Public Safety Pool") and five channels exclusively to applicants eligible in the Emergency Medical Radio Service (the "EMRS Pool"); and (7) To continue to assign channels in the Public Safety and EMRS Pools on a first-come, first-served basis and resolve mutually exclusive applications by random selection procedures.

6. The *Third NPRM* next considers technical and operational matters and proposes modifications to the Commission's existing rules with regard to fixed operations, paging operations, and the use of 5 kHz-wide channels. Specifically, the Commission proposes to allow fixed and paging operations for all 220 MHz licensees without the requirement that such use be on an ancillary basis to land mobile operations, and to allow licensees, under certain conditions, to aggregate any and all of their authorized channels to operate on channels wider than 5 kHz.

7. The *Third NPRM* also proposes to adopt definitions for initial applications, amended applications, and applications to modify authorizations in the following manner: (1) To define initial applications for 220 MHz licenses as applications for the nationwide, EA, and Regional licenses to be assigned in Phase II; (2) To adopt the same procedures for amending applications and modifying authorizations for Phase II 220 MHz licenses that are established for other Part 90 CMRS services; (3) To require non-grandfathered CMRS 220 MHz licensees to obtain STAs under the same restrictions applicable to other non-grandfathered Part 90 CMRS licensees; and (4) To extend to all 220 MHz licensees the Part 22 renewal standards adopted in the CMRS *Third Report and Order* for part 90 CMRS services.

8. The *Third NPRM* also addresses a Petition for Rulemaking filed by Fairfield Industries, Inc. (Fairfield), and adopts proposals similar to those requested by Fairfield for secondary, fixed operation in the 220–222 MHz band.

9. Finally, the *Third NPRM* proposes competitive bidding procedures to resolve mutually exclusive initial applications filed in Phase II.

Administrative Matters

10. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 27, 1995, and reply comments on or before October 12, 1995. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

11. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Act Statement

I. Reason for Action

The action is taken to propose a new framework for the licensing and operation of the 220 MHz service, and as part of the Commission's continuing implementation of Congress revisions to Sections 3(n) and 332 of the Communications Act in the Omnibus Budget Reconciliation Act of 1993.

II. Objectives of this Action

The Commission's primary goal is to establish a flexible regulatory scheme that will allow for more efficient licensing, eliminate unnecessary regulatory burdens on both existing and future licensees, and enhance the competitive potential 220 MHz services in the mobile marketplace.

III. Legal Basis

The proposed action is authorized under Sections 4(i), 303(r), 309(j) and 332 of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected

There are approximately 3,800 non-nationwide licensees in the 220 MHz band. The potential impact of the proposals contained in this Notice on small business is hard to predict without the benefit of comment, and the actual impact will depend on the final action taken. The intention of this action is to provide licensees with more flexibility, with a minimum increased burden. Thus, the Commission, in drafting these proposals tried to balance the needs of all licensees and potential licensees. For example, to afford licensees increased flexibility to meet consumer demand and to increase their ability to compete with other CMRS licensees, the Commission has proposed that 220 MHz licensees be permitted to operate paging and fixed systems on a primary basis and to aggregate their 5 kHz channels to operate on channels of wider bandwidth.

V. Reporting, Recordkeeping and Other Compliance Requirements

The Commission is proposing to generally decrease the burden on licensees. For example, rather than being required to obtain separate authorization for each of their base stations, non-nationwide, Phase II licensees will be permitted to operate over Commission-defined geographic areas (EAs and 220 MHz Regions) and will be allowed to construct and operate base stations anywhere within their authorized area as long as signals from those stations do not exceed a prescribed level. On the other hand, Phase II licensees who desire to operate less than 120 kilometers from Phase I co-channel stations will be required to submit a technical analysis demonstrating at least 10 dB protection to the 38 dbuV/m contour of such licensees, and all Phase II licensees will be required to submit maps and other supporting documents to demonstrate compliance with interim and final construction benchmarks.

VI. Federal Rules which Overlap, Duplicate, or Conflict with these Proposals

None.

VII. Significant Alternatives

The Commission believes that the proposals contained in this decision represent the best balance of providing licensees with the most flexibility and the least regulatory burden possible, while ensuring that license are granted to those who value the spectrum most high and will maximize its use to provide the best quality and variety of service to consumers.

•12. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

13. Authority for issuance of this *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking* is contained in Sections 4(i), 303(r), 309(j), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 303(r), 309(j), and 332.

Ordering Clause

14. Accordingly, IT IS ORDERED that the Petition for Rulemaking in RM–8506 filed by Fairfield Industries, Inc. IS GRANTED to the extent indicated herein.

List of Subjects in 47 CFR Part 90

Business and industry, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22296 Filed 9–6–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 89–552, GN Docket No. 93–252; FCC 95–381]

Wireless Services; Private Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission adopts a *Fouth Notice of Proposed Rulemaking* in this proceeding, seeking comment on proposed rules that will allow existing, *i.e.,* Phase I licensees in the 220 MHz service to seek minor modifications of their licenses to construct and operate base stations at currently unauthorized locations. This action is taken to enable Phase I 220 MHz licensees to provide service within the geographic area they could serve pursuant to their initial applications, while accommodating those licensees that need to relocate their base stations for technical or other reasons.

DATES: Comments are due on or before September 13, 1995, and reply comments are due on or before September 18, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Martin Liebman, Wireless Telecommunications Bureau (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Fourth Notice of Proposed Rule Making* in PR Docket No. 89–552, and GN Docket No. 93–252, FCC 95–381, adopted August 28, 1995, and released August 29, 1995. The complete text of this *Fourth Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

Synopsis of Notice of Proposed Rule Making

1. In this *Fourth Notice of Proposed Rulemaking (220 MHz Fourth Notice),* the Commission seeks comment on proposed rules that will allow existing, *i.e.,* Phase I licensees in the 220 MHz service to seek minor modifications of their licenses to construct and operate base stations at currently unauthorized locations. The Commission proposes to define a minor modification for the 220 MHz service as any change in an existing licensee's authorized base station location such that, at the new station location, transmissions do not exceed a predicted field strength of 38 dBuV/m at the edge of the licensee's existing service area, and the Commission proposes to define the edge of a licensee's existing service area as the predicted 38 dBuV/m field strength contour resulting from transmissions from the licensee's currently authorized base station. The Commission's goal in proposing this licensing procedure is to enable Phase I 220 MHz licensees to provide service within the geographic area they could serve pursuant to their initial applications, while accommodating those licensees that need to relocate their base stations for technical or other reasons.

2. The Commission believes that most licensees will be able to locate alternative sites relatively close to their authorized site so that they will not be required to reduce their power or antenna height significantly. However, to enable 220 MHz licensees who desire to move greater distances from their authorized site to serve as much of their original area as possible, the Commission proposes to allow all licensees modifying their authorizations

to construct an unlimited number of additional, or "fill-in" base stations within their existing service area contour so long as the transmissions from these sites to not exceed the predicted field strength of 38 dBuV/m at the edge of their existing service area contour.

3. The Commission also proposes to allow those 220 MHz licensees that are situated in areas of the nation where signal levels could be affected by unusual terrain to move to alternate locations and operate at transmitter powers and antenna heights greater than would be allowed using Figure 10 of Section 73.699 of the Commission's Rules if they provide a technical showing, using established terrain models, to justify the use of higher powers and antenna heights.

4. The Commission modification proposal, if adopted, will permit 220 MHz licensees to obtain permanent authorization to operate at alternative locations. A number of 220 MHz licensees, however, have obtained Special Temporary Authority (STA) to allow them to operate stations temporarily at such locations. The Commission believes that those licensees who have obtained STAs and have constructed and are operating stations will be accommodated by its modification proposal. The Commission therefore proposes that licensees with STAs who seek permanent authorization at their STA site be required to comply with the Commission's modification proposal.

5. The Commission intends to adopt a Report and Order in this proceeding as soon as possible to set forth procedures for minor modification of 220 MHz licenses. Shortly thereafter, the Commission will open a filing window to allow applicants to file modification applications. Licensees will then obtain an authorization to construct a base station at their desired location and under their new operating parameters. The Commission proposes that this authorization, which replaces the licensees's existing authorization, will be the licensee's "service area authorization" and that thereafter the base station constructed under the service area authorization will be the licensee's "primary base station."

6. Although the Commission intends to grant applications for service area authorizations within a short time of their receipt, it is concerned that licensees obtaining such authorizations may not have sufficient time to construct their primary base stations by the December 31, 1995, construction and operation deadline. Therefore, for all licensees obtaining service area authorizations, the Commission will extend the deadline for the construction and operation of their primary base stations to a date 4 months after the grant of their service area authorization. Licensees not granted service area authorizations must still construct their currently authorized base stations and begin operation by December 31, 1995. Licensees obtaining service area authorizations may construct fill-in stations, but will be required to notify the Commission of their construction. The authority to operate fill-in stations will then be granted through minor modification of the licensee's service area authorization.

7. Finally, with the requirement, under our modification proposal, that the predicted field strength of transmissions from a licensee's primary base station not exceed 38 dBuV/m at the licensee's existing service area contour, the Commission is concerned that licensees obtaining service area authorizations could place into operation a primary base station of minimal power simply to meet their construction requirement. To prevent this from occurring, the Commission proposes to require licensees seeking service area authorizations to operate their primary base station at a power and antenna height that will result in the transmission of a predicted signal of 38 dBuV/m or more over at least 50 percent of the licensee's existing service area.

8. The Commission will require parties commenting on this proposal to file comments within 15 days of the release of this item and to file reply comments 5 days thereafter.

Administrative Matters

9. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 13, 1995, and reply comments on or before September 18, 1995. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554.

10. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules, *See generally* 47 CFR 1.1202, 1.1203, and 1,1206(a).

Initial Regulatory Flexibility Act Statement

I. Reason for Action

The action is taken to complete the implementation of the statutory and regulatory revisions applicable to the 220 MHz service by Congress in the Omnibus Budget Reconciliation Act of 1993 and by the Commission in several orders adopted in GN Docket No. 93–252 pertaining to a framework for the acceptance of initial or modification applications for the 220 MHz service.

II. Objectives of this Action

The Commission's primary goal is to establish a flexible regulatory scheme that will allow for more efficient licensing, eliminate unnecessary regulatory burdens on existing Phase I, non-nationwide licensees, and enhance the competitive potential of 220 MHz services in the mobile marketplace.

III. Legal Basis

The proposed action is authorized under Sections 4(i), 303(r), and 332 of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected

There are approximately 3,800 non-nationwide licensees authorized under Phase I licensing of the 220 MHz band. The potential impact of the proposals contained in this decision on small businesses is hard to predict without the benefit of comment, and the actual impact will depend on the final action taken. The intention of this action is to provide these Phase I non-nationwide licensees, which are authorized under site-specific licenses, with more flexibility with a minimum increased burden. The Commission, in drafting these proposals, has tried to balance the needs of all licensees and potential licensees. For example, to afford Phase I non-nationwide licensees increased flexibility to meet consumer demand and the ability to compete with future 220 MHz licensees and other CMRS licensees, licensees would be permitted to relocate a base station or construct fill-in stations anywhere within a service area to be defined by their existing 38 dBuV/m service contour, as long as the transmissions from the new sites do not extend beyond that contour.

As an example of proposed rules decreasing restrictions on these Phase I licensees, a licensee seeking to relocate within the newly defined service area would file a modification application to replace its existing site-specific authorization with a service area authorization that permits relocation on a permissive basis through minor modification of the service area authorization. Moreover, the existing deadline of December 31, 1995, imposed on Phase I licenses for the construction and operation of primary base stations will be extended to a date four months after the grant of the proposed service area authorization.

V. Reporting, Recordkeeping and Other Compliance Requirements

The Commission is proposing to generally decrease the burden on non-nationwide, Phase I licensees. A licensee would be able to replace its existing site-specific authority with an authorization that permits it to relocate authorized base stations or add fill-in base stations within an area to be defined by its existing 38 dBuV/m service contour through minor modification procedures. However, the licensee would be required to file a modification application during a filing window to be established upon the adoption of final rules in order to obtain the authorization to operate within the proposed service area. Also, the licensee would be required to notify the Commission of the construction of any fill-in stations.

VI. Federal Rules which Overlap, Duplicate, or Conflict with these Proposals

None.

VII. Significant Alternatives

The Commission believes that the modification licensing procedure proposed for non-nationwide Phase I licensees represents the best balance of providing them with the most flexibility and the least regulatory burden possible. It enables licensees to exchange their site-specific license for a broad, service-area license that permits them to move sites freely within the transmission area of the existing license through modification applications, while ensuring that transmissions do not extend to new geographic areas so as to require competing applications under initial application procedures.

11. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this *Fourth Notice of Proposed Rulemaking*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Fourth Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

12. Authority for issuance of this *Fourth Notice of Proposed Rulemaking* is contained in Sections 4(i), 303r, and 332 of the Communications Act of 1934 as amended; 47 U.S.C. 154(i), 303(r), and 332.

List of Subjects in 47 CFR Part 90

Business and industry, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22294 Filed 9–6–95; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding to list Silene verecunda ssp. verecunda (Mission Dolores Campion)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to list *Silene verecunda* ssp. *verecunda* (Mission Dolores Campion) pursuant to the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial data, the Service finds that listing this species is not warranted at this time. The known populations of *S. verecunda* ssp. *verecunda* are unlikely to be affected by toxic waste site studies and clean-up related to military base closure actions. The population status and vulnerability of *S. verecunda* ssp. *verecunda* to threats is unknown for the central part of its range including Montara Mountain in San Mateo County to Rancho del Oso in Santa Cruz County, California. The recent discovery of *S. verecunda* ssp. *verecunda* in chaparral and mixed evergreen plant communities indicates that this species may be more widely distributed and have broader habitat affinities than previously believed.

DATES: The finding announced in this document was made on July 24, 1995. Comments and materials regarding this petition finding may be submitted to the Field Supervisor at the address listed below until further notice.

ADDRESSES: Data, information, comments, or questions concerning this finding may be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. The petition finding, supporting data, comments, and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, staff biologist, at the above address or telephone 916/979–2120.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that after receiving a petition that is found to present substantial information indicating that the petitioned action may be warranted, the Service make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Such 12-month findings are to be published promptly in the **Federal Register**.

On May 29, 1991, the Service received a petition dated May 28, 1991, from Mr. Brian O'Neill, General Superintendent of the Golden Gate National Recreation Area (GGNRA), National Park Service, San Francisco, California, to emergency list five candidate plants including *Silene verecunda* ssp. *verecunda* (Mission Dolores Campion). The petition cited threats to this species that would result from military base closure activities on the Presidio in San Francisco, California. These activities included hazardous or toxic waste site studies and clean-up, and increased traffic and recreational activities. A 90-day finding was made by the Service that the petition presented substantial information indicating that the

requested action may be warranted. The 90-day finding was published in the **Federal Register** on August 19, 1992 (57 FR 37513). A status review was continued for this category 2 candidate species (58 FR 51186; September 30, 1993).

Silene verecunda ssp. *verecunda* is a perennial herb in the pink family (Caryophyllaceae) that grows from 10 to 70 centimeters (4 to 28 inches) tall. Each flower has five pink to rose colored notched petals, and the purplish sepals are united into a tube, making the flower look bell-shaped.

Silene verecunda ssp. *verecunda* previously was reported to occupy open grassy areas in sandy to rocky soils in coastal strand, coastal prairie, and coastal scrub plant communities ranging from San Francisco south to Santa Cruz County (Young 1979). Recently, *S. verecunda* ssp. *verecunda* has been reported to occur in chaparral and mixed evergreen forest plant communities (Skinner and Pavlik 1994; Lion Baumgartner, Thomas Reid Associates, *in litt.* 1994). Historical populations from Lake Merced and Mission Dolores in San Francisco have been extirpated due to commercial and residential development. Currently there are about 2,000 known individuals of *S. verecunda* ssp. *verecunda* found primarily on private or non-Federal land, including about 700 plants on San Bruno Mountain (Lion Baumgartner, *in litt.* 1994). Three populations, totaling seven hundred plants according to a 1993 census, occur on the Presidio in San Francisco. It is not known how much potential habitat; or numbers of individuals may occur from Montara Mountain in San Mateo County to Rancho Del Oso in Santa Cruz County.

The northern range of *Silene verecunda* ssp. *verecunda* overlaps a rapidly urbanizing portion of the San Francisco Bay area. Most of the habitat within the northern part of the range of *S. verecunda* ssp. *verecunda* has been disturbed or eliminated except for areas on San Bruno Mountain that are protected for the conservation of the endangered mission blue butterfly (*Icaricia icarioides missionensis*). Implementation of the San Bruno Mountain Habitat Conservation Plan (HCP) developed under sections 10(a)(1)(B) and 10(a)(2)(A) of the Act has conserved habitat for the butterfly, and indirectly benefits *S. verecunda* ssp. *verecunda* by maintaining the habitat in which both species occur. On federally owned land on the Presidio in San Francisco, increased human access and activities potentially threatened three populations of *S. verecunda* ssp. *verecunda*. One of these populations has been fenced to restrict access, and the other two populations are expected to be protected by fencing when ownership of the Presidio is transferred from the Department of Army to the National Park Service. Invasive non-native vegetation is encroaching on some populations of *S. verecunda* ssp. *verecunda*. On the Presidio, however, there are ongoing efforts to remove the invasive species. There is no quantitative trend data to assess the extent to which *S. verecunda* ssp. *verecunda* has or will be impacted by non-native plants. Therefore, such threat to this species is not known to be immediate or imminent. The known populations of *S. verecunda* ssp. *verecunda* that occur on the Presidio are unlikely to be affected by toxic waste site studies and clean-up. This species does not occur near the area where these activities most likely would occur (Peter Lacivita, U.S. Army Corps of Engineers, pers. comm. 1993). Neither disease, predation, or overutilization are known to be a threat to *S. verecunda* ssp. *verecunda*.

Stochastic (random) and natural events can cause population fluctuations or even population extirpations but are not usually a concern until the number of individuals or geographic distribution become vulnerably small. A combination of remnant small populations, a narrow range, and restricted habitat, could make all or a significant part of any population susceptible to destruction from stochastic natural events, such as flood, drought, disease, or other natural occurrences (Shaffer 1981, Primack 1993) such as genetics and reproductive success.

No demographic studies exist to indicate that the reproductive success of *Silene verecunda* ssp. *verecunda* is threatened, or is vulnerable to adverse impacts from random events. There is no evidence at this time to suggest that reproductive capacity is a factor posing a threat to the survival of the species. Low seed production in perennial plants is not necessarily a trait that makes a species vulnerable to extinction. Huenneke (1986) indicates that low genetic diversity in plants is rarely seen as a threat to their survival. Intrinsically, most rare plants are likely to have genetic systems enabling them to cope with the genetic consequences of rarity.

The population status of *S. verecunda* ssp. *verecunda* and its vulnerability to threats in the central part of its range (i.e., Montara Mountain in San Mateo County to Rancho del Oso in Santa Cruz County) are not known at this time. Moreover, the discovery of *S. verecunda* ssp. *verecunda* in chaparral and mixed evergreen plant communities is an indication that this taxon may be more widely distributed and have broader habitat affinities than previously believed. Chaparral covers an extensive portion of the Coast Ranges in the San Francisco Bay area. Consequently, the unknown overall status of the taxon makes any assumptions about vulnerability of *S. verecunda* ssp. *verecunda* to current threats unsupportable at this time.

The Service has reviewed the petition, other available literature and information, and consulted with biologists and researchers familiar with *Silene verecunda* ssp. *verecunda*. On the basis of the best scientific and commercial information available regarding *S. verecunda* ssp. *verecunda*, the Service finds that the petitioned action is not warranted at this time because there is insufficient information about the taxon's status and its vulnerability to threats. The Service will continue to maintain *S. verecunda* ssp. *verecunda* as a species of concern. The Service encourages all interested parties to investigate the population status of *S. verecunda* ssp. *verecunda* and its vulnerability to threats, with particular reference to the southern and central portions of its range and populations occurring in chaparral and mixed evergreen plant communities. If additional data [illegible] available in the future, the Service may reassess the listing priority for this species or the need for listing.

Author

The primary author of this document is Kirsten Tarp (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: July 24, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–22172 Filed 9–6–95; 8:45 am]

BILLING CODE 4310-55-P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List the Mohave Ground Squirrel as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the 90-day finding on a petition to list the Mohave ground squirrel (*Spermophilus mohavensis*) under the Endangered Species Act (Act) of 1973, as amended. The Service finds that the petition did not present substantial information indicating that the petitioned action may be warranted.

DATES: The finding announced in this document was made on August 4, 1995. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address listed below.

ADDRESSES: Information, data, comments, or questions concerning the status of the petitioned species should be submitted to the Field Supervisor, Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003. The complete file for this finding is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kate Symonds at the Ventura Field Office (see **ADDRESSES** section) or at 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to commence a review of the status of the species.

On December 13, 1993, the Service received a petition dated December 6, 1993, from Dr. Glenn R. Stewart of California Polytechnic State University, Pomona, California, requesting the Service to list the Mohave ground squirrel (*Spermophilus mohavensis*) as a threatened species. The species is a category 2 candidate (November 15, 1994; 59 FR 58988), which was first included in this category on September 18, 1985. Category 2 includes taxa for which sufficient information on biological vulnerability and threats is not currently available indicating that listing as endangered or threatened is warranted.

The Mohave ground squirrel ranges throughout the northwest portion of the Mojave Desert of California. The species spends about 7 months a year, usually from August to February, estivating in burrows. Timing of estivation is presumably related to sufficient accumulation of fat reserves (Bartholomew and Hudson 1960, Ingles 1965, Tomich 1982). Entrance into estivation may begin from June to September. In years with abundant food supplies, adults may enter estivation in late June and juveniles may enter in late July. Adults are more likely than juveniles to enter estivation early because adults do not need to gain as much weight as juveniles to survive the long estivation underground (Gustafson 1993). Males tend to enter estivation earlier than females because they do not need to put energy into milk production and feeding of young before they store fat (Leitner and Leitner 1992). Mating occurs soon after emergence from estivation and a litter of 4–6 young are born after a gestation period of 28–30 days. Mohave ground squirrels are generally less active when air temperatures drop below 88 °F or exceed 98.1 °F (Bartholomew and Hudson 1960). The diet consists of seeds, flowers, forbs, shrubs, grasses, fungi, and arthropods, although the species has demonstrated flexibility in utilizing food items as annual availabilities change (Recht 1977, Leitner and Leitner 1992).

Mohave ground squirrels have been found in all vegetation associations and up to 5,600 feet in elevation within its 7,600 square mile range (Hoyt 1972, Gustafson 1993). Gustafson (1993) reported that Mohave ground squirrels have been found in Holland's (1986) communities of Mohave wash scrub, desert sink scrub, and desert greasewood scrub. Nonetheless, the species appears to prefer large alluvial-filled valleys and deep, fine-to-medium textured soils vegetated with creosote bush scrub, shadscale scrub, or alkali sink scrub wherever desert pavement is absent (Aardahl and Roush 1985). The Mohave ground squirrel rarely is found in mountainous or rocky terrain, or dry lake beds, although exceptions have been recorded (Zembal and Gall 1980, Wessman 1977).

Excluding mountainous or rocky areas, and dry lake beds, the Mohave ground squirrel habitat is distributed over an estimated 7,200 square miles (Gustafson 1993). This figure excludes those plant communities and soil types in which the species has never been found. Without precise habitat information, it is difficult to assess the severity of habitat loss. In addition, insufficient data are available on specific habitat requirements to precisely delineate the acreage of Mohave ground squirrel habitat. Specific information on habitat requirements would also facilitate the rating of areas based on habitat quality.

In making a finding as to whether a petition presents substantial commercial and scientific information to indicate the petitioned action may be warranted, the Service must consider whether the petition is accompanied by a detailed narrative justification [50 CFR § 424.14(b)(2)(ii)]. The regulations require the Service to "consider whether such petition * * * [p]rovides information regarding the status of the species over all or a significant portion of its range" [50 CFR § 424.14(b)(2)(iii)], including current distributional and threat information. Furthermore, the Service is required to "consider whether such petition * * * [i]s accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps" [50 CFR § 424.14(b)(2)(iv)].

In assessing the substantiality of this petition, the Service reviewed several published and unpublished studies, agency documents, literature syntheses, commercial data, and field sighting records. The Service also interviewed researchers and other persons familiar with the species' biology. In addition, the petitioner was contacted to provide additional supporting information, which he was unable to provide. On the basis of the best scientific and commercial information available, the Service finds that the petition did not provide reliable data, recent or otherwise, throughout the species' range regarding specific habitat requirements, and population abundance and trends. Moreover, the petition did not include any data linking some activities (e.g., rural development, off-road vehicle use, Fort Irwin training) with long-term absence of the ground squirrel or on the extent to which these activities may be degrading habitat. Also, the petitioner failed to provide convincing data that grazing by domestic sheep and cattle adversely affects the habitat of the Mohave ground squirrel. Finally, the petition did not include any information to assess the extent and configuration of habitat loss due to fragmentation to determine whether this threatens the species. Therefore, given the uncertainties associated with urban growth and other threats in the Mojave

Desert, and the lack of credible studies on the biological status of the species, the Service finds that the petition did not present substantial information indicating that the listing of the Mohave ground squirrel may be warranted. Given these data uncertainties, the Mohave ground squirrel will remain a species of concern to the Service.

References Cited

A complete list of references used in the preparation of this finding is available, upon request, from the Ventura Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Kate Symonds, Ventura Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–22171 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Mono Lake Brine Shrimp as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Mono Lake brine shrimp (*Artemia monica*) under the Endangered Species Act of 1973, as amended (Act). This aquatic crustacean occurs only in Mono Lake, Mono County, California. A recent decision by the California State Water Resources Control Board to revise the water rights of the City of Los Angeles in the Mono Basin has apparently removed the threat of habitat degradation to the Mono Lake brine shrimp. As a result of the protections offered by this decision, the Service finds that the Mono Lake brine shrimp does not meet the definition of an endangered or a threatened species at the present time.

DATES: The finding announced in this document was made on July 24, 1995. Comments from all interested parties will be accepted until further notice.

ADDRESSES: Data, information, comments, or questions concerning this petition should be sent to the U.S. Fish and Wildlife Service, Field Supervisor, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Cathy R. Brown (see **ADDRESSES** section) telephone 805–644–1766; facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

In a petition dated June 16, 1987, and received by the Service on June 19, 1987, the Service was requested by Dr. Dennis D. Murphy, of the Center for Conservation Biology, Stanford University, to list the Mono Lake brine shrimp as an endangered species. The petition cited threats to this species that would result from increasing salinity caused by continued water diversions from the streams tributary to Mono Lake. The Service's 90-day finding, that substantial information existed indicating that the petitioned action may be warranted, was published in the **Federal Register** on August 19, 1988 (53 FR 31721). A status review was initiated at that time. A timely finding on the subject petition was precluded by higher priority listing actions until the present time.

The Mono Lake brine shrimp is a species of fairy shrimp found only in Mono Lake, Mono County, located east of the Sierra Nevada Mountain Range in northeastern California. It is a branchiopod crustacean in the order Anostraca whose members have stalked compound eyes. It is characterized by an elongated body trunk of 20 or more segments, and the absence of a carapace.

Mono Lake may be the second oldest continuously existing lake in North America with an estimated age ranging from 500,000 to one million years (Vorster 1985). It is a terminal lake, that is, a closed system with no outlet flows. Lake level is maintained by five principal inflowing streams that originate in the Sierra Nevada mountain range from meltwater of the previous winter's snowpack. When the net inflow is less than the net evaporation, salinity concentrations increase as the lake's surface elevation declines. Beginning in 1941, the City of Los Angeles Department of Water and Power (Los Angeles) diverted water from four of the five streams flowing into Mono Lake for its municipal and domestic use. The water exports have caused a decline of 14 meters (m) (45 feet (ft)) in lake surface elevation and a 100 percent increase in lake salinity (Dana and Lenz 1986). Mono Lake surface elevation was about 1,956 m (6,417 ft) above mean sea level and the water salinity was about 48 grams per liter (parts per thousand (ppt)) before water exports began in 1941 (Vorster 1985, Botkin *et al.* 1988). Currently, the lake surface elevation is about 1,943 m (6,375 ft) with a salinity of 100 ppt (M. Davis, Mono Lake Committee, pers. comm., 1994).

High salinities deleteriously affect Mono Lake brine shrimp reproduction. In addition, female age at reproduction increases significantly, and the number of ovoviviparous broods per year and brood size decrease significantly as salinity increases from 76 ppt to 118 ppt (Dana and Lenz 1986). Some of these negative effects on adult Mono Lake brine shrimp fecundity occur at present lake salinities. At the current salinity of about 100 ppt, about 50 percent of Mono Lake brine shrimp cysts do not hatch (Dana and Lenz 1986).

In September 1994, the California State Water Resources Control Board issued Water Rights Decision #1631, revising Los Angeles's water rights to provide greater protection to public trust values of Mono Lake. The State Board's decision establishes an average lake level of 1,948 m (6,392 ft), with an estimated salinity of 69 ppt. These conditions are expected to be beneficial to brine shrimp reproduction and should provide adequate protection for the long-term viability of the Mono Lake brine shrimp.

On the basis of the best available scientific and commercial information, the Service finds that listing the Mono Lake brine shrimp is not warranted because the taxon is not in danger of extinction or likely to become so in the foreseeable future. The Service will reclassify the Mono Lake brine shrimp as a category 3C candidate for listing and will continue to monitor its status. Category 3C candidates are those taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat. If information becomes available indicating that the

Mono Lake brine shrimp is threatened with extinction, the Service would reevaluate this decision.

References

A complete list of references used in the preparation of this finding is available upon request from the Ventura Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Cathy R. Brown, Ventura Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: July 24, 1995.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–22173 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[I.D. 063095A]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Extension of Allocations to Inshore and Offshore Components

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendments; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 38 to the Fishery Management Plan (FMP) for the Groundfish Fishery to the Bering Sea and Aleutian Islands Area and Amendment 40 of the FMP for Groundfish of the Gulf of Alaska. These amendments would extend through December 31, 1998, the authority to allocate pollock and Pacific cod for processing by the inshore and offshore components of the industry and continue the Western Alaska Community Development Quota (CDQ) program. This action is necessary to continue for an additional 3-year period the allocations of pollock and Pacific cod for processing by inshore and offshore components, as well as the CDQ program. The Council intends these amendments to promote management and conservation of groundfish, enhance stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries. Comments are requested from the public. Copies of the proposed FMP amendments may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the proposed amendments must be submitted by October 30,1995.

ADDRESSES: Comments on the proposed FMP amendments must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802–1668, Attention: Lori J. Gravel. Copies of the proposed amendments and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for the amendments may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon reviewing the plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the amendment.

Proposed Amendments 38 and 40 would extend through 1998 the provisions of Amendment 18 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 23 to the FMP for Groundfish of the Gulf of Alaska. Amendments 18 and 23 are scheduled to expire at the end of 1995. The Council voted unanimously at its June 1995 meeting to extend the provisions of the expiring Amendments 18 and 23 through December 31, 1998, under Amendments 38 and 40. The only significant change would be to move the western border of the Catcher Vessel Operational Area 30 minutes longitude to the east, from 168°00' to 167°30' W. long. The intent of the Council is to promote management and conservation of groundfish, enhance stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries during the period of time the Council is developing its comprehensive plan for improving the Alaska groundfish and crab fisheries.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendments. The proposed regulations are scheduled to be published within 15 days of this document's publication.

Dated: August 30, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22081 Filed 8–31–95; 4:34 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 173
Thursday, September 7, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–067–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Northrup King Company seeking a determination of nonregulated status for a corn line designated as Bt11 that has been genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn line presents a plant pest risk.

DATES: Written comments must be received on or before November 6, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–067–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–067–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnologist, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On July 14, 1995, APHIS received a petition (APHIS Petition No. 95–195–01p) from the Northrup King Company (Northrup King) of Golden Valley, MN, requesting a determination of nonregulated status under 7 CFR part 340 for an insect resistant corn line designated as Bt11. The Northrup King petition states that the subject corn line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, corn line Bt11 has been genetically engineered to contain the *cryIA(b)* gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk), which expresses a delta-endotoxin insecticidal protein known to be effective against certain lepidopteran insects, including European corn borer. Corn line Bt11 also contains the *pat* gene isolated from *Streptomyces viridochromogenes* that encodes a phosphinothricin-N-acetyl transferase (PAT) enzyme. When introduced into a plant cell, the PAT enzyme inactivates the herbicide glufosinate and is used in corn line Bt11 as a selective marker. Expression of the introduced genes is controlled by the 35S promoter derived from the plant pathogen cauliflower mosaic virus and a NOS terminator derived from the nopaline synthase gene of *Agrobacterium tumefaciens.*

Corn line Bt11 is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogenic sources. The subject corn line has been evaluated in field trials conducted since 1992 under permits or notifications issued by APHIS, and since 1993, field trials have also been conducted under an experimental use permit issued by the Environmental Protection Agency (EPA). In the process of reviewing the applications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

This genetically engineered corn line is also currently subject to regulation by other agencies. The EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation.

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*), pesticides added to raw agricultural commodities generally are considered to be unsafe unless a tolerance or exemption from tolerance has been established. Foods containing unsafe pesticides are deemed to be adulterated. Residue tolerances for pesticides are established by EPA under the FFDCA; the Food and Drug Administration (FDA) enforces the tolerances set by EPA.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Northrup King's corn line Bt11 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 30th day of August 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–22129 Filed 9–6–95; 8:45 am]

BILLING CODE 3410–34–P

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AL–188—Centre Livestock Market, Inc. Centre, Alabama

GA–215—Calhoun Stockyard Highway 53, Inc. Calhoun, Georgia

MS–168—S & S Sales Mantachie, Mississippi

OR–126—Mike's Livestock Auction Eagle Point, Oregon

SC–152—L & H Auction Seneca, South Carolina

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408—South Building, U.S. Department of Agriculture, Washington, DC 20250 by September 14, 1995. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 30th day of August 1995.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division.

[FR Doc. 95–22111 Filed 9–6–95; 8:45 am]

BILLING CODE 3410–KD–P

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by Section 302(a). Notice was given to the stockyard owners and to the public as required by Section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
IL–174 Reel Livestock Center, Inc., Congerville, Illinois.	July 13, 1995.
MI–149 Rosebush Sale Barn, Rosebush, Michigan.	July 27, 1995.
MS–167 Sebastopol Livestock Association, Inc., Sebastopol, Mississippi..	July 13, 1995.
NC–168 Lyman Livestock, Chinquapin, North Carolina..	August 5, 1995.
OK–211 Prague Livestock Auction LLC, Prague, Oklahoma..	August 4, 1995.
PA–157 Smoketown Quality Dairy Sales Co., Lancaster, Pennsylvania..	July 6, 1995.

Done at Washington, DC, this 30th day of August 1995.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 95–22122 Filed 9–6–95; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 1995 rating year.

FOR FURTHER INFORMATION CONTACT: Mr. George Harbison, Personnel Division, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Washington DC 20425, (202) 376–8356.

Members

—Annie Blackwell, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor;

—Donald Tendick, Deputy Executive Director, Commodity Futures Trading Commission; and

—Paula Lettice, Director, Office of Budget and Program Execution, Office of Budget and Planning, U.S. Department of State.

Dated: September 1, 1995.

Miguel A. Sapp,

Acting Solicitor.

[FR Doc. 95–22212 Filed 9–6–95; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of Elkhorn Slough (CA), Hudson River (NY), ACE Basin (SC), and Tijuana River (CA) National Estuarine Research Reserve Programs.

These evaluations will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to Reserve management. Evaluation of National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Reserve Management Plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Elkhorn Slough National Estuarine Research Reserve, California site visit will be from November 13–17, 1995. A public meeting will be held on Wednesday, November 15, 1995, at 7:00 P.M., at the Elkhorn Slough Visitor Center, 1700 Elkhorn Road, Watsonville, CA 95076.

The Hudson River National Estuarine Research Reserve, New York site visit will be from November 13–17, 1995. A public meeting will be held on Thursday, November 16, 1995, at 7:00 P.M., at the New York State Department of Environmental Conservation Region 3 Office in New Paltz, NY.

The ACE Basin National Estuarine Research Reserve, South Carolina site visit will be from November 27 to December 1, 1995. A public meeting will be held on Thursday, November 30, 1995, at 7:00 P.M., at the Edisto Island Town Hall, 2414 Murray Street, Edisto Beach, SC.

The Tijuana River National Estuarine Research Reserve, California site visit will be from December 4–8, 1995. A public meeting will be held on Wednesday, December 6, 1995, at 7:00 P.M., at the Reserve Visitors Center, 301 Caspian Way, Imperial Beach, California.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, exit. 126.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: August 30, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone.

[FR Doc. 95–22127 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 082895C]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Surf Clam and Ocean Quahog Committee, and Demersal Species Committee jointly with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder Board will hold public meetings.

DATES: The meetings will be held on September 19–21, 1995.

ADDRESSES: The meetings will be held at the Radisson Hotel Philadelphia, 500 Stevens Drive, Lester, PA; telephone: 215–521–5900.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: On September 19, the Surf Clam and Ocean Quahog Committee will meet from 10:00 a.m. until noon. The Demersal Species Committee will meet jointly with the ASMFC Summer Flounder Board from 1:00 until 5:00 p.m. On September 20, the Council will meet from 8:00 a.m. until 4:00 p.m. On September 21, the Council will meet from 8:00 a.m. until approximately noon.

The purpose of these meetings is to review the surf clam and ocean quahog overfishing definitions and confirm the 1996 quota recommendations, discuss 1996 summer flounder management, prepare comments on Amendment 7 to the New England Council's Multispecies Plan, take Council action on 1996 quota recommendations for Atlantic mackerel, squid, and butterfish, and consider other fishery management matters.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at 302–674–2331 at least 5 days prior to the meeting dates.

Dated: August 30, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22083 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 082995B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 976 (P5H)

SUMMARY: Notice is hereby given that Dr. Donald B. Siniff, University of Minnesota, 1987 Upper Buford Circle, St. Paul, MN 55108 has been issued a permit to take Antarctic seals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289).

SUPPLEMENTARY INFORMATION: On June 21, 1995, notice was published in the **Federal Register** (60 FR 32304) that a request for a scientific research permit to take Weddell seals (*Leptonychotes weddelli*), crabeater seal (*Lobodon carcinophagus*), leopard seal (*Hydrurga leptonyx*), Ross seal (*Ommatophoca rossii*), southern elephant seal, (*Mirounga leonina*), and Antarctic fur seal (*Arctocephalus gazella*) had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 29, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–22082 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–22–F

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Membership of NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of persons to serve as members of the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of these members to the NOAA PRB will be for periods of 24 months.

EFFECTIVE DATE: The effective date of service of appointees to the NOAA Performance Review Board is September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Rodney E. Markham, Senior Executive Service Program Manager, Human Resources Management Office, Office of Administration, NOAA, 1315 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0530 (ext. 195).

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the NOAA PRB (*NOAA officials unless otherwise identified*) are set forth below:

Carol Beaver: Chief, Aeronautical Charting Division, National Ocean Service
Hilda Diaz-Soltero: Science and Research Director, Northwest Region, National Marine Fisheries Service
David Evans: Senior Scientist, National Ocean Service
Nancy Foster: Deputy Assistant Administrator, National Marine Fisheries Service
Susan B. Fruchter: Counselor to the Under Secretary for Oceans and Atmosphere
Lois J. Gajdys: Chief, Management and Budget, National Weather Service
Margaret F. Hayes: Assistant General Counsel for Fisheries, Office of General Counsel
Walter J. Hussey: Director, Office of Systems Development National Environmental Satellite, Data and Information Service
David Jefferson: Chief, Information Systems Engineering Division (National Institute of Standards and Technology)
Eugenia Kalnay: Chief, Development Division, National Weather Service
Richard Kayser: Chief, Thermophysics Division, Chemical Science and Technology Laboratory (National Institute of Standards and Technology)
Katharine W. Kimball: Deputy Assistant Secretary, Office of the Assistant Secretary
Martha R. Lumpkin: Director, Central Center, Office of Administration
Ronald D. McPherson: Director, National Centers for Environmental Prediction, National Weather Service
George P. Murphy: Chief, Automation Division, National Weather Service
Ned A. Ostenso: Assistant Administrator, Office of Oceanic and Atmospheric Research
James L. Rassmussen: Director, Environmental Research Laboratories, Office of Oceanic and Atmospheric Research
P. Krishna Rao: Director, Office of Research and Applications, National Environmental Satellite, Data and Information Service
Kelly C. Sandy: Director, Western Center, Office of Administration
Alan R. Thomas: Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research
Michael F. Tillman: Science and Research Director, Southwest Region, National Marine Fisheries Service
Usha S. Varanasi: Science and Research Director, Northwest Region, National Marine Fisheries Service
John Williams: Director, Office of Technology Commercialization (National Institute of Standards and Technology)
Gregory W. Withee: Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service
Helen M. Wood: Director, Office of Satellite Data Processing and Distribution, National Environmental Satellite, Data and Information Service
Sally J. Yozell: Director, Office of Legislative Affairs
Susan F. Zevin: Deputy Assistant Administrator for Operations, National Weather Service

Dated: August 31, 1995.

Diana H. Josephson,

Deputy Under Secretary.

[FR Doc. 95–22137 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–12–P

[I.D. 081895C]

North Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will meet the week of September 25, 1995.

DATES: The meetings are scheduled as follows:

1. Advisory Panel (AP)—September 25 to September 29, 1995, 8:00 a.m. to 5:00 p.m.
2. Scientific and Statistical Committee (SSC)—September 25 to September 28, 1995, 8:00 a.m. to 5:00 p.m.
3. Council—September 27, 1995, 8:00 a.m., and expected to continue through October 2, 1995.

ADDRESSES: The AP and SSC will meet at the Quality Inn, 17001 Pacific Highway South, Seattle, WA. The Council will meet at the Radisson Hotel, adjacent to the Quality Inn.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The agenda for the Council meeting will include the following subjects:

1. Oath of office to new Council appointees and election of Chairman and Vice Chairman of the Council.
2. Reports on domestic fisheries by the Alaska Department of Fish and Game and NMFS, enforcement reports from NMFS and the U.S. Coast Guard, report on international fishery issues, and a report on the status of Steller sea lions.
3. Status report on the Sablefish and Halibut Individual Fishing Quota (IFQ) program and review of several proposed changes to the plan.
4. Observer Oversight Committee report and review of observer program fee concerns, including staff report on proposals to address Council concerns.
5. Review of discussion papers on full utilization, improved retention and harvest priority, individual bycatch quotas, and rock sole seasonal apportionment.
6. Review of the License Limitation System to clarify issues and report on the status of proposed regulations, review of a work plan for a Bering Sea/Aleutian Islands (BSAI) pollock IFQ system, and report on the status of the moratorium on groundfish and crab fisheries.
7. Review of Council operations, including annual cycle for amendment proposals.
8. Review of pollock Community Development Quota (CDQ) applications for 1996–98, receipt of a status report from the State of Alaska on adding Akutan to the CDQ eligibility list, and consider establishing a CDQ Implementation Committee.
9. Review of status of stocks for crab fisheries and set time for a joint meeting of the Council and Alaska Board of Fisheries.
10. Status report on Amendment 1 to the Scallop Fishery Management Plan; possible emergency action to open federal waters in early 1996.
11. Review and approval of initial Gulf of Alaska and Bering Sea/Aleutian Islands (BSAI) stock assessment and fishery evaluation reports for 1996, and approval of initial 1996 groundfish and bycatch specifications for public review, including vessel incentive program rate standards and discard mortality rates for halibut.
12. Initial review of amendments for grid sorting of halibut; revisions to the Pacific ocean perch rebuilding plan, overfishing definitions and crab protection closure areas; a forage fish amendment, rock sole seasonal apportionments, and inseason flexibility to move crab prohibited species catch between BSAI Zones 1 and 2; and reauthorization of BSAI cod allocation by gear type.
13. Review of proposals received for amendments to the groundfish fishery management plans. Other groundfish issues to be discussed, time permitting, include: A report on a trawl mesh experiment, a NMFS report on frameworking inseason micro-management measures, and review of a draft proposed rule to require scale weight measurements of catch in the pollock fishery.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 30, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22091 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 082495B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Northern Habitat Panel will hold a public meeting.

DATES: The meeting will be held on September 14, beginning at 10:00 a.m.

ADDRESSES: The meeting will be held at the Natural Resource Building, 1111 Washington Street, SE, Room 571, Olympia, WA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon); telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss and act on regional habitat issues which merit consideration at this time.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Amanda Bennett at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 30, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22090 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 083095D]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 974 (P368F).

SUMMARY: Notice is hereby given that Mr. James Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039, has been issued a permit to take harbor seals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Gary Barone (301/713–2289).

SUPPLEMENTARY INFORMATION: On June 21, 1995, notice was published in the **Federal Register** that an application had been filed by the above-named individual. The requested permit has been issued, under the authority of the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 29, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–22190 Filed 9–6–95; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Governor's Innovative Programs, National Nonprofit Demonstration Programs, and Disability Demonstration Programs

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (the Corporation) announces the availability of up to $3,000,000 for Governor's Innovative Programs and National Nonprofit Demonstration Programs. The Corporation also announces the availability of up to $2,000,000 for AmeriCorps* Disability Demonstration Programs. This program should demonstrate ways to recruit and integrate individuals with disabilities in all aspects of AmeriCorps* programs. Under the National Nonprofit and Disability Demonstration Programs, organizations and qualified agencies can apply for grants to operate AmeriCorps* programs. Governors may apply for grants to operate AmeriCorps* or other innovative programs that engage Americans in community service to meet critical needs. The Corporation expects to make up to 20 grants. The grant size will vary by circumstance, program scope, and need. The Corporation does not anticipate making operating grants in excess of $300,000. This program is subject to the availability of funds.

DATES: Application materials will be available beginning on September 6, 1995. Deadline for submission of applications for the Governor's Demonstration Programs is November 7, 1995. Deadline for submission of applications for National Nonprofit Demonstration Programs is October 24, 1995. Deadline for the Disability Demonstration Programs is October 31, 1995. Applications for all three programs must be received at the Corporation by 3:30 p.m. Eastern Time, on the specified due date indicated for each program.

ADDRESSES: Applications must be submitted to: Corporation for National Service, 1201 New York Avenue NW, Washington, DC. 20525, Attention: Margaret Rosenberry. Applications may not be submitted by facsimile. This notice may be requested in an alternative format for the visually impaired by calling 202–606–5000, ext. 260.

FOR FURTHER INFORMATION CONTACT: To obtain application materials, contact the Corporation in writing or via facsimile at (202) 565–2786, Attention: Margaret Rosenberry. For further information, contact Margaret Rosenberry, Director of Planning and Program Development, at (202) 606–5000, ext. 154.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. Through their service, participants have direct and demonstrable impact on the nation's education, public safety, human, and environmental needs. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. Pursuant to the National and Community Service Act of 1990, as amended, the Corporation "may undertake activities to * * * support innovative and model programs." 42 U.S.C. Sec. 12653(b).

Through these programs, the Corporation hopes to learn how it can provide more flexibility in program models and requirements without compromising program quality and without losing our emphasis on "getting things done," strengthening communities, and developing participants. In general, the Corporation is accepting applications from national nonprofits, governors and state commissions, AmeriCorps* programs, and organizations working with persons with disabilities. The programs funded under these grants should encourage innovation, expand the universe of service models, and support service programs in a variety of settings.

Period of Support

Grants are made on an annual basis. Grantees may apply for second year support under AmeriCorps* or Subtitle H if funding is available. Renewal funding is not guaranteed and will be based on quality, successful performance, and availability of funds.

Eligible Applicants

For the Governor's Innovative Programs, the state commission on national service will serve as the legal applicant, and the governor may designate other state and/or local agencies or offices as partners in the effort. Although the commission serves as the grantee, the programs may not be operated by the commission itself. Instead, the programs must be operated by appropriate state or local government agencies, and nonprofit organizations, institutions of higher education, or Indian tribes. A letter from the governor which demonstrates support for the program both financially and programmatically is required for this application.

For National Nonprofit Demonstration Programs, only national nonprofit organizations that represent networks of youth or senior citizen-serving organizations, or those that promote and provide technical assistance to volunteer programs and networks are eligible to apply. The national nonprofit organization may apply to operate a demonstration in one, two or three sites. The term "national nonprofit" means any nonprofit organization whose mission, membership, activities, or constituencies are national in scope.

Existing AmeriCorps* State grantees funded, in part or in whole, as a competitive program (rather than with funds solely from the state formula) and their operating or project sites, state commissions, AmeriCorps* National grantees and their operating or project sites, Learn & Serve America Demonstration Programs that have AmeriCorps* Members, and organizations that work with the disability community and can provide technical assistance to AmeriCorps* programs, are eligible to apply for the Disability Demonstration Programs. If an applicant is working with existing AmeriCorps* program(s), a letter from the program(s) which demonstrates support and participation is required. Those AmeriCorps* State grantees that do not know whether they are competitive or formula programs should contact their state commission. The ineligibility of AmeriCorps* State grantees funded from the state formula to apply for Disability Demonstration Programs is pursuant to 42 U.S.C. § 12581(d)(5)(B).

Program Preferences and Priorities

The Corporation is seeking demonstration programs that enhance existing programming at the state and local level, and will provide new knowledge about effective service programming and its impact on schools, communities, Members/participants and institutions. Therefore, particular emphasis will be placed on programs

that can do one or more of the following:

1. Demonstrate new ways to link private businesses, foundations, and the public sector in joint service initiatives;
2. Enhance existing efforts and forge new partnerships with volunteer and community service programs;
3. Involve AmeriCorps* in recruiting, training, and supervising volunteers who receive no stipends;
4. Demonstrate ways to recruit and include persons with disabilities in all aspects of participation as AmeriCorps* Members;
5. Join youth and adults over age 55 to serve their communities together;
6. Operate in rural areas; and/or
7. Involve school-age youth in summer and school-year service-learning activities.

The specific priorities differ for each of the three Demonstration Program categories. The Corporation encourages applicants to develop focused programs and not to design programs to meet multiple priorities. Those applying for funds under the National Nonprofit Demonstration Program must meet community needs in the following areas:

1. Public Safety—especially violence against women and community policing;
2. Early Childhood Development—especially in health, school readiness, child care, parenting and needs of children ages 0–6;
3. Teen Pregnancy Prevention; or
4. After-school and Summer Childcare.

Under Governor's Innovative Programs, applicants may choose to meet needs identified by the governor or by the state commission on national and community service. Disability Demonstration Programs must meet the priorities established by the AmeriCorps* programs with which they will work and may add independent living to service activities.

Match Requirements

There are three basic requirements concerning program funding for all Demonstration Programs.

1. The Corporation share of the total cost of the program may not exceed 80%. The applicant may choose in which specific areas of the budget the 20% match will be made.
2. Each grantee must provide for its share of the cost of carrying out a funded program through a payment in non-federal cash and in-kind, and may provide for such share through state and local sources. At least 10% of the match must be cash.
3. The recipient of a grant may speed no more than 5% of the total grant funds on administrative costs. Additional administrative costs may be covered in the match.

Overview of Application Requirements

Application requirements will be set forth in detail in the application materials. Generally, all programs must comply with all applicable OMB circulars for grant management and with federal laws and regulations, including the supplementation, nonduplication and nondisplacement provisions set forth in 45 CFR 2506.2. Nonprofit organizations must comply with the independent audit requirements of OMB Circular A–133. The Corporation will provide copies of OMB circulars to applicants that do not have access to such materials.

Each applicant must submit one original and six (6) copies of the application package. The application must include all the forms and components listed in the instructions for the application. Applications must not exceed the page limitations specified for each section. Only 10 pages of appendices will be accepted (this includes annual reports, letters of support, and any supplementary material not specifically requested in the application.) Applications must be received at the Corporation by the relevant deadline date. Facsimiles will not be accepted.

Application Review

The Corporation is looking for high quality programs that are innovative and have the potential to be replicated. Applications are evaluated through a multi-stage process that includes reviews by peers and the Corporation staff. Decisions on semi-finalists will be made by the Corporation leadership, and semi-finalists may be asked to supply additional information and an implementation plan before final decisions are made. In addition, the Corporation may bring semi-finalists in for interviews. During the peer review process, the applications will be evaluated on the criteria listed below:

(1) Program Concept and Design (40%)
(2) Organizational Capacity (30%)
(3) Innovation and Ability to Advance the Field (20%)
(4) Cost-Effectiveness (10%).

In addition to the priorities set by the Corporation, the Corporation staff will, during the staff review process, also take into consideration diversity of geographic distribution and program model diversity in making its funding recommendations.

Dated: September 1, 1995.

Terry Russell,

General Counsel, Corporation for National and Community Service.

[FR Doc. 95–22197 Filed 9–6–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, 11 September 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: August 31, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22179 Filed 9–6–95; 8:45 am]

BILLING CODE 5000-04-M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group of Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 12 September 1995.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, suite 500, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: August 31, 1995.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22180 Filed 9–6–95; 8:45 am]

BILLING CODE 5000-04-M

National Security Education Board Meeting

AGENCY: Office of the Assistant Secretary of Defense, Strategy and Requirements.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

DATE: October 30, 1995.

ADDRESS: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Edmond J. Collier, Deputy Director for External Affairs, National Security Education Program, 1101 Wilson Boulevard, suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: collier@nsep.policy.osd.mil

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: August 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22181 Filed 9–6–95; 8:45 am]

BILLING CODE 5000-04-M

Defense Advisory Committee on Women in the Services (DACOWITS)

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92–463, as amended, notice is hereby given on a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of DACOWITS is to advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATES: October 12–15 (summarized agenda follows).

ADDRESS: Crowne Plaza Hotel, 100 North First Street, Phoenix, AZ 85004, (602) 257–1525.

AGENDA: Sessions will be conducted daily and will be open to the public. The agenda will include the following:

Wednesday, October 11, 1995

Conference registration (Conference Participants)
Meeting for Military Representatives
Meeting for Liaison Officers and DACOWITS Staff
Executive Committee Meeting
Plenary Session/Social (Paid Registered Conference Participants only)

Thursday, October 12, 1995

Continental Breakfast (Paid Registered Conference Participants only)
Opening Ceremony/General Business Session (Open to Public)
Lunch (current DACOWITS members, Military Representatives, Liaison Officers and staff)
Field Trip/Installation Visit (current DACOWITS members and Senior Military Representatives only)

Friday, October 13, 1995

Continental Breakfast (Paid Registered Conference Participants only)
Subcommittee sessions (Open to Public)
Lunch (Paid Registered Conference Participants only)
Subcommittee sessions Wrap-up (Open to Public)
OSD Reception and Dinner (By Invitation only)

Saturday, October 14, 1995

Sub-Committee Members Breakfast (current DACOWITS members and Military Representatives)
Sub-Committee Brief (current DACOWITS members and Military Representatives)
Lunch (Paid Registered Conference Participants only)
Executive Committee Mark Up

Sunday, October 15, 1995

Executive Committee Breakfast
Continental Breakfast (Paid Registered Conference Participants only)
Final Committee Meeting/Military Representatives review
Closing Session (Open to Public)

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Patricia F. Kersey, USAF or LCDR Tala J. Welch, USN DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, room 3D769, Washington, DC 20301–4000; Telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the OSD Reception and Dinner and Field Trip.

(2) The Opening Session/business session, all subcommittee sessions and the closing session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 6.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral presentations by members of the public will be permitted only on Sunday, October 15, 1995, before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office 1 copy of the presentation by October 10 and make 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS and Military Women Matters to consider.

(10) Members of the public will not be permitted to enter oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to ask questions to the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

(12) Non-social agenda events that are not open to the public are for administrative matters unrelated to substantive advice provided to the Department of Defense and do not involve DACOWITS deliberations or decision-making issues before the committee.

Dated: September 1, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22178 Filed 9–6–95; 8:45 am]

BILLING CODE 5000-04-M

Department of the Army

Corps of Engineers; Patents Available for Licensing

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, is extending the deadline for proposals for licensing (U.S. and foreign patents pending) technology concerning a concrete armor unit for protecting coastal structures and shoreline embankments from erosion caused by waves and currents. The availability of this technology for licensing was initially announced in the **Federal Register** on May 11, 1995 (Volume 60, No. 91, Page 25209). The deadline for proposals is being extended to allow interested parties more time to prepare proposals for an exclusive or partially exclusive license.

DATES: Proposals for an exclusive or partially exclusive license must be submitted by November 8, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Stewart, ATTN: CEWES–FV–T, (601) 634–4113, FAX (601) 634–4180, Internet stewarp@exl.wes.army.mil, or, for technical information, Mr. C.E. Chatham, ATTN: CEWES–CW, (601) 634–2460, FAX (601) 634–3433, Internet chatham@coafsl.wes.army.mil. U.S. Army Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199. Interested parties are also invited to visit the Waterways Experiment Station to observe this technology.

SUPPLEMENTARY INFORMATION: The initial announcement of the availability of this technology for licensing (**Federal Register** of May 11, 1995 (Volume 60, No. 91, Page 25209)) contains a detailed description of this technology and a listing of the criteria which will be used in evaluating proposals.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–22101 Filed 9–6–95; 8:45 am]

BILLING CODE 3710-08-M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the Affordable Housing Advisory Board. The meeting is open to the public.

DATES: The Affordable Housing Advisory Board will hold its meeting on September 20, 1995, in Chicago, Illinois from 9 a.m. to noon and 1 to 4 p.m.

ADDRESSES: The meeting will be held at the Federal Deposit Insurance Corporation, 500 West Monroe Street, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT:

Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, N.W., Washington, D.C. 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 14(b) of the Resolution Trust Corporation Completion Act, Public Law No. 103–204, established the Affordable Housing Advisory Board to advise the Thrift Depositor Protection Oversight Board (Oversight Board) and the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) on policies and programs related to the provision of affordable housing. The Board consists of the Secretary of Housing and Urban Development (HUD) or delegate; the Chairperson of the Board of Directors of the FDIC, or delegate; the Chairperson of the Oversight Board, or delegate; four persons appointed by the Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two former members of the National Housing Advisory Board. The Board's charter was issued March 9, 1994.

Agendas

A detailed agenda will be available at the meeting. Topics to be addressed include: the merger of the RTC and FDIC affordable housing programs, financing strategies and resources, selection of affordable housing assets, expansion of the Housing Opportunity Hotline and participation of community and nonprofit organizations in the affordable housing program. The Board's chair or its Designated Federal Officer may authorize a member or members of the public to address the Board during the public forum portion of the meeting. After all reports are given and comments are received from members of the public in attendance, the Board will develop its own recommendations.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the September 20 meeting. Seating is available on a first-come first-served basis for each session of the meeting.

Dated: September 1, 1995.

Jill Nevius,

Committee Management Officer.

[FR Doc. 95–22198 Filed 9–6–95; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Hearings

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of hearings.

SUMMARY: The National Assessment Governing Board (NAGB), U.S. Department of Education, is announcing three public hearings. These hearings will be conducted as part of the Council of Chief State School Officers' contract with NAGB for the purpose of developing an assessment framework and specifications for the National Assessment of Educational Progress (NAEP) in Civics. Public and private parties and organizations with an interest in civics education and assessment are invited to present written and oral testimony to the Council.

Each hearing will focus on the first draft of a framework for the national assessment of civics education for NAEP which will be given to a national sample of students in grades 4, 8, and 12. The results of the hearings are particularly important because they will provide broad public input in developing the civics education assessment framework to be used in the planned national NAEP examination. This assessment will measure American students' progress in civics education. These hearings are being conducted pursuant to Public Law 103–382 which states, "The Board shall develop assessment objectives and specifications through a national consensus approach which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the general public."

DATES: The dates of the three public hearings have been set as follows:

- October 25, 1995 in Washington, DC.
- November 10, 1995 in Chicago, Illinois.
- November 16, 1995 in Seattle, Washington.

The first hearing is scheduled from 10:00 to 2:00 pm and will be conducted in the Hall of States in the National Guard Memorial Building in Washington, DC. The second hearing will be held in conjunction with the National Council for the Social Studies Annual Convention in Chicago, Illinois from 9:30 am to 11:30 am in the Acapulco Room of the Hyatt Regency Hotel. The third and final hearing will be held in cooperation with the meeting of the National Assessment Governing Board from 2:30 pm to 5:00 pm in the Congress Room of the Four Seasons Hotel in Seattle, Washington. Persons desiring to present oral statements at any of these hearings shall submit a notice of intent to appear, postmarked no fewer than ten days (10) prior to the scheduled meeting date. The scheduling of oral presentations cannot be guaranteed for notices of intent received less than 10 days prior to the hearing.

Notices of Intent to present oral statements shall be mailed to: Council of Chief State School Officers, One Massachusetts Avenue NW., Suite 700, Washington, DC 20001–1431, Attn: Tiffanie Lee—Public Hearings.

Individuals are encouraged to request a copy of the draft framework, prepared by the NAEP Civics Education Consensus Project committees and staff. This document, which represents the project's first attempt at outlining the NAEP civics education assessment, will serve as the springboard for public comment and review. Requests for the draft framework may be made to Tiffanie Lee at the Council (address above), by phone to 202/336–7076, or fax to 202/789–0596.

LOCATIONS: For detailed information on the exact locations of all public hearings, please contact Council offices at (202) 336–7076.

WRITTEN STATEMENTS: Written statements may be submitted for the public record in lieu of oral testimony up to 30 days after each hearing. These statements should be sent directly to the Council (see aforementioned address) in the following format:

I. Issues and Questions Addressed

Testimony should respond to the content and layout of the draft civics education assessment framework, and the following questions:

1. Does the civics assessment framework combine feasibility and vision?

2. Does the framework contain appropriate expectations for students in grades 4, 8, and 12?

3. Is the design of NAEP civics education assessment appropriate for a large-scale national assessment?

4. Will this framework be useful to policymakers, educators, legislators, school board members and the public?

II. Summary

Briefly summarize the major points and recommendations presented in the testimony.

III. Discussion

The narrative should provide information, points of view and recommendations that will enable the Council to consider all factors relevant to the question(s) the testimony addresses. Respondents are encouraged to limit this section of their written statements to five (5) pages. The discussions may be appended with documents of any length providing further explanation. Written statements presented at each hearing will be accepted and incorporated into the public record. All written statements should follow the above format, as much as it is possible.

HEARINGS OBJECTIVES AND PROCEDURES: The Council seeks participation in the hearings from a broad spectrum of individuals and organizations in the sharing of opinions and recommendations regarding civics education proficiencies, knowledge, and those skills and strategies to be assessed at grade levels 4, 8, and 12. The list of speakers shall, on the one hand, provide a wide range of viewpoints and interests, but also be organized to respect the time constraints of the hearing schedule.

The goal of the hearings is to provide a medium for maximum input and guidance from teachers, curriculum specialists, policymakers, business and government representatives, civic and professional organizations, and concerned members of the general public. Following a brief introduction to the project by the Council of Chief State School Officers, the majority of each session will be devoted to presentations by scheduled speakers.

As listed in the DATES section above, speakers wishing to present statements shall file notices of intent. To assist the Council in appropriately scheduling speakers, the written notice of intent to present oral testimony should include the following information: (1) name, address and telephone number of each person to appear; (2) affiliation (in any); (3) a brief statement of the issues and/or concerns that will be addressed; and (4) whether a written statement will be submitted for the record.

Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Speakers should plan to limit their total remarks to no more than five (5) minutes. While it is anticipated that all persons will have an opportunity to speak, time limits may not allow this to occur. The Council will make the final determination on selection and scheduling of speakers.

All written statements presented at the hearings will be accepted and incorporated into the public record. Written statements submitted in lieu of oral testimony should be received no later than 30 days after each hearing in order to be included in the public record. However, while written statements received after this date will be accepted, inclusion in the public record cannot be guaranteed.

A staff member from the Council of Chief State School Officers will preside at each of the hearings. The proceedings will be audio taped. The hearings can also be signed for the hearing-impaired, upon advance request.

ADDITIONAL INFORMATION: Additional information is available from the Council offices for anyone wishing to obtain more specifics on the assessment project. A draft assessment framework document will be made available to interested parties prior to the hearings in October and November. Individuals desiring additional information on a specific hearing should contact Council offices at (202) 336–7076.

STEPS AFTER HEARING: The Council will review and analyze all comments and opinions received in response to this announcement. A report of the outcomes of these hearings will be made available to the public upon request after January 1996.

The results of this public testimony, along with the Council's civics education consensus committee work, will be used to formulate recommendations for the NAEP Civics Education Assessment for the National Assessment Governing Board. The Board, charged with developing the assessment framework and specifications, will take final action on the Council's recommendations in the spring of 1996.

A record of all Council proceedings will be kept at the Council of Chief State School Officers until March 1996, at which time all records will be transferred to the National Assessment Governing Board, and will be available for public inspection.

Dated: August 31, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–22189 Filed 9–6–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Rapid Commercialization Initiative Announcement

AGENCY: Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Rapid Commercialization Initiative.

SUMMARY: The Rapid Commercialization Initiative (RCI) Announcement is being issued by the U. S. Department of Commerce, U. S. Department of Defense, Environmental Protection Agency, and the U. S. Department of Energy. The RCI is a component of the Administration's efforts to build cooperative interactions between the private sector, states, and federal agencies to advance a national environmental technology strategy and bring environmental technologies to market more rapidly and efficiently. The primary mission of the RCI is to identify and reduce the barriers that impede market entry of the four categories of environmental technologies—avoidance, monitoring and assessment, control, and remediation and restoration technologies—by facilitating and accelerating commercialization.

FOR FURTHER INFORMATION CONTACT: RCI Project Team, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telefax: (304) 285–4683.

SUPPLEMENTARY INFORMATION: RCI has two short-term goals. The first goal of RCI is to provide services to companies to address the three key barriers targeted in the Announcement: (1) Assistance in finding appropriate sites for demonstration/testing of near commercial environmental technologies; (2) assistance in verification of the performance and the cost of performance of RCI technologies; and (3) assistance in facilitating and expediting the issuance of permits. Proposers may request assistance in any one, two, or all three of the RCI services. Industry is invited and encouraged to propose innovative approaches that streamline activity, process, or reporting; save time; improve quality or safety; reduce cost; or eliminate duplication or overlap, to address any or all of the enumerated RCI services.

The second goal of RCI is to identify other important barriers, such as unpredictable commercialization pathways, improving market data, and streamlining regulations and processes to meet government mission program requirements. This information will be used for future consideration and planning relative to the long term goal of RCI to reduce these other barriers. Companies interested in applying for RCI assistance should request a copy of the Announcement which contains specific proposal preparation instructions. Proposal due date is September 28, 1995. Only written requests for the Announcement will be honored. Requests should be sent to the RCI Project Team, at telefax number (304) 285–4683. Letters requesting the solicitation should be addressed to the attention of the RCI Project Team, at the letterhead address and may reference number 95–32247.

Randolph L. Kesling,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 95–22216 Filed 9–6–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Alternative-Fuel Automotive Technician Training; Voluntary Certification Program

AGENCY: Department of Energy.

ACTION: Notice of TeleVideo Conference.

SUMMARY: The purpose of this notice is to facilitate participation by interested members of the public in a TeleVideo conference, co-presented by the U.S. Department of Energy (DOE), which will focus on the voluntary national certification program for private-sector alternative fuel vehicle training programs for automotive technicians.

DATES: The TeleVideo conference is scheduled for satellite broadcast on September 14, 1995 from 1:00 p.m. to 3:00 p.m. (Eastern Time).

ADDRESSES: The public can participate in the TeleVideo conference and obtain information on how to arrange a video conference receive site by calling Steve Husty, West Virginia University Network Coordinator at (304) 293–2867 ext. 424. On the day of the conference, questions may be called in to 1–800–265–6104 or FAXed to (304) 293–7541. Registration is free.

Satellite Information: Telestar 302, Transponder: 10V, Channel: 19 (Downlink frequency: 4080 MHz), Trouble number: 1–800–809–5465, Information: Jack Johns, (304) 293–4221.

FOR FURTHER INFORMATION CONTACT: Instructions on how to apply for certification of alternative fuel technician training programs may be obtained from the National Automotive Technician Education Foundation (NATEF) by calling (703) 713–0100, after September 14, 1995. For general information on alternative fuels, contact the DOE National Alternative Fuels Hotline, 1–800–423–1DOE.

SUPPLEMENTARY INFORMATION: There is a national shortage of qualified technicians to service alternative fuel vehicles. This has spurred the need for high-quality technical training programs with uniform national standards. According to the Bureau of Labor Statistics, jobs for automotive technicians will increase 37% from 1990 to 2005. In order to alleviate the shortage, and pursuant to section 411 of the Energy Policy Act of 1992 (Pub. L. 102–486), DOE entered into a cost shared cooperative agreement with the National Automotive Technician Education Foundation to develop training program standards and implement a certification process for a voluntary national program. This program is referred to as the Certification of Higher-learning in Alternative Fuels Program (CHAMP). An explanation of the certification process, including how to obtain a certification, will take place during a TeleVideo conference, "Alternative Fuel Vehicle Training: A Look At What's Coming Down The Road", scheduled for satellite broadcast Thursday, September 14, 1995, from 1:00 p.m. to 3:00 p.m. (Eastern Time). It is presented by West Virginia University (WVU), the National Automotive Technician Education Foundation (NATEF), and DOE.

The broadcast will be interactive featuring a panel of leading alternative fuels industry and training experts. On the day of the conference, the toll-free number for questions by all participants nationwide for on-the-air responses by the panelists will be 1–800–265–6104.

Issued in Washington, DC, on September 6, 1995.

Brian Castelli,

Acting Assistant Secretary For Energy Efficiency and Renewable Energy.

[FR Doc. 95–22218 Filed 9–6–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG95–81–000, et al.]

LG&E Power Operating Services, Inc., et al. Electric Rate and Corporate Regulation Filings

August 31, 1995.

Take notice that the following filings have been made with the Commission:

1. LG&E Power Operating Services Inc.

[Docket No. EG95–81–000]

On August 18, 1995, LG&E Power Operating Services Inc. ("LPOS"), a California corporation with its principal place of business at 12500 Fair Lakes Circle, Suite 350, Fairfax, Virginia 22033–3822, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

LPOS intends to provide operating services for electrical generating facilities that are eligible facilities. Each of the eligible facilities that LPOS will operate are qualifying facilities with the exception of one pulverized coal-fired cogeneration facility with a maximum net power production capacity of between approximately 165 MW (summer) and 167 MW (winter). All of the facilities' electric power net of the facilities' operating electric power will be purchased at wholesale by public utilities.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Hudson Falls, LLC

[Docket No. EG95–85–000]

Hudson Falls, LLC ("HFLLC") (c/o Jonathan W. Gottlieb, Reid & Priest LLP, 701 Pennsylvania Avenue, N.W., Suite 800, Washington, D.C. 20004) filed with the Federal Energy Regulatory Commission an application on August 21, 1995 for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

HFLLC is a limited liability company organized and in good standing under the laws of the state of New York which will own an interest in a hydroelectric generating facility located on the Hudson River in Saratoga and Washington Counties, New York. The New York Public Service Commission has determined that the facility will comply with the criteria set forth in Section 365.3(b) of the Commission's Regulations.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Adirondack Operating Services, LLC

[Docket No. EG95–86–000]

Adirondack Operating Services, LLC ("AOS") (c/o Jonathan W. Gottlieb, Reid & Priest LLP, 701 Pennsylvania Avenue, N.W., Suite 800, Washington, D.C. 20004) filed with the Federal Energy Regulatory Commission an application on August 22, 1995, for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

AOS is a limited liability company organized and in good standing under the laws of the state of New York which will provide operation and maintenance services to a hydroelectric generating facility located on the Hudson River in Saratoga and Washington Counties, New York as well as other eligible facilities. The New York Public Service Commission has determined that the facility will comply with the criteria set forth in Section 365.3(b) of the Commission's Regulations.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Portland General Electric Company

[Docket No. ES95–39–000]

Take notice that on August 25, 1995, Portland General Electric Company filed an application under § 204 of the Federal Power Act seeking authorization to issue short-term debt securities, from time to time, aggregating not in excess of $200 million principal amount outstanding at any one time, during the period from November 1, 1995 through October 31, 1998, with final maturities not later than October 31, 1999.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22229 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–668–000]

CNG Transmission Corporation and Texas Eastern Transmission Corporation; Intent to Prepare an Environmental Assessment for the Proposed South Oakford Project and Request for Comments on Environmental Issues

August 31, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the South Oakford Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

CNG Transmission Corporation (CNG) and Texas Eastern Transmission Corporation (Texas Eastern) want to abandon by removal their Jeannette Compressor Station, to add compression at their South Oakford Compressor Station, to construct storage pipelines, and to install related facilities at the South Oakford Gate and the Earhart Gate, all in Westmoreland County, Pennsylvania. CNG and Texas Eastern request authorization to abandon:

- All buildings, parking lots, drive ways, equipment, piping, and 7,980 horsepower (hp) of compression at the Jeanette Compressor Station;
- A pig receiver near the Jeannette Compressor station;
- 75 feet of Line JP–40 within the Earhart Gate; and
- A 20-inch mainline gate setting for Line JP–250 at the Earhart Gate.

CNG and Texas Eastern request authorization to construct and operate:

- 10,000 hp of electric motor-driven compression at the South Oakford Compressor Station;
- A pig receiver and barrel dip at the Earhart Gate;
- 3,158 feet of 30-inch-diameter storage suction pipeline (Line JP–296) between the South Oakford Compressor Station and the South Oakford Gate;
- 3,158 feet of 20-inch-diameter storage discharge pipeline (Line JP–297) between the South Oakford Compressor Station and the South Oakford Gate; and
- Facilities to interconnect new Lines JP–296 and JP–297 to existing Lines JP–250 and JP–40, respectively, at the South Oakford Gate.

A nonjurisdictional West Penn Power owned and operated substation (100 feet by 100 feet) would be constructed at the South Oakford Compressor Station.

CNG and Texas Eastern want to construct the proposed facilities between May and November 1996. Removal of the abandoned facilities at the Jeannette Compressor Station would begin in the spring of 1997.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 10 acres of land, all of which is on existing right-of-way or on property owned by CNG and Texas Eastern. Construction of the pipelines would be entirely within existing rights-of-way, but would disturb about 6.5 acres. All land disturbance at the South Oakford and Earhart Gates, about 1 acre total, would be within the existing gate sites and pipeline rights-of-way. The new West Penn Power substation would be enclosed within the South Oakford Compressor Station by moving the existing fence to surround the new substation. This would add about 2.5 acres to the existing 5-acre fenced site.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternative to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process; the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified one issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by CNG and Texas Eastern: The addition of compression at the South Oakford Compressor Station may increase noise levels at nearby residences.

Keep in mind that this is a preliminary issue. Issues may be added, subtracted, or changed based on your comments and our analysis.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities off the South Oakford Compressor Station site. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

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[1] CNG Transmission Corporation and Texas Eastern Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, room 3104, 941 North Capitol Street NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426;
- Reference Docket No. CP95–668–000;
- Send a *copy* of your letter to: Ms. Jennifer Goggin, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St. NE., room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before September 28, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Goggin at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its fillings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene as stated in the Notice of Application issued on August 15, 1995, in this proceeding is September 5, 1995. Parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Jennifer Goggin, EA Project Manager, at (202) 208–2226.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22115 Filed 9–6–95; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 11550–000, et al.]

Hydroelectric Applications Walter Musa, Jr., et al.; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11550–000.

c. *Date filed:* July 3, 1995.

d. *Applicant:* Walter Musa, Jr.

e. *Name of Project:* Fly Creek.

f. *Location:* On Fly and Canyon Creeks, in Clark County Washington. Township 5N, Range 4E, Sections 4, 5, 9, 10.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Albert Liou, Harza Engineering, Inc., 2353 130th Avenue N.E., Suite 200, P.O. Box C–96900, Bellevue, WA 98005, (206) 882–2455.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* November 2, 1995.

k. *Description of Project:* The proposed project would consist of: (1) a 12-foot-high dam on Fly Creek; (2) a 17,000-foot-long, 4.5-foot-diameter penstock; (4) a powerhouse containing one generating unit with a capacity of 7,050 kW and an average annual generation of 25.9 GWh and discharging into Canyon Creek; and (5) a 1.5-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $350,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2a. *Type of Application:* New License.

b. *Project No.:* 2438–007.

c. *Date Filed:* November 5, 1993.

d. *Applicant:* Seneca Falls Power Corporation.

e. *Name of Project:* Waterloo and Seneca Falls Project.

f. *Location:* On the Seneca River in Seneca, Yates, Schuyler, and Ontario Counties, New York.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Patrick Oot, President, Seneca Falls Power Corporation, 4450 Swissvale Drive, Manlius, NY 13902–5224, (315) 637–4761.

i. *FERC Contact:* Thomas Dean (202) 219–2778.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The existing Waterloo and Seneca Falls Project consists of two developments that are 4.2 miles apart: the Waterloo Development and the Seneca Falls Development.

Waterloo Development

The Waterloo Development consists of: (1) a 16.5-foot-high, 306-foot-long dam (including the lock structure); (2) an impoundment with a surface area of 43,200 acres (including Seneca Lake) with a proposed usable storage capacity of 4,300 acre-feet and normal water surface elevations of 446.0 feet BCD (summer) and 445.0 feet BCD (winter); (3) an intake structure; (4) a powerhouse, which has three Francis turbines rated at 2,220 horsepower (hp) with a total hydraulic capacity of 1,650 cubic feet per second (cfs) connected directly to three generators with a total proposed generating capacity of 1.780 megawatts (MW); (5) a tailrace; (6) a 20-foot-long, 34.5 kV transmission line; and (7) appurtenant facilities.

Seneca Falls Development

The Seneca Falls Development consists of: (1) a 68-foot-high, 286-foot-long dam (including the lock structure and powerhouse intake structure); (2) an impoundment with a surface area of 135 acres with a proposed usable storage capacity of 65 acre-feet and normal water elevation of 430.5 feet BCD; (3) an intake structure that is integral with the dam; (4) a powerhouse, which has four Francis turbines that would be rated at 10,600 hp when refurbished with a total proposed hydraulic capacity of 2,480 cfs connected directly to four generators (one currently inoperable) with a total proposed generating capacity of 8.5 MW; (5) a tailrace; (6) a 300-foot-long, 34.5 kV transmission line; and (7) appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraph(s): A4 and D10.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Seneca Falls Power Corporation, 4450 Swissvale Drive, Manlius, NY 13104, or by calling Tod Nash at (315) 346–6232.

3a. *Types of Applications:* Transfer of Licenses. Partial Transfer of License.

b. *Project Numbers:* P–2019 and P–2699.

c. *Applicants:* Pacific Gas and Electric Company, Calaveras County Water District, Northern California Power Agency.

d. *Name of Projects:* Utica and Angels.

e. *Locations:* Utica: On the North Fork Stanislaus River, Silver Creek, and Beaver Creek in Calaveras and Tuolumne Counties, California. Angels: On Angels Creek in Calaveras County, California.

f. *Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant Contacts:* Ms. Annette Faraglia, Attorney, Law Department, Pacific Gas and Electric Company, 77 Beale Street, Room 3051, San Francisco, CA 94120–7442, (415) 973–7145; Mr. Steve Felte, General Manager, Calaveras County Water District, P.O. Box 846, San Andreas, CA 95249, (209) 754–3543, Mr. Hari Modi, Manager, Hydroelectric Project Development, Regulatory Compliance and Licensing, Northern California Power Agency, 180 Cirby Way, Roseville, CA 95678, (916) 781–3636.

h. *FERC Contact:* Dean C. Wight, (202) 219–2675.

i. *Comment Date:* October 16, 1995.

j. *Description of Proposed Actions:*

(1) Pacific Gas and Electric Company (PG&E) and Calaveras County Water District (CCWD) propose to transfer the licenses for both projects from PG&E to CCWD.

(2) CCWD and Northern California Power Agency (NCPA) propose to transfer a portion of the Utica license (P–2109) from CCWD to NCPA. The portion to be transferred consists of the Utica, Union, and Alpine Reservoirs and associated water rights.

k. *Related Actions:* NCPA has pending applications for new licenses in competition with PG&E's pending applications for relicense of both projects. See docket numbers P–2019–017 and P–11477–000 (Utica); P–2699–001 and P–11452–000 (Angels).

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4a. *Type of Application:* Amendment of License for Non-project Use of Project Lands.

b. *Project No:* 1951–036.

c. *Date Filed:* August 11, 1995.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Sinclair Project.

f. *Location:* Baldwin and Putnam Counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Mr. Larry Wall, Georgia Power Company, P.O. Box 4545, Atlanta, GA 30302, (404) 526–2054.

i. *FERC Contact:* Heather Campbell, (202) 219–3097.

j. *Comment Date:* October 16, 1995.

k. *Description of Project:* Georgia Power Company proposes to grant a permit to a developer and adjacent property owner for the purpose of dredging within project waters to increase navigability in the area of the property. A channel would be dredged in Lake Sinclair in order to allow small boat traffic to the future development of the Edgewater Point Estates Subdivision. The subdivision is located on the east shore of Lake Sinclair.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5a. *Type of Application:* New License for Minor Project.

b. *Project No.:* 1517–008.

c. *Date filed:* June 19, 1995.

d. *Applicant:* Monroe City Corporation.

e. *Name of Project:* Upper Monroe Hydroelectric Project.

f. *Location:* Partially within Fishlake National Forest, on Shingle Creek, Serviceberry Creek, and the First Lefthand Fork of the Monroe Creek, near the town of Monroe City, in Sevier County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a) - 825(r).

h. *Applicant Contact:* John Spendlove, Jones & DeMille Engineering, 45 East 500 North, Richfield, Utah 84701, (801) 896–8266.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Deadline for interventions and protests:* November 13, 1995.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The run-of-river project as licensed consists of: (1) a small diversion structure on each of the following three streams—First Lefthand Fork, Shingle Creek, and Serviceberry Creek; (2) an 11,200-foot-long penstock leading from the diversion structure on First Lefthand Fork to a powerhouse; (3) a 3,300-foot-long penstock leading from the diversion structure on Shingle Creek to a point on the First Lefthand Fork penstock 7,400 feet upstream from the powerhouse; (4) a 12,900-foot-long penstock leading from the diversion structure on Serviceberry Creek to a point on the First Lefthand Fork penstock 15 feet upstream from the powerhouse; (5) the powerhouse containing one generating unit with an installed capacity of 250 Kw; (6) a 1.65-mile-long transmission line; (7) a tailrace returning water to Monroe Creek; and (8) appurtenant facilities.

No new construction is planned.

m. This notice also consists of the following standard paragraphs: B1 and E1.

n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of Jones & DeMille Engineering (see address above).

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (October 24, 1995 for Project No. 2438–007). All reply comments must be filed with the Commission within 105 days from the date of this notice (December 8, 1995 for Project No. 2438–007).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The . Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005.

Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 31, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22114 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM96–1–118–000]

Arkansas Western Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1995.

Take notice that on August 28, 1995, Arkansas Western Pipeline Company (AWP) tendered for filing to become part of its FERC Gas Tariff First Revised Volume No. 1, First Revised Sheet No. 4, with a proposed effective date of October 1, 1995.

AWP states that the purpose of this filing is to implement for the first time an ACA charge in its rates. Specifically, AWP proposes to charge the FERC approved surcharge of $.0023 per Dth effective October 1, 1995 in accordance with Section 11 of the General Terms and Conditions of AWP's FERC Gas Tariff.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22116 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–88–000]

Black Marlin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1995.

Take notice that on August 29, 1995, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective October 1, 1995:

Sixth Revised Sheet No. 4

Black Marlin states that the above-referenced tariff sheet is being filed pursuant to Section 18 of the General Terms and Conditions of Black Marlin's tariff to reflect the decrease of the ACA charge to 0.22¢/MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22118 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA94–1–23–007]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1995.

Take notice that on August 29, 1995, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such revised tariff sheets bear various proposed effective dates as indicated thereon.

Eastern Shore states the instant filing is being submitted to comply with the Commission's order issued August 17, 1995 in Docket Nos. TA94–1–23–003, et al. The Commission's order approved Eastern Shore's Offer of Settlement (Settlement) as filed on June 19, 1995, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. More specifically, the filing is submitted in accordance with Articles I, II, and III of the Settlement.

Article I provides that, within fifteen days after the Commission approves the Settlement, Eastern Shore shall file revised Purchased Gas Adjustment (PGA) and Transportation Cost Adjustment (TCA) tariff sheets providing for: (1) The use of the unit-of-sales method to compute its (a) current demand and commodity adjustments, and (b) monthly deferred demand and commodity costs, and (2) the allocation of the demand costs to its firm sales customers based on a jurisdictional demand allocation factor calculated by dividing total jurisdictional customers' contract demands by the total of all customers' contract demands (i.e. jurisdictional and non-jurisdictional). These revised tariff sheets shall be made effective June 1, 1994.

Article II of the Settlement provides that Eastern Shore shall make cash refunds to its jurisdictional sales customers based on the changes in the PGA method described above. Refunds shall be computed from June 1, 1994 through June 30, 1995. Such period coincides with the end of the twelve-month deferral period which ends four months prior to the November 1, 1995 effective date of Eastern Shore's forthcoming annual PGA filing. Accordingly, Eastern Shore's Account No. 191 demand and commodity deferral balances shall be zeroed out as of June 30, 1995, thus eliminating the need for Eastern Shore to file for recovery of such balances in its annual PGA to be filed on or about September 1, 1995.

Article III provides that Eastern Shore shall file revised rate tariff sheets to be effective July 1, 1995. Such revised tariff sheets reflect a reduction of $0.9317 per Dt in Eastern Shore's jurisdictional contract demand sales rates. This reduction is accomplished by restating Eastern Shore's Base Tariff Rates to reflect an equivalent decrease. In addition, the restated Base Tariff Rates reflect Eastern Shore's cumulative PGA and TCA adjustments as filed in Docket No. TQ95–3–23–000. Such filing, accepted by the Commission on May 22, 1995, to be effective May 31, 1995, was

Eastern Shore's most recently approved filing prior to July 1, 1995.

Eastern Shore further states it is also filing revised rate tariff sheets necessary to reflect the implementation of the Settlement on its various filings made subsequent to July 1, 1995. Such filings include (1) Docket No. TF95–5–23–000, an interim PGA approved to be effective July 1, 1995; (2) Docket No. TQ95–4–23–000, a quarterly PGA filing approved to be effective August 1, 1995; (3) Docket No. TF95–6–23–000, an interim PGA filing approved to be effective August 1, 1995; and (4) Docket No. TM95–11–23–000, a tracking filing approved to be effective September 1, 1995.

Eastern Shore states it is currently in the process of finalizing its refund calculations and intends to make such refunds at its earliest opportunity, but in no event later than September 15, 1995. As directed by the Commission, Eastern Shore will file a refund report within thirty days of the refund distribution.

ESNG states that copies of the filing have been served upon its jurisdictional sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and Section 385.214). All such motions or protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22120 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–708–000]

El Paso Natural Gas Company; Notice of Application

August 31, 1995.

Take notice that on August 24, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978 filed an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a certification exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it seeks to abandon an exchange service authorized by an order issued February 13, 1978, as amended, in Docket Nos. CP77–604 and CP77–658. It is stated that such exchange service was provided in accordance with the provisions of a Gas Exchange Agreement dated February 3, 1977 (Exchange Agreement), as amended, between El Paso and Transwestern Pipeline Company (Transwestern). El Paso states that the Exchange Agreement comprises rate schedule X–12 of El Paso's FERC Gas Tariff, Third Revised Volume No. 2 and rate schedule X–1 to Transwestern's FERC Gas Tariff, Original Volume No. 2. El Paso states that it does not propose to abandon any facilities as a result of the proposed abandonment of exchange service.

El Paso states that by order issued July 27, 1995, at Docket No. CP95–70–000, et al., Transwestern has received permission and approval to abandon the exchange service.

It is asserted that the proposed abandonment is permitted by the present and future public convenience and necessity because the proposed abandonment will not result in or cause any interruption, reduction, or termination of firm natural gas service presently rendered by El Paso to any of its respective customers.

Upon receipt of the requested abandonment authorization, El Paso states that it will tender, pursuant to Part 154 of the Commission's Regulations, the appropriate filing to reflect the cancellation of rate schedule X–12 to El Paso's FERC Gas Tariff, Third Revised Volume No. 2. As required by ordering paragraph (B) of the Commission's July 27, 1995 order at Transwestern's Docket No. CP95–70–000, et al., Transwestern, on August 11, 1995 made a tariff filing in compliance with the abandonment authorization to cancel its rate schedule X–1.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 21, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22124 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–423–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1995.

Take notice that on August 29, 1995, Florida Gas Transmission Company (FGT), tendered for filing to become part of its FERC Gas Tariff, Third Revision Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 32
Original Sheet No. 32A

On December 30, 1994, FGT filed a Section 4 rate case filing (Rate Case) in Docket No. RP95–103–000, which, among other things, reflected revised service levels under Rate Schedules SFTS and NNTS, and certain tariff changes related to Rate Schedule NNTS. Subsequently, on March 23, 1995, the parties to the Rate Case proceeding agreed to an Interim Stipulation and Agreement (Interim S&A). Among other things, the Interim S&A provided that the revised service levels under Rate Schedules SFTS and NNTS and tariff changes related to Rate Schedule NNTS would become effective October 1, 1995.

In the instant filing, FGT is making tariff revisions to Rate Schedule NNTS as required by the Interim S&A. These revisions provide FGT's customers with increased flexibility for No-Notice Service. All of the proposed revisions relate to Rate Schedule NNTS customers' ability to request changes to NNTS service levels. Specifically, Section 3.A. of Rate Schedule NNTS is being revised to provide: (i) That, with respect to the initial three-year election option, FGT is not obligated to accept reductions to NNTS service quantities which would reduce the aggregate level of NNTS service quantities by more than 50 percent; and (ii) that shippers may also request changes to their NNTS service quantities annually, provided that FGT is not obligated to accept reductions, pursuant to the annual election option, to NNTS service quantities which would reduce the aggregate level of NNTS service subscribed. The tariff sheets filed herein are identical to Pro Forma Tariff Sheet Nos. 32 and 32A included in the Stipulation and Agreement filed August 24, 1995 ("August 24 S&A") in Docket No. RP95–103.

The revised service levels under Rate Schedules SFTS and NNTS will become effective October 1, 1995. However, these changes do not require tariff revisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22121 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–113–000]

Gasdel Pipeline System, Inc.; Notice of Change in Annual Charge Adjustment

August 31, 1995.

Take notice that on August 29, 1995, Gasdel Pipeline System, Inc. (Gasdel) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1–A, Third Revised Sheet No. 5.

Gasdel states that the purpose of this filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1995 fiscal year. Gasdel requests that the Commission allow the tariff sheet to become effective October 1, 1995.

Gasdel states that copies of the filing have been mailed to all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22117 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–53–000]

Panhandle Eastern Pipe Line Company; Notice of Refund Report

August 31, 1995.

Take notice that on August 29, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing a Refund Report pursuant to the Commission's May 3, 1995, Order Granting Clarification (May 3, 1995 Order) issued in Docket No. RP95–124–001.

Panhandle states that it has returned through billing adjustments on certain customers' transportation invoices mailed July 12, 1995, $154,447.63, representing that portion of the Gas Research Institute surcharge associated with discounted capacity release transactions. Panhandle has included Appendix A to the filing which shows the amount refunded to each affected customer.

Panhandle states that copies of this filing have been served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22123 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–80–000]

Tarpon Transmission Company; Notice of Change in Annual Charge Adjustment

August 31, 1995.

Take notice that on August 29, 1995, Tarpon Transmission Company (Tarpon) tendered for filing and acceptance the following tariff sheets to be a part of its FERC Gas Tariff, Original Volume No. 1:

Thirteenth Revised Sheet No. 2A
Third Revised Sheet No. 2E
Sixth Revised Sheet No. 86A
Eighth Revised Sheet No. 96A

Tarpon states that the purpose of this filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1995 fiscal year. Tarpon requests that the Commission allow the tariff sheets to become effective October 1, 1995.

Tarpon states that copies of the filing have been mailed to its customers and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22119 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–54–000]

Trunkline Gas Company; Notice of Refund Report

August 31, 1995.

Take notice that on August 29, 1995, Trunkline Gas Company (Trunkline) filed its report on refunds pursuant to the Commission's May 3, 1995, Order Granting Clarification issued in Gas Research Institute, 71 FERC ¶61,131 (1995).

Trunkline states that it has refunded through billing adjustments on certain customers' transportation invoices mailed July 10, 1995, in compliance with the Commission's May 3, 1995, Order in Docket No. RP95–124–001 related to the treatment of the Gas Research Institute (GRI) surcharge on discounted capacity release transactions during the period January 1, 1995 through May 31, 1995.

Trunkline states that copies of this filing have been served on all affected customers, applicable state regulatory agencies and GRI.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR385.211, 385.214. All such motions or protests should be filed on or before September 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22122 Filed 9–6–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66216; FRL 4974–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 6, 1995, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 37 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — Registrations With Pending Requests for Cancellation

Registration No.	Product Name	Chemical Name
000224–00029	Phillips Fuel Additive 55 MB-E	2-Methoxyethanol
000241–ID–985–0010	Cygon 400 Systemic Insecticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
000352–00447	Dupont Benlate 50 DF Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352–00534	Du Pont Accent Herbicide	2-(((((4,6-Dimethoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)-*N,N*-dimethyl-
000432–00741	Goldcrest Dulak II	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate 2,2-Dichlorovinyl dimethyl phosphate Xylene range aromatic solvent
000499–00068	Whitmire Fleas-Off for Dogs	Butoxypolypropylene glycol (Butylcarbityl) (6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone
000499–00153	Whitmire PT 515 Wasp-Freeze	Pine oil Pyrethrins Rotenone Cube Resins other than rotenone
000876–00280	Velsicol Technical Chlordane	Octachloro-4,7-methanotetrahydroindane
000876–00288	Technical Heptachlor (Export)	1,4,5,6,7,8,8-Heptachlorotetrahydro-4,7-methanoindene
001021–01157	Pyrocide Intermediate 7029	*N*-Octyl bicycloheptene dicarboximide (Butylcarbityl) (6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins 2,2-Dichlorovinyl dimethyl phosphate
001021–01365	Pyrocide Fogging Concentrate 7257	*N*-Octyl bicycloheptene dicarboximide (Butylcarbityl) (6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins 2,2-Dichlorovinyl dimethyl phosphate
001769–00152	Mint Aire Aerosol	1,2-Propanediol Triethylene glycol
001769–00241	National Chemsearch Sana-Cool	Hexahydro-1,3,5-tris(2-hydroxyethyl)-*s*-triazine
001769–00344	Fen-Two	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
004822–00124	Johnson Yard Master Foam Lawn Weed Killer	Monoethanolamine 3,6-dichloro-*o*-anisate Diethanolamine (2,4-dichlorophenoxy)acetate
005197–00040	Viro-Phene	Isopropanol 4-tert-Amylphenol *o*-Phenylphenol 1,2-Propanediol
005481–00126	Durham Malathion Sulfur Dust 4–25	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate Sulfur
005481–00245	Royal Brand Flea Dusting Powder	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
005481–00247	4% Malathion Dust with Sulphur	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate Sulfur
005481–00257	5% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
005481–00258	Royal Brand 4% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
005481–00269	Royal Brand Stored Grain Dust M-1	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
005481–00274	Malathion 25% Wettable Powder	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
005481–00298	Royal Brand Malathion 25 Dust Base	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
007969–00042	Basagran Manufacturers Concentrate	3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
007969–00054	Laddok Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
007969–00103	Prompt Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
009403–00010	Alken V-7	Potassium *N*-methyldithiocarbamate Disodium cyanodithioimidocarbonate
010370–00045	Ford's Durs-Vap Insecticide Concentrate	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate 2,2-Dichlorovinyl dimethyl phosphate
010370–00151	Ford's Dursban-DDVP 2.5 E.C.	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate 2,2-Dichlorovinyl dimethyl phosphate
010370–00164	Dursban-DDVP 1.25 E.C.	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate 2,2-Dichlorovinyl dimethyl phosphate
010370–00258	Crown Malvex Dry Fly Bait	2,2-Dichlorovinyl dimethyl phosphate
033649–00001	Dianon	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
034704–00636	Dichlobenil 50W	2,6-Dichlorobenzonitrile
034704–00637	Dichlobenil 10-G Aquatic Weed Killer	2,6-Dichlorobenzonitrile
053254–00004	Oxidan DCN/W Co-Blend	Sodium dichloroisocyanurate dihydrate
055947–00143	Barricade 65WG Herbicide In Water Soluble Packs	2,4-Dinitro-*N*3,*N*3-dipropyl-6-(trifluoromethyl)-1,3-benzenediamine (Note: *N*3 = *N*)

TABLE 1. — Registrations With Pending Requests for Cancellation—Continued

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. Two of the registrations for which voluntary cancellation has been requested *000876–0280, Technical Chlordane; 000876–00288, Technical Heptachlor* are registrations granted by EPA to Velsicol Chemical Corporation in 1978 for "export-only"; these particular registrations have never authorized sale or use in the United States. EPA does not believe that "export-only" registrations are appropriate under FIFRA, and intends to grant Velsicol's request for voluntary cancellation of these registrations thirty (30) days after publication of this notice. After the registrations are cancelled, EPA will permit continued exports of chlordane and heptachlor only if such exports are consistent with all the requirements of section 17 of FIFRA, including the labeling and purchaser-acknowledgement provisions of section 17(a). The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000224	Phillips 66 Co., 699 Adams Building, Bartlesville, OK 74004.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000432	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000499	Whitmire Research Laboratories, Inc., 3568 Tree Ct., Industrial Blvd., St Louis, MO 63122.
000876	Velsicol Chemical Corp., 10400 W. Higgins Rd., Suite 600, Rosemont, IL 60018.
001021	Mclaughlin Gormley King Co., 8810 Tenth Ave., North Minneapolis, MN 55427.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005197	Systems General, Inc., Box 152170, Irving, TX 75015.
005481	Amvac Chemical Corp., 4100 E. Washington Blvd, Los Angeles, CA 90023.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
009403	Alken-Murray Corp., 417 Canal Street, New York, NY 10013.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
033649	Nippon Kayaku Co., Ltd., c/o Nichimen America Inc., 1185 Ave. of The Americas, New York, NY 10036.
034704	Platta Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
053254	3V Inc., P. O. Drawer Y, Georgetown, SC 29442.
055947	Sandoz Agro Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

Cas No.	Chemical Name	EPA Company No.
53404–28–7	Dicamba, monoethanolamine salt	004822

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 6, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the

hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 24, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–22231 Filed 9–6–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66215A; FRL–4972–7]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice correction.

SUMMARY: In FR Doc. 95–18873 in the issue of the **Federal Register** of Wednesday, August 2, 1995, beginning in the third column on page 39388, make the following correction.

On page 39390, in the third column, seventeenth line from the top, the signature line which reads "Frank Smith," is corrected to read, "Frank Sanders,".

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St.,SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761. E-mail address: hollins.james@epamail.epa.gov.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 24, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–22232 Filed 9–6–95; 8:45 am]

BILLING CODE 6560–50–F

[AD–FRL–5292–9]

Control Techniques Guideline Document; Wood Furniture Finishing and Cleaning Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of draft control techniques guideline (CTG) document for public review.

SUMMARY: A draft CTG document for control of volatile organic compound (VOC) emissions from wood furniture finishing and cleaning operations is available for public review and comment. This information document has been prepared to assist States in analyzing and determining reasonably available control technology (RACT) for stationary sources of VOC emissions located within ozone national ambient air quality standard nonattainment areas. The draft document recommends RACT for industries included in, but not limited to, nine Standard Industrial Classification (SIC) codes: Wood Kitchen Cabinets (SIC 2434), Wood Household Furniture, except upholstered (SIC 2511), Wood Household Furniture, upholstered (SIC 2512), Wood Television, Radio, Phonograph, and Sewing Machine Cabinets (SIC 2517), Household Furniture Not Classified Elsewhere (SIC 2519), Wood Office Furniture (SIC 2521), Public Building and Related Furniture (SIC 2531), Wood Office and Store Fixtures (SIC 2541), and Furniture and Fixtures Not Elsewhere Classified (SIC 2599).

DATES: Comments must be received on or before November 6, 1995.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate and on computer disk, if possible) to Mr. Paul Almodóvar, (919) 541–0283, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Control Techniques Guideline. Copies of the draft CTG may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodóvar, (919) 541–0283, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The docket is available for public inspection at the Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, which is listed in the **ADDRESSES** section of this notice. The draft control technique guidelines document is also available on the Technology Transfer Network (TTN), on the EPA's electronic bulletin boards. This bulletin board provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed call the HELP line at (919) 541–5384.

I. Introduction

A. Background

Under the Clean Air Act (CAA), as amended in 1990, State implementation plans (SIP's) for ozone nonattainment areas must be revised to require RACT for control of VOC emissions from sources for which the EPA has already published a CTG or for which it will publish a CTG between the date the Amendments were enacted and the date an area achieves attainment status (CAA 182(b)(2)). The EPA has defined RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering the technological and economic feasibility" (44 FR 53761, September 17, 1979).

The CTG's review current knowledge and data concerning the technology and costs of various emissions control techniques. The CTG's are intended to provide State and local air pollution authorities with an information base for proceeding with their own analyses of RACT to meet statutory requirements.

Each CTG contains a "presumptive norm" for RACT for a specific source category, based on the EPA's evaluation of the capabilities and problems general to the category. Where applicable, the EPA recommends that States adopt requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to obtain achievement of the national ambient air quality standards and the economic and technical circumstances of the individual source.

This CTG addresses RACT for control of VOC emissions from wood furniture finishing and cleaning operations. The VOC emissions from wood furniture finishing, cleaning, and washoff operations are addressed. Many of the steps in these operations involve the use of organic solvents and are sources of VOC emissions. The sources, mechanisms, and control of these VOC emissions are described in the CTG.

The determination of presumptive RACT for the wood furniture industry was negotiated under the Federal Advisory Committee Act with members of industry, environmental groups, States, and local agencies. The regulatory negotiation was conducted in conjunction with the negotiation for the proposed national emission standards for hazardous air pollutants (NESHAP) for the wood furniture industry developed under Section 112(d) of the Act. This combined effort ensured that both sets of requirements are consistent and coordinated. The wood furniture industry NESHAP was proposed on December 6, 1994 (59 FR 62652), and is court ordered to be promulgated by November 15, 1995.

B. Solicitation of Comments

The EPA requests comments from the public on all aspects of the draft CTG, including the recommendations for RACT and the estimated cost of control.

II. Summary of Impacts

The EPA estimates that State and local regulations developed pursuant to this draft CTG would affect about 970 facilities and reduce VOC emissions by about 20,400 tons per year at a cost of about $20,200,000. Further information on costs and controls is presented in the draft CTG document.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this draft CTG document is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. This CTG document is not a "rulemaking," rather it provides information to States to aid them in developing rules.

Dated: August 18, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–22089 Filed 9–6–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5293–2]

Approval of Categorical Sulfide Pretreatment Waiver for Uber Tanning Co. Discharging to City of Owatonna Subject to Pretreatment Standards Under 40 CFR Part 425

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The City of Owatonna (hereinafter referred to as "Owatonna"), Minnesota operates a publicly owned treatment works (POTW) which accepts wastewater from Uber Tanning Company, which is subject to pretreatment standards at 40 CFR part 425. Pursuant to 40 CFR 425.04(c), Owatonna certified to the U.S. Environmental Protection Agency (U.S. EPA) on June 28, 1995, that discharge of sulfide from the tannery would not interfere with the operation of the POTW. Pursuant to 40 CFR 425.04(c) Owatonna provided documentation to the U.S. EPA on August 14, 1995, of notice that presents the findings supporting this determination published in the local newspaper with the largest circulation and notice of opportunity for public hearing.

Pursuant to 40 CFR 425.04(c) and in consideration of the information provided by Owatonna, I hereby, waive the sulfide pretreatment standards at 40 CFR part 425 for Uber Tanning Company in Owatonna, Minnesota.

DATES: This action is effective as of September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Morris Beaton, Permits Section, Water Quality Branch, U.S. EPA, Region 5, at (312) 353–0850.

Jo Lynn Traub,

Director, Water Division.

[FR Doc. 95–22084 Filed 9–6–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

CNB Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 29, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. CNB Bancorp, Inc., Woodsfield, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank of Woodsfield, Woodsfield, Ohio.

2. F&A Financial Company, Kittanning, Pennsylvania; to acquire up to 95.9 percent of the voting shares of Snyder Holding Company, Kittanning, Pennsylvania, and thereby indirectly acquire The Farmers National Bank of Kittanning, Kittanning, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Home Savings Bank Employee Stock Ownership Plan, Meridian, Mississippi; to become a bank holding company by acquiring 35.81 percent of the voting shares of Home Savings Bank, SSB, Meridian, Mississippi.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Harrell Bancshares, Inc., Camden, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of South Arkansas, Junction City, Arkansas, and Calhoun County Bank, Hampton, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mille Lacs Bancorporation, Inc., Onamia, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Mille Lacs Bancshares, Inc., Onamia, Minnesota, and thereby indirectly acquire First State Bank of Onamia, Onamia, Minnesota.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Aspen Bancshares, Inc., Aspen, Colorado; to acquire 100 percent of the voting shares of Val Cor Bancorporation, Inc., Cortez, Colorado, and thereby indirectly acquire Valley National Bank, Cortez, Colorado.

2. First National Bancshares, Inc. ESOP and 401(k) Trusts, Goodland, Kansas; to become a bank holding company by acquiring 35 percent of the voting shares of First National Bancshares, Inc., Goodland, Kansas, and thereby acquire First National Bank, Goodland, Kansas.

Board of Governors of the Federal Reserve System, August 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22205 Filed 9–6–95; 8:45 am]

BILLING CODE 6210–01–F

First Midwest Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 20, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Midwest Bancorp, Inc., Naperville, Illinois; to acquire 100 percent of the voting shares of CF Bancorp, Inc., Davenport, Iowa a savings and loan holding company, and thereby indirectly acquire Citizens Federal Savings Bank, F.S.B., Davenport, Iowa (Citizens), and thereby engage in owning, controlling, or operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Citizens may convert to a national bank upon consummation of the proposal. Applicant also has applied to acquire Citizens Service Corporation, Davenport, Iowa, and thereby engage in making, acquiring, or servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Citizens Federal Insurance Agency, Davenport, Iowa, and thereby engage in providing securities brokerage services, pursuant to § 225.25(b)(15) of the Board's Regulation Y and the sale of credit insurance on consumer loans, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22206 Filed 9–6–95; 8:45 am]

BILLING CODE 6210–01–F

Independence Bancorp, Inc., et al.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 20, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Independence Bancorp, Inc. Employee Stock Ownership Plan, Ramsey, New Jersey; to acquire 23.3 percent of the voting shares of Independence Bancorp, Inc., Ramsey, New Jersey, and thereby indirectly acquire Independence Bank of New Jersey, Ramsey, New Jersey.

Board of Governors of the Federal Reserve System, August 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22207 Filed 9–6–95; 8:45 am]

BILLING CODE 6210–01–F

MidWest Bancorporation, Inc.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 20, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *MidWest Bancorporation, Inc.*, Minnetonka, Minnesota, and Todd County Agency, Inc., Minnetonka, Minnesota; to acquire West Central Agency, Inc., Graceville, Minnesota, and thereby acquire certain assets from Graceville Insurance Agency, Graceville, Minnesota, and thereby engage in general insurance agency activities in a place with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. The geographic scope for these activities is the Minnesota communities of Barrett, Bertha, Elbow Lake, Graceville, Verndale, and Wheaton, each of which has a population of less than 5,000.

Board of Governors of the Federal Reserve System, August 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22206 Filed 9–6–95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review; Proposed Information Collection Submitted for Public Comment and Recommendations

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Administration for Children and Families (ACF) is publishing the following summary(ies). To request copies of the proposed collection of information write The Administration for Children and Families, Office of Information Systems, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Proposed Project(s):

Title: Family Preservation and Family Services (FP/FS) Support Act.

OMB No.: New.

Description: Participants in the implementation of the Family Preservation and Family Support Services Program will provide information for reauthorization of Title IV–B, subpart 2 of the Social Security Act and provide feedback to ACF necessary to determine the need for future policy guidance and refine the nature and scope of technical assistance.

Respondents: State, Local and Tribal government.

Title	No. of respondents	No. of responses per respondents	Average burden per response	Burden
Traditional Child Welfare Staff	40	1	2.00	19.90
FP/FS Coordinator	10	1	1.00	10.00
FP/FS Stakeholders	80	1	8.00	80.00
Family Preservation Staff	10	1	0.75	7.50
Family Support Staff	10	1	1.00	10.00
Estimated Total Annual Burden Hours:				127.5

Dated: August 30, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–22079 Filed 9–6–95; 8:45 am]

BILLING CODE 4184-01-M

[Program Announcement No. 93612–961]

Administration for Native Americans; Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families, (ACF).

ACTION: Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiian, Alaska Natives and Native American Pacific Islanders.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1996 funds in four competitive areas:

(1) Governance and social and economic development;

(2) Governance and social and economic development for Alaska Native entities;

(3) Environmental regulatory enhancement; and

(4) Native American languages preservation and enhancement.

Financial assistance provided by ANA in support of projects in these four areas is intended to promote the goal of self-sufficiency for Native Americans.

APPLICATION KIT: Application kits, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201–0001, Attention: 93612–961, Telephone: (202) 690–7776.

SUPPLEMENTARY INFORMATION:

Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1996 funds, authorized under the Native American Programs Act (Act), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders in four competitive areas.

In order to streamline the application process for eligible applicants under four competitive areas, ANA is issuing a single program announcement for fiscal year 1996 funds. Therefore, information regarding ANA's mission, policy, goals, application requirements, review criteria and closing dates for each competitive area is included in this comprehensive announcement.

In previous years, the Administration for Native Americans promoted the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects. Amendments to the Native American Programs Act have expanded ANA's granting authority to establish two additional programs for 1) environmental regulatory enhancement, and 2) Native American languages preservation and enhancement.

Funding authorization is provided under sections [803(a), 803(d) and 803C of the Native American Programs Act of 1974, as amended (Pub. L. 93–644, 88 Stat. 2324, 42 U.S.C. 2991b).]

The Indian Environmental Regulatory Enhancement Act of 1990 (Pub. L. *101–408*) authorizes financial assistance for projects to address environmental regulatory concerns (Section 803(d) of the Native American Programs Act of 1974, as amended).

The Native American Languages Act of 1992 (Pub. L. *102–524*) authorizes financial assistance for projects to promote the survival and continuing vitality of Native American languages (Section 803C of the Native American Programs Act of 1974, as amended).

This program announcement is being issued in anticipation of the appropriation of funds for fiscal year 1996 and the availability of funds for the four competitive areas is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented under each competitive area in this announcement.

Eligible applicants may compete for and receive a grant award in each of the three competitive areas (An Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the same closing date.) However, ANA continues its policy that an applicant may only submit one application per competitive area.

This program announcement consists of three parts.

Part I ANA Policy and Goals

Provides general information about ANA's policies and goals for the four competitive areas.

Part II ANA Competitive Areas

Describes the four competitive areas under which ANA is requesting applications:

- Governance, Social and Economic Development (SEDS);
- Governance, Social and Economic Development (SEDS) for Alaska Native entities;
- Environmental Regulatory Enhancement; and
- Native American Languages Preservation and Enhancement.

Each competitive area includes the following sections which provide area-specific information to be used to develop an application for ANA funds:

A Purpose and Availability of Funds;
B Background;
C Proposed Projects to be Funded;
D Eligible Applicants;
E Grantee Share of the Project;
F Review Criteria;
G Application Due Date(s); and
H Contacts to Obtain Further Information

Part III General Application Information and Guidance

Provides important information and guidance that applies to all four competitive areas and that must be taken into account in developing an application for any of the four areas.

Part I—ANA Policy and Goals

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. *Governance:* To assist tribal and Alaska Native village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

2. *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being.

3. *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

The Administration for Native Americans assists eligible applicants for the four competitive areas to undertake one to three year development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency.

For each type of project, applicants must describe a concrete locally-determined strategy to carry out a proposed project with fundable objectives and activities.

Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community.

An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

Note: If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

Part II—ANA Competitive Areas

The four competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, requirements, and review criteria. However, most of the requirements are standard for all applications to be submitted under this program announcement. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

An applicant may submit a separate application under any of the competitive areas described in this Part, as long as the applicant meets the eligibility requirements that are listed separately under each area. Applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2. An Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the same closing date.

ANA Competitive Area 1. Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1996 financial assistance to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through locally developed social and economic development strategies (SEDS).

Approximately $14 million of financial assistance is anticipated to be available under this priority area for governance, social and economic development projects. In fiscal year 1996, ANA anticipates awarding approximately 120 competitive grants ranging from $30,000 to $1,000,000 under this competitive area.

B. Background

To achieve its goals, ANA supports tribal and village governments, and Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

ANA's SEDS policy is based on the use of the following definitions:

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health, economic well-being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services.

Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

In discussing their community-based, long-range goals, and the objectives for the proposed projects, ANA recommends that non-Federally recognized and off-reservation groups include a description of what constitutes their specific community.

ANA encourages the development and maintenance of comprehensive strategic plans which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

C. Proposed Projects to be Funded

This section provides descriptions of activities which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the governance, social and economic development needs of the local community and should be consistent and supportive of the proposed project objectives.

The types of projects which ANA may fund include, but are not limited to, the following:

Governance

- Improvements in the governmental, judicial and/or administrative infrastructures of tribal and village governments (such as strengthening or streamlining management procedures or the development of tribal court systems);
- Increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning);
- Increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, executive orders, administrative and court decisions, or as citizens of a particular state, territory, or of the United States.
- Status clarification activities for Native groups seeking Federal or State tribal recognition, such as performing research or any other function necessary to submit a petition for Federal acknowledgement or in response to any obvious deficiencies cited by the Bureau

of Acknowledgement and Research (BAR), Department of Interior, in a petition from a Native group seeking Federal recognition; and
- Development of and/or amendments to tribal constitutions, court procedures and functions, by-laws or codes, and council or executive branch duties and functions.

Economic Development

- Development of a community economic infrastructure that will result in businesses, jobs, and an economic support structure.
- Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, light and/or heavy manufacturing, construction, housing and fisheries or aquaculture;
- Stabilizing and diversifying a Native community's economic base through business development ventures;
- Creation of microenterprises or private sector development;
- Establishment or expansion of businesses and jobs that utilize Indian tax incentives passed in the Omnibus Budget Reconciliation Act of 1993; and

Social Development

- Enhancing tribal capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;
- Developing local and intertribal models related to comprehensive planning and delivery of services;
- Developing programs or activities to preserve and enhance tribal heritage and culture; and
- Establishing programs which involve extended families or tribal societies in activities that strengthen cultural identity and promote community development or self-esteem.

D. Eligible Applicants

Current ANA SEDS grantees whose project period terminates in fiscal year 1996 (October 1, 1995-September 30, 1996) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA SEDS grantees, the following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and
- Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Note: Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. (The total approved cost of the project is the sum of the ACF share and the non-Federal share.) The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Note: Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in the Background section of this competitive area), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community you serve will determine the type of documentation necessary.

For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should define their membership and describe how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.
- "Letters and other documents of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant states that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

(2) Organizational Capabilities and Qualifications. (10 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (45 Points)

The application proposes specific project Objective Work Plans with activities related to each specific objective.

The Objective Work Plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

Note: Applicants from the Native American Pacific Islands are exempt from the $200,000 non-Federal share requirement.

G. Application Due Date

The closing dates for submission of applications under this competitive area are: October 20, 1995, February 9, 1996, and May 17, 1996.

H. For Further Information Contact

Sharon McCully (202) 690–5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, S.W., Room 348–F, Washington, D.C. 20201–0001

Competitive Area 2. Alaska-Specific Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1996 funds for Alaska Native social and economic development projects. Approximately $1.5 million of financial assistance is anticipated to be available under this competitive area for Alaska Native governance, social and economic development projects.

ANA plans to award approximately 15–18 grants under this competitive area. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period of 12 months will be up to $150,000, commensurate with approved multi-village objectives.

B. Background

Based on the three ANA goals described in Part I, ANA implemented a special Alaska social and economic development initiative in fiscal year 1984. This special effort was designed to provide financial assistance at the village level or for village-specific projects aimed at improving a village's governance capabilities and for social and economic development.

This competitive area continues to implement this special initiative. ANA believes both the nonprofit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. However, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

C. Proposed Projects to be Funded

Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

Governance

- Initiate demonstration programs at the regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base;
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management and protection, resource assessment and conducting environmental impact studies;
- Assist village consortia in the development of tribal constitutions, ordinances, codes and tribal court systems;
- Develop agreements between the State and villages that transfer programs jurisdictions, and /or control to Native entities;
- Strengthen village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate;
- Assist in status clarification activities;
- Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health, well being and culture of a community and its people;
- Strengthen local governance capabilities through the development of village consortia and regional IRAs (Indian Reorganization Act councils organized under the Indian Reorganization Act, 25 U.S.C. 473a);
- Assist villages in preparing and coordinating plans for the development and/or improvement of water and sewer systems within the village boundaries;
- Assist villages in establishing initiatives through which youth may participate in the governance of the community and be trained to assume leadership roles in village governments; and
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills or earthquakes.

Economic Development

- Assist villages in developing businesses and industries which: 1) use local materials; 2) create jobs for Alaska Natives; 3) are capable of high productivity at a small scale of operation; and 4) complement traditional and necessary seasonal activities;
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system;
- Assist villages, or consortia of villages, in developing subsistence compatible industries that will retain local dollars in villages;
- Assist in the establishment or expansion of new native owned businesses; and
- Assist villages in labor export; i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development

- Assist in developing training and education programs for local jobs in education, government, and health-related fields; and work with these agencies to encourage job replacement of non-Natives by trained Natives;
- Develop local models related to comprehensive planning and delivery of social services;
- Develop new service programs, initially established with ANA funds, which will be funded for continued operation (after the ANA grant terminates) by local communities or the private sector;
- Develop or coordinate with State-funded projects, activities designed to decrease the incidence of child abuse and neglect, fetal alcohol syndrome, and/or suicides;
- Assist in obtaining licenses to provide housing or related services from State or local governments; and
- Develop businesses to provide relief for caretakers needing respite from human service-related care work.

D. Eligible Applicants

Current ANA SEDS grantees in Alaska whose project period terminates in fiscal year 1996 (October 1, 1995—

September 30, 1996) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document.)

Additionally, provided they are not current ANA SEDS grantees, the following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes in Alaska;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and
- Nonprofit Native organizations in Alaska with village specific projects.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

Note: Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20% total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area 1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community you serve will determine the type of documentation necessary.

For example, a tribal organization *may* submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.
- "Letters and other documents of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are *not* considered a binding commitment of outside resources.)

(2) Organizational Capabilities and Qualifications. (10 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (45 Points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

G. Application Due Date

The closing date for submission of applications under this competitive area is: May 17, 1996.

H. For Further Information Contact

Sharon McCully (202) 690–5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., Room 348–F, Washington, DC 20201–0001.

Competitive Area 3. Indian Environmental Regulatory Enhancement Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1996 funds for environmental regulatory enhancement projects. Approximately $3 million of financial assistance is anticipated to be available under this announcement for environmental regulatory enhancement projects. ANA expects to award approximately 35 grants under this competitive area. The funding level for a budget period of 12 months will be up to $250,000.

B. Background

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes.

Some of the critical issues identified by tribes before Congressional committees include:

- The need for assistance to train professional staff to monitor and enforce tribal environmental programs;
- The lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and
- The lack of resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality.

As a result, Congress enacted the Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) to strengthen tribal governments through building capacity within the tribes in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. ANA is to support these activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture.

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups.

"Environmental regulatory enhancement" includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions.

Other functions leading toward enhancing local regulatory capacity include, but are not limited to:

- Environmental assessments;
- Development and use of environmental laboratories; and
- Development of court systems for enforcement of tribal and Federal environmental laws.

Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

C. Proposed Projects to be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure the tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian tribes;
- Incorporated non-Federally recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Corporations/Associations with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.

The following organizations are not eligible to apply:

- Urban Indian Centers;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, Palau, or the Commonwealth of Northern Mariana Islands;
- Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Note: Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe or Native American community. If a Tribe or Alaska native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirement through cash contributions. Therefore, a project requesting $250,000 in Federal funds must include a match of at least $62,500 (20% of total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a

current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific environmental regulatory enhancement long-range goal(s) relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The applicant's specific environmental regulatory needs; and
- A clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community you serve will determine the type of documentation necessary.

For example, a tribal organization *may* submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.
- "Letters and other documents of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are *not* considered a binding commitment of outside resources.)

(2) Organizational Capabilities and Qualifications. (15 Points)

(a) The management and administrative structure of the applicant is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the proposed staff and consultants should have the required qualifications and experience. The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (40 Points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and

- Requests funds which are appropriate and necessary for the scope of the proposed project.

G. Application Due Date

The closing date for submission of applications under this competitive area is March 1, 1996.

H. For Further Information Contact

Sharon McCully (202) 690–5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., SW., Room 348–F, Washington, DC 20201–0001.

Competitive Area 4. Native American Languages Preservation and Enhancement Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1996 funds for projects which assist Native Americans to assure the survival and continuing vitality of their languages. Approximately $1 million of financial assistance is anticipated to be available under this competitive area.

For Category I, Planning Grants, the funding level for a budget period of 12 months will be up to $50,000. For Category II, Design and/or Implementation Grants, the funding level for a budget period of 12 months will be up to $125,000.

B. Background

The Congress has recognized that the history of past policies of the United States toward Indian and other Native American languages has resulted in a dramatic decrease in the number of Native American languages that have survived over the past five hundred years. Consequently, the Native American Languages Act was enacted in 1990 (Title I, Public Law 101–477) to address this decline.

This Act invested the United States government with the responsibility to work together with Native Americans to ensure the survival of cultures and languages unique to Native America. This law declares that it is the policy of the United States to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages." The Congress made a significant first step in passing this legislation in 1990, but it served only as a declaration of policy. No program initiatives were proposed, nor were funds authorized to begin a significant program to carry out this policy.

In 1992, Congressional testimony highlighted that of the several hundred Native American languages that once existed, only about one hundred and fifty-five (155) languages are still spoken or remembered today. However, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken only by the most elderly.

In response to this testimony, the Congress passed the Native American Languages Act of 1992 (Public Law 102–524) to assist Indian tribes, Alaska villages, and Native American groups to assure the survival and continuing vitality of their languages. Passage of this law is an important second step to support the survival and continuation of Native American languages. It provides a basic building block foundation upon which Tribal nations can rebuild economic strength and maintain rich cultural diversity.

The Federal government recognizes that substantial loss of Native American languages has occurred over the past several hundred years. The nature and magnitude of the status of Native American languages will become better defined as language assessments are made.

The Administration for Native Americans (ANA) believes that responsibility for achieving language(s) project results rests with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. The local community and its leadership are responsible for determining its own goals, setting priorities, and planning and implementing programs which support the community's long-range language goals.

Preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity. Therefore, projects proposed under this program announcement will contribute to the balanced development in a native community and can significantly contribute to its path toward self-sufficiency.

Under this competitive area eligible applicants will have the opportunity to develop their own language plans, increase their technical capabilities, and have access to financial and technical resources in order to assess, plan, develop and implement programs to address the survival and continuing vitality of their languages. ANA recognizes that potential applicants may have various levels of specialized knowledge and capabilities to address their specific language concerns. This competitive area is designed to take into account these special needs and circumstances.

"Language preservation" is the maintenance of a language so that it will not decline into non-use.

"Language vitality" is the active use of a language in a wide range of domains of human life.

"Language replication" is defined as the application of a language program model developed in one community to other linguistically similar communities.

"Language survival" is defined as the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

C. Proposed Projects to be Funded

There are two types of projects applicants may apply for:

- Category I—"Planning Grants"-for projects up to 12 months, the funding level will be up to $50,000 or,
- Category II—"Design and/or Implementation Grants"—for projects up to 36 months, the funding level for a budget period of 12 months will be up to $125,000.

Category I—Planning Grants

The purpose of a Planning Grant is to conduct an assessment and to develop the plan needed to describe the current status of the language(s) to be addressed and to establish community long-range language goal(s) to ensure its survival.

Project activities may include, but are not limited to:

- To collect data, organize it, and determine and describe current language status through a "formal" method (e.g., work performed by a linguist, and/or a language survey conducted by community members) or an "informal" method (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members);
- To establish the community's long-range language goals; and
- To get the necessary training and technical assistance to administer the project and achieve the project goal(s).

Category II—Design and/or Implementation Grants

The purpose of providing an option for a Design and/or an Implementation Grant is:

Option One: So tribes or communities can design and/or implement a language program to achieve the community's long-range language goal(s); and

Option Two: To accommodate where the Tribe or community is in their long-term language(s) goals continuum.

Applicants under Category II must be able to document that:

(a) Language information has been collected and analyzed, and that it is current (compiled within 36 months prior to the grant application);

(b) The community has established long-range language goals; and

(c) Community representatives are adequately trained so that the proposed project goals can be achieved.

Category II applications may include purchasing specialized equipment (including audio and video recording equipment, computers, and software) necessary to achieve the project objectives. The applicant must fully justify the need for this equipment and explain how it will be used to achieve the project objectives.

The types of projects and activities ANA can fund under Category II include, but are not limited to:

- Establishment and support of a community Native American language project to bring older and younger Native Americans together to facilitate and encourage the teaching of Native American languages skills from one generation to another;
- Establishment of a project to train Native Americans to teach Native American languages to others or to enable them to serve as interpreters or translators of such languages;
- Development, printing, and dissemination of materials to be used for the teaching and enhancement of Native American languages;
- Establishment or support of a project to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American languages; and
- Compilation, transcription, and analysis of oral testimony to record and preserve Native American languages.

Policy

It is ANA's policy that funds will not be awarded for projects addressing dead languages.

Requirement

The Institute of American Indian and Alaska Native Culture and Arts Development has been established by the Act as the repository for copies of products from Native American languages grants funded under this program announcement. At the end of the project period, products of Native American languages grants funded by this program announcement must be sent to the Institute. Specific information about the repository is in the ANA application kit.

Federally recognized Indian Tribes (as listed by the Bureau of Indian Affairs in an October 21, 1993 **Federal Register** notice, 58 Fed. Reg. 54. 364 (1993)) are not required to comply with this requirement.

D. Eligible Applicants

The following organizations are eligible to apply for funding under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and
- Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

Participating Organizations

If a tribal organization, or other eligible applicant, decides that the objectives of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a tribal school, college, or university, the applicant shall identify such school, college, or university as a participating organization in its application. Under a partnership agreement, the applicant will be responsible for the fiscal, administrative and programmatic management of the grant.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe or Native American community. If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $125,000 in Federal funds must include a match of at least $31,250 (20% total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition the non-Federal share may include certain funds distributed to a tribe, including interest, by the Federal government:

- Funds from the satisfaction of a claim made under Federal law;

- Funds collected and administered on behalf of such tribe or its constituent members; or
- Funds for general tribal administration or tribal development under a formula or subject to a tribal budgeting priority system; such as, but not limited to, funds involved in the settlement of land or other judgment claims, severance or other royalty payments, or payments under the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or tribal budget priority system.

A complete itemized budget must also detail the applicant's non-Federal share, and its source.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications submitted as a partnership arrangement with a school, college, or university, may use contributions from the "partner" organization(s) to meet the non-Federal share, as appropriate.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

F. Review Criteria

The proposed project should address the Native American languages purposes stated and described in the Background (Section B) of this competitive area.

The evaluation criteria below are closely inter-related. They are considered as a whole in judging the overall quality of an application.

Points are awarded only to applications which respond to this competitive area and to these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) The Current Status of Native American Language(s) is Described and Description(s) of Existing Programs/Projects (if Any) Which Support the Language(s) are Included. (10 Points)

(a) The application fully describes the current status of the Native American language(s) in the community. ("Current status" is defined as data compiled within the previous thirty-six (36) months.)

The description of "current status" minimally includes the following information:

(1) Number of speakers of the language(s);

(2) Age of speakers;

(3) Gender of speakers;

(4) Level(s) of fluency;

(5) Number of first language speakers (the Native language is the first language acquired);

(6) Number of second language speakers (the Native language is the second language acquired);

(7) Where the language is used (specific uses such as: home, court system, religious ceremonies, church, multimedia, school, governance activities and other, as appropriate to applicant);

(8) Source of data; (formal and/or informal); and

(9) Rate of language loss or gain.

The application has clearly described the current status of the Native American language(s) to be addressed by the project.

Note: Planning Grant applicants may not have all the information requested about their current language status, since obtaining this data may be part of the planning grant application being reviewed. Applicants applying for Category I—Planning Grants can meet this requirement by explaining their current language status and providing a detailed description of any circumstances or barriers which have prevented the collection of community language data.

(b) The application fully describes existing community language or language training programs and projects, if any, that support the Native American language to be addressed by the proposed project.

Existing programs and projects may be "formal" (e.g., work performed by a linguist, and/or a language survey conducted by community members) or "informal" (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members).

The description should answer the following:

(1) Has applicant had a community language or language training program within the last thirty-six (36) months?

(2) Has applicant had a community language or language training program within the last ten (10) years?

Applicants that answer "no" to either question (1) or (2) should provide a detailed explanation of what barriers or circumstances prevented the establishment or implementation of a community language program.

Applicants that answer "yes" to either questions (1) or (2) should describe recent language program(s), including:

(1) Program goal(s);

(2) Number of program participants;

(3) Number of speakers;

(4) Age range of participants (e.g., 0–5; 6–10; 11–18;, etc.);

(5) Number of language teachers;

(6) Criteria used to acknowledge competency of language teachers;

(7) Resources available, if any, to the applicant (e.g., valid grammars, dictionaries, and/or orthographics or describe other suitable resources); and

(8) What has been achieved.

(2) Long-Range Goals and Available Resources. (25 Points)

(a) The application describes the proposed project's long-range goal(s) and strategy, including:

- How the specific Native American(s) long range community goal(s) relate to the proposed project;
- How the goals fit within the context of the applicant's current language status; and
- A clearly delineated strategy to assist in assuring the survival and continued vitality of the Native American language(s) addressed in the community.

(b) The application explains how the community or tribal government (where one exists) intends to achieve these goals.

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community served will determine the type of documentation necessary.

For example, a tribal organization *may* submit resolutions supporting the project proposal from each of its member's tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(c) Available resources (other than ANA and the non-Federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, and not "letters of support."

- "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources.
- "Letters and other documents of commitment" are binding and specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA funds. These resources may be human, natural or financial, and may include other Federal and non-Federal resources.

Applicant statements that additional funding will be sought from other specific sources are *not* considered a binding commitment of outside resources.

If the applicant proposes to enter into a partnership arrangement with a school, college, or university, documentation of this commitment must be included in the application.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

(3) Project Objectives, Approach and Activities. (25 Points)

The proposed objectives in the Objective Work Plan(s) relate to the competitive area goal to ensure the survival and continuing vitality of Native American language(s). More specifically, together they will achieve the Tribe or community's language goals for the proposed project. If the project is for more than one year, the application includes Objective Work Plans for each year (budget period) proposed.

Each Objective Work Plan proposed clearly describes:

- The Tribal government's, or community's active involvement in the continuing participation of Native American language speakers;
- Measurable or quantifiable results or outcomes;
- How they relate to the community's long-range language goals;
- How the project can be accomplished with the available or expected resources during the project period;
- How the main activities will be accomplished;
- Who specifically will conduct the activities under each objective;
- For Category I projects, what the next steps may be after the Planning project is completed; and
- For Category II projects, how the project will be completed, become self-sustaining, or be financed by other than ANA funds at the end of the project period.

(4) Evaluation Plan. (15 Points)

A section of the application includes an "Evaluation Plan" with a baseline to measure project outcomes, including, but not limited to, describing effective language growth in the community (e.g., an increase of Native American language use). This plan will be the basis for evaluating the community's progress in achieving its language goals and objectives.

(5) Sharing Plan and Plan to Preserve Project Products (10 Points)

A section of the application includes two plans:

(a) A *Sharing Plan* that identifies how the project's methodology, research data, products or outcomes can be shared and used or modified, by other tribes or communities. If this is not feasible or appropriate, provide the reasons. The goal is to provide opportunities to ensure the survival and continuing vitality of native languages.

(b) A *Plan to Preserve Project Products* describes how the products of the project will be preserved through archival or other methods, for the benefit of future generations.

(6) Organizational Capabilities/Qualifications and Budget. (15 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of projects of similar scope by the organization and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities.

Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(c) A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

Note: (Applicants from the Native American Pacific Islands are exempt from the $200,000 non-Federal share requirement).

G. Application Due Date

The closing date for submission of applications under this competitive area is March 15, 1996.

H. For Further Information Contact

Deborah Yatsko, (202) 690–7843, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., SW., Room 348–F, Washington, DC 20201–0001

Part III—General Application Information and Guidance

A. Definitions

Funding areas in this program announcement are based on the following definitions:

- A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.

- A "multi-year project" is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- "Budget Period" is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.
- "Core administration" is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.
- "Environmental regulatory enhancement" includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.
- "Language preservation" is the maintenance of a language so that it will not decline into non-use.
- "Language vitality" is the active use of a language in a wide range of domains of human life.
- "Language replication" is the application of a language program model developed in one community to other linguistically similar communities.
- "Language survival" is the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

B. General Considerations

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that *are* funded with ANA grant funds.

Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which 1) include the salaries of personnel, 2) occupy space, and 3) benefit from the organization's indirect costs.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

C. Activities That Cannot be Funded by ANA

The Administration for Native Americans does not fund projects that operate indefinitely or require ANA funding on a recurring basis. The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. "Core administration" is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

Under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section H, General Guidance to Applicants, below.

D. Multi-Year Projects

Applicants may apply for projects of up to three years. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

E. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

F. The Application Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: 93612–961, Telephone: (202) 690–7776.

2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the specific closing date of each ANA competitive area to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, ACF Guard Station, Washington, DC 20447, Attention: William J. McCarron, ANA No. 93612–961.

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, SW., Washington, DC 20024.

The application (Form 424) must be signed by an individual authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Each tribe, Native American organization, or other eligible applicant may compete and receive a grant award in each of the three competitive areas under this announcement. The Administration for Native Americans will accept only one application per competitive area from any one applicant. Alaska Native entities may submit a SEDS application under either competitive area 1 or 2, but not under both.

If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with (1) American Indian Tribes and Native American communities and organizations, (2) environmental issues, and (3) Native American languages, as appropriate, evaluates each application using the published criteria in each funding competitive area. As a result of the review, a numerical score will be assigned to each application.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

G. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

3. Determination of Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. Section 810(b) of the Native American Programs Act, as amended, 42 U.S.C. 2991h, specifies the appeals process when ANA determines that an organization or activities are ineligible for assistance. When an applicant or the activities proposed by the applicant are rejected as ineligible, the applicant will be advised of the appropriate appeal process.

H. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitutes their specific "community."
- Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For tribes, a current signed resolution from the governing body of the tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution

from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

- Applications from National Indian and Native organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.
- The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.
- Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.
- In the ANA Project Narrative, Section A of the application package, "Resources Available to the Proposed Project," the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.
- Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or a new business, if the applicant includes a business plan that clearly describes its feasibility and the approach for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.
- Applications which were disapproved under a previous closing date and revised for resubmission should make reference to the changes in their current application which are based on ANA panel review comments.

2. Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.
- Applicants are strongly encouraged to submit proposals addressing environmental regulatory enhancement and Native American languages preservation and enhancement under the issue-specific competitive areas described in this announcement.
- For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of Federally recognized Indian tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other Federally recognized Indian tribes which are not included on this list (e.g., those Tribes which have been recently recognized or restored by the United States Congress) are also eligible to apply for ANA funds.
- The Administration for Native Americans will accept only one application, per competitive area, from any one applicant. If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.
- Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a Tribe, or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.
- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.
- An application with an original signature and two additional copies are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.
- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.
- Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

- If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)
- Applicants may propose a 17 month project period. However, the project period for the first year of a multi-year project may only be 12 months.
- Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.
- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.
- The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. "Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit." During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.
- Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3, and Native American languages projects submitted under Competitive Area 4.
- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not interested in funding "wish lists" of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. However, under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.
- Project goals which are not responsive to one or more of the funding competitive areas.
- Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. Proposals from consortia of tribes should have individual objectives which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both a consortia of tribes and the tribes who belong to the consortia receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member tribes.
- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.
- ANA will not fund the purchase of real estate (see 45 CFR 1336.50 (e)) or construction (see ACF Grants Administration Manual § 3.12).
- ANA will not fund investment capital for purchase or takeover of an existing business, for purchase or acquisition of a franchise, or for purchase of stock or other similar investment instruments.
- Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.
- Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

I. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. Law 96–511, as amended in 1986, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations, including program announcements. All information required by this is covered under the following OMB Approval Nos:

- SF 424 OMB Clearance No. 0348–0043 Application for Federal Assistance Standard Form 424
- SF 424A OMB Clearance No. 0348–0044 Budget Information
- SF 424B OMB Clearance No. 0348–0040 Assurances—Non Construction Programs
- OMB Clearance No. 0980–0204 ANA Program Narrative, Application for Federal Assistance

J. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section F, The Application Process: Application Submission. The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

1. Deadlines

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

- Received on or before the deadline date at the address specified in Section F2, Application Submission; or
- Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark

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date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

- No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Children and Families shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of deadlines

The Administration for Children and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Numbers: 93.612 Native American Programs; 93.581 Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality; and 93.587 Promoting the Survival and Continuing Vitality of Native American Languages.)

Dated: August 30, 1995.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 95–22073 Filed 9–6–95; 8:45 am]

BILLING CODE 4184–01–P

Administration for Children and Families

New Child Welfare Waiver Demonstration Project Proposals Submitted Pursuant to Section 1130 of the Social Security Act (the Act); Title IV–E and IV–B of the Act; Public Law 103–432

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for child welfare waiver demonstration projects submitted to the Department of Health and Human Services pursuant to **Federal Register**, Volume 60, No. 115, published Thursday, June 15, 1995. Federal approval for the proposals has been requested pursuant to section 1130 of the Social Security Act.

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project or requests for copies of a proposal, contact the State contact listed for that project.

Comments on a proposal should be addressed to:

Michael W. Ambrose, Administration on Children, Youth and Families, Children's Bureau, 330 C Street, SW.
Mary E. Switzer Building, Room 2068, Washington, D.C. 20201, FAX: (202) 205–9345

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1130 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve child welfare waiver demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On June 15, 1995, we published a notice in the **Federal Register** (Volume 60, No 115, page 31478) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1130 of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1130; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New Proposals

As part of our procedures, we are publishing a notice in the **Federal Register** of all new proposals. This notice contains summaries of 14 proposals received by July 31, 1995, the date established for the first round of proposals. Each of the proposals contains an assurance that the proposed demonstration effort will be cost neutral to the federal government over the life of the proposed effort; and each proposal contains an evaluation component designed to assess the effectiveness of the project.

The June 15, 1995 **Federal Register** Announcement indicated the Department would give priority consideration to proposals received by July 31, 1995. Further, if ten states had not been approved, additional proposals would be accepted by September 30, 1995 and at the end of each calendar quarter thereafter until ten waiver demonstration projects have been approved. The next date for acceptance of any child welfare waiver demonstration proposals is changed to December 31, 1995.

STATE: CALIFORNIA.

DESCRIPTION: California proposes to extend, and broaden to include the use of federal funds, a planned State Partnership Demonstration Project that will provide direct funding to counties for the implementation of child welfare services. Participating counties would receive from the State a single allocation of funds for family and children's services, rather than using categorical funding streams.

The project would enhance the counties' abilities: to meet families' needs more comprehensively; to increase the focus on outcomes; to provide additional in-home services which will result in less need for out of home care; and to contain costs.

The State anticipates that enhanced flexibility in the use of federal funds, reduced administrative requirements and a new "outcome-oriented oversight role" will improve outcomes for children and families, including more effective prevention services that will reduce the need for out of home care. The State is particularly interested in promoting a whole family foster care program and long term options for children in kinship care.

The State proposes, potentially, to waive a large number of statutory (and regulatory) provisions, which would be based on negotiations among federal, State and local child welfare services officials regarding specific local waiver proposals. For each of many statutory provisions, the state proposes conditionally to "request waiver of this section to the extent necessary to implement the proposed demonstration project." Statutory items include certain title IV–E State plan requirements, title IV–E income eligibility requirements, statutory definitions (including definitions of eligible facilities), requirements regarding adoption assistance payments, required statistical reports, and Independent Living Program eligibility requirements. Regulatory items proposed for waiver include limitation on the sources of state match, cost allocation plan

requirements, general grant administration requirements, fiscal regulations, the State allotment determination formula, payment review and facility licensing standards, and regulations regarding the withholding of federal funds.

CONTACT PERSON: Marjorie Kelly, Deputy Director, Children and Families Services Division, California Department of Social Services, 744 P Street M.S. 19073, Sacramento, CA 95814, (916) 657–2614, (916) 653–1695 (FAX).

STATE: DELAWARE.

DESCRIPTION: Delaware proposes a wavier project which has two components. In the first, the State would use multi-disciplinary teams composed of social workers and substance abuse counselors to address the problem of parental substance abuse that creates risks for children and families. This aspect of the project is designed to reduce the number of children coming into out of home care; to delay entry into care; or to reduce the amount of time spent in foster care. The second component involves adding assisted guardianship to the permanency continuum when adoption is not possible and a family has made a long-term commitment to the child. This option is proposed as a cost saving alternative to placing children in foster care.

In establishing a multi-disciplinary team to address parental substance abuse issues, the State anticipates that the services will prevent placement or significantly reduce the duration of placement for 50% of the children in the demonstration units that would come into care because of parental substance abuse. In adding guardianship as a continuum of care option, the State projects that 10 children/youth per year who are currently maintained in long-term foster care will be moved to the guardianship program.

The State proposes to contract with local substance abuse treatment agencies to provide counselors to be co-located with child protective services staff. This effort would provide multi-disciplinary assessment and treatment services for approximately 180 families a year for a period of three years.

The second component of the proposal would make guardianship an available alternative to the caretaking families, thus enabling a child's case to be closed while still making financial and other services available to the family as needed. This option would be considered when adoption is not possible and a family has made a long-term commitment to the child/youth.

For the use of a multi-disciplinary team to provide assessment and treatment services, the State is proposing to waive the prohibition on the expenditure of title IV–E funds for services. For the guardianship component, the State seeks to waive provisions governing eligibility for title IV–E foster care maintenance payments, so that caretaking guardians of children formerly in placement might receive payments comparable to title IV–E foster care maintenance payments.

CONTACT PERSON: Kathryn J. Way, Director, Division of Family Services, Delaware Department of Services for Children and Their Families, 1825 Faukland Road, Wilmington, DE 19805, (302) 633–2650, (302) 995–8290 (FAX).

STATE: DISTRICT OF COLUMBIA.

DESCRIPTION: The District of Columbia proposes to develop a community-based therapeutic model of services to serve as an alternative to placing children in more restrictive institutional settings, as well as providing a transitional bridge for those children returning to the community upon discharge from institutional care.

The flexible use of title IV–E and IV–B funds would allow for the development and provision of a community-based model of therapeutic services to prevent foster home and institutional placement and would increase inter/intra agency and multi-system coordination of services.

The demonstration project would include the use of a "managed care" approach through the use of rate setting procedures to include articulated caps, and a system to provide comprehensive multi-system social and support services. The community-based therapeutic approach would include specialized emergency foster care homes; shared family care; in-home treatment; use of professional surrogate parents; and substance abuse treatment services.

The District of Columbia proposes title IV–E waivers to allow payment for services, and to permit the support of alternatives to foster home and institutional placement through use of a rate-setting process to be established under the demonstration project.

CONTACT PERSON: Ricardo Lyles, Acting Administrator, Family Services Administration, District of Columbia Department of Human Services, 609 H Street, NE, Washington, DC 20002, (202) 724–8756, (202) 727–9460 (FAX).

STATE: GEORGIA.

DESCRIPTION: Georgia proposes to use title IV–E funds to fund preventive and supportive services for children and families at risk, to eliminate the need for placement or reduce the time a child spends in out of home care. Additionally, Georgia seeks to place children in neighborhood settings; provide specialized living arrangements for adolescents, and obtain special adoption assistance to expedite the placement of children into adoptive homes.

The benefits for this demonstration project include removing systems barriers, decreasing or avoiding the amount of time a child spends in out of home care, providing more stable placements, expanding preventive and family support service systems and increasing adoptive placements by making resources available to adoptive families that otherwise would not qualify.

The services to be provided under the demonstration project include family support and prevention services, expansion of kinship care, and community placement services.

Georgia proposes to expand title IV–E coverage to include placement prevention and reunification services. The State also wishes to waive some provisions of title IV–E eligibility determination when a child comes into custody, provide a special waiver to provide adoption assistance to pay for the purchase of services to expedite adoptive placement, and provide funds for adoptive parents for one-time expenses related to the placement of a specific child in the home. Georgia also seeks a waiver to permit title IV–E funds to support a kinship care assistance subsidy, and a waiver of some provisions of title IV–A to allow families whose children are in foster care to continue receiving food stamps, when reunification is expected to occur within 180 days.

CONTACT PERSON: Doris Walker, Foster Care Unit Chief, Georgia Department of Human Resources, Division of Family and Children Services, Two Peachtree Street, NW., Suite 12–300, Atlanta, GA 30303–3180, (404) 657–3458, (404) 657–3415 (FAX)

STATE: ILLINOIS.

DESCRIPTION: Illinois is proposing a subsidized private guardianship as a permanency planning option which would meet the needs of the long-term kinship care population, in order to reduce the number of children in long-term foster care and to reduce the number of disrupted placements.

Illinois seeks to improve permanency outcomes for children in healthy kinship care arrangements in cases where reunification and adoption are not possible. The demonstration project would reduce government intrusion in family life while creating support and clinical management systems which minimize risk through annual reviews of subsidized private guardianship and continuous promotion of adoption options.

Illinois would provide a subsidized private guardianship program (which parallels the adoption subsidy program) for a random group of eligible caregivers.

The State proposes a waiver of title IV–E to permit withholding subsidized guardianship from a randomly selected control group; a waiver of certain provisions of the Adoption Assistance Program to authorize subsidized guardianship for children who meet the eligibility requirements of Section 673 and additional requirements set by the State, in order to authorize payment of nonrecurring guardianship expenses, and for guardianship assistance payments for children; a waiver of eligibility requirements to limit assistance to special needs children; a waiver that would permit federal financial participation in amounts expended as guardianship support payments pursuant to guardianship assistance agreements; and a waiver to authorize federal financial participation in amounts expended on training and administration for the subsidized guardianship program and a waiver of the provision defining "adoption agreement" to allow that term to include "guardianship assistance agreement."

CONTACT PERSON: Joe Loftus, Executive Deputy Director, Illinois Department of Children and and Family Services, 100 West Randolph, 6th Floor, Chicago, IL 60601, (312) 814–8741, (312) 814–6859 (FAX).

STATE: INDIANA.

DESCRIPTION: Indiana proposes to divert per diem funds from restrictive (primarily institutional) placements to more community-based services in order to create more home-based in-state placements for children, placements which would be more supportive of family unity.

The effort would result in fewer high cost, out of state child placements; fewer removals from home, and earlier reunification; improved family functioning; expeditious adoptions; timely transitions to independent living; and improved outcomes for children.

Indiana would modify existing interagency agreements between the Division of Family and Children Services and juvenile court judges to include community partners such as mental health, education and the Step Ahead Council. The local office of Family and Children Services, the county probation office, community mental health center or the school corporation seeking placement of a child would convene a meeting of partners to develop alternatives to restrictive placement.

Indiana proposes to waive title IV–E to permit payment of proposed services: even when a child has not been judicially removed from the home; in order to prevent the placement of a child in out of home care; and for the child in substitute care who is not categorically eligible for title IV–E foster care.

CONTACT PERSON: James Hmurovich, Director, Division of Family and Children, Family and Services Administration, Room W392, Government Center south, 402 West Randolph Street, Indianapolis, IN 46204, (317) 232–4705, (317) 232–4490 (FAX).

STATE: MARYLAND.

DESCRIPTION: Maryland proposes to add federal guardianship assistance as a permanency planning option which would more closely meet the needs of the kinship care population.

This effort would result in reduced average length of stay in out of home placement for children; increased stability for children, and empowerment/support for the caretaking family.

Under this demonstration project in order to be eligible a child would have to be committed to the local department of social services as a child in need of assistance and to have been in a successful out of home placement with the prospective guardian for a minimum of six months. Reunification and adoption would have to be appropriately ruled out as permanency planning options. Resources for the child (SSI, Social Security Survivor's Benefits, etc.) would be transferred to the guardian and deducted from the subsidy. Prospective guardians would be required to sign a guardianship agreement which would require annual renewal.

CONTACT PERSON: Fern Blake, Maryland Department of Human Resources, 311 West Saratoga Street, Baltimore, MD 21201–3521, (410) 767–7269, (410) 333–0099 (FAX).

STATE: MICHIGAN.

DESCRIPTION: Michigan proposes to increase its emphasis on family preservation and family support services and decrease the need for and reliance on out of home care by using title IV–E funds to provide services.

The effort would result in controlled growth of title IV–E maintenance expenditures; greater collaboration among federally-funded programs; increased ability to provide services for families; and decreased reliance on out of home care.

Michigan is proposing to treat title IV–E maintenance payments (other than those for adoption subsidy) as a capped entitlement. The State is proposing to use the funds for service provision, in some cases augmenting funds now being expended under title IV–B Subpart 1 (Child Welfare Services) and Subpart 2 (Family Preservation and Support). The funds would be used to expand grants to local communities and to implement family preservation and support services more quickly.

Michigan is proposing to waive those provisions of title IV–E which restrict States from expending these funds for the provision of services. Michigan excludes title IV–E adoption assistance from its waiver proposal.

CONTACT PERSON: David Berns, Director, Office of Children's Services, Michigan Department of Social Services, 235 South Grand Avenue, P. O. Box 30037, Lansing, MI 48909, (517) 335–6159, (517) 241–7047 (FAX).

STATE: MINNESOTA.

DESCRIPTION: Minnesota proposes to establish relative-based living arrangements as an alternative to out of home care.

The results of this project would be enhanced permanency for children including maintaining a continuity of relationships and a sense of belonging; protection for children who are at risk; lessened government intrusion into families; a greater connection for children with their families and communities; support for kinship placements; lessened time in substitute care; multiple placements will be reduced; and expenditures for out of home placement will be contained.

The proposed demonstration project focuses on placement with family members and would provide support for temporary relative guardianship; permanent relative guardianship; voluntary relative foster care; and court-ordered relative foster care.

Minnesota proposes waivers of provisions under title IV–E in order to exclude grandparents from the foster care licensing requirements; and approval of a financial support structure that allows differential payments based on need. Specific services under this waiver project would include guardianship subsidies, differential foster care support, and specialized training for relative caregivers.

The State also proposes waivers of certain provisions of title IV–A in order to apply the special child standard of assistance in situations where the child is living in one of a range of relative care arrangements; and flexibility to use emergency assistance funds to help relative caregivers meet minimum health and safety standards. Specific services under this waiver would include guardianship, subsidies and alternative care grants.

CONTACT PERSON: Robert DeNardo, Supervisor, Family and Children's Service Division, Minnesota Department of Human Services, 444 Lafayette Road North, St. Paul, MN 55112–3831, (612) 296–5288, (612) 297–1949 (FAX).

STATE: NEW YORK.

DESCRIPTION: New York proposes to use a managed care approach to child welfare services to recapture revenue for reinvestment in preventive and aftercare services in local communities.

The benefits of this effort would be an accelerated decline in the foster care population; an increase in the level of services; and a reduction in the length of stay in foster care.

New York proposes to apply the principles of managed care to its foster care and adoption assistance programs by identifying preset payments for a range of services for a specified population over a predetermined period of time (capitated payments) and adjusting treatment regimens in light of outcomes so that the client receives the necessary services to continue to make progress toward the stated goals of intervention (care management). The State also proposes to increase the availability of child welfare services so that pre-placement preventive and aftercare services can be intensified.

New York proposes to waive: title IV–E requirements regarding the eligibility of children and of foster care facilities; the definition of "special needs" for which title IV–E funds may be used; the circumstances under which these funds may be claimed; and certain requirements concerning title IV–E administration and training.

CONTACT PERSON: Fred Wulczyn, Office of Family and Children Services, Division of Services and Community Development, New York State Department of Social Services, 40 North Pearl Street, Albany, NY 12243–0001, (518) 486–3431, (518) 474–9004 (FAX).

STATE: NORTH CAROLINA.

DESCRIPTION: North Carolina proposes outcome-based management of foster care, in which foster care funding is tied to specific outcomes related to diverting children from foster care whenever possible and moving quickly to achieve permanence for children.

The benefits from this demonstration effort would: link funding and outcomes and measure the effect on service delivery system performance; demonstrate and evaluate the effectiveness of a comprehensive outcome-based approach; decrease the amount of time children spend in foster care, reduce the number of new entries into foster care, and promote collaborative planning and coordination of services with several other initiatives currently underway in the State.

The proposed demonstration effort has two parts. Part I is designed to encourage the development of effective community-based reunification, adoption and aftercare services. Part II is designed to achieve a paradigm shift that allows local programs to move resources from treatment to prevention.

The waiver requests the use of title IV–E foster care funds on behalf of children not presently eligible: to allow local social service agencies to use a capitated rate structure with incentives for achieving specified outcomes; to allow local social service agencies to contract with public, private non-profit and private for profit entities as needed to develop an effective community network of services; and to allow participating agencies to reinvest savings realized from performance excellence in child welfare services.

CONTACT PERSON: Chuck Harris, North Carolina Department of Human Resources, Division of Social Services, 325 Salisbury Street, Raleigh, NC 27603, (919) 733–9467, (919) 715–0024 (FAX).

STATE: OHIO.

DESCRIPTION: Ohio proposes to reduce child removals and/or time of children in placement and associated costs through the use of managed care technology to provide a broader array of services to children and their families.

The benefits of this effort would include decreasing placement costs, increasing the level and quality of services; strengthening local partnerships; and expediting the permanency planning process.

The proposed demonstration effort represents a partnership between public children's service agencies (PCSAs), the Ohio Department of Human Services (ODHS), and managed care entities (MCE). Decision making and risk will be shared among the PCSAs, ODHS and the MCE. ODHS's role is that of coordinator, facilitator and provider of training and technical assistance. The PCSAs' role is primarily as purchasers of services, and they may or may not provide all the direct service functions themselves. The MCE will be responsible for administrative and management functions, medical/clinical reviews, utilization management and service authorization, developing and operating a management information system, developing contracts with providers and payers, and consumer satisfaction-related duties.

The current system of services will continue but with managed care options being considered at decision making points. A policy consortium will be created to develop and implement policy and practices that support permanency planning and provide guidance to the local PCSAs. The terms and conditions developed by the Consortium will bind the provider agencies to uniformly implement the agreed upon practice criteria and to ensure consistency for evaluation purposes across the waiver sites.

Ohio proposes to waive a number of title IV–E provisions that relate to restrictions on child eligibility, and prohibitions on the use of title IV–E funds for the provision of services.

CONTACT PERSON: Isaac Palmer, Deputy Director, Office of Child Care and Family Services, Ohio Department of Human Services, 30 East Broad Street, Columbus, OH 43266–0423, (614) 466–1213, (614) 466–9247 (FAX).

STATE: OREGON.

DESCRIPTION: Oregon proposes to use title IV–E funds for services including but not limited to prevention and support services, protective services, crisis intervention and reunification services. The State also proposes to develop a kinship foster care rate that would be individually determined based on the needs of the child.

The demonstration project would provide flexible funding for abused and neglected children and their families and/or caregivers to receive individual services, regardless of where the chid is placed. Specific outcomes expected would include decreasing the length of foster care placement, increasing the number of children remaining safely in their homes, increasing the use of relative caretakers for children who must be placed out of the home, having more appropriate foster care resources and better utilization of community resources.

The proposed demonstration project would provide support to biological, foster and kinship caretakers through a myriad of services. The State proposes to shift toward a statewide system of in-home care services delivery, insure a match between the child's needs and the skill of the caretakers, establish mechanisms that will refocus the out of home care systems and move closer to implementation of a "first placement/

only placement" objective for children who are unable to remain with their parent(s).

Oregon proposes to waive those provisions of title IV–E: that require a State to make foster care maintenance payments; that require that foster care maintenance payments be made only on behalf of a child who resides in a foster family home or a child care institution; and that concern the conditions for federal reimbursement for voluntary placements.

CONTACT PERSON: Richard Schoonover, State Office of Services for Children and Families, Oregon Department of Human Resources, 500 Summer Street, NE, Salem, OR 98310–1017, (503) 945–6882, (503) 328–3800 (FAX).

STATE: WEST VIRGINIA.

DESCRIPTION: West Virginia will create a comprehensive, decentralized, specialized system to determine a child's potential eligibility for all funding resources for child welfare programs.

The proposed system would maximize the State's child welfare funds by identifying and accessing additional financial resources available to children in care. The new system would emphasize parental obligation and encourage parental participation.

A resource development unit will be created to identify, pursue and produce accurate claims for all sources of funds to which a child in care may be entitled, e.g., child support, SSI, Black Lung, Railroad Retirement, third party medical, SSA, Veterans's Benefits and titles IV–A, IV–B and IV–E.

West Virginia is requesting a waiver of the title IV–E limit of fifty percent for Federal Financial Participation in a State's administrative costs.

CONTACT PERSON: Mary Jarrett, West Virginia Department of Health and Human Resources, Office of Social Services, Bldg. 6, Room B–850, State Capitol Complex, Charleston, WV 25305, (304) 558–7980, (304) 558–8800 (FAX).

III. Requests for Copies of a Proposal

Requests for copies of a Child Welfare Waiver Demonstration Project proposal should be directed to the appropriate State at the telephone number given above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93.645, Child Services—State Grants; 93.658, Foster Care Maintenance; 93.659, Adoption Assistance)

Dated: August 31, 1995.

Joseph A. Mottola,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. 95–22230 Filed 9–6–95; 8:45 am]

BILLING CODE 4184–01–P

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be on Thursday, September 28, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the DoubleTree Hotel, 300 Army-Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 603, Rockville, Maryland 20852, (301) 594–1459.

In addition, if sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6665 no later than September 20.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are: Robert A. Berenson, M.D.; F. Marian Bishop, Ph.D.; Linda Burnes Bolton, Dr.P.H.; John W. Danaher, M.D.; Helen Darling, M.A.; Nancy J. Kaufman, M.S.; William S. Kiser, M.D.; Robert M. Krughoff; Risa J. Lavizzo-Mourey, M.D.; W. David Leak, M.D.; Harold S. Luft, Ph.D.; Barbara J. McNeil, M.D.; Walter J. McNerney, M.H.A.; Edward B. Perrin, Ph.D.; Louis F. Rossiter, Ph.D.; Albert L. Siu, M.D.; and Ellen B. White, M.B.A.

There also are Federal ex officio members. These members are: Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Thursday, September 28, 1995, the meeting will begin at 8:30 a.m. with the call to order by the Council Chairman. The Administrator, AHCPR, will update the status of current Agency issues and program initiatives followed by Council discussion. The meeting will adjourn at 5:30 p.m.

Agenda items are subject to change as priorities dictate.

Dated: August 30, 1995.

Clifton R. Gaus, D. Sc.,

Administrator.

[FR Doc. 95–22220 Filed 9–6–95; 8:45 am]

BILLING CODE 4160–90–M

National Institutes of Health

Technology Assessment Conference on Integration of Behavioral and Relaxation Approaches Into the Treatment of Chronic Pain and Insomnia

Notice is hereby given of the NIH Technology Assessment Conference on "Integration of Behavioral and Relaxation Approaches Into the Treatment of Chronic Pain and Insomnia," which will be held October 16–18, 1995, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on October 16, at 8 a.m. on October 17, and at 9 a.m. on October 18.

Millions of Americans are afflicted with persistent medical disorders that involve behavioral and psychological components. Chronic pain and insomnia are two of the more common disorders with such involvement. Despite the acknowledged importance

of psychological and behavioral factors in these disorders, treatment strategies have tended to focus on medical interventions such as drugs and surgery. The purpose of this conference is to examine the benefits of more consistently integrating behavioral and relaxation approaches with biomedical interventions in clinical settings using chronic pain and insomnia as examples.

More consistent and effective integration of behavioral and relaxation approaches requires the development of precise definitions of the most frequently used techniques, which include hypnosis, meditation, biofeedback, and cognitive therapy. It is also necessary to examine how these interventions have been previously used with somatic therapies in the treatment of chronic pain and insomnia and to evaluate the efficacy of such integration to date. The conference will review the relative merits of specific behavioral and relaxation interventions as well as identify biophysical and psychological factors that might predict the outcome of applying these techniques. Finally, the conference will examine the mechanisms by which behavioral and relaxation approaches could lead to greater clinical efficacy.

The conference will bring together experts in behavioral medicine, pain medicine, insomnia, psychology, neurology, and behavioral and neurosciences as well as representatives from the public.

After 1½ days of presentations and audience discussion, an independent, non-Federal panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The statement will address the following key questions:

- What behavioral and relaxation approaches are used for conditions such as chronic pain and insomnia?
- How successful are these approaches?
- How do these approaches work?
- Are there barriers to the appropriate integration of these approaches into health care?
- What are the significant issues for future research and applications?

The primary sponsors for this conference are the NIH Office of Alternative Medicine and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Cancer Institute; National Institute on Aging; National Institute of Arthritis and Musculoskeletal and Skin Diseases; National Institute of Dental Research; National Heart, Lung, and Blood Institute; National Institute of Mental Health; National Institute of Neurological Disorders and Stroke; and National Institute of Nursing Research.

Advance information on the conference program and conference registration materials may be obtained from: Laura Hazan, Technical Resources International, Inc., 3202 Tower Oaks Blvd., suite 200, Rockville, Maryland 20852, (301) 770–3153.

The technology assessment statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning October 18, 1995, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: August 28, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–22202 Filed 9–6–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 36299, July 14, 1995) is amended to reflect the reorganization and revision of function statements of the National Cancer Institute (NCI) (HNC) as follows: (1) Establish the Division of Basic Sciences (HNC7); Division of Clinical Sciences (HNC8); Division of Cancer Epidemiology and Genetics (HNC9); Division of Cancer Treatment, Diagnosis, and Centers (HNCB); Division of Cancer Biology (HNCC); and Office of Intramural Management (HNC17). (2) Abolish the Division of Cancer Biology, Diagnosis and Centers (HNC2); Division of Cancer Etiology (HNC3); and Division of Cancer Treatment (HNC6). (3) Retitle the Office of Administrative Management (HNC13) as the Office of Extramural Management. (4) Revise the functional statements for the Division of Cancer Prevention and Control (HNC4) and the Division of Extramural Activities (HNC5).

Section HN–B, Organization and Functions is amended as follows: (1) Under the heading *National Cancer Institute (HNC)*, insert the following:

Office of Extramural Management (HNC13)

(1) Plans, directs, and coordinates the administrative management activities of the Office of the Director and the extramural programs, with Institute wide responsibility for budget and grant and contract policy. Areas of management responsibility include grants management; contracts management; finance and budget; personnel; management analysis; financial data and statistics; office automation, automatic data processing, and management information systems; and other areas related to the general administration of the Institute; (2) advises the Institute Director and senior staff on the administrative management of the Institute and its programs; (3) develops and promulgates policies, guidelines, and procedures on matters relating to the administrative management of the Office of the Director and the extramural programs; and (4) formulates and executes action plans in response to administrative problems or initiatives, directives, regulations, legislation or anything else that might require administrative action or have administrative implications.

Office of Intramural Management (HNC17).

(1) Plans, directs, and coordinates the administrative management activities of the Office of Intramural Management and the intramural programs, with Institute wide responsibility for personnel and information resource management policy. Areas of management responsibility include contracts management; finance and budget; personnel; management analysis; financial data and statistics; office automation, automatic data processing, and management information systems; and other areas related to the general administration of the Institute; (2) advises the Institute Director and senior staff on the administrative management of the Institute and its programs (3) develops and promulgates policies, guidelines, and procedures on matters relating to the administrative management of the Intramural Program; and (4) formulates and executes action plans in response to administrative problems or initiatives, directives, regulations, legislation or other matters necessitating administrative action or having administrative implications.

Division of Basic Sciences (HNC7)

(1) Plans, directs, coordinates and evaluates the Institute's intramural programs in basic science relating to

cellular, molecular, genetic, biochemical and immunological mechanisms relevant to the understanding, diagnosis and treatment of cancer; (2) establishes program priorities, allocates, resources, integrates the projects of the various laboratories, evaluates program effectiveness and represents the division in management and scientific decision-making meetings within the Institute; (3) identifies the need for and establishes new intramural research activities; (4) supports training and research opportunities in the basic sciences for young investigators; (5) supports translation of research findings by integrating and coordinating the divisional research activities with other NCI divisions, with the institutes, centers, and divisions within the National Institutes of Health as well as with the private sector and the academic research community.

Division of Clinical Sciences (HNC8)

(1) Plans, directs, coordinates and evaluates patient care activities of the NCI; (2) conducts pioneering clinical research on cancer which translates fundamental research to the bedside in a bi-directional manner; (3) establishes program priorities, allocates clinical resources, integrates the projects of the various branches, evaluates program effectiveness and participants in pertinent management and scientific decision-making meetings within the Institute; (4) addresses clinical research issues requiring urgent attention that cannot readily be pursued through the extramural community; (5) through intramural studies and contracts, administers research in the diagnosis, treatment, and prevention of cancer; (6) develops novel models for carrying out translational research in an efficient and cost-effective manner; (7) develops state-of-the-art educational programs for the education and mentorship of clinical scientists and investigators; and (8) advises the Director of the National Cancer Institute, and supports the activities of the National Cancer Advisory Board and other scientific advisory committees.

Division of Cancer Epidemiology and Genetics (HNC9)

(1) Plans, directs, manages, and evaluates a program of epidemiologic, demographic, biostatistical, and population-based genetic research, as well as provides resources to support such research; (2) uses intramural, contract, interagency, cooperative agreement, and grant mechanisms to administer and manage research in epidemiology, genetics, biometry, and collaborative interdisciplinary approaches to clarify the distribution, causes, and natural history of cancer, as well as the means for its prevention; (3) establishes program priorities, allocates available resources, integrates the activities of various branches, evaluates program effectiveness, and participates in pertinent management and scientific decision-making meetings within the Institute; and (4) advises the Institute Director and supports the activities of the Board of Scientific Counselors, the National Cancer Advisory Board, and other advisory committees.

Division of Cancer Treatment, Diagnosis, and Centers (HNCB)

(1) Plans, directs and coordinates a program of extramural preclinical and clinical cancer treatment research as well as research conducted in cooperation with other Federal agencies with the objective of curing or controlling cancer in man by utilizing treatment modalities singly or in combination; (2) administers targeted research and development programs in areas of drug development, diagnosis, biological response modifiers and radiotherapy development; (3) serves as the national focal point for information and data on experimental and clinical studies related to cancer treatment and for the distribution of such information to appropriate scientists and physicians; and (4) plans, directs and coordinates an extramural program of basic and applied research conducted at cancer centers and through the organ systems program.

Division of Cancer Biology (HNCC)

(1) Plans, directs, coordinates and evaluates a contract and grant-supported program of extramural basic and applied research on cancer cell biology and cancer immunology including the biological and health effects of exposures to ionizing and non-ionizing radiation and the role of chemical or physical agents, acting separately or together, or in combination with biological agents in the inhibition or promotion of cancer; (2) plans, manages and monitors the research and research support activities of the contractor(s) at the government-owned contractor operated (GOCO) facilities at the Frederick Cancer Research and Development Center; (3) plans and administers an extramural program which supports and fosters cancer research training, cancer clinical education, and cancer research career development in order to assure the continuing existence of a national cadre of highly qualified individuals to work in the fields of cancer research, treatment and control; (4) administers a program of support for the construction, alteration, renovation, and equipping of extramural research facilities that house or will house cancer research and/or treatment activities; (5) establishes program priorities, allocates resources, integrates the projects of the various branches, evaluates program effectiveness and participates in pertinent management and scientific decision-making meetings within the Institute; and, (6) advises the Institute Director, and other Institute staff on extramural research in cancer biology and associated areas of science of interest to the Institute and supports the activities of the Board of Scientific Counselors, the National Cancer Advisory Board, and other advisory committees.

Division of Cancer Prevention and Control (HNC4)

(1) Plans and directs the extramural program of cancer prevention and control research for the Institute; (2) coordinates a number of geographically-based cancer surveillance systems and applies statistical, analytic, and other quantitative methods to monitor, evaluate, and report on cancer trends and the impact of cancer; (3) develops and supports research training and career development in cancer prevention and control; and (4) coordinates program activities with other Divisions, Institutes, or federal and state agencies, and establishes liaison with professional and voluntary health agencies, cancer centers, labor organizations, cancer organizations and trade associations.

Division of Extramural Activities (HNC5)

(1) Administers and directs the Institute's grant and contract review activities; (2) provides initial technical and scientific merit review of grants and contracts for the Institute; (3) represents the Institute on overall NIH extramural and collaborative program policy committees, coordinates such policy for the review and administration of grants and contracts; (4) coordinates the Institute's review of research grant and training programs with the National Cancer Advisory Board and the President's Cancer Panel; (5) coordinates the implementation of committee management policies within the Institute and provides the Institute's staff support for the National Cancer Advisory Board and the President's Cancer Panel; (6) monitors and coordinates the operation of the NCI Board of Scientific Counselors and its subcommittees to assure uniformity and quality of scientific review of, and advice concerning, the NCI intramural research program; (7) monitors and coordinates the operations of the NCI Board of Scientific Advisors to assure uniformity and quality of review of, and advice concerning, the NCI extramural program; (8) coordinates program planning and evaluation in the extramural area; (9) provides scientific reports and analyses to the Institute's grant and contract programs; and (10) administers programs to broaden participation by minorities in cancer-related research and training activities and to enhance the effectiveness of programs in cancer treatment and control in reaching the minority community and other historically underserved segments of the general population.

Dated: August 28, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–22203 Filed 9–6–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a teleconference meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council in September, 1995.

A portion of the meeting will be open and include a roll call, general announcements and a discussion of review procedures.

The meeting will also include the review, discussion, and evaluation of grant applications and contract proposals. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 522b(c) (3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Ms. Deloris Winstead, Committee Management Specialist, CSAT National Advisory Council, Rockwall II Building, room 8A141, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment National Advisory Council.

Meeting Date: September 27, 1995.

Place: Center for Substance Abuse Treatment Rockwall II Building, 6th Floor Conference Room, 5600 Fishers Lane, Rockville, Marlyand 20857.

Open: September 27, 1995 12:00 p.m. to 12:30 p.m.

Closed: September 27, 1995 12:30 p.m. to 1:30 p.m.

Contact: Majorie Cashion, Rockwall II Building, room 8A139, Telephone: (301) 443–8923 and FAX: (301) 480–3144.

Dated: September 30, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Service Administration.

[FR Doc. 95–22221 Filed 9–6–95; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Project Called Coquina Palms Townhomes Project, Located in the Central Beaches Area of Brevard County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Joseph A. Hill (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The permit would authorize the take of two families of the threatened Florida scrub jay, *Aphelocoma coerulescens coerulescens* in Brevard County, Florida, for a period of 10 years. The proposed taking is incidental to construction of a 71-unit townhome project, including the necessary infrastructure, on approximately 12 acres (Project). Within the Project, 1.7 acres are occupied by Florida scrub jays and will be permanently altered. The Project is called Coquina Palms Townhomes, and it is located on Wallace Avenue at the water tower site, within Section 30, Township 27 South, Range 38 East, in the central beaches area of Brevard County, Florida.

The Service also announces the availability of an environmental assessment and habitat conservation plan for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. Requests must be submitted in writing to be adequately processed. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before October 10, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–806150 in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The Florida scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub jay population has been reduced by at least half in the last 100 years. Surveys have indicated that two families of Florida scrub jays inhabit the Project site. Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens coerulescens* and exposure of the Applicant under section 9 of the Act. The second alternative is the proposed Project that is designed with a different mitigation strategy. A third alternative, the proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, purchase of offsite habitat for the Florida scrub jay, the establishment of an endowment fund for the offsite acquired habitat, and donation of additional offsite habitat. The HCP provides a funding mechanism for these mitigation measures.

Dated: August 30, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–22143 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of the Lepanthes Eltorensis and Cranichis Ricartii Recovery Plan Technical/Agency Draft for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for *Lepanthes eltorensis* and *Cranichis ricartii*. *Lepanthes eltorensis* and *Cranichis ricartii* are orchids endemic to mountain forests in Puerto Rico. *Lepanthes eltorensis* is currently known from five discrete sites in the palo colorado and dwarf forests of the Caribbean National Forest. *Cranichis ricartii* has been found at only three locations in the Maricao Forest of western Puerto Rico. Both species are threatened by forest management practices, hurricane damage, and collection. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 6, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Marelisa Rivera, Caribbean Field Office, PO. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera, Caribbean Field Office, PO. Box 491, Boquerón, P.R. 00622, Tel. 809–851–7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for *Lepanthes eltorensis* and *Cranichis ricartii*, which are endemic to mountain forests in Puerto Rico. *Lepanthes eltorensis* is an epiphytic orchid that is currently known from five discrete sites in the palo colorado and dwarf forests, all at elevations greater than 850 meters in the Caribbean National Forest. The species has been reported from several species of trees, all supporting abundant mosses and liverworth. *Cranichis ricartii* has been found at only three locations in the Maricao Forest of western Puerto Rico. The species has been found growing in humus of moist serpentine scrub forests of montane ridges at elevations above 680 meters. Both species are threatened by forest management practices, hurricane damage, and collection. The Service solicits review and comments from the public on this draft plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 29, 1995.

James P. Oland,

Field Supervisor.

[FR Doc. 95–22169 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–030–1330–00]

Notice of Emergency Closure of Public Lands; Storey County, NV

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that certain public lands in the vicinity of the Virginia City High School, Storey County, Nevada, are closed to the public. This closure is necessary to provide for public safety due to the recent collapse at the Osbiston mine shaft.

EFFECTIVE DATES: This closure goes into effect on August 28, 1995, and will remain in effect until the Carson City District Manager determines the closure is no longer needed.

FOR FURTHER INFORMATION CONTACT: John Matthiessen, Walker Resource Area Manager, Carson City District, 1535 Hot Springs Road, Carson City, Nevada 89706. Telephone (702) 885–6000.

SUPPLEMENTARY INFORMATION: The land affected by this closure is fenced and comprises less than one-quarter of an acre within the area described as:

Mount Diablo Meridian

T. 17 N., R. 21 E.,
  Sec. 29, S½NE¼SE¼, N½SE¼SE¼.

The authority for this closure is 43 CFR 8364.1. Any person who fails to comply with a closure order is subject to arrest and fines and/or imprisonment not to exceed 12 months in accordance with applicable provisions of 18 USC 3571. This closure applies to all persons excluding (1) public officials and emergency and law enforcement personnel engaged in official business and (2) any person expressly authorized in writing by the Carson City District Manager to enter the closed area.

A map of the closed area is posted in the Carson City District Office.

Dated: August 28, 1995.

John O. Singlaub,

District Manager, Carson City District.

[FR Doc. 95–22102 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–HC–M

[OR 51998, OR 52165, OR 52166; OR–080–05–1430–01: G5–207]

Realty Action; Proposed Modified Competitive Sale

August 25, 1995.

The Notice of Realty Action published in the July 27, 1995, edition of the **Federal Register** (60 FR 38571) is hereby amended as follows:

The appraised fair market value of the three parcels is as follows:

Willamette Meridian, Oregon

T. 7 S., R. 3 W.,
  Sec. 18, Lot 3 (OR 51998)—$67.50
  Sec. 18, Lot 4 (OR 52165)—$207.00
  Sec. 18, Lot 5 (OR 52166)—$171.00

Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306, prior to 11 a.m. on Wednesday, September 27, 1995.

All other conditions of the notice remain in effect.

John Bacho,

Marys Peak Area Manager.

[FR Doc. 95–22100 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–33–M

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 49 N., R. 63 W., accepted August 17, 1995
T. 50 N., R. 68 W., accepted August 17, 1995
T. 48 N., R. 69 W., accepted August 17, 1995
T. 50 N., R. 69 W., accepted August 17, 1995
T. 47 N., R. 71 W., accepted August 17, 1995
T. 42 N., R. 72 W., accepted August 17, 1995
T. 25 N., R. 74 W., accepted August 17, 1995
T. 46 N., R. 76 W., accepted August 17, 1995
T. 47 N., R. 76 W., accepted August 17, 1995
T. 45 N., R. 77 W., accepted August 17, 1995
T. 46 N., R. 77 W., accepted August 17, 1995
T. 12 N., R. 78 W., accepted August 17, 1995
T. 18 N., R. 78 W., accepted August 17, 1995
T. 16 N., R. 84 W., accepted August 17, 1995

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: August 29, 1995.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 95–22098 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Notice of Public Meetings

SUMMARY: The National Seashore, working cooperatively with the public and with other agencies, will devise three separate management plans tailored to unique problems and needs at each of three sites: the William Floyd Estate in Mastic Beach, the Wilderness Area of Fire Island National Seashore (from Smith Point west to Watch Hill), and the western end of the Seashore (from Watch Hill to the Fire Island Lighthouse).

DATES: Although interested parties are invited to attend any or all of these initial preliminary planning meetings, those specifically interested in one area of the park may choose to attend only the meeting for that area. Those interested in deer management for the Wilderness Area plan can meet at the Patchogue Library, in Meeting Room B, at 7 P.M. on September 12. Those interested in the William Floyd Estate can attend a meeting at the Property Owners Association Club House at 31 Neighborhood Road at 7 P.M. on September 14. Those interested in the western end of Fire Island can attend a meeting at the Ocean Beach Community Center, at Ocean Beach on Fire Island, a 7 P.M. on September 23.

ADDRESSES: Inquiries on these meeting dates should be submitted to the Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772, telephone (516) 289–4810.

SUPPLEMENTARY INFORMATION: As at many locations in the Northeast, increasing populations of white-tailed deer are causing concern about impacts to the natural areas of the Seashore along with various kinds of impacts within the communities that border Seashore property. To devise the safest, most practical, and least disruptive plans, the Seashore is seeking the input of all parties affected by the issue, such as Fire Island and Mastic Beach communities and public land managers. For example, both the Robert Moses State Park and the Smith Point County Park (both of which are located on Fire Island) will be invited to participate in the planning process. In addition, other interested members of the public will be needed to form task groups for each management plan.

At each meeting, members of the National Seashore's resource management staff will explain the planning process to be used. The criteria for the formation of task groups will be determined, and general time frames for the planning process will be established. It will be the charge of the task groups to actually begin to define the problem, set deer management objectives and develop alternatives and a recommended alternative for deer management for each of the three sites.

The National Seashore will use the objectives and alternatives developed by the task group to create its draft deer management plan and environmental assessment. The Environmental Assessment will analyze the impact of any management actions which the park may take.

For further information, please contact the superintendent at 516–289–4810 or by writing to: Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York, 11772.

Jack Hauptman,

Superintendent.

[FR Doc. 95–22113 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–70–M

Missouri National Recreational River Advisory Group

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Thursday, September 28, 1995; 1:00 p.m.

ADDRESSES: Niobrara State Park, Group Lodge, Niobrara, Nebraska Agenda topics include:

1. Discussion of the most recent changes to the draft recreational river study and recommendations for changes to the study.
2. Selection of a preferred alternative.

3. Presentation by the Corps of Engineers on the Master Water Control Manual update.

4. The opportunity for public comment and proposed agenda, date, time, and location of the next Advisory Group meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplish the agenda for the meeting, the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The Advisory Group was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the Recreational River. The Missouri National Recreational River is the 39-mile free flowing segment of the Missouri from Fort Randall Dam to the vicinity of Springfield in South Dakota.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, 402–336–3970.

Dated: August 28, 1995.

William W. Schenk,

Field Director.

[FR Doc. 95–22226 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–70–P

Sleeping Bear Dunes National Lakeshore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (P.L. 92–463).

MEETING DATE AND TIME: Friday, October 20, 1995; 9:30 a.m. until 12 noon.

ADDRESSES: Lake Township Hall, 5153 Scenic Drive, Honor, Michigan.

The agenda for the meeting consists of the Chairman's welcome; minutes of the previous meeting; statement of purpose; public input; update on park activities; old business; new business; public input; next meeting date; adjournment. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by the law that established the Sleeping Bear Dunes National Lakeshore, Public Law 91–479. The purpose of the commission, according to its charter, is to advise the Secretary of the Interior with respect to matters relating to the administration, protection, and development of the Sleeping Bear Dunes National Lakeshore, including the establishment of zoning by-laws, construction, and administration of scenic roads, procurement of land, condemnation of commercial property, and the preparation and implementation of the land and water use management plan.

FOR FURTHER INFORMATION CONTACT: Ivan Miller, Superintendent, 9922 Front Street, Empire, Michigan 49630, 616–326–5134.

Dated: August 28, 1995.

William W. Schenk,

Field Director, Midwest Region.

[FR Doc. 95–22227 Filed 9–6–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–371]

In the Matter of: Certain Memory Devices With Increased Capacitance and Products Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 10:00 a.m. on September 18, 1995, in Courtroom B (room 111), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: August 31, 1995.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 95–22234 Filed 9–6–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–364]

Certain Miscellaneous Products; Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Addition to scope of investigation and request for written submissions.

EFFECTIVE DATE: September 1, 1995.

SUMMARY: In response to a request from the United States Trade Representative (USTR), the Commission has expanded the scope of its investigation No. 332–364, Certain Miscellaneous Products: Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin, to include probable effects advice on a second list of proposed modifications to the North American Free Trade Agreement (NAFTA) rules of origin. The Commission's confidential report, which will contain advice on two lists of proposed modifications, will be submitted to the USTR on September 29, 1995.

FOR FURTHER INFORMATION: Information may be obtained from David Lundy, Office of Industries (202–205–3439) or Donita Marakovits, Office of Industries (202–205–3430); and on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal (202–205–1810).

Background

Chapter 4 and Annex 401 of the NAFTA, which entered into force on January 1, 1994, contain the rules of origin for application of the tariff provisions of the NAFTA to trade in goods.

Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 of the Act is that the President obtain advice regarding any proposed modification in the Rules contained in Annex 401 of the Act from the United States International Trade Commission.

The Commission was requested by the USTR, in his letter received on July 17, 1995, to provide advice on the probable effect of the proposed modifications to the rules of origin that were attached to the letter. The Commission instituted investigation No. 332–364, Certain Miscellaneous Products: Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The letter requested that the advice be forwarded to the USTR by September 15, 1995.

The Commission received a second letter from the USTR on August 31, 1995 requesting similar advice on a second set of proposed modifications, which was included as an attachment to the letter. The Commission will provide advice in response to both letters in one confidential report, which will be forwarded to the USTR by September 29, 1995. Copies of both sets of proposed modifications, which cover certain goods described in Chapters 1 through 97 of the Harmonized Tariff Schedule of the United States, are available from the Office of the Secretary at the Commission or from the Commission's Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Written Submissions

No public hearing is being scheduled in connection with the second set of proposed modifications. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on September 20, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: September 1, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–22233 Filed 9–6–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 369X)]

Burlington Northern Railroad Company—Abandonment Exemption—in Big Stone and Traverse Counties, MN

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.78-mile line of railroad between milepost 40.00 near Beardsley and milepost 46.78 near Browns Valley, in Big Stone and Traverse Counties, MN.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 7, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by September 18, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 27, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Assistant General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 12, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 31, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22214 Filed 9–6–95; 8:45 am]

BILLING CODE 7035–01–M

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203.

Comments on the following assessment are due 15 days after the date of availability:

AB–12 (Sub-No. 151X), Southern Pacific Transportation Co.—Abandonment Exemption—in Ventura County, CA. EA available 8/25/95.

AB–417 (Sub-No. 1X), Central New York Railway Corporation - Abandonment of its line of railroad in Oneida, Herkimer and Otsego Counties, New York. EA available 8/25/95.

AB–3 (Sub-No. 126X), Missouri Pacific Railraod Company—Abandonment Exemption—In Caddo Parish, Louisiana (Good Roads Lead). EA available 9/1/95.

Comments on the following assessment are due 30 days after the date of availability: None.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22215 Filed 9–6–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1733–95]

Special Filing Instructions for ABC Class Members; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice; correction of form number.

SUMMARY: On Friday, July 7, 1995, the Immigration and Naturalization Service (the Service) published a notice at 60 FR 35424–35430, entitled "Special Filing Instructions for ABC Class Members." In that notice the Service provided special instructions for class members eligible for asylum benefits under the settlement agreement reached in *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991). That notice document 95–16771, erroneously referenced the Form I–855, *ABC* Change of Address Form.

Accordingly, on page 35424, under "Supplementary Information:" the entry for "Form I–855" where it is listed in the second, third and fourth paragraphs, should have read "Form M–426."

Dated: August 31, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–22222 Filed 9–6–95; 8:45 am]

BILLING CODE 4410–10–M

National Institute of Corrections

Announcement of Programs, Services, and Training

The National Institute of Corrections (NIC), U.S. Department of Justice, has published its Annual Program Plan—Fiscal Year 1996. The document describes the technical assistance, programs, and services to be available to the corrections field during the next fiscal year, which begins on October 1, 1995, and ends September 30, 1996.

A separate document, the NIC Schedule of Training Services for Fiscal Year 1996, describes the training programs and services to be provided by NIC for state and local corrections practitioners.

Both documents contain relevant application forms and may be obtained by contacting the National Institute of Corrections, 320 First Street, NW, Washington, D.C. 20534 (telephone: 202–307–3106 x144, fax 202–307–3361), or the NIC Longmont, Colorado, offices at 1960 Industrial Circle, Suite A, Longmont, Colorado, 80501 (telephone 303–682–0382, fax 303–682–0469). Both documents are also available on Internet. Connect to the Department of Justice gopher server, gopher.usdoj.gov. From the menu, select the National Institute of Corrections, then select the desired document. Application forms are not included in the Internet version of the Annual Program Plan.

Larry B. Solomon,

Acting Director.

FR Doc. 95–22099 Filed 9–6–95; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–085)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that ACO, Inc., a corporation of the State of Oklahoma, has requested an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,171,822, entitled "LOW TOXICITY HIGH TEMPERATURE PMR POLYIMIDE." This patent is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, NASA Langley Research Center.

DATES: Responses to this Notice must be received by November 6, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (804) 864–3521.

Dated: August 30, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–22213 Filed 9–6–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Seeks Qualified Candidates for Advisory Committee on Reactor Safeguards

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for résumés.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is looking for qualified candidates for possible appointment to its Advisory Committee on Reactor Safeguards (ACRS). There are three openings expected on the Committee in 1996. One or two openings may be filled by reappointment of incumbents.

ADDRESSES: Submit résumés to: Ms. Jude Himmleberg, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR APPLICATION MATERIALS, CALL: 1–800–952–9678. Please refer to Announcement Number 95–1000.

SUPPLEMENTARY INFORMATION: The ACRS was established by Congress to provide the Commission with independent expert advice on matters related to regulatory policy and the safety of existing and proposed nuclear power plants. The Committee work currently emphasizes safety issues associated with the operation of more than 100

nuclear units in the United States and technical and policy issues related to evolutionary and passive standard plant designs.

The ACRS membership includes individuals from national laboratories, academic and research institutions, industry, and consulting engineering firms who possess specific technical expertise along with a broad perspective in addressing safety concerns.

The members of the ACRS are selected from a variety of engineering and scientific disciplines such as nuclear power plant operations, nuclear engineering, mechanical engineering, electrical engineering, chemical engineering, metallurgical engineering, structural engineering, materials science, and instrumentation and process control systems. At this time, candidates are being sought with specific expertise in the areas of nuclear power plant operations and instrumentation and process control systems.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear safety matters, and the ability to apply one's skills to solve problems. Additionally, the Commission considers the need for specific expertise in relationship to current and future tasks, availability of candidates to serve, and possible conflicts of interest. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with varying views so that the membership on the Committee will be fairly balanced terms of the point of views represented and the functions to be performed by the Committee.

Because conflict of interest regulations restrict the participation of members actively involved in the regulated aspects of the nuclear industry, the degree and nature of any such involvement will be considered. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment to the Committee. This may result in the candidate being required to divest himself or herself of securities issued by nuclear industry entities, or discontinue or limit involvement in NRC or industry-funded research contracts or grants, based on a determination of possible conflict of interest.

Copies of résumé describing the educational and professional background of the candidate, including any special accomplishments, professional references, current address, and telephone number should be provided. All qualified candidates will receive full consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 50–100 days per year to Committee business. Applications will be accepted until November 24, 1995.

Dated: August 31, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–22191 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–820]

Release of United Nuclear Corporation, Wood River Junction Site For Unrestricted Use and Removal From the Site Decommissioning Management Plan—Finding of No Significant Impact and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission has prepared an environmental assessment (EA) related to the release of the United Nuclear Corporation (UNC) Wood River Junction Site and the termination of Special Nuclear Materials License No. SNM–777, Docket No. 70–820.

On the basis of this EA, the NRC has concluded that the environmental impacts that could be caused by the proposed action would not be significant and do not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The UNC site was listed in the NRC's Site Decommissioning Management Plan, but has now been removed.

Results of the radiological surveys and analyses performed indicate that, after remedial actions, residual radioactive material in building surfaces and in soils at the site is less than the criteria found in the NRC's "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material," August 1967. However, non-radiological onsite groundwater contamination will be monitored on a continuing basis by the State of Rhode Island Department of Environmental Management and UNC. NRC concludes that further remedial action is not required, and that the site is suitable for unrestricted use with regard to any radiological hazards regulated by NRC under the authority of the Atomic Energy Act of 1954, as amended.

As noted in the Action Plan (57 FR 13389), this is the final action of the NRC on the UNC site. NRC will not require any additional decommissioning in response to future NRC criteria or standards, except in the event that additional contamination, or non-compliance with the decommissioning plans approved by NRC is found, indicating a significant threat to public health and safety. Non-compliance would occur if the licensee had not complied with an approved decommissioning plan, or had provided false information.

The NRC hereby provides notice of an opportunity for a hearing on the termination of the license under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The licensee, United Nuclear Corporation, Inc., 67 Sandy Desert Road, Uncasville, CT 06382; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the NRC's "Informal Hearing Procedures for Adjudications in Material Licensing Proceedings" in 10 CFR Part 2, Subpart L.

For further details with respect to this action, see the EA and other documents related to this proposed action which are available for public inspection and copying at the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20555. For additional information, contact Jack Parrott, NRC Project Manager for the UNC site at (301) 415–6700 or Mail Stop T–8F37, Washington, DC 20555.

Dated at Rockville, Maryland this 9th day of August, 1995.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–22183 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Notice of Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Washington Public Power Supply System (the licensee) to withdraw its May 10, 1993, and supplement dated May 21, 1993, application for an amendment to Facility Operating License No. NPF–21 for operation of the Nuclear Project No. 2, located in Benton County, Washington.

The proposed amendment would have revised Section 6 (Administrative Controls) of the Technical Specifications (TS) to modify the composition, organizational assignments, and reporting relationship of the personnel performing the Independent Safety Engineering Group (ISEG) function in the current Nuclear Safety Assurance Division (NSAD). Also, the change would have modified the title of the Quality Assurance (QA) member of the Plant Operations Committee (POC) to reflect the new QA organization.

The Commission had previously issued a Notice of Consideration of Issuance of this amendment published in the **Federal Register** on August 18, 1993 (58 FR 43937). However, by letter dated September 8, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 10, 1993, and supplement dated May 21, 1993, and the licensee's letter dated September 8, 1993, which withdrew the application for license amendment.

The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 29th day of August 1995.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22184 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket 70–27]

Finding of No Significant Impact and Notice of Opportunity for a Hearing, Renewal of Special Nuclear Material License SNM–42, Babcock & Wilcox Company, Naval Nuclear Fuel Division, Lynchburg, VA

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Material License SNM–42 for the continued operation of the Babcock & Wilcox (B&W) Naval Nuclear Fuel Division (NNFD) and Lynchburg Technology Center (LTC) in Lynchburg, Virginia.

Summary of the Environmental Assessment

Identification of the Proposed Action:

B&W has requested the renewal of Special Nuclear Material License SNM–42 for the NNFD and LTC for a period of 10 years. In 1994, the NRC approved the consolidation of all activities authorized under LTC's License SNM–778 into NNFD's License SNM–42.

The B&W facility is located on a 212-hectare (525-acre) site in the northeastern corner of Campbell County, approximately 8 km (5 miles) east of Lynchburg, Virginia. This site is located in a generally rural area, consisting primarily of rolling hills with gentle slopes, farmland, and woodlands. The NNFD/LTC coexists on the site with the B&W Fuel Company plant which is separately licensed by the NRC. The combined NNFD/LTC facility is centrally located on the site with the main manufacturing complex contained in a 7.7-hectare (19-acre) fenced area and the LTC complex contained in a 5.5-hectare (13.6-acre) area for a combined total of 13.2 hectares (32.6 acres).

With this renewal, the combined NNFD/LTC activities will continue. The licensed activities include:

- The fabrication of unirradiated, highly enriched uranium into complete core assemblies for nuclear reactor fuel components for the U.S. Navy propulsion program and other government agencies, as well as university and other research reactors.
- The recovery of process uranium from scrap material.
- The continuation of existing research and development operations and non-nuclear process control research.
- The availability of analytical services for commercial power plants.
- The decontamination of reactor related hardware for inspection and evaluation.

The Need for The Proposed Action

The NNFD operation primarily supports the U.S. Navy propulsion program including fuel loading and subsequent refueling of ship reactors. The demand for this operation will continue in order to maintain at least the present fleet operation. If the operation of the NNFD is discontinued, another facility will have to be used in order to meet the national security needs of the U.S. Navy. In addition, this facility provides nuclear fuel modules to U.S. Department of Energy contractors and other research institutions. The LTC performs research and development necessary to create new products and processes, along with examining and improving those of the present generation.

Denial of license renewal for the NNFD/LTC facility would require that similar activities be undertaken at another site.

Environmental Impacts of the Proposed Action

Renewal of the combined NNFD/LTC license, involves a balance of positive and negative impacts. The positive impacts include contribution to national security, lessening of dependence on fossil fuels, and lessening of the negative environmental impacts related to production and utilization of fossil fuels. The negative impacts include releases of radioactive materials in the various environmental media associated with facility operation.

For the proposed action, renewal of the combined NNFD/LTC license, the continued handling of materials and conduct of operations at the facility poses a potential impact to the environment and public health and safety. For normal operations, the impact is related to the release of low levels of toxic or radioactive materials to the environment over extended periods of time. For accident conditions, the

hazard may involve release of higher concentrations of materials over relatively short periods of time.

The nonradioactive gaseous emissions from the combined NNFD/LTC are nitrogen oxides and fluoride compounds released from the process buildings and combustion products released from the steam plant. The state-issued air quality permit for the facility calls for the NO_X concentration at the site boundary to meet National Ambient Air Quality Standards (NAAQS). It has been determined that a maximum sector annual average NO_X concentration is approximately 0.8 percent of the NAAQS limit for NO_X. Consequently, it is concluded that NO_X emissions produce an insignificant environmental impact (NRC, 1991). The maximum hydrogen fluoride (HF) site boundary concentration is estimated as 0.04 $\mu g/m^3$. This concentration is approximately 1 percent of the time weighted average threshold limit value (TLV) proposed for workers by the American Conference of Governmental Industrial Hygienists (ACGIH) (ACGIH, 1986). Consequently, no significant impacts are expected.

Potential surface water impacts associated with operation of the combined NNFD/LTC include disruption of flow of the James River due to withdrawals and degradation of water quality of the river due to contaminant releases. The design capacity for withdrawal by the B&W facility is 0.02 m^3/s (0.67 ft^3/s). To date, this use of the James River by the B&W facility has had no adverse impact on the James River flow rate. The flow rates associated with future operations are expected to be similar or less than the historical flows; no additional impact is expected.

Degradation of surface water quality is prevented by enforcement of release limits and monitoring programs mandated under the facility National Pollution Discharge Elimination Systems (NPDES) permit. LTC liquid discharges are a small part of the combined discharges, which are monitored under this permit. NPDES permit conditions were exceeded twice during the 1989 through 1993 period. In the first instance, the discharge load for fluoride was exceeded during September 1993. In the second instance, the permit level for fecal coliform was exceeded at an internal monitoring point during July 1994 but was within limits at the final release monitoring point. This infrequent exceedance of NPDES levels does not indicate occurrence of a significant environmental impact.

Potential groundwater impacts include drawdown of the water table in the vicinity of facility wells and degradation of groundwater quality due to uncontrolled leakage to the subsurface soils. The B&W withdrawals of groundwater in the area of the James River are small in comparison to the capacity of the wells and the groundwater system.

There are no discharges of waste waters to ponds that could result in groundwater contamination from proposed operations except for those ponds that are used to manage the flow rate of discharges into the James River. The groundwater does have high levels of trichloroethylene (TCE) contamination from previous leaks which have been identified and eliminated.

On September 27, 1991, the Environmental Protection Agency (EPA) Region III issued a Final Order of Consent (Docket RCRA–III–050–CA) under Section 3008(h) of the Resource Conservation Reauthorization Act (RCRA), as amended. The Consent Order specified that B&W perform interim measures to prevent or relieve immediate threats to human health or the environment, perform a RCRA field investigation (RFI) to delineate the nature and extent of any releases of past raw products or wastes, and to perform a corrective measures study (CMS) to identify and evaluate alternatives for corrective action (B&W, 1995b).

On April 17, 1995, the draft RFI report was completed and submitted to EPA Region III. The RFI report identified three groundwater plumes which were contaminated with TCE, tetrachloroethylene (PCE), and related degradation constituents above the drinking water limit of 0.005 parts per million (ppm). The largest plume (Plume A) is located beneath the NNFD plant, extending 884 m (2,900 feet) from the upper road on the southwest portion of the site northeast to the James River. Plume A has a maximum width 365 m (1,200 feet), an approximate area of 28 hectares (70 acres), and an average concentration of 0.1 ppm TCE. The TCE source areas for plume A are the former TCE storage tank location where the maximum groundwater contamination is 145 ppm TCE, and a former zirconium chip burning area near the James River where the maximum groundwater contamination is 44.3 ppm TCE (B&W, 1995b).

The second largest plume (Plume C) is located beneath the Commercial Nuclear Fuel Plant (CNFP), extending 503 m (1,650 feet) from the upper side of the CNFP plant north towards the James River. Plume C has a maximum width of 190 m (625 feet), an approximate area of 10 hectare (24 acres) and an average concentration of 0.01 ppm TCE. The TCE source area for plume C is the former TCE storage tank location, and the maximum groundwater contamination is 0.397 ppm TCE (B&W, 1995b).

The third largest plume (Plume B) is located on the western portion of the site where the former uranium recovery building was buried. Plume B has a maximum length of 229 m (750 feet), a maximum width of 90 meters (300 feet), an approximate area of 2 hectares (5 acres), and an average concentration of 0.1 ppm TCE and 0.1 ppm PCE. The exact TCE and PCE source areas for plume B are unknown, but are most likely due to past waste disposal practices in the building disposal area. The maximum groundwater contamination is 3.4 ppm TCE and 58.6 ppm PCE. Upon EPA Region III approval of the RFI report, B&W will proceed with the CMS, where alternatives for corrective action will be evaluated (B&W, 1995b).

All but two of the underground tanks installed at the site have been removed and so the potential for accidental contamination of the groundwater is reduced. Remediation plans are being prepared for the cleanup of the TCE plume. The continued operation of the combined NNFD/LTC is not expected to result in any additional negative impact on the local groundwater.

Operation of the NNFD and LTC may pose risks to public health and safety due to release of radioactive material under normal operational or accident conditions. Radioactive materials released from the NNFD and LTC may reach the public through a variety of transport pathways contributing to both internal and external exposures. For atmospheric releases; internal exposures may occur through inhalation of radioactive material dispersed in the air or ingestion of crops and animal products which come in contact with radioactive material deposited from the air. External exposures may occur through direct radiation from an airborne plume or from particulates deposited onto the ground from the plume. For liquid releases, internal exposures from ingestion of water or irrigated crops may occur. External exposures from recreational activities, including swimming and boating may occur. For atmospheric releases, potentially exposed members of the public considered in the analysis include a maximally exposed individual located at the site boundary and the population out to a distance of 80 kilometers (50 miles). In order to provide a conservative evaluation of potential liquid pathway impacts, the analysis assumes that a maximally exposed individual downstream of the facility and the surrounding population obtain drinking water and irrigation water from the James River.

The NNFD releases radioactive material to the atmosphere from approximately 27 stacks while the LTC releases radioactive material from 2 stacks. The NNFD releases are primarily uranium while the LTC releases are mixed fission products, including H–3 and Kr-85. For internal exposures, uranium is the dominant radionuclide; inhalation exposures are greater than ingestion exposures, and the lung is the controlling organ.

Low-level liquid radioactive waste from the NNFD and the LTC are processed through the Waste Treatment Facility. The system effluent is monitored and released to the James River. Releases attributable to the NNFD are primarily uranium while those from the LTC are primarily tritium.

NRC regulations (10 CFR 20.1301) require that total effective dose equivalent (TEDE) for members of the public not exceed 1.0×10^{-3} Sv (100 mrem) per year. In addition, EPA regulations (40 CFR Part 190) require that for routine releases to the general environment, the annual dose equivalent not exceed 2.5×10^{-4} Sv (25 mrem) to the whole body, 7.5×10^{-4} Sv (75 mrem) to the thyroid, and 2.5×10^{-4} Sv (25 mrem) to any other organ (EPA, 1977). For releases to the atmosphere, EPA regulations (40 CFR Part 61) require that the annual effective dose equivalent not exceed 1.0×10^{-4} Sv (10 mrem) (EPA, 1991). Doses associated with NNFD and LTC operations are dominated by releases to the atmosphere. For the maximally exposed individual, TEDE is estimated as 2.4×10^{-7} Sv (0.024 mrem) while the largest dose to a tissue is estimated as 2.0×10^{-6} Sv (0.2 mrem) to the lung. The doses are small fractions of the limits established by the NRC and EPA and indicate that facility operations will have insignificant impact on public health and safety. Because conservative assumptions were used in the analysis, actual doses are expected to be lower.

The NNFD and LTC handle materials which could pose a risk to public health and safety if released during accidents. Prior NRC analysis of operation of the NNFD considered accidents including criticality, fire, and flood (NRC, 1978). This prior analysis is supplemented by consideration of the research and development, analytical, and decontamination operations conducted at the LTC. The initial step in the accident analysis is auditing of hazardous materials and potentially hazardous activities present or conducted at the facility. Other than radioactive materials, the LTC does not contain significant inventories of potentially hazardous materials. In addition, the facility does not fabricate or convert materials in any continuous process. Thus, the handling and examination of fuel assemblies and the management of effluents associated with these operations are the activities which may pose a risk to the public health and safety.

The NNFD conducts an environmental monitoring program which includes sediment, soil, vegetation, surface water, air, and groundwater media at 20 locations on or near the facility. The program is intended to identify trends in concentrations or accumulation of uranium or other contaminants in the environment. Action levels have been established for each media to provide a basis for response to potential problems. Actions triggered by exceedance of an action level may include resampling of the area, performance of isotopic analysis, investigation of the source of contamination, elimination of the source of contamination, or termination of operations pending identification of a method for reduction of contaminant levels. Environmental monitoring results are reviewed as part of the ALARA program.

The NRC staff has reviewed the location of the environmental monitoring program sampling points, the frequency of sample collection, and the trends of the sampling program results in conjunction with environmental pathway and exposure analysis and concluded that the monitoring program provides adequate protection of public health and safety.

Alternatives to the Proposed Action

Implementation of the license renewal alternative involves continued operation of the facility at levels consistent with past practice for both the NNFD and LTC. Data and analysis presented in this Environmental Assessment updates and supplements the data and analysis presented in an Environmental Assessment (NRC, 1991) prepared earlier in the license renewal process. No new major construction or introduction of new processes is contemplated. The nature of the manufacturing, research, and waste management operations is summarized in this section. The system description presented in this section is adapted from material contained in the prior B&W Environmental Assessment (NRC, 1991) and license renewal application (B&W, 1995a).

The alternative of denial of license renewal for the B&W combined NNFD/LTC facility at the Lynchburg, Virginia site implies cessation of manufacturing and commencement of decontamination and decommissioning (D&D) of the facility. Decontamination and decommissioning activities would be substantially the same as those described for the license renewal alternative in Section 2.1 of this environmental assessment. However, since the fuel utilization requirements of the naval propulsion program and the university training and research programs would remain unchanged, selection of this alternative implies transfer of fuel production activities to a new site.

Agencies and Persons Consulted

- Virginia State Health Department, Bureau of Radiological Health.
- Virginia Department of Environmental Quality.

—Mixed Waste Issues Enforcement Branch
—Water Control
—Air Quality
—West Central Regional Office
—Enforcement

- Virginia Labor Market Area Office, Virginia Employment Commission.
- City of Lynchburg, Economic Development Office.
- Environmental Protection Agency, RCRA Enforcement Branch, Region 3.
- Appomatax County Administrator.

Other sources used in the preparation of the EA include the following:

Babcock & Wilcox, 1995a, License Renewal Application, SNM–42, Naval Nuclear Fuel Division, Lynchburg, VA, February 1995.

Babcock & Wilcox, 1995b, Supplemental Information to NRC, April 1995.

Babcock & Wilcox, 1991, Environmental Report, Naval Nuclear Fuel Division, Lynchburg, VA, August 1991.

Babcock & Wilcox, 1989, National Pollution Discharge Permit Application, VA0003697, September 27, 1989.

Biological Monitoring, Inc., 1989, Final Year End Report for On-Site Effluent Toxicity Studies and Biological Studies of the James River Performed in August and September 1989, Prepared for Babcock & Wilcox.

U.S. Nuclear Regulatory Commission, 1991, Environmental Assessment for Renewal of Special Nuclear Material License No. SNM–42, Docket No. 70–27 Naval Nuclear Fuel Division, Lynchburg, VA, August 1991.

U.S. Nuclear Regulatory Commission, 1986, Environmental Assessment for Renewal of Material License No. SNM–778, Docket No. 70–824, Lynchburg Research Center, Lynchburg, VA, December 1986.

U.S. Nuclear Regulatory Commission, 1984, Environmental Impact Appraisal for Babcock & Wilcox Company, Naval Nuclear Fuel Division, Docket No.70–27. Renewal of Special Nuclear Material License No. SNM–42, Lynchburg, VA, March 1984.

Conclusion

The NRC staff concludes that the environmental impacts associated with the proposed license renewal for continued operation of B&W's NNFD/LTC facility are expected to be insignificant.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License SNM–42. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); and on the licensee (Babcock & Wilcox Company, Naval Nuclear Fuel Division, Lynchburg, Virginia); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e.,health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 30th day of August 1995.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 95–22186 Filed 9–6–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al.; Vogtle Electric Generating Plant, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–84, issued to the Georgia Power Company, et al. (the licensee), for operation of the Vogtle Electric Generating Plant (VEGP, Vogtle), Units 1 and 2, located at the licensee's site in Burke County, Georgia.

The proposed amendments, requested by the licensee in a letter dated May 1, 1995, would represent a full conversion from the current Technical Specifications (TS) to a set of TS based on NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1, dated April, 1995. NUREG–1431 was developed through working groups composed of NRC staff members and industry representatives and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the TS. As part of this submittal, the licensee has applied the criteria contained in the Commission's Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors of July 22, 1993, to the current Vogtle TS, and, using NUREG–1431 as a basis, developed a proposed set of improved TS for Vogtle. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, "Technical Specifications," in a rule change which became effective on August 18, 1995 (60 FR 36953).

The licensee has categorized the proposed changes to the existing TS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes, and less restrictive changes.

Non-technical, administrative changes were intended to incorporate human-factors principles into the form and structure of the improved plant TS so that they would be easier to use for plant operations personnel. Administrative changes are editorial in nature or involve the reorganization or reformatting of requirements without affecting technical content or operational requirements. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information which must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc:, and (c) changing NUREG–1431 section wording to conform to existing licensee practices.

Relocated changes, those current TS requirements which do not satisfy or fall within any of the four criteria specified in the Commission's policy statement, may be relocated to appropriate licensee-controlled documents. The licensee's application states that such requirements will be relocated from the TS to administratively controlled documents such as the Final Safety Evalution Report. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. These changes reduce the number of current TS requirements but the actual commitment to continue to perform the requirement will be unchanged upon implementation of the improved TS.

The licensee's proposed improved TS include certain more restrictive requirements than are contained in the current TS, which are either more conservative than corresponding requirements in the current TS, or are additional restrictions that are contained in NUREG–1431 but are not contained in the current TS. Examples of more restrictive requirements include: placing a limiting condition for operation (LCO) on plant equipment that is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

Less restrictive changes are those where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant "less restrictive" requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the improved Standard Technical Specifications. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design was reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431 and thus provides a basis for these revised TS.

These administrative, relocated, more restrictive and less restrictive changes to the requirements of the current TS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the changes described above, the licensee proposed certain changes to the current TS that are both less restrictive and are not within the scope of application for conversion to the guidance of NUREG–1431. All of the differences will be reviewed by the NRC staff and a determination will be made regarding the approval or disapproval of each item as a part of this licensing action. Specifically, the licensee identified the following instances where their submittal varied from the provisions of NUREG–1431.

Shutdown margin requirements for Mode 2 with $K_{eff} < 1.0$ are deleted. The applicability of the TS requirements for shutdown bank insertion limits, the requirement to verify a nonindicating rod position immediately after movement of more than 24 steps, and the required actions and surveillance requirements for quadrant power tilt ratio are revised.

With regard to reactor trip system (RTS) instrumentation, revisions are made to: (1) Three NUREG–1431 surveillances based on Vogtle operating practices and vendor recommendations; (2) notes 1 and 2 to NUREG–1431 LCO 3.3.1 required actions for Condition T (one RTS channel inoperable); (3) the NUREG–1431 surveillance requirements for the P–7 interlock; (4) the completion time for required actions with one intermediate range neutron flux channel inoperable (LCO 3.3.1 Condition F); and, (5) the Applicable Modes or other specified conditions for the RTS Interlocks P–7, P–8, P–9, P–10, and P–13.

For the Engineered Safety Features Actuation System instrumentation, the surveillance intervals for the Channel Operational Test of the refueling water storage tank level Low-Low signal for Semi-Automatic Switchover to Containment Emergency Sump function and the surveillance interval for the Channel Operational Test of the low Reactor Coolant System (RCS) T_{avg} function are increased from monthly to quarterly.

For the RCS, the surveillance interval for the pressurizer heater capacity is revised from 92 days to 18 months. Also, the completion time for depressurizing the RCS in the event of an inoperable cold overpressure protection system is revised from 8 hours to 12 hours, and the requirements for performing RCS water inventory balances are revised. The lift setpoints for the residual heat removal suction relief valves, the RCS vent capacity for cold overpressure protection, and the pressurizer safety valve lift settings are moved to the Bases of the improved TS.

For the Emergency Core Cooling System, the requirements for seal water injection flow is revised to locate the limits for seal injection flow to the Bases. Also, the Mode 4 requirements are revised.

For containment systems, the current allowed outage time for the containment spray and cooling systems is revised from 72 hours to 14 days, and the air lock door interlock mechanism surveillance frequency is revised from the current frequency of 6 months to 18 months. An allowance to open the 14-inch purge valves for maintenance testing is added.

For other plant systems, the Condensate Storage Tank LCO is revised consistent with a planned design modification that will result in two 100% capacity tanks. The surveillance requirement to operate the Piping Penetration Area Filtration and Exhaust System (PPAFES) monthly for ≥10 continuous hours is revised to operate for ≥15 minutes and the heater capacity verification is deleted. The Completion Time to reduce the Power Range Neutron Flux High Trip setpoints is increased from 4 hours to 12 hours. The currently licensed footnote in the Control Room Emergency Filtration System (CREFS) LCO that requires Train B CREFS to be started whenever a CREFS train must be placed in service to comply with Actions is deleted. A Note is added to the current LCO for the engineered safety feature room coolers and the safety-related chiller system providing an exception to the LCO for surveillance testing.

For electrical systems, several revisions to the LCO for AC Sources—Operating were proposed to support the addition of a new Standby Auxiliary Transformer as a Unit 1 and Unit 2 common offsite circuit. Also, the diesel generator accelerated test frequency requirements in the AC Sources—Operating LCO are relocated outside of the TS.

Regarding administrative controls, the Ventilation Filter Testing Program is revised consistent with the proposed change in the Plant Systems Chapter for the deletion of the heater capacity test for the PPAFES. The reference to the ASTM standard in Paragraph 5.5.13.c is deleted.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 10, 1995, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board

Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow, Director, Project Directorate II–2: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated May 1, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 31st day of August 1995.

For the Nuclear Regulatory Commission.

L. A. Wiens,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22185 Filed 9–6–95; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Open Meeting of the Intergovernmental Policy Advisory Committee for Trade

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The September 22, 1995 meeting of the Intergovernmental Policy Advisory Committee will be open to the public. The meeting will include a review and discussion of current issues of U.S. trade policy.

DATES: The meeting is scheduled for September [illegible] 19[illegible] unless otherwise notified.

ADDRESSES: The meeting will be held at the Sheraton City Center Hotel, 1143 New Hampshire Avenue, N.W., Washington, D.C., from 11 a.m. to 2 p.m. unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Clayton Parker, Director of Intergovernmental Affairs, Office of the United States Trade Representative, Executive Office of the President at (202) 395–6120.

Jennifer Hillman,

Acting United States Trade Representative.

[FR Doc. 95–21735 Filed 9–6–95; 8:45 am]

BILLING CODE 3190-01-M

Notice of Meeting of the Advisory Committee for Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the September 14, 1995 meeting of the Advisory Committee for Trade Policy and Negotiations will be held from 10 a.m. to 2 p.m. The meeting will be closed to the public.

SUMMARY: The Advisory Committee for Trade Policy and Negotiations will hold a meeting on September 14, 1995 from

10 a.m. to 2 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: The meeting is scheduled for September 14, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Indian Treaty Room at the Old Executive Office Building, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–22096 Filed 9–6–95; 8:45 am]

BILLING CODE 3190–01–M

Country-by-Country Reallocations of the Tariff-Rate Quota for Sugar

AGENCY: Office of the United States Trade Representatives.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of two sets of country-by-country reallocations of part of the in-quota quantity of the tariff-rate quota for imported sugar for the period that ends September 30, 1995.

EFFECTIVE DATES: June 13 and July 13, 1995, respectively.

ADDRESSES: Inquiries may be mailed or delivered to Tom Perkins, Senior Economist, Office of the U.S. Trade Representative, 600 17th Street N.W., Office of Agricultural Affairs (Room 421), Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Tom Perkins, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: On June 13, 1995, and again on July 13, 1995, the United States Trade Representative determined and announced that countries to which an allocation had been made of the in-quota quantity under the sugar tariff-rate quota (TRQ) provided for in Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) would not be filling their allocations and that the amount of this shortfall would be reallocated to other supplying countries or areas. This notice documents these earlier announcements. Following is information on the quota shortfall and reallocation amounts for the June 13 and July 13 announcements, respectively.

June 13, 1995, Reallocation

On June 13, 1995, the United States Trade Representative determined and announced that five countries would not be filling their allocations under the tariff-rate quota for sugar. These countries are: Barbados, Congo, Gabon, Papua New Guinea, and St. Kitts & Nevis. The amount of the total shortfall is 92,427 metric tons (101,883 short tons). The shortfall amount for each country is: Barbados 23,763 MT, Congo 14,584 MT, Gabon 21,840 MT, Papua New Guinea 13,999 MT, and St. Kitts & Nevis 18,241 MT.

This amount has been reallocated among supplying countries in the following amounts (metric tons, raw value):

Country	Reallocated amount
Argentina	4,035
Australia	7,788
Belize	1,032
Bolivia	750
Brazil	13,606
Colombia	2,252
Costa Rica	1,407
Dominican Republic	16,515
Ecuador	1,032
El Salvador	2,440
Fiji	845
Guatemala	4,504
Guyana	1,126
Honduras	938
India	750
Jamaica	1,032
Malawi	938
Mauritius	1,126
Mozambique	1,220
Nicaragua	1,971
Panama	2,721
Peru	3,848
Philippines	12,668
South Africa	2,158
Swaziland	1,502
Taiwan	1,126
Thailand	1,314
Trinidad-Tobago	657
Zimbabwe	1,126
Total	92,427

July 13, 1995, Reallocation

On July 13, 1995, the United States Trade Representative determined and announced that five countries would not be filling their allocations of the tariff-rate quota for sugar, including the amounts reallocated to them in the June 13, 1995, reallocation announcement. Accordingly, their remaining quota balances are being reallocated. This is in addition to the reallocation announced on June 13, 1995.

The five countries which will not utilize their remaining quota balances are: India, Madagascar, the Philippines, Taiwan, and Thailand. The total amount of the 1994/1995 sugar TRQ reallocated for purposes of the July 13 reallocation is 17,923 metric tons (19,757 short tons). The following amounts are reallocated from each country (in MT raw value): India, 750 MT; Madagascar, 2,066 MT; the Philippines, 12,668 MT; Taiwan, 1,126 MT; and Thailand, 1,314 MT.

This amount has been reallocated among supplying countries in the following amounts (metric tons, raw value):

Country	Reallocated amount
Argentina	522
Australia	1,009
Belize	134
Bolivia	97
Brazil	1,762
Columbia	292
Costa Rica	183
Dominican Republic	2,139
Ecuador	134
El Salvador	316
Fiji	109
Guatemala	583
Guyana	146
Honduras	121
Jamaica	134
Malawi	121
Mauritius	146
Mozambique	158
Nicaragua	255
Panama	353
Papua New Guinea	8,005
Peru	499
South Africa	279
Swaziland	195
Trinidad-Tobago	85
Zimbabwe	146
Total	17,923

Barbados, India, Madagascar, Philippines, Taiwan and Thailand were also excluded from this reallocation based on reported lack of shipment intentions for the June 13 reallocation quantity.

The reallocation of the 17,923 MT includes reinstating to Papua New Guinea 8,005 MT of the 13,999 MT reallocated from it in the June 13 announcement. This amount was reinstated due to a confirmed delivery contract for quota entry into the United States by September 30, 1995.

Note: In both announcements, the reallocation amount is zero for the ten minimum quota-holding countries including: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay, since the previously announced minimum allocation for these countries already exceeds the base import quota plus any reallocation adjustment.

Both reallocations apply to the period ending September 30, 1995, only.

Jennifer A. Hillman,

Acting United States Trade Representative.

[FR Doc. 95–21945 Filed 9–6–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36168; File No. SR–Amex–94–38]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1, 2, 3, 4 and 5 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

I. Introduction

On September 12, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) ("Section 19(b)") of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish uniform rules for the listing and trading of broad-based stock index ("index" or "stock index"), currency ("currency") and currency index ("currency index") warrants (collectively "warrants"). Notice of the proposed rule change appeared in the **Federal Register** on December 20, 1994.[3] One comment letter was received in response to the proposal.[4]

The Exchange subsequently filed five Amendments to the proposal.[5] Amendment No. 1 brought several of Amex's proposed rules and policies into conformity with those previously filed by other markets. Amendment No. 2 primarily addressed surveillance and margin issues related to the trading of warrants. Amendment No. 3 addressed the issues of settlement methodology, currency index warrant margin and reporting requirements. Amendment No. 4 deletes a transaction reporting requirement which will be revised and incorporated into the Exchange's surveillance procedures and also makes minor changes requested by the staff. Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised at or prior to expiration. This order approves the proposal, as amended.

II. Description of the Proposal

The Amex proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.[6] Section 106 of the Amex Company Guide, Currency and Index Warrants, would be amended to provide uniform listing criteria for broad-based stock index, currency, and currency index warrants.[7] First, issuers would be expected to exceed minimum issuer listing standards. In particular, the Exchange proposes that issuers be required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million and provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded through NASDAQ exceeds 25% of the issuer's net worth.[8]

Second, the proposal, as amended requires that unexercised in-the-money warrants provide for automatic exercise on their expiration date or on or promptly following their delisting date (if the issue is not listed upon another organized securities market). Third, the proposal provides that for warrant offerings where U.S. stocks constitute 25% or more of the index value ("domestic index"), issuers shall use opening prices ("a.m. settlement") for U.S. stocks to determine index warrant settlement values on the final determination of settlement value date ("valuation date") for the warrants as well as during the two business days prior to the valuation date.[9] Fourth, Section 106 has been amended to provide that foreign country securities or American Depositary Receipts ("ADRs") thereon that are not subject to a comprehensive surveillance sharing agreement with the Exchange and that have less than 50% of their global trading volume (in dollar value) within the U.S., shall not represent more than 20% of the weight of the index.[10]

The Exchange also proposes adding a provision to Section 106 which is designed to assist in the surveillance of index warrant trading. Specifically, the Exchange will require issuers of stock index warrants to notify the Exchange of any early exercises. For domestic index warrants, this notice must occur no later than 4:30 p.m. (New York time) on the day that the settlement value for the warrants is determined.[11]

Rule 462 ("Rule 462"), the Amex margin rule, is being amended to apply the current customer margin requirements for broad based stock index and currency options to stock index, currency and currency index warrants. Thus, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, but with a minimum of ten percent of the index value. Short sales of currency warrants will follow the margin requirements currently applicable to listed currency options. Specifically, the Exchange proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall be subject to a margin level of 100% of the current market value of each such warrant plus a four percent "add-on." [12] The margin required on currency index warrants would be an amount as determined by the Exchange and approved by the Commission.[13] The Exchange also proposes that its stock index, currency and currency index warrant customer margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the Exchange proposes that index, currency and currency index warrants may be offset with either warrants or Options Clearing Corporation ("OCC") issued options on the same index, currency or currency index, respectively. Furthermore, the Exchange has proposed that Rules 462(d)(2) (F) and (G), to the extent that such rules concern spread and straddle positions in warrants, be subject to a one year pilot basis.[14] Finally, proposed Rule 462 will also permit the use of escrow receipts to cover a short call position in a broad-based stock index warrant.[15]

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[1] 15 U.S.C. § 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35086 (Dec. 12, 1994), 59 FR 65561.

[4] *See* Letter from Paul M. Gottlieb, Seward & Kissel, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 ("Comment Letter" or "Seward & Kissel Letter").

[5] *See* Letters from William Floyd-Jones, Assistant General Counsel, Amex, to Michael Walinskas, SEC, dated May 12, 1995 ("Amendment No. 1"), May 12, 1995 ("Amendment No. 2"), June 26, 1995 ("Amendment No. 3"), July 28, 1995 ("Amendment No. 4") and August 16, 1995 ("Amendment No. 5").

[6] The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may only be exercised during a specified period before expiration).

[7] Sections 106 (b)–(d), which require issuances of warrants to: have a term of one to five years; have a minimum public distribution of 1,000,000 warrants together with a minimum of 400 public holders and an aggregate market value of $4,000,000 and; be cash-settled in U.S. dollars would remain unchanged.

[8] *See* Amendment No. 1. The Exchange amended this provision in response to the Seward & Kissell Letter.

[9] *See* Amendment No. 3. The Exchange amended its proposal in response to the Seward & Kissell Letter and notes that a warrant based upon a domestic U.S. stock index may be settled using closing prices ("p.m. settlement") for the underlying stocks at all times except for the warrant's valuation date and the two business days immediately preceding the valuation date.

[10] *See* Amendment No. 1.

[11] *See* Amendment No. 2.

The Exchange proposes that Part VI of its rules, Trading of Stock Index and Currency Warrants, be applicable solely to the trading of warrants. Proposed Rule 1100 provides that, unless the context otherwise requires or a specific rule in Part VI applies, the provisions of the Constitution and all other rules and policies of the Exchange apply to trading of such securities. Furthermore, proposed Rule 1100 provides that warrants listed on the Exchange prior to SEC approval of this filing shall continue to be governed by those provisions of the Exchange's rules that were applicable to such warrants at the time of their listing. Finally, prior to trading index, currency or currency index warrants, the Exchange will distribute circulars to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in warrants.

Proposed Rule 1101 states that no member or member organization shall accept an order from a customer for the purchase or sale of warrants unless the customer's account has been approved for options trading pursuant to Exchange Rule 921. Accordingly, the Exchange will rescind Commentaries .01 and .02 to Rule 411, its current suitability standard applicable to warrants, which currently provide that the Exchange "recommends" that index and currency warrants only be sold to investors whose accounts have been approved for options trading. Furthermore, proposed Rules 1102–1105 require that the option rules pertaining to suitability, discretionary account trading, supervision of accounts and customer complaints be applied to warrants.

Proposed Rule 1106 requires approval by a Compliance Registered Options Principal of all advertisements, sales literature and educational material issued by a member organization pertaining to warrants. The rule further requires Exchange approval of all advertisements and educational materials pertaining to warrants.

Proposed Rule 1107 provides that position limits for stock index warrants on the same index with original issue prices of ten dollars or less will be fifteen million warrants covering all such issues. In addition, with respect to warrants on the Standard & Poor's MidCap 400 Index, the position limit will be seven and one half million warrants covering all such issues, provided the original issue prices of the warrants are not greater than ten dollars. The rule provides that warrants with an original issue price of greater than ten dollars will be weighted more heavily than warrants with an original issue price of ten dollars or less in calculating position limits.[16] The rule also gives the Exchange the authority to require the liquidation of a position in stock index warrants that is in excess of the position limits set forth in the rule, and Commentary V to the rule provides procedures for allowing limited exceptions to the position limits.

Proposed Rule 1108 provides for exercise limits on stock index warrants analogous to those found in stock index options and states that such limits are distinct from any exercise limits that may be imposed by the issuers of stock index warrants. Accordingly, no member may exercise a long position in warrants over a five consecutive day period in excess of the permissible position limit.

In order to facilitate its review of compliance with position and exercise limits, the Exchange has proposed Rule 1110 which establishes reporting requirements for large warrant positions. Under the terms of the Rule, members will be required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position of 100,000 warrants overlying the same index, currency or currency index. For purposes of this rule, the Exchange proposes that long positions inputs be combined with short positions in call warrants, and that short positions inputs be combined with long positions in call warrants.[17] Finally, proposed Rule 1109 requires that the trading halt provisions in Rule 918C(b) shall be applied to the trading of stock index warrants.

Upon Commission approval of the foregoing rule amendments, the Exchange proposes that it will only file rule changes for specific stock index warrant issuances where there is no corresponding option or warrant on the same underlying stock index already listed on a national securities exchange or included for quotation on NASDAQ. Accordingly, when a listed option overlies a particular broad based index, the Exchange proposes it be allowed to list warrants on that index without further Commission review and approval pursuant to Section 19(b) of the Act, as long as the listing complies with the warrant listing standards as approved in this Order.[18]

III. Comments Received

The Commission received one letter in response to its request for comments on the Amex proposal.[19] The Comment Letter was generally supportive of the Amex's proposal, however, it recommended several changes in the proposed regulatory structure applicable to stock index, currency and currency index warrants. The Comment Letter was submitted on behalf of the Firms, all of whom are represented to be major participants in the issuance, underwriting and trading of warrants. Because the proposed regulatory regime applicable to warrants will, to some extent, be based upon the rules governing standardized options, the

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[12] *See* Amendment No. 3. Consistent with the treatment of options on foreign currencies, warrants on the Canadian Dollar will be subject to a one percent "add-on". The margin required on any other foreign currency would be subject to approval by the Commission. *See infra* note 28.

[13] *See infra* note 28.

[14] Three months prior to the expiration of the pilot program, the Exchange will submit a report to SEC staff analyzing the price relationship between listed warrants and options on similar stock indexes. *See* Amendment No. 1. The Exchange has also requested no action relief from the Commission in order to permit certain short positions in stock index call and put warrants to be treated as covered for margin purposes.

[15] *See* Amendment No. 1. The Exchange notes that this treatment is consistent with the rules that allow for the use of escrow receipts to cover a short call position in broad-based stock index options.

[16] For example, if an investor held 100,000 warrants based upon the Standard & Poor's 500 Index offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000.

[17] *See* Amendment Nos. 1 and 3.

[18] *See infra* note 28.

[19] See supra note 4. The Seward & Kissel Letter was submitted on behalf of PaineWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc. (collectively the "Firms").

Comment Letter states that the Firms comments are driven, in part, by the fact that fundamental differences exist between warrants and standardized options which necessitate disparate regulatory treatment in certain situations.[20]

First, the Comment Letter suggested amending the Issuer Listing Standards to eliminate the 25% test or, in the alternative, to adopt hedging and/or netting standards designed to more accurately reflect issuer-specific risk.[21] Because warrants are sold by means of a registration statement, the Firms believe that adequate disclosure of the amount of an issuer's outstanding securities could be included in the prospectus. Furthermore, the Comment Letter points out that issuers of warrants are traditionally subject to outside evaluation by certain credit rating agencies, which should assist investors in determining undue issuer credit risk. Finally, the Firms do not believe the 25% test bears any resemblance to an issuer's risk exposure since exposure fluctuates with market changes at any given time and also because the proposal provides no recognition for offsetting hedges or for warrants subject to netting.

In response to the Seward & Kissel Letter's comments respecting issuer listings standards, the Amex amended the filing to add an alternative issuer qualification criteria.[22] Under the new criteria, an issuer will be required to either: (a) have a minimum tangible net worth of $250 million; or (b) meet the existing criteria (*i.e.*, tangible net worth of $150 million and meet the 25% test).

The Comment Letter also recommended allowing the use of p.m. settlement for all American-style warrants exercised anytime except 48 hours prior to expiration, at which time a.m. settlement would be required. According to the Comment Letter unlike with listed options (where OCC is the issuer and runs a balanced book), a warrant issuer must hedge its exposure to maintain offsetting positions. Upon early exercise of the warrants, the issuer that has hedged its exposure will have to take action to "unwind" the portion of its hedge relating to the exercised warrants. The Firms believe that requiring a.m. settlement on the first day after an investor exercises the warrant will place additional market risk upon them due to the difficulty in managing the hedge. This increased hedging cost, the Firm's argue, could result in a higher issuance price for the warrant or could require that the warrant settlement value date be postponed an additional day, with warrant holders bearing additional market risk during this period.

In response to the Comment Letter, the Amex amended its filing to include a provision permitting p.m. settlement for stock index warrants except for a short period before expiration.[23] Under the terms of the amendment, stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the U.S. shall, by their terms, provide that, on valuation date, as well as for the two business days prior to valuation date, the value of the stocks traded primarily in the U.S. which underlie such warrants shall be determined by reference to the opening prices of such underlying U.S. securities. For example, if the valuation date for an issuance of index warrants occurs on a Friday, a.m. settlement must be utilized for warrants that are valued on the preceding Wednesday or Thursday, as well as on the valuation date.

Third, the Comment Letter recommended creating a special category of "warrant eligible" customers (separate and distinct from options eligibility criteria), who are authorized to trade warrants even if not approved to trade options. The Firms believe it is inappropriate to apply an options regulatory regime to warrants and that doing so may prevent institutional customers who are not permitted to purchase options products, yet who nevertheless meet all of the options eligibility criteria, from purchasing warrants. In this regard, the Firms propose to create a "warrant eligible" category with standards mimicking those currently required for options approved accounts. As such, "warrant-approved" accounts could purchase warrants, however, they could not purchase options or other products requiring options account approval. The Amex did not amend its filing in response to this comment.

Fourth, the Comment Letter urges the adoption of a rule permitting firms to approve for warrant trading those accounts managed by an investment adviser ("IA") based upon the IA's representation concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the brokerage firms. The Amex has amended its proposal to allow member firms to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the member firm, where the managed account is for an institutional customer or the investment advisor account represents the collective investment of a number of persons. The Amex states that this will conform the handling of warrant accounts to the current practice with respect to listed options accounts.[24]

Finally, the Comment Letter addressed the proposed position limits applicable to warrants. Specifically, the Comment Letter noted that position limits for warrants would be set at levels that are approximately 75% of that allowed for similar broad-based indexes. The Comment Letter recommended establishing position limits for warrants that were equivalent to those established for listed options, allowing a hedge exemption similar to listed option procedures and providing a mechanism for specific waivers or exemptions of warrant position limits for hedgers, market-makers and broker-dealers comparable to the procedures in place for listed options. The Amex did not amend its filing in response to this comment.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[25] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing standards for broad-based stock index, currency and currency index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the Amex's proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

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[20] The Comment Letter lists several differences which it perceives exist between warrants and standardized options. Chief among these are: (1) Warrants are separately registered, unsecured obligations of their issuer while options are issued and guaranteed by the Options Clearing Corp. ("OCC"); (2) during the prospectus delivery period, warrant purchasers receive a product-specific prospectus while options customers receive an options disclosure document ("ODD") at the time the account is opened; (3) each warrant creates a fixed number of outstanding warrants while there is theoretically no limit to the number of options that may be issued by OCC; and (4) warrants are traded on an exchange in a manner similar to stocks which, therefore, translates into superior price transparency than for listed options.

[21] As originally proposed, an issuer would have been required to have a tangible net worth of at least $150 million and the aggregate original issue price of all of a particular issuer's warrant offerings (combined with such offerings by its affiliates) that are listed on a national securities exchange or that are national market securities traded through NASDAQ may not exceed 25% of the issuer's net worth ("25% test).

[22] *See* Amendment No. 1.

[23] *See* Amendments No. 3 and 5.

[24] *See* Amendment No. 1.

[25] 15 U.S.C. § 78f(b)(5) (1982).

The Amex's proposed generic listing standards for broadbased stock index warrants, currency and currency indexes set forth a regulatory framework for the listing of such products.[26] Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have a negative market impact. In addition, these standards should address the special risks to customers arising from the derivative products.[27] For the reasons discussed below, the Commission believes the Amex's proposal will provide it with significant flexibility to list index, currency and currency index warrants, without compromising the effectiveness of the Exchange's listing standards or regulatory program for such products.[28]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on a stock index, currency or currency index permits investors to participate in the price movements of the underlying assets, and allows investors holding positions in some or all of such assets to hedge the risks associated with their portfolios. The Commission further believes that trading warrants on a stock index, currency or currency index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

Warrants, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the Exchange's issuer listing standards that require an issuer to have either; (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency and currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants. Moreover, the alternative test addresses the Comment Letter's concerns on the 25% standard.

The Amex's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) ("domestic index warrants") are required to utilize a.m. settlement for expiring warrants as well as during the last two business days prior to valuation date.[29] The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, in accordance with the Comment Letter's suggestions, the use of p.m. settlement except during the last two business days prior to a domestic index warrant's valuation date, as well as the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designing their products.[30] In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at

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[26] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[27] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

[28] Issuances of warrants overlying a single currency may currently be listed for trading without a rule filing provided that the underlying currency is one of the original seven foreign currencies approved for options trading: the Australian Dollar, British Pound, Canadian Dollar, French Franc, German Mark, Japanese Yen, Swiss Franc and European Currency Unit. Issuances of currency warrants overlying any other foreign currency would require a rule filing pursuant to Section 19(b) of the Act. The Commission notes that currency index warrants may only be established without a further rule filing upon an index that has been previously approved by the Commission pursuant to a Section 19(b) filing. To date, the only currency index approved pursuant to Section 19(b) is an equal-weighted index comprised of the British Pound, Japanese Yen and German Deutsche Mark. *See* Securities Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399 (Dec. 30, 1992). Accordingly, any other currency index (as well as a broad-based stock index) not previously approved by the Commission would require approval pursuant to Section 19(b).

[29] Currency and currency index warrants are not limited to a.m. or p.m. settlement.

[30] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

settlement. Nevertheless, the Commission expects the Exchange to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the Amex has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with trading in these instruments, in accordance with Amex Rule 921, and that adequate disclosure of the risks of these products must be made to investors.[31] In addition, the Amex will apply the options rules for suitability, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the Amex has addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The Amex has adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index, currency and currency index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period. The Commission believes that this will ensure that certain information about the particular issuance and issuer is publicly available.

As noted above, the Comment Letter indicates that applying the options disclosure framework to warrants is inappropriate. However, the Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the Exchange circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

At this time, the Commission does not agree with the proposal contained in the Comment Letter to create a special "warrant eligible" classification of purchasers. As noted above, index, currency and currency index warrants are very similar to standardized options. They are so similar that a customer precluded from trading options should not avoid the restriction indirectly by being designated by Exchange rules as eligible for stock index, currency or currency index warrants. Nevertheless, as the range of exchange-traded derivative products increases, the SROs might consider in the future as to whether a new derivatives eligibility classification is appropriate.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard the Commission notes that the Exchange has developed adequate surveillance procedures for the trading of index and currency warrants. First, new issues of currency warrants will be subject to the Amex's existing surveillance procedures applicable to foreign currency warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses involving the warrant market and the underlying foreign currencies.[32]

Second, the Exchange has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[33] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the Exchange on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the Amex in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Third, the Exchange has developed adequate surveillance procedures to apply to foreign stock index warrants (*i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[34] The Commission believes that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement [35] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivative product and its underlying stocks.[36] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur.[37] In this regard, the Amex will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The Exchange has in place an effective surveillance agreement[38] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard available for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[39] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the Amex has no surveillance sharing agreement.

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[31] Pursuant to Amex Rule 921, all options approved accounts must receive an ODD, which discusses the characteristic and risks of standardized options.

[32] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987), and Securities Exchange Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988). The Commission notes that these surveillance procedures only apply to the issuance of warrants overlying one of the approved foreign currencies. *See supra* note 28. The issuance of warrants upon any other foreign currency would necessitate a Section 19(b) rule filing which, among other things, details applicable surveillance procedures.

[33] In addition, the Commission notes that issuers will be required to report to the Exchange all trades to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the Exchange to monitor the unwinding activity to determine if it was effected in a manner that violates Exchange or Commission rules.

[34] Each prior issuance of a foreign stock market based index warrant is subject to specific surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[35] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[36] The ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants, currency warrants and currency index warrants will not adversely affect the U.S. securities markets or foreign currency markets. First, with respect to currency and currency index warrants, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active over-the-counter market also exists in options, forwards and swaps for foreign currencies. This minimizes the possibility that Exchange listed warrants would be used to manipulate the spot currency markets. In addition, the surveillance procedures for these products should allow the Exchange to detect and deter potential manipulation involving currency warrants and currency index warrants.

Second, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously determined to be broad-based in the context of index options or warrant trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad based stock index options or warrants will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes the Amex's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Third, the Exchange has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the Exchange to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve on a permanent basis the proposed spread margin rules.[40]

Fourth, the Amex has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.[41] Contrary to the views expressed in the Comment Letter, the Commission believes that in the absence of trading experience with domestic index warrants, it would be imprudent to establish position limits for positions greater than those currently applicable to domestic stock index options on the same index.[42]

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards covering index, currency and currency index warrants will provide an appropriate regulatory framework for these products. These standards will also benefit the Exchange by providing them with greater flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index or a non-approved currency or currency index. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

The Commission finds good cause for approving Amendments No. 1, 2, 3, 4 and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** for the following reasons. As discussed below, the changes are either (1) minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures. Accordingly, the amendments do not raise new significant regulatory issues or are responsive to prior comments. In order to enable the Exchange to list new index, currency or currency index warrants as soon as possible, the Commission believes it is necessary and appropriate to approve the amendments on an accelerated basis.

Amendment No. 1 makes several changes to the filing which are designed to bring it into conformity with the other options exchanges. It also revises Section 106 of the Company Guide, Currency and Index Warrants, in several respects to provide uniform issuer listing standards. The first two changes permit the use of p.m. settlement for domestic index warrants (except during the last 48 hours preceding valuation date) and provide an alternative issuer listing qualification criteria (as discussed above under *Issuer Listing Standards and Product Design*). The Commission notes that these changes were made in response to comments received from the Seward & Kissell Letter and further believes these changes provide added flexibility to issuers without compromising investor protection concerns.

Amendment No. 1 also revises Section 106 in two other respects: by limiting the number of foreign securities that may comprise an underlying stock index and by adding a provision requiring an issuer to notify the listing Exchange of early exercises of domestic index warrants. Taken together, the Commission believes these changes further strengthen the issuer listing standards and the Exchange's surveillance procedures to the benefit of warrant investors.

Amendment No. 1 also revises Rule 462 to provide that the proposed spread and straddle margin treatment for stock index warrants will be effected as part of a one year pilot program, and to provide that escrow receipts will be accepted to cover short positions in stock index warrants. The Commission notes that these changes conform the margin treatment afforded options and warrants and provide a basis for evaluating pricing correlations between warrants and options overlying the same index, currency or currency index.

Finally, Amendment No. 1 provides that the Exchange will distribute an information circular to its members upon new warrant listings and that it will permit member firms to accept an IA's representation concerning the options eligibility status of its customers, as described above. The Commission notes that both of these practices are consistent with the treatment of options and, therefore, raise no new or unique regulatory issues. Accordingly for the reasons discussed above relating to each proposed revision of the Amendment, the Commission believes it is appropriate to approve amendment No. 1 to the Exchange's proposal on an accelerated basis.

Amendment No. 2 primarily addresses surveillance related matters. In particular, it provides that issuers must report all hedge unwinding transactions related to the early exercise of domestic index warrants to the listing exchange by the business day following trade date ("T+1").[43] Also, the Amendment requires issuers to notify the listing exchange of any early exercises of index warrants by 4:30 p.m. (New York time) on settlement date for the warrants. Amendment No. 2 also makes minor changes to Rule 462 to clarify which currencies are subject to a four percent "add-on" for margin purposes. The Commission believes these changes to the Amex's surveillance procedures strengthen the Exchange's monitoring of index warrants. Furthermore, the Commission believes this change to Rule 462 is minor and that it does not raise any new or unique regulatory issues. Accordingly, the Commission believes it is appropriate to approve Amendment No. 2 on an accelerated basis.

Amendment No. 3 to the proposal clarifies several issues relating to a.m. settlement, currency index warrant margin, previously issued warrants and position reporting for currency warrants. First, the Amendment clarifies in Amex Rule 106(e) that a.m. settlement will be used during the 48 hour period prior to expiration of index warrants. The Commission notes that this change simply codifies a provision the Amex previously agreed to in Amendment No. 2.[44] Second, the Amendment clarifies that the applicable margin level for currency index warrants will be a percentage as specified by the exchange and approved by the Commission. The Commission notes that this revision is consistent with the treatment afforded currency index options, where margin levels are established on a case by case basis. Third, the Amendment clarifies that warrants issued prior to the approval of these uniform listing and trading guidelines will continue to be subject to the rules applicable to them at the time of their listing. The Commission believes this "grandfather clause" ensures that the rules applicable to previously issued warrants will not change prior to their expiration, and therefore, that the establishment of uniform rules will have little impact on their pricing. Finally, the Amendment establishes that currency and currency index warrants will be subject to the same reporting levels as stock index warrants. The Commission notes that this revision helps to provide uniformity in the regulatory treatment of warrants. Furthermore, because currency and currency index warrants are not subject to position and exercise limits, the Commission believes that requiring investors to report to the Exchange when their holdings exceed specified levels should aid the Exchange in its monitoring for potential trading abuses involving currency and currency index warrants. Accordingly, the Commission believes it is appropriate to approve Amendment No. 3 on an accelerated basis.

Amendment No. 4 deletes a transaction reporting requirement which will be revised and incorporated into the Exchange's surveillance procedures and also makes other minor changes. As such, the Commission does not believe the Amendment raises any new or unique regulatory issues. Accordingly, the Commission believes it is appropriate to approve Amendment No. 4 on an accelerated basis.

Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised prior to expiration. Specifically, the Amendment clarifies that a.m. settlement will be required on valuation date as well as during the last two business days prior to an index warrant's valuation date. As discussed above, the Commission believes that the use of a.m. settlement during this period will help to ameliorate any potential price effects associated with expirations of derivative index products. Accordingly, the Commission believes it is appropriate to approve Amendment No. 5 on an accelerated basis. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments No. 1, 2, 3, 4 and 5 to the Amex's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No 1, 2, 3, 4 and 5. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

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[37] In the context of domestic index warrants, the Commission notes that the U.S. exchanges are members of the Intermarket Surveillance Group ("ISG"), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[38] *See supra* note 35.

[39] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

[40] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the Exchange and approved by the SEC. *See* Amendment No. 4. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[41] The Commission notes that there are no position or exercise limits applicable to currency or currency index warrants, although reporting requirements do apply. Nevertheless, the Commission may review the need to establish foreign currency position limits if the size of the currency or currency index warrant market increases significantly.

[42] With respect to the Comment Letter's suggestion that a hedge exemption rule be established in order to allow participants to readily acquire exemptions from the Exchange as needed, the Commission does not believe that such an approach is appropriate at this time. The hedge exemption for index options was adopted after several years experience with index options trading. Until the SROs gain some experience with domestic index warrant trading, it is difficult to determine the need for a hedge exemption (*i.e.*, that speculative limits are insufficient to meet hedging needs).

[43] The Commission notes that Amendment No. 4 removes this transaction reporting requirement which will be incorporated into the Exchange's surveillance procedures.

[44] Amendment No. 5 subsequently changes the language of this provision to require a.m. settlement be used during the two business days prior to valuation date.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–Amex–94–38) is approved, as amended, with the portion of the rule change relating to spread margin treatment being approved on a one year pilot program basis ending August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22107 Filed 9–6–95; 8:45 am]

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[Release No. 34–36169; File No. SR–CBOE–94–34]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1, 2, 3, 4 and 5 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

I. Introduction

On September 29, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish uniform rules for the listing and trading of broad-based stock index ("stock index" or "index"), currency ("currency") and currency index ("currency index") warrants (collectively "warrants"). Notice of the proposed rule change appeared in the **Federal Register** on January 9, 1995.[3] One comment letter was received in response to the proposal.[4]

The Exchange subsequently filed five Amendments to the proposal. Amendment No. 1 ("Amendment No. 1") brought several of CBOE's proposed rules and policies into conformity with those previously filed by other markets.[5] Amendment No. 2 ("Amendment No. 2") imposes a reporting requirement for positions in currency and currency index warrants.[6] Amendment No. 3 ("Amendment No. 3") addresses issues relating to settlement methodology, surveillance of issuer hedge transactions, early exercise notification and reporting requirements for index warrants.[7] Amendment No. 4 ("Amendment No. 4") addresses surveillance issues related to the trading of index warrants.[8] Amendment No. 5 clarifies the settlement procedures for index warrant which are exercised at or prior to expiration.[9] This order approves the proposal, as amended.

II. Description of the Proposal

The CBOE proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.[10] This filing incorporates the results of numerous communications with the Commission staff and other exchanges, including comments contained in a letter from Sharon Lawson to Joanne Moffic-Silver dated January 28, 1993 ("Lawson letter"). This filing also makes certain changes in the listing criteria for stock index and currency warrants and makes clear that certain rules applicable to currency warrants would apply equally to currency index warrants.

Exercise and Position Limits

The Exchange is proposing position limits for stock index warrants that, in general, are approximately 75%, in terms of underlying dollar value, of the current position limits for index options. Accordingly, proposed Rule 30.35(a) provides that position limits for stock index warrants on the same index with original issue prices of ten dollars or less will be fifteen million warrants covering all such issues.[11] In addition, with respect to warrants on the Russell 2000 Index, the position limit will be twelve and one half million warrants covering all such issues, provided the original issue prices of the warrants are not greater than ten dollars. The rule provides that warrants with an original issue price of greater than ten dollars will be weighted more heavily than warrants with an original issue price of ten dollars or less in calculating position limits.[12]

Proposed Rule 30.35(d) also gives the Exchange the authority to require the liquidation of a position in stock index warrants that is in excess of the position limits set forth in the rule.[13]

Proposed Rule 30.35(b) also establishes exercise limits on stock index warrants which are analogous to those found in stock index options. The rule prohibits holders from exercising, within any five consecutive business days, long positions in warrants in excess of the base position limit established in Rule 30.35(a).

In order to facilitate its review of compliance with position and exercise limits, proposed rule 30.35(d) establishes reporting requirements for large warrant positions. Under the terms of the Rule, members will be required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position of 100,000 warrants overlying the same index, currency or currency index.[14] For purposes of this rule, the Exchange proposes that positions on the same side of the market be aggregated together (*e.g.*, long positions in puts be combined with short positions in call warrants, and short positions in puts be combined with long positions in call warrants).[15]

Margin

The Exchange's proposed margin requirements for customers having positions in index warrants, currency index warrants and currency warrants are included in proposed new Rule 30.52. In general, the proposed margin requirements for long and short positions in stock index warrants are the same as margin requirements for positions in stock index options and the margin requirements for long and short positions in currency warrants are the same as those for corresponding currency options. Thus, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, but with a minimum of ten percent of the index value. Short sales of currency warrants will follow the margin requirements currently applicable to listed currency options. Specifically, the Exchange proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall each be subject to margin level of 100% of the current market value of each such warrant plus a four percent "add-on."[16] The margin required on currency index warrants would be an amount as determined by the Exchange and approved by the Commission.[17] The Exchange also proposes that its stock index, currency and currency index warrant margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the Exchange proposes that index, currency and currency index warrants may be offset with either warrants or Options Clearing Corporation ("OCC") issued options on the same index, currency or currency index, respectively. Furthermore, the Exchange has proposed that Rules 30.35(d)(i), (ii) and (iii), to the extent that such rules concern spread and straddle positions in warrants, be subject to a one year pilot basis.[18] Finally, proposed Rule 30.53(d)(iv) will permit the use of escrow receipts to cover a short position in a broad-based stock index warrant.[19]

CBOE believes that a broker-dealer carrying positions in warrants must bear in mind that special characteristics of warrants—such as pricing differences, the necessity of borrowing to make delivery on short sales, and the issuer credit risk associated with long warrants—may cause these margin requirements to be insufficient to fully cover the risk of such positions in certain circumstances, and broker-dealers must therefore be prepared to call for additional margin when appropriate. CBOE further believes that each exchange listing stock index, currency index or currency warrants should draw the attention of its member firms to this issue in connection with the adoption of these margin rules.

In accordance with the Lawson letter, the proposed rules would be applicable only to warrants issued after the effective date of this filing. Warrants issued prior to that date would remain subject to the rules in effect at the time of their listing.

Customer Protection

Modifications are proposed to Exchange Rule 30.50, Doing Business With the Public, to incorporate references to proposed new Rule 30.52. Proposed Rule 30.52(c) states that no member or member organization shall accept an order from a customer for the purchase or sale of warrants unless the customer's account has been approved for options trading pursuant to Exchange Rule 9.7. Accordingly, the Exchange will rescind Interpretation .02 to Rule 30.52, its current suitability standard applicable to warrants, which currently provides that the Exchange "recommends" that index and currency warrants only be sold to investors whose accounts have been approved for options trading. Appendix A to Chapter XXX, which is a cross-reference table to other rules of the Exchange that are applicable to securities otherwise covered in Chapter XXX, is being updated to reflect the applicability of certain options rules (*i.e.*, customer protection rules including, but not limited to, account supervision, suitability, etc.) to warrants:

Rule 4.13	Reports Related to Position Limits
Rule 4.14	Liquidation of Positions
Rule 9.2	Registration of Options Principals
Rule 9.6	Registration of Branch Offices
Rule 9.7	Account Approval Requirements
Rule 9.8	Supervision Requirements
Rule 9.9	Suitability Requirements
Rule 9.10	Discretionary Account Requirements
Rule 9.21	Requirements for Customer Communications
Rule 9.23	Record-keeping Requirements for Customer Complaints

Listing Criteria

The listing criteria for stock index warrants and currency warrants are being amended to reflect the comments contained in the Lawson letter and to make clear that they apply to currency index warrants. In particular, proposed Rule 31.5(E) (1) and (4) provide that issuers are required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded through NASDAQ exceeds 25% of the issuer's net worth.[20]

Second, proposed Rule 31.5(E)(6) requires that unexercised in-the-money warrants be automatically exercised on either the delisting date (if the issue is not listed upon another organized securities market) or upon expiration. Third, proposed Rule 31.5(E)(5) provides that for warrant offerings where U.S. stocks constitute 25% or more of the index value ("domestic index"), issuers shall use opening prices ("a.m. settlement") for U.S. stocks to determine index warrant settlement values on the final determination of settlement value date ("valuation date") as well as during the two business days prior to valuation date.[21] Fourth, Rule 31.5(E)(7) has been amended to provide that foreign country securities or American Depositary Receipts ("ADRs") thereon that are not subject to a comprehensive surveillance sharing agreement with the Exchange and that have less than 50% of their global trading volume (in dollar value) within the U.S., shall not represent more than 20% of the weight of the index.[22] Finally, the Exchange proposes to add Rule 31.5(E)(8) in order to assist in the surveillance of index warrant trading. Specifically, the Exchange will require issuers of stock index warrants to notify the Exchange of any early exercises by no later than 3:30 p.m. (Chicago time) on the day that the settlement value for the warrants is determined.[23]

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[45] 15 U.S.C. § 78s(b)(2) (1988).

[46] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b-4 (1994).

[3] Securities Exchange Act Release No. 35178 (Dec. 29, 1994), 60 FR 2409.

[4] *See* Letter from Paul M. Gottlieb, Seward & Kissel, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 ("Comment Letter" or "Seward & Kissel Letter").

[5] Letter from Janet Angstadt, Schiff Hardin & Waite, to Michael Walinskas, SEC, dated March 2, 1995.

[6] Letter from Timothy Thompson, CBOE, to Michael Walinskas, SEC, dated May 8, 1995.

[7] Letter from James R. McDaniel, Schiff Hardin & Waite, to Michael Walinskas, SEC, dated June 23, 1995.

[8] Letter from Janet Angstadt, Schiff Hardin & Waite, to Michael Walinskas, SEC, dated August 4, 1995.

[9] Letter from Janet Angstadt, Schiff Hardin & Waite, to Michael Walinskas, SEC, dated August 18, 1995.

[10] The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may be exercised only during a specified period before expiration).

[11] *See infra* note 47.

[12] For example, if an investor held 100,000 warrants based upon the Standard & Poor's 500 Index offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000.

[13] Proposed Rule 30.35(d) makes Rule 4.14 (Liquidation of Positions) applicable to index warrants.

[14] *See* Amendment No. 2. In the original filing, the CBOE proposed establishing a reportable limit for stock index warrants at 20,000 warrants. Amendment No. 2 extended the reporting requirement to currency and currency index warrants at a level of 100,000 warrants (on the same side of the market). Finally, Amendment No. 3 proposed raising the reporting requirement for stock index warrants from 20,000 to 100,000 warrants (on the same side of the market).

[15] *See* Amendment Nos. 2 and 3.

[16] *See* Amendment No. 3. Consistent with the treatment of options on foreign currencies, warrants on the Canadian Dollar will be subject to a one percent "add-on." The margin required on any other foreign currency would be subject to approval by the Commission. *See infra* note 34.

[17] *See infra* note 17.

[18] Three months prior to the expiration of the pilot program, the Exchange will submit a report to SEC staff analyzing the price relationship between listed warrants and options on similar stock indexes. *See* Amendment No. 1. The Exchange has also requested no-action relief from the Commission in order to permit certain short positions in stock index call and put warrants to be treated as covered for margin purposes.

[19] *See* Amendment No. 1. The Exchange notes that this treatment is consistent with the rules that allow for the use of escrow receipts to cover a short call position in broad-based stock index options.

[20] *See* Amendments No. 1 and 3. The Exchange amended this provision in response to the Seward & Kissell Letter.

Trading Halts or Suspensions

Proposed new Rule 30.36 makes the provisions in Rule 24.7 concerning trading halts or suspensions in stock index options applicable to stock index warrants.

Specific Warrant Issues

Upon Commission approval of the foregoing rule amendments, the Exchange proposes that it will only file rule changes for specific stock index warrant issuances where there is no corresponding option or warrant on the same underlying stock index already listed on a national securities exchange or included for quotation on NASDAQ. Accordingly, when a listed option overlies a particular broad based index, the Exchange proposes it be allowed to list warrants on that index without further Commission review and approval pursuant to Section 19(b) of the Act as long as the listing complies with the warrant listing standards as approved in this Order.[24] Finally, prior to trading stock index or currency warrants, the Exchange will distribute circulars to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in warrants.

III. Comments Received

The Commission received one letter in response to its request for comments on the CBOE proposal.[25] The Comment Letter was generally supportive of the CBOE's proposal, however, it recommended several changes in the proposed regulatory structure applicable to stock index, currency and currency index warrants. The Comment Letter was submitted on behalf of the Firms, all of whom are represented to be major participants in the issuance, underwriting and trading of warrants. Because the proposed regulatory regime applicable to warrants will, to some extent, be based upon the rules governing standardized options, the Comment Letter states that the Firms' comments are driven, in part, by the fact that fundamental differences exist between warrants and standardized options which necessitate disparate regulatory treatment in certain situations.[26]

First, the Comment Letter suggested amending the issuer Listing Standards to eliminate the 25% test or, in the alternative, to adopt hedging and/or netting standards designed to more accurately reflect issuer-specific risk.[27] Because warrants are sold by means of a registration statement, the Firms believe that adequate disclosure of the amount of an issuer's outstanding securities could be included in the prospectus. Furthermore, the Comment Letter points out that issuers of warrants are traditionally subject to outside evaluation by certain credit rating agencies, which should assist investors in determining undue issuer credit risk. Finally, the Firms do not believe the 25% test bears any resemblance to an issuer's risk exposure since exposure fluctuates with market changes at any given time and also because the proposal provides no recognition for offsetting hedges or for warrants subject to netting.

In response to the Seward & Kissel Letters's comments respecting issuer listings standards, the CBOE amended the filing to add an alternative issuer qualification criteria.[28] Under the new criteria, an issuer will be required to either: (a) have a minimum tangible net worth of $250 million; or (b) meet the existing criteria (*i.e.*, tangible net worth of $150 million and meet the 25% test).

The Comment Letter also recommended allowing the use of p.m. settlement for all American-style warrants exercised anytime except 48 hours prior to expiration, at which time a.m. settlement would be required. According to the Comment Letter, unlike with listed options (where OCC is the issuer and runs a balanced book), a warrant issuer must hedge its exposure to maintain offsetting positions. Upon early exercise of the warrants, the issuer that has hedged its exposure will have to take action to "unwind" the portion of its hedge relating to the exercised warrants. The Firms believe that requiring a.m. settlement on the first day after an investor exercises the warrant will place additional market risk upon them due to the difficulty in managing the hedge. This increased hedging cost, the Firm's argue, could result in a higher issuance price for the warrant or could require that the warrant settlement value date be postponed an additional day, with warrant holders bearing additional market risk during this period.

In response to the Comment Letter, the CBOE amended its filing to include a provision permitting p.m. settlement for stock index warrants except for a short period before expiration.[29] Under the terms of the amendment, stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the U.S. shall, by their terms, provide that, on valuation date, as well as for the two business days prior to valuation date, the value of the stocks traded primarily in the U.S. which underlie such warrants shall be determined by reference to the opening prices of such underlying U.S. securities. For example, if the valuation date for an issuance of index warrants occurs on a Friday, a.m. settlement must be utilized for warrants that are valued on the preceding Wednesday or

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[21] *See* Amendment No. 5. The Exchange amended its proposal in response to the Seward & Kissell Letter and notes that a warrant based upon a domestic U.S. stock index may be settled using closing prices ("p.m. settlement") for the underlying stocks at all times except for the warrants valuation day and the two business days immediately preceding valuation date.

[22] *See* Amendment No. 1.

[23] *See* Amendment No. 3.

[24] *See infra* note 34.

[25] *See supra* note 4. The Seward & Kissel Letter was submitted on behalf of PainWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc. (collectively the "Firms").

[26] The Comment Letter lists several differences which it perceives exist between warrants and standardized options. Chief among these are: (1) warrants are separately registered, unsecured obligations of their issuer while options are issued and guaranteed by the Options Clearing Corp. ("OCC"); (2) during the prospectus delivery period, warrant purchasers receive a product-specific prospectus while options customers receive an options disclosure document ("ODD") at the time the account is opened; (3) each warrant creates a fixed number of outstanding warrants while there is theoretically no limit to the number of options that may be issued by OCC; and (4) warrants are traded on an exchange in a manner similar to stocks which, therefore, translates into superior price transparency than for listed options.

[27] As originally proposed, an issuer would have been required to have a tangible net worth of at least $150 million and the aggregate original issue price of all of a particular issuer's warrant offerings (combined with such offerings by its affiliates) that are listed on a national securities exchange or that are national market securities traded through NASDAQ was not to exceed 25% of the issuer's net worth ("25% test).

[28] *See* Amendment No. 1.

[29] *See* Amendments No. 3 and 5.

Thursday, as well as on the valuation date.

Third, the Comment Letter recommended creating a special category of "warrant eligible" customers (separate and distinct from options eligibility criteria), who are authorized to trade warrants even if not approved to trade options. The Firms believe it is inappropriate to apply an options regulatory regime to warrants and that doing so may prevent institutional customers who are not permitted to purchase options products, yet who nevertheless meet all of the options eligibility criteria, from purchasing warrants. In this regard, the Firms propose to create a "warrant eligible" category with standards mimicking those currently required for options approved accounts. As such, "warrant-approved" accounts could purchase warrants, however, they could not purchase options or other products requiring options account approval. The CBOE did not amend its filing in response to this comment.

Fourth, the Comment Letter urges the adoption of a rule permitting firms to approve for warrant trading those accounts managed by an investment adviser ("IA") based upon the IA's representation concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the brokerage firms. The CBOE has amended its proposal to allow member firms to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed account is not provided to the member firm, where the managed account is for an institutional customer or the investment advisor account represents the collective investment of a number of persons. The CBOE states that this will conform the handling of warrant accounts to the current practice with respect to listed options accounts.[30]

Finally, the Comment Letter addressed the proposed position limits applicable to warrants. Specifically, the Comment Letter noted that position limits for warrants would be set at levels that are approximately 75% of that allowed for similar broad-based indexes. The Comment Letter recommended establishing position limits for warrants that were equivalent to those established for listed options, allowing a hedge exemption similar to listed option procedures and providing a mechanism for specific waivers or exemptions of warrant position limits for hedgers, market-makers and broker-dealers comparable to the procedures in place for listed options. The CBOE did not amend its filing in response to this comment.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[31] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing standards for broad-based stock index, currency and currency index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the CBOE's proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The CBOE's proposed generic listing standards for broad-based stock index warrants, currency and currency indexes set forth a regulatory framework for the listing of such products.[32] Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leverage and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have a negative market impact. In addition, these standards should address the special risks to consumers arising from the derivative products.[33] For the reasons discussed below, the Commission believes the CBOE's proposal will provide it with significant flexibility to list index, currency and currency index warrants, without compromising the effectiveness of the Exchange's listing standards or regulatory program for such products.[34]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on a stock index, currency or currency index permits investors to participate in the price movements of the underlying assets, and allows investors holding positions in some or all of such assets to hedge the risks associated with their portfolios. The commission further believes that trading warrants on a stock index, currency or currency index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

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[30] *See* Amendment No. 1.

[31] 15 U.S.C. 78f(b)(5) (1982).

[32] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[33] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risk associated with their portfolios.

[34] Issuances of warrants overlying a single currency may currently be listed for trading without a rule filing provided that the underlying currency is one of the original seven foreign currencies approved for options trading: the Australian Dollar, British Pound, Canadian Dollar, French Franc, German Mark, Japanese Yen, Swiss Franc and the European Currency Unit. Issuances of currency warrants overlying any other foreign currency would require a rule filing pursuant to Section 19(b) of the Act. The Commission notes that currency index warrants may only be established without a further rule filing upon an index that has been previously approved by the Commission pursuant to a Section 19(b) filing. To date, the only currency index approved pursuant to Section 19(b) is an equal-weighted index comprised of the British Pound, Japanese Yen and German Deutsche Mark. *See* Securities Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399 (Dec. 30, 1992). Accordingly, anv other currency index (as well as a broad-based stock index) not previously approved by the Commission would require approval pursuant to Section 19(b).

Warrants, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the Exchange's issuer listing standards that require an issuer to have either; (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency or currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants. Moreover, the alternative test addresses the Comment Letter's concerns on the 25% standard.

The CBOE's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) ("domestic index warrants") are required to utilize a.m. settlement for warrants on valuation date as well as during the last two business days prior to valuation date.[35] The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, in accordance with the Comment Letter's suggestions, the use of p.m. settlement except during the last two business days prior to a domestic index warrant's valuation date, as well as the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designing their products.[36] In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at settlement. Nevertheless, the Commission expects the Exchange to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the CBOE has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with trading in these instruments, in accordance with CBOE Rule 9.7, and that adequate disclosure of the risks of these products must be made to investors.[37] In addition, the CBOE will apply the options rules for suitability, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the CBOE has addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The CBOE has adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index, currency and currency index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period. The Commission believes that this will ensure that certain information about the particular issuance and issuer is publicly available.

As noted above, the Comment Letter indicates that applying the options disclosure framework to warrants is inappropriate. However, the Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the Exchange circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

At this time, the Commission does not agree with the proposal contained in the Comment Letter to create a special "warrant eligible" classification of purchasers. As noted above, index, currency and currency index warrants are very similar to standardized options. They are so similar that a customer precluded from trading options should not avoid the restriction indirectly by being designated by Exchange rules as eligible for stock index, currency or currency index warrants. Nevertheless, as the range of exchange-traded derivative products increases, the SROs might consider in the future as to whether a new derivatives eligibility classification is appropriate.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard the Commission notes that the Exchange has developed adequate surveillance procedures for the trading of index and currency warrants. First, new issues of

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[35] Currency and currency index warrants are not limited to a.m. or p.m. settlement.

[36] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

[37] Pursuant to CBOE Rule 9.7, all options approved accounts must receive an ODD, which discusses the characteristic and risks of standardized options.

currency warrants will be subject to the CBOE's existing surveillance procedures applicable to foreign currency warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses involving the warrant market and the underlying foreign currencies.[38]

Second, the Exchange has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[39] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the Exchange on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the CBOE in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Third, the Exchange had developed adequate surveillance procedures to apply to foreign stock index warrants (*i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[40] The Commission believes that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement[41] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivative product and its underlying stocks.[42] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur.[43] In this regard, the CBOE will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The Exchange has in place an effective surveillance agreement[44] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard available for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[45] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the CBOE has no surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants, currency warrants and currency index warrants will not adversely affect the U.S. securities markets or foreign currency markets. First, with respect to currency and currency index warrants, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active over-the-counter market also exists in options, forwards and swaps for foreign currencies. This minimizes the possibility that Exchange listed warrants would be used to manipulate the spot currency markets. In addition, the surveillance procedures for these products should allow the Exchange to detect and deter potential manipulation involving currency warrants and currency index warrants.

Second, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously determined to be broad-based in the context of index options or warrant trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad based stock index options or warrants will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes the CBOE's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Third, the Exchange has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the Exchange to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve on a permanent basis the proposed spread margin rules.[46]

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[38] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987), and Securities Exchange Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988). The Commission notes that these surveillance procedures only apply to the issuance of warrants overlying one of the approved foreign currencies. *See supra* note 34. The issuance of warrants upon any other foreign currency would necessitate a Section 19(b) rule filing which, among other things, details applicable surveillance procedures.

[39] In addition, the Commission notes that issuers will be required to report to the Exchange all trades to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the Exchange to monitor the unwinding activity to determine if it was effected in a manner that violates Exchange or Commission rules.

[40] Each prior issuance of a foreign stock market-based index warrant is subject to specific surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[41] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[42] The ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

[43] In the context of domestic index warrants, the Commission notes that the U.S. exchanges are members of the Intermarket Surveillance Group ("ISG"), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[44] *See supra* note 41.

[45] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

Fourth, the CBOE has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.[47] Contrary to the views expressed in the Comment Letter, the Commission believes that in the absence of trading experience with domestic index warrants, it would be imprudent to establish position limits for positions greater than those currently applicable to domestic stock index options on the same index.[48]

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards covering index, currency and currency index warrants will provide an appropriate regulatory framework for these products. These standards will also benefit the Exchange by providing them with greater flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index or a non-approved currency or currency index. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

The Commission finds good cause for approving Amendments No. 1, 2, 3, 4 and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** for the following reasons. As discussed below, the changes are either (1) minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures. Accordingly, the amendments do not raise new significant regulatory issues or are responsive to prior comments. In order to enable the Exchange to list new index, currency or currency index warrants as soon as possible, the Commission believes it is necessary and appropriate to approve the amendments on an accelerated basis.

Amendment No. 1 makes several changes to the filing which are designed to bring it into conformity with the other options exchanges. First, it revises Rule 31.5(E) in several respects to provide uniform issuer listing standards. The first two changes provide an alternative issuer listing qualification criteria (as discussed above under *Issuer Listing Standards and Product Design*) and limit the number of foreign securities that may comprise an underlying stock index. The Commission notes that the first change was made in response to comments received from the Seward & Kissell Letter and further believes it will provide added flexibility to issuers without compromising investor protection concerns. The Commission believes the second change strengthens the issuer listing standards to the benefit of warrant investors.

Amendment No. 1 also revises Rule 462 to provide that the proposed spread and straddle margin treatment for stock index warrants will be effected as part of a one year pilot program, and to provide that escrow receipts will be accepted to cover short positions in stock index warrants. The Commission notes that these changes conform the margin treatment afforded options and warrants and provide a basis for evaluating pricing correlations between warrants and options overlying the same index, currency or currency index.

Finally, Amendment No. 1 provides that the Exchange will permit member firms to accept an IA's representation concerning the options eligibility status of its customers, as described above. The Commission notes this practice is consistent with the treatment of options and, therefore, raises no new or unique regulatory issues. Accordingly, for the reasons discussed above relating to each proposed revision of the Amendment, the Commission believes it is appropriate to approve Amendment No. 1, to the Exchange's proposal on an accelerated basis.

Amendment No. 2 establishes that currency and currency index warrants will be subject to reporting levels in the same manner as stock index warrants. The Commission notes that this revision helps to provide uniformity in the regulatory treatment of warrants. Furthermore, because currency and currency index warrants are not subject to position and exercise limits, the Commission believes that requiring investors to report to the Exchange when their holdings exceed specified levels should aid the Exchange in its monitoring for potential trading abuses involving currency and currency index warrants.[49] Accordingly, the Commission believes it is appropriate to approve Amendment No. 2 on an accelerated basis.

Amendment No. 3 to the proposal clarifies several issues relating to a.m. settlement, position reporting for index warrants, and other surveillance related matters. In particular, it provides that issuers must report all hedge unwinding transactions related to the early exercise of domestic index warrants to the listing exchange by the business day following trade date ("T+1").[50] Also, the Amendment requires issuers to notify the listing exchange of any early exercises of index warrants by 3:30 p.m. (Chicago time) on settlement date for the warrants. The Commission believes these changes to the CBOE's surveillance procedures strengthen the Exchange's monitoring of index warrants. Also, the Amendment clarifies that a.m. settlement will be used during the 48 hour period prior to expiration of index warrants. The Commission notes that this change simply codifies a provision the CBOE previously agreed to in Amendment No. 2.[51] Finally, the Amendment raises the reporting level requirement for index warrants from 20,000 warrants to 100,000 warrants on the same side of the market. The Commission notes that this change

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[46] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the Exchange and approved by the SEC. *See* Amendment No. 4. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[47] The Commission notes that there are no position or exercise limits applicable to currency or currency index warrants, although reporting requirements do apply. Nevertheless, the Commission may review the need to establish foreign currency position limits if the size of the currency or currency index warrant market increases significantly.

[48] With respect to the Comment Letter's suggestion that a hedge exemption rule be established in order to allow participants to readily acquire exemptions from the Exchange as needed, the Commission does not believe that such an approach is appropriate at this time. The hedge exemption for index options was adopted after several years experience with index options trading. Until the SROs gain some experience with domestic index warrant trading, it is difficult to determine the need for a hedge exemption (*i.e.*, that speculative limits are insufficient to meet hedging needs).

[49] Amendment No. 3 proposes to raise the reporting requirement for stock index warrants from 20,000 to 100,000 warrants.

[50] The Commission notes that Amendment No. 4 removes this transaction reporting requirement which will be incorporated into the Exchange's surveillance procedures.

[51] Amendment No. 5 subsequently changes the language of this provision to require a.m. settlement be used during the two business days prior to valuation date.

provides uniform treatment to index, currency and currency index warrants and should aid the Exchange's surveillance procedures. Accordingly, the Commission believes it is appropriate to approve Amendment No. 3 on an accelerated basis.

Amendment No. 4 deletes a transaction reporting requirement which will be revised and incorporated into the Exchange's surveillance procedures and also makes other minor changes. As such, the Commission does not believe the Amendment raises any new or unique regulatory issues. Second, the Amendment clarifies that the applicable margin level for currency index warrants will be a percentage as specified by the exchange and approved by the Commission. The Commission notes that this revision is consistent with the treatment afforded currency index options, where margin levels are established on a case by case basis. Accordingly, the Commission believes it is appropriate to approve Amendment No. 4 on an accelerated basis.

Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised prior to expiration. Specifically, the Amendment clarifies that a.m. settlement will be required on valuation date as well as during the last two business days prior to an index warrant's valuation date. As discussed above, the Commission believes that the use of a.m. settlement during this period will help to ameliorate any potential price effects associated with expirations of derivative index products. Accordingly, the Commission believes it is appropriate to approve Amendment No. 5 on an accelerated basis.

Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments No. 1, 2, 3, 4 and 5 to the CBOE's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, 2, 3, 4 and 5. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[52] that the proposed rule change (SR–CBOE–94–34) is approved, as amended, with the portion of the rule change relating to spread margin treatment being approved on a one year pilot program basis, ending August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[53]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22108 Filed 9–6–95; 8:45 am]

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[Release No. 34–36171; File No. SR–NASD–55–35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Date of Implementation of the NASD's Primary Market Maker Standards and the Duration of the Pilot Program for the NASD's Short Sale Rule

August 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 24, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission has also granted accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act, the NASD is proposing to delay, from September 6, 1995 to December 1, 1995, the implementation date of the Primary Market Maker standards to be used to determine the eligibility of market makers to an exemption from the NASD's short-sale rule. The NASD also proposes to extend the termination date for the pilot period to June 3, 1996 instead of March 5, 1996. The text of the proposed rule change is as follows (additions are underlined; deletions are bracketed).

RULES OF FAIR PRACTICE

ARTICLE III

Short Sale Rule

Sec. 48

* * * * *

(1)(3) *Until December 1, 1995, t*[T]he term "qualified market maker [,]" [for a period of one year after the effective date of this section,] shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days.

* * * * *

For purposes of this subsection, a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through the Nasdaq system on a continuous basis; provided however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Part VI, Schedule D to the By-Laws, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. *Beginning December 1, 1995,* [One year after effectiveness of this section,] the term "qualified market maker" shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Article III, Section 49 of the Rules of Fair Practice.

* * * * *

(m) This section shall be in effect until *June 3, 1996* [March 6, 1996].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission. the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A., B., and C. below, of the most significant aspects of such statements.

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[52] 15 U.S.C. 78s(b)(2) (1988).

[53] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On June 29, 1994, the SEC approved the NASD's short-sale rule applicable to short sales in Nasdaq National Market securities on an eighteen-month pilot basis through March 5, 1996.[2] The NASD's short-sale rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by the Nasdaq system whenever that bid is lower than the previous inside bid.[3] The rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time). As approved by the Commission, during the first year that the rule is in effect (*i.e.*, September 6, 1994 through September 5, 1995), Nasdaq market makers who maintain a quotation in a particular Nasdaq National Market security for 20 consecutive business days without interruption are exempt from the rule for short sales in that security, provided that the short sales are made in connection with bona fide market making activity (the "20-day" test). For the next six months of the 18-month pilot period (*i.e.*, September 6, 1995 through March 5, 1996), the "20-day" test for market maker exemption from the rule was scheduled to be replaced with a four-part quantitative test known as the Primary Market Maker ("PMM") Standards.

Under the PMM standards, to be eligible for an exemption from the short-sale rule, a market maker must satisfy at least two of the following four criteria: (1) The market maker must be at the best bid or best offer as shown on the Nasdaq system no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its "proportionate" volume in stock.[4] If a market maker is a PMM for a particular stock, there will be a "P" indicator next to its quote in that stock. In addition, market makers will be able to review their status as PMMs through their Nasdaq Workstation. The review period for satisfaction of the PMM performance standards is one calendar month. If a PMM has not satisfied the threshold standards after a particular review period, the PMM designation will be removed commencing on the next business day following notice of failure to comply with the standards. Market makers may requalify for designation as a PMM by satisfying the threshold standards for the next review period.

Because of unforeseen delays in the programming of the PMM standards, however, the NASD is proposing that the effective date of the PMM standards be delayed until December 1, 1995. With the proposed delay, a market maker's trading activity during the month of November will be evaluated according to the PMM standards to determine if it can retain its exemption for December 1995. Until November 30th, the 20-day test will continue to be used to evaluate market makers' eligibility for an exemption from the rule. Thus, after December 1, 1995, a "P" indicator will be delayed next to every PMM that is exempt from the rule according to the new PMM standards.

Because implementation of the PMM standards will be delayed under the proposal, the NASD is also proposing to extend the pilot period for the rule so that there is sufficient time to evaluate the effectiveness and impact of the PMM standards and the effectiveness of the short sale rule with the PMM standards in place. Specifically, the NASD proposes to extend the termination date for the pilot program until June 3, 1996.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) and 11A(c)(1)(F) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Section 11A(c)(1)(F) assures equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities. Specifically, the NASD believes that continuing the operation of the present "20-day" test until the PMM standards are in place will ensure that the liquidity provided to the market by virtue of the market maker exemption will not be diminished. In addition, the NASD believes that continuation of the "20-day" test until the PMM standards are in place would avoid the confusion in the marketplace that would result if the market maker exemption were to lapse for two months and then be reinstated. Finally, the NASD believes that extending the pilot period for the short-sale rule will enhance the quality of studies analyzing the effectiveness of the rule and help to ensure that future regulatory action taken with respect to the rule is based on a greater knowledge and understanding of the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approved such propose rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD has requested, however, that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**.

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[2] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) ("Original Approval Order").

[3] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

[4] Specifically, the proportionate volume test requires a market maker to account for volume of at least one-and-a-half times its proportionate share of overall volume in the security for the review period. For example, if a security has 10 market makers, each has a proportionate share of 10 percent. Therefore, the proportionate share volume is one-and-a-half times 10, or 15 percent of overall volume.

As discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act. Further, the Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of notice of filing in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in that it will permit the NASD to provide interested persons adequate notice that implementation of the PMM standards will be delayed until December 1, 1995 and that the expiration of the short sale rule, including the PMM standards, will be extended until June 3, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

As discussed in the Original Approval Order, the Commission believed and continues to believe that the imposition for a limited time of a short sale rule and accompanying PMM standards applicable to Nasdaq National Market securities is consistent with the requirements of Sections 15A(b)(6), 15A(b)(9) and 15A(b)(11) of the Act.[5] As discussed below, the Commission believes that delayed implementation of the PMM standards until December 1, 1995 and limited extension of the short sale rule until June 3, 1996 (rather than March 6, 1996) is consistent with the Act and the rules and regulations promulgated thereunder.[6]

Maintaining the current operation of the short sale rule until the NASD has completed and tested the systems necessary to provide market participants adequate notice of a market maker's PPM status will avoid confusion in the marketplace and assure consistency in the application of NASD rules. Moreover, extension of the short sale rule until June 3, 1996 will maintain the effectiveness of the PMM standards for six months, as envisioned by the Commission's Original Approval Order. As noted in the Original Approval Order, this will provide the Commission and the NASD the opportunity to study the effects of the rule and its exemptions and to determine whether these are practicable and necessary on an ongoing basis, or whether other alternatives would be more appropriate.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

VI. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the rule change SR–NASD–95–35 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22105 Filed 9–6–95; 8:45 am]

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[5] 15 U.S.C. 78*o*–3(b) (6), (9) and (11). Section 15A(b)(6) requires among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. 15 U.S.C. § 78*o*–3(b)(6). Sections 15A(b) (9) and (11) require that the NASD's rule be designed not to impose any burden on competition not necessary or appropriate in furtherance of the Act, *id.* § 78*o*–3(b)(9), and to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing and publishing quotations. *Id.* § 78*o*–3(b)(11). In addition, the Commission believes that the rule change will further the goals of Section 11A in that it will promote efficient and effective market operations and economically efficient execution of investor orders in the best market and assure fair competition between the exchange markets and the OTC market and among brokers and dealers. *Id.* § 78k–1(a)(1)(C).

[6] Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

[7] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34–36165; File No. SR-NYSE–94–41]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

I. Introduction

On November 9, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) ("Section 19(b)") of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish uniform rules for the listing and trading of stock index ("index" or "stock index"), currency ("currency") and currency index ("currency index") warrants (collectively "warrants"). Notice of the proposed rule change appeared in the **Federal Register** on December 20, 1994.[3] One comment letter was received in response to the proposal.[4]

The Exchange subsequently filed Amendment No. 1 ("Amendment No. 1") to the proposal on August 25, 1995. Amendment No. 1 proposes to amend the filing in order to respond to the Comment Letter, the Commission's comments and to conform certain of the Exchange's proposed rules and policies to those filed by other securities markets. This order approves the proposal, as amended.

II. Description of the Proposal

The NYSE proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.[5] Paragraphs 703.15 (Foreign Currency Warrants and Currency Index Warrants) and 703.17 (Stock Index Warrants Listing Standards) of the *Listed Company Manual* would be amended to provide uniform listing criteria for index, currency and currency index warrants. First, warrant issuers would be expected to exceed minimum issuer listing standards. In particular, the Exchange proposes that issuers be required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded through NASDAQ exceeds 25% of the issuer's net worth.[6]

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[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35095 (Dec. 12, 1994), 59 FR 65552.

[4] *See* Letter from Paul M. Gottlieb, Seward & Kissell, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 ("Comment Letter" or "Seward & Kissell Letter").

[5] The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may only be exercised during a specified period before expiration).

Second, the proposal requires that each unexercised in-the-money warrant be automatically exercised on either the delisting date (if the issue is not listed upon another organized securities market) or upon expiration. Third, the proposal provides that for warrant offerings where U.S. stocks constitute 25% or more of the index value ("domestic index"), issuers shall use opening prices ("a.m. settlement") for U.S. stocks to determine index warrant settlement values at expiration of the warrants, as well as the two business days preceding expiration.[7] Fourth, a new paragraph has been added to Para. 703.17 of the *Listed Company Manual* to prohibit "non-U.S. component securities" from constituting more than 20 percent of the weighted value of an index stock group that underlies a stock index warrant. For purposes of this provision, the term "non-U.S. component security" means, the stock, or an American Depositary Receipt on the stock, of a company that is organized outside of the United States, where more than 50 percent of the dollar value of the global trading volume of the security occurs outside of the United States and that are not subject to a comprehensive surveillance agreement with the primary foreign market.[8] Finally, the Exchange proposes to add Rule 414(n), which is designed to assist in the surveillance of index warrant trading. Specifically, the Exchange will require issuers of stock index warrants to notify the Exchange of any early exercises. For domestic index warrants, this notice must occur by 4:30 p.m. (New York time) on the day that the settlement value for the warrants is determined.[9]

Rule 431 ("Rule 431"), the NYSE margin rule, is being amended to apply the current customer margin requirements for broad based stock index and currency options to stock index, currency and currency index warrants. Thus, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, but to a minimum of ten percent of the index value. Short sales of currency warrants will follow the margin requirements currently applicable to listed currency options. Specifically, the Exchange proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall each be subject to a margin level of 100% of the current market value of each such warrant plus a four percent "add-on." [10] The margin required on currency index warrants would be an amount as determined by the Exchange and approved by the Commission.[11] The Exchange also proposes that its stock index, currency and currency index warrant margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the Exchange proposes that index, currency and currency index warrants may be offset with either warrants or Options Clearing Corporation ("OCC") issued options on the same index, currency or currency index, respectively. Furthermore, the Exchange has proposed that subsections (f)(2)(F)(i), (f)(2)(G)(ii) and (f)(2)(G)(iii) of Rule 431, to the extent that such rules concern spread and straddle positions in warrants, be subject to a one year pilot basis.[12]

Paragraph (f)(2)(H)(iv) of Rule 431 would be amended to permit the carrying of "short" option positions against the use of letters of guarantee or (in the case of a call) "escrow receipts," without the need for margin. The amendment proposes to expand that provision to include stock index warrants as well as options. The use of "escrow receipts" to offset a short call option or warrant position would be new to the Exchange's margin rules, which currently only allow the use of letters of guarantee. However, the margin rules of other U.S. options exchanges provide that no margin is required on a short call option where a customer has delivered to the firm carrying the customer's account a satisfactory escrow receipt. Amendment No. 1 would add the escrow receipt concept to the Exchange's margin rules in respect of margin on options, as well as on stock index warrants, and would do so in a way that generally parallels the permissible use of letters of guarantee under the Exchange's margin rules.

Proposed Rule 414(f) states that no member or member organization shall accept an order from a customer for the purchase or sale of warrants unless the customer's account has been approved for options trading pursuant to Exchange Rule 721. Furthermore, proposed Rules 414(g)–(k) require that the option rules pertaining to supervision of accounts, suitability, discretionary account trading, customer complaints and communications to customers be applied to transactions in warrants. Finally, prior to trading index, currency or currency index warrants, the Exchange will distribute circulars to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in warrants.

Proposed Rule 414(c) provides that position limits for stock index warrants on the same index with original issue prices of ten dollars or less will be fifteen million warrants covering all such issues.[13] The rule provides that warrants with an original issue price of greater than ten dollars will be weighted more heavily than warrants with an original issue price of ten dollars or less in calculating position limits.[14] The rule also gives the Exchange the authority to require the liquidation of a position in stock index warrants that is in excess of the position limits set forth in the rule, and Commentary to the rule establishes procedures for allowing limited exceptions to the position limits.

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[6] *See* Amendment No. 1. The Exchange amended this provision in response to the Seward & Kissell Letter.

[7] *See* Amendment No. 1. The Exchange amended its proposal in response to the Seward & Kissell Letter and will require the use of opening prices in calculating index warrant settlement values during the 48 hours prior to expiration. Before then, an issuer may use either opening or closing prices.

[8] *See infra* note 37 and accompanying text.

[9] *See* Amendment No. 3.

[10] *See* Amendment No. 2. Consistent with the treatment of options on foreign currencies, warrants on the Canadian Dollar will be subject to a one percent "add-on." The margin required on any other foreign currency would be subject to approval by the Commission. *See infra* note 26.

[11] *See infra* note 26.

[12] Three months prior to the expiration of the pilot program, the Exchange will submit a report to SEC staff analyzing the price relationship between listed warrants and options on similar stock indexes. *See* Amendment No. 1. The Exchange has also requested no-action relief from the Commission in order to permit certain short positions in stock index call and put warrants to be treated as covered for margin purposes.

[13] *See infra* note 39.

[14] For example, if an investor held 100,000 warrants based upon the Standard & Poor's 500 Index offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000.

Proposed Rule 414(d) provides for exercise limits on stock index warrants analogous to those found in stock index options and states that such limits are distinct from any exercise limits that may be imposed by the issuers of stock index warrants. Accordingly, no member may exercise a long position in warrants over a five consecutive day period in excess of the permissible position limit.

In order to facilitate its review of compliance with position and exercise limits, the Exchange has proposed Rule 414(c)(v) which establishes reporting requirements for large warrant positions. Under the terms of the rule, members will be required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position of 100,000 warrants overlying the same index, currency or currency index. For purposes of this rule, the Exchange proposes that long positions in puts be combined with short positions in call warrants, and that short positions in puts be combined with long positions in call warrants.[15] Finally, proposed Rule 414(e) requires that the trading halt provisions of Rule 717 shall be applied to the trading of stock index warrants.

Upon Commission approval of the foregoing rule amendments, the Exchange proposes that it will only file rule changes for specific stock index warrant issuances where there is no corresponding option or warrant on the same underlying stock index already listed on a national securities exchange or included for quotation on NASDAQ. Accordingly, when a listed option overlies a particular broad based index, the Exchange proposes it be allowed to list warrants on that index without further Commission review and approval pursuant to Section 19(b) of the Act, as long as the listing complies with the warrant listing standards as approved in this Order.[16]

III. Comments Received

The Commission received one letter in response to its request for comments on the NYSE proposal.[17] The Comment Letter was generally supportive of the NYSE's proposal, however, it recommended several changes in the proposed regulatory structure applicable to stock index, currency and currency index warrants. The Comment Letter was submitted on behalf of the Firms, all of whom are represented to be major participants in the issuance, underwriting and trading of warrants. Because the proposed regulatory regime applicable to warrants will, to some extent, be based upon the rules governing standardized options, the Comment Letter states that the Firms' comments are driven, in part, by the fact that fundamental differences exist between warrants and standardized options which necessitate disparate regulatory treatment in certain situations.[18]

First, the Comment Letter suggested amending the Issuer Listing Standards to eliminate the 25% test or, in the alternative, to adopt hedging and/or netting standards designed to more accurately reflect issuer-specific risk.[19] Because warrants are sold by means of a registration statement, the Firms believe that adequate disclosure of the amount of an issuer's outstanding securities could be included in the prospectus. Furthermore, the Comment Letter points out that issuers of warrants are traditionally subject to outside evaluation by certain credit rating agencies, which should assist investors in determining undue issuer credit risk. Finally, the Firms do not believe the 25% test bears any resemblance to an issuer's risk exposure since exposure fluctuates with market changes at any given time and also because the proposal provides no recognition for offsetting hedges or for warrants subject to netting.

In response to the Seward & Kissel Letter's comments respecting issuer listings standards, the NYSE amended the filing to add an alternative issuer qualification criteria.[20] Under the new criteria, an issuer will be required to either: (a) have a minimum tangible net worth of $250 million; or (b) meet the existing criteria (*i.e.*, tangible net worth of $150 million and meet the 25% test).

The Comment Letter also recommended allowing the use of p.m. settlement for all American-style warrants exercised anytime except 48 hours prior to expiration, at which time a.m. settlement would be required. According to the Comment Letter, unlike with listed options (where OCC is the issuer and runs a balanced book), a warrant issuer must hedge its exposure to maintain offsetting positions. Upon early exercise of the warrants, the issuer that has hedged its exposure will have to take action to "unwind" the portion of its hedge relating to the exercised warrants. The Firms believe that requiring a.m. settlement on the first day after an investor exercises the warrant will place additional market risk upon them due to the difficulty in managing the hedge. This increased hedging cost, the Firm's argue, could result in a higher issuance price for the warrant or could require that the warrant settlement value date be postponed an additional day, with warrant holders bearing additional market risk during this period.

In response to the Comment Letter, the NYSE amended its filing to include a provision permitting p.m. settlement for stock index warrants except for a short period before expiration.[21] Under the terms of the amendment, stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the U.S. shall, by their terms, provide that, on valuation date, as well as for the two business days prior to valuation date, the value of the stocks traded primarily in the U.S. which underlie such warrants shall be determined be reference to the opening prices of such underlying U.S. securities. For example, if the valuation date for an issuance of index warrants occurs on a Friday, a.m. settlement must be utilized for warrants that are valued on the preceding Wednesday or Thursday, as well as on the valuation date.

Third, the Comment Letter recommended creating a special category of "warrant eligible" customers (separate and distinct from options eligibility criteria), who are authorized to trade warrants even if not approved to trade options. The Firms believe it is inappropriate to apply an options regulatory regime to warrants and that doing so may prevent institutional customers who are not permitted to purchase options products, yet who nevertheless meet all of the options eligibility criteria, from purchasing warrants. In this regard, the Firms propose to create a "warrant eligible" category with standards mimicking those currently required for options approved accounts. As such, "warrant-approved" accounts could purchase warrants, however, they could not purchase options or other products requiring options account approval. The NYSE did not amend its filing in response to this comment.

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[15] *See* Amendment No. 1.

[16] *See infra* note 26.

[17] *See supra* note 4. The Seward & Kissel Letter was submitted on behalf of PaineWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc. (correctively the "Firms").

[18] The Comment Letter lists several differences which it perceives exist between warrants and standardized options. Chief among these are: (1) warrants are separately registered, unsecured obligations of their issuer while options are issued and guaranteed by the Options Clearing Corp. ("OCC"); (2) during the prospectus delivery period, warrant purchasers receive a product-specific prospectus while options customers receive an options disclosure document ("ODD") at the time the account is opened; (3) each warrant creates a fixed number of outstanding warrants while there is theoretically no limit to the number of options that may be issued by OCC; and (4) warrants are traded on an exchange in a manner similar to stocks which, therefore, translates into superior price transparency than for listed options.

[19] As originally proposed, an issuer would have been required to have a tangible net worth of at least $150 million and the aggregate original issue price of all of a particular issuer's warrant offerings (combined with such offerings by its affiliates) that are listed on a national securities exchange or that are national market securities traded through NASDAQ were not to exceed 25% of the issuer's net worth ("25% test).

[20] *See* Amendment No. 1.

[21] *See* Amendment No. 1.

Fourth, the Comment Letter urges the adoption of a rule permitting firms to approve for warrant trading those accounts managed by an investment adviser ("IA") based upon the IA's representation concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the brokerage firms. The NYSE has amended its proposal to allow member firms to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed account is not provided to the member firm, where the managed account is for an institutional customer or the investment advisor represents the collective investment of a number of persons. The NYSE states that this will conform the handling of warrant accounts to the current practice with respect to listed options accounts.[22]

Finally, the Comment Letter Addressed the proposed position limits applicable to warrants. Specifically, the Comment Letter noted that position limits for warrants would be set at levels that are approximately 75% of that allowed for similar broad-based indexes. The Comment Letter recommended establishing position limits for warrants that were equivalent to those established for listed options, allowing a hedge exemptions similar to listed option procedures and providing a mechanism for specific waivers or exemptions of warrant position limits for hedgers, market-makers and broker-dealers comparable to the procedures in place for listed options. The NYSE did not amend its filing in response to this comment.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[23] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing standards for broad-based stock index, currency and currency index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the NYSE's proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The NYSE's proposed generic listing standards for broad-based stock index warrants, currency and currency indexes set forth a regulatory framework for the listing of such products.[24] Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have a negative market impact. In addition, these standards should address the special risks to customers arising from the derivative products.[25] For the reasons discussed below, the Commission believes the NYSE's proposal will provide it with significant flexibility to list index, currency and currency index warrants, without compromising the effectiveness of the Exchange's listing standards or regulatory program for such products.[26]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on a stock index, currency or currency index permits investors to participate in the price movements of the underlying assets, and allows investors holding positions in some or all of such assets to hedge the risks associated with their portfolios. The Commission further believes that trading warrants on a stock index, currency or currency index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

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[22] *See* Amendment No. 1.

[23] 15 U.S.C. 78f(b)(5) (1982).

[24] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[25] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

[26] Issuances of warrants overlying a single currency may currently be listed for trading without a rule filing provided that the underlying currency is one of the original seven foreign currencies approved for options trading: the Australian Dollar, British Pound, Canadian Dollar, French Franc, German Mark, Japanese Yen, Swiss Franc and the European Currency Unit. Issuances of currency warrants overlying any other foreign currency would require a rule filing pursuant to Section 19(b) of the Act. The Commission notes that currency index warrants may only be established without a further rule filing upon an index that has been previously approved by the Commission pursuant to a Section 19(b) filing. To date, the only currency index approved pursuant to Section 19(b) is an equal-weighted index comprised of the British Pound, Japanese Yen and German Deutsche Mark. *See* Securities Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399 (Dec. 30, 1992). Accordingly, any other currency index (as well as a broad-based stock index) not previously approved by the Commission would require approval pursuant to Section 19(b).

Warrants, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the Exchange's issuer listing standards that require an issuer to have either; (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency and currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants. Moreover, the alternative test addresses the Comment Letter's concerns on the 25% standard.

The NYSE's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) ("domestic index warrants") are required to utilize a.m. settlement for expiring warrants as well as during the last two business days prior to valuation date.[27] The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, in accordance with the Comment Letter's suggestions, the use of p.m. settlement except during the last two business days prior to a domestic index warrant's valuation date, as well as the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designing their products.[28] In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at settlement. Nevertheless, the Commission expects the Exchange to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the NYSE has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with the trading in these instruments, in accordance with NYSE Rule 721, and that adequate disclosure of the risks of these products must be made to investors.[29] In addition, the NYSE will apply the options rules for suitability, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the NYSE had addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The NYSE had adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index, currency and currency index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period. The Commission believes that this will ensure that certain information about the particular issuance and issuer is publicly available.

As noted above, the Comment Letter indicates that applying the options disclosure framework to warrants is inappropriate. However, the Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the Exchange circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

At this time, the Commission does not agree with the proposal contained in the Comment Letter to create a special "warrant eligible" classification of purchasers. As noted above, index, currency and currency index warrants are very similar to standardized options. They are so similar that a customer precluded from trading options should not avoid the restriction indirectly by being designated by Exchange rules as eligible for stock index, currency or currency index warrants. Nevertheless, as the range of exchange-traded derivative products increases, the SROs might consider in the future as to whether a new derivatives eligibility classification is appropriate.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard the Commission notes that the Exchange has developed adequate surveillance procedures for the trading of index and currency warrants. First, new issues of currency warrants will be subject to the NYSE's existing surveillance procedures applicable to foreign currency warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses involving the warrant market and the underlying foreign currencies.[30]

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[27] Currency and currency index warrants are not limited to a.m. or p.m. settlement.

[28] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

[29] Pursuant to NYSE Rule 726, all options approved accounts must receive an ODD, which discusses the characteristic and risks of standardized options.

Second, the Exchange has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[31] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the Exchange on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the NYSE in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Third, the Exchange has developed adequate surveillance procedures to apply to foreign stock index warrants (*i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[32] The Commission believes that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement [33] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivative product and its underlying stocks.[34] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur.[35] In this regard, the NYSE will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The Exchange has in place an effective surveillance agreement [36] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard available for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[37] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the NYSE has no surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants, currency warrants and currency index warrants will not adversely affect the U.S. securities markets or foreign currency markets. First, with respect to currency and currency index warrants, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and option on those futures. An active over-the-counter market also exists in options, forwards and swaps for foreign currencies. This minimizes the possibility that Exchange listed warrants would be used to manipulate the spot currency markets. In addition, the surveillance procedures for these products would allow the Exchange to detect and deter potential manipulation involving currency warrants and currency index warrants.

Second, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously determined to be broad-based in the context of index options or warrant trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad based stock index options or warrants will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes that NYSE's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Third, the Exchange has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the Exchange to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve on a permanent basis the proposed spread margin rules.[38]

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[30] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987), and Securities Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988). The Commission notes that these surveillance procedures only apply to the issuance of warrants overlying one of the approved foreign currencies. *See supra* note 26. The issuance of warrants upon any other foreign currency would necessitate a Section 19(b) rule filing which, among other things, details applicable surveillance procedures.

[31] In addition, the Commission notes that issuers will be required to report to the Exchange all trades to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the Exchange to monitor the unwinding activity to determine if it was effected in a manner that violates Exchange or Commission rules.

[32] Each prior issuance of a foreign stock market based index warrant is subject to specific surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[33] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[34] The ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

[35] In the context of domestic index warrants, the Commission notes that the U.S. exchanges are members of the Intermarket Surveillance Group ("ISG"), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[36] *See supra* note 33.

[37] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

[38] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the Exchange and approved by the

Fourth, the NYSE has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.[39] Contrary to the views expressed in the Comment Letter, the Commission believes that in the absence of trading experience with domestic index warrants, it would be imprudent to establish position limits for positions greater than those currently applicable to domestic stock index options on the same index.[40]

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards covering index, currency and currency index warrants will provide an appropriate regulatory framework for these products. These standards will also benefit the Exchange by providing them with greater flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index or a non-approved currency or currency index. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** for the following reasons. As discussed below, the changes are either (1) minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures. Accordingly, the amendments do not raise new significant regulatory issues or are responsive to prior comments. In order to enable the Exchange to list new index, currency or currency index warrants as soon as possible, the Commission believes it is necessary and appropriate to approve the amendment on an accelerated basis.

Amendment No. 1 proposes to make the following changes to the Index Warrant Filing:

Changes to Trading Rules

- A definition of "cross currency" would be added to Rule 414(a)(ii).
- The position limit rule (Rule 414(c)(i)) would be amended to provide that, in determining compliance with position limits, "aggregate stock index warrant position" refers to warrants "on the same side of the market".
- A new paragraph 414(c)(v) ("Reports of Index Warrant Positions") would be added to require members and member organizations to report aggregate positions in excess of 100,000 warrants.
- The Index Warrant Filing prescribes the use of opening prices in determining settlement values for all settlement dates. This Amendment No. 1 would amend Paragraph 414(l) ("Settlement Values") to require the use of opening prices in respect of the calculation of settlement values on the day of expiration or on the two business days prior to expiration. Before then, an issuer may use either opening or closing prices in calculating settlement values.
- A new paragraph 414(n) would be added to require the reporting of changes in the number of outstanding warrants due to early warrant exercises.

Changes to Margin Rules

- A new paragraph would be added to Paragraph (f)(2)(C) of Rule 431 ("Margin Requirements") in order to define "call" and "put" in the currency, currency index and stock index warrant context.
- A new element would be added to the definition of "index group value" (*see* Paragraph (f)(2)(C) of Rule 431): In calculating the index group value, one must multiply by the index value (as in the Index Warrant Filing), and divide by any applicable divisor for which the warrant's prospectus may provide (a new addition).
- Paragraph (f)(2)(D)(i) of Rule 431 contains a chart of initial, maintenance and minimum margin requirements. The currency warrant section of that chart would be amended so as to list the margin requirements for specific currencies. The currency index warrant section would be amended to provide that the Exchange will determine currency index warrant margin requirements on a case-by-case basis.
- The Index Warrant Filing proposes to provide margin advantages to certain option and warrant positions (*i.e.*, certain spread and straddle positions) by adding second and third paragraphs to Paragraph (f)(2)(F)(1). This Amendment No. 1 would revise the permissible offset positions and restate those paragraphs to make them easier to read.
- Two paragraphs would be deleted from Paragraph (f)(2)(H). The Index Warrant Filing proposes those paragraphs for the purpose of addressing margin on "short" stock index warrant positions where the holder of the position has hedged by replicating the underlying index with appropriate positions in the component securities. The paragraphs would be replaced by the "letter of guarantee" and "escrow receipt" provisions discussed in the next three bullets.
- Paragraph (f)(2)(H)(iv) (which the Index Warrant Filing proposes to renumber as (f)(2)(H)(v)) of Rule 431) would be amended (although it was not amended in the Index Warrant Filing). That paragraph permits the carrying of "short" option positions against the use of letters of guarantee or (in the case of a call) escrow receipts, without the need for margin. The amendment proposes to expand that provision to include stock index warrants as well as options.
- The use of "escrow receipts" to offset a position carried short would be new to the Exchange's margin rules, which currently only allow the use of letters of guarantee. However, the margin rules of other United States options exchanges provide that no margin is required on a call option where a customer has delivered to the firm carrying the customer's account a satisfactory escrow receipt. Amendment No. 1 would add the escrow receipt concept to the Exchange's margin rules in respect of margin on options, as well as on stock index warrants, and would do so in a way that generally parallels the permissible use of letters of

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SEC. *See* Amendment No. 1. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[39] The Commission notes that there are no position or exercise limits applicable to currency or currency index warrants, although reporting requirements do apply. Nevertheless, the Commission may review the need to establish foreign currency position limits if the size of the currency or currency index warrant market increases significantly.

[40] With respect to the Comment Letter's suggestion that a hedge exemption rule be established in order to allow participants to readily acquire exemptions from the Exchange as needed, the Commission does not believe that such an approach is appropriate at this time. The hedge exemption for index options was adopted after several years experience with index options trading. Until the SROs gain some experience with domestic index warrant trading, it is difficult to determine the need for a hedge exemption (*i.e.*, that speculative limits are insufficient to meet hedging needs).

guarantee under the Exchange's margin rules.

- The definition of two terms that are found in existing paragraph (f)(2)(H)(iv) of Rule 431 would be amended. The changed definitions would apply in the "letter of guarantee" context, as well as in the "escrow receipt" context.
- The definition of "qualified security" would change to "a security listed on a national securities exchange", rather than "a security that meets the listing criteria of the Exchange or of the American Stock Exchange".
- The definition of "cash equivalents" would change to "securities issued or guaranteed by the United States and having a maturity of two years or less", rather than "those instruments referred to in section 220.8(a)(3)(ii) of Regulation T".

The changes to both definitions follow similar changes that the American Stock Exchange has heretofore effected.

- Paragraph (f)(2)(K) of Rule 431 would be amended to specify that the Exchange may specify higher margin for "warrants" (stated generically) if the Exchange deems circumstances to warrant higher margin.
- New Supplementary Material .20 would be added to Rule 431 to specify that the Exchange will subject the spread and straddle margin rules that the Index Warrant Filing proposes to add to paragraphs (f)(2)(F)(i), (f)(2)(G)(ii) and (f)(2)(G)(iii) of Rule 431 to a one-year pilot program. The Exchange would submit to the Commission three months prior to the expiration of the pilot programs a report analyzing the price relationship between listed warrants and options on similar stock indexes.

Changes to Listing Standards

- The "net worth"/"asset" test applicable to issuers of currency, currency index or stock index warrants would be amended. (*See* paragraph (a) of Para. 703.15 of the *Listed Company Manual* in respect of currency and currency index warrants and paragraph (a) of Para. 703.17 of the *Listed Company Manual* in respect of stock index warrants.) Under the new test, an issuer may satisfy the test if it has minimum tangible net worth in excess of $250 million. Alternatively, as in the Index Warrant Filing, the issuer may have minimum tangible net worth in excess of $150 million if its total currency, currency index and stock index warrants do not exceed 25 percent of its net worth.
- Para. 703.15 and Para. 703.17 of the *Listed Company Manual* would limit the term of currency, currency index and stock index warrants to between one and five years.
- A new paragraph would be added to Para. 703.17 of the *Listed Company Manual* to prohibit "non-United States component securities" that are not subject to comprehensive surveillance agreements from constituting more than 20 percent of the weighted value of an index stock group that underlies a stock index warrant.

Finally, the Index Warrant Filing proposes to introduce Rule 414(h) ("Suitability"), which would limit trading by customers in currency, currency index or stock index warrants to options-approved accounts. In the case of an institutional account or an investment club or other collective account, the Exchange would allow a member organization to accept the representation of a registered investment adviser as to the eligibility of the institution or collective investment group, even if the managed account is lacking the underlying documentation.

As mentioned above, because the changes are either (1) minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures, the Commission believes it is appropriate to approve Amendment No. 1 on an accelerated basis.

Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the NYSE's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–NYSE–94–41) is approved, as amended, with the portion of the rule change relating to spread margin treatment being approved on a one year pilot program basis, ending August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22109 Filed 9–6–95; 8:45 am]

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[Release No. 34–36166; File No. SR–PSE–94–28]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1, 2, 3, 4 and 5 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

I. Introduction

On September 22, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) ("Section 19(b)") of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish uniform rules for the listing and trading of stock index ("index" or "stock index"), currency ("currency") and currency index ("currency index") warrants (collectively "warrants"). Notice of the proposed rule change appeared in the **Federal Register** on December 20, 1994.[3] One comment letter was received in response to the proposal.[4]

The Exchange subsequently filed five Amendments to the proposal.[5]

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[41] 15 U.S.C. 78s(b)(2) (1988).

[42] 17 CFR § 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35088 (Dec. 12, 1994), 59 FR 65554.

[4] *See* Letter from Paul M. Gottlieb, Seward & Kissel, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 ("Comment Letter" or "Seward & Kissel Letter").

[5] *See* Letters from Michael Pierson, PSE, to Stephen M. Youhn, SEC, dated March 24, 1995

Amendment No. 1 brings several of PSE's proposed rules and policies into conformity with those previously filed by other markets. Amendment No. 2 addresses currency and currency index warrant margin levels. Amendment No. 3, in addition to responding to several technical changes requested by the staff, addresses issues relating to spread margin, reporting requirements and notification of early exercises. Amendment No. 4 removes certain surveillance procedures from the PSE's rules. Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised at or prior to expiration. This order approves the proposal, as amended.

II. Description of the Proposal

The PSE proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.[6] Rule 8.3, Listing of Currency and Index Warrants, would be amended to provide uniform listing criteria for index, currency and currency index warrants. First, issuers would be expected to exceed minimum issuer listing standards. In particular, the Exchange proposes that issuers be required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded through NASDAQ exceeds 25% of the issuer's net worth.[7]

Second, the proposal requires that unexercised in-the-money warrants be automatically exercised on either the delisting date (if the issue is not listed upon another organized securities market) or upon expiration. Third, the proposal provides that for warrant offerings where U.S. stocks constitute 25% or more of the index value ("domestic index"), issuers shall use opening prices ("a.m. settlement") for U.S. stocks to determine index warrant settlement values during the 48 hour period prior to expiration of the warrants.[8] Fourth, Rule 8.3(a)(7) has been amended to provide that foreign country securities or American Depositary Receipts ("ADRs") thereon that are not subject to a comprehensive surveillance sharing agreement with the Exchange and that have less than 50% of their global trading volume (in dollar value) within the U.S., shall not represent more than 20% of the weight of the index.[9] Finally, the Exchange proposes to add Rule 8.3(a)(8), which is designed to assist in the surveillance of index warrant trading. Specifically, the Exchange will require issuers of stock index warrants to notify the Exchange of any early exercises by 1:30 p.m. (Pacific time) on the day that the settlement for the warrants is determined.[10]

Rule 2.16(d)(2) ("Rule 2.16(d)(2)"), the PSE margin rule, is being amended to apply the current customer margin requirements for broad based stock index and currency options to stock index, currency and currency index warrants. Thus, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, up to a maximum of five percent of the index value. Short sales of currency warrants will follow the margin requirements currently applicable to listed currency options. Specifically, the Exchange proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall each be subject to margin level of 100% of the current market value of each such warrant plus a four percent "add-on."[11] The margin required on currency index warrants would be an amount as determined by the Exchange and approved by the Commission.[12] The Exchange also proposes that its stock index, currency and currency index warrant margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the Exchange proposes that index, currency and currency index warrants may be offset with either warrants or Options Clearing Corporation ("OCC") issued options on the same index, currency or currency index, respectively. Furthermore, the Exchange has proposed that subsections (F)(3), (F)(4), and (G)(4)–(7) to Rule 2,16(d)(2), to the extent that such rules concern spread and straddle positions in warrants, be subject to a one year pilot basis.[13] Finally, proposed Rule 2.16(d)(2)(H)(6) will also permit the use of escrow receipts to cover a short call position in a broad-based stock index warrant.[14]

Proposed Rule 8.4 states that no member or member organization shall accept an order from a customer for the purchase or sale of warrants unless the customer's account has been approved for options trading pursuant to Exchange Rule 9.18(b). Furthermore, proposed Rules 8.5–8.8 require that the option rules pertaining to suitability, discretionary account trading, supervision of accounts and customer complaints be applied to warrants.

Proposed Rule 8.9 requires approval by a Compliance Registered Options Principal of all advertisements, sales literature and educational material issued by a member organization pertaining to warrants. The rule further requires Exchange approval of all advertisements and educational materials pertaining to warrants. Finally, prior to trading index, currency or currency index warrants, the Exchange will distribute circulars to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in warrants.

Proposed Rule 8.10 provides that position limits for stock index warrants on the same index with original issues prices of ten dollars or less will be fifteen million warrants covering all such issues.[15] The rule provides that warrants with an original issue price of greater than ten dollars will be weighted

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("Amendment No. 1"), June 8, 1995 ("Amendment No. 2"), June 23, 1995 ("Amendment No. 3"), August 1, 1995 ("Amendment No. 4"), and August 22, 1995 ("Amendment No. 5").

[6] The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may only be exercised during a specified period before expiration).

[7] *See* Amendments No. 1 and 3. The Exchange amended this provision in response to the Seward & Kissell Letter.

[8] *See* Amendment No. 3. The Exchange amended its proposal in response to the Seward & Kissell Letter and notes that a warrant based upon a domestic U.S. stock index may be settled using closing prices ("p.m. settlement") for the underlying stocks at all times except for valuation day and the two business days immediately preceding valuation day.

[9] *See* Amendment No. 1.

[10] *See* Amendment No. 3.

[11] *See* Amendment No. 2. Consistent with the treatment of options on foreign currencies, warrants on the Canadian Dollar will be subject to a one percent "add-on." The margin required on any other foreign currency would be subject to approval by the Commission. *See infra* note 28.

[12] *See infra* note 28.

[13] Three months prior to the expiration of the pilot program, the Exchange will submit a report to SEC staff analyzing the price relationship between listed warrants and options on similar stock indexes. *See* Amendment No. 1. The Exchange has also requested no-action relief from the Commission in order to permit certain short positions in stock index call and put warrants to be treated as covered for margin purposes.

[14] *See* Amendment No. 1. The Exchange notes that this treatment is consistent with the rules that allow for the use of escrow receipts to cover a short call position in broad-based stock index options.

[15] *See infra* note 41.

more heavily than warrants with an original issue price of ten dollars or less in calculating position limits.[16] The rule also gives the Exchange the authority to require the liquidation of a position in stock index warrants that is in excess of the position limits set forth in the rule, and Commentary to the rule establishes procedures for allowing limited exceptions to the position limits.

Proposed Rule 8.11 provides for exercise limits on stock index warrants analogous to those found in stock index options and states that such limits are distinct from any exercise limits that may be imposed by the issuers of stock index warrants. Accordingly, no member may exercise a long position in warrants over a five consecutive day period in excess of the permissible position limit.

In order to facilitate its review of compliance with position and exercise limits, the Exchange has proposed Rule 8.17 which establishes reporting requirements for large warrant positions. Under the terms of the rule, members will be required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position of 100,000 warrants overlying the same index, currency or currency index. For purposes of this rule, the Exchange proposes that long positions in puts be combined with short positions in call warrants, and that short positions in puts be combined with long positions in call warrants.[17] Finally, proposed Rule 8.12 requires that the trading halt provisions in Rule 7.11 shall be applied to the trading of stock index warrants.

Upon Commission approval of the foregoing rule amendments, the Exchange proposes that it will only file rule changes for specific stock index warrant issuances where there is no corresponding option or warrant on the same underlying stock index already listed on a national securities exchange or included for quotation on NASDAQ. Accordingly, when a listed option overlies a particular broad based index, the Exchange proposes it be allowed to list warrants on that index without further Commission review and approval pursuant to Section 19(b) of the Act, as long as the listing complies with the warrant listing standards as approved in this Order.[18]

III. Comments Received

The Commission received one letter in response to its request for comments on the PSE proposal.[19] The Comment Letter was generally supportive of the PSE's proposal, however, it recommended several changes in the proposed regulatory structure applicable to stock index, currency and currency index warrants. The Comment Letter was submitted on behalf of the Firms, all of whom are represented to be major participants in the issuance, underwriting and trading of warrants. Because the proposed regulatory regime applicable to warrants will, to some extent, be based upon the rules governing standardized options, the Comment Letter states that the Firms' comments are drive, in part, by the fact that fundamental differences exist between warrants and standardized options which necessitate disparate regulatory treatment in certain situations.[20]

First, the Comment Letter suggested amending the Issuer Listing Standards to eliminate the 25% test or, in the alternative, to adopt hedging and/or netting standards designed to more accurately reflect issuer-specific risk.[21] Because warrants are sold by means of a registration statement, the Firms believe that adequate disclosure of the amount of an issuer's outstanding securities could be included in the prospectus. Furthermore, the Comment Letter points out that issuers of warrants are traditionally subject to outside evaluation by certain credit rating agencies, which should assist investors in determining undue issuer credit risk. Finally, the Firms do not believe that 25% test bears any resemblance to an issuer's risk exposure since exposure fluctuates with market changes at any given time and also because the proposal provides no recognition for offsetting hedges or for warrants subject to netting.

In response to the Seward & Kissel Letter's comments respecting issuer listings standards, the PSE amended the filing to add an alternative issuer qualification criteria.[22] Under the new criteria, an issuer will be required to either: (a) have a minimum tangible net worth of $250 million; or (b) meet the existing criteria (*i.e.*, tangible net worth of $150 million and meet the 25% test).

The Comment Letter also recommended allowing the use of p.m. settlement for all American-style warrants exercised anytime except 48 hours prior to expiration, at which time a.m. settlement would be required. According to the Comment Letter, unlike the listed options (where OCC is the issuer and runs a balanced book), a warrant issuer must hedge its exposure to maintain offsetting positions. Upon early exercise of the warrants, the issuer that has hedged its exposure will have to take action to "unwind" the portion of its hedge relating to the exercised warrants. The Firms believe that requiring a.m. settlement on the first day after an investor exercises the warrant will place additional market risk upon them due to the difficulty in managing the hedge. This increased hedging cost, the Firm's argue, could result in a higher issuance price for the warrant or could require that the warrant settlement value date be postponed an additional day, with warrant holders hearing additional market risk during this period.

In response to the Comment Letter, the PSE amended its filing to include a provision permitting p.m. settlement for stock index warrants except for a short period before expiration.[23] Under the terms of the amendment, stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the U.S. shall, by their terms, provide that, on valuation date, as well as for the two business days prior to valuation date, the value of the stocks traded primarily in the U.S. which underlie such warrants shall be determined by reference to the opening prices of such underlying U.S. securities. For example, if the valuation date for an issuance of index warrants occurs on a Friday, a.m. settlement must be utilized for warrants that are valued on the preceding Wednesday or Thursday, as well as on the valuation date.

Third, the Comment Letter recommended creating a special category of "warrant eligible" customers (separate and distinct from options eligibility criteria), who are authorized to trade warrants even if not approved to trade options. The Firms believe it is inappropriate to apply an options regulatory regime to warrants and that doing so may prevent institutional customers who are not permitted to purchase options products, yet who nevertheless meet all of the options eligibility criteria, from purchasing warrants. In this regard, the Firms propose to create a "warrant eligible" category with standards mimicking those currently required for options approved accounts. As such, "warrant-approved" accounts could purchase warrants, however, they could not purchase options or other products requiring options account approval. The PSE did not amend its filing in response to this comment.

Fourth, the Comment Letter urges the adoption of a rule permitting firms to approve for warrant trading those accounts managed by an investment adviser ("IA") based upon the IA's representation concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the brokerage firms. The PSE has amended its proposal to allow member firms to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed account is not provided to the member firm, where the managed account is for an institutional customer or the investment adviser account represents the collective investment of a number of persons. The PSE states that this will conform the handling of warrant accounts to the current practice with respect to listed options accounts.[24]

Finally, the Comment Letter addressed the proposed position limits applicable to warrants. Specifically, the Comment Letter noted that position limits for warrants would be set at levels that are approximately 75% of that allowed for similar broad-based indexes. The Comment Letter recommended establishing position limits for warrants that were equivalent to those established for listed options, allowing a hedge exemption similar to listed option procedures and providing a mechanism for specific waivers or exemptions of warrant position limits for hedgers, market-makers and broker-dealers comparable to the procedures in place for listed options. The PSE did not amend its filing in response to this comment.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[25] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing standards for broad-based stock index, currency and currency index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the PSE's proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The PSE's proposed generic listing standards for broad-based stock index warrants, currency and currency indexes set forth a regulatory framework for the listing of such products.[26] Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have a negative market impact. In addition, these standards should address the special risks to customers arising from the derivative products.[27] For the reasons discussed below, the Commission believes the PSE's proposal will provide it with significant flexibility to list index, currency and currency index warrants, without compromising the effectiveness of the Exchange's listing standards or regulatory program for such products.[28]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on a stock index, currency or currency index permits investors to participate in the price movements of the underlying assets, and allows investors holding positions in some or all of such assets to hedge the risks associated with their portfolios. The Commission further believes that trading warrants on a stock index, currency or currency index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

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[16] For example, if an investor held 100,000 warrants based upon the Standard & Poor's 500 Index offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000.

[17] *See* Amendment No. 3.

[18] *See infra* note 28.

[19] *See supra* note 4. The Seward & Kissel Letter was submitted on behalf of PaineWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc. (collectively the "Firms").

[20] The Comment Letter lists several differences which it perceives exist between warrants and standardized options. Chief among these are: (1) Warrants are separately registered, unsecured obligations of their issuer while options are issued and guaranteed by the Options Clearing Corp. ("OCC"); (2) during the prospectus delivery period, warrant purchasers received a product-specific prospectus while options customers receive an options disclosure document ("ODD") at the time the account is opened; (3) each warrant creates a fixed number of outstanding warrants while there is theoretically no limit to the number of options that may be issued by OCC; and (4) warrants are traded on an exchange in a manner similar to stocks which, therefore, translates into superior price transparency than for listed options.

[21] As originally proposed, an issuer would have been required to have a tangible net worth of at least $150 million and the aggregate original issue price of all of a particular issuer's warrant offerings (combined with such offerings by its affiliates) that are listed on a national securities exchange or that are national market securities traded through NASDAQ were not to exceed 25% of the issuer's net worth ("25% test).

[22] *See* Amendment No. 3.

[23] *See* Amendments No. 3 and 5.

[24] *See* Amendment No. 1.

[25] 15 U.S.C. 78f(b)(5) (1982).

[26] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[27] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

[28] Issuances of warrants overlying a single currency may currently be listed for trading without a rule filing provided that the underlying currency is one of the original seven foreign currencies approved for options trading: the Australian Dollar, British Pound, Canadian Dollar, French Franc, German Mark, Japanese Yen, Swiss Franc and the European Currency Unit. Issuances of currency warrants overlying any other foreign currency would require a rule filing pursuant to Section 19(b) of the Act. The Commission notes that currency index warrants may only be established without a further rule filing upon an index that has been previously approved by the Commission pursuant to a Section 19(b) filing. To date, the only currency index approved pursuant to Section 19(b) is an equal-weighted index comprised of the British Pound, Japanese Yen and German Deutsche Mark. *See* Securities Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399 (Dec. 30, 1992). Accordingly, any other currency index (as well as a broad-based stock index) not previously approved by the Commission would require approval pursuant to Section 19(b).

Warrants, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the Exchange's issuer listing standards that require an issuer to have either; (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency and currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants. Moreover, the alternative test addresses the Comment Letter's concerns on the 25% standard.

The PSE's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) ("domestic index warrants") are required to utilize a.m. settlement for expiring warrants as well as during the last two business days prior to valuation date.[29] The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, in accordance with the Comment Letter's suggestions, the use of p.m. settlement except during the last two business days prior to a domestic index warrant's valuation date, as well as the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designing their products.[30] In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at settlement. Nevertheless, the Commission expects the Exchange to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the PSE has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with trading in these instruments, in accordance with PSE Rule 9.18(b), and that adequate disclosure of the risks of these products must be made to investors.[31] In addition, the PSE will apply the options rules for suitablilty, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the PSE has addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The PSE has adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index, currency and currency index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period. The Commission believes that this will ensure that certain information about the particular issuance and issuer is publicly available.

As note above, the Comment Letter indicates that applying the options disclosure framework to warrants is inappropriate. However, the Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the Exchange circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

At this time, the Commission does not agree with the proposal contained in the Comment Letter to create a special "warrant eligible" classification of purchasers. As noted above, index, currency and currency index warrants are very similar to standardized options. They are so similar that a customer precluded from trading options should not avoid the restriction indirectly by being designated by Exchange rules as eligible for stock index, currency or currency index warrants. Nevertheless, as the range of exchange-traded derivative products increases, the SROs might consider in the future as to whether a new derivatives eligibility classification is appropriate.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard the Commission notes that the Exchange has developed adequate surveillance procedures for the trading of index and currency warrants. First, new issues of currency warrants will be subject to the PSE's existing surveillance procedures applicable to foreign currency warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses involving the warrant market and the underlying foreign currencies.[32]

Second, the Exchange has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[33] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the Exchange on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the PSE in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Third, the Exchange has developed adequate surveillance procedures to apply to foreign stock index warrants *i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[34] The Commission believes that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement [35] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivatives product and its underlying stocks.[36] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur.[37] In this regard, the PSE will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The Exchange has in place an effective surveillance agreement [38] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard available for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[39] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the PSE has no surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants, currency warrants and currency index warrants will not adversely affect the U.S. securities markets or foreign currency markets. First, with respect to currency and currency index warrants, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active over-the-counter market also exists in options, forwards and swaps for foreign currencies. This minimizes the possibility that Exchange listed warrants would be used to manipulate the spot currency markets. In addition, the surveillance procedures for these products should allow the Exchange to detect and deter potential manipulation involving currency warrants and currency index warrants.

Second, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously determined to be broad-based in the context of index options or warrant trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad based stock index options or warrants will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes the PSE's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Third, the Exchange has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the

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[29] Currency and currency index warrants are not limited to a.m. or p.m. settlement.

[30] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

[31] Pursuant to PSE Rule 9.18(b), all options approved accounts must receive an ODD, which discusses the characteristic and risks of standardized options.

[32] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987), and Securities Exchange Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988). The Commission notes that these surveillance procedures only apply to the issuance of warrants overlying one of the approved foreign currencies. *See supra* note 28. The issuance of warrants upon any other foreign currency would necessitate a Section 19(b) rule filing which, among other things, details applicable to surveillance procedures.

[33] In addition, the Commission notes that issuers will be required to report to the Exchange all trades to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the Exchange to monitor the unwinding activity to determine if it was effected in a manner that violates Exchange or Commission rules.

[34] Each prior issuance of a foreign stock market based index warrant is subject to specific surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[35] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[36] The ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

[37] In the context of domestic index warrants, the Commission notes that the U.S. exchanges are members of the Intermarket Surveillance Group ("ISG"), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[38] *See supra* note 35.

[39] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

Exchange to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve on a permanent basis the proposed spread margin rules.[40]

Fourth, the PSE has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.[41] Contrary to the views expressed in the Comment Letter, the Commission believes that in the absence of trading experience with domestic index warrants, it would be imprudent to establish position limits for positions greater than those currently applicable to domestic stock index options on the same index.[42]

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards covering index, currency or currency index warrants will provide an appropriate regulatory framework for these products. These standards will also benefit the Exchange by providing them with greater flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index or a non-approved currency or currency index. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

The Commission finds good cause for approving Amendments No. 1, 2, 3, 4 and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** for the following reasons. As discussed below, the changes are either (1) Minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures. Accordingly, the amendments do not raise new significant regulatory issues or are responsive to prior comments. In order to enable the Exchange to list new index, currency or currency index warrants as soon as possible, the Commission believes it is necessary and appropriate to approve the amendments on an accelerated basis.

Amendment No. 1 makes several changes to the filing which are designed to bring it into conformity with the other options exchanges. First, it revises Rule 8.3, Listing of Currency and Index Warrants, in several respects to provide uniform issuer listing standards. The first two changes permit the use of p.m. settlement for domestic index warrants (except during the last 48 hours preceding valuation date) and provide an alternative issuer listing qualification criteria (as discussed above under *Issuer Listing Standards and Product Design*). The Commission notes that these changes were made in response to comments received from the Seward & Kissell Letter and further believes these changes provide added flexibility to issuers without compromising investor protection concerns.

Amendment No. 1 also revises Rule 8.3 in two other respects: by limiting the number of foreign securities that may comprise an underlying stock index and by adding a provision requiring an issuer to notify the listing Exchange of early exercises of domestic index warrants. Taken together, the Commission believes these changes further strengthen the issuer listing standards and the Exchange's surveillance procedures to the benefit of warrant investors.

Amendment No. 1 also revises Rule 2.16 to provide that the proposed spread and straddle margin treatment for stock index warrants will be effected as part of a one year pilot program, and to provide that escrow receipts will be accepted to cover short positions in stock index warrants. The Commission notes that these changes conform the margin treatment afforded options and warrants and provide a basis for evaluating pricing correlations between warrants and options overlying the same index, currency or currency index.

Finally, Amendment No. 1 provides that the Exchange will permit member firms to accept an IA's representation concerning the options eligibility status of its customers; as described above. The Commission notes that this practice is consistent with the treatment of options and, therefore, raises no new or unique regulatory issues. Accordingly, for the reasons discussed above relating to each proposed revision of the Amendment, the Commission believes it is appropriate to approve Amendment No. 1 to the Exchange's proposal on an accelerated basis.

Amendment No. 2 addresses currency or currency index warrant margin to clarify which currencies are subject to a four percent "add-on" for margin purposes. The Commission notes that this revision simply harmonizes the treatment afforded currency options and warrants. Second, the amendment states that the applicable margin level for currency index warrants will be a percentage as specified by the exchange and approved by the Commission. This change is also consistent with the treatment afforded currency index options, where margin levels are established on a case by case basis. Accordingly, the Commission believes it is appropriate to approve Amendment No. 2 on an accelerated basis.

Amendment No. 3 to the proposal clarifies several issues relating to a.m. settlement, position reporting and notification of early exercise of warrants. First, the Amendment clarifies in PSE Rule 8.3(a)(5) that a.m. settlement will be used during the 48-hour period prior to expiration of index warrants. The Commission notes that this change simply codifies a provision the PSE previously agreed to in Amendment No. 1.[43] Next, the Amendment establishes that warrant positions will be subject to reporting levels, initially set at 100,000 warrants. The Commission believes that requiring investors to report to the Exchange when their holdings exceed specified levels should aid the Exchange in its monitoring for potential trading abuses involving index, currency and currency index warrants. Also, the Amendment addresses surveillance related matters. In particular, it provides that issuers must report all hedge unwinding transactions related to the early exercise of domestic index warrants to the listing exchange by the business day following trade date ("T+1").[44] In addition, it requires issuers to notify the listing exchange of any early exercises of index warrants by 4:30 p.m. (New York time) on settlement date for the warrants. The Commission believes this change to the PSE's surveillance procedures strengthens the Exchange's monitoring of index warrants. Accordingly, the Commission believes it is appropriate to approve Amendment No. 3 on an accelerated basis.

Amendment No. 4 deletes a transaction reporting requirement which will be revised and incorporated into the Exchange's surveillance procedures and also makes other minor changes. As such, the Commission does not believe the Amendment raises any new or unique regulatory issues. Accordingly, the Commission believes it is appropriate to approve Amendment No. 4 on an accelerated basis.

Amendment No. 5 clarifies the settlement procedures for index warrants which are exercised at or prior to expiration. Specifically, the Amendment clarifies that a.m. settlement will be required on valuation date as well as during the last two business days prior to an index warrant's valuation date. As discussed above, the Commission believes that the use of a.m. settlement during this period will help to ameliorate any potential price effects associated with expirations of derivative index products. Accordingly, the Commission believes it is appropriate to approve Amendment No. 5 on an accelerated basis. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments No. 1, 2, 3, 4 and 5 to the PSE's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, 2, 3, 4 and 5. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–PSE–94–28) is approved, as amended, with the portion of the rule change relating to spread margin treatment being approved on a one year pilot program basis, ending August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22194 Filed 9–6–95; 8:45 am]

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[Release No. 34–36167; File No. SR–Phlx–94–49]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1, 2, 3, and 4 to Proposed Rule Change Relating to the Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants

August 29, 1995.

I. Introduction

On November 30, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) ("Section 19(b)") of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to establish uniform rules for the listing and trading of stock index ("index" or "stock index"), currency ("currency") and currency index ("currency index") warrants (collectively "warrants"). Notice of the proposed rule change appeared in the **Federal Register** on December 20, 1994.[3] One comment letter was received in response to the proposal.[4]

The Exchange subsequently filed four Amendments to the proposal.[5] Amendment No. 1 brings several of Phlx's proposed rules and policies into conformity with those previously filed by other markets. Amendment No. 2, in addition to responding to several technical changes requested by the staff, addresses currency and currency index warrant margin levels and settlement methodology. Amendment No. 3, in addition to addressing issues relating to reporting requirements and notification of early exercises, removes certain surveillance procedures from the Phlx's rules. Amendment No. 4 clarifies the settlement procedures for index warrants which are exercised at or prior to expiration. This order approves the proposal, as amended.

II. Description of the Proposal

The Phlx proposes to establish uniform rules for the listing and trading of stock index, currency and currency index warrants.[6] Rule 803, Criteria for Listing, would be amended to provide uniform listing criteria for index, currency and currency index warrants. First, issuers would be expected to exceed minimum issuer listing standards. In particular, the Exchange proposes that issuers be required to have a minimum tangible net worth in excess of $250 million or, in the alternative, have a minimum tangible net worth in excess of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such warrant offerings (combined with offerings by its affiliates) listed on a national securities exchange or that are National Market securities traded through NASDAQ exceeds 25% of the issuer's net worth.[7]

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[40] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the Exchange and approved by the SEC. *See* Amendment No. 2. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[41] The Commission notes that there are no position or exercise limits applicable to currency or currency index warrants, although reporting requirements do apply. Nevertheless, the Commission may review the need to establish foreign currency position limits if the size of the currency or currency index warrant market increases significantly.

[42] With respect to the Comment Letter's suggestion that a hedge exemption rule be established in order to allow participants to readily acquire exemptions from the Exchange as needed, the Commission does not believe that such an approach is appropriate at this time. The hedge exemption for index options was adopted after several years experience with index options trading. Until the SROs gain some experience with domestic index warrant trading, it is difficult to determine the need for a hedge exemption (*i.e.*, that speculative limits are insufficient to meet hedging needs).

[43] Amendment No. 5 subsequently changes the language of this provision to require a.m. settlement be used during the two business days prior to valuation date.

[44] The Commission notes that Amendment No. 4 removes this transaction reporting requirement which will be incorporated into the Exchange's surveillance procedures.

[45] 15 U.S.C. 78s(b)(2) (1988).

[46] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35090 (Dec. 12, 1994), 59 FR 65556.

[4] *See* Letter from Paul M. Gottlieb, Seward & Kissel, to Jonathan G. Katz, Secretary, Commission, dated January 10, 1995 ("Comment Letter" or "Seward & Kissel Letter").

[5] *See* Letters from Michele R. Weisbaum, Phlx, to Michael Walinskas, SEC, dated May 24, 1995, ("Amendment No. 1") and to Stephen M. Youhn, SEC, dated June 26, 1995 ("Amendment No. 2"), August 4, 1995 ("Amendment No. 3"), and August 25, 1995 ("Amendment No. 4").

[6] The proposed rules would apply to both American-style warrants (which may be exercised at any time prior to expiration) and European-style warrants (which may only be exercised during a specified period before expiration).

Second, the proposal requires that unexercised in-the-money warrants be automatically exercised on either the delisting date (if the issue is not listed upon another organized securities market) or upon expiration. Third, the proposal provides that for warrant offerings where U.S. stocks constitute 25% or more of the index value ("domestic index"), issuers shall use opening prices ("a.m. settlement") for U.S. stocks to determine index warrant settlement values during the 48 hour period prior to expiration of the warrants.[8] Fourth, Rule 803(e)(5) has been amended to provide that foreign country securities or American Depositary Receipts ("ADRs") thereon that are not subject to a comprehensive surveillance sharing agreement with the Exchange and that have less than 50% of their global trading volume (in dollar value) within the U.S., shall not represent more than 20% of the weight of the index.[9] Finally, the Exchange proposes to add Rule 803(e)(6), which is designed to assist in the surveillance of index warrant trading. Specifically, the Exchange of any early exercises by 4:30 p.m. (New York time) on the day that the settlement value for the warrants is determined.[10]

Proposed Rule 722 ("Rule 22"), the Phlx margin rule, is being amended to apply the current customer margin requirements for broad based stock index and currency options to stock index, currency and currency index warrants. Thus, all purchases of warrants will require payment in full, and short sales of stock index warrants will require initial margin of: (i) 100 percent of the current value of the warrant plus (ii) 15 percent of the current value of the underlying broad stock index less the amount by which the warrant is out of the money, but to a minimum of ten percent of the index value. Short sales of currency warrants will follow the margin requirements currently applicable to listed currency options. Specifically, the Exchange proposes that short sales of warrants on the German Mark, French Franc, Swiss Franc, Japanese Yen, British Pound, Australian Dollar and European Currency Unit shall each be subject to a margin level of 100% of the current market value of each such warrant plus a four percent "add-on."[11] The margin required on currency index warrants would be an amount as determined by the Exchange and approved by the Commission.[12] The Exchange also proposes that its stock index, currency and currency index warrant margin requirements be permitted offset treatment for spread and straddle positions. In this regard, the Exchange proposes that index, currency and currency index warrants may be offset with either warrants or Options clearing Corporation ("OCC") issued options on the same index, currency or currency index, respectively. Furthermore, the Exchange has proposed that subsection (c)(2)(F)(i) of Rule 722, to the extent that such rules concern spread and straddle positions in warrants, be subject to a one year pilot basis.[13] Finally, proposed Rule 722(c)(2)(G)(v) will also permit the use of escrow receipts to cover a short call position in a broad-based stock index warrant.[14]

Proposed Rule 1024 states that no member or member organization shall accept an order from a customer for the purchase or sale of warrants unless the customer's account has been approved for options trading. Furthermore, Rules 1025–1027 and 1070, pertaining to suitability, discretionary account trading, supervision of accounts and customer complaints will be applied to transactions in warrants.

Existing Rule 1049 will apply to warrants and require approval by a Compliance Registered Options Principal of all advertisements, sales literature and educational material issued by a member organization pertaining to warrants. The rule further requires Exchange approval of all advertisements and educational materials pertaining to warrants. Finally, prior to trading index, currency or currency index warrants, the Exchange will distribute circulars to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in warrants.

Phlx Rule 1001 is being amended to provide that position limits for stock index warrants on the same index with original issue prices of ten dollars or less will be fifteen million warrants covering all such issues.[15] The rule also provides that warrants with an original issue price of ten dollars or more will be weighted more heavily than warrants with an original issue price of ten dollars or less in calculating position limits.[16] The rule also gives the Exchange the authority to require the liquidation of a position in stock index warrants that is in excess of the position limits set forth in the rule, and Commentary to the rule establishes procedures for allowing limited exceptions to the position limits.

Rule 1002 is being amended to provide for exercise limits on stock index warrants that are analogous to those found in stock index options and states that such limits are distinct from any exercise limits that may be imposed by the issuers of stock index warrants. Accordingly, no member may exercise a long position in warrants over a five consecutive day period in excess of the permissible position limit.

In order to facilitate its review of compliance with position and exercise limits, the Exchange is amending Rule 1003 to establish reporting requirements for large warrant positions. Under the terms of the rule, members will be required to file a report with the Exchange whenever any account in which the member has an interest has established an aggregate position of 100,000 warrants overlying the same index, currency or currency index. For purposes of this rule, the Exchange proposes that long positions in puts be combined with short positions in call warrants, and that short positions in puts be combined with long positions in call warrants.[17] Finally, Rule 1047A regarding trading halt provisions is being amended to indicate that it also will apply to the trading of warrants.

Upon Commission approval of the foregoing rule amendments, the Exchange proposes that it will only file rule changes for specific stock index

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[7] *See* amendments No. 1 and 2. The Exchange amended this provision in response to the Seward & Kissell Letter.

[8] *See* Amendments No. 2. The Exchange amended its proposal in response to the Seward & Kissell Letter and notes that a warrant based upon a domestic U.S. stock index may be settled using closing prices ("p.m. settlement") for the underlying stocks at all times except for valuation day and the two business days immediately preceding valuation day.

[9] *See* Amendments No. 1 and 2.

[10] *See* Amendment No. 3.

[11] *See* Amendment No. 2. Consistent with the treatment of options on foreign currencies, warrants on the Canadian Dollar will be subject to a one percent "add-on." The margin required on any other foreign currency would be subject to approval by the Commission. *See infra* note 28.

[12] *See infra* note 28.

[13] Three months prior to the expiration of the pilot program, the Exchange will submit a report to SEC staff analyzing the price relationship between listed warrants and options on similar stock indexes. *See* Amendment No. 1. The Exchange has also requested no-action relief from the Commission in order to permit certain short positions in stock index call and put warrants to be treated as covered for margin purposes.

[14] *See* Amendment No. 1. The Exchange notes that this treatment is consistent with the rules that allow for the use of escrow receipts to cover a short call position in broad-based stock index options.

[15] *See infra* note 41.

[16] For example, if an investor held 100,000 warrants based upon the Standard & Poor's 500 Index offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000.

[17] *See* Amendment No. 2.

warrant issuances where there is no corresponding option or warrant on the same underlying stock index already listed on a national securities exchange or NASDAQ. Accordingly, when a listed option overlies a particular broad based index, the Exchange proposes it be allowed to list warrants on that index without further Commission review and approval pursuant to Section 19(b) of the Act, as long as the listing complies with the warrant listing standards as approved in this Order.[18]

III. Comments Received

The Commission received one letter in response to its request for comments on the Phlx proposal.[19] The Comment Letter was generally supportive of the Phlx's proposal, however, it recommended several changes in the proposed regulatory structure applicable to stock index, currency and currency index warrants. The Comment Letter was submitted on behalf of the Firms, all of whom are represented to be major participants in the issuance, underwriting and trading of warrants. Because the proposed regulatory regime applicable to warrants will, to some extent, be based upon the rules governing standardized options, the Comment Letter states that the Firms' comments are driven, in part, by the fact that fundamental differences exist between warrants and standardized options which necessitate disparate regulatory treatment in certain situations.[20]

First, the Comment Letter suggested amending the Issuer Listing Standards to eliminate the 25% test or, in the alternative, to adopt hedging and/or netting standards designed to more accurately reflect issuer-specific risk.[21] Because warrants are sold by means of a registration statement, the Firms believe that adequate disclosure of the amount of an issuer's outstanding securities could be included in the prospectus. Furthermore, the Comment Letter points out that issuers of warrants are traditionally subject to outside evaluation by certain credit rating agencies, which should assist investors in determining undue issuer credit risk. Finally, the Firms do not believe the 25% test bears any resemblance to an issuer's risk exposure since exposure fluctuates with market changes at any given time and also because the proposal provides no recognition for offsetting hedges or for warrants subject to netting.

In response to the Seward & Kissell Letter's comments respecting issuer listings standards, the Phlx amended the filing to add an alternative issuer qualification criteria.[22] Under the new criteria, an issuer will be required to either: (a) have a minimum tangible net worth of $250 million; or (b) meet the existing criteria (*i.e.*, tangible net worth of $150 million and meet the 25% test).

The Comment Letter also recommended allowing the use of p.m. settlement for all American-style warrants exercised anytime except 48 hours prior to expiration, at which time a.m. settlement would be required. According to the Comment Letter, unlike with listed options (where OCC is the issuer and runs a balanced book), a warrant issuer must hedge its exposure to maintain offsetting positions. Upon early exercise of the warrants, the issuer that has hedged its exposure will have to take action to "unwind" the portion of its hedge relating to the exercised warrants. The Firms believe that requiring a.m. settlement on the first day after an investor exercises the warrant will place additional market risk upon them due to the difficulty in managing the hedge. This increased hedging cost, the Firms argue, could result in a higher issuance price for the warrant or could require that the warrant settlement value date be postponed an additional day, with warrant holders bearing additional market risk during this period.

In response to the Comment Letter, the Phlx amended its filing to include a provision permitting p.m. settlement for stock index warrants except for a short period before expiration.[23] Under the terms of the amendment, stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the U.S. shall, by their terms, provide that, on valuation date, as well as for the two business days prior to valuation date, the value of the stocks traded primarily in the U.S. which underlie such warrants shall be determined by reference to the opening prices of such underlying U.S. securities. For example, if the valuation date for an issuance of index warrants occurs on a Friday, a.m. settlement must be utilized for warrants that are valued on the preceding Wednesday or Thursday, as well as on the valuation date.

Third, the Comment Letter recommended creating a special category of "warrant eligible" customers (separate and distinct from options eligibility criteria), who are authorized to trade warrants even if not approved to trade options. The Firms believe it is inappropriate to apply an options regulatory regime to warrants and that doing so may prevent institutional customers who are not permitted to purchase options products, yet who nevertheless meet all of the options eligibility criteria, from purchasing warrants. In this regard, the Firms propose to create a "warrant eligible" category with standards mimicking those currently required for options approved accounts. As such, "warrant-approved" accounts could purchase warrants, however, they could not purchase options or other products requiring options account approval. The Phlx did not amend its filing in response to this comment.

Fourth, the Comment Letter urges the adoption of a rule permitting firms to approve for warrant trading those accounts managed by an investment adviser ("IA") based upon the IA's representation concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed accounts is not provided to the brokerage firms. The Phlx has amended its proposal to allow member firms to accept the representation of an investment adviser registered under the Investment Advisers Act of 1940 concerning the eligibility status of its customers to engage in warrant trading, even if the underlying documentation relating to the managed account is not provided to the member firm, where the managed account is for an institutional customer or the investment advisor account represents the collective investment of a number of persons. The Phlx states that this will conform the handling of warrant accounts to the current practice with respect to listed options accounts.[24]

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[18] *See infra* note 28.

[19] *See supra* note 4. The Seward & Kissel Letter was submitted on behalf of PaineWebber Inc., Bear, Stearns & Co. Inc., Lehman Brothers Inc., Smith Barney Inc., Salomon Brothers Inc., Morgan Stanley & Co. Inc., and Hambrecht & Quist Inc. (collectively the "Firms").

[20] The Comment Letter lists several differences which it perceives exist between warrants and standardized options. Chief among these are: (1) warrants are separately registered, unsecured obligations of their issuer while options are issued and guaranteed by the Options Clearing Corp. ("OCC"); (2) during the prospectus delivery period, warrant purchasers receive a product-specific prospectus while options customers receive an options disclosure document ("ODD") at the time the account is opened; (3) each warrant creates a fixed number of outstanding warrants while there is theoretically no limit to the number of options that may be issued by OCC; and (4) warrants are traded on an exchange in a manner similar to stocks which, therefore, translates into superior price transparency than for listed options.

[21] As originally proposed, an issuer would have been required to have a tangible net worth of at least $150 million and the aggregate original issue price of all of a particular issuer's warrant offerings (combined with such offerings by its affiliates) that are listed on a national securities exchange or that are national market securities traded through NASDAQ were not to exceed 25% of the issuer's net worth ("25% test").

[22] *See* Amendment No. 1.

[23] *See* Amendments No. 2 and 4.

Finally, the Comment Letter addressed the proposed position limits applicable to warrants. Specifically, the Comment Letter noted that position limits for warrants would be set at levels that are approximately 75% of that allowed for similar broad-based indexes. The Comment Letter recommended establishing position limits for warrants that were equivalent to those established for listed options, allowing a hedge exemption similar to listed option procedures and providing a mechanism for specific waivers or exemptions of warrant position limits for hedgers, market-makers and broker-dealers comparable to the procedures in place for listed options. The Phlx did not amend its filing in response to this comment.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[25] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing standards for broad-based stock index, currency and currency index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the Phlx's proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The Phlx's proposed generic listing standards for broad-based stock index warrants, currency and currency indexes set forth a regulatory framework for the listing of such products.[26] Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

In reviewing listing standards for derivative-based products, the Commission also must ensure that the regulatory requirements provide for adequate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. These rules minimize the potential for manipulation and help to ensure that derivatively-priced products will not have a negative market impact. In addition, these standards should address the special risks to customers arising from the derivative products.[27] For the reasons discussed below, the Commission believes the Phlx's proposal will provide it with significant flexibility to list index, currency and currency index warrants, without compromising the effectiveness of the Exchange's listing standards or regulatory program for such products.[28]

A. Issuer Listing Standards and Product Design

As a general matter, the Commission believes that the trading of warrants on a stock index, currency or currency index permits investors to participate in the price movements of the underlying assets, and allows investors holding positions in some or all of such assets to hedge the risks associated with their portfolios. The Commission further believes that trading warrants on a stock index, currency or currency index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component securities.

Warrants, unlike standardized options, however, do not have a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. This additional credit risk, to some extent, is reduced by the Exchange's issuer listing standards that require an issuer to have either; (a) a minimum tangible net worth of $250 million; or (b) a minimum tangible net worth of $150 million, provided that the issuer does not have (including as a result of the proposed issuance) issued outstanding warrants where the aggregate original issue price of all such stock index, currency and currency index warrant offerings (or affiliates) that are listed on a national securities exchange or traded through the facilities of NASDAQ is in excess of 25% of the warrant issuer's net worth. Furthermore, financial information regarding the issuers of warrants will be disclosed or incorporated in the prospectus accompanying the offering of the warrants. Moreover, the alternative test addresses the Comment Letter's concerns on the 25% standard.

The Phlx's proposal will provide issuers flexibility by allowing them to utilize either a.m. or p.m. settlement, provided, however, domestic index warrants (*i.e.*, warrants based on indexes for which 25% or more of the index value is represented by securities traded primarily in the U.S.) ("domestic index warrants") are required to utilize a.m. settlement for expiring warrants as well as during the last two business

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[24] *See* Amendment No. 1.

[25] 15 U.S.C. §78f(b)(5) (1982).

[26] The Commission notes that warrants issued prior to this approval order will continue to be governed by the rules applicable to them at the time of their listing.

[27] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

[28] Issuances of warrants overlying a single currency may currently be listed for trading without a rule filing provided that the underlying currency is one of the original seven foreign currencies approved for options trading: the Australian Dollar, British Pound, Canadian Dollar, French Franc, German Mark, Japanese Yen, Swiss Franc and the European Currency Unit. Issuances of currency warrants overlying any other foreign currency would require a rule filing pursuant to Section 19(b) of the Act. The Commission notes that currency index warrants may only be established without a further rule filing upon an index that has been previously approved by the Commission pursuant to a Section 19(b) filing. To date, the only currency index approved pursuant to Section 19(b) is an equal-weighted index comprised of the British Pound, Japanese Yen and German Deutsche Mark. *See* Securities Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399 (Dec. 30, 1992). Accordingly, any other currency index (as well as a broad-based stock index) not previously approved by the Commission would require approval pursuant to Section 19(b).

days prior to valuation date.[29] The Commission continues to believe that a.m. settlement significantly improves the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions. Nevertheless, in accordance with the Comment Letter's suggestions, the use of p.m. settlement except during the last two business days prior to a domestic index warrant's valuation date, as well as the valuation date, strikes a reasonable balance between ameliorating the price effects associated with expirations of derivative index products and providing issuers with flexibility in designing their products.[30] In this context, the Commission notes that unlike standardized index options whose settlement times are relatively uniform, index warrants are issuer-based products, whose terms are individually set by the issuer. In addition, while options may have unlimited open interest, the number of warrants on a given index is fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce the pressure from liquidation of warrant hedges at settlement. Nevertheless, the Commission expects the Exchange to monitor this issue and, should significant market effects occur as a result of early exercises from p.m. settled index warrants, would expect it to make appropriate changes including potentially limiting the number of index warrants with p.m. settlement.

B. Customer Protection

Due to their derivative and leveraged nature, and the fact that they are a wasting asset, many of the risks of trading in warrants are similar to the risks of trading standardized options. Accordingly, the Phlx has proposed to apply its options customer protection rules to warrants. In particular, the Commission notes that warrants may only be sold to options approved accounts capable of evaluating and bearing the risks associated with trading in these instruments, in accordance with Phlx Rule 1024, and that adequate disclosure of the risks of these products must be made to investors.[31] In addition, the Phlx will apply the options rules for suitability, discretionary accounts, supervision of accounts and customer complaints to transactions in warrants. By imposing the special suitability and disclosure requirements noted above, the Commission believes the Phlx has addressed adequately several of the potential customer protection concerns that could arise from the options-like nature of warrants.

The ODD, which all options approved accounts must receive, generally explains the characteristics and risks of standardized options products. Although many of the risks to the holder of an index warrant and option are substantially similar, however, because warrants are issuer-based products, some of the risks, such as the lack of a clearinghouse guarantee and certain terms for index warrants, are different. The Phlx has adequately addressed this issue by proposing to distribute a circular to its members that will call attention to the specific risks associated with stock index, currency and currency index warrants that should be highlighted to potential investors. In addition, the issuer listing guidelines described above will ensure that only substantial companies capable of meeting their warrant obligations will be eligible to issue warrants. These requirements will help to address, to a certain extent, the lack of a clearinghouse guarantee for index warrants. Finally, warrant purchasers will receive a prospectus during the prospectus delivery period. The Commission believes that this will ensure that certain information about the particular issuance and issuer is publicly available.

As noted above, the Comment Letter indicates that applying the options disclosure framework to warrants is inappropriate. However, the Commission believes that the combined approach of making available general derivative product information (the ODD), product specific information (the Exchange circular), and issuer specific information (the prospectus) should provide an effective disclosure mechanism for these products.

At this time, the Commission does not agree with the proposal contained in the Comment Letter to create a special "warrant eligible" classification of purchasers. As noted above, index, currency and currency index warrants are very similar to standardized options. They are so similar that a customer precluded from trading options should not avoid the restriction indirectly by being designated by Exchange rules as eligible for stock index, currency or currency index warrants. Nevertheless, as the range of exchange-traded derivative products increases, the SROs might consider in the future as to whether a new derivatives eligibility classification is appropriate.

C. Surveillance

In evaluating proposed rule changes to list derivative instruments, the Commission considers the degree to which the market listing the derivative product has the ability to conduct adequate surveillance. In this regard the Commission notes that the Exchange has developed adequate surveillance procedures for the trading of index and currency warrants. First, new issues of currency warrants will be subject to the Phlx's existing surveillance procedures applicable to foreign currency warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses involving the warrant market and the underlying foreign currencies.[32]

Second, the Exchange has developed enhanced surveillance procedures to apply to domestic stock index warrants which the Commission believes are adequate to surveil for manipulation and other abuses involving the warrant market and component securities.[33] Among these enhanced surveillance procedures, the Commission notes that issuers will be required to report to the Exchange on settlement date the number and value of domestic index warrants subject to early exercise the previous day. The Commission believes that this information will aid the Phlx in its surveillance capacity and help it to detect and deter market manipulation and other trading abuses.

Third, the Exchange has developed adequate surveillance procedures to apply to foreign stock index warrants (*i.e.*, less than 25% of the index value is derived from stocks traded primarily in the U.S.).[34] The Commission believes

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[29] Currency and currency index warrants are not limited to a.m. or p.m. settlement.

[30] Foreign stock market based index warrants may utilize p.m. settlement throughout their duration.

[31] Pursuant to Phlx Rule 1024, all options approved accounts must receive an ODD, which discusses the characteristic and risks of standardized options.

[32] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987), and Securities Exchange Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988). The Commission notes that these surveillance procedures only apply to the issuance of warrants overlying one of the approved foreign currencies. *See supra* note 28. The issuance of warrants upon any other foreign currency would necessitate a Section 19(b) rule filing which, among other things, details applicable surveillance procedures.

[33] In addition, the Commission notes that issuers will be required to report to the Exchange all trades to unwind a warrant hedge that are effected as a result of the early exercise of domestic index warrants. This will enable the Exchange to monitor the unwinding activity to determine if it was effected in a manner that violates Exchange or Commission rules.

[34] Each prior issuance of a foreign stock market based index warrant is subject to specific

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that the ability to obtain information regarding trading in the stocks underlying an index warrant is important to detect and deter market manipulation and other trading abuses. Accordingly, the Commission generally requires that there be a surveillance sharing agreement [35] in place between an exchange listing or trading a derivative product and the exchange(s) trading the stocks underlying the derivative contract that specifically enables the relevant markets to surveil trading in the derivative product and its underlying stocks.[36] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur.[37] In this regard, the Phlx will require that no more than 20% of an Index's weight may be comprised (upon issuance and thereafter) of foreign securities (or ADRs thereon) that do not satisfy one of the following tests: (1) The Exchange has in place an effective surveillance agreement [38] with the primary exchange in the home country in which the security underlying the ADR is traded; or (2) meets an existing alternative standard for standardized options trading (*e.g.*, satisfy the 50% U.S. trading volume test).[39] The Commission believes that this standard will ensure that index warrants are not listed upon foreign indexes whose underlying securities trade on exchanges with whom the Phlx has no surveillance sharing agreement.

D. Market Impact

The Commission believes that the listing and trading of index warrants, currency warrants and currency index warrants will not adversely affect the U.S. securities markets or foreign currency markets. First, with respect to currency and currency index warrants, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active over-the-counter market also exists in options, forwards and swaps for foreign currencies. This minimizes the possibility that Exchange listed warrants would be used to manipulate the spot currency markets. In addition, the surveillance procedures for these products should allow the Exchange to detect and deter potential manipulation involving currency warrants and currency index warrants.

Second, with respect to index warrants, the Commission notes that warrants may only be established upon indexes the Commission has previously determined to be broad-based in the context of index options or warrant trading. As part of its review of a proposal to list an index derivative product, the Commission must find that the trading of index options or warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets. Accordingly, the Commission does not believe that the issuance of index warrants upon previously approved broad based stock index options or warrants will adversely impact the underlying component securities. In addition, because index warrants are issued by various individual issuers who set their own terms, it is likely that expirations among similar index products will be varied, thereby reducing the likelihood that unwinding hedge activities would adversely affect the underlying cash market. Finally, as discussed above, the Commission believes the Phlx's enhanced surveillance procedures applicable to stock index warrants are adequate to surveil for manipulation and other abuses involving the warrant market, component securities and issuer hedge unwinding transactions.

Third, the Exchange has proposed margin levels for stock index and currency warrants equivalent to those in place for stock index and currency options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, options margin treatment is appropriate given the options-like market risk posed by warrants. The Commission notes that the customer spread margin treatment applicable to warrants is subject to a one year pilot program. This will allow the Exchange to analyze the pricing relationships between listed options and warrants on the same index in order to determine whether to revise or approve on a permanent basis the proposed spread margin rules.[40]

Fourth, the Phlx has established reasonable position and exercise limits for stock index warrants, which will serve to minimize potential manipulation and other market impact concerns.[41] Contrary to the views expressed in the Comment Letter, the Commission believes that in the absence of trading experience with domestic index warrants, it would be imprudent to establish position limits for positions greater than those currently applicable to domestic stock index options on the same index.[42]

V. Conclusion

The Commission believes that the adoption of these uniform listing and trading standards covering index, currency and currency index warrants will provide an appropriate regulatory framework for these products. These standards will also benefit the Exchange by providing them with greater

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surveillance procedures. These procedures are generally tailored to the individual warrant issuance and are based upon several factors involving the primary foreign market, including the existence of surveillance or information sharing agreements.

[35] The Commission believes that a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities. *See e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992).

[36] The ability to obtain relevant surveillance information, including, among other things, the identify of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

[37] In the context of domestic index warrants, the Commission notes that the U.S. exchanges are members of the Intermarket Surveillance Group ("ISG"), which was formed to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all the amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the ISG Agreement.

[38] *See supra* note 35.

[39] *See* Securities Exchange Act Release Nos. 31529, 57 FR 57248 (Dec. 3, 1992) and 33555, 59 FR 5619 (Feb. 7, 1994).

[40] The Commission notes that the margin levels for currency index warrants will be set at a level determined by the Exchange and approved by the SEC. *See* Amendment No. 2. Issuances of warrants listed prior to the approval of this order will continue to apply the margin level applicable to them at the time of their listing.

[41] The Commission notes that there are no position or exercise limits applicable to currency or currency index warrants, although reporting requirments do apply. Nevertheless, the Commission may review the need to establish foreign currency position limits if the size of the currency or currency index warrant market increases significantly.

[42] WIth respect to the Comment Letter's suggestion that a hedge exemption rule be established in order to allow participants to readily acquire exemptions from the Exchange as needed, the Commission does not believe that such an approach is appropriate at this time. The hedge exemption for index options was adopted after several years experience with index options trading. Until the SROs gain some experience with domestic index warrant trading, it is difficult to determine the need for a hedge exemption (*i.e.*, that speculative limits are insufficient to meet hedging needs).

flexibility in structuring warrant issuances and a more expedient process for listing warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved broad-based index or a non-approved currency or currency index. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new warrant products.

The Commission finds good cause for approving Amendments No. 1, 2, 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** for the following reasons. As discussed below, the changes are either: (1) Minor and technical in nature; (2) responsive to the Comment Letter; (3) designed to conform to warrant proposals from other markets; or (4) modifications to Exchange surveillance procedures. Accordingly, the amendments do not raise new significant regulatory issues or are responsive to prior comments. In order to enable the Exchange to list new index, currency or currency index warrants as soon as possible, the Commission believes it is necessity and appropriate to approve the amendments on an accelerated basis.

Amendment No. 1 makes several changes to the filing which are designed to bring it into conformity with the other options exchanges. First, it revises Rule 803, Criteria for Listing, to permit alternative issuer listing qualification criteria (as discussed above under *Issuer Listing Standards and Product Design*). Second, it limits the number of foreign securities that may comprise an underlying stock index. The Commission notes that the issuer qualification amendment was made in response to comments received from the Seaward & Kissell Letter and further believes that both changes provide added flexibility to issuers without compromising investor protection concerns.

Amendment No. 1 also revises Rule 722 to provide that the proposed spread and straddle margin treatment for stock index warrants will be effected as part of a one year pilot program, and to provide that escrow receipts will be accepted to cover short positions in stock index warrants. The Commission notes that these changes conform the margin treatment afforded options and warrants and provide a basis for evaluating pricing correlations between warrants and options overlying the same index, currency or currency index.

Finally, Amendment No. 1 provides that the Exchange will distribute an information circular to its members upon new warrant listings and that it will permit member firms to accept an IA's representation concerning the options eligibility status of its customers, as described above. The Commission notes that both of these practices are consistent with the treatment of options and, therefore, raise no new or unique regulatory issues. Accordingly, for the reasons discussed above relating to each proposed revision of the Amendment, the Commission believes it is appropriate to approve Amendment No. 1 to the Exchange's proposal on an accelerated basis.

Amendment No. 2 to the proposal clarifies several issues relating to a.m. settlement, currency index warrant margin and position reporting for currency warrants. First, the Amendment clarifies that a.m. settlement will be used during the 48 hour period prior to expiration of index warrants.[43] Second, the Amendment clarifies that the applicable margin level for currency index warrants will be a percentage as specified by the Exchange and approved by the Commission. The Commission notes that this revision is consistent with the treatment afforded currency index options, where margin levels are established on a case by case basis. Finally, the Amendment establishes that index, currency and currency index warrants will be subject to the same reporting levels. The Commission notes that this revision helps to provide uniformity in the regulatory treatment of warrants. Furthermore, because currency and currency index warrants are not subject to position and exercise limits, the Commission believes that requiring investors to report to the Exchange when their holdings exceed specified levels should aid the Exchange in its monitoring for potential trading abuses involving currency and currency index warrants. Accordingly, the Commission believes it is appropriate to approve Amendment No. 2 on an accelerated basis.

Amendment No. 3 requires issuers to notify the listing exchange of any early exercises of index warrants by 4:30 p.m. (New York time) on settlement date for the warrants. The Commission believes this changes to the Phlx's surveillance procedures strengthens the Exchange's monitoring of index warrants. Accordingly, the Commission believes it is appropriate to approve Amendment No. 3 on an accelerated basis.

Amendment No. 4 clarifies the settlement procedures for index warrants which are exercised prior to expiration. Specifically, the Amendment clarifies that a.m. settlement will be required on valuation date as well as during the last two business days prior to an index warrant's valuation date. As discussed above, the Commission believes that the use of a.m. settlement during this period will help to ameliorate any potential price effects associated with expirations of derivative index products. Accordingly, the Commission believes it is appropriate to approve Amendment No. 4 on an accelerated basis.

Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments No. 1, 2, 3 and 4 to the Phlx's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, 2, 3 and 4. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1995.

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[43] Amendment No. 4 subsequently changes the language of this provision to require a.m. settlement be used during the two business days prior to valuation date.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–Phlx–94–49) is approved, as amended.[45] Furthermore, the portion of the rule change relating to spread margin treatment is approved on a one year pilot program basis, effective from the date of this Order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22106 Filed 9–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21330; File No. 812–9468]

Keyport Life Insurance Company, et al.

August 31, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Keyport Life Insurance Company ("Keyport"), KMA Variable Account ("KMA Account"), Keyport Variable Account I ("Variable Account I"), Independence Life and Annuity Company (formerly, Keyport America Life Insurance Company, "Keyport America"),[1] Independence Variable Annuity Separate Account (formerly, Keyport America Variable Annuity Separate Account, "KA VA Account"), Independence Variable Life Separate Account (formerly, Keyport America Variable Life Separate Account, "KA VLI Account"), Liberty Life Assurance Company of Boston ("Liberty Life") and Variable Account-K ("Account K").

RELEVANT 1940 ACT SECTIONS: Approval requested under Section 26(b) and exemption requested under Section 17(b) from Section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the Managed Assets Fund ("MAF") for shares of the Strategic Managed Assets Fund ("SMAF"), each of which is a portfolio of SteinRoe Variable Investment Trust ("SteinRoe Trust"); shares of SteinRoe Trust's Mortgage Securities Income Fund ("MSIF") for shares of the Colonial-Keyport U.S. Government Fund ("USGF") of Keyport Variable Investment Trust ("Keyport Trust"); and shares of Keyport Trust's Colonial-Keyport Strategic Income Fund ("SIF") for shares of SteinRoe Trust's Managed Income Fund ("MIF") (the "Substitution").

FILING DATE: The application was filed on February 6, 1995 and amended on August 30, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on September 25, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o James Klopper, Esq., Keyport Life Insurance Company, 125 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Keyport is a stock life insurance company and an indirect majority-owned subsidiary of Liberty Mutual Insurance Company ("Liberty Mutual"). Among Liberty Mutual's other indirect subsidiaries are the investment advisory firm of SteinRoe & Farnham Incorporated ("SteinRoe"), which is the adviser to SteinRoe Trust, and Keyport Advisory Services Corp. ("Keyport Advisory"), which is the adviser to Keyport Trust. Keyport offers fixed individual life insurance and individual and group fixed and variable immediate and deferred annuity contracts on a non-participating basis. Keyport currently is not offering new variable life insurance policies.

2. Keyport America is a stock life insurance company and a wholly-owned subsidiary of Keyport. Keyport America is authorized to transact life insurance and annuity business in all states, except New York, and in the District of Columbia. Keyport America is not currently offering new variable annuity contracts or variable life insurance policies.

3. Liberty Life is a stock life insurance company and a wholly-owned subsidiary of Liberty Mutual and Liberty Mutual Fire Insurance Company. Liberty Life offers individual life insurance and group life and health insurance and individual and group annuity contracts.

4. MAF, MSIF and SIF (collectively, "Substitute Funds") and SMAF, USGF and MIF, together with other portfolios of SteinRoe Trust and Keyport Trust, serve as eligible funding vehicles ("Eligible Funds") for certain flexible premium variable annuity contracts ("Contracts") offered by KMA Account and Account-K and previously offered by KA VA Account and certain single premium variable life insurance policies ("Policies") previously offered by Variable Account I and KA VLI Account (collectively, "Accounts").

5. The Accounts are segregated investment accounts registered under the 1940 Act as unit investment trusts. Each Account is divided into sub-accounts ("Sub-accounts") each of which invests in the corresponding portfolio of SteinRoe Trust (including MAF, SMAF, MSIF, and MIF), or Keyport Trust (including USGF and SIF). KMA Account serves as the funding medium for certain variable annuity Contracts issued and administered by Keyport. Variable Account I was established to fund certain individual single premium variable life insurance Policies previously offered by Keyport. KA VA Account was established to fund certain variable annuity Contracts previously offered by Keyport America. KA VLI Account was established to fund certain individual single premium variable life insurance Policies previously offered by Keyport America. Account-K serves as the funding medium for certain variable annuity Contracts issued and administered by Liberty Life. Keyport Financial Services Corp., a subsidiary of Keyport, serves as principal underwriter for the Contracts and Policies.

6. The Contracts offered by KMA Account and the Contracts previously offered by KA VA Account provide for allocation to the Sub-accounts that invest in each of the portfolios of SteinRoe Trust and each of the portfolios of Keyport Trust. The Contracts offered by Account-K provide for investment in the Sub-Accounts that invest in each of the portfolios of SteinRoe Trust and five of the portfolios of Keyport Trust, including USGF and SIF. Keyport America is not actively offering the Contracts funded through KA VA Account.

7. The Policies previously offered by Variable Account I and by KA VLI Account provide for allocation to the Sub-accounts that invest in each of the portfolios of SteinRoe Trust and each of the portfolios of Keyport Trust. Neither Keyport nor Keyport America is actively offering the Policies funded through Variable Account I or KA VLI Account, respectively.

8. Established in connection with the sale of Keyport to Liberty Mutual by the Travelers Insurance Company of Hartford, Connecticut, the SteinRoe Trust is a series type investment company registered with the Commission on Form N–1A. SteinRoe Trust currently has seven investment portfolios ("SteinRoe Trust's Funds") that have differing investment objectives, policies and restrictions.

9. Keyport Trust is a registered series type investment company that currently has six investment portfolios (collectively, with SteinRoe Trust's Funds, "Funds"), that have differing investment objectives, policies and restrictions.

10. Applicants state that SMAF, USGF and MIF, as individual investment alternatives, have not generated the interest of owners of Contracts ("Contract Owners") or owners of Policies ("Policy Owners") (collectively "Owners") that was anticipated at the time of their creation. Also, overall variable product sales by Keyport, Keyport America and Liberty Life have not generated the volume of assets sufficient to make every investment alternative viable. According to the Applicants, in the one-year period ended December 31, 1994, the assets of SMAF attributable to Owners only increased by approximately $2.0 million, the assets of USFG attributable to Owners decreased by approximately $1.6 million, and the assets of MIF attributable to Owners decreased by approximately $10.7 million.

11. MAF, MSIF and SIF are currently available in connection with new purchases and transfers under the Contracts offered by KMA Account and Account-K, the Contracts previously offered by KA VA Account, and the Policies previously offered by Variable Account I and KA VLI Account. Applicants represent that Owners have received current prospectuses or prospectus supplements for the SteinRoe Trust and the Keyport Trust that include information concerning all Eligible Funds, including MAF, MSIF and SIF.

12. Applicants state that, on December 31, 1994, the assets attributable to Owners of each of the Funds expected to be eliminated were relatively small, i.e., approximately $59.1 million in SMAF, approximately $29.2 million in USGF and approximately $42.4 million in MIF. In addition, none of these Funds have generated a sufficient level of Owner interest to justify their high expense ratios. Applicants state that the assets of USGF and MIF declined during the year ended December 31, 1994 and the assets of SMAF increased by only approximately $2.0 million. Moreover, Applicants further state that none of these Funds have generated sufficient Owner interest to justify the expense reimbursements that SteinRoe and Keyport Advisory have assumed with respect to the Funds. Applicants believe that it is not in the public interest to continue to utilize SMAF, USGF and MIF as funding vehicles for the Contracts and Policies and that they can better serve the interests of Owners by utilizing investment alternatives that they believe may be better suited to the needs and interests of Owners.

13. Keyport, Keyport America and Liberty Life, on their own behalf and on behalf of the Accounts, propose to effect a substitution of shares of MAF for all shares of SMAF, shares of MSIF for all shares of USGF, and shares of SIF for all shares of MIF attributable to the Contracts and Policies. Keyport, Keyport America and Liberty Life have undertaken to pay all expenses and transaction costs associated with the Substitution, including any applicable brokerage commissions. On February 7, 1995, Keyport, Keyport America and Liberty Life supplemented the prospectuses of their respective Accounts to reflect the proposed Substitution ("Supplements"). The Supplements were sent to Owners. Keyport, Keyport America and Liberty Life will schedule the Substitution to occur as soon as practicable following the issuance of the order so as to maximize the benefits to be realized from the Substitution. Within five days after the Substitution, Keyport, Keyport America and Liberty Life will send to Owners written notice of the Substitution (the "Notice") that identifies the shares of the Funds that have been eliminated and the shares of the Funds that have been substituted. Keyport, Keyport America and Liberty Life will include in such mailing the supplements to the prospectuses for the Accounts that disclose the completion of the Substitution.

14. Owners will be advised in the Notice that for a period of thirty days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available Sub-account, without limitation and without charge. Moreover, any transfers of all available assets from SMAF, USGF and MIF from the date of the Supplements will not be counted as transfer requests under any contractual provisions of the Contracts or Policies that limit allowable transfers. The period from the date of the Supplements to thirty days from the mailing of the Notice is referred to herein as the "Free Transfer Period." Following the Substitution, Owners will be afforded the same contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts and Policies as they currently have. Immediately following the Substitution, Keyport, Keyport America and Liberty Life, as appropriate, will combine: (i) The Sub-account invested in SMAF with the continuing Sub-account invested in MAF; (ii) the Sub-account invested in USGF with the continuing Sub-account invested in MSIF; and (iii) the Sub-account invested in MIF with the continuing Sub-account invested in SIF. Keyport, Keyport America and Liberty Life each will reflect this treatment in disclosure documents for their respective Accounts, the Financial Statements of their respective Accounts, the Financial Statements of their respective Accounts and the Form N–SAR annual reports filed by their respective Accounts.

15. Keyport, Keyport America and Liberty Life each will redeem for cash and securities all shares of SMAF, USGF and MIF they currently hold on behalf of the Accounts at the close of business on the effective date of the Substitution. The redemption of shares of SMAF, USGF and MIF will be effected partly for cash and partly for securities as a partial "redemption-in-kind." SteinRoe Trust and Keyport Trust will effect the redemptions-in-kind in a manner that is consistent with the investment objectives and policies and diversification requirements applicable to each Substitute Fund. Keyport, Keyport America and Liberty Life each will review the securities selected by SteinRoe and Keyport Advisory for redemption-in-kind to assure that such securities are suitable investments for

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[44] 15 U.S.C. § 78s(b)(2) (1988).

[45] The Commission notes that prior to listing any stock index, currency or currency index warrants, the Exchange will be required to obtain approval from the staff of the Commission concerning the Exchange's surveillance procedures applicable to the trading of warrants.

[46] 17 CFR § 200.30–3(a)(12) (1994).

[1] Keyport America Variable Life Insurance Company changed its name on July 13, 1995. To avoid confusion and effect a smooth transition, the company and its separate accounts may continue to use the name "Keyport America" for a period of time.

each Substitute Fund. Prior to effecting the Substitution, SteinRoe Trust and Keyport Trust will take all actions necessary to comply with the requirements of Rule 18f-1 of the 1940 Act. The securities redeemed in kind will be used together with the cash proceeds to purchase the shares of each Substitute Fund. Applicants have determined that partially effecting the redemption of shares of SMAF, USGF and MIF in kind is appropriate based on the current similarity of the portfolio investments of SMAF, USGF and MIF to those of MAF, MSIF and SIF, respectively. The valuation of any in kind redemptions will be made on a basis consistent with the normal valuation procedures of SMAF, USGF, MIF and the Substitute funds. In all cases, Keyport, Keyport America and Liberty Life on behalf of their respective Accounts will simultaneously place the redemption requests with SMAF, USGF and MIF and the purchase orders with MAF, MSIF and SIF, respectively, so that the purchases will be for the exact amount of the redemption proceeds. As a result, at all times, monies attributable to Owners currently invested in SMAF, USGF and MIF will be fully invested.

16. The full net asset value of the redeemed shares held by the Accounts will be reflected in the Owners' accumulation unit values following the Substitution. Keyport, Keyport America and Liberty Life have undertaken to assume all transaction costs and expenses relating to the Substitution, including any direct or indirect costs of liquidating the assets of SMAF, USGF and MIF so that the full net asset value of redeemed shares of SMAF, USGF and MIF held by the Accounts will be reflected in the Owners' accumulation unit values following the Substitution.

17. SteinRoe and Keyport Advisory have been fully advised of the terms of the Substitution. Keyport, Keyport America and Liberty Life anticipate that SteinRoe and Keyport Advisory, to the extent appropriate, will conduct the trading of portfolio securities in a manner that provides for the anticipated redemptions of shares held by Keyport and the Accounts.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides, in pertinent part that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The purpose of Section 26(b) is both to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with a substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants represent that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses it is designed to prevent. Applicants submit that the Substitution is an appropriate solution to the limited Owner interest and investment in SMAF, USGF and MIF and consistent with the alternative funding plans for the Contracts and Policies through the corresponding Substitute Funds. Applicants assert that the Substitution is being proposed in order to provide a consolidation of assets of Funds that currently are, and in the future are expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

3. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons: (a) The Substitution is of shares of the Substitute Funds whose objectives, policies and restrictions are sufficiently similar to the objectives of the Funds to be eliminated so as to continue fulfilling the Owner's objectives and risk expectations; (b) if an Owner so requests, during the Free Transfer Period, assets will be reallocated for investment in an Owner-selected Fund or Portfolio. Applicants represent that the Free Transfer Period is sufficient time for Owners to reconsider the Substitution; (c) the Substitution, in all cases, will be at the net asset value of the respective shares, without the imposition of any transfer or similar charge; (d) Keyport, Keyport America and Liberty Life have undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commissions, relating to the Substitution and are effecting the redemption of shares of USGF and MIF in a manner that attributes all transaction costs to Keyport. The partial redemptions-in-kind contemplated for appropriate securities of SMAF, USGF and MIF are expected to contribute to the reduction of such costs; (e) the Substitution will not be counted as a transfer under any contractual provisions of the Contracts or Policies that limit allowable transfers; (f) the Substitution in no way will alter the insurance benefits to Owners or the contractual obligations of Keyport, Keyport America and Liberty Life; (g) the Substitution in no way will alter the tax benefits to Owners; (h) Owners may choose simply to withdraw amounts credited to them following the Substitution, under the conditions that currently exist, subject to any applicable declining sales load; and (i) the Substitution is expected to confer certain modest economic benefits to Owners by virtue of the enhanced asset size of the Substitute Funds. Applicants consent to be bound by the terms and conditions listed immediately above in this paragraph.

4. Applicants represent that, on the basis of the facts and circumstances described both in the application and below, they have determined that it is in the best interests of Owners to substitute shares of MAF, MSIF and SIF for shares of SMAF, USGF and MIF, respectively. Each of the Funds is an existing portfolio of either SteinRoe Trust or Keyport Trust. SteinRoe, the adviser of SteinRoe Trust, and Keyport Advisory, the adviser of Keyport Trust, are both indirect subsidiaries of Liberty Mutual. The Independent Accounts and distributor are the same for each of the Funds. Applicants have determined that: (i) The investment objective and related investments of MAF are significantly similar to those of SMAF; (ii) the investment objective and related investments of MSIF are significantly similar to those of USGF; and (iii) the investment objectives and related investments of SIF are significantly similar to those of MIF. Applicants represent that both SMAF and MAF are portfolios that use asset allocation across the asset categories of stocks, bonds and money market securities to seek to achieve high total returns. Applicants further represent that both USGF and MSIF are income-oriented portfolios that primarily use debt securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities to seek to achieve a high level of current income. Finally, they represent that MIF and SIF are income-oriented portfolios that seek to achieve high current income, although SIF is a portfolio that uses more foreign sovereign debt obligations and more higher-yielding, lower-quality corporate debt securities to achieve its objectives than MIF is permitted to use. Applicants submit that, although MIF is a somewhat more conservatively managed portfolio whose use of foreign debt securities and high-yielding corporate bonds is permitted but more limited than in SIF, the average maturity and duration of both MIF's and SIF's portfolio securities are very similar.

5. In reviewing the Funds to form an opinion as to which Fund or Portfolio was an appropriate alternative to SMAF, USGF and MIF, Applicants submit that they were faced with a different economic environment than when SMAF, USGF and MIF were first established. Therefore, Applicants concluded that the selection of a Fund or Portfolio that shared the overall investment objective(s) of the Funds to be eliminated and that involved a comparable investment strategy or risk exposure would best serve the interests of Owners. Applicants state that they considered the fact that the investment performance of each Substitute Fund in which Owners will be indirectly invested following the Substitution is similar or superior to the investment performance of the substituted fund or Portfolio.

6. Applicants represent that SteinRoe Trust's adviser and administrator, SteinRoe, and Keyport Trust's adviser, Keyport Advisory, have agreed to reimburse each of the Funds for their operating expenses in excess of certain specified percentages until April 30, 1995. For the year ended December 31, 1994, for example, SteinRoe reimbursed SMAF and MIF for their operating expenses $17,691 and $38,790, respectively. USGF received no reimbursement for its operating expenses during that period. Applicants further represent that, after April 30, 1995, SteinRoe has determined to continue, if necessary, to voluntarily reimburse MAF and MSIF for their operating expenses in excess of .75% and .70%, respectively, of each such Fund's average daily net assets until April 30, 1996. In addition, Applicants represent that, after April 30, 1995, Keyport Advisory and its affiliates have voluntarily agreed to increase the reimbursement to SIF for its operating expenses so that all operating expenses in excess of .80% of its average daily net assets will be reimbursed until April 30, 1996. Applicants believe, that, starting with the one-year period beginning on May 1, 1995, the anticipated expenses for each of the Funds to be eliminated are expected to be higher than or approximately the same as the anticipated or actual expenses of each of the corresponding Substitute Funds. Thus, on an annual basis, give or take one or two basis points, Owners will not be exposed to higher expenses, following the substitution and may, in fact, benefit from the lower expense ratios that should result from the consolidation of assets following the substitution. With respect to SMAF and USGF, Applicants state that the substitution will result in the consolidation of the assets of those Funds with substantially larger and more stable Funds. With respect to MIF, Applicants represent that the substitution will result in the assets in SIF (which commenced operation on July 14, 1994) increasing to over $55.7 million. Applicants believe that these consolidations of assets should promote greater economies of scale that may help to lower each Fund's expense ratio and, thereby, increase each Fund's performance.

7. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company. As explained above, immediately following the substitution, Keyport, Keyport America and Liberty Life, as appropriate, will combine: (i) the Sub-account invested in SMAF with the continuing Sub-account invested in MAF; (ii) the Sub-account invested in USGF with the continuing Sub-account invested in MSIF; and (iii) the Sub-account invested in MIF with the continuing Sub-account invested in SIF. Sub-accounts of a registered separate account are to be treated as separate investment companies in connection with substitution transactions. Therefore, Keyport, Keyport America and Liberty Life could be said to be transferring unit values between their Sub-accounts, and that the transfer of unit values could be said to involve purchases and sale transactions between Sub-accounts that are affiliated persons. For example, the Sub-account investing in SMAF could be said to be selling shares of such Fund to a Sub-account investing in MAF in return for units of such Sub-account. Conversely, it could be said that a Sub-account investing in MAF was purchasing shares of SMAF. The sale and purchase transactions between Sub-accounts could be said to come within the scope of Sections 17(a)(1) and 17(a)(2) of the 1940 Act, respectively.Therefore, the substitution may require an exemption from section 17(a) of the 1940 Act, pursuant to section 17(b) of the 1940 Act.

8. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a), upon application, if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned; (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicants represent that the terms of the proposed transactions, as described in the application, are reasonable and fair, including the consideration to be paid and received; do not involve over-reaching; are consistent with the policies of the Funds of SteinRoe Trust and Keyport Trust; and are consistent with the general purposes of the 1940 Act.

9. Applicants represent that, for all the reasons stated above, with regard to Section 26(b) of the 1940 Act, the Substitution is reasonable and fair. Applicants expect that existing and future Owners will benefit from the consolidation of assets in the corresponding Substitute Funds. Applicants state that the transactions effecting the Substitution, including the redemption of the shares of SMAF, USGF and MIF and the purchase of shares of MAF, MSIF and SIF, respectively, will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, as described above. Moreover, Applicants state that the partial redemptions-in-kind of shares of the Funds will be effected in conformity with Rule 18f-1 and Rule 17a–7 under the 1940 Act and the procedures of SteinRoe Trust and Keyport Trust established pursuant to Rule 17a–7. Applicants submit that owner interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, Applicants assert that the consideration to be received and paid is, therefore,

reasonable and fair. Keyport, Keyport America and Liberty Life each believe, based on their review of existing federal income tax laws and regulrtions and advice of counsel, that the Substitution will not give rise to any taxable income for Owners.

Applicants' Conclusions

Applicants submit, for all of the reasons stated herein, that their requests meet the standards set out in Sections 17(b) and 26(b) of the 1940 Act and that an order should, therefore, be granted. Accordingly, Applicants request an order pursuant to Sections 17(b) and 26(b) of the 1940 Act approving the substitution of shares of MAF for shares of SMAF, the substitution of shares of MSIF for shares of USGS, and the substitution of shares of SIF for shares of MIF, respectively.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22196 Filed 9–6–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–21331/812–9662]

Van Kampen Merritt Equity Trust et al.; Notice of Application

August 31, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Van Kampen Merritt Equity Trust (the "VK Trust"), American Capital Utilities Income Fund, Inc. (the "AC Fund"), Van Kampen American Capital Investment Advisory Corp. (the "VK Adviser"), Van Kampen American Capital Asset Management, Inc. (the "AC Adviser"), and Van Kampen American Capital Distributors, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit the VK Fund, a sub-trust of the VK Trust, to acquire all of the assets of the AC Fund. Because of certain affiliations, the two funds may not rely on rule 17a–8 under the Act.

FILING DATE: The application was filed on July 12, 1995. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Van Kampen Merritt Utility Fund (the "VK Fund") is a sub-trust of the VK Trust, an open-end management investment company organized as a Massachusetts business trust. The AC Fund is an open-end management investment company organized as a Maryland corporation (the VK Fund and the AC Fund are collectively referred to as the "Funds"). The VK Adviser advises the VK Fund, and the AC Adviser advises the AC Fund. As of May 31, 1995, the AC Adviser owned 9.25% of the outstanding voting shares of the AC Fund.

2. On December 20, 1994, The Van Kampen Merritt Companies, Inc. acquired from The Travelers Inc. all of the outstanding capital stock of American Capital Management & Research, Inc., which at that time was the parent company of the AC Adviser. Immediately following this acquisition, American Capital Management & Research, Inc. was merged into The Van Kampen Merritt Companies, Inc. and the combined entity was renamed Van Kampen American Capital, Inc. The VK Adviser, the AC Adviser, and the Distributor are wholly-owned subsidiaries of Van Kampen American Capital, Inc., and are organized as Delaware corporations.

3. Van Kampen American Capital, Inc. is a wholly-owned subsidiary of VK/AC Holding, Inc. VK/AC Holding, Inc., in turn, is controlled by The Clayton & Dubilier Private Equity Fund IV Limited Partnership ("C&D L.P."), which owned, as of August 29, 1995, approximately 86 percent of the common stock of VK/AC Holding, Inc. C&D L.P. is managed by Clayton, Dubilier & Rice, Inc., a New York-based private investment firm. The general partner of C&D L.P. is Clayton & Dubilier Associates IV Limited Partnership.

4. The investment objectives of the Funds are essentially the same. The investment objective of the VK Fund is to provide its shareholders with capital appreciation and current income. The VK Fund seeks to achieve its objective by investing in a diversified portfolio of common stocks and income securities issued by companies engaged in the utilities industry. Under normal market conditions, at least 80% of the VK fund's assets are invested in securities issued by companies engaged in the utilities industry. As of May 31, 1995, the net assets of the VK Fund were $134,753,821.

5. The primary investment objective of the AC Fund is to provide its shareholders with current income. Capital appreciation is a secondary objective which is sought only when consistent with the primary objective. The AC Fund seeks to achieve its investment objective by investing in a diversified portfolio of common stocks and income securities issued by companies engaged in the utilities industry. Under normal market conditions, at least 65% of the AC Fund's assets are invested in securities issued by companies engaged in the utilities industry. As of May 31, 1995, the net assets of the AC Fund were $26,996,393.

6. Each fund offers three classes of shares. Class A shares of the Funds generally are sold with a front-end sales charge. Purchases of Class A shares in excess of $1,000,000 are not subject to a front-end sales charge but are subject to a contingent deferred sales charge ("CDSC") of 1.00% if redeemed within one year from the date of purchase. Class B shares of the Funds are sold without a front-end sales charge but are subject to a CDSC payable upon redemption. Class C shares of the Funds are sold without a front-end sales charge and are subject to a CDSC of 1.00% if redeemed within one year of purchase.

7. The VK Fund proposes to acquire all of the assets of the AC Fund, in exchange for shares of beneficial interest in the VK Fund and the assumption by the VK Fund of all of the liabilities of

the AC Fund. The number of shares of each class of the VK Fund to be issued to shareholders of the AC Fund will be determined on the basis of the Funds' relative net asset values for each class of shares, computed as of 5:00 p.m. Eastern time on the closing date. Class A, Class B, and Class C shareholders of the AC Fund will receive, respectively, Class A, Class B, and Class C shares of the VK Fund. After this distribution and the AC Fund's winding up of its affairs, the AC Fund will be terminated.

8. In anticipation of the proposed reorganization, on April 7, 1995, the board of trustees of the VK Trust (the "VK Board") unanimously approved a consolidation plan (the "Consolidation Plan") which provided for: (a) merging certain funds advised by the VK Adviser and the AC Adviser, including the Funds, in order to achieve certain economies of scale and efficiency; (b) permitting exchangeability of shares between funds advised by the VK Adviser and the AC Adviser; (c) selecting a common transfer agent; (d) consolidating the VK Board and the board of directors of the AC Fund (the "AC Board") into a combined board;[1] and (e) reorganizing most of the funds advised by the VK Adviser and the AC Adviser, including the Funds, as Delaware business trusts. On May 11, 1995, the AC Board unanimously approved the Consolidation Plan. Shareholder approval of the actions proposed in the Consolidation Plan was obtained, or will be obtained, where necessary.

9. In anticipation of the proposed reorganization, the VK Board and the AC Board, including the non-interested trustees/directors, unanimously approved an agreement and plan of reorganization (the "Reorganization Agreement"). Applicants intend that the Reorganization Agreement will be submitted to the shareholders of the AC Fund for approval at a meeting to be held on or about September 15, 1995. A registration statement on Form N–14 containing a combined proxy statement/prospectus was filed with the Commission on May 25, 1995. The AC Fund began mailing the proxy statement/prospectus to its shareholders on August 4, 1995. Assuming that the required shareholder vote is obtained at the AC Fund's shareholder meeting, the closing of the proposed reorganization is expected to be shortly thereafter, but not before applicants' receipt of the requested order.

10. In considering the Reorganization Agreement, the VK Board and the AC Board, including the non-interested trustees/directors of each board, considered a number of factors in concluding that the Funds' participation in the reorganization is in the best interests of each fund and that the interests of existing shareholders of the Funds will not be diluted. The factors considered by the boards included: (a) the capabilities and the resources of the VK Adviser and other service providers to the VK Fund; (b) the advisory fees and expenses of the Funds, the expense ratios of the Funds, and the anticipated expense ratio of the combined fund; (c) comparative investment performance of the VK Fund and the AC Fund; (d) the terms and conditions of the reorganization; (e) the potential benefits of the reorganization to affiliates of the Funds; (f) the similarity of the Funds; (g) the costs of the reorganization to the Funds; and (h) the fact that the reorganization will be effected on a tax-free basis. The VK Fund, as the surviving fund after the reorganization and merger of the VK Fund and the AC Fund, will be responsible for the expenses incurred by the AC Fund and the VK Fund in connection with the reorganization, and the VK Adviser, the AC Adviser, and the Distributor will be responsible for their respective expenses incurred in connection with the reorganization.

11. The consummation of the reorganization is subject to a number of conditions set forth in the Reorganization Agreement, including: (a) The shareholders of the AC Fund shall have approved the Reorganization Agreement; and (b) the parties shall have received all necessary approvals, registrations, and exemptions (including the requested order) under federal and state securities laws with respect to the proposed reorganization. Any provision of the Reorganization Agreement may be waived, amended, modified, or supplemented by the mutual written agreement of the parties; provided, however, that the parties will not make any material changes to the Reorganization Agreement that affect the application without the prior approval of the SEC. Applicants also agree not to waive, amend, or modify any provision of the Reorganization Agreement that is required by state or Federal law to effect the reorganization.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all the assets of registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers provided that certain conditions are satisfied. The proposed reorganization may not be exempt from the prohibitions of section 17(a) by reason of rule 17a–8 because the AC Adviser owns more than 5% of the outstanding voting securities of the AC Fund.

3. Applicants believe that the terms of the proposed reorganization satisfy the standards of section 17(b). The AC Board and the VK Board, respectively, including their disinterested trustees and directors, have reviewed the terms of the proposed reorganization, including the consideration to be paid or received, and have found that participation in the proposed reorganization as contemplated by the Reorganization Agreement is in the best interests of the VK Fund and the AC Fund, and that the interests of existing shareholders of the Funds will not be diluted as a result of the reorganization. In addition, the AC Board and the VK Board found that the proposed reorganization is consistent with the Funds' policies and the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22195 Filed 9–6–95; 8:45 am]

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[1] The AC Fund will comply with section 15(f) of the Act with respect to the composition of the AC Board. Section 15(f) provides, in relevant part, that an investment adviser of a registered investment company may receive a benefit in connection with a sale of an interest in such investment company which results in an assignment of the investment company's advisory contract if, for a three-year period following the sale, 75% of the directors of the investment company are not interested persons of the adviser or its predecessor.

DEPARTMENT OF STATE

[Public Notice No. 2252]

Notice of Advisory Committee Study Group Meeting on Proposed Rules for Secured Interests in International Transactions

A meeting of a new Study Group on International Secured Interests, co-hosted by the Secretary of State's Advisory Committee on Private International Law (ACPIL) and the Subcommittee on International Commercial Law, Section of Business Law of the American Bar Association (ABA), will be held on Monday, September 18, 1995 in New York at the Brooklyn Law School from 9:30–5:00. The focus of the meeting will be on various efforts by international organizations and others to establish rules for, or unify laws on, secured interests and receivables financing in the context of international transactions. A seminar on international and domestic credit enhancement will take place the following day at Brooklyn Law School, and attendees at the Study Group meeting will be invited to the following day's sessions.

The primary focus for the Study Group will be projects under way at UNCITRAL (United Nations Commission on International Trade Law) and UNIDROIT (International Institute for the Unification of Private Law).

UNIDROIT, an intergovernmental organization of which the United States is a member, is in the process of preparing an initial draft of Uniform Rules on the recognition and enforcement of international interests in mobile equipment. The proposed Rules will need to define what constitutes an international security interest, whether the convention itself should create or only recognize such interests, whether such interests may secure future as well as present obligations, the scope of equipment to be covered, the appropriate registry or registries, remedies and enforcement, basic priority rules and possibly jurisdiction. Consideration will also be given to drafting the rules in the form of a convention (multilateral treaty), rather than as a uniform law. UNIDROIT will hold its next drafting session in October 1995; the meeting of the Study Group will provide guidance for U.S. participants. Documents available include UNIDROIT reports contained in Study LXXII, reports of U.S. participants in prior preliminary drafting meetings of UNIDROIT, and reports prepared for the Aviation Working Group.

UNCITRAL is in the preliminary stages of drafting model law rules on "receivables financing", which focuses on the assignment of rights to payment for goods and services in a broad range of commercial goods. Various types of trade financing mechanisms may be relevant, such as secured transactions, factoring, forfeiting, secondary financing, etc. The preliminary draft rules cover forms of assignment and transfer of security rights, the relationship between assignor and assignee, warranties, applicable law, enforcement and defenses, effect of assignments toward third parties, and priorities. The rules are intended to encompass bulk assignments and general inventory, as well as identifiable goods. UNCITRAL will hold its first working group meeting on this topic in November, 1995; the meeting of the Study Group will provide guidance for U.S. participants. Documents available include reports prepared by the UNCITRAL Secretariat on the legal aspects of receivables financing, U.N. Docs. A/CN.9/397 and 412.

Discussion of the above-referenced projects will take into account the already completed UNIDROIT conventions on International Financial Leasing and International Factoring, both of which are expected to be submitted to the U.S. Senate for advice and consent to United States ratification.

The review of these and other international projects will take into account proposed revisions to the Uniform Commercial Code which are presently under consideration by the National Conference of Commissioners on Uniform State Laws, as well as work being done by the American Law Institute, the American Bar Association and others. In addition, the status of other related projects will be discussed, including current projects on secured interests laws by the World Bank and the National Law Center for Inter-American Free Trade (CIFT) in Tucson, Arizona.

The meeting will be open to the public up to the capacity of the meeting room and all attendees can participate subject to rulings of the Chair. The meeting will be held at Brooklyn Law School, 250 Joralemon Street (downtown Brooklyn), New York 11201. Location of the meeting will be posted at the Law School for participants. Persons wishing to attend or who want further information should contact Peter Winship, International Commercial Law Subcommittee, at (202) 822–8633, fax (202) 785–5185, or Harold Burman, Advisory Committee Executive Director, (202) 776–8421, fax (202) 776–8482.

Copies of all documents referred to above can be obtained on request from the Advisory Committee. Persons unable to attend the meeting may submit their comments in writing to the Advisory Committee by fax at (202) 776–8482 or to the Office of the Legal Adviser (L/PIL), Suite 203 South Building, 2430 E Street, NW., Washington, DC 20037–2800. For information on arrangements at Brooklyn Law School, contact Judy Cohn at (718) 780–7987, fax (718) 780–0393.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law, Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 95–22236 Filed 9–6–95; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–95–32]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 27, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ______, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 1, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 28030
Petitioner: Taquan Air Service, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To permit appropriately trained pilots employed by Taquan Air Service, Inc., (TAS) to perform daily compressor turbine washes on the Pratt & Whitney engine installed on the Cessna 208 Caravan I that TAS operates under part 135.

Dispositions of Petitions

Docket No.: 18599
Petitioner: T.B.M., Inc.
Sections of the FAR Affected: 14 CFR 36.1581(c)
Description of Relief Sought/Disposition: To amend Exemption No. 2745, as amended, which permits the amendment of the landing weight operating limitations imposed on specified DC–6 and DC–7 aircraft to allow landings at weights at or below the applicable maximum landing weight during firefighting operations. The amendment deletes a DC–7B (Registration No. N848D) from this exemption, because it was destroyed in an accident.
GRANT, July 24, 1995, Exemption No. 2745B

Docket No.: 25089
Petitioner: Hawkins & Powers Aviation, Inc.
Sections of the FAR Affected: 14 CFR 137.53(c)(2)
Description of Relief Sought/Disposition: To extend Exemption No. 5075, as amended, which permits Hawkins & Powers Aviation, Inc., to conduct aerial application of insecticide from C–118A (DC–6) aircraft over congested areas without the aircraft being equipped with a device capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds.
GRANT, August 3, 1995, Exemption No. 5075C

Docket No.: 25794
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 47.49 and 91.203
Description of Relief Sought/Disposition: To extend and amend Exemption No. 5318, as amended, which permits Air Transport of America member airlines to operate their U.S.-registered aircraft on a temporary basis following the incidental loss or mutilation of a certificate of airworthiness, registration, or both. The amendment removes references to § 47.49. The original grant reflected that this section was not necessary to the issuance of the exemption; however, § 47.49 was nevertheless inadvertently included.
GRANT, July 24, 1995, Exemption No. 5318D

Docket No.: 27117
Petitioner: Paragators, Inc.
Sections of the FAR Affected: 14 CFR 105.43
Description of Relief Sought/Disposition: To extend Exemption No. 5659, which permits Paragators, Inc., (Paragators) to allow nonstudent parachutists who are foreign nationals to participate in Paragators-sponsored parachute-jumping events at Paragators' facilities, using parachutes that have not been approved by the FAA, but have been accepted or approved for use by the proper authorities in the foreign parachutist's own country.
GRANT, June 30, 1995, Exemption No. 5659A

Docket No.: 27140
Petitioner: Hi Line Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To extend Exemption No. 5715, which allows Hi Line Helicopters, Inc., to operate part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft.
GRANT, July 19, 1995, Exemption No. 5715A

Docket No.: 27153
Petitioner: Kachina Aviation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To extend Exemption No. 5701, which allows Kachina Aviation to operate its part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft.
GRANT, May 24, 1995, Exemption No. 5701A

Docket No.: 27167
Petitioner: Corporate Aviation Services, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To extend Exemption No. 5756, which allows Corporate Aviation Services, Inc., to operate part 135 aircraft without a TSO–C112 (Mode S) transponder installed on its aircraft.
GRANT, July 19, 1995, Exemption No. 5756A

Docket No.: 27306
Petitioner: NockAir Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 133.43 (a) and (b)
Description of Relief Sought/Disposition: To extend Exemption No. 5708, which permits NockAir Helicopters, Inc., to use its helicopters to perform aerial trapeze acts without using an approved external-load attachment or a quick-release device for carrying a person on a trapeze bar.
GRANT, August 3, 1995, Exemption No. 5708A

Docket No.: 27310
Petitioner: Purdue University
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d) (2) and (3); 61.65 (c), (e) (2) and (3), and (g); 61.67(d)(2); 61.157 (d)(1) and (2) and (e) (1) and (2); 61.191(c); and appendix A, part 61
Description of Relief Sought/Disposition: To extend Exemption No. 5706, which permits Purdue University to use FAA-approved simulators to meet certain flight experience requirements of part 61.
GRANT, July 19, 1995, Exemption No. 5706A

Docket No.: 28068
Petitioner: Bombardier, Inc., Canadair
Sections of the FAR Affected: 14 CFR 91.211(b)(1)(ii)
Description of Relief Sought/Disposition: To allow operation of Canadair Global Express (GX) aircraft at altitudes above 41,000 feet mean sea level (MSL) without requiring that at least one pilot at the controls of the airplane wear an oxygen mask.
DENIAL, August 3, 1995, Exemption No. 6141

Docket No.: 28079
Petitioner: General Electric Aircraft Engines

Sections of the FAR Affected: 14 CFR 21.325(b) (1) and (3)
Description of Relief Sought/ Disposition: To allow export airworthiness approvals to be issued for Class I products that have been assembled, inspected, and tested at the Universal Maintenance Center (UMC) in Bandung, Indonesia. Additionally, this exemption allows export airworthiness approvals to be issued for Class II and Class III export that are U.S.-manufactured under the control of General Electric Aircraft Engines quality control system but exported from its facilities located in other countries.
PARTIAL GRANT, July 25, 1995, Exemption No. 6139

Docket No.: 28219
Petitioner: IRZ Infrascan
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit IRZ Infrascan to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
GRANT, July 14, 1995, Exemption No. 6138

Docket No.: 28282
Petitioner: Raytheon Aircraft Company
Sections of the FAR Affected: 14 CFR 21.183(c) and 21.325(b)(1)
Description of Relief Sought/ Disposition: To permit the Raytheon Aircraft Company to obtain standard airworthiness certificates for its Hawker Models 800, 800XP, and 1000 aircraft, type certificated in accordance with § 21.21 instead of § 21.29, and to permit Raytheon to obtain export certificates of airworthiness for those model aircraft from a manufacturing facility located outside of the United States.
GRANT, August 3, 1995, Exemption No. 6142

[FR Doc. 95–22201 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 95–20]

Advanced Technology in Commercial Motor Vehicle Operations; Request for Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for information.

SUMMARY: The FHWA seeks information from motor carriers, vehicle and component manufacturers, technology vendors, and the public on the use of advanced driver, vehicle, and inspection technology in commercial motor vehicle operations. The FHWA plans to evaluate existing technologies to determine if they could be used to simplify or automate compliance with any of the Federal Motor Carrier Safety Regulations (FMCSRs) without compromising public safety. Commenters are encouraged to identify safety-related technology that could reduce paperwork or contribute to more efficient safety management and enforcement practices.

DATES: Comments should be received no later than November 6, 1995.

ADDRESSES: All written, signed comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, Room 4232, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip J. Roke, Office of Motor Carrier Research and Standards, (202) 366–5884, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA requests ideas, suggestions, and comments from motor carriers, manufacturers, technology vendors, other interested parties, and the public on how technology currently available, or soon to become available, to motor carriers and drivers subject to Federal regulatory requirements could be substituted for existing regulatory methods without compromising public safety. This is consistent with the goals of the agency's Zero Base Regulatory Review of the FMCSRs (49 CFR parts 350–399).

Specifically, the FHWA requests commenters to identify and discuss technologies that could reduce costs, delays, and paperwork burdens associated with the current rules, or even enhance operational safety. For example, on September 30, 1988, the FHWA published a final rule (53 FR 38666) to allow motor carriers, at their option, to use certain automatic on-board recording devices to record their drivers' records of duty status in lieu of the required handwritten record of duty status. This provision is now found at § 395.15 of the FMCSRs. Comparable innovations with even greater economic or safety potential may now be available or in the final stages of development.

Information submitted by commenters will help the agency decide which rules could benefit from technological modernization. We will consider amending or replacing current rules with technology-based standards that are consistent with the safe operation of commercial motor vehicles. Any revisions or modifications to the FMCSRs would be done under a separate rulemaking.

Ongoing Research and Development

The FHWA is pursuing several research projects addressing advances in driver, vehicle, and inspection technology. These projects include studies of fitness-for-duty testing devices, automated roadside inspection technologies, advanced brake system testing devices, and the feasibility of standardized vehicle safety component diagnostic devices. The FHWA will use relevant information supplied in response to this notice to supplement and/or validate these research findings.

Manufacturing Standards

The National Highway Traffic Safety Administration (NHTSA) establishes vehicle manufacturing standards and has the statutory authority to require specific components and or systems in original manufactured vehicles. The FHWA plans to share relevant vehicle component and/or systems information received in response to this notice with the NHTSA.

Information Requested

The FHWA requests commenters to provide information on available or soon-to-be available driver and vehicle technology that reduces the regulatory burden of complying with specific areas of the FMCSRs. Please provide as much data as possible on the design, operation, and cost (hardware, software, installation, training, maintenance, etc.) of each device or technology. Reductions in regulatory burdens should be quantified if at all possible. Detailed estimates of savings (in expenditures, time, accidents avoided, etc.) are also very important. (49 U.S.C. 31136, 315022; 49 CFR 1.48)

Issued on: August 30, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–22097 Filed 9–6–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection Submitted to OMB for Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) a Paperwork Reduction Act Submission regarding an information collection titled Recordkeeping Requirements for Securities Transactions (12 CFR Part 12).

DATES: Comments on this information collection are welcome and should be submitted by September 28, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the OCC contact.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the OCC has sent to OMB a Paperwork Reduction Act Submission regarding the following information collection:

Type of Review: Regular.

Title: Recordkeeping Requirements for Securities Transactions (12 CFR 12).

Description: The Recordkeeping Requirements for Securities Transactions (12 CFR 12) serve to establish an audit trail that is used by the OCC in its regulatory examinations as a tool to evaluate a bank's compliance with the anti-fraud provisions of the Federal securities laws. The records provide a basis for adequate disclosure to customers who effect securities transactions through national banks.

Form Number: None.

OMB Number: 1557–0142.

Respondents: Businesses or other for-profit.

Number of Respondents: 416.

Total Annual Responses: 416.

Average Hours Per Recordkeeper: 306 hours.

Total Annual Burden Hours: 127,296.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0186, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0186), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Comments: Comments regarding the submission should be addressed to both the OMB reviewer and the OCC contact listed above.

Date: August 30, 1995.

James F.E. Gillespie,

Director, Legislative & Regulatory Activities.

[FR Doc. 95–22125 Filed 9–6–95; 8:45 am]

BILLING CODE 4810–33–P

UNITED STATES INFORMATION AGENCY

Program Title NIS Secondary School Initiative; Inbound Academic Year Placement

ACTION: Notice—Request for Proposals.

SUMMARY: The NIS Secondary School Initiative Division, Office of Citizen Exchanges, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to place high school students between the ages of 15 and 17 from the New Independent States (NIS) of the former Soviet Union in homestays and schools for the 1996/97 academic year. Organizations will be responsible for orienting students at the local level and for monitoring them during their time in the U.S.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The number of grant awards in this competition will likely be 15–20. All grants are subject to the availability of funds in Fiscal Year 1996.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–96–12. This is a request for proposals only for the activities described above. Requests for proposals in support of other youth exchange programs with the NIS are being published separately.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, DC time on Friday, October 19, 1995. Faxed documents will not be accepted, nor will documents postmarked October 19 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Notification of awards will be announced after January 8, 1996. Grant funds should be available by April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Division for the Secondary School Initiative, E/PY, Room 314, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: 202/619–6299; fax: 202/619–5311; Internet: daronson@usia.gov, to request a Solicitation Package, which includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Specialist Diana Aronson on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Division for the NIS Secondary School Initiative or submitting their proposals. Once the RFP deadline has passed, Agency representatives may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and ten copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/P–96–12, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle. Organizations are encouraged to seek diverse communities and host families in which to place students. Orientation programming should include information on diversity issues as part of American culture and should touch on current laws that mandate equal treatment of all people regardless of race, gender, national origin, or disabling condition.

Overview

Academic year 1996–97 will be the fourth year of the program, which is part of the NIS Secondary School Initiative. It was originally funded under the FREEDOM Support Act of 1992, and in fiscal year 1996 will be funded out of the USIA appropriation for educational and cultural exchanges. The goals of the program are to: promote mutual understanding between the people of the NIS and the U.S.; instill in the participants democratic values and provide experience living in a democracy; establish a critical mass of young people in the NIS capable of transforming their societies.

Purpose

To place approximately 1,200 pre-selected high school students from the 12 New Independent States (NIS) of the former Soviet Union in the United States to study and live for one academic year. To place students in qualified, well-motivated host families and welcoming schools. To enable the students to attain a broad view of the society and culture of the U.S. and to share their cultures with Americans.

Guidelines

Three organizations have been awarded grants to perform the following functions: recruitment and selection of students; assistance in documentation and preparation of IAP 66 forms; preparation of cross-cultural materials; pre-departure and arrival orientation; international travel from home to the host community and return; ongoing communication with natural parents; tracking of all students during their stay in the U.S. and provision of data to USIA; and ongoing follow-up with alumni following their return to the NIS. Separate grants will be awarded for a one-week mid-year Washington DC civics education program for all students and for intensive English training for those students who need to improve their English before going to their host communities. The announcements of the competitions for these grants are being published separately.

Organizations chosen under this competition are responsible for the following: Recruitment, selection, and orientation of host families; school placement; local orientation; specialized training of local staff and volunteers to work with NIS students; preparation and dissemination of materials to students pertaining to the placement organization; program enhancement activities; supervision and monitoring of students, trouble-shooting, and periodic reporting on their progress; communication with the organizations conducting other program components, when appropriate; evaluation of the students' performance and the success of the organization in achieving program goals; and re-entry training to prepare students for readjustment to their native culture.

Applicants may request a grant for the placement of at least 20 students. There is no ceiling on the number of students who may be placed by one organization. It is anticipated that 15 to 20 grants will be awarded for this component of the program. Placements will be spread all across the U.S. Students may be clustered in one or more regions or dispersed. If dispersed, applicants should demonstrate that local staffing and training of local staff is adequate to ensure their competence in supervising and counseling students from the NIS. Please refer to the Guidelines for Proposals—available on request from the address listed above—for details on essential program elements and permissible costs.

Programming begins at the point that the complete applications on selected finalists are delivered to the placement organizations, approximately on April 1, 1996. Participants arrive in their host communities in the month of August and remain for 10 to 11 months until their departure during the period mid-June to early July 1997.

Eligibility

Private legally incorporated not-for-profit—IRS-designated 501(c)(3)—organizations and public institutions are eligible for consideration under this competition. Organizations with less than four years experience conducting youth exchange programs will be eligible for grants not to exceed $60,000.

Participants

Finalists are secondary school students aged 15–17 who have been tested, interviewed and thoroughly screened in an elaborate, merit-based process. Some may be completing their studies in their home schools in May of 1996. Applicants are referred to the Guidelines for Proposals for additional details on student selection criteria.

Visa/Insurance/Tax Requirements

Participants will travel on J–1 visas issued by USIA using a government program number. Organizations must comply with all pertinent J–1 visa regulations in carrying out their responsibilities. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget. Applicants should submit the health and accident insurance plans they intend to use for students on this program. USIA will compare the plan with the Agency plan and make a determination of which will be applicable.

Materials

Drafts of all printed materials developed specifically for this program paid for with grant funds should be submitted to the Agency for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source. The USIA will determine the disposition of the copyrights on any materials so funded.

Proposed Budget

Organizations must submit a comprehensive line item budget based on guidelines in the Solicitation Package. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. Please refer to the Solicitation Package for complete formatting instructions and for allowable costs. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Review Process

The USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein

and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as USIA's East European and NIS Area Office and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to USIA's mission to promote mutual understanding.
2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.
4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants and host families, program venue, and program evaluation) and program content (orientation and wrap-on sessions, programs meetings, resource materials and follow-up activities).
5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to carry out the responsibilities listed above.
6. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful administration of exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.
7. Project Evaluation: Proposals should include a plan to evaluate both the performance of the students and the grantee organization's success in achieving the goals of the program as outlined above. USIA recommends that the proposal include a draft survey questionnaire or other evaluation technique plus description of a methodology to use. Award-receiving organizations/institutions will be expected to submit quarterly reports.
8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.
9. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process after January 8. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 1, 1995.

Dell Pendergrast,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–22192 Filed 9–6–95; 8:45 am]

BILLING CODE 8230–01–M

Freedom Support Act Secondary School Initiative—U.S./NIS Academic Studies Inbound/Outbound Program

ACTION: Notice—request for proposals.

SUMMARY: The Division for the Secondary School Initiative, Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award to facilitate academic exchanges between American high school students and students from the 12 New Independent States (NIS) of the former Soviet Union. Public and private non-profit organizations and educational institutions meeting the provisions described in IRS regulation 25 CFR 1.501(c)(3)–1 may apply to develop projects that promote the purposes of this program, which are to: (a) Build the capacity of organizations to conduct academic exchanges at the secondary school level between the U.S. and the NIS; (b) sponsor study opportunities in the U.S. for NIS high-school-aged students; and (c) promote study abroad opportunities in the NIS for Americans. Applicants may apply for grants of up to two years duration. Exchanges of three to six months duration may take place during the 1997 spring semester, the 1997 fall semester, the 1998 spring semester, and the 1998 fall semester. Full year inbound and outbound exchanges may take place during the 1997–98 academic year.

The countries of the NIS are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Overall grant making authority for this program is contained in the Secondary School Exchange Initiative, as originally authorized in the Freedom Support Act of 1992 (P.L. 102–391). It is anticipated that $4 million will be allotted to this program.

Programs and projects must conform with Agency requirements and guidelines as outlined in the Solicitation Package. USIA projects are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–96–15. This is a request for proposals only for the program models described above. Requests for proposals in support of other youth exchange programs with the NIS are being published separately.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, January 12, 1996. Faxed documents will not be accepted, nor will documents postmarked on January 12, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Notification of awards will be announced on or after April 12, 1996. Grant funds should be available by June 1, 1996.

FOR FURTHER INFORMATION CONTACT:

The Division for the Secondary School Initiative, E/PY, Room 320, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–6299; fax (202) 619–5311, internet address: sjones@usia.gov to request a Solicitation Package, which includes more detailed criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer, Shalita Jones on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries or submitting their proposals to the Division of the Secondary School Initiative. Once the RFP deadline has passed, Division representatives may not discuss this competition in any way with applicants until the Bureau's proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/P–96–15, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative," sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

DIVERSITY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representatives of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to ethnicty, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program and administration of its program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

The purpose of this program is to provide the opportunity for American students to study at a school and experience life with a host family and its community in one of the 12 New Independent States of the former Soviet Union, and, to sponsor students from the NIS to study at an American school and experience life with a host family and its community in the U.S. The programs are intended to provide avenues that will enhance the students' understanding of each country's political, social, and cultural and ethnic diversity; to promote the exchange of ideas; and to foster long-term friendships, through courses of study such as history, social studies, civics, and global economics and environmental issues, as well as through living and interacting with their host families and communities. Initial grant funding is also intended to facilitate the creation of partnerships with NIS organizations seeking to promote exchanges, and to assist U.S. non-profit organizations to build their own capacity to conduct exchange business in the NIS which will promote a long-term future for exchanges beyond federal funding.

This program has four components. Please note that each component is independent of the other and is not subject to reciprocity. Applicants may opt to apply for any or a combination of any or all four of the following components:

A. Outbound Semester

This component will give American high-school students a chance to live with a host family and study at the secondary school level in an NIS country for a period of no less than three months.

B. Inbound Semester

This component provides opportunities for NIS high-school students to live with a host family and study at secondary-level institutions for one academic semester in the U.S.

C. Academic Year Outbound

This component provides opportunities for American high-school students to study for a school year (no less than 9 months) in a country of the former Soviet Union, and to more fully experience the life and culture of a host family and its community.

D. Academic Year Inbound

This component provides the opportunity for students from the former Soviet Union to study for a school year (no less than 9 months) at an American high school, and to experience the life and culture of a host family and its community.

Guidelines

There is no prescribed formula for either component of the program, however, organizations should encourage students to participate in extracurricular activities and provide students with community-based activities. Also, organizations have the option to concentrate groups of students in regional clusters or disperse students wisely. The purpose of clustering is to facilitate periodic gatherings for ongoing orientation, excursions and cultural programming, and well as supervision and feedback. Organizations should identify in their proposals the target regions, states and/or communities in which placements will be sought, and describe how placements in those areas will benefit students and the overall purpose of the program. The names and addresses of prospective schools and letters of agreement to participate from relevant school/district/community officials should be included in the proposal. Regardless of the placement plan, organizations may propose periodic gatherings of students locally, regionally, or nationally.

Grantee organizations working with their offices overseas and/or NIS partners will: Recruit and select students based on merit using their own criteria; arrange for their placement in schools; select host families; make all travel and logistical arrangements; conduct orientation, re-entry, and debriefing sessions for students and hosts; supervise students, solve problems, and provide counseling as needed; develop a mechanism for the transfer of academic credit and/or the certification of school attendance; interact with the schools on an ongoing basis; and evaluate the program's success.

Proposals should succinctly describe how these elements will be handled, with special attention to the following factors:

A. Proposals must demonstrate the organization's capacity to secure quality homestays and school placements for the number of students on which they are bidding by describing the process it uses to identify and screen potential host families, as well as its system for making school placements.

B. Organizations using the cluster method should: specify the cluster size and likely locations; and include a description of how clustering will affect the program, such as scheduling periodic gatherings of the students. A sample schedule of gatherings and topics or themes to be addressed should be included.

C. Organizations using the dispersal method should explain its placement philosophy; describe how dispersal will affect the program; and if planning periodic gatherings the proposal should include a tentative itinerary for sample meetings.

D. Inbound students should be sufficiently proficient in English upon arrival in the U.S. in order to function in a high-school environment. However, no USIA grant funding will be provided for English training under this program.

Preference will be given to proposals that include language skills as a selection criterion for American students going to the NIS. Applicant organizations with alternative approaches to language qualifications should discuss them in the proposal.

Programs must comply with J–1 visa regulations. Visa applications (IAP–66 forms) for NIS participants will be processed by the program office. Please refer to program specific guidelines in the POGI section of the Solicitation Package for further details.

Eligibility

Private not-for-profit organizations and public educational instructions including secondary schools, school districts, state education agencies, and organizational and educational consortiums are invited to participate. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Proposed Budget

Applicants must submit a comprehensive line-item budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Cost-sharing is encouraged and may be in the form of allowable direct or indirect costs. Please refer to the Solicitation Package and Guidelines for complete budget and formatting instructions, and allowable costs.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the Agency's Area Office and the relevant USIA post overseas. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposals should also clearly demonstrate how students will be selected on the basis of merit and the qualifications needed for a successful program.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or ongoing activities and efforts that further the principle of diversity within both the organization and the program activities.

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the success of the program, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly reports, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about

April 12, 1996. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 1, 1995.

Dell Pendergrast,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–22193 Filed 9–6–95; 8:45 am]

BILLING CODE 8230-01-M

Meeting of the Cultural Property Advisory Committee

SUMMARY: The Cultural Property Advisory Committee will meet on September 13 and 14, 1995, in Santa Fe, New Mexico. The sessions on September 13 will be held in the Meem Auditorium, Museum of Indian Arts and Culture, 710 Camino Lego, Santa Fe, from approximately 9:30 a.m. to 5 p.m. The agenda will include discussions concerning public awareness, expanding institutional dialogue on the protection of cultural property, and developments in museum ethics. There will also be a presentation on an initiative about "Protecting Cultural Objects Through International Documentation Standards." Technological developments in law enforcement will also be addressed. The September 13 portion of the meeting will be open to the public. Due to limited space, persons wishing to attend must call (202) 619–6612 no later than 4 p.m. (EDST), September 12, 1995. Only persons who have telephoned in advance will be permitted in the meeting room. The meeting on September 14 will be held in the Board Room of the School of American Research, 660 Garcia St. The entire meeting held on September 14 will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). The agenda will include the review of cultural property import restrictions currently in place under the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et. al., P.L. 97–446) and deliberations concerning internal Committee and agency operations.

Dated: August 31, 1995.

Penn Kemble,

Acting Director, United States Information Agency.

Determination To Close; The Entire Meeting of the Cultural Property Advisory Committee; September 14, 1995

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that the entire meeting of the Cultural Property Advisory Committee on September 14, 1995, which is devoted (1) to review of the effectiveness of import restrictions in place for Peru, Guatemala, Bolivia, El Salvador and Mali; and (2) to a discussion of internal operating procedures and a review of statutory interpretations may be closed to the public.

Dated: August 31, 1995.

Penn Kemble,

Acting Director, United States Information Agency.

[FR Doc. 95–22126 Filed 9–6–95; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee; Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. at the Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC:

Subcommittee for	Date
Alcoholism and Drug Dependence.	September 21 and 22, 1995.
Hematology	September 21 and 22, 1995.
Nephrology	September 26 and 27, 1995.
Respiration	September 27 and 28, 1995.
General Medical Science.	September 29 and 30, 1995.
Surgery	September 30 and October 1, 1995.
Cardiovascular	October 2 and 3, 1995.
Endocrinology	October 9 and 10, 1995.
Mental Health and Behavioral Sciences.	October 11 and 12, 1995.
Aging and Clinical Geriatrics.	October 12 and 13, 1995.
Infectious Diseases	October 16 and 17, 1995.
Neurobiology	October 16 and 17, 1995.
Immunology	October 19 and 20, 1995.
Oncology	October 19 and 20, 1995.
Gastroenterology	October 23 and 24, 1995.
Medical Research Service Merit Review Committee.	December 5, 1995.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each speciality by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Subcommittee meetings will be closed to the public after approximately one hour from the start for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 565–5942, at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Subcommittees may be obtained from this source.

Dated: August 31, 1995.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–22312 Filed 9–6–95; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 173
Thursday, September 7, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 12, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, September 14, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995–29: David W. Syme,Treasurer, Christopher Cox Congressional Committee
Advisory Opinion 1995–30: Craig Snyder, Deputy Chairman, Arlen Specter, 96
Regulatons:
  MCFL Regulations: Revised Rules on Facilitation, Candidate Appearances, Endorsements, Voter Guides and Meeting Rooms
  Draft Final Rules and Accompanying Explanation and Justification on Amendments to the Communications Disclaimer Requirements (11 CFR 110.11)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 95–22390 Filed 9–5–95; 3:42 pm]

BILLING CODE 6715-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 19, 1995 Board of Directors Meeting

TIME AND DATE: Tuesday, September 19, 1995, 1:00 p.m. (Open Portion), 1:30 p.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 p.m. to 1:30 p.m. Closed portion will commence at 1:30 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. New Appointment.
3. Approval of 6/13/95 Minutes (Open Portion).
4. Meeting schedule through March 1995.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Finance Project in Russia.
2. Finance Project in Russia.
3. Insurance Project in Peru.
4. Finance Project in Brazil.
5. Insurance Project in Trinidad and Tobago.
6. Finance Project in Ghana
7. Proposed FY Budget Request.
8. Pending Major Projects.
9. Approval of 6/13/95 Minutes (Closed Portion).

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: September 1, 1995.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 95–22385 Filed 9–5–95; 3:41 pm]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 4, 1995.

A closed meeting will be held on Friday, September 8, 1995, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, September 8, 1995, at 10 a.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Formal order of investigation.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 1, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–22326 Filed 9–5–95; 12:48 pm]

BILLING CODE 8010-01-M

federal register

Thursday
September 7, 1995

Part II

Environmental Protection Agency

40 CFR Parts 280 and 281

Underground Storage Tanks—Lender Liability; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL–5292–1]

RIN 2050–AD67

Underground Storage Tanks—Lender Liability

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule under the Resource Conservation and Recovery Act (RCRA), Subtitle I—Regulation of Underground Storage Tanks. This rule limits the regulatory obligations of lending institutions and other persons who hold a security interest in a petroleum underground storage tank (UST) or in real estate containing a petroleum underground storage tank, or that acquire title or deed to a petroleum UST or facility or property on which an UST is located. This final rule specifies conditions under which these "security interest holders" may be exempted from the RCRA Subtitle I corrective action, technical, and financial responsibility regulatory requirements that apply to an UST owner and operator. This rule should result in additional capital availability for UST owners, many of whom are small businesses, and will assist them in meeting environmental requirements by improving their facilities.

EFFECTIVE DATE: This rule is effective December 6, 1995.

ADDRESSES: The official record for this rulemaking, Docket Number UST 3–18, is located in the UST Docket, room M2616 of the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials, including a comprehensive document containing EPA's response to comments received on the proposed rule, may be reviewed by appointment by calling (202) 260–9720. Copies of docket materials may be made at a cost of $0.15 per page. The mailing address is U.S. Environmental Protection Agency, OUST Docket (5305), 401 M Street, SW., Washington, DC 20460. Please note that EPA is planning to relocate the UST Docket to Arlington, VA during September 1995. You may call (202) 260–9720 for up-to-date information on access to the docket.

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact the RCRA/Superfund Hotline, U.S. Environmental Protection Agency, Washington, DC. 20460, (800) 424–9346 (toll-free) or (703) 412–9810 (local). For the hearing impaired, the number is (800) 553–7672 (toll-free), or (703) 412–3323 (local). For technical information on this rule, contact John Heffelfinger in the EPA Office of Underground Storage Tanks at (703) 308–8881.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
II. Description of the UST Regulatory Program
  A. UST Technical Standards
  1. Leak Prevention
  2. Leak Detection
  3. Release Reporting
  4. Closure
  5. Notification, Reporting, and Recordkeeping
  B. Corrective Action Requirements
  C. Financial Responsibility Requirements
  D. State Program Approval Regulations
  E. Scope of the UST Program
III. The UST Security Interest Exemption and Intent of Today's Rule
  A. Overview
  B. Legal Authority
  C. Real Property Used as Collateral
  D. Abandoned Tanks
  E. Liability of a Holder as an Owner of an Underground Storage Tank or Underground Storage Tank System
  1. Petroleum Production, Refining, and Marketing
  2. Indicia of Ownership
  3. Primarily to Protect a Security Interest
  4. "Holder" of Ownership Indicia
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  F. Liability of a Holder as an Operator of an Underground Storage Tank or Underground Storage Tank System
  1. Pre-Foreclosure Operation
  2. Post-Foreclosure Operation
  3. Release Reporting Requirements Following Foreclosure
  G. Financial Responsibility Requirements
  H. State Implementation and State Program Approval
  I. Holders' Access to State Funds
  J. Outstanding Loans and Loans in Foreclosure Upon the Effective Date of the Rule
IV. Issues Outside the Scope of this Rule
  A. Petroleum Producers, Refiners, and Marketers
  B. Third Party Liability
  C. Trustee and Fiduciary Liability
  D. Hazardous Substance Tanks
  E. Hazardous Waste Tanks
  F. Aboveground Storage Tanks and Heating Oil Tanks
V. Economic Analysis
VI. Regulatory Assessment Requirements
  A. Executive Order 12866
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. Unfunded Mandates Reform Act

I. Background

EPA is establishing regulatory criteria specifying which RCRA Subtitle I requirements are applicable to a secured creditor. Section 9003(h)(9) of RCRA exempts from the definition of "owner," for purposes of § 9003(h)—EPA Response Program for Petroleum, those persons who, without participating in the management of the UST or UST system, and who are not otherwise engaged in petroleum production, refining, and marketing, maintain indicia of ownership in an UST or UST system primarily to protect a security interest. Those most affected by this "security interest exemption" include private lending institutions or other persons that provide loans secured by real estate containing an UST or UST system, or that acquire title to, or other indicia of ownership in, a contaminated UST or UST system.[1] However, the security interest exemption is not limited solely to lending institutions; it potentially applies to any person whose indicia of ownership in an UST or UST system is maintained primarily to protect a security interest.

The RCRA Subtitle I security interest exemption affects not only secured creditors but also UST and UST system owners who seek capital through the private lending market. Today's rule provides a regulatory exemption from the federal UST regulatory requirements for those persons who provide secured financing to UST and UST system owners. EPA expects this rule, in conjunction with the statutory exemption in § 9003(h)(9), to encourage the extension of credit to credit-worthy UST owners. Until now, EPA believes that concerns over environmental liability have made a significant number of lenders reluctant to make loans to otherwise credit-worthy owners and operators of USTs. The free flow of credit to UST owners (many of whom are small entities that may rely on secured financing mechanisms for capital) is expected to assist UST owners in meeting their obligations to upgrade, maintain, or otherwise comply with RCRA Subtitle I and other environmental requirements. Conversely, the lack of such capital may adversely affect the ability of an UST owner to meet its obligations under Subtitle I, with concomitant adverse environmental impacts from USTs and UST systems that are out of compliance due to the lack of financing to make the necessary improvements.

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[1] Under the laws of some states, an interest in real property may include an interest in USTs or UST systems located on that property. See Sunnybrook Realty Co. Inc. v. State of New York, Kesbec, Inc. v. State of New York, Claim Nos. 32844, 33125, 15 Misc. 2d 739; 182 N.Y.S. 2d 983. Of course, the loan documents may specifically include or exclude USTs as collateral securing the obligation.

The Agency is also concerned that if otherwise credit-worthy UST owners and operators are unable to obtain financing to perform leak detection tests, or to upgrade or replace deficient tanks, the market for UST equipment could be adversely affected, thereby limiting the availability and/or affecting the cost of such equipment. In addition, a lack of adequate capital could produce a ripple effect which would cut across other portions of the UST-related industrial sector for equipment and services. For example, based on letters received from UST equipment manufacturers, EPA believes that this sector has suffered as a direct result of the capital squeeze on UST owners and operators. The Agency is further concerned that many UST equipment manufacturers may find it increasingly difficult to sustain their production of UST equipment. Unnecessary constrictions on the free flow of capital for UST improvements to meet regulatory requirements could force companies to abandon their production of UST equipment or to close altogether, and it may have adverse impacts on the environment by inhibiting future investment in or development of new UST technological innovations.

The preamble to this rule is structured as follows: The following section briefly describes the UST program. This section is followed by a discussion of the rule, which includes a description of the various options lenders may exercise both pre- and post-foreclosure with respect to regulatory compliance for a secured UST or UST system. The rule concludes with regulatory text.

II. Description of the UST Regulatory Program

Based on the Agency's study of the banking community's lending practices and discussions with representatives of both lenders and borrowers, EPA believes that the lending community in general is not particularly familiar with the UST statutory scheme and regulatory program. Because USTs and UST systems are likely to be used as collateral in securing loans to borrowers, the Agency believes that it is appropriate and useful to briefly describe the UST program in the preamble of this rule. The following discussion is general in nature and is intended to provide a framework for lenders or others to better understand the scope and intent of the program; it is not intended to be a substitute for the regulations themselves.

Under the Hazardous and Solid Waste Amendments of 1984, Congress responded to the increasing threat to groundwater posed by leaking underground storage tanks by adding Subtitle I to the Resource Conservation and Recovery Act. Subtitle I required EPA to develop a comprehensive regulatory program for USTs storing petroleum or hazardous substances. Congress directed the Agency to publish regulations that would require owners and operators of new tanks and tanks already in the ground to prevent and detect leaks, cleanup leaks, and demonstrate that they are financially capable of cleaning up leaks and compensating third parties for resulting damages.

EPA's UST regulations, 40 CFR Parts 280 and 281, apply to any person who owns or operates an UST or UST system. The term "owner" is defined in the statute generally to mean any person who owns an UST used for the storage, use, or dispensing of substances regulated under Subtitle I of RCRA (which includes both petroleum and hazardous substances) (§ 9001(3), 42 USC 6991(3)). Owners are responsible for complying with the "technical requirements," "financial responsibility requirements," and "corrective action requirements" specified in the statute and regulations. These requirements are intended to ensure that USTs are managed and maintained safely, so that they will not leak or otherwise cause harm to human health and the environment. In addition, should a leak occur, the requirements provide that the owner is responsible for addressing the problem. These same requirements apply to any person who "operates" an UST system. The term "operator" is very broad and means "any person in control of, or having responsibility for, the daily operation of the underground storage tank" (§ 9001(4), 42 USC 6991(4)). As with owners, there may be more than one operator of a tank at a given time. Each owner and operator has obligations under the statute and regulations. In this respect, it is important to understand that a person may have obligations under Subtitle I either as an owner or as an operator, or both.

The following subsections describe briefly each of the major components of the UST regulatory program applicable to persons who own or operate USTs and UST systems.

A. UST Technical Standards

The technical standards of 40 CFR Part 280 referred to here include: Subpart B—UST systems: Design, Construction, Installation, and Notification (including performance standards for new UST systems, upgrading of existing UST systems, and notification requirements); Subpart C—General Operating Requirements (including spill and overfill control, corrosion protection, reporting and recordkeeping); Subpart D—Release Detection; § 280.50 (reporting of suspected releases) of Subpart E—Release Reporting, Investigation, and Confirmation; and Subpart G—Out of Service UST Systems (including temporary and permanent closure). These regulations impose obligations upon UST owners and operators, separate from the Subtitle I corrective action requirements discussed in Section II. B of this preamble.

1. Leak Prevention

Before EPA regulations were issued, most tanks were constructed of bare steel and were not equipped with release prevention or detection features. 40 CFR § 280.21 requires UST owners and operators to ensure that their tanks are protected against corrosion and equipped with devices that prevent spills and overfills no later than December 22, 1998. Tanks installed before December 22, 1988 must be replaced or upgraded by fitting them with corrosion protection and spill and overfill prevention devices to bring them up to new-tank standards. USTs installed after December 22, 1988 must be fiberglass-reinforced plastic, corrosion-protected steel, a composite of these materials, or determined by the implementing agency to be no less protective of human health and the environment, and must be designed, constructed, and installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. Piping installed after December 22, 1988 generally must be protected against corrosion in accordance with a national code of practice. All owners and operators must also ensure that releases due to spilling or overfilling do not occur during product transfer and that all steel systems with corrosion protection are maintained, inspected, and tested in accordance with § 280.31.

2. Leak Detection

In addition to meeting the leak prevention requirements, owners and operators of USTs must use a method listed in §§ 280.43 through 280.44 for detecting leaks from portions of both tanks and piping that routinely contain product. Deadlines for compliance with the leak detection requirements have been phased in based on the tank's age: The oldest tanks, which are most likely to leak, had the earliest compliance deadlines. Phase-in of the leak detection requirements was completed in 1993, and all UST systems should now be in compliance with these requirements.

3. Release Reporting

UST owners and operators must, in accordance with § 280.50, report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, the discovery of any released regulated UST substances, or any suspected release. Unusual operating conditions or monitoring results indicating a release must also be reported to the implementing agency.

4. Closure

Owners or operators who would like to take tanks out of operation must either temporarily or permanently close them in accordance with 40 CFR part 280 subpart G—Out-of-Service UST Systems and Closure. When UST systems are temporarily closed, owners and operators must continue operation and maintenance of corrosion protection and, unless all USTs have been emptied, release detection. If temporarily closed for three months or more, the UST system's vent lines must be left open and functioning, and all other lines, pumps, manways, and ancillary equipment must be capped and secured. After 12 months, tanks that do not meet either the performance standards for new UST systems or the upgrading requirements (excluding spill and overfill device requirements) must be permanently closed, unless a site assessment is performed by the owner or operator and an extension is obtained from the implementing agency. To close a tank permanently, an owner or operator generally must: Notify the regulatory authority 30 days before closing (or another reasonable time period determined by the implementing agency); determine if the tank has leaked and, if so, take appropriate notification and corrective action; empty and clean the UST; and either remove the UST from the ground or leave it in the ground filled with an inert, solid material.

5. Notification, Reporting, and Recordkeeping

UST owners who bring an UST system into use after May 8, 1986 must notify state or local authorities of the existence of the UST and certify compliance with certain technical and other requirements, as specified in § 280.22. Owners and operators must also notify the implementing agency at least 30 days (or another reasonable time period determined by the implementing agency) prior to the permanent closure of an UST. In addition, owners and operators must keep records of testing results for the cathodic protection system, if one is used; leak detection performance and upkeep; repairs; and site assessment results at permanent closure (which must be kept for at least three years).

B. Corrective Action Requirements

Owners and operators of UST systems containing petroleum or hazardous substances must investigate, confirm, and respond to confirmed releases, as specified in §§ 280.51 through 280.67. These requirements include, where appropriate: Performing a release investigation when a release is suspected or to determine if the UST system is the source of an off-site impact (investigation and confirmation steps include conducting tests to determine if a leak exists in the UST or UST system and conducting a site check if tests indicate that a leak does not exist but contamination is present); notifying the appropriate agencies of the release within a specified period of time; taking immediate action to prevent any further release (such as removing product from the UST system); containing and immediately cleaning up spills or overfills; monitoring and preventing the spread of contamination into the soil and/or groundwater; assembling detailed information about the site and the nature of the release; removing free product to the maximum extent practicable; investigating soil and groundwater contamination; and, in some cases, outlining and implementing a detailed corrective action plan for remediation.

C. Financial Responsibility Requirements

The financial responsibility regulations (40 CFR part 280 subpart H) require that UST owners or operators demonstrate the ability to pay the costs of corrective action and to compensate third parties for injuries or damages resulting from the release of petroleum from USTs. The regulations require all owners or operators of petroleum USTs to maintain an annual aggregate of financial assurance of $1 million or $2 million, depending on the number of USTs owned. Financial assurance options available to owners and operators include: Purchasing commercial environmental impairment liability insurance; demonstrating self-insurance; obtaining guarantees, surety bonds, or letters of credit; placing the required amount into a trust fund administered by a third party; or relying on coverage provided by a state assurance fund.

D. State Program Approval Regulations

Subtitle I of RCRA allows state UST programs approved by EPA to operate in lieu of the federal program. EPA's state program approval regulations under 40 CFR Part 281 set standards for state programs to meet.

E. Scope of the UST Program

This rule applies only to petroleum underground storage tanks that are subject to Subtitle I of RCRA. There are certain types or classes of tanks that are excluded from Subtitle I of RCRA. Therefore, the provisions of this rule do not apply to holders of security interests in excluded tanks. Among those tanks specifically excluded by statute are: Farm and residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; tanks used for storing heating oil for consumptive use on the premises where stored; tanks stored on or above the floor of underground areas (such as basements or tunnels); septic tanks; systems for collecting stormwater or wastewater; and flow-through process tanks (42 U.S.C. § 6991(1)).

III. The UST Security Interest Exemption and Intent of Today's Rule

A. Overview

Today's regulation addresses the requirements of Subtitle I that are applicable to a person who holds a security interest in a petroleum UST or UST system, or in a facility or property on which a petroleum UST or UST system is located, from the time that the person extends the credit up through and including foreclosure and re-sale. A holder of a security interest who satisfies the conditions in this rule will not be considered either an "owner" or an "operator" of an underground storage tank for purposes of compliance with Subtitle I regulatory requirements.

The security interest exemption under Subtitle I, § 9003(h)(9) of RCRA, 42 U.S.C. § 6991b(h)(9), on which this rule is based, provides:

> As used in this subsection, the term "owner" does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank.

While limited legislative history exists concerning the RCRA Subtitle I security interest exemption, EPA believes this provision is intended to provide protection from liability for a

person whose only connection with a tank is as the holder of a security interest; *i.e.*, a bank or other creditor who has made a loan to a borrower (commonly the tank's owner) and who has in return secured the loan by taking a security interest in the tank or in the property on which the tank is located. No guidance or other indication is available concerning the types of activities that Congress considered to be consistent with the Subtitle I security interest exemption, or about the types of activities that Congress considered to be impermissible participation in an UST or UST system's management.

The statutory exemption explicitly addresses liability for corrective action at petroleum UST-contaminated sites. Other portions of the statute and regulations applicable to an "owner" of a tank include 40 CFR part 280 subparts B, C, D, E (§ 280.50 only), and G (hereafter referred to as the "UST technical standards" for purposes of this rule), and Subpart H—Financial Responsibility. The statute is silent with respect to a holder's liability for these other requirements solely as a consequence of having ownership rights in a tank primarily to protect a security interest. The Agency does not believe that these limited ownership rights rise to the level of full "ownership" sufficient to make the holder an "owner" of the tank, as that term is used in § 9001(3) of RCRA Subtitle I. Therefore, EPA is providing, under its broad rulemaking authority in § 9003, that a holder who meets the criteria specified in this rule (i.e., whose only connection with the tank is as the *bona fide* holder of a security interest in a petroleum UST or UST system or in a facility or property on which a petroleum UST or UST system is located) is not subject to the UST technical standards, corrective action, and financial responsibility requirements otherwise applicable to a tank owner. EPA believes that this is both appropriate under the Agency's rulemaking authority and consistent with Congressional intent in providing the § 9003(h)(9) exemption for those persons who provide only financing to owners of a tank. Accordingly, a qualifying holder will not be required to comply with the full panoply of EPA regulations implementing Subtitle I that apply to tank owners prior to or following foreclosure, provided that the requirements of today's rule are satisfied.

With respect to a holder's potential to be an "operator" of a tank prior to foreclosure, consistent with the provisions of this rule, the holder typically will not be involved in the day-to-day operations of the tank, and will therefore not incur liability as an "operator."[2] By foreclosing, however, the holder takes affirmative action with respect to the tank and displaces the borrower; therefore, by necessity, the holder has taken "control of * * * [and] responsibility for * * *" the tank, and therefore could be considered a tank operator under the definition at 42 USC 6991(4). However, under today's rule, a foreclosing holder can avoid regulation as an UST "operator" in certain circumstances. In general, a holder will not be considered an UST "operator" if petroleum is not added to, stored in, or dispensed from the UST. In order to satisfy this condition, this rule allows a holder to empty the UST within a certain period of time after foreclosure, and undertake specified minimally burdensome and environmentally protective actions to secure and protect the UST or UST system. On the other hand, a holder who operates a tank by, for example, storing or dispensing petroleum following foreclosure will be subject to the full range of requirements applicable to any person operating a tank (including corrective action requirements).

In developing today's rule, EPA examined the potential obligations under Subtitle I of government entities that act as conservators or receivers of assets acquired from failed lending and depository institutions, such as the Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC). Where a government entity or its designee is acting as a conservator or receiver, EPA interprets the security interest exemption RCRA Subtitle I section 9003(h)(9) to preclude the imposition of the insolvent estate's liabilities against the government entity acting as the conservator or receiver, and considers the liabilities of the institution being administered to be limited to the institution's assets. The situation of a conservator or receiver of a failed or insolvent lending institution is analogous to that of a trustee (particularly a trustee in bankruptcy) that is administering an insolvent's estate and, in accordance with those principles, the insolvent's liabilities generally are to be satisfied from the estate being administered and not from the assets of the conservator or receiver. Therefore, satisfaction of an estate's debts or liabilities would not reach the general assets of the FDIC, the RTC, those of any other government entity acting in a similar capacity, or those of a private person acting on behalf of the conservator or receiver. (The broader issue of trustee and fiduciary liability is discussed in section IV.C. of this preamble.)

B. Legal Authority

EPA is promulgating today's rule to close a gap in the Subtitle I security interest exemption that must be addressed in order to provide holders with certainty regarding their responsibility for UST regulatory compliance. While the statutory exemption explicitly applies to holders who become owners of underground storage tanks, the exemption does not address holders in the capacity of an UST operator. The Agency believes that without promulgating a rule under EPA's broad grant of rulemaking authority applying the protection found in the statutory security interest exemption to holders as operators as well as owners, the statutory exemption may be rendered virtually meaningless, since an owner of an UST is also typically an UST operator. EPA does not believe that Congress, in creating section 9003(h)(9), intended for an otherwise exempt holder of a security interest to nonetheless fall subject to UST regulatory obligations as an operator. As such, EPA's exercise of its rulemaking authority in this rule is appropriate and, perhaps, needed to fully effectuate the purpose of the statute.

In the proposed rule, EPA cited the legal authority that provides the basis for development of the UST lender liability rule—section 9003(b), 42 U.S.C. 6991b(b) of RCRA Subtitle I, and briefly explained the difference between the statutory authority supplied under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the vacated Superfund lender liability rule and the authority supplied under RCRA Subtitle I for an UST lender liability rule. While several commenters stated their belief that EPA has sufficient authority under RCRA to promulgate a regulation regarding UST lender liability, some commenters also expressed concern that the rule would be challenged in light of the outcome of litigation on the CERCLA lender liability rule.[3]

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[2] Of course, a lender which has control of or responsibility for the daily operation of a tank would be an "operator" under § 9001(4), and therefore subject to all requirements applicable to an operator of a tank, including corrective action. Similarly, such acts may also constitute "participation in the management" of the tank, which would void the § 9003(h)(9) exemption and obligate the lender to comply with these same technical, financial, and corrective action requirements as an owner.

[3] On Feb. 4, 1994, the U.S. Court of Appeals for the D.C. Circuit vacated EPA's 1992 rule on lender

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EPA believes that the authority granted in section 9003 of Subtitle I clearly provides the Agency with broad rulemaking authority, as well as explicit rulemaking authority to, in its discretion, exempt certain classes of owners and operators (i.e., holders of security interests as described in this rule) from the UST technical standards, corrective action requirements, and financial responsibility requirements. Section 9003 expressly directs the Agency to "promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment." Section 9003(b) permits the Agency, in promulgating regulations under Subtitle I, to make distinctions in its UST regulations between types or classes of tanks, based upon, *inter alia*, "the technical capability of the owners and operators." Because security interest holders are typically not as a general matter engaged in the operation and maintenance of USTs (and thus do not possess the technical capacity of most UST owners and operators), EPA does not believe that requiring them to comply with highly detailed technical requirements is appropriate where requiring them to do so is not necessary for protection of human health and the environment. Furthermore, the Agency believes an exemption from these regulatory requirements is appropriate in the context of this rule, where an exemption will serve, albeit indirectly, to advance the goals of Subtitle I by making credit more available and thus aiding in the implementation of tank upgrading and replacement requirements.

However, this authority is not open-ended, as section 9003(a) requires EPA to promulgate regulations that are protective of human health and the environment. Without compromising the level of protectiveness established by the UST program, EPA previously relied on its section 9003(b) authority when it excluded a group of owners and operators from RCRA Subtitle I requirements in the final Financial Responsibility Rule (53 FR 43322, Oct. 26, 1988). (In relevant part, the preamble to the final Financial Responsibility Rule states: "The Agency does not interpret the Congressional intent of Subtitle I to preclude exempting any class of USTs from otherwise applicable requirements when the Agency has determined that such requirements are not necessary to protect human health or the environment.") That rule exempted states and the federal government from the UST financial responsibility requirements since those entities were, as a class, able to satisfy the purpose of the financial responsibility requirements in the absence of regulation.

Similarly, for purposes of this rule, EPA believes that it is reasonable, in light of the purposes behind this rule, to exempt a holder from RCRA Subtitle I technical standards, corrective action requirements, and financial responsibility requirements as an operator if its USTs are empty and secure (as explained later in today's rule) or if the holder chooses to also engage in environmentally beneficial activities (as discussed later in this preamble). Because of the eligibility conditions a holder must meet before enjoying this regulatory exemption, EPA's UST regulations will satisfy the statutory requirement that they be protective of human health and the environment.

C. Real Property Used as Collateral

A number of commenters pointed out that the proposed rule conveys the impression that under common commercial practice a security interest holder typically holds an UST or UST system as collateral for a loan obligation. These commenters went on to state that such an impression is incorrect. They maintained that in a typical lending relationship, the lender holds a security interest not in the UST or UST system, but rather in the real property on which the UST or UST system is located.

EPA recognizes that borrowers generally pledge real property as collateral rather than tanks, which are considered fixtures of real property under many state laws. While the Agency failed to refer to real property in its definition of the term, "holder," it specifically defined "security interest" as meaning "an interest in a petroleum UST or UST system or in the facility or property on which the UST or UST system is located, created or established for the purpose of securing a loan or other obligation." EPA acknowledges that the phrase, "UST or UST system or facility or property on which the UST or UST system is located," was not used consistently throughout the proposed rule. This was due in part to the way in which Subtitle I's requirements are structured—UST compliance responsibility rests with the owner or operator of the UST or UST system, not the property on which the UST or UST system is located. Therefore, when describing a holder's liability as an owner or operator under Subtitle I requirements, EPA is obliged to address that liability in terms of how it relates to the ownership or operation of the UST or UST system. Nevertheless, in order to maintain consistency with commercial practice and to clarify that the exemption applies to a holder's collateral in the real estate containing an UST, as well as to the UST itself, the Agency has applied the use of the term, "UST or UST system or facility or property on which the UST or UST system is located," throughout today's final rule, whenever appropriate.

D. Abandoned Tanks

A few commenters expressed concern about the effect that the rule would have upon the number of contaminated sites for which there might be no identifiable or financially capable liable party, which might increase the number of abandoned tanks that would have to be cleaned up with public funding. There are a number of reasons why EPA does not expect the rule to increase the number of abandoned tanks.

First, this regulation is intended to provide clarity and meaning to the existing federal statutory security interest exemption. The rule does not decrease the universe of regulated tanks from those currently regulated under Subtitle I. Further, the rule does not affect the legal obligations to comply with applicable Subtitle I requirements of a previous owner or operator who abandons a tank. Such previous UST owners and operators can be held liable for regulatory compliance or cost recovery under the Leaking Underground Storage Tank Trust Fund. Financial condition does not affect the liability of a tank owner or operator under Subtitle I.

Second, the rule is expected to help UST owners and operators acquire capital to keep their businesses healthy and in compliance with environmental requirements, and in the process, reduce the number of abandoned tanks and potential petroleum releases. Furthermore, the Agency believes that by expanding capital availability, this rule will encourage early compliance with the upcoming 1998 Subtitle I requirement regarding tank upgrading or

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liability under CERCLA in Kelley, et al. v. EPA, No. 93–1312. The CERCLA rule interpreted a statutory exemption under CERCLA that is similar to that under RCRA Subtitle I. The Court held that "EPA lack[ed] statutory authority to restrict by regulation private rights of action arising under the statute * * *" Kelley, slip op. at 3. Whereas CERCLA contains a provision regarding private rights of action, there is no explicit provision for private rights of action contained in RCRA Subtitle I. Furthermore, § 9003 of Subtitle I expressly confers EPA a broad rulemaking authority; to the extent that the grants of rulemaking authority were not sufficiently explicit under CERCLA, such is not the case under RCRA Subtitle I.

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replacement. UST owners who acquire capital to upgrade or replace old, corroded tanks earlier than 1998 greatly contribute to preventing further petroleum contamination.

While contemplating the effect this rule might have upon the number of abandoned tanks, the Agency also recognized that many holders currently abandon UST properties they hold as collateral rather than foreclosing on them and risking potential liability for cleanup costs. EPA believes that this rule will actually improve protection of human health and the environment by providing an incentive to holders who are interested in taking advantage of this regulatory exemption to empty any tanks they acquire through foreclosure, thus preventing future releases. As a result of the rule's increasing the number of holders who take advantage of the security interest exemption and subsequently extend more UST-related loans, EPA expects there to be fewer abandoned or so-called orphan tanks and fewer releases that might otherwise occur due to the lack of capital available for tank upgrading and replacement.

E. Liability of a Holder as an Owner of an Underground Storage Tank or Underground Storage Tank System

The following sections describe the key terms used in this rule. For the most part, these are also terms used in the § 9003(h)(9) security interest exemption. This section specifies the activities that are not "participating in the management" of a tank and which a holder may under today's rule, engage in consistent with Subtitle I regulatory requirements.

1. Petroleum Production, Refining, and Marketing

"Production of petroleum" includes, but is not limited to, activities involved in the production of crude oil or other forms of petroleum, as well as the production of petroleum products from purchased materials, either domestically or abroad. "Refining" includes the processes of cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products. "Marketing" includes the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes. A holder who stores petroleum products in USTs for on-site consumption only, such as to provide heat to an office building or to refuel its own vehicles, is not considered to be engaged in petroleum production, refining, or marketing for the purposes of the UST regulatory program.

2. Indicia of Ownership

For purposes of this rule, "indicia of ownership" means ownership or evidence of an ownership interest in a petroleum UST or UST system, or in a facility or property on which a petroleum UST or UST system is located. This definition is not intended to limit or qualify type, quality, or quantity of ownership indicia that may be held by a person for the purpose of the regulatory exemption. The nature of the ownership interest may vary according to the type of secured transaction and the nature of the holder's relationship (such as that of a guarantor or surety). Accordingly, indicia of ownership may be evidence of any ownership interest or right to an UST or UST system, such as a security interest, an interest in a security interest, or any other interest in an UST or UST system. For purposes of this rule, examples of such indicia include, but are not limited to, a mortgage, deed of trust, or legal or equitable title obtained pursuant to foreclosure or its equivalents, a surety bond, guarantee of an obligation, or an assignment, lien, pledge, or other right to or form of encumbrance against a petroleum UST or UST system, or a facility or property on which a petroleum UST or UST system is located. Accordingly, it is not necessary for a person to hold actual title or a security interest in order to maintain some indicia or evidence of ownership in an UST or UST system.

3. Primarily To Protect a Security Interest

The term, "primarily to protect a security interest" as used in this regulation, means a holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation. EPA intends this phrase to require that the ownership interest be maintained primarily for the purpose of, or primarily in connection with, securing payment or performance of a loan or other obligation (a security interest), and not an interest in the UST or UST system or facility or property on which the UST or UST system is located held for some other reason.

A security interest may arise pursuant to a variety of statutory or common law financing transactions. While a security interest is ordinarily created by mutual consent, such as a secured transaction within the scope of Article 9 of the Uniform Commercial Code, there are other means by which a security interest may be created, some of which may or may not be the result of a consensual arrangement between the parties to the transaction. In general, a transaction that gives rise to a security interest within the ambit of this rule is one that provides the holder with recourse against the UST or UST system or facility or property on which the UST or UST system is located; the purpose of the interest is to secure the repayment of money, the performance of a duty, or of some other obligation. See generally J. White & R. Summers, Handbook on the Uniform Commercial Code § 22 (2d Ed. 1980); Restatement of Security (1941).

As a matter of general law, security interests may arise from transactions in which an interest in an UST or UST system is created or established for the purpose of securing a loan or other obligation, and includes mortgages, deeds of trust, liens, and title held pursuant to lease financing transactions. Security interests may also arise from transactions such as sale-and-leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements or accounts receivable financing agreements, consignments, among others, provided that the transaction creates or establishes an interest in an UST or UST system for the purpose of securing a loan or other obligation.

Some commenters were confused by and requested clarification of the term "lease financing transaction in which the lessor does not select initially the leased property," as used is the rule. A "lease financing transaction" is a common financing transaction for equipment and other types of personal property, and is treated under this rule as a security interest. These are leases where the form of the transaction provides for the lessor to acquire title to the property for and at the discretion of the lessee. The lessor then recovers its loan (i.e., the purchase price of the property) through rental payments from the lessee and, in some cases, from the sale of the property to the lessee or a third party at the end of the lease. Thus, the lessee is the borrower and the lessor is the holder of a security interest in the property.

At the beginning of the lease financing transactions covered by this rule, the lessor does not initially select the leased property. Instead, this is done by the lessee or a third party. Further, during the initial lease or any re-lease, the lessor does not control the daily operation and maintenance of the property. The primary reason the lessor holds indicia of ownership in the property is to protect its security interest in the event that the debtor/lessee fails to pay off its obligation to the lessor. If a debtor/lessee defaults, a lessor may acquire the property through a variety of mechanisms, and is still considered to hold indicia of ownership under this rule provided that it complies with the other provisions of this rule.

In contrast to the preceding discussions, "indicia of ownership" held "primarily to protect [a] security interest" do not include evidence of interests in the nature of an investment in the UST or UST system or in the facility or property on which the UST or UST system is located, or an ownership interest held primarily for any reason other than as protection for a security interest. The person holding ownership indicia to protect a security interest may have additional, secondary reasons for maintaining the indicia in addition to protecting a security interest; maintaining indicia for reasons in addition to protecting a security interest may be consistent with the exemption and this rule. However, any such additional reasons must be secondary to protecting a security interest in the secured UST or UST system or in the facility or property on which the UST system is located. EPA recognizes that lending institutions have revenue interests in the loan transactions that create security interests; such revenue interests are not considered to be investment interests, but are considered secured transactions falling within the security interest regulatory exemption.

4. "Holder" of Ownership Indicia

A "holder" as used in this regulation is a person who maintains ownership indicia primarily to protect a security interest, however acquired or held. The term "holder" includes the initial holder (such as the loan originator) and any subsequent holder, such as a successor-in-interest, subsequent purchaser on the secondary market, loan guarantor, surety, or other person who maintains indicia of ownership primarily to protect a security interest. The term also includes any person acting on behalf of or for the benefit of the holder, such as a court-appointed receiver or a holder's agent, employee, or representative.

Finally, it should be noted that lending institutions, which typically hold a large number of security interests, may also act in some trustee, fiduciary, or other capacity with respect to an UST or UST system. However, this rule does not address circumstances in which a lending institution or any person acts as a trustee, or in a non-lending capacity, or has any interest in an UST or UST system other than as provided in this rule. Because this regulation, as well as the exemption in § 9003(h)(9), addresses only persons who maintain a "security interest," any discussion of persons with other interests or involvement in an UST or UST system is beyond the scope of this rule. Of course, a trustee or other fiduciary, or any other person who holds indicia of ownership in the UST or UST system primarily to protect a security interest, may fall within this security interest regulatory exemption.

5. Participating in Management

As used in this rule, "participation in management" means actual involvement in the management or control of decisionmaking related to the operational aspects or day-to-day operations of an UST or UST system by the holder. Participation in management does not include the mere capacity or unexercised right or ability to influence the operational aspects or day-to-day operations of an UST or UST system or facility or property on which an UST or UST system is located. For purposes of this rule, actual involvement in the operational aspects or day-to-day operation of the UST or UST system means use of the UST to contain petroleum, and includes the storage, filling, or dispensing of petroleum contained in an UST or UST system. For purposes of this rule, a holder performing the functions of a plant manager, operations manager, chief operating officer, chief executive officer, and the like, of the facility or business at which the UST is located is considered to be exercising management control or decisionmaking authority over the operational aspects of the UST or UST system and therefore, participating in management, unless the responsibilities for the position specifically exclude all UST operational responsibilities. Control over the operational aspects of management should not be confused, however, with those activities which constitute administrative or financial management, or involvement in environmental compliance activities or activities taken to protect human health and the environment. Involvement in administrative, financial management, or environmental compliance activities does not, by itself, constitute participation in management under this rule.

The proposed rule included a two-pronged general test of management participation that attempted to distinguish between the scope of general activities acceptable for a holder to undertake, and those activities that could be carved out purely as operational activities rather than other activities related to UST or UST system responsibilities. However, the Agency received a number of comments on the proposed rule indicating that the general test merely added confusion in determining whether or not a holder was engaging in management participation. Consequently, the general test has been omitted in this final rule. Instead, the Agency has concluded that management participation is best defined as actual involvement in the management or control of decisionmaking related to the operational aspects or day-to-day operations of the UST or UST system, and not the financial, administrative or environmental compliance aspects of the UST or UST system or facility or property on which the UST or UST system is located.

The following sections discuss and describe the specific activities of a holder that the rule defines as not being instances of participation in management by a person holding indicia of ownership primarily to protect a security interest in the UST or UST system or facility or property on which an UST or UST system is located. Therefore, conduct of these activities will not, by itself, void the exemption for holders of security interests provided under this rule.

It bears repeating, however, that the activities identified in this rule do not specify the only activities that may be undertaken by a holder without losing the protection of this security interest regulatory exemption, and one should not infer that activities not specifically mentioned in this rule are automatically considered evidence of participation in management—those must be addressed on a case-by-case basis, generally determined by whether or not the holder is involved in the management or control of decisionmaking related to the operational aspects or day-to-day operations of an UST or UST system.

a. Actions that are not participation in management. Participation in the following activities will not exclusively, in themselves, exceed the bounds of this regulatory exemption: Policing the loan; undertaking financial work out with a borrower where the obligation is in default or in threat of default; undertaking foreclosing and winding up operations (as described later in this preamble); or preparing for sale or liquidation of the UST or UST system or facility or property on which the UST or UST system is located. In addition, the holder is not considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located, by monitoring the

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borrower's business; by requiring or conducting environmental compliance activities related to the UST technical standards or other federal, state or local environmental laws and regulations; by requiring or conducting on-site investigations, including site assessments, inspections, and audits, of the environmental condition of the UST or UST system or facility or property on which the UST or UST system is located or of the borrower's financial condition; by requiring or conducting UST or UST system corrective action in compliance with 40 CFR part 280 subpart F or applicable state requirements in those states which have been delegated authority by EPA to administer the UST program; by monitoring other aspects of the UST or UST system considered relevant or necessary by the holder; by requiring certification of financial information or compliance with applicable duties, laws, or regulations, or by requiring other similar actions. Such oversight and obligations of compliance imposed by the holder are not considered part of the management of an UST or UST system or facility or property on which the UST or UST system is located. Although such oversight and obligations may inform and perhaps strongly influence the borrower's management of an UST or UST system, the holder is not considered to be participating in management where the borrower continues to be in control of the day-to-day operations of the UST or UST system.

The following sections describe in more detail two areas of special interest to those who commented on the proposed rule regarding actions in which holders may engage without jeopardizing their security interest exemption.

(1) Administrative and Financial Management. Administrative and financial management activities may be engaged in by a holder in the course of managing a loan portfolio and do not exceed the boundaries of the security interest exemption. Such activities may include providing financial or other assistance, environmental investigations or monitoring of the borrower's business and collateral, engaging in "loan work out" activities, foreclosing on a secured UST or UST system or facility or property on which an UST or UST system is located, winding down operations following foreclosure, or divesting itself of the foreclosed-on property containing an UST or UST system.

(2) Actions Taken to Protect Human Health and the Environment. In the proposed rule, EPA included a separate discussion of voluntary environmental activities undertaken by a holder to protect human health and the environment. A number of commenters stated that this discussion conflicted in part with the discussion entitled "Participating in Management," thereby creating uncertainty regarding a holder's ability to conduct or to require a borrower to conduct site investigation and remediation activities, as well as leak prevention and leak detection activities. The "Participating in Management" section of the proposal's preamble contained information that simultaneously stated that environmental compliance activities would be considered evidence of participation in UST or UST system management, while describing several environmental compliance activities for which a lender could engage in without being considered to be participating in UST or UST system management. The Agency also stated in the proposal's preamble that lender actions which protect human health and the environment are appropriate to include within the scope of protected UST or UST system activities because of the special position and role played by holders in the Subtitle I program, and recognized by Congress in the UST security interest statutory exemption. Several commenters stated the importance of allowing security interest holders to undertake UST remediation to ensure that they can sell UST properties they acquire through foreclosure without jeopardizing protection from Subtitle I liability. Commenters stated that without such protection, many holders will remain reluctant to extend loans to UST owners and operators, undermining the intent of the statutory exemption. Several of these commenters asserted the advantage of allowing holders to take the lead in remediating contaminated sites, rather than waiting on state agencies with limited resources to conduct such cleanups. By directly undertaking such voluntary corrective actions, holders can more quickly eliminate threats to public safety, health, and the environment.

Thus, in order to clarify EPA's original intent to allow holders to voluntarily conduct site remediations as well as other environmentally beneficial activities on properties on which they hold a security interest, the Agency asserts that both environmental compliance activities and activities that are undertaken voluntarily to protect human health and the environment will not be considered evidence of participation in the management of an UST or UST system or facility or property on which an UST or UST system is located. A holder who undertakes these actions must do so in compliance with the applicable requirements in 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 USC § 6991c and 40 CFR part 281.

The following list provides examples of those activities that a holder can engage in without exceeding the bounds of the UST security interest exemption—these are examples only and do not represent all allowable activities: release response and corrective action for UST systems, environmental site investigations, tank upgrading and replacement, leak detection, and maintenance of corrosion protection. These activities are not required of a holder as a condition for obtaining the security interest exemption as an UST "owner"; holders are allowed to participate in these activities without losing the protection of the exemption. Other activities that are not considered participation in management may be required of a holder as a condition for obtaining the security interest exemption as an UST "operator." These activities are discussed later in this preamble, and include: tank emptying, capping and securing lines, permanent or temporary closure of an UST or UST system, and release reporting.

b. Actions taken throughout the loan transaction process that are not participation in management. In the proposed rule, EPA described the major components of the loan transaction process, including elements of that process that occur both prior to and after foreclosure. Most of that discussion is included in this final rule as well, in order to provide clarity and guidance to those UST owners and operators and security interest holders interested in this rule.

(1) Actions at the inception of the loan or other transaction giving rise to a security interest. Actions undertaken by a holder prior to the inception of a transaction in which indicia of ownership are held primarily to protect a security interest are not considered evidence of participation in the management of the UST or UST system. Thus, consultation and negotiation concerning the structure and terms of the loan or other obligation, the payment of interest, the payment period, and specific or general financial or other advice, suggestions, counseling, guidance, or other actions at or prior to the time that indicia of ownership are

first held are not, for purposes of this rule, considered evidence of participation in the management of the UST or UST system or facility or property on which the UST or UST system is located. Activities that take place prior to holding indicia of ownership are not relevant for determining whether the holder has participated in the management of the UST or UST system after the time that the holder acquires indicia of ownership.

In addition to such pre-loan involvement, a holder may determine (whether for risk management or any other business purpose) to undertake or require an environmental investigation (which could include a site assessment, inspection, and/or audit) of an UST or UST system securing the loan or other obligation. Such environmental investigation may be undertaken by the holder, for example, or the holder may require one to be conducted by another party (such as the borrower) as a condition of the loan or other transaction. Neither RCRA Subtitle I nor this rule require that such an environmental investigation be undertaken to qualify for the security interest exemption, and the obligations of a holder seeking to avail itself of the exemption cannot be based on or affected by the holder's not conducting or not requiring an environmental investigation in connection with the security interest. Similarly, a holder is not engaged in management participation as a result of undertaking or requiring an environmental investigation, and nothing in this rule should be understood to discourage a holder from undertaking or requiring such an environmental investigation in circumstances deemed appropriate by the holder. Because lender-conducted or required investigations of a borrower's business or collateral are information-gathering in nature, such activities cannot be considered to be management participation by a holder.

In the event that a pre-loan environmental investigation of an UST or UST system reveals contamination, the holder may undertake any one of a variety of responses that it deems appropriate: For example, the holder may refuse to extend credit or to follow through with the transaction or instead maintain indicia of ownership in other, non-contaminated property as protection for the security interest. Alternatively, a holder may determine that the risk of default is sufficiently slight (or that the extent of contamination is minimal and does not significantly affect the value of the UST or UST system as collateral) to proceed to extend credit and maintain indicia of ownership in the UST or UST system. Additionally, the holder may require the borrower to report and clean up the contamination as a condition for extending the loan. Such activities are not considered participation in the management of the UST or UST system or facility or property on which the UST or UST system is located, and a holder that knowingly takes a security interest in contaminated collateral is not subject to compliance with the RCRA Subtitle I corrective action regulatory program on that basis.

(2) Policing the security interest or loan. A holder may undertake actions that are consistent with holding ownership indicia primarily to protect a security interest which include, but are not limited to, a requirement that the borrower clean up a release from the UST or UST system which may have occurred prior to or during the life of the loan or security interest (as described in the last section); a requirement of assurance of the borrower's compliance with applicable federal, state, and local environmental or other laws and regulations during the life of the loan or security interest; securing authority or permission for the holder to periodically or regularly monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located, or the borrower's business or financial condition, or both; or to comply with legal requirements to which the holder is subject; or other requirements or conditions by which the holder is able to police adequately the loan or security interest, provided that the exercise by the holder of such other loan policing activities are not considered evidence of control over the operational aspects of UST or UST system or facility or property on which the UST or UST system is located.

The authority for the holder to take such actions may be contained in contractual (e.g., loan) documents or other relevant documents specifying requirements for financial, environmental, and other warranties, covenants, and representations or promises from the borrower. While the regulatory exemption in this rule requires that the actions undertaken by a holder in overseeing or managing the loan or other obligation be consistent with those of a person whose indicia of ownership in an UST or UST system (or facility or property on which an UST or UST system is located) is held primarily to protect a security interest, a holder is not expected to be an insurer or guarantor of environmental safety or quality at a secured UST or UST system. The inclusion of environmental warranties and covenants is not considered to be evidence of a holder's acting as an insurer or guarantor, and a finding of "management participation" cannot be premised on the existence of such terms or upon the holder's actions that ensure that the UST or UST system is managed in an environmentally sound manner. Since these actions are consistent with holding indicia of ownership primarily to protect a security interest, they are not considered to be participation in management in this rule.

(3) Loan work out. The holder may determine that actions need to be taken with respect to the UST or UST system to safeguard the security interest from loss. These actions may be necessary when, for example, a loan is in default or threat of default, and are commonly referred to as "loan work out" activities. "Loan work out" is largely an undefined term but is generally understood in the financial community to mean those activities undertaken to prevent, mitigate, or cure a default by the obligor or to preserve or prevent the diminution of the value of the security. Loan work out activities are recognized by EPA as a common lender undertaking and, as such, these actions will not take a holder outside of the scope of the security interest exemption provided that such actions do not include decisionmaking control over the day-to-day operation of the UST or UST system or facility or property on which the UST or UST system is located.

When the holder undertakes loan work out activities, provides financial or other advice, or similar support to a financially distressed borrower, the holder will remain within the scope of this security interest regulatory exemption only so long as the holder does not participate in management as defined herein under the section entitled "Participating in Management." Loan work out actions that are not evidence of "participation in management" include, but are not limited to: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance with regard to the security interest; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions,

representations, or promises from the borrower.

(4) Foreclosure. In order to secure performance of an obligation, a holder often must take possession of an UST or UST system or facility or property on which an UST or UST system is located, as a result of a borrower's business failure and the subsequent foreclosure of the real property used to secure that obligation. The foreclosure process often results in the holder's taking record title or deed to the UST or UST system or facility or property on which an UST or UST system is located. Financial institutions and others who hold security interest exemptions are thereby justifiably concerned about the risks inherent in acquiring liability for compliance with the RCRA Subtitle I requirements for underground storage tanks.

EPA received several comments regarding the foreclosure process and the use of the term "foreclosure or its equivalents" in the proposed rule to trigger the date upon which several conditional measures were proposed to begin. Several commenters explained the linear fashion in which the foreclosure process generally works, indicating that no specific date could be tied to the term "foreclosure" by itself. EPA recognizes that since this rule places several time-related conditions upon a holder to enable it to avoid liability as an UST "operator" under the security interest exemption, it is incumbent upon the Agency to select a precise definition of the term "foreclosure." On the other hand, as commenters suggested, there is no one best consistently used and practical step in the process that can be used as a date to define the end of the foreclosure process. EPA has taken all of these facts into consideration and determined that for purposes of this rule, "foreclosure" means that a legal, marketable or equitable title or deed has been issued, approved and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, facility and property on which the UST or UST system is located.

EPA acknowledges that the definition of "foreclosure" used in this rule describes only part of the process that is generally associated with the foreclosure process. In response to many comments, however, the concept of real property "access" has also been included in the definition. The definition used in this rule was selected to provide a point of reference for indicating the completion of the foreclosure process and point at which a holder could physically access any USTs or UST systems located on the property acquired through the foreclosure process.

Other components of the foreclosure process not referenced specifically in this rule's definition of foreclosure include: foreclosure judgment, foreclosure sale, purchase at foreclosure sale, acquisition or assignment of title in lieu of foreclosure, acquisition of a right to possession or title, or other agreement in settlement of the loan obligation, or any other formal or informal manner by which the holder acquires possession of the borrower's collateral for subsequent disposition in partial or full satisfaction of the underlying obligation. These actions associated with the foreclosure process are considered to fall within the scope of this regulatory exemption as necessary incidents to holding ownership indicia primarily to protect a security interest, so long as the holder's acquisition pursuant to foreclosure is reasonably necessary to ensure satisfaction or performance of the obligation, is temporary in nature, and occurs while the holder is actively seeking to sell or otherwise divest the foreclosed-on UST or UST system of facility or property on which the UST or UST system is located.

In general, under this rule, a foreclosing holder must, in order to maintain consistency with the security interest exemption, seek to sell or otherwise divest itself of foreclosed-on property in a reasonably expeditious manner using whatever commercially reasonable means are available or appropriate, taking all facts and circumstances into account. A holder cannot, under the terms of this rule, reject or refuse offers for the property that represent fair consideration for the asset and remain within the regulatory exemption. "Fair consideration," for purposes of this rule, is equivalent to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or in the case of a lease financing transaction, possession of an UST or UST system or facility or property on which an UST or UST system is located) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). "Fair consideration" also includes all reasonable and necessary costs, debts, fees or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing the UST or UST system or facility or property on which the UST or UST system is located, prior to sale, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee) or other disposition, plus environmental compliance costs (such as tank emptying, upgrading, replacement, and removal, as well as site assessment and corrective action costs); less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower subsequent to the acquisition of full title (or possessions in the case of an UST or UST system subject to a lease financing transaction) pursuant to foreclosure. A holder that outbids or refuses offers from parties offering fair consideration for the property establishes that the property is no longer being held primarily to protect a security interest. The terms of the bid are relevant for this purpose, and a holder is not required to accept offers that would require it to breach duties owed to other holders, the borrower, or other persons with interests in the property that are owed a legal duty. In addition, [illegible] term "fair consideration" [illegible] all cash offer, which is inten[illegible] [illegible]re that this rule would not [illegible] holder to accept a bid that contains unacceptable conditions, such as requirements for indemnification agreements, non-cash offers, "bundled" offers, etc. This provision should not be read to require that a holder may accept only cash offers, however; a holder is always free to accept any offer satisfactory to the holder. The exact requirement that would be imposed by this regulation is that a holder may not reject a cash offer of fair consideration for the foreclosed-on property. If it does, or if it outbids others offering fair consideration, then the holder would, under this rule, be considered to be an owner of the UST or UST system or facility or property on which the UST or UST system is located in the same manner as any other purchaser.

This rule's provisions defining "fair consideration" and specifying when the foreclosing holder may reject or outbid offers for the property were formulated to reflect the amount that the holder may bid at the foreclosure sale, or not reject during the foreclosure sale or thereafter, in order to recover on its loan or other obligation. In addition, there may be multiple security interests in a borrower's property held by secured creditors, which the definition of "fair consideration" must account for. Therefore, for a senior creditor, the term "fair consideration" means a cash amount that represents a value equal to or greater than the outstanding obligation owed to the holder (including the fees, penalties, and other charges incurred by the holder in connection with the property). "Fair consideration" further indicates that the amount that will recover the holder's "security interest" in the property may vary depending on the seniority of the loan or other obligation that is being foreclosed upon. Specifically, a junior creditor may be required to outbid senior creditors in order to recover the value of its loan or other obligation. The definition of fair consideration therefore distinguishes between what junior or senior creditors may bid or not reject for purposes of maintaining the exemption. In addition, in order to avoid liability under law (for example, to the borrower), the foreclosing holder may be required to seek an amount at the foreclosure sale that is greater than the outstanding obligation owed to the foreclosing holder, or to sell the property in a different manner; therefore, this rule does not require a holder to accept an offer of "fair consideration" if to do so would subject the holder to liability under federal or state law.

In this way the rule's provisions with respect to the sale or disposition of property will not conflict with the manner in which such sales are required to be conducted under general principles of law applicable to the holder and the disposition of the property including the UST or UST system. For purposes of this rule, the definition of "fair consideration" is an objective test to determine whether the foreclosing holder has an investment or other interest in the property that is not within the exemption, or whether the holder's post-foreclosure activities indicate that it continues to maintain its ownership indicia in the property primarily to protect a security interest, and is therefore within the protective ambit of this rule.

While a holder may use whatever means are reasonable and appropriate for marketing foreclosed-on property to establish that it is seeking to divest itself of property in an expeditious manner, EPA has established the following "bright line" test that a holder may choose to use to definitely establish that it continues to hold indicia of ownership primarily to protect a security interest, and is not an "owner" of foreclosed-on property for purposes of complying with the UST regulatory program. Under the "bright line" test a holder must, within 12 months following foreclosure (as defined herein under the section entitled "Foreclosure"), list the property with a broker, dealer, or agent who deals with the type of property in question, or advertise the property as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the property in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located. If the holder satisfies these criteria, the holder is considered to have complied with the requirement in this rule that it is seeking to sell or otherwise divest the property in an expeditious manner. A holder choosing to avail itself of this bright line test will be able to provide clear and unambiguous evidence that it is not the UST or UST system's "owner" following foreclosure, for purposes of complying with the UST regulatory program.

EPA also recognizes that market conditions, the condition of the property, and other factors may mean that despite reasonable efforts to expeditiously sell or divest foreclosed-on property, the property may not be quickly sold. Therefore, this regulation does not impose a time requirement for the ultimate disposition of foreclosed-on property. Provided that the property is being actively offered for sale by the holder and no offers of fair consideration are ignored, outbid, or rejected, foreclosed-on property may continue to be held by the holder without the holder being considered an "owner" of the UST or UST system or facility or property on which the UST or UST system is located.

In the proposed rule, EPA proposed that in order for a holder to avoid losing the protection of the security interest exemption, the holder must act upon a written, *bona fide*, firm offer of fair consideration for the property within 90 days of receipt of the offer. A few commenters expressed a concern that 90 days would not provide a holder enough time to complete such a transaction in cases where the purchaser undertakes a site assessment before finalizing the transaction. The Agency has maintained the same language as that contained in the proposed rule, but wants to clarify that the requirement to "act upon" an offer does not mean that a purchase transaction must be completed with the 90-day time period. Rather, the holder must consider the offer, which may include, but is not limited to, responding to the offer and/or initiating a purchase transaction within 90 days. If at any time after six months following the acquisition of marketable title the holder outbids, rejects, or does not act upon within 90 days of receipt of, a written, *bona fide*, firm offer of fair consideration for the property, the holder will lose the protection of the rule. Under this rule, a "written, *bona fide*, firm offer" is a legally enforceable, commercially reasonable, offer, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. Where a holder outbids, rejects, or fails to act upon an offer of fair consideration, the holder is considered, for the purpose of this regulatory exemption, to be maintaining its indicia of ownership in the property as protection for investment purposes, and not as security for the obligation.

(5) Winding up operations after foreclosure. In addition, in the post-foreclosure context, this rule provides that a holder that forecloses on an UST or UST system with ongoing operations may wind up the UST or UST system's operations without also being considered to be participating in management. Winding up is considered a protected activity by a foreclosing holder because, without such protection, foreclosure would not be possible where practical or commercial necessity dictates that the foreclosing holder undertake such actions. "Winding up" in the post-foreclosure context includes those actions that are necessary to close down an UST or UST system's operations, secure the site, and otherwise protect the value of the foreclosed assets for subsequent sale or liquidation. In winding up an UST or UST system, a holder may undertake all necessary security measures or take other actions that protect and preserve an UST or UST system's assets, including steps taken to prevent or minimize the risk of a release or threat of release of the UST or UST system's contents.

F. Liability of a Holder as an Operator of an Underground Storage Tank or Underground Storage Tank System

While the Subtitle I security interest exemption excludes a holder from the definition of "owner" for regulatory compliance purposes, the statute does not explicitly address a holder's responsibilities as an UST or UST system "operator." EPA recognizes that the absence of explicit language in the security interest exemption regarding a holder's responsibility for the Subtitle I requirements as an "operator" creates a potential problem for holders, since EPA's UST regulations (as described in Section II of this preamble) apply to both owners and operators of underground storage tanks.

Some concern was expressed by commenters regarding the absence in the proposed rule of an outright exemption for holders from the definition of "operator" and the potential liability to which a holder could be exposed by engaging in any affirmative action in respect to an UST or UST system. EPA believes that Congress did not grant holders an outright exemption to the term "operator" in the Subtitle I security interest exemption because it may have wanted to ensure that holders did not engage in the day to day operations of the UST or UST system. The Agency believes this intent can be inferred from the statutory requirement that a holder may not "participate in the management" of the UST or UST system without voiding the exemption. EPA realizes that in order to provide meaning to the exemption, however, it is important to define how a holder can acquire title and access to an UST or UST system or facility or property on which an UST is located, and take affirmative actions to protect the value of their security interest, without losing the protection of the security interest exemption. Consequently, this regulation provides a road map that ensures that holders can utilize the security interest exemption, while reflecting the intent that exempted holders be prohibited from operating USTs or UST systems. The following sections discuss the actions that a holder can and cannot take to remain within the protective ambit of the regulatory security interest exemption.

1. Pre-Foreclosure Operation

Prior to foreclosure, it is the borrower, not the holder, who generally is in control of, or has responsibility for, the daily operation of an UST or UST system, and is subject to the full range of requirements applicable to operators of USTs. During this time period, a holder is permitted to conduct those activities related to its financial and administrative obligations of managing a loan portfolio, as well as environmental compliance activities and activities undertaken voluntarily to protect human health and the environment in compliance with 40 CFR part 280. The holder in this position will not lose its ability to take advantage of this regulatory exemption as a result of engaging in these activities. If the holder becomes engaged in the daily operation of an UST or UST system, however, it becomes subject to the full range of requirements applicable to operators of USTs or UST systems.

2. Post-Foreclosure Operation

Once a holder has foreclosed on an UST or UST system or facility or property on which the UST or UST system is located, it displaces the borrower and could become engaged in the day-to-day operation of an UST or UST system merely by storing product in the UST or UST system. EPA considers an UST to be in use and in operation if petroleum is added to, dispensed from, or stored in the UST. Therefore, except as provided in this rule, a holder cannot continue to use, store, dispense, or fill petroleum in an UST or UST system after obtaining marketable title and access to the UST or UST system or facility or property on which the UST or UST system is located without incurring Subtitle I liability (unless there is another operator available, as described later in this section). That does not mean, however, that a holder is barred from taking affirmative actions to ensure that a tank is no longer in use, by demonstrating that the tank is no longer storing, dispensing or being filled with petroleum. The holder best demonstrates this by emptying tanks it acquires through the foreclosure process. Thus, in order to qualify for the exemption, it is essential for a holder to empty all tanks that it knows about or should know about shortly after undertaking foreclosure (the time period following foreclosure is discussed later in this section), unless there is another operator who takes responsibility for complying with 40 CFR part 280 (as described later in this section). An UST or UST system is empty—in accordance with § 280.70—when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight, of the total capacity of the UST system, remain in the system. Stated simply, this means that all product must be removed from the UST or UST system so that only one inch of residue remains. To ensure that the UST system has been adequately secured, vent lines must be left open and functioning, and all other lines, pumps, manways, and ancillary equipment must be capped and secured (§ 280.70).

Several commenters expressed concern about a blanket requirement for holders to discontinue operation of an UST or UST system upon acquisition of the UST or UST system through foreclosure, particularly if a lessee or other tenant was present at the site. In response to these commenters concerns, EPA believes that tanks can remain in use if there is someone who is available to take responsibility as an operator for compliance with the Subtitle I requirements. There may be situations, for example, when a lessee is willing to continue operating an UST or UST system as the "operator," in compliance with Subtitle I, while a holder is in possession of the UST or UST system or facility or property on which the UST is located. In some instances, the holder may want to arrange for a different person to operate the UST or UST system, for example, when the existing lease expires. In those cases where an operator (other than the holder) exists who is in control of and has responsibility for the daily operation of the UST, and who can be held responsible for compliance with 40 CFR part 280 requirements, the holder would not be considered the operator. Under these circumstances it is not necessary, in order to retain the security interest exemption, for a holder to empty the tanks for which it is knowledgeable about upon foreclosure, or to empty tanks that it becomes knowledgeable of later. (The issue of known and unknown tanks is discussed later in this section.)

In foreclosure, to avoid being an "operator" of the UST, in addition to emptying and securing the UST or UST system, a holder must also comply with the Subtitle I requirements for either temporary or permanent closure, in order to retain the security interest exemption. A holder who chooses to permanently close its UST or UST system, must do so in accordance with §§ 280.71 through 280.74, Subpart G—Out of Service UST Systems and Closure, except the holder is not required to perform corrective action if contamination is discovered. A holder who chooses to temporarily close its tanks is required to maintain corrosion protection and report any known or suspected releases from the UST system. In accordance with § 280.70(a), release detection is not required as long as the UST system is empty. A foreclosing holder who fails to satisfy the conditions established in this rule for retaining the security interest exemption could be an "operator" under the Subtitle I regulations and would therefore be subject to the full panoply of Subtitle I regulatory obligations applicable to all operators of tanks, including the corrective action regulations.

a. Costs of post-foreclosure temporary closure conditions. A few commenters expressed concern that the costs associated with the proposed rule's post-foreclosure conditions to empty tanks and enter temporary closure would prevent lenders from making UST-related loans. EPA does not believe that the costs associated with performing these actions are significant, compared to the cost of alternatives that holders would otherwise face.

First, in the absence of this regulatory exemption, as an "operator" upon foreclosure, a holder would have to comply with the UST technical standards in some manner. Entering temporary closure is one way to comply with the UST technical standards. The only condition placed upon a holder by this rule that differs from what normally constitutes temporary closure under the technical standards is the requirement for emptying tanks. The estimated total cost of emptying one tank and draining the associated pipes is $950. $350 of this cost is attributed to the mobilization of a truck for fuel disposal, which remains a fixed price per site. The total estimated cost per four-tank facility is $2750 ($600 per tank, plus $350 for the truck). The total cost for securing the lines is estimated at $225 per facility. These costs could be as much as the cost for release detection for tanks that a holder does not empty and that remain in use, estimated at up to $2800 for a four-tank facility. Under the requirements in 40 CFR § 280.70 for temporary closure, an owner or operator is allowed to either empty and secure its tanks, or perform release detection. While this regulatory exemption restricts a holder's choice to emptying and securing its tanks, no new costs are imposed upon the holder, since without this rule, the holder would have to pay approximately the same cost, whether it chose to empty its tanks or maintain release detection. For further information regarding the costs of emptying tanks and securing lines, please see the "Background Document in Support of the Lender Liability Rule for Underground Storage Tanks Under Subtitle I of the Resource Conservation and Recovery Act" located in the UST Docket at 401 M Street, SW., room 2616, Washington, DC 20460.

b. Time frame for emptying USTs and securing UST systems EPA received the most comments regarding the period of time allowed to demonstrate that a holder is no longer storing product, and thereby no longer operating an UST or UST system. All but one person who commented on the 15-day time frame in the proposed rule maintained that 15 days was not enough time to empty tanks and complete temporary closure after foreclosure. EPA proposed 15 days originally because our research indicated that only seven days should be necessary to empty the tanks and secure the lines at an UST facility once a contractor had been selected. Another seven days was added to provide time for the holder to become familiar with the details of this regulatory exemption and identify a qualified contractor. The Agency is obliged by the regulatory authority under section 9003(b), 42 U.S.C. 6991b(b) of Subtitle I to promulgate regulations based not only upon the technical capability of owners and operators, but also upon what is necessary to protect human health and the environment. It is therefore incumbent upon the Agency to select the shortest time period needed by a holder to empty tanks and secure lines.

Commenters listed a variety of reasons why more time would be needed for emptying tanks, including: special problems associated with rural communities such as long distances—travel time and locating a qualified contractor; snow, ice and other inclement weather conditions (thick snow and/or ice can make tanks difficult or impossible to detect and empty during winter months); contracting delays related to difficulties in locating, scheduling and negotiating a price with a contractor, and in some cases, in obtaining various bids; banks' (especially small banks') unfamiliarity with EPA regulations; multiple tanks at large facilities; laboratory testing requirements imposed by some states; and finding alternative storage arrangements, especially for non-marketers. Government agencies, acting in a receivership capacity, could face special difficulties due to protracted contract bidding requirements. Recommendations proposed by commenters, due to these various delays, ranged from 30 to 140 days.

Based on these commenters' concerns and information that they provided, the Agency has concluded that 60 calendar days is a reasonable, minimum period of time after undergoing foreclosure, as that term is defined under section III. C. 5. of this preamble, to allow a holder to empty its known tanks (see discussion of unknown tanks later in this section). This decision is based upon the following estimated time frame developed from information received by commenters: approximately one week to become familiar with Subtitle I and the details of this regulatory exemption, and to locate all USTs and the extent of the UST system on the foreclosed property; 5 weeks to complete a contractor bidding process and hire a qualified contractor, perform laboratory tests if necessary (accounting for travel time and weather delays), and apply for and obtain approval for content disposal if required by the state; two weeks to schedule contractor and for contractor to perform and complete work related to emptying all USTs and securing the UST system (accounting for travel time, other commitments and weather delays).

EPA also recognizes that the time needed for a holder to empty its tanks and secure its UST system may vary based upon the holder's geographic location. Extreme weather conditions in areas such as Alaska, special problems associated with rural communities, and additional requirements imposed by some states, may pose special problems for holders attempting to empty tanks in an expeditious manner. Thus, holders in some states may need more than 60 days to empty their tanks and secure their UST systems. Therefore, EPA believes that the implementing agency should have the ability to select a time frame that it finds most appropriate for holders, either based upon individual holders' needs (case-by-case determination), or based upon a standard time frame for all holders under the jurisdiction of that implementing agency. Thus, a holder who wishes to take advantage of this regulatory exemption, must empty its known tanks within 60 days after foreclosure or within 60 days after the effective date of this rule, whichever is later, or within another reasonable timeframe as specified by the implementing agency.

c. Unknown Tanks. Many commenters noted that a holder may not know of the existence of an UST when, through foreclosure, it acquires title to an UST or UST system or facility or property on which an UST or UST system is located. Several examples were provided by commenters demonstrating the problems associated with identifying all the USTs that may be located on a property it acquires. Among the examples, commenters stated that USTs may not be registered with the state, or it may be difficult for a holder to know of the existence of an UST on agricultural property or on other non-fuel-marketer properties. Sometimes the borrower does not disclose the existence of any USTs or the exact number and location of the USTs. Even if the holder is aware that USTs may be located on the property, it may encounter difficulty in identifying the USTs' exact locations. This could be especially difficult when a site is covered with snow or ice during the winter. Furthermore, USTs are sometimes hidden under asphalt or even under buildings. Performing an environmental assessment or audit is no guarantee that USTs will be found. As one commenter asserted, even a phase II

site assessment could fail to indicate the presence of USTs.

Several commenters urged EPA to adopt a more practical approach to emptying tanks that may not be discovered by the holder until after the 60-day time period following foreclosure. EPA believes that unless a holder is allowed to empty a tank upon discovering it, rather than potentially losing the protection of the regulatory security interest exemption if it fails to identify and empty all its tanks within 60 days after foreclosure, holders will remain suspicious of extending credit to UST owners and operators, undermining the purpose of this rule. Therefore, a holder can remain within the protective ambit of this rule by emptying an unknown UST within 60 days after discovering it or within 60 days after the effective date of this rule, whichever is later, or within another timeframe as specified by the implementing agency.

d. Permanent closure. A number of commenters objected to EPA's proposal pertaining to holders who had not disposed of the UST or UST system or facility or property on which the UST or UST system is located, within 12 months after foreclosure. The Agency proposed that in order for these holders to maintain the regulatory exemption, they must either enter permanent closure if they failed to dispose of the UST or UST system 12 months after foreclosure, or perform a site assessment and apply for an extension of temporary closure from the implementing agency. Several commenters doubted that they would be able to sell properties with USTs within 12 months. They argued that permanent closure would be burdensome and unnecessary to protect human health and the environment, since the requirement to empty the UST would eliminate the threat of contamination from further releases from the UST.

Commenters also insisted that holders do not possess the technical capacity of the average UST owner or operator, so they should not have to enter permanent closure to retain the exemption. Furthermore, commenters did not believe that it was appropriate for a holder, who acts as a temporary custodian of the UST or UST system, to decide the ultimate fate of a facility (whether to take the tanks permanently out of operation). Rather, they asserted, that decision should be left up to the subsequent purchaser. As one commenter stated, total closure could severely hinder a holder's selling opportunities and eventually remove the property from the mainstream of commerce. Although the proposed rule offered holders the option of applying for an extension of temporary closure from the implementing agency, some states prohibit such extensions, which would leave holders in those states without any option other than permanent closure of the tanks.

EPA agrees with commenters that the decision regarding whether or not a tank should be permanently closed should generally be left with whoever purchases the UST or UST system or facility or property on which the UST is located from the holder. The Agency has concluded that USTs that are emptied, secured and placed in temporary closure for the temporary period of time for which they are possessed by a holder should not need to be permanently removed or permanently closed in place in order to protect human health and the environment. Therefore, in this final rule, a holder may retain the regulatory exemption by temporarily closing but not permanently closing its USTs and UST systems. However, if a holder is unable to dispose of an UST property within 12 months, it must conduct a site assessment if the USTs are older and do not meet new tank performance standards (discussed later in this section). EPA believes that it is important for a holder to conduct such an assessment in order for the implementing agency to determine if there is any contamination on the site, and if so, make a determination regarding the potential amount of risk posed to human health and the environment and whether that risk warrants the implementing agency taking corrective action. (While this rule precludes a holder's liability for corrective action costs if the holder retains its eligibility for the exemption as provided in the rule, the implementing agency can undertake corrective action measures on the holder's site based upon its assessment of the risks posed by any contamination identified there.) As in the case of other temporarily closed tanks, in order to maintain protection of human health and the environment, contamination should not be allowed to remain unidentified for more than 12 months after an UST or UST system has been taken out of service (or in this case, more than 12 months after foreclosure, as that term is defined under § 280.210(c) of this rule). For purposes of this provision, the 12-month period begins to run from the effective date of the rule or from the date on which the UST or UST system is emptied and secured, whichever is later.

The Agency does not consider the site assessment condition to be unduly burdensome for several reasons. First, a holder will only need to perform a site assessment if the USTs that the holder has acquired have not been upgraded or replaced to meet the requirements of § 280.20 for new UST systems or § 280.21 for upgraded systems, or if no external release detection method is in operation. Many of a holder's USTs should be upgraded or replaced since many of the loans that UST owners and operators are requesting are expected to be used for upgrading or replacing substandard tanks. Furthermore, after 1998, all tanks are required to be upgraded or replaced, so holders should encounter few substandard USTs after that time. A site assessment can also be averted if one of the external release detection methods allowed in § 280.43 (e) or (f) is operating at the end of the 12-month period, and the release detection method operating indicates that no release has occurred.

The Agency is also aware that conducting a site assessment during property transfers has become a standard business practice and that few property transactions currently take place without one. If a holder should have to bear the cost of performing a site assessment, that cost may in some cases be passed on to the subsequent purchaser, and in some states, the holder may be reimbursed for the cost of performing a site assessment through the state's petroleum assurance fund or through other assistance programs. While EPA cannot require states to pay or reimburse a holder for performing a site assessment (or for undertaking any other actions that would protect the environment, such as corrective action), the Agency encourages states to provide assistance to holders who wish to engage in environmental compliance activities or voluntary environmental actions in order to protect their security interest.

3. Release Reporting Requirements Following Foreclosure

Under today's rule, upon foreclosure, a holder taking advantage of the regulatory exemption from corrective action regulations must nevertheless comply with the requirement in § 280.50 that the discovery of any releases from the UST be reported to the implementing agency. Only the reporting requirement must be followed; the holder need not comply with § 280.52, despite the reference to that provision in § 280.50. The release reporting requirement of § 280.50 is part of Subpart E, which details the obligations for reporting known or suspected releases, investigating off-site impacts, confirming that a release has occurred, and cleaning up spills and overfills. While Subpart E generally implements Subtitle I's corrective action and site investigation requirements, from which a holder may be excluded under today's rule, § 280.50 has historically been viewed by EPA as part of the UST technical standards.

A holder is responsible, following foreclosure, for reporting to the implementing agency, any discovery of released regulated substances, or any suspected release at an UST site or in the surrounding area. Such reporting is considered necessary to ensure protection of human health and the environment. By the holder's informing the implementing agency of a release, the implementing agency can then determine the appropriate response action, if any.

In the absence of today's rule a holder, as an UST operator, would have to perform release investigation and confirmation in accordance with §§ 280.51 through 280.53. Under today's rule, a holder who chooses to take the tank(s) out of service as described in this rule is required to follow the procedures established in § 280.50 but is not subject to the release investigation and confirmation requirements in §§ 280.51 through 280.53. A holder who elects to keep the tank(s) in operation, however, is obligated to comply with all of the Subpart E requirements, including those related to release investigation and confirmation, and corrective action.

G. Financial Responsibility Requirements

RCRA § 9003(c), as implemented by EPA at 40 CFR Part 280 Subpart H—Financial Responsibility, requires owners or operators of petroleum USTs to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental UST releases. As discussed earlier under Section III. A. of this preamble, EPA is defining, for purposes of its Subtitle I corrective action and technical requirements, the term "owner" to mean that a holder who maintains ownership rights in an UST or UST system primarily to protect a security interest does not rise to the level of a full "owner," and therefore is not subject to compliance with those regulatory requirements. As described earlier, this approach to EPA's regulatory program is consistent with the Subtitle I statutory security interest exemption. Similarly, a holder is not subject to the financial responsibility requirements as an UST owner.

The Agency is also exempting a holder as an UST "operator" from the financial responsibility requirements, provided the holder satisfies the conditions contained in this rule. Before a holder takes possession of an UST or UST system, a holder is not considered an UST operator, for purposes of EPA's technical and financial responsibility regulations, if it is acting merely as a holder and is not in control of the daily operation of the UST or UST system. Therefore, a holder typically is not subject to the UST financial responsibility requirements of 40 CFR Part 280 Subpart H as an operator prior to foreclosure.

Under this rule a holder is exempted from corrective action as an operator after foreclosure if it ensures that its tanks no longer store petroleum and it complies with the temporary or permanent closure requirements specified in this rule. (See Section III. F. 2. of this preamble). In these situations, where the holder is not liable for corrective action and where the tanks are empty and pose little threat of release, it would serve no useful purpose to require a holder to demonstrate compliance with the financial responsibility requirements for corrective action. Therefore, the Agency is exempting holders who satisfy all the other requirements in this rule from demonstrating Subtitle I financial responsibility for UST corrective action.

A holder's responsibility for demonstrating UST financial responsibility for third-party bodily injury and property damage compensation poses a different issue. While RCRA Subtitle I does not include provisions that actually impose third-party liability upon UST owners and operators, it does require UST owners and operators to demonstrate their ability to compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of an UST or UST system. The Agency believes that a holder who complies with all the conditions set forth in today's rule should not be required to comply with any of the UST financial responsibility requirements as an owner or operator, including those for both corrective action and third-party liability coverage. This regulatory exemption is consistent with the interpretation of that language adopted in the preamble to the UST financial responsibility final rule (53 FR at 43323). In that rule, EPA exempted tanks taken out of operation prior to the effective date of the rule from UST financial responsibility compliance. In the preamble to the final rule, EPA recognized that "insurance providers would be extremely reluctant to assure tanks taken out of operation because of the perceived greater uncertainty associated with them" (53 FR at 43327). In particular, insurers have indicated that in the case of foreclosed USTs, they would be concerned about vandalism and other threats to USTs at non-operational, unattended gas stations or similar locations with public access. The preamble also states that "even if providers of assurance would assure these tanks, it is unlikely that they would cover leaks which occurred before the effective date of the policy" (53 FR at 43327).

A similar situation exists for holders who empty their tanks and enter temporary or permanent closure after foreclosure. EPA has discovered that it is practically impossible to obtain third-party environmental insurance coverage for a new owner of empty tanks. Providers of financial assurance are reluctant to provide any coverage for tanks that no longer store petroleum product. Further, providers are reluctant to provide coverage for damages that occur after the effective date of the policy for releases that might have occurred prior to the effective date of the policy. Under this rule a holder is required to empty its tanks in order to be exempt from corrective action regulatory requirements. Since providers are unlikely to provide any coverage for empty tanks at non-operational facilities or for releases that occurred prior to foreclosure, and since third-party damages would be extremely unlikely to stem from releases occurring after the holder forecloses on and empties its tanks, the Agency believes it is unnecessary to require third-party liability coverage for such tanks.

RCRA § 9003(c)(6) supports this regulatory exemption. That provision emphasizes the connection between the UST financial responsibility requirement and a tank's operational status: "The regulations promulgated pursuant to this section shall include: * * * (6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank." [emphasis added.] The Agency believes that since a holder must demonstrate that its tanks are empty and that it is complying with the UST temporary or permanent closure requirements in order to avoid corrective action liability as an operator, there should be no need for a holder who meets these requirements to demonstrate financial responsibility for corrective action or third-party damages. By requiring the holder to empty the tank in order to be exempt from corrective action requirements, EPA is ensuring that damages caused by future releases from that tank will be minimized if not avoided altogether. As a result, holders who act in accordance with the requirements described in this rule are exempt from all Subtitle I financial responsibility requirements.

H. State Implementation and State Program Approval

EPA received numerous comments regarding the problems associated with the absence of lender liability provisions in many states, as well as the problems generated by the variety of state UST lender liability provisions that currently exist. Some commenters argued that the only way to make today's rule effective would be for EPA to require states to enact state legislation regarding UST lender liability. Other commenters specifically addressed state program approval requirements and state clean up funds. In general, the comments indicate that several misconceptions exist regarding the role of state programs in implementing Subtitle I, the state program approval process and state clean up funds.

First, as many commenters pointed out, today's rule only affects federal UST requirements, and only provides an eligible holder protection against federal enforcement actions. Since the UST program is implemented primarily through the states under state laws, a holder can be afforded protection against UST liability at the state level only if the state has enacted its own lender liability legislation, regulations, or policies.

Several states have already enacted laws or regulations containing UST lender liability provisions. In many states without existing lender liability provisions, state legislatures are debating lender liability bills. While EPA can encourage states to enact UST lender liability provisions, the Agency does not have the authority to require that states adopt such provisions. Therefore, the Agency strongly urges those states without security interest exemptions to enact legislation similar to what is included in today's Federal rule. EPA believes that such action is crucial in the effort to increase the availability of capital to UST owners and operators.

Several comments submitted to EPA addressed state program approval and whether or not states could broaden protections for holders. A state's lender liability legislation or regulations may affect the state's program approval and states need to be cognizant of that relationship when considering the enactment of a security interest exemption.

UST state program approval, as provided for under RCRA Subtitle I § 9004, and as implemented by 40 CFR part 281, provides states the ability to operate an UST regulatory program in lieu of the federal program if they first submit the program for review and receive approval from EPA. EPA approval of a state program means that the requirements in the state's laws and regulations will be in effect rather than the federal requirements. Program approval ensures that a single set of requirements (the state's) will be enforced in that state, thus eliminating the duplication and confusion that can result from having separate state and federal requirements. EPA considers state program approval to be an integral part of the UST regulatory program.

EPA's approval review focuses primarily on the basic state authorities (laws and regulations) needed to achieve the underlying objectives of the federal regulations covering the UST technical standards, corrective action, and financial responsibility requirements. The UST state program approval process is also based upon a performance-oriented approach. The statutory test for an approvable state program is that it be "no less stringent" than the federal requirements and include as many categories of UST systems (or be as broad in scope) as the federal requirements. EPA reviews the state's specific statutory and regulatory provisions as well as their interpretation by the Attorney General of the state.

Enactment of lender liability legislation or regulations is not a requirement for receiving or maintaining state program approval. A state program without a security interest exemption is acceptable under EPA's state program approval requirements, since failure to have such a provision would not narrow the scope of the state program, nor render it "less stringent" than the federal program. However, in order to fully effectuate the purpose of today's rule in expanding capital opportunities to UST owners and operators, EPA recommends that states act promptly to enact secured creditor provisions.

If a state program includes an UST security interest exemption, EPA will evaluate it against the criteria in § 281.39 of this rule. A state program that exempts a holder from UST requirements as an owner and operator may be approved if: The holder is maintaining indicia of ownership primarily to protect a security interest in a petroleum UST or UST system; the holder does not participate in the management or operation of the UST or UST system; and the holder does not engage in petroleum production, refining, and marketing. The state's program application should address the issue of UST lender liability in the "Scope" section of its state program description, under § 281.21 of the State Program Approval regulations.

A state may encounter program approval conflicts if it enacts a lender liability provision that is broader in scope or less stringent than today's federal lender liability rule. However, this rule should not present a barrier for states to receive state program approval. The program approval requirements contained in this rule are intended to provide enough flexibility to allow states to enact various UST lender liability provisions without jeopardizing their ability to receive or maintain approval of their state program.

I. Holders' Access to State Funds

EPA received several comments regarding a holder's ability to apply for state cleanup funding to remediate an UST property acquired through foreclosure. Some commenters also expressed concern about a holder's ability to access other state assistance programs intended for UST owners and operators. While the EPA cannot require states to ensure that holders are included among those eligible for a state's cleanup fund, reinsurance program, loan or grant program, today's rule is not intended to prohibit or discourage states from allowing holders access to these programs.

A few commenters highlighted the confusion that exists regarding the association between EPA's financial responsibility requirements and the state cleanup funds. EPA believes that it is important for holders to understand the purpose of state cleanup funds, the relationship between EPA and these state funds, and the relationship between the financial responsibility requirements and state cleanup funds.

As described earlier under section II. C. of this preamble, the financial responsibility requirements were promulgated to ensure that UST owners and operators demonstrated their ability to pay the costs of conducting remediation and compensating third parties for injuries or damages due to UST contamination. There are an array of acceptable financial responsibility compliance mechanisms, including insurance, guarantees, letters of credit, surety bonds, fully-funded trust funds and state assurance funds. State assurance or cleanup funds have become the most common and low cost financial responsibility compliance mechanism for tank owners and operators. As described earlier in this preamble under section III. G., holders who are eligible for today's regulatory security interest exemption are not responsible for demonstrating financial assurance. However, as noted by commenters, many holders would like to obtain access to state cleanup funds to voluntarily remediate any contamination that might be located on an UST property they obtain through foreclosure in order to protect human health and the environment, and make the property more attractive to potential purchasers. Some commenters were concerned that the proposed lender liability rule would have the unintended effect of blocking such access.

State cleanup funds have been established in many states to assist UST owners and operators in performing corrective action. States may apply to EPA for approval of its cleanup fund as a financial assurance mechanism. States are not, however, required by law or regulation to establish a cleanup fund or any other state UST assistance program, or to submit the fund to EPA for approval.

Each state fully controls how its fund functions. No two state cleanup funds are identical; they vary in the amounts and types of coverage provided, in their eligibility requirements, in the amount of funding, funding source, method of payment, and program implementation. EPA's understanding is that currently, holders are eligible to apply for state cleanup fund monies in some states and not in others. That situation will likely continue upon promulgation of this rule, as this rule is not intended to alter the eligibility of holders to apply for state cleanup fund monies. While EPA cannot require that states provide holders access to these funds, EPA encourages states to recognize the benefits associated with remediating UST properties held by holders in terms of increased protection of human health and the environment, and the enhanced ability to return these properties to productive use.

J. Outstanding Loans and Loans in Foreclosure Upon the Effective Date of the Rule

In the proposed rule, EPA requested comments regarding how the potential liability associated with a holder's current holdings acquired through foreclosure could affect the extension of future UST-related loans. Many commenters expressed their concern that financial institutions would be unwilling to extend loans to properties containing USTs if those institutions incurred significant costs in relation to properties on which they had already foreclosed. Several commenters also insisted that the Subtitle I security interest exemption was not intended by Congress to be contingent upon EPA's exercise of its rulemaking authority. These commenters noted that a rule that does not include a holder's current UST holdings would effectively void the secured creditor exemption that has been part of RCRA since 1986, thereby denying holders the protection that Congress provided in the law. Commenters also expressed concern that failure to include in the exemption a holder's outstanding loans in foreclosure would create the need for a cumbersome recordkeeping system, in which holders would have to keep track of whether foreclosures occurred prior to or after the effective date of the rule. Commenters also indicated that enforcement would be hampered unless states began requiring holders to report the date on which foreclosures occur, as defined under § 280.210(c). They stated that such a reporting requirement would add an additional burden on security interest holders, not intended by Congress' statutory exemption for security interest holders.

In addition, several commenters mentioned the benefits that would be afforded the environment by including outstanding loans within the exemption's protective ambit. For example, commenters stated that holders would be encouraged to empty USTs and undertake voluntary cleanups on currently foreclosed properties containing USTs if such properties were included in the rule.

Based on the comments received, EPA has concluded that there is sufficient evidence to indicate that the intent of the rule in expanding credit opportunities for UST owners and operators would be undermined if the rule does not cover holders of existing security interests and holders of security interests already in foreclosure upon the effective date of the rule. Furthermore, such protection for holders could provide additional environmental benefits; by encouraging holders in foreclosure at the time the rule is issued to empty their tanks, contamination will be curtailed at numerous UST sites throughout the country. Therefore, holders of existing as well as future security interests, including those in foreclosure upon the effective date of this rule, fall within the rule's protective ambit as long as the holder satisfies the conditions contained in this rule for the regulatory security interest exemption.

IV. Issues Outside the Scope of This Rule

A. Petroleum Producers, Refiners, and Marketers

Several commenters requested that the security interest exemption be expanded to cover petroleum producers, refiners, and marketers who hold indicia of ownership primarily to protect a security interest. They claimed that a petroleum marketer who extends loans to UST owners is no different than a financial institution that extends loans to UST owners, except that a marketer's experience in the petroleum industry helps it avoid unsound practices that lead to foreclosures. Commenters further stated that these "petroleum marketer-creditors" supply loans to many small businesses that cannot get loans elsewhere, and that without an exemption for petroleum producers, refiners, and marketers, capital from these sources would dry up.

The statutory exemption for security interest holders in Subtitle I specifically excludes petroleum producers, refiners, and marketers. Since the Subtitle I security interest exemption excludes petroleum producers, refiners, and marketers, the Agency has not extended the regulatory exemption to these persons.

EPA disagrees with commenters who stated that small businesses will be harmed by today's rule. To the contrary, the Agency expects this regulatory exemption to increase the total amount of capital available to small businesses, who are currently most in need of capital for UST improvements. Financial institutions, currently reluctant to make UST-related loans to small businesses should, as a result of this rule, greatly increase the total availability of capital for UST owners who are otherwise credit worthy.

Although holders who engage in petroleum production, refining, and marketing are not covered by this regulatory exemption, they should not expect to automatically be held liable for cleaning up contamination caused by a borrower. Under the federal UST regulations, such a holder would need to meet the regulatory definition of either "owner" or "operator" of the UST in order to be potentially liable for contamination caused by the UST. A determination as to whether or not a holder who engages in petroleum production, refining, and marketing is responsible for UST cleanup costs as an owner or operator will be based on the individual circumstances of the case, as has been the situation in the past. Thus, this rule does not affect the current liability scheme for holders who also

engage in petroleum production, refining, and marketing. As a result, EPA does not believe that capital from these sources will "dry up" as some commenters stated.

A few commenters were confused about the effect of the rule upon a holder's ability to extend capital to or foreclose on an UST property that was used by a borrower to produce, refine, or market petroleum. EPA believes that the restriction in the statutory security interest exemption was intended to prevent petroleum producers, refiners, and marketers from personally employing the exemption. Thus, the restriction in the exemption allows holders who do not engage in petroleum production, refining, and marketing to hold a security interest in an UST or UST system for a borrower who engages in these areas of business.

B. Third Party Liability

Several commenters addressed the issue of a holder's protection from third party actions. In general, these commenters requested that the final rule provide protection for holders from UST litigation initiated by private parties (i.e., private legal actions not involving the United States government). Since RCRA Subtitle I does not impose liability pertaining to third parties, EPA has not addressed third party liability in this rule. Third parties who wish to recover UST regulatory compliance and corrective action response costs may have a cause of action against holders under various provisions of federal and state law, other than Subtitle I of RCRA.

While this rule cannot offer protection for holders from every conceivable type of liability related to UST contamination on properties held by holders to protect a security interest, it specifies the types of activities that holders may engage in while remaining within the protective ambit of the Subtitle I security interest exemption. In so doing, it provides certainty for holders whose primary concern is fear of being held liable by the federal government under relevant UST statutes and regulations—not third-party actions.

C. Trustee and Fiduciary Liability Under Subtitle I

EPA received a number of comments requesting that the security interest exemption be expanded to cover trustees and fiduciaries acting in a fiduciary capacity. Commenters stressed the importance of providing the trust operations of a financial institution protection from RCRA Subtitle I liability. They expressed concern that the financial institution or individual financial officer acting as a trustee or fiduciary could face personal liability under RCRA Subtitle I if any or all of a trust's assets are contaminated by an UST release. Commenters asserted that they should not be held personally liable for the cleanup of trust properties because prior to their appointment as trustee or fiduciary they would have no way of knowing whether the trust's property was contaminated, nor would they have been able to have prevented the contamination. They maintained that protection for all areas of a financial institution's operations was crucial to stimulate more credit for small businesses to upgrade and improve their UST systems. Commenters further stated that a large environmental expense on the trust side of a financial institution would have a significant, negative effect upon UST-related lending on the commercial side.

EPA carefully considered the comments received regarding this issue, but has not provided the specific relief requested by commenters. Since the primary purpose of this rule is to expand the availability of capital to UST owners by encouraging lenders to make loans to credit-worthy UST owners, it is appropriate for EPA to provide an exemption for holders of security interests on UST-related loans. The Agency is not convinced, however, that it is necessary to extend the exemption to other persons, such as trustees, who, in their capacity as trustee, are not involved in making UST-related loans to tank owners.

The Agency believes that in most instances, however, the liability of a trustee may be limited by the operation of existing trust law. While acknowledging the complexities of trust law as well as numerous jurisdictional variations, EPA believes the concepts described in the Restatement (Second) of Trusts (1959)[4] provide a fair representation of the common law of trusts, and generally would be applicable to trusts involving underground storage tanks.

Under the well-established and generally accepted principles governing the obligations of trusts and the liability of trustees, as articulated in the Restatement, the trustee is technically personally responsible for the liability: "The trustee is subject to personal liability to third persons on obligations incurred in the administration of the trust to the same extent that he would be liable if he held the property free of trust." Restatement (Second) of Trusts § 261. However, the rule of personal liability is tempered by a right to indemnification: "The Trustee is entitled to indemnity out of the trust estate for expenses properly incurred by him in the administration of the trust." *ID.* § 244. Accordingly, the rule is that ordinarily the trustee may obtain indemnification from the trust assets for the acts within his or her official capacity. Thus, EPA believes that in most instances, a trust's assets would be available for cleanup of trust property contaminated by USTs.

D. Hazardous Substance Tanks

Several commenters noted that hazardous substance UST systems are regulated under Subtitle I, and indicated that the rule would be more useful if holders would not have to concern themselves with determining which USTs contained petroleum and which contained other substances. They requested that the rule also apply to USTs storing hazardous substances. Such a rule, reasoned one commenter, would better reflect the actual property inspection and examination process that holders undertake with respect to their collateral.

Today's regulatory exemption does not apply to non-petroleum, hazardous substance USTs or UST systems regulated under Subtitle I. The primary reasons for this are, first, the security interest exemption appears in one specific section of RCRA Subtitle I, titled EPA Response Program for Petroleum (see RCRA section 9003(h)). As the title indicates, the security interest provision applies to petroleum USTs and UST systems. Second, the primary purpose of this rule is to expand capital availability for small business petroleum UST owners and operators, particularly petroleum retailers. The Agency believes that a rule pertaining exclusively to petroleum USTs and UST systems will address the needs of this particular group of tank owners and operators.

E. Hazardous Waste Tanks

As explained under section III of this preamble, the RCRA Subtitle I security interest exemption specifically applies to USTs that are regulated under Subtitle I and that are used to contain an accumulation of petroleum. A few commenters requested that EPA expand the exemption to include tanks storing hazardous waste as well.

Today's rule only addresses petroleum USTs regulated under Subtitle I of RCRA. Hazardous waste is regulated under Subtitle C of RCRA. Section 9001(2)(A) of Subtitle I explicitly excludes USTs containing hazardous waste from regulation under Subtitle I. EPA derives its authority to develop today's rule in part from section 9003(h) of Subtitle I of RCRA—EPA Response Program for Petroleum. This authority applies exclusively to Subtitle I USTs and does not extend to the regulation of hazardous waste under Subtitle C. Thus, today's rule applies exclusively to EPA's RCRA Subtitle I UST program and does not affect any environmental requirements outside of the Subtitle I regulatory context.

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[4] The Restatement (Second) of Trusts (1959) is an authoritative summary of the law of trusts prepared by the American Law Institute. Although the Restatement is not codified into law, it is frequently used as a guide to interpretation by courts.

F. Aboveground Storage Tanks and Heating Oil Tanks

A few commenters requested that in addition to petroleum USTs, the proposed regulatory exemption apply to aboveground storage tanks (ASTs) and heating oil tanks. Neither ASTs nor tanks used to store heating oil for consumptive use on the premises where stored are regulated under RCRA Subtitle I, although they may be regulated sometimes under other federal laws (e.g., the Oil Pollution Act) or state laws. Today's rule only addresses petroleum USTs regulated under Subtitle I of RCRA. The rule applies exclusively to EPA's RCRA Subtitle I UST program and does not affect any environmental requirements outside of the Subtitle I regulatory context.

While ASTs and heating oil tanks used for on-site consumption are excluded from the federal UST requirements, several states do regulate them. Under federal law, states are allowed to develop more stringent requirements, as well as requirements that are broader in scope than federal the ones. Thus, holders may find themselves responsible for certain state-imposed AST and/or heating oil tank requirements. States that are concerned about lender liability issues may choose to provide statutory and regulatory exclusions for holders that extend loans to borrowers who own or operate ASTs or heating oil tanks, particularly if it would have a positive influence on the ability of an UST owner or operator to obtain capital.

V. Economic Analysis

In the proposed rule, EPA requested that commenters furnish information that would help the Agency better understand how this regulatory exemption would affect an UST owner or operator's ability to comply with UST regulations. The Agency specifically requested information regarding the current interest rate charged for loans when property with one or more USTs is used as collateral. In addition, holders were asked about the extent to which credit might have been more available in the past if the rule had been in effect.

EPA did not receive any substantive comments or data regarding this request for information, and as a result, was unable to collect and analyze any new data that would assist the Agency in quantitatively evaluating further the rule's potential effects upon environmental protection and economic growth. For those interested in a more detailed discussion of the costs and benefits associated with today's rule, please refer to the "Background Document in Support of the Lender Liability Rule for Underground Storage Tanks Under Subtitle I of the Resource Conservation and Recovery Act," located in the OUST Docket at 401 M Street, SW., room M2616, Washington, DC 20460.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the U.S. Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises unique or novel policy issues. Therefore, this rule is subject to review by OMB. OMB, however, elected to waive its review of the final rule. Thus, no changes were made in the final rule in response to OMB recommendations.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, agencies must evaluate the effects of a regulation on small entities. If the rule is likely to have a "significant impact on a substantial number of small entities," then a Regulatory Flexibility Analysis must be performed. Because this rule may actually result in cost savings for small entities that hold security interests in USTs or UST systems, by lowering the cost and increasing the availability of capital for small business UST owners, EPA certifies that today's rule would not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

This rule does not contain any new information collection requirements under the provision of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

To the extent that this rule discusses any information collection requirements imposed under existing underground storage tank regulations, those requirements have been approved by the OMB under the Paperwork Reduction Act and have been assigned control number 2050–0068 (ICR no. 1360.04).

D. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined that this rule does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Parts 280 and 281

Hazardous substances, Insurance, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

Dated: August 29, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 is revised to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, 6991g, 6991h.

2. Part 280 is amended by adding subpart I consisting of §§ 280.200 through 280.240 to read as follows:

Subpart I—Lender Liability

Sec.

280.200 Definitions.
280.210 Participation in management.
280.220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.
280.230 Operating an underground storage tank or underground storage tank system.

Subpart I—Lender Liability

§ 280.200 Definitions.

(a) *UST technical standards,* as used in this subpart, refers to the UST preventative and operating requirements under 40 CFR part 280, subparts B, C, D, G, and § 280.50 of subpart E.

(b) *Petroleum production, refining, and marketing.*

(1) *Petroleum production* means the production of crude oil or other forms of petroleum (as defined in § 280.12) as well as the production of petroleum products from purchased materials.

(2) *Petroleum refining* means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) *Petroleum marketing* means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) *Indicia of ownership* means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) *A holder* is a person who, upon the effective date of this regulation or in the future, maintains indicia of ownership (as defined in § 280.200(c)) primarily to protect a security interest (as defined in § 280.200(f)(1)) in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) *A borrower, debtor, or obligor* is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) *Primarily to protect a security interest* means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) *Security interest* means an interest in a petroleum UST or UST system or in the facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(2) *Primarily to protect a security interest,* as used in this subpart, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) *Operation* means, for purposes of this subpart, the use, storage, filling, or dispensing of petroleum contained in an UST or UST system.

§ 280.210 Participation in management.

The term "participating in the management of an UST or UST system" means that, subsequent to the effective date of this subpart, December 6, 1995, the holder is engaging in decisionmaking control of, or activities related to, operation of the UST or UST system, as defined herein.

(a) Actions that are participation in management.

(1) Participation in the management of an UST or UST system means, for purposes of this subpart, actual participation by the holder in the management or control of decisionmaking related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in the management of the UST or UST system only if the holder either:

(i) Exercises decisionmaking control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or

(ii) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise,

or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 USC 6991c and 40 CFR part 281.

(b) Actions that are not participation in management pre-foreclosure.

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subpart. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subpart. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(i) Policing the security interest or loan.

(A) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in § 280.210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(B) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with 40 CFR part 280, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in § 280.210(a) and § 280.230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

(ii) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in § 280.210(a). For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure. (i) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subpart, the term "foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in § 280.210(a)) prior to or after foreclosure.

(ii) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious

manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in § 280.210(c)(2). A holder that outbids, rejects, or fails to act upon a written *bona fide,* firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in § 280.210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subpart.

(i) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the 12-month period begins to run from December 6, 1995 or from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the 12-month period begins to run from December 6, 1995 or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(ii) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(A) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and corrective action costs incurred under §§ 280.51 through 280.67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph.

(B) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, *bona fide,* firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in § 280.210(c). A "written, *bona fide,* firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from December 6, 1995 or from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from December 6, 1995 or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under 40 CFR part 280, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in § 280.210(a) and § 280.230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

§ 280.220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.

Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an "owner" of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the UST technical standards as defined in § 280.200(a), the UST corrective action requirements under §§ 280.51 through 280.67, and the UST financial responsibility requirements under §§ 280.90 through 280.111, provided the person:

(a) Does not participate in the management of the UST or UST system as defined in § 280.210; and

(b) Does not engage in petroleum production, refining, and marketing as defined in § 280.200(b).

§ 280.230 Operating an underground storage tank or underground storage tank system.

(a) Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in § 280.210(c), is not an "operator" of a petroleum UST or UST system for purposes of compliance with the UST technical standards as defined in § 280.200(a), the UST corrective action requirements under §§ 280.51 through 280.67, and the UST financial responsibility requirements under §§ 280.90 through 280.111, provided that, after December 6, 1995, the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in § 280.210(c), acquires a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located.

(1) A holder is not an "operator" of a petroleum UST or UST system for purposes of compliance with 40 CFR part 280 if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281.

(2) If another operator does not exist, as provided for under paragraph (b)(1) of this section, a holder is not an "operator" of the UST or UST system, for purposes of compliance with the UST technical standards as defined in § 280.200(a), the UST corrective action requirements under §§ 280.51 through 280.67, and the UST financial responsibility requirements under §§ 280.90 through 280.111, provided that the holder:

(i) Empties all of its known USTs and UST systems within 60 calendar days after foreclosure or within 60 calendar days after December 6, 1995, whichever is later, or another reasonable time period specified by the implementing agency, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and

(ii) Empties those USTs and UST systems that are discovered after foreclosure within 60 calendar days after discovery or within 60 calendar days after December 6, 1995, whichever is later, or another reasonable time period specified by the implementing agency, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(3) If another operator does not exist, as provided for under paragraph (b)(1) of this section, in addition to satisfying the conditions under paragraph (b)(2) of this section, the holder must either:

(i) Permanently close the UST or UST system in accordance with §§ 280.71 through 280.74, except § 280.72(b); or

(ii) Temporarily close the UST or UST system in accordance with the following applicable provisions of § 280.70:

(A) Continue operation and maintenance of corrosion protection in accordance with § 280.31;

(B) Report suspected releases to the implementing agency; and

(C) Conduct a site assessment in accordance with § 280.72(a) if the UST system is temporarily closed for more than 12 months and the UST system does not meet either the performance standards in § 280.20 for new UST systems or the upgrading requirements in § 280.21, except that the spill and overfill equipment requirements do not have to be met. The holder must report any suspected releases to the implementing agency. For purposes of this provision, the 12-month period begins to run from December 6, 1995 or from the date on which the UST system is emptied and secured under paragraph (b)(2) of this section, whichever is later.

(4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in 40 CFR part 280 or applicable state requirements in those states that have been delegated authority by EPA to administer the UST program pursuant to 42 U.S.C. 6991c and 40 CFR part 281.

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 281 is revised to read as follows:

Authority: 42 U.S.C. 6912, 6991 (c), (d), (e), (g).

Subpart C—[Amended]

2. Section 281.39 is added to subpart C to read as follows:

§ 281.39 Lender liability.

(a) A state program that contains a security interest exemption will be considered to be no less stringent than, and as broad in scope as, the federal program provided that the state's exemption:

(1) Mirrors the security interest exemption provided for in 40 CFR part 280, subpart I; or

(2) Achieves the same effect as provided by the following key criteria:

(i) A holder, meaning a person who maintains indicia of ownership primarily to protect a security interest in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located, who does not participate in the management of the UST or UST system as defined under § 280.210 of this chapter, and who does not engage in petroleum production, refining, and marketing as defined under § 280.200(b) of this chapter is not:

(A) An "owner" of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the requirements of 40 CFR part 280; or

(B) An "operator" of a petroleum UST or UST system for purposes of compliance with the requirements of 40 CFR part 280, provided the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(ii) [Reserved]

(b) [Reserved]

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Thursday
September 7, 1995

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 864, et al.

Medical Devices; Effective Date of Requirement for Premarket Approval for Class III Preamendments Devices; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 864, 868, 870, 872, 876, 880, 882, 884, 888, and 890

[Docket No. 95N-0084]

RIN 0910-AA31

Medical Devices; Effective Date of Requirement for Premarket Approval for Class III Preamendments Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of product development protocol (PDP) for 43 class III medical devices. The agency also is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. In addition, FDA is announcing the opportunity for interested persons to request the agency to change the classification of any of the devices based on new information.

DATES: Written comments by January 5, 1996; request for a change in classification by September 22, 1995. FDA intends that, if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

ADDRESSES: Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

Section 515(b)(2)(A) of the act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device under section 513 of the act, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the class III devices that are the subjects of this regulation.

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976).)

The Safe Medical Devices Act of 1990 (Pub. L. 101–629) (SMDA) added new section 515(i) to the act (21 U.S.C. 360e(i)). This section requires FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and to determine whether each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. However, the SMDA does not prevent FDA from proceeding immediately to rulemaking under section 515(b) of the act on specific devices, in the interest of public health, independent of the procedures in section 515(i). Indeed, proceeding directly to rulemaking under section 515(b) of the act is consistent with Congress' objective in enacting section 515(i) i.e., that preamendments class III devices for which PMA's have not been required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of any of the devices.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document. The strategy document set forth FDA's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required premarket approval. FDA divided this universe of devices into three groups:

1. Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness but are no longer used or are very limited in use. FDA's strategy is to call for PMA's for all Group 1 devices in an omnibus 515(b) rulemaking action. This proposed rule implements that strategy and covers all Group 1 devices referenced by the May 6, 1994, **Federal Register** notice.
2. Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. For these devices, FDA has issued an order under section 515(i) of the act requiring manufacturers to submit safety and effectiveness information so that FDA can make a determination as to whether the devices should be reclassified.
3. Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA intends to issue proposed rules to require the submission of PMA's for the 15 highest priority devices in this group in accordance with the schedule set forth in the strategy document. FDA has also issued an order under section 515(i) of the act for the remaining 27 Group 3 devices requiring the submission of safety and effectiveness information so that FDA can make a determination as to whether the devices should be reclassified or retained in class III.

A. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for class III devices within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, the agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d) (21 CFR 812.2(d)), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for a class III device is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule to avoid interrupting investigations.

B. Proposed Finding With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the advisory committees (panels) for the classification of these devices along with any additional information that FDA discovers. Additional information can be found in the proposed and final rules classifying these devices as listed below:

Devices	Proposed rule	Final rule
Hematology/Pathology (21 CFR part 864).	September 11, 1979 (44 FR 52950).	September 12, 1980 (45 FR 60576
Anesthesiology 1982 (21 CFR part 868).	November 2, 1979 (44 FR 63292).	July 16, (47 FR 31130)
Cardiovascular (21 CFR part 870).	March 9, 1979 (44 FR 13284).	February 5, 1980 (45 FR 7904)
Dental (21 CFR part 872).	December 30, 198 (45 FR 85962).	August 12, 1987 (52 FR 30082)
Gastroenterology-Urology (21 CFR part 876).	January 23, 1981 (46 FR 7562).	November 23, 1983 (48 FR 53012)
General Hospital and Personal Use (21 CFR part 880).	August 24, 1979 (44 FR 49844).	October 21, 1980 (45 FR 69678)
Neurological (21 CFR part 882).	November 28, 1978 (43 FR 55640).	September 4, 1979 (44 FR 51726)
Obstetrical and Gynecological.	April 3, 1979(44 FR 19894).	February 26, 1980 (45 FR 12682)

Devices	Proposed rule	Final rule
Orthopedic (21 CFR part 888).	July 2, 1982 (47 FR 29052).	September 4, 1987 (52 FR 33686)
Physical Medicine (21 CFR part 890).	August 28, 1979 (44 FR 50458).	November 23, 1983 (48 FR 53032)

C. Devices Subject to This Proposal

1. Hematology and Pathology Devices

Automated Differential Cell Counter (§ 864.5220)

(1) *Identification*. An automated differential cell counter is a device used to identify and classify one or more of the formed elements of the blood. The device is in class III when intended for uses other than to flag or identify specimens containing abnormal blood cells. Otherwise, the device is in class II.

(2) *Summary of data*. The members of the Hematology and Pathology Devices Classification Panel based their recommendation upon the Panel members' clinical experience with automated differential cell counters and on information presented at a symposium entitled "Differential Counters in Hematology" held at the Panel meeting. Among the speakers at the symposium was Dr. Robert Miller of the Johns Hopkins University Medical Center. Dr. Miller discussed difficulties concerning data interpretation, precision and accuracy, correlation to reference methods and error in terms of coincidence, nonreproducible results, nonlinearity, and specific interferences.

FDA has reviewed medical literature concerning automated differential cell counters (Refs. 1 through 5). The medical literature reports two basic methodologies for automated differential cell counting: Pattern recognition and flow-through techniques. Pattern recognition systems microscopically scan a fixed, stained blood film. Flow-through systems count and identify cells suspended in a liquid medium.

Pattern recognition systems are handicapped by their lack of accuracy (Ref. 1). In one study, 68.8 percent of the abnormal cells that the system examined were classified as normal (Ref. 2). An error of this sort could result in the failure to detect a pathological blood sample (Ref. 1). Several studies (Refs. 3 through 5) show a discrepancy between pattern recognition counts and manual counts of monocytes (mononuclear leukocytes). It is suggested that the criteria for identifying monocytes need to be better defined (Ref. 4). There also have been reports of discrepancies between pattern recognition counts and manual counts of plasma cells and atypical lymphocytes (Ref. 4). The tendency of pattern recognition systems to underestimate the number of atypical lymphocytes is ascribed to flaws in the recognition criteria. Pattern recognition systems also cause difficulty in blood film preparation. Overlapping cells must be avoided, and a uniform distribution of cell types must be achieved (Ref. 1).

Flow-through systems allow a hundredfold increase in the rate at which cells are counted. There is imperfect correlation between the classification logic systems of the flow-through machines and morphological features of the blood cell classes as defined by fixed, Romanowsky-stained preparations (Ref. 1). Therefore, these machines will fail to classify up to 10 percent of normal cells.

The device was the subject of a reclassification petition and was partially reclassified into class II for the uses listed above. The proposed rule for reclassification was published in the **Federal Register** of April 5, 1989 (54 FR 13698) and the final rule was published in the **Federal Register** of June 8, 1990 (55 FR 23510).

(3) *Risks to health*.

- Hepatitis infection—Exposure of the user, donor, or patient to blood, blood products, or blood aerosols presents a risk of hepatitis infection. HIV was unknown in 1979 when the device was classified and is also an important risk.
- Misdiagnosis and inappropriate therapy—Failure of the device to perform satisfactorily may lead to an error in the diagnosis of a blood cell disorder. Inappropriate therapy based on inaccurate diagnostic data may place the patient at risk.

2. Anesthesiology Devices

Electroanesthesia Apparatus (§ 868.5400)

(1) *Identification*. An electroanesthesia apparatus is a device used for the induction and maintenance of anesthesia during surgical procedures by means of an alternating or pulsed electric current that is passed through electrodes fixed to the patient's head.

(2) *Summary of data*. The Anesthesiology Devices Classification Panel and the Neurological Devices Classification Panel recommended that electroanesthesia apparatus be classified into class III (premarket approval) because the device presents a potential unreasonable risk of illness or injury to the patient. The Anesthesiology Devices Classification Panel based its recommendation on the insufficient number of domestic studies on human subjects. The Panel had not seen any medical data on which to judge the safety and effectiveness of the device, and believed that the technique of electroanesthesia is not considered a well-established or well-recognized clinical procedure. The Neurological Devices Classification Panel noted that many factors important to the clinical application of this technique have not been sufficiently defined. The Neurological Devices Classification Panel also based its recommendation on the Panel members' experience with the device, and their judgment and knowledge of the pertinent literature (Ref. 6). The National Research Council recommended that electroanesthesia should be considered as a potentially useful adjunct in the maintenance of anesthesia but that electroanesthesia should be limited to investigational use until its effects, advantages, and standardization can be adequately evaluated.

(3) *Risks to health*.

- Electrical shock—Improper electrical grounding may allow the patient or operator to receive an electrical shock.
- Damage to central nervous system—Excessively high electrical current or voltage could damage the central nervous system and cerebral tissues.
- Skin burns—If the electrodes are too small and yield a high current density, skin burns may result.
- Skin irritation—Electrode gels or pastes used to establish electrical contact between the electrode and the skin may cause skin irritation.
- Cardiac or pulmonary interference—The position of the electrode on the head may lead to electrical interference with cardiac or pulmonary functions in the patient.

3. Cardiovascular Devices

Catheter Balloon Repair Kit (§ 870.1350)

(1) *Identification*. A catheter balloon repair kit is a device used to repair or replace the balloon of a balloon catheter. The kit contains the materials, such as glue and balloons, necessary to effect the repair or replacement.

(2) *Summary of data*. The members of the Cardiovascular Devices Classification Panel based their recommendation on the potential hazards associated with the inherent properties of the device and on their personal knowledge of, and experience with, the device. The Panel was not aware of any published literature on this device.

(3) *Risks to health*.

- Gas embolism—Balloon rupture caused by the repair material or a leak in the repair material can allow potentially debilitating or fatal gas emboli to escape into the bloodstream.
- Embolism—Pieces of the balloon that break or flake off may form potentially debilitating or fatal emboli.
- Thromboembolism—Inadequate blood compatibility of the materials used in this device and inadequate surface finish and cleanliness can lead to potentially debilitating or fatal thromboemboli.
- Cardiac arrhythmias—Toxic substances released from the repair material (glue or other adhesive) can trigger cardiac arrhythmias (irregularities in heart rhythm).

Trace Microsphere (§ 870.1360)

(1) *Identification*. A trace microsphere is a radioactively tagged nonbiodegradable particle that is intended to be injected into an artery or vein and trapped in the capillary bed for the purpose of studying blood flood within or to an organ.

(2) *Summary of data*. The Panel members based their recommendation on the potential hazards associated with the inherent properties of the device and on their personal knowledge of, and experience with, the device.

(3) *Risks to health*.

- Thromboembolism—Inadequate blood compatibility of the materials used in the device may lead to potentially debilitating or fatal thromboemboli.
- Embolism—If the microspheres are too large or tend to clump together, they can lodge in a blood vessel and block the flow of blood to an organ.
- Tissue damage—Tissue damage can result from excessive radioactivity of the particles.

Carotid Sinus Nerve Stimulator (§ 870.3850)

(1) *Identification*. A carotid sinus nerve stimulator is an implantable device used to decrease arterial pressure by stimulating Hering's nerve at the carotid sinus.

(2) *Summary of data*. The Panel members based their recommendation on the potential hazards associated with the inherent properties of the device and on their personal knowledge of, and experience with, the device.

(3) *Risks to health*.

- Tissue and blood damage—If the materials, surface finish, or cleanliness of this device are inadequate, damage to the blood and tissue may result.
- Inability to control blood pressure—Failure of the device to stimulate properly can prevent effective control of elevated blood pressure.

High-Energy DC-Defibrillator (Including Paddles) (§ 870.5300)

(1) *Identification*. A high-energy DC-defibrillator is a device that delivers into a 50-ohm test load an electrical shock of greater than 360 joules of energy used for defibrillating the atria or ventricles of the heart or to terminate other cardiac arrhythmias. The device may either synchronize the shock with the proper phase of the electrocardiogram or may operate asynchronously. The device delivers the electrical shock through paddles placed either directly across the heart or on the surface of the body.

(2) *Summary of data*. The Panel relied upon the potential hazards associated with the inherent properties of the device and on the Panel members' personal knowledge of, and experience with, the device. In addition, the Panel sought information from the medical and scientific community, industry, and medical literature (Refs. 20 through 25).

(3) *Risks to health*.

- Electrical shock to operator—Improper electrical design of the device can lead to a serious electrical shock to the operator.
- Inability to defibrillate or persistence of the arrhythmia—Inability to rhythmia may occur because of excessive energy, excessive current, insufficient energy, insufficient current, a difference between the indicated level of energy and the delivered into a 50-ohm load, or excessive leakage current.
- Inability to defibrillate—Inability to defibrillate may occur when certain drugs that can raise the defibrillation threshold are used.
- Inability to defibrillate due to paddle design—Inability to defibrillate may result from inappropriate paddle size or inappropriate paddle location on the subject.

4. Dental Devices

Karaya and Sodium Borate With or Without Acacia Denture Adhesive (§ 872.3400)

(1) *Identification*. A karaya with sodium borate with or without acacia denture adhesive is a device composed of karaya and sodium borate with or without acacia intended to be applied to the base of a denture before the denture is inserted into the patient's mouth. The device is used to improve denture retention and comfort. If it contains 12 percent or more by weight of sodium borate, it is in class III; otherwise it is in class I.

(2) *Summary of data*. The members of the Dental Devices Classification Panel relied upon their personal knowledge of, and clinical experience with, the device in the practice of dentistry and on a report from the then-Bureau of Drugs' OTC Panel on Dentifrices and Dental Care Agents (Ref. 26). This report states that there is a lack of information concerning the safety of adhesives containing sodium borate and a lack of information concerning the effectiveness of acacia in denture adhesives. The report states that the sodium borate concentration of 12 to 20 percent of the adhesive's total weight is equivalent to 2.6 to 5.3 percent boron. Because at least a portion of a denture adhesive is ingested, this amount of boron could cause chronic toxicity in denture wearers (Ref. 27). The Panel agrees that there is a lack of data concerning the safety and effectiveness of acacia and karaya with sodium borate.

(3) *Risks to health*.

- Chronic toxicity—The boron in this device may cause chronic toxicity to users.
- Adverse tissue reaction—If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Carboxymethylcellulose Sodium and Cationic Polyacrylamide Polymer Denture Adhesive (§ 872.3420)

(1) *Identification*. A carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive is a device composed of carboxymethylcellulose sodium and cationic polyacrylamide polymer intended to be applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(2) *Summary of data*. The Panel based its recommendation on the lack of information available to demonstrate the effectiveness of carboxymethylcellulose sodium and cationic polyacrylamide in dental adhesives and on a report of the then-Bureau of Drugs' OTC Panel on Dentifrices and Dental Care Agents. According to the report, the belief that carboxymethylcellulose sodium is safe is based, in part, on its widespread use in food products such as milk and ice cream (Ref. 28). Tests of cationic polyacrylamide for acute oral toxicity, eye irritation, and dermal and inhalation toxicity in subacute and chronic feeding experiments in animals have been negative (Ref. 26). Human patch tests also have been negative (Ref. 28). However, no data were submitted to the Panel to demonstrate, and the literature did not establish, the effectiveness of carboxymethylcellulose

sodium cationic polyacrylamide polymer as a denture adhesive.

(3) *Risks to health.*

- Bone loss from lack of effectiveness—If the adhesive fails to anchor the denture in its proper position, a change in the distance between the upper and lower jaws may occur that may lead to gum irritation and bone loss due to alteration of biting forces.
- Adverse tissue reaction—if the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Polyacrylamide Polymer (Modified Cationic Denture Adhesive (§ 872.3480)

(1) *Identification.* A polyacrylamide polymer (modified cationic) denture adhesive is a device composed of polyacrylamide polymer (modified cationic) intended to be applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, this device, and on a report of the then-Bureau of Drugs' OTC Panel on Dentifrices and Dental Care Agents. Tests of polyacrylamide polymer (modified cationic) for acute oral toxicity, eye irritation, and dermal and inhalation toxicity in subacute and chronic feeding experiments in animals have been negative (Ref. 26). Human patch tests also have been negative (Ref. 28). However, no data were submitted to the Panel to demonstrate, and the literature did not establish, the effectiveness of polyacrylamide polymer as the sole ingredient of a denture adhesive.

(3) *Risks to health.*

- Bone loss—If the adhesive fails to anchor the denture in its proper position, and the distance between the upper and lower jaw is changed, then bone loss and gum irritation may occur.
- Adverse tissue reaction—If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Polyvinylmethylether Maleic Anhydride (PVM–MA), Acid Copolymer, and Carboxymethylcellulose Sodium (NACMC) Denture Adhesive (§ 872.3500)

(1) *Identification.* Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive is a device composed of polyvinylmethylether maleic anhydride, acid copolymer, and carboxymethylcellulose sodium intended to be applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(2) *Summary of data.* The Panel based it recommendation on the Panel members' personal knowledge of, and clinical experience with the device and on a report of the then-Bureau of Drugs' OTC Panel on Dentifrices and Dental Care Agents. The report states that sufficient data are not available to demonstrate the safety and effectiveness of a combination of PVM—MA and NACMC used as a denture adhesive (Ref. 26). The Panel also based its recommendation on a publication by Blacow (Ref. 27), which states that the pH and stability of the anhydride and diacid forms may be hazardous due to the possible presence of an acid pH of 2 to 3, which can burn the tissues in the mouth.

(3) *Risks to health.*

- Toxicity—Ingestion of the materials in this device may cause chronic toxicity to users.
- Adverse tissue reaction—If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction. Acidity of the adhesive may burn tissues in the mouth.

Over-the-Counter (OTC) Denture Reliner (§ 872.3560)

(1) *Identification.* An OTC denture reliner is a device consisting of a material such as plastic resin that is intended to be applied as a permanent coating or lining on the base or tissue-contacting surface of a denture. The device is intended to replace a worn denture lining and may be available for purchase over the counter.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The Panel also based its recommendation on statements that further studies are necessary to determine the safety and effectiveness of this device (Ref. 26).

(3) *Risks to health.*

- Bone degeneration—Use of the device may cause alteration in the vertical dimension of a denture and result in bone degeneration in the upper and lower jaw.
- Carcinomas—Long-term irritation or oral tissues caused by incorrect vertical dimension may cause formation of carcinomas.

Root Canal Filling Resin (§ 872.3820)

(1) *Identification.* A root canal filling resin is a device composed of material, such as methylmethacrylate, intended for use during endodontic therapy to fill the root canal of a tooth. If chloroform is used as an ingredient in the device, the device is in class III. Otherwise, it is in class I.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, root canal filling resins in the practice of dentistry.

(3) *Risks to health.* FDA believes that root canal fillings containing chloroform present a risk of carcinogenicity.

5. Gastroenterology-Urology Devices

Colonic Irrigation System (§ 876.5220)

(1) *Identification.* A colonic irrigation system is a device intended to instill water into the colon through a nozzle inserted into the rectum to cleanse (evacuate) the contents of the lower colon. The system is designed to allow evacuation of the contents of the colon during the administration of the colonic irrigation. The device consists of a container for fluid connected to the nozzle via tubing and includes a system which enables the pressure, temperature, or flow of water through the nozzle to be controlled. The device may include a console-type toilet and necessary fittings to allow the device to be connected to water and sewer pipes. The device may use electrical power to heat the water. This device does not include the enema kit (§ 876.5210). When the device is intended for colon cleansing when medically indicated, such as before radiologic or endoscopic examinations, it is in class II. When the device is intended for other uses, including colon cleansing routinely for general well being, it is in class III.

(2) *Summary of data.* The members of the Gastroenterology-Urology Devices Classification Panel based their recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

(3) *Risks to health.*

- Tissue burns—The temperature-regulating mechanism for the water heater used in this device may allow overheating of the water which is delivered to the patient's colon, resulting in tissue burns.
- Perforation of the colon—Excessive water pressure delivered by this device could result in perforation of the wall of the colon.
- Colon irritation—Excessive or inappropriate use of this device may result in irritation of the colon.
- Electrical injury—Improper design, construction, or a malfunction of the device could result in electrical injury to the patient or operator.

Implanted Electrical Urinary Continence Device (§ 876.5270)

(1) *Identification.* An implanted electrical urinary continence device is a device intended for treatment of urinary incontinence that consists of a receiver implanted in the abdomen with electrodes for pulsed-stimulation that are implanted either in the bladder wall or in the pelvic floor, and a battery-powered transmitter outside the body.

(2) *Summary of data.* The Panel based its recommendation on a review of the historical data concerning implanted electrical urinary continence devices. Halverstadt and Parry (Ref. 29) discussed several unsolved problems inherent in the electrical stimulation of the bladder. These problems include breakage of lead wires, the cumbersome nature of the electrodes, risk of preformation by wires of the bladder cavity, difficulty of obtaining uniform contraction of the detrusor muscle, and the spread of the stimulus to neighboring tissues producing abdominal pain. The Panel also based its recommendation on the experimental nature of these devices and on the lack of adequate medical literature and experience supporting their safety and effectiveness.

(3) *Risks to health.*

- Adverse tissue reaction and erosion—Defects in the design or the construction of the device, or lack of biocompatibility of the materials used in the device, may cause an adverse tissue reaction and tissue erosion adjacent to the device.
- Infection—Defects in the design or construction of the device preventing adequate cleaning or sterilization, or defects in packaging or processing of a device sold as sterile, may allow pathogenic organisms to be introduced and cause an infection in the patient.
- Tissue damage—Defects in the electrode wires may lead to their breakage and consequent tissue damage.
- Abdominal and leg pain—The amount of stimulation by the electrodes necessary to obtain adequate bladder stimulation may lead to abdominal and leg pain.
- Electrical injury—Improper design, construction, or malfunction of the device could result in electrical injury to the patient or the operator.

6. General Hospital and Personal Use Devices

Chemical Cold Pack Snakebite Kit (§ 880.5760)

(1) *Identification.* A chemical cold pack snakebite kit is a device consisting of a chemical cold pack and tourniquet used for first-aid treatment of snakebites.

(2) *Summary of data.* The members of the General Hospital and Personal Use Devices Classification Panel based their recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on several articles in the literature that evaluate different types of treatment for snakebites (Refs. 30, 31, and 32). Most of the literature showed that cryotherapy (the use of cold therapy for the treatment of snakebites) is inappropriate. Clement and Pietrusko found high rates of amputation, local tissue destruction, and prolonged disability in patients treated by this method (Ref. 30). A National Academy of Sciences report stated that doubts about the safety and effectiveness of short-term cold therapy for treatment of snakebites have not been resolved (Ref. 31). The report also stated that the use of cold therapy for a long period of time appears to be dangerous. Watt reported that, among children who had to have amputations because of snakebites, 75 percent had received cryotherapy for the snakebites (Ref. 32).

(3) *Risks to health.*

- Local tissue damage—Exposure of tissue to cold temperatures for long periods of time can freeze the tissue and cause local tissue damage, sometimes necessitating limb amputations.

7. Neurological Devices

Rheoencephalograph (§ 882.1825)

(1) *Identification.* A rheoencephalograph is a device used to estimate a patient's cerebral circulation (blood flow in the brain) by electrical impedance methods with direct electrical connections to the scalp or neck area.

(2) *Summary of data.* The members of the Neurological Devices Classification Panel referenced the literature on this device (Refs. 43 through 46). Some of the panel members witnessed its clinical application. Dr. William Jarzembski, one of the Panel members, provided some detailed information concerning his research on this device.

(3) *Risks to health.*

- Erroneous clinical conclusions—The device may indicate that cerebral circulation is normal, when in fact it may be very abnormal.
- Electrical shock—Excessive current could cause injury, and malfunction of the device could result in an electrical shock.
- Skin reaction—The electrode materials and conductive media may irritate the skin.

Intravascular Occluding Catheter (§ 882.5150)

(1) *Identification.* An intravascular occluding catheter is a catheter with an inflatable or detachable balloon tip that is used to block a blood vessel to treat malformations, e.g., aneurysms (balloonlike sacs formed on blood vessels) of intracranial blood vessels.

(2) *Summary of data.* The Panel members based their recommendation on the lack of data available on this device. Although the Panel members were aware of the use of this device in investigational programs, they believed that there is not enough information or data to demonstrate that its safety and effectiveness can be adequately controlled by means other than premarket approval.

(3) *Risks to health.*

- Infarction of nervous tissue—If the catheter is not controllable or if the balloon or tip should fail or unexpectedly come loose from the catheter, use of the device may cause infarction of nervous tissue (death of nervous tissue due to stoppage of circulation) and other serious injury to the brain and other nervous tissue.
- Hemorrhage—The catheter or improper balloon inflation may injure a blood vessel and result in bleeding.
- Thrombogenesis—Blood coagulation and clotting may result if the material of which the catheter is constructed is not compatible with blood.

Implanted Spinal Cord Stimulator for Bladder Evacuation (§ 882.5850)

(1) *Identification.* An implanted spinal cord stimulator for bladder evacuation is an electrical stimulator used to empty the bladder of a paraplegic patient who has a complete transection of the spinal cord and who is unable to empty his or her bladder by reflex means or by the intermittent use of catheters. The stimulator consists of an implanted receiver with electrodes that are placed on the conus medullaris portion of the patient's spinal cord and an external transmitter for transmitting the stimulating pulses across the patient's skin to the implanted receiver.

(2) *Summary of data.* The Panel members based their recommendation on information supplied by Dr. Blaine Nashold, one of the Panel members, who had been one of the primary individuals engaged in the development of the device (Ref. 37). Dr. Nashold reported that he had implanted the device in a small group of paraplegic patients. Six of the 12 patients had been successfully emptying their bladders by this method for 5 years (Ref. 37).

(3) *Risks to health.*

- Injury to neural tissue—Tissue fibrosis may develop around the electrode on the spinal cord and cause a diminished response to the electrical stimulus.
- Tissue toxicity—The implanted stimulator, lead wires, or electrodes may contain material that is not biocompatible.
- Cerebrospinal fluid leakage—The fluid that surrounds the spinal cord might leak out around the receiver wires.

8. Obstetrical and Gynecological Devices

Obstetric Data Analyzer (§ 884.2050)

(1) *Identification.* An obstetric data analyzer is a device designed to interpret fetal status during labor and to warn of possible fetal distress by analyzing electronic signal data obtained from fetal or maternal electronic or other monitors. This generic type of device includes signal analysis and display equipment, electronic interfaces for other equipment, and power supplies and component parts.

(2) *Summary of data.* FDA reviewed the Obstetrical and Gynecological Devices Classification Panel's recommendation and obtained additional information and data describing the application of automatic analysis techniques to the determination of possible fetal distress. The technique was new in 1978, and very little definitive information was available. It was reasonable to expect that as algorithms were developed and tested, confidence in automatic analysis would increase (Ref. 38).

(3) *Risks to health.*

- Electrical shock—Malfunction of the device could result in electrical shock to the patient.
- Misdiagnosis—Inadequate design or calibration of the device could lead to the generation of inaccurate diagnostic data. If inaccurate diagnostic data is used in managing the patient, the physician may prescribe a course of treatment which places the fetus and patient at risk unnecessarily.

Fetal Electroencephalographic Monitor (§ 884.2620)

(1) *Identification.* A fetal electroencephalographic monitor is a device used to detect, measure, and record in graphic form (by means of one or more electrodes placed transcervically on the fetal scalp during labor) the rhythmically varying electrical skin potentials produced by the fetal brain.

(2) *Summary of data.* The Panel based its recommendation on the fact that fetal electroencephalographic monitoring was a relatively new method of brain function evaluation during birth. Its sensitivity and applicability in the field of the fetal brain research remained to be established because clinical experience was too limited to ascertain its safe and effective use. Rosen and Peltzman, who were performing the major research on this device, were continuing with further controlled studies (Refs. 39 and 40).

(3) *Risks to health.*

- Electrical shock—Malfunction of the device could result in electrical shock to the patient.
- Misdiagnosis—Inadequate design of the device can lead to the generation of inaccurate diagnostic data. If inaccurate diagnostic data are used in managing the patient, the physician may prescribe a course of treatment that places the fetus and patient at risk unnecessarily.
- Adverse tissue reaction—Material in the device could result in a systemic or local tissue reaction when the device comes in contact with the patient.
- Infection—If the device is not properly sterilized, it may introduce microorganisms that could cause infection.

Fetal Scalp Clip Electrode and Applicator (§ 884.2685)

(1) *Identification.* A fetal scalp clip electrode and applicator is a device designed to establish electrical contact between fetal skin and an external monitoring device by means of pinching skin tissue with a nonreusable clip. This device is used to obtain a fetal electrocardiogram. This generic type of device may include a clip electrode applicator.

(2) *Summary of data.* The Panel based its recommendation on personal knowledge of, and experience with, the device. Information presented to the Panel indicated a 1 to 2 percent infection rate for newborns on whom fetal scalp clip electrodes were used (Ref. 41). The Panel noted that this device is in limited use in the United States because the circular (spiral) electrode, preferred because it is easier to apply and remove, is available.

(3) *Risks to health.*

- Adverse tissue reaction—Material in the device could cause a local tissue or systemic reaction when the device comes in contact with the fetus.
- Infection—If the device is not properly sterilized, it may introduce microorganisms that could cause infection.
- Tissue damage—Poor design or incorrect application could result in scalp injury when the device pinches the fetal scalp.

Expandable Cervical Dilator (§ 884.4250)

(1) *Identification.* An expandable cervical dilator is an instrument with two handles and two opposing blades used manually to dilate (stretch open) the cervix.

(2) *Summary of data.* The Panel based its recommendation on personal knowledge of, and experience with, the device. The Panel members' experience with the expandable cervical dilator had been that its leverage is very difficult to control in such a way that the cervix is dilated evenly.

(3) *Risks to health.*

- Laceration of the cervix—Appropriate design and materials are necessary to prevent trauma to the cervix and possible subsequent infertility.
- Adverse tissue reaction—Material in the device could cause a local tissue or systematic reaction when the device comes in contact with the patient.
- Infection—If the device is not properly sterilized, it may introduce microorganisms that could cause infection.

Vibratory Cervical Dilator (§ 884.4270)

(1) *Identification.* A vibratory cervical dilator is a device designed to dilate the cervical os by stretching it with a power-driven vibrating probe head. The device is used to gain access to the uterus or to induce abortion, but is not to be used during labor when a viable fetus is desired or anticipated.

(2) *Summary of data.* The Panel based its recommendation on experience with, and personal knowledge of, the device. The Panel reviewed the literature on the device and in a typical study of 50 patients, there were 3 failures to dilate and 3 patients with cervical tears (Ref. 42). The Panel believed that more data concerning these types of dilators were necessary before standards could be written.

(3) *Risks to health.*

- Laceration of the cervix—Appropriate design and material are necessary to prevent trauma to the cervix and possible subsequent infertility.
- Electrical shock—Malfunction of the device could result in electrical shock to the patient.
- Adverse tissue reaction—Material in the device could cause a systemic or local tissue reaction when the device comes in contact with the patient.
- Infection—If the device is not properly sterilized, it may introduce microorganisms that could cause infection.

Metreurynter-Balloon Abortion System (§ 884.5050)

(1) *Identification.* A metreurynter-balloon abortion system is a device used to induce abortion. The device is inserted into the uterine cavity, inflated, and slowly extracted. The extraction of the balloon from the uterus causes dilation of the cervical os. This generic type of device may include pressure sources and pressure controls.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' familiarity with the device and a review of the literature on this device. Although journal articles discussing the use of this device in Japan indicate that it may be safe and effective (Refs. 43 and 44), the Panel believed that these data were inconclusive and that more studies needed to be performed to establish the performance characteristics of the device. A standard textbook mentioned that the device is rarely used because of potential trauma or infection, unpredictability, and the risk of a live-born fetus (Ref. 45).

(3) *Risks to health.*

- Infection—If the device is not properly sterilized, it may introduce microorganisms that could cause infection.
- Trauma, laceration, hemorrhage, and perforation—Poor design of the device could cause uneven dilation of the cervix causing injury to the patient.
- Adverse tissue reaction—Material or substances in the device could cause a systemic or local tissue reaction when the device comes in contact with the patient's cervix.
- Unnecessary medical procedures—Loss of the device could result in an otherwise unnecessary medical procedure to recover the device from the uterus.

Abdominal Decompression Chamber (§ 884.5225)

(1) *Identification.* An abdominal decompression chamber is a hoodlike device used to reduce pressure on the pregnant patient's abdomen for the relief of abdominal pain during pregnancy or labor.

(2) *Summary of data.* The Panel based its recommendation on personal knowledge of, and experience with, this device. The Panel considered this device to be ineffective. Additionally, the Panel found no literature available to supply adequate clinical data supporting any claim of effectiveness. The consensus of the Panel was that any data that might be developed would support an action to ban the device because its risks outweigh its benefits.

(3) *Risks to health.*

- Difficult patient management—The device is cumbersome and covers the abdominal area of the patient, thus blocking the physician from examining the patient.
- Supine hypotension—Because the patient is required to lie on her back, the possibility of induced low blood pressure and consequent complications exists.

9. Orthopedic Devices

Ankle Joint Metal/Polymer Non-Constrained Cemented Prosthesis (§ 888.3120)

(1) *Identification.* An ankle joint metal/polymer non-constrained cemented prosthesis is a device intended to be implanted to replace an ankle joint. The device limits minimally (less than normal anatomic constraints) translation in one or more planes. It has no linkage across-the-joint. This generic type of device includes prostheses that have a tibial component made of alloys, such as cobalt-chromium-molybdenum, and a talar component made of ultra-high molecular weight polyethylene, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* The members of the Orthopedic Devices Classification Panel based their recommendation on the Panel members' personal knowledge of the device and on the available medical literature. According to Freeman (Ref. 47), "It is still too early to say whether this operation (total ankle joint replacement) offers any advantages over arthrodesis * * *. It would appear a comfortable mobile ankle can be produced but how reliably this can be done and how long the results will last is impossible to say." The only available clinical study on the device at the time of the Panel meeting had been done by Newton (Ref. 48). From 1973 to 1978, 50 patients had this prosthesis implanted. There have been 20 (40 percent) reported failures. FDA believed these data are insufficient to establish the safety and effectiveness of ankle joint metal/polymer non-constrained prostheses.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Elbow Joint Humeral (Hemi-Elbow) Metallic Uncemented Prosthesis (§ 888.3180)

(1) *Identification.* An elbow joint humeral (hemi-elbow) metallic uncemented prosthesis is a device intended to be implanted, made of alloys such as cobalt-chromium-molybdenum, that is used to replace the distal end of the humerus formed by the trochlea humeri and the capitulum humeri. The generic type of device is limited to prostheses intended for use without bone cement (§ 888.3027).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The only available clinical data at the time of the Panel meeting were the results of 2 surgeons who had implanted 18 devices over a 10-year period (Ref. 49). An earlier publication (Ref. 50) discussed the clinical results in what appeared to be the first 10 of these 18 implantations. The devices had been implanted in nine patients (one patient had prostheses implanted bilaterally). These patients were evaluated 1 to 7 years later and only four patients (44 percent) had stable, pain-free elbows with a functional range of motion. New bone growth restricted or totally blocked elbow joint motion in three patients. The device was removed in two other patients; because of joint pain and swelling in one; and because the device had dislocated and was eroding through the skin in the other.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in the loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and release of materials from the device to the

surrounding tissues and systemic circulation.

- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Finger Joint Metal/Metal Constrained Uncemented Prosthesis (§ 888.3200)

(1) *Identification.* A finger joint metal/metal constrained uncemented prosthesis is a device intended to be implanted to replace a metacarpophalangeal (MCP) or proximal interphalangeal (finger) joint. The device prevents dislocation in more than one anatomic plane and consists of two components which are linked together. This generic type of device includes prostheses made of alloys, such as cobalt-chromium-molybdenum, or protheses made from alloys and ultra-high molecular weight polyethylene. This generic type of device is limited to prostheses intended for use without bone cement (§ 888.3027).

(2) *Summary of data.* The only finger joint metal/metal constrained uncemented prosthesis discussed in the literature at the time of the Panel meeting was a two-pronged stainless steel hinged prostheses that was developed by Flatt for use in the MCP and the proximal interphalangeal (PIP) joints of the fingers.

Flatt presented clinical results with the Flatt finger prosthesis in a series of publications over a 12-year period (Refs. 51 through 56). Thirty-one prostheses had been implanted for 6 months or more (6 months to 34 months); 23 in the PIP joint and 8 in the MCP joint. In the earliest of these reports, Flatt noted that despite early encouraging clinical results, the long-term outlook for the device did not look favorable. In particular, Flatt noted that the bone absorption that occurs around the neck of the prosthesis may possibly lead to obstruction of flexion. Flatt also noted that possible complications from use of the device might be: (a) Bone erosion in patients in whom the intramedullary prongs have been forced together in the medullary canal, and (b) metal fatigue and fracture of the intramedullary prongs.

Subsequent publications by Flatt (Refs. 55 and 56) showed that the predicted complications did, in fact, occur. Flatt and Ellison (Ref. 55) reported on the implantation of 242 prostheses (167 in the MCP joint and 75 in the PIP joint) with an average followup of 6.2 years (range 1 to 12 years). Twenty-six (10.7 percent) of the prostheses (15 MCP and 11 PIP) had to be removed for the following reasons: Periarticular fibrosis (bone resorption) and settling, 14; failure (i.e., fracture) of both intramedullary prongs, 2; failure of the screw holding the hinge together, 2; breakdown of the skin over the prosthesis, 5; and infection, 3. The authors reported that of the prostheses that required removal, more than half were removed because of settling within the recipient bones. Bone absorption around the intramedullary prongs, scarring, or heterotrophic bone formation around the hinge caused sufficient mechanical difficulties to necessitate removal of the prosthesis. Flatt and Ellison noted that the gradually progressing periarticular fibrosis (bone resorption) resulted in a decreased range of joint motion and was related to very active use of the hand.

Girzados and Clayton (Ref. 57) reported on the implantation of 23 Flatt finger prostheses in 11 patients with an average followup of 44 months (range 24 to 73 months). Of the 23 prostheses implanted, 11 were in the MCP joints of the fingers, 8 were in the PIP joints of the thumb. Bone absorption around the neck and stems of the prosthesis occurred in 16 of the 23 (69 percent) joints. Six prostheses (26 percent) were rated as poor results: Three had no motion postoperatively; one was grossly unstable; and two were implanted in a patient with active rheumatoid disease who, over a period of 64 months, had intermittent swelling and pain over the joints that had been replaced with the prostheses. The authors reported that "good" or "fair" results were obtained in 13 (56 percent) of the joints. However, the number of patients having pain-free stable joints with a useful range of motion (defined as "good") as opposed to those with limited motion, minimal pain, and instability (defined as "fair") could not be determined.

Problems associated with the Flatt finger prosthesis have been recognized by many authors (Refs. 58 through 63). Several authors (Refs. 58 and 59) reported that these prostheses have not been generally accepted because of the accompanying bone resorption. McFarland (Ref. 60) reported that the Flatt prosthesis had been only moderately successful, that complications were frequent and included bone overgrowth with loss of motion, migration of the prosthesis due to bone erosion, and metal failures (i.e., device fractures). Goldner and Urbaniak (Ref. 62) and Smith and Broudy (Ref. 63) noted that the bone resorption and subsequent migration of the devices was caused by the use of a rigid material in osteoporotic bone. Smith and Broudy (Ref. 63) also noted that the intramedullary prongs frequently migrate through the cortex and occasionally the hinge would break or the overlying skin would ulcerate, causing tendon rupture and infection.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Finger Joint Metal/Metal Constrained Cemented Prosthesis (§ 888.3210)

(1) *Identification.* A finger joint metal/metal constrained cemented prosthesis is a device intended to be implanted to replace a MCP (finger) joint. This device prevents dislocation in more than one anatomic plane and has components which are linked together. This generic type of device include prosthesis that are made of alloys, such as cobalt-chromium-molybdenum, and is limited to those prosthesis intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* Two types of these prostheses were discussed in the literature: (a) The Link prostheses, a metallic hinge intended to replace the MCP joint of a finger or thumb; and (b) the Biomedical Laboratories of the University of Cincinnati (BLUC) prostheses, a hinged metallic prostheses intended to replace the MCP joint of the thumb.

Devas and Shah (Refs. 64 and 65) reported on the implementation of 51 Link prostheses in 25 patients with an average postoperative followup of 4 years (range 2 to 6 years). In 15 (30 percent) of these implantations, the patient had persistent pain in the joint and what was described as a useless finger. The authors believed that the proportion of patients with pain was far too large to make the treatment method freely available. They noted that the main cause of failure was due to loosening of the prostheses with disruption (erosion) of the bone. They also noted that in most of the joints with good and fair results the prosthesis had become loose but that the patients were free from symptoms at the time of evaluation. The authors believed that prosthesis loosening may have been caused by fixation of the components by injecting the cement into the metacarpal and phalangeal bone shafts, and it was noted that a modified prosthesis with a different technique of insertion was being considered (Ref. 65). Two papers (Refs. 66 and 67) described the design and testing of the BLUC thumb prostheses. Clinical results, however, were not presented. FDA believed that the data available on the devices, the clinical results of the use of the devices in 25 patients with a reported failure rate of 30 percent, and the recommendation by the authors that the procedure not be made freely available, did not establish the long-term safety and effectiveness of finger joint metal/metal constrained prostheses.

(3) *Risks to health*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Finger Joint Metal/Polymer Constrained Cemented Prosthesis (§ 888.3220)

(1) *Identification.* A finger joint metal/polymer constrained cemented prosthesis is a device intended to be implanted to replace a MCP or proximal interphalangeal (finger) joint. The device prevents dislocation in more than one anatomic plane, and consists of two components which are linked together. This generic type of device includes prostheses that are made of alloys, such as cobalt-chromium-molybdenum, and ultra-high molecular weight polyethylene, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* Clinical results on three designs of finger joint polymer constrained prostheses were presented in the literature: The Calnan-Nicolle prosthesis, intended for use in the MCP and PIP joints for the fingers; the Niebauer prosthesis also intended for use in the MCP and PIP joints of the fingers; and the Swanson prosthesis intended for use in the MCP and PIP joints of the fingers and for the MCP joint of the thumb.

a. *Calnan-Nicolle prosthesis.* This device has two components: An across-the-joint component having intramedullary stems and a flexible hinge made of polypropylene, and a silicone rubber sleeve which encapsulates the flexible hinge portion of the device (Ref. 72). Griffiths and Nicolle (Ref. 73) reported on the clinical results 8 to 37 months (average of 20 months) after implantation of the Calnan-Nicolle device in 112 MCP joints in 31 patients. Complete relief from pain was obtained in four (13 percent) patients. There was much improvement over preoperative pain status in 13 (42 percent), moderate pain relief in 10 (32 percent), and little pain relief in 4 (13 percent) patients. These authors reported that a deterioration in the performance of the prosthesis occurred in up to half of the patients between 1 and 2 years after insertion of the prosthesis; and that part of the deterioration in function was due directly to mechanical failure of the prosthesis. The range of joint motion had deteriorated over time in 33 of the 40 (82.5 percent) hands on which surgery was performed. Joint deformity was "corrected and held" in 10 to 31 hands (32 percent), was corrected initially but recurred in 14 of 31 (45 percent) hands, and worsened in 7 of 31 (23 percent) hands. The silicone capsule (sleeve) had fractured in 31 of the 112 prostheses (28 percent). The polypropylene stems had fractured in five joints (5 percent). Nicolle (Ref. 71) noted that time and experience had shown that the polypropylene hinge of the Calnan-Nicolle prosthesis does not appear to be strong enough to withstand fully the compression and torsional stresses that may occur in the use of the hand.

b. *Niebauer prosthesis.* This device consists of a single, flexible, across-the-joint component. The intramedullary stems and the flexible hinge portion of the device are made of silicone to allow tissue penetration and fixation of the stems. Beckenbaugh et al. (Ref. 75) reported on the clinical results 12 to 65 months (average 32 months) after implantation in the MCP joints of 68 Niebauer prostheses and found a fracture rate of the device of 38.2 percent (26 devices), recurrence of clinical deformity in 44.1 percent (30 devices) and recurrence of pain in 2 percent. Goldner et al. (Ref. 76) reported a fracture rate of 29.7 percent in 37 prostheses implanted for 6.5 years and 17.5 percent fracture rate in 143 prostheses implanted 4 to 6 years. These authors believe that the silicone-polyester material used in the device may absorb lipids and become brittle, and that eventual fracture of the prosthesis is a possibility, but that fracture does not preclude a good functional result. Goldner and Urbaniak (Ref. 77) evaluated 103 patients over a 4-year period. Pain was relieved or greatly diminished postoperatively in all but 8 of the 103 patients. The average active range of motion in these patients was 51 degrees. The range of motion was noted to increase up to about 1 year postoperatively; and then thought to decrease slightly, possibly due to enlarged bony outgrowths from the surface of the bone and impingement of peripheral bone on the hinge of the device. In two (2 percent) of patients, the device had fractured, which was accompanied by deformity and a moderate amount of pain.

Hagert (Ref. 78) conducted X-ray examinations on 41 joints with Niebauer implants. This author reported that of the 41 prostheses studied, 26 (63.4 percent) were found to be damaged (i.e., cracked within the implant midsection, fragmented at the midsection, or fractured at the hinge), 1 to 36 months postoperatively. This author believed that the Niebauer implant might be too weak to withstand forces in the MCP joints, and that a possible contributing factor was the use of materials (polyester fiber and silicone rubber) with differing elasticity. This author noted that the Niebauer implant was reported to have withstood 100 million flexions during mechanical tests bending it around a fixed axis, but not exposing it simultaneously to shearing type forces which are present in the MCP joint. These shearing forces were reportedly most probably responsible for the deformation of the implant and the subsequent damage observed. Niebauer and Landry (Ref. 79) reported that destruction of the bone around the hinge of the device had occurred in a few cases and that this atrophy may be the result of pressure from the prosthesis. In an evaluation by X-ray of the 41 Niebauer prostheses, Hagert (Ref. 78) observed bone resorption in 23 of the 41 joints (56 percent). The cortex of the bone was penetrated in 13 (32 percent) of these joints. It was reported that the observed erosion of the bone is most likely caused by motion of the intramedullary stems within the medullary cavity, and is exaggerated by the rough polyester surface of the device.

c. *Swanson prosthesis.* This device is made entirely of silicone rubber and is designed to act as an internal mold, maintaining joint alignment, becoming encapsulated and stabilized by fibrous tissue, and gliding or moving within the medullary cavity rather than being fixed to the bone (Ref. 80). A number of reports (Refs. 75 and 80 through 86) were found describing the use of the Swanson prostheses in the MCP joints of the fingers, but few reports (Refs. 87 through 90) were available describing the use of this device in the MCP joint of the thumb, or the PIP joints of the fingers. In 1976, it was reported that a new "high performance" silicone elastomer material had been developed for use in the Swanson prosthesis. With the exception of one report (Ref. 90), the available clinical data were obtained using prostheses made from the "conventional" silicone elastomer. Fracture of implants made of the "conventional" silicone elastomer appears to be the most frequently reported failure. Beckenbaugh et al. (Ref. 75) reported that of 186 Swanson prostheses implanted in the MCP joint for an average of 32 months (range 12 months to 65 months), 26.3 percent (49) had fractured. Hagert et al. (Ref. 82) reported that of 104 Swanson implants evaluated, 25 percent (26) had failed, either by cracking or fragmenting and fracturing within the followup period of 1.5 to 5 years. Mannerfelt and Anderson (Ref. 83) reported a fracture rate of 2.8 percent in 144 joints evaluated 1.5 to 3.5 years (average 2.5 years) after implantation. Ferlic et al. (Ref. 84) reported a fracture rate of 9 months (average 2.3 years) after implantation. Swanson (Ref. 80) reported the lowest rate of fracture, 0.88 percent, in a field clinic series involving over 3,000 implants with a followup of from 6 to 30 months.

The effects of fracture of the device on the clinical results were evaluated by several authors. Aptekar et al. (Ref. 85) described the occurrence of detritic synovitis (inflammation of the synovial tissue) due to shards of silicone rubber found in relation to a broken prosthesis. Beckenbaugh et al. (Ref. 75) noted that recurrence of deformity was associated with implant fracture, i.e., ulnar drift, in 14 percent; weakness or instability in 21 percent; hyperextension in 11 percent; and some clinical deformities in 43 percent; but that while the recurrence of deformity implied that soft tissue balance was not present after the implant fractured, it was not clear whether the imbalance caused the fracture or developed because of it.

Hagert (Ref. 86) believed that the increased displacement, i.e., ulnar deviation, noted in some joints with fractured implants, may indicate insufficiency of the fibrous capsule surrounding the implant to restrain the forces occurring at the MCP joint. This pressure, combined with movement of the implant within the medullary canal was reportedly found to cause a moderately progressive bone resorption throughout the followup period in all of the 36 joints examined. Resorption was observed around the midsection of the prosthesis where the implant was in close contact with bone and around the intramedullary stems of the device. Erosion of bone around the midsection of the device led to various degrees of migration of the device in 28 out of 36 (78 percent) of the joints examined. The author found that decreased joint flexion was observed due either to the distal migration of the implant or a growing volar bony spur in 13 out of the 39 (33 percent) joints examined. He concluded that the design of the device may be insufficient to fully restrain the volarly and proximally directed forces in the MCP joint and the serious decrease of flexion. Hagert et al. (Ref. 82) reported that although it is generally accepted that silicone rubber absorbs lipids and other substances, the effects on material changes and degradation is not adequately known. Weightman et al. (Ref. 87) noted that lipid absorption could contribute to mechanical failure of the prostheses, as chemical deterioration is known to be a prime initiator of fatigue failures of polymers. Other clinical results have been reported in the literature (Refs. 80, 81, 87, and 89) on the use of this prosthesis in large numbers of patients. These results were very similar to those summarized previously.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design of inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.

- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.

- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Hip Joint Metal Constrained Cemented or Uncemented Prosthesis (§ 888.3300)

(1) *Identification.* A hip joint metal constrained cemented or uncemented prosthesis is a device intended to be implanted to replace a hip joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have components made of alloys, such as cobalt-chromium-molybdenum, and is intended for use with or without bone cement (§ 888.3027). This device is not intended for biological fixation.

(2) *Summary of data.* The agency has obtained data and information describing the use of hip joint metal constrained prostheses. Sivash (Ref. 91) reported on implantation in 164 patients; followup time was 1 to 9 years. Breakage of the prosthesis was reported in 13 (8 percent) of the patients. Because of the lack of adequate data to demonstrate the safety and effectiveness of these implanted devices, FDA believed that use of the hip joint metal constrained prosthesis presents an unreasonable risk of illness or injury.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to a dissolution or wearing away from the surfaces of the device and the release of material from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis (§ 888.3310)

(1) *Identification.* A hip joint metal/polymer constrained cemented or uncemented prosthesis is a device intended to be implanted to replace a hip joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have a femoral component made of alloys, such

as cobalt-chromium-molybdenum, and an acetabular component made of ultra-high molecular weight polyethylene. This generic type of device is intended for use with or without bone cement (§ 888.3027). This device is not intended for biological fixation.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Hip Joint (Hemi-Hip) Acetabular Metal Cemented Prosthesis (§ 888.3370)

(1) *Identification.* A hip joint (hemi-hip) acetabular metal cemented prosthesis is a device intended to be implanted to replace a portion of the hip joint. This generic type of device includes prostheses that have an acetabular component made of alloys, such as cobalt-chromium-molybdenum. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Hip Joint Femoral (Hemi-Hip) Trunnion-Bearing Metal/Polyacetal Cemented Prosthesis (§ 888.3380)

(1) *Identification.* A hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis is a two-part device intended to be implanted to replace the head and neck of the femur. This generic type of device includes prostheses that consist of a metallic stem made of alloys, such as cobalt-chromium-molybdenum, with an integrated cylindrical trunnion bearing at the upper end of the stem that fits into a recess in the head of the device. The head of the device is made of polyacetal (polyoxymethylene) and it is covered by a metallic alloy, such as cobalt-chromium-molybdenum. The trunnion bearing allows the head of the device to rotate on its stem. The prosthesis is intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on a presentation to the Panel. Dr. Ian Goldie (University of Goteborg) presented the results of several Norwegian studies with these prostheses. Dr. Goldie referred to Christiansen's series of 241 hips in which excellent results were obtained in 57 percent of the cases and good results in 33 percent. In this series, there were five infections, seven cases of loosening of the acetabular cup, two dislocations shortly after operation, two cases of femoral perforation, and three cases of heterotopic ossification. Dr. Goldie then presented the results of his own series of 61 patients. In the 19 patients with 2 years followup, and in the 28 patients with 6 months followup, there were no complications. However, in the remaining 14 patients with a followup of 1 year, there were the following complications: 2 dislocations between the head and the cup, 2 cases of heterotopic ossification, and 2 patients with inexplicable pain.

FDA sought additional data and information on the safety and effectiveness of these devices. A review of the medical literature revealed a disagreement regarding the resistance to wear of polyacetal materials. McKellop et al. (Ref. 92) reported that laboratory wear rates for polyacetal ranged from 70 percent lower than polyethylene to 540 percent higher. Dumbleton (Ref. 93) reported wear in the trunnion sleeve of the device and that polyacetal exhibits a low resistance to wear. Because of the potential problems involving its resistance to wear, the long-term effectiveness of this device is questionable. The initial investigator and his associates have been the primary users of this device. Long-term followup data are available only from the initial investigator. Clinical cases documenting effectiveness and safety of the device involve usage of less than 3 years.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction in joint function due to excessive wear, fracture, deformation of the device components, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility or resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away of the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of a prosthesis within the body may lead to an increased risk of infection.

Knee Joint Femorotibial Metallic Constrained Cemented Prosthesis (§ 888.3480)

(1) *Identification.* A knee joint femorotibial metallic constrained cemented prosthesis is a device intended to be implanted to replace part of a knee joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. The only knee joint movement allowed by the device is in the sagittal plane. This generic type of device includes prostheses that have an intramedullary stem at both the proximal and distal locations. The upper and lower components may be joined either by a solid bolt or pin, an internally threaded bolt with locking screw, or a bolt retained by circlip. The components of the device are made of alloys, such as cobalt-chromium-molybdenum. The stems of the device may be perforated, but are intended to be implanted with a polymethylmethacrylate luting agent (bone cement).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and experience with, the device, and its

review of the medical literature. Results from using the device in more than 720 cases have been reported in the medical literature in the United States during the past 3 years (Refs. 94, 100, and 103). Reports in the medical literature exist that document use of the device in several thousand cases worldwide during the past 10 years. The Panel believed that this extensive clinical use has revealed the usual mechanical problems, implant loosening and settling. The Panel determined that the overall risks resulting from use of the prosthesis were no worse than the risks associated with major knee surgery without implantation of a prosthesis.

Of the 957 patients reviewed by the Panel who have had this prosthesis implanted and who were discussed in the worldwide medical literature (Refs. 94 through 105), 108 (11 percent) suffered implant failure, 233 (24 percent) of the cases had complications, and 104 (11 percent) had loosening of the prosthesis.

FDA sought additional data on the safety and effectiveness of this device. Kettelkamp (Ref. 105) reported that the failure rate for the device ranges from 5 percent to 24 percent for the hinged metal knee prosthesis, with a short followup time. Kettlekamp (Ref. 105) and Chand (Ref. 106) both believe that excessive forces may be applied to the intramedullary stem bone cement interface because the constrained prosthesis hinge prevents medial/lateral joint movement. Kettlekamp believes that if the stem loosens, the cement may rub away and destroy the surrounding bone, causing a larger cavity and making revision difficult or impossible.

Kettlekamp reviewed reports in the medical literature on use of 576 Walldius hinged knee prostheses. In one group of 144 implantations, complications occurred in 29 cases (13 percent). In the remaining 432 cases, 89 (20 percent) were classified as failures, 33 (7 percent) required reoperations, and 53 (12 percent) had loosening. Fractures occurred in 11 cases (2 percent) and deep infection was reported in 35 knees (8 percent). Kettlekamp reported that the incidence of complication increased with the length of reported followup. Brady and Garber (Ref. 103) reviewed results of implanting the Shiers design of this device in 288 knees. He reported poor results in 71 knees (24 percent), reoperation was required in 33 knees (11 percent), and loosening observed in 56 knees (19 percent). Brady stated that the major problems involved with use of these prosthesis are the absence of axial (medial) rotation, the necessary resection of large amounts of bone, and the creation of physiologic dead space.

Kettlekamp (Ref. 105) and Deburge et al. (Ref. 107) reported that the major problem with the Shiers design prosthesis is loosening. Deburge reported a loosening rate of 15 percent (22 patients) during a 5-year followup of the request of implanting the Guepar constrained knee prosthesis in 152 patients. However, less than half of these instances of device loosening were symptomatic (10 of 22 patients). Reoperations were performed on the 10 patients. Other authors (Ref. 100) believed that the rate of loosening of the prosthesis is higher, possibly around 80 percent, but that only a small percentage of those patients with device loosening are symptomatic.

Arden and Kamdar (Ref. 108) reported followup for 7 years on implantation of 193 Shiers design prostheses. They reported that 11 percent of the patients had aseptic loosening. Kaushal et al. (Ref. 109) reported followup examination of a series of 30 knees about 42 months following implantation of the prosthesis. The examination revealed that 13 knees (46 percent) had phlebothrombosis, 8 knees (11 percent) had asymptomatic loosening, 4 knees (5.4 percent) had deep infections, and 3 knees (4.3 percent) had symptomatic loosening. The major problems with use of the prosthesis were settling, loosening, and limitation on the range of joint motion allowed. In preliminary data, Van Camp et al. (Ref. 110) showed that stress loading appeared to cause mechanical loosening of the device.

Walker (Ref. 111) stated that the valgus angle of the knee was ignored in the older designs of this prosthesis. Walker said this design problem resulted in lateral stress on the intramedullary stems of the device. This theory was verified experimentally by Wagner and Bourgois (Ref. 112). Wagner and Bourgois also showed that, in both the Walldius and Shiers designs of the prosthesis, the prosthesis' axis of rotation was not equivalent to the axis of the anatomic joint it replaced. These researchers said the pin in the Shiers prosthesis was turned down on the axis and that it might loosen if the prosthesis were overstressed. Because the axle pin of the Walldius prosthesis is clamped on one side, the location of the axis causes localized wear.

Although infection immediately following implantation of a prosthesis is primarily a result of surgical technique, Swanson et al. (Ref. 113) stated that the design of the prosthesis may minimize the rate of infection associated with implantation. Swanson found that the infection rate was lower when less bone was removed for insertion of the device. Phillips and Taylor (Ref. 98) reported that most groups of patients who have received this prosthesis have suffered about a 10 percent higher incidence of infection than patients in whom other generic types of knee prostheses have been implanted.

In cases of total failure of implantation of a joint prosthesis, the prosthesis may be removed and the joint fused (arthrodesis). The rate of success in performing arthrodesis is related to the amount of bone that was removed to implant the device. Arthrodesis is difficult following implantation of a constrained joint replacement device.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Knee Joint Patellofemoral Polymer/Metal Semi-Constrained Cemented Prothesis (§ 888.3540)

(1) *Identification.* A knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis is a two-part device intended to be implanted to replace part of a knee joint in the treatment of primary patellofemoral arthritis or chondromalacia. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes a component made of alloys, such as cobalt-chromium-molybdenum or austenitic steel, for resurfacing the intercondylar groove (femoral sulcus) on the anterior aspect of the distal femur, and a patellar component made of ultra-high molecular weight polyethylene. This generic type of device is limited to those devices intended for use with bone cement (§ 888.3027). The patellar component is designed to be implanted only with its femoral component.

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of, and experience with, similar devices and a presentation made to the Panel. Fox reported on his clinical experience with this generic type of device. Fox stated that patellofemoral joint replacement was performed in more than 60 knees, with the followup since 1974. He reported that he, as well as his patients, were pleased with the results.

Other than the presentation to the Panel made by Fox, FDA was not aware of any clinical data for this device. Moreover, because Fox provided no details regarding the device or its implantation procedure, FDA was not certain that the devices Fox implanted belong to this generic class.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution of wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Knee Joint Patellofemorotibial Polymer/Metal/Metal Constrained Cemented Prosthesis (§ 888.3550)

(1) *Identification.* A knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis is a device intended to be implanted to replace a knee joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have a femoral component, a tibial component, a cylindrical bolt and accompanying locking hardware that are all made of alloys, such as cobalt-chromium-molybdenum, and a retropatellar resurfacing component made of ultra-high molecular weight polyethylene. The retropatellar surfacing component may be attached to the resected patella either with a metallic screw or luting agent. All stemmed metallic components within this generic class are intended to be implanted with a polymethylmethacrylate luting agent (bone cement).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' knowledge of, and experience with, the device and a presentation made to the Panel. Pritchard and Fox described their experiences with various patellofemoral joint replacing devices including this generic type of device. Pritchard has implanted patellofemorotibial joint prostheses in at least 100 patients during the 3 years prior to the Panel meeting. Also, Fox reported that he has achieved good results in over 60 cases since 1974. In May 1962, Young (Ref. 116) reported on a series of 16 patients ranging in age from 31 to 70 years who had a Young design prosthesis implanted (2 were bilateral implantations). With a followup time between 9 and 61 months (median of 20 months), 7 of these 16 experienced a clinical failure (43.8 percent) with a mean time of about 9 months before prosthesis removal and arthrodesis (joint fusion). In a later report in 1971, Young (Ref. 120) stratified results by indication: At least 3 of 19 osteoarthritic knees were failures (15.8 percent incidence); at least 17 of 45 rheumatoid knees failed (37.8 percent incidence); of 4 replacements for giant-cell tumor, 2 failed (50 percent incidence); and at least 6 of 10 traumatic arthritic knees failed (60 percent incidence).

Young noted that nine knees examined sometime after initial implantation demonstrated darkening in tissue adjacent to metallic components. Young believed that the darkening of tissue was caused by tissue contamination from corrosion products. Young also believed that similar tissue darkening was noted by Girzadas et al. (Ref. 117). Young believed that the darkening was caused by the bolts used in his design that were made from a cobalt-based alloy, whereas the other components were made from a casting alloy. Young stated that, as a result of his survey of the clinical results for 85 physicians who had implanted the Young-design prosthesis, he was not optimistic about use of the hinged metal/metal knee prostheses and their future for replacement arthroplasty.

In 1973, Hanslik (Ref. 121) reported results of using the device in 50 patients (two bilaterally implanted), principally for the indication of stereoarthrosis. Minimum followup was not given, while maximum followup was possibly 4 years. The patients ranged in age from 56 to 76 years. At least four failures (8 percent) were associated with restricted gliding of the patellofemoral articulation: One of these was attributed to polymethylmethacrylate-induced bony necrosis. Hanslik used the Young (Ref. 116) design of prosthesis and had made major modifications in implantation technique as recommended by Friedebold and Radloff (Refs. 115, 118, and 120). Hanslik performed partial resection of the patella rather than total excision and used a polymethylmethacrylate luting agent to grout the medullary stems (presumably in addition to the cancellous bone screws recommended by Young). Friedebold and Radloff (Ref. 119) reported on use of the prosthesis in femorotibial replacement in 11 patients ranging in age from 50 to 80 years, with between 6 months and 5 years of followup. There were three failures (27.3 percent).

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reactions—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surface of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Knee Joint Femoral (Hemi-Knee) Metallic Uncemented Prosthesis (§ 888.3570)

(1) *Identification.* A knee joint femoral (hemi-knee) metallic uncemented prosthesis is a device made of alloys, such as cobalt-chromium-molybdenum, intended to be implanted to replace part of a knee joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a femoral component with or without protuberance(s) for the enhancement of fixation and is limited to those prostheses intended for use without bone cement (§ 888.3027).

(2) *Summary of data.* FDA was concerned about both the severity of the clinical complications resulting from use of the device and the rate at which these complications occur. The agency

used the complication classification scheme developed by Fox (Ref. 122) and grouped complications by time periods following surgical implantation; immediate postoperative complications, within 2 weeks; short term, within 24 months; and long term, more than 24 months. Platt and Pepler reported in 1969 their clinical results on 55 patients who had this prosthesis implanted with up to 10 years followup (Ref. 123). Their reported incidence of complications ranged from: General—none reported; systemic—none reported; and remote—1 late (2 years postoperatively) paranoid schizophrenia (1.8 percent); and (4) local—at least 45 percent. The most frequent complication was immediate postoperative infection with a presumed incidence of 25.5 percent. The reoperation rate for this series of patients was reported as 20 out of 62 knees or 32.4 percent; assuming only 1 reoperation per patient, a 36.4 percent revision rate will result.

Aufranc and Jones et al. (Refs. 124 and 125) made extensive modifications to M. Smith-Peterson's original "keeled" femoral condylar mold (Ref. 126) and commenced a series of device implantations employing a noncemented stemmed implant in 1952. Clinical results on 64 patients with a minimum of 1-year followup showed that the incidence of complications were: Zero for general and remote categories; 3.1 percent for systemic (2 thrombophlebitic episodes); and a minimum of 25 percent for cumulated local complications. Matching Platt and Pepler's experience (Ref. 124), the most frequent complication observed was immediate postoperative infection with a presumed incidence of 20.3 percent. This series of patients, as of mid-1969, displayed a reoperation rate of 14 out of 79 knees (17.7 percent), assuming only 1 reoperation per patient. Considering this result, with their report of 16 clinical results rated at less than "fair," the failure rate is calculated as 38 percent with an average followup time of 87 months. Aufranc and Jones (Ref. 124) noted that 6 of their initial 14 implantations were failures (42.9 percent) with a maximum followup of 5 years; apparently 10 more years of surgical experience reduced the overall failure rate by 5 percent, without altering the principal reported failure modes: Infection and "poor" clinical result.

Further review of available literature (Refs. 108 and 127 through 136), failed to disclose device experience that would significantly alter the trends described above.

(3) *Risks to health.*

- Loss or reduction of joint or limb function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in the loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution of wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and the systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.
- Death—Death may result from lipoembolic sequelae or thromboembolic complications during or immediately following implantation.

Knee Joint Patellar (Hemi-Knee) Metallic Resurfacing Uncemented Prosthesis (§ 888.3580)

(1) *Identification.* A knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis is a device made of alloys, such as cobalt-chromium-molybdenum, intended to be implanted to replace the retropatellar articular surface of the patellofemoral joint. The device limits minimally (less than normal anatomic constraints) translation in one or more planes. It has no linkage across-the-joint. This generic type of device includes prostheses that have a retropatellar resurfacing component and an orthopedic screw to transfix the patellar remnant. This generic type of device is limited to those prostheses intended for use without bone cement (§ 888.3027). This device is in class III when intended for uses other than treatment of degenerative and posttraumatic patellar arthritis; when intended for those uses, it is in class II.

(2) *Summary of data.* FDA was not aware of any valid scientific evidence supporting the safety and effectiveness of this device when intended for uses other than the treatment of degenerative and posttraumatic patellar arthritis.

3. *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Shoulder Joint Metal/Metal or Metal/Polymer Constrained Cemented Prosthesis (§ 888.3640)

(1) *Identification.* A shoulder joint metal/metal or metal/polymer constrained cemented prosthesis is a device intended to be implanted to replace a shoulder joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have a humeral component made of alloys, such as cobalt-chromium-molybdenum, and a glenoid component made of this alloy or a combination of this alloy and ultra-high molecular weight polyethylene. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of the device and on their knowledge of the medical literature (Refs. 136 through 139). Two of these references (Refs. 136 and 137) described a shoulder joint constrained prosthesis (Fenlin and Zippel designs) and report that implantation of the device relieved pain in 16 of 17 patients. In the patient with the painful prosthesis, the authors believed that the device had loosen. The times of implantation were not reported.

Fenlin (Ref. 138) reported that the Fenlin design prosthesis had been implanted in five patients. The results in three of these patients were discussed. One patient was described as being free of pain, and able to use the operated shoulder for all normal activities, except those requiring elevation of the arm above 80°. The length of followup in this patient was 20 months. Complications were reported in the other two patients. In one patient, the device had loosened at 3 months postoperatively, due to abnormal anatomy of the glenoid. The second patient suffered partial nerve palsy due to damage of the axillary nerve during surgery. Linscheid and Cofield (Ref. 139) reported on the implantation of 13 constrained shoulder joint prostheses (6 of the Stanmore design, and 7 of the Bickel design). The average time of followup was reported as 13 months and ranged from 2 to 26 months. There were two cases of dislocations of the Stanmore design prosthesis and one case of dislocation of the Bickel design prosthesis. There were two additional complications reported with the Bickel design device; one case of fracture of the humeral component and one case of loosening of the glenoid component.

FDA sought additional information on the safety and effectiveness of these devices. Cofield (Ref. 140) reported that prosthetic replacement of the shoulder joint was in 1971, an experimental, investigational procedure. This author noted that basic knowledge about shoulder biomechanics was limited and that current knowledge of shoulder prostheses was not sufficient to establish the requirements of a prosthetic replacement. Buechel et al. (Ref. 141) noted that complications with current shoulder prostheses have been associated with the designs of the devices: (1) The Bickel design shoulder joint prosthesis was reported to dislocate and loosen due to the limited motion of the prosthesis; and (2) the prosthesis design used by Lettin and Scales (presumably the Stanmore design shoulder prosthesis) was reported to significantly limit joint motion, then sublux, and eventually dislocate at the extremes of normal joint motion. Clinical results with several prosthesis designs were reported by Cofield (Ref. 140, 142, and 143). Eleven persons in whom Bickel design prostheses had been implanted were evaluated 18 months to 39 months postoperatively (Ref. 142). Three (27 percent) were experiencing significant pain. The components of the Bickel device had dislocated in two cases. The glenoid component had dislodged from the scapula in two cases and loosened in one. The humeral component had fractured in two other cases. Reoperation was required in four patients and was needed in two or three others. Cofield reported that further clinical and mechanical deterioration in these patients was anticipated due to progressive loosening of the glenoid components and fatigue fracture of the neck of the humeral component, which was not believed to be strong enough. These authors concluded that this type of shoulder joint replacement (i.e., the Bickel design) is not justified. Cofield (Refs. 140 and 143) also reported clinical results in nine patients who had received Stanmore prostheses. After an average postoperative time of 1 year (ranging between 4 and 18 months), six patients had satisfactory relief of pain and three had significant pain. The glenoid component had loosened in two patients. FDA concurred with the Panel that the reported clinical experience with these devices did not establish their long-term safety and effectiveness.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Shoulder Joint Glenoid (Hemi-Shoulder) Metallic Cemented (§ 888.3680) Prosthesis

(1) *Identification.* A shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis is a device that has a glenoid (socket) component made of alloys, such as cobalt-chromium-molybdenum, or alloys with ultra-high molecular weight polyethylene and intended to be implanted to replace part of a shoulder joint. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of the data.* The Panel based its recommendation on the Panel members' personal knowledge of; and clinical experience with, the device.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and the release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

Wrist Joint Metal Constrained Cemented Prosthesis (§ 888.3790)

(1) *Identification.* A wrist joint metal constrained cemented prosthesis is a device intended to be implanted to replace a wrist joint. The device prevents dislocation in more than one anatomic plane and consists of either a single flexible across-the-joint component or two components linked together. This generic type of device is limited to a device which is made of alloys, such as cobalt-chromium-molybdenum, and is limited to those prostheses intended for use with bone cement (§ 888.3027).

(2) *Summary of data.* The Panel based its recommendation on the Panel members' personal knowledge of the device and on the available medical literature. Gschwend et al. (Ref. 144) used this prosthesis in 15 cases from 1971 through 1975. Fixation was reported to be inadequate and not correlated to loads imposed on the wrist joint. In three cases (20 percent), the distal stem became loose. The stem fractured in two cases (13 percent). On one occasion (6.6 percent) the metacarpal bone broke. In another case, as a result of a disturbance of muscle balance, the investigators observed a fixed ulnar deviation of the wrist joint with a tendency toward radial penetration of the medullary canal of the third metacarpal bone. The investigators also described three cases (20 percent) of a sinking of the prosthesis into the capitate through the third metacarpal.

(3) *Risks to health.*

- Loss or reduction of joint function—Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in a loss or reduction of joint function due to excessive wear, fracture, deformation of the device, or loosening of the device in the surgical cavity.
- Adverse tissue reaction—Inadequate biological or mechanical properties of the device, such as its lack of biocompatibility and resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away from the surfaces of the device and release of materials from the device to the surrounding tissues and systemic circulation.
- Infection—The presence of the prosthesis within the body may lead to an increased risk of infection.

10. Physical Medicine Devices

Rigid Pneumatic Structure Orthosis (§ 890.3610)

(1) *Identification.* A rigid pneumatic structure orthosis is a device intended for medical purposes to provide whole body support by means of a pressurized suit to help thoracic paraplegics walk.

(2) *Summary of data.* The Panel based its recommendation on the literature concerning the device (Refs. 145 and 146). The literature evaluation did not demonstrate that the device was safe or effective (Ref. 146). The rigid pneumatic structure orthosis was also evaluated as requested by the Veterans' Administration and the Rehabilitation Services Administration, Department of Health, Education, and Welfare (Ref. 146), and did not meet adequate performance standards for safety and effectiveness.

(3) *Risks to health.*

- Bodily injury—The device could collapse and the patient could fall, resulting in bodily injury, if inflation is lost or the zippers fail.
- Tissue trauma and/or pressure sores—Tissue trauma and/or pressure sores could result if the support beams overinflate and cause excessive pressure on the skin of the patient.

II. PMA Requirements

A PMA for these devices must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified above, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence obtained from well-controlled clinical studies, with detailed data, in order to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Applicants should submit any PMA in accordance with FDA's "Premarket Approval (PMA) Manual." This manual is available upon request from FDA, Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850.

III. Request for Comments with Data

Interested persons may, on or before January 5, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the act and § 860.132 (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of these devices is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by September 22, 1995.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of these devices is submitted, the agency will, by November 6, 1995, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and § 860.130 (21 CFR 860.130) of the regulations.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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9. Schwartz, S. I. et al., "Chronic Carotid Sinus Nerve Stimulation in the Treatment of Essential Hypertension," *American Journal of Surgery*, 114:5–15, 1967.
10. Tacker, W. A., Jr., "Energy Dosage for Human Trans-Chest Electrical Ventricular Defibrillation," *New England Journal of Medicine*, 290:214–215, 1974.
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16. Tacker, W. A., Jr. et al., "The Effect of Tilt on the Strength-Duration Curve for Trans-Chest Ventricular Defibrillation," Proceedings of the 12th Annual AAMI Meeting, San Francisco, CA, p. 403, 1977.
17. Ewy, G. A., "Effectiveness of Direct Current Defibrillation: Role of Paddle Electrode Size: II," *American Heart Journal*, 93(5):674–675, 1977.
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List of Subjects

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Parts 868, 870, 872, 876, 880, 882, 884, 888, and 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 864, 868, 870, 872, 876, 880, 882, 884, 888, and 890 be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 864.5220 is amended by revising paragraph (c) to read as follows:

§ 864.5220 Automated differential cell counter.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule based on this proposed rule). For any automated differential cell counter described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule based on this proposed rule), been found to be substantially equivalent to an automated differential cell counter described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976. Any other automated differential cell counter described in paragraph (b)(2) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 868—ANESTHESIOLOGY DEVICES

3. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

4. Section 868.5400 is amended by revising paragraph (c) to read as follows:

§ 868.5400 Electroanesthesia apparatus.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule based on this proposed rule) for any electroanesthesia apparatus that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a electroanesthesia apparatus that was in commercial distribution before May 28, 1976. Any other electroanesthesia apparatus shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART—870 CARDIOVASCULAR DEVICES

5. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

6. Section 870.1350 is amended by revising paragraph (c) to read as follows:

§ 870.1350 Catheter balloon repair kit.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule). For any catheter balloon repair kit that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a catheter balloon repair kit that was in commercial distribution before May 28, 1976. Any other catheter balloon repair kit shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

7. Section 870.1360 is amended by revising paragraph (c) to read as follows:

§ 870.1360 Trace microsphere.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule). For any trace microsphere that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a trace microsphere that was in commercial distribution before May 28, 1976. Any other trace microsphere shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

8. Section 870.3850 is amended by revising paragraph (c) to read as follows:

§ 870.3850 Carotid sinus nerve stimulator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any carotid sinus nerve stimulator that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a carotid sinus nerve stimulator that was in commercial distribution before May 28, 1976. Any other carotid sinus nerve stimulator shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

9. Section 870.5300 is amended by revising paragraph (c) to read as follows:

§ 870.5300 DC-defibrillator (including paddles).

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule). For any DC-defibrillator (including paddles) described in paragraph (b)(1) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a DC-defibrillator (including paddles) described in paragraph (b)(1) of this section that was in commercial distribution before May 28, 1976. Any other DC-defibrillator (including paddles) described in paragraph (b)(1) of this section shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 872—DENTAL DEVICES

10. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

11. Section 872.3400 is amended by revising paragraph (c) to read as follows:

§ 872.3400 Karaya and sodium borate with or without acacia denture adhesive.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any karaya and sodium borate with or without acacia denture adhesive that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a karaya and sodium borate with or without acacia denture adhesive that was in commercial distribution before May 28, 1976. Any other karaya and sodium borate with or without acacia denture adhesive shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

12. Section 872.3420 is amended by revising paragraph (c) to read as follows:

§ 872.3420 Carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive that was in commercial distribution before May 28, 1976. Any other carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

13. Section 872.3480 is amended by revising paragraph (c) to read as follows:

§ 872.3480 Polyacrylamide polymer (modified cationic) denture adhesive.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any polyacrylamide polymer (modified cationic) denture adhesive that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a polyacrylamide polymer (modified cationic) denture adhesive that was in commercial distribution before May 28, 1976. Any other polyacrylamide polymer (modified cationic) denture adhesive shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

14. Section 872.3500 is amended by revising paragraph (c) to read as follows:

§ 872.3500 Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive that was in commercial distribution before May 28, 1976. Any other polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

15. Section 872.3560 is amended by revising paragraph (c) to read as follows:

§ 872.3560 OTC denture reliner.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any OTC denture reliner that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an OTC denture reliner that was in commercial distribution before May 28, 1976. Any other OTC denture reliner shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

16. Section 872.3820 is amended by revising paragraph (c) to read as follows:

§ 872.3820 Root canal filling resin.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any root canal filling resin described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a root canal filling resin described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976. Any other root canal filling resin shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

17. The authority citation for 21 CFR part 876 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

18. Section 876.5220 is amended by revising paragraph (c) to read as follows:

§ 876.5220 Colonic irrigation system.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any colonic irrigation system described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a colonic irrigation system described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976. Any other colonic irrigation system shall have an approved PMA in effect before being placed in commercial distribution.

19. Section 876.5270 is amended by revising paragraph (c) to read as follows:

§ 876.5270 Implanted electrical urinary continence device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any implanted electrical urinary continence device that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an implanted electrical urinary continence device that was in commercial distribution before May 28, 1976. Any other implanted electrical urinary continence device shall have an approved PMA or a declared completed PDP in effect before being place in commercial distribution.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

20. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

21. Section 880.5760 is amended by revising paragraph (c) to read as follows:

§ 880.5760 Chemical cold pack snakebite kit.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any chemical cold pack snakebite kit that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a chemical cold pack snakebite kit that was in commercial distribution before May 28, 1976. Any other chemical cold pack snakebite kit shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART 882—NEUROLOGICAL DEVICES

22. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

23. Section 882.1825 is amended by revising paragraph (c) to read as follows:

§ 882.1825 Rheoencephalograph.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any rheoencephalograph that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a rheoencephalograph that was in commercial distribution before May 28, 1976. Any other rheoencephalograph shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

24. Section 882.5150 is amended by revising paragraph (c) to read as follows:

§ 882.5150 Intravascular occluding catheter.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any intravascular occluding catheter that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a intravascular occluding catheter that was in commercial distribution before May 28, 1976. Any other intravascular occluding catheter shall have an approved PMA or a declared completed PDP in effect before being place in commercial distribution.

25. Section 882.5850 is amended by revising paragraph (c) to read as follows:

§ 882.5850 Implanted spinal cord stimulator for bladder evacuation.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any implanted spinal cord stimulator for bladder evacuation that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an implanted spinal cord stimulator for bladder evacuation that was in commercial distribution before May 28, 1976. Any other implanted spinal cord stimulator for bladder evacuation shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

26. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

27. Section 884.2050 is amended by revising paragraph (c) to read as follows:

§ 884.2050 Obstetric data analyzer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any obstetric data analyzer that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an obstetrical data analyzer that was in commercial distribution before May 28, 1976. Any other obstetric data analyzer shall have an approved PMA or a declared completed PDP in effect before being place in commercial distribution.

28. Section 884.2620 is amended by revising paragraph (c) to read as follows:

§ 884.2620 Fetal electroencephalographic monitor.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any fetal electroencephalographic monitor that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a fetal electroencephalographic monitor in commercial distribution before May 28, 1976. Any other fetal electroencephalographic monitor shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

29. Section 884.2685 is amended by revising paragraph (c) to read as follows:

§ 884.2685 Fetal scalp clip electrode and applicator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any fetal scalp clip electrode and applicator that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a fetal scalp clip electrode and applicator that was in commercial distribution before May 28, 1976. Any other fetal scalp clip electrode and applicator shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

30. Section 884.4250 is amended by revising paragraph (c) to read as follows:

§ 884.4250 Expandable cervical dilator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any expandable cervical dilator that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an expandable cervical dilator that was in commercial distribution before May 28, 1976. Any other expandable cervical dilator shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

31. Section 884.4270 is amended by revising paragraph (c) to read as follows:

§ 884.4270 Vibratory cervical dilators.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any vibratory cervical dilator that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a vibratory cervical dilator that was in commercial distribution before May 28, 1976. Any other vibratory cervical dilator shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

32. Section 884.5050 is amended by revising paragraph (c) to read as follows:

§ 884.5050 Metreurynter-balloon abortion system.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any metreurynter-balloon abortion system that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a metreurynter-balloon abortion system that was in commercial distribution before May 28, 1976. Any other metreurynter-balloon abortion system shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

33. Section 884.5225 is amended by revising paragraph (c) to read as follows:

§ 884.5225 Abdominal decompression chamber.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any abdominal decompression chamber that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to an abdominal decompression chamber that was in commercial distribution before May 28, 1976. Any other abdominal decompression chamber shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART 888—ORTHOPEDIC DEVICES

34. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

35. Section 888.3120 is amended by revising paragraph (c) to read as follows:

§ 888.3120 Ankle joint metal/polymer non-constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any ankle joint metal/polymer non-constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a ankle joint metal/polymer non-constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other ankle joint metal/polymer non-constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

36. Section 888.3180 is amended by revising paragraph (c) to read as follows:

§ 888.3180 Elbow joint humeral (hemi-elbow) metallic uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any elbow joint humeral (hemi-elbow) metallic uncemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a elbow joint humeral (hemi-elbow) metallic uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other elbow joint humeral (hemi-elbow) metallic uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

37. Section 888.3200 is amended by revising paragraph (c) to read as follows:

§ 888.3200 Finger joint metal/metal constrained uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule), for any finger joint metal/metal constrained uncemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a finger joint metal/metal constrained uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other finger joint metal/metal constrained uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

38. Section 888.3210 is amended by revising paragraph (c) to read as follows:

§ 888.3210 Finger joint metal/metal constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any finger joint metal/metal constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a finger joint metal/metal constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other finger joint metal/metal constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

39. Section 888.3220 is amended by revising paragraph (c) to read as follows:

§ 888.3220 Finger joint metal/polymer constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any finger joint metal/polymer constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a finger joint metal/polymer constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other finger joint metal/polymer constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

40. Section 888.3300 is amended by revising paragraph (c) to read as follows:

§ 888.3300 Hip joint metal constrained cemented or uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any hip joint metal constrained cemented or uncemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a hip joint metal constrained cemented or uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other hip joint metal constrained cemented or uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

41. Section 888.3310 is amended by revising paragraph (c) to read as follows:

§ 888.3310 Hip joint metal/polymer constrained cemented or uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any hip joint metal/polymer constrained cemented or uncemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a hip joint metal/polymer constrained cemented or uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other hip joint metal/polymer constrained cemented or uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

42. Section 888.3370 is amended by revising paragraph (c) to read as follows:

§ 888.3370 Hip joint (hemi-hip) acetabular metal cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any hip joint (hemi-hip) acetabular metal cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a hip joint (hemi-hip) acetabular metal cemented prosthesis that was in commercial distribution before May 28, 1976. Any other hip joint metal (hemi-hip) acetabular metal cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

43. Section 888.3380 is amended by revising paragraph (c) to read as follows:

§ 888.3380 Hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis that was in commercial distribution before May 28, 1976. Any other hip joint femoral (hemi-hip) trunnion-bearing metal/polyacetal cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

44. Section 888.3480 is amended by revising paragraph (c) to read as follows:

§ 888.3480 Knee joint femorotibial metallic constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any knee joint femorotibial metallic constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication in the **Federal Register** of the final rule based on this proposed rule), been found to be substantially equivalent to a knee joint femorotibial metallic constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other knee joint femorotibial metallic constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

45. Section 888.3540 is amended by revising paragraph (c) to read as follows:

§ 888.3540 Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis.

* * * * *

(c) Date PMA or notice of completion of a PDP is required. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

46. Section 888.3550 is amended by revising paragraph (c) to read as follows:

§ 888.3550 Knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis

that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

47. Section 888.3570 is amended by revising paragraph (c) to read as follows:

§ 888.3570 Knee joint femoral (hemi-knee) metallic uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any knee joint femoral (hemi-knee) metallic uncemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a knee joint femoral (hemi-knee) metallic uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other knee joint femoral (hemi-knee) metallic uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

48. Section 888.3580 is amended by revising paragraph (c) to read as follows:

§ 888.3580 Knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis described in paragraph (b)(2) of this section that was in commercial distribution before May 28, 1976, or that has on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis that was in commercial distribution before May 28, 1976. Any other knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

49. Section 888.3640 is amended by revising paragraph (c) to read as follows:

§ 888.3640 Shoulder joint metal/metal or metal/polymer constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any shoulder joint metal/metal or metal/polymer constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a shoulder joint metal/metal or metal/polymer constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other shoulder joint metal/metal or metal/polymer constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

50. Section 888.3680 is amended by revising paragraph (c) to read as follows:

§ 888.3680 Shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis that was in commercial distribution before May 28, 1976. Any other shoulder joint glenoid (hemi-shoulder) metallic cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

51. Section 888.3790 is amended by revising paragraph (c) to read as follows:

§ 888.3790 Wrist joint metal constrained cemented prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any wrist joint metal constrained cemented prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a wrist joint metal constrained cemented prosthesis that was in commercial distribution before May 28, 1976. Any other wrist joint metal constrained cemented prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

PART 890—PHYSICAL MEDICINE DEVICES

52. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

53. Section 890.3610 is amended by revising paragraph (c) to read as follows:

§ 890.3610 Rigid pneumatic structure orthosis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule) for any rigid pneumatic structure orthosis that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule), been found to be substantially equivalent to a rigid pneumatic structure orthosis that was in commercial distribution before May 28, 1976. Any other rigid pneumatic structure orthosis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: August 9, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–22027 Filed 9–6–95; 8:45 am]

BILLING CODE 4160–01–F

federal register

Thursday
September 7, 1995

Part IV

Department of Housing and Urban Development

Grants and Cooperative Agreements, Availability, Etc.: Rescissions Act Impact on Public and Indian Housing; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR-3769-N-02; FR-3774-N-03; FR 3832-N-02; FR-3841-N-04; FR-3867-N-02; and FR-3871-N-02]

Impact of Rescissions Act on Availability of Funding for Fiscal Year 1995: Public Housing Development; Traditional Indian Housing Development; Demolition and Disposition; Public and Indian Housing Modernization Program; and Family Investment Centers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Impact of Rescissions Act on Availability of Funding for Fiscal Year (FY) 1995 for public housing development, the Traditional Indian Housing Development Program, public housing demolition and disposition, the public and Indian housing modernization program, and Family Investment Centers.

SUMMARY: The FY 1995 Rescissions Act affects the public and Indian housing programs described below by rescinding funds and amending the U.S. Housing Act of 1937. This notice advises the public of the rescissions and their impact on Notices of Funding Availability (NOFAs) that have been issued. This notice also advises the public of changes to regulation requirements and program policies, implementing some, but not all, of the provisions of the Rescissions Act that amend the 1937 Act for FY 1995.

DATES: This notice does not revise or extend any application deadlines, except with regard to demolition/disposition applications requesting replacement housing, as described in section I of this notice, under the heading **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

For public housing programs, contact: William Minning, Director of Policy and Evaluation Division, Room 4236. Telephone (202) 708-0713, or (202) 708-0850 (TDD).

For Indian housing programs, contact: Bruce Knott, Native American Programs Housing and Community Development Division, Room P8204. Telephone (202) 755-0068, or (202) 708-0850 (TDD).

The address for both individuals is: Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. The telephone numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION:

I. Public Housing Development

On June 16, 1995 (60 FR 31842), HUD published a NOFA that announced the availability of $600,278,866 for public housing development, of which $598,000,000 was derived from the FY 1995 appropriation and the remainder from carryover funds.

In the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995 (Pub. L. 104-19, approved July 27, 1995) (the Rescissions Act), Congress rescinded $620,600,000 of public housing development funds. The rescissions amount will be taken from FY 1995 funds, carryover funds, and recaptures.

The Rescissions Act provides that:

> [O]f the total rescinded under this heading, [Annual Contributions for Assisted Housing,] $700,600,000 shall be from amounts earmarked for development or acquisition costs of public housing (including $80,000,000 of funds for public housing for Indian families), except that such rescission shall not apply to funds for priority replacement housing for units demolished or disposed of (including units to be disposed of pursuant to a homeownership program under section 5(h) or title III of the United States Housing Act of 1937, as amended (hereinafter referred to as "the Act")) from the existing public housing inventory, as determined by the Secretary, or to funds related to litigation settlements or court orders, and the Secretary shall not be required to make any remaining funds available pursuant to section 213(d)(1)(A) of the Housing and Community Development Act of 1974 and notwithstanding any other provision of law, the Secretary may recapture unobligated funds for development or acquisition costs of public housing (including public housing for Indians) irrespective of the length of time funds have been reserved or of any time extension previously granted by the Secretary. * * *

Under the June 16, 1995 NOFA (60 FR 31842), applications were limited to the following funding categories:

(1) Replacements for demolition/disposition subject to section 18 of the United States Housing Act of 1937;

(2) Replacements for homeownership transfers under the HOPE I Program, and homeownership sales under section 5(h) of the U.S. Housing Act of 1937;

(3) Headquarters Reserve: Unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts; and

(4) "Other" applications.

Under the Rescissions Act, funds for priority replacement housing (including unforeseen housing needs resulting from natural and other disasters) and funds related to litigation settlements or court orders are not rescinded. Therefore, these are the only categories of Headquarters Reserve that can be funded. To the extent that HUD funds FY 1995 public housing development activities of this nature, however, the magnitude of the rescission dictates that HUD recapture unobligated prior year public housing funds (i.e., funds that have not been placed under an Annual Contributions Contract (ACC)), as described further below.

Because of the enactment of the Rescissions Act, HUD is now able to address only the first three categories of funding in the June 16, 1995 NOFA. To pay for the congressionally mandated FY 1995 funding actions under the first three NOFA categories, HUD will recapture prior year unobligated funds from funding awards not within congressionally protected categories.

The one-for-one replacement requirement of section 18 of the U.S. Housing Act of 1937 (the 1937 Act) was eliminated by the Rescissions Act for all public housing (but not Indian housing) demolition or disposition applications approved on or prior to September 30, 1995, including all previous section 18 approvals. Therefore, public housing (but not Indian housing) authorities are no longer required to provide replacement units for such demolition or disposition, nor is HUD obligated to make commitments to provide funding to meet that requirement. However, in keeping with the congressional directive that priority replacement housing funds are not rescinded, HUD intends to review FY 1995 replacement public housing applications and to consider funding those applications it views as best meeting the priorities stated in the NOFA.

Application Requirements

All provisions of the FY 1995 NOFA for public housing development, published on June 16, 1995, still apply except the references to category 4, "Other" applications. There will not be a "fair share" distribution of funds in FY 1995. HUD plans to destroy all category 4 "Other" applications submitted in response to the FY 1995 NOFA. Any public housing authorities (PHAs) interested in having their unfunded applications returned should contact the Office of Public Housing in the local HUD office.

The June 16, 1995 NOFA also provided that category 1 or 2 applications would not be funded unless the underlying demolition of disposition application was submitted by the time funding selections are made (60 FR 31845). The NOFA further provided that HUD may make a funding award if the underlying application had not yet been approved, if all aspects of the underlying application other than compliance with Section 412 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, were approvable by August 1, 1995 (See 60 FR 31845, section III.C.1, column 1.)

The last two sentences of section III.C.1. of the June 16, 1995 NOFA no longer apply and are replaced by the following three sentences:

> For those housing authorities that intend to submit an application for replacement housing under this NOFA, the underlying demolition or disposition application must be submitted by September 15, 1995, and must additionally be approvable by that date. The Department may make a funding award if the underlying application has not yet been approved, if all aspects of the underlying application other than compliance with section 412 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended, are approvable by that date. The Department reserves the right to extend to an individual housing authority that submits a demolition or disposition application by the extended deadline the ability to augment its application submission for items that the HUD staff finds are not complete after an initial review for approvability and that can be completed within the time specified by HUD.

II. Traditional Indian Housing Development Program

On January 20, 1995 (60 FR 4330), HUD published the NOFA for the Traditional Indian Housing Development Program for Fiscal Year 1995. The NOFA announced that up to $282,000,000 was available for new Indian Housing units. Of that amount, $20,000,000 was retained until July 1, 1995 for replacement of approved demolition/disposition units. The NOFA also included a table reflecting the percentage of total funds being made available to each of the Field Offices of Native American Programs (FONAPs) (60 FR 4331).

HUD has completed its funding decisions under this NOFA. With the exception of $1,819,131, all funds have been reserved under grants to Indian Housing Authorities.

As referenced under the Public Housing Development section of this notice, Congress rescinded $80,000,000 of funds for public housing for Indian families, which reduces the maximum authorized budget authority for FY 1995 to $202,000,000. Since HUD completed funding decisions prior to the enactment of the Rescissions Act, HUD must reduce awards made to Indian housing authorities by $78,180,869 (the amount of the rescission less unreserved funds).

HUD intends, as practical, to assign an amount to be rescinded to each FONAP based upon the original assignment of Indian Housing Development funds. Each FONAP, in consultation with representatives of client groups, will identify sources of unobligated funds equal to that FONAPs share of the rescission. If an individual FONAP has insufficient unobligated funds, any remaining funds required to meet the rescission requirements will be prorated to each remaining FONAP.

III. Demolition or Disposition of Public Housing

On January 18, 1995, HUD published in the **Federal Register** (60 FR 3706) a final rule for demolition or disposition of public housing projects. The final rule implemented section 121 of the Housing and Community Development Act of 1987, which amended section 18 of the 1937 Act, governing approvals of demolition and disposition of public and Indian housing. Section 121 provided that developments or portions of developments may not be demolished or disposed of unless the housing agency (HA) has developed a plan for the provision of a replacement unit for each unit involved. The Rescissions Act eliminates the requirement for one-for-one replacement of dwelling units in the case of any application for demolition or disposition of public housing (but not Indian housing) approved on or before September 30, 1995.

In accordance with section 1002 of the Rescissions Act, HAs that have applications for demolition, disposition, or conversion to homeownership of public housing dwelling units approved *on or before September 30, 1995,* including all previous approvals, are no longer required to provide one-for-one housing replacement, and HUD is not obligated to commit the funds necessary to carry out the replacement housing plan. The Rescissions Act provides that no application for replacement housing submitted by a public housing agency to implement a final order of a court issued, or a settlement approved by a court, before enactment of the Rescissions Act, shall be affected.

Review of Pending and New Demolition/Disposition Applications

HUD's review of all pending applications (those currently in Processing Centers or in Headquarters) and all new applications approved on or before September 30, 1995, will require compliance with all provisions of 24 CFR part 970, except that HUD will not require compliance with 24 CFR 970.11, Replacement Housing Plans. HAs submitting new demolition or disposition applications should be aware that if their applications are approved on or before September 30, 1995, replacement housing is not required.

However, as directed by Congress and stated in the public housing development section of this notice (section I, above), HUD will review and consider for funding FY 1995 applications for use of public housing development funds as priority replacement housing. As HUD will describe in another notice to be published soon in the **Federal Register**, certain Section 8 funds will also be made available for replacement of public housing units that are to be demolished or disposed of.

HAs with pending applications for demolition or disposition are encouraged to inform the residents, the related resident organizations, and the units of local government that approved the replacement housing plans of the changes brought about by the Rescissions Act.

Approved Demolition/Disposition Applications With Reserved Funding

For those HAs whose demolition or disposition applications were previously approved by HUD on or before September 30, 1995, for which there are public housing development funds or Section 8 15-year or 5-year certificates reserved (i.e., the replacement housing plan is either fully or partially funded), the HA must use the funds that have been reserved, and are not recaptured, in accordance with all applicable requirements, even though the replacement housing requirement is no longer applicable.

Other Provisions

Other provisions of the Rescissions Act may be addressed in future **Federal Register** notices.

IV. Public and Indian Housing Modernization

The Rescissions Act rescinds $815 million previously appropriated for FY 1995 modernization under Section 14 of the 1937 Act. The $815 million rescission will be achieved by the following:

Eliminating Choice in Management set-aside	$100,000,000
Reducing Lead-Based Paint Risk Assessment set-aside	4,203,655

Reducing Reserve for Emergencies and Natural Disasters	40,000,000
Reducing Comprehensive Improvement Assistance Program (CIAP) funds	70,398,701
Reducing Comprehensive Grant Program (CGP) funds	600,397,644
Total	815,000,000

Set-asides for Section 6(j) technical assistance to HAs, the Tenant Opportunity Program, inspection and technical assistance, and lead-based paint indemnification will not be affected by the rescission.

Expanded Use of Modernization

The Rescissions Act amends section 14 of the 1937 Act by adding a new subsection (q) that expands the eligible activities that may be funded with modernization assistance (CGP or CIAP). An HA may use modernization assistance for any eligible activity related to public and Indian housing that is currently authorized by the 1937 Act or applicable appropriations Acts for an HA. For example, new eligible items include:

- Development of additional units or replacement housing;
- Modernization activities related to the public or Indian housing portion of housing developments held in partnership, or cooperation with nonpublic housing entities (this would include development of replacement housing and receipt of operating subsidy); and
- Other activities related to public and Indian housing, including activities eligible under the Urban Revitalization Demonstration (Hope VI).

However, the Rescissions Act does not authorize use of modernization assistance for public and Indian housing operating assistance.

If the HA wishes to undertake any of these previously ineligible activities, the HA shall revise its Physical Needs Assessment or Management Needs Assessment, as well as the Annual Statement or Five-Year Action Plan, and shall conduct another public hearing and obtain another Local Government Statement. If the revised Annual Statement includes any of these previously ineligible activities, the HA is required to submit another Board Resolution, approving the revised Annual Statement.

The Rescissions Act also states that modernization funds must be used principally for physical improvements or replacement housing and for associated management improvements, except as otherwise approved by the Secretary.

Comprehensive Grant Program (CGP)

The effect of the Rescissions Act is to reduce by 19 percent the amount of CGP funds available in FY 1995, from $3,153,244,533 to $2,552,846,889. The Rescissions Act directs HUD "to take actions necessary to assure that such rescission is distributed among public housing authorities, as if such rescission occurred prior to the commencement of the fiscal year." To comply with the Rescissions Act and to ensure that each CGP agency receives its proportionate reduction, HUD has rerun the CGP formula using the revised appropriation. HUD sent each CGP agency a letter on August 9, 1995, informing it of the revised formula amount and operating procedures to implement the rescission.

Comprehensive Improvement Assistance Program (CIAP)

On March 17, 1995 (60 FR 14538), HUD published a NOFA announcing the availability of $369,715,143 for the Comprehensive Improvement Assistance Program. The effect of the Rescissions Act is to reduce by 19 percent the amount of CIAP funds available in FY 1995, down to $299,316,442. The fund assignment to each HUD Field Office will be reduced accordingly. Since FY 1995 CIAP funding decisions were not final at the time the Rescissions Act was signed, no adjustments to FY 1995 CIAP grants are necessary. FY 1995 CIAP emergency applications that are already approved are not affected by the rescission.

V. Public and Indian Housing Family Investment Centers

HUD published a NOFA for up to $60,000,000 for Public and Indian Housing Family Investment Centers (FICs) on February 15, 1995 (60 FR 8900). HUD also published NOFAs for the following set-asides from FIC funds: $3,500,000 for the Family Investment Centers After-School Program, March 14, 1995 (60 FR 13850); $10,000,000 for a Youth Development Initiative, May 30, 1995 (60 FR 28304); and $1,000,000 for the HOPE in Youth Pilot Demonstration, July 20, 1995 (60 FR 37552).

The Rescissions Act provides that $66,000,000 shall be rescinded from amounts earmarked for family investment centers. However, $5,209,500 has already been awarded and placed under contract either to correct errors in HUD's processing of the FY 1994 family investment center competition or as part of an after school demonstration program. HUD concluded upon review that two applicants were not funded during the FY 1994 family investment center competition due to an error. HUD funded these two applicants for a total of $1,709,500. In addition HUD funded four grantees for a total of $3,500,000 as part of an after school demonstration program. These funds cannot be recaptured because they are under contract.

HID will not award additional grants in FY 1995 under the Family Investment Centers program.

Dated: August 30, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–22237 Filed 9–1–95; 4:04 pm]

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Federal Register

Vol. 60, No. 173

Thursday, September 7, 1995

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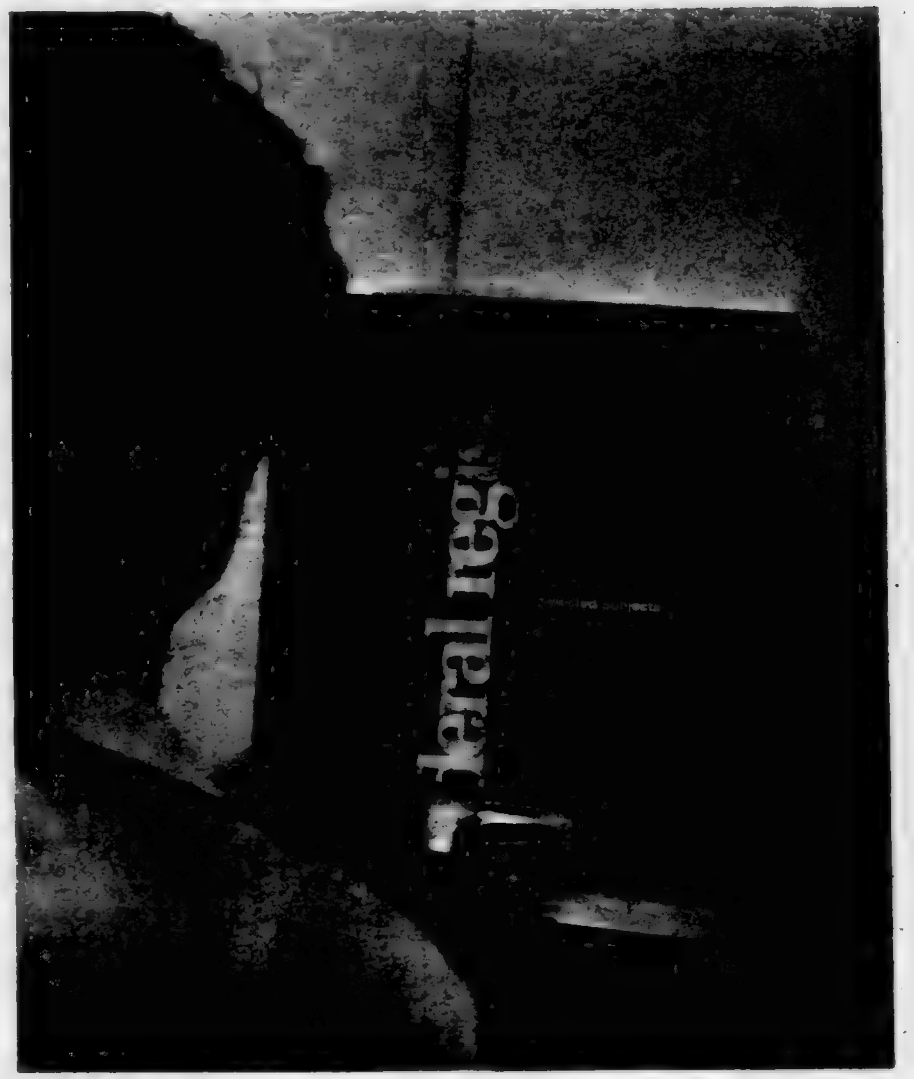

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AG73

Cost-of-Living Allowances (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing two regulatory changes in the nonforeign area cost-of-living allowance (COLA) program. One change will clarify a reference in the regulations to examples of criteria we use for comparing housing between the allowance areas and Washington, DC. The second change will allow the payment of foreign area post differentials without any corresponding offset from the nonforeign area COLA. OPM is also changing the timing of living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands. These changes will improve administration of the nonforeign area COLA program.

DATES: These regulations are effective October 10, 1995. These regulations are applicable on the first day of the first pay period beginning on or after October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Allan G. Hearne, (202) 606–2838.

SUPPLEMENTARY INFORMATION: Under section 5941 of title 5, United States Code, and Executive Order 10000, as amended, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLA's) when local living costs are substantially higher than those in the Washington, DC, area. Nonforeign area COLA's are paid in Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

OPM published proposed rules on May 11, 1995 (60 FR 25150), to improve administration of the program by—

(1) Permitting the survey and analysis of living costs at fewer income levels than the three levels currently used;

(2) Clarifying the types of housing units to be surveyed; and

(3) Allowing the payment of foreign area post differentials without any corresponding offset from the nonforeign area COLA.

OPM also announced for comment its intention to change the timing of living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands, although this change did not require a change in regulation.

There were five respondents to the proposed regulations. In the discussion that follows, we address the comments that we received on each issue and provide our response.

Number of Income Levels Surveyed

We received four comments on the proposal to use only one income level in the surveying of living costs. Each of the four commenters expressed concerns about the impact of the proposed change on COLA rates. One of the commenters favored continued use of the current three-level surveying methodology because of the possibility that the proposed change would not accurately reflect the actual costs of COLA area employees. The other three commenters presented arguments in favor of further study of the issue.

In light of these comments, we have decided not to make the change at this time. OPM will review the issue further in preparation for its report to Congress under the Treasury, Postal Service and General Government Appropriations Act, 1992 (Pub. L. 102–141), as amended. The comments received in response to the proposed regulation will be considered by OPM in its review.

Types of Housing Units Surveyed

We proposed to clarify a parenthetical phrase in current regulations concerning the types of housing units surveyed. We received four comments on this issue. Three commenters agreed with the change, although one said that if the cost index for any COLA area were unintentionally lowered, the change should be revoked. One commenter objected to the change, stating that new homes with their modern architectural preferences, greater amenities, and lower maintenance needs are more valuable than old homes. The commenter added that a comparison of new homes in Washington, DC, with old homes in COLA areas would not be fair and reasonable.

The parenthetical phrase "(type, size, age)" in 5 CFR § 591.205(b)(3) was intended to list *examples* of the standard shelter specifications that could be used for comparing housing in the COLA areas with the Washington, DC, area. Because we were not always able to obtain age data on the housing units surveyed, we proposed to remove "age" from the listing so as not to give the impression that age was in fact being used in the calculations.

In response to the comments, we are instead prefacing "type, size, age" with "e.g.," to make clear that these are examples of the specifications that could be used. We will continue to attempt to obtain age data and may apply age criteria for comparison of housing. If this proves feasible, we will provide a description of the exact procedures in a later **Federal Register** notice.

Nonforeign Area COLA and Foreign Post Differentials

We further proposed to eliminate the requirement in § 591.210(d) that an employee's *nonforeign* area COLA be reduced if the employee also receives a *foreign* area post differential and the two payments combined would otherwise exceed 25 percent of basic pay. This created a disincentive for employees in nonforeign allowance areas to accept long-term temporary assignments in foreign areas. The four comments we received on this proposal all agreed with the change.

Survey Timing

We also announced our intention to change the timing of the summer COLA surveys to correspond with the winter COLA surveys. This does not involve a regulatory change.

We received three comments on this proposal, all of which supported the change, although one respondent reserved full comment pending an opportunity to review the information upon which we based our decision. Therefore, in view of the potential benefit to the public and the

Government of this change and in anticipation of its minimal impact on COLA rates, OPM plans to conduct its living-cost surveys in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands in the first quarter of the calendar year beginning with the next survey, which will be conducted in the first quarter of calendar year 1996.

General Comments

One commenter expressed concern that OPM issued the proposed regulations at a time when a broad examination of the COLA program is scheduled. The commenter felt that some of the changes could have a substantial impact on the program and that the 30-day comment period was not enough time to fully analyze their effect.

Except for the proposed technical clarification relating to standard shelter specifications, all of the changes we proposed were based on comments and recommendations we received on previously published living-cost survey reports. In fact, this particular commenter had proposed, on several previous occasions, analyzing living costs at only one income level, and we had addressed this issue specifically in several previous **Federal Register** notices. Therefore, because we were proposing to adopt recommendations that commenters had previously provided on issues that were not new, we believed that 30 days was sufficient time to review and comment on our proposals. In the future, however, OPM will continue to provide, whenever practical, at least 60 days for interested parties to review and comment on proposals relating to the COLA program.

One commenter responded generally to the cost of housing and grocery items in Alaska and expressed concern about any reduction in COLA rates. These final regulations will have no effect on the COLA rates payable in Alaska. Furthermore, Pub. L. 102–141, as amended, prohibits any reductions in COLA rates through December 31, 1996.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.205, the second sentence in paragraph (b)(3) is revised to read as follows:

§ 591.205 Comparative cost index.

* * * * *

(b) * * *

(3) * * * Standard shelter specifications (e.g., type, size, age) are selected for each income level. * * *

* * * * *

§ 591.210 [Amended]

3. In § 591.210, paragraph (d) is removed and paragraphs (e), (f), and (g) are redesignated as paragraphs (d), (e), and (f), respectively.

[FR Doc. 95–22316 Filed 9–7–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV95–998–2FIR]

Amendment of Requirements Established Under Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts for 1995 and Subsequent Crop Years

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with one minor correction, the provisions of an interim final rule that amends for the 1995 peanut crop and subsequent crop years several provisions of the incoming, outgoing, and indemnification regulations established under Marketing Agreement No. 146. The changes recognize industry operating practices and reduce the burden on handlers without compromising the agreement's objective. The objective of the agreement is to ensure that only wholesome peanuts enter edible market channels. This final rule was unanimously recommended by the Peanut Administrative Committee (Committee), the administrative agency for this wholesomeness assurance program.

EFFECTIVE DATE: September 8, 1995.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, or FAX: (941) 299–5169; or Jim Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2170, or FAX: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 146 (7 CFR part 998) regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are about 75 handlers of peanuts subject to regulation under the agreement, and about 47,000 peanut producers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the

producers may be classified as small entities.

In 1994, the reported U.S. production, mostly covered under the agreement, was approximately 4.25 billion pounds of peanuts, a 25 percent increase from the short 1993 crop. The preliminary 1994 peanut crop value is $1.23 billion, up 19 percent from the 1993 crop value.

The objective of the agreement, in place since 1965, is to ensure that only wholesome peanuts enter edible market channels. About 70 percent of U.S. shellers (handlers), handling approximately 95 percent of the crop, have voluntarily signed the agreement. Under the agreement, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin contamination. Signatory handlers who comply with these requirements may be eligible for indemnification of losses for individual lots of their peanuts which test positive to aflatoxin. Indemnification and administrative costs are paid by assessments levied on handlers signatory to the agreement.

The Committee, which is composed of producers and handlers of peanuts, meets to review the rules and regulations effective on a continuous basis for peanuts regulated under the agreement. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

The Committee met on March 22 and 23, 1995, and unanimously recommended several changes to incoming, outgoing, and indemnification regulations for 1995 and subsequent crop peanuts.

The Committee recommended amending § 998.100 Incoming quality regulation by revising paragraph (c) to provide that commercially acquired lots be designated as Segregation 2 peanuts (rather than Segregation 1) by the Federal or Federal-State Inspection Service (Inspection Service) when exceeding .50 percent freeze damage and/or 14.49 percent loose shelled kernels (LSK's) when the Inspection Service is notified that a contract between the producer and the handler specifies these more restrictive tolerances.

Currently, § 998.100 (b) defines Segregation 1 peanuts as farmers' stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*. Section 998.100 (c) defines Segregation 2 peanuts as farmers' stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

The recommendation was not adopted by the Department. The current standards are rules of general applicability which apply to all peanuts without regard to any contractual agreements between individuals. Buyers and sellers are free to agree to a variety of contractual terms. However, such agreements should not have the effect of determining whether peanuts are Segregation 1 or 2 as those terms are defined in the regulations.

Previously, § 998.100(i) Shelled peanuts read "Handlers may acquire from other handlers, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation (§ 998.200). Any lot of such peanuts must be accompanied by a valid inspection certificate for the grade factors and must be positive lot identified. * * * Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler, and further disposition shall be regulated by paragraph (h)(1) of the Outgoing Quality Regulation (§ 998.200)".

This rule continues in effect the revision made in paragraph (i) of § 998.100 to allow movement of shelled peanuts, which originated from Segregation 1 peanuts, without inspection and positive lot identification (PLI), from one handler to another and does not require the receiving handler to hold and mill such peanuts separate from other receipts and acquisitions. The high degree of control that had been in place for such transactions is no longer needed because the peanut industry has changed from small locally owned plants to large corporations with strict quality control procedures. The Committee believes that relaxing the requirements will enable handlers to reduce processing and storage costs and increase movement of peanuts without jeopardizing the agreement's quality control and lot identification objectives.

Section 998.200 Outgoing quality regulation was amended by revising paragraphs (f) and (h)(1) to allow handlers to transfer peanuts to any handler or to domestic commercial storage without PLI and certification of meeting quality requirements when it leaves the first facility. Previously, § 998.200(f) Inter-plant transfer read "Any handler may transfer peanuts from one plant owned by him to another of his plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements, but such transfer shall be only to points within the same production area and ownership shall have been retained by the handler. Upon any transferred peanuts being disposed of for human consumption, they shall meet all the requirements applicable to such peanuts".

Prior to the issuance of the interim final rule, § 998.200(h) Peanuts failing quality requirements read "(1) Handlers may sell to or contract with other handlers, for further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section. Lots of peanuts disposed of in this manner must be accompanied by a valid grade inspection certificate, and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the seller and the buyer on a form provided by the Committee. Any such peanuts acquired by handlers pursuant to paragraph (i) of the Incoming Quality Regulation (§ 998.100) shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by the requirements specified heretofore or pursuant to paragraph (h)(3) hereinafter".

This high degree of control is no longer needed. As stated earlier, the peanut industry has changed dramatically from many small locally owned and operated plants to large or multinational corporations with strict quality control procedures located throughout the different production areas in the United States. Relaxing the regulation allows freer movement of peanuts, more efficient use of facilities, and reduced numbers of inspections, resulting in lower costs and a more competitive industry, without compromising the program's quality control objective.

Under paragraph (h) of § 998.200, peanuts failing quality requirements for disposition to human consumption outlets can be sent to blanchers for reconditioning, to domestic crushers, or exported (when peanuts meet fragmented requirements). In § 998.200 paragraph (h)(2) previously read "Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin: *Provided,* That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 2 percent foreign material. Prior to movement of such peanuts to a blancher, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and blanching of each such lot. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee * * *."

Paragraph (h)(4) of § 998.200 previously read "Handlers may contract with Committee approved remillers for remilling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation: *Provided,* That such lot of peanuts contain not in excess of 8 percent damage and minor defects combined or 10 percent fall through or 2 percent foreign material. Prior to movement of such peanuts under these provisions to a Committee approved remiller, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and remilling of each such lot. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a), and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts * * *"

Paragraph (h)(2) of § 998.200 was relaxed by the interim final rule to allow individual handlers to move failing peanuts containing not in excess of 10 percent total unshelled peanuts and damaged kernels or 10 percent foreign material to Committee approved blanchers, rather than reworking (blanching) at their own facilities. Also, paragraph (h)(4) of § 998.200 was similarly relaxed to allow individual handlers to move failing peanuts to Committee approved remillers for remilling shelled peanuts containing not in excess of 10 percent total unshelled peanuts and damaged kernels or 10 percent fall through or 10 percent foreign material.

However, before such peanuts go to human consumption outlets, the peanuts have to be certified as meeting human consumption outlet requirements (must at least meet minimum requirements specified in "OTHER EDIBLE QUALITY" (NON-INDEMNIFIABLE) GRADES—WHOLE KERNELS AND SPLITS table of § 998.200(a) and must also be certified "negative" (not more than 15 parts per billion) as to aflatoxin).

These changes recognize the current generally more efficient, higher technology processing capabilities of blanchers' and remillers' facilities and practices compared with the typical handler's facility and are intended to provide handlers more reconditioning flexibility. These changes tend to reduce limitations on handlers by allowing them to use blanchers' and remillers' generally more efficient grading and milling facilities to rework such peanuts, improve handlers' competitive position, especially with regards to imported peanuts, by better utilizing peanut supplies and existing facilities and increase peanut movement to higher value markets.

This action also continues in effect the revisions made to paragraph (j) of § 998.200 to exempt certain peanuts, including those of a lower quality than Segregation 1 for domestic crushing, from being assessed to lower the handlers' costs for these lower value peanuts, as authorized by §§ 998.48 Assessments and 998.31 Incoming regulation of the agreement.

The Committee also recommended that this exemption apply to Segregation 1 peanuts for crushing. However, the recommendation was not adopted by the Department because the agreement provides no authority for such an exemption and it would require an amendment to the agreement through formal rulemaking procedures to add such authority. Segregation 1 peanuts are sometimes commingled with Segregation 2 or 3 peanuts. In such cases, the Segregation 1 peanuts take on the identity of the lower quality Segregation 2 or 3 peanuts, because it dilutes the quality of higher quality Segregation 1 peanuts. In those cases, the quantity of former Segregation 1 peanuts which were commingled are exempt from program assessments.

Further, this action amends § 998.300 Terms and conditions of indemnification by establishing reduced indemnification values specified in paragraphs (e), (h), (i), and (x); and revising paragraph (z) by specifying a reduced ceiling and/or number of claims to "trigger" payments. The indemnification value of rejects and entire lots is reduced to 35 cents per pound from the previous 45 cents. The interim final rule failed to mention that the reduction in indemnification value also required changes to paragraph (e) of § 998.300. This inadvertent omission is corrected in this document.

These changes are intended to reduce the problem encountered by the Committee and the Department on 1993 crop indemnification claims when the indemnification payment ceiling and number of claims was significantly exceeded and the Department was asked for and approved the authority for the Committee to spend up to $500,000 from the indemnification reserve fund to pay the excess claims. These changes are expected to reduce by $2 million the cost to the Committee for indemnification payments, and reduce the possibility of handlers making indemnification, rather than the edible market, the primary market for peanuts when regular market prices are low. When the market is weak some handlers may send their peanuts directly to indemnification rather than incur the cost of reworking the peanuts to improve the quality of the lots enough to sell them in the edible market.

The unchanged portions of the incoming, outgoing, and indemnification regulations currently in effect for 1994 crop peanuts are left in

effect, as is, for 1995 and subsequent crop years.

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter.35), information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0067.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule which was published in the July 14, 1995, issue of the **Federal Register** (60 FR 36205), with one correction adding paragraph (e) to amended § 998.300, will tend to effectuate the declared policy of the Act. That rule provided that interested persons could file comments through August 14, 1995. No comments were received.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This action continues in effect relaxed requirements for peanut handlers, who voluntarily signed the agreement; and (2) the interim final rule provided that interested persons could file comments through August 14, 1995. No comments were received and the Department is adopting as a final rule the provisions of the interim final rule, with one correction.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending 7 CFR part 998 which was published at 60 FR 36205 on July 14, 1995, is adopted as a final rule and corrected as follows:

In amendatory item 4, on page 36208, in the third column, the 4th line, a reference to "(e)", is added between the word "paragraphs" and the letter "(h)".

Dated: September 1, 1995.

Ronald Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–22283 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Services

Consolidated Farm Service Agency

7 CFR Part 1951

RIN 0560–A

Disaster Set-Aside Program

AGENCY: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Consolidated Farm Service Agency (CFSA) is amending its regulations to implement the "Disaster Set-Aside (DSA) Program." This rule makes the Disaster Set-Aside Program a permanent servicing option available to all CFSA Farm Credit Programs borrowers affected by a natural disaster. Under this program, the distressed borrower will have the opportunity to move the next scheduled annual installment to the end of the loan term. The intended effect is to service disaster victims in an efficient and timely manner while keeping them in business.

EFFECTIVE DATE: Final rule effective September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Laris, Loan Officer, Consolidated Farm Service Agency, USDA, Farm Credit Programs Loan Servicing and Property Management Division, Room 5449, 14th Street and Independence Avenue SW., Washington, DC 20250–0774, Telephone (202) 720–1659.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR, part 3015, subpart V (48 FR 29115, June 24, 1983), Emergency Loans, Farm Ownership Loans, and Farm Operating Loans are excluded, with the exception of nonfarm enterprise activity, from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials. The Soil and Water Loan Program, however, is subject to and has complied with the provisions of Executive Order 12372.

Programs Affected

These changes affect the following credit programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans
10.418—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agency has determined that this action does not significantly affect the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the agency at 7 CFR subpart B of part 1900 and any additional regulations to be published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–

0163 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This final rule does not revise or impose any new information collection or recordkeeping requirements from those approved by OMB.

Discussion of Final Rule

The DSA Program was made available to CFSA Farm Credit (FC) Programs borrowers through an interim rule published in the **Federal Register** (59 FR 53079) October 21, 1994, with a 30 day comment period ending November 21, 1994. The program was designed to assist CFSA FC borrowers who were financially distressed because of a natural disaster that hit their area in 1993. The financial distress was nationwide due to heavy flooding in the Midwest and extreme drought in the South. The Agency estimated that considerably more borrowers were affected by disasters in 1993 than in any of the previous five years. In order to assist farmers suffering from delinquencies and possible farm failures, the Agency developed this servicing tool, DSA, that could provide immediate financial assistance without a massive amount of paperwork and restrictive requirements.

Under the DSA program, distressed borrowers may be permitted to move their next scheduled FC annual installment to the end of the loan term to be paid with the final installment. In order to be determined distressed, the borrower's net income must have been reduced as a result of the disaster causing insufficient income to be available to pay all family living and operating expenses, debts to other creditors, and CFSA FC payments. As of June 30, 1995, 6,800 borrowers affected by a 1993 disaster received DSA assistance.

Because of the overall success of the program and the many favorable comments received from borrowers, farm advocacy groups and others, the Agency has amended the regulation to allow DSA to be a permanent servicing tool available to all CFSA FC borrowers affected by a natural disaster.

Discussion of Revisions and Comments

In response to the interim rule, five respondents provided twenty-one comments, two respondents being from farm advocacy groups and three from employees within the Agency. Revisions were made for clarification in answer to comments. The regulations have also been revised to remove administrative procedures. These procedures will instead be available in the agency's internal instructions. Forms and exhibits are available in any CFSA local or state office.

Five comments were received in regard to extending the DSA program to assist borrowers affected by disasters after 1993. Three of the respondents recommended the program be available as a permanent servicing option following all natural disasters while one respondent recommended only extending the program to include 1994 disasters. Only one respondent recommended the program end after assisting farmers affected by the 1993 disasters. After careful consideration and favorable public response from farm advocacy groups and borrowers, the Agency has decided to make the DSA program available as a permanent servicing option to all borrowers affected by a disaster. By making this program available, the Agency believes that borrowers who would not be able to obtain emergency loans under subpart D of part 1945 of this chapter because of percent of loss or lack of collateral, or who cannot receive servicing under subpart S of part 1951, may be able to defer their FC payments in order to stay in business and avoid liquidation. It is also feasible to conclude that if the FC installments are set-aside, any Emergency loan the borrower is eligible for and still needs could be used to pay other creditors or provide for annual operating expenses. The Agency believes that borrowers eligible for this program will receive immediate financial relief from their FC payment obligations in a more expedient manner than under subpart S of part 1951. For example, the application process is simple and easy, unlike the primary loan servicing application under subpart S of part 1951 which requires extensive documentation by both the borrower and the servicing official. There are no additional security requirements to deter the borrower from requesting DSA and the Agency's position is more secure as no debt is written off. Also, based on the actual number of borrowers who received set-aside, the Agency was able to provide financial assistance within a few days whereas under subpart S of part 1951, it takes an average of 90 days to process an application and restructure a loan.

Because this program is promulgated pursuant to section 331A of the Consolidated Farm and Rural Development Act (CONACT) (see discussion in the interim rule at 59 Fed. Reg. 53080, October 21, 1994), the Agency does not consider the program to be a primary loan service program as defined in section 343(b)(3) of the CONACT, which would require the program to be part of the 1951–S process. This would be counterproductive to the purpose of the DSA program which is intended to provide immediate financial relief for one installment only. Moreover, this rule, like the interim rule in section 1951.957, states that borrowers cannot receive both 1951–T and 1951–S servicing when applications for both programs are pending. If DSA is granted, the one delinquent installment eligible for set-aside is serviced and the borrower is no longer delinquent. If 1951–S primary loan servicing is provided, the delinquency is cured by restructuring with or without debt writedown. At any event, as stated in section 1951.957(a)(2), borrowers may resubmit an application in accordance with 1951–S of this part for additional servicing after DSA has been received.

Since the DSA program will be made available to cover future disasters, the Agency has imposed a limitation that restricts future set-aside on a loan if there is already a payment still set-aside. If the borrower received set-aside on three of four loans and later requests set-aside because of another disaster, the borrower may only receive set-aside on the loan that does not already have a payment set-aside. If the set-aside is paid in full, or the loan with set-aside is later restructured under subpart S of part 1951, the set-aside will no longer exist and therefore the loan could again be considered for DSA under future disasters. This limitation was imposed to restrict a continual build up of payments being set-aside to the end of the loan when restructuring the debt under subpart S of part 1951 would have been the most effective servicing action.

One respondent recommended that attorneys for borrowers in bankruptcy be notified of the DSA program with a copy to the borrower. The Agency did not adopt this comment. The letter sent to the borrower is for information only. It is not specifically addressed to the borrower nor does it require the borrower to do anything that if not done, will cause the Agency to liquidate. Furthermore, borrowers in bankruptcy are not serviced under this subpart while under court jurisdiction. Agency regulations for servicing borrowers who have filed bankruptcy petitions are found in subpart A of part 1962.

One respondent suggested that the regulation and the informational letter be clarified to state that if a determination cannot be made based on the borrower's actual records, the borrower may have to provide evidence that all expenses and/or debts could not be paid as projected. The same respondent suggested that for borrowers whose crop is not harvested until the following year, that actual records for both the disaster year and the year in which the income is received be submitted to the Agency. The Agency adopted the first comment by adding a statement that other information may be requested by the servicing official when needed to make an eligibility determination. Instances when other information may be needed are when the borrower did not have a plan already prepared for the disaster year or the disaster affected the following year's production in which a plan or actual records ror that year may be needed. No changes were made as a result of the second comment since the regulation already requires the borrower to provide actual records for the production/marketing period in which the disaster occurred. This requirement should cover those commodities produced in one year and marketed the next. The Agency has also clarified in the eligibility requirements that consideration may be given to loss of income in the following year as a result of the disaster causing insufficient income to pay all expenses and debts for that year. An example may be that the borrower's feed was destroyed causing the borrower to purchase poorer quality feed which in turn caused a decrease in milk production.

Two respondents recommended the regulation be clarified to state that the borrower must have been a borrower at the time of the disaster and continued to be a borrower to the present time. Another respondent recommended that set-aside only be granted on loans outstanding at the time of the disaster. The Agency has adopted these suggestions by requiring that the borrower must have been a borrower and the loan being set-aside must have been outstanding at the time of the disaster. This clarification further enforces the intent of the program to assist borrowers who were affected by a disaster and were unable to make their payments; or if they were able to make their FC payments, they could not pay all their other creditors. If a borrower was not a borrower at the time of the disaster, then there were no payments to the Agency that could not be paid as a result of the disaster. If the Agency made a loan to the borrower after the disaster, a feasible farm and home plan would have been developed in order for the Agency to approve a loan and the affects of the disaster should have already been taken into consideration when the plan was developed. It is not the Agency's intent to make a loan to a borrower and then turn around and set-aside the first installment unless the loan was made prior to the disaster. The Agency has also clarified that borrowers paying under a debt settlement adjustment in accordance with subpart B of part 1956 are not eligible for DSA as these such borrowers are liquidating their debt, not continuing with it.

One respondent recommended that the regulation clarify that borrowers in bankruptcy who are still under court jurisdiction are considered in non-monetary default and are not eligible for the DSA program. The Agency has adopted this recommendation by clarifying that borrowers in bankruptcy or under court jurisdiction are considered in nonmonetary default. Borrowers under a confirmed plan who are still under court jurisdiction may obtain similar type servicing with a modification of their bankruptcy plan through the bankruptcy court as set forth in subpart A of part 1962. The Agency chose to exclude borrowers in bankruptcy from this subpart's servicing because the intent of the program was to expedite the servicing process to resolve the borrower's immediate financial distress. If the borrower is in bankruptcy, court approval is needed, thereby causing additional delays in servicing the borrower.

One respondent recommended an exception to allow borrowers who were restructured after the disaster to receive DSA if the restructure did not take into account the impact of the reduction in income or increase in expenses caused by the disaster. In other words, the impact was not known until harvest season and therefore the restructure did not cure the borrower's financial distress caused by the disaster. While this comment may be well taken since the DSA program was not available until October 21, 1994, these borrowers situations should have already been resolved through the exception authority or considered for 1951–S servicing. Therefore, the Agency did not revise its regulations to incorporate this specific exception. Because the Agency believes that there will be few of these cases in the future, it prefers to rely on its general exception authority contained in section 1951.959 for those few cases which may arise.

One respondent recommended that borrowers who received a confirmed bankruptcy plan after the disaster and are no longer under court jurisdiction should not be eligible for DSA as this is similar to a borrower being restructured under subpart S of part 1951. The Agency did not adopt this comment because generally speaking it has been the Agency's policy to recognize that the Bankruptcy Code provides entirely different relief than the Agency's regulations. For example, section 1951.909(e)(4)(vi) states that a writedown received in bankruptcy will not count toward a borrower's lifetime limit of one writedown nor will it count in the $300,000 per borrower limit.

Three respondents recommended the Agency allow up to the third annual installment to be set-aside in the event the borrower has already paid the installment due after the disaster and the very next installment. The Agency understands the concerns of the respondents. The regulation was published in late October 1994 with borrowers being notified soon thereafter. By this date, many borrowers who were affected by the disaster had already paid their installment due after the 1993 disaster, such as their January 1, 1994 installment, and because they were on an assignment to pay periodic payments throughout the year such as from milk production or hog sales, their January 1, 1995 installment was paid or almost paid by the time the regulation was issued. The same is true for borrowers not on an assignment who paid early in the year from production sales. It is understandable that even though the FC payments were paid, they still may not have been able to pay their other creditors because of the loss they suffered from the 1993 disaster. Borrowers not on an assignment or who did not pay early received full benefit of the DSA program because the income they received was paid to other creditors instead of paying their FC payments. Therefore, in order to provide all borrowers recovering from a disaster with the same opportunity to apply and receive DSA, the Agency has revised the regulations to allow borrowers who were affected by a disaster in 1994 to set-aside the next installment due, up to the third installment due after the disaster occurred. For all disasters thereafter, only the installment due immediately after the disaster or the very next one after that will be set-aside.

Two respondents recommended that the regulation be clarified to limit the amount set-aside to the amount the borrower cannot pay or by how much the borrower needs set-aside to develop a feasible cash flow for the next year. This is consistent with subpart B of part 1924 in which the borrower must pay the FC payments if able to do so, and subpart A of part 1962 for required use of security proceeds. The Agency has adopted this comment by limiting the amount to be set-aside by the lesser of the amount the borrower was unable to pay CFSA during the production/

marketing period in which the disaster occurred, or the amount the borrower was unable to pay other creditors and/or expenses, rounded up to the nearest whole installment. Expenses which the borrower is unable to pay may include the following year's operating and family living expenses if the income or commodities lost from the disaster year would have been used for these purposes, or if normal income security from the disaster year is approved for release under subpart A of part 1962 or otherwise authorized under subpart B of part 1924 for these purposes. Under no circumstances will a portion of the installment be set-aside leaving a balance still due. The portion not set-aside must be paid by the borrower on or before the date exhibit A to FmHA Instruction 1951–T (available in any CFSA local or state office) is signed.

One respondent recommended that the regulation be revised to allow for at least 30 days for the borrower to sign the addendum instead of up to 30 days. This would allow the Agency some flexibility in cases where the Agency's approval is contingent upon the borrower doing something to be eligible, such as paying a portion of the FC payments from proceeds that may not be available until after the 30 day period expires. The Agency has adopted this comment by revising the regulation to allow the County Supervisor to provide for a longer period of time to sign the addendum not to exceed 90 days under extenuating circumstances.

Two comments were received from one respondent to revise the addendum to only state the total amount set-aside on the loan since the Agency's accounting system does not allow the servicing official to calculate the amount of principal and interest that can be set-aside, and to state that if the borrower receives set-aside, the borrower's primary and preservation loan servicing application will be withdrawn, instead of just the primary loan servicing application. The Agency has adopted these comments.

The Agency also added another condition for cancelling and reversing DSA. The interim rule required cancellation when the borrower is later restructured with primary loan servicing. It also allowed for reversal of the DSA prior to the first scheduled annual installment coming due after the DSA is granted when a writedown, buyout, or operating loan assistance is needed. This rule requires cancellation when it is determined that the DSA was unauthorized because it was not provided in accordance with these regulations. If the Agency cancels DSA because the assistance was unauthorized, borrowers will be notified of the reasons for the decision, and provided with an opportunity to appeal. By reserving the authority to cancel DSA when it is unauthorized, the Agency is clarifying inherent Government authority to reverse transactions which are not in accordance with existing law. The Agency has discovered several instances of unauthorized assistance under the interim rule. It is in the public interest to correct these errors.

The Agency has also removed all reference to the 1993 disaster year from this rule since the time period for borrowers affected by a 1993 disaster has passed. (The interim rule allowed until July 1, 1995 to apply). Borrowers affected by a 1994 disaster through the date the final rule is published will have 8 months from the date they are notified of DSA to apply. For all future disasters, borrowers will have 8 months from the date the county is designated a disaster area, which is consistent with the time period to apply for an Emergency Loan in accordance with subpart A of part 1945.

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt restructuring.

Accordingly, part 1951, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

2. Subpart T, §§ 1951.951 through 1951.1000, is revised to read as follows:

PART 1951—SERVICING AND COLLECTIONS

Subpart T—Disaster Set-Aside Program

Sec.
1951.951 Purpose.
1951.952 General.
1951.953 Notification and request for DSA.
1951.954 Eligibility and loan limitation requirements.
1951.955 –1951.956 [Reserved]
1951.957 Eligibility determination and processing.
1951.958 Cancellation and reversal of DSA.
1951.959 Exception authority.
1951.960 –1951.999 [Reserved]
1951.1000 OMB control number.

Subpart T—Disaster Set-Aside Program

§ 1951.951 Purpose.

This subpart sets forth the policies and procedures for the Disaster Set-Aside (DSA) Program. The DSA program is available to Farm Credit (FC) Programs borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster. FC loans that may be serviced under this subpart include Farm Ownership (FO), Operating (OL), Soil and Water (SW), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Economic Opportunity (EO), Softwood Timber (ST), Recreation (RL), and Rural Housing loans for farm service buildings (RHF). Nonprogram (NP) farm type loans may be serviced under this subpart for borrowers who also have FC loans.

§ 1951.952 General.

DSA is a program whereby borrowers who are current or not more than one installment behind on any and all FC loans may be permitted to move one scheduled annual installment for each eligible FC loan to the end of the loan term. The intent of this program is to relieve some of the borrower's immediate financial stress caused by the disaster and avoid foreclosure by the Government. DSA is not intended to circumvent the servicing available under subpart S of this part.

§ 1951.953 Notification and request for DSA.

(a) *Notification.* The Consolidated Farm Service Agency (CFSA) servicing office will notify FC borrowers of the availability of DSA and how to apply within 30 days from the date the servicing office is notified of the disaster designation as determined in accordance with subpart A of part 1945. Only FC borrowers who were borrowers at the time of the disaster and operated a farm or ranch in a county designated a disaster area or contiguous county will be notified. Those borrowers whose FC loan has been accelerated, restructured after the disaster, or who only have NP loans will not be notified. Notification of the DSA program will not affect the notification requirements contained in subpart S of this part.

(b) *Deadline to apply.* All FC borrowers liable for the debt must request DSA within 8 months from the date the disaster was designated, except borrowers affected by a disaster occurring in years 1994 and 1995 where counties or contiguous counties were designated prior to the date of this subpart will have 8 months from the date of DSA notification. Borrowers may only be considered for DSA one time for each disaster.

(c) *Information needed to apply.*

(1) A written request for DSA signed by all parties liable for the debt; and

(2) Actual production, income, and expense records for the production and marketing period in which the disaster occurred. Other information may be requested by the servicing official when needed to make an eligibility determination.

§ 1951.954 Eligibility and loan limitation requirements.

(a) *Eligibility requirements.* The following requirements must be met to be eligible for DSA:

(1) The borrower must have operated a farm or ranch in a county designated a disaster area or a county contiguous to such an area. The borrower must have been a borrower and operated the farm or ranch at the time of the disaster.

(2) The borrower must have acted in good faith as defined in § 1951.906 of subpart S of this part.

(3) All nonmonetary defaults must have been resolved. This means that even though the borrower has acted in good faith, the borrower may still be in default for reasons, such as, but not limited to: no longer farming, prior lienholder foreclosure, bankruptcy or under court jurisdiction, not properly maintaining chattel and real estate security, not properly accounting for the sale of security, or not carrying out any other agreement made with the Agency.

(4) The borrower must be current or not more than one installment behind on any and all FC loans at the time the scheduled installment will be set-aside. Borrowers paying under a debt settlement adjustment agreement in accordance with subpart B of part 1956 are not eligible.

(5) As a direct result of the disaster, sufficient income was not available to pay all family living and operating expenses, debts to other creditors, and CFSA. This determination will be based on the borrower's actual production and income and expense records for the disaster year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of the disaster. Consideration will also be given to insufficient income for the next production and marketing period following the disaster if the borrower establishes that production will be reduced or expenses increased as a result of the disaster.

(6) After the scheduled installments are set-aside, all FC and NP farm type loans must be current.

(7) The borrower's FC loan has not been accelerated nor has the borrower's debt been restructured under subpart S of this part since the disaster occurred.

(b) *Loan limitation requirements.*

(1) The loan must have been outstanding at the time of the disaster.

(2) Only one unpaid installment for each FC loan may be set-aside. If there is an installment still set-aside from a previous disaster, the loan is not eligible for DSA. If the set-aside is later paid in full, or cancelled through restructuring under subpart S of part 1951, the set-aside will no longer exist and therefore the loan may be considered for DSA under future disasters.

(3) The term remaining on the loan receiving DSA equals or exceeds 2 years from the due date of the installment being set-aside.

(4) The amount set-aside shall be limited to the lesser of the amount the borrower is unable to pay CFSA from the production and marketing period in which the disaster occurred, or the amount the borrower is unable to pay other creditors and/or expenses rounded up to the nearest whole installment. Expenses which the borrower is unable to pay may include the following year's operating and family living expenses if the income or commodities lost from the disaster year would have been used for these purposes, or if normal income security from the disaster year is approved for release under subpart A of 7 CFR part 1962 or otherwise authorized under subpart B of 7 CFR part 1924 for these purposes. Under no circumstances will a portion of the installment be set-aside leaving a balance still due. The portion not set-aside must be paid by the borrower on or before the date exhibit A of FmHA Instruction 1951–T (available in any CFSA office) is signed.

(5) The installment that may be set-aside is limited to the first scheduled annual installment due immediately after the disaster occurred, unless that installment is paid, then the next scheduled annual installment after that may be set-aside. For borrowers affected by a 1994 disaster who already paid both of these installments, the third scheduled installment to come due after the disaster may be set-aside.

(6) The amount set-aside will be the unpaid balance remaining on the installment at the time the borrower signs exhibit A of FmHA Instruction 1951–T (available in any CFSA office.) This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date taking into consideration any payments applied to principal and interest since the due date. Recoverable cost items charged to FO, SW, and RHF loans may be set-aside with the annual installment. Cost items identified with a loan number different from the parent loan cannot be set-aside.

§§ 1951.955–1951.956 [Reserved]

§ 1951.957 Eligibility determination and processing.

(a) *Eligibility determination.* Upon receipt of a DSA request, the County Supervisor will determine whether the borrower meets the requirements set forth in 1951.954. Approval shall be contingent upon the borrower's continuing eligibility through the signing of Exhibit A.

(1) The borrower has up to 30 days to sign exhibit A of FmHA Instruction 1951–T (available in any CFSA office), for each loan installment set-aside. The County Supervisor may provide for a longer period of time not to exceed 90 days under extenuating circumstances, including but not limited to situations where the Agency's approval is contingent upon the borrower doing something to be eligible, such as paying a portion of the FC payments from proceeds that may not be available until after the 30 day period.

(2) Pending requests for primary loan servicing will continue to be considered in accordance with subpart S of this part. However, borrowers are not eligible for servicing under both programs. The application for the program not received will automatically be withdrawn at the time the installment is set-aside or the loan restructured, whichever is applicable. The automatic withdrawal is not appealable because the borrower is no longer delinquent. If the borrower again becomes delinquent or in financial distress, or requests primary loan servicing, the borrower will be notified or the request processed in accordance with subpart S of this part.

(b) *Processing.*

(1) [Reserved.]

(2) Interest will accrue on any principal amount set-aside at the same rate charged the non-set-aside portion. Interest will not accrue on the interest portion set-aside. Limited resource interest rate changes will affect the principal set-aside.

(3) The amount set-aside, including interest accrual on any principal set-aside, will be due on or before the final due date of the loan.

(4) There are no additional security requirements attached to the DSA program. All existing security instruments will remain in effect.

(5) [Reserved.]

(6) [Reserved.]

(7) Payments applied to the amount set-aside will be applied first to interest and then principal.

(c) *Adverse determination.* If the borrower becomes more than one installment behind on any FC loan while processing the DSA request, or while an appeal is being considered, and the second installment cannot be paid current prior to exhibit A of FmHA Instruction 1951–T (available in any CFSA office) being signed, the DSA request will be denied.

§ 1951.958 Cancellation and reversal of DSA.

(a) *Reasons for cancellation.* The set-aside may be reversed and exhibit A of FmHA Instruction 1951–T cancelled under the following described situations:

(1) The loan is later restructured with primary loan servicing, (the total unpaid balance must be restructured);

(2) If prior to the first scheduled installment due date after set-aside, the servicing official determines that the current borrower, if delinquent, would qualify for a writedown or net recovery buyout in accordance with subpart S of part 1951, or operating loan assistance in accordance with § 1941.14 of subpart A of 7 CFR part 1941; or

(3) When it has been determined that the borrower was provided unauthorized DSA assistance. (The set-aside will be cancelled after all appeal rights are exhausted. The set-aside will be removed from the account and the payment terms of the original promissory note will be retained as if DSA was never granted. Borrowers financially distressed or delinquent after reversal of the set-aside will be serviced in accordance with subpart S of this part).

(b) Reserved.

§ 1951.959 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if it is determined that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority upon the request of the State Director with the recommendation of the Deputy Administrator for Farm Credit Programs, or upon request initiated by the Deputy Administrator for Farm Credit Programs.

§§ 1951.960–1951.999 [Reserved]

§ 1951.1000 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0163. Public reporting burden for this collection of information is estimated to be 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office OIRM, Room 404–W, Washington DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0163), Washington, DC 20503.

Dated: August 31, 1995.

Eugene Moos,

Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 95–22228 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–10; Amendment 39–9346; AD 95–17–15]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–45/-50 series turbofan engines, that requires an initial and repetitive on-wing visual inspection of the side links of the five-link forward mount assembly for cracks, and replacement of the side links and pylon attachment bolts, and inspection of the fail-safe bolt and platform lug, if the side links are found cracked. This AD also requires a shop-level refurbishment of the side links as a terminating action to the on-wing inspection program. This amendment is prompted by four reports of cracked side links detected during routine engine shop visits. The actions specified by this AD are intended to prevent a side link fracture, which could result in the failure of the second side link, or the forward engine mount pylon attachment bolts, and possible separation of the engine from the aircraft.

DATES: Effective October 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7136; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/-50 series turbofan engines was published in the **Federal Register** on April 6, 1995 (60 FR 17487). That action proposed to require an initial and repetitive on-wing visual inspection of the side links of the five-link forward mount assembly for cracks, and replacement of the side links and pylon attachment bolts, and inspection of the fail-safe bolt and platform lug, if side links are found cracked. That proposal also would require a shop-level refurbishment of the side links as a terminating action to the on-wing inspection program. The actions would be required to be accomplished in accordance with GE Aircraft Engines CF6–50 Service Bulletin No. 72–1092, dated November 18, 1994.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The one commenter states that the requirement to refurbish the side link at the next engine shop visit after effective date of the AD identified in paragraph (b) should be extended so that their current maintenance program is not disrupted.

The commenter further feels that the initial and repetitive inspection program will be sufficient to meet the safety objectives of the AD, and therefore considers the refurbishment to be optional. The FAA does not concur. The FAA has determined that the refurbishment compliance schedule fairly and reasonably balances the safety need to eliminate the unsafe condition from the fleet as quickly as possible with the operators' need to avoid unscheduled maintenance actions. The initial and repetitive inspections were intended as an interim corrective action only, and in order to meet the safety objectives of the AD, the refurbishment was deemed necessary. Individual operators who believe their circumstances warrant relief from the compliance schedule may submit requests for alternative methods of compliance or adjustments to the compliance times.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 220 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 7.5 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. The FAA has estimated that only a small percentage of parts will actually require replacement as a result of this AD, and therefore, has determined the parts cost to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–17–15 General Electric Company: Amendment 39–9346. Docket 95–ANE–10.

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines installed on, but not limited to, Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent a side link fracture, which could result in failure of the second side link, or the forward engine mount pylon attachment bolts, and possible separation of the engine from the aircraft, accomplish the following:

(a) Inspect left-hand side links, Part Numbers (P/N) 9204M94P01, 9204M94P03, and 9346M99P01, and right-hand side links, P/N's 9204M94P02, 9204M94P04, and 9346M99P02, that have not had the side link refurbishment done in accordance with GE CF6–50 Task Numbered Shop Manual, GEK 50481, Chapter 72–23–11, including Temporary Revision No. 72–0821 and 72–0822, both dated November 1, 1994, as follows:

(1) For side links that have not been previously inspected in accordance with GE Aircraft Engines (GEAE) CF6–50 Service Bulletin (SB) No. 72–1092, dated November 18, 1994, inspect in accordance with paragraph 2.A of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, prior to accumulating 350 cycles in service (CIS), or 750 hours time in service (TIS), after the effective date of this AD, whichever occurs earlier.

(2) For side links that have been previously inspected in accordance with GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, inspect in accordance with paragraph 2.A of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, prior to accumulating 350 CIS, or 750 hours TIS since inspected in accordance with GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, whichever occurs earlier.

(3) Thereafter, inspect in accordance with paragraph 2.A of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, at intervals not to exceed 350 CIS, or 750 hours TIS since the last inspection, whichever occurs earlier.

(4) If side links are found cracked, replace the cracked side links and pylon attachment bolts with serviceable parts, and inspect the fail-safe bolt and platform lug in accordance with paragraph 2.B of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994, prior to further flight.

(b) Refurbish the left-hand and right-hand side links identified in paragraph (a) of this AD at the next engine shop visit after the effective date of this AD in accordance with paragraph 2.C of GEAE CF6–50 SB No. 72–1092, dated November 18, 1994. Refurbishment of side links in accordance with this paragraph constitutes terminating action to the on-wing inspection requirements of paragraph (a) of this AD.

(c) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of the fan and core modules.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) The actions required by this AD shall be done in accordance with the following service bulletin:

Document No.	Pages	Date
GEAE CF6–50 SB No. 72–1092.	1–7	Nov. 18, 1994.

Total Pages: 7.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 10, 1995.

Issued in Burlington, Massachusetts, on August 15, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–20849 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–ANE–41; Amendment 39–9347; AD 95–17–16]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–80A series turbofan engines, that requires an initial and repetitive on-wing eddy current inspection or an on-wing spot fluorescent penetrant inspection of the compressor rear frame (CRF) midflange for cracks, and replacement, if necessary, with serviceable parts. This amendment also requires removal from service of certain CRF's as a terminating action to the on-wing inspection program. This amendment is prompted by a report of a CRF separation that resulted in a rejected takeoff. The actions specified by this AD are intended to prevent a CRF separation, which could result in a rejected takeoff and damage to the aircraft.

DATES: Effective November 7, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 7, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7136; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80A series turbofan engines was published in the **Federal Register** on February 22, 1995 (60 FR 9792). That action proposed to require an initial and repetitive on-wing eddy current inspection or on- wing spot fluorescent penetrant inspection of the compressor rear frame (CRF) midflange for cracks, and replacement, if necessary, with serviceable parts. This action also proposed to require removal from service of non-modified CRF's as a terminating action to the on-wing inspection program. The actions would be required to be accomplished in accordance with GE CF6–80A Service Bulletin (SB) No. 72-593, Revision 2, dated March 19, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters request that the FAA move the compliance end date ahead one year to December 31, 1997. One commenter based that request on that commenter's planned acquisition of some affected engines that have not undergone the required modifications. The FAA does not concur. The commenters all recognize and accept the FAA's determination that AD action is necessary. The stated reasons for the requested extension in complying with the AD is the added cost of non-scheduled engine removals to perform the required modifications, and since the on-wing inspections have been successful in detecting cracks to date. The FAA has already considered the fleet-wide costs to operators in complying with this AD. In the normal course of that analysis, the FAA has determined that December 31, 1996, fairly and reasonably balances the safety need to eliminate this unsafe condition from the fleet as quickly as possible with operators' needs to avoid unscheduled maintenance actions. Individual operators who believe their circumstances warrant relief from this compliance schedule may submit requests for alternative methods of compliance or adjustments to the compliance times.

One commenter requests that the FAA broaden its economic analysis to include items beyond direct labor and parts costs to accomplish the required actions of the AD, such as maintenance scheduling costs. The FAA does not concur. In making a finding that an unsafe condition exists, the FAA has determined that the level of safety attained by the approved type design is no longer achieved, and the required actions are necessary to restore that level of safety. Because the type design must maintain that level of safety, necessary actions to restore that level of safety do not add additional regulatory requirements, and do not require a full cost-benefit analysis. The cost analysis is therefore limited to the direct costs of performing the required actions to restore the type design to that level of safety. When establishing compliance times, however, the FAA does try to strike a balance between the need to restore the type design to its certified level of safety with operators' need to avoid unscheduled maintenance actions.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 81 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 85 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $20,644 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,085,264.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–17–16 General Electric Company: Amendment 39–9347. Docket 94–ANE–41.

Applicability: General Electric Company (GE) CF6–80A series turbofan engines installed on, but not limited to, Airbus A310 series and Boeing 767 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent a compressor rear frame (CRF) separation, which could result in a rejected takeoff and damage to the aircraft, accomplish the following:

(a) Inspect CRF, Part Numbers (P/N) 9283M77G07, 9283M77G08, 9283M77G09, 9283M77G11, 9283M77G14, 7283M77G15, 9283M77G16, 9283M77G17, 9283M77G18, 9283M77G19, 1338M77G01, 1338M77G02, 1338M77G03, 1338M77G04, 1338M77G05, and 1338M77G06, that have not accomplished the midflange rework or replacement in accordance with any revision level of GE CF6–80A Service Bulletin (SB) No. 72–600 or 72–611, prior to the effective date of this AD, as follows:

(1) Perform an on-wing eddy current inspection (ECI) or an on-wing spot fluorescent penetrant inspection (FPI) of the CRF midflange for cracks in accordance with the Accomplishment Instructions and the schedule outlined in Table 1 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992, or within 1,000 cycles in service since the last shop level FPI, whichever occurs later, after the effective date of this AD.

(2) Thereafter, reinspect the CRF midflange for cracks in accordance with the Accomplishment Instructions and schedule outlined in Table 2 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992.

(3) Remove from service prior to further flight CRF's with cracked midflanges that exceed the on-wing serviceable limits specified in Table 2 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992, and replace with a serviceable part.

(b) Remove from service CRF's identified in paragraph (a) of this AD at the next piece-part exposure, or by December 31, 1996, whichever occurs earlier, and replace with a serviceable part. Removal and replacement of CRF's in accordance with this paragraph constitutes terminating action to the on-wing inspection requirements of paragraph (a) of this AD.

(c) For the purpose of this AD, a serviceable part is defined as a CRF that has accomplished the midflange rework or replacement in accordance with any revision level of GE CF6–80A SB No. 72–600 or 72–611.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following SB:

Document No.	Pages	Revision	Date
GE CF6–80A SB No. 72–593.	1–4	2	Mar. 19, 1992.
	5–8	1	Oct. 30, 1991.
	9	2	Mar. 19, 1992.
	10–12	1	Oct. 30, 1991.
	13–15	2	Mar. 19, 1992.
	16–22	1	Oct. 30, 1991.

Total Pages: 22.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 7, 1995.

Issued in Burlington, Massachusetts, on August 15, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–20850 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–13–AD; Amendment 39–9351; AD 95–18–03]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With BFGoodrich Off-Wing Ramp/Slide Evacuation Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires modication of the off-wing ramp/slide evacuation systems. This amendment is prompted by reports of punctured tubes on certain BFGoodrich off-wing ramp/slide evacuation systems installed on these airplanes. The actions specified by this AD are intended to prevent such tube punctures, which could delay or impede the evacuation of passengers during an emergency.

DATES: Effective October 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, Department 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 GFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on May 22, 1995 (60 FR 27054). That action proposed to require modication of the off-wing ramp/slide evacuation systems.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 992 Model BFGoodrich off-wing ramp/slide evacuation systems installed on 496 Model 767 series airplanes (2 evacuation systems per airplane) of the affected design in the worldwide fleet. The FAA estimates that 376 BFGoodrich off-wing ramp/slide evacuation systems installed on 188 Model 767 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $200 per evacuation system. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $278,240, or $740 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–18–03 Boeing: Amendment 39–9351. Docket 95–NM–13–AD.

Applicability: Model 767 series airplanes, equipped with BFGoodrich off-wing ramp/slide evacuation systems having part number (P/N) 101630, 101655, or 101656; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent tube puncture of the ramp/slide evacuation system, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the off-wing ramp/slide evacuation systems in accordance with Boeing Service Bulletin 767–25–0218, dated December 15, 1994, and BFGoodrich Service Bulletin 101630/655/656–25–269, dated October 28, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Boeing Service Bulletin 767–25–0218, dated December 15, 1994, and BFGoodrich Service Bulletin 101630/655/656–25–269, dated October 28, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport

Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 10, 1995.

Issued in Renton, Washington, on August 17, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20856 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–26–AD; Amendment 39–9350; AD 95–18–02]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes Equipped With Sundstrand Ram Air Turbine (RAT)/Hydraulic Pumps

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, that requires replacement of the hydraulic pressure transfer tube of the ram air turbine (RAT) system with a new hose assembly. This amendment is prompted by reports that, during flight tests, the hydraulic pressure transfer tube of the RAT cracked when the RAT was extended on a Model 767 series airplane due to overload of the hydraulic transfer tube. The actions specified by this AD are intended to prevent such overload, which could result in cracking of the hydraulic transfer tube. Such cracking subsequently could lead to the loss of hydraulic fluid of the center system and the inability of the RAT to pressurize the center system; this situation could lead to loss of all hydraulic system power in the event that power is lost in both engines.

DATES: Effective October 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathi Ishimaru, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (206) 227–2674; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 and 767 series airplanes was published in the **Federal Register** on May 1, 1995 (60 FR 21054). That action proposed to require replacement of the hydraulic pressure transfer tube of the ram air turbine (RAT) system with a new hose assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter notes that the description of the cause of the unsafe condition that appeared in the Discussion section of the preamble to the notice states that "* * * cracking has been attributed to overload due to mishandling or improper installation of the pressure transfer tubes on the strut of the RAT system." The commenter states that this description is inaccurate, since the overload condition could only occur as a result of maintenance action on in-service airplanes. The commenter suggests that a more accurate description would be "* * * cracking has been attributed to overload of the pressure transfer tube due to mishandling or improper installation during in-service RAT maintenance." The FAA concurs that the commenter's wording is more accurate; however, since the Discussion section is not restated in this final rule, no change to the final rule is necessary.

This commenter also provides further clarification of the unsafe condition described throughout the notice. That description states that "cracking of the hydraulic transfer tube, if not corrected, could result in loss of hydraulic fluid * * *" The commenter states that a more complete description of the unsafe condition would be "* * * overload of the hydraulic transfer tube, if not corrected, may cause the tube to crack and could result in loss of hydraulic fluid * * *" The FAA concurs and has revised all references to the unsafe condition accordingly throughout this final rule.

The same commenter further notes that the Discussion section of the preamble to the notice states that "such overloads are likely to have occurred on other tubes * * *" The commenter states that, since only one operator has reported cracking on two pressure transfer tubes, it does not provide a basis to conclude that overload is "likely" to occur on other airplanes. The commenter suggests that a more accurate description of this situation would be, "such overloads may have occurred on other tubes * * *" Further, the commenter states that testing has demonstrated that the RAT transfer tubes performed acceptably during an in-flight RAT deployment when shimmed in accordance with the maintenance manual. The FAA has reviewed the relevant data currently available. The FAA finds no basis to support the commenter's suggestion that the RAT transfer tubes perform acceptably when shimmed. In fact, the testing showed abnormally high stresses in the tube when the tube was shimmed in accordance with the maintenance manual. However, the FAA concurs that the commenter's suggested wording relative to the fact that overload conditions "may have occurred" is more accurate. Since the Discussion section is not restated in this final rule, no change to the final rule is necessary.

Additionally, this commenter points out a statement that appeared in the Discussion section of the preamble to the notice that reads, "since an unsafe condition has been identified that is likely to exist * * *" The commenter suggests that this phrase would be more accurate if it were changed to read, "since an unsafe condition has been identified that may exist * * *" The FAA does not concur. The phrasing used in that particular statement in the preamble is not accidental. Part 39.1, "Applicability," of the Federal Aviation Regulations (FAR) (14 CFR 39.1) states:

"This part prescribes airworthiness directives that apply to aircraft * * * when—

(a) An unsafe condition exists in a product; and

(b) That condition is likely to exist or develop in other products of the same type design."

Therefore, the finding that the condition "is likely to exist or develop" is necessary to ensure that the AD falls within the scope of part 39; its absence would arguably subject the FAA to legal challenge for inappropriately using the AD process to issue rules that do not meet the criteria for AD's. While it is understandable that a manufacturer would like to minimize any adverse implications regarding the safety of its products, the FAA reiterates that the purpose of an AD is to correct an identified unsafe condition in aircraft, regardless of where it is or what it is caused by. In essence, the AD serves to protect the flying public from the consequences of the unsafe condition. The AD also serves to protect the manufacturer from the liability that would be faced should the unsafe condition not be corrected.

Two commenters request that the compliance time be extended from the proposed 24 months to 36 months. One of these commenters states that such an extension will allow operators to accomplish the replacement during a regularly scheduled heavy maintenance visit and will allow time for procurement of additional parts.

The FAA does not concur with the commenters' request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required replacement within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. Further, the FAA estimates that it would take approximately 2 work hours per airplane to accomplish the replacement; therefore, the FAA has determined that a heavy maintenance visit is not required to accomplish the replacement. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are presented to justify such an adjustment.

One commenter requests that the proposed rule be revised to cite the latest revision of Boeing Alert Service Bulletin 767–29A0077. The FAA concurs. Since the issuance of the proposed rule, the FAA has reviewed and approved Revision 1, dated June 8, 1995, of that Boeing alert service bulletin. This revised service bulletin is essentially identical to the original version; the only relevant change in Revision 1 is a revision to the effectivity listing that removes the airplane having serial number 565. The FAA has revised paragraph (a) of the final rule to reflect the latest revision to the alert service bulletin as an additional source of service information. The FAA has also revised the applicability of the final rule to remove serial number 565 from those Model 767 series airplanes that are subject to the AD.

The same commenter requests that NOTE 3 of the proposal be revised to cite the latest revision of Sundstrand Service Bulletins 730814–29–9 and 729548–29–12. The FAA concurs. The FAA has reviewed and approved Sundstrand Service Bulletin 729548–29–12, Revision 3, dated March 31, 1995; and Sundstrand Service Bulletin 730814–29–9, Revision 2, dated March 31, 1995. These revised service bulletins are essentially identical to the corresponding earlier versions, but contain certain minor editorial changes. The FAA has revised NOTE 3 of the final rule to reflect the latest revision to the service bulletins as additional sources of service information.

Since issuance of the notice, the FAA also has reviewed and approved Sundstrand Service Bulletin 729548–29–14, Revision 1, dated May 3, 1995, and Sundstrand Service Bulletin 730814–29–11, Revision 1, dated May 3, 1995. These revised service bulletins are essentially identical to the corresponding earlier versions, but contain certain minor editorial changes. The FAA has revised NOTE 2 of the final rule to reflect these latest revisions to those service bulletins as additional sources of service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,215 Model 757 and 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 582 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $69,840, or $120 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–18–02 Boeing: Amendment 39–9350. Docket 95–NM–26–AD.

Applicability: Model 757 series airplanes having line positions 1 through 650 inclusive, and equipped with Sundstrand ram air turbine (RAT)/hydraulic pumps having part number (P/N) 730814 series, serial numbers 0001 through 0735 inclusive; and Model 767 series airplanes having line positions 1 through 564 inclusive, and equipped with Sundstrand RAT/hydraulic pumps having P/N 729548 series, serial numbers 0001 through 0620 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent overload of the hydraulic pressure transfer tube, which could result in cracking of the tube of the ram air turbine (RAT), and subsequently could lead to the loss of all center systems hydraulic fluid and the inability of the RAT to pressurize the center hydraulic system, accomplish the following:

(a) Within 24 months after the effective date of this AD, replace the hydraulic pressure transfer tube of the RAT system with a new hose assembly, in accordance with Boeing Alert Service Bulletin 757–29A0046, dated October 6, 1994 (for Model 757 series airplanes); or Boeing Alert Service Bulletin 767–29A0077, dated October 6, 1994, or Revision 1, dated June 8, 1995 (for Model 767 series airplanes); as applicable.

Note 2: Boeing Alert Service Bulletin 757–29A0046 references Sundstrand Service Bulletin 730814–29–11, dated November 3, 1994, or Revision 1, dated May 3, 1995; and Boeing Alert Service Bulletin 767–29A0077 references Sundstrand Service Bulletin 729548–29–14, dated November 3, 1994, or Revision 1, dated May 3, 1995; as additional sources of service information for procedures to replace the pressure tube.

Note 3: Modification of the hydraulic pressure transfer tube of the RAT system in accordance with Sundstrand Service Bulletin 730814–29–9, Revision 1, dated November 3, 1994, or Revision 2, dated March 31, 1995 (for Model 757 series airplanes); or Sundstrand Service Bulletin 729548–29–12, Revision 2, dated November 3, 1994, or Revision 3, dated March 31, 1995 (for Model 767 series airplanes); is considered acceptable for compliance with the modification requirements of paragraph (a) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Boeing Alert Service Bulletin 757–29A0046, dated October 6, 1994 (for Model 757 series airplanes); or in accordance with Boeing Alert Service Bulletin 767–29A0077, dated October 6, 1994, or Boeing Alert Service Bulletin 767–29A0077, Revision 1, dated June 8, 1995 (for Model 767 series airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 10, 1995.

Issued in Renton, Washington, on August 17, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20857 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–31–AD; Amendment 39–9352; AD 95–18–04]

Airworthiness Directives; Beech Model 400 and 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400 and 400A airplanes, that requires modification of the autopilot and rudder boost interlock. This amendment is prompted by a report indicating that the rudder boost system installed on these airplanes does not operate correctly during deployment of a thrust reverser. The actions specified by this AD are intended to prevent incorrect operation of the rudder boost system during deployment of a thrust reverser and to prevent the autopilot from exceeding certain bank angle limits; these conditions could result in reduced controllability of the airplane.

DATES: Effective October 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dale Vassalli, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4132; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech Model 400 and 400A airplanes was published in the **Federal Register** on May 4, 1995 (60 FR 22013). That action proposed to require modification of the autopilot and rudder boost interlock.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 92 Model 400 and 400A series airplanes of the affected design in the worldwide fleet. The FAA estimates that 69 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,360, or $1,440 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–18–04 Beech Aircraft Corporation: Amendment 39–9352. Docket 95–NM–31–AD.

Applicability: Model 400 airplanes, serial RJ–61; and Model 400A airplanes, serials RK–1 through RK–77 inclusive, and RK–79 through RK–92 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) At the next scheduled inspection, but no later than 200 hours time-in-service after the effective date of this AD, install an autopilot and rudder boost improvement kit in accordance with Beechcraft Service Bulletin No. 2533, dated October 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Beechcraft Service Bulletin No. 2533, dated October 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 10, 1995.

Issued in Renton, Washington, on August 22, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21256 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 552

RIN 1215–AA82

Application of the Fair Labor Standards Act to Domestic Service

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule revises regulations to incorporate changes necessitated by amendments to Title II of the Social Security Act which were enacted October 22, 1994, as Public Law 103–387 (Social Security Domestic Employment Reform Act), and makes other updating and technical revisions. A separate document published elsewhere in this issue reopens the comment period regarding the proposed revision to § 552.109, which was published in the **Federal Register** on December 30, 1993 (58 FR 69310), to clarify the minimum wage and overtime exemption under the Fair Labor Standards Act (FLSA) for certain employees of third-party employers who provide domestic companionship services.

DATES: This regulation is effective October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Acting Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room s–3506, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The general FLSA information collection requirements (including requirements contained in part 552) were approved by the Office of Management and Budget under the control number 1215–0017.

II. Background

The Department published a notice of proposed rulemaking in the **Federal Register** on December 30, 1993 (58 FR 69310), inviting public comments until February 28, 1994, on the following technical modifications to 29 CFR part 552:

(1) Revise § 552.100(a)(1) to delete references to former minimum wage levels that have been overtaken by subsequent statutory increases in the minimum wage since part 552 was last revised;

(2) Revise § 552.100(c) to reflect updated credits, in a percentage format, that can be taken by an employer for meals and lodging furnished to a domestic service employee;

(3) Revise § 552.101(a)(1) to change the reference "20 CFR 404.1027(j)" to "20 CFR 404.1057" pursuant to a redesignation in regulations issued under the Social Security Act;

(4) Revise § 552.105(a) to change the FLSA reference "section 3(s)(4)" to "section 3(s)(1)(B)" in accordance with the Fair Labor Standards Amendments of 1989, 103 Stat. 938;

(5) Revise § 552.2(b) to change the reference in the third sentence from "Section 7(1)" to "Section 7(l) (substituting a lower case letter "l" for the number "1" in the parentheses); and

(6) Revise the last sentence of § 552.104(b) to correct two spelling errors.

In addition, the Department invited public comments on a proposal to revise § 552.109 to clarify that, in order for the exemptions in FLSA sections 13(a)(15) and 13(b)(21) to apply, employees engaged in providing companionship services and live-in domestic service employees who are employed by a third-party employer or agency must also be "jointly" employed by the family or household using their services.

A total of 7 comments were received in response to the notice. All focused their remarks on the proposed revision to § 552.109 concerning joint employment and third-party employers. The Department is continuing to consider this particular proposal, and a separate document published elsewhere in this issue reopens and extends the comment period regarding the proposed revision to § 552.109.

III. Summary of Final Rule

A. Updates and Technical Revisions

No public comments were received on the updating and technical changes that were proposed in the December 1993 notice, and such revisions are adopted in the final rule as proposed.

B. Revisions Required by the "Social Security Domestic Employment Reform Act of 1994"

The Social Security Domestic Employment Reform Act of 1994 (Pub. L. 103–387, 108 Stat. 4071) was enacted into law on October 22, 1994. Among other things, this law amended section 3121(x) of the Internal Revenue Code of 1986 to change the "threshold" for withholding and paying social security taxes on domestic workers from $50 per quarter to $1,000 annually in 1995. In the case of years after 1995, the applicable $1000 threshold is to be indexed in $100 increments rounded down to the nearest $100. The new law also amended section 209(a)(6) (formerly designated as 209(g)) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) to exclude from the term "wages" cash remuneration paid by an employer for domestic service employment if the cash remuneration is less than the applicable dollar threshold as defined in section 3121(x) of the Internal Revenue Code of 1986.

As a consequence, the reference in § 552.2(b)(1) to FLSA's coverage of domestic service employees under section 6(f) of FLSA based on section 209(g) of the Social Security Act and to a $50 cash threshold must be modified to conform the regulatory language to the recent statutory changes. This revision of § 552.2(b)(1) is technical in nature and based on the Social Security Domestic Employment Reform Act of 1994 (Pub. L. 103–387, 108 Stat. 4071), about which the Department has no discretion under section 6(f) of the FLSA. Pursuant to 5 U.S.C. 553(b)(3) (A) and (B), this minor, clarifying revision does not require prior notice and comment.

Executive Order 12866/§ 202 of the Unfunded Mandates Reform Act or 1995

This final rule is not a "significant regulatory action" within the meaning of Executive Order 12866, nor does it require a section 202 statement under the Unfunded Mandates Reform Act of 1995. The revisions adopted in this rule are technical in nature or are otherwise required by a recent statutory enactment of the Congress. In any event, the revisions will not have a significant impact on the employment of domestic service employees. Accordingly, these changes are not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

This final rule will not have a significant economic impact on a substantial number of small entities. The changes being adopted in this rule simply conform the regulations to updates in related legislation and are technical in nature. Therefore, the rule is not expected to have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act. A regulatory flexibility analysis is not required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 552

Domestic service workers, Employment, Labor, Minimum wages, Overtime pay, Wages.

Accordingly, part 552 of title 29 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC, on this 31st day of August, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 552—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

1. The authority citation for part 552 is revised to read as follows:

Authority: Secs. 13(a)(15) and 13(b)(21) of the Fair Labor Standards Act, as amended (29 U.S.C. 213(a)(15), (b)(21)), 88 Stat. 62; Sec. 29(b) of the Fair Labor Standards Amendments of 1974 (Pub. L. 93–259, 88 Stat. 76), unless otherwise noted.

2. Section 552.2(b)(1) is revised to read as follows:

§ 552.2 Purpose and scope.

(a) * * *

(b) * * *

(1) If the employee's compensation for such services from his/her employer would constitute wages under section 209(a)(6) of title II of the Social Security Act, that is, if the cash remuneration during a calendar year is not less than $1,000 in 1995, or the amount designated for subsequent years pursuant to the adjustment provision in

section 3121(x) of the Internal Revenue Code of 1986; or

* * * * *

§ 552.2 [Amended]

3. In § 552.2, paragraph (b), the reference in the first sentence of the concluding text is revised to read "Section 7(l)" instead of "Section 7(1)" (substituting a lower case letter "l" for the number "1" in the parentheses).

4. In Section 552.100 (paragraphs (a)(1), (c) and (d) are revised to read as follows:

§ 552.100 Application of minimum wage and overtime provisions.

(a)(1) Domestic service employees must receive for employment in any household a minimum wage of not less than that required by section 6(a) of the Fair Labor Standards Act.

* * * * *

(c) For enforcement purposes, the Administrator will accept a credit taken by the employer of up to 37.5 percent of the statutory minimum hourly wage for a breakfast (if furnished), up to 50 percent of the statutory minimum hourly wage for a lunch (if furnished), and up to 62.5 percent of the statutory minimum hourly wage for a dinner (if furnished), which meal credits when combined do not in total exceed 150 percent of the statutory minimum hourly wage for any day. Nothing herein shall prevent employers from crediting themselves with the actual cost or fair value of furnishing meals, whichever is less, as determined in accordance with part 531 of this chapter, if such cost or fair value is different from the meal credits specified above: *Provided, however,* That employers keep, maintain and preserve (for a period of 3 years) the records on which they rely to justify such different cost figures.

(d) In the case of lodging furnished to live-in domestic service employees, the Administrator will accept a credit taken by the employer of up to seven and one-half times the statutory minimum hourly wage for each week lodging is furnished. Nothing herein shall prevent employers from crediting themselves with the actual cost or fair value of furnishing lodging, whichever is less, as determined in accordance with part 531 of this chapter, if such cost or fair value is different from the amount specified above, *provided however,* that employers keep, maintain, and preserve (for a period of 3 years) the records on which they rely to justify such different cost figures. In determining reasonable cost or fair value, the regulations and rulings in 29 CFR part 531 are applicable.

§ 552.101 [Amended]

5. In § 552.101, the parenthetical reference in the first sentence of paragraph (a) is revised to read "(20 CFR 404.1057)".

6. In § 552.104, paragraph (b) is revised to read as follows:

§ 552.104 Babysitting services performed on a casual basis.

* * * * *

(b) Employment in babysitting services would usually be on a "casual basis," whether performed for one or more employees, if such employment by all such employers does not exceed 20 hours per week in the aggregate. Employment in excess of these hours may still be on a "casual basis" if the excessive hours of employment are without regularity or are for irregular or intermittent periods. Employment in babysitting services shall also be deemed to be on a "casual basis" (regardless of the number of weekly hours worked by the babysitter) in the case of individuals whose vocations are not domestic service who accompany families for a vacation period to take care of the children if the duration of such employment does not exceed 6 weeks.

* * * * *

§ 552.105 [Amended]

7. In § 552.105, the reference in the fourth sentence of paragraph (a) is revised to read "section 3(s)(1)(B) of the Act * * *"

[FR Doc. 95–22141 Filed 9–7–95; 8:45 am]

BILLING CODE 4510–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 52–1–7109, PA 53–1–7110, PA 55–1–7111, PA 61–1–7112, PA 66–1–7113; FRL–5272–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NOx RACT and Synthetic Minor Permit Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on eleven major sources and establishes permit conditions to limit one source's emissions to below major source levels. The intended effect of this action is to approve source-specific plan approvals and operating permits, which establish the above-mentioned requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective November 7, 1995 unless notice is received on or before October 10, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On January 6, 1995, April 24, 1995 and May 31, 1995, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). The SIP revision consists of a group of plan approvals and operating permits for individual sources of volatile organic compounds and/or nitrogen oxides located in Pennsylvania. This rulemaking addresses those plan approvals and operating permits pertaining to the following sources: (1) PECO Energy—Eddystone, (2) Gilberton Power Company, (3) Bethlehem Steel Structural Products Corp., (4) Westwood Energy Properties, Inc., (5) PECO Energy Co.—Front Street, (6) Crawford Furniture Manufacturing Corp., (7) Schuylkill Energy Resources, (8) Panther Creek Partners, (9) Columbia Gas Transmission Co.—Milford, (10) Texas Eastern Transmission Corp.—Entriken, (11) Columbia Gas Transmission Corp.—Greencastle, (12) Lord Corporation. The other plan approvals and operating permits submitted together with these being approved today will be addressed in another rulemaking action.

Pursuant to section 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NOx sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in section 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The January 6, 1995, April 24, 1995 and May 31, 1995 Pennsylvania submittals that are the subject of this document are meant to satisfy the RACT requirements for eleven sources in Pennsylvania and to limit the potential VOC emissions at a source to below the major source size threshold in order to avoid RACT.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals and operating permits can be found in the docket and accompanying technical support document and will not be reiterated in this document. Briefly, EPA is approving one plan approval and fourteen operating permits as RACT and one operating permit as a revision to the Pennsylvania SIP to limit a source's emissions to below the major source threshold. Several of the plan approvals and operating permits contain conditions irrelevant to the determination of VOC or NOx RACT. Consequently, these provisions are not being included in this approval for VOC or NOx RACT.

RACT

EPA is approving the plan approval (PA 23–0017) and operating permit (OP 23–0017) for PECO Energy—Eddystone, located in Delaware County. PECO Energy—Eddystone is a utility and considered a major source of NOx emissions. EPA is approving the operating permit (OP 54–0004) for Gilberton Power Company, located in Schuylkill County. Gilberton Power is a utility and considered a major source of NOx emissions. EPA is approving four operating permits (OP 48–0010, OP 48–0013, OP 48–0014, and OP 48–0015) for Bethelehem Structural Products Corporation, located in Northampton County. Bethlehem Structural Products is a steel manufacturer and considered a major source of VOC and NOx emissions. EPA is approving the operating permit (OP 54–0006) for Westwood Energy Properties, Inc., located in Schuylkill County. Westwood Energy Properties, Inc. is a utility and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 46–0045) for PECO Energy Company—Front Street, located in Montgomery County. PECO Energy Company—Front Street is a utility with a natural gas combustion turbine and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 16–021) for Crawford Furniture Manufacturing Corporation, located in Clarion County. Crawford Furniture Manufacturing Corp. is a wood furniture manufacturer and is considered a major source of VOC emissions. EPA is approving the operating permit (OP 54–0003) for Schuylkill Energy Resources, located in Schuylkill County. Schuylkill Energy Resources is a cogeneration plant and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 13–0003) for Panther Creek Partners, located in Carbon County. Panther Creek Partners is a utility and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 52–0001) for Columbia Gas Transmission Company—Milford Compressor Station, located in Pike County. Columbia Gas Transmission Co.—Milford consists of twenty-seven (27) compressor stations and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 31–2003) for Texas Eastern Transmission Corporation—Entriken Compressor Station, located in Huntingdon County. Texas Eastern Transmission Corp. is a natural gas pipeline compressor station and is considered a major source of NOx emissions. EPA is approving the operating permit (OP 28–2003) for Columbia Gas Transmission Corporation—Greencastle Compressor Station, located in Franklin County. Columbia Gas Transmission Corp.—Greencastle is a compressor station and is considered a major source of NOx emissions. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available from the EPA Region III office. Several of the plan approvals/operating permits contain a provision that allows for future changes to the emission limitations based on CEM or other monitoring data. Since EPA cannot approve emission limitations that are not currently before it, any changes to the emission limitations as submitted on January 6, 1995, April 24, 1995 and May 31, 1995 to EPA must be resubmitted to and approved by EPA in order for these changes to be incorporated into the Pennsylvania SIP. Consequently, the source-specific RACT emission limitations that are being approved into the Pennsylvania SIP are those that were submitted on the above-mentioned dates and are the subject of this rule. These emission limitations will remain unless and until they are replaced pursuant to 40 CFR Part 51 and approved by the U.S. EPA.

Synthetic Minor Source Permit

EPA is approving the operating permit (OP 25–095) for Lord Corporation, located in Erie County. Lord Corporation is an aerospace surface coater and had potential VOC emissions greater than 50 TPY. The approval of these conditions will limit the emissions at this facility to less than 50 TPY and would allow Lord Corp. to avoid being considered a major VOC source, subject to the major source RACT requirements of the Clean Air Act and the Pennsylvania regulation.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document elsewhere in this **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 7, 1995 unless, by October 10, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 7, 1995.

Final Action

EPA is approving the one plan approval and fourteen operating permits as RACT and one operating permit to limit emissions at Lord Corporation to below major source levels.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act; petitions for judicial review of this action, pertaining to the VOC and NOx RACT approval of eleven sources and the synthetic minor permit conditions for Lord Corporation, must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 18, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(102) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(102) Revisions to the Pennsylvania Regulations Chapter 129.91 submitted on January 6, 1995, April 24, 1995 and May 31, 1995 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Four letters, two dated January 6, 1995, one dated April 24, 1995, and one dated May 31, 1995, from the Pennsylvania Department of Environmental Resources transmitting source-specific VOC and/or NOx RACT determinations in the form of plan approvals and/or operating permits for the following sources: (1) PECO Energy—Eddystone (Delaware Co.)—utility, (2) Gilberton Power Company (Schuylkill Co.)—utility, (3) Bethlehem Steel Structural Products Corp. (Northampton Co.)—steel manufacturer, (4) Westwood Energy Properties, Inc. (Schuylkill Co.)—utility, (5) PECO Energy Co.—Front Street (Montgomery Co.)—utility, (6) Crawford Furniture Manufacturing Corp. (Clarion Co.)—furniture manufacturer, (7) Schuylkill Energy Resources (Schuylkill Co.)—cogeneration plant, (8) Panther Creek Partners (Carbon Co.)—utility, (9) Columbia Gas Transmission Co.—Milford (Pike Co.), (10) Texas Eastern Transmission Corp.—Entriken (Huntingdon Co.)—Natural gas pipeline compressor station, (11) Columbia Gas Transmission Corp.—Greencastle (Franklin Co.). In addition, the operating permit for Lord Corporation (Erie Co.), aerospace surface coating operation containing provisions limiting this source as a synthetic minor source (below RACT threshold level of 50 TPY potential VOC emissions) is being approved.

(B) Plan approvals (PA), Operating permits (OP):

(*1*) PECO Energy—Eddystone—PA 23–0017, effective December 28, 1994, except the expiration date of the plan approval, and OP 23–0017, effective December 28, 1994, except the expiration date of the operating permit and conditions 6.C.(1) through (7), 6.D.(1)(c), 7.C.(1) through (5), 7.D.(1)(a) and 8.D.(1)(a) pertaining to SO_2 or PM10 requirements.

(*2*) Gilberton Power Company—OP 54–0004, effective December 20, 1994, except the expiration date of the operating permit and condition 5 pertaining to SO_2 and PM10 requirements.

(*3*) Bethlehem Structural Products Corp.—OP 48–0010, effective December 20, 1994, except the expiration date of the operating permit, OP 48–0013, effective December 20, 1994, except the expiration date of the operating permit and condition (11)(d) through (f) pertaining to sulfur and metals, OP 48–0014, effective December 20, 1994, except the expiration date of the operating permit and conditions (8) and (9) pertaining to particulate matter, and OP 48–0015, effective December 20, 1994, except the expiration date of the operating permit and conditions (9) and (10) pertaining to visible emissions and particulate matter.

(*4*) Westwood Energy Properties, Inc.—OP 54–0006, effective December 27, 1994, except the expiration date of the operating permit and the particulate and SO_2 emission limitations in condition (5).

(*5*) PECO Energy Company—Front Street—OP 46–0045, effective March 31, 1995, except the expiration date of the operating permit.

(*6*) Crawford Furniture Manufacturing Corp.—OP 16–021, effective March 27, 1995.

(*7*) Schuylkill Energy Resources—OP 54–0003, effective May 19, 1995, except the expiration date of the operating permit.

(*8*) Panther Creek Partners—OP 13–0003, effective May 19, 1995, except the expiration date of the operating permit, the non-VOC emission requirements in condition (7), and conditions (8) and (9).

(*9*) Columbia Gas Transmission Company—Milford—OP 52–0001, effective May 19, 1995, except the expiration date of the operating permit.

(*10*) Texas Eastern Transmission Corp.—OP 31–2003, effective May 16, 1995, except the expiration date of the operating permit.

(*11*) Columbia Gas Transmission Corp.—Greencastle—OP 28–2003, effective April 21, 1995, except the expiration date of the operating permit.

(*12*) Lord Corporation—OP 25–095, effective March 30, 1995.

[FR Doc. 95–22134 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AR–FRL–5293–1]

Clean Air Act Final Interim Approval of Operating Permits Program; the State of Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interim Approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits program submitted by the Arkansas Department of Pollution Control and Ecology (ADPCE) for the State of Arkansas for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: October 10, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location:

U. S. Environmental Protection Agency, Region 6, Air Programs Branch (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.
Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219–8913.

FOR FURTHER INFORMATION CONTACT: Wm. Nicholas Stone, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7226.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments, sections 501–507 of the Clean Air Act ("the Act"), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit Operating Permits programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the date of November 15, 1993, or by the end of an interim program, it must establish and implement a Federal program.

On September 19, 1994, the EPA proposed interim approval of the Operating Permits program for the State of Arkansas. See 59 FR 47828 (September 19, 1994). The EPA received public comment on the proposal and compiled a Technical Support Document which describes the Operating Permits program in greater detail. In this document, the EPA is taking final action to promulgate interim approval of the Operating Permits program for the State of Arkansas.

II. Final Action and Implications

A. Analysis of State Submission

The State of Arkansas submitted to the EPA, under a cover letter from the Governor dated October 29, 1993, the State's Operating Permits program. The submittal has adequately addressed all 16 elements required for full approval as discussed in part 70, with the exception of five interim issues listed in the proposal: (1) Reference of Prevention of Significant Deterioration (PSD) applicability for new construction and modification, (2) incorporation by reference of the part 70 provisions regarding complete application requirements and permit content requirements, (3) revision of the minor modification procedure, (4) providing a definition of the term "prompt", and (5) submission of a State Implementation Plan (SIP) revision for Regulation 19 consistent with Regulation 26. The State of Arkansas appropriately addressed all requirements necessary to receive interim approval of the State Operating Permits program pursuant to title V of the Act and 40 CFR part 70.

B. Response to Comments

Comments were received from three groups during the comment period that ran from September 19, 1994, until October 19, 1994. Listed below are the responses to comments received on the proposed interim approval for the Arkansas Operating Permits program.

1. Section 112(g) Implementation

Comments were made that the EPA should not allow Arkansas to implement section 112(g) until Federal rulemaking is complete. Also, objections were made to the State's use of its preconstruction permit process to implement section 112(g) requirements.

The EPA does not agree with the comment. In its proposed interim approval of Arkansas' part 70 program, the EPA proposed to approve the State's preconstruction review program for the purpose of implementing section 112(g) during the transition period before promulgation of a Federal rule implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether the EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a **Federal Register** notice published on February 14, 1995, 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after the EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that the EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that the EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until the EPA provides for such an additional postponement of section 112(g), Arkansas must be able to implement section 112(g) during the transition period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

For this reason, the EPA is finalizing its approval of Arkansas' preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Arkansas of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if the EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Further, the EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Arkansas currently lacks a program designed specifically to implement section 112(g), the preconstruction review program will serve as an adequate implementation vehicle during a transition period because it will allow Arkansas to select control measures that would meet Maximum Achievable Control Technology, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit.

2. Title I Modification Definition

Comments were made that the EPA has proposed interim approval of the Arkansas program because the State definition of title I modification is inconsistent with the new definition of "title I modification" which the EPA has proposed in the revision to 40 CFR part 70 (59 FR 44460, August 29, 1994). Comments objected to the EPA's reinterpretation of title I modification as an interim approval issue.

The EPA does not agree with the comment. As noted in the proposal for interim approval, the Arkansas Plan of Implementation for Air Pollution Control SIP at Regulation 19.2 clearly defines a modification as any increase in emissions. This definition does not provide for a threshold of emissions that could avoid New Source Review. Therefore, the threshold of emission levels at Regulation 26.10(b)(1) is inconsistent with the approved SIP definition of a modification. The Operating Permits program is consistent with part 70 by disallowing "title I modifications" from using the minor modification procedure at Regulation 26.10(b)(7) which includes actions under the SIP. Because the SIP is federally approved and the provision at Regulation 26.10(b)(7) is consistent with part 70, it is clear that the provision at Regulation 26.10(b)(1) is inconsistent with both the existing State law (the SIP) and with the Federal rule at 40 CFR 70.7(e)(2)(i)(A)(5). This inconsistency is discussed further under Number 3 below.

The EPA required the State to revise the Operating Permits regulation because of this inconsistency and required the State to delete Regulation 26.10(b)(1) because it was inconsistent with the federally approved definition in the State's SIP. The EPA explained its reasoning for not allowing the use of a narrower definition of "title I modifications" in the Washington State final approval notice (see 59 FR 55813, November 9, 1994) and incorporates that discussion here by reference.

3. Minor Modification Process

Comments were made that the EPA lacked the authority to require the State to revise its minor modification process to delete the emissions level threshold for minor modification applicability. Comments stated their belief that the "20% of the applicable definition of major source" constituted a de minimus emissions increase and was allowable under the minor modification rule contained in part 70.

The EPA does not agree. The Federal rule, 40 CFR 70.7(e)(3)(i), allows group processing of minor modifications that collectively meet an emission threshold of 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source, or five tons per year whichever is less, provided the minor modification criteria for individual changes at 40 CFR 70.7(e)(2)(i)(A) are also met. The criteria at 40 CFR 70.7(e)(2)(i)(A)(5) and Regulation 26.10(b)(7) disallow changes that are title I modifications. As discussed under Number 2 above, the SIP at Regulation 19.2 defines "modification" as any increase in emissions. Because Regulation 26.10(b)(1) allows certain emissions increases to be processed under the minor modification procedure, the EPA considers the minor modification process in Regulation 26 to be inconsistent with itself and the Federal part 70 rule.

The EPA is currently revising part 70 to clarify the definition of "title I modification" (see 59 FR 44460, August 29, 1994). After this revision, the provision at Regulation 26.10(b)(1) might be interpreted as a de minimis threshold. As the promulgated Federal rule exists and the federally approved SIP exist, any increase in emissions would not be allowed under the minor modification procedure. The title I modification issue is discussed in detail in Number 2 above. The State's regulations must be consistent with the Federal rule as currently promulgated. Therefore, the EPA maintains that the State's regulations are inconsistent with the Federal rule because an emissions increase is allowed for individual changes under Regulation 26.10(b)(1) while the State's regulations at Regulation 26.10(b)(7) and the Federal rule at 40 CFR 70.7(e)(2)(i)(A)(5) disallow emissions increases.

4. Incorporation by Reference of PSD Requirements

Comment was made that the State should not have to formally incorporate by reference the PSD requirements into Regulation 26 as stated in the proposal for this action.

The EPA concurs with this comment. The proposal recommended incorporation of the PSD requirements in order to clarify the regulation for major sources. The State can effectively meet this requirement by amending the regulations at 26.3(b) with:

(4) Any source subject to § 19.9 of the *Compilation of Regulations of the Arkansas State Implementation Plan for Air Pollution Control.*

5. PSD Applicability for Constructed/Modified Sources

Comment was made that the EPA should require Arkansas to revise its operating permit regulation so that the operating permit need only be revised before a change is placed in operation, rather than before construction begins.

The EPA does not agree with this comment. The State of Arkansas has clearly demonstrated that major sources will be regulated by Regulation 26. These sources are required to obtain a modification to the operating permit that incorporates the applicable requirements reflected in the SIP (Regulation 19) before construction begins. This procedure allows the facility to obtain a pre-construction permit as well as a modification to the operating permit. Also, this process allows for adequate public comment without duplicating the public notice process.

If the State chose to revise the regulation as the comment suggests, the facility would still have to obtain a pre-construction permit under Regulation 19 before construction. This includes the requirement of full public review for significant modifications. Then, the

facility would have to obtain a significant modification for the operating permit under Regulation 26 before operating the modified unit.

6. Deviation Reporting

All three comments objected to the EPA requirement that the State define "prompt" in the regulations with respect to deviations.

The EPA concurs with these comments. The notice for proposed approval reflected the most prudent position the EPA could take that would offer clear guidance to the regulated community while protecting the environment. Since publication of the notice, the EPA has reconsidered this position and agrees with the comments that the term "prompt" may be defined in the permit.

The EPA maintains that "prompt" should be defined as two to ten days after a deviation. This timeframe is sufficient in most cases to protect public health and safety as well as provide a forewarning of potential problems. The regulating authority should give consideration to shorter timeframes where potential health and safety concerns exist. Where "prompt" is defined in the individual permit but not in the program regulations, the EPA may veto permits that do not require sufficiently prompt reporting of deviations.

7. Variance Provisions

Comments objected to the EPA's position that variance provisions under State statute do not apply to title V permits unless title V processes are followed.

The EPA does not agree with these comments. As discussed in the proposed notice, the EPA recognizes the State's statutory authority to grant variances. However, 40 CFR part 70 does not allow States to grant variances from title V requirements. The EPA recognizes that title V permits may include compliance schedules for sources which are out of compliance with applicable requirements. However, such measures to bring a source into compliance are not the same as variances, which normally provide a complete exemption from a requirement for the duration of the variance. The EPA also recognizes that Arkansas may exercise enforcement discretion when addressing permit violations, but such discretion is not unlimited.

8. Incorporation by Reference of Application and Permit Content

Comment was made that the State should not have to formally incorporate by reference the application and permit content requirements from 40 CFR 70.5(c) and 70.6(a–c) into Regulation 26 as stated in the proposal.

The EPA does not agree with this comment. Though it may appear clear that the application content and permit content are fully incorporated into the State regulations, formal incorporation by reference will provide a date of promulgation to the incorporated provisions. Changes to the State's program are certain as the Clean Air Act Amendments are implemented, and in this way the State regulations are made clear for enforcement and implementation purposes.

C. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by the State of Arkansas on November 9, 1994. The State must make the following changes to receive full approval:

1. Incorporation by Reference

The State must amend Regulation 26.4 and 26.7 to incorporate the date of promulgation of the rule at 40 CFR part 70 as referenced in the regulation. By incorporating the promulgation date of July 21, 1992, the State regulations will be made clear.

2. Minor Modification Procedures

The language in the State's Regulation 26.10(b)(1) regarding emission levels must be deleted to make the regulations consistent with the Federal rule at 40 CFR 70.7(e)(2)(i)(A) and the State's Regulations 26.10(b)(7) and 19.2.

3. Submission of Regulation 19

The State of Arkansas must ensure consistency between the operating permits program (Regulation 26) and the SIP (Regulation 19). The State is working on a revision to Regulation 19.4 to make the SIP consistent with Regulation 26. A SIP revision must be submitted that is consistent with the rule at 40 CFR part 70 during the interim approval period.

Arkansas' part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the State of Arkansas, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–55818 (November 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the Clean Air Act; *see also* 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

This interim approval, which may not be renewed, extends until October 8, 1997. During this interim approval period, the State of Arkansas is protected from sanctions, and the EPA is not obligated to promulgate, administer and enforce a Federal Operating Permits program in the State of Arkansas. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the three year time period for processing the initial permit applications.

If Arkansas fails to submit a complete corrective program for full approval by April 8, 1997, the EPA will start an 18 month clock for mandatory sanctions. If Arkansas then fails to submit a corrective program that the EPA finds complete before the expiration of that 18 month period, the EPA will apply sanctions as required by section 502(d)(2) of the Act, which will remain in effect until the EPA determines that the State of Arkansas has corrected the deficiency by submitting a complete corrective program.

If the EPA disapproves Arkansas' complete corrective program, the EPA will apply sanctions as required by section 502(d)(2) on the date 18 months after the effective date of the disapproval, unless prior to that date Arkansas has submitted a revised program and the EPA has determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of Arkansas has not timely submitted a complete corrective program or the EPA has disapproved its submitted corrective program. Moreover, if the EPA has not granted full approval to the Arkansas program by the expiration of this interim approval and that expiration occurs after November 15, 1995, the EPA must promulgate, administer and enforce a Federal permits program for the State of Arkansas upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by the EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including the eight public comments received and reviewed by the EPA on the proposal, are contained in docket number OPP–2–9–1 maintained at the EPA Regional Office. The docket is an organized and complete file of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 25, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for the State of Arkansas in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Arkansas

(a) The ADPCE submitted its Operating Permits program on November 9, 1993, for approval. Interim approval is effective on October 10, 1995. Interim approval will expire October 8, 1997.

(b) (Reserved)

* * * * *

[FR Doc. 95–22086 Filed 9–7–95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 090195A]

Pacific Halibut Fisheries; Inseason Actions Off California, Oregon, and Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason actions.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes these inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. These actions are intended to enhance the conservation of the Pacific halibut stock.

EFFECTIVE DATES: Area 2A non-treaty commercial fishery reopening 8 a.m. through 6 p.m., local time, August 29, 1995; north Washington coast sport fishery reopening 8 a.m., local time, September 3, 1995, through 6 p.m., local time, September 4, 1995; Columbia River Area closure 6 p.m., local time, September 30, 1995, through December 31, 1995; California coastal waters closure 6 p.m., September 30, 1995 through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued these inseason actions pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, these inseason actions are published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason actions of the restrictions and requirements established therein.

Inseason Actions

1995 Halibut Landing Report Number 13

Area 2A Non-Treaty Commercial Fishery to Reopen

The August 15 fishing period in Area 2A resulted in a catch of 25,000 lb (11.3 metric tons (mt)). The revised total commercial catch from Area 2A to date is 73,000 lb (33.11 mt), leaving approximately 32,000 lb (14.51 mt) to be taken.

Area 2A will reopen on August 29 for 10 hours from 8 a.m. to 6 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, WA (46°53'18" N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (lb)	
Length	Letter	Dressed, head-on	Dressed, head-off*
0–25	A	225	200
26–30	B	240	210
31–35	C	380	335
36–40	D	1,050	925
41–45	E	1,130	995
46–50	F	1,350	1,190
51–55	G	1,510	1,330
56+	H	2,275	2,000

*Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

North Washington Coast Sport Fishery to Reopen

The North Washington Coast (waters west of the Bonilla-Tatoosh line and south to the Queets River) sport halibut fishery will reopen for 2 days, September 3 and 4, 1995. Approximately 7,000 lb (3.17 mt) of the 71,410 lb (32.20 mt) quota remain to be harvested. Catch and effort during previous openings on July 1 and July 29 were low, allowing an additional opening. The daily bag limit will be one halibut per person, with no size limit. All other published sport fishery regulations, including the closed area southwest of Cape Flattery, will be in effect.

Columbia River Area

This area (Leadbetter Point to Cape Falcon) remains open 7 days a week with a one fish daily bag limit and a minimum size limit of 32 inches (12.59 centimeters (cm)). Approximately 1,200 lb (.54 mt) of a 4,617 lb (2.09 mt) catch limit has been harvested. All reported landings have occurred in WA. This fishery will close September 30, 1995, or when the catch limit is reached, whichever occurs earlier.

California Coastal Waters

Coastal waters from the Oregon-California border remain open 7 days per week with a daily bag limit of one halibut and a minimum size limit of 32 inches (12.59 cm). This area will close for the year on September 30, 1995.

Dated: September 1, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22278 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–22–W

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50 CFR Part 630

[Docket No. 950522139–5219–02; I.D. 042495B]

RIN 0648–AH75

Atlantic Swordfish Fishery; Quotas and Closure of Directed Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim and final rule; Annual quotas and closure; request for comments.

SUMMARY: By final rule, NMFS amends the regulations governing the Atlantic swordfish fishery by: 1) Reducing the total allowable catch (TAC) to 2,984 metric tons (mt); 2) increasing the swordfish bycatch limit to 15 fish for longline vessels when the directed longline swordfish fishery is closed; 3) providing authority for NMFS to modify the bycatch limit; 4) increasing the minimum notice of a closure to 14 days; and 5) reducing the minimum days allowed for the public comment on proposed quota adjustments to 30 days. By interim rule, NMFS amends the regulations to establish a 1996 trip limit of 31,600 pounds (lb) (14,334 kg) dressed weight of swordfish. The intent of this action is to protect the swordfish resource while allowing harvests of swordfish consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and to provide authority to NMFS to make adjustments to the trip limits. NMFS also announces a closure of the directed swordfish fishery for longliners.

DATES: Effective September 8, 1995. The closure for the directed longline fishery for swordfish is effective from 12 noon on October 31, 1995 through 11:59 p.m. December 31, 1995.

Comments on the 1996 trip limits must be submitted by November 1, 1995, and will be considered in establishing final trip limits.

ADDRESSES: Copies of an Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from Richard B. Stone, Chief, Highly Migratory Species Management Division, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments on the interim rule for trip limits should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Ronald G. Rinaldo or Rebecca Lent, 301–713–2347, fax 301–713–0596.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Background information about the need for revisions to the regulations governing the Atlantic swordfish fishery was provided in the notice of proposed rulemaking (60 FR 29543, June 5, 1995) and is not repeated here.

These regulatory changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the Atlantic swordfish fishery. NMFS has re-evaluated the annual TAC, the annual directed-fishery quota, the annual bycatch quota, bycatch limits in the non-directed fishery, and the harpoon gear set-aside quotas in the Atlantic swordfish fishery in accordance with the procedures and factors specified in 50 CFR 630.24(d), including consideration of the latest stock assessment and recommendations of ICCAT. The final regulations are summarized as follows:

1. Total Allowable Catch (TAC)

NMFS is decreasing the annual TAC by 449 mt to 2,984 mt. All weights are in dressed weight of swordfish, unless indicated otherwise. The TAC is divided between a directed-fishery quota of 2,730 mt and a bycatch quota of 254 mt. The directed-fishery quota is divided into two 1,365 mt semiannual quotas for each of the 6-month periods, January 1 through June 30, and July 1 through December 31. Each of the 1,365 mt semiannual quotas is further subdivided into a drift gillnet quota of

27 mt and a longline and harpoon quota of 1,338 mt. This allocation by gear types employs the same percentages that were in effect in 1994.

NMFS estimates that approximately 113 mt of swordfish semiannually will be discarded dead, based on estimates from 1992 and 1993, recent estimated rates of discards, and expected improvement by the fleet in avoiding small fish. Therefore, the semiannual landing quota for the longline and harpoon swordfish fishery is the semiannual catch quota of 1,338 mt minus the estimated semiannual dead discards of 113 mt, or 1,225 mt for each of the two semiannual periods.

Following a closure of the directed longline fishery, any overharvest or underharvest will be added or subtracted, respectively, to the bycatch reserve of 254 mt. The ability to add or subtract underage or overage ensures that the United States will abide by ICCAT quotas while meeting the requirement under ATCA to provide U.S. fishermen with a reasonable opportunity to harvest their full quota.

NMFS has no new information sufficient to justify changes in the existing 10 mt special set-aside quota for harpoon gear.

2. Swordfish Bycatch in the Non-Directed Fishery

There are no new data or analyses that indicate a need for revision to the existing bycatch limits of five swordfish per trip in the squid trawl fishery and two swordfish per trip for all other bycatch fisheries, except the non-directed season in the longline fleet for 1995. Data analyzed by NMFS on longline vessels not directing at swordfish indicate that an increased bycatch limit of 15 swordfish per vessel trip would minimize the discards for 75 percent of the trips in 6 of the 7 fishing areas analyzed, without exceeding the bycatch reserve. Therefore, a bycatch limit of 15 fish per trip is established for longline vessels during the non-directed fishing season. This bycatch limit is based, in part, on the estimated period of time during which the directed fishery will be closed. The rule authorizes the Assistant Administrator for Fisheries, NOAA (AA) to modify the bycatch limits based upon the estimated period of time that the directed fishery is closed as well as the swordfish bycatch in the non-directed fishery.

3. Trip Limits

The reduced TAC and additional fishing capacity in the 1996 swordfish fishery will likely result in early closure of the directed fishery, resulting in economic disruption and hardship to the fleet. NMFS solicited comments on measures to extend the fishing season, including possible trip limits. The interim rule imposes a trip limit for swordfish for permitted longline commercial fishing vessels, and authorizes the AA to make adjustments in the management measures in order to achieve Atlantic swordfish management objectives. These adjustments may include changes in commercial trip limits. Under the interim trip limit, permitted longline vessels may harvest and possess up to 31,600 lb (14,334 kg) of swordfish per trip in 1996. This trip limit is based on the maximum catch of 90 percent of the trips in the Grand Banks (distant-water) fishing trips in 1992 and 1993. Trip limits are not defined by vessel type due to the difficulty of classifying distant-water versus coastal-water vessels. NMFS is soliciting further comments and suggestions from industry on how to clearly classify and monitor trip limits by vessel type and/or area fished.

Implementation of this trip limit for permitted vessels is intended to lower total daily landings, extend the open season, reduce the possibility that the semiannual quota will be exceeded, and reduce the waste, economic disruption and safety problems associated with a derby-style fishery.

4. Other

This rule reduces the minimum number of days allowed for public comment on proposed adjustments to the annual quota from 45 to 30. This reduction is intended to help expedite the rulemaking process for the swordfish fishery, particularly given the relatively brief period between the ICCAT recommendations and the commencement of the fishing season. NMFS also requests comments on whether the fishing year should be changed from January through December to July through June. Such a change would allow NMFS to implement ICCAT recommendations prior to the start of the fishing year.

This rule also changes the address of the Director, NMFS Southeast Region, whose office has moved.

Finally, this rule increases the minimum notice required for a closure from 8 days to 14 days, due to the difficulty for distant water vessels to return to port and offload within 8 days. Thus, a vessel will have a minimum of 14 days to return to port and offload.

Comments and Responses

1. ICCAT Quota Recommendations

Comment: Many fishery participants stated their concern over the country swordfish quotas set by ICCAT for 1995 and 1996. Some commenters suggested that the total quota was set too high to allow for stock recovery, while others indicated that the 1996 U.S. quota should be renegotiated, so that countries that did not comply with previous ICCAT recommendations would be penalized. The 1994 underage should be added to the 1995 quota.

Response: NMFS agrees that the total swordfish quota for the North Atlantic may not ensure stock recovery. The swordfish stock assessment will be reviewed at the 1995 meeting of the Scientific and Statistical Committee of ICCAT. Pending this review, NMFS is obligated under ATCA to implement the ICCAT-recommended quotas. The issue of renegotiating the U.S. quota at ICCAT is beyond the scope of this rulemaking. NMFS agrees that overage/underage is a useful concept that should be discussed at the 1995 ICCAT meeting for future implementation.

2. June-July Application of Total Allowable Catch (TAC)

Comment: Some commenters suggested that quotas be applied on a July-June basis rather than calendar-year basis.

Response: The United States will discuss this issue at ICCAT and NMFS is seeking additional comment from the public on this issue.

3. Measures to Extend the Fishing Season

Comment: NMFS solicited and received numerous suggestions regarding methods to extend the fishing season. Several suggestions were made for extending the fishing season, given the reduced TAC for 1995 and 1996 and the increased fishing capacity due to the return of highliners that had left the Atlantic over the past 4 years to operate in the Pacific. These suggestions included trip limits, seasonal closure of the directed fishery, and establishment of set-aside quotas; the bulk of these were to be applied by vessel size, operation (distant-water versus coastal-water), or by region. There was considerable concern that the landings of larger, distant-water vessels would result in a closure of the fishery, with detrimental effects on smaller operators that provide year-round fresh and high-quality fish. Others were concerned that whatever is done be done equitably and not to the detriment of the distant water fleet or fishermen in northern areas. Some commenters suggested that NMFS classify the vessels according to individual fishing records.

Response: NMFS agrees that the reduced TAC and the additional fishing

capacity will result in early closure of the directed fishery, resulting in economic disruption and hardship to the fleet. The interim rule establishes a limit of 31,600 lb (14,334 kg) of swordfish per trip for 1996 for all vessels in all regions. The difficulty of classifying distant-water vs. coastal-water vessels and of enforcing different trip limits for them requires the establishment of one trip limit at this time. There is insufficient analysis to enable classification based on an individual vessel's past performance. The trip limit is based on 90 percent of the trips taken in the Grand Banks (distant-water) fishery in 1992 and 1993. The trip limit should extend the season while affecting only the larger, distant-water vessels, rather than the smaller, inshore boats that take shorter trips. NMFS will continue to analyze appropriate trip limits for smaller vessels and vessels in other geographical regions to determine equitable limits for all vessels. NMFS will consider comments and suggestions from the industry, particularly with regards to methods for clearly distinguishing distant-water versus smaller, inshore vessels, in promulgating final trip limits for 1996.

4. Swordfish Bycatch in the Non-directed Fishery

Comment: NMFS solicited and received numerous comments on revisions of the longline bycatch limit during closure of the directed longline fishery. Commenters indicated that the catch limit during closure of the directed swordfish fishery should be reviewed in order to minimize the waste from dead discards and to minimize the economic disruption and hardship caused by the closure of the directed fishery.

Response: NMFS agrees that the bycatch limit warrants revision given the high probability of a closure under a reduced TAC and increased fishing capacity. The final rule establishes a bycatch limit for longliners of 15 swordfish per trip during the non-directed fishing season. This limit is based on analysis of catch data for longline vessels not targeting swordfish. Bycatch by other gear types remains at the current levels.

5. Undersized Swordfish Discards

Comment: There were numerous comments regarding dead discards of undersized swordfish. Some commenters indicated that it may be possible to reduce undersized bycatch through area and season closures, and possibly gear modifications, including the use of size-selective gear-types such as harpoons. Comments were made regarding the Second Harvest Program; some feel the program should be implemented while others are concerned about the possible problems due to lack of observers and tax-saving incentives.

Response: NMFS continues to support research and analysis that would provide information on how to reduce the catch of undersized swordfish. This reduction is increasingly critical given the reduced TAC and increased fishing capacity. NMFS believes that this issue should be addressed at ICCAT and will raise the issue at the ICCAT Advisory Committee meeting. Regarding Second Harvest, NMFS is proceeding with this program under strict observation and enforcement requirements.

6. Limited Access for the Atlantic Swordfish Fishery

Comment: Many commenters reiterated the long-standing request on the part of some industry participants to implement limited access in the swordfish fishery and feel that NMFS should implement limited access for the Atlantic swordfish fishery as soon as possible. Some firms may go out of business unless limited access is implemented by 1996.

Response: NMFS has published an Advance Notice of Proposed Rulemaking announcing the availability of discussion papers on limited access options for the Atlantic swordfish and shark fisheries, as well as a concept paper on rationalization of fisheries for Atlantic highly migratory species. These discussion papers will serve as the basis for proposed rulemaking on limited access in these fisheries in the fall of 1995.

7. Procedures for Fishery Closures

Comment: Numerous comments were offered on the optimal method for announcing and implementing a closure of the directed fishery. Announcement of a closure should be made at least 14 days in advance, and provide an additional 14-day period for offloading the catch.

Response: NMFS agrees that adequate closure notification is necessary to prevent market gluts as well as safety problems with closure announcements. This rule increases the minimum notice of a closure from 8 to 14 days. Thus, once NMFS issues a closure notice, a vessel will have a minimum of 14 days to return to port and offload. At this time, NMFS is not providing an additional 14 days to offload because of enforcement concerns that need further analysis.

Changes from the Proposed Rule

In accordance with a review of the factors specified in 50 CFR 630.24(d), consideration of the comments received, and further analysis of available data, the following changes were made to the proposed rule:

1. Swordfish Bycatch in the Non-directed Fishery

The final rule establishes a bycatch limit of 15 fish per trip for longline vessels during the non-directed fishing season.

2. Trip Limits

The interim rule allows all permitted vessels to harvest and possess up to and including 31,600 lb (14,334 kg) of swordfish per trip in 1996.

3. Other

The final rule changes the minimum number of days allowed for public comment for proposed adjustments to annual quotas from 45 to 30, and the minimum notification of a closure from 8 days to 14 days.

Closure of the Directed Fishery

The regulations governing the Atlantic swordfish fisheries at 50 CFR 630.25 provide for a specified annual quota (modified to 2,450 mt dressed weight in this final rule, including estimated dead discards) to be harvested by the directed longline fishery. NMFS is required, under § 630.25(a)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of will equal the quota, and to publish a **Federal Register** document announcing the closure. The current projected date on which the directed Atlantic swordfish catch by the longline fleet is estimated to reach or exceed the quota is October 31, 1995.

Therefore, NMFS announces that the directed longline fishery for swordfish is closed at 12 noon on October 31, 1995. During the closure of the directed longline fishery, aboard a vessel using or having on board a longline and not having on board harpoon gear, a person may not fish for swordfish from the North Atlantic stock, and no more than 15 swordfish per trip may be possessed or landed. Beginning at 12:01 p.m., October 31, 1995, a non-directed longline fleet fishing season will be in effect through 11:59 p.m. December 31, 1995. The AA may modify or close the non-directed longline fleet fishing season upon publication of notification in the **Federal Register**.

Classification

This final rule is published under the authority of ATCA. The AA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic swordfish fishery. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities. That certification remains valid. While the 1995 TAC represents about a 13–percent reduction from the TAC of the previous 2 years, the allowable catch is slightly higher than last year's catch; as a result, a regulatory flexibility analysis was not prepared. The RIR provides further discussion of the economic effects of the final rule.

This action is exempt from review under E.O. 12866.

NMFS issued a biological opinion under the Endangered Species Act (ESA) on September 1, 1995, indicating that the level of impact and marine mammal takes from the longline and harpoon swordfish fishery is not likely to jeopardize the continued existence of any sea turtle species or any marine mammal populations. Prior to the beginning of the 1996 drift gillnet fishery, NMFS will conduct a formal consultation on the fishery under the ESA. Based on the results of the consultation, NMFS may then conduct a rulemaking to promulgate any protective measures prior to the beginning of the drift gillnet fishing season. Since there is no gillnet fishery for the remainder of 1995, no ESA consultation on the drift gillnet fishery is necessary at this time.

The AA has determined that there is good cause to waive partially the 30-day delay in effective date normally required by 5 U.S.C. 553(d), because implementing the U.S. ICCAT-recommended quota for 1995 is necessary for achieving management objectives and meeting ICCAT treaty obligations. The effective date is 7 days from the date of filing with the Office of the Federal Register.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: September 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.2, the definition for "Regional Director" is revised, and the definition for "Trip limit" is added, in alphabetical order, to read as follows:

§ 630.2 Definitions.

* * * * *

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; telephone 813–570–5301, or a designee.

* * * * *

Trip limit means the total allowable take from a single trip as defined in this section.

* * * * *

3. In § 630.7, paragraph (z) is added to read as follows:

§ 630.7 Prohibitions.

* * * * *

(z) Exceed the vessel trip limits specified in § 630.23.

4. In § 630.23, paragraph (d) is added to read as follows:

§ 630.23 Harvest limitations.

* * * * *

(d) *Vessel trip limits.* In 1996, vessels issued a swordfish permit under § 630.4 may not land from, or possess during, a single trip more than 31,600 lb (14,334 kg) dressed weight of swordfish, unless a closure has been effected under § 630.25.

5. In § 630.24, paragraph (b)(1), the first sentence of paragraph (d)(6), and paragraph (f) are revised to read as follows:

§ 630.24 Quotas.

* * * * *

(b) * * *

(1) The annual quota for the directed fishery for swordfish is 2,730 mt, dressed weight, divided into two semiannual quotas as follows:

(i) For the semiannual period January 1 through June 30:

(A) 27 mt dressed weight, that may be harvested by drift gillnet; and

(B) 1,338 mt, dressed weight, that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1,225 mt, dressed weight, may be landed in this category.

(ii) For the semiannual period July 1 through December 31:

(A) 27 mt, dressed weight, that may be harvested by drift gillnet; and

(B) 1,338 mt, dressed weight, that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1,225 mt, dressed weight, may be landed in this category.

* * * * *

(d) * * *

(6) NMFS will announce any adjustments to the annual quotas by publication of a proposed rule in the **Federal Register**, providing for a minimum of a 30-day comment period. * * *

* * * * *

(f) *Inseason adjustments to the bycatch and directed fishery quotas.* (1) If NMFS determines that the annual bycatch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed-fishery quotas pursuant to the requirements and procedures in paragraphs (g) and (h) of this section.

(2) If NMFS determines that it is necessary to close the directed fishery, any estimated overharvest or underharvest directed-fishery quota available immediately prior to that closure will be applied to the annual bycatch quota and will be used to adjust the annual bycatch quota accordingly.

* * * * *

7. In § 630.25, the second sentences of paragraphs (a)(1) and (a)(2), and paragraph (c)(2)(ii) are revised to read as follows:

§ 630.25 Closures and bycatch limits.

(a) * * * (1) * * * The effective date of such notice will be at least 14 days after the date such notice is filed at the Office of the Federal Register. * * *

(2) * * * The effective date of such notice will be at least 14 days after the date such notice is filed at the Office of the Federal Register. * * *

* * * * *

(c) * * *

(2) * * *

(ii) No more than 15 swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. The Assistant Administrator may modify or change the bycatch limits upon publication of notice in the **Federal Register** pursuant to the requirements and procedures in paragraphs (a)(1) and (a)(2) of this section. Changes in the

bycatch limits will be based upon the length of the directed fishery closure as well as the estimated catch per vessel in the non-directed fishery.

* * * * *

[FR Doc. 95–22238 Filed 9–1–95; 4:39 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 60, No. 174

Friday, September 8, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AE80

Employment (General); Use of Private Sector Temporaries

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) proposes to authorize Federal agencies to use private sector temporaries for 120 work days instead of 120 calendar days as currently permitted. Agencies would continue to purchase temporary help services through the Federal procurement process following all applicable laws and regulations relating to the purchase of goods or services from the private sector. The proposed change would give agencies more flexibility to conduct their operations, as recommended by the National Performance Review.

DATES: Comments must be received on or before November 7, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street NW., Room 6F08, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ellen Russell on 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: On January 25, 1989, OPM published [at 54 FR 3762] regulations authorizing Federal agencies to use commercial temporary help services in two situations: certain employee absences and critical unexpected workload needs. Because the authority was new and there were concerns about the possibility of misuse, the timeframes were deliberately tight. Moreover, the regulations contained two sets of time limits: a 45-work day limit on using a particular individual from a temporary help service firm and an overall 120-calendar-day limit on using temporary help services for any one situation. When justified, OPM approved agency requests for extensions.

Our review indicates that in the more than 6 years the authority has been in effect, Federal agencies have appropriately used the services of temporary help firms. Agencies indicated that their employees favor the policy because using temporary help services alleviates extra work pressure and stress during workload peaks and also makes it easier for employees to get time off for critical personal needs. Agencies recommended continuing the authority for temporary help service firms without the 45-day restriction on the use of same individual from a firm because it was inefficient to retrain a new person after 45 days.

Although this proposal would permit agencies to use temporary help services for longer periods, there is no change in the Office of Personnel Management view that continuing work is most appropriately performed by permanent Federal employees. On September 13, 1994, OPM published final regulations [at 59 FR 46895] to ensure that temporary Federal appointments are used to meet truly short-term needs. As in those regulations, the limits in this proposal are designed to restrict the use of temporary help services to short-term needs.

In exercising the discretion to use temporary help services, agencies are reminded of their labor relations obligations under Chapter 71 of Title 5 of the U.S. Code and Executive Order 12871.

This proposal would lengthen the time agencies could use temporary help services for an individual situation from 120 calendar days to 120 workdays. The new 120-workday limit would also apply to an agency's use of a particular individual from a firm; a change from the current 45-workday limit in a 6-month period. The proposal would continue the provision for agencies to request an extension from local OPM service centers when the need for temporary help services continued beyond the initial 120 workdays and would specify that OPM could approve an extension for up to a total of 240 workdays. This would mean that an agency with OPM approval could use the same individual from a firm for up to 240 workdays on the same assignment or on a different assignment. In this context, "agency" means a major organizational element, headquarters or field, of an agency.

The proposal continues the current prohibitions against using temporary help services to displace Federal employees or in place of regular civil service procedures for permanent appointment and would add a prohibition against use of temporary help services to circumvent controls on employment levels. The proposal also continues current provisions permitting the use of temporary help services only when there are no current agency employees who could be spared to do the work, there are no former employees available on the agency's reemployment priority list, and when there are no applicants available for temporary Federal employment within the timeframe needed.

The proposal would change the reporting requirement to OPM from annual reports to reports on an as-requested basis. Agencies would have to maintain the records necessary for such reports and for internal evaluation. The proposed wording more accurately reflects the fact that agencies have the primary responsibility for oversight. Agency contracting officers are responsible for proper performance of the contract for temporary help services. Additionally, agency expenditures for temporary help services are subject to the full range of internal controls and oversight, Inspector General reviews, and audits which apply to every service contract. Agency adherence with these regulations is subject to review under OPM's regular compliance and evaluation activities.

Finally, the proposal would make several editorial changes, for example, deleting reference to the Federal Personnel Manual, a document abolished on December 31, 1994, and adding a reference to temporary reassignments and time-limited promotions as mechanisms for agencies to accomplish work instead of using temporary help firms. The proposal would also clarify that agencies may not use temporary help services for the Senior Executive Service or for the work of managerial or supervisory positions.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. OPM is not regulating entities (including businesses) of any size, or imposing record keeping, reporting, or other compliance requirements on them. OPM is regulating the conduct of Federal agencies if they choose to use temporary help firms.

2. The requirements an entity must observe are generated through an agency-initiated contracting process featuring competitive bidding under the already-established, statutory Federal procurement system. That system applies to all contractors providing goods and services to the Government. The entities affected by that system are those who seek a contract. Those who win a contract receive a beneficial economic impact.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend part 300 of title 5, Code of Federal Regulations, as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for part 300 is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Secs. 300.301 also issues under 5 U.S.C. 1104 and 3341.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

Secs. 300.801 through 300.802 issued under 5 U.S.C. 3328.

1. Section 300.502 is revised to read as follows:

§ 300.502 Coverage

(a) The regulations in this subpart apply to the competitive service and to Schedules A and B in the excepted service.

(b) Agencies may not use temporary help services for Senior Executive Service or for the work of managerial or supervisory positions.

2. In § 300.503 paragraph (c)(3) is added to read as follows:

§ 300.503 Conditions for using private sector temporaries.

* * * * *

(c) * * *

(3) To circumvent controls on employment levels.

3. In § 300.504, paragraphs (a) and (b) are revised to read as follows:

§ 300.504 Prohibition on employer-employee relationship.

* * * * *

(a) In accordance with the regulations in this subpart, an agency may use private sector temporaries in a particular situation for no more than 120 workdays. If the situation justifies use of temporary help services beyond the initial 120 workdays, the agency may request OPM authorization for an additional period not to exceed 120 workdays, up to a total of 240 workdays.

(b) An individual employee of a temporary help firm may work at a major organizational element (headquarters or field) of an agency for no more than 120 workdays in a 12 month period. An agency may request OPM authorization to keep the individual for an additional period not to exceed 120 workdays up to a total of 240 workdays:

(1) In conjunction with an extension of the overall time limit for a particular situation, or

(2) For a different situation if the using of the same individual would be in the interest of good administration.

* * * * *

4. Section 300.505 is revised to read as follows:

§ 300.505 Relationship of civil service procedures.

Agencies continue to have full authority to meet their temporary needs by various means, for example, redistributing work, authorizing overtime, using in-house pools, and making details or time-limited promotions of current employees. In addition, agencies may appoint individuals as civil service employees on various work schedules appropriate for the work to be performed.

5. Section 300.507 is revised to read as follows:

§ 300.507 Documentation and oversight.

Agencies are required to maintain records and provide oversight to establish that their use of temporary help service firms is consistent with the regulations in this subpart. As needed, OPM may request agencies to provide information on the extent of their use of temporary help service firms.

[FR Doc. 95–22317 Filed 9–7–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–95–007]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the Board was reapportioned in 1993. These adjustments are required by the Beef Promotion and Research Order (Order) and would result in an increase in Board membership from 107 to 111, effective with the Secretary's 1996 appointments.

DATES: Comments must be received by October 10, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2606–South Building, 14th and Independence Avenue, Southwest, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, on 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the

Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

This action was also reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The Administrator of AMS has determined that this proposed action will not have a significant impact on a substantial number of small entities as defined by RFA since it only adjusts representation on the Board to reflect changes in domestic cattle inventory and imports.

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 et seq.) and the Order issued thereunder (7 CFR 1260.101 et seq.). Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993.

The current Board representation by States or units has been based on an average of the January 1, 1990, 1991, and 1992 inventory of cattle in the various States as reported by the National Agricultural Statistics Service of the Department of Agriculture (USDA). Importer representation has been based on a combined total average of the 1989, 1990, and 1991 live cattle imports as published by the Foreign Agricultural Service (FAS) of USDA and the average of the 1989, 1990, and 1991 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its July 24, 1995, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1993, to January 1, 1995. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 1993, 1994, and 1995 USDA cattle inventory numbers would best reflect the number of cattle in each State or unit since the 1993 reapportionment.

The Board reviewed the March 1995 FAS circular, "U.S. Trade and Prospects, Dairy, Livestock, and Poultry," to determine proper importer representation. The Board recommended the use of a combined total of the average of the 1992, 1993, and 1994 cattle import data and the average of the 1992, 1993, and 1994 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its July 24, 1995, meeting to be consistent with the procedures used for domestic representation.

The Board's recommended reapportionment plan would increase the number of representatives on the Board from 107 to 111. Two States—Iowa and Ohio—lose one member each; three States—Missouri, Montana, and South Dakota—gain one member each; Texas, gains two members; and the importer unit gains one member. Nevada would lose its only member. Because Nevada does not have sufficient cattle inventory to qualify for a position on the Board, the Board proposes that Nevada be merged with Oregon, a contiguous State that has only one member, to form a Western unit. The combined cattle inventory of Nevada and Oregon would entitle that Western unit to two seats on the Board, thus enabling both States to be jointly represented. The States and units affected by the reapportionment plan and the current and proposed member representation per unit are as follows: (Units are listed with the State makeup recommended by the Board.)

States	Current representation	Proposed representation
1. Iowa	5	4
2. Missouri	4	5
3. Montana	2	3
4. Ohio	2	1
5. South Dakota	3	4
6. Texas	13	15
7. Western	0	2
Nevada	1	....
Oregon	1	....

The 1995 nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment as proposed by this rulemaking would be effective, if adopted, with 1996 nominations and appointments.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 1260 be amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 et seq.

2. In § 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) For Board nominations and appointments beginning with those in 1996, the United States shall be divided into 39 geographical units and one unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES[1]

State/Unit	(1,000 head)	Directors
1. Alabama	1,677	2
2. Arizona	863	1
3. Arkansas	1,837	2
4. California	4,617	5
5. Colorado	2,967	3
6. Florida	1,977	2
7. Georgia	1,477	1
8. Idaho	1,720	2
9. Illinois	1,813	2
10. Indiana	1,163	1
11. Iowa	4,183	4
12. Kansas	6,067	6
13. Kentucky	2,617	3
14. Louisiana	943	1
15. Michigan	1,210	1
16. Minnesota	2,750	3
17. Mississippi	1,353	1
18. Missouri	4,600	5
19. Montana	2,583	3
20. Nebraska	6,017	6
21. New Mexico	1,437	1
22. New York	1,503	2
23. North Carolina	1,063	1
24. North Dakota	1,857	2
25. Ohio	1,480	1
26. Oklahoma	5,333	5
27. Pennsylvania	1,783	2
28. South Carolina	513	1
29. South Dakota	3,833	4
30. Tennessee	2,450	2
31. Texas	14,667	15
32. Utah	867	1
33. Virginia	1,713	2
34. Wisconsin	3,883	4
35. Wyoming	1,383	1
36. Northwest	....	2
Alaska	9	....
Hawaii	173	....
Washington	1,353	....
Total	1,535	....
37. Northeast	....	1
Connecticut	76	....
Delaware	30	....
Maine	116	....
Massachusetts	69	....
New Hampshire	49	....
New Jersey	67	....
Rhode Island	7	....
Vermont	292	....
Total	706	....
38. Mid-Atlantic	....	1
District of Columbia	0	....
Maryland	310	....
West Virginia	477	....
Total	787	....
39. Western	....	2
Nevada	497	....
Oregon	1,420	....
Total	1,917	....
40. Importer[2]	7,016	7

[1] 1993, 1994, and 1995 average.

[2] 1992, 1993, and 1994 average.

* * * * *

Dated: September 1, 1995

Lon Hatamiya,

Administrator.

[FR Doc. 95–22282 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93–076–7]

RIN 0579–AA59

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The purpose of this notice is to announce the first meeting of the Marine Mammal Negotiated Rulemaking Advisory Committee.

DATES: September 25 and 26, 1995, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Holiday Inn at College Park, 10000 Baltimore Boulevard, Route 1, College Park, MD 20740, (301) 345–6700.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care Staff, REAC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published on May 22, 1995 (60 FR 27049–27051, Docket No. 93–076–3), we announced our intent to establish a Marine Mammal Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (Pub. L. 92–463). The Committee will advise the Department on the content of regulations to revise and update the standards for the handling, care, treatment, and transportation of marine mammals in captivity.

The purpose of the meeting is to bring together members of the Animal and Plant Health Inspection Service, representatives of the marine mammal industry, and representatives of other parties with a definable stake in marine mammal issues to frame a recommended rulemaking proposal as an alternative to the current standards for the care of captive marine mammals.

The proposed agenda for the meeting is as follows:

First Day

Morning Session—9 a.m.

APHIS Opening Remarks
Presentation of Agenda
Self-Introductions and Statements of Perspective by Committee Members and Facilitator
Development of Committee Procedures and Protocols

Afternoon Session—1:30 p.m.

Development of Committee Procedures and Protocols
Public Comments

Second Day

Morning Session—9 a.m.

Presentation of Agenda
Review of Substantive Marine Mammal Issues

Afternoon Session—1:30 p.m.

Review of Substantive Marine Mammal Issues

Discussion of Future Committee Meeting Agendas
Comments from the Public

The meetings will be open to the public. Public participation at the meetings will be allowed during periods announced at the meeting for this purpose. Anyone who wants to file a written statement with the Committee may do so at the time of the meeting or may do so after the meeting by sending the statement to Docket No. 93–076–7, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Comments mailed in should state that they refer to Docket No. 93–076–7 and must be received on or before October 10, 1995, to ensure consideration by the Committee.

This notice is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 1st day of September 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–22328 Filed 9–7–95; 8:45 am]
BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

RIN 3150–AF38

One-Time Extension of Certain Byproduct, Source, and Special Nuclear Materials Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing, on a one-time basis, a five-year extension of certain byproduct, source, and special nuclear materials licenses. The provisions of the licenses under extension would provide the same authorizations and limits on licensee activities as they do now. The proposed rule specifies the licenses whose expiration dates would not be extended. On a separate but related matter, the Commission is considering the appropriate duration of materials licenses and seeks comments on this topic.

DATES: Submit comments by October 10, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, 20852, between 7:45 am and 4:15 pm Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: John Pelchat, NRC, Region II, 101 Marietta Street, NW., suite 2900, Atlanta, GA 30323, telephone (404) 331–5083; or C.W. Nilsen, Office of Nuclear Regulatory Research, NRC, Washington, DC 20555, telephone (301) 415–6209.

SUPPLEMENTARY INFORMATION:

Background

The materials licensing ("licensing") process sets out provisions for licensing medical, academic, and industrial users of byproduct materials as well as some small scope users of source and special nuclear materials. This process does not apply to the licensing of power and non-power reactors, uranium milling and processing facilities, or fuel production facilities. Recent NRC internal reviews and regulatory impact surveys of materials licensees ("licensees") have highlighted areas in which the current materials licensing process can be improved. The NRC has completed the preliminary phases of an effort to redesign this process. The goals of the licensing process redesign project are (1) to maintain or raise the level of public safety achieved by the current process; (2) to perform licensing reviews and associated tasks an order of magnitude faster than the current process; (3) to utilize modern information technology as a fundamental part of the new process; and, (4) to reduce the resources needed to carry out the licensing program to meet the projected 1998–1999 staffing levels.

In order to make resources available to expedite the development, design, and testing of the proposed new materials licensing process, the Commission proposes to extend, by rulemaking, certain specific materials licenses ("licenses") by five years from the current expiration dates shown on those licenses. Resources that would have otherwise been used to renew these licenses would be devoted to the redesign project. The extension would be a one-time occurrence and the Commission does not envision that any similar extensions would be granted in any future rulemaking. The extended licenses are not considered to be the equivalent of a renewed license because they would provide the same authorizations and limits on licensee activities as they do now. Accordingly, the extended licenses would not be based on or reference pending renewal applications, including requests, if any, in those renewal applications for NRC approval of changes in current operations. The frequency at which the licensee is inspected would not change. The Commission estimates that more than 80 percent of its 6,500 materials licenses would be extended by this proposed rulemaking.

The Commission believes that it may take this action because no legislative mandate requires that materials licenses have a five-year term. Many years ago, materials licenses were issued for two-year periods. As the uses of radioactive materials became more stable and predictable, the typical duration of licenses was changed to the current five years. The Commission believes that certain specific materials licenses may be extended once by rule for an additional five years beyond their stated expiration date without the normal renewal review and without adverse effect on public health and safety. The Commission's belief is based upon three factors. First, certain specific licenses for which the Commission believes that a renewal review should not be delayed five years would not be affected by this rule. Licenses that may present, in the Commission's view, a greater potential risk from a health and safety standpoint would not be extended by this rulemaking. These licenses are discussed in greater detail below and these licenses would be renewed in accordance with current schedules. Second, the extended licenses would not change the authorized activities or the regulatory requirements with which the licensees must comply. Third, the NRC will continue to inspect licenses that would be extended by this proposed rule. Significant inspection findings would be resolved through the issuance of Notices of Violations that require written responses describing corrective actions or Orders that would modify, suspend, or revoke the license. Accordingly, the Commission believes that there would be reasonable assurance of public health and safety under this rule.

The Commission believes that certain licenses, specified below, should be subject to the health and safety review currently required as part of the 5-year renewal review. These licenses would not have their license terms extended by this proposed rule. The criteria listed below would be applied as of the effective date of the final rule so as to assure that any extensions are based on the most current information available.

- Any specific license that, on the effective date of the final rule, must have prepared an evaluation or an emergency plan for responding to the release of radioactive materials as required by 10 CFR 30.32(i), 40.31(j), or 70.22(i). The Commission believes that these licenses authorize activities that may pose a significant potential for release of radioactive materials and may result in potential exposure to the public and contamination of the environment. Therefore, renewals of these licenses should continue to be reviewed under existing procedures.
- Any specific licenses whose holders are subject to the financial assurance requirements specified in 10 CFR 30.35, 40.36, or 70.25; and on the effective date of the final rule the holders either (a) have not submitted a decommissioning funding plan or certification of financial assurance for decommissioning, or (b) have not received written notice that the decommissioning funding plan or certification of financial assurance for decommissioning is acceptable. These licenses authorize possession of quantities and forms of licensed materials that pose a potential need for extensive decontamination before termination of the license and release of decommissioned facilities. The Commission believes that renewals of these licenses should continue to be reviewed under existing procedures to ensure that the process of obtaining sufficient funding continues so that appropriate resources are available to support decommissioning activity.
- Any license, as of the effective date of the final rule, that is on the Site Decommissioning Management Plan (SDMP) list. Generally, licenses on the SDMP list are no longer actively using licensed materials. The Commission believes that these licenses should continue to be reviewed under existing procedures to ensure proper evaluation of site remediation activities at facilities where the licensee's radiation safety program may be inactive or scaled back.
- Any specific license whose issuance, amendment, or renewal, as of the effective date of the final rule, is not a categorical exclusion under 10 CFR 51.22(c)(14) and therefore needs an environmental assessment or environmental impact statement pursuant to Subpart A of Part 51 of this chapter. The Commission believes that these licenses authorize activities that may have a potential for impacting the environment. Therefore, renewals of these licenses should continue to be reviewed under existing procedures.
- Any specific license issued pursuant to 10 CFR Part 70 for which, as of the effective date of the final rule, the license holder is authorized to possess sufficient quantities of special nuclear material to be subject to the criticality accident requirements of 10 CFR 70.24. The Commission believes that renewals of these licenses should continue to be reviewed under existing procedures to ensure the adequacy of the licensees' important criticality safety procedures.
- Specific licenses whose holders have not had at least one prior NRC inspection of licensed activities as of the effective date of the final rule. The Commission believes that it is inappropriate to extend these licenses when it has not verified the effectiveness of the licensees' radiation safety programs by inspection. This verification is part of the safety basis upon which the NRC is relying. NRC inspection procedures require that all new licensees be inspected within six months of the issue date of their license. A few new licenses that might otherwise be extended may not be extended because they have not been inspected. Because the NRC is continually issuing new licenses, it is not practical to immediately inspect all new licensees to determine whether they satisfy the other criteria for the extension of their license expiration dates.
- Specific licenses whose holders, as the result of the most recent NRC inspection of licensed activities conducted before the effective date of the final rule, have either been (a) cited for a Severity Level I, II, or III violation in a Notice of Violation, (b) subject to an Order issued by the NRC, or (c) subject to a Confirmatory Action Letter issued by the NRC. The NRC has identified significant safety or other regulatory issues in these programs as a result of their most recent NRC inspection. The Commission believes that applications for renewal of these licenses should continue to be reviewed under existing procedures.

Apart from these licenses that the Commission has determined may pose a relatively greater risk to public health and safety, the Commission recognizes that there is another set of licenses that will not be extended by this rule. This set includes those licenses with expiration dates before July 1, 1995, whose holders have submitted applications for renewal pursuant to the renewal provisions specified in 10 CFR parts 30, 40, or 70. The Commission intends to continue to review the submissions of these licensees who have already submitted applications and fees for the renewal of their licenses and are deemed as being in timely renewal. Renewal requests will be granted as the NRC completes its review of those applications that satisfy the requirements specified in the regulations.

The proposed rule will extend the expiration date of those licenses with expiration dates after July 1, 1995, that are in a timely renewal status. As specified in the proposed rule, NRC will consider that these licensees have withdrawn their requests for renewal. Renewal fees paid by these licensees will be refunded.

The July 1, 1995, expiration date was chosen based on resource considerations. The NRC staff has begun the review of many applications for renewal of licenses with expiration dates before July 1, 1995, and it is not appropriate to waste the resources already expended in that effort. On the other hand, most of the applications for renewal of licenses with expiration dates after July 1,1995, have been received only recently, their review has not begun, and resources will be conserved by extending those licenses.

The Commission recognizes that an entity may hold more than one materials license issued under one or more parts of Title 10 of the Code of Federal Regulations. It is the Commission's intent that each license be considered separately in determining whether its expiration date should be extended under this rule. For example, assume that an entity holds two licenses, A and B, and License A is of the type listed in paragraph (a)(3) of §§ 30.36, 40.42, and 70.38 of this proposed rule, but License B is not. In this situation, the expiration date of License A would not be affected by the rule, but the expiration date of License B would be extended by a period of five years from the expiration date stated in the license.

The selective extension of byproduct, source, and special nuclear materials licenses would result in the freeing of Commission resources that would otherwise be used in the review of these renewal applications. These resources will then be redirected, in part, into the detailed design and testing of the proposed new materials licensing process.

Nothing in this rule relieves licensees from the requirements to file for appropriate amendments to their licenses, when changes in licensed activities occur.

If a licensee should elect not to take full advantage of the license extension, the licensee may request termination of its license in accordance with the applicable requirements of 10 CFR parts 30, 40, or 70.

The Commission seeks comments on the issue of license duration. In conjunction with the licensing process redesign effort, the Commission also intends to consider the appropriate duration of materials licenses, including whether the duration should differ depending on the nature of the activities permitted under the license. The Commission is aware that for some types of licensed activities the industry has matured and it may be appropriate to consider issuing licenses for longer times, perhaps 10–20 years. The Commission is also aware that some Agreement States routinely issue licenses for periods longer than 5 years. The Commission seeks comments at this time on the general topic of the appropriate duration of licenses. If the Commission ultimately revises its policy on materials license duration, licensees with pending renewal applications that fulfill all regulatory requirements would be granted licenses consistent with the Commission's resolution of the license duration issue.

Agreement State Compatibility

The Commission has determined that the amended provisions of 10 CFR parts 30, 40, and 70 are not matters of compatibility for evaluating the regulations of States that have entered into agreements (Agreement States) with the Commission pursuant to Section 274.b of the Atomic Energy Act, as amended. Therefore, the States are not required to amend their regulations or licensing practices as a result of this rulemaking. However, the Commission is interested in receiving comments from the Agreement States on the regulatory implications of this proposed rule.

Electronic Access

Comments may be submitted through the Internet by addressing electronic mail to INTERNET:SECY@NRC.GOV. Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Rulemaking Bulletin Board (BBS) on FEDWORLD.

The BBS is an electronic information system operated by the National Technical Information Service of the Department of Commerce. The purpose of this bulletin board BBS is to facilitate public participation in the NRC regulatory process, particularly rulemakings. With publication of this notice, proposed rulemakings and appropriate supporting documents will be available for review and comment on the BBS. These same documents are also available for review and comment at the NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. The BBS may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

The NRC rulemaking bulletin board (rulemaking subsystem) on FEDWORLD can be accessed directly by using a personal computer and modem, dialing the toll free number 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FEDWORLD consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FEDWORLD Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FEDWORLD also can be accessed by a direct dial phone number for the main FEDWORLD BBS at 703–321–3339, or by using Telnet via Internet: fedworld.gov. Using the 703 number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has the option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, you may return to FEDWORLD by selecting the "Return to FEDWORLD" option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the "Rules Menu." Although you will be able to download documents and leave messages, you will not be able to write comments or upload files. If you contact FEDWORLD using File Transfer Program (FTP), all files can be accessed and downloaded, but uploads are not allowed, and all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web as well, like FTP, that mode only provides access for downloading files and does not display the NRC "Rules Menu."

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Environmental Impact: Categorical Exclusion

The NRC has determined that these regulations are the type of actions described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150–0009 (Part 70) and 3150–0120 (Parts 30 and 40).

Regulatory Analysis

A regulatory analysis has not been prepared for this rule because it is not expected to have any adverse impact on licensees subject to the proposed rule. These licensees will be postponing, for five years, submission of license renewal applications and the associated fees.

Regulatory Flexibility Analysis

The NRC is seeking public comments on the potential impact of the proposed rule on small entities. The NRC particularly desires comments from small entities (i.e., small businesses, small organizations, and small jurisdictions under the Regulatory Flexibility Act) as to how the regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Those small entities that offer comments on how the regulations could be modified to take into account the differing needs of small entities should specifically discuss the following:

(a) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to larger organizations in the same business community.

(b) How the proposed regulations could be modified to take into account their needs or capabilities.

(c) The benefits that would accrue, or the detriment that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to individuals or groups; and

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the Nuclear Regulatory Commission is proposing to adopt the following amendments to 10 CFR Parts 30, 40, and 70.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.36, paragraph (a) is revised to read as follows:

§ 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a)(1) Except as provided in paragraph (a)(2) of this section, each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 30.37 not less than 30 days before the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph). If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph), the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) Each specific license which has an expiration date after July 1, 1995, and is not one of the licenses described in paragraph (a)(3) of this section, shall be deemed to have an expiration date which is 5 years after the expiration date stated in the current license.

(3) The following specific licenses are not subject to, or otherwise affected by, the provisions of paragraph (a)(2) of this section:

(i) Specific licenses for which, on the [effective date of the final rule], an evaluation or an emergency plan is required in accordance with § 30.32(i);

(ii) Specific licenses whose holders are subject to the financial assurance requirements specified in § 30.35, and on the [effective date of the final rule], the holders either:

(A) Have not submitted a decommissioning funding plan or certification of financial assurance for decommissioning; or

(B) Have not received written notice that the decommissioning funding plan or certification of financial assurance for decommissioning is acceptable;

(iii) Specific licenses whose holders are listed in the Site Decommissioning Management Plan List [which will be available by the effective date of the final rule].

(iv) Specific licenses whose issuance, amendment, or renewal, as of the effective date of the final rule, is not a categorical exclusion under 10 CFR 51.22(c)(14) and, therefore, need an environmental assessment or environmental impact statement pursuant to subpart A of part 51 of this chapter;

(v) Specific licenses whose holders have not had at least one NRC inspection of licensed activities before [effective date of the final rule];

(vi) Specific licenses whose holders, as the result of the most recent NRC inspection of licensed activities conducted before the effective date of the final rule, have been:

(A) Cited for a Severity Level I, II, or III violation in a Notice of Violation;

(B) Subject to an Order issued by the NRC; or

(C) Subject to a Confirmatory Action Letter issued by the NRC.

(vii) Specific licenses with expiration dates before July 1, 1995, for which the holders have submitted applications for renewal under § 30.37 of this part.

* * * * *

3. In § 30.37, a new paragraph (b) is added to read as follows:

§ 30.37 Application for renewal of licenses.

* * * * *

(b) If any licensee granted the extension described in § 30.36(a)(2) has a currently pending renewal application for the extended license, that application will be considered withdrawn by the licensee and any renewal fees paid by the licensee for that application will be refunded.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as

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amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 40.42, paragraph (a) is revised to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a)(1) Except as provided in paragraph (a)(2) of this section, each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 40.43 not less than 30 days before the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph). If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph), the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) Each specific license which has an expiration date after July 1, 1995, and is not one of the licenses described in paragraph (a)(3) of this section, shall be deemed to have an expiration date which is 5 years after the expiration date stated in the current license.

(3) The following specific licenses are not subject to, or otherwise affected by, the provisions of paragraph (a)(2) of this section:

(i) Specific licenses for which, on [effective date of the final rule], an evaluation or an emergency plan is required in accordance with § 40.31(j);

(ii) Specific licenses whose holders are subject to the financial assurance requirements specified in § 40.36, and on the effective date of the final rule, the holders either:

(A) Have not submitted a decommissioning funding plan or certification of financial assurance for decommissioning; or

(B) Have not received written notice that the decommissioning funding plan or certification of financial assurance for decommissioning is acceptable;

(iii) Specific licenses whose holders are listed in the Site Decommissioning Management Plan List [which will be available by the effective date of the final rule].

(iv) Specific licenses whose issuance, amendment or renewal, as of [effective date of the final rule], is not a categorical exclusion under 10 CFR 51.22(c)(14) and, therefore, need an environmental assessment or environmental impact statement pursuant to subpart A of part 51 of this chapter;

(v) Specific licenses whose holders have not had at least one NRC inspection of licensed activities before [effective date of the final rule];

(vi) Specific licenses whose holders, as the result of the most recent NRC inspection of licensed activities conducted before the effective date of the final rule, have been:

(A) Cited for a Severity Level I, II, or III violation in a Notice of Violation;

(B) Subject to an Order issued by the NRC; or

(C) Subject to a Confirmatory Action Letter issued by the NRC.

(vii) Specific licenses with expiration dates before July 1, 1995, for which the holders have submitted applications for renewal under § 40.43 of this part.

6. In § 40.43, a new paragraph (b) is added to read as follows:

§ 40.43 Renewal of licenses.

* * * * *

(b) If any licensee granted the extension described in § 40.42(a)(2) has a currently pending renewal application for the extended license, that application will be considered to be withdrawn by the licensee and any renewal fees paid by the licensee for that application will be refunded.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

8. In § 70.38, paragraph (a) is revised to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a)(1) Except as provided in paragraph (a)(2) of this section, each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 70.33 not less than 30 days before the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph). If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph), the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) Each specific license which has an expiration date after July 1, 1995, and is not one of the licenses described in paragraph (a)(3) of this section, shall be deemed to have an expiration date which is 5 years after the expiration date stated in the current license.

(3) The following specific licenses are not subject to, or otherwise affected by, the provisions of paragraph (a)(2) of this section:

(i) Specific licenses for which, on [effective date of the final rule], an evaluation or an emergency plan is required in accordance with § 70.22(i);

(ii) Specific licenses whose holders are subject to the financial assurance requirements specified in § 70.25, and on [effective date of the final rule], the holders either:

(A) Have not submitted a decommissioning funding plan or certification of financial assurance for decommissioning; or

(B) Have not received written notice that the decommissioning funding plan or certification of financial assurance for decommissioning is acceptable;

(iii) Specific licenses whose holders are listed in the Site Decommissioning Management Plan List [which will be available by the effective date of the final rule].

(iv) Specific licenses whose issuance, amendment or renewal, as of [effective date of the final rule], is not a categorical exclusion under 10 CFR 51.22(c)(14) and, therefore, need an environmental assessment or environmental impact statement pursuant to subpart A of part 51 of this chapter;

(v) Specific licenses whose holders have not had at least one NRC inspection of licensed activities before [effective date of the final rule];

(vi) Specific licenses whose holders, as the result of the most recent NRC inspection of licensed activities conducted before the effective date of the final rule, have been:

(A) Cited for a Severity Level I, II, or III violation in a Notice of Violation:

(B) Subject to an Order issued by the NRC; or

(C) Subject to a Confirmatory Action Letter issued by the NRC.

(vii) Specific licenses with expiration dates before July 1, 1995, for which the holders have submitted applications for renewal under § 70.33 of this part.

(viii) Specific licenses issued pursuant to § 70.31 that, as of [effective date of the final rule], are also subject to the requirements in § 70.24.

9. In § 70.33, a new paragraph (b) is added to read as follows:

§ 70.33 Renewal of licenses.

* * * * *

(b) If any licensee granted the extension described in § 70.38(a)(2) has a currently pending renewal application for that extended license, that application will be considered withdrawn by the licensee and any renewal fees paid by the licensee for that application will be refunded.

Dated at Rockville, Maryland, this 29th day of August, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,
Executive Director for Operations.

[FR Doc. 95–22182 Filed 9–7–95; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies Section 504 Loan Program Amendments

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises the regulations governing the collection of fees and the utilization of interest accruing in accounts established to administer the 504 loan program in order to permit the flexibility required in negotiating with private sector entities for the delivery of the 504 program.

DATES: Comments must be received on or before October 10, 1995.

ADDRESSES: Comments should be sent to LeAnn M. Oliver, Acting Director, Office of Rural Affairs and Economic Development, Small Business Administration, 409 3rd Street SW., suite 8300, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Acting Director, Office of Rural Affairs and Economic Development, Small Business Administration, Telephone (202) 205–6485.

SUPPLEMENTARY INFORMATION: The proposed rule would amend the rule governing the Central Servicing Agent (CSA) functions. The existing 504 program regulations were promulgated based upon the Agency's experience with a predecessor program. Sufficient experience has accumulated to allow the codification of approaches that have arisen in the administration of the program. This rule clarifies that: (1) Fees can be collected from the borrower of the proceeds of a debenture guaranteed under the program as a one-time initiation fee or a monthly servicing fee, (2) fees can be paid to the CSA from either a specific borrower's payment or from aggregated funds collected pursuant to a master service agreement, and (3) clarifies that 503 companies are to receive periodic pro rata disbursements of interest accruing on loan payments in the Master Reserve Account pending the debenture payment date.

Compliance with Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act.

Executive Order 12866 and Regulatory Flexibility Act

SBA certifies that this proposed rule, if adopted, would *not* be a significant regulatory action for purposes of Executive Order 12866 and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

1. It would *not* result in an annual economic effect of $100 million or more or adversely affect in a material way the economy, a sector or the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. It would *not* create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. It would *not* materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

4. It would *not* raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866

Executive Order 12612

SBA certifies that this rule, if adopted, would have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA hereby certifies that this proposed rule, if adopted, would impose no new reporting or recordkeeping requirements.

Executive Order 12778

SBA certifies that this proposed rule is drafted, the extent practicable, in accordance with the standards set forth in section 2 of E.O. 12778.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set forth above, part 108 of the Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

Assistance Under Sections 504 and 505

§ 108.504 [Amended]

2. Section 108.504(e) is revised to read as follows:

* * * * *

(e) *Central Servicing Agent.* This subsection supersedes § 108.503–11 for loans funded under Section 504 and is applicable to all such loans whenever funded.

(1) SBA, in a master servicing agreement, shall designate a Central Servicing Agent (CSA) to act for all 503 companies participating in the sale of 504 Debentures, to ensure uniformity

and the orderly flow of funds among 504 loan recipients, 503 companies, and the Trustee or Transfer Agent (see § 108.505(f)(3) of this part). Pursuant to such master servicing agreement, in consideration of SBA's guaranty of the 503 company's debenture(s), the 503 Company, with the borrower's consent shall enter into a servicing agent agreement (504 program), SBA Form 1506, with the CSA. Execution of such form shall constitute acceptance by the 503 company and the borrower of the terms of the master servicing agreement. Amendments may be made in the terms and conditions of the master servicing agreement as necessary to adapt to changing program needs.

(2) The borrower may be charged an initiation fee and/or a monthly servicing fee as prescribed by Form 1506, which shall be in addition to the fees and charges permitted by § 108.503–6 of this part.

(3) The CSA may be compensated through an initiation fee and/or a monthly service fee. Pursuant to instructions in the master servicing agreement, the CSA's compensation may be paid from initiation fees on specific loans or from aggregated service fees.

(4) SBA Form 1506 shall prescribe the deposits into and the disbursements from a master reserve account, set up by the CSA pursuant to said master servicing agreement. The master reserve account shall be funded by a reserve deposit, and a funding fee to be published from time to time in the **Federal Register**, and by principal and interest payments of 504 loans. SBA shall add funds pursuant to its guaranty to insure the full and timely payment of the debentures in the event a borrower fails to make full and timely payment on its 504 loan. Funds in the master reserve account shall be used to defray expenses of the program described under paragraph (b) of this section. Interest accruing on loan payments between the date of monthly payment and the debenture payment date shall be paid to the 503 company servicing the loan and shall be disbursed to 503 companies periodically on a pro rata basis. Funds in the master reserve escrow account representing interest earned prior to October 1991 and not distributed to a specific 503 company may be expended by SBA for the purposes of program administration.

* * * * *

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans)).

Dated: June 29, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–22064 Filed 9–7–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–16–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A and 206B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A and 206B helicopters, that currently requires an inspection of the main transmission input driveshaft assembly (driveshaft) at intervals of 300 hours time-in-service (TIS); the application of a zinc chromate primer inspection visual aid; and, daily visual checks of the driveshaft. This action would require inspections of the driveshaft at intervals of 300 hours TIS; the application of a self-adhesive temperature indicator visual inspection aid; and, preflight visual owner/operator (pilot) checks of the driveshaft. This proposal is prompted by recent studies that indicate that self-adhesive temperature indicators are a more reliable means of detecting overheat conditions on grease-lubricated couplings than the zinc chromate primers that are currently in use. The actions specified by the proposed AD are intended to prevent failure of the driveshaft due to coupling wear or overheating, which could result in loss of power to the main rotor and a subsequent forced emergency landing.

DATES: Comments must be received by November 7, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., Product Support Dept., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Jurgen Priester, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, Fort Worth, Texas 76193–0170, telephone (817) 222–5159; fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–SW–16–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On January 26, 1981, the FAA issued AD 81–04–08, Amendment 39–4037 (46 FR 12469, February 17, 1981), to require an inspection of the driveshaft at intervals of 300 hours TIS; the application of a zinc chromate primer inspection visual aid; and, daily visual checks of the driveshaft that may be performed by the pilot. That action was prompted by reports of excessive wear and failures of the driveshaft. The requirements of that AD are intended to prevent failure of the driveshaft due to coupling wear or overheating, which would result in loss of power to the main rotor and a forced emergency landing.

Since the issuance of that AD, manufacturer's studies have shown that self-adhesive temperature indicators are a more reliable means of detecting overheat conditions on grease-lubricated couplings than zinc chromate primers. BHTI has issued Alert Service Bulletin (ASB) No. 206–93–76, Revision B, dated September 6, 1994, which describes procedures for the application of a self-adhesive temperature indicator, as well as for repetitive visual checks of the driveshaft for grease leakage from the grease-lubricated couplings, overheating, and security of the clamps and bolts used to attach the driveshaft to transmission and engine couplings. The checks described in this proposal before the first flight of each day may be performed by a pilot, but must be entered into the aircraft records showing compliance with the AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations. This notice proposes to allow a pilot to perform these checks because they involve only a visual check for grease leakage, overheating, and security of the clamps and bolts used to attach the driveshaft to transmission and engine couplings. These checks can be performed equally well by a pilot or a mechanic. They involve checking items similar to those items that a pilot checks during a preflight check. This notice proposes that a mechanic inspect the driveshaft and driveshaft couplings at intervals of 300 hours TIS.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 206A and 206B helicopters of the same type design, the proposed AD would supersede AD 81–04–08 to require inspections of the driveshaft at intervals of 300 hours TIS; the application of a self-adhesive visual over-temperature indicator; and, preflight visual pilot checks of the driveshaft. The actions would be accomplished in accordance with BHTI ASB No. 206–93–76, Revision B, dated September 6, 1994, described previously.

The FAA estimates that 4,312 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately one and one-half work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no charge, but installation materials would cost approximately $10 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $431,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4037 (46 FR 12469, February 17, 1981), and by adding a new airworthiness directive (AD), to read as follows:

Bell Helicopter Textron, Inc.: Docket No. 94–SW–16–AD. Supersedes AD 81–04–08, Amendment 39–4037.

Applicability: Model 206A and 206B helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main transmission input driveshaft assembly (driveshaft) due to coupling wear or overheating, which could result in loss of power to the main rotor and a subsequent forced emergency landing, accomplish the following:

(a) Before the first flight of each day after the effective date of this AD, visually check the driveshaft, part number (P/N) 206–040–100–13, for: (1) Grease leakage from the driveshaft coupling, P/N 206–040–108–005; and (2) visual damage and security of the clamps and bolts used to attach the driveshaft to the transmission and engine couplings. After compliance with paragraph (d) of this AD, also check the self-adhesive visual over-temperature indicators (over-temperature indicators) for overheating, deterioration, debonding, or discoloration in accordance with Part II of the Accomplishment Instructions of Bell Helicopter Textron, Inc. (BHTI) Alert Service Bulletin (ASB) No. 206–93–76, Revision B, dated September 6, 1994. If any grease leakage exists, or if there are indications of overheating, disassemble and inspect the driveshaft in accordance with the applicable maintenance manual, and replace the over-temperature indicators in accordance with Part III of the Accomplishment Instructions of BHTI ASB 206–93–76, Revision B, dated September 6, 1994.

(b) The visual check required by paragraph (a) may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations.

(c) Inspect and lubricate the driveshaft assembly, P/N 206–040–100–13, and driveshaft grease-lubricated couplings, P/N 206–040–108–005, in accordance with the helicopter's maintenance manual and according to the compliance schedule that follows, and thereafter, inspect and lubricate at intervals not to exceed 300 hours time-in-service (TIS):

(1) For helicopters with 250 hours TIS or more, compliance is required within the next 50 hours TIS; or,

(2) For helicopters with less than 250 hours TIS, compliance is required prior to attaining 300 hours TIS.

(d) Install the over-temperature indicators at the next 300 hours TIS driveshaft coupling inspection and lubrication in accordance with Part I of the Accomplishment Instructions of BHTI ASB 206–93–76, Revision B, dated September 6, 1994.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on August 31, 1995.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–22338 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–237–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that currently requires repetitive purging of the hydraulic system and installation of a spoiler actuator that has been previously certified. That AD was prompted by a report of damage to the locking mechanisms on some pistons of the spoiler actuators. The actions specified by the AD are intended to prevent uncommanded extension of the lift spoiler in the event of loss of hydraulic pressure in the spoiler actuator. This action would establish an increased life limit for certain spoiler actuators, and provide an optional terminating action for the requirements of the AD. It would also limit the applicability of the rule to fewer airplanes.

DATES: Comments must be received by October 16, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–237–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 12, 1994, the FAA issued AD 94–17–12, amendment 39–9007 (59 FR 43025, August 22, 1994), applicable to certain Jetstream Model 4101 airplanes, to require repetitive purging of the hydraulic system and repetitive installation of an actuator that has been previously certified. That action was prompted by a report of damage to the locking mechanisms on some pistons of the spoiler actuators. The cause of this damage has been attributed to inadequate purging of the spoiler hydraulic system. In some instances, the spoiler operation was out of sequence and may have caused damage to the locking mechanisms on the pistons of the spoiler actuators. The requirements of that AD are intended to prevent uncommanded extension of the lift spoiler in the event of loss of hydraulic pressure in the spoiler actuator.

Since the issuance of that AD, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has advised the FAA that a standard life limit has been established for Lucas Aerospace spoiler actuators having part numbers TY1763–01A and TY1763–01B. The new life limit has been established at the current declaration of design performance (DDP) life of 5,000 hours time-in-service since new. Therefore, unless a spoiler actuator would fail to perform correctly beforehand, these actuators are permitted to remain installed on the airplane for an interval not to exceed 5,000 hours time-in-service, at which time they must be replaced. The CAA also has advised that compliance with this 5,000-hour life limit on these particular spoiler actuators terminates the need for the currently required repetitive purging of the actuators' hydraulic system and repetitive installation of newly-certified actuators (those marked with an "R" after the serial number) each 500 hours time-in-service.

Additionally, the CAA has advised that, based on further review, fewer airplanes are subject to the identified unsafe condition than previously considered.

Jetstream has issued Service Bulletin J41–A27–034, Revision 1, dated October 28, 1994, which describes procedures for a one-time removal of the left and right spoiler actuators, purging the hydraulic system, and installation of a previously certified spoiler actuator. This revised service bulletin specifies a life limit of 5,000 hours time-in-service for certain Lucas Aerospace spoiler actuators; if these spoiler actuators are replaced at this life limit, the need for repetitive purging of the hydraulic system and repetitive installation of newly-certified actuators is eliminated. Additionally, the effectivity listing of the revised service bulletin eliminates certain airplanes that were specified in the original issue of the service bulletin; these airplanes have been eliminated because they have been determined not to be subject to the addressed unsafe condition. The CAA classified this revised service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

Jetstream has also issued Service Bulletin J41–27–037, dated November 7, 1994, which describes the installation of Modification JM 41381. This modification involves the installation of improved spoiler actuators (having improved purging capability) on the left and right wings. Installation of these improved actuators eliminates: (1) the need for repetitive purging of the hydraulic system and repetitive installation of newly-certified actuators; and (2) the need for a 5,000 hour time-in-service life limit on the (Lucas Aerospace) actuators. The CAA classified this revised service bulletin as optional.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–17–12. It would continue to require repetitive purging of the hydraulic system and installation of an actuator that has been previously certified marked with an "R" after the serial number. These actions are required to be performed every 500 landings.

This proposal would revise the existing AD by requiring that certain Lucas Aerospace spoiler actuators be replaced at intervals of 5,000 hours time-in-service (on the actuator). Such replacement would terminate the current requirement to repetitively purge the hydraulic system and install newly-certified actuators every 500 landings. It would also revise the applicability of the existing rule to delete certain airplanes. The actions would be required to be accomplished in accordance with Jetstream Service Bulletin J41–A27–034, Revision 1, described previously.

This proposal would also provide for an optional action to terminate both the repetitive purging and installation requirements, as required by the existing AD; and the 5,000 hour time-in-service life limit on certain actuators, as required by this new AD. This optional terminating action consists of installing improved actuators (Modification JM 41381) in accordance with Jetstream Service Bulletin J41–27–037, described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD.

The repetitive purging and installation actions that are currently required by AD 94–17–12 take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact on U.S. operators of the actions currently required is estimated to be $6,120, or $360 per airplane.

Replacement of the spoiler actuator at the newly established life limit would add no new costs to affected operators. In fact, it would reduce the economic burden for most operators, since: (1) Repetitive purging of the actuators would be eliminated, and (2) replacement of the actuators will not have to be accomplished as often as was previously required. Additionally, some of the replacement actuators would be provided to operators free of charge by the manufacturer.

Further, since this proposed AD would be applicable to fewer airplanes than was AD 94–17–12, the total cost impact of the AD would be reduced by the amount of labor and parts costs that would previously have been applied to those additional airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9007 (59 FR

43025, August 22, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Jetstream Aircraft, Limited: Docket 94–NM–237–AD. Supersedes AD 94–17–12, Amendment 39–9007.

Applicability: Model 4101 airplanes; having constructors numbers 41004 through 41015 inclusive, 41018 through 41026 inclusive, 41028 through 41030 inclusive, and 41032; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded extension of the lift spoiler in the event of loss of hydraulic pressure in the spoiler actuator, accomplish the following:

(a) Within 21 days after September 6, 1994 (the effective date of AD 94–17–12, amendment 39–9007), remove the spoiler actuators in accordance with Jetstream Alert Service Bulletin J41–A27–034, dated June 9, 1994, or Revision 1, dated October 28, 1994. Following removal of the actuators, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with the service bulletin. Thereafter, repeat the requirements of this paragraph at intervals not to exceed 500 landings.

(1) Prior to further flight, purge the hydraulic system to ensure that there is no contamination.

(2) Prior to further flight, install a spoiler actuator that has been previously certified and marked with an "R" after the serial number on the nameplate of the actuator.

(b) For spoiler actuators having Lucas Aerospace part number (P/N) TY1763–01A or P/N TY1763–01B: Prior to the accumulation of 5,000 total hours time-in-service on the spoiler actuator, or within 30 days after the effective date of this AD, whichever occurs later, replace the actuator with a new or serviceable part, in accordance with Jetstream Service Bulletin J41–A27–034, Revision 1, dated October 28, 1994. Thereafter, prior to the accumulation of 5,000 hours time-in-service on the spoiler actuator, replace the actuator with a new or serviceable part, in accordance with the service bulletin. Such replacement constitutes terminating action for the repetitive purging and repetitive installation requirements of paragraph (a) of this AD.

(c) Installation of improved spoiler actuators (Modification JM 41381) on the left and right wings, in accordance with Jetstream Service Bulletin J41–27–037, dated November 7, 1994, constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 1, 1995.

Darrell M. Pedersen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22302 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–O

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312 and 314

[Docket No. 95N–0010]

Investigational New Drug Applications and New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations pertaining to investigational new drug applications (IND's) and new drug applications (NDA's). The proposed rule would clearly define in the NDA format and content requirements the need to present effectiveness and safety data for important demographic subgroups, specifically gender, age, and racial subgroups. The rule would codify expectations that FDA has previously described in guidance. The proposed amendments would also require IND sponsors of drugs, including biological products, to characterize, in their annual reports, the number of subjects in a clinical study according to age group, gender, and race. The proposed rule does not address the requirements for the conduct of clinical studies and would not require sponsors to conduct any more studies than they have already conducted. It also would not require the inclusion of particular numbers of individuals from specific subgroups in any study or overall. The rule refers only to the presentation of data already collected. The scope of this proposal does not extend to requiring additional studies or data.

DATES: Written comments by December 7, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Deborah A. Wolf, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION: The proposed rule would amend the NDA content and format regulations at 21 CFR 314.50 to explicitly require that sponsors submit effectiveness and safety data by gender, age, and racial subgroups and other subgroups of the population of patients treated, as appropriate, such as patients with renal failure or patients with different levels of severity of disease. In the **Federal Register** of July 22, 1993 (58 FR 39406), FDA published a guideline entitled "Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs." The guideline provided guidance on FDA's expectations regarding inclusion of both men and women in drug development, analyses of clinical data by gender, assessment of potential pharmacokinetic differences between genders, and conduct of specific additional studies in women, where indicated. The preamble to the guideline described the development of the agency's policy regarding the evaluation of clinical data by gender. The guideline noted that over the preceding decade there had been growing concern that the drug development process did not produce adequate information about the effects of drugs in women (58 FR 39406). Analyses of published clinical trials in certain therapeutic areas had indicated that there had been little or no participation by women in many of the studies. There had also been little study of the effects of such aspects of female

physiology as the menstrual cycle and menopause or of the effects of oral contraceptives and systemic progestins and estrogens on drug action and pharmacokinetics.

The guideline also explained that concerns about the adequacy of data on the effects of drugs in women have arisen in the context of an increasing awareness of the need to individualize treatment in the face of the wide variety of demographic, disease-related, and individual patient-related factors that can lead to different responses in subsets of the population. Optimal use of drugs requires identification of these factors so that appropriate adjustments in dose, concomitant therapy, or monitoring can be made. The guideline was part of FDA's effort to address the need to gather and evaluate data from various subpopulations in clinical drug trials. The agency had previously addressed the need to develop information on the elderly in the 1989 guideline entitled, "Guideline for the Study of Drugs Likely to be Used in the Elderly." That guideline provided similar guidance regarding inclusion of elderly patients in clinical trials and assessment of clinical and pharmacokinetic differences between older and younger patients.

In 1983 and 1989, FDA examined the relative numbers of individuals from two important demographic subgroups, women and the elderly, in the data bases of NDA's. The agency found that, in general, the proportions of women and men included in the clinical trials were similar to the respective proportions of women and men who had the diseases for which the drugs were being studied, taking into account the age range of the population studied. The General Accounting Office (GAO) conducted a larger study of drugs approved during the period 1988 through 1991, and found similar proportions. Women were found to typically represent a majority of patients in NDA data bases of drugs used to treat conditions more common, or more commonly treated, in women, and a minority, generally a sizable one, in tests of drugs for conditions that occur predominantly in males in the age range usually included in the clinical trials.

Although women have been included in the later phases of clinical trials, the agency believes that inclusion alone is not sufficient for adequate assessment of potential gender differences. There must be an effort to use the data to discover such differences, and the agency found that this effort was not made. Various documents published by the agency have reflected the need to examine gender as well as other characteristics for their effects on drug response. FDA's regulations on NDA content and format require the clinical data section of the NDA to include, among other things, "An integrated summary of the data demonstrating substantial evidence of effectiveness for the claimed indications. Evidence is also required to support the dosage and administration section of the labeling, including support for the dosage and dose interval recommended, and modifications for specific subgroups (for example, pediatrics, geriatrics, patients with renal failure)" and an integrated summary of safety. (See 21 CFR 314.50(d)(5)(v) and (d)(5)(vi)(*a*)). The examples of subgroups listed in § 314.50(d)(5)(v) were not intended to be a complete list or to limit the subgroups for which data should be submitted. In 1988, in a guideline entitled, "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications," FDA discussed analyses of population subsets within NDA data bases to look for differences in effectiveness and adverse reactions to drugs. The guideline describes the population subsets to include subsets such as different genders, age groups, and races, and other subsets such as people receiving other drug therapy and people with concurrent illnesses. See, "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications" at pages 32 and 40. The guideline describes the need for clinical data beyond the specific subgroups and categories of information set forth in the current regulations.

The current wording of § 314.50, while not intended to limit the analyses to be carried out does not fully reflect the need to present the safety and effectiveness data by subgroup and omits important subgroups, including gender and racial groups. The proposal would make explicit the agency's requirements concerning the data that are presented in NDA's. It would make clear the need to present safety and effectiveness data by gender, age, and racial subgroups to allow a determination, to the extent the data permit, of whether these factors affect results of treatment or alter dosing requirements.

FDA believes that it is important to make such an explicit requirement. After the publication of the 1988 guideline, FDA and GAO examined data bases for NDA's to see whether the analyses to which the guideline refers were being conducted and submitted. Both of the examinations found that in about half of the cases the data bases were not being analyzed to determine whether there were differences in response to drugs between the two genders or among different racial groups and age groups. Thus, changes that the proposal would make to § 314.50 would codify what the agency has already identified as important elements of clinical data.

FDA also believes that to codify the need for presentations of data by subgroups will provide industry with clear information regarding potential consequences of the absence of subgroup data. The agency's regulation governing the filing of an application, which is set forth in 21 CFR 314.101, provides that the Center for Drug Evaluation and Research may refuse to file an NDA that, among other things, is not submitted in the form required under § 314.50 or that is incomplete because it does not on its face contain information required under section 505(b) of the Federal Food, Drug and Cosmetic Act. 21 CFR 314.101(d)(3). The refusal to file policy attempts to direct FDA's resources to applications complete enough for review. The agency's "New Drug Evaluation Guidance Document: Refusal to File" describes situations in which FDA applies the provision in § 314.101(d)(3) to make refusal to file decisions. In particular, the document explains that omission of critical data, information or analyses needed to evaluate effectiveness and safety or provide adequate directions for use is an appropriate basis for a refusal to file. Among the particular considerations in refusal to file decisions is a "clearly inadequate evaluation for safety and/or effectiveness of the population intended to use the drug, including pertinent subsets, such as gender, age, and racial subsets." Thus, the proposal would allow sponsors to know from the beginning that data that are not presented with regard to gender, age, and racial groups are grounds for a refusal to file.

It is important to note that the rule does not address the requirements for the conduct of clinical studies and that this proposal would not require sponsors to conduct any more studies than they have already conducted. It also does not require the inclusion of particular numbers of individuals from specific subgroups in any study or overall. The rule refers only to the presentation of data already collected. The scope of this proposal does not extend to requiring additional studies or data.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Investigational New Drug Applications and New Drug Applications.

Description: The information submitted by respondents pursuant to the proposed regulatory revisions would assist the agency in monitoring the success of drug companies in enrolling in clinical drug trials subjects representing various subgroups of the population expected to use the drug being tested once it is approved and marketed and in better evaluating the safety and efficacy profiles of drugs for various subgroups.

Description of respondents: Businesses, nonprofit institutions, small businesses.

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
312.33(a)(2)	1,616 (noncommercial)	1	2 hours	3,232
312.33(a)(2)	362 (commercial)	1	8 hours	2,896
314.50	50	1	40 hours	2,000
Total				8,128

The agency has submitted a copy of this proposed rule to OMB for review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The proposed rule does not require any change in the studies a drug manufacturer needs to conduct or impose any requirements on the conduct of those studies. It requires only a presentation of data already collected. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

This proposed rule would amend the IND regulations to enable FDA and sponsors of drugs, including biological products, to monitor the sponsor's success in studying the populations that are likely to receive the drug once it is approved. Under the current IND regulations in § 312.33(a)(2) (21 CFR 312.33(a)(2)), sponsors are required to submit an annual report that includes for each study, among other things, "The total number of subjects initially planned for inclusion in the study, the number entered into the study to date, the number whose participation in the study was completed as planned, and the number who dropped out of the study for any reason." The proposed rule would amend § 312.33(a)(2) to require that the annual report include the number of subjects entered into the study "characterized by age group, gender, and race." Reporting and reviewing this information would not itself represent a need for new studies or patients. The agency is aware that many clinical trials do not contain enough patients from various subgroups to perform statistically rigorous comparisons of outcomes between subgroups. The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Request for Comments

Interested persons may, on or before December 7, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 312 and 314 be amended to read as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

2. Section 312.33 is amended by revising paragraph (a)(2) to read as follows:

§ 312.33 Annual reports.

* * * * *

(a) * * *

(2) The total number of subjects initially planned for inclusion in the study; the number entered into the study to date, characterized by age group, gender, and race; the number whose participation in the study was completed as planned; and the number who dropped out of the study for any reason.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

4. Section 314.50 is amended by revising the second sentence and adding two new sentences after the second sentence in paragraph (d)(5)(v) and by adding two new sentences after the first sentence in paragraph (d)(5)(vi)(a) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(d) * * *

(5) * * *

(v) * * * Evidence is also required to support the dosage and administration section of the labeling, including support for the dosage and dose interval recommended. The effectiveness data shall be presented by gender, age, and racial subgroups. Effectiveness data from other subgroups of the population of patients treated, as appropriate, such as patients with renal failure or patients with different levels of severity of disease, shall also be presented.

(vi) * * *

(a) * * * The safety data shall be presented by gender, age, and racial subgroups. Safety data from other subgroups of the population of patients treated, as appropriate, such as patients with renal failure or patients with different levels of severity of disease, shall also be presented. * * *

* * * * *

Dated: July 11, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–22297 Filed 9–7–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 552

RIN 1215–AA82

Application of the Fair Labor Standards Act to Domestic Service

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: This document reopens and extends the period for filing written comments on a proposed revision to § 552.109 of Regulations, 29 CFR part 552, which was published in the **Federal Register** on December 30, 1993 (58 FR 69310), to clarify the minimum wage and overtime exemption under the Fair Labor Standards Act (FLSA) for certain employees of third-party employers who provide domestic companionship services. The Department is continuing to consider this particular proposal, and this action is taken in order to obtain additional comments from interested parties. A separate final rule published elsewhere in this issue amends 29 CFR part 552 to incorporate changes necessitated by amendments to Title II of the Social Security Act, which were enacted October 22, 1994, as Pub. L. 103–387 (Social Security Domestic Employment Reform Act), and makes other updating and technical revisions as proposed in the notice of December 30, 1993.

DATES: Comments are due on or before November 7, 1995.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Acting Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*), as amended by the Fair Labor Standards Amendments of 1974 (Pub. L. 93–259, 88 Stat. 55), extended with certain exceptions the FLSA's minimum wage, overtime pay, and recordkeeping provisions to domestic service employees whose compensation for services would constitute wages under section 209(g) of Title II of the Social Security Act, *or* who are employed by one or more employers for more than 8 hours in the aggregate in any workweek. Section 13(a)(15) of the FLSA provides an exemption from the minimum wage and overtime pay requirements of the Act for "employees employed on a casual basis in domestic service employment to provide babysitting services," and for domestic service employees employed "to provide companionship services for individuals who * * * are unable to care for themselves." Section 13(b)(21) provides an overtime exemption for domestic service employees who reside in the household in which they are employed. On February 20, 1975, regulations and interpretations implementing the domestic service employment provisions of the FLSA were published in the **Federal Register** (40 FR 7405) at 29 CFR part 552.

The Department published a notice of proposed rulemaking in the **Federal Register** on December 30, 1993 (58 FR 69310), inviting public comments until February 28, 1994, which, among other things, would revise § 552.109 to clarify that, in order for the exemptions in FLSA sections 13(a)(15) and 13(b)(21) to apply, employees engaged in providing companionship services and live-in domestic service employees who are employed by a third-party employer or agency must also be "jointly" employed by the family or household using their services. In addition, the Department invited public comments on certain updating and technical changes to 29 CFR part 552.

The Department proposed to revise § 552.109 to provide, consistent with rulings of the Wage-Hour Administrator, that companions and live-in domestics employed by third-party employers are eligible for the exemptions in FLSA sections 13(a)(15) and 13(b)(21) only where the individuals are also employed by the family or household using their services. This clarification was considered necessary in order to make the underlying definition of "domestic service employees" (*i.e.*, someone who performs services of a household nature "in or about a private home * * * of the person *by whom he or she is employed* * * *") at § 552.101 internally consistent with § 552.109, applicable to domestic service employees who provide "companionship services."

A total of 7 comments were received in response to the notice. All focused their remarks on the proposed revision to § 552.109 concerning joint employment and third-party employers. After review of the comments received to date, the Department has concluded that it is appropriate to continue the rulemaking on the proposed revision to § 552.109. With respect to the updating and technical changes that were proposed in the December 1993 notice, they are adopted in a final rule published elsewhere in this issue. This separate document also revises Regulations, 29 CFR part 552, to incorporate changes necessitated by amendments to Title II of the Social Security Act which were enacted October 22, 1994, as Public Law 103–387 (Social Security Domestic Employment Reform Act).

Based on the comments received to date, the Department wishes to consider the implications of its proposed revision on situations where State and local governments provide companion services to the elderly or infirm, as well as situations where the companion is employed by a family member. The Department is considering revising the proposal to allow the exemption to apply to employment, either jointly with a third party agency or otherwise, by a government agency or family member, where the government agency or family member is acting on behalf of an elderly or infirm person who is unable to act on his or her own behalf. The Department is therefore reopening the comment period in order to receive additional comments relating to this proposal.

The Department is particularly interested in receiving information on the companion services provided by State and local governments, and the relationship between the government and the elderly or infirm person to whom the service is provided.

Signed at Washington, DC, on this 31st day of August 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

As a convenience to the readers of this document, the proposed revisions to § 552.109 which were published in the **Federal Register** document of December 30, 1993 (53 FR 69310), are republished as follows:

PART 552—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

7. In § 552.109, paragraphs (a) and (c) are proposed to be revised to read as follows:

§ 552.109 Third party employment.

(a) Employees who are engaged in providing companionship services, as defined in § 552.6, and who are employed by an employer or agency other than the family or household using their services, are exempt from the Act's minimum wage and overtime pay requirements by virtue of section 13(a)(15), provided that they are also employed by the person in whose home the services are provided, *i.e.*, a joint employment relationship must exist (*see* 29 CFR Part 791). The assignment of such an employee to more than one household or family in the same workweek would not defeat the exemption for that workweek, provided that the services rendered during each assignment come within the definition of companionship services.

(b) * * *

(c) Live-in domestic service employees who are employed by an employer or agency other than the family or household using their services are exempt from the Act's overtime requirements by virtue of section 13(b)(21), provided that they are also employed by the person in whose home the services are provided, *i.e.*, a joint employment relationship must exist. This exemption, however, will not apply where the employee works only temporarily for any one family or household, since the employee would not be "residing" on the premises of such family or household.

[FR Doc. 95–22142 Filed 9–7–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1206

[RIN 3095–AA43]

National Historical Publications and Records Commission; Grant Program Procedures

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Archives and Records Administration (NARA) proposes to update and clarify current regulations in 36 CFR Part 1206 relating to the National Historical Publications and Records Commission (NHPRC) grant program. In particular, language has been revised to reflect an internal reorganization; to address revisions to the state historical records coordinator and advisory board program; to include mention of archival administration and documentary editing fellowships for individuals; to include prior approval requirements for changes in the grant project; to cite Office of Management and Budget Circulars A–110, A–128 and A–133, which stipulate requirements for grant administration and audit; and to make grantees aware of the lobbying certification requirement for grants of $100,000 or more. The rule will affect NHPRC applicants and grantees.

DATES: Comments must be received by November 7, 1995.

ADDRESSES: Comments should be sent to Director, Policy and Planning Division (PIRM–POL), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at 301–713–6730.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the National Historical Publications and Records Commission (NHPRC) is to promote the preservation and use of historically significant documents. The Archivist of the United States awards grants recommended by the NHPRC. Publications grants are made for the preparation (compiling, editing and publishing) of printed, microform, and electronic publications. Subvention grants are made to nonprofit presses to help defray publication costs of Commission-supported editions. Records grants are made for activities relating to the preservation, arrangement and description of historical records. Educational programs sponsored by the NHPRC include an institute to provide training in documentary editing and fellowships in the fields of documentary editing and archival administration. The Catalog of Federal Domestic Assistance (CFDA) number for this program is 89.003.

Provisions of the Proposed Rule

In 1991, the publications and records programs of the NHPRC were merged. The proposed rule updates program descriptions and procedures to reflect this internal reorganization. The NHPRC has also been working with the state historical records coordinators and advisory boards to revise their program sections and has made changes accordingly. In addition, we have added language to reflect current guidelines that stipulate prior approval requirements for changes in a grant project once an award has been made, and to mention specifically the archival administration and documentary editing fellowships.

The proposed rule also seeks to clarify Governmentwide requirements for applicants and grantees by including language that specifies the certification regarding lobbying for grants of $100,000 or more; adds a new section regarding audits, citing OMB Circulars A–128, "Audits of State and Local Governments," and A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations"; and cites OMB Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

Finally, the proposed rule revises reporting requirements to reflect reductions in reporting frequency that are being made as part of the President's regulatory reform initiative.

The information collections contained in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1206

Grant programs—Archives and records, Grant administration.

For the reasons set forth in the preamble, NARA proposes to amend Part 1206 of Title 36 of the Code of Federal Regulations as follows:

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

1. The authority citation of part 1206 continues to read as follows:

Authority: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506.

2. Section 1206.1 is revised to read as follows:

§ 1206.1 Scope of part.

This part prescribes the procedures and rules governing the operation of the grant program of the National Historical Publications and Records Commission.

3. Section 1206.2 is amended by revising paragraphs (e), (f), and (g) to read as follows:

§ 1206.2 Definitions.

* * * * *

(e) The term *State projects* means records projects directed by organizations operating within and involving records or activities within one State. Records or activities of such projects will typically be under the administrative control of the organization applying for the grant. The records or activities need not relate to the history of the State.

(f) The term *regional projects* means records projects involving records or activities in more than one State in a region. Regional projects include those undertaken by regional archival groups or consortia.

(g) The term *national projects* means records projects involving records or activities in several regions or in widely separated States. In general, the location of the records and/or the site of grant-funded activities will determine the category of submission.

4. Section 1206.6 is revised to read as follows:

§ 1206.6 The Commission's Grant Program.

The Commission operates primarily through a grant program supporting publications projects (subpart B) and records projects (subpart C). Fellowships for individuals in archival administration and documentary editing are also offered, as well as an annual institute for the editing of historical documents.

5. Section 1206.7 is added to subpart A to read as follows:

§ 1206.7 Organization.

The Executive Director, Program Director, and the staff of the Commission administer the publications and records grants, fellowships, and institute under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

6. Section 1206.10 is revised to read as follows:

§ 1206.10 General.

This subpart describes the scope, purpose, and operation of that part of the grant program relating to publications projects and prescribes requirements applicable to printed, microform, and electronic publication projects. Grant application and administration procedures are given in subpart D of this part.

7. Section 1206.12 is revised to read as follows:

§ 1206.12 Scope and purpose.

Publications projects are intended to ensure the dissemination and accessibility of documentary source material important to the study and understanding of U.S. history. Projects should therefore be based upon material of widespread interest among scholars, students, and informed citizens. Documents should have historical value and interest that transcend local and State boundaries.

§ 1206.14 [Removed]

8. Section 1206.14 is removed.

9. Section 1206.16 is revised to read as follows:

§ 1206.16 Project requirements.

(a) Each publications project shall include either the papers of a U.S. leader in a significant phase of life in the United States or documents relating to some outstanding event or to some topic or theme of national significance in U.S. history. These projects shall consist of collecting, compiling, editing, and publishing, either selectively or comprehensively, the papers or documents. Publication may be in the form of printed, microform, or electronic editions. Electronic formats for publication of documentary sources will be considered only when suitable preservation of the data can be assured. Three copies of each book publication should be deposited with the National Historical Publications and Records Commission (NHPRC), Washington, DC 20408. These copies may be included as part of the five complimentary copies to be sent by presses receiving subvention grants.

(b) For microform projects, the grantee shall make positive prints and all finding aids available to institutions, scholars, or students through interlibrary loan and for purchase. Five complimentary copies of guides and indexes produced by the projects shall be sent to the Commission.

10. In § 1206.18, paragraphs (a) and (c) are revised to read as follows:

§ 1206.18 Subsidies for printing costs.

(a) The Commission will consider grant applications from university and other nonprofit presses for the subvention of part of the costs of manufacturing and disseminating volumes that have been formally endorsed by the Commission. Grants not exceeding $10,000 per volume ($3,000 for reprints) are awarded upon recommendation of the Commission to promote the availability of Commission-supported documentary editions.

* * * * *

(c) The Commission shall receive five complimentary copies of each published volume for which a subvention grant is made.

11. Section 1206.20 is revised to read as follows:

§ 1206.20 Microform publication standards.

Technical standards for NHPRC-sponsored microform projects are stated in the brochure "National Historical Publications and Records Commission: Microform Guidelines," which will be supplied to applicants upon request and to grantee institutions at the time a grant is made for a microform project.

12. Section § 1206.30 is revised to read as follows:

§ 1206.30 General.

This subpart describes the scope, purpose, and operation of that part of the grant program relating to records projects. Grant application and administration procedures are given in subpart D of this part.

13. Section 1206.32 is revised to read as follows:

§ 1206.32 Scope and purpose.

Through its support for records projects, the National Historical Publications and Records Commission encourages a greater effort at all levels of government and by private organizations to preserve and make available for use those records, generated in every facet of life, that further an understanding and appreciation of U.S. history. In the public sector, these historical records document significant activities of State, county, municipal, and other units of government. In the private sector, historical records include manuscripts, personal papers, and family or corporate archives that are maintained by a variety of general repositories as well as materials in special collections relating to particular fields of study, including the arts, business, education, ethnic and minority groups, immigration, labor, politics, professional services, religion, science, urban affairs, and women. In addition to recommending the supporting of projects relating directly to a body of records, the Commission may also recommend support for projects to advance the state of the art, to promote cooperative efforts among institutions and organizations, and to improve the knowledge, performance, and professional skills of those who work with historical records.

§ 1206.34 [Removed]

14. Section 1206.34 is removed.

15. Section 1206.36 is revised to read as follows:

§ 1206.36 State historical records coordinator.

(a) The governor of each State desiring to participate fully in the program shall appoint a State historical records coordinator (coordinator), who shall be the full-time professional official in charge of the State archival program or agency. If the State has another state-funded historical agency or agencies, the official(s) in charge shall be a member of the State historical records advisory board (board). The coordinator is appointed to a minimum four-year term, but may continue to serve until replaced by the governor or until resignation. The coordinator shall serve as chair of the board and shall be the central coordinating officer for the historical records grant program in the State. The person appointed will not be deemed to be an official or employee of the Federal Government and will receive no Federal compensation for such service. The pamphlet "Guidelines for State Historical Records Coordinators and State Historical Records Advisory Boards," which is available from the Commission and from State historical records coordinators, provides further information on the role of the coordinator.

(b) In the event of the resignation of the coordinator or other inability to serve, a deputy coordinator, if one has been designated, will serve as acting State coordinator until the governor makes an appointment. In the absence of a deputy coordinator, the NHPRC will recognize an acting coordinator, selected by the state board, who shall serve until the governor appoints a coordinator in order to conduct the necessary business of the board.

16. Section 1206.38 is revised to read as follows:

§ 1206.38 State historical records advisory board.

(a) Each State desiring to participate in the program shall define an appointment process and appoint a State historical records advisory board consisting of at least seven members, including the State historical records coordinator, who chairs the board. The coordinator shall provide the Commission with a description of the appointment process. A majority of the members shall have recognized experience in the administration of government records, historical records, or archives. The board should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations in the State. Board members will not be deemed to be officials or employees of the Federal Government and will receive no Federal compensation for their service on the board. They are appointed for three years with the possibility of renewal; and preferably terms are staggered so that one-third of the board is newly appointed or reappointed each year. If the board is not established in State law, members' terms continue until replacements are appointed. The board may adopt standards for attendance and may declare membership positions open if those standards are not met.

(b) The board is the central advisory body for historical records planning and for Commission-funded projects developed and carried out within the State. The board serves as a coordinating body to facilitate cooperation among historical records repositories and other information agencies within the state and as a state-level review body for grant proposals as defined in the Commission's guidelines. Specifically, the board may perform such duties as sponsoring and publishing surveys of the conditions and needs of historical records in the State; soliciting or developing proposals for projects to be carried out in the State with NHPRC grants; reviewing proposals by institutions in the State and making recommendations about these to the Commission; developing, revising, and submitting to the Commission State priorities for historical records projects following guidelines developed by the Commission; promoting an understanding of the role and value of historical records; acting in an advisory capacity to the state archives and other statewide archival or records agencies; and reviewing, through reports and otherwise, the operation and progress of projects in the State financed by NHPRC grants.

17. In § 1206.50, paragraph (c) is revised to read as follows:

§ 1206.50 Types of grants.

* * * * *

(c) *Matching grants.* An application for a matching grant should be made when an applicant has prospects of securing financial support from a third party or, in the case of a State or local government agency, new funds from the institution's own appropriation source are provided expressly for the project proposed in the application. Upon Commission approval of a matching grant request, the applicant shall present written documentation certifying that matching funds have been provided for the project by the non-Federal source. In the case of a State or local government agency, the matching requirement may also be met through matching funds from the State or local government, provided that it can be demonstrated to the Commission's satisfaction that the matching amount has been provided above and beyond funds previously allocated or planned for the agency's budget and that the funds are set aside exclusively to support the project proposed for an NHPRC grant. Applicants need not, however, have

money in hand to make a matching grant request; they need only assure the Commission that they have reasonable prospects of obtaining the needed amounts.

* * * * *

18. Section 1206.52 is revised to read as follows:

§ 1206.52 Grant limitations.

Grant limitations are described in the grant program guidelines pamphlet, available on request from the Commission.

19. Section 1206.54 is revised to read as follows:

§ 1206.54 Who may apply.

The Commission will consider applications from State and local government agencies, nonprofit organizations and institutions, Federally acknowledged or state-recognized Native American tribes or groups, and, under certain conditions, from individuals. Proposals for State projects falling under the Commission's goals, "To Assure the Preservation of the Nation's Documentary Heritage through State Collaborative Efforts" and "To Achieve Progress in the Preservation and Use of Original Source Material," as defined in the grant program guidelines, will be accepted only from applicants in States in which a State historical records coordinator and a State historical records advisory board are currently appointed. This requirement does not apply to regional or national projects.

20. Section 1206.56 is revised to read as follows:

§ 1206.56 When to apply.

Grant proposals are considered during Commission meetings held three times during the year. For current application deadlines contact the grant program staff or State historical records coordinators (for records grant proposals). Some State boards have established pre-submission review deadlines for records proposals; further information is available from State coordinators.

21. In § 1206.58, paragraphs (b), (c), and (d) are revised to read as follows:

§ 1206.58 How to apply.

* * * * *

(b) *Application forms.* Applicants for NHPRC grants shall use Standard Form 424, Application for Federal Assistance, and NA Form 17001, Budget Form (OMB Control Number 3095–0004). Applicants for subvention grants also submit the NHPRC subvention grant application (OMB Control Number 3095–0021), and applicants for archival administration fellowship host institution grants submit a special application (OMB Control Number 3095–0015). Applicants for NHPRC-sponsored fellowships complete the appropriate fellowship application. Copies of these applications and forms are available from the Commission. Project proposals and related correspondence should be sent to the National Historical Publications and Records Commission (NHPRC), Washington, DC 20408.

(c) *Assurances and certifications.* All grant applications to the Commission must include the following assurances and certifications signed by an authorized representative of the applicant institution, or in the case of an individual applicant, by that individual: Standard Form 424B, Assurances: Non-Construction Programs; the Certification Regarding Debarment, Suspension, and Other Responsibility Matters specified in part 1209, appendix B; the Certification Regarding Drug-free Workplace Requirements specified in part 1209, appendix C, of this chapter; and, if the application requests more than $100,000 in Federal funds, a signed Certification for Grants, Loans, or Cooperative Agreements in Excess of $100,000 (certification regarding lobbying). Assurance and certification language is included in the program pamphlet.

(d) *Program guidelines pamphlet.* Supplementary information for applicants is contained in the pamphlet, "Program Guidelines: Applications and Grants," which is available from the Commission upon request. The pamphlet is also available from State historical records coordinators. This pamphlet includes copies of the application form and certifications, guidelines on the preparation of project budgets and program narrative statements, and other guidance on applying for and administering NHPRC grants. OMB Control Number 3095–0013 has been assigned to this information collection.

22. In § 1206.66, paragraphs (b) and (c) are revised to read as follows:

§ 1206.66 Review and evaluation of grant proposals.

* * * * *

(b) *Publications grant proposals.* The Commission staff reviews publications grant proposals for completeness, conformity with application requirements, and relevance to the objectives of the grant program. Proposals are sent to specialists in American history and documentary editing for review and recommendations. The recommendations are considered by the full Commission at regular meetings.

(c) *Subvention grant applications.* The Commission staff reviews subvention grant applications to ensure their adherence to established technical standards for the production of printed volumes, particularly in the quality of paper and ink. Staff recommendations are considered by the full Commission at regular meetings.

23. Section 1206.68 is revised to read as follows:

§ 1206.68 Grant administration responsibilities.

Primary responsibility for the administration of grants is shared by the grantee institution and the project director designated by the institution. In the case of grants made to individuals, the individual named as project director has primary responsibility for the administration of the grant. Grants shall be administered in conformance with either OMB Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" (available from the Commission office by writing to NHPRC, National Archives and Records Administration, Washington,DC 20408, or OMB by writing to the Executive Office of the President, Publications Service, 725 17th Street NW, Suite G2200, Washington, DC 20503) or, in the case of State and local governments, with the regulations in part 1207 of this chapter. All grants shall be in conformance with part 1209 of this chapter.

(a) *Changes in the grant project:*

(1) *Extension of the grant period.* Requests for extension of the grant period must be made before the end of the grant period and must be signed by the grantee institution's authorized representative as indicated on the grant application form (SF 424). No extensions will be allowed unless grantees are up-to-date in their submission of financial and narrative reports.

(2) *Rebudgeting.* To meet unanticipated program needs, grantees may adjust the amounts allocated to existing budget lines for both grant funds and cost sharing and may transfer grant funds among existing NHPRC-funded direct cost categories that appear in the final project budget approved by the Commission at the time of the grant award. Cost-sharing funds may also be shifted among existing cost-sharing categories. For grants where the NHPRC's award is less than $100,000, grantees may make these transfers without NHPRC approval. When

Commission grant awards are for $100,000 or more, grantees must obtain prior approval from the NHPRC when cumulative transfers among direct cost categories total more than 10 percent of the total project budget (i.e., grant funds plus other funds). In addition, the Program Director of the Commission may approve the use of NHPRC grant funds for new cost categories for which Commission funds were not provided in the final approved budget where such action seems appropriate for the fulfillment of the original purposes of the grant and where the amount of funds involved does not exceed 10 percent of the amount of the award or $5,000, whichever is less. Requests to establish these new cost categories must be made in writing and signed by the grantee institution's authorized representative. Requests that exceed this limit are subject to approval by the full Commission.

(3) *Other changes requiring prior approval.* Prior written approval from the Commission must be obtained for financial or programmatic changes in all cases involving the following: revision of the scope or objectives of the project; change of the project director or other key project personnel who have been specifically named in the grant application or award or related correspondence; and, contracting out, subgranting, or otherwise obtaining the services of a third party to perform activities central to the purposes of the grant, unless specified in the grant proposal.

(b) *Submission of requests for changes.* All requests for approval of budget or programmatic changes must be submitted in the form of a letter signed by the grantee institution's authorized representative for the grant and addressed to the Program Director. A written response signed by the Program Director of the Commission will constitute approval for the changes.

24. Section 1206.78 is revised to read as follows:

§ 1206.78 Grant reports.

(a) Financial status reports and narrative progress reports are required for all grants. Standard Form 269, Financial Status Report, shall be used for all financial reports. The pamphlet, "Program Guidelines: Applications and Grants," which is provided to each grantee and is available from the Commission on request, specifies the content of the narrative progress reports.

(b) Financial reports are due annually 30 days after the end of each reporting period. Narrative progress reports are due 30 days after the end of each six-month period. Final financial and narrative reports are due within 90 days after the expiration or termination of the grant period. Grants with a duration of six months or less require a final report only. Additional rules on financial and performance reports are found in OMB Circular A–110 and §§ 1207.40 and 1207.41 of this chapter, as appropriate.

25. Section 1206.79 is added to read as follows:

§ 1206.79 Audits.

Grantees are responsible for obtaining audits in accordance with either the Single Audit Act of 1984 (31 U.S.C. 7501–7), for which audit requirements have been set forth in Office of Management and Budget (OMB) Circular A–128, "Audits of State and Local Governments," or requirements established under OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations," as appropriate. Copies are available from the Commission office or from OMB at the addresses given in § 1206.68 of this part. The grantee is responsible for ensuring that the NHPRC receives a copy of the audit report for any audit performed during the grant period or for three years thereafter. A reasonable portion of grant funds, as defined in the OMB Circular, may be used to comply with audit requirements. The Commission prefers that the grantee assume such costs as institutional cost sharing.

26. Section 1206.94 is revised to read as follows:

§ 1206.94 Compliance with Governmentwide requirements.

In addition to the grant application and grant administration requirements outlined in this part 1206, grantees are responsible for complying with applicable Governmentwide requirements contained in OMB Circular A–110 or part 1207 of this chapter, as appropriate, and part 1209 of this chapter.

Dated: August 30, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–22267 Filed 9–7–95; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 52–1–7109b, PA 53–1–7110b, PA 55–1–7111b, PA 61–1–7112b, PA 66–1–7113b; FRL–5272–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NO_X RACT and Synthetic Minor Permit Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on eleven major sources and establishes permit conditions to limit one source's emissions to below major source levels. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 10, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 18, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95–22135 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 95–282]

Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission has adopted a notice of proposed rulemaking (Notice) inviting comment on proposals to revise the assistance mechanisms contained in the jurisdictional separations rules applicable to Dial Equipment Minutes ("DEM") weighting and the Universal Service Fund ("USF"). The Commission invited comment on whether DEM weighting should be phased out or, if it is retained, whether it should be merged with the USF or otherwise reformed. The Commission also proposed three basic approaches to revising the USF, by either reforming the current mechanism, which bases assistance on the carriers' reported costs, or introducing a system basing assistance on proxy factors, or allocating the fund among the States, which would design their own distribution programs, according to the Commission's guidelines. The Commission referred the proposals to the Federal-State Joint Board in this proceeding for a recommended decision. In addition, the Commission issued a Notice of Inquiry ("NOI") seeking comment regarding: the need for further rulemaking to develop a program to reduce the USF in competitive markets through least-cost bidding, and the appropriate long-range treatment of universal service issues.

DATES: Comments are due October 10, 1995; Reply Comments are due November 9, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jon Reel, (202) 418–0834, or Deborah A. Dupont, (202) 418–0873, Common Carrier Bureau, Accounting and Audits Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's Notice of Proposed Rulemaking in Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, FCC 95–282, CC Docket No. 80–286, adopted and released July 13, 1995. The Commission has made the full text of the Notice of Proposed Rulemaking available for inspection and copying during normal business hours in the Commission's Reference Center, Room 239, 1919 M Street NW., Washington, DC 205543, and will publish it in the FCC Record. The full text of the Notice of Proposed Rulemaking may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone number (202) 857–3800.

Synopsis of Notice of Proposed Rulemaking

In this Notice, the Commission seeks comment on proposed improvements to two subsidies intended to promote universal service at reasonable rates in high-cost, predominantly rural areas: dial equipment minute ("DEM") weighting,[1] and the Universal Service Fund.[2] Changes in technology, market structure, and regulatory policies prompted the Commission to reevaluate these programs, with particular concern that the programs not act as *de facto* barriers to entry in the emerging competitive local exchange market. Commenters are asked to evaluate the proposals in the light of four basic principles. First, assistance should be targeted to support only those providers or users who need it; second, the programs should promote efficient investment and operation; third, the programs should not impose excessive costs on interstate carriers and ratepayers; and fourth, the rules should not impede competitive entry or disrupt normal market forces. The Commission refers the proposals to the Federal-State Joint Board in this proceeding for a recommended decision, as required by the Communications Act of 1934, as amended.[3]

Proposals for Revision of the DEM Weighting Rules

The Commission's rules for allocating equipment costs between the federal and state jurisdictions divide the cost of local switching equipment based on relative dial equipment minutes, or DEM, of use. LEC study areas with 50,000 or fewer access lines "weight" (i.e. multiply) the DEM for their interstate switching costs—thus allocating a higher percentage of their overall switching costs to the interstate jurisdiction—on the theory that smaller LECs, because they cannot take advantage of economies of scale, have higher switching costs. Technological developments, however, may have diminished the importance of switch size to the point where the subsidy should be gradually eliminated, and the Notice requests comment on this option.

If DEM weighting is not eliminated, the Notice requests comment on two possible approaches for its reform. First, the switching costs used for DEM weighting could be combined with the loop costs that determine USF assistance, thereby creating a single, need-based subsidy. Second, if DEM weighting is kept separate from the USF, it could be modified in one or more of the following ways: (1) establish a high-cost test for LECs to qualify for DEM weighting, (2) determine DEM weighting factors on the basis of average local switch size, or (3) keep the existing program, but determine the level of assistance through use of a sliding scale. The Notice requests comment on all these measures, with particular emphasis on whether small LECs actually have higher switching costs per unit of traffic than large LECs.

Proposals for Revision of the Universal Service Fund

The Universal Service Fund was adopted in 1984 to support exchange carriers ("LECs") in study areas with above-average loop costs.[4] The Notice seeks comment on several approaches for reforming the USF, any of which would be compatible with the use of a high-cost credit system. Distributing USF assistance through high-cost credits—money credited on a subscriber's telephone bill that the subscriber could then assign either to the incumbent LEC or to a competing local carrier—is intended to make the program competitively neutral. The Notice requests comment on (1) whether the existence of local service competition should be prerequisite for distributing assistance through a high-cost credit system, (2) whether eligibility for high-cost assistance should depend upon a carrier's assuming minimum service requirements, (3) how best to distribute assistance to carriers that have not been subject to the Commission's separations rules, and (4) the significance of subscriber need in determining high-cost credits.

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[1] *See* 47 CFR 36.125 (1994).

[2] *See* 47 CFR subpart F (1994).

[3] 47 U.S.C. 410(c).

[4] Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 96 F.C.C. 2d 781 (1984).

Besides requesting comment on a high-cost credit system, the Notice sets forth for comment three primary approaches to reform of the USF. The first of these would modify the USF while continuing to base assistance on carrier's reported costs. If this "reported costs" approach is adopted, the Notice proposes, at a minimum, three reforms: (1) require carriers to calculate the costs and number of loops in a study area based on all loops served by affiliated companies in the same state, (2) exclude administrative costs from the loop costs that form the basis for high-cost assistance, and (3) base assistance on the average number of lines in a study area over a year, rather than the number of lines at the end of the year.

In addition to these reforms, the Notice seeks comment on reforming the "reported costs" approach by adopting one or more of the following measures: (1) increase the threshold for receiving assistance, (2) reconsider the current rules' distinctions between small and large study areas, (3) eliminate assistance to LECs receiving minimal assistance per line per month, and (4) adopt a permanent indexed cap. The Notice also requests comment on whether to implement the use of high-cost credits in a "reported costs" system, and whether to base high-cost assistance on local switching and loop costs combined, thereby combining the DEM weighting and USF programs.

The second primary approach would base assistance not on carriers' reported costs, but instead on objectively ascertainable factors that would serve as proxies for the cost of providing service. Using proxy factors rather than reported costs would encourage recipients to control their costs, and would further the policy of competitive neutrality. The Notice seeks comment on four proxy factors: (1) subscriber density per square mile, (2) average distance from the nearest wire center, (3) terrain, and (4) climate. The Notice also seeks comment on whether it is advisable to incorporate local switching costs into the proxy model, and whether the use of a proxy methodology should be limited to the larger LECs.

The third primary approach would allow State utility commissions significant control over distribution of the USF. The Notice proposes a three-step process. First, proxy factors would be used to determine the amount of high-cost assistance allocated for distribution within each State. Second, within each State, the State utility commission would decide, in accordance with general guidelines adopted by the Commission, the process for allocating the assistance among the carriers serving high-cost areas. Third, the Commission would review the distribution plans filed by the State commissioners. The Commission would prescribe a default mechanism for States that decline to participate in the distribution process.

Notice of Inquiry: Comment Requested Regarding the Need for Further Rulemaking

Market-based Incentives to Reduce the USF Through Least-cost Bidding

The NOI sets out for comment a possible methodology to harness market forces to reduce the size of the USF once competition for local phone service is established. Local service providers would reverse-bid to set the amount of USF assistance, with the lowest bidder setting the level of subsidy per subscriber in an area for all carriers serving that area. To encourage carriers to bid, the winner would receive an additional incentive or bonus, such as a percentage of the savings to the fund. To bid, carriers would have to serve as an essential carrier, or "carrier of last resort," by providing ubiquitous service at a reasonable rate within the specified area.

More generally, the NOI solicits suggestions, information, and analyses regarding the appropriate long-term treatment of universal service issues in the light of rapidly-changing technologies and advances in competitive markets.

Regulatory Flexibility Act

In the Notice the Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because, if the proposals in this proceeding are adopted, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.[5] Because of the nature of local exchange and access service, the Commission has concluded that LECs, including small LECs, are dominant in their fields of operation and therefore are not "small entities" as defined by that act.[6] The Secretary has sent a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of that act.[7]

Ordering Clauses

Accordingly, it is ordered that, pursuant to Sections 1, 4(i), 4(j), 403, and 410(c) of the Commissions Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j). 403 and 410(c), notice is hereby given of proposed amendments to Part 36 of the Commission's Rules, 47 CFR Part 36, as described in this Notice of Proposed Rulemaking.

It is further ordered that, pursuant to Section 410(c) of the Communications Act of 1934, 47 U.S.C. § 410(c), the proposals set forth in the Notice of Proposed Rulemaking are hereby referred to the Federal-State Joint Board established in this proceeding for the preparation of a recommended decision.

It is further ordered that, pursuant to Sections 1, 4(i), 4(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(1), 154(j), and 403, notice is hereby given of the initiation of a Notice of Inquiry regarding the need for further rulemaking to address the use of a competitive bidding process to establish levels of high cost assistance, and regarding the appropriate long-range treatment of universal service issues.

List of Subjects in 47 CFR Part 36

Communications common carriers, Jurisdictional separations procedures, Reporting and recordkeeping requirements, Telephone, Universal system of accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22292 Filed 9–7–95; 8:45 am]

BILLING CODE 6712-01-M

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[5] 5 U.S.C. § 601(3).

[6] *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338–39 (1983).

[7] 5 U.S.C. § 603(a).

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47 CFR Part 76

[CS Docket No. 95–143; DA 95–1881]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this action, invites comments on its proposal to amend its rules regarding the listing of major television markets, to change the designation of the Pittsburgh, Pennsylvania television market to include the community of Greensburg, Pennsylvania. This action is taken at the request of Cornerstone Television, Inc., licensee of television station WPCB–TV, channel 40, Pittsburgh, Pennsylvania and it is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before October 31, 1995 and reply comments are due on or before November 15, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* CS Docket 95–143, adopted August 30, 1995 and released September 8, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

Synopsis of the Notice of Propose Rule Making

1. The Commission, in response to a Petition for Rule Making filed by the petitioner, proposed to amend Section 76.51 of the Rules to add the community of Greensburg to the Pittsburgh television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before the Commission that the television stations licensed to Pittsburgh, Pennsylvania do compete throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to the market designation and the market as a whole that "hyphenation" of the market should be proposed. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. accordingly, comment is requested on the proposed addition of Greensburg to the Pittsburgh, Pennsylvania television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making,* including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before October 31, 1995, and reply comments on or before November 15, 1995.

All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

7. Accordingly, this action is taken by the Deputy Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission

William H. Johnson,

Deputy Chief, Cable Services Bureau.

[FR Doc. 95–22246 Filed 9–7–95; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 225

Defense Federal Acquisition Regulation Supplement; Applicability of Trade Agreements

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide that the value of an acquisition for purposes of determining the applicability of both NAFTA and the Trade Agreements Act is the total estimated value of all end products subject to the acts.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address below on or before November 7, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D022 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends language in the Defense Federal Acquisition Regulation Supplement (DFARS) to change the valuation basis for the purpose of meeting thresholds under the North American Free Trade Agreement (NAFTA) and the Trade Agreements Act (TAA) to the estimated combined value of all line items subject to the acts, rather than valuing each line item separately. The purpose of the change is to comply with the requirements of NAFTA. For consistency, since all acquisitions subject to the Trade Agreements Act are also subject to NAFTA, this valuation method is made applicable to the Trade Agreements Act threshold as well.

B. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule changes the valuation method used by contracting officers to determine whether a procurement is subject to a trade agreement. The proposed rule will not diminish existing preferences for small businesses because purchases under small and small disadvantaged business preference programs are exempted from the trade agreements. An initial Regulatory Flexibility Analysis has been prepared and may be obtained from the address stated herein. Comments are invited from small businesses and other interested parties. Comments form small entities concerning the affected subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D022 in correspondence.

C. Paperwork Reduction Act

This rule does not impose any additional information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is proposed to be amended as follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 225.402 is amended by revising paragraph (a) to read as follows:

225.402 Policy.

(a) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.403–70).

(1) See 225.105 for evaluation of eligible products and U.S. made end products.

* * * * *

[FR Doc. 95–22167 Filed 9–7–95; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 670

[Docket No. 950825218–5218–01; I.D. 073195A]

RIN 0648–AE47

Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands; Initial Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (FMP). This rule proposes restrictions on the taking of coral reef resources in or from the exclusive economic zone (EEZ) around Puerto Rico and the U.S. Virgin Islands. NMFS, based on a preliminary evaluation of the FMP, has disapproved two measures involving the adoption of state permit and reporting requirements because the state permit systems are not yet fully developed, and the state regulations authorizing these permits, where they exist, do not satisfy the requirements of the Administrative Procedure Act, the Magnuson Fishery Conservation and Management Act (Magnuson Act), and other applicable laws. The proposed rule would implement the remaining measures in the FMP. The intended effect is to protect important marine resources.

DATES: Written comments must be received on or before October 16, 1995.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the FMP, which includes a regulatory impact review and an environmental impact statement, should be sent to the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918-2577.

Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-570-5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Caribbean Fishery Management Council (Council) under the authority of the Magnuson Act.

Background

The FMP addresses corals and reef-associated plants and invertebrates (coral reef resources) in the waters of the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands (states) and the waters of the adjoining EEZ. The proposed regulations would govern conservation and management of coral reef resources in or from the adjoining EEZ. The FMP was developed to address general concern for the effects of man's activities on coral reef resources, including pollution resulting from coastal development, and the new and rapidly expanding fishery for the marine aquarium industry, especially in Puerto Rico.

The waters off Puerto Rico could become the principal source of live coral reef resources for the U.S. marine aquarium market, because other areas of the Caribbean and Florida have restricted commercial harvest operations by gear regulations and some quotas. The Council is concerned about the potential impacts of the aquarium fishery on targeted organisms and the reef habitat where they are collected, because of increasing demand and current harvesting methods, including the use of chemicals and the removal of substrate.

The Council has noted the current rate of degradation of coral reef resources, their limited distribution and the consequent potential for overexploitation, and the growing demand for reef-associated invertebrates for aquariums. The FMP, in association with corresponding state laws, is expected to provide consistent protection for coral reef resources throughout the U.S. Caribbean.

The FMP proposes to: (1) Prohibit the use of chemicals, plants, plant-derived toxins, and explosives to take coral reef resources in the EEZ; (2) limit allowable harvest in the EEZ to dip nets and slurp guns or by hand; and (3) prohibit the possession or sale of stony corals, gorgonians, and live rock (prohibited species) taken from the EEZ.

Additionally, the FMP proposes the adoption of state permit systems for harvesters and dealers of coral reef resources and for the taking of prohibited species for scientific, educational, or restoration purposes. However, these portions of the FMP are being disapproved because the state permit systems for coral reef resources are not yet fully developed and state regulations authorizing such permits, where the regulations exist, do not meet the requirements of the Administrative Procedure Act, the Magnuson Act and other applicable laws, as discussed below.

Gear Restrictions

A ban on the use of chemicals and explosives to take coral reef resources, and the specification of hand-held slurp guns and dip nets as the only allowable gear, are designed to increase survival of targeted species and to protect non-targeted species from incidental mortality. Quinaldine, the most commonly used chemical agent, is a coal tar derivative used in the manufacture of dyes and explosives. Quinaldine anesthetizes reef fish, lobsters, and other invertebrates, and makes them easier to collect, but reportedly also decreases their survival rates and damages surrounding organisms including coral.

The prohibition on the use of a plant or a plant-derived toxin to harvest coral reef resources would eliminate the historical practice of using plants native to the U.S. Caribbean, such as *Sapindus saponarea*, or their products to stun fish. Harvest by hand in a non-habitat destructive manner would ensure that no coral heads, or other reef habitats, are overturned or otherwise disturbed during harvest to allow access to targeted organisms sheltered beneath them. The proposed gear restrictions are not expected to adversely affect experienced harvesters of coral reef resources. The restrictions are designed to allow the harvest of these species without bycatch or increased capture mortality.

Protected Species

Current scientific research indicates that corals and live rock are relatively slow-growing and may be considered nonrenewable fishery resources. Although certain of the soft coral species, such as gorgonians, are faster-growing, the Council determined that there are insufficient data on growth and replacement rates to propose safe harvest levels for these species. Consequently, the FMP proposes a prohibition on taking: (1) Stony coral, which includes fire corals, hydrocorals, and black corals; (2) gorgonians, including sea fans; and (3) live rock, except when such taking can be authorized for scientific, educational, or restoration purposes. Live rock means coral reef resources attached to a hard substrate, including dead coral or rock. Live rock is collected by scuba divers and sold to the marine aquarium industry for use in minireef tanks. NMFS will continue to monitor relevant scientific data and will revisit the issue if and when the data show that these corals may be sustainably harvested.

Current harvest of stony coral in the U.S. Caribbean appears to be negligible. However, pressure to exploit gorgonians and live rock is expected to grow rapidly as market demand for live marine invertebrates increases and as regulations elsewhere (e.g., Florida) become increasingly restrictive. In Puerto Rico, about 40 individuals harvest live fish and invertebrates for the aquarium trade. About 25 percent of the exports, by number, are invertebrates, especially anemones and starfish. Less than 4 percent is live rock or corals. The wholesale (exvessel) value of the approximately 45,500 live coral reef resources reported exported annually is about $114,000; therefore, the reported export of stony corals, gorgonians, and live rock is valued at less than $5,000 annually.

Restriction on Sale

Since harvest of prohibited species would be allowed only for a scientific, educational, or restoration purpose, sale of prohibited species in or from the EEZ would not be allowed. Harvest of these species in state waters is also prohibited. To put a limitation on sale into effect, it is necessary to be able to distinguish between prohibited species from the EEZ or adjoining state waters and prohibited species harvested elsewhere and imported for sale in Puerto Rico or the U.S. Virgin Islands. Such distinction cannot be made by appearance or test. Accordingly, the FMP proposes that a species prohibited for sale in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested from the EEZ or from adjoining state waters unless it is accompanied by documentation showing that it was harvested elsewhere.

The proposed documentation of having been harvested elsewhere would consist of (1) information specified in 50 CFR Part 246 for marking containers or packages of organisms that are imported, exported, or transported in interstate commerce; (2) the name and home port of the vessel or the name and address of the individual harvesting the prohibited species; (3) the date and port of landing of the species; and (4) a statement signed by the person holding the prohibited species for sale attesting that, to the best of his or her knowledge, information and belief, the species was harvested from an area other than the EEZ or adjoining state waters. If approved, the requirement for documentation of prohibited species that were harvested elsewhere would become effective approximately 3 months after publication of the final rule implementing the FMP. Thus, dealers would have a period during which they could sell existing stocks or obtain the required documentation.

Permit Requirements/Partial Disapproval of the FMP

Because most of the fishery for coral reef resources occurs in state waters, the FMP anticipates that permits for harvesters and dealers, and permits exempting certain activities for scientific, educational, or restoration purposes, in or from the EEZ, would be issued by state agencies. For example, a harvest permit currently required by each state for its waters would be valid for the harvest of coral reef resources from the adjoining EEZ. State permit requirements would encompass all species in the approved Federal management unit.

On August 9, 1995, the Regional Director, Southeast Region, NMFS (Regional Director), disapproved the permit and reporting requirements contained in the FMP, because the state permit systems on which the FMP permit provisions depend cannot satisfy the requirements of the Magnuson Act and other applicable law. Puerto Rico has no harvest permit requirement for coral reef resources. The U.S. Virgin Islands has a system for reporting catch, but it does not currently include all the species in the Federal management unit. A dealer's permit is not currently required in either state,

The FMP suggests that the state permit and reporting procedures could provide additional information on landings, gear, capture mortality, and trade, but it does not appear that current state systems could provide this information. In addition, the FMP envisions that state permit systems can provide exceptions to certain gear restrictions and the taking of prohibited species for scientific, educational, or restoration purposes. However, research permit provisions of state regulations are largely discretionary, and the FMP does not provide details of application requirements, conditions, and criteria for issuance that could allow for meaningful public comment. Also, any state authorities that apply in the EEZ would have to be consistent with the Magnuson Act and other applicable law. These determinations cannot be made until complete state systems are in effect.

Since the most easily accessible reef formations are found in state waters, it is unlikely that any significant number of requests will need to be made for activities in the EEZ for scientific, educational, or restoration purposes. Consequently, the proposed rule merely provides a mechanism to authorize such exceptions on a case-by-case basis should the need arise. Such authorizations would not relieve individuals of the obligation to comply with other legal or regulatory requirements, such as those that may apply in a national marine sanctuary. (See § 670.24.)

When the state permit and reporting systems for coral reef resources are fully developed and sufficient detail on their operations is available, the Council may resubmit these disapproved provisions, incorporating the state permit systems by an amendment to the FMP.

Additional background and rationale for the measures discussed above are contained in the FMP, the availability of which was announced in the **Federal Register** on August 8, 1995, (60 FR 40340).

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a council within 15 days of receipt of an FMP and implementing regulations. At this time NMFS has not determined that the FMP is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws, except for those parts of the FMP specifically disapproved, as discussed above. NMFS, in making that determination with respect to the remaining parts of the FMP, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared a final environmental impact statement (FEIS) for the FMP that will be filed with the Environmental Protection Agency for public review and comment. A notice of its availability for public comment for 30 days will be published in the **Federal Register**. According to the FEIS, the proposed actions would benefit the natural environment by prohibiting activities that damage live bottom habitat areas.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would restrict the taking of coral reef resources in or from the EEZ of the U.S. Caribbean. There are about 16 small businesses in the U.S. Caribbean which are potentially involved in the collection, sale and export of coral reef resources. These firms employ less than 100 workers in all phases of the business (harvesters, packers, shippers). In addition, to firms involved in the commercial aspects of harvest, there are an estimated 65 businesses which provide recreational diving services. Since the FMP can affect collecting for personal use, there is the chance that these businesses could be marginally affected by the rule. However, of the total of about 81 businesses identified, less than 20 percent are expected to be affected by the proposed rule because the volume of current harvest is quite low.

Since neither the substantial number nor significant impact criteria are expected to be met, a determination has been made that the proposed rule will not result in a significant impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act—namely, documentation of origin of prohibited species that are for sale in Puerto Rico or the U.S. Virgin Islands. This requirement has been submitted to OMB for approval. The public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 670

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR is proposed to be amended by adding part 670 as follows:

PART 670—CORAL REEF RESOURCES OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

Sec.

670.1 Purpose and scope.
670.2 Definitions.
670.3 Relation to other laws.
670.4 Permits. [Reserved]
670.5 Recordkeeping and reporting.
670.6 Vessel identification.
670.7 Prohibitions.
670.8 Facilitation of enforcement.
670.9 Penalties.

Subpart B—Management Measures

670.20 Fishing year.
670.21 Harvest limitations.
670.22 Gear restrictions.
670.23 Restrictions on sale or purchase.
670.24 Specifically authorized activities.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 670.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of coral reef resources in or from the EEZ around Puerto Rico and the U.S. Virgin Islands. "EEZ" in this part refers to the EEZ in those geographical areas, unless the context clearly indicates otherwise.

§ 670.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Coral reef resource means one or more of the following, or a part thereof, whether living or dead:

Sponges—Class Demospongiae

Aphimedon compressa, Erect rope sponge
Chondrilla nucula, Chicken liver sponge
Cynachirella alloclada
Geodia neptuni, Potato sponge
Haliclona sp., Finger sponge
Myriastra sp.
Niphates digitalis, Pink vase sponge
N. erecta, Lavender rope sponge
Spinosella policifera
S. vaginalis
Tethya crypta

Hydrocorals—Class Hydrozoa

Hydroids—Order Hydroida
Fire Corals—Order Milleporina
Millepora sp.
Lace Corals—Order Stylasterina
Stylaster roseus, Rose lace corals

Anthozoans—Class Anthozoa

Soft corals—Order Alcyonacea

Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briareidae
Briareum asbestinum, Corky sea finger
Family Telestacea
Telesto riisei, Telesto

Gorgonians—Order Gorgonacea

Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis sp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Family Ellisellidae
Ellisella spp., Sea whips

Hard Corals—Order Scleractinia

Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Meandrinidae
Dendrogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Oculinidae
Oculina diffusa, Ivory bush coral

Black Corals—Order Antipatharia

Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral

Anemones—Order Actiniaria

Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone
Colonial Anemones—Order Zoanthidea
Zoanthus spp., Sea mat
False Corals—Order Corallimorpharia
Ricordia florida, Florida false coral
Discosoma spp. (formerly *Rhodactis*), false coral

Polychaetes—Class Polychaeta

Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae
Spirobranchus giganteus, Christmas tree worm

Gastropods—Class Gastropoda

Family Strombidae, Winged conchs
Strombus spp. (except Queen conch, *S. gigas*)
Family Ovulidae
Cyphoma gibbosum, Flamingo tongue
Charonia tritonis, Atlantic triton trumpet
Family Olividae
Oliva reticularis, Netted olive
Family Elysiidae
Tridachia crispata, Lettuce sea slug

Bivalves—Class Bivalvia

Family Limidae
Lima spp., Fileclams
L. scabra, Rough fileclam
Family Spondylidae
Spondylus americanus, Atlantic thorny oyster

Cephalopods—Class Cephalopoda

Octopuses—Order Octopoda
Family Octopodidae
Octopus spp. (except the Common octopus, *O. vulgaris*)

Crustaceans—Class Crustacea

Decapods—Order Decapoda
Family Stenopodidae, Coral shrimp
Stenopus hispidus, Banded shrimp
S. scutellatus, Golden shrimp
Family Hippolytidae
Lysmata spp., Peppermint shrimp
Thor amboinensis, Anemone shrimp
Family Palaemonida
Periclimenes spp., Cleaner shrimp
Family Alpheidae
Alpheaus armatus, Snapping shrimp
Family Diogenidae
Paguristes spp., Hermit crabs
P. cadenati, Red reef hermit
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus,, Green clinging
Stenorhynchus seticornis, Yellowline arrow
Family Grapsidae
Percnon gibbesi, Nimble spray crab
Family Squillidae, Mantis crabs
Gonodactylus spp.
Lysiosquilla spp.

Bryozoans—Phylum Bryozoa

Starfish—Class Stelleroidea

Analcidometra armata, Swimming crinoid
Astropecten spp., Sand stars
Astrophyton muricatum, Giant basket star
Davidaster spp., Crinoids
Linckia guildingii, Common comet star
Nemaster spp., Crinoids
Ophidiaster guildingii, Comet star
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
O. rubicundum, Ruby brittlestar
Oreaster reticulatus, Cushion sea star

Sea Urchins—Class Echinoidea

Diadema antillarum, Long-spined urchin
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Lytechinus spp., Pin cushion urchin
Tripneustes ventricosus, Sea egg

Sea Cucumbers—Class Holothuroidea

Holothuria spp., Sea cucumbers

Tunicates—Subphylum Urochordata

Green Algae—Phylum Chlorophyta

Caulerpa spp., Green grape algae
Halimeda spp., Watercress algae
Penicillus spp., Neptune's brush
Udotea spp., Mermaid's fan
Ventricaria ventricosa, Sea pearls

Red Algae—Phylum Rhodophyta

Sea grasses—Phylum Angiospermae

Halodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass

Gorgonian means a coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea.

Live rock means a coral reef resource attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Prohibited species means a gorgonian, a live rock, or a stony coral, or a part thereof.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 813-570-5301; or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761; or a designee.

Scientific, educational, or restoration purpose means the objective of gaining knowledge for the benefit of science, humanity, or management of coral reef resources or restoring a disturbed habitat as closely as possible to its original condition.

Stony coral means a coral reef resource—

(1) Of the Class Hydrozoa (fire corals and hydrocorals); or

(2) Of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

§ 670.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

§ 670.4 Permits. [Reserved]

§ 670.5 Recordkeeping and reporting.

A person possessing a coral reef resource in or from the EEZ is required upon request to make such coral reef resource available for inspection by the Science and Research Director or an authorized officer.

§ 670.6 Vessel identification.

(a) *Official number.* A vessel that fishes for or possesses coral reef resources in or from the EEZ must display its official number—

(1) On the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of a vessel that fishes for or possesses coral reef resources in or from the EEZ must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number from an enforcement vessel or aircraft.

§ 670.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fail to make a coral reef resource in or from the EEZ available for inspection, as specified in § 670.5.

(b) Falsify or fail to display and maintain vessel identification, as required by § 670.6.

(c) Fish for or possess a prohibited species in or from the EEZ, as specified in § 670.21.

(d) Use an explosive to harvest a coral reef resource in the EEZ or possess dynamite or a similar explosive substance on board a vessel, as specified in § 670.22(a).

(e) Use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ, as specified in § 670.22(b).

(f) Harvest a coral reef resource in the EEZ other than as specified in § 670.22(c).

(g) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell a prohibited species harvested in the EEZ, as specified in § 670.23(a).

(h) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a coral reef resource.

(i) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 670.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 670.9 Penalties.

See § 620.8 of this chapter.

Subpart B—Management Measures

§ 670.20 Fishing year.

The fishing year for coral reef resources begins on January 1 and ends on December 31.

§ 670.21 Harvest limitations.

No person may fish for or possess a prohibited species in or from the EEZ. The taking of a prohibited species in the EEZ as incidental catch will not be considered unlawful possession of a prohibited species provided it is returned immediately to the sea in the general area of fishing.

§ 670.22 Gear restrictions.

(a) An explosive may not be used to harvest a coral reef resource in the EEZ. Dynamite or a similar explosive substance may not be possessed on board a vessel that possesses a coral reef resource in or from the EEZ.

(b) No person may use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ.

(c) A coral reef resource in the EEZ may be harvested only with a hand-held dip net or slurp gun, or by hand in a manner that does not injure or destroy a coral reef resource or its habitat. For the purposes of § 670.7(f) and this paragraph (c), a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber.

§ 670.23 Restrictions on sale or purchase.

(a) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell a prohibited species harvested in the EEZ.

(b) A prohibited species that is sold or exchanged, or offered for sale or exchange, in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the EEZ unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(1) The information specified in 50 CFR part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The name and home port of the vessel, or the name and address of the individual, harvesting the prohibited species;

(3) The port and date of landing the prohibited species; and

(4) A statement signed by the person selling or exchanging, or offering for sale or exchange, the prohibited species attesting that, to the best of his or her knowledge, information, and belief, such prohibited species was harvested other than in the EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

§ 670.24 Specifically authorized activities.

The Regional Director may authorize the harvest and possession of a prohibited species in or from the EEZ for a scientific, educational, or restoration purpose and may authorize activities otherwise prohibited by the regulations in this part for the acquisition of information and data.

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50 CFR Part 675

[Docket No. 950830223–5223–01; I.D. 082395C]

RIN 0648–AE97

Groundfish of the Bering Sea and Aleutian Islands Area; Chinook Salmon Savings Areas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement Amendment 21b to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment proposes to prohibit the use of trawl gear in specified areas of the Bering Sea and Aleutian Islands (BSAI) management area through April 15 of each fishing year once a chinook salmon bycatch of 48,000 fish has been reached in the BSAI management area trawl fisheries. This action is necessary to limit chinook salmon bycatch in the BSAI management area and is intended to promote the goals and objectives of the FMP.

DATES: Comments on the FMP amendment must be received by October 20, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attention: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 21b and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for Amendment 21b are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI management area is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 675 and 676. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

This action proposes regulations to implement Amendment 21b to the FMP. If approved by NMFS, this amendment would prohibit the use of trawl gear in specified areas of the BSAI management area that historically contributed to relatively high chinook salmon bycatch rates during winter months.

Chinook salmon are caught incidentally in trawl fisheries in the BSAI management area. They are a prohibited species in the trawl fisheries and must be discarded after being counted by a NMFS-certified observer.

During the foreign fisheries, the estimated chinook salmon bycatch reached a high of 115,000 salmon in 1980. As a result, the foreign fleet was put on a bycatch reduction schedule starting at 65,000 chinook salmon and decreasing to 16,500 chinook by 1986. According to reported bycatch, the foreign fleet did not exceed the reduction schedule bycatch level in any year.

The domestic groundfish trawl fleet has caught the majority of the chinook salmon bycatch since 1987. Chinook salmon bycatch exceeded 20,000 fish in 1987, 1988, and 1989 and exceeded 40,000 fish in 1991, 1992, 1993, and 1994. Estimated chinook salmon bycatch in the domestic trawl fisheries from 1990 to the present is summarized below:

Year	No. of Chinook
1990	13,990
1991	48,821
1992	41,903
1993	45,964
1994	44,437
[1] 1995	17,701

[1] Preliminary through 7/29/95.

Observer data from the foreign, joint-venture, and domestic trawl fisheries for pollock and Pacific cod were examined for seasonal and spacial patterns in chinook salmon bycatch and groundfish catch. The pollock and Pacific cod fisheries were selected because nearly all chinook salmon bycatch occurs in these fisheries (92 percent in 1994). These data showed that chinook salmon bycatch was largely associated with groundfish catches along the 200-m contour (continental shelf break), in the "horseshoe" area of the contour, and north of Unimak Island. Chinook salmon bycatch did not extend, for the most part, far from the contour, from the horseshoe, or from north of Unimak Island. In addition, analysis of haul-by-haul observer data showed that chinook salmon bycatch rates were higher in the winter months—from September or October through April.

Analysis of scale patterns, tagging study results, and parasite information indicates that from about 50 percent to over 90 percent of the chinook salmon encountered in the Bering Sea are of Western Alaskan origin. Therefore, chinook salmon bycatch likely reduces the number of chinook salmon available for escapement and subsistence, commercial, and recreational fisheries in Western Alaska and elsewhere.

Salmon fishery managers have been concerned about the health of chinook salmon stocks on the Yukon River, Kuskokwim River, and portions of Bristol Bay, where minimum escapement goals in several systems were not met in the mid- and late-1980's. Although escapement has improved in recent years, these goals are only being met through careful management of directed fisheries by time and area and through gear restrictions.

Chinook salmon is one of the major food items of the Yup'ik Eskimo and Athabaskan Indians of Western and Interior Alaska and plays an important role in supporting the indigenous cultures and mixed, subsistence-cash socioeconomic systems of these peoples. In addition, commercial and recreational fishing provides an important source of income in Western Alaska communities. Further description of the biological, economic, and cultural importance of chinook salmon in Western Alaska is contained in the EA/RIR/IRFA (see **ADDRESSES**).

The Council began developing alternatives for chinook salmon bycatch management in the domestic groundfish trawl fisheries in 1992 under Amendment 21 to the FMP. A draft analysis was released for public review in January 1993. However, in April 1993, the Council decided to separate the chinook salmon bycatch management alternatives; identify them as Amendment 21b; and postpone action to allow public review of a Vessel Incentive Program and industry development of the Salmon Research Foundation. During its June 1993 meeting, the Council voted to endorse the Salmon Research Foundation (SRF), a non-profit corporation that uses income generated from a $20 per chinook salmon assessment to develop a salmon bycatch avoidance program and to fund research on the origin of salmon caught in the trawl fisheries. In 1994, the SRF developed a program to disseminate inseason observer data and other information about individual vessel chinook salmon bycatch to the trawl fleet. The intent of this program was to provide vessel operators timely information to help reduce salmon bycatch rates. The long-term effectiveness of the SRF in reducing chinook salmon bycatch is difficult to evaluate, given the short time it has been in operation.

In June 1993, the Council voted to recommend the issuance of regulations to: (1) Prohibit the discard of salmon until the number of salmon are determined by a NMFS-certified observer, (2) implement data gathering and analysis of bycatch patterns, and (3) require posting on the NMFS bulletin board of salmon bycatch numbers for each vessel. These regulations became effective May 20, 1994 (59 FR 18575, April 20, 1994).

In the meantime, the Council continued to consider additional chinook salmon bycatch management alternatives, including a chinook salmon prohibited species catch (PSC) limit and closures in times or areas of historic high salmon bycatch. PSC limits ranging from 8,000 to 48,000 chinook salmon were analyzed. The lower bound of this range was determined by applying the lowest average annual chinook salmon bycatch rate since 1980 (0.004 salmon per metric ton of groundfish in 1986) to current BSAI management area groundfish harvests. Additional PSC limits analyzed included annual bycatch rates of 0.008 (16,000 salmon), 0.012 (24,000 salmon), and 0.024 (48,000 salmon).

The Council considered nine alternatives or options for area closures once a PSC limit was reached, including the entire BSAI management area, specific Federal statistical areas, a 30 mile-wide (48,280 m) buffer strip along the 200-m contour, and specific ½° lat. by 1° long. blocks. In addition, alternatives or options to close these areas during specific seasons, for specific directed fisheries, or in the absence of a PSC limit also were considered. Chinook Salmon Savings Areas.

At its April 1995 meeting, the Council voted to recommend an FMP amendment that would close three non-contiguous areas of the BSAI management area comprised of nine ½° lat. by 1° long. blocks to all trawling through April 15, once an annual PSC limit of 48,000 chinook salmon was reached. The areas would reopen April 15 for the remainder of the year, regardless of the amount of chinook salmon bycatch. Accounting of chinook salmon towards the bycatch limit would start at the beginning of each fishing year (January 1).

The Chinook Salmon Savings Areas (CHSSA) are:

(1) The area defined by straight lines connecting the following coordinates in the order listed:

56° 30′ N., 171° 00′ W.;
56° 30′ N., 169° 00′ W.;
56° 00′ N., 169° 00′ W.;
56° 00′ N., 171° 00′ W.; and
56° 30′ N., 171° 00′ W.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

54° 00′ N., 171° 00′ W.;
54° 00′ N., 170° 00′ W.;
53° 00′ N., 170° 00′ W.;
53° 00′ N., 171° 00′ W.; and
54° 00′ N., 171° 00′ W.

(3)The area defined by straight lines connecting the following coordinates in the order listed:

56° 00′ N., 165° 00′ W.;
56° 00′ N., 164° 00′ W.;
5° 00′ N., 164° 00′ W.;
55° 00′ N., 165° 00′ W.;
54° 30′ N., 165° 00′ W.;
54° 30′ N., 167° 00′ W.;
55° 00′ N., 167° 00′ W.;
55° 00′ N., 166° 00′ W.;
55° 30′ N., 166° 00′ W.;
55° 30′ N., 165° 00′ W.; and
56° 00′ N., 165° 00′ W.

Data from observed trawl vessels participating in the pollock and Pacific cod fisheries from 1990 through 1993 were used to compare catch and bycatch in the CHSSA and other areas of the BSAI management area. During the high bycatch months of January through April and September through December, the CHSSA represented 52, 66, 64, and 60 percent of the chinook bycatch, and 20, 36, 38, and 49 percent of the total groundfish catch in observed hauls between 1990 and 1993. In other words, the CHSSA represented a larger share of chinook salmon bycatch relative to total groundfish catch. The importance of these areas, in terms of both groundfish catch and chinook salmon bycatch, increased between 1990 and 1993. However, the increase in groundfish catch in the areas was greater than the increase in chinook salmon bycatch over the 4-year period.

Although high chinook salmon bycatch was identified in two seasons (January through April and September through December), through analysis of observer data aggregated by month, the Council recommended a closure only from January 1 through April 15, because the majority of the chinook salmon bycatch in recent years has been caught between January and April. For example, in 1993, approximately 71 percent of the chinook salmon bycatch by observed trawl vessels in the pollock and Pacific cod fisheries in the CHSSA occurred between January and April.

Since 1990, chinook salmon bycatch between January 1 and April 15 was estimated to be:

Year	No. of Chinook by April 15
1990	11,626
1991	44,234
1992	30,703
1993	23,129
1994	37,967
[1] 1995	17,064

[1] Preliminary through 7/29/95.

Based on historical bycatch estimates, reaching the 48,000 PSC limit or closing the CHSSA in future years is not likely. In selecting this preferred alternative, the Council expressed the view that current levels of chinook salmon bycatch probably did not represent biological harm to Western Alaska chinook salmon stocks. Furthermore, existing groundfish fisheries should not be constrained in order to reduce the current level of chinook salmon bycatch. However, future increases in bycatch in the BSAI management area trawl fisheries need to be limited to prevent detrimental impact on Western Alaska chinook salmon stocks and fisheries.

If bycatch amounts before April 15 of future years exceed amounts caught in recent years, closure of the CHSSA would prevent trawlers from fishing in areas that historically represented from 20 percent to 49 percent of annual groundfish catch. Although other areas of the BSAI management area would continue to be open to trawling, vessels displaced from the CHSSA would likely incur increased operating costs and lower catch per unit effort.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the FMP amendment and regulations. At this time, NMFS has not determined that the FMP amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Approximately 107 trawl catcher vessels participate in the BSAI management area groundfish fisheries. Most of these vessels are considered small entities. Closure of the CHSSA is unlikely because the PSC limit is higher than any bycatch estimate for the domestic fisheries. However, the CHSSA represent a large proportion of groundfish catch and many of these catcher vessels are likely to fish in these areas. Therefore, closure of the CHSSA could result in a significant impact on a substantial number of small entities in years of high chinook salmon bycatch. On the other hand, the absence of a mechanism to limit chinook salmon bycatch may adversely impact other small entities that rely on chinook salmon returns to Western Alaska and other areas. A copy of this analysis is available from the Council (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.22, paragraph (i) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(i) *Chinook Salmon Savings Areas.* When the Regional Director determines that 48,000 chinook salmon (*Oncorhynchus tshawytscha*) have been caught by vessels using trawl gear during the time period of January 1 through April 15 in the Bering Sea and Aleutian Islands management area, NMFS will prohibit fishing with trawl gear for the remainder of the period January 1 through April 15 within the following three areas:

(1) The area defined by straight lines connecting the following coordinates in the order listed:

56° 30′ N., 171° 00′ W.;
56° 30′ N., 169° 00′ W.;
56° 00′ N., 169° 00′ W.;
56° 00′ N., 171° 00′ W.; and
56° 30′ N., 171° 00′ W.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

54° 00′ N., 171° 00′ W.;
54° 00′ N., 170° 00′ W.;
53° 00′ N., 170° 00′ W.;
53° 00′ N., 171° 00′ W.; and
54° 00′ N., 171° 00′ W.

(3) The area defined by straight lines connecting the following coordinates in the order listed:

56° 00′ N., 165° 00′ W.;
56° 00′ N., 164° 00′ W.;
55° 00′ N., 164° 00′ W.;
55° 00′ N., 165° 00′ W.;
54° 30′ N., 165° 00′ W.;
54° 30′ N., 167° 00′ W.;
55° 00′ N., 167° 00′ W.;
55° 00′ N., 166° 00′ W.;
55° 30′ N., 166° 00′ W.;
55° 30′ N., 165° 00′ W.; and
56° 00′ N., 165° 00′ W.

[FR Doc. 95–22285 Filed 9–5–95; 1:16 pm]

BILLING CODE 3510–22–W

Notices

Federal Register

Vol. 60, No. 174

Friday, September 8, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 31, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W, Jamie L. Whitten Bldg., Washington, DC 20250, (202) 690–2118.

New

- Food Safety and Inspection Service

7 CFR Part 59, Eggs and Egg Products Inspection

FSIS–38, FSIS–214, FSIS–222, FSIS–240, FSIS–518–1, FSIS–157, FSIS–100, and FSIS–32

Business or other for-profit; 32,496 responses; 24,582 hours

Lee Puricelli (202) 720–7164

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–22280 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Northwest Sacramento Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Province Advisory Committee will meet on September 19 and 20, 1995, for a field trip and meeting. The field trip portion of the meeting will start at 1:00 p.m. September 19, at the Red Bluff Community Center, 1500 South Jackson Street, Red Bluff, CA. The focus of the afternoon field trip will be the Deer Creek Watershed Conservancy. Agenda items will include: (1) An overview on the reasons for initiating the Conservancy organization; (2) Description of current issues and strategies to address those issues; (3) Description of opportunities for enhancement of the Deer Creek Watershed; (4) Overview of elements important to organizational formation, decision making processes, and strategies to help ensure future continuation of the Conservancy. The field trip will return to the Red Bluff Community between 4:30 p.m. and 5:30 p.m. The meeting on September 20, 1995, will begin at 8:00 a.m. at the Red Bluff Community Center. Agenda topics include: (1) Old business from the August '95 meeting; (2) Report on the Interagency Advisory Committee; (3) Report by Sub-communittee for the Timber Salvage Act, (4) Response by Federal agency representatives on key issues related to implementation of the Northwest Record of Decision; (5) Staff reports on Key Issue(s) action items; (6) Development of issue priorities (including the top six issues identified by the Advisory Committee during their May '95 meeting and the key issues identified by Federal agency representatives; (7) Overview on Streamlined Process for Watershed Analysis, (8) Public participation to be available between 3:20 p.m. and 3:50 p.m.; (9) Agenda for next meeting. All Northwest Sacramento Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to David E. Howell, Designated Federal Official, Northwest Sacramento Province, USDI, Bureau of Land Management, 2550 North State Street, Ukiah, CA 95482–3023, (707 468–4000), or Duane Lyon, Province Coordinator, USDA, Shasta Trinity National Forests, 2400 Washington, Redding, CA, 96001 (916–246–5499).

Dated: August 30, 1995.

David E. Howell,

Designated Federal Official, Northwest Sacramento Province.

[FR Doc. 95–22256 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–FK–M

Natural Resources Conservation Service

Rattlesnake Creek Watershed, Ohio

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622); the Natural Resources Conservation Service gives notice of the deauthorization of Federal funding for the Rattlesnake Creek Watershed project, Clinton, Fayette, Madison, and Greene Counties, Ohio, effective on July 25, 1995.

FOR FURTHER INFORMATION CONTACT: Lawrence E. Clark, State Conservationist, Natural Resources Conservation Service, 200 North High Street, room 522, Columbus, Ohio 43215, (614) 469–6962.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 31, 1995.

Lawrence E. Clark,

State Conservationist, Natural Resources Conservation Service.

[FR Doc. 95–22327 Filed 9–7–95; 8:45 am]

BILLING CODE 3410–16–M

ARCTIC RESEARCH COMMISSION

Meetings

August 31, 1995.

Notice is hereby given that the Arctic research Commission will hold its 40th Meeting in Anchorage, Alaska, on September 25–26, 1995. On Monday, September 25, a Business Session open to the public will convene at 9:00 a.m. on the first floor of the Anchorage Museum of History and Art, 121 W. Seventh Avenue. Agenda items include: (1) Chairman's Report; (2) Agency Reports; (3) SCICEX–95 Presentation; (4) CIFAR Presentation. On Tuesday, September 26, the Business Session will reconvene at 9:00 a.m. Agenda items for this session include: (1) Travellers Reports; (2) Correspondence; (3) New Business; an Executive Session will follow the close of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact person for more information: Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 95–22255 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Trade Survey.

Form Number(s): B–450, B–451.

Agency Approval Number: 0607–0195.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 2,036 hours.

Number of Respondents: 5,200.

Avg Hours Per Response: 23 minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Trade Survey to collect annual sales, purchases, year–end inventory, inventory valuation methods, legal form of organization, cost of goods sold, and gross margin data from a sample of wholesalers who are contained in the Census Bureau's Standard Statistical Establishment List (SSEL). We tabulate the annual wholesale trade data to benchmark data from our Monthly Wholesale Trade Survey. The Bureau of Economic Analysis incorporates the wholesale trade data in its calculations of the gross domestic product. Other government agencies and businesses use the published estimates to gauge the current trends of the economy.

Affected Public: Business or other for–profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22288 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Boundary and Annexation Survey.

Form Number(s): BAS–1, 1A, 2, 2A, 3, 3A, 4, 33L, 33LM.

Agency Approval Number: 0607–0151.

Type of Request: Revision of a currently approved collection.

Burden: 10,930 hours.

Number of Respondents: 9,870.

Avg Hours Per Response: 1 hour and 7 minutes.

Needs and Uses: The Census Bureau conducts the Boundary and Annexation Survey (BAS) annually to collect information on the creation of newly incorporated municipalities and minor civil divisions (MCDs), the dissolution of incorporated municipalities and MCDs, and changes to the boundaries of counties, incorporated municipalities, and MCDs. The survey provides accurate identification of geographic areas for the decennial and economic censuses and support for the annual population estimates program. It is also used to update the municipal, MCD, and county inventory for the Federal Information Processing Standards (FIPS) program at the U.S. Geological Survey and the National Institute of Standards and Technology. Other Federal Agencies use BAS results in their legislative programs. This request is for a revision only to the universe of respondents to the BAS. We are increasing the number to support the economic and decennial census.

Affected Public: State, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22289 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Monthly Wholesale Trade Survey.

Form Number(s): B–310.

Agency Approval Number: 0607–0190.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 6,150 hours.

Number of Respondents: 5,985.

Avg Hours Per Response: 9 and one–half minutes.

Needs and Uses: The Bureau of the Census conducts the Monthly Wholesale Trade Survey to obtain sales and inventory data from a sample of merchant wholesalers. From the data we gather, we produce statistics on wholesale sales, end–of–month inventories, methods of inventory valuation, and stock/sales ratios. The Bureau of Economic Analysis uses these statistics in its calculations of the gross domestic product (GDP) and to improve the reliability of inventory adjustments applied in the quarterly GDP estimates. The Bureau of Labor Statistics uses these statistics as input to its Producer Price Indexes and in developing productivity measurements. Other government agencies and businesses use these statistics for planning and development and to gauge the current trends of the economy. Current data on wholesale trade also enable us to make comparisons with the five–year wholesale census data.

Affected Public: Business or other for–profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22290 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Congressional Data User Survey.

Form Number(s): 628, 628(L), 630, 630(L).

Agency Approval Number: 0607–0789.

Type of Request: Revision of a currently approved collection.

Burden: 79 hours.

Number of Respondents: 952.

Avg Hours Per Response: 5 minutes.

Needs and Uses: In October 1993, the Census Bureau, with approval from OMB, surveyed all members of Congress to determine how we can better meet their needs for Census Bureau data. We later obtained OMB clearance to survey all Congressional committees for the same purpose. However, plans for surveying Congressional committees were postponed. The Census Bureau now requests OMB clearance to again survey all current members of Congress and the various committees and subcommittees of Congress. The survey will identify which Congressional members and committees/subcommittees use or do not use our data, how the data are used, which would like a briefing on how to use Census Bureau data, and the medium they prefer, i.e. published reports, CD ROM, internet. We plan to conduct this survey every two years as new members are elected and new committees/subcommittees are formed. This information is needed to determine how the Census Bureau can revise and improve the current program it uses to disseminate data to members and committees/subcommittees of Congress.

Affected Public: Individuals or households.

Frequency: Biannually (every 2 years).

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22291 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Business and Professional Classification Report.

Form Number(s): B–625(97).

Agency Approval Number: 0607–0189.

Type of Request: Revision of a currently approved collection.

Burden: 9,101 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 13 minutes.

Needs and Uses: The Bureau of the Census conducts the Business and Professional Classification Report to collect sales and other information from a sample redrawn every quarter of retail, wholesale, service, and unclassified businesses recently assigned Federal Employer Identification numbers (EIN). We are informed of the existence of these new businesses from lists provided by the Internal Revenue Service and the Social Security Administration. From the information we collect in this survey, we determine an appropriate measure of size, company organization and establishment information, taxable or tax–exempt status, wholesale inventories, type of operation, and assign a new or more refined kind–of–business classification. We use this information to include these businesses in our retail, wholesale, and service surveys. This keeps the sampling frames for our current business surveys up–to–date with the business universe. This request for revision revises the data collection form by removing questions that are no longer needed and simplifying the wording and format of the essential questions.

Affected Public: Businesses or other for–profit, Not–for–profit institutions.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22287 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Joint Meeting of the Computer Systems Technical Advisory Committee Electronics Technical Advisory Committee Telecommunications Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

A joint meeting of the Computer Systems Technical Advisory Committee, the Electronics Technical Advisory Committee, and the Telecommunications Equipment Technical Advisory Committee will be held September 28, 1995, 9 a.m., Herbert C. Hoover Building, room 1617–M2, 14th Street and Pennsylvania Avenue NW., Washington, DC. These Committees advise the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to equipment and technology in the fields of computers, electronics, and telecommunications.

Agenda

General Session

1. Introductions and presentations by the public.
2. Update on technical advisory committee reorganization.
3. Presentation on Asynchronous Transfer Mode (ATM) technology.
4. Discussion on the export control of cryptography.
5. Nomination of candidates for future election of Chairman of joint technical advisory committee meetings.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: August 31, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 95–22286 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Initiation of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping Duty Administrative Reviews of Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Various Countries.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of antidumping duty orders on cold-rolled and corrosion resistant carbon steel flat products and certain cut-to-length carbon steel plate from various countries with August anniversary dates. In accordance with the Department's Regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig or Jean Kemp, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3833 or 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping duty orders with August anniversary dates.

In contrast to the investigation and first administrative review, we are not establishing a lead case for each country, because there are fewer products under antidumping duty orders than were included in the investigation and we believe the normal procedures will be more convenient for analysts and interested parties. Parties should file their submissions under the case numbers for the appropriate country and class or kind of merchandise listed below. In addition, having found them unnecessary and duplicative, the Department is eliminating the General Issue files for this review.

Initiation of Reviews

In accordance with sections 19 C.F.R. 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping duty orders. We intend to issue the final results of these reviews not later than August 31, 1996. The following list consists of administrative reviews requested. However, the Department may determine at a later date to collapse some related parties.

ANTIDUMPING DUTY PROCEEDINGS

List of companies by country	Period to be reviewed
Australia:	
A–602–803 Certain Corrosion-Resistant Carbon Steel Flat Products:	
Broken Hill Proprietary Company, Ltd., A–602–803	08/01/94–07/31/95

ANTIDUMPING DUTY PROCEEDINGS—Continued

List of companies by country	Period to be reviewed
Brazil:	
A–351–817 Certain Cut-to-Length Carbon Steel Plate:	
Companhia Siderurgica de Tubarao (CST), A–351–817	08/01/94–07/31/95
Wirth Ltd.,[1] A–351–817	08/01/94–07/31/95
Canada:	
A–122–822 Certain Corrosion-Resistant Carbon Steel Flat Products:	
Continuous Colour Coat, Ltd., A–122–822	08/01/94–07/31/95
Dofasco Inc. and Sorevco, Inc., A–122–822	08/01/94–07/31/95
Stelco, Inc., A–122–822	08/01/94–07/31/95
A–122–823 Certain Cut-to-Length Carbon Steel Plate	08/01/94–07/31/95
Algoma Steel Inc., A–122–823	08/01/94–07/31/95
Manitoba Rolling Mills, A–122–823	08/01/94–07/31/95
Stelco, Inc., A–122–823	08/01/94–07/31/95
Tideco Industries, A–122–823	08/01/94–07/31/95
Finland:	
A–405–802 Certain Cut-to-Length Carbon Steel Plate:	
Rautaruukki Oy, A–405–802	08/01/94–07/31/95
Germany:	
A–428–814 Certain Cold-Rolled Carbon Steel Flat Products:	
Thyssen Stahl AG and Thyssen, Inc., A–428–814	08/01/94–07/31/95
A–428–816 Certain Cut-to-Length Carbon Steel Plate:	
AG der Dillinger Hüttenwerke, A–428–816	08/01/94–07/31/95
Korea:	
A–580–815 Certain Cold-Rolled Carbon Steel Flat Products:	
Dongbu Steel Co., Ltd., A–580–815	08/01/94–07/31/95
Pohang Iron and Steel Co., Ltd., A–580–815	08/01/94–07/31/95
Union Steel Manufacturing Co., Ltd., A–580–815	08/01/94–07/31/95
A–580–816 Certain Corrosion-Resistant Carbon Steel Flat Products:	
Dongbu Steel Co., Ltd., A–580–816	08/01/94–07/31/95
Pohang Iron and Steel Co., Ltd., A–580–816	08/01/94–07/31/95
Union Steel Manufacturing Co., Ltd., A–580–816	08/01/94–07/31/95
The Netherlands:	
A–421–804 Certain Cold-Rolled Carbon Steel Flat Products:	
Hoogovens Groep BV, A–421–804	08/01/94–07/31/95
Sweden:	
A–401–805 Certain Cut-to-Length Carbon Steel Plate:	
Svenskt Stal AB, A–401–805	08/01/94–07/31/95

[1] For the purpose of determining whether profile slabs produced by CST and imported by Wirth fall within the scope of the antidumping duty order.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 C.F.R. 353.22(c)(1) and 355.22(c)(1).

Dated: September 5, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–22507 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Notice to Extend the Time Period for the Area to be Temporarily Avoided by the Public During Coral Rubble and Ship Debris Removal Activities in the Looe Key National Marine Sanctuary, Now Part of the Florida Keys National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of extension of time period.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), the U.S. Army Corps of Engineers (COE), and authorized contractors will be conducting coral rubble and ship debris removal activities to prevent and minimize the destruction, or loss of, or injury to Sanctuary resources. The coral rubble and ship debris were generated as a result of the August 10 to 12, 1994, R/V *Columbus Iselin* grounding incident within the Looe Key National Marine Sanctuary (Looe Key NMS), now part of the Florida Keys National Marine Sanctuary (Florida Keys NMS).

To ensure the protection of life and property during these complex activities the public is advised to avoid the area due to the presence of heavy equipment (i.e., barge and crane) and increased localized boat traffic. NOAA requested on August 25, 1995 (60 FR 44307) that Sanctuary users temporarily avoid an area approximately 900 square feet marked by visible construction buoys from on or about August 23 and August 31, 1995. The area is in the vicinity of 24°37′30″ N, 81°24′23″ W, a bank reef located 7 nautical miles (12.9 km) off the southwest tip of Big Pine Key, Florida.

Due to recent tropical storms and hurricanes in the Greater Caribbean and Florida peninsula, activities to remove the coral rubble and ship debris have been delayed. This notice extends the request for the public to temporarily avoid the area until September 15, 1995.

FOR FURTHER INFORMATION CONTACT:

Any comments on the establishment of the area to be temporarily avoided may be sent at any time during or after the effective dates specified, to Dr. Charles M. Wahle, Chief, Technical Projects Branch, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910. Telephone number: 301–713–3145 ext. 156.

Locations and Boundaries of Temporary Avoidance Area

The temporary avoidance area is located approximately 7 nautical miles (12.9 kilometers) offshore the southwest tip of Big Pine Key, Florida (24°37′ N, 81° W). The total area to be temporarily avoided is approximately 900 square feet, and is less than one percent of the total area of the Looe Key NMS. The boundary of this area will be marked by visible construction buoys.

The area to be temporarily avoided is bounded by the following coordinates:

Latitude	*Longitude*
A. 24°32′49.5″ N	81°24′25.6″ W
B. 24°32′49.5″ N	81°24′22.4″ W
C. 24°32′25.3″ N	81°24′22.4″ W
D. 24°32′25.3″ N	81°24′25.6″ W

Dates

The area to be temporarily avoided will be in effect until September 15, 1995, or until the construction marker buoys are removed at NOAA's direction if the work is completed prior to September 15, 1995. Public notice of the area to be temporarily avoided will be provided through the **Federal Register**, local news media, and posting of placards on bulletin boards in public areas in Big Pine Key and at Bahia Honda State Park.

Notice of the removal of the area to be temporarily avoided will be issued by NOAA once the rubble and ship debris removal activities are completed.

Dated: September 1, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–22248 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 9, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.
2. The action will result in authorizing small entities to furnish the commodity and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Basin, Wash
6530–01–166–9035
NPA: The Arc of St. Clair County, Port Huron, Michigan

Service

Janitorial/Custodial
Morgantown U.S. Army Reserve Center
Route 19 South, Comfort Inn Drive, Morgantown, West Virginia
NPA: PACE Training & Evaluation Center, Inc., Star City, West Virginia

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–22362 Filed 9–7–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to and Deletions from Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 9, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Case, Flag
8345–00–178–8495
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California

Deletions

If the Committee approves the proposed deletions, all entities of the Federal Government will no longer be required to procure the commodities and service listed below from nonprofit agencies employing people who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for deletion from the Procurement List.

The following commodities and service have been proposed for deletion from the Procurement List:

Commodities

Harness, Head
4240–01–M14–0174

Modification Kit, Harness Head
4240–01–220–3201

Duplicate Diazo Microfiche Program
7690–00–NSH–0019
(Requirements for the Department of Health and Human Services, National Institute of Safety and Health, Cincinnati, Ohio)

Service

Sanding and Oiling of Picnic Tables
Deschutes National Forest
Bend Ranger District
Bend, Oregon

E. R. Alley, Jr.

Deputy Executive Director.

[FR Doc. 95–22363 Filed 9–7–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 9, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 23, July 14, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 32658 and 36266) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Cleaning Compound, Aircraft Surface
6850–00–005–5305

Services

Janitorial/Custodial
Defense Logistics Agency
Defense Fuel Region West, Building 100, San Pedro, California

Laundry Service
Medical Center
Wright-Patterson Air Force Base, Ohio
Mailroom Operation
Internal Revenue Service
55 Market Street, San Jose, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–22361 Filed 9–7–95; 8:45 am]

BILLING CODE 6820–33–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Bulgaria

September 1, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62716, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 1, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on September 11, 1995, you are directed to adjust the limits for the following categories, pursuant to the current bilateral textile agreement between the Governments of the United States and the Republic of Bulgaria:

Category	Twelve-month restraint limit[1]
410	735,102 square meters.
435	21,830 dozen.
448	21,830 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22371 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 1, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 636 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 1, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 6, 1995, you are directed to amend further the directive dated December 16, 1994 to increase the limit for Category 636 to 546,728 dozen[1], as provided under the terms of the bilateral agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22373 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

August 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 331/631 is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17332, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 31, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 11, 1995, you are directed to amend the March 30, 1995 directive to reduce the limit for Categories 331/631 to 1,706,846 dozen pairs [1], as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–22374 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DR–F

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

September 1, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 30346, published on June 13, 1994; and 60 FR 17336, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 1, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 7, 1994, as amended on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 6, 1995, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
433	11,923 dozen.
435	15,766 dozen.
443	106,115 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22372 Filed 9–7–95; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities Under OMB Review

AGENCY: Corporation for National and Community Service (CNS).

ACTION: Information Collection Request Submitted to the Office of Management and Budget (OMB) for Review.

SUMMARY: This notice provides information about an information collection proposal by CNS, currently under review by OMB. ACTION is requesting a expedited review by OMB with final action by September 26, 1995.

DATES: OMB and ACTION will consider comments on the proposed collection of

information and recordkeeping requirements received on or before September 18, 1995. Copies of the proposed form and supporting documents may be obtained by contacting CNS.

ADDRESSES: Send comments to both—

Chuck Helfer, Study Director, CNS,
1201 New York Ave. NW.,
Washington, DC 20525

Debra Bond, Desk Officer, OMB, 3002
NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Chuck Helfer at (202) 606–5000, extension 248.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service

Issuing Notice: Training Conference Evaluation.

Title of Forms: Training Conference Evaluation.

Need and Use: CNS's legislation authorizes it to provide technical assistance to agencies and non-profit organizations which sponsor CNS programs and projects. Information gathered in this information collection will be used to plan and make changes in future training conferences for sponsors and directors of CNS programs.

Type of Request: Reinstatement of a previously approved data collection for which approval has expired.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: Once a year.

Estimated Number of Responses: 2,687.

Average Burden Hours per Response: 0.25 hours.

Estimated Annual Reporting or Disclosure Burden: 672 hours.

Regulatory Authority: 42 U.S.C. 4993 and 42 U.S.C. 12653.

Dated: September 1, 1995.

Lance Potter,

Director, Office of Evaluation.

[FR Doc. 95–22279 Filed 9–7–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Morganza, Louisiana, to the Gulf of Mexico Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers (COE) will prepare a draft environmental impact statement (EIS) to analyze the direct and indirect beneficial and adverse impacts of implementing a proposed hurricane protection project in Terrebonne and Lafourche Parishes, Louisiana. The purposes of the proposed action are to provide protection to existing development from tropical storm and hurricane-induced tidal flooding such as that which occurred during Hurricane Andrew, and to protect coastal wetlands from hurricane surges in a portion of Terrebonne Parish, Louisiana. The proposed action would consist of upgrading many existing forced-drainage-system levees; using permitted and/or installed flood-control features (e.g., floodgates); constructing some new levees and water-control structures; and, closing the water-control structures and flood gates in a coordinated manner in the event of tropical storm or hurricane tidal surges.

FOR FURTHER INFORMATION CONTACT: Questions regarding the EIS may be directed to Mr. Robert Martinson, CELMN–PD–RS, U.S. Army Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone: (504) 862–2582.

Questions regarding the proposed action may be directed to Mr. Troy Constance, CELMN–PD–FB, U.S. Army Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone: (504) 862–2742.

SUPPLEMENTARY INFORMATION: A similar flood protection plan has been proposed by the South Terrebonne Tidewater Management and Conservation District (STTMCD). A Notice of Intent to prepare an EIS for the STTMCD plan under the COE Regulatory Program was issued on April 7, 1993 (**Federal Register**, Volume 58, Number 65, pp. 18084–18085). Because the underlying purposes of the two proposed actions are the same, and in the interest of cost effectiveness, one EIS will be prepared rather than two.

Proposed Action

The STTMCD proposed action would consist of upgrading many existing forced-drainage-system levees from near Larose at the eastern end to Waterproof on the western end; using permitted and/or installed flood-control features (e.g., floodgates) in the area; constructing some new levees and water-control structures, particularly in the Lake gates in a coordinated manner in the event of tropical storm or hurricane tidal surges. The flood gates and water control structures would normally be left open for navigation and tidal ingress and egress. Several communities, including the City of Houma, Dulac, Chauvin, and Montegut, would receive protection from the proposed action.

Alternatives

The no-action alternative must be evaluated. Additionally, several levee alignments around the Lake Boudreaux area will be evaluated, including the STTMCD plan. Non-structural solutions to protecting existing development will also be evaluated.

On May 12, 1993, the COE held a formal NEPA scoping meeting at Houma, Louisiana, for the previously announced regulatory EIS. Fifty-two individuals registered at the meeting. Questions and issues of concern were solicited at the meeting and a summary of the results was made available to participants on April 12, 1994. One of the main areas of concern brought out during the 1993 scoping was potential impacts to Lake Boudreaux, surrounding marshes, and associated marine organisms. Additional meetings with local interests from the various bayou areas will be held in the near future, and leadership and work group meetings will continue to be held to keep the public informed and involved.

The COE does not plan to hold additional formal NEPA scoping meetings at this time, but meetings will continue to be held throughout the planning process, as discussed above.

A draft EIS is scheduled to be available for public review during January 1998.

Kenneth H. Clow,

Colonel, U.S. Army, District Engineer.

[FR Doc. 95–22318 Filed 9–7–95; 8:45 am]

BILLING CODE 3710–84–M

Department of the Air Force

Notice of Intent to Prepare an EIS for a Proposed Golf Course

The Department of the Air Force is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a golf course adjacent to Luke Air Force Base in Arizona.

Luke Air Force Base (AFB) will prepare an EIS on a proposal to construct and operate a golf course and related facilities including a clubhouse, cart storage building, and maintenance building. The golf course will occupy 155 acres in Maricopa County, Arizona, on the northeast corner of Northern

Avenue and Reems Road west of Phoenix. The proposed site, which will soon be deeded to Luke AFB, was used for agricultural purposes in the past. Currently, the site is undergoing construction of the Dysart Drain Improvement Project, which includes a 160-acre detention basin designed to alleviate flooding of the military base property and facilities.

The project is being proposed so that the detention basin provides multiple purpose benefits. It is common practice in the Southwest to place recreational facilities, such as golf courses, in detention basins. Surveys show a high demand for golf by the Luke AFB population, which includes approximately 30,000 active duty and family members as well as military retirees and Department of Defense civilian employees that work at the base. Currently, the eligible members of the Luke AFB population have no military golf alternatives. The competitive environment for golf in the Phoenix metropolitan area make golf unaffordable to many military members as market rates range from $40 to $100 per round during winter months when weather in the area is most conducive for golf.

All potential significant environmental effects will be discussed in the EIS. These include air quality impacts from fugitive dust and various construction emissions generated during the construction period, an analysis of the potential effects caused by increased traffic volume in the area, and the potential for contamination of the detention basin by pesticides and fertilizers used in golf course maintenance.

The only alternative to this action is the no-action alternative, which leaves the site serving as a detention basin without a golf course.

The proposed action would not commence until after completion of the Dysart Drain Improvement Project, which is scheduled for 1997. It is estimated that the time frame for construction of the golf course and its related facilities would take 13 months.

Prior to any construction efforts, and accompanying preparation of the EIS, a public involvement plan will be implemented to solicit public opinion of the proposed action. A public scoping meeting is scheduled for 7:00 p.m. on Tuesday, September 12, 1995 at the Litchfield Park Recreation Center Community Room, 100 South Old Litchfield Road.

To ensure that all significant issues regarding the proposed action and the EIS are identified, comments and questions are invited from all interested parties, and should be addressed to Luke AFB at the address below:

Lisa Q. Carlson, Natural Resources Planner, 56 CES/CEVN, 14002 West Marauder Street, Luke Air Force Base, Arizona 85309–1125, Telephone (602) 856–3823

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–22257 Filed 9–7–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Station, Long Beach, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority established to plan the reuse of the former Naval Station, Long Beach, CA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Department of the Navy, Real Estate Operations Division, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or LCDR April Heinze, Base Closure Manager, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Blvd., suite 507, San Diego, CA 92101–2404, telephone (619) 556–0259. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, condition, exact street address, etc.), contact Lieutenant Commander Kevin Barre, Base Transition Coordinator, Long Beach Naval Shipyard, Building 5, Long Beach, CA 90822–5080, telephone (310) 547–6875.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Station, Long Beach, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. This notice relates to three parcels of the property which formed a part of that installation, i.e., the Savannah/Cabrillo family housing complex, the Ocean Boulevard parcel, and the Navy Mole and transportation corridor parcel. On March 4, 1993, and April 21, 1994, respectively, the land and facilities located at the Savannah/Cabrillo complex and the Ocean Boulevard parcel were determined to be surplus to the needs of the federal government and available for use by state and local governments, representatives of the homeless and other interested parties. In August 1995, the Navy Mole and transportation corridor were also determined to be surplus to the needs of the federal government.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of the Act gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the former Naval Station, Long Beach, is published in the **Federal Register**:

Redevelopment Authority

The redevelopment authority for the Savannah/Cabrillo housing complex, Ocean Boulevard parcel, and the Mole and transportation corridor at the former Naval Station, Long Beach, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Long Beach. The City has established a local community advisory committee to provide recommendations to the City concerning the redevelopment plan. This committee is known as the "Naval Properties Reuse Committee." Day-to-day operations of the committee are handled by Mr. Gerald Miller. The address of the committee is Economic Development Bureau, City of Long Beach, 200 Pine Avenue, Suite 400, Long Beach, CA 90802, Telephone (310) 570–3851, facsimile (310) 570–3897.

Surplus Property Descriptions

The following is a listing of the land and facilities at the former Naval Station, Long Beach, CA, that are declared surplus to the needs of the federal government.

Land

Approximately 56 acres of improved and unimproved fee simple land at the Savannah/Cabrillo housing complex of the former Naval Station, Long Beach, in the City of Long Beach, Los Angeles County. This area is currently available.

Approximately 3 acres of improved and unimproved fee simple land at the Ocean Boulevard parcel of the former Naval Station, Long Beach, in the City of Long Beach, Los Angeles County. This area is currently available.

Approximately 125 acres of improved and unimproved fee simple land on the Navy Mole, including Piers 9, 10, 11, 15 and 16, and transportation corridor at the former Naval Station, Long Beach, in the City of Long Beach, Los Angeles County. The transportation corridor is generally described as a parcel of land extending north of the Mole to the northern boundary of the installation. The westerly boundary of said parcel is the border between the Cities of Los Angeles and Long Beach. The easterly border extends from a point at the westerly side of the building No. 145, north between buildings 23 and 24 to a point on the north side of Reeves Avenue, thence east to align with the western fence of the softball field, thence north to the property line south of Ocean Boulevard.

The Navy Fuel Pier and associated structures, tanks, and other facilities and equipment are excluded from the determination of surplus. The fenced parcel of approximately five acres containing buildings 700, 719, 720, 757 and 850 is surplus but will not be available until the Department of the Navy has completed relocation plans for material stored on this parcel.

Buildings

The following is a summary of the facilities located at the Savannah/Cabrillo housing complex which are currently available. Property numbers are available on request.

- —Family housing units (150 duplex and 42 quadplex structures with 468 individual housing units). Comments: Approx. 633,930 square feet. All units are vacant.
- —Convenience store (1 structure). Comments: Approx. 4,830 square feet.
- —Storage facilities, utility buildings, and maintenance shops (5 structures). Comments: Approx. 10,737 square feet.
- —Detached carports (21 structures). Comments: Approx. 32,640 square feet.
- —Vehicle carports (26 structures with 264 vehicle spaces). Comments: Approx. 40,239 square feet. There are 4, 6, 8, 12, and 16 vehicle structures.
- —Recreation facilities (2 structures). Comments: Approx. 6,576 square feet tenant activities building and one basketball court.

The following is a summary of the facilities located on the Ocean Boulevard parcel available currently. Property numbers are available on request.

- —Shop facility (1 structure). Comments: Approx. 16,400 square feet.
- —Lumber shed (1 structure). Comments: Approx. 960 square feet.
- —Recreation pavilion (1 structure). Comments: Approx. 280 square feet.

The following is a summary of the facilities located on the former Naval Station Mole and transportation corridor which are available unless otherwise indicated above. Property numbers are available on request.

- —Office buildings (7 structures). Comments: Approx. 62,331 square feet.
- —Auto hobby complex (4 structures). Comments: Approx. 6,800 square feet; includes grease rack, shop/office, covered stalls, and car wash.
- —Recreation facilities (23 structures). Comments: Approx. 5,607 square feet; includes cabanas, restrooms, four tennis courts and eight softball fields.
- —Storage facilities (13 structures). Comments: Approx. 28,885 square feet.
- —Maintenance facilities (10 structures). Comments: Approx. 124,616 square feet.
- —Retail stores (3 structures). Comments: Approx. 161,759 square feet; includes exchange, servmart, and credit union.
- —Marina Complex (7 structures). Comments: Approx. 6,674 square feet; includes marina, hoist, sail club, loft, workshop, and shower.
- —Bachelor Officer Housing (1 structure). Comments: Approx. 45,535 square feet.
- —Restaurants (2 structures). Comments: Approx. 45,000 square feet includes officers' club and Taco Bell that is privately owned.
- —Piers (4 structures). Comments: Approx. 21,597 square yards.
- —Miscellaneous buildings, structures, and utilities (26 structures). Measurement systems vary; includes bus shelters, incinerators, compressor plant, electrical substations, guard and watch towers, landing ramps, mooring platforms, magazines, and salt water pumps.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, state and local governments, representatives of the homeless, and other interested parties located in the vicinity of the former Naval Station, Long Beach, may submit to said redevelopment authority (City of Long Beach) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant paragraphs 7 (C) and (D) of said Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Long Beach the date by which expressions of interest must be submitted.

Dated: August 25, 1995.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–22319 Filed 9–7–95; 8:45 am]

BILLING CODE 3810–FF–P

Intent To Grant Partially Exclusive Patent License; Devoe Coatings Company

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to the Devoe Coatings Company, a revocable, nonassignable, partially exclusive license in the United States to partice the Government owned inventions described in U.S. Patent Application Serial No. 08/077,503, entitled "Method of Controlled Release and Controlled Release Microstructures", filed 17 June 1993; and U.S. Patent Application entitled "Controlled Release of Active Agents Using Inorganic Tubules", filed 31 July 1995, Navy Case No. 76,652 in the field of non-lipid derived controlled release systems for use in marine antifouling and anticorrosive paint.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR OOCC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: August 28, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–22258 Filed 9–7–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Committee on Regional Educational Laboratories of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: September 27, 1995, 4 p.m. to 6 p.m.

ADDRESSES: 555 New Jersey Avenue, NW., room 500 C, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, DC 20208–7564. Telephone: (202) 219–2065; Fax: (202) 219–1528.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collectively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Act directs the Board to provide guidance to the Congress in its oversight of the Office; to advise the United States on the Federal educational research and development effort; and to solicit advice from practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The Board has designated the Committee on Regional Educational Laboratories to work on its behalf in these matters in the interim between full meetings of the Board. The meeting of the Committee is open to the public. The agenda for the meeting includes discussions about quality control and set-aside funds for first-year operations of the laboratories. A final agenda will be available from the Board's office on September 20, 1995.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, DC 20208–7564.

Dated: September 1, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 95–22249 Filed 9–7–95; 8:45 am]

BILLING CODE 4000–01–M

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: September 28, 1995, 8:30 a.m. to 4:45 p.m.; September 29, 1995, 8 a.m. to 2 p.m.

ADDRESSES: Association of American Railroads Conference Center, 50 F Street, NW., Fourth Floor, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, DC 20208–7564. Telephone: (202) 219–2065; Fax: (202) 219–1528.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collectively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Act directs the Board to provide guidance to the Congress in its oversight of the Office; to advise the United States on the Federal educational research and development effort; and to solicit advice from practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The meeting of the Board is open to the public. The agenda for September 28 includes a report on the FY 96 budget for the Office of Educational Research and Improvement and reports from the Board's Committees on Research and Development Centers; Standards; and Research Priorities. The Board will review a preliminary report on priorities planning which will be issued in October 1995. The Board's Committee on Partnerships and Outreach will present its recommendations on strengthening linkages with representatives of research, practitioner, and policy-making communities so that research findings can improve practice.

On September 29 the Board will hear a report from its Committee on Regional Educational Laboratories which will focus on quality control and issues centering on knowledge transfer. The Board will also take up planning, scheduling, and budget for its activities in FY 96. A final agenda will be available from the Board's office on September 21, 1995.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue NW., Washington, DC 20208–7564.

Dated: September 1, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 95–22250 Filed 9–7–95; 8:45 am]

BILLING CODE 4000–01–M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: September 26, 1995, from 2 pm to 5 pm.

ADDRESSES: The meeting will be held at the Marriott Metro Center located at 775 12th Street NW., Washington, DC 20005. Call (202) 708–8667 for further information.

FOR FURTHER INFORMATION CONTACT: Nancy Davis, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1250 Maryland Avenue SW., suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 12876 of November 1, 1993. The Board is established to advise Administration officials on federal issues that impact Historically Black Colleges and Universities.

The meeting of the board is open to the public. The agenda includes a discussion of the impact of budgetary changes on federal support to Historically Black Colleges and Universities.

Records are kept of all Board proceedings, and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities at 1250 Maryland Avenue SW., suite 605, Washington, DC 20202, from the hours of 8:30 am to 5 pm.

Dated: August 24, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–22337 Filed 9–7–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Kirtland Area Office (Sandia).

DATES: Monday, September 18, 1995: 6:45 pm–10:00 pm (Mountain Daylight Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th St. NW., Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:45 pm	Public Comment Period
7:00 pm	Issues Discussion: Future Land Use, Corrective Action Management Units
8:30 pm	Board Subcommittee Assignments
9:30 pm	Evaluation
10:00 pm	Adjourn

A final agenda will be available at the meeting Monday, September 18, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on September 5, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22357 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting: Environmental Management Site-Specific Advisory Board, Monticello Site.

DATE AND TIME: Tuesday, September 19, 1995, 7 p.m.–8:30 p.m.

ADDRESS: Monticello City Hall, 17 North 1st East, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502 (303) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

The Environmental Management Site-Specific Advisory Board, Monticello Site, will be discussing reports from subcommittees on health and safety, budget, future land use, and repository design.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248–7727.

Issued at Washington, DC on September 5, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22359 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Saturday, September 9, 1995 2:00 pm—6:00 pm.

ADDRESSES: VFW Hall, Caliente, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. DOE, Nevada Operations Office, AMEM, P.O. Box 98518, Las Vegas, NV 89193–8518, ph. 702–295–0197 fax 702–295–1810.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Saturday, September 9, 1995

2:00 p.m.
- Meeting Begins
- Introduction
- Overview of Site Group
- Presentations: Update on Nevada Test Site (NTS) Environmental
- Impact Statement (EIS); Update on Future Land Use at NTS
- Public Comment
- Break
- Approval of Meeting Minutes
- Review of Action Items
- New Business
- Committee Reports:
  - Transportation
  - EIS
  - Charter/Bylaws
  - ER Funding
  - Diversification

6:00 p.m.
- Meeting Adjourns

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details. A final agenda will be available at the meeting Saturday, September 9, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer's office at the address or telephone number listed above. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that needed to be resolved, this notice is being published less than 15 days in advance of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on September 5, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22358 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, September 21, 1995, 6:00 pm—9:00 pm.

ADDRESSES: Oak Ridge Mall Community Room, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandra Perkins, Site Group Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (615) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

September Meeting Topics

The initial meeting for the EM SSAB, Oak Ridge will be conducted to allow members to begin addressing issues required for the Board to begin functioning. Topics to be discussed are largely organizational, such as: draft operational procedures, chair selection process, future meeting dates and times, goals for the Board, and any training needs for Board members. The Board members will have an opportunity to discuss issues related to the Environmental Management program to help guide the waste management and cleanup program on the Oak Ridge Reservation.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandra Perkins' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between

9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (615) 576–1590.

Issued at Washington, DC on September 5, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22360 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Monday, September 25, 1995:

1:30 p.m.—5 p.m. (tentative session—group dynamics discussion)

6:00 p.m.—7:00 p.m. (public comment session)

7:00 p.m.—9:00 p.m. (subcommittee meetings Bylaws and issues)

Tuesday, September 26, 1995: 8:30 a.m. to 4:00 p.m.

ADDRESSES: The Holiday Inn, U.S. 21—Loveless Street, Beaufort, South Carolina.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, September 25, 1995

1:30 p.m. Group Dynamics Discussion (tentative)
6:00 p.m. Public Comment Session (5-minute rule)
7:00 p.m. Subcommittee Meetings
9:00 p.m. Adjourn

Tuesday, September 26, 1995

8:00 a.m. Welcome
8:30 a.m. Approval of minutes, Board discussions
9:00 a.m. Risk Management & Future Use Subcommittee Recommendations
11:45 a.m. Lunch
12:45 p.m. Environmental Remediation & Waste Management Subcommittee Report
2:30 p.m. Agency updates, facilitator report
2:45 p.m. Membership and Nominations Elections
3:30 p.m. Public Comment Session (5-minute rule)
4:00 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details.

A final agenda will be available at the meeting Monday, September 25, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday—Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling him at (803) 725–8074.

Issued at Washington, DC on September 5, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22356 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. PP–107]

Application for Presidential Permit, Arizona Public Service Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Arizona Public Service Company (APS) has applied for a Presidential Permit in order to construct a new transmission facility at the U.S. border with Mexico.

DATES: Comments, protests or requests to intervene must be submitted on or before October 10, 1995.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Warren E. Williams (Program Office) 202–586–9629 or Mike Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038. Exports of electricity from the United States to a foreign country are also regulated and require authorization under section 202(e) of the Federal Power Act.

On June 22, 1995, APS filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit. This application has been docketed as PP–107. In its application, APS proposes to tap an existing 34.5-kilovolt (kV) line that originates at the existing Fairview Substation in Douglas, Arizona, and to extend the tap approximately 4,000 feet to the international border adjacent to Agua Prieta, Sonora, Mexico. The Fairview substation will be upgraded by adding a transformer and other equipment in order to accommodate the proposed facilities. The proposed power line structures are to be located within a state highway right-of-way.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protest also should be filed directly with: Dennis Beals, Manager, Bulk Power Trading & Customer Services, Arizona Public Service Company, P.O. Box 53999, Station 9860, Phoenix, AZ 85072–3999 and Bruce A. Gardner, Esq., Senior Attorney, Arizona Public Service Company, P.O. Box 53999, Station 9820, Phoenix, AZ 85072–3999.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on the application for Presidential permit contained in docket PP–107 after a determination is made by the DOE that the proposed action is in the public interest and will not adversely impact on the reliability of the U.S. electric power supply system.

Before a Presidential permit or electricity export authorization may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on August 31, 1995.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–22217 Filed 9–7–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 10867 Indiana]

Holliday Historic Restoration, Associates; Notice of Availability of Final Environmental Assessment

September 1, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Holliday Hydroelectric Project located on the West Fork of the White River in Noblesville, Hamilton County, Indiana, and has prepared a Final Environmental Assessment (FEA) for the proposed project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22269 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2417 Wisconsin]

Northern States Power Company; Notice of Availability of Final Environmental Assessment

September 1, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent license for the existing Hayward Hydroelectric Project, located on the Namekagon River, in the City of Hayward, Sawyer County, Wisconsin and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff analyzed the potential environmental effects of the existing project and has concluded that approval of the project, with appropriate protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Notice of Availability of Draft Environmental Assessment for the Hayward Hydroelectric Project was issued on June 16, 1994. In response, the Commission received three comment letters which were reviewed by the Commission's staff and addressed in the FEA.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22270 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1995.

Take notice that on August 30, 1995, Eastern Shore Natural Gas Company (ESNG) tendered for filing certain substitute revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective October 1, 1995.

ESNG states that the purpose of the instant filing is to reflect a decrease of $0.0001 per dt in the Annual Charge Adjustment (ACA) in the commodity portion of its sales and transportation rates. Pursuant to Order No. 472, the Commission assessed ESNG its ACA charge based on $0.0023/Mcf for the annual period commencing October 1, 1995. In accordance with Section 25 of the General Terms and Conditions of ESNG's FERC Gas Tariff, ESNG's proposed tariff sheets track the Commission approved ACA rate of $0.0023 per Mcf ($0.0022 per dt on ESNG's system) commencing October 1, 1995.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211, 385.214). All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22272 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1995.

Take notice that on August 30, 1995, Eastern Shore Natural Gas Company (ESNG), tendered for filing certain substitute revised tariff sheets included in Appendix A to the filing. Such sheets are proposed to be effective October 1, 1995.

ESNG states that the purpose of the instant filing is to track changes made in the rates for storage service purchased from Columbia Gas Transmission under its Rate Schedule FSS and SST, the costs of which are included in the rates and charges payable under ESNG's Rate Schedules CWS and CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211, 385.214). All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22273 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11493–001 Utah]

L.B. Industries, Inc.; Notice of Surrender of Preliminary Permit

September 1, 1995.

Take notice that L.B. Industries, Inc., Permittee for the Brink Pumped Storage Project No. 11493, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11493 was issued November 8, 1994, and would have expired October 31, 1997. The project would have been located on lands administered by the Bureau of Land Management, near Bear Valley, in Sevier County, Utah.

The Permittee filed the request on August 14, 1995, and the preliminary permit for Project No. 11493 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22271 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–424–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1995.

Take notice that on August 29, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Second Revised Volume No. 2, revised tariff sheets to be effective December 1, 1995.

Natural states that the purpose of the filing is to comply with the Commission's June 26, 1995 order in Docket Nos. RP95–326–000 and RP95–242–000 under which Natural is to submit revised rates reflecting the customers' August 1 service elections. This filing deals with the Primary Case submitted by Natural. Natural states that while the service elections were generally submitted under the new services pursuant to the Pro Forma Case, those elections provided Natural with specific evidence as to the level of services its customers desire on Natural's system on and after December 1, 1995. This filing is being submitted solely as a fall back in the event the Commission does not allow the Pro Forma Case (revised rates for which were submitted on August 18) to go into effect on December 1, 1995.

Natural states that due to the significant fly-up in maximum rates created by these changes, it is proposed a deferred cost procedure to avoid such rate increases.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective December 1, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers, interested state regulatory agencies and all parties on the official service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 or 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson,

Acting Secretary.

[FR Doc. 95–22274 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–55–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1995.

Take notice that on August 30, 1995, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Ninth Revised Sheet No. 546
Eighth Revised Sheet No. 547
Ninth Revised Sheet No. 548
Tenth Revised Sheet No. 549
Ninth Revised Sheet No. 550

Ninth Revised Sheet No. 551
Ninth Revised Sheet No. 553
Eighth Revised Sheet No. 554
Ninth Revised Sheet No. 555
Tenth Revised Sheet No. 556
Ninth Revised Sheet No. 557
Ninth Revised Sheet No. 558
Ninth Revised Sheet No. 560
Eighth Revised Sheet No. 561
Ninth Revised Sheet No. 562
Tenth Revised Sheet No. 563
Ninth Revised Sheet No. 564
Ninth Revised Sheet No. 565
Ninth Revised Sheet No. 567
Eighth Revised Sheet No. 568
Ninth Revised Sheet No. 569
Tenth Revised Sheet No. 570
Ninth Revised Sheet No. 571
Ninth Revised Sheet No. 572
Ninth Revised Sheet No. 575
Eighth Revised Sheet No. 576
Ninth Revised Sheet No. 577
Ninth Revised Sheet No. 578
Eighth Revised Sheet No. 579
Ninth Revised Sheet No. 580
Ninth Revised Sheet No. 581
Eighth Revised Sheet No. 582
Ninth Revised Sheet No. 583
Tenth Revised Sheet No. 599
Ninth Revised Sheet No. 600
Ninth Revised Sheet No. 601

The proposed effective date of the tariff sheets listed above is September 1, 1995.

Texas Eastern states that it is submitting the above referenced tariff sheets to reflect the modifications to Sections 9.2, 9.3, 9.4, 9.5, 9.9, and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1, to reflect Base and Operational Segment Entitlements effective September 1, 1995.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22275 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR95–34–000]

Tosco Corporation v. SFPP, L.P.; Notice of Complaint

September 1, 1995.

Take notice that on August 7, 1995, Tosco Corporation (Tosco) filed a complaint pursuant to Section 13(1) of the Interstate Commerce Act (ICA), Section 1803 of the Energy Policy Act of 1992, and Rule 206 of the Commission's Rules of Practice and Procedure against SFPP, L.P. (SFPP) in the above-referenced docket.

The complaint alleges that SFPP violated and continues to violate section 1 of the ICA by establishing and charging unjust and unreasonable rates on its system, pursuant to FERC Tariff Nos. 15, 16, 17, and 18. Tosco requests that the Commission order refunds, reparations, and damages in accordance with the ICA. Tosco also asks that its complaint be consolidated with ongoing proceedings in Docket No. OR92–8–000, *et al.* In the alternative, Tosco asks that the matter be consolidated with the complaint filed against SFPP by Mobil Oil Corporation in Docket No. OR95–5–000.

Any person desiring to be heard or to protest the instant complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 2, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before October 2, 1995.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22276 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–50–001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 1, 1995.

Take notice that on August 25, 1995, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet No. 303. The proposed effective date of the tariff sheet is September 17, 1995.

WNG states that the purpose of the instant filing is to amend the August 17 filing to reflect the FTS winter Transportation Market Area MDTQ for City Utilities of Springfield, Mo. and to show the summer MDTQ in a footnote.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the above referenced docket and on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–22277 Filed 9–7–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5228–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 21, 1995 Through August 25, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–C65002–PR Rating EC2, Caribbean National Forest Land and Resource Management Plan, Implementation, PR.
SUMMARY: EPA expressed environmental concerns about the

proposed project's potential impacts to wetlands, water quality, and biodiversity. Additional information should be provided in the final EIS to address these issues.

ERP No. D–AFS–K60028–CA Rating EC2, Elsmere Solid Waste Management Facility, Implementation, Angeles National Forest (ANF) Land Adjustment Plan, Conditional Use and Oak Tree Permit, Los Angeles County, CA.
SUMMARY: EPA expressed environmental concerns with potential adverse impacts to air quality and biological resources (e.g., riparian habitat). Additional information is needed regarding environmental justice, faulting, landfill design, groundwater protection, and adequate offsets for air quality emissions.

ERP No. D–AFS–L65245–ID Rating EC2, Main Salmon Post-Fire Project, Implementation, Payette National Forest, New Meadows and McCall Ranger District, Idaho County, ID.
SUMMARY: EPA expressed environmental concerns based on water quality impacts from road construction and timber salvage. Additional information is needed on sediment model validation, monitoring and air quality.

ERP No. D–COE–G39028–TX Rating LO, Gulf Intracoastal Waterway (Section 216 Study), Bank Protection and a Spill Containment Feature, Implementation, Aransas National Wildlife Refuge, Galvestion District, Aransas, Calhoun and Refugio Counties, TX.
SUMMARY: EPA had no objection to the proposed action.

ERP No. D–FHW–L40197–OR Rating EC2, Mount Hood Corridor Study, US 26 Rhodedendron to OR–35 Junction, Improvements, Funding, Clackamas County, OR.
SUMMARY: EPA expressed environmental concerns regarding potential water and air quality issues. EPA requested that these issues be clarified in the final EIS.

ERP No. D–MMS–G02005–00 Rating LO, 1996 Central and Western Gulf of Mexico Outer Continental Shelf (OSC) Oil and Gas Lease Sales No. 157 (March 1996) and No. 161 (August 1996), Lease Offerings, Offshore coastal counties and parishes of Al, MS, LA and TX.
SUMMARY: EPA had no objection to the proposed action.

ERP No. D–USN–G11028–TX Rating LO, Mine Warfare Center of Excellance (MWCE) Establishment, Construction and Operations, Magnitic Silencing Facility (MSF), Aviation Mine Count Measures (AMCM) and Sled Facility, Possible NPDES Permit, COE Section 10 and 404 Permits, Corpus Christi Bay Area, TX.
SUMMARY: EPA had no objection to the proposed action.

Final EISs

ERP No. F–BLM–J02030–WY Texaco's Stagecoach Draw Unit Natural Gas Field Development Project, Implementation, Application for Permit to Drill, Right-of-Way Grant, Temporary Use-Permit and COE Section 404 Permit, Farson, Sweetwater County, WY.
SUMMARY: Based on existing, planned and potential mineral and gas development in S.W. Wyoming, EPA expressed concerns about cumulative impacts.

ERP No. F–UMC–K11058–CA San Onofre Area Sewage Effluent Compliance Project, Cease and Desist Order, Camp Pendleton Marine Corps Base, San Diego County, CA.
SUMMARY: EPA had no objection to the final EIS.

ERP No. FA–AFS–L65147–AK Bohemia Mountain Timber Sale, Updated Information concerning Resolution of Three Appeal Issues Regarding Harvesting Timber, Tongass National Forest, Stikine Area, AK.
SUMMARY: EPA expressed environmental concerns with the effect of the action alternatives on water quality and fisheries.

Other

ERP No. LD–AFS–L65242–OR Rating LO, Dutch Flat Creek, Killamacue Creek and Rock Creek Wild and Scenic River Study, Designation or Nondesignation, National Wild and Scenic River System, Wallowa-Whitman National Forest, American Rivers, Baker County, OR.
SUMMARY: EPA had no objection to the proposed action.

Dated: September 5, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–22366 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5228–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed August 28, 1995 Through September 1, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950403, Final EIS, AFS, ND, Southern Little Missouri and Cedar River Oil and Gas Leasing, Approvals, Custer National Forest, Medora Ranger District, Cedar River National Grassland, Grant River Ranger District, Billings, Golden Valley, Slope, Grant and Sioux Counties, ND, Due: October 10, 1995, Contact: Greg Visconty (406) 657–6361.

EIS No. 950404, Final EIS, UAF, AK, Alaska Military Operations Areas (MOAs) Temporary MOAs Conversion to Permanent MOAs; New MOAs Creation; MOAs Modification; Supersonic Aircraft Operations and Routine Flying Training, Joint/Combined Flying Training and Major Flying Exercises Activities, Elmendorf Air Force Base, AK, Due: October 10, 1995, Contact: Jim Hostman (907) 552–4151.

EIS No. 950405, Draft EIS, AFS, MT, Rock Creek Copper/Silver Mine Project, Construction and Operation, COE Section 404 Permit and Permits Approval, Kootenai National Forest, Sanders County, MT, Due: October 23, 1995, Contact: Paul Kaiser (406) 293–6211.

EIS No. 950406, Final EIS, NOA, PR, VI, U. S. Virgin Islands and Puerto Rico Corals and Reef Associated Plants and Invertebrates Fishery Management Plan, Implementation and NPDES Permit, PR and VI, Due: October 10, 1995, Contact: Rolland A. Schmitten (301) 713–2239.

EIS No. 950407, Final EIS, COE, VA, Grundy Flood Damage Reduction/Highway Upgrade Project, Implementation, Town of Grundy, Buchanan County, VA, Due: October 10, 1995, Contact: A. Benjamin Borda (304) 529–5712.

EIS No. 950408, Final EIS, IBR, OR, Fish Passage Improvements, Savage Rapids Dam, Implementation, Grants Pass Irrigation District, Rogue River, Josephine and Jackson Counties, OR, Due: October 10, 1995, Contact: Robert J. Hamilton (208) 378–5087.

EIS No. 950409, Final EIS, DOE, NM, Dual Axis Radiographic Hydrodyamic Test (DARHT) Facility, Construction and Operation, Approval of Operating Permit, Los Alamos National Laboratory (LANL), Los Alamos and Santa Fe Counties, NM, Due: October 10, 1995, Contact: M. Diana Webb (505) 665–6353.

EIS No. 950410, Final EIS, FHW, WA, WA–520 Corridor Improvements, Construction and Reconstruction, between 104th Avenue N.E. and West Lake Sammamish Parkway (Formerly WA–901), Funding and COE Section 404 Permit, the Cities of Bellevue and Redmond, King County, WA, Due: October 10, 1995, Contact: Gene Fong (206) 753–2120.

EIS No. 950411, Draft EIS, FHW, WA, North Spokane Freeway Project, Tranportation Improvements through the City of Spokane and Spokane County between I–90, Spokane County, WA, Due: October 27, 1995, Contact: Gene Fong (360) 753–9413.

EIS No. 950412, Draft EIS, COE, CA, Magpie Creek Channel Section 205 Flood Control Investigation Project, Improvements, Implementation and NPDES Permit Issuance, McCellan Air Force Base, City of Sacramento and lands within the County of Sacramento CA, Due: October 23, 1995, Contact: Joseph Broadhead (916) 264–7622.

EIS No. 950413, Draft EIS, FHW, CA, Alternatives to Replacement of the Embarcadero Freeway and the Terminal Separator Structure, (Formerly CA–480) Implementation, Permit Approvals and Funding, San Francisco County, CA, Due: October 23, 1995, Contact: John R. Schultz (916) 498–5041.

EIS No. 950414, Draft Supplement, FHW, NB, South Locust Street (also known as Old Highway 281) Transportation Improvements, Additional Information, I–80 to the Grand Island and North of US 34, Funding and COE Section 404 Permit, Hall County, NB, Due: October 23, 1995, Contact: Phillip E. Barnes (402) 437–5521.

Amended Notices

EIS No. 950376, Draft EIS, AFS, CO, Rio Grande National Forest Land and Resource Management Plan, Implementation, Archuleta, Rio Grande, Custer, Hinsdale, Alamosa, San Juan, Conejos, Mineral and Saquache Counties, CO, Due: December 22, 1995, Contact: James B. Webb (719) 852–5941. Published FR–08–25–95 Due Date Correction.

EIS No. 950383, Draft EIS, MMS, AK, Beaufort Sea Planning Area Proposed 1996 Oil and Gas Lease Sale No. 144, Lease Offerings, Alaska Outer Continential Shelf (OSC), AK, Due: November 20, 1995, Contact: George Valiulis (703) 787–1662. Published FR–08–25–95 Due Date Correction.

Dated: September 5, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–22367 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5293–8]

Jack's Creek/Sitkin Smelting Superfund Site De Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: United States Environmental Protection Agency.

ACTION: Request for Public Comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of Diversified Industries, Inc., Scullin Steel Company (formerly Eastern Diversified Metals Corporation), and Theodore Sall, Inc. for response costs incurred by the United States Environmental Protection Agency at the Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania.

DATES: Comments must be provided on or before October 10, 1995.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania, U.S. EPA Docket No. III–94–40–DC.

FOR ADDITIONAL INFORMATION CONTACT: Daniel Isales (215) 597–4774, or Pamela Lazos (215) 597–8504, United States Environmental Protection Agency, Office of Regional Counsel, (3RC22), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Notice of De Minimis Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), and Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), notice is hereby given of a proposed administrative settlement concerning the Jack's Creek/Sitkin Smelting Superfund Site in Maitland County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on March 6, 1995 and is subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee and for the grant of a covenant not to sue for damages to natural resources, is also subject to agreement in writing by the Department of the Interior ("DOI").

The settling parties collectively agreed to pay $14,478.00 to United States Environmental Protection Agency toward EPA response costs and $522.00 to DOI for damages to natural resources, subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, Section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. The grant of a covenant not to sue for damages to natural resources by DOI to those parties paying their share of such allocated costs is subject to agreement in writing by DOI pursuant to Section 122(j) of CERCLA, 42 U.S.C. 9622(j).

The Environmental Protection Agency will receive written comments upon this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. Moreover, pursuant to Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), the public may request a meeting in the affected area. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Daniel Isales at (215) 597–4774 or Pamela Lazos at (215) 597–8504.

Peter H. Kostmayer,

Regional Administrator, EPA, Region III.

[FR Doc. 95–22335 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5293–7]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed assessment of Clean Water Act Class I administrative penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty of up to $25,000 by EPA in a "Class I" administrative penalty proceeding. Class I proceedings under section 309(g) are conducted in accordance with the proposed "Consolidated Rules of Practice Governing the Administrative Assessment of Class I Civil Penalties Under the Clean Water Act" ("Part 28"), published at 56 FR 29996 (July 1, 1991).

EPA is providing notice of the following proposed Class I penalty proceeding initiated by the Water Management Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105:

In the Matter of Oracle Ridge Mining Partners, Docket No. CWA–IX–FY95–07, filed August 25, 1995; proposed penalty, $25,000; for unauthorized discharges to Gibb Wash and Geesaman Wash between April 1991 and September 1994, and for failure to develop and implement a spill prevention control and countermeasure plan by the deadline required in 40 CFR 112.3, at the Oracle Ridge Mine in Pima County, AZ.

The procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty proceeding are set forth in Part 28. The deadline for submitting public comment on a proposed Class I penalty is thirty days after issuance of public notice. The Regional Administrator of EPA, Region 9 may issue an order upon default if the respondent in the proceeding fails to file a response within the time period specified in Part 28.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of Part 28, review the complaint, proposed consent order, or other documents filed in this proceeding, comment upon the proposed penalty, or participate in any hearing that may be held, should contact Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1389. Documents filed as part of the public record in this proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this notice.

Dated: August 29, 1995.

Alexis Strauss,

Acting Director, Water Management Division.

[FR Doc. 95–22334 Filed 9–7–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 95–1854]

Pleading Cycle Established for Comments on Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This Public Notice established a pleading cycle for comments on a Request for Declaratory Ruling filed by a group of parties regarding the use of digital modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations. The Commission intends to promptly facilitate the use of digital equipment for these services.

DATES: Comments must be received on or before September 22, 1995, and reply comments must be received on or before October 10, 1995.

ADDRESSES: Comments and reply comments may be mailed to Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles E. Dziedzic or Brandon J. Bullis at (202) 418–1600, Video Services Division, Mass Media Bureau.

The complete text of the Public Notice follows. The Public Notice and a copy of the Request for Declaratory Ruling are available for public inspection in room 207, 2033 M Street, NW., Washington, DC and may also be obtained from the Commission's copy contractor, ITS, Inc. at (202) 418–0620.

Report No. MM 95–83

Released: August 23, 1995

On July 13, 1995, a request for declaratory ruling on the use of digital modulation by Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) stations was filed by a group of ninety-nine parties consisting of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, industry engineers and associations (Petitioners).

Petitioners request that the Commission examine the current MDS and ITFS operational requirements that were adopted before digital compression technology was envisioned and reinterpret them appropriately for digital operations. According to Petitioners, testing conducted in support of this petition demonstrates that the Commission's current MDS and ITFS interference protection rules will safely ensure protection of analog and digital systems during an initial digital transition, with only minimal rule clarifications and waivers necessary. Specifically, Petitioners propose that the Commission apply its current co-channel and adjacent channel desired-to-undesired interference ratios, and for those utilizing digital transmissions, relax the limitations on out-of-band emissions and permit licensees to operate at less than authorized power for an interim period. *See* 47 CFR 21.902, 74.903, 21.908, 74.936(b), 21.107(c) and 74.951(f). Petitioners ask the Commission to clarify whether, under the minimum ITFS programming requirements, additional ITFS programming must be reserved by licensees who expand capacity of their spectrum by utilizing digital compression technology. *See* 47 CFR 74.931. In addition, Petitioners ask the Commission to reinterpret several other requirements that were adopted before digital compression technology was envisioned. For example, Petitioners ask that the Commission determine whether ITFS station identification through the periodic transmission of ITFS call signs must be made over one or all of the channels created through use of digital compression. *See* 47 CFR 74.982.

Petitioners contend that the rapid introduction of digital technology by wireless cable system operators is in the public interest because it will increase the competitive viability of the wireless cable industry and it will also permit educators to increase their transmission capacity. Thus, Petitioners ask the Commission to act promptly on the request in order to have a regulatory framework in place that will permit MDS and ITFS operators to quickly implement digital transmission as soon as equipment is commercially available. Finally, Petitioners suggest that although future testing and information may indicate that further rule changes are appropriate, use of the current rules, with minor rule clarifications and waivers, offered a conservative transitional approach.

Interested parties should file comments on this request by September 22, 1995, and reply comments by October 10, 1995, with the Secretary, FCC, 1919 M Street, NW., Washington, DC 20554. A copy should also be sent to Brandon J. Bullis, Mass Media Bureau, FCC, room 702, 1919 M Street, NW., Washington, DC 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037. Copies of the above-referenced filings are available for public inspection in room 207, 2033 M Street, NW., Washington, DC and may also be obtained from the Commission's copy contractor, ITS, Inc. at (202) 418–0620. For further information, please contact Charles E. Dziedzic or Brandon J. Bullis at (202) 418–1600.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22033 Filed 9–7–95; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of July 5-6, 1995

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 5-6, 1995.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the level of economic activity was about unchanged in the second quarter. Nonfarm payroll employment fell in April and May after posting reduced gains in the first quarter, and the civilian unemployment rate, at 5.7 percent in May, was up somewhat from its first-quarter average. Industrial production continued to decline in May, reflecting another cutback in the production of motor vehicles, and capacity utilization was down somewhat further. Total retail sales have been sluggish on average in recent months. Housing starts were about unchanged over April and May, but sales of new homes turned up sharply in May. Orders for nondefense capital goods have moderated somewhat in recent months but still point to considerable further expansion of spending on business equipment; nonresidential construction has continued to trend appreciably higher. The nominal deficit on U.S. trade in goods and services widened in April from its average rate in the first quarter. Broad indexes of consumer and producer prices have increased faster on average thus far this year, though there were signs of some moderation in the most recent data; advances in labor compensation costs have remained subdued.

Most interest rates have declined somewhat further since the Committee meeting on May 23. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined considerably over the intermeeting period.

M2 and M3 strengthened substantially in May and June. For the year through June, M2 expanded at a rate in the upper half of its range for 1995 and M3 grew at a rate well above its range. Total domestic nonfinancial debt has grown at a rate in the upper half of its monitoring range in recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at this meeting the range it had established on January 31-February 1 for growth of M2 of 1 to 5 percent, measured from the fourth quarter of 1994 to the fourth quarter of 1995. The Committee also retained the monitoring range of 3 to 7 percent for the year that it had set for growth of total domestic nonfinancial debt. The Committee raised the 1995 range for M3 to 2 to 6 percent as a technical adjustment to take account of changing intermediation patterns. For 1996, the Committee established on a tentative basis the same ranges as in 1995 for growth of the monetary aggregates and debt, measured from the fourth quarter of 1995 to the fourth quarter of 1996. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to decrease slightly the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, August 31, 1995.

Normand R. Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 95-22389 Filed 9-7-95; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Notice of Availability Environmental Assessment, Port of Entry, Located at Oroville, Okanogan County, Washington

The General Services Administration (GSA) hereby gives notice an Environmental Assessment (EA) has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended and the Council on Environmental Quality (CEQ) Regulations, 40 CFR parts 1500–1508 of July 1, 1986. The EA was prepared for the proposed expansion of the Port of Entry located at Oroville, Okanogan County, Washington.

Written comments on the proposed action, impacts and mitigation measures may be submitted to GSA's subconsultant Berger/ABAM Engineers Inc., at the following address: 33301 Ninth Avenue South, Federal Way, Washington 98003–6395, during the 30-day public comment period, which begins on August 18, 1995 and concludes on September 18, 1995. It is anticipated a Finding of No Significant Impact (FONSI) for this project will be prepared, signed and become final after completion of the public comment period, provided no new information leading to a contrary finding is received or is made available during the 30-day comment period.

For further information contact Donna M. Meyer, Regional Environmental Program Officer, General Services Administration, Public Buildings Service (10PC), 400 15th Street SW., Auburn, Washington 98001–6599. Telephone: (206) 931–7675.

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[1] Copies of the Minutes of the Federal Open Market Committee meeting of July 5-6, 1995, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Dated: August 23, 1995.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 95–22268 Filed 9–7–95; 8:45 am]

BILLING CODE 6820-23-M

GOVERNMENT PRINTING OFFICE

Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The demonstration will be held Monday, October 16, 1:00 p.m.–2:30 p.m. and 3:00 p.m.–4:30 p.m. at the University of Memphis Libraries, Room 225B, Zach Curlin and Norriswood, Memphis, TN 38152. There is no charge to attend.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format and as Adobe Acrobat Portable Document Format files (PDF). The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index*, including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code;* and *GAO Reports*. Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at john@eids05.eids.gpo.gov; by telephone: 202–512–1525; or by fax: 202–512–1262 . Seating reservations will be accepted through Friday, October 13, 1995.

August 22, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–22242 Filed 9–7–95; 8:45 am]

BILLING CODE 1505-02-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and Dates: 1 p.m.–5 p.m., September 21, 1995; 9 a.m.–5 p.m., September 22, 1995.

Place: Ramada Plaza Hotel, 640 Broad Street, Augusta, Georgia 30901, telephone 706/722–5541, FAX 706/724–0053.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Background

Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose

The purpose of this meeting is to begin work to update the public on the status of CDC's and ATSDR's community involvement plans, health research, and public health activities and present consensus advise and recommendations to CDC and ATSDR regarding these plans.

Matters to be Discussed

The Subcommittee will take into consideration information provided by technical experts on the history of the Savannah River Site and present operations there, as well as updates on the Savannah River Site Dose Reconstructions Project findings and implications. The Subcommittee will also work on organizational issues relating to its future activities.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information

Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: September 1, 1995.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 95–22376 Filed 9–7–95; 8:45 am]

BILLING CODE 4163-18-M

Food and Drug Administration

[Docket No. 90F–182]

Allied Colloids Ltd.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a food additive petition (FAP 8B4095) proposing that the food additive regulations be amended to provide for the safe use of the copolymer of dimethylamine, epichlorohydrin and diethylenetriamine as a retention and drainage aid in the manufacture of paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3080.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 14, 1990 (55 FR 24158), FDA announced that a food additive petition (FAP 8B4095) had been filed by Allied Colloids Ltd., P.O. Box 38, Low Moor, Bradford, West Yorkshire, England, BD–12–OJZ. The petition proposed to amend the food additive regulations to provide for the safe use of the copolymer of dimethylamine, epichlorohydrin and diethylenetriamine as a retention and drainage aid in the manufacture of paper and paperboard.

Allied Colloids Ltd. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: August 18, 1995.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–22370 Filed 9–7–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[MB–094–N]

RIN 0938–AG61

Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the final Federal fiscal year (FFY) 1995 national target and individual State allotments for Medicaid payment adjustments made to hospitals that serve a disproportionate number of Medicaid recipients and low-income patients with special needs. We are publishing this notice in accordance with the provisions of section 1923(f)(1)(C) of the Social Security Act (the Act) and implementing regulations at 42 CFR 447.297 through 447.299. The final FFY 1995 State disproportionate share hospital (DSH) allotments published in this notice supersede the preliminary FFY 1995 DSH allotments that were published in the **Federal Register** on January 13, 1995 (60 FR 3250).

EFFECTIVE DATE: The final DSH payment adjustment expenditure limits included in this notice apply to Medicaid DSH payment adjustments that are applicable to FFY 1995.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 966–2019.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(13)(A) of the Act requires States to ensure that their Medicaid payment rates include payment adjustments for Medicaid-participating hospitals that serve a large number of Medicaid recipients and other low-income individuals with special needs (referred to as disproportionate share hospitals (DSH)). The payment adjustments are calculated on the basis of formulas specified in section 1923 of the Act.

Section 1923(f) of the Act and implementing Medicaid regulations at 42 CFR 447.297 through 447.299 require us to estimate and publish in the **Federal Register** the national target and each State's allotment for DSH payments for each Federal fiscal year (FFY). The implementing regulations provide that the national aggregate DSH limit for a FFY specified in the Act is a target rather than an absolute cap when determining the amount that can be allocated for DSH payments. The national DSH target is 12 percent of the total amount of medical assistance expenditures (excluding total administrative costs) that are projected to be made under approved Medicaid State plans during the FFY. (Note: Whenever the phrases "total medical assistance expenditures" or "total administrative costs" are used in this notice, they mean both the State and Federal share of expenditures or costs.)

In addition to the national DSH target, there is a specific State DSH limit for each State for each FFY. The State DSH limit is a specified amount of DSH payment adjustments applicable to a FFY above which FFP will not be available. This is called the "State DSH allotment".

Each State's DSH allotment for FFY 1995 is calculated by first determining whether the State is a "high-DSH State," or a "low-DSH State." This is determined by using the State's "base allotment." A State's base allotment is the greater of the following amounts: (1) The total amount of the State's actual and projected DSH payment adjustments made under the State's approved State plan applicable to FFY 1992, as adjusted by HCFA; or (2) $1,000,000.

A State whose base allotment exceeds 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1995 is referred to as a "high-DSH State." The FFY 1995 State DSH allotment for a high-DSH State is limited to the State's base allotment.

A State whose base allotment is equal to or less than 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1995 is referred to as a "low-DSH State." The FFY 1995 State DSH allotment for a low-DSH State is equal to the State's DSH allotment for FFY 1994 increased by growth amounts and supplemental amounts, if any. However, the FFY 1995 DSH allotment for a low-DSH State cannot exceed 12 percent of the State's total medical assistance expenditures for FFY 1995 (excluding administrative costs).

The growth amount for FFY 1995 is equal to the projected percentage increase (the growth factor) in a low-DSH State's total Medicaid program expenditures between FFY 1994 and FFY 1995 multiplied by the State's final DSH allotment for FFY 1994. Because the national DSH limit is considered a target, low-DSH States whose programs grow from one year to the next can receive a growth amount that would not be permitted if the national limit was viewed as an absolute cap.

There is no growth factor and no growth amount for any low-DSH State whose Medicaid program does not grow (that is, stayed the same or declined) between FFY 1994 and FFY 1995. Furthermore, because a low-DSH State's FFY 1995 DSH allotment cannot exceed 12 percent of the State's total medical assistance expenditures, it is possible for its FFY 1995 DSH allotment to be lower than its FFY 1994 DSH allotment. This occurs when the State experiences a decrease in its program expenditures between years and its prior FFY DSH allotment is greater than 12 percent of the total projected medical assistance expenditures for the current FFY. This is the case for the State of Indiana for FFY 1995.

There is no supplemental amount available for redistribution for FFY 1995. The supplemental amount, if any, is equal to a low-DSH State's proportional share of a pool of funds (the redistribution pool). The redistribution pool is equal to the national 12 percent DSH target reduced by the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the total of the low-DSH State growth amounts. Since the sum of these amounts is above the projected FFY 1995 national 12 percent DSH target, there is no redistribution pool and, therefore, no supplemental amounts for FFY 1995.

As prescribed in the law and regulations, no State's DSH allotment will be below a minimum of $1,000,000.

As an exception to the above requirements, under section 1923(f)(1)(A)(i)(II) of the Act and regulations at 42 CFR 447.296(b)(5) and 447.298(f), a State may make DSH payments for a FFY in accordance with the minimum payment adjustments required by Medicare methodology described in section 1923(c)(1) of the Act. The State of Nebraska's final State DSH allotment has been determined in accordance with this exception.

We are publishing in this notice the final FFY 1995 national DSH target and State DSH allotments based on the best available data we received to date from the States, as adjusted by HCFA. These data are taken from each State's actual Medicaid expenditures for FFY 1994 as reported on the State's quarterly expenditure report Form HCFA–64 submissions and the FFY 1995 projected Medicaid expenditures as reported on the February 1995 Form HCFA–37 submission. All data are adjusted as necessary.

II. Calculations of the Final FFY 1995 DSH Limits

The total of the final State DSH allotments for FFY 1995 is equal to the sum of the base allotments for all high-DSH States, the FFY 1994 State DSH allotments for all low-DSH States, and the growth amounts for all low-DSH States. A State-by-State breakdown is presented in section III of this notice.

We classified States as high-DSH or low-DSH States. If a State's base allotment exceeded 12 percent of its total unadjusted medical assistance expenditures (excluding administrative costs) projected to be made under the State's approved plan in FFY 1995, we classified that State as a "high-DSH" State. If a State's base allotment was 12 percent or less of its total unadjusted medical assistance expenditures projected to be made under the State's approved State plan under title XIX of the Act in FFY 1995, we classified that State as a "low-DSH" State. Based on this classification, there are 34 low-DSH States and 16 high-DSH States for FFY 1995.

Using the most recent data from the States' February 1995 budget projections (Form HCFA–37), we estimate the States' FFY 1995 national total medical assistance expenditures to be $152,830,147,000. Thus, the overall final national FFY 1995 DSH expenditure target is $18,339,618,000 (12 percent of $152,830,147,000).

In the final FFY 1995 State DSH allotments, we provide a total of $644,305,000 ($356,788,000 Federal share) in growth amounts for the 34 low-DSH States. The growth factor percentage for each of the low-DSH States was determined by calculating the Medicaid program growth percentage for each low-DSH State between FFY 1994 and FFY 1995. To compute this percentage, we first ascertained each low-DSH State's total FFY 1994 medical assistance and administrative expenditures as reported on the State's quarterly expenditure reports (Form HCFA–64) for FFY 1994. Next, we compared the FFY 1994 reported expenditures to each low-DSH State's total estimated unadjusted FFY 1995 medical assistance and administrative expenditures as reported to HCFA on the State's February 1995 Form HCFA–37 submission.

The growth factor percentage was multiplied by the low-DSH State's final FFY 1994 DSH allotment amount to establish the State's final growth amount for FFY 1995.

Since the sum of the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the growth for low DSH States ($19,084,239,000) is greater than the final FFY 1995 national target ($18,339,618,000), there is no final FFY 1995 redistribution pool.

The low-DSH State's growth amount was then added to the low-DSH State's final FFY 1994 DSH allotment amount to establish the final total low-DSH State DSH allotment for FFY 1995. If a State's growth amount, when added to its final FFY 1994 DSH allotment amount, exceeds 12 percent of its FFY 1995 estimated medical assistance expenditures, the State only receives a partial growth amount that, when added to its final FFY 1994 allotment, limits its total State DSH allotment for FFY 1995 to 12 percent of its estimated FFY 1995 medical assistance expenditures. For this reason, nine of the low-DSH States received partial growth amounts.

As explained above, Indiana's final FFY 1995 DSH allotment is lower than its final FFY 1994 DSH allotment. Also, in accordance with the minimum payment adjustments required by Medicare methodology, Nebraska's FFY 1995 State DSH allotment is $11,000,000.

In summary, the total of all final State DSH allotments for FFY 1995 is $19,084,239,000 ($10,886,177,000 Federal share). This total is composed of the prior FFY's final State DSH allotments ($18,490,099,000) plus growth amounts for all low-DSH States ($644,305,000), minus the amount of reduction in Indiana's FFY 1995 DSH allotment ($50,165,000), plus supplemental amounts for low-DSH States ($0). The total of all final FFY 1995 State DSH allotments is 12.5 percent of the total medical assistance expenditures (excluding administrative costs) projected to be made by these States in FFY 1995. The total of all final DSH allotments for FFY 1995 is $744,621,000 over the FFY 1995 national target amount of $18,339,618,000.

Each State should monitor and make any necessary adjustments to its DSH spending during FFY 1995 to ensure that its actual FFY 1995 DSH payment adjustment expenditures do not exceed its final State DSH allotment for FFY 1995 published in this notice. As the ongoing reconciliation between actual FFY 1995 DSH payment adjustment expenditures and the final FFY 1995 DSH allotments takes place, each State should amend its plan as may be necessary to make any adjustments to its FFY 1995 DSH payment adjustment expenditure patterns so that the State will not exceed its final FFY 1995 DSH allotment.

The FFY 1995 reconciliation of DSH allotments to actual expenditures will take place on an ongoing basis as States file expenditure reports with HCFA for DSH payment adjustment expenditures applicable to FFY 1995. Additional DSH payment adjustment expenditures made in succeeding FFYs that are applicable to FFY 1995 will continue to be reconciled with each State's final FFY 1995 DSH allotment as additional expenditure reports are submitted to ensure that the final FFY 1995 DSH allotment is not exceeded. As a result, any DSH payment adjustment expenditures in excess of the final DSH allotment will be disallowed; and therefore, subject to the normal Medicaid disallowance procedures.

III. Final FFY 1995 DSH Allotments Under Public Law 102–234

Key to Chart

Column	Description
Column A = ...	Name of State.
Column B = ...	Final FFY 1994 DSH Allotments for All States. For a high-DSH State, this is the State's base allotment, which is the greater of the State's FFY 1992 allowable DSH payment adjustment expenditures applicable to FFY 1992, or $1,000,000. For a low-DSH State, this is equal to the final DSH allotment for FFY 1994, which was published in the **Federal Register** on May 2, 1994.

Column	Description
Column C = ...	Growth Amounts for Low-DSH States. This is an increase in a low-DSH State's final FFY 1994 DSH allotment to the extent that the State's Medicaid program grew between FFY 1994 and FFY 1995.
Column D = ...	Final FFY 1995 State DSH Allotments. For high-DSH States, this is equal to the base allotment from column B. For low-DSH States, this is equal to the final State DSH allotments for FFY 1994 from column B plus the growth amounts from column C and the supplemental amounts, if any, from column D.
Column E = ...	High or Low DSH State Designation for FFY 1995. "High" indicates the State is a high-DSH State and "Low" indicates the State is a low-DSH State, after calculation of the final State DSH allotments.

FINAL FEDERAL FISCAL YEAR 1995 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUBLIC LAW 102–234

[Amounts are state and Federal shares; dollars are in thousands (000)]

State A	Final FFY 94 DSH allotments for all states B	Growth amounts for low DSH states[1] C	Final FFY95 state DSH allotments D	High or low DSH state designation E
AL	$417,458	Not applicable	$417,458	High.
AK	19,589	1,011	20,600	Low.
AR	3,039	300	3,338	Low.
CA	2,191,451	Not applicable	2,191,451	High.
CO	302,014	Not applicable	302,014	High.
CT	408,933	Not applicable	408,933	High.
DE	5,924	1,145	7,069	Low.
DC	41,039	5,466	46,505	Low.
FL	286,478	47,706	334,183	Low.
GA	382,344	26,799	409,142	Low.
HI	64,078	18,608	82,686	Low.
ID	1,985	100	2,085	Low.
IL	394,993	57,178	452,172	Low.
IN[2]	336,799	Not applicable	286,634	Low.
IA	5,497	623	6,121	Low.
KS	188,935	Not applicable	188,935	High.
KY	264,289	Not applicable	264,289	High.
LA	1,217,636	Not applicable	1,217,636	High.
ME	165,317	Not applicable	165,317	High.
MD	129,543	13,557	143,100	Low.
MA	567,128	8,162	575,289	Low.
MI	617,700	56,305	674,005	Low.
MN	55,394	6,004	61,398	Low.
MS	158,464	24,736	183,200	Low.
MO	731,894	Not applicable	731,894	High.
MT	1,300	42	1,342	Low.
NE[3]	11,000	Not applicable	11,000	Low.
NV	73,560	Not applicable	73,560	High.
NH	392,006	Not applicable	392,006	High.
NJ	1,094,113	Not applicable	1,094,113	High.
NM	15,757	1,546	17,303	Low.
NY	2,831,864	192,007	3,023,871	Low.
NC	389,266	40,840	430,106	Low.
ND	1,155	48	1,203	Low.
OH	566,925	62,999	629,925	Low.
OK	23,568	658	24,225	Low.
OR	25,058	6,356	31,413	Low.
PA	967,407	Not applicable	967,407	High.
RI	94,432	16,470	110,901	Low.
SC	439,759	Not applicable	439,759	High.
SD	1,302	140	1,443	Low.
TN	430,611	Not applicable	430,611	High.
TX	1,513,029	Not applicable	1,513,029	High.
UT	5,514	429	5,943	Low.
VT	26,662	2,419	29,081	Low.
VA	185,746	19,051	204,798	Low.
WA	307,993	28,535	336,527	Low.
WV	121,883	4,211	126,094	Low.
WI	10,881	724	11,605	Low.
WY	1,389	131	1,520	Low.
Total	$18,490,099	$644,305	$19,084,239	

Notes

[1] There was 1 low DSH state which had negative growth and 9 low DSH states which got partial growth up to 12% of FFY 95 MAP.

[2] Due to negative growth, allotment limited to 12% of FFY 95 MAP.

[3] Allotment based upon minimum payment adjustment amount.

IV. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered small entities. Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice sets forth no changes in our regulations; rather, it reflects the DSH allotments for each State as determined in accordance with §§ 447.297 through 447.299.

We have discussed the method of calculating the final FFY 1995 national aggregate DSH target and the final FFY 1995 individual State DSH allotments in the previous sections of this preamble. These calculations should have a positive impact on payments to DSHs. Allotments will not be reduced for high-DSH States since we interpret the 12 percent limit as a target. Low-DSH States will get their prior FFY DSH allotments plus their growth amounts.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 26, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–22170 Filed 9–7–95; 8:45 am]

BILLING CODE 4120–01–P

Public Health Service

Announcement of Cooperative Agreement With the American School Health Association

AGENCY: Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

ACTION: Final notice.

SUMMARY: The Office of Disease Prevention and Health promotion (ODPHP) on behalf of the Interagency Committee on School Health announces the availability of fiscal year (FY) 1995 funds for a sole source cooperative agreement with the American School Health Association (ASHA) to review and synthesize the health and educational effects of school health programs and to set forth the research agenda. Approximately $100,000 will be available in FY 1995 to support this project. This award will begin on or about September 1, 1995, for a 12 month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

EFFECTIVE DATE: September 30, 1995.

FOR FURTHER INFORMATION CONTACT: Kristine I. McCoy, M.P.H., School Health Coordinator, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, PHS U.S. Department of Health and Human Services, 330 C Street, SW, Room 2132, Washington, DC 20201, Phone: 202–205–8180.

SUPPLEMENTARY INFORMATION: The ODPHP will assist in identifying programs and procedures relevant to the project objectives; collaborate in developing, analyzing, and reviewing material for dissemination; and take responsibility for publication of final products.

The Public Health service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement us related to objectives in nearly all priority areas, particularly those pertaining to school-aged children and youth. (To order a copy of "Healthy People 2000," see the section, "Where to Obtain Additional Information.")

Authority

This program is authorized under the Public Health Service Act, section 1701(a)(11).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products and Public Law 103–227, the Pro-Children's Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to the children.

Eligible Applicant

Assistance will be provided only to the ASHA. No other applications are solicited. The program announcement and application kit have been sent to ASHA. Eligibility is limited to ASHA because it provides representation from a wide variety of professionals in health, education, and social services around the country who serve children through school health programs or related research. ASHA was created specifically to represent this wide variety of professionals, and is unique in its role as a liaison between the school health community and government and other national organizations. With a current membership of 3500 the ASHA has served as a policy development and capacity building organization for more than 70 years. One of its major objectives is the sharing of information that will support school health programs and protect and improve the well-being of children. Thus, the ASHA membership will benefit directly from a compiled body of knowledge that can be used to improve and create quality school health programs and which helps ASHA affiliated researchers to focus their work on key questions.

The ASHA's commitment to improvement of the health of school-aged children and demonstrated ability to produce and disseminate information accessible to a wide variety of school health professionals are demonstrated by its flagship publication the Journal of School Health whose articles cover all areas of medical and education practice with special application to school health programs, and which circulates in the U.S. and 56 foreign countries. In addition, the ASHA has a long history of special publications including "Achieving the 1990 Health Objectives for the Nation: Agenda for the Nation's Schools" and "Recommendations for Delivery of Comprehensive Primary Health Care to Children and Youth in the School Setting."

The ASHA has established an advisory panel and a review panel of its members representing graduate academic programs training school health professionals within various disciplines to provide expertise in the planning and conduct of this project. Other professional organizations to which the advisory panel members belong and will serve as agents of for this project include the American Alliance for Health, Physical Education, Recreation and Dance, the American Public Health Association, the Society for the Promotion of Health Education, the Association for the Advancement of Health Education, the International Union on Health Education and Promotion, the American Dietetic Association, and the American School Food Service Association. These organizations will serve as resources for the collection of school health evaluations and will benefit from the dissemination of the final review and synthesis.

Executive Order 12372 Review

This application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Where to Obtain More Information

A copy of "Healthy People 2000" (Full Report, stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Summary" may be obtained from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, telephone (202) 512–2250.

Dated: August 22, 1995.

Susanne A. Stoiber,

Acting Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion/ Health Planning and Evaluation).

[FR Doc. 95–22252 Filed 9–7–95; 8:45 am]

BILLING CODE 4160–17–M

Violent Crime Control and Law Enforcement Act of 1994; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Section 318—Demonstration Grants for Community Initiatives (42 U.S.C. 10418), of the Family Violence Prevention and Services Act as added by Section 40261 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to the Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Assistant Secretary for Health or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: August 29, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–22251 Filed 9–7–95; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–63]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1998 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been

reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW, Washington, DC 20585; (202) 586–1191; GSA: Ed Guilford, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–2059; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: September 1, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 09/08/95

Suitable/Available Properties

Buildings (by State)

Alaska

144 Family Housing Facilities
Naval Air Facility
Adak AK 93555–
Location: 504 units which are two story each
Landholding Agency: Navy
Property Number: 779520014
Status: Excess
Comment: 800–1000 sq. ft. ea., wood frame w/aluminum siding, off-site removal only, ea. unit weighs 50–85 tons, some need rehab, removal via marine transp., 78 units may have Federal need.

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualie, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 466, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240012
Status: Unutilized
Comment: 100 sq ft., 1-story, needs rehab, most recent use—gas station, off-site use only.

Bldg. T33 Radio Trans Facility Naval Computer & Telecommunications Area.
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310003
Status: Unutilized
Comment: 15365 sq. ft., 1-story, access restrictions, needs rehab, most recent use—storage, off-site only

Bldg. 64, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310004
Status: Unutilized Comment: 3612 sq. ft., 1-story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co.: Cumberland ME 04053–
Landholding Agency: Navy
Property Number: 779010110
Status: Unutilized Comment: 7270 sq. ft., 1-story bldg, most recent use—storage, structural deficiencies.

Bldg. 373, Topsham Annex
Naval Air Station
Topsham Co.: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320024
Status: Excess Comment: 1300 sq. ft., 1-story, most recent use—public works maintenance shop, on 2.55 acres.

Michigan

Little Rapids Lightkeeper Sta.
Little Rapids Channel
Sault St. Marie Co: Chippewa MI 49873–
Landholding Agency: GSA
Property Number: 549530002
Status: Excess Comment: 1411 sq. ft. wood frame dwelling with 480 sq. ft. garage, and 121 sq. ft. storage bldg., poor condition, needs rehab, possible asbestos.
GSA Number: 2–D–MI–722A

Pennsylvania

Naval Reserve Center
Dalton Ave. & Mayfair St.
McKeesport Co.: Allegheny PA 15132–
Landholding Agency: Navy
Property Number: 779520034
Status: Excess Comment: 3 interconnected quonset huts, need rehab, possible lead paint, lease restrictions, off-site removal only.

Land (by State)

Georgia

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Missouri

FAA VORTAC Swiss Site
Co: Gasconade MO 65041–
Landholding Agency: GSA
Property Number: 549530001
Status: Excess
Comment: 26.5 acres, potential utilities.
GSA Number: 7–W–MO–627

Texas

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5000

Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7–N–TX–402–V

Suitable/Unavailable Properties

Buildings (by State)

Colorado

Ft. Morgan Service Bldg.
Ft. Morgan Co: Morgan CO 80701–
Landholding Agency: Energy
Property Number: 419520002
Status: Excess
Comment: 132 sq. ft., metal substation bldg. on concrete slab.

Maine

Bldg. 376, Naval Air Station
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320011
Status: Unutilized
Comment: 4530 sq. ft., 2-story, most recent use—quarters, needs rehab.

Maryland

Bldg. 230
Naval Communication Detachment
9190 Commo Road
Cheltenham Co: Prince Georges MD 20397–5520
Landholding Agency: Navy
Property Number: 779330010
Status: Unutilized
Comment: 12,384 sq. ft., 4-story, needs rehab, potential utilities, includes 37 acres of land.

Ohio

Naval & Marine Corps Res. Cntr
315 East LaClede Avenue
Youngstown OH
Landholding Agency: Navy
Property Number: 779320012
Status: Unutilized
Comment: 3067 sq. ft. 2-story, possible asbestos.

Texas

Bldg. 2435
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010161
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2436
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010162
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2460
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010163
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2462
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010164
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2464
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010165
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2466
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010166
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2467
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010167
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2468
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010168
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2472
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010169
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2476
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010170
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2482
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010171
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2495
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010172
Status: Underutilized
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2514
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010173
Status: Underutilized
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2518
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010174
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2520
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010175
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2522
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010176
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2526
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010177
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2423
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010178
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2427
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010179
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2431
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010180
Status: Underutilized
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2424
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010181
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2433
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy

Property Number: 779010182
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2428
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010183
Status: Underutilized
Comment: 3352 sq. ft.; 1 story residence.

Bldg. 2429
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010184
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2454
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010185
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2477
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010186
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2485
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010187
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2499
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010188
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2503
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010189
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2507
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010190
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2513
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010191
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2521
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010192
Status: Underutilized
Comment: 3152 sq. ft.; 1 story residence.

Bldg. 2451
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010193
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2458
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010194
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2461
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010195
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2473
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010196
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2478
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010197
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2480
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010198
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2484
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010199
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2486
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010200
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2487
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010201
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2488
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010202
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2494
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010203
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2500
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010204
Status: Underutilized
Comment: 17[illegible] sq. [illegible]y residence.

Bldg. 2502
Laguna Housing [illegible]
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010205
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2506
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010206
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2508
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010207
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2525
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010208
Status: Underutilized
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2452
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010209
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2475
Laguna Housing Area
NAS Corpus Christi

Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010210
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2479
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010211
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2497
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010212
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2501
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010213
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2505
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010214
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2515
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010215
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2517
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010216
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2519
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010217
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2523
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010218
Status: Underutilized
Comment: 3356 sq. ft.; 1 story residence.

Bldg. 2465
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010219
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2493
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010220
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2510
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010221
Status: Underutilized
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2474
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010222
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2481
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010223
Status: Underutilized
Comment: 3528 sq. ft.; 1 story residence.

Bldg. 2509
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010224
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2511
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010225
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2512
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010226
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2527
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces, TX 78419–
Landholding Agency: Navy
Property Number: 779010227
Status: Underutilized
Comment: 1676 sq. ft.; 1 story residence.

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 779010109
Status: Underutilized
Comment: 3665 sq. ft.; 1 story, possible asbestos, most recent use—laundry.

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003–
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq. ft.; 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city—expires September 1990.

Land (by State)

Florida

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508–
Location: Southeast corner of Corey station—next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Unutilized
Comment: 22 acres.

Georgia

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010255
Status: Underutilized
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office space.

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—office.

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–

Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—dining hall.

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized
Comment: 100 sq. ft.; 1 story permanent bldg; secure facilities with alternate access; most recent use—storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—filling station.

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access; most recent use—bowling alley.

Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos; secure facility with alternate access; most recent use—recreation building.

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048–
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Michigan

Marine Corps Reserve Center
3109 Collingwood Parkway
Flint MI 48502–
Landholding Agency: Navy
Property Number: 779240019
Status: Excess
Comment: 5 acres, previously had four bldgs. on it.

North Dakota

Trailer Lots 1–6
Stromquist 1st Addition
Devils Lake Co: Ramsey ND 58301–
Landholding Agency: Energy
Property Number: 419530001
Status: Excess
Comment: 45720 sq. ft. in trailer park.

Unsuitable Properties

Buildings (by State)

Alaska

Sand Shed, Map Grid 45024
Naval Public Works Center
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area

LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area

Bldg. 10196
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310021
Status: Unutilized
Reason: Secured Area

Bldg. 10517
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310022
Status: Unutilized
Reason: Secured Area

Bldg. 10518
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310023
Status: Unutilized
Reason: Secured Area

Bldg. 10535
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310024
Status: Unutilized
Reason: Secured Area

Bldg. 10538
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310025
Status: Unutilized
Reason: Secured Area

Bldg. 10539
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310026
Status: Unutilized
Reason: Secured Area

Bldg. 10540
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310027
Status: Unutilized
Reason: Secured Area

Bldg. 10603
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310028
Status: Unutilized
Reason: Secured Area

Generator Bldg.
Naval Security Group Activity
Adak Island AK
Landholding Agency: Navy
Property Number: 779430017
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Arizona

Inn Cabin #9
North Rim Grand Canyon
Grand Canyon Co: Coconino AZ 86023–
Landholding Agency: Interior
Property Number: 619530013
Status: Unutilized
Reason: Extension deterioration

California

Bldg. 105
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010159
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940–
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: Other
Comment: sewer treatment facility

Bldg. 31104
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779340003
Status: Unutilized
Reason: Secured Area

Bldg. 31107
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779420001
Status: Unutilized
Reason: Secured Area

Bldg. 15951
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779430006
Status: Unutilized
Reason: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Bldg. 31539
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–
Landholding Agency: Navy
Property Number: 779430016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 00366
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520001
Status: Excess
Reason: Secured Area

Bldg. 00405
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520002
Status: Excess
Reason: Secured Area

Bldg. 00418
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520003
Status: Excess
Reason: Secured Area

Bldg. 00421
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520004
Status: Excess
Reason: Secured Area

Bldg. 00426
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520005
Status: Excess
Reason: Secured Area

Bldg. 00427
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520006
Status: Excess
Reason: Secured Area

Bldg. 00429
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520007
Status: Excess
Reason: Secured Area

Bldg. 00430
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520008
Status: Excess
Reason: Secured Area

5 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00360, 00415, 00419, 00423, 00414
Landholding Agency: Navy
Property Number: 779520009
Status: Excess
Reason: Secured Area

5 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00428, 00359, 00362, 00369, 00409
Landholding Agency: Navy
Property Number: 779520010
Status: Excess
Reason: Secured Area

5 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00367, 00416, 00425, 00365, 00368
Landholding Agency: Navy
Property Number: 779520011
Status: Excess
Reason: Secured Area

4 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00370, 00371, 00385, 00404
Landholding Agency: Navy
Property Number: 779520012
Status: Excess
Reason: Secured Area

4 Bldgs.
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Location: Include: #'s 00412, 00433, 00434, 00435
Landholding Agency: Navy
Property Number: 779520013
Status: Excess
Reason: Secured Area

Bldgs. 31030, 31031 & 31034
Naval Air Weapons Station
China Lake Co: San Bernardino CA 93555–6001
Landholding Agency: Navy
Property Number: 779520015
Status: Excess
Reason: Secured Area Within 2000 ft. of flammable or explosive material

Bldg. 481
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520018
Status: Unutilized
Reason: Secured Area

Bldg. 482
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520019
Status: Excess
Reason: Secured Area

Bldg. 356
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520020
Status: Excess
Reason: Secured Area

Bldg. 361
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520021
Status: Excess
Reason: Secured Area

Bldg. 364
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520022
Status: Excess
Reason: Secured Area

Bldg. 373
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520023
Status: Excess
Reason: Secured Area

Bldg. 407
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520024
Status: Excess
Reason: Secured Area

Bldg. 413
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520025
Status: Excess
Reason: Secured Area

Bldg. 366
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520026
Status: Unutilized
Reason: Secured Area

Bldg. 432
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520027
Status: Excess
Reason: Secured Area

Bldg. 372
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520028
Status: Excess
Reason: Secured Area

Bldg. 417
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520029
Status: Excess
Reason: Secured Area

Bldg. 422
Naval Air Weapons Station, China Lake

China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520030
Status: Excess
Reason: Secured Area

Bldg. 424
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520031
Status: Excess
Reason: Secured Area

Colorado

Bldg. 100
Rocky Flats
Golden Co: Jefferson CO 80402–
Landholding Agency: Energy
Property Number: 419530003
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material

Bldg. 900
Rocky Flats
Golden Co: Jefferson CO 80402–
Landholding Agency: Energy
Property Number: 419530004
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material

Connecticut

Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 419440003
Status: Excess
Reason: Secured Area

Naval Housing—7 Bldgs.
Naval Submarine Base
New London Co: Groton CT
Landholding Agency: Navy
Property Number: 779510001
Status: Unutilized
Reason: Secured Area

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone

Georgia

Naval Submarine Base-Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured Area

Guam

Bldg. 96
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540–1400
Landholding Agency: Navy
Property Number: 779240018
Status: Underutilized
Reason: Extensive deterioration

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230012
Status: Underutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Other
Comment: Extensive deterioration

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230013
Status: Underutilized
Reason: Secured Area, Other
Comment: Extensive deterioration

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779230014
Status: Underutilized
Reason: Secured Area, Other
Comment: Extensive deterioration

Facility 189, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310045
Status: Underutilized
Reason: Extensive deterioration, Secured Area

Facility 342, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310046
Status: Underutilized
Reason: Extensive deterioration, Secured Area

Facility 343, Naval Air Facil.
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310047
Status: Underutilized
Reason: Extensive deterioration, Secured Area

Facility S6194
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310048
Status: Underutilized
Reason: Extensive deterioration, Secured Area

Facility S7124
Naval Air Facility
Midway Island
Pearl Harbor HI 96516–
Landholding Agency: Navy
Property Number: 779310049
Status: Underutilized
Reason: Extensive deterioration, Secured Area

Facility 5985
Naval Station Pearl Harbor
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779310086
Status: Excess
Reason: Extensive deterioration

Bldg. 6, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 10, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779410004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 93, Naval Station
Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779440027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 10
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 12
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 13
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 14
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510009

Status: Unutilized
Reason: Extensive deterioration

Bldg. 15
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 40
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 43
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 44
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 45
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510015
Status: Unutilized
Reason: Extensive deterioration

Bldg. 46
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 101
Naval Magazine Lualualei
Waipio Peninsula Co: Oahu HI
Landholding Agency: Navy
Property Number: 779510017
Status: Unutilized
Reason: Extensive deterioration

Illinois

Bldg. 605
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419440001
Status: Excess
Reason: Extensive deterioration

Bldg. 24
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419510001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 25
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419510002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 822
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419510003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 823
Argonne National Laboratory
Argonne Co: DuPage Il 60439–
Landholding Agency: Energy
Property Number: 419510004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 928
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010120
Status: Unutilized
Reason: Secured Area

Bldg. 928
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010123
Status: Unutilized
Reason: Secured Area

Bldg. 25
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088–
Landholding Agency: Navy
Property Number: 779010126
Status: Unutilized
Reason: Secured Area

South Wing—Building No. 62
Great Lakes Co: Lake IL 60088–5000
Landholding Agency: Navy
Property Number: 779110001
Status: Unutilized
Reason: Secured Area

Bldg. 235
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310039
Status: Unutilized
Reason: Secured Area

Bldg. 2B
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310040
Status: Unutilized
Reason: Secured Area

Bldg. 90
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310041
Status: Unutilized
Reason: Secured Area

Bldg. 232
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310042
Status: Unutilized
Reason: Secured Area

Bldg. 233
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310043
Status: Unutilized
Reason: Secured Area

Bldg. 234
Naval Training Center
Great Lakes Co: Lake IL
Landholding Agency: Navy
Property Number: 779310044
Status: Unutilized
Reason: Secured Area

Maine

Bldg. 293, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779240015
Status: Excess
Reason: Secured Area

Bldg. 384
Naval Air Station Topsham
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779340001
Status: Unutilized
Reason: Extensive deterioration

New Mexico

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 419430002
Status: Unutilized
Reason: Extensive deterioration

New Mexico

Bldg. 93
Brookhaven National Laboratory,
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 419510006
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. SH–7
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410017
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–11
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410018
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–13
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410019
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–16
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410020
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–17
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410021
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–21
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410022
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SH–31
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410023
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SSH–10
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410024
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–209
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410025
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–589
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410026
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–590
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410027
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–4138
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410028
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–4139
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410029
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 867
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410030
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 939
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410031
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 940
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410032
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. H–38
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410033
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SM–173
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410034
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1744
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779410035
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. PT–42
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420002
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. S–93
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420003
Status: Unutilized
Reason: Secured Area

Bldg. TC–910
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420004
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–942
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420005
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–1213
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779420006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 79
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420008
Status: Excess
Reason: Secured Area

Bldg. 281
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420009
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 282
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420010
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 88
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420011
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 98
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420012
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 99
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420013
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1234
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420014
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1235

Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420015
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1246
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420016
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1390
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420017
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1710
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420018
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1742
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420019
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1743
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420020
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1744
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420021
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1745
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420022
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 3450
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420023
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 8067
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420024
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 3546
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420025
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 9017
Piney Island
Marine Corps Air Station
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430001
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9019
Piney Island
Marine Corps Air Station
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430002
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9021
Piney Island
Marine Corps Air Station
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430003
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9023
Piney Island
Marine Corps Air Station
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430004
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9035
Piney Island
Marine Corps Air Station
Cherry Point Co: Carteret NC
Landholding Agency: Navy
Property Number: 779430005
Status: Unutilized
Reason: Extensive deterioration

Structure #AS582
New River Air Station
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430015
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS–299, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430020
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 854, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430021
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 883, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430022
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. TC–174, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430023
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. TC–179, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779430024
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 935, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779430025
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Facility 1972, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779430026
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 3248, Cherry Point
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779440009
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS 552, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440010
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS 587, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440011
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. TT 38, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440012
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 49, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy

Property Number: 779440013
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS 147, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440014
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. BB 166, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440015
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. SM 183, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440016
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. BB 222, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440017
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 451, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440018
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 630, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440019
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. S 745, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440020
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 805, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440021
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. AS 866, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440022
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 954, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440023
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1808, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440024
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1810, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779440025
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Structure #SVL 142
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510021
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Structure #FC 363
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510022
Status: Unutilized
Reason: Secured area,

Structure #AS 583
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510023
Status: Unutilized
Reason: Secured Area

Structure #1966
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510024
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Structure #2322
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779510025
Status: Unutilized
Reason: Secured Area

Structure RR–85
Camp Lejeune Base Rifle Range
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779520016
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Structure SRR–86
Camp Lejeune Base Rifle Range
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779520017
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Ohio

Bldg. 16
RMI Environmental Services
Ashtabula Co: Ashtabula OH 44004–
Landholding Agency: Energy
Property Number: 419440002
Status: Excess
Reason: Other
Comment: Contamination: radioactive materials

Rhode Island

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area

South Dakota

Bldg.—Huron Airport Hangar
Huron Regional Airport
Huron Co: Beadle SD 57350–
Landholding Agency: Energy
Property Number: 419510005
Status: Unutilized
Reason: Within airport runway clear zone

Texas

Bldg. 2426
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010279
Status: Underutilized
Reason: Floodway

Bldg. 2432
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010280
Status: Underutilized
Reason: Floodway

Bldg. 2476
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010281
Status: Underutilized
Reason: Floodway

Bldg. 2498
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010282
Status: Underutilized
Reason: Floodway

Bldg. 2504
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010283
Status: Underutilized
Reason: Floodway

Bldg. 1730
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010284
Status: Underutilized
Reason: Floodway

Bldg. 2422
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010285
Status: Underutilized
Reason: Floodway

Bldg. 2425
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–

Landholding Agency: Navy
Property Number: 779010286
Status: Underutilized
Reason: Floodway

Bldg. 2430
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010287
Status: Underutilized
Reason: Floodway

Bldg. 2434
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010288
Status: Underutilized
Reason: Floodway

Bldg. 2449
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010289
Status: Underutilized
Reason: Floodway

Bldg. 2450
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010290
Status: Underutilized
Reason: Floodway

Bldg. 2453
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010291
Status: Underutilized
Reason: Floodway

Bldg. 2455
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010292
Status: Underutilized
Reason: Floodway

Bldg. 2456
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010293
Status: Underutilized
Reason: Floodway

Bldg. 2463
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010294
Status: Underutilized
Reason: Floodway

Bldg. 2483
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010295
Status: Underutilized
Reason: Floodway

Bldg. 2516
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010296
Status: Underutilized
Reason: Floodway

Bldg. 2524
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010297
Status: Underutilized
Reason: Floodway

Bldg. 2528
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 779010298
Status: Underutilized
Reason: Floodway

Virginia

Bldg. 63
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520035
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 244
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520036
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 286
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520037
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 416
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520038
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 521
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520039
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 539
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520040
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 760
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520041
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area; Extensive deterioration

Bldg. 763
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520042
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1335
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520043
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1488
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779520044
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Washington

Bldg. 57
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010091
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 47 (Report 1)
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010230
Status: Underutilized
Reason: Secured Area

Bldg. 14
Naval Undersea Warfare Center Div., Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 779440001
Status: Underutilized
Reason: Secured Area

Bldg. 39
Naval Undersea Warfare Center Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 779510020
Status: Underutilized
Reason: Secured Area, Extensive deterioration

Land (by State)

California

Naval Air Station, Miramar
San Diego Co: San Diego CA 92145–5005
Landholding Agency: Navy
Property Number: 779440026
Status: Underutilized
Reason: Within airport runway clear zone Other
Comment: Inaccessible

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 779010097
Status: Underutilized
Reason: Floodway

East Martello Battery #2
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone

Georgia

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area

Maryland

5,635 sq. ft. or Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Other
Comment: Drainage Ditch

Puerto Rico

Destino Tract
Eastern Maneuver Area
Vieques PR 00765–
Landholding Agency: Navy
Property Number: 779240016
Status: Excess
Reason: Other
Comment: Inaccessible

Punta Figueras—Naval Station
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 779240017
Status: Excess
Reason: Floodway

Washington

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353–
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area

[FR Doc. 95–22245 Filed 9–7–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of land Management

[AK–962–1410–00–P; AA–6664–C, AA–6664–D, AA–6664–A2]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to the English Bay Corporation for approximately 16,305.62 acres. The lands involved are in the vicinity of the Kenai Fjords, Alaska.

Seward Meridian, Alaska

U.S. Survey No. 4779,
T. 5 S., R. 3 W.,
T. 5 S., R. 4 W,
T. 7 S., R. 7 W.,
T. 7 S., R. 8 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Seward Phoenix Log. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 10, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia K. Underwood,

Acting Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–22301 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–JA–P

[AZ–040–05–1040–00]

Notice of Meeting for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: September 28, 1995, 9:00 a.m.—4:00 p.m., Safford District Office.

ADDRESSES: BLM Safford District Office, 711 14th Ave., Safford, Arizona.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Committee is continuing work on the Gila Box Interdisciplinary Activity Plan, which will be completed by December 1995.

The agenda for the meeting includes: (1) refine management actions; (2) finalize preferred alternative.

All meetings are open to the public. Interested persons may make oral statements to the Committee between 10:30 and 11:00 a.m. or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Resource Area Manager at least two working days prior to the meeting. (Written statements are also accepted at any time during preparation of the draft plan, and will be reviewed by the committee.)

Statements should be mailed to Elmer Walls, Team Leader, Gila Resource Area, 711 14th Ave., Safford, Arizona 85546.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION CONTACT: Meg Jensen, Gila Resource Area Manager, or Elmer Walls, Team Leader, 711 14th Ave., Safford, Arizona 85546, Telephone (520) 428–4040.

Dated: August 29, 1995.

William T. Civish,

District Manager.

[FR Doc. 95–22262 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–32–M

[NM–070–1430–01; NMNM 71324]

Issuance of Exchange Conveyance Document; New Mexico.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 39.22 acres of public land out of Federal ownership and the reconveyance of 90.06 acres of land into Federal ownership.

FOR FURTHER INFORMATION CONTACT: Farmington District Manager, 1235 La Plata Highway, Farmington, New Mexico 87401.

SUPPLEMENTARY INFORMATION: The United States issued an exchange conveyance document to Donald G. Myer and Edith Myer and Chalmer R. Myer and Norma Jean Meyer on November 8, 1993, for the surface estate in the following described land in San Juan County, New Mexico, pursuant to Sections 502 and 504 of the Chaco National Historic Park Act of December 19, 1980 (94 Stat. 3221).

New Mexico Principal Meridian

T. 30 N., R. 12 W.,
  Sec. 19, lot 4.
  Containing 39.22 acres.

In exchange for the land described above, Donald G. and Edith Myer and Chalmer R. and Norma Jean Myer conveyed to the United States of America the surface estate in the following described land located in San Juan County, New Mexico. Also, the State of New Mexico donated to the United States of America 33.00 acres of land (surface estate), and an access road easement in San Juan County, New Mexico described as follows:

New Mexico Principal Meridian

T. 32 N., R. 13 W., sec. 15, a tract of land in the E½SW¼ and W½SE¼ (described by metes and bounds).
  Containing 90.06 acres.

The purpose of the exchange was to acquire and protect cultural resources of national significance. The acquired land offers high public values for cultural resources. The acquired land is closed to the public except by authorized personnel.

The values of the Federal public land was $86,284.00 and the non-Federal land exchanged was $139,090.00. The donated land and easement by the State of New Mexico was appraised at $37,000.00. An equalization payment of $15,806.00 was made to the Myers. The public interest was served through the completion of this exchange.

William C. Calkins,

State Director,

Dated: August 28, 1995.

[FR Doc. 95–22321 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–FB–P

Bureau of Land Management

[CA–018–1220–00]

Recreation Management; Final Supplementary Rules; California

ACTION: Final Supplementary Rules.

SUMMARY: Establishment of supplementary rules for the management of public lands along the Middle Fork of the Consumnes River, Folsom Resource Area, Bakersfield District, California. The following rules shall apply to public land located adjacent to Mt. Aukum Road, El Dorado County, California; specifically, Township 9 North, Range 12 East, section 19 and Township 9 North, Range 11 East, section 24 of the Mt. Diablo meridian.

1. No person shall camp overnight. Camp overnight is defined as the use, construction, or taking possession of public lands using tents, shacks, lean-tos, vehicles, huts, blankets, or sleeping bags.
2. No person shall build, attend, maintain, or use a campfire. Campfire is defined as a controlled fire occurring out of doors, used for cooking, branding, personal warmth, lighting, ceremonial, or aesthetic purposes.
3. No person shall possess or consume alcoholic beverages. Alcoholic beverages are defined as beer, wine, distilled spirits, or any other beverage as defined as such by California law.
4. No person shall enter the area or park a motor vehicle between the hours of 10 o'clock pm and 6 o'clock am. Persons driving through the area on the road are exempt.

Any person who fails to comply with these supplementary rules may be subject to fines of up to $100,000 and/or imprisonment not to exceed 12 months. These penalties are specified by Title 43 of the United States Code, section 303 and Title 18 of the United States Code, section 3623.

Federal, State, and local law enforcement officers and emergency services personnel, while performing official duties, are exempt from these supplementary rules.

DATES: These final rules will be in effect on September 8, 1995 and be in effect until rescinded or modified.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, 63 Natoma Street, Folsom, Ca. 95630, Telephone 916–985–4474.

SUPPLEMETARY INFORMATION: This area has a history of an unusual number of law enforcement incidents. Both the BLM and the El Dorado Sheriff's Department receives a large number of complaints from the public concerning activities occurring in this area. These activities became such a concern to the adjacent residents that they organized a public meeting with county and BLM officials. The purpose of these rules are to allow appropriate use of the public lands and provide for the protection of the public and the resources. These rules were published as proposed rulemaking in the **Federal Register** dated July 20, 1995. No comments were received.

Authority for supplementary rules is contained in Title 43 of the Code of Federal Regulations, subpart 8364.1.

D. K. Swickard,

Resource Area Manager.

[FR Doc. 95–22323 Filed 9–7–95;8:45 am]

BILLING CODE 4310–40–M

[CA–050–05–1610–00]

Proposed Designation of Areas of Critical Environmental Concern (ACEC) for the Arcata Planning Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to designate seven (7) Areas of Critical Environmental Concern (ACECs) as part of the Proposed Amendment to the Arcata Resource Management Plan. The ACECs include: Lack's Creek watershed ACEC, 2978 acres; South Fork Eel River Watershed ACEC, 10,784 acres; Lacks Creek RNA/ACEC, 1520 acres; Red Mountain RNA/ACEC, 6895 acres; Elder Creek RNA/ACEC, 3,775 acres; Gilham Butte RNA/ACEC, 2,550 acres; and the Iaqua Butte RNA/ACEC, 1080 acres.

Resource use limitations associated with the above ACEC proposals would be the same as described for Late-Successional Reserve (LSR) management contained in the Northwest Forest Plan Record of Decision (1994).

In order to be a potential ACEC, an area must satisfy the criteria of relevance and importance, consistent with the regulations, 43 CFR 1610.7–2.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager, at Bureau of Land Management, Arcata Resource Area, 1695 Heindon Road, Arcata, CA 95521–4573. Telephone: (707) 825–2300.

SUPPLEMENTARY INFORMATION: The proposed ACECs are discussed in the *Arcata Planning Area Proposed Resource Management Plan Amendment and Environmental Assessment, March 1995*. There will be a 60-day comment period on the proposed ACEC's beginning with the publication of this notice. Public comments must be in writing and mailed to the above address. Following this 60–day comment period, action will be taken by the California State Director to approve or disapprove the proposed ACECs. Approval of the proposed Arcata RMP Amendment by the California State Director will constitute formal designation of these ACECs.

Daniel E. Averill,

Acting Arcata Area Manager.

[FR Doc. 95–22260 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–40–M

[OR–942–00–1420–00: G5–206]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 16 S., R. 2 E., accepted August 1, 1995;
T. 1 N., R. 6 E., accepted July 24, 1995;
T. 2 N., R. 6 E., accepted July 24, 1995;
T. 30 S., R. 7 W., accepted July 18, 1995;
T. 13 S., R. 7 W., accepted July 17, 1995;
T. 10 S., R. 11 W., accepted July 14, 1995;
T. 31 S., R. 14 W., accepted August 11, 1995;
T. 37 S., R. 14 W., accepted August 8, 1995.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 SW., 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: August 28, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–22259 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–805282

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export one captive-born female grey wolf (*Canis lupus lycaon*) to the Seoul Grand Park Zoo, Seoul Korea, for the purpose of enhancement of the survival of the species through propagation and conservation education.

PRT–805801

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export one captive-born female grey wolf (*Canis lupus lycaon*) to the Akita Omoriyama Zoo, Akita City, Japan, for the purpose of enhancement of the survival of the species through propagation and conservation education.

PRT–806242

Applicant: Michael Wilmet, Long Grove, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by M.G. Wienand at Longwood, Bedford, Cape Province, South Africa for the purpose of enhancement of the survival of the species.

PRT–806340

Applicant: St. Louis Zoological Park, St. Louis, MO.

The applicant requests a permit to import four pairs of captive-held black and white ruffed lemur (*Varecia variegata variegata*) from Parc Zoologique Ivoloina, Madagascar for placement in SSP institutions for the purpose of enhancement through captive propagation.

PRT–805879

Applicant: Eugene M. Bishop, Roswell, GA.

The applicant requests a permit to import the sport-hunted trophy of one bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Mr. Luke Kock, Verborgenfontein, Richmond, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 1, 1995.

Mary Ellen Amtower,

Acting Chief Branch of Permits, Office of Management Authority.

[FR Doc. 95–22247 Filed 9–7–95; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1146X)]

Consolidated Rail Corporation—Abandonment Exemption—in Clearfield and Centre Counties, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Consolidated Rail Corporation of: (1) The Snow Shoe Industrial Track between milepost 11.7± and milepost 22.5±, a distance of 10.8 miles; (2) the Phillipsburg Industrial Track between milepost 0.0± and milepost 4.5±, a distance of 4.5 miles; (3) the Winburne Industrial Track between milepost 0.0± and milepost 1.9±, a distance of 1.9 miles; and (4) the Ophir Industrial Track between milepost 0.0± and milepost 2.09±, a distance of 2.09 miles, a total distance of 19.29 miles in Centre and Clearfield Counties, PA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on October 8, 1995. Formal expressions of intent to file financial assistance offers[1] under 49 CFR 1152.27(c)(2) must be filed by September 18, 1995. Petitions to stay must be filed by September 25, 1995. Requests for a public use condition must be filed by September 28, 1995. Petitions to reopen must be filed by October 3, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–167 (Sub-No. 1146X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423; and (2) Petitioner's representative: Robert S. Natalini, 2001 Market St.-16A, Philadelphia, PA 19101–1416.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Ave., NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22310 Filed 9–7–95; 8:45 am]

BILLING CODE 7035–01–P

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[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Docket No. AB–290 (Sub-No. 173X)]

Norfolk Southern Railway Company—Abandonment Exemption—at Maryville, TN

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad at Maryville, Blount County, TN as follows: (1) between milepost 15.84–KA and milepost 16.05–KA, and (2) between milepost 0.09–KC and milepost 0.82–KC, a total distance of 0.94 miles.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 8, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by September 18, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 28, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 13, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 5, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22465 Filed 9–7–95; 8:45 am]

BILLING CODE 7035–01–P

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department

of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resouces Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Reinstatement, with Change, of a Previously Approved Collection for Which Approval has Expired

(1) Change of Address Form.

(2) Form: EOIR–33. Executive Office for Immigration Review, United States Department of Justice.

(3) Primary: Individuals or households. Other: None. This form is to be used by individuals in immigration proceedings to report their change of address to Immigration Judges or the Board of Immigration Appeals.

(4) 15,000 responses per year at .04 hours per response.

(5) 600 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 5, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22308 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Existing Collection in Use Without an OMB Control Number

(1) Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge.

(2) Form: EOIR–26. Executive Office for Immigration Review, United States Department of Justice.

(3) Primary: Individuals or households. Other: Federal Government. This form will be used to consider appeals by the Immigration and Naturalization Service or an alien to the Board of Immigration Appeals from a decision of an Immigration Judge.

(4) 15,000 responses per year at .50 hours per response.

(5) 7,500 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 5, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22307 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Victims of Crime Act, Crime Victims Assistance Grant Program, Performance Report.

(2) Form: OJP Admin. Form 7330 (Rev. 4–92). Office for Victims of Crime, Office of Justice Programs, United States Department of Justice.

(3) Primary: State, Local, or Tribal Government. Other: None. The information requested is necessary to ensure compliance with statutory criteria which allow the Director of the Office for Victims of Crime to collect performance data from recipients of Victims of Crime Act victim assistance grant funds. The affected public includes up to 57 states and territories administering the crime victim

assistance provisions of the Victims of Crime Act of 1984.

(4) 57 responses per year at 21 hours per response.

(5) 1,197 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 5, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22306 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington DC 20530.

New Collection

(1) Appeal Fee Waiver Request.

(2) Form: EOIR–26A. Executive Office of Immigration Review, United States Department of Justice.

(3) Primary: Individuals and households. Other: None. This form will be used by individuals to apply for a waiver of the fee required to properly file an appeal with the Board of Immigration Appeals.

(4) 450 responses per year at 1 hour per response.

(5) 450 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 5, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22305 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy and 28 C.F.R. 50.7, notice is hereby given that on August 25, 1995, a Consent Decree in *United States* v. *Arrow Concrete Company*, Civil Action No. 5:95CV122 was lodged with the United States District Court for the Northern District of West Virginia.

This Consent Decree settles claims brought pursuant to section 309(b) of the Clean Water Act (the "Act"), 33 U.S.C. 1319(b), for civil penalties and injunctive relief for the discharge of pollutants in violation of section 301 of the Act, 33 U.S.C. § 1311. Under the terms of the Consent Decree, Arrow Concrete Company has agreed to pay a civil penalty of $140,000, comply with interim discharge limits protective of water quality, and promptly apply for, and comply with the requirements of, National Pollution Discharge Elimination System ("NPDES") permits for its West Virginia facilities.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Arrow Concrete Company*, Civil Action No. 95CV122, Ref. No. 90–5–1–1–5066. The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of West Virginia, 1100 Main Street, Suite 200, Wheeling, West Virginia 26003. Copies of the Consent Decrees may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. When requesting a copy by mail, please enclose a check in the amount of $6.25 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–22264 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 U.S.C. 50.7, and pursuant to 42 U.S.C. 7413(g), notice is hereby given that a proposed Consent Decree in *United States* v. *National Cooperative Refinery Association*, Civil Action No. *94–2015 GTV*, was lodged on August 22, 1995, with the United States District Court for the District of Kansas.

The Consent Decree settles an action brought under Section 113 of the Clean Air Act ("the Act"), 42 U.S.C. 7413, and the Standards of Performance for New Stationary Sources ("NSPS"), 40 CFR Part 60, Subpart Db. The Consent Decree provides for NCRA's payment of a civil penalty to the United States in the amount of $176,312.00, and requires NCRA's continued operation and maintenance of a Continuous Emissions Monitoring System ("CEMS") installed on two steam boilers at its McPherson, Kansas refinery, in accordance with the requirements of the NSPS, 40 CFR Part 60, Subpart Db.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *National Cooperative Refinery Association*, DOJ Ref. #90–5–2–1–1835.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 500 State Avenue, suite

360, Kansas City, Kansas 66101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of *$2.75* (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–22265 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Computer Associates International, Inc. and Legent Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in a civil antitrust case, *United States* v. *Computer Associates International, Inc. and Legent Corporation*, Civil No. 95 CV 1398.

On July 28, 1995, the United States filed a Complaint seeking to enjoin a transaction by which Computer Associates agreed to acquire Legent. Computer Associates is the world's largest independent vendor of computer software for mainframe computers and a leading producer of mainframe computer systems management software. Legent is CA's major competitor in the mainframe computer systems management software business. The Complaint alleged that the proposed acquisition would substantially lessen competition in the sale of VSE tape management software, VSE disk management software, VSE security software, VSE job scheduling software, VSE automated operations software, and cross-platform systems management software in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

With respect to the five VSE markets, the proposed Final Judgment requires Computer Associates to license Legent's VSE products to a person determined by the United States to have the capabilities and resources needed to use the licenses as a viable and effective competitor. If CA is unable to identify a viable licensee that is satisfactory to the Department of Justice, the Court may appoint a trustee to carry out the licensing. With respect to the cross-platform systems management software market, the proposed Final Judgment forbids CA for five years from taking any action to restrict any other person's access to Peer Logic's key cross-platform systems management technology, called "PIPES." A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

The public is invited to comment to the Justice Department and to the Court. Comments should be addressed to John F. Greaney, Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9901, Washington, DC 20001 (telephone: 202/307–6200). Comments must be received within sixty days.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street NW., Washington, DC 20530 (telephone: 202/514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue NW., Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

In the matter of: United States of America, Plaintiff, v. Computer Associates, International, Inc., and Legent Corporation, Defendants. Civil Action No. 1:95CV01398. Filed: July 28, 1995.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

3. The defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. In the vent plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: July 27, 1995.

For Plaintiff United States of America.

Joel I. Klein,

Acting Assistant Attorney General.

Lawrence R. Fullerton,

Acting Deputy Assistant Attorney General.

Charles Biggio,

Senior Counsel for Merger Enforcement.

Constance K. Robinson,

Director of Operations.

John F. Greaney,

Chief, Computers and Finance Section.

N. Scott Sacks,

Assistant Chief, Computers and Finance Section.

Kenneth W. Gaul, Weeun Wang, Gilad Y. Ohana, Steven R. Beck, Minaksi Bhatt,

Attorneys, U.S. Department of Justice.

For Defendant Computer Associates International, Inc.

Richard L. Rosen.

For Defendant Legent Corporation.

Randolph H. Elkins.

So Ordered.

____

United States District Judge

Disclosure Pursuant to Rule 108(k)

Pursuant to Rule 108(k) of the Local Rules of this Court, the following is a list of all individuals entitled to be notified of the entry of the foregoing Stipulation and of the entry of the proposed Final Judgment:

Richard L. Rosen, Esq., Arnold & Porter, 555 Twelfth St., N.W., Washington, D.C. 20004–1202
Counsel for Defendant Computer Associates International, Inc.

Michael H. Byowitz, Esq., Wachtell, Lipton, Rosen & Katz, 51 West 52nd St., New York, NY 10019–6150
Counsel for Defendant Legent Corporation

Kenneth W. Gaul, Esquire, Attorney,
Computers & Finance Section,
Antitrust Division, U.S. Department of
Justice, 555 4th St., N.W.,
Washington, D.C. 20001
Counsel for Plaintiff the United States

Final Judgment

In the matter of: United States of America, Plaintiff, v. Computer Associates International, Inc., and Legent Corporation, Defendants. Civil Action No. 1:95CV01398. Filed: July 28, 1995.

Whereas, Plaintiff, United States of America, having filed its Complaint herein on July 28, 1995, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law;

And Whereas, Defendants having agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment being prompt and certain remedial action to ensure that, after the acquisition referred to herein, competition is not substantially lessened in certain product markets for enumerated types of mainframe systems management software;

And Whereas, Defendants having represented to Plaintiff that the licensing and customer election procedures required below can and will be accomplished and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the licensing and customer election provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. Venue is proper in this Court. The Complaint states a claim upon which relief may be granted against the Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

A. "Computer Associates" means Defendant Computer Associates International, Inc., its successors and assigns, each subsidiary and division thereof, and each officer, director, employee, agent and other person acting for or on behalf of any of them.

B. "Customer" means a holder of any current license or maintenance agreement for any subject software product with defendants, regardless where the customer is located.

C. "Customer Information" means all information, files, and records maintained by Defendants concerning Customers, including (i) all customer call reports (or portions thereof covering the Subject Software Products); (ii) all pricing information; (iii) all support and maintenance logs; and (iv) all other information maintained by defendants about specific Customers as concerns the Subject Software Products.

D. "Defendants" means, collectively or individually as the context requires, Computer Associates and/or Legent.

E. "Effective Date(s)" means the later of (i) the date of entry by the Court of this Final Judgment; or (ii) the execution of definitive license agreement(s) as contemplated in Part IV, below.

F. "Legent" means Defendant Legent Corporation, its successors and assigns, each subsidiary and division thereof, and each officer, director, employee, agent and other person acting for or on behalf of any of them.

G. "PIPES" means the technology developed by Peer Logic, Inc. known as PIPES, PIPES Platform, PIPES Platform Software Developers Kit, and derivative works of any of these products, both in object code and source code forms.

H. "Subject Software Product" means each of the following computer programs presently sold by Legent: (i) EPIC/VSE (VSE tape management and disk management); (ii) FAQS/PCS (VSE automated job scheduling); (iii) Alert/VSE and Alert/CICS (VSE security); and (iv) FAQS/ASO for VSE (VSE automated operations). Each Subject Software Product shall include:

1. all source code and object code for the version or versions of the Subject Software Product currently being sold or distributed anywhere in the world, all existing source code and object code for all prior versions of the Subject Software Product previously sold or distributed anywhere in the world, and the most current iterations of source code and object code for all versions of the Subject Software Product under development or developed but not yet being sold or distributed, as of the date of the license(s) entered into pursuant to Part IV, below;

2. all optional modules, add-ons, enhancements and software customization sold or distributed to customers for use with the Subject Software Product;

3. all development tools, development environments, unique programming languages, software patches and other software or intellectual property that are or were used to develop, upgrade, and maintain that Subject Software Product that (i) defendants have the right to license, sub-license or assign, and (ii) that are not generally commercially available;

4. all existing documentation developed for use with any past, present or future version of the Subject Software Product, including all technical or development documentation, all user documentation, and all support documentation and support records, delivered to each licensee in an electronic form acceptable to that licensee.

III. Applicability

A. The provisions of this Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, employees, attorneys and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Defendants and each person bound by this Final Judgment shall cooperate in ensuring that the provisions of this Final Judgment are carried out.

B. Defendants shall require, as a condition of the licensing required herein, that the licensee(s) agree to be bound by the provisions of this Final Judgment that apply to such licensee(s).

IV. Licensing

A. Bidding Procedures

Defendants are hereby ordered and directed to grant a nonexclusive, worldwide, irrevocable license for each Subject Software Product, on the terms and in the manner hereinafter stated:

1. Defendants shall, within seven (7) days after execution of the stipulation in this action, retain an independent investment banker to identify and solicit bidders, and to evaluate bids, for each Subject Software Product. The identity of and terms of retention of said investment banker shall be subject to the approval of the Plaintiff, and said investment banker shall be charged with faithfully carrying out the terms of this Final Judgment. In the event that Plaintiff does not approve the investment banker proposed by Defendants, Defendants shall within three (3) days, submit to Plaintiff six (6) alternate investment bankers, with the terms of the proposed retention stated for each. Plaintiff shall have the right to

select from among these six (6) alternatives.

2. The investment banker shall serve at the cost and expense of Defendants, and shall receive compensation based on a fee arrangement providing an additional incentive based solely on the price and terms of the license and the speed with which it is accomplished.

3. The investment banker shall have discretion to solicit bids for license of the Subject Software Products and to otherwise make known, by usual and customary means, the availability for license of the Subject Software Products. Plaintiff and Defendants may provide names of prospective licensees to the investment banker for solicitation, but in no event shall the investment banker be limited to soliciting bids only from persons identified by Plaintiff or Defendants.

4. The investment banker shall provide any person making an inquiry regarding a possible bid for the Subject Software Products with a copy of this Final Judgment, and shall coordinate the furnishing to all bona fide prospective licensees the information and access specified in sub-section IV.A.5, below. The investment banker shall have discretion to establish such pre-bidding and bidding procedures, subject to the approval of Plaintiff, as are reasonably designed to elicit acceptable bids not later than twenty (20) days after the investment banker is retained. The investment banker shall file weekly reports with the parties setting forth the investment banker's efforts to accomplish licensing of the Subject Software Products as contemplated under this Final Judgment, including the name, address, and telephone number of each person who, during the preceding week, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the subject software products, and shall describe in detail each contact with any such person during that period.

5. Defendants shall promptly furnish to all bona fide prospective licensees, subject to customary confidentiality assurances, all information reasonably necessary for pre-bidding due diligence regarding the subject software products, except such information as may be subject to the attorney-client privilege or the attorney work product doctrine. Defendants shall provide such information to the Plaintiff at the same time that such information is made available to any other person. Defendants shall permit prospective licensees of each Subject Software Product to have reasonable access to personnel and to make such reasonable inspection of any Subject Software Product, together with such financial, operational, or other documents and information as may be relevant to the license required by this Final Judgment.

6. Within seven (7) days after the close of bidding, provided for in sub-section IV.A.3 above, the investment banker shall, in consultation with the parties, determine the successful bidder or bidders for each Subject Software Product. No bid may be accepted that contains any provision requiring or permitting continuing royalty payments to Defendants or the reporting to defendants of sales units or revenues of the Subject Software Product by the bidder. Preference may first be given to bids to license all subject software products, then to license multiple Subject Software Products, then to license an individual Subject Software Product.

7. Defendants shall make all reasonable efforts to enter into a definitive agreement for the licensing of each Subject Software Product to the successful bidder or bidders within fourteen (14) days after selection by the investment banker of the successful bidder or bidders. Plaintiff may, in its sole discretion, extend the time period for completion of a definitive licensing agreement for an additional period of time not to exceed thirty (30) days.

8. Unless Plaintiff otherwise consents, licensing of the Subject Software Products shall include such assets and be accomplished in such a way as to satisfy Plaintiff, in its sole discretion, that each Subject Software Product can and will be used by the licensee(s) as part of a viable, ongoing business involving the sale or license of the Subject Software Product to customers, including a demonstration to Plaintiff's satisfaction that (i) the license is for the purpose of competing effectively in the selling of the Subject Software Products to customers; (ii) the licensee has the managerial, operational, technical and financial capability to compete effectively in the selling of the Subject Software Products to customers; and (iii) none of the terms of the any agreement between the licensee and Defendants gives Defendants the ability artificially to raise the licensee's costs, impairs the licensee's ability to innovate the Subject Software Products, impairs the licensee's ability to support customers, or otherwise interferes with the ability of the licensee to compete effectively. Plaintiff may decline to approve a license of a Subject Software Product to any person currently selling any product in the same product market (as alleged in Plaintiff's Complaint).

9. Within one (1) business day following execution of a definitive agreement for the licensing of any or all of the Subject Software Products, Defendants or the trustee, whichever is then responsible for effectuating the license, shall notify Plaintiff of the proposed license. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in any Subject Software Product, together with full details of same. Plaintiff may, at its sole discretion, request additional information concerning the proposed license and the proposed licensee, which Defendants and the proposed licensee shall promptly provide. Plaintiff shall provide prompt written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed licensee. Upon written notice that the Plaintiff does not object to the proposed licensee, a license proposed under this Part IV may be consummated.

B. License Rights

Any license for one or more of the Subject Software Products shall, at minimum, convey the following:

1. the Subject Software Product, as defined herein;

2. the right of the licensee(s) to obtain comprehensive training for its developers and support personnel from Defendants, such that the licensee(s) will be able to maintain, develop and support the Subject Software Product in substantially the same manner as Defendants;

3. the right of the licensee(s) to assign or sub-license substantially all of its rights under the license(s) to another person, or to sub-license for the purpose of creating distributorships or agents of the licensee, *provided however,* that the license may, if Defendants and the licensee(s) so agree, preclude the sub-license of rights to any Subject Software Product on a non-exclusive basis for the purpose of creating additional independent, competing software vendors of a Subject Software Product;

4. for a period of 180 days after the Effective Date, the right of the licensee(s), without interference from Defendants, to solicit, bid for and hire any of Defendants' employees, agents or contractors whose job duties as of the date of the filing by the parties of this Final Judgment relate, in whole or in part, directly to the development of technical support of the subject software

products (hereinafter, the "Subject Software Product Employees"). To effectuate this right, Defendants shall provide to the licensee(s): (i) the name, address, telephone number, job description, and current compensation of each Subject Software Product Employee; (ii) the right to contact and recruit any or all such persons regarding possible employment; (iii) releases by defendants from any non-compete covenants applicable to any Subject Software Product Employee; and (iv) releases by Defendants from any right under federal, state or other applicable law to claim misappropriation of intellectual property or trade secrets, insofar as such intellectual property or trade secrets relate to the development or support of the Subject Software Products;

5. the right of the licensee to obtain the employment files and records of the Subject Software Product Employees, pursuant to the following procedure: (i) All such employment files and records (or copies thereof), as well as the names, addresses, and telephone numbers of such persons, shall be provided by the Defendants to the investment banker, within five (5) days after the retention of the investment banker; (ii) the investment banker shall contact each Subject Software Product Employee and notify such person, in a form approved in advance by Plaintiff (a) of that person's right to authorize the investment banker or trustee to release that person's employment file or record to any licensee; (b) of the manner in which that person shall provide notice to the investment banker or trustee of its authorization (such as a telephone number that Employee should call); (c) that Defendants will not learn from the investment banker or trustee of the person's authorization to release his or her employment file or record to the licensee; and (d) of the time period in which the person must communicate his or her authorization to the investment banker or trustee; (iii) if a person chooses to authorize the release of his or her employment file or record, the investment banker or trustee shall promptly provide to the licensee(s) that person's employment file or record; and (iv) the investment banker or trustee shall not disclose to Defendants the identity of any person that has chosen to authorize the release of his or her employment file to a licensee(s);

6. for all Customers who elect to transfer their customer relationship for any Subject Software Product to the licensee pursuant to section V, blow: (a) full and complete assignment of all licenses and maintenance contracts for the Subject Software Products so transferred, and (b) full and complete transfer of all Customer Information covering the Subject Software Products so transferred, *provided however* that Defendants may retain Customer Information, but no Customer Information retained by Defendants shall be used for purposes of selling or marketing any Subject Software Product to any Customer who elects, pursuant to Part V herein, to transfer its business relationship to the licensee(s) for any Subject Software Product.

7. for a period of not less than one year after the Effective Date, full and prompt disclosure of all technical updates and problem resolution protocols for the Subject Software Products;

8. for a period of not less than one year after the Effective Date, reasonable (post-license) access during normal business hours to senior members of Defendants' development and support teams for the Subject Software Products to answer questions and provide problem resolution and advice relating to customer support;

9. for a period of not less than one year after the Effective Date, the right of the licensee to refer to the trademarks or trade names of the Subject Software Product for the purpose of representing to Customers and prospective customers that the Subject Software Product was developed by and licensed from Defendants. This subparagraph, however, shall not be construed to grant the licensee any right to market the Subject Software Product under the Defendants' trademarks or trade names.

C. Appointment of Trustee

1. If Defendants have not executed a definitive license or licenses to transfer all Subject Software Products as required by section IV.A, above, within the time specified therein (including any extension granted by Plaintiff pursuant to subsection IV.A.7, above), Defendants shall immediately notify Plaintiff of that fact in writing. Within five (5) calendar days of that date, Plaintiff shall provide Defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required licensing. Defendants shall notify Plaintiff within five (5) calendar days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to Defendants, Plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to Defendants, they shall furnish to Plaintiff, at the time of Defendant's notification to Plaintiff, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required license. If either or both of such nominees are acceptable to Plaintiff, Plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to Plaintiff, Plaintiff shall furnish the Court the names and qualifications of its and Defendants' proposed nominees. The Court may hear the parties as to the nominees' qualifications and shall appoint one of the nominees as the trustee.

2. After the trustee's appointment has become effective, only the trustee shall have the right to license the Subject Software Products. The purpose of the trust shall be to create a viable, ongoing business which can compete effectively in the selling of the Subject Software Products. The trustee shall have the power and authority to execute a license or licenses to a person(s) acceptable to Plaintiff at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, subject to the provisions of sections IV.A and IV.B of this Final Judgment, and shall have such other powers as this Court shall deem appropriate to perform those functions. Defendants shall not object to the licensing of the Subject Software Products by the trustee on any grounds other than the trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to Plaintiff and the trustee within five (5) calendar days after the trustee has notified Defendants of the proposed licensing.

3. The trustee shall serve at the cost and expense of Defendants, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the license(s) and the speed with which it is accomplished, and shall serve on such other terms and conditions as the court may prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of its appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to Defendants and the trust shall then be terminated.

4. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the licensing of the Subject Software Products and shall use their best efforts to assist the trustee in accomplishing the required license(s). The trustee shall have such full and

complete access to the personnel, books, records, and facilities of Defendants' overall businesses as is reasonably necessary to carry out its responsibilities, and Defendants shall develop such financial or other information the trustee deems reasonably necessary to the licensing of the Subject Software Products. The trustee shall have full and complete access to the books and records of the investment banker retained pursuant to Section IV.A, above, relating to the investment banker's (i) attempts to obtain licensing of the Subject Software Products; and (ii) collection of employee files and records and authorizations to release such files and records to licensee(s).

5. After its appointment becomes effective, the trustee shall file weekly reports with the parties and the Court setting forth the trustee's efforts to accomplish licensing of the Subject Software Products as contemplated under this Final Judgment; *provided however*, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding week, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Subject Software Products, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to license the Subject Software Products.

6. Within ninety (90) days after its appointment has become effective, if the trustee has not accomplished the license(s) required to effectuate this Final Judgment, the trustee shall promptly file with the parties and the Court a report setting forth (i) the trustee's efforts to accomplish the required licensing, (ii) the reasons, in the trustee's judgment, why the required license(s) have not been accomplished, and (iii) the trustee's recommendations; *provided however*, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The parties shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include disposing of any or all assets of the Subject Software Product businesses, including Customer contracts and/or software assets, to such buyers as the Court deems appropriate, or extending the trust and the term of the trustee's appointment.

V. Customer Election

Defendants are hereby ordered and directed to take all measures necessary to effectuate the orderly and fair election and, where applicable, orderly transfer of all customer relationships concerning each Subject Software Product to the licensee of such Subject Software Product in the manner hereinafter stated.

A. Immediately upon execution of a definitive agreement to license any Subject Software Product, all provisions of any customer license or maintenance contract concerning such Subject Software Product that directly or indirectly restrict the Customer's ability to transfer its license or maintenance agreements of any Subject Software Product to the licensee of such Subject Software Product shall be suspended until the completion of the election and transfer process.

B. Within one (1) business day after execution of a definitive agreement or agreements to license the Subject Software Product, Defendants shall provide the investment banker or, if applicable, the trustee, with a complete list of the names, addresses, telephone numbers, and primary contact person of each Customer of each Subject Software Product, together with all licenses or other contracts relating to the Subject Software Products.

C. Within five (5) calendar days after execution of a definitive agreement to license each Subject Software Product, the investment banker or, if applicable, the trustee, shall at Defendants' expense provide all customers with a notification of the right to elect whether to transfer their software license and maintenance contracts for the Subject Software Product to the licensee(s) of the Subject Software Product, such notification to be in a form approved by Plaintiff. Such notification shall include a copy of this Final Judgment, specify the identity of the licensee(s) of the Subject Software Products, specify the procedures to be followed in electing to transfer software licenses and maintenance contracts, and state an address of Plaintiff at which to direct questions or complaints about possible violations of the terms of this Final Judgment. Defendants and the licensee of the Subject Software Product shall have an equal right to enclose marketing or promotional materials with such notification, subject to Plaintiff's advance approval of such materials.

D. Except for the marketing or promotional materials included in the notification pursuant to the preceding subsection, Defendants and the licensee of the Subject Software Product shall not otherwise contact or communicate with any customer so notified regarding the Subject Software Products or the customer's election until after the conclusion of the election period and transfer of all customer relationships to the licensee of each Subject Software Product, except (i) insofar as the customer initiates such contacts; and (ii) as may be necessary for routine technical support. In the event a customer's license or maintenance agreement covering any Subject Software Product shall expire or otherwise be renewable during the election period, the terms of the previous license or contract shall be extended until the conclusion of the election period and transfer of the customer relationship, unless the customer affirmatively terminates the license or contract. Defendants shall not solicit or induce customers to terminate licensees or contracts for the purpose of negotiating successor contracts during the election period.

E. Each Customer shall be permitted thirty (30) days after notification in which to notify the investment banker, or, if applicable, the trustee, of its election as to whether Defendants or the licensee shall have the rights to their software licenses and maintenance contracts for the Subject Software Products. Each Customer shall be given instructions how to notify the investment banker or trustee of its election. At the close of the thirty (30) day period, each Customer that has not communicated its election to the investment banker or, if applicable, the trustee shall be notified by the investment banker or trustee that it has fifteen (15) additional days in which to make an election and that failure to elect within that period shall result in such Customer being allocated either to the Defendants or to the licensee(s). Customers failing to elect by the end of the fifteen (15) day period shall be randomly assigned to defendants or the licensee(s) of the Subject Software Products on a pro rata percentage equal to that of Customers who timely elected.

F. Promptly upon the close of the notification period or the Effective Date, whichever is later, the investment banker or trustee shall notify the parties and the licensee of the Subject Software product of the election of each Customer, whether the Customer affirmatively made an election or was assigned at random, and provide the licensee with the information specified in subsection V.B, above, relating to each Customer that elected or was assigned to the licensee.

G. Within five (5) business days after receiving notification from the investment banker or trustee identified in the previous Section, Defendants shall transfer to the licensee of the subject software product all Customer Information for each Customer that (i) elected to transfer its license or maintenance agreement; or (ii) was allocated to the licensee(s) pursuant to Section V.E, above.

H. For each Customer that elects to transfer its license or maintenance agreement, or that is allocated to licensee(s) pursuant to Section V.E, above, Defendants shall pay to licensee a pro rata amount of all maintenance fees already paid by such Customer to Defendants to the extent such fees relate to service periods after the date of such assignment. If the maintenance fees were negotiated or calculated as part of a multi-product bundle or package, the payment to licensee(s) shall be calculated by apportioning the maintenance fees among the products subject to the bundle or package in a ratio derived from the prices of each product as stated in Defendants' standard price list or schedule as of the date upon which the maintenance agreement became effective.

I. Upon transfer of all Customer Information, the licensee of the Subject Software Product, or Defendants, as the case may be, shall be deemed to be in full privity of contract with the Customer, and any provisions of the license or maintenance agreements that were suspended pursuant to section V.A. above shall be reinstated for the full remaining term of the contract.

J. Defendants shall not solicit any Customer electing to transfer its customer relationship for any Subject Software Product to the licensee, or that is allocated to the licensee pursuant to section V.E. above, to breach, repudiate, or abrogate the transferred maintenance agreement during the full remaining term of such agreement.

K. In any case where a Customer elects to transfer its customer relationship to the licensee, or is allocated to the licensee pursuant to section V.E. above, for a Subject Software Product covered by a license or maintenance agreement that also covers other products, such election shall apply only in respect of the Subject Software Product, and the license or maintenance agreement shall otherwise remain fully in effect; *provided however* that any continuing license or maintenance obligation shall be reduced by an amount calculated by apportioning the licensing or maintenance fees in a ratio derived from the prices of each product as stated in Defendants' standard price list or schedule as of the ate upon which the license or maintenance agreement became effective.

VI. Preservation of Assets

Until the transfer of the Subject Software Products and customers relationships required by the Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with this Final Judgment and with the Stipulation previously executed by Defendants. Defendants shall take no action that would jeopardize the licensing of any Subject Software Product, shall continue to commit resources, development and support to each Subject Software Product at a level not materially less than that committed prior to the announcement of the subject acquisition, and shall not otherwise jeopardize the commercial viability of any Subject Software Product insofar as rights thereto may be transferable to a licensee of the Subject Software Product.

VII. Cross-Platform Technology

For five years following the entry by the Court of this Final Judgment, Defendants shall take no action, nor assert any right, to restrict Peer Logic, Inc. or any successor or assign of Peer Logic, Inc. from licensing PIPES to any other person, notwithstanding any provisions of any agreement between such defendant and Peer Logic, Inc. to the contrary.

VIII. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege or doctrine, from time to time:

A. Duly authorized representatives of the Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants made to its principal office, shall be permitted:

1. Access during office hours of Defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview or depose officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Defendants' principal office, Defendants shall submit such written reports, under oath if requested, with respect to the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the Untied States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by Plaintiff to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which a defendant is not a party.

IX. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X. Termination

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XI. Public Interest

Entry of this Final Judgment is in the public interest.

____

United States District Judge

Dated: ________________________

In the matter of: United States of America, Plaintiff, v. Computer Associates International, Incorporated, and Legent Corporation, Defendants. Case No. 95 CV 1398 (TPJ). Filed: August 18, 1995. Received: August 18, 1995.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on July 28, 1995, alleging that the acquisition of Legent Corporation ("Legent") by Computer Associates International, Inc. ("CA") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. CA and Legent are among the world's leading suppliers of systems management software for mainframe computers.

The Complaint alleges that the acquisition would eliminate significant competition between CA and Legent in five markets for systems management software used with mainframe computers that work with the VSE operating system: VSE tape management software; VSE disk management software; VSE security software; VSE job scheduling software; and VSE automated operations software. In addition, the Complaint alleges that the transaction would substantially lessen competition in the market for "cross-platform" systems management software, used in computer installations where a mainframe computer is linked together with other types of computer "platforms" (such as midrange computers or networks of workstations or personal computers). The Complaint seeks adjudication that CA's acquisition of Legent would violate Section 7 of the Clayton Act and preliminary and permanent injunctive relief.

At the same time as the filing of the Complaint, the United States filed a Stipulation and a proposed Final Judgment in settlement of the suit. With respect to each of the five markets for VSE systems management software products, the proposed Final Judgment requires CA to license Legent's products to a person who can and will use the license to compete effectively in the relevant markets. With respect to the market for cross-platform systems management software, the proposed Final Judgment prohibits CA from taking any action to restrict competitors' access to an important technology, called "PIPES," that has been licensed to Legent by a third party, Peer Logic, Inc. ("Peer Logic").

The United States, CA, and Legent have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed final judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

CA is a Delaware corporation with its principal place of business in Islandia, New York. In its fiscal year 1994, CA reported revenues in excess of $2.1 billion. CA produces and markets software for a variety of computers and operating systems, including systems management software for mainframe computers running IBM's VSE operating system. Aside from IBM, which writes the operating system software that run almost all mainframe computers, CA is the largest vendor of the software for IBM and IBM-compatible mainframe computers.

Legent is a Delaware corporation with its principal place of business in Herndon, Virginia, and sells several different types of computer software and related services. In its fiscal year 1994, Legent's total revenues were over $500 million. Like CA, Legent is a leading vendor of systems management software products for mainframe computers.

On May 25, 1995, CA announced that it had entered into a definitive agreement with Legent to purchase all issued and outstanding shares of Legent's common stock through a cash tender offer. This $1.75 billion transaction forms the basis of the government's suit.

B. VSE Systems Management Software

Mainframe computers are the large and powerful computers used by industrial, commercial, educational, and governmental enterprises for large scale data processing applications. Mainframe computers provide unique storage, throughput, and security features and functions that make them superior data processing devices for large corporate and institutional computer users throughout the world.

An operating system is software that controls the operational resources of the computer (including the central processor unit, memory, data storage devices, and other hardware components) and allows "applications" software (programs that perform user-directed tasks requested of the computer, such as programs that maintain payroll, inventory, sales, and other business accounts of a company) to run on the computer. The vast majority of the world's mainframe computers run with operating systems developed by IBM, of which one of the most widely used is the VSE operating system.

System management software is used to help manage, control, or enhance the performance of mainframe computers. Some systems management functionality may be incorporated in an operating system. Separate systems management software programs such as the products offered by CA and Legent, however, provide additional functionality that is demanded by mainframe users. These separate systems management programs work in conjunction and generally must be compatible with the computer's operating system.

CA and Legent both produce a wide range of mainframe computer systems management software products for the VSE operating system. They are direct competitors of each other with respect to the following VSE systems management software products: (1) Tape management software, which controls the computer's cataloguing, loading, formatting, and reading of the magnetic tapes used for data storage; (2) disk management software, which performs functions similar to that of tape management with respect to data storage in hard disk drive installations; (3) security management software, used to prevent unauthorized access to computer applications and data; (4) job scheduling software, used to direct the computer to run particular processing operations (called "jobs") at particular times or sequences; and (5) automated operations software, used to automate message and error handling and other operations at the computer system console.

Each of the above described VSE systems management software products perform distinct functions for which no reasonable substitute products exist. As to each of the VSE products, even a substantial price increase would not cause their purchasers to begin substituting any other products. Each of the VSE products, therefore, constitutes a relevant product market in which to assess the competitive effects of CA's acquisition of Legent.

C. Cross-Platform Systems Management Software

"Cross-platform" refers to different types of computer processor designs or architectures. In addition to mainframe computers, other "platforms" are midrange computers, workstations, and PCs, all of which can, in varying degrees, be linked together into integrated multi-platform networks. These networks are also referred to as "distributed" computer systems. The integration of mainframe computers into distributed multi-platform systems is a relatively recent development, but is of increasing importance to modern computer installations.

CA and Legent have developed cross-platform systems management software products that allow different platforms that make up a multi-platform network of computers to be efficiently managed from a single point in the network. Customers that require cross-platform systems management products would not turn to other means of systems management in response to a significant increase in prices of such cross-platform systems management software. Cross-platform systems management software therefore constitutes a relevant product market in which to assess the competitive effects of CA's acquisition of Legent.

D. Competition Between CA and Legent

CA and Legent compete against each other for sales of VSE and cross-platform systems management software throughout the United States. They compete with respect to both license royalties they charge users of systems management products, and the flexibility of the license terms they offer. Both firms market their products under licenses that require royalty payments for the right to use the product and payments for maintenance of and upgrades to the products.

Moreover, CA and Legent compete in providing product support and service to their customers. Due to the "mission critical" nature of the work done with mainframe computers, users highly value the speed and effectiveness of a vendor's installation, maintenance, and technical support of systems management products. CA and Legent also compete to improve, upgrade, and enhance their systems management products, both in terms of developing products of greater performance or functionality and in terms of products that are easier to install, use, and maintain.

E. Anticompetitive Consequences of the Acquisition

The Complaint alleges that CA's acquisition of Legent would substantially lessen competition and create (or facilitate CA's exercise of) market power in each of the relevant systems management software markets. Each of the relevant markets already is highly concentrated, and the acquisition would substantially increase concentration. In the VSE tape management, VSE disk management, and VSE security markets, CA's acquisition of Legent would make CA the sole supplier. In the VSE job scheduling and VSE automated operations markets, the acquisition would allow CA dominate with post-acquisition market shares of 71 percent and 88 percent respectively. In the cross-platform systems management market, the acquisition would eliminate substantial competition because CA and Legent currently are two of only a few competitors that have to date developed and commercialized the technology necessary to integrate mainframe computers into distributed computing systems.

The Complaint alleges that in each of the relevant markets, the reduction or elimination of competition from CA's acquisition would likely lead to higher prices and lower levels of product quality, service and support, and product innovations and development. The Complaint further alleges that the competitive harm resulting from the proposed acquisition is not likely to be mitigated by possibilities of new entry. For any of the relevant markets, entry would entail expenditures of substantial costs and time for the development of a competitive product that would be acceptable to mainframe customers. Such entry would not be timely, likely, or sufficient in scale to counteract or deter a price increase or a reduction in service or product quality in any of the relevant markets.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in each of the relevant systems management software markets in which CA's acquisition of Legent would be anticompetitive. As to each of the five VSE markets, the proposed Final Judgment requires CA to license Legent's products to a person determined by the United States to have the capabilities and resources needed to use the licenses as a viable and effective competitor.

Under the proposed Final Judgment, each of the VSE product licenses will be worldwide and perpetual in scope, granting the licensee full rights and capabilities to produce, market, and support the products, as well as to develop and market new product versions. The proposed Final Judgment provides that licensee with product development and support assistance and expertise—including the right to recruit Legent development and support personnel—that may be needed to compete effectively.

The proposed Final Judgment establishes procedures enabling current Legent customers to choose whether to purchase future support, maintenance and upgrades of the relevant systems management software products from CA or the licensee, without regard to the customers' current contracts with Legent. Five days after a license is finalized, Legent customers will be notified and given up to 45 days to elect to be supplied by CA or by the licensee. Customers who do not make an election will be assigned to CA or to the licensee on a pro rata basis in the same proportion as the customers who did make elections. The proposed Final Judgment provides that the new supplier will have all customer files, service and support records, and other documentation necessary for the new supplier to effectively serve the needs of the customers who elect to be supplied by the licensee.

If CA, with the assistance of an investment banker, is unable to identify a viable licensee that is satisfactory to the Department of Justice, the Court may appoint a trustee to attempt to carry out the licensing. In the event that the licensing provisions of the proposed Final Judgment do not result in the selection and establishment of a viable and effective competitor in a relevant VSE market, the Judgment requires CA to dispose of additional assets, including the complete divestiture of the products and transfer of Legent customer contracts, to accomplish the goal of establishing a viable and effective competitor.

With respect to the cross-platform systems management software market, the proposed Final Judgment forbids CA for five years from taking any action to restrict any other person's access to a key cross-platform systems management technology. This technology, called "PIPES" and developed by Peer Logic, consists of communication software technology that, among other things, allows the different operating systems in a cross-platform environment to interact with each other.

Peer Logic has licensed PIPES to Legent, for use with or incorporation into Legent Products. With its

acquisition of Legent, and depending on the interpretation of contractual relationships between Legent and Peer Logic, CA may succeed to Legent's rights to use PIPES. By prohibiting CA from potentially interfering with Peer Logic's licensing of PIPES to others, the proposed Final Judgment makes PIPES available to others who would use the technology in competing in the market for cross-platform systems management software.

The relief sought in the markets of concern in the Complaint has been tailored to maintain the level of competition that existed in those markets prior to the acquisition. With respect to the VSE systems management products, the proposed Final Judgment will establish a firm or firms that will offer consumers proven products and competent support. With respect to cross-platform systems management products, the proposed Final Judgment maintains the availability to third parties of technology that is useful in the development of cross-platform systems management solutions, thereby facilitating the more rapid development of competing products by other firms.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John F. Greaney, Chief, Computers & Finance Section, Antitrust Division, United States Department of Justice, Suite 9901, 555 4th Street NW., Washington, DC 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants CA and Legent. The United States is satisfied, however, that the licensing and other relief contained in the Final Judgment should maintain viable and effective competition in the relevant VSE and cross-platform systems management software markets that would otherwise be substantially affected by the acquisition. Moreover, in the event that Legent's five VSE products cannot be promptly licensed to a viable competitor, the Court may order complete divestiture of the products. Thus, the Final Judgment will achieve the same benefit to competition that the government could have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

VII. Determinative Documents

One determinative document within the meaning of the APPA—a July 26, 1995 letter from Sanjay Kumar, CA's President and Chief Operating Officer—was considered by the United States in deciding to consent to the proposed Final Judgment. Mr. Kumar's letter clearly acknowledges that section IV.C.6 of the proposed Final Judgment empowers the Court to order full divestiture of Legent's five VSE products if viable licensee(s) cannot be found. A copy of this document is attached hereto, and will be available for public inspection.

Dated: August 18, 1995.

Respectfully submitted,

Kenneth W. Gaul,

Attorney, Antitrust Division, U.S. Department of Justice.

July 26, 1995.

By Facsimile

Honorable Anne K. Bingaman,
Assistant Attorney General, Antitrust Division, United States Department of Justice, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530

RE: Computer Associates International, Inc./Legent Corporation

Dear Anne: Pursuant to our conversation of this afternoon, this letter will act as confirmation of Computer Associates' understanding regarding the proposed Consent Decree. We hereby acknowledge that the Decree permits the Court sufficient discretion, if the Court so desires, to dispose of the five VSE software products in question in the event that a suitable licensee or licensees are not found. We understand that such disposition ordered by the Court could include the divestiture of one or more of these five VSE software products.

We remain confident that, with the Department's cooperation, the license mechanism proposed in the Decree will work and satisfy all of your requirements.

Sincerely,

Sanjay Kumar,

President and Chief Operating Officer, Computer Associates International, Inc.

Certificate of Service

The undersigned certifies that he is a paralegal employed by the Antitrust Division of the United States Department of Justice, and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on August 13, 1995, he caused true copies of the Competitive Impact Statement of plaintiff, United States, and this Certificate of Service, to be served upon the persons at the place and addresses stated below:

Counsel for Computer Associates

Richard L. Rosen, Esq., Arnold & Porter, 555 12th Street NW., Washington, DC 20004 (by facsimile and by hand delivery)

Counsel for Legent

Michael H. Byowitz, Esq., Wachtell, Lipton, Rosen & Katz, 51 W. 52nd Street, New York, NY 10019 (by facsimile and by overnight courier)

Dated: August 18, 1995.

Joshua Holian,

Paralegal, U.S. Department of Justice, Antitrust Division, Computers & Finance Section.

[FR Doc. 95–22266 Filed 9–7–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis–Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
  MA950001 (Feb. 10,1995)
  MA950002 (Feb. 10,1995)
  MA950003 (Feb. 10,1995)
  MA950007 (Feb. 10,1995)
  MA950009 (Feb. 10,1995)
  MA950010 (Feb. 10,1995)
Maine
  ME950013 (Feb. 10,1995)
New Hampshire
  NJ950007 (Feb. 10,1995)
New Jersey
  NJ950002 (Feb. 10,1995)
  NJ950003 (Feb. 10,1995)
New York
  NY950008 (Feb. 10,1995)
  NY950010 (Feb. 10,1995)
  NY950016 (Feb. 10,1995)
  NY950017 (Feb. 10,1995)
  NY950033 (Feb. 10,1995)
  NY950039 (Feb. 10,1995)
  NY950041 (Feb. 10,1995)
  NY950045 (Feb. 10,1995)
  NY950072 (Feb. 10,1995)
Rhode Island
  RI950001 (Feb. 10,1995)

Volume II

Pennsylvania
  PA950006 (Feb. 10,1995)
  PA950007 (Feb. 10,1995)
  PA950009 (Feb. 10,1995)
  PA950026 (Feb. 10,1995)
  PA950030 (Feb. 10,1995)
  PA950031 (Feb. 10,1995)
  PA950040 (Feb. 10,1995)
  PA950042 (Feb. 10,1995)

Volume III

None

Volume IV

Illinois
  IL950001 (Feb. 10,1995)
  IL950002 (Feb. 10,1995)
  IL950004 (Feb. 10,1995)
  IL950005 (Feb. 10,1995)
  IL950006 (Feb. 10,1995)
  IL950008 (Feb. 10,1995)
  IL950011 (Feb. 10,1995)
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  IL950023 (Feb. 10,1995)
  IL950025 (Feb. 10,1995)
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  IL950027 (Feb. 10,1995)
  IL950028 (Feb. 10,1995)
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  IL950030 (Feb. 10,1995)
  IL950032 (Feb. 10,1995)
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  IL950082 (Feb. 10,1995)
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  IL950087 (Feb. 10,1995)
  IL950090 (Feb. 10,1995)
  IL950092 (Feb. 10,1995)
  IL950094 (Feb. 10,1995)
  IL950095 (Feb. 10,1995)
  IL950096 (Feb. 10,1995)
  IL950098 (Feb. 10,1995)

Volume V

Iowa
  IA950005 (Feb. 10,1995)
Louisiana
  LA950001 (Feb. 10,1995)
  LA950004 (Feb. 10,1995)
  LA950005 (Feb. 10,1995)

Volume VI

California
  CA950004 (Feb. 10,1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 1st day of September 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–22253 Filed 9–7–95; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. E & E Fuels

[Docket No. M–95–110–C]

E & E Fuels, P.O. Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.340 to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive during idle periods when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Solar Sources Underground L.L.C.

[Docket No. M–95–111–C]

Solar Sources Underground L.L.C., P.O. Box 325, Monroe City, Indiana 47557 has filed a petition to modify the application of 30 CFR 75.1700 to its Monroe City Mine (I.D. No. 12–02103) located in Knox County, Indiana. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Peabody Coal Company

[Docket No. M–95–112–C]

Peabody Coal Company, 1951 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.342(a)(2) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. The petitioner proposes to have alternative locations for two additional methane monitors in the longwall face area of the longwall shearing machine instead of using a single methane monitor. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Continuous Mining, Inc.

[Docket No. M–95–113–C]

Continuous Mining, Inc., P.O. Box 239, Edgarton, West Virginia 25672 has filed a petition to modify the application of 30 CFR 75.1710 to its Mine No. 1 (I.D. No. 46–07891) located in Mingo County, West Virginia. The petitioner operates its bridge haulage equipment manufactured for use in extremely low-seam mines and built without operator compartments or canopies. The petitioner proposes to operate this haulage equipment without canopies due to the frequent tearing out of roof bolts when tramming through dips and crests of hills in the coal seam being mined. The petitioner states that the use of canopies would expose the equipment operator to greater hazards than those incurred by operating without operator compartments and canopies.

5. Mystic Energy, Inc.

[Docket No. M–95–114–C]

Mystic Energy, Inc., 130 George Street, Suite J, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.364(b)(1) to its B. L. Mining No. 3 Mine (I.D. No. 46–07139) located in Boone County, West Virginia. Due to deteriorating roof conditions in the intake air course, the area cannot be traveled safely. The petitioner proposes to examine approximately 3,000 feet of the intake air course in the No. 4 Entry by checking the inby and outby ends of the affected area and to monitor for methane and the quantity and quality of air. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Consolidation Coal Company

[Docket No. M–95–115–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(1) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. Due to deteriorating roof and rib conditions in the intake airway from the Seabright Shaft to the No. 8 Seal in 4 North, the area cannot be traveled safely. The petitioner proposes to establish check points J and K to monitor the affected area and to have a certified person examine the area for methane and the quantity of air at both check points on a weekly basis; and to have the certified person initial and record the date, time, and results of the weekly examinations in a book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 10, 1995. Copies of these petitions are available for inspection at that address.

Dated: August 29, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–22263 Filed 9–7–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 29, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ritchie Coryell, Program Director, SBIR Office, (703) 306–1390.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22348 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 94–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 28, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Charles Hauer; Program Director, SBIR Office; (703) 306–1390 or Ed Bryan, Program Director, BES, (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22353 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 28, 29, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 970, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Darryl Gorman, SBIR Office, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22340 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) will be holding panel meetings for the purpose of reviewing proposals submitted to the Phase I Small Innovation Research Program in the area of Next Generation Vehicles.

In order to review the large volume of proposals, panel meetings will be held on September 26, 27, 1995, in rooms 310, and 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:00 to 5:00 each day.

Contact Person: Ritchie Coreyll, SBIR Office, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reasn for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22347 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) will be holding panel meetings for the purpose of reviewing proposals submitted to the Phase I Small Business Innovation Research Program in the area of Chemical and Thermal Systems.

In order to review the large volume of proposals, panel meetings will be held on September 25, 26, 27, 1995, in rooms 310, 320 and 530.

All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:00 to 5:00 each day.

Contact Person: Charles Hauer, SBIR Office, (703) 306–1390, or Robert Wellek, and Farley Fisher, Program Directors, CTS, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22346 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) will be holding panel meetings for the purpose of reviewing proposals submitted to the Phase I Small Business Innovation Research Program in the areas of Atmospheric Sciences and Computer and Information Science and Engineering.

In order to review the large volume of proposals, panel meetings will be held on September 28, 1995, in rooms 310, 340, 360, and 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 and NCAR, Boulder, CO.

All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:00 to 5:00 each day.

Contact Person: Anthony Centodocati, SBIR Office, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

FR Doc. 95–22345 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) will be holding panel meetings for the purpose of reviewing proposals submitted to the Phase I Small Business Innovation Research Program in the are of Chemical and Thermal Systems.

In order to review the large volume of proposals, panel meetings will be held on September 28, 1995, in room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:00 to 5:00.

Contact Person: Charles Hauer, SBIR Office, (703) 306–1390, or Farley Fisher, Program Director, CTS, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22344 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 28, 1995, 8 a.m.–5 p.m.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Pat Johnson, SBIR Office, (703) 306–1390 or Dr. Rolf Sinclair, Program Director, MPS/PHY, (703) 306–1809.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22342 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) will be holding panel meetings for the purpose of reviewing proposals submitted to the Phase I Small Business Innovation Research Program in the areas of Polar Science, Next Generation Vehicles, and Bioengineering and Environmental Systems (Materials).

In order to review the large volume of proposals, panel meetings will be held on September 29, 1995, in rooms 375, 530, 565, and 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. All meetings will be closed to the public and will be held at the

National Science Foundation, 4201 Wilson Blvd., Arlington, VA. from 8:00 to 5:00.

Contact Person: Charles Hauer, Anthony Centodocati, and Ritchie Coryell, SBIR Office, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22341 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundations announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 26, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Charles Hauer, Program Director, SBIR Office, (703) 306–1390 or Edward Bryan, Program Director, BES, (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22351 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: September 26, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Tony Centodocati, Program Director, SBIR Office, (703) 306–1390 or Joan Mitchell, Program Director, GEO, (703) 306–1580.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22350 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194

Date and Time: September 27, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Charles Hauer, Program Detector, SBIR Office, (703) 306–1390 or Ed Bryan, Program Director, BES, (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22349 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Industrial Innovation Interface; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Small Business Industrial Innovation (SBIR) (#61).

Date and Time: September 28, 1995, 1:00–5:00 p.m., September 29, 1995, 8:30 a.m.–12 noon.

Place: Room 590, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Cheryl Albus, SBIR Program Coordinator, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning research programs pertaining to the small business community.

Agenda

September 28, 1995

1:00 p.m. to 1:30 p.m.—Welcome and introductions.
1:30 p.m. to 3:30 p.m.—Review and discussion of programs.
3:30 p.m. to 5:00 p.m.—Report from Committee of Visitors.

September 29, 1995

8:30 a.m. to 10:30 a.m.—Discussion of program issues.
10:30 a.m. to 12:00 noon—Preparation of Committee report.
12:00 noon—Adjourn.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22343 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR)

Dates and Times: September 28, 1995, 8:30 am–5:00 pm Room 730; September 29, 1995, 8:30 am–5:00 pm Room 1060.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meetings: Closed.

Contact Person: Dr. Lorretta J. Inglehart, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1817.

Purpose of Meetings: To provide advice and recommendations concerning support for the Synchrotron Radiation Center, University of Wisconsin proposal.

Agenda: Evaluation of proposal.

Reason for Closing: The proposal being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

FR Doc. 95–22352 Filed 9–7–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

PECO Energy Company; Notice of Issuance of Amendment to Facility Operating Licenses

[Docket Nos. 50–277 and 50–278]

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 210 and 214 to Facility Operating Licenses Nos. DPR–44 and DPR–56 issued to PECO Energy Company (the licensee), which revised the Technical Specifications (TS) for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania. The amendment is effective as of the date of issuance and shall be implemented within 150 days from the date of issuance.

The amendments replace the current TS and associated Bases with a set of TS based on NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4," dated September 1992.

The application for the amendment dated September 29, 1994, as supplemented by letters dated March 3, March 30, May 4 (two letters), May 8, May 9, May 16, May 24, May 25, May 26, June 7, July 7, July 13, July 21 and August 4, (two letters), August 11, and August 28, 1995, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on May 19, 1995 (60 FR 26905). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 42190).

For further details with respect to the action see (1) the application for amendment dated September 29, 1994, as supplemented by letters dated March 3, March 30, May 4 (two letters), May 8, May 9, May 16, May 24, May 25, May 26, June 7, July 7, July 13, July 21, August 4, (two letters), August 11 and August 28 1995, (2) Amendment Nos. 210 and 214 to Licenses Nos. DPR–44 and DPR–56, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania.

Dated at Rockville, Maryland, this 30th day of August 1995.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22309 Filed 9–7–95; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: OCRWM Program Update, Waste Isolation Strategy, ESF Construction & Science Update, NAS "Release Standards," Total System Performance Assessment

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its fall meeting on October 17–18, 1995, in Arlington, Virginia. (Please note: In the event of a general government shutdown, the Board will decide on October 10, 1995, whether or not to cancel the meeting. Please call (703) 235–4473 on October 10 for the announcement.) The meeting will be held at the Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, Virginia 22203; (Tel) 703–528–6000; (Fax) 703–528–4386. The meeting is open to the public and will begin at 8:30 a.m. both days. Presentations during the meeting will focus on strategic concerns and performance assessment.

Strategic concerns in the high-level nuclear waste program will be covered the first day of the meeting. The Department of Energy (DOE) has been asked to provide updates on the Office of Civilian Radioactive Waste Management (OCRWM) program, the developing waste isolation strategy, and construction progress and initial science results in the exploratory studies facility. Congressional staff members will be invited to provide their views on pending legislation that may affect the nuclear waste program. The Board also will hear about the National Academy of Sciences report on release standards for Yucca Mountain and the DOE's reaction to the report. The Electric Power Research Institute will provide an analysis of different proposed standards. At the end of the day, there will be a round-table discussion of strategic developments and concerns.

Performance assessment will be covered on the second day of the meeting, including a detailed look at the OCRWM's Total System Performance Assessment 1995 for the Yucca Mountain site. Additional presentations and a round-table discussion on making the best use of performance assessment will conclude the day's activities.

Time will be set aside on the agenda for public comment and questions. To ensure that everyone wishing to speak is provided time to do so, the Board encourages those who have comments to sign the Public Comment Register, which will be located at the sign-in table. Those registering are advised that, depending on the number of people wishing to speak, a speaking time limit may have to be set on the length of individual remarks. However, written comments of any length may be submitted for the record.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning December 15, 1995. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (Tel) 703–235–4473; (Fax) 703–235–4495.

Dated: September 1, 1995.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 95–22298 Filed 9–7–95; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program Medically Underserved Areas for 1996

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 1996.

SUMMARY: The Office of Personnel Management has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 1996. This determination is necessary to comply with a provision of FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 1996, OPM has determined that the following States are Medically Underserved Areas under the FEHB program: Alabama, Arkansas, Idaho, Louisiana, Mississippi, New Mexico, North Dakota, South Carolina, South Dakota, West Virginia, and Wyoming. Arkansas and Idaho are new for 1996; Georgia has been removed from the list.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, 202–606–0004.

SUPPLEMENTARY INFORMATION: FEHB law [5 U.S.C. 8902(m)(2)] mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires payment to all qualified providers in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest Department of Health and Human Services State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident population.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–22315 Filed 9–7–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36175; File No. SR–Amex–95–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Amex HMO Index

August 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed with the Commission Amendment No. 1 on August 24, 1995.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list for trading options on the Amex HMO Index ("HMO Index" or "Index"). In addition, the Amex proposes to amend Rule 901C, Commentary .01 to reflect that 90% of the Index's numerical index value will be accounted for by stocks that meet the current criteria and guidelines set forth in Rule 915. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style[4] stock index options on the HMO Index, an industry-specific index created by the Exchange.

Index Design

The HMO Index[5] consists of ten highly capitalized health care maintenance organization stocks and American Depository Receipts ("ADRs") traded on the Amex, the New York Stock Exchange ("NYSE"), or through the National Association of Securities Dealers Automated Quotations system and are reported national market system securities ("NASDAQ/NMS").[6] The components comprising the Index ranged in capitalization from $6.9 billion to $1.4 billion as of July 25, 1995. The total capitalization as of that date was $28 billion; the mean capitalization was $2.8 billion; and the median capitalization was $1.9 billion. The largest component accounted for 24.70% of the total weight of the Index, and the five largest components accounted for 72.56% of the total weight of the Index. On that same date, the smallest component accounted for 5.02% of the total weight of the Index.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Amex proposes to amend Amex Rule 904C to provide that position and exercise limits for options on the HMO Index shall be 5,500 contracts of the put class and the call class on the same side of the market. *See* Letter from Claire McGrath, Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated August 24, 1995.

[4] European-style options can only be exercised during a specified period before the options expire.

[5] The HMO Index is a new stock index established in 1995 by the Amex based on health maintenance organization stocks (or ADRs thereon).

Index Calculation

The Index will be calculated by Amex or its designee on a real-time basis using last-sale prices and will be disseminated every 15 seconds by the Amex to vendors over the Consolidated Tape Association's Network B. If a component share is not currently being traded on its primary market, the most recent price at which the share traded on such market will be used in the Index calculation.

The Index is calculated on "capitalization-weighted" basis, using the U.S. primary market prices for component securities, and current shares outstanding. For ADRs, the ADR price and total worldwide shares outstanding on an ADR-equivalent basis will be used. The value of the Index equals the current market value (based on U.S. primary market prices) of each of the Components in the Index divided by the current Index divisor. The Index divisor was initially calculated to yield a bench-mark value of 200.00 at the close of trading on May 31, 1995.

Maintenance

The Index will be maintained by Amex, and pursuant to Exchange Rule 901C(b) may at any time or from time to time substitute stocks, or adjust the number of stocks included in the Index, based on changing conditions in the HMO Industry. In the event the Exchange determines to change the number of Index component stocks to less than nine or greater than thirteen, the Exchange will submit a rule filing pursuant to Section 19(b) of the Act.

Additionally, the Exchange will ensure that at least 90% of the stocks in the Index, by weight, individually satisfy the Exchange's listing and maintenance criteria applicable to listing standardized options thereon. Currently, the Exchange represents that all of the Index's components are options eligible[7] and the subject of standardized options trading.

Expiration and Settlement

HMO Index options will have European-style exercise and will be A.M.-settled index options. Standard option trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply. The proposed options on the HMO Index will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

The Index value for purposes of settling a specific HMO Index option will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the NASDAQ system, the first reported sale price will be used. As trading begins in each of the Index's component securities, its opening sale price is captured for use in the calculation. Once all the component stocks have opened, the value of the Index is determined and that value is used as the settlement value for the option. If any of the component stocks does not open for trading in its primary market on the last trading day before expiration, then the prior day's last sale price is used in the calculation.

Eligibility Standards for Index Components

Amex Rule 901C specifies criteria for inclusion of stocks in an index on which options will be traded on the Exchange. In choosing among HMO stocks that meet the minimum criteria set forth in Rule 901C, the Exchange will focus on stocks that (1) have a minimum market value (in U.S. dollars) of at least $75 million,[8] (2) have an average monthly trading volume in the U.S. markets over the previous six month period of not less than 1 million shares (or ADRs), and (3) are traded on either the NYSE, Amex (subject to limitations of Rule 901C) or NASDAQ. Although the stocks currently selected for inclusion in the HMO Index meet or surpass the above additional criteria, the Exchange intends these additional criteria to be guidelines only and reserves the right to include stocks in the Index that may not meet these guidelines. All Index component securities currently have market capitalizations in excess of $1 billion, with the largest being $6.9 billion. Average monthly trading volume over the previous six months for the individual component stocks ranged from 3.5 million to 43.3 million shares. The five most heavily weighted components account for approximately 73% of the total Index weight, with the largest representing 24.7%.

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to option contracts based on the HMO Index. These rules cover issues such as surveillance, exercise prices, and position limits. The Index is deemed to be a Stock Index Option under Amex Rule 900C(a) and a Stock Index Industry Group under Rule 900C(b)(1). Under Rule 903C, the Exchange intends to list up to three near calendar months and two additional calendar months in the three month intervals in the January cycle. The Exchange proposes to codify in Amex Rule 904C that for HMO Index options, the position limit will be 5,500 contracts on the same side of the market.[9]

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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[6] The components of the Index are: United Healthcare Corp.; U.S. Healthcare Inc.; Humana Inc.; Wellpoint Health Networks, Pacificare Health Systems-B; Foundation Health Corp.; Value Health Inc.; Oxford Health Plans; Health Systems Intl. Inc.-A; and Healthsource Inc.

[7] The Amex's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) there must be a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their security holdings under Section 16(a) of the Act; (2) there must a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* Amex Rule 915, Commentary 01.

[8] In the case of ADRs this represents market value as measured by total world-wide shares outstanding.

[9] The Amex, selecting the 5,500 contracts position limit for the HMO Index, will not utilize the three tier mechanism set forth in Rule 904C for other narrow-based index options. *See* Amendment No. 1, *supra* note 3.

[10] 15 U.S.C. 78f(b)(5).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–Amex–95–32 and should be submitted by September 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22240 Filed 9–7–95; 8:45 am]

BILLING CODE 8010–01–M

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[11] 17 CFR 200.30–3(a)(12).

[Release No. 34–36172; File No. SR–NSCC–95–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Limiting the Use of Letters of Credit to Collateralize Clearing Fund Contributions

August 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 21, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–95–12) as described below. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change increases the minimum cash clearing fund contribution for those members that use letters of credit as clearing fund collateral and sets a limit on the amount of a member's required clearing fund contribution that may be collateralized with letters of credit.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC is seeking permanent approval of a proposed rule change that modifies the amount of a member's required clearing fund deposit that may be collateralized by letters of credit. Specifically, the proposed rule change increases the minimum cash contribution for any member that uses letters of credit from $50,000 to the greater of $50,000 or 10% of that member's required clearing fund deposit up to a maximum of $1,000,000. In addition, the rule change provides that only 70% of a member's required clearing fund deposit may be collateralized with letters of credit. The rule change also adds headings to the clearing fund formula section of NSCC's rules for purposes of clarity and includes other nonsubstantive drafting changes. The effect of the proposed rule change is to increase the liquidity of the clearing fund and to limit NSCC's exposure to unusual risks resulting from the reliance on letters of credit.

The current status of NSCC's clearing fund[4] as a result of the change in the required clearing fund deposit is that approximately 31.46% of the clearing fund is in cash, approximately 29.32% of the clearing fund is in securities, and approximately 39.22% of the clearing fund is in letters of credit.[5]

When NSCC first filed this change the impetus was to improve NSCC's liquidity resources by requiring additional deposits of cash and cash equivalents. Since that time, NSCC has obtained additional liquidity resources through a line of credit with a major New York clearinghouse bank. NSCC currently has a three hundred million dollar line of credit that can be used for liquidity purposes, and the letters of credit in the NSCC clearing fund are available as collateral for this line of credit. Accordingly, NSCC believes that

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The proposed rule change was originally filed on October 27, 1989, and was approved temporarily through December 31, 1990. Securities Exchange Act Release No. 27664 (January 31, 1990), 55 FR 4297 [File No. SR–NSCC–89–16]. Subsequently, the Commission granted a number of extensions to the temporary approval to allow the Commission and NSCC sufficient time to review and assess the use of letters of credit as clearing fund collateral. Most recently, the Commission extended temporary approval through September 30, 1995. Securities Exchange Act Release No. 34745 (September 29, 1994), 59 FR 50949 [File No. SR–NSCC–94–18].

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] These statistics are current as of July 31, 1995. Conversation between Anthony H. Davidson, Esq., NSCC, and Margaret R. Blake, Attorney, Division of Market Regulation, Commission (August 23, 1995).

[5] In October of 1989 when the Commission initially granted temporary approval of NSCC's proposal, letters of credit accounted for 76% of the total dollar value of required clearing fund deposits. By May 28, 1993, letters of credit accounted for less than 30%. During the period from June 1, 1992, to May 28, 1993, letters of credit accounted for an average of 30.49% of the total dollar value of required clearing fund deposits, and for no month during that period did the portion of letters of credit used for required clearing fund deposits rise above 34%. Letter from Karen L. Saperstein, Vice President/Director of Legal & Associate General Counsel, NSCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (June 10, 1993).

it has adequate liquidity resources and requests permanent approval of the change limiting the use of letters of credit to no more than 70% of a member's deposit.

NSCC believes that the proposal is consistent with its requirements under Section 17A of the Act[6] because it enhances NSCC's ability to safeguard securities and funds in its custody or under its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No new written comments have been solicited or received.[7] NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–95–12 and should be submitted by September 29, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22241 Filed 9–7–95; 8:45 am]

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[6] 15 U.S.C. 78q–1 (1988).

[7] Since the initial filing of the proposed rule change NSCC has received one letter of comment. In the letter Wedbush Morgan Securities, Inc. opposed NSCC's proposal because they believed it would increase the cost of posting collateral. Letter from Edward W. Wedbush, President, Wedbush Morgan Securities, Inc., to David F. Hoyt, Assistant Secretary, NSCC (November 9, 1989).

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36176; International Series Release No. 847; File No. SR–Phlx–95–43]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Customized Foreign Currency Options Transaction Size

August 31, 1995.

On June 21, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the minimum transaction size for customized foreign currency options ("Customized FCOs") from 200 to 100 contracts. Notice of the proposed rule change appeared in the **Federal Register** on July 12, 1995.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

On November 1, 1994, the Commission approved the Exchange's proposal to trade Customized FCOs.[4] The Exchange originally imposed a 300 contract minimum opening transaction size pursuant to Rule 1069(a)(6). Earlier this year, the Exchange reduced the minimum size of opening transactions in Customized FCOs to 200 contracts.[5] The Exchange believes, however, that 200 contracts is still too large for a significant segment of mid-sized corporations (*i.e.*, $1–10 billion in market capitalization) that wish to hedge their currency risk in a cost-effective manner using an exchange-traded Customized FCO. The Exchange, therefore, now proposes to reduce the minimum opening transaction size for Customized FCOs to 100 contracts. At the 100 contract level, this will still provide for substantial minimum opening transaction values for Customized FCOs involving all Phlx approved currencies.[6] Specifically, the values for opening transactions will range from a low of approximately $3.6 million for Customized FCOs based on the Australian dollar to a high of approximately $8.0 million for Customized FCOs based on the ECU.[7]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[8] in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the Commission believes that the proposed rule change is designed to make the Customized FCO market accessible to smaller corporate FCO users while maintaining the focus of this market towards institutional investors. As a result, the Commission believes that the proposal may serve to add liquidity to this market which would benefit all users of Customized FCOs.

Moreover, even with lowering the minimum opening transaction size to 100 contracts, the minimum value of an opening Customized FCO transaction involving any approved currency will be greater than $3 million.[9] The Commission believes that these levels are sufficient to ensure that the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35928 (June 30, 1995), 60 FR 35978 ("Exchange Act Release No. 35928").

[4] *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) ("Exchange Act Release No. 34925").

[5] *See* Securities Exchange Act Release No. 35464 (March 9, 1995), 60 FR 14043 (March 15, 1995).

[6] The currencies for which the Phlx is currently approved to trade FCOs are the Australian dollar, British pound, Canadian dollar, European currency unit ("ECU"), French franc, German mark, Japanese yen, Swiss franc, and U.S. dollar. Additionally, the Phlx has proposed to be able to trade Customized FCOs on the Italian lira and Spanish peseta. *See* Securities Exchange Act Release Nos. 35678 (May 4, 1995), 60 FR 24945 (May 10, 1995) (notice of proposal to trade Customized FCOs on the Italian lira), and 35677 (May 4, 1995), 60 FR 24941 (May 10, 1995) (notice of proposal to trade Customized FCOs on the Spanish peseta).

[7] Based on prevailing exchange rates as of May 16, 1995. *See* Exchange Act Release No. 35928, *supra* note 3.

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] *See supra* note 7 and accompanying text.

Customized FCO market continues to be used almost exclusively by institutional investors. As a result, the Commission believes that this proposal does not raise any regulatory concerns that were not adequately addressed by the Exchange when the Commission approved the trading of Customized FCOs.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Phlx–95–43) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22325 Filed 9–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26366]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 1, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 25, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Basic Investment, Inc. (31–908)

Basic Investments, Inc. ("Basic Investments"), P.O. Box 2065, Henderson, Nevada 89009, has filed an application for an order exempting it as a holding company under section 3(a)(3) from all provisions of the Act, except section 9(a)(2).

Basic Investments is primarily engaged in real estate development, sales and rental. All of its capital stock is owned by the following entities, in the proportions indicated parenthetically: Kerr-McGee Chemical Corporation (31%), Titanium Metals Corporation (32%), Pioneer Chlor Alkali Company, Inc. (32%), and Chemstar Incorporated (5%) (collectively, "Industrials"). Basic Investments owns all of the capital stock of three subsidiary companies, Basic Land, Inc. ("Basic Land"), Basic Water Company ("Basic Water"), and Basic Management, Inc. ("Basic Management").

Basic Management owns an electric power distribution system ("Distribution Network") solely for the benefit of the Industrials. This distribution system consists of a 13.8 kV and a 4.16 kV circuit, each approximately 6 miles in length. The Industrials purchase electric power from the Colorado River Commission ("River Commission"), which is transmitted by the River Commission to the Distribution Network. Basic Management distributes this power to the Industrials at certain facilities used by the Industrials in a commonly shared site in Nevada. Distribution costs, which in 1993 were approximately $509,000, are charged to the Industrials on a break-even basis.

Basic Management also develops and operates certain real estate properties in Nevada, the revenues from which totaled approximately $4.5 million in 1993. Additionally, Basic Management monitors a sewage system, which generated gross revenues in 1993 of under $100,000.

Basic Land's sole asset is a 50% partnership interest in Victory Valley Land Company, L.P., which is primarily engaged in the development and/or sale of certain real estate property in Nevada. Gross revenues from Victory Valley's operations allocable to Basic Land in 1993 were approximately $5.5 million. Basic Water owns and operates a water delivery system serving both the town of Henderson, Nevada and an industrial complex jointly used by the Industrials. Gross revenues from this water operation in 1993 were approximately $2.1 million.

Basic Management is a "public-utility company" within the meaning of the Act. Because of Basic Investment's ownership of Basic Management, Basic Investment is a "holding company" within the meaning of the Act. In 1993, Basic Investment's total utility revenue approximated 4% of its combined revenues.

Basic Investment states that it is primarily engaged in businesses other than that of a public utility and that it does not derive a material part of its income from Basic Management's operation of the Distribution Network. Basic Investment further states that, if such revenue were deemed to be material, Basic Investment nonetheless owns all of Basic Management's outstanding capital stock.

Central and South West Corporation, et al. (70–8423)

Central and South West Corporation ("CSW"), a registered holding company, CSW International, Inc. ("CSWI"), a CSW Energy, Inc. ("Energy") (collectively "Applicants"), both wholly owned nonutility subsidiary companies of CSW, all located at 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Act and rules 43, 45, 53, 83, 86, 87, 90 and 91 thereunder.

By order dated November 3, 1994 (HCAR No. 26156) ("Order"), the Commission authorized the Applicants, among other things, to: (1) Organize CSWI and other special purpose subsidiaries ("Project Parents"), to invest in exempt wholesale generators ("EWGs"), and foreign utility companies ("FUCOs"), up to $400 million for which there is recourse to CSW ("Aggregate General Authority"), and up to $600 million of nonrecourse debt; and (2) fund such investments from time to time through issuances by CSW, CSWI and/or the Project Parents, including, without limitation, CSW de Mexico S.A. de C.V. ("CSWdM") and CSW de Mexico Servicios S.A. de C.V. ("CSWdM Servicios"), of stock, partnership interests, promissory notes, commercial paper or other debt or equity securities.

The Applicants now propose to: (1) Increase their authorization under the Aggregate General Authority to an amount equal to 50% of CSW's "consolidated retained earnings" as determined in accordance with rule 53(a)(1); and (2) increase the aggregate amount of nonrecourse debt securities that may be issued by CSWI and/or Project Parents (including, without limitation, CSWdM and CSWdM Servicios) to third parties to $3 billion under the terms and conditions specified in the Order. In addition, the Applicants propose to delete the limitations on the amount of nonrecourse debt that may be denominated in foreign currency.

The Cincinnati Gas and Electric Company (70–8669)

The Cincinnati Gas and Electric Company "(CG&E"), a wholly owned public-utility subsidiary company of CINergy Corp. ("CINergy"), a registered holding company, both located at 139 East Fourth Street, Cincinnati, Ohio 45202, has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 thereunder.

CG&E's amended articles of incorporation ("Articles") currently provide that, without the consent of the holders of not less than a majority of the total number of shares of preferred stock of all series then outstanding, CG&E shall not issue or assume any securities representing unsecured debt (other than for purposes of refunding outstanding unsecured indebtedness or redeeming or otherwise retiring outstanding shares of stock ranking prior to the preferred stock with respect to the payment of dividends or upon the dissolution, liquidation or winding up of CG&E) if, immediately after such issue or assumption, the total outstanding principal amount of all securities representing unsecured debt would exceed 20% of the aggregate of: (1) the total principal amount of all then outstanding secured debt of CG&E; and (2) the capital and surplus of CG&E, as stated on CG&E's books ("20% Limitation").

CG&E proposes to submit to the holders of the outstanding shares of preferred stock of all series, and to CINergy, as the sole holder of all the outstanding shares of CG&E common stock, a proposal ("Proposal") to amend the Articles to eliminate the 20% Limitation. Approval of the Proposal requires the affirmative vote of the holders of not less than two-thirds of the total number of shares of preferred stock of all four series, voting together as one class, and an affirmative two-thirds vote from CINergy as the sole common stock holder. CINergy has informed CG&E that it will vote in favor of the Proposal.

In the event the Proposal fails to receive the requisite affirmative vote, CG&E proposes to seek approval of an alternative proposal amending the Articles to authorize CG&E to issue or assume securities representing unsecured indebtedness in excess of the 20% Limitation through December 1, 2005. Approval of the alternative proposal requires the same affirmative vote as the Proposal.

CG&E proposes to submit the above proposals for consideration and action at a special meeting of stockholders planned to be held on or about November 16, 1995, and, in connection therewith, to solicit proxies from the holders of its capital stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22324 Filed 9–7–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of International Transportation and Trade; Transportation Science and Technology Implementation Arrangement

ACTION: Private sector participation in the U.S. Department of Transportation and Japan's Ministry of Transport Transportation Science and Technology Implementing Arrangement.

BACKGROUND: The Department of Transportation Secretary Federico Peña and his former counterpart, Japan's Minister of Transport Shigeru Ito, signed on February 10, 1994, a Transportation Science and Technology Implementing Arrangement to promote mutually beneficial cooperation in transportation technology. The Implementing Arrangement is designed to establish projects between the U.S. and Japan in all modes of transportation, including intermodalism, safety, environment, transportation for the handicapped and elderly, information-related technology, and other areas as mutually agreed.

The First Annual Meeting of U.S.-Japan transportation experts convened on October 26–27, 1994, in Tokyo, Japan, to discuss/launch project activity on areas relating to all fields of transportation. At the conclusion of the meeting, both parties agreed to seven priority areas for cooperation. These areas are methods to evaluate new design of tankers (oil spill prevention from tankers); marine exhaust emissions; high speed rail transportation; magnetic levitation in rail transport; advanced tunneling technology; transport measures for the mobility handicapped; and intermodalism including an automatic transportation equipment identification system. In addition to the seven priority projects already agreed upon, the United States and Japan are exploring another proposed initiative on emergency management systems/disaster prevention.

SUMMARY: As the Department prepares for the Second Annual Meeting of U.S.-Japan Transportation Experts, this notice sets forth an inquiry to U.S. public and private transportation related companies, research establishments, and academics who are interested in participating in any of the priority areas identified above. Both the U.S. Government and the Government of Japan are eager to have their respective private sector transportation and related technology companies contribute to and benefit from the cooperative exchange.

FOR GENERAL INFORMATION CONTACT: Ms. Phyllis Davis, Office of International Transportation and Trade, telephone (202) 366–9514, U.S. Department of Transportation, 400 7th Street SW., Room 10302, Washington, DC 20590.

SEND INFORMATION TO: Ms. Phyllis Davis, Office of International Transportation and Trade, telephone (202) 366–9514, U.S. Department of Transportation, 400 7th Street SW., Room 10302, Washington, DC 20590.

DEADLINE FOR SUBMISSION OF INFORMATION: Please provide the Department a written summary of the project(s) you may wish to participate in by COB September 29, 1995.

Dated: September 1, 1995.

Nancy K. MacRae,

Deputy Director, Office of International Transportation and Trade.

[FR Doc. 95–22329 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: August 31, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202,

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[10] *See* Exchange Act Release No. 34925, *supra* note 4.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Gemma deGuzman, Information Resource Management (IRM) Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on August 31, 1995:

DOT No: 4110
OMB No: 2137–0052
Administration: Research and Special Programs Administration (RSPA)
Title: Incident and Annual Reports for Gas Pipeline Operators
Need for Information: 49 CFR Section 1915 requires each gas pipeline operator give telephonic notice to an incident at the earliest practicable moment following discovery.
Proposed Use of Information: This information will be used by RSPA to identify significant failures which may require investigation by the Office of Pipeline Safety Enforcement Division or a state agency pursuant to a certification under action 5(a).
Frequency: Once a year and on occasion
Respondents: Gas Pipeline Operators
Number of Respondents: 2,700
Burden Estimate: 7,023 hours
Form(s): DOT 7100.1, 7100.2, 7100.2–1
Average Burden Hours Per Response: 2.6 hours

DOT No: 4111
OMB No: 2115–0076
Administration: United States Coast Guard
Title: Security Zones, Regulated Navigation Areas and Safety
Need for Information: Under (1) Executive Order 10173, gives Coast Guard the authority to prescribe procedure for establishing security zones on areas of land, water, or land and water, (2) The Port and Tanker Safety Act, Coast Guard has the authority to prescribe special regulations to control vessel traffic in areas determined to be hazardous, and (3) The Ports and Waterways Safety Act, Coast Guard has the authority to prescribe regulation to allow for the designation of safety zones.
Proposed Use of Information: The information will be used by the Coast Guard to assess the need to establish security zones, safety zones or regulated navigation areas.
Frequency: On occasion
Burden Estimate: 929 hours
Respondents: Waterway users
Number of Respondents: 743
Form(s): None
Average Burden Hours Per Response: 1 hour and 25 minutes

DOT No: 4112
OMB No: 2133–0506
Administration: Maritime Administration (MARAD)
Title: Merchant Marine Medals and Awards
Need for Information: Required by Public Law 100–324, this information collection provides a method of documenting requests for merchant marine medals and awards.
Proposed Use of Information: The information received is used by MARAD personnel to assist in processing and verifying requests for seamen's service awards.
Frequency: On occasion
Burden Estimate: 3,000 hours
Respondents: Crew members of United States ships
Number of Respondents: 3,000
Form(s): None
Average Burden Hours Per Response: 1 hour

DOT No: 4113
OMB No: 2115–0553
Administration: United States Coast Guard
Title: 33 CFR 140.15 Equivalents and Approved Equipment
Need for Information: Under 33 CFR Subchapter N, Coast Guard will implement the best available and safest technological concept to comply with Section 21 of the Outer Continental Shelf (OCS) Land Act.
Proposed Use of Information: This information will be used by the Coast Guard for comparison with existing standards or procedures to ensure that an equivalent level of safety is maintained as provided for in the regulations.
Frequency: On occasion
Burden Estimate: 100 hours
Respondents: Owners, operators, equipment manufacturers and subcontractors
Number of Respondents: 10
Form(s): None
Average Burden Hours Per Response: 10 hours

DOT No: 4114
OMB No: 2110–0536
Administration: Federal Aviation Administration
Title: Implementation of the Equal Access to Justice Act
Need for Information: 14 CFR Subpart B, Part 14.10 implements procedures for the application of awards under the Equal Access to Justice Act (EAJA). The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to administrative proceedings before government agencies and who prevail over the government.
Proposed Use of Information: This information will be used to determine whether the applicant is eligible to receive an award under the EAJA.
Frequency: As required
Burden Estimate: 210 hours annually
Respondents: Individuals and businesses
Number of Respondents: 21
Form(s): None
Average Burden Hours Per Response: 5 hours

DOT No: 4115
OMB No: 2105–0517
Administration: Office of the Secretary
Title: Amendment to Transportation Acquisition Regulation (48 CFR)
Need for Information: 48 CFR 1213.70; 1237.70; 1252.237–71; and 1252.237–72 will require contracting officers to obtain and evaluate, qualification or other pertinent information when it is necessary to determine whether offerors have the capability to perform services under a proposed contract.
Proposed Use of Information: This information will be used by OST to evaluate offerors' capability statements and data submitted per the requirement of the solicitation or request for quotation.
Frequency: On occasion
Burden Estimate: 57,167 hours
Respondents: Individuals or households, Businesses or other for-profit, small businesses or organizations
Number of Respondents: 792
Form(s): None

Average Burden Hours Per Response: 1 hour

Issued in Washington, D.C. on August 31, 1995.

Jim Harrell,

Computer Specialist, Information Resource Management (IRM) Strategies Division.

[FR Doc. 95–22199 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cincinnati/Northern Kentucky International Airport, Covington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 10, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert F. Holscher, Director of Aviation of the Cincinnati/Northern Kentucky International Airport at the following address: Kenton County Airport Board, Second Floor, Terminal 1, Cincinnati/Northern Kentucky International Airport, 2939 Terminal Drive, Hebron, Kentucky 41048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kenton County Airport Board under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Planner, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301. (901) 544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 31, 1995, FAA determined that the application to impose and use the revenue from a PFC submitted by the Kenton County Airport Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: February 1, 1996
Proposed charge expiration date: August 31, 2000
Total estimated PFC revenue: $117,182,000

Brief description of proposed project(s):

Impose and Use

1. Noise Compatibility Land Use Management Measures (Phase 2).

A. Voluntary Acquisition in the 65/75 LDN, Northwest.

B. Purchase Assurance/Sound Insulation in the 65 to 75 LDN, Southeast.

C. Purchase Assurance/Sound Insulation in the 65 to 75 LDN, Southwest.

2. Runway 18R/36L Extension-1,500 Feet and Related Rehabilitation. Construction of a 1,500 foot extension to the north end of Runway 18R/36L and parallel taxiway and extensive rehabilitation and/or reconstruction of the entire existing 9,500-foot runway and existing taxiways and connectors.

3. Debt Service Cost. This project represents debt service cost related to the issuance of proposed revenue bonds which are to be backed by PFC revenue.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

1. FAR Part 121 Supplemental Operators which operate at the airport without an operating agreement with the Board and enplane less than 1,500 passengers per year.

2. FAR Part 135 on-demand air taxi/commercial operators, both fixed wing and rotary.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cincinnati/Northern Kentucky International Airport.

Issued in Memphis, Tennessee, on August 31, 1995.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 95–22365 Filed 9–7–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Issuance of Final Determination Concerning Electrical Raceways

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of electrical raceways which are to be offered to the United States Government under an undesignated government procurement contract. The final determination found that based upon the facts presented, the country of origin of electrical raceways which are manufactured in Canada from Canadian and foreign components is Canada.

DATES: The final determination was issued on August 24, 1995. Any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of September 8, 1995. A copy of the nonconfidential portions of this final determination will be published in the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Anthony A. Tonucci, Attorney-Advisor, Office of Regulations and Rulings (202) 482–7073.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 24, 1995, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), Customs issued a final determination concerning the country of origin of electrical raceways which are to be offered to the United States Government under an undesignated government procurement contract. The U.S. Customs ruling number is HQ 559089. This final determination was issued at the request of Wiremold Canada, Inc., under procedures set forth at 19 CFR 177 Subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that based upon the facts presented, foreign materials consisting of stainless steel, aluminum sheeting and other small parts, which are further processed and assembled into electrical raceways in Canada, are substantially transformed as a result of the Canadian operations.

Accordingly, the country of origin of the electrical raceways is Canada. This document gives notice pursuant to section 177.29, Customs Regulations (19 CFR 177.29), of that final determination. Pursuant to 19 CFR 177.30, any party-at-interest, as defined at 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of (date of publication in the **Federal Register**). Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that Customs reexamine the matter anew and issue a new final determination.

Dated: August 24, 1995.

Harvey B. Fox,

Director, Office of Regulations And Rulings.

[FR Doc. 95–22254 Filed 9–7–95; 8:45 am]

BILLING CODE 4820-02-P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 174
Friday, September 8, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 1:00–2:00 p.m.

PLACE: Lehmann Brothers.

DATE: Monday, September 18, 1995.

STATUS: Open.

Agenda

1:00 p.m.
  Chairman's Report
1:15 p.m.
  President's Report
1:30 p.m.
  Executive Session (Closed)

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,

President.

[FR Doc. 95–22459 Filed 9–6–95; 11:42 am]

BILLING CODE 6116-01-P-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 14, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–22466 Filed 9–6–95; 1:09 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, September 14, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–22467 Filed 9–6–95; 1:09 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10: a.m., Thursday, September 21, 1995.

PLACE: 2033 K St. N.W., Washington, D.C. Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Final rules on Part 36, Contract Market Transactions.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–22468 Filed 9–6–95; 1:09 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, September 22, 1995.

PLACE: 2033 K St. NW., Washington, DC. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

FR Doc. 95–22469 Filed 9–6–95; 1:09 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 28, 1995.

PLACE: 2033 K St., NW., Washington, DC. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–22470 Filed 9–6–95; 1:09 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, September 29, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–22471 Filed 9–6–95; 1:09 pm]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, September 5, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following

Matters relating to the Corporation's supervisory activities.

Recommendation regarding an administrative enforcement proceeding.

Personnel matters.

Incalling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A) (ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A) (ii), and (c)(9)(B)).The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: September 5, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Assistant Executive Secretary.

[FR Doc. 95–22444 Filed 9–6–95; 10:48 am]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 13, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–22439 Filed 9–6–95; 10:17 am]

BILLING CODE 6210–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE; 10:00 a.m., Wednesday, September 20, 1995.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street NW., Suite 800, Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202/376–2441.

Agenda

I. Call to Order
II. Approval of Minutes:
  May 25, 1995, 17th Annual Meeting
III. Budget Committee Report:
  July 21, 1995, Meeting
  a. Proposed FY 1995 Final Budget Reallocations
  b. Proposed FY 1996 Budget Request
  c. Proposed FY 1997 Office of Management and Budget Submission
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Adjourn

Jeffrey T. Bryson

General Counsel/Secretary.

[FR Doc. 95–22440 Filed 9–6–95; 10:18 am]

BILLING CODE 7570–01–M

Corrections

Federal Register
Vol. 60, No. 174
Friday, September 8, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

RIN 0970–AB58

Title IV–B and Title IV–E of the Social Security Act: Data Collection for Foster Care and Adoption

Correction

In rule document 95–19679 beginning on page 40505 in the issue of Wednesday, August 9, 1995, make the following correction:

Appendix A—[Corrected]

On page 40507, in the third column, in Section I, in the second line, element "XIII." should read "XII."

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D–0131]

"Point to Consider in the Manufacture and Testing of Therapeutic Products for Human Use Derived From Transgenic Animals (1995);" Availability

Correction

In notice document 95–20964 appearing on page 44036 in the issue of Thursday, August 24, 1995, make the following correction:

In the third column, above the FR Doc. line, the title line should appear as follows:

"Acting Deputy Commissioner for Policy."

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

Correction

In notice document 95–21531 beginning on page 45208 in the issue of Wednesday, August 30, 1995 make the following correction:

On page 45208, in the third column, in the **DATES** section, in the second line "August 29, 1995" should read "September 29, 1995".

BILLING CODE 1505–01–D

federal register

Friday
September 8, 1995

Part II

Department of Agriculture

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Administration of Timber Export and Substitution Restrictions; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AB22

Sale and Disposal of National Forest System Timber; Administration of Timber Export and Substitution Restrictions

AGENCY: Forest Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: This final rule implements the Forest Resources Conservation and Shortage Relief Act of 1990 (Act). It defines certain terms necessary to facilitate uniform compliance; prohibits transfer of unprocessed private timber for export by a person who possesses or acquires unprocessed Federal timber; prohibits export of such unprocessed private timber by a third or successive parties; prescribes procedures for reporting the acquisition and disposition of Federal and private timber, including transfers; prescribes procedures for identifying unprocessed Federal and private timber requiring domestic processing; establishes procedures for assessing civil and criminal penalties and applying administrative remedies for violations of the Act, its implementing regulations, and contracts issued under the Act; and authorizes Regional Foresters' entry into cooperative agreements with other agencies.

This comprehensive rule incorporates, with some changes, the provisions of the interim rule published November 20, 1990 (55 FR 48572) which established sourcing area procedures; continued surplus species determinations; and continued the existing reporting procedures applicable to timber sale contracts awarded prior to August 20, 1990. This comprehensive rule also incorporates the final rule of limited scope, published December 19, 1991 (56 FR 65834), which: Continued the existing reporting procedures applicable to timber sale contracts awarded prior to August 20, 1990; amended the interim rule for sourcing area disapproval and review procedures; and established application procedures for persons applying for a share of the limited amount of unprocessed timber originating from National Forest System lands in the State of Washington that are exempted from the prohibition against indirect substitution. This comprehensive rule also establishes the specific quotas for indirect substitution in Washington State. This comprehensive rule fully implements the Act, except for the determination of surplus species, pursuant to 16 U.S.C. 620a(b). The intended effect of this rule making is to conserve public timber resources and help relieve domestic timber supply shortages by implementing the provisions of the Forest Resources Conservation and Shortage Relief Act of 1990.

Given the scope of this final, comprehensive rule making, the Department is seeking public comment on any "fine tuning" of the regulations that may be necessary for more efficient implementation. This request for public comment in no way affects the finality of this rulemaking.

DATES: This rule is effective September 8, 1995. Comments must be received in writing by October 10, 1995.

ADDRESSES: Send written comments to Jack Ward Thomas, Chief (2400), Forest Service, USDA, P0 Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this final rule in the Office of the Director, Timber Management Staff, Forest Service, USDA, 201 14th Street SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. Parties wishing to view comments are encouraged to call ahead ((202) 205–0893) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

The Forest Resources Conservation and Shortage Relief Act of August 20, 1990 (16 U.S.C. 620, *et seq.*), hereafter referred to as the Act, prohibits the export of unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States and restricts direct and indirect substitution of unprocessed Federal timber for timber exported from private lands. Prior to the passage of the 1990 Act, the prohibitions against exporting unprocessed timber harvested from Federal lands had been renewed annually by the Appropriations Act for Interior and Related Agencies, under which Forest Service programs are funded. The Act replaces this annual renewal requirement for contracts awarded on or after the date of enactment of the Act. The specific limitations established in the new Act are described under the applicable regulatory sections.

To meet certain statutory deadlines, the Forest Service published a notice of statutory restrictions in the **Federal Register** on September 17, 1990, (55 FR 36123) followed by publication of several rules, a summary of which follows:

1. An interim rule was published November 20, 1990, (55 FR 48572) to comply with statutory requirements which took effect before this final rule could be issued. The interim rule contained definitions necessary to facilitate uniform compliance, procedures for certifying exemption of a person from the prohibitions against substitution if that person had exported unprocessed private timber in the previous 24 months, and sourcing area application procedures. It also continued the status of existing surplus species until the Secretary could receive public comments and make new surplus species determinations, and continued reporting procedures in effect for contracts awarded prior to enactment of the Act.

2. A proposed comprehensive rule was published January 29, 1991, (56 FR 3354) to fully implement the Act. This proposed rule included procedures for monitoring compliance with the Act and enforcing the prohibition against indirect substitution. Also included were procedures for reporting the acquisition and disposition of unprocessed timber, for documenting transfers, for identifying and marking Federal and private timber required to be domestically processed, procedures for assessing civil and criminal penalties and applying administrative remedies for violations of the Act; revised regulations for debarment and contract suspension, definitions necessary to assure uniform compliance with the Act, provisions for cooperating with other agencies, and procedures for determining surplus species.

3. A proposed rule of limited scope was published January 29, 1991, (56 FR 3375) to implement certain provisions required to take effect before this final comprehensive rule could be adopted. The proposed rule contained regulations for continuing the reporting requirement in timber sale contracts awarded prior to August 20, 1990, establishing sourcing area disapproval and review procedures, and establishing application procedures for indirect substitution prohibition exceptions for persons who acquired unprocessed timber from National Forest System lands in the State of Washington. The final rule of limited scope was issued December 19, 1991 (56 FR 65834).

4. A final rule delegating the Secretary of Agriculture's authority to make the final decision on sourcing area applications received by December 20, 1990 to the Department's Office of Administrative Law Judges (OALJ) was published April 5, 1991 (56 FR 14009);

5. A final rule was published on May 14, 1991 (56 FR 22105), amending the Department's rules of practice governing formal adjudicatory proceedings instituted by the Secretary under various statutes to include log export and substitution disputes arising from the Act.

6. A final rule was published on April 2, 1992 (57 FR 11261), which delegates the Secretary's authority to adjudicate sourcing area applications received after December 20, 1990 to the Department's Office of Administrative Law Judges and the Judicial Officer.

7. A final rule was published on February 24, 1994 (59 FR 8823), which establishes the procedures for adjudicating and reviewing sourcing areas.

This final rule, in combination with the final rule published December 19, 1991, (56 FR 65834) completes the implementation process, except for the determination of surplus species pursuant to 489(b) of the Act (16 U.S.C. 630a(b)).

Contents of comprehensive rule. This final rule contains the following:

1. Requirements of bidders concerning exports;
2. Suspension and debarment of timber purchasers;
3. Definitions necessary to fully implement the Act;
4. Prohibition against export of unprocessed Federal timber;
5. Prohibitions against the transfer of unprocessed private timber for export by a person who also holds or acquires unprocessed Federal timber, and prohibitions against export of unprocessed private timber that requires domestic processing;
6. Sourcing area application procedures;
7. Incorporation of sourcing area disapproval and review procedures;
8. Incorporation of procedures for a non-manufacturer to apply for a waiver of the prohibition against substitution in the preceding 24 months if the person certified by November 20, 1990 that he/she would cease exporting by February 20, 1991;
9. Procedures for reporting the acquisition and disposition of Federal timber and procedures for documenting transfers of unprocessed Federal and private timber requiring domestic processing;
10. Procedures for identifying unprocessed timber requiring domestic processing;
11. Civil and criminal penalties for violations of the Act or regulations issued under the Act, and procedures for assessment of civil and criminal penalties for violations of the Act or regulations issued under the Act;
12. Administrative remedies for violations of the Act or its implementing regulations, or contracts issued under the Act;
13. Authority for Regional Foresters to enter into cooperative agreements with other agencies;
14. Continuation of surplus species determinations pending a separate rule making; and
15. Incorporation of the rule regarding the indirect substitution exception in Washington State.

Summary of Comments and Responses

The Forest Service requested comments on the interim rule published November 20, 1990. The comment period for the interim rule closed December 20, 1990. Subsequently, as previously noted, the Forest Service published a proposed comprehensive rule to implement the remaining provisions of Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) in the **Federal Register** on January 29, 1991 (56 FR 3354). The comment period on the proposed rule closed March 15, 1991. The comments received on the interim rule have been considered along with those received on the proposed rule.

Comments were received from 89 respondents who made numerous comments relating to 17 separate subjects. All relevant comments have been given full consideration in adoption of this final rule. Comments were received from 66 timber sale purchasers; 12 timber industry associations; three timber trade associations; two environmental organizations; two law firms; one private citizen; one forestry and marketing consultant; one port district; and one Federal agency, the U.S. Department of the Interior, Bureau of Land Management. With the exception of Bureau of Land Management, all respondents were from the western United States or from associations and entities representing western interests.

General Comments

Most respondents expressed general support for the Act and agreed that aggressive enforcement of the export restrictions on unprocessed Federal timber was necessary. However, most respondents also strongly opposed, as being excessively costly and unnecessarily burdensome, the proposed procedures for reporting and record keeping and for identifying and marking unprocessed Federal and private timber. Many of these respondents offered constructive suggestions to reduce these costs and burdens. In addition, approximately half of the comments received from all respondents requested or suggested clarifications of proposed procedures and definitions of terms used in various sections of the proposed rule.

The proposed rule also requested nominations of surplus species, and specifically requested comments on the current determinations that Alaska Yellow Cedar and Port Orford Cedar are surplus to domestic manufacturing needs. Several respondents expressed opposition to continuing the determination that these species are surplus. Two respondents requested that Pacific Yew be considered surplus, and one requested that Western/Rocky Mountain Juniper be considered surplus. A separate proposed rule making will address surplus species.

Other respondents expressed strong opposition to the exporting of unprocessed timber from any source—Federal, other public and private lands—and to all forms of substitution of Federal and other public timber for exported private timber.

Comments by Section of the Proposed Rule

The following is a section-by-section summary of comments and the Department's responses to these in the final rule.

Amendment of Title 36, Part 223, Subpart B

This subpart provides the policies and procedures for planning, preparing, appraising, advertising, bidding, awarding and administering timber sale contracts. No comments were received specifically addressing these topics, however upon review of comments addressing the reporting requirements in the proposed rule, it became apparent that the requirements of prospective bidders for reporting prior export activities in the existing rule at § 223.87 were made obsolete by the passage of the new Act and the publication of this final rule. These reporting requirements have been removed in this final rule. This rule substitutes new reporting requirements that are consistent with the Act for contracts issued on or after August 20, 1990.

Section 223.87 Requirements of Bidders Concerning Exports

Section 223.87 in the existing rule required bidders to submit with their bid for National Forest timber, as a condition of bid acceptance, a certification and report listing the disposition of all National Forest timber harvested in the previous calendar year; the amount of timber harvested by the bidder from private lands within the bidder's tributary area that was exported or sold for export during the previous calendar year; the locations of manufacturing facilities where the unprocessed timber was expected to be delivered; and the bases of historic purchase and export quotas. Further, § 223.87 required the bidder to notify the Forest Service of changes in destination of unprocessed timber after award of the contract. This report and certification were done on Forest Service form number FS–2400–43 (OMB No. 0596–0021) to be submitted with the completed bid form. If the FS–2400–43 form was not included with the bid or was not properly completed and signed, the bid could be declared nonresponsive.

Section 223.87 of this final rule would eliminate this certification and reporting requirement and the use of form FS–2400–43. Section 223.87 requires, for a bid to be considered responsive, a certification that (1) the bidder is eligible to acquire unprocessed timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States, in accordance with the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) and its implementing regulations, and (2) the bidder is in compliance with the provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 and its implementing regulations. The reporting requirements in the current bid form are required in the transfer documents and annual report provisions in this rule, so there is no need to collect the information in the bid form. The certification statement is presently part of Forest Service bid form No. FS–2400–14 (1/94). The Office of Management and Budget approved the use of a bid form containing the certification statement regarding compliance through February 28, 1997, and assigned it Control Number 0596–0066. The current bid form was recently revised to add the sentence about eligibility to purchase National Forest System timber consistent with the Act and the regulations. If the bidder is an exporter of unprocessed timber originating west of the 100th meridian in the contiguous 48 States, eligibility includes having an exemption from the prohibition against substitution that would allow the acquisition of unprocessed Federal timber, pursuant to the Forest Resource Conservation and Shortage Relief Act of 1990 and its implementing regulations.

Amendment of Title 36, Part 223, Subpart C

This subpart provides policies and procedures governing suspension and debarment of purchasers of National Forest System timber. It provides for listing of debarred and suspended purchasers and sets forth the causes and procedures for debarment and suspension and for determining the scope, duration, and treatment to be accorded to purchasers listed as debarred or suspended. No comments were received on proposed §§ 223.130, 223.131, 223.133, 223.135, 223.137, and 223.139. Except for minor changes to the text to improve technical and editorial clarity, the Department adopts these sections as proposed.

Section 223.136 Debarment

Section 223.136(b) of the current regulations establishes the effect of a proposed debarment on purchasers of Forest Service timber sale contracts. The current regulations state that, upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, the person proposed for debarment shall not be allowed to bid on or receive new contracts or be granted contract term extensions.

The proposed rule specified that, upon issuance of a notice of proposed debarment, persons violating the Act or any contract or regulation issued under the Act, would not be allowed to enter into any contract to purchase unprocessed timber originating from Federal lands and would not be allowed to take delivery of unprocessed Federal timber from another party who purchased such timber until the debarment proceedings were completed.

Comment. Five respondents stated that it would be unfair if debarment were implemented without prior hearings or opportunity to comment. These respondents were concerned that the affected parties would not have the opportunity to respond to the causes upon which the proposed debarment action was based. Several respondents suggested that such a deprivation would be a violation of the due process clause of the Constitution.

Response. This proposed addition, which prohibits a person proposed for debarment from acquiring timber originating from Federal lands would not alter the procedures for debarment set forth in § 223.138, which establishes the process that Debarment Officers and affected individuals must follow when debarment is being considered. Thus, affected parties would continue to have the opportunity to present information and arguments in opposition to, or in mitigation of the proposed debarment prior to the final debarment determination.

The standard of evidence for debarment (§ 223.138(b)(6)) is a preponderance of the evidence. This standard is deemed met where the cause for debarment is conviction or civil judgment. Where the evidence is sufficient to issue a notice of proposed debarment, good cause exists to protect Government and public interests by not initiating or extending further business dealings with that purchaser.

Further, the process prescribed in the rules provides the due process required by the Constitution. This process is consistent with Government-wide policies and procedures and has been upheld upon judicial review. A trial-type hearing is not required prior to a final debarment decision, unless a dispute of a material fact is raised. Further, the effects of a proposed debarment are limited by the prescribed time for issuance of a final debarment decision. Accordingly, the Department is adopting the revision to § 223.136 as proposed.

Comment. Several respondents suggested that any limitation of rights on a purchaser's existing contracts be deferred until completion of debarment proceedings.

Response. The effect of a proposed debarment is that a purchaser is precluded from consideration of bids on future timber sale contracts, award of future contracts, approval of third party agreements, or extensions of existing contracts, except pursuant to the terms of a contract term adjustment. A purchaser proposed for debarment pursuant to § 223.137(g) is precluded from entering into any contract to purchase unprocessed timber from Federal lands and is also precluded from taking delivery of Federal timber purchased by another person.

The rules do not limit a purchaser's rights on any existing contracts, except with respect to contract extensions. The Forest Service is not obligated to grant contract extensions. There may be situations when refusal to extend the duration of an existing timber sale contract is necessary to protect the Government's interest. If such protective action is not needed, the rule provides that the Chief of the Forest Service or authorized representative may determine that there is a compelling reason to extend an existing contract's term. Therefore, the final rule retains the provision relating to extending the duration of an existing timber sale contract.

Comment. One respondent suggested that purchasers are subject to substantial penalties once a notice of debarment is issued. This respondent asserted that presumptions of guilt or wrongdoing are made prior to an adjudication of a person's rights and that such a system constitutes de facto debarment, is punitive and is impermissible.

Response. The Department realizes that debarment is a serious action. Debarment is, however, a separate administrative action that is not to be confused with criminal, civil or other administrative proceedings that may have punitive effects. Debarment is taken only to protect the Government's and the public's interests and, as a matter of law, is not taken with the intent to punish. Debarment actions are taken only as a means of ensuring that the Government only does business with responsible persons.

The effects of a proposed debarment, by virtue of the process that has been put into place, are not punitive. Once causes for debarment have been established sufficient to issue a notice of proposed debarment, the Government is justified in not conducting further business dealings with a person proposed for debarment, except on existing contracts. The Department also is authorized under the Act to preclude any person who violates the Act, or any regulation or contract issued under the Act from taking delivery of Federal timber purchased by another party.

The due process required by the Constitution is contained in the debarment procedures and is sufficient to avoid penalizing persons proposed for debarment. The procedures contained in the rule provide firm deadlines for the debarring official's final debarment determination. The procedures also allow an opportunity to respond to the proposed debarment, an opportunity for a fact-finding hearing when a dispute over a material fact is raised, and the procedures allow for reconsideration of the debarring official's final debarment determination, as well as appeal to the U.S. Department of Agriculture Board of Contract Appeals (36 CFR 223.138). The effect of a proposed debarment is not punitive. Therefore, except for minor changes to the text to improve technical and editorial clarity, the Department adopts this section as proposed.

Comment. One respondent suggested that the effect of a proposed debarment is the same as debarment and therefore, a purchaser is automatically debarred based on the notice of proposed debarment.

Response. As stated previously, a notice of proposed debarment has the effect of excluding persons from further business dealings pending a final debarment decision. Again, where evidence is sufficient to issue a notice of proposed debarment, good cause exists to protect the Government and public interests by not initiating or extending further business dealings during the period of proposed debarment.

Further, the rules allow persons to submit, either in person or in writing, or through a representative, information and argument in opposition to the proposed debarment. Such persons also may submit evidence of mitigating factors and arguments concerning the imposition, scope, duration or effects of a proposed debarment or debarment. Based on such information, the debarring official may determine that causes for debarment do not exist, that only certain persons or divisions of an organization or company should be debarred, or that a period of less than the maximum allowed may be appropriate. If the information and arguments in opposition, or the mitigating factors are not persuasive, the period of debarment may be effective retroactively from the date of the notice of proposed debarment, that is, a person would not necessarily be proposed for debarment for a period of time and then have an additional three (3) to five (5) year debarment period added on to the time that has already passed during the period of the proposed debarment; any period of debarment may encompass the period of proposed debarment.

Comment. One respondent asserted that some companies or organizations may have separate divisions in various locations and that debarment may not be appropriate for all divisions of a company or its affiliates.

Response. There may be some situations where debarment of all organizational elements of a company or its affiliates would be inappropriate. The rules provide that persons may provide evidence of mitigating factors demonstrating that certain organizational elements or affiliates should not be debarred. However, unless specifically limited, debarment applies to all divisions or organizational elements of a purchaser and any affiliate who is specifically named, given written notice and an opportunity to respond. The rule allows an affiliate to challenge the basis for its debarment, not just its status as an affiliate. *See* § 223.138(b)(1).

Comment. One individual suggested the Forest Service should help parties understand the intent and explain unclear aspects of the rule and stated that the Bureau of Land Management has always been willing to help parties to understand the rules and advise whether a proposed sale complies with its rules.

Response. The Department agrees that the Forest Service should help parties understand the Act and implementing rules; however, the Forest Service cannot give legal advice to timber purchasers. For legal interpretation of the Act or implementing regulations as they pertain to private business proposals, purchasers are advised to seek private counsel.

Amendment of Title 36, Part 223, Subpart D

Subpart D of part 223 governs timber export and substitution restrictions applicable to Federal timber purchases made before the Act. Enactment of the statute and adoption of interim regulations necessitated the addition of a new § 223.159 to existing subpart D in the interim rule to make clear that the provisions of subpart D remained in effect for contracts awarded before August 20, 1990. Section 223.159 of this final rule clarifies that § 223.162 remains in effect for all contracts awarded on or after August 20, 1990 until September 8, 1995. Section 223.159 of this final rule clarifies that certain rules in subpart F of part 223, which implemented the timber export and substitution restrictions of the Act in the interim rule, apply immediately to all contracts awarded on or after August 20, 1990. Minor technical and editorial changes to § 223.159 have been made to improve clarity. This final rule removes § 223.161, *Limitations on timber harvested in Alaska,* and § 223.163, *Determination that unprocessed timber is surplus to domestic needs*. The subjects covered in these sections are now covered in §§ 223.200 and 223.201 in subpart F.

Several respondents advised that the rule needs to clarify definitions and prohibitions in subpart D. However, since the terms are relevant to the new comprehensive rule, rather than those in effect at the time the new Act passed, the definitions identified by the public through submitted comments are addressed in § 223.186.

Amendment of Title 36, Part 223, Subpart F

The rules in Subpart F implement provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) that became effective upon enactment or as otherwise specified in the Act, and incorporate and supplement the interim rules of this Subpart that were published in the **Federal Register** on November 20, 1990 (55 FR 48572). Except as otherwise provided in the Act, this Subpart will govern timber export and substitution restrictions applicable to Federal timber sale contract awarded on or after August 20, 1990.

Section 223.185 Scope and Applicability

Comment. One individual commented that the regulations do not adequately explain the differences between the old and new regulations. Another respondent was unclear as to which contracts the substitution provisions in this regulation apply.

Response. Section 497 of the Act (16 U.S.C. 620h) provides that nothing in this Act, or regulations issued under this Act, abrogates or affects any timber sale contract entered into before August 20, 1990.

Section 494 of the Act (16 U.S.C. 620 note) states that the provisions of the Act take effect on the date of enactment, except as otherwise provided. Section 490(a)(2)(A) of the Act (16 U.S.C. 620b) specifically provides that the substitution rules in effect before issuance of regulations to carry out the provisions of § 490(a) will continue to govern all contracts entered into between the purchaser and the Secretary of Agriculture before issuance of final rules. The prior rule concerned *direct* substitution only (36 CFR 223.162). Therefore, contracts awarded after enactment, but before the issuance of final rules continue to be governed by the rules concerning substitution in existence prior to enactment at § 223.162. As these contracts are completed, this regulation will no longer be effective, and will be removed or revised at that time. Contracts awarded on or after September 8, 1995 are governed in full by subpart F.

Section 490(b)(1) of the Act (16 U.S.C. 620b) states that, as of September 10, 1990, a person is prohibited from purchasing federal timber indirectly if that person would be prohibited from purchasing Federal timber directly. Contracts entered into before the date of publication of this final rule are governed by the substitution restrictions in effect before enactment of the Act. Federal timber purchased pursuant to a contract entered into before September 8, 1995 may be purchased indirectly only if the timber could be purchased directly under the prior rule.

Section 490(b)(2)(D) of the Act (16 U.S.C. 620b) delayed application of the indirect substitution restrictions in the State of Washington until rules were issued to "carry out" the exemption from indirect substitution in Washington State. Therefore, the indirect substitution restrictions for National Forest System timber from Washington State are effective for contracts entered into between the purchaser and the Secretary of Agriculture as of publication of the rule of limited scope (56 FR 3375, December 19, 1991). This rule establishes the shares of exempted timber for specific persons.

The interim rule was the final rule for the provisions contained in that rule: Sourcing area applications, disapproval and review procedures, procedures for a non-manufacturer, certification procedures, continue surplus species determinations, and definitions applicable to the provisions of the interim rule (55 FR 48572, November 20, 1990). The interim rule has now been incorporated into this final rule, with changes as noted.

A final rule of limited scope was published on December 19, 1991 (56 FR 65834). This rule continued the reporting requirements applicable to contracts awarded before enactment, amended the rules for sourcing area disapproval and review procedures found in the interim rule and established procedures for persons applying for a share of the limited amount of unprocessed timber originally from National Forest System lands in Washington State that is exempt from the prohibition against indirect substitution. This rule has been incorporated into this final rule. Contracts entered into after enactment are governed by the provisions of the interim rule and the final rule of limited scope on the effective dates of those rules.

The Department has added a sentence regarding the application of subpart F to unprocessed private timber to clarify that unprocessed private timber that requires domestic processing is subject to subpart F. Further, the Department has added a sentence to clarify that the reporting requirements for transfers of unprocessed Federal timber applies on September 8, 1995, regardless of the contract award date. This ensures that enforcement of the Act can begin immediately. Since the transfer documents are not part of the substitution regulation, this requirement is not limited by the Act's provision that the prior substitution regulation applies to contracts entered into before issuance of this final rule. In addition, the Department has made minor technical and editorial changes to this section to improve clarity and describe the status of contracts awarded between enactment of this Act and promulgation of final rules to maintain consistency throughout the rule.

Section 223.186 Definitions

The complexity of the Act requires definitions in order to explain and understand critical terms. Section 493 of the Act (16 U.S.C. 620e) defines several terms that require refinement. The following terms were defined in the interim rule, and were repeated with minor technical changes as needed, in the proposed rule for continuity, public understanding and comment: *Acquire, Act, Cants* or *Flitches, Export, Federal lands, Fiscal year, Non-manufacturer, Person, Private lands, Purchase, Substitution,* and *Unprocessed timber.* In addition, under the proposed rule definitions of the following additional terms were proposed: *Area of operations, Disregard, Each violation, Finished products, Gross value, Hammer brand, Highway yellow paint, Logs, Processed, Same geographic and economic area, Should have known, Transfer, Willful disregard,* and *Willfully.*

Nineteen responses were received concerning definitions. Ten responses addressed the definition of *Person,* focusing on the subcontractor. Other definitions addressed were: *Disregard, Each violation, Export, Finished products, Gross value, Processed, Same geographic and economic area, Transfer, Unprocessed timber* and *Willful.* Several respondents requested definitions for "manufacturing facility" and "sourcing area."

Person

Comment. Comments regarding the definition of "person" called for a more limited definition of "subcontractor," exclusion of independent contractors as subcontractors, and inclusion of subcontractors as only those persons controlled by the purchaser, or who meet the criteria of affiliates.

Response. The Act defines "person" as "any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, or parent company, *and* business affiliates * * *" 16 U.S.C. 620e(3) (emphasis added). If subcontractors were only to be considered in the context of affiliation, there would be no reason to include subcontractors in the definition of person.

The definition of subcontractor is "One who has entered into a contract, express or implied, for the performance of an act with the person who has already contracted for its performance."

Black's Law Dictionary

The extent to which a contractor and a subcontractor would be considered one "person" will depend on the specific facts of the arrangement between the contractor and subcontractor. The subcontractor obtains his status through his relationship with the contractor. If the subcontractor is acting independently, for instance, in violation of a provision in the Act or regulations, the subcontractor might be prosecuted as an "individual" or other corporate entity, not as a subcontractor.

Comment. One respondent expressed concern that a federal timber purchaser subcontracting with a contract logger who exports or who contracts to log timber that will be exported might be in violation of the Act under the definition of person. The same respondent was concerned that the contract logger who logs both federal logs and private logs eligible for export might be in violation of the Act under the definition of person.

Response. The response above outlines the purchaser's status. The status of the contract logger depends on the definition of "acquire". That is, if the contract logger is acquiring federal timber and exports private timber, then the contract logger would be in violation of the prohibition against substitution, assuming no exemption from the prohibition applied. The Act states that "acquire" means, "to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction, * * *" 16 U.S.C. 620e(1). While the definition of acquire includes "possession", the definition seems to encompass only possession through different types of transactions that lead to control. The contract logger's ability to log federal timber and log exportable timber or export timber will depend on the specific circumstances by which each transaction is conducted.

After the end of the comment period for this rule, the Department received numerous letters regarding the definition of possession as used in the definition of acquire, and its effect on various business relationships, mainly service contracts. The Department may not consider these comments in this rule under the Administrative Procedure Act, 5 U.S.C. 553. However, the Department recognizes the need to clarify this issue, especially in light of the apparent change in the way business is conducted. Therefore, the Department is committed to issuing a proposed rule that will attempt to flesh out the definition of possession, and will ask for comment on a sensible way to implement the intent of the Act to prohibit substitution while balancing enforcement of the Act with reasonable restrictions on business. The Department has deleted the last sentence regarding the standards in the Small Business Administration regulation at 13 CFR 121.401 that may serve as guidelines to determining affiliation for purposes of this Act. This deletion clarifies that the Small Business Administration regulation serves as a guideline only and does not govern these rules.

Each Violation

Comment. Several respondents expressed concern that the term "each violation" is too inclusive to meet the intent of the Act, and that, as defined in the rule, the violation counts would be compounded or multiplied. For example, each missing log brand and paint mark would be a separate violation in addition to the violation caused by the export of the log itself. These respondents suggested that multiple violations be treated as a single event.

Response. The Department believes that the rule's use of the term "each violation" is consistent with the intent of Congress, and that to reduce it would weaken the intent of the Act. Congress considered each violation of the Act serious and prescribed a penalty deemed appropriate to the infraction. Nothing in the Act suggests that "each violation" means a series of acts, or anything other than the plain meaning of the term. Further, section 492(c) of the Act (16 U.S.C. 620d(c)) provides the Secretary with discretion in assessing civil penalties. Therefore, this suggestion is not adopted.

Comment. One respondent commented in regard to "each violation," that human errors and mistakes are inevitable, and that, at times, safety conditions make complete compliance with the branding and painting requirement very difficult. This respondent felt that some reasonable standard must be used when enforcing this requirement.

Response. The Department agrees that occasional "human errors" are understandable. However, purchasers are expected to emphasize the importance of complying with the Act to their employees and subcontractors and to ensure that compliance is attained.

Comment. One individual said the rule should indicate that the Secretary would use discretion and judgment in determining penalties for specific violations of the Act.

Response. Congress gave the Secretary authority in section 492(c) of the Act (16 U.S.C. 620d(c)) to impose penalties for specific violations. These penalties include ceilings but do not mandate specific amounts. Therefore discretion will be used in the imposition of the penalties.

Having considered the various comments received, the Department adopts the definitions of "each violation" as presented in the proposed rule.

Export

Comment. One respondent stated that the definition of when export occurs provides a possible loophole in the prohibition against substitution.

Response. The Department agrees that the definition of when export occurs could provide a loophole to the substitution restrictions. Accordingly, the Department has revised the portion of the definition that relates to the date that an export agreement is entered into.

The definition in the proposed rule states that "(E) export occurs on the date that a person enters into an agreement to sell, trade, exchange, or otherwise convey such timber to a person for delivery to foreign country. If that date cannot be established, export occurs * * *". This definition could permit a person to enter into long-term export agreements just before the issuance of this rule, or 24 months before acquiring Federal timber, and still be exporting, or causing to be exported, private timber while acquiring Federal timber. This activity could occur because the date of the export agreement preceded the effective date of this rule or the 24-month restriction against exporting prior to acquiring Federal timber. This kind of activity would constitute substitution.

To close this potential substitution loophole, the Department has revised the definition of when export occurs by dropping the phrase "If this date cannot be established" and simply listing three independent conditions which for the purposes of the Act, would establish when export occurs as follows: "Export occurs: (1) On the date that a person enters into an agreement to sell, trade, exchange or otherwise convey such timber to a person for delivery to a foreign country; (2) when unprocessed timber is placed in an export facility in preparation (sorting, bundling, container loading etc.) for shipment outside the United States; or (3) when unprocessed timber is placed on board an ocean-going vessel, rail car, or other conveyance destined for a foreign country."

Comment. Another respondent commented that the date on which export occurred must be established with certainty.

Response. The Department intends to ascertain as closely as possible when export occurs by thoroughly investigating all suspected or alleged export violations. The Department believes the definition of export, as revised in this final rule, meets the administrative and enforcement responsibilities required by the Act.

Comments. Several respondents stated that the definition of "export" fails to clarify which contracts fall within its definition.

Response. The purpose of a definition is to clarify and provide a consistent meaning of a term wherever it is used in the regulation. See § 223.185, Scope and Applicability, regarding which contracts are governed by this rule.

Comment. One respondent stated that the definition of export in the proposed rule needs clarification because by "transporting * * * through another party", a person cannot prevent the other party from exporting the timber.

Response. If a person notifies the recipient of the timber of the need for domestic processing, pursuant to the rule's requirements at 36 CFR 223.193 and 223.194, the person would not be entering into an agreement to export, nor would the person be responsible for export that is conducted by a subsequent party.

Finished Products, Processed and Unprocessed Timber

Comment. Several respondents commented that the definitions of "finished products" and "unprocessed timber" are ambiguous. As an example, they point to § 223.187, where certain products which are not in finished product form are excluded from the definition of unprocessed timber.

Response. The Department believes that the term "finished products" is clear. The term is used in reference to "finished products" made of western red cedar that are exempt from the prohibition against indirect substitution (16 U.S.C. 620b(b)(1)). The term "finished products" in the Act suggests more than simply products processed to specific standards, since these products could be remanufactured; the term suggests that the products must be intended for end product use.

The Department agrees that clarification regarding "unprocessed timber" is necessary to prevent products produced within the sale area that could be either finished products or unprocessed timber, such as poles, posts, piling, pulpwood bolts, pulp logs and cull logs, from being removed from the sale area or transferred without reporting or identification, and later exported as unprocessed timber. While the Act lists some of the products that may fall into this category in section 493(7)(B) (16 U.S.C. 620e(7)(B)), other products, such as house logs that are part of a structure kit may be indistinguishable from unprocessed timber. Accordingly, the definition of "unprocessed timber" has been expanded in the final rule to add "* * * For the purposes of reporting and identifying under §§ 223.193, 223.194 and 223.195, unprocessed timber also means timber products listed in § 223.187 of these regulations, and other timber products, including house logs, that are indistinguishable from other unprocessed timber." The Department also added a statement to the definition that "unprocessed timber does not include products intended for remanufacture that meet the criteria listed in § 223.187(a) (2) or (3)." This clarifies that the Act defines certain products as not unprocessed, or processed, that are intended for remanufacture.

The Department has also concluded that the definition of the term "processed" should be revised to remove the reference to "not unprocessed" because this terminology is not used in the rule. Further, § 223.187(b) of these regulations must be included in the reference to § 223.187, since paragraph (b) states what is *not* unprocessed western red cedar. Therefore, the definition has been revised to read as follows: "*Processed* means timber processed into products listed in § 223.187 of these regulations."

Comment. In commenting on these definitions, two respondents expressed uncertainty as to whether each piece in an entire order must satisfy the lumber grade requirements specified in the Act for determining whether timber is processed to standards and specifications suitable for end product use.

Response. Congress specified in section 493(7)(B) (16 U.S.C. 620e(7)(B) that products meeting the current standards of the American Lumber Standards Grades or Pacific Lumber Inspection Bureau's Export R or N list clear grades are not "unprocessed." The standards that the two bureaus use are defined in the *Export R List Grading and Dressing Rules* book, published by the Pacific Lumber Inspection Bureau (1971) and adopted by the West Coast Lumberman's Association and the British Columbia Lumber Manufacturers Association, which reads, "* * * a variation not to exceed 10 percent, more or less, of the quantity ordered shall be allowed in filling cargoes and/or parcel lots." (p. 4) Thus, there is no requirement that each piece in the entire order satisfy the grade requirements. However, in any given lot, at least 90 percent of the pieces must meet these grade requirements.

Gross Value

Comment. One respondent stated that gross value should not include the cost of ocean freight or insurance when sales are made on a "C&F" or "CIF" basis. The respondent stated that including these costs could cause customers to obtain these services abroad.

Response. The Act uses the term, "gross value" in the civil penalties section, where the Secretary may assess a $500,000 penalty or "three times the gross value of the unprocessed timber involved" for a violation of the prohibition against exporting Federal timber. The proposed rule defined gross value as the total amount that the person received from the export purchaser for the unprocessed Federal timber involved in the violation, before production, delivery, agent fees, overhead, and other costs are removed. The marketplace decides the total amount received and the Department does not intend to look behind this figure at the specifics of the business agreement. The Department has clarified in this rule that the gross value is the value of the timber when it is transferred. Other than this change, no change in the rule has been made in response to this comment.

Manufacturing Facility

Comment. Several respondents suggested that a definition be included in the final rule defining the meaning of "manufacturing facility." One respondent stated that the term "non-manufacturer" needs clarification, because of the ambiguity of the term "manufacturing facility." This respondent suggested that non-manufacturer be defined as it is in the SBA program. Another respondent objected to the inability of non-manufacturers to obtain sourcing areas. It was also suggested that "manufacturing facility" be limited to a permanently located operation designed and used to convert logs into primary wood products, including lumber and veneer products, and that it should not include secondary wood processing plants, chip, or fiber operations.

Response. The Department agrees that the term "manufacturing facility" needs to be defined, and that a manufacturing facility should be defined in terms of its permanent location. The Act implies a

permanent location for manufacturing facilities, in section 490(c)(3) (16 U.S.C. 620b(c)(3)); the Act requires the sourcing area to be the area sourced by the applicant's "timber manufacturing facilities." The Act's intent to define a sourcing area by a permanent manufacturing facility is the reason that non-manufacturers may not apply for sourcing areas.

However, the Department disagrees that the definition should exclude producers of chips or fiber products. Sourcing areas are where the applicant desires to "process" timber (16 U.S.C. 620b(c)(3)). In 16 U.S.C. 620e(7)(B)(ix), the Act defines timber not included as unprocessed, that is, processed timber, to include pulp or logs *processed* for conversion into chips. Since this type of facility is specifically included as a processing facility, it is also included in the definition of "manufacturing facility."

Therefore, the Department has added the following to § 223.186: "*Manufacturing facility* means a permanently located processing plant, used to convert unprocessed timber into products." The Department believes this addresses the ambiguity in the term "non-manufacturer" without adopting SBA rules.

Same Geographic and Economic Area

Comment. One respondent stated that there is no reference to "same geographic and economic area" with regard to sourcing areas, as the proposed definition seems to indicate.

Response. While there is no specific reference to "same geographic and economic area" in the sourcing area provision of the Act, this concept is used in determining sourcing areas; the term reflects the Act's requirement that sourcing areas be "geographically and economically separate" from areas where a person harvests private timber for exporting. An area that is geographically and economically separate from an exporting area cannot also be the same geographic and economic area from which a person exports. No change is needed in the rule.

Comment. Several respondents called for a revised definition of "same geographic and economic area." The respondents felt that the definition is too broad and suggested narrowing the definition to meet the Act's intent regarding substitution. Another respondent stated that the Act has a provision that prohibits the purchase of unprocessed federal timber and the export of unprocessed private timber within the past 24 months (16 U.S.C. 620b(a)(1)(B)). The respondent said this provision addresses the concern in the proposed rule that if substitution generally were defined pursuant to the sourcing area concept of geographically and economically separate areas, persons would be granted *de facto* sourcing areas. This commenter also said that the two different definitions of "same economic and geographic area" hinge on a definition of "private lands" as west of the 100th meridian in the contiguous 48 states, and that the Act does not so limit the definition of private lands.

Response. The Department agrees with the last commenter that the Act provides a prohibition that addresses the concern about *de facto* sourcing areas, and that, accordingly, as the other respondents suggested, there is no need to have the second, broader definition of "same economic and geographic area." The Act states, in the section concerning direct substitution, that, "except as provided in subsection (c) of this section (sourcing area approval process)," a person may not purchase unprocessed federal timber originating from west of the 100th meridian in the contiguous 48 States if, "(A) such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; *or* (B) such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands." 16 U.S.C. 620b(a)(1) (emphasis added).

The prohibition in subsection (A) is further defined in the Act. Section 620(e)(8) states that, "*[t]he acquisition of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States to be used in 'substitution' for exported unprocessed timber originating from private lands* means acquiring unprocessed timber from such Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic and economic area." (emphasis added) The underlined portion of the definition is virtually identical to the prohibition in section 620b(1)(A). The prohibition in subsection (B) is much broader, and, by its own terms, prohibits the purchase of federal timber and the export of private timber in the past 24 months, without reference to the same geographic and economic area.

The Act provides that an approved sourcing area is an exemption from the prohibitions in subsection (a) of 16 U.S.C. 620b, in addition to those prohibitions as they relate to indirect substitution in subsection (b). The section concerning sourcing areas states that, "*[t]he prohibitions contained in subsections (a) and (b)* of this section shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands within a sourcing area west of the 100th meridian in the contiguous 48 states approved by the Secretary * * *" 16 U.S.C. 620b (emphasis added). In terms of the prohibition in section 620b(a)(1)(*A*), an approved sourcing area is the only structure provided by the Act to show that purchasing unprocessed federal timber and exporting unprocessed private timber is not occurring within the same economic and geographic area. (For example, a person who had not exported within the past 24 months, but began exporting after purchase of the unprocessed federal timber, would need a sourcing area within which to purchase the federal timber in order to demonstrate that the export and federal purchase areas were geographically and economically separate.) In terms of the prohibition in section 620b(a)(1)(*B*), a sourcing area is required if a person who had exported within the past 24 months in the west wanted to purchase unprocessed federal timber. Because of the specific statutory provision prohibiting the purchase of unprocessed federal timber and the export of private timber without limitation to the "same geographic and economic area," the Department agrees that there is no need for the second, broader definition of that term, and has deleted that definition from the rule.

The Department does not agree that the term "private lands" should not be limited to west of the 100th meridian in the contiguous 48 states. While the Act does not specifically define "private lands" as being west of the 100th meridian in the contiguous 48 States, the Act must be implemented in a manner that gives meaning to all of the provisions of the Act. The Act concerns transactions west of the 100th meridian in the contiguous 48 States. To interpret private lands without such a limitation would mean that export in the previous 24 months from anywhere in the United States (and possibly even export from private lands in a foreign country) would disqualify a person from purchasing unprocessed federal timber, pursuant to 16 U.S.C. 620b(a)(1)(B). There is nothing in the Act to suggest such a broad prohibition. No change in the rule is necessary in response to this comment.

Sourcing Area

Comment. Several respondents suggested that a definition of "sourcing area" be included in the rules.

Response. The Department concurs that a definition of "sourcing area" is desirable. The definition includes the requirement that the sourcing area be economically and geographically separate from any geographic area from which the persons harvests private timber for export, pursuant to the requirement in the Act. 16 U.S.C. 620b(c)(3). Further, the interim rule required sourcing area applicants to include in the map of the sourcing area boundary both Federal and private lands that source the mill that was the subject of the initial applications. The Department has adopted this requirement in the definition of sourcing area. The Act requires the Secretary to consider the "timber purchasing patterns, on private and Federal lands" in the determination of the sourcing area boundary (16 U.S.C. 620b(c)(3)). If private lands were not included in the sourcing area boundary, the Secretary could not establish that the sourcing area is geographically and economically separate from the area where the sourcing area holder or applicant harvests private timber for export as required by the Act. Otherwise, private lands sourcing the mill could be the same lands from which the sourcing area holder or applicant harvests timber for export. The definition of sourcing area is as follows: "*Sourcing area* means the geographic area approved by the Secretary which includes a person's timber manufacturing facility and the private and Federal lands from which the person acquires or intends to acquire unprocessed timber to supply such facility; a sourcing area must be geographically and economically separate from any geographic area from which that person harvests for export any unprocessed timber originating from private lands."

Substitution

The proposed rule included the definition of substitution found in section 493(8) of the Act (16 U.S.C. 620e(8)). However, analysis of the comments and preparation of the final rule, specifically, the comments on the definition of "same geographic and economic area" discussed in the preamble, revealed that this definition applies only to one of the substitution prohibitions in the Act. Under the section entitled, "Limitations on the substitution of unprocessed Federal timber for unprocessed timber exported from private lands (a) Direct substitution" the Act lists two prohibitions. The section states that, except as provided in subsection (c), the sourcing area approval process, no person may purchase directly from the United States unprocessed timber originating from federal lands west of the 100th meridian in the contiguous 48 States if, "(A) such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or (B) such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands."

16 U.S.C. 620e(8) further defines the prohibition in § 620b(1)(A). The definition does not state, "Substitution means * * *," but rather, uses a phrase virtually identical to the prohibition in section 620b(1)(A), and states what that phrase means: "*The acquisition of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States to be used in 'substitution' for exported unprocessed timber originating from private lands* means acquiring unprocessed timber from such Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic and economic area." (Emphasis added)

A need to modify the definition of substitution to fully reflect all of the substitution prohibitions in 16 U.S.C. 620b was recognized. Therefore, the definition of substitution has been modified as follows.

First, the definition of substitution has been modified to include both prohibitions found in section 620b(a), as further defined in section 620e(8). That is, a person violates the prohibition against substitution if such person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area, pursuant to section 620b(a)(1) (A), as further clarified in section 620e(8), or such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands, pursuant to section 620b(a)(1)(B).

Second, the definition of substitution has been modified to close a loophole, in order to heed the Act's intent regarding the substitution prohibitions. The proposed rule's list of prohibitions did not limit when the purchase of unprocessed Federal timber could occur if there is subsequent exporting, unlike the 24-month limit on exporting that precedes the purchase of unprocessed Federal timber. The prohibitions did not prevent unprocessed Federal timber purchased before the export of unprocessed private timber from being substituted for the unprocessed private timber. To comply with the Act's prohibitions, a person will be committing a violation if the person engages in export, or selling for export, unprocessed timber originating from private lands during any calendar year within the same geographic and economic area that a person has unprocessed Federal timber in the person's possession or under contract. Calendar year has been adopted as the appropriate time period because it provides a consistent time period and is familiar to many purchasers who have operated under the prior substitution regulations.

Third, for clarity, the definition of substitution has been modified to include one of the prohibitions against substitution included in the proposed rule in § 233.189. Substitution occurs when a person purchases unprocessed Federal timber and sells unprocessed private timber that requires domestic processing to a third party if the third party or successive parties export the private timber. The third party or successive parties may not export such timber. The prohibition has been modified to clarify that the private timber that may be subject to a substitution violation is that timber that requires domestic processing. In this way, the private timber that may be subject to a substitution violation is identified.

In summary, the modified definition of substitution is as follows: "*Substitution*" occurs when: (1) A person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area; or (2) a person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and, during the preceding 24-month period, exported unprocessed timber originating from private lands; or (3) a person exports or sells for export, unprocessed timber originating from private lands within the same geographic and economic area in the same calendar year that the person has unprocessed timber originating from Federal lands in the person's possession or under contract; or (4) a person purchases, directly or indirectly, unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing, to a third party if that third party or successive parties export that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing may not export such timber.

Transfer

Comment. One respondent was unsure whether "transfer" was limited to transfer of ownership.

Response. The definition of "transfer" means to pass title "or otherwise convey"; it is not limited to the transfer of ownership. No change in the definition is necessary.

Willfully, Willful Disregard, and Disregard

Comment. Several respondents criticized the definitions of *willful* and *willfully disregard* for not including the requirement that the person intended to violate the Act or its implementing regulations. One respondent stated that, while the rule defines the terms as requiring the general intent of intentionally violating an act that is prohibited, the Act requires that these terms include the specific intent of violating the Act.

Response. The Department does not agree with these comments. Defining "willfully" or "willful disregard" as a specific intent to violate a statute or regulations is a standard used in criminal law. The definition of "willfully" or "willful disregard" in the context of civil penalties is a less stringent standard. *See, e.g., Brock* v. *Morello Brothers Construction, Inc.,* 809 F.2d 161, 164 (1st Cir. 1987). However, the Department is modifying the definitions of "willfully" and "willful disregard" to follow more closely the Supreme Court's decision in *McLaughlin* v. *Richland Shoe Co.,* 486 U.S. 128 (1988). In that case, the statute of limitations for a willful violation of the Fair Labor Standards Act (FLSA) extended the statute of limitations from two to three years. The Court stated that a party had committed a willful violation if the party knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute. *McLaughlin,* 486 U.S. at 133, *citing Transworld Airlines, Inc.* v. *Thurston, et al.,* 469 U.S. 111 (1984). The party need not know that the conduct is unlawful, but must at least show indifference to the rules. *Brock,* 809 F.2d at 164, *citing Thurston*. The Supreme Court in *McLaughlin* favored this stricter standard over a less stringent standard followed in some of the case law, given the distinction in the FLSA between the statute of limitations for "ordinary" violations and that for willful violations. *McLaughlin,* 486 U.S. at 132.

Likewise, in the Act, there is an appreciable difference in the amount of penalty that may be assessed for a willful violation, or a violation committed with willful disregard ($500,000), and violations committed either in disregard or by a person who "should have known" ($75,000 and $50,000, respectively). Therefore, the Department has changed the definition of willfully and willful disregard to mean committing an action that a person knew or showed reckless disregard for the matter of whether the person's conduct was a violation of the Act (or its implementing regulations, in the case of "willfully").

Comment. One respondent stated that the definition of disregard is too broad, and should also include specific intent.

Response. The rule's definition of disregard is taken from *Black's Law Dictionary,* 5th Ed.: "to ignore, overlook, or fail to observe" any provision of the Act. Intent is not a prerequisite to committing a violation "in disregard" of the Act or its implementing regulations. Such a definition would render the definition of willfully and willful disregard meaningless. No change has been made in the rules in response to this comment.

The standards of "disregard" and "should have known" are similar to the degrees of negligence. That is, they differ in the "degree of inattention" with which the actor commits an act. "Disregard", is more than "simple inadvertence." The Department believes that the civil penalties may be understood more clearly if they are presented together. Therefore, the Department has placed all of the standards for civil penalties under the heading, "Civil penalties."

In addition to the aforementioned changes, the Department has made minor technical and editorial changes to other definitions within this section to improve clarity; these changes have no substantive effect.

Section 223.187 Determination of Unprocessed Timber

The definition of unprocessed timber in the Act refers to minimum standards and grades of lumber. In order to determine that these standards have been met, the Department proposed in § 223.187 that the shipper of record possess a legible copy of a lumber inspection certificate issued by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard. This certificate would be in the shipper's possession for each shipment and be available for inspection upon request of the Forest Service.

Comment. Several persons objected to the requirement that products be "manufactured for a specific order," stating that commonly ordered products generally are produced without specific orders and stored in inventory. This practice ensures that production need not be curtailed during slow periods and that companies can respond quickly to subsequent orders for products.

Response. The Department concurs with these respondents that § 223.187(a)(1)(ii) needed revision for clarity. It is important for enforcement of the Act, not that products in a shipment have been manufactured for a specific order, but that the products are only intended to be used in the form shipped, and not to be remanufactured into other products in the foreign country. Therefore, in response to this comment, § 223.187(a)(1)(ii) in the final rule has been revised to require that the shipper of record have available for Forest Service inspection a certificate certifying to the intended use of the shipment or order. Likewise, a certification requirement has been added for pulpwood bolts, pursuant to § 223.187(a)(8), to insure that the intent of processing the bolts into pulp is met. These certifications are not required if the timber obtained may be exported (for instance, because the timber originates from private lands from which the timber may be exported) without regard to intended use of the shipment or order. This has been clarified in § 223.187(a)(1).

For ease of administration, the specific certification language has been provided in § 223.187(b) (2) and (3). The person signing the certificate certifies the shipping order number, the date of that order and the intent that the material will be used as shipped or processed into pulp and will not be manufactured into other products. The certifier also certifies that the certification is made with full knowledge of the Act and its implementing regulations. Further, the certifier certifies that exporting unprocessed timber originating from Federal lands or exporting unprocessed timber from private lands that is required to be processed domestically is a violation of the Act and its implementing regulations, and that signing the certificate without abiding by its contents is a violation of the False Statements Act. Regarding a corporation, only a person authorized in writing by the Chief Executive Officer to sign certificates pursuant to 36 CFR 223.187(a)(1)(ii) may sign such certificates. The Forest Service must receive the original, written authorization from the Chief Executive Officer, pursuant to 36 CFR 223.187(b)(5), before a person is authorized to sign the certificates.

Comment. Three respondents suggested that instead of requiring that the shipper of record have in its possession a certificate issued by a lumber inspection/grading bureau, the provisions of the Act related to processed products could be met simply by either requiring the shipper of record to have the certificate available for inspection, or declaring that the products in a particular shipment were inspected, graded, and found to meet the requirements of processed products under the Act, or requiring the shipper of record to certify that "The material in this shipment is conveyed pursuant to the attached order and is not intended for remanufacture."

Response. The Department is requiring that the shipper of record have the certificate issued by the lumber inspection/grading bureau in his/her possession, available for inspection, i.e., readily available, not that the shipper of record necessarily have the certificate on his/her person. Regarding the declaration and the certificate, the Department agrees that these are necessary to ensure that the shipper of record understands that the shipment is not intended for remanufacture. The proposed rule required such a certificate in § 223.187(a)(1)(ii). In order to clarify this requirement, the final rule has amended this section to include the specific certification language that should be used. This certification does not substitute for the lumber inspection certificate. This certificate assures the Department, by the persons responsible for lumber inspection and grading, that the lumber meets the grading requirements of the Act at 16 U.S.C. 620e(7)(B).

Comment. One person stated that requiring separate (lumber grade) inspections of each shipment would deter processed product exports, contrary to the intention of Congress. The respondent also stated that products scheduled for one shipment that are delayed or diverted to another should not require a second certificate.

Response. The Department disagrees with this comment. Certified lumber inspection certificates are a common component of shipment documentation and, therefore, pose no deterrence to lumber exports. The Department accepts the certificate for compliance and enforcement purposes in lieu of breaking apart bundles of lumber prepared for export and individually grading each lumber piece, which certainly would deter exports.

Further, a lumber inspection certificate is required for each shipment or order, regardless of how the material in the shipment came to that shipment. This requirement is necessary for effective inspection of various shipments.

Comment. Several respondents stated that § 223.187 should make clear that restrictions and documentation apply only to material to be exported, not to products sold for domestic consumption, regardless of the degree of manufacture.

Response. The Department agrees with this comment. The Act does not place restrictions on products intended to be sold or manufactured domestically. The Department believes that the rule clearly states that the requirements in § 223.187 apply to material to be exported. Therefore no revisions are necessary in response to this comment. It should be noted, however, that the definition of unprocessed timber includes the items listed in § 223.187 that are indistinguishable from unprocessed timber for purposes of the record keeping and marking requirements in §§ 223.193–.195.

Comment. Several respondents expressed concern that lumber that does not meet the clear grade standard will cause them significant practical problems, particularly for products up to 12 inches thick which were manufactured as exportable clear grades but, upon inspection, failed to meet the standard. These respondents felt the rule would force them to remanufacture such lumber into exportable products up to 8¾ inches thick, or into other products.

Response. Congress included in the Act language permitting the export of clear grade timbers (cants or flitches) up to 12 inches thick and cants of a lesser grade up to 8¾ inches thick intended for remanufacture. Export R List Grading and Dressing Rules permit up to 10 percent of the pieces in a given lot to be outside the specified lumber grade for the lot. Therefore a lot of clear grade 12 inch cants may contain individual cants that do not meet this grade and still qualify for export, provided the lesser grade cants do not make up more than 10 percent of the total lot. If a given lot of 12 inch cants is outside this accepted grading tolerance level, the exporter will have to remove the below grade cants from the lot and re-saw them to not more than 8¾ inches in thickness before exporting or be in violation of the Act. Accordingly, no change in the rule as proposed is necessary.

Comment. Several respondents stated that the final regulations should allow export of clear lumber meeting the referenced grades in thicknesses up to and including 12 inches nominal. These respondents stated that a nominal 12 inches would permit cants cut from fresh cut green trees to be sawn slightly thicker than a true 12 inches to allow for shrinkage back to 12 inches as the wood dries.

Response. The Department declines to adopt this comment. The Act states specifically the maximum thickness of a cant meeting clear grade specification permitted to be exported without further processing is 12 inches (16 U.S.C. 620e(7)(ii)).

Comment. One respondent commented that a producer should be permitted to seek export customers who can use mismanufactured products as is, without further manufacture.

Response. Section 493(7)(B) of the Act (16 U.S.C. 620e(7)(B)) states explicitly the lumber grades and maximum timber sizes that may be exported for further manufacturing outside the United States. In accordance with the Act, products needing further processing before use must meet these grades and size restrictions before being exported. No change in the final rule is made in response to this comment.

Comment. Two respondents stated that the rule also should expressly permit the chipping of any Federal log or portion of a Federal log at domestic operations and that any log which is used solely for domestic chipping be considered a pulp or cull log even if it meets technical specifications for some other grade. Another respondent suggested that a load of logs consisting mainly of chip logs with some higher-grade logs mixed in should be classified as chip logs, even if all or some of the higher-grade logs are processed into some other product. This would prevent waste and encourage the most efficient use of these Federal logs.

Response. The rule does not preclude the chipping of any log obtained from Federal lands. However, the Act at 16 U.S.C. 620e(7)(B)(ix), exempts only pulp and cull logs from the meaning of the term "unprocessed timber," with regard to logs that are processed at domestic pulp mills, domestic chip plants or other domestic operations for the purpose of conversion of the log into chips. Congress did not state that any log converted into chips is exempted from the restrictions on unprocessed timber. Rather, Congress specifically excepted *pulp and cull logs* if they are processed into chips.

To assure that pulp and cull logs that may be indistinguishable from unprocessed timber are not subsequently exported, they must be identified, pursuant to the revised definition of unprocessed timber in 36 CFR 223.186 of this rule.

Determination of Unprocessed Western Red Cedar

Since publishing the proposed rule, the Bureau of Export Administration, Department of Commerce, published a proposed rule on June 3, 1991 (56 FR 25054), and a final rule on January 6, 1993 (58 FR 487), amending the Export Administration Regulation at 15 CFR 777.7, governing the export of unprocessed western red cedar. The Department of Commerce's final rule revises the definition of processed western red cedar to exclude any individual piece of western red cedar having a cross section that exceeds 2,000 square centimeters (310 square inches), regardless of grade. This change makes the United States' western red cedar export restrictions consistent with those of the Providence of British Columbia, Canada. Section 223.187(c) of this rule has been revised to conform with the change in the Department of Commerce's rule governing export of western red cedar.

Comment. One respondent mentioned the proposed rule published by the U.S. Department of Commerce and urged that the U.S. and Canadian Governments develop a standard definition for all species of unprocessed timber.

Response. Section 491(d)(5) of the Act (16 U.S.C. 620c(d)(5)), which imposes restrictions on exports of unprocessed timber originating from State or other public lands, states "nothing in this section shall be construed to supersede the provisions of section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(i))." In order to provide a consistent definition of western red cedar for Federal as well as State and other public lands, and to provide for consistent exporting procedures, § 223.187 of the proposed rule included the definition of western red cedar taken from the timber export regulations established by the Secretary of Commerce at 15 CFR 777.7, which implement section 7(i) of the Export Administration Act, as amended. Discussions on standard definitions of unprocessed timber for species other than western red cedar have not been undertaken as of this date. However, the Act specifically defines unprocessed timber in section 493(7)(A) and (B), and is sufficient for the purposes of this rule making.

In order to monitor any indirect substitution violations, the Department has added a certificate to a new paragraph (d) similar to the certificate for § 223.187(b) with regard to the intent of the shipper of record. The certificate requires the shipper of record to identify whether the product is intended for end product use, and to acknowledge that only processed western red cedar that is intended for end product use is exempt from the prohibition against indirect substitution. Western red cedar products that are "processed" may be exported, but they are not excluded from the prohibition against indirect substitution unless they are intended for end product use. Without this certificate, the Department has no way of enforcing the exemption from indirect substitution allowed for "finished products" of western red cedar, because the Department could not determine by inspection whether a product is intended for end product use. The certificate reads as follows: "I certify that the products in the shipment identified by my shipping order number ________, dated ________, are manufactured in accordance with the attached order from ______ (buyer) ______ of ______ (address) ______, numbered ________ and dated ________, are / are not intended for end product use. I understand that only western red cedar products that are *finished products* are exempt from the prohibition against indirect substitution in the Forest Resources Conservation and Shortgage Relief Act of 1990 (16 U.S.C. 620b(b)(1)) and its implementing regulations. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully acknowledge and understand that to require western red cedar under the indirect substitution exemption in section 490(b)(1) of the Act (16 U.S.C. 620b(b)(1)) for purposes other than domestic processing into finished products will be a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies for such violation." The signatory process and Chief Executive Officer authorization of the signatory is the same as for the certificate in § 223.187(b).

Otherwise, the Department has made several changes to the text as proposed for technical and editorial clarity, but such changes have no substantive effect.

Section 223.188 Prohibitions Against Exporting Federal Timber

This section of the proposed rule was identical to that in the interim rule. Section 489 of the Act (16 U.S.C. 620a) continues the prohibition against the export of timber from Federal lands west of the 100th meridian in the contiguous 48 States that has been renewed annually through the Appropriations Act for Interior and Related Agencies.

Comment. Only one comment was received on this section. The respondent stated that "Our company opposes export of logs regardless of origin."

Response. The Act does not prohibit exporting of logs from private lands as long as logs from Federal lands are not substituted for those exported private logs in the domestic market. The Department has no authority to restrict private log exporting allowed by the Act; therefore, this section of the final rule is unchanged.

Section 223.189 Prohibitions Against Substitution

This section of the proposed rule also was almost identical to that in the interim rule; the proposed rule added a paragraph (a)(3) to § 223.189. This section was repeated in the proposed rule to provide readers with a comprehensive review of the Act's implementing regulations and to provide for public comment on the interim rule. Several changes have been made to clarify this section.

Section 490 of the Act (16 U.S.C. 620b) limits direct and indirect substitution of unprocessed Federal timber for unprocessed timber exported from private lands. Section 490(a) of the Act (16 U.S.C. 620b) entitled "*Direct Substitution*") states that no person may purchase directly from any Department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if:

(A) Such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(B) Such person has exported unprocessed timber originating from private lands during the preceding 24-month period.

Proposed § 223.189(a)(3) stated that no person may acquire unprocessed timber from Federal lands if the person transfers unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States to a third person, and that third party or successive parties export that unprocessed private timber. The third party or successive parties who acquire such unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 states may not export such timber.

Proposed paragraph (a)(3) would reduce the potential for violations of the substitution prohibition. The potential is particularly high in multiple transfers of unprocessed timber originating from private lands in which any of the parties acquire or wish to acquire Federal timber. The paragraph would protect the person who acquires unprocessed Federal timber and transfers unprocessed private timber from a possible substitution violation by making it unlawful for the person acquiring the private timber to export it.

The Act exempts from these prohibitions persons with historic export quotas. The 24-month restriction is waived by a certification process described in § 490 of the Act, and § 223.189 (c) and (d) of the proposed rule.

Nineteen public comments were received on this section.

Comment. Several respondents said that the certification language should indicate that the individual signing the certification on behalf of a corporation is doing so in his or her capacity as an officer or agent of that corporation, not in a personal capacity.

Several respondents also commented that a corporation's Chief Executive Officer should not necessarily be required to sign the certification, since the Chief Executive Officer may have limited knowledge of the firm's acquisition and disposition of unprocessed timber. These respondents suggested that a designated officer or agent of the corporation be permitted to sign the certification on behalf of the corporation.

Response. The certification language holds the corporate officer signing the certification liable in a corporate capacity, not a personal capacity. The certificate must be signed by someone with authority to bind the corporation. The Department prefers to have the signature of the official with clear authority to bind the corporation, the Chief Executive Officer: it would be difficult for the Department to determine if officers, other than the Chief Executive Officer, could bind the corporation. This requirement is similar to the requirement in 36 CFR 223.171(b)(6)(1992), issued pursuant to the Federal Timber Contract Payment Modification Act (16 U.S.C. 618), with which participating timber purchasers complied. In that regulation, the Chief Executive Officer is required to sign a statement for a corporation certifying the accuracy of information submitted. The Chief Executive Officer need not have personal knowledge of the information which he or she is certifying, but must ascertain that the information is true, complete, and accurate to the best of his or her knowledge and belief.

Comment. One respondent wrote that certifications should not be binding if a person or corporation later decides to stop buying Federal timber.

Response. The Department declines to adopt this proposal. As discussed earlier, the final rule adopts and amended the definition of "substitution", which states that substitution occurs when a person exports during any calendar year in which the person has Federal timber in the person's possession or under contract within the same geographic and economic area.

Comment. One respondent objected to implementation of the interim rule before the public had a chance to comment on it.

Response. The Department would have preferred prior notice and comment; however, for the reasons set forth in the preamble to the interim rule, immediate implementation was necessary. Comment on the interim rule was provided for in the proposed rule. These comments have been analyzed in this rule.

Comment. Three respondents asked that provisions for requesting waivers of 24-month prohibition against purchasing Federal timber following export of private timber indicate when and under what circumstances waivers will be granted.

Response. The waiver of the 24-month prohibition was available only to applicants applying by December 20, 1990. Acceptance or rejection of waivers depended upon the Administrative Law Judge's ruling on sourcing area applications. That ruling has occurred, and applicants have been notified of those decisions. In addition, the Forest Service has sent letters advising each applicant of the status of its sourcing area application and request for waiver. Therefore, no change in the rule is necessary. Persons whose waivers were disapproved are not bound by the request for the waiver (36 CFR 223.189(g)(2)).

Comment. One person commented that the rule should clarify that persons signing the waiver of the 24-month prohibition, which requires export to cease for three years, may not export within the sourcing area for as long as the sourcing area is approved.

Response. The Department agrees with this comment. Therefore, in response to this comment, the Department has added a sentence to proposed paragraph (f), now paragraph (5) of § 223.189(f), stating that persons signing the waiver, like all sourcing area holders, may not export unprocessed private timber originating from within the sourcing area.

Comment. Several respondents asked for clarification regarding whether a person who may not purchase unprocessed Federal timber may purchase unprocessed private timber from a person who may purchase unprocessed Federal timber.

Response. A person who may purchase unprocessed Federal timber may purchase unprocessed private timber from someone who may purchase unprocessed Federal timber, provided that the person purchasing the unprocessed private timber does not export the private timber if the timber must be domestically processed (e.g., if the private timber originates from within a sourcing area).

Proposed paragraph (a)(3) has been rewritten to clarify that a person may not purchase unprocessed Federal timber in the west if the person transfers unprocessed private timber from the west *that requires domestic processing,* to a third party, if that party or successive parties exports the unprocessed private timber. The last sentence concerning the prohibition against third or successive parties exporting such timber has also been modified to state that the restriction applies to private timber that requires domestic processing. The restrictions in paragraph (a)(3) are meant only to apply to timber requiring domestic processing, to follow the intent of the Act, which provides certain exemptions allowing for the purchase of unprocessed Federal timber and the export of unprocessed private timber.

Comment. Several respondents expressed concern that they could lose their right to buy Federal timber and be in violation of the substitution prohibitions, if a party to whom they sell unprocessed Federal timber exports private timber.

Response. Section 492(a)(2) of the Act (16 U.S.C. 620d(a)(2)) states that a person who transfers unprocessed Federal timber will provide to the person acquiring such timber a written notice regarding the Federal origin of the timber, and receive from such party written acknowledgment of the notice and an agreement to comply with the requirements of the Act. 36 CFR 223.193(b) implements section 492(a)(2) of the Act (16 U.S.C. 620d(a)(2)), and provides procedures to follow when timber from Federal lands is transferred to another person. To implement this provision, the Department has developed forms intended to relieve the seller of liability if subsequent buyers violate the export or substitution restrictions of the Act. A seller or buyer who cannot produce the appropriate document upon request could be found in violation of the Act. Accordingly, no change in the rule is necessary to respond to the concern.

Comment. One respondent expressed concern that the rule makes the Federal purchaser who sells private timber responsible for the acts of subsequent purchasers of private timber. One respondent suggested that persons with sourcing areas who sell private timber originating from the sourcing area be required to notify the buyer that such timber must be domestically processed.

Response. In order to protect Federal purchasers from the actions of subsequent private purchasers, the proposed rule included an acknowledgment of the prohibition, and an agreement to notify subsequent holders of the timber and marking requirements for unprocessed private timber. These requirements have not been changed in the final rule. 36 CFR 233.194. The Department has clarified § 223.189(a)(3) to state that a person may not purchase unprocessed Federal timber if the person exports or sells for export unprocessed private timber that requires domestic processing.

Comment. In connection with private timber monitoring, one respondent asked whether the prohibition against a Federal purchaser's selling private timber for export applies when the Federal purchaser sells "cutting rights" to the private timber. This respondent also asked if the prohibition applies when the Federal purchaser sells private land and timber.

Response. Since "cutting rights" are basically a timber sale, private timber acquired in this manner would be subject to the prohibition against substitution. If land with timber on it is sold, the purchaser would be evaluated separately from the seller, unless the purchaser and the seller are the same "person" under the definitions in the Act and in these regulations (for instance, if they are affiliated). However, if the land is sold, and the seller reacquires the cut over land within 24 months of the original sale, that person would be subject to the prohibition against substitution. Current definitions in the statute and the rules govern this situation. No change to the rule is necessary in response to this comment. It should be noted that the sale of land encompassing part or all of a sourcing area, and/or the sale of the sourcing area facility, being a change in circumstances, will trigger a review of the sourcing area.

Comment. Several respondents suggested that the rules exempt surplus species from substitution prohibitions.

Response. The Department agrees with this comment. While the Act specifically exempts surplus species from the prohibition against export of unprocessed Federal timber, it does not exempt surplus species from the prohibition against substitution. However, the intent of the prohibition against substitution supports the exemption of surplus species from the prohibition against substitution. The Conference Report states that, "[t]he general reason for limiting substitution is to restrict companies from purchasing Federal timber for their mills and then exporting private timber from the same general area." (Conf. Rpt. at 252.) Presumably, the private timber that is exported would be processed in the mill if Federal timber could not be purchased for that purpose. A species may be declared surplus to domestic needs if there is no domestic market for the species. If there is no domestic market, there would be no manufacturing of that species in domestic mills. The purchase of the surplus species would not facilitate the purchaser's exporting of private timber by providing Federal timber for the purchaser's mill. Therefore, there is no reason to subject surplus species to the prohibition against substitution. Accordingly, a new paragraph (a)(4) of § 223.189 has been added to the final rule to exempt surplus species from the prohibition against substitution, and states: "The prohibitions in paragraphs (a)(1)–(3) shall not apply to specific quantities of grades and species of unprocessed timber which the Secretary of Agriculture has determined to be surplus to domestic manufacturing needs."

Paragraph (a)(1) of the proposed rule (now paragraph (a)(1)(A)) has been modified to reflect the modified definition of substitution. Paragraph (a)(2) has been added to the prohibitions against substitution to parallel when substitution occurs, pursuant to the definition in § 223.186. Paragraph (a)(2) concerns the prohibition against exporting unprocessed private timber and purchasing unprocessed Federal timber in the same geographic and economic area in the same calendar year. Explanations of these modifications may be found in the preamble discussion of the definition of substitution.

Paragraph (3) has been added to § 223.189(e) to clarify that a portion of National Forest System timber from Washington State is exempt from the prohibition against indirect substitution, pursuant to § 223.203. Section 223.189(f) has been revised by adding paragraph (4) to reflect the revised definition of substitution. The revised definition of substitution includes the export of unprocessed private timber during any calendar year that a person has unprocessed Federal timber in possession or under contract.

Having considered the comments addressing § 223.189, the Department is adopting this section as proposed with the changes to the provisions as discussed.

Section 223.190 Sourcing Area Application Procedures

Subsection 490(c) of the Act (16 U.S.C. 620b) requires the Secretary of Agriculture to prescribe procedures for applying for approval of a sourcing area. At a minimum, the procedures shall require the applicant to state the location of private lands from which, in the previous year, the applicant has harvested or otherwise acquired unprocessed timber which was exported from the United States; and the location of each timber manufacturing facility owned or operated by the applicant within the proposed sourcing area boundaries from which the applicant proposes to process timber originating from Federal lands.

The Act also requires that the Secretary provide the opportunity for a hearing on the application and that approval or disapproval be on the record.

Any sourcing area approval must be based on a determination by the Secretary that the area includes the manufacturing facilities at which the applicant expects to process the Federal timber, and that the area is geographically and economically separate from any area from which that person harvests for export any unprocessed timber originating from private lands.

The Secretary also shall consider equally the timber purchasing patterns of the applicant on private and Federal lands with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns. The interim rule defined manufacturing facilities in the "same local vicinity" as those facilities located within 30 miles of the community where the applicant's facility is located. However, the term "same local vicinity" may include more distant communities if manufacturing facilities in those communities depend on the same source of timber and have similar purchasing patterns. Thus, the relative similarity of purchasing patterns would be determined by examining the location and similarity of unprocessed timber being acquired for the affected facilities.

Nine respondents commented on this section of the rule.

Comment. Several respondents indicated that the final rule should specify who may apply for a new sourcing area or request modification of an existing sourcing area, and what time constraints might apply.

Response. The Department agrees with the suggestions to state who may apply for a sourcing area. A person who is not an exporter, or is not affiliated with a person who exports, may not apply for a sourcing area. The Act states that the Secretary may approve a sourcing area if the area where the applicant desires to purchase Federal timber is economically and geographically separate from the area from which that person "harvests for export" unprocessed private timber (16 U.S.C. 620b(c)(3)). The language is clearly geared towards current exporters. Further, a person who does not export does not need a sourcing area.

In contrast, person need only "desire" to process Federal timber in order to apply for a sourcing area (16 U.S.C. 620b(c)(3)). In fact, a person could not both be processing Federal timber outside of an approved sourcing area and exporting unprocessed private timber without violating the prohibition against substitution. The "desire" to process Federal timber may include the intent to acquire or become affiliated with a mill that processes Federal timber. In the case of an affiliation, the Department must have written confirmation that the sourcing area applicant intends to acquire or affiliate with a mill that processes Federal timber as soon as the sourcing area is approved. This will prevent persons from obtaining a sourcing area when one is not needed; in other words, when both processing Federal timber and exporting private timber are not occurring. In order to clarify that the "desire" to process Federal timber may include the intent to acquire or become affiliated with a mill that processes Federal timber, and that written proof of this intent is required when applying for a sourcing area, the Department has expanded paragraph (a) for § 223.190 of the rule as follows: "Subject to the restrictions described in § 223.189 of this subpart and, except as provided in paragraph (b) of this section, a person who owns or operates a manufacturing facility and who exports unprocessed timber originating from private lands may apply for a sourcing area in accordance with the procedures of this section. However, an owner/operator of a manufacturing facility who exports unprocessed timber originating from private lands may not possess or acquire unprocessed timber originating from Federal lands unless the acquisition is within an approved sourcing area. A person who intends to acquire or become affiliated with a manufacturing facility that processes Federal timber and who is an exporter may apply for a sourcing area. Written proof of the intent to acquire or affiliate must be included in the sourcing area application, signed by the applicant and the person or, in the case of a corporation, the Chief Executive Officer, whose company the applicant intends to acquire or affiliate with. This certification must be on letterhead and must be notarized. A sourcing area application that the Secretary determines would be approved will be granted tentative approval pending final notification by the applicant of acquisition of or affiliation with the manufacturing facility. The tentative approval of the sourcing area will lapse unless the acquisition or affiliation occurs within 30 days of the tentative approval of the sourcing area. A sourcing area is not valid until final approval of the sourcing area.

The direct substitution prohibition did not apply to a person who applied for a sourcing area on or before December 20, 1990. A request for modification of an existing sourcing area shall trigger a review pursuant to the procedures and restrictions in § 223.191(e)."

Comment. One respondent suggested that marking a private timber source on a map was adequate. Another respondent stated that the exact location of timber sales for exported timber need not be identified.

Response. The Act requires that sourcing area applicants provide the Secretary with the "location of private lands from which such person has harvested or otherwise acquired" exported timber (16 U.S.C. 620b(c)(A)). While the Act does not require the identity of individual timber sales, it does require the identity of the lands where timber sales were purchased. No change in the rule is necessary.

Comment. Several respondents thought that sourcing area applicants should be required to show where private and federal timber had been acquired in the previous 24 months in order to provide information on "timber purchasing patterns on private and federal lands of the applicant." The Act requires consideration of this factor in the determination of an economically and geographically separate sourcing area. One respondent thought that sourcing area applicants should be required to document that no private timber had been exported from within the area that is the subject of the application, since the Act provides for the sourcing area exemption if a person has not exported unprocessed private timber from within the sourcing area in the previous 24 months.

Response. The Department has records of timber sale purchases on Forest Service lands, so the applicant need not provide this information. An application encompassing lands administered by other federal agencies would be reviewed by those agencies. As far as information regarding private timber purchases, 16 U.S.C. 620b(c)(2)(A) of the Act and § 223.190(c)(1)(iii) of the interim rule (and this final rule) require that applicants provide information on the location of private timber purchases in the previous 12 months. The Forest Service can verify these purchases and the purchases of others in the area through Forest Service records and, in the case of private timber purchases, through state harvesting permits, severance or yield tax records, industrial safety records and by other means. The Department believes that this information is sufficient to determine whether a sourcing area is economically and geographically separate from an applicant's exporting area.

However, the Department agrees that the Act requires that persons with sourcing areas may not have exported unprocessed private timber originating from private lands within the previous 24 months. To clarify implementation of this requirement, the Department has amended the requirement in paragraph (iii) of § 223.190(c)(1) to read as follows: "The location of private lands within and outside the desired sourcing area where the person has, within the 24 months immediately preceding the date of the application, acquired unprocessed timber originating from private land which was exported * * *." The Act requires sourcing area applicants to provide "at a minimum * * * information regarding the location of private lands within the previous year" from which the person has harvested or otherwise acquired unprocessed timber for export (16 U.S.C. 620b(c)(2)(A)). Given the Act's requirement that no export has occurred within the sourcing area in the previous 24 months, requiring information regarding private timber purchases for the previous 24 months comports with the Act's requirements. The Act's requirement of a year's worth of information addresses the application process. Rather than obtaining additional information from the applicant during the adjudication process to determine whether exporting has occurred during the previous 24 months within the proposed sourcing area, the Department believes it is more efficient to obtain all of the information at once. This information is required for sourcing area applications submitted on or after September 8, 1995. Further, the Department has added a sentence to the certification that accompanies the sourcing area application in § 223.190(c)(4). The sentence reads as follows: "I certify that I have not exported unprocessed timber originating from private lands within the boundaries of the sourcing area that is the subject of this application in the previous 24 months."

Comment. One respondent suggested that a map of haul roads used for timber sourcing the manufacturing facility be included in the application, and that the rule clarify that the application be public information.

Response. The interim rule already required a map of the intended sourcing area (36 CFR 223.190(c)(1)). The Department believes that this is sufficient, along with the records of timber sale purchases, to meet the Act's requirements without requiring that haul roads be identified.

The interim rule states that applications are not confidential information (36 CFR 223.190(d)). The rule acknowledges that some information may be deemed confidential under the Freedom of Information Act. Therefore, the rule allows applicants to mark such information for consideration of confidentiality. This information should not hinder other parties in their review of sourcing area applications.

Comment. One respondent stated that overlapping sourcing areas of different applicants caused concern regarding complexity of administration.

Response. Each sourcing area application is adjudicated on its own merits. As long as each sourcing area application meets the criteria in the Act and the regulations, it will be approved. It is likely that different applicants will have valid sourcing areas that overlap. Overlapping sourcing areas will increase the complexity of administration and will require strict accountability and tracking. No change in the rule is necessary.

Comment. One respondent thought that the substantive standard for evaluation of a sourcing area should be clearly stated.

Response. The Department believes that the standard for evaluation was stated clearly in 36 CFR 223.190(h)(5) (now 36 CFR 223.190(i)) and no change is necessary.

Comment. One respondent stated that the definition of "same local vicinity" is too broad and does not accurately reflect the intent of Congress. Another respondent said that the final rule should specify that the applicants need only identify those competitors located within 30 miles known by the applicant to have similar sourcing patterns and products. Several respondents said that the term "same general vicinity," found at 36 CFR 223.190(c)(2), should be defined. Another respondent stated that the only reason "same local vicinity" seems to encompass mills beyond 30 miles in the regulations is for notice and commenting purposes; if the Department wants input from a broader spectrum, it should change the notice requirements, but persons beyond the "same local vicinity" should not be weighted equally with those in the same local vicinity.

Response. The Act at 16 U.S.C. 620b(c)(3) requires that the Secretary consider the timber purchasing patterns of the applicant as well as other persons "in the same local vicinity." In implementing this requirement, the interim rule used the guidance in the Conference Report and stated that "same local vicinity" is normally the manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located. However, this definition alone is inadequate to cover the Act's requirement to consider timber purchasing patterns, so the interim rule stated that the "same local vicinity" may include more distant communities if those communities are dependent on the same source of timber and have similar purchasing patterns. Applicants are required to provide this information, to the best of their knowledge, since they would be the primary source of this information.

"Same general vicinity" was a typographical error, which has been corrected to read, "same local vicinity." The notice requirement is meant to notify those persons whose purchasing patterns would be relevant to the sourcing area application. No change in the rule is necessary.

Comment. One respondent suggested that only the predominant activities of other mills should be considered in determining the "relative similarity of purchasing patterns" in 36 CFR 223.190(h)(5)(iii) (now 36 CFR 223.190(i)(3)). The respondent stated that one-time purchase of federal timber should not be compared to a dozen purchases by a competitor.

Response. Pursuant to the Act, the Department considers only purchasing *patterns.* An anomalous sale would not be considered a pattern. No change is necessary in the rule in response to this comment.

Further review of the sourcing area procedure has indicated that the similarity of products being produced by the applicant and other manufacturing facilities in the same local facility, as specified under paragraph (iii) of § 223.190(h)(5) of the interim rule and proposed rule (now paragraph (3) of § 223.190(i)), is not significant in determining the "relative similarity of purchasing patterns." The major factor needed to determine the similarity of purchasing patterns is whether the timber that competing purchasers bid on and bought was similar. This criterion was already included in paragraph (h)(5)(iii) (now paragraph (i)(3)).

Accordingly, paragraph (i)(3) of § 223.190 in the rule has been revised to eliminate consideration of the similarity of products being produced by competing facilities in the same local vicinity as a factor to determine the similarity of purchasing patterns.

Comment. Several respondents stated that sourcing areas should be approved as requested if there is no "credible opposition" to the application.

Response. The Act establishes specific criteria by which the Secretary may approve an application. The Secretary may approve an application "only if" the Secretary determines that the requested sourcing area is economically and geographically separate from the area from which the applicant harvests private timber for export (16 U.S.C. 620b(c)(3)). Thus, regardless of the extent of opposition to an application, the Secretary must make an independent determination using the standards established by the Act.

Comment. Several respondents stated that applicants should be allowed to provide supplemental information after submission of the application if other parties raise issues or questions about the application.

Response. The Act requires the sourcing area determinations to be made "on the record and after an opportunity for a hearing" (16 U.S.C. 620b(c)(3)). This process, pursuant to the Administrative Procedure Act (5 U.S.C. 554), requires the Department to give parties an opportunity for submission and consideration of facts, arguments and offers of settlement when time and the public interest allow. Applicants must submit the information required by the Act and implementing regulations in order for the application to be processed, regardless of additional information that may be supplied pursuant to the formal adjudication.

Comment. One respondent suggested that this section should state that a sourcing area applicant need not submit a sourcing area application to the Bureau of Indian Affairs, even if the Bureau's lands are part of the proposed sourcing area.

Response. In defining "Federal lands," Section 493 of the Act (16 U.S.C. 620e) specifically excludes Indian and Native Corporation lands. This exclusion is repeated in § 223.186 of this rule. The Department feels these exclusions are adequate and declines to repeat these exclusions in this section of the rule.

Comment. Another respondent suggested that this section be revised to limit the persons entitled to request a hearing to the applicant and other applicants for the same competing sourcing area.

Response. The Department disagrees. Section 490(c)(3) of the Act directs the Secretary to approve or disapprove an application, "on the record and after an opportunity for a hearing." Use of this specific language places the Act under the provisions of the Administrative Procedures Act, which requires public involvement in the decision-making process.

Comment. One respondent stated that section 556(d) of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), the statute governing the administrative process by which sourcing area determinations are made, does not require a full, evidentiary hearing, but allows for a hearing based in part or in full on written submissions.

Response. Section 556(d) of the Administrative Procedure Act states that, "(i)n rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form" Sourcing area applications are not claims, for either money or benefits. Sourcing area applications may be viewed like a "license," in which case, submission of the evidence could be in written form. However, the agency has sole discretion to adopt procedures for a hearing based solely on written evidence, and only when a party will not be prejudiced. Based on the initial round of sourcing area applications, in which the ability to cross examine witnesses and to bring all parties together was significant in making fair, informative determinations, the Department declines to adopt this suggestion.

Comment. One respondent suggested that final regulations should state explicitly that firms with domestic mills in approved sourcing areas may use non-Federal unprocessed timber from outside an approved sourcing area to supplement their log supply.

Response. The Act provides for the specific exemption from the prohibition against substitution in the form of sourcing areas. Sourcing areas have specific requirements. Among these requirements is that sourcing areas include all of the private and Federal lands that source the manufacturing facility (36 CFR 223.186). To haul unprocessed private timber originating outside of the sourcing area into the sourcing area violates the approved sourcing area boundary. The area from which the sourcing area holder harvests for export has exported unprocessed timber is no longer geographically and economically separate from the area from which the person sources the manufacturing facility (16 U.S.C. 620b(c)(3)). Once the sourcing area holder is no longer abiding by the sourcing area boundaries, the sourcing area holder may no longer depend on the valid exemption from substitution that a sourcing area provides. The sourcing area holder would then be in violation of the sourcing area boundary, as well as the prohibition against substitution by having purchased unprocessed Federal timber west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed private timber from the west. In order to clarify this issue, the Department has added paragraph (k) to § 223.190 that states as follows: "Transporting or causing to be transported unprocessed private timber from outside of a sourcing area into a sourcing area by the holder of the sourcing area is prohibited as a violation of the sourcing area boundary. Such violation will cause a review of the sourcing area, and could subject the sourcing area holder to the penalties and remedies for violations of the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620, *et seq.*, and its implementing regulations."

Comment. One respondent stated that the regulations should clarify when a sourcing area is "in effect."

Response. An approved sourcing area is in effect until the holder of the sourcing area relinquishes it, or the sourcing area is disapproved upon review of the sourcing area. A sentence clarifying this has been added to new paragraph (m) of § 223.190.

Comment. Several respondents stated that a person with an approved sourcing area should be allowed to relinquish the sourcing area and then export timber from private lands in that area at any time.

Response. The Department disagrees with this comment. While a person with an approved sourcing area may relinquish the sourcing area at any time, the person may not begin exporting from that area immediately. A person may not export unprocessed private timber as long as that person has unprocessed Federal timber in the person's possession or under contract in the same fiscal year, pursuant to the definition of substitution in § 223.186. To clarify this issue with regard to sourcing areas, the Department is amending § 223.190 by adding paragraph (1). Paragraph (1) states that sourcing areas may be relinquished at any time provided the following certification waiver is signed:

"I am relinquishing the approved sourcing area, described in the Secretary's determination in FSAA ________ on ______, 19____. I understand that I may not export unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during a fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in my possession or under contract, pursuant to the prohibitions against substitution in the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*).("Act") and its implementing regulations. I also understand that I may not purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States, pursuant to the prohibition against substitution in the Act and its implementing regulations. I make this certification with full knowledge and understanding of the Act and its implementing regulations and do fully understand that exporting unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during a fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in possession or under contract, or purchasing unprocessed timber originating from Federal lands west of

the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States is a violation of the substitution provisions of the Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation."

The certificate must be signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer; must be on company letterhead; and must be notarized.

Comment. One respondent had several comments about the certification that accompanies the sourcing area application, found at 36 CFR 223.190(c)(4). First, the respondent recommended striking the phrase "concerning my timber purchasing and export patterns" from both the first and second sentences. The respondent stated that applicants should certify to the truth of the entire application, not just the purchasing and export activities, and that the certification could be misunderstood to require applicants to submit information not otherwise required. The respondent further stated that the certification incorrectly cites section 492 in order to prohibit the export of unprocessed private timber. The respondent contends that nothing in the Act prohibits the export of private unprocessed timber.

Response. The Department disagrees that the certification language "concerning my timber purchasing and export patterns" should be deleted. Complete and accurate information regarding an applicant's timber purchasing and export patterns is crucial to the determination of whether an applicant's intended Federal timber purchasers are economically and geographically separate from the applicant's exporting area. Regarding the reference to section 492, the Department agrees that this citation could benefit from some clarification. Therefore, the Department is changing the reference to section 492 to a general reference to the entire Act, to ensure that applicants review the entire Act for potential violations. The new citation will be 16 U.S.C. 620, *et seq*. The Department is also deleting the reference to the requirement to cease purchasing unprocessed Federal timber within the proposed sourcing area if the sourcing area is disapproved, since only initial applicants could have been purchasing unprocessed Federal timber before the sourcing area's approval. The Department has also added the phrases "and its implementing regulations" to the sentence about the prohibition against exporting unprocessed private timber from within an approved sourcing area. While these changes may clarify the certification language, the Department believes that the original certification published in the interim rule was sufficiently clear. Applicants signing the initial certification are bound by that certification.

Comment. One respondent stated that in order for the Secretary to "consider equally" competitors' practices, the Forest Service should have information from the competitors that is as complete and reliable as the applicant's information. Several respondents said that persons submitting information should have to certify that information provided is complete and accurate. The respondent also said that the complete sourcing information of all competitors from the same local vicinity should be examined, not just a contesting competitor.

Response. The Department agrees that complete and accurate information regarding competitors is necessary to determine whether a sourcing area should be approved. The Department makes its own independent assessment of competitors in the same local vicinity based on information submitted, including the Forest Service's records. The Department does not believe that competitors need to provide certain information; the information received is weighted based on its completeness and accuracy, as judged against other submissions. The Department does agree, however, that parties to a sourcing area determination should certify to the truth of what they are providing. Therefore, the Department is amending 36 CFR 223.190 by adding a new paragraph (j) that states that a person submitting a written comment certify at the end of the comment, but before the signature that the information provided is true and accurate, to the best of the person's knowledge, and that failure to provide true and accurate information could be a violation of the False Statements Act (18 U.S.C. 1001).

Comment. One respondent stated that the agency should show which boundaries the Department would approve, and permit the applicant to revise its application to match those boundaries. Another respondent said that sourcing area applications should not simply be denied, but that applicants should be able to modify the proposed sourcing area.

Response. The Act does not require the Department to provide the boundaries that the agency would accept except for applications received by December 20, 1990 (16 U.S.C. 620(c)(4); 36 CFR 223.191). However, the procedures provided for recommended settlements and adjustments during the initial application process, and will provide the same opportunities for subsequent applications.

Comment. One respondent said the rule should state that a person may apply for a sourcing area at any time, but will receive certain advantages if the person applied by December 20, 1990.

Response. The Department believes this was clarified in the final rule of limited scope, published on December 19, 1991 (56 FR 65834). The sections of that rule that have information about sourcing areas may be found at 36 CFR 223.191, and have been repeated in this rule making for clarity.

The rule making that established the procedures for sourcing area applications and reviews of sourcing areas made technical amendments to this section to conform it to the procedures. Additional technical amendments were made in this rule making to conform it to the procedures. Otherwise, except as noted earlier, this section is adopted as proposed.

Section 223.191 Sourcing Area Disapproval and Review Procedures

Section 223.191 was included in the interim rule, published November 20, 1990 (55 FR 48572), and was revised by the final rule published in the **Federal Register** on December 19, 1991 (56 FR 65834). The rule making that established the procedures for sourcing area applications and reviews of sourcing areas made technical amendments to this section to conform it to the procedures. No changes were proposed or are being made to this section by this rule making. Section 223.191 is included in this final rule for continuity and to avoid confusion as to its status.

Section 223.192 Procedures for a Non-Manufacturer

Section 223.192 gives non-manufacturers the opportunity to make the same business decisions as manufacturers; that is, whether to export unprocessed private timber or buy Federal timber. However, because the non-manufacturer does not have a manufacturing facility, the non-manufacturer cannot establish a sourcing area.

Five responses were received from the public on this section of the rule.

Comment: All five respondents commented that they could find nothing in the Act preventing non-manufacturers from having sourcing areas, or required that timber be processed by the original purchaser. The parties said that the final rule should allow non-manufacturers to apply for sourcing areas from within which such a person could buy Federal timber, but not export timber from private lands.

Several of these respondents stated further that controls on indirect substitution prevent abuses, and that there is no reason to limit competition for Federal timber further by preventing non-manufacturers from bidding in areas that are economically and geographically separate from any areas from which they and their affiliates may export private timber.

Response. The Department disagrees with these comments. The exemption that allows a person to purchase Federal timber while exporting private timber is the sourcing area exemption. The Act clearly directs the sourcing area exception to the prohibition against substitution toward persons with manufacturing facilities. Subsection 490(c)(3) of the Act (16 U.S.C. 620(c)(3)) states that the Secretary may approve the application, "only if * * * the area that is the subject of the application, in which the timber manufacturing facilities at which the applicant desires to process timber originating from Federal lands are located" is geographically and economically separate from lands from which the applicant exports. Further, subsection 490(c)(2) of the Act (16 U.S.C. 620b(c)(2)) requires information from the applicant regarding the location of each timber manufacturing facility "owned and operated" by the applicant. This scheme clearly indicates that Congress intended the Act to limit the sourcing area exception to persons who both export private timber and manufacture timber domestically. Therefore, the Department declines to adopt these comments in the final rule.

Some minor, no-substantive changes have been made to the text of this section as proposed for technical and editorial clarity.

Section 223.193 Procedures for Reporting Acquisition and Disposition of Federal Timber

Annual report. Section 492(a)(1) of the Act provides that each person who, either directly or indirectly, acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall report the receipt and disposition of such timber to the Secretary concerned, in such form as the Secretary may, by rule, prescribe; and that such person may not be held responsible for the reporting of the disposition of any such timber held by subsequent persons. In addition, the Conference Report on this section states that the conferees intend the Secretary of Agriculture to have a complete account of transactions relating to the acquisition and disposition of unprocessed timber originating from Federal lands (Conf. Rpt. p. 259).

The rule (§ 223.193(a)) as proposed would have required that an annual report on the acquisition and disposition of Federal timber be submitted to the Forest Service. Any person acquiring and/or disposing of such timber would be required to submit an annual report.

As proposed, such report would provide, by fiscal year, an accounting of the unprocessed Federal timber acquired, processed, stored, or transferred to another person. The report would require statements regarding the volume of timber acquired, processed, stored and/or transferred to another person, and the origin of such timber. In addition, the report would require the date of acquisition or disposal, from whom acquired, the timber sale name, the contract number, log brands, bar coded tag number and other markings for timber acquired or disposed. The rule as proposed would require submission of the first report December 1, 1991, and subsequent reports on December 1 of each year thereafter.

Twenty-seven respondents commented on this section. The comments essentially focused on three topic areas: The need for the annual report; the difficulty in obtaining the unprocessed Federal timber inventory information requested; and the burden that the information requirement would place on individual companies.

Comment. Comments received questioning the need for the annual report were as follows:

- Annual reporting requirements are not necessary and they are unduly burdensome.
- An annual report may be appropriate for holders of the State of Washington indirect substitution quotas, but should be limited to the facts necessary to show that the quota has not been exceeded.
- The Act does not require retention of these and other records for three years.
- The annual report is redundant; the Department already has this information through the tracking system and/or at the end of each sale.

Response. Section 492 of the Act (16 U.S.C. 620d(a)) states that each person who acquires unprocessed Federal timber, directly or indirectly, shall report to the Secretary the receipt and disposition of such timber. The Secretary will prescribe in the rule the form of the report, which would include frequency. Section 492 of the Act also requires the Secretaries of Agriculture and the Interior to report to Congress on the disposition of unprocessed Federal timber in the west and the practice of indirect substitution, based on the information gathered in subsection (a) (16 U.S.C. 620(b)). Form(s) and reporting frequency as shown in the final rule are those considered to be the minimum necessary to meet the Act's requirements of reporting and monitoring. Retention of these records for three years is important for monitoring purposes, as logs are often in commerce for several years. The annual report is not redundant. The annual report informs the Department as to what volume has been processed and what volume has been exported; the transfer documents inform the Department as to the commercial path of timber. Taken together, these documents allow the Department to track timber from the first purchase through processing or exporting. Further, information gathered at the end of each sale does not account for annual processing of Federal timber by third parties, which the annual report will do.

Comments. Several respondents commented that the information for the annual report required by pre-enactment rules at § 223.48 is sufficient to meet the accounting requirements of the Act, and strongly objected to the volume inventory reporting requirement in the proposed rule. Specific comments included the following:

- Logs generally are sorted by species, size, or grade, and are placed into corresponding storage decks. These decks contain logs from all origins. Tracking such logs by origin would be very costly and impractical.
- To comply with the rule, a purchaser may be forced to buy more land and expand the log yard to accommodate the additional decks needed to separate logs according to origin as well as species, size, grade, etc.
- There is no way to determine the actual volume of Federal timber held in inventory without making estimates at the mill.
- Inventory tagging of each log is possible, but costly. Moreover, tags are easily lost in handling, and many purchases do not have computers and scanners to handle tags.
- The rules would require the scaling and labeling of every log, in addition to branding and marking.
- It is proper to maintain requirements for sale-by-sale disposition of Federal timber on an annual basis, but 100 percent accountability of each individual log cannot be achieved.

Response. The Department agrees with many of these concerns. Accordingly, the Department has removed the requirements to report volume in inventory at the beginning and end of the year. Otherwise, other than as noted, the Department has adopted the form as proposed, with minimal changes in titles, instructions, and certification language. The information requirements in paragraphs (a)(1) through (a)(7) of § 223.193 in the proposed rule have been reduced and revised in new paragraphs (a)(1) through (a)(5) in this rule as discussed below.

The Department believes that information regarding individual logs acquired is not onerous and provides the Department with information to track logs as required by the Act. Brands other than brands registered by a State or agency are required to have a pictorial representation on the form for purposes of identification, since they do not have registration numbers. Contracts awarded before August 20, 1990, require purchasers to submit an annual report on form FS–2400–46, *Purchaser Certification of Timber Domestically Processed or Exported* (OMB No. 0596–0021, Expires March, 1997). The annual report under § 223.193 of this final rule will be very similar to the present reporting form. Like the present reporting form, the annual report under § 223.193 will include a requirement to record the volume of unprocessed private timber exported. This can be found in new paragraph (4) of § 223.193 of this rule.

The major differences between the present form FS–2400–46 and the new annual reporting form are as follows: (1) The form title is changed to read "Certification of Receipt and Disposition of Timber Originating from National Forest Lands"; and (2) the instructions state that any person who directly or indirectly acquired or processed timber originating from National Forest System lands in the previous calendar year must complete the annual report. The Department has changed the final rule to require the annual report by calendar year, rather than fiscal year, because of the purchasers' familiarity with reporting by calendar year and to provide consistency with prohibitions in the regulations.

The Department wants to clarify that actual volume must be reported. In order to monitor and investigate transactions, and to prosecute violations of the Act, the Department must have the actual volume recorded. This will enable the Department to validate the accuracy of the information submitted. Further, the Department will be able to meet the Act's requirement to submit the report to Congress based on the information gathered. Further, the Department needs actual volume recorded in order to monitor the annual quota exempted from the indirect substitution prohibition in Washington State. Third party scaling organizations have the ability to provide accounting reports, and do so as a matter of course, which will reduce the reporting burden.

Comment. Several persons commented that if annual reports are required the first one should not be due before the rules have been in effect for the previous year.

Response. The Department agrees. The first annual report will be for the first calendar year in which the rules are published with the first report due March 1 following the first reporting period. Calendar years prior to the rule's publication will be reported on the current FS–2400–46 form.

Comment. One respondent said that the person submitting the annual report should not have to certify that the information is not confidential.

Response. The Department has revised this requirement. If a person submitting the annual report would like something to be kept confidential, the person should so mark the information. The Department will then evaluate the confidentiality of the information pursuant to the applicable laws.

A new paragraph, § 223.193(a)(5)(ii), has been added to assure that the certifier is eligible to acquire unprocessed timber originating from Federal lands in accordance with the Act. This certification is needed to help assure that the requirements of the Act are enforceable.

A new paragraph, § 223.193(a)(5)(iv), has been added to require the retention of the form and records for three (3) years and to make them available for inspection to authorized Federal officials on request. Retention of these records for three years is important for monitoring purposes and for enforcement of the Act, as logs are often in commerce for several years.

Transfer of Unprocessed Federal Timber

Section 492(a)(2) of the Act states that each person who transfers to another person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 states shall, before completing such transfer: (1) Provide to the person receiving the timber a written notice which identifies the Federal origin of the timber, (2) receive from that person a written acknowledgment of the notice and an agreement that person will comply with the Act, and (3) provide the appropriate Regional Forester, or other official to whom such authority has been delegated, with copies of all such notices, acknowledgments, and agreements.

Section 223.193(b) of the proposed rule would require each person who transfers unprocessed timber originating from National Forest System lands to provide such other person with the notice, acknowledgment, and agreement executed on a form provided by the Forest Service. The proposed § 223.193(b) would also require the transferor to provide copies of each such executed form to the appropriate Regional Forester within 10 days of such transfer.

The transferor includes anyone who sells, trades, or otherwise transfers unprocessed Federal timber. The transferor is not only the initial holder of a contract to harvest Federal timber, but is also any person who subsequently acquires the Federal timber, and in turn transfers it to another person.

Proposed § 223.193(b) would require the transferor to state the origin, species, volume, from who acquired, timber sale name, contract number, log brand, bar-coded tag number, and other markings of unprocessed Federal timber on the form. The proposed form would contain a statement that the purchaser of Federal timber, whether directly or indirectly obtained from the Federal government, agrees to maintain records of all transactions involving unprocessed Federal timber for a period of three (3) years from the date of the transfer, and will make all records involving log transactions available to an authorized U.S. Government official upon request.

The proposed form also would include a certificate stating that the information supplied is a true, accurate, current, and complete statement to the best of the transferor's knowledge, and agreeing to send the form to the appropriate Regional Forester or other administering office within ten (10) days of the transfer. The transferor would agree to obtain a fully completed Notice of Origin form from the transferee, and the transferor would acknowledge that failure to report completely and accurately the transfer of unprocessed Federal timber will subject the transferor to the penalties and remedies in the Act and the penalties in the False Statements Act. The transferor would also be required to acknowledge that he or she has read and understands the form. The certification would also require the transferor to acknowledge that the information provided is not confidential.

Comments. Several comments were received on this procedure. Some respondents were concerned that a seller of Federal logs might be held liable for the illegal actions of the buyer or subsequent buyers, or that the seller would be certifying that the buyer will comply with the Act, including the requirement to retain records.

One person stated that the rule should indicate that a timber seller is exonerated from further liability if all necessary notices, certifications, acknowledgments, and record keeping obligations required under the Act are satisfied.

Response. Section 492(a) of the Act (16 U.S.C. 620d(a)(1)) states that the transferor of unprocessed Federal logs may not be held responsible for subsequent persons' reports of the disposition of such timber. The transaction reporting form to be supplied by the Forest Service, when properly completed and returned to the Forest Service, will release the seller from such liability.

By completing the form, the seller does not certify that the buyer is legally eligible to purchase unprocessed Federal timber pursuant to the Act. The rules and the form require the buyer of the timber to make that certification. The form is a way to notify the buyer, who may have no direct contact with the Federal government, of the rules to which the purchaser is bound.

However, the Department agrees that a statement clarifying liability should appear in the rule. Therefore, the Department has added to the final rule paragraph (4) of § 223.193(b), which states: "Except as otherwise provided by law, a person who transfers unprocessed Federal timber to another person and meets all notice, certification acknowledgment, reporting and record keeping requirements contained in this section shall be relieved from further liability for such timber pursuant to the Act."

Comment. One individual stated that the 10-day period for distribution of the completed transfer document was unrealistically short, especially for a company engaged in a large number of such transactions. Another stated that requiring prompt reporting of such comprehensive information is a substantial and costly burden, particularly given the penalties for mis-reporting or making a single mistake. Still another stated that a phase-in period should be allowed so that companies can adjust or alter their accounting system to meet these requirements.

Response. Effective monitoring and enforcement are dependent on prompt reporting of transfers. All the documents needed to report a transfer are available at the time a transfer agreement is reached, therefore there is little reason that more than 10 calendar days are needed to report that transfer to the Forest Service. The Department also does not believe a phase-in period for complying with these requirements is necessary. The proposed rule has given persons ample time to prepare for compliance with the final rule. Therefore, no change in the final rule is needed.

Comment. One respondent said that the certification language in § 223.193(b)(3)(vi) should state, "an acknowledgment of the prohibition against acquiring unprocessed federal timber *by* a person" who is prohibited by the Act from purchasing unprocessed Federal timber directly from the United States, rather than *from* a person.

Response. The Department does not agree with the comment. The rule already provides that the person acknowledges that he or she may purchase unprocessed Federal timber in accordance with the Act (§ 223.193(b)(3)(ix)). This separate acknowledgment reminds the person acquiring the timber that Federal timber that may not be purchased directly, may not be purchased indirectly either. No change in the rule is necessary.

Comment. One respondent stated that the transfer form should be shorter, with an acknowledgment of the requirement for domestic processing of unprocessed Federal timber, and an acknowledgment that the transfer of unprocessed Federal timber to persons who are not qualified to acquire Federal timber constitutes a violation of the Act, and an acknowledgment from the person acquiring the timber that the person will domestically process the timber.

Response. The certifications provide that the person receiving the timber knows that the timber must be domestically processed, and that the timber is subject to the prohibition against substitution (§ 223.193(b)(3) (vii) and (ix)). The Department agrees, however, that the person transferring the timber needs to acknowledge that transfer of the timber to persons not qualified to acquire Federal timber constitutes a violation of the Act. Persons not qualified to acquire Federal timber are those who could not acquire that timber directly from the Federal government, in violation against substitution, or those who acquire the Federal timber for export. Completion of the form, including acknowledgment of the buyer's eligibility to acquire the timber is sufficient to protect the seller of the timber from an invalid transfer (New paragraph (4) of § 223.193 relieves a person of liability if all notices, agreements and acknowledgments in this section are met except as otherwise provided by law). Accordingly, a sentence has been added to the certification at § 223.193(b)(2)(ii) that the certifier acknowledges that the transfer of unprocessed Federal timber to a person who is not eligible to acquire such timber either because of a substitution violation, or because the person is acquiring such timber for export is a violation of the Act.

Comment. One respondent stated that a violation of the terms of the certification should not be a violation of the Act, but a violation of the contract.

Response. The terms of the certification include an agreement to comply with the Act, and follow procedures to ensure that the government can monitor the transfer of logs, pursuant to 16 U.S.C. 620d(a). Additionally, the Act states that any violation of the Act or regulations implementing the Act is punishable by fines, the amount of which is determined by the specific circumstances. Further, transfer of logs does not always occur within the context of a government contract, although violation of the Act is grounds for canceling a government contract (16 U.S.C. 620d(d)(2)). Therefore, no change is made to the certification language in response to this comment.

Comment. One respondent outlined an alternative to the certifications, branding and painting developed in the proposed rules. The respondent stated that the Department should certify all purchasers who are authorized to buy Federal timber. This would include manufacturers, non-manufacturers and those who buy Federal timber from third parties.

Purchasers certified to purchase Federal timber would report all transactions, including transfer of private timber, to the agency within 10 days. A transfer agreement would be developed by the agency including the agency certification numbers for buyer and seller, estimated volume and a statement that all logs with yellow paint must be domestically produced.

All Federal logs would be painted on at least one end prior to leaving the sale area. All logs requiring domestic processing which are transferred to a third party would be painted on both ends with yellow paint prior to transfer. All logs transferred to a third party would be hammer branded with a mill brand prior to transfer. Waivers would be provided. The respondent states that the key to the Act is to show that a person who purchased Federal timber has not sold private timber for export, and that anyone may purchase unmarked logs, but purchasers authorized to purchase Federal timber may not transfer unmarked logs for export. Therefore, there is no reason to identify the origin as long as logs are marked for domestic processing.

Response. The Department disagrees with this approach. First, while the Department can identify purchasers of Federal timber, it has no way of identifying persons who acquire Federal timber beyond the first purchaser. Therefore, a national certification of all persons who acquire Federal timber is not possible. Second, while it is true that a major component of the Act is that a person acquiring Federal timber has not transferred private timber for export, simply certifying that a person may acquire Federal timber is inadequate for enforcement of the Act. A person with a sourcing area may acquire Federal timber from within that sourcing area, and may transfer private timber for export outside of the sourcing area. Simply identifying the person is inadequate; the Department would need to establish where the timber originated to determine whether there had been a violation. The ability to purchase unmarked logs would render meaningless any tracking system. The Department would have no way of knowing whether a violation of the Act had occurred, based on either the transferor or the origin of the logs. Further, a person acquiring such logs also has no assurance that the transaction is legal. The Department has tried to make the tracking system as straightforward as possible while enabling the monitoring of the logs, as required by the Act. No change in the rule has been made in response to this comment.

Comment. One person stated that the amount of information that must be promptly reported by the buyer and seller of logs, coupled with the penalties for each violation of these requirements, make these requirements a substantial barrier to transferring logs to processors that can mill them to their highest and best use.

Another respondent commented that requiring that records be maintained for 3 years will create considerable additional storage requirements, and that there is no reason to collect the amount of information required in this section. This person said that only a signed statement stipulating that the logs must be domestically processed should be required.

Response. The Act requires the Secretary to draft any regulations necessary to implement the Act. The Department believes that the names of the log seller and the buyer, the log identification markings, the Federal agency contract number, and the volume of Federal logs included in the transaction is the minimum amount of information needed to monitor compliance with the Act. The log identification marks and contract number are necessary to determine origin of the logs and the original buyer. The volume is necessary to track logs, to determine the extent of an alleged violation and to help assess civil penalties. The retention of unprocessed log transfer transaction statements is necessary for the Department to monitor and assure compliance with log export and substitution restrictions. Without such records, the Department could not fulfill its responsibilities to implement and enforce the Act. Therefore, the Department declines to adopt these comments.

Comment. One person commented that because many log transfer agreements are made before actual volume measurements are performed, the Department must be willing to accept estimated log volumes rather than actual log volumes on the transfer form.

Response. The Department will accept volume estimates used in the actual transaction. If the transaction is based on standing tree (cruise) estimates, that will be the volume used for reporting the transaction. If the transaction is based on actual log scale volume, that is the volume to be reported. The phrase "estimated volume or actual volume if the transfer is based on log scale volume," has been added to paragraph (b)(1) in response to this comment.

Comment. One person commented that there is no justification for requiring either the transferrers or the transferees to certify that the information submitted is not confidential.

Response. The Department has revised this requirement. If a person signing the transfer form would like to keep something confidential, the person should mark the information. The Department will then evaluate the confidentiality of the information pursuant to the applicable laws. Therefore, the Department has modified the sentence on confidentiality in the form and in paragraph (b)(3)(ix) of proposed § 223.193.

Comment. One respondent stated that a person transferring unprocessed federal logs must certify that the person understands the Act and regulations which can involve complex legal issues. Two respondents expressed concern that the rule requires persons to reach legal conclusions on issues where the law is unclear with regard to the log transfer documents and the annual reports, and complained that the administering agency is unwilling to give advisory opinions.

Response. While the Act, and therefore the regulations implementing the Act can be complex, a purchaser of unprocessed timber must understand these rules in order to abide by the law. No enforcement of the reporting requirements of the Act or these rules will occur until after this rule is published. The Forest Service is willing to meet with anyone to discuss the Act and/or the regulations when the regulations are finalized. However, the Department cannot give legal advice. No change in the rule is necessary.

A new paragraph, § 223.193(b)(3)(ii), has been added to clarify that the purchaser of Federal timber agrees to allow Federal officials access to log storage and processing facilities for the purpose of monitoring compliance with the Act and implementing regulations. This requirement clarifies that the Federal logs in possession of an indirect purchaser are subject to the same review as Federal logs acquired directly. Without access to log storage and processing facilities, the Department believes the Act's requirements to monitor indirect substitution and enforce its prohibitions would be severely hampered because of an inability to monitor log movement.

A new paragraph, § 223.193(b)(3)(iv), has been added to assure that indirect purchasers are aware the Act requires anyone who acquires federal timber to report the timber's receipt and disposition, 16 U.S.C. 620d(a)(1). Therefore, this paragraph references the required annual report.

Other than the changes noted, the Department has adopted several minor changes to the proposed text of this section for technical and editorial clarity which have no substantive effect.

Section 223.194 Procedures for Reporting Acquisition and Disposition of Private Timber

Under the Act, a person who sells or otherwise transfers private timber that requires domestic processing and has in the person's possession or subsequently acquires unprocessed Federal timber could be in violation of the prohibition against substitution if the buyer of the unprocessed private timber were to export it. To protect a person who deals in both unprocessed Federal and unprocessed private timber from such substitution liability, proposed § 223.194 would require such a person to notify and receive an acknowledgment from the person acquiring the unprocessed private timber that such timber must be domestically processed, not exported, and would require that such transfers be reported to the Forest Service within 10 days of the transaction. The Forest Service would provide a form for such purpose. The statement on the proposed form would provide: (1) Notice to the person receiving the unprocessed private timber that exporting that timber would violate the regulations prohibiting substitution; (2) Notice to the person receiving the unprocessed private timber that the timber has been identified for domestic manufacturing by marking the logs with highway yellow paint that must be retained on the timber; (3) The acknowledgment of the notice by the recipient; (4) An agreement to include the statement in any subsequent transaction documents; (5) A signed copy of the transaction statement to be sent to the applicable Regional Forester within ten (10) calendar days of the transaction; and (6) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from Federal or private lands west of the 100th meridian in the contiguous 48 states for a period of three (3) years from the date of disposal by manufacturing or transfer.

Comments. This requirement drew 18 responses, most of which generally opposed the reporting requirements involving the acquisition and disposition of private timber, and specifically opposed the frequency requirements. These respondents said that their internal accounting and office practices made compliance within the 10 day time frame impossible. Other respondents said the reporting procedures were satisfactory.

Response. The Act specifically prohibits substitution of unprocessed Federal timber for export unprocessed private timber, and assigned the responsibility for monitoring compliance of these prohibitions to the Secretaries of Agriculture and the Interior. Reporting the acquisition and disposition of private timber, along with random site visits, are crucial to fulfilling this monitoring responsibility. The Department cannot enforce the Act's prohibition against substitution and the specific exceptions, without the ability to track unprocessed private timber. Therefore, the Department declines to adopt the suggestions that the proposed reporting of private timber transactions be removed from the rule. As stated earlier, the Department believes that prompt reporting of transfers is vital to effective enforcement of the Act and believes that reporting such transfers within 10 calendar days is not excessively burdensome.

Comment. One respondent commented that the requirement to notify the person receiving unprocessed private timber that the timber has been identified for domestic processing by a spot of yellow paint that must be retained would be extremely expensive, and particularly difficult for small businesses.

Response. In order to enforce the Act's restrictions against direct and indirect substitution, it is necessary to mark all logs that must be domestically processed. Otherwise, there is no way to distinguish between private logs that may be exported, because there is no link to the acquisition of federal logs, and private logs that may not be exported because of the potential violation of substitution. The additional requirements, required by the Act's prohibitions, are the minimal means of identifying logs to be processed. No change in the rule has been made in response to this comment.

Comment. One person stated the rule should require persons who sell private timber from within their approved sourcing area to notify purchasers that they cannot export the logs under the Act.

Response. The rule's "Notice and Acknowledgment of Requirement to Domestically Process Timber Originating from Private Land" accomplishes this objective.

Comment. One respondent states that the rule should clarify that the transaction statements are not required from persons who trade in private timber that originates from outside a sourcing area.

Response. There are no requirements to complete such a statement for transactions involving unprocessed private timber from outside a person's approved sourcing area, because such timber does not require domestic processing. However, the Department agrees that this could be clarified. Therefore, paragraph (a) of § 223.194 has been amended to delete the language regarding private lands located within a sourcing area, and to add a new sentence at the end of the paragraph as follows: "Unprocessed timber originating from private lands located outside of a sourcing area may be transferred by the holder of the sourcing area, or by persons acquiring such unprocessed timber who are eligible to export such timber, without including such a statement."

Paragraph (a) of § 223.194 has also been amended to note that the reporting requirement applies to timber that requires domestic processing, including private timber originating within a sourcing area. This clarification is included to encompass all timber that requires domestic processing.

Paragraphs (b)(1) and (2) have been revised to include the required contents of the notice, including an agreement to permit authorized Federal officials access to private log storage and processing facilities in order to monitor compliance with the Act. As with monitoring of Federal log transfers, discussed earlier in this preamble, without permission to enter into private log storage and processing facilities of those persons in possession of private timber that requires domestic processing, the Department believes the indirect substitution prohibitions of the Act will be substantially unenforceable. This monitoring is a necessary component of enforcing the prohibition against substitution through the export of private timber that requires domestic processing, pursuant to § 223.189(a)(3).

Paragraph (b) has also been revised to include acknowledgments that the person transferring or acquiring the unprocessed private timber is: (1) Aware that failure to comply with the domestic manufacturing requirement for the unprocessed timber or failure to notify subsequent persons of these requirements is a violation of the Act, (2) understands that failure to completely and accurately report and identify unprocessed timber is a violation of the Act and the False Statements Act (18 U.S.C. 1001), and (3) the form has been read and understood. These acknowledgments are needed to assure that the certifier is aware of and understands the potential consequences of violating the Act. These changes assure that the requirements of the Act are enforceable.

Paragraph (b) has also been revised to remove the actual certification statements appearing on the form from the rule.

Further, the Department has clarified in new paragraph (c) that persons who fully comply with the notification requirement in this section are not liable for the actions of persons who subsequently acquire such timber in violation of the Act, except as otherwise provided by law.

The Department has adopted several minor changes to the proposed text of this section for technical and editorial clarity but which have no substantive effect.

General Comments Relating to the Reporting Requirements of Both Sections 223.193 and 223.194

Comment. Several respondents indicated the reporting requirements are too burdensome and costly. Some stated the burden is greatest on the smaller businesses that must commit substantial amounts of their limited time and resources to understanding and complying with these rules. Some stated that these requirements could eliminate some small businesses from continuing to purchase Federal logs. One respondent suggested that there be an annual notification by company, rather than a notification on each sale. One respondent said that it is impractical to require accounting by individual logs. Two respondents wrote that while these are new and added administrative procedures for the purchasers of Federal timber, the provisions appear reasonable and necessary to fulfill the intent of the legislation.

Response. As discussed previously, the annual reporting requirements of the Act do not differ significantly from what is presently being required in contracts awarded before August 20, 1990. The difference is that under the Act, persons who acquire National Forest System timber indirectly must submit an annual report. Previously only those persons who acquired unprocessed timber from National Forest System lands directly had to submit an annual report. In addition, the transfer reporting requirements under the Act are new. Contracts awarded before August 20, 1990 do not have this reporting requirement. Individual logs have never been requested to be identified in annual reports; reporting is done by volume.

The Act requires that a person notify the recipient about the Federal origin of the timber before a transfer occurs; an annual report would not meet this requirement. Completion of these transaction reports, which are on forms furnished by the Forest Service, takes from 5–20 minutes each to complete. The Department does not believe the new forms will have a major impact on timber purchasers, including small businesses.

The most time-consuming task is the annual report. However, most National Forest System timber purchasers have been providing similar information in the previous annual report since 1973.

The initial impact to all businesses will be the submitting of two different sets of forms: those for sales awarded before August 20, 1990, and those awarded on or after August 20, 1990.

The Department anticipates that at least 90 percent of the pre-enactment contracts will be completed and closed within three years of publication of this rule. The dual reporting burden will be steadily and substantially reduced over that period.

Comment. One respondent asked that the terms "transaction" and "transaction statement" be defined. Specifically, the respondent was concerned that a "transaction statement" not include log prices.

Response. The Department agrees. These terms are used in § 223.194 and have been defined in § 223.186 of this rule as follows: "*Transaction* means an arrangement involving the transfer of unprocessed timber. *Transaction statement* is a signed copy of one of the transaction reporting forms in 36 CFR 223.193 and 223.194." The transaction statement does not require information regarding log prices.

Comment. One person was concerned that the forms are inappropriate for a corporation or partnership because they are written for the individual. The person suggested that the forms be revised to accommodate all types of businesses.

Response. The forms are drafted to accommodate the definition of a *person*, which includes the individual as well as corporations. Therefore, the suggestion is not adopted. The individual signing the form is responsible for the content in that person's official capacity.

Comment. One respondent stated that maintaining records for three years is not necessary.

Response. The retention of acquisition and disposition records is necessary for the Department to monitor and ensure compliance with the prohibitions against export and substitution. Logs are often in commerce for several years. Without the availability of records, the Department could not fulfill its responsibilities to implement and enforce the Act on National Forest System lands by tracking the timber back to its source. The Act provides for the Secretary to draft such regulations as may be necessary to implement the Act.

Paragraphs (a)(5)(iv), (b)(2)(iv), and (b)(3)(I) of § 223.193 and paragraphs (b)(1)(iv) and (b)(2)(iv) of § 223.194 implement this requirement of the Act. Paragraphs (b)(1)(iv) and (b)(2)(iv) of § 223.194 have been revised to make them consistent with paragraphs (a)(5)(iv), (b)(2)(iv), and (b)(3)(I) of § 223.193, relating to the availability of records. The portion of paragraph (a) of § 223.194 that concerns the notification statement has been changed to paragraph (b), and has been revised to clarify that notification is necessary only for timber that requires domestic processing. Some other minor changes have been made to the proposed text of this section for technical and editorial clarity but which will have no substantive effect.

Section 223.195 Procedures for Identifying and Marking Timber

Section 223.195 of the proposed rule would require marking and identifying of unprocessed logs originating from National Forest System lands located west of the 100th meridian in the 48 contiguous States. Proposed § 223.195 would require each unprocessed log originating from National Forest System lands west of the 100th meridian in the contiguous 48 states to be marked on each end with a spot of highway yellow paint and with a hammer brand approved for use by the Forest Supervisor of the National Forest from which the unprocessed log originates. In addition, if the unprocessed log is sold to a third party, proposed § 223.195 would require it to be tagged on one end with a bar-coded tag, which would identify the origin of the unprocessed log by timber sale contract number, region, national forest, ranger district, and log number.

As proposed, § 223.195 would permit only the Regional Foresters of Regions 1, 2, 3, and 4 to waive the requirements to hammer-brand on an individual sale basis if there is no history of logs from any origin being exported from the area of the purchaser's operations if the purchaser is in compliance with these regulations, including the provision relating to transfer documents, and the purchaser has certified that he or she has not exported logs from that area in the last 24 months.

Proposed § 223.195 would reserve highway yellow paint for identifying logs originating from west of the 100th meridian in the contiguous 48 states that require domestic manufacturing.

Comments. This section drew 70 responses. Forty-four comments opposed the proposed use of bar code tags as burdensome, costly and unnecessary to implement the Act.

Response. In analyzing all comments and conducting surveys of National Forests and bar code tag manufacturers, the Department concludes that at this time bar coding would not be an effective or efficient way to track logs. Therefore, the bar coding requirements have been removed from the final rule. Likewise, these requirements have been removed from the reporting requirements in §§ 223.193 and 223.194. However, authorization is provided for the testing of alternative methods for possible future revision of this rule.

Comments. Twenty-four comments addressed the double-end hammer branding and yellow painting requirements for identifying National Forest logs. None supported this requirement, but several persons said they preferred hammer branding and painting to tagging logs with bar codes. Comments included the following points:

- Increased branding and painting makes the entire industry pay for the actions of a few bad characters.
- Some sales are so far removed from export yards that increased branding and painting are not necessary.
- Branding and painting requirements compromise safety, because they are manual work that must be done on the landing.
- The waiver provisions are unrealistic, too stringent, and not adjustable to local circumstances or conditions. Judgment as to requirements should be returned to the field.
- Painting and branding small and lower valued timber is problematic; flexibility regarding requirements should be made available in Regions 5 and 6, to accommodate conditions on the ground.
- Painting and branding should be required only on most logs and/or a minimum of 10 logs per load. Many logs larger than 10″ or 12″ should be branded on one end.
- Branding and painting on both ends conflicts with the utilization standards that require logs to be bucked at the break; this is impossible to do because the long is shattered.

Response. Following the reassessment of the use of bar coded tags, the Department believes that hammer branding and yellow painting are the best options currently available for identifying logs not available for export. The Department must be able to identify and track unprocessed Federal and private logs ineligible for export. To make tracking possible and to comply with the Act, all Federal and private logs required to be domestically processed must have long lasting and easily recognizable identifying marks which will stay on the logs until processed.

The Department acknowledges that some logs have more export value than others, and that it is difficult to get a legible brand on a small diameter log 100 percent of the time. With regard to the utilization standards, each end may need to be sawed in some instances. Consequently, the Department has rewritten proposed § 223.195 in the final rule to include paragraphs (e) and (f).

Paragraph (e) permits the Chief of the Forest Service to waive the painting requirements on National Forest logs and private logs when other identification methods that are equal or better than the yellow painting method are found. An easily identified marking indicating which logs must be domestically processed is essential for enforcement purposes. However, this waiver allows for developing technology.

Paragraph (f) amends the criteria by which the Regional Forester may waive all or a portion of the branding requirements in Regions 1, 2, 3 and 4. The Regional Forester remains the appropriate person to grant waivers. The Regional Forester has the broad perspective regarding exporting in the region. Given the Department's recent experiences with logs being transported great distances for commercial purposes, this broad perspective is essential to make the waiver determination. The proposed requirement that exporting not have occurred in the area of the purchaser's operations has been modified in the final rule. The requirement in the final. rule is that exporting not have occurred in the previous five years in the purchaser's area of operations. While providing some time for logs to be in commerce, this modification also accounts for changed market conditions. However, to ensure effective enforcement of the Act, a new paragraph (iv) has been added to § 233.195(f)(1) to state that if the Regional Forester determines that exporting is or has been occurring within the person's area of operation within the previous 5 years, the Regional Forester shall revoke the waiver. Further, the certificate for Regions 1–4 states that the person not have exported in the area of operations in the past five years, to parallel the waiver requirement. In addition, the waiver is valid only for the person's area of operations. The Department believes it is helpful to provide flexibility to those purchasers whose logs would not have the opportunity to intermingle with export traffic. However, it is essential to monitor those logs that do leave the area of operations, and have a greater opportunity to intermingle with export traffic, in order to enforce the Act. Unmarked logs make enforcement of the Act's restrictions impossible, since their ability to be exported is not documented.

Paragraph (f) also allows for waiver of branding on one end on logs less than ten inches in diameter on the large end within Region 5 & 6 that will be processed at a specifically identified facility. The Department recognizes that it may be difficult to brand a small log. One respondent suggested a waiver for logs less than eight inches in diameter on the large end. However, the Department is permitting waiver of one-end branding for logs less than ten inches on the large end, because there has not been significant demand for round wood of this size in the export market, so the chance of these logs mingling with exportable logs is low. However, paragraph (iv) states that if the Regional Forester determines that logs ten (10) inches or less in diameter inside bark on the large end are being exported in the Region, the Regional Forester shall revoke the waiver. This allows the agency to respond effectively to changed conditions. All waivers are granted on an individual timber sale basis.

The Department has also moved the waiver of painting requirements to paragraph (e), following the requirements to paint unprocessed timber originating from private lands in paragraph (d). This move clarifies that the waiver of painting requirements may apply to all unprocessed logs otherwise requiring yellow paint.

With regard to safety, logging is universally recognized as an inherently dangerous occupation. To minimize safety hazards to both private and Federal employees, logging contractors, landowners and managing agencies must work together to provide a reasonably safe working environment. Log accountability and identification must also be provided to assure that the government receives full payment for logs and that logs requiring domestic processing are not exported. No change in the rule is necessary; however, the Department is always interested in more efficient and effective methods for identifying and tracing logs to assure compliance with the Act.

Comment. One respondent commented that long logs are manually bucked, decked, and held for processing through a small sawmill or chip-and-saw. These logs are "in process," but the regulations do not recognize this situation. More flexible identification of in-process logs is necessary—or Regional Foresters need more funding and direction to monitor and enforce existing regulations. Another respondent stated that non-grade logs are often difficult to brand and paint, discouraging the use of small and highly defective logs because of cost.

Response. The proposed rule would require that if a log is cut into two or more pieces, each piece shall be identified in the same manner as the original piece. This provision was deemed necessary to assure that all Federal logs and other logs requiring domestic processing are properly identified, even when such logs are remanufactured into shorter length segments, to prevent possible exporting.

However, the Department has concluded that in some situations it may be highly impractical, very costly and not necessarily in the Government's interest for a person to have available for use all branding hammers needed to replace brands assigned to logs of Federal origin that he or she may be acquiring from other persons. Consequently, paragraph (b)(1) permitting the use of yard catch brands has been added to § 223.195 of the final rule as follows: "A generic log hammer brand, knows as a "catch brand", used to identify ownership, may be used to replace lost, removed, unreadable or otherwise missing brands where such use is authorized by the Regional Forester and approved by the Contracting Officer. Use of such a catch brand on a log or log segment will signify Federal origin."

Further, the Department recognizes that sometimes such re-branding may not be appropriate or necessary, particularly where such pieces are being immediately processed, and/or final processing is to continue on-site, within a relatively short period of time. Accordingly, the Department has added the following to paragraph (b)(2) of § 223.195: "The requirement to preserve identification of log pieces shall not apply to logs cut into two or more segments as part of the mill in-feed process immediately before processing. Log segments that are returned to or placed in storage must be marked on both ends with yellow paint."

With regard to non-grade logs that may be difficult to brand and paint, the Department has provided a waiver of branding on one end for logs 10″ or less, assuming they are not being exported in the Region. The Department believes that the waiver addresses this respondent's concern.

Comment. One respondent objected to the waiver in a person's area of operations. The respondent stated that his company had many areas of operations, and one area should not be affected by another.

Response. The area of operations that will be considered is within the Region where the waiver will occur. Otherwise, the Regional Forester could not grant a waiver. A smaller area would lose meaning in terms of identifying transport of logs for export. No change to the rule is necessary in response to this comment.

Comment. The same respondent said that the criterion in the proposed rule at 36 CFR 223.195(c)(4)(ii), now in paragraph (f)(1)(ii) of the final rule, that persons must certify that they have not exported unprocessed timber from private lands west of the 100th meridian in the contiguous 48 States in the previous 24 months means that those with statutory exemptions from substitution in other circumstances (sourcing areas) could not receive a waiver.

Response. The waiver of branding would have to be evaluated along with any exemptions from substitution to which a person is subject. However, even if exporting is allowed in the same area that Federal timber may be purchased, for instance, under the indirect substitution exemption in § 223.203, this would not affect branding requirements. The Department would need to monitor the flow of logs especially carefully in this situation, to insure that the intermingling of exportable and non-exportable logs does not occur. No change in the rule is necessary in response to this comment.

Comment. One respondent stated that the waiver provision is too limited to be useful, because it requires no history of logs from any origin being exported from the area. This respondent felt that few waivers will be implemented because Region 1 logs have been exported, and other Regions will be reluctant to grant waivers.

Response. The Department believes the revision of the waiver provisions in the final rule discussed above adequately addresses this comment. The revised waiver procedures give the Regional Foresters the ability to address unique local conditions.

Comment. One respondent stated that the annual requirement to certify that a Federal timber purchaser has not exported would suffice for the certification in the waiver of branding requirements.

Response. The Department believes that a separate certification for the particular purpose of waiving branding in a specific area is less confusing, since the purposes of each form are different.

Comment. One respondent suggested that notification of log sales between companies within a Region be reported to the Federal government in lieu of the marking and certification requirements. Only logs leaving a region would be required to be marked.

Response. In order to monitor export activity effectively, logs must be identified. A notification will not assist in identifying logs. Consistent and accurate tracking of these portable, fungible products requires individual log identification.

Analysis of these comments revealed that the proposed rule failed to state when such identifying marks should be applied to the logs. With regard to National Forest System logs, the product identification provision, C(T)6.82, in the timber sale contract requires that painting and branding of products be done before removal from the sale area. This has been a long-standing requirement and practice. Therefore, the Department has added this requirement to paragraph (c) of the final rule to avoid any possible confusion as to when the identifying marks are to be applied to logs originating from National Forest System lands.

With regard to private logs requiring domestic manufacturing, they must be marked before removal from the harvest area. If private logs are acquired by a person who may not export such logs, the logs must be marked by the person acquiring the logs at the time of the acquisition. This requirement has been added to paragraph (d) of the final rule.

Comment. One person stated that an estimated additional cost of $1.00 per thousand board feet will be incurred to comply with the new regulations requiring the painting of private and Federal logs and that these requirements appeared to not recognize the principle of cost/benefit ratios.

Response. The Department recognizes that some companies will incur additional costs by complying with these marking requirements. However, with the exception of the requirement to paint private logs, very similar branding and painting requirements have been required of National Forest timber sale purchasers in most areas of Regions 5 and 6 for at least 20 years, and more recently in Region 1. The Department believes the additional cost of properly identifying logs requiring domestic manufacturing in areas where branding and painting has not been extensively utilized in the past is necessary for effective implementation of the Act.

Comment. One respondent stated that adding yellow paint to private logs could cause confusion, because Federal and private loads could not be readily distinguished from a distance.

Response. The purpose of the yellow paint is to identify the log as requiring domestic processing, not to identify ownership or origin. Loads of National Forest, Bureau of Land Management, State Forest, and some private logs in Oregon and Washington currently carry yellow paint marks. Log identification is maintained by the log brands and truckload receipts displayed on each respective load. Therefore, the Department believes that the yellow paint does not cause confusion, and that no revision of the rule is warranted.

Comment. One respondent was concerned with the requirement that each unprocessed log shall be marked on each end with a spot of yellow paint and with a hammer brand approved for use.

Response. The Department expects timber sale administrators to administer contract requirements in a firm and reasonable manner to assure compliance with the objectives and provisions of the Act and these regulations. This rule provides for waivers of the requirements in some circumstances.

Comment. One respondent stated that the Department should waive the bar code tagging and highway yellow paint requirements on private timber for any purchaser who doesn't export logs.

Response. The requirement to use bar coding has been removed in the final rule. The export of private timber which has been identified as requiring domestic processing is a substitution violation. Only private timber that requires domestic processing must be painted. The yellow paint markings are essential to monitor compliance with the prohibitions against substitution. However, the Department has adopted a limited waiver of painting requirements where special conditions warrant, pursuant to § 223.195(e) of the final rule.

Comment. One reviewer stated a need for quick release of log brands for reuse.

Response. The proposed rule would require a 24-month waiting period before release of an assigned log brand to ensure that all logs harvested under the assigned brand had been domestically manufactured. The 24-month period guards against substitution violations. The Department recognizes that in those States that require registered log brands, many companies will have to develop and register additional log brands to meet this requirement. The Forest Service will strive to release brands for re-assignment as soon as possible following the 24-month period. No revision of the rule is necessary.

The Department has made several minor changes to the text of this section as proposed for technical and editorial clarity, but which have no substantive effect.

Section 223.196 Civil Penalties for Violation

Section 492(c) of the Act establishes civil penalties for violation of the Act of not more than $500,000 for each violation or three times the gross value of the unprocessed timber involved for a violator who exported or caused to be exported unprocessed Federal timber; not more than $500,000 for a violator who willfully violates any provision of the Act or any regulation issued under the Act; not more than $75,000 for each violator who commits a violation in disregard of such provisions and/or regulations; and not more than $50,000 for each violation by a violator who should have known that the action constituted a violation of such provisions and regulations.

The last three penalties may be assessed regardless of whether a violation caused the actual export of unprocessed Federal timber. The Act also provides that a penalty assessed under the Act shall not exclude any other penalty provided by law and shall be subject to review in an appropriate United States district court.

The proposed rule at § 223.196 merely repeats the language of the Act.

This section drew four comments.

Comment: Some respondents felt that 100 percent compliance with the branding, painting, log tagging, bar coding, and inventory requirements is impossible. They thought that minor instances of an illegible brand, or a missed log brand or paint should be handled in relation to the infraction. These respondents felt the final rule must be flexible and attainable so that responsible and prudent purchasers can operate without facing civil penalties. In the view of these respondents, current log accountability requirements adequately meet the Act's enforcement objectives. Another respondent said that the Forest Service should list priorities for enforcement.

Response: The Department recognizes that the law and these rules must be administered with prudence and good judgment. The Act imposes strict fines on violations of "any provision" of the Act or regulations implementing the Act. The Act also states that the Secretary *may* assess fines based "on the record and after an opportunity for a hearing." Therefore the Act ensures that those persons accused of violations will have a full and fair opportunity to present their views and that the actual assessment of penalties is discretionary. The Department believes that the regulations as written reflect the Act. The Department expects all timber sale purchasers and other persons acquiring unprocessed Federal timber to comply with the log identification requirements contained in this rule. The Forest Service will enforce the Act and these regulations as written, and will consider infractions on a case-by-case basis. The Department disagrees that current log accountability requirements are adequate and declines to adopt this comment.

Comment. One person stated that the penalties for non-willful offenses are excessive, and another person stated that the "stiff penalties for lost or damaged tags are unreasonable."

Response: The Department has no authority to change the penalties stipulated in the Act. However, Congress established maximum penalties ("not more than"), but not minimum penalties. The severity of the penalty to be assessed in each case will be based on the severity of the offense. Bar code tags are not required in the final rule. No change in the rule as proposed is necessary to respond to this comment.

Comment. One person suggested making the penalty for exporting Federal timber severe enough to deter violations of the Act.

Response. Congress authorized the Secretary to assess civil penalties of up to $500,000 for each violation, and to debar and cancel contracts in order to deter illegal exports or substitution activities. Moreover, the penalties provided by the Act do not exclude any other penalty provided by law. The Department has no statutory authority to establish penalties beyond those specified by law. Therefore, this comment cannot be adopted.

Section 223.197 Civil Penalty Assessment Procedures

Section 492(c) of the Act (16 U.S.C. 620d(c)) provides that if the Secretary of Agriculture finds, on the record and after an opportunity for a hearing, that a person has violated the Act or its regulations, he or she may impose certain civil penalties for such violation(s). For purposes of assessing these penalties, the Department has added the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) to the list of statutes governed by the adjudicatory procedures at 7 CFR 1.130, *et seq.* in a separate, final rulemaking document (56 FR 22105, May 14, 1991).

Comment. Two persons commented that, as determined in "*Tall* v. *United States*", factual determinations can be made only by a jury, not simply on an administrative record.

Response: The Administration Procedure Act (APA), under 5 U.S.C. 554, governs formal adjudication if a statute requires a determination to be made, "on the record after opportunity for an agency hearing * * *." The Act requires the Secretary to assess certain penalties if he/she finds, "on the record and after an opportunity for a hearing" that a person meets the elements of the various penalties (16 U.S.C. 620d(c)(1)).

While section 554 exempts an adjudication from the formal administrative adjudication process if a matter is subject to a subsequent trial of the law and the facts de novo in a court (5 U.S.C. 554(1)), this exception is not found in the Act. On the contrary, the Act states that an administrative penalty shall be, "subject to review in an appropriate United States district court" (16 U.S.C. 620d(c)(3)). In other words, adjudication of civil penalties may occur in an ordinary formal administrative process, with record review in district court. None of the research data bases revealed a case entitled "*Tall* v. *United States*" dealing with this issue.

Section 223.198 Administrative Remedies for Violation

Section 492(d)(2) of the Act provides that, in addition to the provision for debarment in subpart C of this part, the head of the appropriate Federal department or agency also may cancel any contract entered into with a person found to have violated the Act or regulations or contracts issued under the Act.

The proposed rule would clarify that such a finding shall constitute a serious violation of contract terms pursuant to § 223.116(a)(1) regarding cancellation of contracts.

Three persons responded to this section.

Comment. These persons suggest that no adverse action should be taken against a timber purchaser before expiration of all appeal rights on debarment proceedings. To do otherwise would violate substantive and procedural due process protections.

Response. To protect the public's interest the Department will continue to suspend timber sale operations as soon as improprieties are determined. This is consistent with current procedure under existing regulations. The procedures applicable to the debarment of persons violating the Act, or any regulation or contract issued under the Act are not applicable to existing contracts which are under consideration for cancellation. The debarment procedures apply to future timber sales and future acquisitions of Federal timber. Any debarment action will be taken consistent with the Act and the regulation issues pursuant to the Act. No change in the rule as proposed is necessary to address this comment.

Comment. One respondent suggested that contracting officers be given appropriate guidance on which violations justify the drastic remedy of contract cancellation, including direction on considering whether the violation was intentional, produced significant financial benefits to the perpetrator, etc. Another respondent said that the authority to cancel contracts should not be delegable.

Response. Adequate checks and balances currently exist. Having been given broad powers under the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*), contracting officers are still required to draw counsel and advice from Forest Service law enforcement specialists to determine criminal intent, the Regional Forester's and Chief's contracting specialists, the Department's Office of the General Counsel (OGC), and in some cases the Department of Justice's U.S. Attorney's Office before deciding which violations justify contract cancellation. No additional direction in this final rule is necessary.

Section 223.199 Procedures for Cooperation with Other Agencies

Section 495 of the Act (16 U.S.C. 620f) states that the Secretaries of Agriculture and Interior shall, in consultation, each prescribe new, coordinated, and consistent regulations to implement this title on lands which they administer. Subsection 491(d)(2) of the Act (16 U.S.C. 602c(d)(2)) authorizes the States to cooperate with Federal and State Agencies with appropriate jurisdiction to further the intent of this title. The Act also requires the Secretary of Commerce to issue certain orders and promulgate rules and guidelines necessary to carry out this title.

State and Federal government agencies clearly have individual responsibilities under the Act. Cooperation among these agencies in monitoring and enforcing these regulations provides the most efficient use of limited personnel and financial resources. Cooperative Agreements and/or Memoranda of Understanding between governmental agencies are common in similar situations where there are common responsibilities and interests.

Cooperative efforts to enforce this Act might include exchanging information on sourcing area applications, sourcing area approvals or disapprovals, log brands being used, logging activity, and proposed timber sales. Agencies may cooperate on monitoring export facilities or log storage areas so that each agency would not be required to make separate visits. This cooperative effort would also reduce the impact on the operators of the export facilities and storage areas.

The Department has consulted with and discussed cooperative agreements with the Bureau of Land Management, the Department of Defense and other agencies managing public timber resources in the development of the rule as proposed.

Comment. One person commented that neither the preamble nor the proposed regulations mentions any consultation or any effort to be coordinated and consistent at the national level.

Response. Cooperative agreements and Memoranda of Understanding with other public agencies may be developed at the National Forest, Regional or National Office levels, depending on the program impacts and range of interest. National manuals and handbooks provide direction and guidelines for drafting assistance and consulting with higher-level officials and the Department's Office of General Counsel before entering into such agreements. No further direction is necessary in this final rule.

Section 223.200 Determination of Surplus Species

Section 489(b) of the Act (16 U.S.C. 620a(b)) and the proposed rule would require that determinations that specific quantities of grades and species are surplus to domestic manufacturing needs must be made in accordance with Title 5, United States Code, section 553, the rule making section of the Administrative Procedure Act. The proposed rule also would require that withdrawals of such determinations be done in accordance with the same procedure. Section 491(h) of the Act (16 U.S.C. 620c) requires withdrawals of such determinations to be done "by rule."

The proposed rule would require that review of a determination that a quantity of grade or species is surplus must be reviewed at least once every three (3) years. Notice of the review will be published in the **Federal Register**. The public will have at least 30 days to comment on the review.

The proposed rule specifically requested comments on the current determinations that Alaska yellow cedar and Port Orford cedar supplies are surplus to domestic manufacturing needs. These comments will be used to develop a separate rule making on surplus species determinations. The proposed rule repeated the interim rule which continued the surplus designation of these two species until hearings could be held, in order to avoid the disruption that could be caused by suddenly discontinuing their present surplus status.

Fourteen responses were received on this section. Most of these addressed whether Port Orford cedar should be classified as being surplus to domestic manufacturing needs. Other species discussed and/or proposed for surplus consideration were Alaskan yellow cedar, Western juniper, Rocky Mountain juniper and Pacific yew.

Comment. Six respondents stated that there is a strong domestic demand for Port Orford cedar, and urged that Port Orford cedar no longer be exported in log form. Five other respondents stated Port Orford cedar is still surplus to domestic manufacturing needs, and that if the species were to be declared non-surplus it would disrupt employment and adversely affect the local communities where it is grown and harvested.

Response. The Department is considering these comments in its development of the proposed rule on surplus species.

Comment. One respondent stated that hearings could pose problems for small manufacturers, who might be "disciplined" by larger companies for opposing the export of Port Orford Cedar.

Response. The Act requires a "hearing" on the issue of surplus species. Hearings will be conducted via the rule making process. Comments may be submitted anonymously in response to the proposed rule on surplus species when it is published.

Comment. Comments regarding other species were as follows:

One person stated that Alaska yellow cedar is not surplus to domestic manufacturing needs, and that a hearing would find mills willing to purchase and process the species should it be prohibited from export. Another party stated that Alaska yellow cedar is surplus.

One person responded that Western/Rocky Mountain/Utah juniper should be made a surplus species. This respondent and another respondent suggested also that Pacific yew should also be declared surplus and permitted to be exported because there is little if any domestic use for this species.

Response. Again, these comments will be analyzed in the development of the proposed determination of the surplus species regulation. All interested parties should be prepared to submit comments regarding this proposed determination during the comment period provided in the **Federal Register** publication.

Comment. Two persons commented that the proposed procedures in the rule for determining surplus species appear adequate, and another party commented that the entire set of regulations should be finalized before determining if Port Orford cedar or Alaska yellow cedar supplies exceed domestic manufacturing needs.

Response. The Department agrees with these comments. No revision of the rule is necessary. Some minor changes to the text of this section as proposed have been made for technical and editorial clarity, but have no substantive effect.

Section 223.201 Limitations on Timber Harvested in Alaska

Section 223.161 of the current regulations is repeated, with minor editing, in this Subpart to consolidate all export and substitution restriction rules applicable to all States located west of the 100th meridian. The repetition was needed to make clear that the provision regarding Alaska applies to contracts entered into before, during, and after the date of enactment of the Act.

No comments were received on this section. Therefore, the Department adopts this section, with only minor editing.

Section 223.202 Information Requirements

This rule imposes additional information collection requirements in the form of applications, certifications, reports and record keeping requiring clearance from OMB for compliance with the Paperwork Reduction Act. In the proposed rule, this section provided estimates of the time needed to collect this information, and provided addresses to send comments on these estimates.

The comments submitted concerning the information collection requirements relating to the proposed annual report and the transaction notices are discussed in the Department's responses to comments received on §§ 223.193 and 223.194.

Comment. Several respondents stated that there will be a significant, additional paperwork burden on private companies.

Response. Section 492 of the Act (16 U.S.C. 620d) specifically requires that log transactions be reported. The implementing regulations require the minimum burdens necessary for enforcement of this and other provisions of the Act. The Department has worked to lessen the paperwork burden in this final rule.

Section 223.203 Indirect Substitution Exception for National Forest System Timber From Within Washington State

Section 223.203 was included in the final rule published in the **Federal Register** on December 19, 1991 (56 FR 65834). Section 223.203 is included in this rule making for continuity and to avoid confusion as to its status. The names of the persons obtaining a share of the Washington State quota of unprocessed Federal timber that is exempt from the prohibition against substitution, and the amount of the share for each person, are identified in a new paragraph (e) of § 223.203. The Act requires that the names of persons obtaining such shares and the amount of the shares be established "by rule." 16 U.S.C. 620b(b)(2)(A).

Otherwise, the Department has made minor changes to the text for technical and editorial clarity, including the removal of paragraph (a) in its entirety as redundant and unnecessary. The prohibition against indirect substitution discussed in this paragraph is covered in § 223.189 of this subpart. The remaining paragraphs in this section have been correspondingly re-coded to reflect the deletion in this rule making. These changes have no substantive effect.

General Comments

Several comments that did not fit into any of the above regulatory sections are addressed here.

Comment. One respondent expressed the belief that face-to-face communications between potentially affected timber industry companies and the Federal land management agencies are critical in the development of any regulation.

Response. Publishing through the **Federal Register** and receiving public comments was the most efficient and cost effective method available to develop these rules. The Forest Service plans to conduct several informational meetings nationwide after the final regulations go into effect. This will give interested persons an opportunity to gain a better understanding of the rules and how they will be applied.

Comment. One respondent thought that assumptions made in the National Forest Management Plans on local timber demand will be outdated because exporting firms will gain additional access to certain Federal timber through sourcing areas, and that some forest plans may have to be amended to reflect this change in timber demand.

For example, increased demand might prompt the Forest Service to increase the annual allowable sale quantity in a particular forest plan. However, such an increase could significantly affect the environmental quality of the forest. Direct or indirect environmental impacts may result from the proposed rule, and such impacts should be analyzed in a review in compliance with the National Environmental Policy Act (NEPA).

Another respondent expressed concern for the lack of any environmental review associated with the rule. The respondent stated that the rule permits previously ineligible persons to buy Federal timber. The respondent stated that could change the timber demand which might cause the Forest Service to increase the allowable sale quantity in a particular forest plan. The respondent concluded that such an increase might have substantial environmental ramifications on the affected forest, and therefore an environmental review is necessary.

Response. The Department has conducted an environmental assessment and made a Finding of No Significant Impact (see information under "Environmental Impact", below). The existing rules at 36 CFR 223.160 are less restrictive as to who may buy Federal timber than the Act and these implementing regulations. The existing rules require only that a company not export private timber from within an area tributary to its domestic processing plant if that person also purchased Federal timber directly from a Federal agency to supply that plant. If the company had an established "historic quota" that company could purchase Federal timber and export private timber from within its tributary area if neither its historic purchase quota nor its historic export quota were exceeded in any calendar year.

However, the existing rules did not restrict indirect substitution, so when a company reached its historic export or purchase quota, it could continue to acquire from a third party all the federal timber it wanted from within its tributary area for its plant.

Moreover, a company's tributary area was not subject to approval by the Department. The tributary area was simply the geographic area from which unprocessed timber was delivered to a processing facility and was not subject to a formal review and approval process. The tributary area changed with the circumstances.

This Act eliminates historic quotas, and prohibits companies from exporting private timber from within an approved sourcing area, or from west of the 100th meridian in the contiguous 48 States if the company has no approved sourcing area, and prohibits indirect substitution. Instead of the tributary areas under the old rule, the Act requires sourcing areas to be formally approved by the Secretary—and those sourcing areas can be changed only upon review and agreement of the Department. This Act imposes far more restrictive conditions in order for exporting companies to acquire federal timber than under the pre-enactment rules.

Further, any proposed change in the allowable sale quantity on a forest would be subject to an environmental review at the time of the proposal.

All aspects of forest plans are subject to monitoring and periodic reviews, including the allowable sale quantity (ASQ). All reviews shall consider the Standards and Guidelines from which the specific plan was developed, plus any modifications, and shall be conducted within NEPA guidelines. This regulation proposed only to limit the persons eligible to purchase National Forest timber. The regulation does not affect the quantity or quality of timber to be sold, where the sales are located (other than west of the 100th meridian in the contiguous 48 States), the contract period, or operating seasons. The Department disagrees that this rule may cause an increase in demand for National Forest System timber.

Comment. One respondent stated that log exporting problems should be regulated at the docks where the ships are loaded by stopping all log exports, not by burdening private companies with excessive log identification and reporting regulations.

Response. The Act requires monitoring at the time of acquisition. The Act does not prohibit export of all logs, but of Federal logs and some private logs. Given this divergent treatment of a fungible commodity, it is necessary to regulate the logs in transit, as well as on the export docks.

Comment. Several respondents said that the regulations will have adverse effects on competition and employment, as mill owners will not be competitive in bidding for private timber, and that the annual effect of the regulation will be over $100 million.

Response. While the Act does monitor commerce, it also preserves processing jobs and natural resources domestically. The regulations implement these objectives through monitoring and enforcement mechanisms.

Comment. Several respondents commented that the proposed rule imposes significant new requirements on small business timber sale purchasers and other entities.

Response. The proposed rule in and of itself does not impose significant new requirements. The Act places certain requirements on persons engaged in acquiring unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States and exporting unprocessed private timber originating from private lands. The Act also requires the Secretary of Agriculture to implement the requirements of the Act through this rule making. The final rule simply implements the provisions of the Act. Further, the Department has modified the rule in order to further minimize the burdens on timber purchasers while still enabling enforcement of the Act.

Amendment to 36 CFR Part 261—Prohibitions

Part 261—Prohibitions would be amended to include 16 U.S.C. 620(f) as part of the authority citation.

Section 261.6 Timber and Other Forest Products

The proposed rule would add paragraph (i) to § 261.6 making a violation of the Act, or its implementing regulations, subject to penalties under Part 261. Subsections 492(c) (1) and (2) and Subsection 492(d) of the Act specifically provide for civil penalties and administrative remedies for violations of the Act that are included in another section of the proposed rule. Subsection 492(c)(3) of the Act states that the penalties provided under § 492(c) do not exclude any other penalty provided by law. Proposed § 261.6(i) is such a penalty. Inclusion of violations under §§ 223.185 through 223.202 in § 261.6(i) is essential for consistent and complete implementation of the Act. The prohibition at § 261.6(g) regarding the current export regulations existing at subpart D would be retained to continue enforcement of regulations governing timber sale contracts issued prior to enactment and publication of this final rule.

Comment. One said that the Act did not authorize criminal penalties, nor are they necessary in light of the serious civil and administrative sanctions.

Response. Criminal sanctions are authorized by the Organic Act, 16 U.S.C. 551, and by 18 U.S.C. 3559(a)(7) and 18 U.S.C. 3571(b)(6). These sanctions applied to export violations before enactment of the Act, and are another tool for enforcement. Consequently, it is not necessary to change this section.

Summary

Having fully considered the relevant comments received on the proposed rule, the Department is adopting this final rule, with the modifications previously described in response to comments received. This rule supersedes those provisions of the interim rule published in the **Federal Register** on November 20, 1990. Together with the rule of December 19, 1991, (56 FR 65834) this rule comprises the implementing regulations for the

Forest Resources Conservation and Shortage Relief Act of 1990 except for the separate rule making to be done on surplus species.

This rule is effective upon publication. This rule making relates to agency management, public property and contracts, and therefore pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(2), is exempt from the 30-day delay between publication of a rule and its effective date. Further, a delayed effective date is not required if a rule is a substantive rule which grants or recognizes an exemption (5 U.S.C. 553(d)(1)). This rule provides certain exemptions from the restrictions on substitution, and therefore may be effective immediately. In addition, a delayed effective date is not required if good cause is found and published with the rule (5 U.S.C. 553(d)(3)). Good cause exists to make this rule making effective upon publication due to the many deadlines in the Act for monitoring and enforcement of the Act.

Environmental Impact

Based on both experience and environmental analysis, this final rule will have no significant effect on the quality of the human environment, individually or cumulatively, and the Forest Service has made a Finding of No Significant Impact (40 CFR 1508.27). This rule only establishes certain administrative procedures to limit the persons qualified to purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States. It does not affect the amount of timber to be sold, where the sales will be located, when they will be operated, the contract period, the contract size, resource protection requirements, or any aspect of on-the-ground contract performance. This rule does not alter the requirement that each timber sale must be analyzed and documented in compliance with the National Environmental Policy Act and its implementing regulations. Copies of the Environmental Assessment and Finding of No Significant Impact may be obtained by writing or calling the person or office listed earlier in this document under **FOR FURTHER INFORMATION CONTACT**.

Controlling Paperwork Burdens on the Public

Because of the previous publication of portions of this comprehensive rule making, some sections of this rule making already have OMB control numbers. Previously approved OMB Control Numbers 0596–0114, 0596–0115, and 0596–0021, as well as new information collection requirements, are being consolidated under OMB Control Number 0596–0114.

The procedures in §§ 223.189 and 223.192, and some of the procedures in § 223.190 were approved by the Office of Management and Budget (OMB) and assigned Control Number 0596–0114 upon issuance of the interim rule. Control Number 0596–0114 has been reapproved by OMB for use through May 31, 1997. OMB approved the information collection requirements in §§ 223.191 and 223.203 for use through August 31, 1995, and assigned them Control Number 0596–0115. OMB approved the information collection requirements in § 223.48 and § 223.87 for use through May 31, 1997 and assigned them Control Number 0596–0021; the information collection requirements in § 223.48 and § 223.87 have been revised.

The application and reporting procedures in §§ 223.187, 223.193, 223.194, 223.195, and some of the procedures in § 223.190 of this final rule contain new record keeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. The Office of Management and Budget (OMB) has approved these requirements, and assigned them Control Number 0596–0114.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed in law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Regulatory Impact

This final rule was reviewed under USDA procedures and determined to be a significant rule under Executive Order 12866 on Regulatory Planning and Review because of the strong public interest expressed in the proposed rule. Accordingly, this final rule was subject to OMB review.

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that the action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Economic impacts associated with implementation of this rule result directly from the Forest Resources Conservation and Shortage Relief Act, and not from the rule itself. The rule imposes no additional requirements on small business timber sale purchasers or other small entities beyond what is required by the Forest Resources Conservation and Shortage Relief Act of 1990.

This rule has been reviewed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the rule does not pose the risk of a taking of constitutionally protected private property.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under this rule: (1) All state and local laws and regulations are in conflict with this rule or which could impede its full implementation will be preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

List of Subjects

36 CFR Part 223

Exports, Government contracts, National Forests, Reporting requirements, and Timber sales.

36 CFR Part 261

Crime, Law enforcement, and National Forests.

Therefore, for the reasons set forth in the preamble, part 223 and part 261 of Title 36 of the Code of Federal Regulations are amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

Subpart B—Timber Sale Contracts

2. Revise § 223.87 to read as follows:

§ 228.87 Requirements of bidders concerning exports.

In order to have a bid considered responsive for a sale of timber from National Forest System lands, each bidder must certify that the bidder is eligible to purchase timber from National Forest System lands consistent with the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) and its implementing regulations at 36 CFR part 223, and that the bidder's timber purchase and export activities are in compliance with the timber export and substitution provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) and its implementing regulations at 36 CFR part 223.

Subpart C—Suspension and Debarment of Timber Purchasers

3. Revise paragraph (a) of § 223.130 to read as follows:

§ 223.130 Scope.

(a) This subpart prescribes policies and procedures governing the debarment and suspension of purchasers of National Forest System timber. This subpart further prescribes policies and procedures governing those persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*).

* * * * *

4. Revise § 223.131 to read as follows:

§ 223.131 Applicability.

These regulations apply to purchasers of National Forest System timber as well as to those persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). These regulations do not apply to Forest Service procurement contracts which are governed by regulations at 41 CFR 4–1.6.

5. Amend § 223.133 by revising the definitions of *Affiliates, Debarment,* and *Purchaser* and by adding in alphabetical order definitions of *Federal lands* and *Person* to read as follows:

§ 223.133 Definitions.

* * * * *

Affiliates are business concerns or persons, whose relationship entails the following:

(a) either party directly or indirectly controls or has the power to control the other; or

(b) a third party directly or indirectly controls or has the power to control both. In determining whether affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, common facilities, and contractual relationships. Further guidelines to be used in determining affiliation are found in the Small Business Administration regulation in 13 CFR 121.401.

* * * * *

Debarment means action taken by a debarring official under §§ 223.136 through 223.140 to exclude a purchaser from Forest Service timber sale contracts for a reasonable, specified period of time. A purchaser so excluded is "debarred." Debarment pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.* means action taken by a debarring official under §§ 223.136–223.140 to exclude persons from entering into any contract for the purchase of unprocessed timber originating from Federal lands and from taking delivery of unprocessed Federal timber purchased by another party for the period of debarment.

* * * * *

Federal lands means, for the purposes of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), lands that are owned by the United States, but does not include any lands the title to which is:

(a) Held in trust by the United States for the benefit of any Indian tribe or individual,

(b) Held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(c) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

* * * * *

Person means any individual, partnership, corporation, association, or other legal entity, and includes any subsidiary, subcontractor, parent company, and business affiliates.

* * * * *

Purchaser means any person, who:

(a) Submits bids for, is awarded, or reasonably may be expected to submit bids for or be awarded, a Forest Service timber sale contract;

(b) Conducts business with the Forest Service as an agent or representative of another timber sale purchaser; or

(c) For the purposes of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act), any person who violates the Act or any regulation or contract issued under the Act, or any person who may reasonably be expected to enter into a contract to purchase or receive delivery of unprocessed Federal timber in violation of the Act or its implementing regulations.

* * * * *

6. Revise § 223.135 to read as follows:

§ 223.135 Effect of listing.

(a) Except as otherwise provided in paragraph (b) of this section, purchasers debarred or suspended in accordance with this subpart shall be excluded from bidding on or award of Forest Service timber sale contracts. The Forest Service shall not knowingly solicit or consider bids from, award contracts to, approve a third party agreement with, or renew or otherwise extend, except pursuant to the terms of a contract term adjustment, an existing timber sale contract with these purchasers, unless the Chief of the Forest Service or authorized representative determines, in writing, that there is a compelling reason for such action.

(b) In addition to the provisions of paragraph (a) of this section, persons debarred pursuant to § 223.137(g) shall be prohibited from entering into any contract to purchase unprocessed timber from Federal lands and shall also be precluded from taking delivery of Federal timber purchased by another person for the period of debarment.

* * * * *

7. Amend § 223.136 by revising paragraph (b) to read as follows:

§ 223.136 Debarment.

* * * * *

(b) *Effect of proposed debarment.* (1) Upon issuance of a notice of proposed debarment by the debarring official and until the final debarment decision is rendered, the Forest Service shall not solicit or consider bids from, award contracts to, approve a third party agreement with, renew or otherwise extend, except pursuant to the terms of a contract term adjustment, any contract with that purchaser. The Chief of the Forest Service or authorized representative may waive this exclusion upon a written determination identifying compelling reasons to continue doing business with that purchaser pending completion of debarment proceedings.

(2) In addition to paragraph (b)(1) of this section, issuance of a notice of proposed debarment under § 223.137(g) shall preclude such person from entering into any contract to purchase unprocessed timber originating from Federal lands, and from taking delivery of unprocessed Federal timber from any other party who purchased such timber.

* * * * *

8. Amend § 223.137 by adding paragraph (g) to read as follows:

§ 223.137 Causes of debarment.

* * * * *

(g) Violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). (Act) or any regulation or contract issued under the Act.

* * * * *

9. Revise paragraphs (a) and (b) of § 223.139 to read as follows:

§ 223.139 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s):

(1) The debarring official shall consider any suspension period or

period since issuance of the notice of proposed debarment in determining the debarment period.

(2) Generally, a debarment for those causes listed at § 223.137 (a)–(f) of this subpart should not exceed three (3) years, except as otherwise provided by law.

(3) A debarment for the causes listed at § 223.137(g) shall not exceed five (5) years.

(b) The debarring official may extend the debarment for those causes listed at § 223.137 (a)–(f) of this subpart for an additional period if that official determines that an extension is necessary to protect the Government's interest. However:

(1) A debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based;

(2) If debarment for an additional period is necessary, the debarring official shall initiate and follow the procedures in § 223.138 to extend the debarment.

* * * * *

Subpart D—Timber Export and Substitution Restrictions

10. Revise § 223.159 to read as follows:

§ 223.159 Scope and applicability.

The rules of this subpart apply to all timber sale contracts awarded before August 20, 1990, the date of enactment of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). The rules at § 223.162 shall remain in effect for all contracts awarded on or after August 20, 1990, until September 8, 1995. Contracts awarded on or after August 20, 1990 are subject to the rules of subpart F of this part, unless otherwise noted. Contracts awarded on or after September 8, 1995 are governed in full by subpart F.

§ 223.161 [Removed and reserved]

11. Remove and reserve § 223.161.

§ 223.163 [Removed]

12. Remove § 223.163.

13. Subpart F is revised to read as follows:

Subpart F—The Forest Resources Conservation and Shortage Relief Act of 1990 Program

Sec.

223.185 Scope and applicability.
223.186 Definitions.
223.187 Determination of unprocessed timber.
223.188 Prohibitions against exporting unprocessed Federal timber.
223.189 Prohibitions against substitution.
223.190 Sourcing area application procedures.
223.191 Sourcing area disapproval and review procedures.
223.192 Procedures for a non-manufacturer.
223.193 Procedures for reporting acquisition and disposition of unprocessed Federal timber.
223.194 Procedures for reporting the acquisition and disposition of unprocessed private timber.
223.195 Procedures for identifying and marking unprocessed timber.
223.196 Civil penalties for violation.
223.197 Civil penalty assessment procedures.
223.198 Administrative remedies.
223.199 Procedures for cooperating with other agencies.
223.200 Determinations of surplus species.
223.201 Limitations on unprocessed timber harvested in Alaska.
223.202 Information requirements.
223.203 Indirect substitution exception for National Forest System timber from within Washington State.

§ 223.185 Scope and applicability.

This subpart implements provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) that became effective upon enactment or as otherwise specified in the Act. As of September 8, 1995, this subpart applies to unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States that requires domestic processing. Except as provided later in this paragraph, this subpart applies to all unprocessed timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States acquired from timber sale contracts awarded on or after August 20, 1990. The rules regarding substitution at § 223.162 of subpart D apply to unprocessed timber acquired from timber sale contracts awarded between August 20, 1990, and September 8, 1995, as provided in § 490(a)(2)(A) of the Act. The rules regarding reporting the acquisition and disposition of unprocessed Federal timber at § 223.193 of this subpart apply to all transfers of unprocessed Federal timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States regardless of timber sale contract award date.

§ 223.186 Definitions.

The following definitions apply to the provisions of this subpart:

Acquire means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction. The term "acquisition" means the act of acquiring. The terms "acquire" and "purchase" are synonymous and are used interchangeably.

Act means the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, 104 Stat. 714–726; 16 U.S.C. 620–620j).

Area of operations refers to the geographic area within which logs from any origin have neither been exported nor transported to an area where export occurs. The area of operations will be determined for individual Forest Service Administrative Units or groups of Administrative Units by the Regional Foresters of Regions 1, 2, 3, and 4 on an as-needed basis, and used as part of the criteria for evaluating requests to waive the identifying and marking requirements for unprocessed Federal logs.

Cants or *Flitches* are synonymous, and mean trees or portions of trees, sawn on one or more sides, intended for remanufacture into other products elsewhere.

Civil penalties:

Willful disregard means a person knew or showed reckless disregard for the matter of whether the person's conduct is prohibited by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620, *et seq.* with regard to the prohibition against exporting unprocessed Federal timber (including causing unprocessed timber to be exported).

Willfully means a person knew or showed reckless disregard for the matter of whether the person's conduct is prohibited by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. *et seq.*, or regulations issued under the Act, even though such violation may not have caused the export of unprocessed Federal timber in violation of the Act.

Disregard means to ignore, overlook, or fail to observe any provision of the Act or a regulation issued under this Act, even though such violation may not have caused the export of unprocessed Federal timber in violation of the Act.

Should have known means committing an act that a reasonable person in the timber industry would have known violates a provision of the Act or regulations issued under the Act, even though the violation may not have caused the export of unprocessed Federal timber in violation of the Act.

Each violation refers to any violation under the Act or its implementing regulations with regard to a single act, which includes but is not limited to a single marking (or lack thereof) on a single log, the export of a single log, or a single entry on a document.

Export means transporting, or causing to be transported, either directly or through another party, unprocessed timber to a foreign country. Export occurs:

(1) On the date that a person enters into an agreement to sell, trade, exchange or otherwise convey such timber to a person for delivery to a foreign country;

(2) When unprocessed timber is placed in an export facility in preparation (sorting, bundling, container loading etc.) for shipment outside the United States; or,

(3) When unprocessed timber is placed on board an ocean-going vessel, rail car, or other conveyance destined for a foreign country.

Federal lands means lands that are owned by the United States west of the 100th meridian in the contiguous 48 States, but do not include any land the title to which is;

(1) Held in trust by the United States for the benefit of any Indian tribe or individual;

(2) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(3) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

Finished products means products from trees, portions of trees or other roundwood products processed to standards and specifications intended for end product use.

Fiscal year means the Federal fiscal year beginning October 1, and ending the following September 30.

Gross value means the total value a person received from the transfer of unprocessed Federal timber involved in a violation, before production, delivery, agent fees, overhead, or other costs are removed.

Hammer brand refers to an identifying mark or brand composed of numbers, letters, characters, or a combination of numbers, letters, or characters permanently attached to a hammer, or other similar striking tool. The hammer brand must make a legible imprint of the brand in the end of a log when struck.

Highway yellow paint refers to an oil base or equivalent yellow paint of lasting quality comparable to the yellow paint used to mark highways.

Log refers to an unprocessed portion of a tree that is transported to a manufacturing facility or other location for processing, transferring to another person, or exporting. "Logs" is synonymous with "timber".

Manufacturing facility means a permanently located processing plant used to convert unprocessed timber into products.

Non-manufacturer means a person who does not own or operate a manufacturing facility.

Person means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company, and business affiliates. Persons are affiliates of each other when either directly or indirectly, one person controls or has the power to control the other or a third party or parties control or have the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships.

Private lands means lands, located west of the 100th meridian in the contiguous 48 States held or owned by a person. Such term does not include Federal lands or public lands, or any land the title to which is;

(1) Held in trust by the United States for the benefit of any Indian tribe or individual;

(2) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(3) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

Processed means timber processed into products listed in § 223.187 of these regulations.

Purchase has the same meaning as *acquire*. The terms are used interchangeably.

Same geographic and economic area means the land within the boundaries of an approved sourcing area.

Sourcing area means the geographic area approved by the Secretary which includes a person's timber manufacturing facility and the private and Federal lands from which the person acquires or intends to acquire unprocessed timber to supply such manufacturing facility; a sourcing area must be geographically and economically separate from any area from which that person harvests for export any unprocessed timber originating from private lands.

Substitution occurs when:

(1) A person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area; or

(2) A person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and, during the preceding 24-month period, exported unprocessed timber originating from private lands; or

(3) A person exports or sells for export, unprocessed timber originating from private lands within the same geographic and economic area in the same calendar year that the person has unprocessed timber originating from Federal lands in the person's possession or under contract; or

(4) A person purchases, directly or indirectly, unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing, to a third party if that third party or successive parties export that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing may not export such timber.

Transaction means an arrangement involving the transfer of unprocessed timber.

Transaction statement is a signed copy of one of the transaction reporting forms in 36 CFR 223.193 and 223.194.

Transfer means to pass title, sell, trade, exchange, or otherwise convey unprocessed timber to another person.

Unprocessed timber means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use and intended for remanufacture. Unprocessed timber does not include products intended for remanufacture that meet the criteria listed in § 223.187(a) (2) or (3). For the purposes of reporting and identifying under §§ 223.193, 223.194 and 223.195, unprocessed timber also means timber products listed in § 223.187 of these regulations, and other timber products including house logs that are part of a structure kit, that are indistinguishable from other unprocessed timber.

§ 223.187 Determinations of unprocessed timber.

(a) *All species except western red cedar.* Unprocessed timber, as defined in § 223.186 of this Subpart, does not include timber processed into any one of the following:

(1) Lumber or construction timbers, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture. To determine whether

such lumber or construction timbers meet this grade and intended use standard, the shipper of record must have in its possession for each shipment or order, and available for inspection upon the request of the Forest Service:

(i) A legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard; and,

(ii) A statement by the manufacturer certifying under the penalties provided in section 492 of the Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001) that the products in the shipment or order are intended to be used as shipped, are manufactured into products, or processed into pulp, and are not to be manufactured into other products. The certification statements shall be made in accordance with paragraph (b) of this section. The certification statements in paragraph (b) of this section are not required if the lumber or construction timbers described in paragraph (a)(1) of this section or the pulpwood bolts described in paragraph (a)(8) of this section otherwise may be exported without regard to an intent to remanufacture or process into pulp. For instance, because the timber originates from private land from which timber may be exported.

(2) Lumber, construction timbers, or cants for remanufacture, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches (30.5 cm) thick. To determine whether such lumber, timbers, or cants meet this grading standard, the shipper of record must have in its possession for each shipment or order and available for inspection, upon the request of the Forest Service, a legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard.

(3) Lumber, construction timbers, or cants for remanufacture, except western red cedar, that do not meet the grades referred to in paragraph (a)(2) of this section and are sawn on 4 sides, with wane less than ¼ of any face, not exceeding 8¾ inches (22.2 cm) thick.

(4) Chips, pulp, or pulp products.

(5) Veneer or plywood.

(6) Poles, posts, or piling cut or treated with preservatives for use as such.

(7) Shakes or shingles.

(8) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp. Shippers of record of such pulpwood bolts must have in their possession, and available for inspection upon request of the Forest Service, in accordance with paragraph (b) of this section, a manufacturer's certificate that such bolts are intended for processing into pulp.

(9) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of logs into chips.

(b) *Export product certifications.* (1) Manufacturers of lumber or construction timbers described in paragraph (a)(1) of this section and pulpwood bolts described in paragraph (a)(8) of this section, shall certify to the following statements:

(2) *Lumber or construction timbers;* "I certify that the products in the shipment identified by my shipping order number ________ dated ________, are manufactured in accordance with the attached order from (*buyer*) of (*address*), numbered ________ and dated ________, are intended to be used as shipped and are not to be remanufactured into other products. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violations."

(3) *Pulpwood bolts.* "I certify that the pulpwood bolts in the shipment identified by my shipping order number ________ dated ________, are manufactured in accordance with the attached order from (*buyer*) of (*address*), numbered ________ and dated ________, are intended to be processed into pulp and are not to be remanufactured into other products. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violations."

(4) *Signatory procedures.* Certificates shall be on company letterhead, and signed by the person manufacturing the shipment. In the case of a corporation, the certificates must be signed by a person authorized, in writing, by the Chief Executive Officer pursuant to 36 CFR 223.187(b)(4), to sign the certificates in 36 CFR 223.187(b) on behalf of the corporation.

(5) *Chief Executive Officer Authorization.* The authorization by the Chief Executive Officer shall be on company letterhead, shall be notarized, and shall read as follows:

> "I authorize ________ to sign the certificates in 36 CFR 223.187(b) on behalf of (*name of corporation*). I make this authorization with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber originating from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation."

(6) Exporters of other timber products originating from Federal lands not specifically listed in § 223.187 which may develop export markets in the future may also require similar certification statements. Such statements will be provided by the Forest Service.

(c) *Western red cedar.* Unprocessed western red cedar timber does not include manufactured lumber authorized for export under license by the Department of Commerce, and lumber from private lands processed to standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau, or timber processed into any of the following products:

(1) Lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better, with a maximum cross section of 2,000 square centimeters (310 square inches) for any individual piece of processed western red cedar, regardless of grade. To determine whether such lumber meets these established standards, grades and size restrictions, the shipper of record must have in its possession for each shipment, and available for inspection upon the request of the Forest Service, a legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard. Export restrictions governing western red cedar timber harvested from Federal, State or other public lands are found in 7(i) of the Export Administration Act of 1979 as amended (50 U.S.C. appendix 2406(i)), and implementing regulations at 15 CFR 777.7.

(2) Chips, pulp, and pulp products;

(3) Veneer and plywood;

(4) Poles, posts, pilings cut or treated with preservatives for use as such and not intended to be further processed; and

(5) Shakes and shingles.

(d) *Finished Products.* Shippers of record of products manufactured from unprocessed western red cedar originating from Federal lands, acquired by the manufacturer under the exemption from the prohibition against indirect substitution at § 223.189(e)(1), must have in their possession for each shipment a certificate from the manufacturer that such products are *finished products* as defined in § 223.186 of this subpart. The certification statement shall read as follows:

(1) "I certify that the products in the shipment identified by my shipping order number ______, dated ______, are manufactured in accordance with the attached order from ____ (buyer) ____ of ______ (address) ______, numbered ____ and dated ______, are intended for end product use. I understand that only western red cedar products that are *finished products* are exempt from the prohibition against indirect substitution in the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620b(b)(1)) and its implementing regulations. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully acknowledge and understand that to acquire western red cedar under the indirect substitution exemption in 16 U.S.C. 620b(b)(1) for purposes other than domestic processing into finished products will be a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation."

(2) *Signatory procedures.* Certificates shall be on company letterhead, and signed by the person manufacturing the shipment. In the case of a corporation, the certificate must be signed by a person authorized, in writing, by the Chief Executive Officer, pursuant to 36 CFR 223.187(d)(3), to sign the certificate in 36 CFR 223.187(d)(1) on behalf of the corporation.

(3) *Chief Executive Officer Authorization.* The authorization by the Chief Executive Officer shall be on company letterhead, shall be notarized, and shall read as follows:

> "I authorize ________ to sign the certificate in 36 CFR 223.187(d)(1) on behalf of (name of corporation). I make this authorization with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber originating from private lands which is required to be processed domestically is a violation of this Act, its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation."

§ 223.188 Prohibitions against exporting unprocessed Federal timber.

No person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States. This prohibition does not apply to specific quantities of grades and species of such unprocessed Federal timber that the Secretary of Agriculture determines to be surplus to domestic manufacturing needs.

§ 223.189 Prohibitions against substitution.

(a) *Direct substitution prohibition.* Except as otherwise provided by this section:

(1) No person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if:

(i) Such person acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area; or

(ii) Such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.

(2) No person may export or sell for export, unprocessed timber originating from private lands within the same geographic and economic area in the same calendar year that the person has unprocessed timber originating from Federal lands in the person's possession or under contract.

(3) No person may purchase unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing, to a third party if that third party or successive parties export that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing may not export such timber.

(4) The prohibitions in paragraphs (a)(1)–(3) of this section shall not apply to specific quantities of grades and species of unprocessed timber which the Secretary of Agriculture has determined to be surplus to domestic manufacturing needs.

(b) *Exemptions.* (1) Pursuant to section 490(c) of the Act (16 U.S.C. 620b), all persons who applied for a sourcing area by December 20, 1990, in accordance with § 223.190 of this subpart, were exempt from the prohibitions against substitution, in accordance with § 223.189(a)(1) of this subpart, until such time that the approving official approved or disapproved the application.

(2) Pursuant to Section 490(a) of the Act (16 U.S.C. 620b), an exemption to the prohibition in § 223.189(a)(1)(B) of this subpart is provided to:

(i) A person with a historic export quota who submitted a certification in accordance with § 223.189 (c) and (d) of this subpart; and

(ii) A non-manufacturer who submitted a certification in accordance with § 223.192 of this subpart.

(3) Pursuant to § 490(c) of the Act (16 U.S.C. 620b), the prohibitions against direct substitution in § 223.189(a) (1) and (2) of this subpart do not apply to a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, received a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months, in accordance with § 223.189 (f) and (g) of this subpart.

(c) *Historic export quota exemption.* The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands, within the preceding 24-month period, shall not apply to a person with a historic export quota approved by the Secretary and who has been exporting unprocessed private timber in accordance with the log export and substitution regulations of the Secretary of Agriculture at 36 CFR part 223, subpart D, in effect before August 20, 1990, if:

(1) That person certified in writing to the Regional Forester of the Region administering the historic export quota, on or before November 20, 1990, that the person would cease exporting unprocessed timber originating from private lands on or before February 20, 1991, and

(2) The exporting ceased in accordance with such certification.

(d) *Application for historic export quota exemption.* To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber based on an approved historic export quota described in paragraph (c) of this section, a person must have applied in writing to the applicable Regional Forester on or before November 20, 1990. The certificate must have been notarized. The application was required to be on company letterhead and must have included:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

> "I have purchased, under an historic export quota approved by the Secretary of Agriculture, unprocessed timber originating from Federal lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months in direct substitution for exported unprocessed timber originating from private lands. I desire to purchase directly from a Department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620, *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from lands west of the 100th meridian in the 48 contiguous States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided from such violation."

(3) The certification must have been signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer.

(e) *Indirect substitution prohibition.* No person may purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited by paragraph (a) of this section from purchasing such timber directly from a Department or agency of the United States, pursuant to § 490(b) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). The prohibition in this paragraph does not apply to the following:

(1) To the acquisition of western red cedar, which is domestically processed into finished products.

(2) To a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, receives a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months in accordance with § 223.189 (f) and (g) of this subpart.

(3) To the limited amount of unprocessed National Forest System timber within Washington State that is exempt from the prohibition against indirect substitution, pursuant to § 223.203.

(f) *Waiver within a sourcing area.* The prohibitions in § 223.189(a) (1) and (2) against direct and indirect acquisition of unprocessed timber originating from Federal lands do not apply if:

(1) A person acquires such timber from within an approved sourcing area located west of the 100th meridian in the 48 contiguous States;

(2) Has not exported unprocessed timber originating from private lands located within the approved sourcing area during the preceding 24 months;

(3) Does not export such private timber from within the approved sourcing area during the period the sourcing area is in effect; and

(4) Does not export such private timber during any calendar year in the same geographic and economic area that unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States is under contract or in possession, if the sourcing area is no longer in effect, pursuant to the definition of substitution in 36 CFR 223.186.

(5) The appropriate Regional Forester could waive, in writing, the prohibition against export within the preceding 24-month period for any person who certified in writing, on or before November 20, 1990, that on or before February 20, 1991, that person would cease exporting unprocessed timber originating from private lands within the approved sourcing area for a period of not less than three (3) years. Signatories of this certificate who received an approved sourcing area, like all holders of sourcing areas, are subject to the prohibition against exporting unprocessed timber originating from private lands within the sourcing area boundaries, pursuant to this paragraph.

(g) *Application for waiver within a sourcing area.* To obtain a waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber described in paragraph (f) of this section, a person must have submitted a request for waiver, in writing, to the Regional Forester of the region in which the manufacturing facility being sourced is located, which must have been received by the Regional Forester on or before November 20, 1990, and which must have been signed by the person making such request or, in the case of a corporation, by its Chief Executive Officer. The request for waiver must be notarized and, in the case of a corporation, with its corporate seal affixed. The request shall be on company letterhead with its corporate seal affixed and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the waiver request, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification statement which reads as follows:

> "I have engaged in exporting of unprocessed timber originating from private land located within the sourcing area for which I am applying. I desire to purchase directly from a department or agency of the United States unprocessed timber originating from Federal lands located within the desired sourcing area. I hereby request waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620, *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from within the desired sourcing area by February 20, 1991, and will not resume such exporting for a period of not less than three (3) years. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of Section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation."

§ 223.190 Sourcing area application procedures.

(a) Subject to the restrictions described in § 223.189 of this subpart and, except as provided in paragraph (b) of this section, a person who owns or operates a manufacturing facility and who exports unprocessed timber originating from private lands may apply for a sourcing area in accordance with the procedures of this section. However, an owner/operator of a manufacturing facility who exports unprocessed timber originating from Federal lands may not possess or acquire unprocessed timber originating from Federal lands unless the acquisition is within an approved sourcing area. A person who intends to acquire or become affiliated with a manufacturing facility that processes Federal timber and who is an exporter may apply for a sourcing area. Written proof of the intent to acquire or affiliate must be included in the sourcing area application, signed by the applicant and the person or, in the case of a corporation, the Chief Executive Officer, whose company the applicant intends to acquire or affiliate with. This certification must be on letterhead and must be notarized. A sourcing area application that the Secretary determines would be approved will be granted tentative approval pending final notification by the applicant of acquisition of or affiliation with the manufacturing facility. The tentative approval of the sourcing area will lapse unless the acquisition or affiliation occurs within 30 days of the tentative approval of the sourcing area. A sourcing area is not valid until final approval of the sourcing area. The direct substitution prohibition did not apply to a person who applied for a sourcing area on or before December 20, 1990. A request for modification of an existing sourcing area shall trigger a review pursuant to the procedures and restrictions in § 223.191(e).

(b) As provided in the Act, a person who has requested an exemption or waiver of the prohibition against export within the preceding 24-month period, pursuant to § 223.189 of this subpart, must have applied for the desired sourcing area on or before December 20, 1990.

(c) *Applications.* Sourcing area applications shall include:

(1) A map of sufficient scale and detail to clearly show:

(i) The applicant's desired sourcing area boundary. This boundary will include both the private and Federal lands from which the applicant intends to acquire unprocessed timber for sourcing its manufacturing facilities;

(ii) The location of the timber manufacturing facilities owned or operated by the applicant within the proposed sourcing area where the person intends to process timber originating from Federal land;

(iii) The location of private lands within and outside the desired sourcing area where the person has, within the 24 months immediately preceding the date of the application, acquired unprocessed timber originating from private land which was exported, sold, traded, exchanged, or otherwise conveyed to another person for the purpose of exporting such timber;

(2) A list of other persons with timber manufacturing facilities located within the same general vicinity as the applicant's facilities;

(3) Any other information the applicant may believe is appropriate to support approval of the requested sourcing area; and

(4) A statement signed by the person certifying under the penalties provided in Section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001) that the information provided in support of the application is true, complete, and accurate to the best of the applicant's knowledge. The statement shall read as follows:

> "I certify under penalties of 16 U.S.C. 620d and 18 U.S.C. 1001, that the information provided in support of this application, is true, complete, and accurate to the best of my knowledge concerning my timber purchasing and export patterns. I certify that the information provided concerning my timber purchasing and export patterns fully and accurately reflects, to the best of my knowledge, the boundaries of the sourcing area for which I am applying. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations. I certify that I have not exported unprocessed timber originating from private lands within the boundaries of the sourcing area that is the subject of this application in the previous 24 months. I fully understand that, if this application is approved, exporting unprocessed private timber originating from within the approved sourcing area will be a violation of this Act (16 U.S.C. 620, *et seq.*) its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation."

(d) *Confidential information.* Applications are not considered confidential. However, if a person does submit confidential information as part of an application, the information should be marked confidential. Information so marked will be afforded the rights and protection provided under the Freedom of Information Act.

(e) *Where to submit the application.* A sourcing area applicant shall send the application to the Office of Administrative Law Judges and shall, simultaneously, send a copy of the sourcing area application to the Forest Service Regional Forester of the region in which the manufacturing facility being sourced is located. Where the sourcing area application will cover purchases from more than one agency, application is to be made to the agency from which the applicant expects to purchase the preponderance of its Federal timber. The sourcing area applicant must also send a complete copy of the application to each agency concerned. The lead agency shall make the decision in consultation with, and upon co-signature of, the other agencies concerned.

(f) *Signatory procedures.* Sourcing area applications must be signed by the person making the request, or in the case of a corporation, by its Chief Executive Officer, and must be notarized. The application shall be on company letterhead.

(g) The sourcing area application and review process will be conducted pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), found at 7 CFR part 1, subpart M.

(h) A final decision on a sourcing area application or a formal sourcing area review will be issued within four (4) months of the receipt of the application or initiation of the review.

(i) The following criteria must be met for sourcing area approval:

(1) The Administrative Law Judge, or, on appeal, the Judicial Officer must find that the proposed sourcing area is

geographically and economically separate from any area that the applicant harvests or expects to harvest for export any unprocessed timber originating from private lands. In making such a finding, the Administrative Law Judge, or, on appeal, the Judicial Officer shall consider the timber purchasing patterns of the applicant on private and Federal lands equally with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns.

(2) The "same local vicinity" will normally be manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located, but may include more distant communities if manufacturing facilities in those communities depend on the same source of timber and have similar purchasing patterns.

(3) The relative similarity of purchasing patterns of other mills shall be determined by considering the location and similarity of unprocessed timber being acquired by those facilities.

(4) Lines defining the geographic area shall be based on major natural and cultural features, including, but not limited to, prominent ridge systems, main roads or highways, rivers, political subdivisions, and not characterized by random lines.

(j) *Comments*. Persons may submit comments on sourcing area applications pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, et seq.), found at 7 CFR part 1, subpart M. Persons submitting a comment must certify at the end of the comment, but before the signature, to the following: "I certify that the information provided by me is true and accurate, to the best of my knowledge, and I understand that failure to provide true and accurate information could be violation of the False Statements Act (18 U.S.C. 1001)."

(k) Transporting or causing to be transported unprocessed private timber from outside of a sourcing area into a sourcing area by the holder of the sourcing area is prohibited as a violation of the sourcing area boundary. Such violation will cause a review of the sourcing area, and could subject the sourcing area holder to the penalties and remedies for violations of the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620, *et seq.*, and its implementing regulations.

(l) A person with an approved sourcing area may relinquish the sourcing area at any time provided the person certifies to the following:

> "I am relinquishing the approved sourcing area, described in the Secretary's determination in FSAA ________ on ________, 19____. I understand that I may not export unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during the fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in my possession or under contract, pursuant to the prohibition against substitution in the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) ("Act") and its implementing regulations. I also understand that I may not purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States, pursuant to the prohibitions against substitution in the Act and its implementing regulations. I make this certification with full knowledge and understanding of the Act and its implementing regulations and do fully understand that exporting unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during a fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in possession or under contract, or purchasing unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States is a violation of the substitution provisions of the Act and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation."

The certificate must be signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer; must be on company letterhead; and must be notarized.

(m) A sourcing area is in effect until it is relinquished by the sourcing area holder, or is disapproved upon review of the sourcing area.

§ 223.191 Sourcing area disapproval and review procedures.

(a) Notwithstanding any other provision of law, an applicant whose sourcing area application was submitted by December 20, 1990, and was disapproved could either phase out of purchasing Federal timber or phase out of exporting unprocessed timber originating from private lands within the sourcing area that would have been approved, as follows:

(1) *Phase-out of Federal timber purchasing.* The applicant could purchase, in the 9-month period after receiving the application disapproval, unprocessed timber originating from Federal lands in the disapproved sourcing area, in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed Federal timber in such area during the 5 full fiscal years immediately prior to the date of submission of the application. In the 6-month period immediately following the 9-month period, such person could purchase not more than 25 percent of such annual average, after which time the prohibitions against direct substitution, set forth in § 223.189 of this subpart, shall apply; or

(2) *Phase-out of private timber exporting.* The applicant could continue to purchase unprocessed timber originating from Federal lands within the disapproved sourcing area without being subject to the phase-out of Federal timber purchasing procedures described in paragraph (a) of this section, if the following requirements were met:

(i) The applicant certified to the Regional Forester or the approving official to whom such authority has been delegated, within 90 days after receiving the disapproval decision, as follows:

(A) An applicant that has exported unprocessed timber originating from private lands from the geographic area that would have been approved provided a signed certification that reads as follows:

> "I have engaged in the exporting of unprocessed private timber originating from private lands located within the geographic area the approving official would have approved as a sourcing area for my manufacturing facility. I desire to continue purchasing unprocessed Federal timber from within such area. I hereby certify that I will cease all exporting of unprocessed timber from private lands located within the area that would have been approved by [the applicant shall insert date 15 months from date of receipt of the disapproval decision]. I agree to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area involved in the certification, for a period of three (3) years beginning on the date of receipt of the disapproval notification, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and do fully understand that failure to cease such exporting as certified will be a violation of the Act and may subject me to the penalties and remedies for such violation. Further, I fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001). I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief.";

or,

(B) An applicant who has not exported unprocessed timber originating from private lands from the geographic area that the Secretary would have approved provided a signed certification that reads as follows:

> "I have not exported timber originating from private lands within both the sourcing area that the Secretary would have approved and the disapproved sourcing area in the past 24 months, pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), and I am accepting the area that the Secretary would have approved as my sourcing area. I certify that the information in this certificate is true, complete, and accurate to the best of my knowledge and belief."

(ii) Each certification statement set forth in paragraph (a)(2)(i) of this section must have been signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer; must have been on company letterhead; must have been notarized; and must have had a corporate seal attached.

(iii) The person signing such certification set forth in paragraph (a)(2)(i)(A) of this section must have provided to the Regional Forester the annual volume of timber exported by that person during the five (5) full fiscal years immediately preceding submission of the application, originating from private lands in the geographic area for which the application would have been approved.

(iv) When the applicant submitted the certificate, the area the Secretary would have approved, as shown on the sourcing area map provided by the Secretary, became an approved sourcing area. If the certificate was not submitted, the sourcing area that would have been approved did not become an approved sourcing area.

(3) The phase-out of Federal timber purchasing and the phase-out of private timber exporting procedures provided by paragraphs (a)(1) and (a)(2) of this section do not apply to persons submitting sourcing area applications after December 20, 1990, or to persons requesting review of disapproved sourcing areas.

(b) *Limits on purchases and exports.* (1) During the 15-month period following disapproval of a sourcing area, a person who elects to phase-out of private timber exporting as described in paragraph (a)(2) of this section, may not:

(i) Purchase more than 125 percent of the person's annual average purchases of unprocessed timber originating from Federal lands within the person's disapproved sourcing area during the five (5) full fiscal years immediately prior to submission of the application; and,

(ii) Export unprocessed timber originating from private lands in the geographic area determined by the approving official for which the application would have been approved, in amounts that exceed 125 percent of the annual average of that person's exports of unprocessed timber from such private land during the five (5) full years immediately prior to submission of the application.

(2) At the conclusion of the 15-month export phase-out period, the prohibition against exporting private timber originating from within the area shall be in full force and effect as long as the sourcing area remains approved, pursuant to this subpart F of this part 223.

(c) *Presentation of map to applicant whose sourcing area is disapproved.* The area determined by the deciding official that would have been approved shall be drawn on a map and presented to the applicant by the deciding official with the notice of disapproval of the application.

(d) *Effect of prior certification to cease exporting.* An applicant's previous certification to cease exporting beginning February 20, 1991, for a period of three (3) years from within the disapproved sourcing area pursuant to paragraphs (f) and (g) in § 223.189 of this subpart shall remain in full force and effect for persons with approved and disapproved sourcing areas.

(e) *Review process and frequency.* (1) Approved sourcing areas shall be reviewed not less often than every five (5) years. A tentative date for a review shall be included in the Administrative Law Judge's, or, on appeal, the Judicial Officer's determination or stated in writing by the Regional Forester following the determination. At least 60 days prior to the tentative review date, the Regional Forester or other such reviewing official shall notify the person holding the sourcing area of the pending review, publish notice of such review in newspapers of general circulation within the sourcing area, and invite comments, to be received no later than 30 days from the date of the notice, from all interested persons, including the person holding the sourcing area. For 10 working days following the comment period, any person submitting a written comment and the person with the sourcing area may review the comments. If there is disagreement among the persons who submitted written comments regarding the proper sourcing area, the reviewing official shall convene an informal meeting convenient to the persons that all interested persons may attend. If an agreement cannot be reached among the persons, formal administrative adjudication shall occur. The Administrative Law Judge, or, on appeal, the Judicial Officer shall, on the record and after opportunity for a hearing, approve or disapprove the sourcing area being reviewed, pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), found at 7 CFR part 1, subpart M.

(2) Disapproved sourcing areas shall be reviewed using the process described in paragraph (e)(1) of this section upon resubmission of an application, provided the applicant has accepted the area the Secretary would have approved as a sourcing area pursuant to paragraph (a)(2) of this section.

(3) The Department reserves the right to schedule a review, at the request of the Forest Service or the person holding the sourcing area, at any time prior to the scheduled tentative review date, with 60 days notice.

(4) Sourcing areas being reviewed shall continue in full force and effect pending the final review determination.

(f) *Reporting and record keeping procedures.* The reporting and record keeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0115.

§ 223.192 Procedures for a non-manufacturer.

(a) Persons who do not own or operate a manufacturing facility (non-manufacturer) are not eligible to apply for or be granted a sourcing area.

(b) The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands within the preceding 24-month period shall not apply, if the person certified in writing to the Regional Forester of the region(s) in which the person purchases National Forest System timber by November 20, 1990, that the person would cease exporting unprocessed timber originating from private lands by February 20, 1991, for a period of three (3) years, and the exporting did cease in accordance with such certification.

(c) To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber described in § 223.189 (a) and (b) of this subpart, a person must have applied in writing to the applicable Regional Forester on or before November 20, 1990. The application was required to be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must have included:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

> "I have engaged in the exporting of unprocessed timber originating from private lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months. I desire to purchase directly from a department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620, *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from west of the 100th meridian in the contiguous 48 States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation."

(3) The certification must have been signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer. The certificate must have been notarized.

§ 223.193 Procedures for reporting acquisition and disposition of unprocessed Federal timber.

(a) *Annual report.* Each person who directly or indirectly acquires or possesses unprocessed timber originating from National Forest System lands located west of the 100th meridian in the 48 contiguous States shall submit an annual report on a form provided by the Forest Service on the acquisition and disposition of such timber. Such report shall be on a calendar year basis and shall be sent to the Regional Forester, or other official to whom such authority is delegated, who administers the National Forest System lands from which the majority of timber originated, not later than March 1 of each year, beginning March 1, 1997. The form shall include:

(1) A summary for the calendar year listing, by company, from whom the timber was acquired; the date of acquisition; the origin of National Forest System timber acquired; the sale name; the contract number(s); brand registration number(s) of brands registered by a state or agency or a pictorial representation of sale brand(s) if brands not registered by a state or agency; to whom the timber was sold, transferred or otherwise conveyed to another person; and the date of disposal;

(2) An accounting by origin, in net board feet Scribner or cubic feet, of the volume of National Forest System timber acquired, the volume domestically processed by the purchaser or affiliates, and the volume sold or transferred for domestic processing;

(3) The volume by species of National Forest System surplus species timber acquired and exported or sold for export;

(4) The volume (MBF Net Scribner or cubic) of the unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States that was exported, and

(5) A certificate stating that:

(i) The certifier has read and understands the form;

(ii) The certifier is eligible to acquire unprocessed timber originating from Federal lands in accordance with the Act;

(iii) The information supplied is a true, accurate, current, and complete statement of the receipt and disposition of unprocessed timber originating from National Forest System lands to the best of the certifier's knowledge;

(iv) The certifier agrees to retain a copy of the form and records of all transactions involving unprocessed Federal timber and to make such records available for inspection upon request of an authorized official of the United States for three (3) years from the date of disposal by manufacture or transfer; and

(v) The certifier acknowledges that failure to report completely and accurately the receipt and disposition of timber will subject the certifier to the penalties and remedies in the Act and the penalties in the False Statements Act (18 U.S.C. 1001).

(6) The information provided is presumed to be not confidential, unless specifically marked confidential, in which case confidentiality will be evaluated under applicable laws.

(b) *Transfer of unprocessed National Forest System timber.* Each person who transfers to another person unprocessed timber originating from National Forest System lands shall undertake the following:

(1) Before completing such transfer, provide to such other person a written notice of origin, species, estimated volume or actual volume if the transfer is based on log scale volume, from whom acquired, sale name, contract number, and log brand of unprocessed National Forest System timber being transferred on a form provided by the Forest Service;

(2) Before completing such transfer, certify that the information supplied is a true, accurate, current, and complete statement to the best of his or her knowledge. As part of the certification, the certifier shall:

(i) Agree to send a signed copy of the form required in paragraph (b)(1) of this section within 10 calendar days of such transfer, which shall include all notices, acknowledgments, and agreements, required by this section, to the appropriate Regional Forester who administers the National Forest System lands from which this timber originates, or other official to whom such authority is delegated, and to retain a copy for the certifier's records;

(ii) Acknowledge that the transfer of unprocessed Federal timber to a person for export or to a person who may not purchase timber directly from the Federal government is a violation of the Act;

(iii) Agree to obtain full completed notice of origin form from the transferee;

(iv) Agree to retain records of all transactions involving unprocessed Federal timber for a period of three (3) years from the date of transfer and to make all records involving log transactions available to an appropriate Federal official upon request. Records include all forms and certificates required by these regulations;

(v) Acknowledge that failure to report completely and accurately the receipt and disposition and/or transfer of unprocessed National Forest System timber will subject the certifier to the penalties and remedies in the Act (16 U.S.C. 620, *et seq.*) and the penalties in the False Statements Act (18 U.S.C. 1001); and

(vi) Certify that he or she has read and understands the form.

(3) Before completing such transfer, obtain from the person acquiring such

timber on the same form provided by the Forest Service.

(i) An agreement to retain for a period of three (3) years from date of transfer the records of all sales, exchanges, or other disposition of such timber, and make such records available for inspection upon the request of an authorized official of the United States;

(ii) An agreement to allow Federal officials access to log storage and processing facilities for the purpose of monitoring compliance with the Act and implementing regulations;

(iii) An agreement to maintain and/or replace all brands and paint identifying the Federal origin of each piece of unprocessed Federal timber as described in § 223.195;

(iv) An agreement to submit, by March 1, the annual report required in § 223.193(a);

(v) An agreement to submit a completed notice of origin form for the Federal timber received and to receive an agreement to comply with the Act and regulations in such form if the person transfers any or all of the timber listed in the document;

(vi) An acknowledgment of the prohibition against acquiring unprocessed Federal timber from a person who is prohibited by the Act from purchasing the timber directly from the United States;

(vii) An acknowledgment of the prohibitions against exporting unprocessed Federal timber and against acquiring such timber in substitution for unprocessed private timber west of the 100th meridian in the contiguous 48 States;

(viii) A declaration of its business size and manufacturing classification, as defined under the Small Business Administration Regulations at 13 CFR part 121; and

(ix) A certificate stating that the certifier has read and understands the form; is eligible to acquire unprocessed timber originating from Federal lands in accordance with the Act; has been notified that some or all of the unprocessed timber included in this transfer is subject to export and substitution restrictions; supplied information is a true, accurate, current, and complete statement of the receipt and disposition of the unprocessed timber originating from National Forest System lands to the best of the certifier's knowledge; and acknowledges that failure to report completely and accurately the transfer of unprocessed Federal timber will subject the certifier to the penalties and remedies in the Act (16 U.S.C. 620, *et seq.*) and the penalties in the False Statements Act (18 U.S.C. 1001). The information provided is presumed to be not confidential, unless specifically marked confidential, in which case confidentiality will be evaluated under applicable laws.

(4) Except as otherwise provided by law, a person who transfers unprocessed Federal timber to another person and meets all notice, certification, acknowledgment, reporting and record keeping requirements contained in this section shall be relieved from further liability for such timber pursuant to the Act.

§ 223.194 Procedures for reporting the acquisition and disposition of unprocessed private timber.

(a) *Notice of domestic processing requirement.* Each person who acquires unprocessed timber originating from Federal lands located west of the 100th meridian in the 48 contiguous States, and who also possesses or acquires unprocessed timber from private lands located west of the 100th meridian in the 48 contiguous States that requires domestic processing, including unprocessed timber originating within an approved sourcing area, and in turn sells, trades or otherwise conveys such unprocessed private timber to another person, must include a statement notifying the person acquiring the unprocessed private timber that such private timber must be domestically processed. Unprocessed timber originating from private lands located outside of a sourcing area may be transferred by the holder of the sourcing area, or by persons acquiring such unprocessed timber who are eligible to export such timber, without including such a statement.

(b) The notification statement, pursuant to paragraph (a) of this section, shall accompany each transaction involving unprocessed private timber that requires domestic processing. The statement shall be on a form provided by the Forest Service or a legible copy of such form.

(1) On such form, described in paragraph (b) of this section, the person transferring the timber shall:

(i) Give notice to the person receiving the unprocessed private timber that exporting that timber would violate the Act and its implementing regulations;

(ii) Give notice to the person receiving the unprocessed private timber that the timber has been identified for domestic manufacturing by a spot of highway yellow paint on each log end that must be retained on the timber;

(iii) Agree to send a signed copy of the transaction statement to the Regional Forester within 10 calendar days of the transaction;

(iv) Agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber for a period of three (3) years from the date of disposal by manufacturing or transfer and to make such records available for inspection upon the request of an authorized official of the United States;

(v) Acknowledge that failure to completely and accurately report and identify unprocessed timber is a violation of the Act, and regulations issued under the Act, and the False Statements Act (18 U.S.C. 1001); and

(vi) Certify that the form has been read and understood.

(2) On such form, described in paragraph (b), the person acquiring the timber shall:

(i) Acknowledge receipt of the notice of requirement to domestically process timber originating from private land;

(ii) Certify that a statement pursuant to paragraph (b)(1) will be included in any subsequent transaction documents;

(iii) Agree to maintain yellow paint markings on each log end until the timber is domestically processed or transferred;

(iv) Agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber for a period of three (3) years from the date of disposal by manufacturing or transfer and to make such records available for inspection upon the request of an authorized official of the United States;

(v) Agree to send a signed copy of the transaction statement to the Regional Forester within 10 calendar days of the transaction;

(vi) Agree to allow authorized officials access to log storage and processing facilities for the purpose of monitoring compliance with the Act and its implementing regulations;

(vii) Acknowledge that failure to comply with the domestic manufacturing requirements for unprocessed timber or failure to notify subsequent persons of this requirement may subject the certifier to the civil penalties and administrative remedies provided in the Act and regulations issued under the Act;

(viii) Acknowledge that failure to completely and accurately report and identify unprocessed timber is a violation of the Act, and regulations issued under the Act, and the False Statements Act (18 U.S.C. 1001); and

(ix) Certify that the form has been read and understood.

(c) Except as otherwise provided by law, a person who transfers unprocessed private timber to another person and meets all notice, certification, acknowledgement, distribution, reporting and record keeping requirements contained in this section shall be relieved from further liability for such timber with regard to the export and substitution restrictions pursuant to the Act.

§ 223.195 Procedures for identifying and marking unprocessed timber.

(a) *Highway yellow paint.* The use of highway yellow paint on unprocessed logs west of the 100th meridian in the contiguous 48 States shall be reserved for identifying logs requiring domestic manufacturing.

(b) *Preserving identification.* All identifying marks placed on an unprocessed log to identify the National Forest System origin of that log and/or to identify the log as requiring domestic processing shall be retained on the log until the log is domestically processed. If the identifying marks are lost, removed, or become unreadable, they shall be replaced. If the log is cut into two or more segments, each segment shall be identified in the same manner as the original log.

(1) A generic log hammer brand, known as a "catch brand", used to identify ownership, may be used to replace lost, removed, unreadable or otherwise missing brands where such use is authorized by the Regional Forester and approved by the Contracting Officer. Use of such a catch brand on a log or log segment will signify Federal origin.

(2) The requirement to preserve identification of log pieces shall not apply to logs cut into two or more segments as a part of the mill in-feed process immediately before processing. Log segments that are returned to or placed in storage must be marked on both ends with yellow paint.

(c) *National Forest System logs.* Except as otherwise provided in this subsection, all unprocessed logs originating from National Forest System timber sales west of the 100th meridian in the contiguous 48 States shall, before being removed from the timber sale area, be marked on each end as follows:

(1) Painted on each end with a spot of highway yellow paint not less than three square inches in size; and,

(2) Branded on each end with a hammer brand approved for use by the Forest Supervisor of the National Forest from which the logs originate. The brand pattern may not be used to mark logs from any other source for a period of 24 months after all logs have been removed from the sale area and until such brand pattern is released in writing by the Forest Supervisor.

(d) *Private logs.* All unprocessed logs originating from private lands west of the 100th meridian in the contiguous 48 States that require domestic manufacturing pursuant to § 223.194 of this subpart, shall be painted on each end with a spot of highway yellow paint not less than three (3) square inches in size before removal from the harvest area. If private logs are acquired by a person who may not export such logs, the logs must be marked by the person acquiring the logs at the time of the acquisition.

(e) *Waiver of painting requirements.* The log painting requirements pursuant to paragraphs (c)(1) and (d) of this section may be waived if the Chief of the Forest Service determines that alternate methods for identifying logs required to be domestically processed are equal to or better than the procedures required herein.

(f) *Waiver of branding requirements.* Regional Foresters may waive the branding requirements pursuant to paragraph (c)(2) of this section as follows:

(1) *Regions 1, 2, 3, and 4.* On an individual timber sale basis, all or a portion of the branding requirements pursuant to paragraph (c)(2) of this section may be waived, if:

(i) Unprocessed logs from any origin are not known to have been exported by any person from the person's area of operations within the previous 5; years.

(ii) The person certifies as follows:

> "I hereby request waiver of the requirements to brand each end of individual logs originating from the _______ timber sale, Forest Service contract number _______ pursuant to 36 CFR 223.195. I certify that I have not exported or sold for export unprocessed timber from private lands within my area of operations in five years. I certify that I understand, that if granted, the waiver applies only to unprocessed logs being processed within my area of operations. I certify that any unprocessed logs to which this waiver applies that are transferred, or sold for transfer, outside my area of operations will be branded on both ends in full compliance with 36 CFR 223.195. I make this certification with full knowledge and understanding of the requirement of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations at 36 CFR part 223. I fully understand that failure to abide by the terms of the waiver will be a violation of this Act (16 U.S.C. 620, *et seq.*) and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.";

and,

(iii) The person otherwise complies with the regulations relating to transfers of logs between persons.

(iv) If the Regional Forester determines that unprocessed logs from my origin are being exported, or are known to have been exported within the previous 5 years, by any person from the person's area of operations, the Regional Forester shall revoke the waiver.

(2) *Regions 5 and 6.* On an individual timber sale basis, the branding requirement pursuant to paragraph (c)(2) of this section may be waived for logs ten (10) inches or less in diameter inside bark on the large end may be waived if:

(i) One end of each log is branded;

(ii) The person certifies as follows:

> "I hereby request waiver of the requirement to brand each end of individual logs ten (10) inches or less in diameter inside bark on the large end, originating from the _______ timber sale, U.S. contract number _______ pursuant to 36 CFR 223.195. I certify that I understand, if granted, that the waiver applies only to unprocessed logs being processed at _______, and further certify that any and all unprocessed logs to which waiver would apply that are transferred, or sold for transfer, will be branded on both ends in full compliance 36 CFR 223.195. I make this certification with full knowledge and understanding of the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990; 16 U.S.C. 620, *et seq.*) (Act) and its implementing regulations at 36 CFR Part 223. I fully understand that failure to abide by the terms of the waiver will be a violation of this Act (16 U.S.C. 620, *et seq.*) and the False Statements Act (18 U.S.C. 1001) and may subject me to the penalties and remedies provided for such violation.";

and,

(iii) The purchaser otherwise complies with the regulations relating to transfers of logs between persons.

(iv) If the Regional Forester determines that logs ten (10) inches or less in diameter inside bark on the large end are being exported in the Region, the Regional Forester shall revoke the waiver.

(3) The Chief of the Forest Service may authorize the testing of alternative methods of branding for consideration in future amendment of these regulations. Such alternative methods and logs marked under those methods shall be closely monitored.

§ 223.196 Civil penalties for violation

(a) *Exporting Federal timber.* If the Secretary of Agriculture finds, on the record and after providing an opportunity for a hearing, that a person, with willful disregard for the prohibition in the Act exporting unprocessed Federal timber, exported or caused to be exported unprocessed timber originating from Federal lands in violation of the Act, the Secretary may assess against such person a civil penalty of not more than $500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(b) *Other violations.* If the Secretary of Agriculture finds, on the record and after providing an opportunity for a hearing, that a person has violated any provision of the Act, or any regulation issued under the Act relating to National Forest System lands, even though that the violation may not have caused the export of unprocessed Federal timber in violation of such Act, the Secretary may:

(1) Assess against such person a civil penalty of not more than $500,000, if the Secretary determines that the person committed such violation willfully;

(2) Assess against such person a civil penalty of not more than $75,000 for each violation, if the Secretary determines that the person committeed such violation in disregard of such provision or regulation; or

(3) Assess against such person a civil penalty of not more than $50,000 for each violation, if the Secretary determines that the person should have known that the action constituted a violation.

(c) *Penalties not exclusive and judicial review.* A penalty assessed under paragraph (a) or (b) of this section shall not be exclusive of any other penalty provided by law, and shall be subject to review in an appropriate United States district court.

§ 223.197 Civil penalty assessment procedures.

Adjudicatory procedures for hearing alleged violations of this Act and its implementing regulations and assessing penalties shall be conducted under the rules of practice governing formal adjudicatory proceedings instituted by the Secretary. Such procedures are found at 7 CFR 1.130, *et seq.*

§ 223.198 Administrative remedies.

In addition to possible debarment action provided under subpart C of this part, the Chief of the Forest Service, or other official to whom such authority is delegated, may cancel any timber sale contract entered into with a person found to have violated the Act or regulations issued under the Act. Such a finding shall constitute a serious violation of contract terms pursuant to § 223.116(a)(1) of this part.

§ 223.199 Procedures for cooperating with other agencies.

The Regional Foresters may enter into agreements to cooperate with the Department of the Interior, the Department of Defense, and other Federal, State and local agencies for monitoring, surveillance and enforcing the Act.

§ 223.200 Determinations of surplus species.

(a) Determinations that specific quantities of grades and species are surplus to domestic manufacturing needs and withdrawals of such determinations shall be made in accordance with title 5, United States Code, section 553.

(b) Review of a determination shall be made at least once in every 3-year period. Notice of such review shall be published in the **Federal Register**. The public shall have no less than 30 days to submit comments on the review.

(c) Alaska yellow cedar and Port Orford cedar, which the Secretary of Agriculture found to be surplus to domestic processing needs pursuant to 36 CFR 223.163, the rules in effect before August 20, 1990, shall continue in that status until new determinations are published.

§ 223.201 Limitations on unprocessed timber harvested in Alaska.

Unprocessed timber from National Forest System lands in Alaska may not be exported from the United States or shipped to other States without prior approval of the Regional Forester. This requirement is necessary to ensure the development and continued existence of adequate wood processing capacity in Alaska for the sustained utilization of timber from the National Forests which are geographically isolated from other processing facilities. In determining whether consent will be given for the export of timber, consideration will be given to, among other things, whether such export will:

(a) Permit more complete utilization on areas being logged primarily for local manufacture,

(b) Prevent loss or serious deterioration of logs unsalable locally because of an unforeseen loss of market,

(c) Permit the salvage of timber damaged by wind, insects, fire or other catastrophe,

(d) Bring into use a minor species of little importance to local industrial development, or

(e) Provide material required to meet urgent and unusual needs of the Nation. (16 U.S.C. 472a; 16 U.S.C. 551; 16 U.S.C. 616)

§ 223.202 Information requirements.

(a) The procedures in § § 223.189 and 223.192, and some of the procedures in § 223.190 were approved by the Office of Management and Budget (OMB) and assigned Control Number 0596–0114 upon issuance of the interim rule. Control Number 0596–0114 has been reapproved by OMB for use through May 31, 1997. OMB approved the information collection requirements in § § 223.191 and 223.203 for use through August 31, 1995, and assigned them Control Number 0596–0115. OMB approved the information collection requirements in § § 223.48 and 223.87 for use through March 31, 1997 and assigned them Control Number 0596–0021; the information collection requirements in § § 223.48 and 223.87 have been revised. OMB Control Numbers 0596–0114, 0596–0115, and 0596–0021 have been consolidated under OMB Control Number 0596–0114.

(b) The application and reporting procedures in § § 223.187, 223.193, 223.194, 223.195, and some of the procedures in § 223.190 of this final rule contain new record keeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. The Office of Management and Budget (OMB) has approved these requirements, and assigned them Control Number 0596–0114.

§ 223.203 Indirect substitution exception for National Forest System timber from within Washington State.

(a) *Exception limits.* A limited amount of unprocessed National Forest System timber originating from within Washington State could have been acquired by a person otherwise covered by the prohibition against indirect substitution, pursuant to § 490(b) of the Act and § 223.189(e) of this subpart.

(1) The amount of such unprocessed timber was limited to whichever is less:

(i) The higher of the applicant's actual purchase receipts for unprocessed timber originating from National Forest System lands within Washington State or the Department's records, during fiscal years 1988, 1989, and 1990, divided by 3; or

(ii) 15 million board feet.

(2) Such limit shall not exceed such person's proportionate share of 50 million board feet.

(b) *Application, review and approval process.* To obtain a share of the 50 million board feet exempted from the prohibition against indirect substitution in section 490(b) of the Act, a person must have submitted an application. Applications were required to include at least the following:

(1) The amount of volume exception being requested, in thousand board feet (MBF);

(2) A signed certification that reads as follows:

"I certify that, except for an approved share of unprocessed Federal timber, in accordance with 36 CFR 223.203, the prohibition contained in section 490(b) of the Act (16 U.S.C. 620b) applies to me. I have exported unprocessed timber originating from private lands from west of the 100th meridian in the 48 contiguous States and have acquired unprocessed timber from National Forest System lands located within Washington State in 1988, 1989 and/or 1990. I certify that the information provided in support of this application is a true, accurate, current and complete statement, to the best of my knowledge and belief. I agree to retain records of all transactions involving the acquisition and disposition of unprocessed timber from Federal lands within the area involved in this application for a period of 3 years beginning on the date the application is approved, and to make such records available for inspection upon the request of the Regional Forester or other official to whom such authority has been delegated. I make this certification with full knowledge and understanding of the requirements of the Act and do fully understand that if this application is approved, the amount of exception granted under this approval may not be exceeded in any one fiscal year, and do fully understand that if such exception is exceeded I will be in violation of the Act (16 U.S.C. 620, *et seq.*), and I may be subject to the penalties and remedies provided for such violation. Further, I do fully understand that such violation may subject me to the penalty of perjury pursuant to the False Statements Act (18 U.S.C. 1001).";

and

(3) The application listed under this section must have been signed by the person making such application or, in the case of a corporation, by its Chief Executive Officer. The application must have been on the company's letterhead and must have been notarized.

(4) The application made under this section must have been mailed to the Regional Forester in Portland, Oregon, no later than January 8, 1992. Applicants were notified of the approving official's decision by letter. If approved, the amount of the exception becomes effective upon publication in the **Federal Register**.

(5) Prospective applicants could review Department records upon request prior to the deadline for submitting applications. An applicant could voluntarily submit information documenting the amount of purchases of unprocessed timber originating from National Forest System lands within Washington State. The Department then determined which amount is higher, verified by either the Department's records or the applicant's records. The Department then determined the applicant's portion of the 50 million board feet by determining the lesser of the amount verified by the records or 15 million board feet. Applicants could submit the information documenting the amount of purchases in the following manner:

(i) Actual receipts for purchasing unprocessed timber from National Forest System lands within Washington State; or

(ii) A statement by a certified public accountant of:

(A) A summary by fiscal year for 1988, 1989 and 1990 of the applicant's acquisitions of timber originating from National Forest System lands in the State of Washington, listing total volume for each of the three fiscal years; and

(B) The average volume for the three fiscal years. The volumes to be reported were the harvest volumes, except in the case of open sales. Advertised volumes had to be reported for open sales.

(C) The certified public accountant must have certified to the following:

"I certify that under the penalties and remedies provided in § 492 of the Act (16 U.S.C. 620d) and the penalty of perjury provided in the False Statements Act (18 U.S.C. 1001) that the information provided in support of this application is, to the best of my knowledge and belief, a true, accurate, current, and complete statement of [applicant's company's name] National Forest System timber acquisitions originating from within the State of Washington for fiscal years 1988, 1989 and/or 1990."

(D) The certified public accountant's statement and certification must have been on the accountant's company letterhead, must have been notarized, and must have accompanied the applicant's application.

(c) *Selling and trading rights.* The purchase limit right obtained under this rule may be sold, traded, or otherwise exchanged with any other person subject to the following conditions:

(1) Such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights:

(2) Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights within 15 days of the transaction; and

(3) No person may have or acquire more than 15 million board feet in one fiscal year.

(d) *Information collection.* The application procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0114.

(e) *Persons with approved shares.* The application period for shares of the indirect substitution exception for acquiring unprocessed timber originating from National Forest Systems lands within the State of Washington closed on January 8, 1992. Persons with approved shares are responsible for monitoring and controlling their acquisitions of National Forest System timber originating from within the State of Washington to assure approved share amounts are not exceeded in any Federal fiscal year. Unused portions of annual shares may not be "banked" for use in future fiscal years. The acquisition of such National Forest System timber must be reported to the Forest Service in accordance with § 223.193 of this subpart. The following shares are approved as of September 8, 1995:

(1) Cavenham Forest Industries, Portland, OR, 1,048,000 board feet.

(2) Weyerhauser, Tacoma, WA, 15,000,000 board feet.

PART 261—PROHIBITIONS

13. The authority citation for part 261 is revised to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(C)–(d)(1); 16 U.S.C. 620(f).

Subpart A—General Prohibitions

14. Amend § 261.6 by adding paragraph (i) to read as follows:

§ 261.6 Timber and other forest products.

* * * * *

(i) Violating the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), or its implementing regulations at 36 CFR 223.185–223.203.

* * * * *

Dated: August 28, 1995.

James R. Lyons,

Under Secretary, Natural Resources and Environment.

[FR Doc. 95–21912 Filed 9–7–95; 8:45 am]

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federal register

Friday
September 8, 1995

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 672 et al.

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Consolidate Recordkeeping and Reporting Requirements; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 950727194–5194–01; I.D. 062795C]

RIN 0648–AG54

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Consolidate Recordkeeping and Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to remove and to consolidate several sections of regulations in parts 672 and 675; to simplify and streamline the remaining regulations, including the recordkeeping and reporting requirements; to consolidate area descriptions and coordinates into maps and tables; to consolidate codes, values, and descriptions into tables; and to correct errors and clarify vague text. These actions are intended to facilitate management of the groundfish fisheries and the enforcement of groundfish regulations. They are necessary to promote the goals and objectives of the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska (GOA) and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI).

DATES: Comments must be received on or before October 10, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or be delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK. Comments on the collection-of-information requirements may be sent to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) (0648–AG54), Washington, DC 20503 (Attn: NOAA Desk Officer), and to Patsy A. Bearden, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone (EEZ) of the BSAI and the GOA is managed by NMFS according to the FMPs for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea Aleutian Islands Area. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

This action proposes amendments to regulations as follows: (1) Consolidate § 675.2 into § 672.2; § 675.3 into § 672.3; § 675.4 into § 672.4; and § 675.5 into § 672.5; (2) remove the requirement for the groundfish utilization survey at § 672.5(d) and (e) and other outdated requirements; (3) update and replace §§ 672.2, 672.3, 672.4 (including the Federal Fisheries Permit Application), and 672.5 (including logbooks, reports, and forms); (4) amend §§ 672.7, 675.27, and § 677.4; (5) revise the scientific term for steelhead trout at §§ 672.20(e)(1) and 675.20(c)(1); (6) place all tables and figures currently found in part 675 in part 672, revised and renumbered, and add new tables and figures; (7) revise and insert references to tables and figures within the text of parts 672 and 675; (8) revise and insert paragraph titles to several paragraphs in parts 672 and 675; (9) revise the time citation "00:01 a.m." to read "0001 hours" in §§ 672.20(a), 675.20(a), 672.23(f), and 675.23(d); (10) revise GOA reporting area codes from 61, 62, 63, 64, 65 to read 610, 620, 630, 640, and 650; (11) revise and insert references to GOA reporting areas; (12) add new GOA reporting area code 690 and new BSAI reporting area codes 300, 400, and 550; (13) place all reporting area codes and coordinates in maps and tables; and (14) divide most reporting areas into Alaska state waters and Federal waters for reporting purposes. A description of, and reasons for, these actions follow.

I. Consolidation of Regulations

Although the GOA and BSAI have separate FMPs, much of the regulatory text for the two management areas is the same. NMFS proposes to remove duplicate text that is found also in part 672 (GOA management area) from several sections of part 675 (BSAI management area) and to replace the removed text with a cross reference to part 672. This action will shorten the regulations as well as simplify and clarify the text. Those sections affected would be: Section 675.2 into § 672.2 (Definitions); § 675.3 into § 672.3 (Relation to other laws); § 675.4 into § 672.4 (Permits); and § 675.5 into § 672.5 (Recordkeeping and reporting).

II. Removal of Existing Regulations

NMFS would remove outdated regulations that no longer apply to the groundfish fisheries. This action would shorten the regulatory text and create a simpler, more pertinent body of regulations.

A. Groundfish Utilization Surveys

NMFS proposes to remove regulations at § 672.5(d) and (e) that require completion of an annual groundfish utilization survey. The original purpose of the survey was to estimate domestic annual processing (DAP) groundfish utilization each year for purposes of allocating groundfish among foreign fishing, DAP, and joint-venture processing (JVP) operations. Since 1990, the groundfish fisheries have been fully domesticated, and foreign fishing and JVP operations have been discontinued. Groundfish utilization surveys are no longer needed. The time spent on the labor-intensive surveys by industry provides no useful guidance for annual projections of DAP harvest and production activity.

B. Text Within 675.27(g)

NMFS proposes to remove regulations at § 675.27(g), regarding the Western Alaska Community Development Program, Community Development Quota (CDQ) requirements, that are entitled "CDQ fishing requirements," since these regulations are found in recordkeeping and reporting requirements at § 672.5.

C. Logbooks

1. *Duration of Set or Trawl.* NMFS proposes to remove recordkeeping and reporting requirements at § 672.5 for Catcher Vessels and Catcher/Processors to record duration of set or trawl in the Catcher Vessel Daily Fishing Logbook (DFL) and Catcher/Processor Daily Cumulative Production Logbook (DCPL), respectively. This information can be obtained from the logbook through calculations of start and end times.

2. *Joint-venture Operation.* The requirement to record in a DFL whether delivery by a Catcher Vessel was made to a foreign processor vessel in a joint-venture operation would be removed, since joint-venture operations for groundfish no longer occur in the EEZ off Alaska.

3. *Number of Days Fishing Activity.* The requirement to record the number of days that fishing activity was conducted and when fish were received would be removed from the weekly

production report. This information, originally thought to provide effort information, did not result in useful information.

III. Revision of Regulations

The need for existing recordkeeping and reporting requirements was discussed in the preamble to the proposed rule for Amendments 13 and 18 to the FMPs (54 FR 36333, September 1, 1989). The recordkeeping and reporting requirements implemented under Amendments 13 and 18 (54 FR 50386, December 6, 1989) subsequently were revised to repeal monthly product value reporting requirements (55 FR 34933, August 27, 1990). Additional revisions were published for public comment and implemented under a 1991 interim final rule (56 FR 9636, March 7, 1991). No comments were received on the interim final rule during the public review period.

NMFS proposes to incorporate recommendations from the groundfish industry, NMFS management staff, and enforcement staff to reduce the reporting burden; to improve the format of the logbooks, reports, and forms; and to create a more effective, timely, and comprehensive collection of information to facilitate management of the groundfish fisheries in the EEZ off Alaska.

A. Revisions to Statistical and Reporting Areas

1. *Coordinates.* The codes and coordinates for GOA and BSAI statistical and reporting areas would be presented in maps and tables (see Figures 1 and 3). This action would provide easy access to these data by allowing the reader to refer to one source for all statistical and reporting area coordinates.

2. *Three-digit GOA statistical and reporting area codes.* Two-digit statistical and reporting area designations in the GOA would be changed to 3-digit designations by adding a zero to existing area numbers (e.g., reporting areas 61 through 65 would be designated as areas 610 through 650, respectively) (see Figure 3). Since existing statistical and reporting areas associated with the BSAI are designated by 3-digit codes, revision of the GOA-associated designations to 3-digit statistical and reporting area codes would provide a uniform coding system for incorporation into computer databases.

3. *Bogoslof District, BSAI.* A final rule implementing Amendment 17 to the FMP for the Groundfish Fishery of the BSAI (57 FR 10430, March 26, 1992) established Statistical Area 518 (the Bogoslof District) for purposes of managing the Aleutian Basin pollock stock. The coordinates published for the new area were incorrectly specified in the final rule. NMFS proposes to correct the error in the coordinates of Statistical Area 518 (see Figure 1).

4. *Division between BSAI and GOA Reporting Areas.* The division between reporting areas associated with BSAI and GOA would be described in coordinates along the Alaska Peninsula and the Aleutian Islands (see Figures 1 and 3). Lack of this information has caused problems in groundfish catch reporting and in enforcement of regulations.

5. *New Reporting Areas.* Generally, a reporting area includes a statistical area plus adjacent Alaska State waters and is identified by the same number used to identify the statistical area. NMFS proposes to add six reporting areas that do not follow that scheme (see Figures 1 and 3).

Two reporting areas would be added that are completely within Alaska State waters. Reporting area 649 (Prince William Sound) and reporting area 659 (inside waters of Southeast Alaska) would be established to allow inseason managers to differentiate reported sablefish and demersal shelf rockfish harvests that are managed under Alaska State groundfish quotas.

Four additional reporting areas would be added that are completely outside the EEZ off Alaska—300, 400, 550, and 690—to allow differentiation of fish harvested in areas outside the EEZ.

6. *Corrections to Existing Statistical Areas.* NMFS proposes that a code correction be made for two statistical areas, 511 and 522, that had already been assigned to two non-contiguous areas. This duplication was the result of the subdivision of a large area into smaller areas and inadvertence by not renumbering those areas. Statistical areas 508 and 509 would replace the two areas 511, and statistical areas 523 and 524 would replace the two areas 522. This action would result in more precise identification of the location of groundfish harvested in the BSAI.

7. *Distinction between Federal and State Portions of a Reporting Area.* NMFS proposes to distinguish between Federal waters (statistical areas) and Alaska State waters in any reporting area. Two questions would be added in the DFL, Buying Station Daily Cumulative Logbook (DCL), DCPLs, Weekly Production Report (WPR), Daily Production Report (DPR), Buying Station Check-in/Check-out, and Mothership or Catcher/Processor Check-in/Check-out Reports to request that the reader distinguish between Federal waters or Alaska State waters within any reporting area. This action would accommodate fee assessment of landings under the North Pacific Fisheries Research Plan (Research Plan) authorized by the Magnuson Act. Research Plan fee assessments would not apply to fish, except Pacific halibut, caught in Alaska State waters.

B. Figures and Tables

NMFS proposes to clarify coordinates and descriptions of areas in various sections of parts 672 (GOA management area) and 675 (BSAI management area) and to use maps and tables. Existing figures and tables from both the GOA and BSAI would be renumbered, revised, and placed after the text of part 672. In-text tables would be removed from paragraph 672.24(d), presented in Figure 5b, and relocated after the text of part 672; in-text tables would be removed from paragraph 672.24(e), presented in Table 6, and relocated after the text of part 672. This action would codify and improve access to information needed for compliance with recording and reporting requirements in the following figures and tables:

Figure 1—BSAI statistical and reporting areas; a—map, b—coordinates of reporting areas;

Figure 2—BSAI Catcher Vessel Operational Area (map includes coordinates);

Figure 3—GOA statistical and reporting areas; a—map, b—coordinates of reporting areas;

Figure 4—Herring Savings Areas in the BSAI; a—map, b—coordinates of reporting areas and effective dates;

Figure 5—Kodiak Island areas closed to trawls other than pelagic trawl gear; a—map, b—coordinates of reporting areas;

Figure 6—Length overall of a vessel; and

Figure 7—Location of trawl test areas in the GOA and the BSAI (map includes coordinates).

Table 1—Product codes (new table; these codes were formerly referred to in the Product Recovery Rate (PRR) tables at §§ 672.20 and 675.20). The various products that may be made from groundfish are described here and are assigned a 2-digit product code. Product codes also are used to describe various types of discard; these often are referred to as discard products;

Table 2—Species codes (new table). The various species of groundfish are listed in Table 2;

Table 3—Product recovery rates for groundfish species (renumbered);

Table 4—Bering Sea Subarea Steller Sea Lion Protection Areas (moved from text);

Table 5—Aleutian Islands Subarea Steller Sea Lion Protection Areas (moved from text);

Table 6—Gulf of Alaska Steller Sea Lion Protection Areas (moved from text);

Table 7—Communities determined to be eligible to apply for Community Development Quotas (renumbered);

Table 8—Harvest Zone Codes for Use with Product Transfer Reports and Vessel Activity Reports (new table);

Table 9—Required Logbooks, Reports, and Forms (new table);

Table 10—Gulf of Alaska, Retainable Percentages (renumbered); and

Table 11—Bering Sea and Aleutian Islands Management Area, Retainable Percentages (renumbered).

C. Revisions to Logbooks, Reports, and Forms

NMFS proposes to improve the format of existing logbooks, reports, and forms and to add a new logbook for Buying Stations, in addition to the following revisions:

1. *Metric tons.* The required weight units used to record amounts of landings, product, and discards of groundfish and herring would be revised from "pounds (lb) or nearest 0.1 metric ton (mt)" to "pounds (lb) or nearest 0.01 metric ton (mt)" on all forms and logbooks. This change would allow NMFS to obtain catch data from processors that traditionally have smaller landings. Finer resolution in the database would increase the accuracy of inseason quota management actions.

2. *Daily Fishing Logbook (DFL).* Recording the delivery date under Catch Delivery Information in the DFL would be required for use by NMFS Enforcement personnel. Other revisions to the DFL are proposed to improve the format of the logsheet and to record CDQ information.

At-sea discard information would be required from Catcher Vessels, without increasing the paperwork burden, through the use of an additional blue sheet in the DFL that the operator turns in to the processor with the harvest.

3. *Daily Cumulative Production Logbook (DCPL)*—a. *Mothership or Catcher/Processor.* The Catcher/Processor and Mothership DCPLs would be revised to improve the format of the logsheet and to record CDQ information.

b. *Shoreside Processor.* The Shoreside Processor DCPL would be divided into two parts identified as Part I and Part II, to allow for a greater number of daily entries, particularly in the product section. This action would allow flexibility in the use of the logbook by different types and sizes of Shoreside Processors. Part I would include four subparts: Processor identification information, Catcher Vessel delivery information, landings information, and discarded species information.

Part II would be used to record product information by week-ending date, management area, and species and product codes. Data would be recorded on one page for up to 3 weeks. This action would result in a more efficient page layout and a reduced reporting burden, since groundfish products would not be reported for separate reporting areas or gear types.

Other revisions are proposed to improve the format of the logsheet and to record CDQ information.

4. *Buying Station Daily Cumulative Logbook (DCL).* The operator or manager of a Buying Station would be required to maintain a DCL to record data about Catcher Vessel delivery and discards as well as Buying Station discards that occur after acceptance of the delivery from the Catcher Vessel and prior to delivery to a Mothership or Shoreside Processor. The proposed requirements for a Buying Station DCL would provide a defined procedure for a Mothership or Shoreside Processor to obtain data and report to NMFS any Catcher Vessel harvest and discard that is received, sorted, and delivered by a Buying Station.

5. *Product Transfer Report (PTR).* The name of the Product Transfer Logbook (PTL) would be changed to Product Transfer Report (PTR) to give the form a more accurate name, because it is not a logbook. An addition would be made to the PTR to indicate whether the form is an original or revised report; this information would improve data entry speed and accuracy.

a. *Mothership or Catcher/Processor PTR.* Each Mothership or Catcher/Processor would be required to record the U.S. Coast Guard document number of the vessel on a PTR and collect additional identification information concerning transfer handling, destination, or receipt. The PTR would indicate whether a particular transfer forms the beginning or end of an audit period; whether a transfer is a complete or partial offload; and what amount and type of products remain on board after the transfer. These revisions are needed to simplify and improve the accuracy of audits of Motherships or Catcher/Processors by NMFS Enforcement personnel.

A harvest zone designation (distinct from reporting or statistical area, see Table 8) would be added to the PTR to indicate whether groundfish were harvested in or outside of the EEZ off Alaska. This information is needed to complete requests for statistical reports from members of Congress and other Government officials. NMFS Enforcement and Management personnel would use the information recorded on the PTR to determine ownership of a product from its place of origin to its first destination.

b. *Shoreside Processor.* The Shoreside Processor PTR would be revised to collect additional information concerning transfer handling, destination, or receipt.

6. *Check-in/Check-out Report*—a. *Mothership or Catcher/Processor.* This form would be revised to determine intended primary and secondary target species. This information would provide fishery managers with an estimate of fishing effort for individual species in each reporting area and would enable them to better project fishery closures. Regulations also would be clarified to allow operators of Catcher/Processors using hook-and-line or pot gear to be "checked into" several reporting areas if their gear is simultaneously fishing in those areas.

A requirement would be added to record processor type, because vessels can function in more than one category. This information is needed by fishery managers for quota management purposes.

Other revisions are proposed to improve the format of the form and to record CDQ information.

b. *Shoreside Processor.* A Check-in/Check-out report would be required; it would supersede the existing requirement for a Shoreside Processor to check in through submittal of its first WPR. Each Shoreside Processor would submit a Check-in report before receipt of groundfish, either at the beginning of the fishing year or after submission of a Check-out report.

Products from groundfish often are stored at the Shoreside Processor premises for a long time, along with stored products resulting from non-groundfish fisheries. Fish products that are not intended for storage are transferred from a Shoreside Processor directly to trucks. An accurate on-site groundfish product inventory and audit is therefore difficult to conduct. The Shoreside Processor Check-in/Check-out Report would be revised to record the amount of fish product held or stored at the time the Check-in report is filed. Enforcement personnel would be able to use this information to calculate product on hand at any time from records in the shoreside DCPL and PTRs.

Other revisions are proposed to improve the format of the form and to record CDQ information.

c. *Buying Station.* Each operator or manager of a Buying Station would be required to submit a Check-in Report prior to receipt of groundfish from Catcher Vessels; a Check-out Report would be required upon completion of delivery of all groundfish to a Mothership or Shoreside Processor. A separate Check-in or Check-out Report would be required from the Buying Station operator or manager for each Shoreside Processor or Mothership with which the Buying Station is associated. The proposed Buying Station Check-in/Check-out Report would yield additional effort information needed for quota management.

7. *Weekly Production Report (WPR).* The current WPR would be replaced with two similar WPR forms, one for use by Shoreside Processors and another for use by Motherships or Catcher/Processors.

a. *Mothership or Catcher/Processor.* Each Mothership or Catcher/Processor would be required to record the fisheries permit number and the Alaska Department of Fish and Game (ADF&G) processor code, because both are necessary to identify a processor; a requirement is proposed to report the number of crew members at the end of each weekly reporting period—this information is needed by NMFS economists for national statistical reports; and a requirement is proposed to add the preprinted ADF&G fish ticket numbers that were issued to Catcher Vessels for each delivery made during the weekly reporting period. This information is needed by NMFS to make comparisons of processor-reported Federal and State data for reporting accuracy.

Intended target information would be requested for the next weekly reporting period. This information would be used by NMFS to improve fishing effort projection for individual species.

Two additions would be made to the WPR to improve data entry speed and accuracy, the first to indicate whether the form is an original or revised report, and the second to indicate the date the WPR is prepared.

All references to "retained products" would be revised to read "product". Other revisions are proposed to improve the format of the form and to record CDQ information.

b. *Shoreside Processor.* Each Shoreside Processor would be required to record product data by management area (BSAI or GOA) rather than by reporting area. This would be used for enforcement purposes and for the collection of economic data for national statistical reports.

8. *Daily Production Report (DPR).* NMFS would be authorized to require, through publication in the **Federal Register**, submittal of DPRs. The DPR is used when a fishery is expected to be of too short duration to be managed based on weekly reports. The product reporting section of the DPR would be revised to create separate sections for responses from Shoreside Processors or Motherships and Catcher/Processors. The Shoreside Processor would report landings, as weighed before processing, in a section entitled, "Shoreside Only Landings". The Mothership and Catcher/Processor would report weight of products in a section entitled, "Processor Vessel Only Products". Within these columns, the following information would be recorded for each product: The product code; indication of ancillary, primary, or reprocessed product type; and weight in metric tons. Other revisions would be made to indicate whether a given DPR is an original or revised report and to record the date the form was prepared. This information is needed to ensure an accurate and complete database. Several questions would be added to request additional information about the processor's representative. Other revisions to the DPR are proposed to improve the format of the form and to record CDQ information.

9. *U.S. Vessel Activity Report (VAR).* Existing regulations at 50 CFR 299.5 require U.S. vessels fishing in the Russian economic zone (EZ) in joint ventures to submit a VAR prior to crossing the seaward boundary of the EEZ. The applicability of the VARs currently required under § 299.5 would be expanded to require vessels to submit a VAR report to the Regional Director immediately prior to crossing the seaward boundary of the EEZ off Alaska or immediately prior to crossing the U.S./Canada international boundary between Alaska and British Columbia. The VAR would be used to augment existing recordkeeping and reporting requirements and would not replace the Check-in/Check-out reports or WPRs required under § 672.5.

NMFS has observed increased landings in U.S. ports of undocumented fish allegedly harvested from waters seaward of the EEZ off Alaska. NMFS is concerned that some portion of these landings may consist of fish illegally harvested in the EEZ off Alaska. Although the VAR requirements under § 299.5 address this concern for U.S. vessels fishing in the Russian EZ, NMFS believes that better information must be obtained concerning U.S. fishing activities in waters outside the EEZ off Alaska in order to document the origin and quantity of fish that are brought into the EEZ.

In light of the new requirements for distinguishing between groundfish fishing activity in state or Federal waters as well as pending international regulations for migratory species such as swordfish, the VAR would assist NMFS in tracking U.S. fishing vessels entering or leaving fishing grounds off Alaska from the coterminous United States and/or Hawaii.

10. *Designated Representative.* Each owner, operator, or manager of each Catcher Vessel, Catcher/Processor, Mothership, Shoreside Processor, or Buying Station participating in, or receiving groundfish from, a groundfish fishery would be required to identify a contact person or representative prior to commencement of fishing or processing activities. Although the representative may complete the logbooks, the required reports and forms, or both, the owner, operator, and manager would remain responsible for accurate and timely completion of all reporting requirements. The operator or manager is not always present or available to complete the recordkeeping and reporting requirements. In some instances the logbooks are maintained on board a vessel while the reports and forms are submitted to NMFS by a person in an office hundreds of miles away. Identifying a representative prior to commencement of fishing activity ensures a smooth data flow between the industry and NMFS, allowing quota management to be accurate and timely.

The name of the representative would be required to be reported on each logbook, WPR, DPR, PTR, Check-in/Check-out Report, and VAR (if applicable) and that the telephone number and facsimile number for that person also be provided. Proposed revisions to the recordkeeping requirements would standardize the text on all forms and logbooks to refer to that person as the representative.

D. Maintenance and Retention of Records

NMFS proposes the following requirements for the benefit of Enforcement officers conducting audits of Catcher Vessels, Motherships, Catcher/Processors, Shoreside Processors, and Buying Stations. In order to conduct a thorough audit of fish products on board or on site, paper copies of all groundfish transactions must be accessible for inspection.

1. *Three-year retention period.* The original (white) copy of all logbooks and a paper copy of all reports and forms submitted to NMFS required under amended §§ 672.5 and 675.5 would be

required to be retained for 3 years after the end of the fishing year during which the records were made. In addition, the Mothership and Shoreside Processor would be required to retain the original (white) copy of all DCLs from associated Buying Stations for 3 years, and the Buying Station would be required to retain the pink copy of all DCLs for 3 years.

2. *Retention during fishing year.* The original (white) copy of all logbooks, a paper copy of all reports and forms submitted to NMFS, and the blue DFL logsheet received from Catcher Vessels required under amended §§ 672.5 and 675.5 would be required to be kept on board a vessel or on site a Shoreside Processor or Buying Station until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the logbook, reports, and forms are retained.

3. *Inspection.* The logbooks, reports, and forms required under amended §§ 672.5 and 675.5 would be required to be made available for inspection upon the request of an authorized officer.

4. *Weekly reporting periods.* As set out in regulations at §§ 672.2 and 675.2, the current definition of a weekly reporting period is the period from 0001 hours Monday morning until 2359 hours the following Sunday night, Alaska local time (A.l.t.). NMFS has determined that this weekly reporting period does not allow sufficient time to obtain, process, and summarize weekly observer reports in the subsequent week. A reporting period from Sunday-through-Saturday would provide an additional day to process observer data, integrate these data with the WPRs received from the industry, and produce weekly catch reports. Therefore, the definition of the weekly reporting period would be changed to 0001 hours, A.l.t., Sunday morning until 2359 hours, A.l.t., the following Saturday night. The deadline for receipt of WPRs from Motherships, Catcher/Processors, and Shoreside Processors would remain Tuesday at 1200 hours, A.l.t.

5. *Inactive and active periods.* The operator or manager would be required to account for each day of the fishing year by indicating active and inactive periods on the Catcher Vessel DFL, Catcher/Processor DCPL, Mothership DCPL, Buying Station DCL, and Shoreside Processor DCPL. A single logbook page could be used to account for inactive periods of more than one day within a quarter.

6. *CDQ Information.* The DFL, DCL, and DCPL would be used to account for groundfish harvested under the CDQ Program through the addition of questions on those logbooks, as well as on WPRs, DPRs, and Check-in/Check-out reports to indicate CDQ information. The CDQ information would be transferred from the logbook by the manager or operator of a Mothership, Catcher/Processor, or Shoreside Processor to WPRs, DPRs, and Check-in/Check-out reports. This information is needed because CDQ quotas are managed on an individual basis, and because CDQ harvest information must be kept separate from other types of management quotas.

7. *Scientific name for steelhead trout.* The scientific name for steelhead trout would be revised to read, "*Oncorhynchus mykiss*" in §§ 672.20(e) and 675.20(c). The scientific community currently prefers this new term as a more precise description of steelhead trout.

8. *Time.* The time citation "00:01 a.m." in §§ 672.20(a), 675.20(a), 672.23, and 675.23 would be changed to read "0001 hours" to conform with the revised definition of fishing year.

Classification

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. OMB approval for the majority of this information has been obtained under OMB control numbers 0648–0206 and 0213; additions and revisions to the collection have been submitted to OMB for approval. Additional burden would result from the requirements set forth for the new Buying Station DCL and Check-in/Check-out report, and also from revisions to existing reports.

An estimated additional response time for compliance with these new forms is expected to be between 25 minutes and 2.0 hours annually for the operator or manager of each processor or Buying Station and 27 minutes for each Catcher Vessel operator. The additional annual burden to Shoreside Processors and Buying Stations to comply with requirements for Check-in/Check-out reports is estimated to average about 8 minutes and 6 minutes, respectively, for each Check-in or Check-out report. Revisions to the format of other logbooks and/or additions to information collected by logbooks are minimal and are not anticipated to significantly increase reporting burden to the industry. The requirements include: The U.S. Vessel Activities Report, 15 minutes; Weekly Production Report, 18 minutes; Daily Production Report, 10 minutes; Processor Product Transfer Report, 11 minutes; and the Catcher Vessel Logbook, 15 minutes.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS proposes to consolidate several sections of regulations in parts 672 and 675 by correcting errors, clarifying vague text, removing outdated requirements, as well as simplifying and streamlining the remaining regulations, including the recordkeeping and reporting requirements. All of the recommended revisions are designed to make the regulations easier for the public to use and to enhance the ability of NMFS to collect more accurate and timely groundfish data and to improve the management of the groundfish fisheries. To the extent that there will be additional burden for the industry, it will be minor when compared with the increased ease of use resulting from clarification, simplification, and streamlining.

Send comments regarding this burden estimate or any other aspect of this collection-of-information, including suggestions for reducing this burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 15, 1995.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

2. In § 672.1, paragraph (a) is revised to read as follows:

§ 672.1 Purpose and scope.

(a) Regulations in this part, along with parts 602, 620, 676, and 677 of this chapter, implement the Fishery Management Plan for Groundfish of the Gulf of Alaska.

* * * * *

3. Section 672.2 is revised to read as follows:

§ 672.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Active/inactive periods—(1) *Active periods*—(i) *Catcher Vessel.* An active period for a Catcher Vessel means a period of time when the Catcher Vessel is in a reporting area (except 300, 400, 550, or 690) or gear remains on the grounds in a reporting area (except 300, 400, 550, or 690) regardless of the vessel location.

(ii) *Shoreside Processor, Mothership, Catcher/Processor, and Buying Station.* An active period for a Shoreside Processor, Mothership, Catcher/Processor, and Buying Station means a period of time when checked-in.

(2) *Inactive periods*—(i) *Catcher Vessel.* An inactive period for a Catcher Vessel means any period which does not qualify as an active period.

(ii) *Shoreside Processor, Mothership, Catcher/Processor, or Buying Station.* An inactive period for a Shoreside Processor, Mothership, Catcher/Processor, or Buying Station means a period of time when not checked-in.

ADF&G means the State of Alaska Department of Fish and Game.

Alaska local time (A.l.t.) means the current Alaska time, either daylight savings time or standard time.

Alaska State waters means waters shoreward of the exclusive economic zone (EEZ) off Alaska.

Aleutian Islands Subarea (AI) of the BSAI means that portion of the EEZ contained in Statistical Areas 541, 542, and 543 (see Figure 1 of this part).

Authorized fishing gear means hook-and-line, jig, longline, longline pot, nonpelagic trawl, nontrawl, pelagic trawl, pot-and-line, and trawl; defined as follows:

(1) *Hook-and-line* means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device;

(2) *Jig* means a single non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device;

(3) *Longline* means a stationary, buoyed, and anchored line with hooks or two or more groundfish pots attached, or the taking of fish by means of such a device (see § 672.24(b) or § 675.24(b) of this chapter);

(4) *Longline pot* means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device;

(5) *Nonpelagic trawl* means a trawl other than a pelagic trawl;

(6) *Nontrawl* means hook-and-line, jig, longline, and pot-and-line gear;

(7) *Pelagic trawl* means a trawl that:

(i) Has no discs, bobbins, or rollers;

(ii) Has no chafe protection gear attached to the foot rope or fishing line;

(iii) Except for the small mesh allowed under paragraph (7)(ix) of this definition:

(A) Has no mesh tied to the fishing line, head rope, and breast lines with less than 20 inches (50.8 cm) between knots, and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, head rope, and breast lines and extending past the fishing circle for a distance equal to or greater than one half the vessel's length overall; or

(B) Has no parallel lines spaced closer than 64 inches (162.6 cm), from all points on the fishing line, head rope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm), extending aft for a distance equal to or greater than one half the vessel's length overall;

(iv) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (7)(iii) of this definition for a distance equal to or greater than one half the vessel's length overall;

(v) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (7)(iii) and (iv) of this definition;

(vi) Has no flotation other than floats capable of providing up to 200 lb (90.7 kg) of buoyancy to accommodate the use of a net-sounder device;

(vii) Has no more than one fishing line and one foot rope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and the fishing circle;

(viii) Has no metallic component except for connectors (e.g., hammerlocks or swivels) or net-sounder device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(ix) May have small mesh within 32 ft (9.8 m) of the center of the head rope as needed for attaching instrumentation (e.g., net-sounder device); and

(x) May have weights on the wing tips;

(8) *Pot-and-line* means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device; and

(9) *Trawl* means a conical-shaped net that is towed through the water for catching fish or other organisms. The net accumulates its catch in the closed, small end (usually called the cod end). This definition includes, but is not limited to, Danish and Scottish seines and otter trawls.

Bering Sea and Aleutian Islands Management Area (BSAI) means the Bering Sea and Aleutian Islands subareas (see Figure 1 of this part).

Bering Sea Subarea (BS) of the BSAI means that portion of the EEZ contained in Statistical Areas 508, 509, 512, 513, 514, 516, 517, 518, 519, 521, 523, 524, and 530 (see Figure 1 of this part).

Bogoslof District means that part of the Bering Sea Subarea contained in Statistical Area 518 (see Figure 1 of this part).

Breast line means the rope or wire running along the forward edges of the side panels of a net, or along the forward edge of the side rope in a rope trawl.

Buying Station means a person or vessel that receives unprocessed groundfish from a vessel for delivery at a different location to a Shoreside Processor or Mothership and that does not process those fish.

Bycatch Limitation Zone 1 (Zone 1) means that part of the Bering Sea Subarea that is contained within the boundaries of Statistical Areas 508, 509, 512, and 516 (see Figure 1 of this part).

Bycatch Limitation Zone 2 (Zone 2) means that part of the Bering Sea Subarea that is contained within the boundaries of Statistical Areas 513, 517, and 521 (see Figure 1 of this part).

Catcher/Processor means a vessel that is used for catching fish and processing that fish.

Catcher Vessel means a vessel that is used for catching fish and that does not process on board.

Catcher Vessel Operational Area (CVOA) (see Figure 2 of this part and § 675.22(g) of this chapter).

Central Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 542 (see Figure 1 of this part).

Community Development Plan (CDP) (applicable through December 31, 1995) means a plan for a specific Western Alaska community or group of communities approved by the Governor of the State of Alaska and recommended to NMFS under § 675.27 of this chapter.

Community Development Quota (CDQ) (applicable through December 31, 1995) means a Western Alaska community development quota for pollock assigned to an approved CDP. All CDQs, in the aggregate, equal one-half of 15 percent of the total allowable catch specified for pollock that is placed in reserve under § 675.20(a)(3) of this chapter.

Community Development Quota Program (CDQ program) (applicable through December 31, 1995) means the Western Alaska Community

Development Program implemented under § 675.27 of this chapter.

Community Development Quota Reserve (CDQ reserve) (applicable through December 31, 1995) means one-half of 15 percent of the total allowable catch specified for pollock in each subarea or district that is placed in reserve under § 675.20(a)(3) of this chapter.

Daily reporting period or day is the period from midnight until the following midnight using Alaska local time (A.l.t.).

Directed fishing means any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable by catch amount for that species or species group as calculated under § 672.20 (g) and (h) and § 675.20 (h) and (i) of this chapter.

Donut Hole means international waters of the Bering Sea outside the limits of the EEZ and Russian economic zone as depicted on the current edition of NOAA chart INT 813 Bering Sea (Southern Part).

Eastern Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 541 (see Figure 1 of this part).

Exclusive Economic Zone (EEZ) (see § 620.2 of this chapter).

Federal waters means waters within the EEZ off Alaska.

Fish product weight means the weight of the fish product in pounds or to at least the nearest hundredth of a metric ton (0.01 mt). Fish product weight is based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and individual fresh or frozen fish. The weight of a production unit is the average weight of representative samples of the product, and may include additives but not packaging. Any allowance for water added cannot exceed 5 percent of the gross product weight (fish, additives, and water).

Fishing activity (see definition for fishing in § 620.2 of this chapter).

Fishing circle means the circumference of a trawl intersecting the center point on a fishing line, and that is perpendicular to the long axis of a trawl.

Fishing day (see part 676 of this chapter).

Fishing line means a length of chain or wire rope in the bottom front end of a trawl to which the webbing or lead ropes are attached.

Fishing month (see § 672.26 or § 675.26 of this chapter).

Fishing trip: (1) For purposes of directed fishing calculations, see § 672.20(h)(2) and § 675.20(i)(2) of this chapter.

(2) For purposes of pollock roe retention, see § 672.20(i)(4) and § 675.20(j)(5) of this chapter.

Fishing year means the period of time beginning at 0001 hours, A.l.t., on January 1 and ending at 2359 hours, A.l.t., on December 31 (see § 672.23(a) and § 675.23(a) of this chapter).

Foot rope means a chain or wire rope attached to the bottom front end of a trawl and attached to the fishing line.

Gear Deployment: (1) *For trawl gear* means where the trawl gear reaches the fishing level and begins to fish.

(2) *For jig/troll, hook-and-line, or longline gear* means where the gear enters the water.

(3) *For pot-and-line gear* means where the first pot enters the water.

Gear Retrieval—(1) *For trawl gear*, gear retrieval means where retrieval of trawl cable commences.

(2) *For jig/troll gear*, gear retrieval means where the jig/troll gear leaves the water.

(3) *For hook-and-line or longline pot gear*, gear retrieval means where the last hook-and-line or longline pot gear of a set leaves the water, regardless of where the majority of the haul or set took place.

(4) *For pot-and-line gear*, gear retrieval means where the last pot of a set leaves the water.

Governor means the Governor of the State of Alaska.

Groundfish means target species and the "other species" category, specified annually pursuant to § 672.20(a)(1) or § 675.20(a)(1) of this chapter.

Gulf of Alaska (GOA) means that portion of the EEZ contained in Statistical Areas 610, 620, 630, 640, and 650 (see Figure 3 of this part).

Head rope means a rope bordering the top front end of a trawl.

Herring Savings Area means any of three areas in the BSAI presented in Figure 4 of this part (see also § 675.21(c)(2) of this chapter for additional closure information):

Inshore component (applicable through December 31, 1995) means that part of the U.S. groundfish fishery off Alaska that includes:

(1) All shoreside processing operations;

(2) All processor vessels that process, on a daily average during any weekly reporting period, less than 18 mt of Pacific cod harvested in the GOA and pollock in aggregate round weight equivalents, and are less than 125 ft (38.1 m) in length overall; and

(3) All processor vessels in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) that process, at a single geographic location during a fishing year, pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the GOA, and that submit a Check-in notice and weekly production report as required at § 672.5(c). For purposes of this definition, a single geographic location will be determined by the geographic coordinates reported on a Check-in report submitted by the vessel operator when that vessel engages in a directed fishery for Pacific cod in the GOA or pollock for the first time in a fishing year.

IPHC means International Pacific Halibut Commission (see part 301 of this title).

Joint venture processing (JVP) (see § 611.2 of this chapter).

Landing means off-loading fish.

Length overall (LOA) of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 6 of this part).

Logbook means Daily Cumulative Production Logbook (DCPL), Daily Cumulative Logbook (DCL), or a Daily Fishing Logbook (DFL) required by § 672.5.

Manager, with respect to any Shoreside Processor or Buying Station, means the individual responsible for the operation of the Shoreside Processor operation or Buying Station.

Maximum sustainable yield (MSY) (see part 602 of this chapter).

Mothership means a vessel that receives and processes groundfish from other vessels.

Net-sounder device means a sensor used to determine the depth from the water surface at which a fishing net is operating.

nm means nautical mile.

Non-allocated or nonspecified species means those fish species, other than prohibited species, for which a TAC has not been specified (e.g., grenadier, prowfish, lingcod).

Observer means any person certified under the NMFS Observer Plan (see part 676 of this chapter).

Offshore component (applicable through December 31, 1995) means all processor vessels in the U.S. groundfish fisheries off Alaska not included in the definition of "inshore component."

Optimum yield (OY) (see § 672.20 and § 675.20 of this chapter).

"Other species" is a category that consists of groundfish species in each management area that are not specified as target species (see § 672.20 and § 675.20 of this chapter).

Processing, or to process, means the preparation of fish to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, or rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

Processor vessel means, unless otherwise restricted, any vessel that has been issued a Federal fisheries permit and that can be used for processing groundfish.

Quarter or quarterly reporting period means one of four successive 3-month periods during a calendar year, which begin at 0001 hours, A.l.t., on the first day of each quarter, and end at 2359 hours, A.l.t., on the last day of each quarter. The four quarters for each year are specified as follows:

1st quarter:January 1 through March 31
2nd quarter:April 1 through June 30
3rd quarter:July 1 through September 30
4th quarter:October 1 through December 31

Regional Director means Director, Alaska Region, National Marine Fisheries Service.

Regulatory area means any of three areas of the EEZ in the GOA (see Figure 3 of this part) described as follows:

(1) *Eastern Regulatory Area* means Statistical Areas 640 and 650.

(2) *Central Regulatory Area* means Statistical Areas 620 and 630.

(3) *Western Regulatory Area* means Statistical Area 610.

Reporting area means any of the areas described in Figures 1 and 3 of this part.

Resident fisherman (see § 675.27(d)(7) of this chapter).

Round-weight equivalent means the weight of fish calculated by dividing the weight of the primary product made from that fish by the standard product recovery rate for that primary product as listed in § 672.20(j), or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

Set means a string of pots or hook-and-line gear or a group of pots that are deployed in a similar location with similar soak time.

Shoreside Processor or shoreside processing operation, means any person or vessel that receives unprocessed groundfish, except Catcher/Processors, Motherships, Buying Stations, restaurants, or persons receiving groundfish for use as bait or personal consumption.

Southeast Outside District of the GOA means that part of the Eastern Regulatory Area contained in Statistical Area 650 (see Figure 3 of this part).

Statistical area means the part of any reporting area defined in Figures 1 and 3 of this part, contained in the EEZ.

Steller Sea Lion Protection Areas (for BSAI, see Tables 4 and 5 of this part, § 672.24(e), § 227.12 of this title, and § 675.24(f) of this chapter); for GOA, see Table 6 of this part).

Stem means the foremost position of a vessel; a section of timber or cast, forged or rolled metal to which the sides of a vessel are united at the fore end with the lower end scarfed to the keel and the bowsprit, if one is present, resting on the upper end.

Stern means the aftermost part of the vessel.

Stretched mesh size means the distance between opposite knots of a four-sided mesh when opposite knots are pulled tautly to remove slack.

Support vessel means any vessel that is used in support of other vessels regulated under this part and part 675 of this chapter, including, but not limited to, supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment or other supplies, or transporting processed fish. The term "support vessel" does not include processor vessels or tender vessels.

Target species are those species or species groups, except the "other species" category, for which a TAC is specified pursuant to § 672.20(a) and § 675.20(a) of this chapter.

Tender Vessel means a vessel that is used to transport unprocessed fish received from another vessel to a Shoreside Processor, Mothership, or Buying Station.

Total allowable catch (TAC) (see § 672.20(a)(2) and § 675.20(a)(2) of this chapter).

Transfer includes any loading, offloading, shipment or receipt of any groundfish product, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any Shoreside Processor, or any offsite meal reduction plant.

Trawl test areas (see Figure 7 of this part and § 672.24(f) and § 675.24(g) of this chapter).

Vessel Activity Report (VAR) (see § 672.5(c)(5)).

Vessel operations category (see § 672.4).

Walrus Protection Areas (see § 675.22(f) of this chapter).

Weekly reporting period means a time period, which begins at 0001 hours, A.l.t., Sunday morning (except during the first week of each year, when it starts on January 1) and ends at 2359 hours, A.l.t., the following Saturday night (except during the last week of each year when it ends on December 31).

West Yakutat District of the GOA means that part of the Eastern Regulatory Area of the GOA contained in Statistical Area 640 (see Figure 3 of this part).

Western Aleutian District means that part of the Aleutian Islands Subarea contained in Statistical Area 543 (see Figure 1 of this part).

Wing tip means the point where adjacent breast lines intersect or where a breast line intersects with the fishing line.

4. In § 672.3, paragraphs (a) and (c) are revised to read as follows:

§ 672.3 Relation to other laws.

(a) *Foreign fishing*. Regulations governing foreign fishing for groundfish in the GOA are set forth at § 611.92 of this chapter. Regulations governing foreign fishing for groundfish in the BSAI are set forth at § 611.93 of this chapter. Regulations governing U.S. nationals fishing in the Russian fisheries are set forth in part 299 of this title.

* * * * *

(c) *Domestic fishing for groundfish*. Regulations governing the conservation and management of groundfish in the GOA for vessels of the United States are set forth at this part and parts 620, 676, and 677 of this chapter. Regulations governing the conservation and management of groundfish in the BSAI are set forth in this part and parts 620, 675, 676, and 677 of this chapter.

* * * * *

5. Section 672.4 is revised to read as follows:

§ 672.4 Fisheries permit.

(a) *General*. (1) No vessel of the United States may be used to fish for groundfish in the GOA or in the BSAI unless the owner first obtains a Federal fisheries permit for the vessel issued under this part, except as provided in paragraph (a)(2) of this section. A Federal fisheries permit is effective only until December 31 of the year in which it is issued. Fisheries permits are issued without charge.

(2) Vessels of the United States that fish in the GOA or BSAI for any non-groundfish species, including but not limited to, halibut, crab, salmon, scallops, and herring, and that do not retain any bycatch of groundfish are not required to obtain a Federal fisheries permit issued under this part.

(b) *Federal Fisheries Permit Application*—([illegible] *Rec* [illegible]

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application and permit. A person may obtain an application for a Federal fisheries permit required under paragraph (a) of this section from: National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, fax number: 907–586–7465.

(2) *Completed application.* (i) A person may obtain the Federal fisheries permit required under paragraph (a) of this section by submitting a written permit application to the address given in paragraph (b)(1) of this section.

(ii) The owner or operator of a vessel must answer each question on the permit application in the manner set forth in paragraph (c) of this section.

(iii) The owner or operator must mail completed forms to the address given in paragraph (b)(1) of this section or fax completed forms to: (907)586–7313.

(iv) The owner or operator must complete a separate application for each vessel or processor and must retain a copy of each completed or revised application.

(v) The owner or operator must type or print legibly the information requested on the application.

(3) *Application deficiency.* Upon receipt of an incomplete or improperly completed fisheries permit application, the Regional Director will notify the applicant of the deficiency in the permit application. If the applicant fails to correct the deficiency, the permit will not be issued. No permit will be issued to an applicant until a complete application is received.

(c) *Permit application contents.* The owner or operator must record:

(1) If application is for an amended permit, the current Federal Fisheries Permit number and information that has changed.

(2) If for a vessel, the complete name and homeport (city and state) of the vessel; the ADF&G vessel number; the U.S. Coast Guard documentation number or Alaska registration number; the vessel's length overall and registered net tonnage; and the telephone, fax, and COMSAT (satellite communication) numbers used on board the vessel.

(3) *Shoreside processor information.* If a shoreside processor, refer to § 677.4(b) of this chapter.

(4) *Owner information.* The owner of the vessel or shoreside processor must record the owner's name, permanent business mailing address, telephone and fax numbers; and the name of any company (other than the owner) that manages the operations of the vessel or shoreside processor.

(5) *Federal fisheries permit information.* The owner must record:

(i) The fishery or fisheries and the vessel operations category for which the permit would apply as set forth under paragraph (e) of this section and § 672.2;

(ii) If a Catcher Vessel or Catcher/Processor, the gear type(s) used for groundfish operations;

(iii) If a Catcher Vessel, whether groundfish is retained only as bycatch from halibut, crab, or salmon fisheries; and whether sablefish (black cod) is the only groundfish targeted in the GOA.

(6) *Signature.* The owner must sign and date the application.

(d) *Fisheries permit issuance.* (1) Except as provided in subpart D of 15 CFR part 904, upon receipt of a properly completed permit application, the Regional Director will issue a fisheries permit required by paragraph (a) of this section.

(2) The Regional Director will send the fisheries permit to the applicant along with the appropriate logbooks as provided under § 672.5.

(e) *Vessel operations category.* (1) A fisheries permit issued under paragraph (d)(1) of this section authorizes a vessel to conduct operations as a Catcher Vessel, Catcher/Processor, Mothership, Tender Vessel, or Support Vessel.

(2) A vessel may be issued a fisheries permit as a support vessel or as any combination of the other four categories (Catcher Vessel, Catcher/Processor, Mothership, Tender Vessel). A vessel permitted as a Catcher Vessel, Catcher/Processor, Mothership, or Tender Vessel may also conduct all operations authorized for a support vessel.

(f) *Amended permit.* (1) An owner or operator who applied for and received a fisheries permit under this section must notify the Regional Director, in writing, of any change in the information provided under paragraph (c) of this section within 10 days of the date of that change.

(2) An application for an amended permit must be made on the permit application as set forth in paragraph (c) of this section.

(3) If the application is for an amended fisheries permit required under paragraph (a) of this section and designates a change or addition of a vessel operations category, the amended permit must be on board the vessel before the new type of operations begins.

(g) *Duration.* (1) A fisheries permit remains in effect through December 31 of the year for which it is issued unless it is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures), or unless it is surrendered or invalidated.

(2) A fisheries permit is surrendered when the original permit is submitted to and received by NMFS Enforcement Office in Juneau.

(h) *Alteration.* No person may alter, erase, or mutilate any fisheries permit issued under paragraph (a) of this section. Any fisheries permit that is intentionally altered, erased, or mutilated is invalid.

(i) *Transfer.* A Fisheries permit issued under paragraph (a) of this section is not transferable or assignable and is valid only for the vessel for which it is issued.

(j) *Inspection.* (1) An original fisheries permit issued under paragraph (a) of this section must be carried on board the vessel whenever the vessel is fishing. Photocopied or faxed copies are not considered originals.

(2) A permit issued under paragraph (a) of this section must be presented for inspection upon the request of any authorized officer.

(k) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(l) *Condition.* No person may use a vessel for which the Regional Director has issued a permit under paragraph (a) of this section to fish in the Donut Hole, or to possess fish in the EEZ that were caught in the Donut Hole, during the fishing year for which the permit is issued.

(m) *Moratorium permit.* In addition to the Federal fisheries permit required by paragraph (a) of this section and any other permits that may be required by Federal or Alaska state regulations, a moratorium permit may be required by part 676 of this chapter for a vessel of the United States if the vessel is used to conduct directed fishing for moratorium groundfish species, as defined at § 676.2 of this chapter, in the Gulf of Alaska or Bering Sea and Aleutian Islands management area.

6. Section 672.5 is revised to read as follows:

§ 672.5 Recordkeeping and reporting.

(a) *Applicability and general requirements*—(1) *Applicability.* (i) Except as otherwise provided, this section applies to:

(A) Any Catcher Vessel, Mothership, Catcher/Processor, or Tender Vessel, 5 net tons or larger, which is required to have a fisheries permit under § 672.4; and

(B) Any Shoreside Processor, Mothership, or Buying Station that receives groundfish from vessels required to have a fisheries permit under § 672.4.

(ii) A Shoreside Processor, Mothership, or Buying Station subject to recordkeeping and reporting requirements must report all groundfish and prohibited species received, including:

(A) Fish received from vessels not required to have a fisheries permit;

(B) Fish received under contract for handling or processing for another processor.

(2) *Responsibility.* The operator of a Catcher Vessel, Catcher/Processor, Mothership, or Buying Station delivering to a Mothership (hereafter referred to as the operator) and the manager of a Shoreside Processor or Buying Station delivering to a Shoreside Processor (hereafter referred to as the manager) are each responsible for compliance with the applicable recordkeeping and reporting requirements of this section. In addition, the owner of a vessel, Shoreside Processor, or Buying Station must ensure that the operator, manager, or designated representative (see paragraph (b) of this section) complies with these requirements and is responsible for compliance.

(3) *Groundfish logbooks and forms.* The Regional Director will prescribe and provide logbooks and forms required under this section as shown in Table 9 of this part. The operator or manager must use these logbooks and forms or obtain approval from the Regional Director to use electronic versions of the logbooks and forms.

(4) *Participant identification information.* The operator or manager must record on all required records, reports, and logbooks:

(i) The name of the Catcher Vessel, Catcher/Processor, Mothership, Shoreside Processor, or Buying Station as displayed in official documentation;

(ii) If a vessel, the Federal Fisheries Permit number and ADF&G vessel number (if applicable);

(iii) If a processor, the Federal Processor Permit number and ADF&G processor number;

(iv) If a Buying Station, the name and ADF&G vessel number (if applicable) of the Buying Station; the name, ADF&G processor number, and Federal Processor Permit number of associated processor;

(v) If a Shoreside Processor or land-based Buying Station, the geographic location of operations.

(5) *Representative identification.* The name, daytime business telephone number (including area code), fax or TELEX number, and the COMSAT number (if applicable) of the representative;

(6) *Maintenance of records*—(i) *General.* The operator or manager must maintain all records, reports, and logbooks in a legible, timely, and accurate manner; in English; if handwritten, in indelible ink; if computer-generated, a printed, paper copy; and based on Alaska local time.

(ii) When applicable, the operator or manager must record in each report, form, and logbook the following information:

(A) *Page number.* Number the pages in each logbook consecutively, beginning with page one and continuing throughout the logbook for the remainder of the fishing year, except that the manager of a Shoreside Processor must number the DCPL pages within Part I and Part II separately beginning with page one, etc.;

(B) *Date,* presented as month-day-year;

(C) *Time,* in military format to the nearest hour, A.l.t.;

(D) *Position Coordinates,* latitude and longitude to the nearest second;

(E) *Reporting Area codes,* given in Figures 1 and 3 of this part;

(F) *Species codes,* each target species, the "other species" category, and prohibited species (see §§ 672.20(e) and 675.20(c) of this chapter), using the species codes given in Table 2 of this part;

(G) *Original/Revised Report.* If a report is the first one submitted to the Regional Director for a given date, gear type, and reporting area, "ORIGINAL REPORT". If report is a correction to a previously submitted report for a given date, gear type, and reporting area, "REVISED REPORT";

(H) *Metric tons.* The required weight units used to record amounts of landings, product, and discards of groundfish and herring must be recorded in pounds (lb) or to the nearest 0.01 mt on all forms and logbooks.

(7) *Active and inactive periods.* The operator or manager must, in the DFL, DCL, or DCPL:

(i) Account for each day of the fishing year by indicating active and inactive periods, as defined in § 672.2;

(ii) Use a separate logbook page for each day of an active period;

(iii) Indicate on one page the first and last day of an inactive period;

(iv) *Fishing activity.* The operator or manager must indicate all fishing activity, which is defined as follows:

(A) If a Catcher Vessel, harvest or discard of groundfish;

(B) If a Catcher/Processor, harvest, discard, or processing of groundfish;

(C) If a Mothership or Shoreside Processor, receipt, discard, or processing of groundfish;

(D) If a Buying Station, receipt, discard, or delivery of groundfish;

(v) If in an active period and there is fishing activity, the operator or manager must record:

(A) The gear type used to harvest the groundfish. If a Catcher Vessel or Catcher/Processor and using hook-and-line longline gear, the average number of hooks per skate;

(B) The reporting area code where gear retrieval was completed; whether gear retrieval was in Federal or Alaska State waters;

(C) If a Catcher Vessel, whether a NMFS-certified observer is on board the vessel. If a Catcher/Processor, Mothership, or Shoreside Processor, the number of NMFS-certified observers on board or on site;

(D) The number of crew, except certified observer;

(E) Whether harvest is under a CDQ program; if yes, the CDQ number;

(F) If a Catcher Vessel or Buying Station, the name and ADF&G processor number of the Mothership or Shoreside Processor to which groundfish deliveries were made;

(vi) If in an active period and there is no harvesting, discard, receipt, or processing of groundfish, the operator or manager must indicate "NO FISHING ACTIVITY" and briefly describe the reason.

(8) *Landings information.* The manager of a Shoreside Processor must:

(i) Record and report groundfish landings by species codes and product codes as defined in Tables 1 and 2 of this part for each reporting area, whether in Alaska State waters or Federal waters, gear type, and CDQ number;

(ii) Record in the DCPL each day on the day such landings occur, the following additional information:

(A) The daily combined scale weight of landings retained for processing from a Catcher Vessel or any associated Buying Station, in pounds or to at least the nearest 0.01 mt;

(B) If more than one page is used during a weekly reporting period, the total amount of landings carried forward from the previous page;

(C) At the end of each weekly reporting period, the cumulative total weight, calculated by adding the daily totals and total carried forward for that week;

(iii) Summarize the DCPL for each weekly reporting period on a WPR or for each day on a DPR (if applicable). If there were no landings during a reporting period, write "NO LANDINGS" on the first row of the WPR landings section or under the DPR landings column for that day.

(9) *Product information.* The operator or manager of a Catcher/Processor, Mothership, or Shoreside Processor must, where required:

(i) Record and report groundfish products by species codes, product codes, and product designations as defined in Tables 1 and 2 of this part for each reporting area, whether in Alaska State waters or Federal waters, gear type, and CDQ number;

(ii) Record in the DCPL each day on the day such production occurs, the daily total, balance brought forward (except for Shoreside Processor), and cumulative total fish product weight (see § 672.2) for each product of groundfish in pounds or to at least the nearest 0.01 mt;

(iii) Summarize the DCPL for each weekly reporting period on a WPR or for each day on a DPR (if applicable). If there was no production during a weekly reporting period, indicate "NO PRODUCTION" on the first row of the WPR production section or under the DPR products column for that day.

(10) *Discarded/donated species information.* The manager or operator must, where required:

(i) Record and report discards and donations by species codes and discard product codes as defined in Tables 1 and 2 of this part for each reporting area, whether in Alaska State waters or Federal waters, gear type, and CDQ number;

(ii) Record the estimated daily total, balance brought forward, and cumulative total round fish weight in the DFL, DCL, or DCPL each day on the day such discards occur for each discard of groundfish species, groundfish species groups, and Pacific herring in pounds or to at least the nearest 0.01 mt;

(iii) Record the estimated daily total, balance brought forward, and cumulative total numbers in the DFL, DCL, or DCPL each day on the day such discards occur for each discard of Pacific salmon, steelhead trout, Pacific halibut, king crab, and Tanner crab;

(iv) Summarize the DCPL for each weekly reporting period on a WPR or for each day on a DPR (if applicable). If there were no discards during a reporting period, write "NO DISCARDS" on the first row of the WPR discard section or under the DPR discard column for that day.

(v) *Catcher Vessel discards/donations.* (A) The operator must record in the DFL discards that occur prior to and during harvest and must submit the blue DFL logsheets (discards copy) to the Buying Station, Mothership, or Shoreside Processor receiving the harvest at the end of the weekly reporting period;

(B) If a Catcher Vessel discards fish from an unsorted codend prior to delivery to a processor, the operator of the vessel must estimate and record in the DFL the amount and species composition of the discards made at sea (discard code 98);

(vi) *Buying Station discards/donations.* (A) The operator or manager must record in the DCL on a daily basis on the day such discard occurs, all discards that occur after receipt of harvest from a Catcher Vessel and prior to delivery to a Mothership or Shoreside Processor;

(B) If a blue DFL logsheet is received from a Catcher Vessel and contains reports of discards, the operator or manager must record in the DCL the discards on the day the DFL logsheet is received from the Catcher Vessel;

(vii) *Catcher/Processor discards/donations.* The operator must record in the DCPL on the day such discard occurs all discards that occur prior to harvest, during harvest, and during processing;

(viii) *Mothership or Shoreside Processor discards/donations.* (A) The operator or manager must record into the DCPL on a daily basis on the day such discard occurs, all discards that occur on site after receipt of groundfish, and all discards that occur during processing of groundfish;

(B) If a blue DFL logsheet is received from a Catcher Vessel and discards are reported, the operator or manager must record in the DCPL the discards on the day the DFL logsheet is received from the Catcher Vessel;

(C) If a yellow DCL logsheet is received from a Buying Station and discards are reported, the operator or manager must record in the DCPL the discards on the day the DCL logsheet is received from the Buying Station;

(11) *Contract processing.* (i) The manager of a Shoreside Processor or operator of a Mothership who receives groundfish to be handled or processed under contract for another processor or business entity must report these fish to the Regional Director consistently throughout a fishing year using one of two methods:

(A) Record landings (if applicable), discards, and products of contract-processed groundfish routinely in the DCPL without separate identification; or

(B) Record landings (if applicable), discards, and products of contract-processed groundfish in a separate DCPL identified by the name, Federal Processor permit number, Federal Fisheries permit number (if applicable), and ADF&G Processor code of the associated business entity;

(ii) If contract-processed groundfish records are kept separate from the routine DCPL, the operator or manager of the Mothership or Shoreside Processor must summarize and report that information on a WPR identified by the name, Federal Processor permit number, Federal Fisheries permit number (if applicable), and ADF&G Processor code of the associated business entity.

(12) *Alteration of records.* (i) The operator, manager, or any other person may not alter or change any entry or record in a logbook except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible.

(ii) No person except an authorized officer may remove any original page of any logbook.

(13) *Inspection of records.* The operator or manager of a Catcher Vessel, Catcher/Processor, Mothership, or Shoreside Processor, must make all logbooks, reports, and forms required under paragraph (a)(3) of this section available for inspection upon the request of an authorized officer.

(14) *Submittal of logbooks, reports and forms*—(i) *Quarterly submittal of logbook.* (A) The operator of a Catcher Vessel, Catcher/Processor, Mothership, or the manager of a Shoreside Processor must submit the yellow logsheets on a quarterly basis to: NMFS Alaska Fisheries Science Center, Logbook Program, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115.

(B) The operator or manager must submit the yellow logsheets as follows: First quarter, by May 1 of that year; second quarter, by August 1 of that year; third quarter, by November 1 of that year; and fourth quarter, by February 1 of the following year.

(ii) *Submittal of reports and forms.* Reports and forms may be submitted by the operator or manager by:

(A) Using the NMFS printed form and faxing it to the fax number on the form; or

(B) Transmitting a data file with required information and forms to NMFS by modem or satellite (specifically INMARSAT standards A, B, or C).

(15) *Record retention*—(i) *Original copy.* (A) The operator of a Catcher Vessel, Catcher/Processor, or Mothership and the manager of a Shoreside Processor must retain the original (white) copy of all logbooks and a paper copy of all reports and forms, including those reports and forms that were originally submitted electronically:

(*1*) On site until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the logbook, reports, and forms are retained;

(*2*) For 3 years after the end of the fishing year during which the records were made;

(B) The operator or manager of a Buying Station must retain the original (white) copy of all DCLs required under paragraph (a)(2) of this section on site until the Buying Station has concluded receiving groundfish for a Shoreside Processor or Mothership and for as long as fish and fish products recorded in the DCL are retained by the Buying Station;

(ii) *Yellow DCL logsheet.* When the operator of a Mothership or the manager of a Shoreside Processor submits on a quarterly basis to NMFS, the yellow DCL logsheets received from associated Buying Stations per paragraph (a)(14) of this section, the operator or manager must retain a photocopy of the yellow DCL logsheets until the original DCL is received from the associated Buying Station operator or manager.

(iii) *Blue DFL logsheet.* The operator of a Mothership and the manager of a Shoreside Processor must retain the blue DFL logsheets (discard reports) through the last day of the fishing year during which the records were made.

(iv) *Pink DCL logsheet.* The operator or manager of a Buying Station must retain the pink DCL logsheets for 3 years after the end of the fishing year during which the records were made.

(16) *Integration of Buying Station records.* (i) The operator or manager of a Buying Station must maintain a separate DCL for each Shoreside Processor or Mothership to which the Buying Station delivers groundfish during a fishing year.

(ii) The operator or manager of a Buying Station must submit upon delivery of catch, the yellow DCL logsheets, to the Shoreside Processor or Mothership to which it delivers groundfish, along with the blue DFL logsheets and ADF&G fish tickets or catch receipts for that delivery.

(iii) Upon conclusion of receiving groundfish for a Shoreside Processor or Mothership, the Buying Station operator or manager must submit the original DCL to the Shoreside Processor manager or Mothership operator to which deliveries were made.

(iv) If the Mothership operator or the Shoreside Processor manager receives fish from a Buying Station, the operator or manager must incorporate all of the DCL information into the DCPL.

(b) *Designated representative.* The operator or manager of a Catcher Vessel, Mothership, Catcher/Processor, Shoreside Processor or Buying Station must identify one person to fill out and sign the logbook, complete the recordkeeping and reporting forms, or both, and to identify who will be the contact person for inquiries from NMFS. Designation of a representative under this paragraph does not relieve the owner, operator, or manager of responsibility for compliance with this part.

(c) *Catcher Vessel DFL and Catcher/Processor DCPL*—(1) Requirement. (i) The operator of each Catcher Vessel or Catcher/Processor subject to this part must:

(A) Answer each question on the DFL or DCPL in the manner set forth under paragraphs (c) (3) through (7) of this section; and

(B) Submit the DFL or DCPL in the manner set forth under paragraphs (c)(2) and (a)(14), respectively, of this section.

(ii) *Pair trawl.* If two Catcher Vessels are dragging a trawl between them (pair trawl), a separate DFL must be maintained by each of the vessels. Each vessel operator must log the amount of the catch retained by that vessel and any fish discarded by the vessel.

(2) *Time limit and submittal.* (i) The operator must record in the DFL or DCPL, the time, position, and estimated groundfish catch weight within 2 hours after gear retrieval;

(ii) The operator must record all other information required in the DFL or DCPL by noon of the day following gear retrieval if a Catcher Vessel or by noon of the day following completion of production if a Catcher/Processor;

(iii) The operator of a Catcher Vessel must submit the blue DFL logsheets with delivery of the harvest to the operator or manager of the Buying Station, Mothership, or Shoreside Processor;

(iv) Notwithstanding other time limits, the operator of a Catcher Vessel must record all information required in the DFL within 2 hours after the vessel's catch is offloaded;

(3) The operator must record on each page:

(i) Page number as defined at paragraph (a)(6)(i) of this section;

(ii) The date;

(iii) If a Catcher Vessel, the vessel name and ADF&G vessel registration number. If a Catcher/Processor, the name, ADF&G processor number, and Federal Processor number of the Catcher/Processor;

(iv) The operator's signature;

(v) Active/inactive period. Whether Catcher Vessel or Catcher/Processor is in an active or inactive period as defined at paragraph (a)(7) of this section.

(4) The operator must record the following for each haul or set:

(i) *Gear deployment.* The number of haul or set, by sequence; begin time and position coordinates of gear deployment; average sea depth and average gear depth, recorded to the nearest meter or fathom.

(ii) *Gear retrieval.* The date, time, and position coordinates of gear retrieval. If the vessel is using longline hook-and-line gear, the number of skates set. If the vessel is using longline pot or single pot gear, the total number of pots set.

(iii) The estimated total round fish weight of the groundfish catch; and

(iv) The species code of the intended target species from Table 2 of this part.

(5) The operator must record discard/donation information as defined at paragraph (a)(10) of this section.

(6) If a Catcher Vessel, the operator must record:

(i) The date of delivery.

(ii) The name, ADF&G processor code, and ADF&G fish ticket number(s) provided by the manager or operator of the Mothership, Shoreside Processor, or Buying Station.

(7) If a Catcher/Processor, the operator must record product information as set forth at paragraph (a)(9) of this section.

(d) Buying station DCL—(1) Requirement. The operator or manager of each Buying Station subject to this part must:

(i) Answer each question on the DCL in the manner set forth under paragraphs (d)(3) through (5) of this section; and

(ii) Submit the DCL in the manner set forth under paragraphs (d)(2) and (a)(14), respectively, of this section.

(2) Time limits. (i) The operator or manager must record entries in the DCL as to Catcher Vessel delivery information within 2 hours after completion of receipt of the groundfish.

(ii) All other information required in the DCL must be recorded by noon of the day following the day the receipt of groundfish was completed or discard occurred.

(3) The operator or manager must record for each page:

(i) Page number as defined at paragraph (a)(6)(i) of this section;

(ii) The date;

(iii) The Buying Station name and, if a vessel, the ADF&G vessel number;

(iv) The operator's or manager's signature.

(v) *Active/inactive period.* Whether Buying Station is in an active or inactive period as defined at paragraph (a)(7) of this section.

(vi) The name and ADF&G processor code of the Mothership or Shoreside Processor to which groundfish deliveries were made;

(vii) The number of crew;

(4) The operator or manager must record the following information for each delivery of groundfish:

(i) The ADF&G fish ticket number issued to each Catcher Vessel delivering groundfish. If a fish ticket was not issued, the catch receipt number of the transaction;

(ii) Whether blue DFL logsheets were received from Catcher Vessel;

(iii) The time when receipt of groundfish catch was completed;

(iv) The name and ADF&G vessel registration number of the Catcher Vessel delivering the groundfish;

(v) The total groundfish delivery weight.

(5) The operator or manager must record discard/donation information as defined at paragraph (a)(10) of this section.

(e) *Mothership DCPL*—(1) *Requirement*. The operator of each Mothership subject to this part must:

(i) Answer each question on the DCPL in the manner set forth under paragraphs (e) (3) through (6) of this section; and

(ii) Submit the DCPL in the manner set forth under paragraphs (e)(2) and (a)(14), respectively, of this section.

(2) *Time limits.* (i) The operator must record entries in the DCPL as to Catcher Vessel or Buying Station delivery information within 2 hours after completion of the groundfish receipt.

(ii) All other information required in the DCPL must be recorded by noon of the day following the day the catch receipt, discard, or production occurred.

(3) The operator must record on each page:

(i) Page number as defined at paragraph (a)(6) of this section;

(ii) The date;

(iii) The name, ADF&G processor number, and Federal Processor number;

(iv) The operator's signature.

(v) Whether Mothership is in an active or inactive period as defined at paragraph (a)(7) of this section.

(4) The operator must record for each delivery:

(i) Whether delivery is from a Catcher Vessel or a Buying Station;

(ii) The name and ADF&G vessel registration number (if applicable) of the Catcher Vessel or Buying Station delivering the groundfish;

(iii) The time and position coordinates of the Mothership when groundfish catch is received;

(iv) The estimated total round fish weight of the groundfish catch;

(v) The ADF&G fish ticket number issued to each Catcher Vessel delivering groundfish. If a fish ticket is not issued, record the catch receipt number of the transaction.

(5) The operator must record discard/donation information as defined at paragraph (a)(10) of this section.

(6) The operator must record product information as defined at paragraph (a)(9) of this section.

(f) *Shoreside Processor DCPL*—(1) *Requirement*. The manager of each Shoreside Processor subject to this part must:

(i) Answer each question on the DCPL in the manner set forth under paragraphs (f) (3) through (7) of this section;

(ii) Submit the DCPL in the manner set forth under paragraphs (f)(2) and (a)(14), respectively, of this section.

(2) *Time limits*—(i) The manager must record in the DCPL all Catcher Vessel or Buying Station delivery information within 2 hours after completion of the groundfish receipt.

(ii) All other information required in the DCPL must be recorded by noon of the day following the day the catch receipt, discard, or production occurred.

(3) *Part I.* The operator must record on each page:

(i) *Page number*. If page is for an individual day, the date. If page is for 1 week, week-ending date. See also paragraph (a)(6)(i) of this section.

(ii) Participant identification information as defined at paragraph (a)(4) of this section.

(iii) The signature of the manager.

(iv) Whether the Shoreside Processor is in an active or inactive period as defined at paragraph (a)(7) of this section.

(4) *Delivery information*. The manager must record the following information for each delivery:

(i) Date and time when receipt of groundfish catch was completed;

(ii) Whether delivery is from Catcher Vessel or Buying Station;

(iii) Whether blue DFL logsheets were submitted by Catcher Vessel;

(iv) The name and ADF&G vessel registration number (if applicable) of the Catcher Vessel or Buying Station delivering the groundfish;

(v) The total scale weight of groundfish delivery in pounds or to the nearest 0.01 mt;

(vi) The ADF&G fish ticket number issued to the Catcher Vessel delivering groundfish. If a fish ticket is not issued, record the catch receipt number of the transaction.

(5) *Landings information (Part IC).* The manager must record:

(i) The date next to the appropriate day of the week (SUN through SAT);

(ii) Landings information as defined at paragraph (a)(8) of this section.

(6) *Discarded/donated species information (Part ID).* The manager must record:

(i) The date next to the appropriate day of the week (SUN through SAT);

(ii) Discard information as defined at paragraph (a)(10) of this section.

(7) *Part II.* The manager must record:

(i) Page numbers must be consecutive within Part II, beginning with page one for the first day product was produced after the start of the fishing year and continuing throughout the section for the remainder of the fishing year;

(ii) The name, ADF&G processor code number, and Federal Processor number of Shoreside Processor;

(iii) The signature of the manager.

(iv) *Product information.* (A) The week-ending date;

(B) The management area (BSAI or GOA);

(C) The date next to the appropriate day of the week (SUN through SAT);

(D) Product information as defined at paragraph (a)(9) of this section.

(g) *Groundfish product transfer report (PTR)*—(1) *Requirement.* (i) The operator of a Mothership or Catcher/Processor or the manager of a Shoreside Processor must record each transfer of groundfish product on a separate PTR.

(ii) The operator or manager must answer each question on the PTR in the manner set forth under paragraphs (g) (3) through (6) of this section for each transfer of groundfish or groundfish product and must submit the PTR in the manner set forth under paragraph (g)(2) of this section.

(iii) *Shoreside Processor transfer to offsite meal reduction plant.* The manager of a Shoreside Processor must report on a PTR those fish products which are subsequently transferred to an offsite meal reduction plant;

(iv) *Transfer of groundfish for bait.* The operator or manager must report on a PTR, daily sales or transfer of groundfish to vessels for bait. Individual sales of groundfish for bait purposes during a day may be aggregated when recording the amount of product leaving a facility that day.

(2) *Time limits and submittal.* The operator or manager must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the transfer;

(ii) Submit a copy of each PTR to the Regional Director to fax number 907–586–7313 within 24 hours of completion of transfer.

(3) The operator or manager must record on each page:

(i) Whether an original or revised report, as defined at paragraph (a)(6) of this section;

(ii) Page numbers must be numbered sequentially, with the first transfer of the fishing year as page 1 and continuing throughout the remainder of the fishing year;

(iii) If product (including raw fish) is received, "RECEIPT". If product (including raw fish) is offloaded from a Mothership or Catcher/Processor,

"OFFLOAD". If product (including raw fish) is shipped from a Shoreside Processor, "SHIPMENT";

(iv) Representative identification information, as defined at paragraph (a)(5) of this section;

(v) If a Catcher/Processor or Mothership, the participant identification information as defined at paragraph (a)(4) of this section and Coast Guard Documentation number. If a Shoreside Processor, the participant identification information as defined at paragraph (a)(4) of this section.

(4) *Transfer information.* The operator or manager must record the following information for each transfer:

(i) If another vessel is involved with the transfer, the name and call sign of the vessel receiving or delivering groundfish or groundfish products;

(ii) If a Mothership or Catcher/Processor and the transfer takes place in port, the port of landing and country if a foreign location;

(iii) If transfer is made to an agent, the agent's name. For purposes of this part, agent is defined as the transport company, the buyer, or the distributor;

(iv) *Intended first destination of product.* (A) If an offload or shipment, the intended destination of vessel or agent receiving groundfish or groundfish product. If receipt, not applicable;

(B) If an offload or shipment has several destinations, the primary or first intended destination;

(C) If offload or shipment is going to a single agent and initial destination but requires loading on multiple vans, trucks, or airline flights, the transfer may be recorded on a single PTR page;

(v) *Date and time of product transfer*—(A) *Start date.* The date and time the transfer starts;

(B) *Finish date.* The date and time the transfer is completed:

(*1*) If shipment is an individual van load or flight, the date and time when each shipment leaves the plant;

(*2*) If shipment involves multiple vans or trucks, the date and time when loading of vans or trucks is completed for each day;

(*3*) If shipment involves air freight, record date and time when the last air freight shipment of the day leaves the plant;

(vi) *Position transferred.* If a Catcher/Processor or Mothership and transfer of product is made at sea, the transfer position coordinates.

(5) *Products and quantities offloaded, shipped, or received.* (i) If a Catcher/Processor or Mothership, the Harvest Zone code of the area in which groundfish were harvested as defined in Table 8 of this part;

(ii) The species code and product code for each product transferred as defined in Tables 1 and 2 of this part;

(iii) The number of cartons or production units transferred;

(iv) The average net weight of one carton for each species and product code in kilograms or pounds;

(v) The total net weight (fish product weight, to the nearest 0.01 mt) of the products transferred.

(6) If a Catcher/Processor or Mothership, whether transfer is a total or partial offload. If partial offload, the total fish product weight, to the nearest 0.01 mt, of the products (by harvest zone, species and product codes) remaining on board after this transfer;

(h) *Check-in/Check-out report*—(1) *Requirement*—(i) *Check-in report (BEGIN Message*). Before a Catcher/Processor commences harvest of groundfish in Alaska State or Federal waters of any reporting area except 300, 400, 550, or 690 or before a Mothership, Shoreside Processor or Buying Station commences receipt of groundfish from Alaska State or Federal waters of any reporting area except 300, 400, 550, or 690, the operator or manager must answer each question on the Check-in/Check-out report in the manner set forth under paragraphs (h)(3), (h)(4), and (h)(6) of this section; and must submit the Check-in/Check-out report in the manner set forth under paragraph (h)(2) of this section.

(ii) *Check-out report (CEASE Message*). (A) If a Catcher/Processor departs a reporting area or moves between Alaska State and Federal waters in a reporting area, and gear retrieval is complete from that area, the operator or manager must answer each question on a Check-out report in the manner set forth in paragraphs (h)(3), (h)(5), and (h)(6) of this section and must submit the Check-in/Check-out report in the manner set forth under paragraph (h)(2) of this section;

(B) If a Mothership or Shoreside Processor, and groundfish receipt and processing are completed, the operator or manager must answer each question on a Check-out report in the manner set forth in paragraphs (h)(3), (h)(5), and (h)(6) of this section and must submit the Check-in/Check-out report in the manner set forth under paragraph (h)(2) of this section;

(iii) *Transit between reporting areas.* If a vessel is transiting through a reporting area and is not fishing or receiving fish, a Check-in or Check-out report is not required from that area;

(iv) *Multiple vessel operations categories.* If a Catcher/Processor is functioning simultaneously as a Mothership in the same reporting area, the operator must submit a separate Check-in report for each vessel operations category. Upon completion of each activity, the operator must submit a Check-out report for each vessel operations category.

(2) *Time limits and submittal*—(i) *Check-in report.* (A) The operator of a Catcher/Processor must submit by fax a Check-in report (BEGIN message) to the Regional Director at fax number 907–586–7131 before commencing any harvest of groundfish.

(B) The operator or manager of a Mothership, Shoreside Processor, or Buying Station must submit by fax a Check-in report (BEGIN message) to the Regional Director at fax number 907–586–7131 before commencing any receipt of groundfish.

(ii) *Check-out report.* (A) If a Catcher/Processor, Mothership, or Buying Station, the operator must submit by fax a Check-out report (CEASE message) to the Regional Director at fax number 907–586–7131 within 24 hours after leaving either the Alaska State or Federal part of a reporting area.

(B) If a Shoreside Processor, the manager must submit by fax a Check-out report (CEASE message) to the Regional Director at fax number 907–586–7131 within 48 hours after the end of the applicable weekly reporting period that a Shoreside Processor ceases to process groundfish for the fishing year or has not processed groundfish for more than one weekly reporting period;

(3) The operator or manager must record on each page;

(i) Whether an original or revised report as defined at paragraph (a)(6) of this section;

(ii) Participant identification information as defined at paragraph (a)(4) of this section;

(iii) Representative identification information as defined at paragraph (a)(5) of this section;

(iv) If a Mothership or Catcher/Processor, the processor type and gear type used to harvest the groundfish. If groundfish are received by a Mothership in the same reporting area from more than one gear type, or if groundfish are caught by a Catcher/Processor in the same reporting area using more than one gear type, the operator must submit a separate form for each gear type;

(v) Whether harvest is under a CDQ Program; if yes, the CDQ number;

(vi) If a Buying Station, the number of crew on the last day of the reporting week.

(4) *BEGIN Message.* The operator or manager must record:

(i) If a Catcher/Processor, date and time that gear is deployed. If a

Mothership, date and time that receipt of groundfish begins;

(ii) If a Catcher/Processor, position coordinates where gear is set. If a Mothership, position coordinates where groundfish receipt is begun;

(iii) If a Catcher/Processor, the reporting area code of gear deployment and whether gear deployment was in Federal or Alaska State waters. If a Mothership or Buying Station, the reporting area code where groundfish receipt begins and whether receipt of groundfish occurred in Federal or Alaska State waters;

(iv) If a Shoreside Processor, the date receipt of groundfish will begin; whether checking in for first time in fishing year or checking in to restart receipt and processing of groundfish after filing a Check-out report;

(v) If a Mothership or Catcher/Processor, the primary and secondary species expected to be harvested. If a Buying Station, the intended primary target expected to be harvested. A change in intended target species within the same reporting area does not require a new BEGIN message.

(5) *CEASE Message*. The operator or manager must report:

(i) If a Mothership or Catcher/Processor, the date, time and position coordinates where the vessel departed the reporting area or moved to Federal waters from Alaska State waters within a reporting area, or vice versa;

(ii) If a Shoreside Processor or Buying Station, the date that receipt of groundfish ceased.

(6) *Fish or fish product held at plant*. If a Shoreside Processor, the weight of the fish or fish products in pounds or to the nearest 0.01 mt by species and product codes.

(i) *Weekly production report (WPR)*—(1) *Requirement*. (i) The operator or manager of a Mothership, Catcher/Processor, or Shoreside Processor must answer each question on the WPR in the manner set forth in paragraphs (i)(3) through (i)(7) of this section for any week the Mothership, Catcher/Processor, or Shoreside Processor is checked in pursuant to paragraph (h)(1)(i) of this section and must submit a WPR in the manner set forth in paragraph (i)(2) of this section.

(ii) *Multiple vessel operations categories*. The operator of a vessel that is authorized to conduct operations as both a Catcher/Processor and as a Mothership must submit separate WPRs to report production and discard as a Catcher/Processor and production and discard as a Mothership.

(2) *Time limits and submittal*. The operator or manager must submit a WPR to the Regional Director at fax number 907–586–7131 by 1200 hours, A.l.t., on Tuesday, following the end of the applicable weekly reporting period.

(3) The operator or manager must record on each page:

(i) Whether an original or revised report, defined at paragraph (a)(6) of this section;

(ii) Participant identification information as defined at paragraph (a)(4) of this section;

(iii) Representative identification information as defined at paragraph (a)(5) of this section and date WPR was completed;

(iv) If a Mothership or Catcher/Processor, the processor type and gear type used to harvest the groundfish;

(v) Whether harvest is under a CDQ Program; if yes, the CDQ number;

(vi) The week-ending date;

(vii) The primary and secondary target codes for next week;

(viii) If a Mothership or Catcher/Processor, the number of crew on last day of reporting week.

(4) *Landings information*. If a Shoreside Processor, see landings information requirement at paragraph (a)(8) of this section.

(5) *Discarded/Donated Species Information (Part ID)*. For discard/donate information requirement, see paragraph (a)(10) of this section.

(6) *Product information*. For product information requirement, see at paragraph (a)(9) of this section.

(7) *Catcher Vessel delivery information*. If ADF&G fish tickets are issued by the Mothership or Shoreside Processor, list the fish ticket numbers issued to Catcher Vessels for the weekly reporting period.

(j) *Daily Production Report (DPR)*—(1) *Notice*. If the Regional Director determines that DPRs are necessary to avoid exceeding a groundfish TAC or prohibited species bycatch allowance, NMFS may require submission of DPRs for reporting one or more specific species, in addition to a WPR. NMFS will publish a document in the **Federal Register** specifying the fisheries that require DPRs and the effective dates that submittal of DPRs is required.

(2) *Requirement*. (i) If a Catcher/Processor, Mothership, or Shoreside Processor is checked-in to the specified reporting area and is harvesting, receiving, processing, or discarding the specified species, or is receiving reports from a Catcher Vessel of discard at sea of the specified species, the operator or manager must submit a DPR.

(ii) The operator of a Mothership or Catcher/Processor or manager of a Shoreside Processor must:

(A) Answer each question on the DPR in the manner set forth in paragraphs (j)(4) through (7) of this section;

(B) Submit the DPR in the manner set forth in paragraph (j)(3) of this section;

(C) Use a separate DPR for each gear type, processor type, and CDQ number.

(3) *Time limit and submittal*. The operator or manager must submit a DPR by fax to the Regional Director at fax number 907–586–7131 by 1200 hours, A.l.t., the day following each day of landings, discard, or production.

(4) The operator or manager must record on each page:

(i) Whether an original or revised report as defined at paragraph (a)(6) of this section;

(ii) Participant identification information as defined at paragraph (a)(4) of this section and processor type;

(iii) Representative identification information as defined at paragraph (a)(5) of this section;

(iv) The gear type used to harvest the groundfish, date received landings, and Federal reporting area where landings were harvested;

(v) Whether harvest is under a CDQ Program; if yes, the CDQ number.

(5) *Landing information*. If a Shoreside Processor, see landings information requirement at paragraph (a)(8) of this section.

(6) *Product information*. If a Mothership or Catcher/ Processor, see product information requirement at paragraph (a)(9) of this section.

(7) *Discard/donate information*. For discard/donate information requirement, see paragraph (a)(10) of this section.

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Requirement*. The operator of a Catcher Vessel, a Catcher/Processor, or a Mothership regulated under this part that crosses the seaward boundary of the EEZ off Alaska or crosses the U.S./Canada international boundary between Alaska and British Columbia must answer each question on the VAR in the manner set forth in paragraphs (k)(3) and (4) of this section and must submit a VAR in the manner set forth in paragraph (k)(2) of this section.

(2) *Time limits and submittal*. The operator must submit a VAR by fax to NMFS Alaska Enforcement Division at fax number 907–586–7313 before the vessel crosses the seaward boundary of the EEZ off Alaska or the U.S./Canada international boundary between Alaska and British Columbia.

(3) The operator must record on each page:

(i) Whether an original or revised report as defined at paragraph (a)(6) of this section;

(ii) Participant identification information as defined at paragraph (a)(4) of this section;

(iii) Representative identification information as defined at paragraph

(a)(5) of this section and date VAR was completed;

(iv) If vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S./Canada International boundary between Alaska and British Columbia, the operator must indicate return report. If vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S./Canada International boundary between Alaska and British Columbia into Canadian waters, the operator must indicate depart report.

(v) Port of landing;

(vi) Whether vessel is returning from fishing or departing to fish in the Russian Zone;

(vii) Date and time vessel will cross the EEZ off Alaska or the U.S./Canada international boundary between Alaska and British Columbia;

(viii) Latitude and longitude at the point of crossing the EEZ off Alaska or U.S./Canada international boundary between Alaska and British Columbia.

(4) *Fish or fish product on board the vessel when crossing the EEZ off Alaska or U.S./Canada international boundary*. (i) The Harvest Zone code of the area in which groundfish were harvested as defined in Table 8 of this part;

(ii) The species code and product code for each species on board as defined in Tables 1 and 2 of this part;

(iii) The fish product weight of products on board in pounds or to the nearest 0.01 mt.

7. In § 672.7, paragraphs (p) and (q) are added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(p) Fail to comply with or fail to ensure compliance with requirements at § 672.5.

(q) Use a Catcher Vessel or Catcher/Processor as a Tender Vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

Subpart B—Management Measures

8. Section 672.20, paragraphs (a)(1), (e)(1), and the headings for paragraphs (c)(1), (c)(2)(i), (c)(2)(ii), and (h)(2), and paragraphs (i)(4), and (j) are revised; headings for paragraphs (c)(1)(i)(A), (i)(1), (i)(2), (i)(3), and (i)(6) are added; paragraphs (g)(1) and (g)(3) are amended by revising the words, "Table 2 to this section" to read "Table 10 of this part"; and tables 1 and 2 to the section are removed. The revised and added text reads as follows:

§ 672.20 General limitations.

(a) * * * (1) *Optimum yield (OY)*. The OY for the fishery regulated by this section and by § 611.92 of this chapter is a range of 116,000 to 800,000 mt for target species and the "other species" category in the GOA, to the extent this amount can be harvested consistently with this part and part 611 of this chapter, plus the amounts of "non-specified species" taken incidentally to the harvest of target species and the "other species" category. The species categories are defined in Table 1 of the specifications as provided in paragraph (c)(1) of this section.

* * * * *

(c) * * * (1) *Proposed specifications, interim harvest limits, and final specifications*.

(i) * * *

(A) *Proposed specifications*. * * *

(2) * * * (i) *Directed fishing allowance—Applicable after December 31, 1995*. * * *

(ii) *Directed fishing allowance—Applicable through December 31, 1995*. * * *

* * * * *

(e) * * *

(1) Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Oncorhynchus mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp. and *Lithodes* spp.), and Tanner crab (*Chionoecetes* spp.) caught by a vessel regulated under this part while fishing for groundfish in the GOA, unless retention is authorized by other applicable laws, including the Pacific Halibut Fishery Regulations (part 301 of this title).

* * * * *

(h) * * *

(2) *Fishing trip*. * * *

* * * * *

(i) * * *

(1) *Pollock roe*. * * *

(2) *Primary product*. * * *

(3) *Pollock product recovery rates*. * * *

(4) *Fishing trip*. For purposes of this paragraph, a fishing trip is defined as set forth under paragraph (h)(2) of this section.

* * * * *

(6) *Primary pollock product*. * * *

* * * * *

(j) *Standard product types and standard product recovery rates (PRR's)*—(1) *Calculating round-weight equivalents from standard PRRs*. Round-weight equivalents for groundfish products are calculated using the product codes and standard PRRs specified in Table 3 of this part.

(2) *Adjustments to Table 3 of this part*. The Regional Director may adjust standard PRRs and product types specified in Table 3 of this part if he determines that existing standard PRRs are inaccurate or if new product types are developed.

(3) *Procedure*. Adjustments to any standard PRR listed in Table 3 of this part that are within and including 15 percent of that standard PRR may be made without providing notice and opportunity for prior public comment. Adjustments of any standard PRR during a calendar year, when aggregated with all other adjustments made during that year, will not exceed 15 percent of the standard PRR listed in Table 3 of this part at the beginning of that calendar year, and no new product type will be announced until NMFS publishes the proposed adjustment and/or new product type in the **Federal Register** and provides the public with at least 30 days opportunity for public comment. Any adjustment of a PRR that acts to further restrict the fishery will not be effective until 30 days after the date of publication in the **Federal Register**. If NMFS makes any adjustment or announcement without providing a prior notice and opportunity for prior public comment, the Regional Director will receive public comments on the adjustment or announcement for a period of 15 days after its publication in the **Federal Register**.

9. Section 672.23 is revised to read as follows:

§ 672.23 Seasons.

(a) *Fishing year*. Fishing for groundfish is authorized from 0001 hours, A.l.t., January 1, through 2359 hours, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraphs (c) through (f) of this section.

(b) *Time of openings and closures*. The time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hours A.l.t.

(c) *Directed fishing for trawl rockfish*. Directed fishing for rockfish of the genera *Sebastes* and *Sebastolobus* with trawl gear is authorized from 1200 hours, A.l.t., on the first day of the third quarterly reporting period of a fishing year, through 2359 hours, A.l.t. December 31, subject to other provisions of this part.

(d) *Opening date for trawl groundfish*. Notwithstanding other provisions of this part, fishing for groundfish with trawl gear in the Gulf of Alaska is prohibited from 0001 hours, A.l.t. on January 1 through 1200 hours, A.l.t., January 20.

(e) *Directed fishing for pollock*. Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized: From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 1; from 1200 hours, A.l.t., June 1, through 1200 hours, A.l.t., July 1; from 1200 hours, A.l.t., July 1, through 1200 hours A.l.t., October 1; and from 1200 hours A.l.t., October 1, through 2359 hours, A.l.t., December 31.

10. In § 672.24, paragraphs (d)(3) and (d)(4) are redesignated as paragraphs (d)(4) and (d)(5), respectively; headings for paragraphs (c)(4), newly redesignated (d)(4), newly redesignated (d)(5), and (f)(3) are added; paragraph (d)(3) is added; headings of paragraphs (a) and (b) are revised; and the heading of paragraph (d), and paragraphs (d)(1), (d)(2), (e), (f)(4), and (f)(5) are revised to read as follows:

§ 672.24 Gear limitations.

(a) *Marking of gear—longline marker buoys.* * * *

(b) *Gear restrictions—pots.* * * *

(c) * * *

(4) *Longline pot gear.* * * *

(d) *Trawls other than pelagic trawls—Kodiak Island*—(1) *Type I Closures.* No person may trawl in waters of the EEZ within the vicinity of Kodiak Island, as shown in Figure 5 of this part as Type I areas, from a vessel having any trawl other than a pelagic trawl either attached or on board.

(2) *Type II Closures.* From February 15 to June 15, no person may trawl in waters of the EEZ within the vicinity of Kodiak Island, as shown in Figure 5 of this part as Type II areas, from a vessel having any trawl other than a pelagic trawl either attached or on board.

(3) *Type III Closures.* Type III areas are open to any trawl other than a pelagic trawl gear year round.

(4) *Net-sounder device.* * * *

(5) *Footrope of the trawl.* * * *

(e) *Steller sea lion protection areas*—(1) *Year-round closures.* Trawling is prohibited in the GOA within 10 nm of the 14 Steller sea lion rookeries designated in Table 6a of this part.

(2) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 675.20(a)(8) of this chapter trawling is prohibited in the GOA within 20 nm of each of the three Steller sea lion rookeries presented in Table 6b of this part.

(f) * * *

(3) *Test area criteria.* * * *

(4) *Kodiak Test Area.* Trawl gear testing is allowed in an area (Figure 7 of this part) bounded by straight lines connecting the following coordinates in the order listed at all times:

W. longitude	*N. latitude*
152° 02′	57° 37′
151° 25′	57° 37′
151° 25′	57° 23′
152° 02′	57° 23′
152° 02′	57° 37′

(5) *Sand Point Test Area.* Trawl gear testing is allowed in an area (Figure 7 of this part) bounded by straight lines connecting the following coordinates in the order listed at all times:

W. longitude	*N. latitude*
161° 00′	54° 50′
160° 30′	54° 50′
160° 30′	54° 35′
161° 00′	54° 35′
161° 00′	54° 50′

11. Part 672 is amended by adding a new heading and Tables 1 through 11 at the end of the part preceding the figures to part 672 to read as follows:

Tables—Part 672

TABLE 1.—PRODUCT CODES

Fish product code/description
1. Whole fish/food fish.
2. Whole fish/bait. Processed for bait.
3. Bled only. Throat, or isthmus, slit to allow blood to drain.
4. Gutted only. Belly slit and viscera removed.
6. Head and gutted, with roe.
7. Headed and gutted, Western cut. Head removed just in front of the collar bone, and viscera removed.
8. Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed.
10. Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed.
11. Kirimi. Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.
12. Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted.
13. Wings. On skates, side fins are cut off next to body.
14. Roe. Eggs, either loose or in sacs, or skeins.
15. Pectoral girdle. Collar bone and associated bones, cartilage and flesh.
16. Heads. Heads only, regardless where severed from body.
17. Cheeks. Muscles on sides of head.
18. Chins. Lower jaw (mandible), muscles, and flesh.
19. Belly. Flesh in region of pelvic and pectoral fins and behind head.
20. Fillets with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail.
21. Fillets with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail.
22. Fillets with ribs and no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail.
23. Fillets, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail.
24. Deep-skin fillet. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.
30. Surimi. Paste from fish flesh and additives.
31. Minced. Ground flesh.
32. Fish meal. Meal from fish and fish parts, including bone meal.
33. Fish oil. Rendered oil.
34. Milt. (in sacs, or testes).
35. Stomachs. Includes all internal organs.
36. Octopus/squid mantles. Flesh after removal of viscera and arms.
37. Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached.
39. Bones (if meal, report as 32).
86. Donated Salmon. Includes salmon retained and donated under Salmon Donation Program.
97. Other retained product.

TABLE 1.—PRODUCT CODES—Continued

Fish product code/description
Discard Product Codes
92. Discard, bait. Whole fish used as bait on board vessel.
94. Discard, consumption. Fish or fish products eaten on board or taken off the vessel for personal use.
96. Previously discarded fish (decomposed) taken with trawl gear in current fishing efforts. Discarded.
98. Discard, at sea. Whole groundfish and prohibited species discarded by catcher vessels, Catcher/Processors, Motherships, or Buying Stations delivering to Motherships.
99. Discard, dockside. Discard after delivery and before processing; Discard, at plant. In-plant discard of whole groundfish and prohibited species by Shoreside Processors and Buying Stations delivering to Shoreside Processors before and during processing.
M99 Discard, off site meal reduction plant. Discarded fish that are transferred to any off site facility for reduction to fish meal, fish oil and/or discard at sea.
Product Designation
A Ancillary. Product made in addition to a primary product from the same fish.
P Primary. Product made from each fish with the highest recovery rate.
R Reprocessed. Product that results from processing a previously reported product.

TABLE 2—SPECIES CODES

Code	Species
110	Pacific cod.
120	Miscellaneous flatfish (all flatfish without separate codes).
121	Arrowtooth flounder and/or Kamchatka flounder.
122	Flathead sole.
123	Rock sole.
124	Dover sole.
125	Rex sole.
126	Butter sole.
127	Yellowfin sole.
128	English sole.
129	Starry flounder.
131	Petrale sole.
132	Sand sole.
133	Alaska Plaice flounder.
134	Greenland turbot.
135	Greenstripe rockfish.
136	Northern rockfish.
137	Bocaccio rockfish.
138	Copper rockfish.
141	Pacific ocean perch (*S. alutus* only).
142	Black rockfish.
143	Thornyhead rockfish (all *Sebastolobus* species).
145	Yelloweye rockfish.
146	Canary rockfish.
147	Quillback rockfish.
148	Tiger rockfish.
149	China rockfish.
150	Rosethorn rockfish.
151	Rougheye rockfish.
152	Shortraker rockfish.
153	Redbanded rockfish.
154	Dusky rockfish.
155	Yellowtail rockfish.
156	Widow rockfish.
157	Silvergray rockfish.
158	Redstripe rockfish.
159	Darkblotched rockfish.
160	Sculpins.
166	Sharpchin rockfish.
167	Blue rockfish.
175	Yellowmouth rockfish.
176	Harlequin rockfish.
177	Blackgill rockfish.
178	Chilipepper rockfish.
179	Pygmy rockfish.
181	Shortbelly rockfish.
182	Splitnose rockfish.
183	Stripetail rockfish.
184	Vermilion rockfish.
185	Aurora rockfish.
193	Atka mackerel.

OL
60
SS
1
7
4
SE
8
995
UMI

TABLE 2—SPECIES CODES—Continued

Code	Species
270	Pollock.
510	Smelt.
511	Eulachon.
516	Capelin.
689	Sharks.
700	Skates.
710	Sablefish.
870	Octopus.
875	Squid.
Group Codes. These group codes may be used if individual species cannot be identified.	
144	Slope rockfish (aurora, blackgill, Bocaccio, redstripe, silvergray, chilipepper, darkblotched, greenstriped, harlequin, pygmy, shortbelly, splitnose, stripetail, vermillion, yellowmouth, sharpchin).
168	Demersal shelf rockfish (china, copper, quillback, rosethorn, tiger, yelloweye, canary).
169	Pelagic shelf rockfish (blue, dusky, yellowtail, widow).
171	Shortraker/rougheye rockfish.
Prohibited Species Coees	
000	Unspecified salmon.
200	Pacific halibut.
235	Pacific herring.
410	Salmon, Chinook.
420	Salmon, Sockeye.
430	Salmon, Coho.
440	Salmon, Pink.
450	Salmon, Chum.
540	Steelhead trout.
920	Unspecified king crab.
921	Red king crab.
922	Blue king crab.
923	Gold/brown king crab.
930	Unspecified tanner crab.
931	Bairdi tanner crab.
932	Opilio tanner crab.

TABLE 3.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND/OR 50 CFR 675.20(a)(1)

FMP species	Species code	Product code											
		Whole food fish	Whole bait fish	Bled	Gutted	H&G with roe	H&G western cut	H&G eastern cut	H&G w/o tail	Kirimi	Salted & split	Wings	Roe
		1	2	3	4	6	7	8	10	11	12	13	14
PACIFIC CODE	110	1.00	1.00	0.98	0.85	0.63	0.57	0.47	0.44	....	0.45	....	0.05
ARROWTOOTH FLOUNDER	121	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	....	....	0.08
ROCKFISH[1]	....	1.00	1.00	0.98	0.88	....	0.60	0.50	....	....	....	....	....
SCULPINS	160	1.00	1.00	0.98	0.87	....	0.50	0.40	....	....	....	....	....
ATKA MACKEREL	193	1.00	1.00	0.98	0.87	0.67	0.64	0.61	....	....	....	....	....
POLLOCK	270	1.00	1.00	0.98	0.80	0.70	0.65	0.56	0.50	....	....	....	0.04
SMELTS	510	1.00	1.00	0.98	0.82	....	0.71	....	....	....	....	....	....
EULACHON	511	1.00	1.00	0.98	0.82	....	0.71	....	....	....	....	....	....
CAPELIN	516	1.00	1.00	0.98	0.89	....	0.78	....	....	....	....	....	....
SHARKS	689	1.00	1.00	0.98	0.83	....	0.72	....	....	....	....	....	....
SKATES	700	1.00	1.00	0.98	0.90	....	....	0.32	....	....	....	0.32	....
SABLEFISH	710	1.00	1.00	0.98	0.89	0.68	0.63	0.50	....	....	....	....	....
OCTOPUS	870	1.00	1.00	0.98	0.69	....	....	....	....	....	....	....	....
Target species categories only at 50 CFR 672.20(a):													
DEEP WATER FLATFISH	118	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	....	....	0.08
FLATHEAD SOLE	122	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	....	....	0.08
REX SOLE	125	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	....	....	0.08
SHALLOW WATER FLATFISH	119	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	....	....	0.08
THORNYHEAD ROCKFISH	143	1.00	1.00	0.98	0.88	0.55	0.60	0.50	....	....	....	....	....
Target species categories only at 50 CFR 675.20(a):													
OTHER FLATFISH	120	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	....	....	0.08
ROCK SOLE	123	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	....	....	0.08
YELLOWFIN SOLE	127	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	....	....	0.08

TABLE 3.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND/OR 50 CFR 675.20(a)(1)—Continued

FMP species	Species code	Product code											
		Whole food fish	Whole bait fish	Bled	Gutted	H&G with roe	H&G western cut	H&G eastern cut	H&G w/o tail	Kirimi	Salted & split	Wings	Roe
		1	2	3	4	6	7	8	10	11	12	13	14
GREENLAND TURBOT	134	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	....	....	0.08
SQUID	875	1.00	1.00	0.98	0.69	....	....	....	....	....	....	....	....

FMP species	Species code	Product code												
		Pectroal girdle	Heads	Cheeks	Chins	Belly	Fillets w/skin & ribs	Fillets skin on no ribs	Fillets w/ribs no skin	Fillets skinless/boneless	Fillets deep skin	Surimi	Mince	Meal
		15	16	17	18	19	20	21	22	23	24	30	31	32
PACIFIC COD	110	0.05	....	0.05	....	0.01	0.45	0.35	0.25	0.25	....	0.15	0.5	0.17
ARROWTOOTH FLOUNDER	121	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....	0.17
ROCKFISH	....	....	0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	....	....	....	0.17
SCULPINS	160	....	....	....	....	....	....	....	....	....	....	....	....	0.17
ATKA MACKEREL	193	....	....	....	....	....	....	....	....	....	....	0.15	....	0.17
POLLOCK	270	....	0.15	....	....	....	....	0.35	0.30	0.30	0.21	[2]0.16	0.22	0.17
SMELTS	510	....	....	....	....	....	....	0.38	....	....	....	[3]0.17	....	0.22
EULACHON	511	....	....	....	....	....	....	0.38	....	....	....	....	....	0.22
CAPELIN	516	....	....	....	....	....	....	....	....	....	....	....	....	0.22
SHARKS	689	....	....	....	....	....	....	0.30	0.30	0.25	....	....	....	0.17
SKATES	700	....	....	....	....	....	....	....	....	....	....	....	....	0.17
SABLEFISH	710	....	....	0.05	....	....	0.35	0.30	0.30	0.25	....	....	....	0.22
OCTOPUS	870	....	....	....	....	....	....	....	....	....	....	....	....	0.17
Target speies categories only at 50 CFR 672(a):														
DEEP WATER FLATFISH	118	....	....	....	....	....	0.32	0.27	....	0.22	....	....	....	0.17
FLATHEAD SOLE	122	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....	0.17
REX SOLE	125	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....	0.17
SHALLOW WATER FLATFISH	119	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....	0.17
THORNYHEAD ROCKFISH	143	....	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	....	....	....	0.17
Target species categories only at 50 CFR 675.20(a):														
OTHER FLATFISH	120	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....	0.17
ROCK SOLE	123	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....	0.17
YELLOWFIN SOLE	127	....	....	....	....	....	0.32	0.27	0.27	0.22	....	0.18	....	0.17
GREENLAND TURBOT	134	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....	0.17
SQUID	875	....	....	....	....	....	....	....	....	....	....	....	....	0.17

FMP species	Product code	Species code						
		Oil	Milt	Stomachs	Mantles	Butterfly backbone removed	Decomposed fish	Discards
		33	34	35	36	37	96	92, 94, 98, 99, M99
PACIFIC COD	110	....	....	....	....	0.43	0.00	1.00
ARROWTOOTH FLOUNDER	121	....	....	....	....	....	0.00	1.00
ROCKFISH	....	....	....	....	....	....	0.00	1.00
SCULPINS	160	....	....	....	....	....	0.00	1.00
ATKA MACKEREL	193	....	....	....	....	....	0.00	1.00
POLLOCK	270	....	....	....	....	0.43	0.00	1.00
SMELTS	510	....	....	....	....	....	0.00	1.00
EULACHON	511	....	....	....	....	....	0.00	1.00
CAPELIN	516	....	....	....	....	....	0.00	1.00
SHARKS	689	....	....	....	....	....	0.00	1.00
SKATES	700	....	....	....	....	....	0.00	1.00
SABLEFISH	710	....	....	....	....	....	0.00	1.00
OCTOPUS	870	....	....	....	0.85	1.00	0.00	1.00
Target species categories only at 50 CFR 672.20(a):								
DEEP WATER FLATFISH	118	....	....	....	....	....	0.00	1.00
FLATHEAD SOLE	122	....	....	....	....	....	0.00	1.00
REX SOLE	125	....	....	....	....	....	0.00	1.00
SHALLOW WATER FLATFISH	119	....	....	....	....	....	0.00	1.00
THORNYEAD ROCKFISH	143	....	....	....	....	....	0.00	1.00
Target species categories only at 50 CFR 675.20(a):								

FMP species	Product code	Species code						
		Oil	Milt	Stomachs	Mantles	Butterfly backbone removed	Decomposed fish	Discards
		33	34	35	36	37	96	92, 94, 98, 99, M99
OTHER FLATFISH	120	....	....	....	....	....	0.00	1.00
ROCK SOLE	123	....	....	....	....	....	0.00	1.00
YELLOWFIN SOLE	127	....	....	....	....	....	0.00	1.00
GREENLAND TURBOT	134	....	....	....	....	....	0.00	1.00
SQUID	875	....	....	....	0.75	1.00	0.00	1.00

[1] Rockfish means all species of *Sebastes*, and *Sebastolobus*.

[2] Standard pollock surimi rate during January through June.

[3] Standard pollock surimi rate during July through December.

TABLE 4.—BERING SEA SUBAREA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at 50 CFR 227.12(a)(2)				
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm)				
Sea Lion Rocks	55°28.0′ N	163°12.0′ W		
Ugamak Island	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°.05.5′ N	166°05.0′ W
Bogoslof Island	53°56.0′ N	168°02.0′ W		
Ogchul Island	53°00.0′ N	168°24.0′ W		
Adugak Island	52°55.0′ N	169°10.5′ W		
Walrus Island	57°11.0′ N	169°56.0′ W		
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under 50 CFR 672.30(a)(8), Trawling Prohibited Within 20 nm)				
Sea Lion Rocks	55°28.0′ N	163°12.0′ W		
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ugamak Island	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W
Seguam Island	52°21.0′ N	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		

Note: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

TABLE 5.—ALEUTIAN ISLANDS SUBAREA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at 50 CFR 227.12(a)(2)				
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm)				
Yunaska Island	52°42.0′ N	170°38.5′ W	52°41.0′ N	170°34.5′ W
Seguam Island	52°21.0′ N	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		
Kasatochi Island	52°10.0′ N	175°31.0′ W	52°10.5′ N	175°29.0′ W
Adak Island	51°36.5′ N	176°59.0′ W	51°38.0′ N	176°59.5′ W
Gramp Rock	51°29.0′ N	178°20.5′ W		
Tag Island	51°33.5′ N	178°34.5′ W		
Ulak Island	51°20.0′ N	178°57.0′ W	51°18.5′ N	178°59.5′ W
Semisopochnoi	51°58.5′ N	179°45.5′ E	51°57.0′ N	179°46.0′ E
Semisopochnoi	52°01.5′ N	179°37.5′ E	52°01.5′ N	179°39.0′ E
Amchitka Island	51°22.5′ N	179°28.0′ E	51°21.5′ N	179°25.0′ E
Amchitka Is/Column Rocks	51°32.5′ N	178°49.5′ E		
Ayugadak Point	51°45.5′ N	178°24.5′ E		
Kiska Island	51°57.5′ N	177°21.0′ E	51°56.5′ N	177°20.0′ E
Kiska Island	51°52.5′ N	177°13.0′ E	51°53.5′ N	177°12.0′ E

TABLE 5.—ALEUTIAN ISLANDS SUBAREA STELLER SEA LION PROTECTION AREAS—Continued

Island	From		To	
	Latitude	Longitude	Latitude	Longitude
Buldir Island	52°20.5′ N	175°57.0′ E	52°23.5′ N	175°51.0′ E
Agattu Is./Gillion Pt	52°24.0′ N	173°21.5′ E		
Agattu Island	52°23.5′ N	173°43.5′ EW	52°22.0′ N	173°41.0′ E
Attu Island	52°54.5′ N	172°28.5′ E	52°57.5′ N	172°31.5′ E
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under 50 CFR 675.20(a)(8). Trawling Prohibited Within 20 nm)				
Seguam Island	52°21.0′ M	172°35.0′ W	52°21.0′ N	172°33.0′ W
Agligadak Island	52°06.5′ N	172°54.0′ W		

Note: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

TABLE 6.—GULF OF ALASKA STELLER SEA LION PROTECTION AREAS

Island	From		To	
	Latitute	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at 50 CFR 227.12(a)(2)				
a. Year-round Trawl Closures (Trawling Prohibited Within 10 nm)				
Outer Island	59°20.5′ N	150°23.0′ W	59°21.0′ N	150°24.5′ W
Sugarload Island	58°53.0′ N	152°02.0′ W		
Marmot Island	58°14.5′ N	151°47.5′ W	58°10.0′ N	151°51.0′ W
Chirikof Island	55°46.5′ N	155°39.5′ W	55°46.5′ N	155°43.0′ W
Chowiet Island	56°00.5′ N	156°41.5′ W	56°00.5′ N	156°42.0′ W
Atkins Island	55°03.5′ N	159°18.5′ W		
Chernabura Island	54°47.5′ N	159°31.0′ W	54°45.5′ N	159°33.5′ W
Pinnacle Rock	54°46.0′ N	161°46.0′ W		
Clubbing Rocks-N	54°43.0′ N	162°26.5′ W		
Clubbing Rocks-S	54°42.0′ N	162°26.5′ W		
Ugamak Island	54°14.0′ N	164°48.0′ E	54°13.0′ N	164°48.0′ W
Akun Island	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan Island	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ogchul Island	53°00.0′ N	168°24.0′ W		
b. Seasonal Trawl Closures (During January 1 through April 15, or a date earlier than April 15, if adjusted under 50 CFR 672.30(a)(8). Trawling Prohibited Within 20 mn)				
Akun I	54°18.0′ N	165°32.5′ W	54°18.0′ N	165°31.5′ W
Akutan I	54°03.5′ N	166°00.0′ W	54°05.5′ N	166°05.0′ W
Ugamak I	54°14.0′ N	164°48.0′ W	54°13.0′ N	164°48.0′ W

Note: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

TABLE 7.—COMMUNITIES DETERMINED TO BE ELIGIBLE TO APPLY FOR COMMUNITY DEVELOPMENT QUOTAS

[Other communities may also be eligible, but do not appear on this table.]

Aleutian Region:
  1. Atka.
  2. False Pass.
  3. Nelson Lagoon.
  4. Nikolski.
  5. St. George.
  6. St. Paul.

Bering Strait:
  1. Brevig Mission.
  2. Diomede/Inalik.
  3. Elim.
  4. Gambell.
  5. Golovin.
  6. Koyuk.
  7. Nome.
  8. Savoonga.
  9. Shaktoolik.
  10. St. Michael.
  11. Stebbins.
  12. Teller.
  13. Unalakleet.
  14. Wales.
  15. White Mountain.

Bristol Bay:
  1. Alegnagik.
  2. Clark's Point.
  3. Dillingham.
  4. Egegik.
  5. Ekuk.
  6. Manokotak.
  7. Naknek.
  8. Pilot Point/Ugashi.
  9. Port Heiden/Meschick.
  10. South Naknek.
  11. Sovonoski/King Salmon.
  12. Togiak.
  13. Twin Hills.

Southwest Coastal Lowlands:
  1. Alakanuk.
  2. Chefornak.
  3. Chevak.
  4. Eek.
  5. Emmonak.
  6. Goodnews Bay.
  7. Hooper Bay.
  8. Kipnuk.
  9. Kongiganak.
  10. Kotlik.
  11. Kwigillingok.
  12. Mekoryuk.
  13. Newtok.
  14. Nightmute.
  15. Platinum.
  16. Quinhagak.
  17. Scammon Bay.
  18. Sheldon's Point.
  19. Toksook Bay.
  20. Tununak.
  21. Tuntutuliak.

TABLE 8.—HARVEST ZONE CODES FOR USE WITH PRODUCT TRANSFER REPORTS AND VESSEL ACTIVITY REPORTS

Harvest zone	Description
A	EEZ of Alaska.
D	Donut Hole.
F	Foreign Waters Other than Russia.
I	International Waters other than Donut Hole and Seamounts.
R	Russian waters.
S	Seamounts in International waters,
U	U.S. EEZ other than Alaska.

TABLE 9.—REQUIRED LOGBOOKS, REPORTS AND FORMS FROM PARTICIPANTS IN THE FEDERAL GROUNDFISH FISHERIES

Name of logbook form	Catcher-vessel	Catcher-processor	Mothership	Shoreside processor	Buying station
Daily Fishing Logbook (DFL)	YES	NO	NO	NO	NO
Daily Cumulative Production Logbook (DCPL)	NO	YES	YES	YES	NO
Daily Cumulative Logbook (DCL)	NO	NO	NO	NO	YES
Check-in/check-out Report	NO	YES	YES	YES	YES
U.S. Vessel Activity Report (VAR)	YES	YES	YES	NO	NO
Weekly Production Report (WPR)	NO	YES	YES	YES	NO
Daily Production Report (DPR)[1]	NO	YES	YES	YES	NO
Product Transfer Report (PTR)	NO	YES	YES	YES	NO

[1] When required by Regional Director.

TABLE 10.—GULF OF ALASKA RETAINABLE PERCENTAGES REFERENCED IN 50 CFR 672.20

Basis species[1]	Bycatch species[1]											
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish[2]	DSR SEEO[3]	Atka mackerel	Other species
Pollock	[4]na	20	20	20	20	20	35	1	5	10	20	20
Pacific cod	20	[4]na	20	20	20	20	35	1	5	10	20	20
Deep-water flatfish	20	20	[4]na	20	20	20	35	15	15	1	20	20
Rex sole	20	20	20	[4]na	20	20	35	15	15	1	20	20
Flathead sole	20	20	20	20	20	[4]na	35	1	5	10	20	20
Shallow-water flatfish	20	20	20	20	20	[4]na	35	1	5	10	20	20
Arrowtooth	0	0	0	0	0	0	[4]na	0	0	0	0	0
Sablefish	20	20	20	20	20	20	35	[4]na	15	1	20	20
Pacific Ocean Perch	20	20	20	20	20	20	35	15	15	1	20	20
Shortraker/rougheye	20	20	20	20	20	20	35	15	15	1	20	20
Other rockfish	20	20	20	20	20	20	35	15	15	1	20	20
Northern rockfish	20	20	20	20	20	20	35	15	15	1	20	20
Pelagic rockfish	20	20	20	20	20	20	35	15	15	1	20	20
DSR-Southeast Outside	20	20	20	20	20	20	35	15	15	[4]na	20	20
Thornyhead	20	20	20	20	20	20	35	15	15	1	20	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	[4]na	20
Other species	20	20	20	20	20	20	35	1	5	10	20	[4]na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	20

[1] For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications.

[2] Aggregated rockfish means rockfish of the general Sebastes and Sebastolobus except in the southeast Outside District where demersal shelf rockfish (DSR) is a separate category.

[3] SEEO—Southeast Outside District.

[4] na = not applicable.

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES REFERENCED IN 50 CFR 675.20

Basis Species[1]	Bycatch species[1]												
	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rock sole	Flathead sole	Greenland turbot	Sablefish	Aggregated rockfish[2]	Squid	Other species
Pollock	[3]na	20	20	35	20	20	20	20	1	1	5	20	20
Pacific cod	20	[3]na	20	35	20	20	20	20	1	1	5	20	20
Atka Mackerel	20	20	[3]na	35	20	20	20	20	1	1	5	20	20
Arrowtooth	0	0	0	[3]na	0	0	0	0	0	0	0	0	0
Yellowfin sole	20	20	20	35	[3]na	35	35	35	1	1	5	20	20
Other flatfish	20	20	20	35	35	[3]na	35	35	1	1	5	20	20
Rocksole	20	20	20	35	35	35	[3]na	35	1	1	5	20	20
Flathead sole	20	20	20	35	35	35	35	[3]na	35	15	15	20	20
Greenland turbot	20	20	20	35	20	20	20	20	[3]na	15	15	20	20
Sablefish	20	20	20	35	20	20	20	20	35	[3]na	15	20	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	15	20	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	15	20	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	5	15	15	20	20
Sharpchin/Northern-AI	20	20	20	35	20	20	20	20	35	15	15	20	20
Shortraker/Rougheye-AI	20	20	20	35	20	20	20	20	35	15	15	20	20
Squid	20	20	20	35	20	20	20	20	1	1	5	[3]na	20
Other species	20	20	20	35	20	20	20	20	1	1	5	20	[3]na
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	5	20	20

[1] For definition of species, see Table 1 of the Bering Sea and Aleutian islands groundfish specifications.
[2] Aggregated rockfish of the genera Sebastes and Sebastolobus.
[3] na=not applicable.

12. Part 672 is amended by revising the figures to the part to read as follows:

FIGURES—PART 672

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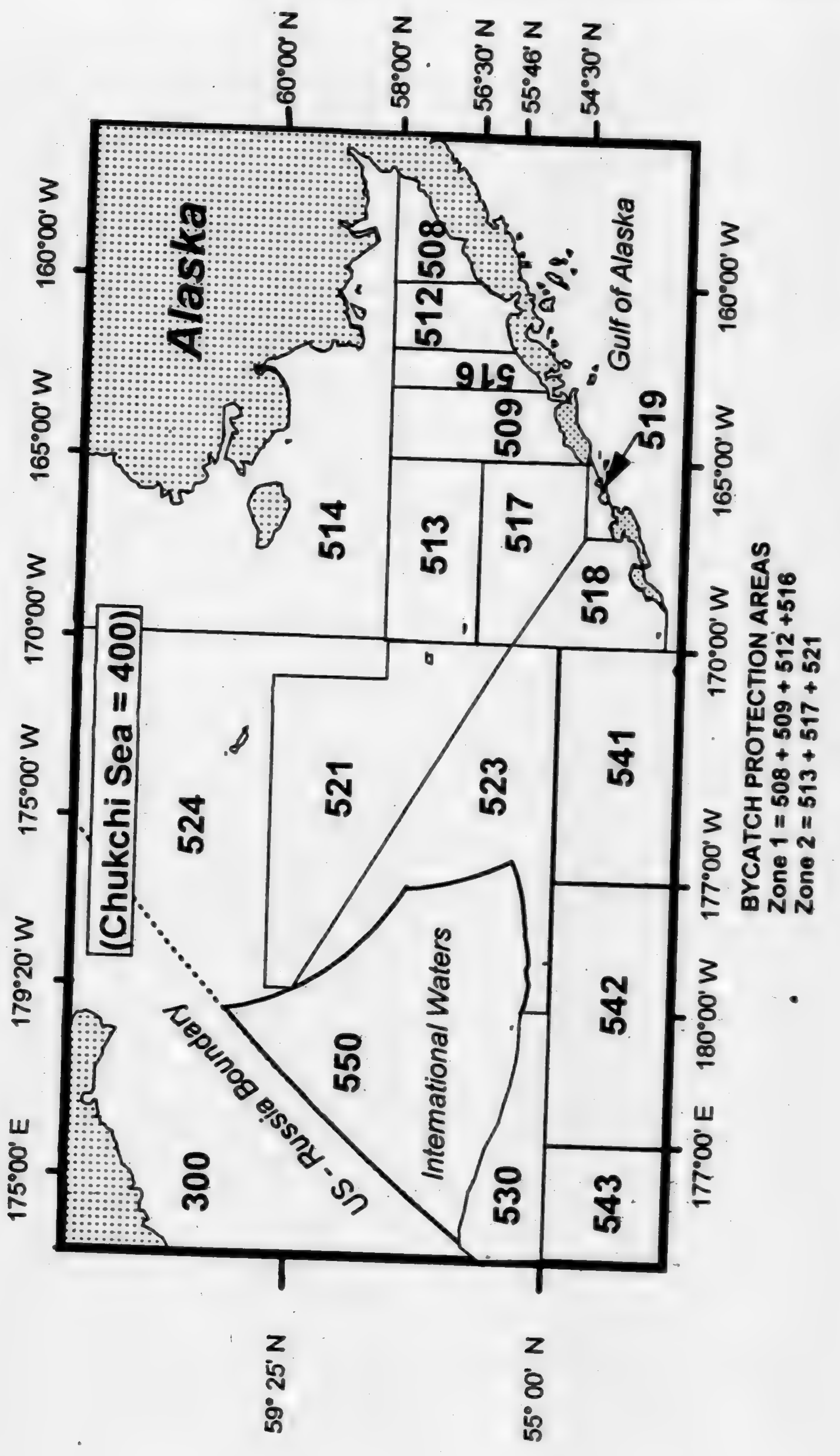

60°00' N
58°00' N
56°30' N
55°46' N
54°30' N
160°00' W
165°00' W
170°00' W
175°00' W
179°20' W
175°00' E
180°00' W
177°00' W
177°00' E
59° 25' N
55° 00' N
Alaska
Gulf of Alaska
508
512
516
509
519
514
513
517
518
524
521
523
541
542
543
550
530
300
(Chukchi Sea = 400)
International Waters
US - Russia Boundary
BYCATCH PROTECTION AREAS
Zone 1 = 508 + 509 + 512 +516
Zone 2 = 513 + 517 + 521

BSAI Statistical and Reporting Areas Map

Figure 1a—BSAI Statistical and Reporting Areas; Map

FIGURE 1B.—BSAI STATISTICAL AND REPORTING AREAS; COORDINATES OF REPORTING AREAS

Code	Description
300	*Russian waters.* Those waters inside the Russian 200 mile limit as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart INT 814 Bering Sea (Northern Part).
400	*Chukchi Sea.* North of a diagonal line between 66°00′ N, 169°42.5′ W (Cape Dezhneva, Russia); and 65°37′ N, 168°7.5° W (Cape Prince of Wales, Alaska) and to the limits of the U.S. EEZ as described in the current edition of NOAA chart INT 814 Bering Sea (Northern Part).
508	South of 58°00′ N between the intersection of 58°00′ North lat with the Alaska Peninsula and 160°00′ W long.
509	South of 58°00′ N lat between 163°00′ W long and 165°00′ W long.
512	South of 58°00′ N lat, north of the Alaska Peninsula between 160°00′ W long and 162°00′ W long.
513	Between 58°00′ N lat and 56°30′ N. lat, and between 165°00′ W long and 170°00′ W long.
514	North of 58°00′ N to the southern boundary of the Chukchi Sea, area 400, and east of 170°00′ W long.
516	South of 58°00′ N lat, north of the Alaska Peninsula, and between 162°00′ and 163°00′ W long.
517	South of 56°30′ N lat, between 165°00′ W long and 170°00′ W long; and north of straight lines between: 54°30′ N lat, 165°00′ W long, 54°30′ N lat, 167°00′ W long, and 55°46′ N lat, 170°00′ W long.
518	*Bogoslof District:* South of a straight line between 55°46′ N lat, 170°00′ W long and 54°30′ N lat, 167°00′ W long, and between 167°00′ W long and 170°00′ W long, and north of the Aleutian Island and straight lines between the islands connecting the following coordinates in the order listed: 52°49.2′ N, 169°40.4′ W. 52°49.8′ N, 169°06.3′ W. 53°23.8′ N, 167°50.1′ W. 53°18.7′ N, 167°51.4′ W.
519	South of a straight line between 54°30′ N lat, 167°00′ W long and 54°30′ N lat, 164°54′ W long; east of 167°00′ W long; west of Unimak Island; and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 53°59.0′ N, 166°17.2′ W. 54°02.9′ N, 166°03.0′ W. 54°07.7′ N, 165°40.6′ W. 54°08.9′ N, 165°38.8′ W. 54°11.9′ N, 165°23.3′ W. 54°23.9′ N, 164°42.0′ W.
521	The area bounded by straight lines connecting the following coordinates in the order listed: 55°46′ N, 170°00′ W, 59°25′ N, 179°20′ W, 60°00′ N, 179°20′ W, 60°00′ N, 171°00′ W, 58°00′ N, 171°00′ W, 58°00′ N, 170°00′ W, 55°46′ N, 170°00′ W,
523	The area bounded by straight lines connecting the following coordinates in the order listed: 59°25′ N, 179°20′ W; 55°46′ N, 170°00′ W; 55°00′ N, 170°00′ W; 55°00′ N, 180°00′ W; and north to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
524	The area west of 170°00′ W bounded south by straight lines connecting the following coordinates in the order listed: 58°00′ N, 170°00′ W 58°00′ N, 171°00′ W; 60°00′ N, 171°00′ W; 60°00′ N, 179°20′ W; 59°25′ N, 179°20′ W and to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
530	The area north of 55°00′ N lat and west of 180°00′ W long to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part)
541	*Eastern Aleutian District.* The area south of 55°00′ N lat, west of 170°00′ W long, and east of 177°00′ W long and bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands).
542	*Central Aleutian District.* The area south of 55°00′ N lat, west of 177°00′ W long, and east of 177°00′ E long and bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands)
543	*Western Aleutian district.* The area south of 55°00′ N lat and west of 177°00′ E long, and bounded on the south and west by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands)
550	*Donut Hole.* International waters of the Bering Sea outside the limits of the EEZ and Russian economic zone as depicted on the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
	Statistical Area. A statistical area is the part of a reporting area contained in the EEZ.

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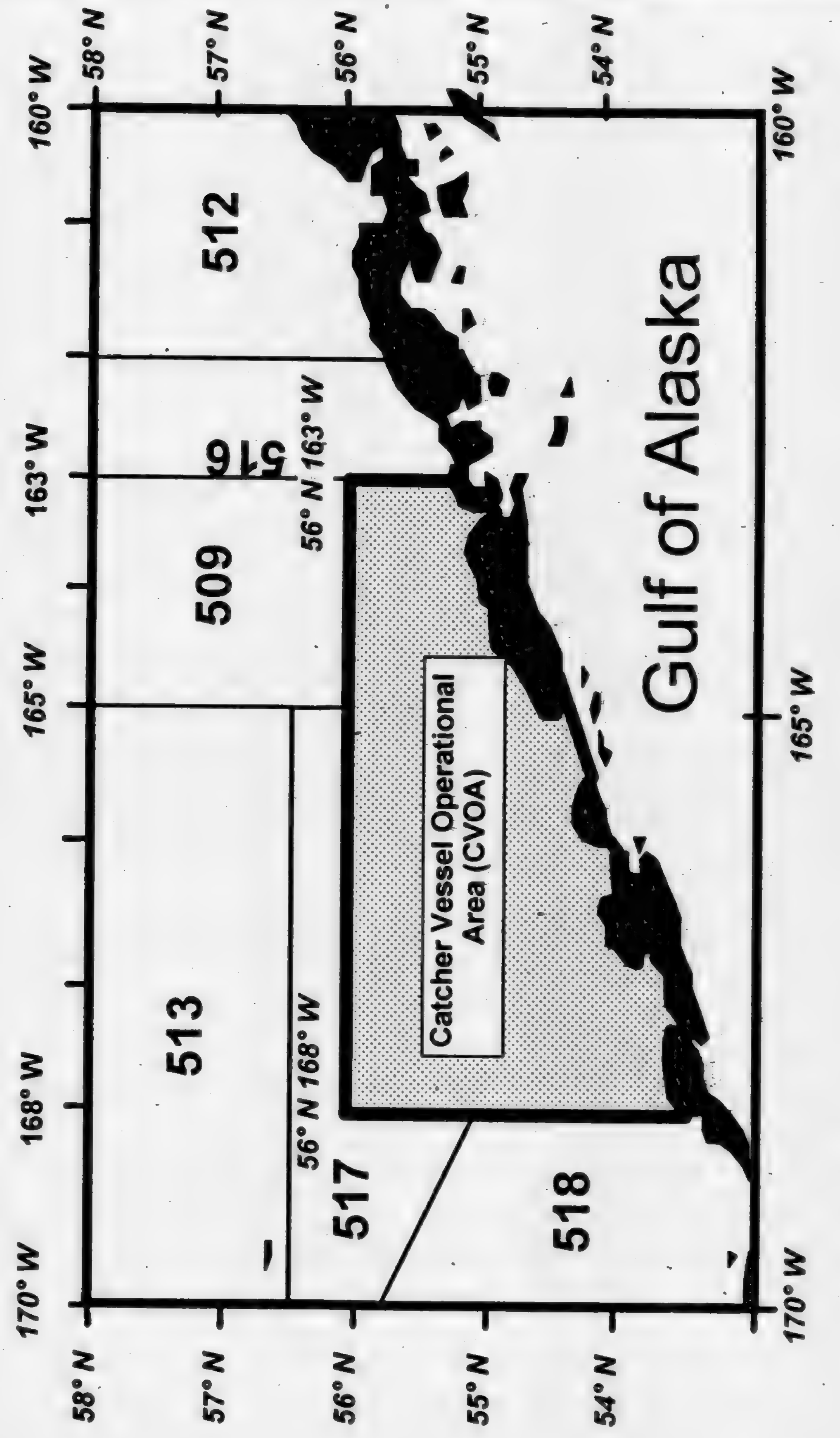

BSAI Catcher Vessel Operational Area

Figure 2—BSAI Catcher Vessel Operational Area

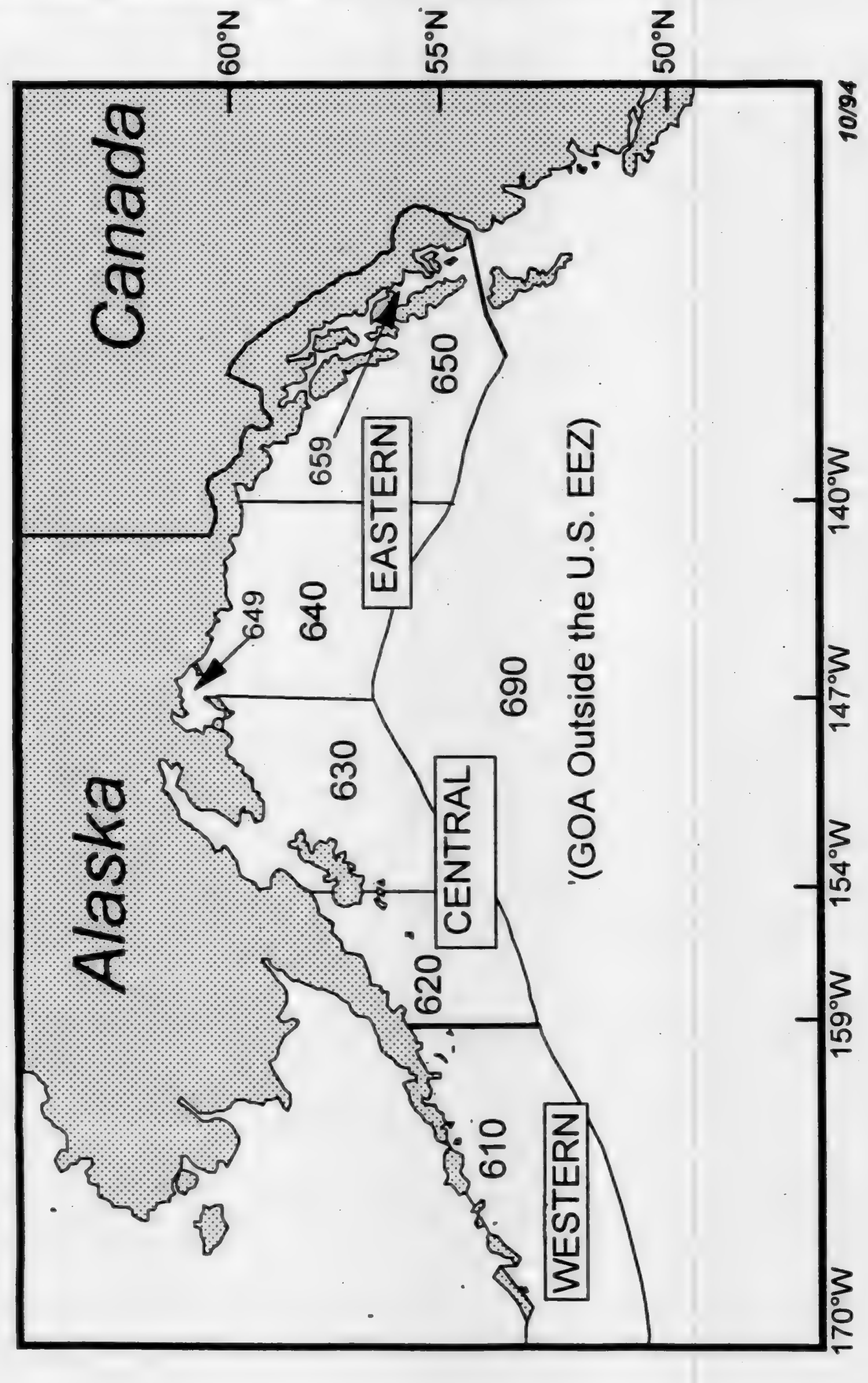

Gulf of Alaska Statistical and Reporting Areas Map

Figure 3a—Gulf of Alaska Statistical and Reporting Areas; Map

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FIGURE 3B.—GULF OF ALASKA STATISTICAL AND REPORTING AREAS; COORDINATES OF REPORTING AREAS

Code	Description
610	*Western Regulatory Area, Shumagin District.* Along the south side of the Aleutian Islands and straight lines between the islands and the Alaska Peninsula connecting the following coordinates in the order listed: 52°49.2′ N, 169°40.4′ W; 52°49.8′ N, 169°06.3′ W; 53°23.8′ N, 167°50.1′ W; 53°18.7′ N, 167°51.4′ W; 53°59.0′ N, 166°17.2′ W; 54°02.9′ N, 166°03.0′ W; 54°07.7′ N, 165°40.6′ W; 54°08.9′ N, 165°38.8′ W; 54°11.9′ N, 165°23.3′ W; 54°23.9′ N, 164°44.0′ W; and southward to the limits of the US EEZ as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass), between 170°00′ W long and 159°00′ W long.
620	*Central Regulatory Area, Chirikof District.* Along the south side of the Alaska Peninsula, between 159°00′ W long and 154°00′ W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).
630	*Central Regulatory Area, Kodiak District.* Along the south side of continental Alaska, between 154°00′ W long and 147°00′ W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
640	*Eastern Regulatory Area, West Yakutat District.* Along the south side of continental Alaska, between 147°00′ W long and 140°00′ W long, and southward to the limits of the US EEZ, as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
649	*Prince William Sound.* Includes those waters of the State of Alaska inside the base line as specified in Alaska State regulations at 5 AAC 28.200.
650	*Eastern Regulatory Area, Southeast Outside District.* East of 140°00′ W long and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 659.
659	*Southeast Inside District.* As specified in Alaska State regulations at 5 AAC 28.105 (a)(1) and (2).
690	*Gulf of Alaska outside the U.S. EEZ* as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).
	Statistical Area. A statistical area is the part of a reporting area contained in the EEZ.

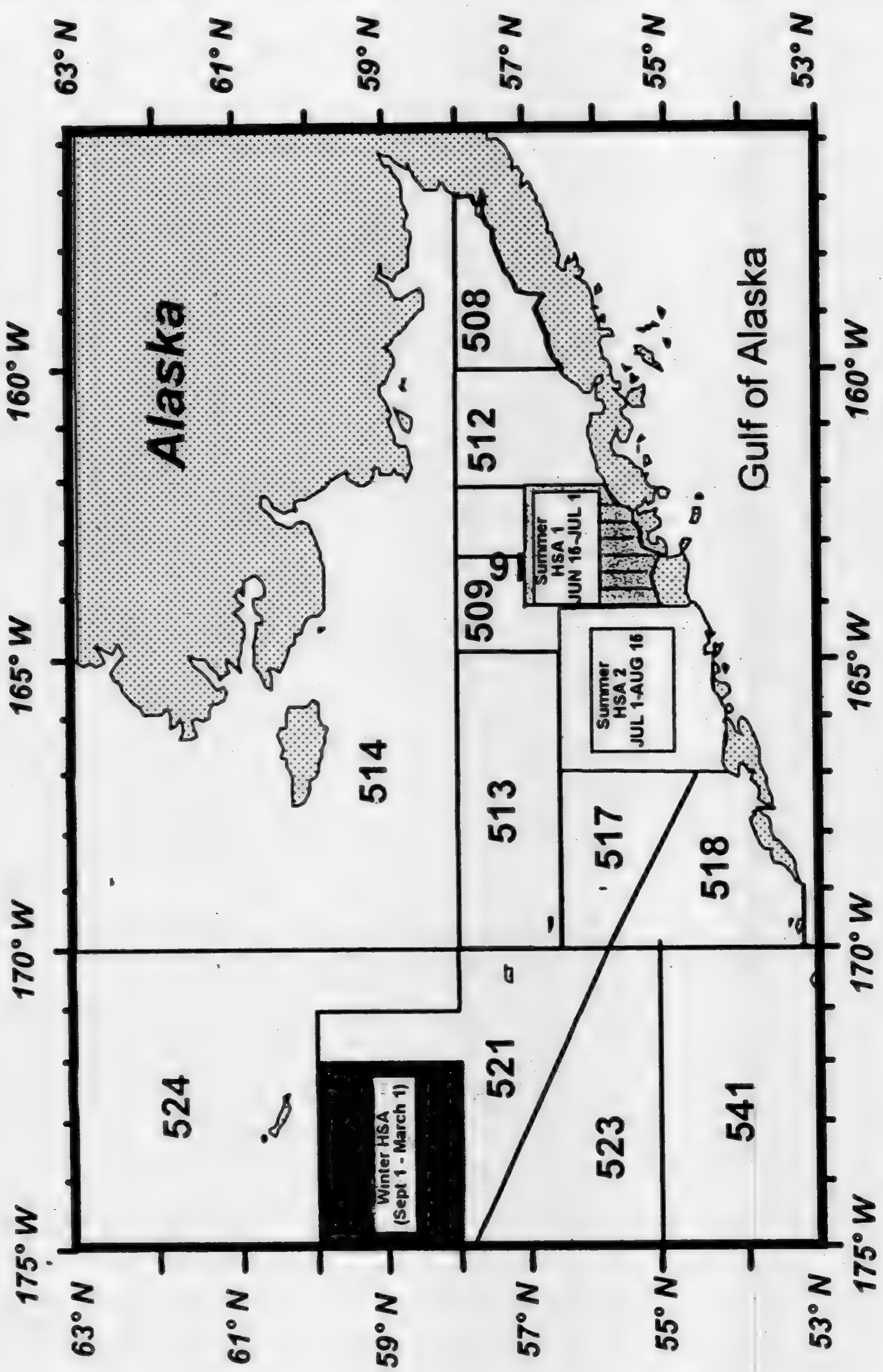
63° N
61° N
59° N
57° N
55° N
53° N
160° W
165° W
170° W
175° W
Alaska
Gulf of Alaska
508
512
509
514
513
517
518
524
521
523
541
Summer HSA 1 JUN 15-JUL 1
Summer HSA 2 JUL 1-AUG 15
Winter HSA (Sept 1 - March 1)

Herring Savings Areas in the BSAI Map

Figure 4a—Herring Savings Areas in the BSAI; Map

BILLING CODE 6560-50-C

FIGURE 4B.—HERRING SAVINGS AREAS IN THE BSAI; COORDINATES

Name	Description and effective date
Summer Herring Savings Area 1	That part of the Bering Sea subarea that is south of 57° N. latitude and between 162° and 164° W. longitude from 1200 hours, A.l.t., June 15 through 1200 hours, A.l.t. July 1 of a fishing year.
Summer Herring Savings Area 2	That part of the Bering Sea subarea that is south of 56°30′ N. latitude and between 164° and 167° W. longitude from 1200 hours, A.l.t., July 1 through 1200 hours, A.l.t. August 15 of a fishing year.
Winter Herring Savings Area	That part of the Bering Sea subarea that is between 58° and 60° N. latitude and between 172° and 175° W. longitude from 1200 hours, A.l.t., September 1 of the current fishing year through 1200 hours, A.l.t. March 1 of the succeeding fishing year.

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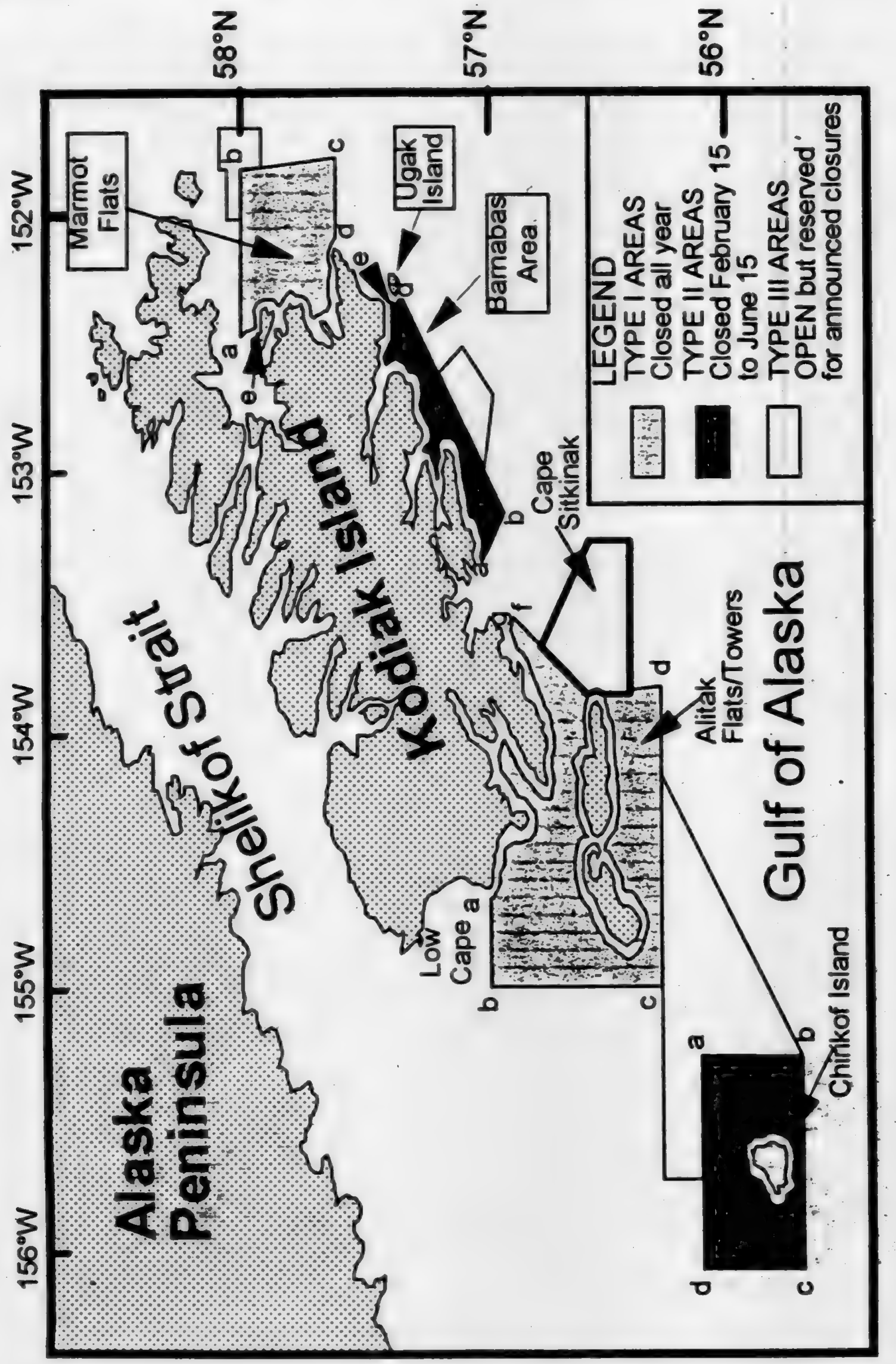
58°N
57°N
56°N
152°W
153°W
154°W
155°W
156°W
Marmot Flats
Ugak Island
Barnabas Area
Cape Sitkinak
Alitak Flats/Towers
Low Cape
Chirikof Island
Kodiak Island
Shelikof Strait
Alaska Peninsula
Gulf of Alaska
LEGEND
TYPE I AREAS Closed all year
TYPE II AREAS Closed February 15 to June 15
TYPE III AREAS OPEN but reserved for announced closures
a
b
c
d
e
f

Kodiak Island Areas Closed to Non-pelagic Trawl Gear Map

Figure 5a—Kodiak Island Areas Closed to Non-pelagic Trawl Gear; Map

BILLING CODE 6560-50-C

FIGURE 5B—KODIAK ISLAND AREAS CLOSED TO NON-PELAGIC TRAWL GEAR; COORDINATES

Name and description of reference area	North latitude/West longitude	Reference point
Alitak Flats and Towers Areas—All waters of Alitak Flats and the Towers Areas enclosed by a line connecting the following 7 points in the order listed:		
a	56°59′4″ 154°31′1″	Low Cape.
b	57°00′0″ 155°00′0″	
c	56°17′0″ 155°00′0″	
d	56°17′0″ 153°52′0″	
e	56°33′5″ 153°52′0″	Cape Sitkinak.
f	56°54′5″ 153°32′5″	East point of Twoheaded Island.
g	56°56′0″ 153°35′5″	Kodiak Island, thence, along the coastline of Kodiak Island until intersection of Low Cape.
a	56°59′4″ 154°31′1″	Low Cape.
Marmot Flats Area—All waters enclosed by a line connecting the following five points in the clockwise order listed:		
a	58°00′0″ 152°30′0″	
b	58°00′0″ 151°47′0″	
c	57°37′0″ 151°47′0″	
d	57°37′0″ 152°10′1″	Cape Chiniak, then along the coastline of Kodiak Island to North Cape.
e	57°54′5″ 152°30′0″	
a	58°00′0″ 152°30′0″	
Chirikof Island Area—All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter-clockwise order listed:		
a	56°07′0″ 155°13′0″	
b	56°07′0″ 156°00′0″	
c	55°41′0″ 156°00′0″	
d	55°41′0″ 155°13′0″	
a	56°07′0″ 155°13′0″	
Barnabas Area—All waters enclosed by a line connecting the following six points in the counter clockwise order listed:		
a	57°00′0″ 153°18′0″	Black Point.
b	56°56′0″ 153°09′0″	
c	57°22′0″ 152°18′5″	South Tip of Ugak Island.
d	57°23′5″ 152°17′5″	North Tip of Ugak Island.
e	57°25′3″ 152°20′0″	Narrow Cape, thence, along the coastline of Kodiak Island.
f	57°04′2″ 153°30′0″	Cape Kasick to.
a	57°00′0″ 153°18′0″	Black Point, including inshore waters.

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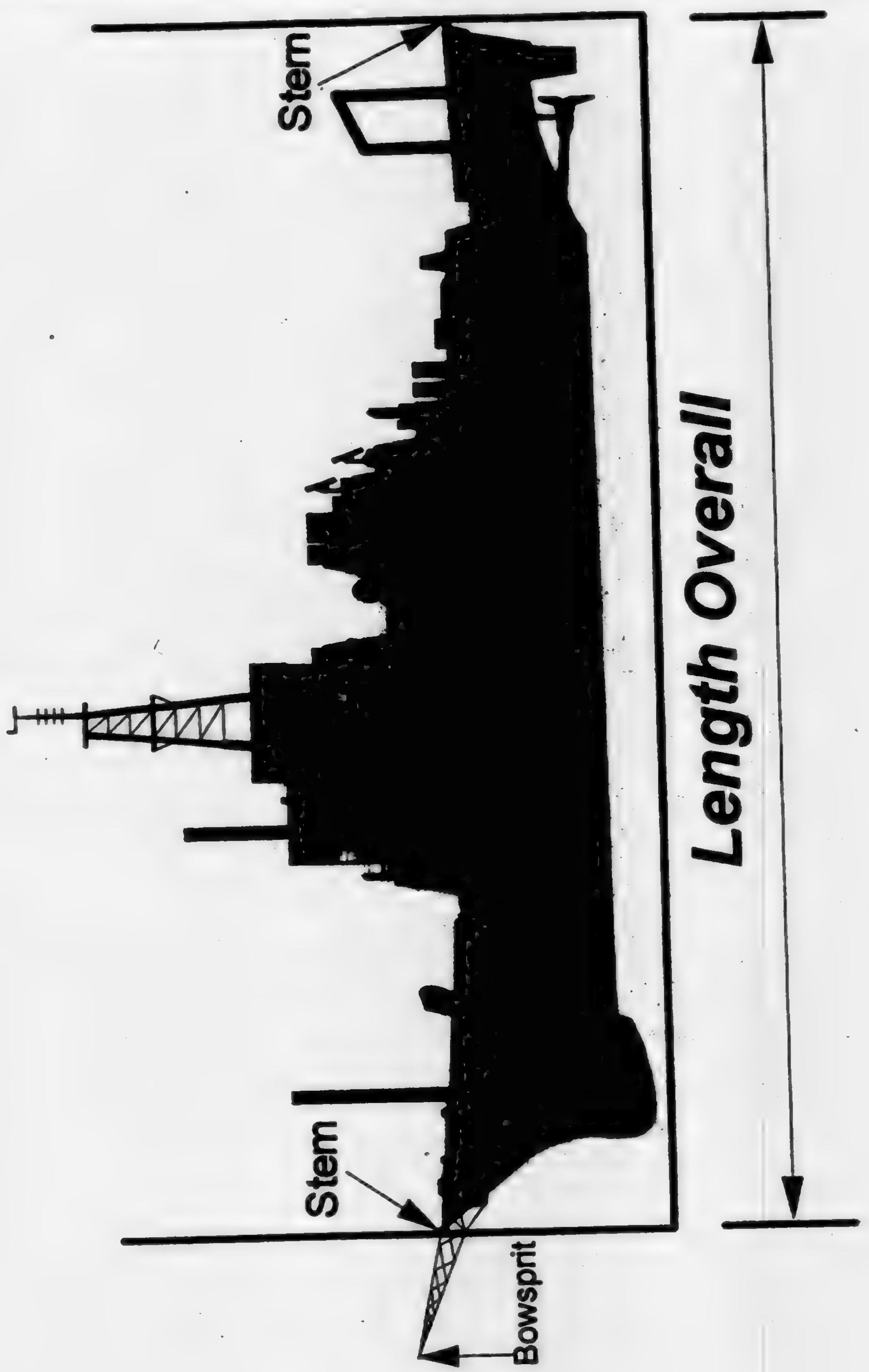
Stem
Length Overall
Stem
Bowsprit

Length Overall of a Vessel

Figure 6—Length Overall of a Vessel

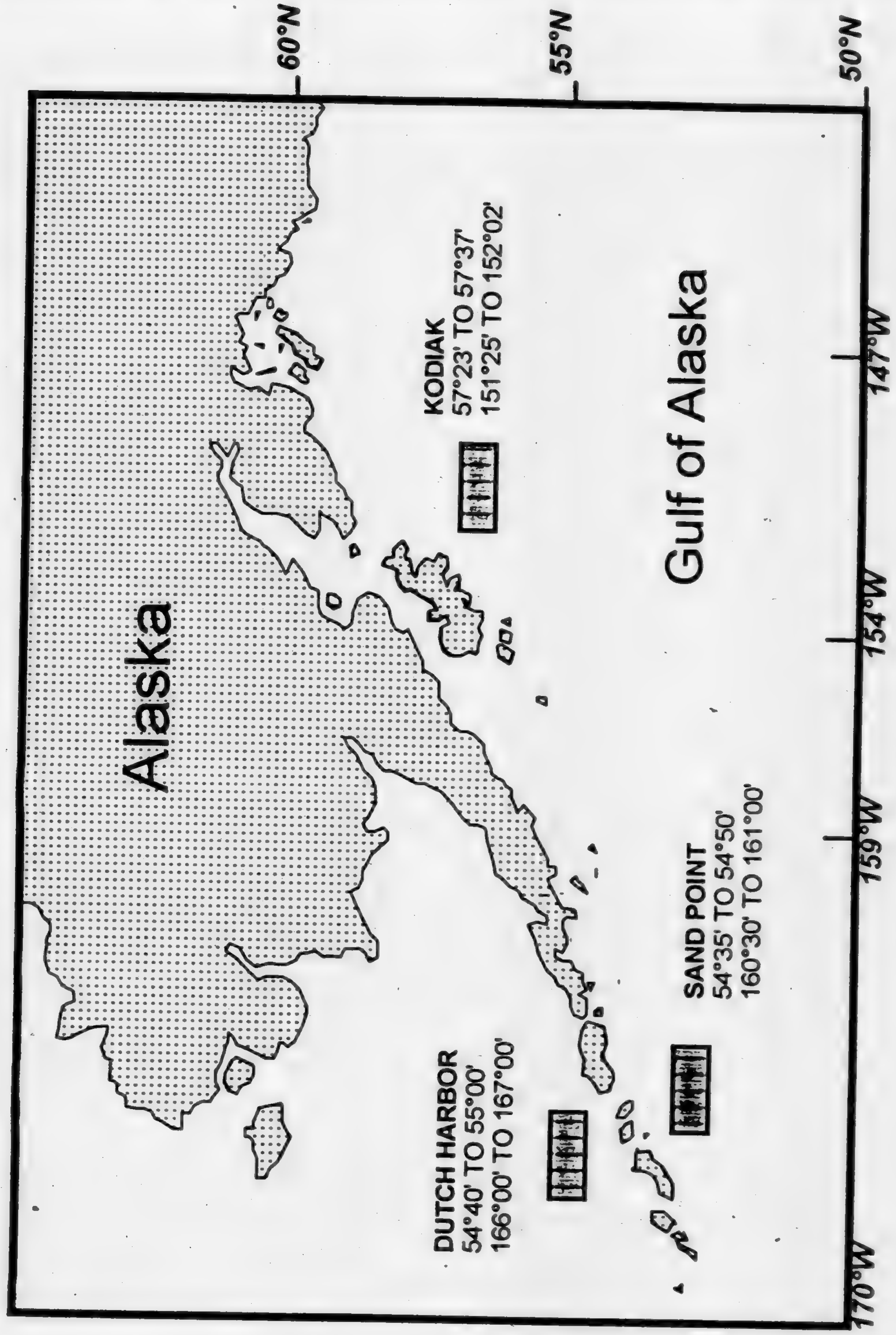
60°N
55°N
50°N
Alaska
Gulf of Alaska
KODIAK
57°23' TO 57°37'
151°25' TO 152°02'
SAND POINT
54°35' TO 54°50'
160°30' TO 161°00'
DUTCH HARBOR
54°40' TO 55°00'
166°00' TO 167°00'
147°W
154°W
159°W
170°W

Location of trawl gear test areas in the GOA and the BSAI

Figure 7—Location of Trawl Gear Test Areas in the GOA and the BSAI

BILLING CODE 6560-50-C

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

13. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

14. In § 675.1, paragraph (a) is revised to read as follows:

§ 675.1 Purpose and scope.

(a) Regulations in this part, along with parts 620, 672, 676, and 677 of this chapter implement the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area.

* * * * *

15. Section 675.2 is revised to read as follows:

§ 675.2 Definitions.

Definitions for this section are located in § 672.2 of this chapter.

16. Section 675.3 is revised to read as follows:

§ 675.3 Relation to other laws.

Regulations for this section are located in § 672.3 of this chapter.

17. Section 675.4 is revised to read as follows:

§ 675.4 Permits.

Fisheries permit requirements for vessels fishing for groundfish in the BSAI are located at § 672.4 of this chapter.

18. Section 675.5 is revised to read as follows:

§ 675.5 Recordkeeping and reporting.

Recordkeeping and reporting requirements regulated under this part and § 672.4 of this chapter are located at § 672.5 of this chapter.

19. In § 675.7, paragraph (a) is revised, and paragraphs (q) and (r) are added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(a) Fish for groundfish in the BSAI with a vessel of the United States that does not have on board a valid permit issued under § 672.4 of this chapter.

* * * * *

(q) Fail to comply with or fail to ensure compliance with requirements at § 672.5 of this chapter.

(r) Use a Catcher Vessel or Catcher/Processor as a Tender Vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

Subpart B—Management Measures

20. In § 675.20, paragraphs (a)(1) and (c)(1) are revised; headings for paragraphs (a)(8) through (a)(12), (d), (j)(1), and (j)(2) are added; heading for paragraph (i)(2) is revised; paragraphs (h)(1) and (h)(3) are amended by revising the words, "Table 1 to this section" to read "Table 11 of part 672," and Table 1 to § 675.20 is removed. The revised and added text reads as follows:

§ 675.20 General limitations.

(a) * * *

(1) *Optimum yield (OY).* The OY for the fishery regulated by this section and by § 611.93 of this chapter is a range of 1.4 to 2.0 million mt for target species and the "other species" category in the BSAI, to the extent this amount can be harvested consistently with this part and part 611 of this chapter, plus the amounts of "non-specified species" taken incidentally to the harvest of target species and the "other species" category. The species categories are defined in Table 1 of the specifications as provided in paragraph (a)(7) of this section.

* * * * *

(8) *Directed fishing allowance.* * * *

(9) *Prohibited species closure.* * * *

(10) *Overfishing closure.* * * *

(11) *JVP or TALFF prohibitions.* * * *

(12) *Factors to be considered.* * * *

* * * * *

(c) * * * (1) Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Oncorhynchus mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp. and *Lithodes* spp.), and Tanner crab (*Chionoecetes* spp.) caught by a vessel regulated under this part while fishing for groundfish in the BSAI, unless retention is authorized by other applicable law, including the Pacific Halibut Fishery Regulations (part 301 of this title).

* * * * *

(d) *Winter Halibut Savings Area.* * * *

* * * * *

(i) * * *

(2) *Fishing trip.* * * *

* * * * *

(j) * * *

(1) *Pollock roe.* * * *

(2) *Primary product.* * * *

* * * * *

21. In § 675.21, headings are added to paragraphs (a)(1) through (a)(6), and (b)(4), to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) * * *

(1) *Red king crab, Zone 1.* * * *

(2) *Tanner crab, Zone 1.* * * *

(3) *Tanner crab, Zone 2.* * * *

(4) *Pacific halibut, trawl.* * * *

(5) *Pacific herring.* * * *

(6) *Pacific halibut, non-trawl.* * * *

(b) * * *

(4) *Bycatch allowances and seasonal apportionments.* * * *

* * * * *

22. In § 675.22, paragraph (a) is revised and headings are added to paragraphs (b) through (f) to read as follows:

§ 675.22 Time and area closures.

(a) *Year-round closures, Area 512.* No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea subarea that is south of 58°00′ N. lat. and between 160°00′ W. long. and 162°00′ W. long. (see Figure 1 of part 672), except as described in paragraph (c) of this section.

(b) *Seasonal closures, Area 516.* * * *

(c) *Partial closures, Area 512.* * * *

(d) *Partial closures, Area 516.* * * *

(e) *Red king crab closures.* * * *

(f) *Walrus Protection Areas.* * * *

* * * * *

23. In § 675.23, paragraph (a) and (d) are revised and headings are added to paragraphs (b) and (c) to read as follows:

§ 675.23 Seasons.

(a) *Fishing year.* Fishing for groundfish in the subareas and statistical areas of the BSAI is authorized from 0001 hours, A.l.t., January 1, through 2359 hours, A.l.t., December 31, subject to the other provisions of this part, except as provided in paragraphs (c) through (e) of this section.

(b) *Time of openings and closures.* * * *

(c) *Directed fishing for arrowtooth flounder and Greenland turbot.* * * *

(d) *Trawl gear prohibition, BSAI.* Notwithstanding other provisions of this part, fishing for groundfish with trawl gear in the BSAI is prohibited from 0001 hours, A.l.t. on January 1, through 1200 hours, A.l.t., January 20.

* * * * *

24. In § 675.24, paragraph (a) is revised; paragraph (e) is removed; paragraphs (f) through (h) are redesignated as paragraphs (e) through (g), respectively; headings are added to paragraphs (c)(1), (c)(2), (c)(3), (d)(1), (d)(2), and newly redesignated paragraphs (f)(2) and (f)(3); the heading for paragraph (b) is revised; and newly designated paragraphs (e) and (f)(4) are revised to read as follows:

§ 675.24 Gear limitations.

(a) *Marking of gear.* (1) All longline marker buoys carried on board or used by vessels regulated under this part shall be marked with at least one of the following:

(i) The vessel's name; and

(ii) The vessel's fisheries permit number; or

(iii) The vessel's registration number.

(2) Marking shall be in characters at least 4 inches (10.2 cm) in height and one-half inch (1.3 cm) in width, in a contrasting color visible above the water line, and shall be maintained in good condition.

(b) *Gear restrictions—pots.*

* * * * *

(c) * * *

(1) *Sablefish.* * * *

(2) *Pollock.* * * *

(3) *Longline pot gear.* * * *

(d) * * *

(1) *Directed fishing closures.* * * *

(2) *PSC closures.* * * *

* * * * *

(e) *Steller sea lion protection areas*—(1) *Bering Sea Subarea and Bogoslof District*—(i) *Year-round closures.* Trawling is prohibited within 10 nm of each of the eight Steller sea lion rookeries shown in Table 4a of part 672 of this title.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15 if adjusted under § 675.20(a)(8), trawling is prohibited within 20 nm of each of the six Steller sea lion rookeries shown in Table 4b of part 672 of this title.

(2) *Aleutian Islands Subarea*—(i) *Year-round closures.* Trawling is prohibited within 10 nm of each of the 19 Steller sea lion rookeries shown in Table 5a of part 672 of this chapter.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15 if adjusted under § 675.20(a)(8), trawling is prohibited within 20 nm of each of the two Steller sea lion rookeries shown in Table 5b of part 672 of this chapter.

(f) *Trawl gear testing areas.* * * *

(2) *Test area conditions.* * * *

(3) *Test area criteria.* * * *

(4) *Bering Sea Testing Area.* Trawl gear testing is allowed in an area (Figure 7 of part 672 of this chapter) bounded by straight lines connecting the following coordinates in the order listed, at all times:

W. longitude	*N. latitude*
167° 00′	55° 00′
166° 00′	55° 00′
166° 00′	54° 40′
167° 00′	54° 40′
167° 00′	55° 00′

* * * * *

25. Section 675.27 is amended by removing table 1 at the end of § 675.27; revising paragraph (d)(2) introductory text and paragraph (g); and by adding headings to paragraphs (a)(1), (a)(2), (c)(1), (c)(2), (e)(1) through (e)(4), and (f)(1) through (f)(3) to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1995).

(a) * * *

(1) Compliance. * * *

(2) Public hearing. * * *

* * * * *

(c) * * *

(1) *Consistent with criteria.* * * *

(2) *Not consistent with criteria.* * * *

(d) *Evaluation criteria.* * * *

(2) Prior to approval of a CDP recommended by the Governor, NMFS will review the Governor's findings to determine that each community that is part of a CDP is listed on Table 7 of part 672 of this chapter or meets the following criteria for an eligible community:

* * * * *

(e) * * *

(1) *Annual reports.* * * *

(2) *Increase in CDQ allocation.* * * *

(3) *Amendment to a CDP.* * * *

(4) *Reaching CDQ allocation.* * * *

(f) * * *

(1) *Recommendation of Governor.* * * *

(2) *Non-compliance.* * * *

(3) *Review of allocation.* * * *

(g) *CDQ fishing requirements.* Recordkeeping and reporting requirements are set out at § 672.5 of this chapter.

* * * * *

PART 675—[AMENDED]

26. Part 675 is amended by removing the heading "Figures—Part 675" and the figures at the end of the part.

[FR Doc. 95–21408 Filed 9–7–95; 8:45 am]

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federal register

Friday
September 8, 1995

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 51

Onions (Bermuda-Granex-Grano) and Other Onions; Grade Standards; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–94–302]

Bermuda-Granex-Grano Type Onions and Onions (Other Than Bermuda-Granex-Grano and Creole Type); Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Bermuda-Granex-Grano Type Onions and United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type). The revision sets a minimum sample size for consumer size packages, provides a "Colossal" size classification and eliminates Export size classifications. It also includes other technical revisions to update the standards in accord with current handling and marketing practices.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2049 South Building, Washington, DC 20090–6456, (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on substantial number of small entities. This final rule for the revision of U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions and U.S. Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type) will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Bermuda-Granex-Grano Type Onions was last revised February 20, 1985, and the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) was last revised October 1, 1971. In general, the Bermuda-Granex-Grano Type (BGG) standard is applied to southern grown onions that have thin papery outer scales, are harvested in the spring and summer and are not typically kept in storage. The Other Than Bermuda-Granex-Grano and Creole Types (Other Than) standard is generally applied to northern grown onions that have thick outer papery scales, are harvested in the fall and are more commonly stored. The major distinction between the two standards for grades of these onions is the lot tolerances; 10 percent for BGG and 5 percent for Other Than. Although separated by type and tolerances, many similarities exist in the grading of these onions. The different types of onions are affected by most of the same defects. The procedures for sampling and performing grading activities are essentially the same regardless of which standard is being applied. The standards were established and have been revised separately over the years to reflect the needs of their respective industries.

A broad spectrum of growers and shippers of onions who utilize both standards, represented by The National Onion Association (NOA), requested that the minimum sample size for consumer size packages be designated at 20 pounds in each standard. While considering the NOA's request the Agency, through a periodic review, decided to take the opportunity to bring the standards into closer uniformity with each other and conformity to current harvesting, handling and marketing practices by proposing additional revisions including a grade for peeled onions, an additional size designation for colossal onions and technical revisions to promote uniformity and clarity wherever possible.

The proposed rule, United States Standards for Grades of Bermuda-Granex Grano Type Onions and United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type), was published in the **Federal Register** on February 16, 1995, (60, FR 8973–8981). The 60 day comment period ended April 17, 1995, and a total of eleven comments were received from six individual growers/packers/shippers, four associations and committees and one from an individual consumer.

Three of these comments, which included two growers/packers/shippers and the NOA, were in full support of the proposal. One commentor expressed that, "Since we market onions of both types, we feel the changes to (the) standard are needed and will make the inspection and marketing of onions much easier." The NOA agreed with the agency's effort to modernize and update the standards because it would encourage improved marketing practices and business conditions for U.S. onion producers, shippers, and handlers. Another comment simply stated agreement with the proposed rule.

Three comments were received which were in general support of the proposed changes but which expressed some disagreement on one or two of the specific revisions.

A grower/packer/shipper suggested that the medium size designation be changed from 2 inch minimum to 2¼ inch minimum and be called large/medium or medium/large. In regards to the new colossal size designation this commentor also stated that "colossal in the trade is generally 4″ and larger not 3¾." Size designations in the standards are not requirements of the grades but provide reasonable guidelines that may be specified in connection with the grades. These guidelines provide the basis for a common trading language. However, industry members may specify any size qualifications they agree to in their contracts. AMS believes that the consolidation of the separate size classifications from each standard into one has achieved the intended purpose of uniformity and clarity. The colossal size designation provides specifications (3¾ inches minimum) that would allow for a lot of onions that are packed to 4 inches minimum yet still maintains a reasonable distinction from the next smaller size designation. Therefore, AMS has decided to leave the sizes as designated in the proposal.

Two produce organization groups sent in identical comments in regards to the proposed U.S. No. 1 Peeled grade. They suggested the grade be substantially rewritten as a "U.S. Peeled grade" and

specified basic requirements, free from defects, free from serious damage defects and other requirements. The comments suggested a grade for peeled onions that was substantially different than the one proposed. Having considered these comments and other comments that give general agreement to the proposal as written or make no specific comment to this issue, AMS has decided to not include the proposed U.S. No. 1 Peeled grade in this standard change. AMS believes further investigation of the need for a peeled onion grade and what requirements would best serve the industry should be undertaken based on these comments.

Two comments were received that addressed specific points they wished to see changed from the proposal.

One grower/packer/shipper commented that "we would like to see the tolerance for decay increased to 4% and total defects allowed to 7% for the other than Bermuda-Grano-Granex type onions. This would save millions of dollars in food claims each year that would go to the farmers and not adversely affect the ultimate return to the receiver with consumer prices eventually falling." The tolerances in the "Other Than" standard have been in place since the inception of the standard in 1920. Changes to the tolerances were not included in the proposed rule because there was no request to do so and AMS saw no need to change that which has been working successfully for the life of this standard. Accordingly, AMS will not be changing any tolerance percentages in this final rule.

A grower/packer/shipper of pearl and boiler onions had some comments in regards to the proposed 20 pound minimum sample size for consumer size packages. In the proposal, Samples for grade and size determination (sections 51.3201 in "BGG" and 51.2839 in "Other Than") states in part "When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are opened to provide at least a twenty pound sample." This commentor pointed out that for the very small pearl or boiler onions which are packed in packages from 10 to 16 ounces this minimum sample size would impose severe hardship. The commentor points out that "the proposed minimum sampling requirement of twenty pounds will necessitate the opening and examination of 32 packages of pearl onions and 20 packages of boiler onions per sample * * * Therefore, for a full semi-trailer load of these consumer size packages, a minimum of 256 packages (approximately *9,600* bulbs) of pearls and a minimum of 160 packages (approximately *3,025* bulbs) of boilers would need to be examined under this proposed sampling requirement. We believe this is an excessively large number of bulbs, and the cost of inspection would be prohibitive." AMS believes that this comment has merit. There would be an unnecessary burden to both industry and the inspection service to sample and inspect as many packages as needed for these smaller size onions under the proposed sampling guidelines. Therefore, AMS has decided to provide an exemption from the 20 pound sample size for onions packed to meet 2¼ inch and smaller maximum size. For these onions the samples may consist of either 20 pounds or the individual package. Samples for grade and size determination will now read: "Individual samples shall consist of at least 20 pounds for onions packed to meet larger than 2¼ inches maximum diameter. When individual packages contain 20 pounds or more and the onions are packed for Large or Jumbo size or larger the package shall be the sample. When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are opened to provide at least a 20 pound sample, except that for onions packed to meet 2¼ inches maximum diameter or smaller, the sample may consist of either 20 pounds or the individual package."

One comment received from a major receiver's association was opposed to the proposal in general. They recommend that AMS retain the existing standards unchanged citing that "Increasing the tolerance of any grade and/or condition factors as well as increasing the defect percentage of any specific grade and/or condition factors or a combination thereof will result in a reduction of the existing quality standards." However, no tolerance changes are included in this standard revision. Further, the revisions to these onion standards are strictly for clarification, uniformity and conformity to current harvesting, handling, and marketing practices. Accordingly, no changes to the proposed standards are being made based on this comment.

Two comments received did not address the provisions of the proposal. One was from an individual consumer and the other was from a grower/packer/shipper.

A copy of the proposed rule was provided to the Agricultural Research Service (ARS) for help in identifying studies, data collection or other information relevant to the possible effect of the proposed revision on pesticide use. ARS reported that they were unable to find much information on the subject. The information that was found by ARS proved not to be relevant.

The Agricultural Marketing Service (AMS) develops and improves standards of quality, condition, grade, and packaging to enhance the marketing of agricultural commodities by fostering consistency in commercial practices. The Agency has determined this final rule will enhance the marketing of onions. The provisions of this final rule are the same as those in the proposed rule except for the changes noted above in response to the comments received, and several minor editorial changes made for clarity.

Accordingly, this revision shall become effective 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and [illegible]tand[illegible] ruits, Nuts, Reporting [illegible]d r[illegible]eeping requiremen[illegible]bles.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In Part 51, Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) is revised to read as follows:

Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types)

Grades

Sec.
51.2830 U.S. No. 1.
51.2831 U.S. Export No. 1.
51.2832 U.S. Commercial.
51.2833 U.S. No. 1 Boilers.
51.2834 U.S. No. 1 Picklers.
51.2835 U.S. No. 2.

Size Classifications

51.2836 Size classifications.

Tolerances

51.2837 Tolerances.

Samples for Grade and Size Determination

51.2838 Samples for grade and size determination.

Application of Tolerances

51.2839 Application of tolerances.

Export Packing Requirements

51.2840 Export packing requirements.

Definitions

51.2841 Mature.
51.2842 Dormant.
51.2843 Fairly firm.

51.2844 Fairly well shaped.
51.2845 Wet sunscald.
51.2846 Doubles.
51.2847 Bottlenecks.
51.2848 Scallions.
51.2849 Damage.
51.2850 Diameter.
51.2851 Badly misshapen.
51.2852 Serious damage.
51.2853 One type.

Metric Conversion Table

51.2854 Metric conversion table.

Subpart—United States Standards for Grades of Onions (Other Than Bermude-Granex-Grano and Creole Types)

Grades

§ 51.2830 U.S. No. 1.

U.S. No. 1 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Fairly firm; and,
(4) Fairly well shaped.
(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles;
(4) Bottlenecks; and,
(5) Scallions.
(c) Free from damage caused by:
(1) Seedstems;
(2) Splits;
(3) Tops;
(4) Roots;
(5) Dry sunken areas;
(6) Sunburn;
(7) Sprouts;
(8) Freezing;
(9) Peeling;
(10) Cracked fleshy scales;
(11) Watery scales;
(12) Dirt or staining;
(13) Foreign matter;
(14) Mechanical;
(15) Translucent scales;
(16) Disease;
(17) Insects; and,
(18) Other means.
(d) For tolerances see § 51.2837.

(e) Size. Unless otherwise specified the diameter shall be not less than 1½ inches, and yellow, brown, or red onions shall have 40 percent or more, and white onions shall have 30 percent or more, by weight, of the onions in any lot 2 inches or larger in diameter.

(f) When a percentage of the onions is specified to be of any certain size or larger, no part of any tolerance shall be allowed to reduce the specified percentage, but individual packages in a lot may have as much as 25 percentage points less than the percentage specified, except that individual packages containing 10 pounds or less shall have no requirements as to percentage of a certain size or larger: *Provided*, that any lot, regardless of package size, shall average within the percentage specified. (See §§ 51.2836 and 51.2837)[1]

§ 51.2831 U.S. Export No. 1.

U.S. Export No. 1 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Dormant;
(4) Fairly firm; and,
(5) Fairly well shaped.
(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles;
(4) Bottlenecks; and,
(5) Scallions.
(c) Free from damage caused by:
(1) Seedstems;
(2) Splits;
(3) Tops;
(4) Roots;
(5) Dry sunken areas;
(6) Sunburn;
(7) Sprouts;
(8) Freezing;
(9) Peeling;
(10) Cracked fleshy scales;
(11) Watery scales;
(12) Dirt or staining;
(13) Foreign matter;
(14) Mechanical;
(15) Translucent scales;
(16) Disease;
(17) Insects; and,
(18) Other means.

(d) Unless otherwise specified onions are packed in accordance with Export Packing Requirements set forth in § 51.2840. (See § 51.2837.)

§ 51.2832 U.S. Commercial.

U.S. Commercial consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Not soft or spongy; and,
(4) Not badly misshapen.
(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles;
(4) Bottlenecks; and,
(5) Scallions.
(c) Free from damage caused by:
(1) Seedstems;
(2) Tops;
(3) Roots;
(4) Dry sunken areas;
(5) Sunburn;
(6) Sprouts;
(7) Freezing;
(8) Cracked fleshy scales;
(9) Watery scales;
(10) Mechanical;
(11) Translucent scales;
(12) Disease;
(13) Insects; and,
(14) Other means.
(d) Free from serious damage caused by:
(1) Staining;
(2) Dirt; and,
(3) Other foreign matter.
(e) For tolerances see § 51.2837.

(f) Size. Unless otherwise specified, the diameter shall be not less than 1½ inches. (See §§ 51.2836 and 51.2837.)

§ 51.2833 U.S. No. 1 Boilers.

U.S. No. 1 Boilers consists of onions which meet all the requirements for the U.S. No. 1 grade except for size. (See § 51.2830.) Size: The diameter of onions of this grade shall be not less than 1 inch nor more than 1⅞ inches. (See § 51.2837.)

§ 51.2834 U.S. No. 1 Picklers.

U.S. No. 1 Picklers consists of onions which meet all the requirements for the U.S. No. 1 grade except for size. (See § 51.2830.) Size: The maximum diameter of onions of this grade shall be not more than 1 inch. (See § 51.2837.)

§ 51.2835 U.S. No. 2.

U.S. No. 2 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) One type;
(2) Mature; and,
(3) Not soft or spongy.
(b) Free from:
(1) Decay;
(2) Wet sunscald; and,
(3) Scallions.
(c) Free from serious damage caused by:
(1) Watery scales;
(2) Dirt or Staining;
(3) Foreign Matter;
(4) Seedstems;
(5) Sprouts;
(6) Mechanical;
(7) Dry sunken areas;
(8) Disease;
(9) Freezing;
(10) Insects; and,
(11) Other means.
(d) For tolerances see § 51.2837.

(e) Size. Unless otherwise specified, the diameter shall not be less than 1½ inches. (See §§ 51.2836 and 51.2837.)

Size Classifications

§ 51.2836 Size classifications.

The size of onions may be specified in accordance with one of the following classifications.

---

[1] Any lot of onions quoted as being of size smaller than 1½ inches minimum, such as "U.S. No. 1, 1¼ inches min." is not required to meet the percentages which shall be 2 inches or larger as specified in the U.S. No. 1 grade.

Size designation	Minimum diameter		Maximum diameter	
	Inches	Millimeters	Inches	Millimeters
Small	1	25.4	2¼	57.2
Repacker/Prepacker [1]	1¾	44.5	3	76.2
Medium	2	50.8	3¼	82.6
Large or Jumbo	3	76.2	(2)	
Colossal	3¾	95.3	(2)	

[1] In addition to the sizes specified, a lot of onions designated as Repacker or Prepacker shall contain at least 60 percent or more 2 inches or larger in diameter.

[2] No requirement.

Tolerances

§ 51.2837 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades the following tolerances, by weight, are provided as specified:

(a) For defects:

(1) *U.S. No. 1, U.S. Export No. 1, U.S. No. 1 Boilers and U.S. No. 1 Picklers grades.*

(i) Not more than 10 percent of the onions in a lot may be damaged by peeling; and,

(ii) Not more than 5 percent of the onions in a lot may be below the remaining requirements of these grades, but not more than two-fifths of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald (see § 51.2839.)

(2) *U.S. Commercial and U.S. No. 2 grades.*

(i) Not more than 5 percent of the onions in a lot may be below the requirements of these grades, but not more than two-fifths of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald. (See § 51.2839.)

(b) For off-size:

(1) *U.S. No. 1, U.S. No. 1 Boilers, U.S. Commercial, and U.S. No. 2 grades.* Not more than 5 percent of the onions in a lot may be below the specified minimum size, and not more than 10 percent may be above any specified maximum size. (See § 51.2839.)

(2) *U.S. No. 1 Pickler grade.* Not more than 10 percent of the onions in a lot may be above the maximum size specified for this grade. (See § 51.2839.)

Samples for Grade and Size Determination

§ 51.2838 Samples for grade and size determination.

Individual samples shall consist of at least 20 pounds for onions packed to meet larger than 2¼ inches maximum diameter. When individual packages contain 20 pounds or more and the onions are packed for Large or Jumbo size or larger the package shall be the sample. When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are opened to provide at least a 20 pound sample, except that for onions packed to meet 2¼ inches maximum diameter or smaller, the sample may consist of either 20 pounds or the individual package.

Application of Tolerances

§ 51.2839 Application of tolerances.

Individual samples are subject to the following limitations:

(a) Samples which contain more than 20 pounds shall have not more than one and one half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent, except that at least one defective and one off-size onion may be permitted in any sample: *Provided*, that en-route or at destination when onions in containers of 50 pounds or more are packed to a minimum size of 3 inches or larger not more than three onions or more than 4 percent (whichever is the larger amount) may be affected by decay or wet sunscald: *And provided further*, that the averages for the entire lot are within the tolerances specified for the grade; and,

(b) Samples which contain 20 pounds or less shall have not more than double the tolerance specified, except that at least one defective and one off-size onion may be permitted in any sample: *Provided*, that the averages for the entire lot are within the tolerances specified for the grade.

Export Packing Requirements

§ 51.2840 Export packing requirements.

Onions specified as meeting Export Packing Requirements shall be packed in containers having a net capacity of 25 kilograms (approximately 56 pounds).

Definitions

§ 51.2841 Mature.

Mature means well cured. Midseason onions which are not customarily held in storage shall be considered mature when harvested in accordance with good commercial practice at a stage which will not result in the onions becoming soft or spongy.

§ 51.2842 Dormant.

Dormant means that at least 90 percent of the onions in any lot show no evidence of growth as indicated by distinct elongation of the growing point or distinct yellow or green color in the tip of the growing point.

§ 51.2843 Fairly firm.

Fairly firm means that the onion may yield slightly to moderate pressure but is not appreciably soft or spongy.

§ 51.2844 Fairly well shaped.

Fairly well shaped means having the shape characteristic of the variety, but onions may be slightly off-type or slightly misshapen.

§ 51.2845 Wet sunscald.

Wet sunscald means sunscald which is soft, mushy, sticky or wet.

§ 51.2846 Doubles.

Doubles means onions which have developed more than one distinct bulb joined only at the base.

§ 51.2847 Bottlenecks.

Bottlenecks are onions which have abnormally thick necks with only fairly well developed bulbs.

§ 51.2848 Scallions.

Scallions are onions which have thick necks and relatively small and poorly developed bulbs.

§ 51.2849 Damage.

Damage means any specific defect described in this section; or any equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the onions. The following specific defects shall be considered as damage:

(a) Seedstems which are tough or woody, or which are more than ¼ inch in diameter;

(b) Splits when onions with two or more hearts are not practically covered by one or more outer scales;

OL
60
SS
1
7
4
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8
995
UMI

(c) Tops when more than 30 percent of the onions in a lot have tops 3 inches or more in length;

(d) New roots when most roots on an individual onion have grown to a length of 1 inch or more in length;

(e) Dry roots when more than 20 percent of the onions in a lot have practically all roots 2 inches or more in length;

(f) Dry sunken areas when the affected areas exceed the equivalent to that of a circle ½ inch in diameter on an onion 2¾ inches in diameter which does not have the outer papery scale covering the affected areas or when the affected areas exceed the equivalent to that of a circle ¾ inch in diameter on an onion 2¾ inches in diameter which has the outer papery scale covering the affected areas. Correspondingly lesser or greater areas are allowed on smaller or larger onions;

(g) Sunburn when more than 33 percent of the onions in a lot have a medium green color on one-third of the surface;

(h) Sprouts when visible, or when concealed within the dry top and more than ¾ inch in length on an onion 2 inches or larger in diameter, or proportionately shorter on smaller onions;

(i) Peeling when more than one-half of the thin papery skin is missing, leaving the underlying fleshy scale unprotected;

(j) Cracked fleshy scales when one or more of the fleshy scales are cracked;

(k) Watery scales when more than the equivalent of the entire outer fleshy scale is affected by an off-color, watersoaked condition. The off-color must be of some shade of brown or yellow;

(l) Dirt, staining or other foreign matter when more than 20 percent of the onions in a yellow, brown or red lot, or more than 15 percent of the onions in a white lot are appreciably stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(m) Mechanical when any cut extends deeper than one fleshy scale, or when any bruise breaks a fleshy scale; and,

(n) Translucent scales when more than the equivalent of two entire outer fleshy scales have a watersoaked condition.

§51.2850 Diameter.

Diameter means the greatest dimension measured at right angles to a straight line running from the stem to the root.

§51.2851 Badly misshapen.

Badly misshapen means that the onion is so misshapen that its appearance is seriously affected.

§51.2852 Serious damage.

Serious damage means any specific defect described in this section; or any equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the onions. The following specific defects shall be considered as serious damage:

(a) Watery scales when more than the equivalent of two entire outer fleshy scales are affected by an off-colored, watersoaked condition. The off-color must be of some shade of brown or yellow;

(b) Dirt, staining or other foreign matter when more than 25 percent of the onions in a lot are badly stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(c) Seedstems when more than ½ inch in diameter;

(d) Sprouts when the visible length is more than ½ inch;

(e) Mechanical when any cut extends deeper than two fleshy scales, or when cuts seriously damage the appearance of the onion; and,

(f) Dry sunken areas when extending deeper than one fleshy scale, or when affecting an area equivalent to that of a circle 1 inch in diameter on an onion 2¾ inches in diameter, or correspondingly lesser or greater areas on smaller or larger onions.

§51.2853 One type.

One type means that the onions are within the same general color category.

Metric Conversion Table

§51.2854 Metric conversion table.

Inches	Millimeters (mm)
⅛	3.2
¼	6.4
⅜	9.5
½	12.7
⅝	15.9
¾	19.1
⅞	22.2
1	25.4
1¼	31.8
1½	38.1
1¾	44.5
2	50.8
2½	63.5
2¾	69.9
3	76.2
3½	88.9
4	101.6

3. In Part 51, Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions is revised to read as follows:

Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions

Grades

Sec.
51.3195 U.S. No. 1.
51.3196 U.S. Combination.
51.3197 U.S. No. 2.

Size Classifications

51.3198 Size classifications.

Tolerances

51.3199 Tolerances.

Samples for Grade and Size Determination

51.3200 Samples for grade and size determination.

Application of Tolerances

51.3201 Application of tolerances.

Definitions

51.3202 Similar varietal characteristics.
51.3203 Mature.
51.3204 Fairly firm.
51.3205 Fairly well shaped.
51.3206 Wet sunscald.
51.3207 Doubles.
51.3208 Bottlenecks.
51.3209 Damage.
51.3210 Serious damage.
51.3211 Diameter.

Metric Conversion Table

51.3212 Metric conversion table.

Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions

Grades

§51.3195 U.S. No. 1.

U.S. No. 1 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Fairly firm; and,
(4) Fairly well shaped.
(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles; and,
(4) Bottlenecks.
(c) Free from damage caused by:
(1) Seedstems;
(2) Splits;
(3) Dry sunken areas;
(4) Sunburn;
(5) Sprouting;
(6) Staining;
(7) Dirt or foreign material;
(8) Mechanical;
(9) Tops;
(10) Roots;
(11) Translucent scales;
(12) Watery scales;
(13) Moisture;
(14) Disease;
(15) Insects; and,
(16) Other means.

(d) For size and tolerances see §§ 51.3198 and 51.3199.

§51.3196 U.S. Combination.

U.S. Combination consists of a combination of U.S. No. 1 and U.S. No. 2 onions: *Provided*, That at least 50 percent, by weight, of the onions in each lot meet the requirements of U.S. No. 1 grade. (See §§ 51.3198 and 51.3199.)

§51.3197 U.S. No. 2.

U.S. No. 2 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics; and,
(2) Not soft or spongy.
(b) Free from:
(1) Decay;
(2) Wet sunscald; and,
(3) Bottlenecks.
(c) Free from serious damage caused by:
(1) Seedstems;
(2) Dry sunken areas;
(3) Sprouting;
(4) Staining;
(5) Dirt or other foreign material;
(6) Mechanical;
(7) Watery scales;
(8) Insects;
(9) Disease; and,
(10) Other means.
(d) For size and tolerances see §§ 51.3198 and 51.3199.

Size Classifications

§51.3198 Size classifications.

Size shall be specified in connection with the grade in terms of minimum diameter, range in diameter, minimum diameter with a percentage of a certain size or larger, or in accordance with one of the size classifications listed below: *Provided*, that unless otherwise specified, onions shall not be less than 1½ inches in diameter, with 60 percent or more 2 inches or larger in diameter.

Size designation	Minimum diameter		Maximum diameter	
	Inches	Millimeters	Inches	Millimeters
Small	1	25.4	2¼	57.2
Repacker/Prepacker[1]	1¾	44.5	3	76.2
Medium	2	50.8	3¼	82.6
Large or Jumbo	3	76.2	(2)	....
Colossal	3¾	95.3	(2)	....

[1] In addition to the sizes specified, a lot of onions designated as Repacker or Prepacker shall contain at least 60 percent or more 2 inches or larger in diameter.

[2] No requirement.

Tolerances

§51.3199 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades the following tolerances, by weight, are provided as specified:

(a) For defects:

(1) *U.S. No. 1 and U.S. No. 2 grades.* Not more than 10 percent of the onions in a lot may fail to meet the requirements of these grades, but not more than one-fifth of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald.

(2) *U.S. Combination grade.* When applying the foregoing tolerances to this grade no part of any tolerance shall be allowed to reduce, for the lot as a whole, the 50 percent of onions of the U.S. No. 1 grade, but individual containers shall have not less than 40 percent of the U.S. No. 1 grade.

(b) For size:

(1) Not more than 5 percent of the onions in a lot may be smaller than the minimum diameter specified. In addition, not more than 10 percent of the onions in a lot may be larger than the maximum diameter specified.

(2) When a percentage of the onions is specified to be a certain size and larger, individual packages containing more than 10 pounds may have not less than one-half of the percentage specified: *Provided*, that the entire lot averages within the percentage specified.

Samples for Grade and Size Determination

§51.3200 Samples for grade and size determination.

Individual samples shall consist of at least 20 pounds for onions packed to meet larger than 2¼ inches maximum diameter. When individual packages contain 20 pounds or more and the onions are packed for Large or Jumbo size or larger the package shall be the sample. When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are opened to provide at least a 20 pound sample, except that for onions packed to meet 2¼ inches maximum diameter or smaller, the sample may consist of either 20 pounds or the individual package.

Application of Tolerances

§51.3201 Application of tolerances.

Individual samples are subject to the following limitations:

(a) Samples which contain more than 20 pounds shall have not more than one and one half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent, except that at least one defective and one off-size onion may be permitted in any sample: *Provided*, that en-route or at destination when onions in containers of 50 pounds or more are packed to a minimum size of 3 inches or larger not more than three onions or more than 4 percent (whichever is the larger amount) may be affected by decay or wet sunscald: *And provided further*, that the averages for the entire lot are within the tolerances specified for the grade; and,

(b) Samples which contain 20 pounds or less shall have not more than double the tolerance specified, except that at least one defective and one off-size onion may be permitted in any sample: *Provided*, that the averages for the entire lot are within the tolerances specified for the grade.

Definitions

§51.3202 Similar varietal characteristics.

Similar varietal characteristics means that the onions in any container are similar in color, shape and character of growth.

§51.3203 Mature.

Mature means that the onion is fairly well cured, and at least fairly firm.

§51.3204 Fairly firm.

Fairly firm means that the onion may yield slightly to moderate pressure but is not appreciably soft or spongy.

§51.3205 Fairly well shaped.

Fairly well shaped means that the onion shows the characteristic shape, not appreciably three-, four- or five-sided, thick necked or badly pinched.

§51.3206 Wet sunscald.

Wet sunscald means any sunscald which is soft, mushy, sticky or wet.

§51.3207 Doubles.

Doubles means onions which have developed more than one distinct bulb joined only at the base.

§51.3208 Bottlenecks.

Bottlenecks means onions which have abnormally thick necks with only fairly well developed bulbs.

§51.3209 Damage.

Damage unless otherwise specifically defined in this section, means any defect which materially affects the appearance, or the edible or shipping quality of the onions. Any one of the following defects, or combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(a) Seedstems which are tough or woody, or which are more than ¼ inch in diameter;

(b) Splits when well cured onions are not practically covered by an outer scale, or when fairly well cured onions are not completely covered by one outer scale;

(c) Dry sunken areas when the affected areas exceed the equivalent to that of a circle ½ inch in diameter on an onion 2¾ inches in diameter which does not have the outer papery scale covering the affected areas or when the affected areas exceed the equivalent to that of a circle ¾ inch in diameter on an onion 2¾ inches in diameter which has the outer papery scale covering the affected areas. Correspondingly lesser or greater areas are allowed on smaller or larger onions;

(d) Sunburn when dark green in color and affecting an area equivalent to that of a circle 1 inch in diameter on an onion 2¾ inches in diameter or correspondingly smaller or larger areas on smaller or larger onions, or when medium to light green in color and affecting more than 10 percent of the surface of the onion;

(e) Sprouting when any sprout is visible, or when concealed within the neck scales and are more than ¾ inch in length on an onion 2 inches or larger in diameter, or proportionately shorter on smaller onions;

(f) Staining, dirt or other foreign material when more than 20 percent of the onions in a yellow, brown or red lot, or more than 15 percent of the onions in a white lot are appreciably stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(g) Mechanical when any cut extends deeper than one fleshy scale, or when any bruise breaks a fleshy scale;

(h) Tops when more than 30 percent of the onions in a lot have tops 3 inches or more in length;

(i) New roots when most roots on an individual onion have grown to a length of 1 inch or more;

(j) Dry roots when practically all roots are 2 inches or more in length;

(k) Translucent scales when more than the equivalent of two entire outer fleshy scales have a watersoaked condition; and,

(l) Watery scales when more than the equivalent of the entire outer fleshy scale is affected by an off-color, watersoaked condition. The off-color must be of some shade of brown or yellow.

§51.3210 Serious damage.

Serious damage unless otherwise specifically defined in this section, means any defect which seriously affects the appearance, or the edible or shipping quality of the onions. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(a) Seedstems when more than ½ inch in diameter;

(b) Dry sunken areas when extending deeper than one fleshy scale, or when affecting an area equivalent to that of a circle 1 inch in diameter on an onion 2¾ inches in diameter, or correspondingly lesser or greater areas on smaller or larger onions;

(c) Sprouting when any visible sprout is more than ½ in length;

(d) Staining, dirt or foreign material when more than 25 percent of the onions in any lot are badly stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(e) Mechanical when any cut extends deeper than two fleshy scales, or when cuts seriously damage the appearance of the onion; and,

(f) Watery scales when more than the equivalent of two entire outer fleshy scales are affected by an off-colored, watersoaked condition. The off-color must be of some shade of brown or yellow.

§51.3211 Diameter.

Diameter means the greatest dimension of the onion at right angles to a line running from the stem to the root.

Metric Conversion Table

§51.3212 Metric conversion table.

Inches	Millimeters *(mm)
⅛	3.2
¼	6.4
⅜	9.5
½	12.7
⅝	15.9
¾	19.1
⅞	22.2
1	25.4
1¼	31.8
1½	38.1
1¾	44.5
2	50.8
2½	63.5
2¾	69.9
3	76.2
3½	88.9
4	101.6

Dated: September 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–22281 Filed 9–7–95; 8:45 am]

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federal register

Friday
September 8, 1995

Part V

Department of Labor

Employment and Training Administration

Department of Education

Office of Vocational and Adult Education; School-to-Work Opportunities; Local Partnership Grants; Application Procedures; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; School-to-Work Opportunities; Local Partnership Grants; Application Procedures

AGENCIES: Employment and Training Administration, Department of Labor; Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of availability of funds, solicitation for grant application (SGA), an administrative cost cap, a definition of administrative costs, and final selection criteria for School-to-Work Opportunities Local Partnership Grants.

SUMMARY: This notice announces the fiscal year (FY) competition for Local Partnership Grants authorized under Title III of the School-to-Work Opportunities Act of 1994 (the Act). This notice contains all of the necessary information and forms needed to apply for grant funding in FY 1995. The Departments also establish final selection criteria to be used in evaluating applications submitted under the Local Partnership Grants competition in FY 1995 and in succeeding years. The Departments also establish a definition for the term "administrative costs," as well as a 10 percent cap on administrative costs incurred by local partnerships receiving grants under Title III of the Act.

DATES: Applications for grant awards will be accepted commencing September 8, 1995. The closing date for receipt of applications is November 7, 1995, at 2 p.m. (Eastern time) at the following address. Telefacsimile (FAX) applications will NOT be accepted.

ADDRESSES: Applications must be mailed to: U.S. Department of Education, Application Control Center, Attention: CFDA #278C, Washington, D.C. 20202–4725.

FOR FURTHER INFORMATION CONTACT: Maria Kniesler, National School-to-Work Office. Telephone: (202) 401–6222. (This is not a toll-free number). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Section A. Background

The Departments of Labor and Education are reserving funds appropriated for FY 1995 under Pub. L. 103–329 (the Act) for a competition for Local Partnership Grants authorized under Title III of the Act. In accordance with the authority provided in section 5 of the Act, the Departments have determined that the administrative provisions contained in the Education Department General Administrative Regulations (EDGAR) at 34 CFR Parts 74, 75, 77, 79, 80, 82, 85 and 86, will apply to grants awarded to local partnerships under this competition.

This notice contains a definition of the term "administrative costs," a 10 percent cap on administrative costs incurred by local partnerships receiving grants under Title III, and the selection criteria that will be used in evaluating applications submitted in response to this year's competition, and all of the other necessary information and forms needed to apply for grant funding.

Section B. Purpose

Under this competition, the Departments will award grants to local partnerships that have built a sound planning and development base for their school-to-work programs, to begin implementation of School-to-Work Opportunities initiatives that will become part of statewide School-to-Work Opportunities systems. These local initiatives will offer young Americans access to programs designed to prepare them for first jobs in high-skill, high-wage careers, and to increase their opportunities for further education and training.

Section C. Application Process

1. Eligible Applicants

A local entity that meets the definition of "local partnership" in section 4(11) of the Act, is eligible to apply for a Local Partnership Grant. However, local partnerships that are located in the eight States that were awarded School-to-Work Opportunities State Implementation Grants in 1994 are not eligible to apply for a Local Partnership Grant under this competition. These eight States are: Maine, Massachusetts, New York, New Jersey, Kentucky, Wisconsin, Michigan, and Oregon. In addition, it should be noted that local partnerships located in States that are slated to receive School-to-Work Opportunities State Implementation Grants in 1995 are eligible to apply for grants under this competition.

As defined in the Act, an eligible partnership must include employers, representatives of local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools, where applicable), local educators, representatives of labor organizations or nonmanagerial employee representatives, and students. Other entities appropriate to effective implementation of a local School-to-Work Opportunities initiative should also be included in the partnership.

Under section 302(a) of the Act a local partnership is eligible to receive only one (1) Local Partnership Grant.

2. State Comments

The local partnership must submit its application to the State for review and comment before submitting the application to the Departments, in accordance with section 303(a) of the Act. The application should be submitted to the State's School-to-Work Contact. A list of State School-to-Work Contacts is included in Appendix D of this notice. The Departments expect that the State School-to-Work Contact will provide all members of the State School-to-Work Partnership listed in section 213(b)(4)(A)-(K) of the Act, an opportunity to review and comment on the local partnership's application.

Of particular importance to the Departments are each State's comments on the consistency of the local partnership's planned activities with the State's plan for a comprehensive statewide School-to-Work Opportunities system and the relationship of any proposed activities with other local plans, especially if the grant applicant is not specifically identified as a local partnership within the State system.

In accordance with section 305 of the Act, if a State has an approved State School-to-Work Opportunities plan, the State must confirm that the plan submitted by the local partnership is in accordance with the State plan. The application from the local partnership must contain this confirmation.

Section 303(b)(1) of the Act requires each State to review and comment on a local partnership's application within 30 days from the date on which the State receives the application from the local partnership. Therefore, even though applicants have 60 days to apply for a Local Partnership Grant under this notice, they must provide their application to their State in time for the State to have at least 30 days before the due date to review and comment on their application.

Furthermore, under section 303(c)(2) of the Act, the State's comments must be included in the local partnership's application. However, if the State does not provide review and comment within the 30-day time period described above, the local partnership may submit the application without State comment. In such a case, the local partnership should provide proof that the State received a copy of the local partnership's application at least 30 days prior to the application due date.

3. Period of Performance

The period of performance for Local Partnership Grants is twelve months from the date of award by the Departments.

4. Option to Extend

Local Partnership Grants may be extended up to four additional years, but not beyond the second year of a School-to-Work Opportunities State Implementation Grant for the State in which the partnership is located. Extensions will be based upon availability of funds and the progress of the local partnership towards its objectives as approved in its application and will be subject to the annual approval of the Secretaries of Labor and Education (the Secretaries). It is likely that the amount of Federal funds, if any, that are awarded to local partnerships under this notice in subsequent years will decrease.

5. Available Funds

Approximately $15 million is available for this competition.

6. Estimated Range of Awards

The amount of an award under this competition will depend upon the scope, quality, and comprehensiveness of the proposed initiative and the relative size of the community to be served by the local partnership.

The Departments expect that first-year grant amounts will be about $200,000 for areas with populations under 250,000; $200,000 to $300,000 for areas with populations of 250,000 to 499,999; $300,000 to $500,000 for areas with populations of 500,000 to 749,999; $500,000 to $700,000 for areas with populations of 750,000 to 999,999; $700,000 to $1,000,000 for areas with populations of 1,000,000 to 1,499,999; and upwards of $1,500,000 for areas with populations of 1,500,000 or more. These ranges are provided to assist applicants in developing plans. The exact amounts awarded may exceed or be less than the amounts reflected in these ranges.

7. Estimated Number of Awards

The Departments expect to award 25–35 grants under this competition.

Note: The Departments are not bound by any estimates in this notice.

8. Reporting Requirements/Deliverables

(a) Reporting Requirements

The local partnership will be required, at a minimum, to submit—

- Quarterly Financial Reports (SF 269–A);
- Quarterly Narrative Progress Reports;
- An Annual Continuation Application package, if appropriate, including—
- A revised SF–524 and renewed Assurances and Certifications;
- A narrative report describing progress toward stated goals, and identifying goals and objectives for the coming year;
- Annual financial reports (ED Form 524B, and SF 269);
- Budget Information for Upcoming Years;
- An Annual Performance Report providing data on performance measures; and
- A close-out report at the end of the grant.

(b) Deliverables

The local partnership will be required to—

- Provide information on best practices and innovative school- and work-based curricula suitable for dissemination to States and other stakeholders;
- Participate in two grantee meetings per year sponsored by the National School-to-Work Office;
- Act as a host to outside visitors who are interested in developing and implementing School-to-Work Opportunities initiatives and to other visitors interested in the replication, adaptation or impact of successful program elements; and
- Participate as needed in evaluation and special data collection activities.

9. Application Transmittal Instructions

An application for an award must be mailed or hand-delivered by the closing date.

(A) Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention CFDA # 278C, 600 Independence Avenue, S.W., Washington, D.C 20202–4725.

An application must show proof of mailing consisting of one of the following:

- A legibly dated U.S. Postal Service Postmark.
- A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- A dated shipping label, invoice, or receipt from a commercial carrier.
- Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

- A private metered postmark.
- A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

(B) Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays and Federal Holidays.

Individuals delivering applications must use the D Street entrance. Proper identification is necessary in order to enter the building.

In order for an application sent through a courier service to be considered timely, the courier service must be in receipt of the application on or before the closing date.

Section D. Organization and Content of Applications

Applicants are encouraged to submit an original and four copies of their application. The Departments suggest that the application be divided into five distinct parts: budget and certifications, abstract, State comments, program narrative and appendices. To ensure a comprehensive and expedient review, the Departments strongly suggest that applicants submit an application formatted as seen below:

Table of Contents

I. Budget and Certifications

Part I should contain the Standard Form SF 424, "Application for Federal Assistance," and SF 524, "Budget." All copies of the SF 424 must have original signatures of the designated fiscal agent. In addition, the budget should include—on a separate page or pages—a detailed cost breakout of each line item on SF 524. All assurances and certifications included in this notice should also be included in Part I of the application.

II. Abstract

Part II should consist of a one-page abstract summarizing the essential components and key features of the local partnership's plan.

III. State Comments

Part III should contain the State's comments on the application. Details on this section can be found under State Comments heading of this notice.

IV. Program Narrative

Part IV should contain the application narrative that demonstrates the applicant's plan and capabilities in accordance with the selection criteria contained in section F of this notice. In order to assist applicants in the preparation of their applications and to facilitate expeditious evaluation by the panel, applicants should describe their proposed plan in light of each of the selection criteria. No cost data or reference to price should be included in this part of the application. The Departments strongly request that applicants limit the program narrative section to no more than 40 one-sided, double-spaced pages.

V. Appendices

All applicable appendices, including letters of support, resumes and organizational charts, should be included in this section. The Departments recommend that all appendix entries cross-reference the applicable sections in the program narrative.

Note: Applicants are advised that the peer review panels evaluate each application solely on the basis of the selection criteria contained in this notice, and the School-to-Work Opportunities Act. Appendices may be used to provide supporting information. However, in scoring applications, reviewers are required to take into account only information that is presented in the application narrative, which must address the selection criteria, and requirements of the Act. Letters of support are welcome, but applicants should be aware that support letters contained in the application will strengthen the application only if they contain commitments that pertain to the selection criteria.

Section E. Safeguards

The Departments will apply certain safeguards, as required under section 601 of the Act, to School-to-Work Opportunities programs funded under this notice. The application must include a brief assurance that the following safeguards will be implemented and maintained throughout all program activities:

(a) No student shall displace any currently employed worker (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits).

(b) No School-to-Work Opportunities program shall impair existing contracts for services or collective bargaining agreements, and no program funded under this notice shall be undertaken without the written concurrence of the labor organization and employer concerned.

(c) No student shall be employed or fill a job—

(1) When any other individual is on temporary layoff, with the clear possibility of recall, from the same or any substantially equivalent job with the participating employer; or

(2) When the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created with the student.

(d) Students shall be provided with adequate and safe equipment and safe and healthful workplaces in conformity with all health and safety requirements of Federal, State, and local law.

(e) Nothing in the Act shall be construed so as to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, ethnicity, national origin, gender, age, or disability.

(f) Funds awarded under the Act shall not be expended for wages of students or workplace mentors.

(g) The grantee shall implement and maintain such other safeguards as the Secretaries may deem appropriate in order to ensure that School-to-Work Opportunities participants are afforded adequate supervision by skilled adult workers, or to otherwise further the purposes of the Act.

Section F. Waivers

Under Title V of the Act the Secretaries may waive certain Federal requirements that impede the ability of a State or local partnership to carry out the purposes of the Act. Only local partnerships in States with approved School-to-Work Opportunities plans may apply for waivers. A local partnership that seeks a waiver should contact its State School-to-Work Contact to determine what documentation is required and to whom it should be sent.

In May, 1995, the National School-to-Work Opportunities Office issued a document entitled "School-to-Work Opportunities Waiver and Plan Approval Process Questions and Answers." This document was sent to every Governor and State School-to-Work Contact. The document contains answers to many of the questions that localities may have when preparing their waiver requests. Local Partnerships interested in applying for waivers should contact the National School-to-Work Opportunities Office or their State School-to-Work Contact for a copy of the waivers document.

Section G. Bidders' Conferences

Bidders' Conferences for interested School-to-Work Opportunities Local Partnership representatives are scheduled from 1:00 p.m. to 4:00 p.m., on the dates and locations listed below:

- September 15, 1995, Bartle Hall, 13th and Broadway, Room 2210, Kansas City, Missouri 64106.
- September 18, 1995, Jackson Federal Building, 915 2nd Avenue, North and South Auditorium, 4th Floor, Seattle, Washington 98174.

Participants at the conferences will receive a detailed description of the School-to-Work Opportunities Act, and the selection criteria and how they will be applied, and will have the opportunity to ask questions of Federal School-to-Work officials.

All partnerships must preregister by faxing the names and addresses of up to three members of the local partnership planning to attend, the name of the local partnership, and a phone number to: Kevin Shelton, Training and Technical Assistance Corporation, 2409 18th, NW., Washington, DC; FAX #: (202) 408–8282.

Questions regarding the solicitation may be submitted in advance. If you are unable to attend the Bidders' Conference, but would like the conference materials and a conference transcript, submit your request via fax to the fax number listed above. All information must be submitted no later than September 13, 1995. Conferees will be sent a confirmation along with hotel accommodation information once their registration has been received.

Local Partnership Grant Competition

Analysis of Comments and Changes

On May 25, 1995, the Departments of Labor and Education published a notice containing proposed selection criteria, a 10 percent cap on administrative costs, and a definition of the term "administrative costs" for this competition and competitions in succeeding years in the **Federal Register** (60 FR 27812–27814). In response to the invitation to comment, 34 parties submitted comments. An analysis of the comments received in response to the publication of that notice and of the changes made to the selection criteria, administrative cost cap, and definition

since publication of the notice of proposed selection criteria and proposed definition, is published as an appendix to this notice.

School-to-Work Local Partnership Grants— Administrative Cost Cap

The Departments are applying the 10 percent cap on administrative costs contained in section 215(b)(6) of the Act to local partnerships receiving grants directly under this competition. Section 215(b)(6) of the Act applies the 10 percent administrative cap to subgrants received by local partnerships from a State. The Departments have concluded that applying the 10 percent cap to local partnerships under Title III of the Act is consistent with the Act's intent and its broader limitations on administrative costs. Further, this limitation is consistent with section 305 of Title III, which requires conformity between School-to-Work Opportunities plans of local partnerships and State School-to-Work Opportunities plans.

Definition

All definitions in the Act apply to local School-to-Work Opportunities systems funded under this and future Local Partnership Grant competitions. Since the Act does not contain a definition of the term "administrative costs" as used in section 217 of the Act, the Departments will apply the following definition to this and future competitions for Local Partnership Grants.

The term "administrative costs" means the activities of a local partnership that are necessary for the proper and efficient performance of its duties under the Local Partnership Grant pursuant to the School-to-Work Opportunities Act and that are not directly related to the provision of services to participants or otherwise allocable to the program's allowable activities listed in section 215(b)(4) and section 215(c) of the Act. Administrative costs may be either personnel or non-personnel costs, and may be either direct and indirect. Costs of administration include those costs that are related to this grant in such categories as—

A. Costs of salaries, wages, and related costs of the grantee's staff engaged in—

- Overall system management, system coordination, and general administrative functions;
- Preparing program plans, budgets, and schedules, as well as applicable amendments;
- Monitoring of local initiatives, pilot projects, subrecipients, and related systems and processes;
- Procurement activities, including the award of specific subgrants, contracts, and purchase orders;
- Developing systems and procedures, including management information systems, for ensuring compliance with the requirements under the Act;
- Preparing reports and other documents related to the Act; and
- Coordinating the resolution of audit findings;

B. Costs for goods and services required for administration of the School-to-Work Opportunities system;

C. Costs of system-wide management functions; and

D. Travel costs incurred for official business in carrying out grants management or administrative activities.

Selection Criteria

Under the School-to-Work Opportunities Local Partnership Grant competition, the Departments will use the following selection criteria in evaluating applications and will utilize a peer review process in which review teams, including peers, will evaluate applications using the selection criteria and the associated point values. The Departments will base final funding decisions on the ranking of applications as a result of the peer review, and such other factors as replicability, sustainability, innovation, geographic balance, and diversity of system approaches.

Selection Criterion 1: Comprehensive Local School-to-Work Opportunities System (40 Points)

Considerations: In applying this criterion, reviewers will consider—

A. *20 Points.* The extent to which the partnership has designed a comprehensive local School-to-Work Opportunities plan that—

- Includes effective strategies for integrating school-based and work-based learning, integrating academic and vocational education, and establishing linkages between secondary and postsecondary education;
- Is likely to produce systemic change that will have substantial impact on the preparation of all students for a first job in a high-skill, high-wage career and in increasing their opportunities for further learning;
- Ensures all students will have a full range of options, including options for higher education, additional training and employment in high-skill, high-wage jobs;
- Ensures coordination and integration with existing school-to-work programs, and with related programs financed from State and private sources, with funds available from Federal education and training programs (such as the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act); and where applicable, communities designated as Empowerment Zones or Enhanced Enterprise Communities (EZ/EEC);
- Serves a geographical area that reflects the needs of the local labor market, and is able to adjust to regional structures that the State School-to-Work Opportunities plan may identify; and
- Targets occupational clusters that represent growing industries in the partnership's geographic area; and, where applicable, demonstrates that the clusters are included among the occupational clusters being targeted by the State School-to-Work Opportunities system.

B. *20 Points.* The extent to which the partnership's plan demonstrates its capability to achieve the statutory requirements and to effectively put in place the system components in Title I of the School-to-Work Opportunities Act, including—

- A work-based learning component that includes the statutory "mandatory activities" and that contributes to the transformation of workplaces into active learning components of the education system through an array of learning experiences such as mentoring, job-shadowing, unpaid work experiences, school-sponsored enterprises, and paid work experiences;
- A school-based learning component that provides students with high-level academic and technical skills consistent with academic standards that the State establishes for all students, including, where applicable, standards established under the Goals 2000: Educate America Act;
- A connecting activities component to provide a functional link between students' school and work activities, and between workplace partners, educators, community organizations and other appropriate entities;
- Effective processes for assessing skills and knowledge required in career majors, and issuing portable skill certificates that are benchmarked to high-quality standards such as those States will establish under the Goals 2000: Educate America Act, and for periodically assessing and collecting information on student outcomes, as well as a realistic strategy and timetable for implementing the process in concert with the State.
- A flexible School-to-Work Opportunities system that allows students participating in the local

system to develop new career goals over time, and to change career majors; and

- Effective strategies for: providing staff development for teachers, worksite mentors and other key personnel; developing model curricula and innovative instructional methodologies; expanding career and academic counseling in elementary and secondary schools; and utilizing innovative technology-based instructional techniques.

Selection Criterion 2: Quality and Effectiveness of the Local Partnership (20 Points)

Considerations: In applying this criterion, reviewers will refer to section 4(11) of the Act and consider—

- Whether the partnership's plan demonstrates an effective and convincing strategy for continuing the commitment of required partners and other interested parties in the local School-to-Work Opportunities system. As defined by the Act, partners must include employers, representatives of local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools, where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, and students, and may include other relevant stakeholders such as those listed in section 4(11)(B) of the Act, including employer organizations, community-based organizations, national trade associations working at the local levels, industrial extension centers, rehabilitation agencies and organizations, registered apprenticeship agencies, local vocational education entities, proprietary institutions of higher education, local government agencies, parent organizations, teacher organizations, vocational student organizations, private industry councils under JTPA, federally recognized Indian tribes, Indian organizations, and Alaska Native villages, and Native Hawaiian entities.
- Whether the partnership's plan demonstrates an effective and convincing strategy for continuing the commitment of workplace partners and other interested parties in the local School-to-Work Opportunities system;
- The effectiveness of the partnership's plan to include private sector representatives as joint partners with educators in both the design and the implementation of the local School-to-Work Opportunities system;
- The extent to which the local partnership has developed strategies to provide a range of opportunities for workplace partners to participate in the design and implementation of the local School-to-Work Opportunities system, including membership on councils and partnerships; assistance in setting standards, designing curricula, and determining outcomes; providing worksite experiences for teachers; helping to recruit other employers; and providing worksite learning activities for students such as mentoring, job shadowing, unpaid work experiences, and paid work experiences;
- The extent to which the roles and responsibilities of the key parties and any other relevant stakeholders, are clearly defined and are likely to produce the desired changes in the way students are prepared for the future.
- The extent to which the partnership demonstrates the capacity to build a quality local School-to-Work Opportunities system;
- Whether the partnership has included methods for sustaining and expanding the partnership, as the program expands in scope and size.

Selection Criterion 3: Participation of All Students (15 Points)

Considerations: In applying this criterion, reviewers will refer to the definition of the term "all students" in section 4(2) of the Act, and consider—

- The extent to which the partnership will implement effective strategies and systems: to provide all students with equal access to the full range of program components specified in sections 102 through 104 of the Act and related activities such as recruitment, enrollment and placement activities; and to ensure that all students have meaningful opportunities to participate in School-to-Work Opportunities programs;
- Whether the partnership has identified potential barriers to the participation of any students, and the degree to which it proposes effective ways of overcoming these barriers;
- The degree to which the partnership has developed realistic goals and methods for assisting young women to participate in School-to-Work Opportunities programs leading to employment in high-performance, high-paying jobs, including non-traditional jobs;
- The partnership's methods for ensuring safe and healthy work environments for students, including strategies for encouraging school to provide students with general awareness training in occupational safety and health as part of the school-based learning component, and for encouraging workplace partners to provide risk-specific training as part of the work-based learning component, as well the extent to which the partnership has developed realistic goals to ensure environments free from racial and sexual harassment;
- The extent to which the partnership's plan provides for the participation of a significant number or percentage of students in School-to-Work Opportunities activities listed under Title I of the Act.

Selection Criterion 4: Collaboration With State (15 Points)

Considerations: In applying this criterion, reviewers will consider—

- The extent to which the local partnership has effectively consulted with its State School-to-Work Opportunities Partnership, and has established realistic methods for ensuring consistency of its local strategies with the statewide School-to-Work Opportunities system being developed by that State Partnership;
- Whether the local partnership has developed a sound strategy for integrating its plan, as necessary, with the State plan for a statewide School-to-Work Opportunities system;
- The extent to which the local partnership has developed effective processes through which it is able to assist and collaborate with the State in establishing the statewide School-to-Work system, and is able to provide feedback to the State on their system-building process.
- Whether the plan includes a feasible workplan that describes the steps that will be taken in order to make the local system part of the State School-to-Work Opportunities System, including a timeline that includes major planned objectives during the grant period.

Selection Criterion 5: Management Plan (10 Points)

Considerations: In applying this criterion, reviewers will consider—

- The feasibility and effectiveness of the partnership's strategy for using other resources, including private sector resources, to maintain the system when Federal resources under the School-to-Work Opportunities Act are no longer available.
- The extent to which the partnership's management plan anticipates barriers to implementation and proposes effective methods for addressing barriers as they arise.
- Whether the plan includes feasible measurable goals for the School-to-Work Opportunities system, based on performance outcomes established under section 402 of the Act, and an effective method for collecting information relevant to the local partnership's progress in meeting its goals.
- Whether the plan includes a regularly scheduled process for improving or redesigning the School-to-Work Opportunities system based on performance outcomes established under section 402 of the Act.
- The extent to which the resources requested will be used to develop information, products and ideas that will assist other States and local partnerships as they design and implement local systems.
- The extent to which the partnership will limit equipment and other purchases in order to maximize the amounts spent on delivery of services to students.

Dated: September 1, 1995.

Tim Barnicle,

Assistant Secretary for Employment and Training, Department of Labor.

Patricia McNeil,

Acting Assistant Secretary for Vocational and Adult Education, Department of Education.

Appendix—Analysis of Comments and Changes—Administrative Costs

10 Percent Cap on Administrative Costs

Comment: Eleven commenters suggested that the proposed 10 percent cap on administrative costs was too low. Several of the commenters felt that the cap should be set at a higher level, such as 15 percent or 20 percent. Other commenters felt that the cap should be set on a flexible scale that would fluctuate according to the size of the grant award. Many commenters felt that the 10 percent cap on administrative costs would ultimately undermine local efforts to build and sustain a strong school-to-work implementation effort, and that it would sacrifice the quality and effectiveness of the local partnerships. Finally, one commenter felt that School-to-Work Opportunities systems in rural areas would have an especially difficult time being able to stay within the 10 percent cap on administrative costs.

Discussion: The Departments have concluded that applying the 10 percent cap to Title III grants awarded to local partnerships is consistent with the Act's broader limitations on administrative costs, with the 10 percent cap imposed on local partnerships receiving School-to-Work Opportunities subgrants from States, and with section 305 of Title III, which requires conformity between School-to-Work Opportunities plans of local partnerships and State School-to-Work Opportunities plans.

Changes: None.

Definition of Administrative Costs

Comment: Twelve commenters suggested that changes be made to the definition of the term "administrative costs." Some of these commenters felt that evaluation and monitoring are functions so central to the local partnerships' ability to implement systemic change that they should be excluded from the definition of administrative costs. One of these commenters also felt that language should be added that would specifically outline allowable activities. Another commenter felt that the definition of the term "administrative costs" under EDGAR should be used.

Discussion: The Departments chose to create a new definition of administrative costs rather than use a generic definition such as the one contained in EDGAR in order to address the unique nature of the Act. This definition was established as part of the 1995 School-to-Work Opportunities State Implementation grant process. It should be noted that activities that are directly related to the provision of services to participants or otherwise allocable to the program's allowable activities under the grant are not defined as administrative costs. The Departments believe that since the definition specifically states that activities under section 215(b)(4) and 215© of the Act are not administrative costs, there is no need to mention specific activities such as the provision of technical assistance or developing model curriculum. The Departments believe that the independent evaluation function is especially critical because of the need for an ongoing process of measuring system effectiveness and therefore have not included it in the definition of the term "administrative costs." The Departments believe, however, that monitoring and establishing compliance systems are activities appropriately charged to the administrative cost category.

Changes: None.

Equipment Cost as an Administrative Cost

Comment: Three commenters asked for clarification as to whether equipment cost is an administrative cost, especially in relation to the last bullet point under selection criterion 5, which asks reviewers to consider the extent to which a local partnership will limit equipment purchases in order to maximize the amounts spent on direct delivery of students.

Discussion: The Departments believe that equipment purchased for the purpose of administering the School-to-Work Opportunities system is an administrative cost, and therefore is subject to the 10 percent cap. However, equipment purchased for classroom instructional use would not be subject to the 10 percent cap.

Changes: None.

Suggested Changes to the Structure of the Notice

Need to Include Sections of the Act in the Notice

Comment: One commenter believed that the selection criteria should more exactly reiterate key components contained in the Act in Title I, sections 101–104 ("General Program Requirements" and basic program components).

Discussion: While the Departments concur with the commenter on the importance of these provisions, they do not believe it is necessary to restate in the notice most of the legislative language emphasized by the commenter. The notice advises local partnerships that applications must meet all the requirements of the Act, reiterates that all definitions in the Act apply to systems funded under the Local Partnership Grant competitions, and emphasizes, under Criterion 1, the need for local partnership plans to demonstrate consistency with all statutory requirements and with all system components in Title I of the Act. Therefore, the Departments strongly encourage applicants to refer to the Act as well as the criteria in developing School-to-Work Opportunities plans that reflect the full intent of the law. The Departments wish to assure the commenter that panelists reviewing the applications are selected for their understanding of the School-to-Work Opportunities Act, are required to participate in a carefully designed orientation, and will be directed to score applications based on the criteria, in conjunction with the requirements of the Act.

Changes: None.

Distribution of Points

Comment: One commenter questioned the distribution of points in this section, and believed that Criterion 1 B, under Comprehensive Local School-to-Work Opportunities System, should receive more weight than 20 out of 100 points. This commenter also indicated that Criterion 3, "Participation of All Students," should receive more than 15 points. Another commenter recommended making Criterion 3 a "threshold criterion". This commenter felt that unless this component was adequately addressed, no local partnership should be considered for funding.

Discussion: In response to this comment, the Departments gave careful consideration to the distribution of points among the selection criteria, and have concluded that the distribution provided for in the notice results in the most appropriate balance among the criteria. The Departments are committed to assisting partnerships develop and implement school-to-work systems that provide opportunities to all students, but they do not agree that Criterion 3 should be replaced with a threshold criterion or an eligibility requirement, or that either of these would be consistent with the Act. Criterion 3 requires that a partnership describe its strategies for effectively ensuring opportunities for all students to participate in the school-to-work system, and to identify ways of overcoming barriers to the participation of any students. This criterion now states that the partnership's strategies must address equal access to the full range of components for all students. The Departments again wish to emphasize that to receive the maximum points for Criterion 3, applicants must not neglect the needs of any students, and must convincingly describe how the School-to-Work Opportunities system will provide the same options and produce the same results for all participating students, while recognizing that groups of students have different needs and, therefore, that specific strategies may be required for the various groups listed in the definition of "all students." Applications that fail to address the critical needs of any category of student and fail to develop effective strategies in response to identified student barriers will not be as competitive as those that have comprehensive and effective strategies for all students. To be competitive, partnerships that have not fully implemented all components of the strategies devised for all students should at least have established a timetable for putting these components in place within a reasonable period of time.

Changes: None.

Restructuring Criteria

Comments: Several commenters recommended adding or restating key concerns under several criteria, changing the order of the bullets under a given criterion, or moving bullets from under one criterion heading to another. One commenter suggested moving the first bullet under Selection Criterion 3 concerning strategies for ensuring that all students have effective and meaningful opportunities to participate in the local School-to-Work Opportunities system to Selection Criterion 1(B). Another commenter suggested reordering the bullets under Selection Criterion 2 in order to enhance the continuity of the section. This commenter also felt that Selection Criterion 1(A) should be made a part of Selection Criterion (2) since geographic coverage is more closely related to the quality and effectiveness of the local partnership.

Discussion: The Departments recognize that there are certain key elements that have a direct bearing on several aspects of local School-to-Work Opportunities systems. The notice has been carefully developed to weave these issues throughout the notice while still capturing the major points most germane to each specific criterion. However, the Departments do not believe it is always necessary to restate these issues as bullet points under multiple criteria. As discussed in response to another comment, applicants are encouraged to refer to the Act as well as the notice in order to develop School-to-Work Opportunities plans that fully implement the law. In response to suggested changes in sequence and placement, the order of importance, or that a greater percentage of the maximum points for that criterion is to be assigned to any particular bullet, all bullets under each selection criterion will be duly considered by the reviewers. The Departments again wish to emphasize that all applications are subject to a thorough review. Panelists are selected for their expertise in school-to-work, receive a thorough orientation, and are grouped in carefully balanced teams representing a range specializations and interests, to ensure that decisions reflect the full intent of the Act.

Changes: None.

Selection Criterion 1: Comprehensive Local School-to-Work Opportunities System (A)

Coordination and Integration With Existing School-to-Work Programs

Comment: Four commenters felt that language should be added that would ensure coordination with Federal systems change grants authorized under the Individuals with Disabilities Education Act (IDEA). One commenter felt that specific reference should not be made to the Job Training Partnership Act (JTPA) and the Carl D. Perkins Vocational and Applied Technology Education Act.

Discussion: Achieving comprehensive reform will require local partnerships to coordinate and integrate a great number and variety of initiatives having training and education related goals. The Departments agree that the lessons learned from initiatives and programs that are related to School-to-Work should be incorporated in the local partnership's plan. The fourth bullet under Selection Criterion 1(A) is intended to encourage local partnerships to review the many Federal, State and local programs and initiatives and to develop plans for creating mutually supportive strategies.

Changes: None.

Difficulty of Rural Areas in Targeting High-wage, High-skill Jobs

Comment: One commenter was concerned that the emphasis placed throughout the notice on high-wage, high-skill jobs would favor urban partnerships over rural partnerships, which may be unable to offer paid work experiences or match metropolitan pay schedules. This commenter pointed out that rural communities have limited access to such paid jobs due to geographic isolation, slow economic growth, and comparatively lower wages for most employees. The commenter suggested that points be awarded for plans developed by rural School-to-Work consortia to allow employees to live in their home community while commuting to high-wage, high-skill jobs in neighboring communities.

Discussion: The Departments are committed to a fair and equitable review of all applications, and recognize that, in order to be successful, a local School-to-Work system must respond to the needs and conditions of the community for which it has been developed. While the Departments recognize the unique challenges faced by rural areas, they do not feel that developing School-to-Work systems tailored to rural locations is incompatible with the emphasis on preparing students for high-skill, high wage jobs as given in the Act. They encourage local partnerships in these areas to design School-to-Work systems that enable young people to explore as broad a range of career options as possible, and develop the skills to compete in a global economy, wherever they ultimately reside and work. The Departments are also interested in applications that link innovative education strategies with local workforce development and economic development strategies. The Departments wish to clarify that this emphasis on high-wage, high-skill jobs should not place rural partnerships at a disadvantage, since reviewers rank each application against the criteria, not against other applications. While the notice will not reserve specific points for rural strategies such as the one suggested by the commenter, reviewers will consider the quality of the partnership's plan in light of what is feasible for that community, as described in the application. Therefore, the extent to which an application describes what is possible and appropriate for the partnership, as well as the partnership's strategies to provide students with opportunities to explore a range of occupational clusters and acquire skills relevant to high-wage, high-skill jobs, will determine the number of points awarded. Rural partnerships that present this information thoroughly and convincingly will score as highly against the criteria as partnerships with a greater range of opportunity due to higher concentrations of business and industry.

Changes: None.

Selection Criterion 1: Comprehensive Local School-to-Work Opportunities System (B)

Need to More Broadly Define Entities to be Linked in the Connecting Activities Component

Comments: Two commenters felt that this criterion described the connecting activities component too narrowly. The commenters pointed out that, while building links with employers (as highlighted in the third bullet) is necessary to successful school-to-work transitions, this group is not the only one that must be linked in a successful system. The commenters urged that this bullet be broadened to emphasize the need for links with all workplace partners, as well as community organizations.

Discussion: The Departments agree with the commenters that a successful connecting activities component maintains a continuous feedback loop between the school and work communities, and that work communities include labor organizations and non-managerial employees as well as employers. The Departments also agree that the connecting activities component should assist students with access to a range of support services, provided through entities like community-based organizations and one-stop career centers.

Changes: The third bullet of Selection Criterion 1(B) has been changed to read: "A connecting activities component to provide a functional link between students' school and work activities, and between workplace partners, educators, community organizations and other appropriate entities."

Providing All Students with a Full Range of Options:

Comment: Four commenters suggested that Selection Criteria 1 A and 3 be changed to reflect the language in section 101(5) of the Act regarding the partnership's plan for providing all students with equal access to the full range of program components (including the school-based and work-based learning components) and related activities, such as recruitment, enrollment, and placement activities.

Discussion: The Departments agree with the commenter on the importance of emphasizing the need for strategies to provide all students equal access to the full range of program components, rather than offering any student an abbreviated menu of options.

Changes: The third bullet under Selection Criterion 1(A) has been changed to recognize the importance of all students having equal access to a full range of options. An additional reference has been added to bullet 6 under Selection Criterion 3.

Consistency with Other Initiatives

Comment: One commenter noted references in the notice to the Goals 2000 and Empowerment Zones/Enhanced Enterprise Communities (EZ/EEC) initiatives, and expressed concern that applications from local partnerships in States not currently participating in the Goals 2000 initiative might be less competitive than applications from partnerships in States that are.

Discussion: References in the notice to these and other initiatives are intended to stress the need for coordination of related efforts in the areas of education reform, workforce development, and economic development. A major purpose of the School-to-Work initiative is to unify categorical programs into coherent and comprehensive systems, and to avoid duplication of effort across various agencies and funding streams. The EZ/EEC initiative, for which the Department of Housing and Urban Development and the Department of Agriculture are the lead agencies, is an economic development initiative targeting urban and rural areas, with a major focus on rebuilding inner cities. Partnerships are funded against an approved strategic plan, and all proposals include an education component. Similarly, the Goals 2000: Educate America Act provides a broad vehicle for education reform supportive of the objectives of School-to-Work. Where these initiatives coincide at the local level, it is important that they be coordinated. However, participation in activities under both Goals 2000 and School-to-Work is strictly voluntary, and a State's participation in Goals 2000 is in no way a condition for award of a School-to-Work Local Partnership Grant. By including references to Goals 2000, the Departments intend to emphasize the need for local systems to incorporate high-quality academic and skill standards consistent with any standards developed by the State as part of education reform or restructuring, and for local partnership activities to coincide with the State or region's overall vision for improving education and employment opportunities.

Changes: None.

Selection Criterion 2: Quality and Effectiveness of the Local Partnership

Key Stakeholders

Comment: Several commenters felt this section focused too narrowly on the role of employers, and did not adequately convey the range of required partners and other interested parties that are given in the Act. Commenters were particularly concerned about the comparative lack of emphasis on union representatives and frontline workers, teachers, and community-based organizations as members of local partnerships. The commenters felt that these groups should be explicitly identified in this criterion, since their involvement is as vital to system development and implementation as that of employers. Various suggestions were made as to how the bullets under this criterion could be amended to be more inclusive of key stakeholders. One commenter noted that students, also listed as required members of local partnerships in the Act, are unlikely to be involved as partners in decision-making, and recommended specific language emphasizing their participation.

Discussion: This criterion immediately refers reviewers to the definitions of local partners given in the Act. However, the Departments agree that it would be useful to list in Selection Criterion 2 all the parties referred to in sections 4(11)(A) and (B). In this way, the criterion will not appear to omit any of the entities that have important contributions to make to a comprehensive local School-to-Work system. It is vitally important to the success of local School-to-Work systems that key local groups, including those highlighted by the commenters, be involved at every stage of system development and implementation. The Departments wish to emphasize that only those applications that involve all key parties substantively and continuously, effectively incorporating their perspectives and strengths in the system plan, will be competitive.

Changes: The first bullet of Criterion 2 now lists the required members of local partnerships as given in section 4(11)(A) of the Act, including representatives of organized labor or nonmanagerial employees, teachers, and students. This first bullet also lists the examples of interested parties noted in section 4(11)(B), including community-based organizations. Subsequent bullets refer to the lists given in the first bullet, and where appropriate, the term "workplace partners" has been substituted for "employers". Similar clarifications were included in the final notice for the State Implementation Grants competition.

Role of Private Industry Councils

Comment: Three commenters suggested that it should not be necessary to form a new local partnership when the Private Industry Councils are able to perform the function. They commented that not including the Private Industry Councils would be detrimental to the School-to-Work Opportunities system.

Discussion: The Departments agree that the Private Industry Councils, as established under section 102 of the Job Training Partnership Act, are key partners in the School-to-Work Opportunities initiative. The Departments believe that Private Industry Councils can play many important roles in local School-to-Work systems, and encourage their participation in local partnerships. However, in order to be eligible for a grant under this notice, a local partnership must include all of the entities included in section 4(11)(A) of the Act, and may include other parties such as those listed in section 4(11)(B). The Departments believe that it is up to each local community to determine which parties are the most appropriate for their local partnership, and that the Act is structured in a way that allows them such flexibility. The Departments believe that the criteria as written adequately allow for the inclusion of the Private Industry Councils in local School-to-Work Opportunities system-building activities.

Changes: None.

Selection Criterion 3: Participation of All Students

Define "All Students"

Comment: Several commenters suggested that a definition of the term "all students" be added to the notice or that the specific student categories be defined.

Discussion: Although all definitions and requirements of the Act apply, the Departments agree that it would be helpful to remind applicants that the Act's definition of the term "all students" applies to this competition.

Changes: A reference to the definition of "all students" in Section 4(2) of the Act has been included in Criterion 3. Inclusion of Safety Skills in the Work-based and School-based Components.

Comment: One commenter recommended that specific language be added to the first and second bullets in this section, requiring the acquisition of skills relating to safety as elements of the school-based and work-based learning components.

Discussion: The Departments strongly agree that issues of health and safety are important to any School-to-Work system. In the fourth bullet under Criterion 3, "Participation of All Students," reviewers will consider the partnership's methods for ensuring safe and healthy work environments for students. Many activities may be a part of strategies for ensuring that students are provided with such environments. The Departments believe that work-based and school-based modules that inform students of safety issues, as well as their rights and responsibilities at the workplace, are among the methods that would appropriately address this criterion. For example, the work-based component could include risk-specific training for students participating in learning experiences at the work site. Outcomes of this training could include a student's being able to demonstrate an understanding of: specific tasks or operations associated with the learning experience that pose risks; proper use of tools, devices, and equipment provided to control identified risks; procedures for responding to any potential hazards the youth identifies; and procedures for reporting illness and injury. The school-based learning component can provide students with general awareness training in occupational safety and health. Outcomes of this training might include a student's being able to describe the general nature and types of work-related health problems, describe the risk factors associated with the most common jobs held by young workers, describe the concept of hazard control strategies and give examples, list the jobs prohibited to young workers by applicable local, State, and Federal laws, and describe the procedures and policies regarding the reporting of work-related diseases and injuries.

Changes: While the Departments do not believe it is appropriate for them to define the strategies that all partnerships must use to ensure safe and healthy work environments, the fourth bullet has been modified to clarify that these strategies should include both the school-based and work-based components, making the Local Partnership notice consistent with the State Implementation Grant notice published in the **Federal Register** of May 18.

Environments Free From Harassment

Comment: One commenter suggested that partnerships be required to describe how they will ensure that student environments are free from racial and sexual harassment.

Discussion: The Departments agree with the commenter on the importance of provisions to ensure that School-to-Work activities take place in atmospheres conducive to learning, and free from racial and sexual harassment. In response to public comment, similer changes were madè to the State Implementation Grants notice published in the **Federal Register** on May 18, 1995. Requiring reviewers to consider whether applications present strategies for harassment-free environments will emphasize the importance of this issue and ensure consistency between the "Participation of All Students" sections of the Local Partnership and State notices.

Changes: Under the fourth bullet of Criterion 3, reviewers will consider the extent to which a partnership has developed realistic goals to ensure environments free from racial and sexual harassment, as well as to guarantee safe and healthy work environments.

Selection Criterion 4: Collaboration With State

State Ability to Sustain Local Partnership

Comment: One commenter suggested that a section be added to this criterion related to the ability of the State School-to-Work Opportunities system to sustain a local partnership once Federal funding to that local partnership has ended. The commenter suggested that a long term sustainability plan that would include the integration of a variety of Federal, State, and local funding streams should be included in this criterion.

Discussion: The Departments expect a State School-to-Work Opportunities System to sustain local partnerships funded under section 302(a) of the Act once Federal funding to that local partnership has ended. However, the Departments are not in a position to prescribe at what level the partnership shall be sustained.

Changes: None.

Selection Criterion 5 Management Plan:

Evaluation

Comments: Three commenters suggested that the bullets under Selection Criterion 1 and 4, regarding performance outcomes, should be more specific. One commenter suggested that language be added stating that performance outcomes should include measures of the extent to which special populations are included. Two commenters felt that it was important to require that both individual and aggregate data be collected.

Discussion: The Departments believe that States and local partnerships should have the flexibility to design evaluations appropriate to their own needs and goals and encourage local partnerships to work closely with their State when developing performance outcomes and evaluation plans. Section 402 of the Act describes the overall framework and emphasis of the performance measurement and evaluation systems for the School-to-Work Opportunities initiative.

Changes: None.

Limit on Equipment Purchases

Comment: One commenter felt that the bullet point under Criterion 4 regarding the limitation of equipment purchases would keep rural partnerships from purchasing distance learning equipment which can often play a critical role in the implementation School-to-Work Opportunities systems in rural areas.

Discussion: The Departments agree that distance learning technology can play a key role in the implementation of local School-to-Work systems in rural areas. Bullet six under Criterion 1(B) states that the Departments are looking for effective strategies for utilizing innovative technology-based instructional techniques such as distance learning. However, applicants are reminded that their overall goal should be to maximize direct services to students. Applicants proposing equipment purchases such as distance learning systems should be sure that such purchases clearly link back to the overall purpose and design of the proposed local School-to-Work Opportunities system. Applicants should also be aware that such purchases would be seen by the Departments as one-time expenditures and would not be refunded in any future years of funding.

Changes: None.

BILLING CODE 4000-01-P

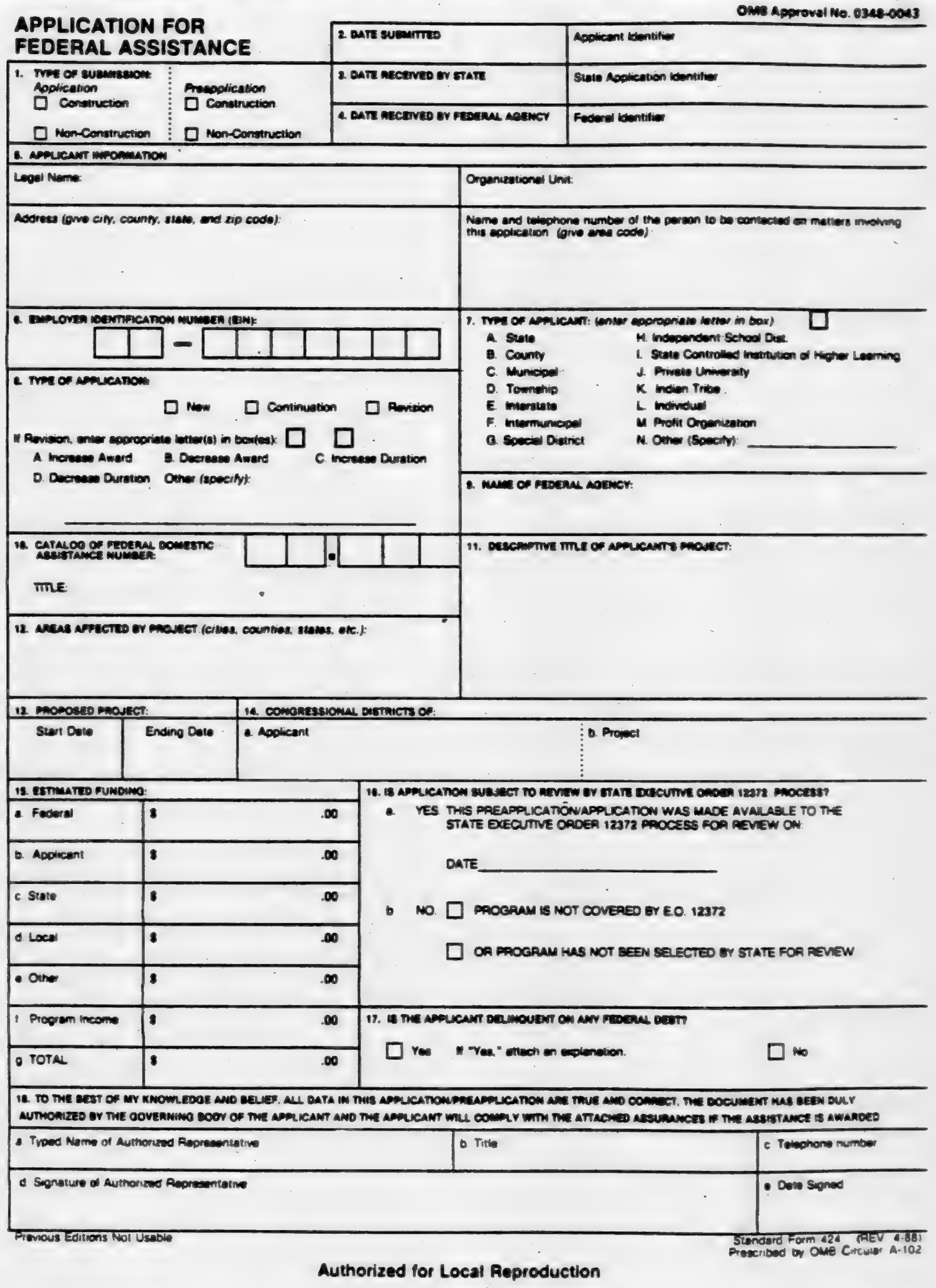

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify): ________________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (*specify*):

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE ________________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —"New" means a new assistance award. —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization			Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.			
SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						
SECTION C - OTHER BUDGET INFORMATION (see instructions)						

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1830–0530, Washington, D.C. 20503.

(Information collection approved under OMB control number 1830–0530, Expiration date: 6/30/98.)

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐
a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐
a. initial filing
b. material change
For Material Change Only:
year ______ quarter ______
date of last report ______

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier ______, *if known*:
Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable*: ______

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ ______ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature ______
value ______

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: ______

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ______
Print Name: ______
Title: ______
Telephone No.: ______ Date: ______

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: ______________________________ Page _____ of _____

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Standard Form - LLL-A

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California

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Colorado

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Indiana

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Kansas

Lee Droegemuller, Commissioner of Education, Kansas State Board of Education, 120 SE 10th Avenue, Topeka, KS 66612–1182, Telephone: 913–296–3202, Fax: 913–296–7933

Kentucky

Ruth Bunch or Beth Brinly, Office of School-to-Work, Berry Hill Annex, 700 Louisville Road, Frankfort, KY 40601, Telephone: 502–564–5901, Fax: 502–564–5904

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Lynne Gilli, Branch Chief of Career and Technology Services, Maryland State Dept. of Education, 200 W. Baltimore Street, Baltimore, MD 21201, Telephone: 410–767–0170, Fax: 410–333–2099

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[FR Doc. 95–95–22339 Filed 9–7–95; 8:45 am]

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federal register

Friday
September 8, 1995

Part VI

Department of Transportation

Federal Aviation Administration

Proposed Policy Regarding Airport Rates and Charges; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 27782]

RIN 2120–AF90

Proposed Policy Regarding Airport Rates and Charges

AGENCY: Department of Transportation (DOT), Federal Aviation Administration (FAA).

ACTION: Supplemental notice of proposed policy; reopening of comment period.

SUMMARY: This document proposes a significant revision of the Policy Regarding Airport Rates and Charges published with request for comment on February 3, 1995. The proposed policy retains the structure and basic approach of the February 3 policy statement, but the strict requirement for equality of fees and costs based on historic cost valuation of assets would be limited to the airfield portion of an airport, and the policy would permit substantial flexibility in the establishment of fees for other aeronautical facilities. The revision reflects public comments received on the February 3 policy statement. This notice announces two public meetings on the proposed policy and reopens the comment period until October 23, 1995.

DATES: Comments must be received by October 23, 1995.

ADDRESSES: Comments should be mailed, in quadruplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Dockets No. 27782, 800 Independence Avenue SW., Washington, DC 20591. All comments must be marked: "Docket No. 27782." Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27782." The postcard will be date stamped and mailed to the commenter.

Comments on this Notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: John Rodgers, Director, Office of Aviation Policy, Plans and Management Analysis, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267–3274; Barry Molar, Manager, Airports Law Branch, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3473.

SUPPLEMENTARY INFORMATION: Section 113 of the FAA Authorization Act of 1994, Public Law 103–305 (1994 Authorization Act) signed into law on August 23, 1994, 49 U.S.C. 47129, required the Secretary of Transportation to issue standards or guidelines for use in determining the reasonableness of an airport fee. After notice and opportunity for public comment, on January 30, 1995, the Office of the Secretary of Transportation (OST) and the FAA issued a "Policy Regarding Airport Rates and Charges," and requested further public comment on the interim policy as published. Docket No. 27782 (60 FR 6906, February 3, 1995). The comment period on the interim policy closed on May 4.

Comments Received

More than 125 comments were received in response to the February 3 request for comment, including comments received after the close of the comment period. The Department considered all comments, including the late-filed comments. Because the Department is proposing a substantially revised policy statement and publishing the statement for an additional comment period, the Department will include in this supplemental notice only a brief discussion of public comments received on the February 3 policy statement, and will not address the comments in detail at this time. When a final policy statement is published in the **Federal Register**, the Department will include a comprehensive response to public comments received on both the February 3 interim policy and this proposed revision.

Summary of Proposed Changes and Response to Significant Issues Raised

1. Valuation of Assets for Ratesetting Purposes.

The interim policy requires valuation of all airport land and airfield assets at historic cost to the original airport proprietor (Para. 2.4.1). The airport proprietor may use other valuation methods for other assets, but total aeronautical revenue may not exceed total aeronautical cost, based on historic cost asset (HCA) valuation, absent agreement (Para 2.4.1(a)).

Aeronautical users filing comments supported the interim final policy's approach to asset valuation.

Airport operators uniformly criticized the treatment of asset valuation. They argued that, *inter alia,* the combination of the HCA valuation requirement and the total cost cap will disrupt their current practices in leasing nonairfield facilities; will underfinance smaller airports that are unable to use debt-financing to fund capital replacement and improvement; and will cause signatory carriers to pay more than non-signatory carriers under certain residual lease and use agreements. They also argued that the HCA requirement is inconsistent with § 47129's prohibition on setting rates; is inconsistent with Departmental policies on financial self-sustainability of airports; and is inconsistent with an airport proprietor's Constitutional right to earn a reasonable return on investment.

While airport commenters prefer elimination of the HCA valuation requirement for all assets, most (the City of Los Angeles being the primary exception) stated that retention of the HCA valuation requirement for the airfield would be acceptable, because HCA valuation for the airfield reflects common industry practice.

The Department proposes to revise the policy by limiting the HCA valuation requirement in proposed Para. 2.5.1 to airfield assets and by eliminating the total HCA cost cap for aeronautical facilities (Para. 2.4.1(a) of the interim policy). Airfield assets would be defined in the applicability section of the policy statement to include runways, taxiways, nonexclusively leased aprons, land associated with these facilities, and land acquired and held to assure compatibility with airfield operations. If the latter land were developed for compatible, nonairfield uses, the land would be removed from the airfield rate base.

In addition, further guidance would be given on the way airfield land may be included in the rate base (proposed Para. 2.5.1(a)). The cost of land acquired with debt could be included in the rate base by charging all debt service expenditures to the airfield cost center. The cost of land acquired with internally generated funds or donated by the airport proprietor could be recovered by amortization. A new paragraph 2.5.1(b) is proposed to clarify that, while HCA valuation must be used to establish total airfield costs, airport operators may, to enhance the efficient use of the airfield, allocate costs using a reasonable and not unjustly discriminatory methodology that departs from a pro rata division of HCA costs.

A new paragraph 2.6 would be added, providing that fees for other aeronautical services and facilities could be established by any reasonable methodology. As discussed below, the policy would provide for FAA scrutiny

of accumulation of surplus funds attributable to aeronautical revenues, however. The Department does not intend this possible scrutiny to function as an indirect reinstatement of the HCA cost cap.

The proposed revision to the policy is intended to carry out the Department's mandate to adopt a policy that assures that airport fees are reasonable while avoiding unnecessary disruption to long-standing, well-accepted pricing practices, especially for nonairfield assets.

For nonairfield facilities, which may be priced according to any reasonable method, our experience suggests that effective competition generally exists. Fees for such facilities are generally established by agreement between the airport proprietor and aeronautical user based on negotiations. Formal administrative complaints over fees for nonairfield facilities have in almost all instances involved allegations of unjust discrimination—not allegations that nonairfield fees were excessive. Moreover, since 1989, all of those complaints not still pending have been dismissed following investigation. Based on these considerations, we propose to rely on the discipline of competition, in the first instance, rather than detailed prescriptions of permissible charging practices to assure that fees for nonairfield facilities meet the requirements of reasonableness contained in statutes, grant agreements and applicable international aviation agreements. However, the policy would explicitly preserve the authority of the FAA to investigate the accumulation of aeronautical surpluses.

For airfield assets—runways and taxiways—there is greater risk that airport proprietors may enjoy locational monopoly power. The HCA requirement for these assets would guard against any abuse of monopoly power and would conform to general industry practice.

The HCA valuation requirement does not conflict with the statutory prohibition on setting the airport fee. The valuation of airfield assets is but one element in setting a fee. Even with the HCA valuation requirement, the airport proprietor has substantial latitude with respect to those other elements.

Further, the HCA valuation requirement does not amount to a regulatory taking of property. The HCA valuation requirement allows the airport proprietor to fully recover its costs of providing airfield facilities. HCA valuation is one of the methods that has been found reasonable, and hence constitutional, by the courts.

Finally, many of the arguments against the HCA requirement for the airfield were considered and rejected by the Department in its decision on the Los Angeles International Airport (LAX) landing fee dispute. See pages 19–26, Order 95–6–36 (June 30, 1995).

2. Applicability to Airfield and Non-Airfield Assets

As noted above, the Department proposes to modify the interim policy to eliminate the total HCA cap on aeronautical revenues and to permit nonairfield fees to be set according to any reasonable method. In keeping with this change, the provision in the policy requiring that aeronautical revenues not exceed aeronautical costs (Para. 2.1 of the interim policy) would be narrowed to apply to airfield revenues and costs (Proposed para. 2.2). Similarly, the provision specifying in detail the costs that may be included in the rate base (Proposed Para. 2.4) would be modified by adding an exception for nonaeronautical fees determined by other reasonable means as provided in proposed Para. 2.6. The Department relies on market forces in the leasing of nonairfield facilities to assure that aeronautical revenues, averaged over time, will approximate costs, including the airport's capital investment needs. However, it is unrealistic to expect the market to produce fees that exactly equal costs for each particular user during every accounting period.

3. Charging Imputed Interest on Investment of Surplus Aeronautical Revenues

The interim policy provides that airport proprietors could include in the aeronautical rate base the implicit cost of capital (imputed interest) of funds generated from nonaeronautical sources and invested in capital assets for aeronautical use (par. 2.3.1). The interim policy further provides that the Department considers it reasonable to use the rate of interest prevailing at the time of the expenditure on bonds issued by the airport proprietor or another airport with a similar bond rating.

Airport commenters objected to this provision on a number of grounds. They argued that by precluding interest on surpluses generated from aeronautical revenues, the policy creates an incentive to invest such aeronautical surpluses in nonaeronautical assets. They further argued that it will be difficult, if not impossible, in most cases to trace a surplus to nonaeronautical sources. In addition, they argue that an interest rate based on their borrowing costs is unreasonably low, and that a reasonable rate of interest should be based on what the airport proprietor could earn on alternative investments.

Airport users did not object to this provision.

After reviewing the comments and in light of the other revisions to the policy relating to fees for nonairfield services and facilities, the Department proposes to modify the provision on imputed interest. The new provision would permit the airport proprietor to include in the rate base imputed interest on all funds invested in aeronautical facilities except those generated from airfield operations and funds acquired through issuance of debt when debt service costs are also included in the rate base. In addition, the policy would no longer specify a particular interest rate as reasonable. This approach is consistent with our decision to provide greater flexibility in establishing nonairfield fees. As promulgated, the interim policy could be read as limiting the assessment of an imputed interest charge on nonairfield assets such as terminals and hangars. With the additional flexibility proposed in this supplemental notice for nonairfield fees, it is possible that fees could include an element of imputed interest that would be inconsistent with the interim policy's limitation on imputed interest. By narrowing the scope of the provision on imputed interest (Proposed Para. 2.4.1) to funds generated by the airfield, the Department would avoid a potential internal conflict in the policy. In addition, the new approach would reduce the potential disincentives to investing funds in aeronautical, rather than nonaeronautical assets.

Under the revised proposal, the airport proprietor could not charge imputed interest on funds generated from fees charged for the use of the airfield. The policy and legal considerations for this limitation are discussed below, in connection with the issue of allowing a return on investment.

With respect to commenters' concerns over the ability to trace the source of funds, we note that in the recent decision on LAX landing fees, the Department stated that, under the Administrative Procedure Act, a carrier complaining about inclusion of imputed interest in the rate base would bear the burden of proving that the airport proprietor was claiming imputed interest on aeronautical surpluses. Under this ruling, an airport proprietor need not trace the source of internally generated funds to claim imputed interest. However, if the airport proprietor has data available that would enable a complainant to trace the funds, that data should be disclosed during fee negotiations or in connection with a fee dispute resolution proceeding.

4. Return on Investment.

The interim policy does not provide for the inclusion of a separate return on investment in the aeronautical rate base.

Airport commenters generally objected to this omission. They argued that a return on investment represents the cost of providing capital for the airport and retaining that investment in use as an airport. They further argued that the failure to allow a rate of return would amount to an unconstitutional taking of property. In addition, they argued that by not allowing a rate of return in the aeronautical rate base, the policy provides incentives for airports to invest internally generated funds in nonaeronautical assets. They also argued that a rate of return is necessary to assure that airport proprietors have adequate revenue to meet debt service coverage obligations and maintain adequate cash reserves to protect against contingencies and unexpected declines in activity and revenue.

Airport users do not object to the approach of the interim policy statement on this issue.

The proposed revisions would permit airport proprietors to use any reasonable, not unjustly discriminatory method to establish nonairfield fees. Fees established by negotiation, for example, may well include a reasonable profit margin for the airport proprietor.

With respect to a publicly-owned airfield, no separate rate of return would be allowed, although imputed interest might be included in the rate base in some circumstances. This treatment of the airfield is justified by the nature of the airfield asset and by the Federal government's historic role and interest in airport development.

A publicly-owned airfield is a public asset operated for the benefit of the general public. Moreover, since the enactment of the first Federal airport aid program in 1946, the overwhelming preponderance of Federal assistance has been applied to finance airfield development. The purpose of this assistance has been to promote and assure the growth, safety and efficiency of the national air transportation system, not to assist airport sponsors in developing profit-making facilities. In this regard, we note that the AAIA specifically prohibits an airport proprietor from including the Federal share of projects in the airport's rate base. The Department considers this prohibition to reflect a Congressional intent to limit the public airport proprietor's ability to employ facilities financed in part with Federal assistance as a means to generate a profit. Finally, with the exception of Los Angeles, whose landing fees were found to be unreasonable in part, we are not aware of any public airport operator that has sought to include a rate of return in its airfield rate base.

In contrast, nonairfield assets such as hangars and terminal gates, are usually leased on an exclusive-use basis. The lease rates reflect the value to the tenant of having an exclusive right to use the particular facility leased. In addition, hangars are ineligible for Federal funding. Eligible terminal development is limited to public use, nonrevenue producing areas—not those which would typically be the subject of an exclusive, or even preferential use lease. In addition, terminal development has constituted a relatively small share of overall Federal airport assistance over the years. Thus, for nonairfield aeronautical facilities, the possibility of earning a profit from Federally financed assets is a *de minimis* concern.

Finally, under the proposed policy, a public airport proprietor may recover its full costs, including the cost of its actual investment in the airfield. In addition, the policy allows the airport proprietor to add the cost of meeting debt-service coverage requirements and reasonable reserves to the rate base. Therefore, a separate rate of return allowance is not needed to meet these requirements for publicly owned airports. A private owner could earn a reasonable return on investment.

5. Applicability to General Aviation Airports

Airport commenters generally objected to the application of the policy to general aviation airports. They argued that § 47129 precludes the Department from adopting airport fee policies applicable to general aviation airports, since that section directs the Secretary to establish policies to be applied in disputes between air carriers and airports. They also argued that the total HCA cap would pose a hardship for most general aviation airports, where nonaeronautical revenues are insignificant and cannot be relied on to generate surplus funds to finance replacement and improvement of airport assets.

Airport users did not specifically address this issue.

The Department does not propose to exclude general aviation airports from the scope of the policy. However, we propose to modify the policy statement to clarify that in situations not covered by § 47129, the policy would be applied by the FAA in its role as administrator of the AIP program, under which the agency must satisfy itself that an applicant for grants is in compliance with its assurances, but does not provide a forum for adjudicating disputes between private parties.

While § 47129 mandates the promulgation of standards relating to airport fees charged to air carriers, it does not prohibit the development of airport fee policies for other airports. Section 511 of the AAIAct, 49 U.S.C. 47107(a) requires the Department to receive satisfactory assurances that, *inter alia*, each airport receiving a grant will be available for public use on reasonable terms without unjust discrimination. This provision is not limited to air carrier airports. Moreover, § 519(a) of the AAIAct, 49 U.S.C. 47122 authorizes the Department to take action we "consider necessary to carry out" the AAIA. Under these provisions, the Department has authority to issue a policy on reasonable and nondiscriminatory airport fees applicable to general aviation airports.

The Department is aware of the differences between general aviation airports and airports receiving extensive air carrier services. As we noted in publishing the interim policy, we will take these differences into account in applying the policy. Moreover, the potential adverse impact on general aviation airports of the revenue cap would be eliminated by our proposal to eliminate that cap.

6. Applicability Where an Agreement Exists

Airport commenters generally requested that we modify the policy to exclude fees established by agreements with users. They argued that the limitations in § 47129 (e)(1) and (f)(1) preclude the application of the policy to fees established by agreement. They also argued that fees established by agreement generally represent a mutual exchange of benefits to both parties. A determination of unreasonableness by the Department would disturb this exchange and provide a windfall to the airport user who challenged the fee.

The Department does not intend to fully exclude fees set by agreement from the scope of the policy. However, we propose to modify the policy statement to clarify that if the FAA reviews a fee set by agreement, the FAA will not act as a forum for adjudication of contract disputes between private parties.

As noted above, the AAIA provides authority for establishing a policy that applies to all airport fees imposed on aeronautical users, including fees established by agreement. In addition, many bilateral aviation agreements include a commitment by the United

States that airport fees charged to foreign airlines will be reasonable. An airport and individual aeronautical user or users cannot by private agreement waive the obligations of the AIP grant assurances, which are designed to protect the public, not just private interests. Similarly, they cannot waive the United States' obligations to foreign governments. Moreover, it is possible that an agreement that is reasonable, and even beneficial in its impact on the parties could have an unreasonable or unjustly discriminatory impact on nonparty airport users.

7. Applicability to Users Other Than U.S. Air Carriers

Airport commenters generally request us to limit the applicability of the policy to U.S. air carriers and foreign air carriers. A few commenters also request that we exclude fees charged to foreign air carriers from the scope of the policy and from the applicability of the expedited hearing procedures in 14 CFR Part 302, subpart F. They argue that § 47129 by its terms precludes us from adopting policies and procedures to determine the reasonableness of fees other than those fees charged to air carriers that are not otherwise excluded from § 47129 by its terms. They further argue that the methods used to establish fees to non-carrier aeronautical users do not readily lend themselves to application of the policy.

The Department does not propose to limit the applicability of the policy to fees imposed on U.S. and foreign air carriers. However, we propose to modify the policy statement to clarify that in situations not covered by § 47129, the policy would be applied by the FAA in its role of administrator of the AIP program in carrying out the agency's obligation to satisfy itself that an applicant for grants is in compliance with its assurances, not in the role of a forum for adjudicating a dispute between private parties. The Department also intends to apply the procedures mandated by § 47129, including the procedures governing refunds, to foreign air carriers in the same way we apply it to U.S. air carriers.

As noted above, the AAIA provides authority for establishing a policy that applies to all airport fees imposed on aeronautical users, including fees imposed on foreign air carriers and noncarrier aeronautical users. In addition, many bilateral aviation agreements include a commitment by the United States that airport fees charged to foreign airlines will be reasonable.

The Department recently considered the applicability of § 47129 to foreign air carriers in the decision on the reasonableness of LAX landing fees. The Department concluded that § 47129 allows foreign airlines to obtain retrospective relief and to file complaints. The Department pointed out that the United States' obligations to give nondiscriminatory treatment to foreign carriers generally precluded us from denying foreign air carriers a remedy available to U.S. carriers absent a bar to granting foreign air carriers that remedy. Order 95–6–36 at 53–56. For the reasons stated in its consideration of the issue in the LAX case, the Department will continue to consider complaints filed by foreign air carriers under the terms of § 47129.

8. Limits on Aeronautical Surplus

The Department proposes to modify the policy to eliminate the total HCA cap on aeronautical revenue and to provide that nonairfield fees may be established by any reasonable means. In providing this flexibility, the Department is in no respect waiving the requirements in statute, AIP grant assurances and, where applicable, international aviation agreements. The use of negotiated rates or rates based on an objective determination of fair market value creates the opportunity for the generation of surplus aeronautical revenues in any given year. The Department proposes to rely generally on market discipline to prevent the generation of aeronautical revenues that, over time, exceed aeronautical costs. Based on this reliance, we are not proposing an alternative cap on fees imposed for aeronautical services and facilities other than the airfield. However, to address the remote chance that the market mechanism may break down, we propose to add a provision on revenue generation specifying that the accumulation of surpluses attributable to aeronautical revenue may warrant an inquiry into the reasonableness of the aeronautical fees (proposed Para. 4.2.1).

Public Meetings

In order to facilitate the submission of public and industry comment, and to ensure that agency staff has the best opportunity to understand the positions of commenters and the scope of industry practice on this complex subject, the Department will hold at least two informal public meetings on the proposed policy. The meetings will be structured to permit informal discussion among the various interested parties rather than simply delivery of prepared comments for the record. Notice of the time, date, and location of the meetings will be published separately in the **Federal Register**.

Proposed Policy

Accordingly, the OST and the FAA propose to revise the Policy Regarding Airport Rates and Charges as follows:

Policy Regarding the Establishment of Airport Rates and Charges

Introduction

It is the fundamental position of the Department that the issue of rates and charges is best addressed at the local level by agreement between users and airports. By providing guidance on standards applicable to airport fees imposed for aeronautical use of the airport, the Department intends to facilitate direct negotiation between the proprietor and aeronautical users and to minimize the need to seek direct Federal intervention to resolve differences over airport fees.

Applicability of the Policy

A. Scope of Policy

Under the terms of grant agreements administered by the FAA for airport improvement, all aeronautical users are entitled to airport access on fair and reasonable terms without unjust discrimination. Therefore, the Department considers that the principles and guidance set forth in this policy statement apply to all aeronautical uses of the airport. The Department recognizes, however, that airport proprietors may use different mechanisms and methodologies to establish fees for different facilities, *e.g.*, for the airfield and terminal area, and for different aeronautical users, *e.g.*, air carriers and fixed-base operators. Various elements of the policy reflect these differences. In addition, the Department will take these differences into account if we are called upon to resolve a dispute over aeronautical fees or otherwise consider whether an airport sponsor is in compliance with its obligation to provide access on fair and reasonable terms without unjust discrimination.

B. Aeronautical Use and Users

The Department considers the aeronautical use of an airport to be any activity that involves, makes possible, is required for the safety of the operations of, or is otherwise directly related to, the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on the airport. Persons, whether individuals or businesses, engaged in aeronautical uses involving the operation of aircraft, or providing flight support directly related to the operation of aircraft, are considered to be aeronautical users.

Conversely, the Department considers that the operation by air carriers or foreign air carriers of facilities such as a reservations center, headquarters office, or flight kitchen on an airport does not constitute an aeronautical activity subject to the principles and guidance contained in this policy statement with respect to reasonableness and unjust discrimination. Such facilities need not be located on an airport. A carrier—s decision to locate such facilities is based on the negotiation of a lease or sale of property. Accordingly, the Department relies on the normal forces of competition for commercial or industrial property to assure that fees for such property are not excessive.

C. Applicability of Section 113 of the FAA Authorization Act of 1994

Section 113 of the Federal Aviation Authorization Act of 1994 ("Authorization Act"), 49 U.S.C. § 47129, directs the Secretary of Transportation to issue a determination on the reasonableness of certain fees imposed on air carriers in response to carrier complaints or a request for determination by an airport proprietor. Section 47129 further directs the Secretary to publish final regulations, policy statements, or guidelines establishing procedures for deciding cases under § 47129 and the standards to be used by the Secretary in determining whether a fee is reasonable. Section 47129 also provides for the issuance of credits or refunds in the event that the Secretary determines a fee is unreasonable after a complaint is filed. Section 47129(e) excludes from the applicability of § 47129 a fee imposed pursuant to a written agreement with air carriers, a fee imposed pursuant to a financing agreement or covenant entered into before the date of enactment of the statute (August 23, 1994), and an existing fee not in dispute on August 23, 1994. Section 47129(f) further provides that § 47129 shall not adversely affect the rights of any party under existing air carrier/airport agreements or the ability of an airport to meet its obligations under a financing agreement or covenant that is in effect on August 23, 1994.

The Department does not interpret § 47129 to repeal or narrow the scope of the basic requirement that fees imposed on aeronautical users be reasonable and not unjustly discriminatory or to narrow the obligation on the Secretary to receive satisfactory assurances that, *inter alia,* airport sponsors will provide access on reasonable terms before approving AIP grants. Moreover, the Department does not interpret sections 47129 (e) and (f) to preclude the Department from adopting policy guidance to carry out the Department's statutory obligation to assure that aeronautical fees are being imposed at AIP-funded airports in a manner that is consistent with the obligation to provide airport access on reasonable terms. Likewise, in the case of airports receiving international service, these provisions do not preclude us from carrying out any international obligations for assuring that airport fees charged to foreign airlines are reasonable.

Therefore, the Department will apply the policy guidance in all cases in which we are called upon to determine if an airport sponsor is carrying out its obligation to make the airport available on reasonable terms, including instances covered in § 47129 (e) and (f).

However, as the statute provides, a dispute over matters described by § 47129 (e) and (f) will not be processed under the procedures mandated by § 47129. Rather those disputes will be processed under procedures applicable to airport compliance matters in general. In addition, the Department will take into account the existence of an agreement between air carrier and airport operator, if one exists, in making a determination.

D. Components of Airfield

The Department considers the airfield assets to consist of runways, taxiways, ramps or aprons not leased on an exclusive use basis and land associated with these facilities. The Department also considers the airfield to include land acquired for the purpose of assuring land-use compatibility with the airfield, if the land is included in the rate base associated with the airfield under the provisions of this policy.

Principles Applicable to Airport Rates and Charges

1. In general, the Department relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.

2. Rates, fees, rentals, landing fees, and other service charges ("fees") imposed on aeronautical users for aeronautical use of airport facilities ("aeronautical fees") must be fair and reasonable.

3. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

Local Negotiation and Resolution

1. In general, the Department relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.

1.1 The Department encourages direct resolution of differences at the local level between aeronautical users and the airport proprietor. Such resolution is best achieved through adequate and timely consultation between the airport proprietor and the aeronautical users. Airport proprietors should engage in adequate and timely consultation with aeronautical users about airport fees.

1.1.1 Airport proprietors should consult with aeronautical users well in advance, if practical, of introducing significant changes in charging systems and procedures or in the level of charges. The proprietor should provide adequate information to permit aeronautical users to evaluate the airport proprietor's justification for the change and to assess the reasonableness of the proposal. For consultations to be effective, airport proprietors should give due regard to the views of aeronautical users and to the effect upon them of changes in fees. Likewise, aeronautical users should give due regard to the views of the airport proprietor and the financial needs of the airport.

1.1.2 To further the goal of effective consultation, Appendix 1 of this policy statement contains a description of information that the Department considers would be useful to the carriers and other aeronautical users to permit meaningful consultation and evaluation of a proposal to modify fees.

1.1.3 Airport proprietors should consider the public interest in establishing airport fees, and aeronautical users should consider the public interest in consulting with airports on setting such fees.

1.1.4 Airport proprietors and aeronautical users should consult and make a good-faith effort to reach agreement. Absent agreement, airport proprietors are free to act in accordance with their proposals, subject to review by the Secretary or the Administrator on complaint by the user or, in the case of fees subject to 49 U.S.C. 47129, upon request by the airport operator, or, in unusual circumstances, on the Department's initiative.

1.1.5 To facilitate local resolution and reduce the need for direct Federal intervention to resolve differences over aeronautical fees, the Department encourages airport proprietors and aeronautical users to include alternative dispute resolution procedures in their lease and use agreements.

1.1.6 Any newly established fee or fee increase that is the subject of a complaint under 49 U.S.C. 47129 that is not dismissed by the Secretary must be paid to the airport proprietor under protest by the complainant. Unless the airport proprietor and complainant agree otherwise, the airport proprietor will obtain a letter of credit, or surety bond, or other suitable credit instrument in accordance with the provisions of 49 U.S.C. 47129(d). Pending issuance of a final order determining reasonableness, an airport proprietor may not deny a complainant currently providing air service at the airport reasonable access to airport facilities or services, or otherwise interfere with that complainant's prices, routes, or services, as a means of enforcing the fee, if the complainant has complied with the requirements for payment under protest.

1.2 Where airport proprietors and aeronautical users have been unable, despite all reasonable efforts, to resolve disputes between them, the Department will act to resolve the issues raised in the dispute.

1.2.1 In the case of a fee imposed on one or more air carriers or foreign air carriers, the Department will issue a determination on the reasonableness of the fee upon the filing of a written request for a determination by the airport proprietor or, if the Department determines that a significant dispute exists, upon the filing of a complaint by one or more air carriers or foreign air carriers, in accordance with 49 U.S.C. § 47129 and implementing regulations. Pursuant to the provisions of 49 U.S.C. § 47129, the Department may only determine whether a fee is reasonable or unreasonable, and may not set the level of the fee.

1.2.2 The Department will first offer its good offices to help parties reach a mutually satisfactory outcome in a timely manner. Prompt resolution of these disputes is always desirable since extensive delay can lead to uncertainty for the public and a hardening of the parties' positions. Air carriers and foreign air carriers may request the assistance of the Department in advance of or in lieu of the formal complaint procedure described in 1.2.1.; however, the 60-day period for filing a complaint under § 47129 shall not be extended or tolled by such a request.

1.2.3 In the case of fees imposed on other aeronautical users, where negotiations between the parties are unsuccessful and a complaint is filed alleging that airport fees violate an airport proprietor's federal grant obligations, the Department will, where warranted, exercise the agency's broad statutory authority to review the legality of those fees and to issue such determinations and take such actions as are appropriate based on that review.

1.3 Airport proprietors must retain the ability to respond to local conditions with flexibility and innovation. An airport proprietor is encouraged to achieve consensus and agreement with its airline tenants before implementing a practice that would represent a major departure from this guidance. However, the requirements of any law, including the requirements for the use of airport revenue, may not be waived, even by agreement with the aeronautical users.

Fair and Reasonable Fees

2. Rates, fees, rentals, landing fees, and other service charges ("fees") imposed on aeronautical users for the aeronautical use of the airport ("aeronautical fees") must be fair and reasonable.

2.1 Federal law does not require a single approach to airport financing. Rates may be set according to a "residual" or "compensatory" rate-setting methodology, or any combination of the two, or according to a new rate-setting methodology, as long as the methodology used is applied consistently to similarly situated aeronautical users and as otherwise required by this policy. Airport proprietors may set rates for aeronautical use of airport facilities by ordinance, statute or resolution, regulation, or agreement.

2.1.1 Aeronautical users may receive a cross-credit of nonaeronautical revenues only if the airport proprietor agrees. Agreements providing for such cross-crediting are commonly referred to as "residual agreements" and generally provide a sharing of nonaeronautical revenues with aeronautical users. The aeronautical users may in turn agree to assume part or all of the liability for non-aeronautical costs, or an airport proprietor may cross-credit nonaeronautical revenues to aeronautical users even in the absence of such an agreement, but an airport proprietor may not require aeronautical users to cover losses generated by nonaeronautical facilities except by agreement.

2.1.2 In other situations, an airport proprietor assumes all liability for airport costs and retains all airport profits for its own use in accordance with Federal requirements. This approach to airport financing is generally referred to as the compensatory approach.

2.1.3 Airports frequently adopt charging systems that employ elements of both approaches.

2.2 Revenues from fees imposed for use of the airfield (airfield revenues) may not exceed the costs to the airport proprietor of providing airfield services and airfield assets currently in aeronautical use (airfield costs) unless otherwise agreed to by the affected aeronautical users.

2.3 The "rate base" is the total of all aeronautical costs that may be recovered from aeronautical users through fees charged for providing aeronautical services and facilities (aeronautical fees). Airport proprietors must employ a reasonable, consistent, and "transparent" (i.e., clear and fully justified) method of establishing the rate base and adjusting the rate base on a timely and predictable schedule.

2.4 Except as provided in paragraph 2.6 below or by agreement with aeronautical users, costs that may be included in the rate base (allowable costs) are limited to all operating and maintenance expenses directly and indirectly associated with the provision of aeronautical facilities and services (including environmental costs, as set forth below); all capital costs associated with the provision of aeronautical facilities and services currently in use, as set forth below; and current costs of planning future aeronautical facilities and services. In addition, a private, equity owner of an airport can include a reasonable return on investment.

2.4.1 The airport proprietor may include in the aeronautical rate base, at a reasonable rate, imputed interest on funds used to finance capital investments for aeronautical use, except to the extent that the funds are generated by fees charged for the use of airfield assets and airfield services. However, the airport proprietor may not include in the rate base imputed interest on funds obtained by debt financing if the debt-service costs of those funds are also included in the rate base.

2.4.2 Airport proprietors may include reasonable environmental costs in the rate base to the extent that the airport proprietor incurs a corresponding actual expense. All revenues received based on the inclusion of these costs in the rate base are subject to Federal requirements on the use of airport revenue. Reasonable environmental costs include, but are not necessarily limited to, the following:

(a) the costs of investigating and remediating environmental contamination caused by aeronautical operations at the airport at least to the extent that such investigation or remediation is required by or consistent with local, state or federal environmental law, and to the extent such requirements are applied to other similarly situated enterprises;

(b) the cost of mitigating the environmental impact of an airport development project (if the development project is one for which costs may be included in the aeronautical users' rate base), at least to the extent that these costs are incurred in order to secure necessary approvals for such projects, including but not limited to approvals under the National Environmental Policy Act and similar state statutes;

(c) the costs of aircraft noise abatement and mitigation measures, both on and off the airport, including but not limited to land acquisition and acoustical insulation expenses, to the extent that such measures are undertaken as part of a comprehensive and publicly-disclosed airport noise compatibility program; and

(d) the costs of insuring against future liability for environmental contamination caused by current aeronautical activities. Under this provision, the costs of self-insurance may be included in the rate base only to the extent that they are incurred pursuant to a self-insurance program that conforms to applicable standards for self-insurance practices.

2.4.3 Airport proprietors are encouraged to establish fees with due regard for economy and efficiency.

2.4.4 The airport proprietor may include in the rate base amounts needed to fund debt service and other reserves and to meet cash flow requirements as specified in financing agreements or covenants (for facilities in use), including but not limited to debt-service coverage; to fund cash reserves to protect against the risks of cash-flow fluctuations associated with normal airport operations; and to fund reasonable cash reserves to protect against other contingencies.

2.4.5 The airport proprietor may include in the rate base capital costs in accordance with the following guidance, which is based on the principle of cost causation:

(a) Costs of facilities directly used by the aeronautical users may be fully included in the rate base, in a manner consistent with this policy. For example, the capital cost of a runway may be included in the rate base used to establish landing fees.

(b) Costs of airport facilities used for both aeronautical and nonaeronautical uses (shared costs) may be included in a particular aeronautical rate base if the facility in question supports the aeronautical activity reflected in that rate base. The portion of shared costs allocated to aeronautical users should not exceed an amount that reflects the aeronautical purpose and proportionate aeronautical use of the facility in relation to nonaeronautical use of the facility, unless the affected aeronautical users agree to a different allocation. Aeronautical users may not be allocated all costs of facilities that are used by both aeronautical and nonaeronautical users unless they agree to that allocation.

2.5 Airport proprietors must comply with the following practices in establishing the rate base, provided, however, that one or more aeronautical users may agree to a rate base that deviates from these practices in the establishment of those users' fees.

2.5.1 In determining the total costs that may be recovered from fees for the use of airfield assets, public use roadways, and associated land in the rate base, the airport proprietor must value them according to their historic cost to the original airport proprietor. Subsequent airport proprietors generally shall acquire the cost basis of such assets at the original airport proprietor's historic cost, adjusted for subsequent improvements.

(a) Where the land associated with airfield facilities and public use roadways was acquired with debt-financing, the airport proprietor may include such land in the rate base by charging all debt service expenditures incurred by the airport proprietor, including principal, interest and debt service coverage. If such land was acquired with internally generated funds or donated by the airport proprietor the airport proprietor may include the cost of the land by amortization. Upon retirement of the debt or completion of the amortization, the land may no longer be included in the rate base.

(b) The airport proprietor may use a reasonable and not unjustly discriminatory methodology to allocate the total airfield costs among individual segments of the airfield to enhance the efficient use of the airfield, even if that methodology results in fees charged for a particular segment that exceed that segment's pro rata share of costs based on HCA valuation.

2.5.2 Where comparable assets, e.g., two runways or two terminals, were built at different times and have different costs, the airport proprietor may, at its option, combine the cost basis of the comparable assets to develop a single cost basis applicable to all such facilities.

2.5.3 The costs of facilities not yet built and operating may not be included in the rate base. However, the debt-service and other carrying costs incurred by the airport proprietor during construction may be capitalized and amortized once the facility is put in service. The airport proprietor may include in the rate base the cost of land that facilitates the current operations of the airport.

2.5.4 The rate base of an airport may include costs associated with another airport currently in use only if: (1) The proprietor of the first airport is also the proprietor of the second airport; (2) the second airport is currently in use; and (3) the costs of the second airport to be included in the first airport's rate base are reasonably related to the aviation benefits that the second airport provides or is expected to provide to the aeronautical users of the first airport.

(a) Element no. 3 above will be presumed to be satisfied if the second airport is designated as a reliever airport for the first airport in the FAA's National Plan of Integrated Airport Systems (NPIAS).

(b) If an airport proprietor closes an operating airport as part of an approved plan for the construction and opening of a new airport, reasonable costs of disposition of the closed airport facility may be included in the rate base of the new airport, to the extent that such costs exceed the proceeds from the disposition.

2.6 For other facilities and land not covered by Paragraph 2.5.1, the airport proprietor may use any reasonable methodology to determine fees, so long as the methodology is justified and applied on a consistent basis to comparable facilities, subject to the provisions of paragraph 4.2.1 below.

2.6.1 Reasonable methodologies may include, but are not limited to, historic cost valuation, direct negotiation with prospective aeronautical users, or objective determinations of fair market value.

2.7 At all times, airport proprietors must comply with the following practices:

2.7.1 Indirect costs may not be included in the rate base unless they are based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers within the control of the proprietor.

2.7.2 The costs of airport development or planning projects paid for with federal government grants and contributions and passenger facility charges (PFCs) may not be included in the rate base.

(a) In the case of a PFC-funded project for terminal development, for gates and related areas, or for a facility that is occupied by one or more carriers on an exclusive or preferential use basis, the fees paid to use those facilities shall be no less than the fees charged for similar facilities that were not financed with PFC revenue.

Prohibition on Unjust Discrimination

3. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

3.1 Unless aeronautical users agree, aeronautical fees imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group under a cost allocation methodology adopted by the airport proprietor that is consistent with this guidance.

3.1.1 The prohibition on unjust discrimination does not prevent an airport proprietor from making reasonable distinctions among aeronautical users (such as signatory and non-signatory carriers) and assessing higher fees on certain categories of aeronautical users based on those distinctions (such as higher fees for non-signatory carriers, as compared to signatory carriers).

3.2 A properly structured peak pricing system that allocates limited resources using price during periods of congestion will not be considered to be unjustly discriminatory. An airport proprietor may, consistent with the policies expressed in this policy statement, establish fees that enhance the efficient utilization of the airport.

3.3 Relevant provisions of the Convention on International Civil Aviation (Chicago Convention) and many bilateral aviation agreements specify, inter alia, that charges imposed on foreign airlines must not be unjustly discriminatory, must not be higher than those imposed on domestic airlines engaged in similar international air services and must be equitably apportioned among categories of users. Charges to foreign air carriers for aeronautical use that are inconsistent with these principles will be considered unjustly discriminatory or unfair and unreasonable.

3.4 Allowable costs—costs properly included in the rate base—must be allocated to aeronautical users by a transparent, reasonable, and not unjustly discriminatory rate-setting methodology. The methodology must be applied consistently and cost differences must be determined quantitatively, when practical.

3.4.1 Common costs (costs not directly attributable to a specific user group or cost center) must be allocated according to a reasonable, transparent and not unjustly discriminatory cost allocation formula that is applied consistently, and does not require any air carrier, foreign air carrier or other aeronautical user group to pay costs properly allocable to other users.

Requirement to be Financially Self-Sustaining

4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

4.1 If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

4.1.1 Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self sustaining as possible in the circumstances existing at such airports.

(a) Absent agreement with aeronautical users, the obligation to make the airport as self-sustaining as possible does not permit the airport proprietor to establish fees for the use of the airfield that exceed the airport proprietor's airfield costs.

(b) For those facilities for which this policy permits the use of fair market value, the Department does not construe the obligation on self-sustainability to compel the use of fair market value to establish fees.

4.1.2 At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to allow commercial aeronautical services to operate at a profit. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.

4.2 In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C. 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users may exceed the costs of service to those users, the surplus funds accumulated from those fees must be used in accordance with § 47107(b).

4.2.1 The Department assumes that the limitation on the use of airport revenue and effective market discipline for aeronautical services and facilities other than the airfield will be effective in holding aeronautical revenues, over time, to the airport proprietor's costs of providing aeronautical services and facilities, including reasonable capital costs. However, the progressive accumulation of substantial amounts of surplus aeronautical revenue may warrant an FAA inquiry into whether aeronautical fees are consistent with the airport proprietor's obligations to make the airport available on fair and reasonable terms.

Requirements Governing Revenue Application and Use

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

5.1 Additional information on the statutorily allowed uses of airport revenue is contained in separate guidance published by the FAA pursuant to § 112 of the FAA Authorization Act of 1994, which is codified at 49 U.S.C. § 47107(l).

5.2. The progressive accumulation of substantial amounts of airport revenues may warrant an FAA inquiry into the airport proprietor's application of revenues to the local airport system.

Issued in Washington, DC, on August 21, 1995.

Federico Peña,

Secretary of Transportation.

David R. Hinson,

Administrator, Federal Aviation Administration.

Appendix 1—Information for Aeronautical User Charges Consultations

The Department of Transportation ordinarily expects the following information to be available to aeronautical users in connection with consultations over changes in airport rates and charges:

1. HISTORIC FINANCIAL INFORMATION covering two fiscal years prior to the current year including, at minimum, a profit and loss statement, balance sheet and cash flow statement for the airport implementing the charges.

2. JUSTIFICATION. Economic, financial and/or legal justification for changes in the charging methodology or in the level of aeronautical rates and charges at the airport. Airports should provide information on the aeronautical costs they are including in the rate base.

3. TRAFFIC INFORMATION. Annual numbers of terminal passengers and aircraft movements for each of the two preceding years.

4. PLANNING AND FORECASTING INFORMATION

(a) To the extent applicable to current or proposed fees, the long-term airport strategy setting out long-term financial and traffic forecasts, major capital projects and capital expenditure, and particular areas requiring strategic action. This material should include any material provided for public or government reviews of major airport developments, including analyses of demand and capacity and expenditure estimates.

(b) Accurate, complete information specific to the airport for the current and the forecast year, including the current and proposed budgets, forecasts of airport charges revenue, the projected number of landings and passengers, expected operating and capital expenditures, debt service payments, contributions to restricted funds, or other required accounts or reserves.

(c) To the extent the airport uses a residual or hybrid charging methodology, a description of key factors expected to affect commercial or other nonaeronautical revenues and operating costs in the current and following years.

[FR Doc. 95–22354 Filed 9–7–95; 8:45 am]

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Friday
September 8, 1995

Part VII

Department of Labor

Occupational Safety and Health Administration

29 CFR 1910
Logging Operations; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–048]

Logging Operations

ACTION: Final rule; corrections and technical amendments.

SUMMARY: This notice corrects and amends the final rule on Logging Operations which was published by OSHA on October 12, 1994 (59 FR 51672). In response to questions raised about certain provisions in the rule, OSHA is clarifying language in the regulatory text so it most accurately expresses the Agency's intent with respect to the provisions in question and to provide additional information with regard to some of the provisions.

EFFECTIVE DATE: September 8, 1995.

FOR ADDITIONAL INFORMATION: Ms. Anne Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202)–219–8148.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1994, OSHA published a revised standard providing protection for workers performing logging operations (59 FR 51672). The final rule (29 C.F.R. 1910.266) had an effective date of February 9, 1995.

After the final rule was published, the Equipment Manufacturers Institute (EMI), the Portable Power Equipment Manufacturers Association (PPEMA), and Homelite, a manufacturer of chain saws, filed timely petitions with the court seeking judicial review of the standard. The deadline for filing a petition for judicial review was December 12, 1994. After the deadline had passed, the Associated California Loggers, the Associated Oregon Loggers, Inc., the Montana Logging Association, and the Washington Contract Loggers Association also filed objections to the final rule.

These parties and organizations raised questions about certain provisions of the final rule. After consideration of their questions, OSHA published a **Federal Register** notice (60 FR 6447, February 8, 1995) staying enforcement of 12 provisions of the standard for six-months, until August 9, 1995. The other provisions of the final rule were not affected by the partial stay and became effective on February 9, 1995.

In the February 8 notice, OSHA explained that the partial stay would give the Agency time to clarify language in the regulatory text and preamble so it most accurately expressed the Agency's intent with respect to the provisions in question and to provide additional information with regard to some of the provisions. The provisions OSHA stayed were: (d)(1)(v)—insofar as it requires foot protection to protect the employee against chain-saw penetration; (d)(1)(vii)—insofar as it requires face protection; (d)(2)(iii)—annual review and approval of first-aid kits by a health care provider; (f)(2)(iv)—machine operation on slopes; (f)(2)(xi)—machine shutdown procedures; (f)(3)(ii)—ROPS specifications; (f)(3)(vii) and (viii)—machine cab enclosures; (f)(7)(ii)—machine parking brakes; (g) (1) and (2)—maintenance and inspection of employee-owned vehicles; (h)(2)(vii)—location of the backcut in Humboldt cutting.

PPEMA and Homelite also requested OSHA to stay enforcement of the requirement that chain saws be equipped with chain brakes. OSHA denied their request. Thereafter, PPEMA withdrew its petition for judicial review. Homelite filed a motion for a stay pending review of the chain-brake requirement with the U.S. Court of Appeals for the Fourth Circuit. OSHA opposed Homelite's motion and American Pulpwood Association (APA) filed an amicus opposing the stay. OSHA also filed a motion to dismiss Homelite's petition for lack of standing. The court denied both Homelite's and OSHA's motions. Homelite continues to challenge the chain brake provision of the final rule in the Fourth Circuit. EMI withdrew its petition for review pursuant to a settlement.

During the six-month stay of enforcement, OSHA received other inquiries about the final rule. In addition, OSHA met with representatives of various logging associations such as APA and the Western Logging Council (WLC), equipment manufacturers such as EMI and PPEMA, and other individuals in order to discuss the stayed provisions as well as other questions they had regarding the final rule.

On August 9, 1995, OSHA published a **Federal Register** notice extending the partial stay for 30 days, until September 8, 1995, in order to complete its reconsideration of the issues, to complete corrections and clarifications in the regulatory text and preamble, and to revise its compliance directive to reflect those changes (60 FR 40457). This notice corrects and amends the final rule, and provides information and clarification regarding the stayed provisions and other issues.

Stayed Provisions

Paragraph (d)(1)(v)—Cut-Resistant Foot Protection

The final rule requires that the employer assure that each employee wears foot protection, covering and supporting the foot and ankle, which is waterproof or water repellant. OSHA stayed one aspect of the foot protection provision which required that logging boots provide protection from penetration by chain saws. Some parties requested OSHA to drop the chain-saw penetration requirement, contending that rubber and calk-soled logging boots providing employees protection from penetration by chain saws were neither necessary nor available.

The rulemaking record strongly supports the need for logging footwear which protects chain-saw operators against penetration by chain saws. As OSHA discussed in the preamble to the final rule, 10 percent of injuries reported in the WIR survey were to the foot and ankle (Ex. 2–1). In addition, APA submitted to the record an injury report where a chain-saw operator who was not wearing protective footwear cut off his foot when the bar went through the soft spot of a tree trunk and into his foot (Ex. 26A).

Reports of foot injuries resulting from chain saws led several commenters to recommend that OSHA require foot protection be cut-resistant (Tr. W1 148, 195; Tr. W2 139). For example, Mr. Joseph William, owner of Jayfor Logging, said he provides and requires employees to wear cut-resistant logging boots (Tr. W1 195). In addition, Mr. Williams said all employers that are members of the Nortim program, a logging workers' compensation insurance group, must assure that employees wear cut-resistant foot protection (Tr. W1 158, 195).

Based on its reconsideration of the record, OSHA maintains that an employee operating a chain saw needs to wear logging boots which will provide protection against penetration by the saw. However, based on discussions during the stay, OSHA is correcting the language of this requirement to express more clearly the Agency's intent regarding the type of chain-saw protection that is required for the foot. In the final rule, OSHA intended by the language "protect the employee from penetration by chain saws" to mean that foot protection worn by employees be equipped with material that is *cut-resistant* to chain saws. That is, OSHA intended that foot protection prevent the chain saw from cutting the employee before the employee is able to react, or before the protective material jams the chain saw. The language in the final rule was not intended to require that the protective material itself must be totally impervious to penetration by a chain saw. Rather, the available protective clothing and footwear is equipped with multiple layers of protective material, such as but not limited to ballistic nylon, Kevlar, or the layered-material in heavy-duty logging boots; which provide cut resistance as follows: the protective material must either provide enough resistance to the saw chain to give the operator time to react and pull the saw away from the foot before the saw chain penetrates through all the layers, or jam the flywheel and chain, thereby stopping the saw. OSHA is revising the regulatory text to indicate that leg protection must be made of material that is cut-resistant, as OSHA has defined it above. OSHA stresses that this change is merely adoption of terminology which is used in the industry, but the use of this term does not change the meaning or intention of the final rule.[1]

Some parties also said that rubber and calk-soled boots which are needed in working in the steep terrain of the northwest were not manufactured with chain-saw cut-resistant material. However, the rulemaking record shows that such boots are available and have been available for a considerable period of time (Ex. 4–103, 5–30). Specifically, E. I. du Pont de Nemours & Company, the manufacturer of Kevlar, told OSHA in 1989 that rubber logging boots were available that contain Kevlar, and which du Pont "feel[s] offers adequate protection against chain saw injuries, based on European test standards" (Ex. 5–30). In addition, an article from the June 1987 *The Logger and Lumberman* said that a cut-resistant rubber boot, which had been successfully tested by the U.S. Forest Service, was available (Ex. 4–103). Moreover, in discussions with other manufacturers and distributors of personal protective equipment during the six-month stay, OSHA has confirmed its original conclusion that a variety of companies currently manufacture logging boots, including rubber and calk-soled boots, which are equipped with material to protect against chain saw cuts. Therefore, OSHA is lifting the stay of this requirement. Effective September 8, 1995, employers shall assure that foot protection worn by each employee who operates a chain saw, including rubber, calk-soled and other slip-resistant boots, is chain-saw cut-resistant.

OSHA has also clarified the final rule to indicate that the cut-resistant foot protection requirement applies only to employees who operate a chain saw. OSHA notes and is specifying in the revised compliance directive that this applies to *any operation* of a chain saw, whether as a regular part of the employee's job or incidental to the job. There is nothing in the records that indicates chain-saw accidents involve only those who operate chain saws on a regular basis. OSHA believes that those who operate chain saws only infrequently may be at particular risk because they may be less familiar with the chain saw and less experienced in managing the hazards associated with its operation. Based upon the hazards to employees when they use a chain saw and the ready availability of the protective equipment to minimize such hazards, OSHA believes that all employees who use a chain saw must be protected against foot injury regardless of the frequency of the chain saw usage. Logging employees who do not operate chain saws at all need not have foot protection that is chain-saw cut-resistant.

OSHA also stresses that the foot protection requirement in the final rule is expressed in performance terms. For example, nothing in the final rule requires that employees wear steel-toed logging boots in order to meet the cut-resistance requirement. Steel-toed boots meeting the ANSI foot protection requirements do provide adequate protection against chain-saw cuts for the *toe*. However, if such boots do not have material to protect the rest of the foot from chain-saw cuts they do not comply with the final rule. The final rule requires that logging boots for chain-saw operators must provide cut-resistant protection for the foot, not just the toe. The record indicates that there is available supplemental cut-resistant foot protection which can be attached to logging boots to provide the needed protection (Ex. 5–14).

After publication of the final rule, OSHA was requested by some parties to clarify the rule to indicate from what type of material logging boots must be constructed. They recommended that OSHA specify that logging boots be made of industrial grade or top grain leather or other material. Instead of specifying the type of material which must be used, OSHA has expressed the requirement in performance terms. For example, OSHA has specified that foot protection cover and provide support to the ankle. The purpose of this requirement is to help reduce the significant number of ankle and foot injuries (sprains and fractures) (Ex. 2–1). OSHA is confident that employers and employees will be able to select logging boots that provide adequate ankle support because various logging associations already recognize that hiking and other light duty boots do not provide sufficient protection.[2]

Paragraph (d)(1)(vii)—Face Protection

In the final rule, OSHA required that employers provide and pay for protection for the eyes and face for any employee where there is a potential for injury due to falling or flying objects. After publication of the final rule, OSHA was requested by some parties to stay the face protection requirement in order to clarify the following concerns.

First, these parties requested OSHA to clarify in what logging operations face protection is required. The rulemaking record shows that some employees do need protection for the face as well as the eyes (e.g., chipper operators) (Ex. 2–1). In the WIR survey 42 face injuries were reported during the three-month survey period which involved other than the eye (Ex. 2–1). OSHA believes that chipper operators, employees cutting limbs, branches or spring poles, and employees moving through dense underbrush are among those for whom the risk of facial lacerations from wood, wood chips, needles or splinters is most likely. OSHA is revising the final rule to indicate that where employees are at risk of facial injury they must wear protection meeting the requirements of subpart I of Part 1910 (29 CFR 1910.133).

For other employees, however, eye protection alone may be adequate to protect them from the hazards present. For example, an employee performing machine maintenance may only require eye protection. For these employees, the most likely hazards are dirt, particles or other substances flying or splashing into the eyes. For example, maintenance employees need eye protection where they are using metal cut-off or grinding tools. Subpart I requires employers to assess the hazards in the workplace to what personal protective equipment is necessary. OSHA is revising the final rule to emphasize that where the assessment indicates a risk of facial injury exists, face protection must also be provided and worn.

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[1] OSHA notes that the most important aspect of the protective material is not that it be made specifically of ballistic nylon, but that it is comparably cut-resistant. OSHA intended its use of the term "ballistic nylon" in the final rule to be consistent with the industry's generic use of the term as shorthand for cut-resistant materials in general. Indeed, in the preamble to the final rule, OSHA discussed several types of materials which are currently available to provide protection against chain-saw cuts.

[2] OSHA notes that the final rule does not require the employer to provide logging boots for employees. The cost of providing logging boots may be borne by employees. The employer, however, must assure that logging boots which are worn by an employee are in serviceable condition and meet the requirements of paragraph (d)(1)(vi) of the final rule.

Second, these parties requested that OSHA clarify whether the final rule requires employees to wear both eye and face protection simultaneously. It was OSHA's intention that of face protection would adequate protection for both the eyes and the face. Therefore, OSHA is adding a note to the final rule to clarify that where the employer determines that protection against eye and face injury is necessary and provides the employee with a device that protects both the eyes as well as the face, the final rule does not also require the employee to wear separate eye protection.

Finally, these parties said that face protection should not be required because it may interfere with the logger's vision, thereby creating additional hazards. They said optical characteristics of face shields made of solid transparent material, as required by subpart I, could distort peripheral vision. However, they did not provide evidence to this effect during the rulemaking and they have not identified any data in the rulemaking record that would support this contention. There is nothing in the record that would lead the Agency to believe that potential distortion of peripheral vision by face shields creates a greater hazard than lack of face protection. Of the injuries reported in the WIR survey, obstructed vision was not identified as the cause of any injury (Ex. 2–1).

They also said that the logger's vision could be reduced in wet weather because of wood chips or sawdust sticking to the face shield or the transparent material fogging up. Once again, the record does not indicate that this is a significant problem. In any event, the final rule allows flexibility in selecting face protection for employees working in different conditions. Specifically, with the exception of chipping operations, the final rule expressly permits logger-type mesh screens to be used for face protection. Such screens provide protection from penetration by branches, limbs and saplings, yet do not restrict vision in wet weather or fog up. Information in the record indicates that face protection comprised of mesh screens is readily available in the industry. In fact, many types of safety headgear manufactured for the logging industry are equipped with mesh screen face protection.

OSHA notes, however, that most logger-type mesh face screens do not meet the literal requirements of Subpart I because they do not comply with the referenced ANSI standards, ANSI Z87.1–1989 or ANSI Z87.1–1968. Mesh face screens are not constructed with impervious transparent material and do not necessarily meet the impact resistance requirements of the ANSI standards. For this reason, they may not be used in chipping operations where impact resistance is needed to prevent injury from wood, wood chips, needles, or splinters being propelled from chipping machines at great speed. For chipping operations, therefore, eye and face protection must meet the requirements of subpart I.

However, for other logging operations such as chain-saw operation, OSHA believes that logger-type mesh screens will provide adequate protection. In these operations there is not the same hazard of objects hitting the face screen at a high speed or penetrating through the mesh openings. Mesh screens provide adequate protection to keep small limbs, branches, and saplings from poking the employee's eye or cutting the employee's face when the employee is moving through the woods. Therefore, OSHA is revising the final rule and compliance directive to indicate that an employer who provides and requires chain saw operators performing felling, limbing and bucking activities to use a logger-type mesh face screen would be deemed to be in compliance with this paragraph. Additionally, logger-type mesh face screens may also be used by those employees performing yarding operations. For all other logging tasks (e.g., machine and vehicle maintenance, cutting winch cables, drilling, grinding, and welding during equipment repair) for which the hazard assessment indicates eye and face protection are necessary, the employer must provide protection which meets the requirements of subpart I.

Paragraph (d)(2)(iii)—First-Aid Kits

Paragraph (d)(2) of the final rule requires that employers provide and maintain first-aid kits. In addition, this paragraph specifies the minimum content requirements for first-aid kits (Appendix A). These provisions became effective February 9, 1995.

OSHA stayed the requirement that the number and contents of first-aid kits be reviewed and approved annually by a health care provider. Some parties told OSHA that annual approval of first-aid kits by health care providers would be burdensome for employers. Because the final rule already contains a list of minimum contents for the first-aid kit, OSHA is persuaded that eliminating the requirement of annual health care provider review will not reduce protection for logging employees.

The minimum first-aid kit and first-aid training requirements provided in the final rule were developed in consultation with the OSHA offices of occupational medicine and occupational health nursing. This careful review of the minimum contents of the required first-aid kits makes it unnecessary for OSHA to require employers to have the kits reviewed annually by a health care provider. Therefore, OSHA is correcting the final rule accordingly.

At the same time, however, OSHA encourages logging employers to conduct an annual review of the contents of first-aid kits, including engaging in consultation with a health care provider regarding approval of those contents. Such review can help to ensure that the contents are adequate for the number of employees and conditions of the particular logging worksite, and that first-aid kits contain the latest first-aid innovations and technologies which would be useful to the logging work environment. Because of the remoteness of logging worksites from professional medical services, OSHA believes that for some logging sites, additional attention should be given to the contents of first-aid kits. Annual health care provider review is clearly permitted in these circumstances, and the final rule provides for such review as a "best practice" recommendation for employers.[3]

Paragraph (f)(2)(iv)—Machine Operation on Slopes

OSHA stayed the provision requiring that logging machines not be operated on any slope greater than the maximum slope recommended by the manufacturer after learning that logging machine manufacturers do not specify a maximum slope on which particular logging machines can be safely operated. The intent of this requirement was to ensure that machines used on sloping terrain are operated in a manner that will prevent the machine from tipping or rolling over. As OSHA explained in the preamble to the final rule, injuries and fatalities resulting from tipping and rollover accidents are prevalent in the logging industry because of the rough terrain on which logging machines operate (Ex. 2–1).

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[3] OSHA notes that the employer does not need to take the actual first-aid kits themselves to the health care provider for review and approval. Rather, the health care provider may review the list of the items contained in the first-aid kits, along with a description of the conditions of the particular worksite.

The maximum slope of operation varies depending on the conditions under which the machine is being operated. These conditions include the terrain (e.g., wet, muddy, dry, compacted, rocky), the direction of the machine operation (e.g., cross-slope, uphill, downhill, diagonally across the slope), and the operation being performed. OSHA is revising the final rule to require that employers assure that machine operators follow the instructions, directions and limitations described by the manufacturer in the operating and maintenance manuals.

There are many ways in which an employer can accomplish this obligation. Manufacturers' operating instructions can be incorporated into operator training programs. Compliance with these operating instructions can be reinforced during regular safety and health meetings, and through spot checks on employees' operating performance.

Paragraph (f)(2)(xi)—Machine Shutdown Procedures

The final rule specifies procedures which must be followed when a machine is shut down. These include applying brakes and grounding or securing moving elements (paragraph (f)(2)(x)), and discharging pressure and stored energy (paragraph (f)(2)(xi)). With regard to the discharge requirements, this provision is intended to prevent moving elements, such as blades, buckets, saws and shears from being unexpectedly or inadvertently activated or engaged after the machine has been shut down. Such activation has resulted in severe injury or death to logging operators, maintenance personnel or others in the vicinity of the machine (Ex. 2–1, 4–61, 4–63, 4–64, 26A).

OSHA stayed the discharge provision (paragraph (f)(2)(xi)) in order to reconsider whether the provision could be misinterpreted to require unnecessary discharging of pressure and stored energy. For example, OSHA was concerned whether employers might misinterpret the provision as requiring the discharge of pressure and stored energy not related to moving elements of the machine, such as bleeding machine brakes, a result which OSHA had not intended.

OSHA is therefore correcting this provision so it more accurately identifies and addresses the hazards OSHA intended to control in the final rule. Revised paragraph (f)(2)(xi) requires that the hydraulic and pneumatic storage devices which can move the moving elements of a logging machine after machine shut down and expose employees to serious hazards must be discharged as specified by the manufacturer.

OSHA is also correcting paragraph (f)(2)(x) to require that any time the operator leaves the machine cab, the parking brakes must be applied, the moving elements must be grounded or secured, and the transmission must be placed in park. A further review of the record indicates that such a correction is necessary since the hazard of unexpected or inadvertent activation of logging machines is present any time an operator leaves the machine cab, whether to perform another logging operation or to stop work for the day. The record includes several reports of machine operators and others who died or were severely injured when they failed to engage the parking brakes and lower moving elements to the ground before dismounting from the machine (Ex. 4–61, 4–64, 26A).

OSHA has addressed the hazard of inadvertent machine engagement in other rules as well (e.g., 29 CFR 1910.147, 29 CFR 1910.178). OSHA believes the same hazard addressed by those rules is present in logging operations. Therefore, OSHA is correcting the final rule and compliance directive to indicate that braking, grounding and parking procedures must be followed any time the operator leaves the machine cab.

Paragraph (f)(3)(ii)—ROPS Specifications

The final rule requires that logging machines be equipped with rollover protective structures (ROPS) that are tested, installed and maintained in accordance with the Society of Automotive Engineers (SAE) J1040, April 1988, performance criteria for ROPS. OSHA stayed this requirement for six months and is now amending the ROPS requirement to state that only machines manufactured after August 1, 1996 must have ROPS which meet the 1988 SAE standard.

OSHA is making this change because, while many machines currently manufactured do meet the 1988 SAE ROPS standard, other machines currently manufactured or in use do not. These machines do have ROPS for the most part. However, the ROPS on these machines meet the 1979 SAE standard instead. While machines that meet the 1988 standard have additional protection (e.g., protection for longitudinal rollover), machines meeting the 1979 standard do provide protection for the most frequently occurring hazard: horizontal rollover. As such, OSHA believes that permitting an exception for machines already in service should not reduce significantly the level of protection provided to machine operators. Therefore, OSHA is revising the compliance directive to indicate that machines manufactured on or before August 1, 1996, which comply with the 1979 SAE ROPS standard are appropriate for use, provided the ROPS is maintained at its designed level of effectiveness (See paragraph (f)(1)(i)—machine general maintenance requirement).[4]

In addition, EMI has agreed to use its best efforts to provide OSHA with a list of the model numbers of the last logging machines manufactured on August 1, 1996. OSHA will use this list to update its logging compliance directive as to which logging machines must meet the 1988 SAE ROPS standard.

Paragraph (f)(3) (vii) and (viii)—Machine Cab Enclosures

OSHA stayed two provisions in the final rule dealing with cab enclosures.[5] Paragraph (f)(3)(vii) required that the lower portion of machine cabs, up to the top of the instrument panel or 24 inches, be enclosed with solid material, except at entrances. Paragraph (f)(3)(viii) required that the upper portion of cabs be enclosed with mesh material (no greater than 2 inches at its least dimension) or with other material(s) that provide equivalent protection and visibility. The intention of these provisions was to ensure that the cab enclosure provided the machine operator with protection from objects penetrating the cab, without impeding the operator's vision.

OSHA stayed these provisions because it was concerned that this language could be misconstrued in ways that would reduce protection for machine operators. OSHA is revising the final rule to require that logging machines manufactured after August 1, 1996, have cabs which are completely enclosed, including at entrances (paragraph (f)(3)(vii)). The revised provision also clarifies that the enclosure must be constructed with mesh material (with openings no greater than 2 inches at its least dimension), or with other material(s) which the employer demonstrates will provide equivalent visibility and protection from penetrating objects.[6]

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[4] The final rule also provides that ROPS and FOPS required on logging machines placed into initial service after the effective date must also meet the requirements of SAE J397, April 1988, "Deflection Limiting Volume—ROPS/FOPS Laboratory Evaluation." The 1988 standard updated a 1979 SAE standard on deflection limiting volume. OSHA notes that there is no functional difference between the criteria of the 1988 and 1979 SAE standards. Therefore, ROPS and FOPS certified to meet the requirements of either the 1988 or 1979 SAE standards shall be deemed to be in compliance with the final logging standard. OSHA is revising the compliance directive to reflect this.

[5] OSHA intends the term "cab" to include any machine operator station, even if it is not a total enclosure providing weather and other protection.

While some logging machines currently manufactured do meet this requirement, others do not. For those logging machines manufactured on or before August 1, 1996, OSHA is clarifying in paragraph (f)(3)(viii) that such machines may either comply with revised paragraph (f)(3)(vii) or continue to meet the protective canopy requirements specified in the 1971 pulpwood logging standard.[7]

Paragraph (f)(7)(ii)—Machine Brakes

In the final rule, OSHA required that logging machines be equipped with service brakes (primary brakes) (paragraph (f)(7)(i)), and a secondary braking system, such as emergency brakes or parking brakes (paragraph (f)(7)(ii)). The final rule specified that the secondary braking system be sufficient to stop the machine, in the event that the service brakes fail, and to maintain parking performance.

OSHA stayed paragraph (f)(7)(ii) insofar as it implied that parking brakes were adequate secondary brakes for stopping a moving logging machine if the service brakes failed. Primary brakes (service brakes), secondary stopping brakes (backup brakes), and parking brakes are all necessary devices for logging machines. OSHA is correcting paragraph (f)(7)(ii) to clarify that logging machines placed into initial service after September 8, 1995, must be equipped with three braking systems—service brakes, secondary brakes and parking brakes.

Some older machines were manufactured with primary brakes, but without secondary or backup brakes, and OSHA has learned that retrofitting these machines may not be feasible. OSHA is permitting these older machines to remain in use, provided that the employer assures the service brakes are inspected and maintained at their designed level of effectiveness. Therefore, OSHA is correcting paragraph (f)(7)(ii) to specify that only machines placed into initial service on or after September 8, 1995 must be equipped with secondary and parking brakes.[8]

Paragraph (g) (1) and (2)—Maintenance and Inspection of Employee-Owned Vehicles

The revised logging rule required employers to assure that any vehicle used off public roads to perform any logging operation, including transporting employees, be maintained in a serviceable condition and be inspected before it is used during a work shift. OSHA agreed to reconsider the maintenance and inspection requirements as they pertained to employee-owned vehicles and stayed the requirements for six months.

OSHA explained in the preamble to the final rule that it was aware that logging employees operate vehicles on private roads or on private property where there may be no roads or only rugged trails. The WIR survey shows that vehicle operators and employees riding in such vehicles are being injured in vehicle accidents where employees are being asked to drive vehicles over terrain that may be quite hazardous (e.g., extremely muddy, steep, and unlevel). For example, according to the WIR survey, there were 33 mobile equipment accidents resulting in employee injury during the three-month survey period (Ex. 2–1). Of these, 24 (72 percent) occurred during other than skidding or yarding operations (Ex. 2–1). In addition, the WIR survey reported 34 injuries on employer-built roads during the same period (Ex. 2–1).

Based on the record evidence, OSHA determined that it was important that logging employees on and between logging sites only drive vehicles that are in proper condition and of the appropriate type for the terrain in question. Because many employers require or permit employees to drive their own vehicles over this terrain to reach the logging work site, OSHA applied the inspection and maintenance requirements to these vehicles as well. However, OSHA is also aware, and others have pointed out, that most States do have periodic vehicle inspection requirements. These inspections are more detailed and comprehensive than the inspection contemplated by the logging rule. As such, OSHA believes that such inspections are adequate, at least with regard to employee-owned vehicles, and that imposing additional vehicle inspection requirements on logging employers is unnecessary. Therefore, OSHA is revising the final rule to apply the vehicle inspection and maintenance requirements only to vehicles which the employer owns, rents or leases. OSHA has done this by revising the definition of "vehicle" covered by the final rule. OSHA also notes that the employer has the duty to provide safe access to the worksite.[9]

With regard to inspections of vehicles, as well as other equipment covered by the final rule such as personal protective equipment, tools, and machines; OSHA never intended that the employer must conduct the actual inspection of such equipment. The compliance directive clarifies that employers may delegate to others, including employees using the items, the performance of inspection and maintenance tasks; but ultimately the employer remains responsible for safe equipment at the workplace. There are different ways in which the employer can assure that equipment is properly maintained and inspected. Employers can inform employees of maintenance and inspection procedures during training, reinforce the requirements during regular safety and health meetings, and conduct spot checks of equipment.

Finally, OSHA notes in the compliance directive that equipment inspection requirements in the final rule apply only if the equipment is used during the work shift. If it is not to be used, it does not need to be inspected.

Paragraph (h)(2)(vii)—Backcuts

The final rule requires that backcuts be placed above the horizontal face cut

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[6] OSHA is noting in the revised compliance directive that material(s) that satisfy the performance criteria of the Society of Automotive Engineers SAE J1084, April 1980, "Operator Protective Structure Performance Criteria for Certain Forestry Equipment" are deemed to comply with the revised provision.

[7] OSHA notes and is clarifying the compliance directive to indicate that extended compliance time and exceptions to compliance apply only where specifically indicated. With regard to all other provisions, the extensions and exceptions do not apply for machinery already in use. The employer must assure that any machine used for logging operations is in compliance with the other provisions of paragraph (f)(3). For example, all machines used in logging operations, whether initially placed in service before or after the effective date, must have two means of egress. To the extent that any machine in service does not have a second means of egress, the machine must be retrofitted (e.g., replacing the stationary windowshield with a hinged window to allow egress) or removed from service.

[8] OSHA is noting in the revised compliance directive that logging machines with braking systems meeting the Society of Automotive Engineers standards for forestry (SAE J1178, June 1987, "Braking Performance—Rubber Tired Skidders") or earthmoving (SAE J1026, April 1990, "Brake Performance—Crawler Tractors and Crawler Loaders") equipment are deemed to be in compliance with the final rule, provided that the employer assures that such braking systems are maintained in a serviceable condition.

[9] OSHA is deleting from revised paragraphs (g)(1) and (g)(2) specific reference to application of vehicle maintenance and inspection requirements to vehicles used to transport employees. Since transportation of employees to, from and between logging sites off public roads is included in the definition of logging operations, OSHA believes it is not necessary to repeat the reference in these provisions.

in all felling except tree pulling operations. OSHA was requested to clarify whether the requirement in paragraph (h)(2)(vii) applies to Humboldt cutting and open face felling. OSHA stayed for six months the backcut requirement in paragraph (h)(2)(vii) as it applied to felling trees using the Humboldt cutting method. OSHA also explained that it would use the six months to further clarify the backcut requirement as it applies to both cutting methods.

Open face felling. After OSHA published the final rule, the Agency was requested to clarify whether the backcut requirement applied to open face felling. In brief, the backcut requirement does not apply to open face felling, and OSHA is clarifying the final rule and compliance directive accordingly.

In open face felling, two facecuts are made diagonally into the stem so there is no horizontal face cut. The backcut requirement applies only where a horizontal face cut has been made. Where a horizontal face cut is used, there is a greater potential that the notch (or wedge) is not as open or that very little or no hinge wood will be left if the backcut is made at the same level. This may result in the tree kicking back or falling in the wrong direction.

In open face felling, the notch is much more open than in conventional felling. As such, there is little or no danger that placing the backcut at the level of the notch will result in the notch closing (i.e., the falling tree hitting the stump) too soon and the tree kicking back off the stump. This is because the openness of the notch permits the tree to fall in the intended direction for a greater interval before the notch closes and the hinge breaks. Either the tree is on the ground or almost parallel to the ground, and thus committed to falling in the intended direction, before the hinge breaks. In addition, there is little danger that no hinge wood will be left to help direct the falling of the tree.

Humboldt cutting. In the Humboldt cutting method a horizontal cut is made into the face of the tree and a notch is cut below the horizontal cut at an angle. By contrast, in conventional felling, the notch is cut at a diagonal above the horizontal face cut.

In several regions the Humboldt cutting method has replaced the conventional method. The Humboldt cutting method is heavily used in the western States and is also used on high quality trees, such as veneer logs and redwoods. Loggers have switched from the conventional to the Humboldt method primarily for productivity reasons. In Humboldt cutting, the notch is made into the stump rather than the log (Ex. 9–15). Thus, if properly done, the cutting of the notch does not result in the loss of useable wood. OSHA is aware that some fellers who use the Humboldt cutting method prefer to make the backcut at the level of the horizontal face cut, but the record indicates their preference is due to these production rather than safety reasons (Ex. 9–15). Some contractors and mills want log butts to be smooth. By placing the backcut at the same level as the face cut, these loggers do not have to make an additional cut after the tree is felled in order to smooth out the log butt. In some cases, to make the additional cut might require walking down a hill where the felled tree has rolled or the additional cut might have to be made by the employee bucking the tree.

In logging operations where the Humboldt method is most heavily used, fellers most often only cut a notch that is no greater than 45 degrees, making the openness of the notch similar to that of conventional felling. Fellers do this in order to keep the stump as short as possible and thereby reduce the lost of useable wood. At 45 degrees, the face notch alone does not fully address both the hazards of misdirected falling and kickback.

Proper backcuts that provide sufficient hinge wood are critical. Sufficient hinge wood helps to hold the tree to the stump during most of its fall and thereby allows the hinge to steer the falling tree in the right direction. If the hinge is inadequate or if pressure is placed on the hinge, it will break too soon and the tree will be left without a steering mechanism. Without the hinge wood, the tree may twist and bend, and fall in the wrong direction. (OSHA is revising paragraph (h)(2)(vi) to expressly state that this requirement is intended to address the hazard of misdirected falling.)

Placing the backcut above the horizontal face cut is also necessary to provide a platform to block the tree from kicking back once the hinge does break. Where there is a potential that the face notch will close before the tree hits the ground, which is the case with most cutting using the conventional and Humboldt methods, this platform is necessary to prevent kickback. Where the backcut is at the same level as the horizontal cut, there is no platform to block the backward movement of the tree should kickback start to occur. (OSHA is revising paragraph (h)(2)(vii) to expressly state that this requirement is intended to address the hazard of tree kickback.)

In both, misdirected falling and kickback, the feller or other team member could be hit by the tree. The risks of such injury are further increased if other conditions are present, such as wind, sloping terrain, or tree lean.

To address these risks, most State logging safety rules require that backcuts be above the face cut in all felling, including Humboldt cutting. For example, in Oregon, a State-plan State, the backcut requirement applies to any tree with an 8-inch or larger diameter base height. Only the State of Montana, which has advisory criteria, permits the backcut to be level with the face cut in Humboldt cutting.

After reviewing the record in this rulemaking, OSHA reaffirms that the record supports the necessity of applying the backcut requirement specified in paragraph (h)(2)(vii) to Humboldt cutting (Ex. 2–1, 4–61, 4–64, 26A; 59 FR 51675). The record clearly shows that manual felling is the single most dangerous occupation in logging. The BLS Census of Fatal Occupational Injuries indicates that more than one-half of all logging employees killed in 1992 were felling trees at the time of their accident (59 FR 51675). In addition, the WIR survey indicated that almost one quarter of all employees reporting injuries were felling trees at the time they were injured, and that the most frequently reported cause of their injuries was being hit by a tree (Ex. 2–1). The record also shows that tree kickback and misdirected falling are two of the major reasons why employees are hit by falling trees. For example, the record contains many reports of employee injuries and deaths due to misdirected falling and tree kickback (Ex. 4–61, 4–64, 26A).[10]

Proper backcuts where adequate hinge wood and a platform are left will reduce the potential for such injuries (Ex. 4–5, 21D, 22, 38I). In fact, manual felling training materials entered into the record instruct fellers, for safety reasons, to place the backcut above the horizontal face cut (Ex. 4–5, 4–6, 4–10, 4–19, 4–169, 4–173, 5–1, 5–29, 8–18, 21, 29). Moreover, the record demonstrates that the primary reason that fellers prefer to place backcuts at the same level as the face cut is not because of safety, but rather because they do not want to have to make an additional cut to trim the log butt. However, there is no evidence in the record which indicates that making an additional cut would have any significant impact on productivity.

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[10] It has been argued by some parties that placing the backcut above the horizontal face cut is only necessary in selective cutting operations, and not in clear cut operations. The reason they give is that in clear cut felling trees are felled into the downhill side of the slope and there is no danger the tree will kick back or fall against gravity in the wrong direction. However, the injury data in the rulemaking record do not support this position. According to the WIR survey, 62 percent of all injuries reported occurred in clear cut operations.

The purposes of this standard are best realized by requiring that the backcut provide sufficient hinge wood to direct the fall of the tree, and that the backcut be above the horizontal face cut so a platform is formed. These safe manual felling practices will help to ensure the tree falls in the intended direction and does not kick back off the stump when the notch closes. OSHA is revising the final rule and compliance directive to more clearly reflect OSHA's intent that these work practices be followed.[11]

OSHA has not specified in the final rule how far above the face cut the backcut must be placed. By contrast, the Washington and Michigan logging standards require that the backcut be approximately 2 inches above the face cut to provide adequate hinge wood. On the other hand, the Oregon logging rule does not specify a minimum vertical distance. OSHA believes that a backcut placed at least one inch above the face cut should provide an adequate platform to prevent kickback and to allow the hinge to help steer the falling of the tree in the intended direction. OSHA believes that a one-inch platform would provide an adequate margin of safety for the feller while still providing the contractor with a fairly square-end log.[12]

Other Corrections and Clarifications

Paragraph (c)—Definitions

Logging operations. The definition of "logging operations" in the final rule includes "marking" operations. OSHA is revising this definition to clarify the type of marking operations covered by the logging standard. OSHA intended that marking include operations that are done attendant to and at the same time as felling, cutting and moving trees in a particular logging work site. Such marking operations include marking danger trees, and sizing and marking felled trees to be cut to length. These particular marking operations inform loggers working in the area or on that tract whether and how to cut trees.

OSHA did not intend marking operations to include those operations that are done independently of or in advance of cutting trees in a particular logging site. These preparatory operations include marking of tracts of land to determine the order in which tracts will be logged, and marking and designating boundaries of tracts of land that will be bid upon for harvesting. Harvesting of trees does not take place on the tracts while these marking operations are being done. These preparatory operations do not involve the hazards of logging operations, and the record indicates that the high injury and fatality rates in the logging industry are not associated with these activities (e.g., Ex. 2–1). Therefore, OSHA is revising the compliance directive to indicate that marking activities which take place in advance of and separate from tree harvesting are not covered by the final logging rule.

For the same reasons, OSHA is also revising the compliance directive to specify that incidental marking of danger trees or wildlife trees at the same time tracts of land are being marked also is not covered by the final rule if no tree harvesting is undertaken in the area at this time.

OSHA is also revising the definition of logging operation to more accurately express its intention about what transportation activities the Agency considers to be logging operations covered by the final rule. The final rule had stated that logging operations include transport of machines, equipment and personnel from one logging site to another. The Agency had intended the definition to include transportation of machines, equipment and personnel to and from as well as between logging sites. As discussed above, with regard to transportation of employees, the revised rule includes only their transportation in vehicles owned, rented or leased by the employer.

OSHA has been requested to clarify what loading and unloading operations are covered by the final rule. OSHA is revising the compliance directive to indicate more clearly that loading of trees at the logging work site and loading/unloading of trees at transshipment points such as satellite wood yards are covered by the final rule. With regard to unloading logs at pulp, paper and paperboard mills (hereafter pulp mills) and sawmills, OSHA has other standards which address some of the hazards associated with such unloading (*See*, Pulp, Paper and Paperboard Mills, 29 CFR 1910.261, and Sawmills, 29 CFR 1910.265). To the extent that hazards associated with unloading trees at these worksites are addressed by these other standards, they apply instead of the final logging rule. For example, both the pulp mill and sawmill standards include provisions specifying how binders and stakes are to be released from the load of logs. As such, the similar provision contained in the logging final rule does not apply. However, to the extent that the final logging rule addresses hazards not covered by the pulp and saw mill standards, the logging rule applies if it is a logging operation. For example, neither the pulp mill or sawmill standards address the hazards faced by log truck operators who remain in their cabs during unloading. Thus, paragraph (h)(6)(iii) applies to loading and unloading of trees at pulp mills and sawmills as well as at logging sites and satellite log yards.

Machine. In the final rule OSHA included a definition of the machines covered by the logging rule. The definition included material handling equipment that is operated off-road. OSHA was asked to clarify whether the definition of logging machine includes aircraft, such as helicopters. OSHA never intended that logging machines include airplanes or helicopters and is clarifying its intention by expressly excluding airplanes and helicopters from the definition of machines covered by the final rule.

Paragraph (d)(1)(iii)—Gloves

The final rule specified that all loggers who handle wire rope must wear cotton gloves or other hand protection that the employer demonstrates provides equivalent protection. The proposed rule would have required employees to wear heavy-duty puncture resistant gloves such as leather. Many commenters said that such gloves would pose additional hazards and urged OSHA to permit employees to wear cotton gloves (Ex. 5–17, 5–29, 5–54, 5–74 through 5–92; Tr. OR 104). They said that during winching leather gloves would not tear away when caught on a "jagger" (i.e., broken wires of a wire rope) and would forcibly pull the logger's hand. This could result in a more severe laceration of the hand, or could cause the employee to be dragged into the machinery or to fall. Thus, they said the leather glove could turn a minor injury into a more serious injury. Based on this, in the final rule OSHA specified that cotton gloves must be worn.

OSHA is correcting the final rule to indicate that it was not the Agency's intention, in specifying cotton gloves, that employees be permitted to have their hands on wire rope when winching is started or underway. OSHA emphasizes that employees are not permitted to be handling the winching line when the yarding machine is in operation. The final rule requires that they must be clear of the choked log *before* the yarding machine operator begins to winch the choked trees. Paragraph (h)(5)(i) of the final rule clearly requires that before any log is moved that employees must be in the clear. In addition, paragraph (h)(5)(v) requires that employees who assist with yarding (i.e., choking logs) must signal the machine operator that they are in the clear and the machine operator must not begin winching the load until he has clearly understood the received signal that other employees are in the clear (paragraph (h)(5)(v)). OSHA included these requirements because employees have been injured where logs being winched hit obstacles, causing them to swing suddenly and strike an employee (Ex. 2–1, 4–63, 4–64).

OSHA is making clear in the revised provision what hazards hand protection are intended to address—puncture wounds, cuts and lacerations that could occur from handling wire rope, especially rope with broken wires. Employers are free to use cotton gloves, provided they adequately address the hazards of handling wire rope. Employers are also free to use rubber gloves with cotton liners or leather gloves that protect employees from the hazards associated with handling wire rope as well as from extreme environmental conditions.

Paragraph (d)(1)(iv)—Leg Protection

Some parties requested OSHA to exempt from the leg protection requirement the incidental use of chain saws. However, OSHA has not made such an exemption because the record clearly does not support it.

As OSHA explained in the preamble of the final rule, the risk of injury from chain saw is present whenever a chain saw is being used (59 FR 51702). The WIR survey showed that 20 percent of injuries reported were chain-saw injuries (Ex. 2–1). Chain-saw kickback and sudden cut-through, which are major causes of chain-saw injuries, are not dependent on whether the chain saw is used frequently or regularly by the operator. There is no evidence in the record that employees who only occasionally operate chain saws are not subject to these risks. OSHA believes that a feller, who operates a chain saw as a regular part of the job, and a logging truck operator, who may operate a chain saw occasionally or incidentally to operating a vehicle, both face a significant risk of injury when using a chain saw. As such, OSHA believes that leg and foot protection are needed whenever an employee is operating a chain saw. The revised compliance directive notes that the leg protection requirement applies to any employee who operates a chain saw for any amount of time.

OSHA realizes that protective material may be damaged or destroyed in the process of stopping a chain saw. Because of this, OSHA is revising the compliance directive to indicate that when the outer covers of the protective equipment have been penetrated it does not necessarily mean that the equipment is no longer serviceable. However, where there are also cuts or tears in the protective material of the leg protection or logging boot, such equipment is no longer in serviceable condition. OSHA agrees with manufacturer warning labels that such cuts and tears in the protective material compromise the ability of the PPE to provide the level of protection which is necessary. OSHA is revising the compliance directive to specify that in such situations footwear and leg protection cannot be repaired and must be replaced with serviceable PPE.

Paragraph (d)(2)(i)—Location of First-Aid Kits

In the final rule, OSHA required that employers provide first-aid kits at each landing, on each employee transport vehicle, and at each worksite where felling is being conducted. After the final rule was published, OSHA was requested to clarify whether first-aid kits must be provided at both active and inactive landings. It was not OSHA's intention to require employers to provide first-aid kits at landings which are not currently in use. OSHA is correcting the final rule to clarify that the provision of first-aid kits at landings refers to only "active" landings.

OSHA was also requested to clarify at what point a felling work site is considered separate or remote from another work site, thus triggering the requirement for an additional first-aid kit. In the revised compliance directive, OSHA has indicated that where employees are cutting trees more than one-half mile from an active landing or an employee transport vehicle, a first-aid kit also must be provided at that work site. In these situations, the first-aid kits which are at the landing or on the vehicle are too distant to be considered immediately accessible.

The compliance directive also indicates that where conditions are not optimal, such as steep or mountainous terrain, very muddy terrain, heavy brush, or snowy and icy conditions, first-aid kits cannot be as far as one-half mile from a cutting area and still be considered immediately accessible. Traveling under such conditions is likely to take far longer than under optimal conditions, thus rendering the first-aid kit too isolated to be of any prompt use. Where such conditions exist or are reasonably anticipated, the employer will have to evaluate their severity in determining whether cutting operations need first-aid kits to be located closer to the worksite.

Finally, OSHA is also correcting the final rule to clarify which felling work sites need first-aid kits. In the final rule, OSHA stated that first-aid kits must be provided "at each work site where felling is being conducted." It was OSHA's intention that felling work sites include any work site where trees are being cut; that includes limbing, bucking, and trimming as well as felling. The rulemaking record clearly shows there are a significant number of injuries wherever trees are being cut. For example, the WIR survey indicated that 23 percent of employees reporting injuries were felling trees and 27 percent were limbing and bucking felled trees (Ex. 2–1). Injuries to these employees are primarily due to chain saws or being hit by a falling or rolling tree. Because of the significant risk of injury, employees performing all of these logging operations need to have immediate access to a first-aid kit.

A further review of the record indicates that in many situations limbing and bucking are not done at the landing, but rather, at the place where the tree is felled (e.g., Ex. 4–63, 4–64, 26A). In addition, in-forest limbing and bucking is not always done near felling operations. For example, felling operations may be far from limbing and bucking crews. To the extent that a limbing or bucking work site is more than one-half mile from the nearest first-aid kit (i.e., felling area, active landing, or employee transport vehicle), OSHA is clarifying that a first-aid kit must also be provided for that limbing or bucking work site.

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[11] OSHA notes that one safe technique for making the backcut is to start the backcut with a plunge cut/bore cut to establish the hinge. The backcut should then be moved toward the back of the tree. This backcut method provides for two holding points until the tree is finally released. This backcutting method will prevent the tree from releasing too soon or moving before the feller has moved to a point of safety. The record shows that this backcutting method is a safe technique for felling (Ex. 9–20), and OSHA suggests this technique when conditions such as, but not limited to, tree lean, slope, and large tree size indicate that felling the particular tree may present additional hazards.

[12] OSHA's decision to require that backcuts in Humboldt cutting be above the horizontal face is based in part on the fact that most loggers currently using this method are making the notch the same size as in conventional felling—45 degrees. A 45-degree notch is generally not open enough to control for both misdirected falling and kickback hazards. However, where a notch of 70 degrees or greater is cut, the notch in Humboldt cutting acts as it does in open face felling. As discussed above, in open face felling, because of the 70- to 90-degree notch, it is unlikely that the tree will fall in the wrong direction or kick back. OSHA stresses that this is due to the openness of the notch rather than the type of cutting method being employed. As such, OSHA is clarifying the compliance directive to indicate that where the notch is at least 70 degrees, it is not as critical that the backcut be above the horizontal face cut or the notch of the face cut, regardless of whether the open face or Humboldt method is being used.

Paragraph (d)(5)—Environmental Conditions

The final rule requires that employees terminate work and move to a safe location where environmental conditions may endanger them in that work or at a given location. While OSHA cannot specify every environmental condition that might necessitate employees moving to a place of safety, OSHA did provide a list of certain types of conditions that would create hazards for employees working in the area.

After publication of the final rule, OSHA was told that the provision was too broad and did not provide adequate instruction for compliance officers because it included conditions which did not pose a real possibility of danger for logging employees. However, OSHA believes that the final rule included clear examples of environmental conditions which would be considered dangerous for an exposed employee. Paragraph (d)(5) specifies that work stop and employees move to a place of safety in electrical storms (as opposed to rainy weather), dense fog (as opposed to pocket fog), heavy rain and snow (as opposed to wet weather), extreme cold (as opposed to cold weather), and mudslides (as opposed to muddy conditions). OSHA believes this list of extreme environmental conditions does identify hazardous conditions and provides adequate guidance for compliance officers.

It was also requested that OSHA revise these provisions to require that employees be moved to a place of safety only if winds were "gale force." Gale force winds are defined as those which are at least 40 miles per hour. OSHA is aware, however, that even winds of less than gale force can significantly affect the fall of a tree, particularly if other adverse conditions are present (e.g., leaning tree, steep terrain, large tree, lodged tree, tree under pressure). As such, OSHA does not believe one specific wind speed is an appropriate indicator of whether an environmental hazard is present. However, OSHA is revising the final rule to more fully express the type of wind conditions it believes create a hazard for an employee working in the area. The final rule and compliance directive are being revised to indicate that all work must terminate and each employee shall move to a place of safety when strong winds which may adversely affect the fall of a tree are present.

OSHA also included fires among hazardous environmental conditions. Some parties have interpreted this example as requiring employees to leave the area any time a fire starts rather than putting out the fire. However, the final rule, viewed in its entirety, does not support that interpretation. For example, paragraph (d)(4), directly preceding the environmental conditions provision, requires employers to provide fire extinguishers on each machine and vehicle. This requirement contemplates that an employee may be called upon to put out a small fire which has started. However, if a fire were to start in an area where there is no fire extinguisher or other equipment or supplies which would allow the employee to safely suppress it, the employer would be responsible for assuring that the employee is moved out of the area of danger. Likewise, where a fire, because of its size, intensity or the conditions of the area, creates a hazard for an employee who remains in the area, either to work or attempt to suppress the fire, the employer must also assure that employee is moved from the area of danger. OSHA notes that the standards on fire protection in subpart L of Part 1910, and not the revised logging standard, govern the fighting and suppression of fires at logging worksites.

Paragraph (d)(6)(iii)—Working Within Visual or Audible Contact

In the final rule, OSHA requires that each employee work within visual or audible contact of another employee. OSHA was requested to clarify whether this requirement applies only to employees working at a logging site or also to employees working away from logging work sites (e.g., logging vehicle operators transporting a load of logs off the logging site on public roads).

OSHA intended that this provision of the final rule apply to each employee working at a logging work site, including watchmen and other employees performing logging operations at remote logging work sites. OSHA did not intend the requirement to apply to vehicle operators who are not at the logging site, but rather driving vehicles miles away. However, this provision does apply to vehicle operators while they are at a logging work site. OSHA is revising the final rule to clarify its intention and to provide the exception for vehicle operators working away from the logging work site.

Paragraph (d)(6)(iv)—End of Workshift Accounting of Employees

The final rule requires that the employer account for each employee at the end of each workshift. OSHA was requested to provide additional clarification of this requirement in the revised compliance directive.

First, the employer need not personally conduct the actual end of shift accounting of each employee. The employer may delegate this task, but the employer remains ultimately responsible under the standard for assuring that employees are not inadvertently left in the woods, especially an employee who may be injured.

Second, this provision does not require employers to prohibit employees from remaining at the work site after the end of the work shift to engage in personal activities, such as hunting, camping, or cutting fire wood for personal use. Rather, OSHA's intent was to assure that no employee, particularly an injured employee, be inadvertently left in the woods without assistance. The rulemaking record includes several reports of accidents in which employees were not discovered in a timely fashion and died (Ex. 4–64, 26A). The revised compliance directive also makes clear that after the workshift has ended and the employer has ascertained that the employee is done with work, including overtime work, and is safely accounted for, the final rule does not prohibit the employer from allowing the employee to remain in the area for personal reasons. OSHA is revising the compliance directive to reflect this.

Paragraph (d)(9)(i)—Storage and Handling of Flammable and Combustible Liquids

The final rule requires that flammable and combustible materials be stored, handled and transported (hereafter stored) in accordance with the requirements of subpart H of Part 1910. OSHA was requested to provide an exception from subpart H to allow logging machine operators to carry plastic cans of chain-saw fuel for refueling away from fueling stations, when necessary. Some parties have interpreted paragraph (d)(9) as prohibiting machine operators from storing and transporting logging machine fuel in 5-gallon plastic containers which are approved by Underwriters Laboratories (UL) or meet U.S. Department of Transportation (DOT) requirements. For the reasons discussed below, OSHA does not believe that an exception to subpart H

is necessary to allow the practice that these parties seek to authorize.

First, Subpart H permits Class IB liquids, which OSHA interprets as including chain-saw fuels, to be carried in 5-gallon plastic safety cans approved by UL or Factory Mutual (FM). Subpart H permits Class IB fuels to be carried in "safety cans" that have a maximum allowable size of 5 gallons (29 CFR 1910.106(d)). Safety cans are defined as containers approved by a nationally recognized testing laboratory (NRTL) and otherwise meeting the requirements of the definition. This requirement is broad enough to encompass plastic safety cans, provided that such containers are approved by a NRTL as meeting all the requirements of the definition. In response to concerns raised, OSHA also notes that UL and FM are recognized by the Agency as NRTLs for testing and listing equipment meeting the requirements of subpart H.

Second, subpart H also permits flammable and combustible liquids to be stored in containers meeting the requirements of regulations issued by the Hazardous Materials Regulations Board, Department of Transportation (*See*, 49 CFR 171–178). These regulations permit flammable liquids such as chain-saw fuel to be stored in plastic jerricans holding up to 5 gallons which meet DOT specifications for non-bulk packaging (*See*, 49 CFR 193.202(c) and 178.502).

Therefore, read in its entirety, the logging standard does not prohibit plastic safety containers under the conditions described above, and an exception is not necessary. OSHA is including this discussion in the revised compliance directive.

Paragraph (d)(9)(iii)—Machine Fueling

The final rule requires that tools, machines and vehicles be shut off during fueling. The purpose of this provision is to eliminate potential sources of ignition when handling flammable and combustible liquids in order to prevent a fire from erupting.

OSHA is revising the rule to permit diesel-powered machines and vehicles to be fueled while at idle, provided that continued operation is intended and that the employer follows safe fueling and operating procedures. OSHA believes this exception is warranted because the hazard which this provision seeks to address, sudden flash fires, is typically not present during fueling of diesel-powered engines. This is because diesel fuel has a higher flash point than that of gasoline, and unlike gasoline its vapors do not evolve as suddenly. In fact, in many cases diesel fuel must be heated before it will give off sufficient vapors to ignite. As such, there is little potential for fire if a diesel-powered engine is running during fueling.

At the same time, however, OSHA is requiring that other safe fueling and operating procedures be followed during fueling of diesel-powered machines and vehicles. OSHA is revising the compliance directive to indicate that employers must train employees in safe practices during fueling. These include vapor containment, spill prevention, and other procedures the operator must follow when leaving the machine cab to fuel the engine.

Paragraph (d)(9)(iv)—Starting Fires

The final rule required that flammable and combustible liquids not be used to start fires. The purpose of this provision was to prevent fires being started by employees from erupting and burning them and others.

After publication of the rule, OSHA was requested to allow fires to be started with chain-saw fuel, which is a flammable liquid, provided that the fuel was not used in an unsafe manner or in a situation which might create a hazard for any employee. OSHA agrees that the rulemaking record does not identify the use of chain-saw fuel to start fires as a major cause of accidents and injuries in the logging industry (e.g., Ex. 2–1). However, the record does indicate that using chain-saw fuel can create a hazard in certain situations. For example, a Forest Products Accident Prevention Association (FPAPA) Industry Alert reported that employees suffered third-degree burns when a fire in a warming hut was reignited with chain-saw fuel and caused an explosion (Ex. 4–64). In that case, an employee had added wood and chain-saw fuel to a woodstove which had been started earlier in the day. The coals left over from the earlier fire vaporized the fuel and then ignited it. The action that the employer could have taken to prevent the accident included prohibiting the use of chain-saw fuel to start a fire in an enclosure. In addition, according to FPAPA, the accident could have been prevented if the employer had trained the workers about the hazards of improper fuel handling.

OSHA is revising the final rule to allow flammable and combustible liquids, such as chain-saw and diesel fuel, to be used to start a fire. OSHA believes that this flexibility will allow piles of wood or slash to be burned when permitted by forestry officials. However, the revised provision does not permit flammable and combustible liquids to be used whenever a fire is needed. The revised provision only permits such liquids to be used where the employer assures that their use does not create a hazard for an employee. OSHA agrees with FPAPA that employers must train employees to know under what conditions it is safe to start a fire with chain-saw fuel and those situations in which using fuel may create a hazard for an employee. In the compliance directive OSHA is indicating particular situations in which starting a fire with chain-saw fuel would not be safe. For example, using chain-saw fuel to start a fire in an enclosure is not safe. There is a greater chance that fuel vapors may collect in the enclosed area and ignite or cause an explosion. The record shows there are other ways to start fires where chain-saw fuel may create a hazard. For example, light-weight fire starters made of sawdust and wax are available.

Paragraph (e)(2)(iv)—Refueling Chain Saws

The final rule required that chain saws be fueled at least 20 feet from any open flame or other source of ignition and started at least 10 feet from the fueling area. The purpose of these provisions is to assure that chain-saw fuel was kept a minimum safe distance from any potential source of ignition.

After publication of the final rule, some parties pointed out that OSHA had established two different minimum safe distances between fuel and ignition sources—20 feet between fueling areas and ignition sources, and 10 feet between fueling areas and chain saw startup, which is another potential source of ignition. They urged OSHA to establish a uniform safe distance and recommended that OSHA adopt a 10-foot minimum safe distance. While OSHA believes that an open fire is a much more likely source of ignition than a chain saw being started, nonetheless OSHA believes that a 10-foot distance is adequate in both situations. This is because in the out-of-doors, where constant air movement dissipates vapors, it would be unlikely there could be a concentration of flammable vapors sufficient to cause an increased potential for fire at a distance greater than 10 feet. Therefore OSHA is revising the final rule and compliance directive to establish a 10-foot minimum safe distance between fueling areas and potential sources of ignition.

Paragraph (e)(2)(vi)—Starting Chain Saws

The final rule requires that chain saws be started on the ground or where otherwise firmly supported. OSHA was requested to clarify expressly in the regulatory text whether "drop starting" a chain saw is prohibited under the final rule, and whether operators are allowed to start the chain saw while standing in an upright stance.

In the preamble to the final rule, OSHA explained that the purpose of this requirement was to assure that employees did *not* attempt to drop start chain saws. As noted in that discussion, an employee could lose his grip when drop starting a chain saw and the saw could fly upward and cut the employee. Nonetheless, OSHA is amending the final rule to emphasize the Agency's intention that drop starting of chain saws is prohibited.

With regard to employee position during chain-saw start up, nothing in the final rule prohibits an employee from standing in upright when starting a chain saw, provided that the employee has firmly supported or secured the chain saw. For example, a chain saw operator would be in compliance with the final rule if he rested the chain saw firmly on a log or other stationary item and started the chain saw while standing upright. OSHA notes that such a starting position is a safe technique because it provides protection both from chain saw kickback and from overexertion of the back.

Paragraph (e)(2)(xii)—Carrying Chain Saws

The final rule requires that chain saws be carried in a manner that will prevent operator contact with the cutting chain and muffler. OSHA's intention is to assure that chain-saw operators are not cut by the saw or burned by the hot muffler when carrying the chain saw between felling points.

The record indicates there are certain devices currently available and used in the logging industry to prevent cuts and burns (Ex. 5–21, 5–36, 5–63), including leather and felt shoulder pads. By citing these examples, OSHA did not intend to imply that these particular devices are required by the final rule. In fact, OSHA expressly stated in the preamble that "any other method of carrying the chain saw that prevents these hazards would also meet this requirement" (59 FR 51713). OSHA is including this clarification in the revised compliance directive.

Paragraph (e)(2)(xiii)—Retreating With Chain Saws

The final rule required that after cutting a tree the feller must shut off or idle the chain saw before beginning his retreat. OSHA's intention was to help assure that employees are not cut by a running chain saw when they are moving quickly to a safe distance from the falling tree. As discussed in the preamble, a significant number of chain-saw injuries result from falling on the saw or losing the grip on a running saw (Ex. 2–1). As a result, any time a feller moves with a chain saw, precautions must be taken to prevent contact with the moving chain. These precautions include shutting off the saw, engaging the chain brake, or idling the engine by releasing pressure on the throttle and grasping the front handle.

It has been pointed out to OSHA that it takes a moment's delay for a saw to idle down once the throttle is released. As was noted in the rulemaking record "[t]he cutter may lose precious seconds worrying about compliance with the * * * standard, meanwhile a life could be in danger" (Ex. 5–50). It is not OSHA's intention that the feller be required to remain next to the tree waiting for the chain saw to idle down before retreating a safe distance from the falling tree. Rather, OSHA's intention is that as soon as the feller releases the throttle, placing the machine into idle, he should immediately move on the retreat path a safe distance from the falling tree. Once the throttle is released, it should only take a brief moment a properly maintained chain saw to stop. OSHA is revising the final rule and compliance directive to more accurately express OSHA's intention.

Paragraph (f)(3)(i)—Protective Structures for Logging Machines

The final rule requires that the following logging machines placed into initial service after February 9, 1995, have FOPS and/or ROPS: tractors, skidders, swing yarders, log stackers and mechanical felling devices. OSHA intended that the term "log stackers" be viewed as a general term covering any logging machine that stacks logs during loading and unloading. However, the more common term used in the industry to refer to machines that load and unload logs is "log loader." OSHA is therefore revising the final rule to clarify that paragraph (f)(3)(i) covers log loaders.

Paragraph (h)(1)(ii)—Unfamiliar or Unusually Hazardous Conditions

This section requires that the immediate supervisor be consulted for approval when unfamiliar or unusually hazardous conditions are encountered before cutting is commenced. OSHA included this provision in the final rule because the record indicates that many injuries occur when inexperienced employees encounter unfamiliar situations, and even when experienced loggers believe they can handle particularly hazardous situations on their own (Ex. 2–1, 4–63, 4–64, 26A).

OSHA was requested to clarify the situations which are intended to be covered by this provision. While OSHA cannot provide an exhaustive list of the situations which may necessitate the employee consulting with a supervisor, there are certain situations which are clearly covered by this paragraph. These situations include worsening weather conditions (e.g., weather changes which begin to impair the logger's vision); deepening snow or mud which begins to affect a logger's mobility; felling very large or very tall trees; cutting trees whose lean, structure, or location make it difficult to fell in the desired or safest direction; and using a driver tree to fell a danger tree. These are situations in which loggers have been killed or severely injured because the conditions caused unexpected results during felling (Ex. 2–1, 4–63, 4–64, 26A). When these conditions arise, adding the supervisor's knowledge, training, and experience to the decisionmaking process should help minimize the hazards to which the logger may be exposed.

In addition to such consultation, it is also important in training for employers to train their new employees that when they encounter situations with which they have not dealt before, they need to work with the supervisor to safely handle the situation. This concept should also be reinforced in regular safety and health meetings.

Paragraph (h)(1)(iii)—Felling Distances

The final rule requires that while manual felling is in progress, yarding machines must not be operated within two tree lengths of the trees being manually felled. OSHA's intention was to assure that neither the yarding machine operator nor the manual feller is injured because of the independent actions of the other. For example, the feller may not be conscious of the fact that the yarding machine operator has entered the area to remove the tree which the feller has just cut. This work practice requirement helps to assure that yarding machine operators are not hit by other trees the feller or felling team has begun to cut.

After the final rule was published, OSHA was requested to clarify whether this provision prohibits tree pulling by teams of employees. Tree pulling was not intended to be prohibited under paragraph (h)(1)(iii). Indeed, paragraph (h)(1)(iv) addresses tree harvesting by employee teams, and sets forth procedures which must be followed where a team is necessary to fell a tree. In any event, OSHA is correcting the final rule to provide an explicit exception to paragraph (h)(1)(iii) for tree pulling operations. OSHA is also

revising the compliance directive to indicate that the procedures governing team felling also apply in tree pulling operations.

Paragraph (h)(1)(ix)—Domino Felling

The final rule prohibits domino felling. OSHA defined domino felling in the final rule as "[t]he partial cutting of *multiple* trees which are left standing and then *pushed over with a pusher tree.*" In the preamble OSHA explained that domino felling was a method of attempting to fell a line or row of trees by partially cutting the trees and then pushing the end tree into the others, thereby creating a domino falling effect. (59 FR 51699, 51724). There was considerable evidence in the rulemaking record that such a method of felling a group of trees is extremely dangerous because there is greater likelihood the line of trees will not fall in the intended direction or may not fall completely, thereby creating even greater hazards (Ex. 5–42, 5–46; Tr. W2 231, OR 659). The hazards associated with domino felling are further increased where a danger tree is among the line or row of trees to be felled using this chain reaction method. Therefore, OSHA emphasized that danger trees also could not be felled using domino felling.

After publication, OSHA was requested to further clarify whether the felling of a single danger tree by felling another single tree into it is prohibited under the final rule. The final rule does not prohibit this practice in all cases, since the definition of domino felling in the final rule does not include the felling of a *single* tree with another tree. The domino felling that is prohibited in the final rule is the felling of *multiple* trees with a pusher tree. OSHA is revising the final rule to identify practices which are not considered to be domino felling, and therefore, are not prohibited by the standard.

However, the practice of felling a danger tree by felling another one into it, while it is not prohibited, is not automatically permitted to be used whenever a danger tree is felled. Paragraph (h)(1)(vii) of the final rule also requires that where a danger tree is felled or removed, the feller must use a technique that minimizes employee exposure to the hazard. In some cases, felling a danger tree by felling another tree into it will not minimize employee exposure to the hazards, and may even increase the risk the feller faces in removing the danger tree. As OSHA pointed out in the preamble, commenters told OSHA that felling a danger tree by felling another one into it is a safe technique when used by an experienced feller, but only "in certain situations" (Ex. 5–74 through 5–92). Other commenters told OSHA that this technique is generally not considered safe practice (Ex. 5–42, 5–46). In clarifying that this technique is not prohibited under the final rule, OSHA is permitting that a danger tree be felled in this manner only where a careful examination of mechanical techniques is first made and where it is also determined that the hazards felling the danger tree in this manner can be sufficiently minimized. The revised compliance directive notes that felling a danger tree by this method does not always minimize employee exposure to the hazard under paragraph (h)(1)(vii), and emphasizes that a safer method to remove a danger tree is to pull the tree down with a skidder or mechanical feller (Ex. 5–43).

Paragraph (h)(2)(i)—Retreat Paths

The final rule requires that a feller must plan and clear a retreat path before he begins cutting a tree. This provision assures that the feller has an accessible path for moving away from the falling tree, especially if the tree falls in an unintended direction. The rulemaking record indicates that a significant number of injuries have resulted from not having a clear retreat path. For example, the WIR survey indicates that almost 15 percent of logging injuries reported resulted from loggers misjudging the time and distance required to move to a safe place (Ex. 2–1).

It has been pointed out to OSHA that while this provision requires employees to plan and clear a retreat path, it does not expressly state that the feller must take that retreat path a safe distance from the falling tree once the tree is cut. While OSHA is confident that the vast majority of employers and fellers understand the purpose of the retreat path, OSHA is correcting the final rule to make the retreat requirement explicit.

Paragraph (h)(3)(i)—Limbing and Bucking

The final rule requires that whenever rolling or sliding of the tree is reasonably foreseeable, limbing and bucking must be done on the uphill side of the tree. While it is possible to limb and buck from the uphill side in almost all situations, the Agency provided an exception for those cases where the employer demonstrated that it was not feasible to limb or buck from the uphill side. In those limited cases, the provision required that the tree be secured with chocks to prevent rolling, sliding or swinging.

After publication of the final rule, OSHA was told by various parties that they knew of no cases where manual bucking and limbing from the uphill side would be infeasible. They also said that the procedure of setting chocks itself would put the employee in a dangerous position. Therefore, they told OSHA that the exception allowing work on the downhill side should be deleted from the final rule.

A review of the rulemaking record supports these comments. There were no comments or hearing testimony identifying any situations in which it would be infeasible to buck or limb a tree from the uphill side. Moreover, the Agency is aware that machines can move trees to a stable position so there is no potential for rolling of the tree during limbing and bucking. Therefore, OSHA agrees that the exception to allow limbing and bucking from the downhill side is unnecessary, and is correcting the final rule to remove it.

Paragraph (h)(5)(v)—Yarding

The final rule requires that yarding lines not be moved unless the yarder operator has clearly received and understood the signal. This provision also specifies that when in doubt, the machine operator must repeat the signal and wait for a confirming signal before moving the line. OSHA intended the term "yarder operator" to be a generic reference to any employee operating a machine used for yarding, including a yarder or skidder. However, since a yarder is also a specific kind of yarding machine, the provision could be read as applying only to the operator of that particular type of machine. Because of the potential for misinterpretation, OSHA is correcting the final rule to more clearly express the Agency's intention that the provision apply to all machines used for yarding felled trees.

Paragraph (h)(5)(viii)—Hazardous Obstructions in Yarding

The final rule requires that yarding machines or vehicles and their loads must be operated with safe clearance from all obstructions. This provision was included in the proposed rule and there were no comments opposing it. However, after publication of the final rule, OSHA received requests for clarification of the language and scope of this provision.

OSHA is revising the final rule and compliance directive to more clearly define the hazards being addressed by this provision. OSHA intended that yarding machines and their loads be operated in a manner that prevents contact with *hazardous* obstructions. The types of obstructions which the record shows to be hazardous include, but are not limited to, boulders, danger trees, stumps, log piles, power lines, and cable rigging (Ex. 2–1, 4–61, 4–64, 26A). OSHA is also revising the compliance directive to include examples of hazardous obstacles that have resulted in employee death and injury.

Paragraph (h)(6)(ii)—Loading

The final rule requires that only the machine operator and other essential personnel be allowed in the work area during loading and unloading. The work area covered by this provision is the immediate loading work area as opposed to the entire logging site (e.g., landing). OSHA is correcting the final rule and compliance directive to express more clearly the Agency's intention.

Paragraph (i)(7)(i)—First-Aid Training

The final logging rule requires the employer to assure that each employee receives or has received first-aid training, including CPR, which meets the minimum requirements set forth in mandatory Appendix B. OSHA was requested by some parties to clarify whether the provision requires employers to provide new employees with first-aid training before they are allowed to begin work, and if so, to permit employers to have a 90-day training phase-in period for new employees.

The final rule does not require employers to provide the first-aid training to their employees. Employers are only required to assure that every employee performing logging operations has a first-aid training certificate which is current. Employers are free to require, as a condition of employment, that new employees have or obtain a first-aid training certificate. As the rulemaking record indicates, there are many organizations, schools, extension services, and others throughout the country which provide first-aid training on a continuous basis.

At the same time, OSHA is aware that some employers do provide first-aid certificate training for new employees who do not have a current first-aid training certificate. Where employers elect to provide such training, the general training requirements of paragraph (i) require that it be provided prior to the employee's initial assignment. It is vital that new and untrained employees not be allowed to begin work until they have been trained.

Remote and isolated locations are typical of logging operations. If employees working in these locations do not have the necessary first-aid training, they would not be able to help themselves or others if an accident were to occur. For example, one fatality report submitted by APA involved a feller being sent to work alone in an isolated area (Ex. 26A). The feller suffered a cut to the upper leg and did not perform any first-aid on himself. Instead, he attempted to walk out of the woods but bled to death before he was found. Teaming an untrained employee with a trained logger would not solve the problem. In case of emergency, the untrained employee would not be able to provide first-aid assistance if it were his trained partner that was injured. Many crews work in pairs in remote areas and each crew member needs to be trained to help his partner.

Therefore, OSHA is not allowing a phase-in period for first-aid training. The employer is responsible for assuring that untrained employees have had first-aid training prior to initial assignment or, in the case of current employees, by the effective date of the final rule. OSHA believes that the logging rule can best reduce the number and severity of logging injuries if employees have a current first-aid training certificate before they begin logging operations.

Paragraph (i)(7) (ii) and (iii)—Frequency of First-Aid Training

The final rule requires employers to assure that each logging employee receives first-aid training at least every three years and CPR training at least annually. The final rule also requires the employer to assure that each employee's first-aid and CPR training certificate remain current. It has been suggested to OSHA that CPR training is only necessary every three years. For the following reasons, OSHA believes that the record does not support such a change.

As OSHA explained in the preamble to the final rule, the American Red Cross first-aid training program, which is the most widely used program in the country, requires first-aid training every three years and annual CPR training in order to maintain a current certificate (Ex. 5–42). The American Heart Association follows the same requirements for maintaining current certification. The American Medical Association also recommends following the training procedures established by the American Red Cross and the American Heart Association. In addition, States have established minimum requirements for first-aid training certification.

While OSHA is aware that some States only require CPR training every two years to maintain a current certificate (e.g., Idaho), there are no States which permit CPR certificates to remain current for three years. OSHA is correcting the final rule to conform its retraining requirements to the requirements established by State regulations and organizations that provide first-aid and CPR certificate training programs. Therefore, as long as the employer assures that each employee has a current first-aid and CPR training certificate which meet State requirements or the requirements of certifying organizations, the employer is in compliance with the final rule. To reflect this clarification, OSHA is deleting paragraph (i)(7)(ii) and redesignating paragraph (i)(7)(iii) as paragraph (i)(7)(ii).

Appendix A to Section 1910.266—First-Aid Kits (Mandatory)

The final rule specifies the minimum contents of first-aid kits that employers must provide. The minimum content list was developed in conjunction with OSHA's offices of occupational medicine and occupational health nursing.

After publication of the final rule, OSHA was requested by some parties to drop tourniquets from the required list of items in first-aid kits. They told OSHA that current first-aid training courses teach people to use direct pressure to stop bleeding and to avoid the use of tourniquets in all but the most severe cases or when no other method will work. They were concerned that if tourniquets were included in logging first-aid kits, their use would be encouraged rather than discouraged. While OSHA is confident that employees trained and certified in proper first-aid techniques will use tourniquets properly, OSHA is also aware that other items commonly present at logging sites could be used as tourniquets (e.g., belts, ropes) if the need arose. Therefore, OSHA is correcting the final rule to delete tourniquets from the mandatory appendix specifying required first-aid contents.

OSHA is also deleting recordkeeping forms from the list of mandatory first-aid kit contents. The recordkeeping forms referred to here were not OSHA 200 accident logs; rather, they were forms that would provide information for the health care provider about the employee's injury and condition if medical attention is necessary and the employee is unable to communicate. Nonetheless, OSHA is removing this requirement to avoid confusion with recordkeeping that is required in accidents and injuries in general. At the same time, OSHA emphasizes that employers should establish a method for communicating to health care providers information concerning injured employees.

OSHA is also deleting the requirement that first-aid kits contain diphenhydramine hydrochloride elixir or capsules (i.e., Benadryl). Even though this over-the-counter medicinal product is frequently used in the logging industry to reduce the effects of insect bites and bee stings, prescribing its use is beyond the scope of first-aid training in this standard.

The requirement that each first-aid kit contain blankets is being revised to indicate that each kit must, at a minimum, contain at least one blanket. OSHA intended the term blankets to be used generically and not to set forth a required number of blankets which must be present.

Finally, OSHA is correcting the splint requirement in Appendix A. In the final rule OSHA had specified that first-aid kits be equipped with wire splints. However, the rulemaking record indicates that other types of splints would be as effective as wire splints and OSHA did not intend to preclude their use. These include, for example, inflatable or air splints. This correction will provide more flexibility for employers in providing first-aid kits that incorporate the latest medical technology and innovations.

Need for Correction

As discussed above, the final rule on Logging Operations published on Oct. 12, 1994 (59 FR 51672) contains errors which may prove to be misleading and are in need of clarification.

Under 5 U.S.C. 553, OSHA finds that there is good cause for making these amendments and corrections to the final logging standard effective upon publication in the **Federal Register**. These amendments represent minor changes and clarifications to the final rule and they do not increase regulatory burdens over those imposed by the final logging standard.

List of Subjects in 29 CFR Part 1910

Chain saw, Forestry, Harvesting, Incorporation by reference, Logging, Occupational safety and health, Pulpwood timber, Safety, Training.

Accordingly, 29 CFR Part 1910 is revised by making the following corrections and technical amendments:

PART 1910—[AMENDED]

1. The authority citation for subpart R of part 1910 continues to read:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.269, 1910.272, 1910.274 and 1910.275 also issued under 29 CFR Part 1911.

2. In paragraph (c) of 1910.266, the definitions of "logging operations," "machine," and "vehicle" are revised to read:

§ 1910.266 Logging Operations.

* * * * *

(c) * * *

Logging operations. Operations associated with felling and moving trees and logs from the stump to the point of delivery, such as, but not limited to, marking danger trees and trees/logs to be cut to length, felling, limbing, bucking, debarking, chipping, yarding, loading, unloading, storing, and transporting machines, equipment and personnel to, from and between logging sites.

* * * * *

Machine. A piece of stationary or mobile equipment having a self-contained powerplant, that is operated off-road and used for the movement of material. Machines include, but are not limited to, tractors, skidders, front-end loaders, scrapers, graders, bulldozers, swing yarders, log stackers, log loaders, and mechanical felling devices, such as tree shears and feller-bunchers. Machines do not include airplanes or aircraft (e.g., helicopters).

* * * * *

Vehicle. A car, bus, truck, trailer or semi-trailer owned, leased or rented by the employer that is used for transportation of employees or movement of material.

* * * * *

§ 1910.266 [Amended]

3. Section 1910.266 is amended by revising paragraph (d)(1)(iii); the first sentence of paragraph (d)(1)(iv); the first sentence of paragraph (d)(1)(v); paragraph (d)(1)(vii); the first sentence of paragraph (d)(2)(i); and paragraphs (d)(2)(iii), (d)(5), (d)(6)(iii), (d)(9)(iii), and (d)(9)(iv) to read:

(d) * * *

(1) * * *

(iii) The employer shall provide, at no cost to the employee, and assure that each employee handling wire rope wears, hand protection which provides adequate protection from puncture wounds, cuts and lacerations.

(iv) The employer shall provide, at no cost to the employee, and assure that each employee who operates a chain saw wears leg protection constructed with cut-resistant material, such as ballistic nylon. * * *

(v) The employer shall assure that each employee wears foot protection, such as heavy-duty logging boots that are waterproof or water repellant, cover and provide support to the ankle. The employer shall assure that each employee who operates a chain saw wears foot protection that is constructed with cut-resistant material which will protect the employee against contact with a running chain saw. * * *

* * * * *

(vii) The employer shall provide, at no cost to the employee, and assure that each employee wears the following:

(A) Eye protection meeting the requirements of subpart I of Part 1910 where there is potential for eye injury due to falling or flying objects; and

(B) Face protection meeting the requirements of subpart I of Part 1910 where there is potential for facial injury such as, but not limited to, operating a chipper. Logger-type mesh screens may be worn by employees performing chain-saw operations and yarding.

Note to paragraph (d)(1)(vii): The employee does not have to wear a separate eye protection device where face protection covering both the eyes and face is worn.

(2) * * *

(i) The employer shall provide first-aid kits at each work site where trees are being cut (e.g., felling, bucking, limbing), at each active landing, and on each employee transport vehicle. * * *

* * * * *

(iii) The employer also may have the number and content of first-aid kits reviewed and approved annually by a health care provider.

* * * * *

(5) *Environmental conditions.* All work shall terminate and each employee shall move to a place of safety when environmental conditions, such as but not limited to, electrical storms, strong winds which may affect the fall of a tree, heavy rain or snow, extreme cold, dense fog, fires, mudslides, and darkness, create a hazard for the employee in the performance of the job.

(6) * * *

(iii) Each employee performing a logging operation at a logging work site shall work in a position or location that is within visual or audible contact with another employee.

* * * * *

(9) * * *

(iii) Each machine, vehicle, and portable powered tool shall be shut off during fueling. Diesel-powered machines and vehicles may be fueled while they are at idle, provided that continued operation is intended and that the employer follows safe fueling and operating procedures.

(iv) Flammable and combustible liquids, including chain-saw and diesel fuel, may be used to start a fire, provided the employer assures that in the particular situation its use does not create a hazard for an employee.

* * * * *

4. Section 1910.266 is amended by revising paragraphs (e)(2)(iv), (e)(2)(vi) and (e)(2)(xiii) to read:

(e) * * *

(2) * * *

(iv) The chain saw shall be fueled at least 10 feet (3 m) from any open flame or other source of ignition.

* * * * *

(vi) The chain saw shall be started on the ground or where otherwise firmly supported. Drop starting a chain saw is prohibited.

* * * * *

(xiii) The chain saw shall be shut off or the throttle released before the feller starts his retreat.

* * * * *

5. Section 1910.266 is amended by revising paragraphs (f)(2)(iv), (f)(2)(x) and (f)(2)(xi); the first sentence of (f)(3)(i); by removing the first sentence of (f)(3)(ii); redesignating the remaining text as paragraph (f)(3)(ii)(C) and adding paragraphs (f)(3)(ii) (A) and (B); and by revising paragraphs (f)(3)(vii), (f)(3)(viii) and (f)(7) (i) and (ii) to read:

(f) * * *

(2) * * *

(iv) To maintain stability, the machine must be operated within the limitations imposed by the manufacturer as described in the operating and maintenance instructions for that machine.

* * * * *

(x) Before the operator leaves the operator's station of a machine, it shall be secured as follows:

(A) The parking brake or brake locks shall be applied;

(B) The transmission shall be placed in the manufacturer's specified park position; and

(C) Each moving element such as, but not limited to blades, buckets, saws and shears, shall be lowered to the ground or otherwise secured.

(xi) If a hydraulic or pneumatic storage device can move the moving elements such as, but not limited to, blades, buckets, saws and shears, after the machine is shut down, the pressure or stored energy from the element shall be discharged as specified by the manufacturer.

* * * * *

(3) * * *

(i) Each tractor, skidder, swing yarder, log stacker, log loader and mechanical felling device, such as tree shears or feller-buncher, placed into initial service after February 9, 1995, shall be equipped with falling object protective structure (FOPS) and/or rollover protective structure (ROPS). * * *

(ii) (A) ROPS shall be tested, installed, and maintained in serviceable condition.

(B) Each machine manufactured after August 1, 1996, shall have ROPS tested, installed, and maintained in accordance with the Society of Automotive Engineers SAE J1040, April 1988, "Performance Criteria for Rollover Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines." * * *

* * * * *

(vii) Each machine manufactured after August 1, 1996, shall have a cab that is fully enclosed with mesh material with openings no greater than 2 inches (5.08 cm) at its least dimension. The cab may be enclosed with other material(s) where the employer demonstrates such material(s) provides equivalent protection and visibility. Exception: Equivalent visibility is not required for the lower portion of the cab where there are control panels or similar obstructions in the cab, or where visibility is not necessary for safe operation of the machine.

(viii) Each machine manufactured on or before August 1, 1996 shall have a cab which meets the requirements specified in paragraph (f)(3)(vii) or a protective canopy for the operator which meets the following requirements:

(A) The protective canopy shall be constructed to protect the operator from injury due to falling trees, limbs, saplings or branches which might enter the compartment side areas and from snapping winch lines or other objects;

(B) The lower portion of the cab shall be fully enclosed with solid material, except at entrances, to prevent the operator from being injured from obstacles entering the cab;

(C) The upper rear portion of the cab shall be fully enclosed with open mesh material with openings of such size as to reject the entrance of an object larger than 2 inches in diameter. It shall provide maximum rearward visibility; and

(D) Open mesh shall be extended forward as far as possible from the rear corners of the cab sides so as to give the maximum protection against obstacles, branches, etc., entering the cab area.

* * * * *

(7) * * *

(i) Service brakes shall be sufficient to stop and hold each machine and its rated load capacity on the slopes over which it is being operated.

(ii) Each machine placed into initial service on or after September 8, 1995 shall also be equipped with: back-up or secondary brakes that are capable of stopping the machine regardless of the direction of travel or whether the engine is running; and parking brakes that are capable of continuously holding a stopped machine stationary.

6. Section 1910.266 is amended by revising paragraphs (g)(1) and (g)(2) to read:

(g) * * *

(1) The employer shall assure that each vehicle used to perform any logging operation is maintained in serviceable condition.

(2) The employer shall assure that each vehicle used to perform any logging operation is inspected before initial use during each workshift. Defects or damage shall be repaired or the unserviceable vehicle shall be replaced before work is commenced.

* * * * *

7. Section 1910.266 is amended by revising paragraphs (h)(1)(iii), (h)(1)(ix), (h)(2)(i), (h)(2)(vi), and (h)(2)(vii); the heading of paragraph (h)(3); and paragraphs (h)(3)(i), (h)(5)(v), (h)(5)(viii), and (h)(6)(ii) to read:

(h) * * *

(1) * * *

(iii) While manual felling is in progress, no yarding machine shall be operated within two tree lengths of trees being manually felled. Exception: This provision does not apply to yarding machines performing tree pulling operations.

* * * * *

(ix) Domino felling of trees is prohibited.

Note to paragraph (h)(1)(ix): The definition of domino felling does not include the felling of a single danger tree by felling another single tree into it.

(2) * * *

(i) Before felling is started, the feller shall plan and clear a retreat path. The retreat path shall extend diagonally away from the expected felling line unless the employer demonstrates that such a retreat path poses a greater hazard than an alternate path. Once the backcut has been made the feller shall immediately move a safe distance away from the tree on the retreat path.

* * * * *

(vi) A backcut shall be made in each tree being felled. The backcut shall leave sufficient hinge wood to hold the tree to the stump during most of its fall so that the hinge is able to guide the tree's fall in the intended direction.

(vii) The backcut shall be above the level of the horizontal facecut in order to provide an adequate platform to

prevent kickback. Exception: The backcut may be at or below the horizontal facecut in tree pulling operations.

Note to paragraph (h)(2)(vii): This requirement does not apply to open face felling where two angled facecuts rather than a horizontal facecut are used.

(3) *Limbing and bucking.* (i) Limbing and bucking on any slope where rolling or sliding of trees or logs is reasonably foreseeable shall be done on the uphill side of each tree or log.

* * * * *

(5) * * *

(v) No yarding line shall be moved unless the yarding machine operator has clearly received and understood the signal to do so. When in doubt, the yarding machine operator shall repeat the signal and wait for a confirming signal before moving any line.

* * * * *

(viii) The yarding machine or vehicle, including its load, shall be operated with safe clearance from all obstructions that may create a hazard for an employee.

* * * * *

(6) * * *

(ii) Only the loading or unloading machine operator and other personnel the employer demonstrates are essential shall be in the loading or unloading work area during this operation.

* * * * *

8. Section 1910.266 is amended by removing paragraph (i)(7)(ii) and redesignating paragraph (i)(7)(iii) as paragraph (i)(7)(ii).

9. Section 1910.266 is amended by revising Appendix A to read:

Appendix A to 1910.266—First-Aid Kits (Mandatory)

The following list sets forth the minimally acceptable number and type of first-aid supplies for first-aid kits required under paragraph (d)(2) of the logging standard. The contents of the first-aid kit listed should be adequate for small work sites, consisting of approximately two to three employees. When larger operations or multiple operations are being conducted at the same location, additional first-aid kits should be provided at the work site or additional quantities of supplies should be included in the first-aid kits:

1. Gauze pads (at least 4×4 inches).
2. Two large gauze pads (at least 8×10 inches).
3. Box adhesive bandages (band-aids).
4. One package gauze roller bandage at least 2 inches wide.
5. Two triangular bandages.
6. Wound cleaning agent such as sealed moistened towelettes.
7. Scissors.
8. At least one blanket.
9. Tweezers.
10. Adhesive tape.
11. Latex gloves.
12. Resuscitation equipment such as resuscitation bag, airway, or pocket mask.
13. Two elastic wraps.
14. Splint.
15. Directions for requesting emergency assistance.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of September, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–22386 Filed 9–7–95; 8:45 am]

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H.R. 584/P.L. 104–24

To direct the Secretary of the Interior to convey a fish hatchery to the State of Iowa. (Sept. 6, 1995; 109 Stat. 262; 1 page)

H.R. 614/P.L. 104–25

To direct the Secretary of the Interior to convey to the State of Minnesota the New London National Fish Hatchery production facility. (Sept. 6, 1995; 109 Stat. 263; 1 page)

H.R. 1225/P.L. 104–26

Court Reporter Fair Labor Amendments of 1995 (Sept. 6, 1995; 109 Stat. 264; 2 pages)

H.R. 2077/P.L. 104–27

To designate the United States Post Office building located at 33 College Avenue in Waterville, Maine, as the "George J. Mitchell Post Office Building". (Sept. 6, 1995; 109 Stat. 266; 1 page)

H.R. 2108/P.L. 104–28

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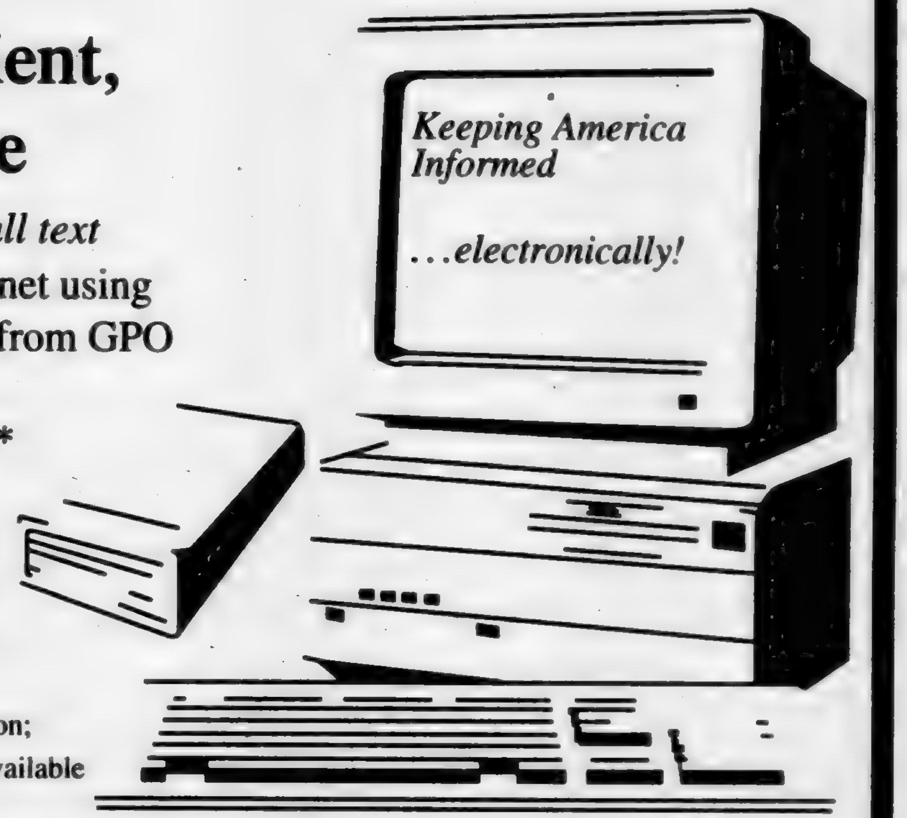

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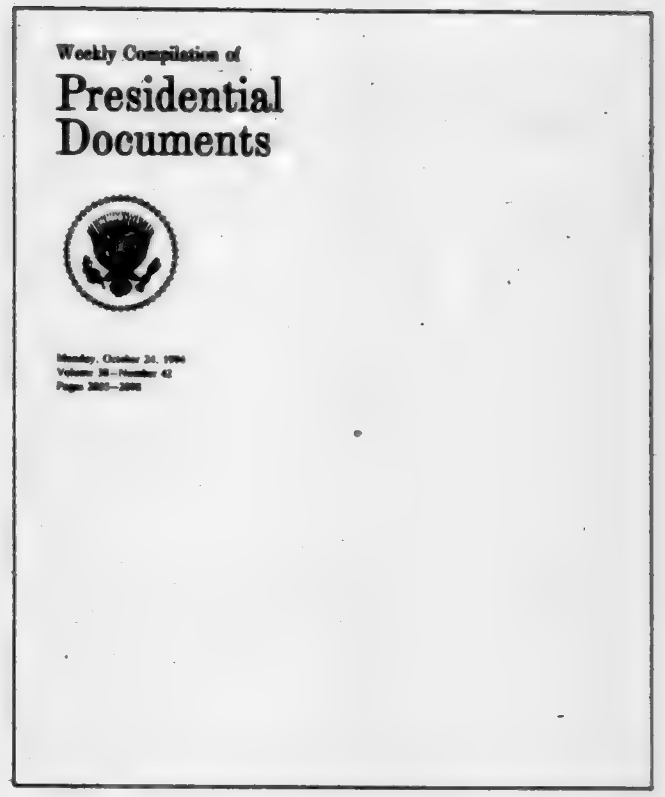
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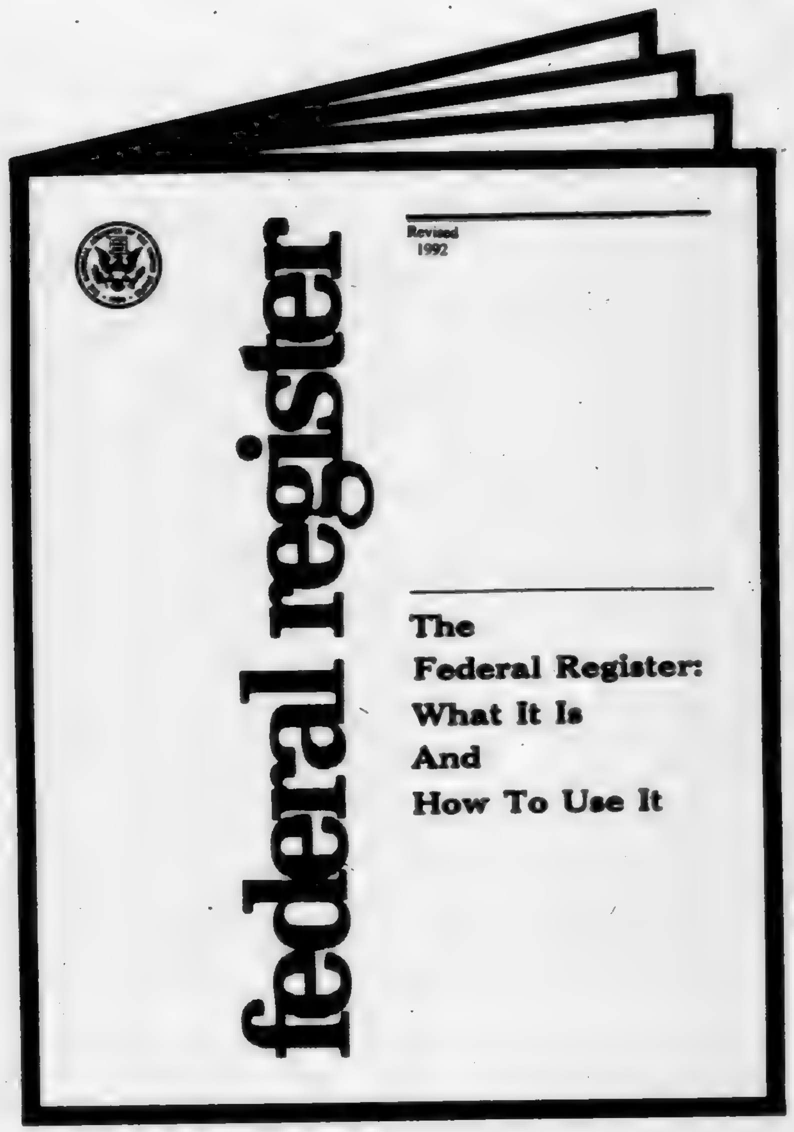

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: October 17 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

ATLANTA, GA

WHEN: September 20 at 9:00 am

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 300, 550, 752, 771, 831 and 842

RIN 3206–AG37

Agency Administrative Grievance System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is abolishing regulations at 5 CFR part 771 on the agency administrative grievance system (AGS). However, any AGS established under the current regulations must remain in effect until modified or replaced by the agency with another dispute resolution process. This change implements a human resources management recommendation under the National Performance Review (NPR). The change also is consistent with OPM's initiative under the NPR to sunset the Federal Personnel Manual (FPM), which included abolishing FPM Chapter 771 on the AGS as of December 31, 1993.

EFFECTIVE DATE: October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert (202) 606–2920.

SUPPLEMENTARY INFORMATION: The National Performance Review was issued on September 7, 1993. Appendix C to the NPR is entitled Major Recommendations Affecting Governmental Systems and includes a number of recommendations concerning reinvention of human resource management. One recommendation, HRM08, stated that agencies should "improve processes and procedures establishes to provide workplace due process for employees" and elaborated that "[a]ll agencies should establish alternative dispute resolution [ADR] methods and options for informal disposition of employment disputes." Among other things, the recommendation specifies that OPM should eliminate "all regulations governing internal agency grievance and appeal procedures, thus freeing agencies to tailor ADR techniques to various situations."

Proposed changes to implement this recommendation were published on December 5, 1994 at 59 FR 62353 for public comment. Comments were received from three agencies, two individuals, and two unions. The agencies were generally supportive of the change while the individuals and the unions were concerned that employees might be deprived of a benefit if agencies are not required to have a AGS. These comments are addressed below.

One agency, while supporting the opportunity to develop a grievance procedure that fits their "needs, resources, and particular characteristics," commented that there is a need for "limited" Government-wide regulation. Here the agency recommends that OPM mandate "universal standards" of due process and a minimal avenue for seeking redress of grievances in the interest of equity and fairness to employees. One union comment was that OPM require the maintenance of the AGS absent establishment of some other system. One individual suggested that it is unnecessary for the current regulations to be abolished in order for agencies to experiment with ADR techniques—such experimentation could take place within the parameters of the regulations.

OPM recognizes the concern that the absence of a regulatory requirement to have an AGS could result in some agencies not having one and that this in turn could result in adverse consequences such as leaving some employees without a forum to resolve some types of workplace disputes. OPM concurs with one agency's comment that the unavailability of a forum could lead to loss of morale, increased disaffection, and diminished worker productivity. OPM, however, believes the risk of agencies not having a system is minimal. First, the absence of an agency dispute resolution system would be contrary to the intent of the NPR recommendation. Second, OPM strongly advises agencies to have an administrative review system, and this aspect of human resources management will be subject to OPM's review as part of its oversight program. Third, the negative consequences of not having a system are so clear that they should deter any agency from letting that happen. Nevertheless, as suggested by one of the commenters, OPM is retaining the single requirement that any AGS established under the current regulations must remain in effect until modified or until that AGS is replaced with another system or process for the resolution of workplace disputes. The remainder of the current regulations are abolished as proposed. OPM believes this course of action affords agencies maximum flexibility while at the same time preserving the rights of individual employees.

Here, OPM repeats and emphasizes the comment made when proposing this change—that agencies are not precluded from continuing their AGS procedures established under part 771 to resolve workplace disputes (in fact, agencies *are*required to continue these procedures at least until they are modified or replaced). Again, as noted when OPM proposed this change, agencies, as suggested by the NPR, can take the opportunity to use ADR techniques in helping resolve disputes in the workplace and to do so without the restrictions contained in the current regulations that might negatively affect agency flexibility to design and operate appropriate workplace dispute resolution procedures. OPM's Office of Labor Relations and Workforce Performance will be available upon request to assist agencies in such efforts.

One commenter stated that elimination of the regulations would serve to expand the scope of bargaining on the scope of negotiated grievance procedures. OPM disagrees—the scope of such procedures is dictated by the provisions of Chapter 71 of title 5 of the United States Code. Elimination of part 771 does not expand or in any manner modify the labor-management relations statute.

Conforming Amendments

OPM also is deleting references to part 771 as they appear elsewhere in title 5 of the Code of Federal Regulations. In those cases, the language is modified to refer generically to "administrative" grievances or grievance systems to reflect the fact that agencies may have administrative grievance systems even though they would no longer technically be established under part 771, i.e., 5 CFR §§ 300.104(c)(2), 550.803, 752.203(f), 831.204(e)(2), and 842.106(e)(2). Likewise, other current references to "administrative" grievances in Title 5 (and not also referring to part 771) remain unchanged, i.e., 5 CFR §§ 511.607(a)(1) and 550.804(b)(1).

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects

5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

5 CFR Part 752

Administrative practice and procedure, Government employees.

5 CFR Part 771

Administrative practice and procedure, Government employees.

5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending title 5 of the Code of Federal Regulations as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The Authority citation for part 300 continues to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 111478, 3 CFR 1966–1970, Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec 300.603 also issued under 5 U.S.C. 1104. Secs. 300.801 through 300.802 issued under 5 U.S.C. 1103(c).

2. In § 300.104, paragraph (c)(2) is revised to read as follows:

§ 300.104 Appeals, grievances and complaints.

* * * * *

(c) * * *

(2) Except as provided in paragraph (c)(1) of this section, an employee may file a grievance with an agency when he or she believes that an employment practice which was applied to him or her and which is administered or required by the agency violates a basic requirement in § 300.103. The grievance shall be filed and processed under an agency grievance system, if applicable, or a negotiated grievance system as applicable.

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart H—Back Pay

3. The authority citation for subpart H of part 550 continues to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

4. In section 550.803, the definition of "grievance" is revised to read as follows:

§ 550.803 Definitions

* * * * *

Grievance has the meaning given that term in section 7103(a)(9) of title 5, United States Code, and (with respect to members of the Foreign Service) in section 1101 of the Foreign Service Act of 1980 (22 U.S.C. 4131). Such a grievance includes a grievance processed under an agency administrative grievance system, if applicable.

* * * * *

PART 752—ADVERSE ACTIONS

5. The authority citation for part 752 continues to read as follows:

Authority: 5 U.S.C. 7504, 7514, and 7543.

6. In section 752.203, paragraph (f) is revised to read as follows:

§ 752.203 Procedures.

* * * * *

(f) *Grievances.* The employee may file a grievance through an agency administrative grievance system (if applicable) or, if the suspension falls within the coverage of an applicable negotiated grievance procedure, an employee in an exclusive bargaining unit may file a grievance only under that procedure. Sections 7114(a)(5) and 7121(b)(3) of title 5 U.S.C., and the terms of any collective bargaining agreement, govern representation for employees in an exclusive bargaining unit who grieve a suspension under this subpart through the negotiated grievance procedure.

* * * * *

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

7. Part 771 is revised to read as follows:

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

Sec.

771.101 Continuation of Grievance Systems.

Authority: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1945–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 1964–1969 Comp., p. 306.

§ 771.101 Continuation of Grievance Systems.

Each administrative grievance system in operation as of October 11, 1995, that has been established under former regulations under this part must remain in effect until the system is either modified by the agency or replaced with another dispute resolution process.

PART 831—RETIREMENT

8. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347: § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508. 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under section

11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

9. In section 831.204, paragraph (e)(2) is revised to read as follows:

§ 831.204 Elections of retirement coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

* * * * *

(e) * * *

(2) The procedures must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

10. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Sections 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under sec. 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, and 5 U.S.C. 8402(c)(1); Sections 842.604 and 842.611 also issued under 5 U.S.C. 8417; Section 842.607 also issued under 5 U.S.C. 8416 and 8417; section 842.614 also issued under 5 U.S.C. 8419; section 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under sec. 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508; section 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; section 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

11. In Section 842.106, paragraph (e)(2) is revised to read as follows:

§ 842.106 Elections of retirement coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

* * * * *

(e) * * *

(2) The procedures must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code.

* * * * *

[FR Doc. 95–22314 Filed 9–8–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release Nos. 33–7208; IC–21332; S7–3–95]

RIN 3235–AG29

Registration Fees for Certain Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments and form.

SUMMARY: The Commission is adopting amendments to rule 24f–2 under the Investment Company Act of 1940, the rule that permits certain investment companies to register an indefinite number of securities under the Securities Act of 1933. The Commission is also adopting a new form, Form 24F–2, to provide a standard form for annual notices filed under rule 24f–2. The amendments and the new form are intended to clarify the application of certain provisions of rule 24f–2 and make the rule's filing deadlines more flexible under certain circumstances.

DATES: The amendments are effective October 10, 1995. The rule amendments and Form 24F–2 will apply to filings that cover fiscal periods ending on or after the effective date, and to mergers and reorganizations completed on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Karen J. Garnett, Attorney, or Joseph E. Price, Deputy Chief, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. After the effective date, questions concerning filings should be addressed to Carolyn A. Miller, Senior Financial Analyst, (202) 942–0510, Office of Financial Analysis, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting amendments to rules 24f–1 (17 CFR 270.24f–1) and 24f–2 (17 CFR 270.24f–2) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("1940 Act") and a new Form 24F–2 (17 CFR 274.24).

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Executive Summary

The Commission is amending rule 24f–2 under the 1940 Act, the rule that permits certain investment companies to register an indefinite number of securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"). The amendments provide that annual notices required by rule 24f–2 will be deemed timely filed if the investment company establishes that it timely transmitted the notice to a company or governmental entity that guaranteed delivery to the Commission no later than the filing date. In addition, the amendments modify certain filing periods under rule 24f–2 and clarify the operation of the rule's termination provisions in the case of investment company business combination transactions. The Commission also is adopting Form 24F–2, a standard form for annual notices required by rule 24f–2. Form 24F–2 solicits the information currently required by rule 24f–2 for annual notices and includes a work sheet for calculating filing fees. The form is intended to improve the accuracy of information contained in Rule 24f–2 Notices and improve the Commission's ability to process the notices. Finally, the Commission is adopting conforming amendments to rule 24f–1, the rule that permits certain investment companies to register securities sold in excess of the number of shares included in a registration statement.

I. Background

Section 6(b) of the Securities Act (15 U.S.C. 77f(b)) specifies the fees that must be paid in connection with registering securities with the Commission under the Securities Act. Section 24 of the 1940 Act (15 U.S.C. 80a–24) modifies these provisions for certain investment companies ("funds").[1] Section 24 was intended to address the problem of inadvertent "oversales" of fund securities, *i.e.*, sales in excess of securities registered, which could easily occur with a fund that continually issues and redeems securities.

Rule 24f–2 under the 1940 Act permits funds to register an indefinite number of securities. A fund that makes a declaration to be governed by the rule ("Rule 24f–2 declaration") pays an initial election fee of $500. Once a fund makes its Rule 24f–2 declaration, it must file a notice within six months after the close of each fiscal year ("Rule 24f–2 Notice") and pay a registration fee based upon the number of shares sold during the fiscal year.[2] If the fund files its Rule 24f–2 Notice within two months after the close of its fiscal year, the fund may deduct the value of shares redeemed from the value of shares sold in calculating the amount of fees due.[3] This netting provision can result in substantial savings to funds and their shareholders.

On February 1, 1995, the Commission issued a release ("Proposing Release") proposing for public comment amendments to rule 24f–2 that would modify the method for determining when Rule 24f–2 Notices will be deemed timely filed with the Commission.[4] The proposed amendments would also change the computation of filing deadlines and the operation of rule 24f–2's termination provisions in the case of investment company business combination transactions. In addition, the Commission proposed a standard form for filing Rule 24f–2 Notices, which was intended to improve the accuracy of information contained in the notices. The Commission received six comment letters on the Proposing Release,[5] all of which supported the proposals.[6] The Commission is adopting the amendments and form substantially as proposed.

II. Amendments to Rule 24f–2

A. Delayed Filings

Under rule 24f–2, the consequences of filing a late Rule 24f–2 Notice can be severe.[7] The Commission proposed an amendment to rule 24f–2 to provide a means for funds to ensure that their Rule 24f–2 Notices are timely filed and thus to avoid the consequences of late filings. The proposed amendment to rule 24f–2 provided that a Rule 24f–2 Notice is deemed timely filed, regardless of when it reaches the Commission, if the fund establishes that it timely transmitted the notice to a third party company or governmental entity that guaranteed delivery to the Commission no later than the filing date. All of the commenters supported the amendment, which the Commission is adopting as proposed.

As adopted, new paragraph (f) of rule 24f–2 (17 CFR 270.24f–2(f)) applies to both the deadline for using the rule's netting provision and the deadline for filing Rule 24f–2 Notices.[8] In order to rely on this provision, a fund must retain a receipt or other writing from the third party evidencing timely receipt by the third party for filing with the Commission by the due date.[9] By providing a means for funds to ensure that they are not penalized for the failure of a third party to timely file their Rule 24f–2 Notices, the amendments should eliminate the need for such funds to seek exemptive relief from the requirements of rule 24f–2.[10] Consequently, the Commission does not expect to entertain further exemptive applications from late filers.

B. Dividend Reinvestment Shares

As discussed above, rule 24f–2 permits a fund to calculate the registration fee due by deducting the amount of shares redeemed during the fiscal year from the amount of shares sold during the period. In determining the amount of shares sold during the fiscal year, some funds have excluded shares issued in connection with dividend reinvestment plans ("DRIP shares").[11] These funds, however, also may have included DRIP shares in determining the amount of shares redeemed during the fiscal year.[12] In the Proposing Release, the Commission explained that this method of counting shares is inconsistent with the netting provision of rule 24f–2, which recognizes that a substantial portion of shares being registered under rule 24f–2 were issued to replace redeemed shares that previously had been registered under the Securities Act.[13] To address this inconsistency, the Commission proposed an amendment to rule 24f–2 to require funds taking advantage of the rule's netting provision to include DRIP shares when determining the amount of shares sold and redeemed during the fiscal year.

Five of the six commenters generally supported the proposed amendment. The objecting commenter argued that including DRIP shares in the amount of securities sold during the fiscal year would contradict the Commission's long-standing position that the issuance of DRIP shares is not a "sale" of securities for purposes of registration.[14] This commenter asserted that the proposed amendments could require a fund to pay registration fees on DRIP shares in years that the amount of DRIP shares issued exceeds redemptions. The Commission acknowledges that in some years a fund could pay fees on DRIP shares that would not be offset by redemptions. Those circumstances would occur infrequently, however, and the fees typically would be recaptured when those shares are redeemed in later years and netted against other sales.[15]

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[1] These companies include face amount certificate companies, open-end management companies, and unit investment trusts.

[2] Rules 24f–2(a)(1), (a)(3), and (b)(1) [17 CFR 270.24f–2(a)(1), (a)(3), and (b)(1)].

[3] Rule 24f–2(c) (17 CFR 270.24f–2(c)).

[4] Investment Company Act Rel. No. 20874 (Feb. 1, 1995) (60 FR 7146 (Feb. 7, 1995)).

[5] The comment letters are available for public inspection and copying in the Commission's public reference room in File No. S7–3–95.

[6] One commenter, who supported the proposed rule amendments and form, suggested further changes to accommodate unit investment trusts ("UITs") under certain circumstances. While such revisions are beyond the scope of the current proposal, the Commission intends to consider revisions to rule 24f–2 for UITs in the future.

[7] Rule 24f–2 currently provides that a fund cannot use the netting provision of paragraph (c) of the rule, which may result in substantially higher filing fees, if the fund's Rule 24f–2 Notice arrives at the Commission more than two months after the end of the fund's fiscal year. In addition, a fund's Rule 24f–2 declaration will terminate if the fund files its Rule 24f–2 Notice more than six months after its fiscal year end.

[8] The amendments change the deadline for filing in order to use the netting provision from two months to 60 days and the deadline for filing Rule 24f–2 Notices from six months to 180 days. *See infra* section II.D ("Calculation of Time Periods").

[9] Funds that file Rule 24f–2 Notices by direct transmission on the Commission's EDGAR system ("electronic filers") will not be affected by this provision, since the timeliness of their filings does not depend upon the mail or courier services. While an electronic filing may be delayed for technical reasons, the rules governing electronic filings contain adequate procedures to address transmission problems. *See* 17 CFR 232.13(b).

[10] The Commission has recently issued exemptive orders pursuant to its authority under section 6(c) of the 1940 Act (15 U.S.C. 80a–6(c)) to allow funds filing after the two month deadline under certain circumstances to use rule 24f–2's netting provision. *See* Proposing Release, *supra* note 4, at n.7 and accompanying text.

[11] DRIP shares generally are not treated as "sales" of stock for purposes of registration requirements under the Securities Act. *See* Securities Act Rel. No. 929 (Jul. 29, 1936). Many funds, therefore, do not include DRIP shares as "sales" for purposes of rule 24f–2.

[12] Funds that do not separately track DRIP shares generally have no means of determining whether shares redeemed during the fiscal year include DRIP shares.

[13] Proposing Release, *supra* note 4, at section II.B.

[14] *See supra* note 11.

[15] Furthermore, in years when the fund has no sales but issues DRIP shares, the fund would not be required to pay registration fees on shares sold, regardless of redemptions in that year. This is because the amendment does not require a fund to include DRIP shares in the total amount of securities sold unless the fund is netting redemptions against sales. *See* Instruction B.7 of Form 24F–2.

The Commission considered alternatives to address the commenter's concern, including requiring funds to track the redemption of DRIP shares and exclude them from the amount redeemed in calculating net sales. Industry commenters supported the proposed approach as being less burdensome. The Commission is adopting the amendment as proposed.[16]

C. Mergers and Other Business Combinations

Paragraph (b)(3) of rule 24f–2 (17 CFR 270.24f–2(b)(3)) requires a fund planning to cease operations to file a post-effective amendment terminating the Rule 24f–2 declaration and file a final Rule 24f–2 Notice "before ceasing operations." In the case of investment company business combination transactions, especially those involving a liquidation, merger, or sale of assets, the operation of the rule has been unclear. While in most cases a fund's operations cease upon consummation of the transaction, it may be impractical for the fund to file a final Rule 24f–2 Notice before the transaction since sales and redemptions may be occurring until the time of the transaction. In addition, paragraph (b)(3) is silent as to the applicability of the netting provision of paragraph (c) when a fund files a Rule 24f–2 Notice in connection with ceasing operations.

To address these issues, the Commission proposed amendments to rule 24f–2 to remove the requirement that a fund file its final Rule 24f–2 Notice prior to ceasing operations and, in its place, provide that if a fund ceases operations, the end of its fiscal year for purposes of rule 24f–2 is the date it ceases operations.[17] Commenters supported the proposal, and the Commission is adopting amendments to paragraph (b)(3) of rule 24f–2 as proposed.

The rule, as amended, provides that the date a fund ceases operations will be deemed the close of its fiscal year.[18] Thus, a fund must file a final Rule 24f–2 Notice within 180 days after ceasing operations and pay registration fees on all shares sold during the fiscal year.[19] If a fund files the Rule 24f–2 Notice within 60 days after ceasing operations, it will be permitted, under paragraph (c), to net redemptions made between the end of the previous fiscal year and the date of ceasing operations against sales during that period.[20] For funds involved in business combination transactions (other than reorganizations described below), revised paragraph (b)(3) specifies that a fund ceases operations for purposes of rule 24f–2 on the date that the fund's assets are distributed in a liquidation, the effective date of a merger, or, when there has been a sale of all or substantially all of the fund's assets, the date those assets are transferred.

As proposed, paragraph (b)(3) also clarified that reorganizations for the purpose of changing the fund's state of incorporation or form of organization would not result in the company ceasing operations for purposes of rule 24f–2. These transactions would be limited under the proposed rule to reorganizations that satisfied the requirements of rule 414 under Regulation C of the Securities Act.[21] Under a rule 414 reorganization, the successor fund succeeds to all assets and liabilities of the acquired fund, including the registration fee liabilities (net of any redemption credits) under rule 24f–2.[22]

Two commenters recommended that the Commission expand the application of paragraph (b)(3) of rule 24f–2 to permit the transfer of redemption credits when the assets and liabilities of an existing fund are merged or otherwise transferred into the portfolio of a newly-created series of another fund.[23] The Commission staff has previously allowed a successor fund to use an acquired fund's redemption credits when the successor fund was a newly-created series of a series company.[24] The Commission has decided to revise paragraph (b)(3) to provide that a fund may transfer redemption credits to a successor fund in the case of either a succession under rule 414 or a transfer of assets to a newly-created series of a series company.

D. Calculation of Time Periods

The Commission proposed amending paragraphs (b)(1) and (c) of Rule 24f–2 to replace the "six month" and "two month" time periods for filing Rule 24f–2 Notices with "180 day" and "60 day" time periods, respectively.[25] The rule's references to "months" has resulted in different filing periods depending upon the months involved and is inconsistent with the timing provisions in other Commission rules.[26] This has, on occasion, caused some confusion among funds about filing deadlines. Only one commenter objected to the proposed revisions, arguing that the proposal to measure time periods in days rather than months would create more confusion among filers about the deadlines for filing Rule 24f–2 Notices. The Commission believes, however, that the proposed amendments, which make rule 24f–2 consistent with other filing requirements under the 1940 Act, will reduce confusion among funds about the time periods for filing annual notices under rule 24f–2. Therefore, the Commission is adopting the amendments as proposed.[27] To further clarify how to calculate time periods, the Commission is also adopting, as proposed, a new paragraph specifying that the first day of the time period is the first calendar day of the fiscal year following the fiscal year for which the Rule 24f–2 Notice is filed.[28]

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[16] Paragraph (c) of rule 24f–2.

[17] Proposing Release, *supra* note 4, at section II.C.

[18] Rule 24f–2(b)(3).

[19] Rule 24f–2(b)(1).

[20] This approach is similar to that taken in rule 8f–1 under the 1940 Act (17 CFR 270.8f–1), which requires a registered investment company winding up its affairs or being merged into or consolidated with another investment company to file an application for an order declaring that the company has ceased to be a registered investment company after the transaction has occurred.

[21] 17 CFR 230.414. Rule 414 generally provides that the registration statement of a predecessor company will be deemed to be the registration statement of the successor company when the purpose of the reorganization is to change the company's domicile or form of organization, provided certain conditions are satisfied. The Commission staff has stated that rule 414 is applicable to certain fund reorganizations. *See, e.g.*, Lowry Market Timing Fund, Inc. (pub. avail. Jan. 9, 1985); Frank Russell Investment Company (pub. avail. Dec. 3, 1984).

[22] Rule 414(b) (17 CFR 230.414(b)) requires that the succession result in the successor issuer acquiring all of the assets of and assuming all of the liabilities and obligations of the issuer.

[23] This type of transaction would not satisfy the requirements of rule 414 because the successor series would be part of a separately registered series company and would not adopt the predecessor fund's registration statement as its own, as required by rule 414. As a result, the acquired fund *would* cease to do business, unlike the acquired fund in a rule 414 succession.

[24] The Victory Funds (pub. avail. Apr. 24, 1995). In The Victory Funds, the staff stated that when a shell series assumes the assets and liabilities of an acquired fund, the transaction is similar to a reorganization under rule 414 because the successor fund is continuing the acquired fund's business and each shareholder of the acquired fund, following the transaction, owns the same pro rata interest in the same portfolio of securities as the shareholder owned before the transaction.

[25] Proposing Release, *supra* note 4, at section II.D.

[26] *See, e.g.*, rule 30b1–1 under the 1940 Act (17 CFR 270.30b1–1) (requiring funds to file semi-annual reports with the Commission not more than 60 calendar days after the close of each fiscal year and fiscal second quarter); rule 30d–1 under the 1940 Act (17 CFR 270.30d–1) (requiring funds to mail semi-annual reports to stockholders within 60 days after the close of the period for which the report is made); and rule 485 under the Securities Act (17 CFR 230.485) (providing that certain post-effective amendments will become effective on the sixtieth day after filing).

[27] The Commission is adopting similar amendments to rule 24f–1, which permits funds with effective registration statements to file a notification that has the effect of registering shares sold in excess of the number of shares previously registered. The six month time periods referred to in paragraphs (a)(1) and (c) of rule 24f–1 (17 CFR 270.24f–1(a)(1), 270.24f–1(c)) are changed to 180 days.

E. Investment Companies Funding Insurance Company Separate Accounts

Variable insurance contracts typically are offered through two tier arrangements in which contract premiums are pooled in an unmanaged insurance company separate account and invested in an underlying investment company ("Underlying Fund"). Many of the separate accounts are registered as investment companies and organized as unit investment trusts; others are eligible for exemption from the 1940 Act.

Pursuant to an interpretive letter recently issued by the Division of Investment Management, Underlying Funds are not required to pay registration fees on securities they sell to certain separate accounts.[29] These separate accounts are those organized as unit investment trusts and registered as investment companies or separate accounts that are exempt from registration under the 1940 Act but which register their securities under the Securities Act and pay registration fees thereon. The purpose of the interpretive letter was to prevent payment of registration fees under the Securities Act for the same aggregate proceeds from investors in variable insurance products that results in "double counting" of assets on which such fees are paid.

The Commission is codifying this interpretive advice in two instructions to new Form 24F–2.[30] Under these instructions, an Underlying Fund that files a Rule 24f–2 Notice generally is not required to include securities sold to an unmanaged separate account that issues interests therein that are registered under the Securities Act and on which registration fees have been or will be paid.[31] If an Underlying Fund excludes such securities from the amount reported in its Rule 24f–2 Notice, the Underlying Fund is not required to pay a registration fee for those securities. An Underlying Fund relying on this exemption may not include shares redeemed or repurchased from such unmanaged separate accounts for purposes of netting sales under rule 24f–2.[32]

III. Form 24F–2

The Commission is adopting Form 24F–2, substantially as proposed, to provide a standard format for filing information required by Rule 24f–2.[33] All of the commenters generally supported the proposed form. The Commission believes that a standard form for Rule 24f–2 Notices will facilitate the calculation of fees due under rule 24f–2 and reduce errors in the calculation of filing fees. The standard form should also improve the Commission's ability to process Rule 24f–2 Notices and detect errors.

Instructions to the form as adopted specify that an issuer may file a single Rule 24f–2 Notice for more than one class or series of securities, provided each series has the same fiscal year end and each class or series is registered on the same Securities Act registration statement.[34] One commenter objected to limiting the use of a single Form 24F–2 to series with the same fiscal year end. This commenter suggested that series funds with different fiscal year ends be permitted to file a single Form 24F–2 for a specified 12-month period, which would permit series with different fiscal year ends to net sales of all series against redemptions of all series. The Commission believes, however, that the limitation is appropriate. Series having different year ends appear to operate more like separate funds than a single fund and thus should not be treated as a single fund for purposes of aggregating sales and redemptions. The Commission has therefore decided not to expand the circumstances under which a series fund is permitted to file a single Form 24F–2 for series within the fund.[35]

As adopted, Form 24F–2 consists of twelve items and detailed instructions for completing and filing the form. The first four items require basic identifying information: the name and address of the fund; the class of shares or series to which the filing relates; the Securities Act file number of the registration statement on which the shares are registered; and the last day of the fiscal-year for which the Rule 24f–2 Notice is filed.

Items 5 and 6 must be completed only if the fund fails to file its Rule 24f–2 Notice within 180 days after its fiscal year end. In such a case, the fund's declaration to register an indefinite number of shares is terminated on the next business day.[36] As under the current rule, the fund must file a separate Form 24F–2 with respect to sales of securities made pursuant to the declaration during (1) the fiscal year for which the notice was not timely filed, and (2) the period after the close of the fiscal year but before the declaration was terminated. Item 5 requires the fund to indicate whether the form is being filed for purposes of reporting securities sold after the close of the fiscal year but before termination of the fund's Rule 24f–2 declaration. In either case, the fund must report the date of termination of its Rule 24f–2 declaration in Item 6.

Items 7 through 11 require a fund to identify the shares sold during the fiscal year for which registration fees have previously been paid or which must be accounted for in determining the fee payable with the Rule 24f–2 Notice.[37] This information is substantially the same as that currently required for a Rule 24f–2 Notice. The only significant change is that the form reflects amendments to paragraph (c) of rule 24f–2 that require a fund to include all securities issued pursuant to DRIPs in the fund's aggregate sales for purposes of calculating registration fees under the rule's netting provisions.[38]

Item 12 is a work sheet for calculating the fee payable with the notice. The fee calculation is presented in tabular format to facilitate the Commission staff's review of filing fees for purposes of determining whether a fund has paid the appropriate amount. The work sheet contains seven line items:

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[28] Rule 24f–2(e) (17 CFR 270.24f–2(e)).

[29] American Council of Life Insurance (pub. avail. June 20, 1995).

[30] Instructions B.5 and C.4 to Form 24F–2.

[31] American Council of Life Insurance (pub. avail. June 20, 1995). The letter and the new instructions do not apply to shares sold to separate accounts whose interests are not registered under the Securities Act or to pension plans.

[32] The Commission may, in the future, consider a separate form designed specifically for variable insurance products to report shares sold under rule 24f–2.

[33] Paragraph (b)(1) of the rule currently specifies the information that must appear in a Rule 24f–2 Notice. Because Form 24F–2 solicits the same information, the amendments delete this information from the rule.

[34] Instruction A.3. This instruction does not affect the method of allocating expenses among multiple classes of funds in accordance with existing orders or rule 18f–3 under the 1940 Act. A multiple class fund is permitted to net credits for redemptions of shares of one class against sales of shares of another class if the fund's exemptive order or plan under rule 18f–3 treats federal securities registration fees as a fund expense and does not provide for the allocation of those fees on a class-by-class basis. *See* Investment Company Act Rel. No. 20915 (Feb. 23, 1995) (60 FR 11876 (Mar. 2, 1995)) (adopting rule 18f–3).

[35] This limitation on filing a single Rule 24f–2 Notice for more than one series is not intended to suggest that all series of a series company must have the same fiscal year end.

[36] Rule 24f–2(b)(2) (17 CFR 270.24f–2(b)(2)).

[37] As proposed, Item 7 required funds to report the number and aggregate sale price of securities of the same class or series "sold during the fiscal year" which had been registered under the Securities Act other than pursuant to rule 24f–2 in a prior fiscal year, but which remained unsold at the beginning of the fiscal year. One commenter asserted that it would be more meaningful, for purposes of calculating filing fees due under rule 24f–2, not to limit this item to securities sold during the fiscal year. The Commission agrees and has omitted the limiting phrase from the form as adopted.

[38] Instruction B.7 clarifies that this item should be completed only if the fund is using the netting provision of rule 24f–2(c) to calculate its registration fee. *See supra* section II.B ("Dividend Reinvestment Shares").

(i) The aggregate sale price of securities sold during the fiscal year in reliance on rule 24f–2;[39]

(ii) The aggregate price of DRIP shares (if not included in (i));

(iii) The aggregate price of shares redeemed or repurchased during the fiscal year;

(iv) The aggregate price of shares redeemed or repurchased and previously applied as a reduction to filing fees pursuant to rule 24e–2;[40]

(v) The net aggregate sale price of securities sold during the fiscal year in reliance on rule 24f–2 (line (i), plus line (ii), less line (iii), plus line (iv));

(vi) The multiplier to be used to determine the fee;[41] and

(vii) The fee due (line (i) (if the netting provision is not used) or line (v) (if the netting provision is used) multiplied by line (vi)).[42]

A fund must complete lines (ii), (iii), (iv), and (v) only if it is using the rule's netting provision.

The work sheet provided in Item 12 is similar to the method for reporting the calculation of Rule 24f–2 fees on the EDGAR system. Under the EDGAR system, an electronic filer is required to prepare a header for each Rule 24f–2 Notice. The header contains certain filing fee information that is included in the accompanying Rule 24f–2 Notice. As adopted, Form 24F–2 does not alter the headers for EDGAR filings.[43]

IV. Cost/Benefit Analysis

The rule amendments and new form adopted today are intended to clarify the operation of rule 24f–2 and make the rule's filing deadlines more flexible under certain circumstances. The addition of paragraph (f) to rule 24f–2 provides a means for funds to avoid late filings, which can result in significant costs to the funds. This provision will relieve funds of the cost of preparing applications for exemption from the provisions of the rule and will relieve the Commission of the cost of reviewing such applications. Other revisions to rule 24f–2 adopted today are intended to clarify the operation of the rule when an extraordinary business transaction occurs such as a merger or liquidation. The change to use of days rather than months to measure the filing deadlines under rules 24f–1 and 24f–2 will, in most cases, shorten the period to make required filings by a day or two, and thus could be viewed as a "cost." The Commission believes, however, that this "cost" will be minor and is outweighed by the added certainty and uniformity that such a change brings to the operation of the rule. Form 24F–2 is designed to ensure that funds provide consistent information in their Rule 24f–2 Notices and to facilitate the staff's review of annual notices. The Commission believes that the standard form and the interpretive guidance provided in the form's instructions will reduce the burden of preparing and reviewing Rule 24f–2 Notices.

V. Summary of Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Act Analysis, prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Karen J. Garnett, Office of Disclosure and Investment Adviser Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Text of Rule Amendments

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. The authority citations following §§ 270.24f–1 and 270.24f–2 are removed.

§ 270.24e–2 [Amended]

3. By amending § 270.24e–2, paragraph (a)(1), by revising the reference "Rule 457(c) (17 CFR 230.457(c))" to read "Rule 457(d) (17 CFR 230.457(d))".

§ 270.24f–1 [Amended]

4. By amending § 270.24f–1, paragraphs (a) and (c)(1), by revising the phrase "6 months" to read "180 days".

5. By amending § 270.24f–2 by revising paragraphs (b)(1), (b)(3), and (c) and by adding paragraphs (e) and (f) to read as follows:

§ 270.24f–2 Registration under the Securities Act of 1933 of an indefinite number of certain investment company securities.

* * * * *

(b)(1) If an issuer has filed a registration statement or post-effective amendment with a declaration authorized by paragraph (a)(1) of this section, it shall, with respect to such registration statement and within 180 days after the close of any fiscal year during which such declaration was in effect, file five copies of a notice ("Rule 24f–2 Notice") with the Commission. The Rule 24f–2 Notice shall be filed on Form 24F–2 (17 CFR 274.24) and shall be prepared in accordance with the requirements of the form. The Rule 24f–2 Notice shall be accompanied by an opinion of counsel indicating whether the securities the registration of which the notice makes definite in number were legally issued, fully paid, and non-assessable, and the additional filing fee, if any, specified in paragraph (c) of this section.

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[39] In the case of a fund with a front-end load, the aggregate sale price includes the sales load.

[40] Section 24(e)(1) of the 1940 Act (15 U.S.C. 80a–24(e)(1)) permits a fund to file a post-effective amendment to its Securities Act registration statement to increase the number of securities registered. Rule 24e–2 (17 CFR 270.24e–2) provides that the fee to be paid at the time of filing such post-effective amendment will be based on the maximum aggregate offering price at which the additional securities will be offered. This filing fee may be reduced by the amount of securities redeemed or repurchased by the issuer in its previous fiscal year, provided the issuer did not use those redemptions or repurchases under the netting provisions of rule 24f–2. Conversely, the issuer may not count redemptions and repurchases used to reduce the filing fee under rule 24e–2 for purposes of netting under rule 24f–2.

[41] In the Act making appropriations for the Commission for fiscal 1994, Congress increased the rate of fees prescribed by section 6(b) of the Securities Act from one fiftieth of one percent to one twenty-ninth of one percent. Pub. L. 103–121 (Oct. 27, 1993). Congress extended the increased fee for fiscal year 1995. Pub. L. 103–352 (Oct. 13, 1994). The current fee rate will be in effect through September 30, 1995, unless further extended by Congress; otherwise, the rate will revert to one fiftieth of one percent. Instruction C.6 to the form reminds funds to determine the current fee rate before filing.

[42] Instruction C.2 specifies that the $100 minimum fee prescribed by section 6(b) of the Securities Act does not apply to fees payable under rule 24f–2. This provision also has been incorporated into paragraph (c) of the rule.

[43] The Proposing Release requested comment whether the Commission should modify its systems to permit computer verification of the fee calculation based on information in the form rather than the header, thus avoiding the need for filers to duplicate information. The only commenter to address this question supported such a modification because it would relieve EDGAR filers of the burden of manually transferring information from Form 24F–2 to the header. The Commission agrees that such a modification could simplify electronic submissions of Form 24F–2. As the staff further develops the EDGAR system, the Commission may propose appropriate modifications relating to Form 24F–2.

* * * * *

(3) For purposes of this section, if a registrant ceases operations, the date the registrant ceases operations shall be deemed to be the close of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets of the registrant, the registrant shall be deemed to have ceased operations for purposes of this section on the date all or substantially all of the registrant's assets are distributed, the date the merger becomes effective under state law, or the date the assets are transferred; *provided, however,* that in the case of a merger of a registrant ("Predecessor Fund") with another registrant ("Successor Fund"), or a sale of all or substantially all of a Predecessor Fund's assets and liabilities to a Successor Fund, the Predecessor Fund shall not be deemed to have ceased operations and the Successor Fund shall assume the obligations, fees, and redemption credits of the Predecessor Fund incurred pursuant to this section and § 270.24e–2 if:

(i) The registration statement of the Predecessor Fund is deemed the registration statement of the Successor Fund in a transaction described by § 230.414 of this chapter; or

(ii) The Successor Fund is a series of a series company (as defined in § 270.18f–2), and immediately prior to the transaction the Successor Fund had no assets or liabilities, other than nominal assets or liabilities, and no operating history.

(c) A Rule 24f–2 Notice shall be accompanied by the payment of a filing fee with respect to the securities sold during the fiscal year in reliance upon registration pursuant to this section and shall be based upon the actual aggregate sale price for which such securities were sold. The filing fee shall be calculated in the manner specified in section 6(b) of the Securities Act of 1933 and the rules and regulations thereunder, except that the minimum filing fee required under section 6(b) shall not apply to fees due under this section. When the Rule 24f–2 Notice is filed not later than 60 days after the close of the fiscal year during which such securities were sold pursuant to this section, the filing fee to be paid as to such securities shall be the fee, if any, calculated in the manner specified in Section 6(b) of the Securities Act of 1933 except that, for the purpose of such calculation, such fee shall be based upon the actual aggregate sale price for which securities (including, for this purpose, all securities issued pursuant to a dividend reinvestment plan) were sold during the issuer's previous fiscal year, reduced by the difference between:

(1) The actual aggregate redemption or repurchase price of such securities of the issuer redeemed or repurchased by the issuer during such previous fiscal year; and

(2) The actual aggregate redemption or repurchase price of such redeemed or repurchased securities previously applied by the issuer pursuant to § 270.24e–2(a) in filings made pursuant to section 24(e)(1) of the Investment Company Act of 1940.

* * * * *

(e) To determine the date on which a Rule 24f–2 Notice must be filed with the Commission under paragraph (b)(1) of this section or the date that a Rule 24f–2 Notice must be filed in order to permit the issuer to calculate the fee due in accordance with the second sentence of paragraph (c) of this section, the first day of the 180 day or 60 day period, as the case may be, shall be the first calendar day of the fiscal year following the fiscal year for which the Rule 24f–2 Notice is to be filed.

Note to Paragraph (e): For example, a Rule 24f–2 Notice for a fiscal year ending on June 30 must be filed no later than December 28 or, if the issuer calculates the fee due in accordance with the second sentence of paragraph (c), no later than August 29. If the last day of the period falls on a non-business day (a Saturday, Sunday or federal holiday), the period shall end on the first business day thereafter, as provided by § 270.0–2.

(f) The date of filing of a Rule 24f–2 Notice with the Commission shall be the date on which the Rule 24f–2 Notice is actually received by the Commission; *provided, however,* that other than in the case of a Rule 24f–2 Notice filed by direct transmission (as such term is defined in rule 11 of Regulation S–T (17 CFR 232.11) a Rule 24f–2 Notice received by the Commission after the date due under either paragraph (b)(1) or paragraph (c) of this section shall be deemed to have been timely filed if the issuer establishes that the Rule 24f–2 Notice was transmitted timely to a third party company or governmental entity providing delivery services in the ordinary course of business, which guaranteed delivery of the Notice to the Commission no later than the required filing date.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

6. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

7. Section 274.24 and Form 24F–2 are added to read as follows:

Note: The text of Form 24F–2 does not appear in the Code of Federal Regulations. A copy of Form 24F–2 is attached as Appendix I to this document.

§ 274.24 Form 24F–2, annual notice of securities sold pursuant to registration of an indefinite number of certain investment company securities.

Form 24F–2 shall be used as the annual report filed by face amount certificate companies, open-end management companies, and unit investment trusts pursuant to § 270.24f–2 of this chapter for reporting securities sold during the fiscal year.

Dated: September 1, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010-01-P

APPENDIX I.

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 24F-2
Annual Notice of Securities Sold Pursuant to Rule 24f-2

Read instructions at end of Form before preparing Form.
Please print or type.

1. Name and address of issuer:

2. Name of each series or class of funds for which this notice is filed:

3. Investment Company Act File Number:

   Securities Act File Number:

4. Last day of fiscal year for which this notice is filed:

5. Check box if this notice is being filed more than 180 days after the close of the issuer's fiscal year for purposes of reporting securities sold after the close of the fiscal year but before termination of the issuer's 24f-2 declaration: ☐

6. Date of termination of issuer's declaration under rule 24f-2(a)(1), if applicable (see Instruction A.6):

7. Number and amount of securities of the same class or series which had been registered under the Securities Act of 1933 other than pursuant to rule 24f-2 in a prior fiscal year, but which remained unsold at the beginning of the fiscal year:

8. Number and amount of securities registered during the fiscal year other than pursuant to rule 24f-2:

9. Number and aggregate sale price of securities sold during the fiscal year:

10. Number and aggregate sale price of securities sold during the fiscal year in reliance upon registration pursuant to rule 24f-2:

11. Number and aggregate sale price of securities issued during the fiscal year in connection with dividend reinvestment plans, if applicable (see Instruction B.7):

12. Calculation of registration fee:

(i) Aggregate sale price of securities sold during the fiscal year in reliance on rule 24f-2 (from Item 10): $__________

(ii) Aggregate price of shares issued in connection with dividend reinvestment plans (from Item 11, if applicable): +__________

(iii) Aggregate price of shares redeemed or repurchased during the fiscal year (if applicable): -__________

(iv) Aggregate price of shares redeemed or repurchased and previously applied as a reduction to filing fees pursuant to rule 24e-2 (if applicable): +__________

(v) Net aggregate price of securities sold and issued during the fiscal year in reliance on rule 24f-2 [line (i), plus line (ii), less line (iii), plus line (iv)] (if applicable): __________

(vi) Multiplier prescribed by Section 6(b) of the Securities Act of 1933 or other applicable law or regulation (see Instruction C.6): x__________

(vii)Fee due [line (i) or line (v) multiplied by line (vi)]: __________

Instruction: *Issuers should complete lines (ii), (iii), (iv), and (v) only if the form is being filed within 60 days after the close of the issuer's fiscal year.* See Instruction C.3.

13. Check box if fees are being remitted to the Commission's lockbox depository as described in section 3a of the Commission's Rules of Informal and Other Procedures (17 CFR 202.3a).

[ ]

Date of mailing or wire transfer of filing fees to the Commission's lockbox depository:

SIGNATURES

This report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.

By (Signature and Title)* ____________________

____

Date __________

* Please print the name and title of the signing officer below the signature.

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 24F-2

Annual Notice of Securities Sold Pursuant to Rule 24f-2

INSTRUCTIONS

A. Rule as to Use of Form 24F-2

1. This form shall be used for annual notices required by rule 24f-2 under the Investment Company Act of 1940 ("Act") [17 CFR 270.24f-2]. Annual notices on this form shall be filed within 180 days after the close of any fiscal year during which the issuer has in effect a declaration to register an indefinite number of securities pursuant to rule 24f-2(a)(1) of the Act. If the notice is being filed not later than 60 days after the close of the issuer's fiscal year, the fees due with the notice may be reduced. (*See* Instruction C.3.)

2. If the form contains insufficient space for the information required in any item, issuers should attach additional pages as necessary and indicate in the space provided for the item the number of additional pages attached.

3. The issuer named in Item 1 of this form is the face amount certificate company, open-end management company, or unit investment trust that has filed a registration statement under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.] containing a declaration to register an indefinite number of securities under rule 24f-2(a)(1) of the Act. If the issuer has registered more than one class or series on the same Securities Act registration statement, the issuer may file a single Form 24F-2 for those classes or series, provided each series has the same fiscal year end. Issuers electing to calculate filing fees on a class-by-class or series-by-series basis, however, should file a separate Form 24F-2 for each class or series. All classes and series for which the form is filed should be identified in Item 2.

4. The Investment Company Act file number reported in response to Item 3 should be the number of the issuer's registration statement filed under the Act. The Securities Act file number in Item 3 refers to the registration statement filed to register an indefinite number of securities (beginning with either "2-" or "33-").

5. Item 4 requires issuers to report the date of the last day of the fiscal year for which the notice is filed. In the case of an issuer that ceases operations, the date it ceases operations is deemed the last day of its fiscal year for purposes of rule 24f-2.

6. Items 5 and 6 should be completed only if the issuer fails to file its Rule 24f-2 Notice within 180 days after the close of the issuer's fiscal year. In such cases, the issuer's declaration to register an indefinite number of shares will be terminated on the next business day, and the issuer should report the date of termination in Item 6. All such issuers must file a separate Form 24F-2 with respect to sales of securities made pursuant to the declaration during (1) the fiscal year for which the notice was not timely filed, and (2) the period after the close of the fiscal year but before the declaration was terminated. Issuers should check the box in Item 5 only if they are filing the form to report securities sold during the period after the close of the fiscal year but before the declaration was terminated.

B. Computation of Number of Securities

1. In response to Items 7 through 11, issuers may aggregate sales, redemptions, and amounts issued of all classes or series for which the notice is being filed. Issuers must aggregate prices within each class or series. If the issuer charges a front-end sales load on its securities, the aggregate sale price must include the sales load.

2. Item 7 requires the issuer to report the number and amount of securities of the same class or series as those for which the notice is being filed, if any, which were registered under the Securities Act *other than* pursuant to rule 24f-2. This item includes securities registered by post-effective

amendment pursuant to rule 24e-2. Securities reported in Item 7 must have been registered prior to the fiscal year for which the notice is being filed and must remain unsold at the beginning of the fiscal year.

3. Item 8 refers to securities registered during the fiscal year *other than* pursuant to rule 24f-2. This item includes securities registered during the fiscal year by post-effective amendment pursuant to rule 24e-2.

4. Item 9 requires the issuer to report the total number and sale price of securities sold during the fiscal year. This item includes (i) sales of securities registered prior to the fiscal year, (ii) sales of securities registered during the fiscal year, and (iii) securities sold in reliance on registration under rule 24f-2. The issuer may also include shares issued in connection with dividend reinvestment plans ("DRIP shares"), unless the issuer separately reports DRIP shares in Item 11.

5. Securities sold to an unmanaged separate account that offers interests therein that are registered under the Securities Act and on which a registration fee has been or will be paid, may be excluded from the securities reported in Item 9. (*See* Investment Company Act Rel. No 21332 (Sep. 1, 1995).)

6. Item 10 requires the issuer to report the securities sold during the fiscal year in reliance upon registration under rule 24f-2.

7. Item 11 should be completed only if the issuer is using the netting provision of Item 12. In such cases, the issuer should report the number and dollar amount of securities not registered under the Securities Act that were issued during the fiscal year in connection with dividend reinvestment plans. The issuer is not required to complete Item 11 if DRIP shares are included in the securities reported in Item 9.

C. Computation of Registration Fees

1. Item 12 is a work sheet for calculating the filing fee due. Items 12 (i) and (ii) should be the same as the responses provided to Items 10 and 11, respectively.

2. The filing fee due shall be calculated in the manner specified in Section 6(b) of the Securities Act [15 U.S.C. 77f(b)]. Except as provided below, fees shall be based on the actual aggregate sale price, redemption price, or dollar amount at the date on which the securities were sold, redeemed, or issued. The $100 minimum fee prescribed by Section 6(b) does not apply to fees payable under rule 24f-2.

3. Lines (ii), (iii), (iv), and (v) of Item 12 (netting provision) apply only to issuers that file the form not later than 60 days after the close of the fiscal year during which securities were sold. In such cases, the filing fee shall be based upon the net aggregate price for which such securities were sold or issued during the issuer's previous fiscal year. Net aggregate price is the actual aggregate sale price, plus the value of shares issued in connection with dividend reinvestment plans, reduced by the difference between (1) the actual aggregate redemption or repurchase price of such securities of the issuer redeemed or repurchased by the issuer during the fiscal year, and (2) the actual aggregate redemption or purchase price of such redeemed or repurchased securities previously applied by the issuer pursuant to rule 24e-2(a) under the Act.

4. If the issuer excludes from the shares reported in Item 9 securities sold to unmanaged separate accounts pursuant to Instruction B.5, the issuer may not use shares redeemed or repurchased from those unmanaged separate accounts for purposes of determining the number of shares redeemed in Item 12.

5. If the issuer's total redemptions and repurchases during the fiscal year exceed the issuer's sales and amount of DRIP shares issued during the fiscal year, the issuer may report on line (iii) of Item 12 only the amount of redemptions equal to the amount of shares sold and issued during the fiscal year, as reported on lines (i) and (ii). The net aggregate price reported in line (v) of Item 12 cannot be less than zero.

6. The multiplier for calculation of the filing fee required by line (vi) of Item 12 is prescribed by Section 6(b) of the Securities Act. As of October 13, 1994, the multiplier was one twenty-ninth of one percent of the maximum aggregate offering price of the securities being registered. This multiplier is subject to change from time to time, without notice, by act of Congress through appropriations for the Commission or other laws. Issuers should determine the current fee rate prior to the time of filing by reference to Section 6(b) and any law or regulation affecting Section 6(b). Unless otherwise specified by act of Congress, the fee rate in effect at the time of filing applies to all securities sold during the fiscal year, regardless of whether the fee rate changed during the year.

7. The Commission currently calculates fees due under Section 6(b) by dividing the total amount of shares to be registered by 2900. Thus, the multiplier used in line (vi) of Item 12, under current law, should be 1/2900. Use of a decimal factor or some other method to calculate filing fees may result in payment of an incorrect amount. The Commission will not accept any filing that is accompanied by insufficient fees, and no part of the filing fee is refundable. Fees must be paid by United States postal money order, certified bank check, or cash. Issuers should refer to rule 0-8 under the Act [17 CFR 270.0-8] and rule 3a under the Commission's Rules of Informal and Other Procedures [17 CFR 202.3a] for instructions on payment of fees to the Commission. Electronic filers are subject to the fee payment requirements of rule 13(c) under Regulation S-T [17 CFR 232.13(c)].

D. Signature and Filing Form; Exhibit

1. The form shall be signed on behalf of the issuer by an authorized officer of the issuer. The issuer shall file five copies of the completed form, at least one of which has been manually signed, with the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. In accordance with general rule 8b-11 under the Act [17 CFR 270.8b-11], duplicated or facsimile versions of manual signatures shall be considered manual signatures for the purposes of filings under the Act and the rules and regulations thereunder. Electronic filers are subject to rule 302 of Regulation S-T [17 CFR 232.302] regarding signatures on forms filed electronically.

2. This form must be accompanied by the appropriate filing fee and an opinion of counsel indicating whether the securities were legally issued, fully paid, and non-assessable. (*See* paragraph (b)(1) of rule 24f-2.) A copy of the opinion of counsel should be attached to each copy of the form filed with the Commission.

3. This form will be deemed filed with the Commission on the date on which it is actually received by the Commission. Except in the case of a Rule 24f-2 Notice filed by means of "direct transmission" (as such term is defined in rule 11 of Regulation S-T [17 CFR 232.11], this form shall be deemed to have been timely filed if the issuer establishes that it timely transmitted the form and required fees to a third party company or governmental entity providing delivery services in the ordinary course of business, which guaranteed delivery of the form to the Commission no later than the required filing date. Issuers relying on such third party delivery must retain a receipt or other writing from the third party evidencing timely receipt by the third party for filing with the Commission by the due date. The Commission will not accept for filing any form accompanied by insufficient payment for the filing fee. Forms accompanied by insufficient payment shall be returned to the issuer for proper payment and shall not be deemed filed until receipt by the Commission of proper payment.

[FR Doc. 95–22445 Filed 9–8–95; 8:45 am]

BILLING CODE 8010-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name from Premiere Agri Technologies, Inc., to ADM Animal Health & Nutrition Div., and a change of sponsor of several new animal drug applications (NADA's) from wholly-owned subsidiaries to ADM Animal Health & Nutrition Div.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: ADM Animal Health & Nutrition Div., P.O. Box 2508, Fort Wayne, IN 46801–2508, has informed FDA of a change of sponsor name in approved NADA 91–582 (Tylosin) from Premiere Agri Technologies, Inc. ADM Animal Health & Nutrition Div., has also informed FDA that it has assumed sponsorship of the following NADA's previously owned by its subsidiaries:

NADA No.	Drug name	Former sponsor name and address
48–480a	Chlortetracycline	Feed Specialties Co., Inc., 1877 NE. 58th Ave., Des Moines, IA 50313.
65–256	Chlortetracycline hydrochloride	Do.
107–957	Tylosin and sulfamethazine	Do.
108–484	Tylosin and sulfamethazine	Do.
110–045	Tylosin	Good-Life, Division of Central Soya Co., Inc., Good-Life Dr., P.O. Box 687, Effingham, IL 62401.
110–439	Hygromycin B	Feed Specialties Co., Inc.
118–877	Pyrantel tartrate	Do.
128–411	Tylosin and sulfamethazine	Good-Life, Division of Central Soya Co., Inc.
131–956	Tylosin and sulfamethazine	MAC–PAGE, Inc., 1600 South Wilson Ave., Dunn, NC 28334.
132–448	Bambermycins	Feed Specialties Co., Inc.
133–490	Pyrantel tartrate	MAC–PAGE, Inc.
140–842	Hygromycin B	Do.

Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by removing Feed Specialties, Co., Inc., Good-Life, Division of Central Soya Co., and MAC–PAGE, Inc., because the firms are no longer the sponsors of any approved NADA's. The agency is also amending the drug labeler codes in 21 CFR 520.445b, 558.95, 558.274, 558.485, 558.625, and 558.630 providing for use of the above mentioned veterinary drug products. The sponsor labeler code of Premiere Agri Technologies, Inc., is being retained for the new sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Premiere Agri Technologies, Inc.," and by alphabetically adding a new entry for "ADM Animal Health & Nutrition Div., by removing the entries for "Feed Specialties Co., Inc., Good-Life, Division of Central Soya Co., and MAC–PAGE, Inc."; and in the table in paragraph (c)(2) in the entry for "012286" by removing the sponsor name "Premiere Agri Technologies, Inc.," and adding in its place "ADM Animal Health & Nutrition Div.," and by removing the entries for "017274, 021810, and 047427".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation of 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.445b [Amended]

4. Section 520.445b *Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfate)* is amended in paragraphs (b) and (d)(4)(iii)(C) by removing "017274" and adding in its place "012286".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.95 [Amended]

6. Section 558.95 *Bambermycins* is amended in paragraph (a)(4) by removing the entry for "017274" and numerically adding "012286".

§ 558.274 [Amended]

7. Section 558.274 *Hygromycin B* is amended in paragraph (a)(7) and in the table in paragraphs (c)(1)(i) and (c)(1)(ii) by removing the entry for "047427" and numerically adding "012286".

§ 558.485 [Amended]

8. Section 558.485 *Pyrantel tartrate* is amended in paragraph (a)(11) by removing "017274" and adding in its place "012286".

§ 558.625 [Amended]

9. Section 558.625 *Tylosin* is amended in paragraph (b)(52) by removing "021810" and adding in its place "012286".

§ 558.630 [Amended]

10. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraphs (b)(3) and (b)(8) by removing "017274" and adding "012286" and in paragraph (b)(10) by removing "017274, 021810, and 047427" and numerically adding "012286".

Dated: August 31, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine

[FR Doc. 95–22369 Filed 9–8–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8584]

RIN 1545–AK03

Capitalization of Interest; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulations [TD 8584] which were published in the **Federal Register** for Thursday, December 29, 1994 (59 FR 67187). The final regulations relate to the requirement to capitalize interest with respect to the production of property.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jan L. Skelton, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 263A(f) of the Internal Revenue Code.

Need for Correction

As published, the final regulations contains an error that is misleading and in need of correction.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for Part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.263A–9(f)(3), paragraph (v) of *Example 3.*, the last sentence is revised as follows:

§ 1.263A–9 The avoided cost method.

* * * * *

(f) * * *

(3) * * *

Example 3. (i) * * *

(v) * * * For Unit B, this amount is \$775,000 ([\$0 + \$500,000 + \$1,000,000 + \$1,600,000]÷4).

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–22382 Filed 9–8–95; 8:45 am]

BILLING CODE 4830–01–P

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–366; RE: Notice No. 801]

RIN 1512–AA07

The St. Helena Viticultural Area (94F–015P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Napa County, California, to be known as "St. Helena." The petition was submitted by Mr. Charles A. Carpy, Chairman of the St. Helena Appellation Committee. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Lou Blake, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Rulemaking Proceeding

Petition

On March 9, 1994, ATF received a petition from Mr. Charles A. Carpy, Chairman of the St. Helena Appellation Committee, proposing to establish a new viticultural area in Napa County. California, to be known as "St. Helena." The St. Helena Appellation Committee is composed of various vineyard and winery owners located throughout the St. Helena area. The proposed St. Helena viticultural area is located approximately 16 miles northwest of the city of Napa. It is located totally within the larger and previously established

Napa Valley viticultural area: The St. Helena viticultural area covers approximately 9,060 acres, and is densely planted to vines. There are over 30 wineries within the area. The petition provided sufficient information to show that the proposed area meets the regulatory requirements discussed previously. This information is shown beginning with the section entitled "Evidence That Viticultural Area Name Is Widely Known." Mr. Charles Sullivan, Napa Valley historian, provided the petitioner with most of the historical information concerning the St. Helena area that is covered in the petition whereas Dr. Deborah Elliott-Fisk of the University of California provided the petitioner with most of the information in the petition concerning soils, geology and physical geography of the St. Helena area.

Notice of Proposed Rulemaking

In response to Mr. Carpy's petition, ATF published a notice of proposed rulemaking, Notice No. 801, in the **Federal Register** on November 4, 1994 (59 FR 55226), proposing the establishment of the St. Helena viticultural area. The notice requested comments from all interested persons by February 2, 1995.

Comments to Notice of Proposed Rulemaking

Six comments were received in response to the notice of proposed rulemaking (Notice No. 801). Three commenters—Mr. W. Andrew Beckstoffer of Beckstoffer Vineyards, Mr. Richard E. Walton of Beaulieu Vineyard, and Mr. Thomas Leonardini of Whitehall Lane Winery—state that a certain portion of the proposed viticultural area should not, at this time, be included within the boundaries of the St. Helena viticultural area. The portion of the proposed St. Helena viticultural area which these three commenters want excluded starts at the intersection of Zinfandel Lane with Highway 29 on the southern boundary of the area, then in a westerly direction along Zinfandel Lane to where it intersects with the north fork of Bale Slough, then in a northwesterly direction along the north fork of Bale Slough to where it intersects with the southwesterly straight line projection of Inglewood Avenue, then in a southwesterly direction along the straight line projection of Inglewood Avenue to the 500 foot contour line on the western side of the area, then along the 500-foot contour line in a northwesterly direction to Sulphur Creek, then in a southeasterly and then a northeasterly direction along Sulphur Creek until it intersects with Highway 29, then in a southeasterly direction along Highway 29 until it intersects with Zinfandel Lane, the point of beginning.

These three commenters feel that there is simply not sufficient precise data or local agreement at this time to justify a choice for this area. They feel that within a relatively short time, say five years, the grapegrowers, winemakers and local residents will so clarify the wine characteristics and local reference for the wine consumer that the viticultural area designation of this area will become clear to all. At this future time, according to these three commenters, the area would either be added to the St. Helena or Rutherford viticultural area depending on what the evidence shows. All three feel that the evidence at that time will show that this area most closely resembles the Rutherford viticultural area.

Mr. Beckstoffer states that as part of the Rutherford viticultural area process, he submitted detailed data regarding the geological features, elevation, soils, rainfall, and geology of this area. Mr. Beckstoffer indicates that he wants this previous data to be included in his petition requesting that this area not be included in any viticultural area until some future time when more information is available.

Mr. Beckstoffer states that prior testimony at the Rutherford viticultural area hearing shows that there are no significant differences in rainfall, elevation or soils in this area from that to the north, St. Helena, or to the south, Rutherford. Mr. Beckstoffer indicates that there was significant controversy, however, regarding the underlying geology of this area and the area to the north and south. Mr. Beckstoffer states that the geological features upon which a delimited grape growing area is defined as a viticultural area do not support the inclusion of this area in either St. Helena or Rutherford to the exclusion of the other. Consequently, Mr. Beckstoffer feels that the features of this area could presently support inclusion in either Rutherford or St. Helena.

Mr. Beckstoffer also states that this area should not be considered a part of the proposed St. Helena viticultural area just because a certain portion of the area in question is within the municipal limits of the city of St. Helena. Mr. Beckstoffer indicates that it is his understanding that the approved Spring Mountain and Howell Mountain viticultural areas include areas within the city of St. Helena. In addition, the proposed St. Helena viticultural area includes areas both within and outside the city of St. Helena. Furthermore, according to Mr. Beckstoffer, the municipal boundaries of the city of St. Helena have recently been amended and will undoubtedly be amended again in the future. Consequently, Mr. Beckstoffer states that the area in question should not be included or excluded from a viticultural area based on whether a portion of the area is located within the municipal limits of the city of St. Helena.

In summary, Mr. Beckstoffer states that the area in question is a very important grapegrowing area of the Napa Valley claimed for both the Rutherford and St. Helena areas. He further states that the geological features, history and local designation of this area are not precise enough at this time to define the area as part of Rutherford or St. Helena. However, Mr. Beckstoffer feels that with sufficient time, the factors identifying this area in question will be sufficient to justify the inclusion of the area in either Rutherford or St. Helena. Mr. Beckstoffer feels that the current consumer awareness and wine characteristics of grapes produced from this area seem to indicate that the area should be included in Rutherford but that additional time should help determine with greater clarity exactly what viticultural area this area in question belongs in. At some future time, according to Mr. Beckstoffer, this area could be assigned to either Rutherford or St. Helena with much more clarity, precision and general acceptance.

Another commenter—Mr. William A. Hayne—states that he has a vineyard in the area in question and that he does not agree with the proposal to exclude this area from the proposed St. Helena viticultural area. Mr. Hayne further states that viticultural areas in the Napa Valley seem to be destined to be divided up more or less by post office regions and that he wishes to be included in the St. Helena viticultural area as is presently provided for in the notice of proposed rulemaking.

Another commenter—Mr. Richard W. Forman of Forman Vineyard—states that he is very close to the eastern boundary of the proposed St. Helena viticultural area and feels that Forman Vineyard should be included within the St. Helena area. In fact, Mr. Forman states that his winery and vineyard are located within the city limits of St. Helena. He further states his property is located on the lower toe slopes of the eastern Howell Mountain range and as such, has an exposure which looks across the Silverado Trail near Meadowood Lane and into the center of St. Helena. Mr.

Forman indicates that his vineyard, originally established on what was called the Stonebridge property, is clearly more closely associated with its near valley floor neighbors physically, climatologically and geologically, than the further removed and proposed fans of Pratt Valley, Deer Park and Spring Valley. He further indicates that he agrees with Mr. Sullivan's statement in the St. Helena petition that it is difficult to differentiate exactly, on a historical basis, between the 400–600 foot contour on the eastern slopes of the proposed St. Helena viticultural area.

Mr. Forman states that Mr. Sullivan indicates in the petition that the actual Howell Mountain influence of differing climatology does not come into effect until one reaches well above the 600 foot elevation. Mr. Forman states that his vineyard property does not extend beyond the 600-foot contour line and therefore has a very similar climate to the valley floor. And finally, Mr. Forman states that, on a geological basis, his soils closely resemble the soils found in the Phelps Home Ranch 3 Corral III vineyard, noted in petition exhibit No. 30 and located in Spring Valley, which is within the proposed boundaries of the St. Helena viticultural area. Mr. Forman states that this close similarity between soils should establish that his vineyard soils are consistent with other St. Helena district soils and therefore his vineyard property should be included as part of the St. Helena viticultural area.

Mr. Forman indicates that the United States Department of Agriculture (USDA) soil map identifies his vineyard property's soil as a Butte Stony Loam and mentions that it is widely found along the lower eastern toe slopes between Deer Park and Rutherford Cross Roads, again suggesting that this would indeed conform as a characteristic soil type of the area. Mr. Forman states that the climate surrounding his property is quite like that found above the Silverado Trail from Howell Mountain Road to Deer Park Road, particularly in so far as his property is situated within one-fourth mile of the Silverado Trail and has an exposure and elevation only moderately different than these adjacent valley floor locations.

In summary, Mr. Forman states that because of his location within the city limits of St. Helena, because of his exposure and proximity to the valley floor, and because of his vineyard's geology, he feels that his property should be included within the St. Helena viticultural area.

The last commenter, Mr. Chuck Carpy, Chairman of the St. Helena Appellation Committee, states that his comment is in response to the two proposed boundary amendments which were submitted. In response to Mr. Forman's proposal to extend the boundary of the St. Helena viticultural area to include his vineyard property, Mr. Carpy states that the St. Helena Appellation Committee does not have any objection to this proposal. Mr. Carpy states that Mr. Forman's vineyard is located within the city limits of St. Helena and, to the best of his knowledge, is split by the proposed 400 foot contour line. Mr. Carpy indicates that the petitioners have reviewed Mr. Forman's data and find the soil types and geology to be consistent with those of the other toe-slopes of the Vaca (or Silverado) Range in the immediate vicinity. Mr. Carpy states that he has received information from Mr. Forman that indicates that Mr. Forman's vineyard property contains large deposits of old, uplifted Napa Riverbed materials, which suggests that the Napa River channel ran through the area historically. In this sense, according to Mr. Carpy, the area proposed for inclusion by Mr. Forman appears to be similar to the area on the eastern toe-slopes of Oakville, which were added to that viticultural area in the final rule establishing the Oakville viticultural area.

In addition, Mr. Carpy states that the petitioners have no objection with the inclusion of Mr. Forman's property in the St. Helena viticultural area since the proposed boundary expansion is small and the current boundary works a hardship on Mr. Forman because his vineyards are split.

In regard to Mr. Beckstoffer's proposed boundary amendment, Mr. Carpy states that the petitioners are opposed to any further change in the boundaries of the proposed St. Helena viticultural area. Mr. Carpy states that the present rulemaking concerns the St. Helena viticultural area and should not be used as an indirect method of appealing ATF's final rule on the Rutherford viticultural area. Mr. Carpy points out that there was no appeal to U.S. District Court of the Bureau's decision to exclude from Rutherford the area north of Zinfandel Lane, west of Highway 29, and south of Sulphur Creek (the area in question). Mr. Carpy states that it is clear from Mr. Beckstoffer's comment that Mr. Beckstoffer did not agree with the decision made regarding the establishment of the boundaries of the Rutherford viticultural area and consequently is trying to delay action on the area in question in hopes of eventually getting this area included within the Rutherford viticultural area.

Mr. Carpy states that ATF made its decision on the Rutherford viticultural area in July of 1993. He states that the argument that this decision should be revisited in the future provides no legitimate basis for opposing the St. Helena viticultural area petition. Mr. Carpy states that under the applicable regulations, ATF is bound to decide whether there is sufficient evidence to establish the St. Helena viticultural area as proposed by the petitioners. Mr. Carpy observes that Mr. Beckstoffer concedes such evidence exists when he states, "The geological features upon which a delimited grape growing area are defined as a viticultural area * * * could support inclusion [of the area in question] in either [the Rutherford or the St. Helena Viticultural] Area."

On behalf of the petitioners, Mr. Carpy states that all the requirements for the establishment of the St. Helena viticultural area have been met in the case of the area in question. Specifically, the name identification requirement has been met not only by the fact that a portion of the area is within city limits of St. Helena but also by numerous citations in the modern wine press, by historical documents pertaining to the so-called St. Helena District of the late 1800s and by local name recognition. According to Mr. Carpy, it is inconceivable to the petitioners that the properties of George Crane, who is widely acknowledged as one of the founding fathers of St. Helena (Crane Park in the city of St. Helena honors him), and John Lewelling, who also was prominently identified with St. Helena, could be considered as part of the Rutherford viticultural area. Mr. Carpy states that the petitioners have met their burden of proof. Mr. Carpy then quotes from ATF's final rule on the Rutherford viticultural area with respect to the area in question:

> Proponents of a northern boundary for Rutherford that is further north than Zinfandel Lane did not submit any evidence that this area between Zinfandel Lane and Sulphur Creek has ever been known, either currently or historically, as Rutherford. The Rutherford and Oakville Appellation Committee, on the other hand, submitted numerous maps and other name evidence which tends to show that this area has always been considered to be part of the greater St. Helena area.

Later in the final rule establishing the Rutherford viticultural area, it was stated that "Most current and historical maps, as well as other name evidence, suggest that Zinfandel Lane is the most appropriate dividing line between Rutherford and St. Helena." Mr. Carpy indicates that to reject Zinfandel Lane as the most appropriate dividing line between Rutherford and St. Helena would belie history and mislead consumers.

Mr. Carpy requests that all testimony and documentation from the Rutherford proceeding which pertain to the area in question be included in the record of the present rulemaking.

Mr. Carpy states that with regard to the required geographic evidence, the petitioners have placed the entire Sulphur Creek alluvial fan in the St. Helena viticultural area. The petitioners' expert geographer and soil scientist, Deborah Elliott-Fisk, describes that fan in the reporter's transcript of the public hearing on Rutherford, on page 48, as the drainage basin of Sulphur Canyon and Heath Canyon, including Spring Mountain, which "extends through the town of St. Helena at least up to the vicinity of where the Beringer Winery is today."

Mr. Carpy states that the area in question splits the Sulphur Creek alluvial fan at Highway 29 (on an east-west axis) and at Sulphur Creek (north-south), thereby including in the St. Helena appellation only a portion of this geomorphic unit. Mr. Carpy indicates that anything less than such artificial bisection of the Sulphur Creek alluvial fan would place historical St. Helena wineries like Louis Martini and Beringer Vineyards in the Rutherford viticultural area. Mr. Carpy states that there is no explanation or evidence of how or why the area in question is viticulturally distinct from the area east of Highway 29 or from any other portion of St. Helena.

Mr. Carpy indicates that both before and during the Rutherford viticultural area proceeding, Ms. Elliott-Fisk conducted extensive field research throughout the Napa Valley, including the area in question. Ms. Elliott-Fisk concluded in her comments on the Rutherford viticultural area that "the Sulphur Canyon Fan should be left for a future St. Helena viticultural area, as it has rocky soils (with a higher percentage of boulders and large cobbles) and is dominated by rhyolite and other volcanic lithologies with a soil matrix of fine sands and secondary clays, providing for moderate to moderately high vine vigor under slightly warmer climates and increased precipitation than in the Rutherford region." Mr. Carpy states that the petitioners now seek to follow through on ATF's decision in the Rutherford proceeding by placing the entire Sulphur Creek alluvial fan in the St. Helena viticultural area.

ATF Boundary Decisions

After thoroughly reviewing all the comments submitted in response to the notice of proposed rulemaking (Notice No. 801) on the St. Helena viticultural area, ATF has made the following decisions concerning the two requests for boundary changes:

1. *Forman Proposal.* ATF agrees that the Forman vineyard property is split by the boundaries proposed in Notice No. 801 and that the property is located within the city limits of St. Helena. In addition, both Mr. Forman and the petitioners agree that the soil types and geology of this vineyard property are consistent with those of other areas located within the proposed St. Helena viticultural area. For these reasons, ATF has determined that the Forman vineyard property should be included within the boundaries of the St. Helena viticultural area. Consequently, Mr. Forman's proposed boundary change is being adopted in the descriptive section of this final rule.

2. *Beckstoffer Proposal.* ATF believes that the St. Helena petitioners have provided adequate historical, name, and geological evidence to include the area in question in the St. Helena viticultural area. As part of the Rutherford viticultural area process, ATF reviewed all the evidence presented during the comment period and the public hearing to determine the best boundaries for the Rutherford viticultural area. As a result of that review, it was determined that the best dividing line between Rutherford and St. Helena, for viticultural purposes, was Zinfandel Lane. Mr. Beckstoffer has not presented any new evidence which would lead us to the conclusion that the area in question should be part of the Rutherford viticultural area. To the contrary, all historical and name evidence which we have reviewed suggests that this area should be considered as part of the St. Helena area. In addition, the northern boundary of the Rutherford viticultural area was largely determined on the basis of where the southern edge of the Sulphur Canyon Fan approximately ends. Since it was determined that the Sulphur Canyon Fan ends somewhere just south of Zinfandel Lane, it was decided that the northern boundary of the Rutherford viticultural should be Zinfandel Lane. Therefore, since the Sulphur Canyon Fan includes the area north of Zinfandel Lane on both the east and west sides of Highway 29, we have determined that the area in question should be included within the St. Helena viticultural area.

In addition, we see no benefit to delaying a decision on this area for 5 years or more. While it is possible that such a delay could produce some evidence that certain wine characteristics and local reference for the wine consumer might point toward a Rutherford designation for some wines from this area, it would appear that such evidence would at most be limited and subject to dispute. In addition, there is no current evidence available which would be a basis for rejecting the petitioners' current southern boundary proposal. Since the petitioners have provided adequate evidence for their boundary proposal and since no new evidence has been submitted which would cause us to find otherwise, we have decided to adopt the petitioners' boundary proposal as specified in Notice No. 801 along with Mr. Forman's proposed boundary change.

Evidence That Viticultural Area Name Is Widely Known

Data prepared by Mr. Charles Sullivan for the petitioners provides the following historical information.

The town of St. Helena was founded by Henry Still, who bought land from the Edward Bale family in 1855. By 1858 there was a school house and a little Baptist church. Four years later Professor William Brewer of the Whitney party called it a "pretty little village with fifty or more houses . . . nestled among grand old oaks." Early winemakers in the St. Helena area included Charles Krug and George Belden Crane. At the end of the 1879 vintage the *San Francisco Post* ran an article on northern California wines which noted the flavor characteristics of Napa clarets. This article was copied by the *St. Helena Star* which predicted that there would be 2,000 acres of grapes planted in the Napa Valley in 1880. According to Mr. Sullivan, the final total was closer to 3,000, and concentrated in the St. Helena area.

As early as 1869, San Francisco's *Alta California* was making reference to a "St. Helena district," as did the *Pacific Rural Press.* These were references to vineyard plantings in the area. In 1872 the *Napa Reporter* made reference to the boom in vineyard land around St. Helena. The *Alta California* ran an article on the area in 1878, treating St. Helena as a specific district with a great reputation. By then Charles Krug, the Beringers, Crane, John Lewelling, H. A. Pellet, and 14 other producers had built cellars in the St. Helena area.

In 1875 Krug and Pellet organized the producers and growers in the district, a move that culminated in the formation of the St. Helena Viticultural Club on January 22, 1876. According to Mr. Sullivan, others outside the district could join, but it was a local St. Helena organization. In 1880 the Club constructed Vintners Hall, a two story building with a reading room, meeting rooms, and a social hall upstairs.

Mr. Sullivan states that by the end of the 1870s there was no question concerning Napa's special reputation as a winegrowing region, or about St. Helena's as a discrete district in that region. As support for this statement, Mr. Sullivan cites the *Alta California* which concluded in an article published in 1880 that "Napa is now the leading wine-growing county of California, and * * * St. Helena has become the center of the most prosperous wine district in the State."

According to Mr. Sullivan, by the turn of the century Napa prices were still higher than those of other districts, but the special position accorded St. Helena wines had ceased to exist. The popular image of the wines of Oakville, Rutherford, Larkmead, and Howell Mountain had ended the perception of St. Helena wines standing above all others. After Prohibition, the regional association of the leading Napa Valley producers was far from foremost in consumers' minds and in the minds of wine writers according to Mr. Sullivan. However, Mr. Sullivan states that more recently there has been a tendency for wine writers to make reference to the St. Helena "district" and to its wines, particularly to its Cabernet Sauvignons.

In addition to the historical name information mentioned above, the "St. Helena" name appears on a U.S.G.S. 7.5 minute series map entitled "St. Helena Quadrangle" which includes the city of St. Helena and much of its surrounding area.

Evidence of Boundaries

According to the petition, there have never been precise historic boundaries for the St. Helena viticultural district. However, the petitioners state that history does provide an imprecise "St. Helena District" within the geographic structure of State winegrowing established by the first Board of State Viticultural Commissioners in the 1880s. According to the petition, the State was divided into districts, one being Napa, which included Napa, Solano, and Contra Costa Counties. Charles Krug was the first commissioner for the district in 1880. Napa County was then divided into administrative districts: Napa (City), Yountville, St. Helena, and Calistoga. These were not considered viticultural districts at the time. The St. Helena District included the vineyards of Howell Mountain, most of Rutherford, and Larkmead. This is discussed in E.C. Priber's report to the Board in 1893. Even Chiles and Conn Valleys were included in the St. Helena District, although Priber gave separate statistics for these areas.

Although the wineries and vineyardists in the Priber report are listed in administrative districts, Priber's man in the field, A. Warren Robinson, asked each where his or her operation was located, and the answer was given as a place, not necessarily a post office. Bernard Ehlers said he lived at Lodi Station. Mrs. Lillie Coit listed Larkmead. According to the petitioner, such data make it possible to make an attempt to draw historically accurate lines.

A more accurate listing of viticultural districts was given by Charles Krug in his report of 1887. He traces the development of each district in Napa County since 1881, by acreage, production, and type of grape vines. Krug listed Yountville, Oakville, Rutherford, St. Helena, Spring Mountain, Howell Mountain, Calistoga and five others. Although he did not include a map, the precision of his statistics indicates that he and others had the limits of these districts in mind.

From the information discussed above, the petitioner has tried to plot the northern and southern boundaries of the St. Helena viticultural area. From a historical point of view, the petitioner states that any one of three landmarks could be used as the northern boundary of the St. Helena viticultural area. These landmarks include Ritchie Creek, Bale Lane, and Big Tree Road. However, from a practical, as well as historical point of view, Bale Lane is the best choice.

The southern boundary of the St. Helena viticultural area was discussed at length during the December 9, 1992, ATF public hearing held in Napa, California, concerning the northern boundary of the Rutherford viticultural area. From the information submitted at that hearing, it was determined that Zinfandel Avenue, known locally as Zinfandel Lane, was the best northern boundary for the Rutherford viticultural area. Consequently, Zinfandel Avenue (Zinfandel Lane) is appropriate as the southern boundary of the adjacent St. Helena viticultural area.

The southeast boundary of the St. Helena appellation includes the Spring Valley area since this area was included in the St. Helena area on the 1895 "Official Map of the County of Napa." On this map, the properties of George Mee and Antonio Rossi (Spring Valley) were listed as being in the St. Helena district whereas Charles Scheggia, just to the south, listed himself as being in Rutherford.

According to the petitioner, the western boundary of the St. Helena viticultural area is not strictly delineated by historical custom. The petitioner states that this western boundary should be dictated by the eastern boundary of the adjacent Spring Mountain District viticultural area which utilizes the 400-foot contour line. The petitioner states that although some people might draw the western boundary of the St. Helena viticultural area at the 500 or 600-foot contour line, the 400-foot contour line defies no historical precedent and prevents the overlapping of the St. Helena viticultural area with the Spring Mountain District viticultural area.

In regard to the eastern boundary, historical records indicate that Conn Valley is a separate area and should not be included in the St. Helena viticultural area. These records indicate, however, that Pratt Valley is clearly part of the St. Helena area from the location of the Pratt and Chabot wine growing properties. In addition, the Crystal Springs Road area and Dago Valley should be included, due more to recent developments there rather than earlier history. However, the petitioner states that the old Rossini property, where the historic Burgess-Souverain Winery is located today, and the Leunenberger property, where the original Sutter Home-Ballantine Winery was located (today Deer Park Winery), should not be included because they are located on the lower slopes of Howell Mountain rather than in the St. Helena area.

The petitioner uses mostly the 400-foot contour line and a short portion of Howell Mountain Road and a longer portion of Conn Valley Road to delineate the eastern boundary of the proposed St. Helena viticultural area.

Geographical Features

Data prepared by Dr. Elliott-Fisk in support of the petition provides the following geographical information.

Climate. The proposed St. Helena viticultural area lies within a relatively narrow and constricted portion of the upper Napa Valley proper. There exists a subtle interaction of climatic factors which affect grapes grown in this valley floor area. These subtle climatic influences are part of a continuum across the entire floor of the Napa Valley.

The Napa Valley proper is classified as a coastal valley. Along the valley floor from Napa to Calistoga, there are pronounced mesoclimatic variations which relate to the penetration of marine influences from San Pablo Bay and, to a lesser extent, to the rise in elevation as one proceeds up Napa

Valley. This marine air incursion is caused by warming of the valley floor and surrounding hillsides during the daylight hours of the growing season. This warming land mass causes the air in the area to rise, creating pressure gradients which draw in marine air off of San Pablo Bay to the south. During the growing season, this phenomenon generally begins in the early afternoon and continues into the evening. Due to proximity to the bay, the areas in the southern portion of the valley receive the most direct impact of these pressure gradient winds. These winds have a cooling effect throughout the Napa Valley.

During the grape growing season, this cooling plays an important role in the development of the grapes by allowing them to better retain their natural acidity which is critical in the production of high quality wines, according to Dr. Elliott-Fisk. In the St. Helena viticultural area, this cooling effect is moderated compared to the areas further south. However, while the St. Helena area has relatively warm conditions, it is the daily maximum extremes, for which the area to the north (Calistoga) is better known, that distinguish the St. Helena and Calistoga areas.

Dr. Elliott-Fisk indicates that traditionally, the dividing line between the area of Calistoga's higher daily extremes and St. Helena's warm coastal climate has been the section of land around Bale Lane. It is at this point that the Napa Valley and Napa River take a pronounced directional change of course from north/northwesterly to more westerly. To the north of Bale Lane, the exposure of the valley floor to the sun also is more directly aligned than to the south where there is more shading.

The area to the north of the St. Helena viticultural area, particularly around the city of Calistoga, is also affected by a secondary marine air incursion, far less dramatic than that off of San Pablo Bay, which penetrates the upper Napa Valley through the Knights Valley area. This marine influence, according to Dr. Elliott-Fisk, does not typically penetrate as far south as the St. Helena viticultural area. When present, these moist, cooling winds serve to moderate the generally hotter temperatures in Calistoga, making this area ideal for growing premium wine grapes.

Dr. Elliott-Fisk also finds that there are significant climatic differences between the St. Helena viticultural area and the surrounding mountains. To the east of St. Helena lies Howell Mountain and to the west is Spring Mountain. These mountain areas range in elevation from 400 to 2,600 feet for Spring Mountain and from 1,400 to 2,400 feet for Howell Mountain. On average, temperatures fall along the valley floor approximately 2.8 degrees Fahrenheit for each 1,000 foot fall in elevation.

The mountain areas with south or southwest slopes, such as those generally found in the Howell Mountain viticultural area, receive approximately 20 percent more solar radiation during the growing season compared to the valley floor. Northeast and northwest slopes, such as those that typically occur in the Spring Mountain District viticultural area, receive approximately 20 percent less solar radiation than those found on the valley floor in the St. Helena viticultural area. In addition to these differences related to aspect, the relative absence of fog in the higher altitudes increases the solar radiation there compared to the valley floor which often is covered by early morning fog.

According to Dr. Elliott-Fisk, precipitation has been more important in the formation of topography and soils in the Napa Valley than in the definition of distinct climate zones. Outside of annual physiological water needs which are almost exclusively augmented by irrigation, precipitation directly affects grape vines during late spring and early fall, which are the critical periods of the growing and harvest seasons. Cooler areas, those generally found to the south of the St. Helena appellation, are more negatively affected by such conditions.

Soils, Geology and Physical Geography

The St. Helena viticultural area is in the northern Napa Valley and is defined by Dr. Elliott-Fisk as the valley floor area and lower mountain slopes (i.e., toe-slopes) from Zinfandel Lane in the south to Bale Lane in the north.

According to Dr. Elliott-Fisk, the geology of the St. Helena area is characterized by steep mountain fronts composed of the (1) Franciscan Formation (largely sandstones, mudstones and various metamorphic inclusions) overlain by the moderate thicknesses of Sonoma Volcanics on the west side in the Mayacamas Range, and (2) deep flows of Sonoma Volcanics, volcanic vents, and volcanic domes over Great Valley sandstones on the east side in the Vaca Range. Both mountain slopes have been faulted and heavily eroded, with much of this activity believed to be synonymous with the formation of the Sonoma Volcanics in the last 2–5 million years.

Dr. Elliott-Fisk further states that the topography of the Napa Valley floor is largely the product of (1) the marine incursion of San Pablo Bay, and consequent marine erosion and deposit, (2) tectonic uplift and land displacement along faults and fold structures (e.g., anticlines), (3) bedrock resistance to erosion, (4) slope stability, and (5) discharge volumes of the Napa River and its tributaries. The St. Helena viticultural area, extending from Bale Lane on the north to Zinfandel Lane on the south, has a fairly uniform, steep gradient (as compared to the entire Napa Valley floor), indicating that it is a zone of erosion of a former more powerful Napa River. The valley in this area is narrow and is almost entirely the product of river erosion, unlike any other stretch of the valley floor. The one break in gradient occurs where the river turns southward near Big Tree Road (just south of Bale Lane) and exerts more force to cut through bedrock. Thus, although alluvial fans extend across the valley floor from their tributary canyons to the Napa River, the fans are small and relatively young compared to the rest of Napa Valley. Sulphur Creek fan is the largest of the group, as it issues from a very large drainage basin. Fans of the eastern side of the proposed appellation are very small, largely due to the resistance of obsidian (i.e., volcanic glass) bedrock here and small tributary basin size.

The topographic uniformity of the St. Helena viticultural area is further substantiated by climatological data and bioclimatic maps. Growing degree-days (i.e., temperature regime), according to Dr. Elliott-Fisk, are very uniform along this stretch of the valley floor and lower slopes, averaging just under 3600 degree-days. Mean annual precipitation is 35–38 inches. Just north of the northern boundary of the St. Helena viticultural area (e.g., around Dunaweal Lane), the vegetation changes from Valley Oak Savanna to Mixed Hardwood Woodland. These gradients of climate and vegetation from south to north up Napa Valley, according to Dr. Elliott-Fisk, further support the designation of viticultural areas, as climate is an important factor influencing vine growth and fruit characteristics, with natural vegetation telling the viticulturalist what vine production will be like.

Soils and Geomorphology of the Napa Valley

Dr. Elliott-Fisk states that soils can be consistently identified and mapped in Napa Valley through knowledge of the geomorphology (i.e., landforms and landform history) of the area. These soil differences are relevant viticulturally and can be used in the delimitation of viticultural areas. This soil and geomorphic mapping, which is based on very detailed field and laboratory studies, produces soil units that are similar to those shown in the Napa County Soil Survey (USDA-Soil Conservation Survey), but with more detail, precision, and most importantly, a different classification scheme, according to the petitioner. The resolution of the mapping of Napa Valley's soils has increased from the 1938 survey (and the old Marbut soil classification scheme) to the newer 1977 survey (using the new 7th Approximation system of soil classification) to a more detailed depiction of Napa Valley's soils based on an increased understanding of (1) the geomorphological history of the Napa Valley, and (2) the importance of soil parent material and time as soil-forming factors. There are many more soil types (or potential soil series) in Napa County than the Napa County Soil Survey depicts according to the petitioner.

Dr. Elliott-Fisk further notes that a geomorphic (landscape) surface of a given age will have soils of the same type across it. This is because soil formation is controlled by five factors (known as the soil-forming factors): climate, biota (plants and animals), parent material, relief (topography) and time. The petitioner states that much of the variation of soil types in Napa County is due to variation in the parent material and time factors. Different soil types will be derived from sedimentary bedrock versus volcanic bedrock, whether or not these soils are upland residual soils (with weathering and soil formation in place or *in situ*) or transportation/depositional soils (with soil formation beginning once river or other sediments are deposited). Alluvial soils of different ages (old versus young) will also differ significantly.

On any particular geomorphic surface (such as the Sulphur Creek fan), the parent material, relief and time factors are held constant, with the soils very similar (if not identical) across this surface. For depositional landforms (e.g., mudflow lobes, river terraces, alluvial fan units, etc.), the older deposits will have more strongly formed soils. If a geomorphic surface is disturbed by erosion or deposition, its soil will be altered (if not destroyed), with a new soil then forming.

In Napa Valley, according to Dr. Elliott-Fisk, distinct differences are seen between hillside soils and valley floor soils, at least in most situations. Hillside soils tend to be formed from bedrock and are shallow, whereas valley floor soils tend to be formed from alluvium, colluvium or bay deposits and are often deep. As Napa Valley has been tectonically active, however, these deeper, depositional soils are occasionally found up on the hillsides, uplifted above the valley floor. It is important to separate these depositional hillside soils from residual bedrock soils. They have much higher water-holding capacities and deeper rooting depths, influencing vine growth significantly.

Dr. Elliott-Fisk further indicates that the floor of Napa Valley (excluding the bedrock "islands" which form small hills) has soils formed on (1) alluvial fans of various lithologies, textures, and sizes emerging from tributary watersheds towards the Napa River, (2) alluvial floodplains of various ages along the Napa River and the lower reaches of its tributaries (such as Sulphur Creek), and (3) bay deposits of various types, formed when San Pablo Bay extended into the valley proper. The alluvial fans in particular show marked contrasts in soil types north-south and east-west in the valley as a function of their (1) watershed or drainage basin geology and (2) stream gradient (i.e., topography). Dr. Elliott-Fisk concludes that the soils scientist then expects to find one soil series on fans derived from sedimentary bedrock and another on fans derived from volcanic bedrock.

Geomorphic Units of the St. Helena Viticultural Area

The valley floor of the St. Helena viticultural area is covered by a series of small fans and contains important areas of Napa River floodplain. Dr. Elliott-Fisk has described the geomorphic units as follows:

North to South on West Side of Valley:

(1) Ritchie Creek Fan (the southern edge of it extending south of Bale Lane into the viticultural area); principally in the area north of St. Helena;

(2) Mill Creek Fan;

(3) Hirsch Creek Fan;

(4) York Creek Fan;

(5) Sulphur Creek Fan; and

(6) Bear Canyon Fan Complex (in approved Rutherford viticultural area).

North to South on East Side of Valley:

(1) Simmons Canyon Fan (north of the St. Helena viticultural area);

(2) Dutch Henry and Biter Creek Fan Complex (north of the St. Helena viticultural area, reaching almost to Bale Lane);

(3) Unnamed Fan west of Bell Canyon Reservoir and Crystal Springs Road;

(4) Base of Pratt Valley (very small fan);

(5) Base of Deer Park (unnamed tributary; small fan);

(6) Base of Spring Valley (very small fan; mostly within Spring Valley); and

(7) Conn Creek Fan Complex (in approved Rutherford viticultural area).

Napa River Floodplain and River Terraces:

(1) Current incised channel of the Napa River;

(2) Current floodplain of the Napa River; and

(3) Older floodplains of the Napa River at higher elevations.

[These landforms follow the channel of the Napa River, except for older terraces along the hillsides, which are largely obscured by dense hillside woodland and forest; these terraces are discovered through intensive field studies.]

Dr. Elliott-Fisk notes that the geomorphic depositional units (i.e., landforms) in the St. Helena viticultural area are composed almost exclusively of volcanic lithologies (around 85–90 percent volcanics typically, occasionally dropping to 70 percent on parts of the Sulphur Creek fan, with the remainder sedimentary and metamorphic inclusions from the bedrock underlying the Sonoma Volcanics). The upper part of the Sulphur Creek Basin contains small units of sandstone and metamorphic lithologies exposed at the surface through faulting and slope failure. Despite this, volcanic rhyolitic tuff, rhyolite, dacite and andesite are by far the dominant surficial geologies, compared to the Bear Canyon Fan Complex to the south which is 30 percent or less volcanics and the remainder sedimentary.

Dr. Elliott-Fisk further observes that although several types of volcanic rocks compose the St. Helena hillside, the most widespread (and as such, ubiquitous) units are volcanic ash-flows, referred to as tuffs, with occasional volcanic mudflows. The matrix is rhyolitic in composition, with incorporated clasts of obsidian, rhyolite, andesite, dacite and tuff. Occasional metamorphic clasts of cobble or smaller size are seen. This geologic parent material is slightly acidic to acidic, with water-holding capacity of tuffaceous bedrock units moderate. This potential soil parent material is brought down both slopes to the west and east of the valley floor by hillside erosion, runoff, and tributary streamflow.

According to Dr. Elliott-Fisk, the Napa River has incised through these fan deposits discharging on the valley floor and migrated as a consequence of the resistance of these deposits versus its own stream power. The Napa River floodplain, and its associated recent terraces, varies in width throughout this section of Napa Valley but has formed important terraces along the eastern valley edge. Distinct breaks in the natural vegetation are seen at the terrace/alluvial fan transition, as the terraces have more fertile soils with a greater water-holding capacity. As the width of the valley floor in the St. Helena area is on the average less (e.g., more narrow) than anywhere else in the

Napa Valley, these terraces form less viticultural acreage than in the southern or middle sections of Napa Valley.

The lower hillside slopes below the 400-foot elevation are difficult to map on a broad scale depicting geomorphic surfaces. This is largely a function of abrupt changes in slope angle and vegetation type, which influence long-term slope stability. Small areas of uplifted depositional surfaces (alluvial fans and stream floodplain terraces) were found across these lower slopes in the St. Helena area, however.

Soils of the St. Helena Viticultural Area

With regard to the soils within the St. Helena viticultural area, Dr. Elliott-Fisk states that the Sonoma Volcanics rim all sides of the valley in the St. Helena area, and as such the depositional valley floor soils (which may be very bouldery deposits across alluvial fans or finer, but still gravelly deposits along the Napa River proper, all principally Xerolls) are volcanic in origin, and deep, very gravelly sandy loams to sandy clay loams to clay loams, with low to moderate water holding capacities. Sediments have been transported relatively short distances from their origins, as this is the headwater area of the Napa River system, and as such the soils contain a higher percentage of coarse clasts (especially boulders), with sand dominating the fine fraction of almost every soil. Dr. Elliott-Fisk notes that small sections of the upper stream basins of Sulphur Canyon and the Spring Mountain region contain the massive Franciscan marine sandstone and conglomerate, with its affiliated volcanic and metamorphic inclusions. The lithology of the fine clasts that compose the alluvial fans in this immediate region (i.e., Sulphur Creek fan) include a higher portion of non-volcanic clasts (up to 15 percent, to occasionally 30 percent) than alluvial fans to the north, such as the Ritchie Creek fan below Diamond Mountain, located largely north of the northern St. Helena viticultural area boundary. However, the percentage of non-volcanic clasts is much higher to the south of the St. Helena viticultural area (i.e., Bear Canyon fan). The lower toe-slopes of the mountain slopes in the St. Helena area (below the 400-foot elevation) contain both Xerolls and Xeralfs, depending on slope stability and age.

Dr. Elliott-Fisk states that she has excavated an additional 17 soil trenches in the process of her scientific investigation in this area. She states that she has done previous soils work in this region and has excavated over 350 soil trenches in Napa Valley. She has provided, as part of the petition, profile drawings, descriptive field, and analytical laboratory data for 17 soils by horizon. Four of these soils are from property outside of the boundaries of the St. Helena viticultural area and were chosen to be representative of those areas.

Soil Summary

The soils of the St. Helena viticultural area, according to Dr. Elliott-Fisk, are deep alluvial soils of moderate age, with well-formed horizonation, textural B horizons, sandy clay loam to clay loam textures, reddish colors, high gravel content (primarily of cobbles), and near neutral pH. In this erosional zone of the valley floor, where the width is restricted, groundwater and the groundwater table have a significant influence, bringing in additional dissolved minerals and increasing the pH (and nutritional content) above the valley floor soils to the north (Calistoga region) and south (Rutherford and Oakville), as well as the hillsides (Spring Mountain, Diamond Mountain, Howell Mountain and Pritchard Hill). The soil drainage in the St. Helena area is typically good since the water table drops in the spring, summer and fall to allow the vines an adequate root zone with free oxygen and carbon dioxide, thus providing vigorous conditions for grape growing. The moderate climate, with warm summer temperature, balances well with this soil environment, and allows the wine grower to manipulate the vines to extract what the winemaker desires from a particular varietal. As such, Dr. Elliott-Fisk concludes that this provides a stable and predictable environment for grape growing, and the physical geography of the region has promoted the production of fine wines in the St. Helena area for many decades.

Conclusion

The St. Helena viticultural area is uniform topographically and can be distinguished from the steeper hillsides to the east (Howell Mountain) and west (Spring Mountain District) as well as from the valley floor areas to the south (Rutherford) and north (Calistoga). This is an area where the valley floor narrows from around 19,000 feet at Oakville Cross Road and 11,000 feet at Zinfandel Lane to around 3,500 feet at Lodi Lane and Bale Lane. The area is marked by a uniform, steep gradient and significant river erosion. The bedrock geology is primarily volcanic, in contrast to the sedimentary soils to the south.

Along the eastern edge of the St. Helena area, geologic and geographic evidence support the inclusion of Spring Valley and Pratt Valley and the exclusion of Conn Valley and the higher mountain slopes.

Viticultural Area Boundary

The boundary of the St. Helena viticultural area may be found on three United States Geological Survey (U.S.G.S.) maps with a scale of 1:24,000. The boundary is described in § 9.149.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region. In addition, no new recordkeeping or reporting requirements are imposed by this regulation. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this regulation is not subject to the analysis required by this Executive Order.

Drafting Information. The principal author of this document is Robert White, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.149 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.149 St. Helena.

(a) *Name.* The name of the viticultural area described in this section is "St. Helena."

(b) *Approved maps.* The appropriate maps for determining the boundary of the St. Helena viticultural area are three U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale. They are titled:

(1) "St. Helena Quadrangle, California," edition of 1960, revised 1993.

(2) "Calistoga Quadrangle, California," edition of 1958, photorevised 1980.

(3) "Rutherford Quadrangle, California," edition of 1951, photorevised 1968, photoinspected 1973.

(c) *Boundary.* The St. Helena viticultural area is located in Napa County in the State of California. The boundary is as follows:

(1) Beginning on the Rutherford Quadrangle map at the point of intersection between State Highway 29 and a county road shown on the map as Zinfandel Avenue, known locally as Zinfandel Lane, the boundary proceeds in a southwest direction along Zinfandel Avenue to its intersection with the north fork of Bale Slough (blueline stream) near the 201 foot elevation marker;

(2) Thence in a northwesterly direction approximately 2,750 feet along the north fork of Bale Slough to a point of intersection with a southwesterly straight line projection of a light duty road locally known as Inglewood Avenue;

(3) Thence in a straight line in a southwesterly direction along this projected extension of Inglewood Avenue approximately 2,300 feet to its intersection with the 500 foot contour line in Section 7, Township 7 North (T7N), Range 5 West (R5W);

(4) Thence along the 500 foot contour line in a generally northwesterly direction through Sections 7, 1 and 2, to its intersection of the western border of Section 2, T7N, R6W;

(5) Thence northerly along the western border of Section 2 approximately 500 feet to its intersection with Sulphur Creek in Sulphur Canyon in the northwest corner of Section 2, T7N, R6W;

(6) Thence along Sulphur Creek in an easterly direction approximately 350 feet to its intersection with the 400 foot contour line;

(7) Thence along the 400 foot contour line in a generally easterly, then northwesterly, direction past the city of St. Helena (on the St. Helena Quadrangle map) to a point of intersection with a southwesterly straight line projection of the county road shown as Bale Lane in the Carne Humana Rancho on the Calistoga Quadrangle map;

(8) Thence along the projected straight line extension of Bale Lane in a northeasterly direction approximately 700 feet to the intersection of State Highway 29 and Bale Lane and continuing northeasterly along Bale Lane to its intersection with the Silverado Trail;

(9) Thence in a northwesterly direction along the Silverado Trail approximately 1,500 feet to an unmarked driveway on the north side of the Silverado Trail near the 275 foot elevation marker;

(10) Thence approximately 300 feet northeasterly along the driveway to and beyond its point of intersection with another driveway and continuing in a straight line projection to the 400 foot contour line;

(11) Thence in a northerly and then generally southeasterly direction along the 400 foot contour line through Sections 10 (projected), 11, 12, 13, 24 and 25 in T8N, R6W, Section 30 in T8N, R5W, Sections 25 and 24 in T8N, R6W, Sections 19 and 30 in T8N, R5W to a point of intersection with the city limits of St. Helena on the eastern boundary of Section 30 in T8N, R5W, on the St. Helena Quadrangle map;

(12) Thence north, east and south along the city limits of St. Helena to the third point of intersection with the county road known as Howell Mountain Road in Section 29, T8N, R5W;

(13) Thence in a northeasterly direction approximately 900 feet along Howell Mountain Road to its intersection with Conn Valley Road;

(14) Thence northeasterly and then southeasterly along Conn Valley Road to its intersection with the eastern boundary of Section 28, T8N, R5W;

(15) Thence south approximately 5,200 feet along the eastern boundary of Sections 28 and 33 to a point of intersection with the 380 foot contour line near the southeast corner of Section 33, T8N, R5W, on the Rutherford Quadrangle map;

(16) Thence in a northwesterly direction along the 380 foot contour line in Section 33 to a point of intersection with a northeasterly straight line projection of Zinfandel Avenue;

(17) Thence in a southwesterly direction approximately 950 feet along this straight line projection of Zinfandel Avenue to its intersection with the Silverado Trail;

(18) Thence continuing along Zinfandel Avenue in a southwesterly direction to its intersection with State Highway 29, the point of beginning.

Signed: August 9, 1995.

Daniel R. Black,

Acting Director.

Approved: August 21, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–22486 Filed 9–8–95; 8:45 am]

BILLING CODE 4810–31–U

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations; Implementation of Executive Orders 12957 and 12959

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Iranian Transactions Regulations to implement the President's declaration of national emergency and imposition of sanctions against Iran.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Regarding the issuance of licenses, Steven I. Pinter, Chief, Licensing Division (tel.: 202/622–2480); regarding banking and compliance questions, Dennis P. Wood, Chief, Compliance Programs Division (tel.: 202/622–2490); regarding Iranian government entities, J. Robert McBrien, Chief, International Programs Division (tel.: 202/622–2420); regarding legal questions, William B. Hoffman, Chief Counsel (tel.: 202/622–2410); Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 and type "/GO FAC" or call

202/515–1530 for disks or paper copies. This file is available in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats.

Background

In Executive Order 12613 of October 29, 1987 (3 CFR, 1987 Comp., p. 256, 52 FR 41940), President Reagan imposed import sanctions against Iran, invoking the authority, *inter alia*, of section 505 of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa–9 ("ISDCA"). In Executive Order 12957 of March 15, 1995 (60 FR 14615, March 17, 1995), President Clinton declared a national emergency with respect to the actions and policies of the Government of Iran and imposed additional sanctions against Iran, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701–06 ("IEEPA"). The President substantially supplemented and amended the sanctions in those orders in Executive Order 12959 of May 6, 1995 (60 FR 24757, May 9, 1995), invoking the authority, *inter alia*, of IEEPA and ISDCA. In the Executive orders, the President authorized the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as might be necessary to carry out the purposes of those orders. In implementation of these orders, the Office of Foreign Assets Control is amending in their entirety the Iranian Transactions Regulations (as amended, the "Regulations").

The Regulations continue the prohibitions previously contained in 31 CFR part 560 concerning the importation into the United States, or the financing of such importation, of any goods or services of Iranian origin. The Regulations also expand the prohibitions to (a) the exportation from the United States to Iran or the Government of Iran, or the financing of such exportation, of any goods, technology, or services; (b) the reexportation to Iran of certain goods and technology of U.S. origin; (c) any transaction by a United States person relating to goods or services of Iranian origin or owned or controlled by the Government of Iran; (d) any new investment by a United States person in Iran or in property owned or controlled by the Government of Iran; (e) the approval or facilitation by a United States person of the entry into or performance by a foreign entity owned or controlled by a United States person of a transaction or contract if the United States person is prohibited from engaging directly in such activity; and (f) any transaction by any United States person or within the United States that evades or avoids, or attempts to violate, these prohibitions.

All General Licenses and General Notices issued by the Office of Foreign Assets Control prior to September 11, 1995 (see 60 FR 40881, Aug. 10, 1995), may continue to be relied on to validate actions prior to this date during the period of their validity. Specific licenses issued by OFAC prior to this date continue in effect according to their terms unless modified by the Office of Foreign Assets Control. Authorizations contained in General Licenses issued prior to publication of the Regulations can now be found in the following sections.

General License No.	Date of Issuance	Regulations Section
1	05/19/95	560.515
2	06/01/95	560.516
3	06/01/95	560.517
4	06/13/95	560.518, 560.524
5	06/14/95	560.210, 560.523
6	06/14/95	560.521
7	06/14/95	560.519
8	06/14/95	560.520
9	06/14/95	560.512
10	06/14/95	560.510
11	07/21/95	560.524
12	07/21/95	560.525

Transactions otherwise prohibited by this part may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in § 560.801 of subpart H.

The following sections contained in part 560 are removed and reserved and are no longer in force: §§ 560.202, 560.302, 560.309, 560.403, 560.404, 560.405, 560.409, 560.503, 560.504, 560.511, and 560.514.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties concerning any rule or other public document.

The collection of information requirements contained in §§ 560.601, 560.602, and 560.801 have been previously approved by the Office of Management and Budget ("OMB") and assigned control number 1505–0106. Because the Regulations are being issued without prior notice and public procedures pursuant to the Administrative Procedure Act, the collection of information requirements contained in §§ 560.603 and 560.704 are being submitted to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project (1505—0106), Washington, DC 20503, with copies to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., N.W.—Annex, Washington, DC 20220. Notice of OMB action on these requests will be published in the **Federal Register**.

This collection of information is required by the Office of Foreign Assets Control for licensing, compliance, civil penalty, and enforcement purposes. This information will be used to determine the eligibility of applicants for the benefits provided through specific licenses, to determine whether persons subject to the Regulations are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents and recordkeepers are individuals and business organizations.

Estimated total annual reporting and/or recordkeeping burden: 1000 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to ten hours, depending on the individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 1 to 4.

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banking and finance, Exports, Foreign trade, Imports, Information, Investments, Iran, Loans, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Transportation.

For the reasons set forth in the preamble, 31 CFR part 560 is revised to read as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 2349aa–9; 3 U.S.C. 301; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, March 17, 1995; E.O. 12959, 60 FR 24757, May 9, 1995.

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
560.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

560.201 Prohibited importation of goods and services from Iran.
560.202 [Reserved]
560.203 Evasions; attempts.
560.204 Prohibited exportation of goods, technology, and services to Iran.
560.205 Prohibited reexportation of goods and technology to Iran.
560.206 Prohibited transactions related to Iranian–origin goods or services.
560.207 Prohibited investment.
560.208 Prohibited approval or facilitation.
560.209 Prohibited transactions with respect to the development of Iranian petroleum resources.
560.210 Exempt transactions.

Subpart C—General Definitions

560.301 Effective date.
560.302 [Reserved]
560.303 Iran; Iranian.
560.304 Government of Iran.
560.305 Person; entity.
560.306 Iranian–origin goods and services.
560.307 United States.
560.308 Importation.
560.309 [Reserved]
560.310 License.
560.311 General license.
560.312 Specific license.
560.313 Entity owned or controlled by the Government of Iran.
560.314 United States person.
560.315 Information or informational materials.
560.516 New investment.
560.317 Credits or loans.
560.318 Technology.
560.319 United States depository institution.
560.320 Iranian accounts.

Subpart D—Interpretations

560.401 Reference to amended sections.
560.402 Effect of amendment.
560.403 [Reserved]
560.404 [Reserved]
560.405 [Reserved]
560.406 Transshipments prohibited.
560.407 Transactions related to Iranian–origin goods.
560.408 Importation into and release from a bonded warehouse or foreign trade zone.
560.409 [Reserved]
560.410 Exportation of services.
560.411 Offshore transactions in Iranian–origin goods and services.
560.412 Extensions of credits or loans to Iran.
560.413 Letter of credit payments by Iranian banks in the United States.
560.414 Exports to third countries; reexports.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

560.501 Effect of license or authorization.
560.502 Exclusion from licenses and authorizations.
560.503 [Reserved]
560.504 [Reserved]
560.505 Certain services relating to participation in various events authorized.
560.506 Importation and exportation of certain gifts authorized.
560.507 Accompanied baggage authorized.
560.508 Telecommunications and mail transactions authorized.
560.509 Certain transactions related to patents, trademarks and copyrights authorized.
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Subpart A—Relation of This Part to Other Laws and Regulations

§ 560.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter, including part 535, "Iranian Assets Control Regulations." No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulations authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 560.201 Prohibited importation of goods and services from Iran.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the importation into the United States, or the financing of such importation, of any goods or services of Iranian origin, other than Iranian–origin publications and materials imported for news publications or news broadcast dissemination, is prohibited.

§ 560.202 [Reserved]

§ 560.203 Evasions; attempts.

Any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions contained in this part is hereby prohibited.

§ 560.204 Prohibited exportation of goods, technology, and services to Iran.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation from the United States to Iran or the Government of Iran, or the financing of such exportation, of any goods, technology, or services is prohibited.

§ 560.205 Prohibited reexportation of goods and technology to Iran.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the reexportation to Iran or the Government of Iran of any goods or technology exported from the United States, the exportation of which to Iran was subject to export license application requirements under any United States regulations in effect immediately prior to May 6, 1995, is prohibited, unless the reexportation is of goods that have been substantially transformed outside the United States, or incorporated into another product outside the United States and constitute less than 10 percent by value of that product exported from a third country.

§ 560.206 Prohibited transactions related to Iranian–origin goods or services.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, any transaction, including purchase, sale, transportation, swap, financing, or brokering transactions, by a United States person relating to goods or services of Iranian origin or owned or controlled by the Government of Iran is prohibited.

§ 560.207 Prohibited investment.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, any new investment by a United States person in Iran or in property (including entities) owned or controlled by the Government of Iran is prohibited.

§ 560.208 Prohibited approval or facilitation.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the approval or facilitation by a United States person of the entry into or performance by an entity owned or controlled by a United States person of a transaction or contract prohibited as to United States persons by §§ 560.205, 560.206, and 560.207, or relating to the financing of activities prohibited as to United States persons by those sections, or of a guaranty of another person's performance of such transaction or contract, is prohibited.

§ 560.209 Prohibited transactions with respect to the development of Iranian petroleum resources.

Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to March 16, 1995, the following are prohibited:

(a) The entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of:

(1) A contract that includes overall supervision and management responsibility for the development of petroleum resources located in Iran, or

(2) A guaranty of another person's performance under such contract; or

(b) The entry into or performance by a United States person, or the approval by a United States person of the entry into or performance by an entity owned or controlled by a United States person, of

(1) A contract for the financing of the development of petroleum resources located in Iran, or

(2) A guaranty of another person's performance under such a contract.

§ 560.210 Exempt transactions.

(a) *Personal communications.* The prohibitions of §§ 560.204 and 560.206 do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Humanitarian donations.* The prohibitions of §§ 560.204 and 560.206 do not apply to donations by United States persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.

(c) *Information and informational materials.*

(1) The prohibitions of §§ 560.204 and 560.206 do not apply to the exportation from the United States to Iran of information and informational materials, as defined in § 560.315, whether commercial or otherwise, regardless of format or medium of transmission, or any transaction of common carriers incident to such exportation.

(2) Paragraph (c)(1) of this section does not authorize transactions related to information and informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of information or informational materials, or the provision of marketing and business consulting services by a United States person. Such prohibited transactions include, without limitation, payment of advances for information or informational materials not yet created and completed, and provision of services to market, produce or co–produce, create or assist in the creation of information or informational materials.

(3) Paragraph (c)(1) does not authorize transactions incident to the exportation of restricted technical data as defined in part 779 of the Export Administration Regulations, 15 CFR part 779, or to the exportation of goods for use in the transmission of any data. The exportation of such goods to Iran is prohibited, as provided in § 560.204.

(d) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages. This exemption extends to transactions with Iranian carriers and those involving group tours and payments in Iran made with cash or traveler's checks for transactions incident to personal travel. The use of currency drafts, charge, debit, or credit cards is not permitted.

(e) *Letters of Credit.* Letters of credit and other financing agreements with respect to trade contracts in force as of May 6, 1995, may be performed pursuant to their terms with respect to underlying trade transactions occurring prior to 12:01 a.m. EDT, June 6, 1995. See § 560.413.

Subpart C—General Definitions

§ 560.301 Effective date.

The term "effective date" means:

(a) 12:01 p.m., Eastern Standard Time, October 29, 1987, for all prohibitions set forth in § 560.201.

(b) 12:01 a.m., Eastern Daylight Time, June 6, 1995, for all prohibitions set forth in §§ 560.204, 560.205, and 560.206 with respect to trade transactions based on contracts in force as of May 6, 1995, and which were authorized pursuant to federal regulations in force immediately prior to May 6, 1995.

(c) 12:01 a.m., Eastern Standard Time, March 16, 1995, for all prohibitions set forth in § 560.209 and the prohibitions set forth in § 560.203 as they apply to the prohibitions set forth in § 560.209.

(d) 12:01 a.m., Eastern Daylight Time, May 7, 1995, for all other prohibitions contained in this part.

§ 560.302 [Reserved]

§ 560.303 Iran; Iranian.

The term "Iran" means the territory of Iran, and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights or jurisdiction, provided that the

Government of Iran exercises partial or total *de facto* control over the area or derives a benefit from economic activity in the area pursuant to an international agreement. The term "Iranian" means pertaining to Iran as defined in this section.

§ 560.304 Government of Iran.

The term "Government of Iran" includes:

(a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof;

(b) Any entity owned or controlled directly or indirectly by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the applicable effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any person or entity designated by the Secretary of the Treasury as included within paragraphs (a) through (c) of this section.

§ 560.305 Person; entity.

(a) The term "person" means an individual or entity.

(b) The term "entity" means a partnership, association, trust, joint venture, corporation or other organization.

§ 560.306 Iranian–origin goods and services.

(a) The term "goods or services of Iranian origin" includes:

(1) Goods grown, produced, manufactured, extracted, or processed in Iran;

(2) Goods which have entered into Iranian commerce; and

(3) Services performed in Iran or by the Government of Iran, as defined in § 560.304.

(b) The term "services of Iranian origin" does not include:

(1) Diplomatic and consular services performed by or on behalf of the Government of Iran;

(2) Diplomatic and consular services performed by or on behalf of the Government of the United States; or

(3) Services provided in the United States by an Iranian national resident in the United States.

§ 560.307 United States.

The term "United States" means the United States, including its territories and possessions.

§ 560.308 Importation.

The term "importation" means the bringing of any goods into the United States, except that in the case of goods transported by vessel, "importation" means the bringing of any goods into the United States with the intent to unlade them.

§ 560.309 [Reserved]

§ 560.310 License.

Except as otherwise specified, the term "license" means any license or authorization contained in or issued pursuant to this part.

§ 560.311 General license.

The term "general license" means any license or authorization the terms of which are set forth in this part.

§ 560.312 Specific license.

The term "specific license" means any license or authorization not set forth in this part but issued pursuant to this part.

§ 560.313 Entity owned or controlled by the Government of Iran.

The term "entity owned or controlled by the Government of Iran" includes any corporation, partnership, association, or other entity in which the Government of Iran owns a majority or controlling interest, and any entity which is otherwise controlled by that government.

§ 560.314 United States person.

The term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States.

§ 560.315 Information or informational materials.

(a) The term "information" or "informational materials" includes, without limitation:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered "information" or "informational materials", artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term "information" and "informational materials" with respect to United States exports does not include items:

(1) That were, as of April 30, 1994, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (the "EAA"), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, including "software" that is not "publicly available" as these terms are defined in 15 CFR parts 779 and 799.1; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 560.316 New investment.

The term "new investment" means a transaction after 12:01 EDT, May 7, 1995, that constitutes:

(a) A commitment or contribution of funds or other assets; or

(b) A loan or other extension of credit, as defined in § 560.317.

§ 560.317 Credits or loans.

The term "credits" or "loans" means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including but not limited to: overdrafts; currency swaps; purchases of debt securities issued by the Government of Iran; purchases of a loan made by another person; sales of financial assets subject to an agreement to repurchase; renewals or refinancings whereby funds or credits are transferred to or extended to a prohibited borrower or prohibited recipient; the issuance of standby letters of credit; and drawdowns on existing lines of credit.

§ 560.318 Technology.

For purposes of §§ 560.204 and 560.205, the term "technology" includes technical data or other information subject to the Export Administration Regulations, 15 CFR parts 768–799.

§ 560.319 United States depository institution.

The term "United States depository institution" means:

(a) Any entity organized under the laws of any jurisdiction within the United States (including its foreign branches), and

(b) Any agency, office, or branch located in the United States of a foreign entity; that is engaged primarily in the business of banking, including accepting deposits and making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, or procuring purchasers and sellers thereof, as principal or agent. The term includes, among others, banks, savings banks, savings associations, mortgage companies, credit unions, and trust companies and United States holding companies.

§ 560.320 Iranian accounts.

The term "Iranian accounts" means accounts of persons located in Iran or of the Government of Iran maintained on the books of a United States depository institution.

Subpart D—Interpretations

§ 560.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 560.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not, unless otherwise specifically provided, affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 560.403 [Reserved]

§ 560.404 [Reserved]

§ 560.405 [Reserved]

§ 560.406 Transshipments prohibited.

(a) The prohibitions in § 560.201 apply to the importation into the United States, for transshipment or transit, of Iranian–origin goods which are intended or destined for third countries.

(b) The prohibitions in § 560.204 apply to the exportation from the United States, for transshipment or transit, of goods which are intended or destined for Iran.

(c) The prohibitions in § 560.205 apply to the reexportation of goods described in that section, for transshipment or transit, which are intended or destined for Iran.

(d) The prohibitions in § 560.206 apply to any transaction relating to the transshipment of goods of Iranian origin or owned or controlled by the Government of Iran through any country.

§ 560.407 Transactions related to Iranian–origin goods.

(a) Importation into the United States from third countries of goods containing Iranian–origin raw materials or components is not prohibited if those raw materials or components have been incorporated into manufactured products or substantially transformed in a third country by a person other than a United States person.

(b) Transactions relating to Iranian–origin goods that have not been incorporated into manufactured products or substantially transformed in a third country are prohibited.

(c) Transactions relating to goods containing Iranian–origin raw materials or components are not prohibited if those raw materials or components have been incorporated into manufactured products or substantially transformed in a third country by a person other than a United States person.

§ 560.408 Importation into and release from a bonded warehouse or foreign trade zone.

The prohibitions in § 560.201 apply to importation into a bonded warehouse or a foreign trade zone of the United States. However, § 560.201 does not prohibit the release from a bonded warehouse or a foreign trade zone of Iranian–origin goods imported into a bonded warehouse or a foreign trade zone prior to October 29, 1987.

§ 560.409 [Reserved]

§ 560.410 Exportation of services.

(a) The prohibition on the exportation of services from the United States contained in § 560.204 applies only to services performed on behalf of a person in Iran or the Government of Iran or where the benefit of such services is otherwise received in Iran, if such services are performed:

(1) In the United States, or

(2) Outside the United States by an individual United States person ordinarily resident in the United States, or

(3) Outside the United States by an overseas branch of an entity located in the United States.

(b) The benefit of services performed anywhere in the world on behalf of the Government of Iran is presumed to be received in Iran.

(c) Services provided in the United States or by a United States person to a non–Iranian carrier transporting passengers or goods to or from Iran are not considered to be exported to Iran.

(d) Services provided in a third country by a United States person ordinarily resident outside the United States are not considered to be exported from the United States.

§ 560.411 Offshore transactions in Iranian–origin goods and services.

The prohibitions contained in § 560.206 apply to, among other things, transactions by United States persons in locations outside the United States with respect to goods or services which the United States person knows, or has reason to know, are of Iranian origin or owned or controlled by the Government of Iran, including:

(a) Importing into or exporting from such locations; and

(b) Purchasing, selling, financing, swapping, insuring, transporting, lifting, storing, incorporating, or transforming, or brokering any of the foregoing.

§ 560.412 Extensions of credits or loans to Iran.

(a) The prohibitions contained in § 560.207 apply, among other things, to the unauthorized renewal or rescheduling of credits or loans in existence as of May 6, 1995.

(b) The prohibitions contained in § 560.209 apply, among other things, to the unauthorized renewal or rescheduling of credits or loans in existence as of March 15, 1995.

(c) The prohibitions contained in §§ 560.207 and 560.209 apply, among other things, to credits or loans in any currency.

§ 560.413 Letter of credit payments by Iranian banks in the United States.

(a) For purposes of the exemption in § 560.210(e), payment of letters of credit and other financing agreements according to their terms includes, in the case of payments made by an Iranian bank's branch or agency located in the United States, payments that such branch or agency is:

(1) Legally obligated to make pursuant to the terms of letters of credit and other financing agreements relating to pre–May 7, 1995 trade contracts; or

(2) Licensed to make by the Office of Foreign Assets Control with respect to pre–May 7, 1995 trade contracts.

(b) Payments that are not binding legal obligations of an Iranian bank's branch or agency pursuant to the terms of the letter of credit or other financing agreement are not covered by this exemption.

§ 560.414 Exports to third countries; reexports.

(a) The prohibitions contained in § 560.205 do not apply to the reexportation to Iran by a person who is not a United States person of any item described in that section which was exported from the United States prior to 12:01 a.m. EDT, May 7, 1995, and was not the property of a United States person as of 12:01 a.m. EDT, May 7, 1995, if the reexportation to Iran of such item was not subject to export license application requirements under any United States regulations in effect immediately prior to May 6, 1995.

(b) United States persons are prohibited as of 12:01 a.m. EDT, May 7, 1995, from reexporting any item subject to the prohibitions contained in § 560.205 regardless of when the item was exported from the United States. United States persons are prohibited from approving or facilitating any reexport by an entity owned or controlled by a United States person of any item subject to the prohibitions of § 560.205 of this part regardless of when the item was exported from the United States.

(c) Effective 12:01 a.m. EDT May 7, 1995, the exportation from the United States to any destination of any item that was subject to export license application requirements under any United States regulations in effect immediately prior to May 6, 1995, is subject to the condition that the reexportation to Iran requires a specific license, except as otherwise authorized by this part.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 560.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or other authorization.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part authorizes any transactions prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 560.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action is binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 560.503 [Reserved]

§ 560.504 [Reserved]

§ 560.505 Certain services relating to participation in various events authorized.

The importation of Iranian–origin services into the United States is authorized where such services are performed in the United States by an Iranian national who enters the United States on a visa issued by the State Department for the purpose of participating in a public conference, performance, exhibition or similar event, and such services are consistent with that purpose.

§ 560.506 Importation and exportation of certain gifts authorized.

The importation into the United States of Iranian–origin goods, and the exportation from the United States of goods, is authorized for goods sent as gifts to persons provided that the value of the gift is not more than $100.

§ 560.507 Accompanied baggage authorized.

(a) Persons entering the United States directly or indirectly from Iran are authorized to import into the United States Iranian–origin accompanied baggage normally incident to travel.

(b) Persons leaving the United States for Iran are authorized to export from the United States accompanied baggage normally incident to travel.

(c) This authorization applies to accompanied baggage that includes only articles that are necessary for personal use incident to travel, not intended for any other person or for sale, and are not otherwise prohibited from importation or exportation under applicable United States laws.

§ 560.508 Telecommunications and mail transactions authorized.

All transactions of common carriers incident to the receipt or transmission of telecommunications and mail between the United States and Iran are authorized. For purposes of this section, the term "mail" includes parcels only to the extent the parcels contain goods exempted from the prohibitions contained in this part or otherwise eligible for importation from or exportation to Iran under a general or specific license.

§ 560.509 Certain transactions related to patents, trademarks and copyrights authorized.

(a) All of the following transactions in connection with patent, trademark, copyright or other intellectual property protection in the United States or Iran are authorized:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright or other form of intellectual property protection;

(2) The receipt of a patent, trademark, copyright or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright or other form of intellectual property protection; and

(4) The filing and prosecution of opposition or infringement proceedings with respect to a patent, trademark, copyright or other form of intellectual property protection, or the entrance of a defense to any such proceedings.

(b) Nothing in this section affects obligations under any other provision of law.

§ 560.510 Transactions related to the resolution of disputes between the United States or United States nationals and the Government of Iran.

(a) Except as otherwise authorized, specific licenses may be issued on a case–by–case basis to authorize transactions in connection with awards, decisions or orders of the Iran–United States Claims Tribunal in The Hague, the International Court of Justice, or other international tribunals (collectively, "tribunals"); agreements settling claims brought before tribunals; and awards, orders, or decisions of an administrative, judicial or arbitral proceeding in the United States or abroad, where the proceeding involves the enforcement of awards, decisions or orders of tribunals, or is contemplated under an international agreement, or involves claims arising before 12:01 a.m. EDT, May 7, 1995, that resolve disputes between the Government of Iran and the United States or United States nationals, including the following transactions:

(1) Importation into the United States of, or any transaction related to, goods and services of Iranian origin or owned or controlled by the Government of Iran;

(2) Exportation or reexportation to Iran or the Government of Iran of any goods, technology, or services, except to the extent that such exportation or reexportation is also subject to export licensing application requirements of another agency of the United States Government and the granting of such a

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license by that agency would be prohibited by law;

(3) Financial transactions related to the resolution of disputes at tribunals, including transactions related to the funding of proceedings or of accounts related to proceedings or to a tribunal; participation, representation, or testimony before a tribunal; and the payment of awards of a tribunal; and

(4) Other transactions otherwise prohibited by this part which are necessary to permit implementation of the foregoing awards, decisions, orders, or agreements.

(b) Specific licenses may be issued on a case–by–case basis to authorize payment of costs related to the storage or maintenance of goods in which the Government of Iran has title, and to authorize the transfer of title to such goods, provided that such goods are in the United States and that such goods are the subject of a proceeding pending before a tribunal.

(c)(1) All transactions are authorized with respect to the importation of Iranian–origin goods and services necessary to the initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals.

(2) Specific licenses may be issued on a case–by–case basis to authorize the exportation to Iran or the Government of Iran of goods, and of services not otherwise authorized by § 560.525, necessary to the initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals, except to the extent that the exportation is also subject to export licensing application requirements of another agency of the United States Government and the granting of such a license by that agency would be prohibited by law.

(3) Representation of United States persons or of third country persons in legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals, against Iran or the Government of Iran is not prohibited by this part. The exportation of certain legal services to a person in Iran or the Government of Iran is authorized in § 560.525.

(d) The following are authorized:

(1) All transactions related to payment of awards of the Iran–United States Claims Tribunal in The Hague against Iran out of the Security Account provided for in paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of January 19, 1981.

(2) All transactions necessary to the payment of awards in a legal proceeding to which the United States Government is a party, or to payments pursuant to settlement agreements entered into by the United States Government in such a legal proceeding.

§ 560.511 [Reserved]

§ 560.512 Iranian Government missions in the United States.

(a) All transactions ordinerily incident to the importation of goods or services into the United States by, the exportation of goods or services from the United States by, or the provision of goods or services in the United States to, the missions of the Government of Iran to international organizations in the United States, and Iranians admitted to the United States under section 101(a)(15)(G) of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101(a)(15)(G), are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the mission, or for personal use of personnel admitted to the United States under INA section 101(a)(15)(G), and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(b) All transactions ordinarily incident to the importation of goods or services into the United States by, the exportation of goods or services from the United States by, or the provision of goods or services in the United States to, the Iranian Interests Section of the Embassy of Pakistan (or any successor protecting power) in the United States, are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the Iranian Interests Section, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(c) All transactions ordinarily incident to the provision of goods or services in the United States to the employees of Iranian missions to international organizations in the United States, and to employees of the Iranian Interests Section of the Embassy of Pakistan (or any successor protecting power) in the United States, are authorized, provided that the transaction is not otherwise prohibited by law.

§ 560.513 Importation of Iranian–origin oil.

(a) Specific licenses will be issued on a case–by–case basis to permit the importation of Iranian–origin oil in connection with the resolution or settlement of cases before the Iran–United States Claims Tribunal in The Hague, established pursuant to the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran of January 19, 1981, or where the proceeds are otherwise to be deposited in the Tribunal's Security Account.

(b) License applications submitted pursuant to this section must contain the importer's certification that the oil is of Iranian origin with all relevant supporting documentation, including specification of the production site at which the oil was extracted, and that the sale or transfer of the oil is by or for the account of the Government of Iran. Licenses will not be issued for importations of Iranian–origin oil which is not sold or transferred by or for the account of the Government of Iran. In cases where the oil is being imported either in whole or in part in resolution or settlement of a case pending before the Tribunal, applicants are required to identify the case and submit a copy of the settlement agreement and the Award on Agreed Terms issued by the Tribunal. In cases where any proceeds are generated for the account of the Government of Iran from the importation of Iranian–origin oil, the importer must demonstrate that irrevocable arrangements are in place that will ensure that the proceeds will be deposited in the Tribunal's Security Account.

§ 560.514 [Reserved]

§ 560.515 30–day delayed effective date for pre–May 7, 1995 trade contracts involving Iran.

(a) All transactions necessary to complete performance of a trade contract entered into prior to May 7, 1995, and involving Iran (a "pre–existing trade contract"), including the exportation of goods, services (including financial services), or technology from the United States that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, or performance under a pre–existing trade contract for transactions in Iranian–origin or Government of Iran owned or controlled goods or services not involving importation into the United States, are authorized without specific licensing by the Office of Foreign Assets Control if the conditions in paragraph (a)(1) or (a)(2) are met:

(1) If the pre–existing trade contract is for exportation of goods or technology from the United States that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, the goods or technology must be exported from the United States prior to 12:01 a.m. EDT, June 6, 1995, and all other activity by U.S. persons that is necessary and incidental to the performance of the pre–existing trade contract (other than payment under a financing contract) must be completed prior to 12:01 a.m. EDT, August 6, 1995; or

(2) If the pre–existing trade contract is for:

(i) The exportation of services from the United States and benefitting a person in Iran or the Government of Iran; or

(ii) The reexportation of goods or technology to Iran, the Government of Iran, or an entity owned or controlled by the Government of Iran that was authorized pursuant to Federal regulations in force immediately prior to May 6, 1995, or

(iii) Transactions relating to goods or services of Iranian origin or owned or controlled by the Government of Iran other than transactions relating to importation into the United States of such goods or services, all obligations under the pre–existing trade contract (other than payment under a financing contract) must be fully completed prior to 12:01 a.m. EDT, June 6, 1995.

(b) In order to complete performance of a pre–existing trade contract, the arrangement or renegotiation of contracts for transactions necessary and incidental to performance of the pre–existing trade contract is authorized. Such incidental transactions may include, for example, financing, shipping and insurance arrangements. Amendments to a pre–existing trade contract for the purpose of accelerating a previously–specified delivery schedule under a contract for a fixed quantity or value of goods, technology or services, or curtailing or canceling required performance, are authorized without specific licensing. Any other alteration of the trade contract must be specifically licensed by the Office of Foreign Assets Control.

(c) The existence of a contract will be determined with reference to the principles contained in Article 2 of the Uniform Commercial Code.

(d) No U.S. person may change its policies or operating procedures in order to enable a foreign entity owned or controlled by U.S. persons to enter into a transaction that could not be entered into directly by a U.S. person located in the United States pursuant to the prohibitions contained in this part.

§ 560.516 Payment and United States dollar clearing transactions involving Iran.

(a) United States depository institutions are authorized to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the following conditions and does not involve debiting or crediting an Iranian account:

(1) The transfer is by order of a foreign bank which is not an Iranian entity from its own account in a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) to an account held by a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) for a second foreign bank which is not an Iranian entity. For purposes of this section "foreign bank" includes a foreign subsidiary, but not a foreign branch of a domestic bank;

(2) The transfer arises from an underlying transaction that has been authorized by a specific or general license issued pursuant to this part;

(3) The transfer arises from an underlying transaction that is not prohibited or is exempted from regulation pursuant to Section 203(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1702(b), such as an exportation of information or informational materials to Iran, a travel–related remittance, or payment for the shipment of a donation of articles to relieve human suffering or a third country transaction not involving a United States person nor otherwise prohibited by this part; or

(4) The transfer is a non–commercial remittance to or from Iran, such as a family remittance not related to a family–owned enterprise.

(b) Before a United States depository institution initiates a payment subject to the prohibitions contained in this part on behalf of any customer, or credits a transfer subject to such prohibitions to the account on its books of the ultimate beneficiary, the U.S. depository institution must determine that the transfer is not prohibited by this part.

(c) Pursuant to the prohibitions contained in § 560.208, a United States depository institution may not make transfers to or for the benefit of a foreign-organized entity owned or controlled by it if the underlying transaction would be prohibited if engaged in directly by the U.S. depository institution.

(d) This section does not authorize transactions with respect to property blocked pursuant to part 535.

§ 560.517 Exportation of services: Iranian accounts at United States depository institutions.

(a) United States depository institutions are prohibited from performing services with respect to Iranian accounts, as defined in § 560.320, at the instruction of the Government of Iran or persons located in Iran, except that United States depository institutions are authorized to provide and be compensated for services and incidental transactions with respect to:

(1) The maintenance of Iranian accounts, including the payment of interest and the debiting of service charges;

(2) The processing of transfers arising from underlying transactions that are exempted from regulation pursuant to section 203(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1702(b), such as an exportation of information or informational materials to Iran, a travel–related remittance, or payment for the shipment of a donation of articles to relieve human suffering; and

(3) At the request of the account party, the closing of Iranian accounts and the lump sum transfer only to the account party of all remaining funds and other assets in the account.

(b) Specific licenses may be issued with respect to the operation of Iranian accounts that constitute accounts of:

(1) Foreign government missions and their personnel in Iran; or

(2) Missions of the Government of Iran in the United States.

§ 560.518 Transactions in Iranian–origin and Iranian Government property.

(a) Except for transactions involving the Government of Iran, all domestic transactions with respect to Iranian–origin goods located in the United States are authorized, provided that this paragraph (a) does not affect the status of property blocked pursuant to part 535 or detained or seized, or subject to detention or seizure, pursuant to this part.

(b) All transactions necessary and incidental to a United States person's sale or other disposition of goods or services of Iranian origin or owned or controlled by the Government of Iran that are located or to be performed outside the United States and were acquired by that United States person in transactions not prohibited by part 535 or this part are authorized, provided:

(1) The sale or other disposition does not result in the importation of such goods or services into the United States, and

(2) The sale or other disposition is completed no later than 12:01 a.m. EDT, August 6, 1995.

(c) Except as provided in paragraphs (a) and (b) of this section, United States persons may not deal in goods or services of Iranian origin or owned or controlled by the Government of Iran, except that the following transactions are authorized:

(1) Transactions by a United States person with third–country nationals incidental to the storage and maintenance in third countries of Iranian–origin goods owned prior to May 7, 1995, by that United States person or acquired thereafter by that United States person consistent with the provisions of this part;

(2) Exportation of Iranian–origin household and personal effects from the United States incident to the relocation of United States persons outside the United States; and

(3) Purchase for personal use or consumption in Iran of Iranian–origin goods or services.

(d) In addition to transactions authorized by paragraph (c)(1) of this section, a United States person is authorized after 12:01 a.m. EDT, May 7, 1995, to use or dispose of Iranian–origin household and personal effects that are located outside the United States and that have been acquired by the United States person in transactions not prohibited by part 535 or this part.

§ 560.519 Policy governing news organization offices.

(a) Specific licenses may be issued on a case–by–case basis authorizing transactions necessary for the establishment and operation of news bureaus in Iran by United States organizations whose primary purpose is the gathering and dissemination of news to the general public.

(b) Transactions that may be authorized include but are not limited to those incident to the following:

(1) Leasing office space and securing related goods and services;

(2) Hiring support staff;

(3) Purchasing Iranian–origin goods for use in the operation of the office; and

(4) Paying fees related to the operation of the office in Iran.

(c) Specific licenses may be issued on a case–by–case basis authorizing transactions necessary for the establishment and operation of news bureaus in the United States by Iranian organizations whose primary purpose is the gathering and dissemination of news to the general public.

(d) The number assigned to such specific licenses should be referenced in all import and export documents and in all funds transfers and other banking transactions through banking institutions organized or located in the United States in connection with the licensed transactions to avoid disruption of the trade and financial transactions.

§ 560.520 Exportation of agricultural commodities.

(a) All transactions by United States persons in connection with the exportation from the United States to Iran of any agricultural commodity under an export sales contract are authorized, provided:

(1) Such contract was entered into prior to 12:01 a.m. EDT, May 7, 1995; and

(2) The terms of such contract require delivery of the commodity prior to February 2, 1996.

(b) The performance of letters of credit and other financing agreements with respect to exports authorized by this section is authorized pursuant to their terms.

(c) For purposes of this section, the term "agricultural commodity" means feed grains, rice, wheat, cotton, peanuts, tobacco, dairy products, and oilseeds (including vegetable oil).

(d) Specific licenses may be granted on a case–by–case basis for transactions by United States persons in connection with the exportation of other agricultural articles from the United States to Iran that do not fall within the definition of "agricultural commodity" contained in paragraph (c) of this section, provided such exportation is pursuant to an export sales contract and the conditions contained in paragraphs (a)(1) and (a)(2) of this section are met.

§ 560.521 Diplomatic pouches.

All transactions in connection with the importation into the United States from Iran, or the exportation from the United States to Iran, of diplomatic pouches and their contents are authorized.

§ 560.522 Allowable payments for overflights of Iranian airspace.

Payments to Iran of charges for services rendered by the Government of Iran in connection with the overflight of Iran or emergency landing in Iran of aircraft owned by a United States person or registered in the United States are authorized.

§ 560.523 Importation of information and informational materials.

(a) In addition to transactions relating to information or informational materials that are exempted from regulation under § 560.210, the following are authorized:

(1) The importation of information and informational materials of Iranian origin from any location, whether commercial or otherwise, regardless of format or medium of transmission; and

(2) All financial and other transactions related to the importation of information and informational materials.

(b) Specific licenses may be issued on a case–by–case basis for the exportation of equipment necessary for the establishment of news wire feeds or other transmissions of information or informational materials.

§ 560.524 Household goods and personal effects.

(a) The exportation from the United States to Iran of household and personal effects, including baggage and articles for family use, of persons departing the United States to relocate in Iran is authorized provided the articles included in such effects have been actually used by such persons or by family members accompanying them, are not intended for any other person or for sale, and are not otherwise prohibited from exportation. See also, § 560.518(c)(2).

(b) The importation of Iranian–origin household and personal effects, including baggage and articles for family use, of persons arriving in the United States is authorized; to qualify, articles included in such effects must have been actually used abroad by such persons or by other family members arriving from the same foreign household, must not be intended for any other person or for sale, and must not be otherwise prohibited from importation.

§ 560.525 Exportation of certain legal services.

(a) The provision of the following legal services to the Government of Iran or to a person in Iran, and receipt of payment therefor, are authorized:

(1) Provision of legal advice and counselling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counselling is not provided to facilitate transactions that would violate any of the prohibitions contained in this part;

(2) Representation when a person in Iran or the Government of Iran has been named as a defendant in or otherwise made a party to domestic United States legal, arbitration, or administrative proceedings;

(3) Initiation of domestic United States legal, arbitration, or administrative proceedings in defense of

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property interests of the Government of Iran that were in existence prior to May 7, 1995, or acquired thereafter in a transaction not inconsistent with the prohibitions contained in this part;

(4) Representation before any federal or state agency with respect to the imposition, administration, or enforcement of United States sanctions against Iran;

(5) Initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before international tribunals (including the Iran–United States Claims Tribunal in The Hague and the International Court of Justice):

(i) To resolve disputes between the Government of Iran and the United States or a United States national;

(ii) Where the proceeding is contemplated under an international agreement; or

(iii) Where the proceeding involves the enforcement of awards, decisions, or orders resulting from legal proceedings within the scope of paragraph (a)(5)(i) or (a)(5)(ii) of this section, provided that any transaction, unrelated to the provision of legal services or the payment therefor, that is necessary or related to the execution of an award, decision or order resulting from such legal proceeding, or otherwise necessary for the conduct of such proceeding, and which would otherwise be prohibited by this part requires a specific license in accordance with §§ 560.510 and 560.801;

(6) Provision of legal advice and counselling in connection with settlement or other resolution of matters described in paragraph (a)(5) of this section; and

(7) Provision of legal services in any other context in which prevailing United States law requires access to legal counsel at public expense.

(b) The provision of any other legal services to a person in Iran or the Government of Iran, not otherwise authorized in or exempted by this part, requires the issuance of a specific license.

§ 560.526 Commodities trading and related transactions.

(a) *Trading in Iranian–origin commodities.* With respect to § 560.206, specific licenses may be issued on a case–by–case basis to authorize certain commodities trading by a United States person in Iranian–origin goods, or transactions incidental to such trading, where:

(1) No party to the transaction with the United States person is a person in Iran or the Government of Iran, and

(2) It was impossible for the United States person to determine at the time of entry into the transaction, given all circumstances of the transaction, that the goods would be of Iranian origin or would be owned or controlled by the Government of Iran.

(b) *Trading in commodities destined for Iran or the Government of Iran.* With respect to § 560.204, specific licenses may be issued on a case–by–case basis to authorize certain trading by United States persons in commodities of U.S. or third–country origin destined for Iran or the Government of Iran, or transactions incidental to such trading, where:

(1) It was impossible for the United States person to determine at the time of entry into the transaction, given all circumstances of the transaction, that the goods would be for delivery to Iran or to the Government of Iran;

(2) The United States person did not contract with a person in Iran or the Government of Iran; and

(3) The United States person did not initiate the nomination of the commodity's destination as Iran or the Government of Iran.

§ 560.527 Rescheduling existing loans.

Specific licenses may be issued on a case–by–case basis for rescheduling loans or otherwise extending the maturities of existing loans, and for charging fees or interest at commercially reasonable rates, in connection therewith, provided that no new funds or credits are thereby transferred or extended to Iran or the Government of Iran.

§ 560.528 Aircraft safety.

Specific licenses may be issued on a case–by–case basis for the exportation and reexportation of goods, services, and technology to insure the safety of civil aviation and safe operation of U.S.–origin commercial passenger aircraft.

Subpart F—Reports

§ 560.601 Required records.

Every person engaging in any transaction subject to the provisions of this part must keep a full and accurate record of each such transaction in which that person engages, regardless of whether such transaction is effected pursuant to license or otherwise, and such record must be available for examination for at least 2 years after the date of such transaction.

§ 560.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

§ 560.603 Reports on oil transactions engaged in by foreign affiliates.

(a) *Requirement for reports.* Reports are required to be filed in the manner prescribed in this section with respect to all reportable transactions, as defined in paragraph (f) of this section, engaged in by the foreign affiliates of a United States person. Reports are due within fifteen days after the end of each calendar quarter. The first report must cover the period beginning June 6, 1995, and ending September 30, 1995. Reports must be filed covering each three–month period thereafter.

(b) *Who must report.* Reports are required to be filed by any United States person whose foreign affiliate engaged in a reportable transaction during the prior calendar quarter. A single United States entity within a consolidated or affiliated group may be designated to report on each foreign affiliate of the United States members of the group. Such centralized reporting may be done by the United States person who owns or controls, or has been delegated authority to file on behalf of, the remaining United States persons in the group.

(c) *What must be reported.*

(1) Part I of the report must include the following information with respect to United States persons with a foreign affiliate:

(i) Its name and address;

(ii) Its principal place of business;

(iii) For entities, its state of incorporation; and

(iv) The name, corporate title, and telephone number of the individual to contact concerning the report.

(2) Part II of the report must include the following information with respect to the foreign affiliate:

(i) Its name and address;

(ii) The country of its incorporation and its principal place of business;

(iii) Its entity type (e.g., corporation, partnership, limited liability company, etc.);

(iv) Its relationship to the reporting United States person, including percentage of direct and indirect ownership;

(v) The name, title, and nationality of principal corporate officers; and

(vi) A description of the manner and degree to which the United States person exercises control over the foreign affiliate's oil–related transactions. The description must include any written or verbal directions or instructions issued by the United States person to the foreign affiliate concerning such transactions, any requirements for prior approval by the United States person concerning such transactions, and the frequency of, and the nature of information contained in, written or verbal reports by the foreign affiliate to the United States person in which these transactions are described, aggregated, or summarized.

(3) Part III of the report must include the following information with respect to each reportable transaction (a separate part III must be submitted for each reportable transaction):

(i) The nature of transaction (e.g., purchase, sale, swap);

(ii) A description of the product, technology, or service involved;

(iii) The name of the Iranian or third country party involved in the transaction;

(iv) The currency and amount of the transaction (and corresponding United States dollar value of the transaction, if not conducted in United States dollars);

(v) The division or branch of the foreign affiliate involved in the negotiating and executing of the transaction;

(vi) The name, corporate title, and nationality of each employee engaged in the transaction; and

(vii) How the transaction is reflected in the report or reports as required by paragraph (c)(2)(vi) of this section. If the transaction is aggregated with other transactions, an explanation must be provided for all the components in the aggregate report.

(d) *Where to report.* Reports must be filed with the Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220. Reports may be submitted by facsimile transmission at 202–622–1657. A copy must be retained for the reporter's records.

(e) *Whom to contact.* Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, telephone: 202–622–2440.

(f) *Definitions.* For the purposes of this section:

(1) The term "foreign affiliate" means a person or entity (other than a United States person as defined in § 560.314) which is organized or located outside of the United States, and which is owned or controlled by a United States person or persons; and

(2) The term "reportable transaction" includes any purchase, sale, or swap, or the provision of services related to such purchase, sale, or swap, such as financing, lifting, transporting, insuring, processing, transforming, or incorporating, related to:

(i) Iranian–origin crude oil or natural gas; or

(ii) Crude oil or natural gas and involving Iran or the Government of Iran.

Subpart G—Penalties

§ 560.701 Penalties.

(a) Attention is directed to § 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705), which provides that a civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under the International Emergency Economic Powers Act, and that whoever willfully violates any license, order, or regulation issued under the International Emergency Economic Powers Act may, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. Section 206 of the International Emergency Economic Powers Act is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act.

(b) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, may be fined not more than $10,000 or imprisoned not more than 5 years, or both.

(c) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

§ 560.702 Detention of shipments.

Import shipments into the United States of Iranian–origin goods in violation of § 560.201 and export shipments from the United States of goods destined for Iran in violation of §§ 560.202 or 560.204 shall be detained. No such import, export, or reexport will be permitted to proceed, except as specifically authorized by the Secretary of the Treasury. Unless licensed, such shipments are subject to penalty or seizure and forfeiture action, under the Customs laws or other applicable provisions of law, depending on the circumstances.

§ 560.703 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he may issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice will describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 560.704 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of the written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 560.705 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the person named in the prepenalty notice, he shall promptly notify the person in writing of the determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he may issue a written notice of the imposition of the monetary penalty to that person.

§ 560.706 Referral for administrative collection measures or to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 560.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in this part. All such licenses in effect on the date of publication are set forth in subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file such reports or statements will nullify the authorization to such person provided by the general license.

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information or discuss or argue the application may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury, or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to the Director, at the following address: Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

§ 560.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 560.803 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, whether general or specific, authorizations, instructions, orders, or forms issued hereunder may be amended, modified, or revoked at any time.

§ 560.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of

Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 560.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12613, Executive Order 12957, Executive Order 12959, and any further Executive orders relating to the national emergency declared in Executive Order 12957 may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 560.806 Customs procedures: Goods specified in § 560.201.

(a) With respect to goods specified in § 560.201, and not otherwise licensed or excepted from the scope of that section, appropriate Customs officers shall not accept or allow any:

(1) Entry for consumption or warehouse (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any informal entries);

(2) Entry for immediate exportation;

(3) Entry for transportation and exportation;

(4) Withdrawal from warehouse;

(5) Admission, entry, transfer or withdrawal to or from a foreign trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign trade zone.

(b) Customs officers may accept or allow the importation of Iranian–origin goods under the procedures listed in paragraph (a) if:

(1) A specific license pursuant to this part is presented; or

(2) Instructions authorizing the transaction are received from the Office of Foreign Assets Control.

(c) Whenever a specific license is presented to an appropriate Customs officer in accordance with this section, one additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved must be filed with the appropriate Customs officers at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the additional copy, must bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license must be presented to the appropriate Customs officers in respect of each such transaction and must bear a notation in ink by the licensee or person presenting the license showing the description, quantity and value of the merchandise to be entered, withdrawn or otherwise dealt with. This notation must be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its issuance. If the license in fact authorizes the entry, withdrawal, or other transaction with regard to the merchandise, the appropriate Customs officer, or other authorized Customs employee, shall verify the notation by signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person presenting it and the additional copy of the entry, withdrawal or other appropriate document shall be forwarded by the appropriate Customs officer to the Office of Foreign Assets Control.

(d) If it is unclear whether an entry, withdrawal or other action affected by this section requires a specific license from the Office of Foreign Assets Control, the appropriate Customs officer may withhold any action thereon and shall advise such person to communicate directly with the Office of Foreign Assets Control to request that instructions be sent to the Customs officer to authorize him to take action with regard thereto.

§ 560.807 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department of Treasury issued pursuant to 5 U.S.C. 552 and published at 31 CFR part 1.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published at 31 CFR part 1.

(c) Any form issued for use in connection with the Iranian Transactions Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220 or by calling 202/622–2480.

Subpart I—Paperwork Reduction Act

§ 560.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 560.601, 560.602, and 560.801 have been approved by the Office of Management and Budget and assigned control number 1505–0106.

Dated: August 23, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 28, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–22387 Filed 9–6–95; 5:01 pm]

BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 137–1–7051a; FRL–5262–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern negative declarations from the Mojave Desert Air Quality Management District (MDAQMD) for two source categories that emit volatile organic compounds (VOC): Asphalt Air Blowing and Vacuum Producing Devices or Systems. The MDAQMD has certified that these source categories are not present in the District and this information is being added to the federally approved State Implementation Plan. The intended effect of approving these negative declarations is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on these negative declarations serves as a final determination that the finding of nonsubmittal for these source categories has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on November 13, 1995 unless adverse or critical comments are received by October 11, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the submitted negative declarations are available for public inspection at EPA's Region IX office and also at the following locations during normal business hours.

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 92123–1095

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District), 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

Applicability

The revisions being approved as additional information for the California SIP include two negative declarations from the MDAQMD regarding the following source categories: (1) Asphalt Air Blowing and (2) Vacuum Producing Devices or Systems. These negative declarations were submitted by the California Air Resources Board (CARB) to EPA on December 20, 1994 and December 29, 1994, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the portions of San Bernardino County Air Pollution Control District[1] within the Southeast Desert Air Quality Management Area (AQMA). 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(b)(2) of the CAA, Congress statutorily adopted the requirement that nonattainment areas submit reasonably available control technology (RACT) rules for all major sources of VOC and for all VOC sources covered by a Control Techniques Guideline document by November 15, 1992.[2]

Section 182(b)(2) applies to areas designated as nonattainment prior to enactment of the amendments and classified as moderate or above as of the date of enactment. The Southeast Desert AQMA is classified as severe;[3] therefore, this area was subject to the RACT catch-up requirement and the November 15, 1992 deadline.

The negative declaration for Asphalt Air Blowing was adopted on October 26, 1994 and submitted by the State of California on December 20, 1994 and the negative declaration for Vacuum Producing Devices or Systems was adopted on December 21, 1994 and submitted by the State of California for the MDAQMD on December 29, 1994. The submitted negative declarations were found to be complete on January 3, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[4] and are being finalized for approval into the SIP as additional information. This notice addresses EPA's direct-final action for the MDAQMD negative declarations for Asphalt Air Blowing and Vacuum Producing Devices or Systems. The submitted negative declarations certify that there are no VOC sources in these source categories located inside MDAQMD's portion of the Southeast Desert AQMA. VOCs contribute to the production of ground level ozone and smog. These negative declarations were adopted as part of MDAQMD's effort to meet the requirements of section 182(b)(2) of the CAA.

EPA Evaluation and Action

In determining the approvability of a negative declaration, EPA must evaluate the declarations for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In Board Resolution No. 94–26, the District rescinded Rule 470, Asphalt Air Blowing. Asphalt Air Blowing Operations are typically conducted at refineries, and there are no refineries located in MDAQMD. MDAQMD's emission inventory has also revealed that there are no sources of VOC emissions from this source category. In Board Resolution No. 94–38, the District rescinded Rule 465, Vacuum Producing Devices or Systems and certified that MDAQMD's emission inventory has revealed that there are no sources of VOC emissions from this source category located within the MDAQMD's jurisdiction.

EPA has evaluated these negative declarations and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. MDAQMD's negative declarations for Asphalt Air Blowing and Vacuum Producing Devices or Systems are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D. Therefore, if this direct final action is not withdrawn, on November 13, 1995, any FIP clock is stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995, unless, by no later than October 11, 1995, adverse or critical comments are received.

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[1] On July 1, 1993, the San Bernardino County Air Pollution Control District was renamed the Mojave Desert Air Quality Management District.

[2] Mojave Desert Air Quality Management District did not make the required SIP submittals by November 15, 1992. On January 15, 1993, the EPA made a finding of failure to make a submittal pursuant to section 179(a)(1), which started an 18-month sanction clock. The negative declarations being acted on in this direct final rulemaking were submitted in response to the EPA finding of failure to submit.

[3] Southeast Desert Air Quality Management Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

Because this action does not create any new requirements but simply includes additional information into the SIP, I certify that it does not have a significant impact on any small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The negative declarations being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this [proposed or final] action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated July 10, 1995.

Felicia Marcus,

Regional Administrator.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.220 is amended by removing paragraph (c)(198)(ii).

3. Subpart F is amended by adding § 52.222 to read as follows:

§ 52.222 Negative declarations.

(a) The following air pollution control districts submitted negative declarations for volatile organic compound source categories to satisfy the requirements of section 182 of the Clean Air Act, as amended. The following negative declarations are approved as additional information to the State Implementation Plan.

(1) Mojave Desert Air Quality Management District.

(i) Natural Gas and Gasoline Processing Equipment and Chemical Processing and Manufacturing were submitted on July 13, 1994 and adopted on May 25, 1994.

(ii) Asphalt Air Blowing was submitted on December 20, 1994 and adopted on October 26, 1994.

(iii) Vacuum Producing Devices or Systems was submitted on December 29, 1994 and adopted on December 21, 1994.

[FR Doc. 95–22148 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-W

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40 CFR Part 52

[CT–18–1–6482a; A–1–FRL–5271–3]

Approval and Promulgation of Air Quality Implementation Plans—Connecticut; PM10 Attainment Plan and Contingency Measures for New Haven

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut to satisfy certain federal requirements for the New Haven initial PM10 nonattainment area. The purpose of this action is to bring about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). EPA is also approving reasonable available control measures (RACM) and contingency measures for the New Haven initial PM10 moderate nonattainment area as established in this SIP revision, since Connecticut has demonstrated implementation of RACM will attain and maintain the PM10 NAAQS. Additionally, EPA is approving Connecticut's adoption of the PM10 NAAQS and emergency episode regulation. This action is being taken under the Clean Air Act.

DATES: This final rule is effective November 13, 1995, unless notice is received by October 11, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Building (AAA), Boston, MA 02203–2211. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the Air,

Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, US Environmental Protection Agency, 401 M Street, SW, (LE–131), Washington, DC 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns, (617) 565–4982.

SUPPLEMENTARY INFORMATION:

Background

Part D, Subparts 1 and 4 of Title I of the Clean Air Act Amendments of 1990 (hereafter referred to as "the Act") set out air quality planning requirements for moderate PM10 nonattainment areas. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM10 nonattainment area SIP requirements. [See, generally, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).] Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this approval and the supporting rationale.

By November 15, 1991, States containing initial moderate PM10 nonattainment areas were required to submit, among other things, the following items. [See §§ 172(c), 188, and 189 of the Act.]

- Provisions to assure that reasonably available control measures (RACM)—including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)—shall be implemented no later than December 10, 1993;
- Either a demonstration, including air quality modeling, that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;
- Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and
- Provisions to assure that the control requirements applicable to major stationary sources of PM10 also apply to major stationary sources of PM10 precursors except where the Administrator determines that such sources do not contribute significantly to PM10 levels which exceed the NAAQS in the area.

Some provisions were due at a later date. States with initial moderate PM10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM10 by June 30, 1992. [See § 189(a).] Such States also must submit contingency measures by November 15, 1993—which become effective without further action by the State or EPA—upon a determination by EPA that the area has failed to achieve RFP or to attain the PM10 NAAQS by the applicable statutory deadline. [See § 172(c)(9) and 57 FR 13543–44.]

Summary of Connecticut's SIP Revision

On March 24, 1994, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). This SIP revision consists of 7 consent orders and corresponding compliance plans, which contain enforceable control measures to reduce the re-entrainment of fugitive emissions from roads in New Haven. The implementation of these control measures by the end of 1994 will reduce PM10 emissions by 157 tons below the uncontrolled levels. Accordingly, CT DEP has adopted reasonable available control measures (RACM) for PM10 and through dispersion modeling has demonstrated that these control measures are sufficient to expeditiously attain PM10 NAAQS in New Haven. As required, the road dust control measures implemented through the consent orders also assure maintenance of the 24-hour PM10 NAAQS 3 years beyond the December 31, 1994 statutory attainment date. Additionally, Connecticut's SIP revision provides for the implementation of contingency measures, which were due to EPA by November 15, 1993. CT DEP submitted a supplement on May 20, 1994, which relies on a conservative strategy from one of the consent orders to satisfy the requirements for § 172(c)(9) contingency measures. This submittal demonstrates that the City of New Haven's controls will go beyond RACM and these excess reductions will serve as Connecticut's contingency measures.

These submittals complete the attainment plan and contingency measures for New Haven by meeting the applicable requirements to demonstrate attainment of the PM10 NAAQS by December 31, 1994 and maintenance of those standards for 3 years beyond that. These requirements are outlined in Part D, Subparts 1 and 4 of the Act and elaborated upon in the General Preamble.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals. (See 57 FR 13565–66.) Specific requirements and the rationale for EPA's proposed action are detailed in the Technical Support Document (TSD), dated March 27, 1995, accompanying this approval action and are summarized, but not restated, here in the following paragraphs. Interested parties should consult the TSD or Connecticut's submittals for details on the aspects of the New Haven SIP.

Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. Section 172(c)(9) of the Act also requires that plan provisions for nonattainment areas meet the applicable provisions of § 110(a)(2).

EPA must also determine whether a submittal is complete and therefore warrants further EPA review and action. (See § 110(k)(1) and 57 FR 13565.) EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). EPA attempts to make completeness determinations within 60 days of receiving a submittal. However, a submittal is deemed complete by operation of law if EPA does not make a completeness determination by 6 months after receipt of the submittal.

The State of Connecticut held public hearings on August, 20, 1993, October 18, 1993, December 29, 1993, and January 28, 1994 to entertain public comment on the various components of the PM10 attainment plan, consent orders, and compliance plans proposed for New Haven. The Commissioner of CT DEP (the Governor's designee) submitted the plans and consent orders to EPA on March 24, 1994 as a proposed revision to the SIP. On May 20, 1994, the Commissioner further submitted proposed PM10 contingency measures for New Haven.

On March 18, 1993, the State of Connecticut held a public hearing to amend its air quality standards and emergency episode regulations

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concerning PM10. The CT DEP adopted the amendments upon filing with the Secretary of State on April 23, 1993, and the EPA received them as a proposed revision to the SIP on March 16, 1995.

EPA reviewed all submittals to determine completeness in accordance with criteria outlined in 40 CFR Part 51 Appendix V and as amended by 57 FR 42216 (August 26, 1991). In letters dated May 12, 1994, July 2, 1994, and April 5, 1995, EPA-New England informed the Connecticut Governor's designee that the respective submittals were determined complete and explained how the review process would proceed.

Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because such inventories are necessary to an area's attainment demonstration, the emissions inventories must be received with the attainment SIP submission. (See 57 FR 13539.)

CT DEP determined that the PM10 nonattainment problem in New Haven was a local problem in the area around the Stiles Street and Yankee Gas monitoring sites. Mud and dirt from the unpaved areas in their vicinity are chronically dragged out onto area streets and are re-entrained by local traffic, contributing to high levels of airborne PM10 and therefore exceedences at nearby monitors. Corroborating CT DEP's observations and conclusions, Midwest Research Institute (MRI) made an independent general assessment of the Stiles Street area, as presented in a revised final report titled *Recommendations for an Approvable SIP Revision: Revised Final Report* (September 10, 1993).

CT DEP submitted an emissions inventory for baseyear 1990. Due to the localized and unique nature of the complex fugitive dust sources, a micro-scale inventory was developed for this section of New Haven, while the remainder of the inventory was developed on a larger scale from county or town-wide data. Moreover, Connecticut DEP's dispersion modeling confirms what its inventory shows: point sources do not contribute significantly to PM10 NAAQS violations in this airshed. EPA considers control measures which do not expedite attainment, or affect sources that contribute to PM10 levels, unreasonable even though technologically and economically feasible.

Entrainment of dust by vehicular traffic contributed 2407 tons of the 1990 baseyear actual PM10 emissions, which totalled 2990 tons. Point sources contributed 120 tons and area sources added 463 tons more. EPA is satisfied that Connecticut's inventory is sufficiently accurate and comprehensive for determining the adequacy of the New Haven attainment demonstration consistent with the requirements in § 172(c)(3) and § 110(a)(2)(k). Therefore, EPA is approving this emissions inventory, the details of which are embodied in the TSD.

RACM/RACT

As noted, the initial moderate PM10 nonattainment areas were required to submit provisions to assure that RACM/RACT are implemented no later than December 10, 1993. (See §§ 172(c)(1) and 189(a)(1)(C).) The General Preamble contains a detailed discussion of EPA's interpretation of the RACM/RACT requirement. (See 57 FR 13539–45 and 13560–61.)

CT DEP attributed the highest PM10 contributions in the New Haven area to mud and dirt from unpaved areas being dragged out onto area streets and re-entrained by local traffic. Also, frequent travel across private unpaved storage areas and emissions from loading and unloading of shredded scrap metal contribute to excessively high ambient PM10 levels in the area.

Accordingly, CT DEP negotiated and executed a set of 7 consent orders and compliance plans to implement RACM for PM10 area sources in New Haven. These orders and their effective dates are as outlined below.

CONSENT ORDERS FOR NEW HAVEN INITIAL MODERATE PM10 NONATTAINMENT AREA

Order No.	State of Connecticut vs.	Effective date
8073	City of New Haven	September 24, 1993.
8074	Waterfront Enterprises, Inc.	November 5, 1993.
8075	Laydon Construction	September 21, 1993.
8076	United Illuminating Company	December 2, 1993.
8076c	M. J. Metals, Inc.	June 18, 1993.
8078	New Haven Terminal, Inc.	November 15, 1993.
8079	Yankee Gas Services Company	September 24, 1993.

Specifically, the control measures adopted accomplish the following.

- All unpaved private industrial travel lanes and unpaved public roads in the Stiles Street area will be eliminated.
- All paved private travel lanes will be delineated with concrete rails or other effective borders for the purpose of eliminating off-pavement travel and reducing the transfer of exposed soil to adjacent road surfaces.
- Private travel roads will be posted with speed limit and directional signing to reduce additional fugitive emissions and vehicle miles traveled (VMT).
- All open storage lots will be covered with gravel to a minimum depth of 2 inches.
- All areas not used for travel, storage, or parking (or any other active use) will be mulched and vegetated or covered with gravel and rendered inaccessible to vehicular travel.
- Any significant piles of sand, scrap metal, or other erodible materials will be covered, sheltered with a wind break, and/or operated in conjunction with a wet suppression system.
- Segments of some public roads in the area will be lined with guard rails or other barriers to prevent further off-pavement travel.
- All paved private travel lanes and city streets in the Stiles Street area will be put on a maintenance plan, which includes periodic street sweeping.

Each consent order requires a schedule and written plan detailing control measures designed to reduce PM10 emissions for each party's responsibility. CT DEP included these orders and plans in the March 24, 1994 submittal and EPA will incorporate them into Connecticut's SIP. Approval of the SIP will make these consent orders and compliance plans federally enforceable. EPA is therefore approving the control strategy as meeting RACM/RACT requirements.

Demonstration

As noted, initial moderate PM10 nonattainment areas were to submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994. [See § 189(a)(1)(B) of the Act.] CT DEP submitted an attainment demonstration based on dispersion modeling in accordance with EPA's "Guideline on Air Quality Modeling (Revised)" (GAQM) (40 CFR Part 51 Appendix W) to model New Haven for a determination of PM10 design concentrations.

The 24-hour PM10 NAAQS is 150 micrograms per cubic meter (μg/m^3), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m^3 is equal to or less than one. [See 40 CFR 50.6.] Based on modeling 5 years of representative meteorological data and projecting growth on a controlled emissions inventory for 1994, the 24-hour design concentration for New Haven was predicted as 135 μg/m^3. This demonstrates that implementation of RACM prescribed for New Haven will attain the 24-hour PM10 NAAQS. The annual PM10 NAAQS is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m^3. The predicted annual design concentration of 46 μg/m^3 demonstrates that New Haven will also attain the annual PM10 NAAQS.

CT DEP's submittal further projected emissions for New Haven inventory to 1997 in order to demonstrate maintenance. Further dispersion modeling indicates that the control strategy, summarized above in the section titled RACT/RACM, will maintain air quality levels less than the PM10 NAAQS at least through December 31, 1997. This demonstration meets the EPA requirement for a minimum 3-year maintenance projection beyond the statutory attainment deadline. The TSD provides more details on EPA's review of the maintenance demonstration and the control strategy used.

PM10 Precursors

The control requirements applicable to major stationary sources of PM10 also apply to major stationary sources of PM10 precursors unless EPA determines such sources do not contribute significantly to PM10 levels in excess of the NAAQS in that area. [See § 189(e) of the Act.]

CT DEP's analysis of air quality and emissions data for New Haven demonstrates that PM10 nonattainment in New Haven is a micro-scale fugitive dust problem. EPA agrees that gaseous emissions, such as VOC, SO_2, and NO_2, do not contribute to PM10 levels above the NAAQS in New Haven. Consequently, stationary sources in New Haven need no further emission controls for possible PM10 precursors. The TSD accompanying this notice contains a further discussion of the data and analyses addressing the contribution of possible precursor sources in this area.

Quantitative Milestones and Reasonable Further Progress

Section 171(1) of the Act defines reasonable further progress (RFP) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. The PM10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by December 31, 1994. (See § 189(c) of the Act.)

In implementing RFP for this initial moderate area, EPA has reviewed the attainment demonstration and control strategy for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the PM10 NAAQS by December 31, 1994. [See § 171(1).] Even though Connecticut's PM10 SIP does not require that all measures required for attainment be fully implemented effective December 1, 1993, CT DEP's dispersion modeling aptly confirms that implementation of RACM will bring about attainment by December 31, 1994, the statutory attainment date for initial moderate PM10 nonattainment areas. (See § 188(c)(1).) EPA keys the first milestone to the SIP revision containing control measures which will result in emission reductions (57 FR 13539) and, since the PM10 attainment date is less than 3 years from the actual submittal date of CT DEP's SIP revision, EPA is accepting CT DEP's SIP revision as its first quantitative milestone for New Haven. Subsequently, until New Haven is redesignated to attainment, Connecticut's SIP commits CT DEP to submit quantitative milestone and RFP reports to EPA every 3 years. EPA is therefore approving Connecticut's approach to quantitative milestones and RFP.

Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA. (See §§ 172(c)(6) and 110(a)(2)(A) and 57 FR 13556.) The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (See 57 FR 13541.) Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP. (See § 110(a)(2)(C).)

The particular control measures contained in the SIP are summarized above under the section headed RACM/RACT. These control measures are defined and detailed in the compliance plans required under each negotiated consent order. Approval of this SIP submittal and incorporation by reference will make the consent orders, along with the control measures perscribed and contained therein, for New Haven federally enforceable.

Contingency Measures

As provided in § 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. (See generally 57 FR 13543–44.) These measures were required to be submitted by November 15, 1993 for the initial moderate nonattainment areas. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM_{10} NAAQS by the applicable statutory deadline.

Connecticut's May 20, 1994 supplemental submittal for New Haven addressed contingency measures required under § 172(c)(9), since the submittal on March 24, 1994 did not. It relies on a conservative strategy through the consent order and compliance plan for the City of New Haven. This submittal demonstrates that the City of New Haven is controlling PM_{10} emissions beyond RACM. CT DEP did not consider (i.e., take credit for) these additional measures in the 1994 attainment year or 1997 maintenance year modeling demonstrations. Specifically, these measures consist of the following:

- Installing granite curbs along Waterfront Street between Forbes Avenue and Alabama Street;
- Planting vegetation in barren areas between Waterfront Street and the I–95 exit ramp to the east, including new trees to act as permanent barriers from illegal parking;

- Reconstructing Stiles Street, including installation of sewers, catch-basins, curbs, and sidewalks on both sides of the street;
- Installing granite curbing along both sides of Connecticut Avenue from the edge of existing curbing north to Albia Street and south to connect with the existing curbing; and
- Repaving Alabama Street from Waterfront Street to its end at the east, including installation of sewers, catch-basins, curbs, handicapped curb cuts at the corners, and vegetation between curb and lot lines, and fencing where necessary.

Contingency emissions reductions should be approximately equal to the emissions reductions necessary to demonstrate RFP for one year or 25 percent for the initial moderate nonattainment areas. (See 57 FR 13543–4.) CT DEP's contingency measures submittal estimates the emissions reductions due to these measures to be 84 tons per year. Since total emission reductions required to demonstrate attainment for New Haven by December 31, 1994 are 157 tpy, the estimated 84 tpy emissions reduction (or 53.5 percent) from the control measures found in the control plan for the City of New Haven will exceed one year or 25 percent of RFP.

EPA finds that CT DEP's contingency measures for New Haven fulfill § 172(c)(9) requirements.

Other SIP Requirements

CT DEP has amended Sections 22a–174–24(f) and –24(g) "Connecticut primary and secondary ambient air quality standards for particulate matter" and 22a–174–6(a) and –6(b) "Air Pollution" emergency episode procedures." These regulations now reflect the PM_{10} NAAQS and contain the PM_{10} alert, warning and emergency levels that appear in EPA's "Example Regulations for Prevention of Air Pollution Emergency Episodes" (Appendix L to Part 51). There only exist two outstanding definitions which Connecticut should adopt to complete all § 110 requirements: "particulate matter emissions" and "PM_{10} emissions," but their absence here does not preclude EPA's approval of all else detailed above.

Under § 188 of the Act, if an initial moderate nonattainment area does not meet the December 31, 1994 attainment deadline, the area is normally "bumped up" to a serious non-attainment area and must implement additional control measures and must also submit another SIP revision. However, if an area can show, among other things, that the area had no more than one exceedance at any monitoring site in the nonattainment area in the year preceding the extension year, the area may apply for, and obtain a 1-year extension of the attainment date. (EPA may grant a total of two 1-year extensions of the attainment date to a qualifying area.) Based on air quality data for 1992–94, New Haven did not meet the December 31, 1994 attainment deadline, mainly because of a delay in implementing RACM. However, since mid-1994, when the implementation of New Haven's prescribed control measures were mostly underway and in some cases complete, New Haven has not seen further exceedences of the PM_{10} NAAQS. Actually, there has been a dramatic decrease in monitored PM_{10} levels at the Yankee Gas monitor since then. On March 31, 1995, Connecticut DEP applied for a 1-year extension of the attainment deadline for New Haven, and EPA is granting the extension in a separate notice elsewhere in today's **Federal Register**. This, however, does not preclude EPA from approving the attainment plan and contingency measures for New Haven.

Final Action

EPA is approving the SIP revisions submitted to the EPA on March 24 and May 20, 1994. These revisions include 7 consent orders (listed previously in the table in the section titled RACM/RACT) and compliance plans which the CT DEP negotiated and executed to bring about attainment of the PM_{10} NAAQS for the New Haven initial moderate PM10 nonattainment area. These orders and plans impose RACM and delineate contingency measures for New Haven. Among other things, the State of Connecticut has demonstrated that, with the implementation of RACM, the New Haven initial moderate PM10 nonattainment area attains the PM10 NAAQS and will maintain air quality levels below the NAAQS at least through December 31, 1997.

EPA is also approving two amendments to the Regulations of Connecticut State Agencies concerning abatement of air pollution: adoption of the PM10 NAAQS in amended Sections 22a–174–24(f) and –24(g) "Connecticut primary and secondary ambient air quality standards for particulate matter" and emergency episodes for PM10 in amended Sections 22a–174–6(a) and –6(b) "'Air Pollution" emergency episode procedures", both received by EPA on March 16, 1995 and effective in the State of Connecticut on July 7, 1993.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 13, 1995.

Under the Regulatory Flexibility Act, 5 USC § 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 USC §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under §§ 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under § 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

SIP approvals under § 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 USC § 7410 (a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under § 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See § 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 26, 1995.

John P. DeVillars,

Regional Administrator, EPA-New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 USC 7401–7671q

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(68) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(68) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on March 24, 1994, May 20, 1994, and March 4, 1994.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated March 24, 1994 submitting a revision to the Connecticut State Implementation Plan.

(B) Letter from the Connecticut Department of Environmental Protection dated May 20, 1994 submitting a supplemental revision to the Connecticut State Implementation Plan.

(C) State Order No. 8073: State of Connecticut vs. City of New Haven (effective September 24, 1993) and attached plan titled "Remedial Action Plan for Prevention of Airborne Particulate Matter and Fugitive Discharge of Visible Emissions in the Alabama Street/East Shore Parkway Area of New Haven."

(D) State Order No. 8074: State of Connecticut vs. Waterfront Enterprises, Inc. (effective November 5, 1993) and attached plan titled "Proposed Operation Plan in Response to Unilateral Order (September 20, 1993)."

(E) State Order No. 8075: State of Connecticut vs. Laydon Construction, (effective September 21, 1993) and attached plan titled "Plan for Control of Fugitive Emissions of PM10 (September 21, 1993)."

(F) State Order No. 8076: State of Connecticut vs. United Illuminating Company (effective December 2, 1993) and attached plan titled "Remediation Plan for Fugitive Emissions: Alabama Street and Connecticut Avenue, New Haven, Connecticut (November 19, 1993)."

(G) State Order No. 8076c: State of Connecticut vs. M. J. Metals, Inc. (effective June 18, 1993).

(H) State Order No. 8078: State of Connecticut vs. New Haven Terminal, Inc. (effective November 15, 1993) and attached plan titled "Fugitive Dust Control Plan (Revised January 19, 1994)."

(I) State Order No. 8079: State of Connecticut vs. Yankee Gas Services Company (effective September 24, 1993) and attached plan titled "Revised Compliance Plan for Consent Order No. 8079 (August 31, 1993)."

(J) Letter from the Connecticut Department of Environmental Protection dated March 4, 1994 (received March 16, 1995) submitting two amendments to the Regulations of Connecticut State Agencies concerning abatement of air pollution: amended Sections 22a–174–24(f) and –24(g) "Connecticut primary and secondary ambient air quality standards for particulate matter" and amended Sections 22a–174–6(a) and –6(b) "'Air Pollution' emergency episode procedures" (both effective July 7, 1993).

(K) Amended Regulations of Connecticut State Agencies: amended Sections 22a–174–24(f) and –24(g) "Connecticut primary and secondary ambient air quality standards for particulate matter" and amended Sections 22a–174–6(a) and –6(b) "'Air Pollution' emergency episode procedures" (both effective July 7, 1993).

(ii) Additional materials.

(A) An attainment plan and demonstration which outlines Connecticut's control strategy and for attainment and maintenance of the PM10 NAAQS, implements and meets RACM and RACT requirements, and provides contingency measures for New Haven.

(B) Nonregulatory portions of the submittal.

[FR Doc. 95–22130 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[DE22–1–7160a, DC19–1–7159a, MD36–1–7161a, PA48–1–7162a, VA42–1–7163a; FRL–5291–8]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia; Revisions to the State Implementation Plans (SIPs) Addressing Ozone Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the ozone State Implementation Plans (SIPs) for Delaware, the District of Columbia (the District), Maryland, Pennsylvania and Virginia. This action is based upon revision requests which were submitted by these states to satisfy the requirements of the Clean Air Act (Act), as amended November 15, 1990, and the Photochemical Assessment Monitoring Stations (PAMS) regulations. The PAMS regulations required affected states to provide for the establishment and maintenance of an enhanced ambient air quality monitoring network in the form of PAMS by November 12, 1993.

DATES: This final rule is effective November 13, 1995 unless adverse comments are received by October 11, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Written comments should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903; District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Avenue, SE., Washington, DC 20020; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; Pennsylvania Department of Environmental Protection, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–6863.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittals

SIP revisions incorporating PAMS into the ambient air quality monitoring networks of State or Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS) were submitted to EPA from the following state agencies on the following days:

(1) Delaware's Department of Natural Resources & Environmental Control submitted a PAMS SIP revision on March 24, 1994;

(2) The District of Columbia's Department of Consumer and Regulatory Affairs submitted a PAMS SIP revision on January 14, 1994;

(3) Maryland's Department of the Environment submitted a PAMS SIP revision on March 24, 1994;

(4) Pennsylvania's Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection) submitted a PAMS SIP revision on September 23, 1994; and

(5) Virginia's Department of Environmental Quality submitted a PAMS SIP revision on November 23, 1994. These states will establish and maintain PAMS as part of their overall ambient air quality monitoring networks.

Section 182(c)(1) of the Act and the General Preamble (57 FR 13515) require that the EPA promulgate rules for enhanced monitoring of ozone, oxides of nitrogen (NO_X), and volatile organic compounds (VOC) no later than 18 months after the date of the enactment of the Act. In addition, the Act requires that, following the promulgation of the rules relating to enhanced ambient monitoring, states must commence actions to adopt and implement programs based on these rules, to improve the monitoring of ambient concentrations of ozone, NO_X, and VOC; and to improve the monitoring of emissions of NO_X and VOC.

The final PAMS rule was promulgated by the EPA on February 12, 1993 (58 FR 8452). Section 58.40(a) of the revised rule requires states with serious and above areas to submit a PAMS network description, including a schedule for implementation, to the Administrator within six months after promulgation or by August 12, 1993. Further, section 58.20(f) requires these states to provide for the establishment and maintenance of a PAMS network within nine months after promulgation of the final rule or by November 12, 1993.

While EPA recognizes that none of the above states met either of the deadlines, EPA considers this point moot, since these states have since submitted revisions and adopted implementation schedules for PAMS in all affected areas. These submittals have been reviewed by the EPA and are intended to satisfy the requirements of 40 CFR section 58.40(a). Since network descriptions may change annually, they are not part of the SIP as recommended by the Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR 58. However, the network description is negotiated and approved during an annual review as required by 40 CFR section 58.25 and section 58.36, respectively, and the revision codified at 40 CFR section 58.46.

The PAMS SIP revisions outlined above are intended to meet the requirements of section 182(c)(1) of the Act and affect compliance with the PAMS regulations, codified at 40 CFR part 58, as promulgated on February 12, 1993.

Public hearings on the PAMS SIP revisions were held on the following dates:

(1) Delaware—November 18, 1994;
(2) the District—January 4, 1994;
(3) Maryland—November 4, 8, 9 and 10, 1994;
(4) Pennsylvania—August 1, and 9, 1994; and
(5) Virginia—August 15, 1994.

None of the states received comment on the PAMS revisions during the public hearings or public comment periods.

II. Analysis of State Submittals

The PAMS SIP revisions will provide Delaware, the District, Maryland, Pennsylvania, and Virginia with the authority to establish and operate the PAMS sites, secure State funds for PAMS and provide the EPA with the authority to enforce the implementation of PAMS, since their implementation is required by the Act.

The criteria used to review the proposed SIP revision are derived from the PAMS regulations, codified at 40 CFR part 58, the Guideline for the Implementation of the Ambient Air Monitoring Regulations 40 CFR Part 58 (EPA–450/4–79–038, Office of Air Quality Planning and Standards, November 1979), the September 2, 1993 memorandum from G. T. Helms entitled Final Boilerplate Language for the PAMS SIP Submittal (Helms boilerplate memorandum), the Act and the General Preamble. The September 2, 1993 Helms boilerplate memorandum stipulates that the PAMS SIP, at a minimum, must:

(a) Enable the monitoring of non-criteria pollutants (such as NO_X, nitric oxide, and speciated VOC including carbonyls) and meteorological parameters, in addition to the monitoring of criteria pollutants (such as ozone and nitrogen dioxide);

(b) Provide a copy of the approved (or proposed) PAMS network description, including the phase-in schedule, for public inspection during the public notice and/or comment period provided for in the SIP revision or, alternatively, provide information to the public upon request concerning the State's plans for implementing the rules;

(c) Make reference to the fact that PAMS will become a part of the State or local air monitoring stations (SLAMS) network; and

(d) Require revisions to the statement that SLAMS will employ Federal reference methods (FRM) or equivalent methods inasmuch as PAMS sampling will be conducted using methods approved by the EPA which are not FRM or equivalent.

The PAMS SIP revisions for Delaware, the District, Maryland, Pennsylvania, and Virginia provide that each state will implement PAMS as required in 40 CFR Part 58, as amended February 12, 1993. This program is required in all ozone nonattainment areas designated as serious, severe, or extreme. The states will also implement these regulations in any existing ozone nonattainment area reclassified to serious, severe, or extreme, or any newly designated ozone nonattainment areas classified as serious or above. The PAMS stations will become a part of the existing NAMS/SLAMS network and will monitor ambient levels of "criteria pollutants," "non-criteria pollutants," and meteorological parameters.

Each state will develop its PAMS network design and establish monitoring sites pursuant to 40 CFR Part 58 in accordance with an approved network description and as negotiated with the EPA through the 105 grant process on an annual basis. Also, each state has begun implementing its PAMS network as required in 40 CFR Part 58.

All of the PAMS SIP revisions mentioned also include provisions to meet quality assurance requirements as contained in 40 CFR Part 58, Appendix A. All of the states also assure that the PAMS monitors will meet monitoring methodology requirements contained in 40 CFR Part 58, Appendix C. These states' SIP revisions also assure that their PAMS networks will be phased in over a period of five years as required in section 58.44. The states' PAMS SIP submittals and the EPA's technical support document are available for viewing at the EPA Region III Office and the state agencies as outlined under the **ADDRESSES** Section of this FR notice.

III. Final Action

EPA is approving revisions to the ozone SIPs for PAMS in Delaware, the District of Columbia, Maryland, Pennsylvania and Virginia. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the FR publication, the EPA is proposing to approve the SIP revision should adverse comments be received. Thus, the action will be effective November 13, 1995 unless, by no later than October 11, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent notice which will withdraw the final action. All public comments will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective November 13, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the Clean Air Act Amendments. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and Subchapter I, Part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final notice that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Act, petitions for judicial review of this Direct Final PAMS approval action must be filed in the U.S. Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 18, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.430 is added to read as follows:

§ 52.430 Photochemical Assessment Monitoring Stations (PAMS) Program.

On March 24, 1994 the Delaware Department of Natural Resources & Environmental Control submitted a plan for the establishment and implementation of a Photochemical Assessment Monitoring Stations (PAMS) Program as a state implementation plan (SIP) revision, as required by section 182(c)(1) of the Clean Air Act. EPA approved the Photochemical Assessment Monitoring Stations (PAMS) Program on September 11, 1995 and made it part of the Delaware SIP. As with all components of the SIP, Delaware must implement the program as submitted and approved by EPA.

Subpart J—District of Columbia

3. Section 52.480 is added to read as follows:

§ 52.480 Photochemical Assessment Monitoring Stations (PAMS) Program.

On January 14, 1994 the District of Columbia's Department of Consumer and Regulatory Affairs submitted a plan for the establishment and implementation of a Photochemical Assessment Monitoring Stations (PAMS) Program as a state implementation plan (SIP) revision, as required by section 182(c)(1) of the Clean Air Act. EPA approved the Photochemical Assessment Monitoring Stations (PAMS) Program on September 11, 1995 and made it part of the District of Columbia SIP. As with all components of the SIP, the District of Columbia must implement the program as submitted and approved by EPA.

Subpart V—Maryland

4. Section 52.1080 is added to read as follows:

§ 52.1080 Photochemical Assessment Monitoring Stations (PAMS) Program.

On March 24, 1994 Maryland's Department of the Environment submitted a plan for the establishment and implementation of a Photochemical Assessment Monitoring Stations (PAMS) Program as a state implementation plan (SIP) revision, as required by section 182(c)(1) of the Clean Air Act. EPA approved the Photochemical Assessment Monitoring Stations (PAMS) Program on September 11, 1995 and made it part of Maryland SIP. As with all components of the SIP, Maryland must implement the program as submitted and approved by EPA.

Subpart NN—Pennsylvania

5. Section 52.2035 is added to read as follows:

§ 52.2035 Photochemical Assessment Monitoring Stations (PAMS) Program.

On September 23, 1994 Pennsylvania's Department of Environmental Resources (now known as the Department of Environmental Protection) submitted a plan for the establishment and implementation of a Photochemical Assessment Monitoring Stations (PAMS) Program as a state implementation plan (SIP) revision, as required by section 182(c)(1) of the Clean Air Act. EPA approved the Photochemical Assessment Monitoring Stations (PAMS) Program on September 11, 1995 and made it part of Pennsylvania SIP. As with all components of the SIP, Pennsylvania must implement the program as submitted and approved by EPA.

Subpart W—Virginia

6. Section 52.2426 is added to read as follows:

§ 52.2426 Photochemical Assessment Monitoring Stations (PAMS) Program.

On November 23, 1994 Virginia's Department of Environmental Quality submitted a plan for the establishment and implementation of a Photochemical Assessment Monitoring Stations (PAMS) Program as a state implementation plan (SIP) revision, as required by section 182(c)(1) of the Clean Air Act. EPA approved the Photochemical Assessment Monitoring Stations (PAMS) Program on September 11, 1995 and made it part of the Virginia SIP. As with all components of the SIP, Virginia must implement the program as submitted and approved by EPA.

[FR Doc. 95–22158 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[FRL–5291–5]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Disapproval of the Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA hereby gives notice that pursuant to its authority under Clean Air Act (the Act) section 110(k)(4), 42 U.S.C. 7410(k)(3), in an April 13, 1995 letter EPA notified Pennsylvania that the conditional approval of the Pennsylvania enhanced Inspection and Maintenance (I/M) State Implementation Plan (SIP) revision had been converted to a disapproval. The letter triggered the 18-month timeclock for the mandatory application of sanctions under section 179(a) of the Act and the 24-month timeclock for the Federal Implementation Plan (FIP) under section 110(c)(1). This also serves to amend the C.F.R. to note the conversion of the conditional approval to a disapproval.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mrs. Kelly L. Bunker, (215) 597– 4554.

SUPPLEMENTARY INFORMATION: On August 31, 1994 a final rule was published in the **Federal Register** (59 FR 44936) which conditionally approved the November 3, 1993 Pennsylvania SIP submittal for a centralized, test-only enhanced I/M program. The first two conditions of the conditional approval were required to be fulfilled by December 31, 1994. The first two conditions for approvability were as follows:

(1) by December 31, 1994, the Commonwealth was required to submit to EPA as a SIP revision, the *Pennsylvania Bulletin* notice which certified that the enhanced I/M program was required in order to comply with federal law, certified the geographic areas which were subject to the enhanced I/M program, and certified the commencement date of the enhanced I/M program and

(2) by December 31, 1994, the Commonwealth was required to submit to EPA as a SIP amendment, the amendments to the Pennsylvania I/M regulation, 67 Pa Code § 178.202–205, which require EPA approval prior to implementation of any alternate purge test procedure and incorporate the transient emission standards for Tier 1 vehicles, the Phase 2 standards for all vehicle types and model years, and the transient and evaporative purge test procedures found in the final version of the EPA document entitled "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", EPA-AA-EPSD-IM–93–1, April 1994.

The proposed rulemaking stated that if the Commonwealth did not submit, by December 31, 1994, a SIP revision in response to the first two conditions of the approval action, the conditional approval would convert to a disapproval. EPA has not received a SIP revision which fulfills the first two conditions of the August 31, 1994 conditional approval. EPA notified the Commonwealth by an April 13, 1995 letter that the conditional approval of the Pennsylvania enhanced I/M SIP had been converted to a full disapproval pursuant to section 110(k)(4) of the Clean Air Act (the Act). This action taken on April 13, 1995 started both the 18 and subsequent 6 month sanctions clocks and the 24-month FIP clock. The Commonwealth must submit and EPA must take rulemaking action to approve an enhanced I/M SIP by October 13, 1996 and April 13, 1997, respectively, in order to halt these sanctions and FIP clocks.

EPA believes that the good cause exception to the notice and comment rulemaking requirement applies to this rulemaking action. [Administrative Procedure Act (APA) section 553(a)(B)]. Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency, for good cause, determines that notice and comment are "impracticable, unnecessary, or contrary to the public interest." In the present circumstance, notice and comment are unnecessary. The conversion of the conditional approval to a disapproval does not require any judgment on the part of the Agency. The issue is clear that the Agency must state whether or not it has received any SIP revision by the required date from the Commonwealth in response to the conditions set forth in the conditional approval of the Commonwealth's enhanced I/M SIP. No substantive review is required for such a determination. The Agency is the only judge of whether or not it has received the SIP revision to meet the conditions of the conditional approval. Because there is nothing on which to comment, notice and comment rulemaking are unnecessary.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Dated: August 2, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2023 is amended by adding paragraph (j) to read as follows:

§ 52.2023 Approval status.

* * * * *

(j) The conditionally approved Pennsylvania enhanced I/M SIP revision (59 FR 44936) submitted on November 3, 1993 by the Pennsylvania Department of Environmental Resources was converted to a disapproval by an April 13, 1995 letter from EPA to Pennsylvania.

§ 52.2026 [Removed and Reserved]

3. Section 52.2026 is removed and reserved.

[FR Doc. 95–22332 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TN–126–6580a; FRL–5282–8]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Permit Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the permit requirements for major sources of air pollution for the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP). EPA is also approving the recodification of this chapter. On November 12, 1993, the State submitted revisions to the Nashville/Davidson portion of the Tennessee SIP on behalf of Nashville/Davidson County. These were revisions to the permit requirements for major sources of air pollution, including revisions to the general definitions, the permit requirements, and the exemptions. As a supplement to this submittal, on July 15, 1994, the State also submitted a request that the recodification of the entire air pollution control rule for Nashville/Davidson County be approved as part of the SIP.

DATES: This final rule will be effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995. If the effective date is delayed, timely notice [illegible] be published in the **Federal Register**.

ADDRESSES: Wr[illegible]ments on this action should be addressed to Karen C. Borel, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311—23rd Avenue, North, Nashville, Tennessee 37203

FOR FURTHER INFORMATION CONTACT: Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365 The telephone number is 404/347–3555 x4197. Reference file TN–126–1–6580a.

SUPPLEMENTARY INFORMATION: The State of Tennessee through the Tennessee Department of Environment and Conservation submitted revisions to the Nashville/Davidson County portion of the Tennessee SIP to EPA on November 12, 1993. EPA found these submittals to be complete on January 21, 1994.

A. Permit Requirement Revisions

Nashville/Davidson County officially adopted proposed amendments to the Chapter 10.56, "Air Pollution Control" of the Metropolitan Code of Laws on September 14, 1993. These regulatory revisions to their Chapter 10.56 change the permit requirements for major air pollution sources. EPA is approving all of the following revisions except where it is specifically noted that the proposed revision is not receiving action.

Section 10.56.010—Definitions

Definitions of "act," "administrator," "major source," "permitted allowable emission," and "volatile organic compounds," were added. The definition of "major stationary source" was deleted.

A definition for "Regulated Pollutant" has been added. However, in response to comments from the EPA this proposed definition is being revised by the State in accordance with their May 30, 1995, letter from Mr. John Walton, Technical Secretary of the Tennessee Air Pollution Control Board, to Mr. Doug Neeley, Chief of the Air Programs Branch of the Region 4 EPA. Therefore, action on the addition of this definition will be taken in future rulemaking.

Section 10.56.020—Construction Permits

Paragraphs (I) through (M) were added to clarify the requirements of their permit program. Paragraph (I) limits the operating time of the new or modified source to the time specified within the permit, but not to exceed one hundred and eighty (180) days. It also requires that the Director be notified of the startup date within five (5) working days of the startup. Paragraph (J) requires that all of the compliance testing required by the construction permit must be done in accordance with the requirements of the SIP and the test results must be submitted to the Director as required by the SIP. Any failure to demonstrate compliance will be sufficient grounds for the Director to require changes in the installation before an operating permit will be granted. Paragraph (K) gives the Director the right to observe any compliance tests and to inspect the installation and operation of the equipment. Paragraph (L) grants the EPA Administrator the right to objection and comment on any application for a construction permit for a major source. Paragraph (M) states that eighteen (18) months after receipt of a complete application for a construction permit the application is considered final, and becomes the permit, if there has been no action by the Director.

Section 10.56.030—Temporary Operating Permit

This section was deleted. All of the requirements previously contained in this section were moved to Sections 10.56.020 and 10.56.040.

Section 10.56.040—Operating Permit

Paragraph (A) was deleted and replaced with a new paragraph (A). All references to "temporary operating permits" have been changed to "construction permits" in this new paragraph. A minor revision was made to paragraph (B) to limit the operating permit to five (5) years, and paragraphs (C) through (F) were added. Paragraph (C) requires that applications for operating permits be filed by the operators of any sources that were operating prior to the effective date of this regulation. Paragraph (D) grants authority to the Metropolitan Board of Health to specify any additional permitting requirements. Paragraph (E) states that any application for a major source operating permit is also subject to objection and comment by the EPA Administrator. Paragraph (F) declares that an operating permit application may be declared final eighteen (18) months after its receipt, if there has not been any action by the Director.

Section 10.56.050—Exemptions

Nashville has proposed to delete the entire Section 10.56.050 [paragraphs (A) through (D)] and replace it with proposed paragraphs (A) and (B). The new paragraph (A) restates the same exemptions that were previously covered in the deleted paragraphs (A) through (D). The new paragraph (B) states that such quantities of air contaminants which adversely affect the public shall not be discharged from any source, regardless of the exemptions listed in the previous paragraph. Proposed paragraphs (C), (D), and (E) were withdrawn by the State in their letter of May 30, 1995, from Mr. Walton to Mr. Neeley in response to comments from the EPA.

Section 10.56.080—Permit Fees

Nashville has deleted the section on permit fees in its entirety. The proposed replacement Section 10.56.080 was withdrawn by the State in their letter of May 30, 1995, from Mr. Walton to Mr. Neeley in response to comments from the EPA.

Section 10.56.120.B.6—Complaint Notice—Hearings Procedure

The length of time to enter a final order or determination, after final argument, was changed from sixty days to ninety days.

Section 10.56.210—Hazardous Air Pollutants

The definition was deleted, and a new definition was added. The new section defines "Hazardous Air Pollutants" in accordance with Section 112 of the Clean Air Act, as amended in 1990 (CAA). This new definition will be used in the issuance of synthetic minor operating permits.

Section 10.56.290—Measurement and Reporting of Emissions

The old title, "Measurement of Air Contaminants," was deleted and the new title was added. Subparagraph 10.56.290.B.3 was added to provide the requirements for notification of compliance tests.

Section 10.56.290.E—Emissions Statement

In this paragraph Nashville/Davidson County requires an annual emissions report from all permitted facilities in accordance with the permitting requirements of Sections 10.56.020 and 10.56.040. In these sections, all sources that emit any regulated air pollutant are required to obtain a permit.

Section 10.56.310—Severability

This section was added to the SIP to address severability. In this new section it is stated that all other provisions of this ordinance will remain in full force and effect in the case where a court declares another section unconstitutional, illegal, or unenforceable.

B. Recodification

On July 15, 1994, the State submitted a request that the recodification of the entire air pollution control rule for Nashville/Davidson County be approved as part of the SIP. The Code of Laws of the Metropolitan Government of Nashville and Davidson County, Tennessee was recodified from Chapter Four, Subchapter One, into new Chapter 10.56, on August 21, 1991. In this document EPA is approving the recodification.

Final Action

EPA is fully approving the submitted revisions to the Nashville/Davidson County portion of the Tennessee SIP, with the exception of the definition of "regulated pollutant" in Section 10.56.010 on which action is not being taken in this rulemaking. EPA is also fully approving the recodification of the Air Pollution Control section of the Nashville/Davidson County portion of the Tennessee SIP, as submitted on July 15, 1994. EPA has not reviewed the substance of the remaining regulations, other than those submitted for revision on November 12, 1993. These rules were approved into the SIP in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the State. The EPA's

approval of the renumbering system at this time does not imply any position with respect to the approvability of the substantive rules. To the extent EPA has issued any SIP calls to the State with respect to the adequacy of any of the rules subject to this recodification, EPA will continue to require the State to correct any such rule deficiencies despite EPA's approval of this recodification.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP Actions

SIP approvals and partial approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(131) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(131) On November 12, 1993, the State submitted revisions to the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP) on behalf of Nashville/Davidson County. These were revisions to the permit requirements for major sources of air pollution, including revisions to the general definitions, the permit requirements, and the exemptions. As a supplement to this submittal, on July 15, 1994, the State also submitted a request that the recodification of the entire air pollution control rule for Nashville/Davidson County be approved as part of the SIP. These revisions and recodification incorporate changes to Nashville's Chapter 10.56, which was previously Chapter 4–1–1, which are required in the Clean Air Act as amended in 1990 and 40 CFR part 51, subpart I.

(i) Incorporation by reference.

Code of Laws of the Metropolitan Government of Nashville and Davidson County, Tennessee, Chapter 10.56, Air

Pollution Control, effective November 10, 1993, except for the following parts:

(A) Section 10.56.010, the definition of "regulated pollutant";

(B) Section 10.56.040, Paragraph (F);

(C) Section 10.56.050, Paragraphs (C), (D) and (E);

(D) Section 10.56.080.

(ii) Other material. None.

[FR Doc. 95–22145 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WI55–02–7015; FRL–5289–5]

Approval of the State Implementation Plan; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On January 10, 1995, the United States Environmental Protection Agency (USEPA) proposed approval of the State Implementation Plan (SIP) revision request for the Milwaukee ozone nonattainment area (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties), as submitted by the State of Wisconsin. The purpose of the revision is to offset any growth in emissions from growth in vehicle miles traveled (VMT), or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other measures, as needed to comply with Reasonable Further Progress (RFP) milestones of the Clean Air Act (Act). Wisconsin submitted the implementation plan revision to satisfy the statutory mandates, found in section 182 of the Act, which requires the State to submit a SIP revision that identifies and adopts specific enforceable Transportation Control Measures (TCM) to offset any growth in emissions from growth in VMT, or number of vehicle trips, in severe ozone nonattainment areas. The USEPA received no public comments on the above proposed approval. On May 5, 1995, USEPA finalized the first element of the VMT offset program for the Milwaukee area. This rule finalizes the approval of the second element of the VMT offset program for the Milwaukee area.

EFFECTIVE DATE: This action will be effective October 11, 1995.

ADDRESSES: Copies of the SIP revision, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AT–18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 182(d)(1)(A) of the Act requires States that contain severe ozone nonattainment areas to adopt transportation control measures and transportation control strategies to offset growth in emissions from growth in VMT or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other measures) as needed to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are set forth in 182(d)(1)(A) and discussed in the General Preamble to Title I of the Act (57 FR 13498 April 16, 1992).

As described in the proposal, section 182(d)(1)(A) sets forth three elements that must be met by a VMT Offset SIP. Under USEPA's alternative interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP, also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of the SIP submissions are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15 percent periodic reduction requirement of the Act; and 3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

As noted in the January 10, 1995, proposal, the USEPA would not take final action on the second element until the State has submitted a complete 15 percent ROP plan. On July 13, 1995, the State of Wisconsin submitted a 15 percent ROP plan with fully enforceable rules that have been subject to public hearing. No TCMs were utilized in the ROP plan to meet the 15 percent reduction in emissions. On July 18, 1995, the USEPA determined that this ROP plan was complete.

II. Final Rulemaking Action

In this action, USEPA is approving the second element of the VMT offset SIP revision submitted by the State of Wisconsin. The third element of the Wisconsin VMT offset SIP will also be the subject of a future rulemaking.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action will relieve requirements otherwise imposed under the Clean Air Act and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Dated: August 17, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (h) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(h) Approval—On November 15, 1993, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a plan for forecasting VMT in the severe ozone nonattainment area of southeastern Wisconsin and demonstrated that Transportation Control Measures would not be necessary to meet the 15 percent Rate-of-Progress milestone.

[FR Doc. 95–22144 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[KY–069–3–6904a; FRL–5277–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 13, 1992, the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet), submitted a maintenance plan and a request to redesignate the Lexington, Owensboro, Paducah, and Edmonson County areas from nonattainment to attainment for ozone (O_3). Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such changes and the redesignation request satisfies the criteria set forth in the CAA. In this action, EPA is approving the redesignation to attainment of the Lexington area (Fayette and Scott counties) and the associated maintenance plan because it meets the maintenance plan and redesignation requirements. EPA has approved the requests to redesignate to attainment and maintenance plans for the Owensboro, Edmonson County and Paducah areas. In this action, EPA is also approving the 1990 base year inventory for the Lexington marginal O_3 nonattainment area.

DATES: This final rule is effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick of the EPA Region 4 Air Programs Branch at (404) 347–3555 extension 4207 and at the above address. Reference file KY–69–3–6904.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1), in conjunction with the Governor of Kentucky, EPA designated the Lexington area as nonattainment because the area violated the O_3 standard during the period from 1987 through 1989 (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.318).

The Lexington marginal O_3 nonattainment area (nonattainment area) more recently has ambient monitoring data that show no violations of the O_3 National Ambient Air Quality Standards (NAAQS), during the period from 1989 through 1991. In addition, there have been no violations reported for the 1992, 1993, or 1994 O_3 seasons. Therefore, in an effort to comply with the amended CAA and to ensure continued attainment of the NAAQS, on November 13, 1992, the Cabinet submitted for parallel processing an O_3 maintenance SIP for the nonattainment area and requested redesignation of the nonattainment area to attainment with respect to the O_3 NAAQS and EPA found the request complete. On November 24, 1992, the Cabinet submitted the Marginal Ozone Nonattainment Areas Projection Inventory 1990–2004 as an amendment to the SIP. On January 15, 1993, July 16, 1993, February 28, 1994, August 29, 1994, and June 14, 1995, the Cabinet submitted revisions addressing public and/or EPA comments on the redesignation request, maintenance plan, and projection inventory.

On May 7, 1993, Region 4 determined that the information received from the Cabinet constituted a complete redesignation request under the general completeness criteria of 40 CFR 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when the Cabinet first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended CAA, including redesignation submittals, would not be determined complete. *See* "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines," Memorandum from John Calcagni to Air Programs Division Directors, Regions I–X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR Part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (*See* Memorandum at 3–4). However, since requests for redesignation are not mandatory submittals under the CAA, EPA believed it appropriate to change its policy with respect to redesignation submittals to conform to the existing completeness criteria (58 FR 38108 (July 15, 1993)). Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the EPA decides to revise that exception. The Cabinet submitted a redesignation request and a maintenance plan on November 13, 1992. When the maintenance plan became state effective on June 14, 1995, the Commonwealth of Kentucky no longer needed parallel processing for the redesignation request and maintenance plan.

The Kentucky redesignation request for the nonattainment areas meets the five requirements of section 107(d)(3)(E) for redesignation to attainment. The following is a brief description of how the Commonwealth of Kentucky has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. The Area Must Have Attained the O_3 NAAQS

The Cabinet's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. Ambient air quality monitoring data for calendar year 1989 through calendar year 1991 show an expected exceedance rate of less than 1.0 per year of the O_3 NAAQS in the marginal nonattainment area. (*See* 40 CFR 50.9 and appendix H.) In addition, there were no violations reported for the 1992, 1993, and 1994 O_3 seasons and there have been no violations to date in 1995. Because the nonattainment area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the area has met the first statutory criterion of attainment of the O_3 NAAQS. The Commonwealth of Kentucky has committed to continue monitoring the nonattainment area in accordance with 40 CFR 58.

2. The Area Has Met All Applicable Requirements Under Section 110, and Part D of the Act

On January 25, 1980, August 7, 1981, November 24, 1981, November 30, 1981, and March 30, 1983, EPA fully approved Kentucky's SIP as meeting the requirements of section 110(a)(2) and part D of the 1977 CAA (45 FR 6092, 46 FR 40188, 46 FR 57486, 46 FR 58080, and 48 FR 13168). The approved control strategy did not result in attainment of NAAQS for O_3. Additionally, the amended CAA revised section 182(a)(2)(A), 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA reviewed the Kentucky SIP to ensure that it contains all measures due under the amended CAA prior to or at the time the Commonwealth of Kentucky submitted its redesignation request.

A. Section 110 Requirements

Although section 110 was amended by the CAA of 1990, the Kentucky SIP for the marginal nonattainment area meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements.

B. Part D Requirements

Before the nonattainment area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for O_3 nonattainment areas classified under table 1 of section 181(a). The Lexington nonattainment area was classified as marginal (See 56 FR 56694, codified at 40 CFR 81.318). The Commonwealth of Kentucky submitted their request for redesignation of the marginal nonattainment area prior to November 15, 1992. Therefore, in order to be redesignated to attainment, the Commonwealth of Kentucky must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, but is not required to meet the applicable requirements of subpart 2 of part D, which became due on or after November 15, 1992.

B1. Subpart 1 of Part D

Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than three years after an area has been designated to nonattainment. EPA has not determined that these requirements were applicable to O_3 nonattainment areas on or before November 13, 1992, the date that the Commonwealth of Kentucky submitted a complete redesignation request for the marginal nonattainment area. Therefore, the Commonwealth of Kentucky was not required to meet these requirements for purposes of redesignation. The Lexington area currently has a fully approvable New Source Review (NSR) program which was last revised on June 23, 1994 (59 FR 32343). Upon redesignation of the area to attainment, the Prevention of Significant Deterioration (PSD) provisions contained in part C of title I are applicable. On January 25, 1978; September 1, 1989; November 6, 1989; November 13, 1989; November 28, 1989; February 7, 1990; and June 23, 1994, the EPA approved revisions to the Commonwealth of Kentucky's PSD program (43 FR 3360, 54 FR 36307, 54 FR 46613, 54 FR 47211, 54 FR 48887, 55 FR 4169 and 59 FR 32343).

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable state SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed,

funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by states must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the state revisions to be submitted by November 15, 1992, one year after the date for promulgation of final EPA conformity regulations which were due November 15, 1991. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed states that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)].

The EPA promulgated final transportation conformity regulations on November 24, 1993, (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that states adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the Commonwealth of Kentucky is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Kentucky is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the Commonwealth requested redesignation of the Lexington area prior to the deadline for these submittals, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

On February 24, 1994, the Commonwealth of Kentucky revised their maintenance plan to commit to revise the SIP by November 25, 1994, to be consistent with the final Federal regulations on conformity. In addition, the Division for Air Quality and the Kentucky Transportation Cabinet are cooperating in adopting regulations consistent with the final conformity regulation.

B2. Subpart 2 of Part D

The CAA was amended on November 15, 1990, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. EPA was required to classify O_3 nonattainment areas according to the severity of their problem. On November 6, 1991 (56 FR 56694), the Lexington area was designated as marginal O_3 nonattainment. Because this area is marginal, the area must meet section 182(a) of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 182. Below is a summary of how the area has meet the requirements of these sections.

(1) Emissions Inventory

The CAA required an inventory of all actual emissions from all sources as described in section 172(c)(3) by November 15, 1992. On November 13, 1992, the Cabinet submitted an emission inventory on the Lexington area. This emission inventory is being approved in this notice.

(2) Reasonably Available Control Technology (RACT)

The CAA also amended section 182(a)(2)(A), in which Congress statutorily adopted the requirement that O_3 nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) rules for O_3. Areas designated nonattainment before amendment of the CAA and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT Fix-ups requirement. The Lexington area was not designated nonattainment prior to 1990 and was classified as marginal O_3 nonattainment pursuant to the 1990 CAA. Therefore, this area is not subject to the RACT fix-up requirement. However, Kentucky chose to apply RACT on all major sources which commenced on or after the effective date of a particular RACT rule. Kentucky submitted VOC RACT SIP revisions through the Cabinet to EPA on February 12, 1992; October 20, 1992; February 17, 1993; and March 4, 1993. Action was taken December 12, 1993, to approve the SIP revision submitted on February 12, 1992. Action was taken June 23, 1994, to approve the SIP revisions submitted on October 20, 1992, February 17, 1993, and March 4, 1993.

(3) Emissions Statements

The CAA required that the SIP be revised by November 15, 1992, to require stationary sources of oxides of nitrogen (NO_X) and VOCs to provide the State with a statement showing actual emissions each year. This request to redesignate was submitted prior to the November 15, 1992, emissions statement deadline. Therefore, the emissions statement program is not a requirement for the Lexington area.

(4) New Source Review (NSR)

The CAA required all classified nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions of VOCs compounds will not result from any new or major source modifications and a general offset rule. A SIP revision incorporating these requirements was due November 15, 1992. This request to redesignate was submitted prior to the November 15, 1992, NSR deadline. Therefore, the NSR program is not a requirement for the Lexington area.

3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the amended CAA, EPA has determined that Kentucky has a fully approved O_3 SIP under section 110(k) for the marginal nonattainment areas, which also meets the applicable requirements of section 110 and part D as discussed above.

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the nonattainment area violated the O_3 NAAQS. Of these control measures, the reduction of fuel volatility from 11.4 psi to 8.6 psi, as measured by the Reid Vapor Pressure (RVP), and fleet turnover produced the most significant decreases in VOC emissions. The table below summarizes total emissions for VOCs. The difference between 1988 and 1990 are actual permanent and enforceable emission reductions which are responsible for the recent air quality improvement in the areas. The VOC emissions in the base year are not artificially low due to local economic downturn.

REDUCTIONS IN VOC EMISSIONS FROM 1988 TO 1990

MSA	VOCs (tpd)		
	1988	1990	1990–1988
Lexington	86.31	63.79	22.52

5. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this notice, EPA is approving the Commonwealth of Kentucky's maintenance plan for the Lexington marginal nonattainment area because EPA finds that the Commonwealth of Kentucky's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the Commonwealth of Kentucky submitted comprehensive inventories of VOC, NO_X, and CO emissions for the Lexington marginal nonattainment area. The inventories included biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the O_3 NAAQS was not violated during 1990.

The Commonwealth of Kentucky submittal contains the detailed inventory data and summaries by county and source category. This comprehensive base year emissions inventory was submitted in the SIP Air Pollutant Inventory Management System (SAMS) format. Finally, this inventory was prepared in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories for the Lexington area is included in this notice for VOCs and NO_X. The CO and the biogenic VOC values are shown below and are a part of the 1990 base year emission inventory. This notice is approving the base year inventory.

CO EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

	Point	Area	Mobile	Non-road	Total
Lexington	0.0	3.52	265.19	57.40	326.11

BIOGENIC EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

	Biogenic
Lexington 1990 Emissions	24.1

B. Demonstration of Maintenance—Projected Inventories

Below, totals for VOC and NO_X emissions were projected from the 1990 base year out to 2004. These projected inventories were prepared in accordance with EPA guidance. As indicated in the following tables, increases in VOC and NO_X emissions are projected in the Lexington nonattainment area.

LEXINGTON VOC EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	12.39	12.63	17.77	17.21	16.85	16.68
Area	14.36	14.53	14.71	14.88	15.06	15.18
Nonroad	11.06	11.21	11.36	11.51	11.66	11.77
Mobile	25.98	24.86	24.38	24.69	25.13	26.03
Total	63.79	63.23	68.22	68.29	68.70	69.66

LEXINGTON NO_X Emission Inventory Summary

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	1.98	2.01	2.03	2.05	2.07	2.09
Area	0.34	0.34	0.35	0.35	0.36	0.36
Nonroad	8.16	8.27	8.39	8.50	8.62	8.70
Mobile	22.06	21.23	20.98	20.95	20.85	21.71
Total	32.54	31.85	31.75	31.85	31.90	32.86

VOC AND NO_X PROJECTED EMISSIONS CHANGES

	VOCs	NO_X
Lexington	9.20%	0.98%

Because there were increases in VOC and NO_X emissions, Kentucky was required to model to demonstrate maintenance of the O_3 standard despite emissions growth. The Empirical Kinetics Modeling Approach (EKMA) was the model used. EKMA models Nonmethane Organic Compounds (NMOC) and NMOC data were available in 1989. For this reason, the model was run using meteorological data from June 23, June 26, and July 18, 1989. These days correspond to the highest ozone monitor readings for which on-site NMOC were available. The EKMA modeling projected O_3 values of 0.106 parts per million (ppm) for June 23, 1989, .116 ppm for July 26, 1989, and .064 ppm for July 18, 1995.

The modeling indicated that the future mix of emissions produced ozone levels below the federal O_3 standard. Thus, the analysis indicated that the Lexington area should continue to maintain the standard throughout the maintenance period.

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the marginal nonattainment areas depends, in part, on the Commonwealth of Kentucky's efforts toward tracking indicators of continued attainment during the maintenance period. The Commonwealth of Kentucky's contingency plan is triggered by two indicators, the emissions inventory for interim years exceeding the baseline emission inventory by more than 10% or an air quality violation. As stated in the maintenance plan, the Cabinet will be developing these emissions inventories every three years beginning in 1996. These periodic inventories will help to verify continued attainment.

D. Contingency Plan

The level of VOC and NO_X emissions in the nonattainment area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the Commonwealth's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, the Commonwealth of Kentucky has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. The plan contains a contingency to implement RACT on existing major sources in the area where the violation occurred within ninety (90) days. RACT was not required for this nonattainment area because it was designated as a marginal nonattainment area pursuant to the CAA. EPA finds that the contingency measures provided in the Commonwealth of Kentucky's submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the Commonwealth of Kentucky has agreed to submit a revised maintenance SIP eight years after the marginal nonattainment areas redesignate to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

EPA is approving Lexington's O_3 maintenance plan because it meets the requirements of section 175A. The EPA is redesignating the Lexington nonattainment area to attainment for O_3 because the Commonwealth of Kentucky has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. In addition, EPA is approving the 1990 base year emission inventory for the Lexington nonattainment area. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The O_3 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be interpreted as authorizing the Commonwealth of Kentucky to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless, by October 11, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 107 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control.

Dated: August 8, 1995.

R.F. McGhee,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(76) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(76) The maintenance plan and for the Lexington area which include Fayette and Scott Counties submitted by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet on November 13, 1992, November 24, 1992, March 10, 1993, July 16, 1993, March 3, 1994, and August 29, 1994, September 28, 1994 and June 14, 1995, as part of the Kentucky SIP. The 1990 Baseline Emission Inventory for the Lexington area which include Fayette and Scott Counties.

(i) Incorporation by reference.

(A) Commonwealth of Kentucky Attainment Demonstration and Ten Year Maintenance Plan for all areas designated Marginal Nonattainment for Ozone. The effective date is January 15, 1993.

(B) Table 6–6 Biogenic Emissions Fayette County, Kentucky. The effective date is January 15, 1993.

(C) Table 6–7 Biogenic Emissions, Scott, Kentucky. The effective date is January 15, 1993.

(ii) Other material.

(A) February 28, 1994, letter from John E. Hornback, Director, Division for Air Quality to Mr. Doug Neeley, Chief, Air Programs Branch.

(B) October 4, 1994, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Regional Administrator, U.S. EPA Region 4.

(C) January 15, 1993, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to Patrick M. Tobin, Acting Regional Administrator, U.S. EPA Region 4.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

2. In section 81.318, the ozone table is amended by removing the Lexington-Fayette Area and its entries in the first alphabetical listing and by adding in alphabetical order entries for "Fayette County" and "Scott County" to the second listing of counties to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE

Designated area	Designation		Classification	
Rest of state	Date [1]	Type	Date [1]	Type
		Unclassifiable/Attainment		
*	*	*	*	*
Fayette County	November 13, 1995.			
*	*	*	*	*
Scott County	November 13, 1995.			
*	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 95–22156 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 60

[AD–FRL–5287–7]

Standards of Performance for New Stationary Sources Appendix A—Reference Methods; Amendments to Method 24 for the Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes procedures for the determination of volatile matter content, density, volume solids, and water content for non thin film ultraviolet radiation-cured coatings. Method 24 refers to the American Society for Testing and Materials (ASTM) procedures for the determination of volatile matter content, density, volume solids, weight solids, and water content of surface coatings. This ASTM method excluded ultraviolet radiation-cured coatings which was not EPA's intent. Therefore, EPA is revising Method 24 to apply to non thin film ultraviolet radiation-cured coatings.

EFFECTIVE DATE: September 11, 1995. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of September 11, 1995.

ADDRESSES: *Docket.* Docket No. A–94–37, containing material relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and Noon, and 1:30 and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Room M1500, First Floor, Waterside Mall, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Sorrell at (919) 541–1064, Source Characterization Group A (MD–19), Emissions, Monitoring, and Analysis Division, US Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Method 24 was intended to be used for measuring volatile organic compounds content of all coatings that are intended for either ambient or baking film foundation. When Method 24 was published in 1980 it referenced the American Society for Testing and Materials (ASTM) Method D 2369–81, which the Environmental Protection Agency believed would apply to all coatings. However, that method was not applicable to ultraviolet (UV) radiation-cured coatings and this amendment to Method 24 will incorporate ASTM Method D 5403–93, which does contain those procedures.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulation, nor does it change any emission standard. Rather, the rulemaking would simply amend an existing test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

II. Public Participation

The opportunity to hold a public hearing on February 8, 1995 at 10 a.m. was present in the proposal notice, but no one desired to make an oral presentation. The public comment period was from January 9, 1995 to March 7, 1995.

III. Significant Comments and Changes to the Proposed Rulemaking

Seven comment letters were received from the proposal rulemaking. The major comments and responses are summarized in this preamble.

Three comments believe that ASTM D 5403–93 is not applicable to thin film UV cured coatings and inks. They noted that to meet the minimum sample size requirement of 0.2 grams, at the coatings recommended thickness, the substrate would be too large to weigh on normal laboratory balances. They requested that the method be modified to state this limitation.

The EPA agrees that the method should be modified to state that ASTM D 5403–93 is not applicable to thin film UV cured coatings and inks. For this method a thin film UV cured coating or ink is one which will not allow the tester to apply at least 0.2 g of coating to the substrate at the supplier recommended film thickness. Revisions have been made to add the equation used to determine if ASTM D 5403–93 is applicable. The revisions also include the requirement of a minimum size substrate before a coating can be classified thin film for this method.

One commenter requested that the cure test at 50 percent exposure and the oven drying portion of ASTM D 5403–93 be deleted from the proposed Method 24 amendments for UV cured coatings. The commenter believes that these steps should be deleted because they expose the cured coatings to conditions to which they would not normally be exposed and over estimate potential emissions.

The EPA does not agree with the commenter's argument that these steps over estimate potential emissions. The purpose of the cure test is to ensure that the coating is properly cured before being placed in the oven. If the coating is not properly cured before being placed in the oven, the emissions will be biased high. The purpose of placing the cured coating in the oven is to determine the VOC emissions that will be emitted over time. Even after a coating is cured under normal procedures, VOC are released during the life time of the coating.

Two commenters were concerned that EPA looks at this modification to Method 24 as a complete "fix it" for the test method. They both noted section 1.4 of ASTM D 5403–93 which states that the method may not be applicable to radiation curable materials wherein the volatile material is water.

The EPA is not trying to imply that this modification makes Method 24 perfect. The EPA recognizes the limitations of ASTM D 5403–93 as stated in Section 1 of the method and also its limitations with respect to thin film radiation cured coating as previously discussed in this preamble. However, Method 24 is the best method currently available for determining the VOC content of coatings and inks. The EPA is always investigating new ways to improve its current test methods including Method 24.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this proposed rulemaking. The principle purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials).

[Section 307(d)(7)(A)].

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year. Section 204 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select form those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of an RFA analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted. Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have an impact on small entities because no additional costs will be incurred.

E. Paperwork Reduction Act

This rule does not change any information collection requirements subject to Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Surface coating of metal furniture, Automotive and light duty truck surface coating operations, Graphic arts industry publications rotogravure printing, Pressure sensitive tape and label surface coating, Industrial surface coating, Large appliances, Metal coil surface coating, Beverage can surface coating industry, Flexible vinyl and urethane coating and printing, Plastic parts for business machine coatings industry, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 23, 1995.

Carol M. Browner,
Administrator.

40 CFR part 60 is amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

2. In § 60.17 of Subpart A, by adding a paragraph (a)(63) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(63) ASTM D 5403–93 Standard Test Methods for Volatile Content of Radiation Curable Materials. IBR approved September 11, 1995 for Method 24 of Appendix A.

* * * * *

3. In Method 24 of Appendix A, Section 3.1 is amended by removing the words "For all other coatings analyzed as follows":

4. In Method 24 of Appendix A, Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7 are redesignated as Sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, respectively.

5. In Method 24 of Appendix A, Equations 24–1 through 24–4 are redesignated as Equations 24–2 through 24–5, respectively.

6. In Method 24 of Appendix A, newly redesignated Section 3.8.1, last sentence, "Section 3.4" is revised to read "Section 3.5".

7. In Method 24 of Appendix A, newly redesignated Section 3.8.2, second sentence, "Section 3.3" is revised to read "Section 3.4".

8. In Method 24 of Appendix A, newly redesignated Section 3.8.2, third sentence, "Section 3.4" is revised to read "Section 3.5".

9. In Method 24 of Appendix A, newly redesignated Section 3.8.2.4, last sentence, "Equation 24–1" is revised to read "Equation 24–2".

10. In Method 24 of Appendix A, Sections 2.6, 3.2 and 3.9 are added to read as follows:

* * * * *

2. * * *

2.6 ASTM D 5403–93 Standard Test Methods for Volatile Content of Radiation Curable Materials (incorporated by reference—see § 60.17).

* * * * *

3.2 Non Thin-film Ultraviolet Radiation-cured Coating. To determine volatile content of non thin-film ultraviolet radiation-cured (UV radiation-cured) coatings, follow the procedures in Section 3.9. Determine water content, density and solids content of the UV-cured coatings according to Sections 3.4, 3.5, and 3.6, respectively. The UV-cured coatings are coatings which contain unreacted monomers that are polymerized by exposure to ultraviolet light. To determine if a coating or ink can be classified as a thin-film UV cured coating or ink, use the following equation:

$C = F\ A\ D$ Eq. 24–1

Where:

A=Area of substrate, in^2, cm^2.
C=Amount of coating or ink added to the substrate, g.
D=Density of coating or ink, g/in^3 (g/cm^3)
F=Manufacturer's recommended film thickness, in (cm).

If C is less than 0.2 g and A is greater than or equal to 35 in^2 (225 cm^2) then the coating or ink is considered a thin-film UV radiation-cured coating for determining applicability of ASTM D 5403–93.

Note: As noted in Section 1.4 of ASTM D 5403–93, this method may not be applicable to radiation curable materials wherein the volatile material is water. For all other coatings not covered by Sections 3.1 or 3.2 analyze as follows:

* * * * *

3.9 UV-cured Coating's Volatile Matter Content. Use the procedure in ASTM D 5403–93 (incorporated by reference—see § 60.17) to determine the volatile matter content of the coating except the curing test described in NOTE 2 of ASTM D 5403–93 is required.

* * * * *

[FR Doc. 95–21527 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 81

[CT–22–1–7078a; A–1–FRL–5271–5]

Clean Air Act Promulgation of Reclassification of PM_{10} Nonattainment Areas—Connecticut; Approval of 1-Year Extension of Attainment Date for New Haven

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is fully approving Connecticut's request for a 1-year extension of the attainment date for the New Haven PM10 nonattainment area. This action is based on monitored air quality data for the national ambient air quality standard for PM10 during the years 1992–94. This action is being taken under the Clean Air Act.

DATES: This final rule is effective November 13, 1995, unless notice is received by October 11, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Building (AAA), Boston, MA 02203–2211. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, US Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns, (617) 565–4982.

SUPPLEMENTARY INFORMATION:

Background

Clean Air Act Requirements and EPA Actions Concerning Designation and Classification

On the date of enactment of the Clean Air Act Amendments of 1990 (herein after referred to as "the Act"), PM10 areas meeting the qualifications of § 107(d)(4)(B) of the Act were designated nonattainment by operation of law. [See generally, 42 USC section 7407(d)(4)(B).] These areas included all former Group I areas and any other areas violating the PM10 standards prior to January 1, 1989. On October 31, 1990 (55 FR 45799), EPA redefined a Group I area for Connecticut as the City of New Haven; the remainder of the state was designated as Group III. Subsequently, after enactment of the Act on November 15, 1990, New Haven was designated moderate nonattainment for PM10 in 56 FR 11101 (March 15, 1991). All other areas not designated nonattainment at enactment were designated unclassifiable.

States containing areas which were designated as moderate nonattainment by operation of law under § 107(d)(4)(B) were required to develop and submit SIPs to provide for the attainment of the PM10 NAAQS. Under § 189(a)(2), those SIP revisions were to be submitted within 1 year of enactment of the Act (November 15, 1991). The SIP revisions were to provide for implementation of reasonable available control measures/technology (RACM/RACT) by December 10, 1993 and attainment of the PM10 NAAQS by December 31, 1994.

Reclassification as Serious Nonattainment

EPA has the responsibility, under §§ 179(c) and 188(b)(2) of the Act, of determining within 6 months after December 31, 1994 whether initial moderate PM10 nonattainment areas have attained the NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's "air quality as of the attainment date," and § 188(b)(2) is consistent with this requirement. EPA will make the determinations of whether an area's air quality is meeting the PM10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). This data will be reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR Part 50, Appendix K.

According to Appendix K, attainment of the annual PM10 standard is achieved when the annual arithmetic mean PM10 concentration is equal to or less than 50 $\mu g/m^3$. Attainment of the 24-hour standard is determined by calculating the expected number of exceedances of the 150 $\mu g/m^3$ limit per year. The 24-hour standard is attained when the expected number of exceedances is 1.0 or less. A total of 3 consecutive years of clean air quality data is generally necessary to show attainment of the 24-hour and annual standards for PM10. A complete year of air quality data, as referred to in 40 CFR Part 50, Appendix K, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

Under § 188(b)(2) a moderate area shall be reclassified as serious by operation of law after the statutory attainment date if the Administrator determines that the area has failed to attain the NAAQS. Under § 188(b)(2)(B) of the Act, the EPA must publish a notice in the **Federal Register** identifying those areas which failed to attain the standard and must be reclassified as serious by operation of law.

Application for a 1-year Extension of the Attainment Date

If the State does not have the necessary number of consecutive clean years of data to show attainment of the NAAQS, a State may apply for an extension of the attainment date. Pursuant to § 188(d) of the Act, a State may apply for and EPA may grant a 1-year extension of the attainment date if the State has: (1) complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than 1 exceedance of the 24-hour PM10 standard in the year preceding the extension year, and the annual mean concentration of PM10 in the area for such year is less than or equal to the standard. If the State does not have the requisite number of years of clean air quality data to show attainment and does not apply or does not qualify for an attainment date extension, the area will be reclassified as serious by operation of law.

Section 188(d) of the Act provides that the Administrator "may" extend the attainment date for areas that meet the minimum requirements specified above. The provision does not dictate or compel that EPA grant extensions to such areas. In exercising this discretionary authority for PM10 nonattainment areas, EPA will examine the air quality planning progress made in the moderate area. EPA will be disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate PM10 planning obligations for the area. In order to determine whether the State has substantially met these planning requirements the EPA will review the States application for the attainment date extension to determine whether the State has: (1) Adopted and substantially implemented control measures submitted to address the requirement for implementing RACM/RACT in the moderate nonattainment area; and (2) that reasonable further progress is being met for the area. RFP for PM10 nonattainment areas is determined to be linear emissions reductions made on an annual basis which will provide progress toward the eventual attainment of the NAAQS in the area.

If an extension is granted, at the end of the extension year, EPA will again determine whether the area has attained the PM10 NAAQS. If the State still does not have 3 consecutive years of clean air quality data, it may apply for a second 1-year extension of the attainment date. In order to qualify for the second 1-year extension of the attainment date, the State must satisfy the same requirements listed above for the first extension. In addition, EPA will consider the State's PM10 planning progress for the area in a manner similar to its evaluation of the first extension request. However, EPA may grant no more than two 1-year extensions of the attainment date to a single nonattainment area. [See § 188(d) of the Act].

Summary of Connecticut's Extension Request

On March 31, 1995, the Connecticut Department of Environmental Protection (Connecticut DEP) submitted a request for a 1-year extension of the attainment date for the New Haven initial moderate PM10 nonattainment area.

EPA's Air Quality Strategies and Standards Division (AQSSD) has prepared a guidance titled "Criteria for Granting 1–Year Nonattainment Area Attainment Dates, Making Attainment Determinations, and Reporting on Quantitative Milestones" (November 14, 1994 memorandum from AQSSD Director Sally Shaver) which outlines how to assess the adequacy of requests for a 1-year extension of the attainment date. The rationale for EPA's approval action are detailed in the Technical Support Document (TSD), dated June 13, 1995. In summary, Connecticut has fulfilled the specific elements of that guidance as follows:

A. Connecticut is implementing the EPA-approved PM10 SIP.

B. New Haven has monitored no more than 1 exceedance during 1994, the year preceding the extension year.[1]

C. Connecticut has demonstrated that RACT/RACM, embodied in 7 consent orders, have been adopted and submitted in the form of a SIP revision and are being implemented for New Haven. Furthermore, real emissions reductions have been achieved.[2]

Connecticut's extension request states that indeed the area recorded no exceedances of the PM10 NAAQS in 1994, and is complying with the applicable state implementation plan. For further details regarding Connecticut's extension request and how it meets EPA's requirements, the reader should refer to the TSD dated June 13, 1995.

Final Action

EPA is approving an extension of the PM10 attainment date for New Haven, Connecticut to December 31, 1995.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 13, 1995.

Under Executive Order 12866, 58 FR 51735 (October 4, 1993) EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

The Agency has determined that the attainment date extension proposed today would result in none of the effects identified in section 3(f). Attainment date extensions under § 188(d) of the Act do not impose any new requirements on any sectors of the economy; nor do they result in a materially adverse impact on State, local, or tribal governments or communities.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under §§ 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined, as discussed earlier, that the finding that is the subject of this final action of failure to attain and grant a 1-year extension does not impose any federal intergovernment mandate, as defined in section 101 of the Unfunded Mandates Act. A finding that an area has failed to attain and should be granted a 1-year extension of the attainment date consists of factual determinations based upon air quality considerations and the area's compliance with certain prior requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector result from this action. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Extensions of attainment dates under § 188(d) do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 USC § 7410 (a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under § 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See § 307(b)(2).]

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 10, 1995.

John P. DeVillars,

Regional Administrator, EPA-New England.

[FR Doc. 95–22132 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

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[1] A review of the PM10 air quality data for New Haven shows air quality monitors for this area monitored 4 exceedances of the 24-hour PM10 NAAQS during the 3-year period from 1992 to 1994. All exceedances occurred in 1993 at the Yankee Gas monitor site (AIRS Site ID 09–009–0021). The area did not have any exceedances of the PM10 NAAQS in 1994.

[2] Section 189(c) requires that Part D SIPs include quantitative milestones to document RFP towards attainment. Every 3 years until EPA redesignates an area to attainment, States must report on whether milestones have been met. Connecticut's SIP commits CT DEP to submit quantitative milestone and RFP reports to EPA every 3 years. For initial moderate PM10 nonattainment areas, the emissions reductions made between SIP submittal and the attainment date will satisfy the first quantitative milestone. (See General Preamble 57 FR 13539.) Since EPA believes it is reasonable to key the first milestone to the SIP revision containing control measures which will result in emission reductions and since the PM10 attainment date was less than 3 years from the actual submittal date of CT DEP's SIP revision, CT DEP submitted—and EPA is accepting—the emissions reductions associated with the New Haven PM10 Attainment Plan SIP revision (submitted to EPA on March 22, 1994) as meeting RFP and the first quantitative milestone for New Haven. (See TSD dated March 27, 1995.)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803, 1815, and 1852

Addition of Coverage to NASA FAR Supplement Coverage on NASA Ombudsman Program

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends the regulations by adding coverage concerning NASA's Ombudsman Program. The Ombudsman Program will improve communications with interested parties. This rule sets forth a clause for identification of the NASA and installation ombudsmen to be included in solicitations and contracts. The clause also serves as the basis for a statement to be included in "Commerce Business Daily" announcements. In addition, the rule amends NASA's coverage on procurement integrity to include the NASA and installation ombudsmen as individuals authorized access to proprietary and source selection information.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 1995, a proposed rule to amend the NFS to add coverage on NASA's Ombudsman Program was published in the **Federal Register** (60 FR 27710) for comment. All comments were reviewed. A change was made as a result of the comments to substitute the word "adjudication" for "arbitration" in the clause at 1852.7002. That change was made as the term "arbitration" could be read as being too restrictive in its meaning. In addition, the word "Selection," appearing in the clause at 1852.215–84 was replaced with "Evaluation." That change is due to "Selection" being incorrect when the intention was to refer to NASA "Source Evaluation Board."

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1803, 1815, and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1803, 1815, and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1803, 1815, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. In section 1803.104–5, the introductory text of paragraph (c) is revised and (c)(11) is added to read as follows:

1803.104–5 Disclosure, protection, and marking of proprietary and source selection information.

* * * * *

(c) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

* * * * *

(11) Duly designated ombudsman.

* * * * *

PART 1815—CONTRACTING BY NEGOTIATION

3. Subpart 1815.70 is added to read as follows:

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.
1815.7002 Commerce Business Daily announcements, solicitations and contracts.

1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NMI 1210.3, NASA Ombudsman Program.

1815.7002 Commerce Business Daily announcements, solicitations and contracts.

The contracting officer shall include a statement similar to that contained in the clause at 1852.215–84, Ombudsman, in Commerce Business Daily announcements of competitive procurements. Also, a clause substantially the same as the one at 1852.215–84 shall be included in Section L of solicitations, including draft solicitations, and in all contracts.

4. Section 1852.215–84 is added to read as follows:

1852.215–84 Ombudsman.

As prescribed in 1815.7002, insert the following clause:

Ombudsman

(October 1995)

An ombudsman has been appointed to hear concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. The purpose of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official, but to communicate concerns, issues, disagreements, and recommendations of interested parties to the appropriate Government personnel and to work to resolve them. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Interested parties are invited to call the installation ombudsman _______ [Insert name] at _______ [Insert telephone number]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman _______ [Insert name] at _______ [Insert telephone number].

(End of Clause)

[FR Doc. 95–22364 Filed 9–8–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 940710–4292; I.D. 090195E]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure of a Commercial Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of a commercial fishery for king mackerel.

SUMMARY: NMFS closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the western zone of the Gulf migratory group. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: September 5, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1, 1995, through June 30, 1996) set the commercial quota at 0.77 million pounds (0.35 million kg) for the western zone.

Under 50 CFR 642.26(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota has been reached, or is projected to be reached, by publishing a document in the **Federal Register**. NMFS has determined that the commercial quota of 0.77 million pounds (0.35 million kg) for the western zone of the Gulf migratory group of king mackerel was reached on September 4, 1995. Hence, the commercial fishery for Gulf group king mackerel from the western zone is closed effective 12:01 a.m., local time, September 5, 1995, through June 30, 1996, the end of the fishing year. The boundary between the eastern and western zones is a line directly south from the Florida/Alabama boundary (87°31′06″ W. long.).

Except for a person aboard a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ king mackerel from the western zone. A person aboard a charter vessel may continue to fish for king mackerel in the western zone under the bag limit set forth in § 642.24(a)(1)(i), provided the vessel is under charter and the vessel has an annual charter vessel permit, as specified in § 642.4(a)(2). A charter vessel with a permit to fish on a commercial allocation is under charter when it carries a passenger who fishes for a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the western zone taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 642.26(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 5, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22401 Filed 9–6–95; 10:44 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 60, No. 175

Monday, September 11, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 93–119–1]

Importation of Citrus Fruits from Australia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations to allow oranges, lemons, limes, mandarins, and grapefruit from the Riverina and Sunraysia districts of Australia to be imported into the United States. We are taking this action because it appears that the citrus may be imported without presenting a significant risk of introducing injurious insects into the United States. Adoption of this proposed rule would provide importers and consumers in the United States with an additional source of citrus fruit.

DATES: Consideration will be given only to comments received on or before October 11, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–119–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–119–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper or Mr. Peter M. Grosser, Senior Operations Officers, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 through 319.56–8 (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. Paragraphs (e) and (f) of § 319.56–2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area or district is free from all or certain injurious insects.

The regulations also provide, among other things, that all importations of fruits and vegetables, as a condition of entry, shall be subject to inspection or treatment, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector (see § 319.56–6). Section 319.56–6 also provides that shipments of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous pests and an inspector determines that the pests cannot be eliminated by disinfection or treatment.

Section 319.56–2v contains provisions for importing citrus fruit from Australia. Currently, § 319.56–2v provides for imports of citrus from only specified subdivisions of the Riverland district. Citrus fruit may be imported from the Riverland district without treatment for fruit flies if the area remains free of fruit flies. Importation of citrus fruit from the Riverland district could continue in the event of a fruit fly infestation if the fruit undergoes cold treatment and meets all other applicable requirements of the regulations. Entry of citrus into the United States from the Riverland district of Australia would be denied if a fruit fly destructive of citrus should be detected in the Riverland district, and there is no authorized cold treatment for this fruit fly.

The Australian Quarantine and Inspection Service (AQIS) has requested that we consider allowing the entry of oranges (*Citrus sinensis* [Osbeck]); lemons (*C. limonia* [Osbeck] and *meyeri* [Tanaka]); limes (*C. aurantiifolia* [Swingle] and *latiifolia* [Tanaka]; mandarins, including satsumas, tangerines, tangors, and other fruits grown from this species or its hybrids (*C. reticulata* [Blanco]); and grapefruit (*C. paradisi* [MacFad.]) from the Riverina and Sunraysia districts of Australia, as well. The Riverina district of New South Wales is comprised of (1) the shire of Carrathool; and (2) the Murrumbidgee Irrigation Area, which is within the administrative boundaries of the city of Griffith and the shires of Leeton, Narrendera, and Murrumbidgee. The Sunraysia district is comprised of the shires of Wentworth and Balranald in New South Wales and the shires of Mildura, Swan Hill, Wakool, and Kerang, the cities of Mildura and Swan Hill, and the borough of Kerang in Victoria.

Both the Mediterranean fruit fly (*Ceratitis capitata* [Wiedemann]) and the Queensland fruit fly (*Dacus tryoni* [Frogg]), insects injurious to citrus, are known to attack citrus in Australia. The Mediterranean fruit fly is not widely distributed in the United States, and the Queensland fruit fly does not occur in the United States. If introduced into the United States, these pests would represent a serious threat to domestic fruit crops. AQIS has conducted extensive trapping surveys[1] that show the Riverina and Sunraysia districts to be free of all types of fruit flies that attack citrus. Specifically, we have determined that:

(1) Within the past 12 months, AQIS has conducted trapping surveys that show the Riverina and Sunraysia districts to be free from all fruit flies that attack citrus;

(2) AQIS has adopted and is enforcing requirements to prevent the introduction of fruit flies destructive of citrus into the Riverina and Sunraysia districts; and

(3) AQIS has submitted to the Administrator of the Animal and Plant Health Inspection Service (APHIS) detailed procedures for the conduct of pest surveys in the Riverina and Sunraysia districts, and for the enforcement of requirements to exclude fruit flies from these districts.

The Administrator of APHIS has determined that the survey methods employed by AQIS are adequate to detect infestations of the Mediterranean fruit fly, the Queensland fruit fly, and other fruit flies destructive of citrus. The Administrator has also determined that the requirements adopted and enforced by AQIS to prevent the introduction of injurious insects into the Riverina and Sunraysia districts of Australia are at least equivalent to those requirements imposed in the United States to prevent the introduction and interstate spread of injurious insects. Therefore, we are proposing to amend § 319.56–2v to allow the importation of oranges, lemons, limes, mandarins, and grapefruit from the Riverina and Sunraysia districts of Australia without treatment for fruit flies, provided that these districts remain free of fruit flies that attack citrus.

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[1] Information regarding how the surveys were conducted can be obtained from the individuals listed under FOR FURTHER INFORMATION CONTACT.

If fruit flies were detected in a district, we would continue to allow oranges, lemons, limes, mandarins, and grapefruit to be imported from that district, subject to the completion of an APHIS-authorized cold treatment for that fruit fly, and to all other applicable requirements of the regulations. This provision would allow importers and exporters to respond to suddenly changed circumstances, such as a Mediterranean fruit fly or Queensland fruit fly infestation, without unnecessarily interrupting fruit shipments or creating a significant risk of introducing fruit flies into the United States.

However, if no APHIS-approved treatment is available for the detected fruit fly, the importation of citrus fruit from the district in which the fruit fly was detected would be prohibited. These are the same provisions currently in the regulations for citrus imported into the United States from the Riverland district of Australia.

In the event that citrus from the Riverina or Sunraysia district of Australia requires treatment for fruit flies, entry of the citrus into the United States would be limited to the port of Wilmington, NC, and North Atlantic ports north of and including Baltimore, MD, if treatment for fruit flies is to be completed in the United States. The climatic conditions in the northeastern United States would ensure that any injurious pests accompanying a shipment of citrus prior to treatment would not pose a risk in that area. Special precautions at the port of Wilmington, NC, mitigate risk there (see § 319.56–2d(b)(5)(iv)). Entry would be allowed through any port if treatment has been completed prior to arrival in the United States.

Lastly, we propose to amend § 319.56–2v by removing a reference to cold treatment authorized under § 319.56–2d and replacing it with a reference to cold treatment in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. Cold treatment schedules no longer appear in § 319.56–2d, but are in the PPQ Treatment Manual, and § 319.56–2d currently refers readers to the PPQ Treatment Manual for the details of cold treatment.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Fruits and Vegetables regulations by allowing the importation of oranges, lemons, limes, mandarins, and grapefruit from the Riverina and Sunraysia districts of Australia.

According to a USDA estimate, the total U.S. production of citrus fruits was approximately 11.172 million metric tons in 1992. Approximately 1.1 million metric tons of citrus fruits were exported from the United States in 1992, with about 9,741 metric tons exported to Australia.

According to an estimate offered by the Australian Office of the Counsellor, Australia produced approximately 592,000 metric tons of citrus fruits in 1992. Citrus production in Australia is oriented primarily to domestic consumption, with exports accounting for approximately 79,000 metric tons, or only about 13 percent of the total production, in 1992. Of the total quantity exported, 2,517 metric tons (about 3 percent) went to the United States.

The U.S. entities who would be most affected by this proposed rule would include citrus fruit producers, exporters, and importers. It is estimated that 93 percent of the U.S. farms that produce citrus fruit, approximately 21,225 farms in all, qualify as small businesses. While this proposed rule would provide an additional supply of citrus fruit in the United States, domestic citrus fruit producers, including small entities, could expect a very insignificant decline in the price of citrus fruits. Due to the seasonal difference in availability, U.S. and Australian producers would not be in direct competition for the domestic citrus market. Both exporters and importers would be expected to benefit from the proposed rule. The projected benefit to exporters may accrue from the expanded export opportunities that could result from a favorable reciprocal trade treatment given by Australia. Importers may also benefit from the increased availability of citrus fruit, especially navel oranges, during the time of year when U.S. production is lowest. However, the economic benefits to importers and exporters are not expected to be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule would allow oranges, lemons, limes, mandarins, and grapefruit to be imported into the United States from the Riverina and Sunraysia districts of Australia. If this proposed rule is adopted, State and local laws and regulations regarding citrus fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh citrus fruits are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 319.56–2v would be revised to read as follows:

§ 319.56–2v Conditions governing the entry of citrus from Australia.

(a) The Administrator has determined that the irrigated horticultural areas within the following districts of Australia meet the criteria of § 319.56–2 (e) and (f) with regard to the Mediterranean fruit fly (*Ceratitis capitata* [Wiedemann]), the Queensland fruit fly (*Dacus tryoni* [Frogg]), and other fruit flies destructive of citrus:

(1) The Riverland district of South Australia, defined as the county of Hamley and the geographical subdivisions, called "hundreds," of Bookpurnong, Cadell, Gordon, Holder, Katarapko, Loveday, Markaranka, Morook, Murtho, Parcoola, Paringa, Pooginook, Pyap, Stuart, and Waikerie;

(2) The Riverina district of New South Wales, defined as:

(i) The shire of Carrathool; and

(ii) The Murrumbidgee Irrigation Area, which is within the administrative boundaries of the city of Griffith and the shires of Leeton, Narrendera, and Murrumbidgee; and

(3) The Sunraysia district, defined as the shires of Wentworth and Balranald in New South Wales and the shires of Mildura, Swan Hill, Wakool, and Kerang, the cities of Mildura and Swan Hill, and the borough of Kerang in Victoria.

(b) Oranges (*Citrus sinensis* [Osbeck]); lemons (*C. limonia* [Osbeck] and *meyeri* [Tanaka]); limes (*C. aurantiifolia* [Swingle] and *latiifolia* [Tanaka]); mandarins, including satsumas, tangerines, tangors, and other fruits grown from this species or its hybrids (*C. reticulata* [Blanco]); and grapefruit (*C. paradisi* [MacFad.]) may be imported from the Riverland, Riverina, and Sunraysia districts without treatment for fruit flies, subject to paragraph (c) of this section and all other applicable requirements of this subpart.

(c) If surveys conducted in accordance with § 319.56–2d(f) detect, in a district listed in paragraph (a) of this section, the Mediterranean fruit fly (*Ceratitis capitata* [Wiedemann]), the Queensland fruit fly (*Dacus tryoni* [Frogg]), or other fruit flies, citrus fruit from that district will remain eligible for importation into the United States in accordance with § 319.56–2(e)(2), provided the fruit undergoes cold treatment in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter, and provided the fruit meets all other applicable requirements of this subpart. Entry is limited to ports listed in § 319.56–2d(b)(1) of this subpart if the treatment is to be completed in the United States. Entry may be through any port if the treatment has been completed in Australia or in transit to the United States. If no approved treatment for the detected fruit fly appears in the PPQ Treatment Manual, importation of citrus from the affected district or districts is prohibited.

Done in Washington, DC, this 1st day of September 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–22406 Filed 9–8–95; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 618, 619, and 626

RIN 3052–AB10

Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions; Definitions; Nondiscrimination in Lending

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) through the Farm Credit Administration Board (Board) proposes to amend the current regulations that govern eligibility and purposes for financing from Farm Credit System (Farm Credit, FCS, or System) banks and associations. This proposal would incorporate recent statutory amendments that govern eligibility and loan purposes from Farm Credit banks that operate under title III of the Farm Credit Act of 1971, as amended (Act). The proposed rule would also implement recently enacted sections 3.1(11)(B) and 4.18A of the Act, which grant Farm Credit banks and associations authorities to participate with non-System lenders in loans to similar entities. At the same time, the FCA proposes to eliminate restrictions in the current regulations that are not required by the Act. The FCA proposes to substantially reorganize these regulations in order to enhance their clarity. The FCA also proposes several technical amendments to other regulations so they conform with this proposal. The proposed rule would relocate the nondiscrimination in lending regulations to a new part without change.

DATES: Comments should be received on or before December 11, 1995.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for review by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Policy Development and Planning Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

The FCA proposes to amend its regulations in part 613 to eliminate unnecessary regulatory restrictions and implement statutory changes. Several recent amendments to sections 3.7 and 3.8 of the Act expand eligibility and purposes of financing for borrowers from BCs and ACBs. Two new statutory provisions were enacted in 1992 and 1994, which authorize Farm Credit banks and associations to participate with non-System lenders in loans to borrowers who are functionally similar but otherwise ineligible for direct FCS financing when the loans are for purposes that are within the System's scope of financing (sections 3.1(11)(B) and 4.18A of the Act).

The FCA's approach in crafting new eligibility regulations is guided by the Board's Policy Statement on Regulatory Philosophy (Policy Statement).[1] Pursuant to this Policy Statement, the FCA is committed to adopting regulations only as necessary to: (1) Implement or interpret the law; or (2) promote the safe and sound operations of System institutions. Consistent with the Policy Statement, the FCA proposes to remove regulatory provisions that prescribe operational procedures, to simplify and clarify the regulations wherever possible, and to delete existing regulatory restrictions that are not imposed by law or necessary to interpret the law or promote safety and soundness. The FCA's proposal should permit FCS institutions to more effectively meet the credit needs of agricultural and aquatic producers, farm-related businesses, rural homeowners, cooperatives, and rural utilities in today's economic environment. Additionally, it should help stimulate economic development in rural areas by increasing the availability of affordable credit to eligible borrowers.

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[1] *See* 60 FR 26034 (May 16, 1995).

The FCA believes that removing non-statutory restrictions in these regulations will enable the FCS to compete appropriately in agricultural and rural credit markets and ultimately enhance its safety and soundness. In this context, the FCA's proposal will enable the FCS to fulfill its statutory mission (as stated in the preamble to the Act) to provide: (1) "A farmer-owned cooperative System of making credit available to farmers, ranchers, and their cooperatives;" and (2) "an adequate and flexible flow of money into rural areas."

II. Financing Under Titles I and II of the Act

The FCA proposes new eligibility regulations for Farm Credit banks and associations that operate under titles I and II of the Act. These rules are designed to clarify current eligibility criteria and the scope or purposes for which System financing may be obtained. The FCA's proposal eliminates provisions in existing subparts A and B of part 613 that prescribe management practices and procedures or unnecessarily restrict the eligibility of persons authorized to borrow under the Act.

The FCA also proposes to reorganize and clarify these regulations so they can be better utilized by the FCS, the FCA, and other interested parties. The existing regulations in subparts A and B would be replaced by four new regulations in subpart A of part 613, which would authorize System banks and associations to extend credit to the following classes of eligible borrowers: (1) Bona fide farmers, ranchers, and producers or harvesters of aquatic products; (2) processing or marketing operators; (3) farm-related businesses that provide services to farmers and ranchers; and (4) rural homeowners. An explanation of the proposed amendments follows.

A. Bona Fide Farmers, Ranchers, and Aquatic Producers and Harvesters

Sections 1.9(1) and 2.4(a)(1) of the Act state that "bona fide farmers, ranchers, and producers or harvesters of aquatic products" are eligible to borrow from Farm Credit banks and associations that operate under titles I or II of the Act, respectively. The term "bona fide farmer, rancher, or producer or harvester of aquatic products" is not defined in either the Act or its legislative history.

The FCA proposes to adopt a single regulation, § 613.3000, that will determine eligibility for financing for loans made to farmers, ranchers, and aquatic producers and harvesters. As a result of this consolidation, the FCA proposes to delete existing §§ 613.3000, 613.3005, 613.3010, and 613.3020.

Proposed § 613.3000(a)(2) defines a bona fide farmer, rancher, and aquatic producer as an individual or legal entity that either: (1) Produces agricultural products or produces or harvests aquatic products to generate income; or (2) owns agricultural land. The definition in the proposed regulation does not represent a significant departure from the existing regulations. The FCA proposes to combine the separate definitions of farmers and ranchers in existing § 613.3010(a) and aquatic producers and harvesters in § 613.3010(d) into a single provision, without substantive change. Agricultural land is defined by proposed § 613.3000(a)(1) as "land that is devoted to or available for the production of agricultural or aquatic products." This proposed definition is more streamlined and would replace current § 619.9025.

1. Elimination of Regulatory Restrictions on Eligibility

Although the regulatory definition of "bona fide farmer" remains essentially unchanged, this proposal would reduce or eliminate restrictions in the current regulations on financing to three types of farmers: part-time farmers, certain legal entities, and certain foreign nationals. The proposed regulation, consistent with the Act, eliminates all distinctions among farmers regarding their eligibility for agricultural and aquatic financing. The FCA proposes to place limits on financing that eligible borrowers may obtain for certain purposes. For the reasons explained below, limitations on financing of non-agricultural credit needs have been retained.

A. Part-time Farmers

The FCA proposes to eliminate any distinction between full-time and part-time farmers, ranchers, and aquatic producers and harvesters. Although the eligibility provisions in titles I and II of the Act do not distinguish full-time from part-time producers, current § 613.3005(a) establishes different lending policies and objectives for full-time and part-time producers who are eligible to borrow. The existing regulation requires Farm Credit Banks (FCBs), agricultural credit banks (ACBs), and their affiliated associations to provide: (1) "Full credit, to the extent of creditworthiness, to full-time bona fide farmers;" (2) "conservative credit" to part-time farmers for agricultural enterprises; and (3) "restricted credit for other credit requirements as needed to ensure a sound credit package."

System institutions have noted that § 613.3005 is more restrictive than the Act. Further, uniform and consistent application throughout the FCS has been difficult to achieve. For these reasons, the FCA proposes to repeal § 613.3005 (a) and (c) and replace it with a new § 613.3000, which will be clear, concise, and easier to implement.

Proposed § 613.3000 does not differentiate between full-time and part-time agricultural and aquatic producers. Moreover, the evolution of agriculture has made part-time producers an increasingly important sector of the agricultural industry and rural America,[2] and existing regulations restricting the scope of lending to them may not serve the purposes of the Act, which does not distinguish between full-time and part-time farmers. The applicant's creditworthiness, not eligibility criteria, would determine the availability of System loans to part-time farmers, as it does with full-time farmers. The broad prescriptions for operational policies and procedures of current § 613.3005(c), which were designed to keep the focus on agricultural lending would be replaced with limitations on the amount of other business credit needs of farmers that could be financed. Although the FCA is removing the policy and procedure requirements of § 613.3005(c), the FCA believes that FCS banks and associations should continue to adopt and implement sound management practices and policies to guide their operations.

B. Legal Entities

The FCA's proposed regulation also removes most distinctions between individuals and legal entities. No restriction on lending to legal entities appears in the Act, and a review of the legislative history of the Act reveals that Congress, over an extended period of time, deleted all statutory restrictions on loans to legal entities by title I and II institutions or their predecessors. The FCA proposes to update its regulations to conform with these changes.

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[2] A recent report by the United States Department of Agriculture, entitled Rural Conditions and Trends, Spring 1995, reported 88 percent of a farm household's income comes from sources off the farm, with farm (income) accounting for the rest.

Under an existing regulation, § 613.3020(b), a legal entity is ineligible for loans from Farm Credit banks and associations unless more than 50 percent of: (1) Its equity or voting shares are owned by individuals conducting an agricultural or aquatic operation; (2) the value of its assets are related to the production of agricultural or aquatic commodities; or (3) its income is derived from agricultural or aquatic activities. Furthermore, the current regulation imposes additional requirements on a legal entity that is owned or controlled by another legal entity that is an ineligible borrower.

In 1993, the FCA solicited public comment on the burdens that existing regulations impose on System institutions. See 58 FR 34003, June 23, 1993. Several commenters responded that existing § 613.3020(b) limits the System's ability to finance legal entities despite the removal of such restrictions in the Act. Some of the comment letters also noted that the current regulation favors individual borrowers over legal entities.

After considering these comments, the FCA proposes to adopt a regulatory approach that equalizes the treatment of legal entities and individual borrowers with respect to financing their agricultural and aquatic needs. Section 1.1(b) of the Act states that one of the objectives of the FCS is to "be responsive to the credit needs of all types of agricultural producers having a basis for credit." Accordingly, the FCA concludes that the eligibility requirements for System institutions should not influence any borrower's decision about whether to farm, ranch, or fish in an individual capacity or as a legal entity.

The FCA proposes to eliminate the requirements in current § 613.3020(b) that most of the owners, assets, or income of an eligible legal entity be related to an agricultural or aquatic enterprise. Rather, any legal entity that engages in agricultural or aquatic production to generate income or owns agricultural land would become an eligible System borrower under proposed § 613.3000(a)(2). The FCA's proposal does not preempt State laws that prohibit or otherwise restrict legal entities (other than closely held family farm corporations) from owning agricultural land or conducting a farming, ranching, or aquatic operation.

Under the proposed regulation, entities that are eligible under title III of the Act would not qualify as legal entities for purposes of financing under titles I or II of the Act. The FCA is aware that some cooperatives now qualify for financing from FCBs and associations, as well as from BCs and ACBs. In fact, some cooperatives have existing financial relationships with associations. Although the FCA does not desire to interfere with existing business relationships, it is concerned that expanded competition within the FCS could be detrimental. The FCA invites comments on whether this approach is appropriate and on other alternatives for addressing this concern.

C. Nationality of the Borrower

Current FCA regulations permit System lenders to provide agricultural financing to foreign nationals only if they are permanent residents of the United States. This restriction derives from language in section 1.1(a) of the Act, which states:

> The farmer-owned cooperative Farm Credit System (is) designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them (and) their cooperatives.

The FCA has viewed this provision as a basis for limiting the ability of the System to lend to certain foreign nationals. Existing § 613.3010(c) states that only foreign nationals who are admitted into the United States for permanent residence pursuant to 8 U.S.C. 1101(a)(20) are eligible for System financing. Legal entities that are owned by foreign nationals who are permanent residents of the United States also qualify for System financing under this provision.

The FCA is aware that non-resident foreign nationals and legal entities owned by such persons have applied to FCS banks and associations for agricultural or aquatic loans. System institutions and members of Congress have made the Agency aware of applicants who own and operate farms or processing and marketing operations in the United States, but are ineligible for financing because they are not citizens or permanent residents. FCS banks and associations are currently required by current § 613.3010(c) to reject automatically the loan applications of such prospective borrowers solely on the basis of their nationality and residency status. Many FCS banks and associations state that the current regulation compels them to deny loans to otherwise creditworthy farmers, ranchers, and aquatic producers and harvesters who make significant contributions to American agriculture. Furthermore, existing § 613.3010 causes System lenders to forfeit to competitors profitable business opportunities with entities that are statutorily eligible to borrow from the System. Many FCS representatives and some members of Congress have questioned the FCA's decision to prohibit System institutions from financing those agricultural and aquatic producers who are non-resident foreign nationals or foreign national legal entities.

These comments have prompted the FCA to consider whether the existing regulation is unnecessarily restrictive. In considering these comments, the FCA examined the immigration and nationality laws of the United States. As a general rule, foreign nationals are allowed to enter the United States as either immigrants or non-immigrants. According to 8 U.S.C. 1101(a)(20), persons who are lawfully admitted for permanent residence in the United States have immigrant status. As noted earlier, agricultural or aquatic producers who are admitted into the United States as permanent residents are already eligible to borrow from System institutions.

Non-immigrants generally are defined as foreign nationals who do not intend to abandon their residence in their home countries and settle permanently in the Untied States. Certain categories of non-immigrants are allowed to conduct businesses and own property in the United States. For example, non-immigrant foreign nationals may enter the United States to conduct business as:

(1) Businesspersons under 8 U.S.C. 1101(a)(15)(B);

(2) Merchants or traders under 8 U.S.C. 1101(a)(15)(E); or

(3) Executives, managers, or specialists for a legal entity that employs them, pursuant to 8 U.S.C. 1101(a)(15)(L).

The proposed regulation would expand eligibility provisions to encompass all foreign nationals who are authorized by the laws of the United States to engage in agricultural or aquatic production or to own agricultural land in the United States. It would also cover domestic legal entities in which foreign nationals have an ownership interest. The FCA believes that this interpretation is consistent with section 1.1(a) of the Act and it provides FCS institutions with greater flexibility to finance bona fide farmers, ranchers, and aquatic producers and harvesters who actively contribute to the growth, productivity, and prosperity of domestic agriculture and the rural economy.

As a result of its consideration of this issue, the FCA proposes to amend its eligibility regulations to enable Farm Credit banks and associations to finance certain non-immigrant foreign nationals who are bona fide farmers, ranchers, and aquatic producers or harvesters, as defined by proposed § 613.3000. More specifically, proposed § 613.3000 (a)(2) and (a)(3)(ii) would expand the definition of "individual" to include foreign nationals who have been admitted lawfully into the United States pursuant to any provision in 8 U.S.C. 1101(a)(15) that authorizes such individuals to own property or operate or manage businesses. This would permit such persons to qualify as a bona fide farmer, rancher, or aquatic producer or harvester if they are engaged in production or own agricultural land.

The proposed regulation would afford the same treatment to legal entities owned by citizens and permanent residents of the United States, or controlled by non-resident foreign nationals, provided that the entity is chartered domestically. The FCA observes, however, that certain foreign nationals and foreign national legal entities have registration and disclosure obligations under the Agricultural Foreign Investment Act of 1978 (AFIDA), 7 U.S.C. 3508, and its implementing regulation, 7 CFR Part 781. Because the Secretary of Agriculture is authorized by section 3 of AFIDA, 7 U.S.C. 3502, to impose civil penalties on non-resident foreign nationals and foreign national legal entities who fail to comply with these disclosure provisions, System institutions that lend to borrowers who are subject to the AFIDA should ensure that the borrowers have complied with its requirements. The FCA observes that the proposed regulation does not preempt State laws that prohibit or otherwise restrict non-resident foreign nationals and foreign national legal entities from owning agricultural land or conducting a farming, ranching, or aquatic operation within their jurisdiction.

The FCA notes that legal entities that are chartered by a foreign government or headquartered outside the United States are also covered by the AFIDA. The FCA seeks comment on whether foreign national legal entities that do not have a domestic subsidiary should be eligible for financing under the final regulation.

2. Limitations on Financing

The proposed regulations would impose no limitations on the System's ability to finance the agricultural and aquatic needs of farmers, ranchers, and aquatic producers. Proposed § 613.3000(c) would authorize FCS banks and associations to extend credit to all eligible borrowers for any agricultural or aquatic purpose, including refinancing pre-existing agricultural or aquatic debt.

Proposed § 613.3000(d) would enable eligible farmers, ranchers, and aquatic producers or harvesters to obtain System loans for their other credit needs with certain limitations. Sections 1.11(a) and 2.4(a) of the Act expressly authorize System banks and associations to finance the other credit needs of agricultural and aquatic producers. This statutory authority has existed since 1955,[3] when Congress originally acknowledged that farmers and ranchers often require credit for other "sound and appropriate" purposes so they can make ends meet and remain on the farm.[4] This longstanding Congressional policy is currently codified in § 613.3005(a).

The FCA proposes a regulatory approach that grants FCS banks and associations greater flexibility to finance the other credit needs of bona fide farmers, ranchers, and aquatic producers and harvesters, but simultaneously preserves the mission of System institutions as agricultural lenders. The proposed regulation removes the existing requirement that a borrower have an outstanding agricultural or aquatic loan in order to receive financing for other credit needs. Today, many agricultural and aquatic producers pursue non-farm business opportunities as a matter of economic survival. A Farm Credit System that is responsive to such other credit needs helps agricultural and aquatic producers to remain on their farms and ranches and in America's rural communities. Furthermore, System lenders fulfill their obligation to "provide for an adequate and flexible flow of money into rural areas, and * * * to meet current and future rural credit needs" when they finance certain non-farm businesses owned by farmers in rural areas. In this context, the Act expressly contemplates that Farm Credit banks and associations will contribute to economic development in rural areas by financing the other business needs of farmers, ranchers, and aquatic producers and harvesters.

Lending for farmers' other credit needs also enables FCBs, ACBs, and their affiliated associations to strengthen their viability by diversifying their loan portfolios. A strong and competitive Farm Credit System increases the availability of affordable credit in rural America. Lending for other domestic and business needs allows System banks and associations to offer a full array of quality credit services to farmers, ranchers, and aquatic producers and harvesters at competitive interest rates and to provide an incidental benefit to rural communities.

Because the primary mission of the FCS is to finance agriculture and aquaculture, the FCA's proposal would restrict loans for the other credit needs of System borrowers. In the FCA's opinion, the availability of credit for non-agricultural purposes should be proportionally related to the borrower's involvement in farming, ranching, or aquatic production or harvesting. For the reasons explained below, proposed § 613.3000(d) would grant borrowers who engage in agricultural or aquatic production ("farmer-producers") greater access to the FCS for their other credit needs than it would grant to borrowers who are eligible only because they own agricultural land as an investment ("farmer-investors") and non-resident foreign nationals. The FCA's proposal is designed to permit family farm corporations and other legal entities that are closely held by eligible farmers, ranchers, and aquatic producers and harvesters to finance their other credit needs at an FCS bank or association. However, the proposed regulation would authorize System banks and associations to finance only the agricultural or aquatic needs of publicly traded corporations and conglomerates with significant assets unrelated to agriculture.

Proposed § 613.3000(d)(1) would enable farmer-producers to obtain System financing for their housing and other domestic needs without restriction (other than their creditworthiness). Proposed § 613.3000(d)(1) also allows farmer-producers to obtain limited System financing for their other business needs in an amount that does not exceed the market value of their agricultural or aquatic assets. This regulatory approach would ensure that the amount of financing that farmer-producers obtain from FCS banks and associations for non-farm business needs would be proportionate to their investment in their agricultural or aquatic activities.

For the purposes of proposed § 613.3000(d), agricultural assets include real estate, a home that is located on a farm or ranch, equipment, chattel, and livestock. The proposed regulation contemplates that the market value of agricultural assets would be determined at the time of loan

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[3] The former Federal land banks were granted this authority by the Farm Credit Act of 1955, Pub. L. No. 347, section 304(a), 69 Stat. 655 (Aug. 11, 1955). The Farm Credit Act of 1956 granted this authority to the PCAs, Pub. L. No. 84–809, section 105(i), 70 Stat. 665 (July 26, 1956).

[4] S. Rep. No. 1201, 84th Cong., 1st. Sess., (July 28, 1955), p. 21; H. Rep. No. 863, 84th Cong., 1st. Sess., (June 20, 1955), p. 20.

application from the most credible source available to FCS institutions. Because real estate, equipment, and livestock make up the bulk of agricultural assets on most loan applications, appraisals and collateral valuations would be the logical sources to support the market value of the most material of these assets. Absent available appraisals and valuations completed for the FCS institution, other sources could serve as a basis for determining market value such as county tax assessment values or real estate multiple listings. It is not the FCA's intent to cause extra cost or regulatory burden on either the FCS institution or the borrower in order to establish the market value of agricultural assets for determining the level of financing available from the System. Rather, a reasonable but credible valuation performed by FCS institutions that can be supported and tested should suffice for determining compliance with this subpart.

Proposed § 613.3000(d)(2) would limit financing that farmer-investors could obtain from the FCS for all of their other credit needs, including housing and domestic needs, to the market value of their agricultural assets. Such borrowers are not engaged in agricultural production and own agricultural land as a passive investment. As the FCA interprets the Act through its legislative history, Congress did not intend that these farmer-investors have the same access to the FCS for non-agricultural credit needs as farmer-producers. Proposed § 613.3000(d)(2) precludes farmer-investors from obtaining FCS loans for their other credit needs in amounts that are disproportionate to their investment in agriculture. The proposed regulation imposes no restrictions on loans for agricultural or aquatic purposes that farmer-investors may obtain from System banks and associations, and therefore, farmer-investors would have increasing access to the FCS for their other credit needs as their investment in agriculture increases. Retired farmers, ranchers, and aquatic producers and harvesters whose land is cultivated by others would be considered farmer-producers, if they acquired their agricultural land originally for agricultural production purposes rather than as an investment.

Non-resident foreign nationals are accorded the same treatment under proposed § 613.3000(d) as farmer-investors. Although such borrowers are often active agricultural or aquatic producers, their legal status imposes restrictions on their activities within the United States. Prudence requires greater restrictions on these borrowers than on farmer-producers who are citizens or permanent residents of the United States.

Proposed § 613.3000(d)(3) would continue to authorize System banks and associations to finance the other credit needs of family farm corporations and other small and medium sized legal entities that are closely held by bona fide farmers, ranchers, and aquatic producers or harvesters. Although all agricultural corporations would now become eligible to borrow from Farm Credit banks and associations that operate under titles I and II of the Act, the FCA intends that most large agricultural borrowers could obtain System financing only for their agricultural or aquatic needs. Under proposed § 613.3000(d)(3), legal entities could obtain System loans for their other credit needs in an amount that does not exceed the market value of their agricultural assets only if: (1) The securities of the borrower are not traded on a public exchange; and (2) more than 50 percent of the assets of the borrowing legal entity are used in agricultural or aquatic production. The FCA believes that this approach would effectively preclude System banks and associations from financing the other credit needs of large agribusiness corporations and conglomerates.

The FCA requests comments on whether and how the final regulations ought to distinguish among types of eligible farmers with respect to financing other credit needs.

B. Financing of Processing or Marketing Operations

Sections 1.11(a) and 2.4(a) of the Act authorize FCBs, ACBs, and their affiliated associations to finance the processing or marketing operations of bona fide farmers, ranchers, and aquatic producers or harvesters. According to the Act, the processing or marketing operation must be "directly related" to the agricultural or aquatic activities of the borrower. The Act also requires the borrower's agricultural or aquatic activities to supply some portion of the throughput used in the processing or marketing operations. The Act limits processing or marketing loans to borrowers who supply less than 20 percent of the throughput to 15 percent of the total outstanding loans, during the preceding fiscal year, of: (1) The FCB or ACB; and (2) all associations that are affiliated with the same funding bank.

The existing regulation, § 613.3045, imposes certain restrictions on financing for processing or marketing operations that are not required by the Act or are no longer needed to ensure the safety and soundness of the FCS. For example, additional compliance thresholds presently exist for loans to borrowers who supply less than 50 percent of the throughput. A restriction that has been particularly problematic relates to processing or marketing operations that have different owners than the agricultural or aquatic operation providing the throughput. Section 613.3045(b)(2)(iii) currently requires that the entire ownership of the processing or marketing operation vest in eligible borrowers. Many System banks and associations responded to the Notice of Regulatory Burden by requesting relief from this 100-percent ownership requirement. According to System commenters, processing or marketing operations have become ineligible under the existing regulation solely because of a slight change in ownership. FCS institutions point out, for example, that a borrower who establishes an employee ownership program can no longer borrow from the System.

The FCA now proposes to revise and redesignate this regulation, so it more closely parallels the Act. The revised regulation, § 613.3010, will simply require that the processing or marketing operation: (1) Be directly related to the borrower's agricultural or aquatic activities; and (2) consistently process some throughput produced by the borrower.

In an effort to reduce regulatory burden on FCS banks and associations, the FCA proposes to repeal the additional requirements that existing § 613.3045(b)(2) imposes on borrowers who supply less than 50 percent of the throughput to a processing or marketing operation. The FCA believes that this regulatory requirement is no longer necessary to interpret the Act since a statutory portfolio limitation has replaced the statutory requirement that the borrower supply at least 20 percent of the throughput.[5] The FCA also proposes to repeal § 613.3045(e), which unnecessarily specifies paperwork requirements for FCS institutions.

The FCA's proposal would also relax the current requirement that bona fide farmers, ranchers, and aquatic producers or harvesters own 100 percent of an eligible processing or marketing operation. Proposed § 613.3010(a)(1) clarifies that an eligible borrower includes a legal entity in which a controlling interest is owned by individuals or other legal entities that qualify as bona fide farmers, ranchers, or aquatic producers or harvesters. The controlling interest requirement in proposed § 613.3010(a)(1) implements sections 1.11(a)(1) and 2.4(a)(1) of the Act, which require a processing or marketing operation to be directly related to the agricultural or aquatic operations of the borrower. The FCA seeks comments on whether the controlling interest requirement appropriately implements the intent of the Act and provides sufficient guidance to System lenders.

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[5] Pub. L. No. 101–624, section 1832, 104 Stat. 3359 (1990).

Proposed § 613.3010(b) implements the portfolio restrictions that sections 1.11(a)(2) and 2.4(a)(1) of the Act impose on loans to borrowers who contribute less than 20 percent of the throughput used by a processing or marketing operation. This provision would limit retail loans that System banks and associations make to borrowers who supply less than 20 percent of the throughput to 15 percent of outstanding loans at the end of the preceding fiscal year for: (1) The funding bank; and (2) all associations that are funded by the same FCB or ACB. Proposed § 613.3010(b) also retains the existing requirement in § 613.3045(d)(2) that each funding bank, in conjunction with its affiliated associations, ensures that processing or marketing loans to borrowers who supply less than 20 percent of the throughput are equitably allocated among the associations.

The FCA believes the proposed regulation would better enable System institutions to finance entities that contribute substantially to the agricultural economy and rural communities and that increase the income of America's farmers, ranchers, and aquatic producers or harvesters. This proposal would ultimately benefit both producers and consumers by providing competitive credit for this sector of the agricultural economy and fostering economic development in rural areas.

C. Loans to Farm-Related Businesses

Sections 1.9(2), 1.11(c)(1), and 2.4(a)(3) of the Act authorize FCBs, ACBs, and direct lender associations to finance "persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs." Presently, § 613.3050(a) imposes an additional requirement that farm-related businesses furnish "custom-type services" that are directly related to on-farm operating needs of farmers and ranchers. The term "custom-type services" is defined by § 619.9120 as the "performance of on-farm functions on a 'for-hire' basis which farmers and ranchers typically have done for themselves." Furthermore, to qualify under § 613.3050(b)(2) a farm-related business must sell only goods and inputs that "are incident to the services provided." Examples of farm-related services authorized by this regulation include: (1) Spraying of crops; (2) harvesting; (3) hauling agricultural commodities to grain elevators, livestock markets, and other processing centers; (4) custom feed mixing operations; (5) veterinary services; and (6) drying farm commodities.

The FCA has received numerous comments from the FCS about the burdensome nature of §§ 613.3050 and 619.9120. Many System representatives have stated that the current regulatory requirements too narrowly restrict the types of agricultural service businesses that can qualify for FCS loans. Statistics about FCS loans to farm-related businesses suggest that this may be true. Farm-related business loans comprise less than 1 percent of all loans in the Farm Credit System, and many FCS banks and their affiliated associations have no farm-related business loans in their portfolios. These circumstances may indicate that current §§ 613.3050 and 619.9120 frustrate the ability of System banks and associations to fund statutorily eligible and creditworthy farm-related service businesses, and unnecessarily deny many farm-related businesses competitive credit options.

To address this issue, the FCA is proposing a new regulation, § 613.3020, which would replace §§ 613.3050(a), 613.3050(b), and 619.9120, with an eligibility standard for farm-related businesses that is more closely aligned with the plain language of the Act. Under proposed § 613.3020(a), an individual or legal entity who furnishes services to farmers and ranchers that are directly related to their agricultural operations would be eligible to borrow from a Farm Credit bank or association that operates under titles I or II of the Act. Regulatory restrictions that are unnecessary to implement or interpret sections 1.9(2), 1.11(c)(1), and 2.4(a)(3) of the Act would be eliminated.

In 1979, the FCA acknowledged in the preamble to § 613.3050 that neither the literal language of the statute nor its legislative history compel an eligible farm-related business to actually perform services on the customer's property.[6] At that time, however, the FCA did not delete the "on-farm" requirement from the definition of "custom-type" services in § 619.9120. The FCA now proposes to delete the definition of custom-type services which should dispel confusion surrounding the "on-farm" requirement.

Furthermore, the Act does not specifically require eligible borrowers to furnish only "custom-type" services to farmers and ranchers. Although passages in the legislative history to the Farm Credit Act of 1971 contain examples of various custom services that farmers and ranchers may perform themselves, the FCA finds no evidence that sections 1.11(c)(1) or 2.4(a)(3) of the Act actually preclude the FCS from financing other types of services that are directly related to agricultural production. In fact, agricultural producers today rely on technologically advanced services that they cannot provide for themselves, such as computer mapping of soil and crop conditions, nutritional analysis for dairy production, and specialized animal husbandry records and services. These technologically advanced services enable farmers and ranchers to enhance their income by reducing costs, increasing productivity, and meeting the growing demand of consumers for improved food quality and specialty food products. The FCA believes the ability of the FCS to finance such service providers strengthens the agricultural economy of the United States.

A farm-related business is currently ineligible to borrow from a Farm Credit bank or association under § 613.3050(b)(2) unless substantially all of the goods sold are consumed in the services that the borrower provides to farmers and ranchers. As the FCA interprets sections 1.11(c)(1) and 2.4(a)(3) of the Act and their legislative history, a farm-related service business should not be automatically ineligible for FCS loans simply because it also sells some goods that are not incidental to its services. In the FCA's opinion, such a disqualification defeats the statutory purpose of providing credit to farm-related service businesses. For this reason, the FCA proposes to repeal current § 613.3050(b)(2).

The FCA proposes to rely on scope of financing provisions to ensure that FCS banks and associations finance only farm-related businesses that are eligible to borrow under sections 1.11(c)(1) and 2.4(a)(3) of the Act. Proposed § 613.3020(b) would require FCS banks and associations to determine the extent of financing for an eligible farm-related business by measuring the applicant's income on either a gross sales or a net sales basis. More specifically, proposed § 613.3020(b)(1) would authorize financing of all the business needs of an eligible farm-related business that derives more than 50 percent of its

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[6] 44 FR 69631 (Dec. 4, 1979).

income, as determined on either a gross sales or net sales basis, from furnishing agricultural services to farmers and ranchers. A borrower who derives 50 percent or less of its income from furnishing agricultural services could obtain System financing under proposed § 613.3020(b)(2) only for the agricultural services portion of its business.

The FCA notes that this regulation would permit System banks and associations to measure each borrower's income consistently on either a gross sales or a net sales basis, as appropriate. System banks and associations should experience no difficulty in complying with § 613.3020(b) because gross and net sales information is normally provided in financial statements that a farm-related business submits to support its credit request.

The FCA believes that proposed § 613.3020 implements the requirements of the Act without imposing unnecessary regulatory burdens on the FCS or restricting its ability to offer competitive credit to farm-related businesses. The FCA believes that this proposal would provide System banks and associations and FCA examiners with clear and appropriate regulatory guidance, and it would protect the interests of System competitors by enforcing statutory restrictions.

The FCA proposes to delete § 613.3015, which directs a Farm Credit bank or association to determine the eligibility of an applicant who both conducts agricultural or aquatic operations and owns a farm-related business, using one or any combination of the criteria in the existing regulations. The existing regulation is not needed to interpret the Act nor to promote safety and soundness. Clearly, sections 1.11(a) and 2.4(a) of the Act and proposed § 613.3000 authorize FCS banks and associations to finance the "other credit needs" of bona fide farmers, ranchers, and aquatic producers and harvesters. For this reason, System banks and associations can finance farm-related businesses that are owned by eligible agricultural or aquatic producers under either proposed §§ 613.3000 or 613.3020. The FCA observes, however, that a System bank or association could not finance the "other credit needs" of an eligible farm-related business that is not owned by a bona fide farmer, rancher, or aquatic producer.

D. Non-farm Rural Home Loans

Sections 1.9(3), 1.11(b) and 2.4(b) of the Act authorize FCBs, ACBs, and their affiliated associations to finance single-family, moderately priced homes for residents of rural areas where the population does not exceed 2,500 inhabitants. Sections 1.11(b)(2) and 2.4(b)(2) generally restrict non-farm rural home loans to 15 percent of the total outstanding loans of each FCB, ACB, or association.

An existing regulation, § 613.3040, implements this statutory authority. The FCA now proposes to redesignate this regulation as § 613.3030 and revise it to provide greater flexibility to finance non-farm rural homes to the extent allowed by the Act. This proposal differs from the existing rural housing regulation in three ways. First, it clarifies that rural housing loans do not encompass loans to farmers and ranchers for their housing needs, because such loans are properly classified as agricultural loans. Second, the regulation revises and simplifies the criteria for determining whether a home is moderately priced and located in a rural area, as the law requires. Finally, the proposal eliminates regulatory restrictions that are not needed for safety and soundness. The FCA also addresses specific issues about non-farm rural home loans that commenters raised during the Regulatory Burden comment period and in other forums.

1. Definition of Rural Homeowner

The FCA's proposal would clearly differentiate the authority of System banks and associations to finance homes for agricultural and aquatic producers from all other rural residents. Proposed § 613.3030(a)(1) would define an eligible rural homeowner as a person who is not a bona fide farmer, rancher, or aquatic producer or harvester within the meaning of proposed § 613.3000(a)(2). The definition of "rural home" in proposed § 613.3030 would no longer incorporate current § 613.3040(e)(1), which requires either that the: (1) Property lack the capacity to produce agricultural products on a sustainable basis; or (2) borrower does not use the property for agricultural purposes. These provisions were the regulatory mechanism for ensuring that housing loans to farmers were considered agricultural loans rather than rural home loans. The proposed regulations addresses this issue by excluding farmers from the definition of rural homeowner. The FCA also proposes to repeal existing § 613.3040(e)(2), which applies the price, locality, and portfolio restrictions in sections 1.11(b) and 2.4 (b)(1), (b)(2), and (b)(3) of the Act to home loans that System banks and associations make to certain farmers, ranchers, and aquatic producers and harvesters.

The FCA believes that this new approach will clarify the authority of System lenders to finance homes for both agricultural and aquatic producers and other rural residents and eliminate any confusion about the scope of home lending authority. Under the FCA's proposal, Farm Credit banks and associations would finance homes for both full-time and part-time farmers, ranchers, and aquatic producers under proposed § 613.3000(d), while proposed § 613.3030 would apply to home loans that System lenders make to all other rural residents.

Because the Act affords certain benefits and applies certain restrictions to agricultural loans and rural housing loans, it has been important to classify home loans to farmers correctly. For example, the homes of agricultural or aquatic producers are not required to be moderately priced or located in communities where the population does not exceed 2,500 inhabitants. In fact, neither the Act nor FCA regulations require agricultural producers to live on the land that they farm or ranch. As the FCA interprets the Act, home loans to farmers are not subject to the portfolio limitations applicable to rural housing loans.

The FCA notes that statutory borrower rights generally apply to all loans to farmers, ranchers, and aquatic producers, including loans for the purchase of a residence.[7] Borrower rights do not, however, apply to rural home loans.

All bona fide agricultural and aquatic producers are required by section 4.3A(c)(1)(D)(i) of the Act to own voting stock in the FCS bank or association that extends credit to them, including home loans. In contrast, non-farm rural residents hold non-voting participation certificates in FCS banks and associations.

2. Definition of Rural Home

Proposed § 613.3030(a)(2) defines a "rural home" as a single-family moderately priced dwelling located in a rural area that will serve as the occupant's principal residence. Sections 1.11(b)(2) and 2.4(b)(1) of the Act explicitly limit the non-farm rural home financing authority of FCS banks and associations to single-family moderately priced houses. The proposed regulation deletes the requirement in existing regulations that System banks and associations finance only owner-occupied homes, because this limitation does not appear in the Act. The proposal retains, however, a requirement that the home be used as a primary residence. This requirement would implement the Act's stated intent that the System provide financing for housing for rural residents. The FCA is concerned that an infrequently occupied vacation home would not be compatible with Congressional intent. This change will enable the System to finance moderately priced rural homes that shall be used as the principal residence of either the borrower or another rural resident. Thus, a borrower who intends to occupy the home in the future, perhaps as a retirement residence, would be eligible for financing so long as the house was leased to a tenant, in the interim, as the tenant's principal residence.

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[7] In some instances, the protections of another Federal law will supplant the borrower rights provisions of the Act. For loans covered by the Federal Truth in Lending Act (TILA), 15 U.S.C. 1601, *et seq.*, FCS lenders must provide the disclosures required by the TILA in lieu of the effective interest rate disclosures that are otherwise applicable to loans pursuant to subpart K of part 614. The TILA applies to all loans for which the principal purpose is residential housing, regardless of whether the loan is classified as an agricultural or rural housing loan under FCA regulations.

The FCA proposes to remove the passage in § 613.3040(a)(2) that describes rural homes as "conventional housing, modular housing, or mobile homes which are related to a specific site." The FCA believes that any type of dwelling that is moderately priced and located in a rural area may be financed, so the passage is not necessary to implement the Act. Section 613.3030(b) retains a provision that allows a borrower to obtain financing from the System on only one home at any one time. This limitation, which derives from the Act's legislative history, prevents the System from financing rural housing developers.

The existing regulation, § 613.3040(c), allows FCS banks and associations to make loans to non-farm rural residents solely for the purpose of buying, building, remodeling, improving, repairing a rural home, and refinancing existing indebtedness thereon. System representatives have frequently petitioned the FCA to remove this restriction so that they can offer equity lines-of-credit loans to rural homeowners.

The FCA observes that although home equity loans were not generally available loan products when the rural home financing authority was granted to the FCS in 1971, neither the Act nor FCA regulations preclude revolving lines of credit secured by home equity. During the intervening years, however, the residential mortgage markets have developed so that home equity lines of credit are now standard loan products that mortgage lenders routinely offer to their clientele. Home equity loans would enable the rural home lending authority of the FCS to reflect current market practices and would allow rural homeowners who borrow from the FCS to have more flexibility in financing and utilizing the equity in their homes.

The FCA believes line-of-credit loans are compatible with sections 1.11(b) and 2.4(b) of the Act and the current regulation, which authorize System institutions to finance the housing needs of non-farm rural residents. Furthermore, home equity loans would enable FCS banks and associations to fulfill their mission of providing for an adequate and flexible flow of credit for housing in rural areas. Homeowners in rural communities often lack affordable credit options that are widely available in metropolitan areas.

The FCA also observes that home equity loans are compatible with the existing authority of production credit associations (PCAs) and agricultural credit associations (ACAs) under section 2.4(b) of the Act to take either a first or second lien on a rural home. Under existing FCA regulations, FCBs, ACBs, Federal land credit associations (FLCAs), and ACAs can, for certain purposes, make a line-of-credit loan that is secured by a first lien on an unencumbered rural home that is occupied by the borrower. Furthermore, an FCS long-term mortgage lender that already holds the first lien on the property could take a second lien to secure the home equity line-of-credit loan.

For these reasons, proposed § 613.3030(b) would enable FCS banks and associations to offer home equity loans to non-farm rural residents in addition to the types of loans that are already authorized by existing § 613.3040(c). The FCA also proposes conforming revisions to § 614.4222. The FCA emphasizes that FCS lenders could only make home equity line-of-credit financing on rural homes that comply with the requirements of proposed § 613.3030. The FCA fully expects home equity loans to be prudently underwritten. The FCA notes that this proposal would grant FCS institutions reasonable flexibility to make rural home loans within the 15-percent portfolio limit that is imposed by statute.

3. Definition of Rural Area

The FCA proposes to revise the regulatory definition of "rural area" to provide a standard that is clear, consistent, and easy to apply. The proposed definition will also eliminate the need for System institutions to seek FCA guidance about whether a particular locality is a "rural area" within the meaning of these regulations. Proposed § 613.3030(a)(3) defines a "rural area" as a designated territory within a State or the Commonwealth of Puerto Rico, including communities that have a population of not more than 2,500 inhabitants based on the latest decennial census of the United States.

The United States Bureau of Census is an expert, official, and neutral source for accurate and accessible information about the demographics of rural areas. The United States census examines the population density in each State and then classifies the territories with 2,500 or fewer inhabitants as "rural areas." The United States Bureau of the Census does not utilize political boundaries to determine whether an area is rural. The United States census often identifies rural pockets (with 2,500 inhabitants or fewer) that are located inside standard metropolitan statistical areas. The proposed regulation would enable FCS banks and associations to finance non-farm housing in such designated rural areas.

Proposed § 613.3030(a)(3) would replace the definition of "rural area" in current § 613.3040(a)(3). Census data satisfies all of the criteria for "rural areas" that are specified by existing § 613.3040(a)(3). This proposal would also delete the current regulatory requirement that the FCA approve rural areas that include "towns" where the population exceeds 2,500 people. Since 1971, the FCA has acted on only a few requests to approve rural areas including such towns. Moreover, the FCA believes that the Bureau of the Census designation of a "rural area" may provide significantly more reliable and flexible data for System institutions because it disregards political boundaries and is updated to reflect changing conditions.

4. Definition of Moderately Priced

The FCA also proposes to replace the definition of "moderately priced" housing in existing § 613.3040(c)(2) with new § 613.3030(a)(4). The revised definition would provide System banks and associations with a clear standard for determining whether a rural home is "moderately priced." The FCA proposes a two-part definition for "moderately priced" rural homes. The first part is a safe-harbor provision for rural home loans that qualify under section 8.0(1)(B) of the Act for programs of the Federal Agricultural Mortgage Corporation (Farmer Mac). Loans qualify as collateral for Farmer Mac securities if they are secured by rural homes that are located in communities of fewer than 2,500 inhabitants and have a purchase price of not more than $100,000, as adjusted for inflation. Thus, a rural home would be considered "moderately priced" for the purposes of proposed § 613.3030(a)(4)(i) if the loan complies with Farmer Mac's underwriting standards.

The second alternative, proposed § 613.3030(a)(4)(ii), allows Farm Credit banks and associations to finance rural homes that are below the 75th percentile of housing values, ranked from the lowest value to the highest value in the rural area where it is located, as published by the United States Bureau of the Census in the most recent edition of the Census of Housing, General Housing Characteristics. This provision will enable the FCS to finance homes valued in excess of $100,000 in areas in which such homes are still properly considered as moderately priced.

The FCS relied on a similar model until the early 1980's. At the time, the FCA provided administrative guidance to the System by annually publishing an upper limit for moderately priced housing. The upper value of moderately priced housing was derived from housing prices throughout the United States, stratified from the lowest to the highest sales figures. The FCA's proposal provides a more appropriate and accurate measure of "moderately priced" housing, because it examines housing prices in the designated rural areas where the property is located, rather than the entire United States.

In most designated rural areas with a population between 1,000 and 2,499 persons, the 75th percentile for housing prices does not exceed the Farmer Mac threshold of $100,000, as adjusted for inflation. As a result, most of the rural housing in the United States would satisfy either provision of proposed § 613.3030(a)(4). However, when the 75th percentile for home prices in designated rural areas exceeds $100,000, as adjusted for inflation, System institutions could finance homes that satisfy the criteria of proposed § 613.3020(a)(4)(ii) and still comply with Congressional intent that the System finance only moderately priced homes.

The FCA proposes to delete § 613.3040(c), and instead rely on § 614.4210(b), which authorizes System mortgage lenders to lend up to 97 percent of the appraised value of the security property if the loan is guaranteed by a Federal, State, or other government agency. This would permit FCS mortgage lenders to finance low-equity rural home borrowers when the loan is guaranteed by a Federal, State or other government agency.

5. Portfolio Limitations

Both new § 613.3030(c) and existing § 613.3040(d)(2) implement sections 1.11(b)(2) and 2.4(b)(2) of the Act, which limit non-farm rural home loans to 15 percent of the total outstanding loans of each FCS bank or association. Although the FCA has rewritten these provisions to enhance their clarity, the substantive requirements of existing § 613.3040(d)(2) remain the same. Proposed § 613.3030(c)(1) continues to restrict the rural home portfolio of each FCB or ACB to 15 percent of its total outstanding loans at any one time. Under proposed § 613.3020(c)(2), rural home loans by each direct lender association could not exceed 15 percent of its total outstanding loans at the end of its preceding fiscal year, except with the prior approval of its funding bank. Proposed § 613.3030(c)(3) restricts the aggregate of rural home loans made by all direct lender associations that are funded by the same Farm Credit bank to 15 percent of the total outstanding loans of all such associations at the end of the funding bank's preceding fiscal year.

6. Other Deletions

The FCA proposes to delete the existing program limitations in § 613.3040(d)(1) and (d)(3). Existing § 613.3040(d)(1) is obsolete because it prohibits rural home lending in each Farm Credit district without the approval of the now-defunct district boards.[8] Moreover, no provision of the Act requires associations to obtain approval from their funding bank or the FCA before they can exercise their statutory authority to make rural home loans.

Finally, the FCA proposes to delete § 613.3040(d)(3), which states that "agricultural loans shall receive priority to the exclusion of rural home loans" if loan funds for the System are curtailed. This provision derives from a commitment that the FCA gave to Congress in 1971, when System banks and associations were first granted authority to finance non-farm rural homes.[9] The FCA continues to adhere to this commitment. However, existing § 613.3040(d)(3) is a policy statement, rather than an enforceable regulatory provision. If a crisis curtails the ability of the FCS to meet the credit demands of agricultural and aquatic producers, the FCA Board would use its statutory authorities to ensure that the credit needs of agricultural and aquatic producers are given priority.

III. Eligibility and Scope of Financing Under Title III of the Act

The FCA proposes to revise and clarify regulations that govern eligibility and scope of financing for BCs and ACBs. The proposed regulations will implement provisions of the Farm Credit Banks and Associations Safety and Soundness Act of 1992[10] (1992 Act) and the Farm Credit System Agricultural Export and Risk Management Act[11] (1994 Act) that expand the ability of BCs and ACBs to finance: (1) Cooperatives; (2) their parents, subsidiaries, and other entities in which eligible cooperatives hold an ownership interest; and (3) water and waste disposal facilities. The FCA also proposes to amend these regulations so that BC and ACB loans to rural electric and telecommunication utilities are compatible with recent revisions to the Rural Electrification Act of 1936, 7 U.S.C. 901 et seq.

This proposal retains the format in which the domestic lending authorities and international lending authorities of these banks are addressed in two separate regulations. The FCA proposes to redesignate current § 613.3110, however, as new § 613.3100, and to rearrange this regulation so it addresses eligibility, and when appropriate, purposes for financing for each of the following classes of domestic borrowers: (1) Cooperatives, their parents, subsidiaries, and other related entities that serve farmers, ranchers, and aquatic producers and harvesters; (2) electric and telecommunications utilities; (3) water and waste disposal facilities; and (4) domestic lessors. Similarly, the FCA proposes to redesignate § 613.3120 as new § 613.3200, which will clearly delineate eligibility and purposes for financing for the following categories of international loan transactions: (1) Imports; (2) exports; and (3) international business transactions.

Current § 613.3005(b) will be deleted by this proposal because it prescribes business objectives and management practices. From the FCA's perspective, § 613.3005(b) is not necessary to implement or interpret the Act or to promote safety and soundness.

A. Eligibility and Scope of Financing for Domestic Loans

1. Cooperatives and Related Entities That Serve Agricultural and Aquatic Producers

Proposed § 613.3100 streamlines the provisions in current § 613.3110 which authorize BCs and ACBs to lend to cooperatives and related entities that serve farmers, ranchers, and aquatic producers and harvesters. The eligibility provisions for this class of borrowers are scattered throughout paragraphs (a), (b), (c) and (d) of the current regulation. The FCA proposes to consolidate these requirements for agricultural and aquatic cooperatives, their parents, subsidiaries, and other related entities into § 613.3100(b). Except to the extent that proposed § 613.3100(b) incorporates recent statutory amendments that expand the authority of BCs and ACBs to lend to cooperatives and their affiliates, this reorganization is not intended to alter the substance of the current regulation.

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[8] The district boards were abolished by Pub. L. No. 100–399, section 409(d), 102 Stat. 989, 1003, (August 17, 1988).

[9] S.R. 92–307, 92nd Cong., 1st. Sess., (July 27, 1971), p. 6.

[10] Pub. L. No. 102–552, 106 Stat. 4102, (Oct. 28, 1992).

[11] Pub. L. No. 100–376, 108 Stat. 3497, (Oct. 19, 1994).

Proposed § 613.3100(a)(1) defines a cooperative as any association of farmers, ranchers, producers or harvesters of aquatic products, or any federation of such associations, which conducts business for the mutual benefit of its members and has the power to: (1) Process, prepare for market, handle, or market farm or aquatic products; (2) purchase, test, grade, process, distribute, or furnish farm or aquatic supplies; or (3) furnish business or financially related services to their members.

The FCA proposes to revise the definition of service cooperative in current § 613.3110(a)(4) so that it more closely reflects the language of the Act. Under the current regulation, an eligible service cooperative is "predominately involved in providing specialized business services related to the agricultural or aquatic business operation of farmers, ranchers, or producers and harvesters of aquatic products, or cooperatives." This regulatory definition is more restrictive than section 3.8(a) of the Act, which only requires such cooperatives to furnish "farm or aquatic business services or services" to their members. Because the Act does not require eligible service cooperatives to serve only the agricultural or aquatic business operations of their members, proposed (and redesignated) § 613.3100(a)(5) would enable BCs and ACBs to finance service cooperatives that are predominately involved in providing both business services and financially related services to farmers, ranchers, aquatic producers and harvesters, or cooperatives. Cooperatives that satisfy the criteria in proposed § 613.3100(b)(1) are eligible to borrow from a BC or ACB.

Proposed § 613.3100(b)(1)(i) implements section 3.8(a)(4) of the Act, which requires agricultural and aquatic producers to hold a specified percentage of the voting control of an eligible cooperative. Generally, both the Act and the regulation require agricultural and aquatic producers to hold at least 80 percent of the voting control of cooperatives that are eligible to borrow under title III of the Act. However, section 3.8(a)(4) of the Act and § 613.3100(b)(1)(i) reduce the minimum voting control threshold of agricultural and aquatic producers in service cooperatives and certain farm supply cooperatives to 60 percent. Both the current and proposed versions of this regulation allow the board of directors of a BC or ACB to adopt resolutions that impose a higher voting control threshold on any type of cooperative. The FCA proposes to delete the remainder of current § 613.3110(b)(2), which prescribes detailed procedures about how BCs and ACBs should: (1) Treat all eligible cooperatives equitably; (2) compel borrowers to make good faith representations about voting control by agricultural and aquatic producers; and (3) document voting control of eligible cooperatives in certain circumstances. Such regulatory prescriptions are deemed unnecessary for the enforcement of eligibility limitations.

Proposed § 613.3100(b)(1)(ii) retains, with minor stylistic revisions, the current statutory requirement that each cooperative deal in farm or aquatic products or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or financially related services with or for members in an amount at least equal in value to the total amount of such business that it transacts with or for nonmembers. Transactions with the United States, its agencies and instrumentalities, and public utilities are excluded from the amount of business that a cooperative conducts with either members or nonmembers. Redesignated § 613.3100(b)(1)(iii) retains, without substantive amendment, the requirements in section 3.8(a) of the Act and current § 613.3110(b)(4) that: (1) No member of an eligible cooperative has more than one vote because of the amount of stock or membership capital owned therein; or (2) an eligible cooperative restricts dividends on stock or membership capital to 10 percent per year, or the maximum percentage per year permitted by applicable State law, whichever is less.

Proposed § 613.3100(b)(2) enables legal entities that are affiliated with eligible cooperatives to borrow from BCs and ACBs. Under proposed § 613.3100(b)(2)(i), any legal entity that holds more than 50 percent of the voting control of any eligible cooperative may borrow from a BC or ACB as long as it uses the loan proceeds to fund the activities of its cooperative subsidiary on the terms and conditions specified by the bank. Any legal entity in which an eligible cooperative has an ownership interest would be eligible to borrow from a BC or ACB under proposed § 613.3100(b)(2)(ii). This provision of the regulation reflects section 3(B) of the 1994 Act, which authorizes BCs and ACBs to finance, for the first time, legal entities in which the ownership interest of eligible cooperatives is less than 50 percent. However, the amount of financing that a BC or ACB can provide to entities in which eligible cooperatives hold less than a 50-percent ownership interest under section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3100(b)(2)(ii) cannot exceed the percentage that eligible cooperatives own in the entity multiplied by the value of the entity's total assets. For example, an entity with $100 million in total assets that is 45-percent owned by eligible cooperatives could receive financing from a BC or ACB that does not exceed $45 million.

Proposed § 613.3100(b)(2)(iii) derives from section 506 of the 1992 Act, which authorizes BCs and ACBs to finance creditworthy, non-profit service cooperatives and their subsidiaries, if they benefit agriculture in furtherance of the welfare of the farmers, ranchers, and aquatic producers and harvesters who are its members. Many of the cooperative eligibility criteria in § 613.3100(b)(1) apply to this new class of borrowers. First, only eligible service cooperatives and their subsidiaries qualify for loans under proposed § 613.3100(b)(2)(iii). The regulation requires farmers, ranchers, and aquatic producers and harvesters to hold at least 60 percent of the voting control in a service cooperative which is either the borrower, or the borrower's parent. Second, eligibility under proposed § 613.3100(b)(2)(iii) is predicated upon compliance with proposed § 613.3100(b)(1)(iii), which requires cooperatives to either: (1) Operate on the principle of one person, one vote; or (2) restrict dividends on stock or membership capital to 10 percent per year, or the maximum percentage per year permitted by applicable State law, whichever is less. Neither section 3.8(b)(1)(D) of the amended Act, nor § 613.3100(b)(2)(iii) of the proposed regulations require this category of borrowers to transact more business with members than non-members.

2. Electric, Telecommunications, and Cable Television Utilities

The FCA proposes to update and consolidate the regulations that authorize BCs and ACBs to finance public utilities that provide electric, telecommunication, and cable television services in rural areas. Section 1322 of the Food Security Act of 1985[12] significantly expanded the authorities of the BCs (and subsequently the ACBs) to finance rural utilities. Prior to 1985, only electric and telephone cooperatives in which agricultural or aquatic producers held 60 percent of the voting control were eligible for loans under title III of the Act. After 1985, any rural electric or telephone utility that qualifies for financing from either the former Rural Electrification Administration (now the Rural Utilities Services (RUS)), or the Rural Telephone Bank (RTB) of the United States Department of Agriculture is eligible to borrow under section 3.8(b)(1)(A) of the Act. Section 3.8(b) of the Act allows the corporate parents, subsidiaries, and other related entities of such rural utilities to borrow from BCs and ACBs, as well.

The statutory eligibility standards for rural electric and telecommunication utilities are incorporated into § 613.3100(c)(1) of the proposed regulation, which consolidates all of the rural utilities eligibility and scope of financing provisions that are now scattered throughout paragraphs (c)(1), (c)(2), and (c)(3) of existing § 613.3110.

Utilities cooperatives in which at least 60 percent of the voting control vests with agricultural or aquatic producers continue to separately qualify for BC and ACB loans under section 3.8(a)(4)(A) of the Act. State laws usually require utilities to provide electric or telephone service to all inhabitants of a specific geographic territory. As a result of the growth of the non-farm population in rural areas, virtually no utility cooperative still satisfies the statutory requirement that farmers, ranchers, and aquatic producers comprise at least 60 percent of its membership. The FCA understands that BCs and ACBs no longer receive loan applications from borrowers who meet the criteria of section 3.8(a)(4)(A) of the Act. Therefore, the FCA proposes to delete specific references in the regulations to this class of borrowers. However, the FCA notes that utility cooperatives in rural areas almost always satisfy the less stringent eligibility criteria of the RUS or the RTB. As a result, BCs and ACBs now lend exclusively to borrowers who are eligible for RUS or RTB loans.

Redesignated § 613.3100(c)(1)(ii) makes minor stylistic edits to existing § 613.3110(c)(3), which authorizes BCs and ACBs to finance any legal entity that holds more than 50 percent of the voting control of any eligible electric or telecommunication utility if the borrower uses the proceeds of the loan to fund the activities of its subsidiary on the terms and conditions specified by the bank. The subsidiaries and other entities in which eligible utility borrowers hold an ownership interest also qualify for BC and ACB loans under amended section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3100(c)(1). However, when eligible rural electric and telecommunication utilities own less than 50 percent of another entity, section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3100(c)(3) limit bank financing to an amount that does not exceed the ownership percentage multiplied by the total assets of such entity.

The FCA proposes that § 613.3100(a)(3) and (c) refer to "telecommunication," rather than "telephone" services. This proposed revision reflects the fact that Congress recently amended the definition of "telephone service" in section 203(a) of the Rural Electrification Act of 1936, 7 U.S.C. 924(a), to encompass new telecommunication technologies.[13] Whereas 7 U.S.C. 924(a) previously defined "telephone services" as communications "through the use of electricity between the transmitting and receiving apparatus," the statute now refers to communications "by wire, fiber, radio, light, or other visual or electromagnetic means." As a result, cellular, facsimile, cable television, speed data services and other technologically advanced communication services are increasingly available in rural areas. Accordingly, proposed § 613.3100(c)(2) authorizes BCs and ACBs to finance these new telecommunication technologies and services.

Proposed § 613.3100(c)(2) would authorize BCs and ACBs to extend credit to eligible borrowers so they can provide electric or telecommunication services in rural areas. Although the eligibility of rural utilities to borrow from a BC or ACB is now based primarily upon their eligibility for RUS or RTB loans, the purposes for financing for utilities is not directly governed by the Rural Electrification Act of 1936 as amended. Section 203(a) of the Rural Electrification Act of 1936, as amended, 7 U.S.C. 924(a) expressly prohibits cable television carriers from obtaining loans from the RUS or RTB. However, section 3.7(b)(2)(A)(ii) of the Act permits BCs and ACBs to finance affiliated entities that facilitate the business operations of eligible rural electric or telephone utilities. For this reason, proposed § 613.3100(c)(2) would authorize BCs and ACBs to finance an eligible subsidiary of an electric or telecommunication utility that is licensed to provide cable television services in a designated rural community.

3. Water and Waste Disposal Facilities

In 1990, Congress added section 3.7(f) to the Act,[14] granting BCs and ACBs new authorities to finance water and waste disposal facilities in rural areas where the population does not exceed 20,000 inhabitants. The 1992 Act expanded the scope of financing so that BCs and ACBs could also finance the maintenance and operations of such water and waste disposal facilities.[15] The FCA proposes to add a provision to the regulation that will reflect this new statutory authority.

Under proposed § 613.3100(d)(1), a cooperative, or a public, quasi-public agency, body, or other public or private entity that under the authority of State or local law establishes and operates water and waste disposal facilities in a rural area would be eligible to borrow from a BC or ACB. For the purposes of proposed § 613.3100(d), a rural area is defined by statute as all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 inhabitants based on the latest decennial census of the United States. Proposed § 613.3100(d)(2) would authorize BCs and ACBs to extend credit to these borrowers for the installation, maintenance, expansion, improvement, or operation of rural water and waste disposal facilities.

4. Loans to Domestic Lessors

The FCA proposes to redesignate existing § 613.3110(c)(4) as new § 613.3100(e). Under this provision, a BC or ACB may extend credit to domestic parties to finance the acquisition of facilities or equipment that will be leased to shareholders of the bank for use in their operations within the United States. The lease customers of eligible borrowers include any cooperative, rural electric or telecommunication utility, or water or waste disposal facility that is a shareholder of the BC or ACB. The corporate parents and subsidiaries of cooperatives and rural electric and telecommunication utilities may also lease from the borrower. The FCA observes that the authority of BCs and ACBs to make loans to domestic lessors is separate and distinct from the banks' authority to lease equipment to their shareholders under section 3.7(a) of the Act.

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[12] Pub. L. No. 99–198, section 1322, 99 Stat. 1534 (Dec. 23, 1985).

[13] Pub. L. No. 101–624, section 2354, 104 Stat. 4039, (Nov. 28, 1990).

[14] Pub. L. No. 101–624, section 2323(a), 104 Stat. 4013, (Nov. 28, 1990).

[15] Pub. L. 102–552, section 505, 106 Stat. 4131, (Oct. 28, 1992).

5. Status of Certain Borrowers

Section 3.8(b)(4) of the Act preserves the eligibility of existing BC or ACB borrowers despite adverse changes in the law. Existing § 613.3110(b)(5) "grandfathers" parties who were actual BC borrowers on May 17, 1972. The FCA believes that it is no longer necessary for this regulation to contain a "grandfather" clause because the statute adequately protects such borrowers. The eligibility of current BC and ACB borrowers will not be adversely affected by the removal of this regulatory provision.

B. Eligibility and Scope of Financing for International Loan Transactions

The FCA proposes new § 613.3200, which implements the expanded statutory authority of BCs and ACBs to finance the import, export, and international business transactions of cooperatives and other eligible borrowers. The FCA proposes substantial revisions to the existing regulation in order to reflect the provisions in the 1994 Act and enhance the regulation's clarity. The FCA also proposes several conforming and technical amendments to §§ 614.4010(d), 614.4020(a), 614.4233, and subpart Q of part 614 to reflect the expanded international lending authorities of BCs and ACBs.

Proposed § 613.3200(a) would define "farm supplies" only for import and export loan transactions. Under this proposal, "farm supplies" refers to inputs that are used in a farming or ranching operation, but excludes agricultural processing equipment, machinery used in food manufacturing, or other capital goods which are not used in a farming or ranching operation. This definition of "farm supplies" is consistent with the legislative history of the 1994 Act which indicates that Congress did not intend the BCs and ACBs to use their international lending authorities to finance the import or export of capital equipment and machinery.[16]

1. Import Transactions

The 1994 Act did not alter the eligibility and scope of financing requirements for agricultural, aquatic, and farm supply imports that are financed by a BC or ACB. Although the FCA's proposal restructures the existing regulation by consolidating all of the eligibility and scope of financing requirements for import transactions into § 613.3200(b), the FCA has not changed the substance of current § 613.3120. The proposed regulation continues to authorize BCs and ACBs to finance the import of agricultural commodities or products therefrom, aquatic products, and farm supplies into the United States for: (1) An eligible cooperative; (2) a counterparty with respect to a specific import transaction with a voting stockholder of the bank for the substantial benefit of the shareholder; and (3) any foreign or domestic legal entity in which eligible cooperatives hold an ownership interest.

2. Export Transactions

Section 3 of the 1994 Act expanded the authority of the BCs and ACBs to finance parties who facilitate the export of agricultural and aquatic products and farm supplies from the United States to foreign countries. As amended, section 3.7(b)(2)(A) of the Act extends eligibility for such export loans beyond eligible cooperatives, their related entities and counterparties, to any domestic or foreign party, provided that the BC or ACB gives priority, to the extent feasible, to cooperatively sourced products, commodities, and supplies. The statute imposes limits on BC and ACB financing of exports that are not both: (1) Originally sourced from cooperatives; and (2) guaranteed or insured in an amount that equals or exceeds 95 percent of the loan amount by an entity of the United States Government.

These new statutory requirements are incorporated into proposed § 613.3200(c), which provides that the total amount of balances outstanding on loans that are not originally sourced from cooperatives and at least 95-percent guaranteed by the Federal government shall not, at any time, exceed 50 percent of the bank's capital. Furthermore, both the Act and the regulation require the board of directors of each BC and ACB to adopt policies and procedures that ensure that exports of agricultural products and commodities, aquatic products, and farm supplies which originate from eligible cooperatives are financed on a priority basis.

3. International Business Transactions

Prior to 1994, section 3.7(b) of the Act authorized BCs and ACBs to finance only the domestic and foreign legal entities that facilitated the import and export transactions of their cooperative owners. As amended by section 3 of the 1994 Act, this statutory provision now authorizes BCs and ACBs to extend credit to any domestic or foreign legal entity that facilitates the foreign business operations of an eligible cooperative that holds an ownership interest in it. This new statutory authority is incorporated into proposed § 613.3200(d). The FCA observes that this new authority will enable BCs and ACBs to assist their cooperative customers in developing overseas markets for American agricultural and aquatic exports, which in turn, will ultimately increase the income of America's farmers, ranchers, and aquatic producers.

4. Restrictions

Proposed § 613.3200(e) contains restrictions that the Act imposes on the international lending authorities of BCs and ACBs. When eligible cooperatives own less than 50 percent of a foreign or domestic legal entity, section 3.7(b)(2)(A)(ii) of the Act and proposed § 613.3200(e)(1) limit the amount of financing that a BC or ACB may provide to the affiliated entity for any import, export, or international business transaction, to the percentage of ownership that such cooperatives hold in such entity multiplied by the value of the entity's total assets. Furthermore, section 3.7(b)(2)(B) and proposed § 613.3200(e)(2) prohibit BCs and ACBs from financing the relocation of any plant or facility from the United States to a foreign country.

IV. Similar Entities

In 1992, Congress granted FCS banks operating under title III of the Act new authority to participate in loans made by non-System lenders to "similar entities."[17] Section 2 of the 1994 Act clarified this new authority,[18] while section 5 of the 1994 Act granted similar loan participation powers to Farm Credit banks operating under title I of the Act and direct lender associations.[19] As amended, sections 3.1(11)(B) and 4.18A of the Act grant System banks and associations broader authorities pertaining to eligibility and loan participations. The FCA proposes § 613.3300 to provide FCS banks and direct lender associations with guidance about the scope of their new authorities.

Both sections 3.1(11)(B)(iv) and 4.18A(a)(1) of the Act define "participate" and "participation" to mean "multilender transactions, including syndications, assignments, loan participations, subparticipations, other forms of the purchase, sale, or transfer of interests in loans, or other extensions of credit, or other technical and financial assistance." The FCA proposes to incorporate this statutory definition into § 613.3300(a)(1). The FCA emphasizes that this definition would apply only to loan participations between FCS and non-System lenders under sections 3.1(11)(B) and 4.18A of the Act and proposed § 613.3300. For all transactions under sections 1.5(12), 2.2(13), and 3.1(11)(A) of the Act and subpart H of part 614, "loan participation" is defined by § 614.4325(a)(4) as a "fractional undivided interest in the principal amount of the loan."

The proposed regulation would authorize FCS banks and associations to provide related services to similar entities. The FCA observes that the plain language of sections 3.1(11)(B)(iv) and 4.18A(a)(1) of the Act permits FCS banks and associations to provide "technical and financial assistance" to similar entities. Accordingly, the FCA proposes a conforming amendment to § 618.8005 to reflect this new statutory authority. The FCA invites comments about whether the final regulation ought to provide further guidance about this financially related service authority.

Sections 3.1(11)(B)(ii) and 4.18A(a)(2) identify a "similar entity" as a party that is ineligible for a loan from an FCS bank or association, but has operations that are "functionally similar" to the activities of eligible borrowers. An entity is functionally similar to an eligible borrower if it derives a majority of its income from, or a majority of its assets are invested in, the conduct of the activities that are functionally similar to the activities that are conducted by eligible parties. The FCA proposes in § 613.3300(a)(2) a definition of similar entity that is closely aligned with the statutory definition.

Proposed § 613.3300(b) reflects sections 3.1(11)(B)(ii) and 4.18A(a)(2) of the Act, which the FCA interprets to mean that the borrower is ineligible under sections 1.9, 1.11, 2.4, 3.7 and 3.8 of the Act to borrow directly from a System bank or association, but has a credit need that an FCS lender could finance for an eligible borrower. Section 4.18A(b)(4) of the Act expressly precludes Farm Credit banks operating under title I of the Act and direct lender associations from participating in rural home loans under this similar entity authority.

For illustration purposes, the parties who qualify as similar entities under sections 3.1(11)(B) and 4.18A of the Act and the proposed regulations are presented below. The FCA solicits comments about whether the final regulation should provide a specific listing of the parties who qualify as similar entities. Farm Credit banks and direct lender associations that operate under titles I or II of the Act would be authorized to participate with non-System lenders in loans to: (1) Parties who are ineligible to borrow under § 613.3000 but require financing for any agricultural or aquatic purpose; (2) any individual, cooperative, and other legal entity that processes or markets agricultural or aquatic products, but supplies no throughput from an agricultural or aquatic operation; (3) a processing or marketing operation in which farmers, ranchers or aquatic producers do not hold a controlling interest; and (4) parties who are ineligible to borrow under proposed § 613.3020, but operate farm or aquatic supply businesses that furnish services, farm or aquatic equipment, and other goods that are directly related to the agricultural or aquatic operations of farmers, ranchers, and aquatic producers or harvesters.

The FCA believes that title III lenders could participate in loans made by non-System lenders to four types of "similar entities." First, BCs and ACBs could participate in loans to any legal entity that is not part of a cooperative enterprise, but: (1) Processes, prepares for market, handles, or markets farm or aquatic products; (2) purchases, tests, grades, processes, distributes, or furnishes farm or aquatic supplies; or (3) furnishes business and financially related services primarily to farmers, ranchers, and aquatic producers or harvesters. Second, BCs and ACBs could participate in loans to electric utilities that provide some service in rural communities, but for some reason are ineligible to participate in RUS programs. Third, BCs and ACBs could participate in loans to independent power producers, so long as they sell more than 50 percent of the electricity that they generate to rural electric utilities that are eligible for RUS loans. Finally, BCs and ACBs could participate in loans that finance the import of agricultural commodities and products, aquatic products, and farm supplies for borrowers who are not eligible cooperatives, their subsidiaries, or their counterparties.

Section 4.18A(b) of the Act allows each FCB, ACB, and direct lender association to "participate in any loan of a type *otherwise authorized under title I or II* made to a similar entity * * *." The FCA interprets this passage to mean that similar entity loans should still be compatible with the basic lending powers of each Farm Credit bank or association. In other words, section 4.18A(b) of the Act would, for example, authorize FLCAs to participate only in similar entity loans that are: (1) Secured by a first lien on real estate; and (2) mature within not fewer than 5 years, nor more than 40 years. Similarly, this statutory provision would permit PCAs to participate only in operating loans that mature within the time prescribed in section 1.10(b) of the Act. Accordingly, § 613.3300(c) reflects the FCA's interpretation of section 4.18A(b) of the Act. In the FCA's opinion, the above-cited passage in section 4.18A(b) of the Act is compatible with sections 1.5(12)(C) and 2.2(13) of the Act, which authorize FCS banks and direct lender associations to participate with non-System lenders only in the type of loans that such FCS institutions could originate.

Proposed § 613.3300(d) implements the restrictions that sections 3.1(11)(B)(i) and 4.18A(b) of the Act impose on loan participations to similar entities. Proposed § 613.3300(d)(1) reflects statutory lending limits for loan participations to similar entities. Under proposed § 613.3300(d)(1)(i)(A), the total amount of all loan participations that any FCB, ACB, or direct lender association may have outstanding under proposed § 613.3300(b)(1) to a single credit risk could not exceed 10 percent of its total capital. However, proposed § 613.3300(d)(1)(i)(B) would authorize the shareholders of any FCB, ACB, or direct lender to approve a higher lending limit, provided it does not exceed 25 percent of the institution's total capital. This provision would implement section 4.18A(b)(1) of the Act, which authorizes the FCA to permit a higher limit that would apply if shareholders approve. This proposal is consistent with the lending limits that FCA has established for loans to borrowers under titles I and II of the Act. Under proposed § 613.3300(d)(1)(ii), the total amount of all loan participations that any BC or ACB may have outstanding under proposed § 613.3300(b)(2) to a single credit risk could not exceed 10 percent of its total capital.

Under proposed § 613.3300(d)(2), the participation interest in the same loan held by one or more Farm Credit bank(s) or association(s) could not, at any time, equal or exceed 50 percent of the principal amount of the loan. This regulatory provision would implement sections 3.1(11)(B)(i)(I)(bb) and 4.18A(b)(2) of the Act. Sections 3.1(11)(B) and 4.18A of the Act also limit the amount of loan participations to similar entities that each FCS bank or direct lender association may hold at any time to 15 percent of its total outstanding assets. Therefore, proposed § 613.3300(d)(3) applies this 15-percent portfolio limit to FCBs, BCs, ACBs, and direct lender associations.

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[16] 140 Cong. Rec. S14236 (daily ed. Oct. 5, 1994) (Colloquy between Senators Leahy and Lugar).

[17] Pub. L. No 102–552, section 502, 106 Stat. 4130 (Oct. 28, 1992).

[18] Pub. L. No. 103–376, section 2, 108 Stat 3497, (Oct. 19, 1994).

[19] Pub. L. No. 103–376, section 5, 108 Stat 3497, (Oct. 19, 1994).

Proposed § 613.3300(e) would implement requirements of sections 3.1(11)(B) and 4.18A(c)(3) concerning approval by other FCS banks and associations. Proposed § 613.3300(e)(1) implements a statutory provision that requires a direct lender association to obtain approval from its funding bank before it participates with a non-System lender in a loan to a similar entity. The FCA believes that a funding bank's decision to grant or deny approval under section 4.18A(c)(3) of the Act and proposed § 613.3300(e)(1) should rest exclusively on safety and soundness considerations that the transaction would have on the bank's financial position. Direct lender associations have not previously participated with non-System lenders in syndications and other multilender transactions that provide credit to ineligible borrowers. The FCA solicits comments from interested parties about how the final regulation can best accord equitable treatment to both funding banks and their affiliated associations.

Proposed § 613.3300(e)(2) would require a Farm Credit bank operating under title I of the Act or a direct lender association to comply with § 614.4070 before it participates in a similar entity loan in the chartered territory of another FCS institution. These provisions are designed to prevent intra-System competition without the consent of affected institutions. Requiring consent for similar entity participations would be consistent with the FCA's policy for out-of-territory participations and loans to eligible borrowers. However, some System institutions have informed the Agency that obtaining consent is time-consuming and impedes their ability to engage in participation transactions. As the Act is silent on this point, the FCA seeks public comment on whether consent for out-of-territory participations to similar entities ought to be required.

Proposed § 613.3300(e)(3) would implement section 4.18A(c)(1) of the Act by requiring a FCB or direct lender association to obtain BC or ACB approval before it participates in a loan to a similar entity that is eligible to borrow directly from a Farm Credit bank operating under title III of the Act. Both the Act and the proposed regulation require approval from the BC or ACB that, at the time of origination, has the greatest volume of loans (made under title III of the Act) in the State where the headquarters of the similar entity is located.

Similarly, proposed § 613.3300(e)(4) implements section 3.1(11)(B)(iii) of the Act by requiring a BC or ACB to obtain FCB approval before it participates with a non-System lender in a loan to a similar entity that is eligible to borrow directly from an FCB or a direct lender association under proposed §§ 613.3010 or 613.3030. The BC or ACB is required to obtain approval from the FCB(s) in whose chartered territory the similar entity conducts operations. As the FCA interprets section 3.1(11)(B)(iii) of the Act, approval by two FCBs would only be required when both banks are chartered to fund mortgage and short- and intermediate-term operating loans in the same chartered territory. When one FCB discounts production loans in a territory where another FCB funds solely mortgage loans, the BC or ACB would only be required to obtain consent from the FCB with the authority to finance the similar entity.

Pursuant to sections 3.1(11)(B)(iii) and 4.18A(c)(2) of the Act, proposed § 613.3300(e)(5) grants FCS institutions broad latitude to negotiate agreements that confer intra-System consents required by the Act and FCA regulations.

Proposed § 613.3300(f) reflects the FCA's determination that borrower rights do not apply to participation interests that FCBs, ACBs, and associations hold in similar entity loans. Sections 4.14A(a)(5) and 4.14A(a)(6)(A) of the Act require Farm Credit banks (operating under title I of the Act) and associations to accord borrower rights on loans to eligible borrowers that they make to bona fide farmers, ranchers, and aquatic producers and harvesters. Borrower rights would not apply to similar entity loans because the borrower is ineligible to borrow directly from an FCS bank or association and the loan is originated by a non-System lender.

The capitalization requirements for similar entity loan participations is addressed by proposed § 613.3300(g). This provision of the proposed regulation would require the capitalization bylaws of each Farm Credit bank and association to address whether, and to what extent, non-voting stock or participation certificates should be required for participation interests in similar entity loans. Proposed § 613.3300(g) is consistent with section 4.3A of the Act and § 615.5220.

V. Miscellaneous

The FCA proposes to delete existing § 613.3060, which simply states that direct lender associations and other financing institutions (OFIs) are eligible to borrow from FCBs and ACBs. Regulations in subparts C and P of part 614 specifically implement the authority of FCBs and ACBs to fund and discount loans for direct lender associations and OFIs under section 1.7 of the Act rendering this section redundant.

The FCA also proposes to delete the following regulations: §§ 619.9025; 619.9030; 619.9040; 619.9065; 619.9080; 619.9090; 619.9100; 619.9120; 619.9150; 619.9160; 619.9190; 619.9220; 619.9270; 619.9280; 619.9300; and 619.9310. These regulations define certain terms that pertain to eligibility and scope of financing. Many of these definitions are not identical to either the existing or proposed regulations in part 613. This deletion will reduce duplication and potential for confusion.

Finally, the FCA proposes to relocate the nondiscrimination in lending regulations in subpart E of part 613 to a new part 626. Nondiscrimination is unrelated to eligibility and scope of financing, and therefore, the FCA believes that this topic should be addressed in a separate part of the regulations.

List of Subjects

12 CFR Part 613

Agriculture, Banks, Banking, Credit, Rural areas.

12 CFR Part 614

Agriculture, Banks, Banking, Foreign Trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistances.

12 CFR Part 619

Agriculture, Banks, Banking, Rural areas.

12 CFR Part 626

Advertising, Aged, Agriculture, Banks, Banking, Civil rights, Credit, Fair housing, Marital status discrimination, Sex discrimination, Signs and symbols.

For the reasons stated in the preamble, parts 613, 614, 618, 619, and 626 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

2. Subparts A, B, C, and D of part 613 are revised to read as follows:

Subpart A—Financing Under Titles I and II of the Farm Credit Act

Sec.

613.3000 Financing for farmers, ranchers, and aquatic producers or harvesters.
613.3010 Financing for processing or marketing operations.
613.3020 Financing for farm-related businesses.
613.3030 Rural home financing.

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

613.3100 Domestic lending.
613.3200 International lending.

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

613.3300 Participations and other interests in loans to similar entities.

Subpart A—Financing Under Titles I and II of the Farm Credit Act

§ 613.3000 Financing for farmers, ranchers, and aquatic producers or harvesters.

(a) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Agricultural land* means land that is devoted to or available for the production of agricultural or aquatic products.

(2) *Bona fide farmer, rancher, or producer or harvester of aquatic products* means an individual or legal entity that either:

(i) Produces agricultural products or produces or harvests aquatic products to generate income; or

(ii) Owns agricultural land.

(3) *Individual* means a natural person who is either:

(i) A citizen of the United States; or

(ii) A foreign national who has been lawfully admitted into the United States for permanent residency pursuant to 8 U.S.C. 1101(a)(20) or on a visa pursuant to a provision in 8 U.S.C. 1101(a)(15) that authorizes such individual to own property or operate or manage a business.

(4) *Legal entity* means any partnership, corporation, trust, estate, or other legal entity, excluding legal entities eligible under title III of the Act, that is established pursuant to the laws of the United States, any State thereof, the Commonwealth of Puerto Rico, or the District of Columbia and is legally authorized to conduct a business.

(b) *Eligible borrowers.* A bona fide farmer, rancher, or producer or harvester of aquatic products is eligible to borrow under either title I or II of the Act.

(c) *Financing for agricultural or aquatic needs.* Any borrower who is eligible under paragraph (b) of this section may obtain financing for any agricultural or aquatic purpose.

(d) *Financing for other credit needs.*

(1) Individual eligible borrowers who are either citizens or permanent residents of the United States and are actively engaged in agricultural or aquatic production may also obtain financing for:

(i) Housing and domestic needs; and

(ii) Other business needs in an amount that does not exceed the market value of their agricultural or aquatic assets.

(2) Individual eligible borrowers who either own agricultural land as an investment, or are non-resident foreign nationals, may obtain total financing for their housing, domestic and other business needs in an amount that does not exceed the market value of their agricultural or aquatic assets.

(3) Legal entities may obtain financing for their other credit needs in an amount that does not exceed the market value of their agricultural assets only if:

(i) The securities of the borrower are not traded on a public exchange; and

(ii) More than 50 percent of the assets of the borrowing legal entity are used in agricultural or aquatic production.

§ 613.3010 Financing for processing or marketing operations.

(a) *Eligible borrowers.* A borrower is eligible for financing for a processing or marketing operation under titles I and II of the Act, only if the borrower meets the following requirements:

(1) The borrower is either a bona fide farmer, rancher, or producer or harvester of aquatic products or is a legal entity in which eligible borrowers under § 613.3000(b) hold a controlling interest; and

(2) The borrower or an owner of a borrowing legal entity consistently produces some portion of the throughput used in the processing or marketing operation.

(b) *Portfolio restrictions for certain processing and marketing loans.* Processing or marketing loans to eligible borrowers who supply, on a consistent basis, less than 20 percent of the throughput are subject to the following restrictions:

(1) *Bank limitation.* The aggregate of such processing and marketing loans made by a Farm Credit bank shall not exceed 15 percent of all its outstanding retail loans at the end of the preceding fiscal year.

(2) *Association limitation.* The aggregate of such processing and marketing loans made by all direct lender associations affiliated with the same Farm Credit bank shall not exceed 15 percent of the aggregate of their outstanding retail loans at the end of the preceding fiscal year. Each Farm Credit bank, in conjunction with all its affiliated direct lender associations, shall ensure that such processing or marketing loans are equitably allocated among its affiliated direct lender associations.

(3) *Calculation of outstanding retail loans.* For the purposes of this paragraph, "outstanding retail loans" include loans, loan participations, and other interests in loans that are either bought without recourse or sold with recourse.

§ 613.3020 Financing for farm-related businesses.

(a) *Eligibility.* An individual or legal entity that furnishes services to farmers and ranchers that are directly related to their agricultural operations is eligible to borrow under titles I and II of the Act.

(b) *Purposes of financing.* An eligible farm-related business may obtain financing for its business needs, subject to the following requirements:

(1) An eligible farm-related business that derives more than 50 percent of its income (as consistently measured on either a gross sales or net sales basis) from furnishing services that are directly related to the agricultural operations of farmers and ranchers may obtain financing for all of its business needs.

(2) An eligible farm-related business that derives 50 percent or less of its income (as consistently measured on either a gross sales or net sales basis) from furnishing services that are directly related to the agricultural operations of farmers and ranchers may obtain financing only for those credit needs that are related to the provision of farm-related [illegible]

§ 613.3030 Rural home financing.

(a) *Definitions.*

(1) *Rural homeowner* means an individual who is not a bona fide farmer, rancher, or producer or harvester of aquatic products.

(2) *Rural home* means a single-family moderately priced dwelling located in a

rural area that will be the occupant's principal residence.

(3) *Rural area* means a designated rural area within a State or the Commonwealth of Puerto Rico including communities that have a population of not more than 2,500 inhabitants based on the latest decennial census of the United States.

(4) *Moderately priced* means the price of any rural home that either:

(i) Satisfies the criteria in section 8.0 of the Act pertaining to rural home loans that collateralize securities that are guaranteed by the Federal Agricultural Mortgage Corporation; or

(ii) Is below the 75th percentile of housing values, ranked from the lowest value to the highest value in the rural area where it is located in accordance with the most recent edition of the Census of Housing, General Housing Characteristics published by the United States Bureau of the Census. System institutions may obtain copies of this document from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(b) *Eligibility*. Any rural homeowner is eligible to obtain financing on a rural home. No borrower shall have a loan from the Farm Credit System on more than one rural home at any one time.

(c) *Portfolio limitations*, (1) The aggregate of retail rural home loans by any Farm Credit Bank or agricultural credit bank shall not exceed 15 percent of the total of all of its outstanding loans at any one time.

(2) The aggregate of rural home loans made by each direct lender association shall not exceed 15 percent of the total of its outstanding loans at the end of its preceding fiscal year, except with the prior approval of its funding bank.

(3) The aggregate of rural home loans made by all direct lender associations that are funded by the same Farm Credit bank shall not exceed 15 percent of the total outstanding loans of all such associations at the end of the funding bank's preceding fiscal year.

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

§ 613.3100 Domestic lending.

(a) *Definitions.*

(1) *Cooperative* means any association of farmers, ranchers, producers or harvesters of aquatic products, or any federation of such associations, which conducts business for the mutual benefit of its members and has the power to:

(i) Process, prepare for market, handle, or market farm or aquatic products;

(ii) Purchase, test, grade, process, distribute, or furnish farm or aquatic supplies; or

(iii) Furnish business and financially related services to its members.

(2) *Farm or aquatic supplies and farm or aquatic business services* are any goods or services normally used by farmers, ranchers, or producers and harvesters of aquatic products in their business operations, or improve the welfare or livelihood of such persons.

(3) *Public utility* means a cooperative or other entity that is licensed under Federal, State, or local law to provide electric, telecommunication, cable television, water, or waste treatment services.

(4) *Rural area* means all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 inhabitants based on the latest decennial census of the United States.

(5) *Service cooperative* means a cooperative that is predominately involved in providing business and financially related services (other than public utility services) to farmers, ranchers, aquatic producers or harvesters, or their cooperatives.

(b) *Cooperatives and other entities that serve agricultural or aquatic producers.* (1) *Eligibility for cooperatives.* A cooperative is eligible to borrow from a bank for cooperatives or an agricultural credit bank only if the following requirements are satisfied:

(i) Unless the bank's board of directors establishes by resolution a higher voting control threshold for any type of cooperative, the percentage of voting control of the cooperative held by farmers, ranchers, producers or harvesters of aquatic products, or cooperatives shall be 80 percent except:

(A) Sixty (60) percent for a service cooperative;

(B) Sixty (60) percent for local farm supply cooperatives that have historically served the needs of a community that would not be adequately served by other suppliers and have experienced a reduction in the percentage of membership by agricultural or aquatic producers due to changed circumstances beyond their control; and

(C) Sixty (60) percent for local farm supply cooperatives that shall provide needed services to a community, and shall compete with a cooperative specified in § 613.3100(b)(1)(i)(B);

(ii) The cooperative deals in farm or aquatic products, or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or financially related services with or for members in an amount at least equal in value to the total amount of such business it transacts with or for nonmembers, excluding from the total of member and non-member business, transactions with the United States, or any agencies or instrumentalities thereof, or services or supplies furnished by a public utility; and

(iii) The cooperative conforms with one of the following two conditions:

(A) No member of the cooperative shall have more than one vote because of the amount of stock or membership capital owned therein; or

(B) The cooperative restricts dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by applicable State law, whichever is less.

(2) *Other eligible entities.* The following entities are eligible to borrow from banks for cooperatives and agricultural credit banks:

(i) Any legal entity that holds more than 50 percent of the voting control of a cooperative that is an eligible borrower under paragraph (b)(1) of this section, and it uses the proceeds of the loan to fund the activities of its cooperative subsidiary on the terms and conditions specified by the bank;

(ii) Any legal entity in which an eligible cooperative has an ownership interest, *provided that* if such interest is less than 50 percent, financing shall not exceed the percentage that the eligible cooperative owns in such entity multiplied by the value of the total assets of such entity; or

(iii) Any creditworthy private entity operated on a non-profit basis that satisfies the requirements for a service cooperative and complies with the requirements of paragraphs (b)(1)(i)(A) and (b)(1)(iii) of this section, and any subsidiary of such entity. An entity that is eligible to borrow under this paragraph shall be organized to benefit agriculture in furtherance of the welfare of the farmers, ranchers, and aquatic producers and harvesters who are its members.

(c) *Electric, telecommunication, and cable television utilities.*—(1) *Eligibility.* A bank for cooperatives or an agricultural credit bank may lend to:

(i) Cooperatives, other entities, or the subsidiaries of such cooperatives or other entities that:

(A) Have received a loan, loan commitment, insured loan, or loan guarantee from the Rural Utilities Service of the United States Department of Agriculture to finance rural electric and telecommunication services;

(B) Have received a loan or a loan commitment from the Rural Telephone

Bank of the United States Department of Agriculture; or

(C) Have been certified by the Rural Utilities Service of the United States Department of Agriculture to be eligible for a loan, loan commitment, or loan guarantee; or

(ii) Any legal entity that holds more than 50 percent of the voting control of any public utility that is an eligible borrower under paragraph (c)(1)(i) of this section, and uses the proceeds of the loan to fund the activities of the eligible subsidiary on the terms and conditions specified by the bank for cooperatives or agricultural credit bank.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible to borrow under paragraph (c)(1) of this section in order to provide electric or telecommunication services that are generally compatible with the Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 *et seq.*, and regulations that the Secretary of Agriculture promulgates in 7 CFR parts 1610, 1710, 1712, 1714, 1735, 1737, 1739, and 1751. A subsidiary that is eligible to borrow under paragraph (c)(1) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank to operate a licensed cable television utility.

(3) *Restriction.* When an eligible utility, as defined in paragraph (c)(1)(i) of this section, owns less than 50 percent of any legal entity, the amount of financing provided by the bank for cooperatives or agricultural credit bank to the entity shall not exceed the percentage that the eligible cooperatives own in such entity multiplied by the value of the total assets of such entity.

(d) *Water and waste disposal facilities.*—(1) *Eligibility.* A cooperative or a public, quasi-public agency, body, or other public or private entity that, under the authority of State or local law, establishes and operates water and waste disposal facilities in a rural area, as that term is defined by paragraph (a)(5) of this section, is eligible to borrow from a bank for cooperatives or an agricultural credit bank.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible under paragraph (d)(1) of this section solely for installing, maintaining, expanding, improving, or operating water and waste disposal facilities in rural areas.

(e) *Domestic lessors.* A bank for cooperatives or agricultural credit bank may lend to domestic parties to finance the acquisition of facilities or equipment that will be leased to shareholders of the bank for use in their operations located inside of the United States.

§ 613.3200 International lending.

(a) *Definition.* For the purpose of this section only, the term "farm supplies" refers to inputs that are used in a farming or ranching operation, but excludes agricultural processing equipment, machinery used in food manufacturing or other capital goods which are not used in a farming or ranching operation.

(b) *Import transactions.* The following parties are eligible to borrow from a bank for cooperatives or an agricultural credit bank pursuant to section 3.7(b) of the Act for the purpose of financing the import of agricultural commodities or products therefrom, aquatic products, and farm supplies into the United States:

(1) An eligible cooperative as defined by § 613.3100(b);

(2) A counterparty with respect to a specific import transaction with a voting stockholder of the bank for the substantial benefit of the shareholder; and

(3) Any foreign or domestic legal entity in which eligible cooperatives hold an ownership interest.

(c) *Export transactions.* Pursuant to section 3.7(b)(2) of the Act, a bank for cooperatives or an agricultural credit bank is authorized to finance the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country. The board of directors of each bank for cooperatives and agricultural credit bank shall adopt policies that ensure that exports of agricultural products and commodities, aquatic products, and farm supplies which originate from eligible cooperatives are financed on a priority basis. The total amount of balances outstanding on loans made under this paragraph shall not, at any time, exceed 50 percent of the capital of any bank for cooperatives or agricultural credit bank for loans that:

(1) Finance the export of agricultural commodities and products therefrom, aquatic products, or farm supplies that are not originally sourced from an eligible cooperative; and

(2) At least 95 percent of the loan amount is not guaranteed by a department, agency, bureau, board, or commission of the United States or a corporation that is wholly owned directly or indirectly by the United States.

(d) *Transactions involving international business operations.* A bank for cooperatives or an agricultural credit bank may finance a domestic or foreign entity which is at least partially owned by eligible cooperatives described in § 613.3100(b), and facilitates the international business operations of such cooperatives.

(e) *Restrictions.* (1) When eligible cooperatives own less than 50 percent of a foreign or domestic legal entity, the amount of financing that a bank for cooperatives or agricultural credit bank may provide to the entity for any import, export, or international business transaction shall not exceed the percentage of ownership that eligible cooperatives hold in such entity multiplied by the value of the total assets of such entity; and

(2) A bank for cooperatives or agricultural credit bank shall not finance the relocation of any plant or facility from the United States to a foreign country.

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

§ 613.3300 Participations and other interests in loans to similar entities.

(a) *Definitions.*

(1) *Participate* and *participation*, for the purpose of this section, refer to multilender transactions, including syndications, assignments, loan participations, subparticipations, other forms of the purchase, sale, or transfer of interests in loans, or other extensions of credit, or other technical and financial assistance.

(2) *Similar entity* means a party that is ineligible for a loan from a Farm Credit bank or association, but has operations that are functionally similar to the activities of eligible borrowers in that a majority of its income is derived from, or a majority of its assets are invested in, the conduct of activities that are performed by eligible borrowers.

(b) *Similar entity transactions.* A Farm Credit bank or a direct lender association may participate with a lender that is not a Farm Credit System institution in loans to a similar entity that is not eligible to borrow directly under §§ 613.3000, 613.3010, 613.3020, 613.3100, or 613.3200, for purposes similar to those for which an eligible borrower could obtain financing from the participating FCS institution.

(c) *Compatibility with lending authorities under titles I and II of the Act.* Each direct lender association may participate in loans to similar entities under paragraph (b) of this section only to the extent that such loans are compatible with the association's applicable long-term real estate lending authority under sections 1.7(a) and 1.10(a) of the Act or its short- and intermediate-term lending authorities under sections 1.10(b) and 2.4 of the Act.

(d) *Restrictions.* Participations by a Farm Credit bank or association in loans to a similar entity under this section are subject to the following limitations:

(1) *Lending limits.*

(i) *Farm Credit banks operating under title I of the Act and direct lender associations.* The total amount of all loan participations that any Farm Credit Bank, agricultural credit bank, or direct lender association has outstanding under paragraph (b) of this section to a single credit risk shall not exceed:

(A) Ten (10) percent of its total capital; or

(B) Twenty-five (25) percent of its total capital if a majority of the shareholders of the respective Farm Credit bank or direct lender association so approve.

(ii) *Farm Credit banks operating under title III of the Act.* The total amount of all loan participations that any bank for cooperative or agricultural credit bank has outstanding under paragraph (b) of this section to a single credit risk shall not exceed 10 percent of its total capital;

(2) *Percentage held in the principal amount of the loan.* The participation interest in the same loan held by one or more Farm Credit bank(s) or association(s) shall not, at any time, equal or exceed 50 percent of the principal amount of the loan; and

(3) *Portfolio limitations.* The total amount of participations that any Farm Credit bank or direct lender association has outstanding under paragraph (b) of this section shall not exceed 15 percent of its total outstanding assets at the end of its preceding fiscal year.

(e) *Approval by other Farm Credit System institutions.* (1) No direct lender association shall participate in a loan to a similar entity under paragraph (b) of this section without the approval of its funding bank. A funding bank shall deny such requests only for safety and soundness reasons affecting the bank.

(2) No Farm Credit bank operating under title I of the Act or a direct lender association shall participate in a loan under paragraph (b) of this section to a similar entity that is located outside of its chartered territory unless it complies with the requirements of § 614.4070 of this chapter.

(3) No Farm Credit Bank or direct lender association shall participate in a loan to a similar entity that is eligible to borrow under § 613.3100(b) without the prior approval of the bank for cooperatives or agricultural credit bank that, at the time the loan is made, has the greatest volume of loans made under title III of the Act in the State where the headquarters office of the similar entity is located.

(4) No bank for cooperatives or agricultural credit bank shall participate in a loan to a similar entity that is eligible to borrow under §§ 613.3010 or 613.3020 without the prior consent of the Farm Credit Bank(s) in whose chartered territory the similar entity conducts operations.

(5) All approvals required under paragraph (e) of this section may be granted on an annual basis and under such terms and conditions as the various Farm Credit System institutions may agree.

(f) *Borrower rights.* The borrower rights requirements in title IV of the Act and § 614.4336 and subparts K, L and N of part 614 of this chapter do not apply to participations in loans to similar entities under paragraph (b) of this section.

(g) *Borrower stock requirements.* Pursuant to section 4.3A of the Act and § 615.5220 of this chapter, the capitalization bylaws of each Farm Credit bank and association shall determine whether, and to what extent, non-voting stock or participation certificates shall be required for participations in loans to similar entities.

Subpart E—Nondiscrimination in Lending

§§ 613.3145, 613.3150, 613.3151, 613.3152, 613.3160, 613.3170, 613.3175 (Subpart E) [Redesignated]

3. Subpart E of part 613, consisting of §§ 613.3145, 613.3150, 613.3151, 613.3152, 613.3160, 613.3170, and 613.3175 is redesignated as new part 626, consisting of §§ 626.6000, 626.6005, 626.6010, 626.6015, 626.6020, 626.6025, and 626.6030 respectively.

PART 614—LOAN POLICIES AND OPERATIONS

4. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—[Amended]

5. Subpart A of part 614 is amended by removing the reference "613.3020" each place it appears and adding in its place "613.3000"; by removing the reference "613.3045" each place it appears and adding in its place "613.3010"; by removing the reference "613.3040" each place it appears and adding in its place "613.3030"; by removing the reference "613.3050" each place it appears and adding in its place "613.3020"; by removing the reference "613.3110" each place it appears and adding in its place "613.3100(b)(1)"; and by removing the reference "613.3110(c)" each place it appears and adding in its place "613.3100(b)(2), (c), and (d)."

6. Section 614.4010 is amended by removing the words "export or" each place they appear in paragraphs (d)(4) and (d)(5); by removing the reference "(d)(3)" and adding in its place "(d)(4)" in paragraph (d)(5); and by adding new paragraphs (d)(6) and (d)(7) to read as follows.

§ 614.4010 Agricultural credit banks.

* * * * *

(d) * * *

* * * * *

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part 614; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements of § 613.3200(d) and (e) of this chapter.

* * * * *

7. Section 614.4020 is amended by removing the words "export or" each place they appear in paragraphs (a)(4) and (a)(5); by adding after the words "bank's board", the reference ", § 614.4233," in paragraph (a)(4); by removing the words "board policy" and adding in their place, the words "policies of the bank's board, § 614.4233," in paragraph (a)(5); and by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 614.4020 Banks for cooperatives.

(a) * * *

* * * * *

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part 614; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements in § 613.3200(d) and (e) of this chapter.

* * * * *

Subpart E—Loan Terms and Conditions

8. Section 614.4222 is revised to read as follows:

§ 614.4222 Rural home loans.

A long-term real estate loan, including a revolving line of credit, on a rural home shall be secured by a first lien on the property, pursuant to § 614.4210, except that it may be secured by a second lien if the institution also holds the first lien on the property. A short- or intermediate-term loan on a rural home, including a revolving line of credit, must be secured by a lien on the property unless the financing is provided exclusively for repairs, remodelling, or other improvements to the rural home, in which case the credit may be secured by other property or unsecured if warranted by the creditworthiness of the borrower.

9. Section 614.4233 is amended by revising the introductory paragraph to read as follows:

§ 614.4233 International loans.

Term loans made by banks for cooperatives and agricultural credit banks under the authority of section 3.7(b) of the Act and § 613.3200 of this chapter to foreign or domestic parties who are not shareholders of the bank shall be subject to following conditions:

* * * * *

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

§ 614.4610 [Amended]

10. Section 614.4610 is amended by removing the words "a association in the district" and adding in their place, the words "any association funded by the bank" in the first sentence and removing the reference "§ 613.3040(d)(2)" and adding in its place the reference "§§ 613.3010(b)(1) and 613.3030(c)(2)".

Subpart Q—Banks for Cooperatives Financing International Trade

11. The heading for subpart Q is amended by adding after the words "Banks for Cooperatives" the words "and Agricultural Credit Banks".

§ 614.4700 [Amended]

12. Section 614.4700 is amended by adding after the words "banks for cooperatives" the words "and agricultural credit banks" each place they appear in paragraphs (a), (b), and (h).

§ 614.4710 [Amended]

13. Section 614.4710 is amended by adding after the words "banks for cooperatives" the words "and agricultural credit banks" each place it appears in the introductory paragraph and paragraph (c); by adding after the words "bank for cooperatives'" the words "or agricultural credit bank's" in paragraph (a)(1)(ii); by adding after the words "bank for cooperatives" the words "or an agricultural credit bank" each place they appear in paragraphs (a)(1), (a)(1)(i), (a)(3), (a)(5) and (b)(1).

§ 614.4720 [Amended]

14. Section 614.4720 is amended by adding after the words "Banks for cooperatives" the words "and agricultural credit banks" in the first sentence of the introductory paragraph.

§ 614.4800 [Amended]

15. Section 614.4800 is amended by adding after the words "A bank for cooperatives" the words "or an agricultural credit bank" in the first sentence.

§ 614.4810 [Amended]

16. Section 614.4810 is amended by adding after the words "banks for cooperatives" the words "and agricultural credit banks" each place they appear in paragraphs (a) and (b).

§ 614.4900 [Amended]

17. Section 614.4900 is amended by adding after the words "a bank for cooperatives" the words "or an agricultural credit bank" each place they appear in paragraphs (a) through (d); and by adding after the words "banks for cooperatives" the words "and agricultural credit banks" in the first sentence of paragraph (i).

PART 618—GENERAL PROVISIONS

18. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart A—Related Services

§ 618.8005 [Amended]

19. Section 618.8005 is amended by removing the reference "§§ 613.3010, 613.3020 (a)(1), (a)(2), (b), and 613.3045" in paragraph (a) and adding in its place, the reference "§§ 613.3000 (a) and (b), 613.3010, and 613.3300" and by removing the reference "§§ 613.3110 and 613.3120" and adding in its place, the reference "§§ 613.3100, 613.3200, and 613.3300" in paragraph (b).

PART 619—DEFINITIONS

20. The authority citation for part 619 is revised to read as follows:

Authority: Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8 of the Farm Credit Act (12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2).

§§ 619.9025, 619.9030, 619.9040, 619.9065, 619.9080, 619.9090, 619.9100, 619.9120, 619.9150, 619.9160, 619.9190, 619.9220, 619.9270, 619.9280, 619.9300, and 619.9310 [Removed]

21. Sections 619.9025, 619.9030, 619.9040, 619.9065, 619.9080, 619.9090, 619.9100, 619.9120, 619.9150, 619.9160, 619.9190, 619.9220, 619.9270, 619.9280, 619.9300, and 619.9310 are removed.

PART 626—NONDISCRIMINATION IN LENDING

22. The authority citation for part 626 is added to read as follows:

Authority: Secs. 1.5, 2.2, 2.12, 3.1, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2073, 2093, 2122, 2243, 2252); 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR 202, 24 CFR 100, 109, 110.

§ 626.6025 [Amended]

23. Newly designated § 626.6025 is amended by removing the reference "§ 613.3160(b)" and adding in its place, the reference "§ 626.6020(b)" in paragraph (b).

* * * * *

Dated; September 5, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–22313 Filed 9–8–95; 8:45 am]

BILLING CODE 6705–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AA99

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Board proposes to update its regulations to reflect a change in how it evaluates pain and other subjective symptoms when determining if an individual is disabled from all regular employment. Other changes are proposed to reflect changes in law and procedure.

DATES: Comments must be received by November 13, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Courts have consistently held that disability for all regular employment under section 2(a)(1)(v) of the Railroad Retirement Act (45 U.S.C. 231a(a)(1)(v)) is synonymous with the inability to perform any substantial gainful activity under section 223(d) of the Social Security Act (42 U.S.C. 423(d)). Therefore, the Board has generally patterned its regulations dealing with the adjudication of claims for disability based upon the inability to engage in all regular employment (20 CFR Part 220) on regulations promulgated by the Department of Health and Human Services, Social Security Administration (20 CFR Part 404, Subpart P). On November 14, 1991, the Social Security Administration published a final rule (56 FR 57928) expanding its regulations pertaining to how it evaluates symptoms, including pain, in its disability adjudication. The Board has generally followed these regulations in adjudication of claims for disability based on inability to engage in regular employment and now proposes to amend its regulations to conform thereto.

Proposed § 220.100(f) explains how a symptom, such as pain, is considered when it appears as a criterion in the Listing of Impairments contained in Appendix 1 of this part. Appendix 1 contains medical criteria for finding a person disabled on medical factors alone without consideration of the person's age, education, and work experience.

The addition of proposed § 220.100(g) insures that the Listing of Impairments contained in Appendix 1 will at all times conform to Appendix 1 of Subpart P, 20 CFR, Part 404, of the Social Security Adminitration's disability regulations unless specifically indicated otherwise by regulation under this part.

Section 220.112(a) is proposed to be revised by eliminating the reference to remarried widow(ers) and surviving divorced spouses. Section 5103 of Public Law 101–508 revised the standard of disability for these groups of beneficiaries to require the consideration of other than medical factors, such as age, education, and experience, in determining disability for all substantial gainful activity for these groups. Prior to the amendment, only medical factors were required to be used in a disability determination for these beneficiaries.

The proposed rule completely revises § 220.114 to parallel the Social Security regulation dealing with the same subject. See § 404.1529 of this chapter. Proposed § 220.114 will provide guidance on the evaluation of symptoms, including pain. The proposed regulation conforms to the Board's current procedures and applicable court decisions on the evaluation of symptoms, especially pain, in making disability determinations.

Paragraph (a) of proposed § 220.114 is a general statement of how symptoms, such as pain, are considered in determining disability. It explains that the Board will consider a claimant's symptoms along with other objective medical evidence and other evidence relating to a claimant's condition.

Paragraph (b) of proposed § 220.114 explains that the Board will not find that pain will affect an individual's ability to do basic work activities unless the claimant first establishes that he or she has a medically determinable physical or mental impairment, supported by medical signs and laboratory findings, to which the allegation of pain can reasonably be related.

Paragraph (c) of proposed § 220.114 provides that when a symptom, such as pain, is established, the Board must then evaluate the intensity and persistence of the symptom with respect to how it limits the claimant's capacity for work. In making this evaluation the Board considers all available evidence, including the claimant's medical history, statements from the claimant and his treating physician, and statements from others who have knowledge of the claimant's situation.

Paragraph (d) of proposed § 220.114 explains how symptoms, such as pain, are evaluated in the sequential evaluation process required in disability adjudication.

The proposed rule would revise § 220.120 to explain that in determining the claimant's residual functional capacity the Board considers the claimant's symptoms, such as pain, and that such pain or other symptoms may limit the claimant's residual functional capacity beyond what can be determined from anatomical or physiological abnormalities taken alone. Consistent with the revision of section 220.120, proposed new § 220.135 explains that a claimant's symptoms, such as pain, may cause both exertional and nonexertional limitations. This proposed new section defines these terms. Only when the claimant's impairments and related symptoms impose solely exertional impairments do the rules set forth in Appendix 2 of this part direct a conclusion.

Proposed § 220.134 does for Appendix 2 of this part what the proposed amendment to § 220.100(g) does for Appendix 1 and insures that Appendix 2 will be consistent with the comparable appendix in the regulations under the Social Security Act. Appendix 2 contains the medical vocational guidelines or "grids". The grids direct a finding of disabled or not disabled based on specified limitations combined with the individual's age, education, and work experience. Appendix 2 was developed by the Social Security Administration after an extensive administrative rule-making procedure. The Board has adopted the Administration's Appendix 2 in its disability adjudication. This amendment will insure that the Board's Appendix 2 automatically remains in conformance with that of the Social Security Administration except where otherwise stated by this regulation.

Finally, the proposed amendment to § 200.00 of Appendix 2 conforms that section to the revised § 220.120.

The Board, with the agreement of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 220

Disability benefits, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Part 220 of Title 20 of the

Code of Federal Regulations is proposed to be amended as follows:

PART 220—DETERMINING DISABILITY

1. The authority for Part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

2. Section 220.110 is amended by adding paragraphs (f) and (g) to read as follows:

§ 220.110 Listing of impairments in Appendix 1 of this part.

* * * * *

(f) *Symptoms as criteria of listed impairment(s).* Some listed impairment(s) include symptoms usually associated with those impairment(s) as criteria. Generally, when a symptom is one of the criteria in a listed impairment, it is only necessary that the symptom be present in combination with the other criteria. It is not necessary, unless the listing specifically states otherwise, to provide information about the intensity, persistence or limiting effects of the symptom as long as all other findings required by the specific listing are present.

(g) The Listing of Impairments found in Appendix 1 of this part is intended to be identical to the list promulgated by the Social Security Administration in Appendix 1 of Subpart P, 20 CFR Part 404. In addition to Appendix 1 of this part a claimant should also consult Appendix 1 of 20 CFR, Subpart P, Part 404.

§ 220.112 [Amended]

3. The penultimate sentence of § 220.112(a) is amended by removing the words "Except in cases of remarried widows, widowers, and surviving divorced spouses, the" and adding the word "The" to begin that sentence.

§ 220.114 [Amended]

4. Section 220.114 is revised to read as follows:

§ 220.114 Evaluation of symptoms, including pain.

(a) *General.* In determining whether the claimant is disabled, the Board considers all of the claimant's symptoms, including pain, and the extent to which the claimant's symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence. By objective medical evidence, the Board means medical signs and laboratory findings as defined in § 220.113 (b) and (c) of this part. By other evidence, the Board means the kinds of evidence described in §§ 220.45 and 220.46 of this part. These include statements or reports from the claimant, the claimant's treating or examining physician or psychologist, and others about the claimant's medical history, diagnosis, prescribed treatment, daily activities, efforts to work, and any other evidence showing how the claimant's impairment(s) and any related symptoms affect the claimant's ability to work. The Board will consider all of the claimant's statements about his or her symptoms, such as pain, and any description by the claimant, the claimant's physician or psychologist, or other persons about how the symptoms affect the claimant's activities of daily living and ability to work. However, statements about the claimant's pain or other symptoms will not alone establish that the claimant is disabled; there must be medical signs and laboratory findings which show that the claimant has a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all of the other evidence (including statements about the intensity and persistence of the claimant's pain or other symptoms which may reasonably be accepted as consistent with the medical signs and laboratory findings), would lead to a conclusion that the claimant is disabled. In evaluating the intensity and persistence of the claimant's symptoms, including pain, the Board will consider all of the available evidence, including the claimant's medical history, the medical signs and laboratory findings and statements about how the claimant's symptoms affect the claimant. (Section 220.112 of this part explains how the Board considers opinions of the claimant's treating source and other medical opinions on the existence and severity of the claimant's symptoms, such as pain.) The Board will then determine the extent to which the claimant's alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how the claimant's symptoms affect the claimant's ability to work.

(b) *Need for medically determinable impairment that could reasonably be expected to produce symptoms, such as pain.* The claimant's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness will not be found to affect the claimant's ability to do basic work activities unless medical signs or laboratory findings show that a medically determinable impairment(s) is present. Medical signs and laboratory findings, established by medically acceptable clinical or laboratory diagnostic techniques, must show the existence of a medical impairment(s) which results from anatomical, physiological, or psychological abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged. The finding that the claimant's impairment(s) could reasonably be expected to produce the claimant's pain or other symptoms does not involve a determination as to the intensity, persistence, or functionally limiting effects of the claimant's symptoms. The Board will develop evidence regarding the possibility of a medically determinable mental impairment when the Board has information to suggest that such an impairment exists, and the claimant alleges pain or other symptoms but the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptoms.

(c) *Evaluating the intensity and persistence of symptoms, such as pain, and determining the extent to which the claimant's symptoms limit his or her capacity for work.* (1) *General.* When the medical signs or laboratory findings show that the claimant has a medically determinable impairment(s) that could reasonably be expected to produce the claimant's symptoms, such as pain, the Board must then evaluate the intensity and persistence of the claimant's symptoms so that it can determine how the claimant's symptoms limit the claimant's capacity for work. In evaluating the intensity and persistence of the claimant's symptoms the Board considers all of the available evidence including the claimant's medical history, the medical signs and laboratory findings, and statements from the claimant, the claimant's treating or examining physician or psychologist, or other persons about how the claimant's symptoms affect the claimant. The Board also considers the medical opinions of the claimant's treating source and other medical opinions as explained in § 220.112 of this part. Paragraphs (c)(2) through (c)(4) of this section explain further how the Board evaluates the intensity and persistence of the claimant's symptoms and how it determines the extent to which the claimant's symptoms limit the claimant's capacity for work, when the medical signs or laboratory findings show the claimant has a medically determinable impairment(s) that could reasonably be expected to produce the claimant's symptoms, such as pain.

(2) *Consideration of objective medical evidence.* Objective medical evidence is evidence obtained from the application

of medically acceptable clinical and laboratory diagnostic techniques, such as evidence of reduced joint motion, muscle spasm, sensory deficit or motor disruption. Objective medical evidence of this type is a useful indicator to assist the Board in making reasonable conclusions about the intensity and persistence of the claimant's symptoms and the effect those symptoms, such as pain, may have on the claimant's ability to work. The Board must always attempt to obtain objective medical evidence and, when it is obtained, will consider it in reaching a conclusion as to whether the claimant is disabled. However, the Board will not reject the claimant's statements about the intensity and persistence of the claimant's pain or other symptoms or about the effect the claimant's symptoms have on the claimant's ability to work solely because the available objective medical evidence does not substantiate the claimant's statements.

(3) *Consideration of other evidence.* Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, the Board will carefully consider any other information the claimant may submit about his or her symptoms. The information that the claimant, the claimant's treating physician or psychologist, or other persons provide about the claimant's pain or other symptoms (e.g., what may precipitate or aggravate the claimant's symptoms, what medications, treatments or other methods he or she uses to alleviate them, and how the symptoms may affect his or her pattern of daily living) is also an important indicator of the intensity and persistence of the claimant's symptoms. Because symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which the claimant, the claimant's treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether the claimant is disabled. The Board will consider all of the evidence presented, including information about the claimant's prior work record, the claimant's statements about his or her symptoms, evidence submitted by the claimant's treating, examining or consulting physician or psychologist, and observations by Board employees and other persons. Section 220.112 of this part explains in detail how the Board considers and weighs treating source and other medical opinions about the nature and severity of the claimant's impairment(s) and any related symptoms, such as pain. Factors relevant to the claimant's symptoms, such as pain, which the Board will consider include:

(i) The claimant's daily activities;

(ii) The location, duration, frequency, and intensity of pain or other symptoms;

(iii) Precipitating and aggravating factors;

(iv) The type, dosage, effectiveness, and side effects of any medication the claimant takes or has taken to alleviate pain or other symptoms;

(v) Treatment, other than medication, the claimant receives or has received for relief of pain or other symptoms:

(vi) Any measures the claimant uses or has used to relieve pain or other symptoms (e.g., lying flat on the claimant's back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and

(vii) Other factors concerning the claimant's functional limitations and restrictions due to pain or other symptoms.

(4) *How the Board determines the extent to which symptoms, such as pain, affect the claimant's capacity to perform basic work activities.* In determining the extent to which the claimant's symptoms, such as pain, affect the claimant's capacity to perform basic work activities, the Board considers all of the available evidence described in paragraphs (c)(1) through (c)(3) of this section. The Board will consider the claimant's statements about the intensity, persistence, and limiting effects of the claimant's symptoms, and the Board will evaluate the claimant's statements in relation to the objective medical evidence and other evidence, in reaching a conclusion as to whether the claimant is disabled. The Board will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between the claimant's statements and the rest of the evidence, including the claimant's medical history, the medical signs and laboratory findings and statements by the claimant's treating or examining physician or psychologist or other persons about how the claimant's symptoms affect the claimant. The claimant's symptoms, including pain, will be determined to diminish the claimant's capacity for basic work activities to the extent that the claimant's alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence.

(d) *Consideration of symptoms in the disability determination process.* The Board follows a set order of steps to determine whether the claimant is disabled. If the claimant is not doing substantial gainful activity, the Board considers the claimant's symptoms, such as pain, to evaluate whether the claimant has a severe physical or mental impairment(s), and at each of the remaining steps in the process. Sections 220.100 and 220.101 of this part explain this process in detail. The Board also considers the claimant's symptoms, such as pain, at the appropriate steps in the Board's review when the Board considers whether the claimant's disability continues. Subpart O of this part explains the procedure the Board follows in reviewing whether the claimant's disability continues.

(1) *Need to establish a severe medically determinable impairment(s).* The claimant's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, are considered in making a determination as to whether the claimant's impairment or combination of impairment(s) is severe. (See § 220.100(b)(2) of this part.)

(2) *Decision whether the Listing of Impairments is met.* Some listed impairment(s) include symptoms, such as pain, as criteria. Section 220.110(f) of this part explains how the Board considers the claimant's symptoms when the claimant's symptoms are included as criteria for a listed impairment.

(3) *Decision whether the Listing of Impairments is equaled.* If the claimant's impairment is not the same as a listed impairment, the Board must determine whether the claimant's impairment(s) is medically equivalent to a listed impairment. Section 220.111 of this part explains how the Board makes this determination. Under § 220.111(b) of this part, the Board will consider equivalence based on medical evidence only. In considering whether the claimant's symptoms, signs, and laboratory findings are medically equal to the symptoms, signs, and laboratory findings of a listed impairment, the Board will look to see whether the claimant's symptoms, signs, and laboratory findings are at least equal in severity to the listed criteria. However, the Board will not substitute the claimant's allegations of pain or other symptoms for a missing or deficient sign or laboratory finding to raise the severity of the claimant's impairment(s) to that of a listed impairment. If the symptoms, signs, and laboratory findings of the claimant's impairment(s)

are equivalent in severity to those of a listed impairment, the Board will find the claimant disabled. If the Board determines the claimant's impairment(s) is not medically equivalent to a listed impairment, the Board will consider the impact of the claimant's symptoms on the claimant's residual functional capacity. (See paragraph (d)(4) of this section.)

(4) *Impact of symptoms (including pain) on residual functional capacity.* If the claimant has a medically determinable severe physical or mental impairment(s), but the claimant's impairment(s) does not meet or equal an impairment listed in Appendix 1 of this part, the Board will consider the impact of the claimant's impairment(s) and any related symptoms, including pain, on the claimant's residual functional capacity. (See § 220.120 of this part.)

§ 220.120 [Revised]

6. Section 220.120 is revised to read as follows:

§ 220.120 The claimant's residual functional capacity.

(a) *General.* The claimant's impairment(s) and any related symptoms, such as pain, may cause physical and mental limitations that affect what the claimant can do in a work setting. The claimant's residual functional capacity is what the claimant can still do despite the claimant's limitations. If the claimant has more than one impairment, the Board will consider all of the claimant's impairment(s) of which the Board is aware. The Board will consider the claimant's ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c), and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. It may include descriptions (even the claimant's own) of limitations that go beyond the symptoms, such as pain, that are important in the diagnosis and treatment of the claimant's medical condition. Observations by the claimant's treating or examining physicians or psychologists, the claimant's family, neighbors, friends or other persons, of the claimant's limitations, in addition to those observations usually made during formal medical examinations, may also be used. These descriptions and observations, when used, must be considered along with the claimant's medical records to enable the Board to decide to what extent the claimant's impairment(s) keeps the claimant from performing particular work activities. This assessment of the claimant's remaining capacity for work is not a decision on whether the claimant is disabled, but is used as the basis for determining the particular types of work the claimant may be able to do despite the claimant's impairment(s). Then, using the guidelines in §§ 220.125 through 220.135 of this part, the claimant's vocational background is considered along with the claimant's residual functional capacity in arriving at a disability determination or decision. In deciding whether the claimant's disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement the claimant has experienced is related to the claimant's ability to work as discussed in § 220.178 of this part.

(b) *Physical abilities.* When the Board assesses the claimant's physical abilities, the Board first assesses the nature and extent of the claimant's physical limitations and then determines the claimant's residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce the claimant's ability to do past work and other work.

(c) *Mental abilities.* When the Board assesses the claimant's mental abilities, the Board first assesses the nature and extent of the claimant's mental limitations and restrictions and then determines the claimant's residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, co-workers, and work pressures in a work setting, may reduce the claimant's ability to do past work and other work.

(d) *Other abilities affected by impairment(s).* Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions may cause limitations and restrictions which affect other work-related abilities. If the claimant has this type of impairment(s), the Board considers any resulting limitations and restrictions which may reduce the claimant's ability to do past work and other work in deciding the claimant's residual functional capacity.

(e) *Total limiting effects.* When the claimant has a severe impairment(s), but the claimant's symptoms, signs, and laboratory findings do not meet or equal those of a listed impairment in Appendix 1 of this part, the Board will consider the limiting effects of all the claimant's impairment(s), even those that are not severe, in determining the claimant's residual functional capacity. Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of the claimant's impairment(s) and any related symptoms, the Board will consider all of the medical and nonmedical evidence, including the information described in § 220.114(c) of this part.

§ 220.134 [Amended]

7. Section 220.134 is amended by adding a new paragraph (d) to read as follows:

§ 220.134 Medical-Vocational Guidelines in Appendix 2 of this part.

* * * * *

(d) The medical-vocational guidelines found in Appendix 2 of this part are intended to be identical to those promulgated by the Social Security Administration in Appendix 2 of Subpart P, 20 CFR Part 404. In addition to Appendix 2 of this part a claimant shall also consult Appendix 2 of 20 CFR, Subpart P, Part 404.

8. A new § 220.135 is added to read as follows:

§ 220.135 Exertional and nonexertional limitations.

(a) *General.* The claimant's impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit the claimant's ability to meet certain demands of jobs. These limitations may be exertional, nonexertional, or a combination of both. Limitations are classified as exertional if they affect the claimant's ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 220.132 and 220.134 of this part explain how the Board uses the classifications of jobs by exertional levels (strength demands) which are contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations or restrictions which affect the claimant's ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional. Sections 220.100(b)(5) and 220.180(h) of this part explain that if the claimant can no longer do the claimant's past relevant work because of a severe medically determinable impairment(s), the Board must determine whether the claimant's impairment(s), when considered along with the claimant's age, education, and work experience, prevents the claimant from doing any other work which exists in the national economy in order to decide whether the claimant is disabled or continues to be disabled. Paragraphs (b), (c), and (d) of this section explain how the Board applies the medical-vocational guidelines in Appendix 2 of this part in making this determination, depending on whether the limitations or restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, are exertional, nonexertional, or a combination of both.

(b) *Exertional limitations.* When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect only the claimant's ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), the Board considers that the claimant has only exertional limitations. When the claimant's impairment(s) and related symptoms only impose exertional limitations and the claimant's specific vocational profile is listed in a rule contained in Appendix 2 of this part, the Board will directly apply that rule to decide whether the claimant is disabled.

(c) *Nonexertional limitations.* (1) When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect only the claimant's ability to meet the demands of jobs other than strength demands, the Board considers that the claimant has only nonexertional limitations or restrictions. Some examples of nonexertional limitations or restrictions include the following:

(i) Difficulty functioning because of nervousness, anxiety, or depression;

(ii) Difficulty maintaining attention or concentrating;

(iii) Difficulty understanding or remembering detailed instructions;

(iv) Difficulty in seeing or hearing;

(v) Difficulty in tolerating some physical feature(s) of certain work settings, e.g., inability to tolerate dust or fumes; or

(vi) Difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching.

(2) If the claimant's impairment(s) and related symptoms, such as pain, only affect the claimant's ability to perform the nonexertional aspects of work-related activities, the rules in Appendix 2 of this part do not direct factual conclusions of disabled or not disabled. The determination as to whether disability exists will be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2 of this part.

(d) *Combined exertional and nonexertional limitations.* When the limitations and restrictions imposed by the claimant's impairment(s) and related symptoms, such as pain, affect the claimant's ability to meet both the strength demands and demands of jobs other than the strength demands, the Board considers that the claimant has a combination of exertional and nonexertional limitations or restrictions. If the claimant's impairment(s) and related symptoms, such as pain, affect the claimant's ability to meet both the strength demands and demands of jobs other than the strength demands the Board will not directly apply the rules in Appendix 2 of this part unless there is a rule that directs a conclusion that the claimant is disabled based upon the claimant's strength limitations; otherwise the rules provide a framework to guide the Board's decision.

Appendix 2 [Amended]

9. Appendix 2—Medical-Vocational Guidelines of part 220 is amended by revising paragraph (c) of section 200.00 to read as follows:

§ 200.00 Introduction. * * *

* * * * *

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined. When assessing the person's residual functional capacity, the Board considers his or her symptoms (such as pain), signs, and laboratory findings together with other evidence the Board obtains.

* * * * *

Dated: August 29, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–22103 Filed 9–8–95; 8:45 am]

BILLING CODE 7905-01-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AD39

Payment for Vocational Rehabilitation Services Furnished Individuals During Certain Months of Nonpayment of Supplemental Security Income Benefits

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules.

SUMMARY: We are proposing to amend our regulations relating to payment for vocational rehabilitation (VR) services provided to recipients of supplemental security income (SSI) benefit payments based on disability or blindness under title XVI of the Social Security Act (the Act). These regulations reflect section 5037 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990). Section 5037 of OBRA 1990 added section 1615(e) to the Act which authorizes the Commissioner of Social Security (the Commissioner) to pay a State VR agency for costs incurred in furnishing VR services to an individual during certain months for which the individual did not receive SSI payments based on disability or blindness as well as during months for which the individual did receive such payments. We also propose to amend our regulations on VR payments to clarify certain rules and remove some outdated rules.

DATES: Your comments will be considered if we receive them no later than November 13, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966–2830; sent by E-mail to "regulations@ssa.gov;" or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD

21235 between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 (410) 965–8471.

SUPPLEMENTARY INFORMATION: We are proposing to amend our regulations on payment for VR services provided to individuals receiving SSI benefits based on disability or blindness. These amended regulations will reflect section 5037 of OBRA 1990, Public Law 101–508, which added paragraph (e) to section 1615 of the Act. Our existing regulations concerning payment for such services carry out the provisions of section 1615(d) of the Act.

In general, section 1615(d) of the Act authorizes the Commissioner to reimburse a State VR agency for the costs incurred in providing VR services to individuals receiving SSI benefits under title XVI of the Act based on disability or blindness in three categories of cases. Specifically, section 1615(d) permits payment for VR services furnished to such individuals only in cases where: (1) The furnishing of such services results in the individual's performance of substantial gainful activity (SGA) for a continuous period of nine months; (2) the individual is continuing to receive benefits, despite his or her medical recovery, under section 1631(a)(6) of the Act because of his or her participation in a VR program; or (3) the individual, without good cause, refuses to continue to accept VR services or fails to cooperate in such a manner as to preclude his or her successful rehabilitation. (In such a case of refusal to continue or cooperate in a VR program, payments are authorized only for the VR services provided prior to the cessation of VR participation. If the individual resumes participation, then payments are authorized for the VR services provided after participation is resumed only if all requirements for payment are met. These cases are described in sections 1615(d)(1), (2) and (3) of the Act, respectively, and in §§ 416.2211–416.2213 of our regulations.)

Under section 1615(d) of the Act, payment may be made for VR services furnished by a State VR agency, i.e., an agency administering a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended. However, in the case of a State which is unwilling to participate or does not have such a plan for VR services, our regulation at 20 CFR 416.2204 provides that we may arrange for VR services for an SSI recipient who is disabled or blind through an alternative VR service provider (alternate participant) and pay such provider for the costs of services under the same terms and conditions that apply to State VR agencies. This regulation is based in part on section 222(d)(2) of the Act, which provides for the use of alternate participants in the VR payment program under title II of the Act (relating to the rehabilitation of social security disability beneficiaries), and on the authority provided to the Commissioner under section 1633(a) of the Act to make such administrative and other arrangements as may be necessary or appropriate to carry out title XVI of the Act, including making arrangements under title XVI in the same manner as they are made under title II.

Prior to the enactment of OBRA 1990, SSA was authorized to pay a State VR agency under section 1615(d) of the Act only for VR services that were provided to an individual during months for which the individual received SSI benefits based on disability or blindness, including benefits payable under section 1611 or 1619(a) of the Act or, for cases under section 1615(d)(2), discussed above, continued payment of such benefits under section 1631(a)(6) of the Act. This is reflected in our existing regulations at §§ 416.2201, 416.2203 and 416.2215(a)(2).

Section 5037 of OBRA 1990 added section 1615(e) to the Act to provide us the authority to pay a State VR agency under section 1615(d) for the costs described in that section that are incurred in providing VR services to an individual during certain months for which the individual was not receiving SSI benefits based on disability or blindness as well as during months for which the individual was receiving such benefits. Under section 1615(e) of the Act, payment may be made for VR services in a case described in section 1615(d)(1), (2) or (3) of the Act which are provided to an individual in a month for which the individual receives, i.e., is eligible for—

- SSI cash benefits under section 1611 or special SSI cash benefits under section 1619(a) of the Act (this is the same as under prior law);
- A special status for medicaid under section 1619(b) of the Act; or
- A federally administered State supplementary payment under section 1616 of the Act or section 212(b) of Public Law 93–66.

In addition, section 1615(e) of the Act permits payment for VR services provided in a month for which an individual was ineligible for the benefits or special status described above for a reason other than cessation of disability or blindness, if such month occurred prior to the 13th consecutive month of such ineligibility following a month for which the individual was eligible for such benefits or special status. This means that payment may be made for VR services furnished during a month for which an individual's benefit payment or special status for Medicaid under section 1619(b) was suspended.

Section 1615(e) of the Act became effective November 5, 1990, the date of the enactment of OBRA 1990, and applies to claims for reimbursement pending on or after that date. This amendment to the Act, which allows us to reimburse a State VR agency or alternate participant for VR services furnished during certain months for which an individual was not receiving SSI benefits, responds to a recommendation in the March 1988 Report of the Disability Advisory Council that the Congress amend the Act to permit SSA to pay for VR services provided in months when an individual is in suspension status.

Proposed Changes to the VR Payment Regulations

The proposed rules will amend the existing regulations concerning the SSI VR payment program under title XVI of the Act to take account of the provisions of section 1615(e) of the Act which permit payment for VR services furnished during certain months for which a disabled or blind individual does not receive SSI benefits. The proposed rules also will make some other changes in the existing VR payment regulations to clarify certain rules and delete some obsolete rules. These changes affect the regulations governing the social security VR payment program under title II of the Act as well as the regulations concerning the SSI VR payment program under title XVI. The existing social security VR payment regulations carry out section 222(d) of the Act which contains provisions that are similar to the provisions of section 1615(d) of the Act, except that they apply to payment for VR services provided to individuals entitled to social security benefits based on disability under title II.

Changes to the Regulations to Implement Section 1615(e) of the Act

We are proposing to amend § 416.2201 to explain that, in general, sections 1615(d) and (e) of the Act authorize payment for costs of VR services provided to certain disabled or blind individuals who are eligible for SSI benefits, special SSI eligibility status, or federally administered State supplementary payments. In the proposed amendment to § 416.2201, we also explain that for the purpose of the SSI VR payment regulations, we refer to SSI benefits, special SSI eligibility status, or federally administered State supplementary payments as "disability or blindness benefits." Additionally, we also propose to add a corresponding definition of "disability or blindness benefits" for this purpose in § 416.2203, discussed below.

The proposed amendment to § 416.2201 further explains that, subject to the other requirements and conditions for payment prescribed in the regulations, payment may be made for VR services which are furnished during a month(s) for which an individual is eligible for disability or blindness benefits or continues to receive such benefits under section 1631(a)(6) of the Act, or which are furnished during a month(s) for which the individual's disability or blindness benefits are suspended. This rule also is reflected in proposed § 416.2215, discussed below.

In § 416.2203, "*Definitions,*" we propose to delete the paragraph defining "eligible," which discusses eligibility for SSI benefits only, and add a new paragraph to explain the meaning of "disability or blindness benefits" when used in the SSI VR payment regulations. The proposed rules provide that "disability or blindness benefits," as defined for the SSI VR payment regulations only, refer to regular SSI benefits under section 1611 of the Act, special SSI cash benefits under section 1619(a) of the Act, special SSI eligibility status under section 1619(b) of the Act, and/or a federally administered State supplementary payment under section 1616 of the Act or section 212(b) of Public Law 93–66, for which an individual is eligible based on disability or blindness, as appropriate. Thus, in the proposed VR payment regulations, when we use the terms "disability or blindness benefits" with reference to the SSI program, we mean the benefits, status, or payments referred to in section 1615(e) of the Act. As used in this preamble, "disability or blindness benefits" has the same meaning as in the proposed rules. Further, in § 416.2203, we propose to define the phrase "special SSI eligibility status" to refer to the special status for Medicaid under section 1619(b) of the Act since this is the phrase we use to describe the special status in our other SSI regulations, e.g., §§ 416.260 and 416.264.

We also propose to amend several sections of the SSI VR payment regulations to replace phrases such as "disability or blindness payment" with the phrase "disability or blindness benefits," and to substitute the term "benefits" for "payment" or "payments," as the context requires. We are making these changes to §§ 416.2201(b), 416.2209(b) and (c), 416.2212, 416.2213(c), 416.2215(a) and (b), and 416.2216(c)(2).

Section 416.2215(a) of our existing regulations provides that in order for the State VR agency or alternate participant to be paid, the VR services must have been provided—(1) after September 30, 1981; (2) during months the individual is eligible for SSI disability or blindness payments; and (3) before completion of a continuous 9-month period of SGA. We propose to revise paragraph (a)(2) of § 416.2215 to provide that to be payable, the VR services must have been provided during a month or months for which—(i) the individual is eligible for disability or blindness benefits or continues to receive such benefits under section 1631(a)(6) of the Act; or (ii) the disability or blindness benefits of the individual are suspended due to his or her ineligibility for the benefits. We also propose to revise paragraph (a)(3) of § 416.2215 to provide that the VR services must have been provided prior to the completion of a continuous 9-month period of SGA or termination of disability or blindness benefits, whichever occurs first.

The proposed changes to § 416.2215 (a)(2) and (a)(3) provide cross-references to the regulations in Subpart M of 20 CFR Part 416 which contain our rules on suspension and termination of benefits under the SSI program. In general, these regulations provide that unless a termination of an individual's eligibility for benefits is required, an individual's benefits will be suspended for any month for which the individual no longer meets the requirements for eligibility for benefits under the SSI program. Termination of eligibility is required when benefits have been suspended for a period of 12 consecutive months, i.e., the individual remains ineligible for SSI benefits, special status for medicaid, and/or federally administered State supplementary payments for a continuous 12-month period. Eligibility for SSI benefits based on disability or blindness also terminates if the individual's disability or blindness ceases, unless the individual is participating in an approved VR program and the other requirements for the continuation of benefits under section 1631(a)(6) of the Act are met.

The proposed changes we are making to § 416.2215 (a)(2) and (a)(3) are consistent with the provisions of sections 1615 (d) and (e) of the Act. They permit payment for VR services which are provided either during a month(s) for which an individual is eligible for disability or blindness benefits, including the continuation of such benefits under section 1631(a)(6) of the Act, or during a month(s) for which the individual is ineligible for disability or blindness benefits, for a reason other than cessation of disability or blindness, if such month(s) occurs prior to the 13th consecutive month of such ineligibility, i.e., a month(s) for which benefits are suspended but not terminated.

We also propose to amend the introductory paragraph of § 416.2217 to add a reference to section 1615(e) of the Act. In addition, we are proposing to make a change to the regulations governing the social security VR payment program under title II of the Act to reflect the expanded scope of the SSI VR payment program under title XVI resulting from section 1615(e) of the Act. We are proposing to amend § 404.2115(b) of the title II regulations to explain that if VR services are provided to an individual who is entitled to title II disability benefits and who also is or has been receiving disability or blindness benefits under the SSI program, the determination as to when VR services must have been provided may be made under either § 404.2115 or § 416.2215, whichever is advantageous to the State VR agency or alternate participant that is participating in both VR programs.

Other Changes to the VR Payment Regulations

In addition to the changes to the regulations discussed above, we are proposing to amend the social security and SSI VR payment regulations to clarify certain rules relating to payment for VR services provided to an individual in a case where the individual, without good cause, refuses to continue or cooperate in a VR program. We also propose to delete some obsolete rules relating to the time periods within which claims for payment for VR services must be filed. We are making a few other nonsubstantive changes to certain provisions of the regulations affected by the proposed changes described above.

We are proposing to amend §§ 404.2113(c) and 416.2213(c) to indicate that if deductions are imposed against an individual's social security disability benefits because of VR refusal, or if an individual's disability or blindness benefits under the SSI program are suspended because of VR refusal, the services for which payment may be made in such a case are those VR services which were provided to the individual prior to his or her VR refusal. If the individual thereafter resumes participation in a VR program and again receives VR services, payment may be made for those services only if the criteria for payment in § 404.2113 or § 416.2213 are again met, or if the services qualify for payment under one of the other provisions of the regulations permitting payment, i.e., §§ 404.2111, 404.2112, 416.2211, or 416.2212.

We also are proposing to delete the parenthetical phrase "(suspension of benefits in cases described in § 404.2113)" in existing § 404.2115(a)(3). This change is appropriate since under section 222(b) of the Act and § 404.422 of the title II regulations, a determination by us that a social security disability beneficiary has refused, without good cause, to accept VR services available to the individual results in our imposing deductions against social security benefits, rather than suspending benefits. This is reflected in existing §§ 404.2109(c) and 404.2113(c). To be consistent with these sections, we are making a change to § 404.2116(c)(2) to clarify that a beneficiary's VR refusal results in deductions against social security disability benefits, rather than a suspension of benefits.

Existing §§ 404.2116 (b)(2) and (c)(2) and 416.2216 (b)(2) and (c)(2) contain provisions which provide for the filing of claims for payment for VR services in certain cases within 12 months after the month of the initial publication of these sections in the **Federal Register**, 55 FR 8449 (March 8, 1990). This 12-month period ended March 31, 1991, the close of the 12th month following the month of publication in the **Federal Register**. Since this time period for filing a claim is no longer in effect, we are proposing to delete these provisions from the regulations.

We also are proposing to amend §§ 404.2116(c)(2) and 416.2216(c)(2) to clarify that the other 12-month period described in these sections for filing a claim for payment in the case of an individual's VR refusal begins after the first month for which deductions are imposed against social security disability benefits, or after the first month for which disability or blindness benefits under the SSI program are suspended, because of such VR refusal.

Electronic Versions

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in Wordperfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

These proposed regulations carry out section 1615(e) of the Act which allows payment for VR services under section 1615(d) of the Act provided during certain months for which an individual does not receive SSI benefits based on disability or blindness. They apply to States and certain alternate providers of VR services which are willing to provide services to disabled or blind SSI recipients, or social security disability beneficiaries, under our VR payment programs under the conditions specified in the regulations.

Paperwork Reduction Act

These proposed regulations impose no additional reporting or recordkeeping requirements subject to clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: August 23, 1995.

Shirley Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart V of part 404 and subpart V of part 416 of 20 CFR chapter III as follows:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart V—[Amended]

1. The authority citation for Subpart V of Part 404 is revised to read as follows:

Authority: Secs. 205(a), 222, and 702(a)(5) of the Social Security Act; (42 U.S.C. 405(a), 422, and 902(a)(5)).

2. Section 404.2113 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 404.2113 Payment for VR services in a case of VR refusal.

* * * * *

(c) * * * A State VR agency or alternate participant may be paid, subject to the provisions of this subpart, for the costs of VR services provided to an individual prior to his or her VR refusal if deductions have been imposed against the individual's monthly disability benefits for a month(s) after October 1984 because of such VR refusal.

3. Section 404.2115 is amended by revising paragraphs (a)(3) and (b) to read as follows:

§ 404.2115 When services must have been provided.

(a) * * *

(3) Before completion of a continuous 9-month period of SGA or termination of entitlement to disability benefits, whichever occurs first.

(b) If an individual who is entitled to disability benefits under this part also is or has been receiving disability or blindness benefits under part 416 of this chapter, the determination as to when services must have been provided may be made under this section or § 416.2215 of this chapter, whichever is advantageous to the State VR agency or alternate participant that is participating in both VR programs.

4. Section 404.2116 is amended by revising paragraphs (b)(2) and (c)(2) to read as follows:

§ 404.2116 When claims for payment for VR services must be made (filing deadlines).

* * * * *

(b) * * *

(2) If no written notice was sent to the State VR agency or alternate participant,

a claim must be filed within 12 months after the month in which VR services end.

(c) * * *

(2) If no written notice was sent to the State VR agency or alternate participant, a claim must be filed within 12 months after the first month for which deductions are imposed against disability benefits because of such VR refusal.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart V—[Amended]

1. The authority citation for subpart V of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1615, 1631(d)(1) and (e), and 1633(a) of the Social Security Act; (42 U.S.C. 902(a)(5), 1382d, 1383(d)(1) and (e), and 1383b(a)).

2. Section 416.2201 is amended by revising the introductory text of this section and revising paragraph (b) to read as follows:

§ 416.2201 General.

In general, sections 1615 (d) and (e) of the Social Security Act (the Act) authorize payment from the general fund for the reasonable and necessary costs of vocational rehabilitation (VR) services provided certain disabled or blind individuals who are eligible for supplemental security income (SSI) benefits, special SSI eligibility status, or federally administered State supplementary payments. In this subpart, such benefits, status, or payments are referred to as disability or blindness benefits (see § 416.2203). Subject to the provisions of this subpart, payment may be made for VR services provided an individual during a month(s) for which the individual is eligible for disability or blindness benefits, including the continuation of such benefits under section 1631(a)(6) of the Act, or for which the individual's disability or blindness benefits are suspended (see § 416.2215). Paragraphs (a), (b) and(c) of this section describe the cases in which the State VR agencies and alternate participants can be paid for the VR services provided such an individual under this subpart. The purpose of sections 1615 (d) and (e) of the Act is to make VR services more readily available to disabled or blind individuals, help State VR agencies and alternate participants to recover some of their costs in VR refusal situations, as described in § 416.2213, and ensure that savings accrue to the general fund. Payment will be made for VR services provided on behalf of such an individual in cases where—

* * * * *

(b) The individual continues to receive disability or blindness benefits, even though his or her disability or blindness has ceased, under section 1631(a)(6) of the Act because of his or her continued participation in an approved VR program which we have determined will increase the likelihood that he or she will not return to the disability or blindness rolls (see § 416.2212); or

* * * * *

3. Section 416.2203 is amended by removing the definition of "Eligible" and adding 2 new definitions in alphabetical order to read as follows:

§ 416.2203 Definitions.

* * * * *

Disability or blindness benefits, as defined for this subpart only, refers to regular SSI benefits under section 1611 of the Act (see § 416.202), special SSI cash benefits under section 1619(a) of the Act (see § 416.261), special SSI eligibility status under section 1619(b) of the Act (see § 416.264), and/or a federally administered State supplementary payment under section 1616 of the Act or section 212(b) of Public Law 93–66 (see § 416.2001), for which an individual is eligible based on disability or blindness, as appropriate.

* * * * *

Special SSI eligibility status refers to the special status described in §§ 416.264 through 416.269 relating to eligibility for medicaid.

4. Section 416.2209 is amended in paragraph (b) by removing "payments" and adding "benefits" in its place and in paragraph (c) by removing "payment" and adding "benefits" in its place.

5. Section 416.2212 is amended by revising the section heading and revising the first and second sentences to read as follows:

§ 416.2212 Payment for VR services in a case where an individual continues to receive disability or blindness benefits based on participation in an approved VR program.

Section 1631(a)(6) of the Act contains the criteria we will use in determining if an individual whose disability or blindness has ceased should continue to receive disability or blindness benefits because of his or her continued participation in an approved VR program. A VR agency or alternate participant can be paid for the cost of VR services provided to an individual if the individual was receiving benefits based on this provision in a month(s) after October 1984 or, in the case of a blindness recipient, in a month(s) after March 1988. * * *

6. Section 416.2213 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 416.2213 Payment for VR services in a case of VR refusal.

* * * * *

(c) * * * A State VR agency or alternate participant may be paid, subject to the provisions of this subpart, for the costs of VR services provided to an individual prior to his or her VR refusal if the individual's disability or blindness benefits have been suspended for a month(s) after October 1984 because of such VR refusal.

7. Section 416.2215 is revised to read as follows:

§ 416.2215 When services must have been provided.

(a) In order for the VR agency or alternate participant to be paid, the services must have been provided—

(1) After September 30, 1981;

(2) During a month(s) for which—

(i) The individual is eligible for disability or blindness benefits or continues to receive such benefits under section 1631(a)(6) of the Act (see § 416.2212); or

(ii) The disability or blindness benefits of the individual are suspended due to his or her ineligibility for the benefits (see subpart M of this part concerning suspension for ineligibility); and

(3) Before completion of a continuous 9-month period of SGA or termination of disability or blindness benefits, whichever occurs first (see subpart M of this part concerning termination of benefits).

(b) If an individual who is receiving disability or blindness benefits under this part, or whose benefits under this part are suspended, also is entitled to disability benefits under part 404 of this chapter, the determination as to when services must have been provided may be made under this section or § 404.2115, whichever is advantageous to the State VR agency or alternate participant that is participating in both VR programs.

8. Section 416.2216 is amended by revising paragraphs (b)(2) and (c)(2) to read as follows:

§ 416.2216 When claims for payment for VR services must be made (filing deadlines).

* * * * *

(b) * * *

(2) If no written notice was sent to the State VR agency or alternate participant, a claim must be filed within 12 months

after the month in which VR services end.

(c) * * *

(2) If no written notice was sent to the State VR agency or alternate participant, a claim must be filed within 12 months after the first month for which disability or blindness benefits are suspended because of such VR refusal.

9. Section 416.2217 is amended in the introductory text of the section by adding "and (e)" after "section 1615(d)."

[FR Doc. 95–22175 Filed 9–8–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Ch. 1

Meeting of the Indian Self-Determination Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior, Indian Health Service, HHS.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Interior (DOI) and the Secretary of Health and Human Services (DHHS) have established an Indian Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended.

The Department have determined that the establishment of this committee is in the public interest and will assist the agencies in developing regulations authorized under section 107 of the ISDEAA. The agenda planned for the week includes meetings of work groups as well as the full committee. Work groups will be finalizing draft regulatory language and recommending adoption by the full committee. The full committee will review and give approval of such language for publication in the **Federal Register**, as a Notice of Proposed Rulemaking (NPRM). This will be the final meeting of the committee prior to publication of the NPRM.

DATES: The committee and appropriate workgroups will meet on the following days, beginning at approximately 8:30 a.m. and ending at approximately 5 p.m. on each day: Tuesday, September 26; Wednesday, September 27; and Thursday, September 28, 1995.

ADDRESSES: All meetings September 26 through September 28, 1995, will be held at the Doubletree Inn (previously Ramada Inn), 7801 Leesburg Pike, Falls Church, Virginia 22043, telephone (703) 893–1340.

Written statements may be submitted to Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street, NW, MS: 4627–MIB, Washington, DC 20420, telephone (202) 208–3708.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street NW., MS: 4627–MIB, Washington, DC 20240, telephone (202) 208–3708.

Mrs. Merry Elrod, Acting Director, Division of Self-Determination, Indian Health Service, 5600 Fishers Lane, Parklawn Building, Room 6A–05, Rockville, MD, 20857, telephone (301) 443–1044.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advance registration.

Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent that time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the addresses listed above. Summaries of committee meetings will be available for public inspection and copying ten days following each meeting at the same addresses. In addition, the materials received during the input sessions are available for inspection and copying at the same addresses.

Dated: September 5, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–22552 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

U.S. Virgin Islands State Plan for Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: U.S. Virgin Islands state plan: Notice of reconsideration of 18(e) determination; proposed reassumption of concurrent Federal enforcement authority; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: The U.S. Virgin Islands operates a state occupational safety and health program or "state plan" which is federally approved under section 18 of the Occupational Safety and Health Act. In 1984, the Occupational Safety and Health Administration made a "final approval" determination under section 18(e) of the Act which in effect gave exclusive regulatory authority over all safety and health issues covered by the state plan to the Virgin Islands Department of Labor. (The Virgin Islands State Plan is limited in coverage to safety issues, in the private sector.) The most recent Federal monitoring of the state plan indicates that state plan enforcement has ceased to be "at least as effective as" that provided under OSHA and that other 18(e) requirements are no longer being met. In response to that finding, the Virgin Islands Commissioner of Labor has agreed to voluntarily relinquish the State's final approval status, has requested the reassertion of concurrent Federal enforcement jurisdiction, and has pledged to accomplish the necessary corrective action. As a result, the affirmative 18(e) determination is under reconsideration by the Assistant Secretary of Labor for Occupational Safety and Health, (the "Assistant Secretary") pursuant to procedures set forth in 29 CFR 1902.47 *et seq.* Reconsideration and subsequent revocation/suspension of the 18(e) determination will result in reinstatement of concurrent enforcement authority by Federal OSHA over occupational safety issues in the U.S. Virgin Islands pending State corrective action. This notice affords an opportunity for the public to submit written information, views and comments on the proposed reconsideration. A similar notice will be published by the Virgin Islands within the next 10 days.

OSHA is soliciting written comment from interested persons in its reconsideration of the U.S. Virgin Islands State Plan's affirmative 18(e) determination to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public may also submit requests for an informal hearing; if the Assistant Secretary determines that substantial issues are presented which a hearing would likely resolve, an informal hearing will be scheduled in accordance with 29 CFR 1902.49(c).

DATES: Comments and requests for an informal hearing must be received by October 16, 1995.

ADDRESSES: Written comments and requests for an informal hearing must be submitted in quadruplicate to the Docket Office. Telefaxes will be accepted, however, a hard copy original with three (3) copies must also be submitted. All comments and requests must be submitted to Docket No. T–030, U.S. Department of Labor, room N2625, 200 Constitution Avenue NW., Washington, DC 20210 (202) 219–7894. Written comments, and requests for an informal hearing will be made available for public inspection and copying in the Docket Office, Room n2625 at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

Copies of the applicable evaluation reports and the State's letters and Corrective Action Plan may be inspected and copied during normal business hours at the OSHA Technical Data Center (TDC), Room N2625, 200 Constitution Avenue NW., Washington, DC; the approved plan may be inspected and copied during normal business hours at the OSHA Office of State Programs (OSP), Room N3700, 200 Constitution Avenue NW., Washington, DC; copies of the approved plan, the applicable evaluation reports and the State's letters and Corrective Action Plan may be inspected and copied during normal business hours at the Office of the Regional Administrator, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York, New York 10014; Puerto Rico Area Office, Occupational Safety and Health Administration, U.S. Courthouse & FOB, Carlos Chardon Avenue, Room 555, Hato Rey, Puerto Rico 00918, and the Virgin Islands Department of Labor, Occupational Safety and Health Division, 3012 Golden Rock, Christiansted, St. Croix, Virgin Islands 00820.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act) provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 3(7) of the Act makes several U.S. territories and possessions including the U.S. Virgin Islands eligible to submit State plans under section 18. Procedures for State plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in Section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective as" Federal standards and enforcement, "initial approval" is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial-approval period as provided by Section 18(e) of the Act.

The Virgin Islands state plan received initial federal OSHA plan approval on September 11, 1973, 38 FR 16775. A description of the plan and a basic chronology of its submission and federal approval is codified in the Code of Federal Regulations at 29 CFR Part 1952, Subpart S. The Virgin Islands Department of Labor, Division of Occupational Safety and Health (VIDOSH) was designated as the state agency with responsibility for administering the state plan, and operations under the plan commenced at the time of initial plan approval in 1973. The Virgin Islands state plan covers all issues of occupational safety in workplaces located within the Virgin Islands. Although in the public sector the state plan covers occupational health as well as safety, in the private sector the state plan does not exercise enforcement authority over occupational health issues; enforcement of health standards and other health-related requirements in the Virgin Islands private sector is provided by the U.S. Department of Labor.

During the 1970's the Virgin Islands plan proceeded through the various stages of federal approval, and after certification of completion of all required developmental steps in 1981 (29 CFR 1952.252; 46 FR 46808, 09–22–81), Federal OSHA began to evaluate the program for final approval under section 18(e) of the Act in accordance with procedures at 29 CFR 1902.30 *et seq.*, to determine, on the basis of actual operations under the plan, whether the criteria for final approval were being satisfied. An 18(e) or "final approval" determination results in the relinquishment of Federal concurrent enforcement authority in the State with respect to occupational safety and/or health issues covered by the plan, 29 U.S.C. 667(e).

Based on OSHA's evaluation of operations under the plan, and after opportunity for public comment the Assistant Secretary determined that in actual operations, the Virgin Islands State plan was "at least as effective as" the Federal program in providing safe and healthful employment and places of employment, and met all other criteria for final State plan approval under Section 18(e) of the Act and implementing regulations at 29 CFR Part 1902 including compliance staffing consistent with benchmarks established pursuant to *AFL–CIO* v. *Marshall* 570 F.2d 1030 (D.C. Cir. 1978). Accordingly, the Virgin Islands plan was granted final approval, 29 CFR 1952.253, and concurrent Federal enforcement authority over occupational safety was relinquished under section 18(e) of the Act effective April 17, 1984. 29 CFR 1952.254; 49 FR 16755 (April 20, 1984).

Summary of Current Situation

The U.S. Virgin Islands state program is experiencing significant difficulties, and exhibiting deficiencies in many aspects of its 18(e) program, as documented in the three most recent Evaluation reports covering 1991 through 1994 as prepared by OSHA's Region II in New York. Despite many past assurances to OSHA that the administering agency will correct the deficiencies and satisfactorily address the problems, the deficiencies remain unabated. The most basic activities of the program, including scheduling of inspections, identification and citation of hazards, proposal of penalties, review of contested cases, staff training, and response to new Federal standards and Federal program changes are not being accomplished in an effective manner. Accompanied visits and case file reviews have uncovered significant deficiencies in critical enforcement areas, including inspection preparation, inspection procedures, hazard recognition, abatement assurance, case file documentation, and adjudication of contested cases. Additional deficiencies also exist in fiscal administration and reporting, and maintenance of sufficient, qualified staff. The severity of the program's present deficiencies along with the record of their last five (5) years of somewhat problematic performance has resulted in the mutual conclusion by OSHA's Regional Administrator and the Virgin Islands newly appointed Commissioner of Labor that the VIDOSH program does not currently meet the criteria requisite to retain an affirmative determination under Section 18(e) of the Act, as it is not operating in a manner that can be judged "at least as effective as" the Federal OSHA program.

By letter dated July 19, 1995, Lisa Harris-Moorhead, Virgin Islands' Commissioner of Labor indicated the state's agreement to voluntary relinquishment of the U.S. Virgin Islands State plan's final approval status under Section 18(e) of the Act and to reassertion of concurrent Federal enforcement jurisdiction. On behalf of the Governor and his new administration she committed the state to making the Virgin Islands' workplaces safe and healthful and to "marked improvement" in the state's program by December.

Proposed Reconsideration of 18(e) Determination and Reinstatement of Concurrent Federal Enforcement Authority

Section 18(f) of the Act requires the Assistant Secretary to make a continuing evaluation of the manner in which each state plan is being administered. Under regulations at 29 CFR 1902.32(e), after a State's plan has been given an affirmative 18(e) determination, the State is required to maintain a program which will meet the requirements of section 18(c) and will continue to be "as least as effective as" the Federal program. A failure to comply with this or other 18(e) requirements may result in the reconsideration and revocation or suspension of the affirmative 18(e) determination and the resumption of Federal enforcement authority, or, if circumstances warrant, the commencement of proceedings for the withdrawal of approval of the plan pursuant to 29 CFR Part 1955 and section 18(f) of the Act.

Under the authority of section 18 of the Act and 29 CFR 1902.32(f) and 1902.47 *et seq.*, the Assistant Secretary on his own initiative and in response to the state's request is seeking public comment on his proposal to reconsider the U.S. Virgin Islands State plan's affirmative 18(e) determination and reinstate concurrent Federal enforcement authority in order to assure adequate worker protection and the effective enforcement of safety standards and regulations. A decision revoking or suspending the state's 18(e) status would not terminate federal approval of the state plan and would not affect the legal authority of the Virgin Islands to carry on enforcement activities under the state plan. Instead, revocation/suspension of a state's 18(e) determination restores the state plan to "initial approval" status and permits the resumption of concurrent federal enforcement activity including independent Federal or joint state and Federal inspections resulting in the issuance of appropriate Federal citations and penalties and the review of contested cases by the Occupational Safety and Health Review Commission (OSHRC). Federal enforcement activity will reflect all new OSHA compliance initiatives to promote voluntary compliance through common sense regulation and appropriately rewarding employers who take affirmative steps to assure worker protection. OSHA believes such action is an appropriate response to current circumstances in the Virgin Islands; restoring the state plan to its pre-1984 "initial approval" status acknowledges the deficiencies presently existing in the state program, which, while serious and extensive, do not in the Assistant Secretary's judgement warrant the commencement at this time of proceedings under 29 CFR Part 1955 and section 18(f) of the Act to entirely withdraw state plan approval. At the same time, reverting the state's federal approval status from final to initial approval would allow OSHA to exercise discretionary concurrent enforcement authority to compensate for the current deficiencies in state plan enforcement and allow the state sufficient time and assistance to improve its program. Pending a final decision, Federal OSHA compliance officers may accompany State inspectors, effective immediately, but no Federal citations will be issued until a final decision on this action is published.

Final approval status may be renewed or a process to withdraw Federal approval of the State plan may be initiated subsequently, depending on the results of State efforts to address the identified State plan deficiencies.

Signed at Washington, DC this 5th day of September, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–22446 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AH61

Adult Day Health Care Program; Community Residential Care Program; and Contract Program for Veterans With Alcohol and Drug Dependence Disorders

AGENCY: Veterans Health Administration, VA.

ACTION: Proposed rule.

SUMMARY: This document proposes to update references to material incorporated by reference in the Department of Veterans Affairs regulations concerning the Adult Day Health Care Program, the Community Residential Care Program, and the Contract Program for Veterans With Alcohol and Drug Dependence Disorders. These regulations incorporate by reference various editions of the National Fire Protection Association Life Safety Code entitled "NFPA 101, Life Safety Code" and "NFPA 101A, Guide on Alternative Approaches to Life Safety." It is proposed to substitute the current edition (1994) of the Life Safety Code and the current edition (1995) of the Guide on Alternative Approaches to Life Safety for earlier editions. The regulations are designed to ensure that buildings used for treatment and residential services for veterans meet the fire and safety requirements of the Life Safety Code and the Guide on Alternative Approaches to Life Safety. Also, this document amends the current "Contract Program for Veterans With Alcohol and Drug Dependence Disorders" regulations which, prior to the effective date of this document, provided that the Director, Facility Engineering, Planning, and Construction Office, was delegated authority to grant certain equivalencies or variances to building requirements. This delegation of authority is removed and instead such delegation of authority is granted to each of the Regional Directors of the Veterans Health Administration.

DATES: Comments must be received on or before November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel J. Schoeps, Chief, Community Care Programs, Veterans Health Administration, Department of Veterans Affairs, (202) 565–7530, for issues relating to the Adult Day Health Care Program and the Community Residential Care Program; Karen G. Boies, Ph.D., Deputy Associate Director for Addictive Disorders and Psychiatric Rehabilitation, Veterans Health Administration, Department of Veterans Affairs, (202) 565–7316, for issues relating to the Contract Program for Veterans With Alcohol and Drug Dependence Disorders.

ADDRESSES: Mail written comments concerning these proposed regulations to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420; or hand deliver written comments to: Office of Regulations Management, room 1176, 801 Eye Street NW., Washington, DC 20001. Comments should indicate that they are submitted in response to "RIN 2900–AH61." All written comments will be available for public inspection in the Office of Regulations Management, room 1176, 801 Eye Street NW., Washington, DC 20001 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

SUPPLEMENTARY INFORMATION: The regulations affected by this document are authorized under provisions of 38 U.S.C. as follows:

Adult Day Health Care Program—38 U.S.C. 1712; Community Residential Care Program—38 U.S.C. 1730; and Contract Program for Veterans With Alcohol and Drug Dependence Disorders—38 U.S.C. 501 and 38 U.S.C. 1720A

Regulatory Flexibility Act

The Secretary hereby certifies that the provisions of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. In all likelihood, only similar entities that are small entities would conduct activities affected by this rule. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental Health, Drug Abuse, Foreign Relations, Government Contracts, Grants Program—Health, Health Care, Health Facilities, Health Professions, Medical Devices, Medical Research, Mental Health Programs, Nursing Homes, Philippines, Veterans.

Approved: August 29, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 72 Stat. 1114, 38 U.S.C. 501, unless otherwise noted.

2. In § 17.51e, paragraph (c)(2) is revised to read as follows:

§ 17.51e Adult day health care in private facilities.

* * * * *

(c) * * *

(2) The institution shall meet the requirements of chapters 1–7, 10–11, and 31 of the National Fire Protection Association's Life Safety Code, entitled NFPA 101 Life Safety Code 1994, dated February 11, 1994 (which is incorporated by reference). Incorporation of the 1994 edition of the Life Safety Code was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The code is available for inspection at the Office of the Federal Register, room 700, 800 North Capitol Street NW., Washington, DC and at the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Copies may be obtained from: National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.) The institution shall provide sufficient staff to assist patients in the event of fire or other emergency.

* * * * *

3. In § 17.51j, paragraph (a)(2) is revised to read as follows:

§ 17.51j Approval of community residential care facilities.

* * * * *

(a) * * *

(2) Meet the requirements of chapters 1–7, 22–23, and 31 of the 1994 edition of the National Fire Protection Association's Life Safety Code, NFPA 101, and the 1995 edition of NFPA 101A, Guide on Alternative Approaches to Life Safety (which are incorporated by reference). The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Incorporation by reference of the 1994 edition of the Life Safety Code and the 1995 edition of NFPA 101A was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The code is available for inspection at the Office of the Federal Register, room 700, 800 North Capitol Street NW., Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.)

* * * * *

4. In § 17.53b, paragraph (a)(1)(i) is revised to read as follows:

§ 17.53b Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.

(a) * * *

(1) * * *

(i) The building must meet the requirements of the applicable residential occupancy chapters 1–7, 22–23, and 31 of the Life Safety Code (NFPA 101) published by the National Fire Protection Association (NFPA). Battery March Park, Quincy, MA 02269, 1994 edition. (For ordering information, call toll-free 1–800–344–3555.) The 1994 edition of the Life Safety Code is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., room 700, Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Regional Director.

* * * * *

5. In § 17.53c, paragraph (a)(1)(i) is revised to read as follows:

§ 17.53c Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.

(a) * * *

(1) * * *

(i) The building must meet the requirements of the applicable business occupancy chapters 1–7, 26–27, and 31 of the Life Safety Code (NFPA 101) published by the National Fire Protection Association (NFPA), Battery March Park, Quincy, MA 02269, 1994 edition. (For ordering information, call toll-free 1–800–344–3555.) The 1994 edition of the Life Safety Code (NFPA 101) is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., room 700, Washington, DC and the Department of Veterans Affairs, Office of Regulations Management (02D), room 1176, 801 Eye Street NW., Washington, DC 20001. Any Equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Regional Director.

* * * * *

[FR Doc. 95–22311 Filed 9–8–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 15 and 32

[FRL–5219–6]

RIN 2030–AA38

Suspension, Debarment and Ineligibility for Contracts, Assistance, Loans and Benefits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this notice, EPA proposes to remove Part 15 ("Administration of the Clean Air Act and the Clean Water Act with Respect to Contracts, Grants, and Loans—List of Violating Facilities") from Title 40 of the Code of Federal Regulations. EPA also proposes that 40 CFR Part 32, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drugfree Workplace (Grants), be amended simultaneously by adding procedures needed to administer the ineligibility provisions of the Clean Air Act (CAA), Clean Water Act (CWA), and EO 11738.

DATES: Comments must be submitted on or before November 13, 1995.

ADDRESSES: Comments may be mailed to Robert Meunier, Director, Suspension and Debarment Division (3902F), U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460, or delivered to EPA, Fairchild Building, 499 South Capitol St., room 217 between 8 a.m. and 4:30 p.m.

Comments and data may also be submitted electronically by electronic mail (e-mail) to: meunier.robert@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [FRL–5219–6]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below.

FOR FURTHER INFORMATION CONTACT: Robert F. Meunier, Director, Suspension and Debarment Division (3902F), 401 M Street S.W., Washington, DC 20460. Telephone: (202) 260–8025.

SUPPLEMENTARY INFORMATION:

A. Background

Last year, the EPA Administrator decided to reorganize the former Office of Enforcement (OE), now the Office of Enforcement and Compliance Assurance (OECA). As part of that reorganization, administrative responsibility for the Part 15 CAA and CWA contractor listing program was transferred from OECA to the Office of Administration and Resources Management (OARM) so that all EPA debarment functions would be conducted by a single office.

On October 5, 1994, EPA published technical amendments to 40 CFR Parts 15 and 32 to reassign specific functions from OECA to OARM. (See, 59 Fed. Reg. 50691). In the preamble to those amendments, EPA notified the public of its intention to consolidate the two rules into a single rule in 1995.

These proposed amendments would eliminate Part 15 in its entirety, and amend EPA's suspension and debarment rule at Part 32 by adding the few procedures needed to implement the statutorily mandated ineligibility provisions of the CAA and the CWA.

In addition to significantly reducing regulatory text, the proposed rule will reduce the confusion that occurred because EPA had one set of procedures for mandatory and discretionary facility ineligibility (Part 15), and another for discretionary suspension and debarment actions (Part 32). When the proposed amendments become final, pre-conviction cases involving violations of the CAA and CWA will, like cases involving other environmental statutes, be candidates for suspension and proposed debarment under 40 CFR Part 32 and 48 CFR Subpart 9.4.

The following regulatory provisions will be affected under this proposed rule.

Part 15 of Title 40 of the Code of Federal Regulations will be removed.

Part 32 of Title 40 of the Code of Federal Regulations will be amended to incorporate references to the CAA and CWA ineligibility provisions in the title, table of contents, and authorities section.

General references will be added to the purpose clauses at § 32.100(e) and the definitions of "facility" and "CAA or CWA ineligibility" will be added to the definitions at § 32.105.

New paragraphs (d) are added to §§ 32.110 (Coverage) and 32.115 (Policy), to indicate that CAA and CWA ineligibility are within the scope of this rule; and the statutory authority of agency heads to grant exceptions to CAA and CWA ineligible facilities has been added to the exceptions provisions at § 32.215(a) according to the standards set forth in the statute.

A significant addition being proposed is a new paragraph (c) in the settlement provisions of § 32.315. The new text would state that, as part of a comprehensive settlement agreement and before a judgment of conviction is entered, the EPA debarring official may certify that the condition giving rise to the CAA or CWA violation has been corrected. Such certifications would be issued only if the Debarring Official has the same type of documentation which would be required to obtain reinstatement (under the new § 32.321) after a post-conviction CAA or CWA facility ineligibility.

A new § 32.321 is proposed which prescribes the procedures for seeking reinstatement of facility eligibility.

Finally, §§ 32.330 and 32.425 are proposed to be removed from this rule as part of EPA's effort to eliminate unnecessary regulatory provisions. These sections were part of EPA's original 1982 assistance debarment regulation and were retained when EPA published its version of the OMB Nonprocurement Governmentwide Debarment and Suspension Rule (Common Rule) in 1988. Although the Common Rule does not prescribe a "reconsideration" procedure, § 32.320(c) authorizes a debarred respondent to request, at any time, that the debarment decision be reversed or that the period or scope of a debarment be reduced. Even without this provision, EPA believes that the debarring and suspending official has inherent authority to reconsider a suspension or debarment decision.

The proposed removal of the §§ 32.330 and 32.425 reconsideration provisions will not affect a respondent's opportunity to file an appeal under §§ 32.335 and 32.430. Although also not prescribed in the OMB Common Rule, the seldom used Part 32 appeal provisions are being retained because they provide an inexpensive procedure for challenging EPA suspension and debarment determinations.

A record has been established for this rulemaking under docket number "[FRL–5219–6]" (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 217 of the EPA Fairchild Building located at 499 South Capitol Street, Washington, DC.

Electronic comments can be sent directly to EPA at: meunier.robert@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Rulemaking Analysis

B. Executive Order 12866

This rulemaking has been determined not to be significant under EO 12866. However, it has been sent to the Office of Management and Budget for review for consistency with the OMB Common Rule.

C. Regulatory Flexibility Act

The EPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of OMB under 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duties on any of these governmental entities or the private sector. This proposed rule does not change the current statutory and regulatory duties that arise from conditions of federal assistance which, as defined by UMRA, do not constitute a "Federal intergovernmental mandate" or a "Federal private sector mandate." Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule would eliminate the separate procedures in 40 CFR Part 15 for administering the Clean Air Act and Clean Water Act ineligibility provisions, and incorporate simplified ineligibility procedures in EPA's existing nonprocurement suspension and debarment rules (40 CFR Part 32). None of these amended procedures would impose significant or unique regulatory requirements on small governments. Therefore, the proposed rule is not subject to section 203 of the UMRA.

List of Subjects in 40 CFR Parts 15 and 32

Administrative practice and procedure, Debarment and suspension, Ineligibility.

Dated: August 21, 1995.

Alvin Pesachowitz,

Acting Assistant Administrator, Office of Administration and Resources Management.

For the reasons set out in the preamble, 40 CFR Parts 15 and 32 are proposed to be amended as follows:

1. Part 15 is removed.
2. The title of Part 32 is revised to read as follows:

PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS); CLEAN AIR ACT AND CLEAN WATER ACT INELIGIBILITY OF FACILITIES IN PERFORMANCE OF FEDERAL CONTRACTS, GRANTS AND LOANS

3. The authorities citation for part 32 is revised to read as follows:

Authority: EO 12549; 41 U.S.C. 701 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f, 4901, 6901, 7401, 9801 *et seq.*; EO 12689; EO 11738; Pub. L. 103–355 § 2455.

4. Section 32.100 is amended by adding new paragraph (e) as follows:

§ 32.100 Purpose.

* * * * *

(e) Facilities ineligible to provide goods, materials, or services under Federal contracts, loans or assistance, pursuant to Section 306 of the Clean Air Act (CAA) or Section 508 of the Clean Water Act (CWA) are excluded in accordance with the terms of those statutes. Reinstatement of a CAA or CWA ineligibile facility may be requested in accordance with the procedures at § 32.321.

5. Section 32.105 is amended by adding in alphabetical order the following definitions.

§ 32.105 Definitions.

* * * * *

CAA or CWA ineligibility. The status of a facility which, as provided in section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), is ineligible to be used in the performance of a Federal contract, subcontract, loan, assistance award or covered transaction. Such ineligibility commences upon conviction of a facility owner, lessee, or supervisor for a violation of section 113 of the CAA or section 309(c) of the CWA, which violation occurred at the facility. The ineligibility of the facility continues until such time as the EPA Debarring Official certifies that the condition giving rise to the CAA or CWA criminal conviction has been corrected.

Facility. Any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations at which, or from which, a Federal contract, subcontract, loan, assistance award or covered transaction is to be performed. Where a location or site of operations contains or includes more than one building, plant, installation or structure, the entire location or site shall be deemed the facility unless otherwise limited by EPA.

* * * * *

6. Section 32.110 is amended by adding a new paragraph (d) to read as follows:

§ 32.110 Coverage.

* * * * *

(d) Except as provided in § 32.215 of this Part, Federal agencies shall not use a CAA or CWA ineligible facility in the performance of any Federal contract, subcontract, loan, assistance award or covered transaction.

* * * * *

7. Section 32.115 is amended by revising paragraph (d) to read as follows:

§ 32.115 Policy.

* * * * *

(d) It is EPA policy to exercise its authority to reinstate CAA or CWA ineligible facilities in a manner which is consistent with the policies in paragraphs (a) and (b) of this section.

* * * * *

8. Section 32.215 is amended by revising paragraph (a) to read as follows:

§ 32.215 Exception provision.

* * * * *

(a) Any agency head, or authorized designee, may except any Federal contract, subcontract, loan, assistance award or covered transaction, individually or as a class, in whole or in part, from the prohibitions otherwise applicable by reason of a CAA or CWA ineligibility. The agency head granting the exception shall notify the EPA Debarring Official of the exception as soon, before or after granting the exception, as may be practicable. The justification for such an exception, or any renewal thereof, shall fully describe the purpose of the contract or covered transaction, and show why the paramount interest of the United States requires the exception.

9. Section 32.215 is further amended by adding a new paragraph (b) to read as follows:

§ 32.215 Exception provision.

* * * * *

(b) The EPA Debarring Official is the official authorized to grant exceptions under this section for EPA.

10. Section 32.315 is amended by adding a new paragraph (c) to read as follows:

§ 32.315 Settlement and voluntary exclusion.

* * * * *

(c) The EPA Debarring Official may consider matters regarding present responsibility, as well as any other matter regarding the conditions giving rise to alleged CAA or CWA violations in anticipation of entry of a plea, judgment or conviction. If, at any time, it is in the interest of the United States to conclude such matters pursuant to a comprehensive settlement agreement, the EPA Debarring Official may conclude the debarment and ineligibility matters as part of any such settlement, so long as he or she certifies that the condition giving rise to the CAA or CWA violation has been corrected.

11. Section 32.321 is added to read as follows:

§ 32.321 Reinstatement of facility eligibility.

(a) A written petition to reinstate the eligibility of a CAA or CWA ineligible facility may be submitted to the EPA Debarring Official. The petitioner bears the burden of providing sufficient information and documentation to establish, by a preponderance of the evidence, that the condition giving rise to the CAA or CWA conviction has been corrected. If the material facts set forth in the petition are disputed, and the Debarring Official denies the petition, the petitioner shall be afforded the opportunity to have additional proceedings as provided in § 32.314(b).

(b) A decision by the EPA Debarring Official denying a petition for reinstatement may be appealed under § 32.335.

§ 32.330 [Removed]

12. Section 32.330 is removed.

§ 32.425 [Removed]

13. Section 32.425 is removed.

[FR Doc. 95–22088 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 137–1–7051b; FRL–5262–4]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to act on revisions to the California State Implementation Plan (SIP) which concern two negative declarations from the Mojave Desert Air Quality Management District for two volatile organic compound (VOC) source categories: Asphalt Air Blowing and Vacuum Producing Devices or Systems. The intended effect of proposing to include these negative declarations in the SIP is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is acting on the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 11, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the negative declarations are available for public inspection at EPA's Region 9 office and at the following locations during normal business hours.

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95812

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section, A–5–3, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns negative declarations for two VOC source categories from the Mojave Desert Air Quality Management District: (1) Asphalt Air Blowing submitted to EPA on December 20, 1994 and (2) Vacuum Producing Devices or Systems submitted to EPA on December 29, 1994 by the California Air Resources Board.

For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 10, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–22147 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-W

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40 CFR Part 52

[CT–18–1–6482b; A–1–FRL–5271–4]

Approval and Promulgation of Air Quality Implementation Plans—Connecticut; PM10 Attainment Plan and Contingency Measures for New Haven

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing full approval of a State Implementation Plan (SIP) revision submitted by the State of Connecticut to satisfy certain federal requirements for the New Haven initial PM10 nonattainment area. The purpose of this action is to bring about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). EPA also proposes full approval of reasonable available control measures (RACM) and contingency measures for the New Haven initial PM10 moderate nonattainment area as established in this SIP revision, since Connecticut has demonstrated implementation of RACM will attain and maintain the PM10 NAAQS. Additionally, EPA proposes approval of Connecticut's adoption of the PM10 NAAQS and emergency episode regulation. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA does receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before October 11, 1995.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Bldg (AAA), Boston, MA 02203–2211. Copies of the State submittal and EPA's technical support document are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns, (617) 565–4982.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 USC 7401–7671q.

Dated: May 26, 1995.

John P. DeVillars,

Regional Administrator, EPA-New England.

[FR Doc. 95–22131 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[DE22–1–7160b, DC19–1–7159b, MD36–1–7161b, PA48–1–7162b, VA42–1–7163b; FRL–5291–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia; Revisions to the State Implementation Plans (SIPs) Addressing Ozone Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the following states State Implementation Plans (SIPs) for ozone: Delaware, the District of Columbia, Maryland, Pennsylvania, and Virginia. This action is based upon revision requests submitted by these states to satisfy the requirements of the Clean Air Act, as amended November 15, 1990 and the Photochemical Assessment Monitoring Stations (PAMS) regulations. The PAMS regulation required states to provide for the establishment and maintenance of an enhanced ambient air quality network in the form of PAMS by November 12, 1993.

In the Final Rules section of this **Federal Register**, EPA is approving these states' SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 11, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903; District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Avenue, SE., Washington, DC 20020; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; Pennsylvania Department of Environmental Protection, P.O. Box 8468, 400 Market Street, Harrisburg,

Pennsylvania 17105; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219; Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–6863.

SUPPLEMENTARY INFORMATION: For further information regarding the PAMS rulemaking for Delaware, the District of Columbia, Maryland, Pennsylvania, and Virginia, see the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 18, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95–22159 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[KY–069–3–6904b; FRL–5277–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet approving the redesignation to attainment and maintenance plan of the Lexington area because it meets the maintenance plan and redesignation requirements. EPA also proposes to approve the 1990 baseline emissions inventory of the area. In the final rules section of this **Federal Register**, the EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 11, 1995.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick of the EPA Region 4 Air Programs Branch at (404) 347–3555 (extension 4207) and at the above address. Reference file Ky–069–3–6904.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 8, 1995.

R.F. McGhee,

Acting Regional Administrator.

[FR Doc. 95–22157 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[TN–126–6580b; FRL–5282–9]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Permit Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee for the purpose of establishing revisions to the permit requirements for major sources of air pollution in the Nashville/Davidson County area. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 11, 1995.

ADDRESSES: Written comments on this action should be addressed to Karen C. Borel, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311—23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4197. Reference file TN–126–1–6580a.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–22146 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 55

[FRL–5292–4]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed rulemaking—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations being updated pertain to the operating permit requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD) is the designated COA. The OCS requirements for the above District, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before October 11, 1995.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section X, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 (Section X). This docket is available for public inspection and copying Monday—Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section X, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–6102), Attn: Air Docket No. A–93–16 Section X, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR Part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of Part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in Part 55. This NPR is being promulgated in response to the submittal of Part 70 operating permit rules by a local air pollution control agency.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into Part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into Part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into Part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

On July 10, 1995 (60 FR 35538), EPA proposed interim approval of the Operating Permits Program submitted by the Santa Barbara County APCD. EPA is now proposing to update 40 CFR Part 55 by incorporating the requirements of this program, in response to Santa Barbara County APCD's request and to maintain consistency with onshore requirements. These proposed requirements will apply to the extent that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, that they are applicable to OCS sources, and that they do not solely regulate pollutants or precursors to pollutants for which there is no federal or state ambient air quality standard. These proposed Santa Barbara County APCD operating permit requirements applicable to OCS sources will not be finalized in Part 55 until EPA takes final action granting full or interim approval to the Santa Barbara County APCD Operating Permits Program.

The following Santa Barbara County APCD Part 70 permit requirement were submitted for inclusion in Part 55:

Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 06/15/95)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 11/09/93)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

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[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

Administrative Requirements

A. Regulatory Flexibility Act

As was stated in the final OCS regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore Part 70 permit requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the OCS rule. Because this action does not create any new requirements, it does not have a significant impact on a substantial number of small entities.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

C. Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

EPA has determined that the final action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to the State, local, or tribal governments, or to the private sector, result from the action.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: August 25, 1995.

Felicia Marcus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, Part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for Part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(F) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

* * * * *

(e) * * *
(3) * * *
(ii) * * *
(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

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4. Appendix A to CFR Part 55 is proposed to be amended by revising paragraph (b) (6) under the heading California to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

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(California) * * *

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(b) Local requirements.

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(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration–Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate–Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 12/14/93)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 12/10/91)
Rule 342 Control of Oxides of Nitrogen (NO_x from Boilers, Steam Generators and Process Heaters) (Adopted 03/10/92)
Rule 359 Flares and Thermal Oxidizers (Adopted 6/28/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 06/15/95)
Rule 505 Breakdown Conditions Sections A.,B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 11/09/93)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

[FR Doc. 95–22087 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 81

[CT-22-1-7078b; A-1-FRL-5271-6]

Clean Air Act Promulgation of Reclassification of PM10 Nonattainment Areas—Connecticut; Approval of 1-Year Extension of Attainment Date for New Haven

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing full approval of Connecticut's request for a 1-year extension of the attainment date for the New Haven PM10 nonattainment area. This action is based on monitored air quality data for the national ambient air quality standard for PM10 during the years 1992–94. This action is being taken under the Clean Air Act. In the Final Rules Section of this **Federal Register**, EPA is approving the Connecticut's extension request as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA does receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before October 11, 1995.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Bldg (AAA), Boston, MA 02203–2211. Copies of Connecticut's submittal and EPA's technical support document are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns, (617) 565–4982.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 USC 7401–7671q.

Dated: July 10, 1995.

John P. DeVillars,

Regional Administrator, EPA-New England.

[FR Doc. 95–22133 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 677

[Docket No. 950822211–5211–01; I.D. 080395A]

RIN 0648–AD80

North Pacific Fisheries Research Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearing by teleconference.

SUMMARY: NMFS issues a proposed rule to implement Amendment 1 to the North Pacific Fisheries Research Plan (Research Plan). Regulations implementing this amendment would delay full implementation of the Research Plan until 1997 and establish 1996 observer coverage requirements for the Research Plan fisheries. This delay is necessary to provide the North Pacific Fishery Management Council (Council) additional time to address certain issues presented by implementation of the Research Plan. To remain consistent with the Council's intent, observer coverage requirements in regulations that implement Amendment 35 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area are proposed to be extended through 1996.

DATES: Comments on this proposed rule must be received by November 6, 1995. A public hearing on the proposed rule will be held by teleconference on Monday, September 18, 1995, at 1 p.m., Alaska local time.

ADDRESSES: Comments on this proposed rule may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori J. Gravel. Copies of the Observer Plan may also be obtained from this address.

Copies of the Research Plan as revised by proposed Amendment 1, the environmental assessment/regulatory impact review prepared for the Research Plan, and the final report "Establishing the Fee Percentage and Standard Exvessel Prices for 1995" may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

Locations where interested persons may participate in the September 18, 1995, public hearing by teleconference are as follows:

1. Anchorage—North Pacific Fishery Management Council, 600 West 4th Avenue, Anchorage, AK (907–271–2809);
2. Juneau—National Marine Fisheries Service, Alaska Region, 706 West 9th Street, Juneau, AK (907–271–7228);
3. Seattle—Alaska Fisheries Science Center, 7600 Sand Point Way Northeast, Building 4, Room 7600, Seattle, WA (206–526–4197);
4. Newport—Oregon Department of Fish and Wildlife, 2040 Southeast Marine Science Drive, Newport, OR (503–867–0300).

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Research Plan became effective October 6, 1994 (59 FR 46126, September 6, 1994). A regulatory amendment was published in the **Federal Register** on January 9, 1995 (60 FR 2344), that clarified 1995 observer coverage requirements and revised the definition of certain terms set out under § 677.2. Two additional rules have been published in the **Federal Register** that make other minor substantive changes to the regulations implementing the Research Plan. A final rule published on July 5, 1995 (60 FR 34904), and required vessels and shoreside processors to facilitate transmission of observer data. Finally, a proposed rule published on August 16, 1995 (60 FR 42470) revised 1995 observer coverage requirements for crab catcher vessels and exempted certain crab catcher vessels required to obtain observer coverage from paying 1995 Research Plan fees.

The Research Plan adopted by the Council at its December 1993 meeting established a two-phase implementation strategy for the Research Plan. The first phase is occurring in 1995 and serves to collect start-up funding for full implementation of the Research Plan. During 1995, NMFS is assessing and collecting Research Plan fees. Participants in the Research Plan fisheries are continuing independently to obtain required observer coverage

from NMFS-certified observer contractors. "Double payments" for observer services and the Research Plan fee liability are avoided in 1995 through either catcher vessel exemptions from the fee liability or processor credits up to each processor's Research Plan fee liability. Under the Research Plan adopted by the Council and NMFS, the Research Plan would be fully implemented starting in 1996, and observer coverage would be provided to participants in Research Plan fisheries through contractual arrangements between NMFS and companies awarded contracts to provide observer services for the Research Plan fisheries.

The Council, at its April 1995 meeting, raised some concerns about proceeding with the Research Plan and requested NMFS to delay the solicitation process for awarding contracts to provide observers under the Research Plan during 1996. The Council also requested NMFS to initiate an amendment to the Research Plan that would delay full implementation of the Research Plan for at least 6 months.

NMFS informed the Council that the design and implementation of the Research Plan and its specification process are tied to an annual cycle. Mid-year implementation of the Research Plan would create significant administrative and operational problems. Therefore, NMFS suggested a 1-year delay of the full implementation of the Research Plan, rather than the 6-month delay requested by the Council. During a May 16, 1995, teleconference, the Council reaffirmed its desire to delay the Research Plan and agreed to extend the delay for a 1-year period. The Council sought a delay in full implementation of the Research Plan in order to provide additional time to reconsider certain elements of the Research Plan that were previously adopted by the Council. The Council's concerns are as follows: Minimum levels of observer insurance coverage, minimum number of contractors that will provide observer coverage, duration of contracts, notification requirements for obtaining observer coverage, allowances for emergency replacement of observers as well as transfer of observers among vessels, adequate monitoring and control of industry compliance with observer coverage requirements, and ability of supplemental or voluntary observer programs to meet increased compliance monitoring requirements of future management programs under consideration by the Council.

The Council also expressed its intent to continue the fee collection program implemented for 1995 for the remainder of the year, so that adequate start-up funds may be collected for full implementation of the Research Plan in 1997. This means that NMFS will continue to assess fees through early 1996 for fish harvested and retained in the Research Plan fisheries during the last few months of 1995. Collected funds would continue to be held in an interest-bearing account and would be used to award contracts to provide observers under the Research Plan starting in 1997.

The current Research Plan allows a delay in the full implementation of the plan beyond 1995, only if insufficient funds exist to support contract awards for the first half of 1996. NMFS believes that the 1995 fee collection program will provide sufficient funds to support contract awards to initiate full implementation of the Research Plan.

Through mid-July 1995, NMFS had collected $4.2 million in Research Plan fees. The final report "Establishing the Fee Percentage and Standard Exvessel Prices for 1995" (see **ADDRESSES**) estimates that $4.8 million will be needed for start-up funding to support contractual arrangements for observer coverage during the first 6 months of full implementation of the Research Plan. NMFS anticipates that this amount will be collected in 1995 and that full implementation of the Research Plan can be pursued for 1997.

Therefore, the Council's request to delay full implementation of the Research Plan requires an amendment to the Research Plan. At its June 1995 meeting, the Council requested that the date for full implementation of the Research Plan be established by regulations rather than by the Research Plan. The intent of this request was to allow for a revision of this date through a regulatory amendment, rather than an amendment to the Research Plan.

Given that adequate start-up funds will be collected during 1995, no reason exists to continue the fee collection program during 1996. As a result, Research Plan fees will not be assessed for fish caught in 1996. The annual Research Plan specification process becomes unnecessary for 1996, because no reason exists to establish a 1996 fee percentage or standard exvessel prices on which to base fee assessments. The Council intends that 1996 observer coverage levels remain unchanged from 1995 levels. These observer coverage requirements for the groundfish and crab fisheries are set out at § 677.10(a). As in 1995, participants in the groundfish and crab Research Plan fisheries would be responsible for making their own arrangements and paying for required observer coverage. As a result, specifications for observer embarkment/disembarkment ports for observers also are unnecessary for 1996.

The Council's intent to maintain 1995 observer coverage levels through 1996 would also apply to mothership processor vessel and shoreside processor observer coverage requirements set out in regulations implementing Amendment 35 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Final regulations implementing Amendment 35, published on July 5, 1995 (60 FR 34904) and codified at 50 CFR 675.25(b), are effective through December 31, 1995. In keeping with the Council's intent to maintain 1995 observer coverage levels in 1996, NMFS proposes to extend the Amendment 35 requirements through 1996 by including them under regulations implementing 1996 Research Plan observer coverage requirements at § 677.10(a)(1). NMFS also proposes to clarify that the additional observer coverage requirements implemented under Amendment 35 are effective only through October 15 of the second pollock season defined under 50 CFR 675.23(e).

NMFS notes that regulations at § 677.10(g) set out vessel safety requirements applicable in 1996 and beyond. No changes to these requirements are proposed, however, the regulatory text would be revised to clarify that these requirements apply to vessels required to carry observers in 1996 under § 677.10(a).

NMFS further notes that the following sections of the Observer Plan still would be in effect until full implementation of the Research Plan in 1997: (1) Standards of observer conduct; and (2) Description, specifications, and work statement for certified domestic observer contractors, including conflict of interest standards for NMFS-certified observers and contractors and conditions for contractor and observer certification revocation. Copies of the Observer Plan dated May 1994 are available from NMFS (see **ADDRESSES**).

Public comments on the proposed amendment to the Research Plan and its implementing regulations are invited for 60 days. During this comment period, NMFS will conduct public hearings, as required by section 313(c)(2) of the Magnuson Act, in Alaska, Oregon, and Washington to receive public comments on the proposed regulations (see **DATES** and **ADDRESSES** for dates and locations). NMFS will consider the public comments received in preparing the final rule implementing the amendment.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. An effect of the proposed rule would be to eliminate the 1996 fee assessment program authorized under the Research Plan.

The vessel owners who will benefit from this delay are those owners whose vessels fall into the following categories: about 4,000 halibut vessels, 1,400 groundfish vessels less than 60 ft length overall (LOA), and approximately 270 crab catcher vessels; these owners will be relieved from having to pay the Research Plan fee and will not be required to have observer coverage. In addition, owners of all processors will benefit because they will pay the direct observer cost which is less than the Research Plan fee. Groundfish catcher vessels over 60 ft LOA will pay direct observer costs; these costs will equal or exceed the Research Plan fee. In general the direct observer costs are about 1.1 percent of the exvessel value of landings. About 30 crab catcher vessels are required to carry observers. Owners of most of these vessels will pay direct observer costs that may be 2 to 4 times higher than what they would pay in terms of Research Plan fees.

Thus, while the proposed rule would affect a substantial number of small entities during 1996, the effect would not be economically significant. As a result, a regulatory flexibility analysis was not prepared. This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 677

Fisheries, Reporting and recordkeeping requirements.

Dated: September 5, 1995

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 677 is proposed to be amended as follows:

PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

1. The authority citation for part 677 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 677.6, paragraph (b)(2) is redesignated as paragraph (b)(3), a new paragraph (b)(2) is added, and the heading to newly redesignated paragraph (b)(3) is revised to read as follows:

§ 677.6 Research Plan fee.

* * * * *

(b) * * *

(2) *Fee assessments during 1996.* Processors of Research Plan fisheries will not be assessed fees based on catch from Research Plan fisheries that is retained during the 1996 calendar year.

(3) *Fee assessments applicable after December 31, 1996.* * * *

* * * * *

3. In § 677.10, the headings for paragraphs (a) and (b) and the introductory text to paragraph (g) are revised, paragraphs (a)(1)(i)(C) through (a)(1)(i)(F) are redesignated as paragraphs (a)(1)(i)(D) through (a)(1)(i)(G), respectively and paragraphs (a)(1)(i)(C) and (a)(2)(iii) are added to read as follows:

§ 677.10 General requirements.

(a) *Observer requirements applicable through December 31, 1996.* (1) * * *

(i) * * *

(C) Each mothership processor vessel that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g) of this chapter, during the second pollock season that starts on August 15 under § 675.23(e) of this chapter, is required to have a second NMFS-certified observer aboard, in addition to the observer required under paragraphs (a)(1)(i)(A) and (B) of this section, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2) of this chapter, or October 15, 1996, whichever occurs first.

* * * * *

(2) * * *

(iii) Each shoreside processor that offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g) of this chapter, during the second pollock season that starts on August 15, under § 675.23(e) of this chapter, is required to have a NMFS-certified observer, in addition to the observer required under paragraphs (a)(2)(i) and (ii) of this section, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2) of this chapter, or October 15, 1996, whichever occurs first.

* * * * *

(b) *Observer requirements applicable after December 31, 1996.* * * *

* * * * *

(g) *Vessel safety requirements applicable after December 31, 1995.* Any vessel that is required to carry observers under paragraph (a) or (b)(1) of this section must have onboard either:

* * * * *

4. In § 677.11, paragraph (a)(4) is revised to read as follows:

§ 677.11 Annual Research Plan specifications.

(a) * * *

(4) *Observer coverage.* For the period January 1, 1995, through December 31, 1996, observer coverage levels in Research Plan fisheries will be as required by § 677.10(a). After December 31, 1996, the level of observer coverage will be determined annually by NMFS, after consultation with the Council and the State of Alaska, and may vary by fishery and vessel or processor size, depending upon the objectives to be met for the groundfish, halibut, and king and Tanner crab fisheries. The Regional Director may change observer coverage inseason pursuant to § 677.10(b)(2)(ii).

* * * * *

[FR Doc. 95–22510 Filed 9–6–95; 3:17 pm]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 60, No. 175

Monday, September 11, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on September 28, 1995, at the Veterans of Foreign Wars Post 5689, 37410 Main Street, Burney, CA 96013. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:00 a.m. on September 28 and continue until 4:30 p.m. the same day. The main agenda item will be discussions on policy implications of implementation and effectiveness monitoring. As time permits, other items on the agenda will include an update on Section II of the federal watershed analysis guide, a presentation from the California Coast Provincial Advisory Committee, and other topics relative to the Northwest Forest Plan. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: September 5, 1995.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 95–22455 Filed 9–8–95; 8:45 am]

BILLING CODE 3410-11-M

Natural Resources Conservation Service

Honey Creek Watershed, Vigo and Clay Counties, IN

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR 650); The Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Honey Creek Watershed, Vigo and Clay Counties, Indiana.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Natural Resources Conservation Service, 6013 Lakeside Boulevard, Indianapolis, Indiana, 46278, telephone (317) 290–3200.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is a plan for flood control. The planned works of improvement covered by this Finding of No Significant Impact (FONSI) is the relocation of approximately 0.7 mile of Jordan Ditch.

The Notice of a FONSI has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Robert L. Eddleman,

State Conservationist.

[FR Doc. 95–22404 Filed 9–8–95; 8:45 am]

BILLING CODE 3410-16-M

Muddy Fork of Silver Creek Watershed, Clark, Floyd and Washington Counties, IN

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650), the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Muddy Fork of Silver Creek Watershed, Clark, Floyd, and Washington Counties, Indiana.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Natural Resources Conservation Service, 6013 Lakeside Boulevard, Indianapolis, Indiana 46278, telephone (317) 290–3200.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are a plan for flood control, watershed protection and municipal and industrial water supply. The planned works of improvement covered by this Finding of No Significant Impact (FONSI) is approximately 12.0 miles of debris removal, selective tree removal, and streambank stabilization.

The Notice of a FONSI has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Robert L. Eddleman,
State Conservationist.

[FR Doc. 95–22405 Filed 9–8–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Exceptions to the Import Certification and Delivery Verification Procedures.

Agency Form Number: None.

OMB Approval Number: 0694-0001.

Type of Request: Extension of a currently approved collection.

Burden: 16 hours.

Number of Respondents: 31.

Avg Hours Per Response: Approximately 30 minutes.

Needs and Uses: The U.S. and participating countries have agreed to establish Import Certificate and Delivery Verification requirements to help control the disposition of strategically important commodities. This reporting requirement allows exporters to request an exception to the import certificate or delivery verification procedures. The information provided is used by BXA to determine if an exception request is warranted.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Title: Quarterly Report on Exports of Parts to Service Equipment Shipped Against a Validated Export License.

Agency Form Number: None.

OMB Approval Number: 0694–0003.

Type of Request: Extension of a currently approved collection.

Burden: 5 hours.

Number of Respondents: 2 respondents filing quarterly reports.

Avg Hours Per Response: 30 minutes for the reporting requirement and 1 minute for recordkeeping.

Needs and Uses: The Export Administration regulations permit firms to apply for export licenses or reexport authorizations to ship parts needed to service equipment previously exported under an export license. Once BXA grants authority to ship replacement parts, the exporter is required to submit a quarterly report. These reports are reviewed to make sure that there are no excessive shipments of spare parts.

Affected Public: Businesses or other for–profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Foreign Availability Procedures and Criteria.

Agency Form Number: None.

OMB Approval Number: 0694–0004.

Type of Request: Extension of a currently approved collection.

Burden: 2,550 hours.

Number of Respondents: 10.

Avg Hours Per Response: Ranges between 105 and 300 hours.

Needs and Uses: BXA restricts the export of goods and technology that would make a significant contribution to the military potential of other countries, unless it can be determined that foreign availability of the same goods and technology makes export controls ineffective. The information provided is used in determining whether to conduct a foreign availability assessment.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Report of Requests for Restrictive Trade Practice or Boycott.

Agency Form Numbers: BXA–621P, 6051P, 6051P–a.

OMB Approval Number: 0694–0012.

Type of Request: Extension of a currently approved collection.

Burden: 14,776 reporting and recordkeeping hours.

Number of Respondents: 1,187.

Avg Hours Per Response: Varies between 1 and 30 hours depending on the requirement and one minute for each record maintained.

Needs and Uses: The Export Administration Regulations require U.S. persons to report any requests that they have received to take any action to comply with, further, or support an unsanctioned foreign boycott. The information provided by firms is used by BXA to monitor requests for participation in foreign boycotts, analyze changing trends for purposes of deciding U.S. policy of discouraging participation in restrictive trade practices, and to initiate boycott investigations. Without this data, BXA would not have an adequate factual basis for implementing the U.S. boycott program.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Statement by Ultimate Consignee and Purchaser.

Agency Form Number: BXA 629P.

OMB Approval Number: 0694–0021.

Type of Request: Extension of a currently approved collection.

Burden: 4,289 hours.

Number of Respondents: 4,289.

Avg Hours Per Response: 1 hour.

Needs and Uses: Most export license application requests must be accompanied by supporting documents designed to elicit information concerning the intended end–use and end–user of the goods abroad. In order to verify what the U.S. exporter has told BXA about the shipment, the ultimate consignee and purchaser are also required to provide information on the use of the item. The information is used in making licensing decisions.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Quarterly Report of the Loan or Sale of Aircraft Equipment Parts, Accessories and Components by Airlines.

Agency Form Number: None.

OMB Approval Number: 0694–0035.

Type of Request: Extension of a currently approved collection.

Burden: 819 hours.

Number of Respondents: 190.

Avg Hours Per Response: Annual recordkeeping time per respondent is 4.3 hours and 2 hours for those companies that need to file quarterly reports.

Needs and Uses: The Export Administration regulations allow airlines operating abroad to lend or sell U.S. airplane parts to another airline without written BXA authority. Airlines participating must maintain records of these transactions. For those countries in which inspections are now allowed, airlines must submit quarterly reports on equipment transfers. If this procedure were not in place, individual validated licenses would be required.

Affected Public: Businesses or other for–profit organizations.

Frequency: Quarterly, recordkeeping.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Report on Unscheduled Unloading and or Return of Cargo.

Agency Form Number: None.

OMB Approval Number: 0694–0040.

Type of Request: Extension of a currently approved collection.

Burden: 2 hours.

Number of Respondents: 2.

Avg Hours Per Response: 1 hour.

Needs and Uses: On rare occasions, a carrier may find itself in an emergency situation in which controlled goods or technology are unloaded at a destination other than shown on the Shipper's Export Declaration. In such instances, the carrier must notify BXA. Also, a carrier who believes that a shipment may be in violation must notify BXA. This data collection supports BXA's mission of controlling items for national security or foreign policy reasons.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Procedure for Voluntary Self–Disclosure of Violations of the Export Administration Act.

Agency Form Number: None.

OMB Approval Number: 0694–0058.

Type of Request: Extension of a currently approved collection.

Burden: 670 hours.

Number of Respondents: 67.

Avg Hours Per Response: 10 hours.

Needs and Uses: BXA has established procedures for voluntary self–disclosure of export violations. The information provided is used by Export Enforcement to investigate and assess the nature and gravity of the violation. By having such a procedure, it allows BXA to administer the regulations more effectively.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Telecommunications.

Agency Form Number: None.

OMB Approval Number: 0694–0078.

Type of Request: Extension of a currently approved collection.

Burden: 92 hours.

Number of Respondents: 15.

Avg Hours Per Response: Varies per the requirement from 15 minutes to 2 hours.

Needs and Uses: For the shipment of telecommunications equipment to proscribed countries, exporters must provide end use assurances and provide detailed information on the proposed use. The information is used for licensing decisions and for enforcement purposes once a license is issued.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Import Certificates and End–User Certificates.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: Existing collection in use without an OMB control number.

Burden: 1,144 hours.

Number of Respondents: 4,576.

Avg Hours Per Response: 15 minutes.

Needs and Uses: A number of countries are participating in a program to control the trade of strategic commodities through the Import Certificate–Delivery Verification procedure. This collection of information is the certification of the overseas importer to the U.S. Government that they will not reexport commodities except in accordance with U.S. export regulations.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Procedures for Acceptance or Rejection of Rated Order.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: Existing collection in use without an OMB control number.

Burden: 31,500 hours.

Number of Respondents: 25,000 with multiple responses.

Avg Hours Per Response: Approximately 15 minutes.

Needs and Uses: This requirement is needed for the administration of the Defense Production Act. The purpose of the Act is to ensure the timely delivery of goods and services to meet current national defense and emergency preparedness requirements. To help ensure the timely delivery, suppliers must accept or reject defense rated orders and must do so by writing or by electronic means.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Request for Restoration Ideas – New Bedford Harbor.

Agency Form Number: None assigned.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 100 hours.

Number of Respondents: 50.

Avg Hours Per Response: 1 hours — 2 responses per respondent.

Needs and Uses: Under the Comprehensive Environmental Response, Compensation and Liability Act, state and federal natural resource trustees, are responsible for the restoration of natural resources injured by releases of hazardous substances. The collection provides an opportunity for the public to submit ideas for restoration of resources that were injured by the release of contaminated materials in the New Bedford environment.

Affected Public: Individuals, businesses or other for–profit organizations, not–for–profit institutions, state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Dealer Purchase Reports.

Agency Form Numbers: NOAA 88–30 and 88–142.

OMB Approval Number: 0648–0229.

Type of Request: Revision of a currently approved collection.

Burden: 2,801 hours.

Number of Respondents: 1,120 with multiple responses.

Avg Hours Per Response: Ranges between 2 and 30 minutes depending on the requirement.

Needs and Uses: Fishery statistics are collected by NMFS so that the Nation's fishery resources can be managed effectively. Dealer reporting is needed to obtain fishery dependent data on the landings and purchase of fish and shellfish to monitor, evaluate, and enforce fishery regulations, collect basic fishery statistics and to collect certain effort information for economic and biological assessment of the stocks.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion, weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Cooperative Game Fish Tagging Report.

Agency Form Number: NOAA 88–162.

OMB Approval Number: 0648–0247.

Type of Collection: Extension of a currently approved collection.

Burden: 450 hours.

Number of Respondents: 1,500.

Avg Hours Per Response: 2 minutes.

Needs and Uses: Data are needed to determine migratory patterns, distance traveled, stock boundaries, age, and growth patterns of billfish and other recreational and commercially–valued species. Anglers volunteer to tag and release fish, submitting a tagging card with information of the fish released and the location of release. This information is used with information on returned tags to perform analyses necessary for the development of fishery management plans.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 30, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22434 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

[Docket 49–95]

Proposed Foreign-Trade Zone—St. Lucie County, FL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Central Florida Foreign-Trade Zone, Inc. (a not-for-profit corporation), to establish a general-purpose foreign-trade zone at sites in St. Lucie County, Florida, within the limits of the Fort Pierce Customs Station, which, with Customs concurrence, is considered the functional equivalent of a Customs port of entry for purposes of foreign-trade zone status. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 31, 1995. The applicant is authorized to make the proposal under Section 288.36, Florida Statutes Annotated.

The proposed new zone would consist of 3 sites (1,588 acres) in St. Lucie County: *Site 1* (1,078 acres)—St. Lucie County International Airport; *Site 2* (102 acres)—King's Highway Industrial Park, intersection of King's Highway and Commercial Circle, Fort Pierce; and, *Site 3* (408 acres)—St. Lucie West Commerce Park, 590 N.W. Peacock Blvd., Port St. Lucie.

The application contains evidence of the need for zone services in the St. Lucie County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as machine tools, electronic components, medical equipment, food processing/manufacturing, aircraft manufacture, and boat building/marine industry. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on September 29, 1995, at 2:30 p.m., at the Fort Pierce Community Center, 600 N. Indian River Drive, Fort Pierce, Florida 34950.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication].

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Fort Pierce Station,
U.S. Customs Service,
2990 Aviation Way,
Fort Pierce, Florida 34946
Office of the Executive Secretary,
Foreign-Trade Zones Board, Room 3716,
U.S. Department of Commerce,
14th & Pennsylvania Avenue, NW.,
Washington, DC 20230

Dated: September 5, 1995.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 95–22503 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 766]

Grant of Authority for Expansion Foreign-Trade Subzone 9B Kerr Pacific Corporation (Animal Feeds) Honolulu, Hawaii

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of Foreign-Trade Zone 9 (Honolulu, Hawaii), requesting authority to expand the scope of activity conducted under zone procedures at FTZ Subzone 9B, at the Kerr Pacific Corporation/HFM Division plant, (formerly Hawaiian Flour Mills, Inc.) in Honolulu, Hawaii, to include the production of animal feed solely for Hawaiian and export markets, and requesting authority to expand the subzone boundary, was filed by the Board on June 8, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 24–94, 59 FR 35095, 7/8/94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the expansion of the subzone boundaries and the scope of activity at Subzone 9B at the plant site of Kerr Pacific Corporation/HFM Division, in Honolulu, Hawaii, as described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 1st day of September 1995.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 95–22505 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 767]

Grant of Authority for Subzone Status; Rotorex Company, Inc. (Rotary Compressors), Walkersville, MD

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Maryland Department of Transportation, grantee of Foreign-Trade Zone 73, for authority to establish special-purpose subzone status at the rotary compressor manufacturing plant of the Rotorex Company, Inc., in Walkersville, Maryland, was filed by the Board on September 6, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 30–94, 59 FR 48850, 9–23–94); and

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 73A) at the Rotorex Company, Inc., plant in Walkersville, Maryland, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 1st day of September 1995.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 95–22506 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 764]

Expansion of Foreign-Trade Zone 122, Corpus Christi, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone No. 122, requesting authority to expand its general-purpose zone in the Corpus Christi, Texas, area, within the Corpus Christi Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on August 25, 1994 (Docket 29–94, 59 FR 48850, 9/23/94);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including § 400.28, and subject to a 2,000-acre activation limit.

Signed at Washington, DC, this 1st day of September 1995.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 95–22504 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration/Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from three respondents, one U.S. producer, and several interested parties, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above from the Republic of Korea. The review covers three manufacturers/exporters of the subject merchandise to the United States for the period of October 29, 1992 through April 30, 1994

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1993, the Department of Commerce published in the **Federal Register** (58 FR 27520) the antidumping duty order on dynamic random access memory semiconductors (DRAMS) from the Republic of Korea. On May 4, 1994, the Department published (59 FR 23051) a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period of October 29, 1992, through April 30, 1994. We received timely requests for review from Hyundai Electronics Industries, Co. (Hyundai), Goldstar Electron Co. (Goldstar), and Samsung Electronics Co. (Samsung). The petitioner, Micron Technologies Inc., requested an administrative review of these same three Korean manufacturers of DRAMs. Two interested parties, PNY Electronics and Pulsar Components International, Inc., requested a review of sixteen Japanese resellers of Korean DRAMs. However, these two interested parties subsequently withdrew their request. On June 15, 1994, the Department initiated a review of the above Korean manufacturers (59 FR 30770). The period of review (POR) for all respondents was October 29, 1992, through April 30, 1994.

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by the review are shipments of DRAMs of one megabit and above from the Republic of Korea (Korea). For purposes of this review, DRAMs are all one megabit and above DRAMs, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

United States Price

In calculating USP, the Department treated respondents' sales as purchase price, as defined in section 772(b) of the Act, when the merchandise was sold to unrelated U.S. purchasers prior to importation. The Department treated respondents' sales as exporter's sale price (ESP), as defined in section 772(c) of the Act, when the merchandise was sold to unrelated U.S. purchasers after importation.

We calculated purchase price based on packed, f.o.b., f.c.a., or c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties, U.S. commissions, discounts, and rebates in accordance with section 772(d)(2) of the Act.

We calculated ESP based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties, credit expenses, warranty expenses, royalty payments, U.S. commissions, advertising and promotion expenses, foreign banking charges, U.S. subsidiary packing expenses and U.S. and Korean indirect selling expenses, including inventory carrying costs in accordance with section 772(d)(2) of the Act. For both purchase price and ESP sales, we added duty drawback, where applicable, pursuant to section 772(d)(1)(B) of the Act.

We adjusted USP for taxes in accordance with our practice as outlined in *Siliconmanganese from Venezuela, Preliminary Determination of Sales at Less-Than-Fair-Value (LTFV)*, 59 FR 31204 (June 17, 1994). For DRAMs that were further manufactured into memory modules after importation, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs of the materials, fabrication, and general expenses associated with the portion of the merchandise further manufactured in the United States, as well as a proportional amount of profit or loss attributable to the value added. *See, e.g., Notice of Final Determination of Sales at LTFV; Certain Hot-Rolled Carbon Steel Flat Product, Certain Cold-Rolled Carbon Steel Flat Product, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from France*, 58 FR 37125 (July 9, 1993). Profit or loss was calculated by deducting from the sales price of the memory module all production and selling costs incurred by the company for the memory module. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the valued added was deducted. In determining the costs incurred to produce the memory module, we included materials, fabrication, and general expenses, including selling expenses and interest expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In order to determine whether there were sufficient sales of DRAMs in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of DRAMs to the volume of third country sales of DRAMs, in accordance with section 773(a)(1) of the Act. All three respondents had viable home markets with respect to sales of DRAMs made during the POR in accordance with 19 CFR 353.48(a). The Department relied on monthly weighted-average home market prices in the calculation of FMV.

Because Goldstar made some home market sales to related parties during the POR, we tested these sales to ensure that, on average, the related party sales were at arms length. To conduct this test, we compared the gross unit prices of sales to related and unrelated customers net of all movement charges, direct and indirect selling expenses, valued-added tax and packing. *See Final Determination of Sales at LTFV; Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Appendix II*, 58 FR 87062 (July 9, 1993). Based on the results of that test, we discarded from Goldstar's home market database all related party sales not made at arm's length. *See Notice of Final Determination of Sales at LTFV; Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Brazil*, 60 FR 31960, 31971 (June 19, 1995).

Because the Department found sales made at prices less than the cost of production (COP) during the less than fair value (LTFV) investigation, in accordance with our standard practice, we found reasonable grounds to believe or suspect that all three respondents had made sales at prices below the COP in the home market during the POR. Thus in accordance with section 773(b) of the Act, we examined whether the home market sales of each model were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade.

We performed a model-specific COP test, in which we examined whether each home market sale was priced below the merchandise's COP. The Department defines COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packaging costs (19 CFR 353.51(c)(1994)). *See Stainless Steel Hollow Products from Sweden; Preliminary Results of Antidumping Duty Administrative Review*, 59 FR 40521 (August 9, 1994). For each model, we compared this sum to the reported home market unit price, net of price adjustments and movement expenses.

For each model where less than ten percent, by quantity, of the home market sales during the POR were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model where ten percent or more, but less than ninety percent, of the home market sales during the POR were priced below the merchandise's COP, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's COP, provided that these below-cost sales were made over an extended period of time. For each model where ninety percent or more of the home market sales during the POR were priced below the COP and were made over an extended period of time, we disregarded all sales of that model from our analysis. *See Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 50670 (April 27, 1995).

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months during the POR in which each model was sold. If a product was sold in fewer than three months during the POR, we did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the POR. *Id*.

Finally, respondents did not provide any information, nor is there any information on the record of this proceeding which indicates recovery of all costs within a reasonable period of time for sales found to have been made at prices below the cost of production. Therefore, in accordance with our practice, we have disregarded respondents' sales found to have been made at prices below the COP in substantial quantities over an extended period of time, which would not permit recovery of all costs within a reasonable period of time in the normal course of trade.

We calculated the COP for the merchandise based on the sum of each respondent's material costs, fabrication costs and general expenses in accordance with section 353.51(c) of the Department's regulations (19 CFR 353.51(c) (1994)). We adjusted respondents' cost data as described below:

For Hyundai, the Department relied on the submitted COP and constructed value (CV) information, except in the following instances where the costs were not appropriately quantified or valued:

1. We reclassified certain capitalized costs from R&D to current costs of production. We recalculated R&D costs to reflect the current costs incurred for all semiconductors.
2. We revised interest expense to reflect the proportional amount incurred by the semiconductor business.

For Goldstar, the Department relied on the submitted COP and CV information, except in the following instances where the costs were not appropriately quantified or valued:

1. We recalculated [illegible] costs to reflect the current costs incurred for all semiconductors.

For Samsung, the Department relied on the submitted COP and CV information, except in the following instances where the costs were not appropriately quantified or valued:

1. We recalculated R&D costs to reflect the current costs incurred for all semiconductors.
2. We revised interest expense to reflect the proportional amount incurred by the semiconductor business.

When all home market sales of a such or similar product in the contemporaneous month (as identified in the July 19, 1994 model match memorandum) were excluded from our analysis because the home market sales were priced below the COP, or when no home market sales of such or similar merchandise were found, then we used the CV of the merchandise sold in the United States as the basis for FMV in accordance with section 773(e) of the Act. We calculated the CV, in accordance with section 773(e) of the Act, as the sum of the cost of manufacture of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, and home market profit. The cost of manufacture of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses, in accordance with section 773(e)(B)(i) of our regulations, we used the larger of the actual SG&A expenses reported by the respondents or ten percent of the cost of manufacture, the statutory minimum for foreign SG&A expenses. For home market profit, in accordance with section 773(e)(B)(ii) of our regulations, we used the larger of the actual profit reported by the respondents or the statutory minimum of eight percent of the sum of cost of manufacture and SG&A expenses. *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Preliminary Results of Antidumping*

Duty Administrative Review, 59 FR 35098, 35100 (July 8, 1994).

We calculated FMV based on delivered prices to unrelated customers and, where appropriate, to related customers in the home market. In calculating FMV, we made adjustments, where appropriate, for inland freight, inland insurance, discounts, rebates, Korean brokerage and handling charges, and home market credit expenses. We adjusted for Korean consumption tax in accordance with our practice as outlined in *Siliconmanganese from Venezuela, Preliminary Determination of Sales at LTFV*, 59 FR 31204 (June 17, 1994). We deducted home market packing costs from the home market price and added U.S. packing costs to the FMV. We also made, where applicable, difference-in-merchandise adjustments.

For comparison to purchase price sales, pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments to the FMV, where appropriate, for bank charges, royalty payments, and advertising. We made further adjustments, where appropriate, for U.S. commissions and credit expenses in accordance with 19 CFR 353.56(a)(2). Where commissions were paid on U.S. sales and not paid on home market sales, we allowed an offset to FMV amounting to the lesser of the weighted-average home market indirect selling expenses, or the U.S. commissions in accordance with 19 CFR 353.56(b) of our regulations.

For comparison to ESP sales, we made deductions, where appropriate, for credit expenses, royalty payments, bank charges and advertising expenses. We also allowed an ESP offset to the FMV, amounting to the lesser of the weighted-average total of home market indirect selling expenses, or he total U.S. indirect selling expenses plus commissions in accordance with 19 CFR 353.56(b)(2).

No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margins exist for the POR:

Manufacturer/exporter	Percent margin
Hyundai Electronics Co., Ltd. .	0.202 (de minimis)
Samsung Electronics Co., Ltd.	0.9936 (de minimis)
Goldstar Electron Co., Ltd.	0.319 (de minimis)

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and the FMV may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions on each exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of dynamic random access memory semiconductors of one megabit and above, assembled or unassembled, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act.

(1) The cash deposit rate for the reviewed companies will be those rate established in the preliminary results of this review (except that no deposit will be required for firms with zero or de minimis margins; *i.e.*, margins less than 0.5%);

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be 3.85%, the "all other" rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within ten days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 16, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–22501 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–806]

Sulfanilic Acid From India: Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Antidumping Administrative Review.

SUMMARY: On April 14, 1995, the Department of Commerce (the Department) published in the **Federal Register** (60 FR 19017) the notice of initiation of the administrative review of the antidumping duty order on sulfanilic acid from India. This review has now been terminated as a result of a request by the respondents.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4195.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1995, Kokan Synthetics and M/S Kay International (collectively "Kokan and M/S Kay"), requested an administrative review of the antidumping duty order on sulfanilic acid from India for the period March 1, 1994, through February 28, 1995, pursuant to 19 CFR 353.22(a)(5). On April 14, 1995, the Department published in the **Federal Register** (60 FR 19017) the notice of initiation of that administrative review.

Kokan and M/S Kay timely withdrew their request for a review on June 26, 1995, pursuant to 19 CFR 353.22(a)(5). As a result, the Department has terminated the review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675 and 19 CFR 353.22(a)(5).

Dated: August 30, 1995.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 95–22502 Filed 9–8–95; 8:45 am]

BILLING CODE 3510–DS–M

North American Free Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Binational Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Binational Panel.

SUMMARY: On August 30, 1995 the binational panel in Secretariat Case Number MEX–94–1904–02 issued its decision. This panel was convened to review the final antidumping duty determination made by the Secretaria de Comercio y Fomento Industrial (SECOFI) with respect to Imports of Cut-Length Plate, Covered by Customs Tariff Classifications 7208.32.01, 7208.33.01, 7208.42.01 and 7208.43.01 of the Tariff Schedule of the General Tax Import Law, Originating in and Entering from the United States of America. The panel majority remanded the determination to SECOFI to issue a new determination within 21 days (by September 20, 1995) that terminates the proceeding. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The binational panel review in this matter was conducted in accordance with these Rules.

Background

On September 1, 1994, Bethlehem Steel Corporation filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. On the same date, a Request for Panel Review was also filed by US Steel Group, a unit of USX Corporation. Panel review was requested of the final antidumping duty determination made by the Secretaria de Comercio y Fomento Industrial with respect to Imports of Cut-Length Plate, Covered by Customs Tariff Classifications 7208.32.01, 7208.33.01, 7208.42.01 and 7208.43.01 of the Tariff Schedule of the General Tax Import Law, Originating in and Entering from the United States of America. This determination was published in the *Diario Oficial* on Tuesday August 2, 1994. The NAFTA Secretariat has assigned Case Number MEX–94–1904–02 to this request.

Complaints were filed by both requestors challenging SECOFI's final determination in three areas:

1. Jurisdictional and technical errors;
2. Errors in the calculation of the dumping margin; and
3. Errors in causation and injury determinations.

Standard of Review

In reviewing SECOFI's final determination, the Panel determined that it must apply the standard of review and the general legal principles that a Mexican court (the Fiscal Tribunal) would apply when it reviews a final determination by SECOFI. The Panel interpreted this obligation to require it to apply Article 238 of the Federal Fiscal Code, in conjunction with Articles 237 and 239, to the maximum extent, consistent with the nature of the binational panel review process.

In deciding whether SECOFI's determination under this standard of review was in accordance with the antidumping law of Mexico, the Panel also determined that it was required to examine the applicable provisions of the Mexican Constitution, treaties, statutes, legislative history, regulations, administrative practice and judicial precedents—all to the extent that the Mexican Fiscal Tribunal would have relied on such legal sources.

The Panel further found that the guarantees of legality and legal security contained in Articles 14 and 16 of the Mexican Constitution impact both the interpretation to be given to the standard of review and to the substance and procedure of any Mexican antidumping proceeding. A primary function of judicial review by Mexican courts and, consequently, by the Panel, is the enforcement of these guarantees. The Panel concluded that in order for the actions of Mexican authorities to be legal, the agency issuing or carrying out such functions or performing such acts, must be "competent": the existence of the acting entity or unit must be formally established in a legal provision; and that entity or unit must only act in accordance with the express authority granted it by Mexican law.

Panel Decision

In its decision the majority of the Panel only addressed itself to Complainants' first areas of challenges—that SECOFI's actions were illegal because of jurisdictional errors—since as a consequence of its findings, the other areas of challenge became unnecessary to address.

The Panel decided the following:

1. The two administrative units that carried out the antidumping investigation and proceeding in its early stages (December 4, 1992–April 1, 1993), namely the Direccion General de Practicas Commerciales Internacionales (DGPCI) and the Direccion de Cuotas Compensatorias (DCC), were incompetent to do so. They were not duly created and established in the manner required by Mexican Law, and, therefore, their actions were illegal.
2. The visitation orders of July 13 and 14, 1993 were illegal because they were issued by an administrative unit that was incompetent to act.
3. The verification visits that took place on July 19–21, 1993 were performed in part by public officers (Director and Assistant Director of Investigation of Dumping and Subsidies) who lacked competence to act in that capacity because their administrative units had not been legally established.
4. The "external advisors" who participated in the verification visits also lacked competence to act.

Order of the Panel

Pursuant to NAFTA Article 1904.8, the Panel remanded SECOFI's Final Determination to SECOFI for action not inconsistent with its decision. In particular, it directed SECOFI to issue a new determination within 21 days that terminates the proceeding against the Complainants and provides that:

1. The exports of USX and Bethlehem of the goods subject to this proceeding enter Mexican territory with zero antidumping duties applied to them upon their importation; and
2. Any cash deposits or customs bonds relative to antidumping duties made or posted by the importers, in order to import the goods manufactured by USX and Bethlehem, be refunded or cancelled as appropriate.

Dated: September 5, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–22435 Filed 9–8–95; 8:45 am]

BILLING CODE 3510-GT-M

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, Room B–256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 93–063

Title: Polymeric Amorphous Calcium Phosphate Compositions.

Description: Polymeric composites that can provide long-term release of calcium and phosphate ions in biological environments at levels conducive to the formation of hydroxyapatite have been developed. These composites utilize as their filler phase amorphous calcium phosphate, which is highly soluble and rapidly converts to hydroxyapatite. Such biomaterials have the potential to remineralize defective mineralized tissues such as bone or teeth.

NIST Docket No. 94–043

Title: Low Cost Renewable Polishing Lap.

Description: Researchers in the Precision Engineering Division at the National Institute of Standards and Technology have developed a new method for the fabrication of laps wherein the substrate never contacts the polishing media or part being polished. The invention provides the potential to eliminate contamination of the part and/or degradation of the substrate. The concept offers the potential to significantly lower costs in appropriate applications.

NIST Docket No. 95–023D

Title: Methods and Electrolyte Compositions for Electrodepositing Chromium Coatings.

Description: A NIST process deposits chromium plating up to 600 microns thick. The plating process uses nontoxic trivalent chromium to produce a plating three to four times harder, after heating, than depositions using hexavalent chromium.

Dated: September 5, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–22509 Filed 9–8–95; 8:45 am]

BILLING CODE 3510-13-M

Open Forum on Laboratory Accreditation

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: This notice announces an Open Forum for discussion of issues in laboratory accreditation. The forum is co-sponsored by ACIL (formerly American Council of Independent Laboratories), the American National Standards Institute (ANSI), and the National Institute of Standards and Technology (NIST). We invite all interested parties to attend and participate in defining needs for a more streamlined system to eliminate current duplication and unnecessary costs in laboratory accreditation. We hope to stimulate discussion on means for achieving greater compatibility, coordination, and mutual recognition of competent laboratory accreditation programs.

DATES: The forum will take place on Friday, October 13, 1995, at 9 a.m.

ADDRESSES: The forum will be held in the Red Auditorium at the National Institute of Standards and Technology, Gaithersburg, Maryland.

To register to attend the Open Forum and pay the $50 registration fee, interested parties may contact Lori Phillips, NIST, Administration Building, Room B–116, Gaithersburg, Maryland 20899, (301) 975–4513, facsimile (301) 948–2067.

FOR FURTHER INFORMATION CONTACT: Belinda Collins, Director, Office of Standards Services, NIST, (301) 975–4000, facsimile (301) 963–2871.

SUPPLEMENTARY INFORMATION:

Background

NIST, ACIL, and ANSI have explored issues facing both the private sector and government in laboratory accreditation. Multiple, duplicate assessments occur frequently for many laboratories, wasting resources for all parties. Procedures need to be developed, toward a goal of one assessment per laboratory, that are in accord with international guidelines and recognized by all who require laboratory accreditation. Laboratories, accreditors, industry, and federal and state governments must be considered, and the procedures must mesh with domestic and international requirements.

Problems of multiple and/or duplicate accreditations result from accreditation requirements that lack assurance for reciprocity, or constrain acceptance from outside sectors. Challenges raised by the National Research Council study, Standards, Conformity, Assessment and Trade," * * * domestic policies and procedures for assessing conformity of products and processes to standards require urgent improvement" must be addressed.

Speakers will address accreditation issues and problems related to trade needs, international perspectives, and U.S. economic impacts. They will consider the need for joint approaches by the private sector and government to further opportunities for greater acceptance of and reciprocity in laboratory accreditation programs.

Forum Announcement

Laboratory Accreditation in the United States

ACIL, ANSI, and NIST are cosponsoring an Open Forum for discussion of issues in laboratory accreditation. The forum will be an opportunity to define the needs for a more streamlined system to eliminate current duplication and unnecessary costs. There is widespread agreement that the current situation results in unnessary burdens. The forum is intended to stimulate discussion on means for achieving greater compatibility, coordination, and mutual recognition of competent laboratory accreditations. All interested parties are invited to attend and to express their views.

To date, several task groups have assessed the problems encountered by their communities. The various stakeholders include laboratories and their customers, accreditation organizations, industry, and government at all levels. They report overlapping and contradictory requirements among regulations, contractual specifications, and other voluntary applications, as well as a lack of reciprocity among bodies. The consequent duplication of effort costs time and money and seriously degrades U.S. competitiveness in domestic and global markets.

Laboratories, accreditors, manufacturers, the National Environmental Laboratory Accreditation Conference (NELAC), and government representatives, both federal and state, will present their views. They will discuss the cost of multiple accreditations for individual laboratories; conflicting requirements of those requiring accreditation; special programs tailored to narrow customer or supplier bases; non-uniformity of requirements and lack of reciprocity; international trade implications; and other pertinent factors.

A panel discussion and open exchange of ideas at the October 13 forum will explore concepts for future collaboration that will lead to "one-stop shopping" in laboratory accreditation.

Dated: September 5, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–22508 Filed 9–8–95; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[I.D. 083095E]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification to permit no. 918 (P191E).

SUMMARY: Notice is hereby given that on August 30, 1995, Permit No. 918, issued to California Department of Fish and Game, 1416 Ninth Street, Sacramento, CA 95814, was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/712–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: E. Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as admended (16 U.S.C. 1543 et seq.), the regulations governing endangered species permit (50 CFR 217–222), the Fur Seal Act of 1966, and the regulations governing the taking of fur seals (50 CFR 215).

The Permit authorizes up to 30,000 Pacific harbor seals to be inadvertently harassed annually during aerial surveys and an unspecified number of California sea lions (*Zalophus californianus*), Northern elephant seals (*Mirounga angustrirostris*), and Northern fur seals (*Callorhinus ursinus*) will be opportunistically harassed during these surveys. This Permit was extended until September 30, 1999.

Dated: August 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–22402 Filed 9–8–95; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 090195C]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on September 13, 1995, at 10:00 a.m. and on September 14, 1995, at 9:00 a.m.

ADDRESSES: The meeting will be held at the Mariner's Church Banquet Center, 368 Fore Street, Portland, ME; telephone: (207) 774–7016.

Council address: New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, telephone: (617) 231–0422.

SUPPLEMENTARY INFORMATION: On September 13, the morning session will commence with a report from the Groundfish Committee on the status of Amendment #7 to the Northeast Multispecies Fishery Management Plan (FMP). There also will be an update and recommendation from the Aquaculture Committee on the Westport Scalloping enhancement project.

The Marine Mammal Committee will report during the afternoon session. Following that discussion, the Monkfish Committee will report on the progress to develop a monkfish total allowable catch and evaluate trip limits and qualification criteria for limited access, directed monkfish permits. This will be followed by the Gear Conflict Committee update on the Council's request for emergency action to close areas defined in the Southern New England Deepwater Gear Conflict Resolution.

On September 14, the morning session will begin with an update from the Lobster Committee Chairman on the progress of Amendment #6 to the Lobster FMP. Later, reports will be received from the Council Chairman, Executive Director, Northeast Regional Director, Northeast Fisheries Science Center, Atlantic States Marine Fisheries Commission, U.S. Coast Guard and the Mid-Atlantic Council Liaison.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall at the Council (see **ADDRESSES**), at least 5 days prior to the meeting date.

Dated: September 5, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22403 Filed 9–8–95; 8:45 am]

BILLING CODE 3510-22-F

COMPETITIVENESS POLICY COUNCIL

Notice of Forthcoming Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the

Competitiveness Policy Council announces a forthcoming meeting.

DATES: September 14; 2 p.m. to 5 p.m.

ADDRESSES: Dirksen Senate Office Building, Room 11, Washington, D.C. 20510.

FOR FURTHER INFORMATION CONTACT: Howard Rosen, Executive Director, Competitiveness Policy Council, Suite 300, 1726 M Street, N.W., Washington, D.C. 20036, 632–1307.

SUPPLEMENTARY INFORMATION: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100–418, sections 5201–5210, as amended by the Customs and Trade Act of 1990, Public Law 101–382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the US economy. The Council's chairman, Dr. C. Fred Bergsten, will chair the meeting.

The meeting will be open to the public subject to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda: The Council will discuss its annual report and consider additional business as suggested by its members.

Dated: September 5, 1995.

C. Fred Bergsten,

Chairman, Competitiveness Policy Council.

[FR Doc. 95–22604 Filed 9–8–95; 8:45 am]

BILLING CODE 4730-64-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paper Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Recreation Research—Use Surveys; OMB Control Number 0710–0002.

Type of Request: Expedited Processing—Approval date requested: 30 days following publication in the **Federal Register**.

Number of Respondents: 37,500.

Responses Per Respondent: 1.

Annual Responses: 37,500.

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 3,000.

Needs and Uses: The information collected hereby, will be used to enhance research efforts directed toward evaluation, as well as increasing cost efficiency of, planning, design, and management of Corps of Engineers projects. It is also used to report visit information to Congress as required by statute.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Timothy G. Hunt.

Written comments and recommendations on the proposed information collection should be sent to Mr. Hunt at the Office of Management and Budget, Desk Officer for DoD, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 6, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22453 Filed 9–8–95; 8:45 am]

BILLING CODE 5000-04-M

Office of the Secretary

Meeting of the Semiconductor Technology Council; Notice

SUMMARY: Under the provisions of PL 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Semiconductor Technology Council will hold its third meeting. The Council's mission is to: Link industry and national security needs to opportunities for cooperative investments, foster pre-competitive cooperation among industry, government and academia, recommend opportunities for new R&D efforts and potential to rationalize and align on-going industry and government investments. Part of the meeting will be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of Section 552b(c) (3) and (4), Title 5, U.S.C. There will be an open section from 12:30 to 1:30 p.m. for a discussion of MicroElectroMechanical Systems (MEMS) technology. Advanced registration is required for this session.

DATES: September 18, 1995.

ADDRESSES: 1300 N. 17th St., Suite 1450, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Dr. Lance Glasser, Director, ARPA/ETO, 3701 N. Fairfax Drive, Arlington, VA 22203–1714; telephone: 703/696–2213.

Dated: September 6, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22454 Filed 9–8–95; 8:45 am]

BILLING CODE 5000-04-M

Department of the Army; Corps of Engineers

Intent to Prepare an Environmental Impact Statement for the Proposed McDonald Gold Project, Lincoln, MT

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action is an open-pit mining operation with ore processed by heap leaching, and gold and silver recovered by carbon adsorption. The project would be located in Lewis and Clark County, approximately 8 miles east of Lincoln, Montana. The project area covers 5,400 acres above the confluence of the Landers Fork with the Blackfoot River. The majority of the gold deposit lies on state land in Section 6, T14N, R7W. Major facilities would include rock piles, heap leach pads, solution ponds, processing equipment, and auxiliary buildings. Two miles of Montana Highway 200 would relocated 1,200 feet to the south. A project life of 25 years, from construction to reclamation, is anticipated.

The applicant has determined that 205 million tons of ore can be mined and processed economically at a gold price of $375/ounce. This will require the removal of 440 million tons of barren rock to uncover the ore, for a total of over 600 million tons of rock to be removed from the open pit. Phelps Dodge Mining Company, the majority partner in the Seven-Up Pete Joint Venture, will be the operator of the proposed mine. Phelps Dodge advocates a commitment to mining in an environmentally responsible manner.

The Seven-Up Pete Joint Venture identified 16 candidate sites for either rock pile or heap leach sites. All sites were within a 4-mile radius of the McDonald gold deposit. The Co-Lead agencies for preparation of the EIS have requested the applicant to consider additional alternative sites, and that some facilities be broken into smaller units (i.e., three 100 million ton waste rock piles instead of one 300 million ton waste rock pile. The Lead Agencies will also specifically solicit comments from cooperating agencies and the interested public regarding alternatives.

DATES: Public Scoping Meeting, October 12, 1995, 7 p.m., Lincoln Community Hall, Lincoln, Montana.

ADDRESSES: U.S. Army Corps of Engineers, Omaha District, Planning Division, 215 North 17th Street, Omaha, Nebraska 68102–4978; Montana Department of Environmental Quality, Hard Rock Bureau, Reclamation Division, 1625 11th Avenue Helena, Montana 59620–1601.

FOR FURTHER INFORMATION CONTACT: Bob Nebel, U.S. Army Corps of Engineers, (402) 221–4621, or Jim Robinson, Montana Department of Environmental Quality, (406) 444–4958.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

FR Doc. 95–22437 Filed 9–8–95; 8:45 am]

BILLING CODE 3710-62-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Lower Atchafalaya Basin Reevaluation Study, Louisiana

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: This study proposes to develop recommendable solutions for flood control, navigation, and environmental problems in the Atchafalaya Basin Floodway System and adjacent backwater areas. Alternatives being considered consist of various structural and non-structural measures, and will be compared to the no-action alternative.

FOR FURTHER INFORMATION: Questions regarding the proposed study should be addressed to Mr. Troy Constance, U.S. Army Corps of Engineers; Planning Division (CELMN–PD–FB), P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–2742.

SUPPLEMENTARY INFORMATION: 1. *Authority*. The Atchafalaya Basin project was authorized by the Flood Control Act of 1928 and subsequently modified by the Acts of 1934, 1936, 1938, 1941, 1946, 1950, and 1954. The United States Senate Report to the 1994 Energy and Water Development Act (PL 103–126), dated 28 October 1993, directed the Corps to use available funds to investigate conditions at Wax Lake Outlet, Bayou Black, and other features and recommend any modifications desirable for flood protection, navigation, and environmental management.

2. *Proposed Action*. Under the proposed action, the existing project will be investigated to identify possible improvements to the navigation, flood control, environmental, and operation and maintenance features of the Atchafalaya Basin Floodway System, Louisiana, project.

3. *Alternatives*. The alternatives being considered include regulating water distribution in the lower floodway between the Lower Atchafalaya River and the Wax Lake Outlet; construction of a barrier around Morgan City, Louisiana, to prevent flooding from river backflooding events, moving the navigation channel from the Lower Atchafalaya River; and channel development in the upper backwater areas to facilitate drainage from rainfall events.

4. *Scoping Process*. a. Public input for scoping will be achieved through the distribution of a widely circulated Scoping Input Request to all segments of the public having an interest in the study/project. In addition, scoping meetings will be held in the vicinity of Plaquemine, Morgan City, and New Iberia, Louisiana, to request submission of views on alternatives, significant resources in the study area, and any other study-related issue considered important. Comments received as a result of this process will be compiled and analyzed, and a Scoping Document summarizing the results will be made available to all respondents.

b. A tentative list of significant resources to be evaluated in the EIS includes: wetlands; navigation facilities; flood control facilities; cultural resources; socio-economic resources; biological resources, including endangered and threatened species; recreational resources, and water quality.

c. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service concerning endangered species. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. We will prepare a Section 404(b)(1) evaluation for review by the U.S. Environmental Protection Agency and other interested parties. Coordination will be maintained with the Advisory Council on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. Application will be made to the Louisiana Department of Environmental Quality for a Water Quality Certificate.

d. A 45-day public review period will be allowed so that all interested agencies, groups, and individuals will have the opportunity to comment on the DEIS.

5. *Availability*. The DEIS is scheduled to be available to the public during the fall of 1998.

Kenneth H. Clow,

Colonel, U.S. Army District Engineer.

[FR Doc. 95–22436 Filed 9–8–95; 8:45 am]

BILLING CODE 3710-84-M

Environmental Assessment and Finding of No Significant Impact for the Proposed Consolidation of the Finance and Accounting Activities of the U.S.Army Corps of Engineers (USACE) to Memphis, TN

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: This notice of availability is for the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared for the consolidation of the finance and accounting activities of Corps' district, division and headquarters offices under the Department of Defense's Centralized Service to Millington Naval Air Station (NAS), Memphis, Tennessee.

The establishment of the USACE Finance Center (UFC) would provide the vehicle to realign existing resources to facilitate the continued development of Corps of Engineers Financial Management System (CEFMS) and deployment to all 60 USACE locations. Over a three year period CEFMS deployment and establishment of the UFC would enable USACE to consolidate the operating finance and accounting functions currently performed in all 60 locations into one site, freeing up about 67% FTE/Manyears for redistribution or savings. The consistency/standardization of business processes in a CEFMS/single Finance & Accounting operating site would also enhance productivity and quality throughout USACE and provide additional opportunities for redistribution of effort.

The No Action alternative was evaluated and deemed unacceptable because it maintains the present finance and accounting activities at district, division, and headquarters. This alternative would not capitalize on savings which could be realized if the action was implemented. Therefore, the No Action alternative was not considered further.

Although the proposed consolidation would have some adverse socioeconomic effect on the employees displaced or whose jobs are terminated, the effects of this consolidation on the natural and physical environment would not be significant. Under consolidation the financial management functions will continue to be performed; the only change would be that some of these functions will be performed in a different city. The actual physical displacement of the Corps' employees relocating to Memphis, Tennessee, should not have a significant effect on the environment. Affected Corps' headquarters, division and district offices are almost exclusively located within urban areas. The consolidation would require the Corps to dispose of office space in some cities and to lease or utilize existing office space at Millington NAS in Memphis, Tennessee. Again, because this activity would be confined primarily to urban areas, the environmental impact of this action would be minimal. Therefore, an environmental impact statement will not be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Hand, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, Alabama 36628–0001, (334) 694–3881.

SUPPLEMENTARY INFORMATION: Copies of the EA and FONSI will be available to the public for review for 30 days following publication of this notice.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–22438 Filed 9–8–95; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1630–000, et al.]

PECO Energy Corporation, et al.; Electric Rate and Corporate Regulation Filings

September 1, 1995.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER95–1630–000]

Take notice that on August 28, 1995, PECO Energy Company (PECO) filed a Service Agreement dated August 17, 1995, with Ohio Edison Company (OE) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds OE as a customer under the Tariff.

PECO requests an effective date of August 17, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to OE and to the Pennsylvania Public Utility Commission.

Comment date: September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER95–1631–000]

Take notice that on August 28, 1995, PECO Energy Company (PECO), filed a Service Agreement dated August 22, 1995, with LG&E Power Marketing Inc. (LG&E) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds LG&E as a customer under the Tariff.

PECO requests an effective date of August 22, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to LG&E and to the Pennsylvania Public Utility Commission.

Comment date: September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER95–1632–000]

Take notice that on August 28, 1995, PECO Energy Company (PECO), filed a Service Agreement dated August 22, 1995, with Northern Indiana Public Service Company (NIPSCO) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NIPSCO as a customer under the Tariff.

PECO requests an effective date of August 22, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to NIPSCO and to the Pennsylvania Public Utility Commission.

Comment date: September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Engelhard Power Marketing, Inc.

[Docket No. ER95–1633–000]

Take notice that on August 28, 1995, Engelhard Power Marketing, Inc. (ENGL), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that ENGL had completed all the steps for pool membership. ENGL requests that the Commission amend the WSPP Agreement to include it as a member.

ENGL requests an effective date of August 17, 1995, for the proposed amendment. Accordingly, ENGL requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER95–1634–000]

Take notice that on August 28, 1995, Illinois Power Company (Illinois), tendered for filing an Interchange Agreement between Illinois and Kimball Power Company (Kimball). Illinois states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between Illinois and Kimball.

Comment date: September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER95–1635–000]

Take notice that on August 28, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a unit exchange agreement between NUSCO, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, and Central Maine Power Company (CMP).

NUSCO states that a copy of this filing has been mailed to CMP.

NUSCO requests that the Agreement become effective on November 1, 1995.

Comment date: September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Delmarva Power and Light Company

[Docket No. ER95–1639–000]

Take notice that on August 28, 1995, Delmarva Power and Light Company (Delmarva Power), tendered for filing a tariff providing for comprehensive transmission service. Delmarva Power states that its filing modifies its Tariff No. 2 that was filed in Docket No. ER95–222–000 and that its tariff is consistent with the draft pro forma tariffs the Commission included with the proposed rule in "Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities," Docket No. RM95–8–000, IV FERC Stats. and Regs. ¶32,514 (1995). Delmarva Power asks the Commission to set an effective date for this filing of November 1, 1995.

Comment date: September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Delmarva Power & Light Company

[Docket No. ER95–1640–000]

Take notice that on August 28, 1995, Delmarva Power & Light Company (Delmarva) of Wilmington, Delaware, tendered for filing revised rate schedule sheets, and a request to suspend the operation of its fuel clause for the purposes of making a one-time refund of fuel expense over-collections and of resetting its Fuel Adjustments. The Company is proposing several revisions to its rate schedules to define more clearly the operation of the fuel adjustment clause. These revisions involve the following customers and rate schedules: Seaford, Rate Schedule 62; Berlin, Rate Schedule 63; Middletown, Rate Schedule 65; and Smyrna, Rate Schedule 68. Delmarva requests an effective date of October 27, 1995.

Comment date: September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Brooklyn Navy Yard Cogeneration Partners, L.P.

[Docket No. QF95–302–000]

On August 16, 1995, Brooklyn Navy Yard Cogeneration Partners, L.P. of 366 Madison Avenue, Suite 1103, New York, New York 10017, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the natural gas-fired topping-cycle cogeneration facility is located in Kings County, Brooklyn, New York. The facility will consist of two combustion turbine generators, two unfired heat recovery boilers, two extraction/condensing steam turbine generators, and related interconnection equipment. The maximum net power production capacity of the facility will be 315 MW. Thermal energy recovered from the facility will be used for space heating, water distillation and waste water treatment purposes. Installation of the facility began in January of 1995.

Comment date: October 11, 1995 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22451 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–709–000, et al.]

Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

September 1, 1995.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP95–709–000]

Take notice that on August 25, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–709–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization to relocate certain delivery point facilities which serve Dalton Utilities (Dalton). Southern makes such request, under its blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Southern proposes to abandon two four-inch meter runs, a heater and some regulating equipment at its existing Dalton No. 2 Delivery Point which is currently located on Southern's 12-inch Chattanooga Branch Lines in Whitfield County, Georgia. Southern also proposes to construct and operate a dual 4-inch orifice meter, heater, regulators, and other appurtenant facilities in order to provide transportation service to Dalton No. 2, at the relocation cite. It is stated that Southern proposes to relocate the facilities to a site on its 12-inch Chattanooga Branch Lines in Whitfield County, Georgia. The estimated cost of the relocation of the delivery facilities is approximately $101,500. It is indicated that Dalton will reimburse Southern for the total actual cost of relocating the facilities. Dalton has requested the relocation to serve more efficiently the gas requirements on its distribution system which are growing in the area of the proposed relocation point.

Southern states that it will continue to transport gas to the relocated Dalton No. 2 delivery point, pursuant to its Rate Schedules FT and IT. Dalton does not propose to add or change any transportation demand to its firm service as a result of the relocation of the delivery point. Southern further states that the installation of the proposed facilities will have no adverse impact on its peak day or firm requirements.

Comment date: October 16, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP95–711–000]

Take notice that on August 25, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95–711–000 a request pursuant to Sections 157.205, 157.216 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216 and 157.212) for authorization to abandon the existing Fort Lupton taps and to construct new delivery facilities at the same location for Public Service Company of Colorado (PSCo), a local distribution company, under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG proposes to abandon two taps and construct a new meter station and appurtenant facilities at Section 34, Township 2 North, Range 66 West, Weld County, Colorado. The proposed new facilities are to be bi-directional, will increase deliverability and will cost $506,600. The deliveries at the Fort Lupton delivery point will provide service to PSCo's Fort St. Vrain power plant and other loads in the area. Currently, there is 15,500 Dth/d of entitlement under existing agreements, but after the proposed installation, the initial deliveries will be up to 100,000 Dth/d. The total annual and daily contract entitlement for the contracts serving the Fort Lupton delivery facilities are within the certificated entitlements. CIG's existing tariff does not prohibit this change and CIG states that there is sufficient capacity to accomplish the increased deliveries without detriment or disadvantage to other customers.

Comment date: October 16, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Company

[Docket No. CP95–712–000]

Take notice that on August 25, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95–712–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate a new delivery point, the South Bennett delivery facilities, for service under CIG's existing Rate Schedule NNT–2 for Eastern Colorado Utility Company (Eastern Colorado), a local distribution company, in Arapahoe County, Colorado under the blanket certificate issued in Docket No. CP83–21–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that it will operate a tap, two-inch tee, valve, approximately 50 feet of two-inch pipe and appurtenant facilities. CIG states that it plans to construct these facilities pursuant to Section 311 of the Natural Gas Policy Act. CIG estimates that cost of the proposed facilities is approximately $10,000. CIG asserts that it will provide transportation service to Eastern Colorado pursuant to its open access blanket certificate; and therefore, it has authorization for the proposed service. Additionally, CIG notes that the proposed service is not prohibited by an existing CIG tariff. CIG states that it has sufficient capacity to accomplish deliveries to the proposed facilities without detriment or disadvantage to CIG's other customers.

CIG states that it does not currently make deliveries to Eastern Colorado at the proposed South Bennett delivery facility. CIG asserts that the proposed facilities will be capable of delivering approximately 850 Dth/d. Additionally, CIG notes that the end use of the gas delivered by CIG to Eastern Colorado will be for new residential development. CIG claims that the impact of the proposed changes will be minimal because of the proposed delivery volume size and the use of an existing agreement.

Comment date: October 16, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP95–717–000]

Take notice that on August 29, 1995, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101 filed in Docket No. CP95–717–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to utilize the facilities originally installed for the delivery of NGPA Section 311 gas to Missouri Gas Energy (MGE) for the Simmons chicken hatchery in McDonald County, Missouri, and for other purposes under Williams' blanket authorization issued in Docket No. CP82–479–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williams states that it will utilize the Section 311 facilities installed to deliver transportation gas to MGE for Simmons for any purpose. Williams began delivering gas to MGE for Simmons on July 31, 1995 and reported such initial transportation in Docket No. ST95–3275–000. The authorization Williams is requesting will allow receipt point flexibility in the future. Williams states that is has sufficient capacity to accomplish the deliveries specified without detriment to its other customers.

The cost to construct the facilities was $57,875 which will be partially reimbursed.

Comment date: October 16, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22452 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1381–000]

Alliance Strategies; Notice of Issuance of Order

September 6, 1995.

On July 17, 1995, Alliance Strategies (Alliance) submitted for filing a rate schedule under which Alliance will engage in wholesale electric power and energy transactions as a marketer. Alliance also requested waiver of various Commission regulations. In particular, Alliance requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Alliance.

On August 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Alliance should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Alliance is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Alliance's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 25, 1995.

Copies of the full text of the order are available from the Commission's Public

Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22447 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–429–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of September 1, 1995:

Ninth Revised Sheet No. 8
Eleventh Revised Sheet No. 9
Eleventh Revised Sheet No. 13
Eleventh Revised Sheet No. 16
Thirteenth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its Tariff to implement recovery of $9.3 million of costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2 so as to recover the remaining ten percent (10%). ANR has requested that the Commission accept the tendered sheets to become effective September 1, 1995.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 95–22408 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–432–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Columbia Gas Transmission Corporation (Columbia) tendered a filing with the Federal Energy Regulatory Commission (Commission) for proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective October 1, 1995:

First Rev Tenth Revised Sheet No. 25
First Rev Tenth Revised Sheet No. 26
First Rev Tenth Revised Sheet No. 27
First Rev Eleventh Revised Sheet No. 28

Columbia states that this Mid-Cycle Transportation Costs Rate Adjustment (TCRA) filing is being made in accordance with the General Terms and Conditions (GTC) of its FERC Gas Tariff (Section 36) which provides, among other things, that Columbia will adjust its TCRA rates prospectively by means of a filing to become effective October 1 of each year.

Columbia states that copies of its filing have been mailed to all firm customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22411 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–433–000]

CNG Transmission Corporation; Notice of Filing of Report of Account No. 191 Costs

September 5, 1995.

Take notice that on August 31, 1995, CNG Transmission Corporation (CNG), filed a report of certain data regarding its Account No. 191 Transition Costs, as required by Section 18.1.D of the General Terms and Conditions of its FERC Gas Tariff.

CNG states that this one-time reporting requirement was established as part of the comprehensive Order No. 636 restructuring settlement among CNG and its customers, in Docket No. RS92–14. Section 18.1.D of the General Terms requires CNG to file a report by September 1, 1995, with supporting workpapers, detailing the adjustments made by CNG under Section 18.1.D. The nature of these adjustments is set forth in seven enumerated categories. As provided under Section 18.1.D., CNG's customers have 45 days to review this report, and to file comments with the Commission.

CNG states that it has previously reported all adjustments as required in categories 1 through 6 of this Section, to support its filings in Docket Nos. RP94–31, RP94–300, and RP95–347.

CNG states that it has served this data upon all affected customers at the time of each filing, and CNG has incorporated this data by reference in the instant report. To satisfy the Section 18.1.D. requirement as to the seventh category, "amounts received by Pipeline as a result of the direct bill" under this Section, CNG states that it is providing detailed data regarding the amounts received from each customer through direct bills in Docket Nos. RP94–31, RP94–300, and RP95–347.

CNG states that copies of this report and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR Sections 385.214 and 385.211. All motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22409 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–22–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, CNG Transmission Corporation (CNG), pursuant to Section 4 of the Natural Gas Act, Section 154.38(d)(6) of the Commission's Regulations providing for the Annual Charge Adjustment, and Section 14 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to its FERC Gas Tariff, with a proposed effective date of October 1, 1995:

Second Revised Volume No. 1

Fifth Revised Sheet No. 31
Tenth Revised Sheet No. 32
Tenth Revised Sheet No. 33
Sixth Revised Sheet No. 35
Sixth Revised Sheet No. 36

Original Volume No. 2

Eighth Revised Sheet Nos. 250 and 290

Original Volume No. 2A

Eighth Revised Sheet Nos. 18, 28, 35, 48 and 87

CNG states that the proposed tariff sheets reflect a new ACA unit rate of .22 cents per dekatherm.

CNG states that copies of the filing were served upon CNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22410 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–427–000]

El Paso Natural Gas Company; Notice of Tariff Filing

September 5, 1995.

Take notice that on August 31, 1995, pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act, El Paso Natural Gas Company (El Paso) tendered for filing a notice of the following:

(i) A revision to El Paso's Take-or-Pay Buyout and Buydown Monthly Direct Charge and Throughput Surcharge: (a) To reflect the addition of principal dollars to be amortized based upon recent take-or-pay buyout and buydown costs and (b) for interest pursuant to Sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery of its Second Revised Volume No. 1–A and Third Revised Volume No. 1, FERC Gas Tariffs, respectively; and

(ii) That the Annual Charge Adjustment (ACA) in accordance with Section 21, Annual Charge Adjustment Provision, of said Volume No. 1–A Tariff does not require a change.

El Paso states that the additional principal dollars to be amortized are El Paso's last remaining take-or-pay case eligible for recovery under its Take-or-Pay Buyout and Buydown Cost Recovery mechanism.

El Paso states that it proposed to amortize the direct bill portion of the additional costs over a period of one month because the aggregate dollar amounts are small and it would be administratively burdensome for the majority of El Paso's customers to have to account and pay for the de minimis direct bill amounts over a more extended period. With respect to the Throughput Surcharge, El Paso states that it proposed to amortize the additional take-or-pay costs over a period extending through March 31, 1996, which is the end of the amortization period for its Take-or-Pay Cost Recovery mechanism. El Paso states that as a result of this filing, the Throughput Surcharge has decreased $.0008 per dth, from $0.0348 to $0.0340 per dth. El Paso further states that its ACA surcharge of $0.0023 per dth to be collected for the fiscal year beginning October 1, 1995 reflects no change.

Pursuant to Section 21.6 of El Paso's Volume No. 1 Tariff, El Paso is required to file with the Commission certain information supporting the buyout and/or buydown amounts paid. Accordingly, El Paso states that it is submitting concurrently herewith, but under separate cover letter, the schedules reflecting such information for which El Paso has requested confidential treatment.

El Paso requested that the Commission accept the tendered tariff sheets for filing and permit them to become effective on October 1, 1995.

El Paso states that copies of the filing were served upon all of El Paso's affected interstate pipeline system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22412 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–713–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

September 5, 1995.

Take notice that on August 25, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed a prior notice request with the Commission in Docket No. CP95–713–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point to serve Southwest Gas Corporation (Southwest) in Cochise County, Arizona, under El Paso's blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

El Paso proposes to construct and operate dual one-inch tap and valve assemblies with appurtenances on its 26-inch diameter California Line and 30-inch diameter California First Loop Line in Cochise County. El Paso states that Southwest has agreed to reimburse El Paso for the estimated $21,700 construction cost of the proposed delivery tap. El Paso would deliver to Southwest on a firm basis approximately 24.4 Mcf of natural gas per day, 98 Mcf per peak day, and 8,905 Mcf per year by the third year of operating the proposed tap in the Kartchner Caverns area.

El Paso further states that its tariff allows for construction of the proposed delivery tap and that the volumes to be delivered at the tap are within Southwest's certificated entitlements. El Paso also states that it has sufficient capacity to deliver the requested natural gas volumes to Southwest without detriment or disadvantage to El Paso's other customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22413 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–1399–000

ElecTech, Inc.; Notice of Issuance of Order

September 6, 1995.

On July 19, 1995, ElecTech, Inc. (ElecTech) submitted for filing a rate schedule under which ElecTech will engage in wholesale electric power and energy transactions as a marketer. ElecTech also requested waiver of various Commission regulations. In particular, ElecTech requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ElecTech.

On August 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ElecTech should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ElecTech is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ElecTech's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 25, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22449 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–51–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with a proposed effective date of October 1, 1995:

Fourth Revised Sheet No. 7

Great Lakes states that the above tariff sheet reflects the new ACA rate to be charged pursuant to the Annual Charges Adjustment Clause provisions established by the Commission in Order No. 472, issued May 29, 1987. The new ACA rate to be charged by Great Lakes was established by FERC notice given on July 10, 1995 and is to be effective October 1, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22414 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–110–000]

Iroquois Gas Transmission System L.P.; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered a filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 4. The proposed effective date of the tariff sheet is October 1, 1995.

Iroquois states that, pursuant to section 154.38(d)(6) of the Commission's regulations and Section 12.2 of the General Terms and Conditions of its Tariff, Iroquois is making its Annual Charge Adjustment ("ACA") filing to reflect a decrease of $.0001 per Dth (from $.0024 to $.0023 per Dth) in its ACA surcharge.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22415 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1421–000]

JPower; Notice of Issuance of Order

September 6, 1995.

On July 21, 1995, JPower (JPower) submitted for filing a rate schedule under which JPower will engage in wholesale electric power and energy transactions as a marketer. JPower also requested waiver of various Commission regulations. In particular, JPower requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by JPower.

On August 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by JPower should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, JPower is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of JPower's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 25, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

FR Doc. 95–22450 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–46–000]

Kentucky West Virginia Gas Company; Notice of Proposed Change in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Kentucky West Virginia Gas Company (Kentucky West) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 163, to become effective October 1, 1995.

Kentucky West states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0023 per MCF which represents a decrease of $.0001 per MCF. This rate is $.0018 per Dth as converted on Kentucky West's system.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22416 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–99–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Kern River Gas Transmission Company (Kern River) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet Nos. 5 and 6, to become effective on October 1, 1995.

Kern River states that the purpose of this filing is to establish pursuant to Section 154.38(d)(6)(i) of the Commission's regulations a volumetric/usage rate surcharge of $0.0023 per Mcf applicable to service under all of Kern River's firm and interruptible transportation rate schedules for the period October 1, 1995 through September 30, 1996 ("ACA Surcharge"). This ACA Surcharge will recover the charge assessed on Kern River by the Commission for 1995 pursuant to Part 382 of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22417 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–426–000 TM96–2–25–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing to become part in its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed below, with a proposed effective date of October 1, 1995:

Thirteenth Revised Sheet No. 5

Thirteenth Revised Sheet No. 6
Eleventh Revised Sheet No. 7
Fourth Revised Sheet No. 8
First Revised Sheet No. 234
First Revised Sheet No. 235
Original Sheet No. 235A

MRT states that the purpose of the filing is to modify the Fuel Use and Loss Adjustment provisions contained in Section 24 of the General Terms and Conditions of its tariff to (1) Permit MRT, when necessary, to submit out-of-cycle Fuel Use and Loss Adjustment filings more frequency than once a year, and (2) permit MRT to assess a Compressor Fuel Tax Surcharge to recover sales and use taxes assessed on a monthly basis by the States of Arkansas and Louisiana on the value of gas consumed as compressor fuel in such states.

MRT states that concurrent with the submission of the proposed tariff modifications it is also proposing to make its first out-of-cycle Fuel Use and Loss Adjustment applicable to Rate Schedules FTS, SCT, ITS, FSS and ISS as well as its first Compressor Fuel Tax Surcharge adjustment.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commission of Arkansas, Illinois, and Missouri.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22418 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–16–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995 National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective on October 1, 1995.

11th Revised Sheet No. 5
10th Revised Sheet No. 6

National declares that the purpose of this filing is state the Annual Charge Adjustment (ACA) unit surcharge authorized by the Commission for Fiscal 1996 is $.0023 per Mcf or $.0022 per Dth when converted to National's measurement basis.

National states that a copy of this filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22419 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–100–000]

Nora Transmission Company; Notice of Proposed Change in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Nora Transmission Company (Nora) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 163 to become effective October 1, 1995.

Nora states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0023 per MCF which represents a decrease of $.0001 per MCF. This rate is $.0022 per Dth as converted on Nora's system.

Nora states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22420 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–59–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, proposed to be effective October 1, 1995:

Fifth Revised Volume No. 1

Third Revised Seventeenth Revised Sheet No. 50
Third Revised Seventeenth Revised Sheet No. 51
First Revised Sixth Revised Sheet No. 52
Twenty-Second Revised Sheet No. 53
First Revised Sixth Revised Sheet No. 59
First Revised Seventh Revised Sheet No. 60

Original Volume No. 2

First Revised 145th Revised Sheet No. 1C
First Revised Twentieth Revised Sheet No. 1C.a

Northern states that the filing establishes the revised Annual Charge Adjustment (ACA) rate effective October 1, 1995, for Northern's transportation rates. The ACA rate is designed to recover the charge assessed by the Commission pursuant to Part 382 of the Commission's Regulations.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22421 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–37–000]

Northwest Pipeline Corporation; Notice of Proposed Change in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of October 1, 1995:

Third Revised Volume No. 1

First Revised Sixth Revised Sheet No. 5
First Revised Fifth Revised Sheet No. 8

Original Volume No. 2

Nineteenth Revised Sheet No. 2.2

Northwest states that the purpose of this filing is to update Northwest's tariff to reflect the Commission approved Annual Charge Adjustment (ACA) factor of .23¢ per Mcf to be effective for the twelve-month period beginning October 1, 1995. The ACA surcharge unit equates to .22¢ per MMBtu based on Northwest's system weighted average of 1037 Btu per cubic foot of gas for the twelve months ended June 30, 1995, and is a reduction of .01¢ per MMBtu from Northwest's current ACA surcharge of .23¢ per MMBtu.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22422 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–64–000]

Pacific Interstate Offshore Company; Notice of Change in Rate

September 5, 1995.

Take notice that on August 31, 1995, Pacific Interstate Offshore Company (PIOC) submitted for filing, to be part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Second Revised Sheet No. 6

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge of .23 cents per MMBtu, effective October 1, 1995.

PIOC states that a copy of this filing has been served on PIOC's sole customer, the Southern California Gas Company and the Public Utilities Commission of the State of California and other interested parties.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22423 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–29–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets list on Appendix A to the filing. Panhandle proposes that these tariff sheets become effective October 1, 1995.

Panhandle states that these revised tariff sheets are being submitted in accordance with Section 18.2 (Annual Charge Adjustment Provision) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1. This filing reflects the Federal Energy Regulatory Commission's change in the unit rate for the Annual Charge Adjustment surcharge to be applied to rates for recovery of 1995 Annual Charges pursuant to Order No. 472 in Docket No. RM87–3–000. The surcharge attributable to fiscal year 1995 program costs is $0.0023 per Mcf ($0.0023 per Dt. to reflect Panhandle's billing unit) of natural gas transported.

Panhandle states that copies of this filing are being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22424 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2493–006]

Puget Sound Power & Light Company; Notice of Amendment to Application

September 5, 1995.

On June 28, 1995, Puget Sound Power & Light Company (Puget) filed an amendment to its application for a new license for the Snoqualmie River Project No. 2493–006. Puget's application for a new license proposed to make extensive structural modifications to the project to add 31 megawatts (MW) to the existing generation capacity of 42 MW. The amendment was filed as a result of Puget's inability to obtain additional water rights necessary to support its original application.

Puget is now proposing a Refurbished Project that would (1) refurbish the existing diversion dam foundation, in the same location, (2) install an inflatable dam or spillgate system to replace the existing flashboard system, (3) add a 75-foot-long inflatable spillway for flood control, (4) add a sediment exclusion channel to transfer bed load from the Plant 2 intake to pass under the new diversion dam, (5) modify the Plant 1 intake, (6) modify the Plant 1 tailrace channel, (7) remove Units 1–5 penstocks in Plant 1, (8) install new 6-foot and 8-foot diameter penstocks for new Plant 1, Units 1 and 2, (9) install a new Unit 1, sized for 600 cfs, (10) install a new Unit 2, sized for 200 cfs, (11) replace the Plant 1 elevator and elevator house, (12) stabilize the transformer house and machine shops for seismic stability, (13) remove Units 1 through 3 and Unit 5 from Plant 1, (14) retire (in place) Unit 4 in Plant 1, (15) refurbish the existing Plant 2 intake and tunnel, (16) refurbish the existing gatehouse and penstocks for Plant 2, (17) modify the existing Plant 2 forebay for improved safety and operation, (18) upgrade Units 1 and 2 in Plant 2, (19) install a flow bypass system, and (20) refurbish the Plant 2 powerhouse for seismic stability. The Refurbished Project would add 7 MW to the existing 42 MW of generation.

The Refurbished Project proposal also includes instream flows that were identified as potential conditions of a Water Quality Certification by the Washington State Department of Ecology, in a letter dated May 12, 1995.

These proposed minimum instream flows over Snoqualmie Falls are:

From 10 AM to sunset.

March 16–March 31	200 cfs
April 1–April 30	450 cfs
May 1–May 31	700 cfs
June 1–June 30	450 cfs
July 1–July 15	200 cfs
July 16–March 15	100 cfs

Nighttime flows over the falls would not be less than 25 cfs.

A Minor Upgrade alternative that is substantially similar to the Refurbished Project proposal described above was addressed in the draft Environmental Impact Statement issued on November 18, 1994. The Refurbished Project, like the Minor Upgrade alternative, would not increase the 2,500 cubic feet per second (cfs) hydraulic capacity of the existing project.

Some minor differences between the Minor Upgrade alternative and the Refurbished Project proposal are that the Refurbished Project proposal includes: (1) a flow continuation system, (2) minor expansion of the Plant 2 forebay to improve removal of suspended sediments for Plant 2, (3) leaving Unit 4 of Plant 1 in place for historic preservation values, and (4) retaining and refurbishing the existing foot bridge.

Although the Refurbished Project alternative is substantially similar to the Minor Upgrade alternative already addressed in the draft Environmental Impact Statement, we are providing an opportunity for additional interventions, and for entities to reconsider their terms, conditions, prescriptions and comments submitted previously with respect to this application. Comments and/or petitions for intervention will be due 30 days from the date of issuance of this notice with response comments due 45 days from the date of issuance.

A copy of the application and amendment are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch located at 941 North Capitol Street NE., Room 3104, Washington, DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Puget Sound Power & Light Company, P.O. Box 97034, Bellevue, WA 98009–9734, or by calling (206) 462–3058. The applicant contact for this project is Ms. Virginia Howell.

Contact Ms. Kathleen Sherman at (202) 219–2834 for questions relating to this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22425 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–430–000]

Southern Natural Gas Company; Notice of Take-or-Pay Flowthrough

September 5, 1995.

Take notice that on August 31, 1995, Southern Natural Gas Company (Southern) filed to flowthrough take-or-pay costs paid to Koch Gateway Pipeline Company (Koch) under the terms of Koch's Order No. 500 settlements approved by the Commission in Docket No. RP85–209 on August 4, 1994 (August 4, Order).

Southern states that these take-or-pay settlement costs represent the remaining costs associated with the buyout and buydown of producer contracts by Koch as well flowthrough of take-or-pay costs from Koch's upstream pipeline supplier, Sea Robin Pipeline Company (Sea Robin). Paragraph (6) of Article II of Southern's Stipulation authorizes Southern to flow through, on an as-billed basis, buyout and buydown costs incurred from Koch as well as costs flowed through by Koch from Sea Robin.

Southern is proposing to allocate and bill these costs to its customers in accordance with the methodology approved by the Commission in its August 4 Order, as clarified in its subsequent order of July 6, 1995 in Docket No. RP85–209. Southern submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the proposed effective date of October 1, 1995:

Second Revised Sheet No. 23
Second Revised Sheet No. 24
Second Revised Sheet No. 25

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22426 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–431–000]

Southern Natural Gas Company; Notice of GSR Cost Recovery Filing

September 5, 1995.

Take notice that on August 31, 1995, Southern Natural Gas Company (Southern) set forth its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differential costs under realigned gas supply contracts or contract buyout costs associated with continuing realignment efforts as well as sales function costs during the period May 1, 1995 through July 31, 1995. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636.

Southern submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the proposed effective date of October 1, 1995.

Tariff Sheets Applicable to Contesting Parties:

Twenty-Second Revised Sheet No. 15
Twenty-Second Revised Sheet No. 17
Twelfth Revised Sheet No. 18
Fifteenth Revised Sheet No. 29
Fifteenth Revised Sheet No. 30
Fifteenth Revised Sheet No. 31

Tariff Sheets Applicable to Supporting Parties:

Third Revised Sheet No. 15A
Third Revised Sheet No. 17A

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing with the Commission are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22427 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–115–001]

Sumas International Pipeline Inc.; Notice of Tariff Filing

September 5, 1995.

Take notice that on August 29, 1995, Sumas International Pipeline Inc. (SIPI), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with a proposed effective date of October 1, 1995:

Substitute Fifth Revised Sheet No. 4
First Revised Sheet Number 7
First Revised Sheet Number 8

SIPI states that the above tariff sheets reflect the new ACA unit surcharge rate of $.0023 per Mcf which is equivalent to $.0022 per MMBtu on SIPI's system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211) All such protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22428 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Eleventh Revised Sheet No. 10
Eight Revised Sheet No. 11
Third Revised Sheet No. 11A
Thirteenth Revised Sheet No. 12
Fourth Revised Sheet No. 13

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 23 of the General Terms and Conditions of Texas Gas's FERC GAS Tariff, First Revised Volume No. 1, which affords Texas Gas the right to recover the costs billed to Texas Gas by the Federal Energy Regulatory Commission via the FERC ACA Unit Charge method. That unit charge, as determined by the Commission, is $.0022/Mcf ($.0021/MMBtu converted) as set forth on Texas Gas's Annual Charges Bill for fiscal year 1995, to be effective October 1, 1995.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22429 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–721–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

September 5, 1995.

Take notice that on August 31, 1995, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–721–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon a certificated firm transportation service for Columbia Gas Transmission Corporation (Columbia Gas), effective January 31, 1994, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that, by order issued January 31, 1983, in Docket No. CP82–545–000, it was authorized to transport on a firm basis up to 9,000 dt equivalent of natural gas per day for Columbia Gas, and subsequently filed the related transportation agreement as its Rate Schedule X–244. Transco states that it receives the gas at a production platform in High Island Block A–471, offshore Texas, and delivers the gas at the interconnection between Transco and Transco-Columbia Gulf Transmission Company's jointly owned High Island Block A–448 system, offshore Texas.

Transco states that Article II of the underlying transportation agreement provides that the agreement become effective August 5, 1982, and shall remain in force for a primary term of ten years from the date on initial delivery, February 1, 1983, and year to year thereafter unless and until terminated by either party giving prior written notice to the other party of not less than year, which termination may be effective at the end of the primary term or at the end of any year thereafter. Transco states that Columbia Gas provided written notice of termination to Transco by letter dated December 1, 1992, to be effective January 31, 1994. Additionally, Transco states that, pursuant to a stipulation between Transco and Columbia Gas dated June 20, 1994, and approved by the United States Bankruptcy Court for the District of Delaware by June 20, 1994, Transco and Columbia Gas agreed, *inter alia*, to terminate the agreement underlying Rate Schedule X–244.

Transco further states that it does not propose to abandon any facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 26, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22430 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No.: RP95–425–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995 Transwestern Pipeline Company (Transwwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1995:

114th Revised Sheet No. 5
19th Revised Sheet No. 5A
13th Revised Sheet No. 5A.01
11th Revised Sheet No. 5A.02
11th Revised Sheet No. 5A.03
Original Sheet No. 5B.01

Transwestern states that it is seeking to recover certain take-or-pay settlement, buy-out, buy-down, and contract reformation costs ("TCR II Costs") paid by Transwestern. These costs qualify for recovery by Transwestern under Commission Order Nos. 500 and 528 as well as the terms and conditions of the Stipulation and Agreement ("Stipulation") filed by Transwestern in Docket No. RP95–271–000 and approved by Commission order dated July 27, 1995.

In this filing, Transwestern is seeking recovery of $10,622,519.55 in TCR II costs and is revising certain tariff sheets and requesting authority to begin recovery of such amounts under the tariff sheets effective October 1, 1995.

Transwestern requested any waiver of any Commission Regulation and its tariff provisions as may be required to allow the tariff sheets referenced above to become effective on October 1, 1995.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22431 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–42–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1995:

113th Revised Sheet No. 5
18th Revised Sheet No. 5A
10th Revised Sheet No. 5A.02
10th Revised Sheet No. 5A.03
16th Revised Sheet No. 5B

Transwestern states that the tariff sheets referenced above are being filed to adjust Transwestern's Annual Charge Adjustment (ACA) pursuant to Section 23 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The adjustment of the ACA Surcharge is determined each fiscal year pursuant to the Commission's Order No. 472. The ACA Surcharge of $0.0022/dth as determined by the Commission reflects an decrease of $0.0001/dth from the currently effective ACA Surcharge of $0.0023/dth.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22432 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–30–000]

Trunkline Gas Company; Notice of Proposed Change in FERC Gas Tariff

September 5, 1995.

Take notice that on August 31, 1995, Trunkline Gas Company (Trunkline) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 13. Trunkline requests an effective date of October 1, 1995.

Trunkline states that the above-referenced tariff sheet is being filed in accordance with the Commission's Order No. 472 and pursuant to Section 21 (Annual Charge Adjustment (ACA) Provision) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline's current ACA Unit Surcharge of $0.0023 per Dt effective October 1, 1994 as approved by the Commission's Order dated September 30, 1994 in Docket No. TM95–1–30–000 changes to $0.0022 per Dt with the tracking of the ACA Unit Surcharge authorized for the fiscal year 1995.

Trunkline requests waiver of any provisions of the Commission's Regulations which may be necessary to make the tariff sheet and rates submitted herewith effective October 1, 1995.

Trunkline further states that copies of the filing are being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22433 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1382–000]

Utility-Trade Corp.; Notice of Issuance of Order

September 6, 1995.

On July 17, 1995, Utility-Trade Corp. (UTC) submitted for filing a rate schedule under which UTC will engage in wholesale electric power and energy transactions as a marketer. UTC also requested waiver of various Commission regulations. In particular, UTC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by UTC.

On August 25, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by UTC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, UTC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of UTC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 25, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22448 Filed 9–8–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5294–3]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Approval of an Application for Certification of Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of agency approval of an application for equipment certification.

SUMMARY: The Agency received an application dated October 24, 1994 from the Engelhard Corporation (Engelhard) with principal place of business at 101 Wood Avenue, Iselin, New Jersey for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR 85.1401–85.1415. On March 6, 1995 EPA published notification that the application had been received and made the application available for public review and comment for a period of 45 days (60 FR 12185). EPA has completed its review of this application and the Director of the Manufacturers Operations Division has determined that it meets all the requirements for certification. Accordingly, EPA approves the certification of this equipment effective September 11, 1995.

The candidate equipment provides a reduction in emissions of particulate matter (PM) for Detroit Diesel Corporation 6V92TA MUI(mechanical unit injection) petroleum fueled diesel engines. The certification of this equipment is applicable under program 2 only. It does not apply for operators utilizing Program 1 as Engelhard specifically applied under Program 2 only and did not perform the additional testing required for Program 1 certification.

The Engelhard application, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Docket items may be inspected from 8:00 a.m. until 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

DATES: The date of this notice, September 11, 1995, is the official certification date for this application. The equipment is immediately available for installation.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Technical Support Branch, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 233–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On October 24, 1995 Engelhard applied for certification of a kit, for use on 2-cycle petroleum fueled diesel DDC 6V92TA MUI urban bus engines for the 1979 through 1989 model years, that includes a catalytic converter muffler (CCM) and incorporates a ceramic in-cylinder coating applied to the piston crowns, valve face and fire deck on the engine head. The application was submitted under EPA's Urban Bus/Retrofit program under Program 2 only.[1]

The CCM functions as a catalytic converter and a muffler. It takes the place of the original muffler in the engine exhaust system. Through testing in accordance with the Federal Test Procedure for heavy-duty diesel engines, Engelhard documented that emissions of particulate matter (PM) were reduced to a level of 0.22 g/bhp-hr with the candidate equipment installed. Engelhard is certifying this equipment to a maximum PM emission level of 0.25g/bhp-hr.

TABLE A.—CERTIFICATION LEVELS

Engine model	Model year	PM level with standard rebuild and addition of CCM and GPX coating	Code	Family designation
DDC 6V92TA MUI	1979–1989	0.25	All	All.

Emission test results supplied by Engelhard in the application are shown in Table B. The test data show the reduction in PM. Hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_X) and smoke emissions were within the applicable emission standards with the CCM installed.

TABLE B. CERTIFICATION EMISSION TEST RESULTS (GM/BHP–HR)

	Baseline engine before rebuild	Rebuilt engine with catalyst and GPX–4 coating
HC	1.19	0.23
CO	2.53	0.46
NO_X	9.55	5.53
PM	0.87	0.22
Smoke Test:		
Accel	....	6.0%
Lug	....	3.4%
Peak	....	7.6%

Urban bus operators who choose to comply with Program 2 and use the Engelhard equipment will use the PM emission value from Table A when calculating their average fleet PM level.

II. Summary and Analysis of Comments

EPA received comments from one party on this Engelhard application during the comment period. The Greater Bridgeport Transit District stated that their experience using GPX–4 ceramic coatings since 1991 has been positive. The engines have gotten better fuel economy, emitted less smoke, and consumed less lubrication oil. A copy of the comments can be found in EPA Docket A–93–42.

III. Certification Approval

The Agency has reviewed this application, along with comments received from interested parties, and finds that this equipment reduces particulate matter emissions without causing urban bus engines to fail to meet any applicable Federal emission requirements. Additionally, EPA finds that installation of this equipment will not cause or contribute to an unreasonable risk to the public health, welfare or safety, or result in any additional range of parameter adjustability or accessibility to adjustment than that of the engine manufacturer's emission related part. The application meets the requirements for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR 85.1401 and 85.1415). Thus, the Agency hereby approves the certification of this equipment.

IV. Operator Requirements and Responsibilities

For operators who have chosen to comply with Program 2, this equipment is immediately available for use and those who use this certified kit may claim the PM emissions reduction as stated in Table A when calculating their Fleet Level Attained.

As stated in the regulations, operators should maintain records for each engine in their fleet to demonstrate that they are in compliance with the requirements beginning in January 1, 1995. These records include purchase records, receipts, and part numbers for the parts and components used in the rebuilding of urban bus engines.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–22491 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5294–8]

Ozone, Particulate Matter and Regional Haze Implementation Program Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: On November 8, 1990, the EPA gave notice of the establishment of a Clean Air Act Advisory Committee

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[1] EPA promulgated the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses on April 23, 1993 (58 FR 21359). This final rule established the provisions for an urban bus retrofit/rebuild program as required by section 219(d) of the Clean Air Act Amendments (CAAA) of 1990.

(CAAAC) (55 FR 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2).

Today, EPA announces establishment of the Ozone, Particulate Matter (PM) and Regional Haze Implementation Programs Subcommittee (Subcommittee) under the CAAAC. The purpose of the Subcommittee is to provide advice and recommendations on integrated approaches for implementing potentially new national ambient air quality standards (NAAQS) for ozone and particulate matter, as well as a new regional haze program. These programs have an interrelationship in the atmospheric processes that form ozone and fine particulate matter and possess common sources of precursor emissions. Further, EPA recognizes the importance of considering these programs in an integrated manner if cost effective control strategies are to be developed to meet public health and welfare objectives. The EPA envisions an open process that will examine key aspects of the existing implementation programs to provide for more effective implementation of the potential new standards, as well as approaches that will more completely integrate broad regional and national control strategies with more localized efforts. The focus of the Subcommittee will be to assist EPA in developing implementation strategies, preparing supporting analyses, and identifying and resolving impediments to the adoption of the resulting programs.

OPEN MEETING DATE: Notice is hereby given that the Subcommittee will hold an open meeting on September 26, 1995 from 9 a.m. to 4 p.m. at the Sheraton Imperial, 4700 Emperor Boulevard, Morrisville, North Carolina 27560. Due to the size of the meeting room, seating is limited to approximately 150 observers and will be made available on a first come, first served basis. To assist EPA in planning the public meeting, persons interested in attending should register with EPA by contacting Ms. Cathy Ward at TRC Environmental Corporation at 919–419–7500 to give their name and address before September 19, 1995.

The public is invited to submit written views and recommendations on new integrated approaches for implementing these programs. Such comments should be submitted (in duplicate) to Docket A–95–38 by October 10, 1995.

INSPECTION OF DOCUMENTS: A transcript of the meeting as well as other relevant materials will be available for public inspection in EPA Air Docket No. A–95–38. The docket is open for public inspection and copying between 8:30 a.m. and 5:30 p.m., weekdays, at the Air and Radiation Docket and Information Center (6102), room M–1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Haines, Designated Federal Officer for the Subcommittee, at 919–541–5533, or by mail at U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The EPA is presently reviewing the NAAQS for ozone and particulate matter. In a related action, EPA is in the process of developing a regional haze program to address visibility impairment in Federal Class I areas. The EPA's schedule for ozone calls for proposal in mid-1996 and final action in mid-1997. The EPA is under a court-ordered schedule for particulate matter to announce a proposal decision by June 30, 1996, and to take final action by January 31, 1997. The development of a regional haze program is on a schedule similar to the particulate matter review.

Based on the assessment to date, a principle consideration would be to replace the existing 1-hour primary standard for ozone with a new 8-hour standard. Consideration is also given to replacing the existing 1-hour secondary standard for ozone with a new secondary standard with a more appropriate averaging period. While the review of the particulate matter NAAQS has not progressed as far as the ozone review, preliminary assessments of the available scientific information suggest that fine particles are more likely to be associated with reported health effects. In addition, fine particles are the major cause of visibility impairment. Therefore, consideration is being given to the establishment of a new 24-hour and annual fine particle NAAQS to replace the existing 24-hour PM–10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) standard. The existing annual PM–10 standard is likely to be retained. To address the welfare effects of fine particles on visibility, consideration is being given to a regional haze program which allows for regional variations in implementation.

Given the likelihood that both the ozone and particulate matter NAAQS may be revised, as well as the development of a new regional haze program, EPA believes it is important at this time to obtain the advice and recommendations from a broad spectrum of the public on new approaches for implementing these programs. Toward this end, EPA has established the Subcommittee to be comprised of approximately 50 members from business and industry, environmental groups, State, local and tribal governments, as well as other Federal agencies. Members of the Subcommittee were selected on the basis of their professional qualifications and diversity of perspectives in order that EPA has the benefit of the full range of views in developing new approaches for implementing these programs.

Meetings will be held approximately four times a year, as determined by the chairperson. The meetings will be open to the public and will be announced in the Federal Register. The Designated Federal Officer will be present at all meetings and is authorized to adjourn any meeting whenever it is determined to be in the public interest. Each meeting will be conducted in accordance with an agenda approved in advance of the meeting by the Designated Federal Officer.

Dated: September 6, 1995.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 95–22609 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-M

[FRL–5294–2]

Environmental Radiation Protection Standards for Yucca Mountain, NV

AGENCY: U.S. Environmental Protection Agency.

ACTIONS: Notice of Availability, Request for Comments, and Announcement of Public Meetings.

SUMMARY: As required under the Energy Policy Act of 1992 (Pub. L. 102–486), the National Academy of Sciences/National Research Council (NAS) has completed a study of the technical bases for environmental radiation protection standards for the potential repository for radioactive waste at Yucca Mountain, Nevada (hereafter referred to as the NAS Report). The Environmental Protection Agency (EPA) is announcing the availability of the NAS Report and requesting comments on its contents. Instructions for obtaining the NAS Report and submitting comments are given below.

EPA is also announcing public meetings to inform the public of the role which the Agency will play in setting standards for Yucca Mountain and to solicit initial comments and concerns.

DATES: Even though this is an informal comment process, comments will be of greatest value if received on or before October 26, 1995 at the address given below.

ADDRESSES: *To obtain the NAS Report.* The entire NAS Report may be purchased from the National Academy Press, 2101 Constitution Ave. NW., Box 285, Washington, DC 20055 or by calling 800–624–6242 or 202–334–3313. Also, the Agency will make photocopies of the Executive Summary available in response to written requests sent to NAS Report Executive Summary, Radioactive Waste Management Branch (6602J), Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460–0001 or by calling 202–233–9310 or 800–331–9477 and leaving your name and address. Finally, the text of the NAS Report will be available via computer on EPA's Technology Transfer Network; for access: call 919–541–5742 (modems up to 14,400 bps) or via Internet at TELNET ttnbbs.rtpnc.epa.gov.

A copy of the NAS Report is in both dockets which have been established for this rulemaking. One docket, designated Docket A–95–12, is located in Room 1500 (ground level inside of Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. and 3:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying docket materials. This other docket is in the Government Publications Department, Dickinson Library, University of Nevada-Las Vegas, 4505 Maryland Parkway, Las Vegas, Nevada.

To send comments. To comment upon the contents of the NAS Report, write to NAS Report Comments, Radioactive Waste Management Branch (6602J), Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460–0001.

FOR FURTHER INFORMATION CONTACT: Ray Clark; Radioactive Waste Management Branch (6602J), Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460–0001; telephone 202–233–9310.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (NWPA, Pub. L. 97–425) established the current national program for the disposal of spent nuclear fuel (SNF) and high-level radioactive waste (HLW). In 1985, the Agency established generic standards, i.e., for applicable activities in the U.S., for the management and disposal of SNF and HLW in 40 CFR part 191. (50 FR 38066). The NWPA was amended by the Nuclear Waste Policy Amendments Act of 1987 which did not affect EPA's authority or responsibility but did narrow the characterization of potential disposal sites for SNF and HLW to Yucca Mountain, Nevada.

In October 1992, the Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA, Pub. L. 102–579) and the Energy Policy Act of 1992 (EnPA, Pub. L. 102–486) were enacted. The WIPP LWA exempted the potential Yucca Mountain disposal system from coverage under 40 CFR part 191. However, the EnPA assigned the authority and responsibility to establish site-specific environmental radiation protection standards for Yucca Mountain. It also required EPA to contract with the NAS to provide findings and recommendations on the technical bases of the Yucca Mountain standards prior to writing those standards. The NAS study began in February 1993 and was presented to the Agency on August 1, 1995.

"(A) Whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

(B) Whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered or geologic barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits; and

(C) Whether it is possible to make scientifically supportable predictions of the probability that the repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years."

Recommendations and Conclusions of the NAS

The EPA will now begin establishing site-specific standards for Yucca Mountain taking into account the recommendations and conclusions of the NAS. In the Executive Summary of their report, the NAS recommended:

(a) The use of a standard that sets a limit on the risk to individuals of adverse health effects from releases from the repository;

(b) That compliance assessment be conducted for the time when the greatest risk occurs, within the limits imposed by long-term stability of the geologic environment;

(a) The use of a standard that sets a limit on the risk to individuals of adverse health effects from releases from the repository;

(b) That compliance assessment be conducted for the time when the greatest risk occurs, within the limits imposed by long-term stability of the geologic environment;

(c) Against a risk-based calculation of the adverse effect of human intrusion into the repository;

(d) That the consequences of an intrusion be calculated to assess the resilience of the repository to human intrusion;

(e) That resolution of policy issues be done through a rulemaking process that allows opportunity for wide-ranging input from all interested parties;

(f) That the critical-group approach be used in the Yucca Mountain standards; and,

(g) That EPA require that the estimated risk calculated from the assumed intrusion scenario be no greater than the risk limit adopted for the undisturbed-repository case because a repository that is suitable for safe long-term disposal should be able to continue to provide acceptable waste isolation after some type of intrusion.

The NAS also reached several conclusions:

(a) An individual-risk standard would protect public health, given the particular characteristics of the site, provided that policy makers and the public are prepared to accept that very low radiation doses pose a negligibly small risk;

(b) The physical and geologic processes are sufficiently quantifiable and the related uncertainties sufficiently boundable that performance can be assessed over time frames during which the geologic system is relatively stable or varies in a boundable manner;

(c) It is not possible to predict, on the basis of scientific analyses, the societal factors for an exposure scenario. Specifying exposure scenarios therefore requires a policy decision that is appropriately made in a rulemaking process conducted by EPA;

(d) With respect to the second question of Section 801, it is not reasonable to assume that a system for post-closure oversight of the repository can be developed, based on active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits;

(e) With respect to the third question in Section 801, it is not possible to make scientifically supportable predictions of the probability that a repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years; and,

(f) There is no scientific basis for incorporating the ALARA [as low as reasonably achievable] principle into the EPA standards or Nuclear Regulatory Commission licensing regulations for the repository.

Request for Comments on the NAS Report

As the first step in the public process, EPA is requesting comments on the NAS Report. While comments will be accepted on any part of the report, the Agency has several questions upon which it is particularly requesting comments. First, did the report sufficiently answer the questions found in the Act? Second, was there sufficient rationale to support the findings and conclusions? Third, do provisions other than those found in the findings and conclusions need to be included in the EPA standards? Fourth, are any of the findings or conclusions which are inappropriate or inaccurate regarding Yucca Mountain? Fifth, would the cost of imposing the findings and recommendations be justifiable when compared with the benefits provided?

Public Meetings

The second step in the standards-setting process will be to hold a series of public meetings. The purpose of these meetings is to inform the public of the role of the Environmental Protection Agency including the extent and limitations of its authority. They will also be used to receive early comments from and discuss issues with the public.

Public meetings will be held: (a) from 1:00–5:00 p.m. and 6:30–9:30 p.m. on September 20, 1995 in the Multi-Purpose Building, 821 East Farm Road in Amargosa Valley, Nevada (call Stan Sims at 702–727–7727 for directions); (b) from 1:00–5:00 p.m. and 6:30–9:30 p.m. on September 21, 1995 in Wright Hall, Room 103, University of Nevada-Las Vegas, 4505 Maryland Parkway in Las Vegas, Nevada (see the campus map on page 57 of the Las Vegas telephone directory for directions); and from 9:00 a.m.–noon and 1:00 p.m.–5:00 p.m. on September 27, 1995 in the National Gallery Ballroom, Radisson Barcelo Hotel, 2121 P St., NW, in Washington, DC (call 202–293–3100 for directions).

Dated: September 5, 1995.

Mary Nichols,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 95–22355 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS–00174A; FRL–4977–1]

Toxics Release Inventory Phase 3; Chemical Use; Notice of Public Meeting; Change of Meeting Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of August 22, 1995, EPA announced a 2-day public meeting to receive public comments on whether to expand the reporting requirements of the Toxics Release Inventory (TRI) to include chemical use data. This notice announces new dates for the meeting.

DATES: The location of the meeting has not changed (Waterside Towers, Conference Room, 907 6th St., SW., Washington, DC); however, the dates have been changed to October 18 and 19, 1995, at 9 a.m. The issues paper will be available October 4, 1995, by contacting EPA at the telephone number listed under FOR FURTHER INFORMATION CONTACT. In order to schedule speakers and accomodate attendees, please contact EPA by October 6, 1995.

FOR FURTHER INFORMATION CONTACT: The Toxic Substances Control Act Hotline, Environmental Assistance Division, Office of Pollution Prevention and Toxics, 7408, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, e:mail: TSCA-Hotline@epamail.epa.gov. Attention: Administrative Record No. AR 128.

SUPPLEMENTARY INFORMATION: The meeting is intended to explore issues related to the possible collection of chemical use-related data, such as materials accounting, under the Emergency Planning and Community Right-to-Know Act or other appropriate Federal statutes. The purpose of the issues paper is to provide a focus for discussion at the meeting. Speakers are asked to bring a disk containing any written comments they may have.

List of Subjects

Environmental protection, Community right-to-know.

Dated: September 5, 1995.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–22495 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS–44620; FRL–4976–1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on ethyl acetate (CAS No. 141–78–6) and diglycidyl ether of bisphenol A (CAS No. 1675–54–3) (DGEBPA), submitted pursuant to consent orders under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a). Under 40 CFR 790.60, all results of testing conducted pursuant to a consent order must be announced to the public in accordance with section 4(d) of TSCA.

I. Test Data Submissions

Test data for ethyl acetate were submitted by The Chemical Manufacturers Association Oxo Process Panel pursuant to a consent order at 40 CFR 799.5050. They were received by EPA on July 13, 1995. The submission includes a final report entitled "A Ten-Day Vapor Inhalation Study in the Rat." Ethyl acetate is used as a solvent for lacquers and enamel coatings, as a solvent for inks, as a plastics solvent, and in chemical synthesis.

Test data for DGEBPA were submitted by The Society of the Plastics Industry Epoxy Resin Systems DGEBPA Task Force pursuant to a testing consent order at 40 CFR Part 799.5000. They were received on June 14, 1995. The submissions include a final report entitled "DGEBPA: Two Week Dermal Irritation Probe Study in Fischer 344 Rats" and a final report entitled

"DGEBPA: Two Week Dermal Irritation Study in Male B6C3F1 Mice." DEGEBPA is used as a principal component in epoxy resins which are used for sealing and encapsulating, for making castings and pottings, for formulating light-weight foams, and as binders in laminates of fiber, glass, paper, wood sheets, and polyester cloth.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44620). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: August 30, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–22496 Filed 9–8–95; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL LABOR RELATIONS AUTHORITY

Federal Service Impasses Panel

Information Collection Under OMB Review

SUMMARY: The Federal Service Impasses Panel submits the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: September 11, 1995.

The customer survey document lists the following information: (1) Identification of respondent as either an agency or union representative; (2) respondent's organizational level of representation and years of experience in Federal sector labor-management relations; (3) number of cases taken before the Panel in 1994 and 1995; (4) number of bargaining units and employees represented or serviced; (5) time spent by an agency representative on labor-management matters; (6) respondent's experience with the Panel's regulations and views over various aspects of the regulations; (7) identification of the method(s) used to file request(s) for assistance; (8) explanation for not using the Panel's request for assistance form; (9) suggestions for improving the form; (10) views on various aspects of the Panel's letter acknowledging receipt of the request for assistance; (11) views on various aspects of the initial investigation process and on the manner in which the Panel staff representative(s) conducted the investigation(s); (12) if applicable, views on various aspects of the Panel's decision to decline to assert jurisdiction and explanation of the impact of that decision on the parties; (13) if applicable, views on various aspects of the Panel's decision to assert jurisdiction in cases where an obligation-to-bargain issue was raised; (14) views on various aspects of each of seven specified procedures with which the respondent may have had experience; (15) comments on how the procedures worked; (16) views on holding a face-to-face procedure at the Panel's office in Washington, D.C., rather than at the site of the impasse; (17) if applicable, views on various aspects of the Panel's *Decisions and Orders* and arbitration awards; (18) indication of whether the parties did something other than what the Panel ordered; (19) comments on the differences between mediation-arbitration by a Panel representative and private mediation-arbitration where the respondent has participated in both procedures; and (20) comments to the Chair. The letter accompanying the survey identifies (a) the group of individuals asked to respond to the survey (users of the Panel's services in FY 94 and 95); (b) the time estimated for completing and returning the survey (25 minutes or less and 14 days, respectively); (c) the purpose of the survey (evaluation of the Panel's services); and (d) how respondents can obtain a copy of the survey report.

Additional information or comments: Copies of the proposed survey and supporting documents may be obtained from Linda A. Lafferty, Executive Director, 607 14th Street, NW., Suite 220, Washington, D.C. 20424–0001, (202) 482–6670.

Linda A. Lafferty,

Executive Director.

[FR Doc. 95–22500 Filed 9–8–95; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL RESERVE SYSTEM

First United Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First United Bancshares, Inc., El Dorado, Arkansas; to engage *de novo* through its subsidiary, First United Trust Company, N.A., El Dorado, Arkansas, in trust company functions, pursuant to § 225.25(b)(3) of the Board's Regulation Y, and in providing portfolio investment advice, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-22441 Filed 9-8-95; 8:45 am]

BILLING CODE 6210-01-F

Malvern Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 5, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Malvern Bancorporation*, Malvern, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Malvern, Malvern, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Alabama National Bancorporation*, Shoal Creek, Alabama; to merge with National Commerce Corporation, Birmingham, Alabama, and thereby indirectly acquire Commerce Bankshares, Inc., Birmingham, Alabama, and National Bank of Commerce, Birmingham, Alabama.

Board of Governors of the Federal Reserve System, September 5, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-22442 Filed 9-8-95; 8:45 am]

BILLING CODE 6210-01-F

State Street Boston Corporation; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-20914) published on page 43800 of the issue for Wednesday, August 23, 1995.

Under the Federal Reserve Bank of Boston heading, the entry for State Street Boston Corporation, Boston, Massachusetts, is revised to read as follows:

1. *State Street Boston Corporation*, Boston, Massachusetts; to establish, through its subsidiary, Boston Financial Data Services, Inc., Quincy, Massachusetts, a *de novo* joint venture, BancBoston State Street Investor Services, L.P., Canton, Massachusetts, with The First National Bank of Boston, N.A., Boston, Massachusetts, as co-venturer, and thereby perform functions and activities that may be performed by a trust company and provide data processing and data transmission services and activities incidental thereto, pursuant to § 225.25(b)(3) and (b)(7) of the Board's Regulation Y. The services provided by the joint venture may include the processing of creditor claims in bankruptcy proceedings or plaintiff claims in class action legal proceedings, including processing claim information received from creditors and plaintiffs, creating a database regarding creditors and plaintiffs, responding to inquiries from creditors and plaintiffs, and printing and remitting payments to creditors and plaintiffs. Boston Financial Data Services, Inc., is equally owned by State Street Boston Corporation and DST Systems, Inc.

Comments on this application must be received by September 18, 1995.

Board of Governors of the Federal Reserve System, September 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-22574 Filed 9-8-95; 8:45 am]

BILLING CODE 6210-01-F

GOVERNMENT PRINTING OFFICE

Public Meeting for Federal, State and Local Agencies, and Others Interested in A Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The demonstration will be held Thursday, October 19, 9 a.m.–10:30 a.m. and 11 a.m.–12:30 p.m. at the Johnson County Library, 9875 West 87 St., Overland Park, Kansas 66212. There is no charge to attend.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format and as Adobe Acrobat Portable Document Format files (PDF). The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index,* including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code;* and *GAO Reports.*

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at john@eids05.eids.gpo.gov; by telephone: 202–512–1525; or by fax: 202–512–1262 . Seating reservations will be accepted through Friday, October 13, 1995.

Dated: August 23, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–22243 Filed 9–8–95; 8:45 am]

BILLING CODE 1505–02–F

Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, *GPO Access,* provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40). The demonstration will be held Friday, October 6, 8:30 A.M.–10 A.M. and 10:30 a.m.–12: p.m. at the Phoenix Center, 2701 South Minnesota Avenue, Sioux Falls, South Dakota 57105. There is no charge to attend.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format and as Adobe Acrobat Portable Document Format files (PDF). The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Congressional Record; Congressional Record Index,* including the *History of Bills;* Congressional Bills; Public Laws; *U.S. Code;* and *GAO Reports.*

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at john@eids05.eids.gpo.gov; by telephone: 202–512–1525; or by fax: 202–512–1262 . Seating reservations will be accepted through Monday, October 2, 1995.

Dated: August 23, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–22244 Filed 9–8–95; 8:45 am]

BILLING CODE 1505–02–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Public Health (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202)–690–7100.

1. Interdisciplinary Generalist Curriculum (IGC) Project: External Evaluation—New—The main focus of the IGC project deals with the medical faculty and curriculum by requiring demonstration schools to develop collaborative, clinically-oriented teaching during the first two years of medical school among the generalist faculty, require primary care, community-based preceptorships for first and second year medical students, and expose students to 150 hours of curriculum time in the preclinical years (half of which must be devoted to direct supervised patient care experiences; schools funded for the IGC will implement their own curricula which adhere to these guidelines. Two mail surveys will be conducted for the evaluation of the Interdisciplinary Generalist Curriculum Project; a longitudinal survey of faculty at the IGC demonstration schools on attitudes, beliefs and observations about the IGC innovations, and a survey of deans at medical schools and colleges of osteopathic medicine on the implementation of similar curriculum innovations.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Faculty Survey	1552	1	.25
Survey of Deans	153	1	.5
Estimated Total Annual Burden: 465 hours.			

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget. New Executive Office Building, Room 10235, Washington, DC 20503.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–22377 Filed 9–8–95; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3932–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing redelegates to certain HUD officials in field offices (also referred to as State and Area offices) the power and authority to order Limited Denials of Participation (LDPs). A Limited Denial of Participation is a sanction which may be imposed against contractors and participants in HUD programs under certain circumstances. The Assistant Secretary for Public and Indian Housing redelegates authority to issue LDPs, as specified, to the Directors and Deputy Directors of Public Housing and to the Administrators of Field Offices of Native American Programs.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Casimir Bonkowski, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4228, Washington, D.C. 20410, (202) 708–0440; or Dominic Nessi, Director, Office of Native American Programs, 451 7th Street, S.W., Room B–133, Washington, DC 20410, (202) 755–0032. A telecommunications device for the hearing-impaired is available at 202–

708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The HUD regulations at 24 CFR 24.700 provide that officials designated by the Secretary, including the Assistant Secretary for Public and Indian Housing, are authorized to order Limited Denials of Participation (LDPs) and to redelegate this authority. In the present redelegation, the Assistant Secretary for Public and Indian Housing redelegates to the Director and the Deputy Director of Public Housing for each HUD field office (also referred to as a State or Area office) and to the Administrator of each Field Office of Native American Programs, the authority to order Limited Denials of Participation relating to programs under the jurisdiction of the Assistant Secretary for Public and Indian Housing.

Accordingly, the Assistant Secretary for Public and Indian Housing redelegates authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates the power and authority to order Limited Denials of Participation pursuant to 24 CFR 24.700, whenever the program under which the cause for LDP arose is a program under the jurisdiction of the Assistant Secretary for Public and Indian Housing, to the Director and the Deputy Director of Public Housing for each HUD field office (also referred to as a State or Area office) and to the Administrator of each Field Office of Native American Programs.

Section B. No Authority to Further Redelegate

The authority granted in Section A, above, may not be further redelegated pursuant to this redelegation.

Authority: Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: September 1, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–22383 Filed 9–8–95; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–016–1220–00]

Temporary Travel Restrictions for the Serviceberry Mountain Area of Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Order of Area, Road and Trail Use Restriction.

SUMMARY: This order closes certain public lands to motorized vehicle use (except snowmobiles) in the Serviceberry Mountain area of the Little Snake Resource Area, Craig district. This order modifies the "unclassified" Off-Highway Vehicle (OHV) designation (3,108 acres) on public lands newly acquired through the Bridges Land Exchange (COC54336). It also modifies the existing "open" (3,246 acres) and "limited" (1440 acres) OHV designations on public lands adjoining the public lands acquired through the exchange. This order is issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2(a) as a temporary measure while the off-highway vehicle (OHV) management portion of the Little Snake Resource Area Resource Management Plan is reviewed and modified as needed to address public issues, concerns and needs, as well as resource uses, development, impacts and protection.

This Order Affects All Public Lands in the Serviceberry Mountain Area of Moffat County Within

T. 12 N,, R. 90 W., 6th PM
  Sec. 21, S. ½ S. ½ (south of the fence line)
  Sec. 28
  Sec. 29
  Sec. 31
  Sec. 32
  Sec. 33
T. 11 N,, R. 90 W., 6th PM
  Sec. 5
  Sec. 6
  Sec. 7
  Sec. 8
  Sec. 17
  Sec. 18
  Sec. 19
  Sec. 20
  Sec. 21
  Sec. 29
  Sec. 30

EFFECTIVE DATES: This restriction order shall be effective September 14, 1995, and shall remain in effect until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: Current OHV use designations for public lands in the Serviceberry Mountain area, allow motorized vehicle use on and off roads and trails year round or limit motorized vehicle use to all-terrain vehicles and snowmobiles. State and local agencies and neighboring landowners expressed concerns that recent easements and acquisitions would open public lands in the Serviceberry Mountain area to motorized traffic and cause unacceptable impacts to natural resources, especially wildlife and soils.

In addition, consistent motor vehicle limitations are needed throughout the adjoining public lands in the Serviceberry Mountain area to avoid public confusion. The affected public lands includes identified soil erosion hazards and important high quality big game habitat.

Given due consideration of the concerns expressed by the public and potential impacts of unrestricted motorized vehicle use, a modification of existing OHV use designations is necessary to adequately protect natural resources on public land, minimize conflicts with other uses, prevent trespass problems, and ensure public safety until these issues can be more thoroughly addressed in activity planning for these areas. Provisions will be made to allow for necessary motorized travel on the public lands for administrative purposes and to facilitate non-motorized public access to the public lands.

The area, roads, and trails affected by this order will be posted with appropriate regulatory signs. Information, including detailed maps of the restricted area, roads and trails will be available at the access sites and in the Resource Area Office and District Office at the addresses shown below.

Persons who are exempt from the restrictions contained in this notice include:

1. Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities.
2. BLM employees engaged in official duties.
3. Persons or agencies holding a valid permit or right-of-way on or across the restricted public land for access to private land, for purposes related to the access of private land only.
4. Persons or agencies holding a special use permit or right-of-way for access to maintenance and operation of authorized facilities within the restricted area, for purposes related to access for maintenance and operation of authorized facilities, and provided such motorized use is limited to the routes specifically identified in the special use permit or right-of-way.
5. Grazing permittees authorized during the permitted grazing season for grazing related purposes provided such motorized use is limited to existing roads and trails and subject to any additional conditions in the grazing permit. Any motorized use before or after the permitted grazing season necessary for maintenance and operation of range facilities shall require advance approval by the authorized officer specifically authorizing such use and subject to whatever restrictions are deemed necessary.

Penalties: Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT:

John Husband, Area Manager, Little Snake Resource Area, 1280 Industrial Avenue, Craig, Colorado 81625, (970) 824–4441

Mark Morse, District Manager, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, (970) 824–8261

Carroll M. Levitt,

Acting District Manager.

[FR Doc. 95–22299 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–JB–M

[CA–064–05–1430–00, CARI 1366]

Notice of Realty Action; Transfer of Public Lands, Kern County, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Realty Action; Recreation and Public Purpose Act Transfer Kern County, California.

SUMMARY: The following described land has been examined and found suitable for classification for transfer to Kern County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

Mount Diablo Meridian

T.27S., R.39E.,
  Section 12: NW¼SW¼, W½NW¼.

Containing 120 acres of public land, more or less.

SUPPLEMENTARY INFORMATION: The County of Kern has applied to transfer the site currently leased for the Ridgecrest Landfill. The lands are not needed for Federal purposes and conveyance would be consistent with the 1980 California Desert Conservation Area Plan, as amended. The lease and conveyance of the land would be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purpose Act and applicable regulations of the Secretary of the Interior.
2. A right of way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
3. A reservation of all minerals to the United States, and the right to prospect, mine and remove the minerals.
4. A declaratory covenant stating that the site has been used for disposal of solid waste.

Publication of this Notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws and the general mining laws, but not the mineral leasing laws or the Recreation and Public Purpose Act. Detailed information concerning this action is available for review at the California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507. For a period of 45 days after publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert District, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective November 13, 1995.

Dated: August 24, 1995.

Henri R. Bisson,

District Manager.

[FR Doc. 95–22261 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–40–P

[NV–930–4210–05; N–59989]

Notice of Realty Action: Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose conveyance.

SUMMARY: The following described public land near Laughlin, Clark County, Nevada has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the land for a municipal solid waste landfill.

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E.,
  Sec. 8: NE¼NE¼;
  Sec. 9: NW¼NW¼.

Containing 80 acres, more or less.

The land is not required for any federal purpose. The conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945).
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

By no later than October 26, 1995, interested parties may submit comments regarding the proposed conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a municipal solid waste landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a municipal solid waste landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective November 13, 1995. The lands will not be offered for conveyance until after the classification becomes effective.

Dated: August 30, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–22379 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–HC–P

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water conservation plans.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993. These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water conservation plans developed by project contractors in the MP Region, including those required by the Reclamation Reform Act of 1982. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region's contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each contractor's water conservation plan in the **Federal Register** and to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is ongoing; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

DATES: All public comments must be received by Reclamation by October 11, 1995.

ADDRESSES: Please mail comments to the address provided below.

FOR FURTHER INFORMATION CONTACT: Debra Goodman, Bureau of Reclamation, 2800 Cottage Way, MP–402, Sacramento, CA 95825. To be placed on a mailing list for any subsequent information, please write Debra Goodman or telephone at (916) 979–2397.

SUPPLEMENTARY INFORMATION: Under provisions of Section 3405(e) of the CVPIA (Title 34 of Public Law 102–575), "The Secretary (of the Interior) shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts greater than 2,000 acre feet and agricultural contracts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water conservation plans. The steps are:

1. Coordinate with other agencies and the public.
2. Describe the district.
3. Inventory water resources.
4. Review the past water conservation plan and activities.
5. Identify best management practices to be implemented.
6. Develop schedules, budgets, and projected results.
7. Review, evaluate, and adopt the water conservation plan.
8. Implement, monitor, and update the water conservation plan.

The MP contractors listed below have developed water conservation plans which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Clear Creek Community Services District
- Fresno Irrigation District
- Orland-Artois Water District
- Stockton East Water District

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plans listed above will be available for review at Reclamation's MP Regional Office and MP's area offices. If you wish to review a copy of the plans, please contact Ms. Goodman to find the office nearest you.

Dated: August 28, 1995.

Franklin E. Dimick,

Assistant Regional Director.

[FR Doc. 95–22300 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–94–M

Recision of the Record of Decision on the Final Environmental Impact Statement for the Narrows Project, Small Reclamation Loan Program, Utah

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a final environmental impact statement (EIS) on the proposed Narrows Project. The EIS describes and presents the environmental effects of three alternatives, including no action, for a multiple purpose water development project that would provide water for irrigation and municipal use in north Sanpete County, Utah. This notice is for the purpose of rescinding the Record of Decision for this FEIS.

FOR FURTHER INFORMATION CONTACT: Charles A. Calhoun, Regional Director, Upper Colorado Region, Bureau of Reclamation, UC–100, Mail Room 6107, 125 South State Street, Salt Lake City, Utah 84138–1102; Telephone: (801) 524–5592.

SUPPLEMENTARY INFORMATION: On July 28, 1995, the Carbon Water Committee, *et. al.*, filed an action in the United States District Court against Reclamation for declaratory judgment and injunctive relief. The primary assertion in the complaint is that Reclamation failed to comply with NEPA, in the preparation of the final environmental impact statement (EIS) for the proposed Narrows Project.

The complaint alleges a conflict of interest on the part of the contractor that Sanpete Water Conservancy District hired to prepare the EIS and the Loan application. By this recision action, Reclamation intends to initiate a close review of the NEPA document, specifically in light of a possible conflict of interest, to determine whether the contractor accurately portrayed the environmental consequences of the proposed action, both for the public and the decision makers.

Any further action under NEPA or processing of the loan application will await the outcome of this review.

Dated: September 6, 1995.

Charles A. Calhoun,

Regional Director.

[FR Doc. 95–22498 Filed 9–8–95; 8:45 am]

BILLING CODE 4310–94–M

National Park Service

Notice of Inventory Completion of Native American Human Remains in the Possession of the Utah Field House of Natural History State Park, Vernal, UT

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains in the possession of the Utah Field House of Natural History State Park, Vernal UT.

In May, 1953, a Ms. Wadel (or Wadell) donated a single cranium to the Utah Field House of Natural History State Park. Writing on the occipital vault reads: "skull of Sioux Chief Gall. Age 99 years and 7 months. Died 1879 at Poplar, Montana, then the Ft. Peck Military Post. He surrendered to General Miles."

A detailed inventory and assessment of this human cranium has been made by Utah Field House professional curatorial staff and specialists in physical anthropology, forensic anthropology, and prehistoric archaeology in consultation with the Standing Rock Sioux Tribal Council. Osteometric and forensic analyses by Dr. George Gill and Dr. Michael Charney established that the cranium is siouan in configuration. Many of the details written on the skull are at variance with generally acknowledged dates and locations of Chief Gall's life. However, a photographic superimposition of the skull with known photographs of Hunkpapa Chief Gall reveals a striking similarity in form.

Contact with the Standing Rock Sioux Tribal Council and the family of Gall's descendants was initiated in June 1991. On October 4, 1991, a grave located in the St. Elizabeth Episcopal Cemetery, on the Standing Rock Sioux Tribe Reservation and said to be the burial site of Chief Gall was exhumed. Family members, a mortician, a doctor, and the South Dakota State Anthropologist, witnessed the excavation. The grave appeared to have not been previously disturbed. A shattered cranium in the grave yielded no corroborating measurements. The lineal descendants of Chief Gall are satisfied that the remains in the grave are of their ancestor.

The Standing Rock Tribal Council acknowledges the lineal descendants decision on the identity of the cranium. Following the decision by Gall's lineal decendants, broader consultation was initiated with the Fort Belknap Community Council, the Prairie Island Community Council, the Shakopee Sioux Community Council, the Upper Sioux Board of Trustees, the Lower Sioux Indian Community Council, the Flandreau Santee Sioux Executive Committee, the Santee Sioux Tribal Council, the Sisseton-Wahpeton Sioux Tribal Council, the Lower Brule Sioux Tribal Council, the Rosebud Sioux Tribal Council, the Cheyenne River Sioux Tribal Council, the Oglala Sioux Tribe, the Devils Lake Sioux Tribe, the Fort Peck Tribal Executive Board, the Crow Creek Sioux Tribal Council, and the Yankton Sioux Tribal Business and Claims.

Based on the above mentioned information, officials of the Utah Field House of Natural History State Park have determined pursuant to 25 U.S.C. (2) that there is a relationship of shared group identity which can be reasonably traced between this cranium and the Standing Rock Tribe.

This notice has been sent to lineal descendants of Chief Gall and to officials of the Standing Rock Sioux Tribal Council, the Fort Belknap Community Council, the Prairie Island Community Council, the Shakopee Sioux Community Council, the Upper Sioux Board of Trustees, the Lower Sioux Indian Community Council, the Flandreau Santee Sioux Executive Committee, the Santee Sioux Tribal Council, the Sisseton-Wahpeton Sioux Tribal Council, the Lower Brule Sioux Tribal Council, the Rosebud Sioux Tribal Council, the Cheyenne River Sioux Tribal Council, the Oglala Sioux Tribe, the Devils Lake Sioux Tribe, the Fort Peck Tribal Executive Board, the Crow Creek Sioux Tribal Council, and the Yankton Sioux Tribal Business and Claims Committee. Individuals or representatives of any other indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Sue Ann Bilbey, Curator, Utah Field House of Natural History State Park, 235 East Main, Vernal UT 84078, telephone (801)789–3799 on or before [*thirty days after publication of this notice in the* **Federal Register**]. Repatriation of the cranium to the Standing Rock Sioux Tribe may begin after that date if no additional claimants come forward.

Dated: September 1, 1995

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeological Assistance Division

[FR Doc. 95–22375; Filed 9–8–95; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Infrastructure Leasing & Financial Services Limited, Bombay, Indian, ("Borrower") as part of USAID's development assistant program. The proceeds of these loans will be used to finance a prototype program designed to demonstrate the feasibility of private sector provision of infrastructure in India for the benefit of low income families. At this time, the Borrower plans to request bids from eligible lenders for a loan of $25.0 Million U.S. Dollars (US$25,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Infrastructure Leasing & Financial Service Limited, India

Project No.: 386–HG–IV
Housing Guaranty Loan Nos.: 386–HG–015–AO1, 386–HG–016–AO1
Amount: US$25,000,000

Attention:

(1) Mr. Hari Shankaran, Vice President, Infrastructure Leasing & Financial Services Ltd., India Habitat Centre, 4th Floor, East Court, Zone VI, Lodhi Road, New Delhi 110 003, India; Telefax No.: 011–(91–11) 463–6651 (preferred communication); Telephone Nos.: 011–(91–11) 463–6637, 463–6641, 463–6642

(2) Mr. Ravi Parthasarathy, Managing Director, Infrastructure Leasing and Financial Services Ltd., Mahindra Towers, 4th Floor, Road No. 13, Worli, Bombay 400 018; Telefax No.: 011–(91–22) 493–0080 (preferred communication); Telephone Nos.: 011–(91–22) 493–5190, 496–4353, 493–5127

Interested lenders should contact the Borrower and USAID immediately upon receipt of this Notice and indicate their interest in bidding on the proposed financing. Those lenders expressing interest will be included in a short list maintained by USAID for the purpose of facilitating an accelerated auction procedure as and when the actual bid date is set. It is anticipated that the bidding will occur sometime in mid to late September, 1995. As soon as the bid date is established, and in lieu of another public notice, a formal Notice of

Investment Opportunity will be provided directly to those firms appearing on the short list. The time between the actual receipt of the Notice of Investment Opportunity announcing the bid date, and the due date for bids, may be as little as 24 hours.

Lenders seeking to be included in the short list should submit their name, address and telefax number to: Mr. Charles Billand, Assistant Director, Mr. Peter Pirnie, Financial Advisor, U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, DC 20523–1822; Telex No.: 892703 AID WSA; Telefax Nos.: 703/875–4384 or 875–4639 (preferred communication); Telephone Nos.: 703/875–4300 or 875–4510.

The Borrower is currently considering the following terms:

(1) *Amount:* U.S. $25.0 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. (During grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate*: Alternatives of *fixed rate*, and *variable rate* are requested.

(a) *Fixed Interest Rate*: If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 6⅞% U.S. Treasury Bond due August 15, 2025. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate*: To be based on the six-month British Bankers Association LIBOR, or the yield (B.E.Y.) of the 26 week U.S. Treasury Bill, preferably with terms relating to the Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment*:

(a) Offers should include an option for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of USAID require that the proceeds of USAID-guaranteed loans be used to provide affordable shelter and related infrastructure and/or services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, USAID reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Closing Date*: As early as practicable with best efforts to close in 30 days, but not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower. The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Michael J. Lippe, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, Washington, DC 20523–1822; Fax Nos: 703/875–4384 or 875–4639; Telephone: 703/875–4300.

Dated: September 6, 1995.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 95–22557 Filed 9–8–95; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–31]

Charles L. Novosad, Jr., M.D.; Revocation of Registration

On March 14, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles L. Novosad, Jr., M.D. (Respondent), of Pojoaque, New Mexico. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration, AN5283697, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent is not currently authorized to handle controlled substances in the State of New Mexico.

Respondent filed a request for a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. On May 2, 1995, the Government filed a motion for summary disposition, which was accompanied by a Decision and Order of the New Mexico Board of Pharmacy dated September 15, 1994. The Board of Pharmacy ordered the revocation of Respondent's state registration to handle controlled substances based upon the May 20, 1994, revocation of his state medical license. As a result, the Government contended that Respondent is not authorized to handle controlled substances in the State of New Mexico.

On May 9, 1995, the Respondent filed a response to the Government's motion. In his response, Respondent argued in part, that due process required a hearing in this matter.

On May 10, 1995, in his opinion and recommended decision, the administrative law judge found that Respondent lacks authorization to handle controlled substances in the State of New Mexico. The administrative law judge therefore granted the Government's motion for summary disposition and recommended that Respondent's DEA Certificate of Registration be revoked.

On June 5, 1995, the Respondent filed a letter with the administrative law judge requesting that the latter stay any dismissal of his DEA registration without a hearing. On June 6, 1995, the administrative law judge issued an order in which he interpreted the Respondent's letter as a motion for reconsideration of his ruling on the Government's motion for summary disposition. The administrative law judge found that Respondent failed to provide any new information regarding the revocation of his state medical license, and accordingly, denied Respondent's motion for reconsideration.

On June 12, 1995, Respondent filed exceptions to the administrative law judge's opinion and recommended ruling. The Respondent presented arguments pertaining to actions taken by the New Mexico Board of Medical Examiners and the New Mexico Board of Pharmacy. The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

The administrative law judge properly granted the Government's motion for summary disposition. It is well-settled that when no question of fact is involved, or when the facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), aff'd sub nom *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *Alfred Tennyson Smurthwaite, N.D.*, 43 FR 11873 (1978); see also, *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

In his exceptions to the opinion and recommended decision of the administrative law judge, the Respondent argued, *inter alia*, that actions taken by the New Mexico Board of Medical Examiners and the New Mexico Board of Pharmacy, which resulted in the revocation of his state license to handle controlled substances, were improper. However, Respondent presented no evidence to contradict the fact that he is currently without authorization to handle controlled substances in the State of New Mexico.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AN5283697, previously issued to Charles L. Novosad, Jr., M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective October 11, 1995.

Dated: September 5, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–22400 Filed 9–8–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,345]

Adams-Millis, High Point, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 21, 1995 in response to a worker petition which was filed on August 9, 1995 on behalf of workers at Adams-Millis, High Point, North Carolina (a division of the Sara Lee Corporation).

An active certification covering the petitioning group of workers remains in effect (TA–W–30,083, Adams-Millis, High Point, North Carolina, certified August 29, 1994, impact date of June 29, 1993 and an expiration date of August 29, 1996). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of August, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–22472 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,647]

Amerada Hess Corporation Headquartered in Houston, TX and Operating at Various Locations in the Following States; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on March 21, 1995, applicable to all workers at the subject firm. The amended notice was published in the **Federal Register** on March 31, 1995 (60 FR 16667).

At the request of the company, the Department reviewed the certification for the subject firm. New findings show that worker separations have occurred at Amerada Hess locations in New Mexico. The Department is again amending the certification to cover these workers.

The intent of the Department's certification is to include all workers of Amerada Hess adversely affected by increased imports.

The amended notice applicable to TA–W–30,647 is hereby issued as follows:

> "All workers of Amerada Hess Corporation, headquartered in Houston, Texas (TA–W–30,647) and operating at various locations in the following cited States who became totally or partially separated from employment on or after January 17, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–30,647A	Oklahoma
TA–W–30,647B	Louisiana
TA–W–30,647C	North Dakota
TA–W–30,647D	Texas (except Houston)
TA–W–30,647E	New Mexico"

Signed at Washington, DC this 29th day of August 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–22473 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,353; TA–W–30,353A]

E.I. Du Pont De Nemours & Co., Inc., Du Pont Industrial Imaging Rochester, NY and Field Offices Located in Florida; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 10, 1994, applicable to all workers at E.I. Du Pont De Nemours & Co., Inc., Du Pont Industrial Imaging located in Rochester, New York. The notice was published in the **Federal Register** on January 3, 1995 (60 FR 14).

At the request of a petitioner, the Department reviewed the certification for the subject fir[illegible]. The [illegible]ngs show that support staf[illegible] [illegible]ale[illegible] [illegible]ce and administrative) o[illegible] [illegible]t firm located in Florida [illegible] [illegible]ave been included in the certification.

The intent of the Department's certification is to include all workers of Du Pont Industrial Imaging adversely affected by imports.

The amended notice applicable to TA–W–30,353 is hereby issued as follows:

> "All workers of E.I. Du Pont De Nemours & Co., Inc., Du Pont Industrial Imaging, Rochester, New York and support staff

operating in field offices in the State of Florida engaged in employment related to the production of NDT X-ray films who became totally or partially separated from employment on or after July 11, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 25th day of August 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–22474 Filed 9–8–95; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–30,985; FHF Apparel, Miami, FL

TA–W–30,985A; 500 Fashion Group, Northampton, PA

TA–W–30,985B; 500 Fashion Group, Whitehall, PA

TA–W–30,985C; 500 Fashion Group, Philadelphia, PA]

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 9, 1995, applicable to all workers of FHF Apparel, Miami, Florida. The notice was published in the **Federal Register** on June 27, 1995 (60 FR 33235). The certification was amended on August 1, 1995, to include the parent company, Fashion 500 Group located in Northampton, Pennsylvania. The notice will soon be published in the **Federal Register**.

The Department reviewed the subject certification, and is again amending the certification to cover the workers at the Fashion 500 Group locations in Whitehall and Philadelphia, Pennsylvania. The workers produce men's suits and sportscoats.

The intent of the Department's certification is to include all workers of FHF Apparel and the 500 Fashion Group who were adversely affected by imports.

The amended notice applicable to TA–W–30,985 is hereby issued as follows:

> All workers of FHF Apparel, Miami, Florida (TA–W–30,985), and the 500 Fashion Group, Northampton, Pennsylvania (TA–W–30,985A), Whitehall, Pennsylvania (TA–W–30,985B), and Philadelphia, Pennsylvania (TA–W–30,985C) who became totally or partially separated from employment on or after April 24, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 29th day of August 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–22475 Filed 9–8–95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W–31,329]

H.L. Brown, Jr., Midland, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 14, 1995 in response to a worker petition which was filed on August 14, 1995 on behalf of workers at H.L. Brown, Jr., Midland, Texas.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of August, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–22476 Filed 9–8–95; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–31,102]

Rockwell Graphics Systems of Rockwell, Reading, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

On July 31, 1995, the union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The denial notice was signed on July 25, 1995 and published in the **Federal Register** on August 16, 1995 (60 FR 42589).

The union claims that the Department's survey of Rockwell Graphics Systems' customer base was inadequate, and recent competitive bids lost to foreign firms caused layoffs at the subject facility.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC. this 25th day of August, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–22477 Filed 9–8–95; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–31,102]

Rockwell Graphics Systems of Rockwell Reading, PA; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated July 31, 1995, the union requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on July 25, 1995 and published in the **Federal Register** on August 16, 1995 (60 FR 42589).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers Manufactured commercial printing presses.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of Trade Act was not met.

The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey revealed that none of the respondents increased their purchases of imports while decreasing their purchases from Rockwell Graphics Systems during the relevant period.

District 10 of the United Steelworkers of America claim that recent competitive bids were lost to foreign firms, causing substantial loss of jobs at the Rockwell Graphics Systems Reading, Pennsylvania location.

Investigation findings show that the Department surveyed the major declining customers of Rockwell Graphics Systems at Reading. Further findings show that Rockwell Graphics at Reading did not participate in competitive bids during the relevant time period of the investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 25th day of August 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–22478 Filed 9–8–95; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than September 21, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below not later than September 21, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 28th day of August, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 08/28/95

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,368	Roxanne Swimsuits/Art San (ILGWU)	Neptune, NJ	8/17/95	Women's Swimwear.
31,369	Neptune Swimsuits Co (Wkrs)	Neptune, NJ	8/16/95	Warehouse-Swimwear.
31,370	Jonbill, Inc. (Comp)	Danville, VA	8/15/95	Jeans, Men's Ladies' & Children's.
31,371	Gaylord Container (Wkrs)	Weslaco, TX	8/17/95	Cardboard Boxes.
31,372	J.P. Emco (Comp)	Ada, OK	8/16/95	Auto & Truck Body Trim Parts.
31,373	IBM (Wkrs)	Endicott, NY	8/17/95	Printers.
31,374	Dupont Diagnostics, Inc (Wkrs)	Manati, PR	8/15/95	Plastic Bags for diagnostic substances.
31,375	Grumman Allied-LLV Div. (Wrks)	Montogmery, PA	8/01/95	Postal Vehicles.
31,376	Howard Industries (Wkrs)	Milford, IL	8/07/95	Industrial Fans & Motors.
31,377	Jefferson Smurfit Corp. (UPIU)	New Brunswick, NJ	8/07/95	Corrugated Shipping Containers.
31,378	Jusher Manufacturing Co (Wkrs)	Tishomingo, OK	8/14/95	Neckties.
31,379	Lexington Sportwear (Wkrs)	Lexington, SC	8/14/95	Men's Outerwear Jackets.
31,380	Maynard H. Moore, Jr. (Wkrs)	Stoneham, MA	8/16/95	Leather for Shoe Trade.
31,381	The Metallized Papwer Corp (Wkrs)	McKeesport, PA	8/18/95	Metalized Paper.
31,382	O.A.I., Inc (Wkrs)	Hartshorne, OK	8/15/95	Radios & Commercial Electronics.
31,383	Oryx Energy Company (Wkrs)	Dallas, TX	8/10/95	Crude Oil and Natural Gas.
31,384	VSD, Inc. (Wkrs)	Florence, SC	8/11/95	Inductors & Resistors.

[FR Doc. 95–22481 Filed 9–8–95; 8:45 am]

BILLING CODE 4510-30-M

TA–W–31,182 Willwear Hosiery, Shogren Industries, Marion, NC

TA–W–31,183 Willwear Hosiery, Shogren Industries, Chattanooga, TN

TA–W–31,184 Shogren Industries, Concord, NC

TA–W–31,185 Shogren Industries, Upper Brookville, NY

TA–W–31,185A Nation Hosiery Mills, Inc., Chattanooga, TN

TA–W–31,185B Kentucky Lakes Hosiery Mills, Princeton, KY

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 10, 1995, applicable to all workers at Shogren Industries, located in Marion, North Carolina, Chattanooga, Tennessee, Concord, North Carolina, and Upper Brookville, New York. The notice was published in the **Federal Register** on August 24, 1995 (60 FR 44079).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that workers of Shogren Industries located at Nation Hosiery Mills, Inc. in Chattanooga, Tennessee and Kentucky Lakes Hosiery Mill in

Princeton, Kentucky were inadvertently omitted from the certification.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by imports.

The amended notice applicable to TA W–31,185 is hereby issued as follows:

"All workers of Willwear Hosiery/Shogren Industries, Marion, North Carolina (TA–W–31,182); Chattanooga, Tennessee (TA–W–31,183); Shogren Industries, Concord, North Carolina (TA–W–31,184); Upper Brookville, New York (TA–W–31,185); Nation Hosiery Mills, Inc., Chattanooga, Tennessee (TA–W–31,184A); and Kentucky Lakes Hosiery Mill, Princeton, Kentucky (TA–W–31,185B) who became totally or partially separated from employment on or after May 23, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 31st day of August 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–22480 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,077]

Sundstrand Corporation, Electric Power Systems Division, Lima, Ohio; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Sundstrand Corporation, Electric Power Systems Division, Lima, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–31,077; Sundstrand Corporation, Electric Power Systems Div., Lima, Ohio (August 31, 1995)

Signed at Washington, DC this 31st day of August, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–22479 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–066)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Wessex, L.L.C., of Blacksburg, Virginia, has requested a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,296,288 entitled "Protective Coating for Ceramic Materials," which issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration on March 22, 1994. Written objection to the prospective grant of a license should be sent to Mr. Harry Lupuloff, Senior Patent Attorney, NASA Headquarters.

DATES: Responses to this Notice must be received by November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Code GP, Washington, DC 20546; telephone number (202) 358–2067.

Dated: September 1, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–22443 Filed 9–8–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (PL 92–463, as amended), the National Science Foundation announces the following Committee of Visitors meeting:

Name: Committee of Visitors (COV) Review of the Graduate and Minority Graduate Fellowship Programs (1119).

Date & Time: September 25, 1995; 8:00 am to 5:00 pm.

Place: NSF Headquarters, 4201 Wilson Boulevard, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Dr. Susan Duby, National Science Foundation, 703/306–1694.

Purpose of Meeting: To provide oversight review of the Graduate and Minority Graduate Fellowship Programs.

Agenda: To carry out Committee of Visitors' review, including examination of decisions on applications, reviewer comments, and other privileged materials.

Reason for Closing: These meetings are closed to the public because the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552 (b)(c)(4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: September 5, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22407 Filed 9–8–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Availability of Draft Application; Format and Content Guidance and Review Plan and Acceptance Criteria for Non-Power Reactors

The U.S. Nuclear Regulatory Commission (NRC) is in the process of developing for Non-Power Reactors (NPRs) a "Format and Content for Applications for the Licensing of Non-Power Reactors" (F&C) and a "Standard Review Plan and Acceptance Criteria for Applications for the Licensing of Non-Power Reactors" (SRP). The NRC has made available drafts of Chapters 2, "Site Characteristics," 3, "Design of Structures, Systems, and Components," 4, "Reactor Description," 7, "Instrumentation and Control Systems," 10, "Experimental Facilities and Utilization," 13, "Accident Analyses," and 18, "High-Enriched Uranium to Low-Enriqued Uranium Conversions," of the F&C and SRP documents for comment. Other draft chapters will be made available for comment as they are completed.

Copies of these chapters have been placed in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC. Single copies of these documents may be requested in writing from Alexander Adams, Jr., Senior Project Manager, U.S. Nuclear Regulatory Commission, MS: O–11–B–20, Washington, DC 20555. Comments on this chapter should be sent by November 28, 1995, to the Director, Non-Power Reactors and Decommissioning Project Directorate at the above address.

Dated at Rockville, Maryland, this 31st day of August 1995.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22460 Filed 9–8–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–293]

Boston Edison Company, Pilgrim Nuclear Power Station; Issuance of Director Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, granted in part and denied in part a Petition dated March 10, 1995 (Petition), filed pursuant to 10 CFR 2.206 by Ms. Mary Elizabeth Lampert and 62 other persons (Petitioners).

The Petition requested that during the March 25, 1995, refueling outage and In-Vessel Visual Inspection conducted by the licensee, certain technical concerns be addressed, and that before Pilgrim goes back on-line, appropriate repairs be made or corrective action be taken, and that the U.S. Nuclear Regulatory Commission (NRC or Commission) discuss the status of such repairs or corrective actions with the public in Plymouth, Massachusetts. The Petition also requested that the NRC terminate its policy of issuing Notices of Enforcement Discretion (NOEDs) and asserted that the NRC has not been enforcing its regulations.

On April 19, 1995, the Director informed the Petitioner that the NRC management and staff was meeting with the Boston Edison Company (licensee) on May 11, 1995, and they would hold a meeting to receive public input on the evening of May 11, 1995. The Petitioner's request to discuss the status of repairs or corrective actions was granted by virtue of the public meeting.

The Director of the Office of Nuclear Reactor Regulation has denied the Petitioners' requests to require repairs and corrective actions before permitting the Pilgrim plant to resume operation, and to terminate the use of NOEDs.

The reasons for this decision are explained in the "Director's Decision Under 10 CFR 2.206," (DD–95–19) which is available for public inspection in the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Pilgrim facility at Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

A copy of the Decision will be filed with the Office of the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after date of issuance of the Decision unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 31st day of August 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

Appendix A to this Document—Director's Decision Under 10 CFR 2.206: DD–95–19; Boston Edison Company, License No. DRP–35

I. Introduction

Ms. Mary Elizabeth Lampert and 62 other individuals (Petitioners) submitted a Petition dated March 10, 1995, pursuant to 10 CFR 2.206 requesting action with regard to the Pilgrim Nuclear Power Station (Pilgrim), operated by the Boston Edison Company (licensee).

The Petition requested that: (1) during the refueling outage and In-Vessel Visual Inspection scheduled for March 25, 1995, by the licensee, certain technical concerns be addressed, and that before Pilgrim goes back on-line, appropriate repairs be made or corrective action be taken; (2) the U.S. Nuclear Regulatory Commission (NRC or Commission) discuss the status of such repairs or corrective actions with the public in Plymouth, Massachusetts; and (3) the NRC terminate its policy of issuing Notices of Enforcement Discretion (NOEDs) and begin enforcing the regulations again.

As the bases for these requests, the Petitioners identified three groups of technical concerns: (1) age-related deterioration of 25 safety related reactor internals; (2) parts and components "known to be a problem at Pilgrim," including the core shroud, water level indicators, quality assurance for fuel pool cooling system during loss-of-coolant accident/loss of offsite power, motor-operated valves, containment integrity, drywell liner corrosion vulnerability, station blackout vulnerability, and Rosemount transmitters; and (3) parts and components "potentially a problem at Pilgrim," including potential fuel rod corrosion and substandard and/or counterfeit parts. The Petitioners contend that allowing the reactor to operate under a NOED cannot pose less risk to the public health and safety than keeping the reactor shut down until NRC regulations are met.

II. Background

By letter dated April 19, 1995, the NRC acknowledged receipt of the Petition and offered a public meeting, which was held in Plymouth, Massachusetts on May 11, 1995. At that meeting, the results of the licensee's inspections conducted during the outage were discussed.

I have completed my evaluation of the Petition. As explained below, Petitioners have failed to raise any safety concern which would warrant delaying restart of the Pilgrim Nuclear Power Station (which occurred on June 2, 1995), and the Petitioners' request that the NRC terminate the use of NOEDs is denied.

III. Discussion

A. Age-Related Deterioration of Reactor Internals

Many components inside boiling-water reactor (BWR) vessels (i.e., internals) are made of materials such as stainless steel and various alloys that are susceptible to corrosion and cracking. As materials age, they degrade. This degradation can be accelerated by stresses from temperature and pressure changes, irradiation effects on material properties, chemical interactions, and other corrosive environments. As BWRs age, the amount of cracking is expected to increase. Several cases of internals cracking and degradation have been reported to the NRC over the years. In a number of cases, the NRC has concluded that full power operation of the reactor with time-dependent degradation, related to the operating environment, of reactor vessel internals is acceptable as long as the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) safety margins are satisfied and maintained. In the remaining cases, replacement or repairs were performed on the degraded components or internals. The NRC has met with industry every year since 1988 to review the generic safety implications of reactor internals potentially susceptible to age-related cracking. Additionally, a special industry review group, the Boiling Water Reactor Vessels and Internals Project (BWRVIP), was formed to focus on resolution of reactor vessel and internals degradation.

Several industry standards and regulatory requirements and guidelines are in place to address inservice inspections (ISIs) of reactor components. Moreover, the NRC and industry have responded as new issues emerge. For example, issued Generic Letter (GL) 94–03, "Intergranular Stress Corrosion Cracking of Core Shrouds (IGSCC) in Boiling Water Reactors," "in July 1994 requesting Licensees to inspect their shrouds and provide an analysis justifying continued operation until inspections could be completed. General Electric issued Services Information Letter (SIL) No. 588, "Top Guide and Core Plate Cracking," in February 1995 providing specific recommendations for inspections of BWR top guides and core plates. In addition to addressing emerging the BWRVIP is working on a comprehensive plan that will provide detailed guidance on managing cracking in all BWR internals. The plan will address cracking susceptibility, safety consequences, inspection scope and methodology, flaw evaluation, repair strategies, and mitigation of degradation. Several top level executives and technical staff of the Licensee are on the various BWRVIP committees that are developing generic standards for ISI and repairs.

Petitioners request that 25 components be inspected during the 1995 refueling outage (RFO No. 10), and that they be free of any signs of IGSCC or other kind of fatigue.

During RFO No. 10, the licensee indicated completion of the ISI examinations for the third period of the second Pilgrim 10-year inspection interval in accordance with Section XI of the ASME Code, 1980 Edition with Winter 1980 Addenda. This included all 25 components requested by the Petitioners, except the steam separator, neutron source holder and surveillance sample holders which are not safety-related components. The in-core neutron flux monitor components, in-housings, guide tubes, dry tubes, the vessel head cooling spray nozzle, and the fuel supports are not required by NRC regulations to be inspected. The NRC inspected Pilgrim's ISI program and related activities during the 1994 RFO No. 9 and concluded that the second interval program plan was sufficiently comprehensive to ensure safety and met the requirements of the ASME Code, and thus 10 CFR 50.55a(a)(2). The ISI examinations conducted in RFO No. 10 included the core support structure, control rod drive housing, core spray internal piping and spargers, and feedwater spargers.

Augmented examinations were also conducted in which various internals were examined, including the shroud support and access hole covers, jet pump riser braces, shroud head bolts, jet pump sensing lines, steam dryer support, steam dryer baffle plate, top guide, core plate, and control rod stub tubes.

Control blades (control rods for BWRs) are replaced at specified intervals. The licensee also implemented a preemptive repair of its core shroud due to the high susceptibility to IGSCC. See Section III.B.(1), below. As discussed during the May 11, 1995, meeting between the NRC and the public, the inspection results from RFO No. 10 did not reveal any indications of significant time-dependent deterioration of the reactor internals.

The NRC staff concludes that the inspections, examinations, and repairs performed by the licensee during RFO No. 10 and previous outages are sufficient to provide reasonable assurance that no age-related failure of components or internals would occur during the next operating cycle, which is scheduled to end March 21, 1997. Design features, plant procedures, and operator training are developed to ensure safety in the unlikely event that a failure were to occur. The NRC will continue to take regulatory action on a plant-specific or generic basis, as may be appropriate, when time-dependent degradation issues are identified. During the next refueling outage, the licensee will again conduct an in-vessel inspection of safety-related interval components.

Accordingly, Petitioners have not raised a safety concern regarding age-related degradation of reactor internals at Pilgrim which would have warranted prohibiting restart after RFO No. 10.

B. Parts and Components Known To Be a Problem at Pilgrim

(1) Core Shroud

Petitioners express concern about the type of repairs that would be done to the core shroud during RFO No. 10, based on "the different approach taken in Germany at the Wuergassen NPS and at the Oyster Creek NPS in NJ." Petitioners state that German nuclear regulators required replacement of shrouds with cracking, rather than repair of the shroud. Petitioners state that at Oyster Creek, ten tie rods are attached to holes in Type 304 stainless steel, which is subject to IGSCC and is welded to the bottom of the core shroud assembly. Petitioners are concerned that if the same approach were used at Pilgrim, there would be problems with the structural integrity of the materials the tie rods are welded to and with "loose parts."

Officials of PreussenElektra AG, the owner of Wuergassen, initially intended to replace the core shroud at Wuergassen, as reported in *Nucleonics Week* on November 24, 1994. Differences in the design of Wuergassen and NRC-licensed BWRs exist which would make replacement of the core shroud at Wuergassen less complicated than at NRC-licensed plants. For example, the shroud at Wuergassen is bolted on to the shroud support, whereas shrouds of NRC licensees are welded. However, in a press release issued June 1, 1995, PreussenElektra AG decided to decommission the Wuergassen NPS based on economic considerations. As a result, replacement of a BWR core shroud, foreign or domestic, has yet to be undertaken.

By letter dated November 25, 1994, the NRC staff issued the "Safety Evaluation Regarding the Oyster Creek Core Shroud Repair," which approved the scheduled repair as an acceptable alternative to the standards of the ASME Boiler and Pressure Vessel Code. See 10 C.F.R. § 50.55a(a)(2) and 50.55a(a)(3)(i). Oyster Creek and Pilgrim are utilizing similar tie-rod assemblies to structurally replace the core shroud during normal and accident conditions. The difference in the number of tie-rod assemblies used, i.e., ten tie-rod assemblies at Oyster Creek and four tie-rod assemblies at Pilgrim, is related to the contracted vendor's loading distribution design and the associated hardware on the tie-rod assembly. The NRC staff has thoroughly reviewed the Pilgrim repair design and conducted inspections during the core shroud repair process. The staff issued the "Safety Evaluation Regarding Pilgrim Nuclear Power Station Core Shroud Repair," dated May 12, 1995. A synopsis of our review follows.

The design of the Pilgrim shroud repair consists of four (4) stabilizer assemblies, which are installed 90° apart in the shroud/reactor vessel annulus, between attachment points at the top of the shroud and the gusset assemblies on the lower shroud support plate. Each stabilizer assembly consists of a tie rod, and upper spring, a lower spring, an upper bracket and other smaller parts. The tie rod provides the vertical load transfer from the upper bracket to the reactor pressure vessel (RPV) gusset attachment and supports the springs. The upper spring provides radial load transfer at the top guide elevation from the shroud to the RPV. The lower spring provides radial load transfer from the shroud at the core plate elevation to the RPV. The upper bracket provides an attachment to the top of the shroud and restrains the upper shroud weld. Upper-mid and lower-mid supports along the tie rod length provide radial load transfer for the mid sections of the shroud and increase the natural frequency of the tie rods to reduce flow-induced vibration. Two wedges between the core support plate and the shroud are also installed at each stabilizer location to prevent relative motion of the core plate to the shroud. Each cylindrical section of the shroud between welds H1 through H9 is prevented from unacceptable lateral motion by the stabilizers. The section between H9 and H10 is prevented from unacceptable motion by the existing gussets. The lower end of the stabilizers are attached to pins which are placed in holes cut into gusset plates at the bottom. The gusset assemblies and their welds are Inconel and are not considered subject to cracking by industry and the NRC staff. Inconel is a nickel based alloy which is less likely to corrode and degrade than stainless steel, which is an iron based alloy. However, these welds, including those attaching the gussets to the vessel and to the lower shroud support plate (which must resist the vertical stabilizer loads) have been inspected for cracks during this outage, and no crack indications were found. Together, the tie rods and lateral restraints resist both vertical and lateral loads resulting from normal operation and design accident loads, including seismic loads and postulated pipe ruptures.

The NRC staff found that the proposed repair does not affect the ability of operators to insert control rods, the performance of the ECCS, particularly the core spray system, or the ability to reflood and cool the core. The staff concluded that the proposed repair does not pose adverse consequences to plant safety; therefore, plant operation is acceptable with the proposed core shroud repair installed.

In compliance with 10 CFR 50.55a(a)(3)(i), the core shroud repair has been designed as an alternative to the requirements of the ASME Code. Based on a review of the shroud modification hardware from structural, systems, materials, and fabrication considerations, the NRC staff concludes that the proposed modifications of the Pilgrim core shroud would provide an acceptable level of quality and safety. The staff has determined that the licensee's repair of the core shroud will not result in any increased risk to the public health and safety and is, therefore, acceptable.

(2) Water Level Indicators

Petitioners assert that because of a pipe design deficiency, water level indicators at Pilgrim are not fully operable due to high-pressured gas in the water, and that operator training is not the appropriate solution.

Level anomalies were observed in reactor vessel water level indication at several BWRs during controlled depressurization, while commencing plant outages or following reactor trips. These anomalies consisted of "spiking" or "notching" of level indication, and in one instance, a sustained error in level indication. The root cause of these level indication anomalies is the effect of non-condensible gas dissolved in the reference leg of "cold reference leg" type water level instruments. Under rapid depressurization conditions, non-condensible gases can cause significant errors in the level indication.

Cold reference leg water level instruments measure reactor vessel water level by

measuring the differential pressure of two columns of water, i.e., the variable leg and the constant height reference leg. The reference leg is maintained filled to a constant height of water by the condensate chamber. Steam is condensed in the condensate chamber and keeps the reference leg full. Excess condensate is returned to the vessel through the steam supply line. Non-condensible gases, such as hydrogen and oxygen, formed by radiolysis in the reactor vessel, are present in the steam supplied to the condensate chamber. The gases can collect in the condensate chamber and can accumulate to high partial pressures. The gases then become dissolved in the water at the top of the reference leg, and the dissolved gases can be transported down the reference leg by small leaks in valves and fittings at the bottom of the reference leg, diffusion, and/or thermal convection.

Dissolved gases in the reference leg do not present a problem unless the instrument is depressurized. When depressurized, the gases come out of solution and form bubbles that travel up the reference leg. During slow depressurization, level indication has been seen to temporarily "spike" or "notch" while a bubble moves through the vertical sections of the piping. Significant spiking may automatically actuate such systems as the primary containment isolation system (PCIS). This occurred at the Pilgrim plant. After spiking, which is of short duration, the indicated water level returns to actual level. Level spiking is of little significance. Bubbling of the gases may eject a significant amount of water from the reference leg. Loss of reference leg inventory will cause an erroneously high level indication. This occurred during a normal plant cooldown on January 21, 1993, at Washington Nuclear Power Unit 2 (WNP–2), resulting in a 32-inch error in level indication that gradually recovered over a period of 2 hours. If the reactor is rapidly depressurized, as would occur during a design basis loss-of-coolant accident (LOCA) or opening of the automatic depressurization system (ADS) valves, even larger errors in the level indication could result. However, analyses presented by the industry indicated that significant errors would not be expected until the reactor is depressurized below approximately 450 psi.

The NRC staff has taken several actions to address this problem. The BWR Owners Group (BWROG) Regulatory Response Group (RRG) was activated during July 1992. The staff also issued Information Notice 92–54 in July 1992, GL 92–04 in August 1992, and Information Notice 93–27 in March 1993 to alert licensees to the potential problem and to request information concerning actions taken or planned by licensees in response to potential errors in level indication. The BWROG conducted a test program to support their efforts to resolve this issue. The results of the BWROG reference leg de-gas test program confirmed that no significant errors in level indication will occur until the reactor is depressurized below 450 psig, and that large errors in level indication are possible once the reactor is depressurized to lower pressures.

The NRC staff received additional information from the BWROG pertaining to reactor vessel water level instrumentation inaccuracies during normal depressurization due to the effects of non-condensible gas. At the staff's request, the BWROG submitted a report on May 20, 1993, discussing the impact of level errors on automatic safety system response and operator actions during transients and accidents initiated from reduced pressure conditions during plant cooldown (shutdown mode). Based on this information, in addition to the January 21, 1993, WNP–2 event, and data from the reference leg de-gas testing that was conducted by the BWROG, the staff concluded that additional short-term actions needed to be taken for protection against potential events occurring during normal cooldown. On May 28, 1993, NRC Bulletin (NRCB) 93–03,

"Resolution of Issues Related to Reactor Vessel Water Level Instrumentation," was issued, in which the staff requested each BWR licensee to implement additional short-term compensatory actions, and to implement a hardware modification to resolve this issue at the next cold shutdown after July 30, 1993.

The staff has received responses to NRC Bulletin 93–03 from all licensees. All licensees completed short-term compensatory actions and committed to install hardware modifications. Licensees for all affected plants have either completed installation of hardware modifications or are currently shutdown and will install the hardware modifications prior to restart.

To solve the problem identified in NRC Bulletin 93–03, Pilgrim installed a backfill modification to all safety-related water level instrumentation in July 1993. Non-safety-related control instrumentation was not modified by Pilgrim, because such instrumentation was not covered by the actions requested in NRC Bulletin 93–03.

As Petitioners note, an event occurred at Pilgrim on November 8, 1993, involving the non-safety-related water level instrumentation. This event was caused by failure of the licensee to back flush the feedwater control instrumentation reference legs prior to restart due to procedural inadequacy and failure to cross-check multiple indications of reactor vessel water level during startup due to operator error. This event is not safety significant for the following reasons:

(a) event initiation was the result of two independent errors which are not expected to have a high frequency of recurrence;

(b) safety systems and non-safety systems are separated by design; thus, the availability and capability of the safety systems should not be impacted by errors in the non-safety instrumentation and the ability of safety systems to protect the plant should not be compromised; and

(c) the safety systems responded to the event as expected.

This issue is closed because the licensee took adequate corrective actions in response to the November 8, 1993, event. *See* NRC Inspection Report 50–293/93–20, dated January 11, 1994.

Based on the above, Petitioners have not raised a substantial safety concern regarding safety-related water level instrumentation at Pilgrim.

(3) Quality Assurance for Fuel Pool Cooling System During LOCA/LOOP

The Petitioners asserted that workers would be exposed to fatal levels of radiation while manually activating the backup cooling system during a LOCA.

In November 1992 two engineers working under contract at Susquehanna Steam Electric Station filed a 10 CFR 21.21 report. The report detailed design concerns at Susquehanna that could lead to the sustained loss of forced cooling for the stored spent fuel under certain accident or abnormal conditions. The engineers postulated that the environmental conditions developed following a loss of forced cooling would adversely affect equipment necessary for safe-shutdown and accident mitigation. The engineers concluded that these issues had generic implications.

Between November 1992 and October 1994, the NRC staff performed an extensive evaluation of the Susquehanna spent fuel pool cooling design concerns. The staff concluded that these concerns were of low safety significance in the "Final Safety Evaluation By the Office of Nuclear Reactor Regulation Regarding Loss of Spent Fuel Pool Cooling Events," dated June 19, 1995. This conclusion was based on the fact that the probability of recovering forced cooling of the stored spent fuel with access to the necessary equipment was high, and the probability of experiencing a severe core damage accident, which may prevent access to systems need to cool the spent fuel pool, was low.

The staff issued Information Notice 93–83, "Potential Loss Of Spent Fuel Pool Cooling Following A Loss Of Coolant Accident," (October 7, 1993), describing the Section 21.21 report related to Susquehanna. The information notice did not require specific action by licensees. Recognizing the plant-specific design features and operational controls of most spent fuel pool cooling system designs, the staff concluded that further evaluation of spent fuel pool storage safety issues at other plants was warranted to determine the need for further generic action.[1]

The staff has developed and begun implementing a generic action plan to evaluate generic issues. On-site safety assessments of spent fuel storage at selected reactor facilities have been completed. Monticello Nuclear Power Plant is similar to Pilgrim and was one of the nuclear facilities assessed during the week of March 27, 1995. The assessment team concluded that the potential for a sustained loss of spent fuel pool cooling or a significant loss of spent fuel pool coolant inventory at the site visited was remote based on observed design features and operational controls. Based on the above, the NRC staff has concluded that the Petitioners have not identified any safety concerns at Pilgrim regarding spent fuel pool cooling during a LOCA/LOOP.

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[1] In the near future, the staff will issue an additional information notice describing the results of its detailed evaluation of the Susquehanna facility. This information notice will be an interim communication and will not represent the end of the staff's generic review.

(4) Motor-Operated Valves

Petitioners request information on the status of the motor-operated valve (MOV) program at Pilgrim, and inquire why Pilgrim has not been required to fix all MOVs during the March 1995 outage.

The NRC issued GL 89–10, "Safety-Related Motor-Operated Valve Testing and Surveillance" (June 28, 1989) to request that licensees verify the capability of all safety-related MOVs to perform their design basis functions. GL 89–10 requested that licensees complete differential pressure and flow testing for the verification of MOV design basis capability within 5 years after the issuance of GL 89–10 or three refueling outages after December 1989, whichever was later.

Pilgrim is scheduled to complete its MOV Design Basis Capability Verification by April 1997. Although this is somewhat later than some other plants, the licensee is being given the same number of outages (three outages with 24 month cycles) as other licensees to complete the verification, and the program commenced somewhat later at Pilgrim due to the 1990 restart from an extended outage.

During the implementation of GL 89–10, licensees have discovered more MOV concerns and experienced greater difficulty in conducting MOV tests at full design basis differential pressure and flow than envisioned when the GL 89–10 schedule was established. Where significant MOV problems are identified, the NRC ensures that licensees resolve these problems promptly. Further, when the evaluation of NRC-sponsored MOV test results indicated potential problems with specific MOVs in high pressure systems at boiling-water reactor (BWR) nuclear power plants, the NRC issued Supplement 3 to GL 89–10 in October 1990. Supplement 3 requested that BWR licensees promptly evaluate the capability of MOVs used for containment isolation in the steam lines of the high-pressure coolant injection and reactor core isolation cooling systems and in the supply line to the reactor water cleanup system. Further, the staff issued Supplement 5 to GL 89–10 in June 1993, requesting that licensees ensure that new information on the increased inaccuracy of MOV diagnostic equipment be addressed. These two actions were satisfactorily completed by Pilgrim.

The NRC staff has been monitoring the progress of the GL 89–10 program at Pilgrim closely. From December 13 to 17, 1993, and March 22 to 25, 1994, the NRC staff conducted an inspection of the GL 89–10 program at Pilgrim. As stated in NRC Inspection Report 50–293/92–80, the NRC staff had the following findings as a result of the March 1992 inspection:

(a) The method used to set the MOV torque switches using diagnostic testing equipment was inadequate;

(b) the torque switch settings on several safety-related MOVs were not set in accordance with the plant design documents;

(c) corrective actions taken in response to an internal audit of the GL 89–10 Program regarding the torque switch settings of safety-related valves were inadequate:

(d) the GL Supplement 3 response for the reactor water cleanup system isolation valve 1202–5 was inadequate;

(e) plans for conducting design-basis differential pressure testing have not been clearly established;

(f) the current work instructions for performing design basis reviews and switch setting calculations lack adequate detail; and

(g) a considerable effort remains to implement the GL 89–10 program in a timely manner.

The NRC staff found considerable progress in the licensee's MOV program since the initial NRC team inspection in March 1992. Particularly, the staff concluded that the findings from the March 1992 inspection had been satisfactorily addressed. See Inspection Report No. 50–293/93–22 (April 14, 1994). In addition, the testing of differential pressure and/or static pressure of all of the Priority 1 (highest risk) MOVs that can be tested was completed by the end of RFO No. 10. Additionally, the licensee has evaluated all of the GL 89–10 MOVs for susceptibility to pressure locking and thermal binding and, by the end of RFO No. 10, completed modifications on the few valves that were considered susceptible. The staff concludes that the licensee is on schedule to meet its April 1997 completion date.

Based on the progress made to date by the licensee in implementing its GL 89–10 program at Pilgrim, the NRC staff did not consider it necessary that the licensee complete its GL 89–10 program during RFO No. 10. In addition to review of the licensee's submittals in response to GL 89–10 and its supplements, the NRC staff is conducting an extensive inspection program to evaluate the MOV program implemented in response to GL 89–10 at Pilgrim, as well as at other nuclear power plants. The NRC staff concludes that the licensee has substantially reduced the concerns with MOV operation under design basis conditions and is progressing significantly toward completing the GL 89–10 program. Nevertheless, if significant MOV problems are identified at Pilgrim, the licensee will be responsible for addressing those problems in accordance with their safety significance, irrespective of the GL 89–10 completion schedule. Further, the NRC will continue to take regulatory action on a plant-specific or generic basis, as appropriate, when MOV problems are identified.

Based upon the actions taken to date by the licensee to address safety-related MOV issues and the NRC's inspections regarding the licensee's actions on the GL 89–10 program, the NRC staff concludes that no corrective actions are required.

(5) Containment Integrity

Petitioners ask whether the hardened wetwell vent system (HWWVS), referred to as the "Torus Vent", which "allows venting of radioactive effluents directly into our atmosphere," will be corrected in RFO No. 10.

The licensee installed the HWWVS modification during the 1986–1988 outage, thus providing the capability to establish alternate containment decay heat removal if RHR torus cooling capability is lost. The direct torus venting minimizes the potential for core damage and containment failure. The HWWVS has the capability of mitigating a wide range of events including many that are beyond the Design Basis Accidents for the facility. Its installation, along with the procedures for its use, will reduce the likelihood of a core melt from accident sequences involving the loss of long-term decay heat removal. This accomplished by preventing any further damage to safety equipment in the reactor building by ensuring that the piping from the containment to the venting stack will not fail. Further, as a mitigation measure, the vent pathway is located in the wetwell air space. This location ensures that the vented non-condensible gases will pass through the suppression pool thereby significantly scrubbing the fission products. The HWWVS is an improvement that the NRC staff recommended in its Mark I Containment Performance Improvement Program, which identified plant modifications that could enhance the capability to both prevent and mitigate the consequences of severe accidents.

The HWWVS has valves that are kept closed during plant operation, assuring containment integrity. Additionally, the HWWVS design incorporates a device called a rupture disc, which provides an additional leak-tight barrier to further prevent the transport of the containment atmosphere in the wetwell to the atmosphere. The HWWVS is not in use during normal plant operation, nor is it expected to be used during anticipated transient conditions. Petitioners have not demonstrated any basis why this system should be "corrected."

(6) Drywell Liner Corrosion

Petitioners request information on the status of drywell liner corrosion vulnerability and asks whether it would be corrected during RFO No. 10.

The NRC issued GL 87–05, "Request For Additional Information-Assessment of Licensee Measures to Mitigate and/or Identify Potential Degradation of Mark I Drywells," as a result of the November 1986 discovery of corrosion of the Oyster Creek steel drywell in the area of the sand cushion. GL 87–05 did not establish any regulatory requirements other than for Mark I licensees to provide the staff with information as to what actions, if any, were being taken as a result of the Oyster Creek finding. The licensee responded to GL 87–05 by letter dated May 11, 1987. The licensee implemented a surveillance program to detect whether a corrosive environment exists on the external surface of the drywell. This is done by checking the drywell liner air gap drain lines for the presence of water during every refueling outage.

In January 1987, prior to issuance of GL 87–05, the licensee conducted ultrasonic inspections of the interior of the drywell liner in the area of the sand drains, which confirmed liner integrity. In January 1988, the drain lines were verified not to be blocked by using a boroscope. As of the last surveillance, conducted on March 31, 1995, no water leakage had been detected. Petitioners have not demonstrated any basis for correcting this system.

(7) Station Blackout

Petitioners request information on station blackout vulnerability and ask whether it would be corrected during RFO No. 10.

On December 23, 1993, the NRC issued "NRC Pilot Station Blackout Team Inspection," a report concerning the Pilgrim plant, Inspection Report 50–293/93–80. The purpose of that inspection was to review Pilgrim's programs, procedures, training, equipment and systems, and supporting documentation for implementing the Station Blackout (SBO) Rule, 10 CFR 50.63. The actions taken to implement the station blackout rule are important because many of the systems required for decay heat removal and containment cooling are dependent on the availability of alternating current (ac) power. In the event of a station blackout, relatively few systems that do not require ac power are depended upon to remove decay heat, until ac power is restored.

The staff concluded in Inspection Report 50–293/93–80 that:

(a) Pilgrim had sufficient condensate inventory to cope with an 8-hour SBO duration;

(b) all areas which contained equipment needed for SBO coping had proper cooling;

(c) there was sufficient evidence that the torus temperature and the reactor vessel conditions would be maintained according to the plant TSs;

(d) the overall communications capability available during an SBO were adequate;

(e) adequate emergency lighting was available to support plant personnel operations during a station blackout; and

(f) plant modifications were properly installed, and post-modification and pre-operational tests were conducted in accordance with proper test procedures. Quality assurance and maintenance practices, operator training, and staffing levels were appropriate to cope with an SBO.

Accordingly, the Pilgrim plant is in compliance with Section 50.63 and the plant does not have a SBO vulnerability requiring "correction" during RFO No. 10.

(8) Rosemount Transmitters

Petitioners request information on the status of Rosemount transmitters at Pilgrim, and ask whether all would be inspected and corrected during RFO No. 10.

On December 22, 1992, the NRC staff issued Bulletin 90–01, Supplement 1, "Loss of Fill-Oil in Transmitters Manufactured by Rosemount," which requested that licensees take appropriate corrective actions for Model 1153, Series B and D, and Model 1154 Rosemount transmitters manufactured before July 11, 1989, and used in safety-related applications or Anticipated Transient Without Scram (ATWS) systems. The performance of a transmitter that is leaking fill-oil gradually deteriorates and may eventually lead to failure. Although some failed transmitters have shown symptoms of loss of fill-oil prior to failure, it has been reported that in some cases the failure of a transmitter that is leaking fill-oil may be difficult to detect during operation. Transmitter failures that are not readily detectable increase the potential for common mode failure and may result in the affected safety system not performing its intended safety function. Supplement 1 identified specific actions for replacement or enhanced surveillance monitoring of the these transmitters, used in high pressure (greater than 1500 psi), medium pressure (greater than 500 psi and less than 1500 psi), and low pressure (less than 500 psi) applications.

The licensee responded to the requested actions of Bulletin 90–01, Supplement 1, on March 5, 1993 and August 30, 1993. There are a total of 40 Model 1153B transmitters currently in service, 14 medium pressure transmitters and 26 low pressure transmitters. The licensee committed to include each of these transmitters in its enhanced surveillance monitoring program. The licensee stated that there were no Model 1153D or 1154 transmitters currently in service.

The licensee also stated that there were 33 Model 1153B transmitters, manufactured after July 1989, in service. Such transmitters are not subject to the Bulletin 90–01, Supplement 1, requested actions because Rosemount corrected the oil leakage problem by an improved manufacturing and quality assurance process. Although Supplement 1 does not require these transmitters to be included in an enhanced surveillance monitoring program, the licensee has chosen to include them in its program. The licensee's enhanced surveillance program is based on both the trending of operating drift data and calibration drift data, and is in accordance with Rosemount Technical Bulletin No. 4.

The NRC, with assistance from its contractor, reviewed the licensee's response to Supplement 1, and in a letter dated November 29, 1994, concluded that the licensee satisfied the reporting requirements and conformed to the requested actions of Bulletin 90–01, Supplement 1. Accordingly, no further actions by the licensee were required with respect to this Rosemount Issue during RFO No. 10.

C. Parts and Components Potentially a Problem at Pilgrim

(1) Fuel Rod Corrosion

Petitioners request information regarding the status of zirconium alloy tubes installed at Pilgrim, and asks if their susceptibility to nodular corrosion would be corrected during RFO No. 10.

Nodular corrosion is a phenomena seen in plants that have copper in the reactor water at a concentration in the 20–30 parts per billion (ppb) range. Pilgrim systems design limits copper levels to less than 1 ppb in the reactor water. Additionally, all fuel rod cladding in use at Pilgrim has been subject to the GE Nuclear Energy in-process heat treatment (IPHT) process[2], which is a heat treatment process that evenly distributes the composition of the alloy thus lowering the susceptibility to nodular corrosion. Pilgrim has not experienced nodular corrosion, and failure of fuel rods is not expected from this phenomenon.

The NRC staff conducted two inspections of Teledyne Wah Chang Albany (TWCA), the manufacturer of zirconium alloy tubes. In April 1990, an employee of Teledyne Wah Chang Albany (TWCA) raised two concerns regarding the efficacy of TWCA's "beta quench" process, a step in the manufacture of zircaloy tube shells which improves the corrosion resistance of that product: (1) the accuracy of temperature indicating devices as a predictor of the temperature of the bulk profile of the zircaloy billet the beta quench process was measuring, and (2) even if the profiles of the induction furnaces are accurate, the induction furnaces cannot reproduce the profile conditions for each production zircaloy billet as the heating in the furnace is very sensitive to the position of the billet in the furnace.

Neither of the two NRC inspections substantiated the employee's concerns. See Inspection Reports 99901229/91–01 (November 27, 1991) and 99901229/94–01 (January 31, 1995). These inspection reports are available in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. TWCA also investigated these concerns. In a letter to the NRC dated January 10, 1991, TWCA forwarded the results of its investigation, concluding that these concerns were unfounded, although the employee continued to have concerns.

Based on the above, Petitioners have not demonstrated any basis for fuel rod corrosion corrective actions.

(2) Substandard and/or Counterfeit Parts

Petitioners state that Pilgrim was one of several plants identified in a 1990 study by the United States Government Accounting Office as using parts which did not meet government standards, but that the NRC has not asked plants such as Pilgrim to replace those parts. Petitioners request information on the status of substandard or counterfeit parts at Pilgrim, such as nuts, bolts, pipe fittings, circuit breakers and fuses, and whether corrective action would be required during RFO No. 10.

The NRC has been pursuing the issue of counterfeit and substandard parts as a two prong process for a number of years. The first process is reactive, directly addressing the possibility that substandard or counterfeit parts may have been supplied to nuclear power plants, assessing the safety significance and, if needed, replacing the parts. The second process is a proactive approach of improving the assurance that parts are of a high quality before they are put into use.

Since 1988, the NRC has performed over 200 inspections of vendors. During these inspections, the staff occasionally identified suspect practices and referred those cases to the Office of Investigations to determine if wrongdoing had been committed. The NRC also quickly published and disseminated the information to the entire nuclear industry. Over the past several years, the NRC has issued numerous Bulletins and Information Notices having to do with *potential* counterfeit and/or substandard parts and material. However, the staff has not yet identified an issue that, from a safety standpoint, resulted in any plant shutdowns. Nonetheless, the NRC determined that several issues could potentially reduce the margin of safety in some plants and requested some actions by licensees, usually through a Bulletin.

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[2] TWCA does not produce fuel clad tubing, but supplies an intermediate product form to customers that do, including GE Nuclear Energy, who performs the IPHT on the forms.

If the NRC obtains information that some licensees are identified as potential customers of a vendor suspected of supplying counterfeit or substandard parts, an Information Notice is issued. The issuance of an Information Notice does not mean that the identified licensee(s) did, in fact, receive the questionable parts, but rather that they were potential customers. The licensees are responsible for reviewing their own procurement records to identify if they received the suspect parts. Their actions are subject to NRC review and inspection.

The 1990 GAO report, "Nuclear Safety and Health: Counterfeit and Substandard Products Are a Governmentwide Concern," lists a wide range of products as having been received or suspected of having been received by nuclear plants. The information provided by the GAO report regarding products used in nuclear operations was obtained from the NRC and all of the information was made public through various NRC Information Notices and Bulletins. The Pilgrim station was listed in the GAO report as having received counterfeit or substandard fasteners and circuit breakers. Pilgrim was also listed as being suspected of receiving counterfeit or substandard pipe fittings/flanges and fuses.

On November 6, 1987, the NRC issued Bulletin 87–02, "Fastener Testing to Determine Compliance With Applicable Material Specifications." The Bulletin requested all licensees to review their receipt inspection requirements and internal controls for fasteners and to determine, through testing, whether fasteners in stores at their facilities met required mechanical and chemical material specification requirements. Licensee responses were summarized in NUREG–1349, "Compilation of Fastener Testing Data Received in Response to NRC Compliance Bulletin 87–02." NUREG–1349 identified that, of over 3500 fasteners tested, 8 percent of safety-related and 12 percent of nonsafety-related fasteners were found to be nonconforming. However, only 2 percent of the safety-related fasteners were found to be sufficiently out of specification to cause a concern regarding their ability to perform their intended safety function. As a result of the licensees' responses to Bulletin 87–02, the NRC issued a temporary inspection instruction to ensure that licensees verified that fasteners used in nuclear plants met the requisite specifications and that operability of safety-related components was not affected.

In response to Bulletin 87–02, Pilgrim tested 35 safety-related and 29 non-safety-related fasteners. Three safety-related and 6 non-safety-related fasteners were identified as having hardness values slightly out of specification. These slight deviations were not considered safety significant since the hardness deviations consisted of only 1 to 2 Rockwell points which is very close to the test accuracy of ± 1.0 Rockwell point. Furthermore, it is commonly recognized in the industry that this property is most easily influenced by variations in chemistry, heat treatment, and surface treatments.

On May 6, 1988, the NRC issued Bulletin 88–05, "Nonconforming Materials Supplied by Piping Supplies, Inc. at Folsom, New Jersey and West Jersey Manufacturing Company at Williamstown, New Jersey." That Bulletin required NRC licensees to submit information regarding materials supplied by the named companies and requested the licensees to assure that the materials complied with ASME Code Section III, Subarticle NCA–3800 and design specifications requirements, or were suitable for their intended use, or to replace the materials. Following the issuance of that Bulletin and actions taken by licensees, the NRC met with representatives of the Nuclear Management and Resources Council (NUMARC) to discuss the status of licensee actions. NUMARC presented information on licensee and NUMARC/Electric Power Research Institute (EPRI) testing and evaluation methodology of numerous flanges. The information presented at that meeting showed that the material in question had acceptable strength and that continued use of the fittings and flanges did not present a safety problem. Therefore, the NRC issued Supplement 2 to Bulletin 88–05 on August 3, 1988, announcing that it was appropriate to suspend the actions requested by the Bulletin. NUMARC follow-up reports were analyzed by the staff and judged acceptable. Therefore, no further actions were required.

In response to Bulletin 88–05, Pilgrim identified and tested a number of suspect flanges. All were found to be satisfactory, with the exception of one which tested low in hardness. An engineering evaluation performed by Pilgrim determined the flange was acceptable and did not need to be replaced.

On July 8, 1988, the NRC issued Information Notice 88–46, "Licensee Report of Defective Refurbished Circuit Breakers," which alerted licensees to the possibility of defective circuit breakers being supplied to the nuclear industry. Following the issuance of the notice, the NRC issued Bulletin 88–10, "Nonconforming Molded-Case Circuit Breakers," which requested licensees to take action to provide reasonable assurance that those molded-case circuit breakers that did not have verifiable traceability to the circuit breaker manufacturer were able to perform their safety function. In response to the Bulletin, Pilgrim identified only one of 978 circuit breakers in its warehouse as not being traceable to the original equipment manufacturer. That breaker was the only one purchased on its purchase order and was subsequently discarded.

On April 26, 1988, the NRC issued Information Notice 88–19, "Questionable Certification of Class 1E Components," to alert licensees to a possible problem with the certification of Class 1E components by Planned Maintenance Systems (PMS) of Mt. Vernon, Illinois. Information provided to the NRC by a licensee raised questions regarding the validity of certifications issued by PMS for Class 1E fuses PMS supplied. In response to Information Notice 88–19, the licensee reviewed its procurement/QAD documents. There was no indication that the licensee had procured any material from PMS directly or through Bechtel or General Electric. Furthermore, the NRC review of PMS records indicated that PMS did not supply material or services through intermediate suppliers to the Pilgrim station.

In addition to the Information Notices and Bulletins which identified specifics about potential counterfeit or substandard materials, the NRC staff has issued two generic letters providing information to the industry regarding procurement program improvements to help prevent the acceptance and use of counterfeit and/or substandard material. The industry, through the efforts of the Nuclear Energy Institute (NEI, successor to NUMARC), has also taken a strong approach to improve procurement programs by means of a Comprehensive Procurement Initiative, which addressed five areas which included general procurement, vendor audits, tests and/or inspections, obsolescent, and information exchanges. The Comprehensive Procurement Initiative has greatly reduced the incidence of substandard and/or counterfeit parts in the industry.

In view of the above, no action regarding substandard or counterfeit parts needed to be taken by the licensee before start-up of the Pilgrim plant following RFO No. 10.

D. NRC Oversight and Enforcement Discretion

Petitioners state that since September 1989, the NRC has either waived or chosen not to enforce regulations at nuclear reactors more than 340 times, and that of the last 100 industry requests for enforcement discretion, the Commission has granted every one. Petitioners also state that the NRC has granted at least seven NOEDs to Pilgrim since 1989. Petitioners assert that permitting a reactor to operate cannot pose less risk to public health and safety than keeping the reactor shut down until it meets regulations.

The NRC Enforcement Policy, Section VII.C., permits the staff to exercise discretion not to enforce applicable TSs or license conditions by issuance of a NOED. Such enforcement discretion may be exercised only if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety, in cases when a licensee's compliance with a TS Limiting Condition for Operation or other license condition would involve:

(a) an unnecessary plant transient; or

(b) performance of testing, inspection or system realignment that is inappropriate with the specific plant conditions; or

(c) unnecessary delays in plant startup without a corresponding health and safety benefit.

For an operating plant, the NOED is intended to (1) avoid undesirable transients as a result of forcing compliance with the license condition and, thus, minimize potential safety consequences and operational risks or (2) eliminate testing, inspection, or system realignment that is inappropriate for the particular plant conditions. For plants in a shutdown condition, the NOED is intended to reduce shutdown risk by avoiding testing, inspection, or system realignment that is inappropriate for the particular plant conditions, in that it does not provide an overall safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

For plants attempting to start up, the need for exercising enforcement discretion is expected to occur less often than for

operating plants, because delaying startup does not usually leave a plant in a condition in which it could experience undesirable transients. Thus, the issuance of NOEDs for plants attempting to start up must meet a higher threshold.

The use of enforcement discretion does not change the fact that a violation of a license requirement will occur, nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation for which the licensee requests issuance of a NOED. Where the NRC staff has chosen to issue a NOED, enforcement action is normally considered for the root causes, to the extent violations led to the noncompliance for which enforcement discretion was used.

Petitioners have provided no basis warranting a change in the Commission's policy regarding the exercise of enforcement discretion pursuant to Section VII.C. of the Enforcement Policy.

IV. Conclusion

The institution of proceedings in accordance with Section 2.206, as requested by the Petitioner, is appropriate only where substantial safety issues have been raised. See Consolidated Edison Co. of New York (Indian Point Units 1, 2, and 3), CLI–75–8, NRC 173, 175 (1975), and Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 923 (1984). This is the standard I have applied to the Petition. Petitioners have not raised any substantial safety concerns regarding age-related deterioration of reactor internals, or with other parts and components at Pilgrim. To the contrary, all potential problems identified by Petitioners regarding reactor internals and components have been satisfactorily addressed by the licensee at Pilgrim. Therefore, Petitioner's request to delay startup of the Pilgrim plant is denied. Additionally, for the reasons discussed above, Petitioners request to terminate the NRC policy of issuing notices of enforcement discretion to reactor licensees is denied. Petitioner's request for a public meeting was granted.

A copy of the Director's Decision will be filed with the Office of the Secretary for the Commission to review in accordance with 10 CFR 2.206(c). As provided by Section 2.206(c), this Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 31st day of August 1995,

William T. Russell,

Director, Office of Nuclear Reactor Regulation

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BILLING CODE 7590–01–P

[Docket Nos. 50–334 and 50–412]

Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Beaver Valley Power Station, Units 1 and 2; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request by Duquesne Light Company (the licensee) to withdraw a portion of its August 31, 1994, application for a proposed amendment to Facility Operating License Nos. DPR–66 and NPF–73 for Beaver Valley Power Station, Units 1 and 2, located in Beaver County, Pennsylvania.

The proposed amendment involved deletion of certain license conditions and the following changes to the technical specifications (TSs):

1. Elimination of the references to specific frequencies for each of the Technical Specification required audits.
2. Elimination of the references to reviews and audits of the Emergency Plan and Security Plan.
3. Separation of the Inservice Inspection (ISI) and Inservice Testing (IST) Programs surveillance requirements and removal of the requirement that relief requests be granted before they are implemented for both IST and ISI.
4. Editorial changes which were necessitated by a reorganization.
5. Elimination of the reference to Appendix A of 10 CFR Part 55.
6. Elimination of the requirement to perform an independent fire protection and loss prevention program inspection annually.
7. Inclusion of the Offsite Dose Calculation Manual and Process Control Program and associated implementing procedures into the list of required audits.

On May 18, 1995, the licensee submitted a letter to the NRC requesting withdrawal of the proposed changes to the TSs dealing with audits of the Beaver Valley Power Station fire protection program and withdrawal of a proposed 25-percent grace period for all audit frequencies (Item 6 of August 31, 1994 application).

The Commission has previously issued a Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing, which was published in the **Federal Register** on December 21, 1994 (59 FR 65812).

For further details with respect to this action, see the application for amendment dated August 31, 1994, and the licensee's letter of May 18, 1995, which withdrew the portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 31st day of August, 1995.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22462 Filed 9–8–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–498 and 50–499]

Exemption

In the matter of Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas (South Texas Project, Units 1 and 2).

I

Houston Lighting & Power Company, (the licensee) is the holder of Facility Operating License Nos. NPF–76 and NPF–80, which authorizes operation of the South Texas Project, Units 1 and 2 (STP). The operating licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facilities consist of two pressurized water reactors at the licensee's site in Matagorda County, Texas.

II

Section III.D.3 of Appendix J to 10 CFR Part 50 states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are tests intended to measure containment isolation valve leakage rates.

III

By letter dated May 25, 1995, Houston Lighting & Power (HL&P) requested relief from the requirement to perform Type C tests during each reactor shutdown for refueling. HL&P proposes to perform the required Type C tests while the plant is at power.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. The licensee states that the underlying purpose of the rule is to assure that adequate testing is done to assure containment integrity. The licensee's view is that from the standpoint of testing adequacy, *when* the testing is performed is not relevant because the conditions of testing are the same regardless of when it is performed. Taking credit for testing performed during power operation provides the same degree of assurance of containment integrity as taking credit for testing performed during shutdown. Therefore, consistent with 10 CFR 50.12, paragraph (a)(2)(ii), the licensee proposes that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV

Section III.D.3 of Appendix J to 10 CFR Part 50 states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The licensee proposes an exemption to this section to perform the required Type C tests while the plant is at power.

The Commission has determined that pursuant to 10 CFR 50.12(a)(1) that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The staff agrees with the licensee's views provided above. In addition, the NRC staff position is that the focus of Section III.D.3 of Appendix J is on the maximum time period between Type C tests, not the plant's condition when the tests are performed. This position is illustrated in Section III.D.2 of Appendix J regarding Type B tests (for detection of local leakage of containment penetrations), where it states that Type B tests shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. From a safety standpoint, Type B and Type C tests are the same kinds of tests, performed on somewhat different types of containment isolation barriers; therefore, Type B and Type C tests can be treated similarly. Also, there is no reason to restrict Type C tests to refueling outages as long as the 2-year maximum interval is not exceeded. Based on the above, the NRC staff finds the basis for the licensee's proposed exemption from the requirement to perform the Type C tests during each reactor shutdown for refueling to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will not have a significant impact on the quality of the human environment (60 FR 45171). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of August 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22463 Filed 9–8–95; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1995, shall be at the rate of 33 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1995, 36.3 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 63.7 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: August 29, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–22388 Filed 9–8–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36181; File No. SR–Amex–95–24]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Execution of Odd-Lot Market Orders

September 1, 1995.

On June 16, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 205 [3] to provide for the execution of odd-lot market orders [4] at a price based upon the Intermarket Trading System ("ITS") best bid or offer, subject to certain conditions as described more fully below.

The proposed rule change was published for comment in the **Federal Register** on July 19, 1995.[5] No comments were received on the proposal.

The Exchange proposes to amend Amex Rule 205 in order to establish new odd-lot pricing procedures. The Commission initially approved the Exchange's current odd-lot pricing procedures as a pilot program in January 1989 [6] and extended it eleven times since then.[7] Under the pilot procedures, odd-lot market orders with no qualifying notations are executed at the Amex quotation at the time the order is

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amex Rule 205 pertains to the manner of executing odd-lot orders.

[4] An odd-lot market order is an order of less than a unit of trading to buy, sell, or sell short, that carries no further qualifying notations. The normal trading unit, or round-lot, is 100 shares.

[5] Securities Exchange Act Release No. 35963 (July 12, 1995), 60 FR 37112.

[6] Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248 (approving File No. SR–Amex–88–23).

[7] *See* Securities Exchange Act Release Nos. 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR–Amex–95–03); 34949 (Nov. 8, 1994), 59 FR 58863 (approving File No. SR–Amex–94–47); 34496 (Aug. 8, 1994), 59 FR 41807 (approving File No. SR–Amex–94–28); 33584 (Feb. 7, 1994), 59 FR 6983 (approving File No. SR–Amex–93–45); 32726 (Aug. 9, 1993), 58 FR 43394 (approving File No. SR–Amex–93–24); 31828 (Feb. 5, 1993), 58 FR 8434 (approving File No. SR–Amex–93–06); 30305 (Jan. 20, 1992), 57 FR 4653 (approving File No. SR–Amex–92–04); 29922 (Nov. 8, 1991), 56 FR 58409 (approving File No. SR–Amex–91–30); 29186 (May 19, 1991), 56 FR 22488 (approving File No. SR–Amex–91–09); 28758 (Jan. 10, 1991), 56 FR 1656 (approving File No. SR–Amex–90–39); 27590 (Jan. 5, 1990), 55 FR 1123 (approving File No. SR–Amex–89–31).

represented in the market either by being received at the trading post or through the Exchange's Post Execution Reporting ("PER") system.[8] Also, for the purposes of the pilot program, limit orders that are immediately executable based on the Amex quote at the time the order is received at the trading post or through PER are executed in the same manner as market orders. Neither order type is charged an odd-lot differential.[9] Prior to the 1989 pilot program, odd-lot market orders were routed to a specialist and held in accumulation in the PER system or by the specialist until a round-lot execution in that security took place on the Exchange. Subsequent to the round-lot execution, the odd-lot order received the same price as the last Exchange round-lot transaction, plus or minus an odd-lot dealer differential.

In its previous orders, the Commission encouraged the Exchange to evaluate the feasibility of implementing an odd-lot pricing system based on the ITS best bid or offer.[10] The Commission was not satisfied that all customers were receiving the best execution, in terms of price and time, under the pilot procedures. In response, the Exchange, in its most recent request for an extension of the pilot program, stated that it has decided to proceed with systems modifications to provide for the execution of odd-lot market orders at the ITS best bid or offer, subject to certain conditions as hereinafter described, and that such system modifications should be completed by February 8, 1996.[11]

The Exchange now proposes to amend Amex Rule 205, which it intends to implement after the required systems modifications are completed. The proposed amendment provides generally for the execution of odd-lot market orders at the highest bid and lowest offer disseminated by the Amex or by another ITS participant market. In order to protect against the inclusion of incorrect or stale quotations when determining the highest bid and lowest offer, a quotation in a stock from another ITS market center will be considered only if: (1) The stock is included in ITS in that market center, (2) the size of the quotation is greater than 100 shares, (3) the bid or offer is no more than one-quarter dollar away from the bid or offer, respectively, disseminated by the Exchange, (4) the quotation conforms to the Exchange's requirements concerning minimum fractional changes,[12] (5) the quotation does not result in a "locked market,"[13] (6) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (7) the bid or offer is "firm" pursuant to the Commission's and the market's rules.[14] If an ITS quotation from another market is not used because it fails to meet one of the above criteria, the best bid and offer disseminated by the Exchange will be used.

Where quotation information is not available (*e.q.*, when quotation collection or dissemination facilities are inoperable) odd-lot market orders would be executed at the prevailing Amex bid or offer or at a price deemed appropriate under prevailing market conditions. All odd-lot market orders entered prior to the opening of trading will continue to automatically receive the opening price, unless the Rule provides otherwise.[15] The pricing procedures will apply to market orders to buy on the offer and orders to sell on the bid marked "long." The proposal will continue to prohibit odd-lot differentials for these transactions. Finally, these procedures also will apply to odd-lot executable limit orders.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6 (b).[16] Specifically, the Commission believes the proposal is consistent with Section 6(b) (5) of the Act[17] because the Exchange's proposed pricing procedures for standard odd-lot market orders are designed to facilitate the execution and reporting of odd-lot transactions, assist in the prompt and accurate clearance and settlement of such transactions, perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission anticipates this proposal will ensure that customers receive the best execution, both in terms of price and time, for standard odd-lot market orders because such orders will be priced off a current market quote instead of a subsequent transaction. This should result in investors receiving more timely executions at the best prices then prevailing under current market conditions.

The Commission also believes it is reasonable for the Exchange to set certain requirements to trigger the use of the ITS best bid or offer in the odd-lot pricing system. The limited prerequisites for the use of the ITS quote are appropriate to protect the automatic execution feature of the odd-lot pricing system against the inclusion of aberrant quotations. Although the ITS quote remains the Commission's preferred method of pricing standard odd-lot orders, the Commission recognizes that the use of the ITS quote may not always be practicable for the Exchange. Therefore, the Commission believes, in the instances enumerated by the Exchange, it is appropriate to use the Amex best bid or offer. Moreover, even those few orders receiving only the Amex quote will be executed more cheaply than under the pre-1989 system because the Exchange's proposal continues to ensure that a differential is not charged for odd-lot market orders.

When the ITS best bid or offer is unavailable, the Commission believes it is acceptable for the Amex to price standard odd-lot market orders at the price of the last Exchange round-lot sale or at a price deemed appropriate under prevailing market conditions by the odd-lot dealer. In this way, the Exchange continue to provide procedures that facilitate the execution of odd-lot orders.

Finally, the Commission expects, based on the Exchange's representations, the required systems modifications will be completed by

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[8] Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248. The PER system provides member firms with the means to electronically transmit equity orders, up to volume limits specified by the Exchange, directly to the specialist's post on the trading floor of the Exchange. Securities Exchange Act Release No. 34869 (Oct. 20, 1994), 59 FR 54016.

[9] A differential is a charge paid by the customer to the specialist odd-lot dealer for executing the order.

[10] Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248 (approving File No. SR–Amex–88–23).

[11] Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR–Amex–95–03). The Commission notes that the current odd-lot pilot program is scheduled to expire on February 8, 1996.

[12] Amex Rule 127 governs the Exchange's policy concerning minimum fractional changes for securities.

[13] According to Amex Rule 236(a)(4), a "locked market" occurs whenever the Exchange disseminates a bid for an ITS security at a price that equals or exceeds the price of the offer for the security then being displayed from another ITS participating market center or whenever the Exchange disseminates an offer for an ITS security at a price that is less than the price of the bid for the security then being displayed from another ITS participating market center.

[14] The Exchange considers a bid or offer as "firm" when the members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1–1. *See* 17 CFR 240.11Ac1–1(b)(3); 17 CFR 240.11Ac1–1(c)(2).

[15] *See* Amex Rule 205 (c) (1) ("Orders Filled After the Close") and Amex Rule 205 (c) (2) ("Non-Regular Way Trades").

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f (b) (5).

February 8, 1996. The Commission also expects the Exchange to notify the Commission staff of such completion and the implementation of this proposal.

It Therefore Is Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–95–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-22392 Filed 9-8-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–36180; File No. SR–CHX–95–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Technical Corrections to Its Enhanced SuperMAX Rules

September 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b) (1), notice is hereby given that on August 25, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act, proposes to amend Rule 37(e) of Article XX, relating to its Enhanced SuperMAX Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In Securities Exchange Act Release No. 36027 (July 27, 1995), 60 FR 39465 (Aug. 2, 1995) (File No. SR–CHX–95–15), the CHX added rules for the Enhanced SuperMAX Program into CHX Article XX, Rule 37(e). The purpose of this proposed change is to make technical changes to Rule 37(e) to correct inadvertent errors contained in the prior filing. Specifically, Rule 37(e) (1) and (2) are being changed to make it clear that they refer to stopped orders [1] and not stop orders,[2] among other things.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments too and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–20 and should be submitted by October 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22391 Filed 9–8–95;8:45am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 1, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–486

Date filed: August 28, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 25, 1995

Description: Application of Aviateca, S.A., pursuant to 49 U.S.C. 41302 and Subpart Q of the Regulations, requests renewal of its foreign air carrier permit, to engage in foreign air transportation of persons, property, and mail as conferred in Order 90–8–58: 1. Between a point(s) in Guatemala and the terminal point Miami, Florida; 1. Between a points(s) in Guatemala; the intermediate points Cancun and Merida, Mexico; and the coterminal points New Orleans, Louisiana; Houston, Texas; and Dallas/Ft. Worth, Texas; 3. Between a point(s) in Guatemala; the intermediate point Santo Domingo, Dominican Republic; and the terminal point San Juan, Puerto Rico. 4. The authority to engage in charter trips.

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95–22482 Filed 9–8–95; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Savannah International Airport, Savannah, GA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Savannah International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the Savannah Airport Commission. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Savannah International Airport were in compliance with applicable requirements effective August 23, 1993. The proposed noise compatibility program will be approved or disapproved on or before February 25, 1996.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is August 29, 1995. The public comment period ends October 28, 1995.

FOR FURTHER INFORMATION CONTACT: Mrs. Cathy Nelmes, FAA/Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Savannah International Airport which will be approved or disapproved on or before February 25, 1996. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Savannah International Airport, effective on August 29, 1995. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 25, 1996.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747.

Mr. Patrick S. Graham, Savannah International Airport, 400 Airways Avenue, Savannah, GA 31408.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Atlanta, Georgia, on August 29, 1995.

Dell T. Jernigan,

Manager, Atlanta Airports District Office Southern Region.

[FR Doc. 95–22483 Filed 9–8–95; 8:45 am]

BILLING CODE 4910-13-M

Research, Engineering and Development Advisory Committee; Security R&D Subcommittee

Pursuant to Section 10(A) (2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Scientific Advisory Panel of the Security R&D Subcommittee of the Research, Engineering and Development Advisory Committee on Friday, October 20, 1995, from 8:30 a.m. to 4:00 p.m. The meeting will take place in the Aviation Security Laboratory, Federal Aviation Administration (FAA) Technical Center, Atlantic City Airport, New Jersey.

The agenda will include an R&D overview and report on recent developments; discussion on development of trace detection standards; aircraft and container hardening developments; and a laboratory tour.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or to access the FAA Technical Center to attend the meeting should contact Dr. Lyle Malotky, the

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[18] 15 U.S.C. 78s (b) (2).

[19] 17 CFR 200.30–3 (a) (12).

[1] For purposes of the Enhanced SuperMAX program, an order is "stopped" if an agency market order would create either a double up tick (buy order) or double down tick (sell order) if the order was executed at the consolidated best bid or offer. Once an order is stopped, a buy (sell) order is guaranteed at least the offer (bid) price prevailing at the time of the stop ("stopped price"), and the Enhanced SuperMAX program will provide the order with an opportunity for price improvement.

[2] Generally, a stop order is an order to buy or sell at the market price once the security has traded at a specified price ("stop price").

Panel's Designated Federal Official, FAA/ACS–20, 800 Independence Avenue SW., Washington, DC 20591 (202) 267–3967.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 5, 1995.

Andres G. Zellweger,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 95–22484 Filed 9–8–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA esearch, Engineering and Development Advisory Committee. The meeting will be held on October 12 and 13, 1995, at the Holiday Inn Fair Oaks, 11787 Lee Jackson Highway, Fairfax, Virginia.

On Thursday, October 12, the meeting will begin at 8 a.m. and end at 5 p.m. On Friday, October 13, the meeting will begin at 8:00 a.m. and end at 1:00 p.m. The meeting agenda includes an update on the National Science and Technology Council report, and update on subcommittee activities, and a briefing on the Oceanic Program and the General Aviation Program.

Attendance is open to the interested public but limited to space available. With the approval of the committee chair, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, or obtain information, should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–7358.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 5, 1995.

Andres G. Zellweger,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 95–22485; Filed 9–8–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 28, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0096.

Form Number: IRS Forms 1042 and 1042–S.

Type of Review: Extension.

Title: Annual withholding Tax Return for U.S. Source Income of Foreign Persons, Foreign Person's U.S. Source Income Subject to Withholding.

Description: Used by withholding agents to report tax withheld at source in payment of certain income paid to nonresident alien individuals, foreign partnerships, or foreign corporations. The Service uses this information to verify that the correct amount of tax has been withheld and paid to the U.S.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 22,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1042	Form 1042–S
Recordkeeping	6 hr., 28 min	5 hr., 1 min.
Learning about the law or the form	1 hr., 56 min	3 hr., 21 min.
Preparing the form	3 hr., 59 min	4 hr., 31 min.
Copying, assembling, and sending the form to the IRS	32 min	16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 21,324,020 hours.

OMB Number: 1545–0619.

Form Number: IRS Form 6765.

Type of Review: Revision.

Title: Credit for Increasing Research Activities.

Description: Internal Revenue Code (IRC) section 38 allows a credit allows a credit against income tax (determined under IRC section 41) for an increased in research activities in a trade or business. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 13,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 13 min.
Learning about the law or the form—1 hr., 0 min.
Preparing and sending the form to the IRS—1 hr., 8 min.

Frequency of Response: On Occasion.

Estimated Total Reporting/Recordkeeping Burden: 108,680 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service room 5571, 1111 Constitution Avenue, N.W. Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR. Doc. 95–22394 Filed 9–8; 8:45 am]

Billing Code 4830–01–M

Public Information Collection Requirements submitted to OMB for Review

August 28, 1995,

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1415 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: New.

Form Number: ATF F 1676 (5110.12).

Type of Review: New collection.

Title: Bond Covering Removal To and Use Of Wine At Vinegar Plant.

Description: ATF F 1676 (5510.2) is a bond form which serves as a contract between the proprietor of a vinegar plant and a surety. The bond coverage stated on the form is in an amount sufficient to cover the federal excise tax on wine in transit to and stored on the vinegar plant until and wine becomes vinegar.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1512–0081.

Form Number: ATF F 5130.22 and ATF F 5130.23.

Type of Review: Revision.

Title: Brewer's Bond (5130.22); and Brewer's Bond Continuation Certificate (5130.23).

Description: The Brewer's Bond, AFT Form 5130.22 is executed by a brewer and surety company to ensure payment of excise tax on beer removed from the brewery. The Continuation Certificate, ATF F 5130.23 is executed by a brewer and surety company to continue in effect the coverage of a Brewer's Bond by the surety company.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 280.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (every four years).

Estimated Total Reporting Burden: 280 hours.

OMB Number: 1512–0378.

Form Number: ATF F 1730 (5530.3) and ATF REC 5530/1.

Type of Review: Revision.

Title: Applications and Notices—Manufacturers of Nonbeverage Products.

Description: Reports (applications and notices) are submitted by manufacturers of nonbeverage products who are using distilled spirits on which drawback will be claimed. Reports ensure that operations are in compliance with law; prevents spirits from diversion to beverage use. Protects the revenue.

Estimated Number of Respondents: 640.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated total Reporting Burden: 640 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22395 Filed 9–8–95; 8:45 am]

BILLING CODE 4810 31–M

Public Information Collection Requirements Submitted to OMB for Review

August 30, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Departmental Offices/Office of Procurement

OMB Number: 1505–0080.

Form Number: None.

Type of Review: Extension.

Title: Post-Contract Award Information.

Description: Information requested of contractors is specific to each contract and is required for Treasury to evaluate properly the progress made and/or management controls used by contractors providing supplies or services to the Government and to determine contractors' compliance with the contracts, in order to protect the Government's interest.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 5,565.

Estimated Burden Hours Per Response: 15 hours, 32 minutes.

Frequency of Response: On occasion (as specified in contract).

Estimated Total Reporting Burden: 86,421 hours.

OMB Number: 1505–0081.

Form Number: None.

Type of Review: Extension.

Title: Solicitation of Proposal Information for Award of Public Contracts.

Description: Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to evaluate properly the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposals are most advantageous to the Government, price and other factors considered.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 29,183.

Estimated Burden Hours Per Response: 34 hours, 27 minutes.

Frequency of Response: Other (one-time response).

Estimated Total Reporting Burden: 1,005,241 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22396 Filed 9–8–95; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

August 30, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: The Department of the Treasury has requested Office of Management and Budget (OMB) review and approval of the information collection described below by August 31, 1995.

Departmental Offices/Office of Procurement

OMB Number: 1505–0107.

Form Number: None.

Type of Review: Reinstatement.

Title: Regulation on Agency Protests.

Description: Information requested of contractors so that the Government will be able to evaluate protested effectively and provide prompt resolution of issues in dispute when contractors file agency-level protests.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 17.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 34 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22397 Filed 9–8–95; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

August 30, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: IRS Form 1040NR–EZ.

Type of Review: New collection.

Title: U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.

Description: This form is used by certain nonresident aliens with no dependents to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc. are correctly figured.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 135,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 19 min.

Learning about the law or the form—48 min.

Preparing the form—1 hr., 30 min.

Copying, assembling, and sending the form to the IRS—35 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 567,745 hours.

OMB Number: New.

Form Number: IRS Forms 9779, 9780, 9781, 9782, 9783, 9784, 9785, 9786, 9787, 9788, 9789 and 9790.

Type of Review: New collection.

Title: Electronic Federal Tax Payment System (EFTPS).

1. EFTPS Business Enrollment Form (9779);
2. EFTPS Business Enrollment Form (Spanish Version) (9780);
3. EFTPS Mandated Taxpayers and Subsidiaries Enrollment Form (9781);
4. EFTPS Mandated Taxpayers and Subsidiaries Enrollment Form (Spanish Version) (9782);
5. Individual Taxpayer Enrollment Form (9783);
6. Individual Taxpayer Enrollment Form (Spanish Version) (9784);
7. EFTPS Mandated Taxpayers and Subsidiaries Enrollment—Confirmation/Update Form (9785);
8. EFTPS Mandated Taxpayers and Subsidiaries Enrollment—Confirmation/Update Form (Spanish Version) (9786);
9. EFTPS Business Enrollment Confirmation/Update Form (9787);
10. EFTPS Business Enrollment Confirmation/Update Form (Spanish Version) (9788);
11. Individual Enrollment Confirmation/Update Form (9789); and
12. Individual Enrollment Confirmation/Update Form (Spanish Version) (9790).

Description: Enrollment is vital to the implementation of the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system that the Service will use to accept electronically transmitted federal tax payments. This system is a necessary outgrowth of advanced information and communication technologies. It is also an outgrowth of the current TAXLINK system in Atlanta.

Respondents: Business or other for-profit, Individuals or households, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 11,640,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form No.	Response time
9779	20 min.
9780	20 min.
9781	20 min.
9782	20 min.
9783	20 min.
9784	20 min.
9785	20 min.
9786	20 min.
9787	20 min.
9788	20 min.
9789	20 min.
9790	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,879,630 hours.

OMB Number: 1545–1277.

Form Number: IRS Form 1040–TEL.

Type of Review: Revision.

Title: TeleFile.

Description: Form 1040EZ filers who are single with no dependents, and whose IRS mail label has not changed, will be given the option to file their return by telephone, with no return to send in to the IRS. The IRS will use the information obtained to compute the taxpayer's refund or balance due.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 3,450,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 min.

Learning about the law or the worksheet—4 min.

Preparing the worksheet—16 min.

TeleFile phone call—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,725,500 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22398 Filed 9–8–95; 8:45 am]

BILLING CODE 4830-01-M

Publication Information Collection Requirements Submitted to OMB for Review

September 1, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: IRS Form 1040–T.

Type of Review: New collection.

Title: U.S. Individual Income Tax Return.

Description: This form is used by individuals to report their income subject to income tax ad to compute their correct tax liability. The data are used to verify that the income reported on the form is correct and are also used for statistics.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 500,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1040–T	2 hr., 31 min.	2 hr., 54 min.	5 hr., 30 min.	1 hr., 26 min.
Section A	0 min.	10 min.	20 min.	10 min.
Section B	1 hr., 25 min.	11 min.	58 min.	24 min.
Section C	0 min.	1 min.	8 min.	10 min.
Section D	20 min.	16 min.	32 min.	20 min.
Section EIC	0 min.	5 min.	4 min.	10 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 6,121,610 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22399 Filed 9–8–95; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 175

Monday, September 11, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

DATE AND TIME: September 13, 1995, 10 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro; 636th Meeting—September 13, 1995, Regular Meeting (10:00 a.m.)

- CAH–1.
  - Docket #P–2311,016, James River—New Hampshire Electric, Inc.
- CAH–2.
  - Docket #P–2360,026, Minnesota Power and Light Company
- CAH–3.
  - Docket #P–3038,072, Oklahoma Municipal Power Authority
- CAH–4.
  - Docket #P–8144,004, Amador County
- CAH–5.
  - Docket #P–10684,010, Lansing Board of Water and Light
- CAH–6.
  - Docket #P–11521,001, Skokomish Indian Tribe
- CAH–7.
  - Omitted
- CAH–8.
  - Docket #P–10551,036, City of Oswego, New York
- CAH–9.
  - Docket #P–10900,000, Thomas Hodgson & Sons, Inc.
  - Other #s P–10900,007, Thomas Hodgson & Sons, Inc.
- CAH–10.
  - Docket #P–11076,000, City of Tacoma, Washington
  - Other #s P–2016,018, City of Tacoma, Washington

Consent Agenda—Electric

- CAE–1.
  - Docket #ER95–207,000, Peco Energy Company
- CAE–2.
  - Docket #ER93–730,000, Wholesale Power Services, Inc.
- CAE–3.
  - Omitted
- CAE–4.
  - Docket #ER94–465,000, Beebee Island Corporation
- CAE–5.
  - Docket #ER94–1045,000, Kansas City Power & Light Company
  - Other #s ER94–1045,001, Kansas City Power & Light Company
  - ER94–1045,002, Kansas City Power & Light Company
- CAE–6.
  - Docket #ER95–39,000, Potomac Edison Company
  - Other #s ER95–39,001, Potomac Edison Company
- CAE–7.
  - Docket #ER95–288,000, Central Maine Power Company
- CAE–8.
  - Docket #ER95–64,000, South Carolina Electric & Gas Company
  - Other#s EL95–15,000, South Carolina Electric & Gas Company
  - ER95–64,001, South Carolina Electric & Gas Company
- CAE–9.
  - Docket #ER95–267,004, New England Power Company
  - Other#s EL95–25,004, New England Power Company
  - ER95–25,005, New England Power Company
  - ER95–267,005, New England Power Company
- CAE–10.
  - Docket #ER95–457,001, Florida Power Corporation
  - Other#s ER95–457,000, Florida Power Corporation
- CAE–11.
  - Omitted
- CAE–12.
  - Omitted
- CAE–13.
  - Docket #EL91–13,003, Northern States Power Company (Minnesota) V. Southern Minnesota Municipal Power Agency (SMMPA)
- CAE–14.
  - Docket #EL95–41,001, Metropolitan Edison Company and Pennsylvania Electric Company
- CAE–15.
  - Docket #ER94–478,001, Medina Power Company
  - Other#s EL94–87,001, Medina Power Company
- CAE–16.
  - Docket #ER84–560,037, Union Electric Company
- CAE–17.
  - Docket #ER95–980,001, Pacific & Electric Company
- CAE–18.
  - Docket #ER95–1529,001, Mid-Continent Area Power Pool
  - Other#s EL95–77,000, Mid-Continent Area Power Pool
  - ER95–1529,002, Mid-Continent Area Power Pool
- CAE–19.
  - Docket #ER94–1612,003, Destic Power Services, Inc.
- CAE–20.
  - Docket #EG95–66,000, PMDC Energia Ltd.
- CAE–21.
  - Docket #EG95–67,000, OPDB, Ltd.
- CAE–22.
  - Docket #EG95–68,000, Ogden Power Development of Bolivia, Inc.
- CAE–23.
  - Docket #EG95–69,000, The Bolivian Generating Group, L.L.C.
- CAE–24.
  - Docket #EG95–70,000, C&O Bolivia
- CAE–25.
  - Docket #EG95–63,000, El Power, Inc.
- CAE–26.
  - Docket #EG95–64,000, El International
- CAE–27.
  - Docket # EG95–65,000, El Barranquilla, Inc.
- CAE–28.
  - Docket # EG95–61,000, Empresa Guaracachi S.A.
- CAE–29.
  - Docket #EL93–42,000, Towns and Cities of Clayton and Lewes, Delaware v. Delmarva Power & Light Company
- CAE–30.
  - Docket #EL95–35,000, Kootenai Electric Cooperative, Inc. v. et al. v. Public Utility District of No. 2 of Grant County, Washington
- CAE–31.
  - Docket #EL94–72,000, North Little Rock Cogeneration, L.P., et al., Entergy Services, Inc. and Arkansas Power and Light Co.
  - Other#s ER94–1128,001, Entergy Services, Inc.
- CAE–32.
  - Docket # EL91–43,000, Southern Minnesota Municipal Power Agency v. Northern States Power Company (Minnesota)
- CAE–33.
  - Omitted

Consent Agenda—Gas and Oil

- CAG–1.
  - Omitted
- CAG–2.
  - Omitted
- CAG–3.

  - Docket # RP95–242,004, Natural Gas Pipeline Company of America
- CAG–4.
  - Docket # PR95–419,000, Pacific Gas Transmission Company
- CAG–5.
  - Docket # PR93–4,000, Transok, Inc.
  - Other#s PR93–4,001, Transok, Inc.
  - Other#s PR93–4, 002, Transok, Inc.
- CAG–6.
  - Docket # PR94–2,000, Enron Storage Company
- CAG–7.
  - Omitted
- CAG–8.
  - Docket # RP94–119 et al., 002, Texas Gas Transmission Corporation
- CAG–9.
  - Docket # RP94–161,004, U–T Offshore System
- CAG–10.
  - Docket # RP94–162,003, High Island Offshore System
- CAG–11.
  - Docket # RP95–88,002, Tennessee Gas Pipeline Company
  - Other#s RP95–63,001, Tennessee Gas Pipeline Company
  - RP95–112,009, Tennessee Gas Pipeline Company
  - RP95–396,000, Tennessee Gas Pipeline Company
- CAG–12.
  - Docket # RP95–381,000, Tennessee Gas Pipeline Company
- CAG–13.
  - Docket # TM95–5–34,000, Florida Gas Transmission Company
- CAG–14.
  - Docket # RP94–221,002, ANR Pipeline Company
- CAG–15.
  - Docket #RP94–352,002, Western Gas Interstate Company
- CAG–16.
  - Ommitted.
- CAG–17.
  - Docket #RP95–217,001, Trunkline Gas Company
  - Other #S RP95–217,000, Trunkline Gas Company
  - RP95–220,000, Trunkline Gas Company
- CAG–18.
  - Docket #RP95–339,000, Natural Gas Pipeline Company of America
  - Other #S RP95–536,000, Columbia Gulf Transmission Company
  - CP95–555,000, Natural Gas Pipeline Company of America
- CAG–19.
  - Docket #RP95–362,000, Koch Gateway Pipeline Company
- CAG–20.
  - Docket #RP95–399,000, Koch Gateway Pipeline Company
- CAG–21.
  - Docket #RP93–206,008, Northern Natural Gas Company
- CAG–22.
  - Docket #RP95–185,005, Northern Natural Gas Company
- CAG–23.
  - Docket #RP91–203,057, Tennessee Gas Pipeline Company
- CAG–24.
  - Docket #RP95–246,001, Southern Natural Gas Company
- CAG–25.
  - Docket #RP95–190,001, Williams Natural Gas Company
  - Other #S RP95–190,000, Williams Natural Gas Company
  - RP95–190,002, Williams Natural Gas Company
- CAG–26.
  - Docket #RP95–143,002, Northwest Pipeline Corporation
- CAG–27.
  - Docket # RP95–98,001, Columbia Gas Transmission Corporation
  - Other #S CP95–186,001, Tennessee Gas Pipeline Company
  - CP95–231,001, Ozark Gas Transmission System
  - CP95–232,001, Ozark Gas Transmission System
  - RP95–144,001, Tennessee Gas Pipeline Company
- CAG–28.
  - Docket # OR91–1,001, Kerr-McGee Refining Corp. and Texaco Refining and Marketing, Inc. v. Williams Pipe Line Company
- CAG–29.
  - Docket #RP95–22,001, ANR Pipeline Company
- CAG–30.
  - Docket # RP95–15,005, Texas Eastern Transmission Corporation
- CAG–31.
  - Docket #RP94–197,004, Tennessee Gas Pipeline Company
  - Other #S RP93–151,018, Tennessee Gas Pipeline Company
- CAG–32.
  - Docket #OR95–8,000, Williams Pipe Line Company
- CAG–33.
  - Docket #GP90–11,003, Nicor Exploration Company
- CAG–34.
  - Docket #GP95–7,000, Williams Natural Gas Company v. Oxy USA, Inc.
- CAG–35.
  - Docket #OR95–33,000, Yellowstone Pipe Line Company
- CAG–36.
  - Docket #CP94–775,002, Tennessee Gas Pipelien Company
- CAG–37.
  - Docket #CP88–105,003, Yukon Pacific Company L.P.
- CAG–38.
  - Omitted
- CAG–39.
  - Docket #CP94–806,001, Tennessee Gas Pipeline Company
- CAG–40.
  - Docket #PR95–11,000, Egan Hub Partners, L.P.
- CAG–41.
  - Docket #CP95–118,000, East Tennessee Natural Gas Company
- CAG–42.
  - Docket #CP95–228,000, Mississippi River Transmission Corporation
- CAG–43.
  - Docket #CP93–566,000, ANR Pipeline Company
  - Other #SCP93–566,001, ANR Pipeline Company
  - CP93–566,002, ANR Pipeline Company
- CAG–44.
  - Docket #CP95–588,000, Pacific Interstate Offshore Company
- CAG–45.
  - Omitted
- CAG–46.
  - Docket #CP95–552,000, Seagull Natural Gas Company
- CAG–47.
  - Docket #CP94–771,000, Ashland Exploration, Inc.
  - Other #SCP94–757,000, CNG Transmission Corporation
- CAG–48.
  - Docket #CP88–391,016, Transcontinental Gas Pipeline Corporation
- CAG–49.
  - Docket #CP94–183,000, EL Paso Natural Gas Company
  - Other #SCP94–183,001, El Paso Natural Gas Company
- CAG–50.
  - Docket #CP95–475,000, El Paso Natural Gas Company
- CAG–51.
  - Docket #RP93–89,002, MIGC, Inc.

Hydro Agenda

- H–1.
  - Reserved

Electric Agenda

- E–1.
  - Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

- PR–1.
  - Reserved

II. Pipeline Certificate Matters

- PC–1.
  - Reserved

Dated: September 6, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22582 Filed 9–7–95; 1:52 pm]

BILLING CODE 6717–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 12, 1995, from 2:15 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

Approval of Minutes

Closed Session *

A. New Business

Enforcement Actions

B. Reports

OSMO Quarterly Report

Dated September 5, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

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* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

[FR Doc. 95–22555 Filed 9–7–95; 11:08 am]

BILLING CODE 6705–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9 a.m. (EDT), September 18, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the August 21, 1995 Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of FY 1995 expenditures, approval of FY 1996 proposed budget, and FY 1997 estimates.
4. Proposed 1996 Board meeting schedule.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: September 6, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–22558 Filed 9–7–95; 11:09 am]

BILLING CODE 6760–01–M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, September 21, 1995—9:00 a.m.–5:30 p.m.

LOCATION: 1550 M Street, NW., Lobby Conference Room, Washington, DC 20005.

STATUS: (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: September Board Meeting, Approval of Minutes of the Seventy-first Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Fiscal Years 1996 and 1997 Budget Review; Unsolicited Grants and Fellowships.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: September 7, 1995.

Charles E. Nelson,

Vice President, United States Institute of Peace.

[FR Doc. 95–22607 Filed 9–7–95; 1:53 pm]

BILLING CODE 6820–AR–M

Corrections

Federal Register
Vol. 60, No. 175
Monday, September 11, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 91–F–0339]

Indirect Food Additives: Paper and Paperboard Components

Correction

In final rule document 95–16092 beginning on page 34134 in the issue of Friday, June 30, 1995, make the following correction:

On page 34134, in the second column, in the **DATES** section, August 29, 1995 should read July 31, 1995.

BILLING CODE 1505–01–D

federal register

Monday
September 11, 1995

Part II

Office of Government Ethics

5 CFR Part 2640

Interpretation, Exemptions and Waiver Guidance Concerning Acts Affecting a Personal Financial Interest; Proposed Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics is issuing a proposed regulation describing circumstances under which the prohibitions contained in 18 U.S.C. 208(a) would be waived. Section 208(a) prohibits employees of the executive branch from participating in an official capacity in particular matters in which they, or certain persons or entities with whom they have specified relationships, have a financial interest. Section 208(b) of title 18 permits waivers of these prohibitions in certain cases. Section 208(b)(1) permits agencies to exempt employees on a case-by-case basis from the disqualification provisions of section 208(a). Similarly, section 208(b)(3) permits agencies to waive, in certain cases, the disqualification requirement that would apply to special Government employees serving on a Federal advisory committee. Finally, under section 208(b)(2), the Office of Government Ethics has the authority to promulgate executive branchwide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a). This proposed regulation describes those financial interests. It also proposes to provide guidance to agencies on the factors to consider when issuing individual waivers under section 208(b)(1) or (b)(3).

DATES: Comments by agencies and the public are invited and are due by November 13, 1995.

ADDRESSES: Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Attention: Ms. Glynn.

FOR FURTHER INFORMATION CONTACT: Marilyn Glynn, Office of Government Ethics, telephone 202–523–5757, FAX 202–523–6325.

SUPPLEMENTARY INFORMATION: Section 208 of title 18 of the United States Code was enacted in 1962 as part of a general revision of the criminal statutes dealing with bribery, graft, and conflicts of interest. It was the successor to 18 U.S.C. 434, a statute enacted in the Civil War era, which prohibited a Government employee from transacting business for the Government with any business entity in which the employee held a financial interest. Since it became effective in 1963, 18 U.S.C. 208(a) has prohibited an employee of the executive branch from participating in an official capacity in any particular matter in which, to his knowledge, he or other specified persons or organizations, has a financial interest. As originally enacted, section 208(b) provided for certain exceptions to the disqualification mandated by section 208(a). Under 18 U.S.C. 208(b)(1), in individual cases a determination could be made by the official responsible for the employee's appointment that the employee could act in matters in which he or other specified individuals or entities had a financial interest because the interest was not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Under 18 U.S.C. 208(b)(2), each agency had the authority to determine, by regulation, that certain financial interests were too remote or too inconsequential to affect the integrity of the services of that agency's employees. These regulatory "waivers" permitted all employees of the particular agency to act in Government matters in which their only financial interest was one of the type specified in the regulation.

The Ethics Reform Act of 1989 (Pub. L. No. 101–94), as amended, ("the Act"), amended 18 U.S.C. 208 to eliminate the authority of individual agencies to adopt agencywide exemptions from the applicability of section 208(a). Instead, section 208(d)(2) directs the Office of Government Ethics, after consultation with the Attorney General, to adopt uniform regulations exempting financial interests from the applicability of section 208(a) for all or a portion of the executive branch if OGE determines that such interests are either too remote or too inconsequential to affect an employee's services to the Government. The Office of Government Ethics has consulted with the Office of Personnel Management and the Department of Justice, and pursuant to section 201(c) of Executive Order 12674, as modified by E.O. 12731, has obtained the concurrence of the Justice Department.

The Office of Government Ethics is separately publishing in the **Federal Register** an interim regulation, effective upon publication, establishing a single exemption under 18 U.S.C. 208(b)(2) for disqualifying financial interests that arise from Federal Government salary and benefits or from Social Security or veterans' benefits. That exemption is being issued for codification on interim basis at § 2640.101 of 5 CFR. However, when this proposed overall section 208 regulation is ultimately issued as a final regulation, the exemption for certain Federal Government employment-related financial interests will be moved and placed with the miscellaneous exemptions described in § 2640.203. Therefore, the exemption being established in the separate interim regulation is also being republished as part of this proposed regulation for eventual codification at 5 CFR 2640.203(d). Section 2640.101 of this proposed regulation sets forth a general discussion of the purpose of the overall regulation.

Although individual agencies no longer have the authority to issue agency-specific general exemptions, previously issued agency regulatory "waivers" continue to apply until this proposed regulation is adopted as a final rule and becomes effective. When effective, this rule will supersede all agency regulatory waivers issued under 18 U.S.C. 208(b)(2) as in effect prior to November 30, 1989. *See* 5 CFR 2635.402(d)(2). As proposed, this regulation would protect employees who acted in reliance on such "waivers" issued by agencies prior to the effective date of the final regulation. Employees who acted in reliance on such an agency regulatory waiver in effect prior to the effective date of the final version of this regulation would be deemed to have acted in accordance with applicable authority.

This proposed regulation describes those holdings or relationships that give rise to financial interests that OGE has determined are either too remote or too inconsequential in value to be likely to affect an employee's consideration of any particular matter. Employees who have these disqualifying financial interests would be permitted, to the extent described in the regulation, to participate in matters affecting such interests notwithstanding the general prohibition in section 208(a).

Section 208, as amended, still authorizes agencies to issue individual waivers to employees on a case-by-case basis under section 208(b)(1). The determinations required by section 208 for issuance of an individual waiver are unchanged from previous statutory requirements. Section 208(b)(1) provides that an individual waiver may be issued if the official responsible for the officer's or employee's appointment determines that the interest in the matter "is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee." This proposed regulation provides guidance to agencies in making such determinations by listing factors agencies should consider before granting a waiver.

In addition, section 208, as amended, gives agencies specific authority concerning disqualifying financial interests held by special Government employees serving on, or being considered for appointment to, advisory committees within the meaning of the Federal Advisory Committee Act, 5 U.S.C. app. After reviewing the financial disclosure statement required by the Ethics in Government Act of 1978 to be filed by such an individual, the official responsible for the employee's appointment can "waive" the individual's disqualifying financial interest by certifying that the need for the individual's services on the advisory committee outweighs the potential for a conflict of interest created by the financial interest involved. This proposed regulation would describe the factors an agency is to consider in determining whether a waiver should be granted under section 208(b)(3).

Since section 208 became effective in 1963, agency ethics officials have often used the term "waiver" to describe exceptions to the prohibition authorized under either section 208(b)(1) or (b)(2). This proposed rule uses the term "exemption" to describe regulatory exceptions authorized by OGE under section 208(b)(2), and "waiver" to describe individual exceptions granted under section 208 (b)(1) or (b)(3). The Office of Government Ethics believes the term "exemption" more accurately describes the fact that section 208(b)(2) permits OGE to "exempt" certain financial interests from the prohibition in section 208(a).

I. Scope of 18 U.S.C. 208(a)

Section 208(a) prohibits an officer or employee of the executive branch, or an officer or employee of an independent agency of the United States, or a Federal Reserve bank director, officer or employee, or an officer or employee of the District of Columbia, including a special Government employee, from participating personally and substantially in an official capacity

> through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, in which to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest * * *.

18 U.S.C. 208(a).

An employee has a financial interest in a particular matter "when there is a real possibility that he might gain or lose as a result of developments in or resolution of the matter." 83 OGE 1, at 2 (Jan. 7, 1983), published in the Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics 1979–1988 (OGE Advisory Publication), pp. 859, 861. The statute does not require that the amount of gain or loss be of any particular size, or likelihood. "All that is required is that there be a real, as opposed to a speculative, possibility of benefit or detriment." *Id.* Section 208(a) has long been interpreted as applying where the matter will have a "direct and predictable effect" on the employee's financial interest or on the financial interests of other persons or entities specified in the statute. *See, e.g.*, 2 Opinions of the Office of the Legal Counsel 151, 155 (June 29, 1978). In this regulation, the financial interests of the employee and of the other individuals and entities specified in section 208 would be referred to as the employee's "disqualifying financial interests."

The meaning of the term "financial interest" is sometimes misunderstood. As used in section 208, the term "financial interest" refers to the possibility of financial gain or loss as a result of action on a matter. For example, if an employee is owed money by a person who is a party to an agency matter, the loan itself is not a "financial interest" within the meaning of section 208. Instead, the employee's financial interest in the matter arises from the possibility that the matter may have an effect on the debtor's ability or willingness to honor his obligation to pay the debt owed to the employee. The loan would be a disqualifying financial interest under section 208 only if the agency matter would have a direct and predictable effect on the debtor's ability or willingness to repay the loan.

Similarly, an employee may have a savings account in a financial institution which conducts business at the employee's agency. While the employee ordinarily would be viewed as having a "financial interest" in the deposits in his savings account, the employee's involvement in agency matters affecting the financial institution would not necessarily affect his financial interest in the savings account. In fact, in most such cases, the employee would not have a disqualifying financial interest within the meaning of section 208 because the agency matter in which the employee would participate would not result in any gain or loss to his savings account. He would be disqualified from acting in matters affecting the financial institution only if the matter would have a direct and predictable effect on his financial interest in his savings account. Even in the unusual case where the matter would have a direct and predictable effect on the employee's savings account, a portion or all of many such accounts may be insured by the Federal Deposit Insurance Corporation or other similar governmental entity. In such cases, the employee's financial interest may not be the amount of the account itself, but the amount of interest paid on the account, or the amount above the level covered by the insurance. Where the matters in which the employee would act would have a direct and predictable effect on the bank's ability to maintain and pay interest on an account or to preserve the amount in the account above the insurance limit, the employee's participation in these matters should be examined by the appointing official on an individual basis.

In summary, because the meaning of the term "financial interest" under section 208 is not identical to its commonplace or conventional meaning, this proposed regulation does not contain exemptions for certain interests that may be commonly thought of as "financial interests," but that are not affected by most Government matters so as to require disqualification under section 208. This would include, for example, deposits in bank accounts and interests arising from most insurance policies.

There may be situations in which there is some potential for an employee's financial holding to be affected by the outcome of a matter, but the employee would not have a disqualifying interest under section 208(a). For example, if an employee is a contingent beneficiary in a will executed by a still living relative, the employee's interest in the assets to be distributed under the will is merely speculative since he may never inherit them. For purposes of section 208(a), the employee would not be disqualified from participating in matters affecting those assets.

Another limitation on the scope of section 208(a) concerns the range of interests it covers. To be within the scope of the statute, the affected interest must be that of the employee, his spouse, his minor children, a general partner of the employee, an organization in which the employee serves as officer, director, trustee, general partner or employee, or an organization with which the employee is negotiating or has any arrangement concerning prospective employment. Thus, section 208(a) prohibits an employee from acting in a particular matter that will have a direct and predictable effect on the financial interests of a company by which he is employed in his off-duty hours. On the other hand, section 208(a) does not necessarily bar an employee from acting in a matter affecting his *spouse's* employer. Because the financial interests of a spouse's employer are not specified as disqualifying financial interests under the statute, an employee is not disqualified from acting in matters affecting a spouse's employer unless the matter would have a direct and predictable effect on the *spouse's* financial interest. For example, where the spouse is a salaried employee, does not have an ownership interest in the employer, and the matter will not affect her continued employment or her benefits, the agency matter ordinarily would not have a direct and predictable effect on her financial interest. *See, e.g.*, OGE Informal Advisory Letter 84x6 (May 1, 1984), OGE Advisory Publication, p. 465. Under such circumstances, the employee would not be disqualified under section 208(a) from participating in the particular matter.

This does not mean, however, that an employee who concludes that a matter will significantly affect the financial interest of a person or entity with whom he has a close business or personal relationship should act on the matter because the financial interest is not within the scope of section 208(a). Even though section 208(a) is not applicable by its terms to a specific situation, administrative regulations might prohibit participation in particular circumstances. The Standards of Ethical Conduct for Employees of the Executive Branch contain procedures an employee should follow in cases where his impartiality might be questioned if he were to participate in a Government matter affecting financial interests that do not fall within the scope of section 208(a). *See* 5 CFR 2635.501 *et seq.* For example, under § 2635.502, an employee must consider whether his impartiality would be questioned if he were to participate in a particular matter involving specific parties in which his spouse's employer is a party, or represents a party.

It is important to note that section 208(a) applies only in cases where the employee knows that he, or any other person or entity specified in section 208, has a financial interest that will be affected. For example, an employee who is a general partner in a partnership is prohibited from acting in an official capacity in matters that would affect the financial interests of his general partners. If one of his general partners owns stock in a corporation that would be affected by an agency matter in which the employee would participate, the employee would be barred from participating only if he knows that his general partner owns stock in the corporation. Employees who are general partners should be alert to the fact that they will have actual knowledge of their partners' assets if they have reviewed copies of partners' financial statements or similar documents.

Section 208 prohibits employees from participating in a "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest," or certain other "particular matters." The term "particular matter" is discussed in the regulation at proposed § 2640.103(a)(1). In general, a particular matter is one that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. It may include rulemaking, legislation, or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not extend to broad policy options or considerations directed toward the interests of a large and diverse group of persons. Because the meaning of the term "particular matter" is often difficult to apply in specific situations, the proposed regulation contains a number of examples based on the opinions of the Office of Legal Counsel at the Department of Justice. In general, these opinions indicate that certain governmental matters having broad application to a large number of persons are not sufficiently focused on the interests of identifiable persons or classes of persons to be considered "particular matters." However, such broad policy matters may later become particular matters when they are implemented in a way that the interests of specific persons or groups of persons are distinctly affected.

Some of the exemption provisions in this proposed regulation would apply to so-called "particular matters involving specific parties"; others would apply to "particular matters of general applicability not involving specific parties." The distinction between these two categories of "particular matters" is derived from concepts used in other criminal conflict of interest statutes, such as 18 U.S.C. 207. However, to avoid any misunderstanding about the meaning of the terms, the proposed regulation defines "particular matter involving specific parties" by restating a portion of the definition of that term as it is used in 5 CFR 2637.201(c)(1) for purposes of 18 U.S.C. 207.[1] A "particular matter involving specific parties" is one that typically involves a specific transaction affecting the legal rights of parties such as a contract, grant, or case in litigation. For purposes of this regulation, "particular matters of general applicability not involving specific parties" are those types of particular matters not encompassed by the description at 5 CFR 2637.201(c)(1). Examples of such matters are rulemaking and the formulation of policy directed to the interests of a discrete and identifiable class of persons. The regulation generally contains more expansive exemptions for participation in "matters of general applicability not involving specific parties" because it is less likely that an employee's integrity would be compromised by concern for his own financial interests when participating in these broader matters.

Before an employee decides that section 208 might prevent him from participating in a certain governmental matter, he should determine whether the matter is a "particular matter" or a "particular matter involving specific parties." Once he decides that the matter is a "particular matter" or a "particular matter involving specific parties," he should then decide whether the matter will have a direct and predictable effect on his financial interest.

Finally, it is important to note that the requirements of section 208, as well as the exemptions in this proposed regulation, apply not only to regular Government employees, but also to special Government employees as defined in 18 U.S.C. 202(a). The proposed regulation also contains an exemption at § 2640.203(g) applicable solely to special Government employees serving on advisory committees. In addition, waivers issued pursuant to 18 U.S.C. 208(b)(3) for members of Federal advisory committees specifically impact special Government employees, many of whom serve on Federal advisory committees. And, of course, the waiver authority of section 208(b)(1) may be used in individual cases where there is a conflict between the financial interests of a special Government employee and his official responsibilities.

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[1] Section 207 was amended in part by the Ethics Reform Act of 1989, Pub. L. 101–194, and Pub. L. 101–280. The Office of Government Ethics expects to publish regulations interpreting section 207, as amended. The new regulations are expected to contain a similar definition of the term "particular matter involving specific parties."

II. Exemptions from the Prohibition of Section 208(a)

This proposed regulation contains three categories of exemptions from the prohibitions of 18 U.S.C. 208(a). First, the regulation contains proposed exemptions relating to interests arising out of the ownership of mutual funds, common trust funds, unit investment trusts, and employee benefit plans. Second, the regulation contains proposed exemptions arising out of the ownership of interests in securities. Finally, it contains several miscellaneous provisions which would establish exemptions that would apply only in specific situations or only to employees of certain agencies. It is expected that agencies may ask for additional exemptions applicable only to employees or groups of employees at those agencies, as they become aware of the need for them.

For the most part, the exemptions proposed in this regulation would apply to interests that are common to a large number of employees and that are relatively simple to identify, such as those arising from the ownership of mutual funds and securities. In general, the regulation as proposed does not contain exemptions for other potentially disqualifying financial interests which are not normally disqualifying for most employees, such as the interest of a policyholder of a life insurance policy. In most cases, it is unlikely that the typical Federal employee would be required to act in a matter which would affect an insurance company's ability to fulfill its obligation to pay a benefit upon the death of the insured or which would affect the cash value of the policy. Except in the case of interests arising from the purchase of insurance from a mutual insurance company where employees have more a direct interest in the operations of the company itself, interests such as this are not usually disqualifying financial interests under section 208. Those unusual cases where section 208 would bar an employee from acting in a particular matter are best handled on a case-by-case basis in accordance with the procedures for granting an individual waiver under section 208(b)(1) or (b)(3).

Additionally, there may be certain financial interests that create a problem under section 208 only for employees of a particular agency because of that agency's mission, but that are remote or inconsequential enough that an exemption under section 208(b)(2) would be appropriate. For example, the regulation at proposed § 2640.203(h) has an exemption that applies solely to the Directors of Federal Reserve banks. Although this regulation is an executive branchwide rule, OGE will consider including other exemptions which may have applicability only to employees of a particular agency if an exemption would be significant for a large number of the agency's employees and agency resources that would be utilized in issuing individual waivers under section 208(b)(1) would be better used elsewhere in implementing the agency's ethics program. For example, the proposed exemptions for short-term Government securities at § 2640.202(d) and commercial discount and incentive programs at § 2640.203(e) primarily benefit employees at a limited number of agencies. However, these agencies have a sufficient number of employees that can take advantage of the exemptions that it would be appropriate to include specific exemptions here. The Office of Government Ethics specifically requests suggestions for any such exemptions that should be established and asks that agencies making such suggestions provide proposed "exemption" language to facilitate consideration of the recommendations.

The definitions of some of the terms used in the exemptions proposed in this regulation may appear to be inconsistent with similar or related terms used in other regulations issued by OGE. In particular, the definitions of diversified mutual fund, common trust fund, unit investment trust, and employee benefit plan are not parallel to the definition of an excepted investment fund (EIF) as that term is used in connection with reporting assets on a financial disclosure form and which is defined in 5 CFR 2634.310(c)(2). For the reasons described in section A below, OGE has determined that it is impractical to adopt the definition of "excepted investment fund" for use in defining similar terms in this regulation.

Finally, the Office of Government Ethics has attempted to devise exemptions that can be understood and easily applied by the individual Government employees who have conflicting financial interests. The Office of Government Ethics believes that, to the extent possible consistent with the requirements of section 208, the exemptions in this proposed regulation should not be so complex and technical that a typical Government employee would need the advice and assistance of an agency ethics official to determine how to apply the regulation in his particular case. Because one of the purposes of these regulatory exemptions is to lessen the burden on agency ethics officials who may be issuing numerous individual waivers under section 208(b)(1) or (b)(3), OGE has tried to simplify the language of each proposed exemption. However, because section 208 is a criminal statute with significant penalties, the language of each exemption also must carefully delineate the scope of the exemption.

A. Exemptions for Mutual Funds, Common Trust Funds, Unit Investment Trusts, and Employee Benefit Plans

1. Diversified Mutual Funds, Common Trust Funds, and Unit Investment Trusts

For purposes of section 208, an employee who has an interest in a pooled fund such as a mutual fund, a common trust fund, or unit investment trust is deemed to have a financial interest in a matter that would affect the assets held by the fund or trust. In most cases, the holdings of such funds are diversified, with only a limited portion of the fund's assets placed in the securities of any single issuer. Moreover, a fund typically holds securities of issuers who are engaged in a variety of businesses or industries. Usually an employee's interest in any one fund is only a small portion of the fund's total assets. For these reasons, it is generally unlikely that an employee's official actions with regard to any one of the holdings of the fund in which he holds shares will have any consequential effect on the employee's financial interest. Accordingly, proposed § 2640.201(a) would permit an employee to participate in any particular matter affecting the holdings of a diversified mutual fund, diversified common trust fund, or diversified unit investment trust in which the employee, or any other person specified in section 208, has a direct or beneficial ownership interest. The term "direct or beneficial ownership" means that the employee's interest can arise either through his direct ownership of a share in the fund or trust, or as the beneficiary of a trust or an estate that holds such shares.

To ensure that the foregoing assumptions are satisfied, however, the proposed exemption described in § 2640.201(a) would apply only to the holdings of trusts or funds which meet the following criteria. First, if the fund is a mutual fund, it must be a diversified mutual fund that meets the requirements of section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1), for a "diversified company." Section 80a–5 specifies that, for at least 75% of its assets, a diversified company may not invest more than 5% of its assets in any one issuer nor hold more than 10% of the outstanding voting securities of any issuer. Additionally, the proposed rule's definition of the term "diversified" at § 2640.102(b) requires that the fund not have a stated policy of concentrating its investments in any industry, business, single country (other than the United States), or bonds of a single State. This would ensure, for example, that an employee of the Food and Drug Administration (FDA) would not be given an automatic waiver for investments in a mutual fund which limits its holdings to drug company stocks. Of course, an appropriate FDA official could grant an individual waiver under 18 U.S.C. 208(b)(1) or (b)(3) to an employee in a particular case if the agency determined that the employee's interest in a mutual fund specializing in the pharmaceutical industry was not so substantial that it would affect the integrity of his services.

The Office of Government Ethics decided to define "diversified mutual fund" by reference to the definition of "diversified company" contained in 15 U.S.C. 80a–5 to provide employees a simple way of determining whether the mutual funds they own are, in fact, "diversified." Regulations issued by the Securities and Exchange Commission (SEC) governing the administration of mutual funds specifically require that each mutual fund prospectus contain a statement concerning the fund's investment objectives, including whether the fund is deemed to be diversified for purposes of securities law. In most cases, this requirement will be met by a statement that the fund or the company is a diversified management investment company. By locating this statement in the fund's prospectus, an employee can easily determine whether the fund is considered "diversified" under this section 208 regulation. Alternatively, if the employee cannot find the relevant statement or the prospectus is unavailable, the employee can simply call the fund's manager or the broker through whom he purchased the fund and ask if the fund is a diversified company.

The Office of Government Ethics considered using other standards to define the term "diversified", such as adopting the standard for "excepted investment funds" as that term is used in 5 CFR 2634.310(c) for purposes of financial disclosure. "Excepted investment funds" cannot have more than 5% of the value of the fund's portfolio invested in any one issuer and more than 20% in any particular economic or geographic sector. However, use of standards such as this would require employees to examine the fund's assets and perform lengthy mathematical calculations to determine whether the particular fund was diversified. Moreover, because mutual fund assets continuously change, it would be burdensome to determine whether the fund was diversified at all times after the initial calculations were made. Using a numerical standard such as the 5%/20% formula described above arguably would require an employee to recalculate the ratio of assets in the fund's.portfolio prior to participating in particular matters that occur on a continuing basis.

In informal discussions concerning the draft regulation, some agency ethics officials recommended that OGE define the term "diversified" only in relation to whether investments are concentrated in a particular sector, and not whether the fund's assets are invested in any particular number of issuers. Another ethics official suggested that the term "mutual fund" should not be defined by referencing regulations issued by the Securities and Exchange Commission because the regulations are extremely technical and most employees could not really be sure whether their investment is a "mutual fund" or a "diversified company" as defined by the SEC. The thrust of these recommendations was that an employee who failed to determine whether his investment met the statutory definitions would be misled into violating section 208 by acting in matters affecting interests in an investment that appeared to be a mutual fund, but was in fact some other type of pooled investment vehicle that was not technically a "mutual fund" as defined in SEC regulations. Leaving the relevant terms undefined presumably would absolve employees of the responsibility of determining whether their investments were actually diversified mutual funds and would thus avoid inadvertent violations.

The Office of Government Ethics shares these concerns, but does not agree that employees would be better served by dropping the requirement for "diversification" or by leaving the terms "diversified" and "mutual fund" undefined. First, OGE believes it is essential that the exemption proposed for mutual funds apply to funds that are diversified as to the *number of holdings* in the fund, as well as the sectors in which the holdings are invested. Because OGE has the authority to promulgate exemptions only for financial interests that are too "remote or inconsequential" to affect an employee's services to the Government, it would be difficult to conclude that interests arising from a fund containing only a few holdings would be remote or inconsequential enough to warrant a total exemption under section 208(b)(2).

Moreover, employees would also be at risk of violating section 208 if the terms "mutual fund" and "diversified" were not defined in the regulation. With the increasing variety of complex financial instruments that are available to investors, employees certainly could become confused about whether their particular pooled investments are diversified mutual funds. The experience of OGE in reviewing public financial disclosure forms indicates that private limited partnerships invested in securities are sometimes mistaken for mutual funds even though the partnership has a limited number of investors and holdings, and even though the holdings may not be diversified as to either numbers or sector. It would be unfair to employees not to clarify that interests such as these private partnerships would not be considered mutual funds for purposes of the exemption as proposed.

On balance, OGE decided that proposing to define the term "diversified mutual fund" by reference to 15 U.S.C. 80a–5 would be the most convenient method for determining whether the investment vehicle is a fund and is diversified, since a quick perusal of the fund's prospectus, or a call to the fund's manager, will indicate whether the fund is a diversified management investment company. Employees must be expected to have some responsibility for determining whether their investments meet the criteria for application of the exemption provisions. Employees also deserve to receive guidance that is reasonably specific enough to give them adequate notice of what investments meet the criteria for an exemption.

Similarly, by examining the prospectus or calling the fund's manager, an employee can determine whether the fund has a stated policy of concentrating its investments in any industry, business, or country, or to bonds issued by a single State. For example, some funds clearly limit their investments to biotechnology stocks, energy stocks, precious metals and minerals, agricultural products, telecommunications stocks, or municipal bonds issued by a single State. Securities and Exchange Commission regulations require mutual fund sponsors to describe limitations of this type in the fund's prospectus. Additionally, limitations on the type of assets held by a mutual fund are often reflected in the name of the fund itself, e.g. Vanguard Specialized Portfolios: Health Care or Fidelity Spartan New York High Yield. These types of funds are commonly referred to as "sector" funds.[2]

The Office of Government Ethics decided not to consider funds invested in broad geographical regions as "sector" funds. While funds limited to a single State or a single country (other than the United States) would be excluded from the definition of "diversified" under this proposed rule, OGE concluded that it is unnecessary to also exclude, for example, funds limited to investments in Europe or the Pacific region. The Office of Government Ethics specifically requests comments on whether such funds should be considered "diversified."

Because the term "mutual fund" at proposed § 2640.102(l) includes "registered money market funds," money market mutual funds would also have to be diversified in accordance with the standards described at § 2640.102(b)(1) for the exemption proposed at § 2640.201(a) to be applicable. Registered money market funds may be offered by a mutual fund company or may be marketed through a bank. In either case, however, as with other mutual funds, the prospectus describing the fund will contain the information an employee needs to determine whether the fund is diversified. For purposes of this regulation, money market instruments are not considered a single industry or business, and therefore, money market mutual funds are not considered investments concentrating in a single business or industry. By contrast, however, funds which have a policy of investing only in bank stock, or in savings and loan institutions, or in financial services are clearly limited to a single business or industry and are not considered "diversified" for purposes of this proposed regulation.

Money market deposit accounts (as opposed to money market mutual funds) offered by banks are not included in the proposed definition of the term "mutual fund" as it is used in this regulation. Accordingly, the exemption for diversified mutual funds at § 2640.201(a) as proposed would not be applicable to bank money market deposit accounts. The inapplicability of the proposed exemption to money market deposit accounts is not a problem, however, because in most cases, an interest in such an account is not a disqualifying financial interest under section 208. Unlike a money market mutual fund, a bank money market account is a type of individual deposit account funded by the bank's investments. Just as in the case of a regular bank savings account, it is unlikely that an employee would have a disqualifying financial interest because of his account. First, an employee would rarely have knowledge of the bank's underlying investments. However, even in those unusual cases where the employee did have knowledge of those investments, it would be unlikely that a Government matter involving one of the investments would have a direct and predictable effect on the employee's "financial interest" in his deposit account.

On the other hand, employees whose official responsibilities require them to participate in matters affecting banks where they have money market or other deposit accounts may have to consider whether the Government matters in which they might participate would have a direct and predictable effect on the bank's ability to maintain, and pay the appropriate interest on, the accounts. In such cases, of course, the employee may have a disqualifying financial interest in whether the bank can continue to pay interest on his deposit account, rather than a disqualifying financial interest in the bank's investments.

In summary, to make a definitive determination whether a particular mutual fund is "diversified" for purposes of this proposed regulation, an employee simply has to find whether the prospectus states that the fund is a diversified management company, and whether it has a policy of concentrating its investments in a particular industry, business, single country (other than the United States) or in bonds issued by a single State. Because the SEC requires that this information be contained in the prospectus, employees may properly rely on the accuracy of the information. If the prospectus has the specified information, an employee is not required to make any independent determination concerning the fund's diversification. If the employee cannot find the relevant statement in his prospectus or does not have a prospectus, he may call the fund's manager or the broker who sells the fund and ask whether the fund is a "diversified company."[3]

The regulation, at § 2640.201(a), also contains a proposed exemption for participating in matters affecting the underlying assets of a diversified unit investment trust. A unit investment trust is "diversified" if it meets the definition of a "regulated investment company" at 26 U.S.C. 851(a)(1)(A). The standard set forth in section 851 requires that, for 50% of its assets, no more than 5% of the trust's assets may be invested in any one issuer and the trust may hold no more than 10% of any one issuer's outstanding voting securities. Additionally, no more than 25% of the trust's total assets may be invested in any one issuer, or in two or more issuers that the trust controls and which are engaged in the same or similar trades or businesses. An employee need not make an independent determination whether the unit investment trust in which he has invested meets these criteria. Instead, the employee should consult the prospectus describing the trust or the trust's sponsor to determine whether the trust is a "regulated investment company." If it is so described, it satisfies this regulation's diversification requirements, provided the trust does not have a stated policy of concentrating its investments in any industry, business, or single country (other than the United States), or to bonds issued by a single State.[4]

The assets of a common trust fund will be "diversified" for purposes of this proposed regulation if the common trust fund meets the rules for "diversification" established by the Office of the Comptroller of the Currency at 12 CFR 9.18. These rules provide that no more than 10% of a fund's assets may represent one investor's interest, and that no more than 10% of the fund's assets may be invested in any one issuer. This diversification standard applies explicitly to common trust funds maintained by national banks. It also applies to funds maintained under State law by State banks which are required by 26 U.S.C. 584(a) to adhere to rules established by the Office of the Comptroller of the Currency, including the rules for diversification of common trust funds. An employee may presume that any State bank maintaining a common trust fund adheres to these requirements. Of course, as with mutual funds and unit investment trusts, the bank maintaining the fund cannot have a policy of concentrating its investments in an industry, business, or country, or in bonds issued by a single State.

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[2] Although a sector fund is not considered a "diversified mutual fund" for purposes of the exemption described at § 2640.201(a), a mutual fund (including a nondiversified mutual fund) is a "publicly traded security" for purposes of the de minimis exemptions described in § 2640.202. Accordingly, the proposed regulation would permit an employee to participate in certain matters affecting financial interests arising from the ownership of a de minimis amount of nondiversified mutual funds. Also, proposed § 2640.201(b) would exempt interests arising from assets in a sector mutual fund which are not invested in the sector in which the fund concentrates.

[3] Although this proposed regulation would reference several definitions contained in statutes and regulations within the purview of the Securities and Exchange Commission, the Office of the Comptroller of the Currency, the Internal Revenue Service, and the Department of Labor, those agencies do not have any role in interpreting the provisions of this regulation. Inquiries concerning the meaning of terms used in those statutes and regulations, and the way those terms are used in this regulation, should be directed to OGE.

[4] A unit investment trust (or a mutual fund) comprised of bonds issued by a single State would not meet the diversification requirements of this regulation. However, the lack of an exemption would not be a problem for most Federal employees since they typically would not have a disqualifying financial interest arising from ownership of State bonds. Except in unusual cases, the official matters in which an employee would participate would not affect the bond's rating or the State's ability or willingness to honor its obligation to pay interest on the bond.

2. Sector Mutual Funds

Section 2640.201(b) would contain a provision permitting an employee to participate in any particular matter affecting the holdings of a sector mutual fund, provided the affected holding is not invested in the sector in which the fund concentrates. This provision would address the problem that might be encountered, for example, by an employee of the Federal Reserve who owns shares in a sector mutual fund that concentrates in biotechnology stocks, but which also has bank stocks in its portfolio. The proposed exemption would permit the Federal Reserve employee to participate in matters affecting banks whose stock is in the fund's portfolio without obtaining an individual waiver under section 208(b)(1).

The proposed regulation does not contain an exemption for holdings in a geographic sector mutual fund where an individual holding creates a section 208 conflict for an employee, but the sector as a whole does not create a conflict. This might occur, for example, when a Food and Drug Administration employee purchases a mutual fund which concentrates its investments in German businesses and the employee is involved in reviewing an application for a drug approval submitted by a German pharmaceutical company whose stock is a holding of the mutual fund. The Office of Government Ethics requests specific suggestions for language for an exemption that would be applicable in this situation.

3. Employee Benefit Plans

Proposed 5 CFR 2640.201(c)(1) (i), (ii) and (iii) would permit an employee to act in any particular matter affecting the *holdings* of the Federal Government's Thrift Savings Plan, a pension plan established or maintained by a State or local government, or other diversified employee benefit plan in which the employee participates. By participating in the plan, the employee has a financial interest in a matter that affects one or more assets held by the plan. The exemption would also apply in situations where any other person specified in section 208 participates in the plan.

In the case of State or local government pension plans, OGE's experience has been that the plans typically are comprised of a large number of varied assets managed by an independent agency or board. Therefore, the proposed exemption at § 2640.201(c)(1) would apply to an employee's disqualifying interest in the holdings of any State or local government pension.

For all other types of employee benefit plans, the exemption would apply only if the plan is (i) diversified; (ii) the plan's investments are administered by an independent trustee; (iii) the employee (or other person specified in section 208) does not participate in the selection of the investments except to direct that contributions be divided among several different types of investments (such as stocks, bonds or mutual funds) available to plan participants; and (iv) the plan is not a profit-sharing or stock bonus plan. Although this proposed provision would apply to all types of employee benefit plans as described in § 2640.102(d), for all practical purposes most of the plans covered by the provision are some form of employee savings or retirement plan that provides deferred income, typically after the employee has retired. Most often employees view these plans as pensions.

Most pensions (and similar employee benefit plans covered by this rule) are one of two types: A defined benefit plan or a defined contribution plan. A defined benefit plan is one that is designed to provide participants with a defined or specified benefit upon retirement, such as an annual income that is a specific percentage of the compensation received by the participant during a certain period of his employment. By contrast, a defined contribution plan is one that establishes an individual account for each participant. In the case of a defined contribution plan, the retirement benefit received by the employee is based upon the contributions to and any income generated by the account, and can vary depending upon the gains, losses, and expenses that are attributable to the account. Benefits to which a participant is entitled under a defined benefit plan may be insured by the Pension Benefit Guaranty Corporation (PBGC) or by private insurance contracts or annuities.

In most cases, an employee will not have a section 208 interest in the *holdings* of a defined benefit plan because payment of the specified benefit is ensured whether or not the plan holdings generate income sufficient to fund the benefit. Therefore, under most circumstances an employee would not need a waiver under section 208 (b)(1) or (b)(3) or an exemption under section 208(b)(2) to act in matters affecting the *underlying assets* of a defined benefit plan. In some cases, the employee may have a financial interest in the sponsor of the plan who has promised to pay the benefit upon retirement. Except as provided in § 2640.201(c)(2) as proposed, authority to act in matters affecting the sponsor of such a plan must be handled on an individual basis in accordance with the provisions of 18 U.S.C. 208(b)(1). As a practical matter, however, most governmental matters in which an employee would participate are unlikely to have a direct and predictable effect on the plan sponsor's ability or willingness to pay an employee's pension benefits. Accordingly, most employees will not have a disqualifying financial interest in either the holdings or the sponsor of a defined benefit plan.

On the other hand, employees would ordinarily have a financial interest in the holdings of a defined contribution plan since those holdings are the assets which will generate the employee's retirement or other income. Therefore, in the absence of an exemption or waiver, an employee cannot act in particular matters that would have a direct and predictable effect on those holdings. The proposed exemption at § 2640.201(c)(1) would permit an employee to act in particular matters affecting the holdings of an employee benefit plan only if the plan meets the criteria described below.

First, the plan must be administered by an independent trustee which is defined in § 2640.102(g) as either a trustee independent of the plan's sponsor and participants, or a registered investment adviser. Second, the proposed rule would not permit the employee to select his own investments. However, the prohibition on participation in selecting plan investments would not bar an employee from directing the division of employer or employee contributions among a variety of types of investments or among a group of specific investment vehicles chosen by the plan trustee or manager. For example, a pension plan may offer participants the opportunity to choose between a bond fund, a common stock

fund, or a government securities fund. Participants may choose to divide their investments among the various funds.

Additionally, as with mutual funds, common trust funds, and unit investment trusts, this regulation as proposed would require that the assets of the plan must be diversified. Unlike mutual funds, common trust funds, and unit investment trusts, however, there is no independent statutory or regulatory diversification requirement for employee benefit plans except that plan sponsors and managers have a fiduciary responsibility to diversify plan assets to reduce risk to the investors. *See* 29 U.S.C. 1104(a)(1)(C). Because there is no specific numerical standard for diversification that this proposed regulation could easily reference to assist employees in determining whether an individual plan is diversified, OGE had to consider whether it wanted to create a diversification standard similar to others referenced in the regulation. Alternatively, OGE considered whether to adopt the same diversification standard used by employees to determine whether they must report the underlying assets of certain funds or trusts on the public financial disclosure statement (SF 278), i.e. no more than 5% of a plan's assets can be invested in any one issuer and no more than 20% of the plan's assets can be invested in any one business, industry, or economic or geographic sector.

The problem with adopting any one of these diversification standards is that before an employee could decide whether the exemption would be applicable, he would be required to obtain a copy of the plan's portfolio and scrutinize it to determine how the plan's assets are invested, including what proportion of assets are invested in particular issuers and particular industries or sectors. The Office of Government Ethics believes that in many cases it is unrealistic to assume that employees can easily obtain an inventory of pension holdings and make accurate calculations about the percentage of holdings in various issuers and industries. The problem is especially exacerbated by the fact that the assets of many employee benefit plan portfolios are continually changing and it would be difficult to establish with any certainty the relative proportion of the plan's assets from day to day. This problem is not so significant for purposes of determining whether an employee benefit plan is an excepted investment fund (EIF) for purposes of financial disclosure because financial disclosure rules only require employees to determine whether the plan is diversified on the day the report is filed. Where section 208 is implicated, however, employees may be participating over a period of time in Government matters and presumably the plan would have to be diversified at all times when the employee would participate in the matter affecting the plan's assets. If OGE created a numerical diversification standard for employee benefit plans in this regulation, it would be nearly impossible for employees to know from day to day whether the plan continued to be "diversified," and OGE's goal of issuing clear and easy-to-use exemptions would be severely undermined.

On the other hand, OGE is unwilling to permit an automatic exemption to apply to any employee benefit plan, whether or not it is diversified. Without a requirement for some type of diversification, employees would be free to act in matters affecting the holdings of a plan which could contain any amount of a single asset, thus increasing the possibility that the employee might significantly gain or lose as a result of the Government matter in which he would participate. This outcome would subvert the statute's clear intent to exempt only interests that are remote or inconsequential.

Because the majority of employee benefit plans are widely diversified in any case, OGE's concern may be somewhat theoretical. Nevertheless, OGE has decided to propose a requirement that, for the exemption to apply, employee benefit plans must be diversified, i.e. the plan trustee or manager must have a written policy of varying plan investments.

This diversification standard would simply require an employee to determine whether the plan trustee or manager has articulated a policy of diversifying plan assets. The diversification policy might ordinarily be stated in materials describing the benefit plan. For example, brochures describing the TIAA-CREF retirement plan for employees of educational and research institutions specifically state that the CREF Stock Account is a "broadly diversified portfolio of U.S. stocks," and that the CREF Social Choice Account is "diversified among stocks, bonds * * *." In the absence of such a statement, the employee could obtain a written statement from the plan manager or trustee indicating that he has a policy of diversification. In most cases, the manager or trustee will attempt to diversify plan investments in accordance with his or her fiduciary responsibilities under 29 U.S.C. 1104(a)(1)(C).

In addition, the proposed regulation would require that the plan not have a stated policy of concentrating its holdings in any business, industry, single country other than the United States, or bonds of a State within the United States. The provision does not require an employee to perform any mathematical calculation to determine whether a particular percentage of the plan's assets are invested in any industry or sector, but simply to ascertain whether the plan has a policy of making such investments.

Finally, the regulation at proposed § 2640.201(c)(1)(iii)(B) states that the plan may not be a profit-sharing or stock bonus plan. This limitation would ensure that the exemption would not allow an employee to participate in matters affecting the corporate sponsor of a plan. However, because profit-sharing plans which are tax-deferred under 26 U.S.C. 401(k) have become a common form of employee benefit, 401(k) plans would be excluded from the term "profit-sharing plan" for purposes of this regulation.

Section 2640.201(c)(2) as proposed contains a provision which would permit an employee to act in particular matters of general applicability affecting the *sponsor* of a State or municipal pension plan in which the employee, his spouse or minor child, or general partner, participates. As used in this regulation, the term "pension" means a plan, fund or program established or maintained by a State or municipality to provide retirement income for its employees or which results in a deferral of income by employees for periods extending to termination of covered employment or beyond.

As used in the regulation, the term "sponsor" means the State or municipality that established or maintains the plan, not any individual State or municipal agency, board, or panel that may administer the plan on behalf of the State or municipality. Of course, the restrictions of section 208 apply only when the particular matter in which the employee would act has a direct and predictable effect on his financial interest. In the vast majority of cases involving defined benefit plans, it would be unlikely that any particular matter would affect a government's ability or willingness to pay the employee's pension. However, in the event that the employee would be required to act in such a matter, this provision would allow an employee to act only in a particular matter not involving specific parties, such as a rulemaking.

If the matter in which the employee would participate affects the State or municipal agency, board or panel which administers the plan on the State or local government's behalf, the employee would not be able to participate in the matter without first receiving an individual waiver in accordance with the terms of 18 U.S.C. 208(b)(1).

B. Exemptions for Interests in Securities

Because many Federal employees own shares of stock and other types of securities, the proposed regulation contains a number of provisions that describe exemptions for matters affecting financial interests arising out of ownership of securities. Some of the exemptions would apply when the employee owns the security directly; others would apply only when the security is owned by other persons specified in section 208, such as an organization in which the employee serves as officer or director. In addition, some of the exemptions would apply to participation in all types of particular matters, including those involving specific parties. Other exemptions would apply only to participation in particular matters of general applicability. In general, the type and extent of exemption depends on the type of matter involved, the amount of the employee's financial interest, and the likelihood that the employee's action will affect the entity issuing the securities.

As defined in the proposed regulation at § 2640.102(r), the term "security" has a somewhat expansive meaning including stock, bonds, mutual funds, long-term Federal Government securities, limited partnership interests, and municipal securities. However, for many of the exemptions to be applicable, the securities must be "publicly traded securities" as defined in the regulation at proposed § 2640.102(p). This means that in addition to being the type of security described in § 2640.102(r), the securities would have to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 781) and listed on a national exchange or traded through NASDAQ, or be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–8), or be a corporate bond issued by an entity whose stock meets the definition of a "publicly traded security." In general, this requirement ensures that the securities which are the subject of an exemption are widely disseminated. In the case of corporate bonds, the definition of "publicly traded security" will ensure that many bonds which are not traded on a national exchange (but are instead sold over-the-counter) will still be covered by the exemption.

Although most of the securities owned by employees clearly will be "publicly traded" within the meaning of the definition, there may be some cases where the employee is not absolutely certain whether a security is "publicly traded" within the meaning of this regulation. In such cases, employees should discuss the matter with a broker or simply call the issuer.

An interest in stock can create a section 208 disqualifying financial interest in a number of ways. First, ownership of shares of stock in an entity normally represents an ownership interest in the entity itself. Therefore, Government matters that affect the financial interest of the entity have a concomitant effect on the financial interest of the person who owns stock in the entity. For purposes of section 208, the effect of the matter on the entity need not be reflected in a change in the price of the entity's stock. Section 208 is implicated if the matter affects the entity's financial interest in any measurable way, such as when a contract for computer maintenance services is awarded to a large corporation that develops, manufactures and maintains computers. Even if the contract amount is not significant enough to result in an increase in the value of the company's stock, the mere award of the contract has affected the company's finances, and an employee who owns stock in the company has a disqualifying financial interest in the award of the contract to the company. Of course, in some cases a Government matter may be so significant that the price of the company's stock rises or falls to reflect the financial market's reaction to the matter. In such cases, an employee who owns stock in the company would even more clearly have a disqualifying financial interest in the matter.

Corporate bonds and certain municipal and Government bonds are included in the definition of "security" for purposes of the proposed regulation. Of course, a bond is also a form of debt owed by the entity issuing the bond. Ordinarily, ownership of a corporate or municipal bond does not create a disqualifying financial interest unless the Government matter in which the employee participates would have a direct and predictable effect on the market value of the bond or the entity's ability to repay the debt. The proposed rule contains exemptions that would apply in cases where the bond's value or the issuing entity's ability to pay would be affected.

The term "municipal security" is defined in the proposed regulation at § 2640.102(k) to include only the direct obligations of, or obligations guaranteed as to principal or interest by, a municipal entity. Thus, certain industrial development bonds which are issued under municipal aegis, but which actually represent the obligations of a private organization, would not be deemed municipal securities for purposes of this regulation. Since the corporations which issue industrial development bonds are varied, including both public and nonpublic companies, a blanket waiver to cover interests in securities offered by such organizations is inappropriate.

The term "long-term Federal Government security" is defined in the proposed regulation at § 2640.102(j) to mean bonds or notes with a maturity of one year or more issued by the United States Treasury pursuant to 31 U.S.C. chapter 31. Because the value of these long-term securities can fluctuate widely, OGE has determined that it would be appropriate to exempt financial interests arising from the ownership of these Government securities to the same extent that financial interests arising from other securities are exempted. On the other hand, the value of short-term Federal Government securities (with maturities of less than one year) cannot be substantially affected by the actions of employees who participate in matters involving those securities. Therefore, the regulation would contain a separate exemption at § 2640.202(d) for interests arising from the ownership of short-term Federal Government securities. Of course, as a practical matter only employees involved in setting and implementing monetary policy or other similar governmental matters are likely to be participating in matters affecting financial interests in Government securities in any event.

The term "Federal Government security" does not include a security issued by any Federal entity other than the U.S. Treasury pursuant to 31 U.S.C. chapter 31. Accordingly, interests arising from the ownership of securities issued by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), and other similar Government agencies and Government-sponsored entities are not automatically exempt from the requirements of section 208. Of course, in appropriate cases disqualifying financial interests arising from the ownership of Federal agency securities may be waived on an individual basis pursuant to 18 U.S.C. 208(b)(1).

Even though interests in diversified mutual funds, and certain interests in sector mutual funds would be totally exempted under § 2640.201 as proposed, the term "mutual fund" is included in the definition of "security" for the purpose of the de minimis exemptions. This means that nondiversified mutual funds would be exempt to the same extent, and under the same circumstances, that stocks, bonds and other "securities" are exempt. Thus, an interest in $5,000 worth of a biotechnology sector mutual fund would be exempt even though an employee would be participating in a particular matter involving a company whose stock was owned by the mutual fund. Similarly, proposed § 2640.202(c) would permit an employee to participate in a particular matter of general applicability even if he owned $25,000 worth of a sector mutual fund, one of whose holdings was a company affected by the matter in which the employee would participate. For purposes of the de minimis provisions, the value of an employee's interest in a mutual fund would be the value of his interest in the fund as a whole, not the pro rata value of any underlying holding of the fund.

1. De Minimis Exemptions

The first exemption pertaining to ownership of securities at § 2640.202(a) as proposed would permit an employee to participate in any particular matter involving specific parties where the employee's financial interest arises from the direct or beneficial ownership by the employee, his spouse or minor child of publicly traded securities, long-term Federal Government securities, or municipal securities valued at no more than $5,000 where the entity issuing the security is a party to the matter. The term "direct or beneficial ownership" means that the employee's interest can arise either through his direct ownership of the securities, or as the beneficiary of a trust or an estate. The value of securities owned by the employee, his spouse, and his minor children must be aggregated to determine whether the exemption applies.[5] Thus, for example, if an employee owns stock in each of several companies which are parties to the particular matter, the provision at proposed § 2640.202(a) would not exempt him from the prohibition of section 208 unless the aggregate value of the stock he owns in all parties is no more than $5,000.

The Office of Government Ethics considered proposing to set the de minimis standard at no more than $1,000 because that is the minimum value for assets that must be reported on an employee's public financial disclosure statement (SF 278). Setting the de minimis level at $1,000 would have permitted agency ethics officials who review financial disclosure reports to counsel employees that section 208(b)(2) exempts all interests in securities they own whose values fall below the threshold for reporting on the SF 278 statement. However, the actual financial interest one might have in a matter because of the ownership of stock worth no more than $1,000 would have been a significantly lower amount than OGE believes can be considered "inconsequential" within the meaning of section 208(b)(2) and would have clearly limited the exemption's usefulness. After final adoption of this rule (with any modifications), OGE will periodically review this and other specific dollar thresholds as well as other aspects of this regulation.

Where an employee has an interest in a security issued by an entity which is not a party to the particular matter involving specific parties, but which is nonetheless affected by the matter, the employee may act in the matter if the value of the security does not exceed $25,000. *See* proposed § 2640.202(b). This might occur, for example, when one automobile manufacturer sues the Government to enjoin enforcement of a new regulation that will require all manufacturers to incur additional production expenses. A Government attorney involved in the litigation who owns stock in another auto manufacturer not a party to the litigation may continue to act in the case pursuant to this exemption if the value of his stock does not exceed $25,000. Of course, this proposed exemption would be relevant only in cases where section 208 was applicable to the matter at issue, i.e. the matter would have a direct and predictable effect on the employee's financial interest arising from the security.

Proposed § 2640.202(b) would not permit an employee to act in a particular matter if the aggregate value of affected securities owned by the employee, his spouse and minor children exceeds $25,000. For purposes of determining whether the $25,000 limitation is met, the value of securities exempted under § 2640.202(a) would have to be included. For example, if an employee owns $5,000 of stock in an automobile manufacturer which is a party to a case in litigation in which the employee is involved, and he also owns $22,000 of stock in another automobile manufacturer affected by, but not a party to the litigation, he may not rely on the exemptions at §§ 2640.202(a) and (b), as proposed, to participate in the matter. Because the aggregate market value of his holdings in the securities of all affected entities exceeds $25,000, he would have to disqualify himself from the matter, or divest at least $2,000 worth of securities in affected party or non-party entities, or seek an individual waiver under section 208(b)(1) prior to participating in the matter. The purpose of the aggregation requirement is to ensure that the application of more than one exemption to a single matter does not violate the statutory criterion that exemptions be issued only for interests that have been determined to be remote or inconsequential.

The proposed regulation at § 2640.202(c) would permit an employee to participate in any particular matter of general applicability not involving specific parties, where the employee's disqualifying financial interest arises from the ownership of publicly traded, long-term Federal Government, or municipal securities issued by one or more entities, *if* the value of the employee's holdings (including the aggregate holdings of his spouse and minor children) in any one affected entity does not exceed $25,000, and his holdings in all affected entities does not exceed $50,000. This proposed exemption would not permit the employee to participate in particular matters having specific parties whether or not the issuer of the securities is a party. This exemption, as well as the exemption proposed at § 2640.202(b) for cases where the issuer of the security is not a party to the matter, would allow an employee to participate in matters where his financial interest was relatively insubstantial, and where it is not likely that the interest would be affected in a manner disproportionate to other affected entities.

Finally, it should be understood that the amounts set forth in the de minimis provisions in proposed § 2640.202 do *not* establish a threshold over which waivers may not be granted on an individual basis under section 208(b)(1). Therefore, an appointing official may decide in an individual case to grant a waiver to permit an employee to participate in particular matters involving parties in cases where an employee owns more than $5,000 worth of stock in an affected party. Similarly, an appointing official may grant waivers in cases where an employee would participate in matters of general applicability or in matters where he owns stock in affected entities which are not parties, even where the amount of the employee's holdings exceeds the amounts set forth in § 2640.202(b) and (c) as proposed. The criteria an agency should consider in granting such waivers are described in §§ 2640.301 and 2640.302 of this proposed regulation.

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[5] Some of the exemptions in proposed § 2640.202 apply to the interests of the employee, the employee's spouse and minor children, and the employee's general partner. Others apply to interests arising from the holdings of a general partner, or someone whom the employee serves as officer, director, trustee or employee. Still others apply to the interests of any one listed in section 208.

2. Short-term Federal Government Securities

Proposed § 2640.202(d) would permit an employee to act in any particular matter affecting a financial interest arising from the ownership of "short-term Federal Government securities" by the employee, or any other person specified in section 208. The term "short-term Federal Government security" is defined in proposed § 2640.102(t) to mean a bill issued by the United States Treasury pursuant to 31 U.S.C. chapter 31, with a maturity of less than one year. This provision, for example, would permit employees of the Federal Reserve to act in matters that would affect changes in the interest rates paid on Treasury bills. The Office of Government Ethics believes that the exemption for short-term Federal Government securities is warranted because changes in the interest rates paid on Treasury bills occur in relatively small increments, and do not significantly enhance the value of these bills because of their short maturities.

3. Interests of Tax-Exempt Organizations

Unless he is personally involved in an organization's investment decisions, an employee often would not have knowledge of the investment interests of organizations in which he is an officer, director, trustee, or employee. However, because section 208 bars him from acting in matters in which these organizations have a financial interest, section 208 will be implicated if an employee acts in a particular matter which he *knows* will affect the holdings of an organization he serves as officer, director, trustee, or employee.

The concern about a conflict of interest in such cases is diminished, however, if the organization is nonprofit and tax-exempt under section 501(c)(3) of the Internal Revenue Code, and the employee has no involvement in making investment decisions for the organization. Examples of such organizations include child or animal welfare organizations, community service groups, and health or medical research organizations. Section 2640.202(e) of this proposed regulation contains a provision that would permit an employee to participate in any type of particular matter affecting an entity which issues publicly traded, municipal, or long-term Federal Government securities in which a tax-exempt organization invests, if the employee serves the 501(c)(3) organization as an unpaid officer, director, or trustee, or as an employee. The exemption would apply only if the employee plays no role in making investment decisions for the organization other than participating in the decision to invest in several different categories of investments, the organization's holdings in the entity are limited, and the organization is not related to the entity except as an investor, or through a routine commercial transaction. This proposed exemption is limited in scope and only allows an employee to participate in a matter which affects the tax-exempt organization's investments. It would not permit the employee to participate in matters that directly affect the tax-exempt organization, or matters that would also affect the employee's own financial interests.

4. Interests of General Partners

Section 208(a) prohibits an employee from acting in any particular matter that would affect the financial interests of his general partner. Of course, in many cases, an employee will not have knowledge of his partner's financial interests, so that section 208 will not limit the employee's ability to act in Government matters in which his partner has an interest.

On the other hand, where the employee does have knowledge of his partner's interests, it might often be inappropriate for the employee to act in a matter which would affect those interests. However, where the general partner's interest is derived solely from the ownership of publicly traded, long-term Federal Government, or municipal securities, proposed § 2640.202(f)(1) would permit an employee to act in any particular matter affecting the issuer of the securities, if the value of the securities does not exceed $200,000 and ownership of the securities is not related to the partnership between the employee and his general partner.

Proposed § 2640.202(f)(2) contains a provision that would permit an employee to act in all matters where the disqualifying interest would arise from any interest of an employee's general partner, but only if the employee's relationship to his general partner is that of a limited partner in a large partnership, i.e. one with at least 100 limited partners. OGE believes that, in most such cases, an employee would not have enough of a personal relationship with his general partner that his judgment on official matters affecting his partner would be impaired, or would be perceived to be impaired, by the public. In cases where an employee is a limited partner in a partnership with fewer than 100 limited partners, he would have to receive an individual waiver under section 208(b)(1) before he could participate in particular matters in which he knows his general partner has a financial interest.

C. Miscellaneous Exemptions

1. Hiring Decisions

Employees throughout Government are expected to participate in routine personnel matters that involve current employees of an entity in which they may have a financial interest, but the Government personnel matters are unlikely to have any significant effect on their financial interests. In most such cases, it would be difficult to conclude that the employee has a disqualifying financial interest within the meaning of section 208 in the hiring of an employee. In certain exceptional cases, however, an employee's participation in a hiring decision might affect his financial interests. For example, an employee may be called upon to participate in a decision to hire a new employee currently working for a company in which he owns stock. In the case of some highly paid executives, the executive's departure may cause the company to incur gains or losses, thereby creating a disqualifying financial interest. An exemption under section 208(b)(2) would permit the employee to carry out his duties without raising any serious conflict of interest concerns.

Section 2640.203(a) as proposed would permit an employee who owns publicly traded securities issued by a corporation, or who has a vested interest in a pension plan sponsored by a corporation which issues publicly traded securities, to participate in Government hiring decisions involving an applicant currently employed by the corporation. This exemption would allow an employee to continue participation in routine hiring procedures even when the matter might nominally affect his interest in the corporation. The exemption would also apply in cases where any other person specified in section 208 owns publicly traded securities issued by the corporation or participates in a pension plan sponsored by the corporation.

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2. Employees on Leave from Institutions of Higher Education

Proposed § 2640.203(b) would permit an employee who is on a leave of absence from an institution of higher education (defined as an educational institution described in 20 U.S.C. 1141(a)) to participate in matters of general applicability which would affect the financial interest of the institution. Because of the tenure system, an employee who comes from an academic setting to work in the Federal Government often takes a leave of absence from his academic position rather than terminate the position entirely. Under these circumstances, in cases where the employee's involvement in a Government matter would affect the educational institutional only as part of a larger class of similarly affected institutions, the likelihood of a conflict of interest is sufficiently remote that an exemption permitting the employee to act is warranted.

The proposed exemption would permit the employee to act only in matters affecting the institution from which he is on leave, not his own direct financial interests. For example, an employee could participate in developing a research plan that is expected to result in a grant announcement soliciting proposals from researchers to study a particular medical procedure even if he knows that the university from which he is on leave may submit a proposal. On the other hand, the employee could not participate under this exemption in a Government decision to increase the current funding levels of a certain type of research conducted by a group of colleges and universities, including the school from which he is on leave, if his university salary when he returns will be paid from an affected research grant.

3. Multi-campus Institutions of Higher Education

18 U.S.C. 208 prohibits an employee, including a special Government employee, from acting in a Government matter which would have a direct and predictable effect on the financial interest of his employer. In the case of some employees, particularly special Government employees, the non-Federal employer may be a multi-campus State institution of higher education. Even though the employee may be employed by only one campus of the institution, his employer is the entire institution and he is therefore barred from acting in official matters which affect any of the institution's campuses.

To lessen the hardship that would result from the application of section 208 in many cases involving multi-campus institutions of higher education and to alleviate the need for numerous individual waivers, the exemption at proposed § 2640.203(c) would permit an employee to act in matters affecting one campus of a state multi-campus institution of higher education if the employee is employed in a position with no multi-campus responsibilities at a different campus of the same institution. Where an employee is employed on one campus of an institution, he is not likely to be involved with matters occurring on other campuses, and therefore his interests in those matters are sufficiently remote that a blanket waiver would be appropriate. The exemption would allow an employee to participate in matters affecting other campuses of the institution only if his responsibilities are confined to the one campus where he is employed; a person whose responsibilities cross more than one campus would not be able to participate in any particular matter involving any campus of the institution without first receiving an individual waiver under 18 U.S.C. 208(b)(1).

4. Employees Whose Official Duties Affect the Financial Interests of Government Employees

Section 2640.203(d) as proposed would restate the exemptive provision contained in interim rule § 2640.101 of 5 CFR, which is being separately published in the **Federal Register** by OGE, that applies to interests that arise from employment in the executive branch of the Federal Government. With two exceptions, the provision exempts all disqualifying financial interests in Government salary and benefits, and in Social Security and veterans' benefits. The exemption does not permit an employee to make (1) determinations that individually or specially affect his own financial interest in Government salary and benefits, or (2) determinations, requests, or recommendations that individually or specially relate to, or affect the Government employment-related financial interests of any other person specified in section 208, such as the employee's spouse, minor child, or general partner. Furthermore, a note following the section explains that the exemption does not permit an employee to take any action in violation of any other statutory or regulatory requirement.

5. Participation in Discount and Incentive Programs

The proposed exemption at § 2640.203(e) concerns benefits earned in discount, incentive and other similar programs. These benefits might include, for example, frequent flier mileage, upgraded seating on airplanes, free tickets for additional airplane flights, and discounted rates for rental cars and hotel rooms. Typically these programs are established by commercial entities to generate loyalty to a particular company. Often participants in the programs earn benefits based on the amount of the company's services they utilize during a specified period. Employees may participate in such programs in a personal capacity, and usually participation would raise no concerns under section 208. However, in unusual cases, the benefits may create a financial interest of the employee in certain types of matters. Employees who act in Government matters which affect an entity's ability or inclination to honor its commitment to provide benefits may have a disqualifying financial interest in those matters. The exemption proposed at § 2640.203(e) would permit an employee who participates in such a significant way in matters affecting one of these entities to participate in these agency matters even if he, or any other person specified in section 208, participates in the benefit program. In the case of frequent flier programs, for example, this might include employees of the Federal Aviation Administration, or the Pension Benefit Guaranty Corporation, or the Antitrust Division of the Department of Justice.

6. Mutual Insurance Companies

An employee's interest as a policyholder of life, health, automobile, house and other types of insurance does not often create a section 208 disqualifying financial interest because there are not many Government matters in which an employee could participate that would affect an insurance company's ability or inclination to continue the benefits to which the employee is entitled under the policy. In the unusual case where an employee were assigned to participate in such a significant matter, the employee should first obtain an individual waiver under section 208(b)(1).

In the case of mutual insurance companies, however, employees may have interests in the company other than those involving the continuation of benefits. Mutual insurance company policyholders may have an interest in the overall financial health of the mutual insurance company because the amount of the policyholders' premiums are based upon the profitability of the company. In such cases, the policyholder would have a disqualifying financial interest in any particular matter that would affect the company's profitability or general financial health. The proposed exemption at § 2640.203(f) would permit an employee to participate in any particular matter, including a matter involving parties, that would affect the financial interest of the employee, or any other individual specified in section 208, as a mutual insurance policyholder.

The exemption would not apply, however, if the matter would affect the company's ability to comply with its obligation to pay claims under the policy or to pay the employee the cash value of the policy. The exemption would, for example, allow an employee to participate in Government matters where his mutual insurance company insures a party to the matter as long as the matter was not so significant that it would impair the company's ability to satisfy its obligation to pay claims under the policy or to pay the employee the cash value of the policy. The exemption also would not apply when an entity specified in section 208 (e.g. a corporation that the employee serves as officer or director) rather than the employee himself or other individual specified in section 208 is a policyholder. OGE decided not to extend the exemption to this situation because of concern whether the financial interest of a corporation or other large entity as a policyholder might be considerably greater than one which could be considered "inconsequential" under the statute.

7. Special Government Employees Serving on Advisory Committees

Federal agencies often utilize the services of outside experts by forming advisory committees under the Federal Advisory Committee Act, 5 U.S.C. app. These committees are organized specifically to obtain the advice and recommendations of persons with expertise in a particular field. Therefore, many of the persons serving on an advisory committee will likely be employed or have some type of business relationship with private sector organizations that may be affected by the matter under review by the committee. Many advisory committee members are appointed as special Government employees and are therefore subject to the requirements of section 208.[6]

When 18 U.S.C. 208 was amended in 1989, a new waiver authority was added concerning the interests of persons serving on advisory committees. This new authority, at section 208(b)(3), permits an agency to waive, on an individual basis, any disqualifying financial interest of a special Government employee (SGE) serving on an advisory committee if the need for the employee's services outweighs the potential for a conflict of interest. Nevertheless, agencies which utilize the services of a large number of special Government employees on advisory committees still have to prepare innumerable waivers, largely on a routine basis, for the disqualifying interests of these employees. To eliminate the need for some of these individual waivers, the proposed regulation at § 2640.203(g) would exempt the employment interests of special Government employees serving on advisory committees, permitting them to participate in any particular matter of general applicability not involving specific parties. The provision would specifically permit a covered employee to act in a particular matter affecting a financial interest created because of his employment status. This would include, for example, the interests of an SGE's principal employer in a regulatory matter applicable to all similarly situated entities. The exemption would not apply, however, if the matter would have a special or distinct effect on the person other than as part of a class.

The Office of Government Ethics believes that this special exemption for members of advisory committees can be justified because the public's interest in the integrity of advisory committee proceedings is protected by the nature of the proceedings themselves. The Federal Advisory Committee Act requires that advisory committee meetings be open to the public, except in unusual circumstances. Moreover, the membership of advisory committees must be balanced so that a variety of viewpoints will be represented. Both of these requirements will ensure that the public is aware of a committee member's ties to persons who may be affected by the committee's deliberations. Finally, the findings of an advisory committee are not binding on an agency, but merely constitute recommendations that can be adopted or rejected by the agency.

Limitations on the use of the exemption would further ensure the integrity of the advisory committee process. First, the exemption would apply only to matters of general applicability which would not have a special and distinct effect on the affected person. Thus, the exemption would not permit a special Government employee to act in a matter in which the affected person was a party, or the competitor of a party. Second, the exemption would apply only to the financial interests which arise from the special Government employee's non-Federal employment, such as the employee's salary or the overall financial well-being of the entity or person who employs the special Government employee. It would not apply to the employee's stockholding interest in his employer, although such an interest could be exempt under § 2640.202(c) of this proposed regulation or under § 2640.201(c) if stock is part of an employee benefit plan as defined in the proposed exemption. Moreover, a disqualifying financial interest arising from the ownership of stock by the special Government employee could be waived on an individual basis under section 208(b)(1) or (b)(3).

8. Directors of Federal Reserve Banks

Although the other conflict of interest prohibitions in title 18 do not apply to the Directors of the twelve Federal Reserve Banks throughout the United States, the Directors are subject to the requirements of section 208. Each of the twelve banks has nine Directors, three of whom represent the interests of that Bank's stockholding member banks, and six of whom represent the interests of the public, with due consideration to the interests of commerce, industry, services, labor and consumers. Because of their ties to the financial services industry and their communities, it is likely that at least some of the Directors will have financial conflicts with their duties. The proposed regulation at § 2640.203(h) would exempt the Directors from the application of section 208 for two primary activities: the role of Directors in establishing the interest rate to be charged on loans made by Reserve Banks, and the role the Directors may play in extending credit to healthy financial institutions or to financial institutions in hazardous condition. The exemptions, which were first issued by the Federal Reserve in 1978 and which are currently set forth in 12 CFR 264a.5, are necessary to resolve any possible conflict between the Directors' statutorily mandated representational function and the performance of their official duties.

In general, proposed § 2640.203(h) would permit a Federal Reserve Director to act in matters involving (1) the establishment of rates to be charged member banks for advances and discounts; (2) approval or ratification of extensions of credit, advances or discounts to depository institutions that are not in a hazardous financial condition; (3) approval or ratification of extensions of credit, advances or discounts to depository institutions that are in a hazardous condition as determined by the President of the Bank in accordance with 12 CFR 264a.3, but only when certain conditions are met; and (4) consideration of monetary policy matters, regulations, statutes, or other similar matters of broad applicability. As described above, these exemptions would simply continue existing regulatory exemptions for Reserve Bank Directors.

9. Medical Products and Devices

Section 2640.203(i) would contain an exemption for special Government employees who serve on advisory committees considering the approval or classification of medical products or devices. Often these special Government employees are employed by hospitals or other medical facilities that purchase these products or devices for use by their patients. Similarly, the special Government employees may prescribe the product or device for their own patients. In some cases, the employees may have a disqualifying financial interest in the matters under consideration by the committee because their employers' profits from providing these products or devices to patients by billing more than the cost of the item. In other cases, it is possible that a special Government employee with private patients could affect his own financial interest by, for example, deciding not to reclassify a drug to permit it to be sold over the counter, thereby resulting in a loss of patients who would otherwise have to seek a prescription from him.

The Office of Government Ethics believes that the types of financial interests described in the proposed exemption are inconsequential enough that special Government employees who serve on these types of advisory committees can be expected to act impartially. Of course, the exemption would apply only when the financial interest is of the type described in the regulation. Other types of financial interests, such as those arising from the ownership of stock in the manufacturer of the product or device, or employment by the manufacturer would not be not covered by this exemption. Such interests may be covered by other exemptions (such as proposed § 2640.202(a)) or an employee may obtain an individual waiver under section 208(b)(1) or (b)(3).

D. Prohibited Financial Interests

The provision at § 2640.204 of this proposed regulation would make clear that none of the exemptions apply to financial interests held or acquired in violation of a statute or agency supplemental regulation issued under 5 CFR 2635.105, or that are otherwise prohibited under 5 CFR 2635.403(b). This provision would prevent an employee who knowingly acquires a prohibited financial interest and who also participates in an agency matter affecting that interest, from asserting that the exemption provisions described in this rule preclude the Government from pursuing appropriate sanctions against him.

E. Employee Responsibility

Section 2640.205 as proposed states that each employee assigned to a matter which may affect a financial interest within the scope of section 208(a) is responsible for determining, prior to taking action, whether an exemption permits him to participate in the matter. If an employee is unsure whether an exemption is applicable in a particular situation, he should consult with the agency ethics official prior to taking action. As proposed, this regulation would be interpreted strictly, so that an employee who has a financial interest in a matter could not act in the matter in reliance on any provision in the regulation unless the interest were specifically exempted by the regulation. Alternatively, an employee may seek an individual waiver under 18 U.S.C. 208(b)(1) or (b)(3).

F. Existing Agency Exemptions

This proposed rule at § 2640.206 contains a provision designed to resolve questions concerning reliance on waivers issued by agency regulation prior to November 30, 1989, the effective date of the 1989 Ethics Reform Act revisions to 18 U.S.C. 208. The provision would make clear that an employee who, prior to the effective date of this regulation, participated in a matter in which he had a financial interest acted in accordance with applicable regulations if he acted in reliance on a regulatory waiver issued by his employing agency under 18 U.S.C. 208(b)(2) as in effect prior to November 30, 1989.

III. Waivers Issued Pursuant to 18 U.S.C. 208(b)(1)

In some situations an employee may have a disqualifying financial interest which would not be exempted from the requirements of section 208(a) by this proposed regulation as being too remote or inconsequential. For example, some disqualifying financial interests are simply too difficult to define precisely enough in a regulation, while in other cases OGE is unable to describe with enough particularity the matters in which the exemptions would apply. In circumstances such as these, an agency may determine pursuant to section 208(b)(1) that an individual waiver should be granted to the employee. The determination required in these cases is that the employee's disqualifying interest in the matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government expects from the employee. In short, the agency must determine whether the employee's interest in the matter is not so significant that the employee can be relied upon to act or appear to act impartially in the matter. While final determinations in these matters rest with the agencies, this proposed regulation at § 2640.301 would establish uniform procedural requirements for such waivers and would provide guidance to agencies in making the determinations necessary for the granting of waivers.

An agency granting a waiver pursuant to section 208(b)(1) should observe a number of procedural requirements. First, the financial interest involved, and the nature and circumstances of the particular Government matter or matters in which the employee would act must be fully disclosed to the Government official responsible for issuing the waiver. If the official decides to grant the waiver, it must be in writing and be issued by the person responsible for the employee's appointment (or by a person to whom the responsibility to issue such waivers has been delegated.) A waiver must be issued prior to any action on the matter by the employee. The waiver should describe the matter or matters to which it applies, the employee's role in these matters, and any limitations to be placed on the employee's involvement in them. There is no requirement in the rule as proposed that the disqualifying financial interest, the particular matter to which the waiver applies, or the employee's role in the matter be described with any specific degree of particularity. This would, for example, permit the agency issuing the waiver to describe the employee's duties in a general way, or to describe a class of matters to which the waiver would apply. Of course, agencies should endeavor to formulate waivers with enough specificity that a member of the public would have a clear understanding of the circumstances to which the waiver applies. In addition, the waiver must be based on a determination that the employee's financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. A waiver may apply to both present and future financial interests provided that the interests are described with specificity.

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[6] In some cases, a person may be serving on an advisory committee in a representative capacity on behalf of a non-governmental organization, group or industry. Section 208 does not apply to committee members serving in a representative capacity because they are not considered special Government employees. Accordingly, a representative does not need a waiver or exemption as described in this proposed regulation in order to participate in committee matters. *See generally* OGE Informal Advisory Letter 82x22 (July 9, 1982), OGE Advisory Publication, p. 325.

In granting a waiver, section 208(b)(1) specifically requires an agency to determine whether the employee's financial interest in the matter is not so substantial as to affect the integrity of the employee's services to the Government. In large part, this determination depends on the size of the financial interest, its importance to the employee, and the employee's ability to affect his own financial interest directly. Information concerning an employee's good character and past record are irrelevant in making the waiver determination and should not be relied upon as a basis for granting a waiver.

The proposed regulation at § 2640.301(b) lists five factors that an agency official may consider in judging the propriety of granting a waiver. First, the responsible official should consider the type of interest creating the disqualification, such as stock, bonds, or a job offer. Consideration should also be given to the identity of the person whose financial interest is involved. In particular, if the financial interest is not the employee's own, but is the interest of one of the other persons specified in section 208, the agency official should examine the relationship of the person to the employee. Employment interests often create ties stronger than mere stock ownership that might affect an employee's judgment. Moreover, the ethics official should consider the effect of the matter on the interests of the person specified in the statute, not just the ultimate effect, if any, on the interests of the employee. Next, the official should consider the dollar value of the disqualifying interest to the extent it is known or can be estimated, and the value of the financial instrument or holding which is creating the disqualifying interest. Finally, the responsible official should consider the nature and importance of the employee's role in the matter in which he would be allowed to act, including the extent to which he would have to exercise discretion. For example, the agency should consider whether the employee will play a primary role in dealing with an entity in which he has a financial interest, or contribute substantially to a decision affecting such an entity, or play a peripheral role in a matter involving the entity.

Agencies may also consider certain other factors when deciding whether an employee's financial interest is substantial enough to affect the integrity of his services. A responsible official may consider the sensitivity of the agency matter in which the employee would act, the need for the employee's services in the particular matter, and whether adjustments could be made in the employee's duties that would reduce or eliminate the likelihood that the integrity of the employee's services would be questioned. A decision by the responsible official to grant a waiver pursuant to section 208(b)(1) constitutes a determination under 5 CFR 2635.502 of the Standards of Ethical Conduct that the Government's interest in having an employee participate in a particular matter outweighs any questions concerning an employee's impartiality.

IV. Waivers Issued Pursuant to 18 U.S.C. Section 208(b)(3)

This proposed regulation would also address the authority of agencies to issue waivers pursuant to section 208(b)(3) for special Government employees who are members of an advisory committee established under the Federal Advisory Committee Act (5 U.S.C. app.) or nominees to such a committee if these individuals have a disqualifying financial interest. The basis for a determination to grant a waiver under section 208(b)(3) is somewhat different from that which underlies a waiver granted pursuant to section 208(b)(1). To allow an individual to participate in advisory committee matters from which he would otherwise be disqualified, the agency must balance the need for the individual's services against the potential for a conflict of interest created by the employee's disqualifying interest. After reviewing the financial disclosure statement filed by the individual pursuant to the Ethics in Government Act of 1978, the official responsible for appointing the individual to the committee must certify that the need for the individual's services outweighs the potential for conflict created by the financial interest involved.

In making this certification, § 2640.302(b) as proposed would instruct the responsible official to consider the uniqueness of the individual's qualifications and the difficulty of finding a similarly qualified individual to serve on the committee. As in the case of making a determination whether a waiver should be granted under section 208(b)(1), the official should also consider the type of interest that is creating the disqualification, as well as its dollar value to the extent it is known or can be estimated. Consideration should also be given to the identity of the person whose financial interest is creating the disqualification and that person's relationship to the employee. Finally, the official should consider the likelihood that the advisory committee will consider matters which will affect the individual's financial interests individually or particularly.

The regulation at proposed § 2640.302(a) also states that the agency should follow procedural requirements similar to those for granting individual waivers under 18 U.S.C. 208(b)(1). Waivers issued pursuant to section 208(b)(3) may be applicable only to special Government employee members or prospective members of advisory committees within the meaning of the Federal Advisory Committee Act.

V. Consultation and Notification Concerning Waivers

Proposed § 2640.303, in accordance with section 301(d) of Executive Order 12674, would require a responsible official, when practicable, to consult formally or informally with the Office of Government Ethics prior to granting a waiver under either § 2640.301 or § 2640.302 as proposed. The consultation need not take any particular form and may be done informally by telephone. While these waiver determinations are within an agency's discretion, consultation with OGE affords the agency official an opportunity to benefit from OGE's experience and knowledge as to how these provisions are generally interpreted and whether the agency's proposed solution is legally sufficient and is within the range of reasonable interpretations. After issuance of a waiver, a copy of the waiver must be transmitted promptly to OGE. *See* section 301(d) of E.O. 12674, as modified, and 5 CFR 2635.402(d)(4).

VI. Public Availability of Waivers

Agencies are generally required to make copies of waivers issued pursuant

to 18 U.S.C. 208(b)(1) or (b)(3) available to the public upon request. *See* 18 U.S.C. 208(d)(1) and proposed § 2640.304. The procedures to be used for providing access to these waivers are those which are used for public access to financial disclosure statements under the Ethics in Government Act. The procedures are described at 5 CFR 2634.603.

There are certain limitations on the public availability of waivers granted pursuant to 18 U.S.C. 208(b)(1) and (b)(3). Agencies may withhold from disclosure any information contained in a waiver which would be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. In addition, for waivers issued under section 208(b)(3), an agency must withhold any information in the certification concerning an individual's financial interest that is more extensive than what is required to be disclosed by the individual in his financial disclosure statement under the Ethics Act. Agencies should also withhold information in any waiver which is otherwise subject to a prohibition on public disclosure under law.

VII. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments to OGE on this proposed regulation, to be received on or before November 13, 1995. The Office of Government Ethics will review all comments received and consider any modifications to this rule as proposed which appear warranted before adopting a final rule on this matter.

Executive Order 12866

In promulgating this proposed regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this proposed regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: August 9th, 1995.

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Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend title 5, chapter XVI, subchapter B of the Code of Federal Regulations by adding a new part 2640 to read as follows:

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

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Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2640.101 Purpose.

18 U.S.C. 208(a) prohibits an officer or employee of the executive branch, of any independent agency of the United States, of the District of Columbia, or Federal Reserve bank director, officer, or employee, or any special Government employee from participating in an official capacity in particular matters in which he has a personal financial interest, or in which certain persons or organizations with which he is affiliated have a financial interest. The statute is intended to prevent an employee from allowing personal interests to affect his official actions, and to protect governmental processes from actual or apparent conflicts of interests. However, in certain cases, the nature and size of the financial interest and the nature of the matter in which the employee would act are unlikely to affect an employee's official actions. Accordingly, the statute permits waivers of the disqualification provision in certain cases, either on an individual basis or pursuant to general regulation. Section 208(b)(2) provides that the Director of the Office of Government Ethics may, by regulation, exempt from the general prohibition, financial interests which are too remote or too inconsequential to affect the integrity of the services of the employees to which the prohibition applies. This regulation describes those financial interests. The regulation also provides guidance to agencies on the factors to consider when issuing individual waivers under 18 U.S.C. 208(b)(1) or (b)(3), and provides an interpretation of 18 U.S.C. 208(a).

§ 2640.102 Definitions.

For purposes of this part:

(a) *Common trust fund* means any fund as defined in 26 U.S.C. 584. A common trust fund is maintained by a bank exclusively for the collective investment and reinvestment of monies contributed to the fund in its capacity as trustee, executor, administrator, or guardian. Common trust funds are collections of individually established funds for which a bank acts as fiduciary. The bank pools the funds for investment purposes.

(b) *Diversified* means that the fund, trust or plan does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of:

(1) A mutual fund, means the assets of the mutual fund are sufficiently varied that it meets the requirements of section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1), for a diversified company;

(2) A common trust fund, means the fund is subject to the rules regarding diversification established by the Office of the Comptroller of the Currency at 12 CFR 9.18;

(3) A unit investment trust, means the assets of the trust are sufficiently varied that it meets the requirements of section 851 of the Internal Revenue Code, 26 U.S.C. 851, for a regulated investment company; and

(4) An employee benefit plan, means that the plan's trustee has a written policy of varying plan investments.

Note: A mutual fund meets the requirements of Section 5(b)(1) of the Investment Company Act of 1940 if it is a "diversified company." A unit investment trust is diversified in accordance with 26 U.S.C. 851 if it is a "regulated investment company." An employee can determine if a fund or trust meets these standards by locating a description of the fund as a "diversified company" or the trust as a "regulated investment company" in the prospectus for the fund or trust or by calling a broker or the manager of the trust or fund. A common trust fund maintained by a national or State bank can be presumed to be diversified in accordance with the standards for diversification set by the Office of the Comptroller of the Currency. An employee benefit plan is diversified if the plan manager has a written policy of varying assets. This policy might be found in materials describing the plan or may be obtained in a written statement from the plan manager.

It is important to note that a mutual fund, unit investment trust, common trust fund, or employee benefit plan that is diversified for purposes of this regulation may not necessarily be an excepted investment fund (EIF) for purposes of reporting financial interests pursuant to 5 CFR 2634.311(c). In some cases, an employee may have to report the underlying assets of a fund, trust or plan on his financial disclosure statement even though an exemption set forth in this regulation would permit the employee to participate in a matter affecting the underlying assets of the fund, trust or plan. Conversely, there may be situations in which no exemption in this regulation is applicable to the assets of a fund, trust or plan which is properly reported as an EIF on the employee's financial disclosure statement.

(c) *Employee* means an officer or employee of the executive branch of the United States, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia. The term also includes a special Government employee as defined in 18 U.S.C. 202.

(d) *Employee benefit plan* means a plan as defined in section 3(3) of the Employee Retirement Security Act of 1974, 29 U.S.C. 1002(3), and that has more than one participant. An employee benefit plan is any plan, fund or program established or maintained by an employer or an employee organization, or both, to provide its participants medical, disability, death, unemployment, or vacation benefits, training programs, day care centers, scholarship funds, prepaid legal services, deferred income, or retirement income.

(e) *He, his,* and *him* include she, hers, and her.

(f) *Holdings* means portfolio of investments.

(g) *Independent trustee* means a trustee who is independent of the sponsor and the participants in a plan, or is a registered investment advisor.

(h) *Institution of higher education* means an educational institution as defined in 20 U.S.C. 1141 (a).

(i) *Issuer* means a person who issues or proposes to issue any security, or has any outstanding security which it has issued.

(j) *Long-term Federal Government security* means a bond or note with a maturity of one year or more issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.

(k) *Municipal security* means direct obligation of, or obligation guaranteed as to principal or interest by, a State (or any of its political subdivisions, or any municipal corporate instrumentality of one or more States,) or the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(l) *Mutual fund* means an entity which is registered as a management company under the Investment Company Act of 1940, as amended, (15 U.S.C. 80a–1 *et seq.*). For purposes of this rule, the term mutual fund includes open-end and closed-end mutual funds and registered money market funds.

(m) *Particular matter involving specific parties* includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties.

(n) *Pension plan* means any plan, fund or program maintained by an employer or an employee organization, or both, to provide retirement income to employees, or which results in deferral of income for periods extending to, or beyond, termination of employment.

(o) *Person* means an individual, corporation, company, association, firm, partnership, society or any other organization or institution.

(p) *Publicly traded security* means a security as defined in paragraph (r) of this section and which is:

(1) Registered with the Securities and Exchange Commission pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) and listed on a national or regional securities exchange or traded through NASDAQ;

(2) Issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940, as amended, (15 U.S.C. 80a–8); or

(3) A corporate bond registered as an offering with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) and issued by an entity whose stock is a publicly traded security.

Note: National securities exchanges include the American Stock Exchange and the New York Stock Exchange. Regional exchanges include the Boston, Cincinnati, Intermountain (Salt Lake City), Midwest (Chicago), Pacific (Los Angeles and San Francisco), Philadelphia (Philadelphia and Miami), and Spokane stock exchanges.

(q) *Sector mutual fund* means a mutual fund that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single State within the United States.

(r) *Security* means common stock, preferred stock, corporate bond, municipal security, mutual fund, long-term Federal Government security, and limited partnership interest.

(s) *Short-term Federal Government security* means a bill with a maturity of less than one year issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.

(t) *Special Government employee* means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(u) *Unit investment trust* means an investment company as defined in 15 U.S.C. 80a–4(2).

§ 2640.103 Prohibition.

(a) *Statutory prohibition.* Unless permitted by 18 U.S.C. 208(b)(1)–(4), an employee is prohibited by 18 U.S.C. 208(a) from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The restrictions of 18 U.S.C. 208 are described more fully in 5 CFR 2635.401 and 2635.402.

(1) *Particular matter.* The term "particular matter" includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and

may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. The particular matters covered by this part include a judicial or other proceeding, application or request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: The Overseas Private Investment Corporation decides to hire a contractor to conduct EEO training for its employees. The award of a contract for training services is a particular matter.

Example 2: The spouse of a high level official of the Internal Revenue Service (IRS) requests a meeting on behalf of her client (a major U.S. corporation) with IRS officials to discuss a provision of IRS regulations governing depreciation of equipment. The spouse will be paid a fee by the corporation for arranging and attending the meeting. The consideration of the spouse's request and the decision to hold the meeting are particular matters in which the spouse has a financial interest.

Example 3: A regulation published by the Department of Agriculture applicable only to companies that operate meat packing plants is a particular matter.

Example 4: A change by the Department of Labor to health and safety regulations applicable to all employers in the United States is not a particular matter. The change in the regulations is directed to the interests of a large and diverse group of persons.

Example 5: The allocation of additional resources to the investigation and prosecution of white collar crime by the Department of Justice is not a particular matter. Similarly, deliberations on the general merits of an omnibus bill such as the Tax Reform Act of 1986 are not sufficiently focused on the interests of specific persons, or a discrete and identifiable group of persons to constitute participation in a particular matter.

Example 6: The recommendations of the Council of Economic Advisors to the President about appropriate policies to maintain economic growth and stability are not particular matters. Discussions about economic growth policies are directed to the interests of a large and diverse group of persons.

Example 7: The formulation and implementation of the response of the United States to the military invasion of a U.S. ally is not a particular matter. General deliberations, decisions and actions concerning a response are based on a consideration of the political, military, diplomatic and economic interests of every sector of society and are too diffuse to be focused on the interests of specific individuals or entities. However, at the time consideration is given to actions focused on specific individuals or entities, or a discrete and identifiable class of individuals or entities, the matters under consideration would be particular matters. These would include, for example, discussions whether to close a particular oil pumping station or pipeline in the area where hostilities are taking place, or a decision to seize a particular oil field or oil tanker.

Example 8: A legislative proposal for broad health care reform is not a particular matter because it is not focused on the interests of specific persons, or a discrete and identifiable class of persons. It is intended to affect every person in the United States. However, the implementation, through regulations, of a section of the health care bill limiting the amount that can be charged for prescription drugs is sufficiently focused on the interests of pharmaceutical companies that it would be a particular matter.

(2) *Personal and substantial participation.* To participate "personally" means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate "substantially" means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

Example 1: An agency's Office of Enforcement is investigating the allegedly fraudulent marketing practices of a major corporation. One of the agency's personnel specialists is asked to provide information to the Office of Enforcement about the agency's personnel ceiling so that the Office can determine whether new employees can be hired to work on the investigation. The employee personnel specialist owns $10,000 worth of stock in the corporation that is the target of the investigation. She does not have a disqualifying financial interest in the matter (the investigation and possible subsequent enforcement proceedings) because her involvement is on a peripheral personnel issue and her participation cannot be considered "substantial" as defined in the statute.

(3) *Direct and predictable effect.* (i) A particular matter will have a "direct" effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this part.

(ii) A particular matter will have a "predictable" effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

Example 1: An attorney at the Department of Justice is working on a case in which several large companies are defendants. If the Department wins the case, the defendants may be required to reimburse the Federal Government for their failure to adequately perform work under several contracts with the Government. The attorney's spouse is a salaried employee of one of the companies, working in a division that has no involvement in any of the contracts. She does not participate in any bonus or benefit plans tied to the profitability of the company, nor does she own stock in the company. Because there is no evidence that the case will have a direct and predictable effect on whether the spouse will retain her job or maintain the level of her salary, or whether the company will undergo any reorganization that would affect her interests, the attorney would not have a disqualifying financial interest in the matter. However, the attorney must consider, under the requirements of part 2635.502 of this chapter, whether his impartiality would be questioned if he continues to work on the case.

Example 2: A special Government employee (SGE) whose principal employment is as a researcher at a major university is appointed to serve on an advisory committee that will evaluate the safety and effectiveness of a new medical device to regulate arrhythmic heartbeats. The device is being developed by Alpha Medical Inc., a company which also has contracted with the SGE's university to assist in developing another medical device related to kidney dialysis. There is no evidence that the advisory committee's determinations concerning the medical device under review will affect Alpha Medical's contract with the university to develop the kidney dialysis device. The SGE may participate in the committee's deliberations because those deliberations will not have a direct and predictable effect on the financial interests of the researcher or his employer.

Example 3: The SGE in the preceding example is instead asked to serve on an advisory committee that has been convened to conduct a preliminary evaluation of the new kidney dialysis device developed by Alpha Medical under contract with the employee's university. Alpha's contract with the university requires the university to undertake additional testing of the device to address issues raised by the committee during its review. The committee's actions will have a direct and predictable effect on the university's financial interest.

Example 4: An engineer at the Environmental Protection Agency (EPA) was formerly employed by Waste Management, Inc., a corporation subject to EPA's regulations concerning the disposal of hazardous waste materials. Waste Management is a large corporation, with less than 5% of its profits derived from handling hazardous waste materials. The engineer has a vested interest in a defined benefit pension plan sponsored by Waste Management which guarantees that he will receive payments of $500 per month beginning at age 62. As an employee of EPA, the engineer has been assigned to evaluate Waste Management's compliance with EPA hazardous waste regulations. Because there is no evidence that the engineer's monitoring activities will affect Waste Management's ability or willingness to pay his pension benefits when he is entitled to receive them at age 62, he has no disqualifying financial interest in the Government matter. The EPA's monitoring activities will not have a direct and predictable effect on the employee's financial interest in his Waste Management pension. However, the engineer should consider whether, under the standards set forth in 5 CFR 2635.502, a reasonable person would question his impartiality if he acts in a matter in which Waste Management is a party.

(b) *Disqualifying financial interests.* For purposes of 18 U.S.C. 208(a) and this part, the term financial interest means the potential for gain or loss to the employee, or other person specified in section 208, as a result of governmental action on the particular matter. The disqualifying financial interest might arise from ownership of certain financial instruments or investments such as stock, bonds, mutual funds, or real estate. Additionally, a disqualifying financial interest might derive from a salary, indebtedness, job offer, or any similar interest that may be affected by the matter.

Example 1: An employee of the Department of the Interior owns transportation bonds issued by the State of Minnesota. The proceeds of the bonds will be used to fund improvements to certain State highways. In her official position, the employee is evaluating an application from Minnesota for a grant to support a State wildlife refuge. The employee's ownership of the transportation bonds does not create a disqualifying financial interest in Minnesota's application for wildlife funds because approval or disapproval of the grant will not in any way affect the current value of the bonds or have a direct and predictable effect on the State's ability or willingness to honor its obligation to pay the bonds when they mature.

Example 2: An employee of the Bureau of Land Management owns undeveloped land adjacent to Federal lands in New Mexico. A portion of the Federal land will be leased by the Bureau to a mining company for exploration and development, resulting in an increase in the value of the surrounding privately owned land, including that owned by the employee. The employee has a financial interest in the lease of the Federal land to the mining company and, therefore, cannot participate in Bureau matters involving the lease unless he obtains an individual waiver pursuant to 18 U.S.C. 208(b)(1).

Example 3: A special Government employee serving on an advisory committee studying the effectiveness of a new arthritis drug is a practicing physician with a specialty in treating arthritis. The drug being studied by the committee would be a low cost alternative to current treatments for arthritis. If the drug is ultimately approved, the physician will be able to prescribe the less expensive drug. The physician does not own stock in, or hold any position, or have any business relationship with the company developing the drug. Moreover, there is no indication that the availability of a less expensive treatment for arthritis will increase the volume and profitability of the doctor's private practice. Accordingly, the physician has no disqualifying financial interest in the actions of the advisory committee.

(c) *Interests of others.* The financial interests of the following persons will serve to disqualify an employee to the same extent as the employee's own interests:

(1) The employee's spouse;

(2) The employee's minor child;

(3) The employee's general partner;

(4) An organization or entity which the employee serves as officer, director, trustee, general partner, or employee; and

(5) A person with whom the employee is negotiating for, or has an arrangement concerning, prospective employment.

Example 1: An employee of the Consumer Product Safety Commission (CPSC) has two minor children who have inherited shares of stock from their grandparents in a company that manufactures small appliances. Unless an exemption is applicable under section 2640.202 of this part or he obtains a waiver under 18 U.S.C. 208(b)(1), the employee is disqualified from participating in a CPSC proceeding to require the manufacturer to remove a defective appliance from the market.

Example 2: A newly appointed employee of the Department of Housing and Urban Development (HUD) is a general partner with three former business associates in a partnership that owns a travel agency. The employee knows that his three general partners are also partners in another partnership that owns a HUD-subsidized housing project. Unless he receives a waiver pursuant to 18 U.S.C. 208(b)(1) permitting him to act, the employee must disqualify himself from particular matters involving the HUD-subsidized project which his general partners own.

Example 3: The spouse of an employee of the Department of Health and Human Services (HHS) works for a consulting firm that provides support services to colleges and universities on research projects they are conducting under grants from HHS. The spouse is a salaried employee who has no direct ownership interest in the firm such as through stockholding, and the award of a grant to a particular university will have no direct and predictable effect on his continued employment or his salary. Because the award of a grant will not affect the spouse's financial interest, section 208 would not bar the HHS employee from participating in the award of a grant to a university to which the consulting firm will provide services. However, the employee must consider whether her participation in the award of the grant would be barred under the impartiality provision in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR 2635.502.

(d) *Disqualification.* Unless the employee is authorized to participate in the particular matter by virtue of an exemption or waiver described in subpart B or subpart C of this part, or the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignments should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics, is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement, or is required to do so by agency supplemental regulation issued pursuant to 5 CFR 2635.105. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: The supervisor of an employee of the Department of Education asks the employee to attend a meeting on his behalf on developing national standards for science education in secondary schools. When the employee arrives for the meeting, she realizes one of the participants is the president of Education Consulting Associates (ECA), a firm which has been awarded a contract to prepare a bulletin describing the Department's policies on science education standards. The employee's spouse has a subcontract with ECA to provide the graphics and charts that will be used in the bulletin. Because the employee realizes that the meeting will involve matters relating to the production of the bulletin, the employee properly decides that she must disqualify herself from participating in the discussions. After withdrawing from the meeting, the employee should notify her supervisor about the reason for her disqualification. She may elect to put her disqualification statement in writing, or to simply notify her supervisor orally. She may also elect to notify appropriate coworkers about her need to disqualify herself from this matter.

(e) *Divestiture of a disqualifying financial interest.* Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, an employee is no longer prohibited from acting in the particular matter.

(1) *Voluntary divestiture.* An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) *Directed divestiture.* An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a) of this chapter, or if the agency determines in accordance with § 2635.403(b) of this chapter that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.

(3) *Eligibility for special tax treatment.* An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(f) *Official duties that give rise to potential conflicts.* Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

§ 2640.201 Exemptions for interests in mutual funds, common trust funds, unit investment trusts, and employee benefit plans.

(a) *Diversified mutual funds, common trust funds, and unit investment trusts.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, affecting one or more holdings of a diversified mutual fund, a diversified common trust fund, or a diversified unit investment trust, where the disqualifying financial interest in the matter arises because of the direct or beneficial ownership by the employee, or any other person specified in section 208(a), of an interest in the trust or fund.

Example 1: An employee owns shares worth $100,000 in several mutual funds whose portfolios contain stock in a small computer company. Each mutual fund prospectus describes the fund as a "diversified management company." The employee may participate in agency matters affecting the computer company.

Example 2: An employee has owned shares in five different mutual funds for a number of years. Although each of the funds has numerous varied holdings, the employee is not sure whether the funds are actually "diversified" as defined in § 2640.102(b). After searching his records, the employee finds prospectuses for three of the funds. One of these prospectuses indicates that the mutual fund is a "diversified company" and a second states that the fund is a "diversified management company." Neither indicates that the fund has a policy of concentrating its investments in a particular sector. Both funds are "diversified" mutual funds and the employee is not disqualified from acting in matters affecting the underlying holdings of the funds. For the remaining three funds, the employee calls the telephone number provided by the fund's sponsor for investor inquiries. After ascertaining that all three funds are "diversified companies" and none has a policy of concentrating investments in a particular sector, the employee is free to act in matters affecting the funds' holdings. Once this determination has been made, no further action is required and the employee may rely on the exemption in § 2640.201(a).

Example 3: An auditor at the Internal Revenue Service (IRS) is one of the beneficiaries of a trust established by her father to provide a life income for his children. The trust is managed by a bank as a common trust fund. The IRS auditor may assume that the trust's assets are diversified and may act in IRS matters that would affect the trust's underlying assets.

Example 4: A nonsupervisory employee of the Department of Energy owns shares in a mutual fund that expressly concentrates its holdings in the stock of utility companies. The employee may not rely on the exemption in § 2640.201(a) to act in matters affecting a utility company whose stock is part of the mutual fund's portfolio because the fund is not a diversified fund as defined in § 2640.102(b)(1). The employee may, however, seek an individual waiver under 18 U.S.C. 208(b)(1) permitting him to act. Moreover, depending upon the value of the employee's interest in the fund and the type of particular matter in which he would participate, one of the exemptions at § 2640.202(a)–(c) for interests arising from publicly traded securities may be applicable.

(b) *Sector mutual funds.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, affecting one or more holdings of a sector mutual fund where the affected holding is not invested in the sector in which the fund concentrates, and where the disqualifying financial interest in the matter arises because of the direct or beneficial ownership by the employee, or any other person specified in section 208, of an interest in the fund.

Example 1: An employee of the Federal Reserve owns shares in the mutual fund described in the preceding example. In addition to holdings in utility companies, the mutual fund contains stock in certain regional banks and bank holding companies whose financial interests would be affected by an investigation in which the Federal Reserve employee would participate. The employee is not disqualified from participating in the investigation because the banks that would be affected are not part of the sector in which the fund concentrates.

(c) *Employee benefit plans.* An employee may participate in:

(1) Any particular matter, whether of general applicability or involving specific parties, affecting one or more holdings of an employee benefit plan, where the disqualifying financial interest in the matter arises from membership by the employee, or any other person specified in section 208(a), in:

(i) The Thrift Savings Plan for Federal employees described in 5 U.S.C. 8437;

(ii) A pension plan established or maintained by a State government or any political subdivision of a State government for its employees; or

(iii) A diversified employee benefit plan, provided:

(A) The investments of the plan are administered by an independent trustee, and the employee, or other person specified in section 208(a), does not participate in the selection of the plan's investments or designate specific plan investments (except for directing that contributions be divided among several different categories of investments, such as stocks, bonds or mutual funds, which are available to plan participants); and

(B) The plan is not a profit-sharing or stock bonus plan.

Note: Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing plans for purposes of this section. However, for the exemption to apply, 401(k) plans must meet the requirements of § 2640.201(c)(1)(iii)(A).

(2) Particular matters of general applicability, such as rulemaking, affecting the State or local government sponsor of a State or local government pension plan described in, § 2640.201(c)(1)(ii) where the only disqualifying financial interest in the matter arises because of participation by the employee, or other person specified in section 208(a), in the plan.

Example 1: An attorney terminates his position with a law firm to take a position with the Department of Justice. As a result of his employment with the firm, the employee has interests in a 401(k) plan, the assets of which are invested primarily in stocks chosen by an independent financial management firm. He also participates in a defined contribution pension plan maintained by the firm, the assets of which are stocks, bonds, and financial instruments. The plan is managed by an independent trustee. Assuming that the manager of the pension plan has a written policy of diversifying plan investments, the employee may act in matters affecting the plan's holdings. The employee may also participate in matters affecting the holdings of his 401(k) plan if the individual financial management firm that selects the plan's investments has a written policy of diversifying the plan's assets. Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing or stock bonus plans for purposes of this regulation.

Example 2: An employee of the Department of Agriculture who is a former New York State employee has a vested interest in a pension plan established by the State of New York for its employees. She may participate in an agency matter that would affect a company whose stock is in the pension plan's portfolio. She also may participate in a matter of general applicability affecting all States, including the State of New York, such as the drafting and promulgation of a rule requiring States to expend additional resources implementing the Food Stamp program. Unless she obtains an individual waiver under 18 U.S.C. 208(b)(1), she may not participate in a matter involving the State of New York as a party, such as an application by the State for additional Federal funding for administrative support services, if that matter would affect the State's ability or willingness to honor its obligation to pay her pension benefits.

§ 2640.202 Exemptions for interests in securities.

(a) *De minimis exemption for all matters.* An employee may participate in any particular matter involving specific parties, in which the disqualifying financial interest arises from the direct or beneficial ownership by the employee, his spouse or minor children of securities issued by one or more entities which are parties to the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government securities or municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse and minor children in the securities of all parties does not exceed $5,000.

Example 1: An employee owns 100 shares of publicly traded stock valued at $3,000 in XYZ Corporation. As part of his official duties, the employee is evaluating bids for performing computer maintenance services at his agency and discovers that XYZ Corporation is one of the companies that has submitted a bid. The employee is not required to recuse himself from continuing to evaluate the bids.

Example 2: In the preceding example, the employee and his spouse each own 100 shares of stock in XYZ Corporation, resulting in ownership of $6,000 worth of stock by the employee and his spouse. The exemption in § 2640.202(a) would not permit the employee to participate in the evaluation of bids because the aggregate market value of the holdings of the employee, spouse and minor children in XYZ Corporation exceeds $5,000. The employee could, however, seek an individual waiver under 18 U.S.C. 208(b)(1) in order to participate in the evaluation of bids.

Example 3: An employee is assigned to monitor XYZ Corporation's performance of a contract to provide computer maintenance services at the employee's agency. At the time the employee is first assigned these duties, he owns publicly traded stock in XYZ Corporation valued at less than $5,000. During the time the contract is being performed, however, the value of the employee's stock increases to $7,500. When the employee knows that the value of his stock exceeds $5,000, he must disqualify himself from any further participation in matters affecting XYZ Corporation or seek an individual waiver under 18 U.S.C. 208(b)(1).

(b) *De minimis exemption when issuer is not a party.* An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the direct or beneficial ownership by the employee, his spouse, or minor children of securities issued by one or more entities that are not parties to the matter but that are affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government securities or municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse and minor children in the securities of all affected entities (including securities exempted under paragraph (a) of this section) does not exceed $25,000.

Example 1: An attorney at the Department of Labor is handling litigation brought by Allied Chemical Corporation challenging a provision in the Department's health and safety regulations that apply to companies which manufacture certain types of ether. If the plaintiff is successful, all companies subject to this provision in the health and safety rules will be able to reduce expenditures required for complying with the regulations. The attorney does not own any stock in Allied Chemical Corporation, but does own $15,000 worth of stock in another company not a party to the litigation, but which is subject to the regulatory provision at issue in the litigation. The attorney may continue to handle the litigation.

Example 2: A second attorney at the Department of Labor is asked to assist in handling the same litigation brought by Allied Chemical Corporation, as described in the preceding example. However, this attorney owns $4,000 worth of stock in Allied Chemical, as well as $12,000 worth of stock in each of two other chemical companies which are not parties to the litigation, but which are subject to the regulatory provision at issue and which would be affected by the outcome of the litigation. Unless the attorney obtains an individual waiver pursuant to section 208(b)(1), or sells a portion of his stock, he may not participate in matters involving this litigation. The aggregate market value of his holdings in affected entities exceeds $25,000.

(c) *De minimis exemption for matters of general applicability.* An employee may participate in any particular matter of general applicability not involving specific parties, such as rulemaking, in which the disqualifying financial interest arises from the direct or beneficial ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

(1) The securities are publicly traded, or are long-term Federal Government securities or municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse and minor children in:

(i) Any one such entity does not exceed $25,000; and

(ii) All entities affected by the matter does not exceed $50,000.

Example 1: The Department of Commerce is in the process of formulating a regulation concerning unfair trade practices. The regulation will affect all foreign companies that sell automobiles in the United States. An employee of the Department who is assisting in drafting the regulation owns $10,000 worth of stock in one Japanese automobile manufacturer, $20,000 worth of stock in a German automobile manufacturer, and

$7,500 worth of stock in a Swedish automobile company. Even though the employee owns $37,500 worth of stock in companies that will be affected by the regulation, she may participate in drafting the regulation because the value of the securities she owns does not exceed $25,000 in any one affected company and the total value of stock owned in all affected companies does not exceed $50,000.

Example 2: A health scientist administrator employed in the Public Health Service at the Department of Health and Human Services is assigned to serve on a Departmentwide task force that will recommend changes in how Medicare reimbursements will be made to health care providers. The employee owns $10,000 worth of shares in a sector mutual fund invested primarily in health-related companies such as pharmaceuticals, developers of medical instruments and devices, managed care health organizations, and acute care hospitals. Because the fund is not a "diversified mutual fund" as defined in § 2640.102(b), the exemption at § 2640.201(a) is not applicable. However, because the fund is a "publicly traded security" as defined in § 2640.102(q), the exemption for financial interests arising from ownership of a de minimis amount of securities at § 2640.202(c) will permit the employee to participate on the task force.

(d) *Exemption for short-term Federal Government securities.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, in which the disqualifying financial interest arises from the direct or beneficial ownership by the employee, or any other person specified in section 208(a), of short-term Federal Government securities.

(e) *Exemption for interests of tax-exempt organizations.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, in which the disqualifying financial interest arises from the ownership of publicly traded or municipal securities, or long-term Federal Government securities by an organization which is tax exempt pursuant to 26 U.S.C. 501(c)(3), and of which the employee is an unpaid officer, director, or trustee, or an employee, if:

(1) The matter affects only the organization's investments, not the organization directly;

(2) The employee plays no role in making investment decisions for the organization, except for participating in the decision to invest in several different categories of investments such as stocks, bonds, or mutual funds;

(3) The organization's holdings in one or more affected issuers represent no more than 20% of the organization's total investment portfolio; and

(4) The organization's only relationship to the issuer, other than that which arises from routine commercial transactions, is that of investor.

Example 1: An employee of the Federal Reserve is a director of the National Association to Save Trees (NAST), an environmental organization that is tax exempt under section 501(c)(3) of the Internal Revenue Code. The employee knows that NAST has an endowment fund that is partially (about 10% of the endowment's value) invested in the publicly traded stock of Computer Inc. The employee's position at the Federal Reserve involves the procurement of computer software, including software marketed by Computer Inc. The employee may participate in the procurement of software from Computer Inc. provided that he is not involved in selecting NAST's investments, and that NAST has no relationship to Computer Inc. other than as an investor in the company and routine purchaser of Computer Inc. software.

(f) *Exemption for certain interests of general partners.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, in which the disqualifying financial interest arises from:

(1) The ownership of publicly traded securities, long-term Federal Government securities, or municipal securities by the employee's general partner, *provided:*

(i) Ownership of the securities is not related to the partnership between the employee and his general partner, and

(ii) The value of the securities does not exceed $200,000; or

(2) Any interest of the employee's general partner if the employee's relationship to the general partner is as a limited partner in a partnership that has at least 100 limited partners.

Example 1: An employee of the Department of Transportation is a general partner in a partnership that owns commercial property. The employee knows that one of his partners owns stock in an aviation company valued at $100,000 because the stock has been pledged as collateral for the purchase of the commercial property by the partnership. In the absence of an individual waiver under 18 U.S.C. 208(b)(1), the employee may not act in a matter affecting the aviation company. Because the stock has been pledged as collateral, ownership of the securities is related to the partnership between the employee and his general partner.

Example 2: An employee of the Pension Benefit Guaranty Corporation (PBGC) has a limited partnership interest in Ambank Partners, a large partnership with more than 500 limited partners. The partnership assets are invested in the securities of various financial institutions. Ambank's general partner is Capital Investment Services, an investment firm whose pension plan for its own employees is being examined by the PBGC for possible unfunded liabilities. Even though the employee's general partner (Capital Investment Services) has a financial interest in PBGC's review of the pension plan, the employee may participate in the review because his relationship with his general partner is that of a limited partner in a partnership that has at least 100 limited partners.

§ 2640.203 Miscellaneous exemptions.

(a) *Hiring decisions.* An employee may participate in a hiring decision involving an applicant who is currently employed by a corporation that issues publicly traded securities, if the disqualifying financial interest arises from:

(1) Ownership by the employee, or any other person specified in section 208, of publicly traded securities issued by the corporation; or

(2) Participation by the employee, or any other person specified in section 208, in a vested pension plan sponsored by the corporation.

(b) *Employees on leave from institutions of higher education.* An employee on a leave of absence from an institution of higher education may participate in any particular matter of general applicability, not involving specific parties, affecting the financial interests of the institution from which he is on leave, *provided* that the matter will not have a special or distinct effect on that institution other than as part of a class.

Example 1: An employee at the Department of Defense (DOD) is on a leave of absence from his position as a tenured Professor of Engineering at the University of California (UC) at Berkeley. While at DOD, he is assigned to assist in developing a regulation which will contain new standards for the oversight of grants given by DOD. Even though the University of California at Berkeley is a DOD grantee, and will be affected by these new monitoring standards, the employee may participate in developing the standards because UC Berkeley will be affected only as part of the class of all DOD grantees. However, if the new standards would affect the employee's own financial interest, such as by affecting his tenure or his salary, the employee could not participate in the matter unless he first obtains an individual waiver under section 208(b)(1).

Example 2: An employee on leave from a university could not participate in the development of an agency program of grants specifically designed to facilitate research in jet propulsion systems where the employee's university is one of just two or three universities likely to receive a grant under the new program. Even though the grant announcement is open to all universities, the employee's university is among the very few known to have facilities and equipment adequate to conduct the research. The matter would have a distinct effect on the institution other than as part of a class.

(c) *Multi-campus institutions of higher education.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, affecting one campus of a State multi-campus institution of higher education, if the employee's only disqualifying financial interest is employment in a position with no multi-campus responsibilities at a separate campus of the same multi-campus institution.

Note: Many State institutions and systems of higher education are sufficiently separate from each other that an exemption is not necessary to permit an employee to participate in matters affecting another State educational institution. Whether State institutions constitute a State "system" must be resolved on an individual basis by the agency employing the exemption.

Example 1: A special Government employee (SGE) member of an advisory committee convened by the National Science Foundation is a full-time professor in the School of Engineering at one campus of a State university. The SGE may participate in formulating the committee's recommendation to award a grant to a researcher at another campus of the same State university system.

Example 2: A member of the Board of Regents at a State university is asked to serve on an advisory committee established by the Department of Health and Human Services to consider applications for grants for human genome research projects. An application from another university that is part of the same State system will be reviewed by the committee. Unless he receives an individual waiver under section 208 (b)(1) or (b)(3), the advisory committee member may not participate in matters affecting the second university that is part of the State system because as a member of the Board of Regents, he has duties and responsibilities that affect the entire State educational system.

(d) *Exemptions for financial interests arising from Federal Government employment or from Social Security or veterans' benefits.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, where the disqualifying financial interest arises from Federal Government salary or benefits, or from Social Security or veterans' benefits, except an employee may not:

(1) Make determinations that individually or specially affect his own Government salary and benefits, or Social Security or veterans' benefits; or

(2) Make determinations, requests, or recommendations that individually or specially relate to, or affect, the Government salary or benefits, or Social Security or veterans' benefits of any other person specified in section 208.

Note: This exemption does not permit an employee to take any action in violation of any other statutory or regulatory requirement, such as the prohibition on the employment of relatives at 5 U.S.C. 3110.

Example 1: An employee of the Office of Management and Budget may vigorously and energetically perform the duties of his position even though his outstanding performance would result in a performance bonus or other similar merit award.

Example 2: A policy analyst at the Defense Intelligence Agency may request promotion to another grade or salary level. However, the analyst may not recommend or approve the promotion of her general partner to the next grade.

Example 3: An engineer employed by the National Science Foundation may request that his agency pay the registration fees and appropriate travel expenses required for him to attend a conference sponsored by the Engineering Institute of America. However, the employee may not approve payment of his own travel expenses and registration fees.

Example 4: A GS–14 attorney at the Department of Justice may review and make comments about the legal sufficiency of a bill to raise the pay level of all Federal employees paid under the General Schedule even though her own pay level, and that of her spouse who works at the Department of Labor, would be raised if the bill were to become law.

Example 5: An employee of the Department of Veterans Affairs (VA) may assist in drafting a regulation that will provide expanded hospital benefits for veterans, even though he himself is a veteran who would be eligible for treatment in a hospital operated by the VA.

Example 6: An employee of the Office of Personnel Management may participate in discussions with various health insurance providers to formulate the package of benefits that will be available to Federal employees who participate in the Government's Federal Employees Health Benefits Program, even though the employee will obtain health insurance from one of these providers through the program.

Example 7: An employee of the Federal Supply Service Division of the General Services Administration (GSA) may participate in GSA's evaluation of the feasibility of privatizing the entire Federal Supply Service, even though the employee's own position would be eliminated if the Service were privatized.

Example 8: Absent an individual waiver under section 208(b)(1), the employee in the preceding example could not participate in the implementation of a GSA plan to create an employee-owned private corporation which would carry out Federal Supply Service functions under contract with GSA. Because implementing the plan would result not only in the elimination of the employee's Federal position, but also in the creation of a new position in the new corporation to which the employee would be transferred, the employee would have a disqualifying financial interest in the matter arising from other than Federal salary and benefits, or Social Security or veterans' benefits.

Example 9: A career member of the Senior Executive Service (SES) at the Internal Revenue Service (IRS) may serve on a performance review board that makes recommendations about the performance awards that will be awarded to other career SES employees at the IRS. The amount of the employee's own SES performance award would be affected by the board's recommendations because all SES awards are derived from the same limited pool of funds. However, the employee's activities on the board involve only recommendations, and not determinations that individually or specially affect his own award. Additionally, 5 U.S.C. 5384(c)(2) requires that a majority of the board's members be career SES employees.

Example 10: In carrying out a reorganization of the Office of General Counsel (OGC) of the Federal Trade Commission, the Deputy General Counsel is asked to determine which of five Senior Executive Service (SES) positions in the OGC to abolish. Because her own position is one of the five SES positions being considered for elimination, the matter is one that would individually or specially affect her own salary and benefits and, therefore, the Deputy may not decide which position should be abolished.

(e) *Commercial discount and incentive programs.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, affecting the sponsor of a discount, incentive or other similar benefit program if the only disqualifying financial interest arises because of the participation of the employee, or any other person specified in section 208, in the program, *provided:*

(1) The program is open to the general public; and

(2) Participation in the program involves no other financial interest in the sponsor, such as stockholding.

Example 1: An attorney at the Pension Benefit Guaranty Corporation who is a member of a frequent flier program sponsored by Alpha Airlines may assist in an action against Alpha for failing to make required payments to its employee pension fund, even though the agency action will cause Alpha to disband its frequent flier program.

(f) *Mutual insurance companies.* An employee may participate in any particular matter, whether of general applicability or involving specific parties, affecting a mutual insurance company if the only disqualifying financial interest arises because of the employee's interest or the interest of any other individual specified in section 208, as a policyholder, unless the matter would affect the company's ability to pay claims required under the terms of the policy or to pay the employee the cash value of the policy.

Example 1: An administrative law judge at the Department of Labor receives dividends from a mutual insurance company which he takes in the form of reduced premiums on his life insurance policy. The amount of the dividend is based upon the company's overall profitability. Nevertheless, he may preside in a Department hearing involving a

major corporation insured by the same company even though the insurance company will have to pay the corporation's penalties and other costs if the Department prevails in the hearing.

Example 2: An employee of the Department of Justice is assigned to prosecute a case involving the fraudulent practices of an issuer of junk bonds. While developing the facts pertinent to the case, the employee learns that the mutual life insurance company from which he holds a life insurance policy has invested heavily in these junk bonds. If the Government succeeds in its case, the bonds will be worthless and the corresponding decline in the insurance company's investments will impair the company's ability to pay claims under the policies it has issued. The employee may not continue assisting in the prosecution of the case unless he obtains an individual waiver pursuant to section 208(a)(1).

(g) *Exemption for employment interests of special Government employees serving on advisory committees.* A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. app.) may participate in any particular matter of general applicability, not involving specific parties, where the disqualifying financial interest arises from his non-Federal employment or non-Federal prospective employment, *provided* that the matter will not have a special or distinct effect on the employee or employer other than as part of a class. For purposes of this provision, "disqualifying financial interest" arising from non-Federal employment does not include the interests of a special Government employee arising from the ownership of stock in his employer or prospective employer.

Example 1: A chemist employed by a major pharmaceutical company has been appointed to serve on an advisory committee established to develop recommendations for new standards for AIDS vaccine trials involving human subjects. Even though the chemist's employer is in the process of developing an experimental AIDS vaccine and therefore will be affected by the new standards, the chemist may participate in formulating the advisory committee's recommendations. The chemist's employer will be affected by the new standards only as part of the class of all pharmaceutical companies and other research entities that are attempting to develop an AIDS vaccine.

Example 2: The National Cancer Institute (NCI) has established an advisory committee to evaluate a university's performance of an NCI grant to study the efficacy of a newly developed breast cancer drug. An employee of the university may not participate in the evaluation of the university's performance because it is not a matter of general applicability.

Example 3: An engineer whose principal employment is with a major Department of Defense (DOD) contractor is appointed to serve on an advisory committee established by DOD to develop concepts for the next generation of laser-guided missiles. The engineer's employer, as well as a number of other similar companies, has developed certain missile components for DOD in the past, and has the capability to work on aspects of the newer missile designs under consideration by the committee. The engineer owns $20,000 worth of stock in his employer. Because the exemption for the employment interests of special Government employees serving on advisory committees does not extend to financial interests arising from the ownership of stock, the engineer may not participate in committee matters affecting his employer unless he receives an individual waiver under section 208(b)(1) or (b)(3), or determines that the exemption for interests in securities at § 2640.202(c) applies.

(h) *Directors of Federal Reserve Banks.* A Director of a Federal Reserve Bank or a branch of a Federal Reserve Bank may participate in the following matters, even though they may be particular matters in which he, or any other person specified in section 208(a), has a disqualifying financial interest:

(1) Establishment of rates to be charged for all advances and discounts by Federal Reserve Banks;

(2) Consideration of monetary policy matters, regulations, statutes and proposed or pending legislation, and other matters of broad applicability intended to have uniform application to banks within the Reserve Bank district;

(3) Approval or ratification of extensions of credit, advances or discounts to a depository institution that has not been determined to be in a hazardous financial condition by the President of the Reserve Bank; or

(4) Approval or ratification of extensions of credit, advances or discounts to a depository institution that has been determined to be in a hazardous financial condition by the President of the Reserve Bank, *provided that* the disqualifying financial interest arises from the ownership of stock in, or service as an officer, director, trustee, general partner or employee, of an entity other than the depository institution, or its parent holding company or subsidiary of such holding company.

(i) *Medical products and devices.* A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. app.) may participate in Federal advisory committee matters concerning the approval or classification of medical products or devices if the disqualifying financial interest arises from:

(1) Employment by the special Government employee, or any other person specified in section 208(a), with a hospital or other similar medical facility whose only interest in the medical product or device is purchase of it for use by its patients; or

(2) The prescription of medical products and devices for patients by the special Government employee, or any other person specified in section 208(a).

§ 2640.204 Prohibited financial interests.

None of the exemptions set forth in §§ 2640.201, 2640.202, or 2640.203 apply to any financial interest held or acquired by an employee in violation of a statute or agency supplemental regulation issued in accordance with 5 CFR 2635.105, or that is otherwise prohibited under 5 CFR 2635.403(b).

Example 1: The Office of the Comptroller of the Currency (OCC), in a regulation that supplements part 2635 of this chapter, prohibits certain employees from owning stock in commercial banks. If an OCC employee purchases stock valued at $2,000 in contravention of the regulation, the exemption at § 2640.202(a) for interests arising from the ownership of no more than $5,000 worth of publicly traded stock will not apply to the employee's participation in matters affecting the bank.

§ 2640.205 Employee responsibility.

Prior to taking official action in a matter which an employee knows would affect his financial interest or the interest of another person specified in 18 U.S.C. 208(a), an employee must determine whether one of the exemptions in §§ 2640.201, 2640.202, or 2640.203 would permit his action notwithstanding the existence of the disqualifying interest. An employee who is unsure whether a waiver is applicable in a particular case, should consult an agency ethics official prior to taking action in a particular matter.

§ 2640.206 Existing agency exemptions.

An employee who, prior to the effective date of this regulation, acted in an official capacity in a particular matter in which he had a financial interest, will be deemed to have acted in accordance with applicable regulations if he acted in reliance on an exemption issued by his employing Government agency pursuant to 18 U.S.C. 208(b)(2), as in effect prior to November 30, 1989.

Subpart C—Individual Waivers

§ 2640.301 Waivers issued pursuant to 18 U.S.C. 208(b)(1).

(a) *Requirements for issuing an individual waiver under 18 U.S.C. 208(b)(1).* Pursuant to 18 U.S.C. 208(b)(1), an agency may determine in an individual case that a disqualifying financial interest in a particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Upon making that determination, the agency may then waive the employee's disqualification notwithstanding the financial interest, and permit the employee to participate in the particular matter. Waivers issued pursuant to section 208(b)(1) should comply with the following requirements:

(1) The disqualifying financial interest, and the nature and circumstances of the particular matter or matters, must be fully disclosed to the Government official responsible for appointing the employee to his position (or other Government official to whom authority to issue such a waiver for the employee has been delegated);

(2) The waiver must be issued in writing by the Government official responsible for appointing the employee to his position (or other Government official to whom the authority to issue such a waiver for the employee has been delegated);

(3) The waiver should describe the disqualifying financial interest, the particular matter or matters to which it applies, the employee's role in the matter or matters, and any limitations on the employee's ability to act in such matters;

(4) The waiver shall be based on a determination that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Statements concerning the employee's good character are not material to, nor a basis for making, such a decision;

(5) The waiver must be issued prior to the employee taking any action in the matter or matters; and

(6) The waiver may apply to both present and future financial interests, provided the interests are described with sufficient specificity.

Note: The disqualifying financial interest, the particular matter or matters to which the waiver applies, and the employee's role in such matters do not need to be described with any particular degree of specificity. For example, if a waiver were to apply to all matters which an employee would undertake as part of his official duties, the waiver document would not have to enumerate those duties. The information contained in the waiver, however, should provide a clear understanding of the nature and identity of the disqualifying financial interest, the matters to which the waiver will apply, and the employee's role in such matters.

(b) *Agency determination concerning substantiality of the disqualifying financial interest.* In determining whether a disqualifying financial interest is sufficiently substantial to be deemed likely to affect the integrity of the employee's services to the Government, the responsible official may consider the following factors:

(1) The type of interest that is creating the disqualification (e.g. stock, bonds, real estate, other securities, cash payment, job offer, or enhancement of a spouse's employment);

(2) The identity of the person whose financial interest is involved, and if the interest is not the employee's, the relationship of that person to the employee;

(3) The dollar value of the disqualifying financial interest, if it is known or can be estimated (e.g. the amount of cash payment which may be gained or lost, the salary of the job which will be gained or lost, the predictable change in either the market value of the stock or the actual or potential profit or loss or cost of the matter to the company issuing the stock, the change in the value of real estate or other securities);

(4) The value of the financial instrument or holding from which the disqualifying financial interest arises (e.g. the face value of the stock, bond, other security or real estate) and its value in relationship to the individual's assets. If the disqualifying financial interest is that of a general partner or organization specified in section 208, this information must be provided only to the extent that it is known by the employee;

(5) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter.

(6) Other factors which may be taken into consideration include:

(i) The sensitivity of the matter;

(ii) The need for the employee's services in the particular matter; and

(iii) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that the integrity of the employee's services would be questioned by a reasonable person.

§ 2640.302 Waivers issued pursuant to 18 U.S.C. 208(b)(3).

(a) *Requirements for issuing an individual waiver under 18 U.S.C. 208(b)(3).* Pursuant to 18 U.S.C. 208(b)(3), an agency may determine in an individual case that the prohibition of 18 U.S.C. 208(a) should not apply to a special Government employee serving on, or an individual being considered for, appointment to an advisory committee established under the Federal Advisory Committee Act, notwithstanding the fact that the individual has one or more financial interests that would be affected by the activities of the advisory committee. The agency's determination must be based on a certification that the need for the employee's services outweighs the potential for a conflict of interest created by the financial interest involved. Waivers issued pursuant to 18 U.S.C. 208(b)(3) should comply with the following requirements:

(1) The advisory committee upon which the individual is serving, or will serve, is an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. app.;

(2) The waiver must be issued in writing by the Government official responsible for the individual's appointment (or other Government official to which authority to issue such waivers has been delegated) after the official reviews the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978;

(3) The waiver must include a certification that the need for the individual's services on the advisory committee outweighs the potential for a conflict of interest;

(4) The facts upon which the certification is based should be fully described in the waiver, including the nature of the financial interest, and the particular matter or matters to which the waiver applies;

(5) The waiver should describe any limitations on the individual's ability to act in the matter or matters;

(6) The waiver must be issued prior to the individual taking any action in the matter or matters; and

(7) The waiver may apply to both present and future financial interests of the individual, provided the interests are described with sufficient specificity.

(b) *Agency certification concerning need for individual's services.* In determining whether the need for an individual's services on an advisory committee outweighs the potential for a conflict of interest created by the disqualifying financial interest, the responsible official may consider the following factors:

(1) The type of interest that is creating the disqualification (e.g. stock, bonds, real estate, other securities, cash payment, job offer, or enhancement of a spouse's employment);

(2) The identity of the person whose financial interest is involved, and if the interest is not the individual's, the relationship of that person to the individual;

(3) The uniqueness of the individual's qualifications;

(4) The difficulty of locating a similarly qualified individual without a disqualifying financial interest to serve on the committee;

(5) The dollar value of the disqualifying financial interest, if it is known or can be estimated (e.g. the amount of cash payment which may be gained or lost, the salary of the job which will be gained or lost, the predictable change in either the market value of the stock or the actual or potential profit or loss or cost of the matter to the company issuing the stock, the change in the value of real estate or other securities);

(6) The value of the financial instrument or holding from which the disqualifying financial interest arises (e.g. the face value of the stock, bond, other security or real estate) and its value in relationship to the individual's assets. If the disqualifying financial interest is that of a general partner or organization specified in section 208, this information must be provided only to the extent that it is known by the employee; and

(7) The extent to which the disqualifying financial interest will be affected individually or particularly by the actions of the advisory committee.

§ 2640.303 Consultation and notification regarding waivers.

When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in §§ 2640.301 and 2640.302. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

§ 2640.304 Public availability of agency waivers.

(a) *Availability.* Subject to the limitations in paragraph (b) of this section, a copy of an agency waiver issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) shall generally be made available upon request to the public by the issuing agency. Public release of waivers shall be in accordance with the procedures set forth in section 105 of the Ethics in Government Act of 1978, as amended. Those procedures are described in 5 CFR 2634.603.

(b) *Limitations on availability.* In making a waiver issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) publicly available, an agency:

(1) May withhold from public disclosure any information contained in the waiver that would be exempt from disclosure pursuant to 5 U.S.C. 552;

(2) Shall withhold from public disclosure information in a waiver issued pursuant to 18 U.S.C. 208(b)(3) concerning an individual's financial interest which is more extensive than that required to be disclosed by the individual in his financial disclosure report under the Ethics in Government Act of 1978, as amended; and

(3) Shall withhold from public disclosure information in any waiver which is otherwise subject to a prohibition on public disclosure under law.

[FR Doc. 95–22174 Filed 9–8–95; 8:45 am]

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federal register

Monday
September 11, 1995

Part III

Department of Agriculture

Agricultural Research Service Cooperative State Research, Education and Extension Service

Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1996; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Agricultural Research Service; Cooperative State Research, Education and Extension Service

Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1996; Solicitation of Applications

Purpose

Applications are invited for competitive grant awards under the Biotechnology Risk Assessment Research Grants Program (the "Program") for fiscal year 1996. The authority for the Program is contained in section 1668 of Pub. L. No. 101–624 (the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 5921). The Program is administered by the Cooperative State Research, education and Extension Service (CSREES) and the Agricultural Research Service (ARS) of the U.S. Department of Agriculture.

The purpose of the Program is to assist Federal regulatory agencies in making science-based decisions about the safety of introducing genetically modified plants, animals, and microorganisms into the environment. The Program accomplishes this purpose by providing scientific information derived from the risk assessment research conducted under it. Research proposals submitted to the Program must be applicable to the purpose of the Program to be considered. Awards will not be made for clinical trials, commercial product development, product marketing strategies, or other research not appropriate to risk assessment.

Applicant Eligibility

Proposals may be submitted by any United States public or private research or educational institution or organization.

Available Funding

Subject to the availability of funds, the anticipated amount available for support of the program in fiscal year 1996 is $1.7 million.

It is expected that Congress, in the final version of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996 (H.R. 1976), will prohibit CSREES from using the funds available for fiscal year 1996 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively-awarded research grants.

In addition, it is expected that, pursuant to the final version of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996 (H.R. 1976), in the case of any equipment or product that may be authorized to be purchased with the funds provided under this Program, entities will be encouraged to use such funds to purchase only American-made equipment or products.

Program Description

Under the Program, USDA will competitively award research grants to support science-based biotechnology regulation and thus help address concerns about the effects of introducing genetically modified organisms into the environment and to help regulators develop policies concerning such introduction. Proposals are invited in the area of biotechnology risk assessment research as appropriate to agricultural plants, animals and microbes. Proposals based upon field research and whole organism-population level studies are strongly encouraged. Although emphasis will be given to risk assessment research involving genetically modified organisms, model systems using nongenetically modified organisms also will be considered if they can provide information that could lead to improved assessment of potential risks associated with the introduction of genetically modified organisms into the environment. Proposals should be applicable to current regulatory issues surrounding the ecological impacts of genetically modified organisms.

Proposal Evaluation

Proposals will be evaluated by the administrator assisted by a peer panel of scientists for scientific merit, qualifications of project personnel, adequacy of facilities, and relevance for current regulatory issues.

Areas of Research to be Supported in Fiscal Year 1996

Proposals addressing the following research topics are requested:

1. Development of new risk assessment methods (e.g., monitoring organism escape, measuring biological impacts), and risk assessment procedures (e.g. comparative analysis of ecosystems, models to predict risks) that could be used in risk assessment of genetically modified fungi, bacteria, viruses (including animal vaccines), plants, arthropods, fish, birds, and mammals. Applicants should address the need for, and development of, new risk assessment methods in the course of addressing a specific and defined risk assessment issue, especially as pertains to genetically modified organisms. The development of better risk assessment methods for field testing genetically modified organisms also will be considered.

2. Creation of information systems and computer models to support regulatory agency decision-making in regards to potential impacts to the environment over time (e.g., computer models to describe the interaction of environmental and organismal factors especially for establishment and dispersal of the organism).

3. Risk assessment of the environmental fate (e.g. survival, reproductive fitness, genetic stability, horizontal gene transfer) as correlated with effects (e.g., loss of genetic diversity, enhanced competition) of genetically modified fungi, bacteria, viruses, plants, arthropods, fish, birds, and mammals introduced into the environment (i.e., not in a contained laboratory, greenhouse or building); and studies or identification of traits which may influence fate and effects.

In response to requests to Program Directors and Federal regulatory agencies, as stipulated in the authorizing legislation for the Program, section 1668 of Public Law 101–624, the following specific areas of risk assessment research have been identified as eligible for competition as research topics for this year:

4. The bidirectional rates, effects of selection pressures, mechanisms and impact of gene transfer between currently genetically transformable crop species and existing North American weedy, free living relatives of those crops including studies of methods of mitigation of potential gene exchange. Research could rely on reanalysis of published information and/or laboratory/field studies.

5. The potential for recombination between plant viruses and plant-encoded noncapsid viral genes (e.g. replicase), especially for those viruses in supergroup B (carmovirus, tombusvirus, luteovirus, sobemovirus). Such studies should identify recombination potentials and, if demonstrated, define frequencies and effect on symptom expression. Comparisons with recombination frequencies between naturally occurring viral sequences are encouraged.

6. Changes in viral host ranges or the types of viral vectors as a result of the use of transgenic plants expressing viral genes.

7. The potential for nontarget effects of introduced plant-defense compounds expressed in genetically modified plant-associated microorganisms (e.g., compounds in phyllosphere or rhizosphere-inhabiting bacteria) or in

plants (e.g., *Bacillus thuringiensis* delta-endotoxin), especially in regard to persistence of the organisms and material in the environment.

8. Identification of genes which can confer additional pathogenicity to animal pathogens.

9. Environmental risk analysis of large scale deployment of genetically engineered organisms; especially commercial uses of such organisms, with special reference to consideration that may not be revealed through small scale evaluations and tests.

All research proposals submitted should include a statement describing the relevance of the proposed project to one or more of the research topics requested. When appropriate, detailed descriptions of statistical analyses to be done should be included in the proposal. The inclusion of statisticians as co-principal investigators or contractors is encouraged.

Note: Individual investigators whose research projects are funded under the Program will be required to attend, present data and provide a manuscript on the results of their research at an Annual Conference. Attendance costs at such a conference do not need to be included in the budgets of proposed research projects; such costs will be paid from funds provided under a cooperative agreement between CSREES and the University of Maryland for an annual risk assessment symposium Additionally, a final project report on research results will be required in a fixed protocol, electronic format, suitable for distribution by USDA.

Applicable Regulations

This Program is subject to the administrative provisions found in 7 CFR part 3415 (58 FR 65646, December 15, 1993), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this Program. These include, but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act;

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 520—ARS implementation of the National Environmental Policy Act;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

7 CFR Part 3407—CSREES implementation of the National Environmental Policy Act;

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in federally assisted programs;

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

Programmatic Contact

For additional information on the Program, please contact:

Dr. Edward K. Kaleikau, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2241,
Washington, DC 20250–2241,
Telephone: (202) 401–1901

or

Dr. Robert M. Faust, Agricultural Research Service, U.S. Department of Agriculture, Room 338, Building 005,
BARC-West, Beltsville, MD 20705,
Telephone: (301) 504–6918.

How to Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR Part 3415), and the Application Kit contains required forms, certifications, and instructions for preparing and submitting grant applications. The administrative provisions include guidelines for proposal format.

Copies of this solicitation, the administrative provisions, and the Application Kit may be obtained by contacting:

Proposal Services Branch, Awards Management Division, Cooperative State Research, Education and Extension Service, U.S. Department of Agriculture, Ag Box 2245,
Washington, DC 20250–2245,
Telephone Number: (202) 401–5048

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number psb@reeusda.gov which states that you wish to receive a copy of the application materials for the Fiscal Year 1996 Biotechnology Risk Assessment Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Proposal Format

The format guidelines for full research proposals, found in the administrative provisions for the Program at § 3415.4(d), should be followed for the preparation of proposals under the Program in fiscal year 1996. (Note that the Department elects not to solicit preproposals nor conference grant proposals in fiscal year 1996.)

Compliance with the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 and 7 CFR part 520 (the CSREES and ARS regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to CSREES and ARS so that CSREES and ARS may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES and ARS Categorical Exclusions (7 CFR 3407.6 and 7 CFR 520.5)

Based on previous experience, the following categories of CSREES and ARS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSREES and ARS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusions must be identified. The information submitted shall be identified as "NEPA Considerations" and the narrative statement shall be placed after the coversheet of the proposal.

Even though a project may fall within the categorical exclusions, CSREES and ARS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Proposal Submission

What to Submit

An original and 14 copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

Where and When to Submit

Proposals must be received by 4:30 p.m. eastern standard time on December 11, 1995. Proposals sent by First Class mail must be sent to the following address:

Proposal Services Branch, Awards Management Division, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048

Proposals that are delivered by Express mail, a courier service, or by hand must be submitted to the following address (note that the zip code differs from that shown above): Proposal Services Branch, Awards Management Division, Cooperative State Research, Education and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Telephone: (202) 401–5048

Supplementary Information

The Biotechnology Risk Assessment Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.219. For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, on this 1st day of September, 1995.

William D. Carlson,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

Robert J. Reginato,

Acting Administrator, Agricultural Research Service.

[FR Doc. 95–22464 Filed 9–8–95; 8:45 am]

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federal register

Monday
September 11, 1995

Part IV

Postal Service

5 CFR Ch. LX
39 CFR Part 447

Supplemental Standards of Ethical Conduct and Conforming Amendments; Final Rules

POSTAL SERVICE

5 CFR Chapter LX

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The United States Postal Service, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule establishing regulations applicable to employees of the Postal Service to supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The final rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to the Postal Service. The final rule is effective upon publication and establishes regulations which prohibit certain outside activities and require prior approval for employees to engage in other specified outside employment or activities.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mitchell J. Benowitz, Ethics and Information Law, Postal Service, (202) 268–2967.

SUPPLEMENTARY INFORMATION: On March 27, 1995, the Postal Service, with OGE's concurrence, published for comment a proposed rule to establish supplemental standards of ethical conduct for Postal Service employees (60 FR 15700–15703). The proposed rule was intended to supplement the Standards of Ethical Conduct for Employees of the Executive Branch published by OGE on August 7, 1992, and effective February 3, 1993 (5 CFR part 2635; see also the grace period extensions at 59 FR 4779–4780, February 2, 1994, and 60 FR 6390–6391, February 2, 1995). The proposed rule was issued pursuant to 5 CFR 2635.105, which authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to implement their ethics programs. The Postal Service, with OGE's concurrence, determined that the supplemental regulations contained in the proposed rule were necessary to implement the Postal Service's ethics program successfully, considering the unique programs and operations of the Postal Service.

The proposed rule prescribed a 60-day comment period and invited comments from all interested parties. No comments have been received by the Postal Service. Therefore, no changes have been made in the final rule. The Postal Service, with OGE's concurrence, is now publishing as a final rule the Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service, to be codified at a new part 7001, Title 5 of the Code of Federal Regulations.

The Executive Branch-wide Standards have superseded many provisions of the Code of Ethical Conduct for Postal Employees (Code), 39 CFR part 447. Certain other provisions of the Code that prohibited the holding of specified financial interests, 39 CFR 447.22(b)(1)–(7), and those provisions of 39 CFR 447.23 that involve compensated outside employment relationships, remained temporarily in effect pursuant to the note following 5 CFR 2635.403(a), as extended at 59 FR 4779–4780 and 60 FR 6390–6391. The note following 5 CFR 2635.403(a) provides that such prohibitions shall cease to be effective upon the issuance of agency supplemental regulations. Therefore, the provisions of 39 CFR part 447 concerning prohibited financial interests or compensated outside employment relationships are now superseded. In a separate document published in this issue of the **Federal Register**, the Postal Service is amending 39 CFR part 447 to repeal the financial interest prohibitions and those provisions that have been superseded by the Executive Branch-wide Standards.

List of Subjects in 5 CFR Part 7001

Conflict of interests, Ethical standards, Executive branch standards of conduct, Government employees.

Dated: August 2, 1995.

Mary S. Elcano,

Senior Vice President, General Counsel, United States Postal Service.

Approved: August 4, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the United States Postal Service, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LX, consisting of part 7001, as follows:

CHAPTER LX—UNITED STATES POSTAL SERVICE

PART 7001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES POSTAL SERVICE

Sec.
7001.101 General.
7001.102 Restrictions on outside employment and business activities.
7001.103 Statutory prohibition against interests in contracts to carry mail and acting as agent for contractors.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 401; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.802, and 2635.803.

§ 7001.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635, as applied to employees of the United States Postal Service (Postal Service). Postal Service employees are subject, in addition to the standards in 5 CFR part 2635 and this part, to the executive branch financial disclosure regulations contained in 5 CFR part 2634, and to any rules of conduct issued separately by the Postal Service, including but not limited to regulations contained in 39 CFR part 447, the Postal Service's Employee and Labor Relations Manual, and the Postal Service's Procurement Manual.

§ 7001.102 Restrictions on outside employment and business activities.

(a) *Prohibited outside employment and business activities.* No Postal Service employee shall:

(1) Engage in outside employment or business activities with or for a person, including oneself, engaged in:

(i) The manufacture of any uniform or other product required by the Postal Service for use by its employees or customers;

(ii) The transportation of mail under Postal Service contract to or from the postal facility at which the employee works, or to or from a postal facility within the delivery area of a post office in which the employee works;

(iii) Providing consultation, advice, or any subcontracting service, with respect to the operations, programs, or procedures of the Postal Service, to any person who has a contract with the Postal Service or who the employee has reason to believe will compete for such a contract; or

(iv) The operation of a commercial mail receiving agency registered with the Postal Service, or the delivery outside the mails of any type of mailable matter, except daily newspapers; or

(2) Engage in any sales activity, including the solicitation of business or the receipt of orders, for oneself or any other person, while on duty or in uniform, or at any postal facility.

(b) *Prior approval for outside employment and business activities*—(1) *Requirement for approval.* A Postal Service employee shall obtain approval, in accordance with paragraph (b)(2) of this section, prior to:

(i) Engaging in outside employment or business activities with or for any person with whom the employee has official dealings on behalf of the Postal Service; or

(ii) Engaging in outside employment or business activities, with or for a person, including oneself, whose interests are:

(A) Substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications; or

(B) Substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service.

(2) *Submission and contents of request for approval.* An employee who wishes to engage in outside employment or business activities for which prior approval is required by paragraph (b)(1) of this section shall submit a written request for approval to the Postal Service Ethical Conduct Officer or appropriate delegate. The request shall be accompanied by a statement from the employee's supervisor briefly summarizing the employee's duties and stating any workplace concerns raised by the employee's request for approval. The request for approval shall include:

(i) A brief description of the employee's official duties;

(ii) The name of the outside employer, or a statement that the employee will be engaging in employment or business activities on his or her own behalf;

(iii) The type of employment or business activities in which the outside employer, if any, is engaged;

(iv) The type of services to be performed by the employee in connection with the outside employment or business activities;

(v) A description of the employee's official dealings, if any, with the outside employer on behalf of the Postal Service; and

(vi) Any additional information requested by the Ethical Conduct Officer or delegate that is needed to determine whether approval should be granted.

(3) *Standard for approval.* The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the outside employment or business activity will not involve conduct prohibited by statute or federal regulation, including 5 CFR part 2635, which includes, among other provisions, the principle stated at 5 CFR 2635.101(b)(14) that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in part 2635.

(c) *Definitions.* For purposes of this section:

(1) *Outside employment or business activity* means any form of employment or business, whether or not for compensation. It includes, but is not limited to, the provision of personal services as officer, employee, agent, attorney, consultant, contractor, trustee, teacher, or speaker. It also includes, but is not limited to, engagement as principal, proprietor, general partner, holder of a franchise, operator, manager, or director. It does not include equitable ownership through the holding of publicly traded shares of a corporation.

(2) *A person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications* includes a person:

(i) Primarily engaged in the business of publishing or distributing a publication mailed at second-class rates of postage;

(ii) Primarily engaged in the business of sending advertising, promotional, or other material on behalf of other persons through the mails;

(iii) Engaged in a business that depends substantially upon the mails for the solicitation or receipt of orders for, or the delivery of, goods or services; or

(iv) Who is, or within the past 4 years has been, a party to a proceeding before the Postal Rate Commission.

(3) *A person having interests substantially dependent upon providing goods or services to or for use in connection with the Postal Service* includes a person:

(i) Providing goods or services under contract with the Postal Service that can be expected to provide revenue exceeding $100,000 over the term of the contract and that provides five percent or more of the person's gross income for the person's current fiscal year; or

(ii) Substantially engaged in the business of preparing items for others for mailing through the Postal Service.

§ 7001.103 Statutory prohibition against interests in contracts to carry mail and acting as agent for contractors.

Section 440 of title 18, United States Code, makes it unlawful for any Postal Service employee to become interested in any contract for carrying the mail, or to act as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the Postal Service.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–22381 Filed 9–8–95; 8:45 am]

BILLING CODE 7710-12-P

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39 CFR Part 447

Ethical Conduct; Conforming Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The United States Postal Service is amending the Code of Ethical Conduct for Postal Employees (Code). Many provisions of the Code have been superseded by the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by the Office of Government Ethics (OGE) and by the Postal Service regulations supplemental to the Standards. Other provisions have been superseded by OGE regulations governing the filing and review of public and confidential financial disclosure reports. The superseded provisions of the Code are repealed, and certain provisions in 39 CFR part 447 are amended or revised to conform to new OGE regulations.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mitchell J. Benowitz, Ethics and Information Law, Postal Service, (202) 268–2967.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1992, the Office of Government Ethics (OGE) published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards), now codified at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 52583, with additional grace-period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Standards, which became effective February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

The Standards superseded most federal agency regulations promulgated under subparts A, B, and C of former 5 CFR part 735. On November 30, 1992

(57 FR 56433), the Office of Personnel Management (OPM) issued a final rule amending 5 CFR part 735. The final rule, effective February 3, 1993, repealed many provisions that were contained in subparts A, B, and C of former 5 CFR part 735, but retained certain provisions covering types of conduct that are not covered by the Standards.

On April 7, 1992, OGE published in the **Federal Register** (57 FR 11800) an interim rule amending 5 CFR parts 2633 and 2634. The interim rule implements provisions of the Ethics Reform Act of 1989 (Reform Act) and related legislation pertaining to executive branch employees, which modified public financial disclosure requirements and amended the availability of and procedures for certification of qualified blind and diversified trusts. OGE also published an interim rule, subpart I of 5 CFR part 2634, to establish, effective October 5, 1992, a revised system of confidential (nonpublic) financial disclosure reporting for certain midlevel employees of the executive branch, pursuant to the Reform Act and Executive Order 12674. These interim rules superseded Postal Service regulations pertaining to public and confidential financial disclosure reports, as contained in subpart D of 39 CFR part 447.

In a separate document published in this issue of the **Federal Register**, the Postal Service, with the concurrence of OGE, is issuing regulations applicable to employees of the Postal Service to supplement the Standards of Ethical Conduct for Employees of the Executive Branch. The supplemental regulations, to be codified at 5 CFR part 7001, include restrictions on outside employment similar to many of those that existed under the Code of Ethical Conduct for Postal Employees.

Discussion

I. General

The principal purpose of this rule is to repeal outdated provisions of the Code of Ethical Conduct for Postal Employees (Code), 39 CFR part 447, that have been superseded by OGE regulations. Many provisions of the Code have been superseded by the new Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. In addition, provisions of the Code that concern public and confidential financial disclosure requirements have been superseded by the interim rule amending 5 CFR parts 2633 and 2634. Certain provisions of the Code are retained, either without change or with conforming amendments, because they concern matters that are outside the scope of 5 CFR part 2635. Some provisions are amended to conform to the Ethics Reform Act of 1989, and others are amended to conform to recent changes in the organizational structure of the Postal Service.

II. Revision of the Heading of 39 CFR Part 447

The heading of 39 CFR part 447, "Code of Ethical Conduct for Postal Employees," is being revised to "Rules of Conduct for Postal Employees." This revision is intended to make clear that the rules of conduct in 39 CFR part 447, as amended, are not part of the ethical standards contained in 5 CFR part 2635 and regulations supplemental thereto.

III. Repeal of Financial Interest Prohibitions

The provisions of the Code that prohibited the holding of specified financial interests, 39 CFR 447.22(b)(1) through (b)(7), and those provisions of 39 CFR 447.23 that involved compensated outside employment relationships, have remained temporarily in effect pursuant to the note following 5 CFR 2635.403(a), as extended at 59 FR 4779–4780 and 60 FR 6390–6391. The note following 5 CFR 2635.403(a) provides that such prohibitions shall cease to be effective upon the issuance of agency supplemental regulations. In another document, the Postal Service is now issuing supplemental regulations. Therefore, the provisions of 39 CFR part 447 concerning prohibited financial interests or compensated outside employment relationships are now superseded and repealed. The supplemental regulations prohibit certain outside employment, and they require prior approval for certain outside employment. The supplemental regulations do not, however, specify financial interests the holding of which is prohibited.

IV. Analysis of Subparts

This amendment will affect subparts A through I of 39 CFR part 447 as follows:

Subpart A—Basic Purpose and Applicability

Subpart A included explanations of the applicability of 39 CFR part 447 and general standards of ethical conduct applicable to Postal Service employees. All sections of subpart A have been superseded by 5 CFR part 2635. The subpart has been revised to explain that the rules retained in 39 CFR part 447 are in addition to other rules of conduct, specifically the rules contained in 5 CFR part 2635 and Postal Service regulations supplemental thereto.

Subpart B—Standards of Conduct

Subpart B contained general standards of conduct, rules concerning prohibited financial interests, rules concerning outside employment, and other rules of conduct applicable to Postal Service employees. Most sections of subpart B are repealed because they have been superseded by 5 CFR part 2635 and the Postal Service regulations supplemental thereto, but certain sections are retained. In order to distinguish the rules in subpart B of 39 CFR part 447 from the "standards" in 5 CFR part 2635, the heading of subpart B is revised to "Employee Conduct."

The following sections of subpart B are retained:

(1) Part of paragraph (j) of 39 CFR 447.23, which concerned teaching, lecturing, and writing. Because the subject of teaching, lecturing, and writing is generally covered in 5 CFR part 2635, part of paragraph (j) therefore is superseded and repealed. Paragraph (j) also included, however, rules concerning the use of information in connection with preparing persons for examinations for appointments within the Federal Government. This part of paragraph (j) is similar to the Executive Branch-wide rule promulgated by OPM, 5 CFR 735.202. The OPM rule does not, however, apply to examinations for appointment in the Postal Service, and it does not specify that the Postmaster General may authorize the use of nonpublic information when such use is in the public interest. Therefore, part of paragraph (j) is retained in amended form.

(2) Paragraph (k) of 39 CFR 447.23, which prohibited employees from using sick leave to enable themselves to engage in outside employment. This paragraph is retained because it is an internal personnel rule, issued pursuant to authority independent of 5 CFR part 2635.

(3) Paragraphs (a), (c), (d), (e), and (f) of 39 CFR 447.25. These paragraphs concerned, respectively, discrimination, conduct prejudicial to the Postal Service, use of intoxicating beverages, illegal use of drugs, and gambling. The paragraphs are retained because they cover types of conduct that are not within the scope of 5 CFR part 2635, and they are issued pursuant to authority independent of that part.

Subpart C—Ethical Conduct Advisory Services and Remedial Action

Subpart C included procedures by which Postal Service employees may obtain advice concerning standards of ethical conduct, rules concerning remedial action based on violations of ethical standards, and regulations concerning post-employment restrictions imposed under 18 U.S.C. 207.

Sections concerning advisory services are retained in amended form. Under 5 CFR 2635.107, agencies are responsible for providing counseling to their employees with regard to the application of 5 CFR part 2635 and regulations supplemental thereto. The retained sections pertain solely to the Postal Service's internal implementation of requirements imposed by OGE regulations, and they are amended to conform to the OGE regulations and recent changes in the organizational structure of the Postal Service.

Sections concerning remedial action are superseded and repealed because 5 CFR 2635.106 provides that violations of 5 CFR part 2635 or regulations supplemental thereto may be cause for disciplinary or corrective action. Nevertheless, as specified in revised subpart A of 39 CFR part 447, Postal Service employees who violate the rules in amended 39 CFR part 447 may be subject to disciplinary action.

The sections that pertained to post-employment restrictions, 39 CFR 447.33 and 447.34, are amended to conform to the Ethics Reform Act of 1989. The Reform Act includes amendments to 18 U.S.C. 207, which became effective on January 1, 1991. Sections 447.33 and 447.34 of 39 CFR part 447 were based on former 18 U.S.C. 207, and they applied only to persons who terminated their employment with the Postal Service prior to January 1, 1991. Section 447.33, which described the restrictions imposed under 18 U.S.C. 207 as in effect prior to January 1, 1991, is revised to refer to OGE regulations concerning the same subject, 5 CFR part 2637. Section 447.34, which implemented administrative enforcement procedures authorized under 18 U.S.C. 207(j) as in effect prior to January 1, 1991, is repealed. A new section is added to notify employees who leave the Postal Service after January 1, 1991, that they are subject to the restrictions imposed under 18 U.S.C. 207, as amended.

Subpart D—Reports of Employment and Financial Interests

Subpart D included regulations concerning the filing and review of confidential and public financial disclosure reports. These regulations are superseded by the new OGE regulations in 5 CFR part 2634.

Subpart E—Political Activities

Subpart E contained regulations concerning the political activities of Postal Service employees. The regulations are retained because they are issued pursuant to authority independent of 5 CFR part 2635. Section 447.53 is amended to correct a citation to regulations issued by OPM.

Subpart F—Participation in Community Affairs

Subpart F contained regulations concerning the holding of state or local office by Postal Service employees. The regulations are retained because they are issued pursuant to authority independent of 5 CFR part 2635. Section 447.62 is amended to conform to changes in the organizational structure of the Postal Service.

Subpart G—Bribery, Undue Influence, or Coercion

Subpart G contained regulations concerning internal procedures for reporting instances in which persons attempt to bribe, unduly influence, or coerce Postal Service employees, and instances involving potential violations of federal laws related to the responsibilities of the Postal Service. The regulations are retained because they are issued pursuant to authority independent of 5 CFR part 2635.

Subpart H—Definitions

The sections in subpart H defined terms used in 39 CFR part 447. All sections are superseded by 5 CFR part 2635 and are repealed. The definitions of "Postal Service" and "employee" are moved to subpart A of 39 CFR part 447. "Employee" is defined to include a special employee as defined by 18 U.S.C. 202(a). This definition is consistent with the definition of "employee" in 5 CFR 2635.102(h).

Subpart I—Statutory Provisions

The sections in subpart I, which listed statutes applicable to Postal Service employees, are repealed. Many of the listed statutes apply to all federal employees and are listed in 5 CFR 2635.902. Although statutes that apply specifically to Postal Service employees are not listed in 5 CFR part 2635, the repeal of this subpart does not excuse employees from complying with any applicable statutes. The sections in this subpart are repealed because they are at least in part superseded by 5 CFR part 2635, the statutes are listed for informational purposes only, and the removal of ethical conduct regulations from 39 CFR part 447 renders that part a less useful location for such information.

Following this amendment, 39 CFR part 447 will be reorganized as follows:

PART 447—RULES OF CONDUCT FOR POSTAL EMPLOYEES

Subpart A—Applicability and Definitions

Sec.
447.11 Applicability.
447.12 Definitions.

Subpart B—Employee Conduct

447.21 Prohibited conduct.

Subpart C—Ethical Conduct Advisory Services and Post-Employment Activities

447.31 Advisory service.
447.32 Post-employment activities.

Subpart D—Political Activities

447.41 General.
447.42 Additional prohibited political activities.
447.43 Investigation and enforcement.

Subpart E—Participation in Community Affairs

447.51 General.
447.52 Holding of State or local office by Postal Service employees.

Subpart F—Bribery, Undue Influence, or Coercion

447.61 General.

List of Subjects in 39 CFR Part 447

Conflict of interests, Political activities.

For the reasons set forth above, 39 CFR part 447 is amended as follows:

PART 447—RULES OF CONDUCT FOR POSTAL EMPLOYEES

1. The authority citation for part 447 is revised to read as follows:

Authority: 39 U.S.C. 401.

2. The heading of part 447 is revised as set forth above.

3. Subpart A, consisting of §§ 447.11 and 447.12, is revised to read as follows:

Subpart A—Applicability and Definitions

§ 447.11 Applicability.

This part contains rules of conduct for the employees of the Postal Service. Employees are required to comply with the regulations in this part, and violations of the regulations may be cause for disciplinary action. The regulations in this part are in addition to other rules of conduct provided by applicable statutes, regulations, or Postal Service handbooks and manuals. For applicable rules of ethical conduct, employees are referred to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and Postal Service regulations supplemental thereto, 5 CFR part 7001.

§ 447.12 Definitions.

The following definitions apply for purposes of this part.

(a) *Postal Service.* The United States Postal Service as established by 39 U.S.C. 201.

(b) *Employee.* An individual appointed to a position, temporary or permanent, within the Postal Service, or hired as an executive under an employment contract, including a substitute or a special employee as defined by 18 U.S.C. 202(a). The term "employee" does not include the Governors of the Postal Service.

4. The heading of subpart B is revised to read as follows:

Subpart B—Employee Conduct

§ 447.21 [Removed]

5. Section 447.21 is removed.

§ 447.22 [Removed]

6. Section 447.22 is removed.

7. Section 447.23 is redesignated as § 447.21 and is amended by removing the introductory text and paragraphs (a) through (i). Paragraphs (j) and (k) are redesignated as §§ 447.21(a) and 447.21(b). Newly redesignated § 447.21 is amended by revising the heading and paragraph (a) to read as follows:

§ 447.21 Prohibited conduct.

(a) An employee must not engage, either on a paid or unpaid basis, in teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, or for appointment in the U.S. Postal Service, when these activities are dependent on information obtained as a result of his or her employment with the Postal Service, except when that information has been made available to the general public, or will be made available on request, or when the Postmaster General gives written authorization that the use of nonpublic information is in the public interest.

* * * * *

§ 447.24 [Removed]

8. Section 447.24 is removed.

§ 447.25 [Amended]

9. Section 447.25 is amended by removing paragraph (b). Paragraph (a) is redesignated as § 447.21(c). Paragraphs (c) through (f) are redesignated as §§ 447.21(d) through 447.21(g).

§ 447.26 [Removed]

10. Section 447.26 is removed.

§ 447.27 [Removed]

11. Section 447.27 is removed.

12. The heading of subpart C is revised to read as follows:

Subpart C—Ethical Conduct Advisory Services and Post-Employment Activities

13. Section 447.31 is revised to read as follows:

§ 447.31 Advisory service.

(a) The Ethical Conduct Officer is responsible for the administration of the ethics program of the Postal Service. In the exercise of that responsibility, the Ethical Conduct Officer shall coordinate the advisory service provided by this section, assure that authoritative interpretations of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and Supplemental Postal Service Regulations (Supplemental Regulations) are available to the Associate Ethical Conduct Officers, and render final rulings on behalf of the Postal Service in appeals by employees from rulings under the Standards and Supplemental Regulations made by an agency designee. The Ethical Conduct Officer shall provide advice and guidance for the Postmaster General and all Associate Ethical Conduct Officers concerning questions arising under the Standards and Supplemental Regulations. The Ethical Conduct Officer may delegate to an Assistant Ethical Conduct Officer authority to perform any duty or function vested in him or her by this Section. The General Counsel is the Ethical Conduct Officer of the Postal Service and the Designated Agency Ethics Official for purposes of the Ethics in Government Act, as amended, and implementing regulations of the Office of Government Ethics, including 5 CFR part 2638.

(b) The Deputy Postmaster General is the Associate Ethical Conduct Officer for the Office of the Postmaster General and the Office of the Deputy Postmaster General. The Chief Operating Officer, Senior Vice Presidents, Vice Presidents, and such other persons as the Ethical Conduct Officer may designate are Associate Ethical Conduct Officers for their respective organizational elements. Each Associate Ethical Conduct Officer shall designate a suitable employee to coordinate the ethics program within his or her organization and to act as liaison with the Ethical Conduct Officer. Each Associate may designate other suitable employees to assist or act for him or her and shall ensure that there is an adequate number of Qualified Ethics Trainers to comply with the requirements of the annual ethics training program.

(c) The Ethical Conduct Officer and, with his or her approval, Associate Ethical Conduct Officers, may delegate to additional persons or classes of persons the authority to make determinations, to give approval, or to take other action in accordance with the Standards of Ethical Conduct, as is contemplated by 5 CFR 2635.102(b), defining "agency designee."

(d) An employee may obtain advice and guidance on questions of conflicts of interest from the Ethical Conduct Officer or the Associate Ethical Conduct Officer having appropriate jurisdiction. In order to avoid undue interference with established grievance and disciplinary procedures, advisory service under this subpart will not normally be available in an instance in which a grievance is pending or disciplinary action has been initiated.

(e) An employee may request any ruling provided for by the Standards and Supplemental Regulations by submitting a request in writing to the Senior Counsel, Ethics, or, in the field, to the Chief Field Counsel or Deputy Chief Field Counsel, General Law.

(f) An employee may appeal to the Ethical Conduct Officer from a ruling made by an agency designee concerning matters covered by the Standards and Supplemental Regulations within 30 days from the date of the ruling. The appeal must be in writing and must contain a full statement of the relevant facts. It should be addressed to the Ethical Conduct Officer, U.S. Postal Service, Washington, DC 20260, and a copy thereof should be sent to the official whose ruling is being appealed.

§ 447.32 [Removed]

14. Section 447.32 is removed.

15. Section 447.33 is redesignated as § 447.32 and revised to read as follows:

§ 447.32 Post-employment activities.

(a) Restrictions on the post-employment activities of persons who have been employed by the Postal Service are imposed by 18 U.S.C. 207. The Ethics Reform Act of 1989 includes amendments to 18 U.S.C. 207, which became effective January 1, 1991. Employees who terminated their employment prior to January 1, 1991, are subject to the restrictions imposed under 18 U.S.C. 207 in effect prior to that date, while all other employees are subject to the restrictions imposed under 18 U.S.C. 207 as amended.

(b) The Office of Government Ethics has issued regulations, contained in 5 CFR part 2637, that implement 18 U.S.C. 207 as in effect prior to January 1, 1991. Employees who terminated their employment with the Postal

Service prior to January 1, 1991, may refer to 5 CFR part 2637 for guidance concerning applicable post-employment restrictions, and further guidance may be obtained in accordance with § 447.31 of this part.

(c) Employees who terminate their postal employment on or after January 1, 1991, are subject to 18 U.S.C. 207 as amended. Guidance concerning post-employment restrictions applicable to such employees may be obtained in accordance with § 447.31 of this part.

§ 447.34 [Removed]

16. Section 447.34 is removed.

§ 447.41 [Removed]

17. Section 447.41 is removed.

§ 447.42 [Removed]

18. Section 447.42 is removed.

19. Redesignate subpart E as subpart D as follows:

Subpart D—Political Activities

§§ 447.51 and 447.52 [Redesignated as §§ 447.41 and 447.42]

20. Sections 447.51 and 447.52 are redesignated as §§ 447.41 and 447.42.

21. Section 447.53 is redesignated as § 447.43 and revised to read as follows:

§ 447.43 Investigation and enforcement.

The Office of the Special Counsel and the Merit Systems Protection Board investigate and adjudicate allegations of political activity in violation of the regulations of the Office of Personnel Management by Postal Service employees. For jurisdiction in such a case, see 5 CFR 734.102 and part 1201.

22. Redesignate subpart F as subpart E as follows:

Subpart E—Participation in Community Affairs

§ 447.61 [Redesignated as § 447.51]

23. Section 447.61 is redesignated as § 447.51.

24. Section 447.62 is redesignated as § 447.52, and paragraph (d)(2) is revised to read as follows:

§ 447.52 Holding of State or local office by Postal Service employees.

* * * * *

(d) * * *

(2) The Vice President, Area Operations, determines that the employee's postal responsibilities are being conducted in a satisfactory manner and that the absence of the employee during the campaign period will not disrupt the operation of the facility where he or she is employed.

Note: Requests shall be submitted through the postmaster or other installation head to the Vice President, Area Operations. If the employee is elected to and takes such a full-time office, he or she may either be separated from the Postal Service or granted leave without pay.

* * * * *

Subpart F—Bribery, Undue Influence, or Coercion

§ 447.71 (Subpart G) [Redesignated as § 447.61 (Subpart F)]

25. Redesignate subpart G, consisting of § 447.71, as subpart F, consisting of redesignated § 447.61.

§ 447.81 [Removed]

26. Subpart H, consisting of § 447.81, is removed.

§ 447.91 [Removed]

27. Subpart I, consisting of § 447.91, is removed.

Stanley F. Mires,

Chief Counsel, Legislative.

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Part V

Environmental Protection Agency

Guidance on Identification of Lead-Based Paint Hazards; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–62150; FRL–4969–6]

Guidance on Identification of Lead-Based Paint Hazards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 403 of Title IV of the Toxic Substances Control Act (TSCA), requires EPA to promulgate regulations that "identify. . .lead-based paint hazards, lead-contaminated dust and lead-contaminated soil." While EPA is in the process of developing section 403 rules, it has issued information designed to serve as guidance until the promulgation of those rules. This guidance was originally issued in a July 14, 1994 memorandum from Lynn R. Goldman, Assistant Administrator for Prevention, Pesticides and Toxic Substances, entitled "Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil." Subsequently, copies of the guidance have been available from the Agency upon request. In order to further disseminate the guidance, the Agency is publishing the full text of that document in this notice.

FOR FURTHER INFORMATION CONTACT: For technical information, contact David Topping, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–7737, e-mail: topping.david@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Community Development Act of 1992 (HCDA), Pub. L. 102–550, contains 16 titles amending and extending a number of laws relating to housing and community development. Title X of the HCDA titled "The Residential Lead-Based Paint Hazard Reduction Act of 1992" contains five subtitles extending and establishing programs for reducing exposure to lead, principally in paint. Subtitle B of Title X amends the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601, et. seq., by adding Title IV, which requires EPA to take certain actions to address lead-based paint concerns, including establishing requirements for training and accreditation of contractors conducting lead paint-related work.

Section 403 of TSCA requires EPA to promulgate regulations that "identify . . . lead-based paint hazards, lead-contaminated dust and lead-contaminated soil" for purposes of Title IV of TSCA and the entire Title X of the HCDA. The Agency is continuing to develop this rule and expects to promulgate final section 403 rules by October of 1997.

Recognizing that the section 403 rulemaking process is technically complicated and would be protracted, the Agency issued information on lead-based paint hazards on July 14, 1994, in response to an increasing number of requests for guidance from State and EPA Regional offices, as well as public health and housing officials. The information (the "Guidance") was issued in the form of a memorandum from Lynn R. Goldman, Assistant Administrator for Prevention, Pesticides and Toxic Substances, to EPA Regional Toxics Program Division Directors. The Guidance was made available to the public through various means, including the National Lead Information Center Clearinghouse and EPA's RCRA/Superfund Hotline. In response to concerns that additional steps should be taken to ensure that the Guidance is readily available to the general public, the Agency is publishing the full text of the Guidance in today's notice.

II. Appropriate Use of the Guidance

The Agency notes that these recommendations were designed to serve solely as guidance for purposes of Title IV of TSCA and, as such, do not have the effect of regulation. Additionally, the Guidance reflects risk management decisions based upon consideration of the information available to the Agency at the time that it was issued. As more complete information becomes available to the Agency, it will be considered in the section 403 rulemaking. Other caveats related to the Agency's intentions and the appropriate use of the Guidance are contained in the sections entitled "Use of This Guidance" and "Relationship of Soil Levels in This Guidance to the OSWER Interim Soil Lead Directive" in the Guidance text. For example, these sections explain that the Guidance does not apply to RCRA Corrective Action and Superfund sites.

III. Updated Citations

The Guidance contains a now outdated reference to draft EPA sampling procedures, referenced as "Residential Sampling for Lead: Protocols for Sampling Lead in Dust and Soil (EPA, 1994)." Since the release of the Guidance, these procedures have become available in the final version, as Residential Sampling for Lead: Protocols for Dust and Soil Sampling, EPA 747-R-95-001 (March 1995). Copies of this document can be obtained from the National Lead Information Center Clearinghouse at 1-800-424-LEAD.

IV. Text of the Guidance

Agency Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil

July 14, 1994.

Recently EPA has received an increasing number of requests for advice on residential lead-based paint hazards, including hazards from lead-contaminated dust and soil in and around homes. These requests have come from State and EPA Regional officials, as well as from public health and housing personnel, concerned with childhood lead poisoning. While the Agency is in the process of developing a rule to identify these hazards under section 403 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2683, we believe it is appropriate to respond to these requests by issuing guidance at this time based upon our best currently available information.

EPA believes that it would not be prudent to issue national regulatory standards under section 403 at this time since a number of relevant research activities are currently underway and are scheduled to be completed in the near future. It is expected that this research will allow the Agency to develop standards that would more accurately direct resources toward residences that would benefit most from abatement and control activities. In the interim, the recommendations in this document represent the Agency's best judgement given its current state of knowledge and experience and are intended to serve as guidance until the promulgation of the TSCA section 403 rule. EPA emphasizes that these recommendations are intended solely as guidance and, as such, are not intended, nor can they be relied upon, to create any obligation or right that may be created in the future by rules issued under TSCA section 403. Persons to whom this guidance is directed may decide to follow it or to act at variance with it and may use the guidance in conjunction with analysis of specific site circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

Use of This Guidance

It is the Agency's intent that this guidance be used to prioritize primary prevention activities that address hazards from lead in and around residences. EPA expects that these

hazards will be among those that will be identified when regulations are issued under TSCA section 403. The levels and conditions described in this guidance should be used by decisionmakers (risk assessors, risk managers, etc.) to identify lead-based paint hazards, sources of lead exposure, and the need for control actions in residential environments where children may be present. They should not be regarded as definitive statements of the lead hazard associated with specific environmental lead measurements, but the Agency believes that the criteria provided herein can inform and guide decisions on the identification of lead-based paint hazards and appropriate responses. Also, any lead-based paint-related activities (including lead detection, abatement, clearance, and disposal) should comply with all Federal, State, and local regulations.

Additionally, it should not be inferred that the recommendations in this guidance will, in and of themselves, guarantee the elimination of risks to children from residential lead exposure. Rather, this guidance is an attempt to identify the general types of environmental conditions and response activities that, given the current state of our knowledge, are likely to reduce risks over various broad ranges of environmental lead levels that may be found in the residential environment.

Finally, this guidance is not to be applied in addressing potential threats from lead at CERCLA and RCRA Corrective Action sites. Guidance developed by the Office of Solid Waste and Emergency Response is the appropriate tool for addressing these types of sites.

General

Although considerable progress has been made in the reduction of environmental lead (e.g., the phase-out of leaded gasoline and lead-soldered food cans, more stringent drinking-water standards, etc.), residual lead contamination remains ubiquitous in both residential and commercial areas. In this guidance, the Agency's approach is to focus on the sources of lead that are related to the nation's housing stock. While there are numerous pathways for lead exposure, eliminating or reducing the role of lead-based paint and lead-contaminated soil as direct exposure sources (and as contributors to indoor lead dust) will significantly reduce total lead exposures from residential sources.

Soil and dust at other locations (e.g., day care centers, public playgrounds, and other non-residential areas) can also be important contributors to a child's lead exposure. While these areas are outside the scope of TSCA section 403 authority, their potential contribution to a child's total lead exposure should also be considered when deciding upon community-wide responses to environmental lead.

In addition, the Agency recognizes that a number of factors contribute to risks from lead, including the nature of the lead sources, the amount of exposure to each source, and others. In this guidance, the Agency is using the levels of lead (and, for soil, the expected extent of children's contact) as a surrogate for risk.

At low to moderate levels of lead in soil and dust, and where paint deterioration is not extensive nor substrate failures or moisture problems present, EPA believes that interim controls can be an effective way to temporarily reduce exposures.[1] Interim control of lead in dust, soil, or painted surfaces must be predicated upon demonstrated ability to maintain and monitor such management strategies, based upon condition of the environment, expected use and contact, and reasonably anticipated changes in condition and/or use. At higher lead levels in soil and dust, and under deteriorated conditions of lead-based painted surfaces, more rigorous and long-term exposure reduction interventions should be taken. Under certain conditions related to extremely high soil concentrations or structural damage to painted surfaces, interim controls may not be appropriate for particular areas or components and only complete abatement of the component by an adequately trained professional will ensure adequate protection.

EPA policymakers do not believe that they are in a position to identify these levels and conditions as regulatory standards at this time. However, the Agency has developed this guidance based on consideration of estimated health impacts from lead exposure, the need to prioritize residences that would benefit from abatement, and comparison of risk reduction benefits and cost allocation projected for various control measures.

Sequence of Source Control Activities

Because of the interrelationship between lead-based paint, lead-contaminated dust, and lead-contaminated soil (e.g., lead in paint can contribute lead to dust and soil, lead in soil can contribute lead to interior dust, etc.), it is important that the sources of lead be considered in proper order when conducting response activities. For example, if soil is being contaminated by deteriorating exterior lead-based paint, it is preferable to address the paint first, immediately followed by the soil. If the soil were addressed first, it may become recontaminated during work on the paint. In general, exterior paint should be addressed prior to soil, while soil and interior paint should be addressed prior to interior dust. This best avoids potential recontamination problems among the three. Exceptions should be made when there will be delays in addressing a source or when levels in one medium (such as interior dust) are clearly hazardous and immediate actions are needed to protect health. If, in the previous example, the exterior paint could not be addressed immediately for some reason, it would not be appropriate to delay attention to the soil, since the soil could continue to act as a source of exposure.

Lead-Based Paint

Lead-based paint is of concern both as a source of direct exposure through ingestion of paint chips, and as a contributor to lead in interior dust and exterior soil. Lead was widely used as a major ingredient in most interior and exterior oil-based paints prior to 1950. Lead compounds continued to be used as corrosion inhibitors, pigments, and drying agents from the early 1950's. In 1972, the Consumer Products Safety Commission limited lead content in new residential paint to 0.5% (5,000 ppm) and, in 1978, to 0.06% (600 ppm).

The Department of Housing and Urban Development (HUD) estimates that three-quarters of pre-1980 housing contain some lead-based paint. The occurrence, extent and concentration of lead-based paint increase with the age of the housing. Ninety percent of privately-owned housing units built before 1940 contain some lead-based paint; 80% of 1940-1959 unit[illegible]; and [illegible] of 1960-1979 units.[2]

Coatings of [illegible] paint are defined by statu[illegible] ead-based if the lead content exceeds either 1.0 mg/cm^2 or 0.5% by weight. Lead-based paint should be either abated or addressed through interim controls if it is found in any of the following circumstances: (1) it is deteriorated (in any location); (2) it is present (in any condition) on impact or friction surfaces; or (3) it is present

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[1] "Interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, such as paint repair, specialized cleaning, temporary containment and ongoing monitoring of lead-based paint hazards or potential hazards.

[2] Comprehensible and Workable Plan for the Abatement of Lead-Based Paint in Privately-Owned Housing: A Report to Congress, U.S. Department of Housing and Urban Development, Washington, DC, December 7, 1990.

(in any condition) on surfaces that are accessible for mouthing or chewing by children. "Deteriorated paint" means any interior or exterior paint that is peeling, chipping, chalking, or cracking, or is located on an interior or exterior surface or fixture that is damaged or deteriorated. An "impact surface" is an interior or exterior surface that is subject to damage from repeated impacts (e.g., certain parts of door frames). A "friction surface" is an interior or exterior surface that is subject to abrasion or friction (e.g., certain window, floor, and stair surfaces). A surface is considered to be accessible for mouthing or chewing by children if it protrudes from the surrounding area to the extent that a child can chew the surface, and is within three feet of the floor or ground (e.g., window sills, railings, and the edges of stair treads).
(Recommendations for sampling of painted surfaces are attached.)

When it is determined that paint abatement and/or interim control activities will be performed on housing components, they should be performed according to practices that will be described in the 1995 HUD Guidelines and the regulations to be promulgated under section 402 of TSCA, 15 USC 2682 (as appropriate for the unit in question), including clearance testing.[3,4] The section 402 standards are expected to be proposed in several months. (Guidance on sampling and analysis of dust for clearance testing is attached.) Until either the HUD Guidelines are published in final form or the section 402 standards are issued, abatement activities should be performed according to the current HUD guidelines and interim control activities should be conducted according to state and local requirements, since they are not addressed in the existing HUD guidelines.

Lead-Contaminated Dust

In many cases, lead-contaminated interior dust can be the most direct source of a child's lead exposure, acting as a pathway for lead from lead-based paint, exterior soil, dust carried home from occupational exposure, etc. This guidance primarily confronts this source by addressing the residence-related sources of lead in dust--namely, lead-based paint and soil. The effect of the recommendations for paint and soil is removal or control of these two sources, followed by cleanup of the previously contaminated dust. In the context of their lead abatement programs, HUD has established "clearance levels," which are part of the evaluation of the thoroughness of abatement and subsequent cleanup activities. Clearance levels are "technology based"--that is, they indicate what can be achieved after proper abatement or interim control actions. Clearance levels are appropriate since the marginal cost of attaining them is typically quite low once an intervention is underway, and EPA and HUD experience indicates that they can be achieved through proper abatement and interim control activities. The Agency therefore recommends that the following clearance levels be met after abatement or interim control activities have been performed:

Location	Lead loading
Uncarpeted floors[5]	100 $\mu g/ft^2$ (0.93 mg/m^2)
Interior window sills	500 $\mu g/ft^2$ (4.65 mg/m^2)
Window wells	800 $\mu g/ft^2$ (7.45 mg/m^2)

[5] It is anticipated that the 1995 revision to the HUD guidelines will lower the current clearance standard of 200 $\mu g/ft^2$ for uncarpeted floors to 100 $\mu g/ft^2$.

Section 403 directs the Agency to issue rules that identify lead-based paint hazards, which include lead-contaminated dust that would result in adverse health effects. The levels that will be developed in the section 403 rulemaking will indicate to risk assessors that a lead-based paint hazard (for dust) exists. Obviously, the levels will be different in purpose than clearance levels--the former indicating that a hazard is present and the latter indicating that source control and cleanup have been appropriately performed. Accordingly, hazard levels are to be used during risk assessment and re-evaluation, whereas clearance levels are used to confirm the success of abatement and/or interim control activities.

Until the standards can be developed under section 403, the above-listed clearance levels should be used in identifying lead-based paint hazards and sources of lead exposure, and determining the need for control actions. The Agency reiterates that these recommendations are based upon lead levels that have been demonstrated to be achievable through abatement and interim control activities and they are not based upon projected health effects associated with specific dust lead levels. As a result of continued Agency evaluation of the relationship between interior dust lead levels and health effects, these hazard levels may be revised in future guidance.[6] Also, when assessing multiple sources of lead, dust lead concentration may be a more appropriate measurement. The utility of concentration measurements for identifying section 403 hazards from dust will be further considered in the development of the section 403 rulemaking.

Other potential sources of lead that may be present in house dust in addition to lead-based paint and lead-contaminated soil include neighborhood sources, such as demolition of a nearby building, sandblasting of a bridge, or other activities involving structures that may contain lead-based paint. Also, lead may be brought into the home on clothing of residents employed in lead-related occupations, or as the result of some hobbies. Additionally, deteriorated paint which contains some lead, but at levels lower than 1.0 mg/cm^2 or 0.5% by weight, could be a source. Depending upon the extent to which these sources contribute lead to interior dust, regular cleaning of the residence may not provide sufficient reduction in the level of lead exposure from dust, and the sources should be identified and controlled. It is often possible to identify these situations through sampling and analysis of the interior dust.

Since lead levels measured by wipe samples ("dust lead loading") are dependent upon both the amount of collectable dust on a surface and the concentration of lead in that dust, high values for either of these two factors

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[3] "Abatement" means any set of measures designed to permanently eliminate lead-based paint hazards, including the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or permanent covering of lead-contaminated soil.

[4] HUD is developing detailed technical guidelines pursuant to section 1017 of Title X of the Housing and Community Development Act of 1992 to describe best practices for all activities related to the evaluation and control of lead-based paint hazards. While applicable specifically to federally-assisted housing, the described practices provide useful technical guidance for all types of housing with similar conditions. These Guidelines are now undergoing clearance and approval within HUD and are available in draft form for review. These Guidelines will supersede HUD's 1990 "Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing," which focused primarily on testing and abatement (and do not address risk assessment or interim controls).

[6] Principal among the studies expected to provide further information on the relationship between dust lead and children's blood lead levels is the recent Rochester Lead-in-Dust study. This HUD-funded study was conducted by the University of Rochester from May to December of 1993 and included approximately 200 children whose primary source of lead exposure was from house dust. Peer review of this study began in June of 1994.

could produce high wipe sample lead results. That is, a large amount of low-lead-concentration dust and a small amount of high-lead-concentration dust could result in similar wipe sample results. Therefore, while low dust lead loading values may indicate that sources that contribute to household dust have been sufficiently controlled, high values could result from any of the following situations: (1) there are some insufficiently controlled sources that continue to contribute significant amounts of lead to the dust; (2) relatively large amounts of low-lead dust are present; or (3) some combination of these occurs.

Dust lead concentration measurements can provide insight as to which of these conditions is resulting in high wipe sample values, as well as assist risk assessors in identifying possible sources. For example, if interior paint has been ruled out as a source, and dust concentrations approach those of exterior soil, it may well be the result of soil being tracked into the house from outside. Also, if paint is in sound condition and soil concentrations are low but the interior dust concentrations are high, it is possible that other sources, such as dust carried home from lead-related work, are present. Through a systematic process of elimination, many of the sources of lead in house dust can often be determined. While a detailed discussion on how to perform these types of assessments is outside the scope of this guidance, these issues will be addressed by certification procedures and training requirements for parties involved in lead-based-paint activities (which includes abatement, inspection and risk assessment) currently being developed under section 402 of TSCA.

To ensure that excessive exposures are not being caused by the amount of dust in the house, the Agency recommends that efforts always be made to minimize dust in residences, even after paint and dust sources have been addressed through any needed interim control and/or abatement activities. A key component of these efforts is the need to maintain a residence in a cleanable state (i.e., in such a condition that it can be effectively cleaned by the occupant using reasonable cleaning procedures). For example, water-damaged or worn wood flooring may have a rough surface with crevices from which dust cannot be readily removed through routine wet mopping. Such surfaces should either be replaced or repaired so that they are cleanable. Likewise, it is important that the residence be effectively and regularly cleaned and that exposures to any interior dust be minimized. Recommended activities to reduce interior dust lead levels and associated exposures include: mopping floors, window ledges, and accessible surfaces with a warm detergent solution; washing pacifiers and bottles if they fall on the floor; washing toys and stuffed animals regularly; and ensuring that children wash their hands before meals, naps, and bedtime. These activities, as well as the importance of nutrition and other factors relevant to children's risk from lead exposure, should always be stressed as part of public education and awareness programs, regardless of the measured lead concentration in any one medium.

Lead-Contaminated Soil

Lead-contaminated exterior bare soil is of concern both as a direct source of exposure through inadvertent ingestion due to children's normal hand-to-mouth activity, and as a contributor to indoor dust lead levels (e.g., when tracked into a residence from outside).

Common sources of lead in residential soil include deteriorating exterior lead-based paint and historical airborne deposition onto the soil surface as the result of point source emissions or leaded gasoline. These sources have added substantially to the naturally occurring lead in soils, which generally range from 5 - 50 parts per million.[7] Also, industrial sources such as smelters, recycling facilities, and mining activities can result in lead contamination at residential areas. This adds difficulty in relating lead levels in soil to potential health effects because lead from different sources may pose different levels of potential hazard. One apparent difference is the extent to which ingested lead originating from different sources is taken up into the body--that is, the bioavailability of the lead. Decisionmakers should consider this and any other available information when implementing the recommendations contained in this guidance, particularly where non-paint sources of lead are involved. That is, if the soil is contaminated by lead from other sources, rather than lead-based paint, decisionmakers should investigate the types of lead compounds present and their unique characteristics. Agency guidance on consideration of bioavailability of lead in risk assessment can be found in the Guidance Manual for the Integrated Exposure Uptake Biokinetic Model for Lead in Children (available from National Technical Information Service, U.S. Dept. of Commerce, Attn: Sales, Springfield, VA 22169 (703/487-4650), as document number PB 93-963510).

Soil lead concentrations in the United States vary widely, from less than one to tens of thousands of parts per million (ppm). This range of concentrations and attendant potential exposure levels indicates that it is appropriate to develop a scaled strategy of risk reduction activities, depending upon the concentrations at particular locations and other site-specific factors. The Agency's recommendations for response activities at varying soil lead concentrations are as follows.

The Agency is recommending that (depending upon use patterns, populations at risk, and other factors), when lead concentrations are observed that exceed 400 ppm in bare soil, further evaluation should be undertaken and physical exposure-reduction activities, commensurate with the expected degree of risk, are appropriate.[8] The Agency

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[7] U.S. Environmental Protection Agency (1989) Review of the National Ambient Air Quality Standards for Lead: Exposure Analysis Methodology and Validation. U.S. EPA Office of Air Quality Planning and Standards, RTP, NC. EPA-450/2-89/011.

[8] The selection of 400 ppm in this guidance is based upon two decisions. The first is that the level should help in reducing the threat that environmental lead poses to the public. In this guidance, EPA estimates that beginning exposure reduction activity at 400 ppm will help ensure that a typical child or group of children exposed to lead would have an estimated risk of no more than 5% of exceeding a blood lead level of 10 $\mu g/dl$. This benchmark may change in the future section 403 rulemaking.

The second decision is to use the best available tool for assessing the relationship between children's blood lead levels and environmental lead levels. Current research indicates that young children are particularly sensitive to the effects of lead and require specific attention in the development of lead standards. A level that is protective for young children is expected to be protective for older population subgroups. In the same environmental setting, pregnant women would be expected to have blood lead levels lower than would young children, and this may further limit fetal exposures.

The Agency has examined both epidemiological studies and modeling approaches for this purpose. Both of these will be further evaluated as part of the effort to develop section 403 rulemaking. However, given the need to issue guidance at this time, the Agency is choosing to base the guidance on the Integrated Exposure Uptake Biokinetic (IEUBK) model, which EPA designed to evaluate exposures to children in a residential setting.

In general, the model generates a probability distribution of blood lead levels for a typical child, or group of children, exposed to a particular soil lead concentration and concurrent lead levels from other sources.

The spread of the distribution reflects the observed variability of blood lead levels in several communities. This variability arises from several sources, including behavioral and cultural factors.

The identification of lead levels from other sources (due to air, water, diet, etc.) is an essential part of characterizing the appropriate blood lead distribution for a specific neighborhood or site. For the purpose of deriving the 400 ppm value used in this guidance, the background lead exposure inputs

Continued

believes that the 400 ppm level serves as a reasonable current benchmark for the purposes of this guidance. Therefore, the Agency recommends that further evaluation and appropriate exposure-reduction activities be undertaken when soil lead concentrations exceed 400 ppm at areas expected or intended to be used by children.[9] (Recommendations for soil sampling and analysis are attached.) Further evaluation activities may include blood lead screening of children and others in the community.

When soil lead levels exceed 400 ppm and children are likely to be present, exposure-reduction responses should focus on interim controls designed to change use patterns and create barriers between children and contaminated soil. This involves taking steps to keep children away from certain areas and to reduce exposure to bare soil in accessible areas. As an example of changing the use pattern, thorny shrubs can be planted to keep children from playing around houses that have elevated soil lead concentrations immediately next to the house. Also, play equipment can be moved from bare soil contaminated areas to encourage children to play elsewhere or, for more highly contaminated areas, access can be restricted by fencing. As an example of the use of barriers to reduce exposure, grass or other groundcover can be established and maintained or the area can be covered with mulch or gravel. While the effectiveness of many of these interim control actions cannot yet be quantified, the Agency believes that they can reduce exposure. However, whenever interim controls are used, their condition should be monitored to ensure continued effectiveness. For example, the condition of plants, groundcover, etc., that serve as use-modifying and barrier-type elements should be visually inspected to ensure that they have become well established and remain effective at preventing exposure in accordance with the upcoming HUD Guidelines.

Within the range of 400 - 5,000 ppm, the degree of risk reduction activity should be commensurate with the expected risk posed by the bare soil, considering both the severity of exposure (as reflected by the soil lead concentration) and the likelihood of children's exposure. At concentrations in the lower segment, emphasis should be placed on reducing exposures through interim controls at those areas expected or intended to be used by children. If the area is not frequented by children, these exposure reduction activities may be less rigorous. Where bare-soil lead levels are found to be 2,000 ppm or more, interim controls should be implemented even if the area is not frequented by children.

Increasingly aggressive exposure-reduction activities are warranted at higher soil lead levels, with very high levels indicating that soil abatement may be necessary. For purposes of prioritizing abatements, the Agency recommends soil abatement when lead levels are found at 5,000 ppm or more in residential bare soil. Appropriate activities at this level of lead concentration may include removal and replacement of the soil, the use of more permanent covers (e.g., paving), or other activities. Of course, state and local agencies should consider any other factors that affect the actual risks and benefits of abatement when determining whether abatements may be necessary at lower levels, including, for example, prevalence of elevated blood lead levels in children.

The Agency is suggesting 5,000 ppm for this higher level because of the need to prioritize the types of activities that can often be resource intensive. Factors considered in the choice of this level include the risk reduction that may be achieved by different measures and the resources needed to reduce those risks. Consequently, this level is designed to indicate where there is a relatively higher certainty that abatement or other extreme activities would be appropriate from a risk reduction and resource prioritization perspective. Based upon estimates of residential soil lead distributions (from HUD, 1990), 5,000 ppm would target the soil at an estimated ½% of U.S. homes.

Because of the likelihood that lead-contaminated soil will have previously contributed lead to interior dust, specialized cleaning is recommended for the interior of residences to meet dust clearance levels after soil abatement or interim control activities have been conducted.

The Agency's recommendations for residential lead-contaminated soil are summarized in Table I.

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to the IEUBK model were determined using national averages, where suitable, or typical values. Thus, the estimated level of 400 ppm is associated with an expected "typical" response to these exposures, and should not be taken to indicate that a certain level of risk (e.g., exactly 5% of children exceeding 10 µg/dl blood lead) will be observed in a specific community (e.g., in a blood lead survey).

Because a child's exposure to lead involves a complex array of variables, because there is population sampling variability, and because there is variability in environmental lead measurements and background levels of lead in food and drinking water, results from the model may differ from results of blood lead screening of children in a community. Extensive field evaluation of the model is in progress and the model will be evaluated further once these efforts are completed. EPA may base the future section 403 rulemaking on the model once these evaluations have been completed, or on another methodology.

[9] 400 ppm is also used as the residential soil lead screening level for corrective Action under the Resource Conservation and Recovery Act (RCRA) and cleanups under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in the Office of Solid Waste and Emergency Response (OSWER) Interim Soil Directive. OSWER's screening level is not a "cleanup standard," nor automatically as "cleanup goal." Rather, it is a level of contamination above which there is enough concern to warrant site-specific study of risks.

TABLE 1.—EPA RECOMMENDATIONS FOR RESPONSE ACTIVITIES FOR RESIDENTIAL LEAD-CONTAMINATED BARE SOIL

Area of Concern	Bare Soil Lead Concentration (ppm)	Recommended Response Activities
Areas expected to be used by children, including: residential backyards, daycare and school yards, playgrounds, public parks, and other areas where children gather.	400–5,000	Interim controls to change use patterns and establish barriers between children and contaminated soil, including: planting ground cover or shrubbery to reduce exposure to bare soil, moving play equipment away from contaminated bare soil, restricting access through posting, fencing, or other actions, and control further contamination of area. Monitor condition of interim controls. Public notice of contaminated common areas by local agency.
	>5000	Abatement of soil, including: removal and replacement of contaminated soil, and permanent barriers. Public notice of contaminated common areas by local agency.
Areas where contact by children is less likely or infrequent	2000–5000	Interim controls to change use patterns and establish barriers between children and contaminated soil, including: planting ground cover or shrubbery to reduce exposure to bare soil, moving play equipment away from contaminated bare soil, restricting access through posting, fencing, or other actions, and control further contamination of area. Monitor condition of interim controls. Public notice of contaminated common areas by local agency.
	>5000	Abatement of soil, including: removal and replacement of contaminated soil, and permanent barriers. Public notice of contaminated common areas by local agency.

Relationship of Soil Levels in This Guidance to the OSWER Interim Soil Lead Directive

A variety of Agency programs address lead under a number of statutes. Lead in soil is addressed under TSCA Title IV (including TSCA sections 402 and 403), the RCRA Corrective Action program, and CERCLA (Superfund), each of which differs somewhat in purpose and in the types of sites to which they apply. Title IV section 403 regulations, which have yet to be issued, will identify lead hazards in paint and residential dust and soil. RCRA Corrective Action applies to RCRA hazardous waste sites. CERCLA applies to sites that have been contaminated by releases of CERCLA hazardous substances (which include lead).

While this guidance applies to housing, which is a significant part of the coverage of TSCA Title IV, it is not issued under the legal standards of any of these statutes, nor is it to be used to support statutorily driven requirements of CERCLA or RCRA. Instead, the guidance is designed to allow screening of the worst sources of lead-contaminated soil related to the housing stock among the potentially huge number of sites affected. The top one percent of housing sites consists of about 1,000,000 locations.

Because there is such a large number of housing sites, the purpose of this guidance is to recommend a set of nationwide levels that will screen those sites at which, EPA expects, decisionmakers will want to consider various risk reduction activities. The higher the level and the more likely exposure will occur, the more aggressive the risk reduction activities undertaken should be. The ultimate decision, however, will be made locally by various federal, state and local officials, or by building owners, operators or occupants. These decisionmakers will need to consider a variety of issues, including the risk reduction to be achieved by different measures and the resources needed to reduce those risks. Given the wide applicability of this guidance, EPA has developed generic standards to deal with the most risky sites--in particular, those where the Agency feels most confident that actual adverse effects could occur.

The Agency's recommendations for evaluating RCRA Corrective Action and CERCLA sites are contained in the OSWER Interim Soil Lead Directive. The OSWER directive deals with a much smaller number of sites, at which extensive site characterization will have been performed before cleanup decisions are made. RCRA and CERCLA programs, thus, will often have site-specific exposure values, which may be in a relatively narrow range. As a result, values chosen for action under the RCRA or CERCLA programs may be different from those selected under this guidance. Also, once the section 403 regulations are promulgated, OSWER intends to issue a final (to replace the interim) directive.

The Section 403 Rulemaking

At present, the Agency's section 403 rulemaking activities are focused on a variety of technical issues related to more accurate assessment of the risks associated with residential lead-based paint, lead-contaminated dust, and lead-contaminated soil. These activities include continued analysis of models and slope studies, including evaluation of the range of environmental conditions over which they are adequate. Complicating factors include likely differences in the bioavailability of lead from different sources and the variability in dust lead levels on interior surfaces. Because the Agency's work on these issues involves ongoing as well as previously published research, additional time will be required before levels for lead-based paint hazards can be determined with more specificity and proposed in the section 403 rulemaking.

As a result of these additional investigations, the section 403 rulemaking may differ from this guidance in a number of areas. These may include the role of dust concentration (in addition to, or in place of, dust lead loading), the quantitative or relative degree of blood lead level reduction that may be targeted, methods to relate environmental lead measurements to expected blood lead levels, and holistic standards rather than specific levels for each exposure source.

Attachments

Guidance for Measuring Lead in Soil and Paint

Sampling and Analysis of Dust for Clearance Testing

Guidance for Measuring Lead in Soil and Paint

July 1994

Preface

Lead-contaminated house dust is considered the most significant source of lead poisoning for the greatest number of children. All house dust contains some lead; the amount depends on lead contamination from other sources such as deteriorated lead-based paint and lead-contaminated soil. Millions of children live in dwellings with high dust-lead levels and routinely put dust-laden fingers, toys, and other objects into their mouths. Deteriorated lead-based paint and soil also may individually contribute significantly to a child's lead exposure if ingested. However, a more common scenario is the contamination of house dust by paint and soil and the child's subsequent ingestion of the contaminated house dust. One way to control high house dust lead levels and dust-lead exposure is to control the sources of lead that contaminate house dust, namely lead-contaminated bare soil and deteriorated lead-based paint.

Soil Sampling Overview

Soil is a major reservoir of lead in our environment. It has been contaminated with lead from many years of airborne particulate fallout from automobile exhaust, from industrial sources, and from the extensive use of lead-based paint on residential housing and other structures. Children who play in bare soil may be directly exposed to lead. Soil tracked into the home (e.g., on shoes or by wind) contaminates house dust and, thus, may expose children through the dust medium. The purpose of this section is to assist the reader to develop and implement a soil sampling strategy to determine whether the soil outside of a dwelling poses a significant health hazard to children.

Because only areas of bare soil are considered likely lead hazards, the focus of this guidance is to assess lead levels in areas of bare soil.[10] While only bare soil needs to be sampled, a property owner may wish to have additional sites sampled if the ground covering on those sites may be disturbed by such activities as gardening or excavation.

A soil sampling strategy should be designed to:

- Identify the location of soil-lead hazards outside of the dwelling.
- Provide recommendations to the property owners or other interested parties on the best ways to control identified hazards.
- Do the assessment at an affordable price to enable most property owners in the United States to have such an assessment conducted.

Due to the diversity of housing stock in the U.S., residential soil-lead assessments must be done case-by-case. The federal government can provide only general guidelines on where to collect samples. Actual sampling locations are based on information obtained during a preliminary assessment of the property and on the professional judgment of the person collecting the samples.

If sample analysis costs were trivial, then numerous soil samples could be collected at each residence to fully characterize lead levels. But analytical cost, in the range of $15 per sample, is not trivial. Therefore, to keep costs affordable, the sampling strategy must limit the number of soil samples analyzed.

When collecting only a limited number of samples from a yard, the major source of uncertainty in the results is from collecting samples from very small areas relative to the total area of interest. Imagine that a single soil sample is collected from an unusually high, but small, lead-contaminated area, or from a small section of the yard that recently had lead-free potting soil spilled on it. Most of these variations are out of the control of or unknown to the person collecting samples. One simple approach to reduce this problem is to sample from larger areas.

The easiest and most cost-effective way to sample from larger areas is to collect field composite samples. A field composite sample consists of individual sub-samples collected from two or more locations and combined into one sample for analysis (the composite sample). When only a few samples can be feasibly analyzed at a residence due to time and money constraints, composite sampling offers a more cost-effective approach and provides more accurate information than collecting a few single location samples.

At least two composite samples per dwelling or building should be collected where bare soil is present. General sampling locations are as follows:

- one from bare soil in the child's principal play area(s) and
- one from bare soil areas in the front or back yard (if present) and/or from the foundation drip line.

Vegetable gardens, pet sleeping areas, and bare pathways are also potential sampling sites, depending on the situation.

Once sampling areas are identified, sub-sampling locations within these areas need to be determined. No more than 10 sub-samples should be collected into one composite sample. Without much gain in representativeness, combining more than 10 sub-samples in composite samples may add extra costs to laboratory lead analysis.

Determining Collection Locations for Each Composite

Option A

Sub-sampling locations in bare soil play areas are selected by first sketching the area and then drawing a circle just encompassing the accessible bare area. A second circle is drawn inside the first with one-half the radius and three equally-spaced sampling locations selected at random on the inner circle. Soil sub-samples are then collected at each location. This process may be repeated for up to three bare soil play areas, if present.

To sample the building foundation or dripline, take four individual sub-samples. Where possible, given accessibility limitations and the availability of bare soil, each sub-sample should be located at random in a bare soil area at the dripline on a different side of the house. Composite the four individual foundation/dripline sub-samples into one sample for lead analysis. At other sampling locations in the yard, samples should be collected following the procedures for play areas.

Option B

Each composite sample should consist of bare area soil sub-samples collected from 3 to 10 distinct locations roughly equidistant from each other along an axis. For samples collected along the foundation dripline, sub-samples should be collected at least 2 to 6 feet away from each other. At other sampling locations, samples should be collected at roughly equidistant points along each axis of an "x" shaped grid.

Sampling Equipment and Methods

Samples may be collected using a coring tool to acquire the top 1/2 inch (or 1 centimeter) of the soil surface. Soil coring devices may not be useful in sandy, dry, or friable soil. In these cases, a stainless steel scoop or the lip of the sample container itself may be used.

If paint chips are in the core sample taken, they should be included as part of the sample. Paint chips should not be excluded from the soil sample, since they are part of the soil matrix. However, there should be no attempt to oversample paint chips. Following the detailed sampling procedures outlined in "Residential Sampling for Lead: Protocols for Sampling Lead in Dust and Soil (EPA, 1994)," is essential to correctly apply the guidance provided here.

Interpreting Results

Bare soil, if highly contaminated with lead, is thought to be a significant hazard to children who play on it. It may also be a significant source of tracked-in or wind-blown lead that subsequently contaminates house dust. The level of hazard is determined by comparing the sampling results to the section 403 soil lead guidance.

If duplicate composite samples are collected from the same bare soil area(s), the arithmetic average of the two lead levels should be compared to the Section 403 guidance. If non-composited individual samples are taken instead of composites, within an area expected to have relatively homogeneous lead levels, the arithmetic average of the individual samples should be compared to the standard. However, individual samples above the standard might possibly indicate that there are inherently large differences in lead levels and that more sampling or some remediation should be considered.

Sampling and Testing for Lead in Paint

Where to Sample

For a residential unit, all interior rooms, the exterior sides of the unit, and the outside property around the unit are to be inspected. The residence should be divided into room equivalents. Room equivalents are standard interior rooms, stairways and hallways which are not usually regarded as rooms, portions of very large rooms, each of the sides of the house, and the outside property. Within the room equivalents, painted components are to be identified and grouped by component type, substrate, and visible color. For example, if there are four walls in a room, all made of plaster, and all painted with white paint, these four walls are all grouped together. One wall of the four is to be randomly selected to represent the four walls. In similar fashion, the inspection continues in each room equivalent with the identification of unique combinations of component, substrate, and visible color. A random representative area of each unique combination is to be sampled and tested in each room equivalent.

For each of these designated components, an area on the component is to be chosen which represents the paint on that component. During the inspection, components which are accessible surfaces, friction surfaces, impact surfaces, or have deteriorated paint are to be identified.

How Many Samples

It is expected that between 50 to 200 components will be identified for testing at a residential unit.

In multifamily housing with more than 20 units, a random sample of units for inspection is allowed. Units and buildings that have similar construction, floor plans, and painting history should be grouped for sampling purposes. Samples may be selected for each group. In multifamily housing with 20 or fewer units, each unit is to be sampled. In both cases, individual units are to be sampled following the guidance on where to sample described for residential units. The number of units in the sample should be determined from Table I, which is attached. However, the decision logic for a sample of units is more complicated than for single residential units, and should be fully grasped before a sample is selected.

How to Sample

The recommended method for testing in a residential unit at this time is the K shell reading from a portable XRF instrument. Substrate corrections are to be made where necessary. Standard reference material paint films developed by NIST for usage with XRFs are to be used to demonstrate that XRF instruments are in control. XRF results are in units of milligrams per square centimeter.

An average of three readings is recommended. Each reading should be approximately 15 seconds with a new source. Appropriate adjustments in reading time should be made for source age.

Where portable XRF is not feasible due to a surface being narrow or curved, where greater accuracy is desired, or where comparison to the percent by weight standard is desired, paint samples can be collected and sent to a laboratory for analysis. The paint samples should be collected from a one square inch area. Care should be taken to collect all the paint in the area, and to minimize the inclusion of substrate material. Lead in paint samples collected in this way can be reported in both milligrams per square centimeter and percent by weight. If a surface is so deteriorated that XRF is not feasible and a paint sample cannot be collected from a square inch, then a strip of peeling paint is to be collected. Lead from such a sample can only be reported in percent by weight units.

How to Analyze Paint Samples

Paint chip samples should be analyzed by a laboratory recognized by EPA's National Lead Laboratory Accreditation Program. Paint samples should be no more than 500 milligrams in weight. If the paint samples received by the laboratory are larger than 500 milligrams, the laboratory should homogenize and subsample the paint samples to select a subsample of approximately 500 milligrams for the analysis. Results reported by the laboratory must make the appropriate adjustment for the subsampling.

Conclusions

For single houses and units, conclusions are reached as follows. XRF results are to be corrected for substrate effects where necessary. Corrected XRF results are divided into three categories: positive, inconclusive, and negative. Reading averages of 1.6 mg/cm^2 or more are classified as positive; reading averages of 0.4 mg/cm^2 or less are classified as negative. All other reading averages are classified as inconclusive. K-shell XRF results in the positive category indicate lead is present at or above 1.0 mg/cm^2. K-shell XRF results in the negative category indicate lead is not present at or above 1.0 mg/cm^2. The probability of false positives is currently estimated to be at least less than 10%, and less than 5% in most cases. The probability of false negatives is similarly estimated to be at least less than 10%, and less than 5% in most cases. Inconclusive results should be confirmed by laboratory analysis. Inconclusive XRF results on accessible, impact, friction or deteriorated surfaces should be regarded as positive for lead unless a subsequent laboratory test proves otherwise.

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[10] Title X defines "Lead contaminated soil" as bare soil on residential property that contains lead at or in excess of the levels determined by the EPA to be hazardous to human health.

When paint chip laboratory results are reported in milligrams per square centimeter, a result greater than or equal to 1.0 is positive for lead. When the results are in percent by weight, a result greater than or equal to 0.5% is positive for lead. If laboratory results are in both units, and at least one result is above the 1.0 mg/cm^2 or 0.5% standard, then the sample is positive for lead.

Locations tested by XRF or paint chip sampling may represent other locations. Refer back to the original inspection to determine the housing components which the samples represent. Findings of positive, negative, or inconclusive apply to all the components represented by a sample.

For multi-family housing of 20 or more units where a sample of units has been selected, group the sample results by component type, such as "kitchen walls" or "doors." Each component type group should consist of at least 40 samples to the extent this is practical. Classify XRF results as positive, inconclusive, or negative following the rules above. For any component type with 20% or more positive results, lead is present at or above the 1.0 mg/sq on one or more of the components of that type. If all sample results are negative or all sample results are less than 1.0 mg/cm^2, lead is not present at or 1.0 mg/cm^2 on any components of that type. All other cases are inconclusive and require laboratory testing.

To do the laboratory testing, take a paint sample for all XRF sample results that were greater than or equal to 1.0 mg/cm^2. If any of these results are positive, reach the conclusion that lead is present at or above 1.0 mg/cm^2 on at least one component of the type in question. If no results are positive, reach the conclusion that lead is not present at or above 1.0 mg/cm^2 for any components of that type. Results from the sample can be used to determine which component types need abatement or control, which do not, and which need further testing in the unsampled units.

TABLE 1.—NUMBER OF UNITS TO BE TESTED IN MULTIFAMILY DEVELOPMENTS

No. of units in building or group of similar buildings	No. of units to be tested
21–26	20
27	21
28	22
29–30	23
31	24
32	25
33–34	26
35	27
36	28
37	29
38–39	30
40–50	31
51	32
52–53	33
54	34
55–56	35
57–58	36
59	37
60–73	38
74–75	39
76–77	40
78–79	41
80–95	42
96–97	43
98–99	44
100–117	45
118–119	46
120–138	47
139–157	48
158–177	49
178–197	50
198–218	51
219–258	52
259–299	53
300–379	54
380–499	55
500–776	56
777–1004	57
1005–1022	58
1023–1039	59

For buildings or groups of similar buildings with 1,040 units or more, test 5.8 percent of the number of units, rounded to the nearest unit. EXAMPLE: If there are 2,170 units, 5.8 percent is 125.86 units, so 126 units should be tested.

Dust Clearance Testing

July 1994

Background

Section 403 of the Residential Lead–Based Paint hazard Reduction Act of 1992 requires EPA to promulgate regulations which identify lead–based paint hazards, lead–contaminated dust, and lead–contaminated soil. The purpose of this document is to summarize clearance testing procedures to identify lead dust hazards that may remain after lead abatements or application of interim controls.

Who Should Sample

Clearance testing for dust should be conducted after lead abatements or after application of interim controls. Clearance testing should be conducted by a party independent of the person or organization that completed the abatement or interim controls.

When to Sample

Sampling of dust should take place at least one hour after completion of all abatement and interim control work, including clean–up. All interior rooms or areas and exterior areas should be visually clean before collecting dust samples. If this is not the case, clean the rooms and areas before starting dust collection for clearance testing.

Where to Sample

Identify the interior rooms or areas and exterior areas of the residence where abatements or interim controls were carried out. If there was an interior containment area, most of the clearance sampling should be conducted within the containment area. If there was no interior containment area, all interior rooms or areas should be sampled. Designate rooms or areas in the interior for sampling. An interior area is a portion of a the residence that is equivalent to a room, even though it is not ordinarily regarded as such. Hallways and stairways are examples of areas in a house. In addition, very large rooms should be divided into areas.

If on–site paint removal took place in the interior, collect one floor sample, one interior window sill sample, and one exterior window sill sample from each of the interior rooms or areas designated for sampling. If no on–site paint removal took place in the interior, select one floor sample and one window sample, either an interior or exterior sill, in each room or area designated for sampling.

If there were any exterior abatements or interim controls, select one exterior window sill and one other horizontal surface in a living area or near an entryway for testing, preferably from the sides or exterior areas of the house where abatements or controls were applied. A porch railing or the top step of a stairway are examples of horizontal surfaces on the exterior. If there was an interior containment area, collect one floor sample outside the containment area but within 10 feet of the airlock.

How Many Samples

The total number of samples will depend on the number of interior rooms, the presence of an interior containment area, whether there was any exterior work, the number of windows present, and the presence of horizontal surfaces on the exterior.

For example, consider a single family house with 8 interior rooms and areas. In this case suppose abatement had taken place in 4 of the interior rooms, and on the front and back of the house. There was no interior containment area, and on–site removal of paint took place in the interior. All rooms had windows. There would be 26 dust samples for this house, 3 from each of the 8 interior rooms or areas, and 2 from the exterior.

As another example, consider another house with 8 interior rooms or areas. Suppose abatement had taken place in the interior, in 5 rooms, with a containment separating these 5 rooms from the rest of the house. Suppose no on–site removal of paint had taken place. There would be 11 interior dust samples, 2 from each of the 5 rooms where abatements were done, plus one floor sample within 10 feet of the containment area. If there had been any exterior work, 2 dust samples would have been collected from the exterior.

In multi–family housing of more than 20 units, random sampling of units for clearance testing is allowed. Units and buildings that have similar construction and were cleaned in the same manner should be grouped for sampling purposes. Samples may be selected for each group. The number of units in the sample should be derived from Table I, which is attached. In this case, guidance on where to sample for the selected units is the same as for an individual house. However, if any component in the sample of units fails clearance, that component, in all the unsampled units, must be re–cleaned, as well as the specific components that failed clearance in sampled units. The significance of this aspect of clearance failure should be grasped before selecting a sample of units.

How to Sample

Draw or obtain a floor plan of the house or unit. Rooms, areas, and locations of windows should be clearly marked on the floor plan. If there were exterior abatements, identify the window exterior sills and horizontal surfaces closest to the exterior areas that were worked on. Using information about the abatement or interim control applications, designate interior rooms and areas and exterior areas for sampling.

Using the floor plan, go through the residence and make selections of where to sample. For floors, divide each room or area into three segments, randomly select one of the segments, and then, within the segment, randomly select either a position near a wall or a position near the center. If there is one window in a room or area, that window should be sampled. If there is more than one sample, randomly select an interior window sill and/or an exterior window sill. Note that if there are two or more windows in a room, the interior and exterior sills may come from different windows.

The basic method for collecting dust clearance samples is the wipe method. Other dust collection methods may be used provided the user establishes comparability to the wipe method.

To collect floor samples, use a template or tape to mark off one square foot within the floor location selected. Use a wipe method to collect dust within the template or taped area. Clean the template between samples if using a non–disposable template. Take other appropriate steps to avoid contamination of samples.

For sampling interior and exterior window sills and exterior horizontal surfaces, use tape to mark the specific section to be sampled. Be sure what is delineated by the tape can be measured.

After collection of dust, fold the wipe and place it in a clean glass or plastic container. Label the container so that the sample can be associated with the location from which it was collected. Measure all sampling areas not delineated by the template, and in all cases indicate the sampling area on each label for each container.

How to Analyze Dust Samples

Dust samples are to be analyzed for "total lead," not "bioavailable lead." Samples should be analyzed at a laboratory recognized as proficient for lead in dust analysis by the EPA National Lead Laboratory Accreditation Program (NLLAP).

Conclusions

At this time, the standards for clearance are 100 µg/ft^2 for floors, 500 µg/ft^2 for interior window sills, and 800 µg/ft^2 for exterior window sills and exterior horizontal surfaces. These numbers are for wipe samples. If a collection method other than the wipe method is used, the user is responsible for providing comparable standards for clearance.

Samples which are less than the appropriate standard are said to have passed clearance, and all rooms or areas represented by those samples have passed clearance.

Samples above or equal to the appropriate standard have failed clearance, and all rooms or areas represented by those samples are said to have failed. For samples that have failed, the components represented by those samples (floors, interior window sills, exterior window sills, exterior horizontal surfaces, or interior areas outside a containment area) must be re–cleaned and re–tested. The process continues until clearance is obtained for all components. In addition, if a sample outside a containment area fails clearance, collect additional floor samples outside the containment area, at a further distance from the airlock, during the re–testing.

Re–evaluation Schedule

When lead–based paint is removed during abatement, successful clearance testing after application is all that is recommended. When lead–based paint remains at the residence, re–evaluation testing is recommended in addition to clearance testing. For enclosures, re–evaluation testing is recommended 10 years after treatment. For encapsulation, re–evaluation testing is recommended 1 year after application, and then every 3 years afterwards. For interim controls, re–evaluation testing is recommended every 12 months after application. If a mixture of methods is used in a room or area, the most stringent schedule for re–evaluation testing is recommended.

Dated: August 30, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–22497 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–F

federal register

Monday
September 11, 1995

Part VI

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 1 et al.
Elimination of Obsolete Parts; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Subtitle A, and Parts 1, 3, 8, 11, 15, 16, 24, 39, 40, 49, 86, 90, 103, 106, 120, 130, 200, 205, 209, 210, 211, 224, 225, 226, 227, 228, 229, 238, 240, 250, 270, 271, 277, 278, 500, 511, 575, 577, 578, 579, 580, 595, 596, 598, 599, 600, 811, 900, 907, 965, 967, 1730, 1800, 1895, 2700

[Docket No. FR–3922–F–01]

RIN 2501–AC00

Elimination of Obsolete Parts

AGENCY: Office of the Secretary.

ACTION: Final rule.

SUMMARY: This final rule removes from title 24 of the Code of Federal Regulations the Department's regulations and codified guidance which are unnecessary or obsolete. Following a review of existing HUD regulations in accordance with the President's regulatory reinvention initiative, the Department has determined that the regulatory parts and other codified materials identified in this rule are unnecessary to be retained in the Code of Federal Regulations because the parts address obsolete programs that have been repealed, are no longer funded, or by new legislation have been consolidated into other programs; no regulatory requirements are included in the parts and therefore the provisions of these parts need not be codified or can be provided through other non-rulemaking means; e.g., notices or handbooks; the parts cover expiring programs, that is, there are only a few outstanding mortgages or contracts, which will either continue to be administered under the regulations that existed immediately before October 11, 1995 or be directed under individual contracts or grant agreements; or the parts relate to functions that have been transferred to another agency.

EFFECTIVE DATE: October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 708–3055; TDD: (202) 708–3259.

SUPPLEMENTARY INFORMATION: President Clinton's memorandum of March 4, 1995, titled "Regulatory Reinvention Initiative" directed heads of Federal departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. As a part of HUD's overall effort to reduce regulatory burden and streamline the content of title 24 of the Code of Federal Regulations, this rule removes those parts (and subdivisions of parts) which represent regulations and other materials which are unnecessary or obsolete, as further categorized and listed below. Guidance presently provided in appendices and non-regulatory guidance presently codified will be available through other non-rulemaking means.

To the extent that regulations are needed to implement new legislation, they will be issued separately from this document. Any determination to issue new regulations will be carefully considered to ensure that it is consistent with the President's regulatory reform efforts and the principles in Executive Order 12866.

The Department has also reviewed its other existing regulations, and those regulations will be amended as appropriate to eliminate or revise outdated provisions, reduce burden, and increase flexibility. The Department is seeking appropriate statutory changes if legislative authority is required in order to achieve regulatory reform.

Parts (and subdivisions of parts) obsolete because the programs have been repealed, are no longer funded, or by new legislation have been consolidated into other programs: 49, 90, Appendix D to Subtitle A, 103 (Appendix only), 120, 200 (subparts L and N only), 210, 211, 229, 238, 250, 270, 271, 500, 575, 580, 595, 596, 598, 599, 600, 811 (subpart B only), 965 (subpart F only), 1730, 1800, 1895, 2700.

Parts and other guidance unnecessary because no regulatory requirements are included and the provisions need not be codified or can be provided through other non-rulemaking means; e.g., notices or handbooks: 1 (Appendix A only), 3, 8 (Appendices A and B only), 11, 15 (subpart D only), 16 (Appendix A only), 24 (Appendices A, B, and C only), 39, 40 (Appendix A only), 86 (Appendices A and B only), 106, 200 (subpart B only), 967.

Parts for expiring programs, under which there are only a few outstanding mortgages or contracts:

To the extent local programs are still ongoing under the following repealed parts or subparts, their repeal does not affect the requirements which apply to those programs under the applicable contracts or grant agreements.

1. The programs associated with the following parts will continue to be administered under the regulations that existed immediately before October 11, 1995: 205, 209, 224, 225, 226, 227, 228, 240, 277, 278.

This rule amends 24 CFR part 200 to add a new subpart W, which lists the parts associated with expiring programs and states that any existing loan assistance, ongoing participation, or insured loans under these parts will continue to be governed by the regulations in effect as they existed immediately before October 11, 1995.

2. The programs associated with the following parts will be directed by individual contracts or grant agreements, which may be unilaterally amended to incorporate the regulatory provisions being deleted by this rule: 511 (subpart C, E, and G only), 577, 578, 579, 900, 907.

Parts unnecessary because the functions have been transferred to another agency: 130.

Justification for Final Rule

In accordance with 24 CFR part 10, it is the practice of the Department to offer interested parties the opportunity to comment on proposed regulations. However, these regulations merely remove unnecessary or obsolete regulatory provisions. Removal of these regulations does not establish or affect substantive policy. Therefore, the Department has determined that public comment is unnecessary and contrary to the public interest.

Other Matters

Environmental Finding

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities because this rule pertains to the administrative matter of removing obsolete or unnecessary parts from the Code of Federal Regulations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being.

Semiannual Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368), pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 1

Administrative practice and procedure, Civil rights, Reporting and recordkeeping requirements.

24 CFR Part 3

Authority delegations (Government agencies).

24 CFR Part 8

Administrative practice and procedure, Civil rights, Equal employment opportunity, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 11

Seals and insignia.

24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

24 CFR Part 16

Privacy.

24 CFR Part 24

Administrative practice and procedure, Drug abuse, Government contracts, Government procurement, Grant programs, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 39

Energy conservation, Housing, Loan programs—housing and community development.

24 CFR Part 40

Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 49

Aliens, Grant programs—housing and community development, Loan programs—housing and community development, Mortgage insurance.

24 CFR Part 86

Administrative practice and procedure, Lobbying (Government agencies), Reporting and recordkeeping requirements.

24 CFR Part 90

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 106

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Mortgages.

24 CFR Part 120

Fair housing, Grant programs—housing and community development.

24 CFR Part 130

Administrative practice and procedure, Equal employment opportunity, Government contracts, Housing, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 205

Community facilities, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 209

Mortgage insurance.

24 CFR Part 210

Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 211

Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 224

Military personnel, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 225

Military personnel, Mortgage insurance.

24 CFR Part 226

Government employees, Mortgage insurance.

24 CFR Part 227

Federally affected areas, Military personnel, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 228

Federally affected areas, Mortgage insurance, National defense.

24 CFR Part 229

Federally affected areas, Mortgage insurance, National defense, Reporting and recordkeeping requirements.

24 CFR Part 238

Insurance, Investments, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 240

Mortgage insurance.

24 CFR Part 250

Intergovernmental relations, Low and moderate income housing, Mortgage insurance.

24 CFR Part 270

Appalachia, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing.

24 CFR Part 271

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Technical assistance.

24 CFR Part 277

Aged, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing.

24 CFR Part 278

Aged, Grant programs—housing and community development, Individuals with disabilities, Low and moderate income housing, Nutrition.

24 CFR Part 500

Grant programs—housing and community development, Loan programs—housing and community development, Urban renewal.

24 CFR Part 511

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 575

Civil rights, Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 577

Community facilities, Employment, Grant programs—housing and community development, Grant programs—social programs, Individuals with disabilities, Homeless, Indians, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 578

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Individuals with disabilities, Homeless, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 579

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 580

Grant programs—housing and community development, Urban renewal.

24 CFR Part 595

Community development, Grant programs—housing and community development, Urban renewal.

24 CFR Part 596

Community development, Indians, Intergovernmental relations.

24 CFR Part 598

Community facilities, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 599

Grant programs—housing and community development, Grant programs—natural resources, Public lands.

24 CFR Part 600

American Samoa, Community facilities, Energy conservation, Environmental protection, Grant programs—housing and community development, Guam, Housing, Indians, Intergovernmental relations, Northern Mariana Islands, Pacific Islands Trust Territory, Reporting and recordkeeping requirements, Virgin Islands.

24 CFR Part 811

Public housing, Securities, Taxes.

24 CFR Part 900

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 907

Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 967

Grant programs—housing and community development, Public housing.

24 CFR Part 1730

Consumer protection, Land sales.

24 CFR Part 1800

Energy conservation, Grant programs—energy, Loan programs—energy, Penalties, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 1895

Energy conservation, Organization and functions (Government agencies), Seals and insignia, Solar energy.

24 CFR Part 2700

Loan programs—housing and community development, Mortgage insurance, Mortgages.

Accordingly, pursuant to the Secretary's authority under 42 U.S.C. 3535(d), subtitle A and chapters I, II, V, VI, VIII, IX, X, XI, and XV of title 24 of the Code of Federal Regulations are amended as follows:

Subtitle A—[Amended]

1. Subtitle A is amended by removing:
a. Appendix A from part 1;
b. Part 3;
c. Appendices A and B from part 8;
d. Part 11;
e. Subpart D from part 15;
f. Appendix A from part 16;
g. Appendices A, B, and C from part 24;
h. Part 39;
i. Appendix A from part 40;
j. Part 49;
k. Appendices A and B from part 86;
l. Part 90; and
m. Appendix D to subtitle A.

Chapter I—[Amended]

2. Chapter I is amended by removing:
a. The appendix from part 103; and
b. Parts 106, 120, and 130.

Chapter II—[Amended]

3. Chapter II is amended by amending part 200 by removing subparts B, L, and N, and by adding a new subpart W, consisting of § 200.1301, to read as follows:

PART 200—INTRODUCTION

* * * * *

Subpart W—Administrative Matters

§ 200.1301 Expiring Programs—Savings Clause.

No new loan assistance, additional participation, or new loans are being insured under the programs listed below. Any existing loan assistance, ongoing participation, or insured loans under these programs will continue to be governed by the regulations in effect as they existed immediately before October 11, 1995:

Part 205 Mortgage Insurance for Land Development [Title X]
Part 209 Individual Homes; War Housing Mortgage Insurance [Sec. 603]
Part 224 Armed Services Housing—Military Personnel [Sec. 803]
Part 225 Military Housing Insurance [Sec. 803]

Part 226 Armed Services Housing—Civilian Employees [Sec. 809]
Part 227 Armed Services Housing—Impacted Areas [Sec. 810]
Part 228 Individual Residences; National Defense Housing Mortgage Insurance [Sec. 903]
Part 240 Mortgage Insurance on Loans for Fee Title Purchase
Part 277 Loans for Housing for the Elderly or Handicapped
Part 278 Mandatory Meals Program in Multifamily Rental or Cooperative Projects for the Elderly or Handicapped

Chapter II—[Amended]

4. Chapter II is further amended by removing parts 205, 209, 210, 211, 224, 225, 226, 227, 228, 229, 238, 240, 250, 270, 271, 277, and 278.

Chapter V—[Amended]

5. Chapter V is amended by removing:
a. Part 500;
b. Subparts C, E, and G from part 511; and
c. Parts 575, 577, 578, 579, 580, 595, 596, 598, and 599.

Chapter VI—[Amended]

6. Chapter VI is amended by removing part 600.

Chapter VIII—[Amended]

7. Chapter VIII is amended by removing subpart B from part 811.

Chapter IX—[Amended]

8. Chapter IX is amended by removing:
a. Parts 900 and 907;
b. Subpart F from part 965; and
c. Part 967.

Chapter X—[Amended]

9. Chapter X is amended by removing part 1730.

Chapter XI—[Amended]

10. Chapter XI is amended by removing parts 1800 and 1895.

Chapter XV—[Amended]

11. Chapter XV is amended by removing part 2700.

Dated: August 30, 1995.

Henry G. Cisneros,
Secretary.

[FR Doc. 95–22384 Filed 9–8–95; 8:45 am]

BILLING CODE 4210–32–P

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–026–00001–8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
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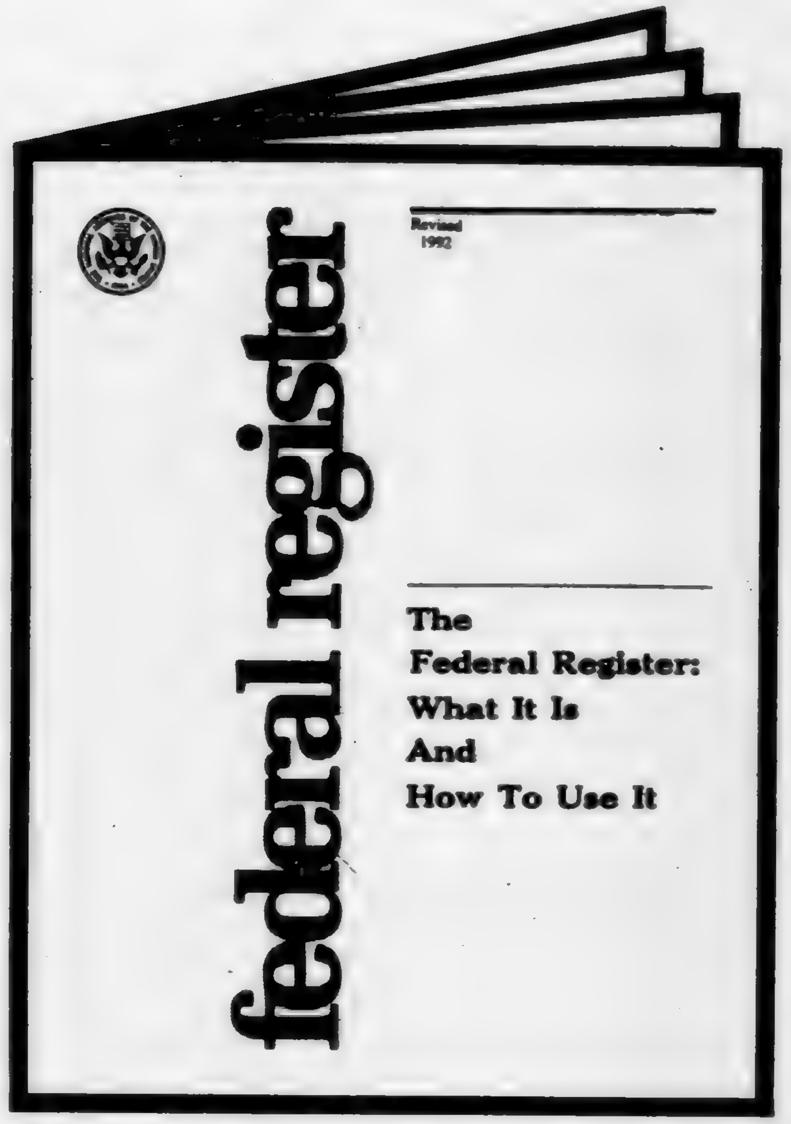

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–25–AD; Amendment 39–9365; AD 95–19–04]

Airworthiness Directives; Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes, that requires installation of a placard on the instrument panel in the cockpit to advise the flightcrew that the Omega navigation system may be inoperative at certain engine speeds. This amendment is prompted by reports of loss of certain navigation signals during extended over water operation. The actions specified by this AD are intended to prevent excessive deviation from the intended flight path due to loss of navigation signals, which could result in a potentially low-fuel condition or a traffic conflict.

DATES: Effective October 12, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Gates Learjet, Mid-Continent Airport, P. O. Box 7707, Wichita, Kansas 67277. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: C. Dale Bleakney, Aerospace Engineer, ACE–130W, Systems and Equipment Branch, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes was published in the **Federal Register** on May 16, 1995 (60 FR 26003). That action proposed to require installation of a placard on the instrument panel in the cockpit to advise the flightcrew that the Omega navigation system may be inoperative when engine speed reaches 92.5% N_2.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 710 Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes of the affected design in the worldwide fleet. The FAA estimates that 177 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts (local manufacture of a placard) is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,620, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, it will take approximately 14 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts will be approximately $3,050 per airplane. Based on these figures, the total cost impact of the optional terminating action is $3,890 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–04 Learjet: Amendment 39–9365. Docket 95–NM–25–AD.

Applicability: Model 5, 35A, 36, 36A, 55, 55B, and 55C airplanes; equipped with

Global Wulfsburg GNS 500, GNS–1000, and GNS-X Flight Management Systems, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive deviation from the intended flight path which, if the aircraft is on an extended overwater operation, may lead to a potential low-fuel condition or a traffic conflict operation, accomplish the following:

(a) Within 60 days after the effective date of this AD, install a placard in a prominent location on the instrument panel that states: "VLF/OMEGA MAY BE INOPERATIVE AT 92.5% N_2"

(b) For Model 35 airplanes, serial numbers 35–001 through 35–603 inclusive; and Model 36, serial numbers 36–001 through 36–053 inclusive: Installation of a GNS 500/1000 generator band reject filter in accordance with Gates Learjet Airplane Accessory Kit Model AAK 85–1, dated January 14, 1986, as revised by Airplane Accessory Kit Change Notice AAK–85–1, Change 1 (undated), constitutes terminating action for the placard requirement of paragraph (a) of this AD. Following installation of the filter, the placard required by paragraph (a) of this AD may be removed.

(c) For Model 55 airplanes, serial numbers 55–003 through 55–124 inclusive: Installation of a GNS 500/1000 generator band reject filter in accordance with Gates Learjet Airplane Accessory Kit Model 55 AAK 55–85–2, dated January 14, 1986, as revised by Airplane Accessory Kit Change Notice AAK No. AAK55–85–2, Change 1 (undated), constitutes terminating action for the placard requirement of paragraph (a) of this AD. Following installation of the filter, the placard required by paragraph (a) of this AD may be removed.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on October 12, 1995.

Issued in Renton, Washington, on September 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22457 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–13–U

Federal Aviation Administration

14 CFR Part 71

[Docket No. 28306; Amendment No. 71–26]

Airspace Designation; Incorporation By Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Federal Aviation Regulations relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9C, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points incorporated by reference.

EFFECTIVE DATE: These regulations are effective September 16, 1995, through September 15, 1996. The incorporation by reference of FAA Order 7400.9C is approved by the Director of the Federal Register as of September 16, 1995, through September 15, 1996.

FOR FURTHER INFORMATION CONTACT: Brenda Brown, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9235.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, listed Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations (FAR) section 71.1 (14 CFR section 71.1). The Director of the Federal Register approved the incorporation by reference of FAA Order 7400.9B in section 71.1, effective September 16, 1994, through September 15, 1995. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9B in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Airspace Designations and Reporting Points, Order 7400.9C. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9C in section 71.1, as of September 16, 1995, through September 15, 1996. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, 71.79, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9C.

The Rule

This action amends part 71 of the Federal Aviation Regulations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9C effective September 16, 1995, through September 15, 1996. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9C in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1.

The FAA has determined that this action: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant

preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all Class A, Class B, Class C, Class D, and Class E airspace areas and for all reporting points can be found in FAA Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9C is effective September 16, 1995, through September 15, 1996. During the incorporation by reference period, proposed changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9C may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3485. Copies of FAA Order 7400.9C may be inspected in Docket No. 28306 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue, SW., Washington, D.C. weekdays between 8:30 a.m. and 5:00 p.m., or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This section is effective September 16, 1995, through September 15, 1996.

§ 71.5 [Amended]

3. Section 71.5 is amended by removing the words "FAA Order 7400.9B" and adding, in their place, the words "FAA Order 7400.9C."

§ 71.31 [Amended]

4. Section 71.31 is amended by removing the words "FAA Order 7400.9B" and adding, in their place, the words "FAA Order 7400.9C."

§ 71.33 [Amended]

5. Paragraph (c) of § 71.33 is amended by removing the words "FAA Order 7400.9B" and adding, in their place, the words "FAA Order 7400.9C."

§ 71.41 [Amended]

6. Section 71.41 is amended by removing the words "FAA Order 7400.9B" and adding, in their place, the words "FAA Order 7400.9C."

§ 71.51 [Amended]

7. Section 71.51 is amended by removing the words "FAA Order 7400.9B" and adding, in their place, the words "FAA Order 7400.9C."

§ 71.61 [Amended]

8. Section 71.61 is amended by removing the words "FAA Order 7400.9B" and adding, in their place, the words "FAA Order 7400.9C."

§ 71.71 [Amended]

9. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words "FAA Order 7400.9B" and adding, in their place, the words "FAA Order 7400.9C."

§ 71.79 [Amended]

10. Section 71.79 is amended by removing the words "FAA Order 7400.9B" and adding, in their place, the words "FAA Order 7400.9C."

§ 71.901 [Amended]

11. Paragraph (a) of § 71.901 is amended by removing the words "FAA Order 7400.9B" and adding, in their place, the words "FAA Order 7400.9C."

Issued in Washington, DC, August 23, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–22606 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations that delegate authority of the Commissioner of Food and Drugs (the Commissioner) to ensure that mammography facilities meet quality standards under the Mammography Quality Standards Act of 1992 (the MQSA) (Pub. L. 102–593). The authorities being redelegated include responsibilities under the MQSA that have not previously been redelegated by the Commissioner. The title of the delegation is being revised to reflect the expansion of authorities.

EFFECTIVE DATE: September 12, 1995.

FOR FURTHER INFORMATION CONTACT:

Richard E. Gross, Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, Piccard Bldg., 1350 Piccard Dr., Rockville, MD 20850, 301–443–2845, or

Ellen R. Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending § 5.85 (21 CFR 5.85) to redelegate authorities under the MQSA that were delegated to the Commissioner by the Acting Assistant Secretary for Health on June 10, 1993. That delegation gave the Commissioner authority to implement 15 sections of the MQSA (58 FR 32543). The Commissioner's authority to issue facility certificates was subsequently redelegated to officials of the Center for Devices and Radiological Health in 21 CFR 5.85 (59 FR 35849, July 14, 1994). That section is now being amended to redelegate the Commissioner's additional authority under the MQSA to do the following: Issue and renew certificates to mammography facilities; receive applications for certificates; approve, withdraw approval from, and evaluate accreditation bodies; evaluate individual facility compliance with quality standards by conducting inspections; impose sanctions; suspend and revoke facility certificates; make information available to physicians and the general public useful in evaluating the performance of facilities; and authorize States to carry out certification requirements and implement quality standards. The heading for § 5.85 is being revised to reflect the expansion of authorities being redelegated. These authorities are redelegated to the Director and Deputy Director for Regulations and Policy, Center for Devices and Radiological Health (CDRH), the Director, Office of Health and Industry Programs (OHIP), CDRH, and the Director, Division of Mammography Quality and Radiation Programs, OHIP, CDRH, as set forth in the regulation. These authorities are directly related to current CDRH operations and programs.

Further redelegation of the authority delegated is not authorized at this time. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.85 is revised to read as follows:

§ 5.85 Authority to ensure that mammography facilities meet quality standards.

(a) The following officials are authorized to issue, renew, and extend certificates to mammography facilities under section 354(c) of the Public Health Service Act (42 U.S.C. 263b):

(1) The Director and Deputy Director for Regulations and Policy, Center for Devices and Radiological Health (CDRH).

(2) The Director, Office of Health and Industry Programs, CDRH.

(3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(b) The following officials are authorized to accept an application for a certificate under section 354(d)(1) of the Public Health Service Act:

(1) The Director and Deputy Director for Regulations and Policy, CDRH.

(2) The Director, Office of Health and Industry Programs, CDRH.

(3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(c) The following officials are authorized to approve accreditation bodies to accredit mammography facilities under section 354(e)(1)(A) of the Public Health Service Act:

(1) The Director and Deputy Director for Regulations and Policy, CDRH.

(2) The Director, Office of Health and Industry Programs, CDRH.

(d) The following officials are authorized to ensure that accreditation bodies provide satisfactory assurances of compliance under section 354(e)(1)(C) of the Public Health Service Act:

(1) The Director and Deputy Director for Regulations and Policy, CDRH.

(2) The Director, Office of Health and Industry Programs, CDRH.

(3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(e) The Director, CDRH, is authorized to promulgate regulations under which the Director may withdraw approval of accreditation bodies under section 354(e)(2) of the Public Health Service Act.

(f) The following officials are authorized to determine the applicable standards for a facility for accreditation under section 354(e)(3) of the Public Health Service Act:

(1) The Director and Deputy Director for Regulations and Policy, CDRH.

(2) The Director, Office of Health and Industry Programs, CDRH.

(3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(g) The following officials are authorized to ensure that accreditation bodies make on site visits and to determine whether other measures are appropriate under section 354(e)(4)(A) and (e)(4)(B) of the Public Health Service Act:

(1) The Director and Deputy Director for Regulations and Policy, CDRH.

(2) The Director, Office of Health and Industry Programs, CDRH.

(3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(h) The following officials are authorized to evaluate annually the performance of each approved accreditation body as provided by section 354(e)(6)(A) of the Public Health Service Act:

(1) The Director and Deputy Director for Regulations and Policy, CDRH.

(2) The Director, Office of Health and Industry Programs, CDRH.

(3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(i) The following officials are authorized to determine the compliance of certified facilities with established standards through facility inspections as provided by section 354(g) of the Public Health Service Act:

(1) The Director and Deputy Director for Regulations and Policy, CDRH.

(2) The Director, Office of Health and Industry Programs, CDRH.

(3) The Director, Division of Mammography Quality and Radiation Programs, Office of Health and Industry Programs, CDRH.

(j) The Director and Deputy Director for Regulations and Policy, CDRH, are authorized to impose sanctions under section 354(h)(1) and (h)(2) of the Public Health Service Act.

(k) The Director and Deputy Director for Regulations and Policy, CDRH, are authorized to suspend or revoke individual facility certificates under section 354(i)(1) and (i)(2)(A) of the Public Health Service Act.

(l) The Director and Deputy Director for Regulations Policy, CDRH, are authorized to compile and make available to physicians and the general public information the Director determines is useful in evaluating the performance of mammography facilities as provided by section 354(l) of the Public Health Service Act.

(m)(1) The following officials may authorize a State to carry out certification program requirements and implement quality standards under section 354(q)(1) and (q)(2) of the Public Health Service Act:

(i) The Director and Deputy Director for Regulations and Policy, CDRH.

(ii) The Director, Office of Health and Industry Programs, CDRH.

(2) The Director, CDRH, is authorized, after providing notice and opportunity for corrective action, to withdraw the approval of a State's authority to carry out certification requirements and implement quality standards under section 354(q)(4) of the Public Health Service Act.

Dated: September 1, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–22578 Filed 9–11–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–95–007]

RIN 2115–AA97

Special Local Regulations; San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.1105 for the Navy Fleetweek Parade of Ships and Blue Angels Demonstration, San Francisco Bay, California. This Fleetweek event features a parade of ships sailing into the Bay and low level air shows performed by the Navy's Blue Angels and other aircraft along the San Francisco waterfront. The regulations in 33 CFR 100.1105 are necessary to restrict vessel traffic in the regulated areas during Fleetweek 1995 to ensure the safety of participants and spectators.

EFFECTIVE DATES: The regulations in 33 CFR 100.1105 are effective on Thursday, October 5, 1995 through Sunday, October 8, 1995, terminating on each of those days at the end of the scheduled activity as follows:

Regulated area "Alpha" for the Navy Parade of Ships becomes effective at 8:30 a.m. PDT, October 7, 1995 and terminates at 12 noon PDT, October 7, 1995 or when the last U.S. Naval vessel in the column has exited regulated area "Alpha", whichever time is later, unless cancelled earlier by Commander, Coast Guard Group San Francisco.

Regulated area "Bravo" for the Blue Angels practice flights becomes effective at 10 a.m. PDT, October 5 and 6, 1995 and terminates at 4 p.m. on PDT each day, unless cancelled earlier by Commander, Coast Guard Group San Francisco. Regulated area "Bravo" for the Blue Angels demonstration and other airshow activities again becomes effective at 10 a.m. PDT, October 7, 1995, and 9:30 a.m., October 8, 1995, and terminates at 4 p.m. each day, unless cancelled earlier by Commander, Coast Guard Group San Francisco.

FOR FURTHER INFORMATION CONTACT: Lieutenant S. Cooley, Operations Officer, U.S. Coast Guard Group San Francisco, Yerba Buena Island, California, 94130–5000; telephone: (415) 399–3445.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

The U.S. Navy/City of San Francisco Fleetweek Navy Parade of Ships and the Navy Blue Angels Aerial Show is scheduled for Saturday, October 7, 1995. Regulated area "Alpha" will ensure unobstructed waters for safe navigation of the Parade of Navy Ships proceeding inbound via the Eastbound San Francisco Bay Traffic Lane. Following the ship parade, regulated area "Bravo" for the aerial demonstration by the U.S. Navy Blue Angels and other aircraft will ensure the safety of the aircraft, vessels, and persons onboard. In preparation for this demonstration, the Blue Angels will conduct practice flights on October 5 and 6, 1995. An additional Blue Angels aerial demonstration is scheduled for October 8, 1995. The regulated area for the practice event and the performance by the Blue Angels and other aircraft will restrict vessel access to the marinas and commercial docks along the San Francisco waterfront. The short duration and minimal size of the regulated area will minimize any inconvenience. Persons and vessels shall not enter or remain within the stated distances from the Naval parade vessels in regulated area "Alpha," or enter or remain within regulated area "Bravo," unless authorized by the Coast Guard Patrol Commander. Fleetweek activities have traditionally attracted a sizable fleet of vessels, and large vessel operators needing to transmit near Fleetweek activities are encouraged to make such transits well before or after the regulated area are in effect.

Dated: August 30, 1995.

D.D. Polk,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 95–22530 Filed 09–11–95 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–95–028]

Special Local Regulations for Marine Events; Hampton Bay Days Festival; Hampton River, Hampton, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice announces that 33 CFR 100.508 is in effect for the Hampton Bay Days Festival, an annual event to be held on September 9 and 10, 1995 on the Hampton River. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations in 33 CFR 100.508 are effective from 7 a.m., September 9, 1995 until 7 p.m., September 10, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204 or Commander, Coast Guard Group Hampton Roads (804) 483–8567.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR J.C. Good, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Hampton Bay Days, Inc. submitted an application to hold the Hampton Bay Days Festival on September 9 and 10, 1995. The marine portion of the festival will consist of a parade of boats, water ski shows, and assorted boat races. There will also be a fireworks display launched from within the regulated area. The regulations in 33 CFR 100.508 govern the activities of the Hampton Bay Days Festival held on the Hampton River, in and around downtown Hampton, Virginia. Implementation of 33 CFR 100.508 also implements as special anchorage areas the spectator anchorages designated in that section for use by vessels during the event.

Vessels less than 20 meters long may anchor in these areas without displaying the anchor lights and shapes required by Inland Navigation Rule 30 (33 U.S.C. 2030(g)).

These regulations were specifically established to enhance the safety of the participants in and spectators of the marine portions of the Hampton Bay Days Festival and the regulations are hereby implemented.

Dated: August 29, 1995.

N.V. Scurria, Jr.,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 95–22531 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 07–95–20]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulations governing the operation of the Merrill Barber, State Road 60 bridge, mile 951.9, at Vero Beach. This drawbridge has been replaced by a fixed bridge and there is no longer a need for the regulation.

EFFECTIVE DATE: October 12, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Project Manager, Bridge Section, (305) 536–4103.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, as notice of proposed rulemaking has not been published for these regulations, because there is no longer a need for the regulations as they pertain to a drawbridge that no longer exists.

Drafting Information

The principal persons involved in drafting this document are Walt Paskowsky, Project Manager, and LT Commander Rob Wilkins, Project Counsel.

Background and Purpose

The Merrill Barber bridge was replaced by a high level fixed bridge on March 1, 1995. The old drawbridge is in the process of being removed from the waterway. This removal is a requirement of the permit issued for the new bridge. The regulations in 33 CFR 117.261(n) governing the operation of the old drawbridge are no longer necessary and are being removed.

Environment

Under section 2.B.2.e(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because the drawbridge no longer exists.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing facts, part 117 of Title 33 of the Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.261 paragraph (n) is removed and reserved.

§ 117.261 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.

* * * * *

(n) [Removed and reserved]

* * * * *

Dated: July 21, 1995.

R.T. Rufe, Jr.,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 95–22529 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD02–95–015]

RIN 2115–AE84

Regulated Navigation Area; Ohio River Mile 461.0 to 462.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area on the Ohio River from mile 461.0 to mile 462.0. This regulation is needed to protest and control recreational and commercial vessel traffic during three Jimmy Buffet concerts at the Riverbend Music Center, Cincinnati, Ohio. This regulation will restrict general navigation in the regulated area for the safety of recreational and commercial vessels.

EFFECTIVE DATES: This regulation is effective between 8 p.m. and 11 p.m. EDST on September 22, 23, and 26, 1995.

FOR FURTHER INFORMATION CONTACT: CWO Ken Smith, Operations Officer, Captain of the Port, Louisville, Kentucky at (502) 582–5194.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Chief Warrant Officer Ken Smith, Operations Officer for the Captain of the Port Louisville, Kentucky, and Lieutenant S. Moody, Project Attorney, Second Coast Guard District Legal Office, St. Louis, MO.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Overriding safety concerns and short notice of scheduling of the event made following normal rulemaking procedures impracticable. Three Jimmy Buffet concerts at the Riverbend Music Center, an arena located on the shores of the Ohio River, are expected to attract hundreds of recreational vessels to the area. These shoreside concerts are not marine events and therefore the sponsors were not required to notify the Coast Guard of the event. As a result, the Coast Guard did not learn of the need for vessel traffic control in time to publish a notice of proposed rulemaking.

Background and Purpose

For the past few years Jimmy Buffet has performed annual concerts at the Riverbend Music Center and over that period of time the concerts have increased in popularity. In the last few years, this particular concert series has attracted an increasingly large number of spectator craft, posing a significant hazard to navigation. This increased number of vessels has contributed to an unusually high number of close calls between spectator craft and commercial traffic. The purpose of this regulation is to establish navigation and operating restrictions which will serve to separate recreational vessels from commercial vessel traffic, and if needed, to escort commercial traffic through the regulated navigation zone.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). Because of the limited duration of the restrictions, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, Louisville, Kentucky will monitor river conditions and will amend restrictions in the regulated area as conditions permit. Changes will be announced by Marine Safety Information Radio broadcast (Broadcast Notice to Mariners) on VHF marine band radio, channel 22 (157.1 MHz). Mariners may also call the Port Operations Officer, Captain of the Port, Louisville, Kentucky at (502) 582–5194 for current information.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because the Coast Guard expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, as revised by 59 FR 38654; July 29, 1994, this regulation is categorically excluded from further environmental documentation as an action required to protect public safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart F of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citations for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 604–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T02–064 is added to read as follows:

§ 165–T02–064 Regulation Navigation Area: Ohio River.

(a) *Location.* The Ohio River between mile 461.0 and 462.0 is established as a regulated navigation area.

(b) *Effective dates.* This section is effective between 8 p.m. and 11 p.m. EDST on September 22, 23, and 26, 1995.

(c) *Regulations.* (1) Commercial vessels transiting the regulated navigation area shall proceed at minimum steerage and at the direction of Coast Guard officers or petty officers who will be patrolling the regulated area on board Coast Guard vessels.

(2) Recreational vessels within the area shall not anchor or moor in the navigable channel.

(3) The Captain of the Port, Louisville, Kentucky may, upon request, or for good cause, depending on on-scene conditions, authorize a deviation from any regulation in this section if it is found that proposed or needed operations can be performed safely.

(4) The Captain of the Port, Louisville, Kentucky will notify the maritime community of river conditions affecting the area covered by this regulated navigation of by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: August 30, 1995.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District, St. Louis, MO

[FR Doc. 95–22528 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Huntington 95–002]

RIN 2115–AA97

Safety Zone; Little Kanawha River, Mile 0.9 to 1.9, Worthington Creek Entrance, Wood County, WV

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Little Kanawha River, at the entrance to Worthington Creek, Wood County, West Virginia, and all adjacent landside areas within a 500 foot radius of each specific explosive detonation site. This regulation is needed to control vessel traffic in the regulated area to prevent potential safety hazards for transiting vessels and the general public resulting from the demolition of the East Street Bridge at mile 1.4, Little Kanawha River, Parkersburg, West Virginia. Vessel movements within this safety zone are permitted under the criteria set forth in this regulation.

EFFECTIVE DATE: This regulation is effective at 6 a.m. EDT on September 11, 1995. It terminates on November 11, 1995 at 8 p.m. EST, unless terminated sooner by the Captain of the Port Huntington.

FOR FURTHER INFORMATION CONTACT: LT Sean Moon, Chief of the Port Operations Department, Captain of the Port, Huntington, West Virginia at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG Steven Frye, Project Officer, Marine Safety Office, Huntington, West Virginia and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Following normal rulemaking procedures would have been impracticable. Specifically, anticipated demolition operations, including explosive detonations, as part of a bridge removal project at mile 1.4, Little Kanawha River, Parkersburg, West Virginia, have created a situation which presents an immediate hazard to navigation, life, and property. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Background and Purpose

The activity requiring this regulation is a bridge demolition undertaken as a part of the replacement of a bridge under United States Coast Guard Bridge Permit Number 3–95–2 dated March 29, 1995. The Captain of the Port Huntington received notice of the intended explosive and demolition operations August 14, 1995. The bridge permit included the requirement that the existing bridge be demolished before construction of the new bridge. Waterside demolition operations, involving the use of crane barges and explosives in and near the navigation channel, will begin on or about September 11, 1995 at mile 1.4 on the Little Kanawha River. Completion of the bridge removal is expected to occur on or before November 11, 1995. Bridge spans and bridge piers will be removed in sections, one at a time, over a period of several months. In addition to the explosive hazard associated with several different detonations, the regular presence of a crane barge, tow boats and submerged steel will pose an obstructive hazard to waterborne traffic operating in the vicinity of the project work site. In order to provide for the safety of vessel traffic and the general public, the Captain of the Port Huntington intends to regulate vessel traffic in that portion of the Little Kanawha River where the explosives and steel removal operations will be taking place, and to work with local law enforcement officials to secure all landside areas within a 500 foot radius of each specific blast site until the hazard from the explosive detonations is mitigated.

During critical phases of the demolition project, the affected portions of the Little Kanawha River, the entrance to Worthington Creek, and adjacent landside areas in proximity to the blast site will be subject to periodic closures. No vessels will be allowed to transit the affected waterway when blasting and steel removal operations will impede safe navigation. Additionally, local law enforcement officials will secure landside areas as appropriate to safeguard the general public from the explosive hazard during detonations.

Notification of river and creek entrance closure will be made via Broadcast Notice to Mariners at periods 24 hours, 2 hours, and 5 minutes prior to each blast. Notification will be via VHF radio channel 16.

During all river and creek entrance closures, two boats will be available for the security of the closed river area. The boats will be placed up and down the river of the blasting area. These boats will patrol and warn any recreational/commercial vessel traffic of the impending blast.

No blasting will be permitted unless all river and creek traffic is removed to a safe location outside of the blasting area. No blasting will take place when there is restricted visibility (visibility must be at least ½ mile). No blasting will take place unless the river stage is at or will be during operations no more than four feet above normal pool.

Unless overtaken by circumstances, periodic river and creek closures will be less than 24 hours in duration. Closures of Worthington Creek entrance will be very abbreviated, during blasting operations only. Closures of the Little Kanawha River will be during blasting and clearing operations and will remain in effect until the river is cleared and the safety of transiting vessels is ensured. Local law enforcement officials will restrict access and secure landside areas as necessary to protect the public from explosive hazards. Road closures, evacuations, and other appropriate security measures will be imposed for abbreviated periods only.

When the blasting and obstructive hazards have been mitigated, the Captain of the Port Huntington will reopen the river. Notification of the reopening of the river will be via VHF radio on channel 16. The entrance to Worthington Creek will be reopened to vessel traffic entering the Little Kanawha River upon the conclusion of each blasting operation. Vessels transiting to or from the Worthington Creek entrance must contact the on scene contractor's vessel for passing instructions to ensure safe operation within the safety zone. Local law enforcement officials will reopen landside areas immediately upon conclusion of blasting operations. Notice of this safety zone and updates on periodic closures will also be published in the Local Notice to Mariners.

The establishment of this safety zone regulation helps to ensure that vessels will not transit the Little Kanawha River in the vicinity of the blasting area during explosive detonations or when the main channel is obstructed by submerged steel to eliminate attendant risks associated with these operations. The Captain of the Port will also work with local law enforcement officials to protect the safety of the general public in adjacent landside areas. The safety zone also helps to ensure that communication is established between the contractors and vessels transiting the waters within the safety zone during the noncritical phases of the demolition project. With proper communication between both parties, the contractor is assured of having ample time to comply with any request to relocate work boats temporarily to allow a vessel to navigate through the safety zone.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, due to the limited duration of actual river closures.

Small Entities

The Coast Guard finds that the impact on small entities is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994) this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart F of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46

2. A temporary § 165.T02–003 is added, to read as follows:

§ 165–T02–003 Safety Zone: Little Kanawha River, Worthington Creek Entrance

(a) *Location.* The Little Kanawha River between miles 0.9 and 1.9, the entrance to Worthington Creek, Wood County, West Virginia is established as a safety zone.

(b) *Effective dates.* This section is effective on September 11, 1995 at 6 a.m. EDT. It terminates on November 11, 1995 at 8 p.m. EST, unless terminated sooner by the Captain of the Port Huntington.

(c) *Regulations.* (1) All vessels must, except those vessels with explicit permission from the Captain of the Port:

(i) Remain outside the safety zone during all periods of closure, as announced by Coast Guard Broadcast Notice to Mariners and as enforced on scene by personnel from the Coast Guard Marine Safety Office Huntington, WV.

(ii) Communicate with the contract vessel M/V WILLIAM H. ELLIOT on channel 16 VHF–FM to arrange for safe passage through the safety zone at all other times, providing at least ten (10) minutes advance notice prior to transiting through the regulated area.

(iii) Provide the contract vessel M/V WILLIAM H. ELLIOT at least ten (10) minutes advance notice to move/suspend operations in any case where the transiting vessel operator believes the safe passage of any vessel or tow is jeopardized by the presence/operation of the crane barge during operations not involving river closure.

(2) Vessels involved with the East Street Bridge demolition operations must, except those vessels with explicit permission from the Captain of the Port:

(i) M/V WILLIAM H. ELLIOT: Communicate with and arrange safe passage through the safety zone for all vessels not involved in the demolition project.

(ii) M/V WILLIAM H. ELLIOT: Initiate appropriate broadcast notices to local mariners over channel 16 VHF–FM 24 hours, 2 hours, and 5 minutes prior to initiation of blasting operations.

(iii) M/V WILLIAM H. ELLIOT: Ensure that all vessel traffic is outside the area of the safety zone and the waterside blast area is secured prior to any explosive detonation, with that information effectively communicated to the contractors conducting the blasting.

(iv) M/V WILLIAM H. ELLIOT: Monitor operations involving steel and debris removal after each detonation and, following clearance of the river, the conduct of subsequent subsurface sweeps of the main channel.

(v) M/V WILLIAM H. ELLIOT: Notify the Coast Guard Captain of the Port Huntington once a successful sweep has determined that the Little Kanawha River main shipping channel is clear (a minimum underwater clearance of 15 feet below normal river pool), with no obstructions to impede the safe navigation of vessels.

(vi) All other contract vessels: Relocate to a safe area prior to any blasting operations.

(3) AMERICAN BRIDGE COMPANY must, except with explicit permission from the Captain of the Port:

(i) Not detonate explosives if a vessel not involved with the blasting operation is inside the safety zone, or if any contract vessel has not relocated to a safe distance away from the blast area, as verified and communicated by the M/V WILLIAM H. ELLIOT.

(ii) Not initiate any blasting operations until local law enforcement officials have verified and communicated that landside security is established and that landside portions of the safety zone are clear.

(iii) Not initiate any blasting operations in periods of restricted visibility (operator must ensure there is clear bank-to-bank visibility).

(iv) Not initiate any blasting operations in a period of forty-eight (48) hours after it has been determined by the Captain of the Port that blasting operations have been suspended for the scheduled date and time to allow proper rescheduling of demolition operations with federal and state representatives, local authorities, and industry.

(4) The Captain of the Port may, upon request, authorize a deviation from any rule in this section if he determines that the proposed operations can be done safely.

(5) The Captain of the Port may direct the movement of any vessel within the safety zone as appropriate to ensure the safe navigation of vessels through the safety zone.

Dated: August 22, 1995, 4:30 p.m. EDT.

G.H. Burns III,

Lieutenant Commander, U.S. Coast Guard, Captain of the Port, Huntington, WV.

[FR Doc. 95–22532 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 153–1–7165a; FRL–5278–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern a rule from the El Dorado County Air Pollution Control District (EDCAPCD). This rule controls volatile organic compound (VOC) emissions from lumber processing and timber manufacturing operations. This approval action will incorporate the rule into the federally approved SIP.

The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on this rule serves as a final determination that the finding of

nonsubmittal for this rule has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This final rule is effective on November 13, 1995 unless adverse or critical comments are received by October 12, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

El Dorado County Air Pollution Control District, 330 Fair Lane, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being approved into the California SIP is EDCAPCD's Rule 234, "VOC RACT Rule—Sierra Pacific Industries." This rule was submitted by the California Air Resources Board to EPA on June 16, 1995.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included a portion of El Dorado County in the Sacramento Metro Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(b)(2)(C) of the CAA, Congress statutorily required nonattainment areas to submit reasonably available control technology (RACT) rules for all major stationary sources of VOCs by November 15, 1992 (the RACT "catch-up" requirement).

At the time of enactment of the CAA amendments, the Sacramento Metro Area was classified as serious;[1] therefore, this area was subject to the RACT catch-up requirement and the November 15, 1992 deadline.[2]

The State of California submitted many revised RACT rules for incorporation into its SIP on June 16, 1995, including the rule being acted on in this notice. This notice addresses EPA's direct-final action for EDCAPCD's Rule 234, "VOC RACT Rule—Sierra Pacific Industries.". EDCAPCD adopted Rule 234 on April 25, 1995. This submitted rule was found to be complete on July 31, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and is being finalized for approval into the SIP.

Rule 234 controls VOC emissions from a waste-fired boiler (Boiler #3) at Sierra Pacific Industries in Camino, California. VOCs contribute to the production of ground level ozone and smog. This rule was adopted as part of EDCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to section 182(b)(2)(C). A similar rule was promulgated by EPA on February 14, 1995, as part of an ozone attainment Federal Implementation Plan (FIP).[4] The following is EPA's evaluation and final action for Rule 234.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents.[5] Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "catch-up" their RACT rules. See section 182(b)(2). For some categories, such as lumber processing and timber manufacturing, EPA did not publish a CTG. In such cases, the state and local agencies may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. Therefore, the EDCAPCD must determine the VOC control measures that are reasonable and available for Sierra Pacific based on its operations. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 5. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

EDCAPCD's Rule 234, "VOC RACT Rule—Sierra Pacific Industries," limits the emissions of volatile organic compounds (VOCs) to 150 parts per million volume (ppmv) from a waste-fired boiler (Boiler #3) at Sierra Pacific. This standard is maintained through any one or more of the following: (1) use of fuel with a maximum moisture content of 50%, (2) operation of the boiler at optimal combustion conditions, (3) proper operation and maintenance of pollution control equipment, and/or (4) periodic inspection, maintenance, and repairs on the boiler and other equipment. Records must be maintained of system operating parameters, including temperatures, pressures, fuel flow rate, steam production rate, repair, fuel moisture, and all VOC control measures. All records must be maintained for five years. Compliance with the emission standard is demonstrated using EPA Methods 25 or 25A. The APCO has to be notified within 48 hours if the emission standard is exceeded. Final compliance with Rule 234 is required by February 1, 1996. A more detailed discussion of the source controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD) for Rule 234, dated May 25, 1995.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, EDCAPCD's Rule 234, "VOC RACT Rule—Sierra Pacific Industries," is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D. Therefore, if this direct final action is not withdrawn, on November 13, 1995, any FIP clock associated with the finding of failure to submit is stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995, unless, October 12, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rule being approved by this action will impose no new requirements because the affected source is already subject to this regulation under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 10, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(222)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(222) * * *

(i) * * *

(B) El Dorado County Air Pollution Control District.

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[1] The Sacramento Metro Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

[2] California did not make the required SIP submittal by November 15, 1992. On March 29, 1994, the EPA made a finding of failure to make a submittal pursuant to section 179(a)(1), which started an 18-month sanction clock. The rule being acted on in this direct final rule was submitted in response to the EPA finding of failure to submit.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[4] The ozone attainment FIP was a court ordered requirement, which applied to the Sacramento, Ventura, and South Coast ozone nonattainment areas in California, and was not a result of the March 29, 1994, findings letter. The final FIP rule was signed on February 14, 1995, but was not published in the **Federal Register**. The FIP was rescinded by Congressional action on April 10, 1995. Pub. L. 104–6, Defense Supplemental Appropriation, H.R. 889.

[5] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on (May 25, 1988); and the existing control techniques guideline (CTGs).

(*1*) Rule 234, adopted on April 25, 1995.

* * * * *

[FR Doc. 95–22154 Filed 9–11–95; 8:45 am]

BILLING CODE [illegible]

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40 CFR Part 52

[AK–4–1–6027a, WA–7–1–5542a, WA–38–1–6974a; FRL–5277–9]

Clean Air Act Attainment Extensions for PM–10 Nonattainment Areas: Alaska and Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action identifies those nonattainment areas in the State of Alaska and the State of Washington which have failed to attain the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to ten micrometers (PM–10) by the applicable attainment date. This action also serves to grant a 1 year attainment date extension for three nonattainment areas: Mendenhall Valley, Alaska; Spokane, Washington; and Wallula, Washington, for PM–10.

DATES: This action will be effective on November 13, 1995 unless adverse or critical comments are received by October 12, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101; the Alaska Department of Environmental Conservation, 410 Willoughy, Suite 105, Juneau, Alaska, 99801–1795; and the Washington State Department of Ecology, P.O. Box 47600, PV–11, Olympia, WA 98504–7600.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Environmental Scientist, Air & Radiation Branch (AT–082), EPA, Seattle, Washington, (206) 553–1814, or George Lauderdale, Environmental Protection Specialist, Air & Radiation Branch (AT–082), EPA, Seattle, Washington, (206) 553–6511.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements Concerning Designation and Classification

Areas meeting the requirements of section 107(d)(4)(B) of the Act[1] were designated nonattainment for PM–10 by operation of law and classified "moderate" upon enactment of the 1990 Clean Air Act Amendments. *See generally* Section 107(d)(4)(B). These areas included all former Group I PM–10 planning areas identified in 52 FR 29383 (August 7, 1987), as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the National Ambient Air Quality Standards (NAAQS) for PM–10 prior to January 1, 1989.[2] A **Federal Register** notice announcing the areas designated nonattainment for PM–10 upon enactment of the 1990 Amendments, known as "initial" PM–10 nonattainment areas, was published on March 15, 1991 (56 FR 11101), and a subsequent **Federal Register** notice correcting the description of some of those areas was published on August 8, 1991 (56 FR 37654). *See* 56 FR 56694 (November 6, 1991) and 40 CFR 81.303 and 40 CFR 81.348 (for codified air quality designations and classifications in the State of Alaska and Washington, respectively). All initial moderate PM–10 nonattainment areas have the same applicable attainment date of December 31, 1994.

States containing initial moderate PM–10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a SIP revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration either that the plan would provide for attainment of the PM–10 NAAQS by December 31, 1994 or that attainment by that date was impracticable. *See* Section 189(a).

B. Attainment Determinations

All PM–10 areas designated nonattainment pursuant to section 107(d)(4)(B) of the Act were initially classified "moderate" by operation of law upon enactment of the 1990 Clean Air Act Amendments. *See* Section 188(a). Pursuant to sections 179(c) and 188(b)(2) of the Act, EPA has the responsibility of determining within six months of the December 31, 1994, attainment date whether PM–10 nonattainment areas have attained the NAAQS. Determinations under section 179(c)(1) of the Act are to be based upon an area's "air quality as of the attainment date." Section 188(b)(2) is consistent with this requirement. Generally, EPA will determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established State and Local Monitoring Stations (SLAMS) in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined by EPA to meet federal monitoring requirements (see 40 CFR 50.6 and appendix J, 40 CFR part 53, 40 CFR 58, appendix A & B) and may be used to determine the attainment status of areas. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided that it meets the federal monitoring requirements for SLAMS. All data will be reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration over a three-year period (1992, 1993 and 1994 for areas with a December 31, 1994 attainment date) is equal to or less than 50 micrograms per cubic meter ($\mu g/m^3$). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 $\mu g/m^3$. The 24-hour standard is attained when the expected number of days with levels above 150 $\mu g/m^3$ (averaged over a three-year period) is less than or equal to one (1.0). Three consecutive years of air quality data is generally necessary to show attainment of the annual and 24-hour standard for PM–10. *See* 40 CFR part 50 and appendix K.

C. Extension of the Attainment Date

The Act provides the Administrator with the discretion to grant a one-year extension of the attainment date for a moderate PM–10 nonattainment area, provided certain criteria are met. *See* Section 188(d). If an area does not have the necessary number of consecutive years of clean air quality data to show attainment of the NAAQS, a State may apply for up to two one-year extensions of the attainment date for that area. The statute sets forth two criteria a moderate nonattainment area must satisfy in order to obtain an extension: (1) The State has complied with all the requirements and commitments pertaining to the area in the applicable implementation plan; and (2) the area had no more than one exceedance of the 24-hour PM–10 standard in the year preceding the extension year, and the annual mean concentration of PM–10 in the area for the year preceding the extension year is less than or equal to the standard. *See* Section 188(d).

The authority delegated to the Administrator to extend attainment dates for moderate PM–10 nonattainment areas is discretionary: Section 188(d) of the Act provides that the Administrator "may" extend the attainment date for areas that meet the minimum requirements specified above. The provision does not dictate or compel that EPA grant extensions to such areas even if these conditions are met.

In exercising this discretionary authority for PM–10 nonattainment areas, EPA examines, in addition to the two statutory criteria discussed above, the air quality planning progress made in the moderate area. *See* November 14, 1994 Memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division entitled "Criteria for Granting 1-Year Extensions of Moderate PM–10 Nonattainment Area Attainment Dates, Making Attainment Determinations, and Reporting on Quantitative Milestones." EPA is disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate PM–10 nonattainment area planning obligations. In order to determine whether the State has substantially met these planning requirements, EPA reviews the State's application for the attainment date extension to determine whether the State has: (1) Adopted and substantially implemented control measures that represent RACM/RACT in the moderate nonattainment area; and (2) demonstrated that the area has made emission reductions amounting to reasonable further progress (RFP) toward attainment of the PM–10 NAAQS as defined in section 171(1) of the Act. RFP for PM–10 nonattainment areas is defined in section 171(1) of the Act as annual incremental emission reductions to ensure attainment of the applicable NAAQS (PM–10) by the applicable attainment date.

If the State does not have the requisite number of years of clean air quality data to show attainment and does not apply or qualify for an attainment date extension, the area will be reclassified to serious by operation of law under section 188(b)(2) of the Act. If an extension of the attainment date is granted, at the end of the extension year EPA will again determine whether the area has attained the PM–10 NAAQS. If the requisite three consecutive years of clean air quality data needed to determine attainment are not met for the area, the State may apply for a second one-year extension of the attainment date. In order to qualify for the second one-year extension of the attainment date, the State must satisfy the same requirements listed above for the first extension. In addition, EPA will consider the State's PM–10 planning progress for the area during the year for which the first extension was granted. If a second extension is granted and the area does not have the requisite three consecutive years of clean air quality data needed to demonstrate attainment at the end of the second extension, no further extensions of the attainment date can be granted and the area will be reclassified serious by operation of law. *See* Section 188(d).

II. Summary of Today's Action

Today's action announces EPA's determination that the Mendenhall Valley, Alaska, PM–10 nonattainment area and the Spokane and Wallula, Washington, PM–10 nonattainment areas have each failed to attain the PM–10 NAAQS by the applicable attainment date of December 31, 1994. This determination is based upon air quality data which show there were violations of the PM–10 NAAQS in each of these areas during the period from 1992 to 1994.

The State of Alaska has requested a one-year extension of the PM–10 attainment date for the Mendenhall Valley nonattainment area. The State of Washington has requested a one-year extension of the PM–10 attainment date for both the Spokane PM–10 nonattainment area and the Wallula PM–10 nonattainment area. EPA has reviewed these extension requests and is granting a one-year extension of the attainment date for each area. This determination is based upon available air quality data and a review of the State's progress in implementing the planning requirements that apply to moderate PM–10 nonattainment areas.

A. Mendenhall Valley, Alaska, PM–10 Nonattainment Area

The Mendenhall Valley PM–10 nonattainment area is located nine miles from downtown Juneau and is Juneau's largest residential area.

1. Air Quality Data

The Mendenhall Valley nonattainment area has three PM–10 monitoring sites: Floyd Dryden, Glacier Auto and Trio Street. These SLAMS sites were established in 1986, 1988, and 1989 respectively. Glacier Auto was discontinued in 1993. Sampling at the Floyd Dryden and Trio Street sites are every day. Sampling at Glacier Auto is every other day. Data from these sites have been deemed valid by EPA and submitted by the State of Alaska for inclusion in the AIRS system.

A review of the data for calendar years 1992, 1993 and 1994 for the Mendenhall Valley PM–10 nonattainment area shows no violation of the annual PM–10 standard. During this same three year period, the Trio monitor reported one measurement above the level of the 24-hour NAAQS in calendar year 1992 and three measurements above the level of the 24-hour NAAQS in calendar year 1993. There were no measured levels above the 24-hour NAAQS in calendar year 1994.

2. Attainment of the PM–10 NAAQS

The Mendenhall Valley PM–10 nonattainment area does not attain the 24-hour PM–10 NAAQS. PM–10 concentrations reported from the SLAMS monitoring station at Trio Street exceeded the level of the NAAQS three times in 1993. Because of the sampling frequency, the expected exceedance rate for this three-year period is 3.07 (calculated in accordance with appendix K), which represents a violation of the 24-hour standard.

3. Extension of Attainment Date

EPA is granting the State's request for a one-year extension of the attainment date, from December 31, 1994 to December 31, 1995, for the Mendenhall Valley PM–10 nonattainment area.

a. Compliance With Applicable SIP

Based on information available to EPA, EPA believes the State of Alaska is in compliance with all requirements and commitments in the applicable implementation plan that pertains to the Mendenhall Valley PM–10 nonattainment area. EPA has fully approved the State's moderate PM–10 nonattainment area plan as a SIP revision for the Mendenhall Valley PM–10 nonattainment area. (52 FR 13885). EPA believes that the State is meeting the requirements and commitments of the statewide SIP and is in compliance with the Mendenhall Valley PM–10 SIP revision.

b. Air Quality Data

As discussed above, there were no measured levels above the 24-hour NAAQS during calendar year 1994. The annual mean concentration of PM–10 was 21 $\mu g/m^3$ during 1994, well below

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[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act as amended ("Act" or "CAA"), which is codified at 42 U.S.C. § 7401 *et seq.*

[2] Many of these other areas were identified in footnote 4 of the October 31, 1990 **Federal Register** notice.

the standard. Therefore, the Mendenhall Valley PM–10 nonattainment area meets the extension criteria of no more than one exceedance of the 24-hour NAAQS and an annual mean concentration less than or equal to the standard for the year preceding the extension year.

c. Substantial Implementation of Control Measures

The State of Alaska has developed and implemented a significant control measure on the major PM–10 source within the Mendenhall Valley nonattainment area. The measure consists of controlling fugitive road dust by implementing a Valley-wide street paving project. The EPA determined this control measure met EPA's guidance for RACM/RACT for sources in the nonattainment area and approved the State's SIP revision on April 25, 1994 (52 FR 13885).

d. Emission Reduction Progress

On April 19, 1995, the State of Alaska submitted to EPA the milestone report required by section 189(c)(2) of the Act to demonstrate annual incremental emission reductions and reasonable further progress in the Mendenhall Valley area. In that report, which is contained in the docket supporting this rulemaking, the State discusses implementation of the control measures adopted as part of the control strategy in the SIP and the emission reductions that have been achieved as a result of the State's control strategy. At the end of 1994, 96 percent of the proposed road paving had been completed which reduced particulate emissions by 654 tons. EPA believes that the estimated reductions in emissions from the aggressive paving project demonstrates reasonable further progress in the Mendenhall Valley nonattainment area.

In summary, for the reasons discussed above, EPA is granting the State's request for a one-year extension of the attainment date for the Mendenhall Valley PM–10 nonattainment area from December 31, 1994 to December 31, 1995.

B. Spokane PM–10 Nonattainment Area

The Spokane PM–10 nonattainment area is an urban area located in the northeastern portion of the State of Washington.

1. Air Quality Data

The Spokane nonattainment area has a relatively large PM–10 monitoring system. PM–10 monitoring began in 1985 and there are currently three SLAMS sites and one NAMS site in the urban area. Sampling frequencies are one sample every six days at two sites and daily sampling at two sites. Data from all the sites have been deemed valid by EPA and submitted by the State of Washington for inclusion in the AIRS system.

A review of the data for calendar years 1992, 1993 and 1994 shows no violations of the annual PM–10 standard in the Spokane PM–10 nonattainment area. During this same three-year period, there were a total of nine reported measurements above the level of the 24-hour NAAQS at the NAMS monitoring site located near downtown Spokane which has historically exceeded the standard with greatest frequency. In calendar year 1992 there were five recorded values above the NAAQS in September and October. In 1993 a total of four values were above the NAAQS (two in March, one in September and one in November). The three other monitoring sites also recorded levels above the 24-hour NAAQS in 1992 and 1993. In calendar year 1994, there were no measurements at any site above the 24-hour NAAQS.

2. Attainment of the PM–10 NAAQS

The Spokane PM–10 nonattainment area does not attain the 24-hour PM–10 NAAQS. Because of the sampling frequencies, the expected exceedance rate for the three-year period, at three of the sampling locations, is in violation of the 24-hour standard.

3. Extension of Attainment Date

EPA is by this action proposing to grant the State's request for a one-year extension of the attainment date, from December 31, 1994 to December 31, 1995, for the Spokane PM–10 nonattainment area.

a. Compliance With Applicable SIP

Based on information available to EPA, EPA believes the State of Washington is in compliance with all requirements and commitments in the applicable implementation plan and statewide SIP requirements that pertain to the Spokane PM–10 nonattainment area. Although the State has submitted its moderate PM–10 nonattainment area plan as a SIP revision, EPA has not yet taken action on that plan. Therefore, the submitted plan is not yet an "applicable implementation plan" for the Spokane PM–10 nonattainment area.

b. Air Quality Data

As discussed above, there were no measured levels above the 24-hour NAAQS during calendar year 1994. The annual mean concentration of PM–10 was 38 μg/m^3 during 1994, well below the standard. Therefore, the Spokane PM–10 nonattainment area meets the extension criteria of no more than one exceedance of the 24-hour NAAQS and an annual mean concentration less than or equal to the standard for the year preceding the extension year.

c. Substantial Implementation of Control Measures

The State of Washington, along with the local air pollution control agency, has developed and implemented several significant control measures on sources within the Spokane PM–10 nonattainment area. The State submitted these control measures to EPA as a SIP revision on November 15, 1991, and in supplemental submissions since that time. These measures consist of a comprehensive residential wood combustion program, including a mandatory woodstove curtailment program; stringent controls on fugitive road dust, including controls on winter road sanding and road paving program; and emission limits on point sources in the nonattainment area. EPA has conducted a preliminary review of these measures and believes that they substantially meet EPA's guidance for RACM, including RACT, for purposes of granting an extension under section 188(d) of the Act.

d. Emission Reduction Progress

On March 24, 1995, the State of Washington submitted to EPA the milestone report required by section 189(c)(2) of the Act to demonstrate annual incremental emission reductions and reasonable further progress in the Spokane area. In that report, a copy of which is available in the docket, the State discusses implementation of the control measures adopted as part of the control strategy in the SIP and the emission reductions that have been achieved as a result of the State's control strategy. EPA believes that the reductions in emissions for the sources demonstrates reasonable further progress in the Spokane nonattainment area.

In summary, for the reasons discussed above, EPA is granting the State's request for a one-year extension of the attainment date for the Spokane PM–10 nonattainment area from December 31, 1994 to December 31, 1995.

C. Wallula, Washington PM–10 Nonattainment Area

The Wallula PM–10 nonattainment area is located in rural south central Washington State.

1. Air Quality Data

The Wallula nonattainment area has one PM–10 monitoring site located on a hill overlooking the small

unincorporated community of Wallula. The SLAMS site was established in 1986. Sampling frequency is one sample every six days. Data from this site has been deemed valid by EPA and submitted by the State of Washington for inclusion in the AIRS system.

A review of the data for calendar years 1992, 1993 and 1994 shows no violations of the annual PM–10 standard at the site. During this same three-year period, there were two reported measurements above the level of the 24-hour NAAQS. In calendar year 1993 there was one level above the NAAQS in May and in 1994 one level was recorded above the NAAQS in June.

2. Attainment of the PM–10 NAAQS

The Wallula PM–10 nonattainment area does not attain the 24-hour PM–10 NAAQS. PM–10 concentrations reported from the SLAMS monitoring station exceeded the level of the NAAQS twice from 1992 to 1994. Because of the sampling frequency, the expected exceedance rate represents a violation of the 24-hour standard.

3. Extension of Attainment Date

EPA is by this action is granting the State's request for a one-year extension of the attainment date, from December 31, 1994 to December 31, 1995, for the Wallula PM–10 nonattainment area.

a. Compliance With Applicable SIP

Based on information available to EPA, EPA believes the State of Washington is in compliance with all requirements and commitments in the applicable implementation plan that pertains to the Wallula PM–10 nonattainment area. Although the State has submitted its moderate PM–10 nonattainment area plan as a SIP revision, EPA has not yet taken action on that plan. Therefore, the submitted plan is not yet an "applicable implementation plan" for the Wallula PM–10 nonattainment area.

b. Air Quality Data

As discussed above, there was one measured level above the 24-hour NAAQS during calendar year 1994. The annual mean concentration of PM–10 was 36.4 μg/m^3 during 1994, well below the standard. Therefore, the Wallula PM–10 nonattainment area meets the extension criteria of no more than one exceedance of the 24-hour NAAQS and an annual mean concentration less than or equal to the standard for the year preceding the extension year.

c. Substantial Implementation of Control Measures

The State of Washington has implemented control measures on sources within the Wallula PM–10 nonattainment area. The State submitted the control measures to EPA as a SIP revision on November 15, 1991, and in supplemental submissions since that time. The major control measure is the federal Food Security Act's provisions requiring development and implementation of conservation plans for participating farms. EPA has conducted a preliminary review of these measures and believes that they substantially meet EPA's guidance for RACM, including RACT, for purposes of granting an extension under section 188(d) of the Act.

d. Emission Reduction Progress

On March 24, 1995, the State of Washington submitted to EPA the milestone report required by section 189(c)(2) of the Act to demonstrate annual incremental emission reductions and reasonable further progress in the Wallula area. In that report, the State discusses implementation of the control measures adopted as part of the control strategy in the SIP and the emission reductions that have been achieved as a result of the State's control strategy. EPA believes that the reductions demonstrate reasonable further progress in the Wallula nonattainment area.

In summary, for the reasons discussed above, EPA proposes to grant the State's request for a one-year extension of the attainment date for the Wallula PM–10 nonattainment area from December 31, 1994 to December 31, 1995.

III. Executive order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993) EPA is required to determine whether regulatory actions are significant and therefore should be subject to the Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

The Agency has determined that the determinations of nonattainment and attainment date extensions granted today would result in none of the effects identified in section 3(f). Under section 188(b)(2), findings of nonattainment and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, the nonattainment determinations and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Attainment date extensions under section 188(d) of the Clean Air Act do not impose any new requirements on any sectors of the economy; nor do they result in a materially adverse impact on State, local, or tribal governments or communities.

IV. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Reclassification of nonattainment areas under section 188(b)(2) of the CAA and extensions of attainment dates under 188(d) do not create any new requirements. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate.

EPA has determined, as discussed earlier in section "IV. Executive order (EO) 12866" of this notice, that the finding that is the subject of this final action of failure to attain and grant of a one-year extension to the Mendenhall Valley, Alaska, and the Wallula and Spokane, Washington, PM–10 nonattainment areas do not impose any federal intergovernment mandate, as defined in section 101 of the Unfunded Mandates Act. A finding that an area has failed to attain and should be granted a one-year extension of the attainment date consists of factual determinations based upon air quality considerations and the area's compliance with certain prior requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector result from this action. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless, by October 12, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 8, 1995.

Charles Findley,

Acting Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Alaska

2. Section 52.82 is added to read as follows:

§ 52.82 Extensions.

The Administrator, by authority delegated under section 188(d) of the Clean Air Act, as amended in 1990, hereby extends for one year (until December 31, 1995) the attainment date for the Mendenhall Valley, Alaska, PM–10 nonattainment area.

Subpart WW—Washington

2. Section 52.2472 is added to read as follows:

§ 52.2472 Extensions.

The Administrator, by authority delegated under section 188(d) of the Clean Air Act, as amended in 1990, extends for one year (until December 31, 1995) the attainment date for the Spokane, Washington, PM–10 nonattainment area and the Wallula, Washington, PM–10 nonattainment area.

[FR Doc. 95–22160 Filed 9–11–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Parts 52 and 81

[LA–28–1–7053a, FRL–5292–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Approval of the Maintenance Plan for St. James Parish; Redesignation of St. James Parish to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 15, 1994, the State of Louisiana submitted a revised maintenance plan and request to redesignate the St. James Parish ozone nonattainment area to attainment. This maintenance plan and redesignation request was initially submitted to the EPA on May 25, 1993. Although the EPA deemed this initial submittal complete on September 10, 1993, certain approvability issues existed. The State of Louisiana addressed these approvability issues and has revised its submissions. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements. In this action, EPA is approving Louisiana's redesignation request because it meets the maintenance plan and redesignation requirements set forth in the CAA, and EPA is approving the 1990 base year emissions inventory.

The approved maintenance plan will become a federally enforceable part of the State Implementation Plan (SIP) for Louisiana.

DATES: This action will become effective on November 13, 1995, unless notice is postmarked by October 12, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Anyone wishing to review this petition at the Regional U.S. EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Air Planning Section (6PD–L), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

Background

The CAA, as amended in 1977, required areas that were designated nonattainment based on a failure to meet the ozone National Ambient Air Quality Standard (NAAQS) to develop SIP's with sufficient control measures to expeditiously attain and maintain the standard. St. James Parish, Louisiana, was designated under section 107 of the 1977 CAA as nonattainment with respect to the ozone NAAQS on September 11, 1978 (40 CFR 81.319). In accordance with section 110 of the 1977 CAA, the State of Louisiana submitted an ozone SIP as required by part D on December 10, 1979. EPA fully approved this ozone SIP on October 29, 1981 (46 FR 53412). The most recent revision to the ozone SIP occurred on May 5, 1994, when the EPA approved a SIP revision for the State of Louisiana to correct certain enforceability deficiencies in its volatile organic compound (VOC) rules (59 FR 23164). For purposes of redesignations, the State of Louisiana has an approved ozone SIP for St. James Parish.

On November 15, 1990, the CAA Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). The ozone nonattainment designation for St. James Parish continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990 (See 56 FR 56694, November 6, 1991). Since the State had not yet collected the required three years of ambient air quality data necessary to petition for redesignation to attainment, this parish was designated as unclassifiable-incomplete data for ozone.

The Louisiana Department of Environmental Quality (LDEQ) more recently has collected ambient monitoring data that show no violations of the ozone NAAQS of .12 parts per million. The State developed a maintenance plan for St. James Parish and solicited public comment. Subsequently, the State of Louisiana submitted a request, through the Governor's office, to redesignate this parish to attainment with respect to the ozone NAAQS. The initial redesignation request for St. James Parish was submitted to the EPA on May 25, 1993. Although this maintenance plan and redesignation request were deemed complete, several approvability issues existed. The State of Louisiana addressed these approvability issues and submitted a revised maintenance plan and redesignation request accordingly. The revised redesignation request for St. James Parish was received on December 15, 1994. This revised redesignation request was accompanied by an ozone maintenance SIP. Please see the technical support document (TSD), located in the official docket, for the detailed air quality monitoring data.

Evaluation Criteria

The 1990 Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area must have attained the applicable NAAQS; (2) the area must meet all applicable requirements under section 110 and part D of the CAA; (3) the area must have a fully approved SIP under section 110(k) of the CAA; (4) the air quality improvement must be permanent and enforceable; and (5) the area must have a fully approved maintenance plan pursuant to section 175A of the CAA. Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status. Please see EPA's (TSD) for a detailed discussion of these requirements.

(1) Attainment of the NAAQS for Ozone

Attainment of the ozone NAAQS is determined based on the expected number of exceedances in a calendar year. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9 and appendix H to that section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances at each monitoring site over a three year period. An area is in attainment of the standard if this average results in expected exceedances for each monitoring site of 1.0 or less per calendar year. When a valid daily maximum hourly average value is not available for each required monitoring day during the year, the missing days must be accounted for when estimating exceedances for the year. Appendix H provides the formula used to estimate the expected number of exceedances for each year.

The State of Louisiana's request is based on an analysis of quality-assured ozone air quality data which is relevant to both the maintenance plan and to the redesignation request. The data come from the State and Local Air Monitoring Station network. The request is based on ambient air ozone monitoring data collected for more than three consecutive years from January 1, 1989, through December 31, 1993. The data clearly show an expected exceedance rate of less than one for this parish.

In addition to the demonstration discussed above, EPA required completion of air network monitoring requirements set forth in 40 CFR part 58. This included a quality assurance plan revision and a monitoring network review to determine the adequacy of the ozone monitoring network. The LDEQ fulfilled these requirements to complete documentation for the air quality demonstration. The LDEQ has also committed to continue monitoring in St. James Parish in accordance with 40 CFR part 58.

In summary, EPA believes that the data submitted by the LDEQ provides an adequate demonstration that St. James Parish attained the ozone NAAQS. Moreover, the monitoring data continue to show attainment to date.

If the monitoring data records a violation of the ozone NAAQS before the direct final action is effective, the direct final approval of the redesignation will be withdrawn and a proposed disapproval substituted for the direct final approval.

(2) Section 110 Requirements

For purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the CAA prior to or at the time the State submitted its redesignation request, as set forth in EPA policy. EPA interprets section 107(d)(3)(E)(v) of the CAA to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to or at the same time as the submission of a complete redesignation request. Requirements of the CAA that come due subsequently continue to be applicable to the area at later dates (see section 175A(c)) and, if redesignation of any of the areas is disapproved, the State remains obligated to fulfill those requirements. These requirements are discussed in the following EPA documents: "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992, "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992, and "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993.

EPA has analyzed the Louisiana SIP and determined that it is consistent with the requirements of amended section 110(a)(2). The SIP contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications to existing ones; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emissions monitoring and reporting.

(3) Part D Requirements

Before St. James Parish can be redesignated to attainment, the Louisiana SIP must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a)(1). Since St. James Parish is considered nonclassifiable, the State is only required to meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176. As long as EPA did not determine that any of the pertinent section 172(c) requirements were applicable prior to the submission of these redesignation requests in 1993, none of these requirements are applicable for purposes of this redesignation action.

Section 176(c) of the CAA requires States to revise their SIP's to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity").

Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the implementation of title I informed the State that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)). The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A.

Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the State of Louisiana was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Louisiana was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Louisiana submitted both its transportation and general conformity rules to EPA on November 10, 1994. As these requirements did not come due until after the original submission date of this redesignation request, these conformity rule submissions need not be approved prior to taking action on this redesignation request.

(4) Fully Approved SIP

The EPA finds that the State of Louisiana has a fully approved SIP for St. James Parish for the purposes of redesignating the parish to attainment for ozone.

(5) Permanent and Enforceable Measures

Under the CAA, EPA approved Louisiana's SIP control strategy for St. James Parish, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. Several Federal and Statewide rules are in place which have significantly improved the ambient air quality in this parish. Existing Federal programs, such as the Federal Motor Vehicle Control Program and the Reid Vapor Pressure (RVP) limit of 7.8 pounds per square inch for gasoline, will not be lifted upon redesignation. These programs will counteract emissions growth as the parish experiences economic growth over the life of the maintenance plan.

The State adopted VOC rules such as oil/water separation; degreasing and solvent clean-up processes; surface coating rules for large appliances, furniture, coils, paper, fabric, vinyl, cans, miscellaneous metal parts and products, and factory surface coating of flat wood paneling; solvent-using rules for graphic arts, and miscellaneous industrial source rules such as for cutback asphalt. The applicable reasonably available control technology (RACT) rules will also remain in place in St. James Parish. In addition, the State permits program, the prevention of significant deterioration (PSD) permits program, and the Federal Operating Permits program will help counteract emissions growth.

The EPA finds that the combination of existing EPA-approved SIP and Federal measures ensure the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

(6) Fully Approved Maintenance Plan Under Section 175A

In today's document, EPA is approving the State's maintenance plan for St. James Parish because EPA finds that the LDEQ's submittal meets the requirements of section 175A. Thus, this parish will have a fully approved maintenance plan in accordance with section 175A as of the effective date of this redesignation. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Regional Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. Each of the section 175A plan requirements is discussed below.

Demonstration of Maintenance

The requirements for an area to redesignate to attainment are discussed in the memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memo). One aspect of a complete maintenance demonstration discussed in the Calcagni memo is the requirement to develop an emissions inventory from one of the three years during which the area has demonstrated attainment. This inventory should include VOC's, oxides of nitrogen (NO_X), and carbon monoxide (CO) emissions from the area in tons per day measurements.

Attainment Inventory

The LDEQ adopted a comprehensive inventory of VOC, NO_X, and CO emissions from area, stationary, and mobile sources using 1990 as the base year to demonstrate maintenance of the ozone NAAQS. EPA has determined that 1990 is an appropriate year on which to base attainment level emissions because EPA policy allows States to select any one of the three years in the attainment period as the attainment year inventory. The State's submittal contains the detailed inventory data and summary by source category.

The LDEQ provided the stationary source estimates for each company meeting the emissions criteria by requiring the submission of complete emissions inventory questionnaires which had been designed to obtain site-specific data. The LDEQ generated area source emissions for each source category based on EPA's "Procedures for the Preparation of Emissions Inventories for Precursors of Carbon Monoxide and Ozone, Volume I", and the EPA document entitled "Compilation of Air Pollutant Emission Factors." The nonroad mobile source inventory was developed using methodology recommended in EPA's "Procedures for Emission Inventory Preparation. Volume IV: Mobile Sources." Additional data was provided with reference to an EPA-sponsored study entitled "Nonroad Engine Emission Inventories for CO and Ozone Nonattainment Boundaries." Onroad emissions of VOC, NO_X, and CO were calculated on a county-wide basis using EPA's MOBILE5a computer model. Growth projections were derived from the United States Department of Commerce, Bureau of Economic Analysis statistics. These projections represent growth for Louisiana for each emission source category.

The following table is a summary of the revised average peak ozone season weekday VOC and NO_X emissions for the major anthropogenic source categories for the 1990 attainment year inventory.

ST. JAMES PARISH

[Tons per day]

	1990	1995	2000	2005
Point Source CO	2.39	2.37	2.37	2.34
Point Source VOC	8.44	8.42	8.49	8.32
Point Source NO_X	40.21	39.88	39.95	39.51
Area Source CO	.25	.25	.26	.26
Area Source VOC	1.19	1.19	1.22	1.22
Area Source NO_X	.10	.10	.10	.10
Nonroad Source CO	6.54	6.56	6.68	6.70
Nonroad Source VOC	2.09	1.51	1.54	1.55
Nonroad Source NO_X	3.83	3.84	3.91	3.92
Onroad Source CO	17.30	13.83	11.13	9.81
Onroad Source VOC	2.09	1.58	1.41	1.35
Onroad Source NO_X	3.42	3.06	2.81	2.71
Total CO	26.48	23.01	20.44	19.11
Total VOC	13.81	12.70	12.66	12.44
Total NO_X	47.56	46.88	46.77	46.24

The attainment inventory submitted by the LDEQ for St. James Parish meets the redesignation requirements as discussed in the Calcagni memo. Therefore, the EPA is today approving the emissions inventory component of the maintenance plan for St. James Parish.

Continued Attainment

Continued attainment of the ozone NAAQS in St. James Parish will depend, in part, on the Federal and State control measures discussed previously. However, the ambient air monitoring site will remain active at its present location during the maintenance period. These data will be quality assured and submitted to the Aerometric Information and Retrieval System (AIRS) on a monthly basis. Certain monitored ozone levels will provide the basis for triggering measures contained in the contingency plan. Additionally, as discussed above, during year 8 of the maintenance period, the LDEQ is required to submit a revised plan to provide for maintenance of the ozone standard in this parish for the next ten years.

Contingency Plan

Section 175A of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. The contingency plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. The State should also identify specific triggers which will be used to determine when the measures need to be implemented.

The LDEQ has selected VOC offsets and new Control Techniques Guidelines (CTG) or Alternative Control Technology (ACT) rule implementation as its contingency measures. At any time during the maintenance period, if St. James Parish records a second exceedance of the ozone NAAQS within any consecutive three-year period (a level below the NAAQS), the LDEQ will promulgate a rule change to implement

VOC offsets in this parish. This rule will be submitted to EPA within 9 months of the second exceedance. Implementation will occur if a third exceedance of the ozone standard is recorded during any consecutive 3 year period.

Should St. James Parish experience a third exceedance of the ozone standard during any consecutive 3 year period, the LDEQ will promulgate a rule revision to place new CTG and ACT VOC rules (where applicable) in the parish. These rules will be submitted to the EPA within 9 months of the third exceedance. Implementation will occur if a violation of the ozone standard is recorded during any consecutive 3 year period. These contingency measures and schedules for implementation satisfy the requirements of section 175A(d).

Final Action

The EPA has evaluated the State's redesignation request for St. James Parish, Louisiana, for consistency with the CAA, EPA regulations, and EPA policy. The EPA believes that the redesignation request and monitoring data demonstrate that this parish has attained the ozone standard. In addition, the EPA has determined that the redesignation request meets the requirements and policy set forth in the General Preamble and policy memorandum discussed in this notice for area redesignations, and today is approving Louisiana's redesignation request for St. James Parish.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on November 13, 1995, unless adverse or critical comments are received by October 12, 1995. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective November 13, 1995.

The EPA has reviewed this redesignation request for conformance with the provisions of the CAA and has determined that this action conforms to those requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Table 3 SIP Actions Exempt From OMB Review

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Area designations, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, National Parks, Reporting and recordkeeping, Ozone, Volatile organic compounds, Wilderness areas.

Dated: August 24, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.975 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.975 Redesignations and maintenance plans: ozone.

* * * * *

(b) Approval—The Louisiana Department of Environmental Quality (LDEQ) submitted a redesignation request and maintenance plan for St. James Parish on May 25, 1993. The EPA deemed this request complete on September 10, 1993. Several approvability issues existed, however. The LDEQ addressed these approvability issues in a supplemental ozone redesignation request and revised maintenance plan. This supplemental submittal was received for St. James Parish on December 15, 1994. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) of the Act as amended in 1990. The redesignation meets the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Louisiana ozone State Implementation Plan for this parish. The EPA therefore approved the request for redesignation to attainment with respect to ozone for St. James Parish on November 13, 1995.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.319, the ozone table is amended by revising the entry for St. James Parish to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
St. James Parish	November 13, 1995	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

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[FR Doc. 95–22162 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[ME–24–1–6911a; A–1–FRL–5284–8]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). This SIP was submitted by the State to satisfy the Federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act as amended in 1990 (CAA).

DATES: This final rule is effective November 13, 1995, unless notice is received by October 12, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3248.

SUPPLEMENTARY INFORMATION: Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in Section 507 of Title V of the CAA. In February 1992, EPA issued Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) the establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

Maine has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements.

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act.

The SBAP has met this requirement by acting as a clearing house for developing, compiling and disseminating technical information for small businesses. Mechanisms include networking and obtaining information from various agencies and departments within the State, EPA and business sectors. The program will provide and prepare industry guidelines for small businesses. The State has also established a toll-free phone number to help answer small business questions.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.

The State has met this requirement by providing assistance to small businesses by responding to telephone and written requests. Additionally, the state will sponsor conferences, workshops, etc. to disseminate information. Maine's small business assistance program is placed in the State's existing Office of Pollution Prevention. Therefore, the SBAP is built on an already established program.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner.

The State's SBAP will be the responsibility of the small business ombudsman and the staff within the Office of Pollution prevention. The implementation of the program will also involve various functional units within the Department of Environmental Protection. The SBAP will assist air emission sources by providing sources with assistance in identifying applicable rules; determining the need for a permit; explaining permitting procedures; providing the necessary forms and applications and assisting them in preparing the documents; providing sources with information on the Small Business Assistance Program; assisting them by identifying compliance assistance; and referring small businesses with specialized problems or concerns to the Ombudsman.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act.

The State has met this requirement by listing various mechanisms in the SIP revision which will be utilized while implementing the program. These mechanisms include, among others, assistance in identifying applicable rules, explaining relevant issues, providing information and notifying small businesses of their rights and obligations.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act.

The State will meet this requirement by preparing brochures outlining the rights and obligations under the CAA and the small business assistance program. This effort will be further supplemented by the staff's development of compliance and permitting workshops. The audit program will be funded primarily by the Department with 25% of the cost of the audit coming from the source. The State will offer two types of audit services. The Department is also exploring other possibilities of establishing a more effective and efficient audit program.

The sixth requirement is to develop procedures for consideration of requests from small business stationary sources for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

The SIP revision states that regulations for consideration of work practices for technological methods of compliance exist in Maine's regulations governing the Title V Operating Permit Program. All requests for modifications will be considered according to the regulations set forth in Title V whether or not that source is subject to Maine's Title V Permit program. The regulations include: (1) procedures for receiving requests from small businesses to modify the provisions of state adopted regulations; (2) format of such requests; (3) procedures for how requests shall be reviewed and acted upon; and (4) requirements to ensure that no such modification may be granted unless it is in compliance with the applicable requirements of the CAA, applicable SIP or any Federal regulation.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by placing the Ombudsman in the existing Office of the Pollution Prevention. A specific list of Ombudsman duties are listed in the SIP revision. Maine's legislation legally authorizes the Ombudsman to carry out the role and functions of the federally mandated position by specifically addressing the requirements in section 507.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by incorporating the compliance advisory panel into the existing Pollution Prevention Advisory Committee. Since the compliance advisory panel is being integrated into an already established panel, the State has revised the make-up of the formal Pollution Prevention Advisory committee to meet the requirements of section 507(e). The committee will be increased to 16 voting members. Selection of the panel members is consistent with the CAA requirements and the additional members of the panel do not change the overall makeup of the panel as required in section 507(e).

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[1] A seventh requirement of Section 507(a), establishment of an Ombudsman office, is discussed in the next section.

In addition to establishing the membership of the CAP, the State PROGRAM delineates four responsibilities of the Panel: (1) to render advisory opinions concerning the effectiveness of the SBAP and the difficulties encountered; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;[2] (3) to review and assure that information for small business stationary sources is easily understandable to the layperson; and (4) the Ombudsman may serve as the Secretariat for the development and dissemination of panel reports and advisory opinions.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals,

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The SIP revision's eligibility requirements for the PROGRAM is consistent with the CAA. Additionally, the SIP revision says that it will be the general policy of the Department of Environmental Protection to assist all business in meeting the requirements of the CAA. However, wherever resources become a limiting factor in providing such assistance, the Department will give priority to businesses which meet the definition of small business stationary source under section 507(c)(1) of the CAA.

Final Action

In this action, EPA is approving the SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action removes the January 15, 1993 finding of failure to make a submittal for the Small Business Assistance Program. This action will be effective November 13, 1995 unless adverse or critical comments are received by October 12, 1995.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 13, 1995.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. The Office of Management and Budget exempted this action under Executive Order 12866.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 507 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because all affected sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

By today's action, EPA is approving a state program created for the purpose of assisting small business stationary sources in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small business stationary sources; it is a program under which small business stationary sources may elect to take advantage of assistance provided by the State. Therefore, because EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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[2] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Small business assistance program.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 24, 1995.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(38) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(38) Revisions to the State Implementation Plan establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program were submitted by the Maine Department of Environmental Protection on July 7, and August 16, 1994.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated July 7, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Revisions to the State Implementation Plan for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program dated July 12, 1994 and effective on May 11, 1994.

(C) Letter from the Maine Department of Environmental Protection dated August 16, 1994 submitting a corrected page to the July 12, 1994 SIP revision.

[FR Doc. 95–22152 Filed 9–11–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[NH17–01–7150a; A–1–FRL–5281–8]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Extension of the Date To Meet Conditions for the Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes and allows for extension of the date for the State of New Hampshire to meet the conditions delineated in the **Federal Register** notice of October 12, 1994 (59 FR 51514) from July 29, 1995, until November 14, 1995. New Hampshire must meet these conditions before the motor vehicle inspection and maintenance program can be approved. The intended effect of this action is to approve a revision to the date for submission of required conditions in accordance with Section 110(k)(4) of the Clean Air Act.

DATES: This final rule is effective November 13, 1995, unless notice is received by October 12, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment, at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW. (LE–131), Washington, D.C., 20460; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Peter Hagerty, (617) 565–3224.

SUPPLEMENTARY INFORMATION: On June 14, 1995, the State of New Hampshire submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a request to extend the date for submission of a SIP revision which meets the requirements of the three conditions specified for full approval of the New Hampshire motor vehicle inspection and maintenance program in the **Federal Register** of October 12, 1994, (59 FR 51514). New Hampshire requested an extension from July 29, 1995, to November 14, 1995.

Summary of SIP Revision

On June 14, 1995, the State of New Hampshire submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a request for extension of the date for submission of a SIP revision which meets the requirements of the three conditions specified in the **Federal Register** notice of October 12, 1994, from July 29, 1995, to November 14, 1995. New Hampshire must meet these conditions before the motor vehicle inspection and maintenance program can be approved. This is consistent with the requirements of Section 110 (k)(4) of the Clean Air Act which allows states up to one year to comply with conditions based on commitments by a state to adopt enforceable measures to meet SIP requirements. In New Hampshire's case these conditions call for (1) imposition of a more severe penalty for first time inspection offenses, (2) adoption of on-road testing standards, and (3) limiting the use of compliance via diagnostic inspection to those vehicles for which it is allowed under the EPA's I/M rules. November 14, 1995, is one year from the effective date of the New Hampshire conditional approval notice and is within the time allowed under section 110(f)(4) to meet SIP conditions.

The letter requesting this extension was not the subject of a public hearing. There is now insufficient time for New Hampshire to hold public hearings on its recent request for an extension of time to meet the conditions of the I/M SIP approval. Although such hearings are still required, in this case, EPA believes it is not in the public interest to demand that they occur prior to taking action on this revision and thus require disapproval of New Hampshire's I/M SIP. We note that New Hampshire held hearings on the submitted I/M program and provided the public an opportunity to comment on whether or not the submittal complied with federal statutory and regulatory requirements . Also, during EPA's approval process, the public had an opportunity to comment on the proposed conditional approval and address the State's commitments to correct identified deficiencies. According, while the State remains obligated to hold hearings on its commitments to adopt corrective measures, it merely is delaying such hearings for a *de minimus* period. EPA

believes New Hampshire will hold hearings on its commitments in conjunction with the hearings on the substantive corrective measures themselves.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless adverse or critical comments are received by October 12, 1995.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 13, 1995.

Final Action

EPA is approving an extension of the date for the State of New Hampshire to meet the conditions delineated in the October 12, 1995 **Federal Register** from July 29, 1995, until November 14, 1995.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements, such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables.

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

Conditional approvals of SIP submittals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that such disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it substitute a new federal requirement.

On January 6, 1989, (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 27, 1995.

John P. DeVillars,

Regional Administrator, EPA—New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

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Subpart EE—New Hampshire

2. Section 52.1519 is amended by adding paragraph (c)(3) to read as follows:

§ 52.1519 Identification of plan.

* * * * *

(c) * * *

(3) Revision to the State Implementation Plan submitted by the New Hampshire Air Resources Division on June 14, 1995.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Air Resources Division dated June 14, 1995, submitting a revision to the New Hampshire State Implementation Plan.

[FR Doc. 95–22165 Filed 9–11–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[TN131–1–6794a; TN136–1–6795a; TN137–1–6796a; FRL–5291–1]

Approval and Promulgation of Air Quality Implementation Plans: Tennessee; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; clarification.

SUMMARY: EPA is correcting minor errors in the amendments to the regulations which appeared in the **Federal Register** on July 28, 1995 (60 FR 38694). This action approved nonregulatory provisions for the implementation of a basic I/M program in Rutherford, Sumner, Williamson, and Wilson Counties which are part of the Nashville, Tennessee, ozone nonattainment area.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, please contact Richard A. Schutt, Air Programs Branch, U.S. Environmental Protection Agency Region 4, 345 Courtland Street NE., Atlanta, GA 30365, (404) 347–3555 extension 4206.

SUPPLEMENTARY INFORMATION: In the July 28, 1995 (60 FR 38694), final rule, EPA approved nonregulatory provisions for the implementation of a basic I/M program in Rutherford, Sumner, Williamson, and Wilson Counties in Tennessee in § 52.2235. This section had been added to the CFR in a direct final rule published by EPA on June 22, 1995 (60 FR 32469). This rule was withdrawn on August 7, 1995 (60 FR 40101), after comments were received on the direct final rule, thereby removing § 52.2235 from the CFR. On August 8, 1995 (60 FR 40292), EPA added § 52.2235 back into the CFR. Today EPA is adding § 52.2235 paragraph (b) back into the CFR.

Dated: August 22, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.2235 is amended by adding paragraph (b) to read as follows:

§ 52.2235 Control Strategy for Ozone.

* * * * *

(b) Nonregulatory provisions for the implementation of a basic I/M program in Rutherford, Sumner, Williamson, and Wilson Counties, submitted on July 13, 1994, were approved by EPA on September 26, 1995.

[FR Doc. 95–22164 Filed 9–11–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[WY2–1–7126; FRL–5279–5]

Approval and Promulgation of State Implementation Plans; Wyoming; Revision to Section 3 Particulates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving a revision of the Wyoming State Implementation Plan (SIP) submitted by the Governor of Wyoming on September 6, 1988. Specifically, a revision was made to the definition of "ambient air" in Section 3, Particulates, of the Wyoming Air Quality Standards and Regulations (WAQSR). The action makes the revised definition part of the Federally approved SIP.

EFFECTIVE DATE: This final rule is effective on October 12, 1995.

ADDRESSES: Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Denver, Colorado 80202–2466; the Air Quality Division, Wyoming Department of Environmental Quality, Herschler Building, 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002; and the Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Overview

On August 26, 1992, EPA proposed to approve a revision to Section 3, Particulates, of the WAQSR, which was submitted for approval in the SIP on September 6, 1988. The revision to Section 3, which added subsection (d), defined "ambient air" for surface coal mines located in Wyoming's Powder River Basin (PRB). The details of the original proposed rule can be found at 57 FR 38641–38650.

After publication of the original proposed action, EPA reevaluated the need to conduct the 30-year "life-of-mine" modeling as outlined in the proposed action. As a result, a Memorandum of Agreement (MOA) was written between Dennis Hemmer, Director of the Wyoming Department of Environmental Quality (DEQ) and Patricia D. Hull, Director of the Air, Radiation and Toxics Division in EPA Region VIII, describing procedures to be followed by the State of Wyoming and EPA in protecting the PM_{10} National Ambient Air Quality Standards (NAAQS) in the Powder River Basin. The approach outlined in the MOA is based upon continued ambient air quality monitoring, rather than implementation of the 30-year life-of-mine modeling study. A detailed discussion of the MOA is provided below. Since EPA changed the basis for approving the revisions to the State's definition of ambient air, EPA re-proposed approval of these revisions on June 23, 1994 (see 59 FR 32395–32397).

II. Memorandum of Agreement

A. Compliance

The signed MOA between EPA and DEQ was submitted to the DEQ on January 24, 1994. A review of the PM_{10} ambient monitoring data from the Powder River Basin, as well as the actions by the DEQ and the Wyoming coal companies to maintain an adequate ambient monitoring network, support EPA's view that these actions have proven successful in maintaining the PM_{10} NAAQS in the region. Other factors that were taken into account include: (1) The fact that the DEQ included in each PRB mining permit explicit requirements to implement best

available work practices (BAWP); (2) that the DEQ is using necessary enforcement to ensure that BAWP are being and will continue to be implemented; and (3) that the probability of future PM_{10} NAAQS violations in the area is small.

For these reasons, EPA believes it is appropriate to continue ambient monitoring in place of a 30-year life-of-mine study, provided there are no violations of the PM_{10} NAAQS. The ambient monitoring network submitted to EPA in June 1992, remains in effect. If a PM_{10} exceedance is monitored, then one of the following two procedures would become effective:

1. In the event of an exceedance of the PM_{10} NAAQS or Prevention of Significant Deterioration (PSD) increments in the Powder River Basin, the State must expeditiously use all necessary compliance tools, including enforcement of BAWP requirements in the State permits, to eliminate the likelihood of future exceedances of the PM_{10} NAAQS or PSD increments caused by the contributing source(s).
2. If, in the opinion of EPA, the State does not initiate timely and appropriate action to address these exceedances, or if timely State action does not effectively resolve the issue of exceedances (i.e., if a violation of the PM_{10} NAAQS occurs following the timely and successful completion of any corrective action required by the State), EPA will reevaluate the need for the State to implement a 30-year life-of-mine study.

B. Conditions Agreed to in the MOA by the State of Wyoming

By signing the MOA, the State of Wyoming agreed to:

1. Conduct ambient air monitoring, including overseeing the mines' ambient monitoring networks, entering the data into the Aerometric Information and Retrieval System (AIRS) database, ensuring attainment of the primary and secondary NAAQS for PM_{10} based upon 40 CFR 50.6, requiring the minimum frequency of sampling for PM_{10} based on 40 CFR 58.13, and basing violations upon the calculation in 40 CFR, part 50, appendix K.
2. Provide EPA with a summary of BAWP for each mine, verification that the mines are employing BAWP, and a copy of the Wyoming State regulation which provides the State with the authority to enforce BAWP.

On December 2, 1993 the State of Wyoming DEQ submitted copies of the regulations requested: the authority to require and enforce BAWP through State regulation is contained in Section 35–11–801(a) of the Wyoming Statutes Ann. (W.S.A.), and Section 21(c)(v) of the WAQSR addresses Best Available Control Technology measures for mining operations.

3. Provide EPA with a written opinion from the State's Attorney General that the State has the authority to take enforcement action against mines based upon *violations* of the PM_{10} NAAQS.

A letter from the Wyoming Attorney General's office set forth the enforcement authority of the State of Wyoming, as required by the MOA. The letter referred to the general enforcement provision of Section 35–11–201, W.S.A., and to Section 3(a) of the WAQSR, which establishes the ambient standards for particulate matter and includes the calculation used for demonstration of attainment from 40 CFR part 50, appendix K. The submittal also included a reference to Section 35–11–701, W.S.A., which allows the Director of the DEQ to issue a Notice of Violation; a reference to Section 35–11–901(a), W.S.A., which provides for civil penalties and injunctive relief against "any person who violates * * * any regulation [or] standard;" and a reference to Section 35–11–901(j), W.S.A., which discusses criminal penalties.

C. PSD Increments

The issue of particulate matter increment consumption was temporarily resolved by the establishment of a new Powder River Basin section 107 area. (See 58 FR 4348, January 14, 1993.) This designation effectively "untriggered" the minor source baseline date in the Powder River Basin particulate matter attainment area and, thus, emissions from coal mines and other minor sources were no longer consuming particulate matter increment.

Since that time, a complete PSD permit application was received for the Kennecott/Puron facility in the PRB, which would effectively trigger the minor source baseline date in the PRB. However, the State requested on December 19, 1994 that the impact area of this PSD source be designated as a separate section 107 area so that the minor source baseline date would only be triggered in the 1 $\mu g/m^3$ impact area of the Kennecott/Puron facility. Such a request is allowed under the Federal PSD rules as long as the area to be excluded from the Powder River Basin particulate matter attainment area encompasses the entire 1 $\mu g/m^3$ ambient impact of the Kennecott/Puron facility. In a separate rule in this **Federal Register**, EPA is approving the State's December 19, 1994 request and is redesignating the Powder River Basin particulate matter attainment area to exclude the Kennecott/Puron PSD Baseline area, which is being designated as a separate particulate matter attainment area. Thus, EPA's action will "untrigger" the particulate matter minor source baseline date in the remaining Powder River Basin particulate matter attainment area. Refer to that direct final rule elsewhere in this **Federal Register** for further details.

Dispersion modeling of coal mines for tracking PSD increment may be required at some time in the future, if a new or modified major stationary source again triggers the minor source baseline date in the Powder River Basin or by January 1, 2001 (as currently provided in the State's definition of "minor source baseline date"), whichever occurs first.

Final Action

As discussed above, EPA re-proposed action on the revision to the definition of "ambient air" in Section 3(d) of the WAQSR on June 23, 1994, and no comments were received on that proposed SIP approval. Therefore, EPA is finalizing its approval of Section 3(d) of the WAQSR and is incorporating the revised definition into the approved SIP for Wyoming.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the Amendments enacted on November 15, 1990, and has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP [illegible]ittals under section 110 [illegible]d s[illegible]pter I, part D of the Clean Ai[illegible]t create any new requirements, [illegible]ply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernment relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 10, 1995.

Jack W. McGraw,
Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart ZZ—Wyoming

2. Section 52.2620 is amended by adding paragraph (c)(22) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(22) On September 6, 1988, the Governor of Wyoming submitted revisions to Section 3 of the Wyoming Air Quality Standards and Regulations, adding subsection (d) which defines "ambient air" for surface coal mines located in Wyoming's Powder River Basin.

(i) Incorporation by reference.

(A) Revisions to Section 3(d) of the Wyoming Air Quality Standards and Regulations, effective June 5, 1987.

(ii) Additional material.

(A) Memorandum of Agreement signed on December 22, 1993 by Dennis Hemmer, Director, Department of Environmental Quality, State of Wyoming, and on January 24, 1994 by Patricia D. Hull, Director, Air, Radiation and Toxics Division, EPA Region VIII.

[FR Doc. 95–22149 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 55

[FRL–5294–2]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule—consistency update.

SUMMARY: EPA is finalizing the updates of the Outer Continental Shelf ("OCS") Air Regulations. The requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD), South Coast Air Quality Management District (South Coast AQMD), and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the requirements contained in "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources" (August, 1995), "South Coast Air Quality Management District Requirements Applicable to OCS Sources" (Part I and II) (August, 1995), and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources" (August, 1995) is to regulate emissions from OCS sources in accordance with the requirements onshore.

EFFECTIVE DATE: This action is effective October 12, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency (LE–6102), 401 "M" Street, SW., Room M–1500, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 1995 in 60 FR 3603 and June 13, 1995 in 60 FR 31128, EPA proposed to approve the following requirements into the OCS Air Regulations: "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources", "South Coast Air Quality Management District Requirements Applicable to OCS Sources" (Part I and II), and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources". These requirements are being promulgated in response to the submittal of rules from local air pollution control agencies. EPA has

evaluated the above requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

A 30-day public comment period was provided in 60 FR 3603 and 60 FR 31128 and no comments were received.

EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposals set forth in the January 18, 1995 and June 13, 1995 notices of proposed rulemaking. EPA is approving the submittals as modified under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore.

Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this final rule will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

EPA has determined that the final action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to the State, local, or tribal governments, or to the private sector, result from the action.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 25, 1995.

Felicia Marcus,
Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraphs (e)(3)(ii)(F), (G), and (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, August, 1995.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I and Part II), August, 1995.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, August, 1995.

* * * * *

3. Appendix A to CFR Part 55 is amended by revising paragraph (b)(6), (7), and (8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

California

* * * * *

(b) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, August, 1995:

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 12/14/93)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)

Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 12/10/91)
Rule 342 Control of Oxides of Nitrogen (NO_x from Boilers, Steam Generators and Process Heaters) (Adopted 03/10/92)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 505 Breakdown Conditions Sections A.,B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources*, August, 1995:

Rule 102 Definition of Terms (Adopted 11/4/88)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 8/12/94) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 8/12/94)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 6/10/94) except (e)(3) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 6/10/94)
Rule 304.1 Analyses Fees (Adopted 6/10/94)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 6/10/94)
Rule 309 Fees for Regulation XVI (Adopted 6/10/94)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 7/9/93)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only. (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Storage of Organic Liquids (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
Addendum to Regulation IV (Effective 1977)
Rule 701 General (Adopted 7/9/82)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX New Source Performance Standards (Adopted 4/8/94)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 8/2/91)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)
Rule 1113 Architectural Coatings (Adopted 9/6/91)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 4/5/91)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
Rule 1136 Wood Products Coatings (Adopted 8/12/94)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/10/93)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)

Rule 1176 Sumps and Wastewater Separators (Adopted 5/13/94)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 5/3/91)
Rule 1303 Requirements (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 9/11/92)
Rule 1306 Emission Calculations (Adopted 5/3/91)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1610 Old-Vehicle Scrapping (Adopted 1/14/94)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 10/15/93)
Rule 2001 Applicability (Adopted 10/15/93)
Rule 2002 Allocations for Oxides of Nitrogen (NO_x) and Oxides of Sulfur (SO_x) (Adopted 10/15/93)
Rule 2004 Requirements (Adopted 10/15/93) except (l) (2 and 3)
Rule 2005 New Source Review for RECLAIM (Adopted 10/15/93) except (i)
Rule 2006 Permits (Adopted 10/15/93)
Rule 2007 Trading Requirements (Adopted 10/15/93)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_x) Emissions (Adopted 10/15/93)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 9/9/94)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_x) Emissions (Adopted 10/15/93)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 9/9/94)
Rule 2015 Backstop Provisions (Adopted 10/15/93) except (b)(1)(G) and (b)(3)(B)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, August, 1995:

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permits (Adopted 12/13/94)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Appendix II–A Information Required for Applications to the Air Pollution Control District (Adopted 12/86)
Appendix II–B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 7/12/94)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted [illegible]/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/28/94)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NOx (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 12/13/94)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 5/11/93)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)
Rule 74.23 Stationary Gas Turbines (Adopted 3/14/95)
Rule 74.24 Marine Coating Operations (Adopted 3/8/94)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 5/17/94)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)

Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

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[FR Doc. 95–22519 Filed 9–11–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 70

[LA–001; FRL–5293–3]

Clean Air Act Final Full Approval of Operating Permits Program; Louisiana Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating full approval of the Louisiana Operating Permits program submitted by the Governor of Louisiana for the Louisiana Department of Environmental Quality (LDEQ) for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: This program will be effective October 12, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location:

Environmental Protection Agency, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.
Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, P.O. Box 82135, Baton Rouge, Louisiana 70884–2135.

FOR FURTHER INFORMATION CONTACT: Joyce P. Stanton, Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7547.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the Clean Air Act ("the Act"), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the date of November 15, 1993, or by the end of an interim program, it must establish and implement a Federal program.

On August 25, 1994, the EPA proposed interim approval of the Operating Permits program submitted by the LDEQ on November 15, 1993, to meet the requirements of part 70 and title V of the Act. (See 59 FR 43797, August 25, 1994) (hereafter Interim Approval Notice). Many comments were received on the Interim Approval Notice. The LDEQ provided comments and revised their Operating Permits program to address the issues discussed in the Interim Approval Notice. These revisions were sent to the EPA on November 10, 1994. On April 7, 1995, the EPA rescinded the proposed interim approval, addressed all comments received on the Interim Approval Notice, and proposed full approval of the Operating Permits program for the LDEQ based on the revised Operating Permits program. (See 60 FR 17750, April 7, 1995) (hereafter Full Approval Notice). The EPA received public comment on the Full Approval Notice and compiled a technical support document which describes the Operating Permits program in greater detail.

A single commentor, the National Environmental Development Association-Clean Air Regulatory Project (NEDA-CARP), provided comments on the Full Approval Notice. NEDA-CARP was concerned that the EPA was requiring the LDEQ to revise its regulatory provision on research and development (R&D) facilities to prevent R&D facilities from being considered separately from sources with which they are co-located, in order to receive full approval. NEDA-CARP stated its belief that the EPA was not correct in its interpretation of 40 CFR part 70 and that it is likely that the part 70 rules will be revised in the near future to allow States the flexibility to consider co-located R&D facilities separately from the source. The EPA appreciates NEDA-CARP's concerns; however, the Louisiana Operating Permits program must be evaluated based on the part 70 rules and interpretations in place at the time of approval. In any case, the premise of NEDA-CARP's comment is incorrect. Apparently basing its comment on drafts of a proposed revision to part 70, NEDA-CARP claims that the proposal would allow an R&D facility to be treated separately for applicability purposes regardless of its Standard Industrial Classification (SIC) code or whether it functions as a support facility. While it is true that the proposed rule would create a separate industrial classification for R&D, the preamble to the proposed rule clarifies that this is a codification of the EPA's previous understanding of the SIC code test embodied in the current part 70, which would allow an R&D facility to be treated separately only if it belongs to a separate two digit SIC code. Moreover, the proposal expressly retains from the SIC code approach the duty to aggregate an R&D facility with other on-site sources for which it functions as a support facility. Therefore, the EPA continues to believe that these changes to Louisiana's Operating Permits program were necessary for full approval.

NEDA-CARP's other comments were supportive of the positions taken by the EPA in the Full Approval Notice such as the definitions of "title I modification" and "case-by-case" determinations, and the approval of the insignificant activities and criteria.

In this notice, the EPA is taking final action to promulgate full approval of the Operating Permits program for the LDEQ.

II. Final Action and Implications

A. Analysis of State Submission

On April 7, 1995, the EPA proposed full approval of the State of Louisiana's Title V Operating Permits program. (See 60 FR 17750). The program elements discussed in the proposed notice are unchanged from the analysis in the Full Approval Notice and continue to fully meet the requirements of 40 CFR part 70.

In the Interim Approval Notice, the following items were delineated as deficiencies in the Louisiana Operating permit program: State confidentiality provisions could be interpreted to protect the contents of the permit itself from disclosure; Louisiana Administrative Code (LAC) 33:III.501.B.7 allowed the permitting authority to consider a certain complex within a facility as a source separate from the facility with which it is co-located, provided that the complex is used solely for R & D of new processes and/or products, and is not engaged in the manufacture of products for commercial sale; deadlines for submittal of Acid Rain permits were inconsistent; LAC 33.III.521.A.6 appeared to allow administrative amendments to permits to incorporate certain "off-permit" changes; it was unclear whether the State could lawfully require records to be retained for five years; LAC 33.III.527.A.3 allowed certain changes that rendered existing compliance terms irrelevant to be incorporated through minor modification procedures, yet was unclear whether the criteria in the State rule conformed to 40 CFR 70.4(b)(14); State provisions did not include a requirement that the permit specify the origin of and reference the authority for each term or condition, nor did they identify differences in form from the applicable requirements upon which the terms were based or contain various other elements required by 40 CFR 70.6; inadequate definition of "title I modification;" provisions to determine insignificant activities were not included with the State's original submittal. As discussed in the notice proposing full approval, Louisiana has addressed all of these items. For further discussion of these items, please see the proposed full approval and the Technical Support Document.

B. Options for Approval/Disapproval

The EPA is promulgating full approval of the Operating Permits program submitted to the EPA for the LDEQ on November 15, 1993, and revised on November 10, 1994. Among other things, the LDEQ has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by the EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70.

Therefore, the EPA is also promulgating full approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final full approval, including the public comments received and reviewed by the EPA on the proposal, are contained in the docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 of the Unfunded Mandates Act requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 25, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

40 CFR Part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A is amended by adding an entry for "Louisiana" in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Louisiana

(a) The Louisiana Department of Environmental Quality, Air Quality Division submitted an Operating Permits program on November 15, 1993, which was revised November 10, 1994, and became effective on October 12, 1995.

(b) [Reserved]

* * * * *

[FR Doc. 95–22330 Filed 9–11–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 81

[FRL–5279–6]

Designation of Areas for Air Quality Planning Purposes; Wyoming; Redesignation of Particulate Matter Attainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is approving a December 19, 1994 request from the Governor of Wyoming to redesignate the Powder River Basin particulate matter attainment area in portions of Campbell and Converse Counties to exclude an area designated as the Kennecott/Puron Prevention of Significant Deterioration (PSD) Baseline area, pursuant to section 107 of the Clean Air Act (Act). EPA is designating the Kennecott/Puron PSD Baseline area as a separate particulate matter attainment area under section 107 of the Act. EPA is approving the State's

redesignation request because the State has adequately followed the applicable Federal requirements and policy. Approval of the section 107 redesignation eliminates the minor source baseline date for particulate matter in the Powder River Basin area which was triggered by the submittal of a complete PSD permit application for the Kennecott/Puron facility.

DATES: This final rule is effective on November 13, 1995 unless adverse or critical comments are received by October 12, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations: Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and Air Quality Division, Wyoming Department of Environmental Quality, 122 West 25th Street, Herschler Building, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

The Powder River Basin particulate matter attainment area was initially designated by EPA in the January 14, 1993 **Federal Register** (see 58 FR 4348–4350). This designation was established in accordance with the Federal PSD regulations, which provide States with the option of establishing numerous PSD baseline areas under section 107(d) of the Act, as long as the baseline areas do not intersect or are not smaller than the area of 1 μg/m³ ambient impact of any major stationary source or major modification which established the minor source baseline date or which was subject to PSD permitting requirements (see 40 CFR 52.21(a)(15)).

This designation of the Powder River Basin as a separate baseline area under section 107 of the Act effectively "untriggered" the particulate matter minor source baseline date in the Powder River Basin particulate matter attainment area. The State's PSD regulations at that time provided that the particulate matter minor source baseline date in the Powder River Basin area would not be triggered until the submittal of the first complete PSD permit application for a major stationary source or major modification locating in or significantly impacting the Powder River Basin particulate matter attainment area, or by January 1, 1996, whichever occurred first. The State has since amended its PSD regulations to trigger the particulate matter minor source baseline date in the Powder River Basin no later than January 1, 2001.

Subsequently, in August of 1994, a PSD permit application was submitted for the Kennecott/Puron facility to construct a large coal beneficiation plant in the Powder River Basin of Campbell County, Wyoming. In order to avoid triggering the particulate matter minor source baseline date for the entire Powder River Basin particulate matter attainment area, the State submitted a request on December 19, 1994 to redesignate the Powder River Basin particulate matter attainment area to exclude the 1 μg/m³ air quality impact area of the Kennecott/Puron facility. As stated above, this is allowed under the Federal PSD permitting regulations, as long as the area to be excluded from the Powder River Basin particulate matter attainment area encompasses the entire 1 μg/m³ ambient impact of the Kennecott/Puron facility.

II. Evaluation of State's Submittal

The State's December 19, 1994 submittal consisted of a description of the boundary of the Kennecott/Puron PSD Baseline area to be excluded from the Powder River Basin area and supporting modeling results which were used to define the 1 μg/m³ air quality impact area of the Kennecott/Puron facility. EPA originally noted a few concerns with the modeling, which were identified to the State in letters dated February 2, 1995 and March 31, 1995. The State responded to EPA's concerns in letters dated April 15, 1995 and April 28, 1995. The State's responses adequately addressed EPA's concerns. Thus, EPA believes the State has adequately assessed the 1 μg/m³ air quality impact area of the Kennecott/Puron facility.

The State has followed the terms of EPA's redesignation policy in its December 19, 1994 request to redesignate the Powder River Basin particulate matter attainment area to exclude the Kennecott/Puron PSD Baseline area and to designate the Kennecott/Puron PSD Baseline area as a separate section 107 particulate matter attainment area. Authority for the State's action is provided for in section 107(d)(3)(D) of the Act, which states: "the Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State [and EPA] shall approve such redesignation." Therefore, EPA is approving the State's request.

This approval eliminates the minor source baseline date for particulate matter that was established in the Powder River Basin area by the submittal of a complete PSD permit application for the Kennecott/Puron facility. Thus, until the time that the minor source baseline date is triggered, minor source emissions that exist in the Powder River Basin attainment area will become part of background emissions for the area. Once the minor source baseline date is triggered, all new growth from minor sources will begin consuming increment. The particulate matter minor source baseline date is considered to be triggered in the Kennecott/Puron PSD Baseline particulate matter attainment area as of the date the facility's PSD permit application was deemed complete.

FINAL ACTION: EPA is approving the State of Wyoming's request to redesignate the Powder River Basin particulate matter attainment area to exclude the Kennecott/Puron PSD Baseline area, which is being designated as a separate section 107 particulate matter attainment area. The new section 107 Kennecott/Puron PSD Baseline particulate matter attainment area is defined as follows: the area described by the W½SW¼ Section 18, W½NW¼, NW¼SW¼ Section 19, T47N, R70W, S½ Section 13, N½, N½SW¼, N½SE¼ Section 24, T47N, R71W, Campbell County, Wyoming. The Powder River Basin particulate matter attainment area boundary description in 40 CFR part 81 is thus being amended to exclude the Kennecott/Puron PSD Baseline area.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the State's request should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective on November 13, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a

proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 13, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area under section 107(d)(3)(D) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

The State has requested redesignation of the Powder River Basin particulate matter attainment area, to exclude a portion of that area, in accordance with section 107 of the Act. EPA's approval of this redesignation request will merely have the effect of splitting the currently designated Powder River Basin particulate matter attainment area into two parts and will impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 10, 1995.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 81, subpart B, is amended as follows:

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 81.351 [Amended]

2. Section 81.351 is amended by revising the Wyoming TSP table to read as follows:

* * * * *

WYOMING—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Trona Industrial Area (Sweetwater County)		X		
Powder River Basin				X
Campbell County (part)				
Converse County (part)				
That area bounded by Township 40 through 52 North, and Ranges 69 through 73 West, inclusive of the Sixth Principal Meridian, Campbell and Converse Counties, excluding the areas defined as the Pacific Power and Light attainment area, the Hampshire Energy attainment area, and the Kennecott/Puron PSD Baseline attainment area.				
Pacific Power and Light Area				X
Campbell County (part)				
That area bounded by NW1/4 of Section 27, T50N, R71W, Campbell County, Wyoming.				
Hampshire Energy Area				X
Campbell County (part)				
That area bounded by Section 6 excluding the SW1/4; E1/2 Section 7; Section 17 excluding the SW1/4; Section 14 excluding the SE1/4; Sections 2, 3, 4, 5, 8, 9, 10, 11, 15, 16 of T48N, R70W and Section 26 excluding the NE1/4; SW1/4 Section 23; Sections 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35 of T49N, R70W.				
Kennecott/Puron PSD Baseline Area				X
Campbell County (part)				
That area described by the W1/2SW1/4 Section 18, W1/2NW1/4, NW1/4SW1/4 Section 19, T47N, R70W, S1/2 Section 13, N1/2, N1/2SW1/4, N1/2SE1/4 Section 24, T47N, R71W.				
Rest of State				X

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[FR Doc. 95–22150 Filed 9–11–95; 8:45 am]
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40 CFR Part 282

[FRL–5277–6]

Underground Storage Tank Program: Approved State Program for Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. Forty CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under Sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. This rule codifies in 40 CFR part 282 the prior approval of Vermont's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective November 13, 1995, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of Vermont's underground storage tank program must be received by the close of business October 12, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of November 13, 1995, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. UST 5–1), Underground Storage Tank Program, HPU–CAN7, U.S. EPA Region I, JFK Federal Building, Boston, MA 02203–2211. Comments received by EPA may be inspected in the public docket, located in the Waste Management Division Record Center, 90 Canal St., Boston, MA 02203 from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joan Coyle, Underground Storage Tank Program, HPU–CAN7, U.S. EPA Region I, JFK Federal Building, Boston, MA 02203–2211. Phone: (617) 573–9667.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a **Federal Register** document announcing its decision to grant approval to Vermont. (57 FR 186, January 3, 1992). Approval was effective on February 3, 1992.

EPA codifies its approval of state programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under Sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Vermont underground storage tank program. This codification reflects only the state underground storage tank program in effect at the time EPA granted Vermont apprcval under section 9004(a), 42 U.S.C. 6991c(a). EPA provided notice and opportunity for comment earlier during the Agency's decision to approve the Vermont program. EPA is not now reopening that decision nor requesting comment on it.

Codification provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Vermont program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Vermont, the status of federally approved requirements of the Vermont program will be readily discernible. Only those provisions of the Vermont underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of Vermont's underground storage tank program, EPA has added Section 282.95 to Title 40 of the CFR. Section 282.95 incorporates by reference for enforcement purposes the state's statutes and regulations. Section 282.95 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under Subtitle I of RCRA.

The Agency retains the authority under Sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Vermont enforcement authorities will not be incorporated by reference. Forty CFR § 282.95 lists those approved Vermont authorities that would fall into this category.

The public also needs to be aware that some provisions of Vermont's underground storage tank program are not part of the federally approved state program. These are:

- Registration requirements for tanks greater than 1,100 gallons containing heating oil consumed on the premises where stored; and
- Permanent closure requirements for tanks greater than 1,100 gallons containing heating oil consumed on the premises where stored.

These non-approved provisions are not part of the RCRA Subtitle I program, because they are "broader in scope" than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.95 of the codification simply lists for reference and clarity the Vermont statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA. The State, however, will continue to enforce such provisions.

Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made (57 FR 186, Jan. 3, 1992) to approve the Vermont underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: July 20, 1995.

John P. DeVillars,
Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Subpart B is amended by adding § 282.95 to read as follows:

Subpart B—Approved State Programs

§ 282.95 Vermont State-Administered Program.

(a) The State of Vermont is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Vermont Department of Environmental Conservation, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281. EPA approved the Vermont program on January 3, 1992, and the approval was effective on February 3, 1992.

(b) Vermont has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under Sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, Vermont must revise its approved program to adopt new changes to the federal Subtitle I program which make it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Vermont obtains approval for the revised requirements pursuant to Section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this Subpart and notice of any change will be published in the **Federal Register**.

(d) Vermont has final approval for the following elements submitted to EPA in Vermont's program application for final approval and approved by EPA on January 3, 1992. Copies may be obtained from the Underground Storage Tank Program, Vermont Department of Environmental Conservation, 103 South Main Street, West Building, Waterbury, VT 05671–0404. The elements are listed below:

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Vermont Statutory Requirements Applicable to the Underground Storage Tank Program, 1995.

(B) Vermont Regulatory Requirements Applicable to the Underground Storage Tank Program, 1995.

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: Title 10 Vermont Statutes Annotated, Chapter 59, Sections 1931 through 1935.

(B) The regulatory provisions include: Vermont Environmental Protection Rules, Chapter 3, Sections 104 through 106.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) Title 10 Vermont Statutes Annotated, Chapter 59, Section 1929, insofar as it refers to registration requirements for tanks greater than 1,100 gallons containing heating oil consumed on the premises where stored.

(B) Vermont Environmental Protection Rules, Chapter 8, Section 301, registration requirements, and Section 605(2), permanent closure requirements, insofar as they refer to tanks greater than 1,100 gallons containing heating oil consumed on the premises where stored.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval," signed by the Attorney General of Vermont on April 11, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Vermont to EPA, April 11, 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application in May 1991, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application in May 1991, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* On March 2, 1992, EPA and the Vermont Department of Environmental Conservation signed the Memorandum of Agreement. Though not incorporated by reference, the Memorandum of Agreement is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by adding in alphabetical order "Vermont" and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Vermont

(a) The statutory provisions include Vermont Statutes Annotated, 1992, Chapter 59. Underground Liquid Storage Tanks:

Section 1921 Purpose.
Section 1922 Definitions.
Section 1923 Notice of New or Existing Underground Storage Tank.
Section 1924 Integrity Report.
Section 1925 Notice in Land Records.
Section 1926 Unused and Abandoned Tanks.
Section 1927 Regulation of Category One Tanks.
Section 1928 Regulation of Large Farm and Residential Motor Fuel Tanks.
Section 1930 Implementation; Coordination.
Section 1936 Licensure of Tank Inspectors.

Section 1938 Underground Storage Tank Trust Fund.
Section 1939 Risk Retention Pool.
Section 1940 Underground Storage Tank Incentive Program.
Section 1941 Petroleum Cleanup Fund.
Section 1942 Petroleum Distributor Licensing Fee.
Section 1943 Petroleum Tank Assessment.
Section 1944 Underground Storage Tank Loan Assistance Program.

(b) The regulatory provisions include State of Vermont, Agency of Natural Resources, Underground Storage Tank Regulations, February 1, 1991:

(1) Subchapter 1: General.
  Section 8–101 Purpose.
  Section 8–102 Applicability.
  Section 8–103 Severability.
(2) Subchapter 2: Definitions.
  Section 8–201 Definitions.
(3) Subchapter 3: Notification and Permits.
  Section 8–301 Notification, except for the following words in section 8–301(1), "Notification is also required for any tank used exclusively for on-premises heating that is greater than 1100 gallons in size."
  Section 8–302 Permits.
  Section 8–303 Financial Responsibility Requirements.
  Section 8–304 Petroleum Tank Assessment.
  Section 8–305 Innovative Technology.
(4) Subchapter 4: Minimum Standards for New and Replacements Tanks and Piping.
  Section 8–401 General Requirements.
  Section 8–402 Tanks—Design and Manufacturing Standards.
  Section 8–403 Tanks—Secondary Containment.
  Section 8–404 Tanks—Release Detection.
  Section 8–405 Piping—Design and Construction.
  Section 8–406 Compatibility.
  Section 8–407 Spill and Overfill Prevention Equipment.
  Section 8–408 Installation.
(5) Subchapter 5: Minimum Operating Standards for Existing Tanks and Piping.
  Section 8–501 General Requirements.
  Section 8–502 Spill and Overfill Prevention.
  Section 8–503 Corrosion Protection of Metallic Components.
  Section 8–504 Release Detection.
  Section 8–505 Compatibility.
  Section 8–506 Repairs.
(6) Subchapter 6: Reporting, Investigation, Corrective Action and UST Closure.
  Section 8–601 General Requirement, except for the following words, "Heating oil tanks greater than 1100 gallons capacity used exclusively for on-premise heating purposes are subject to the requirements for permanent closure in accordance with subsection 8–605(2)."
  Section 8–602 Reporting.
  Section 8–603 Release Investigation and Confirmation.
  Section 8–604 Corrective Action.
  Section 8–605 Closure of USTs.
  Appendix A Groundwater Monitoring Requirements.
  Appendix B Inventory Monitoring Procedures.
  Appendix C Procedures for Manual Tank Gauging.
  Appendix D Installation Requirements Applicable to New and Replacement UST Systems.

[FR Doc. 95–22487 Filed 9–11–95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[GEN Docket No. 89–623; FCC 91–43]

Emergency Position Indicating Radiobeacons; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments to the CFR.

SUMMARY: This document contains a correction to the final regulations, which were published on March 20, 1991, (56 FR 11683). The regulations relate to the test procedures for Emergency Position Indicating Radiobeacons contained in 47 CFR 2.1515(b).

EFFECTIVE DATE: September 8, 1995.

FOR FURTHER INFORMATION CONTACT: John Reed, Office of Engineering and Technology, (202) 739–0704.

List of Subjects in 47 CFR Part 2

Communications equipment, Radio.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Accordingly, 47 CFR Part 2 is corrected by making the following correcting amendments:

1. The authority citation for Part 2 continues to read as follows:

Authority: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

§ 2.1515 [Corrected]

2. In Section 2.1515, paragraph (b) (Step 2), the I.F. bandwidth "10 Hz" is corrected to read "10 kHz" and in (Step 5), the I.F. bandwidth of "100 kHz" is corrected to read "100 Hz".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22567 Filed 9–11–95; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 18

[GEN Docket No. 92–255; FCC 94–155]

Magnetic Resonance Systems; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments to the CFR.

SUMMARY: This document contains a correction to the final regulations, which were published on August 3, 1994, (59 FR 39472). The regulations relate to the exemption from the standards for non-consumer ultrasonic equipment of non-consumer magnetic resonance equipment used for medical diagnostic and monitoring applications contained in 47 CFR Section 18.121.

EFFECTIVE DATE: September 8, 1995.

FOR FURTHER INFORMATION CONTACT: John Reed, Office of Engineering and Technology, (202) 739–0704.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction were amended in ET Docket No. 92–255, modifying 47 CFR Section 18.121.

Need for Correction

As published in the CFR, the final regulations contain errors that may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication on August 3, 1994, of the final regulations, which were the subject of FR Doc. 94–18799, is corrected as follows:

Section 18.121 is revised to read as follows:

§ 18.121 Exemptions.

Non-consumer ultrasonic equipment, and non-consumer magnetic resonance equipment, that is used for medical diagnostic and monitoring applications is subject only to the provisions of Section 18.105, Sections 18.109 through 18.119, Section 18.301 and Section 18.303 of this Part.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22568 Filed 9–11–95; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 95–86; RM–8636]

Radio Broadcasting Services; Frankenmuth, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 229A to Frankenmuth, Michigan, as that community's first local service in response to a petition filed by Frankenmuth Broadcasting, Inc. *See* 60 FR 32933, June 26, 1995. There is a site restriction 14.9 kilometers (9.3 miles) southeast of the community at coordinates 43–18–21 and 83–33–28. Concurrence has been received from the Canadian government for Channel 229A as a specially negotiated short-spaced allotment. With this action, this proceeding is terminated.

DATES: Effective October 23, 1995. The window period for filing applications will open on October 23, 1995, and close on November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 95–86, adopted August 30, 1995, and released September 7, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Frankenmuth, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22569 Filed 9–11–95; 8:45 am]

BILLING CODE 6712-01-F

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47 CFR Part 90

[PR Docket No. 92–235, DA 95–1839]

Freeze on the Filing of Applications for 12.5 KHz Offset Channels in the 421–430 MHz and 470–512 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; Clarification.

SUMMARY: On June 15, 1995, the Commission adopted a *Report and Order* that resolves many of the technical issues which have inhibited private land mobile radio (PLMR) users from employing the most spectrally efficient technologies. This document clarifies the June 15, 1995 *Report and Order* so that license applications on frequencies 12.5 kHz removed from any channel available under the former rules in the 421–430 MHz and 470–512 MHz frequency bands will not be accepted for filing until issues are resolved relative to proper frequency coordination. Upon the resolution of these issues, the Commission will notify the public as to the lifting of the freeze.

EFFECTIVE DATE: August 22, 1995.

FOR FURTHER INFORMATION CONTACT: Ira Keltz of the Wireless Telecommunications Bureau at (202) 418–0616.

SUPPLEMENTARY INFORMATION: On June 15, 1995, the Commission adopted a *Report and Order,* PR Docket 92–235, FCC 95–255 (60 FR 37152, July 19, 1995), to promote more efficient use of the private land mobile radio (PLMR) spectrum in the 150–174 MHz VHF band, and in the 421–430 MHz, 450–470 MHz, and 470–512 MHz UHF bands. In the *Report and Order,* the Commission recognized the need for time to develop frequency coordination standards for the new narrowband channel plans. It stated that all new channels 7.5 kHz removed from any channel available in the 150–174 MHz band under the former rules, and those channels 6.25 kHz removed from any channel available in the 421–512 MHz UHF bands under the former rules, would not be available for licensing until August 18, 1996. *See Report and Order,* paragraph 41. Consistent with comments of the PLMR community, however, the Commission concluded that coordination and assignments on the new channels 12.5 kHz removed in the UHF band could proceed.

On August 11, 1995, the Bureau granted a request by Hewlett-Packard Company (HP) to freeze the filing of new high-powered stations on 12.5 kHz offset channels in the 450–470 MHz band (60 FR 43720, August 23, 1995). On that same day, August 11, the Land Mobile Communications Council (LMCC) submitted a request to stay all assignments on the new channels in the VHF 150–174 MHz band and the UHF 421–430, 450–470, and 470–512 MHz bands. On August 17, LMCC provided supplemental information relating to this request. LMCC notes that the *Report and Order* created a complex new PLMR environment with a wide variety of operational systems, including analog and digital, trunked and conventional, older wideband and newer narrowband, and high and low-power stations. LMCC contends that at this time, the frequency coordinators do not have the information to make informed frequency recommendations regarding the assignment of the new channels.

In the *Report and Order,* we decided not to accept applications for new channels 7.5 kHz removed from any channel in the VHF band and 6.25 kHz removed from any channel in the 421–512 MHz UHF band pending the development of standards. The Bureau now also believes that the public interest will be served by giving the land mobile community additional time to develop standards for 12.5 kHz offset channels in the 421–430 MHz and 470–512 MHz UHF bands. Therefore, we are expanding the freeze granted on August 11 to include all new frequencies that are 12.5 kHz removed from any frequency available in the 421–430 MHz and 470–512 MHz bands under the former rules. As with our freeze on applications for high-powered stations on the 450–470 MHz offset channels, this freeze will be in effect until the issues related to proper coordination are resolved. Upon resolution of these issues, we will notify the public of the lifting of the freeze on these channels.

The imposition of the freeze is procedural in nature and, therefore, is not subject to the notice and comment, and effective date requirements of the Administrative Procedure Act (APA) (5 U.S.C. § 553). See *Neighborhood TV Co., Inc.* v. *FCC,* 742 F.2d 629 (D.C. Cir. 1984), *Buckeye Cablevision, Inc.,* v. *United States,* 438 F.2D 948 (6th Cir. 1971), and *Kessler* v. *FCC,* 326 F.2d 673 (D.C. Cir. 1963). Furthermore, good cause exists for this exception to the APA's notice and comment, and effective date requirements, because it would be impractical, unnecessary, and contrary to the public interest if the Commission did not act to protect the PLMR spectrum from potential harmful interference. This action is effective August 22, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22293 Filed 9–11–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Chapter 9

Acquisition Regulation; Regulatory Reduction

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today issues a final rule to amend the Department of Energy Acquisition Regulation (DEAR) in its continuing effort to achieve the goals of several Executive Orders (EO), including: EO 12861, Elimination of One-Half of Executive Branch Internal Regulations; EO 12931, Federal Procurement Reform; and EO 12866, Regulatory Planning and Review. This rule deletes existing regulatory material that has been determined to be unnecessary. Specific material deleted from the DEAR is summarized in the "Section-by-Section Analysis" appearing later in this document.

EFFECTIVE DATE: This final rule will be effective October 12, 1995.

FOR FURTHER INFORMATION CONTACT: Kevin M. Smith, Office of Policy (HR–51), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 586–8189.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Analysis
III. Procedural Requirements
  A. Review Under Executive Order 12866
  B. Review Under Executive Order 12778
  C. Review Under the Regulatory Flexibility Act
  D. Review Under the Paperwork Reduction Act
  E. Review Under Executive Order 12612
  F. Review Under the National Environmental Policy Act
  G. Public Hearing Determination

I. Background

Executive Order (EO) 12861, dated September 11, 1993, Elimination of One-Half of Executive Branch Internal Regulations, was issued by the President to streamline Government operations, improve productivity, and improve customer service. EO 12931, dated October 13, 1994, Federal Procurement Reform, calls for significant changes to make the Government procurement process more effective and efficient. EO 12866, dated September 30, 1993, Regulatory Planning and Review, requires agencies to review regulations to improve effectiveness and to reduce regulatory burden. This rule eliminates existing regulatory material that is unnecessary. In promulgating this rule, the Department will further the objectives of the EOs by reducing the volume of the DEAR; streamlining operations; reducing constraints, prescriptive requirements, and administrative processes; making requirements outcome oriented vs. process oriented; and, defining roles and responsibilities at the lowest appropriate level within the procurement organization by lowering certain responsibilities from the Head of the Contracting Activity to the contracting officer. The DEAR coverage removed includes material that is for informational purposes only and nonregulatory in nature; internal guidance and procedures; regulations that constrain the Department's own procuring activities; coverage that is more restrictive than the Federal Acquisition Regulation (FAR); and coverage that is repetitive of the FAR or of other regulations. A Notice of Proposed Rulemaking was published in the **Federal Register** on June 8, 1995 (60 FR 30258). Interested persons were invited to participate in this rulemaking by submitting data, views or arguments with respect to the DEAR amendments set forth in the Notice of Proposed Rulemaking. The public comment period closed on August 7, 1995, a period of 60 days. During that period, no comments were received by DOE.

II. Section-by-Section Analysis

The following sections of the DEAR are eliminated:

1. Section 901.103, second sentence, addressing the applicability of the DEAR to procurements using nonappropriated funds; this is recommended guidance and is nonregulatory in nature.

2. Subsection 901.103–70, identifying those types of actions excluded from the scope of the DEAR; this is for informational purposes only and is nonregulatory in nature.

3. Subsection 901.104–3, third sentence of paragraph (a), and paragraph (b), identifying distribution procedures of the DEAR; this is for informational purposes only and is nonregulatory in nature.

4. Section 901.170, explaining references to organizations within DOE; this is for informational purposes only and is nonregulatory in nature.

5. Subsection 901.301–71, addressing the amendment procedure; this is internal procedural information and is nonregulatory in nature.

6. Subsection 901.301–72, paragraphs (a), (b), and (c), detailing other issuances related to acquisition; this is for informational purposes only and is nonregulatory in nature.

7. Subsection 901.601–70, prescribing the use of internal controls for DOE activities; this is internal oversight procedure and is nonregulatory in nature.

8. Subsection 901.603–70, addressing modification to existing contracting officer authority; this is internal oversight procedure and is nonregulatory in nature.

9. Subsection 901.603–71, addressing the responsibility of other Government personnel; this is internal oversight procedure and is nonregulatory in nature.

10. Subsection 901.603–72, paragraph (b), addressing contracting officer subordinates; this is for informational purposes only and is nonregulatory in nature.

11. Subpart 902.1, providing definitions; this is for informational purposes only and is nonregulatory in nature.

12. Subsection 903.101–3, last four sentences, requiring a standards of conduct notebook to be maintained at all contracting activities; this is unduly constrictive oversight of the Department's contracting offices.

13. Section 904.402, paragraph (b), second and third sentences, and paragraphs (c) through (k), providing cross-reference information on security issues; this is for informational purposes only and is nonregulatory in nature.

14. Section 904.403, providing cross-reference information on restricted data; this is for informational purposes only and is nonregulatory in nature.

15. Section 904.601, providing information on contract reporting; this is for informational purposes only and is nonregulatory in nature.

16. Subsection 904.601–70, providing information on contract reporting; this is for informational purposes only and is nonregulatory in nature.

17. Subsection 904.601–71, paragraphs (a) and (b), providing information on contract reporting; this is for informational purposes only and is nonregulatory in nature.

18. Section 904.702, paragraph (b), second sentence, explaining the need for longer retention periods of certain records; this is for informational purposes only and is nonregulatory in nature.

19. Subpart 905.2, addressing research and development advance notices; coverage at FAR 5.205 is sufficient.

20. Subpart 905.3, providing cross-reference information on notices of awards; this is for informational purposes only and is nonregulatory in nature.

21. Subsection 906.303–1, first sentence, which references FAR justification requirements for other than full and open competition; coverage at FAR 6.303–1 is sufficient.

22. Subpart 907.1, addressing acquisition plans; coverage at FAR 7.102 is sufficient.

23. Subpart 907.4, addressing Lease or Purchase requirements; coverage at FAR 7.4 and Federal Property Management Regulation (FPMR) 101–25.5 is sufficient.

24. Section 908.802, last sentence, addressing forms and instructions to contractors on the acquisition of printing and related supplies; this is procedural information that is already addressed within the section.

25. Subpart 908.70, addressing the use of excess materials from General Services Administration inventories; this is internal procedural information and is nonregulatory in nature.

26. Subpart 908.72, addressing Nevada Test Site support services; this is site-specific policy and is not appropriate for DOE-wide regulations.

27. Section 909.404, addressing debarment, suspension and ineligibility procedures; the separate DOE List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees is no longer maintained.

28. Part 910, addressing specifications, standards and other purchase descriptions; this is internal oversight procedure and is nonregulatory in nature.

29. Subpart 912.5, addressing approval of stop work orders; this requirement is more restrictive than the requirement at FAR 12.503(b).

30. Subsection 913.505–3, addressing the use of SF 44's; the coverage at FAR 13.505–3 is sufficient.

31. Subpart 914.2, addressing solicitation of bids; this is for informational purposes only and is nonregulatory in nature.

32. Section 914.401, addressing the opening and receipt of bids; the coverage at FAR 14.401 is sufficient.

33. Subsection 914.402–1, addressing unclassified bids; the coverage at FAR 14.402–1 is sufficient.

34. Subsection 915.406–5, addressing representations and instructions; the coverage at FAR 15.406–5 is sufficient.

35. Section 915.610, addressing written or oral discussions; the coverage at FAR 15.610 is sufficient.

36. Section 915.801, providing a definition of field pricing support; the coverage at FAR 15.801 is sufficient.

37. Subsection 915.804–8, prescribing the use of FAR clauses; the coverage at FAR 15.804–8 is sufficient.

38. Subsection 915.804–70, addressing the submission of uncertified cost or pricing data; the coverage at FAR 15.804–6 is sufficient.

39. Subsection 915.805–70, paragraphs (a), (b), (c), and (f), addressing the use of audits; this is for informational purposes only and is nonregulatory in nature.

40. Section 915.807, addressing prenegotiation plans; coverage at FAR 15.807 is sufficient.

41. Section 915.808, addressing the price negotiation memorandum; coverage at FAR 15.808 is sufficient.

42. Section 916.207, addressing approval for the use of firm-fixed-price, level-of-effort contracts; this requirement is more restrictive than the requirement at FAR 16.207.

43. and 44. Section 916.303, providing a cross-reference within DEAR; this is for informational purposes only and is nonregulatory in nature.

45. Subpart 916.6 addressing letter contract definitization and funding requirements; these requirements are more restrictive than the requirements at FAR 16.603–2.

46. Subsection 919.705–2, addressing subcontracting plans; coverage at FAR 19.705–2 is sufficient.

47. Subsection 919.705–5, addressing awards involving subcontracting plans; coverage at FAR 19.705–5 is sufficient.

48. Section 919.708, addressing the use of incentives for subcontracting; this is more restrictive than the requirement at FAR 19.708(c).

49. Part 920, addressing labor surplus area concerns; coverage at FAR Part 20 is sufficient.

50. Subpart 922.4, addressing construction contract labor standards; coverage at FAR 22.4 is sufficient.

51. Part 924, providing cross-reference information on protection of privacy and Freedom of Information policies; this is for informational purposes only and is nonregulatory in nature.

52. Subpart 925.5, addressing payment in foreign currency; coverage at FAR 25.5 is sufficient.

53. Subsection 928.103–2, addressing the need for performance bonds; coverage at FAR 28.103–2 is sufficient.

54. Subpart 928.2, addressing sureties; coverage at FAR 28.2 is sufficient.

55. Subpart 933.2, addressing the contracting officer's written findings in a dispute; coverage at FAR 33.211 is sufficient.

56. Section 935.007, providing a cross-reference to Program Research and Development Announcements; this is for informational purposes only and is nonregulatory in nature.

57. Section 935.015, providing a cross-reference to special research contracts coverage; coverage on that subject was removed in a prior rulemaking and this section is no longer necessary.

58. Section 936.202, paragraphs (a) and (b), addressing specifications for construction contracts; FAR coverage at 36.202 is sufficient.

59. Subpart 937.2, providing a cross-reference to internal directives on consulting services; this is for informational purposes only and is nonregulatory in nature.

60. Section 937.7010, addressing protective services; this is for informational purposes only and is nonregulatory in nature.

61. Section 937.7020, addressing continuity of protective services; this is for informational purposes only and is nonregulatory in nature.

62. Section 937.7030, addressing continuity of protective services; this is for informational purposes only and is nonregulatory in nature.

63. Section 942.000 addressing post award activity; this is for informational purposes only and is nonregulatory in nature.

64. Section 942.001, addressing contract administration; this is for informational purposes only and is nonregulatory in nature.

65. Section 942.002, addressing monitoring of contracts; coverage at FAR Part 42 is sufficient.

66. Section 942.003, providing an explanation of organizations that perform post-award contract management functions; this is for informational purposes only and is nonregulatory in nature.

67. Subpart 942.1, providing an explanation of cross-servicing contract management activity; this is for informational purposes only and is nonregulatory in nature.

68. Subpart 942.2, addressing the reporting of contract administration assignment; this is internal procedural information and is nonregulatory in nature.

69. Section 942.708, addressing quick closeout procedures; this requirement is more restrictive than the requirement at FAR 42.708.

70. Subpart 942.14, addressing traffic and transportation management; this is internal procedural information and is nonregulatory in nature.

71. Part 943 addressing the extension of contracts resulting from unsolicited proposals and the use of forms; this is internal procedural information and is nonregulatory in nature.

72. Subpart 944.1, providing definitions; this is for informational purposes only and is nonregulatory in nature.

73. Subpart 944.2, addressing consent to subcontract; coverage at FAR 44.2 is sufficient.

74. Subsection 945.104–70, addressing the review and correction of contractor property management systems; coverage in the DOE Property Management Regulations at 41 CFR 109–1.52 is sufficient.

75. Section 945.304, providing cross-references on motor vehicle policies; this is for informational purposes only and is nonregulatory in nature.

76. Section 945.501, providing definitions; this is for informational purposes only and is nonregulatory in nature.

77. Subsection 945.502–70, addressing physical protection of property; coverage at FAR 45.5 and in the DOE Property Management Regulations at 41 CFR 109–1.51 is sufficient.

78. Subsection 945.502–71, addressing control of sensitive items of property; coverage at FAR 45.5 and in the DOE Property Management Regulations at 41 CFR 109–1.51 is sufficient.

79. Subsection 945.502–72, addressing the management of precious metals; coverage in the DOE Property Management Regulations at 41 CFR 109–27.53 is sufficient.

80. Section 945.508, specifying the frequency of physical inventories; coverage in the DOE Property Management Regulations at 41 CFR 109–1.51 is sufficient.

81. Section 945.570, addressing motor vehicle and aircraft management; coverage at FAR 45.304 and in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

82. Subsection 945.570–1, classifying types of motor vehicles; this is for informational purposes only and is nonregulatory in nature.

83. Subsection 945.570–3, addressing the selection of type of motor vehicle; coverage in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

84. Subsection 945.570–4, addressing the identification of motor vehicles; coverage in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

85. Subsection 945.570–5, addressing the utilization of motor vehicles; coverage in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

86. Subsection 945.570–6, addressing the maintenance of motor vehicles; coverage in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

87. Subsection 945.570–9, addressing the purchase and use of aircraft; coverage in the DOE Property Management Regulations at 41 CFR 109–38 is sufficient.

88. Subpart 947.1, addressing transportation insurance and cost-reimbursement contracts; the coverage at FAR 47.1 is sufficient.

89. Subsection 949.108–4, addressing authorization for subcontract settlements; this requirement is more restrictive than the requirement at FAR 49.108–4.

90. Subsection 949.108–8, addressing the assignment of rights under subcontracts; this requirement is more restrictive than the requirement at FAR 49.108–8.

91. Subsection 949.112–1, addressing partial payments; this requirement is more restrictive than the requirement at FAR 49.112–1.

92. Subpart 949.2, addressing the submission of settlement proposals and the bases for settlement proposals; these requirements are more restrictive than the requirements at FAR 49.2.

93. Subpart 949.3, addressing the submission of settlement proposals; this requirement is more restrictive than the requirement at FAR 49.3.

94. Subpart 951.2, addressing contractor use of interagency motor pool vehicles; the coverage at FAR 51.2 is sufficient.

95. Section 951.7000, addressing contractor travel discounts; this is for informational purposes only and is nonregulatory in nature.

96. Section 951.7001, addressing contractor use of Government travel discounts; this is for informational purposes only and is nonregulatory in nature.

97. Subpart 971.2, prescribing contracting activity review requirements; this is unduly constrictive oversight of the Department's contracting offices.

98. Subpart 971.3, addressing procurement management system reviews; these reviews are no longer performed within the Department.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Public Hearing Determination

DOE has concluded that this rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 912, 913, 914, 915, 916, 919, 920, 922, 924, 925, 928, 933, 935, 936, 937, 942, 943, 944, 945, 947, 949, 951, and 971

Government procurement.

Issued in Washington, D.C., on August 31, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for Parts 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 912, 913, 914, 915, 916, 919, 920, 922, 924, 925, 928, 933, 935, 936, 937, 942, 943, 944, 945, 947, 949, 951, and 971 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

901.103 [Amended]

2. Section 901.103 is amended by removing the second sentence.

901.103–70 [Removed]

3. Subsection 901.103–70 is removed.

901.104–3 [Amended]

4. Subsection 901.104–3 is amended by removing the third sentence of paragraph (a), and by removing paragraph (b) and the paragraph (a) designation.

901.170 [Removed]

5. Section 901.170 is removed.

901.301–71 [Removed]

6. Subsection 901.301–71 is removed.

901.301–72 [Amended]

7. Subsection 901.301–72 is amended by removing paragraphs (a), (b), and (c).

901.601–70 [Removed]

8. Subsection 901.601–70 is removed.

901.603–70 [Removed]

9. Subsection 901.603–70 is removed.

901.603–71 [Removed]

10. Subsection 901.603–71 is removed.

901.603–72 [Amended]

11. Subsection 901.603–72 is amended by removing paragraph (b) and the paragraph (a) designation.

PART 902—DEFINITIONS OF WORDS AND TERMS

902.1 [Removed]

12. Subpart 902.1 is removed.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

903.101–3 [Amended]

13. Subsection 903.101–3 is amended by removing the second through fifth sentences.

PART 904—ADMINISTRATIVE MATTERS

904.402 [Amended]

14. Section 904.402 is amended in paragraph (b) by removing the second and third sentences, and by removing paragraphs (c), (d), and (k).

904.403 [Removed]

15. Section 904.403 is removed.

904.601 [Removed]

16. Section 904.601 is removed.

904.601–70 [Removed]

17. Subsection 904.601–70 is removed.

904.601–71 [Amended]

18. Subsection 904.601–71 is amended by removing paragraphs (a) and (b), and the paragraph (c) designation.

904.702 [Amended]

19. Section 904.702 is amended in paragraph (b) by removing the second sentence.

PART 905—PUBLICIZING CONTRACT ACTIONS

905.2 [Removed]

20. Subpart 905.2 is removed.

905.3 [Removed]

21. Subpart 905.3 is removed.

PART 906—COMPETITION REQUIREMENTS

906.303–1 [Amended]

22. Subsection 906.303–1 is amended in paragraph (a) by removing the first sentence.

PART 907—ACQUISITION PLANNING

907.1 [Removed]

23. Subpart 907.1 is removed.

907.4 [Removed]

24. Subpart 907.4 is removed.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

908.802 [Amended]

25. Section 908.802 is amended in paragraph (b) by removing the last sentence.

908.70 [Removed]

26. Subpart 908.70 is removed.

908.72 [Removed]

27. Subpart 908.72 is removed.

PART 909—CONTRACTOR QUALIFICATIONS

909.404 [Removed]

28. Section 909.404 is removed.

PART 910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS [REMOVED]

29. Part 910 is removed.

PART 912—CONTRACT DELIVERY OR PERFORMANCE

912.5 [Removed]

30. Subpart 912.5 is removed.

PART 913—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

913.505–3 [Removed]

31. Subsection 913.505–3 is removed.

PART 914—SEALED BIDDING

914.2 [Removed]

32. Subpart 914.2 is removed.

914.401 [Removed]

33. Section 914.401 is removed.

914.402–1 [Removed]

34. Subsection 914.402–1 is removed.

PART 915—CONTRACTING BY NEGOTIATION

915.406–5 [Removed]

35. Subsection 915.406–5 is removed.

915.610 [Removed]

36. Section 915.610 is removed.

915.801 [Removed]

37. Section 915.801 is removed.

915.804–8 [Removed]

38. Subsection 915.804–8 is removed.

915.804–70 [Removed]

39. Subsection 915.804–70 is removed.

915.805–70 [Amended]

40. Subsection 915.805–70 is amended by removing paragraphs (a), (b), (c), and (f), and redesignating paragraphs (d) and (e) as paragraphs (a) and (b).

915.807 [Removed]

41. Section 915.807 is removed.

915.808 [Removed]

42. Section 915.808 is removed.

PART 916—TYPES OF CONTRACTS

916.207 [Removed]

43. and 44. Section 916.207 is removed.

916.303 [Removed]

45. Section 916.303 is removed.

916.6 [Removed]

46. Subpart 916.6 is removed.

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

919.705–2 [Removed]

47. Subsection 919.705–2 is removed.

919.705–5 [Removed]

48. Subsection 919.705–5 is removed.

919.708 [Removed]

49. Section 919.708 is removed.

PART 920—LABOR SURPLUS AREA CONCERNS [REMOVED]

50. Part 920 is removed.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

922.4 [Removed]

51. Subpart 922.4 is removed.

PART 924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION [REMOVED]

52. Part 924 is removed.

PART 925—FOREIGN ACQUISITION

925.5 [Removed]

53. Subpart 925.5 is removed.

PART 928—BONDS AND INSURANCE

928.103–2 [Removed]

54. Subsection 928.103–2 is removed.

928.2 [Removed]

55. Subpart 928.2 is removed.

PART 933—PROTESTS, DISPUTES AND APPEALS

933.2 [Removed]

56. Subpart 933.2 is removed.

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

935.007 [Removed]

57. Section 935.007 is removed.

935.015 [Removed]

58. Section 935.015 is removed.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

936.202 [Amended]

59. Section 936.202 is amended by removing paragraphs (a) and (b) and redesiginating paragraphs (c) through (j) as paragraphs (a) through (h), respectively.

PART 937—SERVICE CONTRACTING

937.2 [Removed]

60. Subpart 937.2 is removed.

937.7010 [Removed]

61. Section 937.7010 is removed.

937.7020 [Removed]

62. Section 937.7020 is removed.

937.7030 [Removed]

63. Section 937.7030 is removed.

PART 942—CONTRACT ADMINISTRATION

942.000 [Removed]

64. Section 942.000 is removed.

942.001 [Removed]

65. Section 942.001 is removed.

942.002 [Removed]

66. Section 942.002 is removed.

942.003 [Removed]

67. Section 942.003 is removed.

942.1 [Removed]

68. Subpart 942.1 is removed.

942.2 [Removed]

69. Subpart 942.2 is removed.

942.708 [Removed]

70. Section 942.708 is removed.

942.14 [Removed]

71. Subpart 942.14 is removed.

PART 943—CONTRACT MODIFICATIONS [Removed]

72. Part 943 is removed.

PART 944—SUBCONTRACTING POLICIES AND PROCEDURES

944.1 [Removed]

73. Subpart 944.1 is removed.

944.2 [Removed]

74. Subpart 944.2 is removed.

PART 945—GOVERNMENT PROPERTY

945.104–70 [Removed]

75. Subsection 945.104–70 is removed.

945.304 [Removed]

76. Section 945.304 is removed.

945.501 [Removed]

77. Section 945.501 is removed.

945.502–70 [Removed]

78. Subsection 945.502–70 is removed.

945.502–71 [Removed]

79. Subsection 945.502–71 is removed.

945.502–72 [Removed]

80. Subsection 945.502–72 is removed.

945.508 [Removed]

81. Section 945.508 is removed.

945.570 [Removed]

82. Section 945.570 is removed.

945.570–1 [Removed]

83. Subsection 945.570–1 is removed.

945.570–3 [Removed]

84. Subsection 945.570–3 is removed.

945.570–4 [Removed]

85. Subsection 945.570–4 is removed.

945.570–5 [Removed]

86. Subsection 945.570–5 is removed.

945.570–6 [Removed]

87. Subsection 945.570–6 is removed.

945.570–9 [Removed]

88. Subsection 945.570–9 is removed.

PART 947—TRANSPORTATION

947.1 [Removed]

89. Subpart 947.1 is removed.

PART 949—TERMINATION OF CONTRACTS

949.108–4 [Removed]

90. Subsection 949.108–4 is removed.

949.108–8 [Removed]

91. Subsection 949.108–8 is removed.

949.112–1 [Removed]

92. Subsection 949.112–1 is removed.

949.2 [Removed]

93. Subpart 949.2 is removed.

949.3 [Removed]

94. Subpart 949.3 is removed.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

951.2 [Removed]

95. Subpart 951.2 is removed.

951.7000 [Removed]

96. Section 951.7000 is removed.

951.7001 [Removed]

97. Section 951.7001 is removed.

PART 971—REVIEW AND APPROVAL OF CONTRACT ACTIONS

971.2 [Removed]

98. Subpart 971.2 is removed.

971.3 [Removed]

99. Subpart 971.3 is removed.

[FR Doc. 95–22219 Filed 9–11–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

48 CFR Parts 1301, 1302, 1304, 1305, 1306, 1307, 1308, 1309, 1314, 1315, 1316, 1317, 1319, 1322, 1324, 1325, 1331, 1332, 1333, 1334, 1336, 1337, 1342, and 1345

[Docket No. 950602146–5146–01]

RIN 0690–AA24

Commerce Acquisition Regulation; Removal of Provisions

AGENCY: Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce hereby removes certain parts, subparts, and sections of the Commerce Acquisition Regulation concerning internal management. This action is taken in keeping with the goals of the National Performance Review and in order to comply with recent Executive Orders that address regulatory reforms.

EFFECTIVE DATE: September 12, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Cavallini, 202–482–0202.

SUPPLEMENTARY INFORMATION: On March 4, 1995, as part of the President's Regulatory Reinvention Initiative, the President directed agencies to conduct a page-by-page review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform. After conducting a review of the Commerce Acquisition Regulation (CAR), it was determined that the intended goal of certain portions of the CAR could be achieved in more efficient, less intrusive ways. The portions of the CAR being removed were internal management regulations that are not required by law and are not deemed to be regulatory in nature.

List of Subjects in 48 CFR Parts 1301, 1302, 1304, 1305, 1306, 1307, 1308, 1309, 1314, 1315, 1316, 1317, 1319, 1322, 1324, 1325, 1331, 1332, 1333, 1334, 1336, 1337, 1342, and 1345

Government procurement.

Shirl G. Kinney,
Procurement Executive.

For the reasons set forth in the preamble, Chapter 13 of Title 48 Code of Federal Regulations is amended as set forth below:

1. The authority citation for parts 1301, 1302, 1304, 1305, 1306, 1307, 1308, 1309, 1314, 1315, 1316, 1317, 1319, 1322, 1324, 1325, 1331, 1332, 1333, 1334, 1336, 1337, 1342, and 1345 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

PART 1301—[AMENDED]

2. Part 1301 is amended by removing and reserving subparts 1301.2, 1301.3, 1301.4, and 1301.5.

3. Part 1301 is further amended by removing §§ 1301.601, 1301.601–70, 1301.601–71, 1301.603, and 1301.603–71, and 1301.603–70(a) (2) and (3) and redesignating paragraph (a)(4) as (a)(2).

PARTS 1302, 1304, 1305, 1306, 1307, and 1308—[REMOVED AND RESERVED]

4. Parts 1302, 1304, 1305, 1306, 1307, and 1308 are removed and reserved.

PART 1309—[AMENDED]

5. Part 1309 is amended by revising subpart 1309.4 to read as follows:

Subpart 1309.4—Debarment, Suspension and Ineligibility

1309.470–4 Procedures on debarment.

Decision making process. Upon receipt of a debarment recommendation, the Procurement Executive shall review all available evidence and shall promptly determine whether or not to proceed with debarment. The Procurement Executive may refer the matter to the Office of Inspector General for further investigation. After completion of any additional review or investigations, the Procurement Executive shall make a written determination. A copy of this determination shall be promptly sent to the initiating contracting office. (See FAR 9.406–3(b).)

1309.470–7 Procedures on suspension.

Decision making process. Procedures for the decision making process of suspensions are the same as those contained in 1309.470–4 except that an initial decision for suspension results in immediate suspension. (See FAR 9.407–3(b).)

PART 1314—[REMOVED AND RESERVED]

6. Part 1314 is removed and reserved.

PART 1315—[AMENDED]

7. Part 1315 is amended by removing § 1315.501; removing § 1315.504(a) and redesignating § 1315.504 (b) and (c) as (a) and (b), respectively; removing § 1315.506 (a), (b), and (c) and redesignating paragraphs (d), (e), (f), and (g) as (a), (b), (c), and (d) respectively; removing and reserving subpart § 1315.6; removing § 1315.804–3; and removing § 1315.805–70 (a) and (b) and redesignating paragraph (c) as (a).

PART 1316—[AMENDED]

8. Part 1316 is amended by removing and reserving subparts 1316.3 and 1316.6.

PART 1317—[AMENDED]

9. Part 1317 is amended by removing and reserving subparts 1317.4 and 1317.5.

PART 1319—[AMENDED]

10. Part 1319 is amended by removing §§ 1319.201, 1319.705–5, 1319.7001 and 1319.7002(b).

PARTS 1322, 1324, 1325, AND 1331—[REMOVED AND RESERVED]

11. Parts 1322, 1324, 1325, and 1331 are removed and reserved.

PART 1332—[AMENDED]

12. Part 1332 is amended by removing and reserving subparts 1332.4 and 1332.6.

PART 1333—[AMENDED]

13. Part 1333 is amended by removing §§ 1333.102, 1333.104(a) (3) and (4), 1333.104(f), 1333.105(a)(2), 1333.105(b), 1333.105(d), and 1333.209.

PART 1334—[REMOVED AND RESERVED]

14. Part 1334 is removed and reserved.

PART 1336—[AMENDED]

15. Part 1336 is amended by removing §§ 1336.602–4 and 1336.603.

PART 1337—[REMOVED AND RESERVED]

16. Part 1337 is removed and reserved.

PART 1342—[AMENDED]

17. Part 1342 is amended by removing § 1342.102–70 (c) and (d).

PART 1345—[REMOVED AND RESERVED]

18. Part 1345 is removed and reserved.

[FR Doc. 95–22559 Filed 9–11–95; 8:45 am]
BILLING CODE 3510–17–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1827 and 1852

[NFS Case 940013]

RIN 2700–AB72

NASA FAR Supplement; Assignment of Copyright in Software

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a revision of the NASA FAR Supplement to allow the Contracting Officer to direct the contractor to claim copyright in computer software and assign the copyright to the Government or another party. Assignment to the Government can only be directed when the Contractor has not previously been granted permission to claim copyright on its own behalf. This is needed because existing contract clauses do not provide this authority for some types of contracts.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Nina Lawrence, (202) 358–2424, or Tom Deback, (202) 358–0431.

SUPPLEMENTARY INFORMATION:

A. Background

NASA published a Proposed Rule on October 13, 1994 (59 FR 51936), amending the NASA FAR Supplement (NFS) to allow the Contracting Officer to direct the contractor to claim the copyright in computer software and assign the copyright to the Government or another party. Assignment to the Government can only be directed when the contractor has not previously been granted permission to claim copyright on its own behalf. NASA is publishing this Final Rule with some changes in the provisions set forth in the Proposed Rule, which reflect some of the comments received.

FAR clause 52.227–14, Rights in Data—General, as modified by the NFS, currently provides that a contractor may establish (assert) claim to copyright in software developed under the contract provided the contractor obtains the Contracting Officer's prior written permission. This revision will not restrict this right. However, if a contractor is not interested in claiming copyright, or developing the software, and is unwilling to assign the copyright to NASA or its designee, no copyright can be claimed for the software. In many, if not most, cases this does not matter. However, in some situations where further development of software is needed before the software can be marketed, the U.S. private sector may be unwilling to invest in developing and marketing the software without the availability of copyright protection. This revision will provide authority to acquire assignments of copyright in such situations.

It is NASA's intent to announce to the public the availability of licensable software and the criteria which will be utilized in selecting licensees. Exclusive and partially exclusive licenses will be granted only after public notice and opportunity to file written objections.

FAR 27.404(g)(3) authorizes agencies to include contractual requirements to assign copyright to the Government or another party. The FAR further directs that any such requirements established by agencies should be added to clause 52.227–14, Rights in Data—General. This authority is the same as is presently contained in FAR clause 52.227–17, Rights in Data—Special Works. That clause is specifically tailored for acquisitions where data is the main deliverable; it lacks many elements necessary in contracts involving a mix of deliverables. The proposed revision will result in a clause that more appropriately addresses NASA's needs in acquisitions involving mixed deliverables. Further, with the increased emphasis in recent years on promoting U.S. competitiveness and the commercialization of Government-generated technology, it is important that steps be taken to protect computer software that has a significant technology transfer value. The availability of copyright protection will enable NASA to enhance U.S. competitiveness and more effectively transfer valuable computer software technology.

This revision does not apply to or affect contracts for basic or applied research with a university or college (see NFS 1827.404(e)(1) or 1827.409(e)).

Comments on the Proposed Rule were received from four organizations, and a number of comments were duplicative in subject matter. Several comments related to the rights of contractors. One organization commented that the contractor assigning the copyright would not retain a copyright license, and that to avoid potentially becoming an infringer, the contractor would be motivated to seek the Contracting Officer's permission to claim the copyright. The authority to direct assignment of copyright is presently contained in FAR clause 52.227–17, Rights in Data—Special Works, which has been in use for many years. Contractors have not been motivated to request permission to claim copyright in order to avoid potential infringement, even though the clause provides that the contractor may use the data first produced only for the performance of the contract. Rather, contractors have requested permission to claim copyright for the purpose of further developing and/or commercializing the software.

Some commenters expressed concern that a contractor would not be given the opportunity to copyright software, or NASA would arbitrarily refuse to grant the contractor permission to copyright. The purpose of the revision proposed by NASA is to effect the further development and/or commercialization of the software, and if the contractor has a plan for accomplishing such further development and/or commercialization, permission to copyright will be granted. NFS 1827.404(e)(2) sets forth guidelines covering when the Contracting Officer may, in consultation with the installation's patent or intellectual property counsel, grant the contractor permission to copyright, publish, or release to others computer software first produced in the performance of the contract. For example, permission to copyright will be granted if (i) the contractor has identified an existing commercial computer software product line, or proposes a new one, and states a positive intention of incorporating the computer software first produced under the contract into that line, either directly itself or through a licensee; or (ii) the contractor has made, or will be required to make, significant contributions to the development of the computer software by co-funding or by cost sharing, or by contributing resources.

Another group of comments related to the question of when copyright arises and use of the word "establish" in the proposed revision. There is no question that under 17 U.S.C. 102(a) "copyright protection subsists * * * in original works of authorship fixed in any tangible medium of expression * * *" and that under 17 U.S.C. 201, ownership of the copyright vest initially in the author or authors. However, it is also clear from the legislative history of the Copyright Act of 1976 that contract provisions can determine whether a contractor can claim copyright protection in data first produced under the contract. See the discussion of Section 105, U.S. Government works, in the legislative history of the Copyright Act of 1976, i.e., H.R. Report 94–1476, 94th Congress Second Session, pages 58–59 and S. Report 94–473, 94th Congress, First Session, pages 56–57. Both reports state: "As the bill is written, the Government agency concerned could determine in each case whether to allow an independent contractor or grantee to secure copyright in works prepared in whole or in part with the use of Government funds."

NASA is aware that use of the word "establish" presents difficulties, and, for the purpose of conformity with the copyright statute, has construed the word "establish" to mean "assert". NASA is taking this opportunity to revise the NFS so that if reflects copyright law by using "assert" in the Final Rule in lieu of "establish," and by requiring in the NFS that a provision be added to the FAR Rights in Data—General and Special Works clauses which states that the word "establish" in those clauses shall be construed as meaning "assert".

Some comments related to the necessity for the revision, e.g., lack of evidence that the U.S. private sector is unwilling to invest in the software without copyright protection; vagueness of Proposed Rule's goals; and the availability of copyright protection for derivative works based on public domain software. NASA's goal is to more effectively transfer valuable computer software technology to the private sector thereby enhancing commercialization of Government-generated technology and U.S. competitiveness. Disseminating software to the public without restriction works well for many computer software products. However, it has been the experience of Federal agencies that in situations where further development of software is needed before the software can be marketed, the U.S. private sector is unwilling to invest in developing and marketing the software without copyright protection. The GAO in its June 1992 report, entitled "Technology Transfer: Copyright Law Constrains Commercialization of Some Federal Software", concluded that although many factors affect a company's decision whether to invest in Federal software, lack of copyright protection for that software is a consideration. The principle is well established with respect to the U.S. general public that technology which is freely available to everyone is often not of interest to anyone where considerable risk capital is required to achieve commercialization.

The Final Rule will provide the flexibility needed to ensure the transfer and commercialization of valuable computer software in situations where the contractor is not interested in further development and commercialization of the software.

B. Executive Order 12866

The Office of Information and Regulatory Affairs has determined that this rule is significant under E.O. 12866. This regulation is needed on an urgent and compelling basis because valuable computer software developed under NASA contracts may become part of the public domain, and thereby lose its value, if the software is not copyrighted. Current regulations grant the contractor the right to request permission to claim copyright, but there is no procedure to force the contractor to exercise that right or to transfer the copyright to the Government. The regulation meets the need, i.e., provides protection for the software's value, by allowing NASA to direct the contractor to claim copyright and assign the copyright to NASA or another party. The potential costs for this regulatory action are limited to the nominal costs involved in claiming and transferring copyright. These costs may vary, but are estimated to be less than $100 per copyright, and it is anticipated that less than 10 contractors annually would each be required to incur this expense one time. Because the contracts under which valuable software is likely to be developed are usually cost-reimbursable research and development contracts, the costs for copyright and transfer would normally be charged to the Government. The potential benefits are the value of the protected software. This value cannot be measured, as it depends on future discoveries and developments. This value cannot be considered to be taken away from contractors, because it never belonged to them.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1827 and 1852

Government procurement.

Tom Luedtke,
Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1827 and 1852 are amended as follows.

1. The authority citation for 48 CFR Parts 1827 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1827—PATENTS, DATA, AND COPYRIGHTS

2. In section 1827.404, paragraphs (d)(1) and (e)(1) are revised and paragraphs (e)(4) and (e)(5) are added to read as follows:

1827.404 Basic rights in data clause.

* * * * *

(d) * * *

(1) The Contracting Officer shall consult with the installation's Patent or Intellectual Property Counsel before granting in accordance with FAR 27.404(f)(1)(ii) permission for a contractor to claim copyright subsisting in data, other than computer software, first produced under the contract. For copyright of computer software first produced under the contract, see paragraph (e) of this section.

(e) * * *

(1) Paragraph (3) (see 1827.409(e) and 1852.227–14) is to be added to paragraph (d) of the clause at FAR 52.227–14, Rights in Data—General, whenever that clause is used in any contract other than one for basic or applied research with a university or college. Paragraph (d)(3)(i) of the clause provides that the contractor may not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. This is in accordance with NASA policy and procedures for the distribution of computer software developed by NASA and its contractors.

* * * * *

(4) If the contractor has not been granted permission to copyright in accordance with paragraphs (e)(1) and (e)(2) of this section, paragraph (d)(3)(ii) of the clause at FAR 52.227–14, Rights in Data—General (as modified by 1852.227–14), enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designee. The Contracting Officer may, in consultation with the installation patent or intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of agency mission objectives, needed to support specific agency programs, or necessary to meet statutory requirements.

(5) In order to insure consistency with copyright law, paragraph (d)(3)(iii) clarifies that the word "establish" in FAR 52.227–14, Rights in Data—General shall be construed as "assert" when used with reference to a claim to copyright.

* * * * *

3. In section 1827.405, paragraph (c) is added to read as follows:

1827.405 Other data rights provisions.

* * * * *

(c) *Production of special works.* Paragraph (f) of the clause at 1852.227–15 is to be added to the clause at FAR 52.227–17, Rights in Data—Special Works, whenever that clause is used in any NASA contract.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. In section 1852.227–14, paragraph (3) of the addition to the FAR clause is redesignated as paragraph (3)(i) and new paragraphs (3)(ii) and (iii) are added as follows:

1852.227–14 Rights in Data—General.

* * * * *

(3)(i) * * *

(ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(iii) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert".

(End of addition)

5. Section 1852.227–15 is added to Part 1852 to read as follows:

1852.227–15 Rights in Data—Special Works

As prescribed in 1827.405(c), add the following paragraph (f) to the basic clause at FAR 52.227–17:

(f) Whenever the words "establish" and "establishment" are used in this clause, with reference to a claim to copyright, they shall be construed to mean "assert" and "assertion", respectively.

(End of addition)

[FR Doc. 95–22573 Filed 9–11–95; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 671, 672, 675, 676, and 677

[Docket No. 950506130–5171–02; I.D. 050195A]

RIN 0648–AH62

Limited Access Management of Federal Fisheries In and Off Alaska; Groundfish and Crab Fisheries Moratorium; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule (I.D. 050195A) that was published Thursday, August 10, 1995 (60 FR 40763). The rule imposes a temporary moratorium on the entry of new vessels into the groundfish fisheries under Federal jurisdiction in the Bering Sea and Aleutian Islands (BSAI) management area, the crab fisheries under Federal jurisdiction in the BSAI Area, and the groundfish fisheries under Federal jurisdiction in the Gulf of Alaska (GOA).

EFFECTIVE DATES: Effective September 11, 1995, through December 31, 1998, except for the amendments to §§ 671.4, 672.4, and 675.4, and §§ 676.3 and 676.4, which will become effective on January 1, 1996, through December 31, 1998; and the amendments to Figure 1 to part 677, § 677.4, and §§ 671.2, and 671.3, which are effective September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Catherine Belli, 301-713-2341.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections addresses fishery management problems caused by excess harvesting capacity or overcapitalization by establishing temporary entry controls until more permanent controls on harvesting capacity can be implemented. As published, the final rule contains typographical and editorial errors which are misleading and in need of correction. This document corrects those errors.

Correction of Publication

Accordingly, the publication on August 10, 1995 (60 FR 40763), of the final regulations (I.D. 050195A) that were the subject of FR Doc. 95–19344, is corrected as follows:

1. On page 40767, middle column, second full paragraph, line 22, is revised to read "1988 through February 9, 1992, or a".

2. On page 40771, third column, amendatory instruction number 6., line two is revised to read "through December 31, 1998, § 672.3,".

3. On page 40772, first column, amendatory instruction number 9., line two is revised to read "through December 31, 1998, § 675.3,".

4. On page 40773, first column, the term "*Reconstruction*" in the definitions is italicized.

Dated: September 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–22284 Filed 9–11–95; 8:45 am]

BILLING CODE 3510-22-F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 090595A]

Groundfish of the Bering Sea and Aleutian Islands Area; Apportionment of Reserve

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS is apportioning reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow for ongoing harvest and account for previous harvest of the total allowable catch (TAC).

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 7, 1995, until 12 midnight, A.l.t., December 31, 1995. Comments must be received at the address below no later than 4:30 p.m., A.l.t. September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668. Attn: Lori Gravel.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the U.S. BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director, Alaska Region, NMFS, has determined that the initial TACs specified for: "Other rockfish" in the Bering Sea subarea and rock sole and "other flatfish" in the BSAI need to be supplemented from the non-specific reserve in order to continue operations and account for prior harvest.

Therefore, in accordance with § 675.20(b), NMFS is apportioning from the reserve to TACs for the following species or species groups: In the Bering Sea subarea - 49 metric tons (mt) to "other rockfish"; in the BSAI - 9,000 mt to rock sole, and 2,931 mt to "other flatfish".

These apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category, because the revised TACs are equal to or less then specifications of acceptable biological catch.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA), has determined, under section 553(d)(3) of the Administrative Procedure Act and 50 CFR 675.20(b)(2), that good cause exists for waiving the opportunity for prior public comment for this action. Fisheries are currently taking place that will be supplemented by this apportionment. Delaying the implementation of this action would be disruptive and costly to these ongoing operations. Under § 675.20(b)(2), interested persons are invited to submit written comments on these apportionments to the above address until September 22, 1995. To the extent that this action relieves a restriction, no delayed effectiveness period is necessary. In any case, for the reasons stated above, there is good cause to waive the delayed effectiveness period so that this action may take effect immediately.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22658 Filed 9–7–95; 4:18 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 60, No. 176
Tuesday, September 12, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52, and 100

Nuclear Energy Institute

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Meeting: Cancellation.

SUMMARY: The Nuclear Regulatory Commission is cancelling the meeting scheduled for September 13, 1995 with the Nuclear Energy Institute and other industry representatives. This document cancels the meeting notice appearing in the **Federal Register** on August 23, 1995 (60 FR 43726). The meeting will be rescheduled at a future date.

DATES: To be determined.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Soffer, Accident Evaluation Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6574.

Dated at Rockville, Maryland, this 8th day of September, 1995.

For the Nuclear Regulatory Commission.

Leonard Soffer,

Accident Evaluation Branch, Office of Nuclear Regulatory Research.

[FR Doc. 95–22702 Filed 9–11–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–40–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes Equipped With BFGoodrich Main Landing Gear Brake Assemblies

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes. That action would have required inspection of certain brake assemblies to determine the part number of the torque plates, measurement of the amount of wear remaining on the brake wear pin indicator, and removal of brake assemblies on which misidentified torque plates were installed and replacement with serviceable brakes. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data indicating that all misidentified torque plates have been removed from airplanes and spare part inventories. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: David M. Herron, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; 98055–4056; telephone (206) 227–2672; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on April 17, 1995 (60 FR 19181). The proposed rule would have required a one-time inspection of certain brake assemblies to determine the part number of the torque plates, measurement of the amount of wear remaining on the brake wear pin indicator, and removal of brake assemblies on which misidentified torque plates were installed and replacement with serviceable brakes. That action was prompted by a report indicating that certain torque plates were misidentified and installed on certain brake assemblies. The proposed actions were intended to prevent decreased brake performance during a rejected takeoff or landing when these brakes are at or near their indicated wear limit.

Since the issuance of that NPRM, Boeing and BFGoodrich have initiated an aggressive inspection program to ensure that the misidentified torque plates are removed from airplanes and spare part inventories. These manufacturers have provided substantiating data to the FAA to account for all misidentified torque plates. (Boeing submitted a letter dated May 3, 1995, and BFGoodrich transmitted a fax memorandum dated May 17, 1995, which account for each misidentified torque plate.)

Based upon the FAA's review of the data submitted by these manufacturers, the FAA has determined that the previously identified unsafe condition no longer exists. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 95–NM–40–AD, published in the **Federal Register** on April 17, 1995 (60 FR 19181), is withdrawn.

Issued in Renton, Washington, on September 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22592 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SPATS No. KS–016–FOR]

Kansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kansas regulatory program (hereinafter the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of modifications to the Kansas revegetation guidelines pertaining to requirements for determining the productivity success of trees and shrubs. The amendment is intended to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., c.d.t., October 12, 1995. If requested, a public hearing on the proposed amendment will be held on October 10, 1995. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t., on September 27, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert L. Markey, Acting Director, Kansas City Field Office, at the first address listed below.

Copies of the Kansas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Robert L. Markey, Acting Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, Room 500, Kansas City, Missouri, 64105, Telephone: (816) 374–6405.

Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section, 1501 South Joplin, P.O. Box 1418, Pittsburg, Kansas 66762, Telephone (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Acting Director, Kansas City Field Office, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. Background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981 **Federal Register** (46 FR 5892). Subsequent actions concerning the Kansas program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Discussion of the Proposed Amendment

By letter dated August 9, 1995 (Administrative Record No. KS–600), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment at its own initiative. Kansas proposes to modify its requirements for determining the productivity success of trees and shrubs by amending its approved revegetation guidelines entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success" to include an alternative sampling method for determining woody stem density.

Specifically, Kansas proposed the following alternative sampling method for woody stems.

Woody Stem Density

The Permittee shall use success standards developed in joint cooperation between the Kansas Department of Wildlife and Parks (KDWP), USDA-Soil Conservation Service (USDA–SCS), Kansas State University—Forestry Extension (KSU), the Operator and the SMS. The productivity success is determined by the success of the trees and shrubs. The Permittee will be required to utilize one of two sampling techniques, 100 percent count or 1/50 acre sampling circles. All data must be collected in a statistically valid manner. Where the stocking density for the permit has been set at less than 300 stems per acre and less than 10 acres, a 100% stem count is required. Where the stocking density exceeds 300 stems per acre on 10 acres or more, a 1/50 acre sampling circle may be used as described below.

Stem Density Sampling Techniques

The sampling circle will be a round area one-fiftieth (1/50) of an acre in size (16.7 feet in radius). The Permittee will establish a sampling circle at each of the randomly selected sampling points, such that the center of the sampling circle is the random point.

The stem density data is collected as follows:

(1) The sampling circle may be drawn by attaching a 16.7 foot string to a stake fixed at the random point and then sweeping the end of the string (tightly stretched) in a circle around the stake;

(2) All living trees and shrubs within each of the sampling circles are counted and recorded by species. Shrubs or trees rooted within the sampling circle are counted; those rooted outside of the sampling circle are not included in the sample. To count as living, the tree or shrub must be alive, healthy, and been in place for at least two years; and

(3) Continue sampling randomly selected points until sample adequacy is met. Individual sampling circle values summarized by species are used for statistical analysis.

Calculation of Stem Density

The total stem density per acre is calculated as follows: D=S divided by N times 50.

D=Total Stem Density per Acre.
S=Total Number of Stems Counted.
N=Total Number of Sample Points.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m., c.d.t., on September 27, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under FOR FURTHER INFORMATION CONTACT.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 24, 1995.

Russell Frum,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–22516 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 943

[SPATS No. TX–024–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas Coal Mining Regulations (TCMR) pertaining to self-bonding. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations, provide additional safeguards, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., c.d.t., October 12, 1995. If requested, a public hearing on the proposed amendment will be held on October 10, 1995. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t., on September 27, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Tim L. Dieringer, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma, 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas, 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated August 11, 1995, (Administrative Record No. TX–593), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposes to amend the Texas Coal Mining Regulations at subsection 806.309(j)(2)(C)(iv) concerning the criteria for acceptance of self-bonds to ensure reclamation performance.

Texas proposes to include an indicator ratio of total liability to net worth of 2.5 or less as an alternative to its existing self-bonding requirement for a ratio of total liabilities to net worth that is equal to or less than the industry median reported by the Dun and

Bradstreet Corporation for the applicant's primary standard industry classification code.

Texas also proposes to add new criteria which applicants can meet to qualify for self-bonding as an alternative to Texas' existing criteria. This alternative method of self-bonding includes a specific requirement for net worth of at least $100 million, a requirement for fixed assets in the United States totaling at least $200 million, a requirement for issued and outstanding securities pursuant to the Securities Act of 1933 subject to the periodic financial reporting requirements of the Securities and Exchange Act of 1934, and a requirement that the total amount of the applicant's outstanding and proposed self-bonds for surface coal mining and reclamation operations shall not exceed 16⅔ percent of the applicant's net worth in the United States.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t., on September 27, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. Of no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surfacing mining, Underground mining.

Dated: August 24, 1995.

Russell Frum,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–22517 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–95–003]

RIN 2115–AE47

Drawbridge Operation Regulations; Oakland Inner Harbor Tidal Canal, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of reopening of comment period; notice of public hearing.

SUMMARY: In response to several requests for a public hearing, the Coast Guard is reopening the comment period

and announcing a public hearing to be held October 5, 1995, on the proposed change to the drawbridge operating regulations for four drawbridges over the Oakland Inner Harbor Tidal Canal (Oakland Estuary).

DATES: The public hearing will be held on October 5, 1995, commencing at 7 p.m. Written comments must be received not later than October 31, 1995.

ADDRESSES: The hearing will be held at the Gresham Conference Center, Building 4, Coast Guard Island, Alameda, CA. Written comments should be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, Room 214, Coast Guard Island, Alameda, CA 94501–5100, or may be delivered to Room 214 at the same address between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jerry Olmes, Bridge Administrator, Eleventh Coast Guard District; telephone (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Regulatory Background

On May 9, 1995 (60 FR 24599), the Coast Guard published a Notice of Proposed Rulemaking (NPRM), (CGD11–95–003), which proposed amending the regulation for the draws of the Alameda County vehicular bridges crossing the Oakland Inner Harbor Tidal Canal at the following locations: Park Street, mile 7.3; Fruitvale Avenue, mile 7.7; High Street, mile 8.1; and the U.S. Army Corps of Engineers railroad bridge, mile 7.7 at Fruitvale Avenue. Under the existing regulation, the draws are attended 24 hours per day, and open upon signal except during designated morning and afternoon commute periods. The proposed amendment requires attended service 16 hours per day with a four hour advance notice requirement for bridge openings during nighttime hours when an operator is not in constant attendance. The proposed amendment preserves the existing commute hour closures. This proposed amendment will allow the bridge owner to reduce operating expenses and should still provide for the reasonable needs of navigation. In addition, the identifying waterway mileage designating the location of, and the call sign for, each bridge would be revised to conform with the currently utilized standard of measurement.

Discussion of Proposed Action

The Coast Guard received 18 letters in response to the NPRM, six of which requested a public hearing. The Coast Guard has decided to reopen the comment period and to hold a public hearing in order to provide all interested parties with additional opportunity to present relevant comments.

The hearing will be informal. Representatives of the Coast Guard will preside, make brief opening statements and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should contact Mr. Jerry Olmes at (510) 437–3514 before the hearing date. Such notification should include the approximate time needed to make the presentation. Comments previously submitted on this rulemaking are a matter of record and need not be resubmitted at the hearing. Speakers are encouraged to provide written copies of their oral statement to the hearing officers at the hearing.

Interested persons who are unable to attend the hearing may also participate in the consideration of the proposed amendment by submitting their written comments to the Commander (oan-br), Eleventh Coast Guard District at the address under **ADDRESSES.**

All written comments must be received no later than October 31, 1995. Each written comment should identify the proposed amendment and clearly state the reason for any objections, comments or proposed changes, and include the name and address of the person or organization submitting the comment. Copies of all written communications will be available for review by interested persons after the hearing at the office of the Commander (oan-br), Eleventh Coast Guard District, between 7:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. All comments received, whether in writing or presented orally at the public hearing, will be fully considered before final agency action is taken on the proposed amendment. The proposed amendment may be changed in light of comments received.

The hearing will be recorded and a written summary will be available for public review after October 16, 1995. All comments will be made a part of the rulemaking docket.

Dated: August 30, 1995.

D.D. Polk,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 95–22527 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 153–1–7165b; FRL–5278–8]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from lumber processing and timber manufacturing.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 12, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

El Dorado County Air Pollution Control District, 330 Fair Lane, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION: This document concerns El Dorado County Air Pollution Control District's (EDCAPCD) Rule 234, "VOC RACT Rule—Sierra Pacific Industries," submitted to EPA on June 16, 1995, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 10, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–22155 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[AK–4–1–6027b, WA–7–1–5542b, WA–38–1–697b; FRL–5278–1]

Approval and Promulgation of State Implementation Plans: Alaska and Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the 1 year attainment date extension for three nonattainment areas: Mendenhall Valley, Alaska; Spokane, Washington; and Wallula, Washington, for particulate matter with an aerodynamic diameter of less than or equal to ten micrometers (PM–10). In the Final Rules Section of this **Federal Register**, the EPA is approving the States' extensions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by October 12, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795; and the Washington State Department of Ecology, P.O. Box 47600, PV–11, Olympia, Washington 98504–7600.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1814; or George Lauderdale, Environmental Protection Specialist, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6511.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: August 8, 1995.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 95–22161 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[ME–24–1–6911b; A–1–FRL–5284–9]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine for the purpose of establishing a small business stationary source technical and environmental compliance assistance program (PROGRAM). In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before October 12, 1995.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg. (AAA), Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3248.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 24, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–22153 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[NH17–01–7149b; A–1–FRL–5281–9]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Extension of the Date To Meet Conditions for the Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP)

revision submitted by the State of New Hampshire. This revision establishes and allows for extension of the date for the State of New Hampshire to meet the conditions delineated in the **Federal Register** of October 12, 1994 (59 FR 51514), from July 29, 1995, until November 14, 1995. New Hampshire must meet these conditions before the motor vehicle inspection and maintenance program can be approved. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency believes this is a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before October 12, 1995.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and at the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Peter Hagerty, (617) 565–3224.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 27, 1995.

John P. DeVillars,

Regional Administrator, EPA-New England.

[FR Doc. 95–22166 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[30–1–6372, VA32–1–5999; FRL–5294–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Proposed Approval of Revised Confidentiality Provisions; Proposed Approval and Disapproval of Minor New Source Permit Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. This action proposes approval of changes submitted by Virginia in March 1993 to the provisions governing confidentiality of information. This action proposes disapproval of the public participation requirements associated with the permitting of minor new sources, and proposes approval of all other revisions to Virginia's revised new source permit provisions. The intended effect of this action is to propose approval of those State provisions which meet the requirements of the Clean Air Act, and disapprove those State provisions which do not.

DATES: Comments must be received on or before October 12, 1995.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597–1325.

SUPPLEMENTARY INFORMATION: On March 18, 1993 and March 29, 1993, the Virginia Department of Environmental Quality submitted a series of amendments to its Regulations for the Control and Abatement of Air Pollution as formal revisions to its State Implementation Plan (SIP). These SIP revision submittals are described below.

I. March 18, 1993 Submittal

Virginia submitted revised provisions in Part II (General Provisions), Section 120–02–30 (Availability of Information) in order to establish criteria for determining confidential information. A definition of "confidential information," including the criteria used to determine confidentiality, is added to Part I (General Definitions), Section 120–01–02 (Terms Defined).

Section 120–02–30 is revised to (1) emphasize that emissions data shall be available to the public without exception; (2) provide for criteria to determine whether information submitted by a regulated entity may be kept confidential; (3) substitute non-confidential information for confidential information, or challenge the request to keep information confidential; determine an owner who files confidential information which does not meet the established criteria to be in violation of Commonwealth law. Confidential information must meet the following criteria:

(1) The owner has taken measures in the past to keep such information confidential.

(2) The information has not been reasonably obtainable without the owner's consent by private citizens or other firms. (Exception: Information obtained through judicial discovery based on a showing of "special need" may still be kept confidential from the public.)

(3) Information may not be readily available from sources other than the owner.

(4) Disclosure of the information would cause "substantial harm" to the owner.

Virginia also submitted additional revisions to Parts I and II (General Provisions). EPA will act upon these revisions in a separate rulemaking action.

Virginia certified that public hearings were held on September 2, 1992 in Abingdon, Roanoke, Lynchburg, Fredericksburg, Richmond, Chesapeake, and Springfield.

EPA Evaluation

The determination of confidentiality provisions set forth in the definition of "confidential information" and the provisions of Section 120–02–30 have been revised to conform with the Virginia Administrative Code. EPA has determined that these revised provisions meet the requirements of 40 CFR Section 52.116(a), which requires states to make emissions data available for public inspection. However, should Virginia submit a SIP revision request on behalf of a source and submit information which has been judged confidential under the provisions of Section 120–02–30, Virginia must request EPA to consider confidentiality according to the provisions of 40 CFR

Part 2. EPA is obligated to keep such information confidential only if the criteria of 40 CFR Part 2 are met.

II. March 29, 1993 Submittal

Virginia submitted revised provisions of Part VIII, Section 120–08–01 (Permits—new and modified stationary sources). Virginia has also revised Appendix R (Stationary Source Permit Exemption Levels) as part of this SIP revision request.

Section 120–01–08A—Applicability

Section 120–08–01A.3 states that sources exempt from this section must still comply with all other applicable regulations, laws, ordinances and orders of governmental entities having jurisdiction (including the Federal government). In addition, any facility which is exempt from this section, but which exceeds the applicable emissions standard threshold of Part IV (as if it were an existing source) or the standard of performance threshold of Part V, shall still be subject to the more restrictive of these two provisions.

Section 120–08–01A.4 is added to state that increments of construction or modification, unless specifically part of an approved planned incremental construction/modification program, shall be added together to determine whether such activity is subject to the provisions of Section 120–08–01. This provision is currently found in Section V.B of SIP-approved Appendix R.

Section 120–08–01B—Definitions

Allowable emissions and *potential to emit*—The revised wording makes clear that emission limitations must be both State *and* Federally enforceable.

Commence—from *cancelled* to *canceled*.

Federally enforceable—extends to *federally enforceable* operating permit programs.

"Modification"—(1) "Amount" is replaced with "uncontrolled emission rate"; (2) the revised definition clarifies that emissions associated with maintenance, repair and replacement activities which do not fall within the definition of "reconstruction" will not be considered "modifications" (3) the following exclusions are removed: use of an alternative fuel ordered under the 1974 Energy Supply and Environmental Coordination Act (ESECA), use of an alternative fuel ordered under section 125 of the Clean Air Act, and the change in ownership of an emissions unit.

Section 120–08–01C—General

The provisions of current SIP Section 120–08–01.C.4 are deleted and replaced with the provisions of new Section 120–08–01G. New Section 120–08–01C.4 is added to state that both the permit application and the permit itself may combine all applicable provisions of Sections 120–08–01, 120–08–02 and 120–08–03.

Section 120–08–01D—Applications

The provisions of current SIP Section 120–08–01D.1, describing who is authorized to sign the permit application, is expanded and relocated in Section 120–08–01D.3. Section 120–08–01D.2 states that a single application should identify each emissions point in the emissions unit. Section 120–08–01D.4 provides the text of a statement which an applicant must sign certifying that the information is, to the best of the applicant's knowledge, true, accurate and complete. Section 120–08–01D.5 requires an applicant to provide a notice from the locality in which the source is located that the site and operation of the source are consistent with all local ordinances.

SIP Section 120–08–01F—Standards for Granting Permits

This section is moved to Section 120–08–01H.

Section 120–08–01F—Action on Permit Application (SIP Section 120–08–01G)

Section 120–08–01F.1 is rewritten to state that within 30 days of the receipt of a permit application, the board will notify the applicant as to the status of the application, including (1) a determination as to which provisions of part VIII are applicable; (2) identification of deficiencies; and (3) a determination as to whether the permit application contains sufficient information to begin review. This provision further distinguishes as to what is meant by "sufficient" (i.e., Virginia has enough information to begin review of the application), and what is meant by "complete" (i.e., Virginia has enough information to forward the application to the State Air Pollution Control Board for final review and analysis, as well as final decision).

The provisions in subsections 120–08–01F.2 through F.5 are rewritten or revised to reflect that all applicable public participation requirements are now spelled out in Section 120–08–01G.

Section 120–08–01G—Public Participation

Section 120–08–01G consolidates the applicable public participation requirements that are currently located in SIP sections 120–08–01C.4. and 120–08–01G.2 through G.6. This section, as revised, applies to all major stationary sources or major modifications with a net emissions increase of 100 tons per year of any single pollutant. In addition, Section 120–08–01G.4 specifies that applications from the following categories of sources shall be subject to a 30-day public comment period and if necessary, a public hearing:

(1) major stationary sources and modifications with a net emissions increase of 100 tons per year of any single pollutant, and which are not subject to the requirements of either Section 120–08–02 or 120–08–03; (2) stationary sources which have the potential for public interest concerning air quality issues; (3) stationary sources of which any provision of the permit would exceed the height allowed by the State's definition of good engineering practice (GEP).

Section 120–08–01I.—Application Review and Analysis

The provisions of SIP section 120–08–01L have been moved to this section.

Section 120–08–01J (Former Section 120–08–01H)—Compliance Determination and Verification by Performance Testing

1. Section 120–08–01J.3 adds language specifying that the owner of a source is responsible for conducting initial source testing, as well as providing the State with written report stating the results of such testing.

2. Sections 120–08–01J.3, J.4, J.5, and J.6 contain revised provisions to conform with the revised organization of this subsection.

Section 120–08–01K—Permit Invalidation, Revocation and Enforcement (SIP Title: Revocation of Permit)

1. Sections 120–08–01K.1 and K.3 contain revised provisions to conform with the revised organization of this subsection.

2. Sections 120–08–01K.4 through K.9 are added to specify conditions under which construction and operating permits would be subject to enforcement action (K.4), limiting terms and conditions (K.5.), revocation (K.6), suspension (K.7), and civil charges, penalties and other relief contained under the State's regulatory and statutory authority (K.8). Section 120–08–01K.9 provides that the State shall notify applications in writing of its decision and reasons to change, suspend, revoke, or invalidate a permit. Reasons for revoking a permit include: (1) Knowingly making misstatements on the permit application, (2) failing to comply with the terms and conditions of the permit, (3) failing to comply with any emission standards applicable to an

emissions unit included in the permit, (4) causing emissions which result in violations of any ambient air quality standard or applicable control strategy, including the SIP-enforceable emission limit in effect at the time that the application is submitted, and (5) failing to comply with the applicable provisions of Section 120–08–01. Although not specified in the language of Section 120–08–09K, EPA interprets the violation of an "applicable control strategy" to also include the violation of any applicable Prevention of Significant Deterioration (PSD) increment.

Section 120–08–01L—Existence of Permit No Defense (SIP Section 120–08–01J); Section 120–08–01M—Compliance With Local Zoning Requirements (SIP Section 120–08–01K)

There are no changes other than the new subsection designation within either of these sections.

Section 120–08–01N—Reactivation and Permanent Shutdown (New)

This section establishes provisions for determining what constitutes a permanent shutdown. Section 120–08–01.N.2 provides that if a source is shut down permanently, the State shall revoke the permit by written notification to the owner, and remove the source from its emissions inventory. If such source chooses to resume operation, then the owner must apply for another permit. Section 120–08–01N.3 provides that where the State determines that a source has not operated for a year or more, it shall notify the owner in writing of its intent to consider the shutdown as permanent. This section further provides that a source owner is entitled to a formal hearing on the State's determination. Section 120–08–01N.4 provides that nothing would prevent State and the source from making a mutual determination of a mutual shutdown prior to any decision rendered at the formal hearing.

Section 120–08–01O—Transfer of Permits (New)

This section establishes provisions for notifying the State when a permitted source undergoes transfer of ownership or change to the source's name. This section further establishes that a permit may not be transferred from one location to another or from one piece of equipment to another, unless the source is considered a portable facility under Section VII of Appendix R.

Section 120–08–01P—Circumvention

There are no changes other than the new subsection designations within this section.

Note: The following provisions of Section 120–08–01 pertain to sources which are not covered by the SIP, and will not be either reviewed or evaluated as part of this SIP revision action:

Sections 120–08–01C.1.b, 120–08–01G.4.a, 120–08–04H.1, 120–08–04.I.2.

Appendix R

This Appendix, which replaces current SIP Section 2.33(g), defines and describes those source categories and thresholds which are either subject to or exempted from the provisions of Section 120–08–01. The provisions of Sections VI and IX of Appendix R pertain to sources which are not covered by the SIP, and will not be either reviewed or evaluated as part of this SIP revision action. New exemptions from the provisions of Section 120–08–01 include the following sources: (1) Solid fuel burning units with a maximum heat input of between 350,000 btu/hr and 1,000,000 btu/hr; (2) new sources of volatile organic compounds (VOC) with uncontrolled emission rates of less than 25 tons per year; modified VOC sources with uncontrolled emissions increases of less than 10 tons per year; (3) new sources of particulate matter (PM_{10}) with uncontrolled emission rates of less than 15 tons per year; modified PM_{10} sources with uncontrolled emissions increases of less than 10 tons per year; (4) new sources of sulfur dioxide (SO_2) with uncontrolled emission rates of less than 40 tons per year; (5) new sources of nitrogen dioxide (NO_2) with uncontrolled emission rates of less than 40 tons per year; (6) addition of, relocation of, or change to a woodworking machine within a wood product manufacturing plant; (7) all wood sawmills.

Virginia has certified that public hearings were held on July 8, 1992 for all of the above revisions in accordance with 40 CFR Section 51.102. The public hearing locations were Abingdon, Roanoke, Lynchburg, Fredericksburg, Richmond, Chesapeake, and Springfield.

EPA Evaluation

The Agency requirements for new source permitting are found in 40 CFR part 51, subpart I (Review of New Sources and Modifications), sections 51.160 through 51.166 inclusive. Section 120–08–01 is designed to apply to permitting procedures for "minor" new sources and modifications, i.e., sources who would need a permit to construct or modify, but not be subject to the federally enforceable permitting requirements established for sources subject to PSD or new source review in nonattainment areas. EPA is satisfied that the threshold exemption levels established in Section 120–08–01 and Appendix R would not exempt sources which should be subject to the permitting procedures in the latter two categories. Furthermore, EPA is satisfied that the revised requirements in Section 120–08–01 are consistent with the criteria listed in § 51.160. Similarly, EPA is satisfied that exemptions specified in specific types of emissions (such as the exemption of vessel emissions when calculating secondary emissions) are consistent with the current requirements of 40 CFR part 51, specifically the definition of "secondary emissions" found in §§ 51.165(a)(1)(viii) and 51.166(b)(18).

The provisions of Section 120–08–01N, concerning shutdowns, pertain only to the procedural mechanisms for permit determinations. In order to determine whether it is appropriate for shutdown credits to be used in an attainment demonstration, Virginia has developed a system which keeps track of shutdowns, pursuant to Section 120–08–03. Therefore, EPA's evaluation only focuses on the shutdown mechanism and not the application of shutdown credits. The shutdown mechanisms found in Section 120–08–01N. are consistent with the criteria listed in § 51.160.

While the revised provisions of Section 120–08–01 represent an improvement over the current SIP provisions, one revision significantly relaxes a current SIP requirement. According to the requirements of 40 CFR sections 51.160 and 51.161, an approved SIP must contain legally enforceable procedures which provide for the opportunity for public comment on information submitted by owners and operators of all sources covered by Section 120–08–01. This requirement is addressed by the SIP-approved provisions of Section 120–08–01C.4.a. However, the revised provisions of Sections 120–08–01G.1 and –01G.4.b specifically exempt major modifications of less than 100 tons per year from the prescribed public participation requirements. Therefore, the revised provisions of Sections 120–08–01G.1 and –01G.4.b would no longer meet the public participation requirements of 40 CFR Section 51.161 since certain major modifications currently subject to the public participation requirements of SIP-approved Section 120–08–01 would now be exempt from such requirements. Therefore, EPA proposes disapproval of Virginia's revised Sections 120–08–01G.1 and 120–08–01G.4.b. as revisions to the Virginia SIP.

The revisions to the provisions of Section 120–08–01 serve to strengthen its overall enforceability. The definitions of "allowable emissions" and "potential to emit" found in Section 120–08–01B. clearly state that the applicable emissions rates and emissions limits must be federally enforceable. In addition, the permit exemption thresholds listed in Appendix R are consistent with those listed in 40 CFR Sections 51.165 and 51.166. Those new and modified sources which would be covered by the provisions of Section 120–08–01 and which have the potential to emit of 100 tons or more per year consist of sources which are not covered by the provisions for PSD (e.g., categories of sources where the PSD applicability threshold is 250 tons per year or more) or new source review in nonattainment areas. Section 120–08–01D. clearly defines the "responsible official" required to sign any application form, report or compliance certification. The revised definition of "modification" has been strengthened now that the ESECA exemption that had been previously part of the SIP has now been removed. In addition, the enforceability has been strengthened since "uncontrolled emissions rate" is more definitive than "amount." The definition of "federally enforceable" has been expanded to include operating permits issued under a federally approved program.

Section 120–08–01K expands the conditions under which the State may revoke a construction permit issued under this section. Although Section 120–08–01K.6.d. does not specifically state that Virginia will revoke a permit because of violation of any applicable PSD increment, EPA can enforce such revocation under the premise that any violation of the PSD increment constitutes a violation of the SIP control strategy in effect at the time that the application is submitted.

The revisions to Section 120–08–01 are administrative and procedural in nature, and contain no emission limits. Therefore, the revised provisions in and of themselves will have no adverse impact on air quality.

Section 51.160(a) of 40 CFR part 51 requires states to set forth enforceable procedures making a state agency responsible to determine whether the construction or modification of a facility, building, structure or facility will result in either (1) violations of an applicable control strategy, or (2) interference with the attainment or maintenance of a standard in the state where the source is to be located, or in a neighboring state. States may exempt certain sources and or source modifications from their permitting requirements if such exemptions would not violate the provisions of 40 CFR § 51.160(a). Virginia lists its size threshold and source category exemptions in Appendix R. The revised Appendix R expands the threshold and categories of new or modified sources which would be exempt from the permitting requirements of Section 120–08–01.

In its analysis supporting the revised exemption levels of Appendix R, Virginia states that wood sawmills and wood manufacturing operations now exempted from the permitting requirements of Section 120–08–01 are considered "small businesses" whose emissions are likely to be below the revised PM_{10} threshold exemption levels and thus, will not significantly contribute to ambient levels of PM_{10} standards. Virginia further states that such operations which meet the applicability requirements of Sections 120–08–02 (Major Stationary Sources and Major Modifications Locating in PSD Areas) or 120–08–03 (Major Stationary Sources and Major Modifications Locating in Nonattainment Areas) must still obtain a permit from Virginia. In addition, owners of sources exempted from the permitting provisions of Section 120–08–01 by Appendix R will not be relieved from the applicability requirements of Section 120–08–01A.3. as described above.

Except as noted below, EPA has determined that the revised threshold exemption levels established by Virginia and listed in Part II of Appendix R are stringent enough that the applicable national ambient air quality standards (NAAQS) and PSD increments will be protected, and that no applicable control strategy will be violated. EPA has concluded that the new and modified sources covered by the requirements of 40 CFR 52.21 and 52.24 contribute more significantly towards current ambient air quality levels. Although there currently are no PM_{10} nonattainment areas in Virginia, EPA requests Virginia to expand on its analysis that the exemptions of wood sawmills and wood manufacturing operations from the permitting requirements of Section 120–08–01 (as stated in Appendix R) would meet the requirements of 40 CFR 51.160(a).

Proposed Action

EPA is proposing to approve the revised provisions of Sections 120–02–30 and 120–08–01 (except for Sections 120–08–01G.1 and –01G.4.a), as well as the definition of "confidential information." EPA is also proposing approval of the revised exemption levels of Appendix R, provided that Virginia supply additional documentation that the exemptions provided for wood manufacturing operations and wood sawmills are consistent with all applicable Agency criteria for minor new source permit programs. At the same time, EPA proposes to disapprove the public participation requirements set forth in Sections 120–01–08G.1 and –01G.4.a, and retain in its place the current Virginia SIP-approved public participation provisions of Section 120–08–01C.4.a.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action proposes approval of pre-existing requirements under State or local law, or retains currently-existing Federal requirements. This proposed action imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary R. Nichols, Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the SIP revision pertaining to Virginia's confidentiality of information and minor new source permit provisions will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 28, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95–22336 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[LA–28–1–7053b; FRL–5292–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Approval of the Maintenance Plan for St. James Parish; Redesignation of St. James Parish to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On December 15, 1994, the State of Louisiana submitted a revised maintenance plan and request to redesignate the St. James Parish ozone nonattainment area to attainment. This maintenance plan and redesignation request was initially submitted to the EPA on May 25, 1993. Although the EPA deemed this initial submittal complete on September 10, 1993, certain approvability issues existed. The State of Louisiana addressed these approvability issues and has again submitted this request. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements. In this action, EPA is approving Louisiana's redesignation request because it meets the maintenance plan and redesignation requirements set forth in the CAA, and EPA is approving the 1990 base year emissions inventory. The approved maintenance plan will become a federally enforceable part of the State Implementation Plan (SIP) for Louisiana.

In the Final Rules Section of this **Federal Register**, the EPA is approving this redesignation request as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing, postmarked by October 12, 1995. If no adverse comments are received, then the direct final rule will be effective on November 13, 1995.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Anyone wishing to review this petition at the Regional EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Air Planning Section (6PD–L), EPA Region 6, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final Rule which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Area designations, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, National Parks, Reporting and recordkeeping, Ozone, Volatile organic compounds, Wilderness areas.

Dated: August 24, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

[FR Doc. 95–22163 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 81

[FRL–5279–7]

Designation of Areas for Air Quality Planning Purposes; Wyoming; Redesignation of Particulate Matter Attainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing to approve the State of Wyoming's December 19, 1994 request to redesignate the Powder River Basin particulate matter attainment area to exclude the Kennecott/Puron Prevention of Significant Deterioration (PSD) Baseline area, pursuant to section 107 of the Clean Air Act. EPA is also proposing to designate the Kennecott/Puron PSD Baseline area as a separate particulate matter attainment area. In the final rules section elsewhere in this **Federal Register**, the EPA is acting on the State's request in a direct final rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received in writing by October 12, 1995.

ADDRESSES: Written comments should be addressed to Vicki Stamper, 8ART-AP, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and Air Quality Division, Wyoming Department of Environmental Quality, 122 West 25th Street, Hershler Building, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency; Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules Section of this **Federal Register**.

Dated: August 10, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–22151 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 136

[FRL–5294–6]

A Public Meeting and Availability of Documents on Streamlining Approval of Analytical Methods at 40 CFR Part 136 and Flexibility in Existing Test Methods

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting and availability of documents.

SUMMARY: The Office of Science and Technology within EPA's Office of Water is conducting a public meeting on approaches to streamlining the proposal and promulgation of analytical methods at 40 CFR Part 136 under Section 304(h) of the Clean Water Act and increasing flexibility in existing 40 CFR Part 136 test methods. In this public meeting, EPA intends to discuss (1) procedures for streamlining the promulgation of new analytical methods under 40 CFR Part 136; (2) measures to provide increased flexibility for use of emerging technologies in analytical methods already promulgated at 40 CFR Part 136; (3) establishment of standardized quality control (QC) for analytical methods, including standardized procedures for development of QC acceptance criteria from single and interlaboratory data; (4) establishment of standardized data elements for reporting analytical results; (5) withdrawal of outdated methods; and (6) establishment of criteria by which the wastewater methods promulgated at 40 CFR Part 136 can be harmonized with other EPA program methods and with industry and association methods. The purpose of this notice is to provide information regarding the public meeting agenda, to make available documents concerning the Agency's streamlining effort, and to discuss the information and documents provided with this notice. This notice is not an advanced notice of proposed rulemaking, but is intended only to apprise persons of discussion topics at upcoming public meetings. Nothing in this document is intended to have regulatory effect or to initiate any rulemaking process. Where the document discusses existing regulatory interpretations, such interpretations are guidance only and not themselves binding on EPA, State regulatory agencies, or the public to the extent they are inconsistent with the underlying regulations.

DATES: The public meeting on streamlining will be held Thursday, September 28, 1995, from 9:00 a.m. to 5:30 p.m.

ADDRESSES: [illegible] meeting on streamlining [illegible] at the Federal Building in S[illegible]shington. See Supplementar[illegible]ation for further details.

The documents made available with this notice can be obtained from Marion Thompson, Mail Code 4303, 401 M Street, S.W., Washington, DC 20460. Phone: (202) 260–7117. Facsimile: (202) 260–7185.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice can be directed to Marion Thompson by phone at (202) 260–7117 or by facsimile at (202) 260–7185.

SUPPLEMENTARY INFORMATION: Arrangements for the public meeting are being coordinated by DynCorp EENSP. For information on registration, contact Cindy Simbanin, 300 N. Lee Street, Suite 500, Alexandria, VA 22314. Phone: (703) 519–1386. Facsimile: (703) 684–0610. Space is limited and reservations are being taken on a first come, first served basis. No fees will be charged to attend. Hotel reservations may be made by contacting the Crowne Plaza Hotel in Seattle at (800) 521–2762. Guest rates are $83 single and $106 double occupancy, including tax. Reservations must be made by 9/8/95, and you must specify that you are attending the EPA Workshop to qualify for the group rate. Accommodations are limited, so please make your reservations early.

I. Background

Section 304(h) of the Clean Water Act (CWA) requires the EPA Administrator to promulgate guidelines establishing test procedures for data gathering and monitoring under the Act. These test procedures (analytical methods) are promulgated at 40 CFR Part 136. EPA uses these analytical methods to support development of effluent guidelines promulgated at 40 CFR Parts 400–499. These procedures we also used to establish compliance with National Pollutant Discharge Elimination System

(NPDES) permits and for other purposes.

A. 40 CFR Part 136 Methods

Until April of 1995, proposal and promulgation of analytical methods for wastewater at 40 CFR Part 136 had been the responsibility of EPA's Office of Research and Development (ORD), specifically, the Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL–Ci). In April of 1995, EPA restructured its research laboratories and transferred responsibility for proposal and promulgation of analytical methods for wastewater to the Engineering and Analysis Division (EAD) within the Office of Water's (OW's) Office of Science and Technology (OST).

One objective in implementing transfer of the 304(h) program was to better serve the needs of the regulated community, State and Regional permitting authorities, and environmental laboratories, by centralizing the methods overall responsibility for effluent guidelines methods and associated compliance monitoring methods into a single office. This centralization of responsibility should allow EPA to better respond to the needs of these communities by expediting the current method modification and approval process. Specific goals for streamlining the program are to:

(1) Decrease the time and Agency resources required to approve new analytical techniques and improved methods,

(2) Provide for an increase in the number of methods that are approved for use each year,

(3) Increase participation of outside organizations in the method development process, and

(4) Improve overall program quality.

In order to achieve these goals, EPA is considering development of a 304(h) program framework that is based on the following key elements:

- Increased flexibility to modify approved methods,
- Standardized QA/QC protocols to be required for all new methods,
- Standardized procedures for generating QC acceptance criteria,
- Standardized procedures for validating methods at minimal expense,
- A standardized method format,
- Standardized procedures for submitting methods to EPA for approval,
- Standardized processes for reviewing and approving methods, and
- Increased stakeholder involvement in 304(h) program implementation.

B. Public Meetings

EPA plans to conduct at least three public meetings, the public meeting announced in this notice and two others to be announced separately, to solicit input and recommendations concerning the 304(h) streamlining initiative. In addition, EPA is soliciting support and expertise from each of the groups that have developed methods already approved for use under the 304(h) program. These groups include the AOAC-International (formerly the Association of Official Analytical Chemists), the American Society for Testing and Materials (ASTM), the American Public Health Association (APHA), the Water Environment Federation (WEF), the U.S. Geological Survey (USGS), and the American Water Works Association (AWWA). Many of these groups can offer valuable insight concerning problems with the current program and recommended areas of improvement. Also, some of these groups have developed or are developing standardized procedures for the areas listed above. In these instances, EPA plans to build upon the experience and efforts of those organizations. For example, the method validation procedures described later in this notice are based on the standardized method validation protocols developed by AOAC-International and ASTM and are adapted as necessary to meet EPA's regulatory objectives.

C. Increased Flexibility in the 304(h) Program

In developing its preliminary plans for improvement of the 304(h) program, EPA concluded that the success of the program would depend on its ability to reflect the latest advances in analytical technology. This, in turn, would require that the program be efficient and flexible enough to encourage the development of new methods and technology by organizations outside of EPA. Specifically, the program must provide:

- A well-defined QC/QA program that is stringent enough to meet compliance monitoring objectives associated with the program but flexible enough to be applied to a wide variety of analytical procedures,
- A well-defined system of classifying new techniques as either new methods or as modifications to existing methods,
- A flexible framework in which already approved methods can be modified, and
- The flexibility to modify processes for submitting new methods based on lessons learned.

Advantages of increased program flexibility are expected to be shared widely by EPA, by purveyors of new technology, and by permittees, permit writers, and analytical laboratories. In addition, this inherent method flexibility, along with a well-defined program for developing and approving new methods, will provide research laboratories, instrument vendors, and equipment manufacturers with incentives for developing new analytical techniques. This, in turn, will provide permittees and permit writers with greater flexibility in selecting analytical methods that yield improved performance in specific discharge situations.

Finally, a more flexible program is consistent with this Administration's Environmental Technology Initiative. The initiative, which was announced by President Clinton in February 1993, is intended to accelerate environmental technological innovation as a means of strengthening America's economy and creating jobs while enhancing environmental protection. EPA believes that the incentives provided by a more flexible program will spur the development of new technologies, and with it new jobs. In addition, EPA anticipates that the use of new technologies may lower the cost of environmental measurements, thereby reducing costs of environmental compliance for industries and municipalities.

In seeking increased program flexibility, EPA has sought to develop a strategy that balances the advantages described above against concerns that results produced with new technologies may not be equivalent to results produced by the approved 40 CFR Part 136 methods. The core of this strategy is a well-defined QA/QC program that can apply to all approved methods and method modifications.

The remainder of this notice outlines a framework in which the key elements listed above can be implemented to meet EPA's streamlining objectives. This framework will be discussed at the public meetings on streamlining. Section II describes OST's vision for increased flexibility within the 304(h) program itself and for increased flexibility within specific methods approved under the program. Section II also describes the standardized QC framework on which this program and method flexibility is based and outlines requirements necessary to document equivalency of alternate techniques used in the program. Section III describes procedures that can be used to develop acceptance criteria for the standardized QC tests outlined in

Section II. Section IV describes standardized procedures for submitting new methods, including a standardized format for documenting new methods, standardized procedures for validating new methods, and standardized procedures for submitting validated methods to EPA for approval.

II. Method Flexibility

On October 26, 1984, EPA addressed the flexibility allowed in the wastewater methods with the promulgation of a major set of methods at 40 CFR Part 136 Appendix A for determination of organic analytes (49 FR 43234). In that promulgation, EPA stated that flexibility would be allowed in certain parts of the analytical methods, provided that equivalency could be demonstrated. This notice describes a methods system in which greater flexibility is allowed.

A. Interpretations of Flexibility

EPA has received several requests for interpretation of the flexibility allowed by the 40 CFR Part 136 methods, and EPA's Office of Research and Development (ORD) and Office of Science and Technology (OST) have provided technical interpretations of these requests. Interpretations made to date are provided in a document titled Technical Interpretation of Method Flexibility that is made available with this notice. These interpretations further clarify the flexibility of the 40 CFR Part 136 methods given in the 1984 final rule (49 FR 43234).

B. Alternate Methods

The current means by which organizations may seek approval of alternate methods is described at 40 CFR Sections 136.4 and 136.5. If an alternate method is to be applied to a specific discharge, section 136.4 requires the person submitting the request to file a limited approval application with the Administrator of the EPA Region in which the discharge occurs. If permission is sought to use the alternate method for nationwide use, a nationwide approval application must be filed with the Director of EMSL–Ci. In most instances, Regional Administrators have deferred decisions concerning limited approval to the Director of EMSL–Ci. To support its approval process, EMSL–Ci developed extensive requirements for the data needed to demonstrate that an alternate method produces results that are equal to or better than results produced by the approved method. This alternate test procedure (ATP) process has worked well for persons willing to invest the resources required. EPA seeks a public discussion of whether the ATP process should be continued, particularly in the context of the adoption of the streamlining process contemplated by this notice.

In contrast to continuing the ATP process, EPA has received numerous comments at its technical symposia and in other venues that the ATP process is cumbersome, and that the data gathering required is much more extensive than is necessary to demonstrate that a simple method modification does not materially affect the results produced by that method. Against this view, many permitting agencies interpret the words in an analytical method very literally and allow no changes whatsoever. In many cases, narrow interpretation may be justified, in that the permitting authority may have experienced situations in which certain unscrupulous dischargers or laboratories have taken shortcuts that ultimately compromised the analytical results produced. If this compromise results in compliance with a permit limit when use of the approved, unmodified method would result in noncompliance, a narrow, restrictive interpretation would be justified.

EPA now intends to describe the conditions under which minor method modifications would be allowed and would be considered within the scope of a method. One approach to this issue is described below and will be discussed during the public meetings announced in this notice. There may be other approaches. Therefore, EPA seeks input from the public, particularly from the regulating and regulated communities, as to the workable set of conditions under which method modifications should be allowed.

C. Front-End Method Modifications

For purposes of the public meetings, EPA plans to consider changes to all but the determinative step in an analytical method as being within the scope of that method. The determinative step is the physical/chemical process by which the actual measurement is made. For most methods, the determinative step is an instrumental determination. Titration, colorimetry, inductively coupled plasma atomic emission spectroscopy (ICP/AES), high resolution gas chromatography combined with high resolution mass spectrometry (HRGC/HRMS), and reading a color change in an immunoassay are all examples of the determinative step.

All "front-end" devices and processes employed prior to the determinative step, including sampling, sample extraction/digestion, sample cleanup, and sample introduction, are not considered to be part of the determinative step. In addition, changes to data processing and other techniques that occur after the determinative technique rarely impact data reliability.

One objective of providing flexibility to modify approved methods is intended to allow laboratories a means by which to reduce the generation of laboratory wastes without having to undergo elaborate comparison studies and a time-consuming approval process. The front-end flexibility described in this notice is based on an in-house laboratory comparison of QC sample results generated using the modified method. Once the laboratory has successfully demonstrated that the modified method is comparable to the approved 40 CFR Part 136 method (Reference Method), the laboratory would be able to implement the changes immediately. Section II.E. of this notice outlines procedures that may be required to demonstrate method comparability.

1. Examples of Determinative Techniques

As described above, a method that uses a different determinative technique would be either a modification of another, existing, EPA-approved method or is a new method. The factors to be considered in establishing that the determinative technique is the same as that in an existing method are (1) the physical/chemical nature of the measurement process and (2) the specificity of the measurement for the analyte(s) of interest. If either or both of these factors are different from an existing method for the analyte(s) of interest, the determinative step is not the same and the procedure would not be considered to be a new method.

For example, the use of a horizontal torch in an ICP is not a different determinative technique because neither the physical/chemical process nor the specificity of the measurement is changed. Similarly, the use of a magnetic sector in place of a quadrupole in a low resolution mass spectrometer (LRMS) is not a change in the determinative technique because neither the physical/chemical process nor the specificity of measurement is changed. On the other hand, the addition of a mass spectrometer to the ICP results would be a change in both the physical/chemical process and the specificity, and use of a high resolution mass spectrometer in place of the LRMS results in a change in specificity, even though the physical/chemical nature of the process is not changed.

Further, and as one of EPA's internal reviewers has pointed out, the determinative technique may be the least variable part of the entire analytical process. Therefore, although this notice provides one approach to flexibility in which the determinative process would be fixed, EPA seeks to discuss how this flexibility could be quantified and controlled to allow use of alternate determinative techniques without compromising the specificity of a method for the analyte(s) of interest and without making the flexibility so broad that the method protocol becomes meaningless.

2. List of Candidate Front-End Techniques

This use of the physical/chemical nature and specificity of the determinative technique to describe fundamental method changes would result in the conclusion that all analytical processes that occur prior to the determinative technique and that do not adversely affect method performance could be considered within the scope of a method. To facilitate an understanding of such front-end techniques that could be considered within the scope of existing 40 CFR Part 136 methods, EPA has compiled a list titled Front-end Techniques that are Candidates for Method Modification Under EPA's Method Flexibility Overture. This list, which is based on a review of methods promulgated at 40 CFR Part 136 and on discussions of some of these techniques at technical symposia and with instrument vendors and other suppliers of analytical equipment, is made available with this notice. EPA emphasizes that this would not be a list of approved techniques, nor would this list be all-inclusive. The list is merely intended to provide examples of the types of procedural modifications that may fall within the flexibility of approved methods. Presently, substitution of these techniques in a method approved for use under 40 CFR Part 136 is allowed only when these techniques are listed in the approved method or under the conditions described in the document titled Technical Interpretation of Method Flexibility that is also made available with this notice.

3. Cautions That All Techniques May Not Produce Equivalent Results

EPA wishes to emphasize that not all techniques may produce results equivalent to the techniques employed in the 40 CFR Part 136 methods. This is particularly true for "method-defined" analytes. A method-defined analyte is one in which the analytical result obtained depends totally on how the measurement is made. Therefore, changes to specific analytical protocols have the potential of changing the numerical value of the results for a given sample. For example, the conventional pollutant "oil and grease" (40 CFR 401.16) is defined by the exact procedure used. In attempting to find a solvent to replace Freon-113 for the determination of oil and grease, EPA has found that no solvent produces results exactly equivalent to the results produced by Freon-113 on the range of environmental samples tested. Extreme care must therefore be exercised in making changes to the analytical techniques used in the determination of these method-defined analytes.

Even for analytes that are not method-defined, differing analytical techniques can produce varying results. Examples of techniques that have come to EPA's attention are differences produced by separatory funnel and continuous liquid-liquid extractors in the extraction of phenolic compounds by EPA Method 625 and with other methods in which phenolic compounds are determined. Similarly, EPA has observed differences produced by separatory funnel and stir-bar extraction techniques for certain pulp mill wastewaters using Method 1653 and differences produced by batch versus column adsorption techniques for certain pulp mill wastewaters using Method 1650.

One possible solution to this problem would be to require that each modified method be used to analyze a matrix spike/matrix spike duplicate pair on each dissimilar matrix. Another possible solution is to require testing of each modified method on each and every specific discharge to which the modified method is to be applied. EPA employed this philosophy in the development of Method 1664 for the determination of oil and grease. Method 1664 would require demonstration of equivalency using analytical standards spiked into reagent water and testing of the specific discharge unless the concentration of oil and grease in the discharge is not detectable.

Finally, it has been suggested that it is necessary to define methods by the extraction/digestion procedure and the determinative step in order to ensure that results produced through a modified method are truly comparable. For example, it has been suggested that without this stricter definition of methods, total metals digestions could be omitted and still yield acceptable recoveries of metals from spiked samples. One possible solution to this problem would be to modify the QC requirements to require spiking of various forms of target analytes, as appropriate to the method. For example, laboratories testing for total metals would be required to include organic, inorganic, highly soluble, and relatively insoluble species of the metals of interest in their spike solutions when demonstrating method equivalency. Another possible solution would be to simply limit the flexibility outlined above and in the document entitled Front-end Techniques that are Candidates for Method Modification Under EPA's Method Flexibility Overture by omitting all techniques associated with sample extraction or digestion.

D. Standardized Quality Control

In order to establish that a front-end change will not degrade method performance, a reference against which the change is made would be needed. For the purposes of the public meetings, the reference would be the method promulgated at 40 CFR Part 136. The definitive test criteria against which performance of the front-end modification would be assessed would be the QC acceptance criteria in the promulgated method. For those methods that do not contain QC acceptance criteria, these criteria would be developed using performance data in the promulgated 40 CFR Part 136 method. See the discussion in Section III of this notice on how EPA would establish these criteria.

The QC acceptance criteria would be based on the standardized quality control (QC) described below. This standardized QC includes QC tests that can be used to demonstrate that a front-end change would not adversely affect method performance. EPA would like to apply this standardized QC to all methods to be proposed at 40 CFR Part 136 in the future. EPA would also like to apply this standardized QC to all applicable methods and analytes that are already approved for use at 40 CFR Part 136. Applicability includes all chemical analytical methods, and, with some modification, many of the radiological methods and physical methods. EPA is in the process of developing corresponding QC requirements for determining the equivalence of toxicity testing procedures and may include this corresponding QC in a subsequent notice or proposal.

1. Standardized QC in the 40 CFR Part 136 Methods

The standardized QC program envisioned by EPA would be based on the QC program detailed in Section 8 of each method published at 40 CFR 136, Appendix A. For the purpose of providing a solid foundation on which to build the method and program flexibility described in this notice, EPA has updated and expanded the standardized QC that is detailed in these methods to ensure reliable measurements. The expanded and updated standardized QC that EPA plans to use would be as follows:

- Initial calibration—a minimum of five concentrations of analytical standards for the analyte(s) of interest, one near the method detection limit (MDL; 40 CFR 136, Appendix B), and one near the upper end of the calibration range. The nature of the calibration function allowable is specified in the method or, in the absence of such specifications, can be developed from performance data using the procedures outlined in Section III of this notice. Examples of the calibration function include: linear through the origin, linear not through the origin, or quadratic through or not through the origin. Calibration functions higher than second order (quadratic) would not be allowed. Limits on the calibration function are also specified in the method or, in the absence of such specifications, can be developed from performance data. For example, if linearity through the origin is used, some limit on the linear fit should be stated. In the Appendix A methods, this limit is specified as the percent relative standard deviation of the response factor or calibration factor. Laboratories seeking to exercise the front-end method flexibility described in this notice would be required to meet all initial calibration acceptance criteria when using the modified technique.
- Calibration verification—periodic verification that instrument performance has not changed significantly. This verification is based on time (e.g., a working day or 12-hour shift) or on the number of samples analyzed (e.g., after every 10th sample). QC acceptance criteria are given in the approved method or can be developed for each analyte using the procedures outlined in Section III of this notice. Laboratories seeking to exercise the front-end method flexibility described in this notice would be required to meet these QC acceptance criteria when using alternate front-end techniques. Most methods approved under this program specify corrective action that the analyst is to take when calibration is not verified, e.g., that all samples analyzed since the last verified calibration must be reanalyzed, or that the surrogate and matrix spike recoveries should be used to determine if results for a given sample are valid. Under the standardized QC program envisioned by EPA, this required action to would be extended to all methods already approved for use at 40 CFR Part 136 and to all new methods submitted for approval.
- Initial demonstration of laboratory capability—analysis of four reagent water samples spiked with the analyte(s) of interest and carried through the entire analytical process. This test is performed by the laboratory before it utilizes the method for analysis of actual field samples. In the 1600 series methods, this test is termed the "initial precision and recovery" (IPR) test. In other venues, it has been termed the "start-up" test. All four reagent water samples used in the test are spiked with the same solution, but the concentration of target analytes in the spike solution may vary between one and five times the lowest concentration used to establish the initial calibration curve. Laboratory performance is assessed in terms of the average percent recovery and the standard deviation of recovery. QC acceptance criteria for each analyte and consequences of failing the IPR test are given in the 40 CFR 136, Appendix A methods. For other methods, the procedures outlined in Section III of this notice can be used to develop QC acceptance criteria. Under the standardized QC program envisioned by EPA, corrective action required for failing to meet these criteria would be to correct the problem and repeat the test prior to the analysis of field samples. Laboratories seeking to exercise the front-end flexibility described in this notice would be required to produce acceptable IPR test results using the modified method technique.
- Analysis of blanks—either periodically or with each sample batch. The period or batch size is defined in each method. QC acceptance criteria are given in each method or can be developed for the concentration or amount of analyte allowed in the blank. Under the standardized QC program envisioned by EPA, the consequence of failing to meet the acceptance criteria will be to identify and eliminate the source of contamination and reanalyze the sample batch with which the blank is associated. Laboratories seeking to exercise the front-end method flexibility outlined in this notice must be capable of producing acceptable blanks when using the alternate techniques.
- Analysis of a matrix spike (MS) and matrix spike duplicate (MSD)—the analytes of interest are spiked into splits of an actual field sample, and the recovery of the analytes is used to assess method performance on that sample matrix. (For isotope dilution analyses, the MS/MSD analyses are not required because every sample is spiked.) QC acceptance criteria for spike recovery and for the relative percent difference (RPD) in results between the MS/MSD pair are given in the methods. In the absence of such specifications, recovery and RPD acceptance criteria can be developed from performance data using the procedures outlined in Section III of this notice. Unless otherwise stated in the approved method, EPA envisions that the normal consequence of failing the MS/MSD test will be to reanalyze the sample batch with which the MS/MSD are associated. Laboratories seeking to exercise the front-end flexibility described in this notice would be required to analyze an MS/MSD pair on each new matrix. If results of these MS/MSD analyses fail to meet the acceptance criteria, the laboratory would be required to conduct more extensive studies of the modified method on that matrix.
- Ongoing demonstration of laboratory capability—analysis of a single reagent water sample spiked with the analyte(s) of interest. This sample is carried through the entire analytical process to demonstrate that the laboratory is in control and to allow separation of laboratory performance from method performance on the sample matrix. In the 40 CFR 136, Appendix A methods, this sample is referred to as a "quality control check sample." In other venues, this analysis has been termed the "ongoing precision and recovery" (OPR) analysis, the "laboratory control sample" (LCS), and the "laboratory-fortified blank" (LFB). QC acceptance criteria for each analyte in this sample are given the approved method, or in the absence of such criteria, can be developed from performance data using the procedures described in Section III of this document. Unless otherwise stated in the approved method, EPA envisions that the consequence of failing the OPR test will be to reanalyze the sample batch with which the OPR is associated.
- Method detection limit (MDL)—nearly all of the 40 CFR 136, Appendix A methods contain MDLs, although few of the methods explicitly require laboratories to demonstrate their ability to achieve these MDLs. Methods recently published by OST and by ORD, however, have required laboratories to demonstrate their ability to achieve specified MDL objectives. Under the standardized QC program envisioned by EPA, MDLs would be used as an indicator of method performance. MDLs, or the embodiment of some other detection limit concept, should be developed for each analyte in each method, and each laboratory that intends to practice a method should be

required to demonstrate that the MDL(s) or equivalent detection limit concept can be achieved prior to practice of the method. As envisioned by EPA in the system contemplated by this notice, this requirement would apply to the analytes of interest only.

- Analysis of a reference sample from a source external to the laboratory—the most common reference sample is a Standard Reference Material from the National Institute of Standards and Technology (NIST). The reference sample and the period for its use are specified in each method. EPA is considering setting acceptance criteria for standard reference materials to be within some percentage of the true value based on the variability of measurement for that analyte. One possible indicator of that variability is the relative standard deviation calculation for the initial precision and recovery samples. Corrective action to be taken when the acceptance criteria are not met should involve identifying the samples affected, determining the amount of the effect, and if the effect is significant, determining the impact of the effect on the environmental samples analyzed and advising the affected parties.

2. Standardized QC in Other Method-Developing Organizations

During the last several years, EPA has worked closely with ASTM toward the development of standardized QC for incorporation into ASTM methods. One product of this effort is a draft document entitled Standard Practice for Writing Quality Control Specifications for Test Methods for Organic Constituents, which has been approved by the ASTM Committee D–19 on Water. This document, which is made available with this notice, requires standardized QC in all future editions of organic methods and describes how criteria are to be calculated from the results of an interlaboratory method validation study. The main difference between the QC requirements outlined in this document and those produced today is the lack of an ASTM requirement to determine MDLs.

EPA has also worked closely with the Environmental Quality Committee of AOAC-International to standardize and collaboratively test methods that contain comparable QC requirements and performance-based QC criteria. More recently, EPA has begun working with the American Public Health Association, American Water Works Association, and Water Environment Federation toward standardization of QC to be used for methods published in Standard Methods for the Examination of Water and Wastewater and promulgated at 40 CFR Part 136. Similarly, EPA has begun working more closely the U.S. Geological Survey (USGS) toward standardization of QC for USGS methods promulgated at 40 CFR Part 136.

EPA plans to continue efforts with these organizations to advance the universal adoption of standardized QC that would facilitate rapid proposal of methods produced by these organizations at 40 CFR Part 136. Further, if the methods developed by these organizations meet or exceed the needs of the Agency, EPA would rely on these organizations as primary method developers and could focus its own efforts on specialized methods or on esoteric methods needed to support regulation development or compliance monitoring.

E. Requirements for Documenting Front-End Method Equivalency

Under the program envisioned by EPA, flexibility in existing methods will apply to any change in one or more front-end devices and processes as long as these changes do not adversely affect method performance. In exercising this flexibility, laboratories will be required to demonstrate and document that the changes implemented will produce results that are comparable to or better than those produced by the Reference Method.

Demonstration that the method will meet or exceed the performance of the Reference Method and/or regulatory goals requires laboratories to perform the applicable QC tests outlined in Section II.D.1 of this notice and meet the applicable QC acceptance criteria associated with each test. Laboratories that exercise the flexibility offered by this program will be required to maintain all equivalency documentation on file and submit it to their clients (data users) upon request. Permittees that exercise the flexibility offered by this program will be responsible for ensuring that equivalency has been demonstrated by their in-house or contract laboratories and for ensuring that documentation can be provided to permitting authorities upon request.

At a minimum, documentation of method equivalency will include all raw results and summary data generated for each of the QC elements required. Alternatively, laboratories, permittees, or permitting authorities may elect to utilize the checklist provided and described in a document titled Methods Considered Within the Scope of Existing Wastewater Methods Under the EMMC Performance-based Methods System (EMMC PBMS Guidance), made available with this notice.

Minimum data elements that EPA believes must be retained on file (and made available on request) to demonstrate equivalency are as follows.

1. The organization and method number for the modified 40 CFR Part 136 method (Reference Method) used for the measurement.

2. A detailed narrative discussing the modification(s) to the Reference Method. This narrative should provide (1) a detailed description of the changes made to the Reference Method, (2) the reasons for the change, (3) the supporting logic behind the technical approach to the change, and (4) the result of the change. The narrative should be written by an analytical chemist and written in terms that another analytical chemist can understand.

3. A summary level report or data reporting forms listing the pollutants, along with their CAS Registry numbers, for which the modifications were made.

4. A summary of all quality control results required by the Reference Method. These results include, but are not limited to, the following:

- Method-specific instrument tuning.
- Calibration.
- Calibration verification.
- Initial precision and recovery.
- Ongoing precision and recovery.
- Matrix spike and matrix spike duplicate results.
- Surrogate recoveries.
- Internal standard recoveries.
- Labeled compound recoveries.
- Method of standard additions.
- Spectral interference checks.
- Serial dilutions.
- Blank results.
- Quality control charts and limits.
- MDL study results.

Specific QC results vary according to the Reference Method and the instrument used in the determinative step. For example, labeled compound recoveries are associated only with methods that are based on isotope-dilution techniques, and spectral interference checks are typically associated with ICP-AES analyses.

5. Raw data that will allow an independent reviewer to verify each determination and calculation performed by the laboratory.

This verification should consist of tracing the instrument output (peak height, area, emission intensity, or other signal intensity) to the final result reported. Raw data are method and instrument specific and may include, but are not limited to the following:

- Sample numbers or other identifiers used by the both the permittee and the laboratory.

- Sample preparation (extraction/digestion) dates.
- Analysis dates and times.
- Sequence of analyses or run logs.
- Sample weight or volume.
- Extract volume prior to each cleanup step.
- Extract volume after each cleanup step.
- Final extract volume prior to injection.
- Digestion volume.
- Titration volume.
- Percent solids or percent moisture.
- Matrix modifiers.
- Dilution data, differentiating between dilution of a sample and dilution of an extract or digestate.
- Instrument (make, model, revision, modifications) and operating conditions.
- Sample introduction system (ultrasonic nebulizer, hydride generator, flow injection system, etc.).
- Column conditions (manufacturer, length and diameter, stationary phase, solid support, film thickness, chelating or ion exchange resin, etc.).
- Analysis conditions (char/ashing temperatures, temperature programs, incident rf power, flow rates, plasma viewing height, etc.).
- Detectors (type, wavelength, slit, analytical mass monitored, etc.).
- Chromatograms, ion current profiles, bar graph spectra, library search results.
- Background correction scheme.
- Quantitation reports, data system outputs, and other data to link the raw data to the results reported. (Where these data are edited manually, explanations of why manual intervention was necessary must be included).
- Direct instrument readouts; i.e., strip charts, mass spectra, printer tapes, etc., and other data to support the final results.
- Laboratory bench sheets and copies of all pertinent logbook pages for all sample preparation and cleanup steps, and for all other parts of the determination.

The raw data required should be provided for all calibrations, verifications, blanks, matrix spikes and duplicates, and other QC analyses required by the Reference Method as well as any field samples analyzed by the method. Data should be organized so that an analytical chemist can clearly understand how the analyses were performed.

6. Example calculations that will allow the data reviewer to determine how the laboratory used the raw data to arrive at the final results.

Useful examples include both detected compounds and undetected compounds. If the laboratory or the method employs a standardized reporting level for undetected compounds, this should be made clear in the example, as should adjustments for sample volume, dry weight (solids only), etc.

7. For GC/MS and other instruments involving data systems, the permittee should be prepared to submit raw data on magnetic tape or disk, upon request by the regulatory authority.

8. The names, titles, addresses, and telephone numbers of the analysts who performed the analyses and of the quality control officer who will verify the analyses.

If data are collected by a contract laboratory, the permittee will be responsible for ensuring that all of the requirements in the methods are met by the contract laboratory and that all data listed above are provided.

III. Development of QC Acceptance Criteria

Few of methods promulgated at 40 CFR Part 136 contain QC acceptance criteria for all of the standardized QC elements outlined in this notice. (The notable exceptions are the methods published at 40 CFR 136, Appendix A.) As described above, however, QC acceptance criteria are the principle means by which a front-end method modification can be judged to provide results equivalent to or better than results produced by the Reference Method. For those methods that do not contain QC acceptance criteria, EPA plans to employ one of three sources of data for developing these criteria. These sources are (1) interlaboratory study data contained in the promulgated 40 CFR Part 136 analytical method, if available, (2) water supply (WS) and water pollution (WP) study data, or (3) single-laboratory data contained in the promulgated analytical method. In explanation, WS and WP study data result from laboratory performance evaluations conducted periodically by EPA's National Environmental Research Laboratory at Cincinnati (NERL-Ci, formerly EMSL-Ci). By following the statistical techniques described below and detailed in the accompanying supporting document, these WS and WP data, or the performance data contained in an existing analytical method promulgated at 40 CFR Part 136, can be used to establish QC acceptance criteria.

As of the date of publishing this notice, EPA has not developed a means for developing QC acceptance criteria for a method for which EPA has neither WS/WP study data nor performance data, and until such means are developed, EPA will not allow modification of promulgated 40 CFR Part 136 methods for which these data are not available. Although EPA has not surveyed all methods promulgated at 40 CFR Part 136, the Agency believes that the number of methods that (1) do not contain QC acceptance criteria, (2) are not covered by the WS/WP studies, or (3) do not contain performance data, is small. EPA seeks a public discussion of how to establish QC acceptance criteria when data on which to base these criteria are not available.

A. Development of QC Acceptance Criteria From Interlaboratory Study Data

ASTM and AOAC-International have published extensive literature on the statistical treatment of data for interlaboratory collaborative testing of analytical methods, including "ASTM D–2777" and Guidelines for Collaborative Study Procedure to Validate Characteristics of a Method of Analysis, JAOAC 72 No. 4, 1989. EPA's Office of Research and Development (ORD) and Office of Science and Technology (OST) have used the ASTM and AOAC-International statistical procedures to produce QC acceptance criteria for analytical methods published by their offices. The specific embodiment of the procedures as used by OST are given in an OST document titled Development of QC Acceptance Criteria, made available with this notice. EPA plans to work with AOAC-International and ASTM to conform these procedures as much as is practicable.

B. Development of QC Acceptance Criteria From WS/WP Study Data

EPA is considering use of WS/WP study data to establish QC acceptance criteria for an analytical method for which these criteria have not been developed. The procedures used will be the same or similar to those in ASTM D–2777 and detailed in the Development of QC Acceptance Criteria document referenced above. EPA envisions that this development will be conducted internally by EPA on an as-needed basis for methods, and that the acceptance criteria will then be proposed for promulgation at 40 CFR Part 136.

C. Development of QC Acceptance Criteria From Method Performance Data

Although few of the methods promulgated at 40 CFR Part 136 have QC acceptance criteria, most of these methods do contain performance data. Usually, these data reflect method performance in a single laboratory. Using the procedure given in the document titled Development of QC Acceptance Criteria, these performance data can be used to establish QC performance criteria. Basically, this procedure uses the recovery and standard deviation of recovery to establish the QC acceptance criteria, with an additional allowance for interlaboratory variability where applicable. Exact details of these procedures are given in the Development of QC Acceptance Criteria document that is made available with this notice.

IV. Submission of New Methods

The process EPA envisions for submission of new methods encompasses the elements described in this notice. These elements are as follows:

- The method would be written using the guidelines and format described in Section IV.A.,
- The method would incorporate the standardized QC elements described in Section II.E.,
- QC acceptance criteria would be included in the method as described in Section III, and
- The method would be validated for single-use, single-industry use, or nationwide use, as described in Section IV.B.

A. Standardized Method Format

Made available with this notice is a document titled Guidelines and Format for Methods to be Proposed at 40 CFR Part 136. This document is a further development of the Guidelines and Format for EMSL-Cincinnati Methods (EPA–600/8–83–020) produced by EMSL-Ci in 1983. In turn, the Guidelines and Format for EMSL-Ci Methods was based on the ASTM's Form and Style for ASTM Standards, 5th ed., June 1980 (13–000001–80). The Guidelines and Format for Methods to be Proposed at 40 CFR Part 136 incorporates several important aspects of the information presented in this notice. It also incorporates the analytical methods format prescribed by EPA's Environmental Monitoring Management Council (EMMC). The EMMC format is directed at standardizing all Agency analytical methods.

For new methods submitted under the program discussed in this notice, a guideline and format from another organization may be used provided it is standardized and contains the same elements specified in this document. For example, the method format documents from the APHA, AWWA, and WEF for Standard Methods for Examination of Water and Wastewater, and from ASTM, AOAC-International, and USGS are acceptable because these formats are documented and routinely followed by these organizations. Methods produced or approved by organizations that allow random formats would be required to be revised into a standardized format before submission for proposal at 40 CFR Part 136. This requirement would preclude confusion in methods.

B. Method Validation

For purposes of the streamlining contemplated by this notice, EPA presents a tiered approach to validation of new methods. This approach consists of three tiers, dependent on the intended application of the new method. The tiers are single use, use within a given industry, and nationwide use, and the levels of validation required for new or alternate methods are consistent with these uses. As discussed above, only those methods that contain a new or alternate determinative technique would be required to undergo method validation studies.

1. Tier I—Validation of Single-Use Methods

A single-use method would be applicable to a single discharge. Validation would be on that discharge and the method would be applicable to that discharge only. EPA believes that this tier would codify the present flexibility understood to be permitted in monitoring by encouraging permitting authorities and individual dischargers to determine unusual analytes of regulatory concern and to overcome matrix interferences. Method validation would consist of running four replicate tests in a single laboratory to establish single-laboratory performance data and applying the procedures given in the document titled Development of QC Acceptance Criteria to establish QC acceptance criteria for the method from the single-laboratory data.

2. Tier II—Validation of Single-Industry Methods

This tier would be applicable to discharges in a given industry by industrial category or subcategory. Categorical effluent guidelines limitations are promulgated at 40 CFR Parts 400–505. Method validation would consist of running tests of a minimum of one sample from a waste stream from three different facilities in three separate laboratories (a total of nine analyses) to establish laboratory performance data for the QC tests specified in this notice. These performance data would then be used to establish QC acceptance criteria using the document titled Development of QC Acceptance Criteria.

3. Tier III—Validation of Methods for Nationwide Use

Nationwide-use methods would be validated in one of two ways: (1) A classical interlaboratory study would be performed using study designs such as those used by EPA in past studies or by AOAC-International or ASTM and QC acceptance criteria would be developed using the traditional variance components analysis, or (2) a study design that attempts to include all variance components could be used. For example, QC acceptance criteria could be developed by running tests in waste streams from a minimum of nine industrial categories in nine separate laboratories (a total of nine analyses). One of the nine waste streams would be required to be from a publicly owned treatment works (POTW) to ensure coverage of this industrial category. Although the individual variance components would not be known, the overall variance could be estimated from the study. The advantage of this second approach is that the number of tests, and therefore the cost, is minimized. Further details of the use of these two approaches is given in the Development of QC Acceptance Criteria document made available with this notice. EPA seeks a public discussion of the utility of these two approaches.

In order to implement this tiered approach, it is likely that a new table or tables would be published in 40 CFR Part 136 to define the level of validation and use for a method as well as the specific discharge and industrial category for methods that would be proposed and promulgated at Tiers I and II.

As with the other aspects of this notice, EPA seeks a public discussion of this tiered approach and suggestions for other approaches that may be more efficient or less cumbersome. EPA is particularly interested in learning from the regulated community if this approach would aid in reducing monitoring costs and of overcoming matrix interferences. EPA is also particularly interested in learning if this approach would be cumbersome for permitting authorities to administer.

C. Submission Process

Under the system contemplated by this notice, new methods and methods manuals would be submitted to the Office of Science and Technology (OST) which would coordinate proposal of the method(s) under 40 CFR Part 136. The steps involved in developing and preparing a method for proposal are

outlined below. It should be stressed that the preparer should communicate closely with OST throughout this process to ensure that the method will be suitable for proposal at the end of the process.

1. Determination That Method Is New

The preparer should first determine whether the method is a new method or a modification of an existing method under the Agency's method flexibility initiative. The following sources should be consulted in making this determination:

- The FR/CFR reference that implements the system contemplated by this notice [citation].
- Technical Interpretation of Method Flexibility.
- Front-End Techniques that are Candidates for Method Modification under EPA's Method Flexibility Overture.
- Methods Considered Within the Scope of Existing Wastewater Methods Under the EMMC Performance-based Methods System.

2. Method Development

Once it has been determined that a new method is warranted, the method should be developed and documented using the following sources.

- Guidelines and Format for methods to be proposed at 40 CFR Part 136.
- Development of QC Acceptance Criteria.
- The FR/CFR reference that implements the system contemplated by this notice [citation]—Standardized Quality Control.

3. Preliminary Method Submission

Once the method has been written according to a standardized format, the preparer would document plans to validate the method, including a schedule. Section IV.B. Method Validation, should be consulted in planning for appropriate method validation.

4. Method Validation

After writing and initial testing, the preparer would proceed with method validation according to the documented plans. Based on data from the validation study, the method may need to be modified and a further validation study may be required. After completing the validation study(ies), the preparer would write a detailed validation report. EPA may, at a later date, develop the format and requirements for such a report.

5. Preparation of Draft Preamble

Once the method has been properly validated and the method and validation report are ready for submission, the preparer would develop a draft preamble for proposal of the method at 40 CFR Part 136. If the system contemplated by this notice is found to be desirable, a template for the draft preamble could be provided by EPA to assist the preparer.

6. Submission of Final Method, Validation Report, and Draft Preamble

The final method, validation report, and draft preamble would be sent to EPA. EPA would review these documents and communicate with the preparer regarding questions and to clarify any outstanding issues. EPA would then finalize the preamble, include the appropriate documents in the docket, and submit a proposal for inclusion of the method in 40 CFR Part 136 to the **Federal Register** for public comment.

7. Submission of Proprietary Methods or Methods Containing Proprietary Equipment or Substances

Under several statutes, EPA is prohibited from releasing materials marked as confidential business information (CBI) and has treated analytical methods as CBI when so marked. The Agency believes that the objective of promulgating analytical methods is for the full enjoyment by the public in making determinations of pollutants in the environment. Therefore, EPA believes that proprietary methods should not be included in part 136. However, EPA believes that proprietary equipment or substances used in methods should be maintained as confidential. For example, the liquid phases in gas chromatographic columns are usually known by their confidential name, such as DB–1, SPB-octyl, and Dexsil, although EPA also believes that the nature of proprietary equipment and substances eventually becomes known. EPA seeks a public discussion of whether or not confidential methods should be promulgated at 40 CFR Part 136, and whether the practice of including proprietary equipment and substances in methods should be continued, or if EPA should require identification of these equipment and substances.

V. Harmonization of Methods

A. Harmonization of 40 CFR Part 136 Methods With Other EPA Methods

The methods required for NPDES compliance monitoring are the 40 CFR Part 136 Methods. Although there are many similarities between the technical details of methods from other EPA programs and in other methods, it has not been acceptable to date to use another method for NPDES monitoring in place of a 40 CFR Part 136 Method. For instance, methods from the Office of Solid Waste SW–846 manual have not been acceptable. However, with the flexibility discussed in this notice, other methods may be permitted, provided that the requirements given in the method and discussed in this notice and its supporting documents are met. This includes the requirement that the determinative step and specificity are equivalent, and that the performance of the method is equal to or better than the performance of the Reference Method. The Reference Method must be a 40 CFR Part 136 method. The other methods can be EPA methods, methods from other organizations, or methods developed by a laboratory or other organization.

In addition to the allowance for use of other methods, if the requirements described in this notice are followed both in letter and in spirit, methods from several of EPA's analytical programs can be fused into a single method acceptable for use in compliance monitoring under the wastewater program and under the EMMC PBMS. For example, using the checklist described in this notice and detailed in the document titled Methods Considered Within the Scope of Existing Wastewater Methods Under the EMMC Performance-based Methods System (EMMC PBMS Guidance), and the analyte lists and QC acceptance criteria in the methods to be fused, EPA Superfund Contract Laboratory Program (CLP) Method OLM02.0, EPA Office of Groundwater and Drinking Water (OGWDW) Method 524.2, and Office of Solid Waste SW–846 Method 8260 can be made acceptable for use in the wastewater program as a front-end modification of Method 624.

The process consists of using the capillary column specified in methods OLM02.0, 524.2, and 8260; testing for all analytes listed in all methods, performing all performance tests in all methods; and meeting the most stringent of the QC acceptance criteria for each test in all methods. For acceptance in the wastewater program under this notice, it would be necessary to perform the standardized QC described above and meet the QC acceptance criteria in Method 624. In addition, and while operating under Method 624, it would be necessary to spike all analytes listed in the permit, and not just the subset of analytes required as the matrix spike in the CLP method. The spike would therefore be specific to the discharge. Alternatively, all analytes listed in Method 624 could be spiked. Further, if the spiked analytes are not recovered in the normal range (as specified in the QC acceptance criteria in Method 624), it would be necessary to analyze the QC check sample given in Method 624 to demonstrate that a matrix effect had or had not occurred, and that the laboratory was in control. All other performance requirements in Method 624 would also need to be met and the checklists in the EMMC PBMS Guidance would need to be completed to document the use of a front-end modification of Method 624.

B. Standardization of Methods Across Agency Programs

Under the auspices of EPA's EMMC, the various program offices are working to arrive at a single method that transcends Agency programs for the most commonly used methods. The first method being studied is a method for determination of volatile organics by purge and trap gas chromatography/mass spectrometry (GC/MS). If agreement between the program offices can be reached, this method will encompass the analyte lists and quality control requirements in EPA's Drinking Water, Wastewater, Solid Waste, and Remedial programs. Several possible approaches to the development of analyte lists and QC requirements for consolidated methods are being discussed within the Agency. One possible approach is to examine the QC specifications required by each program and include the most stringent requirements in the consolidated methods. Another possible approach is to re-develop analyte lists and QC specifications for the integrated methods; this approach would necessitate interlaboratory studies that could require extensive Agency resources. EPA seeks a public discussion concerning approaches towards integration of Agency methods.

VI. Other Streamlining Issues

A. Standardized Data Elements for Reporting

EPA is also considering standardized data elements for reporting, with an eye toward reporting of results on magnetic media and via electronic means. In certain of its programs, EPA has been accepting analytical data on magnetic media in precisely defined formats for more than 10 years. However, a more generalized format may have broader use. One such format is the Department of Energy Electronic Data Deliverable Master Specification (DEEMS). EPA seeks a public discussion as to whether the Agency should further pursue electronic formats for reporting data generated using the 40 CFR Part 136 methods.

B. Withdrawal of Outdated Methods

EPA is also considering withdrawal of methods that the Agency believes are obsolete or are no longer used. For example, 40 CFR 136, Table ID, footnote 3 references methods published in 1978 that include thin-layer chromatography (TLC) methods. EPA believes that TLC methods have been outdated by gas chromatography and high performance liquid chromatograph methods for the analytes to which the methods published in 1978 are applied. EPA is therefore considering a careful examination of Tables 1A through 1E of Part 136 for obsolete or outdated methods, and proposing removal of those methods for which newer methods are available.

C. Incorporation by Reference

It is EPA's intention to reduce the number of pages published in the **Federal Register** and the Code of Federal Regulations by incorporating proposed and promulgated methods, respectively, by reference. The approach is intended to reduce the expense of publication in the FR and CFR. EPA also believes that publication in these documents is unnecessary because analytical methods are esoteric in nature and, therefore, not of interest to the general public. In place of publication in the FR and CFR, copies of the methods would be made available through such outlets as the Government Printing Office, the EPA Water Resource Center, the National Technical Information Service, and through meetings such as the Pittsburgh Conference, the annual meeting of the Water Environment Federation, and EPA's Conference on Analysis of Pollutants in the Environment held annually in Norfolk, Virginia. EPA is also exploring distribution of the full text of the proposed and promulgated 40 CFR Part 136 methods on-line.

Consistent with this approach, EPA would also withdraw the 40 CFR 136 Appendix A methods from the CFR and would incorporate these methods by reference, thus reducing the number of pages of material published annually in the CFR by more than 240.

EPA will discuss this removal of methods from publication in the FR and CFR, the use of the Internet for distribution of methods, and other avenues of distribution that could be used to make methods more accessible to interested parties.

VII. Discussion of Information Contained in This Notice

EPA is particularly interested in eliciting constructive discussion that will allow the Agency to incorporate flexibility into existing methods and streamline proposal and promulgation of new methods under 40 CFR Part 136. On the other hand, EPA is interested in compelling reasons why such a program may not work, even with extensive built-in controls to assure that the results produced by modified or new analytical methods are reliable. At this juncture, the floor should be considered open for discussion. EPA looks forward to working with all interested and concerned parties to produce an improved system for methods approval under the 304(h) program.

Dated: September 1, 1995.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 95–22608 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 372

[OPPTS–400098; FRL–4972–8]

Zinc Oxide; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to delist zinc oxide from the zinc compounds category subject to the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This decision is based on evidence that zinc ion can become available from zinc oxide through several mechanisms and that zinc ion can reasonably be anticipated to be toxic to aquatic organisms.

FOR FURTHER INFORMATION CONTACT: Maria Doa, Petitions Coordinator, 202–260–5997, or e-mail: doa.maria@epamail.epa.gov, for specific information regarding this document. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll free TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Zinc oxide is a zinc compound reportable under the zinc compounds category provided in the initial EPCRA section 313 list of chemicals. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemical substances from the section 313 list (59 FR 61439, November 30, 1994).

II. Description of Petition and Relevant Regulations

On April 4, 1995, EPA received a petition from the American Zinc Association to delete zinc oxide from the compounds reportable under EPCRA section 313 under the zinc compounds category. The petitioner contends that zinc oxide is not the type of compound that should be reported under EPCRA section 313 because zinc compounds are "Generally Recognized as Safe by the Food and Drug Administration as: a dietary supplement (21 CFR 182.5991); a nutrient (21 CFR 182.5991); and a resinous/polymeric coating (21 CFR 175.300)." The petitioner adds that "zinc oxide has been used for decades as a skin ointment—e.g., for diaper rash—and protectant. * * *"

III. EPA's Technical Review of Zinc Oxide

The technical review of the petition to delete zinc oxide from the zinc compounds category focused on the available ecological and environmental fate data. Based on a review of these data, EPA has made the determination that there is sufficient evidence to reasonably anticipate that zinc ion may cause environmental toxicity and that zinc ion can become available in the environment from zinc oxide. The principal concern regarding zinc oxide is its toxicity to aquatic species and its ability to bioaccumulate. Several mechanisms have been identified by which zinc ion can become available in the environment from zinc oxide. For example, zinc ion may become available in the environment from zinc oxide via dissolution in aqueous solutions.

A. Chemistry

Pure zinc oxide (ZnO) is typically a white or yellow-white amorphous powder. Crystalline zinc oxide has a hexagonal crystal structure. Zinc oxide has a reported melting point in the range of 1970 °C to 1975 °C. Zinc oxide is produced by oxidizing zinc vapors in burners. The source of the zinc vapor is either impure zinc oxide or purified zinc metal. Zinc vapor generated from purified zinc metal will provide the highest purity zinc oxide (Refs. 1–4).

An important conversion in the environment is the conversion of zinc oxide to zinc hydroxide. Zinc hydroxide also dissociates in the environment to yield zinc ion. Below 39 °C, zinc oxide reacts slowly with water to form zinc hydroxide ($Zn(OH)_2$). The rate of conversion of zinc oxide to zinc hydroxide is dependent on various factors, the most important of which is temperature. Above 39 °C, ZnO is the stable form.

The reported water solubility of zinc oxide ranges from 1.6 milligrams per liter (mg/L) (29 °C) to 5 mg/L (25 °C). The two most common forms of zinc hydroxide are the amorphous form and the ε-Zn(OH)2 form. The reported water solubility of zinc hydroxide ranges from 2.92 mg/L (18 °C) to 15.5 mg/L (29 °C). These variations in solubility data are most likely due to variations in the solubility tests with respect to the form of zinc used, oxide or hydroxide (the amorphous form of zinc hydroxide is more soluble), pH, temperature, and experimental variability. The solubilities of zinc oxide and zinc hydroxide are at a minimum at pH 9.3. At this pH, the solubility of zinc hydroxide is 0.0822 mg/L for the amorphous form and 0.0041 mg/L for the $\epsilon\text{-}Zn(OH)_2$ form. Zinc oxide and hydroxide are insoluble in organic solvents, including alcohols and acetone (Refs. 3, 5-9).

Zinc oxide and hydroxide are amphoteric; they dissolve in acids to form salts and in alkalis to form zincates. Zinc oxide will dissolve in hydrochloric acid, for example, generating zinc chloride ($ZnCl_2$), a salt with appreciable water solubility (432 grams (g) $ZnCl_2$ dissolves in 100 g H_2O at 25 °C). Common zincates include $[Zn(OH)_4]^{-2}$ and $[Zn(OH)3]^{-}$. Zinc oxide also dissolves in ammonia generating the tetraligated complex, $[Zn(NH3)_4]^{+2}$. The conversion of zinc oxides to zinc salts is of importance because of the high solubility of many of the salts in water which would make the zinc ion available (Refs. 1, 2, 10, and 11).

Although zinc oxide may be poorly reactive under some conditions, it is reported that zinc oxide adsorbs carbon monoxide and carbon dioxide. Zinc oxide reacts with carbon dioxide in moist air generating zinc carbonates, in particular zinc oxycarbonate. The reported water solubility of zinc carbonate ranges from 0.01 grams per liter (g/L) (15 °C) to 0.7 g/L (18 °C) (Refs. 1 and 8).

Zinc oxide completely absorbs UV radiation below 366 nanometer (nm), and as a result, is used as a white pigment. A more common use for zinc oxide is as an accelerator, activator and stabilizer in rubber manufacture (Refs. 1 and 2).

B. Environmental Fate

The mechanisms that contribute most to the environmental fate of zinc oxide are dissolution, sorption, and precipitation, all of which are affected particularly by the pH of the media, but also by other factors including temperature. Unlike other zinc compounds (such as zinc sulfide), zinc oxide does not undergo significant microbial transformation.

1. *Water.* The solubility of zinc oxide at pH 7 and 29 °C is approximately 5 to 15 mg/L. Because zinc oxide is amphoteric, it is more soluble at pH values other than 7, particularly values less than 7. Above pH 7, zinc oxide and

zinc hydroxide will dissolve to form other zincates. These zinc compounds are also amphoteric; the availability of zinc ion from these compounds, therefore, is also dependent on their solubility and pH.

In water, zinc ion may associate or react with neutral or ionic compounds to form inorganic salts, stable organic complexes, or inorganic or organic colloids. The quantity of zinc ion available in water from each of these forms is dependent upon the solubility of these forms, pH, temperature, the total amount of the zinc form present in water, and the presence of other metal ions, organic compounds, and inorganic compounds.

Zinc ion will eventually adsorb to sediments. The extent to which this occurs is strongly dependent on pH, temperature, salinity, and the amount of zinc ion present. Below pH 5, minimal soil sorption is expected.

In wastewater treatment plants, zinc oxide is usually removed as a solid. Removal rates usually range up to 90 percent. Any solubilized zinc oxide will be released to surface water as zinc ion in solution with a counter anion in solution.

2. *Land*. The movement of zinc oxide in soils is strongly pH dependent. At pH 7, zinc ion will be available from zinc oxide in soils to the extent that the oxide is solubilized. If the pH falls below 7 in soils, leaching of zinc ion will increase due to the increased solubility of zinc oxide. Sorption of zinc ion to soils will be minimal at pH values less than 5. The sorption of zinc ion to soils, therefore, significantly decreases through a critical pH range of 7 to 5. Zinc ion not adsorbed to soils will eventually end up in the water column (Ref. 12).

3. *Air*. Zinc oxide may be present in the atmosphere in particulate form, originating primarily from dust from manufacturing and processing sites. Deposition of particulate zinc oxide by fallout or washout generally occurs in a short period of time in the vicinity of the emission source.

C. Toxicity Evaluation

EPA's review primarily addressed the environmental toxicity of zinc ion. There is sufficient evidence to indicate that zinc ion may cause environmental toxicity. Zinc ion can become available in the environment from zinc oxide through several mechanisms. Zinc ion can become available from dissolution of zinc oxide in aqueous solution, particularly at pH values between 5 and 7. Zinc ion can become available from the dissolution or reaction of zinc oxide to produce several products of varying solubility, such as zinc hydroxide (generated from the hydrolysis of zinc oxide); zincates (generated from the dissolution of zinc oxide or zinc hydroxide in alkaline solution); zinc salts (including zinc chloride, generated from the dissolution of zinc oxide in a hydrochloric acid solution); and zinc carbonates (generated from the reaction of zinc oxide with carbon monoxide or carbon dioxide in moist conditions).

Based on the availability of zinc ion, zinc oxide may cause adverse environmental effects. In terms of health effects, it should be noted that the predominant concern of most literature available on the toxicology of zinc ion deals with the effects of zinc ion deficit rather than excess. Zinc is classified as an essential nutrient. The National Academy of Science recommends a dietary allowance of 0.21 mg elemental zinc per kilogram per day (kg/day). Zinc is also an essential nutrient to aquatic and terrestrial organisms; it is involved in the synthesis of nucleic acids and enzymes.

Environmental effects (Refs. 13 and 14). By whatever route available, zinc ion exhibits high toxicity to aquatic organisms. This conclusion is based on a substantial amount of information available for zinc ion which includes acute toxicity values lower than 100 parts per billion (ppb), and bioconcentration values higher than 1,000. Numerous studies indicate that zinc ion also has a high chronic toxicity.

a. *Aquatic toxicity*. The available evidence indicates that zinc ion is highly toxic to aquatic organisms and has a high potential to bioaccumulate.

In natural waters, zinc ion occurs in both suspended and dissolved forms. It can exist as a simple hydrated ion; as various inorganic salts; in stable organic complexes; or adsorbed into or occluded in, inorganic or organic colloids. The quantity of zinc ion available from each of these forms is dependent upon pH, temperature, and the total amount of the zinc form present in water, and the presence of other metal ions or organic and inorganic compounds. Zinc is eventually partitioned into sediments. Zinc ion bioavailability from sediments is enhanced under conditions of high dissolved oxygen, low salinity, low pH, and high levels of humic substances. Zinc ion remaining in sediments may be toxic to or bioaccumulate in sediment organisms.

The levels of acute toxicity for zinc ion to various fish and invertebrates range from 40 ppb to 58,100 ppb. This wide range is partially due to the hardness of the water used in the studies; generally as water hardness increases the acute toxicity of zinc ion decreases. The 96–hour LC_{50} (median lethal concentration) for rainbow trout in a flow-through system was 93 ppb. The 96–hour LC_{50} for cutthroat trout was 90 ppb. The 48–hour LC_{50} value for a daphnid species was 40 ppb. Acute toxicity EC_{50} values of 40 and 100 ppb were noted in daphnids.

Numerous other acute tests have been conducted on estuarine and marine invertebrates and fish. EC_{50} values of 310 ppb and 166 ppb were calculated by testing oysters and hard shelled clams, respectively. EC_{50} values for a copepod, mysid shrimp, lobster, and hermit crab were 210 ppb, 498 ppb, 175 ppb, and 400 ppb, respectively. Estuarine and marine fish were less sensitive to zinc ion than invertebrates. The LC_{50} values ranged from 2,730 ppb for larvae of Atlantic silversides to 83,000 ppb for larvae of mummichog.

Zinc ion exhibits high chronic toxicity in the aquatic environment. The maximum acceptable toxicant concentration (MATC) in soft water was 36 to 71 ppb for rainbow trout fry (hatching from unexposed eggs). The MATC for fathead minnows, based on spawning and hatching success and fry survival, in hard water (200 mg/L as $CaCO_3$) was 30 to 180 ppb. The MATC for this fish in soft water was 78 to 145 ppb.

In invertebrates (*Daphnia magna*), reproduction was impaired by 10 percent after a 21–day exposure to 70 ppb zinc ion. Cell growth was inhibited in algae (*Selenastrum capricornutum*) after exposure for 7 days at a concentration of 30 ppb, and the EC_{95} for growth after exposure for 14 days was 68 ppb.

Marine algae are very sensitive to zinc. Growth was inhibited in kelp (*Laminaria hyperiborea*) at 100 ppb and in algae (*Skeletonema costatum*) at 50 ppb. Cell numbers decreased in three species of marine algae, *Gymnodinium splendens, Schroderella schroederi, and Thalassiosira rotula*, at 100 ppb, 50 ppb, and 100 ppb, respectively.

b. *Bioaccumulation*. Zinc ion can reasonably be anticipated to bioaccumulate in aquatic organisms. Bioconcentration factors (BCFs) of 1,130 and 432 were noted in mayflies and flagfish, respectively. BCFs for marine algae (*Cladophora and Fucus serratus*) and oysters were noted to be 4,680, 16,600, and 16,700, respectively.

D. Technical Summary

The technical review of the petition to delete zinc oxide from the zinc compounds category focused on the ecological and environmental fate data. Based on a review of these data, EPA has made the determination that there is

sufficient evidence to reasonably anticipate that zinc ion may cause environmental toxicity and that zinc ion can become available in the environment from zinc oxide. The principle concern regarding zinc oxide is its toxicity to aquatic species and its ability to bioaccumulate. Several mechanisms have been identified by which zinc ion can become available in the environment from zinc oxide (see Unit III.A. and B. of this preamble). Zinc ion may become available in the environment from zinc oxide via dissolution in aqueous solutions particularly between the pH range of 5 and 7.

IV. Rationale for Denial

EPA is denying the petition submitted by the American Zinc Association to delete zinc oxide from the reporting requirements under the zinc compounds category of the EPCRA section 313 list of toxic chemicals. This denial is based on: (1) The Agency's conclusion that zinc ion can become available from zinc oxide, and (2) the determination that there is sufficient evidence to indicate that zinc ion causes aquatic toxicity. Several mechanisms have been identified where zinc ion can become available in the environment from zinc oxide, particularly dissolution in aqueous solutions.

Additionally, zinc oxide and zinc hydroxide may dissolve in acids or alkalis to form salts or zincates, respectively. Many zinc salts are particularly water soluble, allowing another pathway by which zinc ion may become available. Due to these mechanisms, which may result in the availability of zinc ion from zinc oxide, zinc oxide contributes to the overall loading of zinc ion to the environment.

EPA has determined that zinc ion can reasonably be anticipated to cause a significant adverse effect on the environment of a sufficient seriousness to warrant continued reporting of zinc oxide under EPCRA section 313 because of zinc ion's high toxicity to aquatic organisms and its tendency to bioaccumulate in the environment. Concern regarding these effects are in accordance with the criteria in EPCRA section 313(d)(2)(C). Because zinc oxide can reasonably be anticipated to be highly ecotoxic and induce well-established serious adverse effects, EPA does not believe that an exposure assessment is necessary to make the determination required by EPCRA section 313(d)(2)(C).

In reference to the petitioner's contention that zinc oxide should not be included on the EPCRA section 313 list because zinc compounds are "Generally Recognized as Safe by the Food and Drug Administration," EPA is not persuaded that this is a sufficient basis for removing zinc oxide from the list. While EPA agrees that zinc is classified as an essential nutrient and, in terms of human health effects, the predominant concern cited in most of the available literature deals with the effects of zinc ion deficit rather than excess, this is not the whole picture. EPA, in making its listing decisions under section 313 of EPCRA, considers a different set of issues than those addressed by FDA in its regulatory decisions. Specifically, EPA considers the potential for adverse impacts on the environment, as well as those on human health. As indicated by the regulatory citations provided by the petitioner in support of its contention, FDA's focus is on human health effects. In the particular case of zinc oxide, EPA's decision to deny the petition to delist is based on the environmental impacts of the chemical.

V. References

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(4) Dean, J.A., ed., Lange's Handbook of Chemistry, 13th ed., McGraw-Hill, pp. 4–131, New York (1985).

(5) ATSDR, Toxicological profile for zinc. US Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, p. 109 (1994).

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(8) Linke, W.F., Solubilities of Inorganic and Metal-Organic Compounds, D. Van Nostrand Co., Inc., Princeton (1958).

(9) Pourbaix, M., Atlas of Electrochemical Equilibria in Aqueous Solutions, National Association of Corrosion Engineers, pp. 406–413, Houston (1974).

(10) Cotton, F.A. and Wilkenson, G., Advanced Inorganic Chemistry, A Comprehensive Text, 2nd ed., John Wiley Sons, pp. 604–608, New York (1986).

(11) Pauling, L., General Chemistry, 3rd ed., Freeman and Company, San Francisco (1970).

(12) Bodek, I., Environmental Inorganic Chemistry, Properties, Processes, and Estimation Methods, Pergamon Press, pp. 7.15/1–7.15/11, New York (1988).

(13) USEPA/OPPT, Smrchek, Jerry C., Petition to Delist Zinc Sulfide-Hazard Review dated March 28, 1990.

(14) USEPA/OPPT, Meyn, Ossi, Petition to Delist Zinc Oxide dated June 21, 1995.

VI. Administrative Record

The record supporting this decision is contained in docket number OPPTS–400098. All documents, including an index of the docket, are available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as the Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: September 1, 1995.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–22618 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–53; RM–8613]

Radio Broadcasting Services; Eugene, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Commission denies the request of Conway Broadcasting to allot Channel 265A to Eugene, Oregon, as the community's fifth local FM service. *See* 60 FR 11644, March 2, 1995. The Commission found that Channel 265A cannot be allotted to the community in compliance with the Commission's technical requirements. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–53, adopted August 30, 1995, and released September 7, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22570 Filed 9–11–95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Southern Population of Walleye as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the southern population of walleye (*Stizostedion vitreum*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service finds that listing this species is not warranted at this time.

DATES: The finding announced in this document was made on September 1, 1995.

ADDRESSES: Data, information, comments, or questions pertaining to this petition should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Jackson Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. The petition finding, supporting data, and comments are available for public inspection, by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Ron Larson at the above address (601–965–4900, ext. 27).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, the Service make a finding within 12 months of the date of the receipt of the petition on whether the petition action is: (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the **Federal Register**.

On August 22, 1994, the Service received a petition dated August 20, 1994, from Mr. Robert R. Reid, Jr., of Birmingham, Alabama, to emergency list the southern population of walleye (*Stizostedion vitreum*) as endangered. The Service made a 90-day finding, concluding that the petition and Service files contained substantial information indicating that the requested action may be warranted. An announcement of that finding was published in the **Federal Register** on March 13, 1995 (60 FR 13397). A status review was initiated on March 13, 1995, and the public comment period was open between March 13, and May 12, 1995.

The Service has reviewed the petition, literature cited in the petition, information received by the Service during the comment period, other available literature and information, and consulted with biologists and researchers familiar with the southern population of walleye. On the basis of the best scientific and commercial information available, the Service find that listing is not warranted at this time. The status review revealed that the southern population of walleye has likely declined; however, convincing data on biological vulnerability and range-wide threats are not available to support a proposed rule for listing at this time.

Information obtained during the status review indicated that native walleye historically occurred in the lower Mississippi and Pearl rivers in Mississippi; in all eight Mobile Basin drainages in Alabama, Georgia, Mississippi, and in a small area of Tennessee; and in the Escambia River of Alabama (Brown 1962, Schultz 1971, Hackney and Holbrook 1978, Moss *et al.* 1985, Mettee *et al.* 1989a, 1989b). Genetic analyses, based on protein electrophoresis and mitochondrial-DNA, have demonstrated that the walleye native to the Mobile Basin is distinctive (Wingo 1982, Murphy 1990, Billington *et al.* 1992, Billington and Strange in press). This population, herein referred to as the "southern walleye," is currently known from seven Mobile Basin (Basin) drainages. The southern walleye is a large freshwater fish that reaches weights of 2 pounds (4 kg) or more (Schultz 1971, Moss *et al.* 1985). Southern walleye occur mostly in rivers and larger streams, but they may also occur in impoundments and channelized rivers. They are migratory and move upstream, or into smaller streams in winter and early spring, to spawn on clean sand and gravel substrates (Schultz 1971, Kingery and Muncy 1988).

Southern walleye populations appear to be small. In fish surveys, they often comprise less than one percent of a collection (Brown 1962, Schultz 1971). However, adult walleye are frequently found in deep holes and associated with submerged logs; habitats that are not readily sampled. Based on what appear to be spawning runs, there are at least five potential spawning areas located throughout the Basin, but considering the walleye's extensive distribution, additional spawning sites are likely.

The status review disclosed that the southern walleye has likely declined in population size and distribution owing to considerable habitat modification that has occurred over much of its range. Locks and dams block or restrict walleye movement and may inundate historic spawning habitat. Additional habitat has been altered by channelization, desnagging, gravel mining, and headcutting. Local declines in water quality from point and nonpoint source pollution also may affect stream reaches occupied by walleye. Angling may reduce reproduction in Alabama because mature fish are caught when concentrated at spawning sites.

Some of the major threats, *e.g.*, dam construction, channelization, and water pollution, appear to have recently stabilized. Illegal gravel mining remains a problem in several coastal plain areas because of inadequate detection and enforcement. Headcutting continues to be a threat in areas such as the upper Tombigbee where geomorphic instability has resulted from channelization, gravel dredging, and other channel modifications (Hartfield 1992). However, these problems are localized in relatively small portions of the southern walleye's known and potential range within the Basin. The review identified several potential threats to two spawning sites, but there was insufficient data to infer that other spawning areas are threatened.

Despite these identified threats, the Service found that an accurate assessment of the current status and population trends of the southern walleye was not possible due to a lack of recent and historic information on populations (*e.g.*, distribution and abundance within drainages), and number, location, and condition of spawning sites. The status review identified only one comprehensive report on the walleye's status (Schultz 1971), and that report covered only a small portion of the species' range.

The Service believes that the southern walleye is still sufficiently abundant that timely management and conservation efforts can improve its status. Attempts by the State of Mississippi to enhance southern walleye populations by closing fishing and operating an experimental walleye hatchery are meritorious. Similar efforts by other states could enhance southern walleye populations throughout its range.

The Service will retain the southern walleye as a species of concern and continue to seek information on the species and monitor its status. If additional data become available, the Service may reassess the need for listing and propose listing as necessary.

Further details regarding the biological status of the species are contained in the administrative finding, which can be obtained by contacting the office indicated in the **ADDRESSES** section of this notice.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Jackson Field Office (see **ADDRESSES**).

Author

The primary author of this document is Dr. Ron Larson, Jackson, Mississippi, Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 1, 1995.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 95–22624 Filed 9–11–95; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Availability of Reports and Other Data Pertaining to the Listing of the Bruneau Hot Springsnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, opening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that reports and other data pertaining to the listing of the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) are available to the public. Specifically, the Service is seeking public comment on a U.S. Geological Survey report and other reports and data received since the listing of the springsnail. In addition, the Service solicits any other information relevant to determining whether the springsnail should be listed as an endangered species. The Service opens the public comment period until November 13, 1995.

DATES: The comment period is open until November 13, 1995. Any comments and materials received by the closing date will be considered in the final determination.

ADDRESSES: Comments and materials concerning the reports and other information pertaining to the listing of the Bruneau hot springsnail should be submitted to the U.S. Fish and Wildlife Service, Snake River Basin Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. Reports and other data cited in this notice, and public comments and other materials received will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the address listed above (telephone 208/334–1931, facsimile 208/334–9493).

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1993, the U.S. Fish and Wildlife Service (Service) published a final rule in the **Federal Register** determining the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) to be an endangered species (58 FR 5946). In its decision to the list the springsnail the Service relied, in part, on a provisional draft of a U.S. Geological Survey (USGS) report (Berenbrock 1992) analyzing the hydrology of the geothermal aquifer in the Bruneau Valley area. The USGS provided the Service with the draft report, but did not release it to the public and requested that the Service not release the report to the public, pending agency review and approval.

On May 7, 1993, the Idaho Farm Bureau Federation, Owyhee County Farm Bureau, Idaho Cattleman's Association, and Owyhee County Board of Supervisors challenged the listing decision on several grounds in a lawsuit filed in United States District Court for the District of Idaho. The plaintiffs argued that the Service committed a number of procedural violations during the listing process, including not allowing the public to review the draft USGS report. On December 14, 1993 the district court determined that the Service committed several procedural errors and set aside the final rule listing the springsnail as an endangered species.

The district court decision was appealed to the United States Court of Appeals for the Ninth Circuit by two intervening conservation groups, the Idaho Conservation League and Committee for Idaho's High Desert. On June 29, 1995 the appellate court overturned the district court decision and reinstated the Bruneau hot springsnail to the endangered species list. However, the appellate court concluded that the Service should have made the draft USGS report (i.e., Berenbrock 1992) available for public review, as the Service relied largely on this report to support the final listing rule. The appellate court directed the Service to provide an opportunity for public comment on the USGS report and other relevant information, and to reconsider its listing decision. This notice of availability complies with the court's direction.

Available Reports and Data

In addition to the draft USGS report, which was finalized in August 1993 (i.e., Berenbrock 1993), the Service has additional reports and information pertinent to the listing decision received since the original listing rule was published January 25, 1993. The following information contained in

Service files is available for public review and comment:

Berenbrock, C. 1992. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, southwestern Idaho. U.S. Geological Survey, Water-Resources Investigations, Boise, Idaho. Preliminary report.

Berenbrock, C. 1993. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, southwestern Idaho. U.S. Geological Survey, Water-Resources Investigations Report 93-4001, Boise, Idaho.

Bruneau Valley Coalition, Inc. 1995. Habitat maintenance and conservation plan for the Bruneau hot springsnail, January, 1995. Unpublished plan.

Bruneau Valley Coalition, Inc. 1995. Proposed amendment to the "Threatened and Endangered Species" section of the Interim Comprehensive Land Use Plan for the federally and state managed lands in Owyhee County. Unpublished amendment.

Idaho Water Resources Research Institute. 1994. Bruneau hot springs aquifer restoration report: a preproposal. Unpublished report, University of Idaho, Moscow, Idaho.

Lee, J. A. 1994. Summary report for the control survey of the Bruneau hot springsnail. Unpublished report, Bureau of Land Management, Boise District Office, Boise, Idaho.

Mladenka, G. C. 1993. Report on the 1993 Bruneau hot springsnail site survey. Unpublished report.

Mladenka, G. C. 1995. Bruneau Hot Springs invertebrate survey. Unpublished report, Stream Ecology Center, Idaho State University, Pocatello, Idaho.

Royer, T. V. and G. W. Minshall. 1993. 1993 Annual Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Unpublished report, Stream Ecology Center, Idaho State University, Pocatello, Idaho.

U.S. Geological Survey. 1995a. Unpublished letter summarizing results of Bruneau-area ground water-level and spring discharge monitoring data through December 1994. Boise, Idaho.

U.S. Geological Survey. 1995b. Unpublished letter commenting on Idaho Water Resources Research Institute's report and summarizing provisional, spring discharge data collected from June 1994 through July 1995 from three hot springs above Hot Creek, Idaho.

Varricchione, J. T. and G. W. Minshall. 1995. 1994 Monitoring Report: Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). Technical Bulletin No. 95-14, Idaho Bureau of Land Management.

Varricchione, J. T. and G. W. Minshall. 1995. Gut content analysis of wild *Gambusia* and *Tilapia* in Hot Creek, Bruneau, Idaho. Unpublished report, Idaho State University, Pocatello, Idaho.

Authority

The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531–1544.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 1, 1995.

Thomas J. Dwyer,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 95-22586 Filed 9-11-95; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[RIN 1018–AD11]

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Public Hearing on Proposed Endangered Status for Three Wetland Species in Southern Arizona and Northern Sonora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: The U.S Fish and Wildlife Service (Service) gives notice that a public hearing will be held and the comment period reopened on the proposed rule to list two plants, Canelo Hills ladies'-tresses (*Spiranthes delitescens*) and Huachuca water umbel (*Lilaeopsis schaffneriana* spp. *recurva*), and one amphibian, the Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*) as endangered. The hearing and the reopening of the comment period will allow all interested parties to submit oral or written comments on the proposal.

DATES: The public hearing will be held from 7 p.m. to 10 p.m. on September 27, 1995, in Sierra Vista, Arizona. The comment period for this proposal will be reopened on September 11, 1995 and will close on October 27, 1995. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on the proposal.

ADDRESSES: The public hearing will be held at the Buena Performing Arts Center, Buena High School, 5225 Buena School Boulevard, Sierra Vista, Arizona. Written comments should be sent to the State Supervisor, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Humphrey, at the above address, 602/640–2720.

SUPPLEMENTARY INFORMATION:

Background

Canelo Hills ladies'-tresses, Huachuca water umbel, and the Sonora tiger salamander occur in a limited number of wetland habitats in southern Arizona and northern Sonora, Mexico. They are threatened by one or more of the following—collecting, disease, predation, competition with nonnative species, catastrophic floods, drought, and degradation and destruction of habitat resulting from livestock overgrazing, water diversions, dredging, and groundwater pumping. All three taxa are also threatened with stochastic extirpations or extinction due to small numbers of populations or individuals. A proposed rule to list these species as endangered was published in the **Federal Register** (60 FR 16836) on April 3, 1995.

Pursuant to 50 CFR 424.16(c)(2), the Service may extend or reopen a comment period upon finding that there is good cause to do so. Full participation of the affected public in the species listing process, allowing the Service to consider the best scientific and commercial data available in making a final determination on the proposed action, is deeded as sufficient cause.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearings or mailed to the Service. Legal notices announcing the dates, times, and locations of the hearings will be published in newspapers concurrently with the **Federal Register** notice.

Previous comment periods on this proposal closed on June 2, 1995 and July 24, 1995. In order to accommodate this additional hearing, the Service reopens the public comment period. Written comments may now be submitted until October 27, 1995, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Jeffrey A. Humphrey (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544 *et seq.*).

Dated: September 8, 1995.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95-22794 Filed 9-11-95; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 950810-206-5224-02; I.D. 082395A]

RIN 0648–AG29

Reef Fish Fishery of the Gulf of Mexico; Amendment 11

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 11 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 11 proposes to revise the framework procedure for modifying management measures, change the definition of optimum yield (OY), restrict the sale/purchase of reef fish harvested from the exclusive economic zone (EEZ) to permitted reef fish vessels/dealers, allow transfer of reef fish permits and fish trap endorsements under specified circumstances, implement a new reef fish permit moratorium, and require charter vessel and headboat permits. NMFS, based on a preliminary evaluation of Amendment 11, has disapproved three of the measures in the amendment because they are inconsistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act). The proposed rule would implement the remaining measures in Amendment 11. The intended effects of the proposed rule are to improve procedures for timely management, relieve restrictions and hardships, and enhance enforceability of the regulations.

DATES: Written comments must be received on or before October 27, 1995.

ADDRESSES: Comments on the proposed rule must be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 11, which includes an environmental assessment, a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA), should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Michael E. Justen or Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Act.

Minor Revisions to the FMP's Procedure

The Council has proposed editorial changes to the FMP's annual procedure for specifying total allowable catch (TAC) to reflect its current practice of Socioeconomic Panel review of the annual stock assessments. The Council also proposes to specify in the procedure that the recovery period will be set by the Council, not the Stock Assessment Panel. These changes are described in Amendment 11 and are not repeated here.

Allowance for TAC to Exceed Allowable Biological Catch

The Council has proposed to modify the language of the procedure to allow TAC to exceed the allowable biological catch (ABC) level specified for stocks not assessed as overfished. The purpose of this measure is to allow a digression from maintaining TAC at or below ABC when necessary to address short-term economic or social concerns. The Council's intent is to ease restrictions in setting TAC, and to make the FMP consistent with similar language in the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic.

This measure does not have any time constraints or upper limits for the digression. Application of this approach is risk prone in that it would not assure the prevention of overfishing before the Council could take corrective action. Therefore, NMFS has determined that this measure is inconsistent with National Standard 1 of the Magnuson Act. Accordingly, the Director, Southeast Region, NMFS (Regional Director), finds that this provision must be disapproved under the Magnuson Act and has not included it in this proposed rule.

Biological Generation Time

The FMP's procedure provides for specification of a recovery period for each stock up to 1.5 times the biological generation time. The "biological generation time" specified in the FMP is equal to the age at which the average female achieves half of her expected lifetime egg production. Recovery periods longer than 1.5 times the biological generation time may be proposed by amendment to the FMP.

The Council is proposing to increase the upper limit for specification of the recovery period for red snapper from 1.5 to 2.0 times the biological generation time, or other biologically based recovery period developed by the Reef Fish Stock Assessment Panel, Socioeconomic Panel, Scientific and Statistical Committee, and Advisory Panel and approved by the Council. The upper limit of 2.0 times the biological generation time equates to a maximum recovery target year of 2017, assuming a biological generation time for red snapper of 13.6 years (with a natural mortality rate estimate of $M = 0.2$).

The Council selected this alternative because many fishermen are heavily dependent on red snapper, and the increased flexibility will allow greater consideration of social and economic considerations in the recovery schedule for this species.

Given the known overfished state of the red snapper stock, this change increases the chances of a stock collapse in the event of one or more year class recruitment failures rather than assuring the prevention of overfishing. Accordingly, NMFS has determined that this measure is inconsistent with National Standards 1 (prevention of overfishing) and 2 (best available scientific information). Accordingly, the Regional Director finds that this provision must be disapproved under the Magnuson Act and therefore has not included it in this proposed rule.

Changes to the FMP's Definition of Optimum Yield

The current definition of OY is to stabilize long-term population levels of all reef fish species by establishing a certain survival rate of biomass into the stock of spawning age to achieve at least 20 percent spawning potential ratio (SPR). The Council considered several OY definitions based on the recommendation of the SPR Strategy Committee that OY should not be the same as the definition of overfishing. The Council proposes to set OY based on an SPR level corresponding to $F_{0.1}$ until an alternative operational definition that optimizes ecological, economic, and social benefits to the Nation has been developed by Reef Fish Stock Assessment Panel, Socioeconomic Panel, Scientific and Statistical Committee, and Reef Fish Advisory Panel, and approved by the Council. Under current management conditions, SPR at $F_{0.1}$ is approximately 34 percent for red snapper, 46 percent for red grouper, and 48 percent for gag.

The proposed management regime sets OY for each stock based on a spawning potential ratio (SPR) level corresponding to $F_{0.1}$ until an alternative operational definition that optimizes ecological, economic and social benefits to the Nation has been developed. However, the Southeast Fisheries Science Center (SEFSC) has determined that the analysis underlying this OY definition is incomplete. For example, the Council's document failed to address the relationship between this formula and the issues of bycatch and minimum size. A complete analysis of the impact of bycatch and minimum size on the formula would reveal extreme ranges in SPR targets from year to year, causing significant instability in the fishery. Without a thorough review of the impacts of this proposed OY definition, this information cannot be considered the best scientific information available. Therefore, NMFS has determined that this measure is inconsistent with National Standard 2. Accordingly, the Regional Director finds that this provision must be disapproved under the Magnuson Act and it is not included in this proposed rule.

Use of $F_{0.1}$ to define OY also would be inconsistent with National Standard 1. Under National Standard 1, the most important limitation on the specification of OY is that the choice of OY, and the conservation and management measures designed to achieve it, must prevent overfishing. Since use of $F_{0.1}$ is not appropriate for the reef fish fisheries, there is no assurance that the choice of OY and the conservation and management measures selected to achieve OY will actually prevent overfishing.

Restrictions on Reef Fish Transactions

To ensure that catches of reef fish are properly tracked, the sale of reef fish harvested by a vessel with a Federal commercial permit would be allowed only to a federally permitted dealer. A federally permitted dealer would be allowed to purchase reef fish harvested in the EEZ only from a vessel with a Federal commercial reef fish permit. These requirements would: (1) Improve quota monitoring by providing a census of reef fish dealers; (2) enhance the enforceability of the dealer and vessel permit requirements; and (3) aid in verifying required vessel logbook submissions.

Transfer of Fish Trap Endorsements

Currently, transfer of a fish trap endorsement is allowed upon change of ownership of a vessel with a fish trap endorsement from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. No provisions are made for permanent or temporary transfers of fish trap endorsements when a vessel with such endorsement has a change of ownership that is directly related to the disability or death of the owner. The Council has learned of hardships that have resulted from the non-transferability of fish trap endorsements upon the disability or death of the vessel owner. To alleviate such hardships, the Council proposes that the Regional Director have authority to transfer or revise the fish trap endorsements, either temporarily or permanently, upon the disability or death of such owner. Transfer/revision would be in accordance with instructions of the owner or his/her legal guardian, in the case of a disabled owner, or of the will or executor of the estate, in the case of a deceased owner.

One-time Transfer of Fish Trap Endorsements

The regulations implementing Amendment 5 (59 FR 966, January 7, 1994) established a fish trap endorsement to the vessel permit that allowed use of fish traps by certain fishermen and established a 3-year moratorium on the issuance of additional endorsements, effective February 7, 1994. To qualify for the endorsement, persons must have had logbook records of landings of reef fish from traps during the period 1991 through November 19, 1992. Some persons who had invested in gear and vessels to participate in the trap fishery, but had not participated prior to November 19, 1992, were denied the privilege of fishing in that fishery. Amendment 11 would allow a one-time transfer of fish trap endorsements in effect on September 12, 1995, to vessels with a commercial vessel permit whose owners have a record of landings of reef fish from traps in the EEZ, as reported on fishing vessel logbooks received by the Science and Research Director from November 20, 1992, through February 6, 1994. The proposed transfer of current endorsements, some of which are not being used to fish traps, would provide the opportunity to participate in the fish trap fishery for the duration of the moratorium to persons who entered the fishery without being aware of the impending moratorium and were subsequently excluded.

Moratorium on Reef Fish Commercial Vessel Permits

The current moratorium on issuance of new commercial vessel permits in the reef fish fishery is scheduled to end on December 31, 1995. Amendment 11 proposes a new moratorium while the Council considers limited access for the reef fish fishery. Commercial permits under the new moratorium would be restricted initially to vessels whose permits are eligible for renewal on December 31, 1995. Under the proposed new moratorium, an owner whose earned income qualified for the permit may transfer the permit to the owner of another vessel or to a person purchasing the commercially permitted vessel. Such new owner may receive a commercial permit for that vessel, and renew it for the first calendar year after obtaining it, without meeting the earned income requirement. However, to renew the commercial vessel permit for the second calendar year after the transfer, the new owner must meet the earned income requirement not later than the first calendar year after the vessel acquires the permit.

The proposed moratorium would continue for up to 5 years, that is, through not later than December 31, 2000, while the Council considers a permanent limited access system for the reef fish fishery. Section 303 of the Magnuson Act provides that the Council may establish a system for limiting access to the fishery in order to achieve OY if, in developing such system, the Council takes into account several factors. As the proposed moratorium has implications of limited access, Amendment 11 contains the Council's determinations on those factors.

Charter Vessel and Headboat Permits

Currently, permits are required to operate as charter vessels or headboats

in the EEZ under the FMP for coastal migratory pelagic resources, but not for reef fish. Amendment 11 proposes that reef fish charter vessels and headboats be required to obtain annual permits. Such permits would aid in monitoring this segment of the fishery and in identifying vessels that may qualify for the 2 day possession limit applicable to charter vessels and headboats under certain conditions. Other benefits include: Use of permit sanctions for curbing the activities of repeat offenders, efficient deployment of enforcement resources, and improvement of basic statistics for use in assessing impacts of alternative regulations.

The Council suggested that, as a criterion for charter vessel/headboat permits, such vessels must possess the appropriate licenses required by the state from which it operates. All of the Gulf states have license requirements. NMFS concurs with the aim of ensuring compatibility of state and Federal requirements in this regard, but finds this suggestion to be unnecessarily burdensome. To put it into effect, the Regional Director would have to know and apply the licensing requirements of each of the five Gulf states. In lieu of such criterion, the Regional Director will periodically advise the appropriate authorities of each state of charter vessel/headboat permits issued for vessels of that state. Each state may then take appropriate action under its authority.

The Council wishes to advise charter vessel and headboat owners and operators that income requirements may be considered as a criterion for charter vessel/headboat permits in a future amendment to the FMP.

Availability of Amendment 11

Additional background and rationale for the measures discussed above are contained in Amendment 11, the availability of which was announced in the **Federal Register** (60 FR 45392, August 31, 1995).

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an amendment and regulations. At this time, NMFS has not determined that Amendment 11 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws, except for those parts of Amendment 11 specifically disapproved, as discussed above. NMFS, in making that determination with respect to the remaining parts of Amendment 11, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA as part of the RIR, which describes the impacts this proposed rule would have on small entities, if adopted. The impacts are summarized as follows:

All of the commercial and charter vessel/headboat businesses are small entities that would be affected by one or more of the actions in the proposed rule. In terms of revenues and costs:

(1) The restrictions on reef fish transactions between permitted vessels and permitted dealers would marginally decrease revenues and increase costs; (2) the reduction of restrictions on transfer of fish trap endorsements would increase revenues to fish trappers; (3) the charter vessel/headboat permit requirement would increase costs for that sector; and (4) the new permit moratorium would affect the revenues of current commercial operators in a positive manner relative to the status quo.

Under the status quo, the current permit moratorium would cease and a larger number of entrants to the fishery would be expected. This would tend to decrease the revenues of current participants by more than 5 percent, although neither the number of new entrants nor their combined levels of efforts can be estimated. Hence, the new moratorium can be considered to have a positive effect on revenues greater than 5 percent. No entities are expected to be forced to cease operations. A copy of the IRFA is available from the Council (see **ADDRESSES**).

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. This requirement has been submitted to OMB for approval. Specifically, applications would be required for charter vessel/headboat permits. The public reporting burden for this collection of information is estimated to average 20 minutes per response. This rule revises the collections of information relating to applications for commercial vessel permits and applications for fish trap endorsements, which are currently approved under OMB Control No. 0648–0205 and have public reporting burdens estimates of 20 minutes per response, each. Their reporting burden estimates are unchanged. This rule repeats the collection of information requirement for dealer permits, which is currently approved under OMB Control No. 0648–0205 and has a public reporting burden estimate of 5 minutes per response. Each of the above reporting burden estimates includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding any of these reporting burden estimates or any other aspects of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 6, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.4, paragraphs (o) and (p) are removed; paragraphs (a) and (b), the first sentence of paragraph (f)(1), the first sentence of paragraph (h), paragraphs (m) and (n) are revised to read as follows:

§ 641.4 Permits and fees.

(a) *Applicability*—(1) *Commercial vessel permits.*

(i) As a prerequisite to selling reef fish in or from the EEZ and to be eligible for exemption from the bag limits specified in § 641.24(b) for reef fish in or from the EEZ, an annual commercial vessel permit for reef fish must be issued to the vessel and must be on board. However, see paragraph (m) of this section regarding a moratorium on commercial vessel permits.

(ii) To obtain or renew a commercial vessel permit, the owner or operator of the vessel must have derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, or from charter or headboat operations during either of the 2 calendar years preceding the application. (See paragraph (m)(3) of this section for a limited exception to this requirement.) For a vessel owned by a corporation or partnership, the earned income requirement must be met by an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator. A commercial vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(iii) A qualifying owner or operator of a charter vessel or headboat may obtain a commercial vessel permit. However, a charter vessel or headboat must adhere to the bag limits when operating as a charter vessel or headboat.

(2) *Fish trap endorsements.* To possess or use a fish trap in the EEZ, a commercial vessel permit for reef fish with a fish trap endorsement must be issued to the vessel and must be on board. However, see paragraph (n) of this section regarding a moratorium on fish trap endorsements. In addition, a color code for marking the vessel and trap buoys must be obtained from the Regional Director—see § 641.6.

(3) *Charter vessel/headboat permits.* For a person on board a charter vessel or headboat to fish for or possess a reef fish in or from the EEZ, a charter vessel/headboat permit for reef fish must be issued to the vessel and must be on board.

(4) *Dealer permits.* A dealer who receives from a fishing vessel reef fish harvested from the EEZ must obtain an annual dealer permit. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(b) *Application for a vessel permit.* (1) An application for a commercial vessel permit or a charter vessel/headboat permit must be submitted to the Regional Director and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. After receipt of a complete application, at least 30 days must be allowed for processing the application and issuing a permit. All permits are mailed to owners, whether the applicant is an owner or an operator.

(2) An applicant must provide the following:

(i) A copy of the vessel's valid U.S. Coast Guard certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(ii) The vessel's name and official number.

(iii) The name, address, telephone number, and other identifying information of the owner and of the applicant, if other than the owner.

(iv) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas requested by the Regional Director.

(v) Any other information that may be necessary for the issuance or administration of the permit.

(3) In addition, an applicant for a commercial vessel permit—

(i) Must provide documentation of earned income that meets the criteria of paragraph (a)(1)(ii) of this section; and

(ii) If fish traps will be used to harvest reef fish, must provide the following information:

(A) The number, dimensions, and estimated cubic volume of the fish traps that will be used; and

(B) The applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

* * * * *

(f) * * * (1) The Regional Director will issue a permit at any time to an applicant if the application is complete and, in the case of an application for a commercial vessel permit, the applicant meets the earned income requirement specified in paragraph (a)(1)(ii) of this section. * * *

* * * * *

(h) * * * A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided under paragraph (m) of this section for a commercial vessel permit or as provided under paragraph (n) of this section for a fish trap endorsement. * * *

* * * * *

(m) *Moratorium on commercial vessel permits.* This paragraph (m) is effective through December 31, 2000.

(1) Except for an application for renewal of an existing commercial vessel permit or as provided in paragraphs (m)(2) and (m)(3) of this section, no applications for commercial vessel permits will be accepted.

(2) An owner of a permitted vessel may transfer the commercial vessel permit to another vessel owned by the same entity by returning the existing permit with an application for a commercial vessel permit for the replacement vessel.

(3) An owner whose earned income qualified for the commercial vessel permit may transfer that permit to the owner of another vessel or to the new owner when he or she sells the permitted vessel. The owner of a vessel that is to receive the transferred permit must return the existing permit to the Regional Director with an application for a commercial vessel permit for his or her vessel. Such new owner may receive a commercial vessel permit for that vessel, and renew it for the first calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(1)(ii) of this section. However, to renew the commercial vessel permit for the second calendar year after the transfer, the new owner must meet that earned income requirement not later than the first calendar year after the permit transfer takes place.

(4) A commercial vessel permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the Regional Director within 1 year of the expiration date of the permit.

(n) *Moratorium on fish trap endorsements.* The provisions of this paragraph (n) are effective through February 7, 1997.

(1) A fish trap endorsement will not be issued or renewed unless the current owner of the commercially permitted vessel for which the endorsement is requested has a record of landings of reef fish from fish traps in the EEZ of the Gulf of Mexico during 1991 or 1992, as reported on fishing vessel logbooks received by the Science and Research Director on or before November 19, 1992. An owner will not be issued fish trap endorsements for vessels in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings in 1991 or 1992.

(2) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(3) A fish trap endorsement is not transferable upon change of ownership of a vessel with a fish trap endorsement, except as follows:

(i) A fish trap endorsement is transferable when the change of ownership of the permitted vessel is from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(ii) In the event that a vessel with a fish trap endorsement has a change of ownership that is directly related to the disability or death of the owner, the Regional Director may issue a fish trap endorsement, temporarily or permanently, with the reef fish commercial permit that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial reef fish permit upon disability or death of an owner is

considered a purchase of a permitted vessel and paragraph (m)(3) of this section applies regarding a commercial reef fish permit for the vessel under the new owner.)

(4) A fish trap endorsement in effect on September 12, 1995, may be transferred to a vessel with a commercial vessel permit whose owner has a record of landings of reef fish from fish traps in the EEZ, as reported on fishing vessel logbooks received by the Science and Research Director from November 20, 1992, through February 6, 1994, and who was unable to obtain a fish trap endorsement under paragraph (n)(1) of this section. The owner of a vessel that is to receive the transferred endorsement must return the currently endorsed commercial permit and the unendorsed permit to the Regional Director with an application for a fish trap endorsement for his or her vessel. Revised commercial permits will be returned to each owner.

(5) If a fish trap endorsement is transferred under paragraph (n)(3) or (n)(4) of this section, the owner of the vessel to which the endorsement is transferred may renew the endorsement without regard to the requirement of paragraph (n)(1) of this section regarding a record of landing of reef fish from fish traps.

(6) A fish trap endorsement that is not renewed or that is revoked will not be reissued. A fish trap endorsement is considered to be not renewed when an application for renewal is not received by the Regional Director within 1 year of the expiration date of the permit.

§ 641.5 [Amended]

3. In § 641.5, in the first sentence of paragraph (c), the phrase "reef fish permit" is removed and the phrase "commercial reef fish permit" is added in its place.

4. In § 641.7, paragraphs (a), (y), and (bb) are revised, paragraphs (cc) and (dd) are redesignated as paragraphs (ee) and (ff), respectively, and new paragraphs (cc) and (dd) are added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(a) Falsify information specified in § 641.4(b) or (c) on an application for a permit or endorsement, or information regarding transfer or revision of a permit or endorsement.

* * * * *

(y) Use or possess in the EEZ a fish trap without a valid fish trap endorsement, as specified in § 641.4(a)(2).

* * * * *

(bb) Receive from a fishing vessel, by purchase, trade, or barter, without a dealer permit, reef fish harvested from the EEZ, as specified in § 641.4(a)(4).

(cc) Sell, trade, or barter or attempt to sell, trade, or barter reef fish harvested on board a vessel for which a commercial permit has been issued under § 641.4 to a dealer that does not have a permit issued under § 641.4, as specified in § 641.28(a).

(dd) As a permitted dealer, purchase, trade, or barter or attempt to purchase, trade, or barter reef fish harvested on board a vessel that does not have a commercial permit issued under § 641.4, as specified in § 641.28(b).

* * * * *

5. Sections 641.28 and 641.29 are redesignated as §§ 641.29 and 641.30, respectively, and new § 641.28 is added to read as follows:

§ 641.28 Restrictions on sale/purchase.

(a) A reef fish harvested in the EEZ by a vessel that does not have a valid commercial permit, as required by § 641.4(a)(1), or possessed under the bag limits specified in § 641.24(b), may not be purchased, bartered, traded, or sold, or attempted to be purchased, bartered, traded, or sold.

(b) A reef fish harvested on board a vessel for which a valid commercial permit has been issued under § 641.4 may be sold, traded, or bartered or attempted to be sold, traded, or bartered only to a dealer who has a valid permit issued under § 641.4.

(c) A reef fish harvested in the EEZ may be purchased, traded, or bartered or attempted to be purchased, traded, or bartered by a dealer who has a valid permit issued under § 641.4 only from a vessel for which a valid commercial permit has been issued under § 641.4.

§§ 641.2, 641.23, 641.24, 641.25, and 641.27 [Amended]

6. In addition to the amendments set forth above, in 50 CFR part 641 remove the word "permit" and add, in its place, the words "commercial permit" in the following places:

(a) Section 641.2 in the definitions of "Charter vessel" and "Headboat";

(b) Section 641.23(d)(2)(iii);

(c) Section 641.24(a)(1)(ii)(A);

(d) Section 641.25 introductory text; and

(e) Section 641.27(a).

[FR Doc. 95–22551 Filed 9–7–95; 9:35 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 176

Tuesday, September 12, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 95–040N]

FSIS's Top-to-Bottom Review—Notice of Availability of Report

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of a preliminary report entitled "Top-to-Bottom Review." The report, which consists of four volumes, contains analyses and options developed by teams of Agency employees who examined the Agency's future roles, resource allocation and organizational structure. FSIS particularly seeks comments from all interested parties concerning the regulatory roles analyses and options found in Volume II.

DATES: Comments will be accepted through October 31, 1995.

ADDRESS FOR COMMENTS: Comments should be addressed to: Top-to-Bottom Review, Room 350–E, Administration Building, Food Safety and Inspection Service, USDA, Washington, DC 20250.

ORDERS: The report may be obtained by contacting the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Either paper or diskette copies may be purchased from NTIS.

Orders for the diskette, which contains all four volumes of the report, should reference NTIS accession number PB95–505392. Orders for paper copies should reference the accession number for the particular volume or volumes desired. They are as follows: Volume I: Report Digest, PB95–265419; Volume II: FSIS Regulatory Roles, PB95–265427; Volume III: FSIS Structure, PB95–265435; Volume IV: FSIS Resource Allocation and Other Administrative Subjects, PB95–265443.

For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 for regular service or (800) 553–NTIS for rush service. To access the document electronically for ordering and downloading via FedWorld, dial 703–321–3339 with a modem or Telnet fedworld.gov. For technical assistance to access FedWorld, call 703–487–4608.

FOR FURTHER INFORMATION CONTACT: Jeanne Axtell or John McCutcheon, Top-to-Bottom Review Coordinators, Food Safety and Inspection Service, USDA, Room 350–E Administration Building, Washington, DC, 20250; telephone (202) 720–3521 or (202) 720–2709, respectively.

SUPPLEMENTARY INFORMATION: FSIS is announcing the availability of a preliminary report titled "Top-to-Bottom Review."[1] Volume I is a comprehensive digest of the full report. It contains an introduction, summaries of the findings of all 10 review teams, and appendices. Volume II contains the findings of three teams that examined the Agency's regulatory roles of the future. Volume III contains the findings of three teams that examined the Agency's organizational structure. Volume IV contains the findings of the remaining four teams that addressed resource allocation; laboratory resources; supervisory and managerial roles; and employees' knowledge, skills, abilities and training.

The following information provides context for the preliminary report.

Administrator Michael R. Taylor announced early in 1995 that FSIS would look at itself "from top to bottom" and define for the future the Agency's regulatory roles, resource allocation, and organizational structure in a manner consistent with the goals and strategies of the proposed Pathogen Reduction/HACCP (Hazard Analysis and Critical Control Point) regulation. The resulting Top-to-Bottom Review is part of the Agency's overall initiative to improve the safety of meat and poultry products and better protect consumers.

The intensive self-examination was prompted also by two other factors. First, the Federal deficit and the resulting pressure to reduce government spending mean that FSIS cannot expect significant increases in its funding in future years. Second, Federal agencies are under a presidential mandate to streamline headquarters and support functions and reduce the number of senior-level positions. It is thus critical to ensure that FSIS is making the best possible use of the resources it has to improve food safety and meet its other consumer protection responsibilities.

The review has involved people from all parts of the Agency. A special effort was made to include as many field representatives as possible when the 10 working teams were formed.

Outreach Program

An extensive outreach program was conducted for FSIS employees and constituents. Internal outreach activities were guided by the conviction that the Agency's employees should be kept fully informed about the review at every stage and that employees' suggestions should be solicited and considered throughout the course of the review.

A three-day employee call-in was held June 12–14. About 250 employees participated. An additional 131 sent in written suggestions, and about 20 more have used the review's electronic mailbox to submit their views. This feedback, which consisted of well over 1000 ideas, comments, and questions, was sorted by subject and provided to the review leaders and teams for consideration.

Constituents received information about the review through a notice in the **Federal Register** June 20 and mentions in the FSIS Update, a weekly newsletter faxed to industry groups, consumer groups, and others who follow the Agency's activities. Briefings for industry and consumer representatives were held June 9, with the Administrator and review leaders presenting status reports and answering questions about the review. Briefings were also held for Congressional staffs.

Intent of the Report

The preliminary report is the result of creative brainstorming by a diverse array of knowledgeable FSIS employees responding to the Administrator's call for bold options. It offers and analyzes a range of possible actions and is meant to serve as a basis for internal and external consideration and comment.

The review leaders were concerned about the length of the report, which exceeds 600 pages. They considered consolidating and trimming some of the material, but decided instead to retain all of it and issue the preliminary report in the form of several volumes in order to give FSIS employes and constituents access to the entire body of work produced by each team. Those who do not want to receive and review the entire report can read Volume I, where they will find summaries of the complete versions of the teams' work as presented in Volumes II, III, and IV.

Some topics are addressed more than once. This apparent duplication of effort is intentional. While different teams did examine some of the same issues, they did so independently, applying their own unique perspective and approach. These differing views will provide the Agency's management team with a full range of options to consider.

The teams had just 10 weeks to gather the necessary information and discuss their conclusions. They would have liked more time to write up the results of the work, but the review leaders elected to issue the preliminary report on time as a "work in progress" rather than delay it for further development of the underlying analyses or refinement of the written components. The report serves its purpose of providing Agency management with a wide range of options. Further analysis will be conducted, as needed, before decisions are made.

Work of the 10 Review Teams

The 10 teams that conducted the Top-to-Bottom Review are listed below with a brief and general characterization of their work.

FSIS Regulatory Roles (see Volume II of the Report)

1. Farm-to-Table (Outside the Plant)

This team looked at strategies for ensuring that food safety programs are functioning throughout the non-plant levels of the farm-to-table continuum. Possible FSIS roles were considered from the pre-harvest animal production environment to the end point of preparation and consumption. At every point, the team found opportunities to reduce the likelihood of foodborne illness.

2. Inplant Regulatory Roles

This team analyzed three representative types of plants (processing, poultry slaughter, and livestock slaughter) in order to identify the possible FSIS inspectional and regulatory roles in each type of operation, determine how FSIS resources are currently allocated within plants, identify potential gaps in the current inspection program's ability to deliver food safety assurances to the public, and suggest how the gaps might be filled. The team developed a range of options for conducting antemortem and postmortem inspection and HACCP validation and verification.

3. Separation of Industry and USDA Roles

The team was charged with determining strategies and techniques to better define the distinct roles and responsibilities of FSIS and industry in ensuring food safety. It observed that the roles are presently commingled because USDA (FSIS) has assumed many management and consultant functions in the meat and poultry plants it regulates. The team identified 13 techniques for "decoupling" FSIS from the industry and "decoupling" inspection personnel from plants.

FSIS Structure (See Volume III)

4. Organizational Structure

The team was charged with determining the optimal structure needed for headquarters and the field to carry out the goals and strategies of the proposed Pathogen Reduction/HACCP regulation, taking into account the streamlining goals of the Administration and the reinvention objectives outlined in the National Performance Review. The team developed a model for a new, highly integrated organizational structure for FSIS. It considered several ways of streamlining the supervision and management of the field regulatory programs.

5. Field and Headquarters Support Services

This team was asked to determine what support activities are best performed in the field and at headquarters. It suggested numerous ways of modifying the existing structure so that streamlining goals can be met and some of the resources now used for support services can be shifted to new food safety initiatives such as HACCP. The team's approach included looking at ways to combine the regional and area office functions to eliminate duplication of services and reduce support staffing.

6. Policy and Regulation Development

The purpose of this team was to examine how policy and regulation development activities can be better managed within the Agency.

FSIS Resource Allocation and Other Administrative Subjects (See Volume IV)

7. Optimal Resource Allocation

This team's assignment was to determine the optimal balance between resources allocated to health and safety activities and those allocated to economic adulteration, labeling, and misbranding activities. It looked at how FSIS can allocate resources flexibly, with inspectors' assignments scheduled according to the risk presented by certain plants, products, or processes. Several options were considered for implementing a new resource allocation system.

8. Allocation of Laboratory Resources

The team was charged with determining what level of laboratory activities is necessary for regulatory oversight of industry operations and determining what testing should fall to FSIS and what should be industry's responsibility. Options were developed for using the FSIS laboratories to support HACCP and other Agency programs.

9. Supervision and Management Roles and Responsibilities

This team was asked to determine the nature of future supervisory and managerial responsibilities and examine better methods for delivering technical information. It called for analyzing supervisory and managerial jobs to determine actual knowledge, skills, and abilities (KSA's) required to perform successfully in FSIS and designing programs to provide supervisors and managers with the necessary level of knowledge and skill in HACCP and pathogen reduction topics.

10. Knowledge, Skills, Abilities and Training

This team looked at the KSA's and training that will be necessary to carry out the Agency's future roles along the farm-to-table continuum. It did not, however, address short-term HACCP training for FSIS employees. Another Agency project is addressing the short-term training needs for HACCP-based inspection.

Comments Sought

Through October 31, FSIS welcomes comments on the preliminary report. The Agency is particularly interested in receiving comments on Volume II: FSIS Regulatory Roles. The topics addressed there directly affect how the Agency deals with the public, and they relate to implementation of the proposed Pathogen Reduction/HACCP regulation.

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[1] The report is available for review in the office of the FSIS Docket Clerk, Room 4352 South Agriculture Building, Washington, DC 20250.

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Volumes III and IV address internal administrative matters primarily related to organizational structure and resource allocation. Because of budgetary pressures and the mandate to streamline its structure, FSIS is moving immediately to examine and further evaluate these administrative portions of the preliminary report.

Done at Washington, DC, on September 6, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–22633 Filed 9–7–95; 2:53 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Baltimore, Maryland, October 19–21, 1995, with a tour of local projects scheduled for October 19, 8:00–5:00 p.m. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is to receive status reports from prior challenge cost-share grant recipients and to initiate discussion on the 1995 Annual Report for Congress. The meeting will be chaired by William Kruidenier of the International Society of Arboriculture and Genni Cross of The Trust for Public Land/California ReLeaf, the Chair-elect. The meeting is open to the public and time will be provided at the beginning of each major agenda topic for public input. However, in order to schedule public input, time to speak must be requested by October 12, 1995. Council discussion is limited to Forest Service staff and Council members. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held October 19–21, 1995.

ADDRESSES: The meeting will be held at the Latham Hotel, 612 Cathedral Street, Baltimore, Maryland.

Send written statements and/or proposed agenda items to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 1042 Park West Court, Glenwood Springs, CO 81601.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (970) 928–9264.

Dated: September 6, 1995.

Joan M. Comanor,

Deputy Chief, State and Private Forestry.

[FR Doc. 95–22611 Filed 9–11–95; 8:45 am]

BILLING CODE 3410–11–M

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on October 12, 1995 at the Skokomish Tribal Center, North 80 Tribal Center Road, Shelton, Washington. The meeting will begin at 9:30 a.m. and continue until 3:30 p.m. Agenda items are: (1) 1996 Restoration Priorities; (2) Adaptive Management Planning (share ideas and discuss AMA plan and product concept); (3) Marbled Murrelet Critical Habitat: Process and Procedures; (4) Update on "318" and Salvage Sales on the Olympic NF; (5) 1996 Watershed Analysis Status and Follow-up; (6) Open Forum and Agenda Items from Advisory Committee; and (7) Public Comments. All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211 or Ronald R. Humphrey, Forest Supervisor, at (360) 956–2301.

Dated: September 6, 1995.

Ronald R. Humphrey,

Forest Supervisor.

[FR Doc. 95–22585 Filed 9–11–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1996 Integrated Coverage Measurement (ICM) Activities.

Form Number(s): CAPI Instrument, DT–1301, DT–1320, DT–1309(L), DT–1314, DT–1315, DT–1340, DT–1377.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 8,541 hours.

Number of Respondents: 18,000.

Avg Hours Per Response: 11 minutes.

Needs and Uses: The Census Bureau requests OMB approval of the various activities and instruments associated with conducting ICM research in two planned tests — the 1996 ICM Special Test and the 1996 American Indian Reservation Test. The potential ICM activities consist of an independent listing including a quality assuarnce advance listing, a housing unit followup interview including quality assurance and evaluation interviews, a person and group quarters interview including quality assurance and evaluation interviews, an outmover tracing interview including an evaluation interview, and a dual system estimation followup interview including an evaluation interview. Prompted by the need to improve statistical methodology for estimating population coverage during the decennial census, the Bureau of the Census developed the ICM approach. The ICM approach was first tested in the 1995 Census Test. Results of that test are still under analysis. After completing review of the 1995 ICM results, we may determine that some of these operations, quality control measures, or evaluations are not needed.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 7, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22560 Filed 9–11–95; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than September 30, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceedings	
Argentina: Silicon Metal (A–357–804)	09/01/94–08/31/95
Canada: Replacement Parts for Self-propelled Bituminous Paving Parts (A–122–057)	09/01/94–08/31/95
Canada: Steel Jacks (A–122–006)	09/01/94–08/31/95
Canada: Steel Rail (A–122–804)	09/01/94–08/31/95
Germany: Certain Forged Steel Crankshafts (A–428–604)	09/01/94–08/31/95
Italy: Pads for Woodwind Instrument Keys (A–475–017)	09/01/94–08/31/95
Japan: Filament Fabric (A–588–607)	09/01/94–08/31/95
Taiwan: Chrome-Plated Lug Nuts: (A–583–810)	09/01/94–08/31/95
The People's Republic of China: Chrome-Plated Lug Nuts (A–570–808)	09/01/94–08/31/95
The People's Republic of China: Greige polyester/Cotton printcloth (A–570–101)	09/01/94–08/31/95
The People's Republic of China: CDIW Fittings & Glands (A–570–820)	09/01/94–08/31/95
United Kingdom: Certain Forged Steel Crankshafts (A–412–602)	09/01/94–08/31/95
Suspension Agreements	
Argentina: Certain Carbon Steel Wire Rod (C–357–004)	01/01/94–12/31/95
Peru: Cotton Shop Towels (C–333–401)	01/01/94–12/31/95
Countervailing Duty Proceedings	
Argentina: Line Pipe (C–357–801)	01/01/94–12/31/94
Argentina: Standard Pipe (C–357–801)	01/01/94–12/31/94
Argentina: Light-Walled Rectangular Tubing (C–357–801)	01/01/94–12/31/94
Argentina: Heavy-Walled Rectangular Tubing (C–357–801)	01/01/94–12/31/94
Canada: New Steel Rail, Except Light Rail (C–122–805)	01/01/94–12/31/94
Israel: Fresh Cut Roses (C–508–064)	01/01/94–12/31/94
New Zealand: Steel Wire (C–614–601)	07/01/94–12/31/94
Thailand: Steel Wire Rope (C–549–806)	01/01/94–12/31/94
Venezuela: Circular Welded Nonalloy Steel Pipe (C–307–806)	01/01/94–12/31/94

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 C.F.R. 355.22(a) of the Department's Interim Regulations (60 FR 25137 (May 11, 1995)), an interested party must specify the individual producers or exporters covered by the order for which they are requesting a review. Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by September 30, 1995. If the Department does not receive, by September 30, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: September 6, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–22745 Filed 9–11–95; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[I.D. 090695B]

North Pacific Fishery Management Council; Team Teleconferences

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of teleconferences.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Plan Team and Individual Fishery Quota (IFQ) Implementation Team have each scheduled a teleconference during the month of September.

DATES: IFQ Implementation Team: September 13, 1995, at 9:00 a.m., Alaska Time. Crab Plan Team: September 21, 1995, 1:00 p.m., Alaska Time.

Both conferences will continue until business is completed.

ADDRESSES: Listening sites for the public will be provided in Seattle, WA, and Juneau, Anchorage, and Kodiak, AK, upon request.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, 907–271–2809 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: The agenda for the IFQ Industry Implementation Team is as follows:

1. A report from the NMFS Restricted Access Management Division on the current Halibut/Sablefish IFQ program and issues they would like to have addressed, a report from the IFQ Research Planning Group, a report on the current status of amendments in progress, and a report on enforcement of the program.

2. A general discussion by the team on issues to be discussed and recommendations to be forwarded to the Council.

The agenda for the Crab Plan Team is as follows:

Continuation of August 30 teleconference to review and approve the crab Annual Area Management Report (also called the SAFE—Stock Assessment and Fishery Evaluation Report) and other developments with regard to crab management.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809.

Dated: September 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22746 Filed 9–8–95; 2:13 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF DEFENSE

Department of the Army

Finding of No Significant Impact for the Environmental Assessment for Disposal of the Woodbridge Research Facility, Woodbridge, VA

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: In August 1994, Public Law (PL), 103–307, Provision 128 (Military Constuction Appropriations Act, 1995), was signed, mandating the transfer of the Woodbridge Research Facility (WRF) property in its entirety to the Department of the Interior (DOI). Under DOI, the U.S. Fish and Wildlife Service (USFWS) will be the managing agency for the property.

The Environmental Assessment (EA) evaluates the environmental effects associated with the disposal of the WRF property to the USFWS. There would be no significant impacts in connection with either of the alternatives addressed in the EA. The No Action Alternative refers to continuation of existing conditions of Caretaker Status, without implementation of the proposed action. The No Action Alternative is only possible if Congress were to take additional action to repeal or direct a different disposition from that which is currently directed under Pub. L. 103–307.

The Preferred Alternative is the disposal of the 580-acre WRF property, which incorporates the transfer of the property in its entirety to the USFWS. The existing buildings may be used for agency environmental education programs and offices. USFWS states that they will manage the property as a refuge, continue the hunting programs, and promote environmental education programs.

It has been determined that implementation of the proposed action (disposal) would have no significant impact on the quality of the natural or human environment. Transfer to the USFWS would provide for the further enhancement of the natural resources at the WRF property. Accordingly, an Environmental Impact Statement will not be prepared.

DATES: Inquiries will be accepted by no later than October 12, 1995.

ADDRESSES: For further information on the Environmental Assessment or this Finding of No Significant Impact (FNSI), write to Maria dela Torre, U.S. Army Corps of Engineers, Baltimore District, ATTN: CENAB–PL–EM, P.O. Box 1715, Baltimore, Maryland 21203–1715.

FOR FURTHER INFORMATION CONTACT: Maria dela Torre at (410) 962–2911.

Dated: September 6, 1995.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 95–22612 Filed 9–11–95; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Board of Visitors to the United States Naval Academy; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet on 2 October 1995, at Alumni Hall, United States Naval Academy, Annapolis, MD, at 8:30 a.m. The executive session of this meeting from approximately 8:30 a.m. to 10:00 a.m. will be closed to the public. Following executive session the remainder of the meeting will be opened to the public.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During executive session these inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Secretary of the Navy has determined in writing that the executive session portion of the meeting shall be closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of Title 5, United States Code.

For further information concerning this meeting contact: Lieutenant Commander Adam S. Levitt, U.S. Navy, Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402-5000, Telephone Number: (410) 293-1503.

Dated: August 31, 1995

M. A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95-22521 Filed 9-11-95; 8:45 am]

BILLING CODE 3810-FF-F

Notice of Public Hearing for the Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) for the Proposed Disposal and Reuse of Mare Island Naval Shipyard, Vallejo, California

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) and the California Environmental Quality Act (CEQA), the Department of the Navy in association with the City of Vallejo, has prepared and filed with the U.S. Environmental Protection Agency a joint Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the proposed disposal and reuse of Mare Island Naval Shipyard (MINSY). The Navy is the lead agency for NEPA documentation, and the City of Vallejo is the lead agency for documentation pursuant to CEQA. The DEIS is being prepared to comply with 1993 Base Realignment and Closure (BRAC) directive from Congress to close MINSY.

A Notice of Intent to prepare the EIS/EIR was published in the **Federal Register** on September 1, 1994 and a public scoping meeting for the EIS/EIR was held on September 22, 1994 in Vallejo, California. A Notice of Availability of the Draft EIS/EIR was published in the **Federal Register** on September 1, 1995.

Pursuant to BRAC, the EIS/EIR assesses the potential environmental impacts associated with the disposal of federal surplus land at MINSY and of potential reuse alternatives. All available properties will be disposed of in accordance with the provisions of the Defense Base Closure and Realignment Act (Public Law 101–510) of 1990 and applicable federal property disposal regulations.

The Mare Island Reuse Plan, developed by the City of Vallejo, constitutes the preferred alternative for the EIS/EIR. Three alternative reuse scenarios are also considered, including a less intensive development of the project, still based in large part on the Mare Island Reuse Plan, a redevelopment plan focusing heavily on open space, and a no-action alternative which would result in the federal government retaining the property in an "inactive" status. No decisions on the proposed action will be made until the NEPA process has been completed and the Navy releases a Record of Decision.

The Draft EIS/EIR is available for review at the following public libraries in the vicinity of MINSY: John F. Kennedy Library, 505 Santa Clara Street, Vallejo, California; Springstowne Library, 1003 Oakwood Avenue, Vallejo, California; Vacaville Library, 1020 Ulatis Drive, Vacaville, California; Fairfield-Suisun Library, 150 Kentucky, Fairfield, California; Benicia Library, 150 L Street, Benicia, California; Suisun City Library, 333 Sunset Street, Suisun, California; Dixon Public Library, 135 East B Street, Dixon, California; Napa Library, 1150 Division Street, Napa, California; St. Helena Library, 1492 Library Lane, St. Helena, California; Yountville Library, Yountville, California; and Calistoga Library, 1108 Myrtle Street, Calistoga, California.

DATES: A public hearing to inform the public of the DEIS/EIR findings and to solicit comments will be held on Wednesday, September 27, 1995, beginning at 7:00 p.m. in the City Council Chambers, Vallejo City Hall, located at 555 Santa Clara Street, Vallejo California. Federal, state, and local agencies, and interested individuals are invited and urged to be present or be represented at the hearing. Oral comments will be heard and transcribed by a stenographer; however, to ensure accuracy of the record, all statements should also be submitted in writing. All statements, both oral and written, will become part of the public record for the document. Equal weight will be given to both oral and written statements. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. Longer comments should be summarized at the public meeting or mailed to the address listed at the end of this announcement.

ADDRESSES: All written comments should be submitted no later than October 16, 1995, to Commanding Officer, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–5006 (Attention: Mr. Jerry Hemstock, Code 18522). For additional information, please contact Mr. Jerry Hemstock at telephone (415) 244–3023, fax (415) 244–3737 or Ms. Ann Merideth, Planning Division, City of Vallejo, 555 Santa Clara Street, Vallejo, CA 94590–5934, telephone (707) 648–4326, fax (707) 552–0163.

Dated: September 8, 1995.

M.D. Schetzsle,

LT, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 95–22792 Filed 9–11–95; 8:45 am]

BILLING CODE 3810-FF-M

Notice of Intent To Prepare a Joint Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR) for the Disposal and Potential Reuse of the Naval Medical Center, Oakland, California

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) and the California Environmental Quality Act (CEQA), the Department of the Navy in coordination with the City of Oakland is preparing a joint Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR) for the disposal and potential reuse of the Naval Medical Center Oakland (NMCO) property and structures located in Oakland, California. The Navy shall be the EIS lead agency and the City of Oakland shall be the EIR lead agency. The Defense Base Closure and Realignment Act (Public Law 101–510) of 1990, as implemented by the 1993 base closure process, directed the U.S. Navy to close NMCO. NMCO is scheduled for closure in September of 1996.

NMCO is within the jurisdiction of the City of Oakland in Alameda County, and is located approximately nine miles southeast of the Oakland central business district, and 17 miles east of the City of San Francisco. The medical center site is approximately 192 acres developed with approximately 89 structures including the hospital, 5 modern buildings, 20 older buildings, 24 miscellaneous structures, and 38 military family housing units.

The EIS/EIR will address the disposal of the property and the potential impacts to the environment that may result from reuse development based upon implementation of the Oak Knoll Reuse Plan (currently under preparation by the City of Oakland) and a "no action" alternative. The Oak Knoll Reuse Plan—Preliminary Alternatives, dated August 1995, prepared by the City of Oakland Base Reuse Authority in conjunction with the residents of the City of Oakland will serve as the basis

for reuse alternatives. The "no action" alternative would have NMCO remain federal government property in a caretaker status.

The Oak Knoll Reuse Plan—Preliminary Alternatives listed the following preliminary alternatives: Senior/Community, Mixed Use Village, Single Use Campus, and Residential. These alternatives comprise land uses (neighborhood retail area, community facilities area, educational/training and institutional area, active recreational area, open space area, and residential area) combined in different acreage configurations. A neighborhood retail area (including supermarket, convenience shops, restaurants, laundry, beauty shop, copy service, travel agency, and bank uses) could range up to 5 acres. A community facilities area (including senior residential, homeless housing, elder hostel, health and social services facility, post office, small professional offices, and daycare facilities) could range up to 33 acres. An educational/training and institutional use area (including professional research development and biotech facilities, offices, administration, storage, conference and assembly halls, and health clinic) could range up to 35 acres. An active recreation area (including swimming pool, bowling alley, gymnasium, tennis courts, baseball fields, playfields and picnic area) could range between 8–14 acres. An open space area (recreation trails, creek restoration, conserved woodlands, wildlife habitat, and parkland) could range between 55–110 acres. A residential area (including variable mixes of market rate housing, single-family housing units, and/or medium density townhouses, live/work spaces, and senior/homeless housing) could range up to 82 acres.

DATES: Federal, state, and local agencies, and interested individuals are encouraged to participate in the scoping process for the EIS/EIR to determine the range of issues and alternatives to be addressed. A public scoping meeting to receive oral and written comments will be held at 7:00 p.m. on Wednesday, September 27, 1995, at the NMCO Club Knoll Caduceus Room, 8750 Mountain Boulevard, Oakland, California. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. Longer comments should be summarized at the public meeting or mailed to the address listed at the end of this announcement.

ADDRESSES: All written comments should be submitted within 30 days of the published date of this notice to Mr. Gary J. Munekawa (Code 185), Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–5006, telephone (415) 244–3022, fax (415) 244–3737. For information concerning the EIR, please contact the City of Oakland, Office of Planning and Building, Environmental Review Section, Ms. Anu Raud at telephone (510) 238–6346, or Mr. Nixon Lam at telephone (510) 238–2229, or fax (510) 238–3586. For further information regarding the Oak Knoll Reuse Plan—Preliminary Alternatives, dated August 1995, please contact the City of Oakland, Oakland Base Reuse Authority, Mr. Paul Nahm, or Mr. Barry Cromartie at telephone (510) 238–7256, or fax (510) 238–3691.

Dated: September 8, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–22793 Filed 9–11–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 13, 1995.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 7, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision.
Title: Reform and Relief Regulations
Frequency: One Time.
Affected Public: Individuals or households; Business or other for profit; Not for Profit institutions.
Reporting Burden:
  Responses: 12,803,255.
  Burden Hours: 30,010,875.
Recordkeeping Burden:
  Recordkeepers: 0.
  Burden Hours: 0.
Abstract: To revise § 682.201 to provide for the eligibility of step parents under the Federal PLUS Program, to eliminate §§ 682.600 and 682.602, which can better be presented in program manuals and handbooks, and to add a new § 682.611.

Office of Postsecondary Education

Type of Review: Revision.
Title: Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant Programs (Recordkeeping/Disclosure)—Reform and Relief Regulation
Frequency: One Time.
Affected Public: Individuals or households; Business or other for profit; Not for Profit institutions.
Reporting Burden:
  Responses: 17,078.
  Burden Hours: 12,559.
Recordkeeping Burden:
  Recordkeepers: 0.
  Burden Hours: 0.
Abstract: Revising sections 674.2, 674.16, 674.17(a), 674.31, 675.2, 675.17, Appendix B to Part 675, 676.2, and 676.17 for purposes of clarification, elimination of duplication regulations, and to provide more institutional flexibility; not reporting any actual changes in burden hours. Respondents are the institutions and students.

Office of Postsecondary Education

Type of Review: Revision.
Title: Regulations for Perkins Loan Program—Subpart C—Due Diligence—Reform and Relief Regulation
Frequency: One Time.
Affected Public: Individuals or households; Business or other for profit; Not for Profit institutions.
Reporting Burden:
  Responses: 2,796,530.
  Burden Hours: 80,431.
Recordkeeping Burden:
  Recordkeepers: 0.
  Burden Hours: 0.
Abstract: Section 574.47(g) is being revised for purposes of clarification and to provide more institutional flexibility. The Department will use the information to ensure that the institution has followed the prescribed regulatory procedures in administering these programs and to justify the payment of funds by the federal government.

Office of Postsecondary Education

Type of Review: Revision.
Title: Reform and Relief Regulations—Federal Pell Grant Program
Frequency: Annually.
Affected Public: Individuals or households; Business or other for profit; Not for Profit institutions.
Reporting Burden:
  Responses: 400.
  Burden Hours: 16,400.
Recordkeeping Burden:
  Recordkeepers: 0.
  Burden Hours: 0.
Abstract: This submission is proposing the elimination of redundancy and inconsistencies within the regulations. The program participation agreement requirements for the Federal Pell Grant Program (§§ 690.7 and 690.71–690.73) and the procedures for providing funds (§ 690.74) are already provided for in the Student Assistance General Provisions regulations. The changes to § 690.83 (c) and (e) are just to eliminate inconsistent standards.

[FR Doc. 95–22597 Filed 9–11–95; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 13, 1995.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 7, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Regular.
Title: Student Assistance General Provisions—Subpart K—regulatory relief and reform package.
Frequency: Annually.
Affected Public: Business or other for profit; Not for Profit institutions.
Reporting Burden:
  Responses: 3,634.
  Burden Hours: 4,477.
Recordkeeping Burden:
  Recordkeepers: 0.
  Burden Hours: 0.
Abstract: These regulations are part of a Division-wide regulatory relief package and affect provision of Student Assistance General Provisions regulations regarding cash management.

Office of Postsecondary Education

Type of Review: Regular.
Title: Performance Report for the School, College, and University Partnerships (SCUP) Program.

Frequency: Annually.
Affected Public: Not for Profit institutions; State, Local or Tribal Government.
Reporting Burden:
  Responses: 1.
  Burden Hours: 240.
Recordkeeping Burden:
  Recordkeepers: 0.
  Burden Hours: 0.
Abstract: SCUP grantees must submit the report annually so the Department can evaluate the performance of grantees prior to awarding continuation grants. The Department will also aggregate data on project outcomes related to student and school performance impact, and identify exemplary projects.

[FR Doc. 95–22596 Filed 9–11–95; 8:45 am]

BILLING CODE 4000-01-P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 12, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 7, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Regular.
Title: Student Aid Report.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting Burden:
  Responses: 15,237,969.
  Burden Hours: 4,095,759.
Recordkeeping Burden:
  Recordkeepers: 0.
  Burden Hours: 0.
Abstract: "Federal Grants, Student Aid programs": The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal Financial Aid. The form is submitted by the applicant to the institution of their choice.

[FR Doc. 95–22595 Filed 9–11–95; 8:45 am]

BILLING CODE 4000-01-P

Coordinated Services Projects

AGENCY: Department of Education.

ACTION: Notice of application availability and waiver of reporting requirement for coordinated services projects.

SUMMARY: The U.S. Secretary of Education (Secretary) announces the availability of applications to use Elementary and Secondary Education Act (ESEA) funds for coordinated services projects under section 14206(b) and Title XI of the ESEA. In addition, the Secretary announces the waiver of an annual reporting requirement that otherwise would apply to these projects.

SUPPLEMENTARY INFORMATION: Title XI of the ESEA offers local educational agencies (LEAs), schools, and groups of schools, the opportunity to use up to five percent of their ESEA funds in any fiscal year for a coordinated services project. Coordinated services projects link public and private agencies with schools to improve the access of elementary and secondary students and their families to health and social services through a coordination site at or near a school.

Coordinated services projects provide a mechanism for helping children and their families address factors outside the classroom such as inadequate or substandard nutrition, health care, and living conditions that can adversely affect the ability of a child to learn. Funds may be used to develop, implement, or expand a coordinated services project. Funds may not be used for the direct provision of any health or health-related service.

DEFINITION: The term "coordinated services project" is defined by the statute as "a comprehensive approach to meeting the educational, health, social service, and other needs of children and their families, including foster children and their foster families, through a community-wide partnership that links public and private agencies providing such services or access to such services through a coordination site at or near a school.

ELIGIBLE APPLICANTS: Applications for a coordinated services project may be submitted to the Secretary by an LEA, or if there is no governing LEA, by an individual school or group of schools.

WAIVER OF REPORTING REQUIREMENT: Under the Education Department General Administrative Regulations (EDGAR), an applicant generally must submit an annual performance report to the Department. (See 34 CFR §§ 74.51, 75.720, and 80.40.) However, in the interest of reducing burden at the local level, the Secretary has determined that a performance report is unnecessary for the first year and third year of the implementation or expansion of a coordinated services project, and therefore waives that requirement for the first and third years. This waiver is in accordance with the Secretary's authority under these regulations.

FOR APPLICATIONS OR INFORMATION CONTACT: Jeanne Jehl, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW (Portals Building–Room 604), Washington, D.C.

20202–6123. Telephone: (202) 260–1854. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including the use of ESEA funds for coordinated services projects, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcement, Bulletin and Press Releases). However, the official notice of application availability is the notice published in the **Federal Register**.

(**Authority:** 20 U.S.C. 8401–8407 and 8826(b))

Dated: August 21, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95–22550 Filed 9–11–95; 8:45 am]

BILLING CODE 4000-01-P

Office of Postsecondary Education; Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the requirement that an institution shall use at least 5 percent of the total amount of its Federal Work-Study (FWS) Federal funds granted for the 1995–96 award year to compensate students employed in community service jobs.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the statutory requirement that an institution shall use at least 5 percent of its total FWS Federal funds granted for the 1995–96 award year (July 1, 1995 through June 30, 1996) to compensate students employed in community service jobs.

DATES: *Closing Date for submitting a Waiver Request and any Supporting Information or Documents.* An institution that would like to request a waiver of the requirement that an institution use at least 5 percent of the total amount of its FWS Federal funds granted for the 1995–96 award year to compensate students employed in community service jobs, must mail or hand-deliver its waiver request and any supporting information or documents on or before October 20, 1995. The Department will not accept a waiver request submitted by facsimile transmission. The waiver request must be submitted to the Institutional Financial Management Division at one of the addresses indicated below.

ADDRESSES: *Waiver Request and any Supporting Information or Documents Delivered by Mail.* The waiver request and any supporting information or documents delivered by mail must be addressed to Ms. Carolyn Short, Fiscal Program Specialist, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue SW., (Room 4714, ROB–3), Washington, D.C. 20202–5458.

An applicant must show proof of mailing its waiver request by October 20, 1995. Proof of mailing consist of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If a waiver request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail. Institutions that submit waiver requests and any supporting information or documents after the closing date will not be considered for a waiver.

Waiver Requests and any Supporting Information or Documents Delivered by Hand. A waiver request and any supporting information or documents delivered by hand must be taken to Ms. Carolyn Short, Fiscal Program Specialist, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

Hand-delivered waiver requests will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. A waiver request for the 1995–96 award year that is hand-delivered will not be accepted after 4:30 p.m. on October 20, 1995.

SUPPLEMENTARY INFORMATION: Under section 443 (b)(2)(A) of the Higher Education Act of 1965, as amended (HEA), an institution must use at least 5 percent of the total amount of its FWS Federal funds granted for an award year to compensate students employed in community service, except that the Secretary may waive this requirement if the Secretary determines that enforcing it would cause hardship for students at the institution. The institution must provide a written waiver request and any supporting information or documents by the established October 20, 1995 closing date.

The waiver request must be signed by an appropriate institutional official and above the signature the official must include the statement: "I certify that the information the institution provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by representatives of the Secretary of Education." If the institution submits a waiver request and any supporting information or documents after October 20, 1995, the request will not be considered.

To receive a waiver, an institution must demonstrate that complying with the 5 percent requirement would cause hardship for students at the institution. To allow flexibility to consider factors that may be valid reasons for a waiver, the Secretary is not specifying specific circumstances that would support granting a waiver. However, the Secretary does not foresee many instances in which a waiver will be granted. The fact that it may be difficult for the institution to comply with this provision of the HEA is not a basis for granting a waiver.

Applicable Regulations

The following regulations apply to the Federal Work-Study program:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Work-Study Programs, 34 CFR Part 675.

(3) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(4) New Restrictions on Lobbying, 34 CFR Part 82.

(5) Government Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(6) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: To receive information, contact Ms.

Carolyn Short, Fiscal Program Specialist, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 4714, ROB–3), Washington, D.C. 20202–5458. Telephone (202) 708–9756. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Authority: 42 U.S.C. 2756(b)).

Dated: September 5, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number: 84.033 Federal Work-Study Program)

[FR Doc. 95–22549 Filed 9–11–95; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet September 19, 1995, at the offices of the Organization for Economic Cooperation and Development (OECD) in Paris, France, to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions on the same date at the OECD offices.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on September 19, 1995, at the headquarters of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre-Pascal, Paris, France, beginning at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the OECD on September 19, including a preparatory session for company representatives from 9:00 a.m. to 9:30 a.m. The agenda for the preparatory session for company representatives is to elicit views regarding items on the agenda for the SEQ meeting. The agenda for the meeting of the SEQ is under the control of the SEQ.

It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of Summary Record of the 84th Meeting
3. SEQ Work Program
   —Proposals for 1996 Work Program
4. Conferences and Seminars
   —"Coordinated Emergency Response Measures" conference/test preparations
   —Conference on long term security issues—June 1996
   —Seminar for stockholding agencies—late 1996
5. Proposals on IEA Emergency Response
   —Follow-up by the SEQ to Governing Board decision of February 22, 1995 on IEA emergency response
6. Emergency Reserve Situation of IEA Countries
   —Emergency reserve and net import situation of IEA countries as of April 1, 1995
   —Report required by the Governing Board on emergency reserve situation of IEA countries, notably those not meeting IEA commitments
   —Emergency reserve and net import situation of IEA countries as of July 1, 1995
   —Availability of U.S. Strategic Petroleum Reserve storage capacity
7. Industry Advisory Board (IAB)
   —Current and planned IAB activities
   —Industry Supply Advisory Group training course
8. Emergency Response Reviews
   —Updated schedule of reviews
9. Emergency Response Issues in IEA Candidate Countries
   —Emergency response situation in Korea
   —Emergency reserve and net import situation of IEA candidate countries
10. Oil Market Situation
11. Emergency Management Manual
   —French translation
   —Emergency Reference Guide
12. Emergency Data System and Related Questions
   —Preparation for October/November 1995 test submission of Questionnaires A and B
   —Monthly Oil Statistics (MOS) for March 1995
   —MOS for April 1995
   —MOS for May 1995
   —MOS for June 1995
   —Base Period Final Consumption (BPFC) Q294—Q195
   —BPFC Q394—Q295
   —Quarterly Oil Forecast—Q395/Q296 and current trigger situation
13. Seasonality in IEA Oil Supply and Demand
14. Emergency Response Issues Related to Oil Product and Refining Issues
   —SEQ/Standing Group on Oil Market study of product specifications and related issues
15. Policy and Legislative Developments in Member Countries
   —Energy Policy and Conservation Act
   —Update of emergency response legislation in Spain
   —Other country developments
16. Other Business
   —Participation in SEQ activities by candidate countries
   —Tentative calendar of SEQ activities until end 1995
   —Questionnaire A/Questionnaire B test submission scheduled for October 19–20 and November 20–21, 1995
   —SEQ meeting scheduled for December 13, 1995
   —IEA conference on long-term security issues scheduled for June 1996
   —Seminar for IEA stockholding agencies, November 1995

As permitted by 10 CFR Section 209.32, the usual 7-day period for publication of this meeting notice in the **Federal Register** has been shortened because unanticipated circumstances pertaining to the scheduling of the meeting delayed the issuance of this notice.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ or the IEA.

Issued in Washington, DC, September 7, 1995.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 95–22628 Filed 9–11–95; 8:45 am]

BILLING CODE 6450-01-P

Intent To Award a Grant to the Underground Injection Practices Research Foundation

AGENCY: U.S. Department of Energy, Metairie Site Office.

ACTION: Notice of non-competitive financial assistance (grant).

SUMMARY: The Department of Energy (DOE), Metairie Site Office announces that it intends to make a Non-Competitive Financial Assistance Award (Grant) through the Pittsburgh Energy Technology Center to the Underground Injection Practices Research Foundation (UIPRF) of the Ground Water Protection Council (UIPRF). The action is necessary to continue work related to Class II injection well operations in various states throughout the country. The effort will continue implementation of a Risk-Based Data Management System (RBDMS), conduct Class II injection well Area of Review (AOR) workshops, and conduct a RBDMS workshop.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh, PA 15236, Attn.: Eric T. Bell, Telephone: (412) 892–5802

SUPPLEMENTARY INFORMATION: The UIPRF has proposed a three-task project relating to Class II injection well operations in various states throughout the country. Task I of the proposed project is designed to continue implementation of a Risk-Based Data Management System (RBDMS). Task 2 of this project is designed to develop and conduct workshops using the guideline document developed by an UIPRF committee. These workshops will be held in various locations to further assist the regulator and industry in establishing Area of Review (AOR) variance programs across the country. Task 3 of this project involves one workshop on the RBDMS.

The Underground Injection Practices Council (UIPC) was formed in 1985 to work with various federal agencies, state underground injection control (UIC) officials, municipal and county officials, representatives of environmental groups, industry, scientists, and others on safe and effective methods for waste disposal. The UIPC, through its Research Foundation, conducts a comprehensive program of original research and data collection and serves as a clearinghouse for information on underground injection. The UIPC also conducts a variety of educational programs and serves as a forum for the development of more sound regulations and technical standards.

Greater emphasis is currently being placed on the ability of states to justify their regulatory decisions, with interest in developing reliable procedures for assessing the risks posed by oil and gas injection wells increasing rapidly. Under the Safe Drinking Water Act, agencies that implement UIC programs are required to prevent subsurface injection that endangers an underground source of drinking water (USDW).

In 1993 the UIPRF completed a grant from DOE that involved the investigation of state environmental, oil, and gas data, and data management systems that pertain to underground injection control. The primary goal of this research was to increase the base of technical and environmental knowledge related to the application of the UIPRF model that has been developed to assess the risk of injection water contaminating a USDW. The project involved four major tasks: (1) conducting an inventory and needs assessment of the database management systems of the 21 states that have primacy to supplement the UIC requirements for Class II wells, (2) conducting investigations of six state's data management system capabilities and making hardware and software improvements, (3) conducting a Technical Symposium on Class II injection wells relating to the application of the UIPRF model that was developed to assess risk of injection water contaminating USDWs, and (4) conducting investigations of four states' data management system capabilities and making hardware and software improvements.

In 1994 the UIPRF initiated a two-task DOE-funded project. Task 1 of the project was designed to extend the implementation of a Risk-Based Data Management System (RBDMS) in four states. Alaska, Mississippi, Montana, and Nevada were given assistance with converting data from existing data management systems; coding and internal testing of the RBDMS; preparing documentation, training, and technology transfer; and project management. Task 2 of the project offered assistance in conducting four regional workshops related to Area of Review (AOR) investigations and environmental compliance.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (A) and (D), a noncompetitive Financial Assistance Award to the UIPRF is justified. This effort is a continuation of the two previous mentioned grants. Competing this action would have a significant adverse effect on continuity of the on-going program. The Applicant has exclusive domestic capability to perform this activity successfully, based upon the unique technical expertise of the UIPRF which will ensure maximum utilization of existing state, federal, industry, and commercial sources of data necessary to complete the study. This effort therefore is considered suitable for noncompetitive financial assistance. A competitive solicitation would be inappropriate.

DOE funding for this research is estimated to be $1,070,000 for the 24 month duration of the project. These funds will be used to pay for the cost of research staff, administrative support personnel, consultants, experts, and printing costs as necessary for the research project.

Issued in Pittsburgh, PA, on August 31, 1995.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 95–22627 Filed 9–11–95; 8:45 am]

BILLING CODE 6450-01-P

Energy Information Administration

Proposed Revision and Extension of Coal Data Collections

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed revision and extension of coal data collections and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed revision and extension of the coal data collections included in the Coal Program Package. The following surveys are covered by this action: Form EIA–1, "Weekly Coal Monitoring Report—General Industries and Blast Furnaces," (Standby), Form EIA–3, "Quarterly Coal Consumption Report—Manufacturing Plants," Form EIA–3A, "Annual Coal Quality Report—Manufacturing Plants," Form EIA–4, "Weekly Coal Monitoring Report—Coke Plants," (Standby), Form EIA–5, "Coke Plant Report—Quarterly," Form EIA–5A, "Annual Coal Quality Report—Coke Plants," Form EIA–6, "Coal Distribution Re[illegible]," Form EIA–7A, "Coal Pr[illegible]luc[illegible]port," and Form EIA–2[illegible] "[illegible] Telephone Survey of Coa[illegible], Utilities," (Standby).

DATES: Written comments must be submitted on or before November 13, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Thomas Murphy, Coal Data Systems Branch, EI-521, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Alternatively, Mr. Murphy can be reached at TMURPHY@EIA.DOE.GOV (Internet e-mail), 202–254–5561 (voice), or 202–254–6233 (facsimile).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Thomas Murphy at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The coal surveys included in the Coal Program Package collect information on coal production, distribution, receipts, consumption, quality, stocks, and prices. Data are used to support public policy analyses of the coal industry and are published in various EIA publications. Respondents to the surveys include coal producers, coal distributors, and coal consumers.

The EIA is attempting to employ electronic data collection methods in order to better serve those customers that have or intend to have FAX, Internet, and other electronic reporting capabilities for use in submitting their data to the EIA. If you are a coal survey respondent, please respond to questions E and I at the end of this notice so that we can better serve you in the future.

II. Current Actions

Based upon an internal review of coal program data requirements and consultations with the coal industry and data users we propose to implement one of the following two options with respect to the surveys in the Coal Program Package. Our objective in proposing these options is to modify the EIA coal data program by reducing respondent reporting burden and survey operating costs, without degrading the accuracy and coverage of the EIA's coal data.

Option 1

EIA–6

This option proposes to reduce the frequency of the current survey from quarterly to annual. Quarterly estimates of State-level coal consumption in the "Other Industrial" and "Residential and Commercial Sectors" would be made by EIA.

This option would also fill the resulting data gap of quarterly production and producer stocks by using Mine Safety and Health Administration (MSHA) quarterly coal production and producer stock data so that no quarterly coal production or stock data would be collected by EIA. The use of MSHA quarterly data has been discussed with MSHA. MSHA plans to collect producer stock data for EIA on their quarterly survey Form 7000–2, "Quarterly Mine, Employment and Coal Production Report." Quarterly distributor stock data would be estimated at the State-level by EIA.

EIA–3

This option would delete the requirement for disaggregation by coal rank (anthracite, bituminous, subbituminous, and lignite) and replace it with a check-off box to indicate the predominant rank of coal receipts.

In Part III of this survey, we propose to delete the question relating to the share of electricity sold to electric utilities and rely on the EIA–867 for this information.

EIA–5

This option would delete the requirement for disaggregation of all coal data by coal rank. Additionally, a column would be added to Part III of the current form to clarify reporting for intra-company transfers of coke.

EIA–3A/EIA–5A

We propose to reduce the frequency of these surveys from annual to triennial.

EIA–7A

Since the reporting requirements for this survey can vary significantly, depending upon the type of respondent (mine only, preparation plant only, and mine collocated with a preparation plant), we propose to have a common identification page and split the remainder of this survey into three separate schedules, each of which will be tailored to suit the type of respondent.

In addition, we propose to eliminate the collection of certain identification information and employment data, relying instead on MSHA data on Form 7000–2.

EIA–1/EIA–4/EIA–20

We propose to request that these forms be re-cleared without changes.

Option 1 Burden Impact

The annual respondent burden for the current coal forms is 19,380 hours. The EIA estimates that Option 1 would reduce the annual respondent burden to 8,437 hours, a decrease of 10,943 hours (56 percent).

Option 2

EIA–6

This option would eliminate the EIA–6 survey entirely. To partially fill the resulting data gap for distribution to consumer sectors by origin and destination State, we propose to add origin State for receipts on the quarterly EIA–3 survey (manufacturing plants) and the quarterly EIA–5 survey (coke plants). The FERC Form 423 currently collects coal receipts data by origin for electric utility plants having a capacity of 50MW or more. Thus the origin and destination of coal going to most of the consuming sectors would be maintained. All methods of transportation data would be eliminated. Some of these data are available from outside sources, such as Resource Data International, Association of American Railroads, and the U.S. Corps of Engineers.

This option also eliminates State-level data covering coal distribution to the agriculture, mining and construction sectors (currently 0.2 percent of total annual domestic distribution) and distribution data for the "Residential" and Commercial sectors (currently 0.6

percent of total annual domestic distribution). Some of the data for the agriculture, mining, and construction industries, as well as the residential and commercial sectors can be captured on the annual Form EIA–867, to the extent that coal consumption in these sectors is attributable to coal-fired generators larger than 1 MW. Quarterly estimates of national-level consumption in the agriculture, mining, construction, and residential and commercial sectors would be made by the EIA.

This option would fill the resulting data gap of quarterly production and producer stocks data by using Mine Safety and Health Administration (MSHA) quarterly coal production and producer stock data so that no quarterly coal production or stock data would be collected by EIA. MSHA plans to collect producer stock data for EIA on their quarterly survey Form 7000–2, "Quarterly Mine Employment and Coal Production Report." Distributor stock data would be estimated by the EIA at the National level.

EIA–3

This option would add State of origin of coal receipts data to the EIA–3 to fill one of the data gaps from elimination of the EIA–6. Coal consumption, cost, adjustments, and coal stocks (Columns B, D, E, F, and G of the current form) would be reported in the aggregate only. We propose to delete the requirement for disaggregation by coal rank (anthracite, bituminous, subbituminous, and lignite) and replace it with a check-off box to indicate the predominant rank of coal receipts.

In Part III of this survey, we propose to delete the question relating to the share of electricity sold to electric utilities and rely on the EIA–867 for this information.

EIA–5

This option would add State of origin of coal receipts to the EIA–5 to fill another of the data gaps from elimination of the EIA–6. Coal consumption, cost, adjustments, and coal stocks (Columns B, E, F, and G of the current form) would be reported in the aggregate only. We propose to delete the requirement for disaggregation of all coal data by coal rank. Additionally, a column would be added to Part III of the current form to clarify reporting for intra-company transfers of coke.

EIA–3A/EIA–5A

We propose to reduce the frequency of these surveys from annual to triennial.

EIA–7A

Since the reporting requirements for this survey can vary significantly, depending upon the type of respondent (mine only, preparation plant only, and mine collocated with preparation plant), we propose to have a common identification page and split the remainder of this survey into three separate schedules, each of which will be tailored to the type of respondent.

In addition, we propose to eliminate the collection of certain identification information and employment data, relying instead on MSHA data on Form 7000–2 for this information.

EIA–1/EIA–4/EIA–20

These are standby forms that would be used to monitor coal receipts, coal consumption, and coal stocks at major coal-burning facilities in the event of a coal supply disruption. We propose to request that these forms be re-cleared without changes.

Option 2 Burden Impact

The annual respondent burden for the current coal forms is 19,380 hours. The EIA estimates that Option 2 would reduce the annual respondent burden to 4,147 hours, a decrease of 15,233 hours (79 percent).

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions (Options 1 and 2) discussed in item II. Comments are also invited, as required by the Paperwork Reduction Act, on the coal data collections, EIA–1, 3, 3A, 4, 5, 5A, 6, and 7A. The following guidelines are provided to assist in the preparation of your responses. When commenting on specific form(s), please indicate to which form(s) your comments apply.

General Issues

EIA is interested in receiving comments from persons regarding:

A. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. Practical utility is the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

C. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

D. Can data be submitted in accordance with the due date specified in the instructions?

E. Public reporting burden hours per response for both options in this collection are detailed below.

Form	Option 1	Option 2
EIA–1	1.0	1.0
EIA–3	.4	.8
EIA–3A	.33	.33
EIA–4	1.0	1.0
EIA–5	.9	1.4
EIA–5A	.33	.33
EIA–6	5.0	0
EIA–7A	.5	.5
EIA–20	1.0	1.0

Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate, and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

F. What is the estimated cost of completing the form(s), including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

H. Which option do you prefer and why (Option 1 or Option 2)?

I. If you have the capability, what is your electronic reporting preference (FAX, Touch-Tone Telephone Data Entry, Internet, etc.)?

As a Potential User

J. Can you use data at the levels of detail indicated on the form(s)?

K. For what purpose would you use the data? Be specific.

L. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

M. For the most part, coal data is published by EIA in short tons of coal. Would you prefer to see EIA publish more data in metric tons? If yes, please specify what information (e.g., coal production, coal consumption) and in which EIA publication(s) you would like to see such information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form(s). They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, September 6, 1995.

John Gross,

Acting Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–22629 Filed 9–11–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project Nos. 432–022, et al.]

Hydroelectric Applications, Carolina Light and Power Company, et al.; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Whitewater Recreation Management and Site Development Plan.

b. *Project No.:* 432–022.

c. *Date Filed:* August 1, 1995.

d. *Applicant:* Carolina Power and Light Company.

e. *Name of Project:* Walters.

f. *Location:* Pigeon River, Haywood County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* R.M. Coats, Manager, Carolina Power and Light Company, P.O. Box 1551, Raleigh, NC 27602, (919) 546–6031.

i. *FERC Contact:* Patti Pakkala, (202) 219–0025.

j. *Comment Date:* October 19, 1995.

k. *Description of Project:* Carolina Power and Light Company (CP&L), licensee for the Walters Project, requests approval of a whitewater recreation management and site development plan. As part of this plan, CP&L requests approval for developing a whitewater rafting staging area and launch ramps directly downstream of the Walters Project powerhouse, on the Pigeon River. The ramps and staging area are to be available to both public boaters and commercial rafting companies. The plan also establishes management guidelines for the recreational use of the river.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. *Type of Application:* Amendment to Recreation Plan.

b. *Project No.:* 2685–003.

c. *Date Filed:* June 30, 1995.

d. *Applicant:* New York Power Authority.

e. *Name of Project:* Blenheim-Gilboa.

f. *Location:* Schoharie Creek, Schoharie County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles Lipsky, New York Power Authority,123 Main Street, White Plains, NY 10601, (914) 681–6200.

i. *FERC Contact:* Patti Pakkala, (202) 219–0025.

j. *Comment Date:* October 19, 1995.

k. *Description of Project:* New York Power Authority (Authority), licensee for the Blenheim-Gilboa Project, requests approval of an amendment to the project recreation plan. Specifically, the Authority requests approval of a proposal to implement an archery hunting program on certain project lands. The hunting area would be designated with safety zones and would be jointly administered by the Authority and the New York State Department of Environmental Conservation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11553–000.

c. *Date filed:* July 13, 1995.

d. *Applicant:* Lace River Hydro.

e. *Name of Project:* Lace River.

f. *Location:* In Tongass National Forest, at an unnamed lake, on an unnamed tributary of the Lace River, in the Borough of Juneau, Alaska. Township 34S, Range 63E, Sections 33 to 36, Township 35S, Range 63E, Sections 1 to 4, 8, 9, 17 to 19, Township 35S, Range 63E, Section 19 and Township 35S, Range 62E Sections 5, 8, 16, 17, 22 to 24.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Earle V. Ausman, 1503 West 33rd Avenue,Anchorage, AK 99503, (907) 258–2420.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* November 13, 1995.

k. *Description of Project:* The proposed project would consist of: (1) either a siphon intake or a new 20-foot-high timber buttress dam; (2) the existing unnamed lake has a surface area of 384 acres and 7,600 acre-feet of storage, if the dam is built the surface area would become 420 acres and storage would be 8,400 acre-feet; (3) a 7,600-foot-long, 21-inch-diameter penstock; (4) a powerhouse containing one generating unit with a capacity of 4,900 kW and an average annual generation of 34.1 GWh; and (5) a 5-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $50,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. *Type of Application:* Surrender of License.

b. *Project No.:* 8133–053.

c. *Date Filed:* July 19, 1995.

d. *Applicant:* B.S. Inc.

e. *Name of Project:* East Fork Ditch Hydropower.

f. *Location:* On the East Fork Weiser River, in Adams County, ID.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)–825(r).

h. *Applicant Contact:* David J. Stecher, B.S. Inc., 8211 Chesterfield Avenue, Boise, ID 83704, (208) 322–2943.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* October 19, 1995.

k. *Description of Application:* The licensee seeks to surrender the license for this unconstructed project because it is insolvent and is unable to proceed with construction.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing

preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 6, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22538 Filed 9–11–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. MT95–18–000]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1995.

Take notice that on August 31, 1995, Alabama-Tennessee Natural Gas Company tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet, to become effective September 1, 1995:

First Revised Sheet No. 149

In connection with this change, Alabama-Tennessee states that it has filed a revised statement of procedures for compliance with the Standards of Conduct required pursuant to 18 CFR 161.3 and a report as to how it is complying with Standards E, F, and G required by the Commission in its August 2, 1995 order in this proceeding.

Alabama-Tennessee has requested any waivers that may be required to accept and approve its filing as submitted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22539 Filed 9–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–20–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1995.

Take notice that on August 31, 1995, Algonquin Gas Transmission Company (Algonquin), filed to update its Annual Charge Adjustment (ACA). Algonquin tendered for filing as part of its FERC Gas Tariff, the following tariff sheets:

Fourth Revised Volume No. 1

Tenth Revised Sheet No. 21
Tenth Revised Sheet No. 22
Seventh Revised Sheet No. 23
Seventh Revised Sheet No. 24
Seventh Revised Sheet No. 25
Seventh Revised Sheet No. 27
Sixth Revised Sheet No. 29
Sixth Revised Sheet No. 31
Sixth Revised Sheet No. 35

Original Volume No. 2

Seventh Revised Sheet No. 259

Fifth Revised Sheet No. 343
Fourth Revised Sheet No. 431

Algonquin states that this filing decreases its current ACA charge by $0.0001 per MMBtu to $.0022 per MMBtu. Algonquin respectfully requests that these tariff sheets be accepted effective October 1, 1995.

Algonquin states that copies of this tariff filing were mailed to all firm customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1995. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22543 Filed 9–11–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–48–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1995.

Take notice that on August 31, 1995, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, tariff sheets as referenced below, proposed to be effective October 1, 1995:

Second Revised Volume No. 1

Eighth Revised Sheet No. 17

Original Volume No. 2

Second Revised Sheet No. 14

ANR states that the above referenced tariff sheets are being filed to adjust its Annual Charge Adjustment (ACA) rate as permitted by Section 24 of its Second Revised Volume No. 1 FERC Gas Tariff. The new ACA rate to be charged by ANR will be effective October 1, 1995.

ANR states that all of its customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests should be filed on or before September 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22546 Filed 9–11–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

September 6, 1995.

Take notice that on August 31, 1995, Colorado Interstate Gas Company (CIG) filed Thirteenth Revised Sheet No. 11 of its FERC Gas Tariff, First Revised Volume No. 1, reflecting an increase in the fuel retention percentage for Lost, Unaccounted-For and Other Fuel Gas from (1.16%) to (1.12%), reflecting an increase in the fuel retention percentage for Transportation Fuel Gas from 1.92% to 2.17%, and reflecting a decrease in the fuel retention percentage for Storage Fuel Gas from 1.46% to 1.36% effective October 1, 1995.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214, and 385.211). All such petitions or protests should be filed on or before September 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22544 Filed 9–11–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–70–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1995.

Take notice that on August 31, 1995, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1995:

Eighth Revised Sheet No. 018
Eighth Revised Sheet No. 019

Columbia Gulf states that the listed tariff sheets set forth the adjustment to its rates applicable to the Annual Charge Adjustment (ACA), pursuant to the Commission's Regulations and Section 32 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Columbia Gulf states further that it has recalculated the Commission's revised ACA per Mcf of $0.0023 to a rate per Dth of $0.0023. The adjusted ACA Unit Surcharge will be billed for the fiscal year commencing October 1, 1995.

Columbia Gulf states that copies of the filing were served upon the Company's firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22547 Filed 9–11–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1995.

Take notice that on August 31, 1995, Florida Gas Transmission Company (FGT), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1995:

Fifth Revised Eighth Revised Sheet No. 8A
Fourth Revised Sheet No. 8A.01
Fourth Revised Original Sheet No. 8A.02
Third Revised Seventh Revised Sheet No. 8B
Third Revised Original Sheet No. 8B.01

FGT states that the instant filing is submitted in conformance with the requirements of Section 27 of its FERC Gas Tariff, Third Revised Volume No. 1, which provides that FGT will file a Fuel Reimbursement Charge Adjustment to be effective each April 1 and October 1, as applicable. Section 27.C. states that the Current Fuel Reimbursement Charge Percentage will be the quotient resulting from fuel used and lost and unaccounted for gas, less fuel retained for Western Division deliveries, divided by volumes delivered, excluding Western Division deliveries, during the six-month period commencing one year prior to the effective date of the Fuel Reimbursement Charge Adjustment. Further, Section 27.C. permits FGT to file for adjustments to that calculation to provide for known and measurable changes if documented by supporting work papers.

FGT states it has extended the period for computing the Current Fuel Reimbursement Charge Percentage an additional two months in order to reflect the known and measurable changes in actual fuel usage and unaccounted for volumes which have occurred in the most recent two months for which accounting data is available. FGT states this adjustment is required in order to more precisely reflect fuel usage and unaccounted for volumes currently being experienced by FGT. The proposed Current Fuel Reimbursement Charge Percentage as determined by the ratio of fuel usage and unaccounted for volumes to deliveries, exclusive of Western Division fuel and deliveries, for the period October 1, 1994 through May 31, 1995 is 3.26%, a reduction from the previously effective Current Fuel Reimbursement Charge Percentage of 3.34%.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22545 Filed 9–11–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–11–000]

Koch Gateway Pipeline Company; Notice of Filing of Revised Tariff Sheets

September 6, 1995.

Take notice that on August 31, 1995, Koch Gateway Pipeline Company (Koch Gateway), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective October 1, 1995:

Seventh Revised Sheet No. 20
Seventh Revised Sheet No. 21
Seventh Revised Sheet No. 22
Fourth Revised Sheet No. 23
Seventh Revised Sheet No. 24

Koch Gateway states that the above referenced tariff sheets reflect a revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1995 Annual Charges, pursuant to Order No. 472.

Koch Gateway states that this revision authorizes Koch Gateway to collect $0.0023 per each Mcf ($0.0022 per Mmbtu as converted on Koch Gateway's system) of natural gas transported applicable to the 1995 Annual Charge assessed Koch Gateway by the Commission under Part 382 of the Commission's Regulations.

Koch Gateway also states that the tariff sheets are being mailed to its customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before September 13, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22542 Filed 9–11–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96–1–114–000]

Mobile Bay Pipeline Company; Notice of Filing of Revised Tariff Sheets

September 6, 1995.

Take notice that on August 31, 1995, Mobile Bay Pipeline Company (Mobile Bay) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective October 1, 1995:

Second Revised Sheet No. 4

Mobile Bay states that the above referenced tariff sheets reflect a revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1992 Annual Charges, pursuant to Order No. 472.

Mobile Bay states that this revision authorizes Mobile Bay to collect $0.0023 per each Mcf of natural gas transported applicable to the 1995 Annual charge assessed Mobile Bay by the Commission under Part 382 of the Commission's Regulations.

Mobile Bay also states that the tariff sheets are being mailed to its customers and to interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before September 13, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22548 Filed 9–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–9–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1995.

Take notice that on August 31, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Fourteenth Revised Sheet No. 30, with a proposed effective date of October 1, 1995.

Tennessee states that the purpose of this filing is to reflect a decrease in the ACA rate adjustment to Tennessee's commodity rates for the period October 1, 1995 through September 30, 1996. Tennessee states that the tariff sheet reflects a decrease of $.0001 per Dth in the ACA adjustment surcharge, resulting in a new ACA rate of $.0022/Dth.

Tennessee states that copies of the filing have been mailed to all affected parties.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 and 385.214). All such motions or protests should be filed before September 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22541 Filed 9–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–197–004]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

September 6, 1995.

Take notice that on August 31, 1995, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2. The proposed effective date of the revised tariff sheets is September 1, 1995.

Transco states that the purpose of the instant filing is to place into effect on September 1, 1995, upon the conclusion of the suspension period in this proceeding, the rates filed herein on March 1, 1995, as adjusted (1) to eliminate the costs associated with facilities not in service as of August 31, 1995, the end of the RP95–197 test period (2) to incorporate, as appropriate, intervening filings which have been made effective or are pending before the Commission to become effective subsequent to the March 1, 1995, filing in this docket and (3) to revise tariff sheet nos. 1300A and 1300B (Rate Schedule X–140) in compliance with the Commission's June 20, 1995 order on rehearing.

Transco states that it is serving copies of the instant filing to its customers, State commissions and other interested parties to Docket No. RP95–197.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22540 Filed 9–11–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5294–7]

Agency Information Collection Activities up for Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before November 13, 1995.

ADDRESSES: Office of Solid Waste and Emergency Response, 401 M Street SW., Washington, DC 20460, MS 5101.

Remit Comments to: Sella M. Burchette, US EPA/ERT, 2890 Woodbridge Ave, Blg 18, MS 101, Edison, NJ 08837–3679.

FOR FURTHER INFORMATION CONTACT: Sella M. Burchette, (908) 321–6726 / FAX: (908) 321–6724 / burchette.sella@epamail.epa.gov

SUPPLEMENTARY INFORMATION: Affected entities: Entities affected by this action are those State and local employees engaged in hazardous waste operations and emergency response in the 27 States that do not have Occupational Safety and Health Administration (OSHA) approved State plans.

Title: EPA Worker Protection Standard for Hazardous Waste Operations and Emergency Response, EPA ICR # 1426.03, OMB Control # 2050–0105, Expiration 1–31–96.

Abstract: Section 126 (f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) require EPA to set worker protection standards for State and local employees engaged in hazardous waste operations and emergency response in the 27 States that do not have Occupational Safety and Health Administration approved State plans. The EPA coverage, required to be identical to the OSHA standards, extends to three categories of employees: those in clean-ups at uncontrolled hazardous waste sites, including corrective actions at Treatment, Storage and Disposal (TSD) facilities regulated under the Resource Conservation and Recovery Act (RCRA); employees working at routine hazardous waste operations at RCRA TSD facilities; and employees involved in emergency response operations without regard to location. This ICR renews the existing mandatory recordkeeping collection of ongoing activities including monitoring of any potential employee exposure at uncontrolled hazardous waste site, maintaining records of employee training, refresher training, medical exams, and reviewing emergency response plans.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information;

(iii) Enhance the quality, utility and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Burden Statement: The annual recordkeeping burden for this collection is estimated to average 10.64 hours per site or event. The estimated number of respondents is approximated at 100 RCRA regulated TSD facilities or uncontrolled hazardous waste sites; 23,900 State and local police departments, fire departments or hazardous materials response teams. The estimated total burden hours on respondents: 255,427. The frequency of collection: continuous maintenance or records. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: September 6, 1995.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 95–22622 Filed 9–11–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2097]

Petition for Reconsideration of Actions in Rulemaking Proceedings; September 7, 1995

Petition for reconsideration has been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed by September 27, 1995. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Administration of the North American Numbering Plan. (CC Docket No. 92–237)

Number of Petitions Filed: 2

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulations. (MM Docket Nos. 92–266 and 93–215)

Number of Petitions Filed: 2

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Romeny, West Virginia) (MM Docket No. 94–137 and RM–8532)

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22533 Filed 9–11–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS95–1]

Appraisal Subcommittee; Appraisal Regulation; Temporary Practice and Reciprocity

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The Appraisal Subcommittee ("ASC") of the Federal Financial Institutions Examination Council is publishing this Notice to solicit public comments on how it should implement section 315 of the Riegle Community Development and Regulatory Improvement Act of 1994 ("CDRIA"). The ASC anticipates that the comments generated during this process will facilitate the establishment of a more efficient and uniform system for providing temporary practice and reciprocity to State certified and licensed appraisers.

DATES: Comments must be received on or before December 11, 1995.

ADDRESSES: Persons wishing to submit written comments should file them with Edwin W. Baker, Executive Director, Appraisal Subcommittee, 2100 Pennsylvania Avenue NW., Suite 200, Washington, D.C. 20037. Comments may be forwarded via fax to (202) 634–6555 or by Internet e-mail to asc@apo.com. All comment letters, including those filed electronically, should refer to Docket No. AS95–1. All comment letters will be available for public inspection and copying at the ASC's offices. Comments submitted electronically also will be publicly available in the ASC Forum on Appraisal Profession Online at (703) 478–5502.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel, at (202) 634–6520, Appraisal Subcommittee, 2100 Pennsylvania Avenue NW., Suite 200, Washington, D.C. 20037.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Since January 1, 1993, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("Title XI"), as amended,[1] has required all federally regulated financial institutions to use State licensed or certified real estate appraisers, as appropriate, to perform appraisals in federally related transactions. *See* § 1119(a) of Title XI, 12 U.S.C. 3348(a). In response to Title XI, each State, territory and the District of Columbia ("State") has established a regulatory program for certifying, licensing and supervising real estate appraisers. In turn, the ASC has been closely monitoring State programs to ensure their compliance with Title XI.

While Title XI authorizes each State to certify, license, and supervise real estate appraisers within its jurisdiction, the Title also provides a means for appraisers licensed or certified in one State to practice on a temporary basis in another State. Section 1122(a)(1) of Title XI, 12 U.S.C. 3351(a)(1), specifically requires "[a] State appraiser certifying or licensing agency [to] recognize on a temporary basis the certification or license of an appraiser issued by another State if—(A) the property to be appraised is part of a federally related transaction, (B) the appraiser's business is of a temporary nature, and (C) the appraiser registers with the appraiser certifying or licensing agency in the State of temporary practice."

As discussed in more detail below, reciprocity provides appraisers certified or licensed in one State with a means to practice in another State on a permanent basis. While Title XI, until recently, did not specifically mention reciprocity, the ASC encouraged States to enter into reciprocal appraiser licensing and certification agreements and arrangements.

In September 1994, Section 315 of CDRIA was enacted. Pub. L. 103–325, 108 Stat. 2160, 2222 (1994). CDRIA amended Section 1122(a) of Title XI by adding new subparagraph (2) pertaining to temporary practice and new paragraph (b) regarding reciprocity:

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[1] Pub. L. 101–73, 103 Stat. 183 (1989), as amended by Pub. L. 102–233, 105 Stat. 1792 (1991), Pub. L. 102–242, 105 Stat. 2386 (1991), Pub. L. 102–550, 106 Stat. 3672 (1992), Pub. L. 102–485, 106 Stat. 2771 (1992), and Pub. L. 103–325, 108 Stat. 2222 (1994).

> (2) *Fees for temporary practice.* A State appraiser certifying or licensing agency shall not impose excessive fees or burdensome requirements, as determined by the Appraisal Subcommittee, for temporary practice under this subsection.
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> * * * * *
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> (b) *Reciprocity.* The Appraisal Subcommittee shall encourage the States to develop reciprocity agreements that readily authorize appraisers who are licensed or certified in one State (and who are in good standing with their State appraiser certifying or licensing agency) to perform appraisals in other States.

The Senate Report to accompany S. 1275, issued on October 28, 1994, by the Senate Committee on Banking, Housing, and Urban Affairs, said:

> The Committee's intent is to enable qualified appraisers to practice in a number of States without anticompetitive restrictions. S. Rep. No. 103–169, 103d Cong., 2d Sess. 53 (1994), reprinted in 1994 U.S. Code Cong. & Admin. News 1937.

II. ASC Policies Regarding, and Current Status of, Temporary Practice

Soon after the full implementation of Title XI in January 1993, and based on the ASC's reviews of State appraiser regulatory programs, the ASC issued *Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers* (August 1993). Policy Statement 5 specifically addressed temporary practice issues. The Statement, among other things: (1) Recognized that a certified or licensed appraiser from State A, who has an assignment concerning a federally related transaction in State B, has a statutory right to enter State B, register with the State agency in State B and perform the assignment; and (2) informed States that: (a) they could not unreasonably hamper the exercise of temporary practice rights, (b) out-of-State certified or licensed appraisers should register for temporary practice prior to performing the subject appraisal, and (c) temporary practice systems should process registrations promptly and efficiently. The ASC suggested that an acceptable model for temporary practice procedures would include a nominal per assignment fee, proof of a valid license or certificate and the completion of a reasonable temporary practice registration form. The Statement covered several technical matters, such as defining the terms, "assignment" and "temporary" and providing guidance on permissible State limitations on temporary practice.

The Statement addressed how States should enforce their statutes and regulations regarding appraisers who perform appraisals as temporary practitioners. For example, out-of-State certified or licensed appraisers need to be subject to the host State's full regulatory jurisdiction and, therefore, must comply with the State's real estate appraisal statutes and regulations. Moreover, the State should treat temporary practitioners like any other appraisers certified or licensed by the State who wish to perform appraisals in federally related transactions. In addition, the Statement noted that the host State agency should take jurisdiction of any complaints regarding the temporary practicing appraiser's appraisal activities within the State.

As a matter of policy, the ASC, as part of the field review process, has written States agencies about temporary practice fees of $100 or more or permits issued on less than a per assignment basis, first requesting the basis for the restrictions and then, if appropriate, requesting liberalization of the restrictions. Some States have been responsive to the ASC's recommendations; others have not. While the ASC believes that Policy Statement 5 and its field review program have been effective in helping to ensure a certified or licensed appraiser's ability to engage in temporary practice, issues remain. Two States still do not permit temporary practice. Of the States that do, some impose short time limits on length of permits. In addition, almost 40 States require temporary practice registrants to file a "letter of good standing," which must be obtained from the home State agency. This requirement often has resulted in unnecessary delays in the issuance of temporary practice permits. Moreover, States charge insurance fees, ranging from $5 to $40, per letter. Frequently, the charges must be paid by certified check, which results in further delays.

III. ASC Policies Regarding, and Current Status of, Reciprocity

The ASC, in Statement 6 of its *Policy Statements*, endorsed reciprocity and urged the States to establish permanent reciprocity arrangements promptly to address the needs of certified or licensed appraisers who practice on a non-temporary, multistate basis.[2] Many interested parties, including lenders and appraisers, have commented that reciprocity is at least as critical as temporary practice. As noted above, reciprocity involves a permanent recognition of another State's certified or licensed appraisers. It generally means that a host State will credential a person based upon that person having been credentialed by his or her home State. It also could involve mutual agreements or understandings among States for their certified or licensed appraisers to operate freely within those States without any further registration, credentialing, or administrative action. At this time, no States have implemented reciprocity agreements of this nature.

Reciprocity, as practiced today, requires that an appraiser who is certified or licensed in State A and reciprocally certified or licensed in State B must comply with both States' appraiser laws, including those requiring continuing education and the payment of certification, licensing and Federal fees. Generally, the appraiser is not required to take and pass State B's certification or licensing examinations. The appraiser, however, usually must submit, to State B, a copy of his or her credentials, a statement of good standing, a consent to local service of process and the payment of appropriate fees. Or, State B might grant the requested certificate or license "by endorsement" upon payment of State's B's certification or licensing fee. Many States use both methods. A few States may accept the examination results of other States, but require the applicant to complete the remainder of the application, which then is fully reviewed by the State agency. As of December 31, 1994, all but one State had some sort of reciprocity program in place.

Differences in reciprocity procedures and requirements remain problematic. While some regions of the United States have successfully arrived at regional reciprocity agreements, others have not, in part because some States have higher education and experience requirements for applicants than those promulgated by the Appraiser Qualifications Board ("AQB"). Other States require letters of good standing from *each* State of certification or licensing. In the ASC's view, these differences continue to burden the free movement of certified or licensed appraisers across State lines and to cause confusion among appraisers and users of appraisal services.

The ASC believes that States should accept other States' certifications and licenses without reexamining applicants' underlying education or experience, as long as each State has appraiser qualification criteria that meet the minimum standards for certification and licensure as determined by the AQB, uses appraiser certification and licensing examinations that are AQB endorsed and continues to perform education and experience reviews competently.

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[2] The ASC suggested in the Policy "that States consider implementing, at a minimum, the following features in their reciprocity policies:

- A simple application;
- No reexamination;
- No additional review of an applicant's education or experience;
- Reciprocal licensing or certification fees similar in amount to the corresponding fees for 'home' State appraisers; and
- The collection and forwarding to the ASC of the National Registry [of State Certified or Licensed Real Estate Appraisers ("National Registry")] fee for each reciprocally licensed or certified appraiser."

IV. Alternatives

The ASC is publishing this Notice to solicit public comments on how it should implement Congress's directives as set forth in CDRIA. The ASC anticipates that the comments generated during this process will facilitate the establishment of a more efficient and uniform system for providing temporary practice and reciprocity to State certified and licensed appraisers. The following sections present for public consideration and comment several possible approaches.

A. A Universal "Drivers License" Approach to Both Temporary Practice and Reciprocity

While a State's licensing or certification of professionals, such as appraisers, differs in substantial ways from awarding persons permits to drive vehicles, a "drivers license" approach to both reciprocity and temporary practice seems to warrant serious consideration. States have successfully worked out procedures to honor valid drivers licenses of non-resident drivers and to prosecute their illegal driving activities under local law.

As applied to real estate appraisers, this approach would enable a real estate appraiser with a valid certification or license[3] to perform his or her appraisal functions in any State. To enforce violations, State agencies would have ready access to one or more systems to allow them to determine the status of any single certificate or license holder. Such a system could be based on records from, either the appraiser's home State of certification or licensure or the National Registry.

More specifically, an appraiser certified or licensed in State A could travel to State B and perform an appraisal without notifying State B's appraiser regulatory agency. While in State B, the appraiser would need to perform his or her duties in accordance with State B's appraiser statutes and regulations. If a complaint were filed with State B's appraiser regulatory agency respecting the activities of the appraiser while in State B, the complaint would be investigated and handled by State B, with that State sending a copy of the complaint to State A's appraiser regulatory agency. State A's agency would be encouraged to assist State B actively in its investigation, and State A could also take any independent disciplinary action within its power. Consistent with legal principles guiding interstate relations, State A would honor State B's final decision pertaining to the complaint.

B. Other Temporary Practice Alternatives

1. Specific Standards

This approach would establish specific guidelines for temporary practice fee levels and practices and procedures. The standards could:

- Make temporary practice available only on a "per assignment" basis;
- Prohibit time limitations of less than six months on the duration of temporary practice permits;
- Allow temporary practitioners to have one permit extension;
- Prohibit a State from charging a fee exceeding a fixed amount, *e.g.*, $50, for each temporary practice permit;
- Enable an appraiser to have at least two temporary practice permits per year;
- Prohibit mandatory affiliation requirements for temporary practitioners;
- Require a State's acceptance of an out-of-State appraiser's qualifications strictly on the basis of the presentation of his or her license or certification and sworn statement that it is in good standing in all States of certification or licensure. Existing State requirements for appraisers to obtain home State letters of good standing would be eliminated. Instead, an appraiser's status would be validated through the use of the National Registry (perhaps via electronic access) or the relevant State appraiser registry;
- Require out-of-State appraisers to register, rather than apply, for temporary practice;
- Require requests for temporary practice to be processed in no more than five business days from receipt;
- Require the State of temporary practice to take regulatory responsibility for a visiting appraiser's unethical, incompetent or fraudulent practices performed while within the State; and
- Require the State agency in the State of temporary practice to cooperate with, and provide assistance to, the home State agency in its investigation of the appraiser's practices.

2. Self-certification of Compliance with Specific Standards

This approach would incorporate the specific standards presented above, but would shift from the ASC to States and their State agencies the ongoing duty of ascertaining whether their temporary practice statutes, regulations, procedures, fees and practices are consistent with the ASC's standards. In essence, it would create a "safe harbor" for States and State agencies that conform to the ASC's standards. This safe harbor would vanish upon a determination by the State or the ASC that an element of the State's temporary practice program appears to unreasonably burden the free movement of certified or licensed appraisers across State lines.

3. General Standards

This approach would avoid specific standards of any kind and basically would incorporate Title XI's language into the ASC's written guidance to the States. Thus, the ASC would require States:

- To recognize on a temporary basis the certification or license of an appraiser issued by another State, if the property to be appraised is part of a federally related transaction, the appraiser's business is of a temporary nature and the appraiser registers with the State agency in the State of temporary practice; and
- Not to impose excessive fees or burdensome requirements for temporary practice, as determined by the ASC.

C. Other Reciprocity Approaches

The ASC is required by Title XI to "encourage the States to develop reciprocity agreements," and those agreements need to "readily authorize" out-of-State licensed or certified appraisers (who are in good standing with their State) "to perform appraisals in other States." The following approaches could be used separately or in tandem:

1. Create a General Federal Duty

The ASC could create a duty for each State and State agency to work expeditiously and conscientiously with other States and State agencies with a view toward satisfying the purposes of the statutory language. The ASC would monitor each State's progress and could take positive steps to work with and encourage States to work out issues and difficulties whenever appropriate.

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[3] The appraiser would have only one license or certification. Because the single credential would enable the appraiser to practice in more than one State, States would no longer charge separate fees for temporary practice or reciprocity, and appraisers would have to pay only one annual National Registry fee to the ASC through their home State agency.

2. Request States to Create and File Plans

The ASC could request each State to draft and file with the ASC a plan to accomplish reciprocity with at least all contiguous States by a specific time. For States not sharing geographically contiguous borders with any other State, such as Alaska and Hawaii, those States would need to draft a plan to include States that certify or license appraisers who perform a significant number of appraisals in Alaska and Hawaii. The ASC would review each State's plan as part of its State agency monitoring function, and, wherever appropriate, work with the State and surrounding States to resolve issues and arrive at mutually satisfactory arrangements.

V. Request for Comments

A. In General

The ASC requests comment on all aspects of implementing the new legislation from interested members of the public, including appraisers, States and their State appraiser regulatory agencies, users of appraisal services and industry groups. The approaches set forth above are intended only to be starting points for discussion and comment, and the ASC welcomes variations or combinations of these approaches and the recommendation of other alternatives.

B. Specific Questions

(1) In your view, what are the most serious impediments to temporary practice or reciprocity? Please provide your best estimates of their costs in time and money, if possible.

(2) Do you beleive that these impediments warrant ASC action?

(3) Are any of the alternatives presented in Part IV especially well suited to removing the impediments, and what are your reasons for your choice?

(4) Do other alternatives exist? If so, please describe them.

(5) Are there any other issues related to temporary practice or reciprocity that should be brought to the ASC's attention?

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: August 31, 1995.

Diana L. Garmus,

Chairperson.

[FR Doc. 95–22518 Filed 9–11–95; 8:45 am]

BILLING CODE 6201–01–M

FEDERAL RESERVE SYSTEM

First Union Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 26, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire RS Financial Corporation, Raleigh, North Carolina, and thereby indirectly acquire Raleigh Federal Savings Bank, Raleigh, North Carolina, and engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Downs Bancshares, Inc., Downs, Kansas; to acquire Cushing Insurance, Inc., Downs, Kansas, and thereby engage in the sale of general insurance in a town of less than 5,000 in population, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. The geographic scope for this activity is Downs, Kansas.

Board of Governors of the Federal Reserve System, September 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-22575 Filed 9-11-95; 8:45 am]

BILLING CODE 6210-01-F

Passumpsic Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 6, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Passumpsic Bancorp, St. Johnsbury, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of Passumpsic Savings Bank, St. Johnsbury, Vermont.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Quantum Capital Corp., Suwanee, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Quantum National Bank, Suwanee, Georgia (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Liberty Bancshares, Inc., Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Bank, Springfield, Missouri, a *de novo* bank.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Dartmouth Capital Group, Inc., Gilford, New Hampshire, and Dartmouth Capital Group, L.P., Gilford, New Hampshire; to become bank holding companies by acquiring 52.90 percent of the voting shares of SDN Bancorp, Encinitas, California, and thereby indirectly acquire San Dieguito National Bank, Encinitas, California.

Comments regarding this application must be received by the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 1995.

Board of Governors of the Federal Reserve System, September 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-22576 Filed 9-11-95; 8:45 am]

BILLING CODE 6210-01-F

Louis G. Titus, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Liscomb J. Titus and Paula E. Titus, Trustees of the Louis G. Titus Revocable Trust; to retain 51.2 percent; Paula E. Titus, individually, to retain an additional 27.6 percent; and John L. Titus, all of Holdrege, Nebraska, to retain 39.3 percent of the voting shares of LJT, Inc., Holdrege, Nebraska, and thereby indirectly acquire The First National Bank of Holdrege, Holdrege, Nebraska.

Board of Governors of the Federal Reserve System, September 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-22566 Filed 9-11-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 951–0044]

Columbia/HCA Healthcare Corporation.; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Nashville-based health care corporation to divest Poplar Springs Hospital, a psychiatric hospital facility in Petersburg, Virginia.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:
Mark Horoschak, Bureau of Competition, Federal Trade Commission, S–3115, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. (202) 326–2756
Oscar Voss, Bureau of Competition, Federal Trade Commission, S–3115, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2750

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation into the proposed acquisition of John Randolph Medical Center in Hopewell, Virginia, and certain related assets, by Columbia/HCA Healthcare Corporation ("Columbia/HCA") from the Hopewell Hospital Authority, and it is now appearing that Columbia/HCA ("proposed respondent") is willing to enter into an agreement containing an order to divest certain assets, to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between the proposed respondent by its duly authorized officers and attorneys, and counsel for the Commission that:

1. The proposed respondent Columbia/HCA is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203.

2. The proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

3. The proposed respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either

withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist, and other relief in disposition of the proceedings, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Columbia/HCA" or "respondent" means Columbia/HCA Healthcare Corporation, its partnerships, joint ventures, companies, subsidiaries, divisions, and groups and affiliates controlled by Columbia/HCA; their directors, officers, employees, agents, and representatives; and their successors and assigns.

B. "Commission" means the Federal Trade Commission.

C. The "Acquisition" means the transaction contemplated by the October 31, 1994, agreement between Columbia/HCA and the Hopewell Hospital Authority, whereby Columbia/HCA will acquire John Randolph Medical Center in Hopewell, Virginia, and certain related assets.

D. "Psychiatric hospital" means a health care facility licensed or certified as a psychiatric hospital (except for a facility limited by its license or certificate to residential treatment or other long-term care), that provides 24-hour inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

E. "Psychiatric unit" means a department, unit, or other organizational subdivision of a general acute care or other non-psychiatric hospital, licensed or certified as a provider of inpatient psychiatric care (except for a facility limited by its license or certificate to residential treatment or other long-term care), that provides 24-hour inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

F. "Psychiatric hospital facility" means a psychiatric hospital, a non-psychiatric hospital with a psychiatric unit, or a psychiatric unit.

G. "Psychiatric hospital services" means the provision by psychiatric hospitals or psychiatric units of inpatient services for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illnesses or emotional disturbance, or alcohol or drug abuse. "Psychiatric hospital services" do not include the long-term psychiatric treatment provided by residential treatment facilities, other long-term treatment of chronic mental illnesses, or such treatment and other services provided by Federally-owned facilities and state mental hospitals.

H. To "operate" a psychiatric hospital facility means to own, lease, manage, or otherwise control or direct the operations of a psychiatric hospital facility directly or indirectly.

I. To "acquire" a psychiatric hospital facility means to directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. Acquire the whole or any part of the assets of a psychiatric hospital facility;

2. Acquire the whole or any part of the stock, share capital, equity, or other interest in any person operating a psychiatric hospital facility;

3. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of a psychiatric hospital facility; or

4. Enter into any other arrangement to obtain direct or indirect ownership, management, or control of a psychiatric hospital facility or any art thereof, including, but not limited to, a lease of or management contract for a psychiatric hospital facility.

J. "Relevant area" means the area in Virginia encompassing the independent cities of Colonial Heights, Hopewell, and Petersburg; Dinwiddie and Prince George counties; and those portions of Charles City and Chesterfield counties within a fifteen (15) mile radius of the present site of Poplar Springs Hospital in Petersburg, Virginia.

K. "Affiliate" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

L. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture, or other business or legal entity, including any governmental agency.

M. "Assets and Businesses" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. all real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements, and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "Real Property");

2. all contracts and agreements with physicians, other health care providers, unions, third party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees (collectively, the "Contracts");

3. all machinery, equipment, fixtures, vehicles, furniture, inventories, and supplies (other than such inventories and supplies as are used in the ordinary course of business during the time that Columbia/HCA owns the assets) (collectively, the "Personal Property");

4. all research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know how, specifications, designs, drawings, processes, and quality control data (collectively, the "Intangible Personal Property");

5. all books, records, and files, excluding, however, the corporate minute books and tax records of Columbia/HCA and its affiliates; and

6. all prepaid expenses.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, all Assets and Businesses, including all improvements, additions, and enhancements made prior to divestiture, of Poplar Springs Hospital in Petersburg, Virginia (the "Paragraph II Assets").

B. Respondent shall also divest such additional Assets and Businesses ancillary to the Paragraph II Assets and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Paragraph II Assets.

C. Respondent shall divest the Paragraph II Assets only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Paragraph II Assets is to ensure the continuation of the Paragraph II Assets as an ongoing, viable psychiatric hospital and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

D. Respondent shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement to Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this order or until such other time as said Agreement to Hold Separate provides.

E. Pending divestiture of the Paragraph II Assets, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the Paragraph II Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Paragraph II Assets, except for ordinary wear and tear.

F. A condition of approval by the Commission of the divestiture shall be a written agreement by the acquirer(s) of the Paragraph II Assets that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the Commission in the manner prescribed by Paragraph IV of this Order, any Paragraph II Asset to any person who operates, or will operate immediately following the sale, any other psychiatric hospital facility in the relevant area.

III

It is further ordered that:

A. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval the Paragraph II Assets, in accordance with this order, within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the undivested Paragraph II Assets.

B. In the event that the Commission or the Attorney General brings an action for any failure to comply with this order or in any way relating to the Acquisition, pursuant to § 5(*1*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*1*), or any other statute enforced by the Commission, the respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under Paragraph III.A, shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it for any failure by the respondent to comply with this order.

C. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A of this order, the respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Paragraph II Assets.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.C.3 to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Comission, or in the case of a court-appointed trustee, by the court; provided however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the undivested Paragraph II Assets, or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court appointed trustee, by the court.

6. Subject to Columbia/HCA's absolute and unconditional obligation to divest at no minimum price the Paragraph II Assets (and subject to the terms described in Paragraph II.A), and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to

the respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to the acquirer as set out in Paragraph II; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity, the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of the respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the undivested Paragraph II Assests.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses inclurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or waton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Paragraph II Assets.

12. The trustee shall report in writing to the respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not, without providing advance written notification to the Commission directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any person operating a psychiatric hospital facility in the relevant area;

B. Acquire any assets of a psychiatric hospital facility in the relevant area;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any psychiatric hospital facility, or any part thereof, in the relevant area, including but not limited to, a lease of or management contract for any such facility;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any psychiatric hospital facility in the relevant area;

E. Permit any psychiatric hospital facility it operates in the relevant area to be acquired by any person that operates, or will operate immediately following such acquisition, any other psychiatric hospital facility in the relevant area.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 CFR § 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information and documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a.

Provided, however, that prior notification pursuant to this Paragraph IV, or pursuant to Paragraph II.F. of this order, shall not be required for:

1. the establishment by respondent of a new psychiatric hospital facility in the relevant area: (a) that is a replacement for an existing psychiatric hospital facility, if that facility is operated by respondent and is not required to be divested pursuant to Paragraph II of this order; or (b) that is not a replacement for any psychiatric hospital facility in the relevant area;

2. any transaction otherwise subject to this Paragraph IV of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the psychiatric hospital facility or part thereof to be acquired does not exceed one million dollars ($1,000,000);

3. the acquisition of products or services in the ordinary course of business; or

4. any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all, or any substantial part of, any psychiatric hospital facility it operates in the relevant area to be acquired by any other person (except pursuant to the divestiture required by Paragraph II), unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

VI

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully complied with Paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraph II of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of this order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and it is complying with this order.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this order, the respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

Appendix I

Agreement To Hold Separate

This Agreement to Hold Separate ("Agreement") is by and between Columbia/HCA Healthcare Corporation ("Columbia/HCA" or "respondent"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq.

Premises

Whereas, on October 31, 1994, Columbia/HCA and the Hopewell Hospital Authority entered into an agreement whereby Columbia/HCA will acquire John Randolph Medical Center in Hopewell, Virginia, and certain related assets, from the Authority (the "Acquisition"); and

Whereas, Columbia/HCA, with its principal place of business at One Park Plaza, Nashville, Tennessee 37203, owns and operates, among other things, psychiatric hospitals; and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Order"), which would require the divestiture of certain assets specified in Paragraph II of the Consent Order ("Paragraph II Assets"), the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdrew such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of the Paragraph II Assets during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestitures of the Paragraph II Assets, and the Commission's right to have the Paragraph II Assets continue as a viable psychiatric hospital independent of Columbia/HCA; and

Whereas, the purposes of this Agreement and the Consent Order are to:

(i) preserve the Paragraph II Assets as a viable, competitive, and ongoing psychiatric hospital, independent of Columbia/HCA, pending the divestitures of the Paragraph II Assets as required under the terms of the Consent Order;

(ii) prevent interim harm to competition from the operation of the Paragraph II Assets pending divestiture as required under the terms of the Consent Order; and

(iii) remedy any anticompetitive effects of the Acquisition; Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture of the Paragraph II Assets is not accomplished, to appoint a trustee to seek divestiture of said assets pursuant to the Consent Order or to seek civil penalties or a court appointed trustee or other equitable relief, as follows:

1. Respondent agrees to execute the Agreement Containing Consent Order and be bound by the attached Consent Order.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a or 2.b, it will comply with the provisions of paragraph 3 of this Agreement:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the day after the divestiture of the Paragraph II Assets, as required by the Consent Order, is completed.

3. To ensure the complete independence and viability of the Paragraph II Assets, and to assure that no competitive information is exchanged between Columbia/HCA and the managers of the Paragraph II Assets, respondent shall hold the Paragraph II Assets, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Paragraph II Assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Columbia/HCA excluding the Paragraph II Assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the Consent Order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with the Acquisition, respondent shall organize a distinct and separate legal entity, either a corporation, limited liability company, or general or limited partnership ("New Company") and adopt constituent documents for the New Company that are not inconsistent with other provisions of this Agreement or the Consent Order; provided, however, that Columbia/HCA may designate as the "New Company" under this agreement, the "New Company" created pursuant to the Agreement to Hold Separate Regarding the Florida, Texas, and Louisiana Assets between Columbia/HCA and the Commission in connection with FTC File No. 951–0022. Respondent shall transfer all ownership and control of all Paragraph II Assets to the New Company.

c. The board of directors of the New Company, or, in the event respondent organizes an entity other than a corporation, the governing body of the entity ("New Board"), shall have three members. Respondent shall elect the members of the New Board. The New Board shall consist of the following three persons: Winfield C. Dunn; Samuel H. Howard; and David C. Colby. The Chairman of the New Board shall be Winfield C. Dunn (provided he agrees), or a comparable, knowledgeable person, who shall remain independent of Columbia/HCA and competent to assure the continued viability and competitiveness of the Paragraph II Assets. The New Board shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be David C. Colby, provided he agrees, or a comparable knowledgeable person ("the respondent's New Board member"). The New Board shall meet monthly during the course of the Hold Separate, and as otherwise necessary.

Meetings of the New Board during the term of this Agreement shall be audiographically/transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Paragraph II Assets, the independent Chairman of the Board of the New Company, the New Board, or the New Company or any of its operations or businesses; provided, however, that respondent may exercise only such direction and control over the New Company as is necessary to assure compliance with this Agreement or the Consent Order, or with all applicable laws.

e. Respondent shall maintain the viability, competitiveness, and marketability of the Paragraph II Assets; shall not sell, transfer, or encumber said Assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair their viability, competitiveness, or marketability of said Assets.

f. Except for the respondent's New Board member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of the New Company.

g. The New Company shall be staffed with sufficient employees to maintain the viability and competitiveness of the Paragraph II Assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.

h. With the exception of the respondent's New Board Member, respondent shall not change the composition of the New Board unless the independent Chairman consents. The independent Chairman shall have power to remove members of the New Board for cause. Respondent shall not change the composition of the management of the New Company except that the New Board shall have the power to remove management employees for cause.

i. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in Paragraph 3.c of this Agreement.

j. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about the New Company or the activities of the hospital to be operated by the New Board. Nor shall the New Company or the New Board receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to the New Company necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

k. Except as permitted by this Agreement, the respondent's New Board member shall not, in his or her capacity as a New Board member, receive Material Confidential Information and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's New Board member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's New Board member shall participate in matters that come before the New Board only for the limited purposes of considering a capital investment or other transaction exceeding $250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the Consent Order. Except as permitted by this Agreement, the respondent's New Board member shall not participate in any matter, or attempt to influence the votes of the other members of the New Board with respect to matters, that would involve a conflict of interest if respondent and the New Company were separate and independent entities.

l. Any material transaction of the New Company that is out of the ordinary course of business must be approved by a majority vote of the New Board; provided that the New Company shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

m. If necessary, respondent shall provide the New Company with sufficient working capital to operate the Paragraph II Assets at their respective current rates of operation, and to carry out any capital improvement plans for the Paragraph II Assets which have already been approved.

n. Columbia/HCA shall continue to provide the same support services to the Paragraph II Assets, as are being provided to those Assets by Columbia/HCA as of the date this Agreement is signed. Columbia/HCA may charge the Paragraph II assets the same fees, if any, charged by Columbia/HCA for such support services as of the date of this Agreement. Columbia/HCA personnel providing such support services must retain and maintain all Material Confidential Information of the Paragraph II Assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute a confidentiality agreement prohibiting the disclosure of any Material Confidential Information of the Paragraph II Assets.

o. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) twelve (12) months after the date the Consent Order becomes final, or (ii) the date contemplated by subparagraph 2.b (the "Initial Divestiture Period"), respondent shall make available for use by the New Company funds sufficient to perform all necessary routine maintenance to, and replacements of, the Paragraph II Assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide the New Company with such funds as are necessary to maintain the viability, competitiveness, and marketability of such Assets.

p. Columbia/HCA shall circulate, to its management employees responsible for the operation of hospitals (including non-psychiatric facilities) either in the relevant area defined in the Consent Order in this matter, or in the city of Richmond or Henrico or Chesterfield counties in Virginia, a notice of this Hold Separate and Consent Order in the form Attachment A.

q. The New Board shall serve at the cost and expense of Columbia/HCA. Columbia/HCA shall indemnify the New Board against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the New Board directors.

r. The New Board shall have access to and be informed about all companies who inquire about, seek, or propose to buy any Paragraph II Assets.

s. The New Board shall report in writing to the Commission every thirty (30) days concerning the New Board's efforts to accomplish the purposes of this Hold Separate.

4. Should the Commission seek in any proceeding to compel respondent to divest any of the Paragraph II Assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure

to comply with the Consent Order or this Agreement, or in any way relating to the Acquisition, as defined in the draft complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, from respondent shall abide by the terms of this Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the erms of this Agreement or Consent Order.

6. For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon writtens request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representatives of the Commission:

a. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, corespondence, memoranda, and all other records and documents in the possession or under the control of the respondent relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

7. This Agreement shall not be binding until approved by the Commission.

Attachment A—Notice of Divestiture and Requirement for Confidentiality

Columbia/HCA Healthcare Corporation has entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of Poplar Springs Hospital in Petersburg, Virginia and certain related assets and businesses ("Poplar Springs"). Until after the FTC's Order becomes final and Poplar Springs is divested, Poplar Springs must be managed and maintained as a separate, ongoing business, independent of all other Columbia/HCA businesses. All competitive information relating to Poplar Springs must be retained and maintained by the persons involved in the operation of Poplar Springs on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Columbia/HCA business. Similarly, all such persons involved in Columbia/HCA shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves Poplar Springs.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject Columbia/HCA to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order To Aid Public Comment, Columbia/HCA Healthcare Corp., FTC File No. 951–0044

The Federal Trade Commission has accepted, subject to final approval, a proposed consent order from Columbia/HCA Healthcare Corp. ("Columbia/HCA"). The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed consent order would settle charges by the Federal Trade Commission that Columbia/HCA's proposed acquisition of John Randolph Medical Center ("John Randolph") from the Hopewell Hospital Authority may substantially lessen competition in the market for psychiatric hospital services in the "Tri-Cities" area of south central Virginia (which includes Hopewell, Petersburg, Colonial Heights, and other nearby communities). Because the Commission has not charged that the proposed acquisition would endanger competition with respect to non-psychiatric hospital services offered by John Randolph, the scope of the proposed consent order is limited to psychiatric services. (Columbia/HCA does not operate any hospitals in the Tri-Cities area that provide non-psychiatric hospital services.)

Columbia/HCA operates over 300 hospitals nationwide. Its only hospital in the Tri-Cities area is Poplar Springs Hospital, a 100-bed hospital in Petersburg, Virginia specializing in psychiatric care. John Randolph is a 150-bed general acute care hospital in Hopewell, Virginia, about ten miles northeast of Petersburg. It is owned and operated by the Hopewell Hospital Authority. John Randolph provides psychiatric hospital services in its 34-bed psychiatric unit, as well as a variety of medical and surgical services in other departments of the hospital. The complaint accompanying the consent order alleges that the proposed combination of Columbia/HCA's Poplar Springs with John Randolph may substantially lessen competition in the relevant psychiatric hospital services market, and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The complaint defines psychiatric hospital services as those inpatient services provided by psychiatric hospitals, or psychiatric units of non-psychiatric hospitals, for the psychiatric diagnosis, treatment, and care of persons suffering from acute mental illnesses or emotional disturbance, or alcohol or drug abuse. The complaint distinguishes psychiatric hospital services from outpatient psychiatric care, as well as from long-term treatment of chronic mental illnesses (such as that provided by Central State Hospital, a state mental hospital in Petersburg, which is not included in the relevant product market alleged in the complaint). According to the complaint, even though such alternatives are much less expensive than acute inpatient psychiatric hospital care, they cannot reasonably meet the mental health needs of the patients who receive inpatient care at the psychiatric hospitals and hospital units in the Tri-Cities.

The complaint defines the relevant geographic market as the Tri-Cities area. Columbia/HCA and John Randolph are two of only three competing providers of psychiatric hospital services in that area. The only other provider of psychiatric hospital services in the Tri-Cities area is Southside Regional Medical Center, a general acute care hospital in Petersburg, Virginia, which has a 31-bed psychiatric unit.

As stated in the complaint, the proposed acquisition would eliminate competition between Columbia/HCA and John Randolph, and significantly increase the already high level of concentration for psychiatric hospital services in the Tri-Cities area. The complaint alleges that the proposed acquisition would eliminate the psychiatric unit at John Randolph as a substantial, independent competitive force. The complaint also alleges that the proposed merger would increase the market share of Columbia/HCA, the leading provider of psychiatric hospital services in the Tri-Cities area, from over 50% to over 70%. The complaint further alleges that, as measured by the Herfindahl-Hirschman Index ("HHI"), market concentration would increase more than 2400 points to a post-acquisition level of over 6400, on a scale of 0 to 10,000. (The HHI is a measure of market concentration used by the Federal antitrust enforcement agencies to estimate, in conjunction with information on other market factors, the likelihood that a merger would endanger competition.) As explained in the 1992 Horizontal Merger Guidelines issued by the Commission and the Department of Justice (57 Fed. Reg. 41552), the Federal antitrust enforcement agencies consider markets with HHI levels above 1800 to be "highly concentrated." Where the post-merger HHI would exceed 1800, the agencies presume that a merger producing an increase in the HHI of more than 100 points is likely to significantly lessen competition (unless factors other than market concentration indicate that the merger presents no significant threat to competition).

According to the complaint, entry into the Tri-Cities area by new psychiatric hospital facilities is unlikely to prevent or remedy any anticompetitive price increases or other effects resulting from the acquisition. Certificate of need approval is required from a state regulatory agency for new psychiatric hospital or unit in Virginia. Such approval would be difficult to obtain in the Tri-Cities area, given that there is (and likely will be for the foreseeable future) substantially more psychiatric hospital bed capacity in the Tri-Cities health planning district than the state believes is sufficient to meet the mental health needs of the residents of the Tri-Cities area.

The complaint alleges that the proposed acquisition may: substantially lessen competition for psychiatric hospital services in the Tri-Cities area; result in less favorable prices and other terms for health plans that contract with psychiatric hospital facilities in the Tri-Cities area; increase the possibility of collusion or interdependent coordination by the remaining market competitors; and deny patients, physicians, third-party payers, and other consumers of psychiatric hospital services, the benefits of free and open competition based on price, quality, and service.

The consent order, if issued in final form by the Commission, would require Columbia/HCA to divest Poplar Springs Hospital and related assets. Columbia/HCA is permitted to carry out its proposed acquisition of John Randolph. The consent order would ensure the continued operation of Poplar Springs as a viable psychiatric hospital facility independent of Columbia/HCA and John Randolph, and remedy the lessening of competition for psychiatric hospital services resulting from Columbia/HCA's acquisition of John Randolph.

Under the terms of the proposed order, Columbia/HCA must divest Poplar Springs to an acquirer and in a manner approved by the Commission. The divestiture must be completed within twelve months of the date the order becomes final; otherwise, Columbia/HCA will consent to the appointment of a trustee, who will have twelve additional months to effect the divestiture. (Paragraphs II and III)

A Hold Separate Agreement executed in conjunction with the consent agreement requires Columbia/HCA to maintain Poplar Springs separate from its other operations until the completion of the divestiture, or as otherwise specified. To assure the complete independence and viability of Poplar Springs Hospital, the Hold Separate Agreement requires Columbia/HCA to transfer all ownership and control of Poplar Springs Hospital to a separate legal entity, and to assure that no competitive information is exchanged between Columbia/HCA and this entity. Under the Hold Separate Agreement, Columbia/HCA may not exercise any direction, control, or influence over this entity, except as necessary to assure compliance with the Consent Order and the Hold Separate Agreement and the continued viability, competitiveness, and marketability of Poplar Springs.

For ten years after the order is made final, the proposed consent order would prohibit Columbia/HCA from combining (through purchase, sale, lease, or otherwise) its psychiatric hospital facility in the Tri-Cities area with any other psychiatric hospital facility in that area, without prior notice to the Federal Trade Commission. Columbia/HCA must provide such notice in accordance with procedures similar to those governing premerger notifications required by Section 7A of the Clayton Act, 15 U.S.C. § 18a (unless the merger is already subject to Section 7A's requirements, in which case no notice is necessary over and above that provided pursuant to Section 7A). The order provision supplements Section 7A, to ensure that the Commission receives advance notice of potentially significantly Columbia/HCA mergers in the relevant market, and thereby give the Commission an opportunity to block any such merger if it can demonstrate that the merger may substantially lessen competition. The proposed order contains certain limited exceptions to the prior notification requirement for transactions which are unlikely to substantially lessen competition, such as for small transactions under $1 million. (Paragraph IV)

The proposed consent order also contains provisions concerning its continued application to future owners of Columbia/HCA psychiatric hospital facilities in the Tri-Cities area. The acquirer of Poplar Springs, pursuant to the divestiture called for by the order, must agree to not transfer the hospital, for ten years from the date of the order, without prior notice to the Commission, to any person already operating a psychiatric hospital facility in the Tri-Cities area (Paragraph II.F.). In addition, the order would prohibit Columbia/HCA for ten years from transferring a psychiatric hospital facility in the Tri-Cities area other than Poplar Springs (*e.g.*, the John Randolph psychiatric facility it is to acquire) to another person, unless the acquiring person first files with the Commission an agreement to be bound by the order (Paragraph V).

The purpose of this analysis is to invite public comment concerning the proposed order, and to assist the Commission in its determination of whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement or to modify its terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by Columbia/HCA that its proposed acquisition of John Randolph Medical Center would violate the law, as alleged in the Commission's complaint.

Donald S. Clark,

Secretary.

[FR Doc. 95–22580 Filed 9–11–95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 951–0037]

Phillips Petroleum Company and Enron Corporation.; Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the Houston, Texas-based Enron Corporation not to sell 830 miles of natural gas pipe and related assets within the Texas and Oklahoma Panhandle region to the Bartlesville, Oklahoma-based Phillips Petroleum Company.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, Bureau of Competition, Federal Trade Commission, S–2602, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2610.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval.

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Phillips Petroleum Company ("Phillips"), through its subsidiary GPM Gas Corporation ("GPM"), of the outstanding voting securities of Enron Anadarko Gathering Company and Transwestern Anadarko Gathering Company, two subsidiaries of Enron Corp. ("Enron"), that will own certain gas gathering assets currently owned by Transwestern Pipeline Company ("Transwestern") and Northern Natural Gas Company ("Northern Natural"), two other subsidiaries of Enron, and it now appearing that Enron and Phillips, hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into an agreement containing an Order to cease and desist engaging in certain activities, and providing for other relief:

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Phillips is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Phillips Building, Bartlesville, Oklahoma 74004.

2. Proposed Respondent Enron is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 1400 Smith Street, Houston, Texas 77002.

3. Proposed Respondents admit all the jurisdictional facts set forth in the draft complaint.

4. Proposed Respondents waive:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If the agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents' addresses as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Proposed Respondents have read the proposed complaint and Order contemplated hereby. Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. "Phillips" means Phillips Petroleum Company, its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns, its subsidiaries, divisions, groups, and affiliates controlled by Phillips, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Enron" means Enron Corp., its directors, officers, employees, agents, and representatives, predecessors, successors, and assigns, its subsidiaries, divisions, groups, and affiliates controlled by Enron, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondent" or "Respondents" means Phillips and Enron, collectively and individually.

D. "Maxus" means Maxus Energy Corporation, its predecessors, successors, and assigns, subsidiaries, divisions, and groups, and affiliates controlled by Maxus Energy Corporation.

E. The "Acquisition" means the proposed acquisition by Phillips of the outstanding voting securities of Enron Anadarko Gathering Company and Transwestern Anadarko Gathering Company, which will own certain gas gathering assets currently owned by Transwestern Pipeline Company and Northern Natural Gas Company, two subsidiaries of Enron, pursuant to the stock purchase agreements executed on November 15, 1994, by Phillips and Enron as subsequently modified and amended.

F. "Gas gathering" means pipeline transportation, for oneself or other persons, of natural gas over any part or all of the distance between a well and a gas transmission pipeline or gas processing plant.

G. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

H. "Related Person" means a person controlled by, controlling, or under the common control with, another person.

I. "Relevant Geographic Area" means the Texas counties of Hansford, Ochiltree, and Lipscomb and all portions of Beaver County, Oklahoma, within ten miles of the Texas border.

J. "Schedule A assets" means the whole and any part of the assets listed in Schedule A of this Order (including, but not limited to, the assets listed in annex 1 and annex 2).

K. "Commission" means the Federal Trade Commission.

II

It is further ordered that Enron shall not sell, transfer, or otherwise convey, directly or indirectly, the Schedule A assets, or any stock, share capital, equity, or other interest in any person controlling the Schedule A assets, to Phillips in connection with the Acquisition; and, within thirty (30) days after this Order becomes final, Enron shall provide notice of the requirements of this Order to the Federal Energy Regulatory Commission.

III

It is further ordered that Phillips shall not acquire, directly or indirectly, any stock, share capital, equity, or other interest in any person controlling the Schedule A assets in connection with the Acquisition.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, Phillips shall not, without prior notification to the Commission, directly or indirectly:

A. Acquire the Schedule A assets;

B. Acquire any stock, share capital, equity, or other interest in any person engaged in gas gathering within the Relevant Geographic Area at any time within the two years preceding such acquisition, provided, however, that an acquisition of securities will be exempt from the requirements of this paragraph (IV.B) if after the acquisition Phillips will hold cumulatively no more than two (2) percent of the outstanding shares of any class of security of such person; and provided further, that this Paragraph (IV.B) shall not apply to the acquisition of any interest in a person that is not at the time of the acquisition engaged in gas gathering within the Relevant Geographic Area due to the sale within the preceding two years of all assets used for gas gathering within the Relevant Geographic Area to another

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party who intended to operate said assets for gas gathering within the Relevant Geographic Area; or

C. Enter into any agreements or other arrangements with any person or with two or more related persons to obtain, within any 18 month period, direct or indirect ownership, management, or control of more than five miles of pipeline previously used for gas gathering and suitable for use for gas gathering within the Relevant Geographic Area.

V

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, Enron shall not, without prior notification to the Commission, directly or indirectly:

A. Transfer Schedule A assets to Phillips or Maxus;

B. Transfer any stock, share capital, equity, or other interest in any entity controlling the Schedule A assets to Phillips or Maxus; or

C. Enter into any agreement or other arrangement to transfer direct or indirect ownership, management, or control of any of the Schedule A assets to Phillips or Maxus.

VI

It is furthered ordered that the prior notifications required by Paragraphs IV and V of this Order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. In lieu of furnishing (1) documents filed with the Securities and Exchange Commission, (2) annual reports, (3) annual audit reports, (4) regularly prepared balance sheets, or (5) Standard Industrial Code (SIC) information in response to certain items in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, Phillips shall provide a map showing the location of the pipeline whose acquisition is proposed and other pipelines used for gas gathering in the Relevant Geographic Area and a statement showing the quantity of gas that flowed through pipeline whose acquisition is proposed in the previous 12 month period. Respondents shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"), If, within the first waiting period, representatives of the Commission make a written request for additional information, Respondents shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by Paragraphs IV and V of this Order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VII

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final, each Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order; and

B. One (i) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, each Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order. Provided, however, that if Enron sells all of the Schedule A assets, it will no longer be required to file any further written reports with the Commission.

VIII

It is further ordered that each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in such Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

IX

It is further ordered that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to such Respondent, each Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such Respondent relating to any matters contained in this Order; and

B. Without restraint or interference from it, to interview officers, directors, or employees of such Respondent, who may have counsel present, relating to any matters contained in this order.

Signed this _______ day of _______________, 19_____.

Schedule A

Transwestern System 3—Catesby/Ivanhoe

Beaver County, OK
Ellis County, OK

Assets: All Transwestern-owned facilities located upstream of the discharge side of the Catesby Compressor unit. Includes approximately 45.5 miles of pipe and the Catesby compressor #745, 422 horsepower. Material assets are listed in Annex 1 for Transwestern system 3.

Transwestern System 4—Frass Como

Lipscomb County, TX
Beaver County, OK

Assets: All Transwestern-owned facilities located upstream of, but not including, the side/hot-tap valve that connects the Frass Como Lateral to the 12 inch Lipscomb-Mocaine Lateral, including the Frass Como compressor station. Includes approximately 55.1 miles of pipe. Material assets are listed in Annex 1 for Transwestern system 4.

Transwestern System 5—Follett

Lipscomb County, TX

Assets: All Transwestern-owned facilities located upstream of, but not including, the side/hot-tap valve that connects the 4 inch Follett Lateral to the 12 inch Lipscomb-Mocaine Lateral. Includes approximately 8.3 miles of pipe. Material assets are listed in Annex 1 for Transwestern system 5.

Transwestern System 7—Kiowa Creek

Lipscomb County, TX

Assets: All Transwestern-owned facilities located upstream of, but not including, the side/hot-tap valve that connects the 6 inch Kiowa Creek Lateral and the 8 inch Kiowa Creek Loop to the 12 inch Lipscomb-Mocaine Lateral, including the Kiowa Creek #2 compressor station. Includes approximately 77 miles of pipe and three compressor units: Kiowa Creek #2 Compressor #865, 1,078 horsepower; Kiowa Creek #1 Compressor #828, 1,078

horsepower; and E. Lipscomb Compressor #858, 531 horsepower. Material assets are listed in Annex 1 for Transwestern system 7.

Transwestern System 8—Wolf Creek

Lipscomb County, TX
Ellis County, OK

Assets: All Transwestern-owned facilities located upstream of, but not including, the side/hot-tap valve that connects the 6 inch Wolf Creek Lateral to the 12 inch Lipscomb-Mocaine Lateral. Includes approximately 45.2 miles of pipe and the Wolf Creek compressors #755 and #853, 1,470 combined horsepower. Material assets are listed in Annex 1 for Transwestern system 8.

Transwestern System 13—Waka/Perryton

Ochiltree County, TX

Assets: All Transwestern-owned facilities located upstream of and including the pig receiver for the 8 inch Perryton lateral, located on the upstream side of and to the NE of the Waka compressor station. Includes approximately 77.8 miles of pipe and the Perryton Transwestern compressor #827, 779 horsepower. Material assets are listed in Annex 1 for Transwestern system 13.

Transwestern System 14—Gray rock

Ochiltree County, TX
Lipscomb County, TX

Assets: All Transwestern-owned facilities located upstream of, but not including, the 6 inch pig launcher on the discharge side of the Gray Rock compressor station. Includes approximately 43.3 miles of pipe and the Gray Rock compressor #826, 810 horsepower. Material assets are listed in Annex 1 for Transwestern system 14.

Transwestern System 20—Brillhart

Hansford County, TX

Assets: All Transwestern-owned facilities located upstream of, but not including, the side/hot-tap valve that connects the 8 inch Brillhart Lateral to the 10 inch Cactus-Hugoton Lateral. Includes approximately 78.5 miles of pipe and two compressors: Brillhart #748, 708 horsepower; and Brillhart #796, 785 horsepower. Material assets are listed in Annex 1 for Transwestern system 20.

Transwestern System 21—John Creek

Hansford County, TX
Ochiltree County, TX
Hutchinson County, TX
Roberts County, TX

Assets: All Transwestern-owned facilities located upstream of, but not including, the side/hot-tap valve that connects the 6 inch John Creek Lateral to the 12 inch Cactus-Hugoton Lateral. Includes approximately 31 miles of pipe and the John Creek compressor #747, 537 horsepower. Material assets are listed in Annex 1 for Transwestern system 21.

Northern Natural System 35—Spearman System—North

Hansford County, TX

Assets: The following four sections: (1) Approximately 6.3 miles of 6 inch and 2.0 miles of 4 inch Northern-owned gathering lines, upstream of where the 6 inch TG385 connects to the 8 inch TG24001 in the northwest quarter of Section 42, Block 1, Washington County RR Survey. (2) Approximately 6.5 miles of 4 inch Northern-owned gathering lines, upstream of the side valve on the 10 inch TG24001 in the northeast quarter of Section 30, Block 1, Cherokee Iron Furnace CO Survey. (3) The Buckner A1 wellhead facilities and approximately 3.4 miles of 4 inch Northern-owned gathering lines from the Buckner A1 well in Section 20 to the side valve on the 10 inch TG24001 in Section 27, Block 1, Cherokee Iron Furnace Co Survey. (4) Approximately 3.5 miles of 8 inch, 3.8 miles of 6 inch, and 10 miles of 4 inch Northern-owned gathering lines, upstream of where the 6 inch TG247 and the 8 inch TG246 connects to the 12 inch TG24001 near the East Section Line of Section 7, Block 2, SA&MG RR Survey. Material assets are listed in Annex 2 for Northern Natural system 35.

Northern Natural System 35—Spearman System—East

Hansford County, TX
Hutchinson County, TX
Roberts County, TX

Assets: The following two sections: (1) The Brainard Lateral consisting of approximately 1.9 miles of 8 inch, 5.8 miles of 6 inch, and 19.2 miles of 4 inch Northern-owned gathering lines, upstream of a side valve where the 8 inch TG335 connects to the 26 inch TG24001 in Section 8, Block H&GN Survey. (2) The East Leg consisting of approximately 11.1 miles of 10 inch, 19.5 miles of 8 inch, 19.0 miles of 6 inch, and 49.6 miles of 4 inch gathering lines, upstream of where 10 inch TG301 connects to the suction of Northern's Spearman Compressor Station. Material assets are listed in Annex 2 for Northern Natural system 35.

Northern Natural System 37—Fuller System

Hansford County, TX
Sherman County, TX
Hutchinson County, TX

Assets: The following two sections: (1) The Hansford County No. 1 System consisting of approximately one-half mile of 2 inch, 5 miles of 8 inch, 3 miles of 6 inch, and 11 miles of 4 inch gathering lines, upstream of the suction of Northern's Hansford County No. 1 compressor station. (2) The Hutchinson County No. 2 system consisting of approximately 5 miles of 6 inch and 5 miles of 4 inch gathering lines, upstream of the suction of Northern's Hutchinson County No. 2 compressor station. Material assets are listed in Annex 2 for Northern Natural system 37.

Northern Natural System 79—Perryton System

Ochiltree County, TX
Beaver County, OK

Assets: The Northern-owned facilities upstream of the suction of Northern's Perryton Compressor Station. The facilities consist of approximately one quarter mile of 2 inch, 89 miles of 4 inch, 58 miles of 6 inch, 23 miles of 8 inch, 4 miles of 10 inch, and 10 miles of 16 inch gathering lines. Material assets are listed in Annex 2 for Northern Natural system 79.

ANNEX 1 TO SCHEDULE A

[Transwestern Gathering Company]

S	Line seg	Description	WH	Comp	Line	Meter	Comp. H/P	Pipe diameter	Pipe length	Pipe 2 diameter	Pipe 2 length
3	CA–1	4" SHEPHERD #1/L E MAYER #1 LAT.		X		0	0	6.6	31680.	0.0	0.00
3	CA–1	MTR STA SHL MAYER WL1.	X			42800	0	4.5	100.	0.0	0.00

ANNEX 1 TO SCHEDULE A—Continued

[Transwestern Gathering Company]

S	Line seg	Description	WH	Comp	Line	Meter	Comp. H/P	Pipe diameter	Pipe length	Pipe 2 diameter	Pipe 2 length
3	CA–1	MTR STA SHL SHEPRD WL1.	X			42810	0	4.5	100.	0.0	0.00
3	CA–1–01	IRWIN #1–20 WL LN	X			41610	0	4.5	422.	0.0	0.00
3	CA–1–01	SHELL-TUBB #1–30 WL LN.	X			41630	0	4.5	400.	0.0	0.00
3	CA–1–01	PEETOOM #1–29 WELL LINE.	X			41660	0	4.5	5280.	0.0	0.00
3	CA–1–02	SHELL-OHEARN #1–32 WELL.	X			41620	0	4.5	6864.	0.0	0.00
3	CA–1–02	SHELL-WHITE #1–31 WELL.	X			41640	0	4.5	400.	0.0	0.00
3	CA–1–03	WHITE B #1–5 WELL LINE.	X			42830	0	4.5	14256.	0.0	0.00
3	CA–1–03	PHIL-DRAKE #1–6 WEL LN.	X			42840	0	4.5	106.	0.0	0.00
3	CA–1–04	PEARSON #1 4 LN & EQ	X			41590	0	0.0	0.	0.0	0.00
3	CA–1–04	CONN KELLN 11–1	X			41750	0	0.0	0.	0.0	0.00
3	CA–1–04	SWENN #1 4 LN & EQ	X			42870	0	4.5	5808.	0.0	0.00
3	CA–1–04	MESA PETROLEUM CO—#1 PIERSALL.	X			43090	0	0.0	0.	0.0	0.00
3	CA–1–06	CONN SHELL—#2–31 WHITE.	X			41730	0	4.5	2600.	0.0	0.00
3	CA–1–06	CONN CNG-STATE UNIT #1.	X			43210	0	0.0	0.	0.0	0.00
3	CA–2	CONNMEDALLION PETR-WHITE A#1&2.	X			41021	0	0.0	0.	0.0	0.00
3	CA–2	STATE #1–36	X			41690	0	0.0	0.	0.0	0.00
3	CA–2	WHITE A #1–1 WELL LN	X			42820	0	4.5	53.	0.0	0.00
3	VH–1	12″ IVANHOE & CATESBY LAT.			X	0	0	12.7	34320.	0.0	0.00
3	VH–1	CONNMEWBOURNE OIL #1–24 WYNN.	X			41911	0	0.0	0.	0.0	0.00
3	VH–1	TW #745 IVANHOE/CATESBY COMP.		X		0	422	0.0	0.	0.0	0.00
3	VH–1–01	BERYL JET #1–14 WL LN.	X			42690	0	4.5	158.	0.0	0.00
3	VH–1–04	CONN BURKHART #1–15 BEDELL INOIN FL.	X			41910	0	0.0	0.	0.0	0.00
3	VH–2–01	CONNMARLIN OIL #1 HALLIBURTON.	X			41740	0	4.5	2050.	0.0	0.00
3	VH–2–01	FOX #1 WL LN	X			41970	0	0.0	0.	0.0	0.00
3	VH–2–01	BOCKELMAN #1–17 WL LN.	X			42760	0	4.5	106.	0.0	0.00
3	VH–2–02	MTR STA UNION DYCHE WL.	X			41020	0	4.5	4852.	0.0	0.00
3	VH–2–03	4″ O'HARE W/KAISER FRANCIS-REDELSPERGR#1.	X			40301	0	0.0	0.	0.0	0.00
3	VH–2–03	OHAIR #1–40 TIN WL LN	X			42770	0	4.5	5280.	0.0	0.00
3	VH–2/3	10″ CATESBY EXTENSION.			X	0	0	10.7	44880.	0.0	0.00
3	VH–3	MCCLURE #1–13 WELL LINE.	X			41680	0	4.5	400.	0.0	0.00
3	VH–3–01	SUE HILL #1	X			41700	0	4.5	1750.	0.0	0.00
4	FC–1	CONN TEX OKG—#2 PINKARD "B".	X			38980	0	0.0	0.	0.0	0.00
4	FC–1	FRASS-COMO FLD TW #746.		X		0	0	0.0	0.	0.0	0.00
4	FC–1/2	8″ COMO J FRASS FLD LAT.			X	0	0	8.6	52800.	0.0	0.00
4	FC–2	DAROVZET SALES MTR STA.	X			20	0	0.0	0.	0.0	0.00
4	FC–2–02	MTR STA HUM-FRASS #B–1.	X			3651	0	4.5	3980.	0.0	0.00
4	FC–2–02	MTR STA HBL-FRASS WL–1.	X			3653	0	4.5	8220.	0.0	0.00
4	FC–2–03	CONN NAT GAS ANADARKO #1–26 DEPEW.	X			43340	0	4.5	10500.	0.0	0.00

ANNEX 1 TO SCHEDULE A—Continued

[Transwestern Gathering Company]

S	Line seg	Description	WH	Comp	Line	Meter	Comp. H/P	Pipe diameter	Pipe length	Pipe 2 diameter	Pipe 2 length
4	FC–3	8″ COMO & FRASS FLD LAT.			X	0	0	8.6	25080.	0.0	0.00
4	FC–3–01	4″ HOWARD/MAHAFFEY/MIER/ANDERSON.			X	0	0	6.6	13200.	0.0	0.00
4	FC–3–01	MTR STA CSO VICKERS WL.	X			42530	0	4.5	100.	0.0	0.00
4	FC–3–2	PHILLIPS EXCHANGE 3 SIDE VLVS.	X			952	0	0.0	0.	0.0	0.00
4	FC–5–02	CONN FALCON-CLENNEY #1.	X			40390	0	4.5	25.	0.0	0.00
4	FC–5–02	CONN FALCON-SCHUSTER #1.	X			40400	0	4.5	20600.	0.0	0.00
4	FC–5–05	CONN FALCON-CLENNEY #2.	X			40430	0	4.5	400.	0.0	0.00
4	FC–5–07	CONN NAT GAS ANDRKO #1–2 DICK BVR.	X			40460	0	4.5	8037.	2.3	136.00
4	FC–5–08	CONNMEWBOURNE #1 BARNES 14 BEAVER.	X			40520	0	4.5	2540.	0.0	0.00
5	FT–1	LFR B&T–R #1 TO LIP–M.			X	0	0	4.5	29040.	0.0	0.00
5	FT–1	CONN SAM REGER #1	X			36100	0	4.5	100.	0.0	0.00
5	FT–1–01	CONN COTTON #1 KRAFT.	X			37800	0	4.5	3600.	0.0	0.00
5	FT–1–02	FARM TAP MERLIN LAUBHAM.	X			3110	0	0.0	0.	0.0	0.00
5	FT–1–02	FARM TAP-RUSSELL SINER.	X			3490	0	0.0	0.	0.0	0.00
5	FT–1–03	CONN JACK G JONES-#1 MASON.	X			38030	0	0.0	0.	0.0	0.00
5	FT–1–03	CONN COTTON-#1 LAUBHAN.	X			38480	0	4.5	9800.	0.0	0.00
5	FT–2–04	CONN LAUBHAN UNIT A #1.	X			36220	0	4.5	50	0.0	0.00
7	EL–1	4″ E. LIPSCOMB FLD LAT.			X	0	0	4.5	22176.	4.0	480.00
7	EL–1	LINE PARKER 1 4 IN	X			35710	0	4.5	272.	0.0	0.00
7	EL–1	LINE SHULTZ C–I 4 IN	X			35790	0	4.5	272.	0.0	0.00
7	EL–1	EAST LIPS TW #858		X		0	500	0.0	0.	0.0	0.0
7	EL–1–01	LINE TYSON A–1 4 IN	X			35680	0	4.5	4646.	0.0	0.0
7	EL–1–01	LINE SHULTZ 2–5625 4 IN.	X			35760	0	4.5	4176.	0.0	0.00
7	EL–1–02	CONN HUMBLE–1 W M SCHULTZ UNIT.	X			35932	0	4.5	5280.	0.0	0.00
7	EL–1–02	CONN 1 SCHULTZ	X			35940	0	4.5	2200.	0.0	0.00
7	KC–1	6″ LIBSCOMB F/PIPER #2 LIPSCOMB LAT.			X	0	0	6.6	13781.	0.0	0.00
7	KC–1	LINE PIPER 2 6 IN	X			35730	0	4.5	272.	0.0	0.00
7	KC–1	LINE SHULTZ B–2 6 IN	X			35740	0	4.5	272.	0.0	0.0
7	KC–1	KIOWA CREEK #1 TW #828.		X		0	1100	0.0	0.	0.0	0.00
7	KC–1–02	4″ LIPSCOMB F/YAUCK/DUKE/SHULTZ B.			X	0	0	4.5	12619.	0.0	0.00
7	KC–1–02–01	NATOMAS #1 YAUCK TW #855.		X		0	42	0.0	0.	0.0	0.00
7	KC–1–03	CONN SCRATH OIL-PIPER #689.	X			9750	0	0.0	0.	0.0	0.00
7	KC–1–03	CONN SCARTH PETR-#601–1 PIPER.	X			38360	0	4.5	300.	0.0	0.00
7	KC–1–03	CONN SCARTH-PIPER 600-1.	X			38400	0	0.0	0.	0.0	0.00
7	KC–1–03	CONN SCARTH-PIPER 601–2.	X			38410	0	0.0	0.	0.0	0.00
7	KC–1–03	CONNMAY PETRO PIPER RNCH #1 ZIPSCO.	X			55120	0	0.0	0.	0.0	0.00
7	KC–1–05	MTR RUN-NEWBORURNE-SCHULTZ #1.	X			38160	0	2.3	30.	0.0	0.00

ANNEX 1 TO SCHEDULE A—Continued

[Transwestern Gathering Company]

S	Line seg	Description	WH	Comp	Line	Meter	Comp. H/P	Pipe diameter	Pipe length	Pipe 2 diameter	Pipe 2 length
7	KC–1–06	CONN NAT GAS-ANADARKO #1–644 OWENS.	X			38890	0	4.5	2600.	0.0	0.00
7	KC–1–06	CONN EXXON-#7 OLA O PIPER.	X			38900	0	4.5	6000.	0.0	0.00
7	KC–1–07	CONNMAY PET-WM SCHULTZ #1.	X			55130	0	0.0	0.	0.0	0.00
7	KC–1–08	CONNMEWBOURNE #1 DUCE "781".	X			55230	0	4.5	2882.	2.3	83.00
7	KC–1–08	CONN MEWBOURNE #1 SCHULTZ "761".	X			55240	0	4.5	873.	2.3	152.00
7	KC–1/2/3	6" KIOWA CREEK LAT ..			X	0	0	6.6	66264.	0.0	0.00
7	KC–1/2/3 / KC–3–5/6.	EXT KIOWA CREEK T/ LEAR PET 6" LINE.			X	0	0	6.6	27262.	6.6	151.00
7	KC–2	CONN OLA #1	X			36384	0	6.0	1750.	0.0	0.00
7	KC–2	KIOWA CREEK STA#2–TW #865.		X		0	1050	0.0	0.	0.0	0.00
7	KC–2–01	MTR STA APAH LAURE WL1.	X			36340	0	4.5	13200.	0.0	0.00
7	KC–2–03	CON BRADFORD FD CSG HD.	X			36320	0	4.5	106.	0.0	0.00
7	KC–2–03	PURDOM #1 4LN & EQ ..	X			37190	0	4.5	422.	0.0	0.00
7	KC–2–03	CONN FALCON-PURDOM UNIT #1.	X			38340	0	0.0	0.	0.0	0.00
7	KC–2–04	CONN COTTON PETR–1–A–PIPER.	X			36720	0	4.0	1000.	0.0	0.00
7	KC–2–206	CONN COTTON PETR–1 BRADFORD "B".			x	0	0	4.5	3100.	0.0	0.00
7	KC–2–06	CON UNAPACHE-BRADFOD #1.	X			36300	0	6.6	10560.	0.0	0.00
7	KC–2–06	CONN DIAMOND-#3 688 OLA 0 PIPER.	X			37741	0	4.5	4500	0.0	0.00
7	KC–2–06	CON COTTON-BRADFORD #2.	X			38320	0	0.0	0.	0.0	0.00
7	KC–2–07	PAN PET HLTON #1 WL LN.	X			36830	0	4.5	3000.	0.0	0.00
7	KC–2–07	CONN COTTON PETR-1 FAIR.	X			36880	0	4.5	4400.	0.0	0.00
7	KC–2–10	CON APACHE BRADFORD #3.	X			33652	0	0.0	0.	0.0	0.00
7	KC–2–10	CONN COTTON-#4 OLA PIPER.	X			37720	0	0.0	0.	0.0	0.00
7	KC–2–10	CONNMEWBOURNE-BRADFORD #1.	X			38690	0	0.0	0.	0.0	0.00
7	KC–2–12	CONN COTTON #2 PIPER A.	X			37790	0	4.5	900	0.0	0.00
7	KC–2–13	CONN COTTON PETROLEUM-1 PIPER.	X			36710	0	4.0	400.	0.0	0.00
7	KC–2–13	CONN COTTON PETR-1 PIPER "B".	X			36730	0	4.5	2900.	0.0	0.00
7	KC–2–14	CONNMEWBOURNE #2 BRADFORD.	X			36650	0	4.5	640.	0.0	0.00
7	KC–3	6" KIOWA CREEK LATERAL.			X	0	0	6.6	5500.	0.0	0.00
7	KC–3	CONN ARCO-#2 FRED LOESCH.	X			38700	0	4.5	900.	0.0	0.00
7	KC–3–02	CONN MEDALLION #1 ...			X	0	0	4.5	15840	0.0	0.00
7	KC–3–02	CONN SINCLAIR-LOESCH #1.	X			36032	0	4.5	1684.	0.0	0.00
7	KC–3–02	CONN FULTON SELL #4	X			38886	0	0.0	0.	0.0	0.00
7	KC–3–07	CONN DIAMOND-OLA PIPER 1–691.			X	0	0	6.6	4300.	0.0	0.00
7	KC–3–07	CONN ARCO-#1 MARGARET L DIXON.	X			38810	0	4.5	600.	0.0	0.00
7	KC–3–08	CONN ARCO-# HALBROOK DAILY WELL.	X			38740	0	4.5	11000.	0.0	0.00
7	KC–3–09	CONN ARCO-#1PAINE BROS CO.	X			38871	0	4.5	6400.	0.0	0.00

ANNEX 1 TO SCHEDULE A—Continued

[Transwestern Gathering Company]

S	Line seg	Description	WH	Comp	Line	Meter	Comp. H/P	Pipe diameter	Pipe length	Pipe 2 diameter	Pipe 2 length
7	KC–3–10	CONN ARCO-#1 FULTON-SELL.	X			388222	0	4.5	1500.	0.0	0.00
7	KC–3–10	CONN FULTON SELL #3	X			38885	0	0.0	0.	0.0	0.00
7	KC–3–11	CONN AMOCO-#2 LILLIE M PETERSON.	X			33680	0	4.5	2000.	0.0	0.00
7	KC–3–15	CONN ARCD-SORENSON DIXON CENT POINT.	X		X	55210	0	4.0	880.	0.0	0.00
7	KC–3A	6" KIOWA CREEK LAT ..			X	0	0	2.3	280.	0.0	0.00
8	SG–1	TAP TO INTERNORTH MEIER #1 LIPSC.	X			16200	0	0.0	0.	0.0	0.00
8	SG–1	CONN JERNIGAN-BATTIN #1.	X			38280	0	0.0	0.	0.0	0.00
8	SG–1–01	CONN FILON EXPL—#1 FRITZ.	X			41340	0	4.5	5500.	0.0	0.00
8	SG–1/2	4" W A MEIER #1& ANNA RUF #1 WELLS, TX.			X	0	0	4.5	21120.	0.0	0.00
8	SG–2	4" LAT TO W A MEIER #1 & ANNA RUF #1 WEL.			X	0	0	4.5	26400.	0.0	0.00
8	WC–1	PRICE 2 WOLF CK 4 IN	X		35660	0	0	4.5	272.	0.0	0.00
8	WC–1	WOLF CREEK TW #755 & 853.		X		0	1470	0.0	0.	0.0	0.00
8	WC–1–01	PRICE IB WOLF CK 4 IN	X			35650	0	4.5	2635.	0.0	0.00
8	WC–1–02	CONN EXXON—#4 WILLIS D PRICE "B".	X			38310	0	4.5	1800.	0.0	0.00
8	WC–1–02	CONN EXXON—#5 WILLIS D PRICE.	X			38440	0	4.5	200.	0.0	0.00
8	WC–1/2/3	6" WOLF CREEK LAT			X	0	0	6.6	79147.	0.0	0.00
8	WC–2	FARM TAP—MARY & ROBERT SQUIRES.	X			3460	0	0.0	0.	0.0	0.00
8	WC–2	R DOYLE 1–WOLF CK 415.	X			35630	0	4.5	272.	0.0	0.00
8	WC–2	PRICE I WOLF CK 4 IN .	X			35640	0	4.5	272.	0.0	0.00
8	WC–2	J DOYLE I–WOLF CK 4 IN.	X			35770	0	0.0	0.	0.0	0.00
8	WC–2	CONNMEWBOURNE OIL CO—SQUIRE #3.	X			55540	0	4.5	2550.	0.0	0.00
8	WC–2–01	CONN HUMBLE-1 TYSON.	X			35970	0	4.5	6200.	0.0	0.00
8	WC–2–02	CONNMEWBOURNE #1 PRICE.	X			38630	0	4.5	3500.	0.0	0.00
8	WC–2–03	CONN HUMBLE-W D PRICE #4.	X			35851	0	0.0	0.	0.0	0.00
8	WC–3	BROWN I–WOLF CRK 4 IN.	X			40200	0	4.5	272.	0.0	0.00
8	WC–3–01	CONN FILON-THORNTION TRUST #1.	X			40260	0	4.5	165.	0.0	0.00
8	WC–3–02	CONNMAPCO-LOIS BROWN #2–27.	X			41460	0	0.0	0.	0.0	0.00
8	WC–3–02	CONNMAPCO-BROWN 1–26.	X			41470	0	0.0	0.	0.0	0.00
8	WC–3–02	CONNMAPCO-PIERCE #1–28.	X			41480	0	0.0	0.	0.0	0.00
8	WC–3–03	SHERRILL OU 1#1 WL LN.	X			40250	0	4.5	6300.	0.0	0.00
8	WC–3–05	CONN BUNKER-WAYLAND #1–5.	X			40290	0	0.0	0.	0.0	0.00
8	WC–3–06	CONN 4" JORDAN CENT DELIV PT #1.			X	0	0	0.0	0.	0.0	0.00
8	WC–3–06	CONNECT JORDAN O&G #1 CENTRAL DEL PT.	X			41510	0	4.5	20803.	0.0	0.00
8	WC–3–07	SHATTUCK OU–1 #3 WL LN.	X			41520	0	4.5	4281.	0.0	0.00
8	WC–4	GIBBS #1–19 WELL LINE.	X			40230	0	4.5	9240.	0.0	0.00

ANNEX 1 TO SCHEDULE A—Continued

[Transwestern Gathering Company]

S	Line seg	Description	WH	Comp	Line	Meter	Comp. H/P	Pipe diameter	Pipe length	Pipe 2 diameter	Pipe 2 length
13	NP–1	6″ F/HAN #1, WITT #1, KERSHAW #1.			X	0	0	6.6	29515	0.0	0.00
13	NP–1–01	INST TAP HOT-NEUFELD #1.	X			36430	0	0.0	0.	0.0	0.00
13	NP–1–02	CONN GARY GEORGE #1.	X			38965	0	0.0	0.	0.0	0.00
13	NP–1–02	CONN ANADARKO MARIE #1–62 WLDCT.	X			52190	0	0.0	0.	0.0	0.00
13	NP–2	MTR STA SH KERSHAW WL1.	X			37000	0	4.5	18880.	0.0	0.00
13	NP–2	CONN MEWBOURNE SCHWULK #1.	X			53260	0	0.0	0.	0.0	0.00
13	NP–2–02	HAROLD D COURSON—#1–43 WAGGONER.	X			38130	0	4.5	20.	0.0	0.00
13	NP–2–03	CONN FALCON-WAGGONER #1–43.	X			38080	0	4.5	1300.	0.0	0.00
13	NP–2–03	CONN FALCON-WAGGONER #1–43.	X			38130	0	4.5	9600.	0.0	0.00
13	NP–2–04	CONN COURSON #1–42 MCGARROUGH.	X			38540	0	4.5	2200.	0.0	0.00
13	NP–3	CONN PHILCON—1 MAXWELL.	X			36940	0	4.5	15312.	0.0	0.00
13	PE–1	PSHIGODO I–PP LAT 4 IN.	X			34910	0	4.5	272.	0.0	0.00
13	PE–1–02	CONN ANADARDO #1–661 DUDLEY.	X			38620	0	4.5	600.	0.0	0.00
13	PE–1–03	PHL–MC WLIB–8 PERY LAT.	X			34900	0	4.5	2900.	0.0	0.00
13	PE–1–03	CONN COURSON OIL AND GAS #4–571 1ST.	X			34911	0	0.0	0.	0.0	0.00
13	PE–1–03	CONN #1–571 1ST NATL TRUST-ACCT REC..	X			38460	0	4.5	4400.	0.0	0.00
13	PE–1–04	LN FR RIDGMOR TO PSH L.	X			34930	0	4.5	15840.	0.0	0.00
13	PE–1–05	CONN COURSON—#2–571 1ST NATL TRUST.	X			38551	0	4.5	1600.	0.0	0.00
13	PE–1–06	CONN NAT GAS ANADARDO #1–64 CAMP.	X			38962	0	4.5	5400.	0.0	0.00
13	PE–1–06	CONN SANTA FE ENRGY #2–49 WFL AR.	X			52110	0	4.5	6172.	4.5	69.00
13	PE–1–06	CONN NAT GAS ANADARKO 1–46 RICHARDSN.	X			52150	0	4.0	7300.	0.0	0.00
13	PE–1/2/3	6″ & 8″ N. PARRYTON ALT.			X	0	0	8.6	72072.	0.0	0.00
13	PE–2	LAND-EXCHANGE NN DUDE WILSON.	X			9170	6.6	0	650.	0.0	0.00
13	PE–2	HUM-PER WL 1–8 PERY LAT.	X			34610	0	4.5	272.	0.0	0.00
13	PE–2	HUM PER WL1–8 PERY LAT.	X			34811	0	4.5	272.	0.0	0.00
13	PE–2	PERRYTON TW #827		X		0	785	0.0	0.	0.0	0.00
13	PE–2–01	WC HERNDON C #1 WL LN.	X			34750	0	4.5	264.	0.0	0.00
13	PE–2–01	W C HERNDON 1 U L WL LN.	X			37910	0	6.6	475.	0.0	0.00
13	PE–2–01	CONN HERNDON #1	X			37970	0	4.5	2650.	0.0	0.00
13	PE–2–02	4″ F/DUDE WILSON GW5 #1 & WG4 #1.			X	0	0	4.5	13200.	0.0	0.00
13	PE–2–02	JONES #2–750 WELL LINE.	X			34740	0	4.5	317.	0.0	0.00
13	PE–2–02	JONE #1–750 WL LN	X			34770	0	4.5	400.	0.0	0.00
13	PE–2–03	MTR STA HUM–D W WE GU4.	X			34830	0	4.5	100.	0.0	0.00
13	PE–2–03	DUDE WILSON GU–4 #2 WL.	X			37930	0	4.5	211.	0.0	0.00
13	PE–2–04	BRUHLMAN #1–17 WL LN.	X			34870	0	4.5	4752.	0.0	0.00

ANNEX 1 TO SCHEDULE A—Continued

[Transwestern Gathering Company]

S	Line seg	Description	WH	Comp	Line	Meter	Comp. H/P	Pipe diameter	Pipe length	Pipe 2 diameter	Pipe 2 length
13	PE–2–04	CONN HORIZON #2–17 BRUHLMAN.	X			52080	0	4.5	3389.	2.3	98.00
13	PE–2–05	PSHIGODA B #1 4LN & EQ.			X	0	0	4.5	15790.	0.0	0.00
13	PE–2–05	CONN EXXON CORP DUDE WILSON GU 7–3.	X			34711	0	0.0	....	0.0	0.00
13	PE–2–05	CONN EXXON CORP DUDE WILSON GU 5–4.	X			34731	0	0.0	0.	0.0	0.00
13	PE–2–05	CONN HD WILSON GU7 #7.	X			34950	0	4.5	53.	0.0	0.00
13	PE–2–07	4″ LN ROGERS #3–DUDE WILSON GSG LAT.	X		X	0	0	6.6	10666.	0.0	0.00
13	PE–2–07	CONN EXXON–#2 DUDE WILSON UNIT #2.	X			33080	0	4.5	800.	0.0	0.00
13	PE–2–07	D WLSN GU WL 2–DW LAT.	X			34800	0	4.5	272.	0.0	0.00
13	PE–2–07	ROGERS I–PP LAT 4 IN	X			34820	0	4.5	4277.	0.0	0.00
13	PE–2–07	MTR STA HBL ROGERS WL 3.	X			34860	0	4.5	400.	0.0	0.00
13	PE–2–09	HBL D WILSON 5–Z WL LN.	X			34791	0	4.5	400.	0.0	0.00
13	PE–2–10	CONN EXXON-DUDE WILSON #6.	X			38720	0	4.5	3000.	0.0	0.00
13	PE–2–10	CONN EXXON—#2 DUDE WILSON UNIT #7.	X			38760	0	4.5	600.	0.0	0.00
13	PE–2–10	CONN H&L OPER—#2 PSHIGODA.	X			38850	0	4.5	1200.	0.0	0.00
13	PE–2–11	CONN EXXON-DUDE WILSON GAS UNIT 5–3.	X			33460	0	4.5	1340.	0.0	0.00
13	PE–2–12	CONN EXXON—#2 DUDE WILSON UNIT #1.	X			38800	0	4.5	900.	0.0	0.00
13	PE–2–13	CONN EXXON—#3 DUDE WILSON UNIT #4.	X			38860	0	4.5	2135.	0.0	0.00
13	PE–2–14	CONN EXXON—#5 HELEN ROGERS.	X			33070	0	4.5	2400.	0.0	0.00
13	PE–2–14	DODSON #1–834 WL LN	X			34890	0	0.0	0.	0.0	0.00
13	PE–2–16	CONN SAMSON RE-SOURCES DODSON #3 OCH.	X			52121	0	4.5	738.	2.3	360.00
13	PE–2–17	W C HERNDON B #1–L WL LN.	X			37900	0	4.5	5808.	0.0	0.00
13	PE–2–17	CONN COURSON #2–662 HERNDON OCHL.	X			52160	0	0.0	0.	0.0	0.00
13	PE–2–18	CONN COURSON #1–747 ELDEN WAKA PRT.	X			52181	0	4.5	600.	0.0	0.00
13	SH–1	CON PITMAN-SWINK WL #1.	X			34700	0	4.5	100.	0.0	0.00
13	SH–1–03	SCHNEIDER #1–93 WL LN.	X			36410	0	4.5	24816.	0.0	0.00
13	SH–½	6″ SHARE-WEST PERRYTON LAT.			X	0	0	6.6	66000.	0.0	0.00
13	SH–2–02	MTR STA RDG GREGG WL 1.	X			34530	0	4.5	2640.	0.0	0.00
13	SH–2–02	TEVIS #1–20 WL LN	X			36420	0	4.5	15312.	0.0	0.00
13	SH–2–02	CONNER #1–36 WL LN .	X			36750	0	4.5	370.	0.0	0.00
13	ER–2–03	SMITH #1–30 WELL LN .	X			34540	0	4.5	6864.	0.0	0.00
14	ER–½	6″ ELLIS RANCH FLD LAT.			X	0	0	6.6	52800.	0.0	0.00
14	ER–3	6″ ELLIS RANCH FLD LAT.			X	0	0	6.6	31680.	0.	0.00
14	ER–3–01	MTR STA H KAY NELL W#1.	X			34640	0	4.5	10560.	0.0	0.00

ANNEX 1 TO SCHEDULE A—Continued

[Transwestern Gathering Company]

S	Line seg	Description	WH	Comp	Line	Meter	Comp. H/P	Pipe diameter	Pipe length	Pipe 2 diameter	Pipe 2 length
14	ER-3-01	CONN AMOCO—#2 KAYNELL-HAMKER TRUSTA.	X			38710	0	0.0	0.	0.0	0.00
14	ER-3-02	ARTHUR MORGAN #1 WL LN.	X			34660	0	4.5	19008.	0.0	0.00
14	ER-3-03	MORRIS C-1 4 LN & EQ	X			34940	0	4.5	370.	0.0	0.00
14	ER-3-04	CONNMEWBOURNE—#1 MORRIS.	X			38610	0	4.5	6400.	0.0	0.00
14	ER-3M	4" MITCHELL #1 & #A-1 LAT.			X	0	0	4.5	4224.	0.0	0.00
14	ER-3M1	4" MITCHELL #1 & #A-1 LAT.			X	0	0	4.5	10560.	0.0	0.00
14	GR-1	PERRY A #1-730 WL LN	X			36490	0	6.6	45408.	0.0	0.00
14	GR-1-01	CONN ANDARKO #1-58 SELL NORTHRUP.	X			55360	0	0.0	0.	0.0	0.00
14	GR-1-01	WHEAT #1-678 WL LN	X			37130	0	4.5	53.	0.0	0.00
14	GR-1-01	SHELL-WHEAT #1-732 WL LN.	X			37150	0	6.6	7920.	0.0	0.00
14	GR-1-01	CONNMEWBOURNE—PERRY #2.	X			38680	0	0.0	0.	0.0	0.00
14	GR-1-02	CONN DICK BARTON #1	X			37260	0	6.6	7920.	0.0	0.00
14	GR-1-03	CONN APACHE-MILES UNIT #1.	X			34484	0	4.5	1600.	0.0	0.00
14	GR-1-03	CONN APACHE HARRY L KING #1.	X			36470	0	6.6	21120.	0.0	0.00
14	GR-1-03	CONN MOUNTAIN FRONT VARIOUS WELLS.	X			36471	0	0.0	0.	0.0	0.00
14	GR-1-04	CONN TED WEINER-MRS Z D GUY-1.	X			37400	0	4.5	1700.	0.0	0.00
14	GR-1-07	CONNMEWBOURNE—#1 PERRY.	X			38600	0	4.5	2100.	0.0	0.00
14	GR-1-09	CONN TARPON OIL-H PEERY #2.	X			36480	0	6.6	7392.	0.0	0.00
14	GR-2	GRAY ROCK TW #826		X		0	785	0.0	0.	0.0	0.00
14	KC-3-02	MTR STA FAL SEA-HAN #1..	X			36060	0	4.5	7920.	4.5	100.00
14	KC-3-03	LANDERS #1 WL LN	X			37162	0	4.5	6864.	0.0	0.00
14	KC-3-12	CONN COURSON OIL #2-855 LANDERS.	X			55101	0	4.5	2520.	0.0	0.00
20	BH-1/2/3/4/5	8" HANSFORD LAT			X	0	0	8.6	63360.	0.0	0.00
20	BH-2	BRILLHART TW #748 & 796.		X		0	1493	0.0	0.	0.0	0.00
20	BH-2-01	LAT 4 GANDY & GLOVER TO BRILLHART.			X	0	0	4.0	10800.	0.0	0.00
20	BH-2-01	GO-GAND WL LN-BRLHT LT.	X			33930	0	4.5	21120.	4.5	100.00
20	BH-2-03	FARM TAP—GEORGE C. COLLARD.	X			352	0	0.0	0.	0.0	0.00
20	BH-2-04	CONN GULF-LOWE-1	X			33440	0	4.0	6000.	0.0	0.00
20	BH-2-04	CONN BILLINGSLEY #1	X			33840	0	0.0	0.	0.0	0.00
20	BH-2-05	HORIZON-LOWE #1 WL LN.	X			33960	0	4.5	5808.	0.0	0.00
20	BH-2-05	BALLARD #1-123 WL LN	X			33990	0	4.5	5808.	0.0	0.00
20	BH-2-06	CONN BROCK EXPL CORP #1 ANDERSON.	X			33411	0	0.0	0.	0.0	0.00
20	BH-2-06	MTR STA HOR OG COP WL 1.	X			33970	0	4.5	7920.	0.0	0.00
20	BH-2-07	CONN GULF-RHODA HART—1.	X			33400	0	8.0	5280.	0.0	0.00
20	BH-3	CONN UNIT DRILL & EXPL NO 1 BECK.	X			33090	0	4.5	120.	0.0	0.00
20	BH-3-01	FUR-MUR WL LN-BRLHT LT.			X	0	0	4.5	15240.	0.0	0.00
20	BH-3-01	CONN MARY #2	X			33982	0	2.0	60.	0.0	0.00
20	BH-3-03	CONNMEWBOURNE-HIGGS #1.	X			33160	0	0.0	0.	0.0	0.00
20	BH-3/4	8" BERNSTEIN LAT			X	0	0	8.0	52800.	0.0	0.00
20	BH-4	8" BRILLHART LAT			X	0	0	8.6	36960.	0.0	0.00

ANNEX 1 TO SCHEDULE A—Continued

[Transwestern Gathering Company]

S	Line seg	Description	WH	Comp	Line	Meter	Comp. H/P	Pipe diameter	Pipe length	Pipe 2 diameter	Pipe 2 length
20	BH-4-01	FARM TAP-PAT PATTERSON/ROBERT H. ARCHER.	X			401	0	0.0	0.	0.0	0.00
20	BH-4-01	GO-STL WL LN-BRLHT LAT.	X			33870	0	4.5	15840	0.0	0.00
20	BH-5-03	CONNMARLIN OIL #1 SUE.	X			53250	0	0.0	0.	0.0	0.00
20	BH-5-04	CONN HORIZON TX BRILHRT 1-6 HNGFRD.	X			53230	0	4.0	3000.	0.0	0.00
21	JC-1	CONN BARBOUR ENERGY CORP. #1 JARVIS.	X			33110	0	0.0	0.	0.0	0.00
21	JC-1	JOHN CREEK TW #747		X		0	706	0.0	0.	0.0	0.00
21	JC-1/2	6" JOHN CREEK LAT			X	0	0	6.6	4382.	0.0	0.00
21	JC-2	JOHN CREEK CROSSOVER.	X			9238	0	0.0	0.	0.0	0.00
21	JC-2	MTR STA SUN O-MIN K #1.	X			33700	0	4.5	4752.	0.0	0.00
21	JC-2	MTR STA GLE MATT WLI A.	X			33941	0	6.6	18480.	4.5	100.00
21	JC-2-01	4" LAT F/JACKSON #1 & K L WEST #1.			X	0	0	4.5	13200.	0.0	0.00
21	JC-2-01	ARCHER #1-72 WELL LINE.	X			33730	0	4.5	317.	0.0	0.00
21	JC-2-02	PAN AM-BRAINARD #1 LN.	X			33780	0	4.5	5280.	0.0	0.00
21	JC-2-02	MATHEWS #1 4LN & EQ	X			38000	0	4.5	6336.	0.0	0.00
21	JC-2-2	MATHEWS #1-80 WL LN	X			35052	0	4.5	264.	0.0	0.00
21	JC-3	CLEMENT #1-14 WL LN	X			33980	0	4.5	28512.	0.0	0.00
21	JC-3	CONN HORIZON #1 CONVERSE A OCHLTR.	X			53240	0	0.0	0.	0.0	0.00
21	JC-3-01	PAN AM-BECK B #1 LN	X			35061	0	4.5	264.	0.0	0.00
21	LP-1-01	FLOWERS #1-5 5 WL LN.	X			35041	0	4.5	158.	0.0	0.00
21	LP-1-02	CONN #2 REED	X			33650	0	4.5	4900.	0.0	0.00
21	LP-1-02	CONN ELEANOR REED WELL #1.	X			35071	0	4.5	264.	0.0	0.00
21	LP-1-04	CONN AMOCO PRO #2 WB MCINTIRE "A".	X			52240	0	4.5	1800.	0.0	0.00

ANNEX 2 TO SCHEDULE A

Res sys	Fn	State	Acct sys	Loc	Location description	Area	Line No.	Map ref
					SPEARMAN			
35	GP	TX	75	30101	LIPS AS WELL GATH/TEXAS	A	TG 30101	T-2.
35	GP	TX	75	30301	JOHNSON #1 WELL GATH/TEXAS	A	TG 30301	T-2.
35	GP	TX	75	30401	STATEX NITSCHKE #1 WELL GATH/TEXAS	A	TG 30401	T-2.
35	GP	TX	75	31001	BULTMAN #1 WELL GATH/TEXAS	A	TG 31001	T-2.
35	GP	TX	75	32101	LIPS B1 WELLO GATH/TEXAS	A	TG 32101	T-2.
35	GP	TX	75	33201	KNOX PIPKIN #1-28 WELL GATH/TEXAS	A	TG 33201	T-2.
35	GP	TX	75	38601	KILEBREW WELL GATH/TEXAS	A	TG 38601	T-2.
35	GP	TX	75	43801	FLOWERS #1 WELL GATH/TEXAS	A	TG 43801	T-2.
35	GP	TX	75	48001	SPEARMAN 16IN SUCTION GATH/TEXAS	A	TG 48001	T-2.
35	GP	TX	75	53601	FLOWERS #1/FLOWERS #1 TIE-IN	A	TG 53601	T-2.
35	GP	TX	75	61401	LIPS RANCH GATH/TEXAS	A	TG 61401	T-2.
35	GP	TX	75	72301	ROBERTS COUNTY #1 SUCTION LINE/TX	A	TG 72301	T-2.
35	GP	TX	75	73501	ROBERTS CO #1 LINE/TEXAS	A	TG 73501	T-2.
35	GP	TX	75	81191	HODGES #1-39 WEKK GATHERING/TEXAS	A	TG 81191	T-2.
35	GP	TX	75	86901	LIPS RANCH LATERAL	A	TG 86901	T-2.
35	GP	TX	75	87001	LIPS RANCH TIE-OVER LINE	A	TG 87001	T-2.
35	**GP**	**TX**	**75**	**24001**	**NORTH OF SPEARMAN GATH/TEXAS**	**A**	**TG24001**	**T-3.**
35	GP	TX	75	24601	MCCARTY A1 WELL GATH/TEXAS	A	TG 24601	T-3.
35	GP	TX	75	24701	VERNON A1 WELL GATH/TEXAS	A	TG 24701	T-3.
35	GP	TX	75	31601	KIRK #1 WELL GATH/TEXAS	A	TG 31601	T-3.
35	GP	TX	75	32801	JACKSON A#1 UT/LT WELL GATH LINE/TX	A	TG 32801	T-3.

ANNEX 2 TO SCHEDULE A—Continued

Res sys	Fn	State	Acct sys	Loc	Location description	Area	Line No.	Map ref
35	GP	TX	75	32901	WILMETH WELL GATH/TEXAS	A	TG 32901	T–3.
35	GP	TX	75	33501	ODC #1–44 WELL GATH/TEXAS	A	TG 33501	T–3.
35	GP	TX	75	34701	REX #1 WELL GATH/TEXAS	A	TG 34701	T–3.
35	GP	TX	75	35001	YANDA ET AL WELL GATH/TEXAS	A	TG 35001	T–3.
35	GP	TX	75	35101	KENNY WELL GATH/TEXAS	A	TG 35101	T–3.
35	GP	TX	75	38501	CLEMENTINE-LEE WELL GATH/TEXAS	A	TG 38501	T–3.
35	GP	TX	75	38801	JACKSON #1LT/BEULAH #1 TIE-IN GATH	A	TG 38801	T–3.
35	GP	TX	75	38901	BRAINARD #3 WELL GATH/TEXAS	A	TG 38901	T–3.
35	GP	TX	75	40601	MCINTIRE #1-LT AND UT WELL GATH/TEXAS	A	TG 40601	T–3.
35	GP	TX	75	41201	BEULAH #1 WELL GATH/TEXAS	A	TG 41201	T–3.
35	GP	TX	75	46101	MATHEWS #2 WELL GATH/TEXAS	A	TG 46101	T–3.
35	GP	TX	75	60801	COOKE #1C WELL GATH/TEXAS	A	TG 60801	T–3.
35	GP	TX	75	64201	CROWE 7–58 WELL GATH/TEXAS	A	TG 64201	T–3.
35	GP	TX	75	86801	BRACKEN ENERGY-ETLING #1–8	A	TG 86801	T–3.
					FULLER			
37	GP	TX	55	53401	FISHER #1 WELL GATH/TEXAS	A	TG 53401	T–3.
37	GP	TX	55	53701	R WAMBLE #1	A	TG 53701	T–3.
37	GP	TX	55	53801	PEARL #1	A	TG 53801	T–3.
37	GP	TX	55	53901	BOARD #1 WELL GATH/TEXAS	A	TG 53901	T–3.
37	GP	TX	55	59201	GENE CLUCK #1 WELL GATHERING LINE/T	A	TG 59201	T–3
					PERRYTON			
79	GP	OK	44	16701	GEORGE MOUNTS WELL GATH/OKLAHOMA	A	OG 16701	O–13.
79	GP	OK	44	17801	SIMS #1 LATERAL GATH/OKLAHOMA	A	OG 17801	O–13.
79	GP	OK	44	24001	WILSON #1 GATH/OKLAHOMA	A	OG 24001	O–13.
79	GP	OK	44	27301	PALMER #1 WELL GATH/OKLAHOMA	A	OG 27301	O–13.
79	GP	OK	44	31901	PITTMAN #1 WELL/GATH/OKLAHOMA	A	OG 31901	O–13.
79	GP	OK	44	47201	BECKWITH 1–22 WELL GATHERING/OKLA	A	OG 47201	O–13.
79	GP	OK	44	50501	NAYLOR #1 WELL GATH/OKLA	A	OG 50501	O–13.
79	GP	TX	71	21301	CUTTER #1 WELL GATH/TEXAS	A	TG 21301	T–2.
79	GP	TX	71	21401	PHISGODA #1 WELL GATH/TEXAS	A	TG 21401	T–2.
79	GP	TX	71	21501	ORINGDERFF WELL GATH/TEXAS	A	TG 21501	T–2.
79	GP	TX	71	21601	WRIGHT #1 WELL GATH/TEXAS	A	TG 21601	T–2.
79	GP	TX	71	21701	SCHOENHALS #1 WELL	A	TG 21701	T–2.
79	GP	TX	71	21801	GEORGE MOUNTS #1 WELL GATH/TEXAS	A	TG 21801	T–2.
79	GP	TX	71	27301	PALMER #1 WELL GATH LINE/TEXAS	A	TG 27301	T–2.
79	GP	TX	71	28401	GEORGE #1 WELL GATH/TEXAS	A	TG 28401	T–2.
79	GP	TX	71	28801	LE MASTER #1 WELL GATH/TEXAS	A	TG 28801	T–2.
79	GP	TX	71	30801	ODELL LA MASTER WELL GATH/TEXAS	A	TG 30801	T–2.
79	GP	TX	71	32301	GREENE #1 WELL	A	TG 32301	T–2.
79	GP	TX	71	32601	SIMS #1–36L WELL GATH/TEXAS	A	TG 32601	T–2.
79	GP	TX	71	34301	MOYES-GEORGE #1 WELL GATH/TEXAS	A	TG34301	T–2.
79	GP	TX	71	38701	PERRY #1 WELL GATH/TEXAS	A	TG 38701	T–2.
79	GP	TX	71	39201	PERRY B1 WELL GATH/TEXAS	A	TG 39201	T–2.
79	GP	TX	71	71701	SCHULTZ #1 WELL GATHERING/TEXAS	A	TG 71701	T–2.
79	GP	TX	71	80031	BATMAN #1–21 SIDE VALVE/TEXAS	A	TG 80031	T–2.
79	GP	TX	71	80751	TANDY #1 WELL GATHERING LINE/TX	A	TG 80751	T–2.

ITEM IN BOLD REFLECTS A PORTION OF THE TOTAL LINE NO. REFERENCED AS TG24001

The facilities for line no. TG24001 include only the following facilities: Buckner A1 wellhead facilities and approximately 3.4 miles of 4–inch pipeline from well connection in section 20 to side valve on the 10–inch TG24001 in section 27; and approximately 6.5 miles of 4–inch pipeline from a side valve on TG64201 in section 25 to a side valve on the 10–inch TG24001 in section 30 (including well facilities for G1, G1A, G2, & G3).

This Interim Agreement ("Agreement") is by and among Phillips Petroleum Company ("Phillips"), a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its principal executive offices located at Phillips Building, Bartlesville, Oklahoma 74004; Enron Corp. ("Enron") a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 1400 Smith Street, Houston, Texas 77002; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq. (collectively, the "Parties").

Premises

Whereas, on November 15, 1994, Phillips entered into an Agreement to acquire certain voting securities from Enron, as further described in the "Acquisition" definition in the Agreement Containing Consent Order between Phillips, Enron, and the Commission; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, under the Consent Order, Enron will not sell, transfer or otherwise convey, directly or indirectly, to Phillips certain assets listed in Schedule A of the Consent Order in connection with the Acquisition; and

Whereas, the Commission is concerned that if an understanding is not reached to preserve the status quo ante, divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be a less than effective remedy; and

Whereas, the purpose of this Agreement is to preserve the status quo ante pending Commission acceptance or rejection of the proposed Consent Order and to preserve a remedy for any anticompetitive effects of the Acquisition; and

Whereas, Phillips and Enron's entering into this Agreement shall in no way be construed as an admission by Phillips and Enron that the Acquisition is illegal or anticompetitive; and

Whereas, Phillips and Enron understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, with the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Phillips and Enron with respect to the Acquisition (except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof,) the Parties agree as follows:

1. Phillips and Enron agree to execute and be bound by the Consent Order. Phillips, Enron, and the Commission further agree that each term defined in the Consent Order shall have the same meaning in this Agreement.

2. Phillips and Enron agree that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 2.a. and 2.b., they will not consummate the Acquisition:

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's rules; or

b. One day after the Consent Order becomes final.

3. Should the Federal Trade Commission seek in any proceeding to compel Phillips to divest itself of the voting securities acquired in the Acquisition, or assets conveyed pursuant thereto, or to seek any other injunctive or equitable relief, Phillips and Enron shall not raise any objection based on the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 or the fact that the Commission has permitted the Acquisition. Phillips and Enron also waive all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Phillips or Enron, as the case may be, made to its principal office, Phillips or Enron, as the case may be, shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of the company and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the company relating to compliance with this Agreement;

b. Without restraint or interference from it, to interview officers or employees of the company, who may have counsel present, regarding any such matters.

5. In the event the Commission has not finally issued the Consent Order within one hundred twenty (120) days of its publication in the **Federal Register**, Phillips or Enron may each, at its own option, terminate this Agreement by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including, but not limited to, an action pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b). Termination of this Agreement shall in no way operate to terminate the Consent Order that Phillips and Enron have entered into in this matter.

6. This Agreement shall not be binding until approved by the Commission.

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("Commission") has accepted for public comment from Phillips Petroleum Co. ("Phillips") and Enron Corp. ("Enron") an agreement containing consent order. This agreement has been placed on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns Phillips' proposed acquisition, through its wholly-owned subsidiary, GPM Gas Services Corp., of certain pipeline gathering systems owned by Enron's subsidiaries, Northern Natural Gas Co. and Transwestern Pipeline Co. Phillips and Enron are engaged in gas gathering—the transportation of natural gas, for their own or for others' use, from a well head or producing area to a gas transmission pipeline or a gas processing plant. The Commission's investigation of this matter found potential anticompetitive problems in the Texas Panhandle counties of Hansford, Lipscomb, and Ochiltree and the immediately adjoining area in Beaver County, Oklahoma (hereafer referred to as the Panhandle counties).

For certain gas and oil producers in the Panhandle counties, the respondents are the only, or two of very few, choices available for producers who require gas gathering services. The Commission was concerned that the proposed merger would eliminate competition between the respondents in providing gas gathering services. The Commission was also concerned that the proposed merger would lead to anticompetitive increases in gathering rates to these producers, and an overvall reduction in gas drilling and production.

The agreement Containing Consent order would, if finally issued by the Commission, settle charges alleged in the Commission's Complaint that Phillips' acquisition of Enron's gas gathering systems substantially lessened competition in the gathering of natural gas in the Panhandle counties. The nature of such competition to be preserved is the actual and potential competition to provide gas gathering services to producers and other customers of the parties. The Commission's Complaint further alleges that Phillips' merger agreement with Enron violates Section 5 of the Federal Trade Commission Act and that the merger, if consummated, would violate Section 5 of the Federal Trade

Commission Act and Section 7 of the Clayton Act.

The order accepted for public comment contains provisions that would require that Enron not sell approximately 830 miles of pipe and related gas gathering assets within the Panhandle counties to Phillips. The gas gathering assets to be excluded from the transaction are listed in Schedule A of the proposed Consent Order. For a period of ten (10) years from the date that the order becomes final, the order would require prior Commission notification before (a) Phillips could acquire from any one person during any 18 month period more than five miles of gas gathering pipelines located within the Panhandle counties, or (b) Enron could sell the Schedule A assets to Phillips or Maxus Energy Corporation, another large gas gatherer in the Panhandle counties.

A separate agreement between the Commission and Phillips and Enron preserves the status quo pending final action by the Commission to accept or reject the proposed consent order. Phillips and Enron agreed to take no steps to consummate the proposed acquisition until the Commission accepts or rejects the proposed order.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark,

Scretary.

[FR Doc. 95–22581 Filed 9–11–95; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Alan L. Landay, Ph.D., Rush-Presbyterian—St. Luke's Medical Center: Based on an investigation conducted by the institution, ORI found that Alan L. Landay, Ph.D., Associate Professor, Department of Immunology/Microbiology, engaged in scientific misconduct involving two instances of plagiarism in publications related to two Public Health Service (PHS) grants.

Dr. Landay has entered into a Voluntary Settlement Agreement with ORI in which he has accepted ORI's finding and, for the two (2) year period beginning August 8, 1995, has voluntarily agreed to:

(1) Exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) Certify in every PHS research application or report that all contributors to the application or report are properly cited or otherwise acknowledged. The certification by the Respondent must be endorsed by an institutional official. A copy of the endorsed certification is to be sent to ORI by the institution.

ORI acknowledges that Dr. Landay cooperated with the institutional investigation and the ORI review, accepted responsibility for his actions, and appropriately corrected the scientific literature. The two published papers (Coon, J.S., Landay, A.L., & Weinstein, R.S. "Advances in flow cytometry for diagnostic pathology." Laboratory Investigations 57:453–479, 1987; and Landay, A., Hennings, C., Forman, M., & Raynor, R. "Whole blood method for simultaneous detection of surface and cytoplasmic antigens by flow cytometry." Cytometry 14:433–440, 1993) that contained plagiarized text have been corrected (Landay, A. Correspondence. Laboratory Investigations 70:134, 1994; and Landay, A., Jennings, C., Forman, M., & Raynor, R. Correction. Cytometry 14:698, 1993).

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–22515 Filed 9–11–95; 8:45 am]

BILLING CODE 4160-17-P

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8 a.m.–5 p.m., September 28, 1995. 8 a.m.–5 p.m., September 29, 1995.

Place: Holiday Inn Boise/Airport, 3300 Vista Avenue, Boise, Idaho 83705, telephone 208/344–8365, FAX 208/343–9635.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

Purpose: The purpose of this meeting is to receive updates from the Inter Tribal Council on Hanford Health Projects; updates and clarification from ATSDR and CDC representatives on outstanding issues; address procedures for renewing, adding, and replacing HHES members; discuss with Agency personnel, issues relevant to the Technical Steering Panel; and receive reports from the Outreach, Public Health Activities, and Health Studies Work Groups.

Matters To Be Discussed: Agenda items will include ATSDR's & CDC's updates, a discussion of "Popular Epidemiology," guidance from ATSDR, Office of Public Affairs, on media relations, and topics germane to work group activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda A. Carnes, Health Council Advisor, ATSDR, E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0730, FAX 404/639–0759.

Dated: September 6, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–22561 Filed 9–11–95; 8:45 am]

BILLING CODE 4163-70-M

Public Meeting of the Inter Tribal Council, In Association With the Meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

The Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Public Meeting of the Inter Tribal Council (ITC), in association with the meeting of the Citizen Advisory Committee on Public Health Service Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Date: 9 a.m.–4:30 p.m., September 27, 1995.

Location: Holiday Inn Boise/Airport, 3300 Vista Avenue, Boise, Idaho 83705, telephone 208/344–8365, FAX 208/343–9635.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other public-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ITC is part of these efforts. The ITC will work with HHES to provide input on Native American health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting of the ITC is to discuss issues that are unique to tribal involvement with HHES including considerations regarding a proposed medical monitoring program and explorations of options and alternatives to providing support for tribal involvement in HHES.

Matters To Be Discussed: Agenda items will include dialogue pertaining to issues unique to tribal involvement with HHES. This will include an update on the status of ATSDR's draft policy on establishing government-to-government relations with the nine affected tribes as sovereign nations, and exploring options and alternatives to providing support for tribal participation in HHES.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda A. Carnes, Health Council Advisor, ATSDR, E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0730, FAX/639–0759.

Dated: September 6, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).0

[FR Doc. 95–22563 Filed 9–11–95; 8:45 am]

BILLING CODE 4163-70-M

Centers for Disease Control and Prevention

[INFO–95–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request study materials on the proposed project, call the CDC Reports Clearance Officer on (404) 639–3453.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Evaluation of the "WomanKind: Support Systems NS for Battered Women" Project in Minnesota—New—The Division of Violence Prevention at CDC has been [illegible] to work to increase physicians and other health care providers' ability to identify and attend to the needs of victims of domestic violence. WomanKind strives to: (1) increase health care providers' capacity and motivation to identify and refer battered women to WomanKind advocates from several hospital departments, (2) facilitate clients' decisions to alter their circumstances, and (3) work with clients to identify and access existing community services that provide practical support in developing and implementing a plan for change.

This program is in operation at three hospitals in the Minneapolis area. Three similar hospitals will be included as comparison sites. The evaluation is being conducted to determine the extent to which the objectives listed above are achieved and to identify the integration and level of contribution made by each specific program element. These data are specific to the project in Minnesota. Specific outcomes include examining health care providers and WomanKind advocates knowledge, attitudes, motivations, and skills, and the ability to successfully diagnose, manage, refer, and otherwise assist female victims of intimate partner violence. Client's satisfaction with services, number of repeat contacts with WomanKind, and (perhaps) their use of community services will be considered, as well. An examination of materials, implementation process and the potential for this program to be used in other settings are additional components of the evaluation study. If proven effective, this program could be used with other domestic violence prevention strategies to reduce the incidence of domestic violence.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Hospital Staff KABB Survey—Census 1 and 6 month and year	950	3	.17
Hospital Staff KABB Survey—Trainees Immediate Post-test	250	1	.17

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Volunteer Advocate KABB Survey	30	4	.17
Womankind Client KABB Survey	450	4	.25
Control Client KABB Survey	200	4	.25
Hospital Staff Training Evaluation	250	1	.08
Volunteer Advocate Training Evaluation	30	6	.08
Hospital Staff Trainer Evaluation	250	1	.08
Volunteer Trainer Evaluation	30	6	.08

2. Symptom and Disease Prevalence Questionnaire and Supplemental Modules (0923–0012)—Revised—A three-year extension will be requested to this information collection to continue to conduct health studies among populations living near hazardous waste sites and potentially exposed to hazardous substances in order for ATSDR and our cooperative investigators to evaluate the association between exposure to hazardous substances and adverse health effects. The core questionnaire will be slightly revised to provide improved flow and respondent understanding. In these investigations, data on the prevalence of a range of symptoms and diseases suspected are collected. Much of the information is specific to certain organ systems, suspected to be at risk based on the contaminants and pathways of exposure present at each site; thus, organ-specific questionnaires are used in conjunction with the core questionnaire for the corresponding organ systems identified for each site. The results may identify specific public health concerns requiring further investigation or the may calm unsubstantiated fears concerning the perceived health impact of a site. Although these studies are designed to be site specific, the results of a number of similar studies may be combined to provide ATSDR with some broader measure of the public health impact of certain of these sites and conditions. Door-to-door canvassing will serve to census the areas; personal interviews will also be used for collecting information from the respondents.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Individuals Completing Core	3500	1	.75
Individuals Completing Supplement	3500	1	.25

3. A CLIA Comprehension Survey and Information Program for Physicians—New—The purpose of this contract is to enable the Centers for Disease Control and Prevention (CDC) to assess the depth and accuracy of the knowledge base of clinicians regarding the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) regulations as they relate to physicians office laboratories (POLs), and to provide specific information and training to practitioners based on this assessment. In 1990, CDC was designated by the Department of Health and Human Services to assist in the implementation of CLIA '88; this project is a direct response to that mandate.

Through contact with the laboratory and physician communities, CDC has become aware of gaps in information and understanding about the CLIA '88 regulations, especially as they relate to physicians office laboratories. Misconceptions regarding the CLIA '88 regulations in the community may be impeding successful implementation of the regulations and causing unnecessary and inappropriate responses in POL testing sites. Therefore, CDC is proposing a survey of practicing physicians to assess the depth and accuracy of the knowledge base of clinicians regarding the CLIA '88 regulations as they relate to POLs, and to provide specific information and training to practitioners based on this assessment.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Laboratories	5250	1	.2

4. Project BEGIN—New—Project BEGIN is a randomized controlled study to evaluate the effectiveness of an early intervention program for children from birth to three years of age.

The intervention consists of four components: home visits; attendance at a child development center; parent groups; and facilitation of access to a comprehensive array of health and social services. The intervention program is hypothesized to promote optimal childhood development (e.g., cognitive, behavioral, social) and family functioning, and result in better long-term social outcomes, including improved school performance, lower rates of criminal behavior, better employment history, and more stable families.

The study will be conducted at 10 sites across the country. Each site will enroll 32 children, randomly assigned to either the intervention or the comparison arm of the study.

The purpose of the study is to gather data for studying delivery of community intensive and comprehensive early intervention models; benefit to the children enrolled and their families of interventions, and the impact of benefits on subgroups of children.

Respondents will be the children and their parents recruited into both the intervention and comparison arms of the study. Standardized assessment instruments will be used to assess the developmental status of the children. In-person interviews, mostly using standard instruments, will be used to collect data from parents. Data collection will be on-going throughout the study. Data will be used in two ways: to assess the effectiveness of the intervention; and to document and evaluate the quality of intervention delivery.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Children	320	4	4
Care Giver	640	1	1

Dated: September 6, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–22565 Filed 9–11–95; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 602]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for the Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (To order a copy of "Healthy People 2000" or CDC's "Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection" (July 8, 1992), see the Section "Where to Obtain Additional Information.")

Authority

This program is authorized under sections 301 (42 U.S.C. 241) and 310 (42 U.S.C. 242n) of the Public Health Service Act, as amended. Applicable program regulations are found in 42 CFR part 52—Grants for Research Projects.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are non-governmental, nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private (e.g., national, regional) organizations, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- or women-owned businesses are eligible for these cooperative agreements. Current recipients of CDC HIV funding must provide the award number and title of the program (see the Section "Program Requirements, C. Letter of Intent").

Availability of Funds

Up to $250,000 may be available in FY 1996 to fund approximately 10 to 15 awards. The awards will average $20,000 and will be funded for a 12-month budget and project period. The funding estimate may vary and is subject to change, based on availability of funds. Awards will initially be made on a contingency basis as described in the Purpose section.

The following are examples of the most frequently encountered costs that may or may not be charged to the cooperative agreement:

1. As approved, CDC funds may be used for direct cost expenditures: salaries, speaker fees, rental of conference related equipment, registration fees, and transportation cost (not to exceed economy class fares) for non-Federal employees.

2. CDC funds may not be used for the purchase of equipment, payments of honoraria, organizational dues, entertainment or personal expenses, cost of travel and payment of a full-time Federal employee, or per diem or expenses, other than mileage, for local participants.

3. CDC funds may not be used for reimbursement of indirect costs.

4. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds may not be used for this purpose.

5. CDC funds may be used for only those parts of the conference specifically supported by CDC as documented in the Notice of Cooperative Agreement (award document).

Recipient Financial Participation

Part of the cost of the proposed conference must be funded by other than CDC funds.

Purpose

The purpose of the HIV prevention conference support cooperative agreement is to provide partial support for non-Federal conferences or specified portions of non-Federal conferences to stimulate efforts to prevent the transmission of HIV. CDC will collaborate on conferences that specifically focus on preventing HIV transmission. Because conference support by CDC creates the appearance of CDC co-sponsorship, CDC will actively participate in the development and approval of those portions of the agenda supported by CDC funds. Contingency awards will be made allowing usage of only 25% of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds for costs associated with preparation of the agenda. The remainder of funds will be released only upon acceptance of the final full agenda. CDC reserves the right to terminate co-sponsorship if it does not approve the final agenda.

Program Requirements

CDC will provide support for conferences that are:

1. Regional (more than one State), national, or international in scope;

2. Targeted to professionals contributing to HIV prevention efforts; and

3. Focused on the transfer of HIV prevention research and evaluation findings to intervention efforts or the application of these prevention efforts to service providers and health professionals who provide service to individuals whose behaviors place them at increased risk for HIV infection.

Topics concerned with issues and areas other than HIV prevention should be directed to other public health agencies or in accordance with current **Federal Register** Notices (see **Federal Register** Notice 600, April 20, 1995, 60 FR 19750).

The activities related to the development of HIV prevention conferences require substantial CDC collaboration and involvement. In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities listed in section A., and CDC will be responsible for conducting activities listed in section B.:

A. Recipient Activities

1. Manage all activities related to program content (e.g., objectives, topics, participants, session design, workshops, special exhibits, speakers, fees, agenda composition, and printing). Many of

these items may be developed in concert with assigned CDC project personnel.

2. Provide draft copies of the agenda and proposed ancillary activities to the CDC program office for review and comment. Submit a copy of the final agenda and proposed ancillary activities to the CDC Grants Management Office for acceptance.

3. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press). CDC must review and approve the use of any materials with reference to CDC involvement or support.

4. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures).

5. Plan, negotiate, and manage conference site arrangements, including all audiovisual needs.

6. Develop and conduct education and training programs on HIV prevention.

7. Collaborate with CDC staff in reporting and disseminating results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, HIV/AIDS prevention and service organizations, and the general public.

B. CDC Activities

1. Provide technical assistance through telephone calls, correspondence, and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on risk factors for HIV infection, preventive measures, and program strategies for the prevention of HIV infection.

3. Review draft agendas and approve the final agenda and proposed activities prior to release of restricted funds.

4. Assist in the reporting and dissemination of research results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, and HIV/AIDS prevention and service organizations, and the general public.

C. Letter of Intent

Respondents must submit a one-page, typewritten letter of intent (LOI) that briefly describes the title, location, and purpose of the meeting, its relationship to the following described CDC Topics of Special Interest, the date of the proposed conference, and the intended audience (number and description). No attachments, booklets, or other documents accompanying the LOI will be considered. The letter should also include the estimated total cost of the conference and the percentage of the total cost (which must be less than 100%) being requested from CDC. Current recipients of CDC HIV funding must provide the award number and title of the funded programs. LOIs will be reviewed by CDC program staff, and an invitation to submit an application will be made based on the proposed conference's relationship to the CDC topics of special interest and the availability of funds. An invitation to submit an application does not constitute a commitment by CDC to fund the applicant.

D. Topics of Special Interest

Funding preferences are established to ensure a balance of CDC HIV prevention funding and to address at-risk populations that are underserved. CDC is especially interested in supporting meetings and conferences for HIV prevention service providers on the following topics:

1. Prevention of HIV infection among:

a. Underserved populations (e.g., women of reproductive age, racial and ethnic minorities);

b. High-risk populations, including both in-school and out-of-school youth; or

c. Populations in special settings (e.g., racial and ethnic minorities; out-of-school, high-risk youth; incarcerated persons; men who have sex with men; high-risk drug users; and migrant workers). Particular attention will be given to organizations that serve multiple high-risk populations.

2. Development of HIV prevention strategies with a broad range of community partners including those who have not traditionally been involved with public health programs (e.g., business, religious leaders).

3. Development of prevention marketing strategies, including various behavior modification messages related to sex practices (e.g., abstinence, condom use).

Note: To provide for adequate time to collaborate on the meeting agenda and content, applicants should allow a minimum of 3 months from the scheduled application due date to the planned date of the conference. (See the Section Letter of Intent and Application Submission and Deadlines.) Meetings scheduled to begin earlier than March 15, 1996, will not be routinely considered for funding.

Evaluation Criteria

LOIs will be reviewed by CDC program staff for consistency with CDC's HIV prevention goals and priorities and the purposes of this program. An invitation to submit an application will be made on the basis of the proposed conference's relationship to the CDC determined topics of special interest, the timing of the meeting or conference that would allow for CDC input, and the availability of funds. Applications will be reviewed and evaluated according to the following criteria.

(Total points available is 100).

A. Proposed Program and Technical Approach: (50 Points)

Evaluation will be based on:

1. The applicant's description of the proposed conference as it relates to HIV prevention and education, including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices, and the extent of the applicant's collaboration with other agencies serving the intended audience, including local health and education agencies concerned with HIV prevention.

2. The applicant's description of conference objectives in terms of quality, specificity and the feasibility of the conference based on the operational plan, and the extent to which evaluation mechanisms for the conference adequately assess increased knowledge, attitudes, and behaviors of the target participants.

3. The relevance and effectiveness of the proposed agenda in addressing the chosen HIV prevention/education topic.

4. The degree to which conference activities proposed for CDC funding strictly adhere to the prevention of HIV transmission.

B. Applicant Capability (25 Points)

Evaluation will be based on:

1. The adequacy and commitment of institutional resources to administer the program.

2. The adequacy of existing and proposed facilities and resources for conducting conference activities.

3. The degree to which the applicant has established and used critical linkages with health and education agencies with the mandate for HIV prevention. Letters of support from such agencies should be obtained to demonstrate the linkages specific to the conference.

C. Qualifications of Program Personnel: (25 Points)

Evaluation will be based on:

1. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

2. The competence of associate staff persons, discussion leaders, and speakers to accomplish conference objectives.

3. The degree to which the application demonstrates that key personnel have knowledge about the transmission of HIV, and current nationwide information and education efforts that may affect, and be affected by, the proposed conference.

D. Budget Justification and Adequacy of Facilities: (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, consistency with the intended use of cooperative agreement funds, and the extent to which the applicant documents financial support from other sources.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Other Requirements

Recipients must comply with the document entitled Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (June 1992) (a copy is in the application kit). To meet the requirements for a Program Review Panel, recipients are encouraged to use an existing Program Review Panel such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own Program Review Panel, at least one member must also be an employee (or a designated representative) of an appropriate health or educational agency, consistent with the revised Content Guidelines. The names of review panel members must be listed on the Assurance of Compliance form (CDC Form 0.1113) which is also included in the application kit.

Letter of Intent and Application Submission and Deadlines

The original and two copies of the LOI must be postmarked by the October 13, 1995, deadline date to be considered. Within four weeks, successful respondents will receive a written request to submit an application for funding; unsuccessful respondents will be also be notified in writing. A request to submit an application does not constitute a commitment to fund the applicant.

The original and two copies of the application must be submitted on PHS Form 5161–1 (OMB Number 0937–0189) by December 22, 1995. The earliest possible award date is February 16, 1996, and the earliest possible conference date is March 15, 1996. Applications must be postmarked on or before the deadline date and sent to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office (Ann. #602), Centers for Disease Control and Prevention (CDC), MS E–15, 255 East Paces Ferry Road, NE., Room 320, Atlanta, GA 30305.

Deadlines

The Letter of Intent and requested applications shall be considered as meeting the applicable deadline if they are either:

A. Received on or before the deadline date, or

B. Postmarked on or before the deadline date (respondents should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 602. You will receive a copy of the program announcement, a list of the relevant Healthy People 2000 HIV objectives, and the addresses and phone numbers for CDC contact personnel. The announcement is also available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov. CDC will not send application kits by facsimile or express mail unless the cost for the latter is paid by the addressee.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Mr. Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Atlanta, GA 30305, telephone (404) 842–6550. Programmatic technical assistance may be obtained from Ms. Linda LaChanse, Program Analyst, Training and Technical Services Support Branch, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–40, Atlanta, GA 30333; telephone (404) 639–2918. Please refer to Announcement Number 602 when requesting information and when submitting your application in response to the announcement.

Respondents may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800. Single copies of CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992) can be obtained by calling the CDC National AIDS Clearinghouse at (800) 458–5231.

Dated: September 5, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–22588 Filed 9–11–95; 8:45 am]

BILLING CODE 4163–18–P

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5:30 p.m., September 28, 1995; 8:30 a.m.–1:30 p.m., September 29, 1995.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, GA 30329.

Status: Open to the public, limited only by the space available.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; address the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Tuberculosis in foreign-born persons; ACET Strategic Plan to Eliminate Tuberculosis Progress Report; future priorities and direction for ACET; updates on funding issues, health-care workers safety and infection control, TB vaccine workshop, updates from the National TB Controller's Association, DTBE strategic plan for training, FDA regulations related to TB, and ACET statements in progress.

Agenda items are subject to change as priorities dictate.

Contact Pserson for More Information: Samuel W. Dooley, Jr., M.D., Acting Associate Director for Science, National Center for Prevention Services, CDC, and Acting Executive Secretary, ACET, 1600 Clifton Road, NE, M/S E-07, Atlanta, GA 30333, telephone 404/639-8006.

Dated: September 6, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–22562 Filed 9–11–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Representatives of Health Professional Organizations; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting with health professional organizations. The meeting will be chaired by Sharon Smith Holston, Deputy Commissioner for External Affairs. The agenda will include brief presentations and discussions on the process for submitting nominees for advisory committees, communicating with FDA, and other topics of particular interest to members of health professional organizations.

DATES: The meeting will be held on Monday, October 2, 1995, 2 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Hubert H. Humphrey Bldg., conference room 503A, 200 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Peter H. Rheinstein, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide an opportunity for representatives of health professional organizations to be briefed by senior FDA staff, and to provide an opportunity for informal discussion and comment on topics of particular interest to health professional organizations.

Dated: September 5, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–22514 Filed 09–11–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Proposed Data Collections Available for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection project, the Office of the Assistant Secretary for Health publishes periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call Kathryn Lotfi on (301) 443-2006.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Application Packets for Real Property for Public Health Purposes—0937–0191—Revision—The Department of Health and Human Service administers a program to convey or lease surplus real property to States and their political subdivisions and instrumentalities, to tax-supported institutions, and to nonprofit institutions to be used for health purposes. State and local governments and non-profit organizations use these applications to apply for excess/surplus, under-utilized/unutilized and off-site Government real property. Information in the application is used to determine eligibility to purchase, lease, or use property under the provisions of the surplus property program. The Environmental information form, used to evaluate potential environmental effects of a proposal as required by the National Environmental Policy Act of 1969, is being revised to provide factual data to support the response to each question and to leave no doubt about what conditions or adverse effects are being considered as well as to make it more user friendly. Respondents: State, Local or Tribal Government, Not-for-profit institutions; Annual Number of Respondent: 114; Number of Responses per Respondent: 1; Average Burden per Response: 200 hours; Estimated Annual Burden: 22,800 hours. Send comments to Kathryn Lotfi, Office of General Counsel, Room 4A-53, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 6, 1995.

James Scanlon,

Director, Data Policy Staff Office of the Assistant Secretary for Health and PHS, Reports Clearance Officer.

[FR Doc. 95–22593 Filed 9–11–95; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV 930–1430–01; N–59940]

Temporary Closure; Las Vegas District

SUMMARY: The Las Vegas Stateline Resource Area within the Las Vegas District will issue a temporary closure of certain public lands for the protection of person, property, and public lands and resources for the purpose of a BLM permitted recreational event, "Planet Move". Legal description:

Mount Diablo Meridian

T. 25 S., R. 60 E.,
  Sec. 9: SW¼

Approximately 160 acres (Jean Dry Lake).

DATE: September 28, 1995 through October 2, 1995.

TIME: Continuous through stated dates.

A map of the affected lands will be available for inspection at the Las Vegas District Office. The following are exceptions to the closure:

- Authorized personnel required for the event, i.e., construction crews, caterers, entertainers, security officers, etc.
- Attendees who have paid the required admission fee.

Violation of this closure is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Authority for temporary closure is contained in Title 43 CFR, subpart 8364.1(a).

Dated: August 18, 1995.

Michael F. Dwyer,

District Manager.

[FR Doc. 95–22520 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–HC–P

[OR–080–083–6332–02; G5–211]

Amendment to Camping Restriction Order Established; Salem District; OR

ACTION: Ammendment to the Overnight Camping Restriction Order Established for the Salem District, published in the June 8, 1984, edition of the **Federal Register** (49 FR 23950).

SUMMARY: The Overnight Camping Restriction Order Established for the Salem District, published in the June 8, 1984, edition of the **Federal Register** (49 FR 23950) is hereby amended as follows:

1. Maximum days of continuous occupancy for Yellowbottom Recreation Site will now be 14 days.
2. Delete the Quartville Recreation Corridor from the Recreation site/area list. The Quartzville Recreation Corridor will now be managed in accordance with the 14-day camping stay limit for BLM-administered lands in the Salem District, published in the September 27, 1991, edition of the **Federal Register** (56 FR 49199).

EFFECTIVE DATE: Effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Richard Prather, Area Manager, Cascades Resource Area, 1717 Fabry Road SE, Salem, OR 97306, (503) 375–5646.

Pete Schay,

Acting Area Manager, Cascades Resource Area.

[FR Doc. 95–22322 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[OR–080–083–6332–02; G5–210]

Motorized Vehicle Restriction on Public Lands; Salem District; OR

ACTION: Notice of restriction of use of motorized vehicles on public lands.

SUMMARY: Notice is hereby given that effective immediately, that unless otherwise authorized, all public motorized vehicle travel is prohibited on the following areas:

1. The last 0.25 mile of Road 9–1E–12, east of where it intersects with Road 8–1E–26 in Section 5, of T. 8S., R. 2E., W.M.
2. All lands administered by the Bureau of Land Management in Sections 15, 16, and 17, T. 6S., R. 2E., W.M.

The authority for this closure is 43 CFR 8364. This closure will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Richard Prather, Area Manager, Cascades Resource Area, 1717 Fabry Road SE, Salem, OR 97306, (503) 375–5646.

SUPPLEMENTARY INFORMATION: The purpose of these closures is to protect soil, vegetation and sensitive cultural, paleontological, and riparian resources, from excessive damage by motor vehicles.

Pete Schay,

Acting Area Manager, Cascades Resource Area.

[FR Doc. 95–22320 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–33–P

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0044); Washington, D.C. 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Application for Permit to Drill, Form MMS–123.

OMB approval number: 1010–0044.

Abstract: Respondents submit Form MMS–123 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

Bureau form number: Form MMS–123.

Frequency: On occasion.

Description of respondents: OCS oil, gas, and sulphur lessees.

Annual burden hours: 1,555.

Bureau Clearance Officer: Arthur Quintana (703) 787–1239.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 95–22526 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0068); Washington, D.C. 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR Part 250, Subpart M, Unitization.

OMB approval number: 1010–0068.

Abstract: Respondents are required to obtain approval from the Minerals Management Service's Regional Supervisors when they enter into an agreement to unitize operations under two or more leases. Any proposed modifications to the agreement must also be approved by the Regional Supervisor. This information is necessary to ensure that operations under the proposed unit agreement will result in the prevention of waste, conservation of natural resources, and protection of correlative rights including the Government's interest.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Annual burden hours: 2,424.

Bureau Clearance Officer: Arthur Quintana (703) 787–1239.

Dated: August 9, 1995.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 95–22525 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0039); Washington, D.C. 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Well Potential Test Report and Request for Maximum Production Rate (MPR), Form MMS–126.

OMB approval number: 1010–0039.

Abstract: Respondents submit Form MMS–126 to the Minerals Management Service's (MMS) Regional Supervisors for the purposes of establishing well maximum production rates (MPR). This information is used to establish the maximum daily rate at which oil and gas may be produced from a specific well completion.

Bureau form number: Form MMS–126.

Frequency: On occasion.

Description of respondents: Outer Continental Shelf oil and gas lessees.

Annual burden hours: 3,727.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1239.

Dated: August 3, 1995.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 95–22522 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and budget; Paperwork Reduction Project (1010–0045); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, VA 22070–4817.

Title: Sundry Notices and Reports on Wells, Form MMS–124.

OMB approval number: 1010–0045.

Abstract: Respondents submit Form MMS–124 to the Minerals Management Service's (MMS) District.

Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations, protection of the human, marine, and coastal environments, conservation of the natural resources in the OCS, prevention of waste, and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

Bureau form number: Form MMS–124.

Frequency: On occasion.

Description of respondents: Outer Continental Shelf oil, gas, and sulphur lessees.

Annual burden hours: 8,820.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1239.

Dated: August 9, 1995.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 95–22523 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contracting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0079); Washington, D.C. 20503, telephone (202) 395–7340, with copies of Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR Part 250, Subpart G, Abandonment of Wells.

OMB approval number: 1010–0079.

Abstract: Respondents submit this information to the Minerals Management Service so it can verify that the final disposition of a well is being diligently pursued and that any deviations from the approved plan and the documentation of the temporary plugging of the wellbore and marking of the location have been performed by the lessee operator.

Bureau form number: None.

Frequency: Annual.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Annual burden hours: 213.

Bureau Clearance Officer: Arthur Quintana (703) 787–1239.

Dated: August 9, 1995.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 95–22524 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–MR–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Aquatic and Riparian Species of Pahranagat Valley for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the aquatic and riparian species of Pahranagat Valley. This plan undertakes an ecosystem approach by discussing the recovery needs of three native, endangered fish species. The Service solicits review and

comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 13, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, Nevada Ecological Services State Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada, 89502 (telephone: 702–784–5227), or the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon, 97232–4181 (telephone: 503–231–6241). Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, State Supervisor, at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Byers at the above Reno, Nevada address (telephone: 702–784–5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification or delisting, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Three native, endangered fish species are endemic to the Pahranagat Valley in Lincoln County, Nevada. The Pahranagat roundtail chub is found in only 12 km of the Pahranagat River. The White River springfish is found only in the spring pool of Ash Spring. The Hiko White River springfish is found in the spring pools of Hiko and Crystal Springs. Populations of Pahranagat roundtail chub vary between 150 to 250 adult fish. The White River springfish population is stable with approximately 7000 fish. The Hiko White River springfish population is critically low (<35) in Crystal Spring and more common (approximately 5500 fish) in Hiko Spring. The principle causes of decline for these species are habitat modification and nonnative fish introductions. Critical habitat has been designated for the two subspecies of springfish. Ninety-five percent of the habitats occupied by these species are on private lands. Recovery of this species will require removal and/or control of nonnative fishes, restoration and protection of occupied habitats, and protection of ground water sources.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 1, 1995.

Michael J. Spear,

Regional Director.

[FR Doc. 95–22587 Filed 9–11–95; 8:45 am]

BILLING CODE 4310–55–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Republic of Indonesia ("Borrower") as part of USAID's development assistance program. The proceeds of this loan will be used to facilitate the delivery of urban environmental infrastructure for the benefit of low-income families in Indonesia. At this time, the Government of Indonesia has authorized USAID to request proposals from eligible lenders for a loan under this program of $25 million U.S. Dollars (US$25,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Indonesia

Project No: 497–HG–002—Amount: US$25,000,000

Housing Guaranty Loan Nos.: 497–HG–007 A01, 497–HG–008 A01

1. Attention: Mr. Darsjah, Director General of Budget Ministry of Finance, Jalan Lapangan Banten Timur No. 2, Jakarta, Indonesia; Telex No.: 45799 DJMLNIA or Telefax No.: 011–(62–21)–365859 or 374530 (preferred communication); Telephone Nos.: 011–(62–21)–3458289, 372758 or 3842234 or 3848294.

2. Attention: Mr. Paul Sutopo, Bank of Indonesia, Jalan M.H. Thamrin No. 2, Jakarta, Indonesia; Telex No.: 44200 BISIR IA or 46611 BISIR IA; Telefax No.: 011–(62–21)–3452892 (preferred communication); Telephone No.: 011–(62–21)–367972.

3. Attention: Mr. Ibrahim Zarkasi, Bank of Indonesia, One World Financial Center, 200 Liberty Street, 6th Floor, New York, N.Y. 10281, Telefax No.: 212/945–1316 (preferred communication); Telephone Nos.: 212/945–1310 or 1311.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representatives by *Tuesday, September 26, 1995, 12:00 noon Eastern Daylight Savings Time.*

Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Joel Kolker, Acting Director, Regional Housing and Urban Development Office, USAID/Jakarta, Box 4, APO AP 96520, c/o American Embassy, Jakarta, Indonesia, (Street address: J1 Medan Merdeka Selatan No. 5, Jakarta, Indonesia); Telex No.: 44218 AMEMB IA; Telefax No.: 011–(62–21)–380–6694 (preferred communication); Telephone No.: 011–(62–21)–360–360

Mr. Charles Billand, Assistant Director; Mr. Peter Prinie, Financial Advisor; Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, D.C. 20523–1822; Telex No.: 892703 AID WSA; Telefax Nos.: 703/875–4384 or 875–4639 (preferred communication); Telephone Nos.: 703/875–4300 or 875–4510

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $25 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. (During grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of both fixed and variable rate loans are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 7⅝% U.S. Treasury Bond due February 15, 2025. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include any options for prepayment and mention prepayment premiums, if any.

(b) Only in an extraordinary event to assure compliance with statutes binding USAID, USAID reserves the right to accelerate the loan (it should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration).

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees, Paying and Transfer Agent fees, and out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan. *All fees should be clearly specified in the offer.*

(7) *Closing Date:* Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Mr. Michael J. Lippe, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, Washington, D.C. 20523–1822; Fax Nos: 703/875–4384 or 875–4639; Telephone: 703/875–4300.

Dated: September 7, 1995.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 95–22692 Filed 9–11–95; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

Notice of Meeting of National Grain Car Council

TIME AND DATES: 9:00 a.m., Wednesday, September 20, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D. C. 20423.

SUMMARY: The National Grain Car Council (NGCC) arose from a proceeding instituted by the ICC in *National Grain Car Supply—Conference of Interested Parties,* Ex Parte No. 519. The NGCC was formed as a working group to facilitate private-sector solutions to problems arising in the railroad transportation of grain. The purpose of the meeting is to discuss the NGCC's future agenda and to elect permanent officers.

FOR FURTHER INFORMATION CONTACT: Lars Etzkorn, Telephone: (202) 927–6010, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22625 Filed 9–11–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Task Force on Prison Construction Standardization and Techniques

ACTION: Notice of establishment of Task Force on Prison Construction Standardization and Techniques.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2 (1972), and 41 CFR 101–6.1001–6.1035 (1992), the Director, National Institute of Corrections (NIC), with the concurrence of the U.S. Attorney General, is establishing a Task Force on Prison Construction Standardization and Techniques (TFPCST) for the purpose of evaluating and recommending new construction technologies, techniques, and materials to reduce prison and jail construction costs at the federal, state, and local levels and make construction more efficient.

The Task Force is authorized by Public Law 103–322, Section 20406 of Subtitle D, the Violent Crime Control and Law Enforcement Act of 1994. The specific provisions of the Act state that the Task Force will: (1) establish and recommend standardized construction plans and techniques for prison and jail construction; (2) evaluate and recommend new construction technologies, techniques, and materials to reduce prison and jail construction costs at the federal, state, and local levels and make construction more efficient; (3) disseminate the information to state and local officials involved in prison and jail construction; (4) promote the implementation of cost-saving efforts at the federal, state, and local levels; (5) evaluate and advise on the results and effectiveness of such cost-saving efforts as adopted and disseminate information on the results; and (6) to the extent feasible, certify the effectiveness of these cost-saving efforts.

MEMBERSHIP: In accordance with the provisions of P.L. 103–322, Section 20406 of Subtitle D, this Task Force will be composed of federal, state, and local officials experienced in the design and construction of prison and jail facilities and an equal number of architects, engineers, and construction professionals from the private sector with experience in prison and jail design and construction.

The Task Force will consist of 15 members nominated primarily by relevant professional associations and state and local departments of corrections with recent significant construction activity. The Task Force will be advisory only and will report to the U.S. Attorney General through the Director of the National Institute of Corrections.

CONTACT PERSON: Michael A. O'Toole, National Institute of Corrections, Jails Division, 1960 Industrial Circle, Suite A, Longmont, CO 80501, (800) 995–6429.

TELEPHONE: (303) 682–0639, Fax: (303) 682–0469.

Morris L. Thigpen,

Director.

[FR Doc. 95–22534 Filed 9–11–95; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Visual Arts and Museum Planning Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Overview/Planning Section) to the National Council on the Arts will be held on September 12–13, 1995. The panel will meet from 9:00 a.m. to 5:30 p.m. on September 12 and from 9:00 to 5:00 p.m. on September 13, in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the arts, 1100 Pennsylvania Avenue, NW Washington, D.C. 20506, 202/682–5532, TYY/TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Director of Council and Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5788.

Dated: September 5, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–22511 Filed 9–11–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Partnership Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Partnership Advisory Panel (Local Arts Agencies Section) to the National Council on the Arts will be held on September 28–29, 1995. The panel will be held from 8:45 a.m. to 6:30 p.m. on September 28 and from 8:30 a.m. to 5:00 p.m. on September 29, in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW Washington, D.C. 20506, 202/682–5532, TYY/TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Director of Council and Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: September 5, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–22513 Filed 9–11–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Museum Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization/Professional Development Section B) to the National Council on the Arts will be held on September 19–22, 1995. The panel will meet from 9:00 a.m. to 7:00 p.m. on September 19 and from 9:00 a.m. to 5:30 p.m. on September 20–22, in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY/TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Director of Council and Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5788.

Dated: September 5, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–22512 Filed 9–11–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by October 6, 1995. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy at the above address or (703) 306–1031.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant:* William D. Fraser, Biology Department, Montana State University, Bozeman, Montana 59717, Permit Application No. 96–021.

Activity for Which Permit is Requested

Enter Specially Protected Area and Enter Site of Special Scientific Interest. The applicant requests permission to enter Litchfield Island (SPA #17) 3 times per week for 1–2 hours to census penguins and other seabirds breeding on the island. The island can be accessed safely and easily at times of the year when sea ice and bad weather make access to other penguin rookeries difficult or impossible. The applicant relies heavily on the ability to document weekly changes in penguin populations and breeding effort. This island has thus become a reliable source of long-term comparative data on penguin demography important to the hypotheses being tested by the LTER. All visits will be restricted to the unvegetated parts of the island.

In addition, the applicant would also like to enter Biscoe Point, Anvers Island (SSSI #20) on 5 separate occasions to census penguins and other seabirds. Some penguins banded as chicks are not returning to their natal colonies, but are instead moving to colonies on islands quite distant from Palmer. The applicant needs to document how pervasive this trend is by finding previously banded birds so as to adequately incorporate them into data on survival and recruitment.

Location

SPA #17—Litchfield Island, and SSSI #20—Biscoe Point, Anvers Island

Dates

October 1, 1995–May 31, 1998

2. *Applicant:* William D. Fraser, Biology Department, Montana State University, Bozeman, Montana 59717, Permit Application No. 96–022.

Activity for Which Permit is Requested

Taking. The applicant proposes to continue work associated with the Long-Term Ecological Research (LTER) on the Antarctica Marine Ecosystem project studying the relating variability in seabird reproductive success, survival and recruitment to fluctuations in certain biotic and abiotic features in their environment. This work involves censusing populations; marking, weighing and measuring adults, chicks and eggs; obtaining diet samples; and placing radio transmitters on some individuals to develop profiles on foraging efforts. As in the past, all seabirds involved in the research will be released unharmed.

Location

Palmer Station vicinity and nearby islands accessible by zodiac

Dates

October 1, 1995–May 31, 1998

3. *Applicant:* William D. Fraser, Biology Department, Montana State University, Bozeman, Montana 59717, Permit Application No. 96–023.

Activity for Which Permit is Requested

Taking. The applicant requests permission to tag 200 Adelie penguins using the subcutaneous tag method. The tagging of penguins is part of a long-term ecological research (LTER) program studying the relating variability in seabird reproductive success, survival and recruitment to fluctuations in certain biotic and abiotic features in their environment.

Location

Palmer Station vicinity and nearby islands

Dates

October 1, 1995—May 31, 1998

4. *Applicant,* Colin Harris, International Center for Antarctic Information and Research (ICAIR), P.O. Box 14–199, Orchard Road, Christchurch, New Zealand, Permit Application No. 96–013.

Activity for Which Permit is Requested

Enter Sites of Special Scientific Interest. The applicant proposes to enter the Arrival Heights and Cape Crozier Sites of Special Scientific Interest to survey ground control points needed to prepare up-to-date and detailed site maps for these areas. The work involves obtaining precise measurements of up to 6 ground control points at each site. In addition aerial photography above each control point will be necessary so the control points can be transferred to existing aerial photography for each site. Access to sites will follow restrictions outlined in the management plans for each site.

Location

SSSI #2—Arrival Heights, Hut Peninsula, Ross Island, and SSSI #4—Cape Crozier, Ross Island

Dates

November 1, 1995—January 31, 1996

Nadene G. Kennedy,

Permit Office, Office of Polar Programs.

[FR Doc. 95–22556 Filed 9–11–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–287 and 50–388]

Pennsylvania Power & Light Company, Susquehanna Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an amendment to Susquehanna Steam Electric Station, Units 1 and 2, Technical Specifications to permit the implementation of an increase in the allowable exposure of Siemens' 9×9–2 fuel from 40 GWD/MTU to 45 GWD/MTU. Pennsylvania Power and Light Company (PP&L) (the licensee), on May 31, 1994, submitted to the Commission for review, Topical Report PL–NF–94–005–P, "Technical Basis for SPC 9×9–2 Extended Fuel Exposure at Susquehanna SES." This report provided a technical justification for the increased fuel burnup and the staff subsequently approved the report as indicated in its letter to PP&L dated December 15, 1994.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend the Susquehanna Steam Electric Station (SSES), Units 1 and 2, Technical Specifications (TS) to permit the implementation of an increase in the allowable exposure of Siemens' 9×9–2 fuel from 40 GWD/MTU to 45 GWD/MTU. The proposed action is in accordance with the licensee's application for amendment dated February 2, 1995.

The Need for the Proposed Action

NRC approval of this TS change, as applied to the Unit 1, Cycle 9, and Unit 2, Cycle 8, will establish a new, higher fuel burnup rod-average limit of 45 MWD/MTU and will permit the licensee to continue to operate the plant through the end of each of these specified cycles, exceeding the current fuel burnup limit of 40 GWD/MTU, without affecting the safe operation of each reactor.

Environmental Impacts of the Proposed Action

The Commission completed its evaluation of the proposed action and the above referenced topical report and found it to be acceptable. In addition the TS changes implementing the higher fuel burnup limit have also been found to be acceptable. The safety considerations associated with extended irradiation of nuclear fuel have been evaluated by the NRC staff and the staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse affect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such changes would not significantly affect the consequences of serious accidents. Routine radiological effluents are not affected. As a result, there is no increase in individual or cumulative radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation." This assessment was published in the **Federal Register** on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with the Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60 Gigawatt Days per Metric Ton (GWD/MT) are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CRF 51.52(c). These findings are applicable to the proposed increase in the increase in the allowable exposure of Siemens' 9×9–2 fuel for the Susquehanna units. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change will in no way affect environs located outside the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed change in the fuel exposure limit.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Susquehanna Steam Electric Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on July 7, 1995, the staff consulted with the Pennsylvania State official, David Ney of the Department of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 2, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 5th day of September 1995.

For the Nuclear Regulatory Commission.

John Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22613 Filed 9–11–95; 8:45 am]

BILLING CODE 7590–01–P

NEA/CNRA/CSNI International Workshop on Steam Generator Tube Integrity in Nuclear Power Plants; Notice of NEA Meeting

SUMMARY: An International Workshop on Steam Generator Tube Integrity in Nuclear Power Plants (NPPs) will be convened by the Committee on Nuclear Regulatory Activities (CNRA) and the Committee on the Safety of Nuclear Installations (CSNI) of the OECD Nuclear Energy Agency (NEA). The NEA announcement and call for participation is attached. The NRC is a member of these committees and NRC staff and contractors will participate in the workshop. The NEA is seeking other participants from the United States. Those interested in participating, should submit the registration form directly to the NEA at the address noted on the form. The deadline for registration has been extended to September 30, 1995.

Dated at Rockville, Maryland, on September 6, 1995.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Chief, Electrical, Materials & Mechanical Engineering Branch, Division of Engineering Technology, Office of Nuclear Regulatory Research.

NEA/CNRA/CSNI International Workshop on Steam Generator Tubing Integrity in Nuclear Power Plants

SECOND ANNOUNCEMENT AND CALL FOR PARTICIPATION

1. Organization and Host

An Intentional Workshop on Steam Generator Tube Integrity in Nuclear Power Plants (NPPs) will be convened by the Committee on Nuclear Regulatory Activities (CNRA) and the Committee on the Safety of Nuclear Installations (CSNI) of the OECD Nuclear Energy Agency (NEA). The workshop will be hosted by the Office of Nuclear Regulatory Research of the United States Nuclear Regulatory Commission. The four-day workshop will be conducted in suburban Chicago, Illinois near Argonne National Laboratory on Monday, October 30 through Thursday, November 2, 1995.

2. Background and Purpose

Steam generator tubing has exhibited a wide variety of degradation mechanisms. As a result, a considerable amount of effort has been expended to address the safety and economic implications of these degradation processes. These efforts have resulted in improved inspection techniques, the development of defect-specific tube repair criteria, enhanced primary-to-secondary leakage monitoring programmes, and implementation of various preventative and corrective measures. Nevertheless, steam generator tube integrity continues to be a major issue for nuclear power plant operators, vendors, and regulators, and efforts continue to be directed at addressing issues related to steam generator tube integrity.

The purpose of this workshop is to provide a unique forum for the exchange of information on aspects related to steam generator tube integrity. Participants will have the opportunity to meet their counterparts from other countries and organizations to discuss regulatory and research issues on this topic. Participants will develop conclusions and recommendations regarding these issues and, hopefully, identify methods to improve their own programs.

3. Workshop Format

The workshop will provide an international forum for the exchange of operating experience and ongoing activities with respect to steam generator tube integrity. Emphasis will be placed on regulatory and safety issues. Participation in this NEA specialists meeting/workshop is limited to contributing experts nominated by the NEA/CNRA/CSNI representative from their country. Prospective participants are asked to contact their representative and provide information on their specific areas of interest and expertise and to indicate the workshop session to which they would contribute.

The workshop format includes an opening plenary session, parallel discussion sessions on five technical areas, and a concluding summary and integration session. In order to gain the most value from their participation, participants will be expected to be present for the entire workshop and to contribute to one of the working sessions.

The opening plenary session will begin with up to eight invited presentations on international steam generator regulatory practices and issues. The second part of the plenary session will consist of comprehensive technical overviews by international authorities in the areas of steam generator tubing degradation, integrity, and inspection.

Following the opening plenary session, the workshop participants will be divided into five parallel working sessions dealing with the following topics: (1) tubing degradation, (2) tubing inspection, (3) tubing integrity, (4) preventative and corrective measures, and (5) operational aspects and risk analysis. Two pre-selected facilitators will lead each of the five working sessions to promote and stimulate the discussions. Under the leadership of these facilitators, each workshop session will develop a list of conclusions and recommendations for their technical area. Prospective participants who are interested in serving as a facilitator should indicate this interest when they register.

The concluding session will begin with presentations by each of the facilitators summarizing the findings and recommendations from his or her working session. An integration session will follow in which the facilitators and CNRA representatives will develop and present overall summary conclusions and recommendations on regulatory and research issues relevant to regulators.

4. Provisional Programme

The overall schedule of events for the workshop is given in Table 1. The plenary session will take place on the first day, followed by five parallel workshop session on the second day and the morning of the third day. The fourth day will consist of the technical summary and integration sessions. Workshop attendees will be given an opportunity to tour selected Argonne facilities on the afternoon of the third day.

The presentations in the first plenary session will be structured to provide an international overview of key aspects of steam generator tubing degradation mechanisms, inspection, integrity, preventative/corrective measures, and operation aspects/risk analysis. Matrices outlining the contents of these presentations are given in Table 2.

As stated above, the five parallel working sessions, each lead by two pre-selected facilitators, will deal with the following topics: (1) tubing degradation, (2) tubing inspection, (3) tubing integrity, (4) preventative and corrective measures, and (5) operational aspects and risk analysis. The topics to be covered in these sessions and the specific aspects of these topics to be considered are presented in Table 3.

5. Programme Committee

The workshop is being organized under the direction of a Programme Committee made up of the following members:

Dr. Joseph Muscara, United States (chairman)
Mr. Kenneth J. Karwoski, United States
Dr. William J. Shack, United States
Ms. Dominique Moussebois, Belgium
Mr. Guy Turluer, France
Mr. Toshihiko Iwase, Japan
Dr. Jose M. Figueras, Spain
Mr. Gert Hedner, Sweden
Mr. Jean-Pierre Clausner, NEA Secretariat

6. Meeting Organization, Participation, Deadlines

Language. The working language of the workshop will be English. No translation service will be available. Good command of the English language will be necessary to fully benefit from the workshop activities.

Participation. Participation in the meeting is expected from nuclear regulatory bodies, nuclear power utilities, research laboratories, owner's groups, and vendors. Participants, including those who wish to submit papers, are asked to fill out the attached participation form and return it through their country's NEA/CNRA/CSNI representative to the NEA secretariat for planning purposes as early as possible and not later than 15 September 1995:

Mr. Jean-Pierre Clausner, Nuclear Safety Division, OECD Nuclear Energy Agency,
Le Seine St. Gerrnain, 12, Bd. des Iles,
92130 Issy-les-Moulineaux, France.
Email: Jean-Pierre.Clausner@OECD.org.
Tel: 33 145 2410 54, Fax: 33145241110.

Registration Fee. A registration fee of $75 will be charged. This fee will cover the costs of a reception on the evening of Sunday, October 29 and a banquet on Tuesday, October 31, as well as coffee breaks and refreshment.

Manuscripts and publication of proceedings. To permit reproduction and distribution of the papers at the beginning of the workshop, speakers are requested to send their photo-ready original manuscript no later than October 1, 1995 to: Dr. Dwight Diercks, Energy Technology Division, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439, USA.

If the October 1 deadline for paper submittal should prove impractical, authors are asked to bring 100 copies of their paper to the workshop.

Technical papers and the conference proceedings will be published following the completion of the workshop.

Workshop location. The workshop will be held at the Regency Hyatt Oak Brook Hotel where block of room is being made available at a rate of U.S. $97.20 for single or double occupancy. To receive this rate, attendees must make reservations directly with the hotel on or before October 25, 1995 and must specify that their reservations are for the "steam generator workshop." Hotel information is as follows:

Hyatt Regency Oak Brook Hotel, 1909 Spring Road, Oak Brook, IL 60521 USA, Telephone: 1 708–573–1234, Fax: 1 708–573–1909

Other hotels in the area include the following:

Marriott Hotel, 1401 West 22nd Street, Oak Brook, IL 60521 USA, (across the street from the Hyatt Regency Oak Brook Hotel), Telephone: 708–573–8555, Fax: 708–573–1026, Rates: $139 per night, one or two persons per room
Drake Hotel, 2301 South York Road, Oak Brook, IL 60521 USA, (Located at intersection of York Road and Cermak Rd., 2.2 miles (3.5 km) from the Hyatt Regency Oak Brook Hotel). Telephone: 708–574–5700, Fax: 708–574–0830, Rates: $89 per night (one person), $99 (two persons) including continental breakfast
Hampton Inn, 222 East 22nd Street, Lombard, IL 60148, (Located 5 miles (8 km) from the Hyatt Regency Oak Brook Hotel),Telephone: 708–916–9000, Fax: 708–916–8015, Rates: $64 per night (one person), $69 (two persons), including continental breakfast

Transportation. The Hyatt Regency Oak Brook and nearby hotels are most conveniently reached from O'Hare International Airport by rental car or limousine. All of the major car rental agencies are represented at O'Hare, and car rental arrangements may be made with them directly. Arrangements for limousine service must be made in advance, providing the flight number and the anticipated time of arrival. The following service is suggested: United Limousine Service, 432 Ogden Avenue, Downers Grove, IL 60515, Telephone: 708–969–3865, Fax: 708–969–8976.

The approximate cost is $15.50 (plus tip), but the Argonne National Laboratory rate must be requested when making reservations. Upon arrival at the airport, the traveler must 1–800–331–9037 for actual pickup (the limousine will be waiting nearby). Taxi service between O'Hare and Oak Brook is also available, but the cost is usually higher than for a limousine.

Other activities. An optional tour of selected technical facilities at Argonne National Laboratory is planned for the afternoon of Wednesday, November 1. Arrangements for participation in this tour may be made at the workshop.

The Hyatt Regency Oak Brook Hotel is approximately 14 miles (22 km) from O'Hare International Airport and 18 miles (29 km) from downtown Chicago. It is located immediately adjacent to the Oak Brook shopping center, a very large and modern facility offering a wide variety of shops and restaurants.

Nearby Chicago is the largest city in the central United States and a major transportation, commercial, and manufacturing center. Chicago is noted for its outstanding museums, including the Field Museum of Natural History, the Art Institute of Chicago, the Museum of Science and Industry, the Adler Planetarium, and the Shedd Aquarium. It is also features the Chicago Symphony Orchestra, the shops along North Michigan Avenue, and the parks along the shores of Lake Michigan. Chicago is an ethnically diverse city that offers a rich variety of cultural attractions, restaurants, and activities.

BILLING CODE 7590–01–P

Table 1. Overall Schedule of Workshop Events

	October 30	October 31	November 1	November 2
Morning	Opening & welcome Plenary Session, Part 1: International regulatory practices and issues	Workshop (five parallel sessions) ⇓ ⇓ ⇓ ⇓ ⇓	Workshop (five parallel sessions) ⇓ ⇓ ⇓ ⇓ ⇓	Technical summary and conclusions from each workshop session
Afternoon	Plenary Session, Part 2: Technical (degradation, integrity, inspection)	⇓ ⇓ ⇓ ⇓ ⇓ ⇓ ⇓ ⇓ ⇓	Tour of ANL facilities	Integration session by CNRA representatives and facilitators to develop summary conclusions and recommendations (regulatory and research) relevant to regulators

Table 2. Content of Plenary Session, Part 1 Presentations

Degradation Mechanisms	OBSERVED	CURRENT	PRIORITY	UNDERSTANDING	FUTURE ACTIONS
ID SCC, circumferential, RTZ	*	*	**	**	***
OD SCC, circumferential, RTZ	*	*	**	**	***
ID axial PWSCC	*	*	**	**	***
ODSCC at tube support plates	*	*	**	**	***
Sleeved tube degradation	*	*	**	**	***
Freespan cracking	*	*	**	**	***
Others (specify):	*	*	**	**	***

* Yes,No; ** High, Medium, Low; *** Research, Regulatory, Vendor

Table 2. (Cont'd.)

Inspection	TECHNIQUE	DETECTION	SIZING	CHARACTERISATION OF INTEGRITY	FUTURE ACTIONS
ID SCC, circumferential, RTZ	*	**	**	**	***
OD SCC, circumferential, RTZ	*	**	**	**	***
ID axial PWSCC	*	**	**	**	***
ODSCC at tube support plates	*	**	**	**	***
Sleeved tube degradation	*	**	**	**	***
Freespan cracking	*	**	**	**	***
Others (specify):	*	**	**	**	***

* Bobbin coil, Rotating pancake coil, Ultrasonics, Other
** High, Medium, Low; *** Research, Regulatory, Vendor

Table 2. (Cont'd.)

Integrity	REPAIR LIMIT	BASIS	CONFIDENCE ON GROWTH RATE	CGR BASIS	CONFIDENCE ON BURST PRESSURE PREDICTION	CONFID. ON LEAK RATE	PROBABILISTIC/ DETERMINISTIC	FUTURE ACTIONS
ID SCC, circumferential, RTZ	*	**	***	#	***	***	##	###
OD SCC, circumferential, RTZ	*	**	***	#	***	***	##	###
ID axial PWSCC	*	**	***	#	***	***	##	###
ODSCC at tube support plates	*	**	***	#	***	***	##	###
Sleeved tube degradation	*	**	***	#	***	***	##	###
Freespan cracking	*	**	***	#	***	***	##	###
Others (specify):	*	**	***	#	***	***	##	###

* Voltage, Crack length, Crack depth; ** Physically based, Correlation;
*** High, Medium, Low; # Laboratory, Field; ## Probabilistic, Deterministic;
Research, Regulatory, Vendor

Table 2. (Cont'd.)

Preventative/Corrective Measures	APPLIED/USED	EFFECTIVENESS	QUALIFIED	FUTURE ACTIONS
Sludge lancing	*	**	*	***
Chemical cleaning	*	**	*	***
Sleeving	*	**	*	***
Roto/shot peening	*	**	*	***
Water chemistry	*	**	*	***
Others (specify):	*	**	*	***
	*	**	*	***

* Yes, No; ** High, Medium, Low; *** Research, Regulatory, Vendor

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Table 2. (Cont'd.)

Operation Aspects/ Risk Analysis	APPLIED/USED	ACCURACY/	EFFECTIVENESS	LIMITS	FUTU. ACTIONS
Leak detection:					
N-16	*	**		***	#
Off-gass analysis	*	**		***	#
Blowdown analysis	*	**		***	#
Grab samples	*	**		***	#
Others (specify):	*	**		***	#

* Yes, No; ** High, Medium, Low;
*** Basis for action levels/limits: LBB, Dose concerns, Tube integrity,
Other: Research, Regulatory, Vendor

Table 3. Topic to be Covered in Five Parallel Workshop Sessions

Degradation

Modes of current Interest		Characterisation of Mode
Primary: axial	)	
circumferential	)	Mechanical Properties
crack network	)	Stress/Enironment
Secondary: axial	>	What is Known
circumferential	)	Initiation/Propagation
crack network	)	Predictive Methodologies
Fatigue	)	Crevice Chemistry (Secondary Side Modes)

Inspection

Methods (EC, UT, others)	)	Criteria - Confidence level, true state of sample,
Capabilities	)	pass-fail.
Quantification	>	Definition and extent of inspection programme
Sizing	)	(varies with plant, inspection requirements,
Performance Demonstration	)	expertise, etc.)
Sleeving and other repairs	)	

Integrity

Structural Integrity	)	Rationale for limits
circumferential cracks	)	Repair criteria
PWSCC at RTZ	)	NDE reliability
networks/complex cracks	>	Growth rates
Leakage estimates (empirical correlation	)	Margins/uncertainty
vs. physically based approaches)	)	LBB/normal operating conditions
Integrity assessment by empirical correlation	)	TSP integrity/constraint
vs. physically based approaches	)	Severe accidents

Preventative and Corrective Measures

Experience with 690, 800, Monel 400,	)	Direct tube repairs
Sleeving	)	Water chemistry
Shot/roto-peening	)	Molar ratio control
Ni plating	>	Boric acid additions
Sludge lancing	)	Zn additions
Chemical cleaning	)	Phosphate/AVT
Direct Tube repairs	)	Plugging

Operational Aspects and Risk Analysis

Multiple tube rupture	)	Consequence analysis
Leakage monitoring	>	Operating procedures
Tube integrity	)	Single tube rupture
Dose concenrs	)	Multiple tube rupture

O E C D CNRA/CSNI
NUCLEAR ENERGY AGENCY

REGISTRATION FORM
CNRA/CSNI International Workshop on Steam Generator Tube Integrity in NPPs

HOSTED BY THE USNRC/RES, IN ARGONNE, ILLINOIS
30 OCTOBER - 2 NOVEMBER 1995

NAME: ______________________________

POSITION: ______________________________
ORGANIZATION: ______________________________

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ADDRESS: ______________________________

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TEL: _______________ **FAX:** _______________
I register for the following working session: (please refer to table 3 for topics covered in each session)

1) Tubing Degradation **4) Preventive and Corrective Measures**
2) Tubing Inspection
3) Tubing Integrity **5) Operational Aspects and Risk Analysis**

I intend to make a presentation YES ( ) NO ( )
(Please note that presentations are intended to support the technical discussion during the working session. Therefore, they should be limited in time (10 to 15 mn) and strictly adhere to one topic of the working session).

Title:

I volunteer to serve as a moderator (facilitator) of a Working Session

Please circle which session: 1 2 3 4 5

Please return before September 15, 1995 to:
Mr. Jean-Pierre Clausner **Tel: 33 1 45 24 10 54**
OECD Nuclear Energy Agency **Fax: 33 1 45 24 11 10**
Le Seine St Germain
12, Boulevard des Iles
92130 Issy-les-Moulineaux, France

[FR Doc. 95–22593 Filed 9–11–95; 8:45 am]
BILLING CODE 7590-01-C

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued Revision 5 of NUREG–1307 entitled "Report on Waste Burial Charges." The report provides power reactor licensees updated information to allow them to adjust periodically the projected waste burial cost component when estimating the cost of decommissioning their nuclear plants.

Copies of NUREG–1307, Revision 5 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

For further information contact George J. Mencinsky, Division of Regulatory Applications, Office of Nuclear Regulatory Research, Mail Stop T–9 F31, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6206.

Dated at Rockville, Maryland, this 1st day of Sept. 1995.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 95–22615 Filed 9–11–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36186; International Series Release No. 848; File No. SR–CBOE–95–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Index Warrants on the Mexico 30 Index

September 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on August 21, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to provide for the listing and trading on the Exchange of warrants on the Mexico 30 Index ("Mexico Index" or "Index"), a cash-settled, broad-based index.[1]

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A: Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled index warrants based on the Mexico 30 Index. The Index is comprised of 30 representative stocks of the Mexican Stock Exchange ("Bolsa").[2] CBOE believes that warrants on the Index will provide investors with a low-cost means of participating in the performance of the Mexican economy and a hedging mechanism against the risk of investing in that economy.

Index Warrant Trading. The proposed warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American-style) or exercisable only on their expiration date (if not exercisable prior to such date). The holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index value has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index value has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Warrant Listing Standards and Customer Safeguards. On August 28, 1995, the Commission approved the Exchange's generic warrant filing "Establishment of Uniform Listing and Trading Guidelines for Stock Index, Currency and Currency Index Warrants" (SR–CBOE–94–34) ("Index and Currency Warrant Filing"). The listing and trading of Index warrants on the Mexico 30 Index will be subject to these guidelines and rules.

Index Design. The Index was designed by and is maintained by the CBOE and the Chicago Mercantile Exchange ("CME"). CBOE represents that the 30 stocks comprising the Index were selected for their high market capitalization and their high degree of liquidity, and further believes that they are representative of the industrial composition of the broader Mexican equity market. The Mexico Index is composed of 15 broad industry groups, including building materials, diversified holding companies, and telecommunications.

The Index is weighted by the market capitalization of the component stocks, however, at the time of a semi-annual review (occurring after the close on expiration Fridays in December and June) the Index will be adjusted, if necessary, to ensure that no single component shall have a weight in the Index greater than 25%. For example, on June 16, 1995, the most recent review date, Telefonos de Mexico ("TMX") would have had a weight of 30.41% of the Index. To reduce TMX's weight, the Exchange reduced the number of outstanding TMX shares used in the calculation of the Index from 8.0375 billion to 6.1303 billion.

The total capitalization of the Index as of July 31, 1995 was $46.21 billion, which represents 49.35% of the overall capitalization of the Mexican Bolsa. The median capitalization of the stocks in the Index on July 31, 1995, was 4.507 billion Pesos ($737 million at the exchange rate of 6.115 pesos per dollar prevailing on July 31, 1995). The average market capitalization of these stocks was $1.54 billion on the same date (using the same rate of exchange). The individual market capitalization of these stocks ranged from $156 million (Grupo Sidek-B) to $13.3 billion (Telmex) on July 31, 1995. The largest stock accounted for 23.61% of the Index, while the smallest accounted for 0.36%. The top five stocks in the Index by weight accounted for 55.02% of the Index. CBOE represents that upon each semi-annual review of the Index, the Exchange shall make any necessary modifications to ensure that the top three weighted stocks in the Index by weight may not account for more than 45% of the Index at the time of a semi-annual review.[3] The average daily volume in the component securities for the period from February 1995 through July 1995, ranged from a low of approximately 9,270 shares to a high of 14,123,392 shares, with an average daily trading volume for all components of the Index of approximately 1,479,390 shares per day.

Calculation. The value of the Index is determined by multiplying the price of each stock times the number of shares outstanding, adding those sums and dividing by a divisor which gives the Index a value of 200 on its base date of January 3, 1995. This divisor is adjusted for pertinent changes as described below in the section titled "Maintenance." The Index had a closing value of 203.07 on July 31, 1995.

Maintenance. The Index will be maintained by the CBOE and CME. To maintain continuity of the Index, the divisor of the Index will be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, changes in the number of shares outstanding, spin-offs, certain rights issuances, and mergers and acquisitions. The composition of the Index will be reviewed periodically and the Exchanges may make component changes at any time.

Bridge Information Systems ("Bridge") will calculate the value of the Index every fifteen seconds throughout the trading day and disseminate the Index value through the Options Price Reporting Authority ("OPRA"). Bridge obtains quotes and trade information on a real-time basis directly from the Bolsa through an electronic feed. Accordingly, the value of the Index will be based upon the prices of the components as traded or quoted on the Bolsa.

Surveillance Agreements. The Exchange expects to apply its existing warrant surveillance procedures to Index warrants. In addition, the Exchange is aware of a Memorandum of Understanding ("MOU") between the Commission and the Comision Nacional Bancaria y de Valores. This MOU will enable the Commission to obtain information concerning the trading of the component stocks of the Mexico 30 Index. The Exchange also will make every effort to enter into an effective surveillance agreement with the Bolsa.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in warrants based on the Mexico 30 Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in warrants based on an additional index.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–46 and should be submitted by October 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22535 Filed 9–11–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36185; File No. SR–CBOE–95–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing of Flexible Exchange Options on Specified Equity Securities

September 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 1995, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to provide for the listing and trading of Flexible Exchange Options ("FLEX Options") on specified equity securities ("FLEX Equity Options"). The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

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[1] CBOE is concurrently seeking approval to list and trade options on the CBOE Mexico 30 Index. For a more detailed description of the CBOE Mexico 30 Index and CBOE Mexico 30 Index options, *see* Securities Exchange Act Release No. 36160 (August 28, 1995).

[2] The components of the Index are Alfa SA–A; Apasco SA; Grupo Casa Autrey; Banacci-B; Grupo Carso-A1; Controla Com M–B; Cemex SA–B; Cifra SA–C; Desc SA–B; Empresas Moderna-A; Fomento Econ M–B; Grupo Embotelladoro Mexico; Grupo Financiero Bancomer-B; Grupo Financiero Serfin-B; Grupo Gigante; Grupo Modelo-C; Grupo Mexico-B; Grupo Tribasa-CPO; Hylsamex SA–BCP; Empresas ICA; Iusacell; Kimberly-Clark M–A; Coca-Cola Femsa; Grupo Industrial Maseca-B; Grupo Sidek-B; Tubos De Acero; Telefonos De Mexico-L; Tolmex SA–B2; Grupo Telev-CPO; and Vitro SA.

[3] As of July 31, 1995, the top three stocks represented 43.6% of the weight of the Index.

[4] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the CBOE's FLEX Options rules [3] to permit the introduction of trading in FLEX Options on specified equity securities that satisfy the Exchange's listing standards for equity options. Currently, FLEX Options are listed and traded on the CBOE in respect of several broad market indexes of equity securities ("FLEX Index Options").[4] The Exchange states that because of the success of these products in meeting the needs of investors for greater flexibility in designating the terms of index options within the parameters of the CBOE's FLEX Options rules, the Exchange is now proposing to provide comparable flexibility to investors in equity options. The CBOE believes that by extending the FLEX Options program in this way, the result will be to further broaden the base of institutional investors that use FLEX Options to manage their trading and investment risk.

For the most part, the CBOE represents that the current rules governing FLEX Index Options will apply unchanged to FLEX Equity Options. Certain changes to the CBOE's existing FLEX Options rules, however, are proposed to deal with the special characteristics of FLEX Equity Options. Specifically, the CBOE proposes to add several new definitions to Rule 24A.1 to accommodate the introduction of trading in FLEX Equity Options,[5] and to revise certain other CBOE rules describing FLEX Options and governing their trading, as described below.

The CBOE proposes to revise Rule 24A.4 concerning the terms of FLEX Options to make specific reference to the terms of FLEX Equity Options. Specifically, FLEX Equity Options will have (1) a maximum term of three years, (2) a minimum size of 250 contracts for an opening transaction in a new series, and and (3) a minimum size of 100 contracts for an opening or closing transaction in a series in which there is already open interest (or any lesser amount in a closing transaction that represents the remaining underlying size). The minimum value size for FLEX Quotes [6] by a single Market-Maker in response to a Request for Quotes [7] in FLEX Equity Options is the lesser of 100 contracts or the remaining underlying size in a closing transaction.

The CBOE also proposes to allow exercise prices and premiums for FLEX Equity Options to be stated in dollar amounts or percentages, with premiums rounded to the nearest minimum tick and exercise prices rounded to the nearest one-eighth. The exercise of FLEX Equity Options will be by physical delivery, and the exercise-by-exception procedures of The Options Clearing Corporation ("OCC") will apply.[8]

The CBOE represents that the trading procedures applicable to FLEX Equity Options will be mostly the same as those that apply to FLEX Index Options, except that unless the Exchange's Market Performance Committee decides otherwise, there will not be FLEX Appointed Market-Makers [9] who are obligated to respond to Requests for Quotes in respect of FLEX Equity Options as there are in respect of FLEX Index Options. Instead, the CBOE proposes to have five or more "FLEX Qualified Market-Makers" appointed to each class of FLEX Equity Options who must satisfy essentially the same standards of qualification as FLEX Appointed Market-Makers (including the requirement for a specific clearing member letter of guarantee for FLEX Options),[10] and who may, but without obligation to do so, enter quotes in response to a Request for Quotes in a class of FLEX Equity Options in which the Market-Maker is qualified. In addition, FLEX Qualified Market-Makers will be obligated to make responsive quotes when called upon to do so by a FLEX Post Official [11] in the interests of a fair and orderly market. Quotes of FLEX Qualified Market-Makers must satisfy the minimum size parameters discussed above for FLEX Equity Options and must be entered within the time periods provided in the CBOE's FLEX Options Rules.[12]

The CBOE represents that the rules governing priority of bids and offers for FLEX Equity Options are also much the same as those that apply to FLEX Index Options, except that in the case of FLEX Equity Options, no guaranteed minimum right of participation is provided to an Exchange member that initiates a Request for Quotes and indicates an intention to cross or act as principle on the trade; [13] as to such a member the Exchange's regular rules of price and time priority shall apply.[14]

The CBOE represents that position limits and exercise limits for FLEX Equity Options are proposed to be larger than the limits applicable to Non-FLEX Equity Options, in the same manner and for the same reasons that the position and exercise limits for FLEX Index Options are larger than those applicable to Non-FLEX Index Options. Position and exercise limits for FLEX Equity Options are proposed to be five times the limits for Non-FLEX Equity Options on the same underlying security. This compares with limits for OEX FLEX Index Options that are eight times the limits for Non-FLEX OEX Options and limits for SPX FLEX Index Options that are 4.44 times the limits for Non-FLEX SPX Options. Also, as is currently the case for FLEX Index Options, it is proposed that there will be no aggregation of positions or exercises in FLEX Equity Options with positions or exercises in Non-FLEX Equity Options for purposes of position or exercise limits. The CBOE believes that the larger position and exercise limits for FLEX Options and the nonaggregation of positions and exercises in FLEX Options and Non-FLEX Options reflect the institutional nature of the market for FLEX Options and the fact that the CBOE must compete with over-the-counter markets throughout the world, many of which do not impose any position or exercise limits whatsoever.

Also, the Exchange proposes to provide that the expiration date of a FLEX Equity Option may not fall on a day that is within two business days of the expiration date of a Non-FLEX Equity Option. This is intended to eliminate the possibility that the exercise of FLEX Equity Options at expiration will cause any untoward pressure on the market for underlying securities at the same time as Non-FLEX Options expire. The Exchange proposes that this change will also apply to FLEX Index Options.[15]

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest in that extending the existing FLEX Option program to encompass FLEX Options on specified equity securities will for the first time provide investors with a regulated, transparent exchange market in flexible options on individual equity securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–43 and should be submitted by October 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22536 Filed 9–11–95; 8:45 am]

BILLING CODE 8010–01–M

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[3] *See* CBOE Rules 24A.1 through 24A.17.

[4] Specifically, the Commission has approved the listing by the CBOE of FLEX Options on the S&P 100 ("OEX"), S&P 500 ("SPX"), Nasdaq 100, and Russell 2000 Indexes. *See* Securities Exchange Act Release Nos. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (approval of FLEX Options on the SPX and OEX indexes), 34052 (May 12, 1994), 59 FR 25972 (May 18, 1994) (approval of FLEX Options on the Nasdaq 100 index), and 32694 (July 29, 1993), 58 FR 41814 (July 5, 1993) (approval of FLEX Options on the Russell 2000 index).

[5] In addition to the term FLEX Equity Options, the proposal also defines the terms "FLEX Index Options," "Non-FLEX Options," "Non-FLEX Equity Option," and, "Applicable Floor Procedure Committee."

[6] *See* CBOE Rule 24A.1(f).

[7] *See* CBOE Rule 24A.1(k).

[8] OCC Rule 805 provides for automatic exercise of in-the-money options at expiration without the submission of an exercise notice to the OCC if the price of the security underlying the option is at or above a certain price (for calls) or at or below a certain price (for puts); and the non-exercise of an option at expiration if the price of the security underlying the option does not satisfy such price levels. *See* OCC Rule 805.

[9] *See* CBOE Rule 24A.9.

[10] *See, e.g.,* CBOE Rules 24A.9, 24A.13, 24A.14, and 24A.15.

[11] *See* CBOE Rule 24A.1(e).

[12] *See* CBOE Rule 24A.5.

[13] *See* CBOE Rule 24A.5(c).

[14] *See* CBOE Rule 6.45.

[15] CBOE Rule 24A.4(c)(iv) currently provides that the expiration date of a FLEX Index Option may not fall within three business days of the expiration date of a Non-FLEX Index Option.

[16] 15 U.S.C. 78f(b)(5) (1988).

[17] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36187; File No. SR–PSE–95–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Amendment of the Schedule of Rates for Exchange Services

September 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 22, 1995 the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Rates for Exchange Services.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Rates for Exchange Services as follows: First, the Exchange is proposing to reduce its fee for transfers of membership that are made on a temporary basis. Currently, the fee for certain intra-organizational transfers of membership (temporary or permanent) is $250.00.[2] Under the proposal, if a transfer of membership is made on a temporary basis (*e.g.*, while a member is away on vacation), the amount of the fee would be $100.00.[3] Second, the Exchange is proposing to eliminate its charge of $0.005 per share on net outgoing market maker principal trades executed over the Intermarket Trading System ("ITS"). Third, the Exchange is proposing to reduce its systems fee for equity specialists from $1,700 per month per cost to $1,550 per month per post. This change represents a reduction in the workstation component (two personal computers) of the specialist system fee. Fourth, the Exchange is proposing to reduce its P/COAST[4] workstation fee for floor brokers (one personal computer) from $250.00 per month to $175.00 per month. Fifth, the Exchange is proposing to reduce its charge for additional personal computers from $200.00 per month per personal computer to $175.00 per month per personal computer. The purpose of the proposed changes is to ensure that the subject rates and charges are fair and competitive.

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[1] 15 U.S.C. 78s(b)(1).

[2] *See* PSE Rule 1.10(a)(ii).

[3] The Exchange has represented that a temporary transfer of membership is one made for 30 days or less. The Commission notes that the current language of PSE Rule 1.10(a)(ii) provides for a $250.00 fee for the temporary transfers of membership and, therefore, confli[illegible] with the proposed amendment. To remedy this conflict, the Exchange has further represented that it will submit a filing in the near future that, among other things, will conform PSE Rule 1 to the proposed amendment and make it clear that a temporary transfer of membership, for the purposes of the proposed amendment, is one for 30 days or less. Telephone conversation between Michael D. Pierson, Senior Attorney, PSE and Glen Barrentine, Team Leader, SEC (Aug. 30, 1995).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section (6)(b) of the Act[5] in general and furthers the objectives of Section 6(b)(4)[6] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (e) of Rule 19b–4 thereunder.[8]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written comments with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Pacific Stock Exchange. All submissions should refer to File No. SR–PSE–95–19 and should be submitted by October 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22537 Filed 9–11–95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0363]

Pioneer Ventures Limited Partnership II; Notice of Request for Exemption

On June 27 1995, Pioneer Ventures Limited Partnership II ("PVLP II"), a Massachusetts limited partnership and SBIC Licensee number 01/71–0363 filed a request to the SBA pursuant to Section 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903(b)(1995)) for an exemption allowing the Licensee to invest in Corex Technologies Corporation (Corex), of Brookline Massachusetts. Corex received prior financial assistance from an Associate (as defined by Section 107.3 of the SBA Regulations) of PVLP II, and has itself become an Associate of the Licensee. Corex is currently in need of additional capital, and PVLP II can only offer this assistance to Corex upon receipt of a prior written exemption from SBA. This exemption is the basis for this notice.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on this exemption request to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Brookline, Massachusetts.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: August 29, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–22571 Filed 9–11–95; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

[NHTSA Docket No. 93–55, Notice 3]

RIN 2127–AF94

Pilot State Highway Safety Program

AGENCY: Federal Highway Administration and National Highway Traffic Safety Administration, DOT.

ACTION: Notice of waiver.

SUMMARY: The Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA) are announcing the creation of a pilot highway safety program for fiscal year 1996 State highway safety programs under 23 U.S.C. 402, and the waiver of certain procedures for States that have elected to participate in the pilot program.

EFFECTIVE DATE: September 12, 1995.

FOR FURTHER INFORMATION CONTACT: In NHTSA, Marlene Markison, Office of State and Community Services, 202–366–2121; John Donaldson, Office of the Chief Counsel, 202–366–1834. In FHWA, Mila Plosky, Office of Highway Safety, 202–366–6902; Paul Brennan, Office of the Chief Counsel, 202–366–0834.

SUPPLEMENTARY INFORMATION:

Background

The Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*) established a formula grant program to improve highway safety in the States. As a condition of the grant, the States must meet certain requirements contained in 23 U.S.C. 402. Section 402(a) requires each State to have a highway safety program, approved by the Secretary of Transportation, which is designed to reduce traffic accidents and the deaths, injuries, and property damage resulting from those accidents. Section 402(b) sets forth the minimum requirements with which each State's highway safety program must comply. For example, the Secretary may not approve a program unless it provides that the Governor of the State is responsible for its administration through a State highway safety agency which has adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary. Additionally, the program must authorize political subdivisions of the State to carry out local highway safety programs and provide a certain minimum level of funding for these local programs each fiscal year. The enforcement of these and other requirements is entrusted to the Secretary and, by delegation, to FHWA and NHTSA (the agencies).

The agencies currently administer the program in accordance with an implementing regulation, Uniform Procedures for State Highway Safety Programs (23 CFR Part 1200) (the Uniform Procedure Rule), which contains procedures for the submission, content, and approval of each State's Highway Safety Plan and requirements for implementation, management, and closeout of each year's Highway Safety Plan. A number of other requirements apply to the Section 402 program, including those generally appearing in Chapter II of Title 23 CFR and such government-wide provisions as the Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments (49 CFR Part 18) and the various Office of Management and Budget (OMB) Circulars containing cost principles and audit requirements (e.g., OMB Circulars A–21, A–87, A–122, A–128, and A–133).

In the years since enactment of Section 402, States have developed and deployed the resources necessary to conduct mature and highly effective highway safety programs. The agencies have become aware of interest on the part of some States in assuming more responsibility for the planning and direction of their programs, with a decreased emphasis on detailed Foreign oversight. In response to that interest, and consistent with efforts to relieve burdens to the States under the President's regulatory reform initiative, the agencies have established a pilot program for fiscal year 1996 highway safety programs. The details of the pilot program have been discussed at length with the States during the planning stages, and appeared in the Appendix to this notice. In brief outline, the pilot program replaces the requirement for State submission and Federal approval of a Highway Safety Plan with a benchmarking process by which the State sets its own performance goals.

The agencies have queried each State about its interest in participating in the pilot program for the fiscal year 1996 highway safety program. This notice lists those States that have chosen to become participants and waives existing procedures for these participants, to the extent that they are inconsistent with the pilot program, for the duration of fiscal year 1996. This wavier does not affect any provisions specifically imposed by statute or by publications of Government-wide applicability (e.g., 49 CFR Part 18, OMB Circulars). Assuming the pilot program is successful, the agencies expect to revise the regulations governing the State highway safety program to permanently accommodate the pilot procedures.

States Participating in the Fiscal Year 1996 Pilot Program

The following States have elected to participate in the pilot program for fiscal year 1996:

Alaska
California
Colorado
Delaware
Illinois
Indiana
Maryland
Massachusetts
New York
North Dakota
Ohio
Pennsylvania
South Dakota
Utah
West Virginia
Wisconsin

Waiver

Any provisions of 23 CFR Chapter II which conflict with the procedures of the pilot program are waived for the States listed above for fiscal year 1996. Pilot States will instead follow the procedures appearing in the Appendix. For example, pilot States will not have to seek approval for changes involving transfers of funds between program areas or for continuing projects beyond three years. Instead, these States may unilaterally move funds between program areas and extend projects in accordance with their program needs. However, pilot States will still have to submit an updated HS Form 217 reflecting the change, in the former case, and follow the increased cost-sharing requirements for projects exceeding three years, in the latter case.

States following the pilot program procedures must continue to comply with all statutory requirements contained in 23 U.S.C. 402, and the Governor's Representative for Highway Safety shall sign a certification statement to that effect. In addition, Federal regulations having government-wide applicability will continue to apply, and are also referenced in the certification statement to be signed by the Governor's Representative for Highway Safety.

Authority: 23 U.S.C. 315 and 402; 49 CFR 1.48 and 1.50.

Issued on: September 7, 1995.

Ricardo Martinez,

National Highway Traffic Safety Administrator.

Rodney E. Slater,

Federal Highway Administrator.

Appendix—Fiscal year 1996 Pilot State Highway Safety Program

A State participating in the pilot program must continue in that program through the completion of the highway safety program cycle, including submission of the annual evaluation report and final voucher.

Prior to August 1, 1995, the States were advised to prepare a *planning document* describing how the Federal highway safety funds will be used consistent with the guidelines, priority areas, and other requirements established under Section 402. The planning document shall be formally approved and adopted by the Governor's Representative for Highway Safety (GR). It serves as the basis for the State's development of the financial elements identified in the HS Form 217 discussed below. Unlike the Highway Safety Plan, there is no requirement that this planning document be approved by NHTSA and FHWA. Instead, by August 1, the State planning document is to be sent to the NHTSA Regional Administrator (RA) and the FHWA Division Administrator (DA) for information. If the RA and/or DA observe elements of the plan that are not authorized by section 402 or otherwise not in accordance with law, they will notify the State, which shall take appropriate corrective action.

As soon as practicable after August 1, 1995, and in any event prior to fund disbursement, the State shall submit (1) a *certification statement* and (2) a *benchmark report* to NHTSA/FHWA. (Note: At the State's option, the *planning document, certification statement*, and *benchmark report* may be combined into one document.)

The *certification statement*, signed by the GR, shall provide formal assurances regarding the State's compliance with applicable laws and financial and

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[4] P/COAST stands for Pacific Computerized Order Access SysTem.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f (b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4.

[9] 17 CFR 200.30–3(a) (12).

programmatic requirements pertaining to the Federal grant. (To assure that States are well informed of their responsibilities, NHTSA and FHWA will provide every State with an up-to-date manual (the Highway Safety Grant Management Manual) containing pertinent Federal requirements and policies.)

The *benchmark report* shall have three components:

1. *Process Description*—This component shall contain a brief description of the *process(es)* used by the State to: (1) Identify its highway safety problems, (2) establish its proposed performance goals and (3) develop the programs/projects in its plan.

The description shall specify the participants in the three processes (such as State and local organizations, Highway Safety Committees or Task Forces, SMS group, private entities), the data and information sources used (including how recent and why utilized), and the criteria and/or strategies for program and project selections (such as locations or groups targeted due to special needs or problems, ongoing activities, training needs). The description should focus on links between identified problems, performance goals, and activities selected. This Process Description need not be lengthy. An annotated flow chart may provide sufficient information.

2. *Performance goals*—The heart of the benchmark report is the State's description of its highway safety performance goals. Each State shall establish performance goals (including target dates) and identify the performance measures it will use to track progress toward each goal and its current (baseline) status with regard to these measures.

A State's selection of appropriate long- and short-term goals should evolve from the problem identification process and be consistent with guidelines and priority areas established under Section 402. It will not be necessary to address *all* national priority areas in the new benchmarking system. While NHTSA is required by statute to identify those programs most effective in addressing national highway safety priority program areas for the use of Section 402 funds, States have latitude to determine their own highway safety problems, goals, and program emphasis.

A State might include goals as broad as "decreasing alcohol-related crashes in the State by X percent or X number by year 2010 from X percent or X number (baseline)." On the other hand, the State goal might be as specific as "reducing alcohol-related deaths/injuries of youth ages 16–20 in the State by X percent of all State youth." When long-term goals are identified, the State should consider setting interim targets.

Moving from a process to an outcome approach requires that a set of outcome measures be established that represent the status of key traffic safety programs at the State level, including those programs that are National Priority Program Areas which the State has chosen to address. There are many sources for these measures. The Fatal Accident Reporting System (FARS), restraint usage surveys, State emergency medical services and police enforcement systems, and Crash Outcome Data Evaluation System (CODES) are examples of the data bases from which to select appropriate performance measures. The types of data available will vary from State to State. In all cases, the measures used must be ones that are reliable, readily available, and reasonable in measuring the outcome of a good highway safety program.

Not all items in a State's planning document will directly correlate to one specific goal. Certain programs and countermeasures have an impact on several goals or on an overall program area. For example, Standardized Field Sobriety Testing (SFST) training may affect all of a State's alcohol goals. Examples of performance measures are included in the final section of this appendix.

3. *HS Form 217, the "Highway Safety Program Cost Summary"*

This form reflects the State's proposed allocation of funds, including carry-forward funds, by program area. The allocations shall be based on the State's identified performance goals and its planning document. The funding level used shall be an estimate of available funding in the upcoming fiscal year. After the exact amount of annual Federal funding has been determined, the State shall submit the revised or "initial obligating" HS Form 217. The amount of Federal funds reflected on the revised HS Form 217 shall not exceed the obligation limitation. A subsequent revised HS Form 217 shall be submitted for any changes made by the State to those data elements appearing on the form (i.e., program area, P&A limitation, 40% local funding, matches).

Federal approval of each State's highway safety program will be in the form of a letter from NHTSA and FHWA to the Governor and GR *acknowledging the State's submission of a certification statement, benchmark report, and planning document that comply with all requirements described above.*

Annual Evaluation Report

Within 90 days after the end of the fiscal year, each State shall submit an *Annual Evaluation Report*. This report shall address:

1. State progress toward performance goals, using performance measures identified in the initial fiscal year benchmark report.

2. Steps taken toward meeting the State goals identified in the benchmark report, which may include administrative measures such as the number of training courses given and people trained, and the number of citations issued for not using child safety seats or safety belts; and

3. Descriptions of State and community projects funded during the year.

States are strongly encouraged to set ambitious goals and implement programs to achieve those goals. States will not be penalized or sanctioned for not meeting identified performance goals. However, where little or no progress toward goals is perceived, as described in the annual evaluation report or discussed in periodic meetings, NHTSA and FHWA staff will recommend changes in strategies, countermeasures, or goals.

As under the current procedures, there can be no extensions for the annual report due date even though a State can request an extension of up to 90 days for submission of the final voucher.

Moving From a Process-Dominated to an Outcome-Based Approach

Implementation of this new approach will establish new roles and relationships for both Federal and State participants. The involvement of the NHTSA and FHWA field staff in the operational aspects of a State highway safety program will entail a minimum of two formal strategic planning meetings per year to discuss implementation issues and needs that NHTSA/FHWA can meet. During these sessions, the regional, division and State representatives will review each State's progress toward identifying and meeting its goals and will discuss and negotiate strategies being used.

The degree and level of technical assistance in functional matters provided by NHTSA and FHWA will be determined at these meetings. National and regional NHTSA and FHWA staff have special expertise and can provide a national perspective on outcome approaches (best practices, newest countermeasures), marketing, training, data analysis, evaluation, financial management, and program development. (Of course, these same regional services will be available to States choosing to continue working under the existing HSP procedures.)

Examples of Performance Measures

This section contains examples of highway safety performance measures to assist States in formulating their goals. In addition to those identified below, other measures might include societal costs, CODES data, hospital head injury and similar injury data, etc. Measures must be reliable, readily available, and reasonable as representing the outcome of a good highway safety program. (The national FARS average or norm for each measure, if available, appears in parentheses.)

Overall Highway Safety Indices

State fatality rate per 100M vehicle miles (1.7)
% motor vehicle collisions with non-motor vehicle (17%)
Number of pedestrians or bicyclists injured or killed

Alcohol

Drivers in fatal crashes with BACs > .00, .08, .10 (State limit)
Drivers in fatal crashes, ages 15–20, with BACs> .00, .08, .10 (State limit)
% alcohol-related crashes (42%)
% alcohol-related fatalities
% alcohol-related injuries
Conviction rates for DUI/DWI

Occupant Protection

% motor vehicle occupants (MVO) restrained (National State Survey 67%)
% MVO fatalities restrained (35%)
% MVO injuries restrained
% MVO youth fatalities (age 15–20) restrained (35%)

Child Safety

% MVO fatalities age 0–4 restrained (70%)
% MVO injuries age 0–4 restrained

% MVO fatalities age 0–4 unrestrained

Emergency Medical Services

Time of crash to hospital treatment (60 min or less)
Time of crash to response time (arrival at crash site)

Motorcycle Safety

% motorcyclists helmeted (restraint survey)
% motorcycle fatalities helmeted (60%)
% motorcycle injuries helmeted
% motorcycle fatalities with properly licensed drivers (41%)
% motorcycle fatalities alcohol-involved (51%)
% motorcycle injuries alcohol-involved
Number of fatal or serious head injuries

Pedestrian Safety

Number/% urban predestrain fatalities at intersections or crossings (35%)
Number/% alcohol-impaired pedestrian fatalities 16 yrs and older (36%)
Number/% total fatalities or serious injuries that are pedestrian in given jurisdiction
Number/% urban pedestrian injuries
Number/% rural pedestrian injuries

Bicycle Safety

% pedacycle fatalities helmeted (no national norm)
% pedacycle fatalities ages 26–39 alcohol-impaired (26%)

Speed

% fatal crashes with speed as a contributing factor (31%)
Number of speed-related fatalities / fatal crashes
Monitoring changes in average speeds overall and on specific types of roadways (interstate, other 55–60 mph roads)

Youth

(National performance measures from above plus:)
% drivers ages 15–20 in fatal crashes with BACs >.01 (40%)
% drivers ages 15–20 injured in crashes with BACs >.01
Total fatalities per 100K involving registered drivers, ages 15–20
Total fatalities per 100 million VMT for youth, ages 15–20
Total injuries per 100K registered drivers, ages 15–20
Total injuries per 100 million VMT for youth, ages 15–20
% MVO fatalities, ages 15–20, restrained (35%)

Police Traffic Services

(See subject categories)

Roadway Safety

Work zone fatalities
Work zone injuries (included M.V. occupants, peds, & work personnel)
Number of Highway-railroad grade crossing crashes—number of injuries or fatalities
Number of flaggers injured or killed
Number of workers injured or killed

Traffic Records

Number of personnel trained in record collection, data input, and data analysis
Number of high accident locations identified and improved
Unknown % for occupant protection fatalities (10%)
Unknown/untested % for fatal driver BAC (30%)
Unknown % of time of crash to hospital arrival (50%)
Entering data within a specific time
Linking data systems

Injury Prevention Goals

(See subject categories)

[FR Doc. 95–22598 Filed 9–7–95; 2:03 pm]

BILLING CODE 4910-59-M

[FHWA Docket No. MC–94–14]

State Commercial Motor Vehicle Safety Law Affecting Interstate Commerce; Notice of Preemption Determination

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of determination of preemption of State of Mississippi commercial motor vehicle safety law.

SUMMARY: The FHWA has reviewed a State of Mississippi commercial motor vehicle safety law and determined that it is incompatible with Federal regulations. This review is required by the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2832). The FHWA has determined that the State law is preempted by Federal law and may not be in effect and enforced with respect to commercial motor vehicles in interstate commerce.

EFFECTIVE DATE: This preemption determination is effective September 12, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Taylor, Office of Motor Carriers, HFO–30, (202) 366–9579; or Mr. David Sett, Office of the Chief Counsel, HCC–20, (202) 366–0834; Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Under the United States Constitution, the Congress is granted the power to regulate interstate commerce. In the Motor Carrier Safety Act of 1984 (the Act), the Congress authorized the Secretary of Transportation to issue regulations pertaining to the safety of commercial motor vehicles in interstate commerce. 49 U.S.C. 31136. The Congress did not choose to wholly occupy the field, however, and States are not precluded from such regulation insofar as the State laws are compatible with and have the same effect as Federal regulations.

State laws which are incompatible with and do not have the same effect as Federal regulations may not be in effect and enforced with respect to commercial motor vehicles in interstate commerce and are subject to Federal preemption. The Act directs the Secretary of Transportation to conduct rulemaking proceedings to determine whether State laws may be preempted. The proceedings may be pursuant to the Secretary's own initiative or the petition of any interested person. 49 U.S.C. 31141.

The Commercial Motor Vehicle Safety Regulatory Review Panel, which was established by the Act to analyze State commercial motor vehicle safety laws and regulations, notified the FHWA in its final report in August 1990 that a State of Mississippi law was incompatible with Federal regulations. The law in question exempts vehicles engaged in certain industries, such as lumber and gravel hauling and farming, from compliance with State motor carrier safety laws and regulations.

On July 15, 1994, the FHWA initiated a rulemaking proceeding to review the State of Mississippi law. 59 FR 36252. All interested persons were invited to submit comments to the rulemaking docket. The only comment received was from the Advocates for Highway Safety, which agreed with the preliminary determination of preemption on the grounds that the exemptions in the State of Mississippi law are not provided in Federal regulations.

The specific provisions which were reviewed, and preliminarily found to be preempted as they apply to interstate commerce, are found in Section 77–7–16(3)(g)–(i), Mississippi Code of 1972. Subsection (3) exempts certain vehicles and operations from the provision in the Code requiring the State Public Service Commission to "promulgate as its own and enforce the rules, regulations, requirements and classifications of the United States Department of transportation or any successor federal agency charged with regulation of motor vehicle safety." Included in the exemption are:

(g) Motor vehicles owned and operated by any farmer who:

(i) Is using the vehicle to transport agricultural products from a farm owned by the farmer, or to transport farm machinery or farm supplies to or from a farm owned by the farmer;

(ii) Is not using the vehicle to transport hazardous materials of a type and quantity that requires the vehicle to be placarded in accordance with the Federal Hazardous Material Regulations in CFR 49 part 177.823; and

(iii) Is using the vehicle within one hundred fifty (150) air miles of the farmer's farm, and the vehicle is a private motor carrier of property.

(h) Motor vehicles engaged in the transportation of logs and pulpwood between the point of harvest and the first point of processing the harvested product;

(i) Motor vehicles engaged exclusively in hauling gravel or other unmanufactured road building materials.

The Federal Motor Carrier Safety Regulations (FMCSRs) do not contain compatible exemptions. Generally, the FMCSRs do not allow industry-based exemptions. State laws which provide such exemptions for vehicles in interstate commerce are deemed less stringent than the FMCSRs.

Drivers of farm vehicles, such as defined in paragraph (g) of the Mississippi Code, do have limited (49 CFR 391.67, articulated vehicles) and full (49 CFR 391.2(c), nonarticulated vehicles) exemptions from driver qualification requirements of Part 391 of the FMCSRs. Unlike the Mississippi Code, however, the FMCSRs do not exempt farm vehicles or their drivers from any other motor carrier safety requirements. Paragraph (g) is, therefore, determined to be preempted insofar as it provides exemptions for farm vehicles not found in the FMCSRs.

The exemptions in paragraphs (h) and (i) for gravel and log haulers have no parallels in the FMCSRs. Each of these provisions in the Mississippi Code are therefore incompatible with the FMCSRs and are determined to be preempted.

Insofar as these exemptions affect vehicles in interstate commerce, they are contrary to the guideline for regulatory review in 49 CFR Part 355, app. A, which provides that the "requirements must apply to all segments of the motor carrier industry." Because the exemptions are less stringent than Federal regulations, the State law is preempted and shall not be in effect and enforced by the State of Mississippi with respect to commercial motor vehicles in interstate commerce. 49 U.S.C. 31141.

Any person, including the State of Mississippi, may petition the FHWA for a waiver from a preemption determination. 49 U.S.C. 31141(d). A petitioner is afforded the opportunity for a hearing on the record. A waiver may be granted if it is demonstrated that the waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

Any person adversely affected by this determination may also file a petition for judicial review of the determination in the United States Court of Appeals.

It should be reemphasized that this preemption determination is applicable only to certain State of Mississippi commercial motor vehicle safety laws insofar as they apply to vehicles in interstate commerce. State of Mississippi laws applicable only to vehicles in intrastate commerce are not subject to preemption, and, moreover, appear to be compatible for purposes of the Motor Carrier Safety Assistance Program because they fall within the Tolerance Guidelines. 49 CFR Part 350, app. C.

(49 U.S.C. 31141; 23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 31, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–22564 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

[Docket No. 95–53; Notice 2]

Cantab Motors, Ltd., Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standards No. 208 and 214

Cantab Motors, Ltd., of Round Hill, Va., applied for a temporary exemption of two years from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*, and for three years from Federal Motor Vehicle Safety Standard No. 214 *Side Impact Protection*. The basis of the application was that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on July 14, 1995, and an opportunity afforded for comment (60 FR 36328).

The make and type of passenger car for which exemption was requested is the Morgan open car or convertible. Morgan Motor Company ("Morgan"), the British manufacturer of the Morgan, has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. In the nine years it has been in business, the applicant has bought 35 incomplete Morgan cars from the British manufacturer, and imported them as motor vehicle equipment, completing manufacture by the addition of engine and fuel system components. They differ from their British counterparts, not only in equipment items and modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their fuel system components and engines, which are propane fueled. As the party completing manufacture of the vehicle, Cantab certifies its conformance to all applicable Federal safety and bumper standards. The vehicle completed by Cantab in the U.S. is deemed sufficiently different from the one produced in Britain that NHTSA considers Cantab the manufacturer, not a converter, even though the brand names are the same.

Morgan itself produced 478 cars in 1994, while in the year preceding the filing of its petition in June 1995, the applicant produced 9 cars for sale in the United States. Since the granting of its original exemption in 1990, Cantab has invested $38,244 in research and development related to compliance with Federal safety and emissions standards. The applicant has experienced a net loss in each of its last three fiscal (calendar) years, with a cumulative net loss for this period of $92,594.

Application for Exemption From Standard No. 208

Cantab received NHTSA Exemption No. 90–3 from S4.1.2.1 and S4.1.2.2 of Standard No. 208, which expired May 1, 1993 (55 FR 21141). When this exemption was granted in 1990, the applicant had concluded that the most feasible way for it to conform to the automatic restraint requirements of Standard No. 208 was by means of an automatically deploying belt. In the period following the granting of the exemption, Morgan and the applicant created a mock-up of the Morgan passenger compartment with seat belt hardware and motor drive assemblies. In time, it was determined that the belt track was likely to deform, making it inoperable. The program was abandoned, and Morgan and Cantab embarked upon research leading to a dual airbag system.

According to the applicant, Morgan tried without success to obtain a suitable airbag system from Mazda, Jaguar, Rolls-Royce and Lotus. As a result, Morgan is now developing its own system for its cars, and "[a]s many as twelve different sensors, of both the impact and deceleration (sic) type, have been tested and the system currently utilizes a steering wheel from a Jaguar and the Land Rover Discovery steering column." Redesign of the passenger compartment is underway, involving knee bolstering, a supplementary seat belt system, anti-submarining devices, and the seats themselves. Morgan informed the applicant on May 2, 1995, that it had thus far completed 10 tests on the mechanical components involved "and are now carrying out a detailed assessment of air bag operating systems and columns before we will be in a position to undertake the full set of appropriate tests to approve the installation in our vehicles."

Application for Exemption From Standard No. 214

Concurrently, Morgan and the applicant have been working towards meeting the dynamic test and performance requirements for side impact protection, for which Standard No. 214 has established a phase-in schedule. Although Morgan fits its car with a dual roll bar system specified by Cantab, and Cantab installs door bars and strengthens the door latch receptacle and striker plate, the system does not yet conform to the new requirements of Standard No. 214, and the applicant has asked for an exemption of three years. It does, however, meet the previous side door strength requirements of the standard. Were the phase-in requirement of S8 applied to it, calculated on the basis of its limited production, only very few cars would be required to meet the standard.

Safety and Public Interest Arguments

Because of the small number of vehicles that the applicant produces and its belief that they are used for pleasure rather than daily for business commuting or on long trips, and because of the three-point restraints and side impact protection currently offered, the applicant argued that an exemption would be in the public interest and consistent with safety. It brought to the agency's attention two recent oblique front impact accidents at estimated speeds of 30 mph and 65 mph respectively in which the restrained occupants "emerged unscathed."

Further, the availability "of this unique vehicle . . . will help maintain the existing diversity of motor vehicles available to the U.S. consumer." Finally, "the distribution of [this] propane-fueled vehicle has contributed to the national interest by promoting the development of motor systems by using alternate fuels."

No comments were received on the application.

In adding only engine and fuel system components to incomplete vehicles, the applicant is not a manufacturer of motor vehicles in the conventional sense. It does not produce the front end structural components, instrument panel, or steering wheel, areas of the motor vehicle whose design is critical for compliance with the airbag requirements of Standard No. 208. These are manufactured by Morgan, and the applicant is necessarily dependent upon Morgan to devise designs that will enable conformance with Standard No. 208. The applicant has been monitoring Morgan's progress, and that company is engaging in testing and design activities necessary for eventual conformance. The fact that the applicant is requesting only a two-year exemption, rather than three, indicates its belief that complying operator and passenger airbags will at last be fitted to its cars by the end of this period.

Similarly, the applicant is dependent upon the structural design of its vehicle for compliance with Standard No. 214. As with Standard No. 208, Morgan and the applicant are working towards conformance, though apparently it will not be achieved within two years. In both instances, however, the applicant is conscious of the need to conform and has been taking steps to accomplish it. Although the company's total expenditure of $38,244 in the last five years to meet emission and safety requirements is low, the small number of cars produced for sale in the United States in the last year, nine, would not make available substantial funds to the company, and its cumulative net losses of $92,594 indicate an operation whose financial existence is precarious.

Applicant's cars are equipped with manual three-point restraint systems and comply with previous side impact intrusion requirements. Because applicant produces only one line of vehicles, it cannot take advantage of the phase-in requirement. Given the existing level of safety of the vehicles and the comparatively small exposure of the small number of them that would be produced under an exemption, there would appear to be an insignificant risk to traffic safety by providing an exemption. The public interest is served by maintaining the existence of small businesses and by creating awareness of alternative power sources.

In consideration of the foregoing, it is hereby found that to require immediate compliance with Standards Nos. 208 and 214 would cause substantial economic hardship to a manufacturer that has in good faith attempted to meet the standards, and that an exemption would be in the public interest and consistent with the objectives of traffic safety.

Accordingly, the applicant is hereby granted NHTSA Exemption No. 95–2, from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*, expiring September 1, 1997, and from 49 CFR 571.214 Motor Vehicle Safety Standard No. 214 *Side Impact Protection*, expiring September 1, 1998.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50)

Issued on September 7, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–22605 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 95–52; Notice 2]

Decision that Nonconforming 1992 Mercedes-Benz 300CE Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992 Mercedes-Benz 300CE passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 Mercedes-Benz 300CE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1992 Mercedes-Benz 300CE), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective as of September 12, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States [illegible] certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the [illegible] model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to decide whether 1992 Mercedes-Benz 300CE passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on July 18, 1995 (60 FR 36873) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–117 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1992 Mercedes-Benz 300CE (Model ID 124.050 and 124.061) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Mercedes-Benz 300CE originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 7, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–22603 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–73; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1987 Nissan Stanza Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonforming 1987 Nissan Stanza passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHSTA) of a petition for a decision that a 1987 Nissan Stanza that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 12, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Liphardt & Associates of Ronkonkoma, New York ("Liphardt") (Registered Importer 90–004) has petitioned NHTSA to decide whether 1987 Nissan Stanza passenger cars are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1987 Nissan Stanza that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1987 Nissan Stanza to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Liphardt submitted information with its petition intended to demonstrate that the non-U.S. certified 1987 Nissan Stanza, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1987 Nissan Stanza is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* . . . ., 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush

Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1987 Nissan Stanza complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate sealed beams and sidemarkers; (b) installation of U.S.-model taillamps; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that the vehicle is equipped with a seat belt warning lamp and with seat belt assemblies that are identical to those found on its U.S. certified counterpart.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 7, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–22602 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–58; Notice 2]

Decision That Nonconforming 1996 Mercedes-Benz Gelaendewagen Type 463 Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1996 Mercedes-Benz Gelaendewagen Type 463 multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1996 Mercedes-Benz Gelaendewagen Type 463 MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The decision is effective as of September 12, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. § 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. § 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Europa International, Inc. of Santa Fe, New Mexico (Registered Importer No. R–91–002) petitioned NHTSA to decide whether 1996 Mercedes-Benz Gelaendewagen Type 463 MPVs are eligible for importation into the United States. NHTSA published notice of the petition on July 24, 1995 (60 FR 37915) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–11 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1996 Mercedes-Benz Gelaendewagen Type 463 MPVs are eligible for importation into the United States because they have safety features to comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. § 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 7, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–22599 Filed 9–11–95; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 95–55; Notice 2]

Decision That Nonconforming 1992 Jaguar XJS Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992 Jaguar XJS passenger care are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 Jaguar XJS passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturers complying with the safety standards (the U.S.-certified version of the 1992 Jaguar XJS), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of September 12, 1995.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then published this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (Registered Importer R–90–005) petitioned NHTSA to decide whether 1992 Jaguar XJS passenger cars are eligible for importation into the United States. NHSTA published notice of the petition on July 21, 1995 (60 FR 37704) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–129 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1992 Jaguar XJS not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Jaguar XJS originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on September 7, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–22600 Filed 9–11–95; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 95–74; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1989 Nissan Maxima Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989 Nissan Maxima passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1989 Nissan Maxima that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is [30 days after publication in the **Federal Register**].

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to; Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)((A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Liphardt & Associates of Ronkonkoma, New York ("Liphardt") (Registered Importer 90–004) has petitioned NHTSA to decide whether 1989 Nissan Maxima passenger cars are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1989 Nissan Maxima that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1989 Nissan Maxima to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Liphardt submitted information with its petition intended to demonstrate that the non-U.S. certified 1989 Nissan Maxima, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1989 Nissan Maxima is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 111 *Rearview Mirrors,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1989 Nissan Maxima complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate sealed beams and sidemarkers; (b) installation of U.S.-model taillamps; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection*: installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection*: installation of a seat belt warning buzzer. The petitioner states that the vehicle is equipped with a seat belt warning lamp and with seat belt assemblies that are identical to those found on its U.S. certified counterpart.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 7, 1995.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–22601 Filed 9–11–95; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93–50; Notice 4]

Denial of Petition for Reconsideration, Nassau Technologies; Federal Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Response of Petition for Reconsideration.

SUMMARY: This notice denies a petition from Nassau Technologies, Inc., for reconsideration of NHTSA's decision not to include motor vehicle glazing as a major vehicle component, which would be subject to the parts-marking requirement of 49 CFR Part 541, Federal Motor Vehicle (Theft Prevention Standard). NHTSA is denying the petition because it believes that it needs cost and effectiveness information beyond that which it received in connection with this petition in order to make an informed decision about whether motor vehicle glazing should be added to the list of major components for which parts-marking is required by the theft prevention standard.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 1993, NHTSA published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM) (58 FR 36376), seeking comments on possible definitions of multipurpose passenger vehicle (MPVs) and light-duty truck (LDTs) to be used in the Federal motor vehicle theft prevention standard (49 CFR Part 541) when the agency amended it to add those vehicles categories pursuant to the Anti Car Theft Act of 1992, P.L. 102–519 (October 25, 1992). The ANPRM also sought comments on which MPV and LDT parts should be considered major component parts, and therefore, subject to the parts-marking requirements.

Several commenters on the ANPRM, Advocates for Highway and Auto Safety (Advocates), Prospective Technologies (Prospective), and State Farm Mutual Insurance Company (State Farm), suggested that motor vehicle glazing be treated as major component parts for all high-theft vehicle lines. Prospective cited the relative ease with which glazing could be marked, the low cost of marking, and provided examples of lower-theft rates for some motor vehicles with glazing that had been voluntarily marked with the vehicle identification number.

On July 8, 1994, the agency published a notice of proposed rulemaking (NPRM) in the **Federal Register** (59 FR 35082), which requested additional comments on proposed definitions of MPVs and LDTs and also solicited comments on the components of these vehicles that should be subject to parts marking. In the NPRM, the agency specifically requested additional information and comments on whether glazing should also be added to the passenger vehicle components subject to parts making, and proposed the following glazing components to be marked, if present on the vehicle: windshield, right/left front-side window, right/left rear-side window, rear window, and right/left T-top inserts. In addition, the NPRM sought comments on the exclusion of particular glazing pieces, and whether glazing should be exempted from the requirements of 49 CFR § 541.5(d)(1)(ii)(B) that the marking be placed on a portion of the part not likely to be damaged in a collision. Finally, the notice requested comments on how the target areas for glazing parts could be specified so that the markings required by the antitheft standard and the markings required by Federal motor vehicle safety standard 205, Glazing Materials, would not be placed in the same area.

Five of the fifteen commenters, International Association of Auto Theft Investigators (IAATI), Advocates, State Farm, Prospective, and Automark Corporation supported a requirement for marking motor vehicle glazing. The remaining commenters—automobile manufacturers and their associations, and the National Automobile Dealers Association (NADA)—disagreed with including glazing as a component to be subject to the parts-marking requirements. Among the reasons given for disagreement were excessive cost, the fact that none of the methods for marking glazing had been implemented on a manufacturer's assembly line, occupational and environmental hazards presented by some of the chemicals and other materials used in marking glass, the questionable effectiveness in deterring theft, and the absence of legal authority. Nassau did not comment on the NPRM, and no other commenter mentioned laser technology as means of marking glazing material.

After considering all of the comments, NHTSA issued a final rule that does not include glazing as one of the major vehicle components subject to the parts-marking requirements of Part 541 (59 FR 64164 (December 13, 1994)).

On January 12, 1995, the agency received a petition for reconsideration of the final rule from Nassau Technologies, Inc., of Stafford, Texas (Nassau). A manufacturer of a patented laser etching system known as LaserGuard. Nassau stated that it had not commented on the ANPRM or NPRM on requiring glazing to be marked under the theft prevention standard because it had not been aware of the agency's publication of the notices until after the comment period had closed. Its basis for seeking reconsideration of the final rule was that if NHTSA and the vehicle manufacturers had information about Nassau's LaserGuard system before the final rule, the agency would have included glazing as a component subject to the parts-marking requirements of Part 541.

Nassau specifically addressed four major issues raised by the commenters opposed to marking of vehicle glazing: cost, adverse environmental and occupational health impacts, effectiveness as a theft deterrent, and problems with etching replacement glazing.

Nassau contends that the cost estimates provided to NHTSA by the commenters opposed to marking of glazing were based on antiquated and costly glass-etching technologies, i.e., sandblasting and chemical etching processes. Nassau agreed that these methods are cumbersome and labor intensive.

However, it asserted that its LaserGuard etching process is less costly than these processes because its system is automated, requires no stencil production or no etching materials and can be adapted to robotics for assembly line use. Nassau believes that the per-vehicle cost to mark glass with the LaserGuard system would be far less than $5.00. The current per-vehicle cost using LaserGuard is $5. Nassau believes that the cost would be substantially reduced if the system were used on a large scale by the automobile manufacturers. According to Nassau, the low per-vehicle cost of LaserGuard would keep the total cost of marking all required components of a vehicle below the statutory cumulative limit of $20.86 (in 1993 dollars).

Nassau asserted that the environmental and employee health concerns about chemical etching and sandblasting raised by several manufacturers, including proper ventilation, storage and disposal of hazardous or caustic agents, and the need for protective apparel, would all be eliminated if the LaserGuard system were used. It stated that the LaserGuard system operates a Co_2 laser.

Nassau asserted that in its experience, glass etching has been successful as a theft deterrent. Its parent company has provided a glass etching product with a consumer warranty to a large automobile distributor for 10 years. The warranty for this product states that if the consumer's vehicle is stolen and not recovered the company will pay the owner one thousand dollars. Nassau submitted an exhibit showing that over a two-year period, 238,363 vehicles had their glazing etched using the product, and only 129 warranty claims were processed.

Nassau stated that insurance companies and lawmakers who recognize glass etching as a theft deterrent generally support the view that etching the glass protects the vehicle as a whole from theft. Nassau also asserted that because it is difficult for thieves to make a vehicle unidentifiable if two or more windows must be removed and replaced, some insurance companies give a discount on the premium for vehicles that have some but not all glazing etched. According to Nassau, this would ameliorate the problems concerning the etching of replacement glass that were raised by some commenters. (It cited as an example the Texas Insurance Automobile Rules and Rating Manual which defines a qualifying antitheft system as a "system under which the motor vehicle identification number (VIN) is permanently marked on at least two windows of the motor vehicle other than the small vent windows.") If having as few as two windows glazed is sufficient to deter theft of the vehicle, there would not be a frequent need to replace damaged glass with etched glass in order to gain the deterrent effect. Nassau added that for those consumers who wished to have replacement glass etched, manufacturers could provide a chemical etching kit directly to the consumer or to the body shop upon request by the vehicle owner.

In conclusion, Nassau stated that the LaserGuard system, engineered and developed in 1990, has been successfully tested and operated in high-volume environments in multiple locations. It believes that the agency's decision not to include glazing as a component subject to the parts-marking requirement was heavily influenced by the concerns expressed by the manufacturers, which were based on different etching technologies.

Discussion

The agency's principal reason for deciding in the final rule not to adopt the proposal to include glazing as a major vehicle component subject to parts-marking was its belief that "specifying glazing as major parts, may make the costs of parts marking for some manufacturers exceed the $20.86 [1993 dollars] limited specified in [49 U.S.C.] section 33105(a)," combined with the assertions from commenters that windows are rarely stolen as replacement parts, and that there is no evidence that vehicles are stolen for their glazing materials. 59 FR 64166 (December 13, 1994).

Nassau asserted in its petition that the per-vehicle cost of glass etching using its LaserGuard system is currently about $5. It also stated its belief that the per-vehicle cost would be substantially lower if the system were to be implemented on the assembly lines of the major vehicle manufacturers. It does not state whether its estimated per-vehicle-cost for large-scale use of LaserGuard takes into account the capital investment that manufacturers would be required to make to tool their assembly lines to accommodate the LaserGuard technology. The agency notes that in its petition Nassau states that the system can be adapted to robotics for use on the assembly line. The extent of the adaptations that would be needed and their possible cost is not known.

Even if the agency were to accept the assertion that the per-vehicle cost of laser etching of vehicle glazing would be low enough to keep the per-vehicle cost of parts-marking below the statutory limit, it would be required to consider other factors in deciding whether to mandate etching of vehicle glass. Some commenters on the NPRM raised serious questions about whether etched glazing would be an effective deterrent to vehicle theft. Nassau has countered these assertions with one example of a situation in which a group of vehicles with marked glazing had a very low incidence of theft.

The agency does not believe it has a basis for concluding that it can give any more weight to Nassau's example than to the NPRM comments to the contrary. While it is clear that the vehicles in Nassau's example experienced a low-theft rate, there is no information in Nassau's submission that would enable the agency to make a judgment about whether and to what extent the low-theft rate could be attributed to the fact that the glazing on the vehicles was marked. Further, the entire MY 1993 Nissan 300ZX line had all its windows etched and the theft rate for that line continued to increase from the previous model year.

The agency heretofore has limited designation of parts required to be marked under Part 541 to those parts explicitly listed by Congress and parts that were clearly within the scope of the mandate of the Anti Car Theft Act of 1992 (P.L. 102–519) to add multipurpose passenger vehicles and light-duty trucks to the vehicle categories covered by Part 541. See 59 FR 64166 (December 13, 1994). Because the data on the effectiveness of parts marking in general and marking of glazing in particular is uncertain, and the addition of a requirement to mark glazing would result in additional costs to vehicle and replacement parts manufacturers, the agency has decided that the best course at this time is to limit the scope of the parts-marking requirement to the parts listed in the final rule published December 13, 1994. (59 FR 64166)

For the foregoing reasons, the agency is denying the petition for reconsideration filed by Nassau Technologies, Inc.

Issued on: September 6, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–22594 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No.T95–63; Notice 01]

RIN 2127–AF56

Federal Motor Vehicle Theft Prevention Standard; Preliminary Theft Data

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 1993, including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 1993. The theft data preliminarily indicate that the vehicle theft rate for CY/MY 1993 vehicles (3.90 thefts per thousand vehicles) decreased by 9.5 percent from the theft rate for CY/MY 1992 vehicles (4.31 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before November 13, 1995.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably with ten copies to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 9:30 am to 4:00 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually every since 1983/84. Continuing to fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 1993, the most recent calendar year for which data are available.

In calculating the 1993 theft rates, NHTSA followed the same procedures it used in calculating the MY 1992 theft rates. (For 1992 theft data calculations, see 60 FR 1824, January 5, 1995). As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1993 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1993 vehicles of that line stolen during calendar year 1993, by the total number of vehicles in that line manufactured for MY 1993, as reported to the Environmental Protection Agency.

The preliminary 1993 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/ MY 1992. The preliminary theft rate for MY 1993 passenger vehicles stolen in calendar year 1993 decreased to 3.90 thefts per thousand vehicles produced, a decrease of 9.5 percent from the rate of 4.31 thefts per thousand vehicles experienced by MY 1992 vehicles in CY 1992. For MY 1993 vehicles, out of a total of 213 vehicle lines, 98 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 98 vehicle lines with a theft rate higher than 3.5826, 77 are passenger car lines, 17 are multipurpose passenger vehicles lines, and 4 are light-duty trucks lines.

In Table I, NHTSA has tentatively ranked each of the MY 1993 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

All comments must not exceed 15 pages in length (49 CFR Part 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business regulation. (49 CFR Part 512.)

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

THEFT RATES OF MODEL YEAR 1993 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1993

	Manufacturer	Make/model (line)	Thefts 1993	Production (Mfr's) 1993	1993 (per 1,000 vehicles produced) theft rate
1	MITSUBISHI	MONTERO	296	11,221	26.3791
2	CHRYSLER CORP	LEBARON COUPE/CONVERTIBLE	631	26,789	23.5544
3	MERCEDES-BENZ	129	15	780	19.2308
4	FORD MOTOR CO	MUSTANG	1,935	110,616	17.4929
5	VOLKSWAGEN	CABRIOLET	48	2,991	16.0481
6	CHRYSLER CORP	IMPERIAL	89	6,235	14.2743
7	NISSAN	300ZX	115	8,300	13.8554
8	CHRYSLER CORP	PLYMOUTH ACCLAIM	604	49,611	12.1747
9	CHRYSLER CORP	PLYMOUTH SUNDANCE	600	59,749	10.0420
10	MITSUBISHI	PRECIS	16	1,612	9.9256
11	NISSAN	PATHFINDER	394	41,215	9.5596
12	MITSUBISHI	DIAMANTE	235	24,846	9.4583
13	GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA	1,272	135,272	9.4033
14	GENERAL MOTORS	OLDSMOBILE SILHOUETTE APV	98	10,465	9.3645
15	CHRYSLER CORP	DODGE SPIRIT	714	76,503	9.3330
16	NISSAN	NX COUPE	17	1,910	8.9005
17	MITSUBISHI	GALANT/SIGMA	98	11,282	8.6864
18	TOYOTA	4-RUNNER	367	42,257	8.6850
19	HONDA	PRELUDE	187	22,123	8.4527
20	CHRYSLER CORP	DODGE SHADOW	843	102,186	8.2497
21	NISSAN	INFINITI Q45	37	4,517	8.1913
22	GENERAL MOTORS	GMC JIMMY S–15	353	43,412	8.1314
23	NISSAN	MAXIMA	543	67,075	8.0954
24	HYUNDAI	SONATA	125	15,452	8.0896
25	HONDA/ACURA	LEGEND	300	37.488	8.0026
26	CHRYSLER CORP	JEEP WRANGLER	459	59,412	7.7257
27	HONDA	ACCORD	2,290	304,032	7.5321
28	CHRYSLER CORP	LEBARON SEDAN	243	32,480	7.4815
29	GENERAL MOTORS	GEO TRACKER	258	35,201	7.3293
30	MERCEDES-BENZ	140	80	11,041	7.2457
31	CHRYSLER CORP	DODGE DYNASTY	421	58,401	7.2088
32	GENERAL MOTORS	PONTIAC TRANS SPORT APV	184	26,442	6.9586
33	HYUNDAI	EXCEL	294	42,632	6.8962
34	MITSUBISHI	3000GT	83	12,266	6.7667
35	CHRYSLER CORP	JEEP CHEROKEE	2,312	345,277	6.6961
36	MAZDA	RX–7	67	10,035	6.6766
37	FORD MOTOR CO	E150 VAN	60	9,236	6.4963
38	GENERAL MOTORS	CHEVROLET LUMINA APV	260	40,613	6.4019
39	HONDA/ACURA	VIGOR	68	10,695	6.3581
40	NISSAN	SENTRA	830	130,991	6.3363
41	GENERAL MOTORS	BUICK CENTURY	764	120,599	6.3350
42	GENERAL MOTORS	OLDSMOBILE BRAVADA	61	9,671	6.3075
43	CHRYSLER CORP	NEW YORKER SALON	131	20,852	6.2824
44	PORSCHE	911	10	1,600	6.2500
45	PORSCHE	928	1	163	6.1350
46	FORD MOTOR CO	LINCOLN TOWN CAR	684	113,596	6.0213
47	MITSUBISHI	MIRAGE	190	32.168	5.9065
48	ISUZU	STYLUS	9	1,544	5.8290
49	HYUNDAI	ELANTRA	205	36,169	5.6678
50	FORD MOTOR CO	THUNDERBIRD	733	129,854	5.6448
51	TOYOTA	MR2	29	5,245	5.5291
52	GENERAL MOTORS	CHEVROLET BLAZER S–10	731	132,616	5.5122
53	CHRYSLER CORP	DODGE B150 RAMCHARGER/VAN	29	5,376	5.3943
54	HONDA/ACURA	INTEGRA	197	36,832	5.3486
55	GENERAL MOTORS	PONTIAC SUNBIRD	471	88,087	5.3470
56	ISUZU	AMIGO	41	7,684	5.3358
58	BMW	5	74	13,975	5.2952
59	GENERAL MOTORS	CHEVROLET BERETTA	194	36,925	5.2539
60	MITSUBISHI	EXPO	58	11,158	5.1981
61	BMW	3	209	40,552	5.1539
62	SUZUKI	SWIFT	55	10,689	5.1455
63	GENERAL MOTORS	CHEVROLET SPORTVAN G–10	11	2,173	5.0621
57	GENERAL MOTORS	CADILLAC DEVILLE/SIXTY SPECIAL	634	125,391	5.0562
64	VOLKSWAGEN	CORRADO	14	2,786	5.0251
65	NISSAN	240SX	107	21,471	4.9835
66	GENERAL MOTORS	CHEVROLET CORVETTE	103	20,764	4.9605
67	HYUNDAI	SCOUPE	56	11,377	4.9222
68	GENERAL MOTORS	CHEVROLET CORSICA	628	127,933	4.9088
69	NISSAN	ALTIMA	480	99,404	4.8288
70	NISSAN	PICKUP TRUCK	541	112,552	4.8067
71	GENERAL MOTORS	GMC RALLY SPORTVAN	5	1,073	4.6598
72	GENERAL MOTORS	PONTIAC GRAND PRIX	491	107,000	4.5888
73	MERCEDES-BENZ	201	35	7,669	4.5638
74	MITSUBISHI	ECLIPSE	247	54,670	4.5180
75	CHRYSLER CORP	DODGE STEALTH	64	14,516	4.4089
76	PORSCHE	968	4	911	4.3908
77	GENERAL MOTORS	PONTIAC LEMANS	33	7,550	4.3709
78	MITSUBISHI	PICKUP TRUCK	39	8,925	4.3697
79	FORD MOTOR CO	LINCOLN MARK VIII	135	30,964	4.3599
80	TOYOTA	CELICA	121	27,794	4.3535
81	NISSAN	INFINITI J30	81	18,785	4.3120
82	TOYOTA	SUPRA	12	2,850	4.2105
83	FORD MOTOR CO	MERCURY TOPAZ	314	76,115	4.1253
84	FORD MOTOR CO	TEMPO	853	208,382	4.0934
85	GENERAL MOTORS	CHEVROLET CAVALIER	962	235,319	4.0881
86	SUBARU	LOYALE	48	11,914	4.0289
87	BMW	8	3	753	3.9841
88	FORD MOTOR CO	MERCURY COUGAR	316	79,780	3.9609
89	MAZDA	929	61	15,651	3.8975
90	GENERAL MOTORS	CHEVROLET ASTRO	431	113,010	3.8138
91	GENERAL MOTORS	PONTIAC GRAND AM	844	224,101	3.7662
92	TOYOTA	COROLLA/COROLLA SPORT	794	211,301	3.7577
93	GENERAL MOTORS	GEO STORM	169	45,000	3.7556
94	VOLKSWAGEN	FOX	60	16,181	3.7081
95	FORD MOTOR CO	FESTIVA	152	41,199	3.6894
96	GENERAL MOTORS	BUICK SKYLARK	207	56,362	3.6727
97	FORD MOTOR CO	PROBE	438	119,920	3.6524
98	GENERAL MOTORS	SATURN SC	184	51,011	3.6071
99	MAZDA	B SERIES PICKUP	133	37,181	3.5771
100	TOYOTA	PASEO	96	26,896	3.5693
101	TOYOTA	LEXUS SC	60	16,891	3.5522
102	TOYOTA	LEXUS LS	100	28,366	3.5253

THEFT RATES OF MODEL YEAR 1993 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1993—Continued

THEFT RATES OF MODEL YEAR 1993 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1993—Continued

Manufacturer	Make/model (line)	Thefts 1993	Production (Mfr's) 1993	1993 (per 1,000 vehicles produced) theft rate
103 SUZUKI	SAMURAI	4	1,139	3.5119
104 BMW	7	32	9,304	3.4394
105 SUZUKI	SIDEKICK	64	18,621	3.4370
106 VOLKSWAGEN	PASSAT	44	12,851	3.4239
107 CHRYSLER CORP	DODGE DAYTONA	31	9,059	3.4220
108 TOYOTA	CAMRY	1,027	302,089	3.3997
109 CHRYSLER CORP	NEW YORKER 5TH AVE	92	27,345	3.3644
110 GENERAL MOTORS	GMC SAFARI	134	40,883	3.2776
111 GENERAL MOTORS	CHEVROLET S–10 PICKUP	567	173,509	3.2678
112 HONDA/ACURA	NSX	2	626	3.1949
113 GENERAL MOTORS	OLDSMOBILE ACHIEVA	135	42,384	3.1852
114 FORD MOTOR CO	LINCOLN CONTINENTAL	82	25,762	3.1830
115 CHRYSLER CORP	DODGE CARAVAN/GRAND	856	272,265	3.1440
116 FORD MOTOR CO	MERCURY CAPRI	25	7,971	3.1364
117 TOYOTA	LEXUS GS	58	18,545	3.1275
118 CHRYSLER CORP	PLYMOUTH VOYAGER/GRAND	651	210,815	3.0880
119 GENERAL MOTORS	CADILLAC ALLANTE	14	4,558	3.0715
120 MAZDA	323/PROTEGE	258	84,282	3.0612
121 TOYOTA	TERCEL	311	101,974	3.0498
122 MAZDA	NAVAJO	17	5,579	3.0471
123 HONDA	CIVIC	843	280,107	3.0096
124 ISUZU	RODEO	123	40,886	3.0084
125 TOYOTA	PICKUP TRUCK	611	207,824	2.9400
126 FORD MOTOR CO	ESCORT	1,141	399,860	2.8535
127 FORD MOTOR CO	CROWN VICTORIA	205	72,065	2.8447
128 CHRYSLER CORP	EAGLE TALON	74	26,105	2.8347
129 GENERAL MOTORS	GEO METRO	209	73,962	2.8258
130 GENERAL MOTORS	CHEVROLET CAPRICE	163	57,723	2.8238
131 CHRYSLER CORP	PLYMOUTH LASER	48	17,178	2.7943
132 FORD MOTOR CO	MERCURY TRACER	208	74,835	2.7794
133 GENERAL MOTORS	PONTIAC FIREBIRD	34	12,327	2.7582
134 GENERAL MOTORS	CHEVROLET CAMARO	93	34,137	2.7243
135 GENERAL MOTORS	CHEVROLET C–1500 PICKUP	636	242,756	2.6199
136 FORD MOTOR CO	TAURUS	1,056	406,215	2.5996
137 ALFA ROMEO	164	1	385	2.5974
138 FORD MOTOR CO	MERCURY SABLE	317	127,406	2.4881
139 CHRYSLER CORP	TOWN & COUNTRY MPV	64	26,057	2.4562
140 VOLVO	850	67	27,482	2.4380
141 GENERAL MOTORS	BUICK REGAL	205	84,571	2.4240
142 FORD MOTOR CO	MERCURY GRAND MARQUIS	201	83,239	2.4147
143 GENERAL MOTORS	CHEVROLET LUMINA	526	222,442	2.3647
144 CHRYSLER CORP	INTREPID	165	70,170	2.3514
145 MAZDA	626/MX–6	301	128,044	2.3508
146 TOYOTA	LEXUS ES	95	41,060	2.3137
147 GENERAL MOTORS	GMC SONOMA	95	41,459	2.2914
148 CHRYSLER CORP	EAGLE SUMMIT	46	20,246	2.2721
149 NISSAN	INFINITI G20	39	17,427	2.2379
150 GENERAL MOTORS	GEO PRIZM	168	75,502	2.2251
151 GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	168	75,885	2.2139
152 FORD MOTOR CO	EXPLORER	671	306,845	2.1868
153 MAZDA	MX–5 MIATA	46	21,758	2.1142
154 MAZDA	MX–3	67	31,972	2.0956
155 GENERAL MOTORS	GMC SIERRA C–1500	175	83,764	2.0892
156 SUBARU	LEGACY	138	66,117	2.0872
157 ISUZU	PICKUP	48	23,476	2.0446
158 GENERAL MOTORS	CADILLAC ELDORADO	41	20,540	1.9961
159 VOLVO	960	13	6,826	1.9045
160 VOLVO	940	43	22,767	1.8887
161 JAGUAR	XJS	3	1,625	1.8462
162 TOYOTA	PREVIA	67	36,970	1.8123
163 CHRYSLER CORP	EAGLE VISION	51	28,642	1.7806
164 FORD MOTOR CO	RANGER PICKUP	593	333,277	1.7793
165 GENERAL MOTORS	CADILLAC SEVILLE	58	32,968	1.7593
166 CHRYSLER CORP	CONCORDE	84	49,483	1.6976
167 CHRYSLER CORP	DODGE DAKOTA PICKUP	211	127,043	1.6609
168 GENERAL MOTORS	PONTIAC BONNEVILLE	163	99,076	1.6452
169 ISUZU	TROOPER	29	17,982	1.6127
170 MAZDA	MPV WAGON	48	30,069	1.5963

THEFT RATES OF MODEL YEAR 1993 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1993—Continued

Manufacturer	Make/model (line)	Thefts 1993	Production (Mfr's) 1993	1993 (per 1,000 vehicles produced) theft rate
171 GENERAL MOTORS	BUICK RIVIERA	7	4,437	1.5776
172 NISSAN	QUEST	39	25,190	1.5482
173 AUDI	90	13	8,501	1.5292
174 FORD MOTOR CO	AEROSTAR	377	248,494	1.5171
175 SAAB	900	15	9,943	1.5086
176 JAGUAR	XJ6	12	8,003	1.4994
177 CHRYSLER CORP	DODGE COLT/COLT VISTA	55	38,339	1.4346
178 GENERAL MOTORS	OLDSMOBILE CUTLASS CRUISER	9	6,330	1.4218
179 MERCEDES-BENZ	124	35	25,290	1.3839
180 VOLVO	240	20	14,985	1.3347
181 AUDI	S4	1	756	1.3228
182 GENERAL MOTORS	OLDSMOBILE 88 ROYALE	73	58,942	1.2385
183 GENERAL MOTORS	CADILLAC FLEETWOOD	32	26,899	1.1896
184 SAAB	9000	10	9,745	1.0262
185 SUBARU	IMPREZA	40	40,584	0.9856
186 CHRYSLER CORP	PLYMOUTH COLT/COLT VISTA	37	38,339	0.9651
187 GENERAL MOTORS	BUICK PARK AVENUE	42	51,244	0.8196
188 GENERAL MOTORS	BUICK LESABRE	117	143,724	0.8141
189 GENERAL MOTORS	BUICK ROADMASTER	28	36,289	0.7716
190 VOLKSWAGEN	JETTA	5	6,494	0.7699
191 AUDI	100	5	6,764	0.7392
192 GENERAL MOTORS	SATURN SL	122	165,754	0.7360
193 GENERAL MOTORS	OLDSMOBILE 98/TOURING	13	18,857	0.6894
194 VOLKSWAGEN	GOLF/GTI	2	2,946	0.6789
195 FORD MOTOR CO	F150 PICKUP TRUCK	268	436,016	0.6147
196 FORD MOTOR CO	MERCURY VILLAGER (MPV)	52	94,655	0.5494
197 SUBARU	JUSTY	2	4,071	0.4913
198 CHRYSLER CORP	DODGE RAM PICKUP D150	6	13,349	0.4495
199 GENERAL MOTORS	SATURN SW	4	13,821	0.2894
200 ALFA ROMEO	SPIDER	0	509	0.0000
201 CHRYSLER CORP	DODGE VIPER	0	910	0.0000
202 FERRARI	348	0	70	0.0000
203 FERRARI	512	0	91	0.0000
204 FERRARI	MONDIAL	0	24	0.0000
205 JAGUAR	XJRS	0	99	0.0000
206 KIA MOTORS	SEPHIA	0	200	0.0000
207 LAMBORGHINI	DIABLO	0	13	0.0000
208 LOTUS	ESPIRIT	0	113	0.0000
209 PEUGEOT	405	0	14	0.0000
210 ROLLS-ROYCE	CORNICHE/CONTINENTAL	0	145	0.0000
211 ROLLS-ROYCE	SIL SPIRIT/SPUR/MULS/EIGHT	0	99	0.0000
212 ROLLS-ROYCE	TURBOR R	0	36	0.0000
213 SUBARU	SVX	0	302	0.0000

Issued on: September 6, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–22584 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–59–P

Federal Aviation Administration

[Docket No. 27782]

RIN 2120–AF90

Proposed Policy Regarding Airport Rates and Charges

AGENCY: Department of Transportation (DOT), Federal Aviation Administration (FAA).

ACTION: Notice of meeting.

SUMMARY: On September 8, 1995, the Department of Transportation and the Federal Aviation Administration published a supplemental notice of a proposed policy statement in the **Federal Register** with respect to fair and reasonable and not unjustly discriminatory airport rates and charges and announced that at least two meetings for oral views would be held. The proposed policy statement sets forth DOT/FAA policy regarding airport practices that DOT/FAA would consider to be consistent with Federal requirements for airport rates and charges for aeronautical uses. This notice announces the date, time, location and procedures for the first meeting. A separate notice will be published about additional meetings.

DATES: The public meeting will be held on September 20, 1995, starting at 10 a.m. Pursuant to the September 8, 1995 Supplemental Notice, written comments are also invited and must be received on or before October 23, 1995.

ADDRESSES: The public meeting will be held at the Worthington Hotel, 200 Main Street, Fort Worth, Texas 76102. Overnight accommodations are available at the hotel, at the government rate of $71.00 per night. Reservations may be made by phoning 1–800–433–5677 and referring to the FAA public hearing. Persons unable to attend the meeting may mail their comments in quadruplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Dockets No. 27782, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to participate in public meeting should be directed to Mayte Agosto at (202) 267–8972 or Kevin Hehir at (202) 267–8224, Federal Aviation Administration, Airport Safety and Compliance Branch, AAS–311, 800 Independence Ave. SW., Washington, DC 20591.

Questions concerning the subject matter of the meeting may be directed to Barry Molar, Federal Aviation Administration, Airports Law Branch, AGC–610, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267–3473.

The full text of the Supplemental Notice is also available on the Office of Airport Safety and Standards Electronic Bulletin Board. Persons with a computer and modem, and communications software, can access the bulletin board by setting the modem parameters to match those of the bulletin board before dialing. Upon connection with the bulletin board for the first time, users are required to register by answering a short questionnaire. The bulletin board is menu-driven, and detailed instructions for downloading files are provided. The Supplemental Notice cannot be read on-line, but can be easily downloaded and saved.

The bulletin board parameters are as follows:

Telephone number: (202) 267–5205, or 1–800–224–6287 via FAA Corporate Bulletin Board
Data bits: 8
Parity: None
Stop bits: 1
Baud rate: 300/1200/2400/9600/14400
System operator: Jeff Rapol, AAS–200 (202) 267–7474

SUPPLEMENTARY INFORMATION:

Participation at the Meeting

Requests from persons who wish to participate at the public meeting should be received by the FAA no later than September 15, 1995. Such requests should be submitted to Mayte Agosto as listed in the section title **FOR FURTHER INFORMATION CONTACT** and should include a statement of the interest represented by the speaker, e.g., as a representative of an airport proprietor, an air carrier, a foreign air carrier, or other aeronautical user. Requests received after the date specified above will be scheduled if they can be accommodated, but in view of the format for presentation, as discussed below, accommodation of late requests cannot be assured. The FAA will prepare an agenda of speakers that will be available at the time of the meeting.

Background

On September 8, 1995, the DOT and FAA jointly published in the **Federal Register** a supplemental notice of proposed policy regarding fair and reasonable nondiscriminatory airport rates and charges. Specifically, the supplemental notice of proposed policy sets forth proposed revisions to the interim final policy on airport rates and charges published jointly by the DOT and FAA on February 3, 1995 (60 FR 6906). In the February 3 publication, DOT/FAA requested comments on the interim policy, and the supplemental notice reflects DOT/FAA consideration of the comments received. DOT/FAA have published the supplemental notice of proposed policy for comment and are conducting public meetings to assure that any modifications in the interim policy are based on as full an understanding of the industry practices as possible and to provide a full opportunity for industry input into the policy. The meetings will be structured to permit informal discussion among the various interested parties rather than simply delivery of prepared comments for the record.

Meeting Procedures

The following procedures are established to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who have requested in advance to participate. Registration will be available on the day of the meeting (between 9:00 a.m. and 10:00 a.m.). However, in view of the format of the meetings, there is no assurance that persons who register on the day of the meeting will have the opportunity to fully participate.

(2) There will be a morning and afternoon break as well as a break for lunch.

(3) The meeting may adjourn early if scheduled panels of speakers complete their presentations in less time than is scheduled for the meeting.

(4) DOT/FAA will try to accommodate all speakers in the context of the format for this public meeting. However, the FAA reserves the right to exclude some speakers if necessary to assure that all panels represent a balance of viewpoints and concerns.

(5) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested at the above number by September 15, 1995.

(6) Representatives of the FAA will preside over the meeting. A panel of DOT and FAA personnel will hear comments and question other participants. Presentations by commenters will be made on panels of up to 5 persons, rather than individually. The Department will assign interested persons to panels before the meeting, and will attempt to have each panel representative of different segments of the industry. At a minimum, each panel should include both airline and airport representatives.

(7) Each participant on a panel may make a brief opening statement and submit written materials for the record. After completion of the statements by all members of the panel, agency personnel will question commenters on their statements and views, and may inquire into commenters' experience with specific industry practices. Appropriate questions may be directed by one panel member to another, through the agency moderator. Questions and comments from the floor will be taken if time permits.

(8) Opening statements will be limited to 2 minutes. Each panel will be limited to no more then one hour. The meeting will include as many panels as are necessary to accommodate all interested commenters.

(9) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

(10) The DOT/FAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or information related to the proposed policy statement may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(11) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA.

Issued in Washington, DC, on September 8, 1995.

Cynthia Rich,

Assistant Administrator for Airports.

[FR Doc. 95–22735 Filed 9–11–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974, as Amended; New System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of proposed system of records.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), proposes to add a new record system entitled "Payment Records for Other than Regular Recurring Benefit Payments—Treasury/Financial Management Service—Treasury/FMS .016," to its inventory of systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: Comments must be received no later than October 12, 1995. The proposed system of records will be effective October 23, 1995, unless FMS receives comments which would result in a contrary determination.

ADDRESSES: Comments must be submitted to Debt Management Services, Financial Management Service, 401 14th Street, SW, Room 151, Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Debt Management Services, (202) 874–6660.

SUPPLEMENTARY INFORMATION: The purpose of this system is to facilitate the disbursement of Federal payments to individuals, corporations and other entities. Currently, FMS has a system of records entitled "Payment Issue Records for Regular Recurring Benefit Payments—Treasury/FMS .002," however, this system of records covers only six types of Federal payments. The proposed system is intended to include all records for payments not included in Treasury/FMS .002 such as vendor payments, Federal salary payments, and Veterans' benefit payments.

FMS is the central disbursing source for the Federal Government and currently receives recurring and non-recurring payment certification records from departments and agencies of the Government.

Currently, information contained in the payment records of FMS (not included in Treasury/FMS .002) is not retrievable by personal identifier, and these records have not been considered a "system of records" under the Privacy Act of 1974.

FMS has been designated by the Office of Management and Budget as the lead agency in credit management and debt collection for the Federal Government. FMS is establishing this system of records to more effectively apply certain debt collection tools established under Federal law such as tax refund offset under section 31 U.S.C. 3720A, administrative offset under 31 U.S.C. 3716, and Federal employee salary offset under 5 U.S.C. 5514. FMS also intends to use this system to report vendor payments to the Internal Revenue Service (IRS) in accordance with 26 U.S.C. 6041.

In order to facilitate the collection of delinquent debts and the reporting of vendor payments to IRS, FMS intends to obtain personal identifier(s) as part of payment certifications received from departments and agencies. This action will not result in any additional data collection from the public since the departments and agencies already have this information. However, it will change the status of the non-recurring payment records maintained by FMS to a "system of records" as defined by the Privacy Act of 1974.

Given the nature of the information that will be maintained and its proposed use, the Privacy Act of 1974, as amended, 5 U.S.C. 552a, requires FMS to give general notice and seek public comments.

The new system report, as required by the Privacy Act of 1974, was submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated July 15, 1994 (59 FR 37914, July 25, 1994).

Dated: August 29, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

Treasury/FMS .016

SYSTEM NAME:

Payment Records for Other Than Regular Recurring Benefit Payments-Treasury/Financial Management Service.

SYSTEM LOCATION:

The Financial Management Service, U.S. Department of the Treasury, Washington, DC 20227. Records maintained at Financial Centers in six regions: Austin, TX; Birmingham, AL; Chicago, IL; Kansas City, MO; Philadelphia, PA; and San Francisco, CA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the intended recipients or recipients of payments from the United States Government, and for whom vouchers have been certified for payment by departments or agencies and sent to FMS for disbursement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payment records showing name, social security or employer identification number or other agency identification number, address, payment amount, date of issuance, check number and symbol or other payment identification number, routing number of the payee's financial institution and the payee's account number at the financial institution, vendor contract and/or purchase order, and the name and location number of the certifying department or agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 6166, dated June 10, 1933.

PURPOSE:

To facilitate disbursement of Federal monies to individuals by check or electronically, authorized under various programs of the Federal Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used to: (1) Disclose to the banking industry for payment verification; (2) disclose to Federal agencies, departments and agencies for whom payments are made, and payees; (3) disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (4) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (5) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (6) disclose information to foreign governments in accordance with formal or informal international agreements; (7) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (8) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (9) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (10) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (11) disclose information concerning delinquent debtors to Federal creditor agencies, their employees, or their agents for the purpose of facilitating or conducting Federal administrative offset, Federal tax refund offset, Federal salary offset, or for any other authorized debt collection purpose; and (12) disclose to the Defense Manpower Data Center and the United States Postal Service and other Federal agencies through authorized computer matching programs for the purpose of identifying and locating individuals who are delinquent in their repayment of debts owed to the Department or other Federal agencies in order to collect those debts through salary offset and administrative offset, or by the use of other debt collection tools.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage is on magnetic media and hard copy.

RETRIEVABILITY:

Records are retrieved by name, employer identification number (EIN) and social security number.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. Records are kept in limited access areas during duty hours and in locked cabinets at all other times. Records are password protected and are maintained in a building subject to 24-hour security.

RETENTION AND DISPOSAL:

Records are retained for three years. Records are disposed of in accordance with Treasury Directive 25–02, Records Disposition Management Program.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief Disbursing Officer, Financial Management Service, 401 14th Street, SW, Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be sent to the Disclosure Officer at 401 14th Street, SW, Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The System Manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is obtained from vouchers, payment tapes and electronic data transmissions via the Electronic Certification System by departments and agencies for whom payments are made.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–22553 Filed 9–11–95; 8:45 am]

BILLING CODE 4810–35–P

Fiscal Service

[Dept. Circ. 570, 1995 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; RLI Insurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revision, on page 34446 to reflect this addition:

RLI Insurance Company BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, Illinois 61615 PHONE: (309) 692–1000. UNDERWRITING LIMITATION *b/*: $11,642,000. SURETY LICENSES *c/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/7034/6953/6872 or by purchasing a hard copy from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

For further assistance, contact the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6905 or (202) 874–9978 (fax).

Dated: August 23, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–22623 Filed 9–11–95; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Services Cooperative Studies Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409 that a meeting of the Medical Research Services Evaluation Committee will be held at the Back Bay

Hilton Hotel, 40 Dalton Street, Boston, MA on November 7–8, 1995. The session on November 7 is scheduled to begin at 7:30 a.m. and end at 5:30 p.m. and on November 8 from 7:30 a.m. to 6:00 p.m. The meeting will be for the purpose of reviewing six new protocols for multi-hospital clinical trials: one on treatment of PTSD; one on treatment of alcoholism; one on atherosclerosis; one on prevention of skin cancer; one on atrial fibrillation; one on vascular surgery and the progress of two on-going cooperative studies, one on aneurysm detection and one on cholesterol and heart diseases.

The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 a.m. to 8:00 a.m. on both days to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Medical Research Service Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC (202–565–7154), prior to October 15, 1995.

The meeting will be closed from 8:00 a.m. to 5:30 p.m. on November 7, 1995 and from 8:00 a.m. to 6:00 p.m. on November 8, 1995 for consideration of specific proposal in accordance with provisions set forth in section 10(d) of Pub. L. 92–463, as amended by section 5(c) of Pub. L. 94–409, and 5 U.S.C. 552b (c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 31, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–22554 Filed 9–11–95;8:45am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 176
Tuesday, September 12, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORDS REVIEW BOARD

TIME AND DATE: 9:00 a.m., September 20–21, 1995.

PLACE: ARRB, 600 E Street, NW, 2nd Floor, Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

September 20, 9:00 a.m.: Closed Meeting

1. Review and Accept Minutes of August Closed Meetings.
2. Review of Assassination Records.
3. Other Business.

September 21, 9:00 a.m.: Open Meeting

1. Review and Accept Minutes of August 3 Open Meeting.
2. Discuss and Vote on Privacy Act Regulation and other notices for **Federal Register**.
3. Other Business.

September 21, 10:00 a.m.: Continuation of Closed Meeting

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 95–22706 Filed 9–8–95; 8:45 am]

BILLING CODE 6820-TD-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Notice is hereby given of an open meeting of the Defense Nuclear Facilities Safety Board (Board) with representatives of the Department of Energy (DOE) regarding the Department's standards-based safety management program. The purpose of the meeting is twofold: (1) For DOE to provide information to the Board regarding the status of DOE's review and revision of nuclear safety Orders and rules, and (2) to allow the Deputy Secretary of Energy to obtain the preliminary advice of individual Board members in identifying any significant safety issues raised by the Board's review of draft revisions to date. No Board decision will be reached, nor will agency business be finally disposed of during the session. This meeting is noticed pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice of the open meeting is a part of the Board's continuing effort to inform the public regarding DOE's standards-based safety management program.

TIME AND DATE: 10:00 a.m., September 20, 1995.

PLACE: The Department of Energy, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board and the Deputy Secretary of Energy will convene a joint consultative session regarding DOE's standards-based safety management program. 42 U.S.C. § 2286b requires the Board to continuously review and evaluate the content and implementation of standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of DOE. Those standards include rules, DOE safety Orders, and other-requirements. The Board, acting pursuant to its enabling statute, has issued a series of recommendations (most notably 90–2 and 94–5) designed to foster the development of an effective standards-based nuclear safety program within DOE. The Secretary of Energy has accepted each of these recommendations. In the meantime, DOE is engaged in a number of initiatives designed to simplify existing safety Orders and to promulgate new and more effective safety rules. The Secretary of Energy's commitment to implementing Board recommendations calling for an effective standards-based safety management program will require careful integration with these recent DOE initiatives. The Board has already held two open Board meetings regarding its review of DOE efforts to revise and improve nuclear safety requirements. This will be the third session in that series. Since the Board's statutory responsibility for oversight of nuclear safety standards for DOE facilities is a continuing one, additional meetings are anticipated.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Anderson, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTAL INFORMATION: DOE has the responsibility to conduct its operations in a manner that protects public health and safety and the environment. One of the ways that DOE accomplishes this is through its rules, orders, and directives systems, which directly govern the conduct of DOE's defense nuclear activities.

The Board has a responsibility for oversight of DOE's development of nuclear health and safety requirements at defense nuclear facilities. DOE is now embarked upon a transition from the use of safety Orders to rules to manage its requirements-based safety program. The Board's most recent effort to ensure that the "good engineering practices" codified in DOE's safety Orders are maintained was expressed in its Recommendation 94–5, dated December 29, 1995. Recommendation 94–5, in its entirety, is on file in DOE's Public Reading Rooms, at the Defense Nuclear Facilities Safety Board's Washington office, and on the Internet through access to the Board's electronic bulletin board at the following address: gopher://gopher.dnfsb.gov:7070. It is also set forth in the **Federal Register** at 60 FR 2089.

The Deputy Secretary of Energy seeks early notice of any safety issues which the Board may have identified in the draft revised rules and Orders. In accord with the statute establishing the Board, a public session will be conducted in which individual Board members may provide preliminary advice to the Deputy Secretary on matters needing further DOE review and to receive information from DOE on how rules, Orders, and other safety requirements are being revised and integrated into an overall safety management program for defense nuclear facilities.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office.

The Board also intends to notice and conduct further public hearings pursuant to 42 U.S.C. § 2286b, at a later date, to assess DOE's progress in implementing an effective standards-based safety program for DOE's defense nuclear facilities and to assure that DOE's activities in streamlining DOE's nuclear safety order system and converting to a regulatory program do not eliminate the engineering practices

now codified in its safety Orders that are necessary to adequately protect public health and safety.

Dated: September 8, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–22770 Filed 9–8–95; 3:06 pm]

BILLING CODE 3670-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 18, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–22774 Filed 9–8–95; 3:07 pm]

BILLING CODE 6210-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 11, 18, 25, and October 2, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of September 11

Monday, September 11

1:30 p.m.
  Briefing on Status of Watts Bar Licensing (Public Meeting)
  (Contact: Steve Varga, 301–415–1403)
3:30 p.m.
  Affirmation Session (Public Meeting)
  (Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
  a. Revisions to Regulatory Requirements for Reactor Pressure Vessel Integrity in 10 CFR Part 50 (Tentative)
  b. Final Amendment to 10 CFR Part 50, Appendix J, "Containment Leakage Testing," to Adopt Performance-Oriented and Risk-Based Approaches (Tentative)
  (Contact: Andrew Bates, 301–415–1963)

Tuesday, September 12

10:30 a.m. and 1:30 p.m.
  All Employees Meetings (Public Meetings) on "The Green" Plaza Area between buildings at White Flint
  (Contact: Beth Hayden, 301–415–8200)

Week of September 18—Tentative

There are no meetings scheduled for the Week of September 18.

Week of September 25—Tentative

There are no meetings scheduled for the Week of September 25.

Week of October 2—Tentative

Tuesday, October 3

10:00 a.m.
  Briefing by National Academy of Sciences (NAS) on Recommendations for Technical Bases of Yucca Mountain Standards (Public Meeting)

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: September 7, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–22704 Filed 9–8–95; 11:21 am]

BILLING CODE 7590-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming quarterly meeting of the Board of Directors.

DATE: A regular open meeting will be held Wednesday, September 27, 1995, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, N.W., Washington, D.C.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: September 7, 1995.

Lester M. Hunkele III,

Executive Director.

[FR Doc. 95–22663 Filed 9–7–95; 4:57 pm]

BILLING CODE 7630-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 11, 1995.

A closed meeting will be held on Thursday, September 14, 1995, at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 14, 1995, at 10:30 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 7, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–22710 Filed 9–8–95; 11:24 am]

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federal register

Tuesday
September 12, 1995

Part II

Department of Transportation

Federal Transit Administration

49 CFR Part 661

Buy America Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–95–471]

RIN 2132–AA42

Buy America Requirements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking seeks to implement section 1048 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240) (ISTEA), which amended the Federal Transit Administration's (FTA) Buy America requirements. FTA requests comments on its proposed implementation of the statutory provisions and on other proposed amendments intended to update and clarify its Buy America regulation, 49 CFR Part 661.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: All comments concerning these proposed regulations should be sent to Docket Clerk, Docket No. FTA–95–471, Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Office of the Chief Counsel, (202) 366–1936.

SUPPLEMENTARY INFORMATION:

I. The ISTEA Amendments

A. Addition of "Iron" (§§ 661.5(a)–(c))

Section 1048 of ISTEA amends 49 U.S.C. 5323(j) by adding "iron" to the products covered, and by inserting two new subsections concerning waivers of the Buy America requirements. By adding the word "iron," Congress has extended Buy America protection to iron and iron products, in addition to steel and manufactured products, which were previously protected. FTA intends to amend 49 CFR 661.5 (a) and (b) to reflect this statutory amendment. FTA also proposes to amend 49 CFR 661.5(c) to specify that both the iron and steel requirements apply to items made primarily from those materials and used in construction and rail projects. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock. FTA seeks comment on this proposed amendment of 49 CFR 661.5(c).

B. Intentional Violations (§ 661.18)

Section 1048(b) amends 49 U.S.C. 5323(j) by inserting subsection (5), which states that any person determined by a Federal agency or court to have affixed a false "Made In America" label to or misrepresented the origin of a foreign product, shall be ineligible to receive contracts funded by ISTEA, pursuant to suspension and debarment proceedings. FTA intends to add new section 661.18 to implement this statutory change.

C. Limitation on Applicability of Waivers (§ 661.7)

Section 1048(b) also amends 49 U.S.C. 5323(j) by adding subsection (4), which provides that if a foreign country is party to an agreement with the United States under which the Buy America requirements are waived, and the foreign country violates the agreement by discriminating against U.S. goods, products from that country shall not be eligible for waivers under 49 U.S.C. 5323(j). FTA notes that there is currently no agreement between the United States and a foreign country which waives the Buy America requirements. FTA therefore considers this provision inoperative at the present time. FTA intends to amend 49 CFR 661.7 to add a new subsection that will reflect this statutory change, and seeks comment on whether its conclusion that 49 U.S.C. 5323(j)(4) is not applicable at this time requires further discussion or expansion.

II. Amendments to Update and Clarify the Buy America Regulation

FTA also seeks to update the regulation by removing provisions that are no longer applicable, and to clarify certain other provisions.

A. Definition of "Component" (§ 661.3)

49 CFR Part 661, consistent with the Surface Transportation Assistance Act of 1982 (STAA) and the Surface Transportation and Uniform Relocation Assistance Act (STURAA), establishes separate requirements for manufactured products and for rolling stock. To be considered domestic, rolling stock must be assembled in the United States and 60 percent of its components, by cost, must be of U.S. origin. For a manufactured product to be considered domestic, all manufacturing processes must take place in the United States and all of its components must be of U.S. origin. In both cases, then, to determine compliance with the Buy America requirements, it is necessary to identify those parts of a product which may be considered components.

Section 661.11, which sets out the separate requirements for rolling stock, defines, at subsection (e), component as "any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location."

However, many suppliers of manufactured products have pointed out to the FTA that neither section 661.3 (general definitions) nor section 661.5 (requirements for manufactured products) contains a similar definition of component. They have therefore asked FTA for guidance in determining what constitutes a component of a manufactured product.

FTA notes that the definition of component of subsection 661.11(e) parallels that of the Federal Acquisition Regulations implementing the Buy American Act of 1933 (49 U.S.C. § 10a–d), which applies to manufactured products generally. FTA therefore considers that it is appropriate to apply this definition to components of manufactured products as well as to components of rolling stock. Accordingly, FTA proposes to add it to the definitions provision of the regulation, section 661.11(3).

B. Component Requirement for Manufactured Products (§ 661.5(d)(2))

Section 165(b)(3) of the STAA, as amended by section 337 of STURAA, imposes domestic preference requirements on the subcomponents of components of rolling stock and associated equipment. No such similar statutory changes were made to section 165(a) for manufactured products. Therefore, the agency concluded that a manufactured product is of domestic origin if it is manufactured in the United States. In other words, in determining the origin of a component of a manufactured product governed by section 165(a), FTA will look only to where the product is manufactured, and will not look to the origin of the various materials included in the product during the manufacturing process.

However, subsection 661.5(d)(2) of the regulation provides that for a manufactured product to be considered of U.S. origin, "all items or material used in the product must be of United States origin." In FTA's experience, the language of this provision has often created the incorrect assumption that in determining the origin of a manufactured product, FTA will consider all of its material content, even at the subcomponent level and below. In order to correct this misperception, FTA proposes to amend subsection 661.5(d)(2) to state that for a

manufactured product to be considered of domestic origin, all of its components must be of United States origin. This amended provision will also state that a component will be considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

C. Determination of Grandfathered Companies (§ 661.10)

Section 337 of the STURAA provided for a gradual increase in the domestic content requirements for buses and other rolling stock from 50 percent to 60 percent. Section 337(a)(2)(B) of STURAA stated that these revised requirements would not apply to any contract entered into prior to April 1, 1992, with any supplier or contractor or any successor in interest or assignee which had complied with the previous domestic content requirements. Section 661.10 of the regulation sets out the criteria for determining whether a company could qualify for grandfather treatment.

Since the April 1, 1992, deadline has elapsed, and since there is little likelihood that contracts for rolling stock executed prior to that date are still outstanding, FTA will delete this grandfather provision from its Buy America regulation.

D. Domestic Content Requirements for Rolling Stock (§§ 661.11(a)–(d))

As indicated above, section 337 of STURAA provided for a gradual increase in the domestic content for rolling stock from the previous 50 percent level to 55 percent for contracts entered into after October 1, 1989, and to 60 percent for contracts entered into after October 1, 1991, and after April 1, 1992, for grandfathered companies. 49 CFR 661.11 (b) and (c) implemented these statutory provisions. Since the 60 percent domestic content requirement is now in effect for all contracts executed after April 1, 1992, FTA intends to delete subsections 661.11 (b) and (c) and to amend subsection 661.11(a) to reflect this change. Subsections (k) and (n) will also be revised to indicate that the 60 percent domestic content requirements also apply to components of rolling stock. The remaining subsections of 49 CFR 661.11 will be re-numbered accordingly.

E. Request for Comments

FTA requests comments on any of the amendments proposed today. In addition to those matters, FTA requests recommendations or proposals for other amendments which could further clarify the regulation or facilitate its implementation.

III. Regulatory Impacts

A. Executive Order 12866

FTA has determined that this action is not significant under Executive Order 12866 or the regulatory policies and procedures of Department of Transportation regulatory policies and procedures. Since this final rule makes only technical amendments to current regulatory language, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), as added by the Regulatory Flexibility Act, Pub. L. 96–354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

C. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

D. Executive Order 12612

This action has been reviewed under Executive Order 12612 on Federalism and FTA has determined that it does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policy making or administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge the traditional State governmental functions or otherwise affect any aspect of State sovereignty.

IV. List of Subjects in 49 CFR Part 661

Buy America, Domestic preference requirement, Government contracts, Grant programs-Transportation, Mass transportation.

V. Proposed Amendments to 49 CFR Part 661

Accordingly, for the reasons described in the preamble, it is proposed that Part 661 of Title 49 of the Code of Federal Regulations be amended as follows:

PART 661—[AMENDED]

1. By revising the authority citation to read as follows:

Authority: 49 U.S.C. 5323(j) (formerly Sec. 165, Pub. L. 97–424; as amended by sec. 337, Pub. L. 100–17 and sec. 1048, Pub. L. 102–240); 49 CFR 1.51.

2. By adding in alphabetical order a definition of "Component" to § 661.3 to read as follows:

§ 661.3 Definitions.

* * * * *

Component means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location.

* * * * *

3. By revising § 661.5 to read as follows:

§ 661.5 General requirements.

(a) Except as provided in §§ 661.7 and 661.11 of this part, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

(b) All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

(c) The steel and iron requirements apply to all items made primarily of steel and iron including, but not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock.

(d) For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

4. By adding new 661.7(h) to read as follows:

§ 661.7 Waivers.

* * * * *

(h) The provisions of this section shall not apply to products produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, determines that:

(1) That foreign country is party to an agreement with the United States pursuant to which the head of an agency of the United States has waived the requirements of this section; and

(2) That foreign country has violated the terms of the agreement by discriminating against products covered by this section that are produced in the United States and are covered by the agreement.

§ 661.10 [Removed]

5. By deleting § 661.10.

6. By revising § 661.11 to read as follows:

§ 661.11 Rolling stock procurements.

(a) The provisions of § 661.5 do not apply to the procurement of buses and other rolling stock (including train control, communication, and traction power equipment), if the cost of components produced in the United States is more than 60 percent of the cost of all components and final assembly takes place in the United States.

(b) The domestic content requirements in paragraph (a) of this section also apply to the domestic content requirements for components set forth in paragraphs (i),(j), and (l) of this section.

(c) A component is any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an end product at the final assembly location.

(d) A component may be manufactured at the final assembly location if the manufacturing process to produce the component is a separate and distinct activity from the final assembly of the end product.

(e) A component is considered to be manufactured if there are sufficient activities taking place to advance the value or improve the condition of the subcomponents of that component; that is, if the subcomponents have been substantially transformed or merged into a new and functionally different article.

(f) Except as provided in paragraph (k) of this section, a subcomponent is any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component (as defined in paragraph (c) of this section) in the manufacturing process and that is incorporated directly into a component.

(g) For a component to be of domestic origin, more than 60 percent of the subcomponents of that component, by cost, must be of domestic origin and the manufacture of the component must take place in the United States. If, under the terms of this part, a component is determined to be of domestic origin, its entire cost may be used in calculating the cost of domestic content of an end product.

(h) A subcomponent is of domestic origin if it is manufactured in the United States.

(i) If a subcomponent manufactured in the United States is exported for inclusion in a component that is manufactured outside the United States and it receives tariff exemptions under the procedures set forth in 19 CFR 10.11 through 10.24, the subcomponent retains its domestic identity and can be included in the calculation of the domestic content of an end product even if such a subcomponent represents less than 60 percent of the cost of a particular component.

(j) If a subcomponent manufactured in the United States is exported for inclusion in a component manufactured outside the United States and it does not receive tariff exemption under the procedures set forth in 19 CFR 10.11 through 10.24, the subcomponent loses its domestic identity and cannot be included in the calculation of the domestic content of an end product.

(k) Raw materials produced in the United States and then exported for incorporation into a component are not considered to be a subcomponent for the purpose of calculating domestic content. The value of such raw materials is to be included in the cost of the foreign component.

(l) If a component is manufactured in the United States, but contains less than 60 percent domestic subcomponents, by cost, the cost of the domestic subcomponents and the cost of manufacturing the component may be included in the calculation of the domestic content of the end product.

(m) For purposes of this section, except as provided in paragraph (o) of this section:

(1) The cost of a component or a subcomponent is the price that a bidder or offeror must pay to a subcontractor or supplier for that component or subcomponent. Transportation costs to the final assembly location must be included in calculating the cost of a component. Applicable duties must be included in determining the cost of foreign components and subcomponents.

(2) If a component or subcomponent is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into the component or subcomponent, an allowance for profit, and the administrative and overhead costs attributable to that component or subcomponent under normal accounting principles.

(n) The cost of a component of foreign origin is set at the time the bidder or offeror executes the appropriate Buy America certificate.

(o) The cost of a subcomponent that retains its domestic identity consistent with paragraph (j) of this section shall be the cost of the subcomponent when last purchased, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers or, if no purchase was made, the value of the subcomponent at the time of its shipment for exportation, f.o.b. United States port of exportation or point of border crossing, as set out in the invoice and entry papers.

(p) In accordance with 49 U.S.C. 5323(j), labor costs involved in final assembly shall not be included in calculating component costs.

(q) The actual cost, not the bid price, of a component is to be considered in calculating domestic content.

(r) Final assembly is the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes. If a system is being procured as the end product by the grantee, the installation of the system qualifies as final assembly.

(s) An end product means any item subject to 49 U.S.C. 5323(j), that is to be acquired by a grantee, as specified in the overall project contract.

(t) Train control equipment includes, but is not limited to, the following equipment:

(1) Mimic board in central control.
(2) Dispatcher's console.
(3) Local control panels.
(4) Station (way side) block control relay cabinets.
(5) Terminal dispatcher machines.
(6) Cable/cable trays.
(7) Switch machines.
(8) Way side signals.
(9) Impedance bonds.
(10) Relay rack bungalows.
(11) Central computer control.
(12) Brake equipment.
(13) Brake systems.

(u) Communication equipment includes, but is not limited to, the following equipment:

(1) Radios.
(2) Space station transmitter and receivers.
(3) Vehicular and hand-held radios.
(4) PABX telephone switching equipment.
(5) PABX telephone instruments.
(6) Public address amplifiers.
(7) Public address speakers.
(8) Cable transmission system cable.
(9) Cable transmission system multiplex equipment.
(10) Communication console at central control.
(11) Uninterruptible power supply inverters/rectifiers.
(12) Uninterruptible power supply batteries.
(13) Data transmission system central processors.
(14) Data transmission system remote terminals.
(15) Line printers for data transmission system.

(16) Communication system monitor test panel.
(17) Security console at central control.

(v) Traction power equipment includes, but is not limited to the following:

(1) Primary AC switch gear.
(2) Primary AC transformers (rectifier).
(3) DC switch gear.
(4) Traction power console and CRT display system at central control.
(5) Bus ducts with buses (AC and DC).
(6) Batteries.
(7) Traction power rectifier assemblies.
(8) Distribution panels (AC and DC).
(9) Facility step-down transformers.
(10) Motor control centers (facility use only).
(11) Battery chargers.
(12) Supervisory control panel.
(13) Annunciator panels.
(14) Low voltage facility distribution switch board.
1(5) DC connect switches.
(16) Negative bus boxes.
(17) Power rail insulators.
(18) Power cables (AC and DC).
(19) Cable trays.
(20) Instrumentation for traction power equipment.
(21) Connectors, tensioners, and insulators for overhead power wire systems.
(22) Negative drainage boards.
(23) Inverters.
(24) Traction motors.
(25) Propulsion gear boxes.
(26) Third rail pick-up equipment.
(27) Pantographs.

(w) The power or third rail is not considered traction power equipment and is thus subject to the requirements of 49 U.S.C. 5323(j) and the requirements of § 661.5.

(x) A bidder on a contract for an item covered by 49 U.S.C. 5323(j) who will comply with section 165(b)(3) and regulations in this section is not required to follow the application for waiver procedures set out in § 661.9. In lieu of these procedures, the bidder must submit the appropriate certificate required by § 661.12.

7. By adding § 661.18 to read as follows:

§ 661.18 Intentional violations.

Any person shall be ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 pursuant to the debarment and suspension proceedings under part 29 of this title if it has been determined by a court or Federal agency that any person intentionally—

(a) Affixed a label bearing a "Made in America" inscription, or an inscription with the same meaning, to a product not made in the United States, but sold in or shipped to the United States and used in projects to which this section applies, or

(b) Otherwise represented that any such product was produced in the United States.

Issued on: September 5, 1995.

Gordon J. Linton,

Administrator.

[FR Doc. 95–22499 Filed 9–11–95; 8:45 am]

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Tuesday
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Part III

The President

Proclamation 6819—America Goes Back to School

Proclamation 6820—Classical Music Month

Federal Register
Vol. 60, No. 176
Tuesday, September 12, 1995

Presidential Documents

Title 3—

The President

Proclamation 6819 of September 8, 1995

America Goes Back to School, 1995

By the President of the United States of America

A Proclamation

The beginning of a new school year is a time of renewal and anticipation for families, educators, and communities across America. Teachers ready their classrooms and curricula; law enforcement officers redouble their efforts to keep neighborhoods safe and drug-free; businesses work with schools to create stronger partnerships; and parents everywhere encourage their children to look forward to the challenges ahead.

This time of year also provides us with an occasion to renew our faith in the promise of education—the spark that lights our ambitions and gives us the tools to grow and succeed. To ensure America's continued leadership in the coming century, we must empower every citizen with the knowledge and training necessary to meet new and varied challenges. The generation of young people in school today deserves our Nation's pledge to help them get on the right course and make the most of their lives.

Improving education means strengthening families and schools. Families are responsible for raising children, and parents are their first and most important teachers. Schools are responsible for providing children with quality education and meaningful guidance. But schools and families cannot do it alone. Instead, religious organizations, community leaders, older Americans, volunteer groups, service agencies, industries, and every caring individual must work together, realizing that the complexity of our diverse and changing society demands innovative and effective solutions for helping our children embrace the values of good citizenship.

In March 1994 I signed into law the Goals 2000: Educate America Act, which supports grassroots efforts to help schoolchildren meet high standards for achievement and discipline. School-to-Work programs are uniting businesses, community colleges, and high schools to provide work-study experience and technical expertise, and a new system of direct loans is making a college education more affordable and accessible. This year the Department of Education is deepening its commitment to parent and community involvement by joining the Family Involvement Partnership for Learning to sponsor America Goes Back to School: A Place for Families and the Community. This initiative encourages all Americans to take part in the drive for excellence in education. I am proud that the Department has acted boldly to foster support for America's families and students.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 11 through September 18, 1995, as a time when "America Goes Back to School." I call upon parents, community and State leaders, businesses, civic and religious organizations, and all our citizens to observe this period with appropriate ceremonies and activities expressing support for schools and colleges, children and families, and to continue their active involvement on behalf of America's students throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–22838
Filed 9–11–95; 10:46 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6820 of September 9, 1995

Classical Music Month, 1995

By the President of the United States of America

A Proclamation

Classical music is one of the glories of the world, a living tradition that enriches the lives of millions of Americans. In the concert halls of our bustling cities, in the community centers of our small towns, and in countless homes everywhere, classical music brings joy and inspiration to our citizens. Its phrases and themes have long spoken to our national love of beauty and our common passion for spirited expression.

More than one hundred years ago, the Bohemian composer Antonín Dvořák came to America—traveling from New York to Iowa to admire the awesome potential of this great land. The New World Symphony, Dvořák's tribute to our country, touches us still with its references to the music of Native American and African American people.

Indeed, classical music is a universal language. Whether the musicians speak English, Spanish, Russian, Japanese, or Hebrew, all recognize the same notes. Whatever cultural tradition is evoked by its cords and rhythms, classical music stirs emotions we all share. Among the many music lovers gathered to enjoy a performance, each individual listener feels the powerful dynamism of music's resonant voice.

This month, let us celebrate the artistic excellence that brings classical music to life. We honor the many remarkable composers, conductors, and performers of the past whose works continue to delight us, and we applaud today's musicians, whose talents remind us of the continuity and grandeur of the human experience. Each has contributed to the vast body of music that entertains and inspires people around the globe.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 1995, as "Classical Music Month." I call upon government officials, educators, community organizations, and all the people of the United States to observe this month with appropriate programs, ceremonies, and activities paying tribute to the extraordinary diversity and artistry of classical music.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–22839
Filed 9–11–95; 10:47 am]
Billing code 3195–01–P

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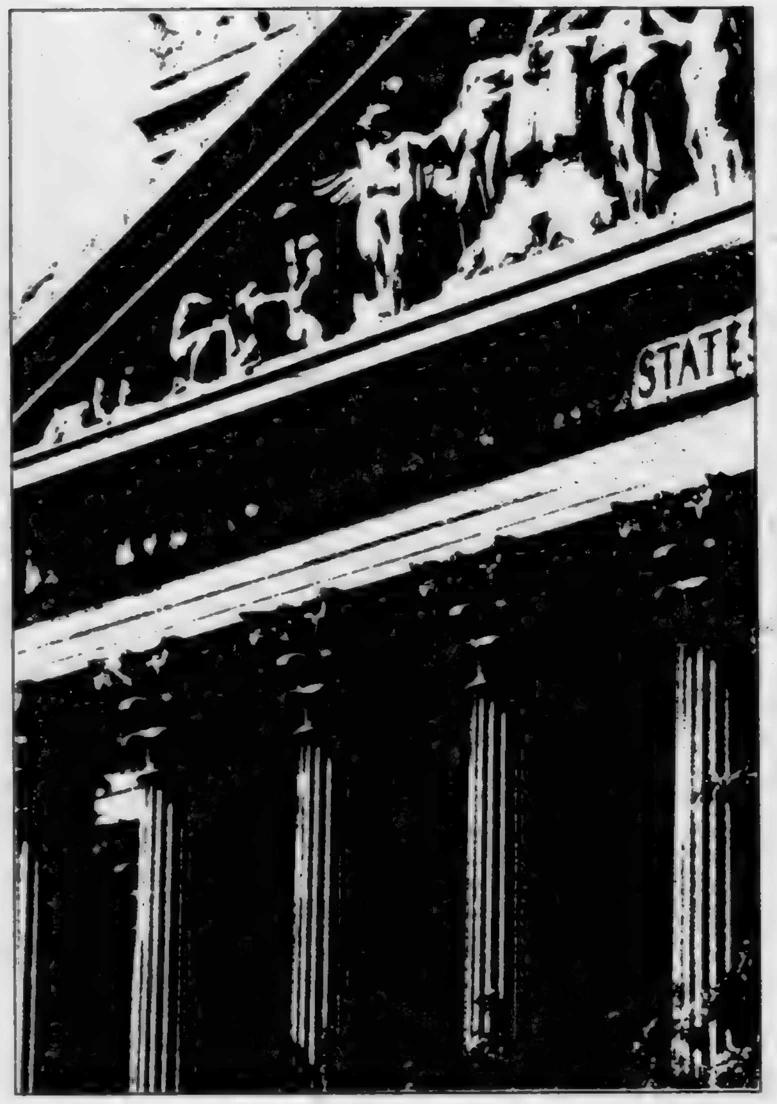

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 60, No. 177
Wednesday, September 13, 1995

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

5 CFR Part 4101

12 CFR Part 601

RIN 3052–AB50, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Farm Credit Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts as final an interim rule which supplements the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by the Office of Government Ethics (OGE). The final rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to FCA programs and operations. The final rule also repeals the FCA's current regulation on these subjects and replaces them with a single section that provides cross-references to the Executive Branch-wide Standards and financial disclosure regulations, as well as these new supplemental regulations.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Wendy R. Laguarda, Senior Attorney and Deputy Ethics Official, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4234, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On June 12, 1995, the FCA published an interim rule (60 FR 30778) and requested public comments thereon. The interim rule established regulations imposing prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; limitations on purchases of assets owned by Farm Credit System institutions, conservatorship or receivership assets, or certain assets held by the Farm Credit System Insurance Corporation; restrictions arising from the employment of relatives; a prohibition against involvement in Farm Credit System board member elections; and restrictions on outside employment and business activities. The interim rule also amended 12 CFR part 601 by removing §§ 601.100–601.102. A new § 601.100 was added to provide a cross-reference to the FCA's supplemental ethical conduct regulation, codified at 5 CFR part 4101, and the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635.

The FCA received no comments on the interim rule. Accordingly, the FCA Board adopts the interim rule adding 5 CFR part 4101 and amending 12 CFR part 601 which was published at 60 FR 30778 on June 12, 1995, as a final rule without change.

List of Subjects

5 CFR Part 4101

Conflicts of interests, Government employees.

12 CFR Part 601

Conflicts of interests.

Dated: August 31, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–22610 Filed 9–12–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Office of the Secretary, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends Import Regulation 1, Revision 7 which governs the administration of the import licensing system for certain dairy products. A license qualifies imports of certain dairy products for entry at the in-quota tariff rates established in the Harmonized Tariff Schedule of the United States (HTS). This rule implements the Uruguay Round Agreements Market access concessions.

DATES: This interim rule will be effective upon September 13, 1995. Comments should be submitted on or before October 30, 1995 to be assured of consideration.

ADDRESSES: Comments should be sent to the Dairy Import Quota Manager, Import Policies and Programs Division, AG Box 1021, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250–1021. All comments received will be available for public inspection in room 5541–S at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Warsack, Import Programs Group, Import Policies and Programs Division, AG Box 1021, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250–1021, or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866. It has been determined to be significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Office of the Secretary is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Paperwork Reduction Act

This information collection for this interim rule was approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under OMB control number 0551–0001, expiring June 30, 1997.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778. The provisions of this interim rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The interim rule would not have retroactive effect.

Background

This interim rule amends Import Regulation 1, Revision 7 ("Revision 7"), 7 CFR Part 6, which prescribes a system for licensing importation of certain articles of dairy products which are subject to tariff-rate quotas. Importers who hold licenses issued pursuant to Revision 7 may enter these articles at the applicable lower in-quota tariff rate; importers without license may enter these articles, but are required to pay duty at the applicable higher over-quota rate.

Tariff-rate quotas for certain articles of dairy products resulted from the Uruguay Round negotiations, and have been proclaimed in the Harmonized Tariff System of the United States ("HTS"). This interim rule is authorized by sections 103 and 404 of the Uruguay Round Agreements Act, and the notes to Chapter 4 and General Note 15 of the HTS.

In the Uruguay Round negotiations, the United States agreed to liberalize access to the U.S. market for imports of certain articles of dairy products. The United States agreed to convert the prior system of absolute quotas to a system of tariff-rate quotas. The United States also committed to increase, each year over a six-year period, the quantities of those articles that would be eligible for the lower in-quota rate of duty beyond the amounts that had been permitted to enter under the prior absolute quota system. Finally, the United States agreed to allocate those increased quantities among specified supplier countries.

The United States agreed to implement these commitments as of the dates on which the various supplier countries began to implement their own Uruguay Round Agreements market access concessions. For most supplier countries, this was January 1, 1995; however, there were six countries that did not begin to implement their Uruguay Round concessions until July 1, 1995.

The Uruguay Round concessions and access commitments on dairy products have required the United States to make changes in its system for regulating imports of dairy products. Under the prior regime of absolute quotas, an importer had to obtain a license in order to import an article of dairy products subject to a quota; with very limited exceptions no imports were permitted without a license. The new tariff-rate quota system will continue to operate on the basis of licenses but with a basic difference. A tariff-rate quota is essentially a two-tiered tariff system. An importer that obtains a license may enter a specified quantity of an article at the lower, in-quota rate of duty. An importer without a license will no longer be precluded from entering an article; he or she may enter the article, but will be assessed duty at the higher over-quota rate.

USDA began to implement the post-Uruguay Round system when it published an interim rule on January 6, 1995 (60 *Fed. Reg.* 1989–1996) amending Revision 7. That interim rule added a new Appendix 3 which specified the quantities of articles of dairy products that, effective January 1, 1995, had become available for supplementary licenses during quota year 1995. The quantities specified reflected U.S. commitments to those supplier countries who had implemented their own Uruguay Round access commitments on January 1, 1995. The January 6 interim rule also established new eligibility requirements for applicants seeking licenses for non-cheese articles listed in Appendix 3, and prescribed methods for allocating such non-cheese licenses. Finally, the January 1 interim rule changed various references in the text of the rule to reflect the conversion in the U.S. tariff system from the old Tariff Schedules of the United States ("TSUS") to the HTS.

On May 2, 1995, USDA published a second interim rule (60 FR 21425–28), again amending Revision 7 by revising Appendix 3 to reflect additional amounts of dairy products that became available, effective July 1, 1995, for supplementary licenses. These increases implemented U.S. access commitments to the six countries who had begun to implement their own access commitments effective July 1, 1995.

This interim rule again amends Appendix 3 to reflect additional quantities of cheese and cheese products that will be eligible, effective January 1, 1996, for supplementary license. These increases reflect the additional amounts of access required to fulfill the second year of the six-year commitment. This interim rule also changes, from August 1 to October 1, the first day on which an application for nonhistorical and supplementary license may be postmarked to receive consideration. Finally, it modifies the eligibility requirements for supplementary licenses for non-cheese articles by changing the time period during which entries or exports of dairy products have to occur.

Although this interim rule, like the two previous interim rules, reflects only modest adjustments in the basis operation of the dairy products import system, USDA anticipates that it will soon propose more fundamental changes to the system. On June 2, 1994, USDA published an Advance Notice of Proposed Rulemaking (59 *Fed. Reg.* 28495) seeking public comment and suggestions about ways to operate the system of dairy product importation. Subsequently, on March 10, 1995, USDA held a public hearing at which interested parties voiced their views and comments on the current system and presented their suggestions about changes or revisions to the system. Having had the benefit of these public comments, USDA plans to publish a proposed rule in the near future.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, and Imports.

Interim Rule

Accordingly, 7 CFR Part 6, Subpart—Tariff-Rate Quotas is amended as follows:

1. The authority citation is revised to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 and 4959 (19 U.S.C. 3513 and 3601).

2. Section 6.25 is amended by revising paragraph (b)(4), removing paragraph (c)(2), and redesignating paragraph (c)(3) as paragraph (c)(2) and revising redesignated paragraph (c)(2)(ii) to read as follows:

§ 6.25 Eligibility.

* * * * *

(b) * * *

(4) An application will not be approved if the submission of the evidence and certifications required to establish nonhistorical eligibility is postmarked before October 1 or later than November 1 of the year preceding the quota year for which the license is requested. If October 1 falls on a Saturday, Sunday, Federal holiday or day which is not a full workday for the United States Postal Service, applications postmarked on October 1 or any subsequent day(s) up to and including the next full workday for the United States Postal Service will be treated the same in determining priority in the issuance of licenses, in the issuance of the import licenses.

(c) * * *

(2) * * *

(ii) Providing documentary evidence that the applicant has made at least two separate commercial entries or exports of any dairy product totaling not less than 38,000 kilograms during the 12 month period ending August 1, 1995; or at least eight separate commercial entries or exports totaling not less than 18,000 kilograms, each entry or export being a minimum of 2,200 kilograms, with a minimum of two transactions taking place in each of at least three quarters of the 12 month period ending August 1, 1995.

* * * * *

3. Appendix 3 is revised to read as follows:

Appendix 3—Articles Subject to the Supplementary Licensing Provisions of Import Regulation 1, Revision 7, and Respective Annual Tariff-Rate Import Quotas for the 1996 Quota Year

Article by HTS note number	*Annual supplementary quota (kilograms)*
Butter (Note 6)	4,256,311
Dried Skim Milk (Note 7)	1,241,359
Dried Whole Milk (Note 8)	958,125
Butter Substitutes Containing over 45% by weight of butterfat and butteroil (Note 14)	4,000,500
Cheese and substitutes for cheese (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat, and articles within the scope of other tariff-rate quotas provided for in this subchapter) (Note 16)	4,882,000
Australia	833,333
Austria	182,000
Costa Rica	1,550,000
Czech Republic	200,000
EC	600,000
Poland	300,000
Slovak Republic	600,000
Switzerland	166,667
Uruguay	250,000
Any Country	200,000
Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, blue-mold cheese (Note 17)	176,667
Chile	26,667
Czech Republic	50,000
EC	100,000
Cheddar cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (Note 18)	2,673,333
Australia	416,667
EC	333,333
Chile	73,333
Czech Republic	50,000
New Zealand	1,700,000
Any Country	100,000
American-type cheese, including Colby, washed curd, and granular cheese (but not including cheddar) and cheese and substitutes for cheese containing or processed from such American-type cheese (Note 19)	33,333
EC	33,333
Edam and Gouda cheese, and cheese and substitutes for cheese containing, or processed from, Edam and Gouda Cheese (Note 20)	543,333
Argentina	110,000
Austria	133,333
EC	200,000
Czech Republic	100,000
Italian-Type cheeses, made from cow's milk (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz, and Goya not in original loaves) and cheese and substitutes for cheese containing, or processed from, such Italian-Type cheeses, whether or not in original loaves (Note 21)	4,540,000
Argentina	1,890,000
EC	233,333
Uruguay	750,000
Hungary	400,000
Poland	1,100,000
Romania	166,667
Swiss and Emmenthaler cheese other than with eye formation Gruyere-process, and cheese and substitutes for cheese containing, or processed from such cheese (Note 22).	126,667
Austria	26,667
EC	100,000
Swiss and Emmenthaler cheese with eye formation (Note 25)	1,473,333
Austria	73,333
EC	233,333
Sweden	300,000
Switzerland	66,667
Czech Republic	400,000

Signed at Washington, D.C. on September 7, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95–22817 Filed 9–11–95; 12:03 pm]

BILLING CODE 3410-01-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–22]

RIN 1557–AB14

Risk-Based Capital Requirements—Small Business Loan Obligations

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its risk-based capital standards as required by section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994. The changes will modify the risk-based capital treatment of transfers of small business loans or leases of personal property with recourse, and are intended to facilitate such transfers.

DATES: The interim rule is effective September 13, 1995. Comments must be received on or before November 13, 1995.

ADDRESSES: Written comments should be submitted to Docket No. 95–22. Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Fax (202) 874–5274. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: David Thede, Senior Attorney, Securities and Corporate Practices Division (202/874–5210); Stephen Jackson, National Bank Examiner, (202) 874–5070, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION: The OCC is amending its risk-based capital standards for transfers of small business obligations with recourse as required by section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Riegle Act), 12 U.S.C. 1835. Banks typically transfer assets with recourse as part of securitization transactions. Sections 201–210 of the Riegle Act were intended to increase small business access to capital by removing impediments in existing law to the securitization of small business loans and leases.

Under the OCC's current risk-based capital standards, assets transferred with recourse are reported on the balance sheet in regulatory reports. These amounts are thus included in the calculation of banks' risk-based capital and leverage capital ratios.

Section 208 requires the OCC, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve Board (the Federal banking agencies) to change this capital treatment for transfers of small business loans and leases with recourse. Under section 208, a bank may hold capital only against the face amount of a recourse obligation (rather than the amount of the asset transferred with recourse) if the bank establishes a reserve equal to the bank's reasonable estimated liability under the recourse obligation.[1] Section 208 limits the availability of this treatment as follows:

(1) To apply section 208 to a transaction, a bank must be a "qualified insured depository institution" at the time of the sale with recourse. A qualified insured depository institution must be either well capitalized or, with the approval of the OCC, adequately capitalized (in either case, without regard to section 208). If an institution loses its "qualified" status, transactions completed while the institution was qualified will continue to receive the favorable capital treatment.

(2) The total outstanding amount of recourse retained by a bank with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the bank as described in section 208 may not exceed 15 percent of the risk-based capital of the bank, unless the OCC, by regulation or order, specifies a greater amount.

Prompt Corrective Action

Section 208(f) states that the capital of an insured depository institution shall be computed without regard to section 208 in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o). Section 1831o addresses prompt corrective action.

The caption to section 208(f), "Prompt Corrective Action Not Affected," and the legislative history indicate that section 208 was not intended to affect the operation of the prompt corrective action system. See S. Rep. No. 103–169, 103d Cong., 1st Sess. 38, 69 (1993). However, the statute does not include "well capitalized" in the list of capital categories not affected. The prompt corrective action system deals primarily with imposing corrective sanctions on banks that are less than adequately capitalized. Therefore, allowing a bank that is adequately capitalized without the section 208 treatment[2] to use section 208 for purposes of determining whether the bank is well capitalized generally would not affect the application of the prompt corrective action sanctions to the bank. Other statutes and regulations treat a bank more favorably if it is well capitalized as defined under the prompt corrective action statute, but these provisions are not part of the prompt corrective action system of sanctions. Permitting a bank to be treated as well capitalized for purposes of these other provisions also will not affect the imposition of prompt corrective action sanctions.

There is one provision of the prompt corrective action system that could be affected by treating a bank as well capitalized rather than adequately capitalized. If the OCC determines that a bank is in an unsafe or unsound condition or is engaging in an unsafe or unsound practice, 12 U.S.C. 1831o(g) authorizes the OCC to require an adequately capitalized bank (but not a well capitalized bank) to comply with certain prompt corrective action provisions as if the bank were undercapitalized. Because the text and legislative history of section 208 indicate that it was not intended to affect prompt corrective action, the OCC believes that section 208 does not affect the capital calculation for purposes of 12 U.S.C. 1831o(g), regardless of the bank's capital level. (The OCC requests comment on this conclusion and also asks that commenters discuss the legal justification for any alternative interpretation that they suggest.)

Thus, a bank may use the capital treatment described in section 208 when determining whether it is well capitalized for purposes of prompt corrective action as well as for other regulations that reference the well capitalized capital category.[3] A bank may not use the capital treatment described in section 208 when determining whether it is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized for purposes of prompt corrective action or other regulations that directly or indirectly reference the prompt corrective action capital categories.[4] The banking agencies will disregard the capital treatment described in section 208 for purposes of 12 U.S.C. 1831o(g).

The OCC requests comments on all aspects of this interim rule.

Summary Outline

(1) Which small business obligations can an institution apply section 208 to? The answer depends on the capital level of the bank without considering section 208.

---

[1] For purposes of determining a bank's capital ratio, the reserve would not be subtracted from the amount of the recourse obligation.

[2] It is very unlikely but theoretically possible that a bank that is undercapitalized without section 208 would become well capitalized if it applied the treatment in section 208. Because section 208 was not intended to affect prompt corrective action, and because allowing an undercapitalized bank to become well capitalized would affect prompt corrective action, the OCC interprets section 208 not to allow an undercapitalized bank to use the capital treatment it describes to become well capitalized for purposes of prompt corrective action.

[3] An institution that is subject to a written agreement or capital directive as discussed in the OCC's prompt corrective action regulation would not be considered well capitalized.

[4] Under section 208, the capital calculation used to determine whether an institution is well capitalized differs from the calculation used to determine whether an institution is adequately capitalized. As a result, it is possible that an institution could be well capitalized using one calculation and adequately capitalized using the other. In this situation, the institution would be considered well capitalized.

(a) Bank is *well capitalized* without using section 208: bank is "qualifying" and can apply section 208 to any transfer of small business obligations with recourse, up to the 15% of capital limit.

(b) Bank is *adequately capitalized* without using section 208 and has *permission* from its regulator: bank is "qualifying" and can apply section 208 to any transfer of small business obligations with recourse, up to the 15% of capital limit.

(c) Other banks: bank is not "qualifying" and so cannot apply section 208 to *new* obligations. However, if the bank was qualifying in the past, it can continue to apply section 208 to obligations arising out of transfers that occurred during the time that the bank was qualified.

(2) If a bank has assets that it can apply section 208 to, for what purposes can the bank use the section 208 treatment? Again, the answer depends on the capital level of the bank without considering section 208.

Capital level	PCA, except 1831o(g)	1831o(g)	Other laws and regulations that reference PCA	Other laws and regulations that do not reference PCA
Well capitalized without using 208 [1]	Yes	N/A [2]	Yes	Yes.
Well capitalized using 208 and adequately capitalized without using 208.	Yes	No	Yes	Yes.
Other banks	No	No	No	Yes.

[1] Most banks currently fall into this category and so would be able to use section 208 for all capital calculations.

[2] If a bank is well-capitalized without using section 208, application of section 208 will not affect the status of the bank under 12 U.S.C. 1831o(g).

Regulatory Flexibility Act

It is hereby certified that this interim rule will not have a significant economic impact on a substantial number of small entities. This rulemaking is required by statute and will not affect a bank's risk-based capital for Prompt Corrective Action purposes, regardless of bank size.

Administrative Procedure Act

Section 208(g) requires that the Federal banking agencies promulgate rules implementing section 208 no later than March 22, 1995. The OCC has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be impracticable due to the time constraints imposed by section 208(g). In addition, in the OCC's view, advanced public notice and comment is unnecessary as the interim rule merely restates the statute. Further, the interim rule would permit qualifying institutions to reduce their capital levels, thereby providing these institutions with greater lending flexibility. Consequently, the added delay that would result from providing advance notice and public participation could adversely affect credit availability.

The interim rule is immediately effective upon publication in the **Federal Register**. This action is being taken pursuant to 5 U.S.C. 553(d) of the Administrative Procedure Act which permits the waiver of the 30-day delayed effective date requirement for good cause or where a rule relieves a restriction. The OCC views the limitations of time and the potential loss of benefit to affected parties during the pendency of this rulemaking as good cause to waive the 30-day delayed effective date. In addition, as the interim rule relieves a restriction, the 30-day delayed effective date may be waived. Nevertheless, the OCC desires to have the benefit of public comment before adoption of a final rule. Accordingly, the OCC invites interested persons to submit comments during a 60-day comment period. In adopting a final rule, the OCC will revise the interim rule as may be appropriate based on the comments received.

Executive Order 12866

The OCC has determined that this interim rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, the interim rule authorizes an alternative method of calculating capital that permits banks to elect to hold less capital for certain recourse obligations. Because the OCC has determined that the interim rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and Regulatory Burden

The OCC has determined that this interim rule will not increase the regulatory paperwork burden of national banks.

Section 302 of the Riegle Act requires that new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements take effect on the first day of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulation should become effective on a day other than the first day of the next quarter. The OCC believes that an immediate effective date is appropriate since the interim rule relieves a regulatory burden on qualifying banks that transfer small business obligations with recourse by significantly reducing the capital requirements on such obligations. This immediate effective date will permit qualifying institutions to reduce the amount of capital they must maintain to support the risk retained in these sales. Moreover, the OCC does not anticipate that immediate application of the rule will present a hardship to qualifying institutions in terms of compliance. Also, there is a statutory requirement for the banking agencies to promulgate final regulations implementing the provisions of section 208 by March 22, 1995. For these reasons, the OCC has determined that there is sufficient good cause to provide for an immediate effective date.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, appendix A to part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, section 3 is amended by adding a new paragraph (c) to read as follows:

Appendix A To Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Assets and Off-Balance Sheet Items.

* * * * *

(c) *Alternative Capital Calculation for Small Business Obligations.* (1) *Definitions.* For purposes of this section 3(c):

(i) *Qualified bank* means a bank that:

(A) Is well capitalized as defined in 12 CFR 6.4 without applying the capital treatment described in this section 3(c), or

(B) Is adequately capitalized as defined in 12 CFR 6.4 without applying the capital treatment described in this section 3(c) and has received written permission from the appropriate district office of the OCC to apply the capital treatment described in this section 3(c).

(ii) *Recourse* has the meaning given to such term under generally accepted accounting principles.

(iii) *Small business* means a business that meets the criteria for a small business concern established by the Small Business Administration in 13 CFR part 121 pursuant to 15 U.S.C. 632.

(2) *Capital and reserve requirements.* With respect to a transfer of a small business loan or a lease of personal property with recourse that is a sale under generally accepted accounting principles, a qualified bank may elect to apply the following treatment:

(i) The bank establishes and maintains a non-capital reserve under generally accepted accounting principles sufficient to meet the reasonable estimated liability of the bank under the recourse arrangement;

(ii) For purposes of calculating the bank's risk-based capital ratio, the bank includes only the amount of its retained recourse in its risk-weighted assets; and

(iii) For purposes of calculating the bank's tier 1 leverage ratio, the bank excludes from its average total consolidated assets the outstanding principal amount of the small business loans and leases transferred with recourse.

(3) *Limit on aggregate amount of recourse.* The total outstanding amount of recourse retained by a qualified bank with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the bank as described in section 3(c)(2) of this appendix A may not exceed 15 percent of the bank's total capital after adjustments and deductions, unless the OCC specifies a greater amount by order.

(4) *Bank that ceases to be qualified or that exceeds aggregate limit.* If a bank ceases to be a qualified bank or exceeds the aggregate limit in section 3(c)(3) of this appendix A, the bank may continue to apply the capital treatment described in section 3(c)(2) of this appendix A to transfers of small business loans and leases of personal property that occurred when the bank was qualified and did not exceed the limit.

(5) *Prompt Corrective Action not affected.* (i) A bank shall compute its capital without regard to this section 3(c) for purposes of prompt corrective action (12 U.S.C. 1831o and 12 CFR part 6) unless the bank is an adequately or well capitalized bank (without applying the capital treatment described in this section 3(c)) and, after applying the capital treatment described in this section 3(c), the bank would be well capitalized.

(ii) A bank shall compute its capital without regard to this section 3(c) for purposes of 12 U.S.C. 1831o(g) regardless of the bank's capital level.

* * * * *

Dated: August 28, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–22666 Filed 9–12–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–111; Special Conditions No. 25–ANM–106]

Special Conditions: Israel Aircraft Industries Model Galaxy Series Airplane, High Altitude Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Israel Aircraft Industries (IAI) Ltd. Model Galaxy airplane. This new airplane will have an unusual design feature associated with an unusually high operating altitude (45,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: October 13, 1995.

FOR FURTHER INFORMATION CONTACT: Timothy Dulin, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, telephone (206)227–2141.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1992, IAI Ltd., Ben-Gurion International Airport, 70100, Israel, applied for a new type certificate in the transport airplane category for the Model Galaxy airplane. The IAI Model Galaxy airplane is a derivative of the IAI Model 1125 Westwind Astra and is designed to be a long range, high speed swept low wing airplane with two aft-fuselage mounted Pratt & Whitney PW 306A engines and a conventional empennage.

The type design of the Model Galaxy contains a number of novel and unusual design features for an airplane type certificated under the applicable provisions of part 25 of the Federal Aviation Regulations (FAR). Those features include a high maximum operating altitude. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for the IAI Galaxy; therefore, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, IAI Ltd. must show that the Galaxy meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–77. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Galaxy includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification, and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Galaxy because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under the provisions § 21.101(a)(1).

Novel or Unusual Design Feature

The IAI Galaxy will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 45,000 feet.

The FAA considers certification of transport category airplanes for operation at altitudes greater than 41,000 feet to be a novel or unusual feature because current part 25 does not contain standards to ensure the same level of safety as that provided during operation at lower altitudes. Special conditions have therefore been adopted to provide adequate standards for transport category airplanes previously approved for operation at these high altitudes, including certain Learjet models, the Boeing Model 747, Dassault-Breguet Falcon 900, Canadair Model 600, Cessna Model 650, Israel Aircraft Industries Model 1125 Westwind Astra, and Cessna Model 560. The special conditions for the Learjet Model 45 are considered the most applicable to the Galaxy and its proposed operation and are therefore use as the basis for the special conditions described below.

Damage tolerance methods are proposed to be used to ensure pressure vessel integrity while operating at the higher altitudes, in lieu of the 1/2-bay crack criterion used in some previous special conditions. Crack growth data are used to prescribe an inspection program that should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, as amended by Amendment 25–72. The maximum extent of failure and pressure vessel opening determined from the above analysis must be demonstrated to comply with the pressurization section of the proposed special conditions, which state that the cabin altitude after failure must not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

In order to ensure that there is adequate fresh air for crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance. Therefore, these special conditions require airplane interior temperature limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. Therefore, to prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes, or 40,000 feet for any time period. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at high altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression resulting in cabin altitudes above the 37,000-foot limit depicted in Figure 4 approaches the physiological limits of the average person; therefore every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receive oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. These special conditions therefore require pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

As discussed above, these special conditions are applicable to the IAI Model Galaxy. Should IAI Ltd. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Discussion of Comments

Notice of Proposed Special Conditions No. SC–95–4–NM for the Israel Aircraft Industries Model Galaxy Series Airplane, was published in the **Federal Register** on June 7, 1995 (60 FR 30019). No comments were received.

Conclusion

This action affects only certain design features on the IAI Ltd. Model Galaxy airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Israel Aircraft Industries, Ltd. Model Galaxy series airplanes:

Operation to 45,000 Feet

1. *Pressure Vessel Integrity.*

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to ensure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

2. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling systems must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. the existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system, combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4(a) and 4(b) of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that IAI Ltd. must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

5. *Oxygen Equipment and Supply.*

(a) A continuous flow oxygen system must be provided for the passengers.

(b) A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

BILLING CODE 4910-13-M

Figure 1

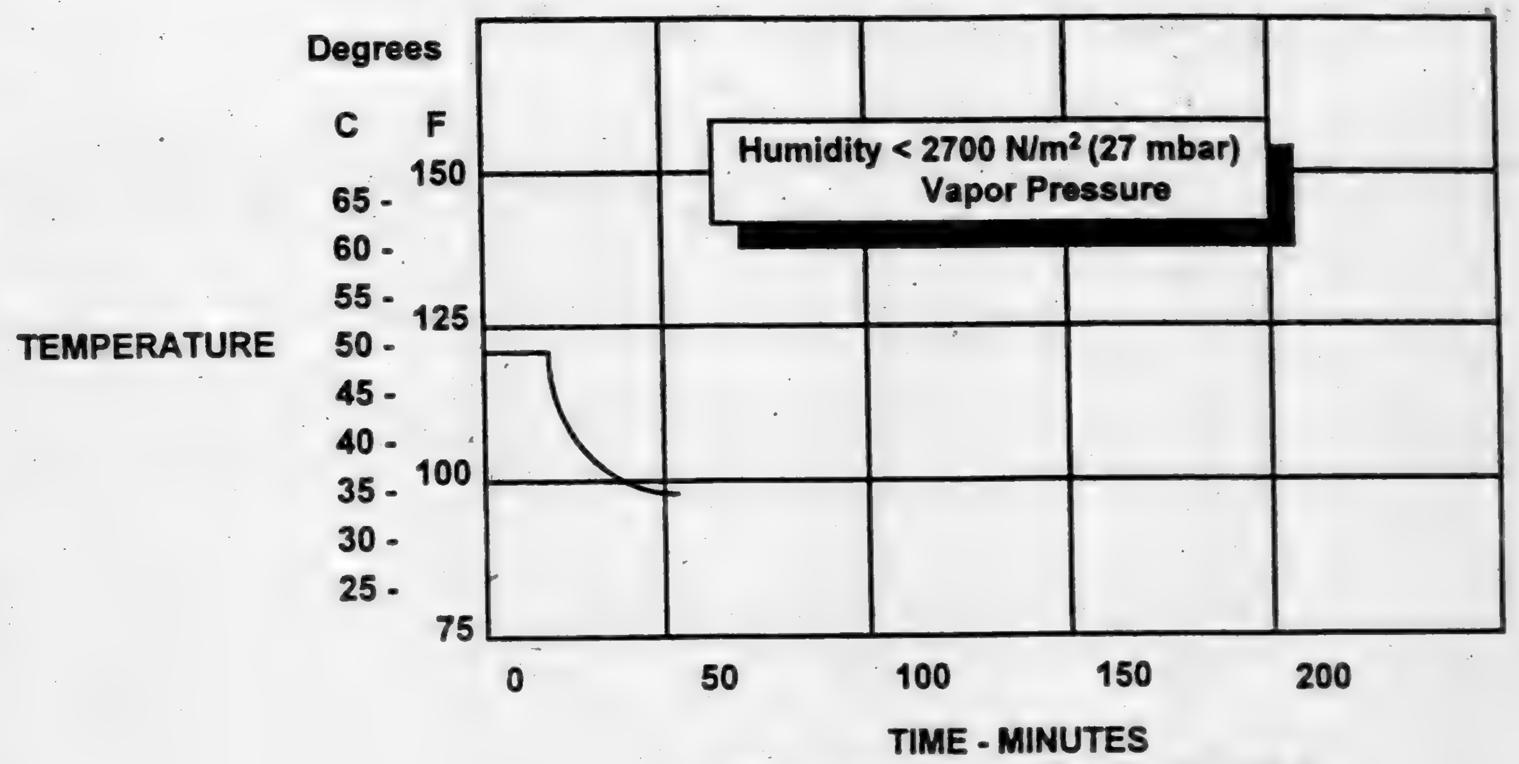

TIME - TEMPERATURE RELATIONSHIP

Figure 2

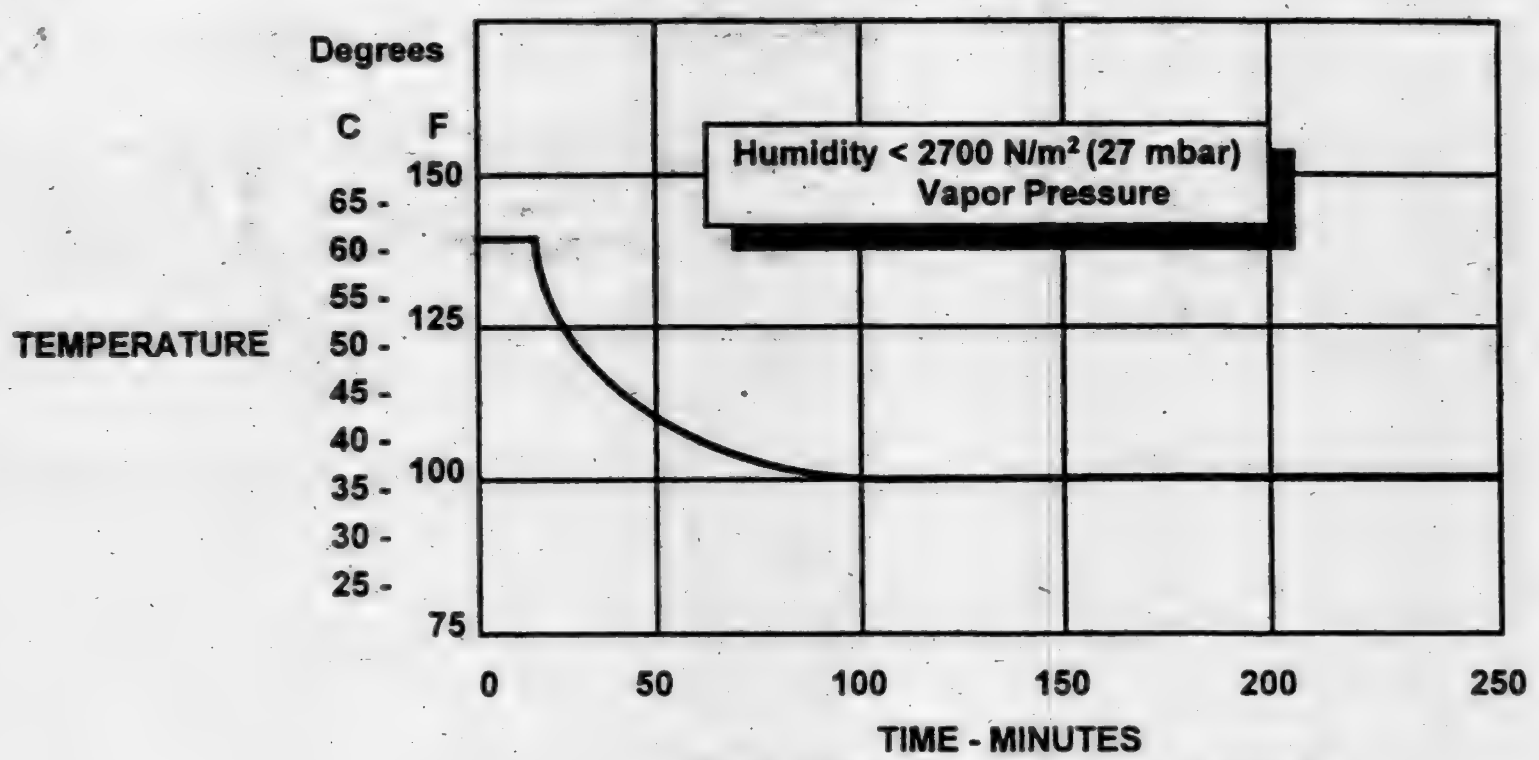

TIME - TEMPERATURE RELATIONSHIP

Figure 3

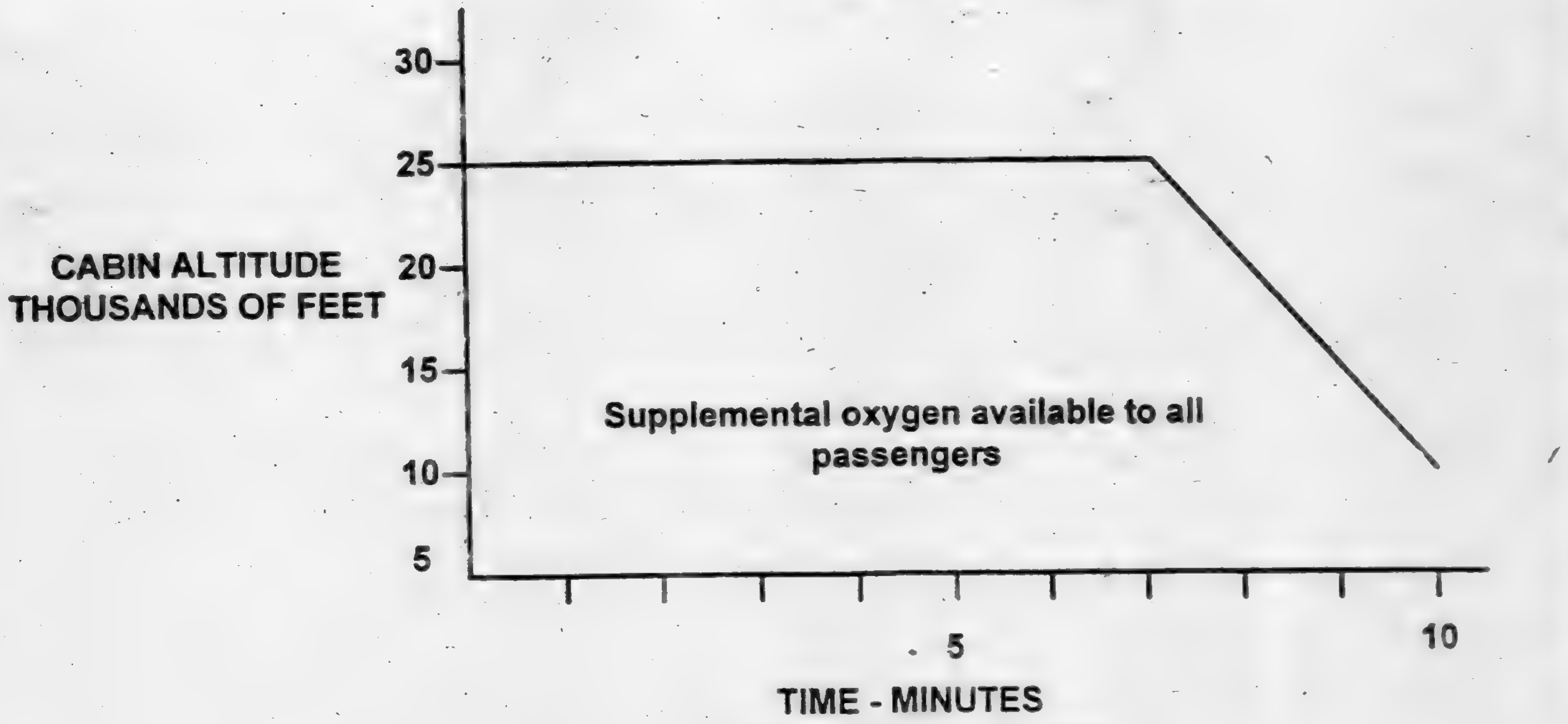

CABIN ALTITUDE - TIME HISTORY

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Figure 4

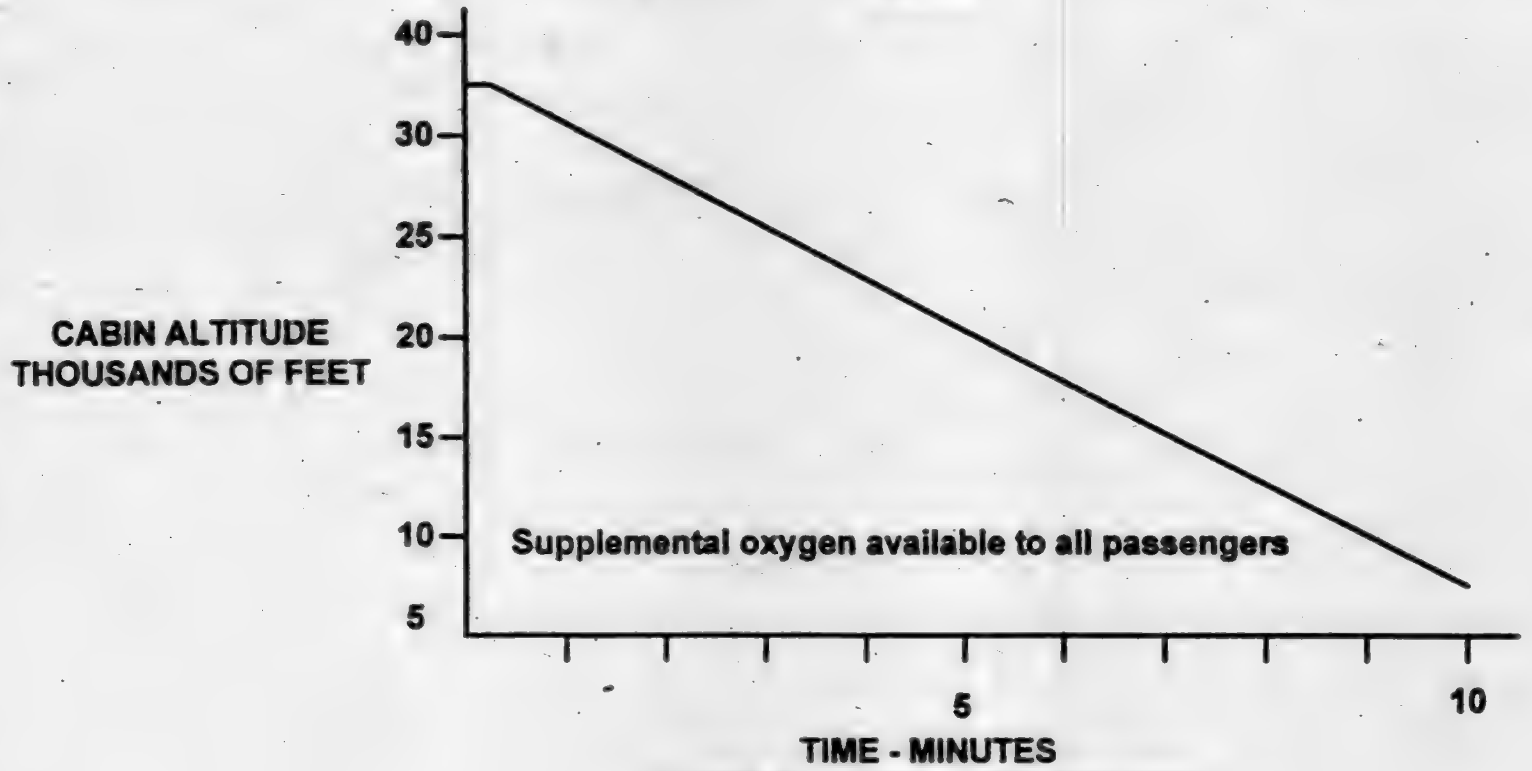

CABIN ALTITUDE - TIME HISTORY

NOTE: For figure 4 , time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Renton, Washington, on August 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–22740 Filed 9–12–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–153–AD; Amendment 39–9366; AD 95–18–52]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T95–18–52 that was sent previously to all known U.S. owners and operators of Lockheed Model L–1011–385 airplanes by individual telegrams. This AD requires visual inspections to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers, replacement of cracked fittings, and repair of adjacent structure if found to be cracked. This amendment is prompted by reports of cracks found in these fittings. The actions specified by this AD are intended to prevent failure of these fittings due to fatigue cracking; such faiiure could result in rapid decompression of the airplane during flight.

DATES: Effective September 28, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–18–52, issued August 29, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before November 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On August 29, 1995, the FAA issued telegraphic AD T95–18–51, which is applicable to Lockheed Model L–1011–385 series airplanes.

The FAA recently received a report from an operator of Lockheed Model L–1011–385 series airplanes indicating that the aft pressure bulkhead on an airplane failed while it was in flight, which resulted in rapid decompression of the airplane. This airplane had accumulated 52,010 hours time-in-service and 25,721 total flight cycles. Investigation revealed that 19 of the fittings that attach the aft pressure bulkhead to the fuselage stringers at stringers 10 through 55 were severed on this airplane. Additionally, the vertical leg of the bulkhead outer tee was cracked between these stringers. The cause of the cracking of the fittings has been attributed to fatigue.

Subsequent inspections of 15 additional airplanes in the fleet revealed cracking in the fittings of 5 of those airplanes; however, none of those fittings were severed.

Fatigue cracking, if not detected and corrected in a timely manner, could lead to failure of the fittings that attach the aft pressure bulkhead to the fuselage stringers, and subsequently could result in rapid decompression of the airplane during flight.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T95–18–52 to ensure that cracked fittings are identified and replaced in a timely manner. The AD requires a detailed visual inspection to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers at stringers 1 through 10 (on the right side of the airplane) and at stringers 64 through 56 (on the left side of the airplane). If cracking is found in any fitting, the fitting must be replaced and an additional detailed visual inspection must be performed to detect cracking in the radius at the lower end of the vertical leg of the bulkhead T-shaped frame. If cracking is found in the T-shaped frame, the cracked frame must be repaired.

Additionally, if cracking is detected in the fittings of either stringer 10 or 56, the fitting(s) in the adjacent outboard stringer(s) must be inspected until the fittings are found to be free of cracks.

The detailed visual inspections of the fittings and necessary follow-on actions are to be repeated at specified intervals.

This AD also requires that operators submit, to the FAA, a report of the findings of their inspections.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on August 29, 1995, to all known U.S. owners and operators of Lockheed Model L–1011–385 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–153–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–18–52 LOCKHEED: Amendment 39–9366. Docket 95–NM–153–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking which could lead to failure of the fittings that attach the aft pressure bulkhead to the fuselage stringers, and could result in rapid decompression of the airplane during flight, accomplish the following:

(a) Perform a detailed visual inspection to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers (hereinafter referred to as "fittings") at stringers 1 through 10 (right side) and at stringers 64 through 56 (left side), at the later of the times specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 20,000 total flight cycles; or

(2) Within the next 25 flight cycles or 10 days after the effective date of this AD, whichever occurs earlier.

(b) If cracking is detected in the fitting at either stringer 10 or stringer 56, prior to further flight, perform a detailed visual inspection to detect cracking of the next adjacent fitting (i.e., at stringer 11 or 55). If cracking is detected in that fitting, prior to further flight, perform a detailed visual inspection to detect cracking of the next adjacent fitting (i.e., at stringer 12 or 54). If cracking is detected in that fitting, prior to further flight, continue to perform detailed visual inspections to detect cracking of the next adjacent fitting(s) until such a fitting is found to be free of cracks.

(c) If any cracked fitting is detected during the inspections required by either paragraph (a) or (b) of this AD, prior to further flight, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD.

(1) Replace the cracked fitting with a new fitting, or with a serviceable fitting on which a detailed visual inspection has been performed previously to detect cracking and has been found to be free of cracks; and

(2) Perform a detailed visual inspection to detect cracking in the radius at the lower end of the vertical leg of the bulkhead T-shaped frame between the stringer locations on either side of the stringer having the cracked fitting. If any cracked T-shaped frame is detected, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate.

(d) Repeat the inspections and other necessary actions required by paragraphs (a), (b), and (c) of this AD at intervals not to exceed 1,800 flight cycles or 3,000 flight hours, whichever occurs earlier.

(e) Within 10 days after accomplishing the initial inspections required by paragraphs (a) and (c) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7340; fax (404) 305–7348. The report must include, at a minimum, the total number of flight cycles accumulated on the airplane having the cracked fitting or cracked T-shaped frame, and identification of the location on the airplane where the cracked fitting or T-shaped frame was found, if any. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) This amendment becomes effective on September 28, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–18–52, issued on August 29, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on September 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22591 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

RIN 1515–AB78

19 CFR PART 12

[T.D. 95–71]

UNESCO Cultural Property Convention Signatories

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by republishing the list of signatory nations to the 1970 United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Because of the dissolution of the U.S.S.R. and other political changes in Europe, there have been many changes to the list in recent years. Rather than noting each change, Customs is publishing a new list which replaces the existing list.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Donnette Rimmer, Intellectual Property Rights Branch, 202–482–6960.

SUPPLEMENTARY INFORMATION:

Background

In 1983, the United States enacted the "Convention on Cultural Property Implementation Act" (19 U.S.C. 2601 *et seq.*) which accepted the 1970 United Nations Educational Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). As a party to the Convention, the U.S. actively participates in efforts to eliminate illicit traffic in cultural property, that is, items of importance for archaeology, prehistory, history, literature, art or science.

When a country ratifies, accepts or accedes to the Convention, Customs accords that country all rights and privileges under the Convention and adds its name to the list of signatory countries to provide the public notification of this fact.

There have been numerous additions and changes to this list in recent years with the reunification of Germany (the reunified state has not acceded to the Convention, while the former East Germany had); the dissolution of the former U.S.S.R.; and other political changes in eastern Europe. Rather than noting each change, Customs has determined to publish a new list of signatory nations which will replace the current version in the Customs Regulations.

Inapplicability of Notice and Delayed Effective Date

Because this amendment merely implements a statutory requirement and involves a matter in which a majority of the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is inappropriate.

Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other statute.

Executive Order 12866

The amendment does not meet the criteria for a "significant regulatory action" under E.O. 12866.

Drafting Information

The principal author of this document is Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Part 12 of the Customs Regulations (19 CFR Part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 and the relevant specific authority citation continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

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§§ 12.104–12.104i also issued under 19 U.S.C. 2612.

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2. In § 12.104b, paragraph (a) is revised to read as follows:

§ 12.104b State Parties to the Convention.

(a) The following is a list of State Parties which have deposited an instrument of ratification, acceptance, accession or succession, the date of such deposit and the date of entry into force for each State Party:

State party	Date of deposit	Date of entry into force
Algeria	June 24, 1974 (R)	Sept. 24, 1974.
Angola	Nov. 7, 1991 (R)	Feb. 7, 1992.
Argentina	Jan. 11, 1973 (R)	Apr. 11, 1973.
Armenia, Republic of	Sept. 5, 1993 (S)	See Note 1.
Australia	Oct. 30, 1989 (Ac)	Jan. 30, 1990.
Bangladesh	Dec. 9, 1987 (R)	Mar. 9, 1988.
Belarus	Apr. 28, 1988 (R)	July 28, 1988.
Belize	Jan. 26, 1990 (R)	Apr. 26, 1990.
Bolivia	Oct. 4, 1976 (R)	Jan. 4, 1977.
Bosnia-Herzegovina	July 12, 1993 (S)	See Note 2.
Brazil	Feb. 16, 1973 (R)	May 16, 1973.
Bulgaria	Sept. 15, 1971 (R)	Apr. 24, 1972.
Burkina Faso	Apr. 7, 1987 (R)	July 7, 1987.
Cambodia	Sept. 26, 1972 (R)	Dec. 26, 1972.
Cameroon	May 24, 1972 (R)	Aug. 24, 1972.
Canada	Mar. 28, 1978 (Ac)	June 28, 1978.
Central African Republic	Feb. 1, 1972 (R)	May 1, 1972.
China, People's Republic of	Nov. 28, 1989 (Ac)	Feb. 28, 1990.
Columbia	May 24, 1988 (Ac)	Aug. 24, 1988.
Cote d'Ivoire	Oct. 30, 1990 (R)	Jan. 30, 1991.
Croatia	July 6, 1992 (S)	See Note 2.
Cuba	Jan. 30, 1980 (R)	Apr. 30, 1980.
Cyprus	Oct. 19, 1979 (R)	Jan. 19, 1980.
Czech Republic	Mar. 26, 1993 (S)	See Note 4.
Dominican Republic	Mar. 7, 1973 (R)	June 7, 1973.
Ecuador	Mar. 24, 1971 (Ac)	Apr. 24, 1972.

State party	Date of deposit	Date of entry into force
Egypt	Apr. 5, 1973 (Ac)	July 5, 1973.
El Salvador	Feb. 20, 1978 (R)	May 20, 1978.
Georgia, Republic of	Nov. 4, 1992 (S)	See Note 1.
Greece	June 5, 1981 (R)	Sept. 5, 1981.
Grenada	Sept. 10, 1992 (Ac)	Dec. 10, 1992.
Guatemala	Jan. 14, 1985 (R)	Apr. 14, 1985.
Guinea	Mar. 18, 1979 (R)	June 18, 1979.
Honduras	Mar. 19, 1979 (R)	June 19, 1979.
Hungary	Oct. 23, 1978 (R)	Jan. 23, 1979.
India	Jan. 24, 1977 (R)	Apr. 24, 1977.
Iran	Jan. 27, 1975 (Ac)	Apr. 27, 1975.
Iraq	Feb. 12, 1973 (Ac)	May 12, 1973.
Italy	Oct. 2, 1978 (R)	Jan. 2, 1979.
Jordan	Mar. 15, 1974 (R)	June 15, 1974.
Korea, Democratic People's Republic of	May 13, 1983 (R)	Aug. 13, 1983.
Korea, Republic of	Feb. 14, 1983 (Ac)	May 14, 1983.
Kuwait	June 22, 1972 (Ac)	Sept. 22, 1972.
Lebanon	Aug. 25, 1992 (R)	Nov. 25, 1992.
Libya	Jan. 9, 1973 (R)	Apr. 9, 1973.
Madagascar	June 21, 1989 (R)	Sept. 21, 1989.
Mali	Apr. 6, 1987 (R)	July 6, 1987.
Mauritania	Apr. 27, 1977 (R)	July 27, 1977
Mauritius	Feb. 27, 1978 (Ac)	May 27, 1978.
Mexico	Oct. 4, 1972 (Ac)	Jan. 4, 1973.
Mongolia	June 23, 1991 (Ac)	Aug. 23, 1991.
Nepal	June 23, 1976 (R)	Sept. 23, 1976.
Nicaragua	Apr. 19, 1977 (R)	July 19, 1977.
Niger	Oct. 16, 1972 (R)	Jan. 16, 1973.
Nigeria	Jan. 24, 1972 (R)	Apr. 24, 1972.
Oman	June 2, 1978 (Ac)	Sept. 2, 1978.
Pakistan	Apr. 30, 1978 (R)	July 30, 1981.
Panama	Aug. 13, 1973 (Ac)	Nov. 13, 1973.
Peru	Oct. 24, 1979 (Ac)	Jan. 24, 1980.
Poland	Jan. 31, 1974 (R)	Apr. 30, 1974.
Portugal	Dec. 9, 1985 (R)	Mar. 9, 1986.
Qatar	Apr. 20, 1977 (Ac)	July 20, 1977.
Romania	Dec. 6, 1993 (R)	Mar. 6, 1994.
Russian Federation	Apr. 28, 1988 (R)	See Note 3.
Saudi Arabia	Sept. 8, 1976 (Ac)	Dec. 8, 1976.
Senegal	Dec. 9, 1984 (R)	Mar. 9, 1985.
Slovak Republic	Mar. 31, 1993 (S)	See Note 4.
Slovenia, Republic of	Oct. 10, 1992 (S)	See Note 2.
Spain	Jan. 10, 1986 (R)	Apr. 10, 1986.
Sri Lanka	Apr. 7, 1981 (Ac)	July 7, 1981.
Syria	Feb. 21, 1975 (Ac)	May 21, 1975.
Tadjikistan, Republic of	Aug. 11, 1992 (S)	See Note 1.
Tanzania	Aug. 2, 1977 (R)	Nov. 2, 1977.
Tunisia	Mar. 10, 1975 (R)	June 10, 1975.
Turkey	Apr. 21, 1981 (R)	July 21, 1981.
Ukraine	Apr. 28, 1988 (R)	July 28, 1988.
United States of America	Sept. 2, 1983 (Ac)	Dec. 2, 1983.
Uruguay	Aug. 9, 1977 (R)	Nov. 9, 1977.
Yugoslavia	Oct. 3, 1972 (R)	Jan. 3, 1973.
Zaire	Sept. 23, 1974 (R)	Dec. 23, 1974.
Zambia	June 21, 1985 (R)	Sept. 21, 1985.

Code for reading second column: Ratification (R); Acceptance (Ac); Accession (A); Succession (S).

Notes:

1. The Republic of Armenia, the Republic of Georgia, and the Republic of Tadjikistan each deposited a notification of succession in which each declared itself bound by the Convention as ratified by the USSR on April 28, 1988 and which entered into force on July 28, 1988.
2. Bosnia-Herzegovina, Croatia and the Republic of Slovenia each deposited notification of succession in which each declared itself bound by the Convention as ratified by Yugoslavia on Oct. 3, 1972 and entered into force on January 3, 1973.
3. The Government of the Russian Federation informed the Director General of UNESCO that the Russian Federation continues without interruption the participation of the USSR in all UNESCO Conventions. The instrument of ratification was deposited by the former USSR on April 28, 1988, and entered into force on July 28, 1988.
4. The Czech Republic and the Slovak Republic each deposited a notification of succession in which each declared itself bound by the Convention as accepted by Czechoslovakia on Feb. 14, 1977 and which entered into force on May 14, 1977.

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George J. Weise,

Commissioner of Customs.

Approved: August 21, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–22644 Filed 9–12–95; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE06

Administrative Review Process, Testing Modifications to Prehearing Procedures and Decisions by Adjudication Officers

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are amending our rules to establish authority to test use of an adjudication officer who, under the *Plan for a New Disability Claim Process* approved by the Commissioner of Social Security in September 1994 (the disability redesign plan), would be the focal point for all prehearing activities when a request for a hearing before an administrative law judge (ALJ) is filed. The adjudication officer position is an integral part of the disability redesign plan. We expect that our tests of this position will provide us with sufficient information to determine the effect of the position on the hearing process. These final rules add two new sections setting out, for purposes of the tests we will conduct, the responsibilities of the adjudication officer in connection with a claim for Social Security or Supplemental Security Income (SSI) benefits based on disability. Unless specified, all other regulations related to our administrative review process and the disability determination process remain unchanged.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–6243.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Administration (SSA) decides claims for Social Security benefits under title II of the Social Security Act (the Act) and for SSI benefits under title XVI of the Act in an administrative review process that generally consists of four steps. Claimants who are not satisfied with the initial determination we make on a claim may request reconsideration. Claimants who are not satisfied with our reconsidered determination may request a hearing before an ALJ, and claimants who are dissatisfied with an ALJ's decision may request review by the Appeals Council. Claimants who have completed these steps and who are not satisfied with our final decision, may request judicial review of the decision in the Federal courts.

Generally, when a claim is filed for Social Security or SSI benefits based on disability, a State agency makes the initial and reconsideration disability determination for us. A hearing requested after we have made a reconsideration determination is held by an ALJ in one of the 132 hearing offices we have nationwide.

Applications for Social Security and SSI benefits based on disability have risen dramatically in recent years. The number of new disability claims SSA received in Fiscal Year (FY) 1994—3.56 million—represented a 40 percent increase over the number received in FY 1990—2.55 million. Requests for an ALJ hearing also have increased dramatically. In FY 1994, our hearing offices had almost 540,000 hearing receipts, and the overwhelming majority of these receipts were related to requests for a hearing filed by persons claiming disability benefits. In that year, the number of hearing receipts we received exceeded the number of receipts we received in FY 1990 by more than 70 percent. We expect hearing receipts to increase to more than 590,000 by the close of FY 1995.

Despite management initiatives that resulted in a record increase in ALJ productivity in FY 1994 and the hiring of more than 200 new ALJs and more than 650 new support staff in that year, the number of cases pending in our hearing offices has reached unprecedented levels—more than 480,000 at the end of FY 1994 and more than 554,000 at the end of July 1995.

In order to process this workload, the disability redesign plan contains other changes to the disability determination process by which SSA plans to decrease processing times while providing world-class service. For example, the disability redesign plan envisions a streamlined initial disability determination process which will result in more timely determinations and the elimination of the reconsideration step in the administrative review process for disability claims. We expect that one consequence of these initiatives will be an increase in the number of requests for hearings filed over the next several years. In light of these growing workload expectations, and to process more efficiently the hearing requests now pending at our hearing offices, we are issuing these final rules establishing the authority to test having an adjudication officer conduct prehearing development and, if appropriate, issue a decision wholly favorable to the claimant.

We expect that use of an adjudication officer, as described in [illegible] disability redesign plan, will enable us to ensure development of a complete record and to issue decisions in a more efficient manner when a request for a hearing has been filed. We anticipate that our tests of the adjudication officer position will provide us with information regarding the effect use of an adjudication officer has on the current hearing process, and how to best use an adjudication officer under the redesigned disability process. We will do this by testing the adjudication officer position alone and in combination with one or more of the tests we are conducting pursuant to the final rules "Testing Modifications to the Disability Determination Procedures," which were published in the **Federal Register** on April 24, 1995 (60 FR 20023) (to be codified at 20 CFR 404.906 and 416.1406).

We consider testing and subsequently implementing use of an adjudication officer to be a high agency priority. It is a complementary approach to the short-term disability initiatives we currently are undertaking. Our short-term initiatives are designed to process more efficiently pending requests for hearings and reduce the number of pending hearings to 375,000 at the end of calendar year 1996. One key short-term initiative is set out in the final regulations we published in the **Federal Register** on June 30, 1995 (60 FR 34126), which temporarily authorize attorney advisors in our Office of Hearings and Appeals (OHA) to conduct certain prehearing proceedings and, where appropriate, issue decisions which are wholly favorable to the claimant and any other party to the hearing. Our attorney advisor rules will no longer be effective on June 30, 1997, unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**. The principal aim of the final rules authorizing attorney advisors to conduct certain proceedings and issue wholly favorable decisions is to expedite decisions on pending requests for hearings. The use of an adjudication officer is focused on making better use of existing resources, so that ongoing cases are processed more timely and in a more efficient manner. These final rules authorizing us to test use of an adjudication officer will allow us to test the effect of a process that we expect will allow us to better manage the hearing process in the years to come.

We find good cause for dispensing in this case with the 30-day delay in the effective date of a substantive rule provided for by 5 U.S.C. 553(d). As explained above and in the notice of proposed rulemaking (NPRM), the number of hearing requests pending at OHA has reached unprecedented levels, and the number of requests for hearings filed over the next several years is expected to continue to increase. In view of the number of pending and expected hearing requests, the beneficial effect we expect this rule to have on our ability to improve our service to claimants, and the importance we place on ensuring that we adjudicate claims timely and accurately, we find that it is in the public interest to make these final rules effective upon publication.

Prehearing Procedures Under the Disability Redesign Plan

On April 15, 1994, SSA published a notice in the **Federal Register** (59 FR 18188), setting out a proposal to reengineer the initial and administrative review process we use to determine an individual's entitlement to Social Security and SSI benefits based on disability. Comments on this comprehensive and far-reaching proposal were requested, and during the comment period that began on April 1, 1994, and ended on June 14, 1994, SSA received, from a broad spectrum of respondents, over 6,000 written responses and extensive oral comments. The commenters expressed their belief that improvements were needed to provide better service and to manage the claims process more effectively. While some concerns were expressed, the commenters praised SSA for taking on the task of redesigning the disability claim process.

On September 7, 1994, the Commissioner of Social Security accepted the revised disability redesign plan that was submitted for her approval on June 30, 1994, with the full understanding that some aspects of the proposal would require research and testing. The plan as approved by the Commissioner was published in the **Federal Register** on September 19, 1994 (59 FR 47887).

The plan anticipates a redesigned, two-step process for deciding Social Security and SSI claims based on disability. Under this process, the claimant will receive an initial determination, and if the claimant is not satisfied with this determination he or she may request an ALJ hearing. When a hearing is requested in the redesigned process, the focal point for prehearing activities will be an adjudication officer who will work with, among others, claimants and their representatives. Adjudication officers will have authority to make decisions wholly favorable to the claimant after the hearing is requested but before it is held where such decisions are warranted by the evidence.

The adjudication officer, together with the claimant and his or her representative, will have responsibility for ensuring that claims coming before ALJs are fully developed. The procedures outlined in the disability redesign plan make the best use of the services of representatives by more clearly defining the responsibility of claimants and their representatives to submit evidence. In addition, we anticipate that the hearing process will function more efficiently under the disability redesign plan because the adjudication officer will conduct an informal conference with a claimant's representative to identify the issues in dispute and to prepare proposed written agreements for the approval of the ALJ regarding those issues which are not in dispute and those issues proposed for hearing. We would not ask a claimant who does not have a representative to limit issues prior to the hearing. However, if the claimant obtains representation after the adjudication officer concludes that the case is ready for a hearing, the ALJ will return the case to the adjudication officer who will conduct an informal conference with the claimant and his representative.

In these final rules we are adding new §§ 404.943 and 416.1443. These sections set out, for purposes of the tests we will conduct, the responsibilities of the adjudication officer when a request for an ALJ hearing is filed.

For many years, our hearing offices have productively used various forms of prehearing development. We have conducted tests of a standard prehearing development process under our existing regulatory authority. This experience has given us some information about the effect the establishment of an adjudication officer position may have on the administrative review process. However, as we believe that further information will allow us to better evaluate the effect the position may have on the administrative review process, we will begin testing use of the adjudication officer as soon as possible. The tests are intended to assess whether the position meets the goals of the disability redesign process and whether it will have an effect on administrative and program expenditures. We also will manage closely the tests of the adjudication officer position to ensure that the procedures are consistently and effectively applied at all locations.

In accordance with the goals and directives of the National Performance Review's Reinventing Government Programs I and II, and our disability redesign plan, the role of the adjudication officer must be flexible to make the best use of our available program resources and also be consistent with providing world-class service to our customers. Accordingly, under these final rules, the adjudication officer may either be a qualified employee of SSA or an employee of a State agency that makes disability determinations for us. The adjudication officer may be located in our field offices or program service centers, in State agencies that make disability determinations for us, in OHA, or in our Regional Office of Program and Integrity Reviews.

Adjudication Officer Qualifications

The adjudication officer will be expected to bring relevant experience to the position, with additional training provided as may be necessary to complete the preparation of the individual to assume the full range of duties. The adjudication officer must have a thorough knowledge of the disability provisions, and be able to communicate effectively in informal conferences and in writing. The adjudication officer must be able to manage a substantial caseload, review independently the information in the claims file, determine the need for additional evidence, and evaluate the evidence under the applicable provisions of the Act, our regulations and rulings. In addition, the adjudication officer must be able to write factually and legally correct decisions that can be readily understood by the claimant.

Evaluation of Tests of Prehearing Procedures and Decisions by Adjudication Officers

These final rules establish the authority to test new prehearing procedures involving use of an adjudication officer. We plan to test the procedures in multiple sites, including our field offices and program service centers, State agencies that make disability determination for us, OHA, and our other regional offices to provide a means of determining the effect of the procedures in those sites. Each test will involve a representative mix of geographic areas and caseloads. Before we commence each test, we will publish a notice in the **Federal Register** designating the test site(s) and duration of the test. The notice will also describe when the test will be conducted alone or in combination with one or more of the tests we are conducting pursuant to the final rules "Testing Modifications to the Disability Determination Procedures" which we published in the **Federal Register** on April 24, 1995 (60 FR 20023) (to be codified at 20 CFR 404.906 and 416.1406). We will evaluate test outcomes against the objectives of the disability redesign:

- Is the process user friendly?
- Does the process maintain a high level of payment quality?
- Does the process take less time?
- Is the process efficient?
- Does the process result in satisfying work for employees?

One of the most important aspects of our evaluation plan is to measure the effect the procedures used by the adjudication officer has on overall disability allowance rates. The responsibilities of an adjudication officer are not designed to change the overall allowance rates. In order to determine whether the actions taken by adjudication officers result in processing improvements consistent with expected outcomes, we will review evaluation results on a quarterly basis. If our evaluation shows that overall allowance rates increase or decrease unacceptably, we will cease use of, or make appropriate adjustments to the prehearing procedures, consistent with this regulatory authority.

In the preamble to the final rules on "Testing Modifications to the Disability Determination Procedures," we indicated that we plan to test the adjudication officer prehearing procedures, as well as other aspects of the disability redesign which do not require regulatory changes, in combination with one or more of the four models described in those final rules at some test sites. This continues to be our intention. Such tests will provide us with a body of information about each individual part of the redesign, as well as whether the combined effect of the redesign meets our goals of making the disability process user friendly, more timely and more accurate and efficient. It will also provide us with information about program expenditures in connection with the overall redesign.

Public Comments

These regulatory provisions were published in the **Federal Register** as an NPRM on June 9, 1995 (60 FR 30482). We provided the public with a 30-day comment period. We received 21 letters in response to this notice from a variety of sources, including individuals employed by SSA as attorney advisors or ALJs, State agencies which make disability determinations for us, representatives of legal services organizations, union representatives, and a private attorney.

In general, the comments expressed concerns regarding several aspects of the proposed rule and requested that we not promulgate the rule as proposed. Some comments suggested changes to the rules, or identified provisions in the rule that the commenters believed required clarification. Some of the comments we received were outside the scope of the proposed rule, and therefore have not been addressed. The substantive comments made by the commenters and our responses are set out below. Because some of the comments were detailed, we condensed, summarized or paraphrased them. We have, however, tried to summarize the commenters's views accurately and respond to all of the significant issues raised by the commenters.

As discussed in our responses to the comments we received, we have made some changes to the proposed rule to clarify certain aspects of the rule. However, as most of the comments we received related to issues that we had considered previously in the development of the disability redesign plan, we are issuing these final rules with no substantive changes.

Comment: A number of commenters expressed concern that the proposed rule would change the responsibilities of claimants and their representatives for obtaining and submitting evidence.

Response: This is not our intent. Under the provisions of titles II and XVI of the Act and our existing regulations, a claimant will not be found disabled unless he or she submits evidence to support his or her claim for disability benefits or SSI payments based on disability. (See sections 223(d)(5)(A) and 1614(a)(3)(G) of the Act, and 20 CFR 404.704–404.705, 404.935, 404.1512, 404.1514, 416.912(c), and 416.1435). The claimant's responsibility regarding the submission of evidence to support the claim for benefits is equally the responsibility of a representative appointed by the claimant. (See 20 CFR 404.1710, 404.1715, 416.1510 and 416.1515).

The disability redesign plan reflects the principle of claimant and claimant representative responsibility in the submission of evidence while defining new procedures to promote effective cooperation between SSA and claimants and their representatives in ensuring the development of complete evidentiary records. The plan makes the best use of a representative's services early in the process, and these final rules do not impose on claimants or their representatives significant responsibilities that they do not currently have.

Testing use of an adjudication officer as part of the prehearing procedures we follow will allow us to assess the extent to which having an adjudication officer work with claimants and representatives in developing complete evidentiary records will contribute to improved and more expeditious claims development and, thereby, a more effective adjudication process.

Comment: Several commenters stated that the proposed rule would result in different treatment of represented and unrepresented claimants and encourage representation. Other commenters thought the proposed rule would discourage representation.

Response: Like the proposed rule, these final rules contain slightly different procedures in two areas—the development of additional evidence and the holding of prehearing conferences. These differences in procedures result from a claimant's decision to proceed without representation. We believe that the differences in procedures are warranted in both instances and that these final rules will not result in unfair treatment of any claimants. The procedures reflected in these final rules also involve a continuance of existing practices in our hearing offices.

Our intent is neither to encourage nor discourage representation. Rather, under these final rules, and as contemplated by the disability redesign plan, we will remind the claimant of his or her right to representation. The information regarding the right to representation provided by the adjudication officer is designed to prevent delays caused by a lack of understanding of that right and to encourage the claimant to decide about the need for representation and choice of representative as soon as practicable. In all cases, however, the adjudication officer retains his responsibility to ensure complete evidentiary development with the claimant and any appointed representative and will work with the claimant and/or the representative in developing evidence. The adjudication officer will assist unrepresented claimants and, if necessary, claimant representatives in securing evidence. Generally, unrepresented claimants will more frequently need assistance than represented claimants. However, all claimants will be treated fairly and will be assisted if necessary in meeting their obligations to produce evidence. That approach continues current practices under which ALJs exercise a heightened responsibility in assisting unrepresented claimants.

The adjudication officer and the claimant's representative will participate in an informal conference. One of the purposes of this informal conference is to attempt to reach proposed agreements for the approval of the ALJ regarding the issues which are not in dispute and those issues proposed for the hearing. However, the adjudication officer may conduct an informal conference with an unrepresented claimant, the main purpose of which will be to explain to the claimant the issues which may arise at the hearing. In addition, if a claimant obtains representation after the adjudication officer has concluded that the case is ready for a hearing, the ALJ will return the case for an informal conference with the adjudication officer. Under current practice, personnel in our OHA hearing offices generally do not request unrepresented claimants to participate in prehearing conferences, and prehearing conferences are sometimes scheduled after a claimant who was unrepresented obtains representation. The final rules do not contain specific criteria regarding when an adjudication officer will hold an informal conference with an unrepresented claimant so that the adjudication officer will have some discretion in this area.

An essential function of the adjudication officer is to provide a point of contact for unrepresented claimants in order to explain the hearing process and the right to representation. The adjudication officer also will give unrepresented claimants referral sources for obtaining representation and copies of documents needed in appointing a representative. Under current practice, personnel in our OHA hearing offices remind claimants about their right to representation and provide information about referral sources in acknowledging requests for a hearing. The purpose of those actions, like the similar actions to be taken by the adjudication officers, is to encourage prompt and fully informed decisions about securing representation. There is no attempt on our part to encourage or discourage representation. Under the redesigned process, as under the current process, the decision to proceed with or without representation will continue to be a decision for the claimant to make.

Comment: Some commenters thought that the proposed rule would create a new step in the administrative review process, would reduce claimant access to an ALJ, and delay the adjudication of claims.

Response: An overriding purpose of the disability redesign plan is to shorten and expedite the administrative process. To reach that goal, the plan contemplates eventual elimination of the reconsideration step and the creation of the adjudication officer position. Use of an adjudication officer is not intended to serve as a replacement for reconsideration, as some commenters thought. Instead, the disability redesign plan contemplates the elimination of reconsideration because the initial determination will be the result of a process that ensures a more fully developed evidentiary record and provides an opportunity for the claimant to present additional evidence at a predecision interview. When a claimant is dissatisfied with the initial determination and requests an ALJ hearing, the adjudication officer's role will be to expedite the completion of any necessary prehearing activities and to issue, where warranted by the evidence, a decision which is wholly favorable to the claimant without the need for a hearing.

Under these final rules, adjudication officers will not have authority to deny claims or to dismiss requests for an ALJ hearing. The intent of the redesign plan, and these final rules, is to increase claimant access to the ALJ by reducing the time required to receive an ALJ hearing in cases in which a hearing is necessary. Moreover, these final rules preserve a claimant's right to a hearing which will be conducted by an ALJ, if he or she is dissatisfied with the adjudication officer's decision.

Comment: Other commenters expressed concern that the proposed rule would force ALJs to hear cases that are improperly developed. These commenters stated that the ALJ's authority to consider additional evidence or issues should be clarified.

Response: We do not agree with the commenters' concerns that these rules would force ALJs to hear and decide improperly developed cases. Sections 404.943(b)(4) and 416.1443(b)(4) of the proposed rule stated that at the point at which a case is referred for a hearing, "the administrative law judge conducts all further hearing proceedings, including scheduling and holding a hearing and issuing a decision or dismissal of your request for a hearing." New §§ 404.943 and 416.1443 do not deny to an ALJ any authority he or she may exercise under existing regulations. In order to make this point clearer, however, we have clarified in these final rules that the proceeding an ALJ may conduct can include the development of additional evidence.

Comment: Several commenters stated that the provision of the proposed rule providing that the case would be returned to the adjudication officer if the claimant obtained representation after the AO concluded that the case was ready for a hearing, would create delays and discourage representation.

Response: We do not agree with the commenters, and it is certainly not our intent to create delays or to discourage representation. We believe that this procedure will enable us to interact with the claimant's representative in a better and more timely manner and that the AO, working with the claimant's representative, will be able to ensure that the evidentiary record is as complete as possible prior to the hearing. By ensuring the development of a complete record before the hearing, we intend that this procedure will expedite both the hearing and the issuance of a hearing decision.

Comment: A number of commenters thought that the proposed rule was purposely vague or unclear on how certain issues will be handled in the process, e.g., the return of cases by an ALJ to an adjudication officer and whether and how new evidence and issues could be considered by an ALJ.

Response: As noted above and in the NPRM (60 FR 30482, 30483), new §§ 404.943 and 416.1443 establish authority to test having an adjudication officer be the focal point of prehearing activities, as described in the disability redesign plan. The redesign plan set forth a broad description of a new disability process and of the adjudication officer position and left operational, organizational and other details of the process to be developed (59 FR 18188). Our intent is not to be vague or unclear; rather, our intent is to authorize testing in which detailed operating procedures may be addressed and developed incrementally. As noted above, however, we have clarified in these final rules that the ALJ may consider additional evidence, and is not limited to the record developed by the claimant, his or her representative and the adjudication officer. We also have clarified that the written agreements prepared by the adjudication officer with the claimant's representative are only proposed agreements for the approval of the ALJ. These agreements are subject to acceptance by and/or further development by the ALJ at the hearing. In addition, we have clarified that the ALJ may return the case to the adjudication officer for further development or to obtain additional evidence at any point on or before the date of the hearing.

Comment: Several commenters objected to a perceived acceleration of the implementation of the adjudication officer, particularly before other parts of the disability redesign were in place, including the disability claims manager position called for in the disability redesign plan.

Response: These final rules establish authority to test the use of an adjudication officer; they do not establish the authority to implement the use of the adjudication officer position on a nationwide basis. The purpose of the rules is to test the use of an adjudication officer position and its procedures in a variety of sites and circumstances. We will test the position alone and in combination with one or more of the tests we are conducting pursuant to the final rules we recently published on "Testing Modifications to the Disability Determination Procedures" (60 FR 20023). The modifications to be tested under those rules include the position of disability claims manager and elimination of the reconsideration level of the existing disability claims process.

Comment: Two commenters expressed the view that DDS employees are best suited for the adjudication officer position; five other commenters stated that the adjudication officer should be an attorney or have legal training.

Response: Comments regarding the qualifications of the adjudication officer, throughout the planning process as well as in response to the NPRM, essentially have fallen into the two categories reflected above. The Commissioner has made a decision that for testing purposes the adjudication officer may be an employee of SSA or a State agency that makes disability determinations for us. The adjudication officer will be expected to bring relevant experience to the position. While legal experience is deemed desirable, it is not required, provided the individual is qualified to communicate effectively in informal conferences and in writing. The issues regarding whether the adjudication officer must have the qualifications for an attorney position are issues upon which testing information is required.

Comment: Two commenters expressed the view that the adjudication officer should be located in OHA offices only.

Response: We have not adopted this comment. We believe the testing of the adjudication officer position should not be limited to OHA sites. Testing the position in a variety of sites will provide information on the most effective location(s) for the adjudication officers. We also wish to assess the feasibility of increasing accessibility to claimants and their representatives by locating the adjudication officers in community based sites.

Comment: Some of the commenters thought the proposed rule would violate a claimant's right to due process under the Constitution and a full and fair hearing under the Act if the rule precluded the ALJ from considering new evidence or issues at the hearing.

Response: We do not agree that these rules violate a claimant's right to due process under the Constitution or a full and fair hearing under the Act in any way. These final rules do not preclude or interfere with a claimant's right to a full and fair hearing before an ALJ. Rather, the claimant's right to a hearing conducted by an ALJ is explicitly preserved even in instances in which the adjudication officer makes a wholly favorable decision. The preservation of the claimant's right to an ALJ hearing is consistent with due process and equal protection under the Constitution. Moreover, the due process concerns expressed by the commenters were premised on the commenters' belief that the proposed rule limited the ALJ's ability to consider additional evidence or issues at the hearing. As we have discussed above and clarified in these final rules, the ALJ's ability to consider additional evidence or issues under these final rules remains the same as it is under our current regulations.

Comment: A number of commenters expressed the view that the adjudication officer is unnecessary because of the availability of preferable alternatives, specifically the short-term disability initiatives we are currently undertaking. Other commenters requested that we clarify the relationship between the adjudication officer and the attorney advisors in OHA who have been temporarily authorized to make fully favorable decisions in certain instances pursuant to the short-term disability initiatives.

Response: The adjudication officer is part of SSA's long term plans for redesigning and fundamentally improving the disability claim process. Our short-term initiatives are designed to process pending workloads more efficiently, not to bring about the kind of changes that will fundamentally improve the disability claim process.

The short-term disability initiatives include final rules issued on June 30, 1995 (60 FR 34126) which temporarily authorize attorney advisors in OHA to conduct certain prehearing proceedings and, where appropriate based on the documentary record developed as a result of these proceedings, to issue decisions that are wholly favorable to the parties to the hearing. Although there are similarities in functions under this short-term initiative and the adjudication officer process, there are substantial differences as well. The primary focus of the attorney advisor process is on the rapid identification of pending cases in which a wholly favorable decision can be made without a hearing. The adjudication officer also will identify claims in which a wholly favorable decision may be made, but the adjudication officer's functions are more broadly concerned with the full range of prehearing activities, particularly development of the record.

Comment: A few commenters expressed concern that the proposed rule provided no study protocol.

Response: We will have a study and evaluation plan in place to assure a valid and accurate assessment of the degree to which use of an adjudication officer attains the goals we wish to achieve before any national implementation of the process. The approach we are following in this regard is similar to the approach we are following in the related testing to be conducted under final rules on "Testing Modifications to the Disability Determination Procedures" (60 FR 20023, 20025).

Comment: Some commenters expressed concern that the proposed rule provided no clearly defined decision-making standard.

Response: Adjudication officers will be bound by the Social Security Act, the regulations, and Social Security Rulings, including Social Security Acquiescence Rulings. They will also rely on other guidance published by the agency. This is consistent with established standards of decision making in SSA.

Comment: Other commenters expressed concern that the proposed rule provided no specific quality assurance review procedures.

Response: We are establishing an intensive quality assurance review program that will provide us with information regarding the quality of the adjudication officer work process, as well as the procedures, sites and the assumptions set out in detail in the disability redesign plan. In addition, the final rules authorize the Appeals Council to review the adjudication officer's decision on its own motion. No additional changes in these final rules or existing regulations are required to allow us to subject the decisions made by adjudication officers to quality assurance review procedures.

Comment: Several commenters expressed concerns that the adjudication officer position as proposed for testing violated Federal/State principles applicable in the administration of the Social Security disability programs, including the principle that States cannot make decisions.

Response: We are of the opinion that sections 205(b)(1) and 221(a)(1) of the Act give the Commissioner, or her agents, broad authority to determine rights to benefits under the Act. These sections contain no language specifically excluding State DDS employees who adjudicate disability claims for us from acting as agents of the Commissioner in this regard. Moreover, having DDS employees as adjudication officers is consistent with SSA's current regulations at 20 CFR 404.1613 and 416.1013 governing Federal and State jurisdiction with respect to disability determination workloads and adding new classes of cases and decision-makers.

Comment: Some commenters also expressed concern that the adjudication officer process would require Federal oversight of decisions made by employees of State agencies.

Response: The Social Security disability programs under titles II and XVI of the Act establish a Federal program which includes a role for the States in the adjudication process. As in all other areas of the disability programs, the adjudication officer will be subject to SSA oversight, both in effectuating the adjudication officer's wholly favorable decisions and in quality assurance functions.

Comment: Several commenters expressed the view that the adjudication officer process will increase administrative and program costs, particularly on the basis that the process will not decrease OHA workloads unless it results in the allowance of many cases.

Response: We are conducting these tests to determine whether use of an adjudication officer will have an effect on program and administrative expenditures. The adjudication officer's function is to provide a focal point for all prehearing activities. While adjudication officers may issue wholly favorable decisions where warranted, they can contribute to the improvement of the disability process in other ways as well. Use of an adjudication officer is not designed to change the overall allowance rates. Moreover, as set out in the NPRM and above, in order to determine whether the prehearing procedures result in processing improvements consistent with expected outcomes, we will review evaluation results on a quarterly basis and make appropriate adjustments to, or cease use of, the prehearing procedures consistent with this regulatory authority if there is evidence that overall allowance rates increase or decrease unacceptably.

Comment: One commenter suggested changes to the proposed rules to clarify in several places in the regulations that adjudication officers may only issue wholly favorable decisions.

Response: We believe these final rules clearly limit the adjudication officers to making wholly favorable decisions, and do not require further clarification as suggested by the commenter.

Comment: Two commenters expressed the view that the 30-day comment period was too short.

Response: We do not agree that a longer comment period was warranted. We provided a shorter comment period than the 60-day period we usually provide because of the salutary effect we expect these rules to have on our ability to improve our service to claimants, and the importance we place on ensuring that we adjudicate claims timely and accurately. We also believe that the 30-day period is appropriate in this instance because we previously provided the public an extended opportunity to comment on all aspects of the disability redesign plan, including the establishment of the adjudication officer position.

Comment: One commenter suggested that we add a sentence in § 404.943(b)(1) to clarify that a claimant's representative will be allowed to participate in the interview with the claimant.

Response: We have not adopted this comment because the final rules we are issuing provide authority for us to test the use of an adjudication officer. They do not change in any way the rules we follow regarding representation. Our existing regulations at 20 CFR 404.1705 and 416.1505 provide that claimants may obtain representation at any time. We notify the claimant's representative of any administrative actions we take, and we also afford the representative the opportunity to participate in any meetings or interviews which we conduct with the claimant he or she represents.

Comment: We were also asked by a commenter to clarify in § 404.943(a)(2) of the regulations that some persons would be assigned to a control group for purposes of the tests we will conduct under these final rules.

Response: Although we will have a control group, cases in this group will be processed in accordance with our current regulations, and the control group will be used to provide comparative data when we evaluate the records of cases that were used in our tests. For these reasons, a specific reference to the control group procedures is not needed in these final rules, and the change suggested by the commenter has not been made.

Comment: Two commenters asked us to clarify whether the adjudication officer would schedule a date for the hearing with an ALJ.

Response: The answer to this question is no. These final rules do not change our current procedures under which the ALJ schedules the hearing. However, we will use two new methods in conjunction with the tests we will conduct under these final rules to facilitate the ability of the ALJ to schedule a hearing. Under the first method, before the prehearing procedures are completed, the adjudication officer will ask the claimant or the claimant's representative to provide two or three dates within the following 35–50 days on which the claimant and his or her representative could be available for a hearing. These dates will be part of the record the adjudication officer forwards to the hearing office, where the case will be reviewed and a hearing scheduled for one of the dates in the file. The second method which we intend to test is one where the adjudication officer will arrange the time and date for the hearing by having the adjudication officer match a time acceptable to the claimant and his or her representative with an available hearing time out of a block of times for a hearing provided by the hearing office. The block of times will be the time periods within the following 2 to 3 months when time is available to hold hearings. The adjudication officer, however, will not access individual ALJ scheduling calendars and will not schedule a case with a specific ALJ. Under either procedure, the hearing office will prepare and send out the hearing notice 20 days prior to the hearing. The objective of both methods is to ensure that the hearing is scheduled and held in a timely and efficient manner following the conclusion of the prehearing procedures.

Comment: One commenter requested that the provision in § 404.943(c)(1) be revised to clarify the authority of the adjudication officer to issue a decision after a claim has been referred to an ALJ, but before the hearing is held.

Response: We have revised §§ 404.943(b)(4) and 416.1443(b)(4) to clarify that an ALJ may return a claim to the adjudication officer for further development prior to the hearing. Under

the final rules, the ALJ may return the claim to the adjudication officer on or before the date of the hearing to complete the development of the evidence and for such other action as necessary. If the ALJ exercises this authority, the adjudication officer may make a decision that is wholly favorable to the claimant if it is warranted by the evidence, or the adjudication officer may refer the claim to the ALJ when the additional prehearing procedures are completed.

Comment: One commenter requested us to clarify that, when the claimant or representative is unable to agree with the adjudication officer that the development of the evidence is complete, the adjudication officer will note the disagreement and refer the claim to the administrative law judge for further proceedings.

Response: We agree with the comment and have clarified §§ 404.943(b)(4) and 416.1443(b)(4).

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review. These rules do not adversely affect State, local or tribal governments. The administrative costs of the tests will be covered within budgeted resources. No program costs are expected to result from processing of the test cases. We have not, therefore, prepared a cost/benefit analysis under Executive Order 12866.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or record keeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: August 23, 1995.

Shirley Chater,
Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205 (a), (b), and (d)–(h), 221(d), 225 and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), 425 and 902(a)(5); 31 U.S.C. 3720A).

2. New § 404.943 is added under the undesignated center heading "Hearing Before an Administrative Law Judge" to read as follows:

§ 404.943 Responsibilities of the adjudication officer.

(a)(1) *General.* Under the procedures set out in this section we will test modifications to the procedures we follow when you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in § 404.1505 is at issue. These modifications will enable us to test the effect of having an adjudication officer be your primary point of contact after you file a hearing request and before you have a hearing with an administrative law judge. The tests may be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 404.906. The adjudication officer, working with you and your representative, if any, will identify issues in dispute, develop evidence, conduct informal conferences, and conduct any other prehearing proceeding as may be necessary. The adjudication officer has the authority to make a decision wholly favorable to you if the evidence so warrants. If the adjudication officer does not make a decision on your claim, your hearing request will be assigned to an administrative law judge for further proceedings.

(2) *Procedures for cases included in the tests.* Prior to commencing tests of the adjudication officer position in selected site(s), we will publish a notice in the **Federal Register**. The notice will describe where the specific test site(s) will be and the duration of the test(s). We will also state whether the tests of the adjudication officer position in each site will be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 404.906. The individuals who participate in the test(s) will be assigned randomly to a test group in each site where the tests are conducted.

(b)(1) *Prehearing procedures conducted by an Adjudication Officer.* When you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in § 404.1505 is at issue, the adjudication officer will conduct an interview with you. The interview may take place in person, by telephone, or by videoconference, as the adjudication officer determines is appropriate under the circumstances of your case. If you file a request for an extension of time to request a hearing in accordance with § 404.933(c), the adjudication officer may develop information on, and may decide where the adjudication officer issues a wholly favorable decision to you that you had good cause for missing the deadline for requesting a hearing. To determine whether you had good cause for missing the deadline, the adjudication officer will use the standards contained in § 404.911.

(2) *Representation.* The adjudication officer will provide you with information regarding the hearing process, including your right to representation. As may be appropriate, the adjudication officer will provide you with referral sources for representation, and give you copies of necessary documents to facilitate the appointment of a representative. If you have a representative, the adjudication officer will conduct an informal conference with the representative, in person or by telephone, to identify the issues in dispute and prepare proposed written agreements for the approval of the administrative law judge regarding those issues which are not in dispute and those issues proposed for the

hearing. If you decide to proceed without representation, the adjudication officer may hold an informal conference with you. If you obtain representation after the adjudication officer has concluded that your case is ready for a hearing, the administrative law judge will return your case to the adjudication officer who will conduct an informal conference with you and your representative.

(3) *Evidence*. You, or your representative, may submit, or may be asked to obtain and submit, additional evidence to the adjudication officer. As the adjudication officer determines is appropriate under the circumstances of your case, the adjudication officer may refer the claim for further medical or vocational evidence.

(4) *Referral for a hearing*. The adjudication officer will refer the claim to the administrative law judge for further proceedings when the development of evidence is complete, and you or your representative agree that a hearing is ready to be held. If you or your representative are unable to agree with the adjudication officer that the development of evidence is complete, the adjudication officer will note your disagreement and refer the claim to the administrative law judge for further proceedings. At this point, the administrative law judge conducts all further hearing proceedings, including scheduling and holding a hearing (§ 404.936), considering any additional evidence or arguments submitted (§§ 404.935, 404.944, 404.949, 404.950), and issuing a decision or dismissal of your request for a hearing, as may be appropriate (§§ 404.948, 404.953, 404.957). In addition, if the administrative law judge determines on or before the date of your hearing that the development of evidence is not complete, the administrative law judge may return the claim to the adjudication officer to complete the development of the evidence and for such other action as necessary.

(c)(1) *Wholly favorable decisions issued by an adjudication officer*. If, after a hearing is requested but before it is held, the adjudication officer decides that the evidence in your case warrants a decision which is wholly favorable to you, the adjudication officer may issue such a decision. For purposes of the tests authorized under this section, the adjudication officer's decision shall be considered to be a decision as defined in § 404.901. If the adjudication officer issues a decision under this section, it will be in writing and will give the findings of fact and the reasons for the decision. The adjudication officer will evaluate the issues relevant to determining whether or not you are disabled in accordance with the provisions of the Social Security Act, the rules in this part and part 422 of this chapter and applicable Social Security Rulings. For cases in which the adjudication officer issues a decision, he or she may determine your residual functional capacity in the same manner that an administrative law judge is authorized to do so in § 404.1546. The adjudication officer may also evaluate the severity of your mental impairments in the same manner that an administrative law judge is authorized to do so under § 404.1520a. The adjudication officer's decision will be based on the evidence which is included in the record and, subject to paragraph (c)(2) of this section, will complete the actions that will be taken on your request for hearing. A copy of the decision will be mailed to all parties at their last known address. We will tell you in the notice that the administrative law judge will not hold a hearing unless a party to the hearing requests that the hearing proceed. A request to proceed with the hearing must be made in writing within 30 days after the date the notice of the decision of the adjudication officer is mailed.

(2) *Effect of a decision by an adjudication officer*. A decision by an adjudication officer which is wholly favorable to you under this section, and notification thereof, completes the administrative action on your request for hearing and is binding on all parties to the hearing and not subject to further review, unless—

(i) You or another party requests that the hearing continue, as provided in paragraph (c)(1) of this section;

(ii) The Appeals Council decides to review the decision on its own motion under the authority provided in § 404.969;

(iii) The decision is revised under the procedures explained in §§ 404.987 through 404.989; or

(iv) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 404.984.

(3) *Fee for a representative's services*. The adjudication officer may authorize a fee for your representative's services if the adjudication officer makes a decision on your claim that is wholly favorable to you, and you are represented. The actions of, and any fee authorization made by, the adjudication officer with respect to representation will be made in accordance with the provisions of subpart R of this part.

(d) *Who may be an adjudication officer*. The adjudication officer described in this section may be an employee of the Social Security Administration or a State agency that makes disability determinations for us.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart N continues to read as follows:

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. New § 416.1443 is added under the undesignated center heading "Hearing Before an Administrative Law Judge" to read as follows:

§ 416.1443 Responsibilities of the adjudication officer.

(a)(1) *General*. Under the procedures set out in this section we will test modifications to the procedures we follow when you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in §§ 416.905 and 416.906 is at issue. These modifications will enable us to test the effect of having an adjudication officer be your primary point of contact after you file a hearing request and before you have a hearing with an administrative law judge. The tests may be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 416.1406. The adjudication officer, working with you and your representative, if any, will identify issues in dispute, develop evidence, conduct informal conferences, and conduct any other prehearing proceeding as may be necessary. The adjudication officer has the authority to make a decision wholly favorable to you if the evidence so warrants. If the adjudication officer does not make a decision on your claim, your hearing request will be assigned to an administrative law judge for further proceedings.

(2) *Procedures for cases included in the tests*. Prior to commencing tests of the adjudication officer position in selected site(s), we will publish a notice in the **Federal Register**. The notice will describe where the specific test site(s) will be and the duration of the test(s). We will also state whether the tests of the adjudication officer position in each site will be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 416.1406. The individuals who participate in the

test(s) will be assigned randomly to a test group in each site where the tests are conducted.

(b)(1) *Prehearing procedures conducted by an Adjudication Officer*. When you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in §§ 416.905 and 416.906 is at issue, the adjudication officer will conduct an interview with you. The interview may take place in person, by telephone, or by videoconference, as the adjudication officer determines is appropriate under the circumstances of your case. If you file a request for an extension of time to request a hearing in accordance with § 416.1433(c), the adjudication officer may develop information on, and may decide where the adjudication officer issues a wholly favorable decision to you that you had good cause for missing the deadline for requesting a hearing. To determine whether you had good cause for missing the deadline, the adjudication officer will use the standards contained in § 416.1411.

(2) *Representation*. The adjudication officer will provide you with information regarding the hearing process, including your right to representation. As may be appropriate, the adjudication officer will provide you with referral sources for representation, and give you copies of necessary documents to facilitate the appointment of a representative. If you have a representative, the adjudication officer will conduct an informal conference with the representative, in person or by telephone, to identify the issues in dispute and prepare proposed written agreements for the approval of the administrative law judge regarding those issues which are not in dispute and those issues proposed for the hearing. If you decide to proceed without representation, the adjudication officer may hold an informal conference with you. If you obtain representation after the adjudication officer has concluded that your case is ready for a hearing, the administrative law judge will return your case to the adjudication officer who will conduct an informal conference with you and your representative.

(3) *Evidence*. You, or your representative, may submit, or may be asked to obtain and submit, additional evidence to the adjudication officer. As the adjudication officer determines is appropriate under the circumstances of your case, the adjudication officer may refer the claim for further medical or vocational evidence.

(4) *Referral for a hearing*. The adjudication officer will refer the claim to the administrative law judge for further proceedings when the development of evidence is complete, and you or your representative agree that a hearing is ready to be held. If you or your representative are unable to agree with the adjudication officer that the development of evidence is complete, the adjudication officer will note your disagreement and refer the claim to the administrative law judge for further proceedings. At this point, the administrative law judge conducts all further hearing proceedings, including scheduling and holding a hearing, (§ 416.1436), considering any additional evidence or arguments submitted (§§ 416.1435, 416.1444, 416.1449, 416.1450), and issuing a decision or dismissal of your request for a hearing, as may be appropriate (§§ 416.1448, 416.1453, 416.1457). In addition, if the administrative law judge determines on or before the date of your hearing that the development of evidence is not complete, the administrative law judge may return the claim to the adjudication officer to complete the development of the evidence and for such other action as necessary.

(c)(1) *Wholly favorable decisions issued by an adjudication officer*. If, after a hearing is requested but before it is held, the adjudication officer decides that the evidence in your case warrants a decision which is wholly favorable to you, the adjudication officer may issue such a decision. For purposes of the tests authorized under this section, the adjudication officer's decision shall be considered to be a decision as defined in § 416.1401. If the adjudication officer issues a decision under this section, it will be in writing and will give the findings of fact and the reasons for the decision. The adjudication officer will evaluate the issues relevant to determining whether or not you are disabled in accordance with the provisions of the Social Security Act, the rules in this part and part 422 of this chapter and applicable Social Security Rulings. For cases in which the adjudication officer issues a decision, he or she may determine your residual functional capacity in the same manner that an administrative law judge is authorized to do so in § 416.946. The adjudication officer may also evaluate the severity of your mental impairments in the same manner that an administrative law judge is authorized to do so under § 416.920a. The adjudication officer's decision will be based on the evidence which is included in the record and, subject to paragraph (c)(2) of this section, will complete the actions that will be taken on your request for hearing. A copy of the decision will be mailed to all parties at their last known address. We will tell you in the notice that the administrative law judge will not hold a hearing unless a party to the hearing requests that the hearing proceed. A request to proceed with the hearing must be made in writing within 30 days after the date the notice of the decision of the adjudication officer is mailed.

(2) *Effect of a decision by an adjudication officer*. A decision by an adjudication officer which is wholly favorable to you under this section, and notification thereof, completes the administrative action on your request for hearing and is binding on all parties to the hearing and not subject to further review, unless—

(i) You or another party requests that the hearing continue, as provided in paragraph (c)(1) of this section;

(ii) The Appeals Council decides to review the decision on its own motion under the authority provided in § 416.1469;

(iii) The decision is revised under the procedures explained in §§ 416.1487 through 416.1489; or

(iv) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 416.1484.

(3) *Fee for a representative's services*. The adjudication officer may authorize a fee for your representative's services if the adjudication officer makes a decision on your claim that is wholly favorable to you, and you are represented. The actions of, and any fee authorization made by, the adjudication officer with respect to representation will be made in accordance with the provisions of subpart O of this part.

(d) *Who may be an adjudication officer*. The adjudication officer described in this section may be an employee of the Social Security Administration or a State agency that makes disability determinations for us.

[FR Doc. 95–22579 Filed 9–12–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 19

Duty to Report Violations; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that gives the responsibility to perform the centralized investigative activities in FDA to another office. The responsibility was recently transferred from the Division of Ethics and Program Integrity, Office of Management and Operations, FDA, to the Office of Internal Affairs, FDA. This action will codify this transfer of functions.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Tommy L. Hampton, Office of Internal Affairs (HF–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0243.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 23, 1995 (60 FR 4417), the Department of Health and Human Services published a notice to reflect an organizational change in FDA. The positions assigned to perform the centralized investigative activities located in the Division of Ethics and Program Integrity, Office of Management, Office of Management and Systems, FDA, were transferred to the new Office of Internal Affairs within the Office of the Commissioner.

The new Office of Internal Affairs will serve as an FDA investigative resource to conduct internal FDA investigations and support the Office of Inspector General investigations. Therefore, the agency is amending 21 CFR 19.21 to reflect the organizational change.

List of Subjects in 21 CFR Part 19

Conflict of interests.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 19 is amended as follows:

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

1. The authority citation for 21 CFR part 19 continues to read as follows:

Authority: Sec. 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371).

2. Section 19.21 is amended in paragraph (a) by removing "Division of Ethics and Program Integrity, Office of Management and Operations" and adding in its place "Office of Internal Affairs, Office of the Commissioner" ; in paragraph (b) by removing "Division of Ethics and Program Integrity" the two times it appears and adding in its place "Office of Internal Affairs"; and in paragraph (c) by removing "Division of Ethics and Program Integrity" and adding in its place "Office of Internal Affairs".

Dated: September 5, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–22636 Filed 9–12–95; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 175

[Docket No. 93F–0276]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethoxylated primary linear alcohols of greater than 10 percent ethylene oxide by weight having molecular weights of 390 to 7,000 for use as components of food packaging adhesives. This action is in response to a petition filed by Petrolite Corp.

DATES: Effective September 13, 1995; written objections and requests for a hearing October 13, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 17, 1993 (58 FR 48659), FDA announced that a food additive petition (FAP 3B4390) had been filed by Petrolite Corp., 369 Marshall Ave., St. Louis, MO 63119–1697. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of ethoxylated primary linear alcohols of greater than 10 percent ethylene oxide by weight having molecular weights of 390 to 7,000 for use as components of food packaging adhesives.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, carcinogenic impurities, resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer or Delaney clause (section 409(c)(3)(A) of the act) further provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA* 728 F.2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, ethoxylated primary linear alcohols of no greater than 10 percent ethylene oxide by weight having molecular weights of 390 to 7,000, will result in exposure to the additive of no greater than 50 parts per billion (ppb) in the daily diet (Ref. 1).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data from acute toxicity studies on the additive. No adverse effects were reported in these studies.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in the additive,

1,4-dioxane and ethylene oxide. This risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

FDA has estimated the hypothetical worst-case exposure to 1,4-dioxane from the petitioned use of the additive in the manufacture of adhesives to be 0.25 part per trillion of the daily diet or 750 picogram (pg)/person/day (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound lifetime human risk from exposure to this chemical stemming from the proposed use of the additive (Ref. 3). The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the estimated worst-case exposure of 750 pg/ person/day, FDA estimates that the upper-bound limit of individual lifetime risk from the use of the subject additive is 2.7×10^{-11}, or 2.7 in 100 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime averaged individual exposure to 1,4-dioxane is expected to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to 1,4-dioxane would result from the proposed use of the additive.

B. Ethylene Oxide

FDA estimated that the hypothetical worst-case exposure to ethylene oxide from the potential use of the additive in the manufacture of adhesives to be 0.05 part per trillion of the daily diet or 150 pg/person/day (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany, to estimate the upper-bound level of lifetime human risk from exposure to ethylene oxide stemming from the proposed use of the additive (Ref. 5). The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach.

Based on a potential exposure of 150 pg/person/day, FDA estimates that the upper-bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of the subject additive is 2.8×10^{-10}, or 2.8 in 10 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to ethylene oxide would result from the proposed use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime risk from exposure to these impurities, even under worst-case assumptions, are very low, less than 2.7 in 100 billion for 1,4-dioxane and less than 2.8 in 10 billion for ethylene oxide, respectively.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive in adhesives is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before October 13, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Branch (HFS–247), to the Indirect Additives Branch (HFS–216), concerning FAP 3B4390—Petrolite Corp.—exposure to the food additive and its component (1,4-dioxane and ethylene oxide), November 5, 1993.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. "Bioassay of 1,4–Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

4. Memorandum, Report of the Quantitative Risk Assessment Committee, June 30, 1994.

5. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2–Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding a new entry under the heading "Substances" to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
Ethoxylated primary linear alcohols of greater than 10 percent ethylene oxide by weight having molecular weights of 390 to 7,000 (CAS Reg. No. 97953–22–5).	
* * * * *	

Dated: September 1, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–22637 Filed 9–12–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 510

New Animal Drugs; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name of approved applications from Animal Sciences Division of Monsanto Co. to Protiva, A Unit of Monsanto Co.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Judith M. O'Haro, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION: Animal Sciences Division of Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63167, has informed FDA of a change of sponsor name to Protiva, A Unit of Monsanto Co. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Animal Sciences Division of Monsanto Co." and by alphabetically adding a new entry for "Protiva, A Unit of Monsanto Company," and in the table in paragraph (c)(2) in the entry for "059945" by removing the sponsor name "Animal Sciences Division of Monsanto Co." and adding in its place "Protiva, A Unit of Monsanto Company."

Dated: September 1, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–22638 Filed 9–12–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 640

[FHWA Docket No. 95–19]

RIN 2125–AD62

Certification Acceptance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is adopting an interim policy for certification acceptance (CA) which modifies the current FHWA policy. The interim policy streamlines and simplifies the existing procedures for CA applications to be consistent with the new program provisions in sections such as 1016(f) and 1105(e) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914. The modifications simplify the current regulations by eliminating unnecessary and prescriptive requirements. The new policy will allow State highway agencies (SHAs) to use the CA alternate procedures to supplement the administrative flexibility provided in the ISTEA for non-Interstate projects.

DATES: This regulation is effective September 13, 1995. Written comments must be received on or before December 12, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–19, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Marttila, Interstate and Program Support Branch, Federal-Aid and Design Division, Office of Engineering, (202) 366–4637, or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This interim final rule establishes the procedures to be followed by SHAs for the processing of transportation projects under CA. This document allows the timely use by SHAs of the simplified CA procedures. The mandatory requirement for evaluation of all areas under CA administration every four years is eliminated, however the revised regulation retains the general requirements of the FHWA's fundamental provisions of law in title 23, United States Code, with respect to the basic structure of the Federal-aid highway program. The requirement that the State's laws, regulations, directives, and standards must aim to comply with title 23, U.S.C., policies is also retained. In keeping with the streamlining effort, specific requirements of the States for CA, including reports, are deleted because title 23, U.S.C. requirements will be subject to periodic changes. The revised CA regulation provides that States may be requested to furnish reports and information at the discretion of the FHWA. All references to the Secondary Road Plan (SRP) and its limited-coverage State certification procedures are removed because the SRP program was eliminated under the ISTEA restructuring.

The CA procedures are not being completely eliminated because, even in light of the additional flexibility provided by the ISTEA, and in particular 23 U.S.C. 106, certain National Highway System (NHS) projects can still be handled under CA. Some of those projects were not given the additional flexibility provided by the ISTEA. In addition, some States continue to use CA notwithstanding the more flexible options available.

Section-by-Section Analysis

Section 640.101 Purpose

The statement of purpose remains unchanged.

Section 640.103 Definitions

The definition of "secondary road plan" is removed because the Federal-aid secondary road system has been repealed by the ISTEA.

The definition of "State highway/transportation agency" is added to include all departments, commissions, boards or officials charged with responsibility for highway construction. The meaning is the same as that given for "State highway department" in 23 U.S.C. 101.

The term "transportation" is added to the definition of "State certification" to conform to the definition of "State highway/transportation agency."

Section 640.105 Effect of Certification Acceptance

Paragraph (d) is revised to eliminate the listing of fundamental provisions of law in title 23, U.S.C. The listing has become outdated and is subject to periodic changes. This does not change the finding required in 23 U.S.C. 117 that Federal-aid projects under CA will be carried out in accordance with State laws, regulations, directives and standards which will accomplish the policies and objectives issued pursuant to title 23, U.S.C.

Section 640.107 Coverage

Paragraphs (a) and (c) are revised to conform to the language in the ISTEA and 23 U.S.C. 135, Statewide Planning, is added for the projects listed in paragraph (b) and excluded from coverage under CA.

Paragraph (d) is eliminated because it allowed a simplified CA application procedure based on evaluation of the State's operations and performance under the SRP which has been eliminated. The simplified procedure is not needed because the special rules in 23 U.S.C. 106, provided under the ISTEA, allow increased flexibility in approval of projects using Federal-aid funds on non-NHS projects, low-cost NHS projects, and 3R projects on the NHS.

Section 640.109 Requirements for Certification Acceptance

Paragraphs (a) and (b) are revised and combined into a new paragraph (a) to simplify and streamline reviews and to eliminate redundant or unnecessary requirements. The detailed list of title 23 requirements is eliminated and the itemized evaluation of a State's performance and resources, to be used to determine the State's capability to carry out project responsibilities, is replaced by a more flexible approach. The approach is based on process reviews and evaluations conducted as part of the overall FHWA evaluation of the State's performance and resources. Procedures to accept limited-coverage CA, based on an evaluation of operations and performance under an approved SRP, are eliminated because of the repeal of the secondary road system by the ISTEA and because the limited-coverage of projects is not necessary given the special rules provided for in the ISTEA which have replaced the need for CA of such projects.

Paragraph (c) is redesignated as paragraph (b).

Section 640.111 Content of State Certification

Paragraph (a) is revised to eliminate the procedures for limited-coverage State certification which are no longer applicable. Such certification is not necessary for non-NHS projects, low-cost NHS projects, and 3R projects on the NHS under the provisions of 23 U.S.C. 106.

Section 640.113 Procedures

The text is revised and rearranged to simplify and streamline the procedures and eliminate redundant and unnecessary requirements. The revision implements guidance issued by the FHWA for program oversight in conformance with the ISTEA provisions, giving greater flexibility to the administration of Federal-aid projects.

Paragraph (a) is eliminated as redundant and because its subject is covered in § 640.105(d). Paragraph (b) is redesignated as paragraph (a). Paragraph (c) is redesignated as paragraph (b) and the text revised to conform to current FHWA guidance on processing design exceptions for projects administered under CA. Paragraph (d) is redesignated as paragraph (c) and the information on project agreements is updated to the requirements in 23 CFR Part 630, subpart C. Paragraph (e) and Appendix A, referenced in paragraph (e), are eliminated because the listing in Appendix A is outdated and not all inclusive and because the reports required by Appendix A on Federal-aid projects are subject to periodic changes. Paragraph (f) is redesignated as paragraph (d) and the text is revised to conform to the ISTEA provision for acceptance of Federal-aid projects. Paragraph (g) is redesignated as paragraph (e) and the text revised to remove the requirement that the State submit the final voucher on a specific form known as "FHWA 1447".

Paragraph (h) is redesignated as paragraph (f).

Section 640.115 Evaluations

Paragraphs (a) and (b) are revised to provide more flexibility in administering the CA procedures, in keeping with the spirit of ISTEA and recommendations made in the 1993 report by the Office of Program Review, entitled "Stewardship Under ISTEA Program Efficiencies." Paragraph (a) is revised to provide that evaluations will be periodic, on an "as deemed appropriate' basis, rather than requiring evaluations at least once every 4 years.

Paragraph (b) retains the requirement that an evaluation report, with recommendations, be prepared when a State fails to comply with CA requirements. This evaluation report is retained to provide a means for determining whether acceptance of a State's certification should be rescinded.

Section 640.117 Rescission of State Certification

The text is not changed in this section.

Review Procedure

Based on an analysis of public comments received, the FHWA will reexamine its determination that this interim final rule is acceptable as the basis for CA and whether further change is warranted.

Rulemaking Analysis and Notices

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, allows agencies engaged in rulemaking to dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. For the reasons set forth below, the FHWA has determined that prior notice to the public on this action is unnecessary and contrary to the public interest.

The FHWA has determined that prior notice and opportunity for comment are unnecessary because the changes being adopted in this rulemaking involve streamlining and provide more administrative flexibility in the use of the regulation. This revision, as part of the government regulatory review effort, updates and simplifies the existing CA regulation. This rule provides a less burdensome system for gathering information from the States with respect to the CA process and provides more flexible reporting arrangements for States that are, at their option, participating in the CA program. The previous requirements for periodic reports are deleted. Instead, the States may be requested by the FHWA to furnish reports and information from time to time. Overall, the CA procedures are relaxed and do not impose any additional restrictions on the public.

The FHWA has also determined that prior notice and opportunity for comment would be contrary to the public interest. As noted earlier, the adoption of this interim final rule would allow a timely use by SHAs of the streamlined and simplified CA procedures. Through the streamlined process and simplified reporting requirements, States that have chosen to participate in the CA program can do so to administer their State highway programs more efficiently.

Furthermore, the FHWA has also determined that prior notice and opportunity for comment are not required under the Department of Transportation's Regulatory Policies and Procedures because it is not anticipated that such action will result in the receipt of useful information.

The APA, according to 5 U.S.C. 553(d)(3), also allows agencies, upon a finding of good cause, to make a rule effective immediately and avoid the 30-day delayed effective requirement. The FHWA has determined that good cause exists to make this rule effective upon publication because the rule streamlines the CA process and provides less prescriptive requirements for its use. Making this rule effective upon publication will enable the States to take advantage of the simplified procedures immediately. Moreover, it should be noted that participation by the States in the CA program is voluntary.

Nevertheless, public comment is solicited on this action. Comments received will be carefully considered in evaluating whether any change to this action is needed.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. As stated, this revised regulation merely streamlines and updates the current CA regulation by giving added flexibility to the States in their use of CA. It is anticipated that the economic impact of the rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The FHWA made this determination based on the fact that the interim final rule for CA is an update of a current regulation and will provide greater flexibility in using the CA alternate procedures in the administration of projects consistent with the provisions of ISTEA.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This rule does not impose additional costs or burdens on the States, including the likely source of funding for the States, nor does it affect the ability of the States to discharge traditional State government functions. The intent of this rule is to provide the States with additional administrative flexibility in the use of the regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 640

Government procurement, Grant programs-transportation, Highways and roads.

Issued on: September 5, 1995.

Rodney E. Slater,

Federal Highway Administrator.

For the reasons set out above, the FHWA amends chapter I of title 23, Code of Federal Regulations, by revising part 640 to read as set forth below.

PART 640—CERTIFICATION ACCEPTANCE

Sec.

640.101 Purpose.
640.103 Definitions.
640.105 Effect of certification acceptance.
640.107 Coverage.
640.109 Requirements for certification acceptance.
640.111 Content of State certification.
640.113 Procedures.
640.115 Evaluations.
640.117 Rescission of State certification.

Authority: 23 U.S.C. 101(e), 117, and 315; 49 CFR 1.48(b).

§ 640.101 Purpose.

The purpose of this part is to provide instructions for preparation and acceptance of State certification proposals to accomplish the policies and objectives of title 23, U.S.C., using State laws, regulations, directives, and standards. Also covered are procedures for administering projects under certification acceptance and evaluating State performance.

§ 640.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Certification acceptance (CA) means the alternative procedure authorized by 23 U.S.C. 117(a) for administering Federal-aid highway projects not on the Interstate System.

State certification means a written statement prepared by a State highway/transportation agency setting forth the laws, regulations, directives, and standards it will use, or cause to be used, in the administration of certain highway projects.

State highway/transportation agency has the same meaning as that given for *State highway department* in 23 U.S.C. 101.

§ 640.105 Effect of certification acceptance.

(a) Acceptance of a State certification permits a State to discharge certain responsibilities otherwise assigned to the Secretary under title 23, U.S.C., for Federal-aid highway projects. A State may permit performance and project certification by capable local governments.

(b) Acceptance of a State certification does not constitute a commitment or obligation of Federal funds.

(c) Acceptance of a State certification does not preclude FHWA access to and review of a Federal-aid project at any time.

(d) Certification acceptance as an alternative procedure does not replace the fundamental provisions of law in title 23, U.S.C., with respect to the basic structure of the Federal-aid highway program. Acceptance of a CA proposal does not preclude application of any provision of title 23, U.S.C., that may be advantageous to the State.

(e) Nothing in this part shall affect or discharge any responsibility or obligation of the FHWA under any Federal law other than title 23, U.S.C.

§ 640.107 Coverage.

(a) Certification acceptance may apply to Federal-aid highway projects except projects on the Interstate System. If other FHWA regulations and title 23, U.S.C., allow, projects not on a Federal-aid highway may be administered under the provisions of an accepted State certification.

(b) The CA procedure shall not apply to transportation planning and research (23 U.S.C. 134, 135, and 307), highway safety (chapter 4, title 23, U.S.C.), or those public transportation projects not administered by FHWA under title 23, U.S.C.

(c) A State certification may provide for either full or partial coverage of the Federal-aid highway projects, programs, phases of work, and classes of projects.

§ 640.109 Requirements for certification acceptance.

(a) Acceptance of either a full or partial coverage State certification as described in § 640.107(c) will be based upon:

(1) A State request and identification of the State laws, regulations, directives, and standards that either separately or collectively will accomplish the policies and objectives contained in or issued pursuant to title 23, U.S.C., and

(2) An FHWA finding that the State highway/transportation agency has the capability to carry out project responsibilities in accordance with such State requirements. The FHWA finding will be based on previous process reviews and evaluations conducted as part of FHWA's oversight of Federal-aid programs and an FHWA evaluation of the State's performance and resources. If information from process reviews and that available from previous evaluations are considered to be insufficient to form a reasonable judgment, they may be supplemented by additional reviews and inquiries of the State agency.

(b) A State certification may be accepted in whole or in part, depending on FHWA findings. Where minor deficiencies are found, acceptance may be conditioned or may exclude the affected State operations until the deficiencies are corrected. Where deficiencies are found which are of such magnitude as to create doubt that the policies and objectives of title 23, U.S.C., would be accomplished, the State certification will not be accepted until the deficiencies are corrected.

§ 640.111 Content of State certification.

(a) The State certification will include the following:

(1) The name of the State highway/transportation agency and the legal authority which permits such agency to accomplish the policies and objectives contained in or issued pursuant to title 23, U.S.C.;

(2) A statement of the programs, phases of work, and classes of projects or combinations thereof that the State is including in the certification being submitted for acceptance;

(3) For submissions providing full or partial coverage of projects as provided in § 640.107(c), a listing of the title 23, U.S.C., policies and objectives and citation of State laws, regulations, directives, and standards that will be applied. Any policies and objectives that are not applicable due to partial coverage may be omitted; and

(4) A description of the State's methods for assuring local government knowledge of and compliance with State and Federal requirements where they will perform services on projects administered under CA.

(b) Existing assurances and formal agreements between the State and the FHWA with respect to equal employment opportunity, current billing, and control of outdoor advertising will continue in full force and effect and may be incorporated by reference. Likewise, the State's procedures accepted under 23 U.S.C. 109(h) may be incorporated by reference.

(c) State certifications are to be signed by the chief official of the State highway/transportation agency and submitted to the FHWA Division Administrator.

§ 640.113 Procedures.

(a) Authorization by the FHWA to proceed with work on a CA project will be in response to a written request from the State highway/transportation agency.

(b) If the State finds that exceptions to CA procedures or standards are appropriate on a project, the State will justify and document such decisions.

(c) A project agreement, or modification to a project agreement, will be executed as required by 23 CFR Part 630, subpart C, Project Agreements.

(d) The FHWA may accept projects based on inspections of a type and frequency necessary to ensure the projects are completed in accordance with appropriate standards. The State is to notify the FHWA when a project is complete and/or ready for such inspection.

(e) Final vouchers will be submitted to the FHWA with the State certifying that the plans, design, and construction for the project were in accord with the laws, regulations, directives, and standards contained in the State certification or such project exceptions as were approved by the FHWA.

(f) Revisions or amendments to State certifications will be made when necessary and processed as provided in § 640.111(c). The existing State certification is to be reviewed periodically to determine its adequacy in light of this part, the statutes in effect at the time of the review, and the operational reviews made by FHWA.

§ 640.115 Evaluations.

(a) The FHWA may conduct periodic evaluations, as deemed appropriate, of the State's operations under CA. These evaluations may include coverage of any or all areas of the State's administration of CA projects.

(b) If a failure to comply with Federal or State laws occurs and the State is unable or unwilling to effect corrective action of the deficiency, an evaluation report, including recommendations, will be prepared by the FHWA as a basis for considering whether acceptance of the State certification should be rescinded under § 640.117.

§ 640.117 Rescission of State certification.

The acceptance of a State certification may be rescinded at any time upon request of the State or if considered necessary by the FHWA to protect the Federal interest. The rescission may be applied to all or part of the programs or projects covered in the State certification.

[FR Doc. 95–22583 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act (FLSA), minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. This document puts into effect the minimum wage rates recommended for various industry categories by Industry Committee No. 21, which met in Pago Pago, American Samoa during the week of June 12, 1995. The new minimum wage rates are effective 15 days after their publication in the **Federal Register**.

EFFECTIVE DATE: This rule is effective on September 28, 1995.

FOR FURTHER INFORMATION CONTACT:

Daniel F. Sweeney, Deputy Assistant Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3028, Washington, DC 20210; telephone: (202) 219–8353. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

There are no reporting or recordkeeping requirements contained in this rule.

II. Background

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064), as amended (29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., P. 1004), and by means of Administrative Order No. 662 (60 FR 19099), the Secretary of Labor appointed and convened Industry Committee No. 21 for Industries in American Samoa, referred to the Committee the question of the minimum rates of wages to be paid under section 8 of FLSA to employees within the industries, and gave notice of a hearing to be held by the Committee.

As required by the Secretary's notice, Industry Committee No. 21 conducted an investigation and hearing in Pago Pago, American Samoa during the week of June 12, 1995. Subsequently, the Committee filed with the Administrator of the Wage and Hour Division a report, dated June 19, 1995, containing its findings of fact and recommendations with respect to minimum wages for various industry classifications.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950 and 29 CFR 511.18, this rule revises §§ 697.1 and 697.3 of 29 CFR Part 697 to implement the recommendations of Industry Committee No. 21.

Executive Order 12866/Section 202 of the Unfunded Mandates Reform Act of 1995

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866, and no regulatory impact analysis is required. This document puts into effect the wage rates recommended by Industry Committee No. 21 that met in Pago Pago, American Samoa during the week of June 12, 1995. The Committee recommended increases in various industry categories, ranging from 5 cents per hour for fish canning and processing and can manufacturing, the largest private industry in American Samoa, the 35 cents per hour, in two steps, in finance and insurance and private hospitals and educational institutions. When these increases are fully implemented, wage rates will range from $2.45 an hour (government and miscellaneous industries) to $3.75 an hour, shipping and transportation, classification A (stevedoring, lighterage, and maritime shipping agency). There are approximately 16,000 employees in the various industry classifications. Based on the number of workers whose wages must be increased to the new minimum wage levels in 1995 and/or 1996, and assuming that employees currently paid at or in excess of the new minimum wages will also receive commensurate wage increases to maintain relative pay comparability, increases in the overall annual wage bill are expected to be modest—approximately $7 million in 1995 and $5 million in 1996. Thus, this rule is not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

For similar reasons, the rule does not require a § 202 statement under the Unfunded Mandates Reform Act of 1995. In this regard, wage order procedures under 29 CFR Part 511 require residents of American Samoa to be included in the composition of any industry committee. Individuals are

nominated by the American Samoa government to serve of committees and its representatives also provide testimony and make commendations at hearing proceedings.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects on 29 CFR Part 697

Minimum wages, American Samoa.

Promulgation of Final Rule

Because, under sections 5, 6, and 8 of the Fair Labor Standards Act and 29 CFR 511.18, the Department has no authority to approve or modify the rates recommended by the industry committee, the Department finds, pursuant to 5 U.S.C. 553.(b)(3)(B), that notice and public comment thereon under the Administrative Procedure Act are not necessary.

Accordingly, Part 697 of Chapter V of Title 29, *Code of Federal Regulations* is amended as set forth below.

Signed at Washington, D.C. this 31st day of August, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 697—INDUSTRIES IN AMERICAN SAMOA

1. The authority citation for Part 697 continues to read as follows:

Authority: Secs. 5, 6, 8, 52 Stat. 1062, 1064; 29 U.S.C. 205, 206, 208.

2. Section 697.1 is amended by revising paragraphs (a)(1), (b)(1), (b)(2)(ii), (b)(2)(iii), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), and (n)(1) to read as follows:

§ 697.1 Wage rates and industry definitions.

* * * * *

(a) *Fish canning and processing and can manufacturing industry.* (1) The minimum wage for this industry is $3.10 an hour effective July 1, 1996.

* * * * *

(b) *Shipping and transportation industry.* (1) The minimum wage for classification A, stevedoring, lighterage and maritime shipping agency activities, is $3.65 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.75 an hour effective July 1, 1996. The minimum wage for classification B, unloading of fish, is $3.60 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.70 an hour effective July 1, 1996. The minimum wage for classification C, all other activities, is $3.50 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.62 an hour effective July 1, 1996.

(2) * * *

(ii) *Classification B: Unloading of fish.* This classification shall include the unloading of raw and/or frozen fish from vessels.

(iii) *Classification C: All other activities.* All other activities in the shipping and transportation industry.

(c) *Tour and travel service industry.* (1) The minimum wage for this industry is $3.00 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.10 an hour effective July 1, 1996.

* * * * *

(d) *Petroleum marketing industry.* (1) The minimum wage for this industry is $3.45 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.55 an hour effective July 1, 1996.

* * * * *

(e) *Construction industry.* (1) The minimum wage for this industry is $3.05 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.20 an hour effective July 1, 1996.

* * * * *

(f) *Hotel industry.* (1) The minimum wage for this industry is $2.45 an hour effective on September 28, 1995, the date specified in § 697.3; and $2.60 an hour effective July 1, 1996.

* * * * *

(g) *Retailing, wholesaling, and warehousing industry.* (1) The minimum wage for this industry is $2.70 an hour effective on September 28, 1995, the date specified in § 697.3; and $2.80 an hour effective July 1, 1996.

* * * * *

(h) *Ship maintenance industry.* (1) The minimum wage for this industry is $3.00 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.10 an hour effective July 1, 1996.

* * * * *

(i) *Bottling, brewing, and dairy products industry.* (1) The minimum wage for this industry is $2.85 an hour effective on September 28, 1995, the date specified in § 697.3; and $2.95 an hour effective July 1, 1996.

* * * * *

(j) *Printing and publishing industry.* (1) The minimum wage for this industry is $3.05 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.20 an hour effective July 1, 1996.

* * * * *

(k) *Finance and insurance industry.* (1) The minimum wage for this industry is $3.45 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.60 an hour effective July 1, 1996.

* * * * *

(l) *Private hospitals and educational institutions.* (1) The minimum wage for this industry is $3.00 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.10 an hour effective July 1, 1996.

* * * * *

(m) *Government employees industry.* (1) The minimum wage for this industry is $2.45 an hour effective October 1, 1996.

* * * * *

(n) *Miscellaneous activities industry.* (1) The minimum wage for this industry is $2.35 an hour effective on September 28, 1995, the dated specified in § 697.3; and $2.45 an hour effective July 1, 1996.

* * * * *

3. Section 697.3 is revised to read as follows:

§ 697.3 Effective dates.

The wage rates specified in § 697.1 shall be effective on September 28, 1995, except as otherwise specified.

[FR Doc. 95–22138 Filed 9–12–95; 8:45 am]

BILLING CODE 4510–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[WI56–01–7019a; FRL–5289–3]

Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: In this action USEPA is removing all total suspended particulate (TSP) area designations in the State of Wisconsin. This direct final action was prompted by the Wisconsin Department of Natural Resources' (WDNR) April 20, 1994 request to redesignate portions of the cities of Brokaw, Green Bay, Kenosha, Madison, Manitowac, Marshfield, Milwaukee, Oshkosh,

Racine, Superior and Waukesha from secondary TSP nonattainment to attainment or unclassifiable for PM. On June 3, 1993 (58 FR 31622), USEPA published a final rule revising the prevention of significant deterioration (PSD) particulate matter increments, which became effective on June 4, 1994, so that the increments are measured in terms of particulate matter with an aerodynamic diameter less than 10 microns (PM). Section 107(d)(4)(B) of the Clean Air Act (Act) authorizes USEPA to eliminate all area TSP designations once the increments for PM are promulgated. The June 3, 1993 action also established the method by which USEPA deletes such TSP designations.

EFFECTIVE DATE: This final rule is effective November 13, 1995, unless USEPA receives adverse or critical comments by October 13, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: (It is recommended that you telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

Background

In 1971, USEPA promulgated primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter to be measured as TSP. On July 1, 1987 (52 FR 242634), USEPA revised the NAAQS for particulate matter, replacing the TSP indicator with the PM indicator. On the same date, USEPA promulgated final regulations under 40 CFR part 51 for State implementation of the revised NAAQS (52 FR 24672). In the preamble to that action, USEPA announced that, because of the importance of the section 107 area designations to the applicability of the TSP increments, it would retain the TSP designations beyond the date on which USEPA approves a State's revised PM State Implementation Plan (SIP). This would protect the applicability of the TSP increments until a PM increment system could be established.

The 1990 Amendments to the Act contained several pertinent provisions relating to or affecting the TSP area designations. Under section 107(d)(4)(B) of the amended Act, Congress established by operation of law the first nonattainment area designations for PM, and mandated that areas not initially defined as nonattainment are considered to be unclassifiable. The entire State of Wisconsin was designated unclassifiable for PM under the 1990 Amendments to the Act. Moreover, section 107(d)(4)(B) provided that any designation for particulate matter (measured in terms of TSP) that the Administrator promulgated prior to the date of enactment of the 1990 Amendments shall remain in effect for purposes of implementing the maximum allowable concentrations of particulate matter (measured in terms of TSP) increments until the Administrator determines that such designation is no longer necessary for that purpose.

On June 3, 1993 (58 FR 31622), under the authority of section 166(f) of the Act, USEPA published the final rulemaking replacing the TSP increments with equivalent PM increments. As a result, the PSD increments and NAAQS will be measured by the same indicator. As stated at 58 FR 31635, for States already having delegated authority to implement the Federal PSD regulations "USEPA will eliminate the TSP designations when the PM increments become effective under § 52.21 on June 3, 1994." The USEPA has delegated to the State of Wisconsin the authority to implement the PSD program. The delegation agreement provides for automatic adoption of the revised PM increments once the increments become effective. In addition, USEPA approved the State's PM rules as a revision to the Wisconsin SIP on June 28, 1993 (58 FR 34528).

As suggested above, because the revised Act sets out the narrow purpose of maintaining the TSP designations only until promulgation of the PM increments, USEPA believes it is not required to examine the TSP air quality considerations of a TSP redesignation. However, there may be other air quality implications, especially PM impacts, which follow not from a TSP redesignation, but from a revision to existing TSP requirements. Sections 110(l) and 193 of the Act contain very specific restrictions on modifications or revisions to applicable implementation plans that may interfere with requirements of the Act or result in relaxations of control requirements. If the applicable TSP plan for the area has provisions which result in the automatic relaxation of control requirements upon the deletion of the area designations for TSP, then any such deletion should not be approved unless, consistent with section 193, such modification is accompanied with at least equivalent emission reductions. Similarly, if the applicable TSP implementation plan automatically is modified upon the deletion of the area designations for TSP, then any such deletion should not be approved unless such modification is accompanied with a demonstration that the revision does not interfere with requirements of the Act. The USEPA's technical support document dated May 25, 1995 discusses how the modifications and the TSP plan revision automatically occurring upon the deletion of the TSP designations will not interfere with any requirement of the Act, such as maintenance of the PM NAAQS, and will not result in an increase in particulate matter emissions.

Final Action

Because TSP designations are no longer necessary and Wisconsin has already been designated as unclassifiable for PM, USEPA is taking action to delete all TSP area designations in the State of Wisconsin. The Agency believes that this is administratively more efficient than redesignating the TSP secondary nonattainment areas to attainment.

Miscellaneous

Comment and Approval Procedure

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on November 13, 1995, unless USEPA receives adverse or critical comments by October 13, 1995.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on November 13, 1995.

Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for a revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Executive Order 12866

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. Sections 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This approval does not create any new requirements.

Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 17, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 81.350 [Amended]

2. In § 81.350 the table entitled "Wisconsin-TSP" is removed.

[FR Doc. 95–22620 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 4F4389/R2163; FRL–4973–3]

RIN 2070–AB78

CryIA(c) and CryIC Derived Delta Endotoxins of Bacillus Thuringiensis Encapsulated in Killed Pseudomonas Fluorescens; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of CryIA(c) and CryIC derived *Pseudomonas fluorescens* (MATTCH Biosecticide) in or on all raw agricultural commodities. Mycogen Corp. submitted a request for an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of this pesticide in or on all raw agricultural commodities.

EFFECTIVE DATE: Effective on September 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4389/R2163], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St. SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (tolerance fees) P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4F4389/R2163]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Willie H. Nelson, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: 5th Floor, CS #1, 2800 Crystal Drive, Arlington, VA 22202, 703-308-8715; e-mail: nelson.willie @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 17, 1995, EPA issued a notice that Mycogen Corp., 4980 Carroll Canyon Rd., San Diego, CA 92121, had submitted a pesticide petition (PP 4F4389) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for a blend of CryIA(c) and CryIC derived delta-endotoxins of pesticide *Bacillus thuringiensis* encapsulated in killed *Pseudomonas fluorescens* for all raw agricultural commodities (RAC's) when used in accordance with good agricultural practices.

There were no adverse comments or requests for referral to an advisory committee received in response to the notice of filing of the pesticide petition, PP 4F4389.

Product Analysis

Mycogen Corp. submitted information which adequately described its product (MATTCH). This product consists of a maxture of two lepidopteran active toxins derived from naturally occurring delta endotoxins as found in *Bacillus thuringiensis*. Delta endotoxins active against lepidopteran species are formed as protoxins that are activated in the alkaline gut environment of the insect. The active toxins in this product are referred to by Mycogen Corp. as CryIA(c) and CryIC due to their amino acid sequence similarity to these toxins. The protoxin portion of these derived toxins comes from another CryI protein. These are produced in *Pseudomonas fluorescens*.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include the following: an acute oral toxicity/pathogenicity study, an *in-vitro* digestibility study, and abridged data from Mycogen's previously registered MVP product.

Toxicology Assessment

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the use of CryIA(c) and CryIC derived delta-endotoxins of *Bacillus thuringiensis* encapsulated in killed *Pseudomonas fluorescens*.

Mycogen's data on potential health effects include information on the characterization of the expressed CryIA(c) and CryIC derived delta-endotoxin, the acute oral toxicity, and the *in vitro* digestibility of the delta-endotoxin. No potential health effects are expected from the use of this product.

Toxicity

The Agency expects that proteins with no significant amino acid homology to known mammalian protein toxins and which are readily inactivated by heat or mild acidic conditions would also be readily degraded in an *in vitro* digestibility assay and have little likelihood of displaying oral toxicity in laboratory rodents.

Mycogen's data support the prediction that the CryIA(c) and CryIC proteins would be nontoxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjobald, Roy D., et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology*, 15, 3-9 (1992)]. Therefore, since no significant acute effects were observed, even at relatively high dose levels, the CryIA(c) and CryIC delta-endotoxins are not considered acutely or chronically toxic. In addition, the *in vitro* digestibility studies indicate the delta-endotoxin would be rapidly degraded following ingestion.

Despite decades of widespread use of *Bacillus thuringiensis* as a pesticide (it has been registered since 1961), there have been no confirmed reports of immediate or delayed allergic reactions to the delta-endotoxin itself despite significant oral, dermal, and inhalation exposure to the microbial product. Several reports under FIFRA section 6(a)2 have been made for various *Bacillus thuringiensis* products with allergic reactions being reported. However, these reactions were determined not to be due to *Bacillus thuringiensis* itself or any of the Cry toxins.

Residue Chemistry Data

Residue chemistry data were not required because of the lack of mammalian toxicity of this active ingredient. In the acute mouse oral toxicity study, the CryIC delta-endotoxin was shown to have an LD_{50} greater than 5,050 mg/kg. When proteins are toxic they are known to act via acute mechanisms and at very low dose levels [Sjobald, Roy D., et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology*, 15, 3-9 (1992)]. Therefore, since no significant acute effects were observed, even at relatively high dose levels, the CryIC delta-endotoxin is not considered acutely or chronically toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial Bacillus thuringiensis products from which this plant pesticide was derived. (See 40 CFR 158.740(b)). For microbial products, further toxicity testing to verify the observed effects and clarify the source of the effects (Tiers II, III) and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study.

Conclusions

Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from the requirement of a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rule making. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, a summary of any evidence relied upon by the objector as well as the other materials required by 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims of facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4389/R2163] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4F4389/R2163], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1154, to read as follows:

§ 180.1154 CryIA(c) and CryIC derived Delta-Endotoxins of Bacillus thuringiensis var. kurstaki Encapsulated in killed Pseudomonas fluorescens, and the expression plasmid and cloning vector genetic constructs.

CryIA(c) and CryIC derived delta-endotoxins of *Bacillus thuringiensis* var. *kurstaki* encapsulated in killed *Pseudomonas fluorescens* and the expression plasmid and cloning vector genetic constructs are exempt from the requirement of a tolerance when used in or on all raw agricultural commodities.

[FR Doc. 95–22617 Filed 9–12–95; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 300

[FRL–5294–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Jackson Township Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Jackson Township Landfill Superfund site (Site) in Ocean County, New Jersey from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey have determined that all appropriate Fund-financed responses under CERCLA have been implemented at the Site and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of New Jersey have determined that remedial actions conducted at the Site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 13, 1995.

ADDRESSES: Comprehensive information on this site is available at the following addresses:

Jackson Township Municipal Complex, RD#4, Box 1000, Jackson, NJ 08527, Phone: (908) 928–1200

Ocean County Library, 101 Washington Street, Toms River, NJ 08753, Phone: (908) 349–6200.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Gowers, Remedial Project Manager, U.S. Environmental Protection

Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4413.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Jackson Township Landfill Site in Ocean County, New Jersey.

A Notice of Intent to Delete for this site was published April 26, 1995 (60 FR 20473). The closing date for comments on the Notice of Intent to Delete was May 26, 1995. EPA received no comments and therefore has not prepared a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund)—financed remedial actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous substances, Hazardous waste, Intergovernmental relations.

Dated: May 21, 1995.

William J. Muszynski,

Acting Regional Administrator.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp. p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the "entry for Jackson Township Landfill Site" in Ocean County, New Jersey.

[FR Doc. 95–22489 Filed 9–12–95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–25; RM–8588, RM–8633]

Radio Broadcasting Services; Waldport and Depoe Bay, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denies the request of Jarvis Communications, Inc. to allot Channel 288A to Waldport, Oregon, as the community's first local FM service. *See* 60 FR 10533, February 27, 1995. The Commission grants the request of Ginna Jones to allot Channel 288A to Depoe Bay, Oregon, as its first local FM service. Channel 288A can be allotted to Depoe Bay in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 44–48–42 North Latitude and 124–03–42 West Longitude. With this action, this proceeding is terminated.

DATES: Effective October 23, 1995. The window period for filing applications will open on October 23, 1995, and close on November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–25, adopted August 31, 1995, and released September 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Depoe Bay, Channel 288A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22785 Filed 9–12–95; 8:45 am]

BILLING CODE 6712-01-F

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47 CFR Part 73

[BC Docket No. 79–269; RM–3392, RM–3398]

Television Broadcasting Service; Syracuse, New York; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the Television Table of Allotments as published in the October 1, 1994, revision of 47 CFR part 73. The listing for Syracuse, New York, in § 73.606(b) incorrectly shows Channel 62 + instead of Channel 68 –. Channel 68 – was substituted for Channel 62 + at Syracuse pursuant to the *Second Report and Order*, BC Docket No. 79–269, 49 FR 21931, May 24, 1984.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION:

Background

Channel 68 – was substituted for Channel 26 + at Syracuse, NY, and Channel 62 was substituted for Channel 63 at Kingston, New York, in order to allot Channel 63 to Newton, New Jersey.

Need for Correction

As published, the final regulation contains a wrong channel allotment at Syracuse, NY, which is misleading and needs correction.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—RADIO BROADCAST SERVICES

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under New York, is amended by removing Channel 62 + and adding Channel 68 – at Syracuse.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22786 Filed 9–12–95; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 923 and 970

RIN 1991–AB05

Acquisition Regulation; Acquisition and Use of Environmentally Preferable Products and Services

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends the Department of Energy Acquisition Regulation (DEAR) to provide for the acquisition and use of environmentally preferable products and services.

EFFECTIVE DATE: October 13, 1995.

FOR FURTHER INFORMATION CONTACT: P. Devers Weaver, Office of Policy (HR–51), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; telephone 202–586–8250.

SUPPLEMENTARY INFORMATION:

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  E. Review Under Executive Order 12612.
  G. Review Under Executive Order 12778.

I. Background

A proposed rule was published in the January 11, 1995, **Federal Register** at 60 FR 2727. It proposed to amend the DEAR to provide a contract clause, Acquisition and Use of Environmentally Preferable Products and Services. The clause is to be incorporated in DOE management and operating contracts to promote the acquisition and use of environmentally preferable products and services, in accordance with specified Department of Energy and other Federal policies.

Subparagraph (a)(3) of the clause Acquisition and Use of Environmentally Preferable Products and Services (DEAR 970.5204–39) has been amended to reflect the May 1, 1995, Environmental Protection Agency rule at 40 CFR Part 247 (60 FR 21370) which superseded prior Part 247 and removed 40 CFR Parts 248, 249, 250, 252, and 253.

We note an amendment to the Federal Acquisition Regulation (FAR) covering environmentally preferable products published in the May 31, 1995, **Federal Register** (60 FR 28492). The FAR coverage addresses Federal policy and contract clauses involving environmentally preferable products. Today's rule is consistent with the FAR and supplements the FAR with requirements that meet needs that are unique to DOE management and operating contracts.

II. Disposition of Comments

Comments, due by March 13, 1995, were received from two organizations. One was a DOE field organization and one was an industrial firm in the private sector.

One comment suggests that DOE should delay finalization of the proposed rule until the Environmental Protection Agency (EPA) publishes further guidelines for the procurement of products containing recovered materials, pursuant to Executive Order 12873 of October 20, 1993, entitled "Federal Acquisition Recycling and Waste Prevention." These new EPA guidelines, according to the commenter, would evaluate products based upon multiple attributes, such as energy consumption in the manufacture of recycled products, rather than on the single factor of being made from recycled contents.

DOE has adopted EPA guidelines for the acquisition and use of products containing recovered materials (10 CFR Parts 247–253) based on the expertise of the EPA in environmental matters. The contract clause which is the subject of this rule requires DOE management and operating contractors to comply with the requirements of the DOE "Affirmative Procurement Program for Products Containing Recovered Materials" (APP). The APP will be periodically updated to account for changes in EPA guidelines. Therefore, DOE will incorporate future changes in published EPA guidelines and does not need to further delay publication of this rule to accommodate this comment.

Another comment asked that subparagraph (a)(4) of the proposed clause at 970.5204–39, Acquisition and Use of Environmentally Preferable Products and Services, be amended by adding the words "and provided to the contractor by the Contracting Officer for implementation" at the end of the subparagraph, to ensure that a contractor is aware of the existence of guidance documents. The proposed clause provides that a contractor shall comply with requirements in the document "U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials," and related guidance documents as they are identified in writing by the contracting officer. It is necessary for DOE to identify the documents with which a management and operating contractor is to comply, but this does not require that the document be provided by the contracting officer. (As a practical matter, DOE program officials will often provide the contractor with the relevant guidance documents.) The clause is not being amended.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993). Accordingly this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures, the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment. This rule establishes a clause and practices for the purchase of goods and services and does not require preparation of an environmental impact statement or an environmental assessment under categorical exclusion A6 of Subpart D.

C. Review Under the Paperwork Reduction Act

To the extent that new information collection or recordkeeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910–0300.

D. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

E. Review Under Executive Order 12612

Executive Order 12612 entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department of Energy has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 48 CFR Parts 923 and 970

Government procurement.

Issued in Washington, D.C. on Sept. 7, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

1. The authority citation for Part 923 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. New subpart 923.4 is added as follows:

Subpart 923.4—Use of Recovered Materials

923.471 Policy.

The DOE policy is to acquire items composed of the highest percentage of recovered/recycled materials practicable (consistent with published minimum content standards), without adversely affecting performance requirements; consistent with maintaining a satisfactory level of competition; and consistent with maintaining cost effectiveness and not having a price premium paid for products containing recovered/recycled materials.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

4. Section 970.2304 is added to read as follows:

970.2304 Use of Recovered/Recycled Materials.

970.2304–1 General.

The policy for the acquisition and use of environmentally preferable products and services is described at 48 CFR (DEAR) subpart 923.4.

970.2304–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR (DEAR) 970.5204–39, Acquisition and Use of Environmentally Preferable Products and Services, in management and operating contracts.

5. To subpart 970.52 add section 970.5204–39 as follows:

970.5204–39 Acquisition and Use of Environmentally Preferable Products and Services.

As prescribed in 48 CFR (DEAR) 970.2304–2, insert the following clause in management and operating contracts.

ACQUISITION AND USE OF ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES (OCT 1995)

(a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:

(1) Executive Order 12873 of October 20, 1993, entitled "Federal Acquisition, Recycling, and Waste Prevention,"

(2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub. L. 94–580, 90 Stat. 2822),

(3) Title 40 of the Code of Federal Regulations, Subchapter I, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials,

(4) "U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials" and related guidance document(s), as they are identified in writing by the Department.

(b) The Contractor shall prepare and submit reports on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction (e.g., in a specified format) from the Contracting Officer.

(c) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans, and program guidance with the DOE recycling point of contact, who shall be identified by the Contracting Officer. Reports required pursuant to paragraph (b) of this clause, shall be submitted through the DOE recycling point of contect.

[FR Doc. 95–22754 Filed 9–12–95; 8:45 am]

BILLING CODE 6450-01-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 950426116–5116–01; I.D. 090195B]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Inseason Adjustment, U.S.-Canadian Border to Carroll Island, WA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment.

SUMMARY: NMFS announces that the possession, landing, and delivery limit in the commercial salmon fishery in the area from the U.S.-Canadian border to Carroll Island, WA, was increased to 375 coho per opening beginning August 19, 1995. This adjustment is intended to provide additional fishing opportunity to commercial fishermen.

DATES: Effective 0001 hours local time, August 19, 1995, through September 15, 1995. Comments will be accepted through September 27, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: In the annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), NMFS announced that the 1995 commercial fishery in the area between the U.S.-Canadian border and Carroll Island, WA, would open on August 5 and fishing would follow a cycle of 4 days open and 3 days closed. The fishery would close the earliest of September 15, attainment of the adjusted 25,000 coho salmon quota (60 FR 40302, August 8, 1995), or attainment of the 160,000 pink salmon guideline. Each vessel would be able to possess, land, and deliver no more than 80 coho per open period; this limit was adjusted to 200 coho per open period effective August 12 (60 FR 43984, August 24, 1995).

The best available information on August 17 indicated that commercial catches through August 15 totaled 9,900 coho salmon and 23,100 pink salmon. The preseason objective for the possession, landing, and delivery limit was to provide commercial fishermen a minimal allowance for coho salmon while providing access to pink salmon. Pink salmon are currently available in the fishery. Increasing the possession, landing, and delivery limit to 375 coho salmon per opening would provide additional fishing opportunity to commercial fishermen by increasing access to coho salmon without exceeding the ocean share allocated to the commercial fishery in this area.

Modification of limited retention regulations is authorized by regulations at 50 CFR 661.21(b)(1)(ii). All other restrictions that apply to this fishery remain in effect as announced in the annual management measures.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fish and Wildlife regarding this adjustment. The State of Washington will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, August 19, 1995, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to provide commercial fishermen with additional fishing opportunity, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22700 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 661

[Docket No. 950426116–5116–01; I.D. 090195D]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure From Humbug Mountain, OR, to Horse Mountain, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the recreational salmon fishery in the area from Humbug Mountain, OR, to Horse Mountain, CA, was closed at midnight, August 18, 1995, because the recreational quota of 900 chinook salmon for the area had been reached. This action is necessary to conform to the preseason announcement of the 1995 management measures and is intended to ensure conservation of chinook salmon.

DATES: Effective at 2400 hours local time, August 18, 1995, through August 31, 1995. Comments will be accepted through September 27, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140, or Rodney R. McInnis, 310–980–4030.

SUPPLEMENTARY INFORMATION: Under regulations at 50 CFR 661.21(a)(1), NMFS will close the commercial or recreational fishery for ocean salmon when the quota has been projected to have been reached.

In the annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), NMFS announced that the 1995 recreational fishery in the area between Humbug Mountain, OR, and Horse Mountain, CA, would open on August 16 and continue through August 31 or until attainment of the 900 chinook salmon quota, whichever occurred first.

The best available information on August 17 indicated that, based on the recreational catch and effort levels for the first 2 days of the fishery, recreational fishing could take place for 3 days without exceeding the quota. A fourth day of fishing would greatly exceed the quota. Therefore, NMFS determined to close the fishery at midnight, August 18.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding this closure. The States of Oregon and California will manage the recreational fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 2400 hours local time, August 18, 1995, by telephone hotline number (206) 526–6667 and (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to conserve chinook salmon, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22665 Filed 9–12–95; 8:45 am]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 60, No. 177

Wednesday, September 13, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This document requests comments, prior to the publication of a proposed rule, concerning how to streamline and simplify the procedures used to arrange the purchase and shipment of commodities under the Public Law 480, title I program.

DATES: Comments in response to this document should be received by November 13, 1995.

ADDRESSES: Comments should be sent to: Mary T. Chambliss, Deputy Administrator, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, room 4077, South Building, 14th and Independence, SW., Washington, DC. 20250–1031.

All comments will be available for public inspection during regular business hours in room 4549, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, P.L. 480 Operations Division, Foreign Agriculture Service, United States Department of Agriculture, 14th and Independence Avenue, SW, Washington, D.C. 20250–1033; telephone (202) 720–3664.

SUPPLEMENTARY INFORMATION: Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Pub. L. 480) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on concessional credit terms. 7 U.S.C. 1701 *et seq.*

CCC seeks comments and recommendations from the public on any ways in which the Pub. L. 480, title I program could be simplified or streamlined. Comments could include suggestions about program regulations, purchase authorizations, commodity and freight invitations for bids, letters of credit, letters of commitment, the sales approval process (including Form FAS–359, "Declaration of Sale"), ocean transportation (including Form CCC–106, "Advice of Vessel Approval") and any aspect of the program which could be improved.

Background

After CCC and the recipient country have signed a title I agreement, CCC issues a purchase authorization ("PA") which establishes general specifications for the commodity to be purchased, sets the contracting and delivery periods, and establishes conditions for CCC's financing of the commodity and any authorized ocean transportation costs. The recipient country issues, upon CCC approval, public Invitations for Bids (IFB's) for commodities and ocean transportation. These IFB's contain the country's requirements including precise commodity specifications, delivery dates, and payment documents. Subsequently the importer and suppliers of commodities and ocean transportation enter into contracts based on these public IFB's.

After the contracts have been entered into, the importer causes a letter of credit to be opened through a U.S. bank in favor of the commodity supplier; and a separate letter of credit in favor of the supplier of ocean transportation when CCC is financing any part of the ocean transportation. CCC also issues to that bank a Letter of Commitment pursuant to which CCC will reimburse the bank for payments made, or drafts accepted, under the letter of credit. See 7 CFR 17.15. In this manner, the supplier receives payment from the bank upon presentation of required documentation. The bank sends the documents to a specified Federal Reserve Bank, which debits CCC's account and sends the documents to CCC for post-audit.

In addition to soliciting comments generally on the Pub. L. 480, title I program, CCC is interested in receiving specific comments on three questions. First, could the PA be eliminated and the relevant portions of the PA be incorporated into the financing regulations or the IFB's, as appropriate?

Second, because opening letters of credit can be time-consuming and costly for the importing country, should CCC simply pay the supplier directly for the commodity and ocean freight costs which are financed by CCC?

Finally, should CCC finance commodity contracts on a cost and freight basis, or a cost, insurance and freight basis, instead of requiring separate contracts for the commodity and the ocean transportation? Under these contracts the commodity supplier would be responsible for securing ocean transportation on U.S.-flag vessels as needed to meet the requirements of the Cargo Preference Act. In particular, comments are requested regarding the effect of such a change on small businesses, and on how CCC could identify the portion of the total offer price attributable to the commodity and that attributable to the ocean transportation. This is necessary to permit USDA to continue to perform price review on the commodity cost and provide the information necessary for the Maritime Administration to determine whether the U.S.-flag freight rate is "fair and reasonable."

CCC emphasizes that comments on any and all parts of the program are encouraged and that all comments will be carefully considered.

Signed at Washington, D.C. on July 17, 1995.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 95–22664 Filed 9–12–95; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006, 1007, 1011, 1012, 1013, and 1046

[Docket No. AO–388–A9, et al.; DA–95–22]

Milk in the Carolina and Certain Other Marketing Areas; Supplemental Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

7 CFR part	Marketing area	Docket No.
1005	Carolina	AO–388–A9
1006	Upper Florida	AO–356–A32
1007	Southeast	AO–366–A37
1011	Tennessee Valley	AO–251–A40
1012	Tampa Bay	AO–347–A35
1013	Southeastern Florida.	AO–286–A42
1046	Louisville-Lexington-Evansville.	AO–123–A67

SUMMARY: On August 17, 1995, a notice of hearing was published in the **Federal Register** (60 FR 42815) advising the public of a hearing to be held on September 19, 1995, in Atlanta, Georgia, to consider proposed amendments to the Southeast Federal milk order. Since that time, two other proposals have been received to provide a transportation credit and a 20-cent Class I price increase in 7 southern Federal milk orders during the period of October 1995 through February 1996. The proposal is intended to assure these markets of an adequate supply of milk during a period of declining milk production in the southeastern United States. Proponents have indicated that they will ask for emergency consideration of these issues at the hearing.

DATES: The hearing will convene at 9:00 a.m. on September 19, 1995.

ADDRESSES: The hearing will be held at the Granada Suite Hotel, 1302 West Peachtree Street, Atlanta, Georgia 30309 (Tel: 800/548–5631).

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Granada Suite Hotel, 1302 West Peachtree Street, Atlanta, Georgia, beginning at 9:00 a.m., on September 19, 1995, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the aforementioned marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders. The proposed "transportation credit" falls into the category of services of marketwide benefit as described in § 8c(5)(J)(iii) of the Act. Accordingly, a hearing must be held on this issue no later than 90 days after receipt of the proposal.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to Proposals 4 and 5.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1005, 1006, 1007, 1011, 1012, 1013, and 1046

Milk marketing orders.

The authority citation for 7 CFR Parts 1005, 1006, 1007, 1011, 1012, 1013, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture. Proposed by Arkansas Dairy Cooperative, Associated Milk Producers, Inc., Carolina-Virginia Milk Producers Association, Inc., Cooperative Milk Producers, Inc., Florida Dairy Farmers Association, Inc., Mid-America Dairymen, Inc., and Tampa Independent Dairy Farmers Association, Inc:

Proposal No. 4: Amend 7 CFR Parts 1005, 1006, 1007, 1011, 1012, 1013, and 1046 for the months of October 1995 through February 1996 by adding a paragraph to Section 60 of each order that would read as follows:

§ 10XX.60 Handler's value of milk for computing uniform price.

* * * * *

(j) With respect to milk marketed on and after the effective date hereof through February 1996, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.9 cents per hundredweight for each 10 miles or fraction thereof, less any positive difference between the Class I differential applicable at the transferee plant less the Class I differential applicable at the transferor plant.

Proposal No. 5: Amend 7 CFR Parts 1005, 1006, 1007, 1011, 1012, 1013, and

1046 for the months of October 1995 through February 1996 by adding 20 cents per hundredweight to the Class I price.

Copies of this notice of hearing and the order regulating the aforesaid marketing areas may be procured from the Market Administrator, P.O. Box 1208, Norcross, GA 30091–1208 (Tel: 404/448–1194), the Market Administrator, P.O. Box 18030, Louisville, KY 40261–0030 (Tel: 502/499–0040) or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Dairy Division, Agricultural Marketing Service (Washington office); and the Offices of the Market Administrators for the orders involved in this proceeding. Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 8, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–22829 Filed 9–12–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE-RM–93–801]

Energy Conservation Program for Consumer Products: Proposed Rulemaking Regarding Energy Conservation Standards for Refrigerators, Refrigerators-Freezers, and Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Extension of comment period for proposed rulemaking and rescheduling of public hearing.

SUMMARY: In response to a request from the Association of Home Appliance Manufacturers (AHAM), the Department of Energy is rescheduling the public hearing and extending for thirty (30) days the comment period for the Proposed Rulemaking Regarding Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers. This notice announces that the public hearing scheduled for September 12 and 13, 1995 has been rescheduled to October 26, 1995.

DATES: Written comments on the Proposed Rulemaking must be received by November 2, 1995. The Department requests ten (10) copies of the written comments, and, if possible, a computer disk. The Department is currently using WordPerfect® 5.1.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on October 26, 1995. Requests to speak at the hearing must be received by the Department no later than 4 p.m., Thursday, October 5, 1995. Ten copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., Thursday, October 12, 1995.

The hearing will begin at 8:30 a.m. on October 26, 1995, and will be held at the U.S. Department of Energy, Forrestal Building, Room 6E–069, 1000 Independence Avenue, SW., Washington, DC 20585. The length of each presentation is limited to twenty (20) minutes.

ADDRESSES: Written comments, oral statements, requests to speak at the hearing and requests for speaker lists are to be submitted to: Voluntary Home Energy Rating System Guidelines (Docket No. EE-RM–93–801), U.S. Department of Energy, Office of Codes and Standards, Buildings Division, EE–431, 1000 Independence Avenue, SW., Rm 1J–018, Washington, DC 20585, (202) 586–7574.

Copies of the *Technical Support Document: Energy Efficiency Standards for Consumer Products: Refrigerators, Refrigerator-Freezers, and Freezers* (TSD) may be obtained from: U.S. Department of Energy, Office of Codes and Standards, Appliance Division, EE–431, 1000 Independence Avenue, SW., Rm 1J–018, Washington, DC 20585, (202) 586–9127.

Copies of the TSD, transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Edward O. Pollock, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5778

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Department published a Notice of Proposed Rulemaking (NOPR) on July 25, 1995, entitled "Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers" (60 FR 37388). In a letter dated August 11, 1995, AHAM requested a postponement of the hearings and written comment deadline because of legislative proposals before Congress that may affect the scope of energy standards activities. The legislative situation should be clarified by or in October.

In the NOPR, the Department listed a number of issues where comments were specifically requested. To this list, the Department is adding the following:

- The effect of the proposed standards on competition in the marketplace. This includes, but is not limited to, the effect on small manufacturers, niche-market manufacturers, and manufacturers who may struggle financially.
- The effect of the proposed standards on manufacturer's product lines. Comments are not limited to these issues and the issues listed in the NOPR. Comments may address any issue related to the proposed rule.

Issued in Washington, D.C., September 8, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–22814 Filed 9–8–95; 4:25 pm]

BILLING CODE 6450–01–P

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10 CFR Part 830

[Docket No. NE–RM–91–830]

RIN 1901–AA34

Nuclear Safety Management

10 CFR PART 834

[Docket No. EH–RM–93–834]

RIN 1901–AA38

Radiation Protection of the Public and the Environment

AGENCY: Department of Energy.

ACTION: Notice of corrections and extension of comment periods.

SUMMARY: On August 31, 1995, the Department of Energy (DOE) published a document (60 FR 45382) to reopen the comment periods with respect to the ongoing rulemakings concerning 10 CFR Parts 830 and 834. This document indicated that draft regulatory language and a discussion of the regulatory system under development would be available through the internet. An incorrect internet address, however, appeared in the document. The correct address is gopher://nattie.eh.doe.gov:2011/11/.Drafts. The document also incorrectly cited the DOE Standard that discusses hazard categories. The correct citation is DOE Standard 1027. In light of these corrections, DOE is extending the comment periods.

DATES: Written comments (11 copies) must be received by the Department on or before October 13, 1995.

ADDRESSES: Part 830: Written comments on Part 830 (11 copies) should be addressed to PART 830, Mr. Orin Pearson, U.S. Department of Energy, Office of Environment, Safety and Health, EH–10, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Part 834: Written comments on Part 834 (11 copies) should be addressed to PART 834, Mr. Andrew Wallo, U.S. Department of Energy, Office of Environment, Safety and Health, EH–412, 1000 Independence Avenue SW., Washington, D.C. 20585.

Internet: The draft regulatory language for Part 830 and for Part 834, as well as the draft discussion of the regulatory system under development, is available on the internet at gopher://nattie.eh.doe.gov:2011/11/.Drafts.

FOR FURTHER INFORMATION CONTACT:

Part 830: Mr. Richard Stark, U.S. Department of Energy, Office of Environment, Safety and Health, EH–31, 19901 Germantown Road, Germantown, Maryland 20874–1290, (301) 903–4407.

Part 834: Mr. Andrew Wallo, or Mr. Harold T. Peterson, Jr., U.S. Department of Energy, Office of Environment, Safety and Health, EH–412, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–2409, fax (202) 586–3915.

Written Comments: Ms. Andi Kasarsky, (202) 586–3012.

Issued in Washington, DC on September 7, 1995.

Douglas W. Smith,

Acting Deputy General Counsel For Energy Policy.

[FR Doc. 95–22626 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 2

[Docket No. 95–23]

RIN 1557–AB49

Sales of Credit Life Insurance

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise its regulation governing credit life insurance and the disposition of credit life insurance income. This proposal is another component of the OCC's Regulation Review Program to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens.

The proposal eliminates unnecessarily detailed provisions, reorganizes sections of the rule into a more helpful format, and refocuses the regulation to address areas presenting the greatest safety and soundness concerns.

DATES: Comments must be received by November 13, 1995.

ADDRESSES: Comments should be directed to: Docket 95–23, Communications Division, 250 E Street, SW, Washington, DC 20219, Fax (202)874–5274. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Stuart E. Feldstein, Senior Attorney, Legislative and Regulatory Activities, (202) 874–5090.

SUPPLEMENTARY INFORMATION: The OCC is proposing to revise 12 CFR part 2 as part of its Regulation Review Program. The goal of the Program is to eliminate provisions in the OCC's regulations that impose unnecessary regulatory burdens and do not contribute significantly to maintaining the safety and soundness of national banks or accomplishing the OCC's other statutory responsibilities. By simplifying and clarifying the regulation, the proposal is intended to better focus on the standards and principles to which national banks should adhere when they furnish credit life insurance to customers.

Background

The OCC issued a final rule to establish part 2 in 1977, 42 FR 48518 (September 23, 1977), to regulate the disposition of income from the sale of credit life insurance by national banks to loan customers of the bank. The regulation addressed the practice where employees, officers, directors, and principal shareholders, or their related interests, diverted income from the sale of credit life insurance to their benefit rather than to the bank. The OCC noted at the time that "[T]he proposal was premised on the judgment that income earned from credit life insurance sales to bank customers by bank officers using bank premises and good will in the creation of bank assets (loans) should be credited to bank earnings rather than be paid directly to and retained by officers, directors or selected stockholders." *Id.*

The regulation also addressed a number of related safety and soundness concerns. For example, there is an inherent conflict of interest when a loan officer's receipt of commissions from the sale of credit life insurance is dependent on the volume of loans made. This prospect of financial reward based solely upon loan volume may induce loan officers to make financially unsound loans. *See also, First National Bank of La Marque* v. *Smith,* 610 F.2d 1258 (5th Cir. 1980) ("When loan officers are allowed to retain commissions, the prospect of personal financial gain is interjected into the lending decision."). Additional safety and soundness concerns cited when the rule was adopted included: (1) that arrangements permitting employees, officers and directors to use bank premises and goodwill for personal profit were inimical to the trust and

confidence depositors place in financial institutions; (2) that the acquisition of a bank by investors who rely on the credit life insurance income to service their debt was inherently unsafe and unsound because it decreases their interest in running a profitable bank; and (3) that incentives to increase bank profits were diminished if money was distributed other than through dividends. *See,* 41 FR 29846 (July 20, 1976); 42 FR 48518 (September 23, 1977).

In 1982, the OCC amended part 2 to incorporate certain recommendations of the Federal Financial Institutions Examination Council. Among other things, these amendments clarified that bank officers and employees could participate in limited bonus and incentive plans notwithstanding the prohibition on receiving income derived from the sale of credit life insurance. The amendments also revised a provision permitting income from the sale of credit life insurance to be credited to a holding company affiliate of the bank by requiring the affiliate to "reasonably compensate" the bank for the use of its premises, personnel, and goodwill. 47 FR 31376 (July 20, 1982).

Proposal

The OCC is committed to safeguarding national banks from the inappropriate practices that gave rise to the promulgation of part 2, and is not proposing to diminish the fundamental standards reflected in the current rule. Rather, the proposal reduces the overly detailed format of the current rule, seeks comment on additional streamlining, and reorganizes the rule into more readable and understandable provisions that focus on the safety and soundness concerns and fiduciary principles that are the objectives of the regulation.

Section 2.1—Authority, Purpose, and Scope

The proposal removes current § 2.1 as unnecessary. The proposal adds an "Authority, purpose, and scope" section that briefly describes the objectives and scope of the regulation. The section also restates language in current § 2.6 relating to national bank authority to furnish credit life insurance under 12 U.S.C. 24 (Seventh). These revisions do not expand or otherwise modify the authority of national bank's to furnish credit life insurance under 12 U.S.C. 24 (Seventh).[1]

Section 2.2—Definitions

The definitions in current § 2.3 are amended to reflect minor wording changes. In addition, the OCC requests comment as to whether the scope of the definition of "credit life insurance" is appropriate.

Section 2.3—Distribution of Credit Life Insurance Income

The proposal also contains a simplified statement of the methods by which credit life insurance may be sold by national banks. The current regulation requires income derived from the sale of credit life insurance by national bank insiders to loan customers of the bank to be credited to the bank rather than to the bank insiders or entities in which they have a material interest. In connection with the initial Notice of Proposed Rulemaking in 1976, some commenters argued that certain state laws prohibited the assignment of commissions to the bank and, thus, contradicted the OCC's requirement to credit income from the sale of the credit life insurance to the bank. In response to this concern, current § 2.6 contains a list of OCC approved methods of distribution of credit life insurance income that are alternatives to the assignment of commissions to the bank. Section 2.6 also states that other methods satisfying the requirements of current § 2.4 are acceptable.

The current rule provides banks with some certainty about the types of methods that are acceptable. However, these examples do not appear to be needed as part of the regulation, and may, in practice, be unduly restrictive and confusing. Therefore, the OCC is proposing to remove the list of approved alternative methods and substitute a simple statement that the means of distribution of credit life insurance income must be consistent with the requirements and principles of proposed § 2.3.

These requirements include a provision that prohibits bank insiders from retaining commissions or other income from the sale of credit life insurance to loan customers of the bank, subject to certain exceptions for bonus and incentive plans.

In addition, the proposal also clarifies that it is unsafe and unsound for a director, officer, employee, or principal shareholder of a national bank, (*i.e.* a shareholder that directly or indirectly owns five percent or more of the bank's stock), or an entity in which any such person has an interest of five percent or more, involved in the sale of credit life insurance to bank loan customers to take advantage of that business opportunity for personal profit. This provision revises current § 2.4(a) to reinforce the core principle that income derived from the opportunity created by the bank should be credited to the bank.

The OCC requests commenters to address whether the five percent ownership test for a "principal shareholder" and for covered entities in which insiders have an interest is an appropriate level to use in these contexts, and, if not, what alternative percentages or more flexible standards would be appropriate. For example, the OCC notes that a "principal shareholder" for purposes of insider lending standards is defined with a ten percent voting stock ownership test. 12 CFR 215.2(m)(1).

The OCC also requests commenters to address whether the prohibition against the retention of income derived from the sale of credit life insurance should apply to sales of credit life insurance to loan customers of an affiliate bank.

Subject to various safeguards, the OCC permits national banks to share space and employees with entities other than depository institutions. *See* 42 FR 11924 (March 3, 1995) (Proposed revisions to part 7, the OCC's interpretive rulings.) In some instances, the bank and another entity that uses bank premises may share employees to sell products, which may include credit life insurance, to the bank's customers. To the extent these shared employees receive commissions from the sale of the credit life insurance, the arrangement arguably falls within the prohibitions contained in the current rule, as well as this proposal.

Possible solutions to this issue include a prohibition on commissions received from the sale of credit life insurance by bank employees to the bank's customers, a requirement that the bank be compensated in some fashion, and/or a standard excluding certain types of dual employees from the scope of part 2. The OCC is mindful of not placing impediments to multi-product arrangements that are beneficial to banks and bank customers and have not been the source of problems or abuses.

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[1] *IBAA v. Heimann,* 613 F.2d 1164, (D.C. Cir. 1979), *cert. denied,* 449 U.S. 823 (1980) (upholding national bank authority to sell credit life insurance). *See also* examples of other OCC precedent on furnishing credit life insurance: Interpretive Letter No. 277 (December 21, 1983) reprinted at [1983–1984 Transfer Binder] Fed. Banking L. Rep. (CCH) P85,441 (credit life insurance permissible as an incidental power under 12 U.S.C. 24(Seventh)); Interpretive Letter No. 283 (March 16, 1984) reprinted at [1983–1984 Transfer Binder] Fed. Banking L. Rep. (CCH) P85,447 (sales of credit life and disability insurance as agent for the insurer or by other arrangement as an incidental power); Letter from James G. Orie, Attorney, OCC Law Department (January 28, 1987); Letter from Ford Barrett, Assistant Director, Legislative and Regulatory Analysis (December 13, 1984); Letter from Richard V. Fitzgerald, Director, Legal Advisory Services Division (May 12, 1980); Letter from Robert Bloom, First Deputy Comptroller for Policy (June 29, 1976); and Letter from Joe H. Selby, First Deputy Comptroller for Operations (June 30, 1976).

However, the OCC also must exercise effective oversight where legitimate safety and soundness concerns may arise.

The OCC therefore requests comment on the treatment and compensation of employees shared with a non-bank entity that sells credit life insurance to the bank's customers.

Section 2.4(b) of the current regulation, originally adopted in 1977, permits income from the sale of credit life insurance to be credited to a holding company affiliate of the bank or to a trust for the benefit of all bank shareholders. A subsequent amendment to part 2 in 1982 required the holding company affiliate or trust to pay "reasonable compensation" to the bank for the use of its personnel and premises. 47 FR 31376 (July 20, 1982).

The OCC requests comment on whether to retain these provisions in the final rule or whether they are no longer necessary or used. If commenters propose retaining these provisions, the OCC also requests comment on whether comparable provisions should apply to affiliates not in a holding company structure.

Section 2.4—Bonus and Incentive Plans

Current § 2.4(a) permits limited bonus and incentive arrangements for employees and officers, notwithstanding the general prohibition against paying insiders income derived from the sale of credit life insurance to loan customers. Under the current rule, bonus or incentive payments based on credit life insurance sales may be made not more frequently than quarterly, and may not exceed in any one year five percent of the recipient's annual salary or five percent of the average salary of all loan officers participating in the plan. The proposal retains this condition with some minor wording changes to make the provision simpler and more understandable.

The OCC is concerned, however, that these restrictions may be too rigid. Therefore, commenters are specifically asked to address whether this periodic payment standard and the two percentage limits are appropriate safeguards for bonus and incentive programs, and, if not, what alternative safeguards the OCC should adopt that would deter inappropriate sales activities by insiders in connection with the sale of credit life insurance.

The proposal also adds a new provision that requires the bank not to structure its bonus or incentive plans in a manner that could create incentives for persons selling credit life insurance to provide inappropriate recommendations or sales of credit life insurance to customers of the bank. This provision is intended to protect consumers by requiring banks to address potential conflicts of interest that arise when loan officers also sell credit life insurance.

Other Changes

The proposal removes current § 2.5 which relates to director responsibilities since that issue is already considered in another section of the proposal. Current § 2.5 only addresses directors, and requires them to observe the requirements in § 2.4 and to be mindful of their duty under common law and 12 U.S.C. 73 to promote the interest of the bank over their personal interests. This section merely restates common law and statutory requirements. Moreover, the same basic fiduciary principles apply to bank officers and other employees involved in credit life insurance sales as well as to directors. The proposal states these principles in § 2.3(c), and applies them to all categories of bank officials and employees engaged in credit life insurance sales.

The proposal also removes current § 2.7 where the Comptroller reserves the authority to modify the applicability of any part of part 2 based on the particular circumstances of the bank. The OCC has rarely used this section. The OCC will continue to consider requests for interpretations of part 2 on a case-by-case basis.

The OCC welcomes comments on any aspect of the proposed regulation, particularly those issues specifically noted in this preamble.

DERIVATION TABLE

[This table directs readers to the provision(s) of the current regulation, if any, upon which the proposed revision is based.]

Revised provision	Original provision	Comments
§ 2.1	§§ 2.1, 2.2, 2.6.	Modified.
§ 2.2	§ 2.3	Modified.
§ 2.3	§§ 2.4(a), (b), 2.6.	Modified.
§ 2.4(a), (c)	§ 2.4(a), (c)	Modified.
§ 2.4(b)		Added.
	§ 2.5	Removed.
	§ 2.7	Removed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the rule has the effect of reducing burden and increasing the flexibility of national banks, consistent with safe and sound banking practices.

List of Subjects in 12 CFR Part 2

Credit, Life insurance, National banks.

Authority and Issuance

For the reasons set out in the preamble, part 2 of chapter I of title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 2—SALES OF CREDIT LIFE INSURANCE

Sec.
2.1 Authority, purpose, and scope.
2.2 Definitions.
2.3 Distribution of credit life insurance income.
2.4 Bonus and incentive plans.

Authority: 12 U.S.C. 24 (Seventh), 93a, and 1818(n).

§ 2.1 Authority, purpose, and scope.

(a) *Authority.* A national bank may furnish credit life insurance to loan customers pursuant to 12 U.S.C. 24 (Seventh).

(b) *Purpose.* The purpose of this part is to set forth the principles and standards that apply to a national bank's sale of credit life insurance, and the limitations that apply to the receipt of income from those sales by certain individuals and entities associated with the bank.

(c) *Scope.* This part applies to sales of credit life insurance by any national bank employee, officer, director, or principal shareholder, and certain entities in which they have interests.

2.2 Definitions.

(a) *Credit life insurance* means credit life, health, and accident insurance.

(b) *Interest* includes:

(1) Ownership through a spouse or minor child;

(2) Ownership through a broker, nominee, or other agent; or

(3) Ownership through any corporation, partnership, association, joint venture, or proprietorship, that is controlled by a director, officer, employee, or principal shareholder of the bank.

(c) *Officer, director, employee, or principal shareholder* includes the spouse and minor children of an officer, director, employee, or principal shareholder.

(d) *Principal shareholder* means any shareholder who directly or indirectly owns or controls an interest of more than five percent of the bank's outstanding shares.

§ 2.3 Distribution of credit life insurance income.

(a) The means of distribution of credit life insurance income employed by a national bank must be consistent with the requirements and principles of this section.

(b) Except as provided in § 2.4, a director, officer, employee, or principal shareholder of a national bank, or an entity in which such person has a voting interest of five percent or more, may not retain commissions or other income from the sale of credit life insurance in connection with any loan made by that bank.

(c) It is an unsafe and unsound practice for any director, officer, employee, or principal shareholder of a national bank, (including any entity in which such a person has a voting interest of five percent or more), who is involved in the sale of credit life insurance to loan customers of a national bank, to take advantage of that business opportunity for personal profit. Income derived from credit life insurance sales to loan customers must be credited to the income accounts of the bank and not to the bank's employee, director, officer, or principal shareholder, or to an entity in which such a person has a voting interest of five percent or more.

§ 2.4 Bonus and incentive plans.

(a) A bank employee or officer may participate in a bonus or incentive plan based on the sale of credit life insurance if the following conditions are satisfied:

(1) Payments based on credit life insurance sales are made not more frequently than quarterly; and

(2) Payments to any individual in any one year do not exceed the greater of:

(i) Five percent of the recipient's annual salary; or

(ii) Five percent of the average salary of all loan officers participating in the plan.

(b) The bank may not structure its incentive or bonus program in a manner that creates incentives for an individual to make inappropriate recommendations or sales to customers of the bank.

(c) Nothing contained in this part prohibits a bank employee, officer, director, or principal shareholder who holds an insurance agent's license from agreeing to compensate the bank for the use of its premises, employees, or goodwill. However, the employee, officer, director, or principal shareholder shall turn over to the bank as compensation all income received from the sale of the credit life insurance to the bank's loan customers.

Dated: September 7, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–22699 Filed 9–12–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–212–AD]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes. This proposal would require inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable. This proposal is prompted by a report of failure of an engine power cable, which could cause loss of function of the power control levers on the console. The actions specified by the proposed AD are intended to prevent loss of function of the levers on the console and subsequent loss of normal control of engine power.

DATES: Comments must be received by October 23, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and ener[illegible] aspects of the proposed rule. A[illegible]nents submitted wi[illegible]e a[illegible]e, both before and after the cl[illegible] for comments, in the Rules Doc[illegible]xamination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–212–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model ATP airplanes. The CAA advises that it received a report indicating that an engine power cable failed while the airplane was on the ground. Investigation revealed that the engine power cable failure was caused by fatigue damage at the point where the cables pass around a small diameter pulley. Failure of the engine power cables could result in loss of function of the power control levers on the console. This condition, if not corrected, could result in loss of normal control of engine power.

Jetstream has issued Service Bulletin ATP–76–16, dated October 14, 1994, which describes procedures for repetitive detailed visual inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable. If one broken wire in any strand of an engine power cable is found, the service bulletin permits 60 further landings before replacement of the damaged cable. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive detailed visual inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that, unlike the procedures recommended in the referenced Jetstream service bulletin, this proposed rule would not permit further flight after detection of any cable that is found with one wire broken in any strand. Instead, this proposed rule would require, prior to further flight, repair of the cable in accordance with the service bulletin. The FAA finds that an adequate level of safety for the affected fleet requires that damaged cables must be replaced prior to further flight. The FAA has determined that, in cases where certain known unsafe conditions exist, and where actions to detect and correct that unsafe condition can be readily accomplished, those actions must be required.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,200, or $120 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Docket 94–NM–212–AD.

Applicability: Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of function of the power control levers on the console and subsequent loss of normal control of engine power due to failure of the engine power cables, accomplish the following:

(a) Perform a detailed visual inspection and tests for damage of the engine power cables, in accordance with Jetstream Service Bulletin ATP–76–16, dated October 14, 1994, at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Thereafter repeat this inspection and tests at intervals not to exceed 1,000 landings.

(1) Prior to the accumulation of 1,000 total landings on the engine power cable, or within 200 landings after the effective date of this AD, whichever occurs later.

(2) Within 75 days after the effective date of this AD.

(b) If any damaged engine power cable is found, prior to further flight, replace the damaged engine power cable with a new cable in accordance with the Jetstream Service Bulletin ATP–76–16, dated October 14, 1994. Thereafter, repeat the inspection and tests required by paragraph (a) of this AD at intervals not to exceed 1,000 landings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 7, 1995.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22717 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–ANM–18]

Proposed Establishment of Class E Airspace; Baker, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish the Baker, Montana, Class E airspace. If established, the airspace would accommodate a new instrument approach procedure at Baker Municipal Airport, Baker, Montana. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before October 13, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–18, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Frala, ANM–535/A, Federal Aviation Administration, Docket No. 95–ANM–18, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis support in the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANM–18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All commdents submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Baker, Montana, to accommodate a new instrument approach procedure at Baker Municipal Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of earth.

* * * * *

ANM MT E5 Baker, MT

Baker Municipal Airport, MT
(Lat 46°20′52″N, long. 104°15′34″W)

That airspace extending upward from 700 feet above the surface within an 8.9 mile radius of the Baker Municipal Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°29′00″N, long. 104°45′00″ W; to lat. 46°30′30″ N, long. 104°31′00″ W; to lat. 46°37′00″ N, long. 103°59′40″W; to lat. 46°37′55″ N, long. 103°53′45″ W; to lat. 46°25′45″ N, long. 103°37′30″ W: to lat. 46°17′30″ N, long. 103°48′15″ W; to lat. 45°40′00″ N, long. 103°00′50″ W; to lat. 45°35′30″ N, long. 103°01′45″ W; to lat. 45°49′30″N, long. 103°37′30″ W; to lat. 45°35′50″ N, long. 103°34′30′ W; to lat. 46°10′50″ N, long. 103°56′00″ W; to lat. 46°04′20″ N, long. 104°20′45″ W; to the point of beginning; excluding that portion within the Bowman Municipal Airport, MT, 1,200-foot Class E airspace area.

* * * * *

Issued in Seattle, Washington, on August 30, 1995.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–22737 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Extension of Port Limits of Puget Sound, WA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the consolidated port of entry of Puget Sound, Washington. The current boundaries are being extended to include the portion of King County, Washington, which now lies between the boundaries of the Port of Seattle and the Port of Tacoma. The boundaries are being changed because various commercial operations requiring the services of Customs personnel have been established in areas beyond the current limits of the consolidated port.

This proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, DC, on regular business days between the hours of 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Patricia M. Duffy, Office of Field Operations, 202–927–0509.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographical limits of the Port of Seattle, Washington, which is within the consolidated Customs Port of Puget Sound in the Pacific Region.

Current Port Limits of Seattle

The port limits of the consolidated Customs port of entry of Puget Sound, Washington, were established in Treasury Decision (T.D.) 75–130 of May 21, 1975 (effective July 1, 1975). They were most recently extended by T.D. 83–146 of June 23, 1983 (effective August 4, 1983).

The port limits of the consolidated Port of Puget Sound consist of a description of the Port of Seattle as well as a listing of Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, and a description of territory in Tacoma. The current boundaries of the Port of Seattle described in the port description of Puget Sound are as follows:

Section 35, Township 27 North, Range 3 East, West Meridian, County of Snohomish and the geographical area within the boundaries beginning at the intersection of NW. 205th Street and the waters of Puget Sound, proceeding in an easterly direction along the King County line to its intersection with 100th Avenue, NE., thence southerly along 100th Avenue, NE. and its continuation to the intersection of 100th Avenue, SE. and 240th Street, SE., thence westerly along 240th Street SE., and south, to its intersection with the waters of Puget Sound and then northerly along the shores of Puget Sound to its intersection with NW. 205th Street, the point of beginning, County of King, all within the State of Washington.

Proposed Expansion of Port

Customs is now proposing to expand the Port of Seattle by extending the southern boundary of the Port of Seattle to the King-Pierce County line. The southern boundary, if so extended, would convene with the existing northern boundary of the port of entry at Tacoma, Washington. The new boundary for the Port of Seattle will then be section 85, Township 27 North, Range 3 East, West Meridian, County of Snohomish.

This proposed expansion of the Seattle port limits would provide a continuous area of service from Tacoma's Commencement Bay to Seattle's Elliot Bay, and would align the port in a manner already identified by the trade as beneficial due to the central location between Seattle and Tacoma.

Expansion of the port limits would improve service to the public, clarify resource allocations for facilities within the expanded area, and allow beneficial commercial development within the consolidated port of entry of Puget Sound.

The District of Seattle will use existing staffing to service the expanded

area of the consolidated Port of Puget Sound. The Regional Commissioner supports the expansion request with the stipulation that no additional staff will be required to operate the expanded facilities and marinas.

Proposed Seattle Port Limits

The geographical area within the proposed new boundaries will be as follows:

Beginning at the intersection of NW. 205th Street and the waters of Puget Sound, proceeding in an easterly direction along the King County line to its intersection with 100th Avenue, NE., thence southerly along 100th Avenue, NE. and its continuation to the intersection of 100th Avenue, SE. and 240th Street, SE., thence westerly along 240th Street, SE. to its intersection with North Central Avenue., thence southerly along North Central Avenue, its continuation as South Central Avenue and 83rd Avenue South and its connection to Auburn Way North, thence southerly along Auburn Way North and its continuation as Auburn Way South to its intersection with State Highway 18, thence westerly along Highway 18 to its intersection with A Street, SE., then southerly along A Street, SE. to its intersection with the King County Line, then westerly along the King County Line to its intersection with the waters of Puget Sound and then northerly along the shores of Puget Sound to its intersection with NW. 205th Street, the point of beginning, all within the County of King, State of Washington.

If the proposed extension of the consolidated port of entry of Puget Sound is adopted, the list of Customs ports of entries in 19 CFR 101.3(b) will be amended accordingly.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), Section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, DC.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency reorganization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other office participated in its development.

George J. Weise,

Commissioner of Customs.

Approved: August 24, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–22641 Filed 9–12–95; 8:45 am]

BILLING CODE 4820–02–P

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19 CFR Part 101

Name Change for Consolidated Port of Philadelphia

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to change the name of the Consolidated Port of Philadelphia to the Consolidated Port of the Delaware River and Bay, and to identify the participating ports within the consolidated port.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Comments (preferable in triplicate) must be submitted to the U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: A. Donald Gilman, Office of Congressional and Public Affairs, (202) 927–1169.

SUPPLEMENTARY INFORMATION:

Background

Section 101.3, Customs Regulations (19 CFR 101.3), lists as one of Customs ports of entry Philadelphia-Chester, Pa. and Wilmington, Del. This port includes the named cities and includes Camden, Gloucester City and Salem, New Jersey and territory described in T.D. 84–195. The port of entry is popularly known as the Consolidated Port of Philadelphia.

After a meeting with trade community representatives from both Wilmington, Delaware and Philadelphia, Pennsylvania, Customs has determined that the name of the consolidated port should be changed to the Consolidated Port of the Delaware River and Bay, and that participating ports within the consolidated port would be identified. The Wilmington, Delaware trade community strongly favors such a name change, and the Philadelphia trade community has not expressed any objection to that suggestion.

Proposal

Accordingly, Customs is proposing in this document to change the name of the port of Philadelphia-Chester, PA. and Wilmington, Del., popularly known as the Consolidated Port of Philadelphia to the Consolidated Port of the Delaware River and Bay. If the proposed name change of the port is adopted, the list of ports in 19 CFR 101.3(b) will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street NW., Suite 4000, Washington, DC.

Regulatory Flexibility Act

Although this document is being issued for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, the document is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

Agency organization matters such as this are exempt from Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Approved: August 23, 1995.

Michael H. Lane,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–22642 Filed 9–12–95; 8:45 am]

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Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, 13, and 19

[Notice No. 815]

RIN 1512–AB34

Procedures for the Issuance, Denial, and Revocation of Certificates of Label Approval, Certificates of Exemption From Label Approval, and Distinctive Liquor Bottle Approvals (93F–029P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to issue regulations specifically setting forth the procedures for the issuance, denial, and revocation of certificates of label approval (COLAs), certificates of exemption from label approval, and distinctive liquor bottle approvals. The proposed denial and revocation regulations are new, whereas the proposed issuance regulations are more specific than the current regulations. The proposed regulations would also codify the procedures for administratively appealing the denial or revocation of certificates of label approval, exemptions from label approval, or distinctive liquor bottle approvals.

DATES: Written comments to this proposed rule must be received by December 12, 1995.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 815).

Copies of the proposed regulation and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert White, Coordinator, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration (FAA) Act, 27 U.S.C. § 205(e), provides ATF, as the delegate of the Secretary of the Treasury, with authority to promulgate regulations with respect to the bottling, packaging, and labeling of distilled spirits, wine, and malt beverages in order to prohibit deception of the consumer, and provide the consumer with adequate information as to the identity and quality of the product.

In order to carry out such requirements, domestic bottlers and producers are prohibited from bottling distilled spirits, wines, or malt beverages, and importers are prohibited from removing bottled distilled spirits, wines, or malt beverages from Customs custody, unless they have in their possession a certificate of label approval covering such products, "issued by the Secretary in such manner and form as he shall by regulations prescribe." 27 U.S.C. § 205(e). The law provides an exemption from these requirements for products which are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce.

The regulations implementing these statutory provisions provide that no person shall bottle or pack wine, distilled spirits, or malt beverages unless application is made to the Director and an approved certificate of label approval, ATF Form 5100.31, is issued. 27 CFR §§ 4.50(a), 5.55(a), and 7.41. The regulations also provide that no bottled wines, distilled spirits, or malt beverages shall be released from Customs custody for consumption unless an approved certificate of label approval, ATF Form 5100.31, is deposited with the appropriate Customs officer at the port of entry. 27 CFR §§ 4.40(a), 5.51(a), and 7.31(a).

A bottler of wine or distilled spirits who can show to the satisfaction of the Director that the product is not to be sold, offered for sale, or shipped or delivered for shipment or otherwise introduced in interstate or foreign commerce, must make application for exemption from the labeling requirements of the FAA Act on ATF Form 5100.31 in accordance with the instructions on the form. If the application is approved, a certificate of exemption from label approval will be issued on the same form. 27 CFR §§ 4.50(b) and 5.55(b). Certificates of exemption from label approval are not issued for malt beverages.

Finally, the ATF Form 5100.31 is also used to obtain approval for distinctive liquor bottles, pursuant to the regulations appearing at 27 CFR § 19.633(a). ATF's authority to regulate liquor bottles is derived from section 5301 of the Internal Revenue Code of 1986, 26 U.S.C. § 5301. However, the approval of a distinctive liquor bottle also includes the approval of the label on that bottle, pursuant to the FAA Act.

Revocation of COLAs

ATF reviews over 60,000 applications for certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals every year. There is no doubt that errors will occasionally occur in the approval process. Thus, there is clearly a necessity for some type of revocation procedure.

Since the enactment of the FAA Act in 1935, ATF and its predecessor agencies have taken the position that the statutory authority to issue certificates of label approval also included an implied statutory authority to cancel or revoke such certificates in the event that such certificates were approved in error. There have never been formal procedures in the regulations for denial or revocation of certificates of label approval. However, ATF has utilized informal procedures for denials and revocations, where applicants or certificate holders who wished to contest a denial or revocation were given an opportunity to do so in writing, or through informal meetings with Bureau officials.

The certificate of label approval was never intended to convey any type of proprietary interest to the certificate holder. On the contrary, Paragraph III(1)(c) of Form 5100.31 provides that "[t]his certificate is issued for Bureau of Alcohol, Tobacco and Firearms use only and does not constitute trademark protection, or relieve any person from liability for violations of the FAA Act and related regulations and rulings." The certificate of label approval is a statutorily mandated tool used to help ATF in its enforcement of the labeling requirements of the FAA Act.

Recently, however, ATF's procedures for revocation of COLAs were subject to challenge in the Federal District Court for the Northern District of California. In *Cabo Distributing Co.* v. *Brady*, 821 F. Supp. 601 (N.D. Cal. 1992), the court set aside ATF's revocation of labels for "Black Death" vodka on several grounds. The court held that there was no express statutory or regulatory authority for the Bureau to cancel certificates of label approval, and that the Bureau had implied authority to reverse its actions only in limited circumstances. The court thus concluded that "[w]ithout statutory authority or regulatory authority, the BATF [sic] cannot cancel a certificate of label approval." 821 F. Supp. at 612. The court also held that the Bureau's informal procedures for revoking the "Black Death" certificates of label approval had not afforded the certificate holders their constitutional right to procedural due process. 821 F. Supp. at 612.

ATF does not agree with the court's decision on either of these two holdings. ATF believes that a right to cancel certificates of label approval is implied from the statute's delegation to the Secretary of the authority to issue certificates of label approval "in such manner and form as he shall by regulations prescribe* * *" The statute thus explicitly authorizes ATF, as a delegate of the Secretary, to issue regulations governing the procedure for the issuance of certificates of label approval. There is also implicit statutory authority to issue regulations governing the procedures for denying and revoking certificates of label approval.

ATF believes that the procedures which it has been using for revoking certificates of label approval, although not codified in the regulations, have provided certificate holders with due process of law. However, in order to clarify its authority and procedures for revocation of label approvals, ATF is proposing to adopt new regulations in a new Part 13 which will set forth procedures for revoking such approvals and for appealing such revocations. The procedures will also provide applicants with the opportunity to administratively appeal the denial of applications for label approval. Finally, the procedures will also cover certificates of exemption from label approval and distinctive liquor bottle approvals, since these are issued on the same form as certificates of label approval.

Proposed Procedures

ATF is proposing to issue regulations specifically setting forth the procedures for the issuance, denial, and revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals. The proposed denial and revocation regulations are new, whereas the proposed issuance regulations are more specific than the current regulations. The proposed regulations would also codify the procedures for administratively appealing the denial or revocation of certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals. ATF believes that the proposed regulations would afford applicants and certificate holders with more than adequate due process of law. ATF also believes that the codification of these procedures in regulations will eliminate any questions as to its authority to revoke certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals.

Under current regulations, the authority to approve certificates of label approval, exemptions from label approval, and distinctive liquor bottle applications rests with the Director. When an application for label approval, exemption from label approval, or distinctive liquor bottle approval is approved, the signature of the Director is affixed to the form, with the date, and any qualifications are marked in the appropriate space on the form. The approved ATF Form 5100.31 is then sent to the applicant. If an application is denied for any reason, the applicant is sent an ATF Form 5190.1, "ATF F 5100.31 Correction Sheet," with the reasons for the denial briefly noted on the form. The proposed regulations will codify this practice.

The proposed regulations afford the applicant an opportunity to file a written appeal of the denial of an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, with the Chief, Labeling Section, Product Compliance Branch, within 45 days after the date of the notice of denial. Such an appeal should explain the basis for the applicant's belief that the denial was erroneous, and that the subject label or bottle is in compliance with all applicable laws and regulations. After considering all relevant facts and issues presented in writing by the applicant, the Chief, Labeling Section, shall issue a final decision on the denial of the application.

With respect to revocations of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals, the proposed regulations provide that the Chief, Product Compliance Branch, shall provide the certificate holder with a notice of proposed revocation prior to taking any action with respect to the label or distinctive liquor bottle. The certificate holder shall have 45 days from the date of the notice in which to present written arguments as to why the revocation should not occur. After considering any arguments or facts presented during this 45-day period, the Chief, Product Compliance Branch, shall issue a decision. If the decision is to revoke the label or distinctive liquor bottle approval, the certificate holder shall then have 45 days from the date of the decision of the Chief, Product Compliance Branch, to file a written appeal with the Chief, Alcohol and Tobacco Programs Division. The written appeal should include all pertinent arguments and evidence which the certificate holder wishes to present. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

The proposed regulations authorize applicants or certificate holders to request informal conferences at each stage of the administrative appeal process. The decision whether to grant such requests lies entirely within the discretion of the official considering the administrative appeal. It should be noted that the issue of informal conferences arose during the litigation over the "Black Death" labels. To avoid any possible misunderstandings which might arise out of inconsistent recollections by meeting participants, the proposed regulations will clarify that informal conferences are not on the record. To the extent that an applicant or certificate holder wishes to rely on arguments or evidence presented at an informal conference, he or she must present such arguments or evidence in writing to the decision maker within 10 days after the date of the conference.

Exception to Notice of Proposed Revocation Requirement

The proposed regulations provide that where there is a change in labeling requirements by operation of law or regulation, there is no requirement to issue a notice of proposed revocation prior to notifying a certificate holder of the revocation of a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval. In these cases, the burden of ensuring that affected labels are in compliance with the new requirements imposed by statute or regulation should be on the certificate holder, not ATF. If ATF determines that a label or bottle which is not in compliance with the new statutory or regulatory requirements is still being used, the Chief, Product Compliance Branch, will issue a letter notifying the certificate holder that the certificate has been revoked by operation of law or regulation. If the certificate holder wishes to challenge the application of the law or regulation to the particular label or bottle, he or she may appeal the decision, in writing, to the Chief, Alcohol and Tobacco Programs Division.

If the proposals in this notice are adopted, regulations in Parts 4, 5, 7, and 19 will be amended to cross reference the procedures enumerated in Part 13.

Public Participation

ATF requests all interested parties to submit written comments concerning the issuance, denial, revocation, and appeal procedures proposed in this notice of proposed rulemaking. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The names of commenters are not exempt from disclosure.

Written comments will be available for public inspection during normal business hours at the following address: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation will give ATF specific regulatory authority to issue, deny or revoke certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals. The regulation will not increase recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Robert L. White, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection; Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Appeals, Applications, Certificates of label approval, Certificates of exemption from label approval, Denials, Distinctive liquor bottle approvals, Informal conferences, Labeling, Revocations.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Authority and Issuance

Chapter I of Title 27, Code of Federal Regulations, is proposed to be amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Section 4.40 is amended to add paragraph (d) to read as follows:

§ 4.40 Label approval and release.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see Part 13 of this chapter.

Par. 3. Section 4.50 is amended to add paragraph (c) to read as follows:

§ 4.50 Certificates of label approval.

* * * * *

(c) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, and certificates of exemption from label approval, as well as appeal procedures, see Part 13 of this chapter.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 4. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

Par. 5. Section 5.46 is amended to revise paragraph (d) to read as follows:

§ 5.46 Standard liquor bottles.

* * * * *

(d) *Exceptions*—(1) *Distinctive Liquor Bottles.* The headspace and design requirements in paragraphs (b) and (c) of this section do not apply to liquor bottles which are specifically exempted by the Director, pursuant to an application filed by the bottler or importer.

(2) *Cross reference.* For procedures regarding the issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see Part 13 of this chapter.

Par. 6. Section 5.51 is amended to add paragraph (e) to read as follows:

§ 5.51 Label approval and release.

* * * * *

(e) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 7. Section 5.55 is amended to add paragraph (d) to read as follows:

§ 5.55 Certificates of label approval.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see Part 13 of this chapter.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 8. The authority citation for Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 9. Section 7.31 is amended to add paragraph (d) to read as follows:

§ 7.31 Label approval and release.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 10. Section 7.41 is revised to read as follows:

§ 7.41 Certificates of label approval.

(a) *Requirement.* No person shall bottle or pack malt beverages, or remove malt beverages from the plant where bottled or packed unless application is made to the Director, and an approved certificate of label approval, ATF Form 5100.31, is issued by the Director.

(b) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 11. Part 13 is added to read as follows:

PART 13—LABELING PROCEEDINGS

Subpart A—Scope and Construction of Regulations

Sec.
13.1 Scope of part.

Subpart B—Definitions

13.5 Meaning of terms.

Subpart C—Applications

13.11 Application for certificate.
13.12 Notice of denial.
13.13 Appeal of denials.
13.14 Final decision after appeal of denial.

Subpart D—Revocations

13.20 Revocation of certificates.
13.21 Notice of proposed revocation.
13.22 Decision after notice of proposed revocation.
13.23 Appeal of revocation.
13.24 Final decision after appeal.

Subpart E—Revocation by Operation of Law or Regulation

13.35 Revocation by operation of law or regulation.
13.36 Notice of revocation.
13.37 Appeal of notice of revocation.
13.38 Decision after appeal.

Subpart F—Miscellaneous

13.40 Informal conferences.
13.45 Effective dates of revocations.
13.50 Effect of revocations.
13.55 Service on applicant or certificate holder.
13.60 Representation before the Bureau.
13.65 Computation of time.
13.70 Extensions.

Authority: 270 U.S.C. 205(e) and 26 U.S.C. 5301.

Subpart A—Scope and Construction of Regulations

§ 13.1 Scope of part.

The regulations in this part govern the procedure and practice in connection with the issuance, denial, and revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals under 27 U.S.C. 205(e) and 26 U.S.C. 5301. The regulations in this part also provide for appeal procedures when applications for label approval, exemptions from label approval, or distinctive liquor bottle approvals are denied, or when these applications are approved and then subsequently revoked.

Subpart B—Definitions

§ 13.5 Meaning of terms.

Where used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this subpart. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "include" and "including" do not exclude things not enumerated which are in the same general class.

Act. The Federal Alcohol Administration Act.

Applicant. The permittee or brewer whose name, address, and basic permit number, or plant registry number, appears on an unapproved ATF F 5100.31, application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

ATF. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC 20226.

Brewer. Any person who brews beer (except a person who produces only beer exempt from tax under 26 U.S.C. 5053(e)) and any person who produces beer for sale.

Certificate holder. The permittee or brewer whose name, address, and basic permit number, or plant registry number, appears on an approved ATF F 5100.31, certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

Certificate of exemption from label approval. A certificate issued on ATF F 5100.31 which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

Certificate of label approval. A certificate issued on ATF F 5100.31 which authorizes the bottling or packing of wine, distilled spirits, or malt beverages, or the removal of bottled wine, distilled spirits, or malt beverages from Customs custody for introduction into commerce, as long as the product bears labels identical to the labels affixed to the face of the certificate, or labels with changes authorized by the certificate.

Chief, Alcohol and Tobacco Programs Division. The ATF official responsible under this part for deciding appeals of revocations of:

(1) Certificates of label approval;

(2) Certificates of exemption from label approval; and

(3) Distinctive liquor bottle approvals.

Chief, Labeling Section, Product Compliance Branch.

The ATF official responsible under this part for deciding appeals of denials of applications for:

(1) Certificates of label approval;

(2) Certificates of exemption from label approval; and

(3) Distinctive liquor bottle approvals.

Chief, Product Compliance Branch. The ATF official responsible under this part for issuing revocations of

(1) Certificates of label approval;

(2) Certificates of exemption from label approval; and

(3) Distinctive liquor bottle approvals.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof for nonindustrial use. The term "distilled spirits" shall not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Distinctive liquor bottle. A liquor bottle of distinctive shape or design.

Distinctive liquor bottle approval. Approval issued on ATF F 5100.31 which authorizes the bottling of distilled spirits, or the removal of bottled distilled spirits from Customs custody for introduction into commerce, as long as the bottle is identical to the photograph affixed to the face of the form.

Interstate or foreign commerce. Commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to protect the revenue adequately.

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

Permittee. Any person holding a basic permit under the Federal Alcohol Administration Act.

Person. Any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof.

Product Compliance Branch Specialist. An ATF official—

(1) Responsible under this part for reviewing initial applications for:

(i) Certificates of label approval;

(ii) Certificates of Exemption from label approval; and

(iii) Distinctive liquor bottle approvals; and

(2) With authority to affix the Director's signature to approved certificates and to issue an "ATF F 5100.31 Correction Sheet" along with any denial of an application.

United States. The several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means the Commonwealth of Puerto Rico.

Use of other terms. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Wine. (1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 3036, 3044, 3045) and

(2) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance only if containing not less than 7 percent, and not more than 24 percent of alcohol by volume, and if for nonindustrial use.

Subpart C—Applications

§ 13.11 Application for certificate.

An applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, shall send signed duplicate copies of ATF Form 5100.31, "Application for and Certification/Exemption of Label/Bottle Approval" to the Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226. If the application evidences compliance with all applicable laws and regulations, a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval shall be issued, and the Director's signature shall be affixed to the form. If the approval is qualified in any manner, such qualifications shall be set forth in the appropriate space on the form.

§ 13.12 Notice of denial.

Whenever an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval is denied, a Product Compliance Branch Specialist shall issue to the applicant a notice of denial on ATF Form 5190.1, entitled "ATF F 5100.31 Correction Sheet," briefly setting forth the reasons why the label or bottle is not in compliance with the applicable laws or regulations. The applicant may then submit a new application for approval after making the necessary corrections.

§ 13.13 Appeal of denials.

If an applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval wishes to appeal the denial of an application, he or she may file a written appeal with the Chief, Labeling Section, Product Compliance Branch, within 45 days after the date of the notice of denial. Such an appeal should explain the basis for the applicant's belief that the subject label or bottle is in compliance with the applicable laws and regulations. If no appeal is filed within 45 days after the date of the notice of denial, such notice of denial shall be the final decision of the Bureau.

§ 13.14 Final decision after appeal of denial.

After considering any written arguments or evidence presented by the applicant or his or her representative, the Chief, Labeling Section, Product Compliance Branch, shall issue a written decision to the applicant. If the decision is that the denial should stand, a copy of the application, marked "appeal denied," shall be returned to the applicant, along with a brief explanation of the basis for the denial and the specific laws or regulations relied upon in denying the application. If the decision is that the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle application should be approved, ATF Form 5100.31 shall be issued in accordance with usual procedures. The decision of the Chief, Labeling Section, Product Compliance Branch, shall be the final decision of the Bureau.

Subpart D—Revocations

§ 13.20 Revocation of certificates.

Certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, previously approved on ATF Form 5100.31, may be revoked by the Chief, Product Compliance Branch, upon a finding that the label or bottle at issue is not in compliance with the applicable laws or regulations.

§ 13.21 Notice of proposed revocation.

Except as provided in § 13.35, when the Chief, Product Compliance Branch, determines that a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been issued for a label or bottle which is not in compliance with the laws or regulations, he or she shall issue to the certificate holder a notice of proposed

revocation which shall set forth the basis for the proposed revocation and shall provide the certificate holder with 45 days from the date of the notice in which to present written arguments or evidence as to why the revocation should not occur.

§ 13.22 Decision after notice of proposed revocation.

After considering any written arguments or evidence presented by the certificate holder or his or her representative, the Chief, Product Compliance Branch, shall issue a decision. If the decision is to revoke the certificate, a letter shall be issued explaining the basis for the revocation of the certificate, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter to that effect shall be issued.

§ 13.23 Appeal of revocation.

A certificate holder who wishes to appeal the decision of the Chief, Product Compliance Branch, to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, may file a written appeal with the Chief, Alcohol and Tobacco Programs Division, setting forth the grounds on which he or she believes that the decision of the Chief, Product Compliance Branch, was erroneous. Such appeal must be filed with the Chief, Alcohol and Tobacco Programs Division, within 45 days after the date of the decision of the Chief, Product Compliance Branch.

§ 13.24 Final decision after appeal.

After considering any written arguments or evidence presented by the certificate holder or his or her representative, the Chief, Alcohol and Tobacco Programs Division, shall issue a written decision to the certificate holder. If the decision is to revoke the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, a letter shall be issued explaining the basis for the revocation, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter to that effect shall be sent to the certificate holder. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

Subpart E—Revocation by Operation of Law or Regulation

§ 13.35 Revocation by operation of law or regulation.

ATF will not individually notify all holders of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals, that such approvals have been revoked in situations where such revocation occurs by operation of law or regulation.

Where changes in labeling or other requirements are made as a result of amendments or revisions to the law or regulations, it is the responsibility of the certificate holder to voluntarily surrender all certificates which are no longer in compliance, and to submit applications for new certificates in compliance with the new requirements; *Provided*, that in certain circumstances, ATF may announce that the submission of new applications for label approval is not necessary in order to implement a new requirement in the law or regulations. In such circumstances, it is the responsibility of the certificate holder to ensure that labels are in compliance with the requirements of the new regulations or law, notwithstanding the fact that new applications for label approval were not required.

§ 13.36 Notice of revocation.

If ATF determines that a certificate holder is still using a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval which is no longer in compliance due to amendments or revisions in the law or regulations, the Chief, Product Compliance Branch, will notify the certificate holder in writing that the subject certificate has been revoked by operation of law or regulations, with a brief description of the grounds for such revocation.

§ 13.37 Appeal of notice of revocation.

Within 45 days after the date of a notice of revocation by operation of law or regulations, the certificate holder may file a written appeal with the Chief, Alcohol and Tobacco Programs Division. The appeal should set forth the reasons why the certificate holder believes that the regulation or law at issue does not require the revocation of the certificate.

§ 13.38 Decision after appeal.

After considering all written arguments and evidence submitted by the certificate holder, the Chief, Alcohol and Tobacco Programs Division, shall issue a final decision regarding the revocation by operation of law or regulation of the certificate. If the decision is that the law or regulation at issue requires the revocation of the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, a letter shall be issued explaining the basis for the revocation, and citing the specific laws or regulations which required the revocation of the certificate. If the decision is that the law or regulation at issue does not require the revocation of such certificate, a letter to that effect shall be sent to the certificate holder. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

Subpart F—Miscellaneous

§ 13.40 Informal conferences.

(a) *General.* As part of a timely filed written appeal of a notice of denial, a notice of proposed revocation, or a decision of the Chief, Product Compliance Branch, to revoke a certificate, an applicant or certificate holder may file a written request for an informal conference with the ATF official deciding the appeal. However, the decision whether to hold an informal conference is at the sole discretion of the deciding official.

(b) *Informal conference procedures.* If the deciding official determines that the holding of an informal conference would be beneficial, he or she shall inform the applicant or certificate holder, and a date shall be agreed upon. The informal conference is for purposes of discussion only, and no transcript shall be made. If the applicant or certificate holder wishes to rely upon arguments, facts, or evidence presented at the informal conference, he or she has 10 days after the date of the conference to incorporate such arguments, facts, or evidence in a written submission to the deciding official.

§ 13.45 Effective dates of revocations.

With the exception of revocations occurring pursuant to § 13.35, ATF shall allow at least 45 days between the issuance of a decision to revoke a certificate, and the actual revocation of the certificate. The deciding official may, at his or her discretion, allow the certificate holder a longer period of time in which to use up the existing stock of labels or distinctive liquor bottles. The decision to allow such a "use-up" period, and the length of the "use-up" period allowed, are matters committed entirely to the discretion of the deciding official, based on the circumstances of the case.

§ 13.50 Effect of revocations.

(a) *General.* On the effective date of a final decision which has been issued by the Chief, Product Compliance Branch, or the Chief, Alcohol and Tobacco Programs Division, to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, the certificate holder shall be asked to surrender the original of such certificate to ATF for manual cancellation. Regardless of whether the original certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been manually cancelled or not, the certificate shall be null and void after the effective date of the certificate's revocation. It shall be a violation of this section for any certificate holder to present a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval to an official of the United States Government as a valid certificate, after the effective date of the revocation of the certificate, if the certificate holder has been previously notified that such certificate has been revoked by ATF.

(b) *Use of certificate during period of appeal.* If a certificate holder files a timely appeal after receipt of a notice of revocation from the Chief, Product Compliance Branch pursuant to section 13.22, he or she may continue to use the certificate at issue until the effective date of a final decision issued by the Chief, Alcohol and Tobacco Programs Division. However, the effective date of a notice of revocation by operation of law or regulations, issued pursuant to § 13.36, is not stayed during the pendency of an appeal.

§ 13.55 Service on applicant or certificate holder.

Notices of denial, notices of proposed revocation, and notices of revocation shall be served on an applicant or a certificate holder by first class mail, or by personal delivery. When service is by mail, a signed duplicate original copy of the document shall be mailed to the applicant or certificate holder at the address stated in the application for a certificate of label approval, or at the last known address. If authorized by the applicant or certificate holder, the signed duplicate original copy of the document may be mailed to a designated representative. Where service is by personal delivery, a signed duplicate original copy of the document shall be delivered to the certificate holder or to a designated representative, or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent thereof, or to its attorney of record.

§ 13.60 Representation before the Bureau.

An applicant or certificate holder may be represented by an attorney, certified public accountant, or other person recognized to practice before the Bureau of Alcohol, Tobacco and Firearms as provided in 31 CFR Part 8 (Practice Before the Bureau of Alcohol, Tobacco and Firearms), if he or she has otherwise complied with the applicable requirements of 26 CFR 601.521 through 601.527 (conference and practice requirements for alcohol, tobacco, and firearms activities).

§ 13.65 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event or default after which the designated period of time is to run, is not to be included. The last day of the period to be computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday, or legal holiday. Papers or documents which are required or permitted to be filed under this part must be received for filing at the appropriate office within the time limits, if any, for such filing.

§ 13.70 Extensions.

For good cause shown, the Chief, Labeling Section, Product Compliance Branch, the Chief, Product Compliance Branch, or the Chief, Alcohol and Tobacco Programs Division, may grant extensions as to any time limits prescribed by the regulations in this part.

PART 19—DISTILLED SPIRITS PLANTS

Par. 12. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 13. Section 19.633 is amended to add paragraph (c) to read as follows:

§ 19.633 Distinctive liquor bottles.

* * * * *

(c) *Cross reference.* For procedures regarding issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

Par. 14. Section 19.641 is revised to read as follows:

§ 19.641 Certificate of label approval or exemption.

(a) *Requirement.* Proprietors are required by 27 CFR part 5 to obtain approval of labels, or exemption from label approval, for any label to be used on bottles of spirits for domestic use and shall exhibit evidence of label approval, or of exemption from label approval, on request of an ATF officer.

(b) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see part 13 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Signed: July 28, 1995.

Daniel R. Black,

Acting Director.

Approved: August 17, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–22577 Filed 9–12–95; 8:45 am]

BILLING CODE 4810-31-U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of cancellation of committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), the Occupational Safety and Health Administration (OSHA) is announcing the cancellation of a Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) meeting scheduled for September 19–21, 1995 in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: This document announces the cancellation of a meeting of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) that was

scheduled for September 19–21, 1995 by a notice published on August 30, 1995 (60 FR 45111). The meeting will be rescheduled at a later date.

For an electronic copy of this **Federal Register** notice, contact the Labor News Bulletin Board at (202) 219–4784 (callers must pay any toll-call charges. 300, 1200, 2400, 9600 or 14,400 BAUD; Parity: None; Data Bits = 8; Stop Bit = 1. Voice phone (202) 219–8831); or OSHA's Webpage on Internet at http://www.osha.gov/ and http://www.osha-slc.gov/. For news releases, fact sheets, and other documents, contact OSHA FAX at (900) 555–3400 at $1.50 per minute.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 et seq.; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, D.C., this 7th day of Sept., 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–22690 Filed 9–12–95; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR PART 13

RIN 1024–AC31

Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The National Park Service (NPS) is proposing regulations to require mountain climbers to register a minimum of 60 days before any climb on Mount McKinley and Mount Foraker in Denali National Park, Alaska. Mountaineering in the park has increased dramatically over the last ten years. The number of climbers on Mount McKinley has risen from 695 in 1984 to 1277 in 1994 and 1,220 in 1995. Climbing-related injuries and deaths have correspondingly increased. By requiring advance registration, the Denali park staff will be able to provide information to prospective mountaineers in advance of their climb. This may include information on the specific dangers they may face, how to prepare and equip, other safety related issues, and requirements concerning resource protection issues such as litter removal and human waste disposal. Currently, climbers are required to register, but may do so as late as the day they depart for the mountain.

DATES: Written comments will be accepted through November 13, 1995.

ADDRESSES: All comments should be addressed to: Superintendent, Denali National Park and Preserve, PO Box 9, Denali National Park, AK 99755.

FOR FURTHER INFORMATION CONTACT: Steve Martin, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali National Park, AK 99755.

SUPPLEMENTARY INFORMATION:

Background

Denali National Park was first established as Mt. McKinley National Park on February 26, 1917. A separate Denali National Monument was proclaimed on December 1, 1978. These two park areas were combined, reconfigured and established as Denali National Park and Preserve on December 2, 1980, encompassing approximately 6.5 million acres. Prior to achieving its current configuration, the land the park now encompasses was recognized for its unique ecological value and designated an International Biosphere Reserve in 1976. That designation has since been expanded to encompass the entire 6.5 million acre park and preserve. The park contains North America's highest mountain, 20,320 foot Mount McKinley. Mount Foraker, at 17,400 feet, and numerous large glaciers of the Alaska Range are also a part of this park's subarctic ecosystem. Wildlife includes caribou, Dall sheep, moose, grizzly bears and wolves.

The first ascent of Mount McKinley occurred in 1913. Climbing continued to be a popular activity, although on a small scale, after the park was established. However, during the last ten years, mountaineering in the park has increased dramatically. The number of Mount McKinley climbers has risen from 695 in 1984 to 1277 in 1994 and 1,220 in 1995. With the numbers of climbers increasing, the number of accidents, rescues and resource related problems have also increased. Since 1932, a total of 85 mountaineers have perished on the slopes of Mount McKinley; 28 percent of these deaths (24) have occurred since 1990. Recent years have also seen an increase in climbing related deaths on Mount Foraker and the other Alaska Range peaks located in the park. In 1990, eight mountaineers were rescued on Mount McKinley. In sharp contrast, the number of mountaineers rescued increased to 28 in 1992, 27 in 1994 and 21 in 1995. Studies by the NPS showed that the major reason climbers got into trouble on the mountain and required rescue was their unfamiliarity with the hazards unique to Mount McKinley. Specifically, extreme weather conditions, weather changeability and the other hazards associated with climbing in such northerly latitudes caught the climbers unprepared. The NPS determined that climbers need better education and information prior to their climbs and that an appropriate time frame was necessary to convey this information to the climbing community. Climbers from 38 countries registered to climb Mount McKinley in 1995. With so many climbers seeking permits, adequate lead time required to fulfill the requests lengthens. The 60 day pre-registration period will provide sufficient opportunity for the Denali park staff to provide the necessary information to prospective mountaineers on the dangers they may face climbing in the park, how to prepare and equip themselves for the climb, other safety related issues and requirements concerning resource protection issues such as litter removal and human waste disposal.

When this proposed rule becomes final, it will replace the interim rule that was published on March 31, 1995, in the **Federal Register**. (60 FR 16579).

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rule making. Comments must be received on or before November 13, 1995. The NPS will review all comments and consider making changes to the rule based upon a thorough analysis of the comments.

Drafting Information

The primary authors of this rule are Dennis Burnett, Washington Office of Ranger Activities and Brenda Bussard of Denali National Park and Preserve, National Park Service.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, and in accord with the procedural requirements of the National Environmental Policy Act (NEPA), and by Departmental Regulations in 516 DM 6, (49 FR 21438) an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) have been prepared.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, reporting and record keeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR chapter I, part 13 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

Subpart C—Special Regulations—Specific Park Areas in Alaska

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65(b) also issued under 16 U.S.C. 1361, 1531.

§ 13.63 [Amended]

2. Section 13.63 is amended by revising paragraph (f) to read as follows:

* * * * *

(f) *Mountain climbing.* Climbing on Mount McKinley or Mount Foraker without registering, on a form provided by the Superintendent, at least 60 days in advance of any climb is prohibited.

Dated: August 23, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–22749 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–70–P

POSTAL SERVICE

39 CFR Part 955

Rules of Practice Before the Board of Contract Appeals

AGENCY: Board of Contract Appeals, Postal Service.

ACTION: Proposed rule.

SUMMARY: This document contains proposed revisions to certain rules of practice of the Postal Service Board of Contract Appeals (Board). These revisions would implement provisions of the Federal Acquisition Streamlining Act of 1994, which amended the Contract Disputes Act of 1978, under which the Board adjudicates contract disputes. These revisions would increase the maximum amount that may be in dispute for appeals to qualify for consideration under the small claims and accelerated procedures of boards of contract appeals.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Written comments should be mailed or delivered to the Judicial Officer Department, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–6100. Comments received will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dennis E. Wiessner, Jr., or J. Brett Golden, 202–268–5438.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed revisions to the rules of practice of the Postal Service Board of Contract Appeals (Board). These revisions would implement certain provisions of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (FASA), which amended sections 8(f) and 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 601–613), under which the Board adjudicates contract disputes. These revisions would increase the maximum amount that may be in dispute for appeals to qualify for consideration under the small claims and accelerated procedures of boards of contract appeals.

The Postmaster General has delegated to the Board the authority to adopt and issue rules necessary to resolve contract disputes under the Contract Disputes Act of 1978. 39 CFR 955.1(d).

Effective Date

Pursuant to sections 10001 and 10002 of the FASA, the Board proposes to make the revised rules, as well as sections 2351(c) and (d) of the FASA, applicable to all pending appeals and to those appeals filed on or after October 1, 1995. However, comments will be considered for November 13, 1995.

Proposed Changes

The monetary limit of the eligibility requirement for the small claims (expedited) procedure is increased from $10,000 to $50,000 (39 CFR 955.13(b)(1), (c)(1)). The monetary limit of the eligibility requirement for the accelerated procedure is increased from $50,000 to $100,000 (39 CFR 955.13(b)(2), (d)(1), (d)(3)).

List of Subjects in 39 CFR Part 955

Administrative practices and procedure, Postal Service.

For the reasons set forth in the preamble, the Postal Service proposes to amend 39 CFR part 955 as follows:

PART 955—RULES OF PRACTICE BEFORE THE BOARD OF CONTRACT APPEALS

1. The authority citation for 39 CFR part 955 is revised to read as follows:

Authority: 39 U.S.C. 204, 401; 41 U.S.C. 607, 608.

2. Section 955.9 is amended by revising the second sentence to read as follows:

§ 955.9 Hearing election.

* * * In appropriate cases, the appellant shall also elect whether he desires the optional small claims (expedited) procedure or accelerated procedure prescribed in § 955.13.

§ 955.13 [Removed]

3. Section 955.13 is removed.

§ 955.36 [Redesignated as § 955.13]

4. Section 955.36 is redesignated as § 955.13 and amended by revising the first sentence of paragraphs (b)(1) and (b)(2); by revising paragraph (c)(1) and the first sentence of (c)(2)(ii) and the fourth sentence of paragraph (c)(4); by revising paragraph (d)(1) and the third sentence of (d)(3); by revising paragraph (e); and by adding paragraph (f), as follows:

§ 955.13 Optional small claims (expedited) and accelerated procedures.

* * * * *

(b) Elections to Utilize small claims (expedited) and accelerated Procedure.

(1) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. * * *

(2) In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring the decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. * * *

(c) The small claims (expedited) Procedure.

(1) This procedure shall apply only to appeals where the amount in dispute is $50,000 or less as to which the appellant has elected the small claims (expedited) procedure.

(2) * * * (ii) within 5 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. * * *

* * * * *

(4) * * * Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for the record and payment purposes and for the establishment of the commencement date of the period for filing a motion of reconsideration under § 955.30.

* * * * *

(d) The accelerated Procedure.

(1) This procedure shall apply only to appeals where the amount in dispute is $100,000 or less as to which the appellant has made the requisite election.

* * * * *

(3) * * * Alternatively, in cases where the amount in dispute is $50,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. * * *

(e) Motions for Reconsideration in Cases Arising Under § 955.13. Motions for reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated procedure need not be decided within the time periods prescribed by this § 955.13 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.

(f) Except as herein modified, the rules of this part 955 otherwise apply in all aspects.

§ 955.35 [Removed]

Section 955.35 is removed.

§ 955.37 [Redesignated as 955.35]

6. Section 955.37 is redesignated as § 955.35.

7. New § 955.36 is added to read as follows:

§ 955.36 Effective Dates and applicability.

The provisions of §§ 955.9 and 955.13 took effect [date of publication of final rule in the **Federal Register**]. Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601–613), §§ 955.13 and 955.35 apply to appeals relating to contracts entered into on or after March 1, 1979. All other provisions of this part 955 took effect February 18, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals docketed prior to their effective date.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–22634 Filed 9–12–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[AD–FRL–5291–2]

Proposed Conditional Special Exemption From Requirements of the Clean Air Act for the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands, and the Territory of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed actions.

SUMMARY: The Governors of the Territory of American Samoa (American Samoa), the Commonwealth of the Northern Mariana Islands (CNMI), and the Territory of Guam (Guam) each submitted a petition under section 325(a) of the Clean Air Act (the Act) for a waiver from title V of the Act. Title V requires that states, including the petitioners, adopt and submit to EPA a title V operating permits program for major sources and certain other stationary sources. Title V also requires that sources located in areas that do not adopt a state title V permitting program obtain a federal permit from the US EPA. Section 325(a) allows American Samoa, CNMI, and Guam to petition for an exemption from certain Clean Air Act requirements.

The EPA received petitions requesting an exemption from title V of the CAA from American Samoa on November 18, 1994, from CNMI on July 14, 1994, and Guam on November 21, 1994. This document describes the petition submitted by each agency, EPA's analysis, and EPA's proposed action on each petition. The EPA is proposing to grant conditional waivers from the requirement that American Samoa and CNMI adopt and submit title V operating permit programs. The EPA proposes to require the implementation of alternative programs to protect local air quality as a condition of these waivers. The EPA is proposing to grant Guam a three-year extension of the deadlines in title V. The EPA is also proposing to exempt sources from the requirement to obtain a federal title V permit during the period of the waivers, except for certain major sources of hazardous air pollutants. While this proposal addresses all three petitions, EPA's action is based on a separate evaluation of each petition.

DATES: Comments on these proposed actions must be received in writing by October 13, 1995.

ADDRESSES: Comments should be addressed to Norm Lovelace at the address indicated. Copies of the petitions and other supporting information, including air quality modeling, used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Office of Pacific Islands and Native American Programs, US EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT; Norm Lovelace (telephone 415/744–1599, fax 415/744–1604), Chief, Office of Pacific Islands and Native American Programs, or Ed Pike (telephone 415/744–1248), Operating Permits Section, Air and Toxics Division, at US EPA–Region IX, 75 Hawthorne Street, San Francisco, California 94105. Comments should be addressed to Norm Lovelace, mailcode E–4.

I. Background

Title V of the Act requires states to develop and submit operating permit programs by November 15, 1993. EPA has promulgated certain minimum requirements (57 FR 32250 (July 21, 1992)) that are codified at 40 Code of Federal Regulations (CFR) part 70. States must develop programs for issuing permits that contain monitoring and compliance terms and conditions that ensure sources comply with all applicable federal air regulations, and the permit issuance process must include public participation and EPA oversight. EPA is required to impose sanctions on any state, including the petitioners (see 40 CFR 70.2 definition of "state"), that has not submitted a complete title V permit program. For any state that does not have an approved program by November 15, 1995, the EPA must promulgate, administer, and enforce a federal air permit program.

Section 325(a) of the Act allows the petitioners to request that the Administrator of EPA waive requirements of the Clean Air Act other than section 112 (Hazardous Air Pollutant or HAPs) requirements or any requirement under section 110 or part D of subchapter 1 that would be necessary to attain or maintain a national primary ambient air quality standard. The petitioners request a waiver from title V and do not request a waiver from any requirements under section 112 of the Act, including requirements that are triggered by the approval of a title V permit program. In addition, the petitions for American Samoa and CNMI commit to implementing alternative programs to protect ambient air quality, including the national ambient air quality standards.

Section 325(a) also specifies the criteria for approving exemptions: "Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant." EPA's determinations are based on whether the petitions meet these criteria. Although EPA is publishing its proposed action on the petitions in a single rulemaking, each action is considered a separate decision and can be considered independently. If significant comments are received pertaining to a specific petition, EPA may take final action on each petition independently.

II. Analysis and Proposed Action

A. American Samoa

1. Description of Petition and Supporting Documents

The Governor of American Samoa submitted the Government's petition on November 28, 1994. The petition consists of the following sections: 1) a description of the waiver request and geographical and political conditions; 2) a description of American Samoa's commitment to ensure attainment and maintenance of national ambient air quality standards; 3) a commitment to work with EPA to ensure that the hazardous air pollutant program under Section 112 of CAA is administered and enforced on American Samoa; 4) a description of the unique local economic burden that the title V operating permit program would create; and 5) other unique geographical, meteorological, and local factors that support the petition. The supporting information includes: 1) maps of American Samoa; 2) an emissions inventory for American Samoa; 3) screening analysis of ambient air quality impacts on American Samoa; 4) economic analysis of an operating permit program on American Samoa; and 5) newspaper articles illustrating the financial difficulties of the American Samoa Government (ASG).

2. Analysis of the Petition

EPA believes that the unique local circumstances presented in the petition satisfy the criteria in section 325(a) for granting an exemption from title V of the CAA. EPA also believes that the petition's proposed mitigating air quality program is appropriate for American Samoa and would result in air quality benefits equivalent to a title V program.

The petition makes a convincing argument that a title V operating permit program would have a unique negative economic impact on American Samoa. Implementing this program would be economically unreasonable for the American Samoa Government (ASG) and the general public due to extremely limited local resources. Only five sources have potential emissions exceeding the major source level (40 CFR 70.2) and would be subject to the program. If ASG imposed fees based on emissions as required by part 70, the two power plants run by the American Samoa Power Authority (ASPA), a semi-autonomous government utility agency, would incur most of these costs. Projected costs to be incurred by ASPA would likely be passed to its electrical consumers, which include private industry, the public and the American Samoa Government. Increased power bills to the latter two consumers would strain already limited resources. Per capita income is only $3,039 (compared to $14,420 for the mainland United States) and the population is only 49,000. The ASG has had major financial difficulties over the past years, and as the major consumer of power it has unpaid power bills of over $2 million.

The petition estimates that the total regulatory and compliance costs of the program would be $143,000. The relative economic impact of these fees would be high compared to the limited economic resources of American Samoa. Given the limited number of sources, the limitations of the ASEPA staff, the more pressing environmental priorities of American Samoa (such as safe drinking water and solid waste disposal), and the fact that the major costs will be borne by an area with limited economic resources, EPA believes that it is appropriate for ASG to focus its limited resources on an alternative permitting program, which could be expected to achieve equivalent environmental benefits. EPA believes that these economic resource constraints support American Samoa's position that the title V program is unreasonable in American Samoa and justify a more narrowly focused program.

3. Alternative Air Quality Program Proposed by American Samoa

American Samoa proposes an air quality program to address potential exceedances of the National Ambient Air Quality Standards (NAAQS). This program more appropriately addresses unique meteorological circumstances and the protection of local air quality. While the title V program is expected to increase compliance with emission limits, other mechanisms (such as source-specific SIP limits or direct enforcement of federal standards) may be a practical and effective means of controlling air pollution on American Samoa. In addition, no major sources of air toxics are identified in the petition. Major source of air toxics may require case-by-case title V permitting review for implementation of a current or future section 112 standard.

Screening model results submitted with the petition indicate that sulfur dioxide (SO_2) NAAQS exceedances may occur in the Pago Pago Harbor area. In the petition, American Samoa commits to ensuring that primary ambient air quality standards in the Pago Pago Harbor area are met. American Samoa will collect meteorological data and undertake additional refined air modeling of the Pago Pago Harbor area. American Samoa will also require sources impacting the Pago Pago Harbor area to implement physical and operational changes if necessary to assure compliance with the NAAQS. EPA agrees with American Samoa that possible emission control strategies for correcting any sulfur dioxide NAAQS exceedances include, but are not limited to, a reduction in the sulfur content of the fuel burned, the addition of scrubbers or other control devices, a reduction in the hours of operation for some units, or a combination thereof. EPA also believes that amendments to American Samoa's State Implementation Plan (SIP) are the most practical method of imposing any controls and compliance methods that are necessary.

EPA believes that American Samoa's proposed mitigating air quality program, which is tailored to prevent and remedy potential air quality violations, will achieve equivalent benefits for air quality and is more appropriate than the title V program due to the geographic isolation, economic circumstances, and the limited number of sources in American Samoa. Furthermore, because the few sources in American Samoa do not appear to compete with mainland sources, the exempted sources will not gain a competitive advantage over sources subject to title V.

4. Conditional Waiver

EPA is proposing to exempt American Samoa from the requirement to develop a part 70 permitting program and sources on American Samoa from the requirement to apply for a part 71 permit (except when specifically required by EPA), provided that the following conditions are met. EPA is proposing that American Samoa collect complete meteorological data and complete a refined air quality modeling analysis within two years of the effective date of this rulemaking. EPA is also proposing that American Samoa require affected sources to implement changes necessary to ensure NAAQS achievement in a timely manner if the modeling demonstrates a violation of the NAAQS. EPA believes that a period of five years, which is three years from the completion of modeling by American Samoa, will allow sufficient time to implement strategies to meet the NAAQS if exceedances have occurred.

EPA is also proposing that American Samoa implement an alternative local operating permit program. The permitting program will ensure that the emission limits used to verify compliance with the NAAQS are met. At a minimum, the program should meet the guidelines established in the June 29, 1989 **Federal Register** for federally enforceable operating permit programs. These guidelines are more flexible than the title V guidelines but ensure that permits are federally enforceable on a practical and legal basis. The permits should include applicable Clean Air Act requirements, adequate compliance measures, and allow for public participation. In addition, this alternative program can be used to implement other air quality requirements.

EPA proposes to reopen the waiver if these conditions are not met or if EPA determines that implementation of a title V permitting program is necessary to ensure compliance with applicable Clean Air Act requirements and protect air quality.

B. CNMI

1. Description of Petition and Supporting Documents

The Governor of CNMI submitted the petition to EPA on July 14, 1994. The petition consists of a 15-page narrative and supporting information. The narrative portion of the petition is organized into sections which describe: (1) the purpose of the petition; (2) unique local geographical, meteorological, and economic factors; (3) major air emission sources and sources of hazardous air pollutants emissions in CNMI; and (4) information on the existing CNMI permitting regulations, which CNMI suggests as an alternative mitigating program. CNMI also submitted copies of local statutes and regulations, maps of CNMI, emissions information, and cost estimates for the title V program as supporting information.

2. Analysis of the Petition

EPA believes that the unique local circumstances presented in the petition satisfy the criteria in section 325(a) for granting an exemption from title V of the CAA. CNMI's petition states that title V is overly burdensome due to local circumstances and proposes a mitigating local permit program. The petition describes unique local factors that make the economic burden of implementing the title V permitting program greater for CNMI than for most state air agencies. CNMI's population (43,345) is far smaller than mainland state agencies. In addition, per capita income ($7,200) in CNMI is only half that of the United States. Therefore, the economic resources available to address air quality problems are much more limited than the resources available in areas under the jurisdiction of mainland state air quality agencies.

The CNMI petition states that Clean Air Act programs, particularly title V, are not necessary because ambient air quality is not impacted by emissions from stationary sources on CNMI, and that an alternative local program is sufficient to protect air quality. EPA air quality modeling conducted to evaluate this claim predicted violations of the National Ambient Air Quality Standards (NAAQS). However, EPA's analysis also shows that the alternative permitting program described by CNMI would address exceedances of the NAAQS as effectively as a title V program. CNMI's emission inventory shows that emissions result almost exclusively from internal combustion engines, and EPA believes that options other than case-by-case title V permitting of these sources (such as a SIP rule with specific control and compliance measures) would be appropriate for controlling these sources due to their similarity. In addition, none of the sources identified in the petition are identified as a major air toxics source that may require case-by-case permitting review for implementation of a current or future section 112 standard.

3. Air Quality Modeling

EPA performed screening level modeling on the main Commonwealth Utilities Company (CUC) power plant on Saipan, the main island in the CNMI and the island with the largest emission sources, to assess potential air quality problems on Saipan. EPA's SCREEN2 model predicts significant violations of the sulfur dioxide (SO_2) three-hour and 24-hour NAAQS due to low stack heights, high sulfur fuel, and the lack of control equipment. The model also indicates that violations of the eight-hour carbon monoxide (CO) and the annual nitrogen oxide (NO_X) NAAQS may occur. United States Air Force meteorological data indicate that a significant percent of the predicted violations will impact onshore areas of the island.

The SCREEN2 model does not use detailed site specific meteorological data. CNMI could choose to perform additional modeling using site specific meteorological data. EPA does not believe that the concentrations of air pollutants predicted under the SCREEN2 model would change enough using refined modeling to show compliance with the NAAQS. However, EPA believes that additional modeling may help verify the extent of the predicted SO_X NAAQS exceedances and the effectiveness of different strategies for achieving compliance with the

NAAQS. CNMI may choose to use the existing SCREEN2 modeling results or conduct additional refined modeling.

4. Alternative Permitting Program Proposed by CNMI

The CNMI proposed an alternative program to address sources of air pollution based on its current regulations and several proposed changes. CNMI updated the petition on October 20, 1994, by submitting the currently effective CNMI Air Pollution Control Regulations (CNMI Regulations). The CNMI Regulations (part V.A) require the registration of certain new and existing sources. The Director of the Division of Environmental Quality may allow the construction or modification of a major new source if the source will not endanger the attainment or maintenance of NAAQS or violate the allowable air quality increments in 40 CFR 52.21 (c) and (d) (CNMI Regulations part V.E). EPA interprets these rules to prohibit the air quality violations predicted by the screening model. EPA is conditioning the waiver to require that CNMI fully implement and enforce these currently effective regulations, including provisions that require sources built after the effective date of the regulations to apply physical and operational controls to assure that NAAQS and PSD increments are not exceeded.

The CNMI petition also proposed revisions to the CNMI program that would provide elements of an operating permit program similar to the title V permitting program. On February 17, 1995, CNMI committed to obtain additional authority to enforce permits and provide public process if required by EPA. The petition also stated that CNMI could modify the program to include all applicable Clean Air Act requirements in the program and require monitoring and/or recordkeeping requirements to ensure that sources comply with their emission limits. Therefore, EPA is proposing that the CNMI adopt these elements in the alternative operating permit program and submit the adopted regulations as a revision to CNMI's SIP as a condition to granting the waiver. The CNMI petition stated that CNMI could collect fees to fund the permitting program, but did not commit to collecting these resources. EPA believes that CNMI should have the flexibility to determine appropriate funding mechanisms, but that sufficient resources must be available to fund an alternate program.

5. Conditional Waiver

EPA is proposing to exempt CNMI from the requirement to develop a part 70 permitting program and sources on CNMI from the requirement to apply for a part 71 permit (unless specifically required by EPA) on the condition that CNMI implement the alternative permitting program. This would require that CNMI implement existing air quality regulations addressing potential existing violations of air quality standards.

EPA is proposing that CNMI may conduct any additional modeling it believes is necessary to yield more site-specific ambient emission estimates. EPA is proposing a 1-year deadline for the completion of any such modeling. CNMI's petition does not address what meterological data is available, but EPA will consider any new information or comments that address whether additional time would be necessary to collect meterological data or whether existing sources of meterological data are acceptable in the final rulemaking.

EPA is also proposing that CNMI submit a State Implementation Plan (SIP) to address any confirmed violations within two years of the effective date of the waiver, and ensure compliance with the NAAQS within four years of the effective date of this waiver. In addition, EPA is proposing that CNMI fully adopt enhancements to its existing operating permit program and implement the alternative operating permit program within two years of the effective date of the waiver and submit these requirements as revisions to its SIP rules.

EPA will reopen the waiver if these conditions are not met or if EPA determines that implementation of a title V permitting program is necessary to ensure compliance with applicable Clean Air Act requirements and protect air quality. If EPA determines that any area will not meet the NAAQS, as determined under CAA section 110, within four years of the effective date of the waiver, EPA will redesignate that area non-attainment and require the appropriate attainment plans.

C. Guam

1. Description of Petition and Supporting Documents

The Governor of Guam submitted a petition to EPA on November 18, 1994. The petition consists of a 12-page narrative and 5 supporting exhibits. The narrative portion of the petition is organized into sections which describe: 1) the petition, the type of waiver requested, and the basis for the petition; 2) compliance with primary ambient air quality standards; 3) compliance with Section 112 of the CAA; 4) the local economic effect of a title V operating permit program; and, 5) additional unique geographical, meteorological, and local factors. The supporting information includes: 1) a map of Guam; 2) an emissions inventory; 3) source profiles and estimates of their actual and potential emissions; and, 4) an economic analysis of an operating permit program on Guam.

2. Analysis of Guam's Petition

EPA believes that the unique local circumstances presented in the petition justify an extension of the deadlines in title V but do not warrant a permanent exemption from title V of the Act. Guam's petition requests a waiver based on several factors. The petition states that implementing title V would be a burden for Guam and that Guam currently lacks the technical resources to implement the program. In addition, the petition states that title V is not necessary to ensure compliance with air quality standards.

EPA agrees that Guam needs additional technical resources to implement a title V permitting program and believes a three-year extension in the deadline to adopt a title V program would allow the Guam Environmental Protection Agency (GEPA) to secure additional training and technical resources. In addition, an extension would allow Guam the option of saving resources by adopting the federal operating permit rule (currently proposed at 60 FR 20804; to be codified at 40 CFR part 71) by reference or by using a state or local rule as a guideline rather than developing their own permitting rule. EPA believes that three years will allow GEPA sufficient time to acquire the technical resources to develop and implement a title V permitting program.

While the petition states that imposing a title V permit program would impose an economic burden, the data does not support this assertion. Although businesses on Guam are unlikely to relocate due to these fees, title V fees could have an impact on small businesses. However, EPA believes that part 70 gives Guam flexibility to assess different fees to different sources based on the expected economic burden. The petition also states that per capita income in Guam is less than per capita income on the mainland United States ($9,928 versus $14,420 in 1990 dollars). EPA does not believe that the title V permitting program would have a noticeable economic impact on citizens. For instance, Guam's petition estimates that title V costs to residential and local government electric users is $183,000 (assuming the local utility increase rates to cover 100% of its permit fees and other permit costs) for a population of 133,000. For these reasons, EPA does not believe that implementation of a title V permitting program on Guam is economically infeasible.

In addition, many significant sources of air pollution are located on Guam. The petition identified 14 title V sources with actual emissions in excess of 100 tons per year and 55 sources with actual emissions of up to 85 tons per year, some of which may be subject to title V because they have a potential to emit exceeding the major source levels (see 40 CFR part 70.2). Guam has more title V sources than the other two petitioners and more title V sources than most State and local agencies in EPA Region IX. Air emissions on Guam result mainly from equipment needed to generate electric power, including boilers, fuel-oil storage tanks, diesel engines and combustion turbines. According to Guam's petition, the major pollutant emitted in 1993 was SOx, with 12,500 tons from the largest source and 5,570 from the second largest source. The total emissions inventory of 30,490 tons per year was larger than the other areas requesting a waiver and larger than 32 of the 40 State and local agencies in EPA Region IX that have completed emissions inventories for their title V sources. EPA believes that the large point sources on Guam, including major air toxics sources, that would be subject to a title V program have a greater impact on local air quality than sources on American Samoa and CNMI.

3. Alternative Air Quality Program

Title V is intended to implement Clear Air Act programs that are designed to protect air quality. Guam's petition does not commit to or propose an alternative operating permit or compliance program that would ensure that air quality protections, such as air toxics controls and emission limits for criteria pollutants, are achieved. Therefore, it is not clear from the petition what procedures Guam would institute to ensure that Clean Air Act objectives are achieved.

4. Conditional Extension

EPA is proposing to grant Guam an extension of the deadline for developing and submitting a title V permitting program for three years from the effective date of this rulemaking action, but not later than November 15, 1998, which is five years beyond the statutory deadline for submitting a complete title V permitting program. The Clean Air Act originally gave state and local agencies three years to develop and submit operating permit programs, and EPA believes that this time period is sufficient for Guam to acquire sufficient technical resources and to utilize EPA's part 71 regulation or develop its own program using an approved state or local program as a model.

EPA is also granting title V sources on Guam a waiver from the effective date of the part 71 permit program until five years from the effective date of this rulemaking action, but not later than November 15, 2000, providing that Guam submits a timely and complete permitting program. This two year difference between the deadline for submitting a timely and complete title V program and the effective date of the part 71 program will allow EPA time to review Guam's program and allow Guam an opportunity to correct any incomplete areas of their program or any approval issues in their program. If a timely and complete program is not submitted by Guam, the part 71 program will be effective three years after the effective date of this rulemaking, or November 15, 1998, whichever is earlier. As proposed, the part 71 regulation requires that sources submit permit applications within one year of the effective date unless EPA establishes an earlier submittal date. For more information, see the part 71 proposal at 60 FR 20804 (April 27, 1995).

D. Hazardous Air Pollutant Requirements for American Samoa, CNMI, and Guam

1. Effective Date of Requirements Triggered by Title V

The Act prohibits section 325 waivers from section 112 requirements, and the petitioners do not request a waiver from section 112 requirements. This notice does not waive any requirements under section 112 of the Act, including case-by-case Maximum Achievable Control Technology (MACT) determinations under sections 112(g) and 112(j) of the Act. New and modified major HAP sources must apply MACT under section 112(g) if EPA has not promulgated an applicable National Emission Standard for Hazardous Air Pollutants (NESHAP; NESHAPs promulgated after the 1990 Amendments to the Act are also commonly referred to as MACT standards) for the source category. Existing major HAP sources must apply for a title V permit containing MACT under section 112(j) if EPA misses a NESHAP deadline for their source category by 18 months (59 FR 26429). These two requirements are, in the absence of a section 325 waiver, triggered by the effective date of a title V program.

EPA is proposing to grant the waivers on the condition that these section 112 requirements will be implemented from the effective date of the waiver. Therefore, EPA is proposing that the effective date of this waiver constitute the effective date of a title V program for American Samoa, CNMI and Guam for the purposes of triggering section 112(g) and 112(j) requirements. While no sources subject to the requirements of the 112(g) and 112(j) have yet been identified, this condition will ensure that sources built or identified in the future will be subject to these hazardous air pollutant reductions.

2. Implementation of Section 112 requirements

EPA will issue part 71 permits to any source subject to the 112(g) and 112(j) programs in American Samoa, CNMI, and Guam under today's proposal. Sources that are required to apply for a 112(g) or 112(j) determination would be required to submit a complete part 71 application to EPA and EPA would issue a permit that includes 112(g) and 112(j) requirements under the part 71 regulations. While the final part 71 rule has not yet been promulgated, EPA is not aware of any sources that would be subject to this provision in the near future and anticipates that the part 71 rule (see 60 FR 20804 for proposal) will be finalized before any sources become subject. For instance, EPA expects that the 112(j) provisions will not be effective before 1997. In addition, EPA has stated in its February 14, 1995 interpretive notice (60 FR 8333) that the requirements of 112(g) are not effective until EPA promulgates a final 112(g) rule. EPA anticipates that the part 71 rule will be promulgated before any case-by-case determinations in American Samoa, CNMI or Guam are necessary. EPA will consider any comments received on the appropriate mechanism for implementing case-by-case MACT determinations, and is specifically soliciting comments on the appropriate mechanism for implementing case-by-case MACT if promulgation of the part 71 rulemaking is delayed. EPA requests information on any source that may be subject to section 112(g) in the next two years in case the part 71 promulgation date is delayed past the effective date of this waiver and the promulgation of the 112(g) rule.

EPA is currently considering whether major sources of air toxics subject to EPA MACT standards should also be subject to permitting under part 71 in the absence of a approved local title V program. Future MACT standards may utilize title V permits (i.e. a part 70 or part 71 permit) to establish specific compliance requirements or to allow operators flexible options for meeting emission limits. EPA is also considering whether title V permits are necessary to implement section 129(e) municipal waste incinerator standards (see proposals at 59 FR 48198–48228 (NSPS) and 48228–48258 (state programs for existing sources)), which cover both criteria pollutants and hazardous air pollutants. The proposal does not currently require these sources to obtain title V permits. EPA will consider any comments on this issue and determine in the final rulemaking whether proper implementation of the section 112 and section 129(e) standards require the permitting of subject sources under title V.

Other section 112 requirements, such as 112(d) MACT standards, automatically apply to all subject sources in American Samoa, CNMI, and Guam and are enforceable by EPA. EPA will develop appropriate mechanisms with the petitioners to identify subject sources and ensure that sources comply with the standards. The petitioners have demonstrated that they currently lack the technical resources to develop a title V program, and EPA believes that greater technical resources will be necessary to determine case-by-case MACT limits for HAPs. If the petitioners develop the necessary technical resources and meet other specified criteria, they may apply for delegation of the section 112(g) and 112(j) programs by developing a title V program or applying under section 112(l) of the Act (58 FR 62262 (November 16, 1993)).

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of these proposed waivers. Copies of the petitions, modeling data, and other information relied upon for the proposed approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by October 13, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the waiver proposed today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves waivers requested by the petitioners to reduce the cost of implementing the Clean Air Act. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 69

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Operating permits, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: August 25, 1995.

Felicia Marcus,

Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows:

Authority: Sec. 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

Subpart A—Guam

2. Subpart A is amended by adding § 69.13 to read as follows:

§ 69.13 Title V extension.

(a) The Administrator of the EPA grants the Territory of Guam an extension until three years from [the effective date of the final rule], but no later than November 15, 1998, from the requirement to develop a title V permit program by November 15, 1993. The Administrator of the EPA grants all title V sources located in Guam a waiver, except as described in paragraph (b) of this section, from the requirement to apply for and obtain a part 71 permit. The part 71 waiver shall expire on the earlier of three years from the earlier of [the effective date of the final rule], or November 15, 1998. If Guam does not submit a complete permit program, as defined in 40 CFR part 70, by the expiration date of the waiver, then 40 CFR part 71 shall become effective for all subject sources in Guam on that date. 40 CFR part 71 shall become effective for all sources on Guam two years from the expiration of the waiver if Guam submits a timely and complete program but does not have an approved program on that date.

(b) All section 112 requirements shall be implemented during the period of the waiver. Sections 112 (g) and (j) of the Act shall apply to all sources on Guam during the term of this waiver, and any subject source shall submit a timely part 71 permit application to EPA requesting a case-by-case 112(g) or 112(j) MACT determination. In addition, Guam will develop a Memorandum of Understanding with EPA to identify sources of hazardous air pollutants (HAPs).

Subpart B—American Samoa

3. Subpart B is amended by adding § 69.22 to read as follows:

§ 69.22 Title V waiver.

(a) The Administrator of the EPA grants the Territory of American Samoa an exemption from the requirement to

develop, implement, and submit for approval a title V operating permit program and grants title V sources located in American Samoa an exemption from the requirement to apply for and obtain a part 71 permit except as described in paragraph (a)(3) of this section. This waiver is subject to the following conditions:

(1) American Samoa shall implement the following program to protect attainment of National Ambient Air Quality Standards as a condition of the waiver:

(i) American Samoa shall collect complete meteorological data and complete refined air quality modeling for the Pago Pago Harbor and submit such data and modeling results to EPA within two years of [effective date of the final rule].

(ii) American Samoa shall address any NAAQS exceedances discovered through the modeling results with a State Implementation Plan (SIP) that ensure compliance with the NAAQS within the earlier of three years from the date such results are submitted to EPA and five years from [the effective date of the final rule]. This plan shall be submitted by three years from [the effective date of the final rule].

(2) American Samoa shall develop, implement, and submit to EPA for approval an alternative permit program that meets the requirements specified in EPA's June 28, 1989 guidelines.[1] The program must be submitted within two years of [effective date of the final rule] and include the following elements:

(i) Permit content:

(A) Permits must contain and ensure compliance with all applicable federal requirements, as defined under section 40 CFR 70.2; and

(B) Contain monitoring, recordkeeping and reporting requirements sufficient to assure compliance with applicable federal requirements;

(ii) The collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program;

(iii) Public notice and a 30-day public comment on each major source permit, including an opportunity for EPA review;

(iv) Civil and criminal penalties up to $10,000 per day per violation; and

(v) A schedule for issuing permits to all major sources, as defined under 40 CFR 70.2, within three years of EPA approval of the alternate operating program.

(3) All section 112 requirements shall be implemented during the period of the waiver. Sections 112(g) and (j) of the Act shall apply to all sources on American Samoa during the term of this waiver, and any subject source shall submit a timely part 71 permit application to EPA requesting a case-by-case 112(g) or 112(j) MACT determination. American Samoa shall develop a Memorandum of Understanding with EPA to identify sources of hazardous air pollutants (HAPs).

(b) EPA may modify or revoke this waiver for cause, and shall reopen the waiver if the conditions under paragraph (a) of this section are not met.

Subpart C—Commonwealth of the Northern Mariana Islands

4. Subpart C is amended by adding § 69.32 to read as follows:

§ 69.32 Title V exemption.

(a) The Administrator of the EPA grants the Commonwealth of the Northern Mariana Islands an exemption from the requirement to develop, implement, and submit for approval a title V operating permit program and grants title V sources located in CNMI an exemption from the requirement to apply for and obtain a part 71 permit except as described in paragraph (a)(3) of this section. This waiver is subject to the following conditions:

(1) CNMI shall implement the following program to protect attainment of National Ambient Air Quality Standards as a condition of the waiver:

(i) CNMI shall enforce its January 19, 1987 Air Pollution Control (APC) regulations, including the requirement that all new or modified sources comply with the NAAQS and Prevention of Significant Deterioration (PSD) increments.

(ii) CNMI may conduct air emissions modeling, using EPA guidelines, for power plants located on Saipan to assess EPA's preliminary determination of non-compliance with the SOx NAAQS. CNMI shall complete and submit any additional modeling to EPA within one year from [the effective date of the final rule] to determine whether existing power plants cause or contribute to violation of the NAAQS and PSD increments in the APC and 40 CFR 52.21.

(iii) If CNMI's additional modeling demonstrates non-attainment with NAAQS based on EPA guidelines, or if CNMI elects to accept EPA's preliminary determination that the NAAQS have been exceeded, CNMI shall submit a revised State Implementation Plan that ensures compliance with the NAAQS. The Plan shall be submitted within one year from [the effective date of the final rule] or, if CNMI elects to conduct additional modeling, within two years of [the effective date of the final rule]. CNMI shall take appropriate corrective actions through the SIP to demonstrate compliance with applicable NAAQS within four years from [the effective date of the final rule].

(2) CNMI shall develop, implement, and submit to EPA for approval into CNMI's SIP an alternative permit program that meets the requirements specified in EPA's June 28, 1989 guidelines. The program shall be submitted within two years of [the effective date of the final rule] and include the following elements:

(i) Permit content requirements:

(A) Permits must contain and ensure compliance with all applicable federal requirements, as defined under section 40 CFR 70.2; and

(B) Contain monitoring, recordkeeping and reporting requirements sufficient to assure compliance with applicable federal requirements;

(ii) The collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program;

(iii) Public notice and a 30-day public comment on each major source permit, including an opportunity for EPA review;

(iv) Civil and criminal penalties up to $10,000 per day per violation; and

(v) A schedule for issuing permits to all major sources, as defined under 40 CFR 70.2, within three years of EPA approval of the alternate operating program.

(3) All section 112 requirements shall be implemented during the period of the waiver. Sections 112 (g) and (j) of the Act shall apply to all sources on CNMI during the term of this waiver and all subject sources shall submit a timely application for a part 71 permit. CNMI shall develop a Memorandum of Understanding with EPA to identify sources of hazardous air pollutants (HAPs).

(b) EPA may modify or revoke this waiver for cause, and shall reopen the waiver if the conditions under paragraph a are not met. This exemption from requirements of title V of the Act shall continue until modified or terminated through rulemaking procedures.

[FR Doc. 95–22490 Filed 9–12–95; 8:45 am]

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[1] These guidelines were published in the **Federal Register** on June 28, 1989 at 54 FR 27282.

40 CFR Part 70

[AL01; FRL–5295–5]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Alabama Department of Environmental Management, Jefferson County Department of Health, and the City of Huntsville Department of Natural Resources and Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes source category-limited interim approval of the State of Alabama Department of Environmental Management (ADEM) and the Jefferson County Department of Health (JCDH) operating permits programs. The EPA also proposes interim approval of the City of Huntsville Department of Natural Resources and Environmental Management (City of Huntsville) operating permits program. These proposed approvals are for the purpose of complying with Federal requirements which mandate that States develop and submit to EPA programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 13, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at EPA Region 4 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE, Atlanta, Georgia 30365, (404) 347–3555, Ext. 4170.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), EPA has promulgated rules that define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the State's submission is materially changed during the one-year review period, 40 CFR Part 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional material. The EPA received title V operating permits program submittals from the ADEM, JCDH, and City of Huntsville on December 15, 1993; December 14, 1993; and November 15, 1993, respectively. The ADEM provided EPA with additional material in supplemental submittals dated March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995. The JCDH and City of Huntsville provided EPA with additional material in supplemental submittals dated July 14, 1995, and July 20, 1995, respectively. Because these supplements materially changed the title V program submittals, EPA has extended the review period and will work expeditiously to promulgate a final decision on all programs.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. Where a State requests source category-limited interim approval and demonstrates compelling reasons in support thereof, EPA may also grant such an interim approval. If EPA has not fully approved a program by two years after November 15, 1993, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the ADEM, JCDH, and City of Huntsville would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the ADEM, JCDH, and City of Huntsville. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval.

Following final interim approval, if the ADEM, JCDH, or City of Huntsville failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the ADEM, JCDH, or City of Huntsville then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that a complete corrective program had been submitted. Moreover, if the Administrator found a lack of good faith on the part of the ADEM, JCDH, or City of Huntsville, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the department had come into compliance. In any case, if, six months after application of the first sanction, the ADEM, JCDH, or City of Huntsville still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the ADEM, JCDH, or City of Huntsville's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the ADEM, JCDH, or City of Huntsville had submitted a revised program, and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the ADEM, JCDH, or City of Huntsville, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the department had come into compliance. In all cases, if, six months after EPA applied the first sanction, the ADEM, JCDH, or City of Huntsville had not submitted a revised program that EPA had determined corrected the

deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if the ADEM, JCDH, or City of Huntsville has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to the ADEM, JCDH, or City of Huntsville's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal permits program for the ADEM, JCDH, or City of Huntsville upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

The EPA has concluded that the operating permits programs submitted by the ADEM, JCDH, and City of Huntsville substantially meet the requirements of title V and part 70, and proposes to grant interim approval to the programs. For detailed information on the analysis of the State's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Support Materials

Pursuant to section 502(d) of the Clean Air Act as amended (1990 Amendments), the Governor of each State must develop and submit to the Administrator an operating permits program under State or Local law or under an interstate compact meeting the requirements of title V of the Act. The ADEM, JCDH, and City of Huntsville requested, under the signature of James W. Warr, Director of the ADEM and governor's designee, interim approval to administer the State and Locals operating permits program submittals in all areas of the State of Alabama with the exception of Indian reservations and tribal lands. The ADEM and JCDH also requested source category-limited interim approval.

The ADEM, JCDH, and City of Huntsville operating permits program submittals do not assert jurisdiction over Indian lands or reservations for purposes of 40 CFR part 70 and title V. The EPA will, at a future date, conduct a Federal title V operating permits program governing title V sources of air emissions on Indian lands and reservations in Alabama.

The ADEM submittal, provided as Section 1—"Complete Program Description," addresses 40 CFR 70.4(b)(1) by describing how the ADEM intends to carry out its responsibilities under the part 70 regulations. The JCDH and City of Huntsville submittals also provided descriptions of how they intend to carry out their responsibilities under the part 70 regulations. They are included in Section 1 of the JCDH submittal and Section 2 of the City of Huntsville submittal. The program descriptions have been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the attorney general (or the attorney for the State air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The ADEM, JCDH, and City of Huntsville have submitted legal opinions showing adequate legal authority as required by Federal law and regulation. However, their legal opinions also state that the ADEM, JCDH, and City of Huntsville do not have adequate criminal authority as required by 40 CFR 70.11(a)(3)(ii)–(iii). This lack of criminal authority precludes the ADEM, JCDH, and City of Huntsville from obtaining full approval of their title V programs.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the implementation of the permit program. Section 2 of the ADEM submittal, Attachment I of the JCDH submittal, and Section 8 of the City of Huntsville submittal include the permit application forms. The permit application forms meet the requirements of 40 CFR 70.5(c).

2. Regulations and Program Implementation

The ADEM submitted Regulation 335–3–16 ("Major Source Operating Permit") and Regulation 335–1–7 ("Air Division Operating Permit Fees") for implementing the State part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was included in Sections 3 and 4 of the ADEM submittal. The JCDH submitted Chapter 18 ("Major Source Operating Permits") and Chapter 16 ("Operating Permit Fees") of the Air Pollution Control Rules and Regulations for implementing their part 70 program. Sufficient evidence of their procedurally correct adoption was included in Attachment 3 of the JCDH submittal. The City of Huntsville submitted Regulations 3.1 ("General Provisions"), 3.6 ("Permit Application Fees"), 3.7 ("Major Source Operating Permit Annual Emissions Fees"), and 3.9 ("Major Source Operating Permit") of the Air Pollution Control Rules and Regulations for implementing their part 70 program. Sufficient evidence of their procedurally correct adoption was included in Section 4 of the City of Huntsville's submittal. Copies of all applicable State/Local statutes and regulations that authorize the part 70 program, including those governing State/Local administrative procedures, were included with the submittals.

The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Section 3 of the ADEM submittal: (A) Applicability requirements, [40 CFR 70.3(a)]: 335–3–16–.03; (B) Permit application requirements, [40 CFR 70.5]: 335–3–16–.04; (C) Provisions for permit content, [40 CFR 70.6]: standard permit requirements: 335–3–16–.05(1); permit duration: 335–3–16–.05(2); monitoring and related recordkeeping and reporting requirements: 335–3–16–.05(3); compliance requirements: 335–3–16–.06 and .07; (D) Provisions for permit issuance, renewals, reopenings and revisions, [40 CFR 70.7]: 335–3–16–.12 and 335–3–16–.13; and (E) Permit review by EPA and affected State, including public participation [40 CFR 70.6]: 335–3–16–.15.

The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Attachment 3 of the JCDH submittal: (A) Applicability requirements, [40 CFR 70.3(a)]: Regulation 18.3; (B) Permit application requirements, [40 CFR 70.5]: Regulation 18.4; (C) Provisions for permit content, [40 CFR 70.6]: standard permit requirements: Regulation 18.5.1; permit duration: Regulation 18.5.2; monitoring and related recordkeeping and reporting requirements: Regulation 18.5.3; compliance requirements: Regulations 18.7 and 18.7; (D) Provisions for permit issuance, renewals, reopenings and revisions, [40 CFR 70.7]: Regulations 18.12 and 18.13; and (E) Permit review by EPA and affected State, including public participation [40 CFR 70.6]: Regulation 18.14.

The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Section 4 of the City of Huntsville submittal: (A) Applicability requirements, [40 CFR 70.3(a)]: Regulation 3.9.1; (B) Permit application requirements, [40 CFR 70.5]: Regulation 3.9.2; (C) Provisions for permit content, [40 CFR 70.6]: standard permit requirements: Regulation 3.9.5(a);

permit duration: Regulation 3.9.5(b); monitoring and related recordkeeping and reporting requirements: Regulations 3.9.5(c), 3.9.5(d) and 3.9.5(e); compliance requirements: Regulations 3.9.6 and 3.9.7; (D) Provisions for permit issuance, renewals, reopenings and revisions, [40 CFR 70.7]: Regulations 3.9.10 and 3.9.11; and (E) Permit review by EPA and affected State, including public participation [40 CFR 70.6]: Regulation 3.9.13.

Alabama statutes 22–22A–5(18) and (19) provide civil enforcement authority consistent with 40 CFR 70.11, including authority to recover penalties and fines in a maximum amount of not less than $10,000 per day per violation. However, current statutes do not provide adequate authority to assess monetary criminal penalties as required by the Act. Section 70.11(a)(3) (ii) and (iii) require criminal fines recoverable against any person who knowingly violates any applicable requirement, any permit condition, or any fee or filing requirement; knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit; or who knowingly renders inaccurate any required monitoring device or method. These fines shall be recoverable in a maximum amount of not less than $10,000 per day per violation. Section 22–28–22(d) of the Alabama Air Pollution Control Act provides that any person who knowingly violates or fails or refuses to obey or comply with that chapter or who knowingly submits any false information under that chapter shall be guilty of a misdemeanor and, upon conviction, may be sentenced to hard labor for not more than a year. To receive full program approval, the State of Alabama must amend its state law to provide for adequate criminal fines consistent with 40 CFR 70.11.

The ADEM title V program will implement a two-step process for application completeness, first determining an application to be administratively complete, then requiring application updates as needed to support draft permit preparation. The ADEM has committed in a letter to EPA dated August 28, 1995, to requiring initial applications that: (1) define the part 70 applicable requirements and major/minor source status, (2) certify compliance status with respect to all applicable requirements, (3) allow the permitting authority to determine the approved permit issuance schedule, and (4) include certifications of application truth, accuracy, and completeness. The EPA notes that this type of flexibility is appropriate and has outlined guidance in section II.D. of the July 25, 1995, White Paper for Streamlined Development of Part 70 Permit Applications. The JCDH and City of Huntsville programs require all title V sources to submit complete applications within 12 months of interim approval.

Section 70.5(d) requires that any application form, report, or compliance certification submitted pursuant to the title V regulations shall contain a certification by a responsible official that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. ADEM Regulation 335–3–16–.04(9)(a) (JCDH Regulation 18.4.9(a) and City of Huntsville Regulation 3.9.4(a)) satisfies this requirement. ADEM Regulation 335–3–16–.04(9)(b) (JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b)) adds the following condition: "Certification for completeness shall not be required for initial applications that will not be processed in the first year the regulations in this chapter are effective." Since applications will be received from all sources by the end of the first year following program approval, and these applications will meet the requirements listed above, ADEM Regulation 335–3–16–.04(9)(b) (JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b)) must be deleted from the State's regulations.

The ADEM and JCDH define "insignificant activity" as any air emission or air emissions unit at a plant that has the potential to emit less than 5 tons per year of any criteria pollutant or less than 1,000 pounds per year of any hazardous air pollutant (HAP). The City of Huntsville's program defines "insignificant activity" as any air emission or air emissions unit at a plant that the Director has determined to be insignificant and has been included by the Director on a list of insignificant emission levels or insignificant emissions units. All three programs require that insignificant activities be listed in the permit application forms. The programs also define "trivial activity" as any air emission from a unit that is considered inconsequential, as determined by the Director/Health Officer, and do not require that trivial activities be listed in the permit application forms. To obtain full approval, the program regulations must clarify that emissions thresholds for individual activities or units that are exempted will not exceed the lesser of 1,000 pounds per year or section 112(g) de minimis levels for HAPs. The State may, however, set higher levels of emissions thresholds upon demonstration that the higher levels are insignificant.

The ADEM, JCDH, and City of Huntsville programs provide that the Director/Health Officer will maintain a list of air emissions or air emissions units that are considered to be insignificant activities and a list of air emissions units or changes in air emissions that have been determined to be trivial. The ADEM, JCDH, and City of Huntsville programs do not include the list of insignificant activities as part of their regulations nor do they require review and approval of them by EPA. Section 70.5(c) states that EPA may approve, as part of a State program, a list of insignificant activities and emissions levels which need not be included in the permit applications. Under part 70, a State must request and EPA may approve as part of that State's program any activity or emission level that the State wishes to consider insignificant. To obtain full approval the State and the local agencies must revise their approach on insignificant activities such that the list is made available for EPA and public review and comment each time the list is revised.

The ADEM, JCDH, and City of Huntsville programs also lack assurance that insignificant activities will not be exempted from title V permitting requirements or excluded from major source applicability determinations. Section 70.5(c) states that a part 70 permit application "may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved * * *" To obtain full approval, the State and the Local agencies must revise their regulations consistent with section 70.5(c) to ensure that emissions units with applicable requirements will not be exempted from title V permitting requirements or major source applicability determinations, even if listed on an approved list of insignificant activities.

Sections 70.4(b)(3)(iii) and 70.6(a)(2) state that operating permits programs must issue permits for a fixed term of five years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed five years, except for permits issued for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act. ADEM Regulation 335–3–16–.05(2)(c) (JCDH Regulation 18.5.2(c) and City of Huntsville Regulation 3.9.5(b)(3)) states: "Permits which are issued for new emission units before the unit becomes operational shall be effective for five years after operation of the unit

commences." The EPA interprets this provision to mean that facilities may be issued "merged" new source review (NSR)-operating permits such that an operating permit has a future effective date, and the expiration date would be five years from the effective date. Operating permits would not be issued with a term longer than five years (except for the case of solid waste incineration units). A "merged" NSR-operating permit is not a title V permit until the source commences operation. Also, the title V permit will not become effective if new requirements become applicable to the source (or if other factors change that would render the operating permit invalid) until the permit is revised to reflect these changes.

The ADEM, JCDH, and City of Huntsville rules provide for operational flexibility in accordance with 40 CFR 70.4(b)(12)(i). However, the following provisions regarding trading of emissions under a Federally enforceable emissions cap are not provided for:

(a) The program shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all standard permit requirements and compliance requirements, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a Federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. [See 40 CFR Part 70.4(b)(12)(iii)]

(b) The permit application shall include additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source or to define permit terms and conditions for the trading of emissions increases and decreases in the permitted facility. [See 40 CFR Part 70.5(c)(7)]

(c) The permit shall include terms and conditions, if the permit applicant requests them, for the trading of emission increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case by case approval of each emissions trade. [See 40 CFR Part 70.6(a)(10)]

As a prerequisite for full program approval, the ADEM, JCDH, and City of Huntsville regulations must rectify this lack of flexibility on emissions trading procedures. However, EPA notes that the flexibility provisions of 40 CFR part 70 are under revision due to litigation on the rule. The EPA will allow the State/local programs to make these changes according to the revisions to part 70 when published in order to avoid duplicative rulemaking.

ADEM Regulation 335–3–16–.04(8)(b)(3) (JCDH Regulation 18.4.8(c)(3) and City of Huntsville Regulation 3.9.3(c)(3)) states that the permit application shall include "emission rates of all pollutants in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, or alternative method approved by the Department's Director." The State cannot be granted authority to approve alternatives to standard reference test methods that are specified by applicable requirements. Performance tests shall be conducted in accordance with the procedures set forth in 40 CFR Parts 60, 61 and 63 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent or alternate test methods as specified in 40 CFR 60.8(b)(2) and (3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii), the State may approve minor changes in methodology provided these changes are reported to EPA. While this is not a change to current practice, full program approval of the ADEM, JCDH, and City of Huntsville Rules will require deletion of the Department Director's discretion in approving alternatives to standard reference test methods.

ADEM Regulation 335–3–16–.13(4) (JCDH Regulation 18.13.4 and City of Huntsville Regulation 3.9.11(d)) requires that significant modifications be incorporated into operating permits by the same procedures required for an initial permit application, including public participation, review by affected States, and review by EPA. The rule also defines significant modifications as changes that result in a net emissions increase of any of the pollutants and levels listed in ADEM Regulation 335–3–14–.04 or .05, or any modifications under NSPS or NESHAP. This definition of significant modifications is deficient in that 40 CFR section 70.7(e)(4)(i) requires, at a minimum, the State program to consider significant modifications to include every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions. As a prerequisite for full program approval, the ADEM, JCDH, and City of Huntsville Rules must be revised to make this clarification to its definition of significant modifications. However, EPA notes that the permit revision requirements of 40 CFR part 70 are under revision due to litigation on the rule. The EPA will allow the State/local programs to make these changes according to the revisions to part 70 when published in order to avoid duplicative rulemaking.

ADEM Regulation 335–3–16–.13(1) (JCDH Regulation 18.13.1 and City of Huntsville Regulation 3.9.11(a)) contains the requirements of 40 CFR 70.7(d) for administrative amendments, but does not require the Administrator's approval for similar changes allowed by this chapter. This is inconsistent with 40 CFR 70.7(d)(1)(vi) which requires that, in order for changes other than those specified in 40 CFR 70.7(d)(i) through (v) to be made as administrative amendments, they must first be determined by the Administrator, as part of the approved part 70 program, to be similar to those specified in 70.7(d)(1) (i) through (iv). For full approval, ADEM Regulation 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(7) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program.

ADEM Regulation 335–3–16–.13(1)(a)6 states that an administrative permit amendment is a permit revision that "incorporates into a permit issued under this chapter the requirements from preconstruction review permits authorized under this Administrative Code, provided that the process used meets procedural requirements substantially equivalent to the requirements of ADEM Admin. Code r. 335–3–16–.12 and 335–3–16–.14 of this chapter * * *." This rule lacks the requirement of 40 CFR 70.7(d)(1)(v) for permit review by EPA and affected states. For full program approval, ADEM Regulation 335–3–16–.13(1)(a)6 must be revised to include the required EPA and affected states review provisions.

The Alabama Air Pollution Control Act, section 22–28–13, provides the ADEM, JCDH, and City of Huntsville with authority to grant individual variances beyond the limitations prescribed in the Alabama Air Pollution Control Act. This authority is exercised whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement, or order of the commission would impose serious hardship without equal or greater benefits to the public and that the emissions occurring, or proposed to occur, do not endanger or tend to endanger human health or safety, human comfort, or aesthetic values. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements in which it is based."

The complete program descriptions submitted by the ADEM, JCDH, and City of Huntsville and the Technical Support Documents (TSDs) for each program are available for review of more detailed information. The TSDs contain detailed analysis of the programs and describe the manner in which the programs meet all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year, consumer price index (CPI) adjusted from 1989. The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum."

The ADEM and JCDH have adopted the "presumptive minimum" of $25 per ton (annually adjusted by the CPI), for each regulated pollutant except carbon monoxide. Also, fees will be assessed on the first 4,000 tons per regulated pollutant per facility. The City of Huntsville has also adopted the $25 per ton (annually adjusted by the CPI). In addition to the emissions-based fees, the City of Huntsville will collect permit application fees. Permit application fees from title V sources, as described in Section 3.6 of the City of Huntsville's rules, will be used to support the title V program.

The ADEM and JCDH have also collected early title V fees in 1992, 1993 and 1994, to develop and start the title V program. Facilities under the ADEM and JCDH that paid these initial ramp-up fees will be given credit on the amount owed during 1995–1999 until the total credit allowed equals the sum of the amount paid in 1992, 1993, and 1994. The ADEM and JCDH have demonstrated that the fees collected during 1995–1999 minus the ramp-up fee credits are sufficient to cover the costs of the program. The City of Huntsville has also demonstrated that the fees collected will be sufficient to cover the cost of the program.

The ADEM, JCDH, and City of Huntsville submittals have included an initial accounting and description of how required fee revenues are used solely to cover the title V program. The EPA has determined that their fee demonstrations are adequate and meet the requirements of 40 CFR 70.9.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

The ADEM, JCDH, and City of Huntsville have demonstrated in their title V program submittals broad legal authority to incorporate into permits and enforce all applicable requirements; however, they have also indicated that additional regulatory authority may be necessary to carry out specific section 112 activities. They have therefore supplemented their broad legal authority with a commitment to implement any section 112 regulations promulgated by EPA that are Federally mandated by the Clean Air Act Amendments of 1990. The EPA has determined that this commitment, in conjunction with the State/Local broad statutory authority, adequately assures compliance with all section 112 requirements. The EPA regards this commitment as an acknowledgment by the ADEM, JCDH, and City of Huntsville of their obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

The EPA interprets the above legal authority and commitment to mean that the ADEM, JCDH, and City of Huntsville are able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Documents accompanying this proposed interim approval.

b. Implementation of Section 112(g) Upon Program Approval

The EPA issued an interpretive notice (60 FR 8333) on February 14, 1995, which outlines a revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a Federal rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether or not to delay the effective date of section 112(g) beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless EPA provides for such an additional postponement of section 112(g), the ADEM, JCDH, and City of Huntsville must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of State regulations implementing the rule.

The EPA is aware that the ADEM, JCDH, and City of Huntsville lack a program designed specifically to implement section 112(g). However, the ADEM, JCDH, and City of Huntsville do have preconstruction review programs within their permit rules that can serve as adequate implementation vehicles during the transition period. These programs would allow the ADEM, JCDH, and City of Huntsville to select control measures that would meet the maximum available control technology (MACT) standards, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit. The EPA proposes to approve the use of the ADEM, JCDH, and City of Huntsville preconstruction review programs, under the authority of title V and part 70, for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of State/

Local rules implementing EPA's section 112(g) regulations. These programs are found in Chapter 335–3–14 of the ADEM Regulations, Chapter 2 of the JCDH Regulations, and Chapter 3.5 of the City of Huntsville Regulations. Although section 112(l) provides authority for approval of State air regulations that specifically implement section 112(g), the direct linkage between the implementation of section 112(g) and title V provide for this limited approval by way of the preconstruction review programs already in place.

The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) and part 70 require that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of future section 112 standards and programs that are unchanged from the Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for part 70 and non-part 70 sources.[1] The ADEM, JCDH, and City of Huntsville have informed EPA that they intend to accept delegation of section 112 standards and infrastructure programs through adoption by reference. The details regarding the use of these delegation mechanisms are set forth in a letter dated June 8, 1995, submitted by the ADEM as a title V program addendum.

d. Commitment To Implement Title IV of the Act

The ADEM has committed to implement any Acid Rain regulations, following promulgation by EPA of regulations implementing sections 407 and 410 of the Clean Air Act, that are Federally mandated by the Clean Air Act Amendments of 1990 through title IV. The ADEM has proposed revisions to the ADEM Administrative Code that will incorporate 40 CFR Part 72 and Appendices by reference. The State has committed to finalize its Acid Rain rules by November 15, 1995. The JCDH and City of Huntsville have committed to adopt Local Acid Rain regulations within 60 days after the ADEM adopts the State rules.

B. Proposed Actions

The EPA is proposing to grant source category-limited interim approval for the ADEM and JCDH operating permits programs, and interim approval for the City of Huntsville program. If promulgated, the State and Local agencies must make the following changes to their programs to receive full approval:

1. The State statute must be revised to provide adequate criminal authority as required by 40 CFR 70.11(a)(3)(ii)–(iii), including criminal fines recoverable in a maximum amount of not less than $10,000 per day per violation.
2. The ADEM, JCDH, and City of Huntsville must delete ADEM Regulation 335–3–16–.04(9)(b), JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b), which state: "Certification for completeness shall not be required for initial applications that will not be processed in the first year the regulations in this chapter are effective." Since applications will be received from all sources by the end of the first year following program approval, and these applications will meet at least minimal requirements for a completeness determination, this regulation is not consistent with 40 CFR Part 70.
3. The ADEM, JCDH, and City of Huntsville must revise their regulations regarding insignificant activities such that (1) emissions thresholds for individual activities or units that are exempted will not exceed five tons per year for criteria pollutants, and the lesser of 1,000 pounds per year or section 112(g) de minimis levels for HAPs, (2) their list of insignificant activities is made available for EPA and public review and comment each time the list is revised, and (3) emissions units with applicable requirements will not be exempted from title V permitting requirements or major source applicability determinations, even if listed on an approved list of insignificant activities.
4. The ADEM, JCDH, and City of Huntsville programs must be revised to provide for operational flexibility in accordance with 40 CFR 70.4(b)(12)(iii), 70.5(c)(7), and 70.6(a)(10). These rules allow the agencies, if requested by permit applicants, to issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in permitted facilities.
5. ADEM Regulation 335–3–16–.04(8)(b)(3), JCDH Regulation 18.4.8(c)(3), and City of Huntsville Regulation 3.9.3(c)(3) state that permit applications shall include "emission rates of all pollutants in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, or alternative method approved by the Department's Director." The Regulations must be revised to delete the Department Director's discretion in approving alternatives to standard reference test methods used in demonstrating compliance with title V permit terms.
6. The ADEM, JCDH, and City of Huntsville rules define significant modifications as modifications under NSPS or NESHAP. In accordance with 40 CFR 70.7(e)(4)(i), this definition must be modified to include at least every significant change in existing monitoring terms or conditions and every relaxation of reporting or recordkeeping terms or conditions as a significant modification.
7. For full approval, ADEM Regulation 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(7) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program. Also, ADEM Regulation 335–3–16–.13(1)(a)6 must be revised to include the EPA and affected states review provisions required by 40 CFR 70.7(d)(1)(v).

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications. The ADEM and JCDH, which have requested source category-limited interim approvals as discussed below, will have a 5-year time period in which to process initial permit applications.

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[1] The radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the ADEM, JCDH, and City of Huntsville in the development of their radionuclide program to ensure that permits are issued in a timely manner.

The ADEM and JCDH have requested source category-limited (SCL) interim approval of their part 70 operating permits programs. Although the ADEM and JCDH would be required to issue permits within three years to all sources subject to the interim approval, some sources would not be subject to the requirement to obtain a permit until full approval is granted. Part 70 sources not addressed until full program approval is granted are also subject to a 3-year time period for processing initial permit applications. The 3-year period for these sources would begin on the date that full approval of the State or Local program is granted. Therefore, initial permitting of all part 70 sources would not be completed until five years after interim approval is granted. The City of Huntsville did not request SCL interim approval of their part 70 operating permits program, and will therefore complete initial permitting within three years of interim approval.

The ADEM and JCDH provided the reasons for needing SCL interim approval in supplemental materials submitted by the ADEM on March 18, 1994, and by the JCDH on July 10, 1995. The ADEM and JCDH have a variety of large and complex sources such as chemical manufacturing plants and pulp and paper facilities. As a result, EPA believes the ADEM and JCDH will be unable to issue permits to all part 70 sources within three years and that SCL interim approval is warranted for their title V programs. For further discussion on EPA's determination, see the Technical Support Documents accompanying this approval.

In published guidance, EPA has acknowledged that SCL interim programs that apply to at least 60 percent of all part 70 sources and that include sources responsible for at least 80 percent of the aggregate emissions from all part 70 sources substantially meet the emissions coverage requirements of part 70. The ADEM program submittal includes a schedule for permitting 60 percent of all part 70 sources within three years of interim program approval. The ADEM has also committed to permitting part 70 sources that are responsible for a substantial percentage of the State's aggregate emissions in three years. In addition, the ADEM has committed to act on all initial permit applications by November 15, 2000. The EPA believes that the ADEM program has been skillfully designed to utilize available resources in an efficient manner and to result in effective permits that are Federally enforceable. The EPA is confident that the ADEM will address a substantial number of sources in the first three years so as to represent a significant portion of the program and, therefore, fully meets the intent of part 70 and other program guidance. The JCDH program will address 60 percent of their part 70 sources during the first three years following SCL interim approval and has also committed to permitting part 70 sources that are responsible for a substantial percentage of the Local's aggregate emissions during these three years.

The scope of the ADEM, JCDH, and City of Huntsville part 70 programs for which EPA proposes interim approval in this notice would apply to all part 70 sources (as defined in the approved program) within the State, except any sources of air pollution over which an Indian tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

As discussed above in section II.A.4.c., EPA also proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 to the ADEM, JCDH, and City of Huntsville for receiving delegation of future section 112 standards and programs that are unchanged from Federal standards as promulgated. In addition, EPA proposes to delegate existing standards and programs under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the submittals and other information relied upon for the proposed interim approval are contained in a docket maintained at EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by October 13, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, Local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the [proposed] approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, Local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or Local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, Local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 5, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–22723 Filed 9–12–95; 8:45 am]

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40 CFR Part 81

[WI56–01–7019b; FRL–5289–4]

Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: In this action USEPA proposes to remove all total suspended particulate (TSP) area designations in the State of Wisconsin. This action was prompted by the Wisconsin Department of Natural Resources' (WDNR) request to redesignate all areas in the State from TSP nonattainment to attainment. In the final rules section of this **Federal Register**, USEPA is approving the State's request as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by October 13, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S.C. 7401–7671(q).

Dated: August 17, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–22621 Filed 9–12–95; 8:45 am]

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40 CFR Part 180

[PP 4E4419/P626; FRL–4970–8]

RIN 2070–AC

Avermectin B_1 and its Delta-8,9 Isomer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish time-limited tolerances for the combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodities dried hops and cattle fat. The proposed regulation to establish maximum permissible levels for residues of the insecticide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4). The time-limited tolerances for dried hops and cattle fat would expire on April 30, 1996.

DATES: Comments, identified by the document control number [PP 4E4419/P626], must be received on or before October 13, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4E4419/P626]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the "SUPPLEMENTAL INFORMATION" section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information." CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 4E4419 to EPA on behalf of the Idaho, Oregon, and Washington Hop Commissions, and the Hop Growers of America. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.449 by establishing time-limited tolerances for the combined residues of the insecticide avermectin B_1 [a mixture of avermectins containing greater than or equal to 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a} and less than or equal to 20 percent avermectin B_{1b} (5-O-demethyl-25-de(1-methylpropyl)-25-(1-

methylethyl) avermectin A_{1a})] and its delta-8,9-isomer in or on the raw agricultural commodities dried hops at 0.5 part per million (ppm) and cattle fat at 0.015 ppm.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. A 1-year feeding study with dogs fed diets containing 0.25, 0.50, or 1.0 milligram (mg)/kilogram (kg)/day with a no-observed-effect level (NOEL) of 0.25 mg/kg/day. A high incidence of mydriasis (excessive dilation of the pupil of the eye) was observed in male and female dogs at the 0.50-mg/kg/day dose level.

2. A 2-year chronic toxicity/carcinogenicity study with rats fed diets containing 0, 0.75, 1.5, or 2.0 mg/kg/day with a systemic NOEL of 1.5 mg/kg/day. Tremors were observed in male and female rats fed diets containing 2.0 mg/kg/day. No carcinogenic effects were observed under the conditions of the study.

3. A chronic toxicity/carcinogenicity study in mice fed diets containing 0, 2.0, 4.0, or 8.0 mg/kg/day for 94 weeks with a systemic NOEL of 4 mg/kg/day based on increased mortality, dermatitis, and extramedullary hematopoiesis in the spleen of males, and body weight loss in females at the 8.0 mg/kg/day dose level.

4. A two-generation reproduction study in rats fed diets containing 0, 0.06, 0.12, or 0.40 mg/kg/day with a NOEL of 0.12 mg/kg/day. The lowest-observed-effect level (LOEL) was established at 0.40 mg/kg/day based on increased retinal folds in weanlings, increased dead pups at birth, decreased viability indices, decreased lactation indices, and decreased pup body weights.

5. A developmental toxicity study with rats given gavage doses of 0, 0.4, 0.8, or 1.6 mg/kg/day with no developmental toxicity observed under the conditions of the study.

6. A developmental toxicity study with mice given gavage doses at 0, 0.1, 0.2, 0.4, or 0.8 mg/kg/day. The LOEL for developmental toxicity (cleft palate) was established at 0.4 mg/kg/day.

7. A developmental toxicity study with rabbits given gavage doses with NOEL's for developmental and maternal toxicity at 1.0 mg/kg/day. The LOEL for developmental toxicity was established at 2.0 mg/kg/day based on cleft palate, clubbed foot, and delayed ossification.

8. Avermectin B_1 tested negative for mutagenic effects in the Ames assay, V-79 mammalian cell assay, structural chromosomal aberration assay (*in vitro* in Chinese hamster ovary cells), and *in vivo* bone marrow cytogenic study in male mice. Avermectin B_1 produced an increase in single strand DNA breaks in a rat *in vitro* hepatocyte mutagenicity study. However, no mutagenic effects were observed when the assay was carried out in vivo at 10.6 mg/kg.

Toxicity studies reviewed for the delta-8,9-isomer of avermectin B_1 include:

9. A developmental toxicity study in rats given gavage doses of 0, 0.25, 0.50, and 1.0 mg/kg/day with no developmental toxicity observed under the conditions of the study.

10. A mouse developmental toxicity study with a NOEL of 0.06 mg/kg/day based on developmental toxicity (cleft palate) at the 0.10 mg/kg/day dose level.

11. A one-generation reproduction study with rats fed diets containing 0, 0.06, 0.12, or 0.40 mg/kg/day with a NOEL for reproductive effects at 0.40 mg/kg/day. There were no reproductive effects observed under the conditions of the study.

12. An Ames mutagencity study was negative in the presence of S-9 activation.

Dietary risk assessements for avermectin indicate that there is minimal risk from established tolerances and the proposed tolerances for dried hops and cattle fat. Dietary risk assessments were conducted using the Reference Dose (RfD) to assess chronic exposure and risk and the Margin of Exposure (MOE) for acute toxicity.

The RfD is calculated at 0.0004 mg/kg/day, based on a NOEL of 0.12 mg/kg/of body weight/day from the two-generation reproduction study in the rat and an uncertainty factor of 300. The anticipated residue contribution (ARC) from existing tolerances and the proposed tolerances for dried hops and cattle fat utilizes 6 percent of the RfD for the general population and 21 percent of the RfD for nonnursing infants (less than 1-year old).

The MOE is a measure of how closely the high-end acute dietary exposure comes to the NOEL from the toxicity endpoint of concern. For avermectin the MOE was calculated as a ratio of the NOEL (0.06 mg/kg/day) from the mouse developmental toxicity study to dietary exposure, as estimated for the population subgroup at greatest risk (females of child-bearing age). The MOE for females of childbearing age is greater than 100 for high-end exposure. Acute dietary MOE's of of less than 100 are generally of concern to EPA.

The nature of the residue in or on hops is adequately understood. The enforcement method, which was developed by the registrant, Merck Research Laboratories, has been validated by an independent laboratory. The enforcement method will be submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II), when EPA's Analytical Chemistry Laboratory has successfully completed its own validation of the enforcement method. The analytical method is being made available, in the interim, to anyone with an interest in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protections Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-305-5937.

Any secondary residues will be covered by existing tolerances for meat, meat byproducts, and milk and the proposed tolerance for cattle fat at 0.015 ppm. The established tolerances for meat, meat byproducts, and milk will expire on April 30, 1996, which coincides with conditional registrations for use of avermectin on cotton and citrus. (See the **Federal Registers** of August 3, 1994 (59 FR 39505) and September 30, 1994 (59 FR 49825), for additional information regarding the conditional registrations for cotton and citrus.) The proposed tolerance for cattle fat will expire on April 30, 1996, which also coincides with the expiration date for time-limited tolerances for meat, meat byproducts, and milk. EPA intends to make a decision on the registrations for cotton and citrus prior to April 30, 1996. If full registration is issued, the time-limited restrictions will be removed from the avermectin tolerances for meat, meat byproducts, cattle fat, and milk.

EPA is establishing the tolerance for dried hops with an expiration date of April 30, 1996, to allow IR-4 time to submit additional residue data in support of a permanent tolerance for dried hops, and to allow EPA additional time to evaluate the enforcement method for dried hops. A permanent tolerance for dried hops must also await establishment of permanent tolerances for meat, meat byproducts, cattle fat, and milk.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is

proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E4359/P626]. Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

A record has been established for this rulemaking under docket number [PP 4E4419/P626] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.449, by amending paragraph (a) in the table therein by adding and alphabetically inserting listings for cattle fat and dried hops and by amending paragraph (b) by revising the introductory text, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration date
Cattle, fat	0.015	Do.
* * *	*	*
Hops, dried	0.5	Do.
* * *	*	*

(b) A tolerance is established for the combined residues of the insecticide avermectin B1 [a mixture of avermectins containing greater than or equal to 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and greater than or equal to 20 percent avermectin B_{1b} (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] and its delta-8,9-isomer in or on the following commodities:

* * * * *

[FR Doc. 95–22619 Filed 9–12–95; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 721

[OPPTS–50601F; FRL–4926–1]

Cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo-; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo- based on receipt of new data. The data indicate that for purposes of TSCA section 5, the substance will not present an unreasonable risk to human health.

DATES: Written comments must be received by October 13, 1995.

ADDRESSES: All comments must be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, an additional sanitized copy must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50601F. Unit III.

of this preamble contains additional information on submitting comments containing CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–50601F. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1992 (57 FR 44050), EPA issued a SNUR establishing significant new uses for cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo-. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo- under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced in Unit IV. of this preamble.

PMN Number: P–90–1358

Chemical name: Cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo-.
CAS number: 7027–11–4.
Effective date of revocation of section 5(e) consent order: October 17, 1994.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA has sufficient information to determine, for purposes of TSCA section 5, that the manufacture, processing, distribution in commerce, use, or disposal of the PMN substance will not present an unreasonable risk to human health. Accordingly, EPA has determined that further regulation under section 5(e) is not warranted at this time.
Toxicity testing results: The results of the 90–day subchronic study in rats which included a functional observational battery, an evaluation of motor activity, and specific histological examination of the central and autonomic nervous system, show that the PMN substance P–90–1358 did not produce signs of systemic toxicity in either sex of rats when administered in feed. At the 4,500 ppm (parts per million) dose, which was the highest dose tested, food consumption and weight gain in females were depressed. However, it is uncertain whether the depression of body weight in females was due to toxicity or unpalatability of the test material. There were no signs of neurotoxicity at any dose tested. Upon microscopic examination, there was no dose-related trend in incidence of abnormal findings. There was no indication whether cyanide was or was not released from the PMN substance. In addition, the study showed that the PMN substance does not act like the analogue, isophorone.
CFR citation: 40 CFR 721.2225

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to the human health. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. EPA reviewed testing conducted by the PMN submitter pursuant to the consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order. In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50601 (P–90–1358). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

A record has been established for this rulemaking under docket number OPPTS–50601F (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of the rule. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: September 1, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2225 [Removed]

2. By removing § 721.2225.

[FR Doc. 95–22730 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50608C; FRL–4911–5]

Ethane, 1,1,1-Trifluoro-; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for ethane, 1,1,1-trifluoro-, based on receipt of new data. The data indicate that for purposes of TSCA section 5, the substance will not present an unreasonable risk to human health.

DATES: Written comments must be received by October 13, 1995.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460.

Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50608C. Unit III. of this preamble contains additional information on submitting comments containing CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–50608C. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 8, 1993 (58 FR 32238), EPA issued a SNUR establishing significant new uses for ethane, 1,1,1-trifluoro-. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for ethane, 1,1,1-trifluoro- under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced in Unit IV. of this preamble.

PMN Number P–92–341

Chemical name: Ethane, 1,1,1-trifluoro-.
CAS number: 420–46–2.
Effective date of revocation of section 5(e) consent order: August 29, 1994.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted by the PMN submitter under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA has sufficient information to determine, for purposes of TSCA section 5, that the manufacture, processing, distribution in commerce, use, or disposal of the PMN substance will not present an unreasonable risk to human health. Accordingly, EPA has determined that further regulation under section 5(e) of TSCA is not warranted at this time.
Toxicity testing results: Cardiac sensitization (dogs): The PMN substance was found to be a cardiac sensitizer when exposures occurred at a 30 percent concentration in air (300,000 ppm (parts per million)) for 10 minutes. Lower exposures did not elicit a sensitization response. The substance is not mutagenic in the micronucleus assay. There were no observed adverse effects at concentrations up to 40,000 ppm in the developmental or 90–day subchronic study.
CFR citation: 40 CFR 721.3254.

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to human health. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any person's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50608 (P–92–341). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

A record has been established for this rulemaking under docket number OPPTS–50608C (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of the rule. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: September 1, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.3254 [Removed]

2. By removing § 721.3254.

[FR Doc. 95–22731 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 493

[HSQ–225–P]

RIN 0938–AG99

Public Health Service; CLIA Program; Categorization of Waived Tests

AGENCY: Health Care Financing Administration (HCFA) and Public Health Service (PHS), HHS.

ACTION: Proposed rule.

SUMMARY: In this rule we are proposing criteria we would use to determine whether to categorize specific laboratory tests as waived from certain requirements of the Clinical Laboratories Improvement Amendments of 1988. We also propose revisions to requirements that laboratories performing waived tests must meet.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 13, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Centers for Disease Control and
Prevention, Public Health Service,
Department of Health and Human
Services, Attention: HSQ–225–P, 4770
Buford Hwy., NE., MS F11, Atlanta,
Georgia 30341–3724.

If you prefer, you may deliver your written comments (1 original and 3 copies) to the following address:

CDC/Washington, Room 714–B, Hubert
H. Humphrey Building, 200
Independence Avenue, SW.,
Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ–225–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to:

Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 10235, New Executive
Office Building, Washington, DC
20503, Attn: Allison Herron Eydt,
HCFA Desk Officer.

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FOR FURTHER INFORMATION CONTACT: Rosemary Bakes-Martin, (404) 488–7655, for questions regarding the criteria for waived test categorization and the requirements for data submission; and Judy Yost, (410) 786–3531, for certificate and inspection issues.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 353 of the Public Health Service (PHS) Act (42 U.S.C. 263a), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), all laboratories that examine human specimens for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings must meet certain requirements to perform the examination. On February 28, 1992 (57 FR 7002), we published regulations to implement CLIA at 42 CFR part 493. Many of the requirements are based on the complexity of the tests performed. There are currently three test categories: waived, moderate complexity and high complexity.

In accordance with the law, HHS established a Clinical Laboratory Improvement Advisory Committee (CLIAC) to advise and make recommendations on technical and scientific aspects of the regulations. The CLIAC is composed of individuals involved in the provision of laboratory services, use of laboratory services, development of laboratory testing devices or methodologies, and others as approved by HHS. In addition, HHS has designated four CLIAC subcommittees that focus on the following areas: cytology; personnel; proficiency testing, quality control and quality assurance; and test categorization.

We received approximately 16,000 letters from professional organizations and individuals that provided approximately 71,000 comments in response to publication of the February 28, 1992 regulations. Through this proposed rule, we are responding to the approximately 1,100 comments concerning the categorization of waived tests, specifically the subjectiveness of the waived criteria and the failure of tests to be granted waiver status.

These commenters were responding to our regulations at § 493.15 that merely excerpt the statutory language without elaboration and list nine tests or examinations that meet the statutory criteria and are waived. That section further provides that revisions to the list of waived tests approved by HHS will be published in the **Federal Register** in a notice with opportunity for public comment. As currently defined in the regulation, waived tests are simple laboratory examinations and procedures that—

(1) Are cleared by the Food and Drug Administration (FDA) for home use;

(2) Employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible; or

(3) Pose no reasonable risk of harm to the patient if the test is performed incorrectly.

The specified tests that are listed in the regulation are:

(1) Dipstick or tablet reagent urinalysis (non-automated) for bilirubin, glucose, hemoglobin, ketone, leukocytes, nitrite, pH, protein, specific gravity, and urobilinogen;

(2) Fecal occult blood;

(3) Ovulation tests—visual color comparison tests for human luteinizing hormone;

(4) Urine pregnancy tests—visual color comparison tests;

(5) Erythrocyte sedimentation rate—non-automated;

(6) Hemoglobin—copper sulfate—non-automated;

(7) Blood glucose by glucose monitoring devices cleared by the FDA specifically for home use;

(8) Spun microhematocrit; and

(9) Hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurement and readout.

After evaluating the comments concerning waived tests, we sought advice in February 1993 from the CLIAC concerning the criteria for waiver and the process for considering whether specific tests should be placed in the waived category. The CLIAC agreed that the criteria should be better defined and recommended that the Centers for Disease Control and Prevention (CDC) clarify the criteria and process for categorizing waived tests and suggested that a moratorium be placed on adding tests to the waived category until the criteria were better defined. In response to the CLIAC recommendation, CDC initially established [illegible] moratorium on considering tests for waiver while we were developing [illegible] notice of proposed rulemaking to revise the CLIA regulations for waived categorization.

In response to public concern, on December 19, 1994, the moratorium was lifted, and CDC notified all manufacturers and producers of moderate complexity test systems that it will consider for waiver any test that meets the statutory criteria and for which the manufacturer or producer applies for waiver in accordance with the CLIA regulations published February 28, 1992. CDC enclosed guidelines (included in this rule as proposed test system characteristics and field studies) that can be used to verify the accuracy and precision of testing devices and demonstrate that the test meets the statutory criteria for waiver. The guidelines were included to assist applicants in applying for waiver; however, all requests will be considered as long as they include valid scientific studies to verify that the test meets the statutory criteria for waiver.

II. The Revision Process

Under the statute, waived tests are defined as "* * * simple laboratory examinations and procedures that, as determined by the Secretary, have an insignificant risk of an erroneous result * * *." The statute contains additional language to describe the types of examinations and procedures to be included in the waived category; that is, tests that have "* * * been approved by the FDA for home use, employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible, or the Secretary has determined pose no reasonable risk of harm to the patient if performed incorrectly." The law also specifies that waived tests are exempt from the CLIA health and safety standards, including personnel, patient test management, quality control, proficiency testing, quality assurance, and routine inspections requirements.

In the preamble of the CLIA regulations published February 28, 1992, in the **Federal Register** (57 FR 7002), we stated that FDA clearance of a test for home use could not be used as a sole criterion for qualifying as a waived test. We have continued to review the section of the statute pertaining to waived tests and believe now that the better view of the statute is that the waived criteria set out at 42 U.S.C. 263a(d)(3)(A), (B), and (C) were intended by the Congress to represent the kinds of tests that are "simple laboratory examinations and procedures which * * * have an insignificant risk of an erroneous result." Therefore, any test system cleared by the FDA for home use will, upon receipt of a request for waiver from the manufacturer, be waived under CLIA.

With regard to the other two criteria for waiver, we believe that a critical factor to be considered is the implicit statutory mandate that waived testing be easily performed and provide accurate results. Therefore, in order for a test to be categorized as waived, it must *both*: (1) Be simple; and (2) have an insignificant risk of an erroneous result. In this rule, we are proposing to clarify the statutory criteria by specifying performance characteristics and studies designed to demonstrate that any test system categorized as waived would be simple, easy to perform, and essentially error-free. We believe that conformance to these criteria would reduce the possibility of the test producing an erroneous result and, thus, assist in determining whether the test system could pose a reasonable risk of harm to a patient if performed incorrectly.

We are proposing that, to be exempt from CLIA and categorized as waived, in accordance with the law, all test systems either be cleared by the FDA for home use or meet the requirements in CLIA to ensure that the test procedure is simple and not prone to error.

In response to the CLIAC recommendation, CDC developed a protocol to follow when requesting that tests be placed in the waived category. The protocol describes basic specifications for verifying that the test system meets the performance characteristics defined by the criteria. CDC proposed that, upon request of HHS as specified in § 493.2001, the CLIAC would review applications for waiver, in accordance with the waived criteria, and make recommendations to HHS concerning waiver status.

The proposed clarifications to the criteria for waiver addressing simplicity and accuracy and the proposed process to follow when requesting waived categorization were presented to the CLIAC test categorization subcommittee and subsequently to the full committee. The CLIAC endorsed the clarifications as well as the process for requesting waived categorization and recommended that the CLIA regulations be revised to incorporate the changes.

The CLIAC further recommended that all tests currently on the waived list be subject to the new clarifications to the criteria to determine if they should remain in the waived category. The committee thought that the method previously used to place tests in the waived category was too subjective and was concerned that some of the tests may not be sufficiently error-free to justify their continued waived status.

III. Proposed revisions

Clarified Criteria

In this regulation, we propose to delete § 493.15, which contains the current criteria for waived tests and a process to announce revisions to the list. In its place, we would: Clarify the waived criteria (outlined below), incorporate the clarification into our regulations at a new § 493.7, and place the remaining provisions, appropriately revised to reflect the new procedures, at § 493.9.

Following the recommendation from the CLIAC that we clarify the criteria for waiver, a number of resources, such as FDA protocols for defining tests suitable for home use and the National Committee for Clinical Laboratory Standards protocols for method evaluations, were used as reference materials. Since one of the main concerns of commenters on our previous CLIA rulemaking centered around the subjectiveness and ambiguity of applying the statutory criteria to categorize the tests as waived, we used information from these sources to clarify what we mean by "simple" and "not prone to error" as a mechanism to define the statutory phrase "have an insignificant risk of an erroneous result". We believe that test systems must possess certain characteristics that would make them easier to use and they also must be able to demonstrate a level of accuracy and precision that would ensure the correct test result is generated regardless of the user's level of expertise.

Below we have listed test system properties that we believe illustrate simplicity and ease of use. The test system:

- Uses direct unprocessed specimens, requires no specimen manipulation before analysis or analyst intervention during analysis, and provides direct readout of results. Quantitative tests must be fully automated while qualitative tests are limited to simple reagent impregnated devices that produce only a positive or negative result;
- Contains fail-safe mechanisms rendering no results when the results are outside of the reportable range or when the test system malfunctions;
- Requires no invasive test system troubleshooting, or electronic or mechanical maintenance; and
- Contains instructions written at a comprehension level no higher than seventh grade. Instructions would have to include step-by-step system operation and maintenance procedures; reagent preparation and storage; and calibrator and control preparation, storage, frequency of assay, and action to be taken if control or calibrator results are out of range.

We would consider a test for waiver if the test system has these characteristics. However, we are interested in receiving comments on alternative test system characteristics or approaches to define the statutory criterion related to test system simplicity.

The test system characteristics that we are proposing are designed to limit the amount of operator intervention or interpretive skill required to perform the test. Limiting operator intervention should prevent analysts without previous laboratory training or experience from inadvertently disrupting the analytic process and thus introducing human error into the testing procedure. The requirement for a fail-safe mechanism would prevent untrained operators from unknowingly accepting or utilizing incorrect results. In view of the fact that no previous training or experience is required before performing waived tests, test systems in the waived category should not require invasive troubleshooting or electronic or mechanical maintenance since these processes rely on the use of interpretive skills to make judgement decisions. We also believe that an "easy to use" test system must have instructions that are written at a comprehension level that would provide reasonable assurance that all likely users, regardless of background, training, or experience, would be able to read and understand the step-by-step procedures required to correctly perform testing. We are suggesting that a seventh grade comprehension level is appropriate to define the waived criteria because waived tests will not be subject to any personnel requirements and because waived tests must be simple and capable of providing accurate test results when performed by non-professional testing personnel. Inasmuch as the considerations for waiver are similar to those for FDA clearance of home-use products, and FDA requires that package inserts for

home-use tests be written at the seventh grade comprehension level, we are proposing that waived test system instructions be written at the same comprehension level.

Submission Requirements

To define test systems that are simple, easy to use, and not error prone, we are proposing that field studies be conducted to scientifically assess the accuracy and precision of the test. In this regulation, we are proposing basic criteria for manufacturers and producers to use in configuring these field studies.

The studies are designed to ensure that the test system generates consistent results regardless of the environment in which the testing is performed.

Specifically, we are proposing that these studies:

- Evaluate among-operator imprecision;
- Evaluate within-site imprecision at a minimum of three sites; and
- Evaluate among-site imprecision.

We are proposing to place no restrictions on the number of study participants or sites except for specifying that the within-site studies should be performed at a minimum of three sites. We believe it is appropriate to provide this flexibility in study design, which allows applicants to determine the number of participants and sites that are adequate to produce measures of performance that are both statistically valid and defensible. Also, the appropriateness of the number of study participants and sites might vary depending upon the analyte or test method.

Additionally, in this rule, we are proposing that the studies prove the test system's clinical reliability by demonstrating accuracy at all relevant medical decision points. To verify the credibility of the data, we are proposing in this rule that the number of participants and sites and the sampling process be adequate to produce measures of performance that are both statistically valid and defensible (estimates must support valid confidence limits for all statistical parameters). We are proposing that the studies be performed at non-laboratory sites to ensure that all users, professionals as well as lay persons, can perform waived testing with the same competence. We are proposing that the study participants have no previous laboratory experience or training to ensure that individuals used for study purposes have education, training and experience that is at a level no higher than that of the lowest trained persons anticipated to perform the test. We welcome comments and suggestions on the types of studies proposed in this rule and comments on our proposals for data submission.

Because waived tests would not be subject to any quality control requirements and we would not routinely conduct inspections of laboratories performing only waived tests, we propose to require the laboratory to notify the producer or manufacturer of the test system of any performance that does not meet the specifications as outlined in the test system instructions and would require the producer or manufacturer to include in the test system instructions the address and phone number of the person to contact. If the manufacturer or producer of the test system does not resolve the problem, we would require the laboratory to notify PHS of the problem.

We also would require that test system instructions include a statement to inform the laboratory that if the laboratory modifies or alters the test system instructions in any way (for example, changes in specimen type or sample amount), the test no longer meets the requirements for waiver and is considered to be high complexity and, thus, must meet all the applicable CLIA requirements in 42 CFR part 493.

Review Process

To ensure that tests categorized as waived are simple, accurate and essentially error-free, we would require that waived tests meet the clarified criteria. Once the final rule responding to the comments received to this proposed rule is published, we plan to evaluate requests for waiver, in accordance with the data submittal requirements and process for requesting waived categorization that would be included under § 493.7, and to apply the new requirements to currently waived tests. However, it should be noted that when the CLIA regulations are revised to incorporate changes to the waiver process, we expect that the review process for waived categorization of devices having similar test methodologies could be simplified. For example, if a test system employs the same methodology as a device that has been granted waiver in accordance with the final regulations, submission of studies showing accuracy and precision equivalency between the applicant test system and the waived test should be sufficient. These studies must reflect data that are adequate to produce measures of performance that are statistically valid and defensible and estimates must support valid confidence limits for all parameters.

In this rule, we are proposing that, after waiver has been granted, any change or modification by the maunfacturer or producer to the test system that could affect the test accuracy or reliability (that is, procedural changes that would now require operator intervention during the analytic process or method changes that require performance studies to reevaluate test validity) be resubmitted for evaluation and review. Changes to a test system that would not affect test performance, such as those made to improve component appearance or durability, would not have to be resubmitted.

The Department's purpose in issuing this proposed rule is to clarify the criteria for determining which tests should be waived. In this regard, there may be alternative formulations that would result in more, or fewer, waived tests. In this proposed rule, we specifically request comments concerning:

- Which proposed criteria might be modified (and how), as well as comments in support of the provisions contained in this proposed rule;
- The impact on patient access to care if these criteria are finalized;
- The health implications of any recommended changes, including not only the possibility of erroneous test results but also likely effects on patient health if additional testing is discouraged or encouraged (for example, by providing such testing in a doctor's office); and
- The potential that these criteria may or may not have for driving new technology toward more safe and accurate testing.

In addition, we are interested in receiving comments and suggestions about how we might include in the waived categorization process considerations related to the benefits to the public of categorizing tests as waived. Although the statute does not specify this as a criterion for waiver, we recognize this as a significant factor affecting access to care.

After the comments to this rule are evaluated and a final rule is published, we plan to follow the CLIAC recommendation that PHS reevaluate tests that were previously categorized as waived against any new regulatory criteria. If changes to the previously waived tests are necessary, we plan to publish a notice in the **Federal Register** soliciting comments on the proposed changes.

Waived Test List

In this rule, we propose to delete the generic list of waived tests from

§ 493.15. However, at § 493.7(c)(3), we would retain the provision, currently at § 493.15(d), to publish the names of the tests that are waived in a **Federal Register** notice with an opportunity for public comment. In addition, for consistency with the test categorization provisions in § 493.17(c)(1)(ii), we would make waived categorization effective on the date of notification to the applicant. Any entity that is notified of approval of its waiver application must be aware, however, that we may rescind this waiver approval and recategorize the test should comments we receive convince us that our initial waiver decision was inappropriate.

Summary of Proposed Changes to the Regulation

We propose to remove § 493.15 in its entirety. The criteria currently in § 493.15(b) for determining whether a given test can be categorized as waived would now be in a new § 493.7 and in greater detail. The requirements applicable to certificate of waiver laboratories (formerly at § 493.15(e)) would be expanded and placed in a new § 493.9.

In § 493.9, we would continue to require laboratories to follow the manufacturer's or producer's instructions when performing waived tests and to meet the requirements in subpart B of part 493. In line with the clarifications provided to the statutory criteria for categorizing tests as waived, we also would state that if a laboratory does not follow the manufacturer's or producer's instructions or makes a modification in the test system, the laboratory would no longer meet the requirements for certificate of waiver and the modified test, as performed by the laboratory, would be considered high complexity until otherwise categorized. If a laboratory or manufacturer desires official categorization of the modified test, it must submit a written request to PHS. Categorization of the modified product should occur within 30 days after PHS receives the request. In addition, laboratories would be required to report to PHS any performance problems not resolved by the producer or manufacturer of the test.

We would also make technical conforming changes to the following sections and headings because of our revisions concerning waived tests: §§ 493.2; 493.20(c); 493.25(d); 493.35 (a) and (d); 493.37(b)(1) and (g); 493.39 introductory paragraph and paragraph (a); 493.45 (a)(2) and (a)(3); 493.47(a)(2); 493.49 introductory paragraph and (b)(2)(iv); 493.53(a); 493.1775(b)(4)(iii) through (v), and (c).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Collection of Information Requirements

The proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Section 493.7: This section outlines the criteria a manufacturer must follow in order to have a test considered to be a "waived" test. These include but are not limited to test system characteristics, instructions, field studies and the evaluation of data.

Section 493.9: This section outlines the requirements for laboratories performing waived tests. These include following the manufacturers' instructions and reporting to PHS performance problems not resolved by the manufacturer.

Sections 493.35, 493.39, 493.49, 493.53: Sections 493.35 through 493.63 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. The information is gathered on form number HCFA-R-26. These sections outline the requirements for a laboratory to follow to submit application forms for CLIA certification. The requirements include laboratory notification to HHS of changes to the types of tests performed or changes in ownership, name, location or director.

Section 493.1775: Section 493.1775 is currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. This section sets forth conditions and standards for inspection of laboratories. The burden associated with inspections consists of retrieving the records and documentation requested by the inspector, participating in the entrance and exit interviews, responding to the statement of deficiencies that may result from the inspection and documenting any corrective actions taken that are appropriate to the plan of correction for the deficiencies cited.

When OMB approves those provisions not currently approved we will publish a notice in the **Federal Register** to that affect.

Description of Respondents

Section 493.7: Small businesses or organizations, businesses or other for profit, non-profit institutions, who manufacture laboratory tests.

Sections 493.9, 493.35, 493.39, 493.49, 493.53; 493.1775: Small businesses or organizations, businesses or other for profit, non-profit institutions, state and local governments, federal agencies.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

CFR sections	Annual No. of responses	Annual frequency	Average burden per response	Annual burden per hours
493.35, 493.39, 493.49, 493.53	28,700	1	.25 hr	7,175
493.1775	1,280([a])	1	4 hrs	2,560
493.7	20	1	168 hrs	3,360
493.9	<20	([b])	([b])	([b])

[a] Based on receiving complaints on 2 percent of waived laboratories (64,000) resulting in the survey of 1,280 waived laboratories with complaints in a two year period.

[b] Laboratories are responsible for following manufacturers' instructions when performing waived tests. Whenever a problem is encountered by the laboratory that is not resolved by the manufacturer, the laboratory must notify PHS. This should be an infrequent occurrence (manufacturers generally resolve problems identified by laboratories).

The agency has submitted a copy of the proposed rule to OMB for its review of these information collections. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. Comments should be sent to HCFA, HSQB, MPAS, C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850 and to the OMB official whose name appears in the ADDRESSES section of this preamble.

VI. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all laboratories and manufacturers and producers of laboratory test systems are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As a result of our evaluation of comments received on the test categorization portion of the February 28, 1992 regulations implementing CLIA and as a result of additional consultation with the CLIAC, we are proposing to clarify the criteria and process used to categorize laboratory tests as waived. Manufacturers and producers of laboratory test systems specifically suggested that the types of information and data to be submitted when requesting waived categorization be more clearly defined in order to ensure that the criteria are applied accurately and uniformly to all laboratory tests. The proposed expansion of the waived criteria and development of a process protocol would provide for consistent application of detailed standards in order to ensure that tests categorized as waived are either cleared by the FDA for home use or are simple to use, produce accurate results when testing is performed, and preclude any reasonable risk of harm to patients as a result of testing errors. Of course, manufacturers and producers would be required to submit specific information and data demonstrating that their test system meets the criteria for waived categorization. In some cases, manufacturers or producers of test systems might have to conduct additional studies to obtain the information required; however, much of the data is similar to that currently required by the FDA for clearance of products. In accordance with the law, this rule would provide that any test system cleared by the FDA for home use will, upon application by the manufacturer, be waived from CLIA. We anticipate that manufacturers and producers ultimately will benefit in the form of increased sales and distribution of tests categorized as waived.

Currently, almost one-half of all laboratories hold certificates of waiver. These laboratories would obviously benefit from an improved test categorization process that yields more waived tests. Any increase in the number of waived tests would benefit laboratories by reducing the regulatory burden, since laboratories limiting their services to waived test performance are not subject to the CLIA health and safety standards (including proficiency testing, quality control, personnel, recordkeeping and quality assurance requirements). Certificate of waiver laboratories are required only to register and follow manufacturers' and producers' instructions for test performance. In addition, increasing the number of waived tests would enable laboratories to provide an expanded test menu without incurring the higher fees associated with a regular CLIA certificate. The availability of an expanded test menu at less cost also may encourage new entities to begin providing services, thereby increasing access to health care, particularly in underserved and rural areas. Consumers of laboratory services would benefit from an enhanced range of laboratory services that have been determined to be safe and produce accurate results.

We have developed these clarifications to the waived criteria in an effort to improve the process of approving tests for waiver. We believe that using the better defined criteria would result in more tests being waived if for no other reason than because the improved waiver process should drive the technology toward simpler tests that would then be widely available (because of waived status). However, we realize that the number of tests waived could vary depending upon the revisions to the waiver process. Depending on how many more or fewer tests receive a waiver, there could be significant effects on patient health (due to more or less patient access to testing, as well as more or fewer test errors) and impact on manufacturers, producers and laboratories. We request comments on alternatives that might produce higher benefits or lower costs, taking into account all effects. We particularly solicit comments that can provide quantitative estimates of likely effects on patient health resulting from different waived criteria and, hence, waived tests.

As indicated above, we believe that over time the effect of this rule will be to expand the universe of waived tests, to the benefit of patients, laboratories, manufacturers, and producers. However, we are unable to quantify these likely long run effects because they depend on market decisions, research results, and technological change that cannot be predicted.

In the short run, we would not expect substantial effects. Currently there are nine waived tests and about 250 individual test systems or products representing nine analytes or specific types of procedures that have been approved as waived tests. Assuming that the final rule does not depart substantially from the proposed criteria, the great majority of individual tests would continue to be eligible for the waiver category. We expect that laboratories would continue to have a wide range of products/test systems available and would therefore not lose waiver status. At most, only a few products might not meet the clarified waived criteria and any such test system's manufacturer or producer would have the option of improving test accuracy.

This proposed rule would clarify the process and criteria for categorizing waived tests and possibly result in changes in the list of waived tests. Proper realignment of the fee schedule, if necessary, would follow implementation of this rule.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities or the operations of a substantial number of small rural hospitals. We do request comments, however, on possible adverse effects on affected entities and will consider these carefully in formulating the final rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 493

Grant programs-health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR part 493 would be amended as set forth below:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12), 1861(s)(13), 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11), 1395x(s)(12), 1395x(s)(13), 1395x(s)(14), 1395x(s)(15), and 1395x(s)(16)).

2. In § 493.2, in the definition of "CLIA certificate" the introductory text is republished and paragraph (2) and (5) are revised to read as follows:

§ 493.2 Definitions.

* * * * *

CLIA certificate means any of the following types of certificates issued by HCFA or its agent:

* * * * *

(2) *Certificate for provider-performed microscopy (PPM) procedures* means a certificate issued or reissued before the expiration date, pending an appeal, in accordance with § 493.47, to a laboratory in which a physician, midlevel practitioner or dentist performs no tests other than PPM procedures and, if desired, tests approved by PHS as waived under § 493.7.

* * * * *

(5) *Certificate of waiver* means a certificate issued or reissued before the expiration date, pending an appeal, in accordance with § 493.37, to a laboratory to perform only the tests approved by PHS as waived under § 493.7.

* * * * *

3. A new § 493.7 is added to read as follows:

§ 493.7 Waived tests.

(a) *Requirement.* For a test to be included in the waived category, the test system must meet the descriptive criteria specified in paragraph (b) of this section.

(b) *Criteria.* Test systems must be simple laboratory examinations and procedures that have an insignificant risk of an erroneous result. Test systems cleared by the FDA for home use meet the criteria specified in this section and will be approved for waiver following submission of the manufacturer's or producer's request for waiver approval.

(1) For quantitative tests, methods must be simple (easy to use) and accurate as evidenced by the following items:

(i) Test systems that have the following characteristics:

(A) Are fully automated or self-contained.

(B) Use only direct unprocessed specimens.

(C) Require no specimen manipulation before the analytic phase of operation.

(D) Require no operator intervention during the analytic phase.

(E) Provide a direct readout of results; that is, require no calculations or conversions.

(F) Contain fail-safe mechanisms that render no result when the test system malfunctions and initiate fail-safe mechanisms rendering no test result when the result is outside the reportable range.

(G) Require no invasive test system troubleshooting to be performed by testing personnel and include no electronic or mechanical maintenance to be performed by testing personnel.

(ii) Test system instructions that are written at a comprehension level no higher than the seventh grade (as demonstrated by accepted academic standards) and that address the following items:

(A) Analytical skills required of personnel performing the test.

(B) Attributes or limitations of the physical environment or conditions for test performance.

(C) Requirements for specimen collection, handling, storage and preservation.

(D) Reportable range for patient results.

(E) Reference range (normal values).

(F) Step-by-step protocols that include, as appropriate, the following items:

(*1*) Instrument or test system operation and test performance instructions.

(*2*) Test system maintenance procedures.

(*3*) Preparation and storage of reagents, calibrators, controls or other materials used in testing.

(*4*) Control procedures, including the type of materials, suggested concentrations, and frequency of assay.

(*5*) Calibration procedures, including the number and type of materials and frequency of assay.

(*6*) Acceptable ranges for any control or calibration material included with the test system.

(*7*) Action to be taken when calibration or control results do not meet the acceptable range of values.

(*8*) Description of course of action to be taken when the test system becomes inoperable.

(iii) Field studies that meet the following criteria:

(A) Are performed at nonlaboratory sites.

(B) Include study participants who have no previous laboratory experience or training. The number of participants and sites selected must be adequate to produce measures of performance that are both statistically valid and defensible.

(C) Demonstrate that the manufacturer's or producer's written instructions are the only protocols required to perform the test accurately and reliably.

(D) Demonstrate that the test system produces accurate results under the testing conditions and within the physical environment specifications defined in the test system instructions.

(E) For those tests that employ calibration, demonstrate that calibration is stable over the calibration frequency interval or that a fail-safe mechanism rendering no result is initiated when the test system is out of calibration.

(iv) Data from field studies that meet the following criteria:

(A) Are generated from protocols that address the points described in paragraph (b)(1)(iii) of this section.

(B) Are adequate to produce measures of performance that are both statistically valid and defensible (estimates must support valid confidence limits for all statistical parameters).

(C) Evaluate performance at all medical decision points and relevant upper and lower limits of the reportable range using at least three concentrations of the analyte being tested.

(D) Evaluate among-operator imprecision using test results of all study participants.

(E) Evaluate within-site imprecision using test results generated at each site by an adequate number of participants to produce measures of performance that are statistically valid and defensible. Testing must be performed at a minimum of three independent study sites.

(F) Evaluate among-site imprecision at an adequate number of sites to produce measures of performance that are statistically valid and defensible.

(G) Demonstrate that the total amount of imprecision, which includes all components contributing to imprecision as demonstrated by studies described in paragraphs (b)(1)(iv) (D), (E) and (F) of this section, is less than one-fourth of the reference range for the analyte divided by the mean of the reference interval.

(v) Method accuracy studies demonstrating that the test system is not affected by systematic error when—

(A) Using reference materials assayed by study participants that produce data that prove there is no statistically significant difference between the test results and the value of the reference materials;

(B) Using patient samples instead of reference materials, proving that there is no statistically significant difference between test results obtained on patient and reference materials due to the effects of the sample matrix; and

(C) Using patient samples containing substances that commonly cause interference, confirming there is no introduction of error due to the presence of these substances.

(2) For qualitative tests, methods must be simple (easy to use) and accurate as evidenced by the following items:

(i) Test systems that have the following characteristics:

(A) Use only direct unprocessed specimens.

(B) Require no specimen manipulation before performing the testing procedure.

(C) Contain no procedural steps beyond adding a sample to a reagent impregnated device.

(D) Require no specimen manipulation during the procedure.

(E) Require a well-defined distinct endpoint that is limited to positive or negative interpretation.

(F) Contain fail-safe mechanisms that render no result when the test system malfunctions.

(ii) Test system instructions that are written at a comprehension level no higher than the seventh grade (as demonstrated by accepted academic standards) and that address the following items, as appropriate:

(A) Analytical skills required of personnel performing the test.

(B) Attributes or limitations of the physical environment or conditions for test performance:

(C) Requirements for specimen collection, handling, storage and preservation.

(D) Patient result reporting.

(E) Reference range (normal values).

(F) Step-by-step protocols that include, as appropriate, the following items:

(*1*) Test performance instructions.

(*2*) Preparation and storage of reagents, calibrators, controls or other materials used in testing.

(*3*) Control procedures, including the type of materials and frequency of assay.

(*4*) Calibration procedures, including the number and type of materials and frequency of assay.

(*5*) Acceptable ranges for any control or calibration material included with the test system.

(*6*) Action to be taken when calibration or control results do not meet the acceptable range of values.

(*7*) The correct interpretation of test endpoints.

(*8*) Description of course of action to be taken when test endpoints cannot be determined.

(iii) Field studies that meet the following requirements:

(A) Are performed at nonlaboratory sites.

(B) Include study participants who have no previous laboratory experience or training. The number of participants and sites selected must be adequate to produce measures of performance that are both statistically valid and defensible.

(C) Demonstrate that the manufacturer's or producer's written instructions are the only protocols required to perform the test accurately and reliably.

(D) Demonstrate that the test system produces accurate results under the testing conditions and within the physical environment specifications defined in the test system instructions.

(E) For those tests that employ calibration, demonstrate that calibration is stable over the calibration frequency interval or that a fail-safe mechanism rendering no result is initiated when the test system is out of calibration.

(iv) Data from field studies that meet the following requirements:

(A) Are generated from protocols that address the points described in paragraph (b)(2)(iii) of this section.

(B) Are adequate to produce measures of performance that are both statistically valid and defensible.

(C) Confirm that study participants are able to read the test endpoint with the same precision as laboratory professionals.

(D) Confirm that the performance of study participants is essentially the same as laboratory professionals when testing samples at or near the cutoff and at sufficient distance above and below the cutoff to confirm precision at all analytical decision points.

(E) Demonstrate minimal among-operator imprecision using results of all study participants.

(F) Demonstrate minimal within-site imprecision using test results generated at each site by an adequate number of participants to produce measures of performance that are statistically valid and defensible. Testing must be performed at a minimum of three independent study sites.

(G) Using results generated by study participants, on aliquots of a single testing material, demonstrate minimal among-site imprecision at an adequate number of sites to produce measures of performance that are statistically valid and defensible.

(v) Method accuracy studies demonstrating that there is no statistically significant difference between observed values and expected values at the cutoff point when—

(A) The test values are compared to a quantitative result such as the value of a reference material or the presence or absence of a particular biologic component;

(B) Confirming that there are no significant equivocal test results on either side of the cutoff;

(C) Comparing results between study participants and laboratory professionals on samples with values at the cutoff;

(D) The test is performed on patient samples instead of reference materials, confirming there is no introduction of error due to sample matrix; and

(E) Samples contain substances that commonly cause interference, confirming there is no introduction of error due to these substances.

(c) *Waiver process*—(1) *Process for requesting waived status.* (i) Requests for waiver of tests must be submitted to PHS.

(ii) PHS reviews requests for waiver that meet the criteria specified in paragraph (b) of this section and the submission requirements under paragraph (c)(2) of this section.

(iii) The Clinical Laboratory Improvement Advisory Committee (CLIAC), as specified in subpart T of this part, conducts reviews upon request of HHS and makes recommendations to HHS concerning the waiver of tests.

(iv) Any change or modification to a test system by the manufacturer or producer that could affect the accuracy or reliability of the waived test must be resubmitted to PHS for evaluation and review. Until this review is completed and status is determined, the modified test is considered uncategorized and, in accordance with § 493.17(c)(4), is considered high complexity.

(v) A request for reconsideration of a test denied waived status is accepted for review if the request is based on information not previously submitted.

(2) *Submission requirements*—(i) Requests for waiver must meet the criteria described in paragraph (b) of this section. In the event that a request does not include complete information, the request is not reviewed and the manufacturer or producer of the test system is notified.

(ii) Data collection protocols and data submitted must be complete and data submitted must be statistically valid and meet the criteria described under paragraph (b) of this section.

(iii) Test system instructions must be complete and must include, as applicable, the items defined in paragraph (b)(1)(ii) of this section for quantitative tests and under paragraph (b)(2)(ii) of this section for qualitative tests. In addition, test system instructions must include the following statements:

(A) "Any modification by the laboratory to the test system or the PHS-approved test system instructions will result in the test no longer meeting the requirements for waived categorization. A modified test is considered to be high complexity and is subject to all applicable CLIA requirements contained in 42 CFR part 493."

(B) "The laboratory must notify the manufacturer or producer of this test system of any performance, perceived or validated, that does not meet the performance specifications as outlined in the instructions." The name, address and phone number(s) of the manufacturer's or producer's contact person(s) must follow this statement.

(iv) Using the criteria specified in paragraph (b) of this section, each test categorized as waived before [date of publication of final rule] will be reevaluated by PHS.

(3) *Notification of decision*—(i) PHS determines whether a laboratory test meets the criteria listed under paragraph (b) of this section for a waived test.

(ii) PHS notifies the applicant of the waived categorization determination, whether denied or granted.

(iii) Waived categorization is effective as of the date of notification to the applicant.

(iv) PHS publishes additions and revisions periodically to the tests categorized as waived in the **Federal Register** in a notice with an opportunity for public comment. PHS reserves the right to reevaluate and recategorize a test based upon the comments it receives in response to the **Federal Register** notice.

4. A new § 493.9 is added to read as follows:

§ 493.9 Laboratories performing waived tests.

(a) A laboratory may qualify for a certificate of waiver under section 353 of the PHS Act if it restricts its test performance to one or more tests approved by PHS as waived under § 493.7.

(b) Laboratories issued a certificate of waiver must meet the following requirements:

(1) Follow the manufacturer's or producer's instructions for performing the test. If a laboratory does not follow the manufacturer's or producer's test system instructions, the laboratory no longer meets the requirements for a certificate of waiver and the modified test, as performed by the laboratory, is considered high complexity until otherwise categorized.

(2) Report to PHS any performance problems not resolved by the manufacturer or producer of the test.

(3) Meet the requirements in subpart B of this part.

§ 493.15 [Removed]

5. Section 493.15 is removed.

6. In § 493.20, paragraph (c) is revised to read as follows:

§ 492.20 Laboratories performing tests of moderate complexity.

* * * * *

(c) If the laboratory also performs waived tests, compliance with subparts H, J, K, M, and P of this part is not applicable to the waived tests. However, the laboratory must comply with the requirements in §§ 493.9(b) and 493.1775.

7. In § 493.25 paragraph (d) is revised to read as follows:

§ 493.25 Laboratories performing tests of high complexity.

* * * * *

(d) If the laboratory also performs waived tests, the requirements of subparts H, J, K, M, and P are not applicable to the waived tests. However, the laboratory must comply with the requirements in §§ 493.9(b) and 493.1775.

8. In § 493.35, paragraphs (a) and (d) are revised to read as follows:

§ 493.35 Application for a certificate of waiver.

(a) *Filing of application*. Except as specified in paragraph (b) of this section, a laboratory performing only one or more tests approved by PHS as waived under § 493.7 must file a separate application for each laboratory location.

* * * * *

(d) *Access requirements*. Laboratories that perform one or more tests approved by PHS as waived under § 493.7 and no other tests must meet the following conditions:

(1) Make records available and submit reports to HHS as HHS may reasonably require to determine compliance with this section and § 493.9(b).

(2) Agree to permit announced and unannounced inspections by HHS in accordance with subpart Q of this part under the following circumstances:

(i) When HHS has substantive reason to believe that the laboratory is being operated in a manner that constitutes an imminent and serious risk to human health.

(ii) To evaluate complaints from the public.

(iii) On a random basis to determine whether the laboratory is performing tests not approved by PHS as waived under § 493.7.

(iv) To collect information regarding the appropriateness of tests approved by PHS as waived under § 493.7.

* * * * *

9. In § 493.37, the introductory text of paragraph (b) is republished and paragraphs (b)(1) and (g) are revised to read as follows:

§ 493.37 Requirements for a certificate of waiver.

* * * * *

(b) Laboratories issued a certificate of waiver—(1) Are subject to the requirements of this subpart and § 493.9(b); and

* * * * *

(g) A laboratory with a certificate of waiver that wishes to perform examinations or tests not approved by PHS as waived under § 493.7 must meet the requirements set forth in subpart C or subpart D of this part, as applicable.

10. In § 493.39, the introductory text and paragraph (a) are revised to read as follows:

§ 493.39 Notification requirements for laboratories issued a certificate of waiver.

Laboratories performing one or more tests approved by PHS as waived under § 493.7 and no others must notify HHS or its designee—

(a) Before performing and reporting results for any test not approved by PHS as a waived under § 493.7 for which the laboratory does not have the appropriate certificate as required in subpart C or subpart D of this part, as applicable; and

* * * * *

11. In § 493.45, the introductory text of paragraph (a) is republished,

paragraph (a)(3) is removed, and paragraph (a)(2) is revised to read as follows:

§ 493.45 Requirements for a registration certificate.

* * * * *

(a) A registration certificate is required—

* * * * *

(2) For all laboratories that have been issued a certificate of waiver or certificate for PPM procedures that intend to perform tests of moderate or high complexity, or both, in addition to those tests approved by PHS as waived under § 493.7 or specified as PPM procedures.

* * * * *

12. In § 493.47, paragraph (a) is revised to read as follows:

§ 493.47 Requirements for a certificate for provider-performed microscopy (PPM) procedures.

(a) A certificate for PPM procedures is required—

(1) Initially for all laboratories performing test procedures specified as PPM procedures; and

(2) For all certificate of waiver laboratories that intend to perform only test procedures specified as PPM procedures in addition to those tests approved by PHS as waived under § 493.7.

* * * * *

13. In § 493.49, the introductory text of paragraphs (b) and (b)(2) are republished and the introductory text of the section and paragraph (b)(2)(iv) are revised to read as follows:

§ 493.49 Requirements for a certificate of compliance.

A certificate of compliance may include any combination of tests categorized as high complexity or moderate complexity or approved by PHS as waived under § 493.7. Moderate complexity tests may include those specified as PPM procedures.

* * * * *

(b) Laboratories issued a certificate of compliance—

* * * * *

(2) Must permit announced or unannounced inspections by HHS in accordance with subpart Q of this part—

* * * * *

(iv) To collect information regarding the appropriateness of tests approved by PHS as waived under § 493.7 or tests categorized as moderate complexity (including the subcategory) or high complexity.

* * * * *

14. In § 493.53, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 493.53 Notification requirements for laboratories issued a certificate for provider-performed microscopy (PPM) procedures.

Laboratories issued a certificate for PPM procedures must notify HHS or its designee—

(a) Before performing and reporting results for any test of moderate or high complexity, or both, in addition to tests specified as PPM procedures or any test or examination that is not approved by PHS as waived under § 493.7 for which it does not have a registration certificate as required in subpart C or subpart D, as applicable, of this part; and

* * * * *

15. In § 493.1775, the introductory text of paragraphs (b) and (b)(4) is republished and paragraph (b)(4)(iv) is redesignated as (b)(4)(v), a new (b)(4)(iv) is added, and paragraphs (b)(4)(iii) and (c) are revised to read as follows:

§ 493.1775 Condition: Inspection of laboratories issued a certificate of waiver.

* * * * *

(b) The laboratory may be required, as part of this inspection, to—

* * * * *

(4) Permit HHS or its designee upon request to review all information and data necessary to—

* * * * *

(iii) Determine whether the laboratory is performing tests not approved by PHS as waived under § 493.7;

(iv) Determine whether the laboratory is performing the test in accordance with the manufacturer's or producer's instructions; and

* * * * *

(c) The laboratory must provide upon reasonable request all information and data needed by HHS or its designee to make a determination of compliance with the requirements of part 493. Requirements for the purposes of this section are located in subparts A and B or subpart D, if applicable, of this part.

* * * * *

Authority: Sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: May 18, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: June 2, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–22378 Filed 9–12–95; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[WT Docket No. 95–132; FCC 95–352]

Designate Sault Ste. Marie, Michigan; San Francisco, California, and Morgan City, Louisiana as a Radio Protection Area for Mandatory Vessel Traffic Services (VTS)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has proposed rules to add Sault Ste. Marie, Michigan; San Francisco, California, and Morgan City, Louisiana to the United States Coast Guard (Coast Guard) designated radio protection areas for mandatory VTS and establish marine VHF Channel 12 as the VTS frequency for Sault Ste. Marie, Michigan; San Francisco, California; and Channel 11 as the VTS frequency for Morgan City, Louisiana. This action is in response to a request from the Coast Guard. The designation of Sault Ste. Marie, Michigan; San Francisco, California; and Morgan City, Louisiana as a VTS areas will allow the Coast Guard to manage vessel traffic in a more efficient manner.

DATES: Comments must be submitted on or before October 23, 1995; Reply comments on or before November 7, 1995.

FOR FURTHER INFORMATION CONTACT: James Shaffer, (202) 418–0680, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* FCC 95–352, adopted August 9, 1995, and released August 30, 1995. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, D.C. 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. The Coast Guard filed a petition (RM–8500, 8592, 8598), Public Notice No. 2023 and 2057, requesting that the Commission amend Part 80 of the Rules, 47 CFR Part 80, to add Sault Ste. Marie, Michigan; San Francisco, California; and Morgan City, Louisiana to the Coast

Guard designated radio protection areas for mandatory VTS and established marine VHF Channel 12 as the VTS frequency for Sault Ste. Marie, Michigan; San Francisco, California; and Channel 11 as the VTS frequency for Morgan City, Louisiana.

2. Under the Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act of 1978 and the Oil Pollution Act of 1990, the Coast Guard may construct, operate, maintain, improve or expand VTS systems in any port or place under the jurisdiction of the United States, including the navigable waters of the United States, or in any covered by an international agreement negotiated pursuant to 33 U.S.C. § 1230. The Ports and Waterways Safety Act requires certain designated vessels which operate in a VTS area to utilize and comply with the VTS. Marine accidents in recent years have underscored the need for improving safety on the nation's waterways. Moreover, Congress mandated VTS participation in section 4107 of the Oil Pollution Act, 33 U.S.C. § 1223(a)(2). The Coast Guard has amended its VTS regulations to make participation in all VTS systems mandatory. A VTS system instills order and predictability on a waterway by coordinating vessel movements through the collection, verification, organization, and dissemination of information.

3. Designating Sault Ste. Marie and Berwick Bay as VTS areas will allow the Coast Guard to manage vessel traffic in those areas more efficiently and will help protect the marine environment by preventing vessel collisions and groundings. We propose, therefore, to add Sault Ste. Marie and Berwick Bay to the Commission's list of designated radio protection area for VTS systems specified in Section 80.383. The radio protection area for Sault Ste. Marie will be defined as "The rectangle between North latitudes 45 degrees and 47 degrees, and West longitudes 83 degrees and 85 degrees." The radio protection area for Berwick Bay will be defined as "The rectangle between North latitudes 28 degrees 30 minutes and 30 degrees 30 minutes, and West longitudes 90 degrees 50 minutes and 92 degrees." This area is part of the New Orleans VTS which discontinued operations on July 30, 1988, due to budgetary constraints.

4. We propose to designate Channel 12 (156.600 MHz) as a second radio frequency for use within the San Francisco VTS radio protection area. The density of vessel traffic in the San Francisco Bay, which includes numerous recreational boats, ferries and commercial fishing boats, severely constrains the ability of large vessels to maneuver in the event of an emergency. The Coast Guard states that with mandatory participation, the current VTS channel, Channel 14 (156.700 MHz), will be inadequate to ensure safe and reliable communications in this busy and environmentally sensitive area. The addition of Channel 12 will permit increased navigational safety in the area by organizing traffic flow patterns, reduced meeting, crossing and overtaking situations between large vessels in tight spaces, and limited vessel speed. We propose to permit private coast stations currently authorized on Channel 12 within the proposed San Francisco VTS area to operate until the end of their current license term on a noninterference basis.[1] The staff will help affected licensees find suitable alternative channels. No fee will be charged for affected stations that apply for modification for an alternative channel before their next renewal.

5. We propose to amend Section 0.331 to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the United States Coast Guard to designate radio protection areas for mandatory VTS and establish marine channels as VTS frequencies for these areas. This will allow the Commission to expedite these requests, which will increase safe vessel transit and protect U.S. waters and associated natural resources from environmental harm.

6. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The change proposed herein will have a beneficial effect on the marine community by allowing the Coast Guard to manage vessel traffic in the Prince William Sound area in a more efficient manner. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601–612 (1980).

List of Subjects in 47 CFR Part 80

Communications equipment, Marine safety.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22635 Filed 9–12–95; 8:45 am]

BILLING CODE 6712–01–M

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[1] There currently are six licensed private coast stations within the proposed designated radio protected area that would be affected by this proposal.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No.950830222–5222–01; I.D. 062795B]

RIN 0648–AH69

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawling Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); notice of receipt of petition for rulemaking; request for comments.

SUMMARY: NMFS announces that it is considering proposing regulations that would identify special sea turtle management areas in the southeastern Atlantic and Gulf of Mexico and impose additional conservation measures to protect sea turtles in these areas. This ANPR is in response to the need for such measures identified in NMFS' biological opinions on shrimp trawling, as well as NMFS' recent experience and additional information regarding the need to more effectively protect sea turtles from incidental capture and mortality in the shrimp trawl fishery. NMFS also received a petition for rulemaking from the Texas Shrimp Association (TSA) to revise the current sea turtle conservation requirements for the shrimp trawl fishery in the southeastern United States. The petition is based on a report: "Sea Turtle and Shrimp Fishery Interactions—Is a New Management Strategy Needed?" prepared by LGL Ecological Research Associates, Inc., for TSA (LGL Report). NMFS is soliciting public comment on the LGL Report and information on sea turtles and shrimp trawling and the need for identification of certain areas in the southeastern United States that require special management measures, and what those measures should be.

DATES: Written comments will be accepted through November 13, 1995.

ADDRESSES: Written comments on this ANPR and the LGL Report and requests for copies of the Shrimp Fishery Emergency Response Plan (ERP) and the LGL Report may be submitted to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Phil Williams, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

NMFS consults on shrimp fishing operations in the southeastern United States that may affect listed sea turtles, pursuant to section 7 of the ESA. These shrimp fishing operations are managed, in part, under the Gulf of Mexico Shrimp Fishery Management Plan and the South Atlantic Shrimp Fishery Management Plan, both implemented pursuant to the Magnuson Fisheries Management and Conservation Act (16 U.S.C. 1801 *et seq.*), and the sea turtle conservation regulations at 50 CFR part 227, subpart D, implemented under the ESA.

Unprecedented levels of sea turtle strandings in Texas, Louisiana, and Georgia associated with shrimp fishing during 1994 resulted in a reinitiation of consultation pursuant to 50 CFR 402.16 on shrimp fishing in the southeastern United States. The resulting Biological Opinion (Opinion), issued on November 14, 1994, concluded that continued long-term operation of the fishery under the current management regime is likely to jeopardize the continued existence of the Kemp's ridley and prevent the recovery of loggerheads, but it identified a reasonable and prudent alternative to allow the fishery to continue while avoiding jeopardy. One component of the alternative required the establishment of sea turtle special management areas and permanent rules to reduce the impacts of intensive nearshore shrimping and prevent repeated incidental capture of individual turtles in those areas. An additional component required the development of a Shrimp Fishery Emergency Response Plan (ERP) to identify the actions NMFS would take in response to sea turtle stranding events and to ensure compliance with sea turtle conservation regulations. NMFS approved the ERP on March 14, 1995, and circulated it widely on March 17, 1995. A notice of the ERP's availability was published on April 21, 1995 (60 FR 19885).

NMFS has implemented several temporary restrictions on shrimp trawling during the 1995 season in both the Gulf and the southeast Atlantic, based on the guidance provided in the ERP. Temporary conservation measures restricting the use of certain types of turtle excluder devices (TEDs) and other fishing gear and were first imposed in areas off Texas (60 FR 21741, May 3, 1995) and were modified based on comments from industry (60 FR 26691, May 18, 1995). The same restrictions, as modified, were then imposed in areas off Georgia (60 FR 32121, June 20, 1995). Based on further public comment, restrictions were modified and, through separate rulemaking, were again imposed on August 11, 1995 (60 FR 42809, August 17, 1995) in areas off Georgia and South Carolina. NMFS was prepared to impose similar restrictions in areas off Texas, but a court order eliminated the need for these restrictions; instead, NMFS implemented the restrictions identified in the court order on August 24, 1995 (60 FR 44780, August 29, 1995).

NMFS intended the ERP to be an interim plan to guide its actions and to ensure compliance with sea turtle conservation regulations when strandings approached or met the authorized incidental take levels. Indeed, the Opinion requires that NMFS identify areas requiring special sea turtle management consideration, due to high sea turtle abundance or important nesting or foraging habitats, propose permanent management measures to mitigate the impacts of intensive nearshore shrimping, and prevent repeated incidental capture of individual turtles. These proposed conservation measures could include prohibitions on nighttime shrimping, restrictions on the number and size of trawl nets, restriction on the size of trynets, authorization of only top-opening hard-grid TEDs, reducing the density of shrimp vessels, and temporary area closures. The Opinion requires that the areas be identified by November 14, 1995, and that NMFS propose certain management measures in these areas. NMFS is inviting public comment on what areas and what measures should be included in such a rulemaking.

NMFS received a request from TSA that the LGL Report be treated as a petition for issuance, amendment or repeal of a rule under the rulemaking petition provision of the Administrative Procedures Act, at 5 U.S.C. 553 (e).

NMFS is inviting public comment to assist in determining what, if any, conservation measures should be required of the shrimp trawl fishery to reduce unusual mortalities of sea turtles. NMFS considers the LGL Report as a proposal to revise the existing sea turtle conservation regulations. Through this ANPR, all interested parties are invited to submit comments and information (see **ADDRESSES**).

Copies of the ERP and LGL Report, are available (see **ADDRESSES**).

Dated: September 6, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–22645 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 177

Wednesday, September 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Fourth Quarter of 1995

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the fourth quarter of 1995.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the fourth calendar quarter of 1995.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning October 1, 1995, and ending December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, room 2230-s, 14th Street & Independence Avenue, SW. AgBox 1522, Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the fourth calendar quarter of 1995 for municipal rate electric loans. Pursuant to regulations originally published by the Rural Electrification Administration (REA) at 7 CFR 1714.5, the interest rates on advances from municipal rate loans are based on indexes published in the "Bond Buyer" for the four weeks prior to the first Friday of the last month before the beginning of the quarter.

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 101 Stat. 3178), signed by President Clinton on October 13, 1994, provides for the establishment of RUS as successor to REA with respect to various programs, including the electric loan program established by the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*). On October 20, 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, establishing RUS and abolishing REA. Therefore, RUS is publishing this notice implementing a rule originally published by REA.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the fourth calendar quarter of 1995.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2016 or later	6.000
2015	6.000
2014	6.000
2013	5.875
2012	5.875
2011	5.750
2010	5.625
2009	5.625
2008	5.500
2007	5.375
2006	5.250
2005	5.000
2004	5.000
2003	4.875
2002	4.750
2001	4.625
2000	4.500
1999	4.375
1998	4.250
1997	4.000
1996	3.875

Dated: September 6, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–22632 Filed 9–12–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 950901225–5225–01]

Annual Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides on a comparable classification basis annual sales and purchases for 1995 and inventories for 1994 and 1995. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Nancy A. Piesto or Edward Murphy on (301) 457–2779.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on wholesale trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1995 Annual Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above. This survey has been submitted to the Office of Management and Budget, in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was cleared under OMB Control No. 0607–0195. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: September 6, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–22719 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

[Docket 50–95]

Proposed Foreign-Trade Zone—Kodiak, Alaska, Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Kodiak Island Borough (an Alaskan municipal corporation), requesting authority to establish a general-purpose foreign-trade zone at sites on Kodiak Island. Designation of the Kodiak Airport as a Customs user fee airport is being requested under separate application to the U.S. Customs Service. The FTZ application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 31, 1995. The applicant is authorized to make the proposal under Alaska Statutes, Chapter 77, Section 10.

The proposed zone would consist of eleven sites (4,265 acres) within the City of Kodiak and the Kodiak Island Borough: *Site 1* (Kodiak Space Launch Complex—3,077 acres)—at Narrow Cape, 45 miles SW of the City of Kodiak; *Site 2* (Port of Kodiak/Pier II—4 acres)—City and Port of Kodiak, 403 Marine Way; *Site 3* (Port of Kodiak/Pier III/Sea-Land—4.5 acres)—727 Shelikof, Kodiak; *Site 4* (Port of Kodiak—St. Herman Harbor, Near Island—380 acres); *Site 5* (Fuller's Boatyard Industrial Center—4.3 acres) Marine Way, Kodiak; *Site 6* (International Seafoods of Alaska—5.5 acres)—Marine Way, Kodiak; *Site 7A (13 acres) & 7B (32 acres)*—(Natives of Kodiak, Inc.—45 acres)—2 miles SW of the City of Kodiak on West Rezanof Drive; *Site 8*—(Kodiak State Airport—611.55 acres)—1500 Anton Larsen Bay Road; *Site 9*—(Lash Terminal—Seaport Terminal Services—78.5 acres)—7205 West Rezanof Drive, Kodiak; *Site 10A (44.94 acres) & 10B (9.16 acres)*—(Koniag Regional Native Corp.—53 acres) 2 sites located at the following distances SW of the City of Kodiak on East Rezanof Drive at the head of Womens Bay (10A—Bruhn Point—7.5 miles; 10B—Frye Point—9 miles); and, *Site 11* (Old Harbor—1.5 acres) south portion of the former Old Harbor Airport on Three Saints Avenue.

The application contains evidence of the need for zone services in the Kodiak, Alaska, area. Site 1, the Kodiak Space Launch Complex, will serve as the primary site. It includes launch pads, rocket storage and assembly facilities, and a satellite payload assembly facility. In regard to usage of the proposed sites, in general, several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as oil spill response mobile vans, seafood, boats and logs. No manufacturing approvals are being sought at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on October 5, 1995, 9:00 a.m., Kodiak Island Borough Assembly Chambers, Borough Building, 710 Mill Bay Road, Kodiak, Alaska 99615–6340.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 13, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 14-day period (to November 22, 1995).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Kodiak Island Borough Mayor's Office, Borough Building, 710 Mill Bay Road, Kodiak, Alaska 99615–6340

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: September 6, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–22763 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 090695A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting.

DATES: The meeting will be held on October 2, 1995, from 1:00 p.m. until 5:00 p.m.; on October 3 and October 4, from 8:00 a.m. until 5:00 p.m. each day, and on October 5, from 8:00 a.m. until 12:00 noon.

ADDRESSES: This meeting will be held at the NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL; telephone: (305) 361–4284.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

The Reef Fish Stock Assessment Panel (Panel) will review a recent assessment of the status of the red snapper stock and develop the range of allowable biological catch (ABC) for the 1996 season. This panel of scientists will develop the ABC range from the assessment prepared by NMFS. The Panel also will consider information on the use of marine sanctuaries and restoration periods for red snapper and will draft the Panel report to the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patricia Bear at the Council (see **ADDRESSES**) by September 22, 1995.

Dated: September 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22764 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

September 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–

4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 5371, published on January 27, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 14, 1995, you are directed to amend the January 24, 1995 directive to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
347/348	1,807,507 dozen.
351/651	556,644 dozen.
638/639	1,053,730 dozen.
645/646	220,292 dozen.
847	456,880 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–22694 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

September 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17325, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 14, 1995, you are directed to amend the directive dated March 30, 1995 to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
Levels in Group I	
200	724,490 kilograms.
219	6,484,406 square meters.
225	5,323,210 square meters.
313	13,749,037 square meters.
314	50,178,236 square meters.
331/631	1,609,343 dozen pairs.
334/335	203,688 dozen.
342/642	311,196 dozen.
347/348	1,708,475 dozen.
359–S/659–S[2]	1,296,246 kilograms.
360	1,153,654 numbers.
361	1,153,654 numbers.
443	91,182 numbers.
445/446	46,050 dozen.
447	17,246 dozen.
448	17,458 dozen.
604–A[3]	487,623 kilograms.
611	5,496,469 square meters.
618	2,883,343 square meters.
619/620	8,036,726 square meters.
625/626/627/628/629	21,094,443 square meters.
634/635	257,995 dozen.
641	1,840,587 dozen.
643	270,472 numbers.
644	353,779 numbers.
645/646	663,381 dozen.
847	351,774 dozen.
Subgroup in Group II	
400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465, 469, as a group.	3,179,889 square meters equivalent.
In Group II subgroup	
435	48,903 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[3] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–22695 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

September 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339 is being increased for special shift, reducing the limit for Categories 638/639 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17333, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 14, 1995, you are directed to amend the directive dated March 30, 1995 to adjust the limits for the following categories, as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
Levels not in a group	
338/339	416,148 dozen.
638/639	366,699 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22696 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

September 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 14, 1995, you are directed to amend further the directive dated December 16, 1994 to adjust the limits for the following categories, as provided under the terms of the bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit[1]
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C[2], 359–V[3], 360–363, 369–D[4], 369–H[5], 369–L[6], 410, 433-436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C[7], 659–H[8], 659–S[9], 666, 669–P[10], 670–L[11], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,398,242,981 square meters equivalent.
Sublevels in Group I	
218	11,253,459 square meters.
338/339	2,476,533 dozen of which not more than 1,879,960 dozen shall be in Categories 338–S/339–S[12].
359–C	570,540 kilograms.
369–L	3,130,465 kilograms.
Group II	
330, 332, 349, 353, 354, 359–O[13], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O[14], as a group.	123,554,464 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V[15], 224–O[16], 225, 227, 229, 369–O[17], 400, 414, 464, 465, 469, 600, 603, 604–O[18], 606, 618–622, 624–629, 665, 669–O[19] and 670–O[20], as a group.	260,913,574 square meters equivalent.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,036,942 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[12] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[13] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[14] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[15] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[16] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[17] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S)

[18] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[19] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[20] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22697 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Fall General Board of the USAF Scientific Advisory Board will meet on 19–20 October 1995 at Andrews AFB, MD from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is for the board to receive feedback on the studies of the past year, hear special topics, and provide a forum for organizing and focusing the Board for the upcoming year.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–22657 Filed 9–12–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office, Award Based on Acceptance of an Unsolicited Application, University of Illinois—Energy Resources Center

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, announces its intent to award a grant to the University of Illinois—Energy Resources Center. The University's unsolicited application was found to be meritorious by DOE based on the evaluation criteria set forth in 10 C.F.R. 600.14(d)(1), (2), (3), (4), and (e)(i) and (ii) and is being accepted as it represents a unique, innovative idea, method and approach which would not otherwise be eligible for financial assistance under any recent, current, or planned solicitation. The objective of the work to be supported by this grant is for the Energy Resources Center at the University of Illinois to develop and successfully execute the twenty-third consecutive energy-environmental conference entitled, "Energy and Environmental Policy in a Period of Political Transition," to be held November 20–21, 1995 in Chicago, Illinois.

The project period for the grant is for a 6 month period, expected to begin September 30, 1995. DOE plans to provide funding in the amount of $15,000.00 for this project period.

FOR FURTHER INFORMATION CONTACT: Marlene E. Martinez, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (708) 252–2080.

Issued in Chicago, Illinois on September 5, 1995.

Timothy S. Crawford,

Argonne Group Manager.

[FR Doc. 95–22755 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

Chicago Operations Office; Award Based on Acceptance of an Unsolicited Application

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.14(e), it plans to negotiate and award Grant Number DE-FG02–95CH10846 to the Equity Research Corp.

SUPPLEMENTARY INFORMATION: The anticipated objective of the award is to provide for the application of "Best Available Science" (BAS) to the reevaluation of assessment methods based on scientific knowledge rather than opinions or value judgements. This proposal provides for a unique approach to choose the best available scientific information in that it suggests a clear separation of science from societal goals to enhance the accuracy of estimating environmental risks in an attempt to limit costly adverse effects. These goals will provide scientifically based data for others to utilize in pursuing environmental issues in the education arena and provide the general public as well as the professional societies, knowledge of how risk factors were determined by making consensus reports more accessible. This proposal provides a public service by providing the public with the best and most accurate scientific information with respect to utilizing the Best Available Science. DOE's Office of Environmental Management believes that there is a high probability of achieving the objectives.

The public is greatly served if environmental decisions would be based on BAS. It is the belief of the grantee that objectively computed risks will be somewhat lower than those based upon societal objectives. The lower the risk, the smaller the costs for adverse effects caused within the human health and environmental areas. It is likely that if this approach is successful the cost of environmental protection would be significantly reduced. Consequently, a higher level of environmental protection could be achieved by the current level of funding. Additional benefits of this project are enhancement of public and university education and increases in the availability of relevant published scientific formation. Through the introduction of the publication, "Technology" and the first volume of "Encyclopedia of Environment" the public will have easier access to data presented in relevant papers and consensus reports regarding BAS. Education will be enhanced by the utilization of high school or community college minority students in researching environmental issues while applying BAS, participating with professional organizations in providing environmental courses, participation in technical conferences to discuss BAS for environmental issues, as well as participating in technical panels and making presentations to various groups regarding BAS in human health and environmental concerns.

The grantee plans to obtain this objective by educating students and professional organizations about the benefits and needs of BAS in relation to existing practices; and the dissemination of scientific information through the Technology publication and the new Encyclopedia of Environment. To assure reliance upon BAS the grantee proposes the utilization of not-for-profit professional organizations which include the following: (1) the American Society of Mechanical Engineers (ASME); (2) the American Association for the Advancement of Technology (AAAT); (3) the American Association of Engineering Societies (AAES); and (4) the National Council and Radiation Protection and Measurements (NCRPM). These organizations can provide peer-review of scientific aspects of the societal decisions, can reach a consensus on scientific subjects related to protection of human health and the environment, and can support the publication of relevant BAS. In addition, and in accordance with the North American Free Trade Agreement (NAFTA), an organization was formed and is known by its Spanish acronym "CEPA" which is composed of Universities in Mexico and the U.S. which pursue environmental protection in Mexico. The proposed approach permits the development of relevant information based on scientific consensus, education of the professionals and high school students, and publication of relevant materials for the benefit of the scientific community, regulators, legislators, and above all, the general public.

The technical team is led by an outstanding and uniquely qualified individual, Dr. A. Alan Moghissi, Ph.D., Vice President for Science and Education at Equity Research Corporation. He has broad regulatory experience and has served as a Senior Environmental Protection Agency (EPA) policy official. His interaction with industry over the years has fulfilled a critical need in obtaining an industry perspective. He has gained credibility with the intervener community and Congress as a credible spokesman in the area of technical assessment of societal decisions. For the past 11 years under grants for this effort, Dr. Moghissi has gained unique experience and specialized knowledge in the reevaluation of risk assessments for human health and the environment. An example of the kind of accomplishments he has made is evident in the regulatory change that was made for tritium standards in drinking water. Moghissi, because of his unique past experience as stated above, is uniquely qualified to perform the proposed research.

This award meets the criteria for selection of an unsolicited application as specified under 10 CFR 600.14(e) (i) and (ii). Under subparagraph (i) the application is meritorious based on the foregoing general evaluation which is required by 10 CFR 600.14(d). Under subparagraph (ii) the proposed project represents a unique, innovative idea, method and approach which would not otherwise be eligible for funding under any other known recent, current, or planned solicitation and a competitive solicitation would be inappropriate. This award would be for approximately 5 years at an estimated total cost of 2.9 million dollars.

FOR FURTHER INFORMATION CONTACT: David Ramirez, Contract Specialist, (708) 252–2133; U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439.

Issued in Chicago, Illinois on August 31, 1995.

Cherri J. Langenfeld,

Manager, Chicago Operations Office.

[FR Doc. 95–22756 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance for Clark Atlanta University

AGENCY: Department of Energy, Albuquerque Operations Office.

ACTION: Notice of Financial Assistance Award.

SUMMARY: The Albuquerque Operations Office (AL), pursuant to 10 CFR 600.14(f), will award a grant based on an unsolicited proposal to Clark Atlanta University, 223 James P. Brawley Drive, SW, Atlanta, GA 30314.

DATES: Award will be effective September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Address written comments to the attention of Erwin E. Fragua, Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400, (505) 845–6442 or fax to (505) 845–4004.

SUPPLEMENTARY INFORMATION: Title of project is "Analysis of Economic Success of Applied Energy R&D and Applied Energy R&D Case History". The purpose of this study is to produce two special analyses of emerging science and technology issues regarding the overall effectiveness of the agency's research and development programs. The DOE has invested extensively in R&D covering a wide range of energy sources and end-use technologies. The U.S. public is entitled to a concise assessment of net benefits that have accrued from these investments. While individual success stories abound, there has not been a systematic effort to analyze the overall net impact of DOE's R&D activities on the economy. A cost/benefit approach will be used to analyze the DOE's basic and applied R&D programs, to identify and quantify commercial successes arising from DOE sponsored R&D programs. The study also prepares a case assessment of a successful DOE R&D program over the history of the program; identifying costs, economic and technical successes and estimating return on investment.

The probability of achieving this objective is significant considering the experienced background of the project director, Dr. Charlie Carter, and the facilities of the grantee are adequate for the purpose of achieving the stated objectives.

Issued in Albuquerque, New Mexico, on August 31, 1995.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 95–22757 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P–M

Financial Assistance for The Woods Hole Research Center

AGENCY: Department of Energy, Albuquerque Operations Office.

ACTION: Notice of Financial Assistance Award.

SUMMARY: The Albuquerque Operations Office (AL), pursuant to 10 CFR 600.14(f), will award a grant based on an unsolicited proposal to The Woods Hole Research Center, P.O. Box 296, Woods Hole, MA 02543.

DATES: Award will be effective September 20, 1995.

FOR FURTHER INFORMATION CONTACT:

Address written comments to the attention of Erwin E. Fragua, Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400, (505) 845–6442 or fax to (505) 845–4004.

SUPPLEMENTARY INFORMATION: Title of project is "International Conference on the Adequacy of Commitments Under the Framework Convention on Climate Change". The purpose of this conference is to continue dialogue on the process to strengthen these commitments, similar to the ones previously held on joint implementation and on policy guidance from the Conference of the Parties (COP). The first meeting of the COP to the United Nations Framework Convention on Climate Change (FCCC) was held on March/April 1995 in Berlin. The Berlin Mandate concluded that current commitments under the FCCC are inadequate to meet the Convention's ultimate objective. It established a two year negotiating process to strengthen the specific commitments of industrialized countries and further implement the existing general commitments of developing countries. This process is authorized to elaborate policies and measures which could limit or reduce greenhouse gas emissions as well as set quantified limitation and reducing objectives within specified time-frames for the period beyond the year limitation and reducing objectives within specified time-frames for the period beyond the year 2000. The objective of this conference will be to have informal discussions among the key constituents of the Parties to the Climate Change Convention on the subject of the adequacy of commitments.

The probability of achieving this objective is significant considering the experienced background of the project director, Dr. Kilaparti Ramakrishna, and the facilities of the grantee are adequate for the purpose of achieving the stated objectives.

Issued in Albuquerque, New Mexico, on August 31, 1995.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 95–22758 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P–M

Environmental Management Site Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Fernald.

DATE AND TIME: Saturday, September 30, 1995: 8:30 a.m.–12:00 p.m.

ADDRESSES: The Joint Information Center, 6025 Dixie Highway, Route 4, Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force message line (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

Saturday, September 30, 1995

8:30 a.m.—Task Force Administration, Call to Order, Approval of Minutes, Chair's Remarks
8:45 a.m.—Membership Issues: Expiring Terms, Role of Alternates, Process for Identifying New Members
9:45 a.m.—Review of Charter and Ground Rules
10:30 a.m.—Break
10:45 a.m.—FY 96 Work Plan and Meeting Dates
11:45 a.m.—Wrap Up
12:00 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, September 30, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on September 8, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22759 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Pantex Plant.

DATES AND TIMES: Tuesday, September 26, 1995: 1:30 pm–5:30 pm.

ADDRESSES: Amarillo Association of Realtors, 5601 Enterprise Circle, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Pantex Plant Citizens' Advisory Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:30 pm—Welcome—Agenda Review—Introductions
1:40 pm—Co-Chairs' Comments
2:00 pm—Task Force Reports—Discussion
  Public Participation/Public Information
  Environmental Restoration
  Sitewide Environmental Impact Statements
  Future of the Nuclear Complex
  Waste Management
3:15 pm—Break
3:30 pm—Presentation
4:15 pm—Updates
  Occurrence Reports—DOE
  Special Pantex Site Treatment Plant (PSTP) Meeting Report
4:30 pm—Subcommittee Reports
  - Budget and Finance
  - Policy and Personnel
  - Program and Training
  - Community Outreach
  - Nominations
5:30 pm—Adjourn

Public comment will be taken periodically throughout the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays.

Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on September 8, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22760 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM96–1–68–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet Nos. 5 and 6, to be effective October 1, 1995.

Trailblazer states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Trailblazer to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1995 is $.0023 per Mcf.

Trailblazer requested a waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1995.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22682 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–67–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 6, to be effective October 1, 1995.

Canyon states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1995 is $.0023 per Mcf.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1995.

Canyon states that a copy of the filing is being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E.; Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22681 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–55–000]

Questar Pipeline Company; Notice of Tariff Filing

September 7, 1995.

Take notice that on August 31, 1995, Questar Pipeline Company, pursuant to 154.38(d)(6) and Part 382 of the Commission's Regulations, tendered for filing and acceptance to be effective October 1, 1995, the following tariff sheets of its FERC Gas Tariff:

First Revised Volume No. 1

First Revised Substitute Fourth Revised Sheet No. 5
First Revised Fourth Revised Sheet No. 5A
First Revised Fourth Revised Sheet No. 6
First Revised Second Revised Sheet No. 6A

Original Volume No. 3

First Revised Fourteenth Revised Sheet No. 8

Questar states that this filing incorporates into its storage and transportation rates the annual charge unit rate of $0.0023 per Mcf as adjusted by Questar's Btu factor of 1.062.

Questar states that copies of this filing were served upon Questar's jurisdictional customers and the Utah and Wyoming public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22680 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–49–000]

Williston Basin Interstate Pipeline Company; Notice of Filing of Annual Charge Adjustment Filing

September 7, 1995.

Take notice that on September 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing to become part of its FERC Gas

Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets, with a proposed effective date of October 1, 1995:

Second Revised Volume No. 1

2nd Rev Thirteenth Revised Sheet No. 15
2nd Rev Sixteenth Revised Sheet No. 16
2nd Rev Thirteenth Revised Sheet No. 18
2nd Rev Eleventh Revised Sheet No. 21

Original Volume No. 2

2nd Rev 58th Revised Sheet No. 11B

Williston Basin states that the instant filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) unit charge amount pursuant to the Commission's Statement of Annual Charges under 18 CFR Part 382 and Section 41 of the General Terms and Conditions of Williston Basin's FERCG as Tariff, Second Revised Volume No. 1. The filing incorporates the Commission approved ACA surcharge of .233 cents per Mcf (.217 cents per dkt on the Williston Basin system), a decrease of .0036 cents per Mcf from the current amount.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22679 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–26–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 22, to be effective October 1, 1995.

Natural states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Natural to recover from its customers annual charges assessed to Natural by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1995 is $.0023 per Mcf. Under Natural's billing basis, this rate converts to $.0023 per MMBtu. Since the converted rate is the same as Natural's currently effective ACA surcharge, a revised tariff sheet was not submitted. Natural also filed to remove the ACA surcharge applicable on its Moraine Lateral.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the continuation of its currently effective ACA surcharge and the elimination of the ACA surcharge on its Moraine Lateral to become effective on October 1, 1995.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22678 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. TM96–2–18–000]

September 7, 1995.

Take notice that on September 1, 1995 Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 14, with a proposed effective date of November 1, 1995.

Texas Gas states that the tariff sheet is being filed to establish a revised Effective Fuel Retention Percentage (EFRP) under the provisions of Section 16 "Fuel Retention" as found in the General Terms and Conditions of Texas Gas' FERC Gas Tariff, First Revised Volume No. 1. The revised EFRP may be in effect for the annual period November 1, 1995, through October 31, 1996.

Texas Gas states that copies of the tariff sheet are being mailed to Texas Gas' affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22677 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–15–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Mid Louisiana Gas Company (Mid Louisiana) filed to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Fifth Revised Sheet No. 4
Fifth Revised Sheet No. 4A
Fourth Revised Sheet No. 4B.

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheets is to reflect a revision to the unit rates for the collection of the Annual Charges imposed by Section 382 of the Commission's Regulations.

Mid Louisiana states that this filing is being made in accordance with Section 22 of the General Terms and Conditions of Mid Louisiana's FERC Gas Tariff, Third Revised Volume No. 1.

Pursuant to Section 154.51 of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any requirement of the Regulations to permit the tendered tariff sheets to become effective October 1, 1995 as submitted.

Mid Louisiana states that copies of its filing were served upon its jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22676 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–8–000]

South Georgia Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, South Georgia Natural Gas Company (South Georgia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective October 1, 1995:

First Revised Sheet No. 5
First Revised Sheet No. 6

In the Alternative:

First Alternate First Revised Sheet No. 5
First Alternate First Revised Sheet No. 6

South Georgia states that the instant filing is submitted pursuant to Section 19.2 of the General Terms and Conditions of its Tariff, and the letter order issued on July 14, 1995, in Docket No. RP95–355 granting it an extension of time to file, to adjust its fuel retention percentage ("FRP") for all transportation services on its system effective October 1, 1995. The derivation of the revised FRP is based on South Georgia's gas required for operations ("GRO") for the twelve-month period ending April 30, 1995, adjusted for the balance accumulated in the Deferred GRO Account at the end of said period, divided by the transportation volumes received during the same twelve-month period. Based on this calculation, the revised FRP should be 2.99%, but South Georgia has requested a waiver of its Tariff to allow for the collection of the Deferred GRO Account over a three-year period which results in a revised FRP of 2.25%. If the Commission does not grant its waiver, South Georgia has submitted alternate tariff sheets for approval by the Commission.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 925 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 14, 1995. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22675 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA96–1–23–000 and TM96–3–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such revised tariff sheets bear a proposed effective date of November 1, 1995.

Eastern Shore states the above referenced revised tariff sheets were filed in Eastern Shore's annual Purchased Gas Adjustment (PGA) filing as required by Section 154.305 of the Commission's Regulations and Sections 21 and 23, respectively, of the General Terms and conditions of Eastern Shore's FERC Gas Tariff. Such filing consists of the calculation of (1) current adjustments for the Demand and Commodity purchased gas component and (2) current adjustments for the Demand and Commodity transportation cost component, of Eastern Shore's jurisdictional sales rates.

Eastern Shore states its sales rates set forth on such revised tariff sheets reflect an overall increase of $2.4323 per dt in the Demand Charge and an overall increase of $0.2255 per dt in the Commodity Charge, as measured against Eastern Shore's revised regularly scheduled quarterly PGA filing as submitted in Docket No. TQ95–4–23–001 in Eastern Shore's Compliance Filing submitted on August 29, 1995.

Eastern Shore states that the calculation of revised annual Demand and Commodity surcharge calculations to amortize its Account No. 191 Unrecovered Purchased Gas Cost and Unrecovered Transportation Cost balances as of June 30, 1995 are not included in its annual PGA filing and requests the Commission to waive its regulations in this regard.

Eastern Shore states it submitted on August 29, 1995 a Compliance Filing to comply with the Commission's order issued August 17, 1995 in Docket Nos. TA94–1–23–003, et al. The Commission's order approved Eastern Shore's Offer of Settlement ("Settlement") as filed on June 19, 1995 pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. More specifically, the filing was submitted in accordance with Articles I, II, and III of the Settlement.

Article I provided that, within fifteen days after the Commission approved the Settlement, Eastern Shore shall file revised Purchased Gas Adjustment (PGA) and Transportation Cost Adjustment (TCA) tariff sheets. Pursuant to the Settlement, these revised tariff sheets will be made effective June 1, 1994.

Article II of the Settlement provided that Eastern Shore shall make cash refunds to its jurisdictional sales customers arising from the revised PGA methodology. Refunds shall be computed from June 1, 1994 through June 30, 1995. Such period coincides with the end of the twelve-month deferral period which ends four months prior to the November 1, 1995 effective date of Eastern Shore's forthcoming annual PGA filing. Accordingly, Eastern Shore states that its Account No. 191 demand and commodity deferral balances shall be zeroed out as of June 30, 1995, thus eliminating the need for Eastern Shore to calculate surcharge rates to amortize such balances in the instant annual PGA filing.

Article III provided that Eastern Shore shall file revised rate tariff sheets to be effective July 1, 1995. Such revised tariff sheets reflect a reduction of $0.9317 per dt in Eastern Shore's jurisdictional

contract demand sales rates. This reduction is accomplished by restating Eastern Shore's Base Tariff Rates to reflect an equivalent decrease. In addition, the restated Base Tariff Rates reflect Eastern Shore's cumulative PGA and TCA adjustments as filed in Docket No. TQ95–3–23–000. Such filing, accepted by the Commission on May 22, 1995, to be effective May 31, 1995, was Eastern Shore's most recently approved filing prior to July 1, 1995.

Eastern Shore further states it filed revised rate tariff sheets necessary to reflect the effect of the implementation of the Settlement on its various filings made subsequent to July 1, 1995. Such filings include (1) Docket No. TF95–5–23–000, an interim PGA approved to be effective July 1, 1995; (2) Docket No. TQ95–4–23–000, a quarterly PGA filing approved to be effective August 1, 1995; (3) Docket No. TF95–6–23–000, an interim PGA filing approved to be effective August 1, 1995; and (4) Docket No. TM95–11–23–000, a tracking filing approved to be effective September 1, 1995.

Eastern Shore states it is currently in the process of finalizing its refund calculations and intends to make such refunds at its earliest opportunity, but in no event later than September 15, 1995. As directed by the Commission, Eastern Shore will file a refund report within thirty days of the refund distribution. Such refund report shall contain all the relevant FERC Form 542–PGA schedules normally submitted with its annual PGA filing to fully document the Account No. 191 Unrecovered Purchased Gas Cost and Unrecovered Transportation Cost balances as of June 30, 1995, calculated pursuant to Eastern Shore's revised PGA and TCA provisions included in Eastern Shore's August 29, 1995 Compliance Filing.

Eastern Shore states that copies of the filing have been served upon its jurisdictional sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22674 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–435–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858-Reverse Auction surcharges, which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed 4th Rev Seventeenth Revised Sheet Nos. 50 and 51 and Twenty-Third Rev Sheet No. 53 to revise these surcharges effective October 1, 1995.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22673 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–434–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

September 7, 1995.

Take notice that on September 1, 1995, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective October 1, 1995.

Fourth Revised Sheet No. 35
Third Revised Sheet No. 81
First Revised Sheet No. 84A
Second Revised Sheet No. 98
Third Revised Sheet No. 106
Second Revised Sheet No. 124
Third Revised Sheet No. 131
Second Revised Sheet No. 158
Second Revised Sheet No. 232

CIG proposes this revision so that the ratio of Maximum Daily Withdrawal Quantity to Maximum Available Capacity reflects the actual certificated deliverability of 780,000 Mcf/d for CIG's storage fields. CIG states that it is filing this tariff revision in response to the Commission's order issued July 7, 1995 in Docket No. CP95–498–000 which increased the total certificated daily deliverability of CIG's storage fields from 775,000 Mcf/d to a new level of 780,000 Mcf/d. CIG states this increase is the result of the actual performance gain from facilities constructed with Commission authorization to enhance storage deliverability in Docket No. CP92–154 et al.

The Commission authorized CIG, inter alia, to construct and operate certain facilities to increase the estimated peak day deliverability of CIG's storage fields from 710,000 Mcf/d to a higher level of 775,000 Mcf/d. CIG further states when it filed for authorization of the storage enhancement project, it was impossible to determine the precise level of the increased storage deliverability that would result from the project. Hence, CIG states it allocated capacity based on an estimated storage deliverability of 769,000 Mcf/d.

CIG states it is filing to revise its Tariff so the firm storage entitlement of firm storage customers (Rate Schedule FS–1) and no-notice transportation customers (Rate Schedules NNT–1 and NNT–2), reflect the new certificated deliverability. All of the 11 Mmcf/d storage deliverability upgrade has been allocated to storage customers. CIG's storage customers total deliverability will increase from 669 Mmcf/d to 680 Mmcf/d and CIG's retained deliverability will remain at 100 Mmcf/d. Based on this allocation, the ratio of Maximum Daily Withdrawal Quantity to Maximum Available Capacity will be revised to 1:37.3853. CIG also states it is filing housekeeping revisions to Sheet Nos. 35 and 84A to correct errors on these sheets.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 or 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22672 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–196–001, RP94–157–004, and RP95–196–002; RP95–382–000]

Notice of Technical Conference

September 7, 1995.

In the matter of Columbia Gas Transmission Corporation, *UGI Utilities, Inc.* v. *Columbia Gulf Transmission Company* and *Columbia Gas Transmission Corporation.*

In the Commission's order issued on August 2, 1995, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Wednesday, September 27, 1995, at 10:00 a.m., and if necessary the conference will continue on Thursday, September 28, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22671 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–73–000]

Ozark Gas Transmission System; Notice of Proposed Change in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Ozark Gas Transmission System (Ozark), tendered for filing and acceptance the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Eleventh Revised Sheet No. 4

Ozark proposed that the tariff sheet become effective on October 1, 1995.

Ozark states that the above tariff sheet has been revised to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to Ozark. The Annual Charge unit charge authorized by the Commission for fiscal year 1996 and proposed in the filing is $0.0023 per MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22684 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–62–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Mojave Pipeline Company (Mojave) tendered for filing proposed changes to Sheet No. 11 of its FERC Gas Tariff, First Revised Volume No. 1.

Mojave makes this filing to implement its annual adjustment clause (ACA) for fiscal year 1996, pursuant to Section 154.38(d)(6) of the Commission's Regulations, which allows a natural gas pipeline company to adjust its rates annually to recover from its customers annual charges assessed it by the Commission under Part 382 of the Commission's Regulations. The ACA charge shall be applied to the transportation component of Mojave's rates under its Rate Schedules FT–1 and IT–1. Additional information regarding Mojave's ACA charge is contained on Sheet Nos. 127 and 128 of the First Revised Volume No. 1 of Mojave's existing gas tariff.

Mojave states that copies of the filing were served upon Mojave's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22685 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1439–000]

IGM, Inc.; Notice of Issuance of Order

September 7, 1995.

On July 27, 1995, IGM, Inc. (IGM) submitted for filing a rate schedule under which IGM will engage in wholesale electric power and energy transactions as a marketer. IGM also requested waiver of various Commission regulations. In particular, IGM requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by IGM.

On August 28, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by IGM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, IGM is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided

that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of IGM's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 27, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22686 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1441–000]

Conoco Power Marketing Inc.; Notice of Issuance of Order

September 7, 1995.

On July 27, 1995, Conoco Power Marketing Inc. (Conoco Power) submitted for filing a rate schedule under which Conoco Power will engage in wholesale electric power and energy transactions as a marketer. Conoco Power also requested waiver of various Commission regulations. In particular, Conoco Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Conoco Power.

On August 30, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Conoco Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Conoco Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Conoco Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 29, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22687 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–69–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 5, to be effective October 1, 1995.

Stingray states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Stingray to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1995 is $.0023 per Mcf. Under Stingray's billing basis, this rate converts to $.0022 per Dekatherm.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1995.

Stingray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22683 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–715–000]

Texas Eastern Transmission Corporation, Tennessee Gas Pipeline Company; Notice of Application

September 7, 1995.

Take notice that on August 29, 1995, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, and Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP95-715–000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain exchange and transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern and Tennessee state that they were authorized: (1) An interruptible exchange service by Commission order dated March 18, 1963, in Docket No. CP63–177–000, as amended, which is provided under Texas Eastern's Rate Schedule X–65 and Tennessee's Rate Schedule X–40; (2) a firm transportation and exchange of up to 230,000 Mcf of natural gas per day, by Commission order dated July 18, 1975, in Docket No. CP75–127–000, as amended, which is provided under Texas Eastern's Rate Schedule X–73 and Tennessee's Rate Schedule X–47; (3) an interruptible exchange and transportation of up to 10,000 Mcf of natural gas per day, by Commission order dated May 5, 1980, in Docket No. CP80–62–000, as amended, which is provided under Texas Eastern's Rate Schedule X–111 and Tennessee's Rate Schedule X–63; and, (4) an interruptible transportation and exchange service, by Commission order dated June 20, 1986, in Docket No. CP86–123–000, as amended, which is provided under Texas Eastern's Rate Schedule X–126 and Tennessee's Rate Schedule X–68.

Texas Eastern and Tennessee have mutually agreed to terminate the one exchange and three exchange and transportation services pursuant to termination agreements between Tennessee and Texas Eastern dated August 23, 1995, July 7, 1995, May 16, 1995 and May 16, 1995 for Texas Eastern's Rate Schedules X–65, X–73, X–111 and X–126 and Tennessee's Rate Schedules X–40, X–47, X–63 and X–68, respectively, it is stated. Texas Eastern and Tennessee request that the abandonment be effective on the day of issuance of the Commission's order approving abandonment.

Texas Eastern and Tennessee further state that no facilities will be abandoned in conjunction with the abandonment of these services.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 28, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern and Tennessee to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 95–22667 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–728–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

September 7, 1995.

Take notice that on September 1, 1995, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP95–728–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to modify facilities at the Burley No. 2 Meter Station, Cassia County, Idaho, used to perform transportation service for Intermountain Gas Company (Intermountain), under the blanket certificate issued in Docket No. CP82–433–000, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the Burley No. 2 Meter Station currently consists of two 4-inch taps, four 2-inch regulators, monitor configuration, two 6-inch orifice meters and appurtenances, with a maximum design capacity of approximately 8,883 dt equivalent of natural gas per day at 200 psia. Northwest indicates that at present it has firm obligations to deliver up to 9,000 dt equivalent of natural gas per day at 200 psig for Intermountain's affiliate, IGI Resources, Inc. (IGI) at the Burley No. 2 Meter Station under a Rate Schedule TF–1 transportation agreement.

Northwest proposes to modify the meter station by removing two of the four existing 2-inch regulators and appurtenances and installing appurtenant station piping valves. Northwest indicates that the facility replacement will increase the maximum design capacity of this meter from 8,883 dt equivalent of natural gas per day at 200 psia to approximately 12,400 dt equivalent of natural gas per day at 200 psia or 10,900 dt equivalent of natural gas per day at the 300 psig typical operating pressure. Northwest estimates a construction and removal cost of $3,840. It is indicated that, since this expenditure is necessary in order for Northwest to more efficiently accommodate existing delivery requirements at the Burley No. 2 Meter Station, Northwest will not require any cost reimbursement from IGI.

Northwest advises that any volumes delivered to intermountain through the Burley No. 2 Meter Station will be delivered either for IGI or any other shipper for whom Northwest is authorized to transport gas and will be within the authorized entitlements of such shippers. Also, Northwest indicates that the proposed facility modification is not prohibited by its existing tariff. In addition, Northwest states that it projects no impact on Northwest's system peak day or annual deliveries as a result of the facility modifications.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 95–22668 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–57–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that pursuant to Section 9.1 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A set forth the 1995 Operational Segment Capacity Entitlements. Texas Eastern states further that the 1995 Entitlements were calculated using the same methodology as utilized to calculate the

initial Entitlements which were approved by the Commission in Texas Eastern's Order No. 636 restructuring proceedings in Docket No. RS92–11, *et al.*

In order to reflect the changes discussed above, Texas Eastern is submitting Tenth Revised Sheet Nos. 550, 551, 555, 557, 558, 564, 565, 571, 572, 577 and 580 and Eleventh Revised Sheet Nos. 549, 556, 563 and 570 to reflect necessary modifications to Sections 9.2, 9.3, 9.4, 9.5 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1.

The proposed effective date of the tariff sheets is November 1, 1995, as stated in Section 9.1 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95–22669 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–76–000]

Southwestern Public Service Company; Notice of Filing

September 7, 1995.

Take notice that on August 25, 1995, Southwestern Public Service Company tendered for filing a petition for waiver of the Commission's fuel clause regulations to allow the flow-through of buyout and other related costs associated with the purchase of TUCO Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 25, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 95–22670 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–430–002, et al.]

Phibro Inc., et al.; Electric Rate and Corporate Regulation Filings

September 5, 1995.

Take notice that the following filings have been made with the Commission:

1. Phibro Inc.

[Docket No. ER95–430–002]

Take notice that on August 16, 1995, Phibro Inc. tendered for filing a Notice of Change in Status in the above-referenced docket.

2. Pacific Gas and Electric Company

[Docket No. ER95–1341–000]

Take notice that on August 28, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing an amendment to its July 6, 1995 filing in this docket of a rate change to Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

PG&E's initial filing in this docket submitted cost based rates for trued up previous billings made for capacity and energy sales from Energy Account No. 2 during 1993, which were made using rates based on estimated costs. At the request of FERC Staff, PG&E is amending its filing to include a calculation of certain refunds, including interest, resulting from this rate change.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Electric & Gas Company

[Docket No. ER95–1428–000]

Take notice that on August 7, 1995, South Carolina Electric & Gas Company tendered for supplemental information in the above-referenced docket.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER95–1472–000]

Take notice that on August 29, 1995, New England Power Company (NEP), tendered for filing a Stipulation and Agreement and amended supplements to five Municipal Power Contracts: (1) Unit Power Contract dated January 13, 1994, with the Town of Holden Municipal Light Department; (2) Unit Power Contract dated January 20, 1994, with the North Attleborough Electric Department; (3) Unit Power Contract dated January 11, 1994, with the Hingham Municipal Light Plant; (4) Unit Power Contract dated January 13, 1994, with the Groton Electric Light Department; and (5) Unit Power Contract dated January 14, 1994, with the Middleton Municipal Light Department.

NEP states that the purpose of this filing is to modify its initial proposal concerning rate of return on common equity that may be charged under the contracts. This modification is a result of an agreement between NEP and the five municipal purchasers. NEP requests that its revised proposed rate of return become effective on the later of October 1, 1995 or the first day of the calendar month following the date of commencement of operations at the repowered Manchester Street facility.

NEP states that copies of its filing have been provided to the five municipal purchasers and to state regulatory authorities in Massachusetts and Rhode Island.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER95–1536–000]

Take notice that on August 14, 1995, Florida Power Corporation tendered for filing a tariff providing for comprehensive transmission service. Florida Power states that its filing modifies its Tariff No. 2 that was filed in Docket No. ER95–634–000 and that its tariff is consistent with the draft pro forma tariffs the Commission included with the proposed rule in "Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities," Docket No. RM95–8–000, IV FERC Stats. and Regs. ¶ 35,514 (1995). Florida Power asks the Commission to consolidate this docket with Docket No.

ER95-634-000 and set an effective date for this filing of November 1, 1995.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Missouri Public Service Company

[Docket No. ER95-1606-000]

Take notice that on August 22, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *National Electric Associates Limited Partnership.* The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *National Electric Associates Limited Partnership* pursuant to the tariff, and for the sale of capacity and energy by *National Electric Associates Limited Partnership* to Missouri Public Service pursuant to *National Electric Associates Limited Partnership's* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *National Electric Associates Limited Partnership.*

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Arkansas Power & Light Company, et al.

[Docket No. ER95-1609-000]

Take notice that on August 22, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Energy Services and Catex Vitol Electric, LLC (Catex Vitol). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies will provide Catex Vitol non-firm transmission service under their Transmission Service Tariff.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Wisonsin)

[Docket No. ER95-1638-000]

Take notice that on August 28, 1995, Northern States Power Company, Eau Claire, Wisconsin (NSPW), tendered for filing the following documents:

A. An Amended and Restated Power and Energy Supply Agreement by and between the Village of Cadott, Wisconsin, and NSPW dated August 7, 1995. The Village currently purchases power and energy from NSPW under a power sales agreement dated November 25, 1986, as amended on June 17, 1987, and May 16, 1994. The 1986 agreement as amended is superseded by the amended and restated agreement. NSPW submitted a Certificate of Concurrence on behalf of the Village of Cadott.

B. A Power and Energy Supply Agreement by and between the City of Spooner, Wisconsin, and NSPW dated July 28, 1995. The City of Spooner currently purchases power and energy from NSPW under a firm power service resale agreement dated May 2, 1978, which is superseded by the new agreement. NSPW submitted a Certificate of Concurrence on behalf of the City of Spooner.

C. An Amended and Restated Power and Energy Supply Agreement by and between the City of Bloomer, Wisconsin, and NSPW dated August 9, 1995. The City of Bloomer currently purchases power and energy from NSPW under a power and energy supply agreement dated March 1, 1993, as amended on May 25, 1994. The 1992 agreement as amended is superseded by the amended restated agreement. NSPW submitted a Certificate of Concurrence on behalf of the City of Bloomer.

NSPW requests an effective date of September 1, 1995 for all three agreements. NSPW states that under these new agreements, the Village of Cadott, City of Spooner and City of Bloomer will be entitled to discounts from NSPW's currently effective W-1 rate and that such discounts are being offered to all of its wholesale electric customers. Each of the agreements contains a provision allowing the customer to obtain a negotiated rate upon two years prior notice.

A copy of the filing was served upon the Village of Cadott, City of Spooner, City of Bloomer and the State of Wisconsin Public Service Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER95-1641-000]

Take notice that on August 29, 1995, Cinergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated July 1, 1995, between CIN, CG&E, PSI and Kimball Power Company (KPC).

The Interchange Agreement provides for the following service between CIN and KPC:

1. Exhibit A—Power Sales by KCP
2. Exhibit B—Power Sales by CIN

CIN and KPC have requested an effective date of September 1, 1995.

Copies of the filing were served on Kimball Power Company, the Texas Public Utility Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER95-1642-000]

Take notice that on August 29, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Engelhard Power Marketing (Engelhard) dated August 23, 1995 providing for certain transmission services to Engelhard.

Copies of this filing were served upon Engelhard and the New York State Public Service Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Boston Edison Company

[Docket No. ER95-1643-000]

Take notice that on August 29, 1995, Boston Edison Company (Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for PECo Energy Company (PECo). Boston Edison requests that the Service Agreement become effective as of June 1, 1995.

Edison states that it has served a copy of this filing on PECo and the Massachusetts Department of Public Utilities.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company

[Docket No. ER95-1644-000]

Take notice that on August 29, 1995, Boston Edison Company (Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for North American Energy Conservation, Inc. (NAEC). Boston Edison requests that the Service Agreement become effective as of October 29, 1995.

Edison states that it has served a copy of this filing on NAEC and the Massachusetts Department of Public Utilities.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER95-1645-000]

Take notice that on August 29, 1995, Northern States Power Company-Minnesota (NSP-M) and Northern States Power Company-Wisconsin (NSP-W) jointly tendered and request the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to Utility-2000 Energy Corporation.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of September 27, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreements may be accepted for filing effective on the date requested.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Appalachian Power Company

[Docket No. ER95-1646-000]

Take notice that on August 29, 1995, Appalachian Power Company (APCO), tendered for filing a proposed amendment to its Electric Service Agreement with the City of Radford, Virginia (Radford), Rate Schedule FERC No. 122. The proposed amendment will establish an Economic Development Electric Power Billing Credit for Radford that would provide Radford with an opportunity to offer an economic incentive for development of new industries and/or expansion of existing industries in its service area.

APCO proposes an effective date of November 1, 1995, and states that copies of the filing were served upon the affected customer and the Virginia State Corporation Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER95-1647-000]

Take notice that on August 29, 1995, PECO Energy Company (PECO), filed a Service Agreement dated August 17, 1995, with Public Service Electric and Gas Company (PSE&G) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds PSE&G as a customer under the Tariff.

PECO requests an effective date of August 17, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to PSE&G and to the Pennsylvania Public Utility Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER95-1648-000]

Take notice that on August 28, 1995, Southern California Edison Company (Edison), tendered for filing an amendment to its Interruptible Transmission Service Agreements not amended under the Settlement Agreement in FERC Docket No. ER94-1421-000.

The Amendment sets forth the terms and conditions by which Edison will provide customers with Non-Priority and Priority interruptible transmission service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER95-1649-000]

Take notice that on August 29, 1995, Cinergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated July 17, 1995, between CIN, CG&E, PSI and Heartland Energy Services, Inc. (HES).

The Interchange Agreement provides for the following service between CIN and HES.

1. Exhibit A—Power Sales by HES
2. Exhibit B—Power Sales by CIN

CIN and HES have requested an effective date of September 1, 1995.

Copies of the filing were served on Heartland Energy Services, Inc., the Public Service Commission of Wisconsin, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Electric Power Company

[Docket No. ER95-1650-000]

Take notice that on August 28, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amendment of its filing of pro forma network and point to point transmission tariffs. The amendment corrects several pages that were inadvertently submitted for another proceeding as well as corrects a photocopying error.

Wisconsin Electric renews its requested effective date of August 1, 1995.

Copies of the filing have been served on the service list maintained in Docket Nos. ER94-1625, *et al.*

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Electric Power Company

[Docket No. ER95-1652-000]

Take notice that on August 30, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Tennessee Power Company (TPCO). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows TPCO to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume 1, Rate Schedule T-1.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on TPCO, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. The Montana Power Company

[Docket No. ER95-1653-000]

Take notice that on August 30, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, a Unit Contingent Capacity and Associated Energy Sales Agreement between Montana and Heartland Energy Services (Heartland).

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Louis E. Buck, Jr.

[Docket No. ID-2913-000]

Take notice that on August 28, 1995, Louis E. Buck, Jr. (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal

Power Act to hold the following positions:

Vice President, Chief Accounting Officer and Assistant Secretary, Arkansas Power & Light Company

Vice President, Chief Accounting Officer and Assistant Secretary, Gulf States Utilities Company

Vice President, Chief Accounting Officer and Assistant Secretary, Louisiana Power & Light Company

Vice President, Chief Accounting Officer and Assistant Secretary, Mississippi Power & Light Company

Vice President, Chief Accounting Officer and Assistant Secretary, New Orleans Public Service Inc.

Vice President and Chief Accounting Officer, System Energy Resources, Inc.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22688 Filed 9–12–95; 8:45 am]

BILLING CODE 6717-01-P

Notice of Issuance of Decisions and Orders During the Office of Hearings and Appeals Week of June 5 through June 9, 1995

During the week of June 5 through June 9, 1995 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Richard M. Ross, 6/8/95, VFA–0041

Richard M. Ross filed an Appeal from a determination issued by the Oakland Operations Office (Oakland) of the Department of Energy in response to a request from him under the Freedom of Information Act (FOIA). Ross sought copies of records concerning past and present employment of nine identified DOE employees. In considering this Appeal, the DOE found that certain aspects of the search conducted by Oakland were inadequate and that Oakland had improperly withheld certain records concerning the private employment history of DOE employees pursuant to Exemption 6 of the FOIA. Accordingly, the Appeal was granted in part.

Rocky Flats Field Office, 6/5/95, VSO–0015

An Office of Hearings and Appeals Hearing Officer issued an opinion under 10 C.F.R. part 710 concerning the continued eligibility of an individual for access authorization. After considering the testimony at the hearing convened at the request of the individual and all other information in the record, the Hearing Officer found that the individual has been a user of alcohol habitually to excess and that the diagnosis by a board-certified psychiatrist that the individual was suffering from alcohol abuse was based upon essentially undisputed facts. The Hearing Officer also found that the individual had failed to present sufficient evidence of rehabilitation, reformation or other factors to mitigate the derogatory information under 10 C.F.R. 710.8(j). In particular, the Hearing Officer found that the individual had consumed excessive amounts of alcohol at least twice during the period of time that he claimed that his drinking was under control. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

Refund Application

Texaco Inc./Joe Long's Texaco, 6/7/95 RF321–21065

The Department of Energy (DOE) issued a Decision and Order (D&O) rescinding a refund that had been granted to Joe Long's Texaco. The refund was rescinded and the funds ordered redeposited into the Texaco escrow account because the DOE was unable to locate Mr. Long.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Motor Freight Express et al	RF304–12216	06/07/95
Borough of Highland Park et al	RF272–97500	06/07/95
Gulf Oil Corporation/Howe Oil Company, Inc.	RF300–20421	06/07/95
Gulf Oil Corporation/South Bay Gulf	RF300–13963	06/07/95
Texaco Inc./Field's Texaco Service et al	RF321–220	06/07/95
Texaco Inc./Fruitwood Texaco et al	RF321–4975	06/07/95
Texaco Inc./W.C. Hancock	RF321–20458	06/09/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Albuquerque Operations Office	VSO–0025
Atchison, Topeka & Santa Fe Railway	RF304–13208
Bill's Texaco	RF321–20534
Enchanted Oaks Texaco	RF321–6691
Herb's Texaco & Repair Shop	RF321–20108
Hyde Park Super Service Station	RF321–20848
Monte Sweet's Self Service	RF321–11320
Oak Ridge Operations	VSO–0030
Patterson & Brasher Texaco	RF321–20589
Petroleum Service Co.	RF321–20590
Ross Texaco	RF321–7195
Sir John's ARCO	RF304–14820

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 5, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–22762 Filed 9–12–95; 8:45 am]

BILLING CODE 6450-01-P

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of May 29 Through June 2, 1995

During the week of May 29 through June 2, 1995 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Elizabeth H. Donnelly, 6/2/95, VFA–0039

Elizabeth H. Donnelly filed an Appeal from a determination issued to her on April 3, 1995 by the Department of Energy's Nevada Operations Office. In that determination, the Nevada Operations Office denied Ms. Donnelly's request for information filed pursuant to the Freedom of Information Act (FOIA). Specifically, the Nevada Operations Office denied Ms. Donnelly's request for information related to a "hostile work environment study" pursuant to FOIA Exemption 5. In considering the Appeal, the DOE found that the determination to withhold the requested information pursuant to Exception 5 was consistent with the FOIA. Accordingly, the DOE denied Ms. Donnelly's Appeal.

Gayle M. Adams, 6/1/95, VFA–0040

Gayle M. Adams filed an Appeal from a determination issued to her by the Richland Operations Office of a Request for Information which she had submitted under the Freedom of Information Act. The Richland Operations Office had released responsive documents, but Adams challenged the adequacy of the DOE's search. In considering the Appeal, the OHA found that the search for responsive documents was adequate.

J. Eileen Price, 6/2/95, VFA–0038

J. Eileen Price (Price) filed an Appeal from a determination issued to her by the Department of Energy's Western Area Power Administration (WAPA), that partially denied a Request for Information which Mrs. Price submitted under the Freedom of Information Act. Price requested copies of all appaisal information in her personnel file and all unofficial information pertaining to her employment in WAPA's Loveland Area Office beginning in October 1992. In its determination letter, the WAPA stated that it had found two documents responsive to Price's request, a grievance investigation document (Grievance Document) and a chronology of events related to her grievance (Chronology). Additionally, WAPA stated that it had found various pages from the day planners (Day Planner Notes) of two of her supervisors which were potentially responsive to her request. WAPA provided Price with a copy of the Chronology but withheld the Grievance Documents claiming that the Grievance Document was predecisional and deliberative and thus exempt from disclosure under Exemption 5 of the FOIA. Additionally, WAPA determined that Day Planner Notes were not agency records for the purposes of the FOIA and thus not subject to disclosure. Price argued that WAPA improperly withheld the Day Planner Notes and the Grievance Document. The DOE determined that, while the Grievance Document was predecisional and deliberative, a significant portion of the document contained segregable factual material which was improperly withheld from Price. The DOE further found that WAPA correctly determined that the Day Planner Notes were not agency records subject to disclosure under the FOIA. Consequently, Price's Appeal was granted in part.

U.S. Solar Roof, 5/30/95, VFA–0037

U.S. Solar Roof (Solar Roof) filed an Appeal from a determination issued to it on April 4, 1995 by the Director of the Photovoltaic Technology Division of the Office of Energy Efficiency and Renewable Energy (EE) of the Department of Energy. In that determination, EE denied in part a request for information submitted by Solar Roof on February 27, 1995 under the Freedom of Information Act (FOIA). The EE released two specific items but withheld seven items in their entirety pursuant to 5 U.S.C. § 552(b)(5) (Exemption 5). In its Appeal, Solar Roof challenged EE's April 4, 1995 determination and asserted that EE improperly applied Exemption 5 to the withheld information, and requested that the OHA direct EE to release it. In considering the Appeal, the Office of Hearings and Appeal (OHA) found EE properly applied the threshold requirements of Exemption 5 to the withheld information. However, the OHA remanded this Appeal to EE to issue a new determination, either releasing the withheld information or providing a more adequate consideration of the public interest in its disclosure. Therefore, the DOE granted in part and denied in part Solar Roof's Appeal.

Home Oil Co., Inc., 6/1/95, LEE–0135

Home Oil Co., Inc., (Home Oil) filed an Application for Exception from the requirement to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report." If granted, Home Oil would no longer be required to file Form EIA–782B. On consideration, the DOE denied Home Oil's Application for Exception. In denying the exception request, the DOE considered that Home Oil had not shown that filing Form EIA–782B constituted an undue hardship, gross inequity, or unfair distribution of burdens.

Refund Applications

Atlantic Richfield Co./Seago Enterprises, Inc., 6/1/95, RF304–13736

The DOE issued a Decision and Order partially granting an Application for

Refund filed by Seago Enterprises, Inc., in the ARCO special refund proceeding. The firm had applied for a refund based upon product purchased during 1973 and 1974, part of which was resold to ARCO. Seago's 1973 ARCO purchases were subject to a fixed-price contract based upon January 1973 prices. Seago's purchases were therefore at prices significantly below prevailing market prices, and the DOE found that Seago was not injured with respect to these purchases. With respect to the product that was resold to ARCO, because the contracts guaranteed Seago a fixed profit margin, the firm was also not injured with respect to those purchases. Therefore, the DOE determined that Seago was entitled to a refund only for its 1974 purchases that were not resold to ARCO.

Gulf Oil Corporation/Hinds Gulf, 5/30/95, RR300–253

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed in the Gulf Oil Corporation special refund proceeding by Roger C. Hinds, on behalf of Hinds Gulf. In its Motion, Hinds requested that the DOE reconsider a May 5, 1993 Decision and Order dismissing the refund application of Hinds Gulf on the ground that it was filed after the March 1, 1993 deadline for the Gulf proceeding. *See Gulf Oil Corp./Hind's Gulf,* Case No. RF300–21736 (May 5, 1993) (unpublished decision).

In considering the Motion, the DOE determined that Hinds had not presented any compelling reason that would warrant acceptance of the late application. Specifically, the DOE determined that lack of knowledge concerning the deadline did not provide a compelling reason for acceptance of a late application. Accordingly, the Motion for Reconsideration was denied.

Gulf Oil Corporation/Moore's Fuel Service, 5/30/95, RF300–13106, RF300–19809, RF300–21827

The DOE issued a Decision and Order resolving competing Applications for Refund filed in the Gulf Oil Corporation special refund proceeding for Moore's Fuel Service. The DOE granted the claim of the owner during the refund period, and denied the claim of the current owner, on the ground that the asset sales agreement at issue did not include the right to the refund. In addition, the DOE issued a Supplemental Order, rescinding an excessive refund that the former owner of Moore's Fuel Service had received in an earlier Gulf proceeding. As a result, the former owner, as well as his counsel in the earlier Gulf proceeding, was required to refund $7,675, an amount equal to the excessive refund received in the earlier Gulf proceeding minus the refund granted in this Decision and Order.

Gulf Oil Corporation/Red Carpet Car Wash, 6/1/95, RF300–20452

Petroleum Management, Inc. (PMI) filed an Application for Refund in the Gulf Oil Corporation (Gulf) refund proceeding, based on the purchases of three Red Carpet Car Wash locations. In considering the application, the DOE noted that it had already held, in connection with another refund application filed by PMI, that PMI did not have the right to a refund for the car washes. *See Shell Oil Co./Red Carpet Car Wash,* Case No. RF315–10003 (January 11, 1994) (unpublished decision). Specifically, the DOE noted that the agreement transferring the stock of Red Carpet Car Wash, Inc., the owner of the car washes did not reserve for PMI the right to any refund due Red Carpet. In addition, the DOE determined that PMI was not entitled to a refund for certain PMI outlets because PMI had advised the DOE that those outlets did not purchase Gulf product. Accordingly, the Application was denied.

R. Cali and Brothers, 6/1/95, RF272–97287

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Subpart V crude oil refund proceeding by R. Cali and Brothers. The decision declared June 30, 1995 as the final deadline for the crude oil refund proceeding. The DOE also stated that it would decide if there are sufficient funds available for additional refunds after the resolution of a few outstanding enforcement proceedings.

Texaco Inc./Dow Chemical Co., 6/1/95, RR321–096

The DOE issued a Decision and Order granting a Motion for Reconsideration filed on behalf of Dow Chemical Company in the Texaco Inc. special refund proceeding. The DOE had previously granted Dow a refund based upon its purchases of 1,293,189 gallons of Texaco refined products during the period covered by the Texaco consent order. DOE agreed to consider a supplemental Dow refund claim based upon Dow's additional purchase of 12,978,088 gallons of Texaco propane during the same period. Dow became aware of these purchases upon its review of DOE enforcement documents which stem from a DOE audit of Texaco's business records. In addition, Dow requested an above-volumetric refund for these volumes and presettlement interest on the amount by which it was overcharged by Texaco. DOE found that Dow satisfied the criteria for an above-volumetric refund by demonstrating that it was in all likelihood overcharged by a specific amount. Since Dow was an end-user of the Texaco propane, the firm did not have to demonstrate that it was injured by Texaco's alleged overcharges. DOE also found that Dow's claim to prejudgment interest was meritorious on equitable grounds noting that the DOE/Texaco consent order settlement amount included interest on Texaco's alleged overcharges as a major component. Dow was, therefore, granted a refund of $261,782 ($178,120 principal plus $83,662 interest).

The Waggoners Trucking Co., 5/30/95, RC272–295

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Subpart V crude oil refund proceeding by The Waggoners Trucking Co. (Waggoners). The OHA previously granted a crude oil refund to Waggoners. Waggoners, however, was subsequently found to have filed a refund claim in the Surface Transporters Stripper Well proceeding. In doing so, Waggoners properly executed a waiver and release waiving its right and the rights of its affiliates on August 7, 1986, to receive Subpart V crude oil overcharge refunds. Although Waggoners' Stripper Well refund claim was denied, its waiver is nevertheless binding on its Subpart V crude oil refund Application. Accordingly, this Decision rescinded the original refund granted to Waggoners.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	*Case No.*	*Date*
Armour Food Company	RF272–78056	05/30/95
The Dial Corporation	RC272–292	
Texas, New Mexico & Oklahoma Coaches, Inc	RC272–293	
Armour & Company	RC272–294	
Atlantic Richfield Company/Gordon H. Dunker	RF304–4951	05/30/95
Atlantic Richfield Company/Massillon Supersonic Car Wash et al	RF304–14144	06/01/95
Clarkson Brothers Machinery Haulers	RF272–97192	05/30/95
Farmers Union Oil Company	RF272–92111	06/01/95
Howard County Equity Coop Assn	RF272–92392	
Farmers Coop Oil Assn	RF272–92465	
Gulf Oil Corporation/Energy Supply Propane	RF300–18181	05/30/95
Gulf Oil Corporation/Henderson Clay Products	RF300–18185	05/30/95
Gulf Oil Corporation/Point Gasoline Corporation	RF300–21828	05/30/95
Roofing Wholesale Company, Inc	RF272–67965	06/01/95
Roofing Wholesale Company, Inc	RD272–67965	
Texaco Inc./Duval Corporation	RF321–7899	05/30/95
Texaco Inc./Gartin's Texaco	RF321–20154	06/01/95
Texaco Inc./Midway Texaco	RF321–10554	05/30/95
Texaco Inc./Studebaker's Texaco et al	RF321–19313	05/30/95
Tidewater Transit Co. et al	RF272–85000	06/01/95
Turkey Hill Dairy, Inc. et al	RF272–84642	06/01/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Dolese Concrete Company	RF272–97227
Ethyl Corporation	RF321–19622
Gabig Texaco	RF321–7296
Patterson & Brasher Texaco.	RF321–20624
Shaffer's Texaco at Princeton.	RF321–9511
Shankles Texaco	RF321–18087

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

Dated: September 5, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–22761 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5295–7]

Agency Information Collection Activities Up for Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before November 13, 1995.

ADDRESSES: Indoor Air Division (6607J), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Womble, 202–233–9057/FAX 202–233–9555/womble.susan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Affected entities: Entities affected by this action are those office buildings which voluntarily participate in the Building Assessment Survey and Evaluation (BASE) program.

Title: U.S. Environmental Protection Agency Indoor Environmental Quality Survey, EPA number 1619.02, OMB #2060–0244, January 31, 1996.

Abstract: The Indoor Environmental Quality Questionnaire is a component of the EPA Building Assessment Survey and Evaluation (BASE) program. In this program, EPA is conducting a five-year indoor air quality (IAQ) study of 150–250 large commercial and public office buildings. The purpose of this study is to develop a national baseline assessment of the indoor air in such buildings. The activities EPA will conduct under this study include the Indoor Environmental Quality Questionnaire, building inspections, interviews with building maintenance workers, environmental measurements (e.g. ventilation rates, concentrations of indoor air pollutants) and other quantitative and qualitative assessments. By conducting this research, EPA will begin to be able to assess the key building parameters that affect IAQ and the incidence of certain IAQ-related health and comfort problems. The Indoor Environmental Questionnaire is a voluntary questionnaire asking for information pertaining to work station characteristics, working condition, exposure to pollutants, health and well-being, and stress. Data from the Indoor Environmental Questionnaire will be used to compare the measured building parameters and health effects.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The public reporting burden for this collection of information is e[illegible]imat[illegible]verage 14 minutes per res[illegible]ons[illegible]uding time for reviewing ins[illegible] and completing and re[illegible]g the collection of information. The respondents to the questionnaire are occupants of commercial facilities in a wide variety of fields and SIC codes. Over the last three years approximately 1500 questionnaires have been administered. This is a smaller number than previously projected due to the decreased budget. The total burden of an estimated 14000 persons has not changed but the length of time to achieve that number is greater. The estimated total annual burden of respondents is a maximum of $14,720, and the frequency of collection is once. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: September 7, 1995.

Susan E. Womble,

Environmental Scientist.

[FR Doc. 95–22720 Filed 9–12–95; 8:45 am]

BILLING CODE 6560-50-M

[FRL–5295–2]

Modification of the March 21, 1988, Russo Development Corporation Section 404(c) Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Modification of Clean Water Act (CWA) Section 404(c) Final Determination for Russo Development Corporation.

SUMMARY: Notice is hereby given that the U.S. Environmental Protection Agency (EPA) has modified the March 21, 1988, CWA Section 404(c) Final Determination concerning the Russo Development Corporation (Russo) site located in the Hackensack Meadowlands (Meadowlands), Bergen County, New Jersey. This modification allows Russo to seek authorization for the discharge of dredged or fill material into a 13.5-acre tract containing wetlands, provided Russo deeds over for preservation and enhancement a 16.3 acre property located in Ridgefield, New Jersey, and provides $700,000 for wetland enhancement activities at sites in the Meadowlands. Any discharges of dredged or fill material to wetlands on the Russo site must be authorized by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

EFFECTIVE DATE: The amendment was effective on September 7, 1995.

FOR FURTHER INFORMATION CONTACT: John Ettinger (EPA) at (202) 260–1190.

SUPPLEMENTARY INFORMATION: CWA Section 404(c) authorizes EPA to prohibit, deny, restrict, or withdraw the specification of a site for the disposal of dredged or fill material. On March 21, 1988, EPA's Assistant Administrator (AA) for Water rendered a final determination which prohibited the designation of 57.5 acres of wetlands as a disposal site for fill material. These wetlands were and are currently owned by the Russo Development Corporation (Russo), and are located in the Hackensack Meadowlands in Carlstadt, Bergen County, New Jersey. The Final Determination pertained to a proposal by Russo to maintain 52.5 acres of unauthorized fill (of which 44 acres have been built upon) and to fill a remaining five acres of wetlands of a 13.5-acre tract to complete a warehouse complex. The reason cited by the AA for Water for the 1988 404(c) determination was that the discharge of fill would have unacceptable adverse effects, both individually and cumulatively, on wildlife in the Meadowlands. The 1988 Final Determination stated that the Russo site was/is very valuable to wildlife from a site specific and cumulative standpoint and, that the compensatory mitigation proposed by Russo at that time would not adequately replace those wildlife values that had been and were anticipated to be lost. In the Final Determination, however, EPA indicated that its Section 404(c) prohibition could be reconsidered upon demonstration that the adverse effects to wildlife have been satisfactorily addressed.

Litigation was undertaken by Russo with regard to EPA's and the Army Corps of Engineers' (Corps) actions regarding the site. The litigation history is summarized in the notice of proposed amendment of the 404(c) determination (See 60 FR 15913).

The Corps, EPA, and Russo have engaged in discussions to resolve issues arising under Section 404 with regard to the Russo site. As a result of these discussions, Russo agreed to provide additional mitigation. Based on this additional mitigation, EPA proposed to amend the 404(c) final determination on March 28, 1995. In particular, Russo has agreed to deed over, for preservation and enhancement, an approximately 16-acre parcel of wetlands in Ridgefield, NJ, located approximately 1.5 miles from the subject Russo sites. Russo also agreed to provide $700,000 for the purpose of enhancing wetlands both at this site and at sites contained in a Hackensack Meadowlands Development Commission (HMDC) mitigation bank, as appropriate. This mitigation proposal is designed to compensate for wetlands functions lost as a result of the past and future fill activities on both Russo sites. Based on the increased mitigation, EPA proposed to amend the prohibition of the discharge of fill material on the 13.5-acre Russo site to allow for designation of the subject property as a disposal site, provided the compensatory mitigation conditions are met. After final amendment of the Final Determination, Russo would seek an after-the-fact authorization from the Corps for the past discharge of fill material into the subject wetlands for the purpose of constructing a warehouse complex, as well as authorization for the future discharge of fill material into remaining wetlands for additional development activities.

In the **Federal Register** notice proposing to amend the 404(c) prohibition, EPA requested comments on allowing for restricted use of the Russo site based on the compensatory mitigation proposal discussed above. (A more complete background on this case, as well as a detailed description of a possible compensation scenario that could be implemented under the proposed amendment can be found in the March 28, 1995, notice.) In particular, EPA was interested in comments relating to the proposed compensatory mitigation and its ability to replace the wildlife values lost as a result of past fill activities, as well as anticipated losses due to proposed discharges in the subject wetlands. EPA also mailed copies of the **Federal Register** notice to parties listed on the U.S. Army Corps of Engineers mailing list for the Hackensack Meadowlands District and to recipients of an October 14, 1987, public notice scheduling a public hearing for the Russo Section 404(c) action.

EPA received three written comments in response to the March 28, 1995, **Federal Register** notice. These comments are summarized below, along with EPA's responses to these comments.

The Pleasantville Field Office of the U.S. Fish and Wildlife Service (Service) opposed the proposed action on several grounds. The Service contended that it would adversely affect fish and wildlife resources by contributing to the continuing loss of regionally significant habitat, and would be contrary to the objective of maintaining and restoring regional biodiversity. The Service emphasized that the Meadowlands is a corridor for migratory birds, as well as a large island of habitat in an intensely urbanized area that plays a critical role in maintaining the region's biodiversity.

The Service also commented that the draft Environmental Impact Statement (DEIS) on the proposed Special Area Management Plan (SAMP) for the Hackensack Meadowlands fails to articulate specific fish and wildlife management objectives for target species or species groups. This lack of clearly articulated management objectives, according to the Service, makes it impossible to evaluate the success of individual wetland enhancement projects or the cumulative effects of all such projects on the Hackensack Meadowlands ecosystem.

The Service also contended that the proposed compensatory mitigation is not likely to replace the wetland functions and values lost as a result of Russo's fill activity because the wetlands filled by Russo provided high value fish and wildlife habitat, while the wetlands to be enhanced are already of moderate to high value for fish and wildlife. The Service recommended that the original prohibition under Section 404(c) on the 13.5 acre parcel should remain intact.

Response: EPA agrees that the Meadowlands is a significant habitat for fish and wildlife. The desire to protect the remaining wetlands in the Meadowlands motivated EPA, the Corps, the Hackensack Meadowlands Development Commission (HMDC), the New Jersey Department of Environmental Protection (NJDEP) and the National Oceanic and Atmospheric Administration (NOAA) to join as partners to develop the SAMP, which is a 20-year plan that provides for natural resource protection, and reasonable economic growth within the Meadowlands. The proposed SAMP includes measures for the permanent protection and enhancement of about 90% of the remaining wetland acreage in the Meadowlands, along with the measures proposed for upland and wetland habitat improvement.

The DEIS is intended to be programmatic in nature, and the mitigation plan and strategies contained therein are designed to meet the program goal agreed to by the partner agencies, i.e., no net loss of wetland functions within the Meadowlands District. The targeting of a wetlands mitigation effort toward habitat enhancement for particular species or species groups is more appropriately performed at the site-specific level, on a case-by-case basis, as mitigation sites are developed and not as part of the DEIS. When a specific site is chosen to implement mitigation consistent with the proposed action, specific species or species groups could be targeted as part of the mitigation strategy. EPA will consider all comments regarding the SAMP and DEIS, including those submitted by the Service.

EPA believes, however, that the compensatory mitigation plan proposed by Russo will replace the fish and wildlife values lost as a result of the past and future fill activities. The Advanced Identification of the Hackensack Meadowlands, in which the Service was a participant, as well as additional, detailed studies performed in conjunction with the SAMP, clearly indicate that not all habitat in the Meadowlands is of moderate to high value for wildlife. If a mitigation bank site is established on a site with low habitat value, appropriate enhancement of the site would provide the requisite increase in fish and wildlife value needed to offset the loss in value due to Russo's activity. Appropriate targeting of mitigation bank sites by HMDC, in coordination with EPA, will help to ensure that this goal is achieved. Moreover, the example provided in the March 28, 1995 notice is a mitigation strategy that could offset the loss of wildlife value from Russo's activity.

The State of New Jersey Department of Environmental Protection provided comments on the proposal in the form of two letters. The first letter dated April 21, 1995, objected to the modification. However, a second letter dated June 15, 1995, expressly superseded the Department's earlier letter. In this letter, the State indicated that the proposed settlement and modification of the 404(c) prohibition would serve to satisfy all State regulatory concerns for both the Carlstadt site and the Ridgefield site, and expressed their full support for both actions.

Mr. Henry Gluckstern, a private citizen, wrote in objection to the proposed modification of the 404(c) prohibition, contending that the alternative remedial approaches outlined in the March 28 notice should be rejected as entirely inadequate and that "nothing in the data supplied in the notice supports an actual impossibility of restoring the land to its original wetland values." Mr. Gluckstern opined that the proposed compensatory mitigation will not achieve true biological equivalency, and that as such, it should be rejected.

Response: The information contained in the March 28, 1995, public notice on the proposed amendment provided a detailed chronology of the history of activity on the 13.5 acre tract. For the reason explained below, EPA believes that restoration of the Russo site to its original condition with attendant wildlife values is not likely to be possible. Most of the tract was excavated, with several feet of the original organic soil and "meadow mat" being removed. Subsequently, approximately 8.5 acres of the tract were filled with shot rock varying in size from cobbles to boulders. Two to three acres of the remaining five acres of wetlands on this site subsequently ponded.

The loss of the original substrate, along with its seed bank, would result in a complete change in any plant community that could establish and be naturally sustained if the fill were removed. The establishment of a pond on the excavated portion of the five acre site, which was not present in the original wetlands complex, is direct evidence it would be unlikely that the original wetlands conditions could be established there naturally. In addition, the placement of several feet of rock on 8.5 acres of the site has resulted in compaction of the remnants of the original soil on that site. Evidence of this, based on excavation of the fill performed in 1990, are part of the records of this case.

Moreover, fill removal would permanently change the drainage characteristics of the soil. In addition, the elevation of the remnant original soil would be lower than its original level as a result of the compaction of the fill. As a result of these changes, along with the loss of the organic surface substrate, the conditions at the site would be very different from those that originally existed and supported the historic complex of wetland types on the site. In particular, the wet-meadow complex which existed on site is typically a ground-water fed system, and therefore very dependent on both the drainage characteristics of the substrate and the elevation of the wetland. Even if appropriate seeding/planting could take place, and organic substrate could be added to raise the elevation of the site to its original conditions, the change in the lower soils would still be likely to influence site hydrology, on which such a wetland system is dependent. Consequently, EPA has determined that the data do not support a likelihood of restoring the site to its original wetlands values.

The contention that no true biological equivalence for the wildlife values lost from the site can be established is difficult to address, because the commenter does not define how he is applying the term equivalence. Actual habitat can never be exactly replicated from one site to another, because natural sites rarely have identical (although they frequently have similar) physical, geological, and biological conditions. Likewise, the determinants of community structure are the products of a complex interaction of both existing ecological conditions and stochastic events, and thus will vary from one site to another. However, appropriate conditions to support given wildlife species or groups can be established,

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particularly if the habitat requirements of the desired species or communities are broad. The term equivalence, when applied to individual species, generally refers to two different species which perform the same general ecological role in two different geographic areas. Ecologically equivalent communities, likewise, may have different species; those species, however, would be performing similar roles and the communities would have the same general community structure and dynamics, although those communities would be in two different locations. Given these assumptions, a community which is ecologically equivalent to the Russo site would be considered to be successfully established if it contains similar features and supports a similar number of species which perform the same general roles as those species which were likely to have been present on the site.

The March 28, 1995 notice described a possible combination of mitigation strategies which, if implemented, would support similar wildlife species to those which used the Russo tracts prior to Russo's activities. For example, the excavation of ponds and/or channels would provide open water habitat adjacent to a natural windbreak (i.e., *Phragmites*). This activity would provide resting and feeding habitat for waterfowl and wading birds, especially overwintering black duck, *Anas rubripes*, (a U.S. Fish & Wildlife Service species of special concern) and a species of concern in the final determination of the AA for Water. The resulting habitat would therefore be similar habitat, and would provide support for the same species that may have used the Russo tracts. Likewise, the establishment of either a wet meadow or a high salt marsh would provide hunting habitat for northern harrier, *Circus cyaneus*, and other raptors, as well as game birds such as woodcock and pheasant. Thus, these activities could establish equivalent wildlife values to those lost from the Russo tracts. Those losses have been sustained for nearly ten years, and we believe that implementation of an appropriate mitigation strategy could only benefit the Meadowlands. We therefore continue to believe that the proposal could provide good compensation for wildlife values which were lost from the Russo tracts.

It should be clarified that, under the terms of this 404(c) restriction, $700,000 would be provided by Russo to fund any appropriate mitigation at the Ridgefield parcel and any other locations selected out of the mitigation bank to be operated by HMDC. As discussed by EPA in the notice of the proposed 404(c) determination, effective mitigation could include enhancement activities at the Ridgefield site as well as other appropriate locations. The terms of the 404(c) restriction do not, however, specifically mandate how the money is to be allocated. If a mitigation plan is submitted demonstrating that greater environmental benefit would be obtained from enhancing sites other than the Ridgefield parcel, such a mitigation plan would be consistent with the 404(c) restriction. EPA will be involved in reviewing such a mitigation plan to ensure that it is appropriate taking into account the functions and values needed to compensate for the losses at the 13.5 and 44 acre sites. In addition, it is EPA's intent that, aside from incidental expenses associated with the development of an appropriate mitigation plan, the money provided by Russo to HMDC will be used for actual enhancement activities. Allocation of a portion of the funds for land acquisition, for example, would not be appropriate because it would make it difficult to achieve the degree of mitigation necessary to compensate for losses incurred at the Russo site.

Findings and Conclusions

EPA has carefully reviewed Russo's proposed compensatory mitigation offer and the comments submitted in response to the proposed amendment of the 1988 Final Determination for the CWA Section 404(c) action. Based on this review, EPA concludes that the proposed compensatory mitigation adequately addresses the adverse effects to wildlife described in the Final Determination.

As discussed above, given the extent and impact of Russo's activities on the 13.5-acre site, it is highly unlikely that suitable wetland conditions could be established on-site. Consequently, offsite mitigation is needed to compensate for the adverse effects to wildlife identified in the Final Determination.

The providing of funds to HMDC's proposed mitigation bank for enhancement activities in the Meadowlands will ensure that such mitigation is provided. As a result, a prohibition on the placement of fill material is no longer necessary to prevent unacceptable adverse effects to wildlife. EPA is instead issuing a restriction under Section 404(c) that allows specification of the Russo site as a disposal site for fill material conditional on performance of the mitigation steps specified in the modification below. EPA stated in the **Federal Register** notice proposing this amendment to its 404(c) action that this amendment be conditional on a binding agreement by Russo to perform the specified mitigation. This condition would be met through the imposition of binding conditions in a permit issued under Section 404 by the Corps specifying that Russo must perform this specified mitigation in order for discharges of fill on this site to be authorized under Section 404.

For these reasons, EPA concludes that it is appropriate to modify the original March 21, 1988, Final Determination to allow Russo to seek authorization to discharge dredged or fill material into the 13.5-acre site, provided that Russo implements the mitigation specified below (such mitigation could include the steps outlined in the proposed 404(c) amendment or an equivalent mitigation plan). Any discharge activities to waters of the U.S. must be authorized pursuant to applicable permits issued by the Corps under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

Modification

The March 21, 1988, Clean Water Act Section 404(c) Final Determination for the Russo Development Corporation Site is hereby modified as follows:

The prohibition imposed in the March 21, 1988, Final Determination is removed and a restriction is imposed upon specification of the site for the disposal of dredged or fill material. Under this restriction, the Russo Development Corporation may seek authorization from the U.S. Army Corps of Engineers for discharges of dredged or fill material into waters of the United States within the area previously prohibited by EPA, provided the terms of the authorization require Russo to (1) deed over for preservation and any appropriate enhancements, an approximately 16.3 acre parcel of wetlands located in Ridgefield, New Jersey; and, (2) provide funding in the amount of $700,000 for the purpose of enhancing wetlands in the Hackensack Meadowlands.

Dated: September 7, 1995.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 95–22724 Filed 9–12–95; 8:45 am]

BILLING CODE 6560-50-P

[FRL–5295–6]

Deadline Extension for Submitting Environmental Education Grant Proposals to EPA

The proposal submission deadline for the "Environmental Protection Agency,

Fiscal Year 1996 Environmental Education Grants Program, Solicitation Notice," is extended from October 13, 1995 to December 15, 1995. The original deadline was published in the **Federal Register**, August 4, 1995 at 60 FR 39994/Notices Section.

Due to possible funding delays at the Federal level for fiscal year 1996, EPA is extending the deadline. This will enable grant applicants to spend more time preparing proposals and will give EPA time to fully determine what the changes, if any, are to its fiscal year budget. This postponement may also delay the EPA awards process until the summer of 1996. Therefore, proposed projects should have an expected start date on or after October 1, 1996, and summer projects may be planned for the summer of 1997. EPA regrets any inconvenience these delays may create for grant applicants.

EPA has been very pleased with the quality of proposals received over the past four years and looks forward to receiving new proposals for 1996. If organizations have submitted a proposal in the past and wish to re-apply, they should observe the changes in the Solicitation Notice regarding EPA priorities for funding. For a copy of the Solicitation Notice, please mail requests to: U.S. Environmental Protection Agency, Environmental Education Grants Program (1707), 401 M Street SW., Washington, DC 20460.

Dated: August 30, 1995.

Michael Baker,

Acting Director, Environmental Education Division.

[FR Doc. 95–22721 Filed 9–12–95; 8:45 am]

BILLING CODE 6560-50-P

[OPP–34082; FRL 4975–7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on December 12, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.James.epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 16 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before December 12, 1995 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Delete From Label
000004–00099	Malathion 50% EC (Malathion)	Indoor use in homes, buildings, dairy barns, hog barns, poultry houses, calf pens, dogs, cats, kennels, pens, stored grain, field & garden seeds, transport containers for bagged flour & packaged cereals
000352–00317	Sinbar Herbicide (Terbacil)	Pecans
000352–00341	Manzate 200 Fungicide (Mancozeb)	Non-agricultural turf & lawn grass uses
000352–00354	Benlate Fungicide (Benomyl)	Turf & lawn grass uses
000352–00377	Benomyl Technical (Benomyl)	Turf & lawn grass uses
000352–00385	Benlate OD Fungicide (Benomyl)	Turf & lawn grass uses
000352–00395	Krenite Brush Control (Fosamine Ammonium)	Ditchbank uses
000352–00396	Benlate DF Fungicide (Benomyl)	Turf & lawn grass uses
000352–00398	Manzate 200 Flowable Fungicide (Mancozeb)	Non-agricultural turf & lawn grass uses
000352–00447	Benlate 50 DF Fungicide (Benomyl)	Turf & lawn grass uses
000352–00449	Manzate 200 DF Fungicide (Mancozeb)	Non-agricultural turf & lawn grass uses
000352–00564	Benlate SP Fungicide (Benomyl)	Turf & lawn grass uses

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Delete From Label
000655–00777	Prentox 5 LB. Malathion (Malathion)	Apples, pears, quince, almonds, asparagus, carrots, filbert, peanuts, pineapples, plums, prunes, safflower, soybeans, sugar beets; tobacco, radish, watercress, forest trees (including deciduous forest & shade trees, eastern pine, pines, red pine, stored commodity treatment for almonds, field or grass garden seeds, peanuts, rice, sorghum, bagged citrus pulp, cattle feed concentrate blocks (non- medicated), pet & domestic animal uses for beef cattle, cats, chickens, dairy cattle (lactating and non-lactating), dogs, ducks, geese, goats, hogs, horses (including ponies), sheep, turkeys, animal premise uses for poultry houses, cat & dog sleeping quarters, poultry houses, household uses for indoor domestic dwellings, matteresses, commercial and industrial uses for bagged flour, cereal processing plants, edible & inedible commercial establishments, edible & inedible food processing plants, packaged cereals, pet food & feed stuff, warehouses to control khapra beetles
002217–00628	Methoxychlor 75 Dust Base (Methoxychlor)	Ornamental lawns, recreational areas, urben & rural areas, agricultural premise use for barns (including dairy barns), milk rooms, pens, sheds, stalls, poultry houses, stables, feed rooms & manure piles, kennels, dog & cat sleeping quarters, commercial & industrial use for food processing plants (edible & inedible), food processing storage areas (including cereal processing mills, cereal storage areas & flour mills), mausoleums, mushroom house and equipment treatment, transportation vehicles, empty peanut warehouses
008329–00018	Mosquitomist Two ULV (Chlorpyrifos)	Mosquito larvicide uses
051036–00105	Ametryne 4FL (Ametryne)	Potatoes, citrus use

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000004	Bonide Products, Inc., 2 Wurz Ave., Yorkville, NY 13495.
000352	E.I. duPont de Nemours & Co., Registration & Regulatory Affairs, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880.
000655	Prentiss Incorporated, C.B. 2000, Floral Park, NY 11002.
002217	PBI/Gordon Corp., 1217 W. 12th St., P.O. Box 4090, Kansas City, MO 64101.
008329	Clarke Mosquito Control Products, Inc., 159 N. Garden Ave., Roselle, IL 60172.
051036	Micro Flo Company, P.O. 5948, Lakeland, FL 33807.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 28, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–22492 Filed 9–12–95; 8:45 am]

BILLING CODE 6560-50-F

[OPP–66217; FRL 4975–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 12, 1995, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent To Cancel

This Notice announces receipt by the Agency of requests to cancel some 35 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

Table 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00646	Subdue 5G Fungicide	N-(2,6-Dimethylphenyl*N*-(methoxyacetyl)alanine, methyl ester
000100–00672	Apron T-69 Fungicide	2-(4'-Thiazolyl)benzimidazole *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CA–87–0007	Apron T-69 SD	2-(4'-Thiazolyl)benzimidazole *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 ID–86–0019	Apron T-69 SD	2-(4'-Thiazolyl)benzimidazole *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 ME–92–0002	Ridomil MZ 58 Fungicide	Zinc ion and manganese ethylenebiedithiocarbamate, coordination product *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 NC–90–0004	Subdue Granular Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 ND–92–0002	Ridomil MZ 58 Fungicide	Zinc ion and manganese ethylenebiedithiocarbamate, coordination product *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 WA–86–0028	Apron T-69 SD	2-(4'-Thiazolyl)benzimidazole *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000224–00029	Phillips Fuel Additive 55 MB-E	2-Methoxyethanol
000352–00270	Dupont Lorox Weed Killer WP	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
000352–00391	Dupont Lorox L Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
000352–00451	Dupont Lorox Plus Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoic acid,
000352–00543	New Lorox Plus Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoic acid,
000352–00544	Dupont Gemini Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoic acid,
000352–00562	Dupont Lorox SP Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
000352–00568	Du Pont Synchrony STS	Methyl 3-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl) 2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoic acid,
000748–00212	Hi Flo Prist	2-Methoxyethanol
000748–00213	Lo-Flo Prist Anti-Icing and Biocidal Fuel Additive	2-Methoxyethanol
000748–00215	Prist Anti-Icing & Microbiocidal Aviation FuelAdditive	2-Methoxyethanol
001769–00063	Flair Aerosal Air Sanitizer and Deodorant	1,2-Propanediol
001769–00251	Ornathal Lawn and Ornamental Fungicide	Tetrachloroisophthalonitrile
001812 WI–94–0004	Linex 50 DF	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
003125 SD–91–0002	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 SD–92–0003	Sencor Solupak Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
004524–00027	Monarch C-S	Alkyl* dimethyl benzyl ammonium chloride *($60\%C_{14}$,$30\%C_{16}$, $5\%C_{18}$, $5\%C_{12}$) Alkyl* dimethyl ethylbenzyl ammonium chloride *($68\%C_{12}$, $32\%C_{14}$) Phosphoric acid
005185–00146	Bio-Guard Chlorinated Stabilizer 40–10	Sodium dichloro-*s*-triazinetrione
005464–00006	Shock Repellent	Capsaicin (in oleoresin of capsicum)
007056–00149	CSA Screwworm Spray	Dipropyl isocinchomeronate *O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate

Table 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
007234–00076	Buckshot 10-PH	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
010182–00134	Prelude E W Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
010807–00015	Knight Insect Guard	Bioresmethrin
034704 WA–82–0045	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
034704 WA–85–0030	Dimethogon 25% Wettable Powder Systemic Insecticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
034704 WI–87–0003	Clean Crop Phorate 20G	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034913–00009	Sprakil S-3 Granular Weed Killer	*N*-(5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000224	Phillips 66 Co., 699 Adams Building, Bartlesville, OK 74004.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000748	PPG Industries, Inc., Product Safety, One PPG Place - 36 W., Pittsburgh, PA 15272.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
001812	Griffin Corp., Box 1847, Valdosta, GA 31603.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004524	H.B. Fuller Co., 3900 Jackson St., N.E., Minneapolis, MN 55421.
005185	Bio-Labs Inc., Box 1489, Decatur, GA 30031.
005464	Xitrium Labs Inc., 415 W. Pershing Rd., Chicago, IL 60609.
007056	IQ Products Co., Attn: Marty York, 16212 State Hwy 249, Houston, TX 77086.
007234	Forshaw Chemical Co., 650 State Street, Charlotte, NC 28208.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010807	Amrep, Inc., 990 Industrial Dr., Marietta, GA 30062.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
034913	SSI Mobley Co., Inc., c/o Landis International Inc., Box 5126, Valdosta, GA 31603.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3.—ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
109–86–4	Methoxyethanol	000224 000748

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 12, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 28, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–22493 Filed 9–12–95; 8:45 am]

BILLING CODE 6560-50-F

[OPP–30370A; FRL–4974–9]

Safe and Sure Products; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product De-Flea Shampoo Concentrate, containing active ingredients not included in any currently registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Keigwin, Product Manager (PM) 10, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 210, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–6788; e-mail: keigwin.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 24, 1994 (59 FR 43577), which announced that Safe and Sure Products Company, P.O. Box 5547, Sarasota, FL 34277, had submitted an application to register the pesticide product De-Flea Shampoo Concentrate an insecticide (EPA File Symbol 45729–E), containing the active ingredients docusate sodium sulfosuccinate (hereafter referred to as dioctyl sodium sulfosuccinate) and undecylenic acid at 12 and 2 percent respectively, active ingredients not included in any currently registered product.

The application was approved on August 8, 1995, as De-Flea Shampoo Concentrate for use to control fleas, ticks, and lice on dogs, cats and other nursing animals (EPA Registration Number 45729–2).

The Agency has considered all required data on risks associated with the proposed use of dioctyl sodium sulfosuccinate and undecylenic acid, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of dioctyl sodium sulfosuccinate and undecylenic acid when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 25, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–22733 Filed 9–12–95; 8:45 am]

BILLING CODE 6560-50-F

[OPP–30393; FRL–4972–1]

Zeneca Ag Products; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 13, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30393] and the file symbol (10182–UNI) to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an

ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30393]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Theresa A. Stowe, Acting Team Leader, Product Manager (PM) Team 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 229, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–5540; e-mail: stowe.theresa@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE 19897, to register the pesticide product ICIA5504 50WG Fungicide (EPA File Symbol 10182–UNI), containing the active ingredient (methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate at 50 percent, an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. This product is for use to control certain diseases of grapes and turf. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30393] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 28, 1995.

Stephen L. Johnson

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–22732 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180980; FRL 4975–1]

Pirate; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued specific exemptions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, to Alabama Department of Agriculture and Industries, Arkansas State Plant Board, Louisiana Department of Agriculture and Forestry, and the Mississippi Department of Agriculture and Commerce (hereafter referred to as the "Applicants") for use of the pesticide, Pirate to control tobacco budworms in up to 2,000,000 acres in the south eastern cotton belt region. Due to the unique nature of these emergency situations, in which the time to review the conditions of these situations was short, it was not possible to issue a solicitation for public comment, in accordance with 40 CFR 166.24, prior to the Agency's decision to grant these exemption. However, comments may still be submitted and will be evaluated regarding the continuation of these exemptions.

DATES: Comments must be received on or before September 28, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180980," should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form

must be identified by the docket number [OPP–180980]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain (CBI) must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA, if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for use of the insecticide Pirate, available as Pirate 3SC from American Cyanamid Company, to control tobacco budworms on up to 2,000,000 acres within the south eastern cotton belt region. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicants, excessive economic losses will occur if Pirate is not granted for use on cotton to control the tobacco budworm (TBW) in these regions. The Applicants claim that there are no other alternative pesticides to control this pest due to pyrethroid resistance.

Under the uses requested and/or authorized in these specific exemptions, Pirate was requested, a maximum of 4 applications of Pirate may be applied at the rate of [0.2 to 0.35 lb active ingredient (ai/A)] (8.53 to 14.93 fl. oz. of product) per acre using ground or aerial equipment, in a minimum of 10 gallons per acre total volume by ground or 5 gallons of spray solution per acre by air. A 5 to 7 day application interval, and a 21-day preharvest interval must be observed. The granted specific exemptions expire September 30, 1995.

The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)]. Pirate is an unregistered (new) chemical. In the case of these states', and the situation found in their cotton producing areas, there was not adequate time to publish a notice of receipt and solicit public comments on these applications prior to the Agency reviewing the submitted data, and making and issuing its decisions. Therefore, as allowed for by 40 CFR 166.24(c), the comment period following a notice of receipt was eliminated, since the time available to make a decision required this.

A record has been established for this notice under docket number "OPP–180980" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Interested persons are still invited to submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received regarding continuance of these emergency exemptions for the use of Pirate on cotton.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: August 25, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–22494 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–633; FRL–4975–3]

DuPont Co. and Monsanto Co.; Notice of Filings of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA announces that it has received various pesticide petitions and food/feed additive petitions from the DuPont Co. and the Monsanto Co. proposing the establishment and/or amendment of pesticide tolerances in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-633]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received various notices of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petitions (PP) and food/feed additive petitions (FAP) to amend 40 CFR parts 180, 185, and 186 to establish tolerances for various pesticides in or various commodities as described below. The Monsanto Co. (Monsanto), 700 14th St., NW., Suite 1100, Wasington, DC 20005, and the E.I. DuPont de Nemours & Co. (DuPont), Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, submitted the petitions described herein.

Initial Filings

1. *PP 5F4555*. Monsanto proposes that 40 CFR 180.364 be amended by establishing a regulation to permit residues of glyphoste [*N*-(phosphonomethyl)glycine] resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on the raw agricultural commodity corn forage at 1.0 part per million (ppm). The analytical methods are HPLC with a fluorometric detector and GC/MS.

2. *PP 5F4565*. DuPont proposes that 40 CFR part 180 be amended by establishing a regulation to permit the combined residues of the herbicide terbacil (3-tert-butyl-5-chloro-6-methyluracil) and its hydroxylated metabolites, 3-tert-butyl-5-chloro-6-hydroxymethyluracil, 6-chloro-2,3-dihydro-7-hydroxymethyl-3,3-dimethyl-5H-oxazolo (3,2a) pyrimindim-5-one, and 6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo (3,2a)pyrimidin-5-one (calculated as terbacil) in or on alfalfa, forage at 1 ppm and alfalfa, hay at 1 ppm.

3. *PP 6F3408*. Monsanto proposes that 40 CFR 180.364 be amended by proposing a regualtion to permit the combined residues of the herbicide glyphosate and its metabolite aminomethylphosphonic acid in or on the raw agricultural commodity sunflowers at 0.1 ppm. The analytical method is HPLC.

Amended Filings

4. *PP 3F4268*. In the **Federal Register** of August 17, 1995 (60 FR 42884), EPA issued a notice that DuPont proposed that 40 CFR part 180 be amended by establishing a regulation to permit residues fo the herbicide quizalofop-p-ethyl ester (ethyl, R-2-(4-(6-chloro-quinoxalin-2-yl)oxy)phenoxy)propanoic acid) and the S-enantiomers of the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the legume vegetable (succulent and dried) group at 0.3 ppm; foilage of legume vegetables (except soybeans and bean hay) at 0.7 ppm; sugar beet root at 0.1 ppm; sugar beet top at 0.5 ppm; and cottonseed at 0.1 ppm. Dupont is amending the petition by proposing a regulation to permit the combined residues of the herbicide quizalofop-p-ethyl ester and its acid metabolite, quizalofop-p-[R-(4-((6-chloro-quinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantiomers of the ester and the acid all expresed as quizalofop-p-ethyl ester in or on the following raw agricultural commodities (RACs): cotton seed at 0.1 ppm; legume vegetable (succulent or dried) group at 0.3 ppm; foliage of legume vegetable (except soybeans and bean hay) at 0.7 ppm; sugar beet root at 0.1 ppm; and sugar beet top at 0.5 ppm. (PM-25).

5. *PP 4F4312*. In the **Federal Register** of July 13, 1994 (59 FR 35718), EPA issued a notice that Monsanto proposed that 40 CFR 180.463 be amended by establishing a regulation to permit the combined residues of the herbicide glyphosate and its metabolite aminomethylphosphonic acid (AMPA) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on alfalfa, hay at 200 ppm and alfalfa, forage at 75 ppm. Monsanto is amending the petition by proposing to remove the metabolite AMPA from the expression and to amend 40 CFR 180.364 by establishing a regulation to permit residues of glyphosate resulting from the application of the isopropylamine and/or monoammonium salt of glyphosate for herbicidal and plant growth regulator purposes and/or the sodium sesqui salt of glyphosate for growth regulator purposes in or on the kidney of cattle, goats, hogs, sheep, and horses at 4.0 ppm.

6. *PP 4F4338*. In the **Federal Register** of November 2, 1994 (59 FR 54907), EPA issued a notice that Monsanto proposed that 40 CFR 180.364 be amended by establishing a regulation to permit the combined residues of glyphosate and its metabolite aminomethylphosphonic acid (AMPA), resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on citrus fruits at 0.5 ppm. Monsanto is amending the petition by proposing to remove the metabolite AMPA from the expression.

7. *PP 4F4369*. In the **Federal Register** of February 8, 1995 (60 FR 7540), EPA issued a notice that Monsanto proposed that 40 CFR 180.364 be amended by establishing a regulation to permit the combined residues of glyphosate [N-(phosphonomethyl)glycine in or on soybean forage at 100 ppm, resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate. Monsanto is amending the petition by proposing that 40 CFR 180.364 be amended by establishing a regulation to permit residues of glyphosate resulting from the application of the isopropylamine salt of glyphosate in or on the raw agricultural commodities (RACs) soybean grain at 20 ppm, soybean forage at 100 ppm, soybean hay at 200 ppm, and soybean, aspirated grain fractions at 50 ppm. These tolerances are to replace the existing tolerances for soybeans, soybean forage, soybean hay, and soybean straw.

8. *PP 4F4405*. In the **Federal Register** of February 8, 1995 (60 FR 7540), EPA issued a notice that DuPont proposed that 40 CFR part 180 be amended to establish a regulation to permit residues of the herbicide nicosulfuron (3-pyridinecarboxamide, 2-(((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl)-N,N-dimethyl) in or on sweet corn (kernals plus cobs with husks removed) and corn, sweet, forage at 0.1 ppm. DuPont is amending the petition to propose the establishment of a regulation to permit residues of nicosulfuron in or on corn, sweet (kernals plus cobs with husks removed); corn, sweet, forage; and corn, sweet, fodder (stover at 0.1 ppm).

9. *PP 8F2128*. In the **Federal Register** of November 7, 1978 (43 FR 53816), EPA issued a notice that Monsanto proposed to amend 40 CFR 180.314 by establishing a tolerance for residues of the herbicide triallate (S-(2,3,3-trichloroallyl) diisopropylthiocarbamate) in or on the raw agricultural commodities sugarbeets, sugarbeet tops, soybeans, soybean forage and hay all at 0.05 ppm. Monsanto is amending the petition to propose that tolerances with regional registration be established for residues of triallate and its metabolite 2,3,3-trichloro-2-propene sulfonic acid and expressed as parent equivalent in/on the raw agricultural commodities sugarbeet roots at 0.05 ppm and sugarbeet foliage at 0.5 ppm.

10. *PP 8F3673*. In the **Federal Register** of October 12, 1988 (53 FR 39785), EPA issued a notice that Monsanto Co. proposed that 40 CFR 180.364 be amended by establishing a regulation to permit residues of the herbicide glyphosate in or on corn grain at 1.0 ppm, corn fodder at 20 ppm, and corn forage at 20 ppm. Monsanto is amending the petition by proposing to establish a regulation permitting residues of glyphosate resulting from the the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on corn grain at 1.0 ppm, corn fodder (stover) at 100 ppm, and corn, aspirated grain fractions at 200 ppm. Also proposed is the establishement of tolerances for residues of glyphosate resulting from the application of the isopropylamine salt and/or glyphosate monoammonium salt for herbicidal and plant growth regulator purposes and/or the sodium sesqui salt for growth regulator purposes in or on liver and kidney of cattle, goats, hogs, horses, and sheep and the liver and kidney of poultry at 1.0 ppm.

11. *FAP 4H5701*. In the **Federal Register** of March 15, 1995 (60 FR 13979), EPA issued a notice that Monsanto had submitted an FAP to EPA that proposed amending 40 CFR 186.3500 to establish a regulation permitting residues of the herbicide glyphosate resulting from the application of the isopropylamine salt and/or the monoammonium salt of glyphosate in or on the feed commodity aspirated grain fractions at 30 ppm. Monsanto is amending the petition by deleting the feed commodity soybeans, aspirated grain fractions at 30 ppm from this expression and reproposing it as a raw agricultural commodity under PP No. 4F4369 (Refer to amended filing notice for 4F4369 elsewhere in this document). Monsanto is also proposing that a feed additive regulation be established permitting residues of glyphosate resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on the feed commodity soybean hulls at 100 ppm. This entry would replace the current entry for soybean hulls.

12. *FAP 4H5705*. In the **Federal Register** of November 2, 1994 (59 FR 54907), EPA issued a notice that Monsanto Co. proposed that 40 CFR 185.3500 be amended by establishing a feed additive regulation to permit residues of glyphosate and its metabolite aminomethylphosphonic acid in or on citus pulp, dried at 1.0 ppm. Monsanto is amending the petition by proposing that 40 CFR part 186 be amended by establishing a regulation to permit residues of glyphoaste in or on the feed commodity citrus pulp, dried at 1.5 ppm.

13. *FAP 5H5720*. In the **Federal Register** of August 17, 1995 (60 FR 42885), EPA issued a notice that DuPont proposed that 40 CFR part 186 be amended by establishing a regulation to permit residues of the herbicide quizalofop-p-ethyl ester and the S-enantiomers of the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the animal feed sugar beet molasses at 0.2 ppm. DuPont is amending the petition by proposing that 40 CFR part 186 be amended by establishing a regulation to permit the combined residues of the herbicide quizalofop-p-ethyl ester and its acid metabolite quizalofop-p-(R-(2-(4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid and the S-enantiomers of the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the feed commodity sugar beet molasses at 0.5 ppm.

A record has been established for this rulemaking under docket number [PF-633] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a and 348.

Dated: August 22, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–22870 Filed 9–11–95; 12:03 pm]

BILLING CODE 6560-50-F

[FRL–5295–4]

Jack's Creek/Sitkin Smelting Superfund Site De Micromis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended

AGENCY: Environmental Protection Agency.

ACTION: Request for Public Comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de micromis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. § 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of Gould Electronics, Inc. ("Gould") and Texas Instruments Incorporated ("TI"), for response costs incurred by the United States Environmental Protection Agency at the Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania.

DATES: Comments must be provided on or before October 13, 1995.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania, U.S. EPA Docket Nos. III–95–35–DC and III–95–36–DC.

FOR ADDITIONAL INFORMATION CONTACT: Daniel Isales (215) 597–4774, or Pamela Lazos (215) 597–8504, United States Environmental Protection Agency, Office of Regional Counsel, (3RC22), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107.

Notice of De Micromis Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. § 9622(i)(1), and Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. § 6973(d), notice is hereby given of a proposed administrative settlement concerning the Jack's Creek/Sitkin Smelting Superfund Site in Maitland County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on June 30, 1995 and is subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee and for the grant of a covenant not to sue for damages to natural resources, is also subject to agreement in writing by the Department of the Interior ("DOI").

The settling parties collectively agreed to pay $1,695.12 to the United States Environmental Protection Agency toward EPA response costs and $61 to DOI for damages to natural resources, subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. §§ 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), authorizes early settlements with *de micromis* parties to allow them to resolve their liabilities under, inter alia, Section 107 of CERCLA, 42 U.S.C. § 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. The grant of a covenant not to sue for damages to natural resources by DOI to those parties paying their share of such allocated costs is subject to agreement in writing by DOI pursuant to Section 122(j) of CERCLA, 42 U.S.C. § 9622(j).

The Environmental Protection Agency will receive written comments upon this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. Moreover, pursuant to Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. § 6973(d), the public may request a meeting in the affected area. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Daniel Isales at (215) 597–4774 or Pamela Lazos at (215) 597–8504. The Administrative Record in support of the proposed Order is also available for review.

W. Michael McCabe,

Regional Administrator, EPA Region III.

[FR Doc. 95–22722 Filed 9–12–95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Technology Subcommittee of the Public Safety Wireless Advisory Committee; Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the First Meeting of the Technology Subcommittee of the Public Safety Wireless Advisory Committee.

SUMMARY: The NTIA and the FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the meeting of the Technology Subcommittee of the Public Safety Wireless Advisory Committee.

DATES: Thursday, September 28, 1995; 9 a.m. to 12 p.m.

ADDRESSES: Postal Square Museum Building; 2 Massachusetts Avenue, N.E.; Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Technology Subcommittee will have an open membership. All interested parties are invited to attend and to participate in the First Meeting of this Subcommittee. This policy will ensure balanced participation. To attend the Subcommittee meeting, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before September 18, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at dbehlin@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend the Subcommittee meeting.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–22819 Filed 9–12–95; 8:45 am]

BILLING CODE 6712-01-M

Spectrum Requirements Subcommittee of the Public Safety Wireless Advisory Committee; Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the First Meeting of the Spectrum Requirements Subcommittee of the Public Safety Wireless Advisory Committee.

SUMMARY: The NTIA and the FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the meeting of the Spectrum Requirements Subcommittee of the Public Safety Wireless Advisory Committee.

DATES: Friday, September 29, 1995; 1:00 p.m. to 4:00 p.m.

ADDRESSES: Postal Square Museum Building; 2 Massachusetts Avenue, N.E.; Washington, D.C 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Spectrum Requirements Subcommittee will have an open membership. All interested parties are invited to attend and to participate in the First Meeting of this Subcommittee. This policy will ensure balanced participation. To attend the Subcommittee meeting, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before September 19, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at dbehlin@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend the Subcommittee meeting.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–22820 Filed 9–12–95; 8:45 am]

BILLING CODE 6712-01-M

Operational Requirements Subcommittee of the Public Safety Wireless Committee; Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the First Meeting of the Operational Requirements Subcommittee of the Public Safety Wireless Advisory Committee.

SUMMARY: The NTIA and the FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the meeting of the Operational Requirements Subcommittee of the Public Safety Wireless Advisory Committee.

DATES: Friday, September 29, 1995; 9:00 a.m. to 12:00 p.m.

ADDRESSES: Postal Square Museum Building; 2 Massachusetts Avenue, N.E.; Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Operational Requirements Subcommittee will have an open membership. All interested parties are invited to attend and to participate in the First Meeting of this Subcommittee. This policy will ensure balanced participation. To attend the Subcommittee meeting, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before September 19, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at dbehlin@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend the Subcommittee meeting.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–22821 Filed 9–12–95; 8:45 am]

BILLING CODE 6712-01-M

Interoperability Subcommittee of the Public Safety Wireless Advisory Committee; Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the First Meeting of the Interoperability Subcommittee of the Public Safety Wireless Advisory Committee.

SUMMARY: The NTIA and FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the meeting of the Interoperability Subcommittee of the Public Safety Wireless Advisory Committee.

DATES: Thursday, September 28, 1995; 4:30 p.m. to 7:30 p.m.

ADDRESSES: Postal Square Museum Building; 2 Massachusetts Avenue, N.E.; Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Interoperability Subcommittee will have an open membership. All interested parties are invited to attend and to participate in the First Meeting of this Subcommittee. This policy will ensure balanced participation. To attend the Subcommittee meeting, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before September 18, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at debehlin*fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend the Subcommittee meeting.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–22822 Filed 9–12–95; 8:45 am]

BILLING CODE 6712-01-M

Transition Subcommittee of the Public Safety Wireless Advisory Committee; Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the First Meeting of the Transition Subcommittee of the Public Safety Wireless Advisory Committee.

SUMMARY: The NTIA and the FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the meeting of the Transition Subcommittee of the Public Safety Wireless Advisory Committee.

DATES: Thursday, September 28, 1995; 1:00 p.m. to 4:00 p.m.

ADDRESSES: Postal Square Museum Building, 2 Massachusetts Avenue; N.E., Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Transition Subcommittee will have an open membership. All interested parties are invited to attend and to participate in the First Meeting of this Subcommittee. This policy will ensure balanced participation. To attend the Subcommittee meeting, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before September 18, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at dbehlin@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend the Subcommittee meeting.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–22823 Filed 9–12–95; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 80–286; DA–95–1927]

Letter to Telephone Exchange Service Providers Giving Notice of Proposed Release of Data Submitted by Providers

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In response to several requests, the Common Carrier Bureau (Bureau) of the Federal Communications Commission (Commission) intends to release a compiled database comprising non-confidential subscriber and financial information submitted by local exchange carriers (LECs) is response to an Order, released December 1, 1994. The individual non-confidential responses of the LECs have already been released to the public. To guard against the possibility that LEC information previously claimed to be confidential is included in the database to be released, the Bureau is taking two steps. As described more fully below in a letter from Kenneth P. Moran, Chief of the Bureau's Accounting and Audits Division, the Bureau, first, is excluding from the database to be released a limited number of data fields that a large number of LECs claimed to contain confidential information. Second, the Bureau is requesting LECs that have previously claimed fields confidential in addition to those generally being excluded from the database to reassert those claims not later than September 25, 1995. Failure to reassert such claims will be deemed to constitute waiver of objection to release of such information designated confidential solely to the extent that such information claimed confidential is included in the non-confidential database to be released.

ADDRESSES: Responses should be directed to the Federal Communications Commission, Common Carrier Bureau, Accounting and Audits Division, Box 10, 1919 M St., N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Senior Attorney, and George Johnson, Senior Attorney, Accounting and Audits Division, Common Carrier Bureau (202) 418–0850.

SUPPLEMENTARY INFORMATION:

September 11, 1995.

Release Date: September 11, 1995.

Dear Telephone Exchange Service Provider:

On July 13, 1995, the Federal Communications Commission (Commission) released a Notice of Proposed Rulemaking and Notice of Inquiry, proposing changes to the Commission rules relating to the Universal Service Fund (USF) and Dial Equipment Minute (DEM) Weighting. Also, on December 1, 1994, the Commission released an Order directing local exchange carriers (LECs) to submit certain information to assist in evaluation of current USF and DEM Weighting assistance mechanisms and to estimate the effects of possible rules changes on both telecommunications providers and subscribers.

Although individual LEC submissions in response to the December 1, 1994 Order have been available from the Commission for several months, the National Association of Regulatory Utilities Commissioners as well as LEC representatives have requested that the

Commission release a database that compiles the individual LEC submissions. The Common Carrier Bureau (Bureau), working with the Federal-State Joint Board staff, has compiled the individual LEC responses containing information not claimed to be confidential into a database. In response to the foregoing requests, the Bureau intends to release this database of non-confidential information. While we hope this database will help commenters analyze those proposals in the July 13, 1995, Notice of Proposed Rulemaking and Notice of Inquiry that lend themselves to quantitative analysis, we remind you that comments need not be, and our consideration will not be, limited to the data contained in that database.

Great care has been taken to assure that the information in the database to be released does not contain data fields subject to confidentiality claims. Notwithstanding these efforts, and to protect against the possibility that some information claimed to be confidential has inadvertently been included in the database, the Bureau is taking the following measures.

First, analysis of the claims of confidentiality indicates that most of the confidentiality claims were made in a limited number of specific data fields. To accommodate these claims, we shall exclude the following fields (in File 1/filename "DATAREQ", and File 3/filename "ZIPCODES", respectively) from the forthcoming database:

1. Distribution of billings by dollar amounts (File 1, Fields 69–94 and 137–156).
2. Number of subscriber lines billed for specific interexchange carriers (File 1, Fields 123–130).
3. Information relating to cable TV, cellular and other services (File 1, Fields 335–373).
4. Identity of wire center common language location identifier, the number of subscriber lines served by each wire center, the post office zip code at the location of the wire center, and the zip codes served by specific wire centers (File 3, cols. A–D.).

You need not respond to this letter to have data you submitted in the fields listed above withheld from the database. Withholding this information from the database is intended to accommodate most carriers' concerns about proprietary information and does not constitute a ruling on the requests for proprietary treatment.

Second, if you have requested that the Commission accord other specific information confidential treatment, you may at this time file a statement identifying those other fields in your response to the data request for which you claimed confidential treatment, and a statement that you continue to assert such claims. If such statements are timely received, the fields of information will be excluded from the database to be released. Failure to provide such statements on or before September 25, 1995, will be deemed to constitute waiver of objection to release of the LEC's information designated confidential solely to the extent that such confidential information has been included in the database to be released. Requests that information not previously designated confidential or proprietary now be so designated, will not be considered.

Statements seeking continued confidential treatment of data must be received by the Commission not later than September 25, 1995. To ensure that we receive your response without delay, we have assigned a special mail box for replies to this letter. Therefore, to be considered, your response must be addressed to:

Federal Communications Commission,
Common Carrier Bureau, Accounting and Audits Division, Box 10, 1919 M Street, N.W., Washington, DC 20554

Inquires should be directed to either Deborah Dupont, Senior Attorney, or George Johnson, Senior Attorney, Accounting and Audits Division, at 202–418–0850.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22904 Filed 9–12–95; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1065–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1065–DR), dated August 25, 1995, and related determinations.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio dated August 25, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 25, 1995:

The counties of Erie and Lorain for Individual Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–22727 Filed 9–12–95; 8:45 am]

BILLING CODE 6718-02-M

[FEMA–1065–DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1065–DR), dated August 25, 1995, and related determinations.

EFFECTIVE DATE: August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 25, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms and flooding on August 7 through August 18, 1995, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Ohio.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and/or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Champaign, Licking, Logan, Marion, Mercer, Miami, Scioto, and Shelby Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–22728 Filed 9–12–95; 8:45 am]

BILLING CODE 6718-02-P

[FEMA–1066–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1066–DR), dated September 1, 1995, and related determinations.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Oklahoma, resulting from tornadoes, severe storms and flooding beginning on July 21 through and including August 6, 1995 is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Oklahoma.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance and Hazard Mitigation Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter L. Smith of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

The counties of Alfalfa, Blaine, Caddo, Cotton, Custer, Grant, Jackson, Kay, Major, Oklahoma, Tillman, Washita and Woods for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–22729 Filed 9–12–95; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011223–011

Title: Transpacific Stabilization Agreement

Parties:

A.P. Moller-Maersk Line
American President Lines, Ltd.
Evergreen Marine Corp. (Taiwan) Ltd.
Hapag-Lloyd Aktiengesellschaft
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nedlloy Lines B.V.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Yangming Marine Transport Corp.

Synopsis: The amendment suspends for an indefinite period the Agreement's Capacity Management Program ("CMP"). The suspension of the CMP will apply to the Agreement's current quarterly accounting period, as well as subsequent accounting periods.

Agreement No.: 232–011491–001

Title: Lykes/Evergreen Reciprocal Space Charter, Sailing and Cooperative Working Agreement

Parties:

Lykes Bros. Steamship Co., Inc.
Evergreen Marine Corp. (Taiwan) Ltd.

Synopsis: The proposed amendment adds a new Article 9.2(a)(7) to clarify the amount of notice required for termination in the event one of the parties withdraws a vessel or reduces its tonnage in the trade without the consent of the other party. It also makes other non-substantive changes to the Agreement.

Dated: September 7, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–22639 Filed 9–12–95; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

FSB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 6, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FSB Corp.*, Sublette, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank of Sublette, Sublette, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Area Bancshares Corporation*, Owensboro, Kentucky; to acquire 100 percent of the voting shares of Citizens Deposit Bancshares, Incorporated, Calhoun, Kentucky, and thereby indirectly acquire Citizens Deposit Bank, Calhoun, Kentucky.

Board of Governors of the Federal Reserve System, September 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-22707 Filed 9-12-95; 8:45 am]

BILLING CODE 6210-01-F

Keystone Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 27, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Keystone Financial Corporation*, Harrisburg, Pennsylvania; to acquire Martindale Andres & Company, Inc., West Conshohocken, Pennsylvania, and thereby engage in investment advisory activities, pursuant to § 225.25(b)(4) of the Board's Regulation Y; and in brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-22708 Filed 9-12-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee (NVAC), Subcommittee on Vaccine Safety and the Advisory Commission on Childhood Vaccines (ACCV) Subcommittee on Vaccine Safety, Subcommittee on Immunization Coverage, and Subcommittee on Future Vaccines: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–12 noon, September 28, 1995. 8:30 a.m.–1 p.m., September 29, 1995.

Place: Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: The Committee shall advise and make recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters To Be Discussed: The Committee will discuss the National Vaccine Program Office operations and staffing; report of the Task Force on Safer Vaccines; status of the Advisory Committee on Immunization Practices reevaluation of polio immunization recommendations; impact of Federal budget cuts on Federal vaccine research; update on the Children's Immunization Initiative, including the Vaccines for Children Program; Mercer Report: next step; update on pertussis trial; status of the Salk facility; impact on welfare reform; subcommittee reports: vaccine safety, immunization coverage, and future vaccines; and a working group report on adult immunization.

Name: Subcommittee on Vaccine Safety and the Advisory Commission on Childhood Vaccines Subcommittee on Vaccine Safety.

Time and Date: 1:30 p.m.–5 p.m., September 28, 1995.

Place: Hubert H. Humphrey Building, Room 337A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This joint ACCV/NVAC subcommittee will review issues relevant to vaccine safety and adverse reactions to vaccines.

Matters To Be Discussed: The Subcommittee will discuss the Institute of Medicine vaccine safety forum and summary of planned workshops; summary of the final report of the task force on safer childhood vaccines; and the charge of the Subcommittees.

Name: Subcommittee on Immunization Coverage.

Time and Date: 1:30 p.m.–5 p.m., September 28, 1995.

Place: Hubert H. Humphrey Building, Room 423A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Immunization Coverage will identify strategies and policy options by which to further improve the levels of immunization coverage.

Matters To Be Discussed: The Subcommittee will discuss determinants of under vaccination in preschool children; national, State, and local immunization coverage levels; current interventions for immunization and the future health environment.

Name: Subcommittee on Future Vaccines.

Time and Date: 1:30 p.m.–5 p.m., September 28, 1995.

Place: Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Future Vaccines will develop policy options and guide national activities which will lead to accelerated development, licensure, and best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: The Subcommittee will review and discuss the terms of reference for the Subcommittee; identify the matrix of interactions and partnerships, via specific case studies; describe the process of priority-setting by each of the members of the vaccine research and development community, and define barriers to new vaccine development.

Agenda items for each meeting are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Committee Management Specialist, National Vaccine Program Office, CDC, 1600 Clifton Road, NE, M/S A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: September 7, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–22693 Filed 9–12–95; 8:45 am]

BILLING CODE 4163–18–M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to revise Chapter HA (Office of the Assistant Secretary for Health), and Chapter HC (Centers for Disease Control and Prevention). These revisions will reflect the transfer of responsibility for the National Vaccine Program Office (NVPO) from the Office of the Assistant Secretary for Health (OASH) to the Centers for Disease Control and Prevention (CDC). The Director of the National Vaccine Program (NVP) will continue to be the Assistant Secretary for Health. Specifically:

(1) The statement for the Office of the Assistant Secretary for Health (42 FR 61318, December 2, 1977, as amended most recently at 60 FR 18418, April 11, 1995) is amended to delete the title and statement for the NVPO (HA2). Responsibilities of this office are transferred to CDC. The Director of the NVP will continue to be the Assistant Secretary for Health;

(2) The statement for the Centers for Disease Control and Prevention (HC) (45 FR 69696, October 20, 1980, as amended most recently at 60 FR 17792–95, April 7, 1995) is amended to reflect the transfer of the NVPO from the Office of the Assistant Secretary for Health to the Office of the Director, CDC.

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, HA–10, Organization, delete item 14. and renumber items 15. through 17. as items 14. through 16.

Under *Section HA–20, Functions,* after the title and statement for the *Office on Women's Health (HAW),* delete the title and statement in its entirety for the *National Vaccine Program Office (HA2).*

Under Chapter HA, Section HA–30, Delegations of Authority, add the following:

All delegations and redelegations of authority made to PHS officials which were in effect prior to the effective date of this reorganization will continue in effect in them or their successors, pending further redelegations, provided they are consistent with this reorganization.

Centers for Disease Control and Prevention

Under Part H, Chapter HC, Centers for Disease Control and Prevention, Section HC–B, Organization and Functions, following the title and statement for the CDC Washington Office (HCA6), insert the following title and statement:

National Vaccine Program Office (HCA8). The Office: (1) Advises the Director, CDC, regarding issues and concerns identified with the implementation of the responsibilities of the National Vaccine Program (NVP); (2) develops and provides the Director, CDC, an annual Plan for implementation of the responsibilities of the NVP for submission to the Director, NVP; (3) develops data and conducts analyses of Federal spending on vaccines and vaccine-related activities; (4) provides executive secretary and staff and administrative support to the National Vaccine Advisory Committee; (5) coordinates preparation and submission of the annual National Vaccine Report for transmittal by the Director, CDC, to the Director, NVP; and (6) coordinates CDC's development and preparation of data and information in support of the Director, NVP.

Dated: August 1, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–22640 Filed 9–12–95; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–05–1310–020241A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Officer of Management and Budget, Paperwork Reduction Project (1004–), Washington, DC 20503, telephone 202–395–7340.

Title: Coalbed Methane (43 CFR Part 3170).

OMB Approval Number: (Not Yet Assigned).

Abstract: The Bureau of Land Management is proposing a new rule at 43 CFR Part 3170 to encourage the development of coalbed methane (CBM) in Affected States where conflict over ownership of the resource exits. The new regulations will establish procedures to: space wells; pool conflicting interests; escrow costs and proceeds attributable to conflicting interests; allow the drilling, stimulation, and abandonment of CBM wells; and provide affected parties with notice and the opportunity to comment or object or both. In order to obtain specific approvals under the regulations, applications would submit information to BLM to demonstrate the orderly and efficient development of CBM while preserving the mineability of coal seams.

Bureau Form Number: None.

Frequency: Occasionally.

Description of Respondents: Respondents may range from individuals to multi-national corporations.

Estimated Completion Time: 100 hours. This estimate is based on an "application" defined as submitting all the required information to receive approval to: establish one spacing unit, pool all of the conflicting CBM ownership within the unit, and drill and stimulate one CBM well on the unit.

Annual Responses: Nine.

Annual Burden Hours: 900.

Bureau Clearance Officer (Alternate): Wendy W. Spencer, (303) 236–6642.

Walt Rewinski,

Deputy State Director, Resources and Planning, Use and Protection.

[FR Doc. 95–22784 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–GJ–M

[AK–964–1410–00–P; F–14956–B]

Alaska; Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to White Mountain Native Corporation for approximately 15.00 acres. The lands involved are in the vicinity of White Mountain, Alaska.

Kateel River Meridian, Alaska

T. 10 S., R. 23 W.
  Secs. 28 and 32.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 13, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Robin Rodriguez,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–22712 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–JA–P

[WO–300–1310–00]

Notice of Draft Report and Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability for review and comment of draft report on the Reinventing Government II (REGO II) proposal to transfer oil and gas Inspection and Enforcement (I&E) and Environmental Compliance responsibilities that are currently administered by the Bureau of Land Management (BLM) to individual States and Indian tribes.

SUMMARY: The onshore and gas program, administered by BLM, is one of the major mineral leasing programs in the Department of the Interior (DOI). At the end of 1994, more than 51,000 onshore oil and gas leases existed on Federal lands covering 39 million acres. About 19,500 leases were in producing status. The BLM is also responsible for operational management oversight of about 4,100 producing leases on Indian lands and supervision of drilling on nonproducing leases. Royalty income from onshore oil and gas production on Federal and Indian lands is over $600 million per year.

Under Vice President Gore's REGO II proposal, it has been proposed that the BLM transfer oil and gas inspection and enforcement responsibilities concerning production verification and environmental compliance to the individual States and Indian tribes. This proposal was initially intended as an unfunded transfer of the I&E and Environmental Compliance programs to States and Indian tribes. Subsequently, the DOI indicated that funding of these programs, commensurate with current BLM spending levels, may be made available to the States and Tribes if they elect to assume program responsibilities.

The information contained in the draft REGO II Report is based on preliminary issues and recommendations identified by the REGO II Task Force comprised of Federal, State and Tribal representatives. The purpose of the report is to: (1) Provide information on the Bureau's I&E and Environmental Compliance programs, (2) identify opportunities and limitations associated with program transfers, and (3) address important considerations that must be taken into account in evaluating the feasibility of transfers.

DATES: Copies of the draft report may be obtained by contacting Mike Pool at the address or telephone number listed below. Written comments on the draft report must be received by October 16, 1995.

ADDRESSES: Written comments should be sent to Mike Pool, Bureau of Land Management, Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401.

FOR FURTHER INFORMATION CONTACT: Mike Pool, (505) 599–8910.

Dated: September 6, 1995.

Mike Pool,

District Manager.

[FR Doc. 95–22713 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–FB–M

[UT–020–05–1430–01; U–54825]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action. Noncompetitive Sale of Public Land in Tooele County, Utah.

SUMMARY: The following land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719), at not less than the estimated fair market value of $3,100.00. The land will not be offered for sale until at least 60 days after the date of this notice.

Salt Lake Meridian,

T. 8 S., R. 19 W.,
  Sec. 9, E½E½E½SW¼,
    E½E½W½E½E½SW¼.

Containing approximately 25.0 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by dirct sale to Jay I. Hicks of Ibapah, Utah. It has been determined that the subject parcel contains no known mineral values, except for a prospective value for oil and gas; therefore, mineral interests except for oil and gas will be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain a reservation of oil and gas to the United States and the right to construct ditches and canals under the authority of the Act of August 30, 1890 (43 U.S.C. 945).

Detailed information concerning the sale are available for review at the Salt Lake District Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Salt Lake District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: August 30, 1995.

Gary Wisser,

Acting Salt Lake District Manager.

[FR Doc. 95–22701 Filed 9–12–95; 8:45 am]

BILLING CODE 4310-DQ-P

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Assessment (Draft EA) for Additions to Shiawassee National Wildlife Refuge in Saginaw County, Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that the U.S. Fish and Wildlife Service (Service) has made available for public comment a Draft EA to protect additional habitat on the existing 9,042-acre Shiawassee National Wildlife Refuge (Refuge). The Refuge is located at the confluence of the Shiawassee, Cass and Tittabawassee Rivers, adjacent to the Saginaw metropolitan area in Saginaw County, in Michigan's Lower Peninsula.

DATES: Written comments should be received by October 23, 1995. Public Open Houses are scheduled in the Saginaw metropolitan area from September 20–23, 1995. The exact dates, times and locations are listed under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056; Attention: Stanley Jackowicz, RE–AP. Copies of the Draft EA are available during normal business hours at the Shiawassee National Wildlife Refuge headquarters, 6975 Mower Road, Saginaw, Michigan 48601.

FOR FURTHER INFORMATION CONTACT: Doug Spencer, Refuge Manager at (517) 777–5930.

SUPPLEMENTARY INFORMATION: The Service proposes to protect approximately 7,500 acres of additional habitat in association with the existing Shiawassee National Wildlife Refuge (Refuge) located along the Saginaw River in the east-central portion of Michigan's Lower Peninsula. This additional protection is proposed to restore, protect and manage bottomland and upland habitat that would support the existing Refuge and Tributary watersheds of the Saginaw River. Historically the area was predominantly lowland hardwood forest, upland forest, emergent marsh, and scattered areas of lakeplain prairie. The proposal is also meant to provide areas of lakeplain prairie and emergent marshes that are either lacking or under-represented on the existing Refuge. This would help to restore the habitat and wildlife diversity the area once supported. The proposal is also meant to protect the lower reaches of the Cass, Tittabawassee and Shiawassee River watersheds that feed and support the existing refuge and Saginaw Bay of Lake Huron.

The purposes of the addition to the Shiawassee National Wildlife Refuge are:

1. Provide wildlife corridors by protecting, restoring, and managing wetlands and bottomland forest and upland habitats along the rivers for the many values associated with these plant communities.

2. Protect, restore and maintain the biological diversity of the area by preserving the native habitats and associated fish, migratory and resident wildlife.

3. Facilitate with other agencies, groups and private landowners the conservation of resources in the watersheds that support the refuge.

4. Provide for increased recreation, environmental education, and interpretative opportunities to the general public. Acquire, manage, and operate Green Point Environmental Learning Center in the City of Saginaw.

5. Work cooperatively with local communities on the establishment of a visitors center located near a major thoroughfare to promote eco-tourism in the metropolitan area.

The alternatives considered in the Draft EA are:

1. *No Action*—Rely on existing Federal, State, and local government laws, regulations, and ordinances to protect resources.

2. *Private Lands Agreements*—Rely on a program of technical outreach sponsored by the Service and Michigan Department of Natural Resources to assist landowners in the restoration and enhancement of wildlife and fish habitats in the area. The area would encompass 7,500 acres along the Cass, Shiawassee and Tittabawassee Rivers.

3. *Acquisition of 7,500 acres by Service as an Addition to the Shiawassee National Wildlife Refuge*—Under this alternative, the Service would use acquisition of fee title, easements, and leases from willing sellers, subject to appropriated funds to add to the existing Shiawassee National Wildlife Refuge.

4. *Acquisition of 5,688 acres by Service as an Addition to the Shiawassee National Wildlife Refuge*—Under this alternative, the Service would use acquisition of fee title, easements, and leases from willing sellers along the lower reaches of the Cass, Shiawassee, and Tittbawassee Rivers, subject to appropriated funds to add to the existing Shiawassee National Wildlife Refuge.

The Service's preferred alternative is #3—Acquisition of 7,500 acres as an addition to the Shiawassee NWR. The major issues discussed in the Draft EA include Service acquisition policy, effects on the tax base, loss of cropland, maintenance of existing ditches and dikes, mosquito control, effects on adjacent cropland, loss of residential development, fire protection responsibilities, and maintenance of township roads.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations.

The Service has scheduled six public open houses in the Saginaw area, the times and locations are as follows: Thomas Township Hall (249 N. Miller Road, Thomas Township) on Sept. 20, 1995, from 3:00 p.m. to 5:30 p.m.; James Township Hall (6060 Swan Creek Road, James Township) on Sept. 20, 1995, from 7:00 p.m. to 10:00 p.m.; Saginaw Township Hall (4980 Shattuck Road, Saginaw Township) on Sept. 21, 1995, from 3:00 p.m. to 5:30 p.m.; Bridgeport Township Hall (6206 Dixie Highway, Bridgeport) on Sept. 21, 1995, from 7:00 p.m. to 10:00 p.m.; Spaulding Township Hall (5025 E. Road (M–13), Spaulding Township) on Sept. 22, 1995, from 7:00 p.m. to 10:00 p.m.; and in the City of Saginaw at the Green Point Nature Center (3010 Maple Street, Saginaw) on Sept. 23, 1995, from 1:00 p.m. to 4:00 p.m.

The Draft EA will be available to the public on September 5, 1995. The deadline for public comments on the Draft EA is October 23, 1995.

Dated: September 5, 1995.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 95–22711 Filed 9–12–95; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Order Adjusting the Boundary of Theodore Roosevelt National Park, North Dakota, to Include Certain Lands

AGENCY: National Park Service, Interior.

ACTION: Boundary adjustment order.

SUMMARY: Pursuant to the authority contained in the Act of March 24, 1956, 70 Stat. 56, 16 U.S.C. 241e, and as a portion of U.S. Highway No. 10 has been realigned, the boundaries of Theodore Roosevelt National Park are being adjusted accordingly.

DATES: The effective date of this order shall be September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Realty Officer, Intermountain Field Area, P.O. Box 25287, Denver, Colorado, 80225–0287, (303) 969–2611.

SUPPLEMENTAL INFORMATION: The above-cited Act authorizes the Secretary of the Interior to make adjustments in the boundaries of Theodore Roosevelt National Park along U.S. Highway No. 10 as he deems advisable and in the public interest if and when the alinement of the highway is changed, subject to the limitation that no more than 500 acres may be so added to the park.

U.S. Highway No. 10 has been realigned in the vicinity of the City of Medora, North Dakota, and it has been determined that a boundary adjustment is advisable in the area of the park entrance. The total acreage of Theodore Roosevelt National Park will be increased by 0.30 acre by this boundary adjustment. This increase does not exceed the acreage limitation set forth above. No lands are being excluded from the park as a result of this action.

Subject to valid existing rights, the following described lands are hereby added to Theodore Roosevelt National Park to be administered in accordance with the laws and regulations applicable thereto:

The City of Medora, Billings County, North Dakota.

All that portion of Third Avenue in the City of Medora which lies East of the Northeasterly right-of-way line of U.S. Highway No.10, and west of a line 140 feet West of and parallel to the Westerly line of Main Street in said City of Medora.

Containing 0.30 acre, more or less.

Dated: September 1, 1995.

Ronald E. Everhart,

Intermountain Field Director.

[FR Doc. 95–22748 Filed 9–12–95; 8:45 am]

BILLING CODE 4310-70-P

Meeting: Committee for the Preservation of the White House

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Old Executive Office Building, Washington, D.C. at 1 p.m., Friday, September 29, 1995. It is expected that the agenda will include policies, goals and long range plans. The meeting will be open, but subject to appointment and security clearance requirements, including clearance information by September 20, 1995.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m., weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, S.W., Washington, D.C. 20242.

Dated: September 6, 1995.

James I. McDaniel,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 95–22649 Filed 9–12–95; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 2, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by September 28, 1995.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Kenai Peninsula Borough-Census Area

Lee, Jesse, Home for Children, Swetmann Ave., Seward, 95001146

ARKANSAS

Ashley County

Fisher, John P., House, Jct. of AR 278 and Co. Rd. 50, W of Bayou Bartholomew Bridge, Portland vicinity, 95001141

Baxter County

Cotter High School Gymnasium, Old (Public Schools in the Ozarks MPS) 412 Powell St., Cotter, 95001147

Johnson County

Oark School—Methodist Church (Public Schools in the Ozarks MPS) Jct. of AR 215 and Co. Rd. 34, Oark, 95001142

CALIFORNIA

Del Norte County

BROTHER JONATHAN Shipwreck Site, Address Restricted, Crescent City vicinity, 95001132

Lake County

Cache Creek Archeological District, Address Restricted, Lower Lake vicinity, 95001130

Los Angeles County

Orange Heights—Barnhart Tracts Historic District, Roughly bounded by N. Los Robles Ave. W., N. El Molino Ave. E., Jackson St. N., and E. Mountain St. S., Pasadena, 95001128

Monterey County

Castroville Japanese Language School, 11199 Geil St., Castroville, 95001127

San Joaquin County

Hotel Lodi, 5 S. School St., Lodi, 95001140

COLORADO

Alamosa County

Alamosa County Courthouse, 702 Fourth St., Alamosa, 95001149

Routt County

Maxwell Building, 840 Lincoln Ave., Steamboat Springs, 95001148

DELAWARE

New Castle County

Johnson, William Julius "Judy" House, 3701 Kiamensi Ave., Christiana Hundred, Marshallton, 95001145

FLORIDA

Marion County

Kerr City Historic District, S of Co. Rd. 316, N of Lake Kerr, Fort McCoy vicinity, 95001150

Volusia County

Tourist Church, 501 N. Wild Olive Ave., Daytona, 95001139

GEORGIA

Fulton County

Orr, J. K., Shoe Company, 16 William Holmes Borders, Sr. Ave., Atlanta, 95001135

LOUISIANA

St. Mary Parish

Brubaker House, 1102 Second St., Morgan City, 95001133

Vermilion Parish

Broussard, Ovide, House, 309 E. St. Victor St., Abbeville, 95001136

Chauviere House, 108 N. Louisiana, Abbeville, 95001144

Gordy House, 503 Charity St., Abbeville, 95001131

Lyons House, 315 N. St. Charles St., Abbeville, 95001129

MASSACHUSETTS

Essex County

Tavern Acres Historic District, Bounded by Bradstreet Rd., Green and Main Sts. and Park Way, North Andover, 95001134

NEW JERSEY

Cumberland County

Trinity African Methodist Episcopal Church, Bridgeton-Milltown Rd. (NJ 49), E of Woodruff Rd. (Co. Rd. 553), Fairfield Twp., Gouldtown vicinity, 95001138

Somerset County

Vanderveer, Jacobus, House, Jct. of US 202 and 206, N of River Rd., Bedminster Twp., Pluckemin vicinity, 95001137

Union County

Mid-Town Historic District, Bounded by Broad, N. Broad, Dickinson, E. Grand, E. Jersey Sts., Commerce Place, Elizabeth Ave. and Martin L. King Plaza, Elizabeth, 95001143

A proposed move is being considered for the following property:

CALIFORNIA

Contra Costa County

Danville Southern Pacific Railroad Depot 355 Railroad Ave., Danville, 94000860

[FR Doc. 95–22631 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–70–P

Land Exchange Between the National Park Service and the City of Albuquerque

AGENCIES: National Park Service and City of Albuquerque.

ACTION: Proposed Land Exchange and Opportunity for Public Comment, Albuquerque, New Mexico.

SUMMARY: Pursuant to 16 U.S.C. Sec. 460*l*–22(b) and the Petroglyph National Monument Establishment Act of 1990, 104 Stat. 272, the National Park Service, hereinafter called the Service, requires that the public be notified of a proposed land exchange between this agency and the City of Albuquerque, hereinafter called the city. Both entities propose to exchange 0.11 of an acre owned by the Service outside the boundary of Petroglyph National Monument for two tracts, totaling 0.11 of an acre, that the city owns within the Atrisco Unit of the monument. The Service tract is located along Unser Boulevard 0.2 of a mile south of the Las Imagines Visitor Center within a 100-year flood hazard zone. A water drainage structure, operated and maintained by the city, currently exists on this tract. The city-owned tracts, consisting of 0.06 of an acre and 0.05 of an acre, are unimproved and were acquired as uneconomic remnants when the right-of-way for Unser Boulevard was acquired. Located along Unser Boulevard, these tracts are also situated south of the Visitor Center, 0.4 of a mile and 0.6 of a mile, respectively.

With the city responsible for handling the collection of drainage water adjacent to Unser Boulevard and the Service responsible for managing the lands within the Atrisco Unit of the monument, it is in the best interests of both agencies to consummate this exchange.

Both parties have determined that the lands and interests therein to be exchanged are of equal value.

COMMENTS AND FURTHER INFORMATION: The comment period on this proposed exchange ends 45 days from the date of this publication. Any comments pertaining to this exchange should be sent to the Superintendent, Petroglyph National Monument, 6001 Unser Boulevard, NW, Albuquerque, New Mexico 87120. Further information on this exchange can be obtained at the same address.

Dated: August 11, 1995.

John E. Cook,

Field Director, Intermountain Area, National Park Service.

[FR Doc. 95–22650 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–362 (Final) and 731–TA–707 through 710 (Final)]

Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe From Argentina, Brazil, Germany, and Italy

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (the Act) (19 U.S.C. §§ 1671d(b) and 1673d(b), respectively), that an industry in the United States is materially injured by reason of imports from Italy of certain seamless carbon and alloy standard, line, and pressure steel pipe and redraw hollows [2] that are subsidized by the Government of Italy, and by reason of imports from Argentina, Brazil, Germany, and Italy that are sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective December 23, 1994, and January 27, 1995, following preliminary determinations by the Department of Commerce that imports of certain seamless carbon and alloy standard, line, and pressure steel pipe and redraw hollows from Italy were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)), and that imports of such pipe from Argentina, Brazil, Germany and Italy [3] were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). The petition underlying these investigations was filed on June 23, 1994, prior to the effective date of the Uruguay Round Agreements Act.[4] Thus, these investigations were subject to the substantive and procedural rules of the Act, the pre-existing law.

Notices of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of January 12, 1995, March 1, 1995, and June 23, 1995 (60 FR 2984, 60 FR 11110, and 60 FR 32709). The hearing was held in Washington, DC, on June 20, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 26, 1995. The views of the Commission are contained in USITC Publication 2910 (July 1995), entitled "Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy: Investigations Nos. 701–TA–362 and 731–TA–707 through 710 (Final)."

By order of the Commission.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Imports are currently reported under Harmonized Tariff Schedule statistical numbers 7304.10.1020, 7304.10.5020, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, and 7304.59.8025.

[3] Commerce's preliminary determination of sales at LTFV regarding Italy was negative. Following Commerce's final affirmative determination of sales at LTFV, the Commission instituted its final antidumping investigation concerning Italy, effective June 14, 1995.

[4] See Pub. L. 103–465, approved Dec. 8, 1994, 108 Stat. 4809, at § 291.

Issued: September 7, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–22689 Filed 9–12–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32758]

Portland & Western Railroad, Inc.—Lease and Operation Exemption—Southern Pacific Transportation Company

Portland & Western Railroad, Inc. (PNWR), a noncarrier, has filed a notice of exemption to lease from Southern Pacific Transportation Company (SPT) and to operate three rail segments, all in the State of Oregon, totaling approximately 52.68 miles: (1) The 28.91-mile Tillamook Branch, between milepost 741.59 near Willsburg Jct. and milepost 770.50 near Schefflin; (2) the 9.45-mile Westside-Seghers Branch, between milepost 764.80 near Hillsboro and milepost 754.57 near Seghers; [1] and (3) the 14.32-mile Newberg Branch, between milepost 763.99 near Cook and milepost 749.67 near Newberg. SPT also granted PNWR incidental overhead trackage rights to operate over 3.69 miles of rail line between milepost 768.00 at Brooklyn Yard and the point of connection with the Tillamook Branch at milepost 741.59 near Willsburg Jct. The notice became effective on August 15, 1995.

PNWR is 100% owned and controlled by Genesee & Wyoming Industries, Inc. (GWI), and GWI controls nine class III rail carriers through stock ownership. Because, the three SPT lines connect with lines operated by Willamette & Pacific Railroad, Inc., a GWI controlled rail carrier, GWI has petitioned for an exemption in *Genesee & Wyoming Industries, Inc.—Continuance in Control Exemption—Portland & Western Railway, Inc.*, Finance Docket No. 32759, to continue in control of PNWR and the other railroads in its corporate family after PNWR becomes a class III rail carrier. To consummate the instant transaction before Finance Docket No. 32759 is decided, GWI has placed PNWR in an independent voting trust. 49 CFR 1013.

Any comments must be filed with the Commission and served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., P.O. Box 796, 213 West Miner Street, West Chester, PA 19381–0796.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22734 Filed 9–12–95; 8:45 am]

BILLING CODE 7035–01–P

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[1] Although the mileposts for this line segment suggest that the line is 10.23 miles long, the actual mileage is 9.45 miles. The discrepancy is attributable to the mileposts not having been redesignated to reflect a previous abandonment.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 20, 1995, Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made written request to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Methylphenidate (1724).

The firm plans to produce bulk finished product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 13, 1995.

Dated: September 5, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–22765 Filed 9–12–95; 8:45 am]

BILLING CODE 4410–09–M

Office of Community Oriented Policing Services

Community Policing to Combat Domestic Violence

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of Availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces the availability of grants to provide funding for implementing innovative community policing strategies to combat domestic violence to law enforcement agencies which partner with eligible domestic violence victim advocacy organizations.

The Community Policing to Combat Domestic Violence Initiative ("COPS/DV Initiative") permits agencies which have demonstrated a solid community policing effort and are interested in specifically turning their focus, or strengthening their already progressive focus, towards domestic violence to apply for funding in partnership with an agency which provides domestic violence victim advocacy. Eligible applicants include State, local, and Indian law enforcement agencies with demonstrated commitments to community policing. Victim service agencies and organizations, domestic violence shelters, and non-profit, nongovernmental victim service providers are encouraged to partner with police agencies to apply under this program. Projects will be funded for a one-year period. The Catalog of Federal Domestic Assistance reference is 16.710.

DATES: COPS/DV Initiative Application Kits will be available on or about September 9, 1995. Completed applications should be returned to the COPS Office by November 17, 1995. Applications submitted after this deadline will not be accepted.

ADDRESSES: COPS/DV Initiative Applications Kits may be obtained by writing to COPS/DV Initiative, 1100 Vermont Avenue, N.W., 5th Floor, Washington, D.C. 20530, or by calling the Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770. Completed COPS/DV Initiative Application Kits should be sent to COPS/DV Initiative, COPS Office, 1100 Vermont Avenue, N.W., 5th Floor, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770.

SUPPLEMENTARY INFORMATION: Title I of the Violent Crime Control and Law

Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase the number of community oriented policing officers on the streets and to support innovative community policing projects. The COPS Office is offering the COPS/DV Initiative to provide one-year grants to agencies which have a demonstrated commitment to community policing to turn their focus, or strengthen their already progressive focus, towards domestic violence.

All state, local, Indian Tribal, and other public law enforcement agencies which are committed to using community policing to combat domestic violence are eligible to apply for funding in partnership with victim service agencies and organizations, domestic violence shelters, and non-profit, nongovernmental victim service providers. Law enforcement agency applicants must demonstrate that they are implementing an exemplary community policing program and that they currently train officers in community policing. Law enforcement agency applicants must submit with their application a memorandum of understanding between the agency and an eligible victim or community service organization, specifying the roles of all parties involved in the proposal and describing clearly the parameters of partnership between the participants.

Applicants must apply under one of three funding categories: (1) Domestic Violence Training with a Community Oriented Policing Philosophy (up to $2,000,000 in funding, not to exceed $250,000 per grant); (2) Problem Solving and Community Based Programs: Community Policing Partnerships and Problem Solving Initiatives Focusing on Domestic Violence (up to $5,000,000 in funding, not to exceed $200,000 per grant); or (3) Changing Police Organizations to be More Responsive to Domestic Violence (up to $3,000,000 in funding, not to exceed $150,000 per grant).

All applicants under the COPS/DV Initiative will be asked to provide an Application Summary Sheet, a Project Narrative, and a Budget Narrative. The Application Summary Sheet requests identifying information on the applicant agency; a brief description of the proposed project; and a brief description of the partnership between the law enforcement agency applicant and an eligible victim services organization. The Project Narrative requires a description of the innovative community policing project proposed and a narrative description of the law enforcement applicant agency's current community policing plan and practices. The Budget Narrative requires a description of the proposed project budget, including the identification of local contributions of funds, if any, to the proposed project.

Projects will be funded for a one-year period. The application deadline for the COPS/DV Initiative is November 17, 1995. Applications postmarked after this deadline will not be considered. An award under the COPS/DV Initiative will not affect the eligibility of any agency to apply to other COPS programs.

Dated: September 1, 1995.

L. Anthony Sutin,

Acting Director.

[FR Doc. 95–22660 Filed 9–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Joseph A. Cekola, et al.*, Case No. 1:93–CV–1006, was lodged with the United States District Court for the Western District of Michigan on August 31, 1995. The proposed consent decree resolves civil claims brought by the United States for the recovery of costs incurred in responding to polychlorinated biphenyl (PCB) and asbestos releases and threats of releases at the panelyte Site in Kalamazoo, Michigan. The decree requires the two Cekola defendants to reimburse $128,340, plus interest, to the United States through a court registry account.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Joseph A. Cekola, et al.*, Case No. 1:93–CV–1006 and the Department of Justice Reference No. 90–11–3–1234.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Michigan, 110 Michigan Street, N.W., Room 399, Grand Rapids, Michigan 49503; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–22659 Filed 9–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on September 5, 1995, a proposed consent decree in *United States* v. *Why Wastewater?, Inc.*, Civil Action No. EP95CA381, was lodged with the United States District Court for the Western District of Texas. The complaint filed by the United States sought injunctive relief and civil penalties for violations by defendant Why Wastewater?, Inc., ("WWI") of Section 3005 of RCRA, 42 U.S.C. § 6925 and Sections 335.2 and 335.94 of the Texas Administrative Code, for storage of hazardous waste without a permit. The proposed consent decree imposes a $103,000.00 civil penalty for these violations and injunctive relief against WWI to cease storage of waste without a permit.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Why Wastewater?, Inc.*, DOJ #90–11–2–1029.

The proposed consent decree may be examined at the offices of the United States Attorney for the Western District of Texas, Federal Building, Suite 200, 700 E. San Antonio St., El Paso, Texas 79901 and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Effren Ordonez, Assistant Regional Counsel). A copy of the consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the decree may be obtained in person or by mail from the Consent Decree Library. Such requests should be accompanied by a check in the amount of $5.50 (25 cents per page reproduction charge) payable to "Consent Decree Library". When requesting copies, please refer to *United States* v. *Why Wastewater?, Inc.*, DOJ #90–11–2–1029.

Joel Gross,

Acting Chief Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 95–22661 Filed 9–12–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

President's Committee on the International Labor Organization; Notice of Postponement of Closed Meeting

This document postpones the September 14, 1995 closed meeting of the President's Committee on the ILO. Notice of this closed meeting was previously published in the **Federal Register** on September 6, 1995, 60 FR 46308. The meeting is being postponed because of the scheduling difficulties of certain participants.

We anticipate that the meeting will be rescheduled in the future, and the Committee will publish such notice in the **Federal Register**.

For Further Information Contact: Mr. Joaquin F. Otero, President's Committee on the International Labor Organization, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2235, Washington, DC 20210, Telephone (202) 219–6043.

Signed at Washington, DC this 8th day of September, 1995.

Joaquin F. Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 95–22726 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–28–M

Pension and Welfare Benefits Administration

[Application No. D–09845 and D–09846, et al.]

Proposed Exemptions; Prudential Property Investment Separate Account (PRISA) and Prudential Property Investment Separate Account II (PRISA II)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Prudential Property Investment Separate Account (PRISA) and Prudential Property Investment Separate Account II (PRISA II) Located in Newark, NJ

[Application Nos. D–09845 and D–09846]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply, effective December 31, 1995, to the advanced commitment to provide an enhanced return and the payment of such return by the Prudential Insurance Company of America (Prudential) to various employee benefit plans (the Plan or Plans) on the assets of such Plans which are invested either in PRISA and/or PRISA II (the Account or Accounts), as of April 1, 1994, and which remain invested for all or any portion of a twenty-one (21) month period, beginning April 1, 1994, and ending December 31, 1995, (the Investment Period), provided that the following conditions are met:

(1) The decision to invest funds in either or both of the Accounts for all or a portion of the Investment Period has

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[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

been and will be made by fiduciaries of the Plans independent of Prudential;

(2) The amount of the enhanced return payment with respect to the assets of the Plans that are invested in either or both of the Accounts for only a portion of the Investment Period will be calculated in the same manner as the amount of the enhanced return payment with respect to the assets of the Plans that remain invested in either or both of the Accounts for the entire Investment Period;

(3) The enhanced return will be derived by comparing the cumulative total return for the Investment Period reported by the expanded Russell-NCREIF Property Index (the Index) with the cumulative total return of PRISA or PRISA II for the same period;

(4) The Plans will obtain an enhanced rate of return (but not more than 200 basis points) for amounts invested in one or both of the Accounts during all or any portion of the Investment Period, if the cumulative total investment return of such Account for such Investment Period is less than that reported for the Index;

(5) The payments, if any, of enhanced return will be made by Prudential to investors in the Accounts not later than thirty (30) days following the final determination of the amounts owed;

(6) Every property held by the Accounts is individually valued at least once during the Investment Period and thereafter will be valued at least once in each calendar year by an independent qualified appraiser;

(7) A valuation policy committee (the Valuation Policy Committee), consisting of representatives from an valuation management firm (the Valuation Management Firm), Prudential Real Estate Investors (PREI), the interim and permanent advisory councils (the Advisory Council or Advisory Councils) composed of investors in PRISA and PRISA II and their consultants, and other clients of PREI, will meet at least quarterly and set valuation policy for the Accounts;

(8) The Valuation Management Firm, an independent third party, will be responsible for retaining (and terminating) all appraisal firms which value the properties in the Accounts; reviewing all appraisals generated by such appraisal firms; and collecting, reviewing, and distributing any information needed by such appraisal firms to appraise the properties in the Accounts;

(9) The Plans invested in the Accounts who receive the enhanced return will incur no additional cost or risk in connection with the transaction;

(10) In connection with the determination of enhanced return payments, no upward adjustment will be made by Prudential to the value reported by an external independent appraiser of any Property in PRISA and PRISA II without the concurrence of the Valuation Management Firm;

(11) Any required state insurance regulatory approvals are obtained for the transaction; and

(12) The Plans will receive the same treatment and proportional payment under the enhanced return as any other investor in PRISA and PRISA II.

Summary of Facts and Representations

1. Prudential is a mutual life insurance company organized under the laws of the State of New Jersey and subject to the supervision and examination by the Insurance Commissioner of the State of New Jersey. It is represented that Prudential is the largest life insurance company in the United States, with total consolidated assets, as of December 31, 1993, of approximately $218 billion.

Among the variety of insurance products and services it offers, Prudential provides funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act. In this regard, Prudential maintains separate accounts in which pension, profit-sharing, and thrift plans participate. Prudential also manages the assets of such plans held in single customer separate accounts and advisory accounts.

2. PRISA and PRISA II are both open-end pooled separate accounts created by Prudential in 1970 and 1980, respectively. The Accounts were designed as funding vehicles for tax-qualified employee pension benefit plans to invest in real estate on a commingled basis. It is represented that the establishment and operation of PRISA and PRISA II have been approved by the New Jersey Insurance Commissioner.

As of June 30, 1994, PRISA had total net assets of approximately $2,25 billion, including interests in 124 properties located in 22 states and the District of Columbia. The investors in PRISA, as of June 30, 1994, consisted of 190 employee pension benefit plans, including 171 plans covered under the Act and 19 governmental plans that are exempt from coverage under the Act.

As of June 30, 1994, PRISA II had total net assets of approximately $575.6 million, including interests in 18 properties located in 12 states and the District of Columbia. The 38 investors in PRISA II, as of June 30, 1994, consisted of 28 plans covered under the Act and 10 governmental plans that are exempt from coverage under the Act.

The assets of the Accounts consist primarily of real property, and may also include mortgage loans, interests in companies, including partnerships, which acquire, develop or manage real property, and cash or cash equivalents. Interests in the Accounts are expressed in terms of units of participation, the value of which is determined periodically, based upon the net value of each of the Accounts (i.e. the market value of the real property and other assets held in an Account, less the amount of liability for indebtedness and expenses). It is represented that every property held by the Accounts is valued at least once in each calendar year by an independent qualified appraiser.

As separate accounts, PRISA and PRISA II hold assets which are segregated from all other assets held or managed by Prudential. In this regard, it is represented that the assets of each of the Accounts may be charged only with liabilities arising from the operation of that Account and may not be charged with liabilities arising from other business conducted by Prudential.

3. The assets of PRISA and PRISA II are managed by PREI. PREI is a division of the Prudential Investment Corporation which is a direct subsidiary of Prudential. It is represented that PREI is a full-service real estate investment advisor whose sole function is to provide real estate investment advisory and portfolio and asset management services to institutional investors. In addition to PRISA and PRISA II, PREI manages several other pooled separate accounts maintained by Prudential and also manages various single customer separate accounts and advisory accounts. It is represented that PREI currently manages real estate assets of approximately $4.6 billion.

4. The Plans which invest in PRISA and PRISA II consist of defined benefit plans and defined contribution plans. Investment in PRISA by defined contribution plans, where a unit value account is maintained for each individual plan participant, is limited to no more than 33 percent (33%) of the investment fund for which such unit value is determined. It is represented that PRISA II does not have this restriction on the extent of participation by defined contribution plans. The Retirement System for U.S. Employees and Special Agents, a defined benefit plan sponsored by Prudential has invested in PRISA and PRISA II since 1970 and 1980, respectively. It is represented that, as of June 30, 1994, approximately 4 percent (4%) of the

assets of this plan were in the aggregate invested in the Accounts.

The Plans participate in the Accounts, in accordance with the provisions of group pension annuity contracts offered by Prudential. Pursuant to the terms of such group pension annuity contracts, Prudential is appointed as an investment manager to each of the Plans, with discretion to delegate to one or more of its direct or indirect wholly-owned subsidiaries all or part of its authority under such contract. It is represented that for the performance of its duties as investment manager of each of the Accounts, Prudential charges a quarterly fee of a percentage of the value of the assets in each Account.[2] In this regard, Prudential acknowledges that it is a fiduciary and party in interest, pursuant to section 3(14) of the Act, with respect to each Plan, to the extent of the assets of such Plans which are invested in either or both Accounts, pursuant to the terms of such group pension annuity contracts.

5. It is represented that allegations of improprieties by Prudential in connection with the overvaluation of properties in the PRISA and PRISA II portfolios arose in November 1993, as part of a suit brought against Prudential by a former employee. In addition, such allegations were the subject of an investigation by the Department of Labor.[3] It is represented that Prudential hired an outside counsel, Sonnenschein Nath & Rosenthal (Sonnenschein), and an independent accounting firm, Kenneth Leventhal & Company (Leventhal), to conduct independent reviews of various aspects of these allegations. In this regard, Prudential made available to investors in PRISA and PRISA II on April 27, 1994, and to the Department on April 25 and June 26, 1994, the results of such independent reviews conducted by Sonnenschein and Leventhal.

As a result of these investigations and conclusions made by Sonnenschein and Leventhal, Prudential determined to taken certain steps to improve the operation and management of the Accounts. These efforts include: (a) Changing certain of the personnel responsible for the management of the Accounts; (b) establishing the Advisory Councils for each of the Accounts; (c) transferring responsibility for the valuation of properties from PREI to Prudential's Department of the Comptroller (the Comptroller); (d) retaining the services of the independent Valuation Management Firm; (e) creating the Valuation Policy Committee; (e) implementing a fiduciary education program for associates of Prudential; and (f) making financial remediation to investors in PRISA and PRISA II in order to restore each investor to his financial position, absent any overvaluation of PRISA and PRISA II properties.

6. In order to make the Accounts more attractive investments for the Plans and in addition to the other efforts taken by Prudential, as described above, Prudential proposes to provide an enhanced return and to pay such return to the Plans on the assets of such Plans which are invested in either or both Accounts, as of April 1, 1994, and which remain invested for all or any portion of the twenty-one (21) month Investment Period; provided any required state insurance regulatory approvals are obtained and the proposed exemption is granted.[4] In this regard, Prudential has requested exemptive relief from the prohibited transaction provision, set forth in section 406(a) of the Act, because it believes that its obligation to make the enhanced return payments could be viewed as an implicit or indirect extension of credit by the Plans to Prudential which will remain outstanding until such time as Prudential satisfies its obligation by payment of the enhanced return.

Further, in Prudential's view, the proposed enhanced return could give rise to a conflict of interest between Prudential and the Plans that invest in the Accounts in violation of section 406(b)(1) and (b)(2) of the Act. In this regard, the amount of each Account's cumulative total return for the Investment Period will be affected in part by Prudential's exercise of its fiduciary authority, control, and responsibility with respect to the operation and management of the Accounts, including the valuation of assets of the Accounts. Accordingly, it could appear that Prudential has an interest in maximizing the cumulative total return of the Accounts, as determined for the Investment Period, April 1, 1994 through December 31, 1995, thereby reducing the amount of, or entirely eliminating, Prudential's obligation to make the enhanced return payment.

7. With certain limitations, as more fully described below, the amount of enhanced return Prudential proposes to pay to the Plans invested in one or both of the Accounts will be derived by comparing the cumulative total return for the Investment Period reported by a preselected Index with the cumulative total return of PRISA or PRISA II for the same period.

The Index is an index of returns (before deduction of management fees). on real property investments in the United States. The Index is produced in partnership between Russell Real Estate Consulting (a division of the Frank Russell Company, an investment consulting firm) and the National Council of Real Estate Investment Fiduciaries (NCREIF). NCREIF is a non-profit association of institutional real estate investment professionals, including investment managers, plan sponsors, academicians, consultants, appraisers, CPAs, and other service providers who have significant involvement in pension fund real estate investments.

It is represented that all events giving rise to Prudential's payment obligation on the enhanced return will have occurred by December 31, 1995. However, Prudential expects that the information necessary to compare the cumulative total returns of PRISA and PRISA II to that of the Index for the Investment Period, April 1, 1994, through December 31, 1995, will not be available before the end of the second quarter of 1996. It is contemplated that the payments, if any, of enhanced return will be made by Prudential to investors in the Accounts not later than thirty (30) days following the final determination of the amounts owed.

Specifically, the maximum enhanced return shall be equal to the product of (i) one-seventh (1/7th), multiplied by (ii) the difference (but not more than 200 basis points) between the cumulative total return for the entire Investment Period reported by the Index and the cumulative total return of PRISA or PRISA II, prior to reduction for Prudential's management fees, for such entire period, multiplied by (iii) the number of complete calendar quarters that the amounts remain invested in PRISA or PRISA II during the Investment Period.

For example, in the case of an amount that is invested in an Account as of April 1, 1994, and is withdrawn on June 30, 1995, the enhanced return will be equal to the difference between the cumulative total return for such period reported by the Index and the cumulative total return of the Account, prior to reduction for Prudential's management fees, for the same period, but not more than the enhanced return (not in excess of 200 basis points) determined with respect to the entire period April 1, 1994 through December 31, 1995, multiplied by five-sevenths (5/7ths).

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[2] It is represented that Prudential and its affiliates rely upon the statutory exemption, as set forth in section 408(b)(2) of the Act, for the receipt of fees for investment management services provided with respect to PRISA and PRISA II. The Department, herein, expresses no opinion as to whether the provision of services by Prudential and its affiliates to PRISA and PRISA II and the compensation received therefore satisfy the terms and conditions, as set forth in section 408(b)(2) of the Act.

[3] Prudential represents that, by letter dated March 21, 1995, it was advised that the Department had concluded its investigation, and that no further action was contemplated at that time.

[4] By letter dated April 11, 1995, Prudential was advised that the New Jersey Insurance Department has approved the proposed enhanced return payment, as described herein.

9. Prudential represents that the exemption is administratively feasible in that the proposed transaction is narrowly circumscribed and of limited duration. In this regard, the proposed transaction involves a one-time determination of comparative investment returns based upon a recognized real estate industry index that can be readily reviewed and monitored for compliance in all applicable requirements. In addition, it is represented that the comparative return calculation involves a relatively simple and objective comparison of readily available return information, which can be easily confirmed by the fiduciaries of the Plans invested in the Accounts and by the Department. Further, it is represented that the Plans invested in the Accounts who receive the enhanced return will incur no additional cost or risk in connection with the proposed payment, and that Prudential will bear the cost of the exemption application and of notifying interested persons.

10. It is represented that the exemption is in the interest of the Plans and their participants and beneficiaries in that the Plan will obtain an enhanced rate of return (but not more than 200 basis points) for amounts invested in one or both of the Accounts during all or any portion of the Investment Period, if the cumulative total investment return of such Account for such Investment Period is less than that reported for the Index. In addition, Prudential expects that its commitment to provide the enhanced return will reduce requests from investors in one or both Accounts for withdrawal, and will thereby avoid the negative impact on the performance of such Accounts that would likely result from forced liquidation of the properties in the Accounts in order to obtain the cash necessary to satisfy withdrawal requests.

11. It is represented that the proposed exemption contains safeguards which protect the interests of the Plans and the rights of participants and beneficiaries. In this regard, the decision to invest funds in either or both of the Accounts for all or a portion of the Investment Period has been and will be made by fiduciaries of Plans independent of Prudential. In this regard, disclosure of Prudential's proposal to make enhanced return payments was first made to investors in the Accounts by correspondence, dated April 27, 1994. In addition, it is represented that the investors in the Accounts have been kept apprised of related developments in the Accounts, such as state insurance regulatory approvals and the filing of the exemption application. Further, it is represented that an additional level of independent oversight of the proposed transaction will occur through the review of the operations and returns of the Accounts conducted by interim and permanent Advisory Councils for PRISA and PRISA II.

It is represented that the interim Advisory Councils were created by Prudential to be in place through year-end 1994 or until the transition to the permanent Advisory Councils. The responsibilities of the interim Advisory Councils were: (a) To review and comment upon the composition, structure, responsibilities, frequency of meetings, selection of members, and other procedures to be followed by the permanent Advisory Councils; (b) to review and comment on suggested structural changes to the Accounts, including valuation and appraisal policy, dividend policy, and fees; and (c) prior to appointment of the permanent Advisory Councils, to satisfy all the responsibilities pertaining to the duties of such permanent Advisory Councils, as listed in the paragraph below.

The permanent Advisory Council for each Account will be composed of from seven to eleven (preferably nine) investors in the Accounts or their consultants or other representatives who have in-depth knowledge of real estate investment and management. Members of the Advisory Councils will be elected by investors on an investment weighted basis and will serve for a minimum of two (2) years. It is represented that formal meetings of the Advisory Councils will be held quarterly approximately thirty (30) days following the end of each quarter, with additional meetings to be held at the discretion of the Advisory Councils. It is represented that the Advisory Councils do not have veto authority. The role of the Advisory Councils is to monitor, review, comment, and advise. For each of the Accounts, the responsibilities of the permanent Advisory Council are: (a) To review Account investment strategy and philosophy, including diversification strategy; (b) to review the annual business plan for each Account, including the criteria for acquisitions, dispositions, capital expenditures and budgets, and to review quarterly variations to the business plan; (c) to review property and portfolio leverage strategy; (d) to review PREI's plans for paying out redemption requests; (e) to review data and reports sent to all clients; (f) to review and comment on acquisitions and dispositions; and (g) to make suggestions and to comment on all information presented at quarterly meetings.

It is represented that Prudential will calculate the enhanced return payments and will disclose such calculations in the open forum of the Advisory Councils with full disclosure (through distribution of the minutes of Advisory Council meetings) to all investors in the Accounts. Further, PREI will review the returns for each Account with the Advisory Councils for each Account. It is represented that the comparative return calculation for determining the amount of the enhanced return payments involves a relatively simple and objective comparison of readily available information, which can easily be confirmed by the Advisory Council and the account investors.

With respect to the valuation process, it is represented that all the properties in the Accounts will be individually valued at least once during the Investment Period and thereafter will be appraised by external, independent, qualified MAI appraisers at least annually. In this regard, it is represented that external appraisals are performed as of the last day of a calendar quarter. The current Prudential policy is for properties with market values in excess of $50 million to be externally appraised twice each year and properties with values below such amount to be externally appraised once each calendar year. In addition, it is represented that certain events (e.g., significant property or market changes, or internal adjustment of value over a certain threshold) can trigger additional external valuations.

Prudential proposes to strengthen the independence of the valuation process through the appointment of the Valuation Management Firm and the creation of the Valuation Policy Committee. In addition, Prudential has limited the role of PREI in the valuation process to the provision of property, tenant, and market information and participation on the Valuation Policy Committee.

The Valuation Policy Committee will consist of representatives from the Valuation Management Firm, PREI, the PRISA Advisory Council, and other clients of PREI. The Valuation Policy Committee will be chaired by an MAI appraiser employed by Prudential (the Prudential Valuation Reviewer). It is represented that Phyllis A. Cummins (Ms. Cummins), Vice President and Chief Appraiser of Prudential and a member of the Comptroller's Department, is currently serving as the Prudential Valuation Reviewer.

It is represented that Ms. Cummins is qualified to serve as the Prudential Valuation Reviewer in that she has been employed by Prudential for over twenty (20) years and in that time has had significant experience in valuations, development, assets management, acquisitions, sales, and mortgages of all property types. In addition to being an MAI appraiser since 1983, Ms. Cummins holds the Counselor of Real Estate (CRE), the Certified Property Manager (CPM), and the Certified Shopping Center Manager (CSM) designations. Further, Ms. Cummins is certified in New Jersey as a General Appraiser and licensed as a Broker-Salesperson. Ms. Cummins is a graduate of The Ohio State University and received her MBA from the University of North Florida.

It is represented that the Valuation Policy Committee will meet at least quarterly and set valuation policy, including such items as the minimum qualifications for appraisal firms, fee schedules for such firms, rotation of appraisal firms, and valuation methodology. Prudential represents that it will bear the costs of the Valuation Policy Committee.

Prudential represents that, pursuant to guidelines established by the Valuation Policy Committee, it will retain for a non-renewable fixed term an experienced and qualified, independent third party to serve as the Valuation Management Firm. It is represented that the Valuation Management Firm will report to the Valuation Policy Committee. The Valuation Management Firm will be responsible for: (a) Retaining (and terminating) all appraisal firms which value the properties in the Accounts; (b) reviewing all appraisals generated by such appraisal firms for conformance to certain standards, including those established by the Valuation Policy Committee; and (c) collecting, reviewing, and distributing any information from PREI portfolio managers, asset managers, market intelligence coordinators, and third party property managers needed by such appraisal firms to appraise the properties in the Accounts. It is represented that Price Waterhouse is currently serving as the Valuation Management Firm.

It is represented that the costs of the appraisal firms and the Valuation Management Firm are currently paid by Prudential. However, after significant discussions with the PRISA and PRISA II Advisory Councils and investors in the Accounts, Prudential has proposed a revised fee schedule which includes passing on the costs of third party appraisers and the Valuation Management Firm to the Accounts. Prudential believes that this practice is customary in the industry. A proposal to revise the fee schedule is currently being reviewed by the appropriate state insurance departments. Subject to the necessary regulatory approval, Prudential has notified the investors in the Accounts (as required by contract) that it intends to implement this new fee schedule on March 31, 1997.[5] In the interim, it is represented that investors in the Accounts will be charged the lower of the two schedules until the new schedule goes into effect.

The Prudential Valuation Reviewer will serve as the Valuation Management Firm's contact at Prudential. In this regard, it is anticipated that the Valuation Management Firm will report the values of the properties in the Accounts to the Prudential Valuation Reviewer who will have final approval authority. In addition, the Prudential Valuation Reviewer may order additional external appraisals; or, as necessary, may adjust property values, based on tenant, property, or market information provided by PREI or otherwise made available, in calendar quarters when no independent appraisals have been performed. Prudential anticipates that the Prudential Valuation Reviewer will adjust a value estimate provided by an external appraisal only in rare circumstances and extremely infrequently. In this regard, since April 1, 1994, the Prudential Valuation Reviewer has modified the estimate of value of a property in an Account provided by an external appraiser in only one circumstance and where both the Prudential Valuation Reviewer and the Valuation Management Firm believed the external appraiser's estimate of value was overstated. It is represented that this adjustment in the value of a property was disclosed to the investors in the Account in the PRISA Quarter 1995 Report and in minutes of the May 3, 1995 Advisory Council meeting. It is represented that any such similar occurrences in the future will be disclosed in a like manner. Further, it is represented that no upward adjustment will be made to the value reported by an external appraiser of any property in the Accounts without the Valuation Management Firm's concurrence to such increase in value. It is represented that the Prudential Valuation Reviewer will document any such changes and will report all property values to Prudential's Comptroller, rather than to the PREI business unit.

It is represented that Prudential's Comptroller will be responsible for presenting values on financial statements (after adjusting any property not held in fee for the Account's applicable ownership interest). In addition, Prudential's Comptroller will calculate and present the unit values and returns for the Accounts.

12. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The decision to leave funds invested in either or both of the Accounts for all or a portion of the Investment Period has been and will be made by fiduciaries of the Plans independent of Prudential;

(2) The amount of the enhanced return payment with respect to the assets of the Plans that are invested in either or both of the Accounts for only a portion of the Investment Period will be calculated in the same manner as the amount of the enhanced return payment with respect to the assets of the Plans that remain invested in either or both of the Accounts for the entire Investment Period;

(3) The enhanced return will be derived by comparing the cumulative total return for the Investment Period reported by the Index with the cumulative total return of PRISA or PRISA II for the same period;

(4) The Plans will obtain an enhanced rate of return (but not more than 200 basis points) for amounts invested in one or both of the Accounts during all or any portion of the Investment Period, if the cumulative total investment return of such Account for such Investment Period is less than that reported for the Index;

(5) The payments, if any, of enhanced return will be made by Prudential to investors in the Accounts not later than thirty (30) days following the final determination of the amounts owed;

(6) Every property held by the Accounts is individually valued at least once during the Investment Period and thereafter will be valued at least once in each calendar year by an independent qualified appraiser;

(7) Independent oversight of the proposed transaction will occur through

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[5] Prudential has not requested relief for the institution of the revised fee schedule which proposes to pass on the costs of third party appraisers and the Valuation Management Firm to the Accounts.

the review of the operations and returns of the Accounts conducted by interim and permanent Advisory Councils for PRISA and PRISA II;

(8) The Valuation Policy Committee will meet at least quarterly and set valuation policy for the Accounts;

(9) The Valuation Management Firm will be responsible for retaining (and terminating) all appraisal firms which value the properties in the Accounts; reviewing all appraisals generated by such appraisal firms; and collecting, reviewing, and distributing any information needed by such appraisal firms to appraise the properties in the Accounts;

(10) In connection with the determination of enhanced return payments, no upward adjustment will be made by Prudential to the value reported by an external independent appraiser of any Property in PRISA and PRISA II without the concurrence of the Valuation Management Firm;

(11) The Plans invested in the Accounts who receive the enhanced return will incur no additional cost or risk in connection with the transaction;

(12) The transaction is subject to state insurance regulatory approvals;

(13) The calculation of the enhanced return involves a one-time determination of comparative investment returns based upon a recognized real estate industry index that can be readily reviewed and monitored for compliance in all applicable requirements;

(14) The comparative return calculation involves a relatively simple and objective comparison of readily available return information, which can be easily confirmed by the fiduciaries of the Plans invested in the Accounts and by the Department; and

(15) The Plans will receive the same treatment and proportional payment under the enhanced return as any other investor in PRISA and PRISA II.

Notice to Interested Persons

Those persons who may be interested in the pendency of the proposed exemption include fiduciaries, participants and beneficiaries of the Plans that are invested in one or both of the Accounts. However, it is represented that there are hundreds of thousands of participants in the Plans that invest in one or both of the Accounts. Because of the impracticality of providing notice to all such persons, Prudential proposes to give notice to interested persons by distributing the Notice of Proposed Exemption, as published in the **Federal Register**, together with a supplemental statement in the form set forth in the Department's regulations under 29 C.F.R. 2570.43(b)(2), to the contractholder on behalf of each of the Plans that was invested in PRISA or PRISA II, as of April 1, 1994. It is represented that these contractholders are generally the sponsors of the Plans or the trustees or administrators of the Plans. Distribution of notice will be effected by first-class mail, postage prepaid, within fifteen (15) days of the date of publication of the Notice of Proposed Exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

First Hawaiian Bank Located Honolulu, HI

[Application No. D–09877]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[6]

Section I. Exemption for In-Kind Transfer of Assets

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the in-kind transfer to any open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the '40 Act) to which First Hawaiian Bank or any of its affiliates (collectively, the Bank) serves as investment adviser and may provide other services, of the assets of various employee benefit plans (the Plan or Plans) that are held in certain collective investment funds (the CIF or CIFs) maintained by the Bank or otherwise held by the Bank as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plans, in exchange for shares of such Funds, provided the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, receives advance written notice of the in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Fund and the disclosures described in paragraph (g) of Section II below.

(b) On the basis of the information described in paragraph (g) of Section II below, the Second Fiduciary authorizes in writing the in-kind transfer of assets of the Plans in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees received by the Bank in connection with its services to the Fund. Such authorization by the Second Fiduciary to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commissions are paid by the Plans in connection with the in-kind transfers of asset of the Plans or the CIFs in exchange for shares of the Funds.

(d) All or a pro rata portion of the assets of the Plans held in the CIFs or all or a pro rata portion of the assets of the Plans held by the Bank in any capacities as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds.

(e) The Plans or the CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the Plans or the CIFs exchanged for such shares on the date of transfer.

(f) The current market value of the assets of the Plans or the CIFs to be transferred in-kind in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a–7b (Rule 17a–7) under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the date of the Plan or CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(g) Not later than 30 business days after completion of each in-kind transfer of assets of the Plans or the CIFs in

exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, a written confirmation that contains the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the '40 Act;

(2) The price of each of the assets involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such assets; and

(h) No later than 90 days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, a written confirmation that contains the following information:

(1) The number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) The number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(i) The conditions set forth in paragraphs (d), (e), (f), (o), (p), (q) and (r) of Section II below are satisfied.

Section II. Exemption for Receipt of Fees From Funds

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) through (F) of the Code shall not apply to the proposed receipt of fees by the Bank from the Funds for acting as the investment adviser, custodian, sub-administrator, and other service provider for the Funds in connection with the investment in the Funds by the Plans for which the Bank acts as a fiduciary provided that:

(a) No sales commissions are paid by the Plans in connection with purchases or sales of shares of the Funds and no redemption fees are paid in connection with the sale of such shares by the Plans to the Funds.

(b) The price paid or received by the Plans for shares in the Funds is the net asset value per share, as defined in paragraph (e) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director purchases from or sells to any of the Plans shares of any of the Funds.

(d) As to each individual Plan, the combined total of all fees received by the Bank for the provision of services to the Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) The Bank does not receive any fees payable, pursuant to Rule 12b–1 under the '40 Act (the 12b–1 Fees) in connection with the transactions.

(f) The Plans are not sponsored by the Bank.

(g) A Second Fiduciary who is acting on behalf of each Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, receives in advance of the investment by the Plan in any of the Funds a full and detailed written disclosure of information concerning such Fund (including, but not limited to, a current prospectus for each portfolio of each of the Funds in which such Plan is considering investing and a statement describing the fee structure).

(h) On the basis of the information described in paragraph (g) of this Section II, the Second Fiduciary authorizes in writing the investment of assets of the Plans in shares of the Funds and the fees received by the Bank in connection with its services to the Funds. Such authorization by the Second Fiduciary is consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(i) The authorization, described in paragraph (h) of this Section II, is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected by the Bank selling the shares of the Fund held by the affected Plan within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (i) of Section III below, or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

(j) Plans do not pay any Plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Plans which are invested in shares of any of the Funds. This condition does not preclude the payment of investment advisory fees or similar fees by the Funds to the Bank under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act or other agreement between the Bank and the Funds.

(k) In the event of an increase in the rate of any fees paid by the Funds to the Bank regarding any investment management services, investment advisory services, or fees for similar services that the Bank provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (h) of this Section II, the Bank will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is increasing such fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(l) In the event of an addition of a Secondary Service, as defined in paragraph (h) of Section III below, provided by the Bank to the Fund for which a fee is charged or an increase in the rate of any fee paid by the Funds to the Bank for any Secondary Service, as defined in paragraph (h) of Section III below, that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Plan, in accordance with paragraph (h) of this Section II, the Bank will at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

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[6] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

(m) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k), (l), and (n) of this Section II, which expressly provides an election to terminate the authorization, described above in paragraph (h) of this Section II, with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Plans, without penalty to such Plans. Such termination will be effected by the Bank redeeming shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the redemption of shares of such Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of a Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (k) and (l) of this Section II, and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of the Bank to engage in the transactions on behalf of such Plan.

(n) The Second Fiduciary is supplied with a Termination Form, annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (n) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraphs (k) and (l) of this Section II, except to the extent required by said paragraphs (k) and (l) of this Section II to disclose an additional Secondary Service for which a fee is charged or an increase in fees.

(o)(1) With respect to each of the Funds in which a Plan invests, the Bank will provide the Second Fiduciary of such Plan:

(A) At least annually with a copy of an updated prospectus of such Fund;

(B) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to the Bank; and

(2) With respect to each of the Funds in which a Plan invests, in the event such Fund places brokerage transactions with the Bank, the Bank will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(A) The total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to the Bank by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Bank;

(C) The average brokerage commissions per share, expressed as cents per share, paid to the Bank by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Bank.

(p) All dealings between the Plans and any of the Funds are on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(q) The Bank maintains for a period of 6 years the records necessary to enable the persons, as described in paragraph (r) of Section II below, to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the 6 year period; and

(2) No party in interest, other than the Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (r) of Section II below;

(r)(1) Except as provided in paragraph (r)(2) of this Section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) of Section II above are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service (the Service) or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (r)(1)(ii) and (r)(1)(iii) of Section II shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term "Bank" means First Hawaiian Bank and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund or Funds" means any diversified open-end investment company or companies registered under the '40 Act for which the Bank serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in

section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of the Bank (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of the Bank (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/adviser, (ii) the approval of any purchase or redemption by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of Section III above, shall not apply.

(h) The term "Secondary Service" means a service, other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary, at the times specified in paragraphs (k), (l), and (n) of Section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in paragraph (h) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plans and to notify the Bank in writing to effect such termination by redeeming the shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of the Bank, the redemption cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

Summary of Facts and Representations

Description of the Parties

1. The parties or entities that are involved in the subject transactions are described as follows:

a. *The Bank* is state-chartered bank that is incorporated under the laws of Hawaii and maintains its principal office at 1132 Bishop Street, Honolulu, Hawaii. The Bank is a wholly-owned subsidiary of First Hawaiian, Inc., a Delaware holding company.

Over the past seventy years, the Bank and its corporate predecessors have provided asset management services to several types of accounts including personal trusts, guardianship and probate accounts, corporate assets portfolio accounts and employee benefit plans including HR–10 Plans. As of May 1, 1994, the Bank had total assets under management of approximately $1.5 billion. The Bank serves as trustee with respect to the CIFs and as an investment adviser to the Fund portfolios described herein.

b. *The Plans* consist of retirement plans qualified under section 401(a) of the Code with respect to which the Bank serves or will serve as a trustee or investment fiduciary and that constitute "pension plans" as defined in section 3(2) of the Act and section 4975(e)(1) of the Code. The Plans do not include any plans that are sponsored by the Bank.[7]

c. *The CIFs* consist of separate investment portfolios of the First Hawaiian Bank Collective Investment Trust for Employee Benefit Trusts (the Collective Investment Trust) or similar investment trusts that may be established and maintained by the Bank. The Bank serves as trustee of the Collective Investment Trust.

As of June 30, 1993, the aggregate fair market value of the current CIFs maintained by the Bank was approximately $165.3 million. Participation in the CIFs is limited to Plans and public retirement funds for which the Bank acts as trustee or co-trustee or agent for the trustee or trustees of such Plan or CIF.

The CIFs that will be involved initially in the subject transactions are the Equity Fund, the HR–10 Equity Fund and the Pooled Fixed Income Fund.[8] These CIFs will be terminated immediately following the in-kind transfers.[9]

d. *The Funds* are separate portfolios of open-end investment companies registered under the '40 Act. The Funds currently consist of the Bishop Street Funds, a Massachusetts business trust that was established [illegible] 25, 1994. The Bishop Street [illegible] constitute a no-load, open-end management investment company with four portfolios in existence. The existing Funds include the Equity Fund (corresponding to the Pooled Equity Fund and the HR–10 Equity Fund of the Collective Investment Trust) and the High-Grade Income Fund (corresponding to the Fixed Income Fund of the Collective Investment Trust).

The Bishop Street Funds will issue two classes of shares. Institutional Class A shares will be offered primarily to agency, fiduciary, custodial and advisory clients of the Bank. Retail Class B shares will be offered primarily to individuals. The Bishop Street Funds will be offered and sold exclusively through the use of prospectuses and other materials and will be offered and sold in full compliance with regulations of the SEC.

The Bank will serve as the investment adviser to each of the Bishop Street Funds. As the investment adviser, the Bank will make investment decisions with respect to the assets of each Fund and continuously review, supervise and administer each Fund's investment program. For investment advisory services rendered to the Funds, the Bank will receive an investment advisory fee. The Bishop Street Funds will pay separate fees for services provided to the Funds by the transfer agent, administrator and custodian, all of whom will not be affiliated with the Bank. Neither the Bank nor its affiliates will receive any 12b–1 fees from the Funds.

Description of the Transactions

2. Because the Bank recognizes that (a) in-kind transfers to Funds that the Bank services or advises of all or a *pro rata* portion of Plan assets in the CIFs or all or a *pro rata portion of Plan assets*

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[7] The Department herein is not proposing relief for transactions afforded relief by Section 404(c) of the Act.

[8] The Pooled Equity Fund and the HR–10 Equity Fund principally invest in equity securities. The Pooled Fixed Income Fund invests primarily in fixed income securities or other tangible or intangible property or interests in either real or personal property.

[9] A fourth CIF, the Pooled Short-Term Fixed Income Fund, will be terminated at or prior to the time that the other CIFs are converted. At present, the only investor in this CIF is the Pooled Fixed Income Fund.

that the Bank otherwise manages, and (b) the approval process for additional services for which a fee is charged and fee increases by the Bank for these services may be outside the scope of Prohibited Transaction Exemption 77–4 (42 FR 18732, April 8, 1977), the Bank has requested relief for the transactions described in Sections I and II. Each of these transactions is discussed more fully herein. The proposed exemption is conditioned on the satisfaction of certain requirements and compliance with various general conditions which are also discussed below. It is the Bank's express intention that the description of these transactions and the conditions of the requested exemption with respect to such transactions will be applicable uniformly to the current Funds and to any of the other Funds for which the Bank serves as the investment advisor and in which the Plans invest.

In-Kind Transfers to Funds

3. The Bank has maintained CIFs in which the Plans have invested in accordance with requirements under Hawaiian banking law that apply to CIFs. The Bank has decided to terminate all current CIFs and to offer to the Plans participating in such CIFs appropriate interests in certain Funds as alternative investments. Because interests in CIFs generally must be liquidated or withdrawn to effect distributions, the Bank believes that the interests of the Plans invested in CIFs would be better served by investment in shares of the Funds which can be distributed in-kind. Also, the Bank believes that the Funds offer the Plans numerous advantages as pooled investment vehicles. In this regard, the Plans, as shareholders of a Fund, have the opportunity to exercise voting and other shareholder rights.

The Plans, as shareholders of the Funds, as mandated by the SEC, periodically receive certain disclosures concerning the Funds: (a) A copy of the prospectus which is updated annually; (b) an annual report containing audited financial statements of the Funds and information regarding such Funds' performance (unless such performance information is included in the prospectus of such Funds); and (c) a semi-annual report containing unaudited financial statements. In addition, at the option of the Funds, the Plans may receive other pertinent information.

With respect to the Plans, the Bank reports all transactions in shares of the Funds in periodic account statements provided the Second Fiduciary of each of the Plans. Further, the Bank maintains that the net asset value of the portfolios of the Funds can be monitored daily from information available in newspapers of general circulation.

In order to avoid the potentially large brokerage expenses that would otherwise be incurred, the Bank proposes that from time to time it may be appropriate for an individual Plan for which the Bank serves as a fiduciary to transfer all or a *pro rata* share of its in-kind assets to any of the Funds in exchange for shares of such Funds. In this regard, for example, in the case of an in-kind exchange between an individual Plan whose portfolio consists of common stock, money market securities and real estate, and a Fund that, under its investment policy, invests only in common stock and money market securities, the exchange would involve all or a *pro rata* share of the common stock and money market securities held by the Plan, if such stock and securities are eligible for purchase by the Fund, and would not involve the transfer or exchange of the real estate holdings of such Plan. A Fund's eligible investments are set forth in its prospectus. No brokerage commission or other fees or expenses (other than customary transfer charges paid to parties other than the Bank or its affiliates) will be charged to the Plans or the CIFs in connection with the in-kind transfers of assets into the Funds and the acquisition of shares of the Funds by the Plans or the CIFs. Thus, the Bank has requested prospective relief for transactions which would involve: (a) The in-kind transfer by the CIFs of all or a *pro rata* portion of the assets of any of the Plans held in such CIFs to the Funds in exchange for shares of the Fund which subsequently are distributed to the Plans; or (b) the in-kind transfer of all or a *pro rata* portion of the assets of any of the Plans held by the Bank in any capacity as fiduciary on behalf of such Plans to the Funds in exchange for shares of such Funds; provided that conditions described in Section I above are satisfied.

The Bank maintains that the in-kind transfers of assets in exchange for shares of the Funds are ministerial transactions performed in accordance with pre-established objective procedures which are approved by the board of trustees of each Fund. Such procedures require that assets transferred to a Fund: (a) Are consistent with the investment objectives, policies, and restrictions of the corresponding portfolios of such Fund, (b) satisfy the applicable requirements of the '40 Act and the Code, and (c) have a readily ascertainable market value. In addition, any assets that are transferred will be liquid and will not be subject to restrictions on resale. Assets which do not meet these requirements will be sold in the open market through an unaffiliated brokerage firm prior to any transfer in-kind. Further, prior to entering into an in-kind transfer, each affected Plan receives certain disclosures from the Bank and approves such transaction in writing.

Valuation of assets transferred in-kind to the Funds will be established by reference to independent sources. In this regard, for purposes of the transaction, it is represented that all assets transferred in-kind are valued in accordance with the valuation procedures described in Rule 17a–7 under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the date of the Plan or CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

Further, the Bank represents that within 30 days of the completion of a transfer in-kind, it will provide to Plans written confirmation of the identity of each security valued under Rule 17a–7(b)(4), the price of each security, and the identity of each pricing service or market maker consulted in determining the value of the assets transferred. The securities subject to valuation under Rule 17(a)–7(b)(4) include all securities other than "reported securities," as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act), or those quoted on the NASDAQ system or for which the principal market is an exchange.

The value of the assets transferred in-kind will be equal to the aggregate value of the corresponding portfolios shares of the Fund at the close of business on the date of the transaction. In this regard, it is represented that for all conversion transactions that occur after the date of this proposed exemption, the Bank, no later than 90 days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, will mail to the Second Fiduciary a written confirmation of the number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred), and the number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

The Initial Exemption Transactions

4. The Bank has requested prospective exemptive relief, for the in-kind transfer to the Bishop Street Funds. At the time of such in-kind transfer, all of the assets of the three CIFs described above, which are maintained by the Bank and in which the Plans hold interests, will be transferred to the Bishop Street Funds which have investment objectives and policies substantially identical to those of the CIFs. At the same time, the three CIFs will be terminated and the assets of each, then consisting of shares in portfolios of the Bishop Street Funds, will be distributed in-kind to the Plans participating in such CIFs based on each Plan's *pro rata* share of the assets of the CIFs on the date of the transaction.

The Bank will provide to each affected Plan disclosures that announce the termination of the CIFs, summarize the transaction and otherwise comply with provisions of Section I of the exemption. Based on these disclosures, the Second Fiduciary from each affected Plan will approve in writing the transfer of the CIFs' assets to the corresponding portfolios of the Bishop Street Funds in exchange for shares of the Bishop Street Funds, and the receipt by the Bank of fees for services to the Bishop Street Funds. The assets of Plans that do not approve investment in the Bishop Street Funds will be withdrawn from the CIFs and held or invested in appropriate alternative investments in accordance with the terms of such Plans.

Prior to the transaction, the assets of the three CIFs will be reviewed to confirm that such are appropriate investments for the corresponding portfolios of the Bishop Street Funds into which such assets will be transferred. If any of the assets of the three CIFs are not appropriate for the Bishop Street Funds, the Bank intends to sell such assets in the open market through an unaffiliated brokerage firm prior to the transfer.

The assets transferred by the three CIFs to the Bishop Street Funds will consist entirely of cash and marketable securities. For purposes of the transfer in-kind, the value of the securities in each of the three CIFs will be determined based on market values as of the close of business on the last business date prior to the transfer (the CIF Valuation Date). The values will be determined in a single valuation using the valuation procedures described in Rule 17a–7 under the '40 Act. In this regard, the "current market price" for specific types of CIF securities involved in the transaction will be determined as follows:

a. If the security is a "reported security" as the term is defined in Rule 11Aa3–1 under the 1934 Act, the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the CIF Valuation Date; or if there are no reported transactions in the Consolidated System that day, the average of the highest independent bid and the lowest independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act), as of the close of business on the CIF Valuation Date; or

b. If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on the CIF Valuation Date; or if there is no reported transaction on such exchange that day, the average of the highest independent bid and lowest independent offer on such exchange as of the close of business on the CIF Valuation Date; or

c. If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest independent bid and lowest independent offer reported on Level 1 of NASDAQ as of the close of business on the CIF Valuation Date; or

d. For all other securities, the average of the highest independent bid and lowest independent offer as of the close of business on the CIF Valuation Date, determined on the basis of reasonable inquiry. For securities in this category, the Bank intends to obtain quotations from at least three sources that are either broker-dealers or pricing services independent of and unrelated to the Bank and, where more than one valid quotation is available, use the average of the quotations to value the securities, in conformance with interpretations by the SEC and practice under Rule 17a–7.

The securities received by the corresponding portfolios of the Bishop Street Funds will be valued by such portfolio for purposes of the transfer in the same manner and on the same day as such securities will be valued by the CIFs. The per share value of the shares of each portfolio of the Bishop Street Funds issued to the CIFs will be based on the corresponding portfolio's then current net asset value. As a result of the proposed procedure, the Bank expects that the aggregate value of the shares of the corresponding portfolio of the Bishop Street Funds issued to the CIFs to be equal to the value of the assets (cash and marketable securities) transferred to such portfolio as of the opening of business on next business day following the CIF Valuation Date. The Bank also expects the value of a Plan's investment in shares of a corresponding portfolio of the Bishop Street Funds as of the opening of business on the date of the transaction will be equal to the value of such Plan's investment in the CIF as of the close of business on the last business day prior to the transaction.

Not later than 30 business days after completion of the transaction, the Bank will send by regular mail a written confirmation of the transaction to each affected Plan. Such confirmation will contain: (a) The identity of each security that is valued in accordance with Rule 17a7(b)(4), as described above; (b) the price of each such security for purposes of the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such securities. In accordance with the conditions under Section I of the proposed exemption, similar procedures will occur upon any future in-kind exchanges between CIFs maintained by the Bank or Plans, and the Funds.

Receipt of Fees From Funds

5. Under certain conditions, PTE 77–4 permits the Bank to receive fees from the Funds under either of two circumstances: (a) Where a Plan does not pay any investment management, investment advisory, or similar fees with respect to the assets of such Plan invested in shares of a Fund for the entire period of such investment; or (b) where a Plan pays investment management, investment advisory, or similar fees to the Bank based on the total assets of such Plan from which a credit has been subtracted representing such Plan's *pro rata* share of such investment advisory fees paid to the Bank by the Fund. As such, it is represented that there are two levels of fees—those fees which the Bank charges to the Plans for serving as trustee with investment discretion or as investment manager (the Plan-level fees); and those fees the Bank charges to the Funds (the Fund-level fees) for serving as investment advisor, custodian, or service provider.

Plan-level investment management, investment advisory, or fees for similar services provided by the Bank are currently charged in the form of a single asset-based investment management fee. There is also a Plan-level trustee fee for basic administrative services provided by the Bank as well as other specific service fees, such as a cash "sweep" fee. Currently, the annual investment management fee for assets invested in the Pooled Equity Fund and the HR–10 Equity Fund is 0.60 percent of assets under management, based on the daily net asset value of the fund. The fee for assets invested in the Pooled Fixed Income Fund is 0.40 percent of assets under management, based on the daily net asset value of the fund. Plan-level fees are subject to annual minimums for administration and management expressed as flat dollar amounts and administrative fees are subject to the application of certain "break points." In addition to the Plan-level fees for investment management, investment advisory, or similar services, a one-time fee (also a flat dollar amount) may be charged in connection with the establishment of an account for a Plan, and separate transaction fees may be charged for various administrative transactions, such as for example, a participant loan. Depending on the terms governing documents of the Plan, Plan-level fees are paid to the Bank either by the sponsor of the Plan or from the assets of the Plan. Plan-level fees for investment management, investment advisory or similar investment services will terminate immediately after the execution of the subject transactions described herein.

As mentioned above, the Bank may receive Fund-level fees. Such Fund-level fees can be divided into: (a) Fees paid to the Bank by a Fund for investment management, investment advisory, or similar services provided to such Fund, and (b) fees paid to the Bank for administrative, custodial, transfer, accounting, and other Secondary Services provided either to such Fund or to the distributor of shares of such Funds and its affiliates. The Bank is currently not paid any fees in this category from the Bishop Street Funds. The current fee arrangements between the Bank and the Bishop Street Funds provide for the Bank to receive fees from the Bishop Street Funds only for acting as investment adviser. This compensation paid to the Bank for investment advisory services is in accordance with agreements between the Bishop Street Funds and the Bank. In this regard, it is represented that the Bishop Street Funds' Trustees and the shareholders of the Bishop Street Funds approve the compensation that the Bank receives from the Bishop Street Funds. Also, the Bishop Street Funds' Trustees approve any changes in the compensation paid to the Bank for services rendered to the Bishop Street Funds.

With respect to Plans managed by the Bank that are invested in the Funds, although such Plans will no longer pay a Plan-level investment management fee to the Bank, a Plan-level fee will continue to be charged to the Plans for basic administrative services not including investment management.[10] Such administrative services would include, among others, the Bank's acting as custodian of the assets of a Plan, maintaining the records of a Plan, preparing periodic reports concerning the status of the Plan and its assets, and accounting for contributions, benefit distributions, and other receipts and disbursements. These functions performed by the Bank on the Plan-level are separate and distinct from those performed on the Fund-level by the Bank.

The Bank will continue to receive Plan-level compensation from the Plans for investment management services provided with respect to assets of the Plans *not* invested in shares of any of the Funds. Since the Plan-level investment management fee for Plans investing in the Funds will terminate, there will be no credit to the Plans their *pro rata* share of the investment advisory fees paid at the Fund-level. Instead, the only compensation received by the Bank for investment advisory services will be that which is paid by the Funds to the Bank for such services rendered to such Funds. In addition, the Bank will retain fees for providing Secondary Services to the Funds.

The Bank believes that this proposed fee arrangement complies with PTE 77–4. However, there is one difference from PTE 77–4 requested by the Bank for which an exemption is required. In this regard, one of the requirements of PTE 77–4 has been that any change in any of the rates of fees would require prior written approval by the Second Fiduciary of the Plans participating in the Funds. The applicant maintains that where many Plans participate in a Fund, the addition of a service or any good faith increase in fees could not be implemented until written approval of such change is obtained from every Second Fiduciary. The Bank proposes an alternative which the Bank believes provides the basic safeguards for the Plans and is more efficient, cost effective, and administratively feasible than those contained in PTE 77–4.

In the event of an increase in the rate of any investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or an increase in the fees for Secondary Services paid by the Funds to the Bank over an existing rate that had been authorized by the Second Fiduciary, the Bank will provide, at least 30 days in advance of the implementation of such additional service or fee increase, to the Second Fiduciary of the Plans invested in such Fund a written notice of such additional service or fee increase, (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service or the nature and amount of the increase in fees). In this regard, such increase in fees for Secondary Services can result either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over that which had been authorized by the Second Fiduciary of a Plan. The Bank believes that notice provided in this way will give the Second Fiduciary of each of the Plans adequate opportunity to decide whether or not to continue the authorization of a Plan's investment in any of the portfolios of the Funds in light of the increase in investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or the increase in fees for any Secondary Services. In addition, the Bank represents that such fee increase will be disclosed to the Second Fiduciaries in an amendment of or supplement to the Funds' prospectus or in the Funds' statement of additional information, to the extent necessary to comply with SEC disclosure requirements.[11]

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[10] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Plans to assure that the fees paid by the Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

[11] An increase in the amount of a fee for an existing Secondary Service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established Secondary Service shall be considered an increase in the rate of such Secondary Fee. However, in the event a Secondary Fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the amount of such Secondary Fee, and such fee was waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee. However, reinstituting the fee at an amount greater than previously disclosed would necessitate the Bank providing notice of the fee increase and a Termination Form.

Authorization Requirements for the Second Fiduciary

6. The written notice of an additional service for which a fee is charged or a fee increase, as described in Representation 5, will be accompanied by a Termination Form, as defined in paragraph (i) of Section III, and by instructions on the use of such form, as described in paragraph (l) of Section II, which expressly provide an election to the Second Fiduciaries to terminate at will any prior authorizations without penalty to the Plans. The Second Fiduciary will be supplied with a Termination Form annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter, regardless of whether there have been any changes in the fees payable to the Bank or changes in other matters in connection with services rendered to the Funds. However, if the Termination Form has been provided to the Second Fiduciary in the event of an increase in the rate of any investment management fees, investment advisory fees, or similar fees, an addition of a Secondary Service for which a fee is charged, or an increase in any fees for Secondary Services paid by the Fund to the Bank, then such Termination Form need not be provided again to the Second Fiduciary until at least six months have elapsed, unless such Termination Form is required to be sent sooner as a result of another increase in any investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or an increase in any fees for Secondary Services.

The Termination Form will contain instructions regarding its use which will state expressly that the authorization is terminable at will by a Second Fiduciary, without penalty to any Plan, and that failure to return the form will be deemed to be an approval of the additional Secondary Service or the increase in the rate of any fees and will result in the continuation of all authorizations previously given by such Second Fiduciary. Termination by any Plan of authorization to invest in the Funds will be effected by the Bank redeeming the shares of the Fund held by the affected Plan by the close of business on the day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination. If, due to circumstances beyond the control of the Bank, the redemption cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

The rates paid by each of the portfolios of the Funds to the Bank for services rendered may differ depending on the fee schedule for each portfolio and on the daily net assets in each portfolio. The investment advisory fees paid to the Bank by the Funds will be based on the different fee rates of each of the portfolios into which the assets of the Plans are allocated. For example, for services provided to the Equity Fund, the Bank receives from the Bishop Street Funds an annual fee of 0.40 percent based on the Fund's average daily net assets. For services provided to the High-Grade Income Fund, the Bank receives from the Bishop Street Funds an annual fee of 0.25 percent, based on the Fund's average daily net assets. The Bank proposes to allocate the assets of the Plans among the portfolios offered of the Bishop Street Funds and/or among any of the Funds under the terms of this proposed exemption.

The impact of the change in fee structures resulting from the exemptive transactions on the aggregate fees received by the Bank is difficult to determine, according to the applicant, because various factors and variables are unique to each Plan. These factors include the size of the Plan, the extent to which Plan assets are invested in the Funds, usage by the Plans of separate services provided by the Bank and the application of certain "break points" in the schedule of Plan-level fees. Further, the Bank notes that Fund size, the identity of the particular investment portfolio of the Fund into which the Plan assets are allocated and voluntary waivers by the Bank of Fund-level fees are likely to be different in each situation and may affect the aggregate amount of fees received by the Bank. In this regard, the Bank believes that, as to each individual Plan, the combined total of all Plan-level and Fund-level fees received by it for the provision of services to the Plans and to the Funds, respectively, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

Conditions for Exemption

7. If granted, this proposed exemption will be subject to the satisfaction of certain general conditions that will further protect the interests of the Plans. For example, the proposed transactions are subject to the prior authorization of a Second Fiduciary, acting on behalf of each of the Plans, who has been provided with full written disclosure by the Bank. The Second Fiduciary will generally be the administrator, sponsor, or a committee appointed by the sponsor to act as a named fiduciary for a Plan.

With respect to disclosure, the Second Fiduciary of such Plan will receive advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure).

On the basis of the information disclosed, the Second Fiduciary will authorize in writing the investment of assets of a Plan in shares of the Funds in connection with the transactions set forth herein and the compensation received by the Bank in connection with its services to the Funds. Written authorization will extend to only those investment portfolios of the Funds with respect to which the Plan has received the written disclosures referred to above and which are specifically mentioned in such disclosure described above. Having obtained the authorization of the Second Fiduciary, the Bank will invest the assets of a Plan among the portfolios and in the manner covered by the authorization, subject to satisfaction of the other terms and conditions of this proposed exemption. However, the Bank will not invest assets of a Plan in any portfolio not specifically mentioned in the written disclosure and authorization described above. For example, if the written authorization of the Second Fiduciary covered only one of the portfolios then existing, the Bank could only invest the assets of such Plans in that one portfolio specifically authorized. Further, if a new portfolio were established under any of the Funds, the Bank could invest assets of a Plan in such new portfolio only after providing the required disclosures and obtaining from the Second Fiduciary a separate written authorization which specifically mentions the new portfolio.

In addition to the disclosures provided to the Plan prior to investment in any of the Funds, the Bank represents that it will routinely provide at least annually to the Second Fiduciary updated prospectuses of the Funds in accordance with the requirements of the '40 Act and the SEC rules promulgated thereunder. Further, the Second Fiduciary will be supplied, upon request, with a report or statement (which may take the form of the most recent financial report of such Funds, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund.

The Bank does not now execute nor in the future intend to execute securities brokerage transactions for the investment portfolios of any of the Funds, except as and to the extent permitted by the '40 Act and applicable rules of the SEC. However, in the event the Bank ever performs brokerage services for which a fee is paid to the Bank by the investment portfolio of any of the Funds, the Bank represents that it will at least 30 days in advance of the implementation of such additional service provide a written notice which explains the nature of such additional brokerage service and the amount of the fees. Further, the Bank represents that it will provide at least annually to the Second fiduciary of any Plan that invests in such Funds with a written disclosure indicating (a) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to the Bank by such Fund; (b) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Bank; (c) the average brokerage commissions per share, expressed as cents per share, paid to the Bank by each portfolio of a Fund; and (d) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Bank.

The receipt of fees, as described above, is generated in connection with the investment in the Funds by the Plans. These investments are the result of purchases of shares in the Funds and exchanges of assets of the Plans, including those in CIFs, for shares in the Funds.

With respect to such purchases, (a) the Plans and other investors will purchase or redeem shares in the Funds in accordance with standard procedures described in the prospectus for each portfolio of the Funds; (b) the Plans will pay no sales commissions or redemption fees in connection with purchase or redemption of shares in the Funds by the Plans; (c) the Bank will not purchase from or sell to any of the Plans shares of any of the Funds; and (d) the price paid or received by the Plans for shares of the Funds will be the net asset value per share at the time of such purchase or redemption and will be the same price as any other investor would have paid or received at that time. The value of the Bishop Street Funds' shares and the value of each Bishop Street Funds' portfolios are determined on a daily basis. In the case of the non-money market portfolios, assets are valued at fair or market value, as required by Rule 2a–4 under the '40 Act. In the case of any money market portfolio, the assets are valued based on the amortized cost method authorized by SEC Rule 2a–7, in order to maintain a net asset value of $1.00 per share. Both the money market portfolios and the non-money market portfolios determine the net asset value per share for purposes of pricing purchases and redemptions by dividing the value of all securities, determined by a method as set forth in the prospectus for each Bishop Street Fund portfolio, and other assets belonging to each of the portfolios, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

Purchases and redemptions of shares in any of the Funds by the Plans may also occur in connection with daily automated cash "sweep" arrangements. However, agreement to such arrangement is not a condition for the Plan otherwise choosing to invest in shares of the Fund, nor will the reverse be required.

Under the automated cash "sweep" arrangement, a Plan may participate in the "sweep" program only with the initial written approval of the Second Fiduciary and only after certain disclosures have been provided by the Bank. If such approval is given, cash balances of the Plan held from time to time thereafter pending other investment or distribution are invested automatically in shares of the Bishop Street Funds Money Market Fund or other short-term investment vehicle selected by the Second Fiduciary on behalf of a Plan. The automated cash "sweep" arrangement would not involve shares of any non-money market portfolios.

After the Money Market Fund of the Bishop Street Funds has been selected by the Second Fiduciary on behalf of the Plan, otherwise uninvested cash down to the last $1.00 balance of the Plans may be invested automatically on a nightly basis. The Bank has no discretion with respect to the timing of the "sweep" either into or out of the Bishop Street Funds. Under the automated "sweep" arrangement, the Bank's computerized cash management system automatically scans the accounts of the Plans, as of the end of each business day to determine whether such accounts have positive or negative net cash balances. Based on this information, the system automatically invests the case of the Plans having positive balances in shares of the Money Market Fund. In the case of a Plan having a negative cash balance, the system automatically liquidates the Bishop Street Fund shares as necessary to eliminate such negative balance.

Plans may terminate their participation in the automated cash "sweep" arrangement and withdraw at any time by notifying the Bank. Such termination will be effected by the Bank redeeming the shares of the Bishop Street Funds held by the Plan requesting termination by the close of the business day following the date of receipt by the Bank, either by mail, hand delivery, facsimile, or other available means of written communication at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination. However, if due to circumstances beyond the control of the Bank, the redemption of shares of such Plan cannot be executed within one business day, the Bank would complete the redemption within one additional business day.

No fee, charge or penalty of any kind is charged in connection with a termination by a Plan of participation in the automated cash "sweep arrangement" in the Bishop Street Funds or in any of the Funds. The Bank currently charges a Plan-level cash sweep fee for sweep services in connection with the investment of cash balances in short-term investment vehicles managed by unaffiliated entities. This fee will be terminated for Plans that elect to use the Money Market Fund as their cash management vehicle. The Bank does not charge separate or additional fees to Plans in order to participate in the daily automated cash "sweep" arrangement through the Bishop Street Funds, nor is such additional compensation contemplated by the proposed exemption.[12]

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[12] The Department in a letter, dated August 1, 1986, to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, addressed the application of section 408(b)(2) of the Act to arrangements involving "sweep services." In that letter, the Department set forth several examples to illustrate various circumstances under which violations of section 406(b) of the Act would arise with respect to such arrangements. Conversely, the letter provided that, if a bank provides "sweep" services without the receipt of additional compensation or other consideration (other than reimbursement of direct expenses properly and actually incurred in the performance of such services), then the provision of "sweep" services by the bank would not, in itself, constitute a violation of section 406(b) of the Act. Moreover, including "sweep" services under a single fee arrangement for investment management services which is calculated as a percentage of the market value of the total assets under management would not, in itself, constitute an act described in section 406(b)(1), because the bank would not be exercising its fiduciary authority or control to cause a plan to pay an additional fee.

In addition, the letter also discusses the applicability of the statutory exemptions under

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Neither the Plans nor the CIFs will pay sales commissions or redemption fees in connection with the in-kind transfer of assets to the Funds in exchange for shares of the Funds or in connection with purchases or redemptions by the Plans of shares of the Funds, including purchases and redemptions handled through daily automated cash "sweep" arrangements.

(b) The Plans or the CIFs will receive shares of the Funds that are equal in value to the assets of the Plans or the CIFs exchanged for such shares, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a–7 under the '40 Act, as amended from time to time or any successor rule, regulation or similar pronouncement.

(c) Not later than 30 business days after completion of each in-kind transfer of assets in exchange for shares of the Funds, the Plans will receive written confirmation of the assets involved in the exchange which were valued in accordance with Rule 17a–7(b)(4), the price of such assets and the identity of the pricing service or market maker consulted.

(d) No later than 90 days after completion of each in-kind transfer of assets of the plans or the CIFs in exchange for shares of the Funds, the Bank will mail to the Second Fiduciary of each Plan, a written confirmation of the number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred), and the number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(e) The price that will be paid or received by the Plans for shares in the Funds is the net asset value per share at the time of the transaction and is the same price for the shares which would have been paid or received by any other investor for shares of the same class at that time.

(f) Neither the Bank nor an affiliate, including any officer or director will purchase from or sell to any of the Plans shares of any of the Funds.

(g) As to each individual Plan, the combined total of all fees received by the Bank for the provision of services to the Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) The Bank will not receive any 12b–1 Fees in connection with the proposed transactions.

(i) Prior to investment by a Plan in any of the Funds, in connection with transactions, the Second Fiduciary will receive a full and detailed written disclosure of information concerning such Fund.

(j) Subsequent to the investment by a Plan in any of the Funds, the Bank will provide the Plan, among other information, at least annually with an updated copy of the prospectus for each of the Funds in which the Plan invests.

(k) In the event such Fund places brokerage transactions with the Bank, the Bank will provide the Second Fiduciary of such Plan at least annually with a statement specifying the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to the Bank and to unrelated brokerage firms and the average brokerage commissions per share, expressed as cents per share, by each portfolio of a Fund paid to the Bank and to brokerage firms unrelated to the Bank.

(l) On the basis of the disclosures, the Second Fiduciary will authorize the transactions.

(m) The authorization by the Second Fiduciary will be terminable at will without penalty to such Plans, and any such termination will be effected by the close of the business day following the date of receipt by the Bank, either by mail, hand delivery, facsimile or other available means of written communication at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination, unless due to circumstances beyond the control of the Bank delay execution for no more than one additional business day.

(n) The Plans do not pay investment management, investment advisory or similar fees to the Bank with respect to any of the assets of such Plans which are invested in shares of any of the Funds.

(o) The Second Fiduciary will receive a written notice accompanied by the Termination Form with instructions regarding the use of such form, at least 30 days in advance of the implementation of any increase in the rate of any fees for investment management, investment advisory or similar fees, any addition of a Secondary Service for which a fee is charged, or any increase in fees for Secondary Services that the Bank provides to the Funds.

(p) All dealings between the Plans and any of the Funds will be on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same shares of the same class as the Plans.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of

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section 408(b)(6) of the Act (fees for "ancillary services") and under section 408(b)(8) of the Act (investments in collective trust funds maintained by such bank) to such "sweep" service arrangements.

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the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 8th day of September, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–22753 Filed 9–12–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–81; Exemption Application Nos. D–09511, D–09512 and D–09513, et al.]

Grant of Individual Exemptions; Bank of America Illinois, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bank of America Illinois, Located in Chicago, IL

[Prohibited Transaction Exemption 95–81 Exemption Application Nos. D–09511, D–09512 and D–09513]

Exemption

Section I—Exemption for Purchases and Sales

Effective September 1, 1993, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase and sale by employee benefit plans (the Plans), to which the Bank serves as fiduciary, of shares in the Prime Fund, the Government Securities Fund, and the Treasury Fund, or each of their Pacific Horizon Fund successors, three open-end money market mutual fund portfolios (collectively referred to as the Funds), to which the Bank of America Illinois, and its affiliates (the Bank) provide investment advisory and other services, in connection with the Supplemental Sweep Service (as defined in paragraph (b) of section IV below), provided that the conditions of Section III are met.

Section II—Exemption for Receipt of Fees

Effective September 1, 1993, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the receipt of fees by the Bank from the Funds for providing investment advisory and other services to the Funds, in connection with the investment of the assets of the Plans in the Funds, for which the Bank provides investment advisory and other services, provided that the conditions of Section III are met.

Section III—Conditions

(a) The Bank does not have investment discretion or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the Plan assets invested in the Funds pursuant to this exemption.

(b) No sales commissions or redemption fees are paid by the Plans in connection with the purchase or sale of shares in the Funds.

(c) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act of 1940 (the 12b–1 Fees) in connection with the transactions.

(d) The price paid or received by a Plan for shares in a Fund is the net asset value per share on the date of the transaction, as defined in section IV(d), and is the same price which would have been paid or received for the shares by any other investor on that date.

(e) Prior to the Bank's receipt of fees paid by each Fund with respect to Plan assets invested therein, each Plan receives a credit of such Plan's proportionate share of all fees charged to the Fund by the Bank.

(f) The Plans are not employee benefit plans sponsored or maintained by the Bank.

(g) A second fiduciary who is independent of and unrelated to the Bank or any of its affiliates (the Second Fiduciary), receives full written disclosure of information concerning the Fund(s), including but not limited to:

(1) A current prospectus for each fund in which a Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, and all other fees to be charged to or paid by the Plan or the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reason why the Bank may consider such investment to be appropriate for the Plan; and

(4) Upon request of the Second fiduciary, a copy of the proposed exemption and/or a copy of the final exemption;

(h) On the basis of the information described above in paragraph (g) of section III, the Second Fiduciary authorizes in writing the investment of assets of the Plan in each particular Fund, the fees to be paid by the Fund and the Plan to the Bank, and the credit to the Plan of fees received by the Bank

from the Funds for investment advisory and other services, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by part 4 of Title I of the Act.

(i) The Second Fiduciary referred to in paragraph (g) of section III, or any successor thereto, is notified of any change in the rates of the fees referred to in paragraph (g) of section III and approves in writing the continued holding of any Fund shares acquired by the Plan prior to such change and still held by the Plan.

(j) The Bank provides annually, written disclosures to the Second Fiduciary which are provided to all shareholders of the Fund(s), which establish the rate of return of the Fund(s) absent the credit paid to the Plans for fees paid by the Funds to the Bank.

(k) The combined total of all fees received by the Bank for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans may invest, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(l) All dealings between the Plans and the Funds are on a basis no less favorable to the Plans than dealings between the Funds and other shareholders of the Funds.

(m) The Bank shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (n) below to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not available for examination as required by section (n) below;

(n)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (l) above shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan who has the authority to acquire or dispose of the interests of the Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan that has an interest in any of the Funds or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any Plan that has an interest in the Funds or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (n)(1)(B) through (D) shall be authorized to examine the trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this proposed exemption:

(a) Pacific Horizon Fund successor means each of the open-end money market mutual funds resulting from the merger of the Pacific Horizon Prime Fund and the Pacific Horizon Treasury Fund respectively with the Prime Fund and the Treasury Fund. In addition, Pacific Horizon Fund successor means the open-end money market mutual fund resulting from the merger of the Government Securities Fund with a similar money market mutual fund among the Pacific Horizon Funds.

(b) Supplemental Sweep Service means the transfer of shares in the Funds between the Bank and the Plans by means of the Banks's internal accounting procedures at the end of the Supplemental Sweep Period, in connection with Plan orders to purchase shares in the Funds that the Bank is otherwise unable to settle prior to the Supplemental Sweep Period, and Plan orders to purchase or redeem shares in the Funds that are received by the Bank during the Supplemental Sweep Period. A Plan order to purchase or redeem shares in the Fund(s) pursuant to the Supplemental Sweep Service occurs solely as a result of investment decisions, deposits or withdrawals, directed by an independent Second Fiduciary.

(c) Supplemental Sweep Period means the period of time on each business day after the Funds stop accepting orders for the purchase or redemption of shares in the Funds and before the Bank's close of business.

(d) The term "net asset value" means the amount for purposes of pricing all purchase and sale of shares in the Funds calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or fund, by the number of outstanding shares.

(e) An "affiliate" of a person includes:

(1) Any persons directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control, with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(f) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(g) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(h) A fiduciary will not be deemed to be an independent fiduciary with respect to the Bank and its affiliates if:

(1) The fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank or any affiliate:

(2) The fiduciary, or any officer, director, partner, employee or relative of such fiduciary, is an officer, director partner, or employee of the Bank or any affiliate (or is a relative of such persons); or

(3) The fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of the Bank (or a relative of such person), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/adviser, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in sections I and II above, then paragraph (h)(2) of section III above, shall not apply.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 30 days of the date of publication of the Notice in the **Federal Register** on April 7, 1995.

During the comment period, the Department received no requests for a hearing. However, the Department received a comment letter and subsequent clarifications, dated May 18, August 2, and August 4, 1995 from the Bank.

First, the Bank states that item 8 of the Summary of Facts and Representations in the Notice indicates that the books of the Fund's transfer agent carry only one account for all purchases and redemptions of Fund shares by the Bank. The Bank represents that it is possible in the future that, solely for bookkeeping purposes, the transfer agent may record separate accounts in the Bank's name to reflect orders from different Bank departments or divisions, or for other purposes, such as reflecting the Bank's own provisional accounts. Nonetheless, all such shares would be held in the name of the Bank. The Department concurs.

Second, the Bank notes a typographical error in the **Federal Register** at page 17812: the reference to the Bank's cash management fee reads "12" percent rather than "0.12 percent." The Department concurs.

Third, the Bank states that the Prime Fund and the Treasury Fund may be respectively merged into the Pacific Horizon Prime Fund and the Pacific Horizon Treasury Fund, which are money market mutual funds with respect to which a BAI affiliate serves as investment adviser. In addition, although the Government Securities Fund has not been used as a cash management vehicle for any plan to date, it may be merged into a similar money market mutual fund among the Pacific Horizon Funds which is also advised by a BAI affiliate. Further, the Bank represents that the prior representations regarding the Prime Fund, the Treasury Fund and the Government Securities Fund will remain accurate with respect to the Pacific Horizon Fund successors. In this regard, the Bank has requested that relief be extended to the Pacific Horizon Funds which succeed the Prime Fund, the Treasury Fund and the Government Securities Fund. The Department concurs.

After giving full consideration to the record, including the comments by the Bank, the Department has determined to grant the exemption as described herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5507, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption published refer to the notice of proposed exemption published Friday April 7, 1995, at 60 FR 17809.

FOR FURTHER INFORMATION CONTACT: Eric Berger of the Department, telephone (202) 219–8971 (This is not a toll-free number).

PMS Profit Sharing and Retirement Savings Plan and Trust (the Plan), Located in Cleveland, Ohio

[Prohibited Transaction Exemption 95–82; Exemption Application No. D–09824]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale (the Sale) of a certain parcel of improved real property (the Property) from the Plan to M. A. Hanna Company (Hanna), a party in interest with respect to the Plan provided that the following conditions are met:

(1) The fair market value of the Property is established by a qualified and independent real estate appraiser;

(2) Hanna pays the greater of $990,800 or the current fair market value of the Property;

(3) The Sale is a one time transaction for cash;

(4) The Plan pays no fees or commissions related to the Sale; and

(5) Hanna pays any excise taxes to the Internal Revenue Service owed pursuant to section 4975(a) of the Code resulting from Hanna's lease of the Property from the Plan through the effective date of the final grant of the exemption within 90 days of such date.

Effective Date: This exemption will be effective as of September 1, 1995.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on July 12, 1995 at 60 FR 35941.

Written Comments: With respect to the notice of proposed exemption, the Department received one comment in which the applicant requests that the exemption be effective September 1, 1995. The Department has modified the final exemption accordingly in response to the comment.

For Further Information Contact: Allison Padams, of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Mercury Asset Management International Ltd. (Mercury International) Located in London, England

[Prohibited Transaction Exemption 95–83; Exemption Application No. D–09998]

Exemption

The restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the proposed cross-trading of securities between various accounts managed by Mercury International or its Affiliates (the Accounts) where at least one Account involved in any cross-trade is an employee benefit plan account (Plan Account) for which Mercury International acts as a fiduciary; provided that both the General Conditions of Section I and the Specific Conditions of Section II below are met.

Section I—General Conditions

(a) Each employee benefit plan comprising a Plan Account participating in Mercury International's cross-trading program has total assets equal to at least $25 million. In the case of multiple employee benefit plans maintained by a single employer or controlled group of employers, the $25 million requirement may be met by aggregating the assets of such plans if the assets are commingled for investment purposes in a single master trust.

(b) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a qualified Plan Fiduciary which is independent of Mercury International and its Affiliates (the Independent Fiduciary).

(c) The authorization referred to in paragraph (b) above is terminable at will without penalty to the Plan Account, upon receipt by Mercury International of written notice of termination.

(d) Before an authorization is made for any Plan Account, the Independent Fiduciary is furnished with any reasonably available information necessary for the Independent Fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, a description of Mercury International's cross-trade practices, and any other reasonably available information regarding the matter that the Independent Fiduciary requests.

(e) Each cross-trade transaction involves only equity or debt securities for which there is a generally recognized market. With respect to any non-U.S. securities, only those securities traded on a recognized foreign securities exchange for which market quotations are readily available shall be covered by the exemption.[1]

(f) Each cross-trade transaction is effected at the current market value for the security on the date of the transactions. For equity securities, this shall be the closing price for the security on the date of the transaction. The "closing price" shall be the last trade price on exchanges where dealing is order-driven and the closing mid-market price (i.e. the average of the closing bid and offer prices) where dealing is quote-driven. For debt securities, the current market value shall be the fair market value determined in accordance with paragraph (b) of Rule 17a–7 issued by the Securities and Exchange Commission under the Investment Company Act of 1940.

(g) Neither Mercury International nor its Affiliates charges a Plan Account affected by a cross-trade transaction any fee or commission for such transaction.

(h) At least every three months, and not later than 45 days following the period to which it relates, Mercury International furnishes the Independent Fiduciary with a report disclosing: (1) a list of all cross-trade transactions engaged in on behalf of the Plan Account, and (2) with respect to each cross-trade transaction, the prices at which the securities involved in the transaction were traded on the date of such transaction.

(i) The Independent Fiduciary is furnished with a summary of certain additional information at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following: (1) a description of the total amount of the Plan Account's assets involved in cross-trade transactions during the period, (2) a description of Mercury International's cross-trade practices, if such practices have changed materially during the period covered by the summary, (3) a statement that the Independent Fiduciary's authorization of cross-trade transactions may be terminated upon receipt by Mercury International of written notice to that effect, and (4) a statement that the Independent Fiduciary's authorization of the Plan Account's participation in the cross-trade program will continue in effect unless it is terminated.

(j) For all Accounts participating in the cross-trading program, if the number of shares of a particular security which any Accounts need to sell on a given day is less than the number of shares of such security which any Accounts need to buy, or vice versa, the direct cross-trade opportunity is allocated among the buying or selling Accounts on a pro rata basis.

(k) The Accounts involved in cross-trade transactions do not include assets of any Plan established or maintained by Mercury International or its Affiliates.

Section II—Specific Conditions

(a) An Independent Fiduciary of each Plan specifically authorizes each cross-trade transaction in accordance with the following procedure:

(1) No more than three business days prior to the execution of any cross-trade transaction, Mercury International shall inform an Independent Fiduciary of each Plan Account involved in the cross-trade transaction that Mercury International proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available, the current trading price for such securities, and the total number of shares to be acquired or sold by each such Plan Account;

(2) Prior to each cross-trade transaction, the transaction shall be authorized either orally or in writing by the Independent Fiduciary of each Plan Account involved in the cross-trade transaction;

(3) If a cross-trade transaction is authorized orally by an Independent Fiduciary, Mercury International shall provide written confirmation of such authorization in a manner reasonably calculated to be received by such Independent Fiduciary within one business day from the date of such authorization;

(4) The authorization referred to in this Section II shall be effective for a period of three business days; and

(5) No more than ten days after the completion of a cross-trade transaction, the Independent Fiduciary shall be provided with a written confirmation of the transaction and the price at which the transaction was executed.

(b) A cross-trade transaction is effected only where the transaction involves less than five (5) percent of the aggregate average daily trading volume for the securities involved in the transaction for the week immediately preceding the authorization of the transaction. A cross-trade transaction may exceed this limit only by express authorization of Independent Fiduciaries on behalf of Plan Accounts affected by the transaction, prior to the execution of the cross-trade.

(c) The cross-trade transaction is effected at a price which is within ten (10) percent of the closing price of the security on the day before the date on which Mercury International received authorization by the Independent Fiduciary to engage in the cross-trade transaction.

Section III—Definitions

For purposes of this exemption:

(a) "Account" means a Plan Account or Non-Plan Account;

(b) "Affiliate" means any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Mercury International;

(c) "Buying Account" means the Account which seeks to purchase securities in a cross-trade transaction;

(d) "Cross-trade transaction" means a purchase and sale of securities between Accounts for which Mercury International or an Affiliate is acting as investment manager;

(e) "Plan Account" means an Account managed by Mercury International consisting of assets of one or more employee benefit plans which are subject to the Act;

(f) "Non-Plan Account" means an Account managed by Mercury International consisting of assets of clients which are not employee benefit plans subject to the Act; and

(g) "Selling Account" means the Account which seeks to sell its securities in a cross-trade transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on June 15, 1995, at 60 FR 31517.

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[1] With respect to all non-U.S. securities that are "plan assets" managed by Mercury International or an Affiliate, the applicant represents that the requirements of section 404(b) of the Act and the regulations thereunder will be met (see 29 CFR 2550.404b–1). In this regard, section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor. The Department is providing no opinion herein as to whether such requirements will be met.

Written Comments and Modifications: The applicant submitted a comment letter on the Proposal to inform the Department regarding changes in the corporate structure of S.G. Warburg Group plc (the Warburg Group). In this regard, the Proposal was published for Warburg Investment Management International Ltd. (Warburg International) and its Affiliates.

The applicant states that at the time of the Proposal, Warburg International was a wholly-owned subsidiary of Mercury Asset Management plc, which was a wholly-owned subsidiary of Mercury Asset Management Group plc (MAM Group). At such time, MAM Group was 75% owned by the Warburg Group and 25% owned by the public. MAM Group is a public company listed on the London Stock Exchange with its own independent board of directors.

The applicant represents that on July 2, 1995, the investment banking business of the Warburg Group was acquired by Swiss Bank Corporation Investment Banking Ltd. (SBCI), a wholly-owned subsidiary of Swiss Banking Corporation. However, the applicant states that the MAM Group was not one of the companies within the Warburg Group that was acquired by SBCI. Following completion of the sale of the Warburg Group's investment banking business to SBCI, a reconstruction of the Warburg Group took place whereby MAM Group became an independent company and all of its shares became owned entirely by the public. The applicant states that the 75% holding of MAM Group owned by the Warburg Group was distributed to the current shareholders of the Warburg Group.[2] As a result, the MAM Group became fully independent of the Warburg Group as of July 26, 1995.

The applicant represents further that part of the terms of the sale of the Warburg Group's investment banking business to SBCI required that companies within the MAM Group can no longer trade under the "Warburg" name. Therefore, on July 27, 1995, the name of "Warburg Investment Management International Ltd" was changed to "Mercury Asset Management International, Ltd". The applicant states that there have been no other changes in the MAM Group and its subsidiaries as a result of the reorganization.

In response to the applicant's additional information, the Department has modified the Proposal by deleting references made to "Warburg International" and has substituted therefor the name "Mercury International". The Department notes that the exemption would apply only to Mercury International and its Affiliates, as defined in Section III(b), and not to any of the other companies formerly within the Warburg Group that were sold to SBCI.

No other comments, and no requests for a hearing, were made on the Proposal.

Accordingly, the Department has determined to grant the proposed exemption as modified.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

LEGENT Retirement Security Plan (the Plan) Located in Pittsburgh, PA

[Prohibited Transaction Exemption 95–84; Exemption Application No. D–10015]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan of a limited partnership interest in BPT Union City Associates, Inc. (the BPT Interest) to LEGENT Corporation, a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (1) all terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price which is not less than the greater of: (a) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost plus opportunity costs attributable to the BPT Interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 29, 1995 at 60 FR 33870.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 8th day of September 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–22752 Filed 9–12–95; 8:45 am]

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[2] The details of transaction are described as follows: Under a Scheme of Arrangement (a form of reorganization under English law the terms of which are approved by an English court), the MAM Group allotted new ordinary shares, equivalent to the shares held by the Warburg Group, to the current ordinary and deferred shareholders of the Warburg Group on a pro rata basis. The 75% holding of ordinary MAM Group shares held by the Warburg Group was then converted to deferred MAM Group shares, which were purchased by the MAM Group and cancelled, as required under English law.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Federal Advisory Committee on International Exhibitions Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on September 28, 1995, from 9:00 a.m. to 5:30 p.m. This meeting will be held in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 9:15 a.m. for welcome and introductions and from 4:45 p.m. to 5:30 p.m. for a policy discussion.

The remaining portion of this meeting from 9:15 a.m. to 4:45 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY-TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5533.

Dated: September 7, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations National Endowment for the Arts.

[FR Doc. 95–22648 Filed 9–12–95; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Florida Power Corporation, (licensee) for an amendment to Facility Operating License No. DPR–72 issued to the licensee for operation of the Crystal River Nuclear Generating Plant, Unit No. 3, located in Citrus County, Florida. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on November 14, 1990 (55 FR 47570).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to add a limiting condition for operation for new low temperature overpressure protection (LTOP) and to revise the reactor coolant system (RCS) heatup and cooldown pressure-temperature (PT) operating limits for operation up to 15 effective-full-power-years. On February 7, 1991, by Amendment No. 133, the NRC staff approved RCS heatup and cooldown PT curves for operation up to 15 effective-full-power-years. Amendment No. 133 did not address the licensee's proposed TS changes for LTOP, which is the subject of this notice.

The NRC staff has concluded that the licensee's request for LTOP TS changes cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated August 31, 1995.

By October 13, 1995, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene. A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to A.H. Stephens, General Counsel, Florida Power Corporation, MAC–A5D, P.O. Box 14042, St. Petersburg, Florida 33733, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated October 31, 1989, as supplemented August 10, 1990, and (2) the Commission's letter to the licensee dated August 31, 1995.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 31st day of August 1995.

For the Nuclear Regulatory Commission.

David B. Matthews,

Project Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22703 Filed 9–12–95; 8:45 am]

BILLING CODE 7590-01-P

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 18, 1995, through August 30, 1995. The last biweekly notice was published on Wednesday, August 30, 1995 (60 FR 45172).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 13, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public

Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: July 17, 1995

Description of amendment request: The requested change to Technical Specification (TS) section 3.8 would specify that the spent fuel building refueling filter fan and at least one containment purge fan shall be shown to operate within plus or minus 10 percent of the design flow.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:The proposed change to TS is to revise Section 3.8.2.c. This TS section currently states "All filter system fans shall be shown to operate within [plus or minus] 10% of the design flow." The proposed requirements are as follows:

c.1 The Spent Fuel Building refueling filter fan shall be shown to operate within [plus or minus] 10% of the design flow.

c.2 At least one Containment purge filter fan shall be shown to operate within [plus or minus] 10% of the design flow and must be operable during core alterations or movement of irradiated fuel assemblies, or at least one automatic containment isolation valve in each line penetrating the containment which provides a direct path from the containment atmosphere to the outside atmosphere shall be securely closed.

This proposed change does not involve a significant hazards consideration for the following reasons.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change clarifies the operating requirements for the Containment purge and Spent Fuel Building refueling filter systems. This proposed change to the TS specifically delineates the fan filter systems required for refueling operations and does not change the physical operation of the filter systems. The affected systems are not involved in the initiation of any accident. The system response to previously analyzed accidents, including system flows and filter efficiencies will not be altered by the proposed change. These changes are enhancements to clarify existing TS requirements that will not increase the probability or consequences of a previously analyzed accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change merely clarifies the specific filter systems that are necessary to mitigate a fuel handling accident during core alterations or the movement of irradiated fuel assemblies and is consistent with the accident analysis in Section 15.7.4 of the Updated Final Safety Analysis Report (UFSAR). This proposed change does not involve the addition or modification of plant equipment, nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed TS change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change clarifies which filter systems that must be capable of mitigating a design basis fuel handling accident during core alterations or the movement of irradiated fuel assemblies and is consistent with the accident analysis in Section 15.7.4 of the UFSAR. The proposed change will not result in an increase in the Control Room or offsite radiation doses. The performance of the filtration systems, including adsorption efficiencies, will not change. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, SC 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, NC 27602

NRC Project Director: David B. Matthews

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: June 30, 1995

Description of amendment request: The proposed amendments would modify the emergency diesel generator testing requirements in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of occurrence of any accident previously evaluated.

The proposed changes to the Technical Specifications will change the scope of EDG [Emergency Diesel Generator] testing that is performed on a refueling cycle frequency. The proposed changes will eliminate the requirement to perform sequenced loading of the EDG as part of the hot restart test, and will allow the hot restart test to be initiated from any EDG start signal. The revised requirements will eliminate testing that is redundant, provides no additional meaningful information, significantly constrains scheduling of refueling outage maintenance and testing, and impacts the availability of systems and components important to safety. The proposed testing requirements satisfy the underlying purpose of the EDG hot restart test. The testing in accordance with the proposed requirements will verify the ability of each EDG to complete the start up sequence from an equilibrium temperature immediately following operation at full load for a period of time long enough to stabilize operating temperature.

A two hour period for operation at full load has been chosen to ensure that full load operating temperature has stabilized prior to shutdown preceding the hot restart test. Momentary transients outside the full load operating band of 3600 to 4000 kW will not invalidate the two hour run since momentary transient will not significantly affect operating temperature. Brief operation subsequent to a momentary transient will normalize operating temperature. Since the proposed changes impact only surveillance requirements used to periodically verify the operability of a required safety system, and since the proposed changes provide an equivalent level of testing and eliminate redundant testing, the proposed changes will not impact the operability or availability of a required system.

Operation in accordance with the revised requirements will not increase the likelihood that a transient initiating event will occur since transients are initiated by equipment malfunction and/or catastrophic system failure. The revised requirements affect testing that is performed on a Refueling Cycle frequency. Testing in accordance with the proposed requirements will not increase the probability of failure of the EDGs since the testing will provide an equivalent level of testing to verify the operability of the EDGs. In addition, failure of an EDG to start or failure of an EDG while operating is not assumed to be an initiating event of an accident considered in the Updated Final Safety Analysis Report (UFSAR). Based on the above, operation in accordance with the proposed requirements will not significantly increase the probability of occurrence of any accident previously evaluated.

The proposed requirements will meet the underlying purposed of the existing testing requirements. The proposed testing will ensure the ability of the EDG to start from a hot condition in the unlikely event of an accident. The proposed changes will eliminate testing requirements that are redundant and unnecessarily challenge the reliability of the EDGs by requiring unnecessary wear and cycling of the diesel engine and auxiliary systems. Since the proposed changes will not adversely affect the operability or availability of the EDGs, the ability of the EDGs to operate and power equipment important to safety will not be impacted and the ability to mitigate the consequences of accidents previously evaluated will not be affected. Based on the preceding discussion, the consequences of accidents previously evaluated will not significantly increase.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not involve the addition of any new or different types of safety related equipment, nor do they involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the UFSAR. No safety related equipment or function will be altered as a result of the proposed changes. Also, the procedures that govern normal operation and recovery from an accident are not affected by the proposed changes.

The proposed changes will eliminate testing requirements that are redundant and provide no additional meaningful information. Testing in accordance with the revised requirements will provide an equivalent level of confidence in the reliability of the EDG systems to complete the start up sequence from a hot condition. The proposed testing requirements satisfy the purpose Regulatory Guide 1.108 in that the testing requirements will ensure EDG operability and reliability. In addition, the proposed changes are consistent with the changes recommended by the NRC in Generic Letter 93-05. Since no new failure modes or mechanisms are introduced by the proposed changes, the possibility of a new or different kind of accident is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Plant safety margins are established through LCOs, limiting safety system settings, and safety limits specified in the Technical Specifications. There will be no changes to either the physical design of the plant or to any of these settings or limits as a result of the proposed changes. The proposed changes will eliminate testing requirements that are redundant and provide no additional information. Testing in accordance with the revised requirements will verify the ability of the EDGs to complete the start up sequence from a hot condition as is intended by the recommended testing in Regulatory Guide 1.108. In addition, the proposed changes are consistent with the changes recommended by the NRC in Generic Letter 93-05. Since the proposed changes will not impact the availability or operability of the EDGs to perform their intended function and since no LCOs, safety limits, or safety system settings are affected by the proposed changes, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, IL 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, IL 60603

NRC Project Director: Robert A. Capra

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 26, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications to allow rod misalignment of +/- 18 steps at or below 90% of rated thermal power. In addition, a change is proposed to the Limiting Condition for Operation range of rod travel from 228 to "All Rods Out." The introduction of "All Rods Out" is consistent with Amendment 167/161 which approved the removal of Technical Specification 3.1.3.6, "Rod Insertion Limit" from the Technical Specifications and placement into the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed limits on rod misalignment do not increase the probability of an accident. The Technical Specifications' allowed increase in peaking factor limits as power is reduced accommodates an increase in rod misalignment of [plus or minus] 18 steps below 90% of RTP [rated thermal power]. The initial conditions remain unchanged from that assumed in the Updated Final Safety Analysis Report (UFSAR). Therefore, this proposed change poses no significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms or limiting single failure are introduced as a result of implementing the proposed rod misalignment criteria. The institution of the proposed rod misalignment criteria will have no adverse effect, nor does it challenge, the performance of any other safety related system. Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety. The margin of safety, as defined in the BASES for the Technical Specifications, is not significantly affected by the changes to the rod misalignment limit. The Technical Specifications' allowed increase in peaking factor limits as power is reduced accommodates an increase in rod misalignment of [plus or minus] 18 steps below 90% of RTP. The initial conditions remain unchanged from that assumed in the UFSAR. Since the peaking factor limits are not modified, the proposed change does not constitute a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 26, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications to delete the requirement to adjust the Nuclear Instrumentation System (NIS) downward when operating at less than 70% of rated thermal power (RTP).

At reduced power levels (i.e., less than 70% of RTP), calorimetric power measurement uncertainties are most influenced by the feedwater flow measurements, which have the potential for large flow uncertainties under low flow conditions. These calorimetric uncertainties create the potential for a non-conservative gain adjustment of the NIS when the NIS is adjusted downward to match calorimetric power at reduced power levels, and may result in a non-conservative NIS power level indication when operating at higher power levels. Inappropriate gain adjustments could cause the NIS Power Range High Neutron Flux trip to occur at power levels beyond that assumed in the plant safety analyses. The proposed changes would correct this situation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve any physical changes to the NIS. Implementation of the proposed change does not affect the probability of failure of the NIS and does not alter the method in which protection is afforded by the NIS for the reactor and primary system. Therefore, the proposed change does not result in an increase in the severity or consequences of any accident previously evaluated.

The proposed change in Technical Specifications to remove the requirement which could result in non-conservative gain adjustments of the NIS at reduced power levels (below 70% of RTP), will have no significant effect on the probability or consequences of licensing basis events; and the probability or consequences of an accident previously evaluated for Turkey Point has not been significantly increased. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not result in a change in the method in which the NIS provides plant protection. No change is being made which alters the function of the NIS. Therefore, the proposed change does not create the possibility of a new or different kind of accident nor involve a reduction in a margin of safety as defined in the Safety Analysis Report.

The change in Technical Specifications associated with the removal of the requirement which could result in non-conservative gain adjustments of the NIS at reduced power levels (below 70% of RTP) will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

This change in Technical Specifications only affects the removal of the requirement which has the potential for non-conservative gain adjustments of the NIS at reduced power levels (below 70% of RTP); these changes do not alter the manner in which protection is afforded for the reactor and primary system. In addition, the fundamental process for implementation of the calorimetric power/NIS comparison remains the same.

The changes in Technical Specifications associated with the removal of the requirement, which could lead to non-conservative gain adjustments of the NIS at reduced power levels (below 70% of RTP), will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 26, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications (TS) to incorporate certain changes which are consistent with guidance provided by NUREG-1366 and NRC Generic Letter (GL) 93-05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation." The following proposed changes are requested:

(1) TS SR 4.1.3.1.2: Change the frequency interval for control rod movement test from monthly to quarterly.

(2) TS SR 4.6.5.1: Change the hydrogen monitor calibration from quarterly to each refueling interval, and the analog channel operational test from monthly to quarterly.

(3) TS SR Table 4.3-3: Change the analog channel functional test from monthly to quarterly for radiation monitors. Correct spelling of 'Radioactivity' in Item 1.a.

(4) TS SR 4.4.6.2.2: Increase the time allowed in COLD SHUTDOWN before leak testing the Reactor Coolant System (RCS) isolation valves is required, from 72 hours to 7 days.

(5) TS SR 4.10.1.2: Changes the requirement for a rod drop test prior to reducing SHUTDOWN MARGIN from "within 24 hours" to "within 7 days".

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendments conform to the guidance given in Enclosure 1 of the NRC Generic Letter 93-05. The overall functional capabilities of the rod control system, RCS pressure isolation valves, the hydrogen monitoring system, and the radiation monitoring systems will not be modified by the proposed change. These amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

(1) Increasing the interval of control rod movement testing will reduce the possibility of testing-related reactor trips and dropped rods, and result in fewer challenges to safety systems and plant transients.

(2) Increasing the interval of hydrogen monitor calibration and operational tests will result in a reduction in equipment degradation and reduce a burdensome task on personnel resources.

(3) Increasing the interval of radiation monitor functional tests will result in less equipment degradation as well as reducing the potential for testing-related isolations of the control room, fuel handling building, auxiliary buildings, and various process lines.

(4) Increasing the time allowed in COLD SHUTDOWN prior to leak testing RCS isolation valves will permit plant personnel to focus on short notice outage recovery and minimize personnel radiation exposure. Since the methods and the acceptance criteria used for the leak test are not altered, increasing the time from 72 hours to 7 days will not significantly alter the associated risk.

(5) Increasing the time required to perform rod tests prior to reducing the SHUTDOWN MARGIN will result in only one rod drop test vice two following a refueling outage, which will in turn reduce plant transients and personnel resource requirements.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the proposed changes to the TS can not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the surveillance interval changes and clarifications, since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems are unchanged by the proposed amendments. The proposed changes to the TS which establish new or clarify old surveillance intervals consistent with the NRC Generic Letter 93-05 line-item improvement guidance do not significantly reduce any of the margins of safety even though the number of surveillances is decreased. These requested amendments are justified by the following reasoning from NUREG-1366:

(1) The surveillances could lead to plant transients which would challenge safety systems unnecessarily as in the cases of control rod movement tests and post-refueling rod drop tests.

(2) The surveillances result in the unnecessary wear to equipment as in the cases of the hydrogen and radiation monitor surveillances.

(3) The surveillance result in radiation exposure to plant personnel which is not justified by the safety significance of the surveillances as in the case of the time requirement for leak-testing RCS isolation valves when in COLD SHUTDOWN.

(4) The surveillances place an unnecessary burden on plant personnel because the time required is not justified by the safety significance of the surveillance, i.e. hydrogen monitor and post-refueling rod drop tests.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 26, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specification Administrative Controls Section 6.9.1.7 to reflect the use of the Westinghouse NOTRUMP model in the Small Break Loss-of-Coolant Accident (SBLOCA) analysis used in determining the K(z) curve contained in the Core Operating Limits Report (COLR). The following references would be added to Section 6.9.1.7 (COLR) of the Administrative Controls section of Turkey Point Units 3 and 4 TS: ≥WCAP-10054-P-A, (proprietary) and WCAP-10081-NP-A, (non-proprietary), "Westinghouse Small Break ECCS Evaluation Model Using the NOTRUMP Code", October, 1985." WCAP-10054-P-A Addendum 2, (proprietary), "Addendum to the Westinghouse Small Break ECCS Evaluation Model Using the NOTRUMP Code: Safety Injection into the Broken Loop and COSI Condensation Model", August, 1994."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The modification to the current Section 6.9.1.7 of the Administrative Controls section of the Turkey Point Technical Specifications to include the references to WCAP-10054-P-A, "Small Break ECCS Evaluation Model Using the NOTRUMP Code", and WCAP-10054-P-A Addendum 2 for the COSI model, does not involve an increase in the probability or consequences of an accident previously evaluated. This modification to the Technical Specification does not change the probability of occurrence previously evaluated.

This change does not affect the integrity of the fission product barriers utilized for mitigation of radiological dose consequences as a result of an accident. The addition of the new methodology used for Turkey Point uprating analysis does not change, degrade, or prevent the response of safety related mitigation systems to accident scenarios, as described in the Updated Final Safety Analysis Report (UFSAR) Chapter 14. Therefore, the licensee concluded that the probability or consequences of an accident previously evaluated are not increased.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The modification to the current Section 6.9.1.7 of the Administrative Controls section of the Turkey Point Technical Specifications to include the references to WCAP-10054-P-A, "Small Break ECCS Evaluation Model Using the NOTRUMP Code", and WCAP-10054-P-A Addendum 2 for the COSI model, will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new operating configuration is being imposed by the addition of the references to the Technical Specification. Therefore, no new failure modes or limiting single failures have been identified. The licensee concludes that no new or different kind of accidents from those previously evaluated have been created as a result of this revision.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The modification to the current Section 6.9.1.7 of the Administrative Controls section of the Turkey Point Technical Specifications to include the references for the Small Break ECCS Evaluation Model Using the NOTRUMP Code will not involve a reduction in the margin of safety. The SBLOCA analysis results show that the limits of 10 CFR 50.46 are maintained as follows. The new calculated value of worst-case PCT will be 1686°F, which is less than the limit of 2200°F. There is significant margin in the current SBLOCA analysis such that the total cladding oxidation limit of 17 percent will not be challenged. Further, the calculated total amount of hydrogen generated has been determined to remain less than 1 percent. The SBLOCA hydraulic forces are not affected by the K(z) curve and the licensee concludes that the core will remain amenable to cooling. Additionally, post-LOCA long term core cooling and hot leg switchover evaluations are not impacted by the K(z) curve. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 26, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications to achieve consistency throughout these documents by (a) removing outdated material, (b) incorporating administrative clarifications and corrections, and (c) correcting typographical errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendments are purely administrative in nature. These amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the modified specifications can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes and clarifications, since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The modified specifications which correct administrative errors and clarify existing Technical Specification requirements do not significantly reduce any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 17, 1995

Description of amendment request: The proposed amendment would allow the containment to be opened after about 11 days following shutdown during refueling and would redefine the operability requirements for selected engineered safety feature systems such that these systems are only required to be operable during the calculated decay period. The proposed changes will not remove requirements for systems to mitigate potential vessel draindown events, will not remove requirements for systems required for decay heat removal, and will continue to require high water level over the vessel during fuel movement. Programs are in place to close the containment, if needed, to address shutdown risk concerns.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed limits on recently irradiated fuel is used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis. Because the equipment affected by the revised operational conditions is not considered an initiator to any previously analyzed accident, inoperability of the equipment cannot increase the probability of any previously evaluated accident.

The proposed applicability in conjunction with existing administrative controls on light loads, bounds the conditions of the current design basis fuel handling accident analysis. The analysis also concludes the limiting offsite radiological consequences are well within the acceptance criteria of NUREG 0800, Section 15.7.4 and GDC 19. The analysis is also conducted in a conservative manner containing margins in the calculation of mechanical analysis, iodine inventory and iodine decontamination factor. Each of these conservatisms will further decrease the consequences. Therefore, the proposed changes do not significantly increase the probability or consequences of any previously evaluated accident.

The proposed limits are used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. In addition, the changes to operation are consistent with previous limits – only allowing increased flexibility after the radiological consequences are assured to remain within accepted limits. Therefore, these operational conditions are consistent with the design basis analysis. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previous analyzed.

The revised limits are used to establish operational conditions where specific activities represent situations where significant radioactive release can be postulated. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences are at or below the current RBS licensing limit. Safety margins and analytical conservatisms have been evaluated and are well understood. Conservative methods of analysis are maintained through the use of accepted methodology and benchmarking the proposed methods to previous analysis. Margins are retained to ensure that the analysis adequately bounds all postulated event scenarios. The proposed change only eliminates some excess conservatism from the analysis.

EOI has implemented NUMARC 91-06 guidelines for shutdown operations at RBS. Shutdown Operations Protection Plan and Primary-Secondary Containment Integrity procedures presently include guidance for closure of the containment hatch and other significant opening in containment, in addition to the requirements contained in the license and design basis. This additional protection will enhance the ability to limit offsite effects.

Acceptance limits for the fuel handling accident are provided in 10CFR100 with additional guidance provided in NUREG 0800, Section 15.7.4 Excess margin is the difference between the postulated doses and the corresponding licensing limit. In the initial review of River Bend Station for operation (NUREG-0989, Section 15.7.4), the NRC accepted the design and analysis based on meeting the guideline dose limits of 10CFR100 and SRP 15.7.4. The proposed applicability continues to ensure that the whole-body and thyroid doses at the exclusion area and low population zone boundaries, as well as control room doses, are below the corresponding licensing limit. These margins are unchanged; therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005

NRC Project Director: William D. Beckner

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: June 20, 1995 (AEP:NRC:0692CX)

Description of amendment requests: The proposed amendments would remove the requirements for fire protection systems from the licenses and the Technical Specifications (T/S) in accordance with the provisions and guidance of Generic Letters (GL) 86-10, "Implementation of Fire Protection Requirements," 88-12, "Removal of Fire Protection Requirements from Technical Specifications," and 93-07, Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have evaluated the proposed T/S changes and have determined that the changes should involve no significant hazards consideration based on the criteria established in 10 CFR 50.92(c). Operation of CNP [Cook Nuclear Plant] in accordance with the proposed amendment will not satisfy any of the following criteria.

(a) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature, in that it moves the T/Ss portion of the Fire Protection Program from the T/Ss to the UFSAR [Updated Final Safety Analysis Report] and the implementing procedures. This is accomplished by referencing in the UFSAR and the documents which address the Fire Protection Program in greater detail. Thus, the proposed changes will not revise the requirements for fire protection equipment operability, testing, or inspection, but only moves the T/Ss portion of the Fire Protection Program to implementing procedures.

As fire protection requirements are only being relocated following the guidance of GLs 86-10, 88-12, and 93-07, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(b) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not involve any physical alteration of plant configurations, changes to setpoints, or operating parameters. [These] are administrative changes that retain the existing fire protection requirements and relocate these requirements from the T/S to the UFSAR; therefore, these changes do not create the possibility of a new or different kind of accident.

(c) Involve a significant reduction in a margin of safety.

The proposed changes follow guidance contained in GLs 86-10, 88-12, and 93-07 for incorporating the Fire Protection Program into the UFSAR. A license condition will be implemented that will require that no changes can be made to the Fire Protection Program that will adversely affect the ability to achieve or maintain safe shutdown in the event of a fire without prior NRC approval. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: August 23, 1995

Description of amendment request: The proposed amendment would revise Technical Specifications Section 3.8.1.1 and the Bases for Section 3/4.8. The proposed amendment would extend the Allowed Outage Time (AOT) for an Emergency Diesel Generator (EDG) from 72 hours to 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

... NNECO concludes that these changes do not involve a significant hazards consideration since the proposed change satisfies the criteria of 10 CFR 50.92(c). That is, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The EDGs supply backup power to the essential safety systems in the event of a Loss of Normal (offsite) Power. EDGs are not accident initiators. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

Although the EDGs provide backup power to components that help mitigate the consequences of accidents previously evaluated, the extension in the AOT does not affect any of the assumptions used in the deterministic evaluations of these accidents. Thus, this change will not increase the consequences of any accident previously analyzed.

The increase in the EDG AOT introduces the potential to increase the risk to the public since a longer time window provides an opportunity to perform additional preventive maintenance to the EDG while the plant is on-line. However, the extended AOT, by itself, does not necessarily increase risk. The increase in the risk depends on the total time during which an EDG was out of service and the other equipment that is concurrently out of service with the EDG. The total risk increase due to the EDG being out of service will not be significant since that risk increase is monitored and kept at acceptable levels in accordance with the risk monitor program.

Based on the above, the proposal to extend the AOT for the EDGs (Technical Specification 3.8.1) does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to extend the AOT for the EDGs (Technical Specification 3.8.1) does not alter the physical design, configuration, or method of operation of the plant. Therefore, the proposal does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed change to extend the AOT for the EDGs (Technical Specification 3.8.1) do not affect the Limiting Conditions for Operations or their bases. As a result, the deterministic analyses performed to establish the margin of safety are unaffected. Thus, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: August 23, 1995

Description of amendment request: The proposed amendment would extend the Allowed Outage Time (AOT) for an inoperable Safety Injection Tank (SIT) from 1 hour to 24 hours, unless the SIT is inoperable due to either boron concentration not within its limits or an inoperable level or pressure instrument. For these two special cases, the proposed change extends the AOT for an inoperable SIT to 72 hours. In addition, the proposed amendment clarifies the completion times and conditions for action statements and the criteria for surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

... NNECO concludes that these changes do not involve a significant hazards consideration since the proposed change satisfies the criteria in 10 CFR 50.92(c). That is, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The Safety Injection Tanks (SITs) are passive components in the Emergency Core Cooling System that mitigate the consequences of a Loss of Coolant Accident (LOCA). As such, the SITs are not accident initiators. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

The increase in the AOT has the potential to increase the risk if it becomes necessary to stay on-line longer than one (1) hour with an inoperable SIT. However, the estimated risk impact is negligible.

The SITs inject borated water into the reactor vessel (via the cold legs) during the blowdown phase of a large break LOCA. The introduction of the inventory of borated water from all four (4) SITs is needed to ensure adequate reflooding of the core (i.e., minimize core damage) until the Engineered Safety Feature (ESF) pumps can provide adequate core cooling. The SITs also provide makeup water for the Reactor Coolant System (RCS) for smaller break LOCAs. The extension of the AOT does not affect any of the assumptions used in the deterministic evaluations of these accidents. Thus, this change will not increase the consequences of any accident previously evaluated.

The increased AOT extension to 72 hours, based solely on instrumentation (level and pressure) malfunction, also does not involve a significant increase in the consequences of an accident previously evaluated as endorsed by the NRC in NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements."

The modification to the completion times and the modification of the Surveillance Requirements for volumetric changes in the SIT as a result of addition from the Refueling Water Storage Tank (RWST) also do not involve a significant increase in the consequences of any accident previously evaluated by the NRC in NUREG-1432, "Standard Technical Specifications for Combustion Engineering Plants."

Based on the above, the proposed changes to extend the AOT for an inoperable SIT, clarify action statements, and modify the criteria for surveillance requirements, do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to extend the AOT for an inoperable SIT, clarify action statements, and modify the criteria for surveillance requirements, do not alter the physical design, configuration, or method of operation of the plant. Therefore, the proposal does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed changes to extend the AOT for an inoperable SIT, clarify action statements, and modify the criteria for surveillance requirements, do not affect the Limiting Conditions for Operations (LCOs) of the SITs or the bases of the LCOs. As a result, the deterministic analyses performed to establish the margin of safety are unaffected. Thus, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Project Director: Phillip F. McKee

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: May 4, 1995.

Description of amendment requests: The proposed amendments would revise the pressurizer and main steam safety valve lift setting tolerances from plus or minus 1% to plus or minus 3%, revise the Safety Limit curves and revise the Technical Specification Section 2 to conform to Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed changes increase the "as-found" setpoint tolerances for the Pressurizer Safety Valves and Main Steam Safety Valves from [plus or minus] 1% to [plus or minus] 3%. The proposed changes do not involve any hardware modifications to plant structures, systems, or components. Analyses have determined that the proposed changes do not significantly affect the structural integrity of either the Reactor Coolant System or the Main Steam system.

The proposed setpoint tolerance of [plus or minus] 3% was included in the assumptions for the performance of the reload safety evaluations for the current fuel cycles, PI1-17 and PI2-16, and subsequent Prairie Island fuel cycle analyses. These analyses concluded that the minimum acceptable DNBR [departure from nucleate boiling ratio] is maintained, over-pressure protection is maintained, LOCA [loss-of-coolant accident] acceptance criteria are met and offsite dose limits are not exceeded. These changes are consistent with the guidance provided by Section III and XI of the ASME [American Society of Mechanical Engineers] Code and Standard Technical Specifications.

The proposed change to Technical Specification Figure TS.2.1-1 does not affect any existing accident analyses. This revision ensures that the design bases and safety limits are accurately and appropriately reflected in the Technical Specifications and will ensure that plant operations are properly evaluated for DNBR encroachment.

Therefore, the probability or consequences of an accident previously evaluated are not affected by any of the proposed amendments.

2. The proposed amendment will not create the possibility of a new of different

kind of accident from any accident previously analyzed The lift setpoint the Pressurizer Safety Valves and Main Steam Safety Valves will be restored to [plus or minus] 1% following testing, thus the "as-left" setpoint tolerance for the Pressurizer Safety Valves and Main Steam Safety Valves are unchanged. Evaluations of plant normal operation, transient and accident conditions have been performed assuming these safety valve lift settings are [plus or minus] 3% of the nominal setpoint and demonstrated that new or different kinds of accidents are not created by the proposed changes.

The proposed changes to Technical Specification Figure TS.2.1-1 do not affect the design, function or operation of any Prairie Island structures, systems or components. The curves show the loci of points of reactor core differential temperature (an indication of thermal power), Reactor Coolant System pressure, and average temperature for which the minimum DNBR is not less than the safety analysis limit, that fuel centerline temperature remains below melting, that the average enthalpy in the hot leg is less than or equal to enthalpy of saturated liquid, or that the exit quality is within the limits defined by the applicable DNBR correlation. There are no new failure modes introduced by the proposed changes to the Figure. The changes conservatively adjust Figure TS.2.1-1 to current plant conditions and ensure that the design is accurately reflected and that the plant is operated in accordance with its design bases.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created [by] these amendments.

3. The proposed amendment will not involve a significant reduction in the margin of safety

The proposed changes to the safety valve lift setting tolerances are consistent with the guidance provided by Section III and XI of the ASME Code and Standard Technical Specifications. Analyses have demonstrated these valves will continue to perform their function of protecting their respective system from over-pressurization under all postulated transients and accidents. The changed setting tolerances do not cause a reduction in any other safety margin such as DNBR. SAFETY LIMIT curves are provided to define minimum allowable safety margin for plant steady state operation, normal operational transients and anticipated operational occurrences. The SAFETY LIMITs represent a design requirement for establishment of many of the RPS [reactor protection system] trip setpoints which prevent reactor conditions from approaching the SAFETY LIMITs. The proposed revision of the SAFETY LIMIT curves provide the minimum safety margins with somewhat more conservatism than previously included. No RPS trips setpoints are changed.

Therefore, a significant reduction in the margin of safety would not be involved with these amendments.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation [of] the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by Nuclear Regulatory Commission regulations in 10 CFR Part 50, Section 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, MN 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 28, 1995

Description of amendment request: The proposed amendment would revise the 250 volt DC [direct current] profiles in Technical Specifications Surveillance 4.8.2.1 (d) (2c) to reflect the new load profile calculations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

[Final Safety Analysis Report] FSAR Section 8.3 states that the station batteries have sufficient capacity without the charger to independently supply the required loads for four hours. The Technical Specifications require that the batteries be surveilled to dummy loads which are greater than the design loads. The load profiles for the 250 VDC batteries were recalculated using discrete increments of time when the loads would be in use for each of five design basis events. The Technical Specification load profiles are a composite of the worst case loads for the events plus margin. The required ampere-hours for each battery using the new load profiles is less than the ampere-hours required using the existing load profiles. Therefore, since the load profiles envelop the actual loads on the batteries, the change to the 250 VDC battery load profiles does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the 250 VDC batteries have sufficient capacity to power the actual battery loads thus enabling them to perform their intended function. Any postulated accident resulting from this change is bounded by previous analysis. Therefore, the change to the 250 VDC battery load profiles does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The Class 1E 250 VDC batteries are required to have sufficient capacity and capability to ensure sufficient power is available to supply the safety related equipment for (1) the safe shutdown of the facilities and (2) the mitigation and control of accident conditions within the facilities. The proposed load profiles envelope the worst case loads plus margin.

The ampere-hours removed from the Class 1E 250 VDC batteries are less for the proposed load profiles than the existing load profiles. The ampere-hours available in the batteries after the batteries have supplies[d] the emergency loads for 4 hours are: [See table in subject application].

* * * * * * *

Engineering calculation shows that the Class 1E 250 VDC batteries maintain at least 210 VDC at the Class 1E 250 VDC MCCs while supplying the proposed loads, corrected for temperature and aging. Since the Class 1E 250 VDC circuits are designed to operate properly with a minimum of 210 VDC at the Class 1E MCCs, all the Class 1E emergency equipment supplied from the Class 1E batteries have sufficient voltage to operate for 4 hours after the loss of ac power.

The Class 1E 250 VDC batteries and Class 1E 250 VDC battery chargers have been sized using the proposed load profiles. The Engineering calculation shows that the 120 cell, 12 positive plates per cell battery banks are sufficient to supply the proposed load profiles, corrected for temperature and aging. The same calculation also shows that the Class 1E 250 VDC battery chargers have sufficient capacity to re-charge the batteries from the proposed emergency discharged conditions to the fully charged condition in 12 hours while continuing to supply the plant normal continuous loads.

Base upon the above discussion, the proposed changes to the Technical Specification load profiles do not reduce the margin of safety as defined in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: August 11, 1995

Description of amendment request: The proposed amendment would revise Susquehanna Unit 2 Technical Specification Table 3.3.7.5-1 as follows:a.

Revise Item ι13, Required Number of Channels from 1 to 2;b.

Revise Item ι13, Minimum Channel Operable from 0 to 1;c.

Delete Footnote ιι.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Reestablishing the channel operability values in Item ι13 of Technical Specification Table 3.3.7.5-1, and deleting footnote ιι, has no impact on the probability or consequences of an accident previously evaluated. The proposed change in the channel operability values is a return to the values which were reviewed as part of the licensing basis.

II. This proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Reestablishing the channel operability values in Item ι13 of Technical Specification Table 3.3.7.5-1, and deleting footnote ιι, does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change in the channel operability values increases the required number of channels available for accident monitoring. There is no correlation between increasing the number of neutron flux accident monitoring channels available and the creation of accident scenarios.

III. This change does not involve a significant reduction in a margin of safety.

Reestablishing the channel operability values in Item ι13 of Technical Specification Table 3.3.7.5-1, and deleting footnote ιι, does not involve a reduction in a margin of safety. The proposed change increases the number of required channels from current levels, and restores the values to those which have historically been required. At the present time, the number of required channels is being administratively controlled at the proposed levels to ensure conservatism in operability.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 12, 1995

Description of amendment request: The proposed change would extend the surveillance test intervals for the emergency service water (ESW) system to support 24 month operating cycles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes increase the interval between ESW system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. These changes do not involve any physical changes to the plant, nor do they alter the typical way the ESW system functions. On-line testing will continue to assure equipment availability. The type of testing and the corrective actions required if the subject ESW surveillances fail remain the same. As such, the proposed changes create no new impacts on accidents previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes increase the interval between ESW system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not change the ability of the ESW system to provide heat removal for the ECCS [emergency core cooling system] components and other equipment essential to reactor shutdown. Past equipment performance and on-line testing indicate the longer test intervals will not degrade ESW equipment. No changes are proposed to the type of testing performed, only to the length of the surveillance interval. The proposed changes do not modify the design or operation of plant equipment, therefore, no new or different failure modes are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. involve a significant reduction in a margin of safety.

The proposed changes increase the interval between ESW system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not alter the configuration of the ESW system nor change the manner in which the ESW equipment functions. Past equipment performance and on-line testing indicate the longer test intervals will not degrade ESW equipment. Operation of the plant remains unchanged by the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, NY 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, NY 10019

NRC Project Director: Ledyard B. Marsh

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 15, 1995

Description of amendment request: The proposed change would extend the surveillance test intervals for the control rod system to support 24 month operating cycles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

11. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes increase the interval between control rod system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. These changes do not involve any physical changes to the plant, nor do they alter the way the control rod system functions. The type of testing and the corrective actions required if the subject control rod surveillances fail remain the same. As such, the proposed changes create no new impacts on accidents previously evaluated.

The reactivity margin - core loading test can be safely extended to accommodate the 24 month operating cycle. The calculation of reactivity margin takes into account the longer operating cycle.

The control rod scram time test can be safely extended to accommodate a 24 month operating cycle. Operating experience has indicated that control rod scram times do not significantly change over an operating cycle. Additional on-line testing provides adequate assurance of equipment operability.

The SDIV [Scram Discharge Instrument Volume] vent and drain valve operability test can be safely extended to accommodate a 24 month operating cycle. Evaluation of past surveillance performance and additional on-line testing assure valve operability. The operability of the mode switch and the reset switch is demonstrated during shutdowns.

Therefore, the proposed changes do not involve a significant increase in the probability and do not change the consequences of an accident previously evaluated.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes increase the interval between control rod system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not change the ability of the control rod system to provide rapid reactivity control in order that no fuel damage results from any abnormal operating transient. Past equipment performance and on-line testing indicate the longer test intervals will not degrade control equipment. No changes are proposed to the type of testing performed, only to the surveillance interval length. The proposed changes do not modify the design or operation of plant equipment, therefore, no new or different failure modes are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. involve a significant reduction in a margin of safety.

The proposed changes increase the interval between control rod system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not alter the configuration of the control rod system nor change the manner in which the control rod system functions. Past equipment performance and on-line testing indicate the longer test intervals will not degrade control rod equipment. Operation of the plant remains unchanged by the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, NY 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, NY 10019

NRC Project Director: Ledyard B. Marsh

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 21, 1995

Description of amendment request: The proposed changes would replace the title-specific list of members on the Plant Operating Review Committee (PORC) with a more general statement of membership requirements, similar to that used to define Safety Review Committee membership; expand the scope of disciplines represented on the PORC to include Nuclear Licensing and Quality Assurance; change several management position titles; and, make several editorial corrections to the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Replacing the title specific list of PORC members with a statement of membership requirements for the committee does not reduce the effectiveness of the committee to advise the Resident Manager (Site Executive Officer) on matters regarding nuclear safety.

The proposed title changes for the Chief Nuclear Officer, Site Executive Officer, Shift Manager, and Control Room Supervisor are changes in title only and do not affect the responsibilities, authority, qualification requirements, or reporting relationships of these positions.

The change proposed for Specification 6.12 is administrative in nature, reflecting a change previously approved elsewhere in Technical Specifications.

The Radiological and Environmental Services Manager title change proposed for Specification 6.11(A)2 is administrative in nature, reflecting a change previously approved elsewhere in Technical Specifications.

The remainder of proposed changes correct grammar or improve consistency in Technical Specification formatting and do not affect the meaning or intent of the specifications involved.

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92. The changes are administrative in nature and would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,

2. create the possibility of a new or different kind of accident from those previously evaluated, or

3. involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, NY 10019

NRC Project Director: Ledyard B. Marsh

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 27, 1995

Description of amendment request: The proposed change to the Technical Specifications (TS) would incorporate updated pressure vs. temperature operating limit curves contained in TS Figure 3.4.6.1-1 and revise TS Surveillance Requirement 4.4.6.1.3 based on implementation of Regulatory Guide 1.99, Rev. 2 in accordance with Generic Letter 88-11. The changes are a result of data obtained from the first set of specimen capsules removed during Refueling Outage 5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident [...] previously evaluated.

The proposed changes assure that the existing safety limits are not exceeded due to changing Reactor Vessel conditions. These changes reflect the latest material testing

results in accordance with 10CFR50, Appendix G. The proposed changes to the pressure and temperature limits do not increase the probability of nonductile failures. The proposed changes to the surveillance requirement and the associated changes to the Bases to include a commitment to the methodology of Regulatory Guide 1.99, Rev. 2 ensures that the most limiting Reactor Vessel material is used in the determination of the pressure-temperature operating limits.

Therefore, it may be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

No physical plant modifications or new operating configurations result from these changes. These changes do not adversely affect the design or operation of any system or component important to safety, rather they establish limits to assure that operations remain within acceptable safety boundaries.

Therefore, the possibility of a new or different kind of accident from any previously evaluated will not be created.

3. Will not involve a significant reduction in a margin of safety. Analysis of the capsule specimens has concluded that the Reactor Vessel has sufficient fracture toughness for continued safe operation, provided that operation remains within acceptable pressure-temperature limits. The revised pressure-temperature curves define these acceptable pressure-temperature limits during plant operation. The proposed changes maintain the existing margins of safety by modifying the operating limits based on the most limiting of the actual reference temperature shifts. This new limit considered analytical results of the capsule specimens, or a predicted shift considering the most limiting pressure vessel material. Changes to the Surveillance Requirement criteria and the associated Bases to include a commitment to the methodology contained in Regulatory Guide 1.99, Rev. 2 will ensure that the most limiting plate or beltline weld material will be utilized in the determination of the pressure-temperature limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: August 1, 1995

Description of amendment requests: The amendment request proposes to change Technical Specification (TS) 3/4.3.2, Table 3.3-3, "Engineered Safety Features Actuation System Instrumentation." TS 3/4.3.2 includes the requirements for the minimum number of toxic gas isolation system (TGIS) trains operable. The TS change request is to extend the allowed TGIS outage times during replacement of TGIS instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Toxic Gas Isolation System (TGIS) is designed to monitor and mitigate the effects of toxic gas releases on control room habitability. TGIS unavailability is not a precursor to any accident previously evaluated in Chapter 15 of the San Onofre Updated Final Safety Analysis Report (UFSAR). A risk assessment of the TGIS instrumentation replacement activity was performed and found that the likelihood of a loss of control room habitability beyond that permitted by the Technical Specifications (TS) will not exceed 1E-6 over the duration of this TS change. In addition, a loss of control room habitability does not necessarily lead to an accident or core damage event. However, if a loss of control room habitability was conservatively assumed to lead to a core damage event, this increase in risk would still not constitute a significant increase in the consequences or probability of any accident previously evaluated since the increase is less than 3% of the average annual core damage risk from internal events as reported in the San Onofre Individual Plant Examination. Therefore, operation of the facility in accordance with this proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change extends the allowed outage times of the TGIS system. The change does not affect the design or operation of any other plant systems. An increase in TGIS unavailability is not a precursor to any accident previously evaluated in Chapter 15 of the San Onofre UFSAR. Therefore, operation of the facility in accordance with this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

During replacement of TGIS instrumentation a single channel of TGIS will be maintained operable except during periods when construction activity may result in spurious TGIS alarms. During these periods the control room will normally be isolated except for brief periods when the control room will be open to allow for air exchange or to allow for CREACUS equipment repair. These periods, when the control room is open without a TGIS channel available, will not exceed 54 hours during the entire period when this change is in effect. Operation with control room ventilation in the normal mode with a single channel of TGIS operable for 44 days and no TGIS channel available for up to 54 hours has been analyzed, and results in an increase in the probability of a loss of control room habitability which does not exceed 1E-6 over the duration of this TS change. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, CA 92713

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, CA 91770

NRC Project Director: William H. Bateman

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 24, 1994, as supplemented July 21, 1995. The July 21, 1995, letter provides clarification information and did not change the scope of the October 24, 1994, letter, or the initial no significant hazards consideration determination.

Brief description of amendment: The proposed amendment would revise the TS to allow the relocation of TS 3/4.3.7.12, Area Temperature Monitoring; and the associated Bases in the TS to licensee-controlled documents.

Date of issuance: August 28, 1995

Effective date: August 28, 1995

Amendment No.: 62

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 23, 1994 (59 FR 60379) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, NC 27605

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 18, 1995, as supplemented May 31, 1995

Brief description of amendments: The amendments revise the frequency for conducting the Catawba Unit 2 Integrated Leak Rate Test (ILRT) from a nominal frequency of once per 40 months to less than or equal to 70 months. This also involves the granting of an exemption from the requirements of 10 CFR Part 50, Appendix J, which is addressed by separate correspondence.

Date of issuance: August 18, 1995

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 133 and 127

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32362) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, SC 29730

Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: April 26, 1995

Brief description of amendment: This amendment adds a requirement to Technical Specification (TS) 4.5.2.a to periodically verify that the High Head Safety Injection (HHSI) pump minimum flow valve, 2CHS*MOV373, is maintained open during plant operation in Modes 1, 2, and 3. Valve 2CHS*MOV373, must be maintained open to provide a minimum flowpath for the HHSI pumps thereby minimizing the likelihood of HHSI pump damage due to pump operation with insufficient flow. The amendment allows flexibility for local verification of valve position or flow indication if the control room indication is not available. Several editorial changes to TS 3/4.5.2 are also being made to provide consistent format with other TSs.

Date of issuance: August 25, 1995

Effective date: August 25, 1995

Amendment No.: 73

Facility Operating License No. NPF-73: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29874). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: April 14, 1995, as supplemented by letters dated June 22 and July 18, 1995

Brief description of amendment: The amendment eliminates response time testing (RTT) requirements for selected sensors and specific loop instrumentations for (1) the Reactor Protection System (RPS), (2) the Isolation System, and (3) the Emergency Core Cooling System (ECCS). In addition, the Note for Surveillance Requirement 3.3.6.1.7, which reads: "Radiation detectors may be excluded," is being removed since RTT is not required for any radiation detector that provides a primary containment isolation signal as indicated in Table 3.3.6.1-1 of the TS.

Date of issuance: August 23, 1995

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance

Amendment No.: 137

Facility Operating License No. NPF-5: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 5, 1995 (60 FR 35076) The June 22 and July 18, 1995, letters provided clarifying information that did not change the scope of the April 14, 1995, application and initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, GA 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: January 3, 1995, as supplemented by letters dated June 14 and July 6, 1995.

Brief description of amendments: The amendments revise the Technical Specifications (TS) with editorial changes to the Action Statements of TS 3.8.1.1 and 3.8.1.2 in order to reflect the availability of a third offsite ac electrical source. Technical Specification 4.8.1.1.1 is clarified to specify that the offsite ac circuits connected to the onsite Class 1E distribution system are required to be verified OPERABLE. A footnote is added to TS 3.8.3.1 to allow the connection of the third offsite ac source to the onsite busses.

Date of issuance: August 29, 1995

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance

Amendment Nos.: 90 and 68

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6301) The June 14 and July 6, 1995, letters provided clarifying information that did not change the scope of the January 3, 1995, application and initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 29, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, GA 30830

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: May 23, 1995

Brief description of amendments: The amendments revise the column format for the Reactor Protection System and Engineered Safety Feature Actuation System Setpoints

Date of issuance: August 24, 1995

Effective date: August 24, 1995

Amendment Nos.: 176 and 170Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32364) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: December 20, 1993, as supplemented July 19, 1994, and February 28, 1995.

Brief description of amendments: The amendments revise the surveillance requirements and load profiles for A, B, and N Train batteries.

Date of issuance: August 22, 1995

Effective date: August 22, 1995

Amendment Nos.: 198 and 183

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4939) and June 6, 1995 (60 FR 29879) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: May 25, 1995, and supplemented June 30, 1995

Brief description of amendments: The amendments allow fuel reconstitution when analyzed in accordance with NRC-approved methodologies. The amendments are line item improvements based on NRC Generic Letter 90-02, "Alternative Requirements for Fuel Assemblies in Design Features Section of Technical Specifications," supplement 1.

Date of issuance: August 22, 1995

Effective date: August 22, 1995

Amendment Nos.: 199 and 184

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 5, 1995 (60 FR 35081) The June 30, 1995, supplement provided a minor revision to the proposed Technical Specification pages which was within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: February 14, 1995

Brief description of amendment: This amendment makes the following administrative changes to the Maine Yankee (MY) Technical Specifications (TS):

a. Removes responsibility for audits of the emergency and security plans--including their implementing procedures--from the TS and assigns that responsibility to the emergency and security plans,

b. Assigns review responsibility for significant, accidental, unplanned, or uncontrolled radioactive releases to the Nuclear Safety Audit and Review (NSAR) Committee,

c. Assigns additional reporting requirements to the NSAR Committee, and

d. Provides the President of MY with the authority to initiate an audit of any area of facility operation.

Date of issuance: August 22, 1995

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 152

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16191) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: May 18, 1995

Brief description of amendment: The amendment revises the minimum temperature at which the reactor vessel head bolting studs are allowed to be placed under tension. In addition, the amendment revises the minimum reactor vessel metal temperature during core critical operation, revises the minimum reactor vessel metal temperature for pressure tests, makes editorial changes, and revises the Bases for the applicable section.

Date of issuance: August 23, 1995

Effective date: As of the date of issuance to be implemented immediately.

Amendment No.: 85

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32369) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: June 15, 1995

Brief description of amendment: The amendment changes the definition for an alteration of the reactor core to one that is consistent with the intent of the improved standard technical specifications. The amendment also makes administrative changes to several technical specification pages.

Date of issuance: August 28, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 86

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 19, 1995 (60 FR 37097) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 28, 1995, as supplemented August 2, 1995.

Brief description of amendment: The amendment changes Technical Specification (TS) Sections 3.7.5, 4.7.5, and 3/4.7.5, to permit Millstone Unit 3 to remain in operation with the average ultimate heat sink water temperature greater than 75° F (but less than or equal to 77° F) for a period of 12 hours.

Date of issuance: August 28, 1995

Effective date: As of the date of issuance.

Amendment No.: 119

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29881). The information in the licensee's submittal of August 2, 1995, did not require a change to the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: June 29, 1995

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 (DCPP) to add Mode 1 applicability to TS 3/4.4.2.2, "Safety Valves - Operating," and changes the low-temperature overpressure protection (LTOP) system enable temperature for Mode 4 applicability from 323 degrees F to 270 degrees F in TS 3/4.3.2.1, "Safety Valves - Shutdown."

Date of issuance: August 23, 1995

Effective date: August 23, 1995

Amendment Nos.: Unit 1 - Amendment No. 107; Unit 2 - Amendment No. 106

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 19, 1995 (60 FR 37098) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, CA 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 1, 1995, as supplemented by letter dated June 20, 1995

Brief description of amendments: The requested changes would modify the applicable operational conditions for the secondary containment isolation radiation monitors located on the refueling floor and for the monitor located in the railroad access shaft.

Date of issuance: August 24, 1995

Effective date: Both units, as of the date of issuance and is to be implemented within 30 days

Amendment Nos.: 152 and 122

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16192). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 31, 1994, as supplemented by letters dated May 11, and July 3, 1995

Brief description of amendments: This amendment revises the Technical Specifications to permit the relocation of the Turbine Overspeed Protection System to the Updated Final Safety Analysis Report and Controlled Plant Procedures.

Date of issuance: August 24, 1995

Effective date: August 24, 1995

Amendment Nos.: 100 and 64

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55884) The supplemental letters do not

change the initial no significant hazards consideration determination nor the initial Federal Register notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: February 22, 1995

Brief description of amendments: The amendments revise the Technical Specifications Surveillance Requirements to clarify the Emergency Diesel Generator acceptable steady state voltage range.

Date of issuance: August 24, 1995

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 101 and 65

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20525) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: January 13, 1995

Brief description of amendment: The amendment revised the Administrative Controls Section (6.0) of the Technical Specifications for Hope Creek Generating Station to reflect organizational changes and resultant management title changes.

Date of issuance: August 22, 1995

Effective date: August 22, 1995

Amendment No.: 77

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32371) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: December 23, 1994

Brief description of amendments: The amendments to the Technical Specifications revise the surveillance requirement to perform a visual inspection of containment areas affected by containment entry when containment integrity is established. They are consistent with Item 7.5 of Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation."

Date of issuance: August 24, 1995

Effective date: As of the date of issuance, to be implementd within 60 days.

Amendment Nos.: 174 and 155

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6308) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: September 16, 1994

Brief description of amendments: These amendments revise Technical Specification (TS) 3/4.2.1, "Linear Heat Rate." The linear heat rate (LHR) limit for steady state operation is revised from 13.9 kw/ft to 13.0 kw/ft. The Bases for TS 3/4.2.1, "Linear Heat Rate," is also being revised to reflect the new value.

Date of issuance: August 23, 1995

Effective date: August 23, 1995, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2 - Amendment No. 124; Unit 3 - Amendment No. 113

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55892) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, CA 92713

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 3, 1995

Brief description of amendments: The amendments delay implementation of Amendment Nos. 182 and 174 until implementation problems are addressed. These changes revise the setpoints and time delays for the auxiliary feedwater loss of power and the 6.9 kv shutdown board loss of voltage and degraded voltage instrumentation.

Date of issuance: August 22, 1995

Effective date: August 22, 1995

Amendment Nos.: 207 and 197

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** May 23, 1995 (60 FR 27343) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, TN 37402

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 6, 1995 (TS 94-18)

Brief description of amendments: The amendments revise Surveillance Requirement 4.0.5 by replacing the current Inservice Inspection program and the Inservice Testing program requirements with the requirements stated in the Standard Technical Specifications (NUREG-1431). The amendments also delete Technical Specification 3/4.4.10, "Structural Integrity ASME Code Class 1, 2 and 3 Components," and its related Bases information.

Date of issuance: August 22, 1995

Effective date: August 22, 1995

Amendment Nos.: 208 and 198

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20528)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, TN 37402

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: April 17, 1995, as supplemented on June 30, 1995

Brief description of amendment: The amendment revises Technical Specifications Technical Specification 2.2.1, Table 2.2-1. The changes address reducing repeated alarms and partial reactor trips by revising the Overpower Delta-T setpoint function.

Date of issuance: August 21, 1995

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 102

Facility Operating License No. NPF-30. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24922). The June 30, 1995, letter provided supplemental information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, MO 65251

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: September 2, 1992

Brief description of amendment: The amendment revises the required signal-to-noise ratio for the source range monitors, as recommended by General Electric.

Date of issuance: August 23, 1995

Effective date: August 23, 1995

Amendment No.: 140

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 19, 1995 (60 FR 37101) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, WA 99352

Dated at Rockville, Maryland, this 6th day of September 1995.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects - III/IV Office of Nuclear Reactor Regulation.

[Doc. 95-22610 Filed 9-12-95; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF MANAGEMENT AND BUDGET

Managerial Cost Accounting Concepts and Standards

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of the fourth Statement of Federal Financial Accounting Standards, "Managerial Cost Accounting Concepts and Standards for the Federal Government," adopted by the Office of Management and Budget (OMB). The statement was recommended by the Federal Accounting Standards Advisory Board and adopted in its entirety by OMB.

ADDRESSES: Copies of the Statement of Federal Financial Accounting Standards No. 4, "Managerial Cost Accounting Concepts and Standards for the Federal Government," may be obtained for $7.50 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238), Stock No. 041–001–00457–2.

FOR FURTHER INFORMATION CONTACT: Ronald Longo (telephone: 202–395–3993), Office of Federal Financial Management, Office of Management and Budget, 725–17th Street, N.W.—Room 6025, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: This Notice indicates the availability of the fourth Statement of Federal Financial Accounting Standards, "Managerial Cost Accounting Concepts and Standards for the Federal Government." The standard was recommended by the Federal Accounting Standards Advisory Board (FASAB) in June 1995, and adopted in its entirety by the Office of Management and Budget (OMB).

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, they are to be published in the **Federal Register** and distributed throughout the Federal Government.

G. Edward DeSeve,

Controller.

[FR Doc. 95–22766 Filed 9–12–95; 8:45 am]

BILLING CODE 3110-01-P

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2646, Reduction or Waiver of Partial Withdrawal Liability

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget extend approval, under the Paperwork Reduction Act, of the collection of information requirements (1212–0039) contained in its regulation on Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 2646). The effect of this notice is to advise the public of the PBGC's request.

DATES: The PBGC is requesting that OMB complete action on the PBGC's request by September 29, 1995. Comments must be received by September 25, 1995.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9:00 a.m. and 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's regulation on Reduction or Waiver of Partial Withdrawal

Liability (29 CFR Part 2646), which is promulgated pursuant to section 4208 of the Employee Retirement Income Security Act of 1974. Section 4208 contains rules for the reduction or elimination of an employer's partial withdrawal liability under certain circumstances and authorizes the Pension Benefit Guaranty Corporation to promulgate additional partial withdrawal abatement rules.

Under the regulation, a contributing employer can apply to a multiemployer plan for a determination that it has met the requirements for abatement of partial withdrawal liability, and a multiemployer plan sponsor can apply to the PBGC for approval of individually-tailored plan rules for abatement of partial withdrawal liability. The PBGC uses information submitted to it to determine whether plan rules satisfy statutory standards.

The PBGC estimates that the total annual burden of the regulation is 1,250½ hours. Of this total, 1,250 hours represents 1,000 employer abatement applications and plan responses and one-half hour represents a submission to the PBGC by one plan sponsor.

Issued at Washington, DC., this 8th day of September, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–22767 Filed 9–12–95; 8:45 am]

BILLING CODE 7708-01-M

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2675, Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget extend approval, under the Paperwork Reduction Act, of the collection of information requirements (1212–0032) in its regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal (29 CFR Part 2675). The effect of this notice is to advise the public of the PBGC's request.

DATES: The PBGC is requesting that OMB complete action on the PBGC's request by September 29, 1995. Comments must be received by September 25, 1995.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9:00 a.m. and 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation administers the pension plan termination insurance programs under Title IV of the Employee Retirement Income Security Act of 1974. This collection of information (1212–0032) is contained in the PBGC's regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal (29 CFR Part 2675), which implements requirements of ERISA sections 4041A and 4281 for the administration of multiemployer plans that have terminated by mass withdrawal. The PBGC is requesting that the Office of Management and Budget extend approval of the collection of information.

The regulation prescribes rules for notices given and applications made by plan sponsors of mass-withdrawal-terminated plans to assure the consistency and adequacy of the notices and applications. The PBGC uses the information submitted to it in making statutory determinations and identifying and estimating cash needs for financial assistance to the plans.

The PBGC estimates that a total of 25 plans are required to distribute or submit a total of 60 notices or applications under the regulation annually and that the total annual burden of the collection of information is 835 hours, an average of about 14 hours per response.

Issued at Washington, D.C., this 8th day of September, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–22768 Filed 9–12–95; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21336; 811–2496]

Lindner Dividend Fund, Inc.; Notice of Application for Deregistration

September 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Lindner Dividend Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 3, 1995, and amended on August 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 2, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, 7711 Carondelet, St. Louis, Missouri 63105.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Missouri corporation. On July 3, 1974, applicant filed a notice of registration pursuant to section 8(a) of the Act on Form N–8A. On July 31, 1974 applicant filed a registration statement

to register its shares. The registration statement became effective on June 22, 1976, and the initial public offering commenced on or about July 31, 1974.

2. On April 6, 1995, applicant's board of directors adopted an Agreement and Plan of Reorganization (the "Plan"). The Plan provided that applicant would transfer its assets to a separate series of Lindner Investments, Inc. (the "Successor Fund"), in exchange for the assumption by the Successor Fund of applicant's liabilities and the issuance of shares of the Successor Fund.

3. Applicant and the Successor Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. In order to comply with rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's directors determined that the reorganization was in the best interests of applicant and applicant's shareholders.[1] This determination was based, among other things, on: (a) The expense savings which result from the elimination of regular annual meetings; (b) the economies of scale realized in a fund family; and (c) the ability to provide investors an opportunity to switch between funds within a fund group. Applicants also determined, in compliance with rule 17a–8, that the interests of existing shareholders would not be diluted as a result of the reorganization.

4. The proxy statement was filed with the SEC and distributed to applicant's shareholders on or about May 2, 1995. Applicant's shareholders approved the Plan on June 29, 1995.

5. On June 30, 1995, the reorganization was consummated. Applicant transferred its assets to Successor Fund in exchange for the assumption by Successor Fund of applicant's liabilities and the issuance of a number of shares of Successor Fund equal to the number of outstanding shares of applicant on that date. Following the exchange, applicant liquidated and distributed the Successor Fund shares to each of its shareholders on the basis of one Successor Fund share for one outstanding share of applicant. Upon completion of the reorganization, each shareholder of applicant became an owner of Successor Fund shares equal in number and aggregate net asset value to his or her shares of applicant held immediately prior to the reorganization.

6. The expenses applicable to the reorganization are estimated to be approximately $66,444. Applicant and Successor Fund each paid its own expenses related to the reorganization. Applicant's share of the expenses was approximately $35,000.

7. At the time of filing the application, applicant had no assets, and no outstanding debts or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22653 Filed 9–12–95; 8:45 am]

BILLING CODE 8010–01–M

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[1] Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21335; 811–2203]

Lindner Fund, Inc.

September 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Lindner Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 3, 1995, and amended on August 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 2, 1995 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 7711 Carondelet, St. Louis, Missouri 63105.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Missouri corporation. On June 28, 1971, applicant filed a notice of registration pursuant to section 8(a) of the Act on Form N–8A. On September 27, 1971 applicant filed a registration statement to register its shares. The registration statement became effective on May 24, 1973, and the initial public offering commenced on or about September 27, 1971.

2. On April 6, 1995, applicant's board of directors adopted an Agreement and Plan of Reorganization (the "Plan"). The Plan provided that applicant would transfer its assets to a separate series of Lindner Investments, Inc. (the "Successor Fund"), in exchange for the assumption by the Successor Fund of applicant's liabilities and the issuance of shares of the Successor Fund.

3. Applicant and the Successor Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. In order to comply with rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's directors determined that the reorganization was in the best interests of applicant and applicant's shareholders.[1] This determination was based, among other things, on: (a) The expense savings which result from the elimination of regular annual meetings; (b) the economies of scale realized in a fund family; and (c) the ability to provide investors an opportunity to switch between funds within a fund group. Applicants also determined, in compliance with rule 17a–8, that the interests of existing shareholders would not be diluted as a result of the reorganization.

4. A proxy statement was filed with the SEC and distributed to applicant's shareholders on or about May 2, 1995. Applicant's shareholders approved the Plan on June 29, 1995.

5. On June 30, 1995, the reorganization was consummated. Applicant transferred its assets to Successor Fund in exchange for the assumption by Successor Fund of applicant's liabilities and the issuance of a number of shares of Successor Fund equal to the number of outstanding shares of applicant on that date. Following the exchange, applicant liquidated and distributed the Successor Fund shares to each of its shareholders on the basis of one Successor Fund share for one outstanding share of applicant. Upon completion of the reorganization, each shareholder of applicant became an owner of Successor Fund shares equal in number and aggregate net asset value to his or her shares of applicant held immediately prior to the reorganization.

6. The expenses applicable to the reorganization are estimated to be approximately $66,546. Applicant and Successor Fund each paid its own expenses related to the reorganization. Applicant's share of the expenses was approximately $35,000.

7. At the time of filing the application, applicant had no assets, and no outstanding debts or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it proposed to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22656 Filed 9–12–95; 8:45 am]

BILLING CODE 8010–01–M

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[1] Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release Nos. 33–7209; 34–36189; File No. 265–20]

Advisory Committee on the Capital Formation and Regulatory Processes

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: This is to give notice that the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes will meet on September 29, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10:00 a.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–20. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano, Committee Staff Director, at 202–942–2870; Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, notice is hereby given that the Committee will meet on September 29, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10:00 a.m. The meeting will be open to the public.

The Committee was formed in February 1995, and its responsibilities include advising the Commission regarding the informational needs of investors and the regulatory costs imposed on the U.S. securities markets.

The purpose of this meeting will be to discuss the progress of the Committee's work, to discuss elements for a company registration system, as well as to discuss general organizational matters.

Dated: September 6, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–22651 Filed 9–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36197; International Series Release No. 850; File No. SR–OCC–95–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Modifying the Capital Computation Formula and Reporting Requirements Applicable to Canadian Clearing Members of the Options Clearing Corporation

September 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 13, 1995, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–OCC–95–11) as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify OCC's rules pertaining to the financial requirements of Canadian Clearing Member[2] firms, including the capital computation formula and reporting requirements applicable to those members, to reflect revisions to the capital computation and reporting standards recently adopted by various Canadian regulatory authorities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Set forth in sections (A), (B), and (C) below, are the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change seeks to modify OCC's rules concerning the financial requirements of Canadian Clearing Members, including the capital computation formula and reporting requirements applicable to Canadian Clearing Members, to reflect revisions to the capital computation and reporting standards recently adopted by various Canadian regulatory authorities. OCC's rules allow Canadian [illegible]ng Members to submit require[illegible]l reports in accordance with t[illegible]unting and reporting standards of their appropriate self-regulatory body.[4] In monitoring Canadian Clearing Member compliance with OCC financial requirements, OCC converts this financial information into a form consistent with Rule 15c3–1 under the Act.[5]

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The term Canadian Clearing Member is defined in OCC By-Law Article I, Section I.N. (3).

[3] The Commission has modified parts of these statements.

[4] OCC By-law, Article I.N. (2) employs the term "appropriate self-regulatory body" as defined in the Supplementary Instructions re Completion of the Joint Regulatory Financial Questionnaire to refer to the governmental agency or self-regulatory authority primarily responsible for regulating the activities of a Canadian Clearing Member.

The capital formula applied under Canadian securities regulations to Canadian securities firms has been revised and incorporated into a new standard report format. The prior capital formula applied a minimum capital requirement, as assessed by a working capital computation (*i.e.*, total capital less non-allowable assets), based upon volume of business determined by a percentage of adjusted liabilities. The new capital formula continues to be based on a working capital computation minus certain charges, including charges that reflect the risk of proprietary securities held in inventory. However, the new capital formula replaces the concept of adjusted liabilities with revised definitions of allowable assets and margin charges that are intended to reflect the credit worthiness of counterparties and the economic substance of transactions. The report format used by Canadian securities firms to report their capital computation also has been revised. OCC proposes to change its financial requirements and reporting rules to conform them to the revised capital formula and reporting format.

Specifically, the current Interpretations and Policies ("Interpretation") .01 to OCC Rule 301, regarding initial financial requirements, provides that a Canadian Clearing Member that commenced doing business as a broker or dealer within twelve months prior to its admission to Clearing Membership must maintain "initial net free capital," as defined in the Supplementary Instructions re Completion of the Joint Regulatory Financial Questionnaire ("Supplementary Instructions"), of not less than ten percent of such Clearing Member's "adjusted liabilities," as defined in the Supplementary Instructions, until the later of (i) three months after its admission to Clearing Membership or (ii) twelve months after it commenced doing business as a broker or dealer. Currently, Interpretation .01 to OCC Rule 302, regarding minimum net capital requirements, provides that a Canadian Clearing Member shall maintain net free capital, as defined in the Supplementary Instructions, of not less than the amount of net free capital that would be required of such Clearing Member under Section 100.2 of the By-Laws of the Investment Dealers Association of Canada ("IDAC") if the Clearing Member was a member of the IDAC.

As proposed, Interpretation .01 to Rule 301 will require a Canadian Clearing Member to maintain an initial "early warning reserve" as determined in accordance with the Joint Regulatory Financial Questionnaire and Report ("JRFQ&R") of not less than $1,000,000 (U.S.) for the same period as previously required. The proposed Interpretation .01 to Rule 302 will provide that the minimum net capital requirement of a Canadian Clearing Member be the early warning reserve as determined under the JRFQ&R in an amount not less than the greater of $750,000 U.S.) or 2% of such Canadian Clearing Member's total margin requirement as determined in accordance with the JRFQ&R. Application of the early warning reserve as determined under the JRFQ&R also will replace the use of the net free capital formula as determined under the Supplementary Instructions in OCC Rules 303 and 304, respectively, regarding early warning notice and restrictions on distributions.

Finally, in connection with OCC's financial reporting requirements, each Canadian Clearing Member will be required to file its JRFQ&R with OCC on a monthly basis except as provided in the Interpretations to Rule 306. The JRFQ&R replaces the Joint Industry Monthly Financial Report previously required under the Interpretations to OCC's Financial Reporting Rule.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–11 and should be submitted by October 4, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22652 Filed 9–12–95; 8:45 am]

BILLING CODE 8010–01–M

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[5] 17 CFR 240.15c3–1.

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36193; File No. SR–PHLX–95–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Options on the PHLX Forest and Paper Products Sector Index

September 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 15, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX") or "Exchange") file with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to list for trading cash-settled, European-style[1] options on the PHLX Forest and Paper Products Sector Index ("Index"), a new index developed by the Exchange. The Index is comprised of the stocks of 14 domestic forest and paper product companies which, the PHLX represents, effectively represent the available forest and paper products industry.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to list for trading cash-settled, European-style options on the Index. The Index is comprised of the stocks of 14 domestic forest and paper product companies which, the PHLX represents, effectively represent the available forest and paper products industry.[2] The Exchange also represents that the Index meets the generic criteria for listing options on narrow-based indexes as set forth in PHLX Rule 1009A, "Designation of the Index," as approved by the Commission.[3] Accordingly, the PHLX is submitting this proposed rule change pursuant to and in accordance with the procedures set forth in the Commission's Generic Index Approval Order.[4] The PHLX proposes to list and trade options on the Index no sooner than 30 days after August 15, 1995, the filing date of this proposed rule change. The contract specifications for the options on the proposed Index are as follows:

Underlying Index: The Index is an equal-dollar weighted index comprised of stocks from 14 domestic forest and paper products companies. All 14 stocks in the Index are traded on the New York Stock Exchange ("NYSE") and are therefore "reported securities" as defined in Rule 11Aa3–1 under the Act. The PHLX represents that all of the Index's component stocks presently meet the listing criteria for equity options contained in PHLX Rule 1009, "Criteria for Underlying Stocks," and are currently the subject of standardized options trading in the U.S.

According to the PHLX, as of August 4, 1995, the market capitalization of all of the stocks in the Index exceeded $60 billion and the individual capitalizations of the Index's component stocks ranged from $1.6 billion to $10.8 billion. The PHLX states that all 14 of the Index's component stocks had monthly trading volumes in excess of one million shares over each of the past six months from February through July 1995. Accordingly, the Exchange represents that, with respect to the criteria for market capitalization and trading volume, the Index satisfies the generic listing standards as stated in PHLX Rule 1009A.

Index Calculation: The methodology used to calculate the Index is an equal dollar-weighting method, meaning that each of the Index's component stocks is represented in approximately equal dollar amounts. The Exchange believes that this method of calculation is important because it will provide each component issue with equivalent influence on the movement of the Index value instead of allowing one highly capitalized stock to dominate the movement of the Index. To determine the initial dollar weighting of the stocks, the Exchange calculated the number of shares of each stock that would represent an investment of approximately $10,000 in each of the stocks comprising the Index based on closing prices on August 4, 1995. The value of the Index equals the current market value of the sum of the assigned number of shares of all of the stocks in the Index divided by the current Index divisor. The Index value was set at 250 at the close on January 31, 1995.

Index Maintenance: The Exchange will rebalance the Index quarterly, following the close of trading on the third Friday of each March, June, September, and December by changing the number of shares of each component stock so that each company is again represented in approximately $10,000 "equal" dollar amounts. If it becomes necessary, a divisor adjustment will be made when rebalancing occurs to ensure the continuity of the Index's value. The newly adjusted portfolio will then become the basis for the Index's value on the first trading day following the quarterly adjustment.

The number of shares of each component stock in the Index will remain fixed between quarterly reviews, except in the event of certain types of corporate action, such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, rights offering, recapitalization, reorganization or similar event with respect to the component stocks. In the case of a merger or consolidation of the issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted to the nearest whole share to maintain the component's relative weight in the Index prior to the merger. Should a stock replacement occur, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the new component, to the nearest whole share.

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[1] A European-style option can be exercised only during a specified period immediately prior to the expiration of the option.

[2] The components of the Index are: Boise Cascade; Bowater Inc.; Champion International Corporation; Federal Paper Board Company; Georgia Pacific Corporation; International Paper Company; James River Corporation; Louisiana Pacific Corporation; Mead Corporation; Stone Container Corporation; Temple Inland, Inc.; Union Camp Corporation; Westvaco Corporation; and Weyerhauser Company.

[3] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) ("Generic Index Approval Order").

[4] *See* note 3, *supra*.

In selecting replacement components for the Index, the PHLX will take into account the capitalization, liquidity, volatility and name recognition of any proposed replacement stock and assure that the Index continues to meet the maintenance criteria in PHLX Rule 1009A(c). In each of the above cases, the divisor will be adjusted, if necessary, to ensure the continuity of the Index. If the Index fails at any time to satisfy the maintenance criteria set forth in the Generic Index Approval Order,[5] the Exchange will notify the Commission immediately and will not open for trading any additional series of options on the Index unless the Exchange determines such failure is not significant and the Commission concurs in that determination or unless the continued listing of options of the Index has been approved by the Commission under Section 19(b)(2) of the Act.

Pursuant to the Generic Index Approval Order,[6] the PHLX will not increase to more than 19, or decrease to fewer than 9, the number of stocks in the Index, nor will the PHLX make any change in the composition of the Index that would cause fewer than 90% of the stocks, by weight, or fewer than 80% of the total number of stocks in the Index to qualify as stocks eligible for equity options trading under PHLX Rule 1009, "Criteria for Underlying Stocks."[7]

The Index will be updated dynamically and disseminated every 15 seconds during the trade day. The PHLX has retained Bridge Data, Inc. to compute and perform all necessary maintenance of the Index. Pursuant to PHLX Rule 1100A, "Dissemination of Information," updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority ("OPRA").[8] The Index value also will be available on broker/dealer interrogation devices to subscribers of the option information.

Unit of Trading: Each options contract will represent $100, the Index multiplier, times the Index value. For example, an Index value of 200 will result in an option contract value of $20,000 ($100×200).

Exercise Price: The exercise price will be set at 5 point intervals in terms of the current value of the Index. The PHLX will list additional exercise prices in accordance with PHLX Rule 1101A(a), "Terms of Option Contracts."

Aggregate Exercise Price: The aggregate exercise price is found by multiplying the Index multiplier ($100) by the exercise price.

Settlement Price Determination: The Index option settlement value will be determined by using the opening prices of the component stocks on the third Friday of each month.

Settlement Value: Based upon the operating prices of the component stocks on the last day prior to expiration.

Last Trading Day: The Thursday prior to the third Friday of the month for options which expire on the Saturday following the third Friday of that month.

Trading Hours: 9:30 a.m. to 4:10 p.m. EST.

Position and Exercise Limits: The Index is an industry index and the PHLX will apply position and exercise limits pursuant to PHLX Rules 1001A(b)(i), "Position Limits," and 1002A, "Exercise Limits," respectively.

Expiration Cycles: Three months from the March, June, September, December cycle plus at least two additional near-term months. The PHLX also will trade long-term Index options having up to 36 months to expiration pursuant to PHLX Rule 1101A(b)(iii).

Issuer and Guarantor: The Options Clearing Corporation ("OCC").

Premium Quotations: Premiums will be expressed in terms of dollars and fractions of dollars pursuant to PHLX Rule 1033A, "Meaning of Premium Bids and Offers." For example, a bid or offer of 1½ will represent a premium per options contract of $150 (1½ x 100). The minimum change in a premium under $3 will be $\frac{1}{16}$ and $\frac{1}{8}$ for a quote of $3 or greater.

The Index options will be traded pursuant to current PHLX rules governing the trading of index options.[9] In addition, the Exchange represents that surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in Index options. These procedures include having complete access to trading activity in the underlying securities, which are all traded on the NYSE. In addition, the Intermarket Surveillance Group Agreement ("ISG Agreement"), dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of Index options.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement and Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change complies with the standards set forth in the Generic Index Approval Order,[10] it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. Pursuant to the Generic Index Approval Order, the Exchange may not list Index options for trading prior to 30 days after August 15, 1995, the date the proposed rule change was filed with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[5] *See* note 3, *supra*.

[6] *See* note 3, *supra*.

[7] In addition, the Generic Index Approval order requires that at all time, at least 90% of the stock in the Index, by weight, and 80% of the total number of stocks comprising the Index, individually, must satisfy the Exchange's rules governing the listing and maintenance of listing of options thereon. *See* Generic Index Approval Order, *supra* note 3.

[8] The PHLX represents that the PHLX and OPRA have the necessary systems capacity to support the new series of options that will result from the introduction of options and long-term options on the Index. *See* Letter from Joseph Corrigan, Executive Director, OPRA, to Murray Ross, Secretary, PHLX, dated August 17, 1995; and Letter from William H. Morgan, Vice President, Trading Systems, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Commission, dated August 22, 1995.

[9] *See* PHLX Rules 1001A through 1102A, "Limitation of Exchange Liability," and 1000, "Applicability, Definitions, and References," through 1072, "Reporting Requirements Applicable to Short Sales in NASD/NM Securities."

[10] *See* note 3, *supra*.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22654 Filed 9–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36194; File No. SR–PHLX–95–16]

Self-Regulatory Organization; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Narrow-Based Index Options

September 6, 1995.

I. Introduction

On March 6, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PHLX Rule 1001A, "Position Limits," to increase the position and exercise limits[3] for narrow-based (or industry) index options from the current levels of 5,500, 7,500, or 10,500 contracts to 6,000, 9,000, or 12,000 contracts.

Notice of the proposed rule change appeared in the **Federal Register** on May 16, 1995.[4] No comments were received on the proposal.

II. Background and Description

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of option contracts that a member or customer can hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. At the same time, the Commission has recognized that option position and exercise limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[5]

In 1983, the PHLX set position and exercise limits for narrow-based index options at 4,000 contracts.[6] In 1993, the Commission approved a PHLX proposal to amend PHLX Rule 1001A to increase the position limits for narrow-based index options to the current levels of 5,500, 7,500, or 10,500 contracts.[7] The PHLX proposes to amend Exchange Rule 1001A(b)(1) to increase the position and exercise limits for industry index options from 5,500, 7,500, or 10,500 contracts to 6,000, 9,000 or 12,000 contracts.[8]

The Exchange believes that its proposal is consistent with the Act for several reasons. First, the Exchange notes that the current industry index option position limits have been in place since 1993 and that there have been no further increases in position limits for narrow-based index options since that time, despite substantial changes in the marketplace. Most notable among these changes, according to the PHLX, is an appreciable growth in index options trading. The PHLX states that this marked increase in index options volume has significantly increased liquidity in PHLX-traded index options.[9]

Second, the Exchange believes that the proposed increases are reasonable and consistent with the gradual, evolutionary approach adopted previously by the Commission and the options exchanges when increasing position and exercise limits.[10] Accordingly, the PHLX proposes a 9% increase in the lowest tier (from 5,000 to 6,000 contracts); a 20% increase for options currently at the 7,500 contract limit (increased to 9,000 contracts); and a 15% increase in the highest tier, currently at 10,500 contracts (increased to 12,000 contracts).

Third, the Exchange believes that the proposed increases are needed by traders and investors. According to the PHLX, Exchange members and customers have asked the Exchange to propose an increase in position limits, primarily because interested trading participants have not been able to meet their investment needs at current position limit levels. Specifically, the PHLX notes that certain institutional traders handling industry funds deal in securities valued many times higher than the maximum permissible position under PHLX rules. Based on such member and customer requests, the Exchange believes that the current position limit levels discourage market participation by large investors and the institutions that compete to facilitate the trading interests of large investors. Accordingly, the PHLX proposes to raise position and exercise limits for narrow-based index options to accommodate the liquidity and hedging needs of large investors and the facilitators of those investors.

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[11] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days. PHLX Rule 1002A, "Exercise Limits," states that for the purposes of determining compliance with PHLX Rule 1002, "Exercise Limits," exercise limits for index option contracts shall be equivalent to the position limits described in PHLX Rule 1001A.

[4] *See* Securities Exchange Act Release No. 35694 (May 9, 1995), 60 FR 26067.

[5] *See, e.g.*, Securities Exchange Act Release No. 33265 (December 3, 1993), 58 FR 65201 (December 13, 1993) (order approving File No. SR–Amex–93–27) (increasing position and exercise limits for equity options and narrow-based index options).

[6] *See* Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (order approving File No. SR–PHLX–83–17).

[7] *See* Securities Exchange Act Release No. 33288 (December 3, 1993), 58 FR 65221 (December 13, 1993) (order approving File No. SR–PHLX–93–07) ("1993 Approval Order"). Specifically, PHLX Rule 1001A(b)(1) currently provides the following position limits for industry index options: (i) 5,500 contracts for an index where a single component stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits; (ii) 7,500 contracts for an index where a single component stock accounted, on average, for 20% or more of the index value or any five component stocks together accounted, on average, for more than 50% of the index value but no single component stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits; or (iii) 10,500 contracts where the conditions requiring a limit of 5,500 contracts or 7,500 contracts have not occurred.

[8] The PHLX currently trades options on the following narrow-based indexes: (1) the Gold/Silver Index ("XAU") 5,500 contracts; (2) the Utility Index ("UTY") (10,500 contracts); (3) the PHLX/KBW Bank Index ("KBX") (10,500 contracts); (4) the Phone Index ("PNX") (5,500 contracts); (5) the Semiconductor Index ("SOX") (7,500 contracts); and (6) the Airline Sector Index ("PLN") (10,500 contracts).

[9] The PHLX states that index options volume increased 450% (from 354,614 contracts to 1,957,171 contracts in 1994 as compared to 1993.

[10] According to the PHLX, the most recent position limit changes in 1993 represented changes of 38% (from 4,000 to 5,500 contracts); 25% (from 6,000 to 7,500 contracts); and 31% (from 8,000 to 10,500 contracts).

Fourth, the Exchange believes that the proposal should increase the depth and liquidity of the markets for index options. The PHLX also believes that higher position limits would further accommodate the hedging needs of Exchange market makers and specialists, who are also restricted by current levels.

The PHLX notes that it continues to monitor the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits and that the new limits will not diminish the surveillance function in this regard. Additionally, the PHLX states that its surveillance procedures have become increasingly sophisticated and automated.

For these reasons, the Exchange believes that the proposal to increase narrow-based index option position limits is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest. The Exchange believes that the proposal should remove impediments to and perfect the mechanism of a free and open market by providing market opportunity to investors constricted by current position limit levels. The PHLX also believes that by stimulating market participation and thereby increasing option market depth and liquidity, the proposed rule change should promote just and equitable principles of trade.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[11] Specifically, the Commission finds that the proposed position and exercise limits for narrow-based index options should accommodate the needs of investors and market participants and should increase the potential depth and liquidity of the options market as well as the underlying cash market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or the underlying securities.

As noted above, the Commission believes that although the position and exercise limits for options must be sufficient to protect the options and related markets from disruptions by manipulation, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market. In this regard, the PHLX has stated that the current position limits discourage market participation by certain large investors and the institutions that compete to facilitate their trading. In addition, the PHLX notes that index option trading volume has increased significantly since 1993, when the current industry index option position limits were established. In light of the increased volume of narrow-based index option trading and the needs of investors and market makers, the Commission believes that the PHLX's proposal is a reasonable effort to accommodate the needs of market participants.

In addition, the Commission notes that the proposal, while increasing the positions limits for narrow-based index options, continues to reflect the unique characteristics of each index option and to maintain the structure of the current three-tiered system. Specifically, the lowest proposed limit, 6,000 contracts, will apply to narrow-based index options in which a single underlying stock accounts for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option positions limits. A position limit of 9,000 contracts will apply if any single underlying stock accounts, on average, for 20% or more of the index value or any five underlying stocks account, on average for more than 50% of the index value, but no single stock in the group accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 12,000-contract limit will apply only if the Exchange determines that the conditions requiring either the 6,000-contract limit or the 9,000-contract limit have not occurred. Accordingly, the proposal allows the Exchange to avoid placing unnecessary restraints on those narrow-based index options where the manipulative potential is the least and the need for increased positions, both by traders and institutional investors, may be the greatest.

The Commission believes that the proposed increases for the three tiers of 9%, 20%, and 15%, for lowest to highest, respectively, appear to be appropriate and consistent with the Commission's evolutionary approach to position and exercise limits. In this regard, the absence of discernible manipulative problems under the current three-tiered position and exercise limit system for narrow-based index options leads the Commission to conclude that the modest increases proposed by the Exchange are warranted. The Commission recognizes that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns. However, based upon the absence of discernible manipulation or disruption problems under current limits, the Commission believes that the proposed limits can be safely considered. Accordingly, the Commission believes that the liberalization of existing position and exercise limits for narrow-based index options is now appropriate.[12]

The Commission notes that the Exchange has had considerable experience monitoring the current three-tiered framework in narrow-based stock index options. The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the proposed increase in position and exercise limits for narrow-based index options will not cause significant problems.

Finally, the PHLX has indicated that its surveillance procedures have become increasingly sophisticated and automated. The Commission believes that the Exchange's surveillance programs are adequate to detect and deter violations of position and exercise limits as well as to detect and deter attempted manipulative activity and other trading abuses through the use of such illegal positions by market participants.[13]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal to increase the position and exercise limits for narrow-based index options to 6,000, 9,000, or 12,000 contracts, depending on the percentage stock concentrations within the index, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PHLX–95–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22655 Filed 9–12–95; 8:45 am]

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[11] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[12] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the proposed exercise limit increases for the three-tiered framework do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

[13] The Commission emphasizes that the PHLX must closely monitor compliance with position and exercise limits and to impose appropriate sanctions for failures to comply with the Exchange's position and exercise limit rules.

[14] 15 U.S.C. § 78f(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36198; File No. SR–Phlx–95–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Amendment of the Exchange's Schedule of Fees and Charges

September 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 23, 1995 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits a proposed rule change to amend the Phlx's Schedule of Fees and Charges respecting charges for nonexchange sponsored securities execution equipment operated by Phlx members and member organizations on the Phlx equity options trading floor. The proposed amendment would modify the existing $250.00 monthly fee assessed upon each stock execution machine on the Phlx equity options floor. A new securities execution equipment registration fee of $300.00 per terminal would be imposed for the period September 1, 1995 through December 31, 1996, on each member operating equipment that has execution capability and/or order routing access to the common message switch of the primary registered national securities exchanges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Since 1990, the Exchange has imposed a monthly proprietary stock execution machine charge of $250.00.[2] Effective at the opening of business, Friday, September 1, 1995, the Exchange will impose a $300.00 securities execution equipment registration fee for the period September 1, 1995 through December 31, 1996, on nonexchange sponsored terminals or computers configured for execution and/or routing capabilities to the common message switch of the primary registered national securities exchanges maintained on or accessible to the Phlx equity options trading floor. This registration fee will be assessed to each Phlx member or member organization maintaining and operating such nonexchange sponsored securities execution equipment on the Phlx options trading floors. The Phlx will continue to retain the monthly $250.00 fee charged to members and member organizations maintaining and operating such equipment on the Phlx equity trading floor.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objectives of Section 6(b)(4)[4] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.

The Phlx Finance Committee and the Phlx Floor Procedure Committee provided specific recommendations to the Phlx's Board of Governors.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (e) of Rule 19b–4 thereunder.[6]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Philadelphia Stock Exchange. All submissions should refer to File No. SR–Phlx–95–64 and should be submitted by October 13, 1995.

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[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 28212 (July 17, 1990), 55 FR 30065 (implementing a monthly charge on proprietary stock execution machines); Securities Exchange Act Release No. 33954 (April 21, 1994), 59 FR 22191 (allowing members to earn a monthly credit of 50% of the fees charged for stock execution machines).

[3] 15 U.S.C. 78f(B).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22709 Filed 9–12–95; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice No. 2253]

Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission; Notice of Partially Closed Meeting

The Advisory panel to the United States Section of the North Pacific Anadromous Fish Commission will meet on September 28, 1995, at the Radisson Hotel, SeaTac Airport, 17001 Pacific Highway South, Seattle, Washington. This session will involve discussion of the Third Annual Meeting of the North Pacific Anadromous Fish Commission, to be held November 6–10, 1995, in Seattle, Washington. The discussion will begin at 7:00 p.m. and is open to the public.

The Advisory Panel will also meet at 8:00 p.m. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the Third Annual Meeting of the North Pacific Anadromous Fish Commission. The members of the Advisory Panel will examine various options for the U.S. position at the Third Annual Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close the 8:00 p.m. session pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., and 5 U.S.C. 552b(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. William E. Dilday, Senior Pacific Affairs Officer, Office of Marine Conservation (OES/OMC), Room 7820, U.S. Department of State, Washington, D.C. 20520–7818. Mr. Dilday can be reached by telephone on (202) 647–3940 or by FAX (202) 736–7350.

Dated: August 29, 1995.

Ambassador David A. Colson,

Deputy Assistant Secretary for Oceans.

[FR Doc. 95–22662 Filed 9–12–95; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Free Flight Implementation Task Force

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appensix 2), notice is hereby given for Free Flight Implementation Task Force meeting to be held September 20 and 21, 1995. The meeting will be held at the MITRE Reston facility, 11493 Sunset Hills Road, Reston, Virginia.

The meeting on Wednesday, September 20, will begin at 9:30 in Room S1102 with a Plenary session, where the Task Force Chairman and Working Group Co-Chairs will review Task Force objectives and status.

The agenda for the remainder of September 20 and all of September 21 will be separate and concurrent Working Group deliberations.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Exceptional circumstances, such as the need to complete the final report for this task in a relatively short time and the difficulty in locating adequate conference space, exist in this instance to permit public notice of this meeting in less than 15 days.

Issued in Washington, D.C., on September 7, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–22738 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held September 29, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of August 21 Meeting; (3) Consider and Approve: a. Proposed Final Draft, Minimum Operational Performance Standards for Airborne Radio Communications Equipment Operating Within the Radio Frequency Range 117.975–137.000 MHz (RTCA Paper No. 463–95/TMC–187); b. Proposed Final Draft, Minimum Operational Performance Standards for Global Navigation Satellite System (GNSS) Airborne Antenna Equipment (RTCA Paper No. 468–95/TMC–191); c. Proposed Final Draft, Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment (RTCA Paper No. 469–95/TMC–192); (4) Take Action on Open Items from Previous Meeting: a. Report on Integration of RTCA Response to 1994 Symposium Recommendations; b. White Paper on RNP Issues and Recommendations; c. Report from FAA Concerning Cockpit Moving Map Displays; (5) Other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (Phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

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[7] 17 CFR 200.30–3(a)(12).

Issued in Washington, D.C., on September 8, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–22736 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 183; Standards for Airport Security Access Control Systems

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 183 meetings to be held September 27–28, 1995. The first day Plenary session will begin at 9:30 a.m.; the second day Editorial Working Group session will be from 8:30–11:30 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036. The agenda will include: (1) Administrative Announcements; (2) General Introductions; (3) Review and Approval of Agenda; (4) Review and Approval of Minutes of the Meeting held July 25–26; (5) Review of SC–183 Meeting Schedule October-November 1995; (6) Review of Draft Material; (7) Working Group Issues; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 7, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–22739 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on September 27, 1995, at 12:30 p.m.

ADDRESSES: The meeting will be held at the Air Line Pilots' Association, 1625 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dwonna Johnson, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on September 27, 1995. The agenda for this meeting will include status reports on the All Weather Operations Working Group, the Single Engine Operations Working Group, and the Fatigue Countermeasures and Alertness Management Working Group. Attendance is open to the interested public but may be limited by the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 6, 1995.

Quentin J. Smith,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–22742 Filed 9–12–95; 8:45am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 1995, there were six applications approved. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Department of Port Control, Cleveland, Ohio.

Application Number: 95–03–C–00–CLE.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $19,475,642.

Estimated Charge Effective Date: November 1, 1995.

Estimated Charge Expiration Date: February 1, 1997.

Class of Air Carriers not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Cleveland Hopkins International Airport (CLE).

Brief Description of Project Approved for Collection at CLE and Use at CLE: Asbestos removal in terminal at CLE.

Brief Description of Project Approved for Collection at CLE: Waste water—glycol collection system construction.

Brief Description of Project Approved for Collection at CLE and Use at Burke Lakefront Airport: Passenger jetways (non-exclusive use), baggage claim/security improvements (non-exclusive use).

Brief Description of Project Partially Approved for Collection at CLE and Use at CLE: Acquisition of Analex Office Building and vacant land in the Aerospace Technology Park.

Determination: This approval is limited to the acquisition of the land and building in accordance with FAA Order 5100.37A, Land Acquisition and Relocation Assistance for Airport Projects. Relocation assistance is not eligible for commercial businesses. Also, the demolition of the building is not approved at this time. The office building was the subject of an airspace evaluation and a determination of no hazard was issued, the building is a compatible land use, and the Department of Port Control, City of Cleveland, has not determined the appropriate National Environmental Protection Act action with respect to demolition of the Analex building. In the interim, the building may be used to generate new airport revenue. If, after the final acquisition, costs are determined and less than the approved amount is required for the acquisition, the Department of Port Control, City of Cleveland, will be required to issue an amendment to this application to reduce the PFC amount for the project and inform the air carriers.

Brief Description of Project Partially Approved for Collection at CLE: NASA feasibility and pre-engineering study: relocation of engine test facility.

Determination: The estimated task costs requested by the City of Cleveland were reduced based on the FAA's analysis of recent prior similar studies and the FAA's experience in this area.

Decision Date: August 4, 1995.

For Further Information Contact: Dean C. Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: City of Pensacola, Florida.

Application Number: 95–02–U–00–PNS.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,918,000.

Charge Effective Date: February 1, 1993.

Estimated Charge Expiration Date: December 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: The City of Pensacola was previously approved, in a decision dated November 23, 1992, to exclude a class of air carriers from the requirement to collect the PFC. This decision does not affect that ruling.

Brief Description of Projects Approved for Use of PFC Revenue: Provide a vegetation barrier, purchase avigation easements.

Decision Date: August 10, 1995.

For Further Information Contact: Sandra A. Nazar, Orlando Airports District Office, (407) 648–6586.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.

Application Number: 95–06–U–00–CHO.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,524,300.

Charge Effective Date: April 1, 1995.

Estimated Charge Expiration Date: April 1, 1999.

Class of Air Carriers Not Required To Collect PFC's: The Charlottesville-Albemarle Airport Authority was previously approved, in a decision dated January 26, 1995, to exclude a class of air carriers from the requirement to collect the PFC. This decision does not affect the ruling.

Brief Description of Projects Approved for Use of PFC Revenue: Acquire snow blower and broom, Snow loader/plow, Runway deicing vehicle, Aircraft rescue and firefighting (ARFF) vehicle.

Brief Description of Project Disapproved for Use of PFC Revenue: Overlay runway 3–21.

Determination: Disapproved for use of PFC revenue. The FAA's determination approving PFC collection for this project, dated January 26, 1995, notes that, at the time that collection authority was requested, the financial plan for this project included proposed Airport Improvement Program (AIP) entitlement and discretionary grants as the major sources of funding. The FAA's January 26 determination also states that the FAA expected that the public agency would finalize its financial plan prior to the submission of a "use" application for this project. However, the FAA has determined that, at this time, the financial plan for this project is still tentative and that the public agency has not satisfactorily demonstrated the ability to complete the project without the proposed AIP funds, for which the FAA has not made a commitment to provide. Therefore, the FAA is disapproving this project at this time. The public agency is encouraged to reapply for PFC use authority for this project after it has finalized its financial plan. This decision does not affect the collection authority previously approved for this project.

Decision Date: August 10, 1995.

For Further Information Contact: Robert Mendez, Washington Airports District Office, (703) 285–2570.

Public Agency: City of Waco, Texas.

Application Number: 95–01–C–00–ACT.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $615,742.

Estimated Charge Effective Date: November 1, 1995.

Estimated Charge Expiration Date: July 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use of PFC Revenue: Planning studies, Airfield safety improvements, Terminal safety improvements, ARFF vehicle.

Decision Date: August 14, 1995.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Greater Orlando Aviation Authority, Orlando, Florida

Application Number: 95–03–C–00–MCO.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $19,138,741.

Estimated Charge Effective Date: September 1, 1995.

Estimated Charge Expiration Date: June 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection Use:

Design for north crossfield taxiway,
Preliminary design for Airside 2 and related improvements,
Construction of taxiways R–60, F–15, and ARFF taxiway access,
West ramp rehabilitation design,
Matching funds for master plan,
Replacement for pumper engine no. 84,
Replacement for airfield sweeper no. 70353,
Twenty-four inch sanitary force main,
800 Megahertz communication system,
Master mitigation—conceptual permitting,
Mitigation program—engineering services,
Mitigation program—jurisdictional boundaries,
Completion of main terminal northeast corridor,
Part 150 study.

Brief Description of Projects Partially Approved for Collection and Use: Security improvement program.

Determination: The public agency did not adequately support costs for this project other than the matching share of the AIP–36 grant. Accordingly, the approved amount is less than that requested by the public agency.

Brief Description of Disapproved Projects: Exhibit A property map, FAA grant close-out.

Determination: Disapproved. Costs associated with these items are administrative costs specifically related to AIP projects. Allowable costs for the PFC program, defined in section 158.3 and further defined in the preamble to Part 158, identify "a public agency's cost of administering its PFC program" as allowable. These items are not required for PFC project approval or administration of the PFC program at Orlando International Airport; therefore, the projects are disapproved.

Closed circuit television (CCTV) retrofit.

Determination: Disapproved. This project has been determined to be ineligible under AIP criteria in accordance with appendix 2 of FAA Order 5100.38A, since the relocation of a control tower is not eligible. The use of the CCTV system mitigates the need to relocate the air traffic control tower for line-of-sight blockage. Accordingly, this project is disapproved.

Convert chillers to non-CFC refrigerant.

Determination: Disapproved. This project has been determined to be ineligible under AIP criteria in accordance with appendix 2 of FAA Order 5100.39A, as routine airport maintenance. Accordingly, this project is disapproved.

Decision Date: August 28, 1995.

For Further Information Contact: Pablo G. Auffant, Orlando Airports District Office, (407) 648–6583.

Public Agency: Gulfport-Biloxi Regional Airport Authority, Gulfport, Mississippi.

Application Number: 95–03–C–00–GPT.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,518,400.

Estimated Charge Effective Date: September 1, 1995.

Estimated Charge Expiration Date: September 1, 1997.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Construct concourse A,
Construct terminal improvement (phase I),
Master plan (wetlands),
Master plan (access),
Construct charter ramp (phase V–a),
Install loading bridge.

Decision Date: August 31, 1995.

For Further Information Contact: Elton Jay, Jackson Airports District Office, (601) 965–4628.

Amendments to PFC Approvals

Amendment No. City, State	Amendment approved date	Amendment approved net PFC revenue	Original approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
94–01–C–02–CVG, Covington, KY	08/01/95	$38,015,000	$23,847,550	10/01/95	06/01/96
93–01–C–01–BGM, Binghampton, NY	08/01/95	$887,261	$1,872,264	11/01/97	02/01/96
92–01–I–02–PHL, Philadelphia, PA	08/01/95	$51,199,000	$51,199,000	08/01/97	08/01/97
93–01–C–01–SGF, Springfield, MO	08/08/95	$3,110.598	$1,937,090	10/01/96	06/01/97
93–02–I–01–BDL, Windsor Locks, CT	08/18/95	$12,030,000	$1,599,000	09/01/95	12/01/95
92–01–I–01–CMH, Columbus, OH	08/23/95	$7,719,331	$7,341,707	09/01/96	01/01/96
93–01–C–01–LGB, Long Beach, CA	08/29/95	$0	$3,533,766	03/01/98	(1)

[1] Withdrawn.

Issued in Washington, D.C. on September 6, 1995.

Sheryl Scarborough,

Acting Manager, Passenger Facility Charge Branch.

[FR Doc. 95–22743 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chippewa Valley Regional Airport; Eau Claire, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chippewa Valley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 13, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Burt C. Wright, Airport Manager of the County of Eau Claire, WI at the following address: 3800 Starr Avenue, Eau Claire, WI 54703.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Eau Claire under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chippewa Valley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 30, 1995 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Eau Claire was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: January 1, 1996

Proposed charge expiration date: July 31, 2005

Total estimated PFC revenue: $755,028

Brief description of proposed project(s): Terminal Building Renovation, Taxiway Apron Improvements (design only), Airport Snow Removal Vehicle, Taxiway B & C Reconstruction, SRE Building Expansion, Taxiway Apron Improvements (construction), Airport Snow Removal Vehicle, PFC Administration

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: No request to exclude carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Eau Claire.

Issued in Des Plaines, IL on September 6, 1995.

Ben De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–22741 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF THE TREASURY

United States Customs Service

Domestic Interested Party Petition Concerning Country of Origin Marking for Safety Glasses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; extension of comment period.

SUMMARY: This document extends the period of time within which interested members of the public may submit comments regarding the application of the marking requirements to imported prescription safety frames. Customs has been requested to extend the comment period to allow additional time to prepare responsive comments. The comment period is extended to October 11, 1995.

DATES: Comments must be received on or before October 11, 1995.

FOR FURTHER INFORMATION CONTACT: David Cohen, Special Classification and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 482–6980.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1995, a document was published in the **Federal Register** (60 FR 35792) containing a notice of the receipt of a domestic interested party petition regarding the country of origin marking requirements of prescription safety glasses as set forth in Headquarters Letter Ruling (HLR) 734258, dated January 2, 1992. The document solicited comments that were to be received on or before September 11, 1995. Customs has been requested to extend the period of time for comments in order to afford interested parties additional time to study the proposed regulations and prepare responsive comment. In view of the complexity and importance of the petition and its effect on the country of origin marking of safety glasses, Customs believes that the request for an extension of time should be granted. Accordingly, the period of time for the submission of comments is being extended to October 11, 1995.

Approved: September 6, 1995.

Stuart P. Seidel,

Assistant Commissioner of Customs, Office of Regulations & Rulings.

[FR Doc. 95–22643 Filed 9–12–95; 8:45 am]

BILLING CODE 4820-02-P

[Treasury Order Number 100–06]

Delegation of Authority to the Under Secretary (Domestic Finance) for the Government Securities Act of 1986 and Government Securities Act Amendments of 1993

Dated: September 5, 1995.

By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 321(b), I hereby delegate to the Under Secretary (Domestic Finance), the authority of the Secretary under the Government Securities Act of 1986, (Pub. L. 99–571) and the Government Securities Act Amendments of 1993 (Pub. L. 103–202), to exercise and to perform all duties, powers, rights, and obligations under those Acts, with the authority to redelegate such authority.

This Order supersedes Treasury Order 100–06, "Delegation of Authority to the Under Secretary for Finance to Implement the Government Securities Act of 1986," dated February 19, 1987.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 95–22744 Filed 9–12–95; 8:45 am]

BILLING CODE 4810-25-P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 177
Wednesday, September 13, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, September 14, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 14, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1, Phase III); Treatment of Operator Services Under Price Cap Regulation (CC Docket No. 93–124); and Revisions to Price Cap Rules for AT&T (CC Docket No. 93–197). Summary: The Commission will consider proposals on how to modify its price cap regulations for local exchange carriers to reflect the emergence of competition, including proposals related to pricing flexibility and criteria for streamlining regulation.

2—Common Carrier—Title: Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1, Phase II). Summary: The Commission will consider revising proposals related to establishing a permanent method for determining the "X" factor for price cap local exchange carriers.

3—Common Carrier—Title: Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation (CC Docket No. 94–1). Summary: The Commission will consider issues concerning price cap regulation of video dialtone, and the possible creation and operation of a video dialtone price cap basket.

4—Wireless Telecommunications—Title: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool (PR Docket No. 89–553); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding (PP Docket No. 93–253); and Implementation of Sections 3(n) and 322 of the Communications Act (GN Docket No. 93–252). Summary: The Commission will consider petitions for reconsideration of the service rules for 900 MHz Specialized Mobile Radio (SMR) and adoption of auction rules for the licensing of the service.

5—Wireless Telecommunications—Title: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services (CC Docket No. 94–54). Summary: The Commission will consider whether commercial mobile radio services should be prohibited from restricting resale of their services.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated September 7, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22832 Filed 9–11–95; 2:17 pm]

BILLING CODE 6712-01-F

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on September 20, 1995, 8:30 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Field Office Closures—Recommendation 7 of Task Force Report
(2) Coverage Determinations:
  A. San Diego Northern Railway
  B. CAGY Industries, Inc.
  C. Joliet Junction Railroad, Inc.
(3) Proposed Occupational Disability Standards
(4) Regulations—Part 219, Evidence Required for Payment

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: September 8, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–22853 Filed 9–11–95; 2:18 pm]

BILLING CODE 7905-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

Correction

In notice document 95–21570 beginning on page 45402 in the issue of Thursday, August 31, 1995, make the following correction:

On page 45402, in the third column, in the DATES section, in the second and third lines, "October 2, 1995" should read "October 30, 1995".

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR-3917-N-16]

Notice of Submission of Proposed Information Collection to OMB

Correction

In notice document 95–20090 beginning on page 42171 in the issue of Tuesday, August 15, 1995, under **ADDRESSES:**, in the fourth line, "(3)" should read "(30)".

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 432, 451 and 531

RIN 3206-AG34

Performance Management

Correction

In rule document 95–20745 beginning on page 43936 in the issue of Wednesday, August 23, 1995, make the following corrections:

1. On page 43937, in the 1st column, in the 2d paragraph, in the 20th line, "associations, " should read "associations.".

2.On the same page, in the 3rd column, in the 2d paragraph, in the 21st line, "§541.104" should read "§451.104".

3. On page 43939, in the first column, in the second line, "OPM has" should read "OPM had".

4. On page 43940, in the 1st column, in the paragraph 2. Summary Rating, in the 24th line, "assigned with" should read "assigned when".

5. On page 43941, in the third column, in the second paragraph, in the first line, "*performance rating*" should read "*performance standard*".

6. On the same page, in the same column , in the same paragraph, in the fourth line, "*(Performance standard)*" should read "*(performance standard).*"

7. On page 43942, in the 1st column, in the 2d paragraph, in the 16th line, "rules" should read "rules."

8. On the same page, in the second column, in the fourth paragraph, in the ninth line, "text:" should read "text.".

9. On the same page, in the third column, in the fifth line, "(b)," should read "(b);". In the ninth line, "*increase*)" should read "*increase*);".

§ 430.201 [Corrected]

10. On page 43943, in the second column, § 430.201 (b), in the 4th and 5th and 14th lines, "August 23, 1995" should read "September 22, 1995".

§ 430.204 [Corrected]

11. On page 43944, in the first column, § 430.204 (b)(3)(iv), in the 3rd line, "426.208(d)" should read "§ 430.208(d)".

§ 451.101 [Corrected]

12. On page 43946, in the second column, § 451.101 (c), in the 3rd line, "section 4501 title 5" should read "section 4501 of title 5".

§ 451.103 [Corrected]

13. On the same page, in the third column, § 451.103(c)(2), in the 3rd line, "§ 430.20" should read "§ 430.203".

BILLING CODE 1505–01–D

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federal register

Wednesday
September 13, 1995

Part II

Department of Justice

Bureau of Prisons

28 CFR Part 547
Special Food; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 547

[BOP–1044–P]

RIN 1120–AA37

Special Food

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to revise its regulations on the introduction into institutions of special food or meals from outside sources. The revised provisions state more clearly that the Bureau is responsible for procuring and preparing any food or food ingredients served to the institution's inmate population. Special food or meals which may be served to specific groups of inmates rather than to the entire inmate population are identified as commissary food items, religious diet or ceremonial meals, and medical diet foods. This amendment is intended to provide for the secure and orderly operation of the institution.

DATES: Comments due by November 13, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on special foods (28 CFR 547.20). A final rule on this subject was published in the **Federal Register** May 1, 1981 (46 FR 24901).

Current provisions in 28 CFR 547.20 specify that, with stated exceptions, the Bureau requires special food or meals prepared for and/or served to any group(s) of inmates also to be served to the institution's entire inmate population. In revising this section, the Bureau is emphasizing that it is responsible for procuring and preparing food or food ingredients to be served to the institution's inmate population. Any special food or meals to be distributed are therefore to be supplied by the Bureau. Food brought into the institution under an approved visiting program has consequently been removed from the list of exceptions, and the remainder of the stated exceptions have been revised for reasons of organization and clarity.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 547

Prisoners.

Kathleen M. Hawk,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), it is proposed to amend part 547 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 547—FOOD SERVICE

1. The authority citation for 28 CFR part 547 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 547.20 is revised to read as follows:

§ 547.20 Policy.

The Bureau of Prisons is responsible for procuring and preparing any food or food ingredients to be served to the institution's inmate population. Except as allowed for in paragraphs (a) through (c) of this section, the Bureau requires that special food or meals prepared for and/or served to any group(s) of inmates also be served to the institution's entire inmate population. Special food or meals, as identified in paragraphs (a) through (c) of this section, may be prepared and/or served to a specific group of inmates rather than to the entire inmate population of the institution.

(a) Food items sold in the institution's commissary.

(b) Religious diet or ceremonial meals (see 28 CFR 548.13).

(c) Medical diet foods.

[FR Doc. 95–22630 Filed 9–12–95; 8:45 am]

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federal register

**Wednesday
September 13, 1995**

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

Real Estate Settlement Procedures Act (RESPA): Disclosure of Fees Paid to Mortgage Brokers (Retail Lenders), and Notice of Consideration of Negotiated Rulemaking; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. FR 3780–P–01]

RIN 2502–AG40

Real Estate Settlement Procedures Act (RESPA): Disclosure of Fees Paid to Mortgage Brokers (Retail Lenders), and Notice of Consideration of Negotiated Rulemaking

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule and notice of consideration of negotiated rulemaking process.

SUMMARY: The Department has developed a proposed rule presenting alternative approaches to the disclosure of fees to retail lenders and other matters relating to such fees that are addressed in HUD's current regulations implementing the Real Estate Settlement Procedures Act (RESPA). Under this proposed rule, the Department specifically seeks comments on whether the disclosure of indirect fees paid to mortgage brokers is useful to the consumer and should continue to be required. Disclosure of direct charges imposed upon the borrower or seller is clearly required under Section 4 of RESPA and is not the subject of this proposed rule.

The Department also has commenced the convening process to determine whether to establish a committee for negotiated rulemaking on this proposed rule. If negotiated rulemaking appears desirable and feasible, then the Department expects to undertake the establishment of such a committee by publication of a separate notice in the **Federal Register**. If a negotiated rulemaking committee is formed, the public comments concerning the substance of this proposed rule will be given to the committee for consideration in its deliberations. If it is determined that a committee is not appropriate, the comments submitted on this proposed rule will be used by the Department in promulgating a final rule.

DATES: Comment due date: November 13, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule, the feasibility of forming a negotiated rulemaking committee, and suggestions for committee participation to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement, Room 5241, Department of Housing and Urban Development, Washington, DC 20410; telephone 202–708–4560; or (for legal questions) Grant E. Mitchell, Senior Attorney for RESPA, Room 10252, Department of Housing and Urban Development, Washington, DC 20410; telephone 202–708–1552 (these are not toll free numbers). Hearing or speech-impaired individuals may call 1–800–877–8339 (Federal Information Relay Service TDD, which is a toll-free number).

SUPPLEMENTARY INFORMATION: The current RESPA regulations make clear that "secondary market transactions" are not covered by most provisions of RESPA: "a bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except as set forth in section 6 of RESPA and § 3500.21 [mortgage servicing transfers]." The current rule details certain tests for what does or does not constitute a secondary market transaction. The Department seeks comments on its classifications of mortgage loan transactions under the current rule as "primary funding" or "secondary market" transactions and, in particular, on whether the Department has drawn the line in the appropriate place between a primary funding and a secondary market transaction.

The Department also seeks comments on aspects of its current regulations that provide, *inter alia*, that all fees paid to mortgage brokers, either directly or indirectly, must be disclosed on the Good Faith Estimate and the HUD–1 or HUD–1A, which are furnished to borrowers/consumers. Specifically, the Department seeks comments on its determination that the disclosure requirement for "all charges imposed on the borrower" includes fees paid to the mortgage broker by the lender, because all charges are ultimately borne by the borrower. Finally, the Department, in this proposed rule, also requests comments regarding a related issue: whether certain compensation by lenders to mortgage brokers normally paid after settlement, based on the volume of loans produced, should be permitted and disclosed under RESPA.

I. Certain Definitions in Proposed Rule

In this proposed rule, mortgage brokers[1] and certain other mortgage originators are frequently referred to as "retail lenders." Entities that purchase mortgage loans are frequently referred to as "wholesale lenders." In any event, the description of the lender is not dispositive of whether the transaction is covered by the rule. The proposed rule would apply to a transaction based on the characteristics of that transaction, rather than on whether the lender generally functions in a retail or a wholesale capacity.

II. RESPA Coverage

A. Background

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*) (RESPA) was enacted for several purposes, "including insuring that a consumer engaged in a real estate settlement is afforded effective information about the transaction in a timely manner." In addition, the Congress sought to address specific abusive settlement practices that had developed in certain areas of the country. In this proposed rule, HUD is seeking public input on specific disclosure-related issues, including where the lines should be drawn to determine whether RESPA applies.

Since 1974 the mortgage lending industry has experienced a rapid evolution. This industry has experienced major technological advances—new and different kinds of business entities have entered the field, and new business relationships have emerged among the various entities that serve the consumer in a single lending transaction. Much of the change that has occurred is attributable to the growth of the secondary market during the 1980s.

Prior to the 1980's, a mortgage loan transaction was relatively easy to understand. A lender (*e.g.*, a savings and loan, mortgage bank, or commercial bank) typically processed a loan from start to finish. The loan application was processed, evaluated, and underwritten by the lender's own employees. The loan was funded by and closed in the lender's name. The loan was usually held in the lender's portfolio of loans, and any activities regarding the loan (receiving and crediting the payments, paying out monies from an escrow account, etc.—sometimes called "servicing") were handled by that lender. Sometimes the loan was sold to another entity, in a "secondary market" transaction that was a precursor of today's more sophisticated secondary market transactions.

By the end of the 1970s and into the early 1980s, two Government-sponsored enterprises (Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)) had developed into major purchasers of mortgages from original lenders. By the early 1980s, these secondary market entities not only bought mortgage loans, but repackaged many of these loans and sold them as mortgage-backed securities and, with the liquidity created, were able to be even greater purchasers of lenders' mortgage loans. By 1994, Fannie Mae and Freddie Mac were purchasing or otherwise dealing in more than 70 percent of all the conventional 1- to 4-family residential mortgage loans originated in the United States.

Today, the retail lender that works with the consumer to process and close a mortgage loan often is not the entity that will hold or service the loan. Rather, the retail lender serves as an intermediary between the consumer and the entity purchasing or servicing the loan (or "wholesale lender"). Many loans are purchased by, or servicing is transferred to, a wholesale lender at, or shortly after, closing. When a retail lender serves as an intermediary, it may perform services for which it is compensated in processing the loan. Compensation paid to a retail lender therefore may be "direct" and "indirect." Direct payments are fees paid directly by the consumer and must be disclosed under Section 4 of RESPA; indirect payments are fees paid by the wholesale lender to the retail lender. The issue arises over whether the amount and nature of indirect compensation should be disclosed to the consumer. HUD has been presented with arguments that the current RESPA rule, which requires disclosure of all indirect payments to mortgage brokers, focuses too narrowly on this particular class of retail lenders or intermediaries. These arguments suggest that the underlying issues for discussion should be how RESPA's fee disclosure requirements should apply to compensation of mortgage brokers, mortgage bankers, and other financial institutions that originate mortgages (retail lenders) by entities that purchase their mortgages (wholesale lenders).

B. Legal Analysis Under the Current Regulation

Section 4(a) of RESPA (12 U.S.C. 2603(a)) requires the Secretary to create a uniform settlement statement that "shall conspicuously and clearly itemize all charges imposed on the borrower * * * and the seller in connection with the settlement." The stated purposes of the statute include the provision of "greater and more timely information as to the nature and costs of the settlement process" by "more effective advance disclosure to homebuyers and sellers of settlement costs * * *" (12 U.S.C. 2601). Section 5(c) (12 U.S.C. 2604(c)) of RESPA requires the provision of a "good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement. * * *"

Under HUD's current rules, the disclosure of all fees paid to retail lenders, including all compensation from wholesale lenders, is required when the retail lender is being compensated as part of the settlement transaction. This position is set out, *inter alia*, at 24 CFR 3500.5(b)(7); in the Instructions for filling out the HUD–1 and HUD–1A in Appendix A; and in Illustrations of Requirements of RESPA, Fact Situations 5 and 12 in Appendix B. This same disclosure requirement has not been applied to subsequent purchases of loans by wholesale lenders, on the theory that Congress only intended to cover costs related to the initial settlement transactions. The Department's current regulations, therefore, treat compensation to the retail lender under three settlement situations somewhat differently, depending upon how the loans are funded at settlement.

(1) Loan Closing and Subsequent Assignment of the Loan. This is a transaction in which a retail lender processes the loan from start to finish, funds the loan, and closes the loan in its own name. The current RESPA regulation requires that such retail lenders disclose the fees paid by the consumer. At a later point in time, the retail lender may sell the loan to a wholesale lender. The Department has not required that the terms of this subsequent secondary market transaction, including compensation paid to the retail lender by a wholesale lender, be disclosed to the consumer.

(2) Loan Closing in the Wholesale Lender's Name Using the Wholesale Lender's Funds. For this arrangement, the retail lender originates the loan, but is functioning solely in the capacity of an intermediary. The loan funds are provided by the wholesale lender and the loan is closed in the wholesale lender's name. The wholesale lender typically sets the underwriting criteria and makes the underwriting decision. In this instance, the current RESPA regulation applies to the entire fee arrangement between the retail lender and the wholesale lender. The Department regards the retail lender as being compensated as part of the settlement transaction. Indirect, as well as direct, payments to the retail lender must be disclosed under the current RESPA regulations.

(3) Table-funding. For this arrangement, the loan is processed by the retail lender and is closed in the name of the retail lender. There is, however, at or about the time of settlement, a simultaneous advance of loan funds to the retail lender by the wholesale lender and an assignment of the loan and servicing rights to the wholesale lender. Table-funding is therefore somewhat a hybrid of the two arrangements described above. As in situation (1), where the Department requires disclosure of the compensation at settlement, the loan is closed in the name of the retail lender. There is a subsequent assignment of the loan to the wholesaler. Thus, an argument could be made that the assignment constitutes a secondary market transaction, for which the terms (*i.e.*, concerning the retail lender's indirect compensation) are not required to be disclosed under the RESPA regulations. On the other hand, because the mortgage broker assigns the loan simultaneously with closing, it may be asserted that the mortgage broker acts only as an intermediary, as in situation (2).

HUD has consistently determined, in opinions of the General Counsel going back to 1986 and in the final RESPA rule published on November 2, 1992 (57 FR 49600, and restated on February 10, 1994 (59 FR 6506)), that compensation received by a mortgage broker in a table-funded transaction is subject to disclosure. This interpretation treats mortgage brokers in table-funded transactions as *settlement service providers* ancillary to the loan, akin to title agents, attorneys, appraisers, etc., whose fees are subject to disclosure. This interpretation does not view a mortgage broker as the functional equivalent of a mortgage lender. Unlike a mortgage lender, the mortgage broker in a table-funded transaction does not close the loan with its own funds. Conversely, a mortgage broker using its own funds, or with a "warehouse" line of credit for which it is liable, is not viewed as a mortgage broker, but rather as a mortgage lender under the extant HUD interpretation. The salient criterion for this conclusion is the source of funds. HUD's interpretation, embodied in the current RESPA regulations, has given rise to some controversy, as set forth in Section C of this preamble. In light of this controversy, the Department has elected to revisit and invite public comment on these issues. However, the Department wishes to stress to all concerned parties, and particularly to Federal and State regulators, that the Department's willingness to reexamine the issue does not affect the provisions of the current rule as now effective, unless and until modified. All affected parties should continue to make full disclosure of all direct and indirect compensation, as required by the current RESPA rule.

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[1] The historical discussion in this proposed rule uses the term "mortgage broker" because this is the terminology that the Department used in addressing the issue in both the informal opinion and regulatory context. Section 3500.4(d) of the current RESPA rule withdrew all previous informal legal opinions, in particular a letter of August 14, 1992, issued by a former General Counsel of HUD, which dealt extensively with the disclosure of mortgage broker fees and the manner in which such fees should be disclosed on the HUD–1. This preamble uses the term "retail lender" whenver feasible in discussing the proposed rule and when the discussion does not clearly require the use of the term "mortgage broker."

C. Criticism of Existing Policy

(1) HUD's Interpretation of the RESPA Statute is Incorrect. Opponents argue that the Department's interpretation of RESPA's disclosure requirements ("all charges imposed upon the borrower * * *") to include indirect charges and payments from the borrower funds is too expansive and beyond the scope of the statute. They argue that all charges imposed on the borrower are fully included in direct charges. Indirect compensation need not be separately enumerated because it is already reflected in those direct charges. For example, the wholesale lender pays a retail lender fees from income received from the interest rate, points and other direct fees. Separate enumeration constitutes a redundancy, and combining direct and indirect costs overstates the total cost of the loan. Moreover, since the borrower is aware of the borrower's cost for the mortgage loan, no useful purpose is served by disclosing indirect charges reflected in points, interest rate, etc.

Second, opponents argue that a table-funded loan should be treated as a secondary market transaction. They maintain that such a transaction is the functional equivalent of a loan made by another type of lender, *e.g.*, a mortgage banker, who has an advance commitment to sell the loan shortly after settlement.

(2) HUD's Interpretation of the Statute Treats One Class of Participants Unfairly. First, mortgage brokers argue that an unlevel playing field is created, because mortgage bankers need not disclose the terms of a subsequent sale of the loan (although they do disclose origination fees and points, as well as other direct costs); mortgage brokers must effectively do so for table-funded transactions.

Second, by concluding that mortgage brokers engaged in table-funded transactions are not subject to the secondary market exemption, the Department has put an additional burden of scrutiny on these mortgage broker fees by making them subject to requirements of Section 8 of RESPA, which requires that all compensation be reasonably related to goods or services provided. The same scrutiny does not apply to the sales transactions of other originators that sell their loans to wholesale lenders following settlement.

(3) HUD's Interpretation of the RESPA Statute is Poor Public Policy. Opponents argue that retail lenders (particularly mortgage brokers) play an important role in making financing more available to "nontraditional" borrowers. They argue that HUD's interpretation, insofar as it places retail lenders at a competitive disadvantage, is not consistent with public policy designed to expand access to mortgage credit for such nontraditional borrowers.

Opponents also suggest that HUD's policy often requires retail lenders to spend added time and resources explaining the nature of indirect fees to a consumer. Occasionally, a consumer, or even an employee of a retail lender, will attempt to negotiate for a share of the fees paid to the retail lender.

D. Other Considerations and Concerns

(1) The fundamental premise underlying RESPA is that disclosure of information empowers the consumer to shop for better services and lower costs. All fees and charges, other than seller contributions, are ultimately borne by the borrower, whether by direct payments, such as points, or by indirect payments through a higher interest rate that the borrower pays over time. However, the seller also has a fundamental interest in this process, because the seller, particularly in difficult markets, is asked to absorb an increasingly greater part of the settlement costs. Knowledge of all fees, including those paid to a retail lender, may allow consumers to negotiate reductions in overall costs of the transaction.

(2) The Housing and Community Development Act of 1992 (Pub. L. 102–550; 106 Stat. 3672, at 3874) extended RESPA to junior lien transactions and confirmed the Department's position that refinancing transactions were covered by RESPA. As of August 9, 1994, the same principles of disclosure of indirect fees paid to mortgage brokers were extended to junior lien transactions. Refinancing and junior lien transactions are frequently advertised on a "no point" or "no cost" basis, which effectively means that all or much of the ancillary costs and charges of making the loan are contained in the interest rate or in a combination of the interest rate and the points. The consumer typically has a somewhat lesser interest in points and mortgage broker fees, in part because, unlike a purchase money transaction, points may only be amortized and deducted for Federal and State tax purposes over the life of the loan.

The high level of competitiveness through advertising and other publicity in the first mortgage industry, aided by the borrowers' interest in being able to make full IRS deductions, have helped assure that many of the costs of making a mortgage loan have been highly visible. However, while the Department has had extensive experience with purchase money and other first mortgage 1- to 4-family residential loans, because RESPA has only covered junior lien transactions since August 9, 1994, the Department has no comparable range of experience respecting junior lien transactions, which frequently are regulated and limited under different Federal or State laws and are funded by different institutions or branches of institutions. Therefore, the Department welcomes policy or legal commentary regarding the possibility of having one provision for first mortgage transactions and a second provision for junior lien transactions, or whether the Department should treat junior lien transactions made by retail lenders in the same manner as first lien purchase money and refinancing transactions.

(3) Under the statutory or judicial interpretations of the laws of several States, mortgage brokers are treated as agents of the consumer and are considered to have a fiduciary duty to disclose all fees that the mortgage broker obtains from the transaction. In Virginia, a case brought by the Virginia Poverty Law Center was settled when the major mortgage company agreed to restitution of certain fees collected by mortgage brokers, but without answering the fiduciary question. In California, where the courts have adopted the agency theory, the Department of Real Estate has implemented this requirement by creating a combined good faith estimate and mortgage broker disclosure form, thereby requiring all mortgage brokers (who close as many as 50 to 60 percent of all loans in the State) to disclose all direct, indirect, or anticipated mortgage broker compensation. Because RESPA defers to State laws that provide more benefits to the consumer, any new interpretation by the Department will arguably not affect State provisions that provide for such direct and indirect mortgage broker fee disclosures. Also, while the Department has been informed that several class action law suits have been filed regarding the issue of payment of "overages" to mortgage brokers, the Department is not a party to these suits and is unaware of any effect an interpretation by the Department might have on the actions.

E. Possible Results of This Rulemaking

As a result of this rulemaking, HUD could establish uniform disclosure requirements for all retail lenders, either: (1) to require the disclosure of all direct fees paid to retail lenders by borrowers *and* to require disclosure of all indirect fees paid to retail lenders by wholesale lenders; or (2) to require the disclosure of all direct fees paid to retail lenders by borrowers only. In addition to, or instead of, modifying the rules on disclosure of fees in loan transactions, as a result of this rulemaking HUD may redefine what constitutes a "secondary market transaction". As set forth above, such transactions are exempt from RESPA, including, *inter alia*, its disclosure requirements, its prohibitions against kickbacks and referral fees, and its requirement that all compensation be reasonably related to the goods or services provided. HUD could define a "secondary market transaction" as a loan transaction involving: (1) the sale of a loan by a retail lender to a wholesale lender occurring after settlement (the position in the current regulations); (2) the sale of a loan by a retail lender at any time—before, contemporaneous with, or after settlement; or (3) the sale of a loan on some other date, such as after the first accrual date for the loan following settlement; *i.e.*, the date the first payment is due from the borrower under the loan.

Combining the two options of requiring either disclosure of direct and indirect fees, or disclosure of direct fees only, with the three possibilities for defining the secondary market transaction results in six alternative approaches to regulating settlement transactions under RESPA. Each of these six alternatives would have a different effect on each of the major types of loan transactions described above, including: (1) Loan closing and subsequent assignment of the loan; (2) loan closing in the wholesale lender's name using the wholesale lender's funds; and (3) table-funding. None of these alternatives will affect a fourth type of transaction—a portfolio transaction in which a retail lender processes, funds, and closes a loan in its own name for its own portfolio and the lender then holds the loan (if the loan is sold at all, the sale occurs long after settlement). Each of these alternatives or combinations of requirements is discussed below, along with its effect on each type of loan transaction. The public is specifically invited to comment on these six alternatives, as well as other approaches.

Alternative 1: The regulations would require the disclosure of direct and indirect fees at settlement, and a loan sale is classified as a "secondary market transaction" only if it occurs after settlement. This is the approach in the current RESPA rule. Under this alternative, the direct fees for a portfolio lender at settlement must be disclosed and the settlement transaction is subject to RESPA, there are no indirect fees, and any subsequent loan sale by the lender when indirect fees are paid is a secondary market transaction not subject to RESPA. Likewise, the direct fees for a retail lender at settlement, in other transactions involving a loan closing and subsequent assignment of the loan, must be disclosed, but any loan sale after settlement is a secondary market transaction not subject to RESPA (any indirect fees need not be disclosed and RESPA's other restrictions do not apply). In a table-funded transaction, the advance of loan funds to the borrower and the sale of the loan by the retail lender to a wholesale lender are contemporaneous with settlement. Accordingly, all direct and indirect fees to the retail lender must be disclosed under RESPA and the entire transaction—the making of the loan to the borrower and the loan sale—are subject to RESPA. Similarly, in a settlement transaction in the name of a wholesale lender—where there is no sale following settlement—all direct and indirect fees to and from the retail lender and the wholesale lender must be disclosed, and the entire transaction is otherwise subject to RESPA.

Alternative 2: The regulations would require the disclosure of direct and indirect fees at settlement, and any loan sale—before, contemporaneous with, or after settlement—is classified as a "secondary market transaction". Under this alternative, although disclosure of direct and indirect fees would be required for RESPA-covered transactions, more loan sales would be treated as "secondary market transactions" exempt from RESPA's coverage. As in Alternative 1, the direct fees to a portfolio lender at settlement must be disclosed, but any subsequent loan sale would be a secondary market transaction exempt from RESPA's disclosure and other requirements. Also, as in Alternative 1, the direct fees for other transactions involving a loan closing and subsequent assignment of the loan would have to be disclosed, but a subsequent loan sale would be a secondary market transaction exempt from RESPA. Unlike Alternative 1, the sale at settlement of a table-funded loan would also become a secondary market transaction exempt from RESPA's requirements and prohibitions. Indirect fees would not have to be reported and would not be covered by RESPA. Under a settlement transaction in the name of a wholesale lender, however, all direct and indirect fees to and from the retail lender and the wholesale lender would require disclosure, because there is no loan sale or secondary market transaction involved.

Alternative 3: Regulations require the disclosure of direct and indirect fees at settlement, and only loan sales following the first accrual—the date the first payment is due from the borrower under the loan—are "secondary market transactions". Under this alternative, RESPA's disclosure and other requirements would cover more transactions; only loan sales transactions that occur relatively long after settlement would be regarded as secondary market transactions exempt from RESPA's requirements. Under this alternative, loan sales by a portfolio lender—coming, if at all, well after the first loan payment—would be regarded as secondary market transactions. RESPA's disclosure requirements and restrictions would apply to a loan closing and subsequent assignment of the loan, unless the loan is sold after the first accrual date (currently, in most transactions the loans are sold much earlier). RESPA's prohibitions would apply to table-funded transactions when the loan is sold at settlement and transactions when a loan is closed in the name of a wholesale lender and there is no subsequent loan sale.

Alternative 4: Regulations require the disclosure of only direct (not indirect) fees at settlement, and a loan sale is classified as a "secondary market transaction" only if it occurs after settlement. This alternative differs from the current rule in requiring the disclosure only of direct fees from borrowers to retail lenders. Under this alternative, because there is no requirement for the disclosure of any indirect fees to retail lenders for loan sales, the classification of such sales as secondary market transactions is only determinative of whether RESPA's requirements and prohibitions (other than disclosure) apply to the transaction. Under this alternative, direct fees to retail lenders must be disclosed in portfolio transactions, other transactions involving a loan closing and subsequent assignment of the loan, table-funding transactions, and transactions in which a retail lender closes in the name of a wholesale lender (including any direct fees to the wholesale lender). Because retail lenders in portfolio transactions and other transactions involving a loan closing and subsequent assignment of the loan sell their loans after settlement, such sales would be subject to the secondary market exemption and outside of RESPA. Because loan sales in table-funded transactions occur at and not after settlement, under this alternative, such sales transactions would not be secondary market transactions and would be subject to RESPA (although indirect fees need not be disclosed). Also, because a loan in the name of a wholesale lender occurs at settlement and there is no subsequent sale, the retail and wholesale lender's transaction would be subject to RESPA's prohibitions.

Alternative 5: Regulations require the disclosure of only direct (not indirect) fees at settlement, and a loan sale, at any time, is classified as a "secondary market transaction". Under this alternative, direct fees to retail lenders must be disclosed in portfolio transactions, other transactions involving a loan closing and subsequent assignment of the loan, and table-funding transactions, as well as transactions in which retail lenders close in the name of a wholesale lender. Any loan sales (following settlement) by portfolio lenders, or under another transaction involving a loan closing and subsequent assignment of the loan, would be secondary market transactions outside of RESPA's coverage. Under this alternative, a loan sale (at settlement) in a table-funded transaction would also be a secondary market transaction. However, settlement in the name of the wholesale lender not involving a sale, would not be subject to the exemption—RESPA would apply to the entire transaction although indirect fees need not be disclosed.

Alternative 6: Regulations require the disclosure of only direct (not indirect) fees at settlement, and a loan sale is classified as a "secondary market transaction" only if it occurs after the first accrual date. Under this alternative, direct fees to a retail lender must be disclosed in a portfolio transaction; a transaction involving a loan closing and subsequent assignment of the loan; a table-funding transaction; and a transaction in which a lender closes in the name of another lender. Although indirect fees need not be disclosed, RESPA's other requirements would cover more transactions, because fewer transactions would be regarded as secondary market transactions. The exception is a loan sale by a portfolio lender, which, when it occurs, would follow the first accrual date and would, therefore, still be regarded as a secondary market transaction. Loan sales transactions by retail lenders in other transactions involving a loan closing and subsequent assignment of the loan and in table-funded transactions would not be regarded as secondary market transactions and would be subject to RESPA. Settlement in the name of the wholesale lender, because it does not involve a sale, would not be subject to the exemption and RESPA's provisions would also apply to the entire transaction.

HUD seeks comments from the public on which, if any, of these alternative approaches should result from this rulemaking, or whether other approaches that would be permissible under RESPA would better serve the interests of the public and the intent of the statute.

II. Volume-Based Compensation

Volume-based compensation is a payment of money or any other thing of value, as defined by 24 CFR 3500.14(d), that a wholesale lender provides to a retail lender and is based on a number or dollar value of loans that the retail lender sells to the wholesale lender in a fixed period of time.

Volume compensation also encompasses volume discounts, in which a retail lender that is to provide a stated volume of loans is given a lower "start-rate" than the wholesale lender's advertised rate and the retail lender keeps a differential between the start rate and the advertised rate as part of its compensation at settlement.

The Department believes that volume-based compensation is a fairly widespread practice, particularly in California. As noted above, California regulatory requirements provide for disclosure to borrowers of this compensation (the amount, if known, or its potential for receipt by the mortgage broker). HUD has never enunciated a formal policy on whether volume-based compensation is permissible under RESPA. If the Department concludes that it is allowable, the issue also arises as to whether and how the payment should be disclosed on the Good Faith Estimate and the HUD–1 and HUD–1A.

A. Should Volume-Based Compensation be Permitted?

Critics argue that volume-based compensation may lead to loan-steering. Arguably the consumer's interest (in seeing a range of loan options) may be subordinated to the interest of the retail lender in receiving greater compensation from a particular wholesale lender.[2] Also, as discussed earlier in this preamble, Section 8 of RESPA prohibits payments in the absence of "goods or facilities furnished or for services actually performed." Therefore, awarding additional compensation for loans closed above a threshold number, where no added services are provided, could, standing alone, violate RESPA.

On the other hand, others argue that volume-based compensation may be an appropriate payment for goods or services actually performed. Wholesale lenders must exercise careful oversight over retail lenders, because decisions by the retail lender can expose the wholesale lender to default risk. For this reason, wholesale lenders typically perform some underwriting review for each mortgage. There also must be a good working relationship between the staffs of the retail and wholesale lender to ensure that important matters, such as document transfer and the handling of escrow funds, are accomplished smoothly and punctually. Establishing this working relationship and oversight involves some fixed costs to the wholesaler, which decrease on a per loan basis as the volume of business increases. The wholesale lender's variable costs may also decrease with increased volume, because the retail lender becomes more familiar with the requirements of the wholesale lender and the wholesale lender's staff is more familiar with the product and practices of the retail lender. Declining per-unit costs may justify volume compensation.

The consumer may benefit from volume-based compensation. In competitive markets, price concessions from wholesale lenders to high-volume retail lenders generally get passed along to the consumers. To obtain the volume of business needed to obtain price concessions and to benefit from volume-based compensation, the retail lender may pass along part of the high-volume benefits to the consumer, through lower points or other cost savings.

Critics argue that if the retail lender originates in its own name, the consumer is generally unaware that the retail lender has wholesale options available and may not even be consciously aware of the retail lender's intention to sell the mortgage. In this context, steering does not exist in the typical sense, that is, advising the consumer to choose lender A over lender B when lender B's prices are as good as, or better than, lender A's prices. It is also conceivable that wholesale lender X may not offer a loan product that wholesale lender Y offers, such as a 15-year adjustable rate mortgage (ARM). The retail lender may influence the consumer not to select the 15-year ARM so that the retail lender can increase its business with lender X, which offers volume compensation. However, most wholesale lenders offer a comparable range of products.

In addressing the policy issues of whether and how volume-based compensation should be permitted and, if so, disclosed, a commenter may offer legal arguments as to whether RESPA prohibits the practice.

B. Is Volume-Based Compensation Subject to Disclosure?

A retail lender required to make disclosure could argue that HUD has created an "uneven playing field" between mortgage bankers and other retail lenders, inasmuch as the issue of volume-based compensation is not relevant for mortgage banker transactions. (See Section II.C.(2) of this preamble.)

If HUD decides to allow this kind of compensation, practical questions are raised about how to disclose this information—what numbers should be disclosed? At the time of a given closing, a retail lender may not know whether a volume-based payment will be received or how much it will be. As noted above, the California standard Good Faith Estimate and Mortgage Broker Fee Disclosure form requires the disclosure of the compensation, if known, or an indication that a mortgage broker will receive additional compensation.

III. Other Compensation

In addition to volume-based compensation, retail lenders also receive compensation from wholesale lenders under a variety of names, the most common of which are "servicing release premiums" and "yield spread premiums" (which are cited by name in the current RESPA regulation as compensation to be disclosed; 24 CFR part 3500, Appendix A, Fact Situation 12.) Such compensation is also included in "rate differentials," "indirect payments," or "back-funded payments" (occasionally called "back-end points") in Appendix A instructions for filling out the HUD–1A. A "yield spread premium" or "yield spread differential" or "overage" means any compensation paid to or retained by a retail lender based upon the difference in the interest rate provided in the sold loan and some other benchmark interest rate. It compensates the retail lender for a loan priced at a rate higher than the rate at which the wholesale lender would otherwise have been willing to accept the loan. A "servicing release premium" is any compensation paid to a retail lender for the release of rights to service the loan.

The names of the fees (those cited in the previous paragraph may vary) are not definitive or dispositive. The concerns of the Department regarding such forms of compensation are similar to those expressed regarding volume-based compensation; that is, do those fees constitute kickbacks or fee-splitting for delivery of the loans. Commenters are invited to address: (a) whether any such types of compensation should be permissible under RESPA; and (b) what would be the effect of requiring disclosure of such payments.

IV. Proposed Amendments to 24 CFR Part 3500

In this proposed rulemaking HUD is requesting comment on several questions that may lead to new regulatory language in 24 CFR part 3500. For example, several new definitions are proposed for inclusion in § 3500.2. In addition, § 3500.14(g) would be revised to address explicitly the applicability of RESPA to volume-based compensation, and Appendix B, Fact Situation 12, could be modified. HUD may also need to modify the HUD–1 and HUD–1A instructions regarding payments to mortgage brokers. If new definitions are adopted, other definitions may need to be modified for consistency. While the Department has set forth illustrative changes in the definitions, it has not attempted to provide alternative regulatory text for every possible amendment that might result from this rulemaking. Instead commenters are invited to comment on the questions raised in this preamble and provide input on the direction they believe the Department should take on these matters.

If a determination is made that regulatory changes should be developed through a negotiated rulemaking process, the Department expects to publish another proposed rule at the conclusion of the negotiation process and will provide the negotiating committee with the comments submitted in response to today's proposed rule. If negotiated rulemaking is not used, the Department will formulate its final rule after reviewing the comments received in response to this proposed rule.

V. Other Relevant Issues

(a) Recent Legislation. In 1994 Congress enacted the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160, September 23, 1994) (the Act), which includes, as Subtitle B, the Homeownership and Equity Protection Act of 1994. Subtitle B requires the Federal Reserve Board to require additional levels of disclosure in certain circumstances, and requires for its computations inclusion of all compensation paid to mortgage brokers, including both direct and indirect payments, in order to determine if the loan will be a "high-rate mortgage." (See section 152(a)(4)(B) of the Act.) If HUD ultimately determines that indirect fees need not be disclosed in a final rule, the Federal Reserve Board (which relies on information contained in HUD's Good Faith Estimate and the HUD–1 or HUD–1A forms) might have to require its own cost disclosure form in order to determine coverage. Accordingly, HUD plans to invite staff of the Board to comment on the proposed rule. The public is also welcome to address this matter.

(b) Impact of Regulation on State Laws. Whatever HUD determines in final rulemaking, it is possible that a State may have more stringent disclosure requirements than HUD. Under RESPA, State laws that provide greater protection to the consumer would prevail and would not be preempted by HUD requirements. Of course, a salient issue embraced within this proposed rulemaking is whether more disclosure is, in fact, beneficial to consumers. In addressing the alternative proposals in this rulemaking, a basic question for commenters is whether disclosure of the terms of a mortgage loan (e.g., interest rates and points) alone is sufficient consumer information.

VI. Other Matters

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Room

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[2] Retail lenders who fail to present a full range of loan options to all consumers may risk charges of discriminatory treatment on a prohibited basis, which is unlawful under the Fair Housing Act.

10276, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule does not have significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of this proposed rule with regard to small entities, nor are there any unusual procedures that would need to be complied with by small entities. The requirements of the Real Estate Settlement Procedures Act must be uniformly adhered to by all lenders and servicers.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (U.S.C. 4332). The finding is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. Promulgation of this rule clarifies the coverage of the applicable regulatory requirements.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 24 CFR part 3500 is proposed to be amended to address the regulatory questions raised in the preamble and as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for Part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*

2. Section 3500.2 is amended by adding in alphabetical order definitions for "Direct fee", "Indirect fee", "Retail lender", "Secondary market transaction", "Volume-based compensation", and "Wholesale lender", to read as follows:

§ 3500.2 Definitions.

* * * * *

Direct fee means any payment made by a borrower to a lender or any other settlement service provider or to a third party, to be transmitted to a lender or any other settlement service provider, in connection with a settlement of a federally related mortgage loan.

* * * * *

Indirect fee means any payment made by a wholesale lender to a retail lender for services rendered in connection with a federally related mortgage loan origination. [Indirect loan fees are not subject to disclosure on the Good Faith Estimate or the HUD–1 or HUD–1A.]

* * * * *

Retail lender means a person who originates and sells a federally related mortgage loan to a wholesale lender.

Secondary market transaction means a sale of a federally related mortgage loan. A secondary market transaction [as defined by one of the alternatives set out in the preamble of this proposed rule] [is/is not] covered by RESPA and this part, except as set forth in Section 6 of RESPA (12 U.S.C. 2605) and § 3500.21.

* * * * *

Volume-based loan compensation means any added payment or additional thing of value provided by a wholesale lender to a retail lender to a retail lender based on the number or dollar value of loans originated.

Wholesale lender means a person who purchases a mortgage loan from a retail lender.

Dated: August 11, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner

[FR Doc. 95–22691 Filed 9–12–95; 8:45 am]

BILLING CODE 4210-27-P

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federal register

Wednesday
September 13, 1995

Part IV

The President

Presidential Determination No. 95–41 of September 8, 1995—Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Federal Register
Vol. 60, No. 177
Wednesday, September 13, 1995

Presidential Documents

Title 3—

The President

Presidential Determination No. 95–41 of September 8, 1995

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination made by me on September 8, 1994 (59 FR 47229), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1995.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1996, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505; and

(3) the Cuban Assets Control Regulations, 31 CFR Part 515.

The Secretary of the Treasury is directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 8, 1995.

[FR Doc. 95–22934
Filed 9–12–95; 8:45 am]
Billing code 4810–31–M

federal register

Wednesday
September 13, 1995

Part V

The President

Proclamation 6821—To Establish a Tariff-Rate Quota on Certain Tobacco, Eliminate Tariffs on Certain Other Tobacco, and for Other Purposes

Federal Register
Vol. 60, No. 177
Wednesday, September 13, 1995

Presidential Documents

Title 3—

The President

Proclamation 6821 of September 12, 1995

To Establish a Tariff-Rate Quota on Certain Tobacco, Eliminate Tariffs on Certain Other Tobacco, and for Other Purposes

By the President of the United States of America

A Proclamation

1. (a) On April 15, 1994, I entered into trade agreements resulting from the Uruguay Round of multilateral trade negotiations ("the Uruguay Round Agreements"), including the Agreement Establishing the World Trade Organization ("the WTO Agreement") and the General Agreement on Tariffs and Trade 1994 ("the GATT 1994"), annexed to the WTO Agreement. In section 101(a) of the Uruguay Round Agreements Act ("the URAA") (Public Law 103–465, 108 Stat. 4814)(19 U.S.C. 3511(a)), the United States approved the Uruguay Round Agreements. These agreements entered into force for the United States on January 1, 1995.

(b) Section 125(c) of the Trade Act of 1974 ("the 1974 Act")(19 U.S.C. 2135(c)) provides that whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to the 1974 Act, modifies any obligation with respect to the trade of any foreign country or instrumentality, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States. Section 421 of the Uruguay Round Agreements Act (19 U.S.C. 2135 note) authorizes the President, pursuant to the 1974 Act, to proclaim an increase in any existing duty on certain tobacco to a rate no more than 50 percent above the rate that was set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or no more than 350 percent ad valorem above the rate existing on January 1, 1975, whichever is higher.

(c) Section 1105(a) of the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act")(19 U.S.C. 2904(a)) provides that for purposes of applying section 125 of the 1974 Act, any trade agreement entered into under section 1102 of the 1988 Act (19 U.S.C. 2902) shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the 1974 Act (19 U.S.C. 2111 and 2112), and any proclamation issued pursuant to such a trade agreement shall be treated as a proclamation issued pursuant to a trade agreement entered into under section 102 of the 1974 Act.

(d) The United States, acting pursuant to its rights and obligations under the Uruguay Round Agreements, in particular Article XXVIII of the GATT 1994, is modifying its obligations with respect to the tariff treatment of certain tobacco to establish a tariff-rate quota for imports of such tobacco.

(e) Accordingly, I have determined that it is appropriate to proclaim the tariff modifications set forth in Annex I to this proclamation in order to exercise the rights and fulfill the obligations of the United States under the Uruguay Round Agreements. These modifications would, among other things, establish a tariff-rate quota for imports of certain tobacco.

2. (a) Section 423 of the URAA (19 U.S.C. 3621) authorizes the President to proclaim the reduction or elimination of any duty with respect to cigar

binder and filler tobacco, wrapper tobacco, or oriental tobacco set forth in Schedule XX—United States of America, annexed to the Marrakesh Protocol to the GATT 1994 ("Schedule XX").

(b) I have decided to proclaim the elimination of the duties on cigar binder and filler tobacco, wrapper tobacco, and oriental tobacco, as set forth in Annex I to this proclamation.

3. (a) Section 422(c) of the URAA (7 U.S.C. 1445 note) authorizes the President to waive the application to imported tobacco of section 106(g) of the Agricultural Act of 1949 (7 U.S.C. 1445(g)) if the President determines that the waiver is necessary or appropriate pursuant to an international agreement entered into by the United States.

(b) I have determined that it is necessary or appropriate pursuant to the Uruguay Round Agreements to waive the application of section 106(g) of the Agricultural Act of 1949 to imports of cigar tobacco. This waiver shall take effect on the effective date of this proclamation.

4. Presidential Proclamation No. 6641 of December 15, 1993, which implemented the North American Free Trade Agreement ("the NAFTA") with respect to the United States, established a tariff heading in chapter 98 of the Harmonized Tariff Schedules of the United States ("the HTS") for certain textile and apparel goods assembled in Mexico from fabric wholly formed and cut in the United States. This tariff heading, 9802.00.90, inadvertently narrowed the scope of the agreed duty-free treatment, as set forth in Appendix 2.4 to Annex 300–B to the NAFTA. I have decided that it is necessary and appropriate to modify heading 9802.00.90 to the HTS to align it with the provisions of the NAFTA, pursuant to section 201(a)(1) of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057)(19 U.S.C. 3331(a)(1)).

5. (a) The March 9, 1994, Memorandum of Understanding on the Results of the Uruguay Round Negotiations on Agriculture Between the United States of America and Uruguay and the March 24, 1994, Memorandum of Understanding on the Results of the Uruguay Round Market Access Negotiations on Agriculture Between the United States of America and Argentina ("the MOUs") were submitted to the Congress along with the Uruguay Round Agreements. Each MOU provides that, once the appropriate Department of Agriculture authorities approve the country to ship fresh, chilled or frozen beef to the United States, the in-quota quantity of the United States tariff-rate quota for beef will be increased by 20,000 metric tons, and that increase will be allocated to that country.

(b) Section 404(d)(4) of the URAA (19 U.S.C. 3601(d)(4)) authorizes the President to proclaim an increase in the in-quota quantity of the tariff-rate quota for beef if the President determines that an increase is necessary to implement either MOU.

(c) Accordingly, pursuant to section 404(d)(4) of the URAA, I have determined that it is necessary to proclaim an increase in the in-quota quantity of the tariff-rate quota for beef as set forth in Annex II to this proclamation, to be effective for each country upon the dates specified therein.

6. Presidential Proclamation No. 6763 of December 23, 1994, implemented the Uruguay Round Agreements, including Schedule XX, with respect to the United States and incorporated in the HTS tariff modifications necessary and appropriate to carry out the Uruguay Round Agreements. Certain technical errors, including inadvertent omissions and typographical errors, were made in that proclamation. I have decided that, in order to reflect accurately the intended tariff treatment provided for in the Uruguay Round Agreements, it is necessary to modify certain provisions of the HTS, as set forth in Annex II to this proclamation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 301 of title 3, United States Code, section 125 of the 1974 Act (19 U.S.C. 2135), sections 421, 422(c) and 423 of the URAA (19 U.S.C. 2135 note, 7 U.S.C. 1445 note, and 19 U.S.C. 3621, respectively), and section 604 of the 1974 Act (19 U.S.C. 2483), do hereby proclaim:

(1) In order to exercise the rights and fulfill the obligations of the United States under the WTO Agreement, the HTS is modified as set forth in Annex I to this proclamation.

(2) The provisions of Annex I to this proclamation shall take effect with respect to articles entered, or withdrawn from warehouse, for consumption on or after the dates specified in such annex.

(3) Section 106(g) of the Agricultural Act of 1949 (7 U.S.C. 1445(g)) is waived with respect to imports of cigar tobacco entered, or withdrawn from warehouse, for consumption on or after the effective date of this proclamation.

(4) (a) In order to correct certain technical errors, to modify heading 9802.00.90, and to implement certain determinations concerning tariff-rate quotas for Argentina and Uruguay, the HTS is modified as set forth in Annex II to this proclamation.

(b) Annex I to Presidential Proclamation No. 6343 of September 28, 1991, is amended as set forth in Annex II to this proclamation.

(c) The modifications made by Annex II to this proclamation shall be effective with respect to goods entered or withdrawn from warehouse for consumption on or after the dates specified in such annex.

(5) The United States Trade Representative and the Secretary of the Treasury are authorized to exercise my authority under the statutes cited in this proclamation to perform certain functions to implement this proclamation, as assigned to them in Annex I to this proclamation.

(6) All provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(7) This proclamation is effective on September 13, 1995.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of September, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

Billing code 3195–01–P

Annex I

Section A. Modifications to the Harmonized Tariff Schedule of the United States ("HTS").

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2", respectively.

Effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after the effective date of this proclamation.

(1)(a). The additional U.S. notes to chapter 24 are modified by inserting the following new additional U.S. notes in numerical sequence:

"5. (a) The aggregate quantity of tobacco entered, or withdrawn from warehouse, for consumption under subheadings 2401.10.63, 2401.20.33, 2401.20.85, 2401.30.33, 2401.30.35, 2401.30.37, 2403.10.60, 2403.91.45 and 2403.99.60 during the period from September 13 in any year to the following September 12, inclusive, shall not exceed the quantities specified below.

	Quantity (metric tons)
Argentina	12,000
Brazil	80,200
Chile	2,750
European Community (aggregate of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom)	10,000
Guatemala	8,500
Malawi	12,000
Philippines	3,000
Thailand	7,000
Zimbabwe	12,000
Other countries or areas	3,000

(b) Products of Canada, Israel or Mexico shall not be permitted or included under the aforementioned quantitative limitation and no such articles shall be classifiable in the subheadings of this note.

(c) The quantitative limitations under this note are subject to regulations as may be issued by the United States Trade Representative or its designated agency.

(d) Notwithstanding any other provision of this note, imports of tobacco, other than the product of Canada, Israel or Mexico, shall be eligible for the rates of duty provided in, and shall be classified in, the subheadings specified in paragraph (a) of this note, provided that the articles were (1) exported from the country of origin prior to September 13, 1995, and (2) imported directly from the country of origin into the customs territory of the United States, accompanied by such documentation as may be determined necessary by the Secretary of Treasury. For the purposes of this paragraph, entries of tobacco withdrawn from warehouse for consumption or entries of tobacco from foreign-trade zones shall not be determined to be imported directly from the country of origin into the customs territory of the United States.

6. For the purposes of this chapter, the term "prepared for marketing to the ultimate consumer in the identical form and package in which imported" means that the product is imported in packaging of such sizes and labeling as to be readily identifiable as being intended for retail sale to the ultimate consumer without any alteration in the form of the product or its packaging."

(b) Effective September 13, 1996, additional U.S. note 5 to chapter 24 of the HTS, as added by this paragraph, is modified by deleting paragraph (d) of such note.

Annex I (continued)
-2-

Section A. (con.)

(2). Subheadings 2401.10.40, 2401.10.60, 2401.10.70 and 2401.10.90, the superior text immediately preceding subheading 2401.10.40 and the superior immediately preceding subheading 2401.10.70 are superseded by and the following provisions are inserted in numerical sequence:

	[Unmanufactured tobacco...:]			
	[Tobacco, not stemmed/stripped:]			
	[Not containing wrapper tobacco,...]			
	"Oriental or Turkish type:			
2401.10.44	Cigarette leaf........................	Free		77.2¢/kg
2401.10.48	Other................................	Free		85¢/kg
2401.10.53	Cigar binder and filler.....................	Free		85¢/kg
	Other:			
	Flue-cured, burley and other light air-cured leaf:			
2401.10.61	To be used in products other than cigarettes.................	27.4¢/kg	Free (E,IL,J) 8.4¢/kg (CA) 22.4¢/kg (MX)	77.2¢/kg
	Other:			
2401.10.63	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.................	27.4¢/kg	Free (E,J)	77.2¢/kg
2401.10.65	Other......................	350%	Free (IL) 8.4¢/kg (CA) 22.4¢/kg (MX)	350%
2401.10.95	Other................................	37.5¢/kg	Free (A,E,IL, J,MX) 11.5¢/kg (CA)	85¢/kg"

(3)(a). Subheadings 2401.20.30, 2401.20.45 and 2401.20.55 and the superior text immediately preceding subheading 2401.20.45 are superseded and the following provisions are inserted in numerical sequence:

	[Unmanufactured tobacco...:]			
	[Tobacco, partly or wholly stemmed/stripped:]			
	[Not threshed or similarly...]			
	[Other:]			
	[Not containing wrapper tobacco, or not containing...:]			
	"Oriental or Turkish type:			
2401.20.23	Cigarette leaf............	Free		$1.21/kg
2401.20.26	Other......................	Free		$1.15/kg
2401.20.29	Cigar binder and filler.........	Free		$1.15/kg
	Other:			
	Flue-cured, burley and other light air-cured leaf:			
2401.20.31	To be used in products other than cigarettes............	46.9¢/kg	Free (E,IL,J) 14.4¢/kg (CA) 38.4¢/kg (MX)	$1.21/kg
	Other:			
2401.20.33	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions...	46.9¢/kg	Free (E,J)	$1.21/kg
2401.20.35	Other............	350%	Free (IL) 14.4¢/kg (CA) 38.4¢/kg (MX)	350%
2401.20.57	Other.......................	45.5¢/kg	Free (A*,E,IL, J,MX) 14¢/kg (CA)	$1.15/kg"

Annex I (continued)
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Section A. (con.)

(3)(b). Conforming change: General note 4(d) is modified by deleting "2401.20.45 Indonesia" and "2401.20.55 Indonesia" and by inserting "2401.20.57 Indonesia" in numerical sequence.

(4). Subheading 2401.20.80 is superseded by:

	[Unmanufactured tobacco...:]			
	[Tobacco, partly or wholly stemmed/stripped:]			
	[Threshed or similarly processed:]			
	"Other:			
2401.20.75	Oriental or Turkish type............	Free		$1.10/kg
	Other:			
2401.20.83	To be used in products other than cigarettes.................	43¢/kg	Free (E,IL,J) 13.2¢/kg (CA) 35.2¢/kg (MX)	$1.10/kg
	Other:			
2401.20.85	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions................	43¢/kg	Free (E,J)	$1.10/kg
2401.20.87	Other......................	350%	Free (IL) 13.2¢/kg (CA) 35.2¢/kg (MX)	350%"

(5). Subheadings 2401.30.30, 2401.30.60 and 2401.30.90 and the superior text immediately preceding subheading 2401.30.30 are superseded and the following provisions are inserted in numerical sequence:

	[Unmanufactured tobacco...:]			
	[Tobacco refuse:]			
	"From cigar leaf:			
	Tobacco stems:			
2401.30.03	Not cut, not ground and not pulverized..........................	Free		Free
2401.30.06	Cut, ground or pulverized...........	Free		$1.21/kg
2401.30.09	Other..................................	Free		77.2¢/kg
	From Oriental or Turkish type tobacco:			
	Tobacco stems:			
2401.30.13	Not cut, not ground and not pulverized..........................	Free		Free
2401.30.16	Cut, ground or pulverized...........	Free		$1.21/kg
2401.30.19	Other..................................	Free		77.2¢/kg
	Other:			
	To be used in products other than cigarettes:			
	Tobacco stems:			
2401.30.23	Not cut, not ground and not pulverized......................	Free		Free
2401.30.25	Cut, ground or pulverized......	$1.17/kg	Free (E,IL,J) 36.3¢/kg (CA) 96.8¢/kg (MX)	$1.21/kg
2401.30.27	Other................................	34.3¢/kg	Free (E,IL,J) 10.6¢/kg (CA) 28.4¢/kg (MX)	77.2¢/kg

Annex I (continued)
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Section A. (con.)*

(5). (con.):

	[Unmanufactured tobacco...:]			
	[Tobacco refuse:]			
	Other (con.):			
	Other:			
	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions:			
	Tobacco stems:			
2401.30.33	Not cut, not ground and not pulverized.............	Free		Free
2401.30.35	Cut, ground or pulverized.................	$1.17/kg	Free (E,J)	$1.21/kg
2401.30.37	Other..........................	34.3¢/kg	Free (E,J)	77.2¢/kg
2401.30.70	Other...............................	350%	Free (CA,IL, MX)	350%"

(6). Subheading 2403.10.00 is superseded by:

	[Other manufactured tobacco and...:]			
"2403.10	Smoking tobacco, whether or not containing tobacco substitutes in any proportion:			
2403.10.20	Prepared for marketing to the ultimate consumer in the identical form and package in which imported..............................	37.6¢/kg	Free (E,IL,J) 11.5¢/kg (CA) 30.8¢/kg (MX)	$1.21/kg
	Other:			
2403.10.30	To be used in products other than cigarettes................................	37.6¢/kg	Free (E,IL,J) 11.5¢/kg (CA) 30.8¢/kg (MX)	$1.21/kg
	Other:			
2403.10.60	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions...........	37.6¢/kg	Free (E,J)	$1.21/kg
2403.10.90	Other................................	350%	Free (IL) 11.5¢/kg (CA) 30.8¢/kg (MX)	350%"

(7)(a). Subheading 2403.91.40 is superseded by:

	[Other manufactured tobacco and...:]			
	[Other:]			
	["Homogenized" or...:]			
	"Other:			
2403.91.43	To be used in products other than cigarettes............................	40.1¢/kg	Free (E,IL,J) 13.2¢/kg (CA) 35.2¢/kg (MX)	$1.10/kg
	Other:			
2403.91.45	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions........................	40.1¢/kg	Free (E,J)	$1.10/kg
2403.91.47	Other............................	350%	Free (IL) 13.2¢/kg (CA) 35.2¢/kg (MX)	350%"

(b). Conforming change: The article description for subheading 9905.24.10 is modified by deleting "2403.91.40" and inserting "2403.91.43" in lieu thereof.

Annex I (continued)
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Section A. (con.)

(8). Subheading 2403.99.00 is superseded by:

	[Other manufactured tobacco and...:]			
	[Other:]			
"2403.99	Other:			
2403.99.20	Prepared for marketing to the ultimate consumer in the identical form and package in which imported.................	36.3¢/kg	Free (E,IL,J) 11.5¢/kg (CA) 30.8¢/kg (MX)	$1.21/kg
	Other:			
2403.99.30	To be used in products other than cigarettes...........................	36.3¢/kg	Free (E,IL,J) 11.5¢/kg (CA) 30.8¢/kg (MX)	$1.21/kg
	Other:			
2403.99.60	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.........................	36.3¢/kg	Free (E,J)	$1.21/kg
2403.99.90	Other...........................	350%	Free (IL) 11.5¢/kg (CA) 30.8¢/kg (MX)	350%"

Section B. Implementation of modifications in the Rates of Duty 1 General subcolumn of the HTS effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after September 13, 1995. For the following subheadings, the Rates of Duty 1 General subcolumn is modified by deleting the rate of duty appearing in such subcolumn and inserting the rate of duty "Free" in lieu thereof:

2401.10.21
2401.10.29
2401.20.20
2401.20.60

Section C. Effective September 13, 1995, general note 4(d) is modified by deleting "2401.10.21 Dominican Republic" and "2401.10.29 Honduras".

Section D. Modifications of the quantitative limitations provided for in additional U.S. note 5 to chapter 24.

On September 13 of each of the years in the following table, additional U.S. note 5 to chapter 24 shall be modified by deleting for such countries as listed below the country quantitative limitation in such note and inserting the appropriate quantitative limitation listed in this table for such year in lieu thereof:

	1996	1997	1998	1999
Additional U.S. note 5 to chapter 24:				
Argentina	12,000	12,000	11,000	10,750
Guatemala	8,875	9,250	9,625	10,000

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Section E. Staged rate reductions in the Rates of Duty 1 General subcolumn of the HTS for subheadings modified in section A of Annex I to this proclamation.

For the following subheadings, the Rates of Duty 1 General subcolumn shall be modified on January 1 of each year by deleting the existing rate of duty and inserting in lieu thereof the rate of duty indicated in the table below for such year.

HTS Subheading	1996	1997	1998	1999	2000
2401.10.61	26.7¢/kg	26¢/kg	25.3¢/kg	24.6¢/kg	23.9¢/kg
2401.10.63	26.7¢/kg	26¢/kg	25.3¢/kg	24.6¢/kg	23.9¢/kg
2401.10.95	36.6¢/kg	35.6¢/kg	34.6¢/kg	33.7¢/kg	32.7¢/kg
2401.20.31	45.7¢/kg	44.5¢/kg	43.3¢/kg	42.1¢/kg	40.9¢/kg
2401.20.33	45.7¢/kg	44.5¢/kg	43.3¢/kg	42.1¢/kg	40.9¢/kg
2401.20.57	44.4¢/kg	43.2¢/kg	42¢/kg	40.9¢/kg	39.7¢/kg
2401.20.83	41.9¢/kg	40.8¢/kg	39.7¢/kg	38.6¢/kg	37.5¢/kg
2401.20.85	41.9¢/kg	40.8¢/kg	39.7¢/kg	38.6¢/kg	37.5¢/kg
2401.30.25	$1.13/kg	$1.09/kg	$1.05/kg	$1.01/kg	97¢/kg
2401.30.27	33.1¢/kg	32¢/kg	30.8¢/kg	29.6¢/kg	28.4¢/kg
2401.30.35	$1.13/kg	$1.09/kg	$1.05/kg	$1.01/kg	97¢/kg
2401.30.37	33.1¢/kg	32¢/kg	30.8¢/kg	29.6¢/kg	28.4¢/kg
2403.10.20	36.7¢/kg	35.7¢/kg	34.7¢/kg	33.8¢/kg	32.8¢/kg
2403.10.30	36.7¢/kg	35.7¢/kg	34.7¢/kg	33.8¢/kg	32.8¢/kg
2403.10.60	36.7¢/kg	35.7¢/kg	34.7¢/kg	33.8¢/kg	32.8¢/kg
2403.91.43	36¢/kg	32¢/kg	28¢/kg	23.9¢/kg	19.9¢/kg
2403.91.45	36¢/kg	32¢/kg	28¢/kg	23.9¢/kg	19.9¢/kg
2403.99.20	34¢/kg	31.7¢/kg	29.3¢/kg	27¢/kg	24.7¢/kg
2403.99.30	34¢/kg	31.7¢/kg	29.3¢/kg	27¢/kg	24.7¢/kg
2403.99.60	34¢/kg	31.7¢/kg	29.3¢/kg	27¢/kg	24.7¢/kg

Section F. Continuation of staged rate reductions in the Rates of Duty 1 Special subcolumn of the HTS for subheadings modified in section A of Annex I to this proclamation for goods of Canada under terms of general note 12 to the HTS.

For the following subheadings, the Rates of Duty 1 Special subcolumn shall be modified on January 1 of each year by deleting the existing rate of duty that is followed by the symbol "CA" and inserting in lieu thereof the rate of duty indicated in the table below for such year.

HTS Subheading	1996	1997	1998
2401.10.61	5.6¢/kg	2.8¢/kg	Free
2401.10.65	5.6¢/kg	2.8¢/kg	Free
2401.10.95	7.7¢/kg	3.8¢/kg	Free
2401.20.31	9.6¢/kg	4.8¢/kg	Free
2401.20.35	9.6¢/kg	4.8¢/kg	Free
2401.20.57	9.3¢/kg	4.6¢/kg	Free
2401.20.83	8.8¢/kg	4.4¢/kg	Free
2401.20.87	8.8¢/kg	4.4¢/kg	Free
2401.30.25	24.2¢/kg	12.1¢/kg	Free
2401.30.27	7.1¢/kg	3.5¢/kg	Free

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Section F. (Con.)

HTS Subheading	1996	1997	1998
2403.10.20	7.7¢/kg	3.8¢/kg	Free
2403.10.30	7.7¢/kg	3.8¢/kg	Free
2403.10.90	7.7¢/kg	3.8¢/kg	Free
2403.91.43	8.8¢/kg	4.4¢/kg	Free
2403.91.47	8.8¢/kg	4.4¢/kg	Free
2403.99.20	7.7¢/kg	3.8¢/kg	Free
2403.99.30	7.7¢/kg	3.8¢/kg	Free
2403.99.90	7.7¢/kg	3.8¢/kg	Free

Section G. Continuation of staged rate reductions in the Rates of Duty 1 Special subcolumn of the HTS for subheadings modified in section A of Annex I to this proclamation for goods of Mexico under terms of general note 12 to the HTS.

For the following subheadings, the Rates of Duty 1 Special subcolumn shall be modified on January 1 of each year by deleting the existing rate of duty that is followed by the symbol "MX" and inserting in lieu thereof the rate of duty indicated in the table below for such year.

HTS Subheading	1996	1997	1998	1999	2000	2001	2002	2003
2401.10.61	19.6¢/kg	16.8¢/kg	14¢/kg	11.2¢/kg	8.4¢/kg	5.6¢/kg	2.8¢/kg	Free
2401.10.65	19.6¢/kg	16.8¢/kg	14¢/kg	11.2¢/kg	8.4¢/kg	5.6¢/kg	2.8¢/kg	Free
2401.20.31	33.6¢/kg	28.8¢/kg	24¢/kg	19.2¢/kg	14.4¢/kg	9.6¢/kg	4.8¢/kg	Free
2401.20.35	33.6¢/kg	28.8¢/kg	24¢/kg	19.2¢/kg	14.4¢/kg	9.6¢/kg	4.8¢/kg	Free
2401.20.83	30.8¢/kg	26.4¢/kg	22¢/kg	17.6¢/kg	13.2¢/kg	8.8¢/kg	4.4¢/kg	Free
2401.20.87	30.8¢/kg	26.4¢/kg	22¢/kg	17.6¢/kg	13.2¢/kg	8.8¢/kg	4.4¢/kg	Free
2401.30.25	84.7¢/kg	72.6¢/kg	60.5¢/kg	48.4¢/kg	36.3¢/kg	24.2¢/kg	12.1¢/kg	Free
2401.30.27	24.8¢/kg	21.3¢/kg	17.7¢/kg	14.2¢/kg	10.6¢/kg	7.1¢/kg	3.5¢/kg	Free
2403.10.20	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.10.30	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.10.90	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.91.43	30.8¢/kg	26.4¢/kg	22¢/kg	17.6¢/kg	13.2¢/kg	8.8¢/kg	4.4¢/kg	Free
2403.91.47	30.8¢/kg	26.4¢/kg	22¢/kg	17.6¢/kg	13.2¢/kg	8.8¢/kg	4.4¢/kg	Free
2403.99.20	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.99.30	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.99.90	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free

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Annex II

Modifications to the Harmonized Tariff Schedule of the United States (HTS)

Section A. Effective at 12:01 a.m. on January 1, 1994, heading 9802.00.90 is modified by deleting the word "which" appearing after "United States," and by inserting after "United States," the expression "provided that such fabric components, in whole or in part,".

Section B. Effective with respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1995.

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2", respectively.

(1) The Rates of Duty 1 Special subcolumn for subheading 2106.90.46 is modified by deleting the rate of duty "35.517¢/kg" preceding the symbol "MX" in parentheses and inserting in lieu thereof "35.517¢/kg of total sugars".

(2) The article description for subheading 2914.30.10 is modified by deleting "1-(2-naphthalenyl)ethanone; and" and inserting "1-(2-Naphthalenyl)ethanone; and" in lieu thereof.

(3) The article description for subheading 2924.21.12 is modified by deleting "1-(2-methylcyclohexyl)-3-phenylurea" and inserting "1-(2-Methylcyclohexyl)-3-phenylurea" in lieu thereof.

(4) The Rates of Duty 1 Special subcolumn for subheading 2924.21.16 is modified by inserting, in alphabetical order, the symbol "K" in the parentheses following the "Free" rate of duty in such subcolumn.

(5) The article description for subheading 2924.29.28 is modified by deleting "N-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide; and" and inserting "N-[[(4-Chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide; and" in lieu thereof.

(6) The article description for subheading 2925.19.70 is modified by deleting "N,N'-Ethylenebis(5,6-dibromo-2,3-norbornanedicarboximide" and inserting "N,N'-Ethylenebis(5,6-dibromo-2,3-norbornanedicarboximide)" in lieu thereof.

(7) The article description for subheading 2934.90.70 is modified by deleting "2-Methyl-4-isothiazolin-3-one;" from such description and by inserting in alphabetical sequence "2-Methyl-4-isothiazolin-3-one;" in the article description for subheading 2934.10.70.

(8) Subheading 2936.29.90 is superseded and the following provisions are inserted in numerical sequence:

	[Provitamins and vitamins, natural...:]			
	[Vitamins and their derivatives, unmixed:]			
	[Other vitamins and their...:]			
"2936.29.15	Niacin and niacinamide............	Free		25%"
	[Other:]			
"2936.29.50	Other........................	Free		25%"

(9) The Rates of Duty 1 Special subcolumn for subheading 3926.90.65 is modified by deleting the rate of duty "3.3%" preceding the symbol "MX" in parentheses and inserting in lieu thereof "2.5%".

Annex II (continued)
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Section B. (con.)

(10) Additional U.S. note 9 to chapter 52 is modified by deleting the sentence "Imports from countries or areas who are not members of the World Trade Organization shall not be permitted or included in the quantitative limitations set forth in this note." and inserting in lieu thereof "Other than as provided for in the country allocations above, imports from countries or areas who are not members of the World Trade Organization shall not be permitted or included in the quantitative limitations set forth in this note.".

(11) The Rates of Duty 1 Special subcolumn for subheading 5402.41.90 is modified by deleting the rate of duty "8%" preceding the symbol "MX" in parentheses and inserting in lieu thereof "7.2%".

(12) The superior text preceding subheading 9817.00.92 which reads "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons:" is deleted and the text "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles:" is inserted in lieu thereof.

(13) Subchapter VI to chapter 99 is modified by deleting U.S. note 17.

Section C. Effective on the effective date of this proclamation:

Additional U.S. note 3 to chapter 2 is modified by:

(1) inserting in sequence "Argentina 20,000*" and "Uruguay 20,000*" after "Japan 200" in the list of countries and the quantities set opposite such countries in the note.

(2) inserting at the end of the note a new paragraph as follows:

> " * The quantity for Argentina or Uruguay shall be permitted entry pursuant to the provisions of this note on and after the date of publication by the Secretary of Agriculture of a notice in the *Federal Register* that Argentina or Uruguay has been granted approval by the Department of Agriculture to ship fresh, chilled or frozen beef to the United States. This paragraph and the "*" symbol following the quantity for Argentina and Uruguay shall be deleted from this note on the January 1 following the later date of the date of publication of the notice for Argentina or Uruguay.".

(3) deleting the paragraph inserted by subparagraph (2) above on the January 1 following the later date of the date of publication of the notice for Argentina or Uruguay.

Section D. Effective at 12:01 a.m. on January 1, 1996:

(1) Subchapter V to chapter 99 of the HTS is modified by deleting U.S. notes 2, 3, 4 and 5.

(2) Proclamation 6343 of September 28, 1991, is amended by deleting from Annex I thereof paragraph (d)(2) relating to subheading 9905.84.22.

Annex II (continued)
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Section E. For the following subheadings, the Rates of Duty 1 Special subcolumn shall be modified on January 1 of each year by deleting the existing rate of duty followed by the symbol "MX" in parentheses and inserting in lieu thereof the rate of duty indicated in the table below for such year.

HTS Subheading	1996	1997	1998	1999	2000	2001	2002	2003
2106.90.46	34.982¢/kg on total sugars	33.647¢/kg on total sugars	32.713¢/kg on total sugars	31.778¢/kg on total sugars	28.247¢/kg on total sugars	24.716¢/kg on total sugars	21.185¢/kg on total sugars	17.655¢/kg on total sugars 1/
3823.90.28	2.5¢/kg + 9.5%	2.2¢/kg + 8.1%	1.8¢/kg + 6.8%	1.4¢/kg + 5.4%	1.1¢/kg + 4%	0.7¢/kg + 2.7%	0.3¢/kg + 1.3%	Free
3926.90.65	1.6%	0.8%	Free	Free	Free	Free	Free	Free
5402.41.90	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free
6216.00.26	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free
7019.10.15	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free
9906.08.11	19%	18.5%	18%	17.5%	17%	17%	17%	Free

1/ For subheading 2106.90.46, the rates of duty after 2003 shall be as follows:

Effective with respect to articles entered on or after January 1, 2004-- 14.124¢/kg on total sugars;
Effective with respect to articles entered on or after January 1, 2005-- 10.593¢/kg on total sugars;
Effective with respect to articles entered on or after January 1, 2006-- 7.062¢/kg on total sugars;
Effective with respect to articles entered on or after January 1, 2007-- 3.531¢/kg on total sugars; and
Effective with respect to articles entered on or after January 1, 2008-- Free

Section F. Effective at 12:01 a.m. on January 1, 1998:

(1) Chapter 58 of the HTS is modified by deleting the "(CA)" symbol and the duty rate preceding such symbol from additional U.S. notes 1, 2, 3, 4 and 5.

(2) The Rates of Duty 1 Special subcolumn:

(a) for subheading 5810.91.00 is modified by deleting the "CA" symbol in the parentheses following the duty rate "See additional U.S. note 1" and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CA" in alphabetical order.

(b) for subheading 5810.92.10 is modified by deleting the "CA" symbol in the parentheses following the duty rate "See additional U.S. note 2" and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CA" in alphabetical order.

(c) for subheading 5810.92.90 is modified by deleting the "CA" symbol in the parentheses following the duty rate "See additional U.S. note 3" and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CA" in alphabetical order.

(d) for subheading 5810.99.10 is modified by deleting the "CA" symbol in the parentheses following the duty rate "See additional U.S. note 4" and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CA" in alphabetical order.

(e) for subheading 5810.99.90 is modified by deleting the "CA" symbol in the parentheses following the duty rate "See additional U.S. note 5" and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CA" in alphabetical order.

Annex II (continued)
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Section G. Effective at 12:01 a.m. on January 1, 1999:

(1) Chapter 58 of the HTS is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol from additional U.S. notes 1, 4 and 5.

(2) The Rates of Duty 1 Special subcolumn for subheadings 5810.91.00, 5810.99.10 and 5810.99.90 is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "MX" in alphabetical order.

Section H. Effective at 12:01 a.m. on January 1, 2003:

(1) Chapter 58 of the HTS is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol from additional U.S. notes 2 and 3.

(2) The Rates of Duty 1 Special subcolumn for subheadings 0402.91.90, 0406.90.32 and 1806.20.94 is modified by deleting the duty rate preceding the "(MX)" symbol and inserting the "Free" rate in lieu thereof.

(3) The Rates of Duty 1 Special subcolumn for subheadings 2106.90.52, 2106.90.54, 5810.92.10 and 5810.92.90 is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "MX" in alphabetical order.

Section I. Effective at 12:01 a.m. on August 1, 2003, the Rates of Duty 1 Special subcolumn for subheading 0709.60.20 is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "MX" in alphabetical order.

Section J. Effective at 12:01 a.m. on January 1, 2006, the Rates of Duty 1 Special subcolumn for subheadings 1701.11.50, 1701.12.50, 1701.91.30 and 1701.99.50 is modified by deleting the duty rate preceding the "(MX)" symbol and inserting in lieu thereof "7.062¢/kg less 0.1¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 4.564¢/kg".

Section K. Effective at 12:01 a.m. on January 1, 2008, the Rates of Duty 1 Special subcolumn for subheading 2106.90.48 is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "MX" in alphabetical order.

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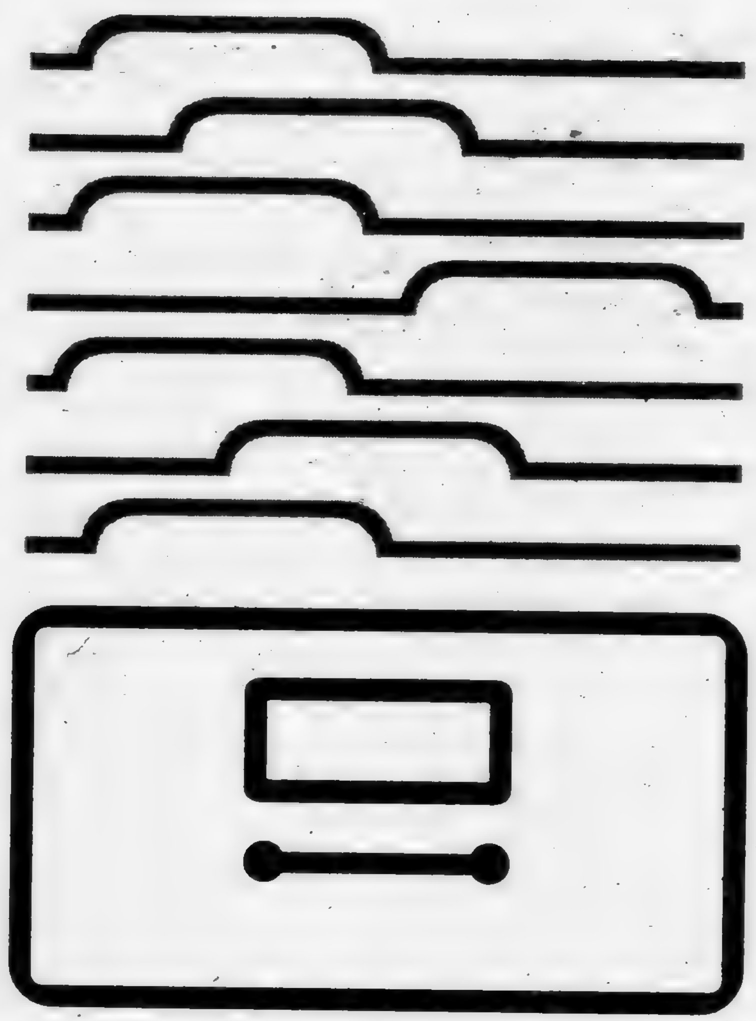

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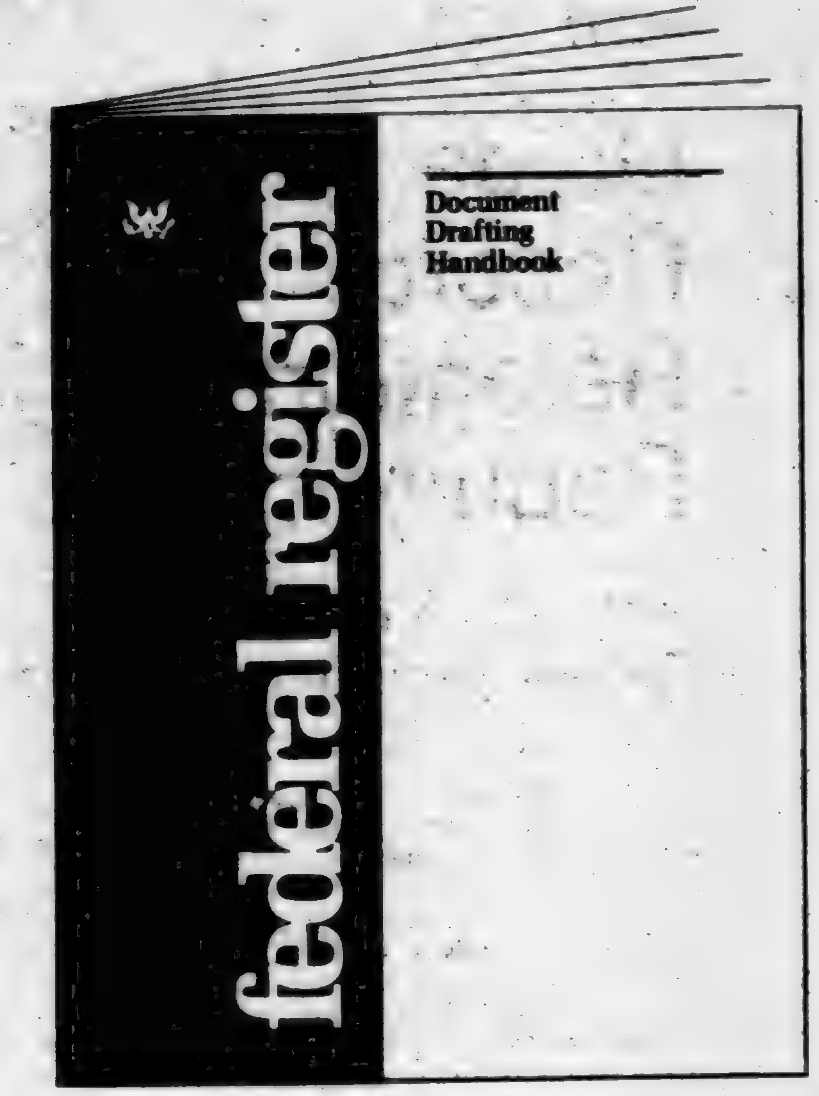

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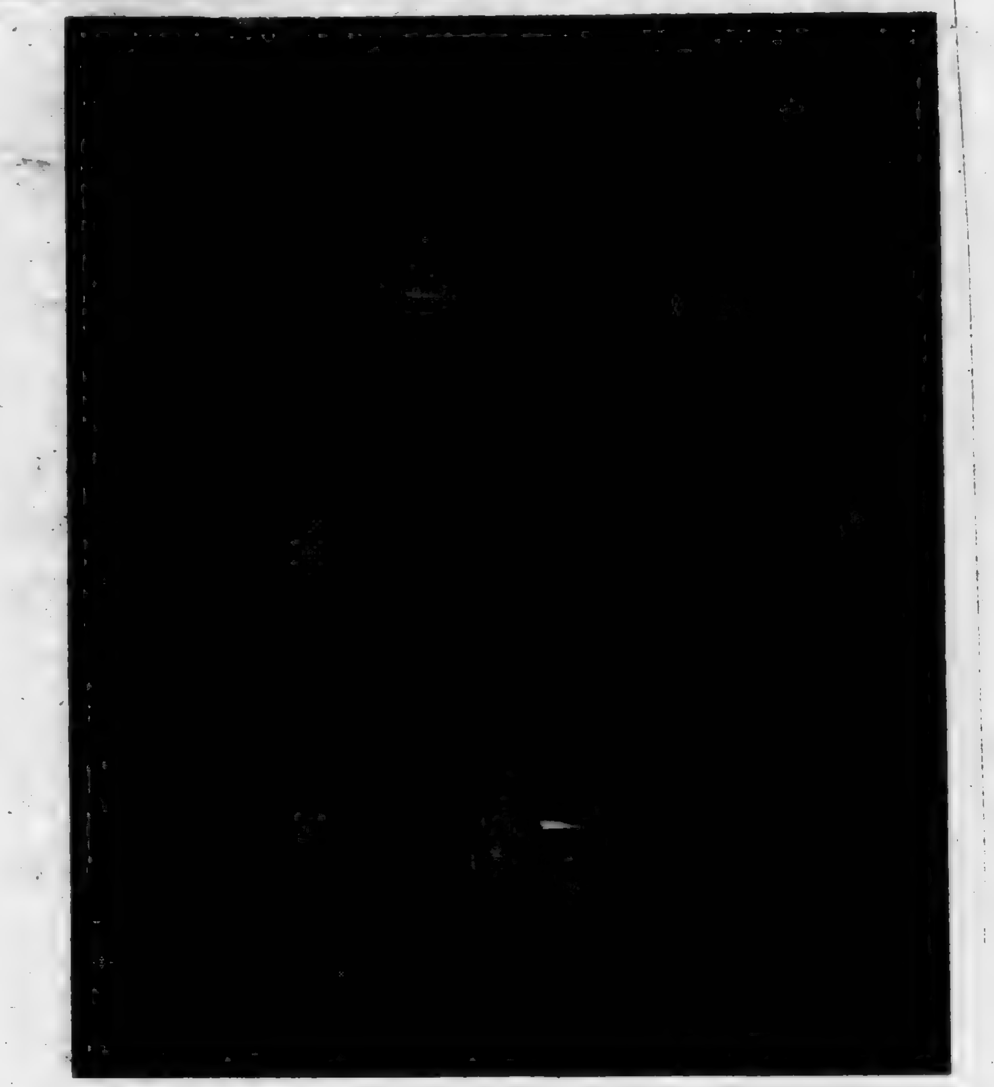

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
[Two Sessions]

WHEN: October 17 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

ATLANTA, GA

WHEN: September 20 at 9:00 am

WHERE:
Centers for Disease Control
and Prevention
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA

RESERVATIONS:
404–639–3528 (Atlanta area)
1–800–688–9889 (Outside Atlanta area)

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–03–AD; Amendment 39–9355; AD 95–18–08]

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300–600 series airplanes, that requires repetitive inspections to detect cracks in the bottom skin of the wing in the area of the cut out for the pylon rear attachment fitting, and repair, if necessary. This amendment is prompted by a report indicating that, during full-scale fatigue testing, a crack was found in the bottom skin of the wing at the cut out for the aft pylon attachment fitting due to fatigue-related stress. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could result in reduced structural integrity of the wing.

DATES: Effective October 16, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300–600 series airplanes was published in the **Federal Register** on May 2, 1995 (60 FR 21470). That action proposed to require repetitive detailed visual inspections to detect cracks in the bottom skin of the wing in the area of the cut out for the pylon rear attachment fitting, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,600, or $360 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–18–08 Airbus Industrie: Amendment 39–9355. Docket 95–NM–03–AD.

Applicability: All Model A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 24,000 total flight cycles since date of manufacture of the airplane, or within 750 flight cycles after the effective date of the AD, whichever occurs later, perform a detailed visual inspection to detect cracks in the bottom skin of the wing in the area of the cut out for the pylon rear attachment fitting, in accordance with Airbus Service Bulletin A300–57–6028, Revision 3, dated September 13, 1994. Repeat the inspection thereafter at intervals not to exceed 9,000 flight cycles. If any crack is detected, prior to further flight, repair the wing bottom skin in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection shall be done in accordance with Airbus Service Bulletin A300–57–6028, Revision 3, dated September 13, 1994, which contains the specified effective pages:

Page No.	Revision level shown on page	Date shown on page
1–6	3	Sept. 13, 1994.
7–9	2	Feb. 22, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 16, 1995.

Issued in Renton, Washington, on August 29, 1995.

Darrell M. Pedersen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21946 Filed 9–13–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–232–AD; Amendment 39–9356; AD 95–18–09]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires modification of the rear spar-to-fuselage attachment. This amendment is prompted by a report indicating that, during full-scale fatigue tests on a Model F28 Mark 0100 test article, cracking was found in the coupling plate and web plate of the rear spar end fitting at the attachment to the main frame at fuselage station 17011 due to fatigue-related stress. The actions specified by this AD are intended to prevent fatigue-related cracking in the rear spar-to-fuselage attachment which, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

DATES: Effective October 16, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on June 9, 1995 (60 FR 30476). That action proposed to require modification of the rear spar-to-fuselage attachment.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 176 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $9,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $410,760, or $19,560 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–18–09 Fokker: Amendment 39–9356. Docket 94–NM–232–AD.

Applicability: Model F28 Mark 0100 series airplanes; having serial numbers 11244 through 11319 inclusive, 11321, and 11323 through 11332 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking in the rear spar-to-fuselage attachment, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 24,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later, modify the rear spar-to-fuselage attachment, in accordance with Fokker Service Bulletin SBF100–53–039, dated February 10, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Fokker Service Bulletin SBF100–53–039, dated February 10, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 16, 1995.

Issued in Renton, Washington, on August 29, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21954 Filed 9–13–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 91–CE–21–AD; Amendment 39–9358; AD 95–18–11]

Airworthiness Directives; de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 73–05–03, which currently requires repetitively inspecting the rear spar cap for cracks on certain de Havilland DHC–6 series airplanes, and replacing any cracked rear spar cap. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. This action requires modifying the wing rear spar support (Modification No. 6/1301) as terminating action for the currently required repetitive inspections. The actions specified by this AD are intended to prevent cracking of the top flange of the wing spar attachment caps, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective October 26, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 26, 1995:

ADDRESSES: Service information that applies to this AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–21–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7523; facsimile (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain de Havilland DHC–6 series airplanes without Modification No. 6/1301 incorporated was published in the **Federal Register** on October 31, 1994 (59 FR 54415). The action proposed to supersede AD 73–05–03 with a new AD that would (1) initially retain the requirement of repetitively inspecting the wing rear spar cap for cracks and replacing any cracked part; and (2) eventually require installing wing rear spar attachment caps that are manufactured from a material having improved stress corrosion resistant properties (Modification 6/1301) as terminating action for the repetitive inspections. Accomplishment of the proposed actions would be in accordance with de Havilland Service Bulletin No. 6/295, Revision D, dated December 20, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above including the referenced service information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 82 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 22 workhours per airplane to accomplish the required modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $6,350 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $628,940. This figure is based upon the assumption that no affected airplane owner/operator has incorporated Modification 6/1301.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 82 airplanes in the U.S. registry that will be affected by this AD, the FAA has determined that approximately 45 percent are operated in scheduled passenger service. A significant number of the remaining 55 percent are operated in other forms of air transportation such as air cargo and air taxi.

The following paragraphs present cost scenarios for airplanes where no cracks were found and where certain category cracks were found during the inspections, and where the remaining airplane life is 15 years with an average annual utilization rate of 1,600 hours time-in-service (TIS). A copy of the full Cost Analysis and Regulatory Flexibility Determination for the required action may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

- No Cracks Scenario: Under the provisions of AD 73–05–03, an owner/operator of an affected de Havilland DHC–6 series airplane in scheduled service who operates an average of 1,600 hours TIS annually will inspect every 26 weeks. This amounts to a remaining airplane life (estimated 15 years) cost of $14,058; this figure is based on the assumption that no cracks are found during the inspections. This AD will incur the inspection at one 1,200-hour TIS interval and then, at 2,400 hours TIS after the effective date of the AD, the operator has to replace the top flange of the wing spar attachment caps (eliminating the need for further repetitive inspections). This results in a present value cost of $8,331, which is a present value cost savings over that required in AD 73–05–03 of $5,727 or $4,154 annualized over the 1.5 years it will take to accumulate 2,400 hours TIS. An owner of a general aviation airplane who operates 800 hours TIS annually without finding any cracks during the 1,200-hour TIS inspection will incur a present value cost savings over that required in AD 73–05–03 of $6,430. This amounts to a per year savings of $2,450 over the 1.5 years it takes to accumulate 2,400 hours TIS.
- Category I cracks found scenario: These are spanwise cracks that are inboard of the third rivet, or spanwise cracks that exceed 50 inches, or any chordwise cracks. Under the provisions of AD 73–05–03, an owner/operator who finds cracks during an inspection under this scenario has to immediately repair the cracked part and repetitively inspect every 26 weeks. This AD will require immediate replacement as terminating action for the repetitive inspections, which results in present value compliance costs of $8,355. The present value cost savings over that required in AD 73–05–03 for this scenario is $6,300 for airplanes in scheduled service and $6,295 per general aviation airplane.
- Category II cracks found scenario: These are spanwise cracks that are outboard of the 10th rivet and within the limits of paragraph (b) of the service bulletin. Under the provisions of AD 73–05–03, an owner/operator who finds cracks during an inspection under this scenario has to repetitively inspect every 13 weeks. This results in present value compliance costs of $27,625. This AD would require repetitive inspections every 600 hours TIS until replacement of the top flange of the wing rear spar attachment caps at 2,400 hours TIS after the effective date of the AD as terminating action for the repetitive inspections. This results in present value compliance costs of $9,700. Immediate replacement of the top flange is more economical than repetitively inspecting; present value costs are $8,355. The present value cost savings over that required in AD 73–05–03 for this scenario is $19,272 per airplane in scheduled service and $19,269 per general aviation airplane.
- Category III cracks found scenario: These are spanwise cracks that are outboard of the 10th rivet and within the limits of paragraph (c) of the service bulletin. Under the provisions of AD 73–05–03, an owner/operator who finds cracks during an inspection in this scenario has to repetitively inspect every 2 weeks. This results in present value compliance costs of $175,000. This AD requires repetitive inspections every 100 hours TIS until replacement of the top flange of the wing rear spar attachment caps at 2,400 hours TIS after the effective date of the AD as terminating action for the repetitive inspections. This results in present value compliance costs of $13,965. Immediate replacement of the top flange is more economical than repetitively inspecting; present value costs are $8,355. The present value cost savings over that required in AD 73–05–03 for this scenario is $166,075 per airplane in scheduled service and $166,784 per general aviation airplane.
- Category IV cracks found scenario: These are spanwise cracks that are outboard of the 10th rivet and exceed the limits of paragraph (b) or (c) of the service bulletin. Also included are cracks in the splice plates of the vertical and horizontal legs of the rear spar or elongated rivet holes. Under the provisions of AD 73–05–03, an owner/operator who finds cracks during an inspection under this scenario has to immediately repair any crack and then repetitively inspect every 26 weeks. This results in present value costs of $14,500. This AD requires immediate crack repair, then an inspection after accumulating 1,200 hours TIS, and replacement of the top flange of the wing rear spar attachment caps at 2,400 hours TIS after the effective date of the AD as terminating action for the repetitive inspections. This results in present value compliance costs of $8,929. Immediate replacement of the top flange is more economical than repetitively inspecting; present value costs are $8,355. The present value cost savings over that required in AD 73–05–03 for this scenario is $6,040 per airplane in scheduled service and $6,430 per general aviation airplane.
- Category V cracks found scenario: These are spanwise cracks that are between the third and tenth rivet. Under the provisions of AD 73–05–03, an owner/operator who finds cracks during an inspection under this scenario has to immediately repair any crack, repetitively inspect every 2 weeks, replace the top flange of the wing rear spar attachment caps, and repetitively inspect thereafter every 26 weeks. This results in present value compliance costs of about $30,000. This AD requires immediate crack repair, repetitive inspections every 50 hours TIS, and replacement of the top flange of the wing rear spar attachment caps at 2,400 hours TIS after the effective date of the AD as terminating action for the repetitive inspections. This results in present value compliance costs of $38,988. Immediate replacement of the top flange is more economical than repetitively inspecting; present value costs are $8,355. The present value cost savings over that required in AD 73–05–03 for this scenario are $19,356 per airplane in scheduled service and $26,367 per general aviation airplane.

- Category VI cracks found scenario: These are spanwise cracks that have a total length exceeding 30 inches but not exceeding 50 inches. Under the provisions of AD 73–05–03, an owner/operator who finds cracks during an inspection under this scenario has to immediately repair any crack, replace the top flange of the wing rear spar attachment caps at 26 weeks, and repetitively inspect thereafter every 26 weeks. This results in present value compliance costs of about $21,200. This AD requires immediate crack repair, repetitive inspections every 600 hours TIS, and replacement of the top flange of the wing rear spar attachment caps at 2,400 hours TIS after the effective date of the AD as terminating action for the repetitive inspections. This results in present value compliance costs of $10,289. Immediate replacement of the top flange is more economical than repetitively inspecting; present value costs are $8,355. The present value cost savings over that required in AD 73–05–03 for this scenario is $12,707 per airplane in scheduled service and $13,028 per general aviation airplane.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules could have a "significant economic impact on a substantial number of small entities," and, in cases where they could, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a rule, or any number of small entities judged to be substantial by the rulemaking official. A "significant economic impact" is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft owned and the annualized cost thresholds, adjusted to 1994 dollars, at $69,000 for scheduled operators and $5,000 for unscheduled operators.

Of the 82 U.S.-registered airplanes affected by this AD, three airplanes are owned by the federal government. Of the other 79, one business owns 24 airplanes, one business owns 7 airplanes, one business owns 6 airplanes, one business owns 3 airplanes, 6 businesses own 2 airplanes each, and twenty-seven businesses own 1 airplane each.

As presented in the crack scenario discussion, replacing the top flange of the wing rear spar attachment caps immediately or within 2,400 hours TIS after the effective date of this AD is more economical in all scenarios than continuing to repetitively inspect the part for the life of the airplane. Therefore, this AD will not have a "significant economic impact on a substantial number of small entities."

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 73–05–03, Amendment 39–1658, and adding a new AD to read as follows:

95–18–11 De Havilland: Amendment 39–9358; Docket No. 91–CE–21–AD.

Supersedes AD 73–05–03, Amendment 39–1658.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (serial numbers 1 to 330), certificated in any category, that have not incorporated Modification 6/1301 in accordance with the instructions in Part C of de Havilland Service Bulletin (SB) 6/295, Revision D, dated December 20, 1991.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent cracking of the top flange of the wing rear spar attachment caps, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect both wing rear spar attachment caps, part number (P/N) C6WM1032, for cracks in accordance with paragraph A of the Accomplishment Instructions section of de Havilland SB No. 6/295, Revision D, dated December 20, 1991. The exposure time of Inspection Method A.1 (Radiographic) in this service bulletin shall be 120 seconds instead of 60 seconds for the inboard X-ray tube location, and the X-ray beam angle shall be decreased from 10 degrees to 5 degrees for all X-ray tube locations.

(1) If cracking is not detected, reinspect each cap every 1,200 hours TIS until a Modification 6/1301 spar cap is installed as required by paragraph (c) of this AD.

(2) If spanwise cracking is detected outboard of the 10th rivet, accomplish the following:

(i) For cracks that have the following (the criteria of paragraph (c) in the Compliance section of de Havilland SB No. 6/295, Revision D, dated December 20, 1991):

First to tenth rivet.	No cracks.
11th to 29th rivet.	One cracked pitch (the distance between adjacent rivet holes) in ten pitches with four uncracked pitches minimum between cracks.
30th to 69th rivet.	Two cracked pitches in ten pitches with four uncracked pitches minimum between cracks.
70th to 74th (end).	One cracked pitch.

Repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 100 hours TIS until a Modification 6/1301 spar cap is installed as required by paragraph (c) of this AD.

(ii) For cracks found outboard of the 10th rivet that run only between two adjacent rivets provided not more than four such cracks exist in an attachment cap and a minimum of two rivet pitch lengths of uncracked material separate cracks (the criteria of paragraph (b) in the Compliance section of de Havilland SB No. 6/295), repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 600 hours TIS until a Modification 6/1301 spar cap is installed as required by paragraph (c) of this AD.

(iii) For cracks that meet or exceed the criteria of paragraphs (b) or (c) in the Compliance section of de Havilland SB No. 6/295, prior to further flight, reinforce the spar cap in accordance with paragraph B of the Accomplishment Instructions section of de Havilland SB No. 6/295, Revision D, dated December 20, 1991, and repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 1,200 hours TIS until a Modification 6/1301 spar cap is installed as required by paragraph (c) of this AD.

(3) If spanwise cracking is detected inboard of the third rivet, or if a chordwise crack is detected, or if the total length of cracks on a cap exceeds 50 inches, prior to further flight, replace the spar cap with a Modification 6/1301 cap in accordance with paragraph C of the Accomplishment Instructions section of de Havilland SB No. 6/295, Revision D, dated December 20, 1991.

(4) If spanwise cracking is detected between the third and tenth rivet, prior to further flight, reinforce the spar cap in accordance with paragraph B of the Accomplishment Instructions section of de Havilland SB No. 6/295, Revision D, dated December 20, 1991, and repeat the inspection specified in paragraph (a) of this AD inboard of the reinforced attachment caps at intervals not to exceed 50 hours TIS until a Modification 6/1301 spar cap is installed as required by paragraph (c) of this AD.

(5) If cracking exceeds a total length of 30 inches but does not exceed 50 inches, prior to further flight, reinforce the spar cap in accordance with paragraph B of the Accomplishment Instructions section of de Havilland SB No. 6/295, Revision D, dated December 20, 1991, and repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 600 hours TIS until a Modification 6/1301 spar cap is installed as required by paragraph (c) of this AD.

(b) Within 100 hours after the effective date of this AD and thereafter at intervals not to exceed 1,200 hours TIS until a Modification 6/1301 spar cap is installed as required by paragraph (c) of this AD, inspect the splice plates of the vertical and horizontal legs of the rear spar fitting at Wing Stations 87 to 91 for cracks or elongated rivet holes. Prior to further flight, replace any part that is cracked or has elongated rivet holes with a serviceable part.

(c) Within 2,400 hours TIS after the effective date of this AD, replace both wing rear spar caps with a Modification 6/1301 spar cap in accordance with paragraph C of the Accomplishment instructions in de Havilland SB No. 6/295, Revision D, dated December 20, 1991, unless already accomplished.

(d) Incorporating Modification 6/1301 on both wing rear spar caps in accordance with paragraph C of the Accomplishment Instructions in de Havilland SB No. 6/295, Revision D, dated December 20, 1991, is considered terminating action for the inspection requirements of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(g) The inspections and modification required by this AD shall be done in accordance with de Havilland Service Bulletin No. 6/295, Revision D, dated December 20, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(h) This amendment (39–9358) supersedes AD 73–05–03, Amendment 39–1658.

(i) This amendment (39–9358) becomes effective on October 26, 1995.

Issued in Kansas City, Missouri, on August 28, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21957 Filed 9–13–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–36–AD; Amendment 39–9360; AD 95–18–13]

Airworthiness Directives; HOAC AUSTRIA GmbH HK 36R "Super Dimona" Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain HOAC AUSTRIA GmbH (HOAC) HK 36R "Super Dimona" gliders. This action requires inspecting the exhaust system for corrosion, replacing the exhaust system if corrosion is found, and installing a carbon monoxide detector. Reports received by the Federal Aviation Administration (FAA) of severe exhaust system corrosion on the affected gliders, including one of excessive corrosion (rusting through), prompted this action. The actions specified by this AD are intended to prevent carbon monoxide leakage caused by a corroded exhaust system, which, if not detected and corrected, could lead to passenger injuries.

DATES: Effective October 26, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 26, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from HOAC AUSTRIA GmbH, N.A. Otto Strasse 5, A–2700 Wiener Neustadt, Austria. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 94–CE–36–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Herman C. Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to HOAC HK 36R "Super Dimona" gliders was published in the Federal Register on March 30, 1995 (60 FR 16396). The action proposed to require inspecting the exhaust system for corrosion, replacing the exhaust system if corrosion is found, and installing a carbon monoxide detector. Accomplishment of the proposed action would be in accordance with the Measures section of HOAC Service Bulletin No. 33, dated July 15, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above including the referenced service information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 4 gliders in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per glider to accomplish the required inspection and install a carbon monoxide detector, and that the average labor rate is approximately $60 an hour. Parts (a carbon monoxide detector) will be provided by the manufacturer at no cost to the owner/operator. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $240 ($60 per glider). This figure is based on the assumption that no affected owner/operator of the affected gliders has incorporated the required installation or accomplished the required inspection.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–18–13 HOAC AUSTRIA GmbH: Amendment 39–9360; Docket No. 94–CE–36–AD.

Applicability: HK 36R "Super Dimona" gliders (serial numbers 36.302 through 36.323), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 10 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent carbon monoxide leakage caused by a corroded exhaust system, which, if not detected and corrected, could lead to passenger injuries, accomplish the following:

(a) Inspect the exhaust system for corrosion in accordance with the Measures section of HOAC Service Bulletin (SB) No. 33, dated July 15, 1993. If corrosion is found, prior to further flight, replace the exhaust system in accordance with the Measures section of HOAC SB No. 33, dated July 15, 1993.

(b) Install a carbon monoxide detector in accordance with the Measures section of HOAC SB No. 33, dated July 15, 1993.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The inspection, replacement, and installation required by this AD shall be done in accordance with HOAC Service Bulletin No. 33, dated July 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from HOAC AUSTRIA GmbH, N.A. Otto Strasse 5, A–2700 Wiener Neustadt, Austria. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9360) becomes effective on October 26, 1995. Issued in Kansas City, Missouri, on August 28, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21958 Filed 9–13–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–11–AD; Amendment 39–9359; AD 95–18–12]

Airworthiness Directives; Mooney Aircraft Corporation Model M20K Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Mooney Aircraft Corporation (Mooney) Model M20K airplanes. This action requires inspecting to see if the airplane is equipped with a Gerdes fuel selector valve, part number (P/N) A–2580, and replacing any Gerdes fuel selector valve with an Airight fuel

selector valve. Malfunction of a Gerdes fuel selector valve on an affected airplane, where the valve did not allow the operator to select the appropriate fuel tank, prompted this action. The actions specified by this AD are intended to prevent fuel selector valve malfunction, which, if not detected and corrected, will prevent the airplane operator from selecting the appropriate fuel tank, resulting in an unscheduled landing.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas 78028; telephone (210) 896–6000. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–11–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Sills, Mechanical Systems Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5154; facsimile (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Mooney Model M20K airplanes was published in the **Federal Register** on April 11, 1995 (60 FR 18374). The action proposed to require inspecting to see if the airplane is equipped with a Gerdes fuel selector valve, (P/N) A–2580, and replacing any Gerdes fuel selector valve with an Airight fuel selector valve. Accomplishment of the proposed replacement would be in accordance with Mooney Service Bulletin M20–256, dated January 24, 1995.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 78 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $535 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $55,770. This figure is based on the assumption that no airplane owner/operator has accomplished the required modification. Mooney has informed the FAA that parts have not been distributed to any owner/operator of the affected airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–18–12 Mooney Aircraft Corporation: Amendment 39–9359; Docket No. 95–CE–11–AD.

Applicability: Model M20K airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent fuel selector valve malfunction, which, if not detected and corrected, will prevent the airplane operator from selecting the appropriate fuel tank, resulting in an unscheduled landing, accomplish the following:

(a) Inspect to see if the airplane is equipped with a Gerdes fuel selector valve, part number (P/N) A–2580. This inspection may be accomplished by examining the cross-sectional shape of the selector valve. The Gerdes selector valve has a rectangular cross section with square corners.

Note 2: The following airplane serial numbers (S/N) had a Gerdes fuel selector valve, part number (P/N) A–2580, installed at manufacture:

S/N 25–0001 through 25–0091, except for the following:

S/N's 25–0017, 25–0027, 25–0052, 250063, 25–0067, 25–0068, 25–0078, 25–0081, 25–0082, 25–0083, 25–0084, 25–0085, 25–0086, and 25–0089.

The excluded S/N 25–0001 through 25–0091 Model M20K airplanes and any S/N Model M20K airplanes outside that range may have had a Gerdes fuel selector valve, part number (P/N) A–2580, installed by field modification.

(b) Replace any Gerdes fuel selector valve, P/N A–2580, with an Airight fuel selector valve in accordance with the INSTRUCTIONS section in Mooney Service Bulletin M20–256, dated January 24, 1995.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished provided that the fuel selector valve is functioning properly.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) The replacement required by this AD shall be done in accordance with Mooney Service Bulletin M20–256, dated January 24, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas 78028. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9359) becomes effective on October 20, 1995.

Issued in Kansas City, Missouri, on August 28, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21959 Filed 9–13–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 91–CE–22–AD; Amendment 39–9367; AD 95–18–10]

Airworthiness Directives; de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 81–10–11, which currently requires repetitively inspecting the elevator root ribs for cracks on de Havilland DHC–6 series airplanes, and replacing any cracked part. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate, or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. This action requires modifying the elevator root rib as terminating action for the repetitive inspections currently required by AD 81–10–11. The actions specified by this AD are intended to prevent failure of the elevator root rib, which could result in loss of control of the airplane.

DATES: Effective October 26, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 26, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K1Y5. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7523; facsimile (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to de Havilland DHC–6 series airplanes that do not have Modification No. 6/1769 incorporated was published in the **Federal Register** on October 3, 1994 (59 FR 54412). The action proposed to supersede AD 81–10–11 with a new AD that would (1) retain the current requirement of inspecting the elevator root rib for cracks, and replacing any cracked part; and (2) require modifying the elevator root rib (Modification 6/1769) as terminating action for the repetitive inspections. Accomplishment of the proposed actions would be in accordance with de Havilland Service Bulletin No. 6/399, Revision E, dated May 25, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above including the referenced service information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 54 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $4,200 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,257,360. This figure is based on the assumption that none of the affected airplane owners/operators have incorporated Modification 6/1769.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 169 airplanes in the U.S. registry that will be affected by this AD, the FAA has determined that approximately 50 percent are operated in scheduled passenger service. A significant number of the remaining 50 percent are operated in other forms of air transportation such as air cargo and air taxi.

The following paragraphs present cost scenarios for airplanes where no cracks were found and where cracks were found, utilizing an average remaining airplane life of 15 years and an average annual utilization rate of 1,600 hours time-in-service (TIS). De Havilland Models DHC–6–100 and DHC–6–200 airplanes have probably already accumulated 15,000 hours TIS; therefore, those airplanes would have 100 hours TIS after the effective date of the AD to incorporate Modification 6/1769. Some Model DHC–6–300 airplanes have not yet accumulated 15,000 hours TIS. This analysis is based upon the assumption that those airplanes yet to accumulate 15,000 hours TIS have 10,000 hours TIS if operated in scheduled service and 5,000 hours TIS if operated in general aviation. A copy of the full Cost Analysis and Regulatory Flexibility Determination for this action may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

- No Cracks Scenario for Models DHC–6–100 and DHC–6–200: These airplanes will be inspected at 50 hours TIS after the effective date and modified within 100 hours TIS after the effective date. The incremental present value cost of this AD over that required by AD 81–10–11 is $5,919 for an airplane utilized in scheduled service, and $6,642 for an airplane utilized in general aviation.

- No Cracks Scenario for Model DHC–6–300 Airplanes: These airplanes will be inspected at 50 hours TIS after the effective date and thereafter at 600-hour TIS intervals until the elevator root rib is replaced upon the accumulation of 15,000 hours TIS. The incremental present value cost of this AD over that required by AD 81–10–11 is $4,962 for an airplane utilized in scheduled service, and $3,099 for an airplane utilized in general aviation.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules will have a "significant economic impact on a substantial number of small entities," and, in cases where they could, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a rule, or any number of small entities judged to be substantial by the rulemaking official. A "significant economic impact" is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft owned and the annualized cost thresholds, adjusted to 1994 dollars, at $69,000 for scheduled operators and $5,000 for unscheduled operators.

Of the 169 U.S.-registered airplanes affected by this AD, six airplanes are owned by the federal government. Of the other 163 airplanes, one business owns 26 airplanes, two businesses own 9 airplanes each, one business owns 8 airplanes, one business owns 7 airplanes, one business owns 5 airplanes, four businesses own 3 airplanes each, sixteen businesses own 2 airplanes each, and fifty-five businesses own 1 airplane each.

Because the FAA has no readily available means of obtaining data on the sizes of these entities, the economic analysis for this AD utilizes the worst case scenario using the lower annualized cost threshold of $5,000 for operators in unscheduled service instead of $69,000 for operators in scheduled service. With this in mind and based on the above ownership distribution, this AD could have a significant impact on a substantial number of small entities. Because of this, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this action that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**. After careful consideration, the FAA has determined that the required action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 81–10–11, Amendment 39–4112, and adding a new AD to read as follows:

95–18–10 De Havilland: Amendment 39–9357; Docket No. 91–CE–22–AD. Supersedes AD 81–10–11, Amendment 39–4112.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category, that do not have Modification No. 6/1769 incorporated.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent failure of the elevator root rib, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 81–10–11), inspect the elevator root rib, part number (P/N) C6TE1022, for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin (SB) No. 6/399, Revision E, dated May 25, 1984.

(1) If any crack is found, prior to further flight, accomplish one of the following:

(i) Replace the cracked part with an airworthy part and reinspect thereafter at intervals not to exceed 600 hours TIS until the modification required in paragraph (b) of this AD is incorporated; or

(ii) Incorporate Modification 6/1769 in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/399, Revision E, dated May 25, 1984.

Note 2: Modification 6/1769 consists of pulling back the elevator skins, removing the torque tube assembly, replacing the root rib assembly and doubler, replacing the second outboard nose rib, installing a new intercostal, and reinstalling the torque tube assembly and new skin.

(2) If no cracks are found, reinspect thereafter at intervals not to exceed 600 hours TIS until the modification required in paragraph (b) of this AD is incorporated.

(b) Upon the accumulation of 15,000 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, incorporate Modification 6/1769 in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/399, Revision E, dated May 25, 1984.

(c) Incorporating Modification 6/1769 as specified in paragraphs (a)(1)(ii) and (b) of this AD is considered terminating action for the inspection requirements of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) The inspections and modification required by this AD shall be done in accordance with de Havilland Service Bulletin No. 6/399, Revision E, dated May 25, 1984. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

(g) This amendment (39–9357) supersedes AD 81–10–11, Amendment 39–4112.

(h) This amendment (39–9357) becomes effective on October 26, 1995.

Issued in Kansas City, Missouri, on August 28, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21960 Filed 9–13–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–CE–58–AD; Amendment 39–9366; AD 95–19–07]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Fairchild Aircraft SA226 and SA227 series airplanes equipped with certain main landing gear (MLG) and nose landing gear (NLG). This action requires repetitively inspecting, using ultrasonic methods, the left-hand and right-hand MLG yokes and the NLG yokes for stress corrosion cracking, and, if any cracked yokes are found that exceed certain limits, either replacing the cracked yoke, the yoke/cylinder combination, or the affected MLG or NLG assembly. Several reports of landing gear failures on the affected airplanes that have the affected MLG or NLG yokes installed prompted this action. The actions specified by this AD are intended to prevent MLG or NLG failure caused by stress corrosion cracks in the yokes, which, if not detected and corrected, could result in loss of control of the airplane during landing operations.

DATES: Effective September 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1995.

Comments for inclusion in the Rules Docket must be received on or before November 4, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–58–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–58–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5133; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION: The FAA has received several reports of main landing gear (MLG) and nose landing gear (NLG) failure on Fairchild Aircraft SA226 and SA227 series airplanes. The airplanes in these incidents are equipped with part number (P/N) OAS5453 MLG and P/N OAS5451 NLG.

Metallurgical analysis of the yokes of the right-hand and left-hand MLG and NLG gear on several of these airplanes revealed that the failure was initiated by stress corrosion cracking of the yokes, which started as corrosion fatigue. This condition, if not detected and corrected, could result in loss of control of the airplane during landing operations.

Fairchild Aircraft has issued Service Bulletin (SB) 226–32–065, SB 227–32–039, and SB CC7–32–007, all Issued: August 16, 1995, which specify procedures for ultrasonically inspecting the left-hand and right-hand MLG yoke, P/N 5453005–1, 5453005–3, or 5453005–5, and the NLG yoke, P/N 5451005–1, on Fairchild Aircraft SA226 and SA227 series airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent MLG or NLG failure caused by stress corrosion cracks of the yokes, which, if not detected and corrected, could result in loss of control of the airplane during landing operations.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, this AD requires repetitively inspecting, using ultrasonic methods, the left-hand and right-hand MLG yokes and the NLG yokes for stress corrosion cracking, and, if any cracked yokes are found that exceed certain limits, either replacing the cracked yoke, the yoke/cylinder combination, or the affected MLG or NLG assembly. Accomplishment of the ultrasonic inspections shall be in accordance with either Fairchild Aircraft SB 226–32–065, SB 227–32–039, and SB CC7–32–007, all Issued: August 16, 1995, as applicable. The replacement, if necessary, shall be accomplished in accordance with the applicable maintenance manual.

Since a situation exists (possible loss of control of the airplane during landing operations) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the

Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–58–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–19–07 Fairchild Aircraft: Amendment 39–9369; Docket No. 95–CE–58–AD.

Applicability: Models SA226–T, SA226–AT, SA226–TC, SA226–T(B), SA227–AC, SA227–AT, SA227–BC, SA227–TT, SA227–CC, and SA227–DC airplanes (all serial numbers), certificated in any category, that are equipped with one or more of the following:

1. Main landing gear part number (P/N) OAS5453–*(dash numbers 1 through 19) with either a P/N 5453005–1, 5453005–3, or 5453005–5 yoke installed; or

2. Nose landing gear P/N OAS5451–*(dash numbers 1 through 17) with a P/N 5451005–1 yoke installed.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially as follows and thereafter as indicated in the body of this AD:

1. Within the next 75 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished; and

2. Upon the installation of one of the affected main landing gear or nose landing gear assemblies or yokes.

To prevent main landing gear or nose landing gear failure caused by stress corrosion cracks of the yoke, which, if not detected and corrected, could result in loss of control of the airplane during landing operations, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Inspect, using ultrasonic methods, the left-hand and right-hand main landing gear and the nose landing gear yoke for stress corrosion cracking in accordance with one of the following, as applicable:

(1) The ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Service Bulletin (SB) 226–32–065, Issued: August 16, 1995.

(2) The ACCOMPLISHMENT INSTRUCTIONS section of Fairchild SB 227–32–039, Issued: August 16, 1995.

(3) The ACCOMPLISHMENT INSTRUCTIONS section of Fairchild SB CC7–32–007, Issued: August 16, 1995.

(b) Reinspect or replace the right-hand or left-hand main landing gear or nose landing gear yoke as follows based on the results of any required inspection:

(1) If no cracks are found or a crack is found that is less than .25 inch, accomplish the following:

(i) Prior to further flight after the inspection required by paragraph (a) of this AD, clean the main landing gears and nose landing gear yoke and piston in accordance with Figure 2 of the service bulletins referenced in paragraphs (a)(1), (a)(2), and (a)(3) of this AD;

(ii) Prior to further flight after the inspection required by paragraph (a) of this AD, apply a small bead of Products Research and Chemical Corporation PR–1422 or PR–1435 sealant to the main landing gears and nose landing gear yoke as shown in Figure 2 of the service bulletins referenced in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, and as described in the SA226/227 Series Service Repair Manual, Chapter 51–30–03, Standard Practices—Sealing; and

(iii) Reinspect at intervals not to exceed 2,000 hours TIS provided no cracks are found that are .25 inch or more in length.

(2) If a crack is found with a length of .25 inch or more but not more than .50 inch, reinspect at intervals not to exceed 1,000 hours TIS provided the crack is no longer than .50 inch.

(3) If a crack is found with a length more than .50 inch but not more than .75 inch, reinspect at intervals not to exceed 500 hours TIS provided the crack is no longer than .75 inch.

(4) If a crack is found with a length more than .75 inch but not more than 1 inch, reinspect at intervals not to exceed 200 hours TIS provided the crack is no longer than 1 inch.

(5) If a crack is found with a length more than 1 inch but not more than 1.5 inches, accomplish the following:

(i) Within 100 hours TIS after the inspection required by paragraph (a) of this AD, replace the cracked part with a new part in accordance with the applicable maintenance manual. This may be accomplished by replacing the cracked yoke, the total gear assembly, or the yoke/cylinder combination;

(ii) Prior to further flight after replacing the cracked part, clean the main landing gears and nose landing gear yoke and piston in accordance with figure 2 of the service bulletins referenced in paragraphs (a)(1), (a)(2), and (a)(3) of this AD;

(iii) Prior to further flight after replacing the cracked part, apply a small bead of Products Research and Chemical Corporation PR–1422 or PR–1435 sealant to the main landing gears and nose landing gear yoke as shown in Figure 2 of the service bulletins referenced in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, and as described in the SA226/227 Series Service Repair Manual, Chapter 51–30–03, Standard Practices—Sealing; and

(iv) Repeat the inspections specified in paragraphs (a) and (b) of this AD and replace the part as required.

(6) If a crack is found with a length more than 1.5 inches, accomplish the following:

(i) Prior to further flight after the inspection required by paragraph (a) of this AD, replace the cracked part with a new part in accordance with the applicable maintenance manual. This may be accomplished by replacing the cracked yoke, the total gear assembly, or the yoke/cylinder combination;

(ii) Prior to further flight after replacing the cracked part, clean the main landing gears and nose landing gear yoke and piston in accordance with figure 2 of the service bulletins referenced in paragraphs (a)(1), (a)(2), and (a)(3) of this AD;

(iii) Prior to further flight after replacing the cracked part, apply a small bead of Products Research and Chemical Corporation PR–1422 or PR–1435 sealant to the main landing gears and nose landing gear yoke as shown in Figure 2 of the service bulletins referenced in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, and as described in the SA226/227 Series Service Repair Manual, Chapter 51–30–03, Standard Practices—Sealing; and

(iv) Repeat the inspections specified in paragraphs (a) and (b) of this AD and replace the part as required.

(7) If multiple cracks are found, add the total length of the cracks and use the criteria presented in paragraphs (b)(1) through (b)(6) of this AD, including all subparagraph designations, to establish repetitive inspection intervals or replacement times.

(c) The MLG and NLG yokes affected by this AD are manufactured by Ozone Industries, Inc. Replacing these yokes with approved parts manufactured by Fairchild Aircraft eliminates the repetitive inspection requirements of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(f) The inspections required by this AD shall be done in accordance with Fairchild Aircraft Service Bulletin 226–32–065, Issued: August 16, 1995, Fairchild Aircraft Service Bulletin 227–32–039, Issued: August 16, 1995, or Fairchild Aircraft Service Bulletin CC7–32–007, Issued: August 16, 1995, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

(g) This amendment (39–9369) becomes effective on September 28, 1995.

Issued in Kansas City, Missouri, on September 6, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22646 Filed 9–13–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–149–AD; Amendment 39–9372; AD 95–19–10]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes. This action requires operators to perform visual inspections of the outer cylinder aft trunnion on the main landing gear to determine if the fillet seal is cracked or missing. This action also requires operators to inspect for evidence of corrosion in this location. Finally, this action prescribes the procedures that operators must follow if corrosion is found. This amendment is prompted by several reports of fractures of the outer cylinder aft trunnion due to stress corrosion cracking. The actions specified in this AD are intended to ensure that corrosion is not present in this location, thereby preventing future failures due to stress corrosion cracking.

DATES: Effective September 29, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 29, 1995.

Comments for inclusion in the Rules Docket must be received on or before November 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–149–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2783; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of fractures of the outer cylinder of the aft trunnion of the main landing gear (MLG) on three Boeing Model 767 series airplanes. One of the three airplanes was six years old and had accumulated 28,887 total flight hours; another was six years old and had accumulated 25,841 total flight hours; and the third was eight years old and had accumulated 27,177 total flight hours. All of these airplanes were equipped with the original MLG, none of which had been overhauled at the time of the failure. Investigation revealed that in each case, moisture had entered the area between the outer cylinder of the MLG and a mating bushing. The effects of such moisture subsequently caused stress corrosion cracking. This condition, if not detected and corrected in a timely manner, could cause more fractures of the outer cylinder of the aft trunnion, which could result in the loss of the MLG.

The FAA has reviewed and approved Boeing Service Letter 767–SL–32–067, dated August 4, 1995, which describes the following procedures:

1. Performing repetitive visual inspections to determine if the fillet seal of the outer cylinder aft trunnion is cracked or missing;

2. Removing the fillet seal, solvent-cleaning the adjacent area, applying corrosion inhibiting compound (CIC),

and visually inspecting to detect corrosion, if any fillet seal is found cracked or missing; and

3. Re-applying CIC and greasing, if no corrosion is detected, or repairing the aft trunnion, if any corrosion is detected. Accomplishment of this repair eliminates the need for the repetitive inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 767 series airplanes of the same type design, this AD is being issued to prevent stress corrosion cracking, which could result in fractures of the outer cylinder aft trunnion and the subsequent loss of the MLG. This AD requires visual inspections to determine if the fillet seal of the outer cylinder aft trunnion is cracked or missing, and the correction of any discrepancy or follow-on actions, if necessary. Repairing the aft trunnion constitutes terminating action for the repetitive inspection requirements. The actions are required to be accomplished in accordance with the service letter described previously.

Operators should note that this AD requires repetitive application of CIC and grease every 500 flight hours, rather than at the 2A check interval (1,000 flight hours), as recommended in the service letter. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the susceptibility of the subject area to a high velocity of water spray (such as, landing on wet runways, high pressure washing, etc.), which could lead to the accumulation of water and subsequent stress corrosion cracking of the outer cylinder of the aft trunnion.

The FAA considers this AD to be interim action. The manufacturer has advised that it is developing a modification that will prevent future occurrences of this unsafe condition. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–149–AD." The postcard will be date-stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–10 Boeing: Amendment 39–9372. Docket 95–NM–149–AD.

Applicability: All Model 767 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition

addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking, which could result in fractures of the outer cylinder aft trunnion and the subsequent loss of the main landing gear (MLG), accomplish the following:

(a) Within 5–½ years since the last overhaul of the MLG or since the date of manufacture of the MLG (for MLG's that have not been overhauled), or within 60 days after the effective date of this AD, whichever occurs later: Perform a visual inspection to determine if the fillet seal of the outer cylinder aft trunnion is cracked or missing, in accordance with Boeing Service Letter 767–SL–32–067, dated August 4, 1995. For the purposes of this AD, fillet seals are not considered to be "cracked" if cracks are found in the fillet seal paint only (where the fillet seal itself is not cracked).

(b) If no cracked fillet seal is found during the inspection required by paragraph (a) of this AD, repeat the inspection thereafter at intervals not to exceed 18 months.

(c) If any fillet seal is found to be cracked or missing during the inspection required by paragraph (a) of this AD, prior to further flight, remove the fillet seal (if present), clean the adjecent area with a solvent, apply corrosion inhibiting compound (CIC), and perform a visual inspection to detect corrosion, in accordance with Boeing Service Letter 767–SL–32–067, dated August 4, 1995.

(1) If no corrosion is detected, prior to the accumulation of 500 flight hours, reapply CIC and grease in accordance with the service letter. Thereafter, repeat the application of CIC and grease at intervals not to exceed 500 flight hours.

(2) If any corrosion is detected, prior to further flight, repair the aft trunnion in accordance with the service letter. Accomplishment of this repair constitutes terminating action for the repetitive inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Boeing Service Letter 767–SL–32–067, dated August 4, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 29, 1995.

Issued in Renton, Washington, on September 7, 1995.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22715 Filed 9–13–95; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–7211; 34–36190]

Confidential Treatment Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is modifying a procedural requirement concerning the number of unredacted copies of material filed with the Secretary of the Commission by issuers applying for a grant of confidential treatment. This modification reduces the number of unredacted copies from three or more copies to one copy.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION CONTACT: John Bernas at (202) 942–2915 or L. Jacob Fien-Helfman at (202) 244–2997, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today announces the adoption of amendments to Rule 406[1] under the Securities Act of 1933 ("the Securities Act")[2] and Rule 24b–2[3] under the Securities Exchange Act of 1934 ("the Exchange Act")[4]. Each rule is being revised for the limited purpose of reducing to one copy the unredacted material required to accompany a request for confidential treatment pursuant to either rule. In the case of Rule 406, the filing person is currently required to submit with the request for confidential treatment "as many copies of the confidential portion, each clearly marked 'Confidential Treatment,' as there are copies of the material filed with the Commission." In the case of Rule 24b–2, the filing person is currently required to submit with the request for confidential treatment "as many copies of the confidential portion, each clearly marked 'Confidential Treatment,' as there are copies of the material filed with the Commission and with any exchange where such material is required to be filed."[5] Today's change in Rule 406 and Rule 24b–2 reduces the number of unredacted copies that are required to be submitted to the Secretary of the Commission with the request for confidential treatment to one copy in all circumstances.[6]

It is anticipated that these revisions will reduce the volume of paper processed and discarded by the Staff without reducing the Division's ability to process filings. This reduction should also increase security for confidential materials since the staff would handle only one unredacted copy. These revisions do not change the number of redacted copies of the materials required to be filed with the Commission's file desk.

These amendments relate solely to "agency organization, procedure or practice." Consequently, their promulgation is not subject to the notice and comment requirements of the Administrative Procedures Act;[7] similarly, this rule making is not subject to the requirements of the Regulatory Flexibility Act.[8]

Statutory Basis

The amendments are being adopted pursuant to Section 19 of the Securities Act and Section 23 of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Registration requirements; Reporting and recordkeeping requirements; Confidential treatment; Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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[1] 17 CFR 230.406.

[2] 15 U.S.C. 77a *et. seq.*

[3] 17 CFR 240.24b–2.

[4] 15 U.S.C. 78a *et. seq.*

[5] Non-EDGAR filers currently are required to file three or more copies of filed material (See 17 CFR 229.406 and 17 CFR 240.12b–11) while EDGAR filers are required to file one copy of such materials (See 17 CFR 232.309(b)).

[6] In those instances when an application is denied, a prior grant revoked, or the information otherwise made public, the staff practice is to request that the applicant amend the initial filing to disclose the previously redacted information by contemporaneously filing the required number of copies without redactions.

[7] 5 U.S.C. 553(b).

[8] 5 U.S.C. 603, 604.

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PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. By amending § 230.406 by revising paragraphs (b)(1) and (b)(3), to read as follows:

§ 230.406 Confidential treatment of information filed with the Commission.

* * * * *

(b) * * *

(1) One copy of the confidential portion, marked "Confidential Treatment," of the material filed with the Commission. The copy shall contain an appropriate identification of the item or other requirement involved and, notwithstanding that the confidential portion does not constitute the whole of the answer or required disclosure, the entire answer or required disclosure, except that in the case where the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. The copy of the confidential portion shall be in the same form as the remainder of the material filed;

* * * * *

(3) The copy of the confidential portion and the application filed in accordance with this paragraph (b) shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to The Secretary, Securities and Exchange Commission, Washington, DC 20549.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. By amending § 240.24b–2 by revising paragraph (b)(1), designating the flush text following paragraph (b)(2) as paragraph (b)(3), and revising newly designated paragraph (b)(3) to read as follows:

§ 240.24b–2 Nondisclosure of information filed with the Commission and with any exchange.

* * * * *

(b) * * *

(1) One copy of the confidential portion, marked "Confidential Treatment," of the material filed with the Commission. The copy shall contain an appropriate identification of the item or other requirement involved and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in the case where the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. The copy of the confidential portion shall be in the same form as the remainder of the material filed;

* * * * *

(3) The copy of the confidential portion and the application filed in accordance with this paragraph (b) shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to The Secretary, Securities and Exchange Commission, Washington, DC 20549.

* * * * *

Dated: September 7, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22802 Filed 9–13–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–123–FOR; State Amendment No. 95–2]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposes to revise revegetation standards for success for nonprime farmland for surface and underground coal mining and reclamation operations under Indiana Code (IC) 13–4.1. The amendment is intended to improve operational efficiency.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated May 3, 1995 (Administrative Record No. IND–1460), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment at its own initiative. This amendment revises 310 IAC 12–5–64.1 and 310 IAC 12–5–128.1 pertaining to success standards for revegetation on nonprime farmland for surface and underground coal mining operations under IC 13–4.1.

OSM announced receipt of the proposed amendment in the May 30, 1995, **Federal Register** (60 FR 28069), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 29, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

310 IAC 12–5–64.1 (Surface) and 12–5–128.1 (Underground) Revegetation Standards for Success for Nonprime Farmland

Since the revisions being proposed for surface mining at § 12–5–64.1(c) are

identical to those being proposed for underground mining at § 12–5–128.1(c), they will be combined for ease of discussion. These subsections provide the standards for success which are to be applied under the approved postmining land uses.

1. *Organizational and Reference Changes.* Indiana proposes paragraph notation changes to reflect the organizational changes made throughout subsections (c). Additionally, Indiana proposes revisions throughout subsections (c) to correct the reference to the "Soil Conservation Service" to the "Natural Resources Conservation Service."

The Director finds the organizational changes and the correction of the reference do not render the Indiana regulations at 310 IAC 12–5–64.1/128.1 less effective than the Federal regulations at 30 CFR 816/817.116.

2. *Subsections (c)(3)(B); Pastureland Production Success Standards.* Subsection (c)(3)(B) concern the production success standards for revegetated pastureland areas. Indiana is proposing to relocate the provision in existing subsections (c)(4), which requires that if the current Natural Resources Conservation Service predicted yield by soil map units is used to determine production of living plants, then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued, to subsections (c)(3)(B).

The Director finds this organizational change does not render the Indiana regulations less effective than the Federal regulations and is approving this modification.

3. *Subsections (c)(3)(C); Pastureland Production Success Standards Methodology.* Indiana is proposing to delete the existing provision in subsections (c)(3)(C) for determining production of living plants on pastureland and is proposing to add the following provision.

> (C) A target yield determined by the following formula: Target Yield = NRCS Target Yield × (CCA/10 Year CA) where: NRCS Target Yield = the average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used, and shall be contained in the appropriate sections of the permit application. CCA = the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. 10 Year CA = the ten (10) Year Indiana Agricultural Statistics Service county average, consisting of the year being evaluated and the nine (9) preceding years.

The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. As discussed in the May 29, 1992, **Federal Register** (57 FR 22655), Indiana's average county yield data contains data of yields form previously mined lands. In letters dated February 26, 1992 (Administrative Record No. IND–1036 and IND–1037), OSM asked Indiana to clarify the use of this data. In letters dated March 20, 1992 (Administrative Record No. IND–1051 and IND–1052), Indiana stated that the amount of previously mined acreage being farmed is so limited that the inclusion of these yields essentially has no impact upon the overall yields calculated for the county average. Indiana also stated that it used the average county yield data as a weather correction factor applied to predicted soil mapping unit yields.

In the May 29, 1992, **Federal Register** (57 FR 22655, finding No. 1.c.), the Director found that the use of the Indiana average county yield data as the sole standard for determining success of revegetation would be less effective then the Federal regulations at 30 CFR 816/817.116.(a)(2). However, the Director found that the use of Indiana's average county yield data as a correction factor would not be inconsistent with the Federal regulations.

The currently proposed methodology is an acceptable way to calculate production standards for non-prime farmland pastureland. This method adjusts the weighted production standard based on soil type by using a factor derived by the county average and an average of the historical county average. The weighted production standard is already approved in the Indiana program and the adjustment of this standard by county average data is reasonable. Thus the Director finds that the proposed method for calculating success standards on nonprime farmland pasture at 310 IAC 12–5–64.1/128.1(c)(3)(C) is no less effective than the Federal requirements for success standards at 30 CFR 816/817.116(a)(2).

4. *Subsection (c)(3)(D)/(c)(5)(D); Other Success Standards.* Indiana is proposing to revise the language in the provisions moved from subsections (c)(3)(C) and (c)(5)(C) to new subsections (c)(3)(D) and (c)(5)(D), respectively. These provisions allow other success standards approved by the director of the Indiana Department of Natural Resources (IDNR) to be used in determining success of production of living plants on revegetated nonprime farmland pasture land and cropland areas. The provisions in (c)(3)(C) and (c)(5)(C) were previously approved by OSM on May 29, 1992 (57 FR 22655). The proposals would change the words "Other success standards" to "Other methods." The "methods" referred to are methods to determine success standards. Therefore, the modifications to the relocated provisions at (c)(3)(D) and (c)(5)(D) are not substantial changes from what was previously approved at (c)(3)(C) and (c)(5)(C).

The Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program. In letters dated March 20, 1992 (Administrative Record Nos. IND–1051 and IND–1052), Indiana stated that the IDNR will request approval by OSM for other standards prior to their use in the Indiana program if they vary significantly from the approved standards.

Based on the above discussion, the Director is approving the provisions at 310 IAC 12–5–64.1/128.1(c)(3)(D) and 12–5–64.1/128.1(c)(5)(D).

5. *Redesignations.* Existing subsections (c)(5) are redesignated subsections (c)(4) without any changes to the provisions. These subsections concern stocking levels and success standards for vegetation on areas to be developed as shelter belts or for fish and wildlife habitat, recreation or forestry land use.

Existing subsections (c)(6) are redesignated subsections (c)(5) with changes. The changes to redesignated (c)(5) are discussed in finding No. 4 and finding No. 6. These subsections concern the success standards for production on revegetated cropland areas.

Existing subsections (c)(7) are redesignated subsections (c)(6). Indiana is proposing to relocate the provision in existing subsections (c)(7), which requires that if the current Natural Resources Conservation Service predicted yield by soil map units is used to determine production of living plants then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued, to redesignated subsections (c)(5)(B). Indiana is also proposing to redesignate from existing subsections (c)(7) to subsections (c)(5)(E) the provision which requires that once the method for establishing the standards has been selected, it may not be modified without the approval of the director of IDNR.

Existing subsections (c)(8) are redesignated subsections (c)(7) without change. These subsections concern revegetation success where barren areas exist within an area under evaluation.

The Director finds the proposed redesignations do not render the Indiana regulations less effective than the Federal regulations.

6. *Subsections (c)(5); Cropland Production Success Standards Methodology.* Indiana is proposing to delete the provision in existing subsections (c)(6)(C) for determining production of living plants on cropland and is proposing to add the following provision to redesignated subsections (c)(5)(C).

> (C) A target yield determined by the following formula: Target Yield = CCA × (NRCSP/NRCSC) where: CCA = the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. NRCSP = the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which existed on the permit at the time the permit was issued. NRCSC = the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which is shown to exist in the county on the most current county soil survey. A croppable soil is any soil which the Natural Resources Conservation Service has defined as being in capability class I, II, III, or IV.

The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. The above discussion in finding No. 3, pertaining to Indiana's average county yield data containing data of yields from previously mined lands is also relevant to this proposed revision. As discussed in finding No. 3, the Director had previously found that the use of Indiana's average county yield data as a correction factor was not inconsistent with the Federal regulations.

Indiana's currently proposed methodology would modify the county average by a factor that uses the NRCS predicted standard for permitted unmined soils and a NRCS predicted standard that excludes mined land. Therefore, the Director is approving the provisions proposed at 310 IAC 12–5–64.1/128.1(c)(5)(C).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program. No comments were received from these agencies.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA. On June 15, 1995 (Administrative Record No. IND–1489), EPA responded that it concurred on the proposed amendment without comment.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP. No comments were received.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Indiana on May 3, 1995.

The Director approves, as discussed in: finding No. 3, the provisions at 310 IAC 12–5–64.1/128.1(c)(3)(C), concerning a methodology for determining the success of production of living plants on nonprime pasture land areas; finding No. 4, the provisions at 310 IAC 12–5–64.1/128.1(c)(3)(D) and 12–5–64.1/128.1(c)(5)(D), concerning the director of IDNR's approval of other success standards to be used in determining success of production of living plants on revegetated nonprime farmland pasture land and cropland areas; finding No. 6, 310 IAC 12–5–64.1/128.1(c)(5)(C), concerning a methodology for determining the success of production of living plants on nonprime cropland areas.

The Federal regulations at 30 CFR Part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 7, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding paragraph (kkk) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(kkk) The following rules, as submitted to OSM on May 3, 1995, are approved effective September 14, 1995:

310 IAC 12–5–64.1(c) and 310 IAC 12–5–128.1(c) concerning standards for success for nonprime farmland for surface and underground coal mining reclamation operations.

[FR Doc. 95–22866 Filed 9–13–95; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to its rules pertaining to normal husbandry practices and the Utah "Vegetation Information Guidelines." The amendment is intended to revise the Utah program to improve operational efficiency.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Richard J. Seibel, Telephone: (303) 672–5501.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16 and 944.30.

II. Submission of Proposed Amendment

By letter dated February 6, 1994, Utah submitted a proposed amendment to its program (administrative record No. UT–1025) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Utah submitted the proposed amendment at its own initiative. Utah proposed to revise its Coal Mining Rules at Utah Administrative Rule (Utah Admin. R.) 645–301–357.300 through 365 to specify normal husbandry practices that could be implemented without restarting the bond liability period. Utah also proposed to revise its "Vegetation Information Guidelines," by adding a bibliography of referenced publications for the proposed normal husbandry practices.

OSM announced receipt of the proposed amendment in the March 15, 1995, **Federal Register** (60 FR 13935), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–1034). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 14, 1995.

Durings its review of the amendment, OSM identified concerns relating to the provisions of Utah Admin. R. 645–301–357.340, Utah Admin. R. 645–301–357.350, and Appendix C of Utah's "Vegetation Information Guidelines." OSM notified Utah of the concerns by letter dated May 23, 1995 (administrative record No. UT–1054). Utah responded in a letter dated June 5, 1995, by submitting a revised amendment that addressed OSM's concerns (administrative record No. UT–1059).

Based upon the revisions to the proposed program amendment submitted by Utah, OSM reopened the public comment period in the July 6, 1995, **Federal Register** (60 FR 35158; administrative record No. UT–1064). The public comment period closed on July 21, 1995.

III. Director's Findings

Utah submitted an amendment to its program revising Utah Admin. R. 645–301–357.300 through 645–301–357.356 to specify approved normal husbandry practices that could be implemented without restarting the period of extended responsibility for successful revegetation (bond liability period). Utah also proposed to revise its "Vegetation Information Guidelines," by adding Appendix C, a bibliography of referenced publications that support the proposed normal husbandry practices. OSM has previously approved Utah's "Vegetation Information Guidelines" (56 FR 41803, August 23, 1991).

The Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1) require that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4). The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow the regulatory authority to select normal husbandry practices if such practices are expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Such practices must be normal husbandry practices within the region.

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Utah on February 6, 1995, and as revised by it on June 5, 1995, is no less effective than the Federal regulations at 30 CFR 816.116(c)(1) and (4) and 817.116(c)(1) and (4). Thus, the Director approves the proposed amendment. OSM's approval of the normal husbandry practices proposed at Utah Admin. R. 645–301–357.310 through 645–301–357.356 (findings Nos. 2 through 7 below) is predicated upon implementation of the general requirements proposed at Utah Admin. R. 645–301–357.301 through 645–301–357.304 (finding No. 1 below) for all normal husbandry practices.

1. Utah Admin. R. 645.301–357.300, General Requirements for Approval of Normal Husbandry Practices and Appendix C of Utah's "Vegetation Information Guidelines"

Utah proposed, at Utah Admin. R. 645–301–357.301 through 645–301–357.304, general requirements for mining and reclamation plan approval of normal husbandry practices. Utah identified in proposed Utah Admin. R. 645–301–357.310 through 645–301–357.365 (discussed in findings Nos. 2 through 7 below) normal husbandry practices that would not restart the bond liability period. Utah proposed to include as general requirements for all such practices (1) that the permittee demonstrate that husbandry practices proposed for a reclaimed area are not necessitated by inadequate grading practices, adverse soil conditions, or poor reclamation procedures, (2) that the permittee consider the total area within the bond increment when calculating the extent of area that may be treated by husbandry practices, and (3) if necessary to seed or plant in excess of the limits set forth in its proposed rules, a separate extended bond liability period for the reseeded or replanted areas. Utah's proposed Admin. R. 645–301–357.301 also includes the requirements that (1) approved practices must be normal practices for unmined lands within the region which have similar land uses, (2) discontinuance of the practices after the end of the bond liability period must not jeopardize permanent revegetation success, and (3) if a permittee proposes practices that are not identified in Utah's program, the additional practices would need to be approved as part of the Utah program in accordance with the Federal regulations at 30 CFR 732.17.

In addition, Utah proposed to revise its "Vegetation Information Guidelines," by adding Appendix C, a bibliography of referenced publications that support the normal husbandry practices proposed in Utah Admin. R. 645–301–357.

The Director finds that Utah's proposed Admin. R. 645–301–357.301 through 645–301–357.304 and Appendix C of Utah's "Vegetation Information Guidelines" are consistent with and no less effective than the Federal regulations concerning approval of normal husbandry practices at 30 CFR 816.116(c) (1) and (4) and 817.116(c) (1) and (4). The Director approves proposed Admin. R. 645–301–357.301 through 645–301–357.304 and Appendix C in Utah's "Vegetation Information Guidelines."

2. Utah Admin. R. 645–301–357.310 Through 645–301–357.312, Reestablishing Trees and Shrubs as a Normal Husbandry Practice

Utah proposed, at Utah Admin. R. 645–301–357.310 through 645–301–357.312, to allow as husbandry practices that would not restart the bond liability period: (1) Transplanting or reseeding 20 percent of the stocking rate for trees and shrubs during the first 40 percent, or through year 4, of the bond liability period; and (2) scalping of small areas in which to reseed shrubs, with the number of reseeded shrubs that can be counted towards success of revegetation limited to one per scalped area.

Utah Admin. R. 645–301–356.232 and the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) require that trees and shrubs used in determining the success of stocking shall (1) be adequate for the plant arrangement, (2) be healthy, and (3) have been in place for not less than two growing seasons. These regulations also require that, at the time of bond release, at least 80 percent of the trees and shrubs used to determine success shall have been in place for 60 percent of the applicable minimum period of responsibility ("the 80/60 requirement").

Because Utah's proposed rules state that only 20 percent of the stocking rate for trees and shrubs could be transplanted or reseeded through year 4 without restarting the liability period, Utah has ensured that trees and shrubs counted toward revegetation success have been in place for at least 6 years. This requirement exceeds the two growing season requirement and ensures that a determination of the 80/60 requirement can be made in accordance with Utah Admin. R. 645–301–356.232.

Therefore, the Director finds that Utah's proposed Admin. R.645–301–357.310 through 645–301–357.312 are consistent with the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) and are no less effective than the Federal regulations concerning approval of normal husbandry practices at 30 CFR 816.116(c) (1) and (4) and 817.116(c) (1) and (4). The Director approves proposed Utah Admin. R.645–301–357.310 through 645–301–357.312.

3. Utah Admin. R. 645–301–357.320 through 645–301–357.324, Chemical, Mechanical, and Biological Weed Control and its Associated Revegetation as a Normal Husbandry Practice

Utah proposed, at Utah Admin. R. 645–301–357.320 through 645–301–357.324, to allow as husbandry practices that would not restart the bond liability period: (1) Chemical weed control following the Weed Control Handbook, published by the Utah State University Cooperative Extension Service; (2) mechanical weed control such as hand roguing, grubbing, and mowing; and (3) biological weed control such as selective grazing. Utah proposed to require that biological control of weeds through disease, insects, or other agents must be approved on a case-by-case basis by Utah and other appropriate agencies which have the authority to regulate the introduction or use of biological control agents. In addition, (1) proposed Utah Admin. R. 645–301–357.320 allows weed control for noxious weeds through the entire liability period and through the first 2 years of the liability period for other weeds and (2) proposed Utah Admin. R. 645–301–357.324 allows up to a total of 15 percent of a reclaimed area during the first 2 years of the liability period to be reseeded or replanted of areas if necessary due to weed control. After the first 2 years of the liability period, no more than 3 percent of the reclaimed area may be reseeded in any single year and no reseeding or replanting due to weed control is allowed after the first 6 years of the liability period, or after Phase II bond release, whichever comes first, without restarting the bond liability period.

Because proposed Utah Admin. R. 645–301–357.320 allows control of only noxious weeds after the first 2 years of the bond liability period, Utah's proposed Admin. R. 645–301–357.324, allowing revegetation of areas damaged due to weed control after year 2 and through year 6 of the bond liability period, or through phase II bond release, applies only to the control of noxious weeds After year 6 of the bond liability period, or after phase II bond release, whichever comes first, any revegetation due to treatment of noxious or other weeds would restart the bond liability period. Prohibiting revegetation due to treatment of weeds after year 6 or after phase II bond release ensures that the permittee can demonstrate that the established vegetation is permanent and otherwise meets the general requirements for success of revegetation in the Federal regulations at 30 CFR 816.111 and 817.111.

The Director finds that Utah's proposed Admin. R. 645–301–357.320 through 645–301–357.324 are no less effective than the Federal regulations concerning approval of normal husbandry practices at 30 CFR 816.116(c) (1) and (4) and 817.116(c) (1) and (4). The Director approves proposed Admin. R. 645–301–357.320 through 645–301–357.324.

4. Utah Admin. R. 645–301–357.330 Through 645–301–357.332, Control of Pests Such as Big Game, Small Mammals, and Insects as a Normal Husbandry Practice

Utah proposed at Utah Admin. R. 645–301–357.330 through 645–301–357.332 to allow, as husbandry practices that would not restart the bond liability period, (1) control of big game and small mammals, approved on a case-by-case basis by Utah, the Utah Division of Wildlife Resources, and the appropriate land management agency or agencies, during the first 6 years of the liability period of until Phase II bond release, whichever comes first, and (2) control of insects throughout the liability period if it is determined, through consultation with an approval from the Utah Department of Agriculture or Cooperative Extension Service and the appropriate land management agency or agencies, that a specific practice is being performed on adjacent unmined lands.

Approvals by the Utah Division of Wildlife Resources, the appropriate land management agency or agencies, and/or the Utah Department of Agriculture or Cooperative Extension Service ensure that appropriate control methods will be used. Limiting such control to the first 6 years of the liability period or until phase II bond release allows the affected vegetation to become established. Prohibiting implementation of these control methods after year 6 or after phase II bond release ensures that the permittee can demonstrate that the established vegetation is permanent and otherwise meets the general requirements for success of revegetation in the Federal regulations at 30 CFR 816.111 and 817.111.

The Director finds that the Utah's proposed Admin. R. 645–301–357.330 through 645–301–357.332 are no less effective than the Federal regulations concerning approval of normal husbandry practices at 30 CFR 816.116(c) (1) and (4) and 817.116(c) (1) and (4). The Director approves proposed Admin. R. 645–301–357.320 through 645–301–357.324.

5. Utah Admin. R. 645–301–357.340 Through 645–301–357.343, Repair of Vegetation Due to Natural Disasters and Illegal Activities Occurring After Phase II Bond Release as a Normal Husbandry Practice

Utah proposed, at Utah Admin. R. 645–301–357.340 through 645–301–357.343, to allow as a husbandry practice that would not restart the liability period the seeding and planting of areas significantly affected by a natural disaster, such as wildfires, earthquakes, and mass movement originating outside the disturbed area but excluding climatic variation; or illegal activities, such as vandalism, which are not caused by any lack of planning, design, or implementation of the mining and reclamation plan on the part of the permittee. In addition, Utah will only allow such repair if the damage occurs after phase II bond release and requires that all applicable revegetation success standards must be achieved on the repaired areas.

Although Utah's proposed rules provide that repair of damaged revegetation caused by such natural disasters and illegal activities will not restart the liability period, the liability period may in fact be extended if the bond release area is not able to meet all applicable revegetation success standards. In addition, because Utah excluded climatic variation from consideration as a natural disaster, the permittee is not excused from demonstrating establishment of a diverse, effective, and permanent vegetative stand during normal periods of drought. Utah's allowance for such repair to occur without restarting the bond liability period after phase II bond release provides an incentive for permittees to seek and obtain phase II bond release.

Because the repair of vegetated areas would be necessitated on similar unmined land in the region if the same damage occurred, the Director finds that Utah's proposed Admin. R. 645–301–357.340 through 645–301–357.343 are not less effective than the Federal regulations concerning approval of normal husbandry practices at 30 CFR 816.116(c) (1) and (4) and 817.116(c) (1) and (4). The Director approves proposed Admin. R. 645–301–357.340 through 645–301–357.343.

6. Utah Admin. R. 645–301–357.350, Irrigation of Transplanted Trees and Shrubs as a Normal Husbandry Practice

Utah proposed, at Utah Admin. R. 645–301–357.350, to allow irrigation of transplanted trees and shrubs as a husbandry practice that would not restart the bond liability period. Utah also submitted a letter from the U.S. Forest Service, Department of Agriculture, dated April 8, 1994, documenting that irrigation of seedlings during the first growing season is a common practice in establishing trees and shrubs.

Utah demonstrated that irrigation of trees and shrubs is a common practice within the region for unmined lands having land similar to the approved postmining land use of the disturbed area. Because Utah limited irrigation of transplanted trees and shrubs to the first 2 years of the liability period, Utah has ensured that discontinuance of the practice will not effect the demonstration of permanent revegetation success.

The Director finds that Utah's proposed Admin. R. 645–301–357.350 is not less effective than the Federal regulations concerning approval of normal husbandry practices to 30 816.116(c) (1) and (4) and817.116(c) (1) and (4). The Director approves proposed Admin. R. 645–301–357.350.

7. Utah Admin. R. 645–301–357.360 Through 645–301–357.365, Highly Erodible Area and Rill and Gully Repair as a Normal Husbandry Practice

Utah proposed, at Utah Admin. R. 645–301–357.340 through 645–301–357.343, to allow as a husbandry practice that would not restart the liability period the repair of highly erodible areas and rills and gullies during the first 20 percent of the bond liability period, if the affected area comprises no more than 15 percent of the disturbed area and if no continuous area to be repaired is larger than one acre. Furthermore, Utah proposed that after the first 20 percent of the bond liability period but prior to the end of the first 60 percent of the liability period or until Phase II bond release (whichever comes first), the repair of any areas greater than 3 percent of the total disturbed area or any continuous area larger than 1 acre will be considered augmentative and will restart the liability period. After the end of the first 60 percent of the liability period or after Phase II bond release, and rill and gully repair would restart the liability period. Utah also submitted as copy or the U.S. Nation Resource Conservation Service (NRCS) Critical Area Planting Guide for the State of Utah.

Because Utah has clearly and reasonably defined when an operator must consider the repair of rills and gullies an augmentative practice that would restart the liability period and submitted NRCS documentation which demonstrates that the repair of rills and gullies are supported by NRCS as an acceptable land management technique for similar situations in the State of Utah, the Director finds that Utah's proposal for the repair or fills and gullies as a normal husbandry practice is not less effective than the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4). The Director approves Utah Admin. R. 645–301–357.340 through 645–301–357.343.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSMs responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program.

The U.S. Bureau of Mines responded on March 10, 1985, that it has no comments on the proposed amendment (administrative record No. UT–1030).

The U.S. Army Corps of Engineers responded on March 15 and July 12, 1995, that it found the proposed amendment to be satisfactory (administrative record Nos. UT–1033 and UT–1069).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(b)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT–1027). EPA did not responded to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. UT–1027). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on findings nos. 1 through 7, the Director approves the proposed amendment concerning normal husbandry practices as submitted by Utah on February 6, 1995, and as revised on June 5, 1995.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 6, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (gg) to read as follows:

§ 944.15 Approval of amendments to the Utah regulatory program.

* * * * *

(gg) The following revisions to or additions of the following sections of the Utah Administrative Rules (Utah Admin. R.) for Coal Mining, and the addition of Appendix C, to Utah's "Vegetation Information Guidelines," as submitted to OSM on February 6, 1995, and revised on June 5, 1995, are approved effective September 14, 1995.

[FR Doc. 95–22865 Filed 9–13–95; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Wyoming regulatory program (hereinafter referred to as the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Wyoming proposed revisions to its mining statute pertaining to procedures for notifying surface land owners, oil and gas well owners, and oil and gas lease holders, of proposed coal mining operations where the land, well, or lease is situated within or near the permit area in question. The amendment is intended to reduce the costs of the Wyoming program while retaining consistency with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15, 950.16, and 950.20.

II. Proposed Amendment

By letter dated June 2, 1995, Wyoming submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. WY–30–01). Wyoming submitted the proposed amendment at its own initiative. The provision of the Environmental, Quality Act that Wyoming proposed to revise is: Wyoming Statute (WS) 35–11–406(j), public notice procedures for permit applications.

OSM announced receipt of the proposed amendment in the June 14, 1995, **Federal Register** (60 FR 31265), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. WY–30–10). Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 14, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Wyoming on June 2, 1995, is no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

At WS 35–11–406(j), Wyoming provides (in part) requirements for mailing copies of the notice of a permit application to surface owners, operators of oil and gas wells, and lessees of record of oil and gas leases. The State proposes to revise these requirements by: (1) Clarifying that such mailings need to be done only for "* * * initial applications or additions of new lands * * *"; (2) deleting the requirement that the notice be mailed to oil and gas operators or holders of oil and gas leases; (3) adding a requirement that the applicant shall mail a copy of the mining plan map to the Wyoming Oil and Gas Commission; and (4) adding a requirement that a "sworn statement" of the mailing of the mining plan map become part of the application.

SMCRA, at Section 507(b)(6)—Application Requirements, requires that at the time of submission of an application, a copy of an advertisement that describes location and boundaries of the proposed cooperation, to be published in a local paper, be included in the application. Section 513—Public Notice and Public Hearings, additionally requires such an advertisement for a permit revision as well and further requires that the regulatory authority notify various local government bodies, planning agencies, etc. in the locality of the proposed surface mining.

SMCRA does not require an applicant to mail a copy of the newspaper notice to surface owners, gas or oil operators, or oil and gas lease holders. The proposed modifications to Wyoming's statute would provide for public notice requirements that go beyond the Federal program requirements. Further, these requirements are not in conflict with or inconsistent with SMCRA. The Director is therefore approving them.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment. None were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Wyoming program.

The Mine Safety and Health Administration (MSHA), (Denver, Colorado) responded that the amendment does not appear to conflict with any current MSHA regulations. (administrative record No. WY–30–09).

The Bureau of Land Management (BLM) expressed concern that the oil and gas operators or lessees would not be notified on new permits or where lands are added. The agency noted that occasionally conflicts between development of the two minerals (coal and oil/gas) have been encountered. BLM opposes the change to the present language unless there will be some mechanism in place for the Wyoming

Oil and Gas Commission to notify Operators of any potential conflict. (administrative record No. WY–30–11).

The State agency responsible for the issuance of oil and gas permits is the Wyoming Oil and Gas Commission. Notification by the State regulatory authority, to such agencies who have authority to issue licenses and permits, is required by the Federal program. Those agencies having knowledge of existing or potential conflicts within their areas of jurisdiction are responsible for submitting comments and/or taking other appropriate actions to avoid or resolve any conflicts. As discussed in the finding, the requirement to notify individual operators or lease holders of gas and oil interests goes beyond the requirements of the Federal program. OSM cannot require standards beyond those of the Federal program. However, if such standards are proposed by a State and are not in conflict or inconsistent with Federal Program requirements, they can be approved.

The U.S. Army Corps of Engineers responded that it found the changes to be satisfactory. (Administrative record No. WY–30–12).

The Mine Safety and Health Administration (Arlington, Virginia) responded that the amendment has no apparent impact upon miners' health and safety and that MSHA jurisdiction does not extend into State administrative requirements for reclamation permit applicants' public notices. (administrative record No. WY–30–13).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On June 7, 1995, OSM solicited EPA's comments on the proposed amendment (administrative record No. WY–30–06). even though none of the revisions that Wyoming proposed to make in its amendment pertain to air or water quality standards. EPA did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record Nos. WY–30–04 and WY–30–03). The Wyoming Department of Commerce, Division of Cultural Resources (SHPO) responded on June 13, 1995, that it had no objections provided that OSM follows the procedures established in accordance with Section 106 of the National Historic Preservation Act and Advisory Council regulations at 36 CFR 800. As a Federal agency, OSM is obligated to follow the above requirements. (administrative record No. WY–30–08). The ACHP did not respond to OSM's request.

V. Director's Decision

Based on the above finding, the Director approves Wyoming's proposed amendment at WS 35–11–406(j), concerning public notice procedures for permit applications, as submitted on June 2, 1995.

The Federal regulations at 30 CFR part 950, codifying decisions concerning the Wyoming program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et. seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 950.15 is amended by adding paragraph (w) to read as follows:

§ 950.15 Approval of amendments to the Wyoming regulatory program.

* * * * *

(w) revisions to WS 35–11–406(j) concerning public notice procedures for permit applications, as submitted to OSM on June 2, 1995, are approved effective September 14, 1995.

[FR Doc. 95–22864 Filed 9–13–95; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Part 7

RIN 1024–AC28

Pictured Rocks National Lakeshore; Hunting Closure

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule closes certain developed and high visitor use areas of the lakeshore to hunting in the interest of public safety. Hunting in these developed and high visitor use areas constitutes a hazard to the safety of the visiting public.

EFFECTIVE DATE: This final rule becomes effective October 16, 1995.

FOR FURTHER INFORMATION CONTACT: Larry Hach, Chief of Visitor Services and Land Management, Pictured Rocks National Lakeshore, P.O. Box 40, Munising, MI 49862. Telephone (906) 387–2607.

SUPPLEMENTARY INFORMATION:

Background

Pictured Rocks National Lakeshore's legislative authority, Public Law 89–668 (80 Stat. 922), states "The Secretary, after consultation with the Michigan Department of Conservation, may designate zones and establish periods where and when no hunting shall be permitted for reasons of public safety, administration, or public use and enjoyment." Pictured Rocks National Lakeshore has already consulted with the Michigan Department of Natural Resources on this issue, as well as with other interested groups including the Michigan United Conservation Clubs, area hunters, and other interested local individuals.

The National Park Service's Management Guidelines (specifically Chapter 8, "Use of the Parks") state that the protection of park visitors and providing for visitor safety is a primary goal of park management, and that the Service may establish regulations or closures that are more restrictive than applicable State regulations based on a finding that such restrictions are necessary for public safety, resource protection, or visitor enjoyment. With the increased amount of visitors to the lakeshore in recent years (CY 94 visitation was 583,131) and the increase of hunting activities within lakeshore boundaries, an increased possibility exists of hazards to the safety of the public due to hunting activity in the developed and high visitor use areas.

Hunting in the lakeshore is managed according to the State of Michigan Department of Natural Resources hunting regulations, Federal migratory waterfowl regulations, and those specific hunting regulations contained in the Superintendent's Compendium (Orders). Continuing under the existing guidelines is dangerous from a safety point of view. At the same time, a total ban on hunting is neither practical nor necessary. This limited hunting closure is in accordance with stated overall management objectives for the administration of lands of the National Park System.

Much of the high public use area at the western end of the lakeshore is situated within the corporate limits of the City of Munising where the discharge of a firearm is already prohibited. The lakeshore's developed areas, such as campgrounds, parking lots, and overlooks, are heavily used by the visiting public. Hunting in such heavily used areas constitutes a hazard to the safety of the visiting public. While State of Michigan regulations currently permit hunting within road rights-of-way (ROW's), the heavy volume of traffic on National Park Service (NPS)-owned paved roads within the lakeshore makes hunting within these ROW's not conducive to the promotion of visitor safety and enjoyment. The heaviest public use period for the lakeshore occurs between April 1 and Labor Day when the lakeshore receives approximately 73 percent of its annual visitation. During this period, the regulation would prohibit hunting within the lakeshore.

On January 23, 1995, the NPS published proposed regulations that would close developed and high visitor use areas of the lakeshore to hunting in the interest of public safety (60 FR 4394). Public comment was invited. The comment period closed March 24, 1995.

Summary of Comments Received

During the public comment period, the NPS received eight written comments regarding the proposed rule. Four comments supported the closures, some asking for increased closures. Four were opposed to the closures, either in part or in whole. An analysis was made of the public comments. After considering all public comments, the NPS has decided to proceed with a final rule on the hunting closures.

A summary of specific comments by broad subject and the agency's response to these comments follows.

1. *Comment: Hunting closure areas are already restricted to hunting by local or state regulations.* A few respondents felt that the closure areas were already restricted to hunting activities by current local or state regulations. They felt that peak hunter density never exceeds a fraction of a hunter per square mile and there has never been an accident in the lakeshore involving hunters.

Response: A City of Munising ordinance prevents the discharge of a firearm within the city limits. However, the city does not enforce this ordinance in the forested areas of the lakeshore, within the city limits. Because the lakeshore does not have the authority to enforce the city's ordinance, it goes unenforced. Each year hunting activity takes place in the Becker Field, Munising ski trails and on Sand Point. All of these areas are within the city limits of Munising.

Michigan DNR hunting regulations define a Safety Zone within 450 feet of occupied dwellings (residences) or associated buildings. This regulation has no correlation to the developed public use areas of the lakeshore, such as drive-in campgrounds, overlooks, parking lots or other high use visitor buildings. Despite heavy public use, none of these lakeshore facilities serve as a "dwelling or associated building." The DNR regulation, therefore, does not apply.

While State of Michigan regulations currently permit hunting within road rights-of-way, the heavy volume of traffic on NPS-owned paved roads within the lakeshore makes hunting within these ROW's not conducive to the promotion of visitor safety and enjoyment. Several conflicts between hunters and non-hunters occur each hunting season within these ROW's that could directly affect the safety of the visiting public.

Although there has not been a documented accident in the lakeshore involving hunting, there have been several documented incidents in each of the past few years, in the developed areas, involving hunter and non-hunter contacts signed by one or both parties as constituting a safety hazard. With the increased number of visitors to the lakeshore, and the increase of hunting activities within the lakeshore boundaries, contacts between hunters and non-hunters directly affect the safety of the visiting public in the developed and high visitor use areas.

Although hunter density per square mile throughout the entire lakeshore is fairly low, having hunting activity in such close proximity to developed and high visitor use areas constitutes a public safety hazard.

2. *Comment: Impact on hunters by the closured areas.* A few commenters stated that these closures could have minimal impact on current hunting groups, but were worried about the lakeshore closing down other areas in the future. They were also concerned that hunters would not be able to access legal hunting areas through these closure areas.

Response: There is no guarantee that future developed and high visitor use lakeshore areas would not be closed to hunting, based on a finding that such restrictions are necessary for public safety, resource protection or visitor enjoyment. Future park developments and visitor areas that attain higher public use could also be closed to hunting for the same public safety reasons.

The closure areas were closely scrutinized to include only those areas where hunting restrictions were necessary for public safety. The closures are not an attempt to slowly close off the entire lakeshore to hunting because the park's enabling legislation mandates that hunting shall be permitted in administering the lakeshore. The legislation also states that, after consultation with the Michigan DNR, the lakeshore may designate zones and establish periods where and when no hunting shall be permitted for reasons of public safety.

Hunters would be allowed access to legal hunting areas through the closure areas, but they could not conduct any hunting while in the closure areas.

3. *Comment: The hunting closure process was handled very openly and fairly.* One respondent stated that the hunting closure process was very open. The person also appreciated that discussions were held with various public groups so that the proposal could be tailored to serve all constituencies fairly.

Response: The lakeshore consulted with the Michigan Department of Natural Resources on this issue, as well as with other interested groups, including the Michigan United Conservation Clubs, area hunters and other local individuals. These various groups were consulted and kept well informed throughout the entire rulemaking process. Information gained from these consultations greatly aided in defining the specific closure areas. Throughout the rulemaking process, treating all constituencies (general public and hunting groups) fairly was a high concern of lakeshore management.

4. *Comment: A need to postpone the opening hunting date to October 15 or later.* One reviewer wanted the opening date for lakeshore hunting postponed to October 15, rather than the day after Labor Day. He also felt there was a need to close more than 2 percent of the lakeshore to hunting during the fall visitor season.

Response: The heaviest public use period occurs between April 1 and Labor Day when the lakeshore receives approximately 73 percent of its annual visitation. Visitor use after Labor Day decreases dramatically and contacts rarely occur between hunters and non-hunters that could affect the safety of the visiting public. Opening the lakeshore to hunting the day after Labor Day allows hunters to pursue bear during Michigan's bear hunting season within the Upper Peninsula.

The developed and high visitor use areas of the lakeshore, which constitute approximately 2 percent of park land, are where an increased possibility exists of contacts between hunters and non-hunters, directly affecting the safety of the visiting public. Over the last several years the lakeshore has witnessed both an increase in total park visitation and hunting activities. Throughout the rest of the lakeshore, in the more undeveloped and less used areas, the possibility of these same safety hazards occurring decreases dramatically.

5. *Comment: Expand the hunting closure areas to include other areas of the lakeshore.* Two respondents felt that the proposed closure areas should also include all backcountry campgrounds, lakeshore hiking trails and the groomed cross-country ski trails.

Response: The lakeshore's developed areas, such as drive-in campgrounds, parking lots and overlooks, are the areas most heavily used by the public. The backcountry areas of the lakeshore, such as backcountry campgrounds, hiking trails, and cross-country ski trails, receive only a fraction of the annual visitor use. Hunter/non-hunter contacts occur very infrequently in the backcountry areas. These backcountry areas were considered for closure, but the potential hazard to the safety of the public was considered minimal and insufficient to warrant closure. The increases in park visitation over the last several years have occurred primarily in the more developed and high use areas of the lakeshore. Closing these backcountry areas to hunting would have little effect on public safety.

6. *Comment: Disagreement with the summer hunting closure and comparing the lakeshore with Michigan State Parks.* A few commenters disagreed with the closing of the lakeshore to hunting from April 1 to Labor Day. They also felt it was not fair to compare the lakeshore hunting closure period with that of Michigan State Parks.

Response: The heaviest public use period for the lakeshore occurs between April 1 and Labor Day, when the lakeshore receives approximately 73 percent of its annual visitation. There is very little hunting activity during this period, since the only legal hunting for game species that can be done is for coyote and for certain animals for which there is "no closed season." With the high visitor use during the summer period in the developed areas, even allowing this level of hunting activity constitutes a public safety hazard.

Michigan DNR hunting regulations close all state parks to hunting from April 1 through September 14. Michigan State Parks have developed and high visitor use areas, similar to the national lakeshore, that are closed to hunting during the summer visitor use season. The lakeshore closure period would be through Labor Day, to allow for the start of the Michigan bear hunting season in the Upper Peninsula. This closure would be similar to Michigan State Park hunting management, with the exception of opening the national lakeshore to hunting earlier in September than in the State parks.

State park acreage closed to hunting in developed areas amounts to less area closed than what would be closed in the lakeshore. This is primarily due to the fact that most state parks are appreciably smaller in total land size when compared with the national lakeshore. Pictured Rocks has more land and therefore more total acreage that would be closed to hunting for public safety reasons.

Effective Date

The final rule establishes regulations that will close developed and high visitor use areas of the lakeshore to hunting in the interest of public safety. The lakeshore will maintain a list of these closed areas, and specific descriptions of the same, for the information of the general public. This rule becomes effective 30 days from the date of publication in the **Federal Register**.

Drafting Information

The author of these regulations is Larry Hach, Chief of Visitor Services and Land Management, Pictured Rocks National Lakeshore.

Paperwork Reduction Act

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent land owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA; 42 USC 4321, et seq.) and by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks; Reporting and record keeping requirements.

In consideration of the foregoing, 36 CFR chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.32 is amended by adding paragraph (c) to read as follows:

§ 7.32 Pictured Rocks National Lakeshore

* * * * *

(c) Hunting. The following lakeshore areas are closed to hunting:

(1) Sand Point area. All that portion of Sand Point described as the area below the top of the bluff in Sections 19 and 30, T47N, R18W, and that area situated within the corporate limits of the City of Munising, including the Sand Point Road.

(2) Developed public use areas.

(i) The area within 150 yards of any campsite located within the Little Beaver, Twelvemile Beach, and Hurricane River Campgrounds.

(ii) The area within 150 yards of the Miners Castle overlooks, paved walkways and vehicle parking lot. Also 100 feet from the centerline of the paved Miners Castle Road and the area within 100 feet of Miners Falls parking lot, trail and associated platforms.

(iii) The area within 100 feet of: the Chapel Falls parking lot; the Little Beaver backpacker parking lot; the Twelvemile Beach picnic area parking lot; the Log Slide parking lot, platforms and walkways; the Grand Sable Lake picnic area and parking lot; the Grand Sable Lake boat launch and parking lot; the Grand Sable Lake overlook parking lot.

(iv) The area within 150 yards of any structure at the Au Sable Light Station, and within 100 feet of the trail between the lower Hurricane River Campground and the light station.

(v) The area within 150 yards of the Sable Falls parking lot and building, including the viewing platforms and associated walkway system to the mouth of Sable Creek. Also included is the area 100 feet from the centerline of the paved Sable Falls Road.

(vi) The area within 150 yards of: the Grand Sable Visitor Center parking lot and barn; the structures comprising the Grand Marais quarters and maintenance facility.

(vii) The 8.6 acre tract comprising structures and lands administered by the National Park Service on Coast Guard Point in Grand Marais.

(3) Hunting season. Hunting is prohibited parkwide during the period of April 1 through Labor Day.

Dated: August 17, 1995.

Robert P. Davison,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–22747 Filed 9–13–95; 8:45 am]

BILLING CODE 4310–70–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–13; RM–8156, RM–8234]

Radio Broadcasting Services; Blanchard, LA and Stephens, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: The Commission denies an application for review filed by Arkansas Wireless Company ("Wireless") of the action taken by the Assistant Chief of the Allocations Branch in MM Docket No. 93–13, allotting Channel 271C3 to Blanchard, Louisiana and denying Wireless' competing counterproposal to allot Channel 271A to Stephens, Arkansas (58 FR 51787, October 5, 1993). The Commission denies the application for review because the underlying decision followed applicable legal precedent in allotting the channel to the more populous community. The Commission also dismisses as moot a motion for stay filed by Wireless seeking a stay of the application filing window.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Mania K. Baghdadi, Mass Media Bureau, (202)776–1653.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 93–13, adopted July 31, 1995, and released on September 11, 1995. The full text of this Commission decision is available for public inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22834 Filed 9–13–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 86–388; RM–5385]

Television Broadcasting Services; Kenansville, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On application for review, the Commission affirmed the grant of the request of the Meredith Corporation (RM–5835) to allot UHF television Channel 31 to Kenansville, Florida for the provision of its first local television

service. The Chief, Policy and Rules Division, had granted Meredith's request by *Memorandum Opinion and Order*, 55 FR 17756, published April 27, 1990. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2100.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 86–388, adopted July 31, 1995 and released September 11, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22833 Filed 9–13–95; 8:45 am]

BILLING CODE 6712–01–F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1812, 1813, 1814, 1815, 1819, 1825, 1834, 1835, 1836, 1852, 1853, and 1870

[NASA FAR Supplement Directive 89–20]

RIN 2700–AB85

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal and administrative matters, such as the NASA FAR Supplement rewrite and reporting of contract data by NASA procurement offices.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 512–1800. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Rewrite of NASA FAR Supplement

NASA is reviewing and rewriting 48 CFR chapter 18, the NASA FAR Supplement, in its entirety in order to implement recommendations of the National Performance Review. During this review, NASA is eliminating reporting requirements and making other changes in order to reduce and simplify the regulation. This rule is part of the effort to simplify NASA's regulations.

Summary of Changes

Unnecessary words in subparts 1801.6 and 1801.7 are eliminated. Sections 1801.603 and 1801.670 are substantially reduced in order to rely primarily on FAR guidance on delegation of contracting officer authority. Section 1801.703 is substantially reduced in order to rely primarily on FAR guidance on class determinations and findings (D&F's). Section 1801.770 is added on legal review of D&F's prior to signature. In subpart 1804.6, instructions are revised concerning data elements required to be reported by NASA procurement offices. Sections 1804.672 and 1852.204–70, Report on NASA Subcontracts, are removed. Section 1804.674 on subcontract reporting is removed because it is already covered by subpart 1819.7.

Paragraph 1834.005–1(k) is removed because it unnecessarily duplicates instructions in subpart 1804.6. Other sections are amended as a result of Federal Acquisition Circulars 90–29 and 90–31.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1801, 1804, 1812, 1813, 1814, 1815, 1819, 1825, 1834, 1835, 1836, 1852, 1853, and 1870

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1804, 1812, 1813, 1814, 1815, 1819, 1825, 1834, 1835, 1836, 1852, 1853, and 1870 are amended as follows.

1. The authority citation for 48 CFR parts 1801, 1804, 1812, 1813, 1814, 1815, 1819, 1825, 1834, 1835, 1836, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1801.1—Purpose, Authority, Issuance

1801.102, 1801.103, 1801.104, 1801.104–1, 1801.104–2, 1801.104–3, 1801.104–370, 1801.105 [Redesignated]

2. Sections 1801.102, 1801.103, 1801.104, 1801.104–1, 1801.104–2, 1801.104–3, 1801.104–370, and 1801.105 are redesignated as 1801.103, 1801.104, 1801.105, 1801.105–1, 1801.105–2, 1801.105–3, 1801.105–370, and 1801.106.

3. In paragraph (b) of the newly designated section 1801.105–1, the citation "1801.104–1(b)" is revised to read "1801.105–1(b)".

Subpart 1801.6—Career Development, Contracting Authority, and Responsibilities

4. In section 1801.602–3, paragraph (a) is revised to read as follows:

1801.602–3 Ratification of unauthorized commitments.

(a) *Policy.* Individuals making unauthorized commitments may be subject to disciplinary action, and the issue may be referred to the Office of Inspector General.

* * * * *

5. Section 1801.603–2 is revised to read as follows:

1801.603–2 Selection.

(a) *Policy.* Normally, only GS–1105 and GS/GM–1102 personnel with the proper training and experience may be appointed contracting officers.

(b) *Organizational need determination.* NASA contracting officers shall be appointed only when a valid organizational need can be demonstrated. Factors to be considered in assessing the need for a contracting

officer include volume of actions, complexity of work, and organizational structure.

1801.603–3, 1801.603–4 [Removed]

6. Sections 1801.603–3 and 1801.603–4 are removed.

7. Section 1801.670 is revised to read as follows:

1801.670 Delegations to contracting officer's technical representatives (COTRs).

A COTR delegation may be made only by the contracting officer cognizant of that contract at the time the delegation is made. If the cognizant contracting officer is absent, the delegation letter may be signed by a warranted contracting officer at any level above the cognizant contracting officer. An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them. COTRs should be informed that they may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments should not be delegated through a COTR designation or by any means other than a contracting officer warrant.

Subpart 1801.7—Determinations and Findings

1801.703 [Removed]

8. Section 1801.703 is removed.

1801.704 [Amended]

9. In section 1801.704, the first sentence is removed.

1801.770 [Added]

10. Section 1801.770 is added to read as follows:

1801.770 Legal review.

Each determination and finding (D&F), including class D&Fs, shall be reviewed by counsel for form and legality before the signature, in accordance with FAR 1.701, is obtained.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.6—Contract Reporting

11. Section 1804.601 is revised to read as follows:

1804.601 Record requirements.

The Headquarters Analysis Division (Code HC) is responsible for meeting the requirements of FAR 4.601, based on installation submission of Individual Procurement Action Reports (NASA Form 507 series) data.

12. Section 1804.671 is revised to read as follows:

1804.671 Individual Procurement Action Report (NASA Form 507 series).

The Individual Procurement Action Report and Supplements (NASA Form 507 series) provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to Congress, Federal Procurement Data Center, and other Federal agencies. The preparation and utilization of the NASA Form 507 series are an integral part of the agencywide Financial and Contractual Status (FACS) system.

13. Section 1804.671–1 is revised to read as follows:

1804.671–1 Applicability and coverage.

The following procurement actions are individually reportable and require the completion of one or more of the forms in the 507 series.

(a) *Initial basic procurements.*

(1) All contracts, regardless of dollar obligation amount.

(2) All grants, cooperative agreements, and Space Act agreements.

(3) Intragovernmental procurements and purchase orders when the initial value is more than $25,000.

(4) All contracts and purchase orders for consulting services.

(5) Purchase orders of $25,000 or less for services within the four designated industry groups identified at FAR 19.1005(a) under the Small Business Competitiveness Demonstration Program. (These actions are not FACS reportable, but are required for FPDS reports.)

(b) *Modifications.* Modifications that—

(1) Obligate or deobligate funds, regardless of dollar amount,

(2) Change the estimated cost and/or fee,

(3) Extend the completion date, or

(4) Add or change procurement statistics previously reported are reportable.

1804.671–2 [Removed and Reserved]

14. Section 1804.671–2 is removed and reserved.

15. Section 1804.671–4 is revised to read as follows:

1804.671–4 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).

(a) Individual Procurement Action Reports shall be prepared and submitted to Headquarters for each procurement action required to be reported (see 1804.671–1). Specifically, for new contract awards, NASA Forms 507, 507A, and 507B are prepared. For new grants, agreements, intragovernmental agreements, and orders against federal supply schedules, NASA Forms 507G and 507B are prepared. For modifications to any of the above procurements, NASA Forms 507M and, if necessary, 507B are prepared.

(b) Detailed item instructions for preparing the NASA Forms 507 series are as follows:

(1) *Item 1—Contract/grant number* (11 positions, including blanks).

(i) Enter the specific contract, grant, cooperative agreement, Space Act agreement, or purchase order number for which the data are reported. The first five digits represent the prefix field, while the last six digits are used to number each contractual instrument serially. If a serial number does not fill out the entire field, leave those digit positions blank instead of using zeros.

(ii) The method of numbering—

(A) Contracts, purchase orders, and Space Act agreements is set forth in subpart 1804.71; and

(B) Grants and Cooperative agreements is set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1, paragraph 306.

(2) *Item 2—Document suffix* (1 position). If an alpha suffix is used in the contract or purchase order number, enter the assigned suffix (e.g., "F" for facilities contracts). Otherwise, leave this item blank.

(3) *Item 3—Modification prefix* (1 position). If an alpha prefix is used in the modification number of the reported action, enter the assigned prefix. Otherwise, leave this item blank.

(4) *Item 4—Modification number* (4 positions). Enter the serial number assigned to the modification action.

(5) *Item 5—PR number* (12 positions). Enter the number assigned to the Procurement Request document which initiated the reported action.

(6) *Item 6—Closeout PR* (1 position). Enter "Y" if the reported action closes the PR reported in item 5. Otherwise, leave this item blank.

(7) *Item 7—Contractor VID* (7 positions). Enter the contractor's unique Vendor Identification Number (VID) which indicates the contractor's name and business address.

(8) *Item 7a—Contractor name* (29 positions, including spaces). Enter the name of the contractor. (For editing purposes, the first five characters of the contractor's name must be identical to those shown in "NASA Contractor Identification Codes.") For intragovernmental actions, enter the agency name (e.g., US Army, US Navy, US Commerce) and also see the Item 8

instructions in paragraph (b)(11) of this section.

(9) *Item 7b—Contractor division* (20 positions). Enter the name of the contractor's division if one is named in the contractual instrument. (For editing purposes, the first five characters of the division name must be identical to those shown in "NASA Contractor Identification Codes.") For intragovernmental actions, enter the name of the cognizant procuring activity (e.g., Electronic Systems Division).

(10) *Item 7c—Contractor address—city and state.* Enter city and state of contractor's address as stated in the contractual instrument.

(11) *Item 8—Contractor identification code (CIC) number* (7 positions). This coding system is managed by the Headquarters Analysis Division (Code HC). It identifies the procurement in terms of the contractor's name, division (if any), address, and the place of performance. A unique code is assigned for each different combination of these items. For combinations not found, call the Office of Procurement, NASA Headquarters (Code HC), where a code will immediately be assigned.

(12) *Item 9—Contractor Place of Performance (CPOP) VID* (7 positions). Enter the unique Contractor Place of Performance (CPOP) VID which indicates the contractor's place of performance address. This is a seven character alpha-numeric code generated by the Acquisition Management Subsystem (AMS).

(13) *Items 9a—Place of performance* (city—24 positions; state—2 positions). Enter the location (city and state) of the principal plant or place of business where the items will be produced or supplied from stock or where the service will be performed. For construction contracts, enter the site of construction. If more than one location is involved, enter the principal place of performance. For intragovernmental actions where the place of performance is unknown, enter the address of the cognizant Government agency.

(14) *Item 10—Procuring installation number* (2 positions). Enter a numeric code identifying the installation responsible for the procurement. The following is a list of installations and their assigned codes:

Code	Installation
04	NASA Headquarters.
21	Ames Research Center.
22	Lewis Research Center.
23	Langley Research Center.
24	Dryden Flight Research Center.
51	Goddard Space Flight Center.
53	Wallops Flight Facility.
54	NASA Management Office-JPL.
62	George C. Marshall Space Flight Center.
64	John C. Stennis Space Center.
72	Lyndon B. Johnson Space Center.
73	Space Station Program Office.
76	John F. Kennedy Space Center.

(15) *Item 11—POP zip code* (5 positions). Enter the five digit zip code corresponding to the contractor's place of performance address.

(16) *Item 12—Contract award/modifieation date* (6 positions).

(i) *Contract award.* Enter the year, month, and day (two numerics each) that the contract is signed by the contracting officer.

(ii) *Modification date.* Enter the year, month, and day (two numerics each) that the modification is signed by the contracting officer.

(17) *Item 13—Completion date* (6 positions). Enter the year, month, and day (two numerics each), either specified or estimated, when all work on the contract and any modifications is scheduled for completion. This date may or may not change as modifications to the contract are issued.

(18) *Item 14—Procurement placement code* (2 positions). Enter the alpha procurement placement code (PPC) identifying the type of solicitation process used and the extent of competition obtained on the procurement. (See 1804.671–7 for PPC matrix.)

(19) *Item 15—Kind of action* (2 positions). Enter the numeric code from the following lists that identifies in general terms the kind of procurement and the action taken to initiate it:

Code	Kind of action
	New Contracts/Grants/Orders
01	New letter contract.
03	New basic contract. New procurements, when the first binding document contains all the agreement's terms and conditions.
05	Intragovernmental. Orders issued to other Federal agencies.
06	Grant.
21	Cooperative agreement or Space Act agreement.
23	Order under Mandatory GSA–FSS. See FAR 8.404.
24	Order under optional (non-mandatory) GSA–FSS. See FAR 8.404–2.
25	Order under indefinite-delivery contract (IDC).
26	Order under BOA.
	Modifications to Existing Contracts
07	New-work modification. Modifications that add a new procurement to existing contracts. New procurement, for the purpose of this report, means a modification action that usually requires the preparation of a Justification for Other than Full and Open Competition (see FAR 6.303).
08	Supplemental agreement. Bilateral, definitized modifications except those covered by code 10 below.
09	Change order. Change orders issued pursuant to the changes clause of the contract.
10	Supplemental agreement definitizing change order.
11	Administrative/incremental funding. This code should be used for administrative changes (such as novation agreements) as well as for incremental funding modifications.
12	Termination for default.
13	Termination for convenience.
14	Definitizing letter contract.
15	Exercising priced option.
16	Order under reporting center's indefinite delivery contract (IDC).
17	Order under reporting center's BOA.

(20) *Item 15a—Center kind of action* (2 positions). Enter the numeric code, if applicable, from the following list that further identifies the kind of action reported in item 15:

Code	Center kind of action
14	Small purchase.
50	Basic ordering agreement (BOA).
52	Indefinite delivery type contract.
53	Basic ordering agreement modification.
54	Task order modification.
60	Blanket purchasing agreement (BPA).
61	Call against BPA.
99	Closing modification.

Leave this item blank if none of the above choices are descriptive of the action being reported. The information provided in this item is used in the generation of Procurement Management Data Reports (PMDR).

(21) *Item 16—Contractor type* (2 positions). Enter the appropriate code from the following:

Code	Contractor
	Business
01	Section 8(a)—disadvantaged. Awards placed through the Small Business Administration with a minority business firm owned and controlled by socially and economically disadvantaged individuals, in accordance with Section 8(a) of the Small Business Act.
03	Disadvantaged direct. Awards placed directly with a minority business firm owned and controlled by socially and economically disadvantaged individuals.
04	Not disadvantaged. Other large or small businesses that are not considered disadvantaged.
	Nonprofit Organization
05	Educational (Non-Minority). A non-minority educational institution that is *not* State, Federal, or local-government-owned.
06	Hospital. A hospital that is *not* State, Federal, or local-government-owned.
08	Other nonprofit (Non-Minority). A non-minority nonprofit institution or organization that is a corporation, foundation, trust, or institution not organized for profit, and no part of its net earnings is applied to the profit of any private shareholder or individual.
15	Educational (HBCU). A Historically Black College or University (HBCU) that is *not* State, Federal, or local-government-owned.
18	Other nonprofit (Minority). A minority nonprofit institution or organization that is a corporation, foundation, trust, or institution not organized for profit, and no part of its net earnings is applied to the profit of any private shareholder or individual.
25	Educational (Other Minority). A minority educational institution, other than an HBCU, that is *not* State, Federal, or local-government-owned.
	State/Local Government
09	Educational (Non-Minority). A State, Federal, or local-government-owned non-minority educational institution. (Privately owned non-minoirty educational institutions shall be coded 05.)
10	Hospital. A State, Federal, or local-government-owned hospital. (Privately owned hospitals shall be coded 06.)
12	Other State/local government. Includes State, Federal, or local-government-owned research organizations.
19	Educational (HBCU). A State, Federal, or local-government-owned Historically Black College or University (HBCU). Privately owned HBCU's shall be coded 15.)
29	Educational (Other Minority). A State, Federal, or local-government-owned non-minority educational institution, other than an HBCU. (Privately owned minority educational institutions, other then HBCU's, shall be coded 25.)

(22) *Item 16a—Woman-Owned business* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the business concern is a woman-owned business. A woman-owned business is one that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(23) *Item 17—Award Outside U.S.* Enter "L" for an award to a source outside the U.S. Enter "M" for an award to a source inside the U.S., if the principal place of performance will be outside the U.S. When this item is coded "L" or "M," the PPC code entered in item 14 of the NASA Form 507 must be from the "work outside U.S." category of the PPC matrix.

(24) *Item 18—Extent of competition* (1 position). Enter the appropriate code from the following list (except for non-new-work (within-scope) modifications):

Code	Extent of competition.
2	Sealed Bid. Award results from acceptance of a bid in response to a formal invitation for bids or from sealed bidding following an evaluation of technical proposals (two-step sealed bidding). (See FAR part 14.)
3	Competed action—SEB. Competitive offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially; award is based on price, design, or technical competition; and Source Evaluation Board (SEB) procedures are used to evaluate the proposals (see FAR 15.608). This code shall also be used if Architect-Engineer Selection Board procedures are used (see FAR 36.603–2).
4	Other competed action. Competitive offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially; award is based on price, design, or technical competition; and Source Evaluation Board procedures are not used to evaluate the proposals.
5	Noncompetitive follow-on to competed action. The procurement is for the continued development or production of a major system or highly specialized equipment, including major components thereof, that is considered available only from the original source, and it is likely that award to any other source would result in (1) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (2) unacceptable delays in fulfilling NASA's requirements (see FAR 6.302–1(b)(2)).
6	Other not competed. Only one offer is solicited and only one offer is received capable of satisfying the Government's requirements wholly or partially; the work involved is not a follow-on procurement reportable under code 5 above. Include awards resulting from unsolicited proposals in this category.

(25) *Item 19—Type of service or product* (4 positions). Enter the code indicating the principal type of effort or end item obtained under the contract. If more than one classification applies to the procurement, enter the one accounting for the largest dollar volume of procurement. Codes have been established to identify research and development (R&D) procurements, service contracts, and supply and equipment contracts. These codes may be found in the FPDS Product and Service Codes manual located in the procurement administrative office at each NASA installation.

(26) *Item 20—Physically complete* (1 position). Enter "Y" (yes) if the contract is physically complete, i.e., after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Government (see FAR 4.804–4). Also enter the date that the contract is physically completed. Otherwise, this field should be left [illegible]

(27) *20a—C[illegible]ant Proposal Number* (18 p[illegible] Enter the contract/grant proposal number in this field. This field is optional and not reported to Headquarters.

(28) *Item 21—Labor surplus area award* (1 position). "Y" or "N" to indicate whether the award is to a concern in a labor surplus area (see FAR Subpart 20.1).

(29) *Item 22—FSS/Indefinite-delivery/BOA contract no.* (15 positions). Enter the Federal Supply Schedule (FSS), indefinite-delivery, or basic ordering agreement (BOA) contract number under which a delivery order has been

placed if Item 15 (Kind of Action) is coded 23, 24, 25, or 26.

(30) *Item 23—Description of contract/modification (narrative).* Enter a brief description of the end item or services being procured. For modifications, enter a brief description of the purpose.

(31) *Item 24—CICA applicability* (1 position).

(i) Pre-CICA: Code 1 Enter if the contract action is a new contract (or within-scope modification thereto) resulting from a solicitation issued before April 1, 1985, irrespective of the award date.

(ii) Post-CICA: Code 2 Enter if the contract action is a new contract resulting from a solicitation issued on or after April 1, 1985. All modifications to such contracts are to be reported by this code.

(32) *Item 24a—Special handling* (1 position). Center unique data element.

(33) *Item 25—Proposed procurement synopsized* (1 position). Entry "Y" if the procurement was synopsized prior to award in the Department of Commerce's Commerce Business Daily. Enter "N" if the procurement was not synopsized, except enter "U" if the procurement was not synopsized because of urgency.

(34) *Item 26—Contract type* (2 positions).

(i) Enter the code that identifies the type of contract from the following list:

Code	Contract type
01	Fixed-Price, Firm (FAR 16.202 and 16.207). (Include Firm Fixed-Price, level-of-effort term contracts in this category.)
02	Fixed-Price, Redetermination (FAR 16.205).
03	Fixed-Price with Economic Price Adjustment (FAR 16.203).
04	Fixed-Price Incentive (FAR 16.204).
05	Cost (No Fee) (FAR 16.302).
06	Cost-Sharing (FAR 16.303). (The estimated cost reported shall include only the Government's share.)
07	Cost-Plus-Fixed-Fee (FAR 16.306).
08	Cost-Plus-Incentive-Fee (FAR 16.404–1).
09	Time-and-Materials (FAR 16.601).
10	Labor-Hour (FAR 16.602).
12	Cost-Plus-Award-Fee (FAR 16.404–2).

(ii) Combination contract types shall be reported as follows:

(A) Where the contract has one type of incentive arrangement applying to cost performance and another to technical and/or schedule performance, report the contract type assigned to the cost-incentive feature; e.g., a contract providing a cost-plus-incentive-fee arrangement on cost and an award fee arrangement on technical and/or schedule performance will be reported as "Code 08—Cost-Plus-Incentive-Fee."

(B) Where one or more items of work are priced exclusively under one of the arrangements coded above, with one or more additional items priced exclusively under another such arrangement, report the contract type in accordance with the code assigned to the arrangement under which the predominate dollar amount will be spent.

(35) *Item 27—No. of offerors solicited* (3 positions). Enter the number of firms to which solicitations were provided.

(36) *Item 28—Number of offers received* (3 positions). Enter the actual number of offers received in response to the solicitation.

(37) *Item 29—Solicitation procedures* (1 position). This item pertains to the requirements of FAR subparts 6.1 (Full and Open Competition), 6.2 (Full and Open Competition After Exclusion of Sources), and 6.3 (Other Than Full and Open Competition), with the exception of the statutory authorities for other than full and open competition (subpart 6.3), which are reported in Item 30. Codes "A" through "L" designate the competition alternatives described in FAR part 6. Delivery-order contract actions under indefinite-delivery contracts shall be reported the same as the initial contract when the following criterion, in FAR 6.001(e), is met: They are orders placed under indefinite-delivery contracts that were entered into pursuant to FAR part 6, and either the contract was awarded under subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order, or the contract was awarded under subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

(i) Code A—Full and open competition sealed bid is entered when the sealed bidding (see FAR 6.401(a)) method of contracting was used.

(ii) Code B—Full and open competition—competitive proposal is entered when the FAR part 15, Contracting by Negotiation, procedures were used for a competitive solicitation.

(iii) Code C—Full and open competition—combination is entered when any combination of competitive procedures (e.g., two-step sealed bidding) was used (see FAR 6.102(c)).

(iv) Code D—Architect-engineer is entered if the action resulted from selection of sources for architect-engineer (A&E) contracts in accordance with Public Law 92–582 and procedures in FAR subpart 36.6 (see FAR 6.102(d)(1)). The selection of a potential A&E contractor is made by an A&E Evaluation Board conducted in accordance with 41 U.S.C. 541 et seq. This selection process is considered a competitive procedure and shall be reported as a competitive award. When award is an A&E contract and was a result of a small business set-aside or labor surplus area set-aside, use code K in lieu of this code.

(v) Code E—NASA Research Announcement/Announcement of Opportunity is entered if the action resulted from competitive selection of basic research proposals as a result of

(A) A broad agency announcement (NASA Research Announcement or Announcement of Opportunity) that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs and

(B) A peer or scientific review (see FAR 6.102(d)(2)).

(vi) Code F—Multiple-award schedule is entered if the action is an order issued against a multiple-award schedule using the procedures in FAR 8.405–1 (see FAR 6.102(d)(3)). This code shall be used for multiple-award schedule contracts (mandatory or optional). This code may be used for ADP procurements, unless the solicitation utilized make-or-model specifications. Use of the multiple-award schedule program is considered to be a competitive procedure because competitive procedures were used by GSA to make the basic multiple-award schedule contract awards under 41 U.S.C. 259(b)(3)(A). For reporting purposes, an order issued against a multiple-award schedule shall be reported as a competitive award.

(vii) Code G—Alternate source—reduced cost is entered if the action was taken pursuant to FAR 6.202(a)(1), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition of such supplies or services.

(viii) Code H—Alternate source—mobilization is entered if the action was taken pursuant to FAR 6.202(a)(2), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization.

(ix) Code J—Alternate source—engineering/R&D capability is entered if

the action was taken pursuant to FAR 6.202(a)(3), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(x) Code K—Set-asides is entered if the action resulted from use of procedures for set-asides pursuant to FAR 6.203. This includes small business set-asides, labor surplus area set-asides, or combinations thereof, but not architect-engineer contracts (use Code D). Code K also includes contract actions under the Small Business Innovation Research (SBIR) Program established under Public Law 97–219.

(xi) Code L—Other than full and open competition is entered if the action resulted from use of other than full and open competition pursuant to 10 U.S.C. 2304(c). The conditions or exceptions permitting contracting without providing for full and open competition are prescribed in FAR 6.302. Enter this code for noncompetitive awards made under the authority of Section 8(a) of the Small Business Act (see FAR subpart 19.8). This code shall also be used for all ADP procurements where the solicitation utilized make-and-model specifications.

(38) *Item 30—Authority for other than full and open competition.* When Item 29 is coded "L," this item must be completed. Enter the applicable code from the categories listed in this paragraph (b)(38). This item identifies the solicitation process and not the extent of competition obtained.

(i) Code A—Unique source is entered when the contract action is under 10 U.S.C. 2304(c)(1) and the agency's minimum needs can be satisfied only by unique supplies or services available from only one source or only one supplier with unique capabilities (see FAR 6.302–1(b)(1)).

(ii) Code B—Fellow-on contract is entered when the contract action is under 10 U.S.C. 2304(c)(1) and it is likely that the award of follow-on contracts must be to the original source because award to any other source would result in—

(A) Substantial duplication of cost to the Government that is not expected to be recovered through competition or

(B) Unacceptable delays in fulfilling the agency's requirements (see FAR 6.302–1(a)(2)(ii)).

(iii) Code C—Unsolicited research proposal is entered when the contract action is under 10 U.S.C. 2304(c)(1) as the result of acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which—

(A) Is not otherwise available to the Government and

(B) Does not resemble the substance of a pending competitive acquisition (see FAR 6.302–1(a)(2)(i)).

(iv) Code D—Patent/data rights is entered when the contract action is under 10 U.S.C. 2304(c)(1) because the existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances make the supplies and services available from only one source (see FAR 6.302–1(b)(2)).

(v) Code E—Utilities is entered when—

(A) The contract action is under 10 U.S.C. 2304(c)(1) when acquiring electric power or energy, gas (natural or manufactured), water, or other utility services and circumstances dictate that only one supplier can furnish the service or

(B) The contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system (see FAR 6.302–1(b)(3)).

(vi) Code F—Standardization is entered when the contract action is under 10 U.S.C. 2304(c)(1) because the agency head has determined under the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items and only one source is available (see FAR 6.302–1(b)(4)).

(vii) Code G—Only one source—other is entered when the contract action is under 10 U.S.C. 2304(c)(1) to a single source and codes "A" through "F" of this paragraph (b)(38) do not apply (see FAR 6.302–1(b)).

(viii) Code H—Urgency is entered when the contract action is under 10 U.S.C. 2304(c)(2) because—

(A) An unusual and compelling urgency precludes full and open competition and

(B) Delay in award of a contract would result in serious injury, financial or other, to the Government (see FAR 6.302–2(b)).

(ix) Code J—Mobilization is entered when the contract action is under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization (see FAR 6.302–3(b)(1)).

(x) Code K—Essential R&D capabilities is entered when the contract action is under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center (see FAR 6.302–3(b)(2)).

(xi) Code L—International agreement is entered when the contract action is under 10 U.S.C. 2304(c)(4) because full and open competition is precluded by—

(A) The terms of an international agreement or treaty between the United States and a foreign government or international organization or

(B) The written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services (see FAR 6.302–4).

(xii) Code M—Authorized by statute is entered when the contract action is under 10 U.S.C. 2304(c)(5) because a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source (see FAR 6.302–5(a)(2)(i)). This code should be used for noncompetitive 8(a) awards.

(xiii) Code N—Authorized resale is entered when the contract action is under 10 U.S.C. 2304(c)(5) for a brand-name commercial item for resale through commissaries or other similar facilities (see FAR 6.302–5(a)(2)(ii)).

(xiv) Code P—National security is entered when the contract action is under 10 U.S.C. 2304(c)(6) because disclosure of the Government's needs would compromise the national security (see FAR 6.302–6).

(xv) Code Q—Public interest is entered when the contract action is under 10 U.S.C. 2304(c)(7) because the agency head has determined that full and open competition is not in the public interest in the particular acquisition concerned (see FAR 6.302–7).

(39) *Item 31—Labor statutes* (1 position). Enter the appropriate code, in accordance with the provisions of the contract, from the following list:

Code	Statutory requirements
N	Not subject to statutory requirements listed below.
1	Subject to Walsh-Healey Act, manufacturer (FAR 22.606–1).
2	Subject to Walsh-Healey Act, regular dealer (FAR 22.606–2).

Code	Statutory requirements
3	Subject to Service Contract Act (FAR subpart 22.10).
4	Subject to Davis-Bacon Act (FAR 22.403–1).

(40) *Item 32—Standard Industrial Classification (SIC) Code* (4 positions). Enter the code identifying the industry category within which the principal (determined by the predominance of dollars awarded) product produced or distributed or services rendered would best fit. Industry categories are published in the Standard Industrial Classification Manual maintained and issued by the Office of Management and Budget (OMB). A listing of the SIC codes, without the detailed lists of products and services falling within each category, can be found at FAR 19.102(g).

(41) *Item 33—Contract administration delegated*. Enter "Y" (yes) or "N" (no) in the first blank to indicate whether any contract administration functions have been delegated to another Government agency (see FAR subpart 42.2). If an "N" was entered, leave the rest of this field blank. If a "Y" was entered, continue to the second blank and enter a "Y" or "N" to indicate whether there was a blanket delegation. A blanket delegation is defined as a delegation of all contract administration functions listed in FAR 42.302(a), with the exception of those non-assignable functions specified in 1842.202(c), plus post award audit. If not a blanket delegation, enter a "Y" for each individual function delegated among the ten items listed. It is not necessary to enter an "N" for non-delegated functions.

(42) *Item 34—Preference program*. Report the code that represents the preference program used in making the award. Report Code H if no preference program applies or the preference program is not otherwise listed.

(i) Code A—Directed to sheltered workshops. Report this code for an award to a workshop for the blind or a workshop for the other severely handicapped pursuant to FAR subpart 8.7.

(ii) Code B—8(a) Program. Report this code for actions with the Small Business Administration pursuant to FAR subpart 19.8.

(iii) Code C—Combined labor surplus/small business set-aside. Report this code for a combined labor surplus area and small business set-aside award made to a small business concern pursuant to FAR subpart 19.5.

(iv) Code D—Small business set-aside. Report this code for a small business set-aside (including Small Business Innovation Research (SBIR)) award made pursuant to FAR subpart 19.5.

(v) Code E—Labor surplus area set-aside. Report this code for a labor surplus area set-aside award made pursuant to FAR subpart 20.2.

(vi) Code F—Tie-bid preference. Report this code for all tie-bid preference awards (see FAR 19.202–3) made pursuant to FAR subpart 19.5.

(vii) Code G—Designated entities set-aside. Report this code for awards set-aside for disadvantaged business, women-owned business, HBCU's, and other minority institutions. (This covers the 26 procurements authorized by the D&F signed by the Administrator on December 1, 1992.)

(viii) Code H—No preference program. Report this code if the award is not made pursuant to a preference program, or if the preference program is not listed in this paragraph (b)(42).

(43) *Item 35—Advisory/Assistance services contract* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the contract is for advisory and assistance services.

(44) *Item 36—Support services type contract* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the contract is for support services. This includes on- or near-site performance where the services are a major element of the contract. It excludes:

(i) Construction, alteration, and repair;

(ii) Small purchases and incidental services;

(iii) Prime product development contracts;

(iv) Operations support contracts, i.e., effort at major facilities associated with carrying out mission operations; tracking station operations; and support funded by STS operations; and

(v) Tenants.

(45) *Item 37—Cost Accounting Standards clause* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the contract contains the Cost Accounting Standards clause (see FAR 30.201–4).

(46) *Item 38—New technology or patent rights clause* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether a new technology or patent rights clause is included in the contract. (See 1827.373). A "Y" entry for contracts with small businesses, nonprofit organizations, and educational institutions will indicate a patent rights clause. A "Y" entry for contracts with large businesses will indicate a new technology clause.

(47) *Item 39—Subcontracting program plan* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the contract contains a subcontract plan requiring the contractor to furnish the information prescribed on Standard Forms 294 and 295 (see 1804.674 and FAR 19.702). Enter "W" (waiver) when there are no subcontracting opportunities, for contracts performed entirely outside the United States, and for GSA Federal Supply Schedule contracts containing plans. Use Code "Y" for corporate plans with individual contract goals.

(48) *Item 40—SBIR award* (1 position). Enter "N" (no) if the contract action is not in support of the Small Business Innovation Research (SBIR) Program (Pub. L. 97–219). Enter Code "1" if the contract action is related to a Phase I contract in support of the program. Enter Code "2" if the contract action is related to a Phase II contract in support of the program. Enter Code "3" for Phase III SBIR contracts. Phase II SBIRs and SBIRs funded by agencies other than NASA should use PPC Code GF.

(49) *Item 41–STTR award* (1 position). Enter Code "N" (no) if the contract action is not in support of the Small Business Technology Transfer (STTR) Program (Pub. L. 102–564).

Enter Code "1" if the contract action is related to a Phase I contract in support of the program. Enter Code "2" if the contract action is related to a Phase II contract in support of the program.

(50) *Item 42—Contract for foreign government or international organization*. Enter "Y" (yes) if a foreign government or international organization is bearing any part of the cost of the action. Otherwise, enter "N" (no).

(51) *Item 43—Management reporting requirements (MRR): correlated cost and performance data reporting* (1 position). Enter one of the following codes (see NHB 9501.2):

Code	Reporting required
N	None required.
2	NASA Form 533M only.
3	NASA Forms 533M and 533Q.
4	NASA Forms 533M and 533P.
5	NASA Forms 533P and 533Q.
6	NASA Forms 533M, 533P, and 533Q.

(52) *Item 44—Management reporting requirements (MRR): property and space hardware reporting* (1 position). Enter one of the following codes (see FAR 45.505–11):

Code	Reporting required
N	None required.
2	NASA Form 1018, without space hardware.
3	NASA Form 1018, with space hardware.

(53) *Item 45—Trade data* (3 blocks).

(i) First block—number of bidders offering foreign item (1 position). Enter one numeric code (0–9) to indicate the number of firms that offered foreign end products. An entry is required regardless of whether the Buy American Act is invoked or not. If none, enter "0". If 9 or more, enter "9".

(ii) Second block—Percent difference (2 positions). If the evaluation factor under the Buy American Act is used and results in award to a firm offering a domestic product, enter the percentage difference between the award price and that of the low firm offering a foreign end product, computer before application of the Buy American Act differential, i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number. If the evaluation factor under the Buy American Act is not used, enter "00".

(iii) Third block—Country of manufacturer (2 positions). If the product is manufactured, mined, or grown in the United States (the 50 states and the District of Columbia) or the service is performed by a U.S. contractor, enter "US". If the product is manufactured, mined, or grown in a foreign country, enter the code from FIPS PUB 10–3 of that country/area. In the case of a service, if the service is performed by a foreign contractor, enter the code from FIPS PUB 10–3 of that country/area. This publication may be obtained from the Headquarters Office of Procurement, Analysis Division (Code HC).

(54) *Item 46—Demonstration test program* (1 position). Enter "Y" or "N" to indicate whether the award is a new contract awarded to a U.S. business concern as a result of a solicitation issued on or after January 1, 1989, under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10 and 1819.10). This item must be completed for awards to large businesses as well as for awards to small businesses.

(55) *Item 47—Emerging small business* (1 position). Complete this item only if Item 46 is coded "Y." Enter "Y" or "N" to indicate whether the contractor represents that it is an emerging small business concern (see FAR 19.1002 for definition of emerging small business).

(56) *Item 48—Emerging small business reserve award* (1 position). Complete this item only if Item 46 is coded "Y." Enter "Y" or "N" to indicate whether the contract award was reserved for emerging small business concerns.

(57) *Item 49—Size of small business* (1 position). Complete this item only if Item 46 is coded "Y" and the award is to a small business. Enter the code that corresponds to the range of the number of employees or the range of the average annual gross revenue for the small business contractor receiving the award as represented by the contractor in response to the solicitation.

(58) *Item 50—Value Engineering Clause*. Enter "Y" (yes) or "N" (no) to indicate whether the contract contains any one of the value engineering clauses at FAR 52.248–1, 52.248–2, or 52.248–3.

(59) *Item 51—Effective date*. Enter the year, month, and day (two numerics each) of the contract's effective date.

(60) *Item 52—Security code* (1 position). Enter "Y" or "N" to indicate whether Defense Industrial Security clearances are required during contract performance.

(61) *Item 53—Equipment code* (1 position). Enter "Y" or "N" to indicate whether the contract will involve government furnished or contractor acquired property.

(62) *Item 54—Administrator code* (3 positions). Enter the code which identifies the individual at the contracting installation responsible for administration of the contract.

(63) *Item 55—Contracting officer code* (3 positions). Enter the code which identifies the contracting officer assigned to the contract.

(64) *Item 56—Negotiator code* (3 positions). Enter the code which identifies the individual responsible for negotiating the contract.

(65) *Item 57—COTR name* (15 positions). Enter the name of the Contracting Officer's Technical Representative (COTR) for the contract.

(66) *Item 58—Organization code* (5 positions). Enter the organization code for the responsible technical organization for which the contract has been awarded.

(67) *Item 59—Contract fund code* (1 position). Enter the appropriate code to indicate whether the contract is fully funded, incrementally funded, or unfunded.

(68) *Item 60—Reason not small business* (2 positions). Enter the appropriate two digit code to identify the reason the contract was not awarded to a small business concern.

(69) *Item 61—FIP Resources Decision Document* (1 position). Enter FRDD number, if applicable.

(70) *Item 62—KMA number* (7 positions). Enter the Delegation of Procurement Authority case number assigned by GSA for FIP Resources (KMA–xx–yyyy(–y)), if applicable.

(71) *Item 63—Center unique*. This field may be used at the discretion of individual centers to collect data not elsewhere reported on the form (e.g., taxpayer identification numbers). Otherwise leave this time blank.

(72) *Item 64—Cancellation date* (6 positions). If it is necessary to cancel a previously executed modification, enter the year, month, and day (two numerics each) of such cancellation.

(73) *Item 65—Total contract value including options*. Enter the definitized contract value (including maximum potential fee or profit) plus the value of any options (including maximum potential fee or profit) available in the contract. Round entries to the nearest whole dollar.

(74) *Item 66—Estimated cost or fixed price* (11 positions). Enter the estimated cost or fixed price for all new awards. For modifications, enter only the increase or decrease effected by the respective modification. For cost-reimbursement contracts, enter the estimated cost, exclusive of fee. For fixed-price contracts, enter the total fixed price, including the negotiated profit. For time-and-materials and labor-hour contracts, enter the total estimated contract price, including profit. Round all entries to the nearest whole dollar. Do not report amounts for priced options that have not been exercised in this field.

(75) *Item 67—Fee* (11 positions). This item pertains to cost-reimbursement contracts only. For new awards, enter the definitized negotiated fee, broken down into the types of fee indicated on the form. For modifications, enter only the increase or decrease effected by the respective modification. For incentive contracts, enter the target fee. For award-fee contracts, enter the base fee plus the maximum, available award fee. Also enter the total of the different types of fees reported. Round entries to the nearest whole dollar.

(76) *Item 68—Action obligation*. Enter the dollar amount obligated (increase or decrease) of the reported action. Report obligations for cost and fee separately and enter the total obligations reported. Round entries to the nearest whole dollar.

(77) *Item 69—Funded through date* (6 positions). For incrementally funded contracts, enter the date through which the contract is funded.

(78) *Item 70—Delegation of Procurement Authority ceiling amount* (11 positions). Enter DPA ceiling amount, if applicable.

(79) *Item 71—FIRMR Applicability* (1 position). Indicate whether the FIRMR applies to the procurement.

(60) *Item 72—Delegation of Procurement Authority expiration date* (6 positions—YYMMDD). Enter the date that the DPA expires, if applicable.

16. Section 1804.671–6 is revised to read as follows:

1804.671–6 Special procurement placement codes (PPC's) for certain procurements.

(a) The accounting copies for all procurements of $25,000 or less from "Disadvantaged Business Firms-Direct" shall be coded with the second letter "M" in the PPC; e.g., BM or KM.

(b) The accounting copies for all procurement of $25,000 or less from "Women-Owned Business Firms" shall be coded with the second letter "W" in the PPC; e.g., BW or KW.

(c) All procurement awards over $25,000 and the accounting copies for procurement actions of $25,000 or less (no NASA Form 507 is required) placed through the Small Business Administration with a disadvantaged business firm under section 8(a) of the Small Business Act shall be coded with PPC "PS" for noncompetitive and "PF" for competitive. The accounting copies for all procurements (except FSS orders) of $2,500 or less shall be coded with PPC's CC, EC, HC, IC, LC, MC, OC, PC, VC, or ZC.

17. Sections 1804.672 through 1804.675 are removed.

18. In section 1804.676, "(Code FEH)" is revised to read "(Code FET)".

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

1812.103 [Amended]

19. In section 1812.103, the citations "1814.407 and 1815.1002" are revised to read "1814.408 and 1815.1003".

1812.302 [Amended]

20. In section 1812.302, paragraph (b) is revised to read as follows:

1812.302 General.

(a) * * *

(b) Additional regulatory guidance is available in "DPAS, Defense Priorities and Allocations System," Department of Commerce, International Trade Administration, Office of Industrial Resource Administration, Washington, DC 20250, October 1984, 66 pages (copies available from Department of Commerce), and the DOD Priorities and Allocations Manual, DOD 4400.1–M, May 1995. The DOC booklet contains the pertinent parts of 15 CFR part 700 and is the recommended guidance on the DPAS to contractors and suppliers receiving rated orders.

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1813.4—Imprest Fund

1813.403, 1813.403–70, 1813.404, 1814.405 [Redesignated]

21. Sections 1813.403, 1813.403–70, 1813.404, and 1813.405 are redesignated as sections 1813.402, 1813.402–70, 1813.403, and 1813.404.

22. In paragraph (b) of the newly designated section 1813.402–70, the citation "FAR 13.403" is revised to read "FAR 13.402".

23. In paragraph ((b)(5) of the newly designated section 1813.403, the citation "1813.405(b)" is revised to read "1813.404(b)".

24. In paragraph (e)(3) of the newly designated section 1814.404, the citation "1813.404" is revised to read "1813.403".

1813.505–2 [Redesignated]

25. Section 1813.505–2 is redesignated as section 1813.505–1, and the section heading to the newly designated section 1813.505–1, "Agency order forms in lieu of Optional Forms 347 and 348" is revised to read "Optional Form (OF) 347, Order for Supplies or Services, and Optional Form (OF) 348, Order for Supplies or Services-Continuation".

1813.7003 [Amended]

26. In paragraph (a) of section 1813.7003, the citation "FAR 13.404" is revised to read "FAR 13.403".

PART 1814—SEALED BIDDING

Subpart 1814.4—Opening of Bids and Award of Contract

1814.406, 1814.406–3, 1814.406–4, 1814.407, 1814.407–1 [Redesignated]

27. Sections 1814.406, 1814.406–3 1814.406–4, 1814.407, and 1814.407–1 are redesignated as sections 1814.407, 1814.407–3, 1814.407–4, 1814.408, and 1814.408–1.

28. In paragraph (a) of the newly designated section 1814.407–3, the citation "FAR 14.406–3(a) and (b)" is revised to read "FAR 14.407–3(a) and (b)", the citation "FAR 14.406–3(d)" is revised to read "FAR 14.407–3(d)", and the citation "FAR 14.406–3(c)" is revised to read "FAR 14.407–3(c)".

29. In paragraph (b) of the newly designated section 1814.407–3, the citation "FAR 14.406–3(a)" is revised to read "FAR 14.407–3(a)".

30. In paragraph (c) of the newly designated section 1814.407–3, the citation "FAR 14.406–3" is revised to read "FAR 14.407–3".

31. In the newly designated section 1814.407–4, the citation "FAR 14.406–4(b) and (c)" is revised to read "FAR 14.407–4(b) and (c)" and the citation "FAR 14.406–4 (d)" is revised to read "FAR 14.407–4(d)".

PART 1815—CONTRACTING BY NEGOTIATION

1815.412 [Amended]

32. In section 1815.412, the section heading "Late proposals and modifications" is revised to read "Late proposals, modifications, and withdrawals of proposals".

1815.413 [Amended]

33. In paragraph (b) to section 1815.413, the citations "FAR 15.1003 and 1815.1003" are revised to read "FAR 15.1004 and 1815.1004".

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.1002, 1815.1003, 1815.1003–1, 1815.1003–2, 1815.1003–3, 1815.1003–4 [Redesignated]

34. Sections 1815.1002, 1815.1003, 1815.1003–1, 1815.1003–2, 1815.1003–3 and 1815.1003–4 are redesignated as sections 1815.1003, 1815.1004, 1815.1004–1, 1815.1004–2, 1815.1004–3 and 1815.1004–4.

35. In newly designated section 1815.1003, the citation "FAR 15.1002" is revised to read "FAR 15.1003".

36. In paragraph (a) to the newly designated section 1815.1004–2, the citation "FAR 15.1003" is revised to read "FAR 15.1004".

1819.502–3 [Amended]

37. In section 1819.502–3, paragraph (a)(1) is revised to read as follows:

1819.502–3 Partial set-asides.

(a)(1) Contracting officers shall require offers obtained from firms eligible for the set-aside portion of the requirement under the clause at FAR 52.219–7, Notice of Partial Small Business Set-Aside, to be in writing and to include agreement—

(i) On the price for the available set-aside quantity,

(ii) On the delivery schedule,

(iii) That all other terms and conditions of the solicitation apply to the set-aside award, and

(iv) To include the clause at FAR 52.215–2, Audit and Records—Negotiation.

* * * * *

PART 1825—FOREIGN ACQUISITION

Subpart 1825.9—Additional Foreign Acquisition Clauses

1825.901 [Amended]

38. Section 1825.901 is revised to read as follows:

1825.901 Omission of Audit Clause.

(a) The contracting officer's request to use the clause at FAR 52.215–2, with its Alternate III, shall consist of the proposed determination and findings (together with any relevant support information) prepared for the Administrator's signature. The procurement officer shall forward the package to the Associate Administrator for Procurement (Code HC).

(b) When the clause at FAR 52.215–2 is used with its Alternate III, the contracting officer shall prepare a written report in triplicate to be furnished to the Congress. The head of the installation concerned shall sign the report and forward it to the Associate Administrator for Procurement (Code HC), who shall submit it to the Administrator for the Administrator's signature and forwarding to Congress.

PART 1834—MAJOR SYSTEM ACQUISITION

1834.005–1 [Amended]

39. In section 1834.005–1, paragraph (k) is removed, and the existing paragraph (l) is redesignated as paragraph (k).

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

1835.016–70 [Amended]

40. In paragraph (e)(9) of section 1835.016–70, the citation "1815.1003" is revised to read "1815.1004".

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1836.304 [Amended]

41. In section 1836.304, the citation "1814.407–1(f)" is revised to read "1814.408–1(f)".

1836.602–5 [Amended]

42. In section 1836.602–5, the section heading "Short selection processes for contracts not to exceed the small purchase limitation" is revised to read "Short selection process for contracts not to exceed the simplified acquisition threshold".

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.204–70 [Removed]

43. Section 1852.204–70 is removed.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Subpart 1870.1—NASA Acquisition of Investigations System

44. In the introductory text to section 1870.102, App. I, Chapter 5, paragraph 504, the citation "1815.1003" is revised to read "1815.1004".

Subpart 1870.3—NASA Source Evaluation

45. In section 1870.303, App. I, Chapter 4, paragraph 407, paragraph 8. is revised to read as follows:

1870.303 Source Evaluation Board Procedures.

* * * * *

Chapter 4 * * *

407 Initial Evaluation * * *

8. Notification of Unsuccessful Offerors. The contracting office shall notify each unsuccessful offeror in accordance with FAR 15.1002.

* * * * *

46. In section 1870.303, App. I, Chapter 6, paragraph 602, paragraph 1.a., the citation "FAR 15.1001" is revised to read "FAR 15.1002", and in paragraph 1.b. the citations "FAR 15.1001(c) and 15.1002" are revised to read "FAR 15.1002(c) and 15.1003".

[FR Doc. 95–22572 Filed 9–13–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217, 222, and 227

[Docket No. 950427117–5220–03; I.D. 042095E]

RIN 0648–AH97

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule establishes all inshore and offshore waters from Cape Canaveral, FL (28°24.6′ N. lat.) to the North Carolina-Virginia border (36°30.5′ N. lat.) as the leatherback conservation zone and provides for short-term closures of areas in that zone when high abundance levels of leatherback turtles are documented. Upon such documentation, NMFS will prohibit, in the closed areas, fishing by any shrimp trawler required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED installed is specified in the regulations as having an escape opening large enough to exclude leatherback turtles. This rule is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Requests for a copy of the environmental assessment (EA) or the contingency plan, prepared for this rule should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, (813) 570–5312, or Phil Williams, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA) of 1973. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. The incidental take and mortality of these species, as a result of fishing activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard.

Under the ESA and its implementing regulations, it is prohibited to take sea turtles. The incidental taking of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 227.72, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing throughout the year. The use of TEDs significantly reduces mortalities of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

As a result of their primarily pelagic existence, leatherbacks normally occur outside of areas where they would be subject to taking by shrimp trawlers. During most months of the year, leatherbacks are not abundant in shrimping areas, and only isolated incidents of taking by trawlers occur. However, the coastal waters of northern Florida, Georgia, South Carolina, and North Carolina experience relatively high abundance levels of leatherbacks as a periodic winter and spring phenomenon. When leatherback abundance is high and shrimp trawlers are fishing, leatherback stranding pulses have been documented on adjacent beaches. A NMFS Biological Opinion prepared for a revision to the sea turtle conservation regulations, published in the **Federal Register** on December 4, 1992, (57 FR 57348), specifically addressed episodic stranding events from Florida through North Carolina, and required NMFS to develop and implement a contingency plan to solve this problem.

A contingency plan for protection of leatherback turtles on the Atlantic seaboard that can be implemented, if necessary, was prepared in cooperation with State officials from Florida, Georgia, and South Carolina. The necessity for implementation of protective measures for leatherback turtles is expected to be on an annual basis but only for short periods of time in relatively small, specific areas at any one time. The plan considers several options to provide protection, and any or all of them may be implemented, if necessary. These options include: Closure of areas to all fishing, use of restricted tow times in lieu of TEDs, mandatory observers, and use of NMFS-approved TEDs with escape openings large enough to exclude leatherback turtles.

Aerial surveys have been conducted for sea turtles off the Florida and Georgia coasts since 1988 and off the coast of South Carolina since 1993. Beginning in December or January each year, concentrations of leatherback turtles occur in northeastern Florida waters. During the month of March, leatherbacks begin moving north and usually enter Georgia waters in late March or early April. Peak concentrations occur in Georgia waters during April and May and by mid-June the concentrations have left Georgia. Leatherback concentrations occur in waters off South Carolina from late April generally through the first part of June.

Shrimping occurs year round in northeastern Florida waters, but the activity levels during any given month may vary from year to year. Shrimp fishing is closed in the State waters of Georgia until June 1 of each year, but shrimping begins in Federal waters off Georgia generally in April or early May. The State of South Carolina opens its waters to shrimping between May 15 and June 30, depending upon the presence of shrimp. Shrimping in Federal waters off South Carolina generally begins in early May. Based upon leatherback turtle concentration information and normal shrimp fishing activities, the most likely period for shrimp vessel interactions with leatherbacks in the leatherback conservation zone is January through June each year.

Each spring for the last 2 years, NMFS has issued temporary 30-day restrictions establishing a leatherback conservation zone (58 FR 28790, May 17, 1993; 59 FR 23169, May 5, 1994; 59 FR 29545, June 8, 1994). An interim rule (60 FR 25620, May 12, 1995) was issued this past year to provide a mechanism for short-term protection, and NMFS published a proposed rule (60 FR 25663, May 12, 1995) to provide for a permanent framework to protect leatherback sea turtles.

Comments and Responses on the Proposed Rule

No comments were received on the proposed rule.

Requirements

This rule establishes a framework whereby short-term closures may be instituted on an expedited basis in order to protect leatherbacks. Specifically, the rule establishes all inshore and offshore waters of the Atlantic area from Cape Canaveral, FL (28°24.6′ N. lat.), to the North Carolina-Virginia border (36°30.5′ N. lat.) as the "leatherback conservation zone."

During the months of January through June, NMFS will conduct weekly aerial surveys of the leatherback conservation zone. If sightings of leatherback turtles during such surveys exceed 10 animals per 50 nautical miles (nm) (92.6 km) of trackline, the survey will be replicated within 24 hours, or as soon as practicable thereafter, to ensure that leatherback turtle presence is persistent in the area. If surveys demonstrate the continued presence of large concentrations of leatherbacks, NMFS will prohibit shrimp fishing in these specific areas by any shrimp trawler required to have a NMFS-approved TED installed in each net rigged for fishing, unless the TED installed is one of the NMFS-approved TEDs described below. Those TEDs have been determined to have escape openings large enough to exclude leatherbacks. In addition, owners and operators of vessels operating in closed areas with an allowed TED, as described below, will be required to register with the Director, Southeast Region, NMFS (Regional Director) in accordance with 50 CFR 227.72(e)(6)(iv)(A) through (F). Upon written request by the Regional Director, they will be required to carry a NMFS-approved observer aboard such vessel(s). A shrimp trawler in the leatherback conservation zone will be required to comply with the terms and conditions specified in such written request, as well as provide information on trawling hours, gear modifications and turtle captures.

Notice of specific area closures will be published in the **Federal Register** and will be effective upon filing of such notice for public inspection at the Office of the Federal Register. Closures will be announced immediately on the NOAA weather channel, in newspapers, and other media. Areas with high leatherback abundance, as documented by the aerial surveys, will be closed for a period of 2 weeks. A closed area will include all, or a portion of, inshore and offshore waters 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 1° lat. coinciding with the trackline. Shrimp trawlers in the leatherback conservation zone will be responsible for monitoring the NOAA weather channel for closure announcements. Shrimp trawlers may also call (813) 570–5312 for updated area closure information.

NMFS-Approved TEDs With Escape Openings Large Enough for Leatherback Sea Turtles

NMFS has approved modifications to the Taylor and the Morrison TEDs, as well as a modification to the single-grid hard TED, that will allow leatherback turtles to escape the trawl. Descriptions of the Taylor and Morrison TED modifications are found at 50 CFR 227.72(e)(4)(iii)(E), and the modified single-grid hard TED is described at 50 CFR 227.72(e)(4)(i)(G)(*2*)(*ii*).

Classification

This rule has been determined to be not significant for purposes of E.O. 12866.

This rule establishes a registration program that contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, registration by vessels fishing in the

leatherback conservation zone from Cape Canaveral, FL, to the Virginia-North Carolina border. This collection has been approved by Office of Management and Budget under control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Assistant Administrator for Fisheries, NOAA,(AA) prepared an EA for the interim rule (60 FR 25620, May 12, 1995) and concluded that, with specified mitigation measures, it will have no significant impact on the human environment. The AA has determined that the EA prepared for the interim rule is applicable to this final rule. Copies of the EA are available (see **ADDRESSES**).

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted; 16 U.S.C. 1531–1543; and 16 U.S.C. 1531 *et seq.*

Dated: September 7, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the interim rule amending 50 CFR parts 217, 222, and 227, which was published at 60 FR 25620 on May 12, 1995, is adopted as a final rule without change.

[FR Doc. 95–22828 Filed 9–13–95; 8:45 am]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 60, No. 178
Thursday, September 14, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–62]

Nuclear Energy Institute; Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute (NEI) on behalf of the nuclear power industry. The petition has been docketed by the Commission and assigned Docket No. PRM–50–62. The petitioner requests that the NRC amend its regulations regarding quality assurance programs to permit nuclear power plant licensees to change their quality program described or referenced in a licensee's Safety Analysis Report (SAR) without prior NRC approval under specified conditions. The petitioner believes that this amendment would improve the regulatory process and increase the safety of commercial nuclear power plants through a more efficient use of agency and industry resources.

DATES: Submit comments by November 28, 1995. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to those comments received on or before this date.

ADDRESSES: For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Services Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

Electronic Access, see **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washingtion, DC 20555–0001. Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Electronic Access

Comments may be submitted through the Internet by addressing electronic mail to INTERNET:SECY@NRC.GOV. Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Rulemaking Bulletin Board (BBS) on FEDWORLD.

The BBS is an electronic information system operated by the National Technical Information Service of the Department of Commerce. The purpose of this bulletin board BBS is to facilitate public participation in the NRC regulatory process, particularly rulemakings. With publication of this notice, proposed rulemakings and appropriate supporting documents will be available for review and comment on the BBS. These same documents are also available for review and comment at the NRC's Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC. The BBS may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

The NRC rulemaking bulletin board (rulemaking subsystem) on FEDWORLD can be accessed directly by using a personal computer and modem, dialing the toll free number at 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FEDWORLD consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FEDWORLD Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FEDWORLD also can be accessed by a direct dial phone number for the main FEDWORLD BBS at 703–321–3339; or by using Telnet via Internet: fedworld.gov. Using the 703 number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has the option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, then you may return to FEDWORLD by selecting the "Return to FEDWORLD" option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, then you will have full access to all NRC systems, but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the "Rules Menu." Although you will be able to download documents and leave messages, you will not be able to write comments or upload files. If you contact FEDWORLD using File Transfer Program (FTP), all files can be accessed and downloaded, but uploads are not allowed, and all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FEDWORLD also can be accessed through the World Wide Web as well, like FTP, that mode only provides access for downloading files, and does not display the NRC "Rules Menu."

For more information on NRC bulletin boards call Mr. Arthur Davis, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

The Petitioner

The petitioner is the Nuclear Energy Institute (NEI). NEI represents that it is responsible for establishing unified nuclear industry positions on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear power plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

Background

The NRC received an NEI petition for rulemaking on June 12, 1995. The petition is dated June 8, 1995, and was docketed as PRM–50–62 on June 19, 1995. The petitioner requests that the NRC amend its regulations in 10 CFR 50.54(a) to permit licensees to make certain changes to their quality assurance programs without prior approval from the NRC. The petitioner believes that this will change the quality assurance process consistent with the change process for other matters described in the SAR.

Discussion of the Petition

The petition states that the current § 50.54(a) allows NRC licensees to change their quality assurance programs as long as any prior commitment in that program is not reduced. The petitioner believes that if a commitment is to be reduced, a licensee needs NRC approval prior to implementation. The petitioner believes that this requirement is sometimes interpreted by the NRC as requiring NRC prior approval for any changes in the quality program, no matter the degree of safety significance. The petitioner believes that prolonged and sometimes unnecessary regulatory interactions often occur centered on the correct interpretation of the term "reduction in commitment." The petitioner cites the following examples of topics that have been the subject of concern in the past:

- Changes in the level of approval of administrative, implementation or policy procedures, regardless of the safety significance.
- Changes in the company organization as it is described in the licensee's original quality plan.
- Changes to audit, review or surveillance frequencies that have minimal, if any, safety significance.
- Adoption of a more recent national standard that may, or may not, have been endorsed by the NRC staff that results in a different implementation methodology, yet fulfills the same function and achieves the same objective as the original standard described in the quality program description through the use of enhanced technology or other developments.
- Adoption of different, more effective and efficient quality processes than those described in a licensee's original quality plant based on the safety significance and past operating performance.

The petitioner believes that the current provisions of § 50.54(a) related to the quality assurance program change process are inconsistent with the requirements associated with other changes to the SAR (see § 50.59).

The petitioner believes that a licensee's inability to adjust its quality assurance program descriptions and commitments without prior NRC approval is a significant administrative burden on a licensee and can distract a licensee and the NRC from more significant safety matters. The petitioner also believes that the proposed amendment would improve regulatory consistency by instituting the same type of change process for the quality assurance program described or referenced in the SAR (i.e., a change process similar to the process delineated in § 50.59). The petitioner believes that the proposed amendment ensures that the attention and resources of NRC and industry would be more appropriately and effectively focused on issues that could have an adverse effect on public health and safety.

The petitioner further believes that the proposed amendment is consistent with the overall objectives of the 1993 Report of the National Performance Review, conducted by the Vice President of the United States, and the 1995 congressional initiatives on improving Federal regulations. In conjunction with phase two of the NRC's national performance review study, a review of current NRC regulations has been performed to identify regulations that are obsolete, unnecessarily burdensome, too prescriptive, or that overlap or duplicate other regulations.

The petitioner states that the NRC's Regulatory Review Group (RRG), in its review of power reactor regulations and related processes, programs, and practices, identified specific examples of inconsistency and incoherence in the current regulations and their associated administrative requirements. The RRG also provided recommendations for improvement. The petitioner states that, in some of the areas reviewed by the RRG, licensees are responsible for controlling specific activities that are very similar in nature to the quality assurance process; however, these other activities are subject to different regulatory constraints, reporting, and record retention requirements.

The petitioner cites the following examples that the regulatory review group provided in its report of August 1993:

- Changes that can be made by a licensee to a facility or procedures without prior NRC approval if the change does not require a change to the Technical Specifications or involve an unreviewed safety question * * *.
- Changes that can only be made to a licensee's quality assurance program described or referenced in the SAR without prior NRC approval if they do not reduce commitments in the program description previously accepted by the NRC, even if the changes do not affect the Technical Specifications, involve unreviewed safety questions, or have any adverse safety significance * * *.
- Varying record retention and reporting frequencies for activities of a similar nature, such as those associated with quality assurance and changes to the SAR.

The petitioner agrees with the NRC's RRG finding that there is no reason for these inconsistencies in the NRC's regulations. The petitioner believes that regulatory effectiveness would be improved, the burden on licensees and the NRC reduced, and regulatory coherence enhanced if there were a consistent change process for changes to the facility, its procedures, tests and experiments, or other matters as described in the SAR.

The petitioner states that in the development of a more efficient and effective quality regime, it is important that licensees not be discouraged by an unnecessary administrative burden of seeking prior NRC approval when a change is of no regulatory significance (i.e., does not result in non-compliance with the NRC's regulations, a change to the technical specifications, or an unreviewed safety question). The petitioner also states that in an evolving technological environment, each licensee should be allowed the opportunity to respond to improvements in technology, industry operating experiences, and new operational or technical information by making changes to its quality assurance program that do not degrade protection of the public health and safety without the need for administrative and managerial regulatory interactions.

The petitioner states that the proposed amendment does not introduce a new type of change process. The petitioner believes that the proposed amendment is based on a well-tried and proven process for making changes to a facility, its procedures, tests, or activities that are described or referenced in the SAR. Compliance with the regulations to ensure proper control of a facility and the quality program associated with the protection of public health and safety is still provided by the adoption of a change process that is similar to the established § 50.59 process.

Section 50.59, Changes, tests and experiments, allows the holder of a license authorizing operation of a production or utilization facility to (i) make changes in the facility as described in the SAR, (ii) make changes in the procedures as described in the SAR, and (iii) conduct tests or experiments not described in the SAR, without prior Commission approval, unless the proposed changes, tests, or experiments, involve a change in the technical specifications incorporated into the license or an unreviewed safety question.

The petitioner believes that its proposed amendment would allow the licensee to have the authority to change its quality program if analysis, as described in § 50.59, demonstrates that a proposed change does not involve an unreviewed safety question or change the technical specifications. The petitioner states that the analysis to support this determination would be consistent with that required to support other types of changes to an SAR; therefore, it would be based on the well-proven and established industry guidance.

The petitioner believes that if the analysis of a proposed change to the quality assurance program indicates that any unreviewed safety questions may be involved, a licensee would either decide not to institute the change or submit the change for NRC approval before implementation. For changes involving an unreviewed safety question, the complete change, including the safety evaluation, would be submitted in accordance with the requirements of § 50.90.

The petitioner states that the proposed amendment would maintain the requirements of § 50.4, requiring licensees to submit a report containing a summary description of the changes to the quality assurance program described or referenced in the SAR. The petitioner states that the report would be submitted annually, or along with the FSAR updates as required by § 50.71(e), or at shorter intervals as determined by each licensee. The petitioner states that licensees would maintain records of the changes as facility records for 5 years, a period that is consistent with other similar NRC regulations (e.g. § 50.59).

The NEI did not address the impact of removing § 50.4(b)(7)(i) from the Commission's regulations or why NEI believes the deletion is necessary.

The petitioner's suggested amendment would require that only a summary, not a detailed safety evaluation, be submitted to the NRC for changes that do not involve a Technical Specification change or an unreviewed safety question. The petitioner believes that this is consistent with the requirements of similar regulations (§ 50.59). The petitioner also believes that the proposed amendment would require that licensees maintain records of these evaluations until the termination of the license.

The petitioner has provided supplemental analyses to facilitate the NRC's consideration of the effect of the proposed action on the environment and small business entities, as well as the paperwork burden on all entities that would be affected by the change. NEI also included analyses to assist NRC in its consideration of the need for a regulatory analysis or application of the backfit rule to this rulemaking.

The NRC is soliciting public comment on NEI's petition requesting the changes to regulations in 10 CFR Part 50 as discussed below.

The Petitioner's Proposed Amendment

The petitioner recommends the following amendments to 10 CFR Part 50.

§ 50.4 [Amended]

1. In § 50.4, paragraph (b)(7)(i) and the designation for paragraph (b)(7)(ii) are removed.

* * * * *

2. In § 50.54, paragraph (a) is revised to read as follows:

§ 50.54 Conditions of licenses.

(a)(1) Each nuclear power plant or fuel reprocessing plant licensee shall implement a quality assurance program pursuant to § 50.34(b)(6)(ii) of this part, as described or referenced in its Safety Analysis Report.

(2) Each licensee described in paragraph (a)(1) of this section may make a change to a previously accepted quality assurance program description included or referenced in its Safety Analysis Report without prior Commission approval unless the proposed change involves a change to the technical specifications incorporated in the license or involves an unreviewed safety question.

(i) A change shall be deemed to involve an unreviewed safety question (A) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in a licensee's Safety Analysis Report may be increased; or (B) if a possibility for an accident or malfunction of a different type than any previously evaluated in a licensee's Safety Analysis Report may be created; or (C) if the margin of safety as defined in the basis for any technical specification is reduced.

(ii) When changes are made to a previously accepted quality assurance program description, a licensee shall submit, as specified in § 50.4, a report containing a brief description of the change, including a summary of the safety evaluation of each change. The report may be submitted annually, or along with FSAR updates as required by § 50.71(e), or at shorter intervals as determined by each licensee.

(iii) Records of changes to the quality assurance program shall be maintained as facility records for five years.

(3) For changes to the quality assurance program description that involve an unreviewed safety question, licensees shall submit the proposed change to the NRC for approval before implementation. The licensee shall submit the application to amend the quality assurance program pursuant to the requirements of § 50.90.

(4) For changes that involve a change to the technical specifications, a licensee shall submit an application for a license amendment pursuant to § 50.90.

* * * * *

Specific Areas for Public Comment

In addition to commenting on the petition for rulemaking (petition) presented above, the NRC staff is soliciting specific comments on the issues presented below. Because the NRC staff has not yet developed its positions on the petition, it is soliciting these comments to obtain information that it may consider in developing future rulemakings that provide procedures for licensees to make changes to its quality assurance program.

1. 10 CFR 50.54(a) was issued on January 10, 1983, to correct instances where licensees had changed their programs that resulted in some unacceptable programs without informing the NRC. What assurances exist to prevent a similar situation from recurring if the petition and the revised threshold for reporting QA program changes is adopted? Is it necessary that such situations be prevented from occurring by adoption of a regulatory approval system?

2. Traditionally, the NRC staff has used a variety of documents such as the NRC Standard Review Plan, NRC Regulatory Guides, and associated industry consensus standards to delineate what QA program elements are necessary to meet Appendix B. Should these standards continue to be used to define acceptable QA programs? Should a licensee QA program change that constitutes a departure from a commitment to comply with a specific regulatory position be considered of sufficient importance that the NRC should be notified in advance of implementation? How would such changes be evaluated under the petitioner's proposed criterion?

3. The NRC has allowed licensees to relocate administrative controls for review and audit functions from the technical specifications. Examples include details on safety review committees, audits, and technical review functions. These have been relocated to the QA program based on the existing change control provisions in § 50.54(a). Would it be appropriate for activities such as safety review committees, independent technical review groups, and audits to be controlled so that only licensee changes exceeding the threshold of an unreviewed safety question (USQ) be reported to the NRC for pre-review before implementation? What kind of changes to a licensee's QA program would constitute a USQ? Assuming that the USQ should/could be applied, does not the use of § 50.59 effectively negate the administrative and regulatory advantage of removing this information from technical specifications (because both technical specification changes and USQs are subject to an opportunity for hearing)? If the revised QA change control mechanism is adopted should aspects of the review and audit functions remain in the QA program or be relocated elsewhere to ensure appropriate NRC review of changes prior to implementation?

4. Are there alternative thresholds for determining whether a licensee must submit their QA program changes for advance review in lieu of the USQ threshold? Provide a technical and/or policy explanation as to why this or any other threshold would be more appropriate.

5. The NRC Regulatory Review Group (RRG) examined change control mechanisms in § 50.54 for control of licensee plans and programs (quality assurance, security, and emergency preparedness). The RRG recommended that licensees should have greater flexibility to make changes in their programs without having to receive prior NRC approval. Currently, QA program changes that "reduce the commitments in the program" are submitted for NRC staff review before implementation. Similarly, security plan changes that "decrease the effectiveness" are submitted for staff review before implementation. Should the staff consider a revision to § 50.54(a) to set the threshold for reporting QA program changes for NRC pre-review that constitute a decrease in effectiveness? Would a "decrease in effectiveness" standard in § 50.54(a) provide a sufficiently flexible and technically reasonable criteria for licensees to report QA program changes to the staff before implementation?

6. Should the NRC staff consider retaining the current language of § 50.54(a) and to define explicit guidance or identify examples on what types of QA program changes would be considered to "reduce the commitments in the program"? By developing this guidance could sufficient flexibility be afforded to licensees to make changes in their QA program without having to undergo a pre-review by the staff?

7. The petition proposes to apply a § 50.59 process to evaluate QA program changes to determine the necessity for pre-review by the staff. Industry guidance for § 50.59 exists within NSAC–125 "Guidelines for § 50.59 Safety Evaluations." NSAC–125 appears to contain little relevant guidance that would be helpful for determining whether QA programmatic changes would constitute a USQ that requires NRC pre-review of the change. In particular, Section 4.2 of NSAC–125 deals principally with evaluating changes associated with nuclear plant equipment and not programmatic controls. Is existing guidance for processing 10 CFR 50.59 evaluations sufficient for evaluating QA program changes? What factors or aspects of the existing industry guidance would need to be supplemented? What types of QA program changes would be necessary to report to the NRC if the current § 50.59 criteria were applied to QA program changes? What are examples of QA program changes that should be considered as meeting the USQ threshold?

8. Would protection of the public health and safety be enhanced if the petition were granted, and if so, in what way? What licensee and NRC costs would be reduced, or increased, if the petition were granted?

Dated at Rockville, Maryland, this 7th day of September, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–22705 Filed 9–13–95; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 353

RIN 3064–AB63

Suspicious Activity Reporting

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to revise and restructure its regulation on the reporting of suspicious activities by insured state nonmember banks, including the reporting of suspicious financial transactions, such as suspected violations of the Bank Secrecy Act (BSA). This proposal implements a new interagency suspicious activity referral process and updates and clarifies various portions of the underlying reporting regulation. The proposal also reduces substantially the burden on banks in reporting suspicious activities while enhancing access to such information by both the federal law enforcement and the federal financial institutions supervisory agencies, thus meeting the goals of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

DATES: Comments must be received by November 13, 1995.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room F–402, 1776 F Street NW., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. [Fax number: 202/898–3838; (Internet address: comments@fdic.gov)] Comments will be available for inspection at the Corporation's Reading Room, Room 7118, 550 17th Street NW., Washington, DC between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Carol A. Mesheske, Chief, Special Activities Section, (202/898–6750), or Gregory Gore, Counsel, (202) 898–7109.

SUPPLEMENTARY INFORMATION:

Background

The federal financial institutions supervisory agencies (the Agencies)[1] and the Department of the Treasury (Treasury), through its Financial Crimes Enforcement Network (FinCEN), are responsible for ensuring that financial institutions apprise federal law enforcement authorities of any known or suspected violation of a federal criminal statute and of any suspicious financial transaction. Suspicious financial transactions, which will be the subject of regulations and other guidance to be issued by Treasury, can include transactions that the bank suspects involved funds derived from illicit activities, were conducted for the purpose of hiding or disguising funds from illicit activity, otherwise violated the money laundering statutes (18 U.S.C. 1956 and 1957), were potentially designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act (BSA) (31 U.S.C. 5311 through 5330), or transactions the bank believes were suspicious for any other reason.

Fraud, abusive insider transactions, check kiting schemes, money laundering, and other crimes can pose serious threats to a financial institution's continued viability and, if unchecked, can undermine the public confidence in the nation's financial industry. The Agencies and federal law enforcement agencies need to receive timely and detailed information regarding suspected criminal activity to determine whether investigations, administrative actions, or criminal prosecutions are warranted.

An interagency Bank Fraud Working Group (BFWG), consisting of representatives from many federal agencies, including the Agencies and law enforcement agencies, was formed in 1984. The BFWG addresses substantive issues, promotes cooperation among the Agencies and federal and state law enforcement agencies, and improves the federal government's response to white collar crime in financial institutions. It is under the auspices of the BFWG that the revisions to this regulation and the reporting requirements are being made.

Suspicious Activity Report

The Agencies have been working on a project to improve the criminal referral process, to reduce unnecessary reporting burdens on banks, and to eliminate confusion associated with the current duplicative reporting of suspicious financial transactions in criminal referral forms and currency transaction reports (CTRs). Contemporaneously, Treasury analyzed the need to revise the procedures used by financial institutions for reporting suspicious financial transactions. As a result of these reviews, the Agencies and Treasury approved the development of a new referral process that includes suspicious financial transaction reporting.

To implement the reporting process, and to reduce unnecessary burdens associated with these various reporting requirements, the Agencies and FinCEN developed a new interagency form for reporting known or suspected federal criminal law violations and suspicious financial transactions. The new report is designated the Suspicious Activity Report (SAR). The SAR is a simplified and shortened version of its predecessors. The new referral process and the SAR reduce the burden on banks for reporting known or suspected violations and suspicious financial transactions. The agencies anticipate the new process will be instituted by October, 1995.

Proposal

The FDIC proposes to revise 12 CFR part 353 by updating and clarifying the current rule governing the filing of criminal referral reports; expanding the rule to cover suspicious financial transactions; implementing the new SAR; and simplifying reporting requirements. This action should improve reporting of known or suspected violations and suspicious financial transactions relating to federally insured financial institutions while providing uniform data for entry into a new interagency computer database. The FDIC expects that each of the other Agencies will be making substantially similar changes contemporaneously.

The principal proposed changes to the current criminal referral reporting rules include several notable changes. They include: (i) Raising the mandatory reporting thresholds for criminal offenses, thereby reducing banks' reporting burdens; (ii) filing only one form with a single repository, rather than submitting multiple copies to several federal law enforcement and banking agencies, thereby further reducing reporting burdens; and (iii) clarifying the criminal referral and reporting requirements of the Agencies and Treasury associated with suspicious financial transactions, thereby eliminating confusion concerning the filing of referrals related to suspicious financial transactions of less than $10,000 and eliminating duplicative referrals.

The proposal also involves the manner in which financial institutions file a SAR. In following the instructions on a SAR, banks may file the referral form in several ways, including submitting an original form or a photocopy or filing by magnetic means, such as by a computer disk.

The Agencies, working with FinCEN, are developing computer software to assist banks in preparing and filing SARs. The software will allow a bank to complete a SAR, to save the SAR on its computers, and to print a hard copy of the SAR for its own records. The computer software will also enable a bank to file a SAR using various forms of magnetic media, such as computer disk or magnetic tape. The FDIC will make the software available to all its supervised institutions free of charge.

Part 353—Suspicious Activity Reports

The title of the regulation has been changed to conform to the name on the SAR. The current part is titled "Reports of Apparent Crimes Affecting Insured Nonmember Banks". The proposed heading, "Suspicious Activity Reports", conforms to the name of the report.

Section 353.1 Purpose and Scope

The proposal restructures the current § 353.0, redesignates it as § 353.1, and clarifies the scope of the current rule. Under the proposal, the SAR replaces the various criminal referral forms that the Agencies currently require banks to file. Also, a bank files a SAR to report a suspicious financial transaction. Presently, many banks are confused over whether to file a CTR or a criminal referral form when a suspicious financial transaction occurs, and often needlessly file both forms or the wrong form.[2]

Combining suspicious financial transaction reporting and criminal referral reporting should reduce confusion, increase the accuracy and efficiency of reporting, and reduce the burden on banks in reporting known or

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[1] The federal financial institutions supervisory agencies are the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

[2] The BSA requires all financial institutions to file CTRs in accordance with the Department of the Treasury's implementing regulations (31 CFR part 103). Part 103 requires a financial institution to file a CTR whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, the bank, under these new requirements, will file both a CTR (reporting the currency transaction) and a SAR (reporting the suspicious criminal aspect of the transaction). If a currency transaction equals or is below $10,000 but is suspicious, the bank will file only a SAR.

suspected violations, including suspicious financial transactions.

Section 353.2 Definitions

Proposed new § 353.2 defines the following terms: "FinCEN", "institution-affiliated party", and "known or suspected violation". The definitions should make the rule easier to interpret and apply.

Section 353.3 Reports and Records

Proposed § 353.3, which replaces and restructures current § 353.1, clarifies and expands the provision that requires a bank to file a completed SAR. This provision raises the dollar thresholds that trigger a filing requirement. It also modifies the scope of events that a bank must report by using the term "known or suspected violation," which is defined at § 353.2(c), and by requiring that a bank file a SAR to report a suspicious financial transaction.

Under the current rule, the FDIC requires a bank to file a criminal referral form with many different federal agencies. The proposal requires a bank to file only a single SAR at one location, rather than the multiple copies of the criminal referral form that must now be filed with various federal agencies.

Under proposed § 353.3, a bank effectively files a SAR with all appropriate federal law enforcement agencies by sending a single copy of the SAR to FinCEN, whose address will be printed on the SAR.

FinCEN will input the information contained on the SARs into a newly created database that FinCEN will maintain. This process meets the regulatory requirement that a bank refer any known or suspected criminal violation to the various federal law enforcement agencies. The information is made available on computer to the appropriate law enforcement and supervisory agencies as quickly as possible. The database will enhance federal law enforcement and supervisory agencies' ability to track, investigate, and prosecute, criminally, civilly, and administratively, individuals suspected of violating federal criminal law. This change will reduce the filing burdens of banks.

The proposal modifies current § 353.1(a)(2), which requires reporting of known or suspected criminal activity when a bank has a substantial basis for identifying a non-insider suspect where bank funds or other assets involve or aggregate $1,000 or more. Proposed § 353.3(a)(2), which replaces current § 353.1(a)(2), raises the reporting threshold to $5,000, thereby reducing the reporting burden on banks.

The proposal also modifies current § 353.1(a)(3), which requires banks to report any known or suspected criminal violation involving $5,000 or more where the bank has no substantial basis for identifying a suspect. Specifically, proposed § 353.3(a)(3), which replaces current § 353.1(a)(3), raises the dollar reporting threshold from $5,000 to $25,000, thereby reducing the reporting burden on banks.

Proposed § 353.3(a)(4) clarifies the reporting requirement for any financial transaction, regardless of the dollar amount, that: (1) the bank suspects involved funds derived from illicit activity, was conducted for the purpose of hiding or disguising funds from illicit activity, or in any way violated the money laundering statutes (18 U.S.C. 1956 and 1957); (2) the bank suspects was potentially designed to evade the reporting or recordkeeping requirements of the BSA (31 U.S.C. 5311 through 5330); or (3) the bank believes to be suspicious for any reason.

Section 353.3(b) Time for Reporting

Proposed § 353.3(b), which replaces current § 353.1(b), sets forth the time requirements a bank must meet when filing a SAR. The proposal clarifies the reporting requirement in the event a suspect or group of suspects is not immediately identified. The proposal does not substantively change the current requirements.

Section 353.3(c) Reports to State and Local Authorities

No changes are being made to the current § 353.1(c), except to redesignate it as 353.3(c).

Section 353.3(d) Exemptions

No changes are being made to the current 353.1(d), other than to redesignate it as 353.3(d) and to delete the reference to § 326.3(a)(2)(i) of this chapter.

Section 353.3(e) Retention of Records

Proposed § 353.3(e) requires a bank to retain a copy of the SAR and the original of any related documentation relating to a SAR for a period of ten years. This time frame corresponds with the statute of limitations for most federal criminal statutes involving financial institutions. The current rule is silent on this issue.

The proposed 353.3(e) clarifies the requirement that banks make all supporting documentation available to appropriate law enforcement agencies upon request. The proposal requires the supporting documentation be identified and treated as filed with the SAR. This approach ensures federal law enforcement agencies and the Agencies, upon request, have access to any documentation necessary to prosecute a violation or pursue an administrative action by requiring banks to preserve underlying documentation for ten years.

Section 353.3(f) Notification to the Board of Directors

Current § 353.1(f) requires notification regarding the filing of a SAR to an insured state nonmember bank's board of directors by the bank's management. To reduce burdens on the boards of directors of banks, especially those large banks that file many SARs, the proposal recognizes that the required notification may be made to a committee of the board.

Section 353.3(g) Confidentiality of SARs

FDIC proposes to add a new paragraph relating to the confidentiality of a SAR. Proposed § 353.3(g) states that a SAR and the information contained in a SAR are confidential, and an insured state nonmember bank should decline to produce a SAR citing this regulation and applicable law (31 U.S.C. 5318(g)), or both.

Comments

The FDIC invites public comment on all aspects of this proposal.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal primarily reorganizes the process for making criminal referrals and has no material impact on banks, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This proposed rule would revise a collection of information that is currently approved by the Office of Management and Budget (OMB) under control number 3064–0077. The revisions raise the reporting thresholds and will permit reporting institutions to use a simplified, shorter form; to file one form only; and to eliminate the submission of supporting documentation with a report. These revisions have been submitted to OMB for review and approval in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The estimated average burden associated with the collection of information contained in a SAR is approximately .6 hours per respondent.

The burden per respondent will vary depending on the nature of the suspicious activity being reported.

Estimated Number of Respondents: 6,500.

Estimated Total Annual Burden Hours: 3,900.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), Room F–400, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064–0077), Washington, DC 20503.

List of Subjects in 12 CFR Part 353

Banks, banking, Crime, Currency, Insider abuse, Money laundering, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 353 is proposed to be revised to read as follows:

PART 353—SUSPICIOUS ACTIVITY REPORTS

Sec.
353.1 Purpose and scope.
353.2 Definitions.
353.3 Reports and records.

Authority: 12 U.S.C. 1818, 1819.

§ 353.1 Purpose and scope.

The purpose of this part is to ensure that insured state nonmember banks file a Suspicious Activity Report when they detect a known or suspected violation of federal law or suspicious financial transaction. This part applies to all insured state nonmember banks as well as any insured, state-licensed branches of foreign banks.

§ 353.2 Definitions.

For the purposes of this part:

(a) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(b) *Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(5)).

(c) *Known or suspected violation* means any matter for which there is a basis to believe that a violation of a federal criminal statute (including a pattern of criminal violations) has occurred or has been attempted, is occurring, or may occur, and there is a basis to believe that a financial institution was an actual or potential victim of the criminal violation or was used to facilitate the criminal violation.

§ 353.3 Reports and records.

(a) *Suspicious activity reports required.* A bank shall file a suspicious activity report with the appropriate federal law enforcement agencies in accordance with the form's instructions, by transmitting a completed suspicious activity report to FinCEN in the following circumstances:

(1) Whenever the bank detects a known or suspected violation of federal criminal law and has a substantial basis to believe that one of its directors, officers, employees, agents, or other institution-affiliated parties committed or aided in the commission of the violation;

(2) Whenever the bank detects a known or suspected violation of federal criminal law, involving or aggregating $5,000 or more (before reimbursement or recovery), and the bank has a substantial basis for identifying a possible suspect or group of suspects;

(3) Whenever the bank detects a known or suspected violation of federal criminal law, involving or aggregating $25,000 or more (before reimbursement or recovery), and the bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) Whenever the bank detects any financial transaction conducted, or attempted, at the bank involving funds derived from illicit activity or for the purpose of hiding or disguising funds from illicit activities, or for the possible violation or evasion of the Bank Secrecy Act reporting and/or recordkeeping requirements. A suspicious activity report must be filed for all instances where money laundering is suspected or where the bank believes that the transaction was suspicious for any reason, regardless of the identification of a potential suspect or the amount involved in the violation.

(b) *Time for reporting.* (1) A bank shall file the suspicious activity report no later than 30 calendar days after the date of initial detection of an act described in paragraph (a) of this section. If no suspect was identified on the date of detection of an act triggering the filing, a bank may delay filing a suspicious activity report for an additional 30 calendar days after the identification of a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of detecting a known or suspected violation.

(2) In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the bank shall immediately notify by telephone, or other expeditious means, the appropriate law enforcement agency and the appropriate FDIC regional office (Division of Supervision) in addition to filing a timely report.

(c) *Reports to state and local authorities.* A bank is encouraged to file a copy of the suspicious activity report with state and local law enforcement agencies where appropriate.

(d) *Exemptions.* (1) A bank need not file a suspicious activity report for a robbery, burglary or larceny, committed or attempted, that is reported to appropriate law enforcement authorities.

(2) A bank need not file a suspicious activity report for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(e) *Retention of records.* A bank shall maintain a copy of any suspicious activity report filed and the originals of any related documentation for a period of ten years from the date of filing the suspicious activity report. A bank shall make all supporting documentation available to appropriate law enforcement agencies upon request. Supporting documentation shall be identified and treated as filed with the suspicious activity report.

(f) *Notification to board of directors.* The management of the bank shall promptly notify its board of directors, or a designated committee thereof, of any report filed pursuant to this section. The term "board of directors" includes the managing official of an insured state-licensed branch of a foreign bank for purposes of this part.

(g) *Confidentiality of suspicious activity reports.* Suspicious activity reports are confidential. Any person subpoenaed or otherwise requested to disclose a suspicious activity report or the information contained in a suspicious activity report shall decline to produce the information citing this part, applicable law (*e.g.*, 31 U.S.C. 5318(g)), or both.

By Order of the Board of Directors.

Dated at Washington, DC, this 6th day of September, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–22750 Filed 9–13–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–7–94]

RIN 1545–AS49

Arbitrage Restrictions on Tax-Exempt Bonds; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date and location for public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments.

DATES: The public hearing will be held Thursday, October 12, 1995, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Thursday, September 21, 1995.

ADDRESSES: The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:R [FI–7–94], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking appeared in the **Federal Register** on Tuesday, May 10, 1994 (59 FR 24094). A notice of public hearing appearing in the **Federal Register** on Thursday, August 17, 1995 (60 FR 42819) announced that the Service would hold a public hearing on proposed regulations relating to the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments on Monday, September 25, 1995, beginning at 10:00 a.m. in the IRS Auditorium.

The date and location of the public hearing has changed. The hearing is scheduled for Thursday, October 12, 1995, beginning at 10:00 a.m. in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of controlled access restrictions, attenders are not admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

The Service will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–22791 Filed 9–13–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173 and 178

[Docket No. HM–207C, Notice No. 95–9]

RIN 2137–AC83

Exemption, Approval, Registration and Reporting Procedures; Miscellaneous Provisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: To expedite processing of applications and to promote clarity and program consistency, RSPA is proposing to revise the procedures for applying for exemptions and to establish procedures for applying for approvals, registering (other than the hazmat registration program), and reporting. In addition, the proposed rule would amend in minor ways a number of provisions, mostly procedural. The intended effect of this NPRM is to provide guidance for persons required to obtain an approval, register, or report with RSPA. By clarifying the requirements, RSPA would reduce the need to seek additional information necessary to complete the processing of applications. The proposed changes also would reduce the processing time.

DATES: *Comments.* Comments must be received by November 28, 1995.

ADDRESSES: *Comments.* Address comments to Dockets Unit (DHM–30), Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW, Washington DC 20590–0001. Office hours are 8:30 am to 5:00 pm Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: Jennifer Antonielli, Office of Hazardous Materials Standards, (800) 467–4922, or Kathleen Molinar, Office of the Chief Counsel, (202) 366–4400, RSPA, Department of Transportation, 400 Seventh Street SW, Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101–5127, directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous material in commerce. 49 U.S.C. 5103. The Research and Special Programs Administration (RSPA) is the administration within the Department of Transportation primarily responsible for implementing the Federal hazmat law. 49 CFR 1.53. RSPA does so through the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180. Under 49 U.S.C. 5117(a), RSPA is authorized to issue an exemption from the Federal hazmat law or the HMR if an applicant demonstrates that public safety will not be compromised. The procedures governing application for an exemption and the manner in which the application is processed are found at 49 CFR subpart B of part 107.

In addition, in numerous instances the HMR require authorization by or registration with RSPA before a person may engage in particular hazmat transportation-related activities in areas such as manufacturing and certifying hazardous material packagings, offering hazardous material for transportation, and transporting hazardous material. Elsewhere, the HMR impose reporting requirements on those engaging in certain hazmat transportation activity. A significant portion of the regulated community is subject to one or more of these types of requirements. Procedures to be followed in seeking an approval from RSPA, registering with RSPA or reporting to RSPA may be found in the HMR provision establishing the particular requirement, but in many cases these procedures are absent or incomplete. There are no general procedural rules in the HMR governing these matters.

This proposed rule would revise existing exemption procedures at 49 CFR subpart B of part 107 and create a new subpart H of part 107 to establish a similar procedural framework for approvals, registrations and reports.

RSPA processes numerous approval, registration and reporting matters, and practices have developed over time. Nevertheless, establishment of formal procedures through regulation provides desirable guidance to all those who now or in the future may be subject to HMR approval, registration or reporting requirements, and fosters the greatest possible consistency in RSPA's handling of these matters. The proposed procedures, in many respects, parallel those for exemptions, and this rule would modify them, and largely codify the approval, registration and reporting procedures that RSPA currently follows. Establishing procedures in 49 CFR part 107 for approvals, registration, and reports would minimize the need for RSPA to seek information from applicants in order to complete the processing of applications.

The procedures for approvals, registration and reporting are limited in their application in two respects. First, under the HMR, other Federal agencies, including the United States Coast Guard, the Federal Highway Administration, the Nuclear Regulatory Commission, the Departments of Defense and Energy, the Bureau of Mines, the Bureau of Alcohol, Tobacco and Firearms, and non-Federal entities such as the Association of American Railroads, issue approvals or receive registrations or reports under the HMR. For example, under § 176.415, Coast Guard approval must be obtained before loading or unloading certain explosives onto or from vessels. The procedures established in this rulemaking would apply only with respect to those matters that, under the HMR, are handled by RSPA. Those matters for which the HMR assigns responsibility to other entities will continue to be handled according to the procedures of those entities.

Second, this rule does not supersede existing procedures for approvals, registration, or reporting, such as the minimum content of the application or the RSPA office where it is to be filed. Where 49 CFR subpart H of part 107 supplements a specific HMR requirement, both will apply. In the unlikely event that subpart H conflicts with an element of the specific approval, registration, or reporting requirement, the specific requirement will govern. Comments are invited on any apparent conflicts.

Proposed amendment of selected provisions in 49 CFR part 107 would clarify and, in some cases, slightly modify RSPA procedures with respect to rulemaking, preemption determinations and enforcement. Certain provisions of 49 CFR part 171 would be amended for clarity. Sections 172.302 and 173.22a would be amended to incorporate requirements currently in Appendix B to subpart B of part 107. A new § 178.3(d) would permit only those persons authorized under an exemption or their agents to certify a packaging to the exemption.

II. Regulatory Reinvention Initiative

In a March 4, 1995 memorandum, the President directed Federal agencies to review all agency regulations and eliminate or revise those that are outdated or in need of reform. RSPA issued a notice on April 4, 1995, (Docket HM–222; 60 FR 17049) requesting comments on regulatory reform and announced seven public meetings nationwide to identify obsolete and burdensome regulations which can be eliminated from the HMR and techniques to improve its customer services. Some of the commenters responding to the notice under Docket HM–222 identified the exemption and approval procedures contained in the HMR as areas in need of clarification and reform. Today's notice is consistent with the goals of the President to clarify and revise Federal agency regulations to relieve unnecessary regulatory burdens.

III. Request for Comments

Comments are invited with respect to all of the proposed changes. In particular, RSPA is interested in whether commenters believe the changes would make the process of applying for an exemption or approval simpler or more efficient, and whether paperwork burdens would be eased; whether the proposed provisions are clear; and how the rule would affect small businesses and other entities.

IV. Summary of Proposed Amendments

A. Exemptions

The exemption procedures at 49 CFR subpart B of part 107 would be reorganized to provide a framework that is more logically arranged than at present. The proposed rule sets forth application requirements for exemptions, exemption modifications, procedures for seeking party status to an exemption and renewing an exemption or a grant of party status. The proposed rule would establish three processing categories—routine, priority, and emergency; the standards to qualify for priority or emergency processing; and the procedures and review criteria to be applied in each category. Next, the notice would set forth the powers of the Associate Administrator for Hazardous Materials Safety (Associate Administrator) to modify, suspend, or terminate an exemption or grant of party status; the standards to do so, and the procedures to be followed. Finally, this NPRM proposes procedures for reconsideration of an exemption decision by the Associate Administrator and appeal of that decision to the RSPA Administrator.

Substantively, the current regulations would be revised in several respects. Summaries of the more significant proposed revisions follow.

In this notice, timely filing requirements under the subpart would be clarified by standardizing the "filing" date as the date a submission is received at the specified RSPA office. Also, the required contents of an application would be expanded in several respects. The applicant would need to list HMR exemptions, approvals, and other authorizations previously or currently held that are related to the subject of the application and known to the applicant; this information would facilitate prompt processing of the application by expediting review of other relevant information. In addition, the applicant would be required to identify each manufacturing facility that would be operating under the requested exemption; this information would facilitate later RSPA inspections. A foreign applicant, after designating a domestic agent for service, would be required to consent in writing to personal jurisdiction with respect to all matters under the Federal hazmat law related to the exemption. The proposed rule also provides that an applicant's failure to respond to a request by RSPA for additional information within 30 days would result automatically in application denial. Paperwork burdens would be reduced by requiring only duplicate, rather than triplicate, application submissions.

In the proposal, the Associate Administrator explicitly would be authorized to consider evidence of an applicant's capability and integrity in deciding on an application. A pending or completed enforcement action for HMR violations could be considered, to the extent the Associate Administrator found it to be relevant. If an enforcement action were only pending, and a final finding of violation had not been made, that would be considered in assessing the weight the enforcement action should be given in deciding on an application.

The standards for routine and emergency application processing would be clarified, and a third category, that of priority processing, would be created. The rule would formalize, but not modify, the way in which exemption applications now are

routinely processed. When an application is determined to be complete, it is published in the **Federal Register** and public comment is solicited. The application then is considered under prescribed standards, including demonstration of an equivalent level of safety and whether the applicant has the capability and integrity necessary to operate under the exemption.

Similarly, the proposed rule would not change how an emergency exemption application is processed, but would clarify and slightly modify the standards for qualifying for emergency processing. The standard would be expanded to include likelihood of significant injury to persons, rather than only loss of life. Also, the proposed rule would clarify that a likelihood of significant economic harm, standing alone, does not entitle an applicant to emergency processing; whether the prospect of significant economic loss constitutes an emergency would be a matter for the Associate Administrator's judgment. For example, the Associate Administrator may find that a carrier's loss of transportation revenue or failure to gain new revenue, or a shipper's failure immediately to gain a new market, would not justify emergency processing.

Specifically, the rule would add a provision that the Associate Administrator may determine a risk of economic loss to the applicant, or to another person engaged in the hazmat activity in cooperation with the applicant, not to be the basis for a finding of emergency if the applicant or another person could have filed for routine application processing in a timely manner. If an application qualifies for emergency processing, it is not published in the **Federal Register**, subject to public comment, or held strictly to the submission requirements for routine processing. Further, recognizing that urgency may not permit the fullest deliberation, the standard for granting the exemption is simply whether doing so is in the public interest, in light of the standards that apply to an application processed routinely. Through the proposed provision, RSPA seeks to ensure that emergency processing, which affords less public review and a risk of reduced agency deliberation, is used only in the case of a risk of significant economic loss where urgency is required to avert the loss and the need for urgency could not have been avoided.

The NPRM would create a third processing category, priority processing, for applications that do not qualify for emergency processing, but merit more expeditious consideration than that routinely accorded. An application that qualifies for priority processing, unlike one processed on an emergency basis, would be subject to public comment and the full degree of deliberation given to applications processed routinely. The priority designation merely would authorize RSPA to deviate from its "first in, first out" policy and consider the application ahead of those received earlier. Applications qualifying for priority processing would be those of governmental bodies when deemed by the Associate Administrator to be in the public interest, and those in which expeditious processing would be necessary to avoid significant economic loss. As in the case of emergency processing, if the significant economic loss were that of the applicant or another person engaged with the applicant in the hazmat activity, the need for the exemption may not have been foreseeable at a time when an application could have been processed routinely. Otherwise, the Associate Administrator would have the discretion to find that the application does not qualify for priority processing.

The proposed rule would clarify the standards for exemption modification, suspension, and termination and give the Associate Administrator more flexibility as to which of the three remedies is appropriate in a given situation. Presently, the Associate Administrator may modify or suspend an exemption if its provisions are violated, or if new information suggests that the activity under the exemption creates a risk to life or property. The Associate Administrator may terminate an exemption if it is no longer consistent with the public interest, is no longer necessary due to a change in the regulations, or was granted on the basis of false or misleading information. The "public interest" criterion encompasses all grounds on which the Associate Administrator may find it justified to terminate an exemption, but is vague. Further, the sharp distinction the existing regulation draws between those conditions that justify modifying or suspending an exemption, and those that justify terminating it, handicap the Associate Administrator in taking the action that a particular circumstance recommends—for example, requiring the termination of an exemption when modification might suffice.

The proposed rule would authorize modification whenever necessary to conform an exemption to changed statute or regulation, or other circumstances. It would authorize modification, suspension, or termination: (1) Whenever, because of a change in circumstances, the exemption no longer would be granted if applied for; (2) if it was granted on the basis of inaccurate or incomplete information; or (3) if the holder violates the exemption in a way that demonstrates insufficient competence or integrity to act under the exemption. In addition, any exemption granted on the basis of an application that the Associate Administrator finds was deliberately inaccurate or incomplete would be subject to modification, suspension, or termination, even where the exemption would have been granted absent the inaccuracy or incompleteness.

Finally, the proposed rule would formalize procedures for requesting reconsideration of an exemption decision by the Associate Administrator and appealing the Associate Administrator's decision to the RSPA Administrator. During the pendency of a request for reconsideration or an appeal, the Associate Administrator or the Administrator, respectively, on a finding of risk to persons or property, could deem the modification, suspension, or termination effective for a period of up to 90 days. Otherwise the exemption, if current, would remain in effect until the decision.

B. Approvals, Registrations, Reports

The proposed rule establishes a framework for processing approval requests similar to that for exemption applications. It also describes procedures for filing registrations and reports with RSPA.

The proposed rule specifies minimum contents of an application for approval to be filed with RSPA, identifies the RSPA office to which the filing would be directed, and sets forth procedures by which an application for approval would be processed.

Next, the proposed rule sets forth standards and procedures for modifying, suspending and terminating approvals. The proposed standards are similar to the procedures for modifying, suspending and terminating exemptions. Modification would be authorized broadly to conform an approval to changed law or circumstances. Modification, suspension and termination all would be available if new information indicates that the approval would not be granted if now applied for; if the holder has demonstrated insufficient capability or integrity to perform the authorized activity; or if the application contained deliberately inaccurate or incomplete information. The holder would be allowed an opportunity to respond to the proposed action before it becomes final; however, where necessary to avert a risk of harm to persons or property, the Associate Administrator could declare the modification, suspension or termination effective pending the holder's response and any subsequent reconsideration, for up to 90 days.

Finally, the proposed rule would provide for reconsideration of the Associate Administrator's decision on granting, modifying, suspending or terminating an approval, and for appeal of that decision to the Administrator.

C. Miscellaneous Amendments

The proposed rule would amend a number of procedural provisions of 49 CFR parts 107, 171, 172, 173, and 178. Amendments would be made for clarity in §§ 107.202, 107.203, 107.205, 107.211, 107.213 (new section), 107.217, 107.223, 107.227, 107.331, 171.1, 171.2, 171.8, 172.302, 173.22a, and 178.3. Requirements for exemption holders now found at Appendix B to subpart B of part 107, would be moved to §§ 172.302(c) and 173.22a(c).

Several provisions governing preemption determinations would be revised. The NPRM would modify § 107.205(a) to delete the requirement that the applicant notify the affected State, local, or tribal government that it has 45 days in which to comment on the application for preemption. Because the date on which the government body receives the applicant's notice is not fixed to the date on which the application is published in the **Federal Register**, this specification is somewhat arbitrary. The State, local, or tribal government would continue to have, ordinarily, 45 days in which to comment, but this time frame would simply be specified in the **Federal Register** notice setting forth the application.

Section 107.209(b) would be deleted. The Associate Administrator's authority to issue a preemption determination on his or her own initiative was eliminated by the Hazardous Materials Transportation Uniform Safety Act, Public Law 101–615, § 13 (Nov. 16, 1990).

Sections 107.209(d) and 107.221(d) would be amended to specify more concretely who would be given personal notice of a preemption or waiver of preemption determination. Presently, the Associate Administrator notifies each person "readily identifiable * * * as one who is affected by the determination." Appeal rights of parties depend on timely receipt of the Associate Administrator's preemption decision. The present standard is vague and could prompt a challenge by a person who did not receive notice of a decision. The proposed rule limits personal notice of the decision to a specified group of persons: those who commented substantially on the matter (this would exclude, for instance, those who merely submitted form letters favoring or opposing preemption) and those who requested notice.

Section 107.305(b) would be clarified in two regards. Additional language would clarify the right of a regulated party to examine an inspector's credentials, but prohibit that party from reproducing them. In addition, it would make explicit the inspector's authority to employ reasonable means of information gathering and documentation in performing an inspection. These means include, but are not limited to, interviewing and taking statements from representatives of the inspected person, photocopying, photographing, and taking audio and video recordings.

An added provision of § 107.305(b) would authorize the Director, Office of Hazardous Materials Enforcement (OHME), or his delegated representative, to issue a subpoena for the production of documentary or other tangible evidence. This authority is vested in the Administrator by § 107.13(a) and would be delegated by the proposed rule from the Administrator to the OHME Director. A person on whom a subpoena is served would have the opportunity to apply to the RSPA Chief Counsel within 10 days of service to modify or quash the subpoena.

A new § 171.2(h) explicitly would prohibit creating or altering an exemption, approval, registration, or other official document to fraudulently indicate authority to offer or transport hazardous materials or manufacture packagings for hazardous materials. Similarly, offering a hazardous material for transportation or transporting a hazardous material in commerce, or representing, marking, certifying, or selling a packaging, under a false or altered exemption, approval, registration, or similar document would be prohibited. Currently, 18 U.S.C. 1001 prescribes a criminal sanction for knowingly or willfully making or using a false document in a matter within the jurisdiction of a Federal agency. The proposed rule would create a separate civil sanction. Liability for a civil penalty would arise only when a violation is committed knowingly within the meaning of 49 U.S.C. 5123(a)(1); that is, when the person either knew or, in the exercise of reasonable care, should have known that the document was false or altered. Accordingly, for example, a carrier would not be subject to a civil penalty for transporting a hazardous material under authority of an exemption altered by a shipper, absent facts establishing the carrier's knowledge that the exemption was altered.

In addition, the proposed rule would amend § 178.3 by adding a new paragraph (d) to specifically prohibit anyone, other than the exemption holder, a person with party status to an exemption, or a third party tester, from certifying that a packaging meets the terms of an exemption. This provision is necessary to assure that packagings manufactured under the terms of an exemption are marked and certified only by those persons authorized to do so.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The notice is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The proposed rule would not result in any additional costs to persons subject to the HMR, but would result in modest cost savings to a small number of them and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or regulatory evaluation is not warranted. This certification may be revised as a result of public comment.

B. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). This proposed rulemaking has no substantial effects on States, local governments, or Indian tribes and does not impair their ability to impose their own procedures for obtaining an exemption or approval, or for registering and reporting. Therefore, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. This notice proposes to amend existing and add new procedural provisions to clarify existing practice. The amendments contained in this notice do not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic

impacts for small units of government, businesses, or other organizations.

D. Paperwork Reduction Act

Under 49 U.S.C. 5108, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this proposed rule.

VI. List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous material transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I would be amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

2. In § 107.3, definitions would be added in alphabetical order to read as follows:

§ 107.3 Definitions.

Accident means an event resulting in the unintended and unanticipated release of hazardous material.

Acting knowingly means acting or failing to act while:

(1) Having actual knowledge of the facts giving rise to the violation, or

(2) Having the knowledge that a reasonable person acting in the same circumstances and exercising due care would have had.

Administrator means the Administrator, Research and Special Programs Administration.

Applicant means the person in whose name an exemption, renewed or modified exemption, grant of party status to an exemption, approval, or registration is requested to be issued.

Application means a request under this subpart for an exemption, a renewal or modification of an exemption, a grant of party status to an exemption, an approval, or a registration.

* * * * *

Associate Administrator means the Associate Administrator for Hazardous Materials Safety.

* * * * *

Filed means received at the Research and Special Programs Administration office designated in the applicable provision or, if no office is specified, at the Office of Hazardous Materials Exemptions and Approvals (DHM–30), U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington DC, 20590–0001.

Holder means the person in whose name an exemption or approval has been issued.

* * * * *

Investigation includes investigations authorized under 49 U.S.C. 5121 and inspections authorized under 49 U.S.C. 5118 and 5121.

Manufacturing exemption means an exemption from compliance with requirements that otherwise must be met before representing, marking, certifying, selling or offering a packaging or container as meeting the requirements of this subchapter or subchapter B governing its use in the transportation in commerce of a hazardous material.

Party means a person, other than a holder, authorized to act under the terms of an exemption.

* * * * *

Registration means a written acknowledgement from the Associate Administrator that the registrant is performing a function for which registration is required under subchapter C. For purposes of this subpart, "registration" does not include registration under subpart F or G of this part.

Report means information, other than an application, registration or part thereof, required to be submitted to the Associate Administrator pursuant to subchapter C.

* * * * *

Shipper exemption means an exemption from compliance with requirements of this subchapter or subchapter C that otherwise must be met before offering a hazardous material for transportation or transporting a hazardous material in commerce.

* * * * *

3. In § 107.5, paragraph (a) would be revised to read as follows:

§ 107.5 Request for confidential treatment.

(a) If any person filing a document with the Associate Administrator claims that some or all the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if that person requests the Associate Administrator not to disclose the information, that person shall file, together with the document, a second copy of the document with the confidential information deleted. The person shall indicate each page of the original document that is confidential or contains confidential information by marking or stamping "confidential" on each page for which a claim of confidentiality is made, and may file a statement specifying the justification for the claim of confidentiality. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, that person must include a statement as to why the information is privileged or confidential. If the person filing a document does not mark or stamp a document as confidential or submit a second copy of the document with the confidential information deleted, the Associate Administrator may assume that there is no objection to public disclosure of the document in its entirety.

* * * * *

4. Subpart B of part 107 would be revised to read as follows:

Subpart B—Exemptions

§ 107.101 Purpose and scope.

This subpart prescribes procedures for the issuance, modification and termination of exemptions from requirements of this subchapter, or subchapter C of this chapter.

§ 107.105 Application for exemption.

(a) Each application for an exemption or modification of an exemption must—

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: Exemptions, DHM–31;

(2) State the name, street and mailing addresses, and telephone number of the applicant; if the applicant is not an individual, state the name of an individual designated as an agent of the applicant for all purposes related to the application;

(3) For a manufacturing exemption, state the name and street address of each of the applicant's or contractor's facilities where manufacturing under the exemption will occur;

(4) If the applicant is not a resident of the United States, contain a designation of agent for service in accordance with § 107.7, and a statement that the applicant consents to personal jurisdiction in the United States for purposes of the Federal hazardous material transportation law related to the exemption;

(5) Cite the regulation from which the applicant seeks relief, including the publication year of the Code of Federal Regulations volume from which the citation is taken;

(6) If known by the applicant, list identifying numbers of all exemptions, approvals and registrations previously or currently held by the applicant under this chapter that are related to the subject matter of the application;

(7) Specify the proposed mode(s) of transportation;

(8) Describe in detail the proposed exemption (e.g., alternative packaging, test, procedure or activity). Including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents;

(9) Specify the proposed duration or schedule of events for which the exemption is sought;

(10) State why the applicant wishes to be relieved from compliance with the specified regulations and, if the exemption is requested for a fixed period, how compliance will be achieved at the end of that period;

(11) If the applicant seeks expedited processing under § 107.115 or § 107.117, set forth the supporting facts and grounds;

(12) Identify and describe the hazardous materials planned for transportation under the exemption. Provide the chemical name, common name, hazard class, identification number, packing group, form, quantity, properties, and characteristics of hazardous material to be offered or transported in conjunction with the exemption, including composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture;

(13) List each packaging, including specification or exemption number, as applicable, to be used in conjunction with the requested exemption;

(14) For alternative packagings, document quality assurance controls necessary to provide safe performance, including package design, manufacture, performance test criteria, in-service performance and service life limitations;

(15) Include information describing all relevant shipping and accident experience of which the applicant is aware that relates to the application;

(16) Identify any increased risk to safety or property that may result if the exemption is granted, and specify the measures that the applicant considers necessary or appropriate to address that risk;

(17) Substantiate, with applicable analyses, data or test results, that the proposed alternative will achieve a level of safety that:

(i) Is at least equal to that required by the regulation from which the exemption is sought, or

(ii) If the regulations do not establish a level of safety, is consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous material in commerce; and

(18) For an exemption involving a hazardous material, packaging material, packaging design or technology where direct comparison cannot be made to an existing standard in subchapter C, provide an analysis that:

(i) identifies each hazard associated with the proposed activity,

(ii) identifies each potential failure mode and the probability of its occurrence, and

(iii) describe how the risk associated with each hazard and failure mode is controlled for life of a packaging or duration of an activity to a level comparable to that provided by the regulation and is consistent with the public interest.

(b) Unless expedited processing under § 107.115 or § 107.117 is requested and granted, applications are processed in the order in which they are filed. For timely consideration, an application should be submitted at least 180 days before the requested effective date.

(c) To request confidential treatment for information contained in the application, the applicant must comply with § 107.5(a).

§ 107.107 Application for party status.

(a) Any person eligible to apply for an exemption may apply to be made party to an application or an existing exemption, other than a manufacture, mark, and sell exemption.

(b) Each application filed under this section must—

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: Exemptions, DHM–31;

(2) Identify by number the exemption application or exemption to which the applicant seeks to become a party;

(3) State the name, address and telephone number of the applicant; if the applicant is not an individual, state the name of an individual designated as the applicant's agent for all purposes related to the application; and

(4) If the applicant is not a resident of the United States, provide a designation of agent for service in accordance with § 107.7, and a statement that the applicant consents to personal jurisdiction in the United States for purposes of the Federal hazardous material transportation law related to the exemption.

(c) The Associate Administrator grants party status to an applicant on finding that—

(1) The applicant is eligible to apply for the exemption;

(2) The application or exemption to which the applicant seeks to become a party concerns a continuing matter; and

(3) Granting party status does not compromise information qualified for confidential treatment under § 107.5.

(d) A party to an exemption is subject to all terms of that exemption, including the expiration date. If a party to an exemption wishes to renew party status, the exemption renewal procedures set forth in § 107.109 apply.

§ 107.109 Application for renewal.

(a) Each application for renewal of an exemption must—

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: Exemptions, DHM–31;

(2) Identify by number the exemption for which renewal is requested;

(3) State the name, address, and telephone number of the applicant; if the applicant is not an individual, state the name of an individual designated as an agent of the applicant for all purposes related to the application;

(4) Include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate and complete; or an amendment to the previously submitted application as is necessary to update and assure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete; and

(5) Include a statement describing all relevant shipping and accident experience of which the applicant is aware in connection with the exemption since its issuance or most recent renewal. If aware of no accidents, the applicant shall so certify. The statement must indicate the approximate number of shipments made or packages shipped, as the case may be, and the number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C.

(b) If at least 60 days before an existing exemption expires the holder files an application for renewal that is complete and conforms to the requirements of this section, the exemption will not expire until final administrative action on the application for renewal has been taken.

§ 107.111 Withdrawal.

An application may be withdrawn at any time before a decision to grant or deny it is made. Withdrawal of an application does not authorize the removal of any related records from the RSPA dockets or files.

§ 107.113 Application processing.

(a) The Associate Administrator reviews an application to determine if it is complete and conforms with the requirements of this subpart. This determination usually is made within 30 days of receipt of an application for exemption or modification of exemption and within 15 days of receipt of an application for renewal of an exemption. If an application is determined to be incomplete, the applicant is informed of the reasons.

(b) An application, other than a renewal or emergency exemption application, that is determined to be complete is docketed. Notice of the application is published in the **Federal Register** and an opportunity for public comment is provided. All comments received during the comment period are considered before final action is taken on the application.

(c) No public hearing or other formal proceeding is required under this subpart before the disposition of an application. Unless expedited processing under § 107.115 or § 107.117 is requested and granted, applications are processed in the order in which they are filed.

(d) At any time during the processing of an application, the Associate Administrator may request additional information from the applicant. If the applicant does not respond to a written request for additional information within 30 days of the date the request was received, the application is deemed incomplete and is denied.

(e) The Associate Administrator may grant or deny an application, in whole or in part. In the Associate Administrator's discretion, an application may be granted subject to conditions that are appropriate to protect health, safety or property.

(f) The Associate Administrator may grant the application on finding that—

(1) The application complies with this subpart;

(2) The application demonstrates that the proposed alternative will achieve a level of safety that:

(i) Is at least equal to that required by the regulation(s) from which the exemption is sought, or

(ii) If the regulations do not establish a level of safety, is consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous materials in commerce;

(3) The application states all material facts, and contains no materially false or materially misleading statement;

(4) The applicant meets the qualifications required by applicable regulations; and

(5) The applicant demonstrates the level of capability and integrity required to conduct the activity authorized by the exemption. A pending or completed enforcement action may be considered evidence of insufficient competence or integrity.

(g) The applicant is notified in writing whether the application is granted or denied. A denial contains a brief statement of reasons.

(h) An exemption and any renewal thereof terminates according to its terms or, if not otherwise specified, two years after the date of issuance. A grant of party status to an exemption, unless otherwise stated, terminates on the date that the exemption terminates.

(i) The Associate Administrator, on determining that an application concerns a matter of general applicability and future effect and should be the subject of rulemaking, may initiate rulemaking under part 106 of this chapter in addition to or instead of acting on the application.

(j) The Associate Administrator publishes in the **Federal Register** a list of all exemption and party status grants, denials and modifications and all applications withdrawn under this section.

§ 107.115 Priority processing.

(a) An application is granted priority processing if the Associate Administrator, on the basis of the application and any inquiry undertaken, finds that—

(1) If the applicant is a governmental body, priority processing is in the public interest;

(2) If the applicant is not a governmental body:

(i) Priority processing is necessary to prevent significant economic loss; and

(ii) The significant economic loss could not be prevented were the application processed routinely.

(b) Where the risk of significant economic loss is to the applicant, or to a party in a contractual relationship to the applicant with respect to the activity to be undertaken, the Associate Administrator may deny priority processing if timely application could have been made.

(c) A request for priority processing on the basis of potential economic loss must reasonably describe and estimate the potential loss.

(d) An application given priority processing receives the same level of substantive review as one processed routinely.

(e) A decision to deny priority processing may not be the subject of a request for reconsideration under § 107.123.

§ 107.117 Emergency processing.

(a) An application is granted emergency processing if the Associate Administrator, on the basis of the application and any inquiry undertaken, finds that—

(1) Emergency processing is necessary to prevent significant injury to persons or property (other than the hazardous material to be transported) that could not be prevented if the application were processed on a routine or priority basis; or

(2) Emergency processing is necessary to prevent significant economic loss that could not be prevented if the application were processed on a routine or priority basis.

(b) Where the significant economic loss is to the applicant, or to a party in a contractual relationship to the applicant with respect to the activity to be undertaken, the Associate Administrator may deny emergency processing if timely application could have been made.

(c) A request for emergency processing on the basis of potential economic loss must reasonably describe and estimate the potential loss.

(d) An application submitted under this section must comply with § 107.105(a)(17) and include such supporting information specified in § 107.105(a)(2) through (a)(16) as the receiving Department of Transportation official deems necessary to process the application. An application on an emergency basis must be submitted through the appropriate Department of Transportation official, as follows:

(1) *Certificate Holding Aircraft Operators:* The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight(s) will originate or that is responsible for the operators' overall aviation security program.

(2) *Noncertificate Holding Aircraft Operators (Operators Operating Under 14 CFR Part 91):* The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight(s) will originate. The nearest Civil Aviation Security Office may be located by calling the FAA Duty Officer, 202–863–5100 (any hour).

(3) *Motor Carriers:* Chief, Hazardous Materials Division, Office of Motor Carrier Field Operations, Federal Highway Administration, Department of Transportation, Washington, DC 20590–0001, 202–366–4415 (day); 202–267–2100 (night).

(4) *Rail Carriers:* Associate Administrator for Safety, Federal Railroad Administration, Department of Transportation, Washington, DC 20590–0001, 202–366–9178 or 366–0488 (day); 202–267–2100 (night).

(5) *Water Carriers:* Chief, Hazardous Materials Standards Branch, Operating and Environmental Standards Division, United States Coast Guard, Washington, DC 20593–0001, 202–267–1577 (day); 202–267–2100 (night).

(e) On receipt of all information necessary to process the application, the receiving Department of Transportation official transmits to the Associate Administrator, by the most rapid available means of communication, an evaluation as to whether an emergency exists under § 107.117(a) and, if appropriate, recommendations as to the conditions to be included in the exemption. If the Associate Administrator determines that an emergency exists under § 107.117(a) and that, with reference to the criteria of § 107.113(f), granting of the application is in the public interest, the Associate Administrator grants the application subject to such terms as necessary and immediately notifies the applicant. If the Associate Administrator determines that an emergency does not exist or that granting of the application is not in the public interest, the applicant immediately is so notified.

(f) An emergency exemption is to be limited in scope and duration to that which is necessary to address the circumstances which constitute the emergency.

(g) A determination that an emergency does not exist may not be the subject of a request for reconsideration under § 107.123.

(h) Within 90 days following issuance of an emergency exemption, a notice of issuance, with a statement of the basis for the finding of emergency and the scope and duration of the exemption, is published in the **Federal Register**.

§ 107.121 Modification, suspension or termination of exemption or grant of party status.

(a) The Associate Administrator may modify an exemption or grant of party status on finding that—

(1) Modification is necessary so that an exemption reflects current statutes and regulations; or

(2) Modification is required by changed circumstances to meet the standards of § 107.113(f).

(b) The Associate Administrator may modify, suspend or terminate an exemption or grant of party status, as appropriate, on finding that-

(1) Because of changed circumstances, the exemption or party status would not be granted if application were made now;

(2) The application contained inaccurate or incomplete information, and the exemption or party status would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder or party knowingly has violated the terms of the exemption or an applicable requirement of this chapter, in a manner demonstrating insufficient capability or integrity to conduct the activity authorized by the exemption.

(c) Before an exemption or grant of party status is modified, suspended or terminated, the Associate Administrator notifies the holder or party in writing of the proposed action and the reasons therefor, and provides an opportunity to show cause why the proposed action should not be taken.

(1) The holder or party may file a written response with the Associate Administrator within 30 days of receipt of notice of the proposed action.

(2) After considering the holder's or party's written response to the notice, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder in writing of the final decision. Modification, suspension or termination shall be accompanied by a brief statement of grounds.

§ 107.123 Reconsideration.

(a) An applicant, a holder or a party may request that the Associate Administrator reconsider a decision under § 107.113(g), § 107.117(e) or § 107.121(c). The request must—

(1) Be in writing and filed within 20 days of receipt of the decision;

(2) State in detail all alleged errors of fact and law;

(3) Enclose all documentation in support of the request to reconsider, with a justification for failure to provide the documentation previously; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may in the notification declare the proposed action immediately effective, for a maximum of 90 days from the date of the holder's or party's receipt of the notice.

(c) The Associate Administrator considers newly submitted information on a showing that the information could not reasonably have been submitted during application processing.

(d) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing of the decision.

§ 107.125 Appeal.

(a) A person who requested reconsideration under § 107.123 may appeal to the Administrator the Associate Administrator's decision on the request. The appeal must-

(1) Be in writing and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration;

(2) State in detail all alleged errors of fact and law;

(3) Enclose all documentation in support of the appeal, with a justification for failure to provide the documentation previously; and

(4) State in detail the modification of the final decision sought.

(b) The Administrator, if necessary to avoid a risk of significant harm to persons or property, may declare the Associate Administrator's action immediately effective pending a decision on appeal, for a maximum of 90 days from the date of the holder's or party's receipt of the decision.

(c) The Administrator considers newly submitted information on a showing that the information could not reasonably have been submitted during application processing or reconsideration.

(d) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing of the decision. The Administrator's decision is the final administrative action.

§ 107.127 Availability of documents for public inspection.

(a) Documents related to an application under this subpart, including the application itself, are available for public inspection, except as specified in paragraph (b) of this section, at the Office of the Associate Administrator for Hazardous Materials Safety, Dockets Unit (DHM–30), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 0001. Copies of available documents may be obtained as provided in part 7 of this title.

(b) Documents available for inspection do not include materials determined to be withheld from public disclosure under § 107.5 and in accordance with the applicable provisions of section 552(b) of title 5, United States Code, and part 7 of this title.

5. In § 107.202, paragraph (a), introductory text, would be revised to read as follows:

§ 107.202 Standards for determining preemption.

(a) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or an Indian tribe, that concerns one of the following subjects and that is not substantively the same as any provision of the Federal hazardous material transportation law, this subchapter or subchapter C that concerns that subject, is preempted:

* * * * *

§ 107.202 [Amended]

6. In § 107.202(b)(3), the wording "49 U.S.C. 5125(b) or(c)" would be revised to read "49 U.S.C. 5125(c)."

§ 107.205 [Amended]

7. In § 107.205, in paragraph (a), at the end of the first sentence, the wording "within 45 days" would be removed.

8. In addition, in § 107.205, paragraph (b) would be revised to read as follows:

§ 107.205 Notice.

* * * * *

(b) The Associate Administrator may publish notice of an application in the **Federal Register** and may notify in writing any person readily identifiable as affected by the ruling.

* * * * *

9. In § 107.209, paragraph (b) would be removed, paragraphs (c), (d) and (e) would be redesignated as paragraphs (b), (c) and (d), respectively, and newly designated paragraph (c) would be revised to read as follows:

§ 107.209 Determination.

* * * * *

(c) The Associate Administrator provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of each determination is placed on file in the public docket. The Associate Administrator may publish the determination or notice of the determination in the **Federal Register**.

* * * * *

10. In § 107.211, in paragraph (a), the second sentence would be revised to read as follows:

§ 107.211 Petition for reconsideration.

(a) * * * The petition must be filed within 20 days of publication of the determination in the **Federal Register**.

* * * * *

11. A new § 107.213 would be added to read as follows:

§ 107.213 Judicial review.

A party to a proceeding under § 107.203(a) may seek review by the appropriate district court of the United States of a decision of the Administrator by filing a petition with the court within 60 days after the Administrator's decision becomes final.

12. In § 107.217, paragraph (d) would be revised to read as follows:

§ 107.217 Notice.

* * * * *

(d) The Associate Administrator may notify any other persons who may be affected by the ruling.

* * * * *

13. In Section 107.221, paragraph (a), (b), introductory text, (c) through (e) would be revised to read as follows:

§ 107.221 Determination.

(a) After considering the application and other relevant information received or obtained during the proceeding, the Associate Administrator issues a determination.

(b) The Associate Administrator may issue a waiver of preemption only on finding that the State or political subdivision or Indian tribe requirement affords the public a level of safety at least equal to that afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder and does not unreasonably burden commerce. In determining if the State or political subdivision or Indian tribe requirement unreasonably burdens commerce, the Associate Administrator considers:

* * * * *

(c) The determination includes a written statement setting forth relevant facts and legal bases and providing that any person aggrieved by the determination may file a petition for reconsideration with the Associate Administrator.

(d) The Associate Administrator provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of the determination is placed on file in the public docket. The Associate Administrator may publish the determination or notice of the determination in the **Federal Register**.

(e) A determination under this section constitutes an administrative finding of whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Federal hazardous material transportation law or any regulation issued thereunder, or whether preemption is waived.

14. In § 107.223, paragraph (a) would be revised to read as follows:

§ 107.223 Petition for reconsideration.

(a) Any person aggrieved by a determination under § 107.221 may file a petition for reconsideration with the Associate Administrator. The petition must be filed within 20 days of publication of the order in the **Federal Register**.

* * * * *

§ 107.227 [Amended]

15. In § 107.227, the wording "§ 107.203(a) or" would be removed.

§ 107.299 [Removed]

16. Section 107.299 would be removed.

17. In § 107.305, paragraph (b) would be revised to read as follows:

§ 107.305 Investigations.

* * * * *

(b) *Investigators.* Investigations under 49 U.S.C. 5121(a) are conducted by Hazardous Materials Safety personnel duly authorized for that purpose by the Associate Administrator. Inspections under 49 U.S.C. 5121(c) are conducted by Hazardous Materials Enforcement Specialists whom the Associate Administrator has designated for that purpose.

(1) An inspector will, on request, present his or her credentials for examination, but the credentials may not be reproduced.

(2) An inspector may administer oaths and receive affirmations in any matter under investigation by the Associate

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Administrator for Hazardous Materials Safety. An inspector may gather information by reasonable means including, but not limited to, interviews, statements, photocopying, photography, and video- and audiorecording.

(3) On concurrence of the Director, Office of Hazardous Materials Enforcement, an inspector may issue a subpoena for the production of documentary or other tangible evidence if, on the basis of information available to the inspector, the documents and evidence materially will advance a determination of compliance with this subchapter or subchapter C. Service of a subpoena shall be in accordance with § 107.13(c) and (d). A person to whom a subpoena is directed may seek review of the subpoena by applying to the Chief Counsel in accordance with § 107.13(h). A subpoena issued under this paragraph may be enforced in accordance with § 107.13(i).

* * * * *

18. In § 107.331, the introductory paragraph and paragraph (d) would be revised to read as follows:

§ 107.331 Assessment considerations.

After finding a knowing violation under this subpart, the Chief Counsel assesses a civil penalty taking the following into account:

* * * * *

(d) The respondent's prior violations;

* * * * *

19. A new subpart H of part 107 would be added to read as follows:

Subpart H—Approvals, Registrations and Submissions

§ 107.701 Purpose and scope.

(a) This subpart prescribes procedures for the issuance, modification and termination of approvals, and the submission of registrations and reports, as required by this chapter.

(b) The requirements of this subpart are in addition to any requirements in this chapter applicable to a specific approval, registration or report. If compliance with both a specific requirement and a requirement of this subpart is not possible, the specific requirement applies.

(c) Registration under subpart F or G of this part is not subject to the provisions of this subpart.

§ 107.705 Registration and reporting.

(a) Each registration or report under this section must be filed with the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001, Attention: Approvals, DHM–32, and contain, in order—

(1) A citation to the section and, if applicable, subsection of the chapter under which the registration or report is made;

(2) If the report is required by an approval, a registration or an exemption, a citation to the approval, registration or exemption number;

(3) The name, address, and telephone number of the person on whose behalf the registration or report is made and, if different, the person making the registration or report;

(4) If the person on whose behalf the registration or report is made is not a resident of the United States, a designation of agent for service in accordance with § 107.7; and

(5) A description of the activity for which the registration or report is required.

(b) If the Associate Administrator determines that the registration or report does not comply with applicable requirements, the registration or reporting party shall make further submissions as the Associate Administrator deems necessary for compliance.

(c) To request confidential treatment for information contained in the registration or report, the applicant must comply with § 107.5(a).

§ 107.707 Applications.

(a) Each application under this section must be filed with the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001, Attention: Approvals, DHM–32 and contain the following, in order—

(1) A citation to the section and, if applicable, subsection of the chapter under which the approval is sought;

(2) If an application for renewal or modification, a citation to the existing approval;

(3) The name, address, and telephone number of—

(i) The applicant;

(ii) If different, the person filing the application; and

(iii) For an applicant that is not an individual, an individual designated as an agent of the applicant for all purposes related to the application;

(4) If the applicant is not a resident of the United States, a designation of agent for service in accordance with § 107.7, and a statement that the applicant consents to personal jurisdiction in the United States for all purposes under the Federal hazardous material transportation law related to the activity for which the approval is required;

(5) A description of the activity for which the approval is required; and

(6) A copy of each document from an entity other than the Office of Hazardous Materials Safety required under the section cited at § 107.707(a)(1) as a prerequisite to the approval.

(b) Each application under this section must contain the following, in order:

(1) The proposed duration of the approval;

(2) The transport mode or modes affected, as applicable;

(3) A full explanation, including all relevant information and documentation, as to why the applicant qualifies for the approval under applicable criteria, and why the approval otherwise is in accordance with law;

(4) All relevant shipping and accident experience;

(5) Identify any increased risk to safety or property that may result if the approval is granted, and specify the measures that the applicant considers necessary or appropriate to address that risk; and

(6) Substantiate, with applicable analyses, data or test results, that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation.

(c) For those approvals with an expiration date, each application for renewal or modification shall be filed in the same manner as an original application. If a complete and conforming renewal application is filed at least 60 days before the expiration date of an approval, the applicant, on written request, shall be issued one or more written extensions to permit operation under the terms of the expired approval until a final decision on the application for renewal has been made. Operation under an expired approval is prohibited absent a written extension. This paragraph does not limit the authority of the Associate Administrator to modify, suspend or terminate an approval under § 107.713.

(d) To request confidential treatment for information contained in the application, the applicant must comply with § 107.5(a).

§ 107.709 Application processing.

(a) No public hearing or other formal proceeding is required under this subpart before the disposition of an application.

(b) At any time during the processing of an application, the Associate Administrator may request additional information from the applicant. If the applicant does not respond to a written request for additional information within 30 days of the date the request was received, the application will be deemed incomplete and denied.

(c) The Associate Administrator may grant or deny an application, in whole or in part. At the Associate Administrator's discretion, an application may be granted subject to conditions appropriate to protect health, safety and property.

(d) The Associate Administrator may deny the application if—

(1) The application does not comply with this subpart;

(2) The application contains inadequate justification, or otherwise does not meet the criteria set forth in the section or subsection under which the approval is sought;

(3) The application contains a materially false or materially misleading statement, or fails to state a material fact;

(4) The applicant does not demonstrate the qualifications set forth in the applicable regulations; or

(5) The applicant does not demonstrate the level of capability and integrity required to perform the activity for which the application is filed. A pending or completed enforcement action may be considered evidence of insufficient capability or integrity.

(e) Unless otherwise specified in this chapter or by the Associate Administrator, an approval does not expire.

(f) The Associate Administrator notifies the applicant in writing of the decision on the application. A denial contains a brief statement of reasons.

§ 107.711 Withdrawal.

An application may be withdrawn at any time before a decision to grant or deny it is made. Withdrawal of an application does not authorize the removal of any related records from the RSPA dockets or files.

§ 107.713 Approval modification, suspension or termination.

(a) The Associate Administrator may modify an approval on finding that—

(1) Modification is necessary to conform an existing approval to relevant statutes and regulations as they may be amended from time to time; or

(2) Modification is required by changed circumstances to enable the approval to continue to meet the standards of § 107.709(d).

(b) The Associate Administrator may modify, suspend or terminate an approval, as appropriate, on finding that—

(1) Because of changed circumstances, the approval would not be granted if application were made now;

(2) The application contained inaccurate or incomplete information, and the approval would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder knowingly has violated the terms of the approval or an applicable requirement of this chapter, in a manner demonstrating insufficient capability or integrity to conduct the activity for which the approval is required.

(c) Before an approval is modified, suspended or terminated, the Associate Administrator notifies the holder in writing of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) The holder may file a written response with the Associate Administrator within 30 days of receipt of notice of the proposed action.

(2) The Associate Administrator, if necessary to avoid a measurable risk of significant harm to persons or property, may in the notification declare the proposed action immediately effective, for a maximum of 90 days from the date of the holder's receipt of the notice.

(3) After considering the holder's written response to the notice, or after 30 days have passed without response from receipt of the notice, the Associate Administrator notifies the holder in writing of the final decision. Modification, suspension or termination shall be accompanied by a brief statement of grounds.

§ 107.715 Reconsideration.

(a) An applicant or a holder may request that the Associate Administrator reconsider a decision under § 107.709(f) or § 107.713(c). The request must:

(1) Be in writing and filed within 20 days of receipt of the decision;

(2) State in detail all alleged errors of fact and law;

(3) Enclose all documentation in support of the request to reconsider, with a justification for failure to provide the documentation previously; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator considers newly submitted information on a showing that the information could not reasonably have been submitted during application processing.

(c) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing of the decision.

§ 107.717 Appeal.

(a) A person who requested reconsideration under § 107.715 may appeal to the Administrator the Associate Administrator's decision on the request. The appeal must:

(1) Be in writing and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration;

(2) State in detail all alleged errors of fact and law;

(3) Enclose all documentation in support of the appeal, with a justification for failure to provide the documentation previously; and

(4) State in detail the modification of the final decision sought.

(b) The Administrator, if necessary to avoid a risk of significant harm to persons or property, may declare the Associate Administrator's action effective pending a decision on appeal, for a maximum of 90 days from the date of the holder's receipt of the decision.

(c) The Administrator considers newly submitted information on a showing that the information could not reasonably have been submitted during application processing or reconsideration.

(d) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing of the decision on appeal. The Administrator's decision on appeal is the final administrative action.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

20. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.1 [Amended]

21. In § 171.1, in the introductory text of paragraph (a), the wording "in commerce" would be added immediately following the wording "materials" and preceding "by".

22. Also in § 171.1, a new paragraph (d) would be added to read as follows:

§ 171.1 Purpose and scope.

* * * * *

(d) The use of terms and symbols prescribed in this subchapter for the stamping, marking, labeling, placarding and description of hazardous materials and packagings used in their transport.

23. In § 171.2, paragraphs (a), (b), (c) and (d) would be revised and a new paragraph (h) would be added to read as follows:

§ 171.2 General requirements.

(a) No person may offer or accept a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, as applicable, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter and of any exemption, approval or registration issued under subchapter A.

(b) No person may transport a hazardous material in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is handled and transported in accordance with applicable requirements of this subchapter and of any exemption, approval or registration issued under subchapter A.

(c) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter or an exemption, approval or registration issued under subchapter A, governing its use in the transportation in commerce of a hazardous material, whether or not it is used or intended to be used for the transportation of a hazardous material, unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired and retested, as appropriate, in accordance with applicable requirements of this subchapter and of any exemption, approval or registration issued under subchapter A.

(d) The representations, markings, and certifications subject to the prohibitions of paragraph (c) of this section include:

(1) Specification identifications that include the letters "DOT" or "UN";

(2) Exemption, approval, and registration numbers that include the letters "DOT"; and

(3) Test dates associated with specification, registration, approval, retest or exemption markings indicating compliance with a test or retest requirement of this subchapter, or an exemption, an approval or a registration issued under subchapter A.

* * * * *

(h) No person shall—

(1) Falsify or alter an exemption, approval, registration or other grant of authority issued under this subchapter or subchapter B of this chapter; or

(2) Offer a hazardous material for transportation or transport a hazardous material in commerce, or represent, mark, certify, or sell a packaging or container, under a false or altered exemption, approval, registration or other grant of authority issued under this subchapter or subchapter B of this chapter.

§ 171.3 [Amended]

24. In § 171.3, paragraph (c) and the Note would be removed, and paragraph (d) would be redesignated as paragraph (c).

25. In § 171.8, a definition of "Approval" would be added and the definition of "Person" would be revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Approval means a written authorization from the Associate Administrator for Hazardous Materials Safety to perform a function for which prior authorization by the Associate Administrator is required under Subchapter C.

* * * * *

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof; or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous material for transportation in commerce or transports hazardous material to further a commercial enterprise, but such term does not include:

(1) The United States Postal Service;

(2) For the purposes of 49 U.S.C. 5123 and 5124, any agency or instrumentality of the Federal Government.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

26. The authority citation for Part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

27. In § 172.302, paragraph (c) would be revised to read as follows:

§ 172.302 General marking requirements for bulk packagings.

* * * * *

(c) *Exemption packagings.* The outside of each bulk package used under the terms of an exemption shall be plainly and durably marked "DOT–E" followed by the exemption number assigned, in letters at least two inches high on a contrasting background.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

28. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

29. In § 173.22a, a new paragraph (c) would be added to read as follows:

§ 173.22a Use of packagings authorized under exemptions.

* * * * *

(c) When an exemption issued to a shipper contains special carrier requirements, the shipper shall furnish a copy of the exemption to the carrier before or at the time a shipment is tendered.

PART 178—SPECIFICATIONS FOR PACKAGINGS

30. The authority citation for Part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

31. In § 178.3, a new paragraph (d) would be added to read as follows:

§ 178.3 Marking of packagings.

* * * * *

(d) No person may mark or otherwise certify a packaging or container as meeting the requirements of a manufacturing exemption unless that person is the holder of or a party to that exemption, an agent of the holder or party for the purpose of marking or certification, or a third party tester.

Issued in Washington, DC, on September 8, 1995, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–22816 Filed 9–13–95; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 60, No. 178
Thursday, September 14, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 8, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–2, Jamie L. Whitten Bldg., Washington, DC 20250, (202) 690–2118.

Emergency

- Consolidated Farm Service Agency
  General Regulations Governing the Peanut Warehouse Storage Loan and Handler Operations

CCC–1006, 1028, 1028A, 1029, 1032, 1032–1, 1033, 1036, 1041–SE, 1041–VC, 1041–SW, 1004, 1023, 1025, 1057, ASCS–1013, CCC–1027, 1005
Farms; 260,013 responses; 54,118 hours
Gary Fountain (202) 720–9106

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–22818 Filed 9–13–95; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION ON CIVIL RIGHTS

Amendment to Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the meeting site of the New Jersey Advisory Committee to the Commission as announced in the **Federal Register**, Vol 60, No. 157, Doc 95–20057, on August 15, 1995, has been amended to the Marriott Courtyard, 1000 Century Parkway, Mount Laurel, New Jersey 08054. (This amendment is change of location only.)

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Irene Hill-Smith, 609–468–5546, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 8, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–22867 Filed 9–11–95; 4:50 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Masonic Medical Research Lab., et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–020. *Applicant:* Masonic Medical Research Lab., Utica, NY 13501–1787. *Instrument:* Xenon Flashlamp System, Model XF–10. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 60 FR 19572, April 19, 1995. *Reasons:* The foreign instrument provides: (1) a high intensity (300J) UV source with a bandwidth of 340–360 nm and (2) an intensity-stepped power supply. *Advice Received From:* The National Institutes of Health, July 10, 1995.

Docket Number: 95–021. *Applicant:* Tulane University, New Orleans, LA 70118. *Instrument:* Ultra Sensitive State Fluorimeter with Accessories, Model FS900CD. *Manufacturer:* Edinburgh Instruments Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 20967, April 28, 1995. *Reasons:* The foreign instrument provides: (1) ultra sensitive UV/VIS/IR detection, (2) 450W xenon source and (3) a high resolution monochromator with wavelength accuracy of ±0.2 nm. *Advice Received From:* The National Institutes of Health, July 10, 1995.

Docket Number: 95–024. *Applicant:* U.S. Environmental Protection Agency, Narragansett, RI 02882. *Instrument:* Mass Spectrometer, Model VG Optima. *Manufacturer:* Fisons Instruments, Inc., United Kingdom. *Intended Use:* See notice at 60 FR 20968, April 28, 1995. *Reasons:* The foreign instrument provides sample sensitivity of 1 microgram for both carbon and nitrogen trace concentration gaseous analysis. *Advice Received From:* The National Institutes of Health, July 11, 1995.

Docket Number: 95–026. *Applicant:* Tulane University, New Orleans, LA 70118. *Instrument:* Lifetime CD Spectrometer, Model FL 900. *Manufacturer:* Edinburgh Instruments Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 20968, April 28, 1995. *Reasons:* The foreign instrument provides: (1) a small lamp pulse width of less than 1 ns, (2) high intensity lamp excitation with short pulse width, and (3) superior stray light rejection by the instrument's monochromator. *Advice*

Received From: The National Institutes of Health, July 11, 1995.

Docket Number: 95–031. *Applicant:* University of Maryland, College Park, MD 20742–7515. *Instrument:* Monocular Oculometer for the Human Eye. *Manufacturer:* Dr. Bouis, Germany. *Intended Use:* See notice at 60 FR 24838, May 10, 1995. *Reasons:* The foreign instrument provides measurement of horizontal eye movement at a scan rate of 4000/sec. *Advice Received From:* The National Institutes of Health, July 12, 1995.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–22901 Filed 9–13–95; 8:45 am]

BILLING CODE 3510–DS–M

President's Export Council: Meeting of the Subcommittee on the Americas

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The President's Export Council Subcommittee on the Americas will hold an open meeting to discuss topics related to hemispheric integration including: trade promotion in the Americas, a Brazilian trade review and the Mexican peso crisis. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed on September 30, 1993, by Executive Order 12689.

DATES: September 29, 1995.

TIME: 9:00 a.m.–1:30 a.m.

ADDRESSES: Main Commerce Building, Room 6029, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Chad Hoseth, President's Export Council, Room 2015B, Washington, D.C. 20230. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Chad Hoseth, President's Export Council, Room 2015B, Washington, D.C. 20230.

Dated: September 8, 1995.

Sylvia Lino Prosak,

Acting Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 95–22887 Filed 9–13–95; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 090795B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Salmon Subcommittee of the Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a public meeting.

DATES: The meeting will be begin on Tuesday, October 10, 1995 at 10 a.m. and may go into the evening until business for the day is completed.

ADDRESSES: The meeting will be held at the Oregon Department of Fish and Wildlife, 2501 SW. First, Commission Room, Portland, OR 97207.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Economic Analysis Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review selected methodologies used in the Council's management of the Pacific salmon fisheries.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Lawrence D. Six, Executive Director, at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: September 8, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22891 Filed 9–13–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

September 8, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 13410, published on March 13, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 7, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 18, 1995, you are directed to amend the directive dated March 7, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
237	304,360 dozen.
314	4,120,099 square meters.
331/631	2,663,924 dozen pairs.
333/633	2,605 dozen.
334/634	615,833 dozen.
335/835	283,781 dozen.
336/636/836	572,566 dozen.
338/339	1,388,284 dozen.
340/640	1,346,490 dozen.
341/641	1,930,467 dozen of which not more than 1,253,654 dozen shall be in Category 341 and not more than 1,207,271 dozen shall be in Category 641.
342/642/842	584,835 dozen.
345/845	140,563 dozen.
347/348/847	1,557,838 dozen.
350/650	116,046 dozen.
351/651	373,596 dozen.
352/652	1,246,213 dozen.
359–C/659–C[2]	1,343,928 kilograms.
360	1,512,587 numbers.
363	4,194,626 numbers.
369–D[3]	624,518 kilograms.
369–S[4]	487,779 kilograms.
434	7,860 dozen.
435	15,933 dozen.
440	11,735 dozen.
611	5,310,564 square meters.
635	383,861 dozen.
638/639/838	847,546 dozen.
644	256,876 numbers.
645/646	87,331 dozen.
647/648	991,211 dozen.
840	157,671 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22831 Filed 9–13–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Use of the 10 CFR Part 960 Siting Guidelines in Evaluating the Suitability of the Yucca Mountain Site

AGENCY: Office of Civilian Radioactive Waste Management, Yucca Mountain. Site Characterization Project.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE), Office of Civilian Radioactive Waste Management (OCRWM), today gives notice of the rationale for its recent announcement that it will use the General Guidelines for the Recommendation of Sites for the Nuclear Waste Repositories (Guidelines) in 10 CFR Part 960, as they are currently written, in its evaluation of the suitability of the Yucca Mountain site in Nevada for development as a repository. As announced, the use of the Guidelines in this evaluation will be consistent with the Nuclear Waste Policy Act of 1982, as amended (NWPA), including the programmatic changes and reconfiguration provided for in the 1987 amendments to the NWPA, the presentation of this information is in response to a commitment made by the DOE to stakeholders at the public meetings held to discuss the DOE's proposed process for evaluating the suitability of the Yucca Mountain site. DOE has concluded that the existing Guidelines should not be amended at this time.

FOR FURTHER INFORMATION CONTACT: Dr. Jane R. Summerson, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 98608, Las Vegas, NV 89193–8608.

I. Background

IA. Development of the Guidelines

As originally enacted in 1982, section 112 of the NWPA provided that a screening process would be used to identify multiple sites in different geologic media as suitable for extensive site characterization to determine their suitability as repository sites. Upon completion of site characterization, the characterized sites would be compared and a single site would be chosen for recommendation to the President for development as a repository.

On February 13, 1983, to implement section 112, the DOE published the proposed "General Guidelines for the Recommendation of Sites for the Nuclear Waste Repositories," for review and comment (48 FR 5670). The Guidelines were subsequently finalized following consideration of comments from the public and the consultation process with the Nuclear Regulatory Commission (NRC) required by the NWPA. See 10 CFR Part 960. The final concurrence of the NRC was provided on July 10, 1984 (49 FR 28130). On December 6, 1984, the DOE promulgated the final version of the Guidelines (49 FR 47714).

In its preliminary decision on the Guidelines, the NRC conditioned its concurrence on DOE adopting a number of conditions closely linking the Guidelines to NRC regulatory requirements in 10 CFR Part 60 (49 FR 9650). In its final concurrence, the NRC noted that DOE had revised the Guidelines to meet its conditions. In response to comments requesting closer alignment of the guidelines to Environmental Protection Agency (EPA) and NRC requirements, DOE stated that,

> In the event of a conflict between the Guidelines and either 10 CFR Part 60 (NRC regulations) or 40 CFR Part 191 [the EPA regulations], these NRC and EPA regulations will supersede the siting guidelines and constitute the operative requirement in any application of the guidelines. (49 FR 47721).

IB. Previous Applications of the DOE Guidelines

Consistent with section 112(b) of the NWPA, the Guidelines were used by the DOE in the process of nominating five sites as suitable for characterization and the recommendation to the President of three of the nominated sites for characterization as candidate sites for the first repository. Each site nomination was accompanied by an Environmental Assessment (EA) that included an evaluation of the suitability of that particular site under the Guidelines, based on the information available at that time. Each EA also contained a separate comparative evaluation of the subject site with the other nominated sites. On May 27, 1986, the President approved each of the sites recommended for characterization, including the Yucca Mountain site.

The 1987 amendments to the NWPA eliminated the requirement to consider multiple geologic repository sites and instead provided that site characterization studies would proceed at only the Yucca Mountain, Nevada site to determine whether it is suitable for development as a geologic repository.

In accordance with section 113(b) of the NWPA, the DOE prepared a Site Characterization Plan (SCP) (DOE/RW–0199, 1988), which, among other things, described how the DOE proposed to apply the Guidelines that fall within the scope of the planned site characterization program. Those provisions in the Guidelines that concern environmental quality, socioeconomic impacts, and transportation, and that generally require non-geologic data gathering, were not addressed in the SCP. In December 1988, the DOE submitted the SCP for the Yucca Mountain site to the NRC and to the State of Nevada for their review and comment. The siting provisions of the Guidelines set forth in 10 CFR Part 960 were identified in the SCP as the primary criteria required by section 113(b) of the NWPA to be used to determine the suitability of the Yucca Mountain site for development as a repository.

The DOE's position regarding the applicability of certain provisions in the Guidelines under the 1987 amendments to the NWPA was also presented in the SCP. The DOE stated that the provision in the Guidelines for comparative evaluations of performance was no longer applicable. The DOE also stated that the provision for comparative evaluation of costs relative to other siting options in 10 CFR 960.5–1(a)(3) was no longer applicable. In the SCP, the DOE identified the conditions in the Guidelines for which specific findings would be made in evaluating whether or not the Yucca Mountain site is suitable for development as a repository.

As discussed in the SCP, the implementation provisions in Subpart B of the Guidelines provide that the qualifying conditions of the pre- and postclosure system guidelines, and the qualifying and disqualifying conditions of the pre- and postclosure technical guidelines, be evaluated and that specific findings be made for each condition at principal decision points specified in Appendix III to 10 CFR Part 960. Before a DOE decision is made that the site is suitable and can be recommended for development as a repository, the evidence has to support findings by the DOE that none of the disqualifying conditions are present, that all qualifying conditions are met, and that these conclusions are not likely to change.

II. Consultation on the Application of the Guidelines

Although the SCP for the Yucca Mountain site describes how the DOE would apply the Guidelines during site characterization in evaluating the suitability of the site in light of the 1987 amendments to the NWPA, a number of entities continued to indicate that they remained unclear as to the DOE's future application of the Guidelines. Because of this continuing indication of confusion with regard to the application of the Guidelines and because Section 112(a) of the NWPA and the Guidelines themselves contemplate that the DOE may revise the Guidelines from time to time, the DOE instituted an ongoing dialogue with external parties on the Guidelines.

In October 1993, the DOE briefed the Affected Units of Government, comprised of representatives of the affected counties and the State of Nevada, on its plans for activities related to site suitability evaluation. These plans included activities intended to implement the DOE's commitment to conduct interim evaluations of the suitability of the Yucca Mountain site during the course of site characterization. Prior to beginning such evaluations, the DOE elected to conduct another review of its Guidelines and solicited public input regarding options for the use of the Guidelines in these evaluations. Five options were identified for discussion:

- Continue to use the existing Guidelines without revision.
- Issue a **Federal Register** notice providing the DOE's proposed implementation of the Guidelines consistent with current legislative direction to characterize a single site.
- Amend the existing Guidelines.
- Develop new site-specific Guidelines.
- Adopt the NRC's siting criteria from 10 CFR Part 60, Subpart E.

These discussions regarding the Guidelines continued in a number of meetings with affected Units of Government held in December 1993, and in February and March 1994. A number of comments related to options for the use of the Guidelines were received by the DOE, either in these meetings or in written comments on the DOE's proposed plans for site suitability activities. The State of Nevada and other Affected Units of Government noted that because the development of the Guidelines received broad public exposure through publication in the **Federal Register**, the DOE's current review of the Guidelines also should receive broad public exposure. In response to these comments, on April 25, 1994, the DOE published a Notice of Inquiry (59 FR 19680) eliciting views of the public on, among other things, the appropriate role of the Guidelines in the evaluation of site suitability. The DOE then conducted a public workshop on May 21, 1994, in Las Vegas, Nevada, to discuss the Guidelines and other issues related to the process for the evaluation of site suitability. The DOE also provided the opportunity for the public to submit written comments. The comment period ended on June 24, 1994.

No clearly preferred option was identified through the public comment process. Indeed, each option had its detractors and supporters. This lack of consensus is generally consistent with the results of previous public interactions.

Following the public meeting and the close of the public comment period, and after consideration of the comments received, the DOE published a second Notice on August 4, 1994 (59 FR 39766) announcing, among other things, that it would continue to use the Guidelines in 10 CFR Part 960 as currently written, subject to the programmatic reconfiguration directed by the 1987 amendments to the NWPA.

At public meetings held with stakeholders on August 27, 1994, in Las Vegas, and on August 30, 1994, in Washington, D.C., questions were raised about the rationale for the announcement regarding the use of the Guidelines in 10 CFR Part 960. At these meetings, the DOE committed to providing background information related to this decision to the program stakeholders.

III. Issues Raised During Consultation and DOE's Response

The issues raised during recent consultation on the use and role of the siting provision in 10 CFR Part 960 in the evaluation of site suitability fall into the following general categories:

- The Role of Stakeholders, the Public and DOE in Evaluating the Use of the Guidelines.
- Consistency with the Current Legislative Framework.

- Consistency with NRC Criteria in 10 CFR Part 60.
- Development of Site-Specific Criteria.

The following provides a discussion of the issues raised and background information regarding the rationale for the DOE's announcement (59 FR 39766) regarding the continued application of the Guidelines, as currently written, to the evaluation of the suitability of the Yucca Mountain site in Nevada.

IIIA. Comments Regarding the Role of Stakeholders, the Public and DOE in Evaluating the Use of the Guidelines

Nye County, in their correspondence dated May 17, 1994, stated that "OCRWM must determine for itself whether or not it can most efficiently continue to conduct the program under the present Guidelines" and, further, the decision to issue a **Federal Register** Notice on the use of 10 CFR Part 960 "* * *must be DOE's decision in the first instance." The County stated:

> While we certainly agree that it is appropriate and useful to seek input from the stakeholders while DOE reevaluates its siting Guidelines, we believe that it is not incumbent upon oversight organizations to recommend, in the first instance, how to change or interpret the law or Guidelines in order to facilitate DOE's ability to carry out its own program. If, for example, it is determined that formalized interpretations of portions of the Guidelines are needed, then OCRWM should suggest and circulate such interpretations. Oversight organizations, such as Nye County can then comment or make positive suggestions for change.

Nye County added that it "strongly believes that justification has yet to be made for making wholesale substantive Guideline revisions."

Nevada's Agency for Nuclear Projects Nevada (Nevada Agency), in their correspondence dated June 22, 1994, stated that "since the Guidelines provide the standard for DOE's final determination of the suitability of the Yucca Mountain site for development of a repository, and are the basis for any preliminary suitability findings, DOE should commit itself, in the Guidelines, to a process for both public involvement and peer review to enhance confidence in its suitability evaluations." Specifically, the Nevada Agency maintained that the Guidelines should be revised to incorporate requirements for a "specific process of public involvement in the DOE's use of the Guidelines for making a Yucca Mountain site suitability determination, whether preliminary or final."

The Nevada Agency stressed that "if DOE proposes revision of the Guidelines, to remain consistent with Section 112(a), it should formally consult with the agencies named, including the Governor of Nevada, before issuance of revised Guidelines, and this consultation should be carried out separately from the Administrative Procedure Act (APA) process to which it has committed." The Nevada Agency continued that section 112(a) of the NWPA provides that the Secretary may revise the Guidelines "consistent with the provisions of this subsection." The Nevada Agency maintained that this subsection requires, in addition to concurrence of the NRC, that DOE consult with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the Geological Survey, and interested Governors prior to issuance of Guidelines." The Nevada Agency added that "it would be useful for DOE to issue an advance notice of proposed rulemaking, prior to issuing a proposed rule, in which it develops and analyzes options for revisions to the Guidelines and then requests comment on these options, as well as suggestions of other options to be considered in revision of the Guidelines."

DOE shares the view of the Nevada Agency that should the Department, at some future date, opt to amend its Guidelines, it should issue an advance notice of proposed rulemaking before it begins the formalized rulemaking process as specified in the Administrative Procedure Act. Extensive consultation with Federal, state, and local entities, as well as with other interested parties should occur, and DOE would obtain NRC concurrence for any guideline revision.

IIIB. Consistency With the Current Legislative Framework

The Nuclear Energy Institute's (NEI) June 24, 1994 response to the DOE Notice of Inquiry, recommended that DOE establish appropriate Guidelines by rulemaking to provide "clear, unambiguous regulations pertinent only to site suitability and ensure that DOE's regulations are conformed to the NWPA, as amended, the Energy Policy Act, and are consistent with the agency's [DOE] intended actions." They argued that if DOE fails to conform 10 CFR Part 960 with the current statutory framework, "the program will likely be subject to unnecessary litigation, additional costs, and further delays that would be more costly to the program than any delay that may be associated with such a rulemaking." The NEI added that "however, in revising Part 960, DOE should not eliminate those Guidelines appropriate for evaluating, on a comparative basis, multiple sites. Such Guidelines may be useful in the future should, for example, the Yucca Mountain site prove unsatisfactory."

A number of comments received during the August, 1994 public meetings questioned the continued application of all or parts of the Guidelines given the provisions of the 1987 amendments to the NWPA and the Energy Policy Act of 1992. Some comments were based on the assumption that the Guidelines are intended to be used only in comparing sites and, therefore, are no longer a meaningful basis for the evaluation of a single site. Other comments, while acknowledging the applicability of certain provisions of the Guidelines to the evaluation of a single site, questioned the continued existence of those provisions that call for comparative evaluations and recommended that the Guidelines should be revised to make clear which provisions applied to the evaluation of Yucca Mountain.

The DOE believes that use of 10 CFR Part 960 in these were comparative and so not relevant to single site without comparison the SCP demonstrates that the Guidelines can be applied in evaluating the suitability of a single site. The DOE has decided that for now no amendments are needed to establish the role of the Guidelines in the determination of suitability for the Yucca Mountain site.

DOE notes that under section 801 of the Energy Policy Act of 1992, the EPA is required to promulgate new standards for a repository at the Yucca Mountain site. Because the Guidelines refer explicitly to 40 CFR Part 191, the DOE has proceeded to conduct its site characterization program in accordance with 40 CFR Part 191. The DOE will re-evaluate its plans and consider the need for any changes in the Guidelines once the new EPA standard has been promulgated.

IIIC. Consistency With NRC Criteria in 10 CFR Part 60

The NEI, in their letter dated October 3, 1994, maintained that rulemaking would afford the opportunity to conform DOE's 10 CFR Part 960 with the NRC's 10 CFR Part 60. They argued that such an action:

> would eliminate duplication of, and reduce the possibility for, confusion over appropriate requirements set forth in each regulation. For example, rather than the enumeration and evaluation of "Potentially Adverse Conditions" in Subpart C. of the Guidelines, it may be advisable to simply reference 10 CFR 60.122(c) and the Potentially Adverse Conditions listed and

> considered there. This will both avoid unnecessary duplication and reduce the possibility for confusion over appropriate requirements.

NEI added that, regardless of whether or not DOE conforms its regulations to NRC's regulations, they suggest that the NRC

> be involved as an extension of the concurrent process defined in Section 112(a) of the Nuclear Waste Policy Act (NWPA), and that the process for applying applicable Guidelines in evaluating site suitability for Yucca Mountain could then be memorialized in a Memorandum of Understanding between the two agencies. Involvement of the regulator will assure that there are no additional misunderstandings between DOE and the NRC as to the nature and application of the site suitability evaluation process.

Nye County (letter dated May 17, 1994) argued against adopting as DOE's siting Guidelines, in substance if not in language, the siting criteria of Subpart E of 10 CFR Part 60. The County stated that:

> this option masks the real fundamental distinction between site suitability and licensability. The DOE siting guidelines must constitute real true measure of site suitability, as contrasted with examples of licensing emphasis on design conditions, operation of the engineered barrier system, and operating procedures. The Guidelines must reflect the geologic capability of the site itself to isolate waste, without the imposition by the licensing agency of any external requirements. Finally, Nye County believes that adopting NRC's Subpart E of 10 CFR Part 60 would mask the fundamental distinctions between site suitability and licensability.

Opposing views were expressed in the August, 1994 public meetings regarding the need to incorporate the applicable provisions of the NRC technical criteria (10 CFR Part 60, Subpart E) into the Guidelines. In one view, the Guidelines should be revised to incorporate the applicable provisions of 10 CFR Part 60 to the maximum extent possible, to avoid duplication and to reduce the possibility for confusion over appropriate requirements. The other view is that the Guidelines should not be amended to adopt the NRC criteria from 10 CFR Part 60 because this would mask the distinction between site suitability and licensing, with the suitability decision focusing on the geologic capability of the site to isolate waste.

The DOE believes that it is not necessary to abandon its Guidelines and adopt the NRC siting criteria found in 10 CFR Part 60, Subpart E. The DOE Guidelines are expressly derived from and tied to the NRC siting criteria (49 FR 47714) and, as noted in 10 CFR 960.1, are intended to complement the NRC and EPA regulations. The NRC concurred in the Guidelines as required by section 112(a) of the NWPA, after an extensive review, with opportunity for public comment (49 FR 28130). One of the NRC's criteria for concurrence was that the siting provisions of the Guidelines must not be inconsistent with 10 CFR Part 60. Based on the direction provided in section 112(a) regarding the purpose and content of the Guidelines, and the NRC's concurrence on these Guidelines, the DOE does not believe that it is necessary to amend 10 CFR Part 960.

IIID. Development of Site-Specific Criteria

Nye County (letter dated May 17, 1994) expressed opposition to developing site-specific Guidelines "as such Guidelines will destroy even a facade of scientific integrity for the Yucca Mountain project." In addressing amendment of the Guidelines, the County stated that they:

> recognize that much knowledge has been gained about disposing of radioactive waste since the Guidelines were first written 10 years ago . . .; the Guidelines themselves contemplate periodic revisions, as is evidenced by the provisions of 10 CFR 960.1. Nye County does not believe that Guidelines should not under any circumstances be amended. At the same time, Nye County believes strongly that no justification has been made for any wholesale substantive revisions of the Guidelines.
>
> [adopting site-specific Guidelines] would clearly constitute what many in Nevada have always feared the most, that is, writing the rules to fit the site rather than characterizing the site to determine whether or not it meets the Guidelines. Furthermore, it is a virtual certainty that the nation will eventually need a second repository. Any DOE Guidelines, therefore, must be applicable to other sites, in other locations, in other geologic media.

Eureka County, in its correspondence dated March 14, 1994, expressed similar views. The County commented that "revision of the Guidelines in a manner that is perceived by the public to be changing the rules to fit the site would be detrimental to the image of the department, and could adversely affect the department's attempts to build trust and confidence." Eureka County continued that "to write site specific Guidelines for Yucca Mountain would further detract from, if not totally destroy, the public's confidence in the scientific objectivity of the Yucca Mountain characterization program. In addition, new Guidelines would have to be developed when a second repository search begins."

Site-specific Guidelines were opposed by many at the August, 1994 public meetings. Comments parallel those made by Nye and Eureka County that (1) such a change could be viewed as changing the rules to fit the site and, (2) general Guidelines may still be needed for siting other repositories should the Yucca Mountain site be found to be unsuitable or should a second repository be needed.

The DOE agrees with these observations. Under section 161(b) of the NWPA, the DOE has an obligation to report to the President and Congress on the need for a second repository. Under section 113(c) of the NWPA, if the Yucca Mountain site is determined to unsuitable, the DOE is obligated to report to Congress on recommended actions to assure safe, permanent disposal of spent nuclear fuel and high-level waste. If a second repository is required or the Yucca Mountain site is found to be unsuitable, it will be necessary to have general Guidelines in place to support the required DOE actions.

IV. DOE Position and Basis for DOE Position

DOE will use the Guidelines as they are currently written in its evaluation of the suitability of the Yucca Mountain site in Nevada for development as a repository. The DOE believes it is not necessary to abandon the Guidelines and adopt the NRC siting criteria in 10 CFR Part 60. DOE further believes it is not necessary to amend the Guidelines to remove those provisions that deal with the comparison of multiple sites.

The DOE believes that amending the Guidelines, either to remove those portions that are primarily used for comparative purposes or to develop Guidelines specifically tailored to the evaluation of the suitability of the Yucca Mountain site, is not required at this time. Because DOE need apply only the relevant provisions, the DOE further believes that it is useful to have in place general Guidelines for the comparison of multiple sites in the event the Yucca Mountain site is determined to be unsuitable for development as a repository, or in the event that a site must be selected for a second repository. Although the Guidelines may have to be amended at some future date to be consistent with any future changes to EPA or NRC requirements, for now, no amendments are needed in order to provide clarification as to the appropriate role of the existing Guidelines in the evaluation of a single site.

The DOE has concluded that it is not necessary to abandon its Guidelines and adopt NRC siting criteria found in 10 CFR Part 60, Subpart E. This is because, as noted in Section II.A above, the DOE Guidelines are expressly derived from and tied to the NRC siting criteria set forth in 10 CFR Part 60. In addition, should any differences between the 10 CFR Part 960 and 10 CFR Part 60 be identified, 10 CFR Part 60 would prevail in the licensing process.

The Implementation Guidelines of 10 CFR Part 960, Subpart B, establish procedures for applying the postclosure and preclosure provisions of the Guidelines in Subparts C and D for the evaluation of multiple sites in different geohydrologic settings in different kinds of host rock. Although prior to 1987, the DOE used these provisions of the Guidelines to assess individual sites as part of the site screening process, the 1987 amendments to the NWPA eliminated the need to consider alternative sites. Therefore, much of Subpart B is no longer applicable to the characterization of a single site. In addition, the various stages of site selection, except for site recommendation for repository development, were completed before passage of the 1987 amendments to the NWPA and the provisions of the Guidelines relating to these stages are no longer applicable to the evaluation of one site. Also, references to comparative site evaluations and associated performance levels are no longer applicable because, the 1987 amendments to the NWPA eliminated the need for any such comparative studies. These provisions will not be applied by DOE in evaluating the suitability of Yucca Mountain as a repository.

The portion of Subpart B of 10 CFR Part 960 that remains applicable to the evaluation of a single site and the relevant postclosure and preclosure guideline provisions in Subparts C and D, respectively, provide the basis for evaluating the suitability of the Yucca Mountain site. In addition, for the purpose of recommending Yucca Mountain for development as a repository, Subpart B provides that the DOE will supply evidence that the repository is likely to comply with applicable EPA and NRC requirements.

As discussed in Section II.B., the DOE provided clarification in the SCP regarding the Guideline conditions for which specific findings would be made in evaluating whether or not the Yucca Mountain site is suitable for development as a repository. Before a DOE decision is made that the site is suitable and can be recommended for development as a repository, the evidence must support findings by the DOE that none of the disqualifying conditions are likely to be present, that all qualifying conditions are likely to be met, and that conclusions regarding such findings are unlikely to change.

DOE recognizes that the licensing process provides additional motivations for conducting activities that go beyond site suitability concerns. Even if there is high confidence that additional information will not change conclusions about site suitability, the DOE may determine that it is prudent to continue activities to address residual uncertainties, to build confidence in models, to confirm performance estimates, or to provide additional assurance to review boards or other parties in the siting and licensing process.

While no provision is made in the Guidelines for specific findings on either the favorable conditions or potentially adverse conditions, if these conditions exist under an evaluated technical or system qualifying condition, DOE will explicitly consider them when making findings on that technical or system qualifying condition, along with other important factors. The DOE notes, however, that as part of its separate and parallel effort to address NRC regulatory issues under 10 CFR Part 60, the DOE will ensure that site characterization studies are conducted to provide the information needed to specifically address the NRC potentially adverse and favorable conditions found in 10 CFR Part 60, Subpart E.

In summary, because Congress directed that only the Yucca Mountain site should be characterized to determine whether it is suitable for development as a geologic repository, none of the comparative portions of the Guidelines are currently applicable. The DOE will make specific findings regarding the applicable qualifying and disqualifying conditions identified in the postclosure and preclosure provisions in 10 CFR Part 960 Subparts C and D respectively, in making its decision whether to recommend the Yucca Mountain site for development as a repository. If favorable or potentially adverse conditions are found to exist under an evaluated technical or system qualifying condition, DOE will explicitly consider them when making findings on that qualifying condition, along with other important factors.

Issued in Washington, DC, on September 5, 1995.

Daniel A. Dreyfus,

Director.

[FR Doc. 95–22840 Filed 9–13–95; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. ER95–1654–000, et al.]

Northern States Power Company (MN) et al.; Electric Rate and Corporate Regulation Filings

September 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company (Minnesota Company))

[Docket No. ER95–1654–000]

Take notice that on August 30, 1995, Northern States Power Company (Minnesota)(NSP), tendered for filing a Construction Agreement between NSP and Cooperative Power Association (CPA). This agreement provides for NSP to complete construction of the JohnnyCake Substation for CPA.

NSP requests that the Commission accept the agreement effective September 1, 1995, and requests waiver of the Commission's notice requirements in order for the revisions to be accepted for filing on the date requested.

Comment date: September 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Power, Inc.

[Docket No. ER95–1655–000]

Take notice that on August 30, 1995, Entergy Power, Inc. (EPI), tendered for filing an Interchange Agreement with Ruston Utilities System.

EPI requests an effective date for the Interchange Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the notice requirements specified in Section 35.11 of the Commission's Regulations.

Comment date: September 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Power Company

[Docket No. ER95–1656–000]

Take notice that on August 30, 1995, Southwestern Electric Power Company (SWEPCO), submitted a service agreement establishing LG&E Power Marketing, Inc. as a customer under SWEPCO's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

SWEPCO requests an effective date of August 10, 1995 for the service agreement. Accordingly, SWEPCO seeks waiver of the Commission's notice requirements. Copies of this filing were served upon LG&E Power Marketing, Inc. and the Public Utility Commission of Texas.

Comment date: September 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Oklahoma

[Docket No. ER95–1657–000]

Take notice that on August 30, 1995, Public Service Company of Oklahoma (PSO), submitted a service agreement establishing LG&E Power Marketing Inc. as a customer under the terms of PSO's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

PSO requests an effective date of August 10, 1995, and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon LG&E Power Marketing Inc. and the Oklahoma Corporation Commission.

Comment date: September 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Central Power and Light Company

[Docket No. ER95–1658–000]

Take notice that on August 30, 1995, Central Power and Light Company (CPL), submitted a service agreement establishing LG&E Power Marketing Inc. as a customer under CPL's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

CPL requests an effective date of August 10, 1995. Accordingly, CPL seeks waiver of the Commission's notice requirements. Copies of this filing were served upon LG&E Power Marketing Inc. and the Public Utility Commission of Texas.

Comment date: September 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. West Texas Utilities Company

[Docket No. ER95–1659–000]

Take notice that on August 30, 1995, West Texas Utilities Company (WTU), submitted a service agreement establishing LG&E Power Marketing Inc. as a customer under the terms of WTU's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

WTU requests an effective date of August 10, 1995 for the service agreement. Accordingly, WTU seeks waiver of the Commission's notice requirements. Copies of this filing were served upon LG&E Power Marketing Inc. and the Public Utility Commission of Texas.

Comment date: September 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Indiana Michigan Power Company

[Docket No. ER95–1660–000]

Take notice that on August 30, 1995, Indiana Michigan Power Company (I&M), tendered for filing with the Commission Facility Request No. 7 to the existing Agreement, dated December 11, 1989 (1989 Agreement), between I&M and Wabash Valley Power Association, Inc. (WVPA). Facility Request No. 7 was negotiated in response to WVPA's request that I&M provide facilities at a new 69 kV tap station to be owned by Jay County REMC (Co-op Name) and operated by I&M know as Jay County REMC-Trinity Tap Station. The Commission has previously designated the 1989 Agreement as I&M's Rate Schedule FERC No. 81.

As requested by, and for the sole benefit of WVPA, I&M proposes an effective date of November 1, 1995, for Facilities Request No. 7. A copy of this filing was served upon WVPA, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment date: September 21 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22804 Filed 9–13–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–716–000, et al.]

Panhandle Eastern Pipe Line Company, et al.; Natural Gas Certificate Filings

September 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP95–716–000]

Take notice that on August 29, 1995 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP95–716–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place approximately 4,000 feet of 6-inch pipeline and 4,000 feet of 10-inch pipeline on Panhandle's Lincoln Laterals, and install approximately 4,400 feet of new 6-inch and 4,400 feet of new 10-inch pipeline all located in Logan County, Illinois, under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that the proposed abandonment would allow the current landowner, Material Service Corporation (MSC), to continue its rock mining operations in the area were the pipeline laterals currently exist. Panhandle states further that the estimated cost to abandon the pipeline in place would be approximately $22,500 and would be 100 percent reimbursed by MSC.

It is said that the new pipeline would be completely installed before the cutting and capping of the existing laterals takes place, in order to minimize the outage time.

Comment date: October 23, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP95–718–000]

Take notice that on August 29, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, in Docket No. CP95–718–000, filed a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the

Natural Gas Act (18 CFR 157.205 and 157.211) and under its blanket authority granted September 1, 1982, in Docket No. CP82–433, for authorization to construct and operate a 1-inch tap and associated valves and piping as a crossover tie-in between the Clark Meter Station and Northwest's 20-inch Camas to Eugene lateral loop line in Clark County, Washington, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Northwest proposes to construct and operate this tie-in for the Clark Meter Station in order to provide an alternate means of gas supply to the Clark Meter Station whenever the 20-inch Camas to Eugene lateral, which normally serves the meter station, is out of service. The design capacity and delivery pressure of the meter station will not change as a result of the proposed modification.

The cost of the proposed crossover tie-in at the Clark Meter Station is estimated to be approximately $9,984.

Comment date: October 23, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Company

[Docket CP95–719–000]

Take notice that on August 29, 1995, Southern Natural Gas Company (Southern), Post Office 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–719–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon measurement and pipeline facilities at 2 delivery points in Aikan County, South Carolina, under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern proposes to abandon the delivery point facilities at the Bath Mills and Clearwater Mills Taps in Aikan County, South Carolina. Southern states that the 2 taps were constructed to serve United Merchants and Manufacturers, Inc., under the terms of a sales agreement dated February 9, 1953. Southern also proposes to abandon delivery point facilities used to serve the Huber-Suprex Plant in Aiken County, under the terms of a sales agreement dated June 27, 1952. Southern further proposes to abandon pipeline facilities associated with these services. These facilities include Southern's 4-inch Bath Mills Tap Line, its 4-inch Clearwater Mills Line between milepost 2.337 and milepost 5.440, its 4-inch Huber Suprex Line and its 4-inch Graniteville Line between mileposts 2.660 and 2.810. It is stated that the industrial operations at these 3 locations have ceased and that no gas service has been provided at the meter stations for approximately 4 years. It is asserted that the proposed abandonments would not result in any termination or interruption of existing service.

Comment date: October 23, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP95–724–000]

Take notice that on August 31, 1995, Transcontinental Gas Pipe Line (Applicant), P.O. Box 1396, Houston, Texas 77251, filed pursuant to Section 7(b) of the Natural Gas Act, for authority to abandon firm transportation service provided to Southern Natural Gas Company (Southern) under Applicant's Rate Schedule X–254, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that on May 10, 1982, Applicant and Southern entered into a transportation agreement under which Applicant transports, on a firm basis up to 6,500 dt/d of natural gas for Southern. This gas is produced at Eugene Island Block 107, offshore Louisiana, and received by Applicant at an interconnection between Applicant's Southwest Louisiana Gathering System and facilities owned by Southern at Eugene Island Block 118. Applicant redelivers equivalent quantities to Southern at a point of interconnection between Southern and Applicant in Section 33, Township 7 South, Range 4 East, Livingston Parish, Louisiana. Service is under Applicant's Rate Schedule X–254.

By letter dated December 8, 1992 Applicant informed Southern that it wanted to terminate Rate Schedule X–254. On July 12, 1993, Southern notified Applicant that it was agreeable to terminating Rate Schedule X–254 effective August 13, 1994. Applicant states that it will not abandon any facilities.

Comment date: September 27, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22805 Filed 9–13–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM96–1–120–000]

Carnegie Interstate Pipeline Co.; Notice of Proposed Change in FERC Gas Tariff

September 8, 1995.

Take notice that on September 1, 1995, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing and acceptance the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 7

CIPCO proposed that the tariff sheet become effective on October 1, 1995.

CIPCO states that the above tariff sheet has been revised to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to CIPCO. The Annual Charge Unit Surcharge authorized by the Commission for fiscal year 1996 is $0.0023 per Mcf, or $0.0022 per Dth when converted to CIPCO's measurement basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 15, 1995. Protests will be considered by the Commission in 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22811 Filed 9–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–727–000]

National Fuel Gas Supply Corp.; Notice of Petition for Declaratory Order

September 8, 1995.

Take notice that on September 1, 1995, National Fuel Gas Supply Corporation (national Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed with the Commission in Docket No. CP95–202–000 a petition for a declaratory order, or other authorization as may be necessary, requesting authorization to refunctionalize the costs associated with certain facilities currently classified as production plant, all as more fully set forth in the application which is open to the public for inspection.

National Fuel states that it proposes to refunctionalize the following facilities, which are located either in New York or Pennsylvania:

A. 17 items of metering and regulating equipment that serve a storage function but are currently classified as production plant. The net book value of this equipment as of May 31, 1995, was $15,506. National Fuel now proposes to refunctionalize this equipment from production to storage.

B. 234 items of metering and regulating equipment that serve a transmission function but are currently classified as production plant. The net book value of this equipment as of May 31, 1995, was $534,630. National Fuel now proposes to refunctionalize this equipment from production to transmission.

C. 20 items of metering and regulating equipment located on gathering pipelines that serve a transmission function but are currently classified as production plant. National Fuel states that this equipment is used to make deliveries to customers under its FERC Rate Schedules EFT and FT and other shippers. The net book value of this equipment as of May 31, 1995, was $105,590. National Fuel now proposes to refunctionalize this equipment from production to transmission.

D. Inventoried metering and regulating equipment currently carried on National Fuel's accounting books as production plant, when only a portion of such equipment was actually used for production purposes. The net book value of this equipment as of May 31, 1995, was $180,398. Since transmission would be the predominant use of this equipment, National Fuel now proposes to refunctionalize this equipment from production to transmission.

E. Metering and regulating equipment installed at metering and regulating stations owned by National Fuel Gas Distribution Corporation (Distribution) but initially charged to National Fuel's production gas plant account when purchased. Subsequently this metering and regulating equipment was installed without an accounting entry transferring the equipment out of National Fuel's production gas plant and into Distribution's gas plant. The net book value of this equipment as of May 31, 1995, was $269,654. National Fuel proposes to reduce its production plant balances to correct these accounting errors.

F. Various buildings and other structures currently booked in Account 329 of the Commission's Uniform System of Accounts, but which actually serve functions other than production. National Fuel proposes to refunctionalize several structures from production to transmission, storage, or general, depending on the functions they serve. The net book value of this equipment as of May 31, 1995, was $1,183,565. The total original cost of these structures was $2,543,060, of which $2,176,988 would be transferred into general plant, $241,431 would be transferred into transmission, and $124,642 would be transferred into storage.

G. Various equipment items used to drill, maintain, and recondition storage wells and transmission lines that are booked as production plant. The net book value of this equipment as of May 31, 1995, was $243,012. National Fuel states that it would refunctionalize this equipment to either storage or transmission, depending upon how it is currently employed.

H. Various equipment items now booked to Account 337—Other Equipment—which National Fuel states that should be refunctionalized to storage and transmission. These items include office furniture, fire fighting equipment, testers, and miscellaneous tools. National Fuel states that this equipment is currently located in the structures proposed for refunctionalization in the above Paragraph F. The net book value of this equipment as of May 31, 1995, was $77,079.

National Fuel does not propose to construct or operate any new facilities in this petition.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 29, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22808 Filed 9–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–508–000]

Northern States Power Co.; Notice of Filing

September 8, 1995.

Take notice that on August 17, 1995, Northern States Power Company (NSP) tendered for filing a revision to its amendment providing the methodology of emission allowance cost recovery for its existing coordination agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions of protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22809 Filed 9–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–726–000]

Tennessee Gas Pipeline Co.; Notice of Request Under Blanket Authorization

September 8, 1995.

Take notice that on September 1, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, file in Docket No. CP95–726–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate three (3) existing delivery point facilities, that were initially constructed under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA), under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it has recently constructed three delivery points under Section 311(a) of the NGPA for use in the transportation of natural gas under Subpart B of Part 284 of the Commission's Regulations. Tennessee further states that granting of the requested authorization will enable Tennessee to fully utilize these facilities for all transportation services, pursuant to Section 311 of the NGPA and Section 7 of the Natural Gas Act and will increase the transportation options of customers on Tennessee's system.

It is stated that delivery volumes through the existing delivery points would not impact Tennessee's peak day and annual deliveries; that the proposed activity is not prohibited by its existing tariff; and that Tennessee has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22807 Filed 9–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–29–000]

Transcontinental Gas Pipe Line Corp., Notice of Tariff Filing

September 8, 1995.

Take notice that on September 5, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Twelfth Revised Sheet No. 60. Such tariff sheet is proposed to be effective October 1, 1995.

Transco states that the purpose of the filing is to reflect a decrease in the Annual Charge Adjustment (ACA) Charge in the commodity portion of Transco's transportation rates. Pursuant to Order No. 472, the Commission has assessed Transco its ACA unit rate of $0.0023/Mcf ($0.0022/dt on Transco's system) for the annual period commencing October 1, 1995.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22813 Filed 9–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–606–001]

Western Gas Interstate Co.; Notice of Application

September 8, 1995.

Take notice that on September 1, 1995, Western Gas Interstate Company (WGI), 504 Lavaca Suite 800, Austin, Texas 78701 filed in Docket No. CP95–606–001, an application pursuant to Section 7 (b) and (c) of the Natural Gas Act (NGA) and §§ 157.7 and 157.17 of the Commission's Regulations for a temporary certificate of public convenience and necessity authorizing WGI: (i) to construct and operate approximately 15.5 miles of eight-inch pipeline and a sales tap in order to provide service to a hog processing plant currently under construction by Seaboard Farms, Inc. (Seaboard) near the City of Guymon, Oklahoma, and to abandon by relocation 7 miles of existing pipeline because of highway expansion;[1] and (ii) to construct and operate, on an interim basis pending the construction of the 15.5 mile segment of eight-inch pipeline, approximately 200 hundred feet of six-inch pipeline connecting the municipal distribution system of the City of Guymon with the Seaboard plant, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

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[1] This 7 miles of pipeline runs parallel to 7 miles of the proposed 15.5 miles of pipeline.

WGI states that the Seaboard Plant is scheduled to open on October 2, 1995, and that the failure of the plant to open on that date would have severe adverse economic effects on the plant and the surrounding community. WGI requests that the Commission grant the request for an expedited permanent certificate, no later than September 11, 1995.

WGI states that the estimated cost of the proposed new delivery point is $1,549,838. It is stated that Seaboard would reimburse WGI $450,000 as part of the costs of the facilities. It is further stated that in connection with this project, the Oklahoma Highway Commission would also pay $371,000 to relocate a portion of its pipeline from a highway expansion project. WGI also states that Seaboard would be served by WGI as a firm transportation customer pursuant to Rate Schedule FT–N. WGI states that service to other customers will not be affected by the construction or operation of the new facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 29, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WGI to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22806 Filed 9–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–121–000]

WestGas InterState, Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 8, 1995.

Take notice that on September 6, 1995, WestGas InterState, Inc. (WestGas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 5. The proposed effective date of the tariff sheet is October 1, 1995.

WGI states that, pursuant to section 154.38(d)(6) of the Commission's regulations and Section 21 of the General Terms and Conditions of its tariff, WGI is making its Annual Charge Adjustment (ACA) filing to reflect a decrease of $.0002 per Dth (from $.0024 to $.0022 per Dth) in its ACA surcharge.

WGI also states that the revised tariff sheet corrects a typographical error in the maximum commodity rate for Rate Schedule IT reflected in the currently-effective rate sheet.

WGI states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22812 Filed 9–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP90–137–024 and TM95–3–49–003 (not consolidated)]

Williston Basin Interstate Pipeline Co.; Notice of Compliance Filing

September 8, 1995.

Take notice that on September 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing, under protest, revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff and to Original Volume No. 1–A of its supersede FERC Gas Tariff.

Williston Basin states that, in accordance with the Commission's August 2, 1995 Order, the revised tariff sheets exempt the Rate Schedule S–2 service performed for Chevron U.S.A. Inc., with Western Gas Resources, Inc. acting as its agent, from Williston Basin's take-or-pay volumetric surcharge both retroactively and prospectively. Williston Basin further states that effective September 1, 1995, this filing also incorporates revised take-or-pay volumetric surcharges which reflect the volumes contained in Williston Basin's August 24, 1995 compliance filing in Docket Nos. RP92–236–000 et al. and which also exclude all S–2 volumes on a prospective basis.

The proposed effective dates for these tariff sheets are as shown on the tariff sheets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22810 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 95–1871]

Finsyn Reports

AGENCY: Federal Communications Commission.

ACTION: Suspension of filing deadline.

SUMMARY: The Commission granted a request filed jointly by the National Broadcasting Company, Inc., CBS Inc. and Capital Cities/ABC, Inc. ("Petitioners") that the requirement to file Network Television Program Ownership and Syndication Reports ("Reports") be suspended. The Reports are currently due to be filed by September 1, 1995. The Commission noted that one purpose of the Reports is to facilitate preparation of comments in connection with the Commission's review of the financial interest and syndication ("finsyn") rules prior to the scheduled expiration of those rules. As the comment cycle in that review has now closed, the Commission will not now require additional Reports to be filed. The Commission also recognized that collection and preparation of the information required to be included in the Reports represent a significant burden on Petitioners, and determined that it is not necessary for the Commission to review that information at this time. The intended effect of the Commission's action is to suspend this reporting requirement, while reserving the right to require that the Reports be filed if necessary depending upon the Commission's decision in its review of the finsyn rules.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Mass Media Bureau (202) 776–1563.

SUPPLEMENTARY INFORMATION:

Adopted: August 28, 1995.
Released: August 28, 1995.

By the Chief, Mass Media Bureau:

1. On August 21, 1995, the National Broadcasting Company, Inc., CBS Inc. and Capital Cities/ABC, Inc. ("Petitioners") filed a joint request that the requirement to file Network Television Program Ownership and Syndication Reports ("Reports"), pursuant to Section 73.661 of the Commission's Rules, 47 CFR 73.661, be suspended until 30 days after the Commission concludes its final review of the Financial Interest and Syndication "finsyn") rules. The Reports are currently due to be filed by September 1, 1995. 47 CFR 73.661(f).

2. The reporting requirements set forth in Section 73.661 were adopted in connection with revisions made by the Commission to the finsyn rules in May 93.[1] At that time, the Commission substantially relaxed its finsyn rules and established a timetable for their complete expiration. The reporting requirements were intended to "help the Commission monitor the efficacy of the rule changes adopted * * * and oversee the networks' conduct in the program acquisition and syndication markets."[2] The Commission also noted "the data collected pursuant to these requirements should prove useful in conducting the scheduled review of the new finsyn regime * * *."[3]

3. The finsyn rules are presently scheduled to expire on November 10, 1995. The Commission commenced its scheduled review of network activities in the financial interest and syndication areas on April 5, 1995.[4] The burden of proof was placed on those parties seeking continued restrictions. The comment cycle in that proceeding closed in June 1995.

4. Petitioners contend that compilation, preparation and filing of the Reports require a significant amount of time and effort on their part. Petitioners also argue that there is no reason to require them to undertake this effort in view of the status of the Commission's review of the finsyn rules.

5. At the present time, we believe it is not necessary for the Commission to review the information required to be submitted by Petitioners pursuant to Section 73.661. The Reports required by that provision must identify all network prime time entertainment programs and all first-run non-network programs in which the network has financial interests or syndication rights, 47 CFR 73.661(a), and provide information regarding independent syndicators who hold the active syndication rights for these programs. 47 CFR 73.661(c). The Reports must also list the sales to broadcast stations of any such programming the networks actively syndicate. 47 CFR 73.661(b). We recognize that collection and preparation of this information represents a significant burden on Petitioners, and do not believe it is necessary to require them to undertake this effort at this time. One purpose of the Reports is to facilitate preparation of comments in connection with our review of the finsyn rules. A number of Reports were filed, and the comment cycle has closed. Accordingly, we will not now require that additional Reports be filed.

6. Accordingly, *it is ordered* that the request by the National Broadcasting Company, Inc., CBS Inc. and Capital Cities/ABC, Inc. to suspend the deadline to file the Reports required by Section 73.661 of our rules is granted to the extent detailed herein.

7. *It is further ordered* That grant of this request is without prejudice to the Commission's right to require that such Reports be filed if necessary depending upon the Commission's decision in MM Docket No. 95–39.

8. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and Sections 0.204(b), 0.283, and 1.45 of the Commission's Rules, 47 CFR 0.204(b), 0.283, and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95–22095 Filed 9–13–95; 8:45 am]

BILLING CODE 6712–01–M

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[1] Second Report and Order in MM Docket No. 90–162 (58 FR 28927, May 18, 1993). The Report and Order revised existing reporting requirements in Section 73.661 to reflect changes being made to the finsyn rules.

[2] *Id.* at 28931.

[3] *Id.*

[4] Notice of Proposed Rule Making in MM Docket No. 95–39 (60 FR 19562, April 19, 1995).

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve a new information collection, Federal Supply Contracts—Cooperative Purchasing.

GSA will use the information to identify to state and local governments those schedule contractors that are participating in Cooperative Purchasing and those that are not. If the information were not collected individual activities would be forced to contact individual contractors, on a recurring basis, to determine their participation status.

AGENCY: Office of GSA Acquisition Policy.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets NW., Washington, DC 20405.

ANNUAL REPORTING BURDEN: 7,000 responses per year, 12 minutes per response annual burden hours 1400.

FOR FURTHER INFORMATION CONTACT: Ida Ustad (202–501–1043).

COPY OF PROPOSAL: A copy of this proposal may be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F Streets, NW, Washington, DC 20405, or by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: September 6, 1995.

Kenneth S. Stacey,

Acting Director, Information Management Division (CAI).

[FR Doc. 95–22795 Filed 9–13–95; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Catherine Kerr, St. Mary's Hospital: The Office of Research Integrity (ORI) conducted an investigation into possible scientific misconduct on the part of Ms. Catherine Kerr while she was a data coordinator at St. Mary's Hospital, Montreal, Quebec. ORI concluded that Ms. Kerr committed scientific misconduct by falsifying and fabricating the dates of tests or examinations required prior to study entry for one woman entered on the Breast Cancer Prevention Trial (BCPT). She also fabricated laboratory results and falsified dates of laboratory tests used to follow the progress of another woman entered on the trial. The BCPT is coordinated by the National Surgical Adjuvant Breast and Bowel Project (NSABP) and supported by the National Cancer Institute and the National Heart, Lung, and Blood Institute. Because the BCPT is still in progress, no conclusions or results have been published and no clinical recommendations have been based on the results of the study.

Ms. Kerr originally appealed but later withdrew her request for a hearing on the ORI findings and administrative actions, which require that, for a period of three years, any institution that proposes Ms. Kerr's participation in PHS-supported research must submit a supervisory plan designed to ensure the scientific integrity of her contribution. Ms. Kerr is also prohibited from serving in any advisory capacity to PHS for a period of three years.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–22769 Filed 9–13–95; 8:45 am]

BILLING CODE 4160-17-P

Administration for Children and Families

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: August 1995

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of August, 1995. It includes both those proposals being considered under the standard waiver process and those being considered under the 30 day process. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since August 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

Comments: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposals under the standard application process for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade SW., Aerospace Building, 7th Floor West, Washington DC 20447. FAX: (202) 205–3598 PHONE: (202) 401–9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

On August 16, 1995, the Secretary published a notice in the **Federal Register** (60 FR 158) exercising her discretion to request proposals testing welfare reform strategies in five areas. Since such projects can only incorporate provisions included in that announcement, they are not subject to the Federal notice procedures. The Secretary proposed a 30 day approval process for those provisions. As previously noted, this notice lists all new or pending welfare reform demonstration proposals under section 1115. Where possible, we have identified the proposals being considered under the 30 day process. However, the Secretary reserves the right to exercise her discretion to consider any proposal under the 30 day process if it meets those criteria in the five specified areas and the State requests it or concurs.

II. Listing of New and Pending Proposals for the Month of August, 1995

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new and pending proposals. This notice contains proposals for the month of August, 1995.

Project Title: California - Work Pays Demonstration Project (Amendment).

Description: Would amend Work Pays Demonstration Project by adding provisions to: Reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

Date Received: 3/14/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Glen Brooks, (916) 657–3291.

Project Title: California—Assistance Payments Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project by: Exempting certain categories of AFDC families from the State's benefit cuts; paying the exempt cases based on grant levels in effect in California on November 1, 1992; and renewing the waiver of the Medicaid maintenance of effort provision at section 1902(c)(1) of the Social Security Act, which was vacated by the Ninth Circuit Court of Appeals in its decision in *Beno* v. *Shalala*.

Date Received: 8/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Michael C. Genest, (916) 657–3546.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

Date Received: 11/9/94.

Type: AFDC.

Current Status: Pending.

Contact person: Eloise Anderson, (916) 657–2598.

Project Title: California—School Attendance Demonstration Project.

Description: In San Diego County, require AFDC recipients ages 16–18 to attend school or participate in JOBS.

Date Received: 12/5/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Michael C. Genest (916) 657–3546.

Project Title: California—Incentive to Self-Sufficiency Demonstration.

Description: Statewide, would require 100 hours CWEP participation per month for JOBS mandatory individuals who have received AFDC for 22 of the last 24 months and are working fewer than 15 hours per week after two years from JOBS assessment and: have failed to comply with JOBS without good cause, have completed CWEP or are in CWEP less than 100 hours per month, or have completed or had an opportunity to complete post-assessment education and training; provide Transitional Child Care and Transitional Medicaid to families who become ineligible for AFDC due to increased assets or income resulting from marriage or the reuniting of spouses; increase the duration of sanctions for certain acts of fraud.

Date Received: 12/28/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Michael C. Genest (916) 657–3546.

Project Title: Connecticut—A Fair Chance—Modification.

Description: Proposed modifications would: Establish time limits; disregard earnings for time-limited recipients up to poverty level; reduce benefit increase for additional children by one-half; require minor parents to live with adult; change redetermination, verification, and reporting requirements; provide employer tax credits for hiring AFDC recipients; require biometric identification as condition of eligibility for unit; establish two-tier payment system for new residents; simplify and conform AFDC and Food Stamp rules on resources; allow 24 weeks of job search without child care guarantee; change good cause criteria regarding participation; change JOBS sanctions; apply uniform sanction policy for JOBS, child support, and voluntary quits; extend transitional Medicaid to two years; provide transitional child care while income below 75% of state median; limit the application period for transitional child care to 6 months after leaving AFDC; establish fee for child care for AFDC recipients; serve non-custodial parents under JOBS.

Date Received: 8/10/95.

Type: Combined AFDC/Medicaid.

Current Status: New.

Contact Person: Nancy Wiggett, (203) 424–5329.

Project Title: Florida—Family Transition Program (Amendments).

Description: Would expand the Family Transition Program demonstration, currently operating in two counties, to six additional counties. The demonstration limits, with some exceptions, AFDC benefits to 24 months in any 60-month period followed by participation in transitional employment. For families subject to the time limit, it replaces current $90 and $30 and one-third disregards with a single, non-time-limited disregard of $200 plus one-half of the remainder; disregards income of a stepparent whose needs are not included in the assistance unit for the first 6-months of receipt of public assistance; excludes summer earnings of teens and interest income; lowers age of child for JOBS exemption to 6-months; raises asset limit to $5,000 plus a vehicle of reasonable worth used primarily for self-sufficiency purposes; extends transitional Medicaid and child care benefits; eliminates 100-hour and required quarters of work rules, and (on a case-by-case basis) the 6-month time limit requirements in the AFDC-UP program; requires school conferences and regular school attendance; offers incentive payments to private employers who hire hard-to-place AFDC recipients; and allows non-custodial parents of AFDC children to participate in JOBS. Statewide, the demonstration requires immunizations of pre-school-age children.

Date Received: 8/2/95.

Type: Combined AFDC/Medicaid.

Current Status: Pending—30 Day Approval Process for all areas except the school attendance component.

Contact Person: Don Winstead, (904) 921–5567.

Project Title: Georgia—Work for Welfare Project.

Description: Work for Welfare Project. In 10 pilot counties would require every non-exempt recipient and non-supporting parent to work up to 20 hours per month in a state, local government, federal agency or nonprofit organization; extends job search; and increases sanctions for JOBS noncompliance. On a statewide basis, would increase the automobile exemption to $4,500 and disregard earned income of children who are full-time students.

Date Received: 6/30/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Nancy Meszaros, (404) 657–3608.

Project Title: Hawaii—Families Are Better Together.

Description: Statewide, would eliminate 100-hour, attachment to the work force, 30 day unemployment and principal wage earner criteria for AFDC-UP families.

Date Received; 5/22/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia Murakami, (808) 586–5230.

Project Title: Illinois—Six Month Paternity Establishment Demonstration.

Description: In 20 counties, would require the establishment of paternity, unless good cause exists, within 6 months of application or redetermination as a condition of AFDC and Medicaid eligibility for both mother and child; would deny Medicaid to children age 7 and under, exclude children from filing rules, and exempt Department from making protective payments to eligible children, when custodial parent has not cooperated in establishing paternity; delegate the establishment of paternity in uncontested cases to caseworkers who perform assistance payment or social service functions under title IV-A or XX.

Date Received: 7/18/95.

Title: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Karan D. Maxson, (217) 785–3300.

Project Title: Illinois—School Attendance Demonstration.

Description: Statewide, would require the participation in a plan for poor elementary school attendance and, upon continuation of poor attendance, the establishment of a protective payee, progressing to the removal of the caretaker's portion of the AFDC grant.

Date Received: 7/18/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Karan D. Maxson, (217) 785–3300.

Project Title: Illinois—Work and Responsibility Demonstration.

Description: The demonstration includes six components, five of which will be implemented statewide. (1) Targeted Work Initiative—would limit receipt of AFDC benefits to a total of 24 months without earnings for households whose youngest child is at least 13 years of age; any month with budgeted income due to employment will not be counted toward the 24 month time limit. (2) Get a Job Initiative—new applicants determined to be job ready and whose children are between 5 and 12 will be required to participate in job search for up to six months. (3) Family Accountability—assistance payments will not be increased as a result of the birth of children conceived while the parent was receiving assistance. (4) Job Track—exempt volunteers for JOBS will become subject to the same requirements and sanctions as non-exempt participants; participation in basic education or GED programs will be limited to two years unless the individual is working or participating in an approved work activity. (5) Self-Sufficiency Plan—all applicants and recipients will be required to complete a self-sufficiency plan as a condition of eligibility. (6) Quarterly Budgeting—in selected sites, cases with earned income will be required to report income quarterly; the information will be used to prospectively budget income for the next quarter. Failure to report earnings will result in case closure and overpayment recovery.

Date Received: 7/18/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Karan D. Maxson, (217) 785–3300.

Project Title: Kansas—Actively Creating Tomorrow for Families Demonstration.

Description: Would, after 30 months of participation in JOBS, make adults ineligible for AFDC for 3 years; replace $30 and 1/3 income disregard with continuous 40% disregard; disregard lump sum income and income and resources of children in school; count income and resources of family members who receive SSI; exempt one vehicle without regard for equity value if used to produce income; allow only half AFDC benefit increase for births of a second child to families where the parent is not working and eliminate increase for the birth of any child if families already have at least two children; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; extend Medicaid transitional benefits to 24 months; eliminate various JOBS requirements, including those related to target groups, participation rate of UP cases and the 20-hour work requirement limit for parents with children under 6; require school attendance; require minors in AFDC and NPA Food Stamps cases to live with a guardian; make work requirements and penalties in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities.

Date Received: 7/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Faith Spencer, (913) 296–0775.

Project Title: Maine—Project Opportunity.

Description: Increase participation in Work Supplementation to 18 months; use Work Supplementation for any opening; use diverted grant funds for vouchers for education, training or support services; and extend transitional Medicaid and child care to 24 months.

Date Received: 8/5/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Susan L. Dustin, (207) 287–3106.

Project Title: Mississippi—A New Direction Demonstration Program—Amendment.

Description: Statewide, would amend previously approved New Direction Demonstration Program by adding provision that a family's benefits would not increase as a result of additional children conceived while receiving AFDC.

Date Received: 2/17/95.

Type: AFDC

Current Status: Pending.

Contact Person: Larry Temple, (601) 359–4476.

Project Title: New Hampshire—Earned Income Disregard Demonstration Project.

Description: AFDC applicants and recipients would have the first $200 plus 1/2 the remaining earned income disregarded.

Date Received: 9/20/93.

TYPE: AFDC.

Current Status: Pending.

Contact Person: Avis L. Crane, (603) 271–4255.

Project Title: New Mexico—Untitled Project.

Description: Would increase vehicle asset limit to $4500; disregard earned income of students; develop an AFDC Intentional Program Violation procedure identical to Food Stamps; and allow one individual to sign declaration of citizenship for entire case.

Date Received: 7/7/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Scott Chamberlin, (505) 827–7254.

Project Title: North Dakota—Training, Education, Employment and Management Project.

Description: Would require families to develop a social contract specifying time-limit for becoming self-sufficient; combine AFDC, Food Stamps and LIHEAP into single cash payment with simplified uniform income, expense and resource exclusions; increase income disregards and exempt stepparent's income for six months; increase resource limit to $5000 for one recipient and $8000 for families with two or more recipients; exempt value of one vehicle; eliminate 100-hour rule for AFDC–UP; impose a progressive sanction for non-cooperation in JOBS or with child support; require a minimum of 32 hours of paid employment and non-paid work; require participation in EPSDT; and eliminate child support pass-through.

Date Received: 9/9/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Kevin Iverson, (701) 224–2729.

Project Title: Ohio—Learning, Earning and Parenting (LEAP) program.

Description: Statewide, would modify and extend by 6 and 1/2 years the previously approved Learning, Earning,

and Parenting Demonstration to require enrollment and regular school attendance by pregnant and parenting teens; provide a $62 bonus or sanction based on attendance; require continued participation in JOBS by LEAP participants who turn 20 and have a child over 6 weeks of age; provide a $62 grade completion bonus for those in high school; provide a graduation or GED completion bonus of $200; implement a progressive sanction leading to removal of the needs of the teen parent and her child/children in determining amount of AFDC; and continue the LEAP progressive sanction when the participant turns 20, if she remains JOBS mandatory.

Date Received: 6/19/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Jackie Martin, (614) 466–8530.

Project Title: Oregon—Oregon Option.

Description: As a statewide project, would incorporate waivers already approved in 1992 for JOBS Welfare Program and in 1994 for the JOBS Plus Demonstration with previously pending waiver requests to increase vehicle asset limit and extend transitional child care. Requests guaranteed level of federal funding, with funds not used for benefits to be used for other community support or prevention programs. Also would, with some exceptions, limit receipt of AFDC benefits to no more than 24 out of 84 months for families with employable parents; allow case manager to determine JOBS exemptions on an individual basis; eliminate the time restrictions on job search; impose progressive sanctions, leading to full-family ineligibility, for non-compliance with JOBS; require ineligible alien parents of AFDC children to participate in JOBS; require counseling for recipients with substance abuse problems; require teen parents to live in an adult-supervised setting; discontinue the AFDC-UP program from June through September each year and eliminate the 100-hour rule and work history requirements; increase asset limit to $2,500 for non-JOBS participants and $10,000 for JOBS participants, and treat lump-sum payments as an asset; require annual AFDC eligibility redeterminations; modify the rules for potential liability under EBT.

Date Received: 7/10/95.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Jim Neely, (503) 945–5607.

Project Title: Oregon—Expansion of the Transitional Child Care Program.

Description: Provide transitional child care benefits without regard to months of prior receipt of AFDC and provide benefits for 24 months.

Date Received: 8/8/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Jim Neely, (503) 945–5607.

Project Title: Oregon—Increased AFDC Motor Vehicle Limit.

Description: Would increase automobile asset limit to $9000.

Date Received: 11/12/93.

Type: AFDC.

Current Status: Pending.

Contact Person: Jim Neely, (503) 945–5607.

Project Title: Pennsylvania—School Attendance Improvement Program.

Description: In 7 sites, would require school attendance as condition of eligibility.

Date Received: 9/12/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Pennsylvania—Savings for Education Program.

Description: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.

Date Received: 12/29/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: South Carolina—Family Independence Program

Description: Statewide, would, with exceptions, time limit AFDC benefits to families with able bodied adults to 24 months out of 120 months, not to exceed 60 months in a lifetime; eliminate increase in AFDC benefit resulting from birth of children 10 or more months after the family begins AFDC receipt, but provide benefits to such children in the form of vouchers for goods and services permitting child's mother to participate in education, training, and employment-related activities; eliminate deprivation requirements, principal earner provisions, work history requirements, and 100-hour rule for AFDC-UP; increase AFDC resource limit to $2,500 and disregard as resources one vehicle with a market value up to $10,000, the balance in an Individual Development Account (IDA) up to $10,000, and the cash value of life insurance; disregard from income up to $10,000 in lump sum payments deposited in an IDA within 30 days of receipt, earned income of children attending school, and interest and dividend income up to $400; require participation in a family skills training program; require certain AFDC recipients to submit to random drug tests and/or participate in alcohol or drug treatment; require children to attend school; increase amount of child support passed through to AFDC recipients; require more extensive information for child support enforcement purposes; modify JOBS exemptions and good cause criteria, and increase sanctions for non-compliance; make job search a condition of eligibility; allow non-custodial parents of AFDC children to participate in JOBS; pay transitional grant equaling 3 percent of the maximum family grant following employment; and provide transitional grant Medicaid and child care for 12 months from the date of employment for cases previously closed due to time limit.

Date Received: 6/12/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Linda Martin (804) 737–6010.

Project Title: Washington—Success Through Employment Program

Description: Statewide, would eliminate the 100-hour rule for AFDC-UP families; impose a 10 percent grant reduction for AFDC recipients who have received assistance for 48 out of 60 months, and impose an additional 10 percent grant reduction for every additional 12 months thereafter, and budget earnings against the original payment standard; and hold the food stamp benefit level constant for cases whose AFDC benefits are reduced due to length of stay on assistance.

Date Received: 2/1/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Liz Begert Dunbar, (206) 438–8350.

III. Listing of Approved Proposals Since August 1, 1995

Project Title: Maryland—Welfare Reform Project.

Contact Person: Katherine L. Cook, (410) 767–7338.

Project Title: Massachusetts—Welfare Reform '95.

Contact Person: Valerie Foretra, (617) 348–5508.

Project Title: Wisconsin—Pay for Performance (Self Sufficiency First was included as a part of Pay For Performance).

Contact Person: Jean Sheil, (608) 266–0613.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research)

Dated: September 11, 1995.

Howard Rolston,

Director, Office of Policy and Evaluation.

[FR Doc. 95–22890 Filed 9–13–95; 8:45 am]

BILLING CODE 4184-01-P

Food and Drug Administration

[Docket No. 95N–0259]

Over-the-Counter Drug Labeling; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 16, 1995 (60 FR 42578). The document announced a public hearing to discuss over-the-counter (OTC) drug labeling issues. The document also solicited comments from interested persons on various aspects of OTC drug labeling that would improve the communication of information to consumers and solicited specific comments and/or data on the costs and benefits of an improved labeling format. The document was published with some errors. The date in which comments are due to the agency, and the date that notices of participation are due to the agency were erroneous. This document corrects those errors and adds a question for public comment which was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Ilisa B. G. Bernstein, Office of the Commissioner, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), ATTN: OTC Drug Labeling Hearing, Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857; or FAX 301–594–3215.

In FR Doc. 95–20245, appearing on page 42578 in the **Federal Register** of August 16, 1995, the following corrections are made:

1. On page 42578, in the first column, under the DATES caption, in the last sentence "December 29, 1995" is corrected to read "October 30, 1995."

2. On page 42580, in the third column, in the first full paragraph, in line 6, the date "September 11, 1995" is corrected to read "September 15, 1995". Additionally, on the same page, in the second column, after the fifth paragraph, new section "F." is added to read as follows:

F. Process Issue

As part of FDA's ongoing effort to improve OTC labeling, the agency believes that it may have to revise many of the OTC monographs to improve and simplify communication of the information. Because revising the labeling portion of the monographs would be a major undertaking, the agency seeks public comment on the process that should be followed by FDA to ensure that the revisions are completed in an efficient and expedient manner. The agency intends on using its own experts to develop revised language that would be published in a notice of proposed rulemaking (NPRM). The agency also intends to allow a longer than usual comment period of 120, 150, or 180 days, to allow for consumer testing of the proposed language by FDA and other interested parties. Based on the results of the testing and comments received, the agency would then develop a final rule for the monograph(s). The agency would group monographs together, so as to develop a small number of NPRM's for this effort. Please comment on whether this process is appropriate, or if other steps should be taken for monograph revisions.

Dated: September 7, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–22788 Filed 9–13–95; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Library of Medicine; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on October 26–27, 1995, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 12:45 p.m. and from 1:45 to 4:45 p.m. on October 26 and from 9:00 a.m. to approximately 12 noon on October 27 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jackie Duley at (301) 496–4441 in advance of the meeting.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 26, from approximately 12:45 p.m. to 1:45 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Harold M. Schoolman, Acting Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: September 8, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–22893 Filed 9–13–95; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, October 19–20, 1995, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting will be open to the public from 8:30 a.m. to 5:00 p.m. on October 19 and 8:30 a.m. to adjournment on October 20. Attendance by the public will be limited to space available. Board topics will include: (1) A report on fiscal issues concerning the National Center for Medical Rehabilitation Research (Center) and the Institute; (2) reports on program activities of the Center; (3) a discussion of general priority areas of research for the Center; (4) a report on substance

abuse and people with disabilities; and (5) a discussion of support for medical rehabilitation research by government agencies.

Ms. Debbie Welty, Board Secretary, NICHD, 6100 Building, Room 2A03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301–402–2242, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Welty.

Dated: September 8, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–22894 Filed 9–13–95; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Collection and Storage Centers for Clinical Research on Transplantation of Umbilical Cord Stem and Progenitor Cells.

Date: October 30, 1995.

Time: 8:00 a.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Deborah P. Beebe, Ph.D., Rockledge II, Room 7206, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0303.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Transplant Centers for Clinical Research on Transplantation of Umbilical Cord Stem and Progenitor Cells.

Date: October 30–31, 1995.

Time: 3:00 p.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Deborah P. Beebe, Ph.D., Rockledge II, Room 7206, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0303.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Medical Coordinating Center for Clinical Research on Transplantation of Umbilical Cord Stem and Progenitor Cells.

Date: October 31, 1995.

Time: 10:00 a.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Deborah P. Beebe, Ph.D., Rockledge II, Room 7206, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0303.

Purpose/Agenda: To review and evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 8, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–22895 Filed 9–13–95; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on October 11–13, 1995, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and the meeting of the subcommittee will be in Conference Room 7, Building 31C.

The meeting of the Planning Subcommittee will be open to the public on October 11 from 2 pm until 3 pm for the discussion of policy issues. The meeting of the full Council will be open to the public on October 12 from 8:30 am until recess for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders and on October 13 from 8:30 am to approximately 9:30 am for a report on extramural programs of the Division of Human Communication. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Planning Subcommittee on October 11 will be closed to the public from 3 pm to adjournment. The meeting of the full Council will be closed to the public on October 13 from approximately 9:30 am until adjournment. The closed portions of the meeting will include a report on the Division of Intramural Research and the review, discussion, and evaluation of individual grant applications. The application and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meeting may be obtained from Dr. Earleen F. Elkins, Executive Secretary, National Deafness and other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd., MSC7180, Bethesda, Maryland 20892, 301–496–8693. A summary of the meeting and rosters of the members may also be obtained from her office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Elkins at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 8, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22896 Filed 9–13–95; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: September 28, 1995.

Time: 2 p.m. to 5 p.m.

Place: 6120 Executive Boulevard, Room 400 C, Rockville, MD 20852.

Contact Person: Mary Nekola, Ph.D., Scientific Review Administrator, NIH, NIDCD, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate a Center grant application (P50).

The meeting, which will be conducted as a telephone conference call, will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 8, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22897 Filed 9–13–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on October 12–13, 1995, convening at 9 a.m. on October 12 and at 8:30 a.m. on October 13 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on October 12 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaianni at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C., Public Law 92–463, the meeting will be closed on October 12 from 10:30 a.m. to approximately 5 p.m. and on October 13 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: September 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22898 Filed 9–13–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: National Institute of Allergy and Infectious Diseases Special Emphasis Panel-Tropical Medicine Research Centers.

Date: October 18–20, 1995.

Time: 8:30 a.m.

Place: Woodfin Suites, 1380 Piccard Drive, Rockville, MD 20850.

Contact Person: Dr. Sayeed Quraishi, Scientific Review Administrator, 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892–7610, (301) 596–7465.

Purpose/Agenda: To evaluate and review individual grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: September 6, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

FR Doc. 95–22899 Filed 9–13–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Adherence in the Childhood Asthma Management Program (Telephone Conference Call).

Date: September 26, 1995.

Time: 11:00 a.m.

Place: Rockledge II, Room 7178, 6701 Rockledge Drive, Bethesda, Maryland.

Contact Person: David Monsees, Ph.D., Rockledge II, Room 7178, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Asthma Clinical Research Network: Minority Centers (Telephone Conference Call).

Date: September 26, 1995.

Time: 11:45 a.m.

Place: Rockledge II, Room 7178, 6701 Rockledge Drive, Bethesda, Maryland.

Contract Person: David Monsees, Ph.D., Rockledge II, Room 7178, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Dioseases Research; and 93:839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 6, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22900 Filed 9–13–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Name of SEP: Chemistry and Related Sciences.

Date: October 16, 1995.

Time: 8:30 a.m.

Place: St. James Hotel, Washington, DC.

Contact Person: Dr. Edward Zapolski, Scientific Review Administrator, 6701 Rockledge Drive, Room 4168, Bethesda MD 20892, (301) 435–1725.

Name of SEP: Clinical Sciences.

Date: October 18–19, 1995.

Time: 8:00 a.m.

Place: Holiday Inn, Gaithersburg, MD.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda MD 20892, (301) 435–1783.

Name of SEP: Clinical Sciences.

Date: November 2, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda MD 20892, (301) 435–1783.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 8, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–22892 Filed 9–13–95; 8:45 am]

BILLING CODE 4140–01–M

Office of Alternative Medicine; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Alternative Medicine Program Advisory Council on September 18, 1995, from 8 a.m. to recess and on September 19, 1995 from 8 a.m. to 12 noon in the Plaza II Conference Room of the Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland.

The meeting will be open to the public with attendance limited to space available. The purpose of the meeting will be to discuss current issues in complementary and alternative medicine research and activities of the Office of Alternative Medicine.

Ms. Beth Clay, Committee Management Liaison, Office of Alternative Medicine, National Institutes of Health, 6120 Executive Boulevard, Suite 450, Rockville, Maryland 20892–9904, phone (301) 594–1990, fax (301) 402–4741, E-Mail: bethclay@helix.nih.gov will furnish the meeting agenda, roster of committee members and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Clay at the above location no later than September 11, 1995.

This notice is being published less than 15 days prior to the meeting due to difficulties encountered in finalizing the agenda and the need to proceed with the meeting as scheduled to address important issues in a timely manner.

Dated: September 6, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–22910 Filed 9–13–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–805803

Applicant: Clyde Robinson, Saratoga Springs, N.Y.

The applicant requests a permit to import 2 pair Hawaiian ducks (*Anas wyvilliana*) from Dr. Peter Player, East Sussex, England for the purpose of enhancement through captive propagation.

PRT–806362

Applicant: John Ferre, Isla Verde Carolina, PR

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by Mr. F. Bowker, Thornkloof, Grahamstown, South Africa for the purpose of enhancement of the survival of the species.

PRT–806434

Applicant: Herman Ferre Roig, Isla Verde Carolina, PR

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by Mr. F. Bowker, Thornkloof, Grahamstown, South Africa for the purpose of enhancement of the survival of the species.

PRT–806355

Applicant: Kathryn Clark, Princeton Univ.; Princeton, NJ

The applicant requests a permit to import tissue samples from captive-held Rodrigues fruit bats (*Pteropus rodricensis*) from the United Kingdom for the purpose of genetic research on the evolutionary origins and systematics of the species to enhance the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 8, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–22787 Filed 9–13–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of the Technical/Agency Draft Recovery Plan for the Appalachian Elktoe for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a technical/agency draft recovery plan for the Appalachian elktoe (*Alasmidonta raveneliana*). This rare freshwater

mussel inhabits medium-sized creeks and rivers with cool, well-oxygenated, and moderate- to fast-flowing water. The Appalachian elktoe currently has a very fragmented, relict distribution but historically had a fairly wide distribution throughout the Upper Tennessee River system in western North Carolina and eastern Tennessee. Only two populations of the species are known to survive. One population occurs in the main stem of the Little Tennessee River in Swain and Macon Counties, North Carolina. The second population occurs in the Nolichucky River system. This population is restricted to scattered locations along a very short reach of the Toe River and the main stem of the Nolichucky River in Yancey and Mitchell Counties, North Carolina. The population on the Nolichucky extends downriver into Unicoi County, Tennessee. A single specimen of the Appalachian elktoe was also found in the Cane River, a major tributary to the Nolichucky River, in Yancey County, North Carolina. It has been reduced to a few short reaches of each of these streams, primarily as a result of impoundments and the general deterioration of water quality resulting from siltation and other pollutants contributed by poor land use practices. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before December 13, 1995, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 704/258–3939). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John Fridell at the address and telephone number shown above (Ext. 225).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, to establish criteria for recognizing the recovery levels for downlisting or delisting them, and to estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to the approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the Appalachian elktoe (*Alasmidonta raveneliana*). The area of emphasis for recovery actions is the upper Tennessee River system in the mountains of western North Carolina and eastern Tennessee. Habitat protection, reintroduction, and the preservation of genetic material are the major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 8, 1995.

Robert R. Currie,

Acting Field Supervisor.

[FR Doc. 95–22935 Filed 9–13–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Technical/Agency Draft Recovery Plan for Cumberland Rosemary for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a technical/agency draft recovery plan for Cumberland rosemary (*Conradina verticillata*). This threatened species is presently known from only three populations: two of these are located in Tennessee and a third occurs in both Tennessee and Kentucky. Cumberland rosemary grows on sandy or gravelly stream banks, sandbars, and gravel/boulder bars associated with floodplains or islands. There are 91 known colonies of the species; however, most colonies are small and are threatened by stream alternations that would change normal flooding patterns; activities that degrade water quality; and habitat destruction by campers, hikers, white-water enthusiasts, and off-road vehicles. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be received on or before December 13, 1995, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the technical/agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 704/258–3939). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on requests for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie at the address and telephone number shown above (Ext. 224).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, to establish criteria for recognizing the recovery levels for downlisting or delisting them, and to estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of

recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to the approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Th primary species considered in this draft recovery plan is Cumberland rosemary (*Conradina verticillata*). It is a small shrub in the mint family (Lamiaceae), known only from the banks of short reaches of three river systems in north-central Tennessee and adjacent Kentucky. The species is found within small areas of the following counties: Cumberland, Fentress, Morgan, Scott, and White Counties, Tennessee, and McCreary County, Kentucky. It is always found growing in close association with the floodplain of watercourses. Specific areas supporting the species include boulder bars, sand bars, gravel bars, terraces of sand on gradually sloping riverbanks and islands, and pockets of sand between large boulders on islands and stream banks. This species' distribution has probably been reduced by such factors as dam construction and the general deterioration of water quality resulting from silt and other pollutants contributed by coal mining, poor land use practices, and waste discharges. Many of these factors continue to impact the species and its habitat. Because the colonies inhabit only short river reaches, they are vulnerable to extirpation from accidental toxic chemical spills. Direct habitat destruction by recreational visitors to the species' habitat is a significant threat to its survival. Hikers, campers, white-water enthusiasts, and off-road-vehicle users all impact the species and its habitat. Habitat protection, searches for new populations, the implementation of appropriate management actions, the completion of biological and genetic studies, and the preservation of genetic material are the major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 8, 1995.

Robert R. Currie,

Acting Field Supervisor.

[FR Doc. 95–22852 Filed 9–13–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Agency Draft Recovery Plan for Cumberland Sandwort for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of an agency draft recovery plan for Cumberland sandwort (*Arenaria cumberlandensis*). This endangered species is known from five populations in Tennessee and Kentucky. It is restricted to sandstone ledges and rock houses in the Cumberland Plateau Province of south-central Kentucky and north-central Tennessee. Specialized habitat requirements, in combination with habitat alteration, are the primary limiting factors for the species. Threats to its continued existence include trampling of its habitat by recreational users and habitat alteration caused by timber harvesting on adjacent lands. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the agency draft recovery plan must be received on or before December 13, 1995, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 704/258–3939). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie at the address and telephone number shown above (Ext. 224).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, to establish criteria for recognizing the recovery levels for downlisting or delisting them, and to estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to the approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is Cumberland sandwort (*Arenaria cumberlandensis*). The area of emphasis for recovery actions is the Cumberland Plateau Province of south-central Kentucky and north-central Tennessee. The species is currently known from four counties in Tennessee (Pickett, Scott, Fentress, and Morgan) and one county in Kentucky (McCreary). A majority of the sites are found in sandstone rock houses or on ledges or solution pockets on sandstone rock faces. All known sites are within the Big South Fork watershed of the Cumberland River. Habitat requirements include shade, moisture, relatively constant cool temperatures, and high humidity. *Arenaria cumberlandensis* is endangered directly and indirectly by human activities in and adjacent to its unique habitat. Significant threats include trampling by hikers, campers, picnickers, individuals rappelling down the sandstone cliffs, and "pot hunters" digging within rock houses for Native American artifacts. Some sites are potentially threatened by timber removal in or adjacent to the areas supporting the species. Increased sunlight on the plants and the subsequent alteration of the moisture conditions would probably lead to extirpation of *Arenaria cumberlandensis* from the timbered area. Habitat protection, searches for new populations, the implementation of appropriate management actions, and the preservation of genetic material are the major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 8, 1995.

Robert R. Currie,

Acting Field Supervisor.

[FR Doc. 95–22936 Filed 9–13–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Approval

The following applicants have applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Kevin M. Gorman, Director, AFA Red Siskin Recovery Project, Rochester, NY. The applicant wishes to establish a cooperative breeding program for the Red Siskin (*Carduelis cucullata*). Mr. Gorman wishes to be an active participant in this program with three other private individuals. The American Federation of Aviculture has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 8, 1995.

Margaret Tieger,

Chief, Branch of Permits Office of Management Authority.

[FR Doc. 95–22842 Filed 9–13–95; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[ES–960–1910–00–4041; ES–047545, Group 94, Arkansas]

Notice of Filing of Plat of Survey; Arkansas

The plat of the dependent resurvey of a portion of the east boundary; a portion of the south boundary; a portion of the subdivisional lines; and the survey of the subdivision of certain sections; Township 15 North, Range 23 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on October 20, 1995.

The survey was requested by the National Park Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 20, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: September 5, 1995.

Corwyn J. Rodine,

Acting Chief Cadastral Surveyor.

[FR Doc. 95–22796 Filed 9–13–95; 8:45 am]

BILLING CODE 4310–GJ–P

[CA–942–5700–001]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Acting Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E–2845, Sacramento, CA 95825, 916–979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 1 S., R. 19 E.,
  Supplemental plat of the NW¼ of section 11, accepted May 4, 1995, to meet certain administrative needs of the U.S. Forest Service, Stanislaus National Forest.
T. 10 N., R. 20 E.,
  Supplemental plat of the NW¼ of section 2, accepted July 5, 1995, to meet certain administrative needs of the U.S. Forest Service, Toiyabe National Forest.
T. 10 S., R. 23 E.,
  Dependent resurvey, (Group 1180) accepted July 5, 1995, to meet certain administrative needs of the U.S. Forest Service, Sierra National Forest.
T. 33 N., R. 2 E.,
  Dependent resurvey and subdivision of section 3, (Group 1049) accepted July 10, 1995, to meet certain administrative needs of the U.S. Forest Service, Lassen National Forest.
T. 2 N., R. 14 E.,
  Supplemental plat of the NE¼ of section 24, accepted July 24, 1995, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.
T. 13 S., R. 34 E.,
  Dependent resurvey and subdivision of section 1, (Group 1175) accepted July 26, 1995, to meet certain administrative needs of the BIA, Central California Agency.
T. 40 N., R. 9 W.,
  Dependent resurvey and subdivision of sections, (Group 1053) accepted July 26, 1995, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

San Bernardino Meridian, California

T. 16 S., R. 5 E.,
  Supplemental plat of the SE¼ of section 6, accepted July 21, 1995, to meet certain administrative needs of the U.S. Forest Service, Cleveland National Forest.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: September 5, 1995.

Lance J. Bishop,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 95–22797 Filed 9–13–95; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0046); Washington, D.C. 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Well Summary Report, Form MMS–125.

OMB Approval Number: 1010–0046.

Abstract: Respondents submit Form MMS–125 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

Bureau Form Number: Form MMS–125.

Frequency: On occasion.

Description of Respondents: OCS oil, gas, and sulphur lessees.

Annual Burden Hours: 2,579.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1239.

Dated: August 9, 1995.

Henry G. Bartholemew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 95–22798 Filed 9–13–95; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE: MEETING

AGENCY: National Park Service, Department of the Interior

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee, Correction

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This notice corrects the notice published in the Federal Register on May 31, 1995.

A meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on October 16, 17, and 18, 1995, in Anchorage, Alaska. The notice published May 31st stated the final day of the meeting may be held in the Eagan Center, Anchorage, AK, in conjunction with the Alaska Federation of Natives annual convention. The location for the final day of the meeting has been changed to the Chart Room in the Anchorage Hilton, 500 West 3rd Avenue, Anchorage, Alaska, 99510–9953. This does not affect the location for the first two days of the meeting which will be held in the Dillingham Room in the Anchorage Hilton, as stated in the earlier notice.

The notice published May 31st stated that comments to the Committee's draft recommendations regarding the disposition of culturally unidentifiable human remains in museums and Federal collections and public comment and discussion of the statute's application in Alaska would be on the meeting's agenda. The agenda has been expanded to include the Committee's review of written evidence on two disputes: the first dispute involves the Oneida Tribe of Indians of Wisconsin, the Oneida Indian Nation, and the Field Museum of Natural History. The second dispute involves Betty J. Washburn and Charles Junkerman, representatives of Chief Satanta (White Bear) Descendants, the University of California, Berkeley, and the Phoebe A. Hearst Museum of Anthropology.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Due to the presence of Alaska Federation of Natives delegates, hotel rooms in Anchorage may be scarce. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127–suite 210, Washington, DC 20013–7127, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capital Street, Washington, DC.

Dated: September 7, 1995

Veletta Canouts,

Acting Departmental Consulting Archeologist and Acting Chief, Archeology and Ethnography Program.

[FR Doc. 95–22830 Filed 9–13–95; 8:45 am]

BILLING CODE 4310–70–F

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203.

Comments on the following assessment are due 15 days after the date of availability: None.

Comments on the following assessment are due 30 days after the date of availability:

AB–6 (Sub-No. 367X), Abandonment of a line of railroad between BN M.P. 34.20 to BN M.P. 135.18 and BN M.P. 126.70 and BN M.P. 139.10 in Pittsburg, In Crawford County, Kansas. EA available 9/8/95.

AB–8 (Sub-No. 31X), The Denver and Rio Grande Western Railroad Company—Abandonment

Exemption—1.55 miles in Salt Lake County, Utah. EA available 9/8/95.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22837 Filed 9–13–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32490]

Gateway Eastern Railway Company; Trackage Rights Exemption; Missouri Pacific Railroad Company, The Alton & Southern Railway Company, and Consolidated Rail Corporation

Missouri Pacific Railroad Company (MP), The Alton & Southern Railway Company (A&S), and Consolidated Rail Corporation (Conrail) have agreed to grant Gateway Eastern Railway Company (GWER) trackage rights over approximately 14.03 miles of their respective rail lines between Mitchell and East St. Louis, IL, as follows: (1) Over 820 feet of MP rail line near milepost 275.60 at Lenox Tower in Mitchell; (2) over 11.07 miles of A&S rail line between milepost 21.00 at Lenox Tower in Mitchell and milepost 9.93 at "HN" Cabin in Canteen Township, IL; and (3) over 2.8 miles of Conrail rail line between milepost 234.0± at "HN" Cabin and milepost 236.8± at Willows Tower in East St. Louis, IL. The trackage rights became effective on of after September 1, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Thomas J. Litwiler, Oppenheimer, Wolff and Donnelly, Two Prudential Plaza, 180 North Stetson Avenue, Chicago, IL 60601.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 8, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22836 Filed 9–13–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Application for Participation in Demonstration Project concerning Electronic Options for Processing Forms I–9.

(2) N/A. Immigration and Naturalization Service. United States Department of Justice.

Primary: Business or other for-profit. Other: Individuals or households, Not-for-profit institutions, Farms, Federal Government, and State, Local or Tribal Government. The Immigration and Naturalization Service is inviting applications from businesses, consortium of businesses, or other employing entities interested in participating in a demonstration project dealing with the electronic production and/or storage of Rooms I–9, Employment Eligibility Verification Form.

(4) 100 annual respondents, 23 hours per response.

(5) 2,300 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 8, 1995.

Kathleen T. Albert,

Acting Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22827 Filed 9–13–95; 8:45 am]

BILLING CODE 4410–10–M

Office of the Attorney General

[AG Order No. 1967–95]

RIN 1105–AA36

Proposed Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

AGENCY: Department of Justice.

ACTION: Proposed Guidelines; Notice of Reopening of Comment Period.

SUMMARY: On April 12, 1995, the United States Department of Justice (DOJ) published Proposed Guidelines to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. These Proposed Guidelines may be found at 60 FR 18613, April 12, 1995. The original 90 day comment period expired on July 11, 1995.

The majority of states already have some form of sex offender registration. It is likely that most states will have to make at least minor changes to their existing systems in order to comply with the statutory requirements outlined in these guidelines. To ensure that the public has ample opportunity to fully review and comment on the proposed guidelines, we are reopening the comment period and will accept comments for an additional 45 days after publication of this notice.

DATES: Comments must be received by October 30, 1995.

ADDRESSES: Comments may be mailed to Bonnie J. Campbell, Office of the

Associate Attorney General, U.S. Department of Justice, Tenth and Pennsylvania Avenue, NW, Washington, DC 20530, 202–616–8894

Dated: September 5, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–22799 Filed 9–13–95; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

[INS No. 1725R–95]

Citizens Advisory Panel Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service) in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 101–6.1001–101–6.1035 (1992), has established a Citizens' Advisory Panel (CAP) to provide the Department of Justice with recommendations on ways to reduce the number of complaints of abuse made against employees of the Service, and to minimize or eliminate the causes for those complaints. This notice announces the CAP's forthcoming meeting and the agenda for the meeting.

DATES: October 25–27, 1995 at 8:00 a.m.

ADDRESSES: Wyndham Greenspoint Hotel, 12400 Greenspoint Drive, Salon A Meeting Room, Houston, TX 77060.

FOR FURTHER INFORMATION CONTACT: Susan B. Wilt, CAP Designated Federal Official (DFO), Immigration and Naturalization Service, Room 3260, Chester Arthur Building, 425 I Street NW., Washington, DC 20536, Telephone (202) 616–7072.

SUPPLEMENTARY INFORMATION: Pursuant to the charging language of the Senate Appropriations Committee Report 102–331 on the FY 1993 Budget for the Immigration and Naturalization Service, Department of Justice, the Service established a Citizens' Advisory Panel for the purpose of providing recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against employees of the Service and, most importantly, to minimize or eliminate the causes for those complaints. The CAP is authorized by the Attorney General to (1) accept and review civilian complaints made against Service employees, and (2) review the systems and procedures used by the Service for responding to such complaints. (February 11, 1994 at 59 FR 6658)

Summary of Agenda

The principal purpose of the meeting will include presentations and a general discussion of training development and education, the current training curriculum, and training policies and procedures for Service employees.

Public Participation

The CAP meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the CAP DFO at least 2 days prior to the meeting by contacting the DFO at (202) 514–2373. After October 20, 1995, contact Roberto Stanley at the Houston District INS Office at (713)–847–7950. Any hearing-challenged individuals wishing to attend please contact the DFO by October 19, 1995 so services can be arranged.

Any member of the public may file a written statement with the CAP DFO before the meeting. Materials submitted at the meeting, should be submitted in 20 copies. The CAP Chairperson will permit members of the public to present orel statements at the meeting with prior registration.

Minutes of the meeting will be available on request from the CAP DFO.

Dated: September 7, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–22909 Filed 9–13–95; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–087]

NASA Advisory Council, NASA–NIH Advisory Committee on Behavioral and Biomedical Research; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, NASA–NIH Advisory Committee on Behavioral and Biomedical Research.

DATES: September 28, 1995, 8:30 a.m. to 5:00 p.m.; and September 29, 1995, 8:00 a.m. to 12:00 p.m..

ADDRESSES: Room 9H40, NASA Headquarters, 300 E Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Arnauld Nicogossian, Code U, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0215.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, September 28, 1995, from 4:30 p.m. to 5:00 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the Office of Life and Microgravity Sciences and Applications Status
—Status of NASA–NIH Activities
—Neurolab Science
—Left Ventricle Assist Device
—International Space Station
—Digital Mammography
—New Science Policy
—Committee Discussion Regarding Future Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 7, 1995.

Danalee Green,

Chief, Management Controls Office, National Aeronautics and Space Administration.

[FR Doc. 95–22886 Filed 9–13–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* October 2–3, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after December 1995.

2. *Date:* October 2–3, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review proposals submitted to the September 15 deadline in Higher Education Humanities Focus Grants Program, submitted to the Division of Education, for projects beginning after April 1996.

3. *Date:* October 5–6, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review proposals submitted to the September 15 deadline in Higher Education Humanities Focus Grants Program, submitted to the Division of Education, for projects beginning after April 1996.

4. *Date:* October 11–12, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the September 15 deadline in Higher Education Humanities Focus Grants Program, for projects beginning after April 1996.

5. *Date:* October 11–12, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after December 1995.

6. *Date:* October 13, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the National Heritage Preservation Program Projects, submitted to the Division of Preservation and Access, for projects beginning after May 1, 1996.

7. *Date:* October 20, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the National Heritage Preservation Program Projects, submitted to the Division of Preservation and Access, for projects beginning after May 1, 1996.

8. *Date:* October 20, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Editions Program applications in History, submitted to the Division of Research Programs, for projects beginning after May 1, 1996.

9. *Date:* October 23, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Editions Program applications in Literature, the Arts and Philosophy, submitted to the Division of Research for projects beginning after May, 1996.

10. *Date:* October 24, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after May, 1996.

11. *Date:* October 25, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Translations and Editions Program applications in Studies of Africa and the Americans, submitted to the Division of Research Programs, for projects beginning after May, 1996.

12. *Date:* October 27, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: The meeting will review applications for the Documentation of Humanities Collections Projects, submitted to the Division of Preservation and Access, for projects beginning after May 1, 1996.

13. *Date:* October 30, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Translations Program applications in Middle Eastern and Asian Studies, submitted to the Division of Research Programs, for projects beginning after May 1, 1996.

14. *Date:* October 30, 1995.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after May 1, 1996.

David C. Fisher, Jr.

Advisory Committee Management Officer.

FR Doc. 95–22843 Filed 9–13–95; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Antarctic Conservation Act of 1978; Notice of Permit Modification Request Received

AGENCY: National Science Foundation.

ACTION: Notice of permit modification requests received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a permit modifications requested.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit modification by October 12, 1995. Permits may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1031.

DESCRIPTION OF PERMIT MODIFICATIONS REQUESTED:

1. The Foundation issued a permit (93–00B) to Dr. Wesley M. Weathers on November 2, 1993. The issued permit allows for the capture and release of seven hundred sixty-six Cape Petrels (*Daption capense*) and Snow Petrels (*Pagodrama nivea*) to conduct measurements over three consecutive breeding seasons. The project focuses on the feeding ecology and energetics of these two common surface-nesting petrels.

The permit holder requests to modify the permit to allow for the collection two additional species of petrels, Antarctic petrels (*Thalassoica antarctica*) and Southern Fulmars (*Fulmarus glacialoides*). The research protocol for these two additional species will be identical to that used on the Cape Petrels and Snow Petrels and samples sizes will also be identical. This modification was prompted by a request from the Australian Antarctic Division to have the permit holder to expand the scope of the research program to include the two additional species.

LOCATION: Prydz Bay, East Antarctica.

DATES: October 15, 1995-March 31, 1996.

2. The Foundation issued a permit (95–013) to Ron Naveen on September 7, 1994. The issued permit allows for the entry into Sites of Special Scientific Interest to catalogue the physical and biological characteristics of more than 60 locations visited in the Antarctic Peninsula. Cataloguing efforts include the inventory, marking, or photographing sites or to demarcate discrete groups, colonies, or plots of penguins, flying seabirds, or terrestrial plans.

The permit holder requests to modify the permit to allow for the collection of culmen measurements from penguin chicks in January/February. These measurements will help to more precisely determine the age of chicks and assist in determining productivity at the site. Culmen measurements will be taken at small creches on an opportunistic basis.

LOCATION: Various visitor sites in the Antarctic Peninsula Region, including a possible stop over at the research site at Admiralty Bay (SSSI #8).

DATES: October 15, 1995–March 1, 1996.

Nadene G. Kennedy,

Permit Office, Office of Polar Programs.

[FR Doc. 95–22876 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.
Date and Time: October 4, 1995, 8:00 a.m.-5:00 p.m.
Place: Room 340 and 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Darryl Gorman, SBIR Office, (703) 306–1390, or Ulrich Strom, MPS, (703) 306–1832, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.
Agenda: To review and evaluate Phase I Small business proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22877 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.
Date and Time: October 6, 1995, 8:00 a.m.-5:00 p.m.
Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contract Person: Ritchie Coryell, Program Director, SBIR Office, (703) 306–1390 or Deborah Crawford, Program Director, ECS, (703) 306–1339.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.
Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the government in the Sunshine Act.

Dated: September 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22878 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.
Date and Time: October 2, 1995, 8:00 a.m.–5:00 p.m.
Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Charles Hauer, SBIR Office, (703) 306–1390, or Debbie Kaminski, Program Director, CTS, (703) 306–1371, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.
Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22879 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.
Date and Time: October 2, 1995, 8:00 a.m.–5:00 p.m.
Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Ritchie Coryell, SBIR Office, (703) 306–1390, or Marvin White, Program Director, ECS, (703) 306–1339, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.
Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22880 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: October 3, 4, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ritchie Coryell, SBIR Office, (703) 306–1390, or Leonard Johnson, Program Director, GEO, (703) 306–1559, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22881 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation-#1194.

Date and Time: October 6, 1995, 8:00 a.m.-5:00 p.m.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ritchie Coryell, SBIR Office, (703) 306–1390, or Radhakishan Baheti, Program Director, ECS, (703) 306–1339, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22882 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: October 6, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ritchie Coryell, SBIR Office, (703) 306–1390, or Chen-Ching Liu, Program Director, ECS, (703) 306–1339, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22883 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: October 6, 1995, 8:00 a.m.-5:00 p.m.

Place: Room 340 and 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Darryl Gorman, SBIR Office, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22884 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: October 2, 1995, 8:00 a.m.–5:00 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ritchie Coryell, Program Director, SBIR Office, (703) 306–1390 or Marvin White, Program Director, ECS, (703) 306–1139.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support,

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22885 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date: October 4 & 5, 1995.

Time: 8:00 a.m. to 6:00 p.m. each day.

Place: IRIS Data Management Center, 1408 NE 45th Street, Seattle WA 98105–4505.

Type of Meeting: Closed.

Contact Person: Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 306–1558.

Purpose of Meeting: To provide advice and recommendations concerning the proposal submitted to NSF by the Incorporated Research Institutions for Seismology (IRIS).

Agenda: To review and evaluate the IRIS proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–22886 Filed 9–13–95; 8:45 am]

BILLING CODE 7555-01-M

POSTAL RATE COMMISSION

[Docket No. A95–18; Order No. 1074]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued September 8, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

In the Matter of: Hetland, South Dakota 57244 (Fern Melstad, Petitioner).

Docket Number: A95–18
Name of Affected Post Office: Hetland, South Dakota 57244
Name(s) of Petitioner(s): Fern Melstad
Type of Determination: Consolidation
Date of Filing of Appeal Papers: August 28, 1995
Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by September 12, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

August 28, 1995
  Filing of Appeal letter
September 8, 1995
  Commission Notice and Order of Filing of Appeal
September 22, 1995
  Last day of filing of petitions to intervene [see 39 C.F.R. 3001.111(b)]
October 2, 1995
  Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. 3001.115 (a) and (b)]
October 23, 1995
  Postal Service's Answering Brief [see 39 C.F.R. 3001.115(c)]
November 7, 1995
  Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. 3001.115(d)]
November 14, 1995
  Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]
December 26, 1995
  Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95–22790 Filed 9–13–95; 8:45 am]

BILLING CODE 7710-FW-P-M

POSTAL SERVICE

Manifest Analysis and Certification (MAC)

AGENCY: Postal Service.

ACTION: Notice of program.

SUMMARY: The U.S. Postal Service proposes to implement a voluntary annual certification program that evaluates the accuracy of certain manifest mailing system software products that calculate postage payment for specific mail class and rate categories.

To ensure the most effective design and implementation of the proposed program, the Postal Service is seeking comments from developers of manifest software products, users of such products, and other interested parties.

DATES: Comments must be received on or before October 16, 1995.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Mail Acceptance, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6808. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166, or Tom Amonette, (317) 464–6599.

SUPPLEMENTARY INFORMATION: Manifest mailing systems have been used for several years to calculate and document postage for mailings of identical- and/or nonidentical-weight mailpieces paid by permit imprints. Mailers rely on the computer software of these systems to accurately list the mailpieces by unique identification and to calculate individual postage rates and the total postage owed for the mailing of those pieces.

In April 1993, the Postal Service redesigned the manifest mailing system program to make it more flexible for mailers. These manifesting standards are described in USPS Publication 401, Guide to the Manifest Mailing System. There is no standardized process to approve manifest mailing software products for quality and accuracy. To ensure such, the approval process occurs at each site where a mailer installs a system. This process is administered by the Postal Service at the district level by the manager of Customer Service Support and at the headquarters level by the manager of the rates and classification service center serving that district.

Many vendors of manifest mailing software have expressed concern that their products are quickly approved for mailers at some sites but delayed at other sites. These vendors have requested a standardized software approval process from site to site, similar to the process currently used for presort software and address matching software.

To that end, the Manifest Analysis and Certification (MAC) program is being proposed. The Postal Service does not propose that the use of MAC-certified software be mandatory for calculating postage with a manifest mailing system. Instead, this program will be voluntary and open to all eligible developers of manifest mailing software products that prepare and document manifest mailings according to the standards in the Domestic Mail Manual (DMM), the International Mail Manual (IMM), and USPS Publication 401, Guide to the Manifest Mailing System. The program will be available to test products configured for personal, midrange, or mainframe computers. Certification will assure users of MAC-certified products that the software, if used properly, will perform its intended function according to Postal Service standards in the DMM, the IMM, and USPS Publication 401, Guide to the Manifest Mailing System. Certification will also ensure that Postal Service facsimile forms and other supporting mailing documentation generated by such software have been evaluated and approved.

Mailers will significantly benefit from the MAC program through a simplified and standardized application and approval process for their manifest mailing systems. Currently, the relevant software and the documents produced must be tested and approved at each implementation site. Under the MAC program, each certified software version will be preapproved for implementation and will not require site-by-site testing and approval. If a mailer uses certified software, the approving post office will not be required to validate its effectiveness and accuracy. The post office approval of the system will be limited to a review that ensures that the mailer has installed the system properly and implemented effective quality control procedures.

Definitions

For purposes of MAC certification, "eligible manifest mailing software product developers" are those firms that develop a manifest mailing software product for commercial sale or use. Initially, MAC certification will not be available for manifest mailing software developed by companies for in-house use only; however, those products might be included during a later phase of the program.

A "manifest mailing software product" is a complete set of computer program modules that accurately list manifested mailpieces and correctly calculate postage for all pieces included on the manifest, according to the standards in the DMM or IMM for one or more classes and rates of mail. The software must produce a manifest and facsimile mailing statements and other USPS forms as required by DMM or IMM standards for the services requested.

Categories of Mail Under MAC

During the initial phase of the MAC program, only software generating itemized single-piece domestic and international mail manifests will be tested and certified. The program will be expanded later to include bulk-rate itemized and batch-processed manifests.

Application and Certification Process

Eligible manifest mailing software product developers will apply for MAC certification of their products in specific categories or package groups. (The list of certification package groups is shown in the tables that follow.) On receipt of the application, the Postal Service will send the applicant the appropriate electronic test file of information describing the pieces in the test mailing for which postage is to be calculated. The software developer will run the test file through the developer's software and print documentation that will list the mailpieces, report the postage for each mailpiece and the total postage owed for the entire mailing, and produce facsimile mailing statements and other required documentation.

The developer will return the generated documentation, along with the original test file, to the USPS National Customer Support Center (NCSC) within a specified period. For the category tested (basic or optional), the Postal Service will evaluate the accuracy of the documentation (that is, the listing of mailpieces, classes, rates, and postage). In addition, the accuracy, format, and content of facsimile mailing statements and any other USPS form (if applicable) will be evaluated.

If the Postal Service determines that the developer's manifest mailing product meets the applicable standards, the developer will be issued a MAC certificate describing the package and options (see following section and tables) for which the product has been certified. The certification will be valid for 1 year, or until the conclusion of the next MAC testing period. The initial MAC testing period will be from November 1995 through January 1996, as further detailed in this notice. Subsequent test periods will begin in August and end in December of the same year.

Certification Package Options

The Postal Service proposes to test and certify manifest mailing software in specific categories (package groups). To be MAC-certified, vendors must, at a minimum, accurately manifest the specific class and rate categories shown in the following table "Basic Package." Optional certification categories will be available for those vendors who offer a greater range of manifest capabilities, as shown in the tables under "Optional Packages." To be certified for a specific package (either basic or optional), the manifest mailing software product must accurately calculate postage and applicable fees; moreover, it must produce required documentation for each class, rate, and processing category listed in that package. The following tables describe the basic package and optional packages that will be tested and certified. All categories in each package are required for certification status for that package.

Single-Piece Rate Mail Certification Packages: Basic and Optional

Basic Package

First-Class Mail (1 to 11 ounces) [1]
Fourth-Class Bound Printed Matter
Fourth-Class Library Rate
Fourth-Class Parcel Post (Intra-BMC)
Fourth-Class Parcel Post (Inter-BMC)
Priority Mail
Priority Mail Flat Rate
Single-Piece Third-Class Mail [1]
Special Fourth-Class Mail

Note: Computerized mailing statement facsimiles are required for all classes and rates.

[1] Must calculate nonstandard surcharge when applicable.

Optional Packages

Option 1: Fourth-Class Mail

Parcel Post Destination Bulk Mail Center (DBMC) [1]

[1] Must calculate nonstandard surcharge when applicable.

Option 2: Special Services

Certified
COD (collect on delivery)
Insured
PAL (parcel air lift)
Registered With Insurance
Registered Without Insurance
Restricted Delivery
Return Receipt [1]
Return Receipt for Merchandise [1]
Special Delivery
Special Handling

Note: Computerized PS Form 3877 facsimiles are required for these services.

[1] Must calculate fee for signature and date service and fee for signature, date, and delivery address service.

Option 3: International Mail

Air
  Letter
  Postcard
Air and Surface
  Books and Sheet Music
  M–Bag
  Parcel Post
  Printed Matter
  Small Packets

Note: Computerized international mailing statement facsimiles are required.

Option 4: International Special Services

Insured
Registered
Return Receipt

Note: Computerized PS Form 3877 facsimiles are required for these services.

1996 Certification Test Period

All vendors desiring to have their software certified for 1996 must submit their applications on or after November 1, 1995; moreover, they must complete the test files (or any retest file) and return the answered test files by the closing date of January 31, 1996. Test files received and evaluated after that date will be assessed an out-of-cycle fee (see below).

Application Materials

To apply for MAC approval, eligible manifest mailing software product developers will request an order form and technical guide from the following address: ATTN MAC Program Department, National Customer Support Center, US Postal Service, 6060 Primacy Pky Ste 201, Memphis TN 38188–0001.

The form and guide may also be ordered by telephone at 1–800–331–5746. Only one form will be necessary, regardless of the number of manifest packages for which application is being made.

MAC Test Files

The MAC test files for each package contain a specific number of records that will describe the type and destination of a specific mailpiece. Each record will include:

- Addressee's name.
- Delivery address (error-free).
- City and state.
- ZIP Code.
- Class of mail.
- Processing category (machinable or nonmachinable for parcels).
- Weight (in pounds and ounces).
- Special service (if applicable to certification package).
- Dollar value (for special services such as COD, insured, or registered).
- Piece identification number (ID #).
- Country code (for international mail).

The test files will be configured in the media listed in the table below.

Magnetic tape	Cartridge	Diskette
6250 BPI EBCDIC 6250 BPI ASCII 1600 BPI EBCDIC 1600 BPI ASCII	IBM 3480 38K	3½", 1.44 Megabyte MS–DOS 5¼", 1.2 Megabyte MS–DOS

Processing Test Files and Providing Documentation

Once received, the developer will process the test files at their location with the manifest mailing product for each manifest package being examined. The developer will generate hard-copy documentation to support the accuracy of the manifest listing of the mailpieces by identification number and the correct postage payment for those pieces. This documentation will include:

- An itemized manifest listing (formatted as described in USPS Publication 401, Guide to the Manifest Mailing System).
- Facsimile mailing statements, summarizing the postage payment by rate and by total postage for each class of mail.
- PS Form 3877, Firm Mailing Book for Accountable Mail (if applicable for mailpieces with special services).
- Sample address labels (if printed by the system), showing the correct permit imprint for class and rate, unique identification number, and any applicable endorsement.

Evaluating MAC Tests

The Postal Service will evaluate the required hard-copy reports returned by the software product developer. This evaluation will focus on the accuracy, content, and clarity of the manifest listing format; the accuracy of postage and applicable fees for special services for each individual mailpiece and for total postage and fees; and the accuracy and format of facsimile mailing statements, PS Forms 3877 (if applicable), and address labels printed by the system.

More than one answer can be right for a particular test question. For example, a test question might indicate an insured mailpiece with a dollar value over the maximum dollar value allowed. The answer might be to assign either no insurance to that piece or insurance for the highest allowable value. Multiple correct answers will be accepted based on current DMM or IMM standards applicable to the particular test question. To be MAC-certified, the results must be in complete accord with the mail classification standards in the DMM and IMM and with the documentation standards in USPS Publication 401, Guide to the Manifest Mailing System, applicable at the time of the test.

MAC Certification

Upon successful test evaluation, developers will be contacted by the Postal Service in writing and issued a MAC certificate. It will note the specific software tested, a description of the package certified, and the dates of certification and expiration. At the conclusion of the test period, a list of MAC-certified manifest mailing software product developers will be published in February 1996, and in January of each following year, in the Postal Bulletin or other publication. The list will include the developer's name, approved product names, version numbers, certified packages, and a company contact name and telephone number. Vendor software not certified before January 31, 1996, or before December 31 of following years, will not be included.

MAC certification will be valid for 1 year or until the next MAC cycle. For those choosing to test during the normal test cycle, MAC certification will be valid from February 1 to December 31, 1996, for the initial MAC cycle and from January 1 to December 31 in following years. Out-of-cycle MAC certifications will expire at the end of the next normal test cycle (for example, a certification obtained in June 1996 will expire in December of the same year).

MAC Recertification

If a manifest mailing software product developer makes significant changes to its product within the 12 months following certification, MAC certification will not remain valid. Developers initiating such product changes must apply for recertification for this modified product. Examples of a significant change are a key alteration of the product's basic mailpiece listing and postage calculation logic; a major change in the content, layout, format, or availability of computer-generated documentation or facsimiles; or a modification that results in significant differences in software operator use.

Some software changes will not be significant enough to require recertification. However, whenever any change is made to a previously certified product, MAC-certified manifest mailing software product developers will be required to notify the Postal Service to determine whether recertification is necessary. To accommodate mailing industry needs to expedite the release of improved products, the Postal Service will provide a toll-free telephone number to inform developers whether the changes will warrant recertification.

DMM- or IMM-Initiated MAC Cycle

Significant changes in manifest mailing preparation standards might require manifest mailing software product developers to modify their products enough to trigger a recertification or a DMM- or IMM-initiated MAC cycle. To provide time for recertification, the Postal Service will attempt to delay implementation of significant changes to manifest mailing standards (those deemed significant enough to require recertification) until 120 days after the final date of notice of the change, whenever possible. (Some changes, such as those resulting from congressional action or Postal Rate Commission proceedings, may require more immediate implementation.)

If the Postal Service conducts MAC testing out of the normal cycle (October 1 through December 31) to accommodate such DMM or IMM changes, manifest mailing software products tested and certified during this period will maintain certification for 1 year beyond the next normal test period. For instance, if a DMM change takes effect May 1996, a manifest mailing product that was MAC-certified in July 1996 (out of cycle to meet the new standard) will be issued a MAC certificate valid from July 1996 to December 1997 (unless further DMM or IMM changes warranted significant software updating).

Certification Fees

Participation in the MAC program will be free of charge during the normal testing cycle and in those instances when a DMM- or IMM-initiated MAC cycle is conducted. A fee of $250.00, however, will be charged for those participating in the MAC program outside the normal test cycle.

MAC Test Failures

Participants will receive notification of errors during MAC test evaluations so that retesting can be done within the normal MAC cycle. The first two attempts for a specific category will be free of charge. All subsequent certification attempts will be charged the out-of-cycle fees.

Standardization of Formats and Test Results

The Postal Service does not propose to mandate the standardization of documentation, except to the extent required in USPS Publication 401, Guide to the Manifest Mailing System. The Postal Service believes, however, that voluntary standardization would enhance the approval and certification process and simplify the acceptance of manifest mailings.

In the future, the Postal Service will offer the option for the manifest mailing product developers to return manifest test files in an electronic file structure. This will allow the test to be analyzed and graded electronically which will speed the approval process and also make it easier to accept manifests electronically at business mail entry units. This electronic file format will be developed in the near future. Although, not a specific part of this proposal notice, the Postal Service requests comments on this issue.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–22889 Filed 9–13–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36200; International Series Release No. 851]

List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

September 7, 1995.

Foreign private issuers with total assets in excess of $5,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to registration under section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* (the "Act").[1]

Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) provides an exemption from registration under Section 12(g) of the Act with respect to a foreign private issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer (1) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed or is required to distribute to its security holders.

On October 6, 1983, the Commission revised Rule 12g3–2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on an automated inter-dealer quotation system (which includes the Nasdaq stock market).[2] The Commission grandfathered indefinitely securities of non-Canadian issuers in compliance with the information-supplying exemption as of October 6, 1983 and quoted in Nasdaq on that date.[3] The Commission extended the exemption to Canadian securities only until January, 1986.

When it adopted Rule 12g3–2 and other rules relating to foreign securities,[4] the Commission indicated that from time to time it would issue lists showing those foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.[5] The purpose of the present release is to call to the attention of brokers, dealers and investors that some form of relatively current information concerning the foreign issuers included on the following list is available in the public files of the Commission.[6] The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[7] The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers.[8]

Any questions regarding Rule 12g3–2 or the list included herein should be directed to Frank G. Zarb, Jr., Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 ((202) 942–2990). Requests for copies of the documents in the files should be directed to the Public Reference Room, Securities and Exchange Commission, Washington, D.C. 20549 ((202) 942–8090).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Issuer name	Country	File No.
A.C.T. Industrial Corp	Canada	82–1071
A.L.I Technologies Inc	Canada	82–3991
AAPC Ltd	Australia	82–3688
AB Astra	Sweden	82–3299
ABN AMRO Holding N.V	Netherlands	82–3246
ADI Technologies	Canada	82–3438
AGA AB	Sweden	82–800
AGC Americas Gold Corp	Canada	82–2622
AO TD GUM	Russia	82–4132
AQM Automotive Corp	Canada	82–3734
ATS Wheel Inc	Canada	82–1373
AVL Information Systems Inc	Canada	82–4010
AVVA Technologies Inc	Canada	82–3922
Aaron Oil Corp	Canada	82–3473
Abaddon Holdings Inc	Canada	82–3025
Ace Developments Ltd	Canada	82–2383
Adastral Resources Ltd	Canada	82–2124
Adex Mining	Canada	82–2796
Advanced Info Services	Thailand	82–3236
Advent Communications Corp	Canada	82–3675
Aerovias de Mexico S.A	Mexico	82–3195
Afrikander Lease Ltd	South Africa	82–245
Agen Ltd	Australia	82–2330
Air Canada	Canada	82–2548
Airboss Ltd	Australia	82–3104
Airboss of America Corp	Canada	82–2793
Akademia Enterprises Inc	Canada	82–4035
Akash Ventures Inc	Canada	82–695
Alantra Venture Corp	Canada	82–3307
Albert Fisher Group PLC	United Kingdom	82–1020
All Nippon Airways Co	Japan	82–1569
All North Resources Ltd	Canada	82–1646
Allan Resources Ltd	Canada	82–3403
Allied Colloids Group PLC	United Kingdom	82–4038
Allied Domecq PLC	United Kingdom	82–878
Allmed International Investments	Canada	82–1064
Almaden Resources Corp	Canada	82–2118
Alpargatas, S.A.I.C	Argentina	82–3122
Alpha Airports Group PLC	United Kingdom	82–3694
Alpha Credit Bank A.E	Greece	82–3399
Alpine Exploration Corp	Canada	82–1856
Alpine Oil Services Corp	Canada	82–3969
Altai Resources, Inc	Canada	82–2950
AmSteel Corp Berhad	Malaysia	82–3318
Amcorp Industries Inc	Canada	82–2991
Amer Group Ltd	Finland	82–1544
America West Capital Corp	Canada	82–3435
American Wollastonite Mining Corp	Canada	82–2887
Amir Ventures Corp	Canada	82–1840
Amoy Properties Ltd	Hong Kong	82–3410
Ampolex Ltd	Australia	82–3078
Andhra Valley Power Supply Co	India	82–3732
Angkasa Marketing Berhad	Malaysia	82–3319
Anglo American Corp. of S. Africa	South Africa	82–97
Anglo American Gold Investment Co	South Africa	82–146
Anglo American Platinum Corp	South Africa	82–4040
Anglo Irish Bank Corp	Ireland	82–3791

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[1] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933, 15 U.S.C. 77a et seq.

[2] Exchange Act Release No. 20264 (Oct. 6, 1983).

[3] If, however, the securities are delisted from an automated inter-dealer quotation system or the issuer fails to maintain or otherwise meet the requirements of the exemption, the grandfather provision will cease to apply.

[4] Exchange Act Release No. 8066 (Apr. 28, 1967).

[5] Exchange Act Release No. 34477 (Aug. 2, 1994) contained the last such list.

[6] Inclusion of an issuer on the following list is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of the exemption provided by Rule 12g3–2(b). The list does identify those issuers that both have claimed the exemption and have submitted relatively current information to the Commission as of September 1, 1995.

[7] Paragraph (a)(4) of Rule 15c2–11 [17 CFR 240.15c2–11] requires a broker-dealer initiating a quotation for securities of a foreign private issuer to maintain in its files, and to make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

[8] See, e.g., Hanly v. SEC, 415 F.2d 589 (2nd Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

Issuer name	Country	File No.
Antares Mining and Exploration Inc	Canada	82–3858
Anthian Resources Corp	Canada	82–4096
Anvil Resources Ltd	Canada	82–1244
Apasco, S.A. de C.V	Mexico	82–3103
Applied Inventories Management Inc	Canada	82–3763
Approach Resources Inc	Canada	82–2406
Aquaterre Mineral Development Ltd	Canada	82–3945
Aquiline Resources Inc	Canada	82–2857
Arapahoe Mining Corp	Canada	82–842
Arbor Resources Inc	Canada	82–3017
Argenta Systems Inc	Canada	82–1320
Argosy Mining Corp	Canada	82–3849
Arjo AB	Sweden	82–3660
Armada Gold Corp	Canada	82–3965
Arnoldo Mondadori Editori S.p.A	Italy	82–3998
Arvind Mills Ltd	India	82–3708
Asea AB	Sweden	82–738
Ashanti Goldfields Co	Ghana	82–3976
Ashton Mining Ltd	Australia	82–3577
Asia Fiber Co. Ltd	Thailand	82–2842
Astra Compania Argentina de Petroleo S.A	Argentina	82–3930
Athabaska Gold Res. Ltd	Canada	82–1906
Athena Gold Corp	Canada	82–2226
Atlas Copco AB	Sweden	82–812
Atlas Pacific Ltd	Australia	82–1852
Atna Resources Ltd	Canada	82–1556
Auridiam Consolidated N.L	Australia	82–3452
Auspex Gold Ltd	Canada	82–2778
Australian Hydrocarbons	Australia	82–856
Australian National Industries Ltd	Australia	82–3351
Autoliv Aktiebolog	Sweden	82–3810
Avcan Global System Inc	Canada	82–3955
Aviovazbank	Russia	82–3972
B.A.T. Industries	United Kingdom	82–33
B.Y.G. Natural Resources Inc	Canada	82–2038
BAA PLC	United Kingdom	82–3372
BBC Brown Boveri Ltd	Switzerland	82–2871
BC Gas Inc	Canada	82–3909
BHF Bank	Germany	82–3404
BMD Enterprises Ltd	Canada	82–1994
BMR Gold Corp	Canada	82–2246
BTR PLC	United Kingdom	82–898
BWI Resources Ltd	Canada	82–2914
BY & G Ventures Corp	Canada	82–1342
Bahia Sul Celulose S.A	Brazil	82–3793
Banca Comerciale Italiana	Italy	82–3707
Banco Espanol de Credito S.A	Spain	82–2814
Banco Mexicano	Mexico	82–3508
Banco de Bogota	Colombia	82–3973
Banco La Previsora S.A	Equador	82–4133
Banco del Sud S.A	Argentina	82–3830
Bandai Co	Japan	82–3919
Banff Resources Ltd	Canada	82–3977
Bank of Austria AG	Austria	82–3407
Bank of East Asia Ltd	Hong Kong	82–3443
Bank of Fukuoka	Japan	82–1117
Bank of Nova Scotia	Canada	82–132
Bank of Scotland	United Kingdom	82–3240
Bankinter S.A	Spain	82–2972
Bar Resources Ltd	Canada	82–1047
Bashaw Holdings Ltd	Canada	82–4134
Bayer AG	Germany	82–3948
Bayerische Hypotheken-und Wechsel-Bank	Germany	82–3777
Beatrix Mines Ltd	South Africa	82–1054
Beaufield Resources Inc	Canada	82–1557
Beckett Technologies Corp	Canada	82–4007
Bergesen d.y. A/S	Norway	82–1697
Berjaya Group Berhad	Malaysia	82–2677
Berjaya Industrial Berhad	Malaysia	82–2580
Bespak PLC	United Kingdom	82–3349
Big I Developments Ltd	Canada	82–1094
Big Valley Resources Inc	Canada	82–1600
Biota Holdings Ltd	Australia	82–3570
Blue Circle Industries PLC	United Kingdom	82–927
Blue Range Resource Corp	Canada	82–3302
Blyvooruitzicht Gold Mining Co	South Africa	82–69
Body Shop International PLC	United Kingdom	82–3534
Böhler Uddeholm AG	Austria	82–4069
Bomax Resources Corp	Canada	82–1562
Bombardier	Canada	82–3123
Bombril S.A	Brazil	82–3651
Booker PLC	United Kingdom	82–1531
Boots Company PLC	United Kingdom	82–788
Borealis Exploration Ltd	Canada	82–1656
Boron Chemicals International Ltd	Canada	82–3496
Boswell International Technologies	Canada	82–863
Bougainville Copper Ltd	New Guinea	82–1133
Boulder Gold N.L	Australia	82–1650
Bowater Industries PLC	United Kingdom	82–3
Bracken Mines Ltd	South Africa	82–219
Braiden Resources Ltd	Canada	82–2121
Brandselite International Corp	Canada	82–4042
Brascan Ltd	Canada	82–4
Bre-x Minerals Ltd	Canada	82–2750
Breckenridge Resources Ltd	Canada	82–1647
Bresea Resources Ltd	Canada	82–1377
Briana Bio-Tech Inc	Canada	82–3073
Bridge Oil Ltd	Australia	82–2167
Bridgestone Corp	Japan	82–1264
Brierly Investments Ltd	New Zealand	82–1093
Brimstone Gold Corp	Canada	82–2896
Bristo Explorations	Canada	82–2610
British Aerospace PLC	United Kingdom	82–3138
Broadwater Development Ltd	Canada	82–2631
Brunswick Mining and Smelting Corp	Canada	82–2827
Buffelsfontein Gold Mining Co	South Africa	82–302
Burmah Castrol PLC	United Kingdom	82–5
Burns Philip & Co	Australia	82–1565
C.A. Venezolana de Pulpa y Papel	Venezuela	82–3202
C.E.L. Industries Ltd	Canada	82–3421
C.P. Pokphand Co. Ltd	Bermuda	82–3260
CAPEX S.A.	Argentina	82–3862
CCL Industries Inc	Canada	82–2549
CDL Hotels International Ltd	Cayman Islands	82–3667
CIBA-GEIGY Ltd	Switzerland	82–2918
CML Microsystems PLC	United Kingdom	82–3176
CPX Industries Inc	Canada	82–3522
CS Holding	Switzerland	82–3477
CSI Credit Systems International Inc	Canada	82–3912
CSK Corp	Japan	82–781
CSL Limited	Australia	82–3785
CT&T Telecommunications Inc	Canada	82–3947
CTM Citras S.A.	Brazil	82–3555
Cabo Ventures Inc	Canada	82–1401
Cactus West Explorations Ltd	Canada	82–3268
Calais Resources Inc	Canada	82–3525
Calco Resources Inc	Canada	82–1914
Call 900 Inc	Canada	82–3663
Cambridge Environmental Systems	Canada	82–3474
Camelot Industries Inc	Canada	82–3288
Camus PLC	United Kingdom	82–3802
Canadian Conquest Explorations Inc	Canada	82–2473
Canadian Frobischer Resources	Canada	82–3254
Canadian Imperial Bank of Commerce	Canada	82–103
Canal Plus	France	82–2270
Canmark International Resources, Inc	Canada	82–2752
Capilano International Inc	Canada	82–3094
Captive Air International Inc	Canada	82–2367
Cardo AB	Sweden	82–4020
Caribbean Cement Company	Jamaica	82–3715
Caribgold Resources Inc	Canada	82–4104
Carlin Gold Co	Canada	82–1770
Cartwright Capital Ltd	Canada	82–3966
Casamiro Resources Corp	Canada	82–1431
Cascadia Technologies Ltd	Canada	82–3738
Cash Canada Pawn Corp	Canada	82–2728
Cash Resources Inc	Canada	82–4106
Castle Rock Exploration Corp	Canada	82–2472

Issuer name	Country	File No.
Cathay Pacific Airlines Ltd	Hong Kong	82–1390
Cathedral Gold Corp	Canada	82–1990
Celanese Canada Ltd	Canada	82–171
Cementos Lima	Peru	82–3911
Cementos Paz del Rio S.A	Colombia	82–3904
Cemex S.A	Mexico	82–2744
Cenco Petroleum Ltd	Canada	82–3679
Centrais Electricas Brasileiras S.A	Brazil	82–3937
Centrais Electricas de Santa Caterina	Brazil	82–3795
Central Costanera S.A	Argentina	82–3868
Central Pacific Minerals N.L.	Australia	82–354
Ceramica Carabobo C.A.	Venezuela	82–3097
Ceval Alimentos S.A	Brazil	82–3855
Challenger Minerals Ltd	Canada	82–3666
Champion Technology Holdings Ltd	Cayman Islands	82–3442
Chandeleur Bay Production Co	Canada	82–2897
Charter Consolidated PLC	United Kingdom	82–233
Chase Resource Corp	Canada	82–1976
Chauvco Resources Ltd	Canada	82–3316
Cheng Hsong Holding Ltd	Bermuda	82–3953
Cheung Kong (Holdings) Ltd	Hong Kong	82–4138
China Growth Enterprises Corp	Canada	82–2448
China Light & Power Co	Hong Kong	82–1197
China Overseas Land and Investment Ltd	Hong Kong	82–3987
China Pharmaceutical Enter. and Inv. Co	Hong Kong	82–4135
China Resources Enterprise Ltd	Hong Kong	82–4177
China Stategic Holdings Ltd	Hong Kong	82–3596
China Steel Corp	Taiwan	82–3296
Chinese Estates Holdings Ltd	Bermuda	82–3954
Christiana Bank OG Kredithasso	Norway	82–3018
Christies International PLC	United Kingdom	82–1180
Churchill Resources Ltd	Philippines	82–3927
Ciadea S.A	Argentina	82–3746
Ciments Francais	France	82–3336
Cimtek Integrated Manufacturing Tech	Canada	82–1680
Circa Telecommunications Inc	Canada	82–3128
City Developments Ltd	Singapore	82–3672
Clarins	France	82–2960
Clarion Environmental Technologies Inc	Canada	82–3533
Claude Resources Inc	Canada	82–1742
Climax International Co	Bermuda	82–4062
Cluff Resources	United Kingdom	82–3894
Coca-Cola Amatil Ltd	Australia	82–2994
Cogenix Power Corp	Canada	82–2990
Colony Pacific Explorations Ltd	Canada	82–1115
Colossal Resources Corp	Canada	82–3659
Columbia Fuels Inc	Canada	82–3365
Comac Food Group Inc	Canada	82–2456
Cominco Ltd	Canada	82–107
Commerzbank AG	Germany	82–2523
Commonwealth Bank of Australia	Australia	82–3612
Compagnie Financiere Richemont AG	Switzerland	82–4102
Compagnie Generale des Eaux	France	82–3814
Compagnie Generale des Est. Michelin	France	82–3354
Compagnie de Suez	France	82–2946
Companhia Energetica Minas Gerais	Brazil	82–3465
Companhia Energtica de Sao Paulo	Brazil	82–3691
Companhia Paranaense de Energica-Copel	Brazil	82–3730
Companhia Siderurgica Belgo-Mineirc	Brazil	82–3771
Companhia Siderurgica de Tubarao	Brazil	82–3842
Companhia Suzano De Papel E Celulose	Brazil	82–3550
Compania Naviera Perez Companc	Argentina	82–3295
Companion Building Material (Holding)	Hong Kong	82–3982
Compass Resources Ltd	Canada	82–2041
Con-Space Communications Ltd	Canada	82–3378
Concept Industries Inc	Canada	82–4003
Concert Industries Ltd	Canada	82–1003
Concordia Bau und Boden AG	Germany	82–3282
Cong Industries Inc	Canada	82–2445
Connecticut Development Corp	Canada	82–3238
Conpanhia Acos Especiais Itabira Acesita	Brazil	82–3769
Consolidated Electric Power Asia Ltd	Bermuda	82–3693
Consolidated Eurocan Ventures Ltd	Canada	82–2948
Consolidated Magna Ventures Ltd	Canada	82–1370

Issuer name	Country	File No.
Consolidated Newjay Resources Ltd	Canada	82–4066
Consolidated Pine Channel Gold Corp	Canada	82–2583
Consolodated First Northern Devlp. Inc	Canada	82–3788
Continental AG	Germany	82–1357
Continental Caretech Corp	Canada	82–3056
Continental Precious Minerals Inc	Canada	82–3358
Controladora Comercial Mexicana	Mexico	82–3177
Copene Petroquimica do Nordeste S.A	Brazil	82–3367
Corporacion Financiera Nacional ... S.A	Colombia	82–3989
Corporacion Financiera del Valle S.A	Colombia	82–3437
Corporacion Geo S.A. de C.V	Mexico	82–3870
Corporacion Industrial Sanluis S.A	Mexico	82–2867
Corriente Resources Inc	Canada	82–3775
Cosco Investment (Singapore) Ltd	Singapore	82–4033
Costello Resources	Canada	82–1918
Credit Lyonnais	France	82–3662
Crestar Energy Inc	Canada	82–3641
Cross Lake Minerals Ltd	Canada	82–2636
Cultor Ltd	Finland	82–1643
Curion Venture Corp	Canada	82–3602
Curlew Lake Resources Inc	Canada	82–1978
Cyclone Capital Corporation	Canada	82–2459
Cyn Tech Ventures Ltd	Canada	82–2675
Czar Resources Ltd	Canada	82–3136
DBA Telecom Corp	Canada	82–3736
DSM N.V	Netherlands	82–3120
Da Capo Resources Ltd	Canada	82–3931
Dai'ei Inc	Japan	82–230
Daibira Corp	Japan	82–3455
Dairy Farm International Holdings Ltd	Hong Kong	82–2962
Daiwa Danchi Co. Ltd	Japan	82–1218
Darius Technology Ltd	Canada	82–1267
Datawave Vending Inc	Canada	82–1901
De Beers Centenary AG	Switzerland	82–3069
De Beers Consolidated Mines Ltd	South Africa	82–91
Deelkraal Gold Mining Co.	South Africa	82–246
Deep Basin Petroleum Corp	Canada	82–2811
Delmay Energy Corp	Canada	82–3412
Delpet Resourses Ltd	Canada	82–1535
Demand Gold Ltd	Canada	82–2033
Den Danske Bank af 1871 AG	Denmark	82–1263
Den Norske Bank AS	Norway	82–3967
Dentonia Resources Ltd	Canada	82–627
Derlan Industries Ltd	Canada	82–2959
Desarrollo Industrial Latinoamericano	Mexico	82–4075
Desarrollo Urbano Integral S.A. de S.V	Mexico	82–4074
Desarrollo de Infraestructura S.A.	Mexico	82–4072
Desert Sun Mining Corp	Canada	82–1349
Deutsche Bank AG	Germany	82–334
Development Bank of Singapore	Singapore	82–3172
Diamond International Industries Inc	Canada	82–1314
Diasyn Technologies Ltd	Canada	82–2295
Dinali Petroleums Ltd	Canada	82–3750
Direct Choice T.V. Inc	Canada	82–4136
Discovery West Corp	Canada	82–1046
Distral S.A	Colombia	82–3983
Dixons Group PLC	United Kingdom	82–3331
Dofasco Ltd	Canada	82–3226
Dominguez & Cia Caracas S.A	Venezuela	82–3429
Dominion Mining Ltd	Australia	82–433
Doornfontein Gold Mining Co	South Africa	82–213
Dorbrana Resources Ltd	Canada	82–3944
Dorel Industries Inc	Canada	82–2800
Double Creek Mining Corp	Canada	82–4115
Dresdner Bank AG	Germany	82–229
Driefontein Consolidated Ltd	South Africa	82–124
Dupont Canada Inc	Canada	82–19
Durban Roodeporte Deep Ltd	South Africa	82–156
Dynamic Ventures Ltd	Canada	82–4080
El Environmental Engineering Concepts	Canada	82–1598
EMR Microwave Technology Corp	Canada	82–4143
Eaglecrest Explorations Ltd	Canada	82–603
East Daggafontein Mines Ltd	South Africa	82–42
East India Hotels Ltd	India	82–3921

Issuer name	Country	File No.
East Midlands Electricity PLC	United Kingdom	82–3029
East Rand Gold & Uranium Co	South Africa	82–289
East Rand Proprietary Mines Ltd	United Kingdom	82–239
East West Resources Corp	Canada	82–787
Eastern Electricity PLC	United Kingdom	82–3040
Eastfield Resources Ltd	Canada	82–1929
Ecuadorean Copperfields Inc	Ecuador	82–966
Eisai Co. Ltd	Japan	82–4015
El Bravo Gold Mining Ltd	Canada	82–1888
Elandsrand Gold Mining Co	South Africa	82–266
Eldon Resources Ltd	Canada	82–3191
Eldorado Corp	Bermuda	82–3578
Elite Industries Ltd	Israel	82–2958
Email Limited	Australia	82–2951
Emerald Isle Resources Inc	Canada	82–1479
Emperor (China Concepts) Inv. Ltd	Bermuda	82–3886
Emperor Mines Ltd	Australia	82–969
Empire Alliance Properties Inc	Canada	82–2215
Engen Limited	South Africa	82–3807
Equus Petroleum Corp	Canada	82–1302
Erciyas Biracilik ve Malt Sanayi A.S	Turkey	82–4144
Eros Entertainment Inc	Canada	82–1931
Eskom	South Africa	82–4028
Esselte AB	Sweden	82–1355
Eucatex S.A. Industria y Commercio	Brazil	82–3618
Eurocontrol Technics Inc	Canada	82–3939
European Garnet Ltd	Canada	82–2169
European Technologies International Inc	Canada	82–3571
European Ventures Ltd	Canada	82–3491
Exall Resources Ltd	Canada	82–3535
F.H. Faulding & Company Ltd	Australia	82–2882
FCA International Ltd	Canada	82–1310
Faber Group Berhad	Malaysia	82–3505
Fairfield Minerals Ltd	Canada	82–1784
Fairhaven International Ltd	United Kingdom	82–650
Fairmile Aquisitions Inc	Canada	82–3717
Fairmont Resources Inc	Canada	82–3492
Fairway Industries Ltd	Canada	82–1962
Faith Mines Ltd	Canada	82–3597
Falcon Point Resources Ltd	Canada	82–1713
Falcon Ventures International Corp	Canada	82–1748
Falconbridge Ltd	Canada	82–3920
Fancamp Resources Ltd	Canada	82–3929
Far-Ben S.A de C.V.	Mexico	82–3600
Farm Energy Corp	Canada	82–3188
Fastlane International Enterprises Inc	Canada	82–1334
Fedsure Holdings Ltd	South Africa	82–3839
Fenway Resources Ltd	Canada	82–2303
Finance One Public Co. Ltd	Thailand	82–3536
First Australian Resources N.L	Australia	82–3494
First Choice Industries Ltd	Canada	82–2229
First Pacific Co. Ltd	Hong Kong	82–836
Fisons PLC	United Kingdom	82–202
Fletcher Challenge Canada Ltd	Canada	82–668
Flughafen Wien AG	Austria	82–3907
Fokker NV	Netherlands	82–3014
Fomento Economico Mexicana	Mexico	82–3009
Fomento de Construcciones y Contratas	Spain	82–3743
Foodquest International Corp	Canada	82–1572
Footmaxx Holdings Inc	Canada	82–4079
Footwall Explorations Ltd	Canada	82–2177
Forbes Medi Tech Inc	Canada	82–3139
Formation Capital Corp	Canada	82–2783
Formosa Chemicals and Fibre Corp	China	82–3979
Foschini Ltd	South Africa	82–4044
Foster's Brewing Group Ltd	United Kingdom	82–1711
Fotex Elso Amerikai Magyar Fotosz	Hungary	82–3286
Founder Resources Inc	Canada	82–3264
Fountain House Holdings Corp	Canada	82–3811
Francisco Gold Corp	Canada	82–3752
Frankie Dominion International Ltd	Bermuda	82–3849
Franz Capital Corp	Canada	82–2574
Fraserfund Financial Corp	Canada	82–3588
Free State Consolidated Gold Mines	South Africa	82–44

Issuer name	Country	File No.
Freeport Resources Inc	Canada	82–1131
Frontline AB	Sweden	82–3792
Fuji Photo Film Co. Ltd	Japan	82–78
G.B. Holdings Ltd	Singapore	82–2192
GKN PLC	United Kingdom	82–1042
GLS Global Listing Service Ltd	Canada	82–1644
GMD Resources Corp	Canada	82–4071
Gala-Bari International Inc	Canada	82–2511
Galleon Mining Ltd	Canada	82–3258
Gallery Resources Ltd	Canada	82–2877
Garden Lake Resources Ltd	Canada	82–3489
Genbel Investments Ltd	South Africa	82–235
Gencor Ltd	South Africa	82–311
General Diamond Corp	Canada	82–3800
Genetronics Biomedical Ltd	Canada	82–4060
Geriatrx Pharmaceutical Corp	Canada	82–1184
Gerle Gold Ltd	Canada	82–1209
Gesham Resources Inc	Canada	82–3625
Giordano Holdings Ltd	Hong Kong	82–3780
Glencairn Explorations Ltd	Canada	82–2640
Glencar Explorations PLC	Ireland	82–1421
Glimmer Resources Inc	Canada	82–1970
Global Teleworks Corp	Canada	82–3375
Globe Group S.A	Greece	82–3199
Globex Mining Enterprises Inc	Canada	82–4025
Gold Fields Property Co. Ltd	South Africa	82–214
Gold Fields of South Africa Ltd	South Africa	82–204
Gold Mines of Kalgoorlie Ltd	Australia	82–2076
Gold Peak Industries (Holdings) Ltd	Canada	82–3604
Goldcliff Resources Corp	Canada	82–2748
Goldcorp Inc	Canada	82–1106
Golden Arch Resources Ltd	Canada	82–659
Golden Knight Resources Inc	Canada	82–811
Golden Kootenay Resources Inc	Canada	82–2546
Golden Resources Development Int'l Ltd	Bermuda	82–4026
Golden Unicorn Mining Corp	Canada	82–3532
Goldnev Resources	Canada	82–1080
Goldpac Investments Ltd	Canada	82–1167
Goldstar Co. Ltd.	Korea	82–3857
Goldwater Resources Ltd	Canada	82–2120
Goodman Fielder Wattie Ltd	Australia	82–2009
Govett Strategic Investment Trust PLC	United Kingdom	82–287
Graffoto Industries Corp	Canada	82–3579
Gran Cadena de Almacenes Colombianos S.A.	Colombia	82–3974
Grand Hotel Holdings Ltd	Hong Kong	82–3408
Grand National Resources Inc	Canada	82–1100
Grande Portage Resources Ltd	Canada	82–1767
Grandmaster Technologies Inc	Canada	82–1764
Granduc Mines Ltd	Canada	82–3124
Granisko Resources Inc	Canada	82–3861
Grasim Industries Ltd	India	82–3322
Great Eagle Holdings Ltd	Bermuda	82–3940
Grecian Specialty Foods Inc	Canada	82–4110
Greenlight Communications Inc	Canada	82–2985
Greenwood Environmental Inc	Canada	82–2195
Grootvlei Proprietary Mines Ltd	South Africa	82–222
Groupe Danone	France	82–3001
Groupo Financiero GBM Atlantico	Mexico	82–3742
Grupo Carso, S.A. de C.V	Mexico	82–3175
Grupo Financeiro Inverlat S.A. de C.V	Mexico	82–3610
Grupo Financiero Banamex Accival	Mexico	82–3325
Grupo Financiero Invermexico S.A. de C.V	Mexico	82–3447
Grupo Financiero Prime Internacional	Mexico	82–3548
Grupo Financiero Probusa S.A. de C.V	Mexico	82–3623
Grupo Gigante, S.A. de C.V	Mexico	82–3142
Grupo Situr, S.A. de C.V	Mexico	82–3187
Grupo Synkro, S.A. de C.V	Mexico	82–2847
Grupo Video Visa, S.A. de C.V	Mexico	82–3193
Guangzhou Shipyard Int'l Co	China	82–4036
Guardian Enterprises Ltd	Canada	82–857
Guinness PLC	United Kingdom	82–1478
Guongdong Investments Ltd	Hong Kong	82–3772
Gwalia Consolidated Ltd	Australia	82–2126
H. Jager Developments Inc	Canada	82–2818

Issuer name	Country	File No.
H.J. Forest Products Inc	Canada	82–4141
HB International Holdings Ltd	Bermuda	82–3949
HSBC Holdings PLC	United Kingdom	82–683
Hai Sun Hup Group Ltd	Singapore	82–3575
Halitec Industries Corp	Canada	82–3711
Hana Microelectronics Co. Ltd	Thailand	82–3633
Hang Lung Development Co. Ltd	Hong Kong	82–1439
Hang Seng Bank Ltd	Hong Kong	82–1747
Hanny Magnetics Holdings Ltd	Bermuda	82–3638
Hansol Paper Co.	Korea	82–3451
Harbour Petroleum Company Ltd	Canada	82–3427
Hardman Resources N.L	Australia	82–3472
Harmac Pacific Inc	Canada	82–4122
Harmony Gold Mining Co	South Africa	82–238
Hars Systems Inc	Canada	82–1870
Hartbeestfuntein Gold Mining Co	South Africa	82–3583
Hartstone Group PLC	United Kingdom	82–3022
Havas S.A	France	82–2879
Hec Hitech Entertainment Corp	Canada	82–3844
Henderson Investment Ltd	Hong Kong	82–3964
Henderson Land Development Co	Hong Kong	82–1561
Hendricks Minerals Canada Ltd	Canada	82–3938
Hera Resources Inc	Canada	82–3656
Heritage Petroleums Inc	Canada	82–1624
Hidroelectrica Alicura S.A	Argentina	82–3749
Hidroelectrica Piedra del Aguila	Argentina	82–4063
Highgrade Ventures Ltd	Canada	82–2257
Highveld Steel & Vanadium Corp Ltd	South Africa	82–596
Hillsdown Holdings PLC	United Kingdom	82–1407
Hindalco Industries Ltd	India	82–3428
Hino Motors Ltd	Japan	82–1388
Hoganas AB	Sweden	82–3754
Hokuriku Bank Ltd	Japan	82–1045
Hol-Lac Gold Mines Ltd	Canada	82–3529
Holderbank Financiere Glaris Ltd	Switzerland	82–4093
Home Venture Ltd	Canada	82–1669
Hong Kong Daily News Holding Ltd	Bermuda	82–3887
Hong Kong & China Gas Co	Hong Kong	82–1543
Hong Kong Aircraft Engineering Co	Hong Kong	82–3846
Hong Kong Land Holdings Ltd	Hong Kong	82–2964
Hongkong Electric Holdings Ltd	Hong Kong	82–4086
Hopewell Holdings Ltd	Hong Kong	82–1547
Horace Small Apparel PLC	United Kingdom	82–3341
Hornbach-Baumarkt AG	Germany	82–3729
Huhtamaki Oy	Finland	82–2925
Hunter Douglas NV	Netherlands	82–3741
Huntington Resources Inc	Canada	82–1374
Huntington Rhodes Inc	Canada	82–2917
Huron Star Resources Ltd	Canada	82–2218
Hydromet Corporation	Australia	82–3543
Hysan Development Co	Hong Kong	82–1617
Hyundai Motor Company	Korea	82–3423
I.T.C. Limited	India	82–3470
IBI Corp	Canada	82–2135
ICM Ventures Inc	Canada	82–3054
IGT Growth Technologies Inc	Canada	82–4098
Iberdrola S.A	Spain	82–3382
Imesco Ltd	United Kingdom	82–118
Impala Platinum Holdings Ltd	South Africa	82–359
Imperial Metals Corp	Canada	82–1032
Indian Hotels Company Ltd	India	82–4076
Indian Petrochemicals Corp	India	82–3958
Indstrl Credit & Investment Corp India	India	82–3716
Industrias Klabin De Papel E Celulose	Brazil	82–3797
Iner-citic Envirotec Inc	Canada	82–2345
Inflazyme Pharmaceuticals Ltd	Canada	82–2317
Inmet Mining Corp	Canada	82–3481
Insulpro Industries Inc	Canada	82–3281
Integrated Paving Concepts Inc	Canada	82–3956
Integrated Media Communications Inc	Canada	82–2263
Interaction Resources Ltd.	Canada	82–705
Interactive Video Systems Inc.	Canada	82–3580
Interfirst Resources Inc.	Canada	82–2302
Interlock Consolidated Enterprises	Canada	82–3359

Issuer name	Country	File No.
Intermin Resourse Corp	Canada	82–1528
International Bioremediation Svs. Inc	Canada	82–3828
International Broadlands Resources	Canada	82–4168
International Container Terminal Service	Philippines	82–3453
International Curator Resources	Canada	82–1540
International Helix Biotechnology	Canada	82–1044
International Homestead Resources	Canada	82–3822
International Kaaba Gold Corp	Canada	82–1049
International King Jack Resources	Canada	82–2109
International Mahogany Corp	Canada	82–2375
International Nederlanden Groep N.V	Netherlands	82–3458
International Onword Learning Sys	Canada	82–2930
International Panorama Resource	Canada	82–1965
International Pipe Ltd	Hong Kong	82–3850
International Road Dynamics Inc	Canada	82–3899
International Skyline Gold Corp	Canada	82–1449
International Thunderbird Gaming	Canada	82–2244
International Topaz Business Devlp. Corp	Canada	82–2276
International Tower Hill Mines	Canada	82–3248
Interstar Mining Group Inc	Canada	82–3759
Invesco Mim PLC	United Kingdom	82–3440
Iochpe-Maxion S.A	Brazil	82–3722
Irish Life PLC	Ireland	82–3134
Iscor Limited	South Africa	82–3826
Isras Investment Company	Israel	82–3243
J. Sainsbury PLC	United Kingdom	82–913
JCI Limited	South Africa	82–4039
JG Summit Holdings Inc	Philippines	82–3572
JSB Inkombank	Russia	82–4124
Jackson Hole Holding Corp	Canada	82–1998
Jamaica Broilers Group Ltd	Jamaica	82–3720
James Hardie Industries Ltd	Australia	82–972
Japan Airlines Company	Japan	82–122
Japan Telecom Co	Japan	82–3943
Jardine Matheson Holdings	Hong Kong	82–2963
Jardine Strategic Holdings Ltd	Bermuda	82–3085
Jarvis Resources Ltd	Canada	82–962
Jascan Resources Inc	Canada	82–2123
Jason Mining Ltd	Australia	82–1257
Jentan Resources Ltd	Canada	82–4017
Jilbey Exploration Ltd	Canada	82–1629
Jinhui Holdings Co	Hong Kong	82–3765
Jinhui Shipping and Transportation	Bermuda	82–4054
Johannesburg Consolidated Investment Co	South Africa	82–4030
John Keells Holdings Ltd	Sri Lanka	82–3854
John Labatt Ltd	Canada	82–1103
Johnson Electric Holdings Ltd	Canada	82–2416
Joutel Resources Ltd	Canada	82–502
K. Wah International Holdings Ltd	Bermuda	82–3853
Kalmar Industries AB	Sweden	82–3889
Kansallis-Osake-Pankki	Finland	82–3798
Kaufhof AG	Germany	82–3592
Kawasaki Steel Corp	Japan	82–3389
Kelso Technologies Inc	Canada	82–2441
Keng Fong Sin Kee Construction	Hong Kong	82–3454
Kenrich Mining Corp	Canada	82–2809
Keppel Corporation Ltd	Singapore	82–2564
Kettle River Resources Ltd	Canada	82–666
Key Anacon Mines Ltd	Canada	82–23
Keylock Resources Inc	Canada	82–3271
Kia Motors Corp	Korea	82–3205
Kidston Gold Mines Ltd	Australia	82–2351
Kimberly Clark De Mexico	Mexico	82–3308
Kingboard Chemical Holdings Ltd	Cayman Islands	82–4082
Kingfisher PLC	United Kingdom	82–968
Kingsfield Capital Corp	Canada	82–3617
Kingston Resources Ltd	Canada	82–1969
Kinova Holdings Corp.	Canada	82–3558
Kinross Mines Ltd	South Africa	82–220
Kirin Brewery Co	Japan	82–188
Kloof Gold Mining Co	South Africa	82–205
Kobe Steel Ltd	Japan	82–3371
Kolvox Communications Inc	Canada	82–3829
Koninklijke Wessanen N.V	Netherlands	82–1306

Issuer name	Country	File No.
Kookaburra Resources Ltd	Canada	82-2740
Korea Mobile Telecommunications Corp	Korea	82-4048
Krones AG	Germany	82-3871
Kumagai Gumi (H.K.) Ltd	Hong Kong	82-4029
Kvaerner AS	Norway	82-3745
Kymmene Oy	Finland	82-3978
La Cemento Nacional C.A	Ecuador	82-3890
La Rock Mining Corp	Canada	82-1496
Ladbroke Group PLC	United Kingdom	82-1571
Lafarge Coppee	France	82-3369
Lagardere Groupe S.C.A	France	82-3916
Lai Sun Development Company	Hong Kong	82-3878
Landmark Resources Ltd	Canada	82-4109
Larsen & Toubro Ltd	India	82-3957
Latin American Gold Inc	Canada	82-3113
Laura Ashley Holdings PLC	United Kingdom	82-1356
Leeward Capital Corp	Canada	82-3640
Legal and General Group PLC	United Kingdom	82-3664
Legend Holding Ltd.	Hong Kong	82-3950
Land Lease Corporation Ltd	Australia	82-3498
Lenzing AG	Austria	82-3207
Leslie Gold Mines Ltd	South Africa	82-223
Levelland Energy and Resources Ltd	Canada	82-3590
Liberty Life Association of Africa Ltd	South Africa	82-3924
Lighting Jack Film Trust	Australia	82-3584
Lion Land Berhad	Malaysia	82-3342
Lippo Ltd	Hong Kong	82-3552
Lojas Americanas S.A	Brazil	82-4047
London Electricity PLC	United Kingdom	82-3037
Lonrho PLC	United Kingdom	82-191
Lorica Resources Ltd	Canada	82-3601
Loumic Resources Ltd	Canada	82-2670
Lucas Gold Resources Corp	Canada	82-2297
Lucero Resource Corp	Canada	82-1756
Lukoil Co	Russia	82-4006
Lumina Investment Corp	Canada	82-4004
Luminart	Canada	82-3864
Luxmatic Technologies N.V	Netherlands	82-3903
Lydenburg Platinum Ltd	South Africa	82-312
Lytton Minerals Ltd	Canada	82-3627
MBF Holdings Berhad	Malaysia	82-3469
MCB Investments Corp	Canada	82-3512
MIM Holdings Ltd	Australia	82-173
MIS Multimedia Interactive Servies Inc	Canada	82-1985
Maesa Gaming Management Inc	Canada	82-1208
Mai PLC	United Kingdom	82-1940
Major General Resources Ltd	Canada	82-2996
Makro Atacadista S.A	Brazil	82-4095
Malbak Ltd	South Africa	82-3751
Mandarin Oriental International Ltd	Hong Kong	82-2955
Manhattan Minerals Corp	Canada	82-3328
Mantex S.A.I.C.A.-S.A.C.A	Venezuela	82-3241
Manweb PLC	United Kingdom	82-3036
Marishell Products Ltd	Canada	82-3766
Mark Resources Inc	Canada	82-4069
Marks and Spencer PLC	United Kingdom	82-1961
Marubeni Corp	Japan	82-616
Massey Mercantile Ltd	Canada	82-3568
Master Player Game Centers Inc	Canada	82-4081
Matrix Energy	Canada	82-1214
Matrix Telecommunications Ltd	Australia	82-1189
Mavesa S.A	Venezuela	82-3397
Maximum Resources	Canada	82-3923
Maxwell Energy Corp	Canada	82-3061
Mayr-Meinhof Karton AG	Austria	82-4052
Mega Star Ventures	Canada	82-2553
Monika Mining Co	Canada	82-1248
Metra Corp	Finland	82-933
Metrowerks Inc	Canada	82-4049
Metsa Serla OY	Finland	82-3696
Midlands Electricity PLC	United Kingdom	82-3035
Mill City Gold Mining Corp	Canada	82-3076
Minefinders Corp	Canada	82-2227
Minera Rayrock Inc	Canada	82-3471

Issuer name	Country	File No.
Minorco	Bermuda	82-206
Minto Explorations Ltd	Canada	82-4119
Minvita Enterprises Ltd	Canada	82-2161
Mirage Resource Corp	Canada	82-1838
Miramar Mining Corp	Canada	82-1566
Miranda Industries Inc	Canada	82-4016
Mirgor SACIFIA	Argentina	82-3941
Mirror Group Newspapers PLC	United Kingdom	82-3114
Mishibishu Gold Corp	Canada	82-2682
Mitsubishi Chemical Corp	Japan	82-1191
Mitsubitshi Corp	Japan	82-3784
Modatech Systems Inc	Canada	82-2006
Molson Companies Ltd	Canada	82-2954
Montclerg Resources Ltd	Canada	82-3951
Montello Resources Ltd	Canada	82-1812
Montoro Resources Inc	Canada	82-3999
Morgan Crucible Company	United Kingdom	82-3387
Mortlock Resource Corp	Canada	82-3685
Mostostal Export Corp	Poland	82-3521
Motion Works Corp	Canada	82-3250
Moulin International Holding Ltd	Bermuda	82-3970
Mount Burgess Gold Mining Co	Australia	82-1235
Mountain Province Mining Corp	Canada	82-2540
Mountain West Resources Inc	Canada	82-1201
Mt. Kersey Mining N.L	Australia	82-3790
Mt. Leyshon Gold Mines Ltd	Canada	82-1753
Multibanco BG—Banco de Guayaquil S.A	Ecuador	82-4143
Multinational Resources Inc	Canada	82-1095
Multiplex Technologies Inc	Canada	82-2937
Mutual Resources Ltd	Canada	82-1171
N.V. Amev	Netherlands	82-3118
NDU Resources Ltd	Canada	82-2292
NV Verenigd Bezit VNU	Netherlands	82-2876
Nampak Limited	South Africa	82-3714
Nan Ya Plastics Corp	China	82-3980
Naneco Minerals Ltd	Canada	82-2618
National Bank of Canada	Canada	82-3764
National Mutual Asia Ltd	Hong Kong	82-3426
National and Provincial Building Society	United Kingdom	82-3753
Naturally Niagara Inc	Canada	82-3621
Nebex Resources Ltd	Canada	82-3897
Nedcor Limited	South Africa	82-3893
Nestle S.A	Switzerland	82-1252
Network One Holding Corp	Canada	82-3787
Nevada North Resources Inc	Canada	82-1665
Nevada Star Resources Corp	Canada	82-3088
New Age Ventures Inc	Canada	82-3344
New Canamin Resources	Canada	82-1725
New Claymore Resources Ltd	Canada	82-3433
New Concept Technologies International	Canada	82-3786
New World Developments Co	Hong Kong	82-2971
NewCoast Silver Mines Ltd	Canada	82-4123
Newera Capital Corp	Canada	82-2993
Nextra Technologies Inc	Canada	82-4129
Nintendo Co	Japan	82-2544
Nippon Shokubai Kagaku Kagyo Co	Japan	82-1484
Nissan Motor Co	Japan	82-207
Nomura Securities Co	Japan	82-3872
Nora Exploration Inc	Canada	82-3329
Norcan Resources Ltd	Canada	82-3934
Nordic Lite Inc	Canada	82-3888
Normandy Poseidon Ltd	Australia	82-1975
Noront Resources Ltd	Canada	82-2304
North Ltd	Australia	82-2531
North American Fire Guardian	Canada	82-1921
North American Nippon Technologies Corp	Canada	82-3048
North West Water Group PLC	United Kingdom	82-2813
Northern Electric PLC	United Kingdom	82-3039
Northern Orion Explorations Ltd	Canada	82-3153
Northern Reef Exploration Ltd	Canada	82-2961
Nu Lite Resources Industries Ltd	Canada	82-3643
Nuinsco Resources Ltd	Canada	82-1846
OJ Oil & Gas Corp	Canada	82-2209
OMV AG	Austria	82-3209

Issuer name	Country	File No.
Obras Y Prayectos S.A. de C.V	Mexico	82–4073
Ocean Diamond Mining Holdings	South Africa	82–4046
Octagon Industries Inc	Canada	82–3310
Odessa Industries Inc	Canada	82–4002
Oil City Lubricants Ltd	Canada	82–1260
Olds Industries Inc	Canada	82–3461
Olympic Resources Ltd	Canada	82–4055
Olympus Optical Co	Japan	82–3326
Omron Corp	Japan	82–1170
Onfem Holdings Ltd	Bermuda	82–3735
Ontex Resources Ltd	Canada	82–2100
Opact Resources Ltd	Canada	82–2003
Orbit Oil and Gas Ltd	Canada	82–3107
Orient Telecom and Technology Holding	Bermuda	82–3946
Orkla A.S	Norway	82–3998
Oro Bravo Resources Inc	Canada	82–2560
Osito Ventures Ltd	Canada	82–2238
Otis J. Explorations Corp	Canada	82–3587
Outokumpu OY	Finland	82–3680
PBX Resources Ltd	Canada	82–2635
PTT Exploration and Production	Thailand	82–3827
PWA Corp	Canada	82–3203
Pacific Andes Int'l Holdings Ltd	Bermuda	82–4031
Pacific Concord Holding Ltd	Hong Kong	82–3819
Pacific Falcon Resources Corp	Canada	82–2204
Pacific Rim Mining	Canada	82–3611
Pacific Vargold Mines Ltd	Canada	82–2891
Pacific Vista Industries Inc	Canada	82–2829
Pact Resources N.L	Australia	82–1386
PanGlobal Enterprises Inc	Canada	82–3223
Pangea Credfields Inc	Canada	82–3917
Paramount Ventures & Finance Inc	Canada	82–2207
Parkcrest Explorations Ltd	Canada	82–4090
Pearson PLC	United Kingdom	82–4019
Pechiney International	France	82–3350
Pelsart Resources N.L	Australia	82–484
Pentland Industries PLC	United Kingdom	82–1219
Pepkor Ltd	South Africa	82–3925
Peregrine Investments Holdings Ltd	Hong Kong	82–3466
Pernod Ricard S.A	France	82–3361
Peru Real Estate S.A	Peru	82–4107
Peruvian Gold Ltd	Canada	82–3997
Petro Plus Inc	Canada	82–2432
Peugeot S.A	France	82–3531
Phoenix Canada Oil Co	Canada	82–3936
Pioneer International Ltd	Australia	82–2701
Pittencrief Resources PLC	United Kingdom	82–3985
Placer Pacific Ltd	Australia	82–1952
Playmates Properties Holdings Ltd	Hong Kong	82–2979
Plentech Electronics Inc	Canada	82–2479
Polyair Tires Inc	Canada	82–3756
Poplar Resources Ltd	Canada	82–1489
Poseidon Gold Ltd	Australia	82–2875
Power Corp of Canada	Canada	82–137
Power Financial Corp	Canada	82–1716
Premier Consolidated Oilfields PLC	United Kingdom	82–2617
Premier Group Ltd	South Africa	82–3892
Premium Springwater & Juice Company	Canada	82–3882
President Enterprises Co	Taiwan	82–3424
Prime Resources Group Inc	Canada	82–1503
Princeton Mining Co	Canada	82–1243
Priva Inc	Canada	82–3837
Progressive Technologies Inc	Canada	82–2325
Promatek Industries Ltd	Canada	82–1351
Proprietary Energy Industries Inc	Canada	82–4140
Protens International PLC	United Kingdom	82–3895
Prudential Corporation PLC	United Kingdom	82–1477
Q Media Software Corp	Canada	82–3761
QNI Limited	Australia	82–3834
Qinling Motors Company	China	82–3891
Quantas Airways Ltd	Australia	82–4130
Quattro Resources Ltd	Canada	82–2625
Quillo Technologies Inc	Canada	82–1960
Quinto Mining Corp	Canada	82–475

Issuer name	Country	File No.
RAO Unified Energy Systems	Russia	82–4077
RFM Corporation	Philippines	82–4117
RJK Explorations Ltd	Canada	82–2629
RWE AG	Germany	82–4018
Racal Electronics PLC	United Kingdom	82–481
Radical Advanced Technologies Corp	Canada	82–3251
Ranbaxy Laboratories Ltd	India	82–3821
Ranchmen's Resources Ltd	Canada	82–2615
Rand Mines Ltd	South Africa	82–304
Randfontein Estates Gold Mining	South Africa	82–267
Rank Organisation Ltd	United Kingdom	82–17
Rautaruukki Oy	Finland	82–3981
Rayrock Yellowknife Resources Inc	Canada	82–378
Raytec Capital Corp	Canada	82–3553
Receptagon Ltd	Canada	82–3096
Recor Holding Ltd	Bermuda	82–3906
Redell Mining Corp	Canada	82–1286
Redfern Resources	Canada	82–1824
Redland PLC	United Kingdom	82–2156
Reed Lake Exploration Ltd	Canada	82–2254
Reeflex Petroleum Technologies Inc	Canada	82–3770
Refrigeracao Parana S.A.	Brazil	82–3794
Regeena Resources Inc	Canada	82–3560
Regent Venture Ltd	Canada	82–2000
Regie Nationale des Usines Renduit	France	82–4001
Rembrandt Group Ltd	South Africa	82–3760
Remington Creek Resources Inc	Canada	82–4022
Rentokil Group PLC	United Kingdom	82–3806
Repola Ltd	Finland	82–3161
Resorts World Berhad	Malaysia	82–3229
Response Biomedical Corp	Canada	82–1365
Rhodia-Ster S.A.	Argentina	82–3942
Rich Mineral Corp	Canada	82–2832
Richlode Investments Corp	Canada	82–3915
Richmont Mines Inc	Canada	82–2940
Ridgeway Petroleum Corp	Canada	82–1819
Riley Resources	Canada	82–2159
Riva Petroleum Inc	Canada	82–2945
Roche Holdings Ltd	Switzerland	82–3315
Rockwealth International Resource Corp	Canada	82–2723
Rocraven Resources Ltd	Canada	82–493
Rolls-Royce PLC	United Kingdom	82–2821
Roper Resources Inc	Canada	82–2020
Roraima Gold Corp	Canada	82–3988
Rosenthal AG	Germany	82–1648
Ross Mining N.L	Australia	82–3609
Rothmans International Ltd	United Kingdom	82–84
Roussel Uclaf	France	82–3574
Roxbury Capital Corp	Canada	82–3616
Royal Bank of Canada	Canada	82–796
Royal Bay Gold Corp	Canada	82–3831
Royal Concorde Capital Inc	Canada	82–3674
Royal Nedlloyd Group NV	Netherlands	82–1056
Royal PTT Nederland NV	Netherlands	82–3778
Rustenburg Platinum Holdings Ltd	South Africa	82–241
Ryde Energy Inc	Canada	82–2326
SAP AG	Germany	82–4045
SGL Carbon AG	Germany	82–4023
SLN Ventures Corp	Canada	82–3856
Saddle Mountain Timber Corp	Canada	82–2749
Safari International Resources Inc	Canada	82–2995
Sage Resources Ltd	Canada	82–3670
Saint Laurent Paperboard Inc	Canada	82–3896
Sakura Bank Ltd	Japan	82–3055
Samantha Gold N.L	Australia	82–323
Samson Exploration	Australia	82–401
Samsung Electronics Co	Korea	82–3109
Samsung Heavy Industries Co	Korea	82–4091
San Miguel Corp	Philippines	82–306
Sandoz Ltd	Switzerland	82–3156
Sandvik AB	Sweden	82–1463
Santos Ltd	Australia	82–34
Sanyo Electric Co	Japan	82–264
Sanyo Securities Co	Japan	82–1857

Issuer name	Country	File No.
Sao Paulo Alpargatas S.A.	Brazil	82–3692
Sappi Ltd	South Africa	82–3835
Sasol Ltd	South Africa	82–631
Scantronic Holdings PLC	United Kingdom	82–2584
Schmitt Industries Inc	Canada	82–1872
Schneider S.A.	France	82–3706
Score Athletic Products Inc	Canada	82–3051
Scottish Hydro-Electric PLC	United Kingdom	82–3099
Scottish Power PLC	United Kingdom	82–3100
Seabil NV	New Zealand	82–3824
Seacorp Capital Corp	Canada	82–1786
Seardel Investment Corp	South Africa	82–3995
Sears Roebuck de Mexico S.A. de C.V.	Mexico	82–3261
Sechura Inc	Canada	82–1278
Sedgwick Group PLC	United Kingdom	82–1529
Seeboard PLC	United Kingdom	82–3033
Sega Enterprises Ltd	Japan	82–3439
Seine River Resources Inc	Canada	82–2942
Selkirk Springs International	Canada	82–2526
Sementes Agroceres S.A.	Brazil	82–3709
Semi-Tech (Global) Co	Bermuda	82–3337
Senetek PLC	United Kingdom	82–875
Sentrachem Ltd	South Africa	82–3914
Servgro International Ltd	South Africa	82–3898
Seversky Tube Works	Russia	82–4101
Shangai Outer Gaogiao Free Trade Zone	China	82–3962
Shanghai Chlor-Alkali Chem. Co	China	82–3657
Shanghai Erfangji Co	China	82–3613
Shanghai Jinqiao Exp. Pr. Zone Dev. Co	China	82–4146
Shanghai Tyre and Rubber Co	China	82–3606
Sharp Corp	Japan	82–1116
Sharpe Energy & Resources Ltd	Canada	82–4009
Shenzen Special E.Z. Real Estate Group	China	82–3783
Shenzhen China Bicycle Co Holdings Ltd	China	82–4068
Shinawatra Computer Co	Thailand	82–3140
Shiceido Company Ltd	Japan	82–3311
Shomega Limited	Austrialia	82–3815
Shun Tak Holdings	Hong Kong	82–3357
Siebe PLC	United Kingdom	82–2142
Siemens AG	Germany	82–73
Sierra Nevada Gold Ltd	Canada	82–894
Sikaman G/I§ Resources Ltd	Canada	82–1651
Silver Peak Resources Ltd	Canada	82–1298
Silver Standard Resources Inc	Canada	82–3190
Silver Tusk Mines Ltd	Canada	82–723
Silverspar Minerals Inc	Canada	82–478
Simametal Ltd	Australia	82–3838
Singapore Telecommunications Ltd	Singapore	82–3622
Siu Fung Ceramics Holdings Ltd	Hong Kong	82–3918
Skibsaksjeselskapet Storli	Norway	82–3848
Slovnaft, A.S.	Russia	82–3721
Slumber Magic Adjustable Bed	Canada	82–2057
Smedvig A.S.	Norway	82–3551
Smedvig Tankships Limited	Bermuda	82–3591
Societe Generale	France	82–3501
Societe Generale de Belgique S.A.	Belgium	82–3879
Société Nationale des Chemins de Fer	Belgium	82–4161
Sol Petroleo S.A.	Argentina	82–3448
Solvay & Cie S.A.	Belgium	82–2691
Sons of Gwalia N.L	Australia	82–1039
South African Breweries Ltd	South Africa	82–303
South African Land & Expl. Co	South Africa	82–59
South China Morning Post	Hong Kong	82–3327
South Crofty Holdings Ltd	Canada	82–2662
South Roodepoort Main Reefs Area Ltd	South Africa	82–930
South Wales Electricity PLC	United Kingdom	82–3031
South Western Electricity PLC	United Kingdom	82–3030
Southcorp Holdings Ltd	Australia	82–2692
Southern Electric PLC	United Kingdom	82–3032
Southern Era Resources Ltd	Canada	82–3658
Southern Pacific Petroleum N.L	Australia	82–353
Southern Petrochemical Industries Co	India	82–3581
Southern Water PLC	United Kingdom	82–2797
Southvaal Holdings Ltd	South Africa	82–197

Issuer name	Country	File No.
Southview Capital Corp	Canada	82–4012
Southward Energy Ltd	Canada	82–3005
Spectrum Games Corp	Canada	82–3599
Sport Specific International Inc	Canada	82–3695
St. Barbara Mines Ltd	Australia	82–3747
St. George Bank Ltd	Australia	82–3809
St. Jude Resources Ltd	Canada	82–4014
St. Lukes Group Ltd	New Zealand	82–3645
Stadshypotek AB	Sweden	82–3933
Stampede Oil Inc	Canada	82–3605
Star Paging International Holdings Ltd	Bermuda	82–3654
Starlight International Holdings Ltd	Bermuda	82–3594
Starrex Mining Corp	Canada	82–3755
Starx Resource Corp	Canada	82–2039
Statoil	Norway	82–3444
Stef International Corp	Canada	82–4070
Stilfontein Gold Mining Co	South Africa	82–301
Stina Resources Ltd	Canada	82–2062
Stocks and Stocks Ltd	South Africa	82–3963
Stralak Resources Ltd	Canada	82–976
Stratabound Minerals Corp	Canada	82–3284
Stratcomm Media Ltd	Canada	82–1778
Stressgen Biotechnologies Corp	Canada	82–3776
Strike Energy Inc	Canada	82–2659
Striker Resources N.L	Australia	82–3585
Stryker Resources Ltd	Canada	82–883
Sumitomo Metal Industries Ltd	Japan	82–3507
Summit Resources Ltd	Canada	82–2922
Summo Minerals Corp	Canada	82–3971
Sun Free Enterprises Ltd	Canada	82–2822
Sun Hung Kai Properties Ltd	Hong Kong	82–1755
Sungold Gaming Inc	Canada	82–2157
Suntree Investments International Corp	Canada	82–2031
Svedala Industri A.B	Sweden	82–3593
Swedbank	Sweden	82–4092
Swire Pacific Ltd	Hong Kong	82–2184
Swiss Bank Corp	Switzerland	82–3567
Synapse Software Inc	Canada	82–3642
Synex International Inc	Canada	82–862
T&H Resources Ltd	Canada	82–2669
THC Medical Inc	Canada	82–3356
TI Group PLC	United Kingdom	82–2697
Tabcorp Holdings Ltd	Australia	82–3841
Tai Cheung Holdings Ltd	Bermuda	82–3528
Talisman Energy Inc	Canada	82–3710
Tappit Resources Ltd	Canada	82–3813
Tarron Industries Ltd	Canada	82–1881
Tata Enginnering and Locomotive Co	India	82–3768
Tata Hydro-Electric Power Supply Co	India	82–3704
Tata Power Company	India	82–3733
Tate & Lyle PLC	United Kingdom	82–905
Taylor Rand Inc	Canada	82–3635
Techtronic Industries Co	Hong Kong	82–3648
Tecnip	France	82–3959
Teijin Ltd	Japan	82–1266
Teijin Seiki Co	Japan	82–1493
Tele 2000 S.A	Peru	82–3866
Telesis Industrial Group	Canada	82–2977
Telesoft Moble Data Inc	Canada	82–3727
Television Broadcasts Ltd	Hong Kong	82–1072
Telstra Corp	Australia	82–3562
Teollisuuden Voima Oy	Finland	82–2973
Termbray Industries Int'l Holdings Ltd	Bermuda	82–4103
Tesco PLC	United Kingdom	82–3277
Teuton Resources Corp	Canada	82–1394
Thai Petrochemical Industry	Thailand	82–4108
Thai Telephone and Telecommunications	Thailand	82–3744
The Art of Animation Galleries Ltd	Canada	82–4063
The Bidvest Group Ltd	South Africa	82–4041
The Burton Group PLC	United Kingdom	82–1498
The Flowerman Group Inc	Canada	82–3935
The Premier Group Ltd	South Africa	82–3892
Thorn EMI Ltd	United Kingdom	82–373
Tiomin Resources Inc	Canada	82–3430

Issuer name	Country	File No.
Toba Gold Resources	Canada	82–2966
Tofas Turk Otomobil	Turkey	82–3699
Tombstone Explorations Co	Canada	82–3624
Tomra Systems A/S	Norway	82–3334
Topaz Resources International	Canada	82–1285
Topper Gold Corp	Canada	82–2694
Toronto Dominion Bank	Canada	82–142
Toyobo Co	Japan	82–1172
Toyota Motor Co	Japan	82–208
Tracker Software International Inc	Canada	82–3884
Trafalgar House PLC	United Kingdom	82–1894
Trans Atlantic Enterprises	Canada	82–1692
Trans Hex Group Ltd	South Africa	82–4011
Transportadora de Gas del Norte S.A	Argentina	82–3845
Trellis Technology Corp	Canada	82–2115
Treminco Resources Ltd	Canada	82–1384
Trend Set Industries International Inc	Canada	82–3825
Trillion Resources Ltd	Canada	82–3630
Trimin Resources Inc	Canada	82–1833
Trinidad Cement Ltd	Trinidad	82–3992
Trinity International Holdings PLC	United Kingdom	82–3043
Trio Gold Corp	Canada	82–2127
Trove Investment Corp	Canada	82–2476
Troymin Resources Ltd	Canada	82–3503
Truly International Holdings	Cayman Islands	82–3700
Trust Company of Australia Ltd	Australia	82–1443
Tsingtao Brewery Company Ltd	China	82–4021
Turkiye Garanti Bankasi	Turkey	82–3636
Tusk Resources Inc	Canada	82–3297
Twin Star Energy Corp	Canada	82–2213
Tycoon Ventures Inc	Canada	82–3468
Tyler Resources Inc	Canada	82–3881
USA Video Corporation	Canada	82–1601
Unibanco Uniao de Bancos Brasileiros	Brazil	82–3353
Unicomm Signal Inc	Canada	82–2787
Unidex Communications Corp	Canada	82–3130
Union Bank of Switzerland	Switzerland	82–3804
Union Miniere S.A	Belgium	82–3876
Unique Force Enterprises Inc	Canada	82–1927
Unisel Gold Mines Ltd	South Africa	82–236
Unitech PLC	United Kingdom	82–2412
United Biscuits PLC	United Kingdom	82–3079
United Engineers (Malaysia)	Malaysia	82–3816
United Film & Video Holdings Ltd	Canada	82–3859
United Overseas Land Ltd	Singapore	82–2180
United Rayore Gas Ltd	Canada	82–747
Unitor Ship Service A.S	Norway	82–3020
Univa Inc	Canada	82–2570
Universal Gun Loc Industries Ltd	Canada	82–828
Universal Trident Industries Ltd	Canada	82–3026
Upton Resources Inc	Canada	82–3290
Urban Juice & Soda Co	Canada	82–2633
Usinas Siderurgicas de Minas Gerais S.A	Brazil	82–3902
Utility Cable PLC	United Kingdom	82–3952
VA Technologie AG	Austria	82–3910
Vaal Reefs Exploration & Mining Co	South Africa	82–56
Valeo S.A	France	82–3668
Valerie Gold Resources	Canada	82–3339
Valmet Oy	Finland	82–3968
Van City Cultured Marble Products Ltd	Canada	82–3052
Vanguard Petroleum Ltd	Australia	82–3478
Varitronix International Ltd	Bermuda	82–3820
Vedron Gold Inc	Canada	82–816
Veitscher Magnesitwerke AG	Austria	82–1573
Velcro Industries N.V	Neth. Ant	82–145
Venoro Gold Corp	Canada	82–2178
Venture Pacific Development Corp	Canada	82–2596
Vera Cruz Minerals Corp	Canada	82–2840
Verdstone Gold Corp	Canada	82–1735
Viceroy Resources Corp	Canada	82–1193
Vickers PLC	United Kingdom	82–1359
Vidatron Enterprises Ltd	Canada	82–2086
Vidatron Group Inc	Canada	82–2086
Video Chile S.A	Chile	82–3851

Issuer name	Country	File No.
Virtual Universe Corp	Canada	82–3467
Virtuality Group PLC	United Kingdom	82–3684
Volkswagen AG	Germany	82–2188
Vortex Energy & Minerals Ltd	Canada	82–3462
Vtech Holdings Ltd	Bermuda	82–3565
Wace Group PLC	United Kingdom	82–2369
War Eagle Mining Co	Canada	82–2006
Weboo Europe S.A	Luxembourg	82–3975
Welkom Gold Holdings Ltd	South Africa	82–57
West Rand Consolidated Mines Ltd	South Africa	82–314
West-Mar Resources Ltd	Canada	82–751
Western Areas Gold Mining Co	South Africa	82–268
Western Canadian Land Corp	Canada	82–1446
Western Copper Holdings Ltd	Canada	82–3422
Western Deep Levels Ltd	South Africa	82–58
Western Garnet Company	Canada	82–2637
Western Keltic Mines Inc	Canada	82–4024
Westley Technologies	Canada	82–1088
Westpine Metals Ltd	Canada	82–3116
Wex Technologies Inc	Canada	82–3304
Wheelock and Co	Hong Kong	82–3789
Whisky Creek Resources Inc	Canada	82–3875
White Knight Resources Ltd	Canada	82–2850
Williams Creek Explorations Ltd	Canada	82–3146
Willow Resources Ltd	Canada	82–3843
Windarra Minerals Ltd	Canada	82–561
Windsor Court Holdings Inc	Canada	82–3495
Winkelhaak Mines Ltd	South Africa	82–221
Winslow Gold Corp	Canada	82–1802
Winzen International Inc	Canada	82–1173
Wo Kee Hong (Holdings) Ltd	Hong Kong	82–3990
Wolters Kluwer N.V	Netherlands	82–2683
Woodside Petroleum Ltd	Australia	82–2280
Wooltru Ltd	South Africa	82–3863
Woolworths Ltd	Australia	82–3544
World Wide Minerals Ltd	Canada	82–2444
Worthing Industries Inc	Canada	82–3253
Wrightson NMA Ltd	New Zealand	82–3646
X-Cal Resources Ltd	Canada	82–1655
Yeebo (International Holdings) Ltd	Bermuda	82–3869
Yellowjack Resources Ltd	Canada	82–1765
Yiu Wing International Holdings Ltd	Bermuda	82–3655
York Centre Corp	Canada	82–2816
Yorkshire Electricity Group PLC	United Kingdom	82–3034
Young-Shannon Gold Mines Ltd	Canada	82–2928
Yukon Revenue Mines Ltd	Canada	82–3779
Yukong Ltd	Korea	82–3901
Yuma Gold Mines Ltd	Canada	82–3050
Zanex N.L.	Australia	82–932
Zodiac Hurricane Marine Inc	Canada	82–1281

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[Release No. 34–36206; File No. SR–DTC–95–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of the Payment of Rebates to Paying Agents During the Conversion to a Same-day Funds Payment Standard

September 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 14, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–95–12) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization Statement of the Terms of Substance of the Proposed Rule Change

DTC is extending until October 1, 1996, the payment of rebates to qualifying agents that pay municipal interest and corporate and municipal redemptions in same-day funds on the payable date.[2]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission previously approved a proposed rule change filed by DTC in which the rebate payments were to end on July 31, 1996. Securities Exchange Act Release No. 35649 (April 26, 1995), 60 FR 21576 [File No. SR–DTC–94–19] (order approving a proposed rule change implementing new guidelines for principal and income payments in a same-day funds environment).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose, of, and Statutory Basis for, the Proposed Rule Change

In DTC's next-day funds settlement system and prior to the implementation of the Group of Thirty's principal and income payment guidelines,[4] paying agents generally made payments in same-day funds to DTC for corporate income payments (*e.g.*, dividends and interest) and reorganization actions (*e.g.*, tenders and exchanges) for a majority of issues. Although corporate and municipal redemption payments and municipal income payments could be paid in next-day funds, paying agents generally made these payments in same-day funds on payment date to ensure their timely arrival at DTC. DTC invested these funds overnight and rebated to the paying agents interest on the funds as compensation for holding the funds overnight.

DTC has paid such rebates for many years; however, once DTC converts to same-day funds settlement for all security issues, DTC will make all payments to its participants on the payable date in same-day funds. As a result, DTC will not have interest earned from overnight investing available to rebate to paying agents. Therefore, DTC determined that it would cease paying such rebates to paying agents. Recognizing that participants would benefit by receiving all their expected payments in same-day funds on the payable date and in order to give agents time in which to modify their business practices in order to compensate for the loss of the rebates, DTC initially proposed to continue to pay rebates from the date of the conversion to same-day funds settlement for all security issues through July 31, 1996. In order to accomplish this, DTC determined that it would charge to participants, in proportion to their holdings in each issue for which a rebate would apply, the funds needed to pay the rebates from the date of the conversion through July 31, 1996.

In order to give paying agents additional time in which to modify their practices and procedures, the members of the Same-Day Funds Payment Task Force of the U.S. Working Committee of The Group of Thirty Clearance and Settlement Project requested that DTC extend the payment of agent rebates from August 1, 1996, through September 30, 1996. Therefore, DTC now proposes to extend the payment of such rebates until September 30, 1996. With respect to payments made on or after October 1, 1996, charges to participants will no longer be made.

The rebates will not be applied to payments of corporate interest, dividends, and reorganizations for which the paying agents already pay DTC in same-day funds on the payable date and which currently are not subject to interest earning rebates. However, DTC will require that 100% of corporate interest, dividends, and reorganization payments be paid to DTC in same-day funds on the payable date by 2:30 p.m. Eastern Standard time.

DTC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[5] because the extension of the payment of rebates to paying agents during the modification of their business practices will foster cooperation and coordination among persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe the proposed rule change will impact or impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments from DTC participants or others have not been solicited or received.

III. Date of effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on August 14, 1995, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[6] of the Act and Rule 19b–4(e)(6)[7] thereunder. In particular, the Commission believes the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–95–12 and should be submitted by October 5, 1995.

For the commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22848 Filed 9–13–95; 8:45 am]

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[3] The Commission has modified the text of the summaries prepared by DTC.

[4] For a complete description of the principal and interest payment guidelines, refer to Securities Exchange Act Release No. 35649, supra note 2.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[7] 17 CFR 240.19b–4(e)(6) (1994)

[8] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21342; 812–9568]

Alex, Brown Cash Reserve Fund, Inc., et al.; Notice of Application

September 8, 1995.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Alex, Brown Cash Reserve Fund, Inc.; Chestnut Street Exchange Fund; Municipal Fund for California Investors, Inc.; Municipal Fund for New York Investors, Inc.; Municipal Fund for Temporary Investment; The PNC Fund, Inc.; Portfolios for Diversified Investment Inc.; Provident Institutional Funds, Inc.; The RBB Fund, Inc.; Temporary Investment Fund, Inc.; Trust for Federal Securities; Warburg Pincus Cash Reserve Fund; Warburg Pincus New York Tax-Exempt Fund (the "Existing Funds"); and all future registered management investment companies (or series thereof) for which PNC Institutional Management Corporation ("PIMC"), PNC Bank, N.A. ("PNC Bank") or any entity controlling, controlled by, or under common control with PIMC or PNC Bank serves as investment adviser (the "Future Funds" and together with the Existing Funds, the "Funds").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act to exempt applicants from the provisions of sections 17(a)(1), 17(a)(2), and 17(e)(1) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to engage in transactions with banks, bank holding companies, and affiliated persons thereof that are "affiliated persons" of a Fund solely because they own, hold, or control five percent or more of the outstanding voting securities of a Fund and/or act as investment adviser to a Fund. No Fund will engage, however, in such transactions with a bank, bank holding company, or an affiliated person thereof that controls, advises, or sponsors that Fund. The purchase and sale transactions would be limited to certain types of high quality debt securities and repurchase agreements meeting specified standards. The requested order would supersede a prior order.

FILING DATES: The application was filed on April 13, 1995, and amended on July 24, 1995. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 3, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o PNC Bank, N.A., Land Title Building, Broad & Chestnut Streets, Philadelphia, Pennsylvania 19110.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Existing Funds are, and the Future Funds will be, registered management investment companies, PIMC or PNC Bank serve as investment adviser to each Existing Fund, and will serve as investment adviser to each Future Fund.

2. In 1984 the SEC issued an order granting an exemption from sections 17(a)(1), 17(a)(2), and 17(e)(1) of the Act to permit the Funds to engage in certain transactions with Affiliated Banks (the "1984 Order").[1] "Affiliated Banks" for purposes of the 1984 Order and the order requested hereby are banks, bank holding companies, and affiliated persons thereof that are affiliated persons of a Fund solely because they directly or indirectly own, control, or hold five percent or more of the outstanding voting securities of a Fund, and/or act as investment adviser to a Fund.

3. The 1984 Order permits the applicant funds to engage in transactions with Affiliated Banks involving the following instruments: (a) Money market instruments of an Affiliated Bank that is one of the fifty largest United States banks (measured by deposits); (b) repurchase agreements with no more than twelve Affiliated Banks that are among the fifty largest United States banks (measured by deposits); and (c) tax-exempt obligations (transactions with Affiliated Banks covered by the terms of the 1984 Order are hereinafter referred to as the "Covered Transactions"). The 1984 Order also permits an Affiliated Bank to accept compensation from the applicant funds, subject to the limitations of section 17(e)(2) of the Act, if such bank acts as agent for one of the funds in a Covered Transaction.

4. Applicants now request an order that would supersede the 1984 Order and permit the Funds to engage in transactions with Affiliated Banks involving the following "Qualified Securities:" (a) Money market instruments and other taxable obligations issued by, or purchased from or sold to an Affiliated Bank; (b) tax-exempt obligations purchased from or sold to an Affiliated Bank; (c) U.S. government securities from Affiliated Banks that are primary dealers in these securities ("Affiliated Dealers") and (d) repurchase agreements.

5. In addition, all Qualified Securities will meet the following credit standards:

a. For obligations that have a remaining maturity of 397 days or less, each such security shall constitute an "Eligible Security" within the meaning of rule 2a–7; provided, that, in the case of Unrated Securities (as defined in rule 2a–7(a)(20)), in addition to the requirements of rule 2a–7 applicable to such Unrated Securities, all determinations with respect to the comparability of such securities to rated securities are also reviewed and approved at least quarterly by a majority of the Fund's directors who are not interested persons of the Fund.

b. For obligations that have a remaining maturity of more than 397 days, each such security (or another long-term security of the same issuer having comparable priority and security to such obligation) shall have been rated by a nationally-recognized statistical rating organization ("NRSRO") in one of the four highest rating categories for long-term obligations; or, if the security and issuer have not been rated by an NRSRO, are determined by the Fund's investment adviser to be comparable in credit quality to a security carrying a long-term rating in one of such four highest rating categories of a NRSRO, and such determination is reviewed and approved at least quarterly by a majority of the Fund's directors who are not interested persons of the Fund.

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[1] The Arch Fund, Inc., Investment Company Act Release Nos. 14016 (June 27, 1984) (notice) and 14064 (July 25, 1984) (order).

c. Any repurchase agreements will be collateralized fully within the meaning of rule 2a–7.

d. For obligations subject to unconditional, irrevocable credit enhancement (including, without limitation, a guarantee, letter of credit or put), the Funds may rely upon the NRSRO ratings of the provider of such credit enhancement to determine whether the obligation satisfies the requirements of paragraphs (a) and (b) above. Such obligations shall be treated as rated securities to the extent that the credit enhancement is of comparable priority and security to the rated obligations of the provider of such credit enhancement.

6. Applicants also request relief to permit an Affiliated Bank to accept compensation within the limitations of section 17(e)(2) of the Act where it acts as agent for any Fund in connection with the purchase or sale of Qualified Securities.

Applicants' Legal Analysis

1. Sections 17(a)(1) and 17(a)(2) of the Act prohibit affiliated persons of the Funds, or affiliated persons of such affiliated persons, acting as principal, knowingly to sell or purchase any securities to or from the Funds. Sections 2(a)(3)(A), (B), and (C) of the Act define an "affiliated person" of another person as, respectively: (a) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of such other person; (b) any person five percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; and (c) any person directly or indirectly controlling, controlled by or under common control with, such other person.

2. By virtue of section 2(a)(3)(A), if a bank owns, controls or holds with power to vote five percent or more of the outstanding voting shares of one of the Funds, that bank could be considered an affiliated person of that Fund. Furthermore, any person who is an affiliated person of a registered investment company also may be deemed to be affiliated with each other registered investment company which has a common investment adviser, or investment advisers which are affiliated persons of each other, or common directors of common officers, or a combination of the foregoing, because such investment companies may be deemed to be under common control. Accordingly, a bank, bank holding company, or affiliated person thereof that is deemed to be an Affiliated Bank in respect of one Fund by virtue of its ownership of such Fund's shares may be deemed to be affiliated with all the Funds. The result of the operation of these provisions is to prohibit all of the Funds from engaging in any principal transaction in securities, including repurchase agreements and U.S. government securities, with a wide range of banks, bank holding companies, and affiliates thereof.

3. If an Affiliated Bank is also a primary dealer or an affiliated person of a primary dealer, the dealer then becomes an Affiliated Dealer. In addition, sections 2(a)(3)(B) and (C) cause a primary dealer which is a subsidiary of an Affiliated Bank, or which is controlled by the same holding company as an Affiliated Bank (or otherwise under common control with the Affiliated Bank), to be an affiliated person of the Affiliated Bank. The primary dealer then is an affiliated person of an affiliated person of the Funds.

4. The Funds believe the applicability of sections 17(a)(1) and 17(a)(2) to transactions between the Funds and Affiliated Banks in Qualified Securities unreasonably reduces the range of available investment alternatives. The inability to effect transactions in Qualified Securities With Affiliated Banks unduly impairs an investment adviser's flexibility in portfolio management, and deprives the Funds of the ability to purchase and sell otherwise proper portfolio securities.

5. Applicants state that the Funds will continue to apply existing internal control procedures that are designed to monitor securities transactions with Affiliated Banks by placing primary responsibility for the reasonableness and fairness of those transactions on the Funds' board of directors or trustees, or other governing bodies ("Governing Boards"). In addition to existing controls, applicants state that they will impose stringent credit quality requirements on the securities that a Fund may purchase from an Affiliated Bank. By limiting transactions with Affiliated Banks to certain Qualified Securities, applicants believe that focus is placed on the merits of a particular investment and that the Funds and their advisers will be subjected to a disciplined determination regarding whether a particular transaction is appropriate for a Fund. Finally, applicants believe that because Qualified Securities will be liquid, high-quality securities, an Affiliated Bank will be unable to exercise any improper influence without detection by the Funds' Governing Boards.

6. Applicants state that no fund will engage in transactions with an Affiliated Bank that serves as investment adviser (including sub-adviser) or sponsor to such Fund. Moreover, no Fund will engage in transactions in Qualified Securities with any Affiliated Bank that controls such Fund within the meaning of section 2(a)(9) of the Act.

7. PIMC and PNC Bank represent that there is no express or implied understanding between PIMC and PNC Bank and any bank, bank holding company or affiliated person thereof that is (or may become) an Affiliated Bank of a Fund that applicants will cause any of the Funds to enter into purchase or sale transactions in Qualified Securities with such entity. Moreover, applicants represent that they will give no preference to any Affiliated Bank in effecting purchase or sale transactions between the Funds and an Affiliated Bank that involve Qualified Securities issued by or purchased from or sold to such Affiliated Bank or because the customers of such bank purchase shares of any of the funds.

8. Section 17(e)(1) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of such person, when acting as agent from accepting from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property to or for such registered company, except in the course of such person's business as an underwriter or broker.

9. Banks are specifically excluded from the definition of a broker in section 2(a)(6) of the Act. In addition, applicants state that it would be highly improbable for a bank to satisfy the definition of underwriter in section 2(a)(40) with respect to each securities transaction involving an investment company where the bank was asked to act as agent for the investment company. Thus, a bank that is an Affiliated Bank may be prohibited from accepting any consideration whatsoever in connection with a brokerage transaction where it acted as agent for the Fund. In addition, if an Affiliated Dealer is not a separate entity from the Affiliated Bank, and acts as agent for a Fund, section 17(e)(1) also may apply to prohibit an Affiliated Dealer from receiving compensation in U.S. government securities or municipal securities transactions.

10. Applicants state that the transactions will comply with section 17(e)(2).[2] In addition, applicants state that the use of Affiliated Banks promotes investment flexibility by expanding the range of entities available for execution of securities transactions.

11. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

12. Section 6(c) of the Act provides that the SEC may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.[3]

13. Applicants submit that the terms and conditions set forth herein are reasonable and fair and do not involve overreaching on the part of any person, that they are consistent with the policy of each of the Funds, that they are consistent with the general purposes of the Act, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order will be subject to the following conditions:

1. The funds will engage in transactions with Affiliated Banks only in Qualified Securities.

2. No Fund will engage in a transaction in Qualified Securities with an Affiliated Bank that is an investment adviser or sponsor to that Fund or an Affiliated Bank controlling, controlled by, or under common control with such investment adviser or sponsor. No Fund will purchase obligations of any Affiliated Bank (other than repurchase agreements) if, as a result, more than 5% of that Fund's total assets would be invested in obligations of that Affiliated Bank. No Fund will engage in transactions in Qualified Securities with an Affiliated Bank that exercises a controlling influence over that Fund (and "controlling influence" shall be deemed to include, but is not limited to, directly or indirectly, owning, controlling, or holding more than 25% of the outstanding voting securities of the Fund).

3. The Funds: (a) Will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraphs (1) and (2) of this section; and (b) will maintain and preserve for a period of not less than six years from the end of the fiscal year in which transactions in Qualified Securities occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or material upon which the determinations described below were made.

4. The Qualified Security to be purchased or sold by a Fund will be consistent with the investment objectives and policies of that Fund as recited in the Fund's registration statement, and will be consistent with the interests of that Fund and its shareholders. Further, the security to be purchased or sold by that Fund will be comparable in terms of quality, yield, and maturity to other similar securities that are appropriate for that Fund and that are being purchased or sold during a comparable period of time.

5. The terms of the transaction will be reasonable and fair to the shareholders of that Fund and will not involve overreaching on the part of any person concerned. In considering whether the price to be paid or received for the security is reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time. In making this analysis, the Governing Board may rely on a matrix pricing system which it believes properly assists it in determining the value of securities pursuant to section 2(a)(41) of the Act.

6. The commission, fee, spread, or other remuneration to be received by the Affiliated Bank as dealer will be reasonable and fair compared to the commission, fee, spread or other remuneration received by other brokers or dealers in connection with comparable transactions involving similar securities being purchased or sold during a comparable period of time, but in no event will such fee, commission, spread or other remuneration exceed that which is stated in section 17(e)(2) of the Act.

7. The Governing Board of each of the Funds: (a) Will adopt procedures, pursuant to which transactions in Qualified Securities may be effected for the Funds, which are reasonably designed to provide that the conditions in the foregoing paragraphs and the requirements of Investment Company Act Release No. 13005 (Feb. 2, 1983) have been complied with; (b) will make and approve such changes as the Governing Board deems necessary; and (c) will determine no less frequently than quarterly that transactions in Qualified Securities made during the preceding quarter were effected in compliance with those procedures. Those procedures will also be approved by a majority of the disinterested Trustees or Directors of the Funds. The investment adviser of each Fund will implement those procedures and make decisions necessary to meet these conditions, subject to the direction and control of the Governing Board of each Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22851 Filed 9–13–95; 8:45 am]

BILLING CODE 8010-01-M

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[2] Section 17(e)(2) permits an affiliated broker of a registered investment company to receive compensation in connection with the sale of securities to or from the investment company under certain circumstances.

[3] Applicants seek relief under section 6(c) as well as section 17(b) because section 17(b) could be interpreted as giving the SEC power to exempt only a single transaction from section 17(a), as opposed to a class of transactions. See Keystone Custodian Funds, Inc., 21 S.E.C. 295 (1945).

[Release No. IC–21340; 812–8950]

Goldman Sachs Money Market Trust, et al.; Notice of Application

September 7, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order of exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Goldman Sachs Money Market Trust (formerly Goldman Sachs-Institutional Liquid Assets), Trust For Credit Unions, Goldman Sachs Equity Portfolios, Inc., Goldman Sachs Trust, Financial Square Trust and Paragon Portfolio (collectively, the "Funds") and Goldman Sachs Funds Management, L.P., Goldman Sachs Asset Management International and Goldman, Sachs & Co. (collectively, "Goldman Sachs"),[1] on

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[1] The term "Goldman Sachs" refers to all entities controlling, controlled by or under common control with Goldman Sachs & Co. and which serve as

Continued

behalf of themselves and any other investment company for which Goldman Sachs may act as investment adviser (which term includes a sub-adviser), administrator and/or distributor in the future.[2]

RELEVANT 1940 ACT SECTIONS: Exemption requested under sections 6(c) and 17(b) from the provisions of sections 17(a)(1) and 17(a)(2) of the 1940 Act.

SUMMARY OF APPLICATIONS: Applicants seek a conditional order to let the Funds engage in purchase and sale transactions limited to certain types of high quality debt securities and repurchase agreements meeting the standards set forth in Condition 1 below ("Qualified Securities") with banks, bank holding companies and affiliates thereof that are "affiliated persons" of the Funds due solely to their owning, holding, or controlling a five percent or greater share interest in a Fund and/or acting as investment adviser to a Fund, except that no Fund will engage in such transactions with a bank, bank holding company, or an affiliate thereof that controls, advises or sponsors that Fund.

FILING DATES: The application was filed on April 22, 1994 and amended and restated on December 20, 1994, and May 25 and September 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 2, 1995, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 85 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564, or C. David Messman, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds currently is organized as a business trust under Massachusetts law or as a corporation under Maryland law. Each of the Funds also has a currently effective registration statement under the 1940 Act and the Securities Act of 1933. Goldman Sachs serves as investment adviser, distributor and/or administrator to each Fund.

2. Several Funds are designed for institutional investors, particularly banks seeking investment of funds (frequently short-term monies) on behalf of accounts for which the banks act in an agency, trustee or other fiduciary capacity. Banks acting in such capacities normally purchase shares of the Funds through an omnibus or "master" account, and register such shares in the name of the bank or its nominee. In some cases, a bank may purchase Fund shares for its own account. Most of the institutionally oriented Funds are money market funds and short-term bond funds; as such the amount of a bank's holdings of shares therein can fluctuate significantly, even on a daily basis. From time to time, the number of shares of a Fund held by a bank may exceed five percent of a Fund's outstanding voting shares.

3. Applicants seek an exemption from sections 17 (a)(1) and (a)(2) to permit the Funds to engage in transactions in Qualified Securities with "Affiliated Banks." For purposes of the application, the term "Affiliated Banks" is defined to mean banks, bank holding companies and affiliated persons thereof that are affiliated persons of any of the Funds solely because they directly or indirectly own, control or hold five percent or more of the outstanding voting securities of any of the Funds, or act as investment adviser to any of the Funds.

Applicants' Legal Analysis

1. Sections 17(a)(1) and 17(a)(2) of the 1940 Act prohibit affiliated persons of the Funds, or affiliated persons of such affiliated persons, acting as principal, knowingly to sell or purchase any securities to or from the Funds. Section 2(a)(3) of the 1940 Act defines an "affiliated person" of another person as, among other persons: (A) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of such other person; (B) any person five percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by or under common control with, such other person; (D) any officer, director, partner, copartner or employee of such other person; and (E) if such other person is an investment company, any investment adviser thereof.

2. By virtue of section 2(a)(3)(A), if a bank owns, controls or holds with power to vote five percent or more of the outstanding voting shares of one of the Funds, that bank could be considered an affiliated person of that Fund. In addition, that bank's holding company and affiliated persons thereof likewise may be deemed to be affiliated persons of an affiliated person of that Fund by virtue of section 2(a)(3)(C). Furthermore, any person who is an affiliated person of a registered investment company also may be deemed to be affiliated with each other registered investment company which has a common investment adviser, or investment advisers which are affiliated persons of each other, or common directors or common officers, or a combination of the foregoing, because such investment companies may be deemed to be under common control. Accordingly, a bank, bank holding company, or affiliated person thereof that is deemed to be an Affiliated Bank in respect of one Fund by virtue of its ownership of such Fund's shares may be deemed to be an affiliated person of an affiliated person of all the Funds. The result of the operation of these provisions is to prohibit all of the Funds from engaging in any principal transaction in securities, including repurchase agreements and U.S. government securities, with a wide range of banks, bank holding companies and affiliates thereof.

3. Section 17(b) of the 1940 Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the 1940 Act. Section 6(c) of the 1940 Act provides that the SEC may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the 1940 Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.[3]

4. The Funds believe the applicability of sections 17(a)(1) and 17(a)(2) to transactions between the Funds and Affiliated Banks in Qualified Securities unreasonably reduces the range of available investment alternatives. The inability to effect transactions in Qualified Securities with Affiliated Banks deprives the Funds of the ability to purchase and sell portfolio securities that, absent the prohibitions of section 17(a), would be appropriate investments made under circumstances which do not involve a conflict of interest or other potential for abuse. Furthermore, the increasing involvement of banks (or affiliated persons thereof) in the markets for a variety of taxable and tax-exempt securities has increased the need for the Funds to be able to engage in transactions in Qualified Securities with Affiliated Banks.

5. Applicants believe that a bank, bank holding company or affiliated person thereof that is affiliated with a Fund solely because it owns, holds or controls five percent or more of a Fund's outstanding shares and/or acts as investment adviser to a Fund is unlikely to posses the power in fact to improperly influence a Fund with respect to purchases or sales by the Fund of securities from or to an Affiliated Bank. In this regard, as a condition to the relief requested, Applicants agree that no Fund will engage in transactions with an Affiliated Bank that serves as investment adviser (including sub-adviser) or sponsor to such Fund. Moreover, no Fund will engage in transactions in Qualified Securities with any Affiliated Bank which controls such Fund within the meaning of section 2(a)(9) of the 1940 Act. Applicants believe these conditions, in conjunction with the oversight to be provided, as a further condition to the relief requested, by the Boards of Directors/Trustees of the Funds, will preclude the possibility of overreaching by an Affiliated Bank. Applicants also submit that a limitation on the credit quality of the securities that may be purchased from an Affiliated Bank adequately addresses the concerns of section 17.

6. Goldman Sachs represents that there is no express or implied understanding between Goldman Sachs and any bank, bank holding company or affiliated person thereof which is (or may become) an Affiliated Bank of a Fund that Goldman Sachs will cause any of the Funds to enter into purchase or sale transactions in Qualified Securities with such entity. Moreover, Applicants represent that they will give no preference to any Affiliated Bank in effecting purchase of sale transactions between the Funds and an Affiliated Bank which involve Qualified Securities issued by or purchased from or sold to such Affiliated Bank or because the customers of such bank purchase shares of any of the Funds.

7. Applicants propose that the requested exemptive relief extend to include investment companies (and series thereof) for which Goldman Sachs does not act as investment adviser, but for which Goldman Sachs serves as distributor and/or administrator. As administrator, Goldman Sachs performs, assists in the performance of and/or supervises substantially all of various administrative services specified in the application on behalf of such investment company (or series thereof). Such services include, among others, assistance with the design, development and operation of a Fund, and the supervision of a Fund's custodian in the maintenance of the Fund's general ledger and in the preparation of the Fund's financial statements, including oversight of expense accruals and payments and of the determination of the net asset value of the Fund's assets and of the Fund's shares. Goldman Sachs also would develop uniform procedures and reports to allow each Fund's Board of Directors or Trustees to monitor compliance with the requirements of the 1940 Act, including compliance with section 17(a).

Applicants' Condition

If the requested order is granted, Applicants agree to the following conditions:

1. The Funds will engage in transactions with Affiliated Banks only in Qualified Securities. For purposes hereof, the term Qualified Securities is defined to mean:

(a) For obligations which have a remaining maturity of 397 days or less, each such security shall constitute an "Eligible Security" within the meaning of rule 2a–7; provided, that, in the case of Unrated Securities (as defined in rule 2a–7(a)(20)), in addition to the requirements of rule 2a–7 applicable to such Unrated Securities, all determinations with respect to the comparability of such securities to treated securities are also reviewed and approved at least quarterly by a majority of the Fund's Trustee/Directors who are not interested persons of the Fund.

(b) For obligations which have a remaining maturity of more than 397 days, each such security (or another long-term security of the same issuer having comparable priority and security to such obligation) shall have been rated by a nationally-recognized statistical rating organization ("NRSRO") in one of the four highest rating categories for long-term obligations; or, if the security and issuer have not been rated by any NRSRO, are determined by the Fund's investment adviser to be comparable in credit quality to a security carrying along-term rating in one of such four highest rating categories of a NRSRO, and such determination is reviewed and approved at least quarterly by a majority of such Fund's Directors/ Trustees who are not interested persons of the Fund.

(c) Any repurchase agreements will be collateralized fully within the meaning of rule 2a–7.

(d) For obligations subject to unconditional, irrevocable credit enhancement (including, without limitation, a guarantee, letter of credit or put), the Funds may rely upon the NRSRO ratings of the provider of such credit enhancement to determine whether the obligation satisfies the requirements of paragraphs (a) and (b) above. Such obligations shall be treated as rated securities to the extent that the credit enhancement is of comparable priority and security to the rated obligations of the provider of such credit enhancement.

2. No Fund will engage in any transaction in Qualified Securities with an Affiliated Bank that is an investment adviser or sponsor to that Fund or an Affiliated Bank controlling, controlled by, or under common control with such investment adviser or sponsor. No Fund will engage in transactions in Qualified Securities with an Affiliated Bank that exercises a controlling influence over that Fund (and "controlling influence" shall be deemed to include, but is not limited to, directly or indirectly, owning, controlling or holding more than 25 percent of the outstanding voting securities of the Fund). No Fund will purchase Qualified Securities of any Affiliated Bank (other than repurchase agreements) if, as a result, more than five percent of that Fund's total assets would be invested in Qualified Securities of that Affiliated Bank.

3. The Funds (a) will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in Condition 6 below, and (b) will maintain and preserve for

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investment adviser, administrator and/or distributor to one or more existing or future registered investment companies.

[2] The term "Funds" includes such future registered investment companies.

[3] Applicants seek relief under section 6(c) as well as section 17(b) because section 17(b) could be interpreted as giving the SEC power to exempt only a single transaction from section 17(a), as opposed to a class of transactions.

a period of not less than six years from the end of the fiscal year in which any transactions with Affiliated Banks occurred, the first two years in an easily accessible place—a written record of each transaction in Qualified Securities setting forth a description of the security purchased or sold, the identify of the person on the other side of the transaction, the terms of the purchase or sale transaction and the information or materials upon which the determinations described below were made.

4. The Qualified Securities to be purchased or sold by a Fund will be consistent with the investment objectives and policies of that Fund as recited in the Fund's registration statement, and will be consistent with the interests of that Fund and its shareholders.

5. The terms of the transactions must be reasonable and fair to the shareholders of that Fund and cannot involve overreaching of that Fund or its shareholders on the part of any person concerned. In considering whether the price to be paid or received for a Qualified Security is reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time. A Qualified Security to be purchased or sold by that Fund must be comparable in terms of quality, yield and maturity to other similar securities that are appropriate for that Fund and that are being purchased or sold during a comparable period of time. In making this analysis, the Board of Trustees/Directors may rely on a matrix pricing system which they believe properly assists them in determining the value of securities pursuant to section 2(a)(41) of the 1940 Act.

6. The Board of Trustees/Directors of each of the Funds (including at least a majority of the disinterested members) will (a) adopt procedures, pursuant to which transactions in Qualified Securities may be effected for the Funds, which are reasonably designated to provide that all the requirements of Conditions 1 through 5 above and the requirements of Investment Company Act Release No. 13005 (Feb. 2, 1983) have been complied with, (b) review no less frequently than annually such procedures for their continuing appropriateness, and (c) determine no less frequently than quarterly that such transactions in Qualified Securities made during the preceding quarter were effected in compliance with such procedures. The investment adviser (or sub-adviser if Goldman Sachs is the sub-adviser) of each Fund will implement these procedures and make decisions necessary to meet these conditions, subject to the direction and control of the Board of Trustees/Directors of each Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22803 Filed 9–13–95; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Handleman Company, Common Stock $(0.01 Par Value) No. 1–7923

September 8, 1995.

Handleman Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Chicago Stock Exchange, Incorporated ("CHX") and the Pacific Stock Exchange Incorporated ("PSE").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the Executive Committee of the Board of Directors of the Company ("Committee"), pursuant to lawfully delegated authority, unanimously approved a resolution on April 26, 1995 to withdraw the Security's listing on the CHX and the PSE and to maintain its listing and registration on the New York Stock Exchange, Inc. ("NYSE"). The decision of the Committee followed a study of the matter, and was based upon the belief that the listings on the CHX and the PSE were no longer beneficial to the Company because: (1) Listing the Security on the CHX, the PSE, and the NYSE was no longer cost effective in light of the low annual trading volume of the Security on the CHX and the PSE; (2) the presence of a substantial national and liquid market for the Security on the NYSE; and (3) the continuing need for the Company to reduce the costs of doing business in the current competitive environment in which the Company operates.

Any interested person may, on or before September 29, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–22845 Filed 9–13–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–21343; No. 812–9594]

Hartford Life Insurance Company, et al.

September 8, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Hartford Life Insurance Company ("Hartford"), Hartford Life Insurance Company–ICMG Secular Trust Separate Account ("Separate Account"), and Hartford Equity Sales Company, Inc. ("HESCO").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account or any other separate account ("Other Accounts") established by Hartford to support certain group flexible premium deferred annuity contracts and individual certificates thereunder ("Contracts") as well as other variable annuity contracts that are substantially similar in all material respects to the Contracts ("Future Contracts"). In addition, Applicants propose that the order extend the same exemptions granted to HESCO to any other broker-dealer that may in the future serve as principal underwriter for the Contracts or Future Contracts. Any such broker-dealer will be registered under the Securities Exchange Act of 1934 as a broker-dealer and will be a member of the National Association of Securities Dealers, Inc. ("NASD").

FILING DATE: The application was filed on May 11, 1995, and amended on August 10, 1995 and September 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Applicants, Scott K. Richardson, Esq., ITT Hartford Life Insurance Companies, 200 Hopmeadow Street, Simsbury, CT 06070.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Hartford, a stock life insurance company, is organized in Connecticut and licensed to do business in all states of the United States and in the District of Columbia.

2. The Separate Account is a separate account established by Hartford to fund the Contracts. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act, and interests in the Contracts are registered as securities under the Securities Act of 1933.

3. Hartford has established for each investment option offered under the Contract a Separate Account subaccount ("Subaccount"), which will invest solely in a specific corresponding portfolio of certain designated investment companies ("Funds"). The Funds will be registered under the 1940 Act as open-end management investment companies. Each portfolio of the Funds will have separate investment objectives and policies.

4. HESCO will serve as the principal underwriter of the Contracts. HESCO, a wholly-owned subsidiary of Hartford, is registered under the 1934 Act as a broker-dealer and is a member of the NASD.

5. The Contracts are tax-deferred individually allocated group flexible premium deferred annuity contracts, and are offered to employee-participants of nonqualified deferred compensation and supplemental executive retirement plans. The Contacts may be purchased with an initial premium payment of $1,000. The minimum subsequent premium payment for the Contracts is $1000 (certain plans may permit smaller initial and subsequent periodic premium payments). Net premium payments may be allocated to one or more of the Separate Account Subaccounts that have been established to support the Contracts.

6. The Contracts provide for a series of annuity payments beginning on the annuity date. The Contract owner may select from several annuity payout options.

7. The Contracts provide for a death benefit if the annuitant dies during the accumulation period or prior to the annuitant or Contract owner attaining age 85. The death benefit is the greater of: (1) the Contract value as determined on the date of receipt of due proof of death by Hartford; or (2) 100% of all premium payments made by the Contract owner under the Contract reduced by the amount of any partial withdrawals.

8. Certain charges and fees are assessed under the Contracts. Hartford will deduct an administration charge from a Contract owner's account value to reimburse it for expenses relating to the administration and maintenance of the Contract and for administration of the Separate Account. The Contract provides for an administrative expense charge of $2.50 to be deducted from account value on the commencement date of the Contract and monthly thereafter. The deduction will be made pro rata according to the value in each Subaccount under a Contract.

9. Applicants represent that the administration charge will not increase during the life of the Contracts. In addition, Applicants represent that these charges are at cost with no anticipation of profit.

10. A maximum front-end sales charge of 4.6% of premium payments, will be imposed for expenses related to the sales and distribution of the Contracts. Applicants state that the front-end sales charge will not increase during the life of the Contracts.

11. Hartford proposes to deduct a daily mortality and expense risk charge. Hartford represents that this charge is equal to an effective annual rate of .65% of the net asset value of the Separate Account, and that it will not increase. Of this amount, approximately .45% is for mortality risks and .20% is for expense risks.

12. Hartford assumes the mortality risk that the life expectancy of the annuitant will be greater than that assumed in the guaranteed annuity purchase rates, thus requiring Hartford to pay out more in annuity income than it had planned. In addition, Hartford is contractually obligated to provide a death benefit prior to the annuity date. Thus, Hartford assumes the risk that the owner may die at a time when the amount of the death benefit payable exceeds the then net surrender value of the Contracts. The expense risk assumed by Hartford is that the contract administration charge will be insufficient to cover the cost of administering the Contracts.

13. In the event the mortality and expense risk charges are more than sufficient to cover Hartford's costs and expenses, any excess will be a profit to Hartford.

14. Should the owner live in a jurisdiction that levies a premium tax, Hartford will pay the taxes when due. Hartford represents that state premium taxes may range up to 4.0% of premium payments and are subject to change. Hartford will deduct premium taxes when they are paid.

15. In addition Hartford will deduct a current charge of .43% of each premium payment for the federal tax cost resulting from Section 848 of the Internal Revenue Code. This charge may be increased or decreased to reflect changes in federal tax laws.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit

any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the net assets of the Separate Account and the Other Accounts in connection with the Contracts and Future Contracts of the .65% charge for the assumption of mortality and expense risks. In addition, Applicants request that the order extend the same exemptions granted to HESCO to any other broker-dealer that may in the future serve as principal underwriter for the Contracts or Future Contracts.

4. Applicants assert that the terms of the relief requested with respect to any Future Contracts funded by the Separate Account or Other Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief for each new Other Account it establishes to fund any Future Contract, as well as for each Future Broker-Dealer that distributes the Contract or Future Contracts. Applicants submit that any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application, and that investors would not receive any benefit or additional protections thereby.

Applicants submit that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing their administrative expenses and maximizing the efficient use of their resources. The delay and expense involved in having repeatedly to seek exemptive relief would reduce Applicants' ability effectively to take advantage of business opportunities as they arise.

Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Applicants thus assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

5. Applicants represent that the .65% per annum mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels and benefits provided, the existence of expense charge guarantees, and guaranteed annuity rates. Hartford will maintain at its principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Applicants' comparative review. In addition, Applicants will keep, and make available to the Commission, a memorandum setting forth the basis for the same representations with respect to the Future Contracts offered by the Separate Account or Other Accounts.

6. Hartford has concluded that there is a reasonable likelihood that the Separate Accounts and Other Accounts' proposed distribution financing arrangements will benefit the Separate Accounts and their investors. Hartford represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

7. The Separate Accounts and Other Account will be invested only in management investment companies that undertake, in the event the company should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by the company's board members, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22849 Filed 9–12–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Larson-Davis Incorporated, Common Stock, $0.001 Par Value) File No. 1–10013

September 8, 1995.

Larson-Davis Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security is currently listed on the Small Cap Market of Nasdaq under the symbol "LDII", and the principal trading activity in the Security occurs in the over-the-counter market of Nasdaq. The Company wishes to withdraw the Security from listing on the BSE in order to consolidate the trading in the Security in a single trading market.

Any interested person may, on or before September 29, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–22847 Filed 9–13–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Package Machinery Company, Common Stock, $1.00 Par Value) File No. 1–9675

September 8, 1995.

Package Machinery Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant

to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Company believes that the continued listing and registration of the Security is not consistent with its status as a company in the process of liquidation and, further, the costs associated therewith outweigh the benefits thereof to both the Company and its shareholders. On February 7, 1995, the shareholders of the Company approved a plan of dissolution and liquidation of the Company. As a result, the Company is currently in the process of selling its remaining businesses, liquidating its assets, and paying its liabilities. In addition, the Company recently completed an odd-lot tender offer to purchase all of the shares of the Security held by shareholders who owned less than 100 shares of the Security. This resulted in the reduction of the number of shareholders of record of the Company to approximately 267 shareholders as of September 1, 1995. Based upon the foregoing, the Company believes it is in the best interest of the Company and its shareholders to withdraw the Security from listing and registration under the Act.

Any interested person may, on or before September 29, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc 95–22846 Filed 9–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26370]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 8, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 2, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Power and Light Company (70–7572)

Central Power and Light Company ("CPL"), 539 N. Carancahua Street, Corpus Christi, Texas 78401–2431, an electric utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a post-effective amendment to its application under sections 9(a) and 10 of the Act and rule 54 thereunder.

By order dated April 13, 1989 (HCAR No. 24863), ("1989 Order"), the Commission authorized CPL to lease to nonaffiliated third parties: (1) Approximately 23,400 square feet of excess space on the first two floors of its corporate headquarters building ("Headquarters Building"); (2) approximately 17,800 square feet of excess space on the third and fourth floors, in the basement and on the roof of the Headquarters Building; and (3) space in one of its former office buildings ("Other Building") pending eventual sale of the Other Building.

CPL now requests authority to lease any existing or future excess space in the Headquarters Building to unaffiliated third parties at what CPL considers to be market rates for such space at the time of entering such leases. CPL also requests authority to lease several of its other rentable properties or portions thereof ("other Properties") to unaffiliated third parties until such properties are sold or are again put into use by CPL at what CPL considers to be market rates for the Other Properties at the time of entering such leases. The Other Properties shall include the following types of properties: (1) Area or regional offices, which typically consist of less than 10,000 square feet; (2) service centers which include office and warehouse facilities and which typically consist of less than 20,000 square feet; (3) district or regional offices, which typically consist of less than 20,000 square feet; (4) excess capacity in CPL training facilities; miscellaneous facilities which are being held for future use or sale and which typically consist of less than 10,000 square feet; and (5) other improved and unimproved land. All rental payments from nonaffiliated third parties for excess space in the Headquarters Building and the Other Properties are, and in the future will be, accounted for as rent from property devoted to electric operations.

Jersey Central Power & Light Company, et al. (70–7862)

Jersey Central Power & Light Company ("JCP&L"), 300 Madison Avenue, Morristown, New Jersey 07460, Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec"), 2800 Pottsville Pike, Reading, Pennsylvania 19605 (collectively, "GPU Companies"), electric utility subsidiaries of General Public Utilities Corporation, a registered holding company, have filed a post-effective amendment to their application under sections 9(a) and 10 of the Act and rule 54 thereunder.

By order dated August 15, 1991 (HCAR No. 25361), ("1991 Order"), the Commission, among other things, authorized JCP&L, Met-Ed and Penelec to enter into separate fuel lease agreements and to establish related financing arrangements to provide for the acquisition of nuclear fuel and certain related services for the Three Mile Island Unit 1 nuclear generating station ("TMI–1") and the Oyster Creek nuclear generating station ("Oyster Creek"). The GPU Companies jointly own TMI–1 in the following percentages: Met-Ed—50%; JCP&L—

25%; and Penelec—25%. JCP&L owns a 100% interest in Oyster Creek. TMI–1 and Oyster Creek are operated and maintained on behalf of the GPU Companies by GPU Nuclear Corporation, a subsidiary of GPU.

Pursuant to the 1991 Order, a nuclear fuel trust ("Fuel Trust") was established in accordance with a trust agreement under which United States Trust Company of New York acts as trustee. The Fuel Trust is the sole stockholder of two nonaffiliated Delaware corporations, TMI–1 Fuel Corporation and Oyster Creek Fuel Corporation (collectively, "Fuel Companies") which own certain nuclear fuel assemblies and component parts ("Nuclear Material") for use at TMI–1 and Oyster Creek, respectively. The GPU Companies have entered into separate lease agreements ("1991 Lease Agreements") by which TMI–1 Fuel Corporation leases Nuclear Material for TMI–1 to the GPU Companies in proportion to their respective undivided ownership interests in TMI–1, and Oyster Creek Fuel Corporation leases Nuclear Material for Oyster Creek to JCP&L. In connection with the 1991 Lease Agreements, The Prudential Life Insurance Company of America and certain of its affiliates entered into lending agreements to provide for borrowings by the Fuel Companies of up to a total of $250 million to finance the acquisition costs of Nuclear Material under such lease agreements.

The GPU Companies now propose to enter into an agreement ("Agreement") with Union Bank of Switzerland, New York Branch ("UBS" or "Agent") for UBS to provide a new credit facility ("Facility"), which would provide for borrowings of up to $210 million by the Fuel Companies from UBS and other lenders for which UBS would act as Agent (collectively, "Lenders"). The Fuel Companies will enter into one or more Facilities providing for aggregate borrowings of up to $210 million and under which: (1) letters of credit ("LC's") would be issued by UBS, as Agent, to provide credit enhancement for commercial paper to be issued by the Fuel Companies and (2) revolving credit loans would be made by the Lenders to the Fuel Companies. In addition, the 1991 Lease Agreements would be amended and/or restated in certain respects consistent with the establishment of the Facilities.

Under the Facility, the Fuel Companies would issue and sell their commercial paper from time-to-time to finance acquisition costs of Nuclear Material. To reduce borrowing costs, the Fuel Companies' commercial paper credit would be enhanced through the issuance by UBS of LC's in an aggregate face amount of up to $210 million outstanding at any time, subject to the following sublimits: (1) JCP&L—$127.5 million; (2) MetEd—$55 million and (3) Penelec—$27.5 million. The commercial paper would be evidenced by commercial paper notes ("CP Notes"). Under the Agreement, the Fuel Companies would enter into separate credit agreements ("New Credit Agreements") pursuant to which the Agent would issue its LC's and each Fuel Company would agree to reimburse the Lenders for related drawings.

The Fuel Companies would also be entitled to borrow directly under the Facility in lieu of issuing CP Notes. To evidence its obligations to repay direct borrowings, each Fuel Company will issue and sell to the Lenders its promissory notes ("New Notes"). The aggregate principal amount of New Notes outstanding at any time would not exceed the lesser of: (1) $210 million less the outstanding principal amount of CP Notes and (2) the Stipulated Casualty Value of all Nuclear Material, as defined in the 1991 Lease Agreements, under lease at such time, less the outstanding principal amount of CP Notes. The Facility would have an initial term of three years, renewable on the first anniversary and on each anniversary thereafter.

The New Notes would be secured on the same basis as the existing notes issued in connection with the 1991 Lease Agreements and would bear interest at either an Alternative Base Rate or a Eurodollar Rate. The Alternative Base Rate is a fluctuating annual rate equal to the higher of: (1) The Agent's publicly announced prime rate and (2) 50 basis points above the rate on overnight federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers. Eurodollar Rate Notes would bear interest at the Eurodollar Rate plus the Applicable Margin, as defined, and would be fixed at the Fuel Company's option for interest periods of 1, 2, 3 or 6 months. The Eurodollar Rate is defined as the annual interest rate for deposits in U.S. dollars as reported in the Dow Jones Telerate system or if such rate is not reported, at the LIBOR rate, in each case for the two business day period prior to the interest period. The Applicable Margin would range from 27.5 to 65 basis points depending on the GPU Company's senior secured long-term debt ratings.

Central Power & Light Co. (70–8677)

Central Power and Light Company ("CP&L"), 539 No. Carancahua St., Corpus Christi, Texas 78401, a wholly-owned electric utility subsidiary company of Central and South West Corporation, 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75266–0164, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 44 and 54 thereunder.

CP&L seeks authorization through December 31, 1998, to incur obligations in connection with the proposed issuance by Nueces County Navigation District No. 1 ("Nueces") and/or Guadalupe-Blanco River Authority, Texas ("Guadalupe") in one or more series of up to $95,000,000 aggregate principal amount of Pollution Control Revenue Bonds. Of this amount, up to $45,000,000 may be Pollution Control Revenue Refunding Bonds ("Refunding Bonds") and up to $50,000,000 may be new money Revenue Bonds ("New Money Bonds"). The issuance by Neuces and Guadalupe ("Issuers") of New Money Bonds and Refunding Bonds (collectively, "New Bonds") may be combined.

The purpose of the Refunding Bonds is to reacquire all or a portion of four previously issued Pollution Control Revenue Bonds ("Old Bonds"). The purpose of the New Money Bonds is to reimburse CP&L for expenditures that qualify for tax-exempt financing or to provide for current solid waste expenditures.

CP&L also seeks authority to manage interest rate risk or lower its interest rate costs on any variable rate New Bond through the issue of caps, floors, and collars during the life of the New Bonds.

The Old Bonds were issued to finance the acquisition and improvements of air and water pollution control facilities at two plants—the Barney M. Davis Power Station and the Coleto Creek generating plant—operated by CP&L. The Old Bonds were issued pursuant to Indentures of Trust ("Indentures") with two banks as trustees, NationsBank of Texas, N.A. and Texas Commerce Bank—Dallas, N.A. ("Trustees"), and had the following terms:

Series	Interest rate	Maturity date	First redemption date
1974A	7⅛%	6/1/04	6/1/84
1974B	7⅛%	6/1/04	6/1/84
1977	6%	11/1/07	11/1/87
1977A	6%	11/1/07	11/1/87

CP&L and the Issuers entered into installment sales agreements ("Sale Agreements") for the issuance of the Old Bonds. In connection with the issuance of the New Bonds, CP&L will

amend the Sale Agreements, enter into agreements with substantially the same terms, and/or enter into new installment sale agreements (collectively, "Amended Sale Agreements").

The New Bonds will bear a fixed or floating interest rate, may be secured with First Mortgage Bonds, and will mature in not more than forty years. The interest rate, redemptions provision and other terms applicable to the New Bonds will be determined in negotiations between CP&L and one or more investment banking firms that will purchase or underwrite ("Purchasers") the New Bonds.

CP&L anticipates that the New Bonds will be redeemable at its option upon the occurrence of various events specified in the Amended Sale Agreements and the Indentures, which might be amended or supplemented ("Supplemental Indentures"), or a new indenture ("New Indenture"). The New Bonds will be subject to optional redemption with premiums to be determined by negotiations between CP&L and the Purchasers, and will be subject to mandatory redemption if the interest on the New Bonds becomes subject to federal income tax.

CP&L may obtain a credit enhancement for the New Bonds, which would include bond insurance, a letter of credit or a liquidity facility. CP&L anticipates it may be required to provide credit enhancement if it issues floating rate bonds. A premium or fee would be paid for the credit enhancement, which would still result in a net benefit through a reduced interest rate on the New Bonds. CP&L will not provide credit enhancement unless it is economically beneficial.

CP&L also seeks authority to issue First Mortgage Bonds as security for the New Bonds, subject to applicable indenture restrictions under a Supplemental Indenture to its Mortgage Indenture dated November 1, 1943 to the First National Bank of Chicago and A.H. Bohm ("Mortgage Indenture"). The First Mortgage Bonds will be held by the Trustee for the New Bonds for the benefit of the New Bonds holders and will not be transferable, except to a successor trustee. The First Mortgage Bonds will be issued in the exact amount and with substantially the same terms as the New Bonds. To the extent payments in respect of the New Bonds are made in accordance with their terms, corresponding payment obligations under the First Mortgage Bonds will be deemed satisfied.

The redemption, sinking fund, and dividend provisions of the First Mortgage Bonds may deviate from the Statement of Policy Regarding First Mortgage Bonds. CP&L anticipates that the New Bonds will be sold by the Issuers pursuant to a Bond Purchase Agreement ("Purchase Agreement") between the Issuers and one or more Purchasers.

The proceeds of the New Bonds will be used to redeem the Old Bonds pursuant to the terms of the Indentures ("Redemption") and reimburse CP&L for expenditures made that qualify for tax-exempt financing or to provide for current solid waste expenditures. The proceeds of any offering also may be used to reimburse CP&L for Old Bonds previously acquired. Additional funds required to pay for the Redemption and the costs of issuance of the New Bonds will be provided by CP&L from internally generated funds and short-term borrowings.

CP&L believes that the Redemption of the Old Bonds and the issuance of floating rate Refunding Bonds could result in substantial savings and benefit ratepayers. Whether or not net present value savings are available, CP&L proposes to refund the Series 1974A and the Series 1977 Bonds to eliminate the sinking fund requirement so that the current amount of tax-exempt bonds outstanding will be maintained. CP&L also proposes to refund the Series 1974B and the Series 1977A Bonds to achieve savings from consolidating several series of bonds into one or two series.

New England Electric System, et al. (70–8679)

New England Electric System ("NEES"), a registered holding company, and its subsidiary companies, Massachusetts Electric Company ("Mass. Electric"), New England Electric Transmission Corporation ("NEET"), Narragansett Energy Resources Company ("NERC"), New England Energy Incorporated ("NEEI"), New England Hydro-Transmission Electric Company, Inc. ("Mass. Hydro"), New England Hydro-Transmission Corporation ("NH Hydro"), New England Power Company ("NEP"), and New England Power Service Company ("NEPSCO"), all of 25 Research Drive, Westborough, Massachusetts 01582, Granite State Electric Company, 33 West Lebanon Road, Lebanon, New Hampshire 03766, and The Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901, (collectively, "Applicants") have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43 and 45 thereunder.

The subsidiaries noted below ("Borrowing Companies") propose, from November 1, 1995 to October 31, 1997, to borrow from the NEES intrasystem money pool ("Money Pool") and/or banks, and/or, in the case of Mass. Electric, Narragansett, and NEP, through the issuance of commercial paper up to the following amounts:

Granite	$10,000,000
Mass. Electric	150,000,000
Narragansett	100,000,000
NEET	10,000,000
Mass. Hydro	25,000,000
NH Hydro	25,000,000
NEP	375,000,000
NEPSCO	25,000,000
Total	720,000,000

The proceeds from the borrowings will be used: (i) to pay outstanding notes to banks and/or commercial paper dealers and/or borrowings from the Money Pool; (ii) to provide new money, and/or to reimburse the treasury, for capital expenditures; and (iii) for other corporate purposes relating to ordinary business operations, including working capital and the financing of construction and property acquisitions.

Applicants request authority to lend to the Money Pool from surplus funds that may be available in their treasuries. Loans by the Money Pool to the Borrowing Companies may or may not be evidenced by notes. The interest rate for such loans will be 108% of the monthly average of the rate for high grade 30-day commercial paper sold through dealers by major corporations as published in the Wall Street Journal. Although there are no stated maturities, Money Pool loans are payable on demand and may be prepaid without penalty.

Applicants state that bank loans will be evidenced by notes maturing less than one year from date of issuance, with a negotiated interest rate. Fees will be paid to the banks in lieu of compensating balance arrangements. The effective interest cost of bank loans will not exceed the greater of the bank's base or prime lending rate or the rate published in the Wall Street Journal as the high federal funds rate, plus, in either case, one percent. Some bank borrowings may be without prepayment privileges. Payment of any short-term promissory notes prior to maturity will be made on the basis most favorable to the Borrowing Companies, taking into account fixed maturities, interest rates, and any other relevant financial considerations.

Mass. Electric, Narragansett, and NEP also propose to issue and sell commercial paper to one or more nationally recognized commercial paper dealers ("CP Dealer"). Initially, the CP Dealer will be CS First Boston

Corporation and/or Merrill Lynch Money Markets Incorporated.

The effective interest cost to the issuer of commercial paper will generally not exceed the effective interest cost of the base lending rate at the First National Bank of Boston. However, the effective interest cost of such paper is based on the supply of, and demand for, that and similar paper at the time of sale, and interest costs have from time to time exceeded bank base rates. While it is not anticipated that the effective annual cost of borrowing through commercial paper will exceed the annual base rate borrowing from the First National Bank of Boston, commercial paper may be issued with a maturity of not more than 90 days with an effective cost in excess of the then-existing lending rate.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22844 Filed 9–13–95; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Dynamic Testing of Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting which is being held by the Federal Aviation Administration (FAA) to present its views and hear comments from the public concerning issues relating to dynamic testing of seats in transport category airplanes.

DATES: The meeting will be held in Seattle, Washington, on October 23 and 24, 1995, beginning at 8:30 a.m.

REGISTRATION: Registration will begin at approximately 7:30 a.m. on Monday, October 23. Persons planning to attend the meeting are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information.

ADDRESSES: The meeting will be held at the Red Lion Hotel Seattle Airport, 18740 Pacific Highway South, Seattle, WA 98188, telephone (206) 246–8600. A block of guest rooms has been reserved for the meeting at the Red Lion Hotel at a group rate. This block of rooms will be held until September 25. Persons planning on attending the meeting should contact the hotel directly for reservations and identify themselves as participants in the FAA public meeting on dynamic testing of seats to ensure proper credit.

FOR FURTHER INFORMATION CONTACT: Jeff Gardin, FAA, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2136; facsimile (206) 227–1320; Internet: Jeff Gardin at ANM100@mail.hq.faa.gov.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to present information to the public regarding certain aspects of the dynamic test requirements for seats, and to hear comments from the general public on the current 16g seat dynamic test regulatory and compliance issues.

The agenda for the meeting will include:

Day One:
- Background on development of the regulation.
- Implementation of the regulation into certification bases
- Summary of recent guidance issued
- Head Injury Criterion compliance
- Status of revision to the advisory circular

Day Two:
- Input from the public

Participation at the Meeting

Requests from persons who wish to present oral statements at the public meeting should be received by the FAA no later than October 2, 1995. Such requests should be submitted to Jeff Gardin, as listed under the heading **FOR FURTHER INFORMATION CONTACT**, and should include a written summary of oral remarks to be presented, as well as an estimate of time needed for the presentation. Requests received after the date specified above will be considered and may be scheduled, time permitting, during the meeting. The FAA will prepare an agenda of speakers who will be available at the meeting. Every effort will be made to accommodate as many speakers as possible in the time allotted.

Meeting Procedures

The following procedures are established to facilitate the meeting:

(1) Attendance is open to the public, but will be limited to the space available.

(2) There will be no admission fee or other charge to attend or participate in the meeting. The opportunity to speak will be available to all persons, subject to availability of time.

(3) The meeting is designed to provide information to, and hear comments from, the public concerning issues related to the dynamic test requirements for seats. The meeting will be conducted in an informal and nonadversarial manner; however, the FAA may ask questions to clarify a statement and to ensure a complete and accurate record.

(4) Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this issue will be present.

(5) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues and, unless stated as such, should not necessarily be construed as a position of the FAA.

(6) An individual, whether speaking in person or in a representative capacity on behalf of an organization, may be limited to as 10-minute statement. If possible, additional time may be allotted, if available.

(7) The FAA will try to accommodate all questions, time permitting. However, the FAA reserves the right to exclude some questions, if necessary, to present a balance of viewpoints and issues.

(8) The FAA will review and consider all material presented by participants at the meeting. Participants are requested to provide 10 copies of all materials to be presented, for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(9) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be made a part of the official record. Any person interested in purchasing a copy of the transcript should contact the court reporter directly at the meeting.

Issued in Renton, WA on September 7, 1995.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–22862 Filed 9–13–95; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Safety Performance Standards Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will discuss its decisions concerning motor vehicle regulatory reform.

DATES: Following the Agency's regular, quarterly public meeting relating to the agency's safety performance standards, which will be held on September 22,

1995 beginning at 9:30 a.m. and ending at approximately 12:30 p.m., NHTSA will discuss its motor vehicle regulatory reform initiatives and its response to public comments on this subject. This latter discussion will be held immediately after the regular quarterly meeting, beginning after lunch at 1:30 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol, 550 C Street, SW, (Columbia North Room), Washington, DC 20024.

SUPPLEMENTARY INFORMATION: The motor vehicle regulatory reform meeting is a follow-up to NHTSA's March 29, 1995 meeting on regulatory reform held in conjunction with the agency's previous quarterly technical meeting, and to the agency's April 4, 1995 meeting in Washington, D.C., at which NHTSA sought information from the public on regulatory reform actions the agency should take related to its motor vehicle regulations. These were in conjunction with President Clinton's call for a new approach to the way Government regulates the private sector, and his request that Executive Branch agencies report to him by June 1, 1995 on ways to improve the regulatory process. NHTSA will discuss how the agency has handled the public comments and the next actions to implement its motor vehicle regulatory reform decisions.

A transcript will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

Issued on: September 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–22863 Filed 9–11–95; 12:22 pm]

BILLING CODE 4910-59-P

Research and Special Programs Administration

Appeals in Hazardous Materials Transportation Enforcement Cases

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of the availability of decisions on appeal in enforcement cases under the Federal hazardous materials transportation law.

SUMMARY: This notice alerts the public that decisions on appeal by the Administrator of the Research and Special Programs Administration (RSPA) are now available through the Hazardous Materials Information Exchange (HMIX) computer system. These appellate decisions involve hazardous materials transportation enforcement cases, issued between 1992 and April 1995, initiated under the Federal hazardous materials transportation law and the Hazardous Materials Regulations (HMR). In these decisions, the Administrator establishes RSPA's policy regarding the enforcement of the HMR and provides a rationale for these policies. This information will assist the efforts of the regulated community to comply with HMR and is being provided to the regulated community as a public service.

FOR FURTHER INFORMATION CONTACT: The public may access the HMIX and the appeal decisions by computer: Commercial Access (708) 972–3275 or Internet Access: hmix.dis.anl.gov (146.137.100.54). Members of the public who do not have access to a computer can request a copy of these decisions by contacting: Suezett Edwards, Office of Hazardous Materials Initiatives and Training (DHM–50), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (Tel. (202) 366–4900) or Robert A. Monniere, Office of the Chief Counsel (DCC–10), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (Tel. (202) 366–4400).

SUPPLEMENTARY INFORMATION: Federal hazardous materials transportation law (Federal hazmat law) (49 USC 5101 *et seq.*, formerly 49 app. USC 1801 *et seq.*) provides that, "The Secretary shall prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. The regulations * * * shall govern safety aspects of the transportation of hazardous material the Secretary considers appropriate." (49 USC 5103(b)(1)). Under this authority, RSPA issues the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, a comprehensive set of regulations concerning the transportation of hazardous materials.

The HMR govern the shipping and transporting of hazardous materials by aircraft, rail car, vessel and motor vehicle. The HMR also prescribe requirements governing the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or container which is represented, marked, certified, or sold for use in transportation of hazardous materials in commerce.

In addition to the HMR, RSPA has issued other regulations (49 CFR parts 106 and 107) implementing Federal hazmat law. All of these regulations are enforced by RSPA, the U.S. Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, and the Federal Railroad Administration. Within their respective modes of transportation, these agencies enforce the requirements of the HMR.

Within RSPA, the Office of Hazardous Materials Enforcement (OHME) and the Office of the Chief Counsel enforce the HMR and parts 106 and 107. RSPA's enforcement regulations are in subpart D of part 107. When OHME finds that a person apparently has violated Federal hazmat law or the regulations, the Office of the Chief Counsel may institute an enforcement action. That office may issue a notice of probable violation (notice), in which a respondent is charged with a probable violation and a civil penalty is proposed. In addition, the notice may contain a proposed compliance order.

Generally, under 49 CFR 107.313(a), a respondent must respond to a notice within 30 days of its receipt. The respondent may respond by admitting the violation(s) and accepting the proposed penalty amount (or the proposed compliance order), or may contest the notice. A notice may be challenged through a written response, a telephonic or in-person conference, or a hearing before an administrative law judge.

If the respondent makes no response within the prescribed period, the Chief Counsel may enter an order finding that the alleged violation(s) were committed and imposing the proposed penalty or compliance order. The same result follows if the respondent admits the violation(s). When the respondent requests a conference, the Office of the Chief Counsel conducts the conference; then the Chief Counsel reviews the proceeding and considers all relevant evidence, including all submissions of the respondent. The Chief Counsel then issues an order, which may include a finding of violation, imposition of a civil penalty and a compliance order.

In assessing civil penalties, the Chief Counsel considers the nature and circumstances of the violation, its extent and gravity, the respondent's culpability, the respondent's lack of prior violations, the respondent's ability to pay, the effect of the civil penalty on the respondent's ability to continue in business and any other relevant factors (especially respondent's corrective actions) (*see* RSPA penalty guidelines, 60 12139 (March 6, 1995)).

Where a hearing is requested, the Office of the Chief Counsel submits the matter to the Department's Office of Hearings. An administrative law judge is assigned to the case and conducts pre-hearing and hearing procedures. The administrative law judge issues an appropriate order.

Following issuance of an order by either the Chief Counsel or an administrative law judge, a respondent must either comply with the order or file an appeal with the Administrator of RSPA. The appeal must be filed within 20 days of respondent's receipt of the order. The appeal must state, with particularity, the findings in the order that the respondent is challenging, and it must include all relevant information and arguments. The filing of an appeal stays enforcement of the order.

In a decision on appeal, the Administrator determines whether to affirm or dismiss violations and whether to affirm or modify civil penalty assessments and compliance orders. A respondent has 30 days from the date of issuance of the decision on appeal in which to comply with its terms. Failure to timely comply results in assessment of interest, penalty and administrative charges where a civil penalty has been affirmed in the decision on appeal. The Administrator's decision on appeal is the final step in the administrative process.

The decisions on appeal are presented in case number sequence with each decision containing the individual case number, respondent's name, the background of the case, a discussion of the facts and circumstances, and the Administrator's findings.

Issued in Washington, DC, on September 11, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–22903 Filed 9–13–95; 8:45 am]

BILLING CODE 4910-60-P

[Docket No. P–93–2W; Notice 3]

Grant of Waiver: Repair of Gas Transmission Lines

The Research and Special Programs Administration (RSPA) waived certain maintenance regulations (49 CFR 192.713(a) and 192.485) to permit 28 pipeline operators and their subsidiaries to repair steel gas transmission lines with Clock Spring® wrap (Notice 2; 60 FR 10630; February 27, 1995). The waiver, which was based on a petition submitted by the Interstate Natural Gas Association of America (INGAA) and a notice inviting public comment (Notice 1; 59 FR 49739; September 29, 1994), applies to lines operating at 40 percent or more of specified minimum yield strength.

As stated in Notice 2, the waiver is subject to the following conditions:

(1) Clock Spring® wrap must be installed using procedures recommended by the manufacturer;

(2) Clock Spring® wrap must be installed consistent with the program, GRI WRAP;

(3) Clock Spring® wrap must be installed consistent with a Gas Research Institute plan, including, at 2-year intervals, excavating and evaluating a statistical sample of sites, recording the results, and sending the results to RSPA;

(4) To allow inspection by RSPA and state agencies serving as interstate enforcement agents, scheduled non-emergency installations of Clock Spring® wrap must be reported (by phone, fax, or mail) a reasonable time before installation to the RSPA pipeline regional office and state agent with authority over the repair; and

(5) Persons installing Clock Spring® wrap must have been trained and certified in installation procedures either by the Clock Spring Company or by persons the Clock Spring Company has trained and certified.

By letter of June 30, 1995, INGAA petitioned RSPA to add additional operators to the list of operators who are authorized to use the wrap under the waiver. These additional operators include interstate natural gas pipeline companies as well as intrastate pipeline companies. Because the safety of Clock Spring® wrap installations on high-stress gas transmission lines is governed by the terms and conditions of the waiver, expanding the list of operators to include additional interstate companies would not be inconsistent with pipeline safety. However, under the federal statutory provision that governs waivers of the pipeline safety regulations (49 U.S.C. 60118), matters involving intrastate pipeline facilities under the authority of participating state agencies are handled initially by those agencies. Therefore, we are adding to the list of operators authorized to use the wrap only those interstate natural gas pipeline companies named in INGAA's petition. These companies are Consumers Power and Michigan Gas Storage Company, Iroquois Gas Transmission System, National Fuel Gas Supply Corporation with National Fuel Gas Distribution Corporation, Sabine Pipe Line Company, Valero Energy Corporation, and Viking Gas Transmission Company.

The remaining companies named in INGAA's petition should either obtain a waiver of 49 CFR 192.713(a) and 192.485 from the applicable state agency participating in the federal/state pipeline safety regulatory program or notify RSPA that the gas transmission lines involved are intrastate pipeline facilities that are not subject to the authority of such an agency. As provided by the above statutory provision, state waiver actions are subject to review by RSPA. We will not object to any state waiver that is consistent with the terms and conditions of the waiver published in Notice 2 of this proceeding.

(Authority: 49 U.S.C. 60118(c))

Issued in Washington, DC on September 8, 1995.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 95–22815 Filed 9–13–95; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Senior Executive Service Combined Performance Review Board (PRB)

AGENCY: Treasury Department.

ACTION: Notice of Members of Combined Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined PRB for the Bureau of Engraving and Printing, the Financial Management Service, the U.S. Mint and the Bureau of the Public Debt. The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the four bureaus, except for executives below the Assistant Commissioner level in the Financial Management Service. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

COMPOSITION OF COMBINED PRB: The Board shall consist of at least three voting members. In case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

PRIMARY MEMBERS: Timothy G. Vigotsky, Assistant Director (Management), E&P; Bland T. Brockenborough, Assistant Commissioner, Regional Operations, FMS; Andrew Cosgarea, Jr., Associate

Director, Chief Operating Officer, Mint; Kenneth R. Papaj, Director, Government Securities Regulations Staff, PD.

ALTERNATE MEMBERS: L. Paul Blackmer, Jr., Associate Director (Chief Financial Officer), E&P; Diane E. Clark, Assistant Commissioner, Financial Information, FMS; Jay M. Weinstein, Associate Director for Policy and Management & CFO, Mint; Thomas W. Harrison, Assistant Commissioner (Administration), PD.

DATES: Membership is effective on September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew Cosgarea, Jr., U.S. Mint, Associate Director, Chief Operating Officer, Suite 825, 633 3rd St., N.W., Washington, D.C. 20220, (202) 874–6100.

This notice does not meet the Department's criteria for significant regulations.

Dated: September 6, 1995.

Andrew Cosgarea, Jr.,

Associate Director, Chief Operating Officer.

[FR Doc. 95–22800 Filed 9–13–95; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 95–74]

Retraction of Revocation Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the Customs Bulletin.

Matthew Adair—11820

License 11820, issued in the Detroit District, remains a valid license.

Dated: September 8, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–22905 Filed 9–13–95; 8:45 am]

BILLING CODE 4820-02-P

[T.D. 95–75]

Retraction of Revocation Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: The following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the Customs Bulletin.

Karen L. Blanchard—10872

License 10872, issued in the Norfolk District, remains a valid license.

Dated: September 8, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–22906 Filed 9–13–95; 8:45 am]

BILLING CODE 4820-02-P

Office of Thrift Supervision

[No. 95–174]

Notification of Change in Location and Hours of Operation for Public Reference Room and Securities Filings Desk

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The Office of Thrift Supervision (OTS) is giving notice of the change in location and hours of operation for its public reference room and the location at which official securities filings are to be made. These changes are being made to enhance access to the public reference room and the securities filing desk.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Catherine C. M. Teti, Director, Records Management and Information Policy, (202) 906–7571, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: This notice serves to inform the public of the change in location and hours of operation for OTS' Public Reference Room and of the change in location for official securities filings made pursuant to 15 U.S.C. 78*l*(i), 12 CFR 563d.1 and 12 CFR Part 563g.

Through a recent reorganization, OTS' Information Services Division, housing its Public Reference Room, has become part of the Dissemination Branch of the Records Management and Information Policy Division. In addition, the Securities Filing Desk previously operated by the Business Transactions Division has been integrated into the Dissemination Branch and now operates from the Public Reference Room.

OTS' Public Reference Room is now located on the lower level of OTS' headquarters office at 1700 G Street, NW., Washington, D.C. 20552. Visitors must check in with the guard on duty and must use the designated elevator for accessing the Public Reference Room. This procedure has eliminated the need for the scheduled escort service. The hours of operation for the Public Reference Room have been expanded to 9:00 a.m. until 4:00 p.m. on business days.

Securities filings, comment letters and other communications with the Dissemination Branch may be hand delivered to OTS' Public Reference Room from 9:00 a.m. until 4:00 p.m. on business days. In addition, delivery will be accepted by the guard's desk at 1700 G Street, NW. from 4:00 p.m. until 5:00 p.m. No other changes have been made in the procedure for making official securities filings.

Comment letters and other correspondence addressed to the Dissemination Branch may also be sent by facsimile transmission to FAX number (202) 906–7755 or, for documents exceeding 25 pages in length, to FAX number (202) 906–6956, from 9:00 a.m. until 5:00 p.m. on business days. Neither facsimile machine is operable outside of these established hours. Securities filings must still be made on paper copies and delivered by mail or messenger.

Amendments to OTS' regulations at 12 CFR Part 505 to reflect the new procedures, addresses, and hours of operation outlined in this notice will be forthcoming in the next OTS technical amendments rulemaking.

Dated: September 8, 1995.

By the Office of Thrift Supervision.

John F. Downey,

Executive Director, Supervision.

[FR Doc. 95–22841 Filed 9–13–95; 8:45 am]

BILLING CODE 6720-01-P

UNITED STATES INFORMATION AGENCY

Exchanges and Training Program With the Newly Independent States

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges, Division of Russia/Eurasia of the United States Information Agency's Bureau of Education and Cultural Affairs announces a competitive grants program. Public or private non-profit organizations meeting the provisions described in 26 CFR 1.501(c)(3) may apply to develop training programs in (1) local government and public administration, (2) business administration and business development, (3) rule of law, and (4) independent media development for the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Russia, Tajikstan, Turkmenistan, Ukraine, and Uzbekistan.

Overall grant making authority for this program is contained in the Mutual

Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act and the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/PN–96–16.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time on Wednesday, November 15, 1995. Faxed documents will not be accepted, nor will documents postmarked November 15, 1995 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Office of Citizen Exchanges, Russia/Eurasia Division, E/PN, Room 216, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, tel.: 202–619–5326, fax: 202–619–4350, to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Specialist Jim Del Giudice on all inquiries and correspondence. Mr. Del Giudice may also be reached at the following e-mail address: jdelgiud@usia.gov. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges, Russia/Burasia Division or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges, Russia/Eurasia Division may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package and send an original and ten copies of completed applications to: U.S. Information Agency, Ref.: E/PN–96–16, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS post overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporation diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

USIA is interested in proposals that encourage the growth of democratic institutions in the NIS. The main areas are local government and public administration; rule of law; business management; and media. Proposals should demonstrate support for host-country institutions and should discuss what impact activities are expected to have over the long run. Proposals which build upon previous efforts and/or show significant cost-sharing will receive preference.

The projects may include: internships; study tours; short-term training; consultations; and extended, intensive workshops taking place in the United States or in the countries listed in this announcement:

We encourage applicants to design creative programs aimed at non-English speakers both for in-country as well as for U.S.-based training projects. USIA is interested in proposals whose designs take into account the need for ongoing sharing of information and training. Examples include: "train the trainers" models; the creation of indigenous training centers; and/or plans to create professional networks or professional associations to share information.

Note: While this competition may fund programs in which American universities work with NIS counterparts, it is not intended to be a university linkage program. Such programs are funded by USIA's Office of Academic Programs (E/A) and proposals whose purpose is to exchange faculty or otherwise support direct academic links should be submitted under the E/A RFP for the College and University Affiliations Programs (CUAP).

Local Government and Public Administration

USIA is interested in proposals for training programs that foster effective administration of local and regional governments.

Programs in Public Administration for Kazakstan will not be accepted.

Proposals are encouraged for the following themes/topics which have been requested by USIA's posts in Ukraine and Russia:

- RUSSIA: Projects that build the capacity of local institutions and that use Russian language materials are strongly encouraged. Proposals that show support from local administrations in Russia—city or oblast—will receive preference, as will proposals that demonstrate some basis for continuity—for example, those that build on Sister City relationships or other professional associations. USIA is particularly interested in exchange programs designed for regional legislators, in particular the oblast legislatures of Irkutsk and Buryatia. Programs that emphasize the practical ramifications of a federated system of government will receive particular consideration. Programs should involve exchanges and continuing consultations between counterparts, for example, oblast duma members and U.S. state legislators. Proposals should be very specific, emphasizing concrete, tangible results that leave something behind in Russia once projects are completed.
- UKRAINE: Priority will be given to programs on themes such as: setting up a civil service and the concept of merit-based recruitment; the relationship between government and business; how to create a business-friendly environment through local laws and practices; combating corruption in law enforcement officials; governmental

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budgeting processes; taxation; privatization of government services; models of local government, including city manager, city council, county government; regional planning at multi-city, multi-county level; and administration of civic organizations such as library school boards, community centers. Ukrainian partner institutions might include the Institute of Public Administration in Kiev, the L'viv Management Institute, the International Management Institute in Kiev, or similar institutions.

Rule of Law

For all NIS countries, USIA is interested in proposals for parliamentary exchanges that offer a substantive professional visit to the United States for groups of elected legislators and their staffs, at both national and regional levels. Programs can be designed around a specific theme (e.g., budget and finance, legislative and parliamentary procedure, oversight of law enforcement) or can serve as a vehicle to develop relationships between parliamentarians and Members of Congress and state legislators. Direct contact with U.S. Members of Congress is a major goal of the program. Proposals for groups composed of deputies or a combination of deputies and professional staff are acceptable. A compelling program rationale should be given for projects mixing local and national officials in one group. Visits to state legislatures in the United States are encouraged. Particular care must be taken to coordinate participant lists with the American Embassy in the given NIS country. In general, the American Embassies will issue the formal invitations to parliamentarians to participate in a given program.

For Russia, USIA is interested in long-term internship-based exchange programs between Russian parliamentary staff members and their American counterparts. Such programs should expose staff members to the workings of a congressional office. Internships should be substantive and involve work both in Washington and in congressional districts and last approximately eight weeks, USIS Moscow would select English speaking participants for this effort.

For Kazakstan, USIA is particularly interested in proposals involving the Parliament-to-be (elections should be held by the end of the 1995 calendar year). Programs beginning after March 1996 would be ideal for establishing contacts with the new parliament. Proposals should focus on the basics of and legislative procedures in drafting, debating, and passing legislation.

For Ukraine, USIA is interested in programs that offer training in the administration of local courts.

Business Administration and Development

USIA's definition of business development and administration is broad. It includes: small business development, resource development (housing, environment, energy), economic privatization and restructuring and agri-business development, including food distribution systems or the role of family farms. USIA is interested in projects that strengthen university business departments and provide management training for people already in the work place. In addition, the following USIS posts have expressed interest in the following specific themes:

- UKRAINE: Proposals are encouraged on the following themes: Business ethics; entrepreneurship; how to start a small business; how to promote business; and business curriculum development.
- KAZAKSTAN: Proposals should focus on management training for established professionals; particularly in those areas that are of importance to the future development of Kazakstan. These fields include energy, industry, metallurgy, agriculture, mineral development, and small business development.

Independent Media Development

USIA is interested in media training proposals that focus on journalistic training, management of media organizations and foster independent media. Journalistic training in basic skills and concepts could include: effective writing, investigative reporting, objectivity, the clear labeling of editorials and opinion pieces, intellectual property issues and ethics.

Media management training (both print and electronic) should focus on management of media as a business: management techniques, desk top publishing, advertising, marketing, distribution, personnel, public relations, and the financial benefits and pitfalls of journalistic advocacy. USIS posts in the following countries have indicated their priority themes:

- RUSSIA: USIA is particularly interested in proposals to work with nascent media associations and wire services. Collaborative efforts with organizations such as (but not limited to) the newly-founded Association for Investigative Journalists and more established organizations like the Russian Association of Editors and Publishers, the Glesnost Defense Fund, and the Globe Press Syndicate (GLOBUS) are encouraged. Proposals should build institutional capacity, increase the number of viable voices promoting the free flow of information, and enhance institutional ability to provide training and support.
- KAZAKSTAN: USIA is particularly interested in proposals that focus on the business of media and maximize the amount of practical, hands-on experience provided to program participants. There are many independent media outlets in Kazakstan that are trying to make the transition to a market-driven news business, and the Agency is interested in proposals that promote the idea of journalism as a business. Training programs in news reporting, television production and the ethics of journalism are also encouraged. Priority will be given to proposals that contain both in-country and U.S.-based programming. Programs for non-English speakers will be given priority.
- UKRAINE: The following topics have priority: Ethics in journalism; straight news reporting; marketing and advertising in print and broadcast media.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines in the Solicitation Package for further details.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance in the Program and Budget Guidelines sections of the Solicitation Package. Proposals for less than $150,000 will receive preference.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants are invited to submit an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the USIA Office of East European and NIS Affairs and the appropriate USIA post(s) overseas. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered:

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Cross Cultural/Area Expertise:* Proposals should reflect the institution's expertise in the subject area and should address specific areas of concern facing countries involved in the project. Additionally, projects should show evidence of sensitivity to historical, linguistic and other cross cultural factors and should demonstrate how this sensitivity will be used in practical aspects of the program, such as pre-departure orientations or briefings of American hosts.

6. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both the organization and the program activities.

7. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

8. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

9. *Follow-On Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

10. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposals include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

11. *Cost-Effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

12. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

13. *Value of U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funding. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 1, 1996. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 8, 1995.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–22908 Filed 9–13–95; 8:45 am]

BILLING CODE 8230-01-M

NIS Secondary School Initiative Inbound Academic Year Placement

AGENCY: United States Information Agency.

ACTION: Amendment—Request for proposals.

SUMMARY: This is an amendment to the Request for Proposals (RFP) published September 7, 1995, beginning on page 46683 and ending on page 46685, concerning placement of students from the Newly Independent States (NIS) of the former Soviet Union who will be in the United States under the 1996/97 Academic Year Program of the NIS Secondary School Initiative (Announcement Number E/P–96–12). This amendment changes the day listed with the deadline date to Thursday, October 19. The RFP incorrectly says Friday, October 19.

FOR FURTHER INFORMATION CONTACT: Diana Aronson, NIS Secondary School Division (E/PY), Room 320, (202) 619–6299.

Dated: September 8, 1995.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 95–22907 Filed 9–13–95; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 178
Thursday, September 14, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, September 21, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995–31: Teresa C. Lahaderne on behalf of San Diego Host Committee
Advisory Opinion 1995–32: Leslie Fox on behalf of Chicago's Committee for '96
Advisory Opinion 1995–33: Melanie Fahey on behalf of the Coast Employee Action Fund
Advisory Opinion 1995–35: N.B. Forrest Shoaf on behalf of Alexander for President, Inc
Regulations:
  MCFL Regulations: Revised Rules on Facilitation, Candidate Appearances, Endorsement, Voter Guides and Meeting Rooms (continued from meeting of September 14, 1995)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–23005 Filed 9–12–95; 3:39 pm]

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federal register

Thursday
September 14, 1995

Part II

Department of Education

34 CFR Part 700

Standards for the Conduct and Evaluation of Activities Carried Out by the Office Educational Research and Improvement (OERI)—Evaluation of Applications for Grants and Cooperative Agreements and Proposals for Contracts; Rule

DEPARTMENT OF EDUCATION

34 CFR Part 700

RIN 1850–AA51

Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI)—Evaluation of Applications for Grants and Cooperative Agreements and Proposals for Contracts

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Assistant Secretary for Educational Research and Improvement establishes final regulations that set standards for the evaluation of applications for grants and cooperative agreements and proposals for contracts. The development of these standards is required by the Office of Educational Research and Improvement's authorizing legislation, the "Educational Research, Development, Dissemination, and Improvement Act of 1994." The standards ensure that these application and proposal evaluation activities meet the highest standards of professional excellence.

EFFECTIVE DATE: These regulations take effect October 16, 1995.

FOR FURTHER INFORMATION CONTACT: Edward J. Fuentes, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 600, Washington, DC 20208–5530. Telephone (202) 219–1895. Internet electronic mail address: stan-questions@inet.ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 31, 1994, President Clinton signed Pub. L. 103–227, which includes Title IX—the "Educational Research, Development, Dissemination, and Improvement Act of 1994" (the "Act"). The Act restructured the Office of Educational Research and Improvement (OERI) and endowed it with a broad mandate to conduct an array of research, development, dissemination, and improvement activities aimed at strengthening the education of all students. The Act also required the establishment of a National Educational Research Policy and Priorities Board (the "Board") to work collaboratively with the Assistant Secretary to identify priorities to guide the work of OERI.

The legislation directed the Assistant Secretary to develop, in consultation with the Board, such standards as may be necessary to govern the conduct and evaluation of all research, development, and dissemination activities carried out by the Office to ensure that such activities meet the highest standards of professional excellence. The legislation required that the standards be developed in three phases. These regulations implement the first phase of the standards. The Assistant Secretary will publish at a later date additional proposed regulations to implement the remaining standards in accordance with the timelines established in the Act. The legislation requires the Board to review and approve the final standards.

On June 7, 1995, the Assistant Secretary for Educational Research and Improvement published a notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 30160).

Analysis of Comments and Changes

In response to the Assistant Secretary's invitation in the NPRM, five parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Issues are grouped according to subject with appropriate sections of the regulations referenced in parentheses. Substantive issues are discussed under the section of the regulations to which they pertain. In addition to the public comment, the comments of the Board's Committee on Standards are also addressed. That Committee met in public session on August 4, 1995, to provide final input for the Board and to act on the Board's behalf in approving the standards. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Qualifications of Peer Reviewers (§ 700.11)

Comments: Two commenters believed that § 700.11 should require the majority of reviewers for a given application to meet the qualifications in § 700.11(a)(1)(i). These commenters were concerned that requiring individual reviewers to possess only one or more of the qualifications listed under § 700.11(a)(1) might result in few or no reviewers for a given application possessing demonstrated expertise in the subject of the competition (§ 700.11(a)(1)(i)). One of these commenters also felt that each group of reviewers for a given application should include at least one reviewer with "in-depth knowledge of policy and practice in the field of education" (§ 700.11(a)(1)(ii)), and at least one reviewer with "in-depth knowledge of theoretical perspectives or methodological approaches relevant to the subject of the competition" (§ 700.11(a)(1)(iii)). Another commenter felt that all reviewers for research projects should possess technical expertise regarding the theoretical and methodological aspects of the grant applications.

Discussion: The Secretary believes it is important for all reviewers to possess each of the qualifications in § 700.11(a)(1). The Board agreed that it is important for all reviewers to possess each of the qualifications in § 700.11(a)(1) but recommended that § 700.11(a)(1)(ii) be modified to allow a reviewer to be deemed qualified on the basis of in-depth knowledge of policy "or" practice in the field of education rather than both.

Changes: The Secretary has revised § 700.11(a)(1) to require each reviewer to possess each of the qualifications of (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) and replaced the word "and" in (a)(1)(ii) with the word "or".

Comments: One commenter expressed concern that the word "relevant" in § 700.11(a)(1)(i) was inadequate for specifying that reviewers have direct expertise in the topic area of grant applications they review.

Discussion: The Secretary agrees with this commenter.

Changes: The Secretary replaced the words "relevant to the subject area" with the words "in the subject area" in § 700.11(a)(1)(i) and also in § 700.11(a)(1)(iii).

Convening Reviewers to Discuss Unsolicited Applications (§ 700.21)

Comments: One commenter suggested substituting the word "may" for the word "will" in § 700.21(c) so as not to require the convening of reviewers in all instances. The commenter believed that it may not be necessary to convene reviewers to discuss the strengths and weaknesses of unsolicited applications.

Discussion: The Secretary believes that discussions of each application's strengths and weaknesses allows reviewers to share perspectives and provide a higher quality of review. Therefore, the Secretary believes that such discussions should, in general, be required. However, the Secretary agrees that in the case of unsolicited applications, it may not be necessary to convene reviewers.

Changes: The Secretary has added a new § 700.21(c)(2), which allows the Secretary to use discretion in determining whether to convene reviewers of unsolicited applications.

Comments: One commenter felt that it was important that applicants receive the written comments regarding the strengths and weaknesses of their applications at the same time as the applicants are notified of acceptance or rejection. Another commenter recommended that the OERI standards address the issue of OERI's communicating the results of the competition to the applicants and the larger community.

Discussion: The Secretary recently modified Department procedures to provide both successful and unsuccessful applicants earlier notification of funding decisions. In most cases, reviewer comments accompany these notifications. However, particularly for competitions that generate large numbers of applications, reviewer comments are sent at a later date so that this early notification of funding decisions need not be delayed. The Secretary routinely issues press releases to inform the public of the results of each competition.

Changes: None.

Evaluating Grant and Cooperative Agreement Applications and Contract Proposals (§ 700.21 and § 700:22)

Comments: One commenter stated that it was not clear that the Secretary will be constrained or informed by the results of the evaluations carried out by the peer reviewers. The commenter recommended changes to clarify that: (1) Each reviewer will provide a recommendation to fund or not to fund each application, accompanied by a numerical rating of the application; and (2) the Secretary will rely on numerical ratings given by the peer reviewers in rank ordering the applications.

Discussion: The Secretary agrees that § 700.21(e) should be revised to clarify that the Secretary prepares a rank order based solely on the peer reviewers' ratings. However, the Secretary believes that, in selecting applications for award, he must consider factors in addition to the applicants' rankings and the funding recommendations of the peer reviewers. These other factors, specified in § 700.40, include performance of the applicant under a prior award, the amount of funds available for the competition, and any other information relevant to a priority or other statutory or regulatory requirement applicable to the selection of applications for new awards.

Changes: The Secretary has revised § 700.21(e) to clarify that the rank order is based solely on the peer reviewers' ratings for each application.

Comments: One commenter pointed out that § 700.22(d), regarding the evaluation of contract proposals, enables reviewers to assign proposals to the category "capable of being made acceptable." The commenter recommended that a similar category be added to § 700.21(d), relating to the evaluation of grants and cooperative agreements. The commenter believes that such a change could allow applicants an opportunity to fix minor problems in otherwise outstanding grant applications and still be eligible for funding.

Discussion: The Federal Acquisition Regulations, which govern the Federal government's contract procurements expressly recommend the establishment of a category "capable of being made acceptable." In that grant competitions are held to determine which applicants are to receive the benefit of Federal financial assistance for the activities applicants propose, rather than to determine which applicant or applicants will be contracted to provide services according to government specifications, fairness would dictate that if one grant applicant is allowed to revise its application, all other grant competitors should be provided the same opportunity. In addition, grant competitions typically generate many more applications than do contract competitions. There are often many more highly rated applicants than there are funds available for awards, and so there is no need to allow competitors a second chance to make their applications fundable. As a practical matter, applications that are truly outstanding, but have minor problems, are likely to be rated highly, with the minor problems addressed during negotiation of the grant award. The Board discussed the issue raised by this commenter. The Board was concerned that reviewers of proposals for contracts had three categories in which they could place contract proposals while reviewers of grant and cooperative agreement applications only had two categories. The Board recommended that a third category be added under § 700.21(d) that would allow reviewers to distinguish between projects that they would recommend for funding and those that they would highly recommend.

Changes: The Secretary has added a new category of "highly recommended for funding" under § 700.21(d).

Comment: After consultation with the Board, the Secretary has determined that the evaluation criteria related to prior performance of applicants under previously funded grants or cooperative agreements (§ 700.30(e)(3)(ii)(D) and § 700.30(e)(4)(ii)(E)) would require applicants to provide that information for evaluation by the peer reviewers. This information is already available to the Secretary and will be another factor considered by the Secretary in making award decisions under § 700.40(a)(3).

Discussion: The evaluation criteria under § 700.30(e)(3)(ii)(D) and § 700.30(e)(4)(ii)(E) duplicate the factors in § 700.40(a)(3) and thus impose an unnecessary burden on applicants.

Changes: § 700.30(e)(3)(ii)(D) and § 700.30(e)(4)(ii)(E) are deleted.

Paperwork Reduction Act of 1980

Section 700.30 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education submitted a copy of this section to the Office of Management and Budget (OMB) for its review, and it was approved by OMB. (44 U.S.C. 3504(h))

These regulations affect the following types of entities eligible to apply for grants and cooperative agreements: State or local governments, businesses or other for profit organizations, nonprofit institutions, and any combinations of these types of entities. The Department needs and uses the information to evaluate applications for funding.

Annual public reporting and recordkeeping burden for this collection of information is estimated to range from 15 hours for each of the approximately 750 applications expected for a field initiated study competition to 150 hours for ten or fewer applications expected for a national research center. Therefore, the actual burden will be determined by the type of project to be supported in the particular competition.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 700

Education, Educational research, Elementary and secondary education, Government contracts, Grant programs—education, Libraries, Reporting and recordkeeping requirements.

Dated: September 11, 1995.

Richard W. Riley,
Secretary of Education.

Sharon P. Robinson,
Assistant Secretary for Educational Research and Improvement.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Chapter VII of Title 34 of the Code of Federal Regulations by adding a new Part 700 to read as follows:

PART 700—STANDARDS FOR THE CONDUCT AND EVALUATION OF ACTIVITIES CARRIED OUT BY THE OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT (OERI)—EVALUATION OF APPLICATIONS FOR GRANTS AND COOPERATIVE AGREEMENTS AND PROPOSALS FOR CONTRACTS

Subpart A—General

Sec.
700.1 What is the purpose of these standards?
700.2 What activities must be governed by these standards?
700.3 What additional activities may be governed by these standards?
700.4 What definitions apply?
700.5 What are the processes of open competition?

Subpart B—Selection of Peer Reviewers

700.10 When is the peer review process used?
700.11 Who may serve as peer reviewers?
700.12 What constitutes a conflict of interest for grants and cooperative agreements?
700.13 What constitutes a conflict of interest for contracts?

Subpart C—The Peer Review Process

700.20 How many peer reviewers will be used?
700.21 How are applications for grants and cooperative agreements evaluated?
700.22 How are proposals for contracts evaluated?

Subpart D—Evaluation Criteria

700.30 What evaluation criteria are used for grants and cooperative agreements?
700.31 What additional evaluation criteria shall be used for grants and cooperative agreements?
700.32 What evaluation criteria shall be used for contracts?

Subpart E—Selection for Award

700.40 How are grant and cooperative agreement applications selected for award?
700.41 How are contract proposals selected for award?

Authority: 20 U.S.C. 6011(i).

Subpart A—General

§ 700.1 What is the purpose of these standards?

(a) The standards in this part implement section 912(i) of the Educational Research, Development, Dissemination, and Improvement Act of 1994.

(b) These standards are intended to ensure that activities carried out by the Office of Educational Research and Improvement (the Office) meet the highest standards of professional excellence.

(Authority: 20 U.S.C. 6011(i)(1))

§ 700.2 What activities must be governed by these standards?

(a) The standards in this part are binding on all activities carried out by the Office using funds appropriated under section 912(m) of the Educational Research, Development, Dissemination, and Improvement Act of 1994.

(b) Activities carried out with funds appropriated under section 912(m) of the Act include activities carried out by the following entities or programs:

(1) The National Research Institutes.

(2) The Office of Reform Assistance and Dissemination.

(3) The Educational Resources Information Center Clearinghouses.

(4) The Regional Educational Laboratories.

(5) The Teacher Research Dissemination Demonstration Program.

(6) The Goals 2000 Community Partnerships Program.

(7) The National Educational Research Policy and Priorities Board.

(Authority: 20 U.S.C. 6011(i)(1))

§ 700.3 What additional activities may be governed by these standards?

(a) The Secretary may elect to apply the standards in this part to activities carried out by the Department using funds appropriated under an authority other than section 912(m) of the Act.

(b)(1) If the Secretary elects to apply these standards to a competition for new grant or cooperative agreement awards, the Secretary announces, in a notice published in the **Federal Register**, the extent to which these standards are applicable to the competition.

(2) If the Secretary elects to apply these standards to a solicitation for a contract award, the Secretary announces in the request for proposals the extent to which these standards are applicable to the solicitation.

(Authority: 20 U.S.C. 6011(i)

§ 700.4 What definitions apply?

(a) *Definitions in the Educational Research, Development, Dissemination, and Improvement Act of 1994.* The following terms used in this part are defined in 20 U.S.C. 6011(l):

Development
Dissemination
Educational Research
Office
National Research Institute
Technical Assistance

(b) *Definitions in Education Department General Administrative Regulations.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
Grant
Project
Secretary

(c) *Definitions in the Federal Acquisition Regulation.* The following terms used in this part are defined in 48 CFR Chapter 1:

Contracting Officer
Employee of an Agency
Proposal
Solicitation

(d) *Other definitions.* The following definitions also apply to this part:

Act means the Educational Research, Development, Dissemination, and Improvement Act of 1994 (Title IX of Pub. L. 103–227, 108 Stat. 212).

EDAR means the Education Department Acquisition Regulation, 48 CFR Chapter 34.

EDGAR means the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85 and 86. *FAR* means the Federal Acquisition Regulation, 48 CFR Chapter 1.

(Authority: 20 U.S.C. 6011)

§ 700.5 What are the processes of open competition?

The Secretary uses a process of open competition in awarding or entering into all grants, cooperative agreements, and contracts governed by these standards. The processes of open competition are the following:

(a) For all new awards for grants and cooperative agreements, the Secretary will make awards pursuant to the provisions of EDGAR with the exception of the provisions in 34 CFR 75.100(c)(5), 75.200(b)(3), (b)(5), 75.210, and 75.217(b)(1), (b)(2), (c), and (d); and

(b) For contracts, the Department will conduct acquisitions pursuant to this part in accordance with the requirements of the Competition in Contracting Act, 41 U.S.C. 253, and the FAR.

(Authority: 20 U.S.C. 6011(i)(2); 41 U.S.C. 253)

Subpart B—Selection of Peer Reviewers

§ 700.10 When is the peer review process used?

The Secretary uses a peer review process—

(a) To review and evaluate all applications for grants and cooperative agreements and proposals for those contracts that exceed $100,000;

(b) To review and designate exemplary and promising programs in accordance with section 941(d) of the Act; and

(c) To evaluate and assess the performance of all recipients of grants from and cooperative agreements and contracts with the Office.

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.11 Who may serve as peer reviewers?

(a) An individual may serve as a peer reviewer for purposes of reviewing and evaluating applications for new awards for grants and cooperative agreements and contract proposals if the individual—

(1) Possesses the following qualifications:

(i) Demonstrated expertise, including training and experience, in the subject area of the competition.

(ii) In-depth knowledge of policy or practice in the field of education.

(iii) In-depth knowledge of theoretical perspectives or methodological approaches in the subject area of the competition; and

(2) Does not have a conflict of interest, as determined in accordance with § 700.12.

(b) For each competition for new awards for grants and cooperative agreements—

(i) Department staff may not serve as peer reviewers except in exceptional circumstances as determined by the Secretary; and

(ii) The majority of reviewers may be persons not employed by the Federal Government.

(2) For each review of an unsolicited grant or cooperative agreement application—

(i) Department employees may assist the Secretary in making an initial determination under 34 CFR 75.222(b); and

(ii) Department employees may not serve as peer reviewers in accordance with 34 CFR 75.222(c).

(c) To the extent feasible, the Secretary selects peer reviewers for each competition who represent a broad range of perspectives.

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.12 What constitutes a conflict of interest for grants and cooperative agreements?

(a) Peer reviewers for grants and cooperative agreements are considered employees of the Department for the purposes of conflicts of interest analysis.

(b) As employees of the Department, peer reviewers are subject to the provisions of 18 U.S.C. 208, 5 CFR 2635.502, and the Department's policies used to implement those provisions.

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.13 What constitutes a conflict of interest for contracts.

(a) Peer reviewers for contract proposals are considered employees of the Department in accordance with FAR, 48 CFR 3.104–4(h)(2).

(b) As employees of the Department, peer reviewers are subject to the provisions of the FAR, 48 CFR Part 3 Improper Business Practices and Personal Conflict of Interest.

(Authority: 41 U.S.C. 423)

Subpart C—The Peer Review Process

§ 700.20 How many peer reviewers will be used?

(a) Each application for a grant or cooperative agreement award must be reviewed and evaluated by at least three peer reviewers except—

(1) For those grant and cooperative agreement awards under $50,000, fewer than three peer reviewers may be used if the Secretary determines that adequate peer review can be obtained using fewer reviewers; and

(2) For those grant and cooperative agreement awards of more than $1,000,000, at least five reviewers must be used.

(b) Each contract proposal must be read by at least three reviewers unless the contracting officer determines that an adequate peer review can be obtained by using fewer reviewers.

(c) Before releasing contract proposals to peer reviewers outside the Federal Government, the contracting officer shall comply with FAR, 48 CFR 15.413–2(f).

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.21 How are applications for grants and cooperative agreements evaluated?

(a) Each peer reviewer must be given a number of applications to evaluate.

(b) Each peer reviewer shall—

(1) Independently evaluate each application;

(2) Evaluate and rate each application based on the reviewer's assessment of the quality of the application according to the evaluation criteria and the weights assigned to those criteria; and

(3) Support the rating for each application with concise written comments based on the reviewer's analysis of the strengths and weaknesses of the application with respect to each of the applicable evaluation criteria.

(c) (1) Except as provided in paragraph (c)(2) of this section, after each peer reviewer has evaluated and rated each application independently, those reviewers who evaluated a common set of applications are convened to discuss the strengths and weaknesses of those applications. Each reviewer may then independently reevaluate and re-rate an application with appropriate changes made to the written comments.

(2) Reviewers are not convened to discuss an unsolicited application unless the Secretary determines that discussion of the application's strengths and weaknesses is necessary.

(d) Following discussion and any reevaluation and re-rating, reviewers shall independently place each application in one of three categories, either "highly recommended for funding," "recommended for funding" or "not recommended for funding."

(e) After the peer reviewers have evaluated, rated, and made funding recommendations regarding the applications, the Secretary prepares a rank order of the applications based solely on the peer reviewers' ratings.

(Authority: 20 U.S.C. 6011(i)(2)(C))

§ 700.22 How are proposals for contracts evaluated?

(a) Each peer reviewer must be given a number of technical proposals to evaluate.

(b) Each peer reviewer shall—

(1) Independently evaluate each technical proposal;

(2) Evaluate and rate each proposal based on the reviewer's assessment of the quality of the proposal according to the technical evaluation criteria and the importance or weight assigned to those criteria; and

(3) Support the rating for each proposal with concise written comments based on the reviewer's analysis of the strengths and weaknesses of the proposal with respect to each of

the applicable technical evaluation criteria.

(c) After each peer reviewer has evaluated each proposal independently, those reviewers who evaluated a common set of proposals may be convened to discuss the strengths and weaknesses of those proposals. Each reviewer may then independently reevaluate and re-rate a proposal with appropriate changes made to the written comments.

(d) Following discussion and any reevaluation and re-rating, reviewers shall rank proposals and advise the contracting officer of each proposal's acceptability for contract award as "acceptable," "capable of being made acceptable without major modifications," or "unacceptable." Reviewers may also submit technical questions to be asked of the offeror regarding the proposal.

(Authority: 20 U.S.C. 6011(i)(2)(C))

Subpart D—Evaluation Criteria

§ 700.30 What evaluation criteria are used for grants and cooperative agreements?

(a) Except as provided in paragraph (d) of this section, the Secretary announces the applicable evaluation criteria for each competition and the assigned weights in a notice published in the **Federal Register** or in the application package.

(b) In determining the evaluation criteria to be used in each grant and cooperative agreement competition, the Secretary selects from among the evaluation criteria in paragraph (e) of this section and may select from among the specific factors listed under each criterion.

(c) The Secretary assigns relative weights to each selected criterion and factor.

(d) In determining the evaluation criteria to be used for unsolicited applications, the Secretary selects from among the evaluation criteria in paragraph (e) of this section, and may select from among the specific factors listed under each criterion, the criteria which are most appropriate to evaluate the activities proposed in the application.

(e) The Secretary establishes the following evaluation criteria:

(1) *National significance.*

(i) The Secretary considers the national significance of the proposed project.

(ii) In determining the national significance of the proposed project, the Secretary may consider one or more of the following factors:

(A) The importance of the problem or issue to be addressed.

(B) The potential contribution of the project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(C) The scope of the project.

(D) The potential for generalizing from project findings or results.

(E) The potential contribution of the project to the development and advancement of theory and knowledge in the field of study.

(F) Whether the project involves the development or demonstration of creative or innovative strategies that build on, or are alternatives to, existing strategies.

(G) The nature of the products (such as information, materials, processes, or techniques) likely to result from the project and the potential for their effective use in a variety of other settings.

(H) The extent and quality of plans for disseminating results in ways that will allow others to use the information.

(2) *Quality of the project design.*

(i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary may consider one or more of the following factors:

(A) Whether the goals, objectives, and outcomes to be achieved by the project are clearly specified and measurable.

(B) Whether there is a conceptual framework underlying the proposed activities and the quality of that framework.

(C) Whether the proposed activities constitute a coherent, sustained program of research and development in the field, including a substantial addition to an ongoing line of inquiry.

(D) Whether a specific research design has been proposed, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(E) The extent to which the research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and the use of appropriate theoretical and methodological tools, including those of a variety of disciplines, where appropriate.

(F) The quality of the demonstration design and procedures for documenting project activities and results.

(G) The extent to which development efforts include iterative testing of products and adequate quality controls.

(H) The likelihood that the design of the project will successfully address the intended, demonstrated educational need or needs.

(I) How well and innovatively the project addresses statutory purposes, requirements, and any priority or priorities announced for the program.

(J) The quality of the plan for evaluating the functioning and impact of the project, including the objectivity of the evaluation and the extent to which the methods of evaluation are appropriate to the goals, objectives, and outcomes of the project.

(3) *Quality and potential contributions of personnel.*

(i) The Secretary considers the quality and potential contributions of personnel for the proposed project.

(ii) In determining the quality and potential contributions of personnel for the proposed project, the Secretary may consider one or more of the following factors:

(A) The qualifications, including training and experience, of the project director or principal investigater.

(B) The qualifications, including training and experience, of key project personnel.

(C) The qualifications, including training and experience, of proposed consultants or subcontractors.

(4) *Adequacy of resources.*

(i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary may consider one or more of the following factors:

(A) The adequacy of support from the lead applicant organization.

(B) The relevance and commitment of each partner in the project to the implementation and success of the project.

(C) Whether the budget is adequate to support the project.

(D) Whether the costs are reasonable in relation to the objectives, design, and potential significance of the project.

(E) The potential for continued support of the project after federal funding ends.

(5) *Quality of the management plan.*

(i) The Secretary considers the quality of the management plan of the proposed project.

(ii) In determining the quality of the management plan of a proposed project, the Secretary may consider one or more of the following factors:

(A) The adequacy of the management plan to achieve the objectives of the project, including the specification of staff responsibility, timelines, and benchmarks for accomplishing project tasks.

(B) The adequacy of plans for ensuring high-quality products and services.

(C) The adequacy of plans for ensuring continuous improvement in the operation of the project.

(D) Whether time commitments of the project director or principal investigator and other key personnel are appropriate and adequate to meet project objectives.

(E) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the project, including those of parents and teachers, where appropriate.

(F) How the applicant will ensure that persons who are otherwise eligible to participate in the project are selected without regard to race, color, national origin, gender, age, or disability.

(G) The adequacy of plans for widespread dissemination of project results and products in ways that will assist others to use the information.

(Approved by the Office of Management and Budget under control number 1850–0723)

(Authority: 20 U.S.C. 6011(i)(2)(D)(ii))

§ 700.31 What additional evaluation criteria shall be used for grants and cooperative agreements?

In addition to the evaluation criteria established in § 700.30(e), the Secretary uses criteria or factors specified in the applicable program statute to evaluate applications for grants and cooperative agreements.

(Authority: 20 U.S.C. 6011(i)(2)(D)(ii))

§ 700.32 What evaluation criteria shall be used for contracts?

(a) The evaluation criteria to be considered in the technical evaluation of contract proposals are contained in the FAR at 48 CFR 15.605. The evaluation criteria that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition officials.

(b) At a minimum, the evaluation criteria to be considered must include cost or price and quality. Evaluation factors related to quality are called technical evaluation criteria.

(c) Technical evaluation criteria may include, but are not limited to, the following:

(1) Technical excellence.
(2) Management capability.
(3) Personnel qualifications.
(4) Prior experience.
(5) Past performance.
(6) Schedule compliance.

(Authority: 20 U.S.C. 6011(i)(2)(D)(ii))

Subpart E—Selection for Award

§ 700.40 How are grant and cooperative agreement applications selected for award?

(a) The Secretary determines the order in which applications will be selected for grants and cooperative agreement awards. The Secretary considers the following in making these determinations:

(1) An applicant's ranking.

(2) Recommendations of the peer reviewers with regard to funding or not funding.

(3) Information concerning an applicant's performance and use of funds under a previous Federal award.

(4) Amount of funds available for the competition.

(5) Any other information relevant to a priority or other statutory or regulatory requirement applicable to the selection of applications for new awards.

(b) In the case of unsolicited applications, the Secretary uses the procedures in EDGAR (34 CFR 75.222(d) and (e)).

(Authority: 20 U.S.C. 6022(i)(2)(D)(i))

§ 700.41 How are contract proposals selected for award?

Following evaluation of the proposals, the contracting officer shall select for award the offeror whose proposal is most advantageous to the Government considering cost or price and the other factors included in the solicitation.

(Authority: 20 U.S.C. 6011(i)(2)(D)(i))

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Part III

Department of Education

Grants and Cooperative Agreements; Availability, etc.: Educational Research and Development Centers Program; Notices

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement (OERI); Educational Research and Development Centers Program

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces final priorities to support seven national research and development centers that would carry out sustained research and development to address nationally significant problems and issues in education.

EFFECTIVE DATE: These priorities take effect October 16, 1995.

FOR FURTHER INFORMATION CONTACT: Either—

1. Jacqueline Jenkins, U.S. Department of Education, 555 New Jersey Avenue NW, Room 510G, Washington, DC 20208–5573. Telephone: (202) 219–2232. Internet: Jackie—Jenkins@ed.gov or;

2. Judith Anderson, U.S. Department of Education, 555 New Jersey Avenue NW, Room 611B, Washington, DC 20208–5573. Telephone: (202) 219–2086. Internet: Judith-Anderson@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Title IX of Public Law 103–227, the Educational Research, Development, Dissemination, and Improvement Act of 1994, reauthorized the Office of Educational Research and Improvement and established five new national research institutes to carry out coordinated and comprehensive programs of research, development, evaluation, demonstration, and dissemination designed to provide research-based leadership for the improvement of education. The five institutes are—

(1) The National Institute on Student Achievement, Curriculum, and Assessment;

(2) The National Institute on the Education of At-Risk Students;

(3) The National Institute on Educational Governance, Finance, Policy-Making, and Management;

(4) The National Institute on Early Childhood Development and Education; and

(5) The National Institute on Postsecondary Education, Libraries, and Lifelong Learning.

The institutes support sustained research and development focused on significant national problems and issues in education conducted by national research and development centers. The statute specifies that each institute will support one or more national research and development centers. For the purpose of this notice, Priority 1 is related to the National Institute on Early Childhood Development and Education; Priorities 2 and 3 are related to the National Institute on Student Achievement, Curriculum, and Assessment; Priority 4 is related to the National Institute on the Education of At-Risk Students; Priority 5 is related to the National Institute on Educational Governance, Finance, Policy-Making, and Management; and Priorities 6 and 7 are related to the National Institute on Postsecondary Education, Libraries, and Lifelong Learning.

The Office of Educational Research and Improvement (OERI), through a series of meetings, regional hearings, and **Federal Register** Notices, solicited advice from parents, teachers, administrators, policy-makers, business people, researchers, and others to identify the most needed research and development activities. After reviewing this advice, the Secretary published on April 10, 1995, a notice in the **Federal Register** (60 FR 18340) inviting written public comments on proposed priorities for seven national educational research and development centers that would carry out sustained research and development to address nationally significant problems and issues in education. Written public comments were to be submitted by May 25, 1995.

On June 8, 1995, at the meeting of OERI's National Educational Research Policy and Priorities Board (Board), the Board reviewed and commented on staff summaries of the written public comments. A committee of the Board held a public meeting on July 18, 1995, to review the written public comments and to make recommendations to the Assistant Secretary on the priorities. The Department has incorporated the committee's recommendations and explained the reasoning for those recommendations in the comment/discussion sections of the document.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 248 parties submitted written comments. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities is published as an appendix to this notice of final priorities. Major issues are grouped according to subject. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Absolute Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet both the general priority and one of the individual priorities listed below. Funding of any individual priority will depend on the availability of funds, priority, and the quality of applications received.

General Absolute Priority: Each national research and development center must—

(a) Conduct a coherent, sustained program of research and development to address problems and issues of national significance in its individual priority area, using a well-conceptualized and theoretically sound framework;

(b) Contribute to the development and advancement of theory in the area of its individual priority;

(c) Conduct scientifically rigorous studies capable of generating findings that contribute substantially to understanding in the field;

(d) Conduct work of sufficient size, scope, and duration to produce definitive guidance for improvement efforts and future research;

(e) Address issues of both equity and excellence in education for all students in its individual priority area; and

(f) Document, report, and disseminate information about its research findings and other accomplishments in ways that will facilitate effective use of that information in professional development for teachers, families, and community members, as appropriate.

Absolute Priority 1: Enhancing Young Children's Development and Learning

Under this priority, a national research and development center must—

(a) Conduct research and development on enhancing the development and learning of young children from birth to age eight, with special focus on children who are placed at risk of educational failure because of community, economic, linguistic, family, or disability factors; and

(b) Include in its work research or development related to the following topics:

(1) Effective practices and programs for maximizing the development and learning of young children from diverse

backgrounds, emphasizing the whole child and developmentally appropriate strategies;

(2) Effective professional development for educators and other early childhood personnel;

(3) Family and community support for young children's development and learning; and

(4) Effective programs and practices for supporting young children during crucial transition periods, from infant to toddler, toddler to preschooler, and preschooler to early elementary school student.

(c) Develop and field test a set of 3–5 hypothetical cases that can be used in training and other settings to help practitioners, families, and community members develop and extend their knowledge and skills to address effectively the development and learning needs of young children; and stimulate new debate, hypotheses, and research.

Absolute Priority 2: Improving Student Learning and Achievement

Under this priority, a national research and development center must—

(a) Conduct research and development on improving student achievement, which must be comprised of research and development on improving learning, teaching, and assessment within a content area; and

(b) Include in its work research or development related to the following topics:

(1) How students acquire knowledge and skills;

(2) Curriculum and effective instruction, including the use of technology, which reflects current understanding of cognitive development, the social context of learning, and student motivation;

(3) Effective professional development for teachers and other school personnel; and

(4) Assessment for improving teaching and learning, including the technical quality of such assessments.

Absolute Priority 3: Improving Student Assessment and Educational Accountability

Under this priority, a national research and development center must—

(a) Conduct research and development on improving student assessment; and

(b) Include in its work research or development related to the following topics:

(1) Development and use of assessments aligned with curriculum and instruction to promote improved teaching, learning, and educational accountability, including the use of assessment in student placement;

(2) The use of accommodations, adaptations, and alternative assessments to enable all students to participate in assessment systems;

(3) The creation of coherent systems that assess diverse student outcomes using multiple measures and multiple assessments; and

(4) The technical quality (validity, reliability, fairness, and content and skill coverage) of different types of assessments and assessment systems, including accommodations, adaptations, and alternative assessments.

Absolute Priority 4: Meeting the Educational Needs of a Diverse Student Population

Under this priority, a national research and development center must—

(a) Conduct research and development on meeting the educational needs of an increasingly diverse student population, including students who are at risk of educational failure because of limited English proficiency, poverty, race, geographical location, or economic disadvantage; and

(b) Include in its work research or development related to at least two of the following topics:

(1) Instructional strategies that recognize and build on the strengths of students from diverse backgrounds to help all students achieve to high academic standards;

(2) Training and professional development activities that enhance the ability of educators, families, and communities to help language minority students and other students at risk of educational failure achieve to high academic standards;

(3) Working with families and community-based organizations, through such means as structuring out-of-school experiences as well as providing support for school-based programs, to help students at risk of educational failure achieve to high academic standards; and

(4) Ways that federal, state, tribal government, and community reform efforts can be designed so that language minority students and other students at risk of educational failure learn to high standards.

Absolute Priority 5: Increasing the Effectiveness of State and Local Education Reform Efforts

Under this priority, a national research and development center must—

(a) Conduct research and development on increasing the effectiveness of state and local efforts to reform elementary and secondary education; and

(b) Include in its work research or development related to the following topics:

(1) Local and school level strategies for reform that create supportive and secure learning environments and lead to improved learning by all students including district and/or schoolwide reforms and partnerships and productive collaboration among families, communities, and schools;

(2) State and local policies that support improved learning by all students including aligning elements of the education system to achieve challenging student standards, enhancing licensing systems for teachers and other education professionals, and providing incentives for reform;

(3) State and local finance strategies that lead to improved learning by all students, including strategies for the equitable distribution of programs and services and strategies for the productive allocation of resources;

(4) State and local governance arrangements that support improved learning by all students including those that involve new opportunities and responsibilities for educators, families, and communities; and

(5) The factors that contribute most to the success of state, district, and school-level reforms, from initiation through implementation to "scaling up," including how variations in context affect the implementation and effects of various strategies.

Absolute Priority 6: Improving Postsecondary Education

Under this priority, a national research and development center must—

(a) Conduct research and development on improving quality, productivity and outcomes of postsecondary education; and

(b) Include in its work research or development related to three or more of the following topics:

(1) Transitions from school to work, or to further education, for secondary and postsecondary students, including, but not limited to, development of effective K–16 systems;

(2) Relationships among students' participation and progress in postsecondary education, their academic achievement, and their later employment outcomes;

(3) Approaches to professional development geared to improving

postsecondary instruction and student learning, including preparation of K–12 educators;

(4) Improvement of postsecondary student learning and assessment; and

(5) Containing costs and improving the productivity and accountability of postsecondary institutions.

Absolute Priority 7: Improving Adult Learning and Literacy

Under this priority, a national research and development center must—

(a) Conduct research and development on improving adult learning and literacy through delivery methods and systems other than postsecondary institutions, including the basic skills needed for work and responsible citizenship; and

(b) Include in its work research or development related to topic (b)(2) below and one or more of the other topics:

(1) Adult acquisition of knowledge and development of linguistic, quantitative, and reasoning skills, including adult acquisition of second-language skills and computer skills;

(2) Effective strategies and technology for providers, including libraries, community organizations, and family literacy programs, to improve adult learning and literacy for all adult populations, including adults with special needs and those needing English as second language instruction;

(3) Effective methods, including use of technology, for professional development of instructional staff for adult education and literacy programs, including English as second language programs and programs for adults with special needs; and

(4) The assessment of adult learning and literacy.

Post-Award Requirements

The Secretary establishes the following post-award requirements consistent with the Educational Research, Development, Dissemination, and Improvement Act of 1994. A grantee receiving a center award must—

(a) Provide OERI with information about center projects and products and other appropriate research information so that OERI can monitor center progress and maintain its inventory of funded research projects. This information must be provided through media that include an electronic network;

(b) Conduct and evaluate research projects in conformity with the highest professional standards of research practice;

(c) Reserve five percent of each budget period's funds to support activities that fall within the center's priority area, are designed and mutually agreed to by the center and OERI, and enhance OERI's ability to carry out its mission. Such activities may include developing research agendas, conducting research projects collaborating with other federally-supported entities, and engaging in research agenda setting and dissemination activities; and

(d) At the end of the award period, synthesize the findings and advances in knowledge that resulted from the Center's program of work and describe the potential impact on the improvement of American education, including any observable impact to date.

Authority: Pub. L. 103–227, Title IX.

Dated: August 31, 1995.

Sharon Porter Robinson,

Assistant Secretary for Educational Research and Improvement.

(Catalog of Federal Domestic Assistance Numbers 84.305, 84.306, 84.307, 84.308, and 84.309 Educational Research and Development Centers Program)

Appendix—Analysis of Comments and Changes

General Absolute Priority

Summarized below are comments which either referred specifically to the General Absolute Priority or cut across all the priorities.

Comments Related to Improving Practice

Comments: Six commenters recommended changes which they believed would increase the likelihood that the centers would conduct research likely to improve practice. The comments included: Add statement about the importance of translating research findings to improvements in practice; include stronger language to encourage utilization of the outcomes of the research program by practitioners; replace the phrase "will allow others to use that information" in (f) with "will encourage effective use of that information;" and add an additional requirement, "(g) Increasing the capacity of field-based practitioners." Another commenter stated that all work must include practitioner-researcher collaborations. The Board committee similarly recommended that stronger language be used to ensure that Center research findings are actually used in professional development activities for teachers, families, and community members.

Discussion: The Secretary agrees that the centers should conduct research which is likely to improve practice and that dissemination plays an integral role in research and development activities that promise to have a positive impact on improving education. The Secretary also agrees about the importance of translating research findings so that results of research may find their way into practice.

Changes: The Secretary has amended (f) to read "Document, report, and disseminate information about its research findings and other accomplishments in ways that will facilitate effective use of that information in professional development for teachers, families, and community members, as appropriate."

Comments on Technology

Comments: Five commenters submitted comments related to technology. One commenter recommended the establishment of a national center on educational technology or that a requirement to conduct research and development on promoting the use of educational technology be included in the general absolute priority. One commenter was concerned about the lack of any mention of research in the area of computer technology. Two commenters said that technology should be dealt with as a cross-cutting issue. Another commenter requested that all of the institutes include work on assistive technology.

Discussion: The Secretary agrees that technology should be dealt with as a cross-cutting issue. Therefore, a separate center on this topic is not appropriate. Furthermore, the Secretary believes that the particular types of research in the area of technology should be proposed by the applicants and not mandated by the Department. The Secretary encourages all applicants to identify appropriate research topics related to technology.

Changes: None.

Comments on Coordination

Comments: Seven commenters noted the importance of communication and coordination. One commenter stated that the centers must communicate with each other in areas of overlap, as well as establish working relationships with the Regional Laboratories. Several commenters made more specific recommendations concerning coordination and communication: Include funds for consultations with parent and education advocacy organizations; require collaboration with other federally-supported entities in the absolute priority, not in the post-award requirement; require that the centers and the other research components in ED, including the research component in the Office of Special Education Programs, maintain regular contact; require centers to develop interagency working agreements with agencies and other entities to promote inter-institutional cooperation and private/public partnerships in the delivery of educational and library services, as well as to emphasize research into organizational design and educational management and delivery systems; and require the new centers to work directly with professional societies, in order to link the research agenda to specific subject areas.

Discussion: The Secretary believes that research and development centers should work with federally supported institutions and other entities to maximize the impact that their activities may have on improvements in the educational system. The instructions provided to applicants will provide examples of ways in which proposed centers could collaborate with these types of entities.

The Secretary believes that inter-institutional cooperation and partnerships for

the delivery of educational and library services are important, as is research on organizational design and educational management and delivery systems, but that these are not areas of research which should be mandated for all research and development centers.

Changes: None.

Comments on Dissemination

Comments: Four commenters recommended that the requirements for dissemination should be strengthened. These commenters recommended that the requirement for documenting, reporting, and disseminating information be strengthened; that an essential component of the centers be the development and implementation of effective dissemination strategies; and that dissemination be given a higher priority.

Discussion: The Secretary believes that dissemination plays an integral role in research and development activities that promise to have a positive impact on improving education. The Secretary believes that the particular types of dissemination activities that will best accomplish this objective depend on (1) the nature of the research knowledge being generated and (2) the potential users of this knowledge. The application package will provide examples of possible dissemination strategies.

Changes: None.

Comments Related to Cost

Comments: Three commenters recommended that the centers be required to address issues of cost or cost-effectiveness. These commenters recommended that each center be challenged not only to address issues of equity and excellence, but also to address issues related to adequacy of resources in its individual priority area; that centers should provide an assessment of the resources required to implement the practices and programs they research and develop; that cost or cost-effectiveness research should be required under all of the priorities; and that each research study should address the issue of cost-effectiveness and creative models and partnerships that could improve cost-effectiveness.

Discussion: The Secretary agrees with the importance of the issues raised by the commenters but believes that grant applicants should be allowed maximum flexibility to develop research agendas within the absolute priority areas. In addition, the Secretary believes it is inappropriate to mandate specific research topics, such as cost-effectiveness, given the limited resources available for supporting the centers. However, applicants are encouraged to address these issues as appropriate in their overall research plans.

Changes: None.

Comments Related to Students With Disabilities

Comments: Eight commenters recommended that the priorities place greater emphasis on students with disabilities. Several commenters stated that all the centers should be required to include research activities on the educational problems of students with disabilities, with one commenter recommending setting aside one-third of their funds to support efforts on this issue. Another commenter recommended requiring grantees to include weighted samples of populations of students with serious emotional disturbance; requiring all institutes to set aside at least 10 percent of funds to study these populations; and inserting the word "all" before the word "students" throughout all of the priorities.

Discussion: The Secretary believes that problems and issues of national significance addressed in the individual priorities are relevant to the needs of all students. In many instances individual children and youth fall into several population categories, for example, young children with disabilities living in rural poverty. The Secretary believes that better applications will result if applicants are allowed to propose and justify what population or populations will be studied in their proposed centers' research and development activities. However, the Secretary does believe that it is important to ensure that centers consider the needs of all students as they design their research activities.

Changes: The Secretary has modified the General Absolute Priority to make clear that the needs of all students are to be included in centers' research. The revised priority states: "(e) Address issues of both equity and excellence in education for all students in its individual priority area."

Comments Related to Size, Scope, and Methodology

Comments: Nine commenters recommended various changes related to issues of size, scope, and methodology. One commenter recommended adding a requirement that each center must produce at least one definitive study, and, in addition, suggested a requirement that each center must embed internal and external evaluation in all activities. One commenter stated that the emphasis on size, scope, duration, and definitive guidance will lead to biasing proposals toward large scale empirical studies; this commenter wanted the priority to specifically mention funding for small scale projects. One commenter was concerned there would be too many centers and too many mandated tasks for some centers given the amount of funding. Another commenter supported the emphasis on scientific research of sufficient scope to answer key questions. This commenter also recommended that the Department give priority to centers that take advantage of major research efforts underway and design new research targeted to questions that cannot be answered by on-going research or existing data bases. One commenter recommended that the scope should be defined to include depth as well as breadth of topics; and one commenter stated that explicit mention should be made of the desirability of multidisciplinary perspectives. Another commenter believed that the individual topics included in the research or development to be undertaken by the centers are written at an appropriate level of specificity. One commenter did not like the idea of large centers addressing broad areas and would prefer either more, smaller grants, or requiring multi-site proposals, with offerers allowed at least nine months to assemble proposals. Another commenter recommended including in section (b) of the General Absolute Priority the expectation that the centers would contribute to methodological advances in the field.

Discussion: The Secretary agrees that each center should produce at least one definitive study and believes that section (d) of the General Absolute Priority is sufficient to ensure that centers will meet this requirement. The Secretary agrees that centers should evaluate their work, and believes that the requirement to conduct scientifically rigorous studies will ensure that centers are held accountable for conducting high quality research. The Secretary does not believe that requiring work of sufficient size, scope, and duration to produce definitive guidance will prohibit centers from conducting small studies. The Secretary encourages the use of multidisciplinary approaches, but does not believe that they should be mandated; instead, applicants should be allowed the opportunity to select approaches which they believe represent the best possible center package. The Secretary does not believe that the centers are too large, or that they are addressing areas that are too broad. The legislative mandate calls for centers that are "of sufficient size, scope, and quality * * * to support a full range of basic research, applied research and dissemination activities." The Secretary believes that it is reasonable to require sustained research across the five years of the grant.

Changes: None.

Requests for Funding Additional Centers

Comments: Several commenters recommended funding additional centers. One wanted to add an evaluation center. One commenter requested that the Department establish a center for policy research and decisionmaking. Thirty-three commenters expressed support for continued funding of a center on families. Eighty commenters voiced support for continued funding of centers in the language arts, e.g., writing and literature. Thirty-two commenters expressed support for continuing a center on research on evaluation of educational personnel and teacher professionalization. Four commenters suggested that there should be a focus on content areas; another was especially concerned about science and mathematics.

Discussion: Given the Congressional mandate to support centers "of sufficient size, scope, and quality * * *" and given limited resources, the Secretary recognizes that these priorities cannot address all of the topics recommended by the commenters.

Changes: None.

Cross-Cutting Issue of Eligibility

Comment: One commenter recommended that non-profit organizations as well as institutions of higher learning be eligible to apply for center grants.

Discussion: The statute requires that grants be awarded to centers "established by institutions of higher education, by institutions of higher education in consortium with public agencies or private non-profit organizations, or by interstate agencies established by compact which operate subsidiary bodies established to conduct postsecondary educational research and development."

Changes: None.

Other Cross-Cutting Issues

Comments: A variety of other comments were related to cross-cutting issues or the priorities as a whole. One commenter requested an emphasis on the importance of family and community contexts, as well as of schools. One commenter stated that all centers should be expected to address issues over the full range of differences among individuals. One commenter expressed concern over the role of libraries and information services in the proposed research priorities. One commenter stated that for each of the seven priorities, a great deal of information on best practice is available, that this information needs to be summarized and shared, and that the institutes should form best practice review boards. One commenter suggested that all of the proposed priorities should address the needs of diverse student populations. One commenter stated that tribal involvement and consultation should be considered throughout the description of the seven priority areas. One commenter wanted the final priorities to include an absolute requirement that centers demonstrate capacity and interest in developing student-centered research and development strategies; include plans for involving students and their families in the development of the work of the center; and include plans for the demonstration of the ultimate student-centered outcomes which result from the work. One commenter stated that cross-research activity would strengthen the centers, and recommended allowing each center to conduct a portion of its work in a related priority area. One commenter suggested that the research agenda should include programs that assist state and local educators with implementation of improvements. One commenter expressed a number of concerns including: The apparent lack of an overall guiding plan; too limited information for applicants about the priorities and about existing activities; an unclear distinction between research and development; too little integration of proposed work with other OERI activities; inadequate integration of similar research and development tasks across the centers; failure to identify key intervention points in the life course; and failure to address some of the most important ways of helping disadvantaged students. One commenter stated that it is unclear how the seven centers relate to the five Institutes; and one commenter wanted to know why field-initiated research was not mentioned.

Discussion: The Secretary recognizes that there is merit to many of these suggestions. However, the Secretary believes that the mandatory requirements imposed on applicants should be held to a minimum in order to allow applicants the flexibility to propose work that will lead to the improvement of American education. Applicants are required to conduct a coherent, sustained program of research and development to address problems and issues of national significance within an individual priority, but the Secretary believes decisions about which issues to cover should be left to the applicant. The section entitled "Supplementary Information" provides further clarification of the relationship between the seven centers and the five Institutes. The statute requires that each Institute reserve at least 20 percent of its funding each fiscal year for field-initiated studies.

Changes: None.

Absolute Priority 1: Promoting the Cognitive and Social-Emotional Development of Young Children

Overview: A total of 48 letters contained comments on Priority 1. Some commenters discussed more than one topic in their correspondence.

Comments Related to the Title

Comments: Seven commenters expressed concern that the title focused too narrowly on cognitive and social-emotional development alone and thereby failed to consider the total development of the child. Two of these commenters recommended that the title be expanded to include the physical development of young children. Two commenters wanted the title to include health outcomes for children. Three of the commenters suggested that language and/or motor development also be included. Another commenter suggested the title be changed to "Services that Promote the Cognitive and Social-Emotional Development of Young Children." Another wanted the title to focus solely on the cognitive development of young children.

Discussion: The Secretary agrees that school readiness extends beyond the dimensions of cognitive and social-emotional development and that the focus of research and development in this topical area should be holistic.

Changes: The Secretary believes that the phrase "development and learning" conveys the priority's intent to focus on the whole child. Consequently, the Secretary has modified the priority's title to read: "Enhancing Young Children's Development and Learning."

Comments Regarding Focus

Comments: Fifteen commenters believed that the priority should shift its focus from young children to their environments, which the respondents defined as family, teachers and other significant caregivers. These commenters stated that there is considerable research in the field on child development and on the factors which directly influence children's well-being. The commenters believe that what is needed is research on programs, strategies and policies which influence parents, educators, and others in the child's environment and enable them to become more effective in supporting children. The commenters maintain that it is just as important for schools to be ready for children, as it is for children to be ready for school. Several commenters recommended the priority's research and development activities should include: Interprofessional development and collaboration—research designed to inform "professional practice, professional development, and policy;" the relationship between public policies and the abilities of parents and educators to support children's development, including family leave policy, proposed reductions in social service programs, and consolidation of categorical child care and early childhood programs into block grants to the States; effective dissemination of early childhood information for use by parents and professionals; and involvement of early childhood professionals in research efforts by the international community.

Discussion: The Secretary believes that young children should remain the central focus of this center. However, the Secretary also understands that research on improving the environments which shape child development is an integral part of this center's work. The Secretary agrees that this priority should include research and development activities on interprofessional development. The Secretary further believes that research can guide and inform policy. Therefore, applicants may choose to address policy issues in their applications, but it is not a requirement.

Changes: In responding to the calls for an emphasis on young children's environments and work on interprofessional development, the Secretary has amended this priority to specifically address these concerns in sections (b) and (c).

Comments on Targeted Populations

Comments: Fourteen comments addressed the parameters of the priority's target populations. Although the proposed priority did not specify an age range, seven commenters recommended that research and development activities focus on children from birth to the age of eight. Five commenters wanted to clarify the phrase "children * * * at risk" in section (a) by adding specific risk factors, including biological, socio-cultural, environmental, and disabling conditions. One commenter wanted to modify section (a) by replacing the word "especially" with "including," to preclude the proposed center from duplicating the work of an already-established center for the education of children at-risk.

Discussion: The Secretary agrees that the concept of "young children," for the purposes of this center, should extend from birth to the age of eight. The Secretary also agrees that it is important to make clear that children who are culturally, economically and/or biologically vulnerable, as well as children with disabling conditions, are not to be excluded from research activities. However, the Secretary believes that each of these suggested factors of risk is already encompassed in section (a), and therefore, the Secretary has not changed the list of enumerated factors. Furthermore, the Secretary recognizes that the proposed center and the existing center for students placed at risk of educational failure do share a focus on the early elementary grades. The Secretary believes, however, that the work of each center will be unique and not duplicative. Therefore, the Secretary sees no need to modify the language of this priority by replacing the word "especially" with the word "including."

Changes: The Secretary has amended section (a) of the final priority to clarify the target population as children from birth through the age of eight.

Comments on Families: Three commenters recommended that the role of families needs to be strengthened throughout the priority. One commenter stated that the proposed priority "ignores the central role families play in the educational development of children." One commenter stated that "family processes have profound effects on early development and should be considered both in studies of development and in studies of policy and services." One commenter recommended that the priority should address family-centered approaches that can be adapted to diverse community contexts. Similarly, the Board committee recommended that families and communities be further emphasized in this priority.

Discussion: The Secretary understands the critical impact of families on young children's development and success in school and consequently the need for research and development activities that can strengthen supports and services for families.

Changes: The Secretary has amended the final priority to include revised sections (b) and (c) in order to give greater emphasis to the role of the family and community throughout the entire final priority.

Comments on Services and Supports

Comments: Twelve commenters addressed the topic of services and supports within communities, schools, and families and offered recommendations on the kinds of research and development activities that should be included in the priority: Service integration strategies for meeting the needs of children, families, and practitioners; community barriers to the distribution of needed services; impact of cultural factors on the delivery of early childhood services; collaboration among service providers, including coordination among child care providers and early childhood educators; coordination of research conducted under this priority with results of last year's OERI conference on school-linked services; the role of libraries and museums in early childhood development and education; and the role of technology in the classroom.

Discussion: The Secretary believes that quality comprehensive services provided by families, preschools, child care facilities, schools, libraries, museums, and other community resources, increase the opportunity for all children to come to school ready to learn, and that research and development activities on this topic should be a part of this center's work.

Changes: The Secretary believes that comprehensive supports and services are encompassed within revised section (b).

Absolute Priority 2: Improving Student Learning and Achievement Overview: A total of 114 letters provided comments on Priority 2. Some commenters discussed more than one topic in their correspondence.

Comments on the Integration of Priorities 2 and 3

Comments: Five commenters stated that successful education reform requires the integration of issues of curriculum, assessment and student learning. In order to ensure continuous coordinated research efforts across these topics, these commenters recommended that the Department support coordinated studies of student learning, curriculum, and assessment. Two commenters recommended that this priority be modified to address the integration of assessment practices into the curriculum.

Discussion: The Secretary believes that assessment tied to curriculum and instructional strategies can improve student learning. To ensure that assessments are aligned to instruction, the Secretary has added a new topic to the priority. In addition, the Secretary has maintained Priority 3 and modified the wording of that priority to align the development and use of assessments with curriculum and instruction.

Changes: The Secretary has added a new topic (b)(4) which reads: "Assessment for improving teaching and learning, including the technical quality of such assessments."

Comments on Separate Content Areas

Comments: One hundred and six commenters recommended changes in the six topics of the proposed priority. Many of the commenters recommended reorganizing the entire priority to emphasize the core academic content areas. Eighty-seven commenters recommended support for separate content centers in the areas of English/ English language arts, writing, literacy, reading, and literature. Frequently these commenters stated that English language arts are fundamental to subsequent student achievement. In addition, many of the commenters supported continuing the existing centers on writing and literature. Nineteen commenters stated that content-oriented centers would have a more direct impact on instruction and learning than the proposed achievement and assessment centers. These commenters reasoned that effective teaching and instructional strategies are content-specific and that most teachers' questions relate to problems of instruction in specific content areas. The commenters suggested that the priority be altered to include content-oriented centers such as science, math, and English.

Discussion: The Secretary agrees that instructional strategies, professional development, and assessment should all be tied to content areas. The Secretary has restructured this priority so that applicants will identify content areas and propose research and development activities in areas of student learning, instructional strategies, professional development, and assessment related to those content areas. The Secretary believes, however, that applicants should identify the content areas for which research and development will be most productive. In the application package instructions, applicants will be reminded of the requirement to specify the content areas, e.g., English, mathematics, writing, or science, on which they propose to focus their investigations.

Changes: The Secretary has revised Priority 2 (a) to read: "Conduct research and development on improving student achievement, which must be comprised of research and development on improving learning, teaching, and assessment within a content area."

Comments on Topic Areas

Comments: Thirteen commenters recommended that technology, the evaluation of school personnel, and family and community be included in the priority. Some of these commenters recommended requiring the center to look into how technology should be used to improve student learning and achievement. The commenters also recommended including investigation of family involvement as a means to improve student learning and achievement, and investigation of the relationship between personnel evaluation of teachers and student achievement. The Board committee recommended that work related to curriculum and instruction reflect current knowledge about cognitive development, the social context of learning, and student motivation.

Discussion: The Secretary recognizes that these and many other factors can lead to improved student achievement. Family, community, and other out-of-school factors have important impact on the improvement of student learning and achievement. In fact, the Secretary believes that many of these recommendations fall within the scope of the priority's topics and could be the subject of the center's research projects. Applicants are encouraged to consider the most effective ways to investigate both in- and out-of-school factors which influence student achievement. To emphasize the important role of technology in improving student achievement, the Secretary has explicitly included technology as one method of instruction to be investigated. To emphasize the important roles of cognitive development, the social context of learning, and student motivation, the Secretary has also explicitly included the requirement that center research on curriculum and effective instruction reflect current understanding of these factors.

Changes: The Secretary has modified topic (b)(2) to read: "Curriculum and effective instruction, including the use of technology, which reflect current understanding of cognitive development, the social context of learning, and student motivation."

Comments on the Scope of the Priority

Comments: Four commenters stated that the priority was too broad in its scope, making it impossible for one center to pursue high quality work in all six areas. These commenters recommended that applicants be given the option of identifying which of the topics to investigate.

Discussion: The Secretary agrees that research and development centers should concentrate their efforts on the most important teaching and learning issues. By changing the priority to focus on content areas and by reducing the number of topics, the Secretary has made it possible for applicants addressing this priority to develop a coherent, focused set of research studies. The Secretary has deleted topics that addressed school organization and school environment. Applicants are encouraged to propose work that will be sensitive to these and other issues as appropriate to their overall research plan.

Changes: The Secretary has reduced the number of topics listed in the priority from

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six to four, and has limited the work to a content area or content areas. The Secretary has revised Priority 2 (a) to read: "Conduct research and development on improving student achievement, which must be comprised of research and development on improving learning, teaching, and assessment within a content area."

Absolute Priority 3: Improving Student Assessment and Educational Accountability

Overview: A total of 17 commenters provided comments on Priority 3.

Comments on Topic Areas

Comments: Four commenters recommended specific topics for inclusion in assessment. These commenters stated that "core content areas" should include geography, arts, humanities, physical education, English, mathematics, social studies, science and foreign languages. These commenters also indicated that the measurement of students' interdisciplinary knowledge and students' cognitive, social, emotional and physical development should be included in assessments.

Discussion: The Secretary believes that the identification of topics to be included in assessments should be up to the applicant. Applicants are encouraged to identify content areas which will be the focus of their research on assessment. The Secretary believes that all these topics can be addressed using the current wording.

Changes: None

Comments on Ways to Improve Assessments

Comments: Four commenters recommended various ways to improve assessments. These commenters stated that assessments should be accurate and devoid of cultural or gender bias. Commenters also stated that the center should explore the creation and use of alternative assessments. The Board committee recommended that this priority be modified to include research on the use of assessments to improve teaching and learning, as well as educational accountability. The Board further recommended that the center's work include research on the use of assessments for student placement.

Discussion: The Secretary agrees that assessments should be of high technical quality and free of bias so that assessments can be used to measure the performance of all students. The Secretary believes that the existing language in topic (b)(4) of "validity, reliability, fairness, and content and skill coverage" adequately covers issues of technical quality and bias. Therefore, no additional language is necessary. In addition, the Secretary believes that different types of assessments, including alternative assessments, present fruitful areas for investigation. The Secretary has added language on alternative assessments to the priority. The Secretary further believes that assessments should promote improved teaching and learning and that particular emphasis on the use of assessments for student placements is appropriate. The Secretary has added language on this area to topic (b)(1).

Changes: The Secretary has amended topic (b)(4) to read: "The technical quality (validity, reliability, fairness, and content and skill coverage) of different types of assessments and assessment systems, including accommodations, adaptations, and alternative assessments." Further, the Secretary has amended topic (b)(1) to read: "Development and use of assessments aligned with curriculum and instruction to promote improved teaching, learning, and educational accountability, including the use of assessment in student placement."

Comments on Special Populations

Comments: Four commenters recommended that the priority explicitly include special education and bilingual populations of students in the priority's scope. These commenters also stated that school systems often exclude language minority students from educational assessment programs. The commenters said that research on assessment should consider issues related to the inclusion of students with disabilities, especially regarding test modifications and testing accommodations.

Discussion: Assessments and assessment systems should be able to reliably and validly measure the performance of all students. Therefore, the Secretary has added a new topic to the priority for research on the accommodations, adaptations, and alternative assessments which will enable all students to participate in assessment systems.

Changes: The Secretary has modified the General Absolute Priority to reinforce that all students are to be included. The revised General Absolute Priority reads: "(e) Address issues of both equity and excellence in education for all students in its individual priority area." Furthermore, the Secretary has added a new topic (b)(2) to Priority 3 which reads: "The use of accommodations, adaptations, and alternative assessments to enable all students to participate in assessment systems." The Secretary has also modified (b)(4) of Priority 3 to include "including accommodations, adaptations, and alternative assessments."

Comments on Combining Priorities 2 and 3

Comments: Five commenters recommended combining student learning and assessment into a single priority. These are the same comments discussed under Priority 2.

Discussion: As stated previously, the Secretary has modified Priority 2 to include assessment issues. Although the Secretary agrees that some assessment research and development and the improvement of teaching and learning in content areas should be closely linked, the Secretary believes that a number of issues related to assessments, assessment systems, and accountability warrant attention by a center which focuses first on assessment and secondly on content areas.

Changes: In addition to the changes in Priority 2, the Secretary amended (b)(1) of Priority 3 to read: "The development and use of assessments aligned with curriculum and instruction to promote improved teaching, learning, and educational accountability, including the use of assessment in student placement."

Absolute Priority 4: Meeting the Educational Needs of a Diverse Student Population

Overview: A total of 30 letters contained comments on Priority 4. The comments are grouped by topical area.

Comments on the Entire Priority

Comments: Eight commenters provided comments about Priority 4 as a whole. Four commenters voiced total support for the priority. Four commenters expressed reservations. One of the latter four stated that ample information is available on the topical area, and that the Institute should begin by collecting and analyzing existing information. Other commenters recommended that limited research dollars be allocated elsewhere and used to support broader research on improving student learning and achievement; that the work proposed for this center should be integrated with similar activities in other priorities and the funds allocated for this center be given to other centers; that funds should not be used to support a center based on a diverse student population; and that the topics covered should be more limited given the center's likely funding.

Discussion: The Secretary believes this topical area is essential, and that a separate center devoted to this topic is warranted even given the reduction in the total number of centers to be funded. However, the Secretary agrees with the comment that it may be difficult for applicants to adequately address all of the topics in their proposals.

Changes: The Secretary has modified (b) to read "Include in its work research or development related to at least two of the following topics:".

Comments on Student Populations

Comments: Nine commenters recommended that the priority identify more specifically the population or populations of students included. Seven of these comments were related to students with disabilities. One expressed concern that the "diverse student" designation in this priority would serve as a catch-all for "other" students, including students with disabilities, rather than an assurance of the inclusion of all students in each center's efforts. The comments included: Add "disability" to the categories of risk; broaden the definition of risk to include students with behavioral and psychological problems; and modify the priority to add a focus on students with disabilities or to set aside a portion of funding to support research and development dealing specifically with the needs of special education students. Two commenters called for inclusion of additional groups or aiming efforts at specific categories of at-risk students, namely Pacific Island students and at-risk students with limited vocational job options. One commenter supported the inclusion of limited-English proficient students. One commenter stated that the priority should address the broad range of dimensions of student diversity.

Discussion: The statute authorizing the National Institute on the Education of At-Risk Students defines an at-risk student as "a student who, because of limited English proficiency, poverty, race, geographic

location, or economic disadvantage, faces a greater risk of low educational achievement or reduced academic expectations." The Institute is limited to funding research which meets the purposes of the statute.

Changes: The Secretary has modified the priority to include the exact wording of the statute.

Comments on Agencies

Comments: One commenter recommended that (b)(5) (now (b)(4)) be amended to add "tribal" to the list of agencies.

Discussion: The Secretary will modified the priority to add the words "tribal government."

Changes: The Secretary has modified the language of Priority 4 by adding "tribal government" to the list in (b)(4).

Comments on Topic Areas

Comments: Sixteen commenters provided comments on the proposed priority's five topics for research and development activities. One commenter stated that student diversity is so basic to our nation's schools that the topic should be incorporated into the other proposed priorities. Another stated that the most pressing need of diverse students is effective literacy lessons. Four commenters made recommendations concerning (b)(2), as follows: Professional development should also include the preparation of teachers and other school personnel, and professional development is so vital that an additional priority on this topic should be added; support for highlighting professional development in Priority 4 and a recommendation that it be similarly highlighted in the other priorities; a statement that professional development research should ensure that appropriately certified school personnel are prepared to work effectively with American Indian students; a statement that methods of assessing teachers of at-risk students should be examined; and a statement that issues related to potential shortages of minority teachers should be investigated. Similarly, the Board committee recommended that topic (b)(2) be modified to include training activities for families and communities, as well as professional development for educators. Seven commenters expressed concerns regarding the scope of and language contained in (b)(3), including recommendations for amending the language to include libraries and museums as examples of out-of-school experiences, adding "* * * and become responsible citizens" to the language, and clarifying the phrases "structuring out of school experiences" and "learning to high standards," subsuming (b)(3) under (b)(4), or deleting (b)(3) altogether because it is not as crucial as the other topics. Three commenters supported (b)(4). Two letters recommended stressing the topic of (b)(4) among all centers and another recommended a number of studies to enhance knowledge of risk and resiliency factors in children and to generate policy recommendations. Two commenters specifically addressed the needs of language minority students under (b)(5). One stressed the importance to this population of English/language arts skills; the second commenter suggested requiring basic research on the process of second language acquisition and in-school learning experiences that enhance English proficiency and academic excellence.

Discussion: The Secretary recognizes the merit of the recommendations regarding in-school learning experiences and has modified (b)(1) to emphasize instructional strategies. The Secretary believes that the language in (b)(2) is sufficiently inclusive to provide for the population of teachers and other school personnel. However, the Secretary has revised (b)(2) to clarify that training activities for families and communities are included within the scope of the topic. The Secretary recognizes that there is merit to including libraries and museums as examples of out-of-school experiences. However, the Secretary does not wish to imply partiality toward particular types of learning experiences, preferring instead to encourage applicants to identify and justify the promising experiences that reflect the particular design of their proposed research and development activities. The Secretary has considered rewording the phrase "structuring out-of-school experiences". The Secretary believes that existing knowledge of effective practices in this area is significantly limited as to warrant a broader, more inclusive approach rather than a more narrow focus. The Secretary expects that applicants' concepts of out-of-school experiences will contribute to the merits of their proposals. The Secretary further believes that there is significant potential for identifying promising out-of-school practices which are not mutually exclusive of family and community-based experiences. Thus, the Secretary concurs with the suggestion that (b)(3) be subsumed under (b)(4).

Changes: Section (b)(1) has been modified to read "Instructional strategies that recognize and build on the strengths of students from diverse backgrounds to help all students to achieve to high academic standards." Section (b)(2) has been modified to include families and communities. Sections (b)(3) and (b)(4) of the priority have been modified to read: "(b)(3) Working with families and community-based organizations, through such means as structuring out-of-school experiences as well as providing support for school-based programs, to help students at risk of educational failure achieve to high standards."

Absolute Priority 5: Increasing the Effectiveness of State and Local Education Reform Efforts

Overview: In response to the Secretary's invitation in the notice of proposed priorities, 76 respondents submitted written comments regarding Absolute Priority 5: Increasing the Effectiveness of State and Local Education Reform Efforts. Some commenters discussed more than one topic in their correspondence.

General Comments: Sixteen commenters supported the focus of the proposed priority. Commenters noted the importance and usefulness of such research in the past and the ongoing need for research in the topic areas listed in the proposed priority. Several commenters provided specific references to useful research in this field. Five commenters expressed disapproval of the proposed priority. One warned against excessive federal intervention in education affairs. Another argued that all the priorities should be directly related to the Goals 2000 legislation. The third characterized the current list of topics under Priority 5 as an unfocused laundry list. The fourth argued that the priority focused on research that had already been done and that academics would continue to do this type of research even in the absence of a center on this topic. The fifth suggested that the proposed research should be conducted in other centers.

Discussion: The Secretary does not believe that the National Research and Development Centers Program represents excessive federal intervention into education affairs. The purpose of these centers is to provide information that will be helpful to educators as they carry out their programs. Because these centers are not intended to promote any particular predetermined reform strategy, the Secretary does not believe the priorities should be directly related to the Goals 2000 legislation. The Secretary has restructured the topics under this priority so they are more coherent rather than giving the appearance of a laundry list. The nonbinding mission guidance will also explain how the topics fit into an integrated whole. The Secretary believes that current reforms are more coherent than they have been in the past and the focus of this priority—the relationship between increased learning by all students and local and school level strategies for reform, state and local policies, finance strategies and governance arrangements—is an important advancement in both research and practice. Also, the Secretary believes that while some research on this topic will be conducted by independent academicians, the important work to be conducted by a center on this topic will not be carried out elsewhere. The Secretary believes that the proposed work is sufficiently distinct to be conducted at a separate center, but that the work of this center should be closely coordinated with work in other centers related to K–12 student achievement. Therefore, the substantive focus of the proposed priority has not be changed.

Changes: The language of the priority has been revised so the topics are more coherent.

Comments on Local and School Level Factors

Comments: Ten respondents commented about the importance of local and school level factors. Some of these emphasized the importance of the impact of these factors on student learning. Generally the comments noted the importance of understanding how local and school factors interact to support desired changes and how these factors interact with state and local policies. In addition, the Board committee recommended that topic (b)(1) be modified to emphasize the importance of supportive and secure learning environments as a target of local or school level reforms.

Discussion: The Secretary agrees that local and school level factors that influence student learning are important and should be studied by this center. The Secretary further agrees that supportive and secure learning environments are particularly important concerns at the local and school levels.

Changes: The priority has been revised to emphasize the importance of research on local and school level factors that influence student learning with particular emphasis on supportive and secure learning environments.

Comments Regarding Student Standards

Comments: Seven respondents commented on the topic of student standards. Most emphasized the importance of the topic. One recommended that work on this topic be coordinated with Title 1 evaluations and with the work the National Science Foundation is sponsoring on standards-based reform. Two argued that such work must be content-based.

Discussion: The Secretary agrees that student standards are an important topic for investigation. The Secretary will coordinate work on this topic with the evaluation of Title 1 and with the work being supported by the National Science Foundation. Applicants will be free to propose content-based approaches to this topic. The center is encouraged to coordinate its work, including the work on student standards, with other related activities in the field.

Changes: The priority has been amended to add as a new topic (b)(2), "State and local finance strategies that support improved learning by all students including aligning elements of the education system to achieve challenging student standards and providing incentives for reform."

Comments Regarding Finance Issues

Comments: Six commenters noted the importance of finance issues. One recommended a center on this topic alone. Another called explicitly for studies of the cost-effectiveness of alternative strategies. Several commenters recommended research on finance strategies that are integrated with other elements of reform.

Discussion: The Secretary agrees that finance issues are important and that the discussion of them in the priority should be expanded.

Changes: The priority has been amended to elaborate upon the finance topic. The equitable distribution of programs and services and the productive allocation of resources are included as areas that must be covered by the center's work.

Comments Regarding Family, Community, School Relationships

Comments: Six commenters noted the importance of family, community and school relationships. One recommended supporting a Center on Families, Communities, Schools and Children's Learning as a second center in the Governance Institute, or, as an alternative, research on strengthening the connections between schools, families, and communities. Two commenters recommended adding parents and families to the topic in the proposed priority focused on examining community-school relationships. In addition, the Board committee recommended adding the word "partnerships" before "collaboration" in (b)(1) to emphasize that families, communities and schools should work together as closely as possible.

Discussion: The Secretary believes that budget restrictions paired with the legislative mandate that no center be funded at less than $1.5 million per year preclude the possibility of funding a second center under the Governance Institute. However, the Secretary agrees that the relationship between schools and families and the community is an important factor related to student learning. The Secretary believes that both productive partnerships and productive collaborations among communities, families and schools merit investigation as local strategies to improve elementary and secondary education.

Changes: The priority has been revised to include enhancing productive partnerships and collaborations among communities, families and schools as a topic area that must be addressed by the center.

Comments Regarding the Format of Topics

Comments: Five commenters were concerned about the format of the topics under the priority. Two suggested that the priority appeared to be promoting a particular view of reform. Another suggested that the topics were too process-oriented. Another commenter suggested that all topics should focus on increasing student achievement. The fifth called for a more integrated and synthesized statement.

Discussion: The Secretary does not believe that this priority should promote any particular reform strategy. Rather, alternative reform strategies should be the focus of the research supported under this priority. The Secretary agrees that the focus of the work sponsored under this priority should be on the relationship between alternative approaches and student learning, not on processes *per se*. The Secretary also agrees that the statement of the individual topics within the priority should be as integrated and synthesized as possible.

Changes: The priority has been revised to clarify that the topics are not promoting a particular approach to education reform, are not focusing on processes *per se*, and are aimed at investigating the relationship between alternative approaches and student learning. The priority has been reformatted to be more coherent.

Comments About Adding Topics

Comments: Fifty-two commenters recommended adding topics to the proposed priority. Examples of research areas proposed for inclusion were the general areas of education governance and teacher professionalization, and the topic areas of building organizational capacity, alternative models of schooling, family-community-school relationships, collaboration between schools and postsecondary institutions, and the integration of services for children and youth. Specific research topics recommended included the federal role in education, policies supporting the use of technology, especially for students with special needs, the role of libraries and museums in students' learning, and addressing cultural differences when setting education policies.

Discussion: The Secretary agrees that education governance is an important general area that should be included in the priority. Also, in recognition of the number of comments on professionalization of education personnel, the Secretary has decided to modify the priority to include a focus on licensing of teachers and other education professionals. The Secretary also believes that the general topics recommended are important and should be considered by applicants as candidates for study. The Secretary recognizes that there is merit to many of the specific topics recommended for inclusion. In fact, the Secretary believes that many of these recommendations fall within the scope of the priority's topics and could be the subject of the center's research projects.

Changes: The priority has been revised to include the general topic area of education governance. In addition, section (b)(2) has been amended to read: "State and local policies that support improved learning by all students including aligning elements of the education system to achieve challenging student standards, enhancing licensing systems for teachers and other education professionals, and providing incentives for reform."

Absolute Priority 6: Improving Postsecondary Education

Overview: A total of 22 letters provided comments on Priority 6. Some commenters addressed more than one topic.

Comments on Scope and Relationship of Priority 6 to Priority 7

Comments: Seven commenters were concerned with relationships and distinctions between priorities 6 and 7. Two recommended combining the two priorities, while others recommended various ways of ensuring that the work is coordinated or that the scope of each priority be clarified to prevent overlap. Several commented on the broad range of issues included in Priority 6, while others added issues that should be emphasized.

Discussion: The Secretary agrees that distinctions between priorities 6 and 7 need to be clarified, but does not agree that a single center can address the complex issues in both postsecondary education and adult literacy and learning. The Secretary agrees that it is important for the centers to coordinate work on issues of mutual interest.

Changes: The title of Priority 6 has been changed to: "Improving Postsecondary Education" to distinguish its focus from priority 7. Section (a) is changed to: "Conduct research and development on improving quality, productivity and outcomes of postsecondary education." Applicants will be permitted to select three or more topics for research from among those listed. Non-binding mission guidance will suggest ways of coordinating the work of the two centers.

Comments on Emphasizing a Continuous View of Education

Comments: Three commenters argued for a broader view of postsecondary students and a more continuous view of education, consistent with the theme of lifelong learning. Three advocated inclusion of community colleges in the work on

postsecondary education. Eight commenters recommended linking research on postsecondary education with various other reform issues including: Teacher education; links to communities; promotion of private/public partnerships in service delivery; and employment opportunities for high-risk students and for the non-college bound. Two commenters advocated a K–16 approach to education reform.

Discussion: The Secretary agrees that this priority should reflect a continuous view of education, including an emphasis on K–16 approaches to education improvement and teacher education. The Secretary encourages the inclusion of various groups of participants and institutions, including community colleges.

Changes: The Secretary has omitted (b)(5): "Articulation between secondary and postsecondary education," and has amended (b)(1) to read: "Transitions from school to work, or to further education, for secondary and postsecondary students, including, but not limited to, development of effective K–16 systems."

Comments on Faculty Development

Comments: Three commenters recommended inclusion of research on faculty development, especially for improving student achievement. Others recommended a focus on professional development, including interprofessional development for educators at various academic levels. The Board committee recommended adding teacher education as an express part of this priority in order to emphasize the need for research and development related to the professional development of K–12 teachers.

Discussion: The Secretary agrees that faculty development is an important aspect of improving the quality of postsecondary education. The Secretary also agrees that postsecondary institutions are critical in improving the preparation of K–12 educators.

Changes: Section (b)(3) will include a new topic: "Approaches to professional development geared to improving postsecondary instruction and student learning, including the preparation of K–12 educators."

Comments on Institutional Productivity, Faculty Rewards, and Finance

Comments: Three commenters advocated various aspects of improving the management and productivity of postsecondary institutions, including a focus on faculty productivity and reward structures.

Discussion: The Secretary agrees that these are important issues and believes that they are already included in the statement on "Containing costs and improving the productivity and accountability of postsecondary institutions."

Changes: None.

Comments on Emphasizing Library Services

Comments: Three commenters recommended an emphasis on research on library services.

Discussion: While the Secretary agrees that libraries are important aspects of postsecondary education, he does not believe that this topic is appropriate as a separate research topic for this priority. However, the Secretary has included the use of libraries in (b)(2) of Priority 7.

Changes: None.

Absolute Priority 7: Improving Adult Learning and Literacy Overview: A total of 21 letters provided comments on Priority 7. Some commenters discussed more than one topic in their correspondence.

Comments on Organizational Strategies, Methods and Delivery Systems

Comments: Four commenters recommended that greater attention be paid to developing effective delivery systems through better organizational strategies, and four others asked that libraries be specified within the research activities.

Discussion: The Secretary agrees that greater attention be paid to developing effective delivery systems through better organizational strategies, including the use of libraries.

Changes: Section (b)(2) has been amended to read: "Effective strategies and technology for providers, including libraries, community organizations, and family literacy programs, * * *"

Comments on Workplace Skills

Comments: Two commenters asked that more work be done in developing skills for use in the workplace and two asked that the research on workplace skills be coordinated with that of the Institute on Postsecondary Education so as to differentiate the basic skills from the levels and kinds of skills generally considered the province of postsecondary institutions' preparation of students for work. The Board committee recommended deleting the word "cognitive" from (b)(1) and replacing it with the phrase "linguistic, quantitative and reasoning" to clarify the myriad of skills to which this Center's research and development might pertain. The Board also recommended that an explicit reference to computer skills be added.

Discussion: The Secretary agrees that adult learning and literacy programs can provide a variety of skills useful in the workforce, including computer literacy, that postsecondary institutions can generally provide skills that are useful for higher level workforce preparedness, and that research on all these skills will profit from collaborative work.

Changes: Section (a) has been amended to read: "Conduct research and development on improving adult learning and literacy through delivery methods and systems other than postsecondary institutions, including the skills needed for work and responsible citizenship." In addition, section (b)(1) has been amended to read: "Adult acquisition of knowledge and development of linguistic, quantitative, and reasoning skills, including adult acquisition of second language skills and computer skills."

Comments on Instructional Considerations

Comments: Two commenters wanted specific mention of family literacy, and two emphasized the importance of instructional strategies and materials. The Board committee recommended adding a specific reference to the use of technology for professional development in order to encourage further use of technology toward the goals of this priority.

Discussion: The Secretary agrees that family literacy is a vital part of the provision of literacy and related instruction and services. The Secretary believes that the importance of instructional strategies and materials is already apparent in the priority in sections (b) (2), (3) and (4).

Changes: Section (b)(2)has been amended to read: "Effective strategies and technology for providers, including libraries, community organizations, and family literacy programs,* * *". Section (b)(3) has been revised to include a specific reference to the use of technology for professional development.

Comments on Special Populations

Comments: Two commenters recommended the specific mention of target populations, including those with learning disabilities, learning disorders and other special needs, and one recommended much greater attention to diversity in general and English as a second language programs and instruction in particular.

Discussion: The Secretary agrees that much more sophisticated identification methods have shown us that an increasingly large number of adults have special learning needs. The Secretary further agrees that burgeoning numbers of adults needing English as second language instruction are asking for programs.

Changes: Section (b)(2) has been amended to read: "Effective strategies and technology for providers, including libraries, community organizations, and family literacy programs, to improve adult learning and literacy for all adult populations, including adults with special needs and those needing English as second language instruction." In addition, section (b)(3) has been amended to read: "Effective methods, including use of technology, for professional development of instructional staff for adult education and literacy programs, including English as second language programs and programs for adults with special needs."

Comments on Research Methodology

Comments: Two commenters called for greater practitioner involvement in the design and conduct of research.

Discussion: The Secretary agrees that such participation would be a valuable ingredient in carrying out the research under this Priority. The Secretary encourages practitioner involvement, but does not believe this should be mandated.

Changes: None.

Post-Award Requirements Comments

Comments: One comment was received on the post-award requirements. This commenter recommended dropping the five percent set-aside for supporting activities that fall within the center's priority area and are designed and mutually agreed to by the center and OERI. The commenter stated a belief that the set-aside modifies the intention of the appropriators by reducing the center awards by five percent to provide additional discretionary funds for the agency not acknowledged in the formal appropriation process. The commenter also suggested that the word "synthesizes" in paragraph (d) has a technical meaning that may not be appropriate in the context of post-award requirements, and suggests using "document" instead, as well as adding "actual impact" instead of "potential impact."

Discussion: The Secretary does not believe that a 5 percent set-aside for the described activities is unreasonable or an attempt to circumvent the appropriations process. The five percent set-aside will be used by the centers for activities which enable them to work more closely with each other. The Secretary agrees that synthesis has a technical meaning and believes that it is an appropriate activity for the centers. The Secretary also believes that it is appropriate for centers to describe potential impact as well as observable impact to date.

Changes: None.

[FR Doc. 95–22873 Filed 9–13–95; 8:45 am]

BILLING CODE 4000-01-P

[CFDA Nos.: 84.305 A and B, 84.306A, 84.307A, 84.308A, and 84.309 A and B]

Office of Educational Research and Improvement (OERI)—Education Research and Development Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: To support seven national research and development centers that would carry out sustained research and development to address nationally significant problems and issues in education.

Eligible Applicants: The following are eligible for a new award under this program: institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations, and interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

Deadline for Transmittal of Applications: December 15, 1995.

Applications Available: September 29, 1995.

Estimated Available Funds: The seven centers will be awarded as cooperative agreements. In fiscal year 1996, $21,350,000 is expected to be available for the first year of funding for the seven national research and development centers. The following table indicates the estimated funding levels over the five-year project period. The funding levels for years 1 through 5 are estimates. Actual funding will depend upon the availability of funds and needs as reflected in the approved application.

Priority area	Fiscal year				
	1996	1997	1998	1999	2000
Enhancing young children's development and learning	2,750,000	2,750,000	2,750,000	2,750,000	2,750,000
Improving student learning and achievement[1]	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Improving student assessment and educational accountability	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000
Meeting the educational needs of a diverse student population	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000
Increasing the effectiveness of state and local education reform efforts	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000
Improving postsecondary education	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000
Improving adult learning and literacy	1,500,000	1,500,000	1,500,000	1,500,000	1,500,000

[1] Multiple awards may be made.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 700, as published elsewhere in this issue of the **Federal Register**.

Priority

The absolute priorities in the notice of final priorities and post-award requirements for this program, as published elsewhere in this issue of the **Federal Register** apply to this competition.

Selection Criteria

In evaluating applications for grants under this program, the Secretary uses the selection criteria in 20 U.S.C. 6031(c)(3)(E) and 34 CFR 700.30.

In accordance with 34 CFR 700.30 (b) and (c), the Secretary has selected evaluation criteria from among those established in 34 CFR 700.30(e) and has assigned weights to each selected criterion.

In addition, the legislation authorizing the Research and Development Centers program requires all applications for grants to be evaluated according to criteria specified in 20 U.S.C. 6031(c)(3)(E) (i)–(vi). The Secretary has incorporated the statutory selection criteria into the criteria established under 34 CFR 700.30. The statutory criteria are: (3)(B)(iii), (4)(B)(iv), (4)(B)(v), (5)(B)(iv), (5)(B)(v), and (5)(B)(vi).

The Secretary announces the following evaluation criteria and assigned weights for this competition:

(1) *National Significance* (30 points)

(A) The Secretary considers the national significance of the proposed project.

(B) In determining the national significance of the proposed project, the Secretary considers the following factors:

(i) The importance of the problem or issue to be addressed.

(ii) The potential contribution of the project to increased knowledge or understanding of educational problems, issues, or effective practice.

(iii) The potential contribution of the project to the development and advancement of theory and knowledge in the field of study.

(iv) The nature of the products (such as information, materials, processes, or techniques) likely to result from the project and the potential for their effective use in a variety of other settings.

(2) *Quality of the Project Design* (30 points)

(A) The Secretary considers the quality of the design of the proposed project.

(B) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) Whether there is a conceptual framework underlying the proposed activities and the quality of that framework.

(ii) Whether the proposed activities constitute a coherent, sustained program of research and development in the field, including a substantial addition to an ongoing line of inquiry.

(iii) The extent to which the research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and use of appropriate theoretical and methodological tools, including those of a variety of disciplines, where appropriate.

(iv) The quality of the plan for evaluating the functioning and impact of the project, including the objectivity of the evaluation and the extent to which the methods of evaluation are appropriate to the goals, objectives, and outcomes of the project.

(3) *Quality and Potential Contributions of Personnel* (20 points)

(A) The Secretary considers the quality and potential contributions of personnel for the proposed project.

(B) In determining the quality and potential contributions of personnel for the proposed project, the Secretary considers the following factors:

(i) The qualifications, including training and experience, of the project director or principal investigator.

(ii) The qualifications, including training and experience, of key project personnel.

(iii) Whether the applicant has assembled a group of high quality researchers sufficient to achieve the mission of the center.

(4) *Adequacy of Resources* (10 points)

(A) The Secretary considers the adequacy of resources for the proposed project.

(B) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support from the lead applicant organization.

(ii) The relevance and commitment of each partner in the project to the implementation and success of the project.

(iii) Whether the costs are reasonable in relation to the objectives, design, and potential significance of the project.

(iv) Whether the proposed organizational structure and arrangements will facilitate achievement of the mission of the center.

(v) Whether the directors and support staff will devote a majority of their time to the activities of the center.

(5) *Quality of the Management Plan* (10 points)

(A) The Secretary considers the quality of the management plan of the proposed project.

(B) In determining the quality of the management plan of a proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the project, including the specifications of staff responsibility, timelines, and benchmarks for accomplishing project tasks.

(ii) The adequacy of plans for ensuring high-quality products and services.

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the project, including those of parents and teachers, where appropriate.

(iv) Whether there is a substantial staff commitment to the work of the center.

(v) The contributions of primary researchers (other than researchers at the proposed center) and the appropriateness of such researcher's experiences and expertise in the context of the proposed center activities, and the adequacy of such primary researcher's time and commitment to achievement of the mission of the center.

(vi) The manner in which the results of education research will be disseminated for further use, including how the center will work with the Office of Reform Assistance and Dissemination.

For Applications or Information Contact: Either—

1. Jacqueline Jenkins, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 510G, Washington, DC 20208–5573. Telephone: (202) 219–2232. Internet: Jackie__Jenkins @ed.gov or;

2. Judith Anderson, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 611B, Washington, DC 20208–5573. Telephone: (202) 219–2086. Internet: Judith__Anderson @ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices or discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Servers at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: Pub. L. 103–227, Title IX.

Dated: August 31, 1995.

Sharon Porter Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–22874 Filed 9–13–95; 8:45 am]

BILLING CODE 4000-01-P

federal register

Thursday
September 14, 1995

Part IV

Department of Education

Office of Educational Research and Improvement; National Institutes' Field-Initiated Studies Grant Program; Notice

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement; National Institutes' Field-Initiated Studies Grant Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1996.

SUMMARY: The Secretary invites applications for new awards for fiscal year 1996 and announces closing dates for the transmittal of applications under the Field-Initiated Studies Grant Program supported by five new National Institutes: Student Achievement, Curriculum, and Assessment; Education of At-Risk Students; Educational Governance, Finance, Policymaking, and Management; Early Childhood Development and Education; and Postsecondary Education, Libraries, and Lifelong Learning. The Field-Initiated Studies Grant Program will support educational research projects related to the missions of the Institutes.

DATES: The closing dates for transmitting applications under this notice are listed in Section I of this notice.

ADDRESSES: *For Applications or Further Information:* The address and telephone number for obtaining applications for, or further information about, individual Institutes are in Section II of this notice.

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Educational Research, Development, Dissemination, and Improvement Act of 1994 ("Act") (20 U.S.C. 6002 *et seq.*) established five National research institutes within the Department. Each of the Institutes will support a Field-Initiated Studies (FIS) Grant program to fund field-initiated research projects on topics related to the mission of the relevant Institute. The application announcement for each FIS Grant program, in Section II of this notice, contains a summary of the mission of each of the five Institutes. Section 931 of the Act (20 U.S.C. 6031) contains a complete description of the mission of each Institute.

The Secretary has established invitational priorities for each of the FIS Grant program competitions. The invitational priorities provide examples of research projects that the Secretary believes would enhance the work of each Institute. The invitational priorities are examples only and applicants may propose education research projects on any topic within the mission of the relevant Institute.

The Field-Initiated Studies Grant program provides assistance to institutions of higher education, public and private organizations, institutions, agencies, and individuals for educational research and demonstration to improve American education. The Act defines "educational research" to include basic and applied research, inquiry with the purpose of applying tested knowledge gained to specific educational settings and problems, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and other fields relating to education (20 U.S.C. 6011(l)(6)). The Act also defines the term "field-initiated research" to mean education research in which topics and methods of study are generated by investigators, including teachers and other practitioners (20 U.S.C. 6011(l)(7)).

Program Information Shared by All National Institutes

Eligible Applicants: Eligible applicants are institutions of higher education, public and private organizations, institutions, agencies, and individuals, or a consortium thereof.

Length of Application: The application narrative may not exceed 25 double-spaced, 8½ x 11" pages (on one side only). The applicant must use a non-proportional 12-point or larger font (i.e., no more than 10 characters to the inch). The entire application package, including all forms, appendices, and attachments may not exceed 45 pages. All pages must have at least 1-inch margins on all sides. Pursuant to this Department's authority to establish instructions governing the form of application, applications which do not follow these specifications will not be considered for funding.

Project Periods: Research projects may extend from one to three years.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86 (part 86 applies to IHEs only); and (b) The regulations in 34 CFR part 700 (Standards for the Conduct and Evaluation of Activities Carried Out by OERI), as published elsewhere in this issue of the **Federal Register**.

Applicable Evaluation Criteria: In accordance with 34 CFR 700.30, the Secretary applies the following evaluation criteria to the Field-Initiated Studies Grant program competitions.

(1) *National Significance* (30 points). (i) The Secretary considers the national significance of the proposed project.

(ii) In determining the national significance of the proposed project, the Secretary considers the following factors—

(A) The importance of the problem or issue to be addressed.

(B) The potential contribution of the project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(C) The potential contribution of the project to the development and advancement of theory and knowledge in the field of study.

(2) *Quality of the Project Design* (30 points). (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors—

(A) Whether the goals, objectives, and outcomes to be achieved by the project are clearly specified and measurable.

(B) Whether a specific research design has been proposed, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(3) *Quality and potential contributions of personnel* (15 points). (i) The Secretary considers the quality and potential contributions of personnel for the proposed project.

(ii) In determining the quality and potential contributions of personnel for the proposed project, the Secretary considers the following factors—

(A) The qualifications, including training and experience, of the project director or principal investigator.

(B) The qualifications, including training and experience, of key project personnel.

(4) *Adequacy of Resources* (15 points). (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors—

(A) Whether the budget is adequate to support the project; and

(B) Whether the costs are reasonable in relation to the objectives, design, and potential significance of the project.

(5) *Quality of the Management Plan* (10 points). (i) The Secretary considers the quality of the management plan of the proposed project.

(ii) In determining the quality of the management plan of a proposed project, the Secretary considers the following factors—

(A) The adequacy of the management plan to achieve the objectives of the project, including the specification of staff responsibility, timelines, and benchmarks for accomplishing project tasks.

(B) Whether time commitments of the project director or principal investigator and other key personnel are appropriate and adequate to meet project objectives.

(C) How the applicant will ensure that persons who are otherwise eligible to participate in the project are selected without regard to race, color, national origin, gender, age, or disability.

Organization of Notice

This notice contains two sections. *Section I* includes a chart listing the common closing date, and other pertinent information about each competition covered by this notice. *Section II* consists of the individual application announcement for each competition under the Field-Initiated Studies Grant program.

SECTION I.—INSTITUTES AND FIS GRANT CLOSING DATES

Title of program and CFDA number	Applications available	Application deadline date	Tentative award date	Estimated available funds	Estimated range of awards	Estimated average size of annual awards	Estimated number of awards
National Institute on Student Achievement, Curriculum, and Assessment FIS Grant Program (84.305F)	10/13/95	01/05/96	06/28/96	$2,580,000	$100,000–300,000	$250,000	10
National Institute on the Education of At-Risk Students FIS Grant Program (84.306F)	10/13/95	01/05/96	06/28/96	2,580,000	100,000–300,000	250,000	10
National Institute on Early Childhood Development and Education FIS Grant Program (84.307F)	10/13/95	01/05/96	06/28/96	1,290,000	100,000–250,000	200,000	6
National Institute on Educational Governance, Finance, Policymaking, and Management FIS Grant Program (84.308F)	10/13/95	01/05/96	06/28/96	860,000	50,000–300,000	150,000	6
National Institute on Postsecondary Education, Libraries, and Lifelong Learning FIS Grant Program (84.309F)	10/13/95	01/05/96	06/28/96	1,290,000	100,000–400,000	250,000	5

Section II—Application Notices

CFDA No. 84.305F—The National Institute on Student Achievement, Curriculum, and Assessment, Field-Initiated Studies Program

Purpose of Program: The purpose of the National Institute on Student Achievement, Curriculum, and Assessment is to provide leadership to improve student achievement in core content areas. The institute is to support research and development to identify and develop innovative and exemplary methods to improve student knowledge at all levels in the core content areas.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1. Methods and activities to reduce and prevent violence in schools.

Invitational Priority 2. Effective use of technology to improve learning, teaching, and testing.

Invitational Priority 3. Methods of delivering teacher education and inservice professional training that lead to improved student achievement.

For Applications or Information Contact: Clara Lawson-Holmes, National Institute on Student Achievement, Curriculum, and Assessment, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 510, Washington, DC 20208–5573. Telephone (202) 219–2079, or clawson@INET.ED.GOV.

CFDA No. 84.306F—The National Institute on the Education of At-Risk Students, Field-Initiated Studies Program

Purpose of Program: The purpose of the National Institute for the Education of At-Risk Students is to expand research-based knowledge and strategies that will promote excellence and equity in the education of children and youth placed at risk of educational failure because of limited-English proficiency, poverty, race or ethnicity, or geographic location. The Institute will carry out a program of research and development to identify and assist others to replicate and adapt programs and models which promote greater achievement and educational success by at-risk students, including innovative methods of instruction, student assessments, professional development, and curricula.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

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Invitational Priority 1. Increasing academic achievement and reducing the dropout rates of American Indian and Alaska Native students.

Invitational Priority 2. Improving the success of students at-risk through coordinated school, community, and family programs, including programs designed to increase learning time.

Invitational Priority 3. Improving student outcomes in schools where a majority of students live in poverty.

For Applications or Information Contact: Beth Fine, National Institute on the Education of At-Risk Students, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 610, Washington, DC 20208–5521. Telephone (202) 219–2239, or bfine@INET.ED.GOV.

CFDA 84.307F—The National Institute on Early Childhood Development and Education, Field Initiated Studies Program

Purpose of Program: The purpose of the National Institute on Early Childhood Development and Education is to identify, develop, evaluate and assist others to replicate methods and approaches that improve early childhood development and education. The Institute is to carry out a program of research and development in areas such as the social and educational development of young children; factors relating to readiness, including prenatal care, health services, and nutrition; family literacy; the role of parental involvement in their children's learning; effective learning methods and curriculum for young children; methods for integrating learning in settings other than the classroom; the impact of outside influences, such as television, violence, and drug abuse; and instruction that considers the cultural environment of children.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1. The development of pre-reading, reading, and family literacy skills.

Invitational Priority 2. Improving long-term outcomes for teenage parents and young children.

Invitational Priority 3. Developing programs that use technology to involve low-income families in the teaching of basic skills to young children.

Invitational Priority 4. Developing methods that enable early childhood caregivers to identify behavior problems early in young children and effectively use interdisciplinary intervention strategies that will replace those problem behaviors with positive behaviors.

Invitational Priority 5. Determining the effectiveness of programs or curricula that address the development of motor, language, speech and other skills needed for young children to be successful in a variety of settings.

For Applications or Information Contact: Joe Caliguro, National Institute on Early Childhood Development and Education, U.S. Department of Education, 555 New Jersey Avenue, NW, Washington, DC 20208–5520 Telephone (202) 219–1935.

CFDA 84.308F—The National Institute on Educational Governance, Finance, Policy-Making, and Management, Field Initiated Studies Program

Purpose of Program: The purpose of the National Institute on Educational Governance, Finance, Policy-Making, and Management is to improve student achievement through restructuring and reform of the education system. The Institute is to carry out a program of research and development to provide a sound basis from which to identify, develop, and evaluate approaches in elementary and secondary education governance, finance, policy-making, and management at the State, local, tribal, school building, and classroom level which promise to improve educational equity and excellence.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1. The development and coordination, integration, and coherence of governance, finance, policymaking and management strategies that promote and sustain education innovations and raise levels of learning for all students.

Invitational Priority 2. The costs and effects of particularly promising approaches for improving the learning of different groups of students in different settings.

Invitational Priority 3. The impact on student learning of open enrollment programs, public school choice, magnet schools and other systems through which parents may select the public schools and educational programs in which their children enroll.

Invitational Priority 4. The impact on student learning of improving the context in which learning occurs through professional development; participatory governance structures; caring, concerned, and disciplined learning environments; and other innovative or improved ways to enhance learning.

For Applications or Information Contact: Elizabeth DeBra or Edward Fuentes, National Institute on Educational Governance, Finance, Policy-Making, and Management, U.S. Department of Education, 555 New Jersey Avenue, NW, Washington, DC 20208–5510. Telephone (202) 219–2021 or-2032.

CFDA 84.309F—The National Institute on Postsecondary Education, Libraries and Lifelong Learning, Field Initiated Studies Program

Purpose of Program: The purpose of the National Institute on Postsecondary Education, Libraries and Lifelong Learning is to improve postsecondary education and adult learning so that adults will be better prepared to compete in a global economy and exercise the rights and responsibilities of citizenship. The institute will carry out a program of research and development that will include subjects such as the development of human capital through postsecondary and adult education; the role of special mission educational institutions such as women's colleges and historically black colleges and universities; new models of service delivery through library systems; effective methods of adult literacy education; and the uses and application of new technology to improve teaching and lifelong learning.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1. To examine how public library systems and other community-based educational institutions can take full advantage of the potential of new information technologies to expand opportunities for adult lifelong learners.

Invitational Priority 2. To examine innovative and experimental approaches used by community-based education providers with respect to: instruction, the provision of information on self-directed learning, assessment of learner needs, and collaborative activities with other community-based education providers. Community-based education providers include libraries, museums, and local continuing education programs.

Invitational Priority 3. To examine the capacities of special mission institutions to provide access and excellence in higher education. Special mission institutions include Historically Black Colleges and Universities, Tribally-Controlled Indian Community Colleges, women's colleges, Hispanic-serving institutions and institutions serving students with disabilities.

Invitational Priority 4. To examine the effectiveness of various model approaches to the provision of family literacy programs.

Invitational Priority 5. To increase our understanding of workplace education and training approaches to improve workforce productivity and meet the challenges of the international economy.

For Applications or Information Contact: Delores Monroe, National Institute on Postsecondary Education, Libraries, and Lifelong Learning, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 620, Washington, DC 20208–5531. Telephone (202) 219–2229, or FIS@INET.ED.GOV.

Program Authority: 20 U.S.C. 6031 (c)(2)(B).

Dated: September 11, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–22875 Filed 9–13–95; 8:45 am]

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federal register

Thursday
September 14, 1995

Part V

Federal Retirement Thrift Investment Board

5 CFR Part 1601

Participant Choices of Investment Funds; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participant Choices of Investment Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rules; amendment.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing an amendment to final rules on participants' choices of Thrift Savings Plan (TSP) investment funds. The amendment has the effect of eliminating the automatic transfer to the Government Securities Investment (G) Fund of the accounts of participants who begin to withdraw their accounts as a series of equal payments. The amendment also makes participants who are receiving their accounts as a series of equal payments eligible to make interfund transfers pursuant to the same rules applicable to all other TSP participants.

EFFECTIVE DATE: This amendment is effective September 16, 1995.

FOR FURTHER INFORMATION CONTACT: Questions concerning this amendment may be addressed to David L. Hutner, Federal Retirement Thrift Investment Board, 1250 H Street NW., Washington, D.C. 20005, (202) 942–1661.

SUPPLEMENTARY INFORMATION: Interim rules governing participants' choices of investment funds were originally published in the **Federal Register** on March 29, 1990, (55 FR 11880) as an amendment to title 5 of the Code of Federal Regulations, adding Part 1601, Participants' Choice of Investment Funds. Revised interim rules were published in the **Federal Register** at 56 FR 592 on January 7, 1991, primarily to implement section 3 of the Thrift Savings Plan Technical Amendments Act of 1990 (TSPTAA), which removed investment restrictions that had been in place prior to the effective date of the TSPTAA. On December 28, 1994, the Board published proposed amendments to the interim rules in the **Federal Register** (59 FR 66796) setting forth changes in the procedures by which TSP participants may make, change, or cancel interfund transfer requests. The Board did not receive any comments on the proposed amendments. On May 26, 1995, the December 28, 1994, proposed amendments to the interim rules were withdrawn and replaced by new proposed amendments (60 FR 27908). No comments on the new proposed amendments were received, and final rules were published on July 17, 1995 (60 FR 36630). However, a proposal to remove investment restrictions from the accounts of participants who are receiving equal payments (which was included in the May 26 proposal) was deleted from the final rules because the technical changes necessary to accomplish that procedure had not been completed. It was stated in the preamble to the final rules that when those technical changes were completed, the Board intended to amend the regulations to eliminate the investment restrictions. The required technical changes will be completed by October 1995. Accordingly, these amendments are designed to eliminate the investment restrictions that have previously applied to participants receiving equal payments.

There are two aspects to the investment restrictions applicable to participants receiving equal payments, both of which are incorporated in 5 CFR 1601.4(c). First, upon commencement of withdrawal of a participant's account through a series of equal payments, the participant's entire account balance is automatically transferred to the G Fund. Second, participants receiving withdrawals by a series of equal payments are not permitted to make interfund transfers out of the G Fund. The present amendment eliminates both restrictions. Thus, as of the effective date of the amendment, participants who are already in equal payment status will be eligible to make interfund transfer requests to be effective October 31, 1995.

The final automatic transfer to the G Fund will be effective September 30, 1995. Participants whose first equal payment is effective October 31, 1995, or later, will not have their accounts automatically transferred to the G Fund. Participants whose first equal payment is issued (in November) effective October 31, 1995, will also be eligible to request an interfund transfer effective as of that date.

Participants whose first equal payment is issued (in November) effective October 31, 1995, will receive a notice advising them of their ability to make interfund transfer requests. Participants who request equal payment withdrawals commencing in subsequent months with similarly be notified that they may make interfund transfers while they are receiving equal payments.

There will also be a one-time notice issued in mid-September 1995 to participants who are already receiving equal payments. The participants will be advised that beginning September 16, 1995, they will be eligible to make interfund transfer requests. Their first interfund transfer opportunity will be for interfund transfers effective October 31, 1995.

In order to make an interfund transfer effective October 31, 1995, the interfund transfer request must be received by October 16, 1995. On September 16, 1995, the TSP recordkeeper will begin accepting interfund transfer requests for transfers effective October 31, 1995, in accordance with the ordinary rules for processing interfund transfer requests that are set forth in this part.

Regulatory Flexibility Act

I will certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), (d)(1) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. These amendments remove restrictions on TSP participants' ability to choose the investment funds in which their accounts will be invested. Moreover, the substantive provision of this amendment was originally included in proposed amendments published in the **Federal Register** (60 FR 27908) on May 26, 1995. Although the final rules published on July 17, 1995, deleted the substantive provision of the present amendment for the reasons stated in the preamble to the final rules (60 FR 36630), no comments were received during the 52 days the proposal was outstanding. Accordingly, I find that publication of these amendments in proposed form is unnecessary.

List of Subjects in 5 CFR Part 1601

Employee benefit plans, Government employees, Retirement, Pensions.

Dated: September 11, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

Accordingly, 5 CFR Part 1601 is amended as follows:

PART 1601—PARTICIPANTS' CHOICES OF INVESTMENT FUNDS

1. The authority citation for Part 1601 continues to read as follows:

Authority: 5 U.S.C 8351, 8438, 8474 (b)(5) and (c)(1).

§ 1601.4 [Amended]

2. Section 1601.4 is amended by removing paragraph (c).

[FR Doc. 95–22868 Filed 9–13–95; 8:45 am]

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federal register

Thursday
September 14, 1995

Part VI

Department of Housing and Urban Development

24 CFR Part 200

Use of Materials Bulletin [illegible] Used in the HUD Building Product Standards and Certification Program for Exterior Finish and Insulation Systems (EFIS); Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket FR–3386–F–02]

RIN 2502–AF94

Use of Materials Bulletin 101 Used in the HUD Building Product Standards and Certification Program for Exterior Finish and Insulation Systems (EFIS)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts Use of Materials Bulletin (UM) No. 101 Exterior Finish and Insulation Systems (EFIS). The UM references related national voluntary consensus standards, provides a labeling and third party certification program to meet the appropriate national voluntary standards, requires that a third-party inspection at the job site be conducted, provides that additional information be included on the label, tag, or mark that each manufacturer would affix to a certified product, specifies the frequency with which products must be tested in order to be acceptable to HUD, and requires an inspection report regarding installation.

DATES: *Effective date:* Octoer 16, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of Federal Register as of August 16, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie Breden, Office of Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, room 3214, L'Enfant Plaza, 490E, 451 Seventh Street SW., Mail Room B–133, Washington, DC 20410–8000; telephone, voice: (202) 755–7440; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Pursuant to HUD's Building Product Standards and Certification Program, which is authorized by Section 521 of the National Housing Act, 12 U.S.C. 1735e, the Department issues Use of Materials Bulletins (UM's). The UM's are issued to provide HUD standards that establish minimum acceptable qualities for certain materials and products to be used in properties subject to mortgages insured by the Department. A UM is also used as a means of promulgating a labeling and a certification program to assure that the products used meet the appropriate standard.

On June 25, 1993 HUD published in the Federal Register (58 FR 34502) an interim rule which adopted Use of Materials Bulletin (UM) No. 101 Exterior Finish and Insulation systems (EFIS). The rule solicited public comments. Eleven commenters sent comments.

One trade association objected to the elimination of gypsum wallboard. It claimed other parts of the EFIS system fail and then this, in turn, causes the wallboard to fail. The Department agrees that when the gypsum wallboard fails, it is usually the result of a break in the exterior envelope allowing moisture to enter the EIFS system. However, once water gets inside the EFIS system, the paper over the gypsum core debonds resulting in a catastrophic failure of the gypsum wallboard and a loss of the cladding's securement to the building structure. Therefore, the Department has referenced a standard for fiber cement board which remains secure even when wet.

Similarly, two manufacturers desire to use a sheathing material that does not comply with American Society for Testing and Materials C–1186. The Department contends that the sheathing should last as long as the mortgage and since the manufacturer will only guarantee this product for 5 years, it was determined that 5 years is not a long enough time for one to have confidence in the integrity of the whole EFIS system.

One inspection agency suggested that other variables, such as temperature and the esthetic design, should be included in the UM. The Department feels there is a wide range of possible variables in EFIS systems and it was not possible at this time to examine all of these items, but the Department will continue to examine these and other parameters to determine if they have a significant effect on the failure of the EFIS system.

Another trade association suggested that nationally recognized standards such as, Exterior Insulation Manufacturers Association (EIMA) and American Society for Testing and Materials (ASTM) Standards, be referenced in lieu of Military and Federal standards. The Department agrees and has referenced EIMA and ASTM standards wherever possible.

One testing laboratory suggested a new water absorption test for polystyrene foam. The Department will add this test to a future revision of UM 101 when it is adopted by ASTM.

One manufacturer wants a wider definition of fiber cement board than that defined by ASTM C 1186–91. The Department feels that this would require a revision to the ASTM standard. Therefore, the Department has recommended that the appropriate ASTM committee be contacted for revising the existing standard.

Finally, a third party inspection agency suggested that ASTM C 578–92 be referenced instead of ASTM C 578–91. UM 101 has been changed to incorporate UM 71 which contains ASTM C 578–92. It also wants a better definition of hail damage. To date, the Department has not been able to exactly quantify what is meant by hail damage. It is investigating establishing a knowledgeable review by peer inspectors for determining the definition of hail damage.

The Department has evaluated the technical standards for exterior finish and insulation systems and plans to adopt these standards by incorporating them into the UM by reference. The UM's adoption would also augment the labeling requirements of 24 CFR 200.935(d)(6).

The text of the UM is not being produced in the final rule because the substance is embodied in a new section of 24 CFR 200.946 set forth below. However, copies of the UM are available for public inspection during regular business hours in the Office of Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, room 3214 L'Enfant Plaza, 490E, Mail Room B–133, Washington, DC, 20410–8000, and in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500.

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102 (2)(c), of the National Environment Policy Act of 1969, 42 U.S.C. 4321 *et. seq.* The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. This UM would adopt standards that are nationally recognized throughout the affected industry and will not create a burden on manufacturers.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being; therefore, it is not subject to review under the order.

Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this final rule would not have substantial direct effect on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the final rule is not subject to review under the order.

Incorporation by Reference

These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Copies of the standards may be obtained from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; the Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041; & the Exterior Insulation Manufacturers Association, 2759 State Road 580, Suite 112, Clearwater, Florida 34621.

Copies of the standards are also available for inspection at the Office of Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, Room 3214, L'Enfant Plaza, 490E, Mail Room B–133, Washington, DC 20410–8000, and at the Office of the Federal Register, 800 North Capital Street, NW, Suite 700, Washington, DC.

List of Subjects in 24 CFR Part 200

Administrative Practice and Procedures, Claims, Equal Employment Opportunity, Fair Housing, Housing Standards, Incorporation by Reference, Lead Poisoning, Loan Programs—Housing and Community Development, Minimum Property Standards, Mortgage Insurance, Organization and Functions (Government agencies), Penalties, Reporting and Recordkeeping Requirements, Social Security, Unemployment Compensation, Wages.

Accordingly, 24 CFR Part 200 is amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–(18); 42 U.S.C. 1436a and 3535(d).

2. Section 200.946 is revised to read as follows:

§ 200.946 Building product standards and certification program for exterior finish and insulation systems, use of Materials Bulletin UM 101.

(a) *Applicable standards:* (1) All Exterior Finish and Insulation Systems shall be designed, manufactured, and tested in compliance with the following standards:

(i) ASCE 7–93, American Society of Civil Engineers—Minimum Design Loads for Buildings and Other Structures.

(ii) ASTM C 150–94 Standard Specification for Portland Cement.

(iii) ASTM C 920–87 Standard Specification for Elastomeric Joint Sealants.

(iv) ASTM C–1186–91 Standard Specification for Flat Non-Asbestos Fiber-Cement Sheets.

(v) ASTM D 579–90 Standard Specification for Greige Woven Glass Fabrics.

(vi) ASTM–D 3273–86—(Reapproved 1991) Standard Test Method for Resistance to Growth of Mold on the Surface of Interior Coatings in an Environmental Chamber.

(vii) ASTM E 330–90 Standard Test Method for Structural Performance of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference.

(viii) ASTM E 695–79 (Reapproved 1991), Standard Method of Measuring Relative Resistance of Wall, Floor, and Roof Construction to Impact Loading.

(ix) ASTM G 26–93 Standard Practice for Operating Light-Exposure Apparatus (Xenon-Arc Type) With and Without Water for Exposure of Nonmetallic Materials.

(x) Council of American Building Officials, Model Energy Code, 1993 Edition.

(xi) EIMA Test Method 101.01–95 (modified ASTM C67–91) Standard Test Method for Freeze/Thaw Resistance of Exterior Insulation and Finish Systems (EIFS), Class PB.

(xii) EIMA Test Method 101.02–95 (modified ASTM E331–91)—Standard Test Method for Resistance to Water Penetration of Exterior Insulation and Finish Systems (EIFS), Class PB.

(xiii) EIMA Test Method 101.03–95 (modified ASTM C297–91)—Standard Test Method for Determining the Tensile Adhesion Strength of an Exterior Insulation and Finish System (EIFS), Class PB.

(xiv) EIMA Test Method 105.01–95—Standard Test Method for Alkali Resistance of Glass Fiber Reinforcing Mesh for Use in Exterior Insulation and Finish Systems (EIFS), Class PB.

(xv) European Agreement Union Technical Committee—June 88—UEAtc Directives for the Assessment of External Insulation System for Walls (Expanded Polystyrene Insulation Faced with a Thin Rendering) Section 3.3.3.3.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from:

(i) American Society Civil Engineers (ASCE) 345 East 47th Street, New York, NY 10017.

(ii) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103;

(iii) Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041;

(iv) EAUTC Centre Scientifique ET Technique Du Batiment (CSTB), 84 Avenue Jesu Jaures, B.P. 02–77421 Marne-LA-Valee Cedex 2, Paris, France.

(v) Exterior Insulation Manufacturers Association (EIMA), 2759 State Road 580, Suite 112, Clearwater, Florida 34621–3350.

(3) The standards are available also for inspection at the Office of Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, room 3214, L'Enfant Plaza, 490E, Mail Room B–133, Washington, DC 20410–8000, and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(b) *Labeling.* Under the procedures as set forth in § 200.935(d)(6), concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applied standard is required to be on the certification label issued by the administrator to the manufacturers. In the case of exterior wall insulation and finish systems, the certification label containing the administrator's mark shall be permanently affixed on the package or container of base and finish coating materials. Further, additional information shall be included on the certification label or mark:

(1) Manufacturer's name.

(2) Manufacturer's statement of conformance with UM 101.

(c) The Administrator shall visit the manufacturer's or sponsor's facility every 6 months, to assure that the initially accepted quality assurance procedures are being followed. At least every four years, the Administrator also shall have the exterior wall insulation and finish systems tested in an approved laboratory to assure that the original performance is maintained.

(d) The administrator's (or administration-accepted inspection agency) inspection of EFIS system installation of 5000 sq. ft. or more, shall be made during and upon completion of the construction. Reports of the inspection shall be made to the owner. These reports shall state:

(1) The coverage of the finish coat per square foot for a given volume of finish.

(2) The minimum thickness of the base and finish coatings.

(3) The fiberglass mesh is installed properly around joints and insulation. All penetrations, including windows, flashing, etc., are sealed; and there is a caulk and sealant continuity evaluation; and

(4) There is a caulk and sealant continuity evaluation with special concerns on maintenance.

(d) The manufacturer shall warrant their exterior wall insulation and finish system, including any caulks and sealants, for twenty years against faulty performance. The warranty shall include correction of delamination, chipping, denting, peeling, blistering, flaking, bulging, unsightly discoloration, or other serious deterioration of the system such as the intrusion of water through the wall or structural failure of the system's surface materials. Should any of these defects occur, the manufacturer shall make a pro-rata allowance for replacement or pay the owner the amount of the allowance. The manufacturer shall not be liable for damages or defects resulting from misuse, natural catastrophes, or other causes beyond the control of the manufacturer. The contractor shall provide a statement to the owner that the product has been installed in compliance with HUD requirements and that the manufacturer's warranty does not relieve the builder, in any way, of responsibility under the terms of the Builder's Warranty required by the National Housing Act, or under any other housing program.

Dated: May 11, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–22824 Filed 9–13–95; 8:45 am]

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federal register

Thursday
September 14, 1995

Part VII

Securities and Exchange Commission

17 CFR Part 239 et al.

Personal Investment Activities of Investment Company Personnel and Codes of Ethics of Investment Companies and Their Investment Advisers and Principal Underwriters; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, 274 and 275

[Release No. 33–7212, IC–21341, IA–1518, File No. S7–25–95]

RIN 3235–AG27

Personal Investment Activities of Investment Company Personnel and Codes of Ethics of Investment Companies and Their Investment Advisers and Principal Underwriters

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules and forms.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Company Act of 1940 that prohibits investment company personnel from engaging in fraudulent acts in connection with their personal transactions in securities held or to be acquired by the investment company, and requires an investment company and its investment adviser and principal underwriter to adopt codes of ethics reasonably designed to prevent such acts. The amendments would increase the oversight role of an investment company's board of directors with respect to the codes of ethics applicable to the investment company, improve the manner in which investment company personnel report their personal securities transactions to their employers, and clarify certain provisions of the rule (including the scope of its anti-fraud provision). Related proposed amendments would require an investment company to provide information about its policies concerning personal investment activities in its prospectus. The Commission also is proposing conforming changes to the rule under the Investment Advisers Act of 1940 that requires an investment adviser to maintain records of its advisory representatives' personal transactions in securities. The proposed amendments are intended to enhance board of director oversight of the policies governing personal transactions in securities by investment company personnel and to make available to the public additional information about these policies.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. All comment letters should refer to File No. S7–25–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David M. Goldenberg, Senior Counsel, or Kenneth J. Berman, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to rule 17j-1 (17 CFR 270.17j-1) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et. seq.*) (the "Investment Company Act"), rule 204–2 (17 CFR 275.204–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et. seq.*) (the "Advisers Act"), Forms N–1A (17 CFR 239.15A, 274.11A), N–2 (17 CFR 239.14, 274.11a-1), N–3 (17 CFR 239.17a, 274.11b) and N–5 (17 CFR 239.24, 274.5) under the Investment Company Act and the Securities Act of 1933 (15 U.S.C. 77a-77aaa) (the "Securities Act") and Form N–8B–2 (17 CFR 274.12) under the Investment Company Act.

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Executive Summary

Conflicts of interest between investment company ("fund") personnel (such as portfolio managers) and their funds can arise when these persons buy or sell securities for their own accounts ("personal investment activities"). These conflicts arise because fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors. Rule 17j–1 under the Investment Company Act addresses these conflicts of interest by: (i) Prohibiting fraudulent, deceptive or manipulative acts by fund affiliates and certain other persons in connection with their personal transactions in securities held or to be acquired by the fund; (ii) requiring funds and their investment advisers and principal underwriters (collectively, "rule 17j–1 organizations") to adopt codes of ethics containing provisions reasonably necessary to prevent their "access persons" (generally, those fund personnel involved in the portfolio management process) from engaging in conduct prohibited by the rule; and (iii) requiring access persons to report their personal securities transactions to the appropriate rule 17j–1 organization. The rule also imposes certain recordkeeping requirements.

The Commission's Division of Investment Management ("Division") recently completed its first detailed study of fund policies concerning personal investment activities since rule 17j–1 was adopted in 1980.[1] In the report on its study, the Division recommended several of the amendments to rule 17j–1 that the Commission is proposing today.

The proposed amendments are designed to improve the regulation of personal investment activities in three respects. First, the proposals would enhance the oversight of personal investment activities by (i) requiring management of a fund and of its investment adviser and principal underwriter, at least annually, to provide the fund's board of directors with a report describing issues arising during the previous year under the codes of ethics applicable to the fund and (ii) requiring access persons to provide the appropriate rule 17j–1 organization with information about securities owned by them at the time they become access persons.

Second, the proposed amendments are designed to provide the public with additional information about fund policies concerning personal investment activities. The Commission is proposing to require that a fund's prospectus disclose whether or not the fund permits its personnel to invest in securities, including securities that may be purchased or held by the fund. In addition, a fund would have to file with the Commission copies of all codes of ethics applicable to the fund as exhibits to its registration statement.

Third, the proposed amendments would tailor rule 17j–1 to make its scope more consistent with its purpose. The proposed amendments would (i) clarify that transactions involving certain securities related to securities in which a fund invests (such as debt securities convertible into stock in which the fund invests) are subject to the rule's anti-fraud provision, (ii) specify that money market funds and money market instruments are not subject to the rule's requirements concerning codes of ethics and transaction reporting, and (iii) clarify the meaning of the term "beneficial ownership" for purposes of the rule's reporting requirements for access persons. The Commission also is proposing certain conforming changes to the recordkeeping provisions applicable to investment advisers in rule 204–2 under the Advisers Act.

I. Background

When fund personnel buy or sell securities for their personal accounts, conflicts of interest with fund investors may arise. For example, in performing their day-to-day responsibilities, fund personnel may have access to information about impending fund transactions that they could use for their own benefit. A fund manager also could profit if the manager causes a fund to purchase or hold portfolio securities in order to protect or strengthen the manager's personal investments in these securities.

Beginning in the early 1960s, Congress and the Commission sought to devise a regulatory scheme to effectively address these potential conflicts.[2] These efforts culminated in the enactment of section 17(j) of the Investment Company Act in 1970 and the adoption by the Commission of rule 17j–1 under the Investment Company Act in 1980.[3]

A. Section 17(j) and Rule 17j–1

Section 17(j) of the Investment Company Act makes it unlawful for persons affiliated with a rule 17j–1 organization (*i.e.*, a fund or its investment adviser or principal underwriter), in connection with the purchase or sale of securities held or to be acquired by the fund, to engage in any fraudulent, deceptive or manipulative act or practice in contravention of rules and regulations adopted by the Commission. Section 17(j) authorizes the Commission to adopt rules to address the conflicts of interest presented by personal securities trading by these persons, including rules requiring the adoption of codes of ethics by funds and their investment advisers and principal underwriters.

In 1980, the Commission adopted rule 17j–1.[4] The rule, which has not been amended since its adoption, prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a fund or its investment adviser or principal underwriter in connection with their personal transactions in securities held or to be acquired by the fund.[5] The rule also (i) requires rule 17j–1 organizations to adopt codes of ethics containing provisions reasonably necessary to prevent "access persons"[6] from engaging in such fraudulent, deceptive or manipulative acts, (ii) requires access persons to report their personal securities transactions to the rule 17j–1 organizations of which they are access persons at least quarterly, and (iii) requires rule 17j–1 organizations to maintain certain records and to make those records available for inspection by the Commission.

Congress gave the Commission the authority to mandate that codes of ethics restrict or prohibit certain activities of access persons and other employees. The Commission recognized when adopting rule 17j–1, however, that no single set of guidelines would be appropriate for all funds. The Commission stated in the release adopting the rule that "as a matter of policy the Commission believes the introduction and tailoring of ethical restraints on the behavior of persons associated with an investment company can best be left in the first instance to the directors of the investment company."[7] The rule therefore does not require that codes of ethics contain any specific restrictions or prohibitions. Additionally, while the rule does require access persons to report their personal securities transactions, it does not place restrictions on the timing or nature of those transactions, other than the general restrictions of the rule's anti-fraud provision.

B. Recent Developments Concerning Personal Investment Activities

The personal investment activities of fund personnel received renewed attention early in 1994 after an investment adviser to several funds dismissed a well-known portfolio manager, alleging that he had failed to report a number of his personal securities transactions as required under both the Investment Company Act and the Advisers Act.[8] At about the same time, the media reported that the country's largest fund complex had amended its rules on personal investment activities in response to certain trading practices.[9] These developments drew further media and congressional attention to the ethical

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[1] Division of Investment Management, SEC, Personal Investment Activities of Investment Company Personnel (1994) ("PIA Report").

[2] *See, e.g.*, Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 200 (1966) ("PPI Report"). In the PPI Report, the Commission expressed its concern about the "ever present danger" of conflicts of interest that arises when fund personnel engage in personal trading. *Id.* at 195. The Commission noted a 1963 report that had found "widespread" insider trading of fund portfolio securities by fund personnel. *Id.* at 196.

[3] Abusive personal investment activities by fund access persons are prohibited not only by section 17(j) and rule 17j–1, but also by other provisions of the federal securities laws. For example, a fund manager who buys or sells securities for his or her own account ahead of the fund ("front running") or makes investment decisions for the fund with the intent to benefit personally may violate the anti-fraud provisions of section 17(a) of the Securities Act and section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et. seq.*) ("Exchange Act") and rule 10b–5 thereunder. The manager also may violate section 17(d) of the Investment Company Act and rule 17d–1 thereunder if the manager purchases or sells the same securities as the fund he or she manages in a joint transaction or arrangement. The manager also could violate section 206 of the Advisers Act if the manager's personal trading defrauds or operates as a fraud on the fund.

[4] Prevention of Certain Unlawful Activities With Respect To Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980), 45 FR 73915 ("Adopting Release").

[5] Rule 17j–1(a).

[6] As defined in rule 17j–1(e), "access persons" generally include officers, directors and any employees who participate in the selection of a fund's portfolio securities or who have access to information regarding a fund's impending purchases or sales of portfolio securities.

[7] Adopting Release, *supra* note 4, at 73916. The need for flexibility was explicitly recognized by Congress. The House and Senate Reports that accompanied section 17(j) noted that:

> The ability to deal with (personal securities) transactions by rule is intended to permit the Commission to draw flexible guidelines to prohibit persons affiliated with investment companies, their advisers and principal underwriters, from engaging in securities transactions for their personal accounts when such transactions are likely to conflict with the investment programs of their companies.

H.R. Rep. No. 1382, 91st Cong., 2d Sess. 28 (1970) ("House Report"); S. Rep. No. 184, 91st Cong., 1st Sess. 29 (1969) ("Senate Report").

[8] *See, e.g.*, Robert McGough and Sara Calian, *Invesco Funds Fires Kaweske, A Star Manager*, Wall St. J., Jan. 6, 1994, at C1; Chris Wloszczyna, *Invesco Funds Fires Portfolio Manager*, USA Today, Jan. 6, 1994, at 2B; Jay Mathews, *Invesco Fires Manager Over Trade Reports*, Wash. Post, Jan. 7, 1994, at G2. The Commission instituted an enforcement action in federal district court against the portfolio manager in February 1995, alleging, among other things, violations of rule 17j–1(c) under the Investment Company Act. SEC v. John J. Kaweske, Civil Action No. 95–N–296 (D. Colo. filed Feb. 6, 1995).

[9] *See, e.g.*, Brett D. Fromson, *Fund Managers' Own Trades Termed a Potential Conflict; Biggest Mutual Fund Firm Tightens Rules*, Wash. Post, Jan. 11, 1994, at A1.

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standards in the fund industry.[10] In response to the concerns raised, the Division initiated a study of rule 17j–1 and the personal investment activities of portfolio managers and other fund employees. The Division released a report on its study (the "PIA Report") in September 1994.[11]

The Division studied the personal investment activities of 622 fund managers employed by thirty companies that, in the aggregate, managed 1,053 mutual funds with total assets of $521 billion. The Division concluded that the existing regulatory framework governing the personal investment activities of fund personnel generally has worked well, but can be improved in certain respects. The Division recommended that the Commission amend rule 17j–1 to further protect fund shareholders by (i) enhancing the oversight of personal investment policies by fund boards, (ii) making it easier for funds to monitor the personal securities transactions of fund personnel, and (iii) making available to the public additional information about fund policies on personal investment. The Commission agrees with the conclusions contained in the PIA Report and is proposing amendments that will effect these recommendations.[12]

II. Discussion

A. Role of Fund Boards

1. Initial Reviews and Annual Reports

The board of directors or trustees of a fund has a significant oversight role with respect to the personal investment activities of fund personnel.[13] The board is responsible for ensuring that the fund establishes a code of ethics that satisfies the requirements of rule 17j–1.[14] The Commission is proposing two amendments to rule 17j–1 that would facilitate ongoing board oversight of codes of ethics. First, the proposed amendments would require a fund's board to affirmatively approve the fund's code and review the codes of any investment adviser or principal underwriter whose services it seeks to retain for the fund.[15] Second, the proposed amendments would require management of a fund and of its investment adviser and its principal underwriter to provide the board, at least annually, with reports describing issues arising during the previous year under the codes of ethics applicable to the fund.[16]

Although rule 17j–1 currently requires every fund to have a code of ethics, the rule does not explicitly require a fund's *board* to take any actions regarding the fund's code or other codes of ethics applicable to the fund. The Commission believes that the rule should be more explicit concerning the role of fund boards. The Commission has refrained from requiring by rule that codes of ethics contain specific restrictions, prohibitions or other provisions, preferring instead that each board establish an appropriate code for its fund. Additionally, a code of ethics that is tailored to the specific characteristics of a fund is fundamental to assuring that access persons do not engage in fraudulent or unethical conduct. It therefore is appropriate that the rule explicitly require a fund's board to have a continuing role in overseeing the application of these policies.

The standard for the board to apply when approving the fund's code or reviewing the code of an investment adviser or principal underwriter would be whether the code contains such provisions as are reasonably necessary to prevent access persons from violating rule 17j–1's anti-fraud provision.[17] The factors that the board should consider when making this determination will necessarily vary depending upon the investment objectives and policies of the fund, as well as the organization and activities of the fund's investment adviser and principal underwriter. Thus, the Commission is not proposing to include in the rule a list of the factors a board should consider in assessing a code of ethics. The Commission believes, however, that the consideration of certain basic issues may be particularly important for all funds.

As an initial matter, the board should consider whether personal investing by fund personnel is consistent with the interests of fund shareholders and should be permitted. Additionally, the board should determine whether the code establishes clear criteria for determining whether a security is "being considered for purchase" by the fund.[18] Such criteria may better enable access persons and compliance personnel to determine whether certain personal securities transactions may violate the fund's code or rule 17j–1.[19] These criteria also may serve to remind fund managers of their duty to avoid taking advantage of investment opportunities that should be brought to the attention of the fund.[20] Finally, a board should consider the extent to which the code addresses the potential violations of rule 17j–1 that may occur when a fund access person purchases or sells securities held by another fund in the same complex.[21]

Under the proposed amendments, the board also likely will wish to determine whether the rule 17j–1 organizations have instituted such procedures as are reasonably necessary to prevent violations of their codes. The rule would not mandate any particular compliance procedures (other than the rule's existing transaction reporting requirements).[22] A fund board, however, should consider the necessity of procedures based on the circumstances of the fund and the other rule 17j–1 organizations. A board may want to consider, for example, whether the code and procedures should include a requirement that all access persons receive prior approval of their personal securities transactions ("pre-clearance"). The board may decide that pre-clearance is a necessary part of the code in order to prevent persons from violating the code and rule 17j–1's anti-fraud provision.[23] The board also may want to consider whether other types of reporting requirements, in addition to those required by rule 17j–1, are appropriate for the fund.

The determinations required by the proposed amendments would need to be made by a majority of the fund's directors, including a majority of the independent directors (*i.e.*, directors who are not "interested persons" of the fund).[24] The role of independent fund directors in policing conflicts of interest is central to the Investment Company Act.[25] The codes of ethics applicable to a fund, and the manner in which these codes are implemented, should be designed to address the fundamental conflict of interest that results when fund access persons are in a position to take personal advantage of the knowledge and opportunities presented because of their positions. Thus, it is appropriate for independent directors to have a primary role in establishing and overseeing the implementation of the policies that address this conflict.

The board's involvement in the personal investment policies applicable to the fund should not cease after the board's initial approval or review of a code of ethics. Continued oversight of the personal investment policies applicable to the fund is in the interest of shareholders because it subjects these policies to independent, objective analysis by the "watchdog" for fund shareholders.[26] The proposed amendments would require the management of each rule 17j–1 organization to provide the board with a report, no less frequently than annually, describing issues arising during the previous year under the codes of ethics applicable to the fund. The report would include, but need not be limited to, details about code violations, sanctions imposed in response to those violations, procedures initiated or changed since the last report, and, in the case of the codes of the investment adviser or principal underwriter, changes to the code itself.[27] The proposed amendments also would require the management of each rule 17j–1 organization to certify to the fund board, no less frequently than annually, that the organization has adopted such procedures as are reasonably necessary to prevent access persons from violating the organization's code of ethics.[28] The report and certification requirements are designed to give the board an opportunity to evaluate and ask questions about the codes applicable to the fund, the manner in which they have been implemented, and their continued effectiveness.[29]

The Commission requests comment on the proposed board review, annual report and certification requirements. Are there other effective means of ensuring that boards are giving enough attention to the personal investment activities of fund personnel? Should the rule explicitly require board review when there have been material changes to a code or procedures, or when there have been significant or frequent violations of a code?

2. Unit Investment Trusts

Like other funds, unit investment trusts ("UITs") and their principal underwriters currently are required by rule 17j–1 to adapt codes of ethics.[30] Because UITs do not have boards of directors, however, it would be difficult for them to comply with the proposed amendments in the same manner as other funds. The principal underwriter or depositor of a UIT typically employs most of the persons having access to information concerning the UIT's securities. Under the proposed amendments, the initial approval and review requirement for a UIT would be fulfilled by either the principal underwriter or depositor for the UIT. The principal underwriter or the depositor would review all of the codes of ethics applicable to the UIT (i.e., the codes of the principal underwriter and the UIT) and determine whether the codes meet the standards described above.[31] Because they do not have boards of directors, UITs would be exempt from the proposed annual report and certification requirements. The principal underwriter or depositor would still be responsible, however, for ensuring that the codes of ethics applicable to the UIT and the related procedures contain provisions reasonably necessary to prevent access persons from violating rule 17j–1 and the codes.

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[10] *See, e.g.*, Tom Petruno, *When It Comes to Fund Industry, Public Trust Must Be A Mutual Issue*, L.A. Times, Jan. 12, 1994, at D1; Steve Bailey and Aaron Zitner, *Mutual Fund Managers Come Under Scrutiny*, Bost. Globe, Jan. 16, 1994, at A1; Susan Antilla, *Fund Managers Testing the Rules*, N.Y. Times, Jan. 23, 1994, § 3, at 15; Geoffrey Smith, *Mutual Funds: The Rules on Insider Trading, Please*, Bus. Wk., Jan. 31, 1994, at 60. *See also* Letter from Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, to Arthur Levitt, Jr., Chairman, U.S. Securities and Exchange Commission (Jan. 11, 1994).

[11] *See supra* note 1. The fund industry also responded to the concerns. The Investment Company Institute ("ICI"), an association of funds representing 95% of total fund assets under management in the United States, organized an Advisory Group on Personal Investing ("ICI Advisory Group"). The ICI Advisory Group, which consisted of six industry representatives, conducted a review of practices and standards governing personal investing by fund personnel. *See* ICI, Report of the Advisory Group on Personal Investing (1994) ("ICI Report"). The ICI Report stated that most codes of ethics reviewed by the Advisory Group exceeded the requirements of rule 17j–1, but recommended that funds adopt additional measures regarding conflicts of interest and personal securities transactions in order to preserve the confidence of investors. *Id.* at iii, v. The ICI's board of governors recommended that all rule 17j–1 organizations adopt the recommendations contained in the ICI Report.

The ICI subsequently conducted a survey of its members to determine whether the fund industry had adopted the recommendations made in the ICI Report. Eighty-five percent of the ICI's member funds responded to the survey. ICI, Report to the Division of Investment Management, U.S. Securities and Exchange Commission: Implementation of the Institute's Recommendations on Personal Investing (1995) ("ICI Survey"). The ICI Survey indicated that more than a majority of the funds responding to the survey had adopted most of the ICI Advisory Group's recommendations, either in full or as adapted to meet each fund's unique business activities, structure and operations. As discussed below in Part II.A.3, the Commission is seeking comment whether to incorporate any of the ICI Advisory Group's recommendations into rule 17j–1.

[12] The Division made three additional recommendations in the PIA Report. First, the Division recommended that the National Association of Securities Dealers, Inc. ("NASD") consider adopting a rule requiring its members (i) to notify a fund or investment adviser whenever an employee opens an account with the member, and (ii) upon request, to provide duplicate copies of the employee's trade confirmations and account statements to the fund or adviser. Second, the Division recommended that the NASD review the applicability of its "free-riding" rules (which prohibit NASD members from selling "hot issue" securities to their employees) to fund personnel. Finally, the Division recommended in the PIA Report that Congress amend section 17(j) to expand the Commission's rulemaking authority to define and proscribe fraud to include transactions that involve financial instruments that are not securities.

The NASD has advised the Division that its Investment Companies Committee has considered and decided not to act on the Division's recommendations to the NASD. The Committee concluded that the NASD does not have a mechanism to ensure compliance with a new rule requiring a member to notify a fund or investment adviser when an employee opens an account with the member. The Committee also concluded that, in the absence of a pattern of abuses involving personal investment activities, amendments to its "free-riding" rules would not be appropriate.

[13] All references in this Release to boards of directors include boards of trustees for funds organized as business trusts.

[14] As part of its oversight role, the board also is responsible for monitoring the operation of the code, including making amendments as may be necessary or appropriate in light of any violations of the code and changing circumstances generally. *See* PIA Report, *supra* note 1, at 34.

[15] Proposed amendment to rule 17j–1(b). The codes of ethics of a fund's investment adviser and principal underwriter may be of greater importance than those of the fund because the investment adviser and principal underwriter typically employ most of the personnel involved in fund management.

[16] Proposed rule 17j–1(b)(2).

[17] Proposed rule 17j–1(b)(1)(ii).

[18] Paragraph (e)(6) of rule 17j–1 defines "security held or to be acquired" by a fund to mean any security which, within the most recent 15 days, (i) is or has been held by the fund, or (ii) is being or has been considered by the fund or its investment adviser for purchase. When adopting rule 17j–1, the Commission indicated that "the mechanics of setting parameters for determining when a transaction is 'being considered' by a particular investment company can best be resolved by the investment company, investment adviser or principal underwriter in the codes of ethics required to be adopted under the Rule." Adopting Release, *supra* note 4, at 73919.

[19] The board may conclude, for example, that it is appropriate to notify a fund's access persons that all securities that could be purchased by the fund are deemed "being considered" by the fund. Alternatively, the board may determine that a security is "being considered" by the fund once a research report relating to that security is prepared by, or received by, the fund's investment adviser.

[20] *See, e.g.*, In the Matter of Kemper Financial Services, Inc., *et. al.*, Investment Advisers Act Release No. 1494 (June 6, 1995) (investment adviser and portfolio manager found to have violated rule 17j–1(a)(3) under the Investment Company Act and the anti-fraud provision of the Advisers Act by diverting investment opportunities belonging to mutual fund clients to a profit-sharing plan established for the benefit of the adviser's employees); In the Matter of Joan Conan, Investment Advisers Act Release No. 1446 (Sept. 30, 1994) (portfolio manager found to have violated the anti-fraud provision of the Advisers Act by misappropriating an investment opportunity of clients that were unregistered investment funds).

[21] *See infra* note and accompanying text.

[22] *See* Part II. B for a description of, and proposed amendments to, these reporting requirements.

[23] Although the rule does not require that funds adopt pre-clearance procedures, the Commission notes that the ICI Advisory Group recommended that funds adopt these measures. ICI Report, *supra* note 11, at 42. The ICI Survey indicated that 69% of the funds responding to the survey had adopted the ICI Advisory Group's recommendation, and an additional 14% had modified the recommendation to reflect their own circumstances. ICI Survey, *supra* note 11, at 26.

[24] *See* 15 U.S.C. 80a–2(a)(19) (definition of "interested person" for purposes of the Investment Company Act).

[25] *See, e.g.*, Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 266 (1992).

[26] *See id.* at 255–56; PIA Report *supra* note 1, at 34.

[27] Upon receipt and consideration of a report, a fund board may in some cases determine that it is necessary to amend the fund's code, or to suggest to an investment adviser or principal underwriter that it consider amending its code. Reports prepared for, and submitted to, fund boards would be required to be maintained with the other records required by rule 17j–1.

[28] Although the proposed amendments would require a report and certification to be delivered to the board only annually, more frequent reports may be warranted in certain instances, such as when there have been particularly significant violations of a code or when there have been material changes to a code. In some instances, it may be determined that a particular violation or change should be reported to the board at its next meeting.

[29] In the ICI Report, the ICI Advisory Group made a recommendation similar to that proposed by the Commission today. ICI Report, *supra* note 11, at 47.

[30] A UIT is a type of fund that issues redeemable securities representing an undivided interest in a portfolio of specified securities. 15 U.S.C. 80a–4(2). Typically, UITs are created by a sponsor or "depositor" that accumulates a portfolio of securities and deposits them with a trustee under the terms of a trust indenture. The UIT portfolio is generally unmanaged; thus, UITs do not have investment advisers. The UIT's operations are subject to the terms of the trust indenture, which specifies the ongoing responsibilities of the trustee, the depositor and other third-party service providers. Thus, a UIT does not have a corporate-type management structure. *See generally* Form N–7 for Registration of Unit Investment Trusts Under the Securities Act of 1933 and Investment Company Act of 1940, Securities Act Release No. 6580 (May 14, 1985), 50 FR 21282.

The Commission recognizes that the absence of board review places the oversight of the operation of codes applicable to the UIT in the hands of the very people who may face the conflicts of interest that the rule is designed to address. The Commission requests comment whether an independent person or committee within the organization of the principal underwriter or depositor should review these codes. Should, for example, the underwriter be required to appoint a committee of persons who are not access persons to approve or review the codes? In addition, the Commission requests comment whether there are other investment companies that, like UITs, should be exempt from the annual report and certification provisions.

3. Alternative Approaches

As noted above, rule 17j–1 is based on the premise that rule 17j–1 organizations should be primarily responsible for tailoring specific restrictions and prohibitions on the personal investment activities of their access persons. The Division's PIA Report concluded that this premise continues to be correct.[32] Nevertheless, comment is requested whether rule 17j–1 should set more detailed standards for codes of ethics.

In its report on personal investment activities, the Investment Company Institute's Advisory Group on Personal Investing ("ICI Advisory Group") suggested that codes of ethics should contain certain minimum substantive restrictions on the activities of access persons and other investment personnel. The ICI Advisory Group recommended, among other things, that codes of ethics prohibit investment personnel from participating in initial public offerings, receiving short-term trading profits, receiving gifts from persons with whom the fund has a business relationship, and purchasing securities during certain "black-out periods.[33] The ICI Advisory Group did not recommend that the Commission amend rule 17j–1 to incorporate these recommendations. Should the Commission impose any specific restrictions on the personal investment policies of rule 17j–1 organizations and their access persons? [34]

B. Reports by Access Persons

1. Initial Reports

The Commission is proposing that rule 17j–1 require that every access person [35] provide a listing (an "initial report") of all securities directly or indirectly beneficially owned by the access person at the time that he or she becomes an access person.[36] Paragraph (c) of the rule currently requires every access person to report to the appropriate rule 17j–1 organization, at least quarterly, all transactions in which the access person has, or by reason of the transaction acquires, any direct or indirect beneficial ownership in any security ("quarterly reports").[37] A fund, however, may not be able to monitor effectively the potential conflicts of interest that arise when an access person invests for his or her own account unless fund management knows the identity of *all* securities held by the access person, including securities acquired before the person became an access person.[38] For example, without knowledge of securities owned by an access person, the fund cannot adequately monitor if, and the extent to which, the access person may be making trading decisions on behalf of the fund regarding securities that the access person holds in his or her own portfolio.[39]

It appears to be common practice in the fund industry to require personnel to disclose personal securities holdings upon the commencement of employment.[40] Therefore, the initial report requirement should not create an additional burden for most rule 17j–1 organizations. To prevent duplicative reporting, the amended rule would provide that if an access person has previously provided information equivalent to that which would be in an initial report (whether in a single report or over time in transactional reports), the access person would not be required to submit an initial report.[41]

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[31] Last sentence of proposed rule 17j–1(b)(1)(ii).

[32] PIA Report, *supra* note 1, at 31.

[33] *See* ICI Report, *supra* note 11.

[34] Some commentators have advocated more comprehensive restrictions, such as banning all personal trading by fund personnel. *See, e.g.*, Stan Hinden, *Avoiding Conflicts—Real and Perceived*, Wash. Post, May 22, 1994, at H3; *Mutual Funds Need Tighter Rules*, Bus. Wk., Feb. 14, 1994, at 134; Susan Antilla, *Fund Managers Testing the Rules*, N.Y. Times, Jan. 23, 1994, § 3, at 15. In the PIA Report, the Division concluded that a total prohibition on personal investment activities by fund personnel is not warranted. PIA Report, *supra* note 1, at 29.

[35] *See supra* note 6.

[36] Proposed amendments to rule 17j–1(c)(1). The report would be required to be filed within 10 days of the event that causes the employee to become an access person (*e.g.*, hiring, promotion, change of position). The initial report would list the title of the security, its CUSIP number (if any), the number of shares held and the principal amount of the security. The Commission also is proposing to amend paragraph (c)(2) of the rule to require quarterly reports to include the CUSIP number (if any) for each security for which a transaction occurs and the date that the report is submitted by the access person. These amendments would assist fund compliance personnel and the Commission's inspections staff in evaluating compliance with the rule's reporting requirements. *See infra* note 38.

[37] *See supra* note 5. In many cases, an employee of an investment adviser or principal underwriter may technically be an access person of both his or her employer and the fund. The staff of the Division has taken the position that if in such a case the employer is required by rule 17j–1 to have a code of ethics, the employee need only be considered an access person of the employer and not of the fund. *See* Investment Company Institute (pub. avail. Mar. 31, 1981).

[38] *See* PIA Report, supra note 1, at 34. Not only are the reports required by rule 17j–1 important to fund management, but they also are important to the Commission's inspections staff, which reviews these reports and codes of ethics during inspections of rule 17j–1 organizations.

[39] Although rule 17j–1 does not explicitly prohibit an access person from making decisions on behalf of a fund regarding securities personally owned by the access person, the Commission would expect that codes of ethics would address this potential conflict of interest, and that boards of directors would wish to have the ability to track such decisions by access persons in order to determine whether these decisions are being inappropriately made. *See* PIA Report, *supra* note 1, at 24 n.74, 35 n.118. *See also* In re ML-Lee Acquisition Fund II, L.P., 848 F. Supp. 527 (D. Del. 1994) (rule 17j–1 may be violated if an access person causes a fund to purchase or sell securities owned by that person, particularly when the access person expects to personally benefit by the transaction).

[40] The ICI found that 77% of the fund complexes responding to its survey require some form of reporting similar to that proposed today. *See* ICI Survey, *supra* note 11, at 31.

[41] Proposed paragraph (c)(3)(v) of rule 17j–1. The proposed exception is intended to give rule 17j–1 organizations flexibility with respect to the initial report requirement. To comply with the exception, the applicable rule 17j–1 organization would have to retain all of the previously submitted information so that the organization could reconstruct the access person's securities holdings on the day that he or she became an access person. Additionally, all of the information used to reconstruct the access person's holdings would have to be maintained for five years from the date that the person becomes an access person, in accordance with the recordkeeping requirements of paragraph (d) of the rule. Because the proposed exception could require an organization relying on the exception to maintain some records for a longer period of time than it otherwise would, rule 17j–1 organiations may choose to require new access persons to submit new initial reports rather than rely on the exception.

The ICI Advisory Group recommended that access persons file reports listing all of their securities holdings upon commencement of employment and thereafter annually.[42] The Commission requests comment whether an annual reporting requirement by access persons would be helpful to funds. To what extent would such a requirement be an undue burden on the persons required to file the reports? The Commission also requests comment whether ten days is the appropriate amount of time for a new access person to provide an initial report. Should new access persons be given additional time (*e.g.*, 15 or 20 days) to file these reports?

2. Scope of Reporting Requirements

The proposed amendments would require an access person to list in an initial report *every* security (as defined in rule 17j–1) beneficially owned by the access person, regardless of whether the security is connected to a security that the fund owns or intends or proposes to acquire at the time that the access person files the initial report. This approach departs from an earlier Division position.[43]

In response to inquiries made shortly after the adoption of rule 17j–1, the staff of the Division took the position that reports required to be made pursuant to paragraph (c) of the rule need be made only with respect to transactions in securities that may be connected to securities that the fund holds or intends or proposes to acquire.[44] These requests involved specific funds with investment objectives that permitted them to invest only in limited types of securities, such as municipal bonds.

The Commission believes that limiting the scope of the rule's reporting requirement may result in gaps in a rule 17j–1 organization's oversight of personal investment activities. For example, an employee of an investment adviser may violate the anti-fraud provision of rule 17j–1 by purchasing a security intended to be acquired by another fund in the same fund complex, even if the employee was not involved in the decision to purchase the security on behalf of the fund. If the employee did not have to report the transaction because the fund of which the employee was an access person did not own, and was not intending or proposing to acquire, the security, the transaction would escape the attention of fund compliance personnel. Comprehensive reporting requirements for both initial and quarterly reports would enable fund directors to determine whether access persons are inappropriately benefitting from their relationship with a fund, investment adviser or principal underwriter.[45] Thus, if the proposed amendments are adopted, the rule will be interpreted as requiring quarterly reports to be filed with respect to transactions in *all* securities. The Commission seeks comment on the effect that these reporting requirements would have on access persons and funds.[46]

3. Review of Reports

Rule 17j–1 currently requires that rule 17j–1 organizations inform access persons of their duty to make quarterly reports and to retain these reports in their records. The Commission is proposing to amend rule 17j–1 to specify that the procedures instituted by rule 17j–1 organizations to prevent violations of the code must include procedures for the review by appropriate managerial or compliance personnel of reports submitted by access persons.[47]

The transaction reporting requirements of rule 17j–1 are intended to keep rule 17j–1 organizations informed of the personal investment activities of access persons in order for these organizations to detect potential conflicts of interest and abusive practices. This purpose will be served only if the reports are reviewed. Procedures that specify not only that reports will be reviewed but that also assign the responsibility for review to specified personnel will increase the likelihood that the purposes of the reporting requirement will be met.

4. Duplicate Broker Reports

It appears to be increasingly common in the fund industry to require access persons of funds to direct their brokers to provide their employers with copies of confirmations of their personal securities transactions and periodic account statements (collectively, "duplicate broker reports").[48] The Commission believes that duplicate broker reports can be an appropriate substitute for quarterly reporting. The proposed amendments would provide that, at the option of the appropriate rule 17j–1 organization, access persons may provide duplicate broker reports in lieu of the quarterly reports.[49]

C. Disclosure of Personal Investing Policies

The Commission is proposing that each fund disclose in its prospectus that the fund and its investment adviser and principal underwriter have adopted codes of ethics relating to personal investment activities and whether or not these codes permit fund personnel to invest in securities (including securities that may be purchased or held by the fund) for their own accounts.[50] The fund also would disclose that these codes are on public file with, and are available from, the Commission.[51]

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[42] *See* ICI Report, *supra* note , at 46.

[43] *See* Alterman Investment Fund, Inc. (pub. avail. Sept. 17, 1981); Minbanc Capital Corp. (pub. avail. Sept. 17, 1981); MI Fund, Inc. (pub. avail. Sept. 17, 1981).

[44] *Id.*

[45] *See* PIA Report, *supra* note 1, at 34 n.116. A list of all securities owned, purchased and sold by an access person also may be a necessary element of the written policies that a registered investment adviser must establish, maintain and enforce, in accordance with section 204A of the Advisers Act, to prevent the misuse of material, non-public information by the adviser and its personnel.

[46] The facts of some recent enforcement actions brought by the Commission have demonstrated that the opportunity for abusive practices may exist where a portfolio manager or other fund insider receives personal investing opportunities in connection with his or her recommendation that the fund purchase a specific security. *See, e.g., United States* v. *Ostrander*, 999 F.2d 27 (2nd Cir. 1993) *aff'g* 792 F. Supp. 241 (S.D.N.Y. 1992); *SEC* v. *Talton R. Embry*, Litigation Release No. 13777 (Sept. 9, 1993); *SEC* v. *Benalder Bayse, Jr.*, Litigation Release No. 13145 (Jan. 24, 1992). The Division staff expressed a similar concern in response to no-action requests regarding rule 204–2(a)(12) under the Advisers Act of 1940, which requires records to be kept of the securities transactions of investment adviser personnel similar to the reports required under paragraph (c) of rule 17j–1. *See* American Syndicate Advisors (pub. avail. Oct. 29, 1986); Financial Independence Advisers, Inc. (pub. avail. Oct. 28, 1985). The change in the Division's interpretation would make it easier for fund compliance personnel and the Commission's inspections staff to identify cases in which fund insiders receive special opportunities in connection with their investing on behalf of a fund.

[47] Proposed rule 17j–1(b)(1)(i). The name of the person or persons responsible for reviewing these reports would be required to be maintained in an easily accessible place for five years under proposed amendments to paragraph (d)(4) of the rule.

[48] The ICI Advisory Group recommended that funds adopt these measures. ICI Report, *supra* note 11, at 44. The ICI Survey indicated that 70% of fund complexes responding to the survey had adopted the ICI Advisory Group's recommendations, and that an additional 14% of fund complexes responding to the survey had adapted these recommendations to their particular circumstances. ICI Survey, *supra* note , at 27.

[49] Proposed rule 17j–1(c)(3)(vi). The duplicate broker report would be required to contain the same information that would appear on a quarterly report, and must be received by the rule 17j–1 organization within 10 days after the end of the quarter in which the transaction takes place. A duplicate broker report that does not contain all of the information required by paragraph (c)(2) would satisfy the rule if the missing information were contained in the records of the appropriate rule 17j–1 organization.

As noted in the PIA Report, recent press accounts have suggested that fund shareholders may not fully understand the potential conflicts of interest faced by fund managers.[52] The ICI Advisory Group, in recommending prospectus disclosure concerning fund codes of ethics, stated that the most recent controversy over personal investing is "in some significant part a product of insufficient information regarding current practices and standards."[53] There currently is no requirement that funds publicly disclose any information about their codes of ethics, and recent media accounts have suggested that it often is difficult to obtain this information.[54] The Commission believes that disclosure concerning the existence of fund personal investing policies to investors not only would provide investors with information they may want when making investment decisions, but also may encourage fund boards to exercise greater care in considering the contents of codes of ethics applicable to their funds.

The Commission believes that the proposed prospectus disclosure can be brief and clear, and thus it is consistent with the Commission's efforts to make prospectuses easier to read for investors.[55] The Commission requests comment whether a more detailed description should be provided in the Statement of Additional Information ("SAI") or in the prospectus. If a fund's code of ethics conforms to a generally accepted industry norm, should a statement to that effect be sufficient to satisfy this requirement?[56] Commenters should indicate how an industry norm can be identified, and whether divergences from the norm that reflect the particular situations of the fund should be disclosed.

The Commission believes that the codes of ethics applicable to a fund should be available to the public. The Commission therefore is proposing that each fund file all codes of ethics applicable to it as an exhibit to its registration statement.[57] Making codes of ethics publicly available will permit the financial press and market professionals to obtain information about personal investment policies and to disseminate this information to the public.[58] The Commission requests comment whether funds should be required to send copies of their codes of ethics to investors upon request.

D. Applicability of Rule 17j–1 to Options and Convertible Securities

Paragraph (a) of rule 17j–1 prohibits fraudulent, deceptive or manipulative acts by fund affiliates and certain other fund insiders in connection with their personal transactions in securities held or to be acquired by the fund. The Commission is proposing to amend rule 17j–1 to clarify that this anti-fraud provision applies to any purchase or sale of an option for, or a security that is exchangeable for or convertible into, a security that is held or to be acquired by a fund (collectively, "related securities").[59]

Congress contemplated that the Commission's rules "could apply to insider trading in the convertible securities, options and warrants of issuers whose underlying securities are owned by an investment company with which the insider is affiliated."[60] The value of a related security often is directly affected by the value of the underlying security. A fund insider who purchases or sells such a related security could improperly benefit from that transaction to the same extent as an insider who conducts a similar transaction in the underlying security.[61] The fact that the transaction involves a related security rather than the underlying security does not diminish its potential for providing an improper benefit to the insider at the expense of the fund and its shareholders.

The Commission requests comment whether this amendment would appropriately clarify the scope of the rule. Should paragraph (a) of rule 17j–1 incorporate other standards to define the types of related securities that fall within the scope of the rule, such as the standard used to determine whether an arrangement creates a "pecuniary interest" in an equity security for purposes of section 16 under the Securities Exchange Act of 1934 ("Exchange Act")[62]

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[50] If a fund is not required to have a code of ethics, the proposed amendment would not require any prospectus disclosure of that fact. A fund that invests only in the securities of another fund (as is the case with "master/feeder" funds or variable annuities structured as unit investment trusts that invest in an underlying fund) would be required to disclose the requested information for the fund in which it invests and for such fund's investment adviser and principal underwriter. *See* Letter from Richard C. Breeden, Chairman, SEC, to John D. Dingell, Chairman, Committee House Committee on Energy and Commerce (Apr. 15, 1992), at Part III; Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants (Feb. 22, 1993), at Comment II.H. The new disclosure would be required under proposed amendments to Item 5 of Form N–1A, Item 9 of Form N–2, Item 6 of Form N–3, Item 3 of Form N–5 and Item 41 of Form N–8B–2.

[51] The Commission also is proposing that a fund be required to file with the Commission all codes of ethics applicable to the fund as exhibits to the fund's registration statement. *See infra* text accompanying note 57.

[52] PIA Report, *supra* note 1, at 13, 33.

[53] ICI Report, *supra* note 11, at 49.

[54] *See, e.g.*, Christopher Phillips, *Keeping Your Fund Manager Honest*, Kiplinger's Pers. Fin. Mag., Apr. 1994, at 57, 58; John Accola, *Only 1 of Top 4 Mutual Fund Firms Reveals Ethics Codes*, Rocky Mountain News, Feb. 6, 1994, at 93A. *See also* John Accola, *Janus First to Announce Revised Code of Ethics*, Rocky Mountain News, Jan. 15, 1995, at 98A (describing how the fund group provided a general outline of its code after many investor requests but had been advised by its attorneys not to release the complete document).

[55] *See, e.g.*, Arthur Levitt, Chairman, SEC, Taking the Mystery Out of the Marketplace: The SEC's Consumer Education Campaign, Remarks before the National Press Club (Oct. 13, 1994); Jeffrey M. Laderman, *The Prospectus Tries Plain Speaking*, Bus. Wk., Aug. 14, 1995, at 72; Stan Hinden, *Investor Protection, Plain and Simple; The SEC Unveils a New Fund Prospectus Written in Basic, Understandable Language*, Wash. Post, July 30, 1995, at H3; Albert B. Crenshaw, *SEC Ponders How to Make Prospectuses Speak Plainly*, Wash. Post, Oct. 16, 1994, at H1, H12.

[56] The ICI Advisory Group recommended certain minimum standards for all codes of ethics, such as prohibiting fund personnel from investing in initial public offerings, receiving short-term trading profits, and receiving gifts. *See* ICI Report, *supra* note 11. The ICI Survey indicated that a majority of fund complexes that responded to the survey are in some manner adopting these standards. *See* ICI Survey, *supra* note 11.

[57] If a fund is not required to have a code of ethics because it is a money market fund or because its investment policies permit it to invest only in securities that are exempt from the definition of "security" in rule 17j–1(e)(5), the fund would not be required to file any code, but would indicate on its exhibit list the reason that no code of ethics is being filed. If the fund invests only in the securities of another fund (as is the case with "master/feeder" funds), the fund would be required to file the codes of ethics applicable to the fund in which it invests. The exhibits would be required under proposed amendments to Item 24 of Forms N–1A and N–2, Item 28 of Form N–3, the Instructions As To Exhibits of Form N–5 and Part IX of Form N–8B–2.

[58] Prior to the adoption of Form N–SAR (17 CFR 249.330, 274.101) in 1985, funds made periodic reports on Form N–1R. Funds were required to file a copy of any codes of ethics or other written conflicts policies as exhibits to the form. *See, e.g.* Prevention of Unlawful Activities with Respect to Registered Investment Companies, Investment Company Act Release No. 10162 (Mar. 20, 1978), 43 FR 12721. Form N–SAR does not include a similar requirement.

[59] Proposed amendment to rule 17j–1(e)(6).

[60] House Report, *supra* note 7, at 28; Senate Report, *supra* note 7, at 29.

[61] Similarly, a fund insider who purchases or sells an underlying security when the fund holds or intends to purchase the related security could, in some instances, improperly benefit from that transaction. A security that underlies an option, warrant or convertible security held by a fund generally would be a security that is being considered for purchase by the fund.

[62] *See* rule 16a–1(a)(2) (17 CFR 240.16a–1(a)(2)) under the Exchange Act, which provides that certain persons are deemed to beneficially own specified equity securities if they have a "direct or indirect pecuniary interest" in the securities. The rule defines a pecuniary interest in an equity security as "the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securit(y)." The rule includes examples of "indirect pecuniary interests," such as a general partner's proportionate interest in a portfolio of securities held by the partnership, certain performance-based fee arrangements, and a person's interest in securities held in a trust. As noted below, this definition is being incorporated into the rule's reporting provisions. *See infra* note 69 and accompanying text.

E. Other Amendments

1. Money Market Instruments

Money market instruments and shares of open-end funds would appear to present little opportunity for the type of improper trading that rule 17j–1 is intended to cover.[63] The Commission therefore excepted bankers' acceptances, bank certificates of deposit, commercial paper and shares of open-end funds from the definition of "security" for purposes of rule 17j–1.[64] Since the adoption of the rule, the Division has issued several no-action and interpretive letters generally restating the Commission's position that all money market instruments (and not only those specified by the rule) are excepted from the rule's definition of "security."[65] The Commission proposes to amend the definition of "security" in the rule to specifically provide that, in addition to the money market instruments currently listed, repurchase agreements and other high quality short-term debt instruments also are excepted from the definition.[66] The proposed amendments also provide that money market funds are not required to adopt codes of ethics.[67] The Commission requests comment whether there are other types of securities that, like money market instruments, would appear to present little opportunity for the type of improper trading that rule 17j–1 is intended to cover, and thus should be excepted from the definition of "security" for purposes of the rule.

2. Beneficial Ownership

Rule 17j–1 currently provides that, for purposes of the reporting requirement of paragraph (c) of the rule, beneficial ownership should be interpreted in a manner that is consistent with the way that term is interpreted for purposes of section 16 of the Exchange Act. In 1991, the Commission adopted revised rule 16a–1 under the Exchange Act in part to clarify the meaning of beneficial ownership for purposes of section 16.[68] Shortly thereafter, the Division issued a letter stating that the definition of beneficial ownership provided in newly adopted rule 16a–1(a)(2) under the Exchange Act should be used when determining beneficial ownership for purposes of paragraph (c) of rule 17j–1.[69] The Commission proposes to amend rule 17j–1(c) to incorporate this interpretation.

3. Conforming Amendments to Advisers Act Rules

Under paragraphs (a)(12) and (a)(13) of rule 204–2 under the Advisers Act, every investment adviser is required to keep records of the personal securities transactions of the adviser and its "advisory representatives" (as defined in the rule). Although the purposes of these paragraphs are substantially the same as the purposes of paragraph (c) of rule 17j–1, the two rules except transactions in different securities from their respective reporting/recordkeeping requirements. Currently, the rule under the Advisers Act excepts from its recordkeeping requirements only transactions in government securities.[70] The Commission believes the reporting requirements for the two rules should cover the same securities. Therefore, the Commission is proposing to amend rules 204–2(a)(12) and 204–2(a)(13) to except from the recordkeeping requirement transactions in securities that are (i) direct obligations of the U.S. Government, (ii) high quality short-term instruments,[71] including but not limited to bankers' acceptances, bank certificates of deposit, commercial paper and repurchase agreements, and (iii) shares of registered open-end investment companies. The Commission also proposes to incorporate the definition of beneficial ownership in rule 16a–1(a)(2) under the Exchange Act into rule 204–2.[72]

III. General Request for Comments

Any interested persons wishing to submit written comments on the rule and form changes that are the subject of this Release, to suggest additional changes, or to submit comments on other matters that might have an effect on the proposals contained in this Release, are requested to do so.

IV. Cost/Benefit Analysis

Funds and the public would benefit from the proposed amendments because the amendments would help prevent fraudulent activity, the costs to the public and shareholders of which could far exceed the cost of compliance with the proposed amendments.

The proposed amendments would impose certain additional costs on rule 17j–1 organizations and their access persons to the extent that these organizations do not currently require their access persons to file initial reports listing all securities held by the access persons, and to the extent the currently required quarterly reports do not include all securities transactions by access persons. Because access persons already are required by rule 17j–1 to file quarterly reports, however, the cost to these entities of accommodating initial reports is estimated to be minimal. The costs to access persons of compiling such reports also is estimated to be minimal.

Funds would incur additional costs for the proposed initial review of the codes applicable to the funds, the annual report and certification from fund management, the additional prospectus disclosure and the filing of applicable exhibits under the proposed amendments. However, in certain cases, fund costs would decrease because the proposed amendments would expand the list of securities exempt from the recordkeeping requirements.

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[63] *See* Adopting Release, *supra* note 4, at 73919.

[64] Rule 17j–1(e)(5). The rule also excepts "securities issued by the Government of the United States" from the definition. The proposed amendments would change this exception to read "direct obligations of the Government of the United States" in order to conform the exception to the exception for these securities listed in rules 204–2(a)(12) and 204–2(a)(13) under the Advisers Act. *See infra* part II.E.3. *See also*, ACM Government Income Fund, Inc. (pub. avail. Dec. 15, 1988) (Division staff interprets the reference to government securities in rule 17j–1(e)(5) to refer only to direct obligations of the United States, and not to obligations of instrumentalities).

[65] *See, e.g.*, The Mexico Fund, Inc. (pub. avail. Aug. 23, 1982); The Securities Groups Money Fund, Inc. (pub. avail. May 6, 1982); Institutional Liquid Assets (pub. avail. July 6, 1981).

[66] Proposed amendment to rule 17j–1(e)(5). The Commission interprets "high quality short-term debt instrument" to mean any instrument having a maturity at issuance of less than 366 days and which is rated in one of the highest two rating categories by a Nationally Recognized Statistical Rating Organization, or which is unrated but is of comparable quality.

[67] Proposed amendment to rule 17j–1(b). This is consistent with an interpretive position taken by the Division staff that funds that invest only in securities that are excepted from the definition of "security" in rule 17j–1, and their investment advisers and principal underwriters, are not required to adopt codes of ethics. Investment Company Institute (pub. avail. Mar. 31, 1981).

[68] *See* Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Securities Exchange Act Release No. 28869 (Feb. 8, 1991), 56 FR 7242. *See also supra* note 62.

[69] *See* Investment Company Institute (pub. avail. July 31, 1991).

[70] The Division staff has issued several no-action letters stating that transactions in shares of funds unaffiliated with the investment adviser are exempt from the recordkeeping requirements of paragraphs (a)(12) and (a)(13) of rule 204–2. *See, e.g.*, Massachusetts Financial Services Co. (pub. avail. Oct. 6, 1992). The Division staff also currently takes the position that transactions in shares of affiliated open-end funds are exempt from the recordkeeping requirements.

[71] *See supra* note 66.

[72] *See supra* note 69 and accompanying text.

V. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding amendments to rule 17j–1 under the Investment Company Act and rule 204–2 under the Advisers Act, and amendments to fund registration forms under the Investment Company Act and the Securities Act. The analysis notes that the amendments are designed to improve the regulation of personal investment activities by enhancing the oversight of these activities by rule 17j–1 organizations, providing the public with additional information about fund personal investment policies and making the scope of rule 17j–1 more consistent with its purpose. Cost-benefit information reflected in the "Cost/Benefit Analysis" section of this Release also is reflected in the analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting David M. Goldenberg, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–2, Washington, DC 20549.

VI. Statutory Authority

The Commission is proposing to amend rule 17j–1 pursuant to the authority set forth in sections 17(j) and 38(a) of the Investment Company Act (15 U.S.C. 80a–17(j) and 80a–37(a)). The amendments to registration forms are proposed pursuant to the authority set forth in sections 6, 7(a), 10 and 19(a) of the Securities Act (15 U.S.C. 77f, 77g(a), 77j, 77s(a)), and sections 8(b), 24(a) and 38(a) of the Investment Company Act (15 U.S.C. 80a–8(b), 80a–24(a) and 80a–37(a)). The amendments to rule 204–2 under the Advisers Act are proposed pursuant to the authority set forth in sections 204, 206(4) and 211(a) of the Advisers Act (15 U.S.C. 80b–4, 80b–6(4) and 80b–11(a).)

Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 239, 270, 274 and 275

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.17j–1 is revised to read as follows:

§ 270.17j–1 Certain unlawful acts, practices, or courses of business and requirements relating to codes of ethics with respect to registered investment companies.

(a) It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company, or any affiliated person of an investment adviser of or principal underwriter for a registered investment company in connection with the purchase or sale, directly or indirectly, by such person of a security held or to be acquired, as defined in this section, by such registered investment company:

(1) To employ any device, scheme or artifice to defraud such registered investment company;

(2) To make to such registered investment company any untrue statement of a material fact or omit to state to such registered investment company a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any such registered investment company; or

(4) To engage in any manipulative practice with respect to such registered investment company.

(b)(1)(i) Every registered investment company, other than a money market fund, and each investment adviser of and principal underwriter for such investment company, shall have a written code of ethics containing provisions reasonably necessary to prevent its access persons from engaging in any act, practice, or course of business prohibited by paragraph (a) of this section and shall use reasonable diligence, and institute procedures reasonably necessary, including procedures by which the reports required by paragraph (c) of this section are reviewed by appropriate management or compliance personnel, to prevent violations of such code.

(ii) The board of directors of the investment company shall approve the code of the investment company. Prior to retaining the services of an investment adviser or principal underwriter, the board of directors shall review the codes of ethics adopted pursuant to paragraph (b)(1)(i) of this section by such investment adviser or principal underwriter, and shall receive a certification from such investment adviser or principal underwriter that it has adopted such procedures as are reasonably necessary to prevent access persons from violating such code. When approving or reviewing a code of ethics pursuant to this paragraph (b)(1)(ii), a majority of the directors of the investment company, including a majority of the directors who are not interested persons thereof, shall determine whether the code contains such provisions as are reasonably necessary to prevent access persons from engaging in any act, practice, or course of business prohibited by paragraph (a) of this section. In the case of a unit investment trust, the approval and review required by this paragraph (b)(1)(ii) shall be conducted by the principal underwriter or depositor of such unit investment trust.

(2) No less frequently than annually, the management of every investment company (other than a unit investment trust) and of its investment adviser and principal underwriter shall furnish to the directors of the investment company a report:

(i) Describing issues arising under the applicable code of ethics since the last report to the board, including, but not limited to, information about violations of the code, sanctions imposed in response to such violations, changes made to the code or procedures, and any proposed or recommended changes to the code or procedures; and

(ii) Certifying that the investment company, investment adviser or principal underwriter, as applicable, has adopted such procedures as are reasonably necessary to prevent access persons from violating the code.

(3) The requirements of paragraphs (b)(1) and (b)(2) of this section shall not apply to any underwriter:

(i) Which is not an affiliated person of the registered investment company or its investment adviser; and

(ii) None of whose officers, directors or general partners serves as an officer, director or general partner of such registered investment company or investment adviser.

(c)(1) Every access person of a registered investment company, other than a money market fund, or of an investment adviser of or principal underwriter for such investment company shall report to that investment company, investment adviser or principal underwriter:

(i) No later than 10 days after the date that such person becomes an access person, the title, CUSIP number (if any), number of shares and principal amount with respect to each security in which the access person had any direct or

indirect beneficial ownership at the time such person became an access person; and

(ii) No later than 10 days after the end of a calendar quarter, the information described in paragraph (c)(2) of this section with respect to any transactions during that quarter in any security in which the access person had, or by reason of such transaction acquired, any direct or indirect beneficial ownership in the security.

(2) Reports required to be made pursuant to paragraph (c)(1)(ii) of this section shall contain the following information:

(i) The date of the transaction, the title, CUSIP number (if any) and number of shares, and the principal amount of each security involved;

(ii) The nature of the transaction (*i.e.*, purchase, sale or any other type of acquisition or disposition);

(iii) The price at which the transaction was effected;

(iv) The name of the broker, dealer or bank with or through which the transaction was effected; and

(v) The date that the report is being submitted by the access person.

(3) Notwithstanding paragraph (c)(1) of this section, no person shall be required to make a report:

(i) With respect to transactions effected for any account over which such person does not have any direct or indirect influence or control;

(ii) If such person is not an "interested person" of a registered investment company within the meaning of section 2(a)(19) of the Act (15 U.S.C. 80a–2(a)(19)), and would be required to make such a report solely by reason of being a director of such investment company, except where such director knew or, in the ordinary course of fulfilling his official duties as a director of the registered investment company, should have known that during the 15-day period immediately preceding or after the date of the transaction in a security by the director such security is or was purchased or sold by such investment company or such purchase or sale by such investment company is or was considered by the investment company or its investment adviser;

(iii) Where the principal underwriter, as to which such person is an access person:

(A) Is not an affiliated person of the registered investment company or any investment adviser of such investment company; and

(B) Has no officers, directors or general partners who serve as officers, directors or general partners of such investment company or any such investment adviser;

(iv) Where a report made to an investment adviser would duplicate information recorded pursuant to §§ 275.204–2(a)(12) or 275.204–2(a)(13) of this chapter;

(v) Where a report to be made under paragraph (c)(1)(i) of this section would duplicate information that:

(A) Already has been provided to the investment company, investment adviser or principal underwriter;

(B) Would enable the investment company, investment adviser or principal underwriter to reconstruct the person's securities holdings at the time that the person became an access person; and

(C) Will be maintained in accordance with the requirements of paragraph (d)(3) of this section from the date that such person becomes an access person; or

(vi) Where a report to be made under paragraph (c)(1)(ii) of this section would duplicate information contained in a broker trade confirmation or account statement received by the investment company, investment adviser or principal underwriter with respect to such person in the time period required by that paragraph, *provided* that all of the information required by paragraph (c)(2) of this section is contained in such broker trade confirmation or account statement or is noted in the records of such investment company, investment adviser or principal underwriter.

(4) Each registered investment company, investment adviser and principal underwriter to which reports are required to be made pursuant to this section shall identify all access persons who are under a duty to make such reports to it and shall inform such persons of such duty.

(5) Any report required by paragraph (c)(1) of this section may contain a statement that the report shall not be construed as an admission by the person making such report that he or she has any direct or indirect beneficial ownership in the security to which the report relates. For purposes of this section, beneficial ownership shall be interpreted in the same manner as it would be under § 240.16a–1(a)(2) of this chapter in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) and the rules and regulations thereunder.

(d) Each registered investment company, investment adviser and principal underwriter which is required to adopt a code of ethics or to which reports are required to be made by access persons shall, at its principal place of business, maintain records in the manner and to the extent set forth in this paragraph (d), and make such records available to the Commission or any representative thereof at any time and from time to time for reasonable periodic, special or other examination:

(1) A copy of each such code of ethics which is, or at any time within the past five years has been, in effect shall be preserved in an easily accessible place.

(2) A record of any violation of such code of ethics, and of any action taken as a result of such violation, shall be preserved in an easily accessible place for a period of not less than five years following the end of the fiscal year in which the violation occurs.

(3) A copy of each report made by an access person pursuant to this section, including any information provided in lieu of such reports pursuant to paragraphs (c)(3)(v) and (c)(3)(vi) of this section, shall be preserved for a period of not less than five years from the end of the fiscal year in which it is made, the first two years in an easily accessible place.

(4) A list of all persons who are, or within the past five years have been, required to make reports pursuant to this section, and a list of all persons responsible for reviewing such reports, shall be maintained in an easily accessible place.

(5) A copy of each report required by paragraph (b)(2) of this section shall be maintained for a period of not less than five years from the date such report is made, the first two years in an easily accessible place.

(e) As used in this section:

(1) *Access person* means:

(i) With respect to a registered investment company or an investment adviser thereof, any director, officer, general partner, or advisory person, as defined in this section, of such investment company or investment adviser.

(ii) With respect to a principal underwriter, any director, officer, or general partner of such principal underwriter who in the ordinary course of his business makes, participates in or obtains information regarding the purchase or sale of securities for the registered investment company for which the principal underwriter so acts or whose functions or duties as part of the ordinary course of his business relate to the making of any recommendation to such investment company regarding the purchase or sale of securities.

(iii) Notwithstanding the provisions of paragraph (e)(1)(i) of this section, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, the term *access person* shall mean any director, officer, general partner, or advisory person of the investment adviser who, with respect to any registered investment company, makes any recommendation, participates in the determination of which recommendation shall be made, or whose principal function or duties relate to the determination of which recommendation shall be made to any registered investment company; or who, in connection with his duties, obtains any information concerning securities recommendations being made by such investment adviser to any registered investment company.

(iv) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since its organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of its total sales and revenues and more than 50 percent of its income (or loss) before income taxes and extraordinary items from such other business or businesses.

(2) *Advisory person* of a registered investment company or an investment adviser thereof means:

(i) Any employee of such company or investment adviser (or of any company in a control relationship to such investment company or investment adviser) who, in connection with his regular functions or duties, makes, participates in, or obtains information regarding the purchase or sale of a security by a registered investment company, or whose functions relate to the making of any recommendations with respect to such purchases or sales; and

(ii) Any natural person in a control relationship to such company or investment adviser who obtains information concerning recommendations made to such company with regard to the purchase or sale of a security.

(3) *Control* shall have the same meaning as that set forth in section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)).

(4) *Purchase or sale of a security* includes, *inter alia*, the writing of an option to purchase or sell a security.

(5) *Security* shall have the meaning set forth in section 2(a)(36) of the Act (15 U.S.C. 80a–2(a)(36)), except that it shall not include:

(i) Direct obligations of the Government of the United States;

(ii) High quality short-term debt instruments, including but not limited to bankers' acceptances, bank certificates of deposit, commercial paper and repurchase agreements; and

(iii) Shares of registered open-end investment companies.

(6) *Security held or to be acquired* by a registered investment company means:

(i) Any security as defined in this section which, within the most recent 15 days:

(A) Is or has been held by such company; or

(B) Is being or has been considered by such company or its investment adviser for purchase by such company; and

(ii) Any option to purchase or sell, and any security convertible into or exchangeable for, a security described in paragraph (e)(6)(i) of this section.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

4. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

5. Item 5 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding paragraph (h) and an instruction to read as follows:

Note: The text of Form N–1A does not, and the amendments to the form will not appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 5. Management of the Fund

* * * * *

(h) A brief statement explaining (i) that the Registrant and its investment adviser and principal underwriter have adopted codes of ethics that have been filed with the Commission, (ii) whether or not these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant, and (iii) that information about how the codes can be inspected or copied at the Commission's public reference rooms or obtained from the Commission's headquarters is available through the Commission's toll-free telephone number, 1–800–SEC–0330.

Instruction: A Registrant that is a money market fund or that otherwise is not required to adopt a code of ethics under Rule 17j–1 under the 1940 Act [17 CFR 270.17j–1] is not required to respond to this item.

* * * * *

6. Item 24 of Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by redesig..ating paragraph (b)(17) as paragraph (b)(18) and adding paragraph (b)(17) and an instruction to read as follows:

Form N–1A

* * * * *

Item 24. Financial Statements and Exhibits

* * * * *

(b) * * *

(17) a copy of all codes of ethics adopted pursuant to Rule 17j–1 under the 1940 Act [17 CFR 270.17j–1] and currently applicable to the Registrant (*i.e.*, the codes of the Registrant and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Registrant, state why (*e.g.*, that the Registrant is a money market fund).

Instruction: A Registrant that is a feeder fund must also file a copy of all codes of ethics applicable to the master fund.

* * * * *

7. Item 9 of Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by removing the word "and" after the semicolon in paragraph 1.f., removing the period in the last line of paragraph 1.g. and replacing it with "; and" and adding paragraph 1.h. and an instruction to read as follows:

Note: The text of Form N–2 does not, and the amendments to the form will not, appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 9. Management

1. *General:* * * *

h. *Codes of Ethics:* a brief statement explaining (i) that the Registrant and its investment adviser and principal underwriter have adopted codes of ethics that have been filed with the Commission, (ii) whether or not these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant, and (iii) that information about how the codes can be inspected or copied at the Commission's public reference rooms or obtained from the Commission's headquarters is available through the Commission's toll-free telephone number, 1–800–SEC–0330.

Instruction

A Registrant that is not required to adopt a code of ethics under Rule 17j–1 under the 1940 Act (17 CFR 270.17j–1) is not required to respond to this item.

* * * * *

8. Item 24 of Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by redesignating paragraph 2.r. as

paragraph 2.s. and adding paragraph 2.r. to read as follows:

Form N–2

* * * * *

Item 24. Financial Statements and Exhibits

* * * * *

2. * * *

r. a copy of all codes of ethics adopted pursuant to Rule 17j–1 under the 1940 Act (17 CFR 270.17j–1) and currently applicable to the Registrant (*i.e.*, the codes of the Registrant and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Registrant, state why (*e.g.*, the Registrant invests only in direct obligations of the United States Government).

* * * * *

9. Item 6 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding paragraph (e) and an instruction to read as follows:

Note: The text of Form N–3 does not, and the amendments to the form will not, appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 6. Management

* * * * *

(e) A brief statement explaining (i) that the Registrant and its investment adviser and principal underwriter have adopted codes of ethics that have been filed with the Commission, (ii) whether or not these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant, and (iii) that information about how the codes can be inspected or copied at the Commission's public reference rooms or obtained from the Commission's headquarters is available through the Commission's toll-free telephone number, 1–800–SEC–0330.

Instruction: A Registrant that is a money market fund or that otherwise is not required to adopt a code of ethics under Rule 17j–1 under the 1940 Act (17 CFR 270.17j–1) is not required to respond to this item.

* * * * *

10. Item 28 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by redesignating paragraph (b)(17) as paragraph (b)(18) and adding paragraph (b)(17) to read as follows:

Form N–3

* * * * *

Item 28. Financial Statements and Exhibits

* * * * *

(b) * * *

(17) a copy of all codes of ethics adopted pursuant to Rule 17j–1 (17 CFR 270.17j–1) and currently applicable to the Registrant (*i.e.*, the codes of the Registrant and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Registrant, state why (*e.g.*, the Registrant is a money market fund).

* * * * *

11. Item 3 of Form N–5 (referenced in §§ 239.24 and 274.5) is amended by removing the word "investment" both times that it appears in the introductory text and adding paragraph (i) after the instruction to read as follows:

Note: The text of Form N–5 does not, and the amendments to the form will not, appear in the Code of Federal Regulations.

Form N–5

* * * * *

Item 3. Policies With Respect to Security Investments

* * * * *

(i) Whether or not the codes of ethics of the registrant and its investment adviser and principal underwriter permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the registrant. Also state that the codes of ethics adopted by the registrant and its investment adviser and principal underwriter have been filed with the Commission and that information about how the codes can be inspected or copied at the Commission's public reference rooms or obtained from the Commission's headquarters is available through the Commission's toll-free telephone number, 1–800–SEC–0330.

* * * * *

12. The Instructions As To Exhibits of Form N–5 (referenced in §§ 239.24 and 274.5) are amended by redesignating paragraph 13 as paragraph 14 and adding paragraph 13 to read as follows:

Form N–5

* * * * *

Instructions as to Exhibits

* * * * *

13. A copy of all codes of ethics adopted pursuant to Rule 17j–1 under the 1940 Act (17 CFR 270.17j–1) and currently applicable to the registrant (*i.e.*, the codes of the registrant and its investment advisers and principal underwriters).

* * * * *

13. Item 41 of Form N–8B–2 (referenced in § 274.12) is amended by adding paragraph (d) to read as follows:

Note: The text of Form N–8B–2 does not, and the amendments to the form will not, appear in the Code of Federal Regulations.

Form N–8B–2

* * * * *

41. * * *

(d) Provide a brief statement explaining (i) that the trust and its principal underwriter have adopted codes of ethics that have been filed with the Commission, (ii) whether or not these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the trust, and (iii) that information about how the codes can be inspected or copied at the Commission's public reference rooms or obtained from the Commission's headquarters is available through the Commission's toll-free telephone number, 1–800–SEC–0330.

* * * * *

14. Part IX of Form N–8B–2 (referenced in § 274.12) is amended by adding paragraph A.(11) to read as follows:

Form N–8B–2

* * * * *

IX

Exhibits

A. * * *

(11) a copy of all codes of ethics adopted pursuant to Rule 17j–1 under the 1940 Act (17 CFR 270.17j–1) and currently applicable to the trust (*i.e.*, the codes of the trust and its principal underwriters). If there are no codes of ethics applicable to the trust, state why (*e.g.*, the trust invests only in direct obligations of the United States Government).

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

15. The authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, 80b–11, unless otherwise noted.

16. Section 275.204–2 is amended by revising the first sentence of paragraph (a)(12)(i), redesignating paragraphs (a)(12)(ii) and (a)(12)(iii) as (a)(12)(iii) and (a)(12)(iv), adding paragraph (a)(12)(ii), redesignating newly designated paragraph (a)(12)(iii)(B) as (a)(12)(iii)(C), adding paragraph (a)(12)(iii)(B), revising the first sentence of paragraph (a)(13)(i), redesignating paragraphs (a)(13)(ii) and (a)(13)(iii) as paragraphs (a)(13)(iii) and (a)(13)(iv), adding paragraph (a)(13)(ii), redesignating newly designated paragraphs (a)(13)(iii)(B) and (a)(13)(iii)(C) as (a)(13)(iii)(C) and (a)(13)(iii)(D) and adding new paragraph (a)(13)(iii)(B), to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(12)(i) A record of every transaction (other than transactions described in paragraph (a)(12)(ii) of this section) in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership.* * *

(ii) Notwithstanding paragraph (a)(12)(i) of this section, no record need be kept of any transactions:

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(A) Effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; or

(B) In securities which are:

(*1*) Direct obligations of the Government of the United States;

(*2*) High quality short-term debt instruments, including but not limited to bankers' acceptances, bank certificates of deposit, commercial paper and repurchase agreements; or

(*3*) Shares of registered open-end investment companies.

(iii) * * *

(B) The term *beneficial ownership* shall be interpreted in the same manner as it would be under § 240.16a–1(a)(2) of this chapter in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] and the rules and regulations thereunder.

* * * * *

(13)(i) Notwithstanding the provisions of paragraph (a)(12) of this section, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction (other than transactions described in paragraph (a)(13)(ii) of this section) in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership.* * *

(ii) Notwithstanding paragraph (a)(13)(i) of this section, no record need be kept of any transactions:

(A) Effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; or

(B) In securities which are:

(*1*) Direct obligations of the Government of the United States;

(*2*) High quality short-term debt instruments, including but not limited to bankers' acceptances, bank certificates of deposit, commercial paper and repurchase agreements; or

(*3*) Shares of registered open-end investment companies.

(iii) * * *

(B) The term *beneficial ownership* shall be interpreted in the same manner as it would be under § 240.16a–1(a)(2) of this chapter in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) and the rules and regulations thereunder.

* * * * *

Dated: September 8, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22850 Filed 9–13–95; 8:45 am]

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Federal Register
Vol. 60, No. 179
Friday, September 15, 1995

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV95–922–1FIR]

Apricots Grown in Designated Counties in Washington; Temporary Suspension of Grade Requirements for Apricots of the Patterson Variety

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which temporarily suspended for the 1995 season only, the minimum grade requirements (Washington No. 1) for fresh shipments of the Patterson variety of apricots grown in Washington. The suspension will enable handlers of Patterson variety apricots to ship more fruit to the fresh market, taking into consideration the significant hail damage experienced by this variety during the growing season. This action will improve returns to producers of the Patterson variety of apricots. This rule was recommended by the Washington Apricot Marketing Committee (Committee), the agency responsible for the local administration of the marketing order for Washington apricots.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–5127; or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of Washington apricots subject to regulation under the order and approximately 400 producers of Washington apricots in the regulated production area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of Washington apricots may be classified as small entities.

This rule finalizes the temporary suspension of the minimum grade requirements (Washington No. 1) for fresh shipments of the Patterson variety apricot for the 1995 season only. This temporary suspension allowed handlers of the Patterson variety apricot to ship more fresh apricots to the market due to the significant hail damage the crop has received.

Section 922.52 (7 CFR 922.52) authorizes the issuance of regulations for grade, size, quality, maturity, pack, markings, and container for any variety or varieties of apricots grown in any district or districts of the production area. Section 922.53 (7 CFR 922.53) authorizes the modification, suspension, or termination of the regulations issued under § 922.52.

Minimum grade, color, and size requirements for Washington apricots regulated under the order are specified in § 922.321 *Apricot Regulation* 21 (7 CFR 922.321). Section 922.321 provides that no handler shall handle any container of apricots unless such apricots grade not less than Washington No. 1, except for shipments that are exempt from regulation. In addition, this section provides that, with the exception of exempt shipments, apricots shipped must be reasonably uniform in color, and be at least 1⅝ inches in diameter, except for the Blenheim, Blenril, and Tilton varieties which must be at least 1¼ inches in diameter.

This rule suspends the minimum grade requirements for fresh shipments of the Patterson variety of apricots for the 1995 season. The grade requirements for the Patterson variety will resume April 1, 1996, for the 1996 and future seasons. Color and size requirements for the Patterson variety will remain unchanged.

The Committee met on May 11, 1995, and unanimously recommended the suspension of grade requirements for the Patterson variety. The Committee requested that this suspension be made effective by July 1, 1995, since the harvest of the Patterson variety was expected to begin shortly thereafter.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington apricots which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Information available to the Committee indicates that the Patterson variety of apricots experienced severe hail damage this season. The excessive damage was a result of location and stage of fruit development. The Patterson variety is the latest variety of apricots produced within the production area. Earlier varieties of apricots did not experience significant hail damage.

This suspension will enable handlers to ship a larger portion of the Patterson variety to the fresh market this season, than if the minimum grade requirements were not suspended. Without suspension of the grade requirements for the Patterson variety, most of the fruit could not be shipped to fresh markets. Last year, 151 tons of the Patterson variety were shipped into the fresh market. Information available to the Committee indicates that with suspension of the grade requirements for the Patterson variety, approximately 125 tons might be shipped to the fresh market. Since the Patterson variety is the latest variety of apricots shipped within the production area, the suspension of the grade requirements for this variety should not adversely affect the marketing of other varieties.

Suspension of the grade requirements for the Patterson variety is intended to increase fresh shipments to meet consumer needs and improve returns to producers.

The interim final rule concerning this action was published in the June 22, 1995, **Federal Register** (60 FR 32429), providing a 30-day comment period ending July 24, 1995. Two comments were received concerning the interim final rule.

Comments were submitted by Gene Stokes, general manager of the California Apricot Advisory Board (Board) and Steve Hash, Vice President of the Agricultural Division of A. Levy and J. Zentner Co., and member of the Board as well. Both contend that the Board is opposed to the temporary suspension of grade requirements because it would adversely affect the California fresh apricot market. Since the California apricot season ends (May through August) just when the Washington apricot season begins (July through September), Messrs. Stokes and Hash believe that any reduction in quality standards in Washington apricots would have a negative effect on purchases of California apricots during the 1996 season. They also contend that this temporary suspension would set a dangerous precedent for the future because hail damage is a common occurrence in Washington and California.

The Department has reviewed the comments of the Board and does not agree that the temporary suspension of grade requirements for one variety of Washington apricots will adversely affect the California market. There is a seven month period of time (from September to May) between the end of Washington apricot shipments for 1995 and the beginning of California apricot shipments for 1996. This period of time between the Washington and California shipping seasons is more than adequate not to have impact on the California apricot market.

After thoroughly analyzing the comments received and other available information, the Department agrees with and upholds the request of the Committee to temporarily suspend grade requirements for the Patterson variety apricot for the 1995 season, only. The Department does not believe that the comments of the Board have merit and concludes that this final rule is appropriate.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (60 FR 32429, June 22, 1995) will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the interim final rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 922 which was published at 60 FR 32429 on June 22, 1995, is adopted as a final rule without change.

Dated: September 11, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–22949 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 927

[FV95–927–2IFR]

Winter Pears Grown in Oregon, Washington, and California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule reduces the reporting requirements for handlers who have shipped less than 2,500 standard western pear boxes during any two-week reporting period of the shipping season. This action decreases the reporting burden on such handlers while maintaining the information collection necessary for the efficient operation of the program. This rule was recommended by the Winter Pear Control Committee (Committee), the agency responsible for the local administration of the marketing order for winter pears.

EFFECTIVE DATE: September 15, 1995. Comments received by October 16, 1995 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments

concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; or Britthany Beadle, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Washington, and California, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears subject to regulation under the order and approximately 1,800 producers of winter pears in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of winter pear handlers and producers may be classified as small entities.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for winter pears which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The Committee met on June 2, 1995, and unanimously recommended revising § 927.125 of the winter pear marketing order. This section governs the reporting requirements for handlers of winter pears.

Section 927.70 authorizes the Committee, subject to the approval of the Secretary, to request information from handlers necessary to perform its duties under the order. Section 927.125 provides that each handler shall furnish to the Committee, as of every other Friday, a "Handler's Statement of Pear Shipments" and a "Handler's Packout Report" containing information used by the Committee for the collection of assessments and the development of statistical data.

This rule revises the reporting requirements to allow handlers who have shipped less than 2,500 standard western pear boxes during any two-week period of the shipping season to report less frequently while maintaining the information collection necessary for the efficient operation of the program.

Handlers are currently required to submit the "Handler's Statement of Pear Shipments" and the "Handler's Packout Report" every other Friday regardless of the quantity of pears shipped in the preceding two-week reporting period. Industry members have acknowledged that this can be burdensome for small handlers, who have shipments of less than 2,500 standard western pear boxes, to report every two weeks.

The Committee also determined that submission of such winter pear shipment data of less than 2,500 standard western pear boxes is not necessary on a biweekly basis for the efficient administration of the program. As an alternative, handlers may, at their option, not report until their accumulated shipments reach 2,500 standard western pear boxes, provided that they submit the following: a "Handler's Packout Report" at the end of harvest which includes a preliminary packout estimate; a "Handler's Statement of Pear Shipments" and a "Handler's Packout Report" after completion of shipments from regular storage (i.e. non-Controlled Atmosphere storage), at mid-season for Controlled Atmosphere storage, and at the completion of shipments. If the preliminary packout estimate varies from the actual shipments, an explanation of the difference will be required with the final shipment report. The two final reports shall be marked "final report" and include an explanation of the actual shipments versus the original estimate, if different.

Information collection requirements will continue to be periodically reviewed by the Committee to ensure that they place a minimal burden on handlers required to file the information. Committee procedures will also continue to be reviewed and streamlined to assure efficiency in administering information collections. The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0089.

Based on the above information, the Administrator of the AMS has

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determined that this interim final rule will not have a significant impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of winter pears.

After consideration of all available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces reporting requirements for winter pear handlers who ship less than 2,500 standard western pear boxes in a two-week reporting period; (2) the Committee unanimously recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) winter pear shipments are expected to begin in early August, and this rule should apply to most of the season's shipments; (4) handlers of winter pears are aware of this rule and they need no additional time to comply with the relaxed requirements; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.125 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and adding a new paragraph (d) to read as follows:

§ 927.125 Reports.

* * * * *

(d) Each handler who has shipped less than 2,500 standard western pear boxes during any two-week reporting period of the shipping season may, in lieu of reporting biweekly, report as follows:

(1) At completion of harvest, on the next biweekly reporting date, furnish to the Control Committee a "Handler's Packout Report";

(2) After unreported shipments total 2,500 standard western pear boxes, furnish to the Control Committee a "Handler's Statement of Pear Shipments" and a "Handler's Packout Report" on the next biweekly reporting date;

(3) After completion of all shipments from regular storage (i.e. non-Controlled Atmosphere storage) at the end of the shipping season, furnish to the Control Committee a "Handler's Statement of Pear Shipments" and a "Handler's Packout Report" on the next biweekly reporting date;

(4) At mid-season for Controlled Atmosphere storage, at a date established by the Control Committee, furnish to the Control Committee a "Handler's Statement of Pear Shipments" and a "Handler's Packout Report"; and

(5) At the completion of all seasonal pear shipments, furnish to the Control Committee a "Handler's Statement of Pear Shipments" and a "Handler's Packout Report" on the next biweekly reporting date. Each of these reports shall be marked "final report" and include an explanation of the actual shipments versus the original estimate, if different.

* * * * *

Dated: September 11, 1995.

Sharon Bomer Lauritsen,

Director, Fruit and Vegetable Division.

[FR Doc. 95–22947 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 989

[Docket No. FV95–989–4IFR]

Raisins Produced From Grapes Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 989 for the 1995–96 crop year. Authorization of this budget enables the Raisin Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1995, through July 31, 1996. Comments received by October 16, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California raisins are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins handled during the 1995–96 crop year, which began August 1, 1995, and ends July 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the

district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

The budget of expenses for the 1995–96 crop year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected acquisitions of California raisins. Because that rate will be applied to actual acquisitions, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met August 15, 1995, and unanimously recommended a 1995–96 budget of $1,500,000, which is $176,000 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Office salaries, $226,000 ($123,000), field and compliance salaries, $75,000 ($44,000), Payroll taxes, $32,000 ($30,000), group retirement, $23,000 ($20,000), employee benefit expense, $6,000 ($2,500), general insurance, $16,000 ($8,000), group medical insurance, $48,000 ($40,000), Committee members insurance, $385 ($350), equipment expense, $20,000 ($10,000), office travel, $20,000 ($14,000), objective measurement survey, $15,500 ($14,750), and export program foreign administration, $385,000 ($357,000). The Committee also recommended $35,000 for export program trade activities and $23,000 for research and communications, for which no funding was recommended last year. Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Executive salaries, $170,000 ($230,000), Committee travel, $50,000 ($75,000), and reserve for contingencies, $142,115 ($142,400).

The Committee unanimously recommended an assessment rate of $5.00 per ton, which is $1.00 more than last year. This rate, when applied to anticipated acquisitions of 300,000 tons, will yield $1,500,000 in assessment income, which will be adequate to cover anticipated administrative expenses. Any unexpended assessment funds from the crop year are required to be credited or refunded to the handlers from whom collected.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the crop year began on August 1, 1995, and the marketing order requires that the rate of assessment for the crop year apply to all assessable raisins handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and it is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 989.346 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 989.346 Expenses and assessment rate.

Expenses of $1,500,000 by the Raisin Administrative Committee are authorized, and an assessment rate of $5.00 per ton of assessable California raisins is established for the crop year ending July 31, 1996. Any unexpended funds from that crop-year shall be credited or refunded to the handler from whom collected.

Dated: September 11, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–22946 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1211

[FV-94-701]

Pecan Promotion and Research Plan; Termination Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This document terminates the Pecan Promotion and Research Plan (Plan) in its entirety. This action is necessary because the promotion and research program for pecans is no longer in operation, the assets of the Pecan Marketing Board have been liquidated, and a final audit of the Board's books has been conducted.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION: Richard H. Mathews, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, AG Code 0244, PO Box 96456, Room 2535–S, Washington, DC 20090–6456, telephone (202) 720–9915.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Referendum Order issued on July 28, 1993, and published on August 3, 1993 (58 FR 41203); Termination Order issued on March 10, 1994, and published on March 15, 1994 (59 FR 11897).

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This termination order has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this termination order.

This action is governed by section 1917(b) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013). The Act authorizes a national pecan promotion, research, and information program. In accordance with the Act, the Department utilized notice and comment rulemaking in developing and implementing the Plan (7 CFR 1211.1–1211.78), which provides the framework for the program. The Plan became effective on May 1, 1992.

Section 1916(a) of the Act required that the Secretary conduct a continuance referendum within 24 months of the effective date of the Plan for the purpose of ascertaining whether growers, grower-shellers, and importers favor continuation, termination, or suspension of the Plan. The order directing that a referendum be conducted was issued on July 28, 1993, and published August 3, 1993 (58 FR 41203). A referendum was conducted with registration of voters from September 27 through October 1, 1993, and mail balloting during October 4–6, 1993.

Termination of the Plan was favored by 62.3 percent of the growers, grower-shellers, and importers casting valid ballots in the referendum. Therefore, pursuant to section 1917(b) of the Act and section 1211.73 of the Plan, it was found and determined that termination of the Plan was favored by a majority of the growers, grower-shellers, and importers voting in the referendum and that the Plan should therefore be terminated. A termination order was issued on March 10, 1994, and published on March 15, 1994 (59 FR 11897) which terminated provisions dealing with establishment and membership of the Pecan Marketing Board (Board), nomination procedures, powers, duties, policies, programs and projects, contracts, budgets, and assessments.

Certain administrative provisions of subpart A of the Plan, such as those relating to refunds, books and records, and the termination of the Plan, remained in effect to facilitate the orderly termination of activities under the Plan. Now, however, all refunds have been paid, all projects have been completed, the Board's assets have been liquidated, and there has been a final audit of the Board's books.

Therefore, it is hereby found and determined that the remaining terms and provisions of 7 CFR part 1211, i.e., Subpart A—Pecan Promotion and Research Plan and Subpart D—Procedure for the Conduct of Referenda in Connection With the Pecan Promotion and Research Plan, do not tend to effectuate the declared policy of the Act. For that reason, this order will terminate 7 CFR part 1211 in its entirety.

Order

It is, therefore, ordered, That 7 CFR part 1211 is hereby terminated effective on October 16, 1995.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Promotion, Reporting and recordkeeping requirements.

PART 1211—PECAN PROMOTION AND RESEARCH PLAN [REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 6001 *et seq.*, 7 CFR Part 1211 is removed.

Dated: September 11, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–22948 Filed 9–14–95; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–52–AD; Amendment 39–9353; AD 95–19–05]

Airworthiness Directives; Fairchild Aircraft Models SA226–AT and SA226–TC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Fairchild Aircraft Models SA226–AT and SA226–TC airplanes. This action requires replacing the two lower aluminum cargo door receptacles with steel receptacles. A report of cargo door failure on one of the affected airplanes prompted this action. Fatigue of the two bottom cargo door receptacles caused the bottom third of the cargo door to bend outward and upward, causing damage to the fuselage door frame. The actions specified by this AD are intended to prevent decompression injuries and the cargo door from breaking off and striking the empennage or the elevator, which could cause substantial structural failure and loss of control of the airplane.

DATES: Effective September 26, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 1995.

Comments for inclusion in the Rules Docket must be received on or before October 26, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–52–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. This information may also be examined at the Federal

Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–52–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hung Viet Nguyen, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION: The FAA has received a report of failure of a cargo door on a Fairchild Aircraft SA226 series airplane while it was in flight. Fatigue of the two bottom cargo door receptacles caused the bottom third of the cargo door to bend outward and upward, causing damage to the fuselage door frame. This condition, if not detected and corrected, could result in the following:

- Decompression injuries as a result of the door being opened,
- The door separating from the airplane, striking the empennage, and causing substantial structural failure, and
- The door separating from the airplane, striking the elevator, and causing loss of control of the airplane.

Fairchild Service Bulletin (SB) 226–52–008; Issued: April 3, 1979; Revised: April 6, 1984, specifies procedures for replacing the two lower aluminum cargo door receptacles with steel receptacles.

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service bulletin, the FAA has determined that AD action should be taken in order to prevent decompression injuries and the cargo door from breaking off and striking the empennage or the elevator, which could cause substantial structural failure and loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 series airplanes of the same type design, this AD requires replacing the two lower aluminum cargo door receptacles with steel receptacles. The actions shall be accomplished in accordance with Fairchild SB 226–52–008; Issued: April 3, 1979, Revised: April 6, 1984. In future rulemaking actions, the FAA may impose life limits on the cargo door and require additional cargo door modifications.

Since a situation exists (possible decompression and empennage or elevator failure) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–52–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–19–05 Fairchild Aircraft Corporation: Amendment 39–9353; Docket No. 95–CE–52–AD.

Applicability: Models SA226–AT (serial numbers AT001 through AT074) and SA226–TC (serial numbers TC201 through TC419) airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent decompression injuries and the cargo door from breaking off and striking the empennage or the elevator, which could cause substantial structural failure and loss of control of the airplane, accomplish the following:

(a) Replace the lower two aluminum cargo door receptacles with steel receptacles in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin (SB) 226–52–008; Issued: April 3, 1979; Revised: April 6, 1984.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(d) The replacements required by this AD shall be done in accordance with Fairchild Aircraft Service Bulletin 226–52–008; Issued April 3, 1979; Revised April 6, 1984. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(e) This amendment (39–9353) becomes effective on September 26, 1995.

Issued in Kansas City, Missouri, on August 25, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21673 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–57–AD; Amendment 39–9337; AD 95–17–06]

Airworthiness Directives; Mooney Aircraft Corporation Model M20K Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Mooney Aircraft Corporation (Mooney) Model M20K airplanes with a Continental TSIO–520–NB engine installed in accordance with Supplemental Type Certificate (STC) SA5691NM. This action requires repetitively inspecting the exhaust transition tube and turbo mount assembly for cracks, and replacing any part found cracked. A report of a cracked exhaust transition tube that connects the exhaust manifolds to the turbocharger inlet on one of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent exhaust gases from entering the cabin heating system because of a cracked exhaust transition tube, which, if not detected and corrected, could result in hazardous levels of carbon monoxide in the airplane cabin.

DATES: Effective September 25, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 1995.

Comments for inclusion in the Rules Docket must be received on or before November 27, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–57–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Rocket Engineering Corporation, East 6247 Rutter Road, Felts Field, Spokane, Washington 99212. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–57–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Masterson, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone (206) 227–2596; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report of a cracked exhaust transition tube that connects the exhaust manifolds to the turbocharger inlet on a Mooney Model M20K airplane. This airplane has a Continental TSIO–520–NB engine installed in accordance with Supplemental Type Certificate (STC) SA5691NM, which is owned by the Rocket Engineering Corporation. Included with this STC SA5691NM installation is an AiResearch THO8A67 turbocharger and intercooler.

In the above-referenced incident, a 4 to 5-inch crack had developed in the exhaust transition tube. In addition, the turbo mount brace was found cracked. These cracks were discovered following an incident where the pilot reported loss of engine power while in flight. A cracked exhaust transition tube that connects the engine manifolds and the turbocharger inlet could allow exhaust gases to enter the cabin heating system. In this instance, a hazardous level of carbon monoxide could enter the airplane cabin, resulting in pilot injury and subsequent loss of control of the airplane.

The Rocket Engineering Corporation has issued Mandatory Service Bulletin MSB95–305–1, dated August 9, 1995, which specifies procedures for inspecting the exhaust transition tube and turbo mount assembly on Mooney Model M20K airplanes with a Continental TSIO–520–NB engine installed in accordance with STC SA5691NM.

The FAA examined all available information related to the incident described above including the referenced service information and has determined that AD action should be taken to prevent exhaust gases from entering the cabin heating system because of a cracked exhaust transition tube, which, if not detected and corrected, could result in hazardous levels of carbon monoxide in the airplane cabin.

Since an unsafe condition has been identified that is likely to exist or develop on other Mooney Model M20K airplanes of the same type design that have a Continental TSIO–520–NB engine installed in accordance with STC SA5691NM, this AD requires repetitively inspecting the exhaust transition tube and turbo mount assembly for cracks, and replacing any part found cracked. Accomplishment of these actions will be in accordance with Rocket Engineering Corporation Mandatory Service Bulletin MSB95–305–1, dated August 9, 1995.

Since a situation exists (possible hazardous carbon monoxide levels in the airplane cabin) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–57–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–17–06 Mooney Aircraft Corporation: Amendment 39–9337; Docket No. 95–CE–57–AD.

Applicability: Model M20K airplanes (all serial numbers), certificated in any category, that have a Continental TSIO–520–NB engine installed in accordance with Supplemental Type Certificate (STC) SA5691NM, which is owned by the Rocket Engineering Corporation.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially within the next 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter as indicated in the body of this AD.

To prevent exhaust gases from entering the cabin heating system because of a cracked exhaust transition tube, which, if not detected and corrected, could result in hazardous levels of carbon monoxide in the airplane cabin, accomplish the following:

(a) Inspect the following parts of the exhaust system for cracks in accordance with Rocket Engineering Corporation Mandatory Service Bulletin MSB95–305–1, dated August 9, 1995:

(1) Exhaust Transition Tube, part number 305–01–507HS, 305–01–507HS–Rev A, or 305–01–507HS–Rev B.

(2) Left Hand Forward Mount Tube, part number 305–03–501, 305–03–501–Rev A, or 305–03–501–Rev B.

(3) Right Hand Forward Mount Tube, part number 305–03–502 or 305–03–502–Rev A.

(b) If cracks are found in either the exhaust transition tube or the turbo mount tubes during any of the required inspections, prior to further flight, accomplish the following in accordance with Rocket Engineering Corporation Mandatory Service Bulletin MSB95–305–1, dated August 9, 1995.

(1) Replace any cracked exhaust transition tube with Exhaust Transition Tube, part number 305–01–507HS–Rev C, and reinspect this new exhaust transition tube at intervals not to exceed 50 hours TIS.

(2) Replace any cracked left hand forward mount tube with Left Hand Forward Mount Tube, part number 305–03–501–Rev C. The repetitive inspections of this part required by this AD may be terminated after this replacement.

(3) Replace any cracked right hand forward mount tube with Right Hand Forward Mount Tube, part number 305–03–502–Rev B. The repetitive inspections of this part required by this AD may be terminated after this replacement.

(c) If no cracks are found in either the exhaust transition tube or the turbo mount tubes during any of the inspections required by this AD, reinspect at intervals not to exceed 25 hours TIS provided the parts are crack-free.

(d) The replacements required by paragraphs (b)(1), (b)(2), and (b)(3) of this AD may be accomplished regardless of whether a part is found cracked in order to extend the repetitive inspection time of the exhaust transition tube or eliminate the repetitive inspection requirement of the left and right hand forward mount tube as is specified in the applicable paragraph of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) The inspections and replacements required by this AD shall be done in accordance with Rocket Engineering Corporation Mandatory Service Bulletin MSB95–305–1, dated August 9, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Rocket Engineering Corporation, East 6247 Rutter Road, Felts Field, Spokane, Washington 99212. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(h) This amendment (39-9337) becomes effective on September 25, 1995.

Issued in Kansas City, Missouri, on August 30, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22048 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF–367]

RIN 1512–AB37

Importation of Arms, Ammunition and Implements of War (93F–301P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends the list of countries from which the import of defense articles into the United States is proscribed to add Iran, Iraq, Libya, Mongolia, Sudan, and Syria and to remove Albania, Bulgaria, Kampuchea, Outer Mongolia, and Romania. The final rule also removes the proscription on import of defense articles, and technical data relating to defense articles, from South Africa and provides examples of countries with respect to which the United States maintains an arms embargo.

EFFECTIVE DATE: September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Larry White, Coordinator, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION: The Arms Export Control Act of 1976, 22 U.S.C. 2278, gives the President of the United States the authority to control the import and export of defense articles and defense services.

Executive Order 11958 of January 18, 1977, as amended (42 FR 4311), delegated authority to control exports of defense articles and defense services to the Secretary of State. The Executive Order also delegated to the Secretary of the Treasury the authority to control the import of such articles and services. However, as stated in 27 CFR 47.55, ATF is guided by the views of the Departments of State and Defense on matters affecting world peace and the external security and foreign policy of the United States. After consulting these Departments, the Bureau of Alcohol, Tobacco and Firearms (ATF) is revising the provisions of 27 CFR part 47 to conform to the recommendation of the Department of State.

On August 23, 1994, the Department of State recommended that ATF formally add Iran, Iraq, Libya, Mongolia, Sudan and Syria to the list in 27 CFR 47.52(a) of countries from which the import of defense articles into the United States is proscribed. The Department of State also recommended that ATF remove Albania, Bulgaria, Kampuchea, Outer Mongolia, and Romania from the list of proscribed countries in § 47.52(a).

In addition, the Department of State advised ATF of the publication of a final rule on August 17, 1994 (59 FR 42158) amending the International Traffic in Arms Regulations to state that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services destined for or originating in South Africa. This final rule amends the regulations in part 47 to reflect this change.

Finally, pursuant to the Department of State's request, ATF is amending the regulations to provide examples of countries with which the United States maintains an arms embargo.

Executive Order 12866

Because the amendments to 27 CFR part 47 involve a foreign affairs function of the United States, Executive Order 12866 does not apply.

Administrative Procedure Act

Under 27 CFR 47.54, amendments made to 27 CFR part 47 are excluded from the rulemaking provisions of 5 U.S.C. 553 because this Part involves a foreign affairs function of the United States. Accordingly, it is not necessary to issue this Treasury Decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitations in 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no reporting or recordkeeping requirements.

Drafting Information

The principal author of this document is Angela Shanks, Technical Aide, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 47

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

Authority and Issuance

Title 27, Code of Federal Regulations, part 47, Importation of Arms, Ammunition and Implements of War, is amended as follows:

Paragraph 1. The authority citation for part 47 continues to read as follows:

Authority: 22 U.S.C. 2778.

Par. 2. Section 47.52 is amended by revising paragraph (a), by removing paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), and by revising the first sentence in the redesignated paragraph (d) to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy applies to Cuba, Iran, Iraq, Libya, Mongolia, North Korea, Sudan, Syria, Vietnam and the States that comprise the former Soviet Union (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). This policy applies to countries or areas with respect to which the United States maintains an arms embargo (e.g., Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan, UNITA (Angola), the former Yugoslavia, Zaire). It also applies when an import would not be in furtherance of world peace and the security and foreign policy of the United States.

* * * * *

(d) Applicants desiring to import articles claimed to meet the criteria specified in paragraph (c) of this section shall explain, and certify to, how the firearms meet the criteria. * * *

Signed: August 4, 1995.

Daniel R. Black,

Acting Director.

Approved: August 14, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–22942 Filed 9–14–95; 8:45 am]

BILLING CODE 4810–31–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in October 1995, and to multiemployer plans with valuation dates in October 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule adopts the October 1995 interest assumptions to be used under the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended. Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during October 1995 and multiemployer plans that have undergone mass withdrawal and have valuation dates during October 1995.

For annuity benefits, the interest rates will be 6.30% for the first 20 years following the valuation date and 5.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.785% for the period during which benefits are in pay status, and 4.0% during all years preceding the benefit's placement in pay status. The above annuity interest assumptions represent a decrease (from those in effect for September 1995) of .10 percent for the first 20 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent a decrease (from those in effect for September 1995) of .25 percent for the period during which benefits are in pay status and the seven years directly preceding that period. They are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during October 1995, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during October 1995, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the

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President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 24 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is *y* years (*y* is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of *y* years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is *y* years (*y* is an integer and $n_1 < y \leq n + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is *y* years (*y* is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*		
24	10–1–95	11–1–95	4.75	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2 * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
October 1995	.0630	1–20	.0575	>20	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 24 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is *y* years (*y* is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of *y* years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is *y* years (*y* is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is *y* years (*y* is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*		
24	10–1–95	11–1–95	4.75	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
October 1995	.0630	1–20	.0575	>20	N/A	N/A

Issued in Washington, DC, on this 12th day of September 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

FR Doc. 95–22993 Filed 9–14–95; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD02–95–056]

RIN 2115–AA97

Safety Zone; Lower Mississippi River, Mile 727.0 to Mile 730.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River between mile 727.0 and mile 730.0. The zone is needed to rig overhead power cables. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

DATES: This regulation is effective at 7 a.m. on September 13, 1995, and terminates at 5 p.m. on September 27, 1995.

FOR FURTHER INFORMATION CONTACT: ENS Bauer, Assistant Chief Port Operations Officer, Captain of the Port, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103, Phone: (901) 544–3941.

SUPPLEMENTARY INFORMATION:

Background and Purpose

At approximately 7:00 a.m. on September 13, 1995, the Tennessee Valley Authority will commence overhead cable rigging operations across the channel at Lower Mississippi River mile 727.8. The operation is expected to be completed within fourteen days from the commencement date. The navigable channel will be blocked during the operations. A safety zone has been established on the Lower Mississippi River from mile 727.0 to mile 730.0 in order to facilitate safe vessel passage. All vessels shall establish passing arrangements with the LOMRC Representative, via VHF Marine Band Radio, Channel 13, prior to entering the safety zone and shall abide by the conditions of the arrangement. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary. Specifically, immediate action is necessary to facilitate overhead cable rigging operations during a period when vessel traffic will be least affected. Harm to the public or environment may result if vessel traffic is not controlled during the operations. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary section 165.T02–056 is added to read as follows:

§ 165.T02–056 Safety Zone; Lower Mississippi River.

(a) *Location.* The following area is a Safety Zone: Lower Mississippi River Mile 727.0 to mile 730.0

(b) *Effective dates.* This section is effective at 7 a.m. on September 13, 1995, and terminates at 5 p.m. on September 27, 1995.

(c) *Regulations.* In accordance with the General regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port. The Captain of the Port, Memphis, Tennessee, will notify the maritime community of conditions affecting the area covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: August 29, 1995.

A. L. Thompson, Jr.,

Commander, USCG, Captain of the Port.

[FR Doc. 95–22982 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–95–138]

RIN 2115–AA97

Safety Zone: Periphonics Corporation 25th Anniversary Fireworks, Upper New York Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Periphonics Corporation 25th Anniversary fireworks located in Upper New York Bay, New York. The safety zone is in effect from 10 p.m. until 11:20 p.m. on Saturday, September 16, 1995, unless extended or terminated sooner by the Captain of the Port New York. The safety zone temporarily closes all waters of Upper New York Bay, within a 300 yard radius of a fireworks barge anchored approximately 300 yards east of Liberty Island, New York.

EFFECTIVE DATE: This rule is in effect from 10 p.m. until 11:20 p.m. on September 16, 1995, unless extended or terminated sooner by the Captain of the Port New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and CDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exits for not publishing an NPRM, and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to the public interest.

Adequate measures are being taken to ensure mariners are made aware of this regulation. Notification of this rule will be locally published in the First Coast Guard District's Local Notice to Mariners, and announced via Safety Marine Information Broadcasts.

Background and Purpose

On August 22, 1995, Fireworks by Grucci, Inc. submitted an Application for Approval of Marine Event to hold a fireworks program in the waters of Federal Anchorage 20C, in Upper New York Bay. The fireworks program is being sponsored by the Periphonics Corporation. This regulation establishes a temporary safety zone in all waters of Upper New York Bay, within a 300 yard radius of the fireworks barge anchored approximately 300 yards east of Liberty Island, New York, at approximately 40°41′18″ N latitude, 074°02′25″ W longitude (NAD 1983). The safety zone is in effect from 10 p.m. until 11:20 p.m. on September 16, 1995, unless extended or terminated sooner by the Captain of the Port New York. The safety zone prevents vessels from transiting this portion of Upper New York Bay, adjacent to the eastern shoreline of Liberty Island, and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation closes a portion of Upper New York Bay, Federal Anchorage 20C, off of Liberty Island, New York, to vessel traffic from 10 p.m. until 11:20 p.m. on September 16, 1995, unless extended or terminated sooner by the Captain of the Port New York. Federal Anchorage 20C is mainly used by commercial sightseeing vessels and recreational vessels. Although the regulation prevents traffic from transiting this area, the effect of the regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; the zone is located within a Federal Anchorage and does not impact a navigable channel; vessel traffic may safely pass to the east of this area; and the extensive, advance advisories which will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons set forth in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. Under the National Environmental Policy Act, the approval of the permit for marine event for this event is a federal action which is categorically excluded in accordance with section 2.B.2.e(35)(h) of Commandant Instruction M16475.1B. This fireworks display lasts less than 30 minutes and is expected to involve less than 200 spectator craft.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–138, is added to read as follows:

§ 165.T01–138 Safety Zone; Periphonics Corporation 25th Anniversary Fireworks, Upper New York Bay, New York.

(a) *Location.* The safety zone includes all waters of Upper New York Bay, within a 300 yard radius of the fireworks barge anchored approximately 300 yards east of Liberty Island, New York, at approximately 40°41′18″ N latitude, 074°02′25″ W longitude (NAD 1983).

(b) *Effective period.* This section is in effect from 10 p.m. until 11:20 p.m. on September 16, 1995, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 5, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 95–22983 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F4331/R2170; FRL–4976–9]

RIN 2070–AB78

Plant Pesticide Bacillus Thuringiensis CryIA(c) Delta-Endotoxin and the Genetic Material Necessary for its Production in Cotton; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the plant pesticide active ingredient *Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production in cotton. The Monsanto Co. requested the exemption from the requirement of a tolerance under the Federal Food, Drug and Cosmetic Act. The rule eliminates the need to establish a maximum permissible level for residues of this plant pesticide in cotton.

EFFECTIVE DATE: September 15, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number [PP 4F4331/R2170] may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4F4331/R2170]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Willie H. Nelson, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 51B6 CS, 2800 Crystal Drive, Arlington, VA 22202, telephone no.: 703-308-8128; e-mail: nelson.willie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 14, 1994 (59 FR 47137), which announced that Monsanto Co., 700 Chesterfield Village Parkway, St. Louis, MO 63198, had submitted pesticide petition (PP) 4F4331 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), exempt from the requirement of a tolerance the plant pesticide *Bacillus thuringiensis* var. *kurstaki* delta-endotoxin protein as produced by the CryIA(c) gene and its controlling sequences. EPA has assigned the active ingredient of this product the name *Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production. "Genetic material necessary for production" means the CryIA(c) gene and its regulatory regions. "Regulatory regions" are the genetic materials that control the expression of the gene, such as promoters, terminators, and enhancers. Monsanto has genetically modified cotton plants to produce the pesticidal protein derived from the common soil bacterium *Bacillus thuringiensis*. The protein produced by these cotton plants is identical to that found in nature.

There were no adverse comments or requests for referral to an advisory committee received in response to the notice of filing.

Residue Chemistry Data

Residue chemistry data were not required because of the lack of toxicity to this active ingredient. This position is similar to that the Agency has taken regarding the submission of residue data for the microbial *Bacillus thuringiensis* products from which this plant pesticide was derived. (See 40 CFR 158.740(b).) For microbial products, residue data are required only when Tier II or III toxicology data are required. The kinds of studies submitted for this plant pesticide are like those in Tier I, not Tier II or III. Submitted data indicated that the product is of low mammalian toxicity/pathogenicity and the kinds of studies required in Tier II or III were not appropriate. Therefore, no residue data are required to grant an exemption from the requirements of a tolerance for Monsanto's plant pesticide, *Bacillus thuringiensis* CryIA(c) delta-endotoxin protein, the CryIA(c) gene and the genetic material necessary for its production in cotton.

Product Analysis

Monsanto submitted information which adequately described the CryIA(c) delta-endotoxin from B.t., as expressed in cotton, along with the genetic material necessary for its production. Because it would be difficult, or impossible, to extract sufficient biologically active toxin from the plants to perform toxicology tests, Monsanto used delta-endotoxin produced in bacteria. Product analysis data were submitted to show that the microbially expressed and purified CryIA(c) delta-endotoxin is sufficiently similar to that expressed in the plant to be used for mammalian toxicological purposes. Plant and microbially produced CryIA(c) delta-endotoxin were shown by these studies to have similar molecular weights and immunoreactivity (SDS-PAGE and Western blots), to lack detectable post-translational modication (glycosylation tests), to have identical amino acid sequences in the *N*-terminal region and to have similar results in bioassays against *Heliothis virescens* and *Helicoverpa zea*. While it is difficult to prove that two proteins are identical, the combined results of the above studies indicate a high probability that these two sources produce proteins that are essentially identical by available protein analytical assays.

Toxicology Assessment

Toxicity

The delta-endotoxin proteins of *B. thuringinesis* have been intensively studied and no indications of mammalian toxicity have been reported. Furthermore, approximately 176 different *B. thuringiensis* products have been registered since 1961, and the Agency has not received any reports of dietary toxicity attributable to their use. This is especially significant because FIFRA section 6(a)(2) requires registrants to report any adverse effects to EPA. Therefore, the Agency does not anticipate any mammalian toxicity from this protein in plants based on the use history of B. thuringiensis products. The *in vitro* digestibility assay provides useful information to predict the metabolic fate of the CryIA(c) protein and its potential as a food allergen. However, it is not clear how this assay's results relate to protein toxicity. Therefore, the Agency requested that an acute oral toxicity study be done to confirm the expected lack of toxicity indicated by the *in vitro* digestibility results.

Monsanto's submitted oral toxicity data support the prediction that this protein would be nontoxic to humans. CryIA(c) delta-endotoxin was chosen in order to obtain sufficient material for mammalian testing if any exposure were anticipated in food or feed. The *in vitro* digestibility studies indicate that the protein would rapidly be degraded following ingestion.

The genetic material necessary for the production of the *Bacillus thuringiensis* CryIA(c) delta endotoxin are the nucleic acids (DNA and RNA) that constitute the CryIA(c) gene and its controlling sequences. DNA and RNA are common to all forms of life, including plants, and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to the consumption of food. These ubiquitous nucleic acids as they appear in the subject active ingredient have been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the *Bacillus thuringiensis* CryIA(c) delta-endotoxin in cotton.

Allergenicity

Despite decades of widespread use of *Bacillus thuringiensis* as a pesticide (it has been registered since 1961), there have been no confirmed reports of immediate or delayed allergic reactions from exposure. Such incidents, should they occur, are required to be reported under FIFRA section 6(a)(2) and as a data requirement for registration of microbial pesticides (40 CFR 158.740 and Subdivision M of the FIFRA testing guidelines, NTIS # PB89-211676).

Studies done in laboratory animals as reported in the literature also have not indicated any potential for allergic reactions to *B. thuringiensis* or its components, including the delta-endotoxin in the crystal protein. Recent *in vitro* studies also confirm that the delta-endotoxin would be readily digestible *in vivo*.

Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, are glycosylated, and are present at high concentrations in the food (Conference on Scientific Issues, Related to Potential Allergenicity in Transgenic Food Crops, April 18 and 19, Annapolis, MD, sponsored by FDA, EPA, and USDA). The delta-endotoxins are not present at high concentrations, are not resistant to degradation by heat, acid and proteases, and are apparently not glycosylated when produced in plants. The company has submitted data to indicate that the CryIA(c) delta-endotoxin is rapidly degraded by gastric fluid *in vitro*, that it is not present as a major component of food, and that it is apparently nonglycosylated when produced in plants.

Submitted Data

1. *Product characterization (431452-01).* Southern blot analysis restriction digests of DNA extracts from cotton line 531 and the parental Coker 312 showed that there is probably only one insert of the cryIA(c) gene cassette present in the transformed line. The introduced gene appears to be genetically stable in the cotton according to the results of progeny selfing and backcrosses with elite lines. The amino acid sequence is homologous to the cryIA(b) gene from HD-1 for positions 1-466 and homologous to cryIA(c) for positions 467-1178 with a single exception of a leucine–serine 766 in the crystal portion of the protein cleaved prior to toxin activation. Western blot analysis of purified toxin, leaf tissue from cotton line 531 and the parental Coker 312 shows that trypsinized extracts have comigrating bands similar to that found in B.t.k HD-73 protein reference material and commercial preparations.
Classification: Acceptable.

2. *Product characterization (431452-02).* B.t.k. HD-73 toxin isolated from either cotton line 531 or 931 were compared to the same toxin expressed in *E. coli* by SDS-PAGE, western blot, glycosylation and bioactivity (Conference on Scientific Issues Related to Potential Allergenicity in Transgenic Food Crops, April 18 and 19, 1994, Annapolis, MD, sponsored by FDA, EPA, andUSDA). The data presented suggest the bacterially produced protein and that found in cotton are equivalent and suggest the bacterially produced B.t.k. HD-73 toxin can serve as a surrogate test substance for the toxicological tests to support the registration of transgenic cotton. This initial submission was classified as supplementary because of the absence of sufficient description of how the B.t.k. HD-73 protein was isolated and purified from the cotton plant. A cursory description is found in "Assessment of Equivalence Between *E. coli*-Produced and Cotton-Produced Btk HD73 Protein * * *." (MRID 431452-02, p.13). Monsanto has since provided complete details regarding isolation and purification. With the clarification of the extraction procedure described above, the product characterization study (MRID 431452-02) has been upgraded from supplementary to acceptable.
Classification: Acceptable.

3. *Product characterization (431452-03).* The delta-endotoxin from B.t.k. HD-73 (lot 5025385) produced in *E. coli* containing the plasmid pMON10569 was purified, lyophilized and found to have the following characteristics: 4.5% moisture, 75.6% protein (amino acid analysis), 70% protein (BCA), 88% HD-73 specific protein (ELISA), 80% HD-73 specific protein (Coomassie blue PAGE), 1.6 ug gram negative endotoxin/mg and no significant trace metals except for sodium, potassium, and phosphate. The molecular weight of the B.t.k. HD-73 toxin was estimated to be 134.8 kD for the full length species and 77.1 kD for the tryptic. The functional activity was found to be an LC_{50} of 0.28 ppm against *Heliothis virescens*.
Classification: Acceptable.

4. *Product characterization (431452-04).* Ten insect pest species from 5 families were tested for their sensitivity to B.t.k. HD-73 protein. Only in the lepidopteran species was there significant mortality. The green peach aphid showed marginal effects from treatment with a tryptic digest of the CryIA(c) toxin from B.t.k. which was not reproducible in a repeat test. The tryptic digest preparation positive control also showed higher mortality in the TBW test.
Classification: Acceptable.

5. *Acute oral toxicity (431452-13).* Ten male and female CD-1 mice per dose level were exposed by oral gavage to 500, 1,000 and 4,200 mg/kg body weight of *E. coli* produced B.t.k. HD-73 toxin. Controls were given the protein equivalent of 6,340 mg/kg of BSA. No mortalities or treatment related adverse effects were seen in either the treated or control mice. There were no observable dose-related effects seen upon necropsy. Classification: Acceptable. Tox category IV.

6. *In vitro digestibility (431452-14).* The B.t.k. HD-73 protein was rapidly degraded to fragments not recognized in a western blot after 7 minutes incubation in simulated gastric fluid (SGF) and was not active in a TBW bioassay after SGF incubation. The *in vitro* digestibility assay provides useful information to predict the metabolic fate of the CryIA(c) protein and its potential as a food allergen.
Classification: Acceptable.

Conclusions

In summary, based upon the submitted studies and other available information, the Agency does not foresee any human health hazards from the use of the *Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production.

Based upon submitted data and a review of its use, EPA has found that when used in accordance with good agricultural practice, this ingredient is useful for the purpose for which the tolerance exemption is sought. Based on the information considered, EPA concludes that a tolerance is not necessary to protect the public health. Therefore, the exemption from the requirement of a tolerance is established as set forth below.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data/information submitted demonstrate that this active ingredient is not toxic to mammalian species. No enforcement actions are expected, based upon the toxicity for this plant pesticide. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections, and must conform to the other requirements of 40 CFR 178.25. Each objection must be accompanied by the fee prescribedby 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4331/R2170] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4F4331/R2170], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (3) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemption from tolerance requirements do not have a significant economic effect on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (49 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1155, to read as follows:

§ 180.1155 Bacillus thuringiensis CryIA(c) delta-endotoxin and the genetic material necessary for its production; exemption from the requirement of a tolerance.

Bacillus thuringiensis CryIA(c) delta endotoxin and the genetic material necessary for its production are exempted from the requirement of a tolerance when used as a plant pesticide in cotton. "Genetic material necessary for its production" means the CryIA(c) gene and its regulatory regions. "Regulatory regions" are the genetic materials that control the expression of the gene, such as promoters, terminators, and enhancers.

[FR Doc. 95–23077 Filed 9–13–95; 12:19 pm]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7159

[AZ-930-1430-01; A-1880, A-12962, A-13003]

Revocation of Coal Land Withdrawals; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in their entirety two Secretarial Orders and two Executive Orders insofar as they affect the remaining 134,960 acres of lands withdrawn for Federal coal classification purposes. The lands are located within the Coronado and Sitgreaves National Forests and the San Carlos Indian Reservation. The withdrawals are no longer needed as the United States Geological Survey has classified the lands as Non-Coal lands and has recommended revocation of the withdrawals. The lands located within the National Forests will be opened to nonmetalliferous mining and to such forms of disposition as may by law be made of National Forest System lands. The lands located within the Indian Reservation will not be opened since reservation lands are not subject to entry under the general land laws or the United States mining laws.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 650–0518.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Orders dated November 29, 1909, and December 28, 1909, and the Executive Order dated July 7, 1910, which withdrew lands and created Coal Land Withdrawal, Arizona No. 1, are hereby revoked in their entirety insofar as they affect the remaining withdrawn lands described as follows:

Gila and Salt River Meridian

San Carlos Indian Reservation

- T. 4 S., Rgs. 18, 19 and 20 E., (Portion located within the San Carlos Indian Reservation).

Gila and Salt River Meridian

Coronado and Sitgreaves National Forests

- T. 4 S., R. 20 E., (Portion located within the Coronado National Forest).
- T. 10 N., R. 18 E., (Portion located outside of the Fort Apache Indian Reservation).
- T. 11 N., R. 18 E.,
  - Sec. 13, SW¼ W½SE¼;
  - Sec. 14, E½SE¼;
  - Sec. 19, Lots 3, 4, E½SW¼, and SE¼;
  - Sec. 20, S½;
  - Sec. 21, SW¼SW¼;
  - Sec. 22, E½SE¼, N½NW¼SE¼, S½SW¼SE¼, S½N½SW¼SE¼, N½NE¼SW¼,W½SW¼, S½N½SE¼SW¼, and S½SE¼SW¼;
  - Sec. 23, NE¼NE¼, W½, NE¼SE¼, and S½SE¼;
  - Sec. 24, NW¼NE¼, and N½NW¼;
  - Secs. 25 to 30, inclusive;
  - Secs. 31 to 34, inclusive (portion located outside of the Fort Apache Indian Reservation);
  - Secs. 35 and 36.
- T. 10 N., R. 19 E.,
  - Secs. 1 to 6, inclusive;
  - Sec. 7 (portion located outside of the Fort Apache Indian Reservation);
  - Secs. 8 to 17, inclusive;
  - Secs. 18 to 20, inclusive (portion located outside of the Fort Apache Indian Reservation);
  - Secs. 21 to 25, inclusive;
  - Secs. 26 to 29, inclusive (portion located outside of the Fort Apache Indian Reservation);
  - Secs. 35 and 36 (portion located outside of the Fort Apache Indian Reservation).
- T. 11 N., R. 19 E.,
  - Sec. 19, Lots 3, and 4, and E½SW¼;
  - Sec. 25, S½;
  - Sec. 26, S½;
  - Sec. 27, S½;
  - Sec. 29, W½, and W½SE¼;
  - Secs. 30 and 31;
  - Sec. 32, W½, and W½E½;
  - Sec. 33, E½;
  - Secs. 34 to 36, inclusive.

The areas described aggregate 85,754 acres in Pinal, Graham, and Navajo Counties.

2. The Executive Order dated April 13, 1917, which withdrew lands and created Coal Land Withdrawal, Arizona No. 2 are hereby revoked in their entirety insofar as they affect the remaining withdrawn lands described as follows:

Gila and Salt River Meridian

Sitgreaves National Forest

- T. 10 N., R. 16 E.,
  - Sec. 1, (Portion located outside of the Fort Apache Indian Reservation).
- T. 11 N., R. 16 E.,
  - Sec. 25, S½;
  - Sec. 36.
- T. 10 N., R. 17 E.,
  - Sec. 3 to 9, inclusive (Portion located outside of the Fort Apache Indian Reservation).
- T. 11 N., R. 17 E.,
  - Sec. 25, S½;
  - Sec. 26, S½;
  - Sec. 27, S½;
  - Sec. 28, S½;
  - Sec. 29, S½;
  - Sec. 30, S½;
  - Secs. 31 to 33, inclusive;
  - Secs. 34 to 36, inclusive (Portion located outside of the Fort Apache Indian Reservation).
- T. 10 N., R. 20 E.,
  - Secs. 5 to 8, inclusive;
  - Secs. 13 to 20, inclusive;
  - Secs. 21 to 23, inclusive (Portion located outside of the Fort Apache Indian Reservation);
  - Sec. 24;
  - Secs. 25, 26 and 28 (Portion located outside of the Fort Apache Indian Reservation);
  - Secs. 29 and 30;
  - Secs. 31 to 33; inclusive (Portion located outside of the Fort Apache Indian Reservation).
- T. 9 N., R. 21 E., (Portion located outside of the Fort Apache Indian Reservation).
- T. 10 N., R. 21 E.,
  - Secs. 19 to 22, inclusive;
  - Sec. 25, NW¼NW¼NE¼NE¼, N½N½NW¼NE¼, W½NW¼SW¼NE¼, SW¼SW¼NE¼, W½SE¼SW¼NE¼, E½E½NW¼, N½NW¼NE¼NW¼, N½S½NW¼NE¼NW¼, N½N½NW¼NW¼, N½S½N½NW¼NW¼, N½NE¼NE¼SW¼, SW¼NE¼NE¼SW¼, SE¼NW¼NE¼SW¼, E½SW¼NE¼SW¼, SW¼SW¼, W½W½SE¼SW¼, NE¼NW¼SE¼SW¼, NW¼NE¼SE¼SW¼, N½NW¼NW¼SE¼, NW¼NE¼NW¼SE¼, SE¼NE¼NW¼SE¼, E½SE¼NW¼SE¼, E½E½SW¼SE¼, S½N½NE¼SE¼, S½NE¼SE¼, and SE¼SE¼;
  - Secs. 26 to 29, inclusive;
  - Secs. 30 to 33, inclusive (Portion located outside of the Fort Apache Indian Reservation);
  - Secs. 34 to 36, inclusive.
- T. 9 N., R. 22 E.,
  - Secs. 1 to 3, inclusive;
  - Secs. 6 and 7 (Portion located outside of the Fort Apache Indian Reservation);
  - Sec. 9;
  - Sec. 10, E½, E½W½, W½NW¼, W½W½SW¼, W½E½W½SW¼;
  - Secs. 11 and 12.
- T. 10 N., R. 22 E.,
  - Secs. 28, 31, 34 and 35.
- T. 8 N., R. 23 E.,
  - Sec. 2;
  - Secs. 11 and 12 (Portion located outside of the Fort Apache Indian Reservation).
- T. 9 N., R. 23, E.,
  - Secs. 7 to 9, inclusive;
  - Secs. 16 to 21, inclusive;
  - Secs. 28, 29 and 33;
  - Sec. 34, W½.

The areas described aggregate 49,206 acres in Navajo County.

3. At 10 a.m. on October 16, 1995, the Forest Service lands described in paragraphs 1 and 2 shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry for nonmetalliferous minerals under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. The lands located within the San Carlos Indian Reservation will not be opened since reservation lands are not subject to entry under the general land laws or the United States mining laws.

Dated: September 5, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–22916 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–32–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–73; RM–8568]

Radio Broadcasting Services; Boonville and Fayette, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230C3 for Channel 230A at Boonville, Missouri, reallots the Channel to Fayette, Missouri, and modifies the license for Station KTLH to specify operation on Channel 230C3 at Fayette, Missouri, in response to a petition filed by Big Country of Missouri. *See* 60 FR 29816, June 6, 1995. The coordinates for Channel 230C3 at Fayette are 39–05–00 and 92–28–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 95–73, adopted September 1, 1995, and released September 12, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Boonville, Channel 230A, and adding Fayette, Channel 230C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22945 Filed 9–14–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–113; RM–8514, RM–8517, RM–8569 and RM–8570]

Radio Broadcasting Services; Cape Girardeau, Chaffee, Scott City and Miner, MO and Union City, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 296A to Miner, Missouri, as a first local service, in response to a proposal filed by Stephen W. Sikes (RM–8570) and Channel 230A to Scott City, Missouri, as a first local service, in response to a proposal filed by Scott City Broadcasters (RM–8569). *See* 59 FR 50886, October 6, 1994. The coordinates for Channel 296A at Miner are 36–55–14 and 89–40–00 and the coordinates for Channel 230A at Scott City are 37–13–00 and 89–31–28. The proposal filed by Kevin G. Greaser, RM–8514, to add Channel 230A to Cape Girardeau, Missouri, has been dismissed. The proposal filed by Twin States Broadcasting, Inc. to substitute Channel 284C2 for Channel 285A at Union city, Tennessee and substitute Channel 230A for Channel 284A at Chaffee, Missouri, has also been dismissed (RM–8517). With this action, this proceeding is terminated.

DATES: Effective October 27, 1995. The window period for filing applications will open on October 27, 1995, and close on November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 94–113, adopted September 1, 1995, and released September 12, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Miner, Channel 296A and Scott City, Channel 230A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22944 Filed 9–14–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 76

[MM Docket Nos. 92–266 and 93–215; FCC 95–196]

Cable Act of 1992—Small Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; notice of effective date.

SUBJECT: FCC Form 1230 Approved by Office of Management and Budget.

SUMMARY: The FCC Form 1230 was approved by the Office of Management and Budget on August 21, 1995. That date also serves as the effective date for the rules and regulations adopted in the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation. The Sixth Report and Order amends definitions of small cable entities to encompass a broader range of cable systems that are eligible for special rate and administrative treatment. To implement these rule changes, the Commission created the FCC Form 1230. In introducing the FCC Form 1230 and new simplified small system rate relief, the Commission continues its ongoing efforts to offer small cable companies administrative relief from rate regulation in furtherance of congressional intent.

DATES: Regulations published in MM Doc Nos. 92–266 and 93–215 published on July 12, 1995 (60 FR 35854) are effective August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Power at (202) 416–0877.

SUPPLEMENTARY INFORMATION: On June 5, 1995, the Commission released the Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation ("Sixth Report and Order"), 60 FR 35854 (July 12, 1995). Copies of FCC Form 1230 can be obtained from the Commission's duplicating contractor, International Transcription Service (ITS), at (202) 857–3800; and free of charge from Garcia Consulting, Inc., at (202) 416–0919. Copies can also be obtained via the Commission's Fax on Demand System. To obtain faxed copies, contact (202) 418–0177 from the handset on your fax machine and enter the document retrieval number 001230 when prompted by the system. Assistance with the Fax on Demand System can be obtained by calling Dorothy Conway at (202) 418–0217.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22835 Filed 9–14–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. 95–45; Notice 2]

Passenger Automobile Average Fuel Economy Standards; MedNet Incorporated; Final Decision

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final decision.

SUMMARY: This decision responds to a petition filed by MedNet Incorporated (MedNet) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 1996 through 1998, and that lower alternative standards be established for it for each of these model years. This decision exempts MedNet and establishes an alternative standard of 17.0 mpg for MY 1996, MY 1997, and MY 1998.

DATES: Effective date: October 30, 1995. This exemption and the alternative standards apply to MedNet for MYs 1996, 1997, and 1998. Petitions for reconsideration must be submitted by October 16, 1995.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590. It is requested, but not required, that 10 copies be provided.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590. Ms. Spinner's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION: NHTSA is exempting MedNet from the generally applicable average fuel economy standard for 1996, 1997, and 1998 model years and establishing alternative standards applicable to MedNet for each of these model years. This exemption is issued under the authority of 49 U.S.C. 32902(d), providing that NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility

(2) Economic practicability

(3) The effect of other Federal motor vehicle standards on fuel economy, and

(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that it would not be technologically feasible and economically practicable for MedNet to improve the fuel economy of its vehicles in MY 1996 through 1998 above an average of 17.0 mpg for MY 1996, 17.0 mpg for MY 1997, and 17.0 mpg for MY 1998 and that the maximum feasible average fuel economy for MedNet is 17.0 mpg in MY 1996, 17.0 mpg in MY 1997, and 17.0 mpg in MY 1998. (60 FR 31937) No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for MedNet in each of MYs 1996, 1997, and 1998 is 17.0 mpg, that other Federal motor vehicle safety standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the nation's need to conserve energy will not be affected by granting this exemption, NHTSA hereby exempts MedNet from the generally applicable passenger automobile average fuel economy standard for the 1996, 1997, and 1998 model years and establishes an alternative standard of 17.0 mpg for MedNet for each of these years.

NHTSA has analyzed this decision and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the proposal would not establish a "rule," which is defined in the Executive Order as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it would apply only to MedNet, Inc., as discussed in this decision. Under DOT regulatory policies and procedures, this decision is not a "significant regulation." If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this exemption is that MedNet will not be required to pay civil penalties if it achieves a CAFE level equivalent to the alternative standard published in this notice. Since this decision sets an alternative standard at the level determined to be MedNet's maximum feasible level for MYs 1996 through 1998, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large are minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the decision and alternative standards. Further, since MedNet's MY 1996, 1997, and 1998 automobiles cannot achieve better fuel economy than 17.0 mpg, granting this exemption will not affect the amount of fuel used.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant impact on a substantial number of small entities. This decision does not impose any burdens on MedNet. It does relieve the company from having to pay civil penalties for noncompliance with the generally applicable standard for MY's 1996, 1997, and 1998. Since the price of 1996, 1997, and 1998 MedNet automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor Vehicles.

In consideration of the foregoing, 49 CFR part 531 is amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 is revised to read as follows:

Authority: 49 U.S.C. 32902; Delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) is republished for the convenience of the reader and paragraph (b)(12) is added to read as follows:

VOL 60
SS 179
SE 15
995
MI

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(12) MedNet, Inc.

Model year	Average fuel economy standard (miles per gallon)
1996	17.0
1997	17.0
1998	17.0

Issued on: September 12, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–22998 Filed 9–14–95; 8:45 am]

BILLING CODE 4910-59-P

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49 CFR Part 583

[Docket No. 92–64; Notice 07]

RIN 2127–AG03

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; further response to petitions for reconsideration.

SUMMARY: The American Automobile Labeling Act requires passenger cars and other light vehicles to be labeled with information about their domestic and foreign content. This document responds to several petitions for reconsideration of the agency's July 1994 final rule implementing that statute. NHTSA is making several changes to the final rule in response to the petitions, which will reduce the burdens associated with making content calculations and also result in more accurate information. The agency has also decided not to make a number of the changes requested by the petitions.

DATES: *Effective date.* The amendments made by this rule are effective October 16, 1995.

Petitions for reconsideration. Petitions for reconsideration must be received not later than October 16, 1995.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Safety Administration, Room 5313, 400 Seventh Street SW, Washington, DC 20590 (202–366–0846).

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I. Background

A. Statutory Requirements

Congress enacted the American Automobile Labeling Act (Labeling Act) as part of the Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1993, P.L. 102–388. The Labeling Act amended Title II of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 210.

Subsequently, on July 5, 1994, the President signed a bill (P.L. 103–272) which revised and codified "without substantive change" the Cost Savings Act and two other NHTSA statutes. The content labeling provisions, which formerly existed as section 210 of the Cost Savings Act, are now codified at 49 U.S.C. § 32304, Passenger motor vehicle country of origin labeling. NHTSA will use the new statutory citations in this notice.

Section 32304 requires passenger motor vehicles[1] manufactured on or after October 1, 1994 to be labeled with information about their domestic and foreign content. The purpose of the section is to enable consumers to take country of origin information into account in deciding which vehicle to purchase.

Section 32304(b) requires each new passenger motor vehicle to be labeled with the following five items of information:

(1) The percentage U.S./Canadian equipment (parts) content;

(2) The names of any countries[2] other than the U.S. and Canada which individually contribute 15 percent or more of the equipment content, and the percentage content for each such country;

(3) The final assembly place by city, state (where appropriate), and country;

(4) The country of origin of the engine; and

(5) The country of origin of the transmission.

Section 32304(b) specifies that the first two items of information, the equipment content percentages for the U.S./Canada and foreign countries, are calculated on a "carline" basis rather than for each individual vehicle. The term "carline" refers to a name of a group of vehicles which has a degree of commonality in construction such as body and chassis.

Manufacturers of passenger motor vehicles are required to establish the required information annually for each model year, and are responsible for the affixing of the required label to the vehicle. Dealers are responsible for maintaining the labels.

In order to calculate the information required for the label, the vehicle manufacturer must know certain information about the origin of each item of passenger motor vehicle equipment used to assemble its vehicles. For example, in order to calculate the information for the first item of the label, i.e., the percentage of the value of the motor vehicle equipment installed on passenger motor vehicles within a carline which originated in the U.S./Canada, the manufacturer must know the U.S./Canadian content of each item of motor vehicle equipment.

The statute specifies that suppliers of passenger motor vehicle equipment must provide information about the origin of the equipment they supply. For purposes of determining U.S./Canadian origin for the first item on the label, the statute provides different procedures depending on whether equipment is received from an allied supplier (a supplier wholly owned by the manufacturer) or an outside supplier.

For equipment received from outside suppliers, section 32304(a)(9)(A) provides that the equipment is considered U.S./Canadian if it contains at least 70 percent value added in the U.S./Canada. Thus, any equipment that is at least 70 percent U.S./Canadian is valued at 100 percent U.S./Canadian, and any equipment under 70 percent is valued at zero percent. This statutory provision is sometimes referred to as the "roll-up, roll-down" provision. For equipment received from allied suppliers, section 32304(a)(9)(B) provides that the actual amount of U.S./Canadian content is used.

The statute requires the Department of Transportation to promulgate regulations implementing the content labeling requirements. Section 32304(d) requires the promulgation of regulations which specify the form and content of the required labels, and the manner and location in which the labels must be affixed. Section 32304(e) requires promulgation of such regulations as may be necessary to carry out the labeling requirements, including regulations to establish a procedure to verify the required labeling information. That section also directs that such regulations provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign content and U.S/Canadian origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers. Finally, section 32304(e) also specifies that the regulations include provisions requiring suppliers to certify whether their equipment is of U.S., U.S./Canadian, or foreign origin.

B. July 1994 Final Rule

On July 21, 1994, NHTSA published in the **Federal Register** (59 FR 37294) a final rule establishing a new regulation, 49 CFR Part 583, Automobile Parts Content Labeling, to implement the Labeling Act. The regulation established requirements for (1) manufacturers of passenger motor vehicles; (2) suppliers of motor vehicle equipment used in the assembly of passenger motor vehicles; and (3) dealers of passenger motor vehicles. A summary of the requirements is set forth below.

1. Manufacturers of Passenger Motor Vehicles

Vehicle manufacturers are required to affix to all new passenger motor vehicles a label which provides the following information:

(1) *U.S./Canadian Parts Content*—the overall percentage, by value, of the U.S./Canadian content of the motor vehicle equipment installed on the carline of which the vehicle is a part;

(2) *Major Sources of Foreign Parts Content*—the names of the two countries, if any, other than the U.S./Canada, which contributed the greatest amount (at least 15 percent), by value, of motor vehicle equipment for the carline, and the percentage, by value, of the equipment originating in each such country;

(3) *Final Assembly Point*—the city, state (where appropriate), and country in which the final assembly of the vehicle occurred;

(4) *Country of Origin for the Engine Parts;*

(5) *Country of Origin for the Transmission Parts.*

The label is also required to include a statement below this information reading as follows:

> **Note:** Parts content does not include final assembly, distribution, or other non-parts costs.

Manufacturers are permitted, but not required, to provide at the end of the note the following additional statement for carlines assembled in the U.S. and/or Canada, and another country:

> This carline is assembled in the U.S. and/or Canada, and in [insert name of each other country]. The U.S./Canadian parts content for the portion of the carline assembled in [insert name of country, treating the U.S. and Canada together, i.e., U.S./Canada] is [ ]%.

The information for items (1) and (2) of the label is calculated, prior to the beginning of the model year, for each carline. The information for items (3), (4) and (5) is determined for each individual vehicle. However, the country of origin for groups of engines and transmissions is determined once a model year.

Vehicle manufacturers are to calculate the information for the label, relying on information provided to them by suppliers. Under the final rule, manufacturers and allied suppliers are required to request their suppliers to provide the relevant content information specified in Part 583, and the suppliers are required to provide the specified information in response to such requests. The vehicle manufacturers are required to maintain records of the information used to determine the information provided on the labels.

2. Suppliers of Motor Vehicle Equipment

For any equipment that an outside supplier (a supplier not wholly owned by the vehicle manufacturer) supplies to a vehicle manufacturer, a supplier wholly owned by the vehicle manufacturer (an allied supplier) or, in the case of a joint venture vehicle assembly arrangement, a supplier that is wholly owned by one member of the joint venture arrangement, the outside supplier is required to provide, at the request of that manufacturer or allied supplier, the following information:

(1) the price of the equipment to the manufacturer or allied supplier;

(2) whether the equipment has, or does not have, at least 70 percent of its value added in the U.S. and Canada;

(3) for any equipment for which the U.S./Canadian content is less than 70 percent, the country of origin of the equipment (treating the U.S. and Canada together);

(4) for equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

For any equipment that an allied supplier supplies to a vehicle manufacturer, the supplier is required to provide, at the request of the manufacturer, the following information:

(1) the price of the equipment to the manufacturer;

(2) the percentage U.S./Canadian content of the equipment;

(3) the country of origin of the equipment (treating the U.S. and Canada together);

(4) for equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

A supplier of engines and transmissions is, in addition to the above requirements, required to provide, at the request of the vehicle manufacturer, the country of origin for each engine or transmission it supplies to the manufacturer, determined as follows: the country in which the greatest percentage, by value (using the total cost of *equipment* to the engine or transmission supplier, while excluding the cost of final assembly labor), was added to the engine or transmission.

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[1] The term "passenger motor vehicle," defined in 49 U.S.C. 32101 as a motor vehicle with motive power designed to carry not more than 12 individuals, is amended for purposes of section 32304 to include any "multipurpose vehicle" and "light duty truck" that is rated at not more than 8,500 pounds gross vehicle weight. Thus, the motor vehicle content labeling requirements apply to passenger cars, light trucks, multipurpose passenger vehicles, and certain small buses. Motorcycles are excluded.

[2] If there are more than two such countries, only the names of the two countries providing the greatest amount of content need be listed.

Both outside and allied suppliers that directly supply equipment to vehicle manufacturers are required to provide the specified information directly to the vehicle manufacturers, in the form of a certification. Outside suppliers that directly supply to allied suppliers are required to provide the specified information and certification directly to the allied suppliers. Suppliers are also required to maintain records of the information used to compile the information provided to the manufacturers and outside suppliers.

The requirements apply only to suppliers which supply directly to the vehicle manufacturer or to an allied supplier. No requirements are imposed on suppliers earlier in the chain, *e.g.*, a company which supplies an item of equipment to an outside supplier which then supplies it to a vehicle manufacturer.

3. Dealers of Passenger Motor Vehicles

Dealers are required to maintain the label on each vehicle until the vehicle is sold to a consumer.

II. Petitions for Reconsideration

NHTSA received petitions for reconsideration from the American Automobile Manufacturers Association (AAMA), General Motors (GM), the Association of International Automobile Manufacturers (AIAM), Volkswagen (VW), the American International Automobile Dealers Association (AIADA), and the Kentucky Cabinet for Economic Development (Kentucky Cabinet). A summary of these petitions follows.

AAMA argued that certain requirements specified in section 583.6, *Procedure for determining U.S./Canadian parts content*, result in U.S./Canadian content being understated and impose costly and unnecessary burdens on manufacturers and suppliers. That organization identified three major issues.

First, AAMA was concerned that section 583.6 provides that materials used by a supplier located in the U.S./Canada are considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. AAMA stated that suppliers may avoid the costly process of tracing simply by defaulting U.S./Canadian content to zero, with the result that U.S./Canadian content will be understated. That organization urged that the regulation allow first-tier suppliers to use methods other than tracing to accurately calculate a material's U.S./Canadian value added.

Second, AAMA was concerned that the U.S./Canadian content of components must be defaulted to zero if suppliers fail to respond to a manufacturer's or allied supplier's request for content information. That organization argued that the content information ultimately provided to consumers will be more accurate if manufacturers are permitted to establish the U.S./Canadian content of a component by other means when a supplier fails to respond.

Third, AAMA was concerned that section 583.6 specifies that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S./Canada for that material or equipment is considered zero, even if part of the material originated in the U.S. or Canada. AAMA argued that this provision is inconsistent with the Labeling Act's definition of "foreign." It also noted that if a manufacturer installed identical parts both in a vehicle assembled in the U.S or Canada and in one assembled in a third country, the two parts would have different U.S./Canadian content. AAMA urged that if a manufacturer is able to identify the U.S./Canadian content, it should be permitted to include the actual U.S./Canadian content of the imported component in the calculations.

AAMA recommended specific changes to Part 583 in light of the three major issues it identified. That organization also recommended a number of other changes to provide clarification.

GM joined in the AAMA petition and also submitted a separate petition urging the agency to permit manufacturers to use alternative procedures to determine U.S./Canadian parts content. That company expressed concern that Part 583 requires it to collect content data on millions of unique part numbers when tracing beyond the first tier of suppliers is required. According to GM, this represents the most burdensome and costly procedure possible, even more burdensome than any other trade-related content data requirements administered by any other U.S. government entity.

With respect to AAMA's and GM's petitions, NHTSA notes that the FY 1995 Conference Report on DOT Appropriations included the following language:

> The conferees are aware that several petitions for reconsideration have been submitted to NHTSA since the publication of the final rule. Among the issues raised in the petitions are whether it is consistent with the Act that the final rule requires that a first-tier supplier of equipment produced or assembled in the U.S. or Canada must consider material used in that equipment to have zero U.S./Canadian content unless the material's U.S./Canadian value has been verified by full tracing to its origin, and that a manufacturer or supplier that does not receive information from its suppliers concerning the U.S./Canadian content of equipment must consider the U.S./Canadian value of the equipment to be zero.
>
> These provisions of the final rule will not ensure that the most accurate, understandable, and cost-effective information is provided to consumers, and thus contradict the expressed intent of Congress in passing the AALA. Therefore, the conferees direct NHTSA to amend the final rule to permit first-tier suppliers to use other methods, such as country-of-origin marking, substantial transformation, or other customs data in their records, to determine the U.S./Canadian content of equipment, and manufacturers and allied suppliers to use other methods to determine U.S./Canadian content of equipment when suppliers fail to provide adequate information.
>
> Furthermore, to ensure that the final rule does not impose costly and unnecessary burdens on manufacturers, the conferees also direct NHTSA to amend the rule to allow manufacturers to propose alternative procedures for determining domestic content if such procedures produce reliable results.

NHTSA notes that the inclusion of this language in an Appropriations Report does not have the effect of changing the existing statute or the agency's duty to follow that statute. The agency will respectfully treat this language as expressing the sentiment of Congress as to how the issues raised by the petitions for reconsideration should be resolved.

AIAM raised four issues in its petition for reconsideration. First, that organization stated that NHTSA did not respond to its comment on the NPRM urging that the regulation provide that any state action which challenges the information provided on the label is Federally preempted. Second, AIAM argued that the regulation contains an overly broad interpretation of the term "final assembly." That organization stated that the definition includes within its scope (and thereby excludes from U.S./Canada parts content) assembly operations that are not performed on the motor vehicle but instead on parts and components of that motor vehicle. Third, AIAM argued that the provision in the regulation concerning tracing back to raw materials is inconsistent with the language of the Labeling Act and also outside the scope of notice of the NPRM. Finally, AIAM argued that a provision in the regulation which specifies that major foreign source percentages are "rounded down" to bring the combined total of U.S./Canadian and major foreign source content to no higher than 100 percent is

outside NHTSA's authority under the Labeling Act.

VW, a member of AIAM, submitted a separate petition requesting that NHTSA reconsider its determination that it is statutorily prohibited from permitting manufacturers selling motor vehicles with minimal U.S./Canadian parts content to state that fact rather than providing specific content numbers. That manufacturer cited the case of *Alabama Power Company* v. *Costle*, 636 F.2d 323 (1979), in support of its request.

AIADA requested that the agency "reconsider and vacate its final rule on Motor Vehicle Content Labeling." That organization stated that the rule is unconstitutionally vague and unequal and discriminatory in its application and therefore constitutes a denial of due process in violation of the Fifth Amendment to the Constitution and the Administrative Procedure Act. It also cited its comments to the agency on the NPRM and on an earlier request for comments but did not provide any other arguments or analysis in support of its petition.

The Kentucky Cabinet argued that the tracing provisions included in the final rule impose unnecessary administrative burdens on the Kentucky automotive industry. It expressed concern that companies will be required to undergo expensive and time-consuming efforts to trace a part back to raw materials. It also stated that in some cases a second tier supplier may not want to divulge proprietary information. The Kentucky Cabinet also expressed concern that the calculations for domestic content do not include the value of labor performed by Kentuckians. It stated that consumers will be forced to make purchasing decisions based on information that does not reflect the actual amount of domestic content. The Kentucky Cabinet specifically expressed concern about the exclusion of final assembly in the calculation of domestic content. It stated that an automotive manufacturer which does substantial "in-house" final assembly will not be able to include the full value of domestic parts and therefore be at a competitive disadvantage.

III. Initial Response to Petitions

In a notice published March 16, 1995 (60 FR 14228), the agency partially responded to the petitions for reconsideration by extending a temporary alternative approach for data collection and calculations. This approach permits manufacturers and suppliers to use procedures that are expected to yield similar results. This alternative was originally available, under the July 1994 final rule, for model year 1995 and model year 1996 carlines which were first offered for sale to ultimate purchasers before June 1, 1995. The notice extended the alternative to all model year 1996 carlines and model year 1997 carlines which are first offered for sale to ultimate purchasers before June 1, 1996.

IV. Overview of Further Response to Petitions

In response to the petitions for reconsideration, NHTSA is making several changes in Part 583. These changes include:

(1) Providing that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S. or Canada is presumed zero, but that if documentation is available to the supplier which identifies value added in the U.S. or Canada for that equipment, such value added in the U.S. or Canada is counted;

(2) Amending the clarifying procedures concerning the determination of U.S./Canadian content to (a) make it clear that, for materials used by suppliers in producing passenger motor vehicle equipment (other than for materials imported from third countries), suppliers are to make a good faith estimate of the value added in the United States or Canada (to the extent necessary to make required determinations concerning the value added in the U.S./Canada of their passenger motor vehicle equipment), (b) provide suppliers greater flexibility in the information they can use in making these estimates, and (c) reduce the number of stages for which suppliers must consider where value was added (although not to the degree recommended by AAMA);

(3) Providing that manufacturers can petition to use alternative calculation procedures based on representative or statistical sampling to determine U.S./Canadian parts content and major sources of foreign parts content; and

(4) Several minor clarifying changes.

NHTSA is granting the petitions to the extent that they are accommodated by these changes; the agency is otherwise denying the petitions.

V. Response to Petitions

In this section, NHTSA presents its analysis of the issues raised by the petitioners and its response. The major issues are organized according to the sections of the final rule to which they relate.

A. Definition of Final Assembly (Section 583.4)

Section 32304(a)(15) provides that "costs incurred or profits made at the final assembly place and beyond (including advertising, assembly, labor, interest payments, and profits)" are excluded from the calculation of parts content. In earlier notices, NHTSA recognized that manufacturers may conduct some pre-assembly operations, e.g., production of parts, at the same location as final assembly. The agency included a definition of "final assembly" in the final rule to distinguish between production of parts, for which labor and other costs are included in parts content calculations, and final assembly, for which labor and other costs are not included.

Two of the petitions for reconsideration addressed the exclusion of final assembly costs from the calculation of U.S./Canadian parts content and/or the final rule's definition of final assembly. As indicated above, the Kentucky Cabinet expressed concern that the calculations for domestic content do not include the value of labor performed by Kentuckians. It stated that consumers will be forced to make purchasing decisions based on information that does not reflect the actual amount of domestic content. The Kentucky Cabinet expressed specific concern about the exclusion of final assembly costs in the calculation of domestic content. It stated that an automotive manufacturer which does substantial "in-house" final assembly will not be able to include the full value of domestic parts and therefore be at a competitive disadvantage.

AIAM argued that the final rule contains an overly broad interpretation of the term "final assembly" that will mislead the motor vehicle purchaser to believe that the value of many auto parts made in-house by a U.S. motor vehicle manufacturer are not part of the U.S./Canadian parts content of the vehicle. It argued that the rule creates an unfair and anomalous situation, since a manufacturer that assembles a large number of components to produce a complex piece of equipment (other than an engine or transmission) must exclude the assembled value of that item from the reported U.S./Canadian parts content of the motor vehicle, while a less integrated manufacturer that obtained the same piece of equipment from an outside supplier in the United States or Canada would include its entire value in the U.S./Canada parts content of the vehicle if the "70 percent" test was met. AIAM also argued that the definition of "final assembly" is so broad that it includes within its scope (and thereby excludes from U.S./Canada parts content) assembly operations that are not performed on the motor vehicle but instead are performed on parts and components of that motor vehicle. AIAM alleged that there is no statutory basis, or even a rational one, to exclude substantial U.S. value added to in-house produced components other than engines and transmissions.

With respect to the Kentucky Cabinet's concerns about excluding final assembly costs, including the exclusion of the value of labor performed by Kentuckians, in the calculation of U.S./Canadian parts content, NHTSA notes that Congress decided to require manufacturers to provide prospective passenger motor purchasers with calculations of parts content rather than overall vehicle content. As indicated above, the statute specifically provides that final assembly costs, including labor costs, are excluded from these calculations. NHTSA does not have the authority to depart from the statute. The agency observes, however, that the value of final assembly labor is reflected on the label since the final assembly point is specified by city, state and country. Thus, prospective purchasers will know whether the vehicle they are considering purchasing was assembled in Kentucky.

With respect to AIAM's concerns about the final rule's definition of "final assembly," NHTSA notes that numerous commenters on the NPRM addressed this subject, and the agency discussed it at length in the preamble to the final rule. In its petition, AIAM did not address the agency's extensive analysis of this issue. The agency will repeat a portion of that discussion in this notice (the statutory references in the quoted language have been superseded, but the substance has not changed):

> The starting place for resolving the question of what operations should be considered to be part of "final assembly" and therefore excluded from parts content calculations is the language of the Labeling Act. The Act includes several relevant sections. First, section 210(b)(1)(A) provides that the label must indicate "the percentage (by value) of passenger motor vehicle equipment installed in such vehicle within a carline which originated in the United States and Canada . . . ." Second, section 210(f)(10) provides that "(c)osts incurred or profits made *at the final vehicle assembly point* and beyond (i.e., advertising, assembly, labor, interest payments, profits, etc.) shall not be included in [the calculation of value added in the United States and Canada]." Third, section 210(f)(14) defines "final assembly point" as "the plant, factory, or other *place* at which a new passenger motor vehicle is produced or assembled by a manufacturer and *from* which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle . . . ." (Emphasis added.).
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> While final assembly point can be considered as either a physical place or a phase in the assembly process, it is significant that section 210 defines it as a place, i.e., the plant, factory, or other place at which a new vehicle is produced or assembled. Thus, looking at the plain language of section 210, assembly and labor costs "at" the plant, factory or other place at which a new vehicle is assembled are excluded from parts content calculations.
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> It is also significant that the language in section 210(f)(14) about the vehicle being in such a condition that "all component parts necessary to the mechanical operation of such automobile are included with such vehicle" refers to the vehicle when it leaves the final assembly point for delivery to a dealer or importer. In citing this language for the proposition that "final assembly" is defined in terms of completeness, AIAM and Toyota confuse the completion of final assembly with the final assembly process. Section 210(f)(14) defines "final assembly point" as the plant, factory, or other place at which a vehicle is "produced or assembled" by a manufacturer. All of the operations that make up the production or assembly process are part of final assembly. There is no basis to interpret section 210(f)(10)'s requirement that assembly and labor costs incurred "at the plant, factory or other place" at which a new vehicle is assembled only applies to the costs associated with the last step in completing the vehicle.
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> Since section 210 expressly provides that assembly and labor costs at the plant, factory or other place at which a new vehicle is assembled are excluded from parts content calculations, NHTSA believes that all assembly and labor costs that are ordinarily associated with final assembly must be excluded. However, the agency believes that the costs associated with parts production that may occur at a final assembly plant should not be excluded from parts content calculations. . . .
>
> . . . A failure to consider parts produced at the final assembly plant as "passenger motor vehicle equipment" would result in significant differences among manufacturers. Further, if a plant were very highly integrated, it could result in a situation where the parts content percentages do not reflect the greater number of a vehicle's parts.
>
> At the same time, however, NHTSA must give full effect to the Congressional intent to exclude the costs of final assembly from parts content calculations. The agency believes that the best way to accomplish this is the method suggested by AAMA: define "final assembly" to include all operations involved in the assembly of the vehicle performed at the final assembly point (the final assembly plant), including but not limited to assembly of body panels, painting, final chassis assembly, and trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using stamping, machining or molding processes.
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> Under this approach, all costs incurred at the final assembly plant are excluded except for those that are incurred in producing either engines/transmissions or in producing parts using forming processes such as stamping, machining or molding. In addition to ensuring that final assembly costs are excluded as required by section 210, the agency also believes that a definition along these lines is much clearer than the proposed definition. For example, this type of definition will not raise issues concerning whether a part is assembled on the main assembly line or off of it.
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> NHTSA cannot accept the recommendation of foreign vehicle manufacturers to define final assembly as starting at the time when the engine and body are fastened together. Under such a definition, manufacturers could add the engine to the body as the last step in assembling the vehicle, thereby reducing final assembly costs to a nullity. Such an approach would be inconsistent with the statutory requirement to exclude assembly and labor costs at the final assembly plant from parts content calculations.

The arguments raised in AIAM's petition for reconsideration do not lead the agency to change the definition of "final assembly." That organization argued that the definition includes within its scope assembly operations that are not performed on the motor vehicle but instead are performed on parts and components of that motor vehicle. However, this is an incorrect distinction. AIAM views final assembly as performing operations on a vehicle when, in fact, the final assembly process consists of assembling parts to produce a vehicle.

NHTSA recognizes that there are many levels of "parts." For example, any individual item that is used in the assembly of a chassis is a "part," yet the chassis as a whole can also be called a "part." It appears that AIAM would like almost all assembly that takes place at the final assembly plant to be outside the definition of final assembly and instead be considered parts production, so that the costs of such assembly are included within the parts content calculations.

However, NHTSA must give effect to section 32304(a)(15)'s requirement that costs incurred at the final assembly place, including assembly and labor, are excluded from the calculation of parts content. As discussed in the above-quoted section of the final rule preamble, the agency believes that all assembly and labor costs that are ordinarily associated with final assembly must be excluded.

NHTSA believes that the definition of final assembly included in the final rule strikes an appropriate balance in distinguishing between parts production

at a final assembly plant and final assembly. First, all costs associated with producing engines and transmissions are excluded from the definition of final assembly, and hence counted as parts content. These are very expensive parts, and it is common both for manufacturers to assemble them at vehicle final assembly plants and to assemble them at separate plants. Therefore, including these costs in parts content, notwithstanding the fact that these items may have been produced at a final assembly plant, helps maintain comparability of the information provided on the labels of different vehicles.

Second, all costs incurred in producing parts using forming processes such as stamping, machining or molding are excluded from the definition of final assembly. The production of parts using forming processes is not assembly, and these operations are thus readily distinguishable from final assembly.

All other costs incurred at the final assembly plant are included within the definition of final assembly, and are thus not included in parts content. These costs basically reflect all assembly costs at the final assembly plant other than those associated with producing engines and transmissions. NHTSA believes that the bulk of these costs, e.g., assembling body panels, building up the chassis, etc., come within the generally understood meaning of final assembly and must therefore be excluded from parts content calculations under the statute.

NHTSA notes that AIAM did not provide specific details or examples about differences between more integrated and less integrated manufacturers. Since manufacturing processes differ among manufacturers, it is inevitable that some differences will be reflected on the label. However, the final's rule inclusion of all costs associated with engine/transmission production and production of parts using forming processes within parts content will reduce such differences.

B. Procedure for Determining U.S./Canadian Parts Content (Section 583.6)

Section 583.6 of the final rule specifies a procedure for determining U.S./Canadian parts content. A number of the major issues raised by the petitioners for reconsideration relate to this section.

1. Calculation by Suppliers of the Portion of their Equipment's Value that Represents Value Added in the U.S./Canada

One of the major issues addressed in the final rule was how suppliers are to calculate the portion of their equipment's value that represents value added in the U.S./Canada. It is necessary for suppliers to make such calculations[3] since the Labeling Act provides that determinations of U.S./Canadian parts content are based on the value added in the U.S./Canada of the equipment used to assemble vehicles within a carline.

As part of avoiding unnecessary costs and keeping the regulatory scheme as simple as possible, NHTSA decided to limit tracking and reporting requirements to "first-tier" suppliers (including both suppliers which deliver equipment to the vehicle manufacturer itself and ones which deliver equipment to an allied supplier). The agency noted in the NPRM, however, that suppliers which are subject to the information requirements may need in some cases to arrange to obtain information from their suppliers.

Commenters on the NPRM raised a number of issues about how suppliers are to make the required determinations about U.S./Canadian content. NHTSA therefore included in the final rule clarifying procedures concerning the determination of value added in the U.S./Canada.

NHTSA recognized that the basic way suppliers add value in the U.S./Canada is by producing or assembling passenger motor vehicle equipment within the territorial borders of the United States or Canada. The final rule (§ 583.6(c)(4)(ii)) therefore specified that, in determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada, the cost of all foreign materials is subtracted from the total value (e.g., the price paid at the final assembly plant) of the equipment. The procedures specified that material is considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. As explained in the final rule preamble, under this approach, neither suppliers nor anyone else is required to trace the value added in the United States or Canada back to raw materials; however, any portion of the cost of a material which is not traced to value added in the United States or Canada is considered foreign.

The clarifying procedures (§ 583.6(c)(4)(ii) and (iv)) also provided that for any material or equipment which is imported into the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of the material originated in the United States or Canada. NHTSA stated that, for purposes of simplicity and consistency, it believed it appropriate to deem any materials which are imported in the United States or Canada from a third country as foreign. The agency did not believe that any attempt to separate out the possible portion of such materials that may have originated in the United States or Canada would provide significantly more useful information to the consumer.

The petitioners for reconsideration raised concerns about both the tracing provision and the provision deeming any equipment or materials which are imported into the United States or Canada from a third country as foreign. The agency will discuss the latter concern first.

a. *Issues concerning equipment or materials imported into the U.S. or Canada.* AAMA argued that the final rule's provisions stipulating that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S. or Canada is zero, even if part of the material originated in the U.S. or Canada, are inconsistent with the Labeling Act's definition of "foreign." That organization noted that section 210(f)(16) defined foreign or foreign content as "passenger motor vehicle equipment not determined to be U.S./Canadian origin." (This reference has been superseded by 49 U.S.C. 32304(a)(6).) AAMA believed that the provisions at issue are inconsistent with that section since a portion of the value of the material or equipment could be determined to be of U.S./Canadian origin. AAMA also noted that if a manufacturer installed identical parts both in a vehicle assembled in the U.S or Canada and in one assembled in a third country, the two parts would have different U.S./Canadian content.

In additional information provided to the agency in support of its petition, AAMA cited a specific example of the consequences of these provisions. In the example, it was assumed that $800 of U.S. engine parts were shipped abroad to the foreign engine assembly plant of an allied supplier. If the engine were shipped back to the U.S., it would be

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[3] As noted in the final rule preamble, however, only allied suppliers typically need to calculate actual value added in the U.S./Canada of their equipment. 59 FR 37309. As a result of the roll-up, roll-down provision, outside suppliers only need to determine whether the value added in the U.S./Canada is at least 70 percent or not. In order to make this determination, of course, outside suppliers need to understand how value added in the U.S./Canada is calculated. Moreover, if the value added in the U.S./Canada of their equipment is close to 70 percent, outside suppliers will need to calculate actual value added.

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considered to have $0 U.S./Canadian content. This would occur as a result of the provision which specifies that any motor vehicle equipment imported into the U.S. or Canada from a third country is considered to have zero U.S./Canadian content. However, if the engine were shipped to a foreign vehicle assembly plant, it would be considered to have $800 U.S./Canadian content. This would occur because the provision about motor vehicle equipment being imported into the U.S. or Canada from a third country would not apply.

AAMA urged that if a manufacturer is able to identify the U.S./Canadian content, it should be permitted to include the actual U.S./Canadian content of the imported component in the calculations.

After considering AAMA's arguments, NHTSA has decided to make a change along the lines recommended by the petitioner. The revised final rule provides that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S. or Canada is presumed zero, but that if documentation is available to the supplier which identifies value added in the United States or Canada for that equipment, such value added in the United States or Canada is counted.

The agency fully agrees with AAMA that $800 of U.S. engine parts should not be converted to foreign content simply because the engine is assembled in another country. NHTSA included the provision deeming any materials which are imported into the United States or Canada from a third country as foreign for reasons of simplicity and because it did not believe that separating out the portion that may have originated in the United States or Canada would significantly affect the information provided on the label. Since AAMA has clearly demonstrated that the provision can have a significant effect on the label, the agency believes that the change recommended by that organization is appropriate.

b. *Issues concerning tracing provision.* Three of the petitioners for reconsideration, AAMA, AIAM, and the Kentucky Cabinet, raised concerns about the tracing provision. The agency will first discuss two issues raised by AIAM concerning whether NHTSA has the authority to specify such a provision.

AIAM argued in its petition that the requirement to trace back to raw materials is contrary to the language of the Labeling Act. AIAM also argued that the tracing provision was not included in the NPRM and was therefore imposed without notice and opportunity for comment.

In arguing that the requirement to trace back to raw materials is contrary to the language of the Labeling Act, AIAM stated that the Act expressly provides that for purposes of determining U.S./Canada value added for an equipment item, only incorporated foreign passenger motor vehicle equipment, not foreign raw material, is to be treated as foreign content. AIAM's explanation for this position is as follows. First, the term "value added in the United States and Canada" is defined in the Labeling Act to mean a percentage derived as follows: value added equals the total purchase price, minus total purchase price of *foreign content,* divided by the total purchase price. Second, "foreign content" is defined to mean *passenger motor vehicle equipment* not determined to be of U.S./Canadian origin. Third, "passenger motor vehicle equipment" is defined to mean any system, subcomponent or assembly and does not include materials or raw materials. Thus, according to AIAM, the term "foreign content" can only refer to passenger motor vehicle equipment and not raw materials.

NHTSA notes that since AIAM's argument cites the specific language of section 210, the agency will respond in the context of that language (while recognizing that language has since been superseded in form but not substance). While AIAM may appear at first glance to simply be applying the statutory definitions, the agency believes that there are several problems with AIAM's argument.

First, a more complete quotation of the definition of "passenger motor vehicle equipment" cited by AIAM reads as follows: The term "passenger motor vehicle equipment" means any system, subassembly, or component *received at the final assembly point* for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser. Since this definition is limited to items received at the final assembly point, neither it, nor a definition of "foreign content" incorporating it, can be directly applied to items being received by a supplier for purposes of producing equipment.

Second, the Labeling Act's primary section concerning the determination of the U.S./Canadian origin of equipment, section 210(f)(5), indicates that, in at least some instances, the foreign content of passenger motor vehicle equipment is determined by subtracting the value of the *foreign material* in that equipment. That section read as follows:

> The terms "originated in the United States and Canada," and "of U.S./Canadian origin," in referring to automobile equipment, means—
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> (A) for outside suppliers, the purchase price of automotive equipment which contains at least 70 percent value added in the United States and Canada; and
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> (B) for allied suppliers, the manufacturer shall determine the foreign content of any passenger motor vehicle equipment supplied by the allied supplier by adding up the purchase price of all foreign material purchased from outside suppliers that comprise the individual passenger motor vehicle equipment and subtracting such purchase price from the total purchase price of such equipment. Determination of foreign or U.S./Canadian origin from outside suppliers will be consistent with subparagraph (A).

This section's reference to determining the foreign content of passenger motor vehicle equipment by subtracting the value of the foreign material in that equipment applies to equipment supplied by allied suppliers rather than equipment supplied by outside suppliers, the focus of AIAM's comment. It is significant, however, that the section uses the term "foreign content" differently from AIAM's reading of section 210's definition of "foreign content."

Third, AIAM's argument begs the ultimate question of how suppliers are to determine the U.S./Canada value added for their equipment. That organization asserts that "only incorporated foreign passenger motor vehicle equipment, not foreign raw material, is to be treated as foreign content." However, first-tier suppliers rarely use raw materials in producing passenger motor vehicle equipment. AIAM's argument leaves unanswered the question of how a supplier determines whether, and the extent to which, the so-called "passenger motor vehicle equipment" which it uses to produce passenger motor vehicle equipment is foreign.

For the reasons discussed above, NHTSA does not accept AIAM's argument that tracing back to raw materials is contrary to the Labeling Act. The agency notes that Act's definition of "value added in the United States and Canada" makes it clear that, in making that calculation, the purchase price of "foreign content" is to be subtracted. As indicated above, the Labeling Act defines "foreign content" as meaning passenger motor vehicle equipment not determined to be U.S./Canadian origin. In applying this provision in the context of suppliers determining whether an item they receive to produce passenger

motor vehicle equipment is foreign, the agency believes that the best reading of the provision is that the cost of the item is considered foreign to whatever extent part or all of the cost is not determined to represent value added in the United States or Canada. Since value is added to items at many stages, it is appropriate, in determining the extent to which an item represents value added in the United States or Canada, to take into account the location where value is added in the various stages.

NHTSA also does not accept AIAM's argument that the tracing provision was outside the scope of notice of the NPRM. The NPRM clearly put at issue the subject of how suppliers are to make determinations of U.S./Canadian content. While the NPRM did not mention tracing as such, the inclusion of the provision in the final rule is a logical outgrowth of the proposal.

NHTSA now turns to the other issues raised by the petitioners concerning the tracing provision. These issues relate to the accuracy of the information that will result from that provision and the difficulties associated with tracing.

AAMA expressed concern that suppliers may avoid the costly process of tracing simply by defaulting U.S./Canadian content to zero, with the result that U.S./Canadian content will be understated. That organization added that even if a supplier chooses to trace, it will be difficult and costly for sub-suppliers to certify the actual U.S./Canadian value added. AAMA stated that sub-suppliers may not maintain the required financial inventory records, and that if actual data are not available, the rule would require these suppliers to default their material content to foreign.

AAMA also noted that the Labeling Act requires that a foreign country providing at least 15 percent of a vehicle's content must be identified. That organization stated that the final rule does not address how "default-to-foreign content" would be allocated to a foreign country or how that foreign country would be identified.

Based on the above arguments, AAMA expressed concern that, under the final rule, Labeling Act data may be subject to significant variability depending on the response and efforts of the manufacturer's suppliers. It recommended that first-tier suppliers be allowed to base the determination of value added in the U.S./Canada on the country-of-origin markings on the materials it purchases, the first-tier supplier's knowledge of the second-tier supplier's processes and the rule of substantial transformation, or if the material is identified as U.S. or Canadian using any other methodology that is used for customs purposes (U.S. or foreign), so long as a consistent methodology is employed for all items of equipment.

As indicated above, the FY 1995 Conference Report on DOT Appropriations stated that the tracing provision, among others, will not ensure that the most accurate, understandable, and cost-effective information is provided to consumers, and directed NHTSA to amend the final rule to permit first-tier suppliers to use other methods, such as country-of-origin marking, substantial transformation, or other customs data in their records, to determine the U.S./Canadian content of equipment.

In addition to the arguments AIAM made with respect to agency authority to specify a tracing provision, that organization also argued that the tracing provision is inconsistent with the Congressionally stated purpose to provide the best and most understandable information possible without imposing costly and unnecessary burdens on the manufacturers. The Kentucky Cabinet expressed concern that companies will be required to undergo expensive and time-consuming efforts to trace a part back to raw materials and that, in some cases, a second tier supplier may not want to divulge proprietary information.

NHTSA has carefully considered the arguments of all of the petitioners, as well as the Congressional report. The agency shares the concern about the possibility that suppliers may choose to avoid the costly process of tracing simply by defaulting the U.S./Canadian content of materials to zero, with the result that U.S./Canadian content will be understated. The agency also shares the concern that actual tracing may be overly burdensome in some instances.

As discussed below, in light of these concerns, NHTSA has decided to amend the clarifying procedures to (1) make it clear that, for materials used by suppliers in producing passenger motor vehicle equipment (other than for materials imported from third countries), suppliers must make a good faith estimate of the value added in the United States or Canada (to the extent necessary to make required determinations concerning the value added in the U.S./Canada of their passenger motor vehicle equipment), (2) provide suppliers greater flexibility in the information they can use in making these estimates, and (3) reduce the number of stages for which suppliers must consider where value was added, although not to the degree recommended by AAMA.

As indicated above, AAMA urged that first-tier suppl[illegible]rs be [illegible]ed to base the determin[illegible]n [illegible] added in the U.S./Canada o[illegible]try-of-origin markings on th[illegible]s it purchases, the first-tier supplier's knowledge of the second-tier supplier's processes and the rule of substantial transformation, or if the material is identified as U.S. or Canadian using any other methodology that is used for customs purposes (U.S. or foreign), so long as a consistent methodology is employed for all items of equipment. NHTSA believes that a methodology this broad for determining value added in the U.S./Canada would be inconsistent with the Labeling Act's requirement that determinations of U.S./Canadian origin be based on the value added in the U.S./Canada.

NHTSA notes that country of origin determinations for customs purposes do not connote value content. The substantial transformation test is a traditional means of making country of origin determinations for customs purposes. Under this test, an imported good becomes a product of the country where it emerges from a process with a new name, character and use different from that possessed by the good prior to processing. However, application of the test does not indicate any particular level of value content from that country of origin. Therefore, even though the product's country-of-origin might be the United States or Canada, it might have little U.S./Canadian content.

In enacting the Labeling Act, Congress decided, for purposes of making determinations about the U.S./Canada origin of motor vehicle equipment, to specify a value added test rather than substantial transformation. More specifically, Congress decided to require items supplied to vehicle manufacturers or their allied suppliers by outside suppliers to have at least 70 percent value added in the U.S./Canada in order to be considered U.S/Canadian.

NHTSA believes that permitting outside suppliers to use the substantial transformation test for purposes of determining the origin of the materials it uses to produce equipment could allow substantial amounts of foreign content to be converted into the U.S./Canadian content and counted toward the 70 percent threshold. This can be illustrated by a hypothetical situation where a first-tier outside supplier purchases casings from a second-tier supplier to use in producing transmissions. The second-tier supplier, located in the U.S., produces the casings by casting them from imported aluminum. Under AAMA's suggested approach, the entire value of the casings would be considered to be U.S./

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Canadian (since the second-tier supplier had performed a substantial transformation) and counted toward the 70 percent threshold, even though the casings were made of imported aluminum. NHTSA observes that just as it agrees with AAMA that $800 of U.S. engine parts should not be converted into foreign content as a result of a regulatory provision intended to provide simplicity, it is equally concerned about the possibility of such a regulatory provision permitting the conversion of a large amount of foreign content into U.S./Canadian content.

A comment on the NPRM signed by Senator Carl Levin and several House members also illustrates how methodologies that permit conversion of substantial foreign content into U.S./Canadian content, for purposes of making country-of-origin determinations for materials suppliers use to produce equipment, could substantially affect the information on the vehicle label.

The comment stated:

> We are writing to urge you to draft American Automobile Labeling Act implementing regulations that reflect the legislation's intent to provide an accurate means of measuring the parts value content of a vehicle.
>
> The trend has been for Japanese transplants to purchase parts assembled in the U.S. by Japanese affiliated parts makers, a high percentage of which are merely assembled here using subcomponents and materials imported from Japan. Nonetheless, they are erroneously counted as U.S. parts for the purposes of calculating U.S. content levels. The Labeling Act was an attempt by Congress to establish a tool to more accurately measure the "actual" U.S. and Canadian content of vehicles sold in the U.S. based on the origin of where the parts are made, not where the parts are purchased or assembled. It is our hope that the Labeling Act will achieve this objective by imposing a stringent definition of what is an "American or Canadian made" auto part.
>
> Currently, Japanese transplant auto makers claim high levels of U.S. content in their U.S. made vehicles. But they will not provide the necessary data to measure accurately the U.S. content levels of the auto parts used in these vehicles, and thus, it is impossible to verify their claims. After tracing the actual source of parts, a 1992 Economic Strategy Institute study found that the U.S. auto parts used in a 1991 Honda Accord contained ⅔ Japanese content and only ⅓ "actual" U.S. content. Even with these low levels of U.S. content, Honda took credit for these parts being totally U.S.-made.
>
> In order to adequately distinguish between parts assembled in the U.S. using imported materials and parts made in the U.S. using U.S. materials, the Labeling Act must include tracing requirements similar to the tracing requirements in the NAFTA rule of origin, with the exception that Mexican parts would not be included as U.S. or Canadian. Tracing should be used to determine if suppliers can be designated as North America (U.S. or Canadian)—if they achieve the 70% North American content value—as well as to determine the country of origin for the engine and transmission. For example, if tracing were required, an engine or transmission that contains 75% Japanese content but is assembled in the U.S. would be correctly found to be primarily of Japanese origin, not of U.S. origin.

NHTSA has also concluded that the concerns identified by the petitioners for reconsideration and the Congressional report can be adequately addressed by making other changes in the procedures for determining value added in the U.S./Canada.

First, the agency is specifying in the regulation that, for materials used by suppliers in producing passenger motor vehicle equipment (other than for materials imported from third countries), suppliers must make a good faith estimate of the value added in the United States or Canada (to the extent necessary to make required determinations concerning the value added in the U.S./Canada of their passenger motor vehicle equipment). Thus, suppliers are not permitted to simply default the U.S./Canadian value of the materials they use to zero, since that would not represent a good faith estimate.

Second, NHTSA is providing greater flexibility to suppliers concerning the information they may use to make their good-faith estimates. Rather than specifying tracing as such, the regulation will permit suppliers to base their estimate on all information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc.

Third, NHTSA has concluded that it can reduce the number of stages for which suppliers must consider where value was added, although not to the degree recommended by AAMA. As indicated above, the basic problem with adopting AAMA's specific recommendation is that it would permit large amounts of foreign content to be transformed into U.S./Canadian content and counted toward the 70 percent threshold. The agency believes that this possibility can be substantially reduced or eliminated by adopting an approach that requires a supplier to consider, for materials it uses which were produced or assembled in the U.S. or Canada, where value was added at each stage back to and including the two closest stages which represented a substantial processing operation into a new and different product with a different name, character and use, rather than all the way back to raw materials.

NHTSA is adopting the following provision concerning how outside suppliers are to determine the U.S./Canadian content of materials used by the supplier which are produced or assembled in the U.S./Canada:

> (A)(*1*) For any material used by the supplier which was produced or assembled in the U.S. or Canada, the supplier will subtract from the total value of the material any value that was not added in the U.S. and/or Canada. The determination of the value that was not added in the U.S. and/or Canada shall be a good faith estimate based on information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc.
>
> (*2*) The supplier shall consider the amount of value added and the location in which that value was added—
>
> (*i*) At each earlier stage, counting from the time of receipt of a material by the supplier, back to and including the two closest stages each of which represented a substantial transformation into a new and different product with a different name, character and use.
>
> (*ii*) The value of materials used to produce a product in the earliest of these two substantial transformation stages shall be treated as value added in the country in which that stage occurred.

This approach can be illustrated by returning to the hypothetical situation involving a first-tier supplier of transmissions which purchases aluminum casings from a second-tier supplier located in the United States. Under the July 1994 final rule, the first-tier supplier could count the full value of the aluminum in those casings as U.S./Canadian content only if it traced the aluminum back to raw materials, i.e., back to bauxite, and found the bauxite to be of U.S. or Canadian origin.

Under today's amendments, the first-tier supplier need only consider where value was added back through two stages, i.e., the casting of the casing and the production of the aluminum. The second-tier supplier, with which the first-tier supplier directly deals, will have information on both of these stages, i.e., it will know about its own casting operations and it will know the source of the aluminum it uses for the casting.

If the casing was cast in the U.S. using aluminum made in the U.S. or Canada, the full value of the casing would be counted as U.S./Canadian content for purposes of determining whether the 70 percent threshold were met. If the casing was cast in the U.S. using imported aluminum, the value of the imported aluminum would have to be subtracted from the value of the casing

in determining the amount that could be counted as U.S./Canadian content.

It would not be necessary, under those two circumstances, for the supplier to attempt to determine the origin of the bauxite used to produce the aluminum. For example, if the aluminum were produced in U.S. or Canada, the value of the materials used to make it would be treated as value added in the country where the aluminum was produced. The agency believes that the value of a material this many stages back is likely to be so small as not to affect labeling information. Moreover, it would be much more difficult to obtain information for a still earlier stage (before the aluminum production), since it would likely require contacting parties with which the first-tier supplier does not ordinarily have privity or any other connection.

NHTSA notes that this approach for the materials used by suppliers is similar to the double substantial transformation test specified by customs for determining foreign value content. As indicated above, country of origin determinations for customs purposes do not connote value content. However, there are a number of programs where certain determinations of value must be made. The full value of imported materials is counted toward the full value of the good for purposes of programs such as the Generalized Systems of Preferences, the Caribbean Basin Economic Recovery Act, etc., only when the imported materials undergo what is known in customs law as a "double substantial transformation." Under this standard, foreign materials can be considered "materials produced in the beneficiary country" when those materials are substantially transformed in that country into a new or different article of commerce which is then used in the production or manufacture of yet another new or different article (the final product). For a further discussion of this concept, see Treasury Decision 88–17, 53 FR 12143, April 13, 1988.

Particularly given the changes discussed in this section, NHTSA believes that the requirement for suppliers to make content determinations will not be burdensome. The agency notes again that the Labeling Act does not require outside suppliers to provide specific estimates of the U.S./Canada value added of their equipment, but instead only requires them to indicate whether the U.S./Canada value added is at least 70 percent.

NHTSA notes that AAMA indicated that a typical item of motor vehicle equipment represents 59 percent value added by the first-tier supplier and 41 percent purchased material. In order to determine in such an instance whether the 70 percent threshold is satisfied, a U.S./Canada outside first—tier supplier of transmissions would only need to determine whether enough of the 41 percent material cost (i.e., the cost of the casings and other transmission parts) represented value added in the U.S./Canada so as to raise the 59 percent figure for the transmissions to at least 70 percent. The agency notes that, assuming the same 59:41 ratio for value added to material cost for second-tier suppliers, about 83 percent (59 percent + (59 percent)(41 percent)) of the total value added of the transmissions would typically represent value added by the transmission supplier itself or the second-tier suppliers from which it purchases materials. Moreover, the second-tier suppliers will know the source of the materials they use.

As discussed above, the first-tier supplier is not limited to basing its estimates on actual tracing, but may instead consider all available information. To the extent that the value added in the U.S./Canada of motor vehicle equipment is well above or well below 70 percent, it will be easy for suppliers to make the required determination. The most difficult determinations will be for equipment whose value added in the U.S./Canada is close to 70 percent. To the extent that the reasonably available information to the supplier indicates that the U.S./Canada value added is near 70 percent, the supplier will simply have to make its best good-faith judgment whether it is "at least" 70 percent.

NHTSA believes that the revised clarifying procedures will, in addition to providing appropriate additional flexibility to suppliers, result in more accurate information being provided to consumers. Full tracing back to raw materials may often be impossible, and, for materials made in the U.S./Canada which are used by suppliers located in the U.S./Canada to make their motor vehicle equipment, the agency believes that good faith estimates by the suppliers of the U.S./Canada value added will be more accurate than a procedure which specifies that any untraced portions of the materials be considered foreign. The agency believes that the concerns expressed by Senator Levin and others in the Congressional comment on the NPRM will be adequately addressed by requiring the suppliers' estimates to reflect consideration of where value was added at each stage back to and including the two closest stages which represented a substantial processing operation into a new and different product with a different name, character and use.

2. Non-Responsive Suppliers

NHTSA included a provision in the final rule which specifies that if a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. The agency stated that it does not believe that this situation will occur very often, and that the provision will ensure that U.S./Canadian content is not overstated as a result of the manufacturer or allied supplier simply assuming that equipment is of U.S./Canadian origin in the absence of information from the supplier.

AAMA argued that the agency's expectation that few suppliers will fail to report is unreasonable, especially within the first few years of implementation. That organization stated that, for a comparison, one of its members' requests for data from suppliers for NAFTA certificates of origin has yielded a response rate of 50 to 60 percent. (In later information provided to the agency, AAMA indicated that the percentage of suppliers reporting under NAFTA ranged from 60 to 65 percent for GM, Ford and Chrysler.)

AAMA argued that the content information ultimately provided to consumers will be more accurate if manufacturers are permitted to establish the U.S./Canadian content of components by other means when a supplier fails to respond. That organization recommended that if a manufacturer or allied supplier does not receive a response to its request for information, the manufacturer or allied supplier should be permitted to use the information in its records to determine the U.S. and Canadian content. The determination could be made by such means as examining the customs marking country, applying the substantial transformation test, or other methodologies used for customs purposes.

As indicated above, the FY 1995 Conference Report on DOT Appropriations stated that this provision of the final rule, among others, will not ensure that the most accurate, understandable, and cost-effective information is provided to consumers, and directed NHTSA to amend the final rule to permit manufacturers and allied suppliers to use other methods to determine U.S./Canadian content of equipment when suppliers fail to provide adequate information.

NHTSA has carefully considered AAMA's request and the Congressional report. As discussed below, the agency has concluded that it would be inappropriate under the statute to make the requested change. However, the agency believes that its one-year extension of the temporary alternative approach for data collection and calculations will provide appropriate flexibility in this area.

As discussed above, the Labeling Act provides that passenger motor vehicle equipment supplied by outside suppliers is considered U.S./Canadian if at least 70 percent of its value is added in the U.S./Canada. See 49 U.S.C. 32304(a)(9). The Labeling Act also provides that outside suppliers are required to certify, among other things, whether their equipment is of U.S./Canadian origin.

While it might appear at first glance to be reasonable to permit manufacturers and allied suppliers to make origin determinations concerning equipment provided by an outside supplier in the event that the outside supplier fails to do so, the problem is that the manufacturers and allied suppliers will not possess the information needed to make the required determination. The agency assumes that this is why AAMA suggests that manufacturers and allied suppliers be permitted to determine whether equipment is U.S./Canadian based on methods other than the value added approach specified in the statute. However, the results that would be obtained from those other methods would not necessarily be consistent with the value added approach.

NHTSA also notes that the most likely instance in which an outside supplier would not want to provide the required information is when the U.S./Canadian content was below 70 percent. In such an instance, it would be particularly inappropriate to permit the manufacturer to use alternative methods for determining whether the equipment was U.S./Canadian.

Moreover, the agency believes that vehicle manufacturers can obtain the required information from suppliers, assuming that the manufacturers and suppliers have the time to make any necessary arrangements. Apart from the fact that outside suppliers are required by Federal law to provide the information to manufacturers and allied suppliers, the outside suppliers are dependent on the auto manufacturers for their business. While NHTSA understands that there may be some confusion at the time a new program is first implemented, it does not believe that suppliers will deliberately refuse to provide the information in response to manufacturers' and allied suppliers' requests. The agency notes that the manufacturers can put specific provisions in their purchase agreements to ensure that they receive the required information.

In its March 1995 initial response to petitions, NHTSA extended by one year the temporary alternative approach for data collection and calculations which permits manufacturers and suppliers to use procedures that are expected to yield similar results. For a more complete discussion of this alternative, see 59 FR 37324–25, July 21, 1994.

The extension of this temporary alternative gives an extra year for manufacturers and suppliers to work out any arrangements that are necessary to ensure that suppliers provide the necessary information to manufacturers. The agency believes that this should provide appropriate flexibility in light of AAMA's concerns.

C. Procedure for Determining Major Foreign Sources of Passenger Motor Vehicle Equipment (Section 583.7)

As part of the procedure for determining major foreign sources of passenger motor vehicle equipment, NHTSA included a provision to prevent the possibility that the specified U.S./Canadian content and major foreign sources of foreign content for a carline will together exceed 100 percent. The agency was concerned that, due to differences in calculation methods for U.S./Canadian and foreign content, it would otherwise be possible for the sum of the U.S./Canadian and foreign label values of a carline to be over 100 percent, which could cause confusion for consumers. The agency decided to simply specify that if the U.S./Canada and major foreign source percentages add up to more than 100 percent, the foreign source percentages are proportionately reduced to the extent necessary to bring the percentages down to 100 percent.

AIAM stated that there are a number of serious problems raised by this provision, all involving the central question of the agency's authority to take this step. That organization made the following argument:

> As NHTSA implicitly acknowledges, the statute does not provide authority for such an arbitrary reduction, yet elsewhere in the preamble the Agency has argued that it is strictly bound by the language of the statute, (*see e.g.*, the Agency's discussion on the authority to exclude vehicles with low or high U.S./Canadian content . . .). The Agency has not identified what specific authority the statute affords NHTSA to reduce that number to 100 percent. The excuse the Agency relies upon—that "such a procedure would necessarily be very complicated, given certain aspects of the procedure for determining U.S./Canadian content" . . . has, in an analogous situation, been found wanting by NHTSA for giving relief to companies with little U.S. content and who for the sake of "simplicity" would agree to claim essentially all foreign content by merely indicating on the label that the U.S. content fell below a specified level. The Agency has refused to grant such a common sense exclusion because "NHTSA has concluded that it does not have the authority to provide exclusions." * * *
>
> A second problem is the absence of any basis in the statute for the Agency's assertion (or justification) that U.S./Canadian percentage "is the more important of the two items of information for consumers." . . . Again, we are unable to find in the language of the statute such a prioritization of the information. Accordingly, AIAM asks the Agency to amend the Rule by deleting § 583.7 to require the use of the percentages as calculated in accordance with the terms of the statute regardless of what the total might be.

NHTSA disagrees with the petitioner's suggestion that the agency lacks authority in this area. Section 32304(e) expressly provides that the agency is to prescribe regulations to carry out [the Labeling Act].

Moreover, AIAM draws an incorrect analogy in comparing this issue with that of whether the agency has authority to exclude vehicles with high or low U.S./Canadian content from certain statutory provisions. In the latter case, the relevant issue was whether the agency could create, by rule, exclusions from express statutory requirements. The provision concerning reducing foreign source percentages does not represent an exclusion from a statutory requirement but instead is simply part of the procedure for determining foreign source percentages.

Rather than representing a departure from the statutory requirements, the provision AIAM objects to was intended to ensure that the statutory provisions concerning determination of U.S./Canadian content are not effectively diluted. NHTSA explained in the final rule preamble that while the method for determining the U.S./Canada percentage is explicitly set forth in the statute, the methodology for determining major foreign source percentages is not in the statute. The agency also explained that since the statute provides a specific methodology for determining the U.S./Canada percentage, "the § 583.7 procedures have the limited purpose of providing a method for calculating the extent to which the *remaining* percentage is attributable to foreign countries which individually contribute at least 15 percent of the parts content, and the specific percentage attributable to each such foreign country."

In the absence of a specific statutory procedure, NHTSA decided to provide wide flexibility concerning how manufacturers are to determine country of origin for purposes of major foreign source percentages. This was for the purpose of minimizing regulatory burdens on manufacturers and suppliers. At the same time, the procedure must not be so flexible that it interferes with other aspects of the statutory scheme. Permitting manufacturers to identify the U.S./Canadian content and major sources of foreign content for a carline as exceeding 100 percent would both confuse consumers and dilute the meaning of U.S./Canadian content as determined under the more specific statutory procedures. NHTSA therefore believes that, far from being arbitrary or inconsistent with the statute, the provision at issue was a reasonable limitation on how major foreign source percentages are determined.

On reconsideration, however, NHTSA has considered whether there may be a better way of addressing this potential problem. The agency notes that the only significant way[4] that U.S./Canadian content and major sources of foreign content can exceed 100 percent is if there is double-counting, i.e., the same value is considered to be both U.S./Canadian *and* foreign. Such double-counting would be inconsistent with the statute, which specifies that foreign content means passenger motor vehicle equipment that is not of United States/Canadian origin.

The agency has considered the extent to which such double-counting might occur under Part 583, absent the provision about reducing foreign percentages.

Double-counting would not occur for equipment supplied by outside suppliers. Such equipment is considered 100 percent U.S./Canadian if 70 percent or more of its value is added in the U.S. and/or Canada and 0 percent U.S/Canadian if less than 70 percent of its value is added in the U.S. and/or Canada. Moreover, the outside supplier is only to provide a country of origin, for purposes of major sources of foreign content, for equipment which has less than 70 percent of its value added in the U.S. and/or Canada. See section 583.10(a)(5).

NHTSA believes that Part 583 is not so clear with respect to possible double-counting for equipment supplied by allied suppliers. Under section 583.11, allied suppliers are to provide a specific percentage U.S./Canadian content for their equipment, as well as a country of origin for purposes of major sources of foreign content. A manufacturer might believe that it should count the actual U.S./Canadian content of such equipment for purposes of determining U.S./Canadian parts content, and the total value of such equipment for purposes of determining major sources of foreign content. This would, of course, result in double-counting. The agency has decided to replace the provision about reducing foreign percentages with one that makes it clear that, in calculating major sources of foreign content, manufacturers are not to count any value that has been counted as U.S./Canadian content.

D. Alternative Procedures for Manufacturers

In the final rule preamble, NHTSA addressed comments by a number of manufacturers urging it to permit simplified procedures for estimating U.S./Canadian content. GM, for example, had recommended the use of a high volume configuration model as the basis for establishing the U.S./Canadian content value for a carline.

NHTSA stated that it does not disagree with the concept of permitting simplified procedures for estimating U.S./Canadian content, if such procedures would always ensure reliable results. The agency concluded, however, that the procedures which were suggested by the commenters, which were based on either a high volume configuration or best selling model, would not appear to always ensure meaningful results. By way of example, the agency cited a situation where the high volume configuration or best selling model of a carline was produced in the U.S./Canada and the rest of the carline was produced in a foreign country. NHTSA noted that content calculations based on the portion of the carline assembled in the U.S./Canada would likely not be representative of the carline as a whole.

In petitioning for reconsideration, GM noted the agency's concern that alternative procedures must always produce reliable results, and requested that alternative, simplified procedures be permitted if the Administrator determines that the procedures produce substantially equivalent results. That manufacturer also stated that an optional procedure can be designed to take care of the problem in the example cited by the agency.

GM noted the Labeling Act's provision stating that regulations are to provide the best and most understandable information possible without imposing costly and unnecessary burdens on manufacturers. That company argued that the agency has chosen as the only allowed method of determining U.S./Canadian content the most burdensome and costly procedure possible. GM explained an optional calculation procedure as follows:

> When attempting to average a very large number of values when all of the values themselves are not known, certain well accepted and reasonable approximation procedures can be employed to reduce the amount of data gathering required to calculate with an acceptable level of confidence. In other words, a great deal of the burden can be reduced while maintaining reliable and equivalent test results. Such procedures are accepted by the Commerce Department under North American Free Trade Agreement and by the Environmental Protection Agency in determining whether vehicles are in the manufacturer's domestic or foreign fleet for Corporate Average Fuel Economy (CAFE) purposes. Also such a procedure is used when determining a manufacturer's CAFE. * * * As with any volume-weighted calculation, only that data associated with high volumes will significantly impact the final calculation. Any further data collecting would add significant burden and provide diminishing returns on the accuracy of the calculated average.
>
> GM believes that NHTSA should accept optional calculation methods as an accurate measure of the average percent of U.S./Canadian content. This will dramatically reduce the content data gathering burden while still maintaining a level of accuracy and reliability required by the AALA in the average content value calculation for the carline.

The FY 1995 Conference Report on DOT Appropriations stated that to ensure that the final rule does not impose costly and unnecessary burdens on manufacturers, the conferees also direct NHTSA to amend the rule to allow manufacturers to propose alternative procedures for determining domestic content if such procedure produces reliable results.

After considering GM's petition and the Congressional report, NHTSA has decided to add a provision along the lines suggested by GM. The agency wishes to reduce manufacturer and supplier costs to the extent possible, and the agency believes that the process recommended by GM is consistent with the agency's concern that alternative procedures must always ensure meaningful results.

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[4] The U.S./Canadian content and major sources of foreign content could also potentially exceed 100 percent as a result of the vehicle manufacturer rounding the percentages to the nearest five percent, as permitted by the statute. However, this result does not appear likely.

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NHTSA notes that GM suggested adding a single sentence to the regulation indicating that manufacturers may use alternative procedures to determine U.S./Canadian parts content provided the Administrator has determined that the alternative procedure will produce substantially equivalent results. The agency believes that it is also necessary for the regulation to specify the type of alternative procedures that manufacturers can petition for, and a more detailed procedure for manufacturers to follow in submitting petitions.

NHTSA is specifying that manufacturers may petition for an alternative calculation procedure that is based on representative sampling and/or statistical sampling. The agency notes that GM's request to use an optional calculation procedure was in the context of a representative sampling approach, such as the one used by EPA for calculating CAFE.

EPA's procedures provide that a manufacturer's CAFE is calculated based on testing a limited number of vehicles. Because EPA's procedures ensure that the tested vehicles are representative, with respect to fuel economy, of the manufacturer's fleet, the procedures result in a calculated average representative of the manufacturer's actual fleet average. (A manufacturer's actual fleet average would be the average fuel economy that would be measured using the prescribed test procedures if every car produced were actually tested.)

NHTSA believes it is appropriate to similarly permit manufacturers to use a calculation procedure for the motor vehicle content labeling program that is based on vehicles that are representative, with respect to content, for the carline. The agency recognized in the preamble to the July 1994 final rule that a particular high volume configuration carline model might not be representative, with respect to content, of the overall carline. However, the agency believes that the petition process recommended by GM will ensure that manufacturers select vehicles that are representative.

The agency also believes it is appropriate to permit manufacturers to petition for alternative calculation procedures that are based on statistical sampling. NHTSA notes that EPA, in developing its calculation procedures, considered statistical sampling approaches as well as representative sampling. That agency decided not to adopt a statistical sampling approach because it would have been much more costly than representative sampling, due to a need to test more vehicles. The motor vehicle content labeling program does not, of course, involve costly testing. Moreover, a statistical sampling approach would likely be less costly than the main approach specified by Part 583 and might, in some cases, be easier for manufacturers to implement than a representative approach. Therefore, NHTSA believes that statistical sampling, as well as representative sampling, should be included as an option for which manufacturers may petition. (For a further discussion of EPA's consideration of representative and statistical sampling approaches, see 41 FR 38677–79, September 10, 1976.)

The procedures specified in today's amendments require manufacturers to provide analysis demonstrating that the alternative procedure will produce substantially equivalent results. If the Administrator determines that the petition contains adequate justification, he or she will grant the petition.

The procedures also provide that the agency will publish a notice of receipt of the petition and provide an opportunity for the public to submit comments on the petition. The Administrator will consider the public comments in deciding whether to grant the petition. While a manufacturer may submit confidential business information in support of a petition, the basic alternative procedure and supporting analysis must be public information.

NHTSA notes that it is possible that alternative procedures may raise issues which require complex analysis. The agency is therefore including a provision in the regulation which specifies that petitions must be submitted not later than 120 days before the manufacturer wishes to use the procedure.

While GM's petition requested that manufacturers be permitted to petition for alternative procedures for calculating carline U.S./Canadian content, the agency is also making this option available for calculating major sources of foreign parts content. The latter calculations are also made on a carline basis, and the same considerations relevant to this issue apply to calculations for both items.

E. Legal Issues

1. Federal Preemption

AIAM stated that NHTSA did not respond to the concerns it raised in its comment on the NPRM about the possibility of actions taken against automotive manufacturers by state or local authorities as a result of the differential treatment of suppliers or what AIAM termed "the misleading nature of the information required by the underlying statute or compliance with the final rule." That organization argued that the label could foster consumer confusion and requested that NHTSA provide an express statement of Federal preemption of any state or local action initiated as a result of providing the required information on the label in accordance with the rule.

NHTSA wishes to emphasize that, while it will respond to the issue of Federal preemption raised by AIAM, the agency is not accepting the petitioner's argument that the underlying statute or regulation results in misleading information or consumer confusion.

It is a basic principle of Constitutional law that Federal law, including agency regulations, can preempt state law. Section 32304(f) expressly provides that "(w)hen a label content requirement prescribed under this section is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to the content of vehicles covered by a requirement under this section," although a state may prescribe requirements related to the content of passenger motor vehicles obtained for its own use. Moreover, Federal law impliedly preempts state law when, among other things, it is impossible to comply with both. In this context, "state law" includes the state's common law, as established through litigation.

Given these principles, and since manufacturers are required to comply with section 32304 and with Part 583, no person may bring an action under state or local law seeking to impose liability against a manufacturer on the basis that it provided information required by Federal law. This result follows from Constitutional law, and it is not necessary to put a specific provision to that effect in the regulation.

2. Due Process

AIADA submitted a very brief petition requesting that the agency "reconsider and vacate its final rule on Motor Vehicle Content Labeling." As grounds for its request, it stated that "(t)he rule is unconstitutionally vague and unequal and discriminatory in its application and therefore constitutes a denial of due process in violation of the Fifth Amendment to the United States Constitution and the Administrative Procedure Act." The petitioner also cited "(a)ll the reasons set forth in AIADA's letters * * * dated January 11, 1992 and January 18, 1994."

NHTSA cannot grant AIADA's request. The agency notes that it cannot

simply "vacate" the content labeling final rule, since the rule is required by section 32304. NHTSA also notes that AIADA's stated concern about "due process" is so vague that it is not possible to identify what specific concerns about the final rule it might relate to. While the petition cites that organization's earlier letters, NHTSA has already responded to those issues in previous **Federal Register** notices, including the final rule preamble. AIADA did not discuss why it is unsatisfied with the agency's responses or even acknowledge the responses. Therefore, there is no basis for the agency to give any further consideration to AIADA's petition.

3. Authority to Exclude Vehicles With Low U.S./Canadian Content

VW requested the agency to reconsider its determination that it lacks authority to permit manufacturers selling vehicles with low U.S./Canadian content, e.g., less than 35 percent, from stating such content as "minimal" or "less than 35 percent," instead of indicating an actual percentage, as specified in the statute. That company made the following argument:

> The NHTSA acknowledges that it has implied authority to create exclusions from the statutory requirements of the [Labeling Act] in cases of administrative need and where a literal application of the statutory language would lead to absurd or futile results or produces a gain of trivial value or of no value at all. The NHTSA concluded, however, that all manufacturers have the capability of implementing the statutory language literally and that disclosure on the label of the actual U.S./Canadian parts content percentage per carline offers a benefit to the consumer which is more than trivial. We disagree.
>
> While one may argue over whether or not disclosure of the actual percentage in the case of a carline with marginal U.S./Canadian parts content bestows more than trivial benefits on the public when compared with a disclosure of that content as "minimal," we note that the Federal Court of Appeals in the case of *Alabama Power Company* v. *Costle*, 636 F.2d 323 (1979) did not view the "trivial" standard to be relevant to a situation where the benefits are exceeded by the costs associated with providing those benefits. The court stated that in that event, the Agency should be guided by the aims of the statute it is implementing and the Congressional intent as expressed in the statute's legislative history.
>
> In the case before us there appears to be no need to explore the legislative history because the statute is plain on its face in providing in section 210(d) that "the regulations shall provide to the ultimate purchaser of a new passenger motor vehicle the best and most understandable information possible about the foreign and U.S./Canadian origin of equipment of such vehicles *without imposing costly and unnecessary burdens on the manufacturers*." (Emphasis supplied by VW)
>
> VW submits that the statute is clear in directing the NHTSA to strike a balance between communicating to the public "the best and most understandable information possible" and the "cost" and "necessity" of burdening the manufacturer. We believe that the NHTSA erred in striking the correct balance between these competing considerations as Congress directed it to do.

VW noted that it imports vehicles from both Germany and Mexico. It stated that the German vehicles are estimated to have a small fraction of U.S./Canadian parts content which could not reasonably be relevant to a U.S. consumer's purchasing decision. That company stated that while its Mexican vehicles are likely to have a greater U.S./Canadian parts content, that content is not sufficient to permit the conclusion that disclosure of the actual percentage would not be dictated by a correct balancing of the factors described in section 210(d). VW argued that its vehicles originating in Mexico are largely manufactured with equipment originating in Europe and Mexico, are marketed and perceived by the U.S. market as foreign made, and are purchased because they are unlike any other offerings to the market by the transplants or the domestic manufacturers.

VW also estimated that the assignment of a staff of five full time employees at a total cost of approximately $500,000 annually will be necessary at its various manufacturer locations to comply with the regulations as adopted, and that $150,000 of that amount is attributable to those portions of the regulation which require the calculation and disclosure of actual percentage figures rather than estimates designed to determine whether or not a particular carline has U.S./Canadian parts content below a range of about 20 percent to 35 percent.

VW argued that the Labeling Act is very specific in directing NHTSA to take costs into account in determining the form and content of the information which the manufacturer must disclose. That company argued that this directive is specific rather than general in nature and that it leaves no room for debate irrespective of whether or not the benefit to the public is trivial or non-trivial.

While NHTSA has carefully considered VW's arguments, it continues to believe that it lacks authority to provide exclusions, along the lines discussed above, for vehicles with low U.S./Canadian content. As discussed below, the agency believes that VW is incorrectly interpreting one sentence in section 210(d) (now replaced by 49 U.S.C. 32304(e)) as overriding more specific statutory provisions.

Since VW based its argument in part on the case of *Alabama Power Co.*, the agency will begin its analysis by quoting the relevant portion of that case:

> *Exemptions for De Minimis Circumstances.* Categorical exemptions may also be permissible as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis*. . . .
>
> Determination of when matters are truly *de minimis* naturally will turn on the assessment of particular circumstances, and the agency will bear the burden of making the required showing. But we think most regulatory statutes . . . permit such agency showings in appropriate cases.
>
> While the difference is one of degree, the difference of degree is an important one. Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value. That implied authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs. For such a situation any implied authority to make cost-benefit decisions must be based not on a general doctrine but on a fair reading of the specific statute, its aims and legislative history. . . . 636 F.2d at 360–61.

In the final rule preamble, NHTSA explained that an exclusion cannot be justified on the *de minimis* theory if non-trivial benefits would otherwise be provided. The agency concluded that it does not have authority to provide the relevant exclusion for vehicles with low U.S./Canadian content because such an exclusion would permit the labels on a substantial portion of the vehicles sold to provide the consumer with significantly less information than Congress intended, thereby eliminating much of the benefit that the Labeling Act was intended to provide.

The agency added:

> For example, a "low-end" exclusion would permit a large percentage of foreign vehicles to be labeled with the words "minimal" or less than 35 percent (or some other specified percentage) U.S./Canadian content, instead of being labeled with a specific percentage. Consumers would not know whether vehicles bearing such labels contained (on a carline basis) 0 percent, about 15 percent, or possibly even nearly 35 percent U.S./Canadian content. A consumer wishing to make a purchase decision among vehicles bearing such labels would not be able to compare their U.S./Canadian content. . . .

NHTSA notes that section 210(b)(2) allows rounding of the percentages, but limits the rounding "to the nearest *five percent.*" This indicates that specific percentages must be listed (since general percentages aren't amenable to rounding) and that any rounding to a greater degree is prohibited. In this regard, it is particularly important to note that the degree of permissible rounding permitted by the enacted version of § 210 is significantly less than the degree that would have been permitted in the introduced version. In the introduced version, rounding would have been permitted to the nearest 10 percent. The enacted version permits rounding only to the nearest 5 percent. Thus, Congress focused particular attention on the issue of rounding and decided to adopt strict limits. Moreover, implicit in the enacted rounding provision is a judgment by Congress that differences in content of as little as five percentage points are significant enough to be considered by the consumer.

The agency continues to believe that the Labeling Act and its legislative history make it clear that requirements which enable consumers to distinguish vehicles with 0 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, and 35 percent U.S./Canadian content provide non-trivial benefits. While such information may not make a difference to consumers who wish to purchase a vehicle that is primarily of U.S./Canadian origin, the information may be relevant for consumers in making a purchase decision between vehicles with relatively low U.S./Canadian content, e.g., for a consumer who may be deciding between a vehicle with 0 percent U.S./Canadian content and one which has 20 percent U.S./Canadian content.

VW's primary argument on reconsideration is that "NHTSA did not properly balance the statutory considerations requiring the parts content label to contain 'the best and most understandable information' to the consumer with the cost and administrative burdens imposed upon a manufacturer such as VW, as Congress expressly directed it to do in the form of a clear and precise mandate." However, VW is incorrectly reading a general statutory provision as overriding most of the rest of the statute.

Section 32304(e) reads in relevant part as follows:

> (e) REGULATIONS.— . . . The Secretary of Transportation shall prescribe regulations necessary to carry out this section, including regulations establishing a procedure to verify the label information required under subsection (b)(1) of this section. Those regulations shall provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign content and United States/Canadian origin of the equipment of the vehicles without imposing costly and unnecessary burdens on the manufacturers. . . .

VW is reading the second sentence of section 32304(e) outside of context. The first sentence makes it clear that the required regulations are "to carry out this section." The term "this section" refers to section 32304, which includes numerous very specific requirements concerning the content information which manufacturers are required to provide. The second sentence is not an invitation for NHTSA to second-guess Congress on all of the specific requirements in section 32304 concerning content information, e.g., whether the information Congress decided to require manufacturers to provide is "best," whether that information is "most understandable," etc. The sentence instead indicates the factors NHTSA must consider in exercising its limited discretion in developing the required regulation. The agency observes that VW's reading of this sentence would reduce virtually all of the specific requirements of section 32304 to suggestions for NHTSA's consideration.

VW argued that the sentence at issue is specific rather than general in nature. That argument was apparently made in response to the agency's statement in the final rule preamble that, as a matter of statutory construction, general provisions cannot be construed as overriding specific ones. NHTSA isn't arguing that it need not follow that sentence. What is significant is that the second sentence of 49 U.S.C. 32304(e) is general as compared to other relevant provisions of the statute.

Of particular significance, section 32304(b) reads as follows:

> (b) MANUFACTURER REQUIREMENT.—(1) Each manufacturer of a new passenger motor vehicle * * * shall establish each year for each model year and cause to be attached in a prominent place on each of those vehicles, at least one label. The label shall contain the following information:
>
> (A) the *percentage* (by value) of passenger motor vehicle equipment of United States/Canadian origin installed on vehicles in the carline to which that vehicle belongs, identified by the words "U.S./Canadian content." (Emphasis added.)

This subsection expressly and specifically requires manufacturers to provide certain information, on the label, including the percentage U.S./Canadian parts content. Following accepted principles of statutory construction, the agency cannot interpret a more general provision as overriding this specific provision.

F. Clarifying Amendments

NHTSA is making several amendments suggested by AAMA for purposes of clarity. The amendments help clarify when the U.S. and Canada are treated together and when they are treated separately in making country of origin determinations. The amendments also help clarify requirements concerning optional information for carlines assembled in the U.S./Canada and in one or more other countries.

G. Letter From Ford

Ford submitted a letter requesting NHTSA's concurrence on a procedure for determining the U.S./Canadian content and country of origin for foreign-sourced allied and outside supplier components. That company explained its request as follows:

> [Part 583] assigns zero domestic content to all passenger motor vehicle equipment which is imported into the territorial boundaries of the United States or Canada from a third country, even if part of its material originated in the United States or Canada. 49 CFR 583.7 allows the supplier to use methodologies that are used for customs purposes to determine the country of origin. Ford expects that for any imported component, both allied and outside, suppliers would report that the domestic content is zero and the country of origin is the country of manufacture, based on the rules of substantial transformation.
>
> Ford can obtain the same information (zero domestic content, country of manufacture, purchase price) expected to be received from our foreign suppliers from our present purchasing systems. Since the process of soliciting the supplier is costly, Ford plans to assign the domestic content and country of origin of the foreign sourced components without soliciting the data from our foreign suppliers. We are concerned that even if Ford did submit the request to foreign suppliers, that suppliers would have to expend additional resources creating a document which Ford already knows the answer. Even if the foreign supplier does not respond, the domestic content and country of origin will not be any different than if they did respond. Ford believes that requiring these suppliers to respond will impose costly and unnecessary burdens on our foreign suppliers.

NHTSA notes that it decided to address Ford's request in this notice, since it was related to some of the issues raised by the petitions for reconsideration.

After carefully considering Ford's request in light of the Labeling Act and Part 583, NHTSA has decided that, for equipment supplied by foreign suppliers and imported into the U.S. or Canada, manufacturers may use any available information to make determinations of zero U.S./Canadian content, country of manufacture, and purchase price, as an alternative to relying on supplier certifications. The agency notes that this represents a change in position from the final rule preamble. The reasons for the agency's new position are set forth below.

In the final rule preamble, NHTSA noted that Toyota had commented that "blanket certifications" should be authorized for use where a supplier's parts contain no U.S./Canadian content and where the country of origin of the equipment is indicated in ordinary business records. In responding to this comment, the agency noted that the Labeling Act provides that the agency's "regulations shall include provisions applicable to outside suppliers and allied suppliers to require those suppliers to certify whether passenger motor vehicle equipment provided by those suppliers is of United States origin, of United States/Canadian origin, or of foreign content and to provide other information * * * necessary to allow each manufacturer to comply reasonably with this section and to rely on that certification and information." 49 U.S.C. 32304(e). NHTSA concluded that, given this statutory provision, it cannot permit the use of ordinary business records instead of specific certifications. See 59 FR 37319. (The agency did note that a certification can cover multiple items of equipment and be incorporated into business records that contain other information.)

On further consideration, NHTSA has concluded that the above-quoted sentence of section 32304(e) should not be read to require manufacturers to obtain information from suppliers that the manufacturer can determine on its own. The agency believes that statutory requirement is met literally by section 583's requirement for suppliers to provide manufacturers and allied suppliers, upon their request, a certificate providing the relevant information. The agency also believes that there is no reason to require manufacturers to request information for which they already know the answer.

With respect to whether manufacturers can make the relevant content determinations, NHTSA believes that it is important to distinguish between passenger motor vehicle equipment that is assembled or produced in the U.S. or Canada, and equipment imported into the U.S. or Canada that was produced in third countries. For reasons discussed in the section on "non-responsive suppliers," manufacturers and allied suppliers will not possess the information needed to determine whether equipment produced in the U.S. or Canada is of U.S./Canadian origin, i.e., whether the equipment has at least 70 percent U.S./Canadian content.

However, manufacturers may possess the information necessary to make content determinations for equipment imported into the U.S. or Canada that was produced in third countries. Under section 583.6(c), the U.S./Canadian content of such equipment is presumed to be zero. Moreover, section 583.7 provides considerable flexibility in making country-of-origin determinations for such equipment. Therefore, for equipment supplied by foreign suppliers which is imported into the U.S. or Canada, the agency believes it is reasonable to permit manufacturers to use any available information to make determinations of zero U.S./Canadian content, country of manufacture, and purchase price, as an alternative to relying on supplier certifications. Manufacturers can, of course, request the information of foreign suppliers instead of making their own determinations.

NHTSA does not believe that there is a need to change the regulation to reflect this new position. The agency notes that section 583.5(h) requires manufacturers and allied suppliers to request their suppliers to provide directly to them the information and certifications "which are necessary for the manufacturer/allied supplier to carry out its responsibilities under [Part 583]." Thus, manufacturers and allied suppliers are not required to request information which is unnecessary for them to carry out their responsibilities.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under Executive Order 12866. The July 1994 final rule was determined to be "significant" under the Department's regulatory policies and procedures, given the degree of public interest and the relationship to other Federal programs and agencies, particularly those related to international trade. This final rule is sufficiently related to that final rule to also be considered significant.

NHTSA discussed the costs associated with the July 1994 rule in a Final Regulatory Evaluation which was placed in the docket for this rulemaking. Today's amendments should slightly reduce manufacturer and supplier costs by simplifying the process for making content determinations.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers and some vehicle manufacturers, are affected by the regulation, the effect on them is minor since the requirements are informational.

C. National Environmental Policy Act

The agency has analyzed the environmental impacts of the regulation in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and has concluded that it will not have a significant effect on the quality of the human environment.

D. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this final rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. States are preempted from promulgating laws and regulations contrary to the provisions of the rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 583

Motor vehicles, Imports, Labeling, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 583 is amended as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

1. The authority citation for part 583 continues to read as follows:

Authority: 49 U.S.C. 32304, 49 CFR 1.50, 501.2(f).

2. Section 583.5 is amended by revising paragraph (e)(3) to read as follows:

§ 583.5 Label requirements.

* * * * *

(e) * * *

(3) A manufacturer selecting this option for a particular carline shall

provide the specified additional information on the labels of all vehicles within the carline, providing the U.S./Canadian content that corresponds to the U.S./Canadian content of the manufacturing location shown as the final assembly point (with all U.S. and Canadian locations considered as a single assembly point) on the label.

* * * * *

3. Section 583.6 is revised to read as follows:

§ 583.6 Procedure for determining U.S./Canadian parts content.

(a) Each manufacturer, except as specified in § 583.5(f) and (g), shall determine the percentage U.S./Canadian Parts Content for each carline on a model year basis, before the beginning of each model year. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. All value otherwise added at the final assembly point and beyond, including all final assembly costs, are excluded from the calculation of U.S./Canadian parts content.

(b) *Determining the value of items of equipment.*

(1) For items of equipment received at the final assembly point, the value is the price paid by the manufacturer for the equipment as delivered to the final assembly point.

(2) For items of equipment produced at the final assembly point (but not as part of final assembly), the value is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment.

(3) For items of equipment received at the factory or plant of an allied supplier, the value is the price paid by the allied supplier for the equipment as delivered to its factory or plant.

(c) *Determining the U.S./Canadian percentage of the value of items of equipment.*

(1) Equipment supplied by an outside supplier to a manufacturer or allied supplier is considered:

(i) 100 percent U.S./Canadian, if 70 percent or more of its value is added in the United States and/or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States and/or Canada.

(2) The extent to which an item of equipment supplied by an allied supplier is considered U.S./Canadian is determined by dividing the value added in the United States and/or Canada by the total value of the equipment. The resulting number is multiplied by 100 to determine the percentage U.S./Canadian content of the equipment.

(3) In determining the value added in the United States and/or Canada of equipment supplied by an allied supplier, any equipment that is delivered to the allied supplier by an outside supplier and is incorporated into the allied supplier's equipment, is considered:

(i) 100 percent U.S./Canadian, if at least 70 percent of its value is added in the United States and/or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States and/or Canada.

(4)(i) Value added in the United States and/or Canada by an allied supplier or outside supplier includes—

(A) The value added in the U.S. and/or Canada for materials used by the supplier, determined according to (4)(ii) for outside suppliers and (4)(iii) for allied suppliers, plus,

(B) For passenger motor vehicle equipment assembled or produced in the U.S. or Canada, the value of the difference between the price paid by the manufacturer or allied supplier for the equipment, as delivered to its factory or plant, and the total value of the materials in the equipment.

(ii) Outside suppliers of passenger motor vehicle equipment will determine the value added in the U.S. and/or Canada for materials in the equipment as specified in paragraphs (A) and (B).

(A)(*1*) For any material used by the supplier which was produced or assembled in the U.S. or Canada, the supplier will subtract from the total value of the material any value that was not added in the U.S. and/or Canada. The determination of the value that was not added in the U.S. and/or Canada shall be a good faith estimate based on information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc.

(*2*) The supplier shall consider the amount of value added and the location in which that value was added—

(*i*) At each earlier stage, counting from the time of receipt of a material by the supplier, back to and including the two closest stages each of which represented a substantial transformation into a new and different product with a different name, character and use.

(*ii*) The value of materials used to produce a product in the earliest of these two substantial transformation stages shall be treated as value added in the country in which that stage occurred.

(B) For any material used by the supplier which was imported into the United States or Canada from a third country, the value added in the United States and/or Canada is presumed to be zero. However, if documentation is available to the supplier which identifies value added in the United States and/or Canada for that material (determined according to the principles set forth in (A), such value added in the United States and/or Canada is counted.

(iii) Allied suppliers of passenger motor vehicle equipment shall determine the value that is added in the U.S. and/or Canada for materials in the equipment in accordance with (c)(3).

(iv) For the minor items listed in the § 583.4 definition of "passenger motor vehicle equipment" as being excluded from that term, outside and allied suppliers may, to the extent that they incorporate such items into their equipment, treat the cost of the minor items as value added in the country of assembly.

(v) For passenger motor vehicle equipment which is imported into the territorial boundaries of the United States or Canada from a third country, the value added in the United States and/or Canada is presumed to be zero. However, if documentation is available to the supplier which identifies value added in the United States and/or Canada for that equipment (determined according to the principles set forth in the rest of (c)(4)), such value added in the United States and/or Canada is counted.

(vi) The payment of duty does not result in value added in the United States and/or Canada.

(5) If a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. This provision does not affect the obligation of manufacturers and allied suppliers to request this information from their suppliers or the obligation of the suppliers to provide the information.

(d) *Determination of the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment.* The percentage of the value of a carline's passenger motor vehicle equipment that is U.S./Canadian is determined by—

(1) Adding the total value of all of the equipment (regardless of country of origin) expected to be installed in that carline during the next model year;

(2) Dividing the value of the U.S./Canadian content of such equipment by the amount calculated in paragraph (d)(1) of this section, and

(3) Multiplying the resulting number by 100.

(e) *Alternative calculation procedures.*

(1) A manufacturer may submit a petition to use calculation procedures based on representative or statistical sampling, as an alternative to the calculation procedures specified in this section to determine U.S./Canadian parts content and major sources of foreign parts content.

(2) Each petition must—

(i) Be submitted at least 120 days before the manufacturer would use the alternative procedure;

(ii) Be written in the English language;

(iii) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590;

(iv) State the full name and address of the manufacturer;

(v) Set forth in full the data, views and arguments of the manufacturer that would support granting the petition, including—

(A) the alternative procedure, and

(B) analysis demonstrating that the alternative procedure will produce substantially equivalent results to the procedure set forth in this section;

(vi) Specify and segregate any part of the information and data submitted in the petition that is requested to be withheld from public disclosure in accordance with part 512 of this chapter (the basic alternative procedure and basic supporting analysis must be provided as public information, but confidential business information may also be used in support of the petition).

(3) The NHTSA publishes in the **Federal Register**, affording opportunity for comment, a notice of each petition containing the information required by this part. A copy of the petition is placed in the public docket. However, if NHTSA finds that a petition does not contain the information required by this part, it so informs the petitioner, pointing out the areas of insufficiency and stating that the petition will not receive further consideration until the required information is submitted.

(4) If the Administrator determines that the petition does not contain adequate justification, he or she denies it and notifies the petitioner in writing, explaining the reasons for the denial. A copy of the letter is placed in the public docket.

(5) If the Administrator determines that the petition contains adequate justification, he or she grants it, and notifies the petitioner in writing. A copy of the letter is placed in the public docket.

(6) The Administrator may attach such conditions as he or she deems appropriate to a grant of a petition, which the manufacturer must follow in order to use the alternative procedure.

4. Section 583.7 is amended by revising paragraphs (c)(1) and (f) to read as follows:

§ 583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.

* * * * *

(c) * * *

(1) Except as provided in (c)(2), the country of origin of each item is the country which contributes the greatest amount of value added to that item (treating the U.S. and Canada together).

* * * * *

(f) In determining the percentage of the total value of a carline's passenger motor vehicle equipment which is attributable to individual countries other than the U.S. and Canada, no value which is counted as U.S./Canadian parts content is also counted as being value which originated in a country other than the U.S. or Canada.

5. Section 583.8 is amended by revising paragraphs (c)(1) and (e) to read as follows:

§ 583.8 Procedure for determining country of origin for engines and transmissions for purposes of determining the information specified by §§ 583.5(a)(4) and 583.5(a)(5) only.

* * * * *

(c) * * *

(1) Except as provided in (c)(2), the country of origin of each item of equipment is the country which contributes the greatest amount of value added to that item (the U.S. and Canada are treated separately).

* * * * *

(e) The country of origin of each engine and the country of origin of each transmission is the country which contributes the greatest amount of value added to that item of equipment (the U.S. and Canada are treated separately).

Issued on: September 11, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–22902 Filed 9–14–95; 8:45 am]

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Proposed Rules

Federal Register

Vol. 60, No. 179

Friday, September 15, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–179–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), which would have superseded an existing AD that is applicable to certain Boeing Model 727 series airplanes. The existing AD currently requires inspections to detect cracks of the elevator rear spar, and repair, if necessary; and provides for a terminating action for the inspections. The previously proposed action would have added a one-time inspection to verify that proper clearance exists between the shear plate and the radii of the elevator rear spar on airplanes on which the terminating action had been accomplished. This action revises the proposed rule by adding new inspections to detect cracks and loose brackets of the elevator rear spar; adding a new terminating modification for the inspections; and expanding the applicability of the rule to include additional airplanes. Additionally, it would supersede two previously issued AD's. The proposed actions are intended to prevent cracking in elements of the elevator rear spar assembly, which could result in excessive free play of the elevator control tab and possible tab flutter.

DATES: Comments must be received by October 12, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–179–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Model 727 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 29, 1994 (59 FR 67238). That NPRM published as Docket 94–NM–179–AD, would have superseded AD 84–22–02, amendment 39–4951 (49 FR 45743, November 20, 1984) to continue to require repetitive visual inspections to detect cracks of the elevator rear spar, and repair, if necessary. That NPRM would have added a one-time inspection to verify that proper clearance exists between the shear plate and the radii of the elevator rear spar on airplanes on which the terminating action specified in AD 84–22–02 has been accomplished. That NPRM would have also provided for an improved modification or repair of the elevator rear spar, which, if accomplished, would have constituted terminating action for the repetitive visual inspection requirements. The proposed action was prompted by reports of cracking in the spar radii at the tab hinge location of the elevator rear spar on certain airplanes. Cracking in this area, if not corrected, could result in excessive free play of the elevator control tab and possible tab flutter.

The FAA issued another proposal, Docket No. 94–NM–197–AD, applicable to certain Boeing Model 727 series airplanes, which was published as a NPRM in the **Federal Register** on January 4, 1995 (60 FR 386). That NPRM proposed to supersede AD 87–24–03, amendment 39–5769 (52 FR 43742, November 16, 1987), and require actions essentially identical to those previously proposed in Docket No. 94–NM–179–AD. The only relevant differences are the specific affected airplanes and certain compliance times.

Since the issuance of those two NPRM's, the FAA has received several reports of cracking found in the elevator

rear spar on a number of Model 727 series airplanes. Investigation has revealed that this cracking occurred on these airplanes following accomplishment of inspections to ensure that proper clearance exists between the shear plate and the rear spar radii. Those inspections of this area would have been required by the two previously-issued NPRM's. The inspection procedure is described in Boeing Service Bulletin 727–55–0085 (which was referenced in Docket No. 94–NM–179–AD as the appropriate source of service information), and Boeing Service Bulletin 727–55–0087 (which was referenced in Docket No. 94–NM–197–AD as the appropriate source of service information). In light of this new cracking, the FAA has determined that these inspections to verify clearance, as proposed in Docket 94–NM–179–AD and Docket 94–NM–197–AD, do not adequately preclude fatigue cracking in the elevator rear spar; this condition could result in excessive free play of the elevator control tab and possible tab flutter.

The FAA has reviewed and approved Boeing Service Bulletin 727–55–0089, dated June 29, 1995. The service bulletin describes procedures for repetitive visual inspections to detect cracks and loose brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate. This service bulletin also describes procedures for various follow-on actions, such as stop drilling and modification. The modification involves replacing the elevator rear spar with a one piece spar assembly and the tee fittings with two support fittings per tab hinge bracket. This modification will prevent fatigue cracks in the elevator rear spar. Accomplishment of the modification eliminates the need for the repetitive visual inspections.

Additionally, this service bulletin expands the effectivity listing to include additional airplanes, which were not previously addressed in Boeing Service Bulletins 727–55–0085 and 727–44–0087, but are subject to the addressed unsafe condition. (Operators should note that Boeing Service Bulletin 727–55–0089 supersedes Boeing Service Bulletins 727–55–0085 and 727–55–0087.)

Since this condition is likely to exist or develop on other products of this same type design, this supplemental NPRM would supersede AD's 84–22–02 and 87–24–03, and would require repetitive visual inspections to detect cracks and loose brackets of the elevator rear spar, and various follow-on actions. The supplemental NPRM would also require installation of a modification that would constitute terminating action for the repetitive inspections. Additionally, the supplemental NPRM would expand the applicability of the existing proposed rule to include additional airplanes. These actions would be required to be accomplished in accordance with Boeing Service Bulletin 727–55–0089, described previously.

The FAA has determined that, in order to adequately address the unsafe condition presented by the problems associated with fatigue cracking in the subject areas, and to facilitate recordkeeping by affected operators, this proposed action (Docket 94–NM–179–AD) will combine the requirements (and applicability) that were previously proposed in two separate rulemaking actions. The FAA intends to withdraw Docket 94–NM–197–AD at a later time by means of a separate rulemaking action.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 1,631 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,166 airplanes of U.S. registry would be affected by this proposed AD.

The inspections would take approximately 17 work hours per airplane to accomplish (this includes the time required to gain access, remove parts, inspect, install, and perform functional testing), at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the proposed inspections requirements on U.S. operators is estimated to be $1,189,320, or $1,020 per airplane, per inspection cycle.

The modification would take approximately 430 work hours per airplane to accomplish, at an average labor rate of $60 per work hours. Required parts would cost approximately $8,580 per airplane. Based on these figures, the total cost impact of the proposed modification requirements on U.S. operators is estimated to be $40,087,080, or $34,380 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendments 39–4951 (49 FR 45743, November 20, 1984) and 39–5769 (52 FR 43742, November 16, 1987), and by adding the following new airworthiness directive:

Boeing: Docket 94–NM–179–AD. Supersedes AD 84–22–02, amendment 39–4951; and AD 87–24–03, amendment 39–5769.

Applicability: Model 727 series airplanes, line numbers 1 through 1832 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (j) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive free play of the elevator control tab and possible tab flutter, accomplish the following:

(a) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–0085, dated August 31, 1984 (specified as terminating action in AD 84–22–02, amendment 39–4951), has not been accomplished and the repetitive inspections required by AD 84–22–02 have not been initiated: Prior to the accumulation of 8,000 total flight hours since date of manufacture, or within 300 flight hours after the effective date of this AD, whichever occurs later, accomplish paragraph (g) of this AD.

Note 2: AD 84–22–02 pertains to the one-piece elevator rear spar.

(b) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–0085, dated August 31, 1984 (specified as terminating action in AD 84–22–02, amendment 39–4951), has not been accomplished and the repetitive inspections required by AD 84–22–02 have been initiated: Accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If any crack has been stop drilled in accordance with AD 84–22–02, accomplish paragraphs (b)(1)(i) and (b)(1)(ii) of this AD, in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995.

(i) Within 1,600 flight hours after stop drilling, accomplish paragraph (g) of this AD.

(ii) Notwithstanding paragraph (h) of this AD, within 3,200 flight hours after stop drilling, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(2) If no crack has been detected as a result of inspections required by AD 84–22–02, within 1,600 flight hours after the last inspection required by that AD, perform a visual inspection to detect cracks and loose brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, and accomplish follow-on actions (i.e., stop drill, modify), in accordance with the Boeing Service Bulletin 727–44–0089, dated June 29, 1995. Repeat the inspection thereafter at intervals not to exceed 1,600 flight hours or 18 months, whichever occurs first. If any crack growth is detected after stop drilling, prior to further flight, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–44–0089, dated June 29, 1995.

(c) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–0085, dated August 31, 1984 (specified as terminating action in AD 84–22–02, amendment 39–4951), has been accomplished: Within 4,000 flight hours after the effective date of this AD, accomplish paragraph (g) of this AD.

(d) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–087, dated June 20, 1986 (specified as terminating action in AD 87–24–03, amendment 39–5769), has not been accomplished and the repetitive inspections required by AD 87–24–03 have not been initiated: Accomplish paragraph (g) of this AD, at the earliest of times specified in paragraph (d)(1), (d)(2), or (d)(3):

Note 3: AD 87–24–03 pertains to the two-piece elevator rear spar.

(1) Prior to the accumulation of 27,000 total flight hours since date of manufacture, or within 4,000 flight hours after December 24, 1987 (the effective date of 87–24–03, amendment 39–5769), whichever occurs later; or

(2) Prior to the accumulation of 12,000 total flight hours since date of manufacture, or within 4,000 flight hours after the effective date of this AD, whichever occurs later; or

(3) Prior to the accumulation of 27,300 total flight hours since date of manufacture, or within 300 flight hours after the effective date of this AD, whichever occurs later.

(e) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–087, dated June 20, 1986 (specified as terminating action in AD 87–24–03, amendment 39–5769), has not been accomplished and the repetitive inspections required by AD 87–24–03 have been initiated: Accomplish either paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) If any crack has been stop drilled in accordance with AD 87–24–03, accomplish paragraphs (e)(1)(i) and (e)(1)(ii) of this AD, in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995.

(i) Within 1,600 flight hours after stop drilling, accomplish paragraph (g) of this AD.

(ii) Notwithstanding paragraph (h) of this AD, within 3,200 flight hours after stop drilling, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(2) If no crack has been detected as a result of inspections required by AD 87–24–03, within 4,000 flight hours after the last inspection required by that AD, perform a visual inspection to detect cracks and loose brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, and accomplish follow-on actions (i.e., stop drill, modify), in accordance with Boeing Service Bulletin 727–44–0089, dated June 29, 1995. Repeat the inspection thereafter at intervals not to exceed 1,600 flight hours or 18 months, whichever occurs first. If any crack growth is detected after stop drilling, prior to further flight, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–44–0089, dated June 29, 1995.

(f) For airplanes on which the modification or repair described in Boeing Service Bulletin 727–55–087, dated June 20, 1986 (specified as terminating action in AD 87–24–03, amendment 39–5769), has been accomplished: Within 4,000 flight hours after the effective date of this AD, accomplish paragraph (g) of this AD.

(g) At the time specified in paragraphs (a), (b)(1)(i), (c), (d), (e)(1)(i), and (f), as applicable, perform a visual inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, and accomplish follow-on actions (i.e., re-inspect, stop drill, modify) in accordance with Boeing Service Bulletin 727–55–0089, dated June 29, 1995, at the time specified in the service bulletin. If any crack growth is detected after stop drilling, prior to further flight, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

(h) Within 5 years after accomplishing the initial inspection required by this AD, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–55–0089, dated June 29, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Issued in Renton, Washington, on September 11, 1995.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22969 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–CE–02–AD]

Airworthiness Directives; Glasflugel, Model Mosquito Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Glasflugel, model Mosquito sailplanes. The proposed action would require modifying the mounting studs on the lifting/tilting frame of the canopy system, repetitively inspecting the mounting stud, and incorporating flight manual revisions that specify a warning on emergency canopy deployment failure. Canopy system problems discovered during routine checks and periodic inspections of these sailplanes prompted the proposed action. The actions specified in this proposed AD are intended to prevent canopy system failure, which could result in loss of control of the sailplane.

DATES: Comments must be received on or before November 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–02–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Glasflugel, c/o Hansjorg Streifeneder, Glasfer-Flugzeug Service, Hofener Weg, D 72582 Grabenstetten, Germany, telephone number 49.73.82.10.32. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Herman C. Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–02–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–02–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Glasflugel mode Mosquito sailplanes. The LBA reports: (1) considerable wear to the mounting studs on the canopy lifting/tilting frame caused by the guide bracket on either side of the fuselage; and (2) possible emergency deployment failure of the canopy caused by the "Pip" pin not being engaged.

Glasflugel has issued the following Technical Note (TN) 303–18, dated March 1, 1991, which specifies repetitively inspecting the mounting studs on the canopy lifting/tilting frame for wear caused by the guide bracket on either side of the fuselage and modifying the mounting studs if they are less than a specified diameter.

Glasflugel also issued Technical Note 303–9, dated June 22, 1979, which specifies incorporating a flight manual revision to include a warning regarding the emergency canopy deployment system.

In order to assure the continued airworthiness of these sailplanes in Germany, the LBA classified the above-referenced technical notes as mandatory, and also issued LBA AD 91–111. The LBA classifying a technical note as mandatory is the same for sailplanes registered in Germany as the FAA issuing an AD for sailplanes registered in the United States.

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement between Germany and the United States. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Glasflugel Mosquito sailplanes of the same type design, the proposed AD would require the following:

- Within the next 30 calendar days, after the effective date of this AD, inspect the mounting studs on the canopy lifting/tilting frame for wear, repetitively inspecting the mounting

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stud every 100 hours time-in-service (TIS) thereafter,

- Measure the diameter of the mounting stud and if it is less than 5 mm (0.2 inch) increase the diameter to 6 mm (0.24 inch) in accordance with the procedure described in Glasflugel Technical Note (TN) 303–18, dated March 1, 1991,
- Incorporate a change to the Mosquito flight manual on page 19, paragraph 3.3 by inserting the following language in accordance with Glasflugal TN 303–9, dated June 22, 1979:

> Whenever the canopy emergency jettison knob is pulled and prior to each flight, if no locking thread is used, it should be ensured that the Pip pines are fully pushed home, so that the locking balls are clear of and behind their fittings.

Initially, the compliance time of the proposed AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected sailplanes ranges throughout the fleet. For example, one owner may operate the sailplane 25 hours in one week, while another operator may operate the sailplane 25 hours in one year. For this reason, the FAA has determined that, in order to ensure that all of the owners/operators of the affected sailplanes initially inspect the canopy system and incorporate the flight manual revisions within a reasonable amount of time, a calendar compliance time is proposed.

The FAA estimates that 40 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $10 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,200. This figure is based on the assumption that no affected owner/operator of the affected sailplanes has incorporated the proposed modification or accomplished the proposed inspection.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40101, 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Glasflugel: Docket No. 93–CE–02–AD.

Applicability; Model Mosquito Sailplanes (all serial numbers).

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any sailplane from the applicability of this AD.

Compliance: Required initially within the next 30 calendar days after the effective date of this AD, unless already accomplished, and repetitively inspect thereafter as indicated in the body of this AD.

To prevent canopy frame failure and emergency canopy deployment failure, which could result in loss of control of the sailplane, accomplish the following:

(a) Inspect the mounting studs on the canopy lifting/tilting frame for evidence of wear and diameter specifications in accordance with the recommendation in Glasflugel TN 303–18, dated March 1, 1991.

(1) If the mounting stud is worn or the diameter measures less than 5 mm (0.2 inch), prior to further flight, increase the diameter to 6 mm (0.24 inch) in accordance with the procedure described in Glasflugel Technical Note (TN) 303–18, dated March 1, 1991.

(2) Repeat the inspection specified in paragraph (a) of this AD and increase the diameter as necessary at intervals not to exceed 100 hours time-in-service (TIS).

(b) Incorporate the following language on page 19, paragraph 3.3 of the Mosquito flight manual in accordance with Glasflugel TN 303–9, dated June 22, 1979:

> Whenever the canopy emergency jettison knob is pulled and prior to each flight, if no locking thread is used, it should be ensured that the Pip pins are fully pushed home; so that the locking balls are clear of and behind their fittings.

(c) Incorporating the flight manual revision as required by paragraph (b) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the sailplane's records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Glasflugel, c/o Hansjorg Streifeneder, Glasfaser-Flugzeug Service, Hofener Weg, D 72582 Grabenstetten, Germany, or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 7, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22922 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 95–NM–131–AD]

Airworthiness Directives; McDonnell Douglas Models DC–9, DC–9–80, and MD–90–30 Series Airplanes, and Model MD–88 Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an exiting airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that currently requires an inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap to the wire bundle, and corrective actions, if necessary. That AD was prompted by reports of chafed and shorted wires that resulted in smoke emanating from the overhead switch panel of the cockpit. This action would expand the applicability of the rule to include certain Model DC–9, C–9 (military), and MD–90–30 series airplanes. This action also proposes to add a requirement to reroute the wire bundle to preclude chafing and damage. The actions specified by the proposed AD are intended to prevent the potential for fire and uncontrolled smoke throughout the cockpit as a result of chafing and shorting in the electrical wire bundles.

DATES: Comments must be received by November 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–131–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 25, 1995, the FAA issued AD 95–09–10, amendment 39–9213 (60 FR 21977, May 4, 1995), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. That AD requires a one-time visual inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap to the wire bundle, repair of chafed wire insulation, and splicing of damaged wires. That action was prompted by reports of chafed and shorted wires that resulted in smoke emanating from the overhead switch panel of the cockpit. The requirements of that AD are intended to prevent the potential for fire and uncontrolled smoke throughout the cockpit as a result of chafing and shorting in the electrical wire bundles.

In the preamble to AD 95–09–10, the FAA indicated that the required actions were considered to be interim action, and that additional rulemaking action was being considered to require modification (rerouting) of the wire bundles. The FAA also indicated that subsequent rulemaking action may be proposed to require the same actions that are required by AD 95–09–10 be applicable to certain Model DC–9, C–9 (military), and MD–90–30 series airplanes.

The FAA now has determined that certain Model DC–9, C–9 (military), and MD–90–30 series airplanes are subject to the same unsafe condition as Model DC–9–80 series airplanes and Model MD–88 airplanes that were identified in the applicability of AD–95–09–10, The wire bundle in the overhead switch panel of the cockpit is routed similarly in all of these airplanes and, therefore, the same potential for wire chafing and damage exists on all of these airplanes. Further, the FAA has determined the rerouting the wire bundles in the overhead switch panel of the cockpit on these airplanes will preclude the potential for fire and uncontrolled smoke throughout the cockpit .

Based on these determinations, the FAA finds that additional rulemaking is indeed necessary, and this proposed rule follows from these determinations.

Additionally, the FAA has reviewed and approved McDonnell Douglass MD–90 Alert Service Bullletin MD90–24A001, dated April 11, 1995, which describes procedures for a one-time visual inspection to detect chafing of the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap, repair of chafed wire insulation, and splicing of damaged wires. This service bulletin pertains only to certain Model MD–90 series airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–09–10 to continue to require a one-time visual inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, application of spiral wrap to the wire bundle, repair of chafed wire insulation, and splicing of damaged wires. For certain Model MD–90–30 series airplanes, the actions would be

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required to be accomplished in accordance with the alert service bulletin described previously. For certain Model DC–9, C–9 (military), DC–9–80 series airplanes, and Model MD–88 airplanes, the actions would continue to be required to be accomplished in accordance with McDonnell Douglas DC–9 Alert Service Bulletin DC9–24A157, dated April 11, 1995 (which was referenced in AD 95–09–10 as the appropriate source of service information).

Additionally, the proposed AD would add a requirement to reroute the wire bundle in accordance with a method approved by the FAA.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 2,012 Model DC–9, C–9 (military, DC–9–80, and MD–90–30 series airplanes, and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 816 airplanes of U.S. registry would be affected by this proposed AD. The proposed requirement to inspect and spiral wrap the wire bundle would take approximately 3 work hours per airplane to accomplish, and the average labor rate is $60 per work hour. Required parts would cost approximately $5 per airplane. Based on these figures that total cost impact of these proposed actions on U.S. operators is estimated to be $185 per airplane.

The requirement to inspect and spiral wrap the wire bundle, specified in this proposed rule, was previously required by AD 95–09–10, which was applicable to 614 Model DC–9–80 series airplanes and Model MD–88 airplanes of U.S. registry. Based on the figures discussed above, the total cost impact of the current requirements of that AD on U.S. operators of Model DC–9–80 series airplanes and Model MD–88 airplanes is estimated to be $113,590. In consideration of the compliance time and effective date of AD 95–09–10, the FAA assumes that U.S. operators of airplanes that are subject to the requirements of that AD have already initiated the required actions. Therefore, the proposed action to inspect and spiral wrap the wire bundle would add no new costs associated with those airplanes.

However, this proposed action would also be applicable to approximately 202 Model DC–9, C–9 (military), and Model MD–9–30 series airplanes of U.S. registry. Based on the figures discussed above, the total new costs imposed by this proposal on U.S. operators of these airplanes are estimated to be $37,370. This figure is based on assumptions that no operator of these additional airplanes has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The newly proposed requirements of this AD action to reroute the wire bundle would be applicable to 816 Model DC–9, C–9 (military), DC–9–80, and Model MD–90–30 series airplanes, and Model MD–88 airplanes of U.S. registry. The proposed requirement to reroute the wire bundle would take approximately 0.5 work hour per airplane to accomplish, and the average labor rate is $60 per work hour. Required parts would cost approximately $5 per airplane. Based on these figures the total cost impact of this proposed action on U.S. operators is estimated to be $28,560, or $35 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9213 (60 FR 21977, May 4, 1995), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 95–NM–131–AD. Supersedes AD 95–09–10, Amendment 39–9213.

Applicability: Models DC–9, C–9 (military), and DC–9–80 series airplanes, and Model MD–88 airplanes, as listed in McDonnell Douglas DC–9 Alert Service Bulletin DC9–24A157, dated April 11, 1995; and Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–24A001, dated April 11, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the potential for fire and uncontrolled smoke throughout the cockpit, accomplish the follows:

(a) For Model DC–9–80 series airplanes and Model MD–88 airplanes: Within 90 days after May 19, 1995 (the effective date of AD 95–09–10, amendment 39–9213), perform a

visual inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, in accordance with McDonnell Douglas Alert Service Bulletin DC9–24A157, dated April 11, 1995.

(1) If no chafing or damage is detected, prior to further flight, apply spiral wrap to the wire bundle in accordance with the alert service bulletin.

(2) If the wire insulation is chafed, prior to further flight, repair it and then apply spiral wrap to the wire bundle, in accordance with the alert service bulletin.

(3) If the wire conductor is damaged, prior to further flight, splice the wires and then apply spiral wrap to the wire bundle, in accordance with the alert service bulletin.

(b) For Model DC–9 and C–9 (military), and MD–90–30 series airplanes: Within 6 months after the effective date of this AD, perform a visual inspection to detect chafing of or damage to the wire bundle in the overhead switch panel of the cockpit, in accordance with McDonnell Douglas CD–9 Alert Service Bulletin DC9–24A157, dated April 11, 1995 [for Model DC–9 and C–9 (military) series airplanes], or McDonnell Douglas MD–90 Alert Service Bulletin MD90–24A001, dated April 11, 1995 (for Model MD–90–30 series airplanes), as applicable.

(1) If no chafing or damage is detected, prior to further flight, apply spiral wrap to the wire bundle in accordance with the applicable alert service bulletin.

(2) If the wire insulation is chafed, prior to further flight, repair it and then apply spiral wrap to the wire bundle, in accordance with the alert service bulletin.

(3) If the wire conductor is damaged, prior to further flight, splice the wires and them apply spiral wrap to the wire bundle, in accordance with the applicable alert service bulletin.

(c) Within 6 months after the effective date of this AD, reroute the wire bundle in the overhead switch panel of the cockpit in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Note 3: Alternative methods of compliance previously granted for amendment 39–9213, AD 95–09–10, continue to be considered as acceptable alternative methods of compliance with this amendment.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 11, 1995.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22967 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 95–NM–43–AD]

Airworthiness Directives; Raytheon Corporate Jets Model BAe 125–800A and –1000A and Model Hawker 800 and 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Corporate Jets Model BAe 125–800A and –1000A and Model Hawker 800 and 1000 series airplanes. This proposal would require an inspection to determine if the diode soldered connections are clean and functionally sound. This proposal would also require remake of the soldered connection and replacement of the diode with a new diode, if necessary. This proposal is prompted by reports of imperfect soldered connections in the engine starting and battery emergency control circuit. The actions specified by the proposed AD are intended to prevent incorrect fault displays in the cockpit and intermittent fault symptoms in the engine starting and battery emergency control circuits, as a result of imperfect soldered connections.

DATES: Comments must be received by October 27, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–43–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Raytheon Corporate Jets Model BAe 125–800A and –1000A and Model Hawker 800 and 1000 series airplanes. The CAA advises that it has received reports of imperfect soldered connections in the engine starting and battery emergency control circuit. Such connections have led to fault symptoms of an intermittent nature in these circuits. This condition, if not corrected, could lead to incorrect fault displays in the cockpit and intermittent fault symptoms in the engine starting and battery emergency control circuits.

Raytheon Corporate Jets has issued Hawker Service Bulletin SB 24–317, dated December 22, 1994, which describes procedures for an inspection to determine if diode soldered connections are clean and functionally sound. This service bulletin also describes procedures for remake of the soldered connection or replacement of the diode with a new diode, if necessary. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an inspection to determine if the diode soldered connections are clean and functionally sound. The proposed AD would also require remake of the soldered connection or replacement of the diode with a new diode, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 19 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,140, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Corporate Jets, Inc. (Formerly DeHavilland, Hawker Siddeley, British Aerospace PLC): Docket 95–NM–43–AD.

Applicability: Model BAe 125–800A and –1000A, and Model Hawker 800 and 1000 series airplanes, as listed in Raytheon Corporate Jets Hawker Service Bulletin SB 24–317, dated December 22, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect fault displays in the cockpit and intermittent fault symptoms in the engine starting and battery emergency control circuits, as a result of imperfect soldered connections, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform an inspection to determine if each diode soldered connection is clean and functionally sound, in accordance with Hawker Service Bulletin SB 24–317, dated December 22, 1994. If any diode soldered connection is not clean or not functionally sound, prior to further flight, remake the soldered connection or replace the diode with a new diode, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 11, 1995.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22968 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

OSD Privacy Program

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Proposed rule.

SUMMARY: In accordance with the Privacy Act of 1974, the Office of the Joint Staff proposes to exempt the system of records JS004SECDIV, entitled Joint Staff Security Clearance Files. The exemption is needed to comply with prohibitions against disclosure of information provided the government under a promise of confidentiality and to protect privacy rights of individuals identified in the system of records.

DATES: Comments must be received no later than November 14, 1995, to be considered by this agency.

ADDRESSES: Send comments to OSD Privacy Act Officer, Directives and Records Division, Washington Headquarters Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Director, Administration and Management, Office of the Secretary of Defense has determined that this proposed Privacy Act rule for the Department of Defense does not constitute "significant regulatory action." Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act proposed rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Investigative and other records needed to make the judgment of approval or denial of a security clearance may require that certain records in the system be protected using the specific exemption (k)(5), to insure that a source who furnished information to the Government under an express promise of confidentiality be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence will be afforded such protection.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. Law 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 311.7 is amended by adding paragraph (c)(9) as follows:

§ 311.7 Procedures for exemptions.

* * * * *

(c) *Specific exemptions.* * * *

(9) *System identifier and name*--JS004SECDIV, Joint Staff Security Clearance Files.

Exemption. Portions of this system of records are exempt pursuant to the provisions of 5 U.S.C. 552a(k)(5) from subsections 5 U.S.C. 552a(d)(1) through (d)(5).

Authority. 5 U.S.C. 552a(k)(5).

Reasons. From subsections (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

* * * * *

Dated: September 8, 1995.

Linda L. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22978 Filed 9–14–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD–94–026]

RIN 2115–AE78

Inland Waterways Navigation Regulations: Wrangell Narrows, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to allow single barge tows of up to 100 feet in width overall to transit Wrangell Narrows, Alaska. The current size restriction for single barge tows in Wrangell Narrows is 80 feet in width overall. An increase in the maximum barge width in Wrangell Narrows will allow barge operators to carry more cargo on each barge to meet the increasing needs of their Alaskan consumers. Increasing the restriction to 100 feet in width overall will have no adverse effects on navigation and marine safety in Wrangell Narrows.

DATES: Comments must be received on or before November 14, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–026), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Diane Schneider Appleby, Project Manager, (202) 267–0352.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 94–026) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

This principal persons involved in drafting this document are Diane Schneider Appleby, Project Manager, and C.G. Green, Project Counsel.

Background and Purpose

Wrangell Narrows is a navigable waterway of the United States located in Southeast Alaska. It connects Frederick Sound on the north end to Sumner Strait on the south. It is approximately 24 miles long and narrows to 300 feet in five places. The longest of the 300 foot wide sections is approximately 5.5 nautical miles in length. The other four sections vary from approximately 600 yards to approximately 1.3 nautical miles in length.

The primary users of Wrangell Narrows are passenger ferries, log carriers, pleasure craft and container barges. Container barges are used to transport consumer goods throughout South East Alaska which is vital to the every day life of Alaskan citizens.

The increased demand for consumer goods in Southeast Alaska has created a greater demand on providers of these goods. The current regulations limit the width of single barge tows allowed to transit Wrangell Narrows to no more than 80 feet in width overall. Increasing the maximum barge width which can transit Wrangell Narrows from 80 to 100 feet would allow barge operators to carry more containers per transit and enable them to more efficiently meet the needs of their Alaskan customers.

Approximately 95,000 containers are shipped through Southeast Alaska each year on approximately 200 transits of Wrangell Narrows. Consumer goods are the primary cargo.

Barges larger than 80 feet in width overall, cannot transit Wrangell Narrows without a waiver of the size restriction. If they cannot use Wrangell Narrows, they must transit through Chatham Strait around Cape Decision which increases the transit distance to the Gulf of Alaska by over 170 miles. Inclement weather, common in Southeast Alaska, often causes delays of as many as two or three days while barge operators wait for better weather to make the passage around Cape Decision. The risk of a marine casualty increases when transporting cargo in severe weather.

Wrangell Narrows is wide enough, even in its narrowest sections, to allow for the safe transit of 100 foot wide barges. Alaska Marine Lines has been safely operating 100 foot wide single barge tows on Wrangell Narrows with a Coast Guard waiver since May 1994, after expressing a written need for an increase in the maximum width of single barge tows. Southeast Alaska relies heavily upon container barges to deliver consumer goods essential to the every day life of its residents. Allowing 100 foot wide single barge tows in Wrangell Narrows would eliminate all current requests for waivers from the width restriction and would reduce unnecessary weather-related delays of consumer good shipments to Alaskan residents. It would also allow most single barge tows to operate in the protected waters of Wrangell Narrows during inclement weather.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard has determined that a Regulatory Evaluation is unnecessary because of the minimal impact expected.

Small Entities

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

This proposed rule has been analyzed in accordance with Executive Order No. 12612 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies. These policies have been fully considered in the development of the proposed regulation. This proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that this action is Categorically Excluded in accordance with section 2.B.2.e(34)(g) of the NEPA Implementing Procedures, COMDTINST M16475.2B. A copy of the categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 162

Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 162 as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 3 U.S.C. 1231; 49 CFR 1.46.

2. In section 162.255, paragraph (e)(2) is revised to read as follows:

§ 162.255 Wrangell Narrows, Alaska; use, administration, and navigation.

* * * * *

(e) * * *

(2) Raft and barge tows of more than one unit shall not exceed 65 feet in width overall. Single barge tows shall not exceed 100 feet in width overall.

* * * * *

Dated: September 7, 1995.

J.A. Creech,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–22985 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–95–123]

RIN 2115–AA97

Safety Zone: Grande Fiesta Italiana Fireworks, Hempstead Harbor, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: This rulemaking project was initiated to establish a temporary safety zone in Hempstead Harbor, New York, for the Grande Fiesta Italiana Fireworks Program. On August 14, 1995, the Coast Guard was notified that the location of the fireworks program was changed to a point on land. Due to the change in location, a safety zone is no longer required. Therefore, the Coast Guard is terminating further rulemaking under docket number CGD01–95–123.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On August 9, 1995, the Coast Guard published a Notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 40543). The proposal was to establish a temporary safety zone in all waters of Hempstead Harbor, shore to shore, within a 300 yard radius of a fireworks barge anchored approximately 300 yards north of Bar Beach, Port Washington, New York, at or near 40°49′52″ N Latitude, 073°39′10″ W longitude (NAD 1983). The safety zone was to be in effect from 9 p.m. until 10:15 p.m. on September 10, 1995, unless extended or terminated sooner by the Captain of the Port New York. No comments were received in response to the NPRM.

On August 14, 1995, Fireworks by Grucci, Inc. informed the Coast Guard that the location of the fireworks program was changed from Hempstead Harbor to a point on land in the vicinity of Bar Beach, Port Washington, New York. The fireworks program will no longer require a safety zone. Therefore, this rulemaking is no longer necessary and the Coast Guard is terminating further rulemaking under docket number CGD01–95–123.

Dated: September 6, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 95–22984 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT26–1–7196; A–1–FRL–5296–4]

Approval and Promulgation of Air Quality Implementation Plans; Approval of the Carbon Monoxide Implementation Plan Submitted by the State of Connecticut Pursuant to Sections 186–187 and 211(m)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes approval of the State implementation plans (SIP) submitted by the State of Connecticut for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for carbon monoxide (CO). The implementation plans were submitted by the State to satisfy the requirements of Sections 187(a)(2)(A), 187(a)(3), 187(a)(7) and 211(m) of the Clean Air Act for an approvable nonattainment area CO SIP for Connecticut's portion of the New York-New Jersey-Connecticut CO nonattainment area. This action is being taken under Section 110 of the Act. The rationale for the approval is set in this document, additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by October 16, 1995.

ADDRESSES: Comments may be mailed to Susan S. Studlien, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg. (AAA), Boston, MA 02203. Copies of the state's submittal and EPA's technical support document are available for inspection during normal business hours, by appointment at the U.S. Environmental Protection Agency, Jerry Kurtzweg, ANR–443, 401 M Street, SW, Washington, D.C. 20460; the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA 02203; and the Bureau of Air Management, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: Damien F. Houlihan, (617) 565–3266, of the U.S. Environmental Protection Agency in Boston, MA.

SUPPLEMENTARY INFORMATION: On January 12, 1993, January 14, 1993, April 7, 1994, and August 1, 1995, the Connecticut Department of Environmental Protection (DEP) submitted a revision to its State Implementation Plan (SIP) for air quality. The revision is designed to satisfy the requirements of Sections 187(a)(2)(A), 187(a)(3), 187(a)(7) and 211(m) of the Clean Air Act, as amended in 1990 (CAA).

I. Background

The air quality planning requirements for moderate CO nonattainment areas are set out in Sections 186–187 and Section 211(m) of the Clean Air Act (Act) Amendments of 1990 (CAAA). These requirements pertain to the classification of CO nonattainment areas and to the submission requirements of the SIP's for these areas, respectively. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Connecticut CO SIP, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on today's proposal.

Those States containing CO nonattainment areas with design values greater than 12.7 parts per million (ppm) were required to submit, among other things, a State Implementation Plan revision, by November 15, 1992, that contains a forecast of VMT in the nonattainment area for each year before the year in which the SIP projects the NAAQS for CO to be attained and an attainment demonstration such that the plan will provide for attainment by December 31, 1995 for moderate CO nonattainment areas. The SIP revision is also required to provide for annual updates of the VMT forecasts along with annual reports regarding the extent to which the forecasts proved to be accurate. In addition, these annual reports must contain estimates of actual VMT in each year for which a forecast was required. The attainment demonstration must include a SIP control strategy, which is also due by November 15, 1992. The SIP control strategy for a given nonattainment area must be designed to ensure that the area meets the specific annual emissions reductions necessary for reaching attainment by the deadline. In addition, section 187(a)(3) requires these areas to implement contingency measures if any estimate of actual vehicle miles travelled (VMT) or any updated VMT forecast for the area contained in an annual report for any year prior to attainment exceeds the number predicted in the most recent VMT forecast. Contingency measures are also triggered by failure to attain the NAAQS for CO by the attainment deadline. Contingency measures must be submitted with the CO SIP by November 15, 1992. In addition, Section 211(m) of the Act requires a SIP revision containing a provision to require that after November 1, 1992, any gasoline sold, or dispensed, to the ultimate consumer in the CO nonattainment area be blended to contain not less than 2.7 percent oxygen by weight during the portion of the year in which the area is prone to high ambient CO levels.

Section 187(a)(2)(A) of the Clean Air Act Amendments of 1990 required EPA, in consultation with the U.S. Department of Transportation (DOT), to develop guidance for states to use in complying with the VMT forecasting and tracking provisions of Section 187. A Notice of Availability for the resulting *Section 187 VMT Forecasting and Tracking Guidance* was published in the **Federal Register** on March 19, 1992.

The Section 187 Guidance identifies the Federal Highway Administration's Highway Performance Monitoring System (HPMS) as the foundation for VMT estimates and forecasts. To develop growth factors for forecasting VMT, the Section 187 Guidance offers as one alternative the use of network-based travel demand models. If these models are properly updated and validated, and if they use an equilibrium approach to allocating trips, they are considered to be the best predictor of growth factors for VMT forecasts.

When determining that actual annual VMT or a VMT forecast has exceeded the most recent prior forecast and, therefore, that contingency measures should be implemented, EPA believes that it is appropriate to take into account the statistical variability in the estimates of VMT generated through HPMS. Consequently, EPA has identified a margin of error to be applied when making VMT comparisons. With the expectation that HPMS sampling procedures will improve over the next few years in response to recent FHWA guidance, the margin of error starts at 5.0 percent for VMT comparisons made in 1994, becomes 4.0 percent for VMT comparisons made in 1995, and is reduced to 3.0 percent for VMT comparisons made in 1996 and thereafter. However, since each revised VMT forecast becomes the VMT baseline for triggering contingency measures, the application of a margin of error every year could allow the forecasts to increase without bound, without ever triggering contingencies. To prevent this occurrence, EPA believes it is appropriate to allow the application of the margin of error only as long as, cumulatively, neither an estimate of actual VMT nor a VMT forecast ever exceed by more than 5.0 percent the VMT forecast relied upon in the area's attainment demonstration.

EPA interprets the requirement for contingency measures to "take effect without further action by the State or the Administrator" to mean that no further rulemaking activities by the State or EPA would be needed to implement the measures. The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, published in the **Federal Register** on April 16, 1992, offers guidance on the type and size of contingencies to be included in the SIP revision. This guidance is advisory in nature and is non-binding. (See the **Federal Register**, April 16, 1992, Volume 57, Number 74, pages 13532 and 13533.)

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (*see* 57 FR 13565–66). The State of Connecticut submitted SIP revisions to EPA on January 12, 1993, January 14, 1993, April 7, 1994, and August 1, 1995 in order to satisfy the requirements of Sections 186–187 and 211(m) of the Act. In order to gain approval, the State submittals must provide for each of the following mandatory elements: (1) a forecast of VMT in the non-attainment area for each year prior to the attainment year; (2) a provision for annual updates of the forecasts along with a provision for annual reports describing the extent to which the forecasts proved to be accurate; these reports shall provide estimates of actual VMT in each year for which a forecast was required; (3) adopted and enforceable contingency measures to be implemented without further action by the State or the Administrator if actual annual VMT or an updated forecast exceeds the most recent prior forecast or if the area fails to attain the CO NAAQS by the attainment date; (4) Attainment Demonstration with Control Strategies and (5) a provision to require that any gasoline sold, or dispensed, to the ultimate consumer in the CO nonattainment area be blended to contain not less than 2.7 percent oxygen by weight during the portion of the year in which the area is prone to high ambient CO levels.

II. Analysis

In today's action EPA proposes to approve Connecticut's CO SIP submittal for the Connecticut portion of the NY-NJ-CT CO nonattainment area and invites public comment on the action. The following items are the basis for approval of the SIP revision. Connecticut has met the requirements of Section 186–187 and 211(m) of the Act by submitting SIP revisions that implement all required elements as discussed below. The state implementation plans submitted by Connecticut on January 12, 1993, January 14, 1993, April 7, 1994, and August 1, 1995, collectively meet the requirements for those particular revisions to the SIP for the Connecticut portion of the NY-NJ-CT Moderate (greater than 12.7 ppm) CO nonattainment area as set forth in Sections 187(a)(2)(A), 187(a)(3), 187(a)(7) and 211(m) of the Act.

1. VMT Forecasts

Section 187(a)(2)(A) requires that the State include in its SIP submittal a forecast of VMT in the nonattainment area for each year before the year in which the SIP projects the National Ambient Air Quality Standard for CO to be attained. The forecasts are to be based on guidance developed by EPA in consultation with DOT, i.e., the *Section 187 VMT Forecasting and Tracking Guidance*. Connecticut has satisfied this requirement with their January 12, 1993 and April 7, 1994 SIP submittals which include VMT forecasts beginning with the year 1993 and including all subsequent years up to the year of attainment (1995). The forecasts were projected using an annual growth factor of two percent as determined from Connecticut's network-based travel demand model. This model is properly updated and validated and uses an equilibrium approach to allocating trips, therefore, it is considered to be the best predictor of growth factors for VMT forecasts in Connecticut and was used appropriately as set forth in the Section 187 VMT Forecasting and Tracking Guidance.

2. Annual VMT Updates/Reports

Section 187(a)(2)(A) specifies that the SIP revision provide for annual updates of the VMT forecasts and annual reports that describe the accuracy of the forecasts and that provide estimates of actual VMT in each year for which a forecast was required. The Section 187 VMT Forecasting and Tracking Guidance specifies that annual reports should be submitted to EPA by September 30 of the year following the year for which the VMT estimate is made. Connecticut satisfied this requirement with their January 12, 1993 and April 7, 1994 SIP submittals.

3. Contingency Measures

Section 187(a)(3) specifies that the State, in its SIP revision, adopt specific, enforceable contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date. Implementation of the identified contingency measures must not require further rulemaking activities by the State or EPA. Certain actions, such as notification of sources, would probably be needed before a measure could be implemented effectively. Connecticut has satisfied this requirement with their January 12, 1993 and April 7, 1994 SIP submittals which include contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date. Connecticut has demonstrated that expanded implementation of an enhanced inspection and maintenance program, beyond what is required in 57 CFR 52950, will provide CO emission reductions to counteract the effect of one years growth in VMT.

Although implementation of an enhanced I/M program is required in the urbanized area of Connecticut's portion of the NY-NJ-CT CO nonattainment area, Connecticut has demonstrated that requiring vehicles traveling within the nonattainment area, but originating outside the urbanized area, to meet the CO performance standard of the enhanced I/M program, will result in CO emission reductions which offset the CO emissions attributable to a two percent growth (one years growth) of the projected 1995 VMT in the area. The legal authority for the implementation of the enhanced I/M program was passed by the General Assembly of the State of Connecticut in Public Act 90–312 which took effect on July 1, 1993. Connecticut further demonstrated that if the area does not attain the CO standard by the December 31, 1995 attainment date, the state is committed to implementing the Employee Commute Option in the nonattainment area, which will provide reductions in VMT to offset the anticipated growth in VMT from 1994 to the attainment year of 1995. The Connecticut Legislature has effectively authorized implementation of the ECO program through the promulgation Public Act 93–334 which has been codified it into the Connecticut General Statutes.

4. Attainment Demonstration

As noted, CO nonattainment areas with design values greater than 12.7 parts per million (ppm) were required to submit a demonstration by November 15, 1992; the plan must provide for attainment by December 31, 1995 for moderate CO nonattainment areas and December 31, 2000 for serious CO nonattainment areas.

To demonstrate attainment, the 1-hour and 8-hour and National Ambient Air Quality Standards (NAAQS) for CO are not to be exceeded more than once per year. The 1-hour CO NAAQS is 35 ppm (40 mg/m^3) and the 8-hour CO NAAQS is 9 ppm (10 mg/m^3). Connecticut has satisfied this requirement with its April 7, 1994 SIP submittal in which Connecticut conducted an attainment demonstration using intersection modeling for a representative set of the most congested intersections with high traffic volumes and the greatest potential to generate high CO concentrations in the Connecticut portion of the NY-NJ-CT CO nonattainment area. This analysis also demonstrated that the two CO monitors in downtown Bridgeport and downtown Stamford are in fact sited where the local conditions result in the highest CO levels in Connecticut's portion of the nonattainment area. The design value for the entire NY-NJ-CT CO nonattainment area was 13.5 ppm in 1988, based on monitoring data from site in Manhattan, New York. Connecticut's SIP revision indicated that based solely on the two monitors located in the Connecticut portion of the nonattainment area, the design value for the Connecticut portion of the area would have been 6.9 ppm, and these CO monitors have not monitored a violation of the NAAQS since 1984. Therefore, Connecticut demonstrates that the existing CO levels in the Connecticut portion of the NY-NJ-CT nonattainment area are in attainment of the NAAQS and CO emissions will continue to decrease throughout the attainment year of 1995 demonstrating continued attainment through the December 31, 1995 attainment date.

The Act requires that the CO nonattainment area plan revisions demonstrating attainment must contain measures which demonstrate reasonable further progress through specific annual emission reductions as are necessary to attain the standard by December 1995. EPA has reviewed the attainment demonstration and control strategy for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the CO NAAQS by the applicable attainment date (see section 171(1)). Connecticut has demonstrated that the Connecticut portion of the NY-NJ-CT nonattainment area is currently in attainment and although further reduction in CO emissions will result from the implementation of oxygenated fuels, enhanced inspection and maintenance and the Federal Motor Vehicle Control Program, specific emission reductions are not necessary to attain the standard by the attainment date. EPA believes the implementation of these measures will assure that the area CO emissions continue to decrease and therefore ensuring attainment of the area in December 1995.

5. Oxygenated Fuels Program

Motor vehicles are significant contributors of CO emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen, contained within the fuel, enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting. Section 211(m) of the CAAA requires that States with CO nonattainment areas classified as moderate or above, submit state implementation plan revisions to implement oxygenated gasoline programs by no later than November 1, 1992. The oxygenated gasoline program must require gasoline sold or dispensed in the specified control area to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the area is prone to high ambient concentrations of CO (the control period). EPA announced guidance on the establishment of control periods, by area, in the **Federal Register** on October 20, 1992 which also announced the availability of oxygenated gasoline credit program guidelines. Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e., an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. As an alternate to the credit program, the State may elect a program in which a minimum of 2.7 percent by weight oxygen must be present in every gallon of gasoline sold. The EPA also issued labeling regulations under section 211(m)(4) of the CAA. These labeling regulations were also published in the **Federal Register** on October 20, 1992.

Connecticut has satisfied the requirements of Section 211(m) with their January 14, 1993, April 7, 1994, and August 1, 1995 SIP submittals which contain adopted amendments and revisions to the Regulation of Connecticut State Agencies (RCSA), to add Section 22a–174–28, which establishes an Oxygenated Fuel Program. EPA is approving, in a separate direct final rulemaking notice, the oxygenated fuel program, except as it applies to the Southwestern Control Area, as defined in 22a–174–28. In this notice, EPA is proposing approval of the definition for the Southwestern Control Area and that portion of the definition of "control period" that applies to the Southwestern Control Area. The program is one in which all oxygenated gasoline must contain a minimum oxygen content of 2.7 percent by weight of oxygen. Connecticut has adopted labeling regulations, enforcement procedures, and oxygenate test methods in accordance with Section 211(m) of the Act.

On August 1, 1995, the State of Connecticut submitted a revision to the control period for the Connecticut portion of the New Jersey/New York/Connecticut CO nonattainment area changing the oxygenated fuels control period to November 1 through the last day of February of each year. Previously, the control period had been October 1 through April 30 of each year. Under Section 211(m) of the CAA, a control period must be that portion of the year in which the control area is prone to high ambient concentrations of CO, but no less than four months in length.

Section 211(m)(2) requires this control period to be based on air quality monitoring data and established by the EPA Administrator. EPA is proposing to approve Connecticut's four-month control period for the Southwestern Control Area because it is consistent with section 211(m)(2) and the EPA 1992 guidance.

EPA is publishing concurrently with this notice a Notice of Proposed Rulemaking to approve New York's oxygenated gasoline SIP submission. That notice proposes to establish a four-month control period for the New York portion of the New York-New Jersey-Connecticut CO nonattainment area. Connecticut's establishment of a four-month control period will be consistent with New York's four-month control period.

The setting of a four-month control period for the nonattainment area is consistent with established Agency guidance (announced for availability at 57 FR 47853, October 20, 1992) regarding oxygenated gasoline control periods to determine the proper control period length for the New York-New Jersey-Connecticut CO nonattainment area. As part of the 1992 guidance document, based on air quality data from 1990 and 1991, EPA suggested that the proper control period for the New York-New Jersey-Connecticut CO nonattainment area was October 1 through April 30. However, the 1992 guidance does not establish a binding norm regarding control periods and provides that the determination of the control period will be an issue to be finally decided by EPA as part of the review of individual state SIP revisions for oxygenated gasoline programs. EPA has set forth the reasons for its proposed approval of the four-month control period for the New York-New Jersey-Connecticut CO nonattainment area in the above-mentioned notice regarding New York's oxygenated gasoline SIP revision published concurrently with this notice. In that notice, EPA explains the rationale for determining that the appropriate control period is from November 1 through the last day of February for the entire nonattainment area. EPA believes sale of gasoline oxygenated to 2.7 percent by weight during the months of October, March and April is no longer necessary for adequate carbon monoxide control in the entire nonattainment area. EPA will not repeat the rationale provided in that notice, but rather incorporates by reference the same rationale into this notice.

Proposed Action

The EPA is proposing to approve collectively the plan revisions submitted to EPA for the Connecticut portion of the NY-NJ-CT CO nonattainment area on January 12, 1993, January 14, 1993, April 7, 1994, and August 1, 1995. Among other things, Connecticut has demonstrated that the Connecticut portion of the NY-NJ-CT CO nonattainment area will continue to attain the CO NAAQS through December 31, 1995, the applicable attainment date.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The CAA does not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

As noted, additional submittals for the CO nonattainment areas are required under Section 186 and 187 of the Act. The EPA will determine the adequacy of any such submittal as appropriate. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of Section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 25, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and section 187(a)(1) of the Clean Air Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to certain duties. To the extent that the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as mandate upon the private sector, EPA's action will impose no new requirements under State law; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, results from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and record keeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 31, 1995.

John P. DeVillars,

Regional Administrator, EPA-New England.

[FR Doc. 95–22958 Filed 9–14–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[Region II Docket No. 140, NY 12–1–6477; FRL–5296–7]

Approval and Promulgation of Implementation Plans; Carbon Monoxide State Implementation Plan Revision State of New York and Revision of Oxygenated Gasoline Control Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing the approval of portions of a request from New York to revise its State Implementation Plan (SIP) related to the control of carbon monoxide. EPA is proposing approval of New York's vehicle miles travelled forecast, contingency measures, carbon monoxide emission inventory, multi-state coordination letter, and Downtown Brooklyn Master Plan. In addition, EPA is proposing approval of the oxygenated gasoline program in the New York City consolidated metropolitan statistical area during the four months when the area is prone to high ambient concentrations of carbon monoxide. New York's oxygenated fuels program also includes a provision for oxygenated fuels to serve as a contingency measure in the Syracuse metropolitan statistical area.

New York has recently updated its enhanced inspection and maintenance submittal which EPA is currently reviewing. Therefore, action on that program, along with the attainment demonstration, which relies on the enhanced inspection and maintenance program, will be taken in a separate **Federal Register** notice. These revisions have been submitted in response to requirements established in the Clean Air Act as amended in 1990 that the states develop a plan to attain the carbon monoxide standard.

DATES: Comments must be received on or before October 16, 1995

ADDRESSES: Written comments should be addressed to:

William S. Baker, Chief, Air Program Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866

Copies of the state submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866.

New York Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended in 1990, sets forth a number of requirements that states designated as moderate nonattainment for carbon monoxide had to submit as revisions to their SIPs by November 15, 1992. Since the New York portion of the "New York-Northern New Jersey-Long Island" carbon monoxide nonattainment area is classified as a moderate 2 area (an area that has a design value of 12.8–16.4 ppm.), New York was required to make this submission. These requirements are: an attainment demonstration, an enhanced vehicle inspection and maintenance program, an oxygenated fuels rule, a vehicle miles traveled forecast, contingency measures, a carbon monoxide emission inventory, a revised new source review program, and multi-state coordination letter.

EPA has issued a "General Preamble" describing its preliminary views on how it intends to review SIPs and SIP revisions submitted in order to meet Title I requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. The reader should refer to the General Preamble for a more detailed discussion of the Title I requirements and what EPA views as necessary to adequately comply with Title I provisions.

On November 13, 1992, New York submitted to EPA proposed revisions to its carbon monoxide SIP that addressed each of the above requirements for its moderate carbon monoxide nonattainment area. In addition, in a submittal dated March 21, 1994, New York submitted to EPA additional information pertaining to its carbon monoxide SIP.

As part of Federal Environmental Impact Statement work, certain projects in Brooklyn were identified as causing violations of the carbon monoxide standard. The State said that they would revise the carbon monoxide SIP to mitigate these problems. On September 21, 1990, New York submitted a revision to the New York SIP to attain the carbon monoxide air quality standard in the Brooklyn portion of the New York City metropolitan area.

These three submittals are the subject of this **Federal Register**. The following summarizes EPA's evaluation of New York's SIP submittals and EPA's proposed actions. The details of EPA's review are contained in the Technical Support Document available at EPA's Region II office.

Attainment Demonstration

Section 187(a)(7) of the Clean Air Act requires each state that contains all or part of a moderate 2 area to submit to the Administrator an attainment demonstration by November 15, 1992. This attainment demonstration documents how the State will attain the 8-hour carbon monoxide NAAQS of 9 ppm by December 31, 1995.

New York, using emissions from the EPA-approved MOBILE4.1 model, demonstrated attainment of the carbon monoxide standard with the EPA-approved CAL3QHC air quality dispersion model. New York took emission reductions credit from enhanced I/M, oxygenated fuels, and the federal motor vehicle control program (vehicle turnover) as control measures to attain the standard. A detailed explanation of this modeling is contained in the Technical Support Document.

New York's analysis demonstrated that all of the modeled intersections attained the 8-hour carbon monoxide standard of 9 ppm. The highest value obtained was 9.0 ppm which occurred at two intersections. Since air quality values at the most congested intersections was determined to not exceed the standard, New York has demonstrated that the entire area will be in attainment for carbon monoxide by December 31, 1995.

New York used appropriate modeling techniques and modeling inputs in this demonstration, however one of the control measures used to demonstrate attainment, the enhanced inspection and maintenance program, submitted on November 15, 1993 had not been fully adopted in accordance with State requirements. On July 31, 1995, New York submitted an updated enhanced inspection and maintenance program which EPA determined to be complete on August 2, 1995. EPA will take action on the enhanced inspection and maintenance program and the attainment demonstration in a separate **Federal Register** notice.

Enhanced Inspection and Maintenance Program

Section 187(a)(6) of the Clean Air Act requires implementation of enhanced inspection and maintenance programs in moderate 2 carbon monoxide nonattainment areas and includes provisions as required under section 182(c)(3) concerning serious ozone nonattainment areas. Such provisions require implementation of an enhanced inspection and maintenance program in urbanized areas with a population greater than 200,000.

On November 15, 1993 New York submitted draft regulations and other information pertaining to the enhanced inspection and maintenance program. Since New York did not submit a fully adopted enhanced inspection and maintenance program, on February 2, 1994 EPA notified the State that this submittal was incomplete and a sanctions process was begun. New York then made an updated submittal on July 31, 1995 which EPA will be taking action on in a separate **Federal Register** notice.

Oxygenated Fuels Rule

I. Introduction

Section 211(m) of the Clean Air Act requires that various states submit revisions to their SIPs, and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the consolidated metropolitan statistical area or the metropolitan statistical area in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months in length unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.[1]

State Submittal

In order to fulfill the Clean Air Act requirement, on September 27, 1993 New York submitted a request to revise its State Implementation Plan to incorporate adopted revisions to Title 6 Subpart 225–3 of the New York Code of Rules and Regulations, entitled "Fuel Composition and Use—Volatile Motor Fuel," effective on September 2, 1993.

Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. New York has established control periods for the New York City consolidated metropolitan statistical area and the Syracuse metropolitan statistical areas which are consistent with the 1992 EPA guidance.

New York's oxygenated gasoline regulations require oxygenated gasoline to be sold in the larger of the consolidated metropolitan statistical area (CMSA) or metropolitan statistical area (MSA) in which the nonattainment area is located, consistent with the requirements of section 211(m)(2) of the Act. The New York City CMSA consists of the following counties: Bronx, Kings, Queens, New York, Richmond, Orange, Rockland, Putnam, Westchester, Nassau and Suffolk. New York's current regulation requires oxygenated gasoline to be sold in this area from October 1 through April 30. While this control period had been appropriate in previous carbon monoxide control seasons in the New York City CMSA, EPA is proposing to determine, based on more recent ambient air monitoring data, that the appropriate oxygenated gasoline control period for the area should be shorter in length. Four months is the minimum program length allowed by the Clean Air Act, except as indicated in section 211(m)(B) which, at the request of a state with respect to any carbon monoxide nonattainment area, allows the EPA Administrator to reduce the period below four months. Such a determination can only occur if the State can demonstrate that due to meteorological conditions a shorter period will assure that no carbon monoxide exceedances will occur outside of that shorter period.

New York also requires the sale of oxygenated gasoline in any area of the State which had been designated as nonattainment for carbon monoxide but was redesignated as attainment, if it is required to maintain the standard in that area.

In the case of the Syracuse metropolitan statistical area, which has been officially redesignated as attainment for carbon monoxide (See 58 FR 50851), the oxygenated gasoline program is no longer required in that area since the attainment demonstration did not depend on the program. The oxygenated gasoline program constitutes the State's contingency measure for the Syracuse metropolitan statistical area, in the event that the carbon monoxide standard is violated in this area. If this program should need to be re-instituted in this area, the period of sale would be November 1 through the last day of February.

In this notice EPA is applying established Agency guidance (announced for availability at 57 FR 47853, October 20, 1992) regarding oxygenated gasoline control periods to determine the proper control period length for the New York City CMSA. As part of the 1992 guidance document, based on air quality data from 1990 and 1991, EPA suggested that the proper control period for the New York City CMSA was October 1 through April 30. However, the 1992 guidance does not establish a binding norm regarding control periods and provides that the determination of the control period will be an issue to be finally decided by EPA as part of the review of individual state SIP revisions for oxygenated gasoline programs. For the reasons set forth below, EPA is now proposing to determine that the appropriate control period is from November 1 through the last day of February; EPA believes sale of gasoline oxygenated to 2.7 percent by weight during the months of October, March and April is no longer necessary for adequate carbon monoxide control in the New York City CMSA.

Section 211(m), cited in the 1992 EPA guidance, requires control period length to be decided by the EPA Administrator based on the period an area is prone to high carbon monoxide concentrations. The three-state New York City CMSA has not recorded an exceedance of the carbon monoxide national ambient air quality standard (NAAQS) in the three months proposed to be dropped since October of 1991. Furthermore, since 1992 the CMSA has not been prone to high ambient concentrations of carbon monoxide, during those three months. Under the approach used in EPA's guidance, "prone to high ambient concentrations of carbon monoxide" is a criterion more stringent than the NAAQS.

While the successful reduction in ambient carbon monoxide levels during October, March and April in the New York City CMSA can in part be attributed to the sale of oxygenated gasoline, EPA believes that implementation of new programs under the Clean Air Act in the New York City CMSA will adequately ensure continued observance of reduced levels of carbon monoxide during the months of October, March and April. Reformulated gasoline, a year round clean gasoline program, which was implemented on January 1, 1995 in the New York City CMSA [see 59 FR 7716, February 16, 1994.] provides gasoline oxygenated to 2.0 percent. EPA believes that implementation of enhanced inspection and maintenance programs [40 CFR Part 51, Subpart S] and the turnover of the New York City CMSA fleet, to newer, cleaner vehicles combined with the use of reformulated gasoline will ensure continued lower carbon monoxide emissions from motor vehicles for the CMSA during October, March and April.

While the established guidance bases the determination of control period only on air quality monitoring data (which exists for the entire New York City CMSA for 1992 to 1995), EPA believes that it is prudent also to provide a technical analysis further supporting the reduction of oxygen content during the shoulder months in the area. To support the contention that in future years, starting with 1996, without sales of gasoline oxygenated to 2.7 percent, but with implementation of federal reformulated gasoline (RFG) and enhanced I/M combined with vehicle turnover carbon monoxide emissions will continue to be lower during October, March and April in the area, EPA performed a series of computer model runs. Since the first observance after the implementation of the oxygenated fuels program of low CO levels during those months was in 1993, average vehicle emissions from that year were used as an upper limit in determining the adequacy of removal of the higher oxygen content in October, March and April.

The comparison was performed utilizing the most current version of EPA's emission factor model for mobile sources, MOBILE5a. All modeling assumed implementation of RFG (with 2.0 percent oxygen content) for 1995 and later, and for 1996 and future years, the effect of an enhanced I/M program are included. MOBILE5a variables such as vehicle speeds and a vehicle miles traveled growth rate were supplied by the New York State Department of Environmental Conservation. For further details regarding the MOBILE5a runs and the subsequent comparisons, the reader is referred to the technical support document. Modeling shows that removing oxygenated gasoline (to 2.7 percent) but accounting for the effects of RFG, enhanced I/M and vehicle turnover, vehicle emissions of CO, through calendar year 2020 (based on an average day in the CO season in each of those years), will still be at least 22.74 percent less than vehicle emissions of CO in 1993 with 2.7 percent oxygenated gasoline. Thus elimination of oxygenated gasoline program requirements in the shoulder months in the area appears to be technically sound.

Based on the proposed determination that the appropriate control period runs from November through February, EPA is proposing to approve New York's oxygenated gasoline requirement only for that four month period. This EPA action on New York's SIP revision takes into account the interaction of the current New York regulation and the RFG regulation promulgated by EPA on February 16, 1994. During the entire seven month period of October through April, the current New York standard for oxygen content in the New York portion of the New York City CMSA is a minimum of 2.7 percent oxygen by weight. The same New York portion of the New York City CMSA is also subject to RFG requirements, which include a year-round oxygenate standard of 2.0 percent. 40 CFR section 80 subpart D. As discussed below, the RFG requirements act to preempt an extension of the state oxygenated gasoline provisions beyond the four month period prone to high ambient concentrations of CO.

EPA's authority to regulate fuels and fuel additives is found in section 211 of the Clean Air Act. Under section 211(c)(1), the Administrator has the authority to control or prohibit the manufacture and sale of fuels and fuel additives on the grounds of danger to public health or impairment of emissions control devices. Section 211(c)(4) provides that where the Administrator has set such a control or prohibition under section 211(c)(1) applicable to a characteristic or component of a fuel or fuel additive, no state may set a control or prohibition respecting that characteristic or component, unless the state control or prohibition is identical to the federal control or prohibition. This provision preempts state fuel controls that are nonidentical to federal section 211(c)(1) controls on the same characteristic or component.

EPA promulgated the RFG program under the authority of sections 211(k) and 211(c)(1) [59 FR 7716, February 16, 1994]. RFG must contain 2.0% oxygen content by weight, and it is required year-round in the New York City CMSA. In the absence of section 211(m), section 211(c)(4) would preempt states from establishing their own minimum oxygen content requirements different from the RFG requirements in RFG areas. Because section 211(m) is a specific, more stringent requirement, it overrides the general preemption provision, and states are not preempted from complying with section 211(m) in RFG areas. However, states are preempted from setting nonidentical controls or prohibitions on oxygen content in RFG areas to the extent that such controls or prohibitions are not mandated by section 211(m).

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[1] *See* "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under Section 211(m) of the Clean Air Act as Amended—Notice of Availability," 57 FR 47849 (October 20, 1992).

In this notice, EPA is proposing to determine that the New York City CMSA is prone to high ambient concentrations of carbon monoxide during the four month period of November through February. Section 211(m) only requires states to adopt 2.7% oxygenated gasoline requirements for the period prone to high ambient concentrations of carbon monoxide, as determined by the Administrator. Thus, upon finalization of EPA's proposed determination, section 211(m) would only require New York to adopt a 2.7% minimum oxygen content standard for four months. The RFG oxygen content requirement preempts any state from prescribing or enforcing oxygen content requirements in this area that go beyond what is mandated by section 211(m). Because New York would be preempted from enforcing the additional months of October, March and April, EPA is only proposing to approve New York's oxygenated fuel requirements for the months of November through February in the counties of Bronx, Kings, Queens, New York, Richmond, Orange, Rockland, Putnam, Westchester, Nassau and Suffolk. EPA is publishing concurrently with this notice a Notice of Proposed Rulemaking to approve Connecticut's oxygenated gasoline SIP submission. That notice proposes to establish the same four-month control period for the Connecticut portion of the New York-New Jersey-Connecticut CO nonattainment area. New York's four-month control period will be consistent with Connecticut's four-month control period.

Through a letter dated August 11, 1995 from New York State Department of Environmental Conservation Deputy Commissioner David Sterman to EPA Regional Administrator Jeanne Fox, the State of New York has communicated to EPA their intent to revise Subpart 225–3 to reflect the shorter control period, identical to the control period EPA is proposing to approve. In the same letter, New York requests EPA to revise its control period guidance to shorten the period to four months. Rather than revising the guidance, in this proposal EPA is applying the guidance to make a determination that the appropriate control period for this area is four months. EPA believes it is appropriate to approve New York's oxygenated fuel requirement for only four of the seven months provided in New York's submission because this approval would not increase the stringency of the State submission and conforms with the State's intended revisions to the regulation. Also, section 110(a)(2)(A) requires SIPs to include "enforceable * * * control measures." EPA only has authority to approve the enforceable portion of the State submission, which, upon finalization of EPA's proposed determination, would correspond to a four month control period.

Transfer Documents

New York has included requirements related to transfer documentation in its regulation. These transfer document requirements enhance the enforcement of the oxygenated gasoline regulation, by providing a traceable record for each gasoline sample taken by state enforcement personnel.

Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation. New York has provided for a comprehensive penalty schedule in accordance with EPA guidance. In addition to having authority to assess a civil administrative penalty, the State has authority to use further measures such as issuance of abatement orders.

Waiver Provisions

EPA is proposing to not approve sections 225–3.8 and 225–3.9(a), which would allow the Commissioner of the Department of Environmental Conservation, upon application, to grant waivers from the State's minimum oxygen content requirement, and the minimum Reid vapor pressure (RVP) requirement, respectively, due to a shortage of gasoline which meets those requirements.

In its revision to section 225–3.8, the State revised the RVP waiver provision originally approved by EPA at 54 FR 26030 on June 21, 1989. At the time, New York had adopted its own summertime RVP standards, more stringent than national standards, as part of an initiative on the parts of northeastern states to make progress toward achieving the National Ambient Air Quality Standard for ozone. Since that time, the national RVP standards have been lowered to the same levels as were initiated by New York in 1989. Because the State's RVP standards are again equal to EPA's national standards and because gasoline RVP is regulated on the Federal level, New York can no longer effectively grant waivers for RVP. To avoid confusion that EPA's approval of the New York RVP requirement might mean that State waivers would waive the Federal requirements, EPA is not approving the State's waiver provision (section 225–3.8).

EPA is also proposing to not approve section 225–3.9(a), which allows the State to grant waivers of the minimum oxygen content requirement. Generally, EPA does not approve state variance or waiver provisions in SIP submissions that would allow the state to grant waivers without EPA approval. To the extent that a waiver provision would allow a state to exempt a source from compliance required by the statute, such a waiver could be inconsistent with the applicable statutory requirements. However, in guidance for oxygenated fuels programs, EPA has identified circumstances under which the Agency may approve a very narrow state variance provision authorizing the state to allow supply of nonconforming gasoline due to extraordinary circumstances. See Guidelines for Oxygenated Gasoline Credit Programs under section 211(m) of the Clean Air Act as Amended. The guidance establishes five conditions to be included in an approvable variance provision. One of these conditions is that the "refiner agrees to make up the air quality detriment associated with the nonconforming gasoline, where practicable." The New York variance provision does not include this requirement. This is a key condition because it reduces the likelihood that granting of a variance would detrimentally affect the environment. Given this deviation from the conditions specified in the guidance, EPA believes that the New York variance provision is not approvable because the limits of the discretion do not clearly meet EPA policy for approving such an exercise of discretion, EPA is not approving this waiver provision. Such waivers would need to be approved by EPA as SIP revisions consistent with EPA policy on such waivers.

Test Methods and Laboratory Review

EPA's sampling procedures are detailed in Appendix D of 40 CFR Part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. New York has incorporated by reference EPA sampling methods.

Labeling

EPA requires the labeling of gasoline pumps and has strongly recommended that states adopt their own labeling regulations, consistent with the federal regulation. New York has adopted labeling regulations consistent with the federal regulation.

Credit Program

EPA guidance announced the availability of an optional oxygenated gasoline credit program (57 FR 47849, October 20, 1992), where marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required. New York has opted not to implement such a credit program and requires a per-gallon minimum oxygen content of 2.7% during the control period.

II. Proposed Action

EPA's review of Subpart 225–3 indicates that the State has adopted an oxygenated gasoline regulation in accordance with the requirements of the Clean Air Act. Therefore, EPA is proposing to approve New York's Subpart 225–3 oxygenated gasoline program as a revision to the State's SIP. EPA is proposing not to approve sections 225–3.8 and 225–3.9(a), which unduly allow the State's Commissioner to grant waivers from the minimum oxygen content and minimum RVP requirement, respectively.

Vehicle Miles Travelled Forecast

Section 187(a)(2)(A) of the Clean Air Act requires moderate carbon monoxide nonattainment areas, such as that portion of New York included in the "New York-Northern New Jersey-Long Island" carbon monoxide nonattainment area, to submit a SIP revision that forecasts vehicle miles travelled through the year 1995. In addition, annual reports and annual updates are required by the State.

The vehicle miles travelled forecast must meet several requirements. It must estimate the vehicle miles travelled from 1990 through 1995 using a method acceptable to EPA, must be conducted in the appropriate geographic area and must provide for annual updates of the forecasts and annual reports on the extent to which the forecasts were accurate, as well as estimates of actual vehicle miles travelled in each year for which a forecast was required (57 FR 13532, April 16, 1992). Moreover, the state should develop the vehicle miles travelled forecast based on EPA guidance.

Contingency measures are to be implemented in a case where the actual annual vehicle miles travelled or the updated forecast contained in an annual report exceeds the most recent prior vehicle miles travelled forecast by an acceptable margin of error (5.0 percent in 1994, 4.0 percent in 1995, and 3.0 percent thereafter) and/or if estimated actual vehicle miles travelled or forecasted vehicle miles travelled exceeds a cumulative 5 percent cap above the attainment demonstration.

The estimated vehicle miles travelled for 1990 and 1991 are 130.7 and 134.6 million miles per day, respectively. In addition, the future forecasts were (in million miles per day) 138.5 for 1992, 142.5 for 1993, 146.4 for 1994, and 150.3 for 1995.

On November 15, 1994, New York submitted a vehicle miles travelled tracking report for the State's 1992 New York City Metropolitan area Carbon Monoxide SIP. This report showed that for 1990, the actual vehicle miles travelled was 130.8. The actual vehicle miles travelled for 1991 to 1993 were below the original forecast: 131.8 for 1991; 135.8 for 1992 and 137.1 for 1993.

New York has submitted documentation satisfying these requirements and EPA, therefore, proposes approval of New York's vehicle miles travelled forecast SIP revision.

Contingency Measures

Section 187(a)(3) of the Clean Air Act requires that states adopt contingency measures to take effect without further action by the Administrator or the state if the state fails to attain the NAAQS by the required date or if any estimate of actual vehicle miles travelled in the nonattainment area or any updated forecast of vehicle miles travelled contained in an annual report for any year prior to attainment is exceeded beyond the allowable limit as discussed in the vehicle miles travelled forecast section. Contingency measures should be capable of reducing vehicle miles travelled or resultant emissions by an amount equal to the projected annual growth rate for vehicle miles travelled (57 FR 13532, April 16, 1992). New York identified two contingency measures, the employee commute option program and winter gasoline volatility reductions, to fulfill this requirement. These programs would both act as contingency measures for failure to attain the carbon monoxide standard or for exceeding the vehicle miles travelled forecast.

1. Employee Commute Option Program

New York is required by section 182(d)(1)(B) of the Clean Air Act to submit its Employee Commute Option program as part of its ozone nonattainment SIP. New York's program applies to employers with 100 or more employees who arrive at the workplace between the hours of 6 and 10 a.m. The goal of this program is to increase the average passenger occupancies by 25% above the average for all vehicles arriving to all workplaces within the zone. This would decrease the amount of automobiles arriving at the workplace, and therefore, decrease the vehicle miles travelled.

New York enacted enabling legislation on August 9, 1993 and the New York State Department of Transportation adopted regulations on April 6, 1994 to implement the program. New York then submitted a SIP revision on June 6, 1994 that contained an adopted employee commute option program. EPA will be taking action on the employee commute option program submittal as a requirement of the ozone SIP in a separate **Federal Register** notice since there are specific requirements an employee commute option program must meet for an ozone SIP but not for contingency measures in a carbon monoxide SIP.

2. Winter Time Gasoline Volatility

New York identified Winter Time Gasoline Volatility as an additional contingency measure. New York State's Subpart 225–3 "Fuel Composition and Use—Volatile Motor Fuel" permits the commissioner to set a winter RVP level for gasoline if such a level is necessary for air quality purposes. This regulation was adopted on June 30, 1993.

EPA is proposing to approve the State's use of the winter time gasoline volatility program as a carbon monoxide contingency measure because it is an adopted measure that will serve to reduce emissions of carbon monoxide. Also, section 211(c)(4) does not preempt the State from adopting a limit on gasoline RVP in the winter time. Under section 211(c)(4), states are preempted from prescribing any control or prohibition respecting any characteristic or component of a fuel, where there is a nonidentical Federal control or prohibition applicable to such characteristic or component. There are two sources of Federal controls on RVP, the Phase II Federal RVP controls promulgated under section 211(h) and section 211(c)(1), and the Federal RVP controls for reformulated gasoline promulgated under section 211(k) and section 211(c)(1). Both of these Federal RVP controls apply only in the summer months. There is no Federal RVP control applicable to gasoline in the winter time, and thus no Federal preemption of the New York winter time RVP control.

Although New York identified two acceptable contingency measures, only one is approvable by EPA at this time. Therefore, EPA proposes to approve the winter time gasoline volatility program as an adequate contingency measure should New York fail to attain the carbon monoxide standard or exceed the vehicle miles travelled forecast. Action on the employee commute option program will be taken in a separate **Federal Register** notice.

Carbon Monoxide Emission Inventory

New York submitted a carbon monoxide emission inventory on November 15, 1992 as required by section 187(a)(1) and as described in section 172(c)(3) of the Clean Air Act. Additional inventory information was submitted in January and March of 1993.

The emission inventory is for a typical carbon monoxide season weekday occurring during December, January, and February and represents a comprehensive, actual inventory of all carbon monoxide emission sources in the New York Metropolitan area. It includes emissions from point, area, and mobile sources (see 1990 base year carbon monoxide emissions summary in Table 1).

TABLE 1.—SUMMARY OF 1990 BASE YEAR CARBON MONOXIDE EMISSIONS BY SOURCE CATEGORY FOR NEW YORK

Source category	CO emissions (tons/day)
Point	31.26
Area	380.16
Non-Road Mobile	577.71
On-Road Mobile	4138.02
Total	5127.15

The inventory was developed according to EPA guidance and has been quality assured. Sources that emit in excess of 100 tons per year of carbon monoxide are defined as point sources. Stationary sources that emit below this threshold are too small to be considered point source and are, therefore, considered to be area sources. The area and off-highway mobile sources include such categories as stationary source fuel combustion, aircraft, marine vessels, and railroads. Highway mobile source emissions were calculated using an updated version of EPA's MOBILE 4.1 model (MOBILE5). Input parameters to this model included vehicle miles travelled, speed, temperature, and registration distribution.

EPA proposes to approve New York's 1990 base year emission inventory for carbon monoxide.

New Source Review Regulation

Section 173 of the Clean Air Act requires states to submit new source review (NSR) revisions that, among other things, incorporate new offset ratios and applicability limits in new source review permitting regulations by November 15, 1992.

EPA will address New York's NSR regulation in a separate **Federal Register** notice.

Multi-State Coordination Letter

Section 187(e) of the Clean Air Act establishes the requirements for "multi-state carbon monoxide nonattainment areas," which are defined as single carbon monoxide nonattainment areas that cover more than one state. To satisfy this requirement, states must develop and submit to EPA a joint workplan to demonstrate early cooperation and integration. This workplan can be in the form of a letter co-signed by all states in the nonattainment area, or, EPA has decided, it can consist of signed individual letters from each of the states. New York submitted its letter, containing a detailed schedule of milestones and a commitment to coordinate with EPA and each of the states involved, on September 16, 1992.

Therefore, EPA proposes to find that New York has fulfilled this requirement and proposes approval of this SIP revision.

Downtown Brooklyn Master Plan

On September 21, 1990, New York submitted a revision to the New York SIP to attain the carbon monoxide air quality standard in the Brooklyn portion of the New York City metropolitan area. This submittal consisted of a plan that was developed in 1987 by the Commissioners of the New York City Departments of Transportation and Environmental Protection called the Downtown Brooklyn Master Plan (DBMP). The DBMP committed the City to implement 13 capital projects in order to reduce high levels of carbon monoxide at intersections in Downtown Brooklyn. The submittal was found to be administratively complete on November 19, 1990.

The 13 projects that made up the DBMP were devised to alleviate predicted violations of the carbon monoxide standard that resulted from several development projects in Downtown Brooklyn. The effects of the individual projects that made up the DBMP were evaluated as a package as part of EPA's review of the Environmental Impact Statement for the Metrotech project. EPA has determined that, taken together, the projects would eliminate the predicted violations.

In its submittal of November 15, 1992 the State included a status report on the DBMP. This status report was updated in a July 14, 1994 letter from Thomas Allen, Department of Environmental Conservation. The status of the DBMP as of July 1994 is displayed in the following table. It shows that, of the 13 capital projects that made up the original plan, five have been completed, one has been partially completed, and two were found to be unnecessary. Of the six projects yet to be completed, two were expected to be completed prior to December 31, 1995. The remaining four projects are unlikely to be completed by that date.

The State is free to revise this element of the SIP, either by demonstrating that the entire DBMP is no longer necessary or by submitting another program of measures equivalent to those it wants to remove.

EPA proposes to approve the DBMP as a revision to the SIP.

TABLE 2.—DOWNTOWN BROOKLYN MASTER PLAN

Downtown Brooklyn master plan status as of July 1994	Original completion date	ISOPIA region II 27–Jul-94
Project		Status
Capital Project Hwk 197A2, Flatbush Ave: 4th Ave to Nassau St, Jay St: Fulton St to Sands St, Willoughby St: Flatbush Ave to Gold St.	31–Dec-91	Completed 12/91.
Capital Porject Hwk 565, Jay St: Fulton St to Sands St	31–Dec-91	Completed 12/91.
Capital Project Hwk 739, Willoughby St: Flatbush Ave to Gold St	31–Dec-91	Completed 12/91.
Capital Project Hwy 197A3R, Flatbush Ave: Atlantic Ave to 4th Ave, Atlantic Ave: Flatbush Ave to 4th Ave, 4th Ave: Pacific St to Flatbush Ave[1].	30–Jun-95	Delayed due to MTA station reconstruction. Estimated bid date Spring 1995.

TABLE 2.—DOWNTOWN BROOKLYN MASTER PLAN—Continued

Downtown Brooklyn master plan status as of July 1994	Original completion date	ISOPIA region II 27–Jul-94
Project		Status
Capital Project Hwk 197G, Ashland Place: Fulton St to Dekalb Ave	30–Jun-93	Completed 6/93.
Capital Project Hwk 197B, Concord St: Flatbush Ave to Gold St		Capital project no longer necessary.
Capital Project Hwk 197C, Concord St: Gold St to Navy St		Capital Project no longer necessary.
Capital Project Hwk 197D, Gold St: Nassau St to Tillary St	30–Mar-89	Completed 3/89.
Capital Project Hbk 667A, Adams/Tillary Underpass, Adams St SVC Rd N/B: Willoughby to Sands, Adams St SVC Rd S/B: Willoughby to Red Cross[1].	31–Dec-95	Project to be re-evaluated.
Capital Project Hbk 667B, BQE: W/B off Ramp @ Ashland Place[1]	31–Dec-95	Timeframe is significantly past 1995.
Capital Project Hwk 565A, Tillary/Jay St intersection double left turns[1]	31–Jan-95	Project tied to underpass construction.
Capital Project Hwk 565A, Atlantic Ave W/B: Ft Greene Pl to Flatbush[1]	31–May-93	MTA approval (delayed) needed to begin construction.
Capital Project ED 75 (Project 201; Subproject E 175):		
A: Atlantic Ave E/B: 4th Ave to Flatbush Ave	30–Jun-95	Construction Completed.
B: 4th Avenue N/B: Pacific St to Atlantic Ave	30–Jun-95	Construction Completed.
C: Vanderbilt Ave @ Atlantic Ave[1]	31–Mar-94	Awaiting land acquisition
D: Atura Streets[1]	31–Mar-94	Under Construction. Completion 9/94.

[1] Projects not yet completed.

Summary

EPA is proposing approval of New York's vehicle miles travelled forecast, contingency measures, carbon monoxide emission inventory, multi-state coordination letter, and Downtown Brooklyn Master Plan as revisions to its carbon monoxide SIP. EPA also proposes approval of New York's winter time gasoline volatility program as a contingency measure. The employee commute option program will be acted upon in a separate **Federal Register** notice. In addition, with the exception of sections 225–3.8 and 225.3.9(a), EPA is proposing to approve the oxygenated gasoline program in the New York City consolidated metropolitan statistical area. This program also includes a provision for oxygenated fuels to serve as a contingency measure in the Syracuse metropolitan statistical area. New York has recently updated their enhanced inspection and maintenance submittal which EPA is currently reviewing. Therefore, action on that program, along with the attainment demonstration, which relies on the enhanced inspection and maintenance program, will be taken in a separate **Federal Register** document.

EPA will address the new source review regulation and transportation and conformity rules in separate **Federal Register** documents.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moveover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *US EPA,* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated annual costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under section 187 of the Clean Air Act. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action would impose any mandate upon the state, loc[illegible] tribal governments e[illegible] the owner or operator [illegible] or as a regulator, or would imp[illegible] mandate upon the private sector, EPA's action would impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated annual costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and

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Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C 7401–7671q.

Dated: September 6, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–22957 Filed 9–14–95; 8:45 am]

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40 CFR Part 300

[FRL–5293–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Clothier Disposal site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Clothier Disposal site from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan ((NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Clothier Disposal site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Clothier Disposal site from the NPL may be submitted on or before October 15, 1995.

ADDRESSES: Comments concerning the deletion of the Clothier Disposal site from the NPL may be submitted to: Herbert H. King, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th floor; New York, NY 10007–1866.

Comprehensive information on the Clothier Disposal site is contained in the EPA Region II public docket, which is located at EPA's Region II office (the 18th floor), and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. King at (212) 637–4268.

Background information from the Regional public docket is also available for viewing at the Clothier Disposal site's Administrative Record repository located at: Fulton Library, 160 South First Street, Fulton, NY 13069.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert H. King, (212) 637–4268.

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I. Introduction

EPA Region II announces its intent to delete the Clothier Disposal site from the NPL and requests public comment on this action. The NPL is Appendix B to the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions (RAs) financed by the Hazardous Substances Superfund Response Trust Fund (the "Fund"). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed RAs, if conditions at such site warrant action.

EPA will accept comments concerning the Clothier Disposal site for thirty (30) days after publication of this notice in the **Federal Register** (until October 15, 1995).

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses how the Clothier Disposal site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met:

1. That responsible or other persons have implemented all appropriate response actions required; or
2. All appropriate Fund-financed responses under CERCLA have been implemented, and no further cleanup by responsible parties is appropriate; or
3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist agency management.

The following procedures were used for the intended deletion of the Clothier Disposal site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.
2. The State of New York has concurred with the deletion decision.
3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty (30)-day public comment period on the deletion package starting on September 15, 1995 and concluding on October 15, 1995.
4. The Region has made all relevant documents available in the regional office and the local site information repository.

EPA Region II will accept and evaluate public comments and prepare a Responsiveness Summary which will address the comments received, before a final decision is made. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next update. Public notices and copies of the Responsiveness Summary will be made available to the public by EPA Region II.

IV. Basis for Intended Site Deletion

Site History and Background

The Clothier Disposal site, located in the Town of Granby, Oswego County, New York, is a fifteen-acre, privately-owned parcel of land, of which six acres were used for waste disposal. Ox Creek flows through the site in a northerly direction, feeding into the Oswego River.

In 1973, the Oswego County Health Department found approximately 2,200 drums of chemical waste dumped on the site and requested an investigation by the New York State Department of Environmental Conservation (NYSDEC). In 1976, NYSDEC brought suit against the owner of the property of operating an illegal dump. Subsequently, a temporary permit was granted for a period of one year to clean up the site. In 1977, the owner made an attempt to bury or cover the waste materials dumped on the site. In doing so, drums were broken open and drained. Between early 1978 and 1980, additional efforts were made by the owner to clean up the property. Again these efforts largely entailed burying or covering previously exposed wastes.

In 1983, Engineering-Service, Inc. performed a Phase I Engineering Investigation and Evaluation of the site for NYSDEC, for the purpose of computing a Hazard Ranking System score needed to evaluate whether or not the site should be placed on the NPL. The site was proposed for listing on the NPL on October 15, 1984 (49 FR 40320); it was included on the NPL on June 10, 1986 (51 FR 21504).

In 1985, NYSDEC, through its contractor, URS Company, Inc. undertook a geophysical survey of the site, and staged and sampled on-site drums as part of the remedial investigation/feasibility study (RI/FS) designed to determine the nature and extent of the contamination at the site, to assess the threat that the site posed to public health and the environment, and to develop and evaluate various alternatives to remediate the site.

Performed concurrently with the RI/FS, a number of potentially responsible parties (PRPs), operating under an Administrative Order, removed and disposed of 1,858 drums and stockpiled visibly-contaminated soil in1986. The remaining drums, as well as the visibly-contaminated surficial soils, were removed by EPA during 1987 and 1988.

A number of data quality problems complicated the completion of the RI/FS, which led to EPA tasking Ebasco Services, Inc. (Ebasco) to perform a supplemental RI/FS.

The supplemental RI/FS report, issued in August 1988, concluded that, as a result of the removal actions taken at the site, only low-level residual soil contamination remained on-site. The RI/FS also concluded that the risk levels associated with this residual contamination were within the acceptable range of 10^{-4} to 10^{-6} (representing a one in ten thousand and a one in a million incremental individual lifetime cancer risk, respectively). The risk assessment indicated that the major route of human exposure at the site was through direct contact with on-site soil residually contaminated with polychlorinated biphenyls (PCBs) and carcinogenic polyaromatic hydrocarbons (CPAHs). The highest PCB concentration observed in the soil was 2.5 parts per million (ppm). In order to develop a full range of remedial alternatives, any concentration above 1 ppm PCBs in the soil was considered to require remediation. This level was based on the Toxic Substances Control Act definition of "clean" soil and is associated with a risk below 4×10^{-7} for current use and 7×10^{-6} for plausible maximum exposure during future site use. For CPAHs (benzo(a)anthrance, benzo(b)fluoranthene, benzo(k)fluoranthene, Benzo(a)pyrene and chrysene), the highest total concentration at any location was observed to be 0.9 ppm. For these compounds, a total concentration of 0.33 ppm was set as the limit above which remediation was required. This level was based on the CPAH detection limit for the EPA contract laboratory program and is associated with a risk for 2×10^{-7} for current use or 3×10^{-6} for plausible maximum exposure during future site use.

The U.S. Fish and Wildlife (USFWS) conducted an investigation of Ox Creek, and in August 1988, issued a report of its findings, entitled, Effects of Contaminants from the Clothier Disposal Site on Fish and Wildlife Resources of Ox Creek, Oswego County, New York. This report stated that there was no evidence of either environmental damage in the area around the site or contamination of Ox Creek at levels likely to be associated with risks to wildlife.

On December 28, 1988, a Record of Decision (ROD) was signed, selecting as the remedy for the site:

- Placement of a one-foot clean soil cover over the residually-contaminated areas;
- Regarding and revegetating of the site to prevent soil erosion and to minimize surface water runoff,
- Installation of rip-rap, as needed, on the embankment sloping towards the adjacent Ox Creek to prevent soil erosion;
- Performance of long-term monitoring of the groundwater and soil, and Ox Creek sediments and surface water; and
- Application of institutional controls to prevent the utilization of the underlying groundwater and the future development of the site for residential use.

The ROD also noted that the maximum contaminant concentrations (although not the geometric mean concentrations) in some of the groundwater sample collected during the RI/FS marginally exceeded a number of Applicable or Relevant and Appropriate Requirements (the maximum concentrations of tetrachloroethene and trichloroethene of 24 parts per billion (ppb) and 18 ppb, respectively, exceeded the New York State standard of 5 ppb of each; and antimony, barium, beryllium, chromium, lead, magnesium, and manganese exceeded New York State inorganic groundwater standards or guidances). Thus, further evaluation to determine whether remediation of the groundwater was necessary was called for in the ROD.

A local citizen's group, after reviewing the USFWS report, expressed concern that the USFWS investigation did not include an eleven-acre wetland located adjacent to the site.

To determine whether remediation of the groundwater was necessary and to evaluate the threat to the wetland located adjacent to the site, EPA tasked Ebasco to perform a post-RI/FS investigation, specifically to collect and evaluate samples of the groundwater and the surface water and sediment in the wetland. The results of this investigation, which were presented in January 1990 in the Post RI/FS Evaluation of Groundwater and Wetlands Report, indicated that a significant threat to human health and the environment did not exist at that time, and RAs for the groundwater and wetlands were not warranted.

In September 1989, a Consent Decree was entered by the Northern District of New York with the Settling Defendants to undertake the design and construction of the remedy selected for the site and to perform the long-term monitoring and maintenance of the site upon completion of the construction. The Settling Defendant's contractor, Canonie Environmental Services Corporation (Canonie), performed pre-design sampling to more precisely determine the area extent of the residual, low-level contamination on-site. Based upon these results, Canonie prepared the remedial design (RD) plans and specifications. As part of the RD, calculations were performed, based on a 100-year storm event, that determined that the erosive forces due to the overland flow velocities would be minimal, and that rip-rap protection on the slopes to the wetland (called for the ROD) would not be required. EPA approved the RD in June 1991.

The Settling Defendants awarded a contract to Sevenson Environmental Services, Inc. to implement the remedy in July 1991. During the course of regrading the areas to be covered with clean soil, it was discovered that an above-grade mound of soil contained parts of four drums. Further, while regrading the slope to the wetland, parts of three other buried drums were uncovered. The drum parts and the surrounding soil were excavated and were subsequently disposed of at an EPA-approved hazardous waste facility. The results of analyses of the soil in the areas where the drum parts were discovered indicated that the contaminants and their concentrations were comparable to those found during the RI and, therefore, the remedy selected in the ROD remained appropriate.

In May 1992, a representative of NYSDEC, during an inspection of the site, observed three seeps located at the foot of the west slope to the wetlands. After an analysis of the seeps and the soil surrounding the seeps, it was concluded that the seeps were caused by the discharge of groundwater at the wetland margin. The results of the analyses of the seeps indicated low concentrations of PCBs. Since the samples were not filtered prior to analysis, the PCBs were believed to be a result of PCBs adsorbed to sediment suspended in the liquid while collecting the samples (this premise has been confirmed, in that no PCBs have been identified in five rounds of ground water testing.) The results of the analyses of the soil associated with these seeps indicated contaminant concentrations that are consistent with those detected during the RI. Considering these results, EPA directed the Settling Defendants to continue with the implementation of the remedy. The installation of the soil cap and revegetation was completed in September 1992.

Following EPA's approval of the Settling Defendants' operation and maintenance and long-term monitoring plan, a Superfund Site Close-Out Report was approved on December 29, 1993.

During the first post-RA inspection/monitoring in April 1994, a small area of black, odorous soil was observed on the western portion of the soil cover. Three buried drums that were subsequently discovered in this area were excavated and overpacked. A geophysical investigation, performed to determine whether other buried drums were present in this area, followed by the installation of two trenches in areas of concern, revealed one crushed drum, metallic debris, and some stained soil. The drum, debris, and soil were excavated and, along with the overpacked drums mentioned above, were disposed of at approved disposal facilities.

Summary of Operation and Maintenance and Five-Year Review Requirements

Since the remedy involved the installation of a soil cover, there are no operational requirements.

The Settling Defendants are to monitor the site for five years, commencing with the first inspection/monitoring event that occurred on April 26, 1994.

The long-term monitoring program consists of monitoring the groundwater, soil, and Ox Creek sediments and surface water quarterly the first year, semi-annually the second year, and annually thereafter.

Site inspections, which will be conducted quarterly for the first year and semi-annually thereafter, are to be coincident with the monitoring events. Additional inspections will be conducted after any major flooding (100-year) or rainfall events in the Ox Creek area. The inspections will include visual observations of the soil cover, erosion controls and silt fencing, groundwater monitoring wells, site security, and general site conditions. Maintenance, if required, will consist of correcting observed deficiencies (e.g., restoring the soil cover and its vegetation to its original condition, repair of fencing, etc.) The six groundwater monitoring wells (four located within the limits of the soil cover, one just adjacent to it, and one up-gradient) that comprise the groundwater monitoring program will be inspected to ensure their integrity. They will be repaired should they become damaged, or replaced should they become non-functional.

So that EPA can evaluate the remedy's effectiveness, following each inspection/sampling event, the Settling Defendants are to submit to EPA a monitoring and inspection program report, summarizing the inspection and sampling results, and describing any corrective maintenance actions that were taken. In addition, a review of the long-term monitoring and inspection program reports will be performed five years after the initiation of the RA to assure that the remedy remains effective in protecting human health and the environment.

Summary of How the Deletion Criteria Has Been Met

Based upon the results of RA sample analyses, survey results, and site inspections, the site meets the requirements set forth in the ROD, in that a one-foot clean-soil cover has been installed over those residually-contaminated locations at which concentrations above 1 ppm PCBs and 0.33 ppmm CPAHs were detected, the site has been regraded and revegetated to prevent soil erosion and to minimize surface water runoff, and institutional controls (an easement) have been put into place to prevent the utilization of the underlying groundwater and the future development of the site for residential use.

EPA and the State have determined that the response actions undertaken at the Clothier Disposal site are protective of human health and the environment.

In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. EPA, in consultation with the State, has determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Having met the deletion criteria, EPA proposes to delete the Clothier Disposal site from the NPL.

Dated: August 21, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–22488 Filed 9–14–95; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3170

[ES–930–05–1310–01–241A]

RIN 1004–AC27

Coalbed Methane

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new part to the oil and gas leasing regulations. This regulation is intended to encourage the production of coalbed methane in States where production has been impeded by conflicts in ownership. These regulations are a requirement of section 1339 of the Energy Policy Act of 1992, Ownership of Coalbed Methane.

DATES: Comments should be submitted by November 14, 1995. Comments received or postmarked after the above date may not be considered in the decision making process on the final rule.

ADDRESSES: Comments should be sent to: Director (120), Bureau of Land Management, Room 5558, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments can also be sent to internet!WO140@attmail.com. Please include "attn: AC27" and your name and address in your internet message. Comments will be available for review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David R. Stewart, Bureau of Land Management, Eastern States at (703) 440–1728.

SUPPLEMENTARY INFORMATION: This proposed rule is intended to implement section 1339 of the Energy Policy Act of 1992 (hereinafter "the Act"), Ownership of Coalbed Methane (Pub. L. 102–486 Section 1339; 106 Stat. 2986; 42 U.S.C. 13368). The Act requires promulgation of regulations by October 24, 1995 to carry out the requirements of the Act. This rule is needed to promote the orderly development of coalbed methane by removing the impediment that conflicting ownership poses to the development of that resource in affected States. The legislative history of the Energy Policy Act indicates that Congress intended Section 1339 to apply to all lands within affected States, and not just Federal lands. *See* H.R. Rep. 102–474(I) at 147–48 and 214–16 (*reprinted in* 1992 U.S. Code Cong. & Admin. News at 1954); Cong. Rec., Feb. 6, 1992 at E 232 (Remark of Rep. Rahall that predecessor bill to section 1339 was offered "with the hopes that the entire Appalachian region will experience the benefits of coalbed methane development." (see also 58 FR 21589).

This regulation essentially force-pools conflicting owners of coalbed methane. It does this by requiring conflicting owners to enter into the development of a drilling unit. The regulation provides that any proceeds from a well, where there is a conflict in ownership, will be placed in an escrow account until the ownership issue is resolved by a State entity of competent jurisdiction. The mechanism of forced pooling, coupled with the escrow account requirements, is intended to remove the impediment that conflicts in ownership of coalbed methane poses to development.

These regulations will affect the development of coalbed methane in five States (Illinois, Indiana, Kentucky, Pennsylvania, and Tennessee). The list of affected States was originally published in the **Federal Register** on April 22, 1993 (58 FR 21589). West Virginia and Ohio were on the original list of affected States but have complied with the requirements of the Act and therefore have been removed from the list. West Virginia was removed from the list of affected States because it implemented a State program that promoted the production of coalbed methane gas within the State. Ohio was removed from the list of affected States as a result of a resolution passed by both houses of the Ohio Legislature requesting removal from the list. West Virginia was removed from the list of affected States on December 8, 1994, (59 FR 63376), and Ohio was removed from the list of affected States on February 8, 1995 (60 FR 7576).

The principal author of this rule is David R. Stewart of the Bureau of Land Management (BLM), Eastern States, assisted by Ian Senio of the Regulatory Management Team of BLM. The staff, Fuels Resources Management Division, U.S. Department of Energy, Morgantown Energy Technology Center, also assisted BLM in drafting this proposed rule. BLM interprets Section 1339 of the Act as giving it the primary responsibility for making day-to-day decisions necessary to carry out the regulations, while also requiring it to consult with and consider the view of the Department of Energy regarding the administration of this program.

We have determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not meet any of the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusion" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. This rule will not have a significant economic effect on the coalbed methane industry. The rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal communities. The rule applies to five States not all of which have substantial quantities of economically recoverable coalbed methane. Furthermore, BLM anticipates that several more States will qualify for removal from the list of affected States, further diminishing the already minor economic impact of these regulations.

The regulations regarding the location and spacing of wells will have little or no economic impact as all of the States on the list of affected States already utilize some method of spacing for gas wells. The regulations pertaining to pooling of interests are reasonable and reflect standard, good management practices for gas wells and will have little economic impact. The section of the regulations that deals with the establishment of an escrow account in cases where it is not clear who owns the coalbed methane gas will also have little economic impact. The escrow account will hold the funds from producing wells while the ownership of the coalbed methane is being determined.

There will be little or no cost increase imposed on the coalbed methane industry and therefore there will be no substantial effects on government agencies or competition. Further, for the same reasons, the Department has determined that under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the rule will not have a significant economic impact on a substantial number of small entities. The rule does not distinguish between entities based on their size.

The BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995 since it will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This regulation will not significantly or uniquely affect small governments.

The Department certifies that this proposed rule does not represent a government action capable of interference with constitutionally protected property rights. There will be no private property rights impaired as a result of this rule. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq*. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

The Regulatory Management Team of BLM wrote these regulations in plain English. We used plain English in an attempt to effectively communicate the information and legal requirements of these regulations. In addition to comments on the substance and content of these regulations, please comment on the use of plain English in these regulations.

List of Subjects for 43 CFR Part 3170

Public lands—Mineral resources, Reporting and record keeping requirements, Coalbed methane.

For the reasons set out in the preamble, part 3170, Group 3100, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is added to read as follows:

PART 3170—COALBED METHANE

General Provisions

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Authority: 42 U.S.C. 1336; 43 U.S.C. 174.0.

General Provisions

§ 3170.0–1 Purpose of these regulations.

The regulations in this part govern operations associated with the development of coalbed methane in those States listed as affected States. They seek to promote the orderly and efficient development of coalbed methane and preserve the ability to mine coal seams in the affected States.

§ 3170.0–3 Authority for these regulations

Section 1339 of the Energy Policy Act of October 24, 1992 (106 Stat. 2776, 2986; 42 U.S.C. 13368).

§ 3170.0–5 Definitions.

(a) *Affected State* means a State listed by the Secretary of the Interior, with the participation of the Secretary of Energy, as published in the **Federal Register** on April 22, 1993, 58 FR 21589 (1993), and as subsequently amended.

(b) *Coalbed methane* means natural gas that is produced, or may be produced, from coalbeds and rock strata associated with the coalbed.

(c) *Coal operator* means any person who has the right to operate or does operate a coal mine.

(d) *Coal owner* means any person who owns or leases a coal seam.

(e) *Coal seam* means any layer of coal 20 inches or more in thickness. The term also applies to a stratum of less thickness that is being commercially worked, or in the Bureau of Land Management's judgment can foreseeably be commercially worked and will require protection if wells are being drilled through it.

(f) *Nonparticipating working-interest owner* means a coalbed methane owner who relinquishes his working interest in a well to participating working-interest owners until the proceeds allocable to his share equal 300 percent of his share of the costs of drilling and equipping the well. Afterwards, the nonparticipating working-interest owner becomes a participating working-interest owner. Here, proceeds equal gross revenue less operating costs.

(g) *Participating working-interest owner* means a coalbed methane owner who elects to share the risks and costs of drilling, completing, equipping, gathering, operating (including any and all disposal costs), plugging, and abandoning a well(s) under a pooling order and to receive a share of the well's production.

(h) *Pooling* means joining of interests for common development within an approved spacing unit.

(i) *Spacing unit* means an area that may contain one or more coalbed methane wells for the purpose of orderly development of coalbed methane.

(j) *Stimulate* means any action taken to increase the inherent productivity of a coalbed methane well such as hydraulic fracturing.

(k) *Unit operator* means the party designated in a pooling order to develop a spacing unit by the drilling of one or more coalbed methane wells.

(l) *Vent* means release of coalbed methane into the atmosphere.

§ 3170.0–7 Applicability of these regulations.

The regulations apply to any deposit of coal capable of producing coalbed methane in an affected State and are in addition to State permitting requirements for individual wells. These regulations don't apply to coalbed methane development where there is a voluntary agreement between all ownership interests.

States Affected by These Regulations

§ 3171.1 Which States are affected States?

The five affected States are Pennsylvania, Kentucky, Tennessee, Indiana, and Illinois. Excluded by statute from any extension or revision of the list of affected States are the States of Colorado, Montana, New Mexico, Wyoming, Utah, Virginia, Washington, Mississippi, Louisiana, and Alabama.

§ 3171.2–1 How does BLM add a State to the list of affected States?

BLM may add to the list of affected States when BLM determines that all three of the following conditions apply—

(a) Development of significant deposits of coalbed methane is being impeded by disputes, uncertainty or litigation regarding ownership of coalbed methane;

(b) No statutory or regulatory procedure or existing case law permits and encourages the development of coalbed methane within that State; and

(c) No extensive development of coalbed methane exists within that State, but the potential for coalbed methane development exists.

§ 3171.2–2 How does BLM remove a State from the list of affected States?

BLM will remove a State from the list of affected States when any of the following events occurs:

(a) The Governor of the State petitions the Secretary of the Interior for removal, and the State's legislature doesn't object. The Governor first must notify the legislature of the petition during a legislative session and allow six months for consideration. If, in that time, the legislature enacts no law or resolution disapproving the petition, the Governor may petition the Secretary to delete the State from the list of affected States. The petition must include a copy of the Governor's notice to the State legislature and a statement that the legislature hasn't disapproved removal of the State from the list of affected States;

(b) The State's legislature passes a law or resolution requesting removal from the list of affected States. A representative of the legislature must send BLM a copy of the law or resolution; or

(c) BLM determines that the State no longer meets all of the criteria for an affected State listed in § 3171.2–1.

How To Establish a Spacing Unit

§ 3172.1 What distance requirements apply to a spacing unit?

If the State has distance requirements for coalbed methane wells those distance requirements apply. Otherwise, a coalbed methane well must be both—

(a) 1,000 feet or more from any other coalbed methane well; and

(b) 200 feet or more from the boundary of the spacing unit.

Coalbed methane wells in the gob will be spaced by BLM on an individual basis. Gob means an area in an underground mine where mining activity has occurred that may be packed with waste rock and in which there is a reasonable likelihood of buildup of coalbed methane. Exceptions to paragraphs (a) and (b) of this section require BLM's prior approval.

§ 3172.2–1 Who may apply for a spacing unit?

You may file an application to establish spacing units for drilling and operating coalbed methane wells if you claim a coalbed methane ownership interest within a proposed spacing unit.

§ 3172.2–2 What must my application for a spacing unit contain?

You must file with BLM an original and two copies of an application to establish or modify spacing. In it—

(a) Give your name and address and those of any counsel or representative;

(b) If you are applying to vacate or amend an order, identify the order you want vacated or amended and state the relief you seek;

(c) Justify the size and shape of the proposed spacing unit based on geologic characteristics of the subject coalbed(s) and the engineering and economic characteristics of well(s) within the unit;

(d) Give a legal description of the area to be spaced relative to a known survey point and the total acreage to be included in the order;

(e) Give a map depicting the boundary of the area to be spaced;

(f) List the names and addresses of each owner of the surface estate, and any oil, gas, coal or other mineral interest underlying the land which is the subject of your request; and

(g) Certify by affidavit that you used due diligence to locate and serve notice of the request for spacing to each of the owners identified under § 3172.2–2(f).

§ 3172.2–3 What must be in my notice to interest owners required by § 3172.2–2(g)?

Your notice must—

(a) Briefly describe the proposed action;

(b) Give the address of the BLM office where your application is filed;

(c) Invite interest owners to send written comments to that BLM office within 30 calendar days of receiving your notice; and

(d) Give a general-location map of the area.

§ 3172.2–4 As a notified interest owner under § 3172.2–2(f) how do I object to the spacing?

Provide BLM with written objections within 30 calendar days of your notification.

§ 3172.2–5 What does BLM consider when reviewing my application for spacing?

(a) Besides the information you submitted in your application for spacing, BLM considers—

(1) Proposed mine development plans;

(2) Existing mine operations;

(3) Drilling of multiple coalbed methane wells on each spacing unit;

(4) Existing spacing laws or orders; and

(5) Objections received under § 3172.2–4.

(b) If you don't send enough information for BLM to determine spacing unit size or shape, BLM may enter a temporary order establishing provisional spacing units for the orderly development of the area. The provisional spacing stays in effect until BLM receives the information it needs to determine the ultimate spacing for the wells.

§ 3172.2–6 How does BLM tell me that the spacing unit has been approved?

After reviewing your application for spacing, BLM issues a spacing order that establishes the following:

(a) The size and shape of the spacing units;

(b) The formations to which the order applies;

(c) The acreage included in the order; and

(d) Well locations on each unit.

BLM will send you and any parties that request it, a copy of the spacing order.

How To Get a Pooling Order

§ 3172.3–1 What is a pooling order?

The pooling order is an order that joins conflicting interests in one or more spacing units and spreads their costs and revenues.

§ 3172.3–2 Is a pooling order required if there is a voluntary agreement between ownership interests in the coalbed methane?

No pooling order is required if the parties claiming an ownership interest in the coalbed methane voluntarily agreed to drill and operate the well.

§ 3172.3–3 Who may apply for a pooling order?

You may apply for a pooling order if you are claiming a coalbed methane ownership interest and are proposing to drill a coalbed methane well.

§ 3172.3–4 What must my application for a pooling order contain?

You must file an original and two copies of your application. In it—

(a) Give your name and address and those of any counsel or representative;

(b) If you are applying to vacate or amend an order, identify the order you want vacated or amended and state the relief you seek. If you are seeking to amend an order, you may reference information already on file with BLM and don't need to send it again;

(c) Justify the proposed action which may include citing statutes, rules, orders, and decided cases;

(d) Give a legal description of the area to be pooled;

(e) Include a map that shows the proposed pooling unit boundary and the boundaries of individual tracts of ownership in the unit, certified by a registered land surveyor or engineer;

(f) For each tract in the unit, give—

(1) The acreage and its percentage to the total acreage of the pooling area;

(2) The names, addresses and ownership percentages for all owners of the surface, coal, oil and gas. If any owner's name and address is unknown, say so;

(g) Describe the coalbed methane ownership interests to be pooled;

(h) Give your percentage of the total interest in the proposed unit;

(i) Describe the conflicting claims to ownership of the coalbed methane;

(j) Give the percentages of coalbed methane ownership interests to be escrowed and a plan for escrowing the costs of drilling and operating the well(s) and the proceeds from the well(s).

(k) Describe the geology of any coalbeds and adjacent strata from which coalbed methane is to be produced;

(l) Describe the proposed development, including at least—

(1) The number, location, and depths of proposed wells (with maps as appropriate);

(2) The anticipated drilling schedule;

(3) A description of production measurement and allocation; and

(4) Any other unique aspect of the operation;

(m) Estimate production over the life of well(s) and the total reserves of the unit;

(n) Estimate the allocable costs, providing sufficient detail of the types of direct and indirect costs; and

(o) Certify by affidavit that you used due diligence to locate and identify all interest owners.

§ 3172.3–5 Will there be a hearing on my application for pooling?

Yes. BLM holds a hearing 45 calendar days or more after receiving an application for pooling.

§ 3172.3–6 How will I know about the pooling order hearing?

BLM provides notice of the hearing by certified mail (return receipt requested) or makes a reasonable and diligent effort to provide notice to each party claiming an ownership interest in the coalbed methane within the proposed pooling area. The notice—

(a) Will describe the purpose of the hearing;

(b) Invites each party to submit written objections;

(c) Invites each party to appear before BLM at the pooling hearing; and

(d) States the anticipated date, time, and place of the hearing.

§ 3172.3–7 What will the pooling order establish?

After reviewing your application for pooling and holding the hearing BLM issues a pooling order which, among other things, establishes—

(a) The boundary of the order;

(b) The coalbed methane ownership interests and formations to be pooled;

(c) The unit operator;

(d) Escrow provisions as provided in 3172.4; and

(e) Election options.

§ 3172.3–8 What options do I have in participating in the pooling order?

After BLM issues the pooling order, if you are an owner or claim ownership of the coalbed methane, you must choose a participation option. You must give written notice of your election to BLM and the designated unit operator within 30 calendar days after the effective date of the pooling order. The participation options are—

(a) You elect to sell or lease your coalbed methane ownership interest to the unit operator at a royalty rate determined by BLM in the pooling order;

(b) You elect to become a participating working-interest owner; or

(c) You elect to become a nonparticipating working-interest owner.

§ 3172.3–9 What if I make no election?

No election means you have agreed to lease your coalbed methane interest to the unit operator under the terms and conditions in the pooling order. The pooling order must clearly state that this is what no election means.

Escrow Accounts

§ 3172.4–1 What is the purpose of the escrow account BLM establishes?

BLM establishes an escrow account to maintain custody of the costs and proceeds for the interests described in the pooling order. The costs for administering the escrow account come out of the funds deposited as proceeds in the escrow account. The escrow account will be established at a federally insured bank.

§ 3172.4–2 What funds must I deposit into the escrow account?

(a) If you are a participating working-interest owner but not the unit operator, you must deposit into the escrow account your share of drilling, equipping, and abandonment costs, as set out in the pooling order;

(b) If you are the unit operator, you must deposit into the escrow account all royalties attributable to the conflicting interests of the lessees plus all proceeds that exceed ongoing operational expenses (including reasonable overhead costs) attributable to conflicting working interests.

§ 3172.4–3 When will I receive my share of the funds paid into the escrow account?

BLM orders payment of principal and accrued interest from the escrow account within 30 calendar days in one of two ways:

(a) To all legally entitled parties after BLM receives notification of the final legal determination of entitlement. Notification consists of certified copies of the order issued by a court or other body of competent legal jurisdiction.

(b) To all parties who claim an ownership in the coalbed methane when they voluntarily agree on the ownership of the coalbed methane. You must send BLM a copy of the voluntary agreement. This agreement must consist of a notarized writing, signed by all parties claiming an interest in the coalbed methane, which at a minimum clarifies ownership interests in the coalbed methane.

§ 3172.4–4 How will the funds from the escrow account be allocated?

You must give BLM either a certified copy of the order issued by a court or other body of competent legal jurisdiction or a copy of the agreement between parties claiming ownership in the coalbed methane. Then—

(a) If you are a legally entitled participating working-interest owner, you receive a proportionate share of the proceeds attributable to your conflicting ownership interest;

(b) If you are a legally entitled nonparticipating working-interest owner, you receive a proportionate share of the proceeds attributable to your conflicting ownership interest, less your proportionate share of 300 percent of the cost of drilling, equipping and abandoning the well;

(c) If you lease (or are considered to have leased under § 3172.3–9) your coalbed methane ownership interest to the unit operator, you receive a share of the royalty proceeds attributable to the conflicting interests of lessees, as set out in the pooling order; or

(d) If you are the unit operator, you receive the costs each legally entitled participating working-interest owner contributed to the escrow account.

Getting Authorization To Drill and Stimulate Coalbed Methane Wells

§ 3172.5–1 After the pooling order is issued may I begin to drill and stimulate the coalbed methane well(s)?

No. You must send to BLM an application for each well. Each coalbed methane well drilled within the area covered by the order must conform with approved well spacing. Drilling operations, stimulation of a coal seam, or surface disturbance preliminary to drilling may begin only after BLM approves the application.

§ 3172.5–2 What must I include when applying for authorization to drill a coalbed methane well or stimulate a coal seam?

You must send to BLM an original and two copies of your application. Include in it—

(a) A cover sheet containing the information specified in applicable notices or orders, including at least—

(1) The operator's name, address and telephone number;

(2) The name of the individual responsible for on-the-ground operations;

(3) The well name, number, location, and the total acreage committed to the well;

(4) The serial number assigned to the pooling order; and

(5) A statement certifying that you have the right to conduct the operations.

(b) A drilling plan containing the information specified in applicable notices or orders, including at least—

(1) A copy of an approved State permit to drill the well(s);

(2) A description of the drilling and casing program;

(3) A general discussion of the local geology;

(4) A discussion of how you will conform to any mine development plan near the proposed coalbed methane well; and

(5) An explanation of procedures you will follow to protect the safety of persons working in underground coal mines near the coalbed methane well.

(c) When proposed, a stimulation plan containing the information specified in applicable notices or orders. In it—

(1) Describe the stimulation procedure;

(2) Identify all parties who either are operating a coal mine or have by virtue of their property rights in the coal the ability to operate a coal mine within 750 horizontal feet and 100 vertical feet above and below the coal bearing stratum which you propose to stimulate;

(3) Certify that each party identified in § 3172.5–2(c)(2) received a stimulation plan and that the plan—

(i) Tells each notified party that it may witness stimulation activity;

(ii) Explains how you and the notified party will share information on the results of stimulation; and

(iii) States the notified party's right to ask for a hearing before BLM;

(4) Include a signed consent from each party identified in § 3172.5–2(c)(2) agreeing to the proposed stimulation plan. The required consent to stimulate a coal seam in no way impairs, abridges, or affects any rights or obligations arising out of a coalbed methane contract or coalbed methane lease in existence as of October 24, 1992, between a coalbed methane operator or interest owner and a coal operator or interest owner. BLM considers a lease or contractual agreement allowing for coalbed methane development and any extensions or renewals of a lease or agreement as fully meeting consent requirements; and

(d) Provide any other data BLM may request.

§ 3172.5–3 What if I can't get signed consent from a party identified in § 3172.5–2(c)(2)?

(a) If all parties identified above haven't given signed consent, you must file a request with BLM for a determination whether to approve or deny the proposed stimulation of the coal seam(s) described in § 3172.5–2(c)(1). In your request—

(1) Say you lack written consent from a party from whom consent is required;

(2) Detail your efforts to obtain written consent;

(3) Offer any reasons you know for the lack of consent; and

(4) Give prima facie evidence that the method of stimulation proposed by the coalbed methane operator won't cause unreasonable loss or damage to the coal seam. For this section, prima facie evidence is evidence that proves a particular fact but might be overcome by other evidence that proves a contradictory fact. This evidence should consider all factors, including the possibility that coal seams for which no actual or proposed mining plans exists may be mined at some future date. This evidence should also take into consideration the economics of the coal industry and mine safety requirements.

(b) If a coal operator denies consent for reasons of safety, BLM seeks the views and recommendations of the appropriate State and Federal coal mine safety agencies. BLM then makes a determination which is in accordance with Federal and State coal mine safety laws and recommendations of Federal and State coal mine safety agencies.

Notice and Objection

§ 3172.6–1 As the unit operator, whom must I notify before I drill a coalbed methane well?

You must notify—

(a) All parties who either are operating a coal mine or have, by virtue of their property rights in the coal, the ability to operate a coal mine within 750 horizontal feet and 100 vertical feet above and below the coal-bearing stratum which you propose to stimulate; and

(b) All parties claiming an interest in the coalbed methane in the spacing unit.

§ 3172.6–2 How do I prove that I notified all appropriate parties?

You must send BLM a copy of—

(a) A signed receipt of delivery of notice by certified mail;

(b) A signed receipt acknowledging personal delivery of the notice; or

(c) The mailing log or other proof of the date you sent the notice by certified mail, return receipt requested, if all receipts of delivery of notice by certified mail haven't been signed and returned to you within 15 calendar days of mailing.

§ 3172.6–3 If I am notified of the application to drill a coalbed methane well, may I object to the drilling of the well?

Yes. You may submit to the BLM office where the application was filed your written objections about drilling the well within 30 calendar days after you receive a notice from the unit operator of the coalbed methane well.

§ 3172.6–4 What must I include in my objections to the application to drill a coalbed methane well?

Your objections to an application must contain—

(a) Your name, address and telephone number;

(b) The date you received notice of the application to drill;

(c) A description of the proposed activity you object to;

(d) A statement of the specific reason(s) you object;

(e) Conditions under which the permit would be acceptable; and

(f) Any other information you wish to provide including but not limited to mine maps, structural maps, mine plans, and stratigraphic information.

§ 3172.6–5 Under what circumstances may BLM refuse to approve the drilling of the well?

BLM may refuse to approve the drilling of the well if BLM determines that the proposed activity would—

(a) Cause unreasonable loss or damage to any operating, inactive or abandoned coal mine, including any coal mine already projected but not yet being operated, due to its proximity to any coal mine opening, shaft, underground workings, or to any proposed extension of the coal mine;

(b) Not conform with a coal operator's development plan for an existing or proposed operation;

(c) Interfere unreasonably with present or future coal mining operations, including the ability to comply with other applicable laws and regulations;

(d) Possibly be unsafe, considering the dangers of creeps, squeezes or other disturbances because of the extraction of coal;

(e) Interfere unreasonably with the safe recovery of coal, oil, and gas; or

(f) Impinge directly upon the notified parties' coalbed methane interest.

§ 3172.6–6 Under what circumstances is BLM required to deny approval for the drilling of a well?

BLM must deny approval for the drilling of a well if BLM determines that—

(a) The well would not comply with applicable spacing or other requirements;

(b) The unit operator hasn't notified, or hasn't made a diligent effort to notify, all entities that claim ownership of coalbed methane to be drained by the well;

(c) The unit operator hasn't provided entities that claim ownership of coalbed methane to be drained by the well an opportunity to object in accordance with these rules; or

(d) Conflicting interests exist that haven't been resolved by voluntary agreement or by final determination by a court or other body of competent legal jurisdiction and BLM has not issued a pooling order.

§ 3172.6–7 If my application to drill a well is unacceptable because a notified party objects, may I modify my proposal to mitigate the objection?

Yes. BLM considers whether drilling is acceptable if you modify the proposed activity so that—

(a) You can reasonably drill through an existing or planned pillar of coal, or are close to an existing well, taking into consideration surface topography;

(b) You can instead move the drilling to a mined-out area, or to some other feasible area;

(c) You can agree to a drilling moratorium of not more than two years to complete coal mining operations in the subject area; or

(d) You can locate the spacing unit or well in a uniform pattern with other spacing units or wells.

Hearing and Decision on Objections to Drilling and Stimulation of Coalbed Methane Wells

§ 3172.7–1 If I have been notified of the proposal to drill or stimulate a coalbed methane well and I object, am I entitled to a formal hearing?

No. However, BLM may decide to hold an informal fact-finding hearing on any objection filed about an application for drilling or stimulation, or both, of a coalbed methane well. In determining whether to have an informal hearing, BLM takes into account at least—

(a) Whether the party objecting to the application has standing to object. Only parties entitled to notice under § 3172.6–1 have standing;

(b) Whether the objection was filed on time; and

(c) Whether the objection contains all of the information required under § 3172.6–4.

§ 3172.7–2 May parties other than notified parties participate in these proceedings?

Yes. Other interested parties may comment on the stimulation plan only. You must submit comments in writing to the BLM office where the proposed plan was filed before the close of the objection period.

§ 3172.7–3 How will I find out about the informal hearing on objections to the drilling and/or stimulation of the well?

If BLM determines that a hearing is warranted, the hearing takes place within 30 calendar days after the close of the objection period. BLM notifies the applicant and each party with standing to object within ten calendar days after the objection period closes. The notice states the time and place of the hearing, all objections, and who made them.

§ 3172.7–4 What if BLM decides not to have a hearing on objections to the drilling and/or stimulation of the well?

If BLM decides not to hold a hearing on any objections filed with BLM, we explain why we are not holding a hearing in writing to the party who objects and the permit applicant and advise the objecting party of the right to appeal the decision.

§ 3172.7–5 When does BLM decide on my request for approval to drill and/or stimulate the coal seam?

Not later than 45 calendar days after receiving your request for approval to drill and/or stimulate, BLM—

(a) Approves your request as submitted or with appropriate modifications or conditions;

(b) Denies your request and advises you of the reasons for disapproval; or

(c) Advises you, either in writing or orally with later written confirmation, of the reasons why final action will be delayed along with the date you can expect the final action.

§ 3172.7–6 Do I need only BLM's approval to start operations?

No. Approval of drilling locations by BLM doesn't relieve you of obtaining the necessary permits from other appropriate State or Federal regulatory

authorities and surface managing agencies.

Plugging of Coalbed Methane Wells

§ 3172.8–1 When must I plug a coalbed methane well?

You must promptly plug and abandon each coalbed methane well that isn't commercially producible and not otherwise required for any other use. If the well you are abandoning—

(a) Penetrates a minable coal seam with remaining reserves, you must provide for safe mining later. When you abandon and plug a well, you must consult with BLM and any Federal or State agencies with authority over coal mine safety; or

(b) Is associated with mined-out or unminable coal seams, you must consult with any Federal or State agencies with authority over coal mine safety.

Venting for Safety

§ 3172.9 May I vent coalbed methane for safety reasons?

Yes. Nothing in this section prevents or inhibits a party who has the right to develop and mine coal from venting coalbed methane to ensure safe mine operations in accordance with any applicable Federal and State requirements.

Appeals

§ 3172.10 What if I have been adversely affected by a decision made by BLM under these regulations?

You may appeal that decision to the Interior Board of Land Appeals under the regulations in part 4 of this title.

Dated: July 17, 1995.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

[FR Doc. 95–22696 Filed 9–14–95; 8:45 am]

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Notices

Federal Register
Vol. 60, No. 179
Friday, September 15, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Arapaho and Roosevelt National Forest and Pawnee National Grassland Land and Resource Management Plan (Forest Plan) Arapaho and Roosevelt National Forest and Pawnee National Grassland; Boulder, Clear Creek, Gilpin, Grand, Jefferson, Larimer, Park, and Weld Counties, Colorado

AGENCY: Forest Service, USDA.

ACTION: Revised Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Arapaho and Roosevelt National Forest and the Pawnee National Grassland gives notice of the agency's intent to prepare an environmental impact statement on the revision of the Arapaho and Roosevelt National Forests and Pawnee National Grassland Land and Resource Management Plan (Forest Plan).

The original Notice of Intent to Prepare an Environmental Impact Statement for this Forest Plan Revision was published July 10, 1990. Due to the delay in publishing a Draft EIS, this Notice serves to revise the Notice of July 1990.

FOR FURTHER INFORMATION CONTACT: Howard Sargent, Forest Planner, (970) 498–1201, 240 West Prospect Road, Fort Collins, CO 80526.

SUPPLEMENTARY INFORMATION: A Forest Plan shall ordinarily be revised on a 10-year cycle or at least every 15 years. A plan may also be revised whenever the Forest Supervisor determines that conditions or demands in the area covered by the plan have changed significantly. The current Arapaho and Roosevelt National Forest Land and Resource Management Plan was approved on May 4, 1984. The Forest is scheduled to complete its revision of the Forest Plan and FEIS in Fall, 1996.

Through evaluation of the Forest Plan, documented in the "Five Year Evaluation: Forest Plan Monitoring and Evaluation Report" (1990) and further refined in 1993 in the "Analysis of the Management Situation," the Forest Supervisor of the Arapaho and Roosevelt National Forest and the Pawnee National Grassland has determined that the following topics should be the primary focus of the Forest Plan Revision:

1. Biological diversity including old growth;
2. National Forest-residential intermix areas;
3. Oil and gas leasing;
4. Recreation-related items such as recreation settings, scenic resources and wild and scenic rivers;
5. Roadless areas and additions to the Wilderness Preservation System;
6. Timber management, including suitable lands, allowable sale quantity, silvicultural practices;
7. Travel management; and
8. Water yield and management.

Public involvement in the Plan Revision process has been extensive since the original Notice of Intent was published, utilizing a variety of scoping techniques. These included mailings to individuals and organizations known to be interested in the Plan Revision, newspaper articles, newsletters, public meetings, and open houses. After release of the Draft Environmental Impact Statement, more open houses will be held and will be announced in local news media and in newsletters.

Revision of the Forest Plan began in 1990; the draft environmental impact statement and Proposed Revised Forest Plan should be available for public review in November, 1995. The final environmental impact statement, Record of Decision, and Revised Forest Plan are scheduled to be completed by Fall, 1996.

The comment period on the draft environmental impact statement will be a minimum of 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 1978*). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The official responsible for approving the revised Forest Plan is the Regional Forester, Rocky Mountain Region, USDA Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, Colorado 80225. The Forest Supervisor, Arapaho and Roosevelt National Forests and Pawnee National Grassland, is delegated responsibility for preparing the revision.

Dated: August 29, 1995.

William P. Lisowsky,

Acting Forest Supervisor.

[FR Doc. 95–22938 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–11–M

Oil and Gas Leasing Analysis; Los Padres National Forest, Los Angeles, Kern, Monterey, San Luis Obispo, Santa Barbara and Ventura Counties, California; Notice of Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service (FS) and the Bureau of Land Management (BLM) are conducting an analysis to identify lands within Los Padres National Forest that should or should not be made available for oil and gas leasing. The analysis will be documented in an environmental impact statement (EIS). The Forest Service is the Federal lead agency. The Bureau of Land Management is participating in the analysis as a cooperating agency.

The purpose of the EIS is to implement the authority and responsibility granted to the FS by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (P.L. 100–203) and to meet the regulatory requirements of 36 CFR 228 Subpart E. This Act gives the FS authority to approve or disapprove the leasing of National Forest System lands for development of oil and gas resources. The Act also authorizes the FS to identify appropriate stipulations to be applied to a lease to protect the surface resources. The BLM issues the leases and administers operations connected with the extraction of the mineral resources. The FS approves all surface disturbing activities and administers all surface operations.

The FS and BLM, Federal agencies with separate responsibilities for administration of oil and gas leasing on lands within Los Padres National Forest, propose the following specific actions:

(1) The Forest Supervisor will decide, within Los Padres National Forest, which National Forest System (NFS) lands and non-Federal lands with Federal mineral ownership (split-estate lands) are administratively available for oil and gas leasing and under what conditions. A significant part of the leasing decision is to determine stipulations to become part of any lands offered for lease. There are numerous possible varieties and combinations of these lease stipulations but each can be placed into one of the following categories: no lease; no surface occupancy; timing limitations; controlled surface use; and, lease with standard BLM lease terms.

(2) The Forest Supervisor will decide which specific NFS lands the BLM is authorized to offer for lease, subject to the FS ensuring that correct stipulations will be attached to leases issued by the BLM.

(3) The FS proposes to amend Los Padres National Forest Land and Resource Management Plan to incorporate the leasing decision in place of guidelines for oil and gas leasing contained in the Forest Plan.

(4) The BLM conducts public offerings to lease the specific lands authorized by the Forest Service.

The decisions made as a result of this analysis will not result in on-the-ground activities. Ground disturbing projects such as exploration, drilling or field development would require further environmental analysis and separate site specific decisions prior to approval.

Since the Forest Plan was completed prior to the passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, the current Forest Plan did not determine the availability of NFS lands for oil and gas leasing. The Plan directs that later analyses and decisions to lease, or not lease, specific lands would be documented in an EIS.

The area involved in this leasing analysis includes all Federal lands within the boundary of Los Padres National Forest except for lands which have been legislatively withdrawn from mineral entry—wilderness, the Santa Ynez municipal watershed and the Big Sur coastal zone. The study area encompasses approximately 743,000 acres or 42 percent of the total area within the Forest boundary.

Possible oil and gas exploration and development that could result from leasing Federal lands within Los Padres National Forest could affect the lands and resources of the Forest in several ways. The FS and BLM have identified the following as tentative issues and resources to be addressed during the analysis process: wildlife and wildlife habitat; threatened, endangered and sensitive animals and plants; soils and water; riparian, wetlands and floodplains; and, visual and recreation resources. In addition, the possible effects of leasing on opportunities to explore for and develop oil and gas resources within the analysis area and possible effects on local communities and socioeconomic values will be analyzed.

The range of alternatives for this analysis is being developed. The following alternatives are proposed at this time. This list will be changed/supplemented as needed as a result of scoping.

(1) No leasing.
(2) Current Forest Plan direction.
(3) Emphasize biodiversity and watershed protection.
(4) Emphasize visual and recreational resources.
(5) Balanced resources emphasis.
(6) Emphasize oil and gas development.

Federal, State and local agencies, organizations, and individuals who may be interested in or affected by the decision will be invited to participate in the scoping process. Scoping will include mailings, media announcements, and public meetings. The scoping process will identify potential issues, identify those issues to be analyzed in depth, and eliminate insignificant issues. Scoping will also determine the extent of the analysis necessary for an informed decision including identification of alternatives.

The FS will hold public meetings at the following locations:

Frazier Park, CA—Saturday, Sept. 30, 1995, 10:00 A.M., Chuchupate Ranger Station, Lockwood Valley Road.

King City, CA—Monday, Oct. 2, 1995, 7:30 P.M., Orradre Building, Salinas Valley Fairgrounds, 625 Division Street.

Arroyo Grande, CA—Tuesday, Oct. 3, 1995, 7:30 P.M., South County Regional Center, 800 West Branch Street.

Goleta, CA—Wednesday, Oct. 4, 1995, 7:30 P.M., Goleta Community Center, 5679 Hollister Avenue.

Ventura, CA—Thursday, Oct. 5, 1995, 7:30 P.M., De Anza Middle School, 2060 Cameron.

David W. Dahl, Forest Supervisor, Los Padres National Forest, Goleta, California, is the responsible official.

Written comments and suggestions concerning the analysis should be sent to Los Padres National Forest, Att'n: Oil & Gas EIS, 6144 Calle Real, Goleta, CA 93117, by October 20, 1995.

The environmental analysis is expected to take about 18 months to complete. The draft environmental impact statement should be available for public review in August, 1996. The final environmental impact statement is scheduled to be completed by April, 1997.

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The FS believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Questions about the proposed action and environmental impact statement should be directed to Al Hess, Oil and Gas EIS Project Leader, Los Padres National Forest, phone (805) 681–2794.

Dated: September 6, 1995.

David W. Dahl,

Forest Supervisor.

[FR Doc. 95–22919 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–11–M

Taneum/Peaches Road Access, Wenatchee National Forest, Kittitas County, Washington

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent.

SUMMARY: On May 19, 1994, a Notice of Intent to prepare an environmental impact statement (EIS) for the Taneum/Peaches road access project was published in the **Federal Register** (59 FR 26201). This notice listed the date of the availability of the draft EIS as January 31, 1995, with the final EIS scheduled to be completed by May 1, 1995. The revised date of availability of the draft EIS is December 1995 and the final EIS is May 1996.

FOR FURTHER INFORMATION CONTACT: Questions concerning this revision should be directed to Douglas Campbell, Lands Specialist, Cle Elum Ranger District, 803 West Second, Cle Elum, Washington 98922; phone (509) 674–4411.

Dated: September 6, 1995.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 95–22970 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–11–M

Delegation of Authority to Forest Supervisors, Intermountain Region

AGENCY: Forest Service, USDA.

ACTION: Notice of delegation of authority.

SUMMARY: The Intermountain Region of the Forest Service hereby gives notice of the delegation of authority by the Regional Forester to Forest Supervisors to perform certain transactions related to the granting and terminating of easements on National Forest System lands under authority of the Federal Land Policy and Management Act of October 21, 1976, and the National Forest Roads and Trails Act of October 13, 1964.

EFFECTIVE DATE: October 16, 1995.

FOR FURTHER INFORMATION CONTACT: Randall Karstaedt, Special Uses Officer, Intermountain Region, 324 25th Street, Ogden, UT 84401, (801) 625–5150.

SUPPLEMENTARY INFORMATION: Pursuant to 36 CFR 251.52 and the delegation of authority from the Chief of the Forest Service set forth in Forest Service Manual section 2732.04c and section 2733.04b, the Regional Forester of the Intermountain Region has delegated the authority to all Intermountain Region Forest Supervisors to 1) issue easements under authority of the Forest Road and Trail Act (FRTA) of October 12, 1964 (Pub. L. 88–657, 78 Stat. 1089, as amended) and to terminate such easements with the consent of the grantee, and 2) issue easements and reservations under authority of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (Pub. L. 94–579, 90 Stat. 2743, as amended) and to terminate such easements with the consent of the grantee or on the occurrence of a fixed or agreed upon condition, event, or time when the easement, by its terms, provides for such termination.

This delegation has been issued as a Regional Supplement to Forest Service Manual Chapter 2730, Road and Trail Rights-of-Way Grants, and Chapter 2704, Responsibility.

Jack A. Blackwell,

Deputy Regional Forester, Resources, Intermountain Region.

[FR Doc. 95–22937 Filed 9–14–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a) (19 CFR 353.22(a)). We intend to issue the final results of these reviews not later than August 31, 1996.

	Period to be reviewed
Antidumping Duty Proceedings	
Belgium:	
Industrial Phosphoric Acid:	
A–423–602	
Societe Chimique Prayon-Rupel	08/01/94–07/31/95
Canada:	
Pure Magnesium:	
A–122–814	
Norsk Hydro Canada, Inc	08/01/94–07/31/95
Israel:	
Industrial Phosphoric Acid:	
A–508–604	
Haifa Chemicals, Ltd	08/01/94–07/31/95
Italy:	
Grain-Oriented Electrical Steel:	
A–475–811	
Acciai Speciali Terni S.p.A	08/01/94–07/31/95
Mexico:	
Gray Portland Cement and Clinker:	
A–201–802	
Cemex, S.A. de C.V	08/01/94–07/31/95
Russia:	
Titanium Sponge:	
A–821–803	
Berezniki Titanium-Magnesium Works ("Avisma") Interlink Metals and Chemicals	08/01/94–07/31/95
The People's Republic of China:	
Sulfanilic Acid:	
A–570–815	
China National Chemicals I/E Corporation, Hebei Branch, China National Chemical Construction Corporation, Bejing Branch, China National Chemical Construction Corporation, Qingdao Branch, Sinochem Qingdao, Sinochem Shandong, Boading No. 3 Chemical Factory, Jinxing Chemical Factory, Zhenxing Chemical Factory, Mancheng Xinyu Chemical Factory, Shijiazhuang, PRC	08/01/94–07/31/95
Mancheng Xinyu Chemical Factory, Baoding, PRC, Mancheng Xinyu Chemical Factory, Bejing, PRC, Hainan Garden Trading Company, Yude Chemical Industry Company, Shunging Lile	08/01/94–07/31/95
All other exporters of sulfanilic from the PRC are conditionally covered by this review.	
Sebacic Acid:[1]	
A–570–825	
Sinochem Jiangsu I/E Corp., Tianjin Chemicals I/E Corp., Guangdong Chemicals I/E Corp., Sinochem Int'l Chemicals Co	07/13/94–06/30/95
All other exporters of sebacic acid from the PRC are conditionally covered by this review.	
Countervailing Duty Proceedings	
Brazil:	
Certain Cut-to-Length Carbon Steel Plate:	
C–351–818	
Companhia Siderurgica de Tubarao	01/01/94–12/31/94
Canada:	
Live Swine:[2]	
C–122–404	
Mayfair Colony, Genetiporc Inc., Niverville Hog and Poultry, National Pig Development (Canada) Co. Ltd., Cornelius Monden, Larry & Gloria McLeod, Rein Westerbaan, Henry Kottelenberg, Garry Van Loon, Warren & Richard Stein, Thames Bend Farms Ltd., Abe Stouffer, Bob Robson, Ed & Nancy DeGorter, Jim & Mary Field, Bill Collins, Ralph Henderson, Clare Martin, Ben & Helen Varekamp, Charlie Terpstra, Andreas & Michael Schertzer, Peter & Kate Bancroft, Jack Nethercott, Allan Faris, Murray Junker, Bob & Scott Robinson, Douglas McLeod, John Boehm, Dan Lester, Ross & Betty Small, Adrian P. Van Dyk, Henry DeWolde, Eric J. Davis, Fred Lee, John & Enid Gough, Henry Van Bilsen, Robin & Donna Carlisle, Ken & Dave Thompson, Lynn Sararus, John Peter Van Haren, Robert M. Matheson, Donald J. Dietrich, George Procter, John & Carrie Rutten, Kurt Keller, Lara & Olav Natvik, Wayne Fear, Richard Stroebel, Arnold Ypma, Jim Whitehouse, Matt Marui, Brian Vandenbroek, Jack & Theo Verburg, Jim F. Hurtter, Wayne Brubacher, William Kuyvenhoven, Tim & Rosa Small, Joe Kolkman, Ian & Marlene Archibald, Larry J. Dawson, Brian Simpson, Adrian VanHaren, Ronald Davis, Rein Minnema, Carl & Charlotte Mueller, Henry E.M. Martin, Arkell Swine Research Station, Jim Long, Wood Lynn Farms International Inc., John McDonnell, Jim McDonnell, Timmerman Farms Ltd., Tom & John Archibald, Quality Swine Corporative of Ontario, Jim Bloxsidge, Astoria Swine, Fairholme Colony, Stonyhill 93 (Willow Creek Colony), Wapoka Creek, Pryme Pork Ltd., Members of the Canadian Pork Council	04/01/94–03/31/95
Pure Magnesium:	
C–122–815	
Norsk Hydro Canada Inc	01/01/94–12/31/94
Alloy Magnesium:	
C–122–815	
Norsk Hydro Canada Inc	01/01/94–12/31/94
Israel:	

	Period to be reviewed
Industrial Phosphoric Acid:	
C–508–605	
Rotem Amfert Negev Ltd, Haifa Chemicals Ltd	01/01/94–12/31/94
Malaysia:	
Extruded Rubber Thread:	
C–557–806	
Heveafil Sdn. Bhd., Filmax Sdn. Bhd., Rubberflex Snd. Bhd., Filati Lastex Elastofibre Sdn., Rubfil Sdn. Bhd	01/01/94–12/31/94
Mexico:	
Certain Cut-to-Length Carbon Steel Plate:	
C–201–810	
Altos Hornos de Mexico, S.A. de C.V	01/01/94–12/31/94
Sweden:	
Certain Cut-to-Length Carbon Steel Plate:	
C–401–804	
SSAB Svenskt Stal AB	01/01/94–12/31/94
Thailand:	
Certain Circular Welded Carbon Steel Pipes and Tubes:	
C–549–501	
Saha Thai Steel Pipe Co., Ltd	01/01/94–12/31/94

[1] The period of review shown in the August 16, 1995 (60 FR 42500) initiation notice covering sebacic acid from the PRC should have read as stated above.

[2] The Department has determined that it is not practicable to conduct company-specific reviews of the order on Live Swine from Canada because a large number of exporters and producers requested the review. Therefore, pursuant to section 777A(e)(2)(B) of the Tariff Act of 1930, as amended, the Department will conduct a country-wide review on the basis of aggregate data. We note the investigation and all prior reviews of this order have been conducted on an aggregate basis and that the companies requesting review, except for Pryme Pork Ltd., and the Government of Canada requested a review on a country-wide basis.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: September 13, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–23112 Filed 9–14–95; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Notice of Intent To Adjust the Boundary of the South Slough National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Public notice.

SUMMARY: Notice is hereby given that the Division of State Lands, of the State of Oregon, intends to make minor adjustments to the boundary of the South Slough National Estuarine Research (SSNERR) in Coos Bay, Oregon. The need for the boundary adjustments stems from the July, 1991 discovery that a landowner adjacent to the SSNERR had encroached on approximately three and one half acres owned by the Reserve. The landowner has agreed to transfer to SSNERR property adjacent to the Reserve. In exchange, the SSNERR will grant to the landowner the encroached-upon land. In addition, The Division of State Lands is also granting tidelands to the SSNERR to ensure that there is no net loss of property within the SSNERR, either in terms of market or ecological value of lands. These actions were designed to resolve the encroachment issue in a manner that will protect the natural integrity of the Reserve, while enabling the landowner to retain access to, and use of, the roads, structures, and utilities he developed on Reserve property.

The delineation of the property that will be removed from the boundary of the SSNERR and granted to the encroaching land owner is identified as follows:

Beginning at a ¾″ iron pipe which marks the center ¼ corner of Section 13, Township 26 South, Range 14 West of the Willamette Meridian, Coos County, Oregon:

Thence South 69°53′22″ East for a distance of 85.23 feet;
Thence South 02°25′33″ East for a distance of 498.92 feet;
Thence South 88°03′51″ East for a distance of 299.89 feet;
Thence North 24°46′16″ East for a distance of 351.55 feet;
Thence West for a distance of 360.17 feet;
Thence North for a distance of 218.7 feet to the North line of the Southeast ¼ of said Section 13;
Thence West along said North line for a distance of 188.0 feet back to the point of beginning. Said parcel containing 3.3 acres more or less.

The delineation of the tidelands proposed to be added to the SSNERR by the Division of State Lands is as follows:

All submerged lands in the South Slough arm of Coos Bay, Township 26 South, Range 14, West 14, Willamette Meridan, more particularly described as follows:

Beginning at a point which is the intersection of Township 26 South, Range 14 West, Sections 14, 15, and 23; thence East 1,283 feet to a point; thence North 2°, 36′ East, 1279.60 feet to the Southwest one-sixteen point on Section 14; thence East 1,313.36 feet to a meander corner of the mean high tide line of the South Slough arms of Coos Bay; thence South 73°34′48″ West 1,808.62 feet to the True Point of Beginning.

Thence South 73°34′48″ West, 250 feet more or less, thence North 16°25′12″ West, 696.96 feet more or less, thence North 73°34′48″ East 250 feet more or less; thence South 16°25′12″ East; 696.96 feet more or less to the True Point of Beginning, containing 4.0 acres more or less.

The delineation of the property added by the landowner who encroached into SSNERR in the upland portion of the SSNERR is as follows:

Beginning at ¾″ iron pipe which marks the center ¼ corner of Section 13, Township 26 South, Range 14 West of the Willamette Meridian, Coos County, Oregon:

Thence East along the North line of the Southeast ¼ of said Section 13 for a distance of 649.09 feet to the True Point of Beginning;
Thence continuing East along said North line for a distance of 60.66 feet;
Thence South for a distance of 218.7 feet;
Thence West for a distance of 161.58;
Thence North 24°46′16″ East for a distance of 240.86 feet back to the True Point of Beginning.

Any person wishing to comment on the proposed boundary change may forward written statements to the Oregon Division of State Lands, South Slough National Estuarine Research, P.O. Box 5417, Charleston, OR. 97420. Comments must be received by the Division of State Lands no later than close of business (30) thirty days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Nina Garfield, NOAA/NOS/OCRM/SRD, 1305 East-West Highway, SSMC4 12th Floor, Silver Spring, MD. 20910; Phone: (301) 713–3141, ext. 171.

Dated: September 8, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries)

[FR Doc. 95–22999 Filed 9–14–95; 8:45 am]

BILLING CODE 3510-08-M

Patent and Trademark Office

[Docket No. 950829221–5221–01]

RIN 0651–XX03

Request for Comments Concerning the Right of Priority (35 U.S.C. 119) and Electronic Exchange of Priority Documents

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice; Request for Comments.

SUMMARY: The Patent and Trademark Office (PTO) requests written public comment on various aspects of existing statutory and regulatory requirements for obtaining the right of priority of an earlier filed foreign application. The PTO also requests written public comment on issues associated with the electronic exchange of priority documents between the PTO, the European Patent Office (EPO), and the Japanese Patent Office (JPO).

DATES: Written comments on the topics presented in the supplementary section of this notice, or any related topics, will be accepted by the PTO until November 13, 1995.

ADDRESSES: Those interested in presenting written comments on the topics presented in the supplementary information, or any related topics, may mail their comments to the Assistant Commissioner for Patents, Washington, D.C. 20231, marked to the attention of Box DAC. In addition, comments may also be sent by facsimile transmission to (703) 308–6916, with a confirmation copy mailed to the above address, or by electronic mail messages over the Internet to priority@uspto.gov.

FOR FURTHER INFORMATION CONTACT: Jeffrey V. Nase by telephone at (703) 305–9285, or by mail marked to the attention of Box DAC, addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:

I. Issues for Public Comment

The PTO is inviting written public comments on the administration and relevance of the existing statutory and regulatory requirements for obtaining the right of priority of an earlier filed foreign application and/or issues associated with the electronic exchange of priority documents between the Trilateral Offices (PTO, EPO, and JPO). Questions included at the end of this section are intended to illustrate the types of issues upon which the PTO is particularly interested in obtaining public comment. This notice has been determined to be not significant for the purposes of Executive Order 12866.

A. The Requirement for a Certified Copy of the Foreign Application Unless Deemed Necessary

Currently, the Trilateral Offices are reconsidering the need that a certified copy of the foreign application be submitted in all cases. 35 U.S.C. 119 requires that a certified copy of a foreign application be submitted in all cases in order to obtain the right of priority. Specifically, 35 U.S.C. 119(b) requires that the applicant file a claim for the right of priority and a certified copy of the original foreign application before the grant of the patent, or at any time during the pendency of the application as required by the Commissioner, but not earlier than six months after the filing of the application in this country. The Commissioner may currently require a translation of the papers filed if not in the English language.

37 CFR 1.55, which implements 35 U.S.C. 119(b), requires that the claim for priority and the certified copy of the foreign application must be filed in all cases before the grant of the patent in order to be entitled to the right of priority, and requires a claim for priority or certified copy of the foreign application filed after payment of the issue fee to be accompanied by a petition (and fee under 37 CFR 1.17(i)) requesting entry. However, the certified copy of the foreign application may be required earlier during the pendency of the application in the case of an interference, when necessary to overcome the date of a reference relied upon by the examiner, or when specifically required by the examiner. If the certified copy of the foreign application is not in the English language, a translation will not be required except in the case of an interference, when necessary to overcome the date of a reference relied upon by the examiner, or when specifically required by the examiner.

Consequently, by statute and regulation, the certified copy of the foreign application must be filed in all cases during the pendency of the application even though it may be unnecessary to the examination of the application. Unless a substantive review of the certified copy of the foreign application, or a translation of such, is necessary to the examination of the application, *e.g.*, during an interference or when necessary to overcome an intervening reference, the claim to priority and the certified copy of the foreign application are merely reviewed to determine whether the certified copy of the foreign application corresponds in number, date, and country to the application identified in the oath or declaration and that there are no obvious formal defects. There is generally no examination of the certified copy of the foreign application to determine whether the applicant is entitled to the benefit of the foreign filing date on the basis of the disclosure of the document. Thus, an unnecessary burden is placed upon applicants to obtain certified copies of the priority documents from the appropriate office and then submit them to the PTO in instances in which the PTO does not substantively examine such documents, especially in view of the fact that such documents do not qualify as prior art in the United States. Further, an unnecessary burden is placed upon the PTO in the processing of such documents.

This right of priority originated in a multilateral treaty of 1883, *i.e.*, the Paris Convention for the Protection of Industrial Property (Paris Convention), to which the United States adhered in 1887. The Paris Convention, however, merely requires that a person who wishes to take advantage of a previous filing make a declaration indicating the date of such filing and the country in which it was filed. The Paris Convention permits, but does not require, the countries of the Union to require a certified copy of the foreign application of the application as previously filed. Under the Paris Convention, the countries may also require that a translation accompany the certified copy of the foreign application. See Questions #1, 2, and 3.

B. Electronic Exchange of Priority Documents

The PTO also requests written public comment on issues associated with the electronic exchange of priority documents between the PTO, EPO, and JPO. Currently, the Trilateral Offices are considering the implementation of procedures that would allow for the direct exchange of priority documents in electronic form between the office of first filing and the offices of subsequent filings. See Question #4. The PTO is interested in how the public views such electronic exchanges of priority documents, including the evidentiary effect of an electronic document constituting the official PTO record of the priority document. See Questions #5 and 6.

It is anticipated that it will be some time before the PTO will have an electronic data base containing the content of applications-as-filed in a word-recognizable format, *e.g.*, applications captured by optical character recognition (OCR). As such, any electronic exchange, at least initially, would be in the form of digital images of the applications-as-filed.

It is contemplated that under a system authorizing the exchange of priority documents, an applicant would have to request that an office forward the priority document directly to another office in electronic form, rather than having the certified copy go to the applicant, who in turn would forward it to the other office. The PTO is also considering providing a return receipt to indicate to the applicant that the request to forward the priority document was received by the PTO and that the PTO has forwarded the priority document to the office(s) designated by the applicant.

The cost to the PTO of processing requests and forwarding priority documents to the designated office(s), and of generating and mailing return receipts, would be recovered through service fees. See Questions #7 and 8. Nevertheless, such a direct exchange of priority documents for a service fee should result in an overall reduction in costs and administrative work for applicants, as well as cost reductions in the conversion from paper to electronic form.

II. Questions

1. (a) Does the requirement that a certified copy of the foreign application be submitted in all cases before the grant of a patent in order to be entitled to the right of priority serve any useful purpose? If yes, please provide those useful purposes.

(b) Is your answer affected by the fact that such documents may qualify as novelty defeating prior art in other countries?

2. (a) Notwithstanding the existing requirements, when should an applicant be required to submit a certified copy of the foreign application?

(b) Would you continue to submit a certified copy of the foreign application even if not specifically required?

(c) Should any action taken by the U.S. Government be contingent on action in the other Trilateral countries?

3. When the foreign application is not in the English language and an English translation is deemed necessary, should both a certified copy of the foreign application and an English language translation accompanied by a verified statement that the translation is an accurate translation of the certified copy of the foreign application be required, or should only an English language translation of the foreign application accompanied by a verified statement that the translation is accurate be required?

4. What significant problems, either legal or technical, would need to be solved to permit the offices of subsequent filing to receive the priority documents directly from the office of first filing rather than from the applicant?

5. Should the PTO, EPO, and JPO electronically exchange priority documents at the request of applicant? Would most applicants take advantage of this service? What disadvantages, if any, are there in the electronic transmission of priority documents among the PTO, EPO, and JPO?

6. Will the filing of a priority document in electronic form by the office of first filing, rather than in paper form by the applicant, affect the legal admissibility of the priority document?

7. If there was a service fee for the direct exchange of priority documents among the PTO, EPO, and JPO, which was higher than the current fee charged for a certified copy of the application, would most applicants still take advantage of this service? At what fee amount would most applicants choose to request the direct exchange of priority documents?

8. If providing a return receipt resulted in an increase in the service fee for the direct exchange of priority documents among the PTO, EPO, and JPO, would a return receipt be desirable? Against the background that increasing the information provided on such a return receipt would increase the cost of generating such return receipt, and thus increase the service fee, what information should be included on the return receipt?

Dated: September 8, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–22858 Filed 9–14–95; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a distress marker light to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 2, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 28781) of proposed addition to the Procurement List. Comments were received from two producers of the distress marker light, one of which is a current contractor with the Government for the light. The contractor stated that the light is a large percentage of its sales, and that losing these sales would have a severe impact on the company and its employees. The contractor claimed that addition of this light to the Procurement List would unreasonably foreclose the contractor from the Government market for strobe marker distress lights, as the Committee has already added the other version the Government buys to the Procurement List. The contractor asked that the Committee not add the light to the Procurement List at least until the current commercial procurement is completed, to allow the contractor to develop a commercial item which would replace the loss of Government sales of the light.

The figures the contractor initially provided to show how the addition would deprive it of a large part of its sales made the assumption that the contractor would receive the contract for the entire requirement for which the Government currently has a solicitation outstanding if the Committee were not to add the light to the Procurement List. The Committee does not consider this assumption to be realistic, because the contractor received less than half of the Government requirements under the most recent procurements, and the contractor has not received a substantial contract for this light since 1992, so it should not be unusually dependent on Government sales of the light.

The contractor subsequently provided other sales information, which indicated that, while the contractor's total sales are considerably less than the forecast the Committee used to estimate impact, the percentage represented by sales of the light to the Government is small enough that its loss is unlikely to have a severe adverse impact on the contractor. Additionally, the contracting activity which buys the light for the Government has indicated that it will complete its current buy before the addition of the light to the Procurement List becomes legally effective. Consequently, the contractor will receive the opportunity it seeks to sell the light to the Government long enough to develop its commercial item.

The other strobe marker distress light was added to the Procurement List in 1973. The commenting contractor was not the contractor for that light at the time; it did not even exist at the time. Consequently, it did not lose sales as a result of the Committee's action.

The other producer of the light is a new company which claimed that it was in line for a contract award for the light earlier this year when the contracting activity cancelled the solicitation, on the basis that the light had been added to the Procurement List, before the producer could obtain a certificate of competency from the Small Business Administration to qualify for the contract award. The producer also objected to the loss of the opportunity to recoup its investment in producing the light.

While the basis for the cancellation of the solicitation was erroneous, as the light was not then on the Procurement List, the contracting activity has informed the Committee that it has subsequently rescinded the cancellation. The contracting activity also informed the Committee that it found the producer nonresponsible, and the producer failed to apply for its certificate of competency within the required period, so it is not eligible for a contract award. These events occurred before the solicitation was erroneously cancelled. Accordingly, the producer's loss of the contract cannot be attributed to the Committee's action in adding the light to the Procurement List.

Similarly, the producer's loss of the opportunity to recoup its investment was caused by its failure to take an action needed to receive a contract award, not by the Committee's action. While the producer will lose further opportunities to recoup its investment once the light is on the Procurement List, it should be noted that it would risk losing these opportunities even if the light had not been added to the Procurement List because no one is guaranteed a contract under the competitive bidding system.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Light, Marker, Distress
6230–01–143–4778

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–22975 Filed 9–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List an animal trap to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 14, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 36266) of proposed addition to the Procurement List.

Comments were received from the current contractor in response to a Committee request for information. The contractor claimed a common-law patent right in the distinctive features of its trap and threatened to sue anyone who manufactures its trap without its permission.

It is the Committee's understanding that the patent laws of the United States do not recognize a common-law patent right. See 35 U.S.C. 102. The features the contractor claimed—a spring loaded door and wire trap walls—appear in similar traps made by at least two other commercial trap manufacturers. The nonprofit agency which will produce the trap based its design on a Government item description and examination of a trap which was not made by the contractor. Consequently, the Committee believes that the contractor's objections are without foundation, and will not impede the nonprofit agency in furnishing the trap to the Government.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Trap, Animal
3740–00–531–3905

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 95–22976 Filed 9–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities, military resale commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 21 and 28, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 37631 and 38794) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, military resale commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities, military resale commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities, military resale commodity and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodities, military resale commodity and services are hereby added to the Procurement List:

Commodities

Compound, Cleaning and Degreasing
  6850–01–383–3038
  6850–01–383–3042
  6850–01–383–3045
  6850–01–383–3046
  6850–01–383–3047
  6850–01–383–3052
  6850–01–383–3053
  6850–01–383–3054
  6850–01–383–3056
  6850–01–383–3058
  6850–01–383–3059
  6850–01–383–3060
Mop, Sponge
  7920–00–728–1167

Military Resale Commodity

Refill, Lint Roller
  M.R. 864

Services

Administrative Services, St. Paul U.S. Army Engineer District, St. Paul, Minnesota

Administrative Services, Department of Veterans Affairs Medical Center, Mountain Home, Tennessee

Data Entry/Data Base Management, General Services Administration, Paints and Chemicals Commodity Center, Auburn, Washington

Janitorial/Custodial, Department of the Treasury, Birmingham Regional Financial Center (BRFC), Birmingham, Alabama

Janitorial/Custodial, U.S. Coast Guard Aviation Training Center, Mobile, Alabama

Janitorial/Custodial, Department of the Air Force, 440th Airlift Wing, 300 East College Avenue, Milwaukee, Wisconsin

Mailroom Operation, U.S. Army Reserve Command, Atlanta, Georgia

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 95–22973 Filed 9–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to the Procurement List for production by the nonprofit agency listed: Administrative Services, Naval Air Warfare Center Training Systems Division, 12350 Research Parkway, Orlando, Florida.

NPA: Goodwill Industries of Central Florida Orlando, Florida

Beverly L. Milkman,
Executive Director.

[FR Doc. 95–22974 Filed 9–14–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 16, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 30, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 34235) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:
Food Service, U.S. Coast Guard Support Center, Alameda, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 95–23003 Filed 9–14–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 27 September 1995.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II§ 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: September 12, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22979 Filed 9–14–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 19 October 1995.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: September 12, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–22960 Filed 9–14–95; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Notice of Availability of Record of Decision for Direct Service Industrial Customer General (Integration of Resources) Transmission Agreement 15-Year Extension

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to extend the length of the Direct Service Industrial Customer General (Integration of Resources (IR)) Transmission Agreement an additional 15 years. The Business Plan Environmental Impact Statement (BP EIS) (DOE/EIS–0183) of June 1995 supports this decision and was previously provided.

In response to a need for sound policy to guide its business direction under changing market conditions, BPA explored six alternative plans of action in its BP EIS. In the subsequent BP EIS Record of Decision (August 15, 1995), the BPA Administrator selected the Market-Driven alternative as the best course of action. The EIS and ROD were also intended to guide BPA in a series of related decisions on specific issues and actions. The subject of this ROD is one of those actions.

Consistent with the Business Plan, the BP EIS, and the BP EIS ROD, BPA is offering to extend the Direct Service Industries' (DSIs) existing 5-year General Transmission Agreement (IR Agreement) for an additional 15 years. BPA has decided to make this offer in order to continue to provide open and equitable access to the DSIs, allow the DSIs to diversify their power supply to reduce risk, and because BPA recognizes that the DSIs likely have the ability to access the wholesale power market indirectly through their local utilities.

This decision, as well as others to follow, are tiered to the BP EIS ROD. The specific information on the IR Agreement extension and a summary of the environmental impacts associated with selecting this particular alternative are available upon request.

ADDRESSES: Copies of the ROD and BP EIS may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION, CONTACT: Allan F. Paschke—MPC, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–5850, fax number 503–230–7568.

PUBLIC AVAILABILITY: This ROD will be distributed to all interested and affected persons and agencies.

Issued in Portland, Oregon, on August 31, 1995.

Walter E. Pollock,

Acting Administrator.

[FR Doc. 95–22953 Filed 9–14–95; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. ER94–1099–005, et al.]

Eclipse Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 8, 1995.

Take notice that the following filings have been made with the Commission:

1. Eclipse Energy, Inc.

[Docket No. ER94–1099–005]

Take notice that on August 28, 1995, Eclipse Energy, Inc. tendered for filing certain information as required by the Commission's letter order dated June 15, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

2. Gulfstream Energy, LLC.

[Docket No. ER94–1597–003]

Take notice that on August 17, 1995, Gulfstream Energy, LLC (Gulfstream) filed certain information as required by the Commission's November 21, 1994 letter order in Docket No. ER94–1597–000. Copies of Gulfstream's informational filing are on file with the Commission and are available for public inspection.

3. Williams Energy Services Company

[Docket No. ER95–305–002]

Take notice that on August 23, 1995, Williams Energy Services Company (Williams Energy) filed certain information as required by the Commission's March 10, 1995 letter order in Docket No. ER95–305–000. Copies of Williams Energy's informational filing are on file with the Commission and are available for public inspection.

4. SouthEastern Energy Resources, Inc.

[Docket No. ER95–385–002]

Take notice that on August 21, 1995, SouthEastern Energy Resources, Inc. tendered for filing certain information as required by the Commission's letter order dated March 7, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

5. K N Marketing, Inc.

[Docket No. ER95–869–001]

Take notice that on August 1, 1995, K N Marketing, Inc. tendered for filing certain information as required by the Commission's letter order dated May 26, 1995 in Docket No. ER95–869–000. Copies of K N Marketing, Inc.'s informational filing are on file with the Commission and are available for public inspection.

6. Public Service Company of Oklahoma Southwestern Electric Power Company and West Texas Utilities Company

[Docket No. ER95–1076–001]

Take notice that on August 23, 1995, West Texas Utilities Company (WTU) tendered for filing a tariff sheet which was inadvertently omitted from its July 14, 1995 amended filing concerning its Coordination Sales Tariff (CST–1). The missing sheet contained no changes in tariff language.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Indiana Michigan Power Company

[Docket No. ER95–1590–000]

Take notice that on August 17, 1995, American Electric Power Service Corporation tendered for filing on behalf of the Indiana Michigan Power Company (Indiana Michigan) a proposed Addendum to Service Schedule D (AEP System Delivery of Third Party Purchases) to the Interconnection Agreement between Indiana Michigan and Commonwealth Edison Company (CE) dated August 1, 1991 (Indiana Michigan FERC Rate Schedule No. 78).

The Addendum is in the form of an agreement between Indiana Michigan and CE settling a complaint filed by CE in Docket No. EL95–4–000 on November 2, 1994. The parties to the agreement request an effective date of August 17, 1995.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Electric Company

[Docket No. ER95–1622–000]

Take notice that on August 24, 1995, Pennsylvania Electric Company tendered for filing Supplement No. 9 (Revised July 21, 1995) Exhibit A—Delivery Points to Pennsylvania Electric Company (Penelec) FERC Rate Schedule FERC No. 90.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Wickland Power Services

[Docket No. ER95–1623–000]

Take notice that on August 24, 1995, Wickland Power Services tendered for filing a letter requesting to become a member of the Western Systems Power Pool.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1627–000]

Take notice that on August 25, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and National Gas & Electric L.P. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1628–000]

Take notice that on August 25, 1995, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Rainbow Energy Marketing. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Light Company

[Docket No. ER95–1629–000]

Take notice that on August 25, 1995, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, and Central Illinois Public Service Company, tendered for filing with the Commission an Index of Customers and four signed Service Agreements under the Coordination Sales Tariff approved on April 25, 1995.

Copies of the filing were served on the applicable customers and the Illinois Commerce Commission.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Indiana Gas and Electric Company

[Docket No. ER95–1636–000]

Take notice that on August 28, 1995, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing to a proposed Interchange Agreement with Intercoast Power Marketing Co. (IPM).

The proposed revised Interchange Agreement will provide for the purchase, sales, and transmission of capacity and energy by either party under the following Service Schedules: (a) SIGECO Power Sales, (b) IPM Power Sales, and (c) Transmission Service.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of August 25, 1995.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Indiana Gas and Electric Company

[Docket No. ER95–1637–000]

Take notice that on August 28, 1995, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing to a proposed Interchange Agreement with Heartland Energy Services Inc. (Heartland).

The proposed revised Interchange Agreement will provide for the purchase, sale, and transmission of capacity and energy by either party under the following Service Schedules: (a) SIGECO Power Sales, (b) Heartland Power Sales, and (c) Transmission Service.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of August 25, 1995.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER95–1661–000]

Take notice that on August 31, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Power Sales Agreement dated June 21, 1995 (Agreement) between PacifiCorp and Cheyenne Light, Fuel and Power Company (Cheyenne).

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of January 1, 1997 be assigned to the agreement.

Copies of this filing were supplied to Cheyenne, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. New York State Electric & Gas Corporation

[Docket No. ER95–1678–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on

August 31, 1995, tendered for filing an amendment to the following rate schedules (the "Rate Schedules"):

104—GPU Service Corporation
119—Consolidated Edison Company of New York, Inc.
120—Niagara Mohawk Power Corporation
122—Baltimore Gas & Electric Company
123—Allegheny Electric Cooperative, Inc.
124—Enron Power Marketing, Inc.
128—Catex Vitol Electric, Inc.
129—LG&E Power Marketing, Inc.
130—AES Power, Inc.
132—InterCoast Power Marketing Company
133—Louis Dreyfus Electric Power, Inc.
134—Citizens Power and Light Corporation
135—Vermont Public Power Supply Authority
136—Green Mountain Power Corporation
137—Electric Clearinghouse, Inc.
138—Burlington Electric Department
139—Atlantic Electric Company
140—Heartland Energy Service, Inc.
141—Rainbow Energy Marketing Corporation
142—CNG Power Services Corporation
143—Engelhard Power Marketing, Inc.
144—Central Hudson Gas & Electric Corporation
[1]—Rochester Gas and Electric Corporation

The amendment modifies the rate ceiling applicable to buy-sell transactions to allow NYSEG to charge mutually agreeable rates up to a ceiling rate that includes a transmission component based on NYSEG's embedded cost of transmission. The Rate Schedules allow NYSEG and the customers to enter into mutually agreeable capacity and/or energy transactions ("Transactions). The Amendment will not apply to any Transactions that commenced on or before August 31, 1995. The Amendment will not change the requirement that NYSEG and the Purchaser reach mutual agreement as to the rates and terms of each Transaction in advance of each Transaction.

NYSEG requests that the agreement become effective on September 1, 1995. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and each customer listed above.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. North Atlantic Energy Corporation

[Docket No. ER95–1679–000]

Pursuant to Section 205 of the Federal Power Act, North Atlantic Energy Corporation (North Atlantic) filed on August 31, 1995, proposed changes to charges for decommissioning Seabrook Unit 1 to be collected under North Atlantic Federal Energy Regulatory Commission Rate Schedule Nos. 1 and 3. These charges are recovered under a formula rate that is not changed by the filing. The proposed adjustment in charges is necessitated by a ruling of the New Hampshire Nuclear Decommissioning Finance Committee adjusting the funding requirements for decommissioning Seabrook Unit 1.

North Atlantic has requested an effective date of November 1, 1995 for the adjusted charges.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Washington Water Power Company

[Docket No. ER95–1681–000]

Take notice that on September 1, 1995, the Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission a Notice of Termination concerning Rate Schedule FERC N. 168 and Supplement No. 1 to Rate Schedule 168, a replacement energy sales agreement between WWP and the City of Seattle which was expired by its own terms effective June 30, 1995.

WWP requests that the requirement for 60 days notice between filing date and termination date be waived. If the 60 days notice is waived, there will be no effect upon purchases under other rate schedules.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho Power Company

[Docket No. ER95–1682–000]

Take notice that on September 1, 1995, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission its draft Second Amendment to the Power Sales Agreement Between Idaho Power Company and the Cities of Azusa, Banning and Colton, California.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER95–1684–000]

Take notice that on September 1, 1995, Delmarva Power & Light Company (Delmarva) tendered for filing an agreement between Delmarva and the Delaware Municipal Electric Corporation (DEMEC) under which Delmarva offers to sell up to 20 MW to DEMEC each month that the Agreement is effective. DEMEC has the right to purchase all, some or none of the 20 MW subject to the condition that each kilowatt which DEMEC does determine to purchase shall be purchased under a 100% load factor basis. In addition, charges under the Agreement have an upper and a lower bound. The Agreement provides that the price shall not be less than Delmarva's forecasted system incremental cost to supply and shall not exceed 3.698 cents per kilowatt hour, which is derived from the Settlement in Docket Nos. ER93–96–000 and EL93–11–000, which was approved by the Commission on December 7, 1994.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Vastar Power Marketing, Inc.

[Docket No. ER95–1685–000]

Take notice that on September 1, 1995, Vastar Power Marketing, Inc. (Vastar) tendered for filing an application for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1. Vastar intends to engage in electric power and energy transactions as a marketer and a broker.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Otter Tail Power Company

[Docket No. ER95–1687–000]

Take notice that on September 5, 1995, Otter Tail Power Company (OTP) tendered for filing a Coordination Sales Tariff. The Tariff provides for the sales of Negotiated Capacity and/or Energy and General Purpose Energy. OTP states that sales under the Tariff will be made at negotiated prices no lower than system incremental energy costs and no higher than the Company's fully allocated cost of capacity plus 100% of incremental energy costs. OTP states service will be provided under the Tariff only to customers who sign Service Agreements.

OTP states that copies of this filing have been served on the Minnesota Public Utilities Commission, the North Dakota Public Service Commission and the South Dakota Public Service Commission.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Illinois Power Company

[Docket No. ER95–1688–000]

Take notice that on September 5, 1995, Illinois Power Company (IPC) tendered for filing an Interchange Agreement between IPC and Stand

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[1] The rate schedule for the agreement with Rochester Gas and Electric Corporation has been submitted to the FERC, docket No. ER94–892–000, and is pending FERC's acceptance and designation of a schedule number.

Energy Corporation (SEC). IPC states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between IPC and SEC.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1689–000]

Take notice that Central Hudson Gas and Electric on September 5, 1995, tendered for filing a Service Agreement between CHG&E and Phibro Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 ("Power Sales Tariff") accepted by the Commission in docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Virginia Electric and Power Company

[Docket No. ER95–1690–000]

Take notice that on September 5, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Dayton Power and Light Company and Virginia Power, dated August 11, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Dayton Power and Light Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Ohio State Corporation Commission, Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER95–1691–000]

Take notice that on September 5, 1995, PECO Energy Company (PECO) filed a Service Agreement dated August 31, 1995, with Engelhard Power Marketing, Inc. (Engelhard) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Engelhard as a customer under the Tariff.

PECO requests an effective date of August 31, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to Engelhard and to the Pennsylvania Public Utility Commission.

Comment date: September 22, 1995, in accordance with Standard Peragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 95–22972 Filed 9–14–95; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. CP95–606–001]

Western Gas Interstate Co.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Seaboard Pipeline Project and Request for Comments on Environmental Issues

September 11, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Seaboard Pipeline Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Western Gas Interstate Company (Western) wants to install a new delivery point to transport up to 3,000 million British thermal units per day of natural gas to Seaboard Farms, Inc. in Texas County, Oklahoma. Western requests Commission authorization, in Docket No. CP95–606–000, to construct and operate the following facilities needed to transport those volumes:

- construct about 15.5 miles of 8-inch-diameter pipeline from the Buffalo Tap to Seaboard Farms;
- install a meter station consisting of a meter, filter, three regulators, and valves. This site would be a 20-foot by 80-foot-fenced area following construction; and
- remove 7 miles of an existing 4-inch-diameter pipeline which would be replaced by the proposed 8-inch-diameter pipeline.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 136 acres of land. Following construction, about 47 acres would be maintained as new aboveground facility sites and right-of-way. The remaining 89 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

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[1] Western Gas Interstate Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA will discuss impacts (if applicable) that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.[3]
- Vegetation and wildlife.
- Land use.
- Cultural resources.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

Due to limited information concerning the proposed project, we are unable to determine which environmental issues should be evaluated in the EA. Therefore, all of the general headings listed above will be evaluated.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP95–606–000;
- Send a *copy* of your letter to: Ms. Amy Olson, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before October 11, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Olson at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing of timely motions to intervene in this proceeding is October 10, 1995. Parties seeking to file interventions must show good cause, as required by section 385.214(b)(3). You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Amy Olson, EA Project Manager, at (202) 208–1199.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22971 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG94–4–004]

Alabama-Tennessee Natural Gas Co.; Filing

September 11, 1995.

Take notice that on August 31, 1995, Alabama-Tennessee Natural Gas Company (Alabama) filed revised standards of conduct in response to the Commission's August 2, 1995 order.[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22930 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–734–000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

September 11, 1995.

Take notice that on September 6, 1995, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia, 25325–1273, filed in Docket No. CP95–734–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.211) for approval to construct and operate a new delivery point to Columbia Gas of Ohio, Inc. (COH), an affiliate, in Belmont County, Ohio for interruptible transportation to Wheeling Pittsburgh Steel Corporation Tin Mill, under the blanket certificate issued in Docket No. CP86–240–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia indicates that the quantity of natural gas it will deliver through the proposed delivery point is 720 Dth/day, and 155,000 Dth annually, respectively. Columbia further indicates that the new delivery point will provide interruptible service under Columbia's ITS Rate Schedule. Columbia states that the estimated cost to establish this point of delivery will be approximately $12,000 which will be reimbursed 100% by COH. Columbia further states that there is no impact on its existing design day and annual obligations to its customers as a result of the construction and operation of the new point of delivery.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and

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[3] According to the applicant, the project will not affect any waters of the United States. We will report any potential impacts, or their absence, under this heading.

[1] 72 FERC ¶ 61,140 (1995).

Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22932 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–746–000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

September 11, 1995.

Take notice that on September 8, 1995, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP95–746–000 a request pursuant to Sections 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR §§ 157.205(b) and 157.212) and Transco's blanket certificate issued in Docket No. CP82–426–000, for authorization to expand an existing delivery point to New Jersey Natural Gas Company (NJNG), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that NJNG is a transportation and storage customer of Transco under Transco's Rate Schedules IT, FT, SS–2 and X–288. Pursuant to NJNG's request, Transco proposes to expand the Morgan Meter Station, a delivery point to NJNG located on Transco's main line system in Middlesex County, New Jersey. This point of delivery is used by NJNG to receive gas into its distribution system. Transco states that the proposed expansion would be accomplished by Transco replacing two existing four-inch meter tubes with three new eight-inch meter tubes and replacing two existing two-inch regulators with three four-inch regulators at the existing station.

Transco states that it currently delivers up to 30,000 dekatherms of gas per day (dt/d) to NJNG at the Morgan Meter Station. As a result of the expansion proposed herein, the capacity of the Morgan Meter Station will be increased to 100,000 dt/d. Transco states that the addition deliveries to the Morgan Meter Station would be made on an interruptible basis. Transco states that it has sufficient system delivery flexibility to accomplish such additional deliveries without detriment or disadvantage to Transco's other customers.

Transco states that it is not proposing to alter the total volumes authorized for delivery to NJNG on a firm basis or to otherwise change in any way NJNG's firm capacity entitlement on Transco's system. Transco further states that the expansion of this delivery point will have no impact on Transco's peak day deliveries and little or no impact on Transco's annual deliveries and is not prohibited by Transco's FERC Gas Tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22933 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–733–000]

Williams Natural Gas Co.; Request Under Blanket Authorization

September 11, 1995.

Take notice that on September 5, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–733–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a new delivery point, by reversing existing receipt facilities, under its blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to use an existing receipt point, located in Garfield County, Oklahoma, for the delivery of transportation natural gas to Trident NGL, Inc. (Trident), a subsidiary of NGC Corp. WNG states that the cost to reverse the existing facilities is estimated to be $2,000 and would be reimbursed by Trident. WNG mentions that the quantities of gas to be delivered are approximately 191,625 Dth per year with a maximum of 650 Dth per day. WNG asserts that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish this delivery without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22931 Filed 9–14–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5295–8]

Clean Water Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer to EPA contractors and subcontractors, technical and financial confidential business information (CBI) collected from several metals forming, finishing, and fabricating industries including the metal products and machinery manufacturing, maintenance and rebuilding industry. Transfer of the information will allow the contractors and subcontractors to assist EPA in

developing effluent limitations guidelines and standards under the Clean Water Act (CWA) for the metal products and machinery industry. The information being transferred was collected under the authority of Section 308 of the Clean Water Act. Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due September 25, 1995.

ADDRESSES: Comments may be sent to Mark Ingle, Engineering and Analysis Division (4303), Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mark Ingle at the above address or at (202) 260–7191.

SUPPLEMENTARY INFORMATION: EPA has previously transferred to its contractor Radian Corporation of Herndon, Virginia (and subcontractors) information, including confidential business information (CBI), concerning the metal products and machinery industry collected under the authority of the Clean Water Act, Section 308.

The information transferred included: Questionnaire data collected during a two phase survey of the metal products industry; the first phase consisted of the screener questionnaire or the Mini-Data Collection Portfolio (MDCP) which was conducted in 1990 (OMB No. 2040–0148); the second phase was a more detailed questionnaire or Data Collection Portfolio (DCP) that was sent in 1991 to a randomly selected sample identified through the responses to the (OMB No. 2040–0148). EPA also transferred site visit and field sampling data collected during 1990 through 1993. In addition, Radian has received similar records and data developed in support of the following effluent guidelines regulations:

- Porcelain Enameling (data collection 1977 through 1979),
- Coil Coating (data collection 1977 through 1979),
- Aluminum Forming (data collection 1978 through 1981),
- Battery Manufacturing (data collection 1978 through 1983),
- Copper Forming (data collection 1978 through 1979),
- Electroplating (data collection 1974 through 1979),
- Metal Finishing (data collection 1974 through 1979),
- Metal Molding and Casting (data collection 1977 through 1983),
- Nonferrous Metals Forming and Metal Powders (data collection 1983 through 1985),
- Nonferrous Metals Manufacturing, Phases I and II (data collection 1978 through 1985),
- Plastics Molding and Forming (data collection 1980 through 1987), and
- Hot Dip Coating Subcategory of the Iron and Steel regulation (data collection 1986).

Radian has also received files gathered during studies of the beryllium copper forming industry (data collection during 1986), the platemaking industry (data collection during 1984), and the printing and publishing industry (data collection 1977 through 1979). EPA determined that this transfer was necessary to enable the contractor and subcontractors to perform their work under EPA Contract No. 68–C4–0024 and related subcontracts by assisting EPA in developing effluent limitations guidelines and standards for the metal products and machinery industry. Notice to this effect was provided to the affected companies at the time the data was collected or through **Federal Register** notice.

Today, EPA is giving notice that it has entered into a new contract, Contract No. 68–C5–0005 with Radian Corporation of Herndon, VA and Radian Corp. has entered into additional contracts with its subcontractors: Westat, Inc. of Rockville, MD; CAI Engineering of Oakton, VA; GeoLogics Corp. of Bethesda, MD; TN Associates of Milwaukee, WI; Tetra Tech of Fairfax, VA; and VIGYAN Corp. of Vienna, VA. to develop effluent limitations guidelines and standards for the metal products and machinery phase II industry. The effective date of the new contract was June 5, 1995. Radian Corp. will provide technical support such as completion of the public docket for the proposed rulemaking and completion of the work on the draft proposed technical development document. The contractor shall also provide support on post proposal efforts, including assisting with public meetings, responding to comments, filling data gaps that arise through comments on the proposed rule, and assisting with the assembly of the rulemaking record for the final rule.

The subcontractors will assist the prime by providing specific expertise. Westat, Inc. will assist with any surveys that may be required in future work, data management and statistical analysis. CAI Engineering provides metal products industrial wastewater and hazardous waste engineering expertise, surface treatment process design and pollution prevention expertise, and wastewater treatment system design expertise. GeoLogics Corp. provides data entry and clerical services. TN Associates provides experience in the design and management of wastewater treatment systems. Tetra Tech provides capabilities in risk management and public outreach. VIGYAN Corp. provides services related to database development and management.

In accordance with 40 CFR part 2, subpart B, the previously collected information described above (including confidential business information) will be transferred to Radian Corp. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA Contract No. 68–C5–0005.

The metal products and machinery manufacturing, rebuilding and maintenance industry financial and economic data that were collected through the DCP survey in 1991 (OMB No. 2040–0148) will be transferred to Abt Associates under Contract No. 68–C4–0060. In accordance with 40 CFR part 2, subpart B, the previously collected information described above (including confidential business information) will be transferred to ERG, Contract No. 68–C3–0302. ERG has subcontracted with Abt Associates to conduct the economic analysis for the metal products and machinery industry. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA contract No. 68–C3–0302.

Anyone wishing to comment on the above matters must submit comments to the address given above by September 25, 1995.

Dated: September 6, 1995.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 95–22958 Filed 9–14–95; 8:45 am]

BILLING CODE 6560-50-P

[ER–FRL–5228–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 28, 1995 Through September 01, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–J65238–MT Rating EC2, Bull Sweats Vegetation Manipulation Project, Implementation, Helena National Forest, Helena Ranger District, Lewis and Clark Counties, MT.

SUMMARY: EPA expressed environmental concerns regarding potential air quality impacts of proposed prescribed burning, and believes additional information on air quality impacts, timber harvest prescriptions, and water quality/wetlands impacts are needed to fully assess and mitigate all potential impacts of the management actions.

ERP No. D–AFS–J65239–MT Rating EC2, South Fork Yaak Salvage Project, Implementation, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about the existing condition, sensitivity to disturbance, and slow recovery of Fowler and Can Creeks, and potential air quality impacts of proposed activities. The EPA also believes additional information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. D–AFS–L65172–ID Rating EC2, Idaho Panhandle National Forests Noxious Weed Management Projects, Implementation, Bonners Ferry Ranger District, Boundary County, ID.

Summary: EPA expressed environmental concerns and believes that information is required to effectively address risks associated with the proposed herbicide treatments related to specific management objectives. Potential impacts to ground and surface water should be expanded.

ERP No. D–BLM–J01073–WY Rating EC2, Jackpot Underground Uranium Mine Project, Construction and Operation, Plan of Operation Approval, NPDES Permit and COE Section 404 Permit, Fremont and Sweetwater Counties, WY.

Summary: EPA expressed environmental concerns and believes that air dispersion modeling in a screening mode should be performed to estimate impacts to NAAQS. The final EIS should address procedures when PM–10 has been trigged and include a contingency plan for the permit.

ERP No. D–BLM–L65243–OR Rating EC2, Lake Abert Area Designation as an Area of Critical Environmental Concerns (ACEC), High Desert Management Framework Amendment Plan, Right-of-Way Grant and Drilling Permit, Valley Falls, Lake County, OR.

Summary: EPA expressed environmental concerns and recommends that a grazing-prohibition alternative be considered, and that potential noise impacts should be addressed in the final EIS.

ERP No. D–NOA–A29004–00 Rating LO, Programmatic EIS—Coastal Nonpoint Pollution Control Program, Implementation, Approval for 29 States and Territories Coastal Nonpoint Program.

Summary: EPA rated the draft EIS as "LO" (lack of objections). As a cooperating agency on the EIS EPA provided some suggestions to strengthen the document in providing a thorough explanation of the program and the problems it is designed to address.

ERP No. D–NPS–K65171–CA Rating EC2, Cabrillo National Monument, General Management Plan/Development Concept Plans, Implementation, San Diego County, CA.

Summary: EPA expressed environmental concerns in these the major areas: air quality, National Pollution Discharge Elimination System permitting, and Coastal Zone Management Act requirements. The draft EIS lacked discussion of air impacts and EPA provided extensive comments and guidance for conformity determinations and analyzing air impacts to be included in the final EIS.

ERP No. DR–DOE–L91009–WA Rating EC2, Yakima River Basin Fisheries Project, Updated and Additional Information, Construction, Operation and Maintenance, Funding, COE Section 10/404 Permits and NPDES Permit, Yakima Indian Nation, Yakima County, WA.

Summary: EPA expressed environmental concerns based on the potential impacts to fisheries resources and the need to ensure that the BPA and other responsible parties are evaluating opportunities to complement their respective management actions/objectives within the Yakima River Basin. EPA has requested additional information on fish habitat conditions, and clarification on the relationship of the proposed action with the Bureau of Reclamation's water enhancement project.

ERP No. DS–NPS–L65229–AK Rating EC2, Brooks River Area, Katmai National Park and Preserve Development Concept Plan, Updated Information Concerning a New Proposal Alternative for Beaver Pond Terrace, Implementation, AK.

Summary: EPA expressed environmental concerns about wetlands, water quality and mitigation.

Final EISs

ERP No. F–BLM–K60026–CA, Mesquite Regional Landfill Project, Implementation, Federal Land Exchange, Right-of-Way Approval, Conditional-Use-Permit and General Plan Amendment, Imperial County, CA.

Summary: The final EIS satisfactorily addressed issues raised in EPA's comments on the draft EIS. EPA believed it may be possible to further reduce air quality impacts by implementing EPA's proposed New Source Performance Standard for MSW landfills (56 FR 24476, May 30, 1991).

ERP No. F–NPS–D61036–DC, Rock Creek Park Tennis Center and Associated Recreation Fields, Implementation, Northwest Quadrant of Washington, DC.

Summary: EPA believes the documentation and range of alternatives discussed are sufficient and no further comments are warranted. EPA had no objections to the preferred alternative described in the FEIS.

ERP No. F–NPS–K61133–CA, Joshua Tree National Monument General Management Plan and Development Concept Plan, Implementation, Riverside and San Bernardino Counties, CA.

Summary: The final EIS has been responsive to concerns expressed in EPA's comments on the draft EIS.

ERP No. F–NPS–K61135–AZ, Grand Canyon National Park General Management Plan, Implementation, Coconino and Mohave Counties, AZ.

Summary: EPA had environmental concerns with the potential adverse impacts with road realignment on the east rim, development of area services on the south rim and compliance with drinking water standards.

ERP No. F–NPS–L61197–OR, Fort Clatsop National Memorial General Management and Development Concept Plans, Implementation, Astoria, Clatsop County, OR.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. EPA provided no formal written comments. EPA had no objection to the preferred alternative as described in the FEIS.

ERP No. F–USN–E11035–SC, Charleston Naval Base Disposal and Reuse, Implementation, Charleston and Dorchester Counties, SC.

Summary: EPA environmental concerns with the DEIS were addressed. However, EPA expressed environmental concerns with water quality and radiological issues in the FEIS.

ERP No. FS–AFS–J65183–UT, East Fork Blacks Fork Multiple Use Management Project, Implementation, Additional Information, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT.

Summary: EPA expressed lack of objections to the proposed action.

Regulations

ERP No. R–AFS–A65162–00, Forest Service Handbook for Review of FERC Hydropower Authorizations on National Forest Service Lands—RIN 0596–AA47.

Summary: EPA agrees that the USFS and FERC should streamline their process and interactions concerning hydropower projects, however it is critical that the USFS maintain sufficient, independent authority to ensure that its environmental responsibilities with regard to National Forest Lands are met.

Dated: September 12, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–23007 Filed 9–14–95; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-5228-7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed September 04, 1995 Through September 08, 1995, Pursuant to 40 CFR 1506.9.

EIS No. 950415, Final EIS, GSA, CA, Fresno—United States Courthouse, Site Selection and Construction, City of Fresno, Fresno County, CA, Due: October 16, 1995, Contact: Javad Soltani (415) 744–5255.

EIS No. 950416, Draft EIS, NPS, PA, Independence National Historical Park, General Management Plan, Implementation, Site Specific, Philadelphia County, PA, Due: November 20, 1995, Contact: Annmarie DiSerafino (215) 597–0060.

EIS No. 950417, Final EIS, GSA, AZ, Evo A. Deconcini Federal Building—United States Courthouse, Construction and Site Selection, Central Business Area (CBA), City of Tucson, Pima County, AZ, Due: October 16, 1995, Contact: Sheryll White (415) 744–5252.

EIS No. 950418, Final EIS, FHW, RI, Quonset Point/Davisville Industrial Park Highway Access Improvement, RI–4 Freeway between North Kingstown and East Greenwich, Funding, Kent and Washington Counties, RI, Due: October 20, 1995, Contact: Kenneth R. R. Sikora (401) 528–4551.

EIS No. 950419, Draft EIS, AFS, PA, Allegheny National Wild and Scenic River Management Plan, Implementation, Allegheny National Forest, Venango, Warren and Forest Counties, PA, Due: October 30, 1995, Contact: Donna McDonald (814) 723–5150.

EIS No. 950420, Draft EIS, NOA, HI, Hawaiian Islands Humpback Whales and Their Habitat National Marine Sanctuary Management Plan, Implementation, Honolulu, Kauai and Maui Counties, HI, Due: December 15, 1995, Contact: James P. Lawless (301) 713–3155.

EIS No. 950421, Draft EIS, USA, CA, Miramar Naval Air Station (NAS) Realignment or Conversion to Miramar Marine Corps Air Station, Implementation, San Diego, CA, Due: October 30, 1995, Contact: Ltc. George Martin (619) 537–6678.

Amended Notices

EIS No. 950331, Draft EIS, AFS, MT, Checkerboard Land Exchange, Plan of Approval and Implementation, Kootenai, Lolo and Flathead National Forest, Lincoln, Flathead and Sanders Counties, MT, Due: October 10, 1995, Contact: Ted Andersen (406) 293–6211.

Published FR 08–04–95—Review period extended.

EIS No. 950335, Draft EIS, AFS, AK, Lab Bay Project Area Timber Harvest, Implementation, COE Section 404, EPA NPDES and Coast Guard Bridge Permits Issuance, Thorne Bay Ranger District, Ketchikan Administrative Area, Tongass National Forest, Prince of Wales Island, AK, Due: September 30, 1995, Contact: Dave Arrasmith (907) 225–3101.

Published FR 08–04–95—Review period extended.

Dated: September 12, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 95–23006 Filed 9–14–95; 8:45 am]

BILLING CODE 6560-50-U

[FRL 5296–3]

Underground Injection Control Program; Nonhazardous Waste Disposal Injection Restriction; Petition for Exemption—Class I Nonhazardous Waste Injection Air Products, Wichita, Kansas

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Air Products Manufacturing Corporation for their Class I Nonhazardous Waste injection well located in Wichita, Kansas. As required by title 40, Code of Federal Regulations part 148, the company has adequately demonstrated to the satisfaction of the United States Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of the restricted, formerly ignitable, greater than 10 percent high total organic carbon (TOC) constituents from the injection zone. This final decision allows the underground injection by Air Products of the specific restricted waste, identified in the petition, into the Class I waste injection well at the Wichita, Kansas facility, for as long as the basis for granting an approval of the petition remains valid, under provisions of title 40, Code of Federal Regulations part 124. A public notice was issued on July 10, 1995. A public comment period, requesting written comments ended on August 10, 1995, and further, a public hearing was held on August 24, 1995. No comments were received during the comment period. This decision constitutes final Agency action and there is no administrative appeal process that can be applied to a final petition decision.

EFFECTIVE DATE: This action is effective as of September 7, 1995.

ADDRESSES: Copies of the petition and all pertinent information relating thereto, including the Agency's response to comments, are on file at the following location: Environmental Protection Agency, Region 7, Water and Pesticides Division, Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas, 66101.

FOR FURTHER INFORMATION CONTACT: Ralph N. Langemeier, Chief, Drinking Water Branch, Environmental Protection Agency, Region 7. Telephone (913) 551–7032.

Dated: September 11, 1995.

Diane K. Callier,

Acting Regional Administrator.

[FR Doc. 95–22955 Filed 9–14–95; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–011472–001

Title: KL/HMM Space Charter Agreement in the Far East-U.S. Pacific Northwest Trades

Parties: Hyundai Merchant Marine Co., Ltd. Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed amendment extends the term of the Agreement until December 31, 1995. The parties have requested a shortened review period.

Agreement No.: 217–011512

Title: Hyundai/MSC Agreement

Parties: Hyundai Merchant Marine Co., Ltd. ("Hyundai") Mediterranean Shipping Co., S.A. ("MSC")

Synopsis: The proposed Agreement authorizes Hyundai to charter space on MSC's vessels in the trade between U.S. Atlantic and Gulf Coast ports and ports in North Europe.

Dated: September 11, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

FR Doc. 95–22911 Filed 9–14–95; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

David Crockett Jones, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 29, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *David Crockett Jones, Jr.*, Naples, Florida; to retain a total of 11.68 percent of the voting shares of South Florida Banking Corporation, Bonita Springs, Florida, and thereby indirectly acquire First National Bank of Florida, Bonita Springs, Florida.

2. *Myer Feldman*, Potomac, Maryland; to acquire an additional 86.55 percent, for a total of 86.80 percent of the voting shares of Totalbank Corporation of Florida, Miami, Florida, and thereby indirectly acquire Totalbank, Miami, Florida, and Trade National Bank, Miami, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Martin Alan Grusin (as Trustee of U.A.B. Holding Trust, Memphis, Tennessee)*, Memphis Tennessee; to retain a total of 100 percent of the voting shares of W.B.T. Holding Company, Memphis, Tennessee, and thereby indirectly acquire United American Bank, Memphis, Tennessee.

Board of Governors of the Federal Reserve System, September 11, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22924 Filed 9–14–95; 8:45 am]

BILLING CODE 6210-01-F

SunTrust Banks, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 29, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia, and Trust Company of Georgia, Atlanta, Georgia; to acquire and Stephens Diversified Leasing, Inc., Reno, Nevada, and thereby engage in leasing personal or real property or acting as agent, broker, or adviser; and in making, acquiring, or servicing loans or other extensions of credit, pursuant to §§ 225.25(b)(5) and 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 11, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22923 Filed 9–14–95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

Policy on the Inclusion of Women and Racial and Ethnic Minorities in Externally Awarded Research

AGENCY: Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry

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(ATSDR), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the CDC[1] policy on the inclusion of women and racial and ethnic minorities in externally awarded research. On April 10, 1995, CDC published a notice for comments (60 FR 18130) on the Policy on the Inclusion of Women and Minorities in Externally Awarded Research. During the 60 day public comment period that ended June 9, 1995, CDC received only a few minor comments. Therefore, after some small revisions, the notice is being re-published and will become policy as of October 1, 1995. This policy is intended to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC-supported studies involving human subjects, whenever feasible and appropriate. Furthermore, it is CDC policy to identify significant gaps in knowledge about health problems that affect women and racial and ethnic minority populations and to encourage studies which address these problems. (Note: This policy is consistent with requirements for CDC intra-agency research.)

EFFECTIVE DATE: Applicable for all CDC externally awarded research projects submitted in response to CDC Program Announcements (Requests for Assistance) and solicitations (Requests for Proposals) announced on or after October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Dixie E. Snider, Jr., M.D., M.P.H., telephone (404) 639–3701 or Barbara W. Kilbourne, R.N., M.P.H., telephone (404) 639–1242.

SUPPLEMENTARY INFORMATION:

CDC and ATSDR Policy on the Inclusion of Women and Racial and Ethnic Minorities in Externally Awarded Research

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I. Introduction

The Centers for Disease Control and Prevention (CDC) is committed to protecting the health of all people regardless of their sex, race, ethnicity, national origin, religion, sexual orientation, socioeconomic status, or other characteristics. To the extent that participation in research offers direct benefits to the participants, underrepresentation of certain population subgroups denies them the opportunity to benefit. Moreover, for purposes of generalizing study results, investigators must include the widest possible range of population groups.

A growing body of evidence indicates that the health conditions and needs of women are different from those of men. Some health conditions are unique to women and others are more prevalent in women. For some illnesses, there are marked distinctions, not only in onset and progression of disease, but also in the preventive, treatment and educational approaches necessary to combat them in women. Furthermore, initial entry into the health care system may be different for some subgroups of women, such as low-income and uninsured women. Lesbians may also enter the health care system differently because they may be less likely to access prevention services, like cancer screening, because they may not utilize family planning services. The Public Health Service Task Force on Women's Health Issues published a report in 1987 stating that it is becoming more important to note the environmental, economic, social, and demographic characteristics that influence a woman's health status. The Task Force focused on the direct and indirect effects these factors could have on the status of a woman's health and noted that when a woman is "outside the normal range of societal expectations," that is, she is of a racial, ethnic or cultural minority or if she is physically or mentally disabled, her health status is potentially at greater risk. These basic observations are not always recognized or reflected in study protocols and proposals.

The disparity in health outcomes between majority and some racial and ethnic minority groups is now well documented. Although some minority populations, e.g., some Asian groups, have better overall health status than non-Hispanic whites, many racial and ethnic minority populations have dramatically shorter life expectancy, higher morbidity rates and inadequate access to quality health care. The Secretary for the Department of Health and Human Services' Task Force on Black and Minority Health issued a report in 1985 noting the underrepresentation of racial and ethnic minorities in research. This underrepresentation has resulted in significant gaps in knowledge about the health of racial and ethnic minority populations and their responses to interventions.

II. Definitions

A. Human Subjects

Under this policy, the definition of human subjects in title 45 CFR part 46, the Department of Health and Human Services regulations for the protection of human subjects, applies: "Human subject means a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual or (2) identifiable private information."

B. Research

Under this policy, the definition of research in title 45 CFR part 46, the Department of Health and Human Services regulations for the protection of human subjects, applies: "Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." All proposed research involving human subjects and conducted using CDC funding will be evaluated for compliance with this policy, including those projects that are exempt from Institutional Review Board (IRB) review (as specified in title 45 CFR part 46). However, nothing in this policy is intended to require IRB review of protocols which otherwise would be exempt. This policy applies to all CDC externally awarded research regardless of the mechanism of financial support (e.g., grant, cooperative agreement, contract, purchase order, etc.). This policy does not apply to those projects in which the investigator has no control over the composition of the study population (e.g., cohort studies in which the population has been previously selected, or research to follow-up outbreak investigations.)

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[1] References to CDC also apply to the Agency for Toxic Substances and Disease Registry (ATSDR).

C. Racial and Ethnic Categories

1. Minority Groups

This policy shall comply with the Office of Management and Budget (OMB) Directive No. 15, and any subsequent revisions to the Directive. OMB Directive No. 15 defines the minimum standard of basic racial and ethnic categories. Despite limitations (as outlined in the Public Health Reports "Papers from the CDC/ATSDR Workshop on the Use of Race and Ethnicity in Public Health Surveillance"), these categories are useful because they allow comparisons among many national data bases, especially Bureau of the Census and national health data bases. Therefore, the racial and ethnic categories described below should be used as basic minimum guidance, cognizant of their limitations.

American Indian or Alaskan Native: A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander: A person having origins in any of the original peoples of Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

Black, not of Hispanic Origin: A person having origins in any of the black racial groups of Africa.

Hispanic: A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

2. Majority Group

White, not of Hispanic Origin: A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

While investigators should focus primary attention on the above categories, CDC recognizes the diversity of the population. For example, Blacks describe themselves in several different ways, including African-American, Caribbean (Haitian, Jamaican, West Indian, Trinidadian), etc. Native Hawaiians have expressed the desire to be considered a separate racial/ethnic category exclusive of the current Asian/Pacific Islander designation. Therefore, investigators are encouraged to investigate national or geographic origin or other cultural factors (e.g., customs, beliefs, religious practices) in studies of race and ethnicity, and their relationship to health problems. Furthermore, since race, ethnicity, and cultural heritage may serve as markers for other important characteristics or conditions associated with a health problem or outcome, investigators should actively seek to identify these other characteristics or conditions.

III. Policy

Research Involving Human Subjects

Applicant institutions must ensure that women and racial and ethnic minority populations are appropriately represented in their proposals for research.

Women and members of racial and ethnic minority groups should be adequately represented in all CDC-supported studies involving human subjects, unless a clear and compelling rationale and justification establishes to the satisfaction of CDC that inclusion is inappropriate or clearly not feasible. Although this policy does not apply to studies when the investigator cannot control the race, ethnicity, and sex of subjects, women and racial and ethnic minority populations must not be routinely and/or arbitrarily excluded from such investigations.

In addition, women of childbearing potential should also not be routinely and/or arbitrarily excluded from participation even though there are ethical/risk issues to consider for inclusion and exclusion. Information on adverse differences in outcome or risk profiles for pregnant women may be reason for exclusion. Therefore, pregnancy status may need to be determined prior to enrollment for some studies and, if necessary, during an intervention to safeguard the participants' health.

IV. Guidance for Applicant Institution Investigators and Decision Makers in Complying with this Policy

A. General

In determining whether special efforts should be made to set specific enrollment goals for women and members of racial and ethnic minority groups, or whether to design special studies to specifically address health problems in such populations, principal investigators should consider the following points:

- Is the disease or condition under study unique to, or is it relatively rare in men, women or one or more racial and/or ethnic minority populations?
- What are the characteristics of the population to which the protocol results will be applied? Does it include both men and women? Does it include specific racial and ethnic minority populations?
- Are there scientific reasons to anticipate significant differences between men and women and among racial and ethnic minority populations with regard to the hypothesis under investigation?
- Are there study design or recruitment limitations in the protocol that could result, unnecessarily, in underrepresentation of one sex or certain racial and ethnic minority populations?
- Could such underrepresentation cause an adverse impact on the generalizability and application of results?
- Is the underrepresentation correctable?
- Does racial and ethnic characterization of study subjects serve a bona fide purpose or might it serve only to stigmatize a group?

Inclusion of women and/or racial and ethnic minority groups in research can be addressed either by including all appropriate groups in one single study or by conducting multiple studies. In general, protocols and proposals for support of studies involving human subjects should employ a design with sex and/or minority representation appropriate to the scientific objectives. It is not an automatic requirement that the study design provide sufficient statistical power to answer the questions posed for men and women and racial and ethnic groups separately; however, whenever there are scientific reasons to anticipate differences between men and women and/or racial and ethnic groups, with regard to the hypothesis under investigation, investigators should include an evaluation of these sex and minority group differences in the study proposal. If adequate inclusion of one sex and/or minority group is impossible or inappropriate with respect to the purpose of the proposed study, or if in the only study population available, there is a disproportionate representation of one sex or minority/majority group, the rationale for the study population must be well explained and justified. The cost of inclusion of women and/or racial and ethnic minority groups shall not be a permissible consideration for exclusion from a given study unless data regarding women and/or racial and ethnic minority groups have been or will be obtained through other means that provide data of comparable quality. Acceptable reasons for exclusion are as follows:

(1) Inclusion is inappropriate with respect to the health of the subjects;

(2) Inclusion is inappropriate with respect to the purpose of the study;

(3) Substantial scientific evidence indicates there is no significant difference between the effects that the

variables to be studied have on women and/or racial and ethnic minority groups;

(4) Substantial scientific data already exist on the effects that variables have on the excluded population;

(5) Inclusion is inappropriate under other circumstances as determined by CDC.

In each protocol or proposal, the composition and rationale for inclusion of the proposed study population must be described in terms of sex and racial and ethnic group. Sex and racial and ethnic characteristics, conditions, and other relevant issues should be addressed in developing a study design and sample size appropriate for the scientific objectives of the investigation. The proposal should contain a description of proposed outreach programs, if necessary, for recruiting women and racial and ethnic minorities as participants. Investigators must facilitate the informed consent process by promoting open and free communication with the study participants. Investigators must seek to understand cultural and linguistic variables inherent in the population to be enrolled, and procedures must be established to ensure appropriate translation of the consent document whenever necessary.

B. Studies of Public Health Interventions

Investigators must consider the following when planning an intervention trial or a clinical trial:

- If the data from prior studies strongly indicate the existence of significant differences of clinical or public health importance in intervention effect between the sexes or among racial and ethnic populations, the primary question(s) to be addressed by the scientific investigation and the design of that study must specifically accommodate the difference(s). For example, if men, women, and racial and ethnic minority groups are thought to respond differently to an intervention, then the study should be designed to answer separate primary questions that apply to men, women, and/or specific racial and ethnic groups with adequate sample size for each.
- If the data from prior studies strongly support no significant differences of clinical or public health importance in intervention effect between subgroups, then sex and race and ethnicity are not required as subject selection criteria; however, the inclusion of sex and racial and ethnic subgroups is still strongly encouraged.
- If the data from prior studies neither support nor negate the existence of significant differences of clinical or public health importance in intervention effect, then the study should include sufficient and appropriate male and female and racial and ethnic minority populations so that valid analysis of the intervention effect in each subgroup can be performed.
- If women of childbearing potential are to be included and if there is reason to suspect that adverse events may occur in pregnant women, pregnancy status should be determined prior to enrollment.

V. Implementation

A. Date of Implementation

This policy applies for all CDC externally awarded research projects submitted in response to CDC Program Announcements (Requests for Assistance) and solicitations (Requests for Proposals) announced on or after October 1, 1995.

B. Roles and Responsibilities

Certain individuals and groups have special roles and responsibilities with regard to the implementation of these guidelines.

1. Applicant Institution Investigators

Applicant institution investigators should assess the theoretical and/or scientific linkages between sex, race and ethnicity and their topic of study. Following this assessment, the applicant institution investigator will address the policy in each protocol, application and proposal, providing the required information on inclusion of women and minorities, and any required justifications for exclusions of any groups.

2. CDC Technical/Peer Review Groups

In conducting technical/peer review of contract, grant, or cooperative agreement applications for scientific and technical merit, CDC Center/Institute/Office (C/I/O) Directors will ensure that CDC technical/peer review groups, to the extent possible, include women and racial and ethnic minorities, and will do the following: *

- Evaluate the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.
- Evaluate the appropriateness of the proposed justification when representation is limited or absent.
- Determine whether the design of the study is adequate to measure differences when warranted.
- Evaluate the plans for recruitment and outreach for study participants including whether the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.
- Include these criteria as part of the technical assessment and assign a score.

3. CDC Center/Institute/Office Directors

CDC C/I/O Directors are responsible for ensuring that CDC externally awarded research involving human subjects meets the requirements of these guidelines. CDC C/I/O Directors will also inform externally awarded investigators concerning this policy and monitor its implementation during the development, review, award, and conduct of research.

4. CDC Institutional Review Boards (IRBs)

CDC IRBs are expected to consider whether CDC investigators have adequately addressed the inclusion of women and racial and ethnic minorities, in research protocols that require CDC IRB approval, as an additional criterion for IRB approval.

C. External Award Consideration

CDC project officers shall design their Requests for Contracts and Requests for Assistance in compliance with this policy. CDC C/I/O Directors shall ensure this policy is fully considered and implemented prior to the release of the Request for Contract and Request for Assistance to the CDC Procurement and Grants Office. CDC funding components will not award any grant, cooperative agreement, or contract for external research projects announced on or after October 1, 1995, and thereafter which does not comply with this policy.

D. Recruitment Outreach by Externally Awarded Investigators

Externally awarded investigators and their staff(s) are urged to develop appropriate and culturally sensitive outreach programs and activities commensurate with the goals of the research. The purpose should be to establish a relationship between the investigator(s), populations, and community(ies) of interest so that mutual benefit is achieved by all groups participating in the study. Investigators should document the process for establishing a partnership with the community(ies) and the mutual benefits of the study and ensure that any factors (e.g., educational level, nonproficiency in English, low socioeconomic status) are accounted for and handled appropriately. In addition, investigator(s) and staff should ensure that ethical concerns are clearly noted and enforced, such that there is minimal

possibility of coercion or undue influence in the incentives or rewards offered in recruiting into or retaining participants in scientific studies.

E. Dissemination of Research Results

Externally awarded investigators are urged to make special efforts to disseminate relevant research results to the communities who participated in the studies and to the affected populations, especially racial and ethnic minority populations that may have cultural, language, and socioeconomic barriers to the easy receipt of such information.

VI. Evaluation

CDC Inclusion Review Committee Responsibility and Members

A CDC Inclusion Review Committee (IRC) with representatives from the CDC Office of the Associate Director for Science, the CDC Office of the Associate Director for Minority Health, and the CDC Office of the Associate Director for Women's Health will review any questions, issues, or comments pertaining to this policy and recommend necessary changes or modifications to the Director, CDC. This committee will meet regularly to review compliance with this policy and evaluate the impact of this policy on research activities at CDC. The CDC IRC may periodically conduct random audits of research protocols to assess compliance with this policy.

Dated: September 8, 1995.

Claire V. Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC) and Deputy Administrator, Agency for Toxic Substances and Disease Registry (ATSDR).

[FR Doc. 95–22950 Filed 9–14–95; 8:45 am]

BILLING CODE 4163–18–P

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to Pub. L. 92–363, notice is hereby given of the meetings of the National Center for Research Resources (NCRR) for October 1995. These meetings will be open to the public as indicated below, to discuss program planning; program accomplishments; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide summaries of meetings and rosters of committee members. Other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed below, in advance of the meeting.

Name of Committee: Comparative Medicine Review Committee.

Scientific Review Administrator: Dr. Raymond O'Neill, National Institutes of Health, 1 Rockledge Center, Room 6110, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0814.

Date of Meeting: October 22–24, 1995.

Place of Meeting: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007.

Closed: October 22, 6:30 p.m.–until recess.

Open: October 23, 8:30 a.m.–10:00 a.m.

Closed: October 23, 10:00 a.m.–until adjournment.

Name of Committee: General Clinical Research Centers Committee.

Scientific Review Administrator: Dr. Bela J. Gulyas, National Institutes of Health, 1 Rockledge Center, Room 6116, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0806.

Date of Meeting: October 18–19, 1995.

Place of Meeting: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: October 18, 8:00 a.m.–9:30 a.m.

Closed; October 18, 9:30 a.m.–until adjournment.

(Calalog of Federal Domestic Assistance Program No. 93.306, Laboratory Animal, and 93.333 Clinical Research, National Institutes of Health, HHS)

Dated: September 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22986 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–M

National In[illegible]tut[illegible]ironmental Health Scie[illegible]e of Meeting of Board of Sci[illegible]unselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIEHS, October 30–31, 1995, in Building 101, South Campus, Main Conference Facility, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public from approximately 8:45 a.m. to 4 p.m. on October 30, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Molecular Biophysics. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5 U.S. Code and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 30 from approximately 4 p.m. to recess and on October 31 from 9 a.m. to adjournment, for the evaluation of the programs of the Laboratory of Molecular Biophysics, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Carl Barrett, Scientific Director, Division of Intramural Research, NIEHS, Research Triangle Park, N.C. 27709, telephone (919) 541–3205, will furnish rosters of committee members and program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dated: September 8, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22987 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose: To review grant applications.

Committee Name: Genetic Basis of Disease Review Committee.

Date: November 6–7.

Time: 8:30 a.m.–5 p.m.

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* C/I/O Directors may waive this requirement if it is clearly inappropriate or clearly not feasible.

Place of Meeting: National Institutes of Health, 45 Center Drive, Natcher Building, Room F2, Bethesda, MD 20892.

Contact Person: Dr. Arthur Zachary, 45 Center Drive, Room 1AS–13, Bethesda, MD 20892.

Committee Name: National Institute of General Medical Sciences Special Emphasis Panel—Biotechnology, Chemistry/Biology Interface and Molecular Biophysics.

Date: November 9–10.

Time: November 9, 1 p.m.–8 p.m.; November 10, 8:30 a.m.–5 p.m.

Place: Holiday Inn Hotel, 8520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Dr. Irene Glowinski, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13J, Bethesda, MD 20892.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: September 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22988 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Deafness and Other Communication Disorders; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD, on October 16 and 17, 1995. The meeting will be held in Conference Room H, the Natcher Conference Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 to 10:30 am on October 16 to present reports and discuss issues related to business of the Board. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Board of Scientific Counselors will be closed to the public from 10:45 am October 16 until adjournment at approximately 3:00 p.m. on October 17. The closed portion of the meeting will be for the review, discussion and evaluation of the program of the Voice and Speech Section of the Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from James F. Battey, M.D., Ph.D., Executive Secretary of the Board of Scientific Counselors, NIDCD, 5 Research Ct., Room 2B–28, Rockville, Maryland 20850, (301) 402–2829.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Battey at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22989 Filed 9–11–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings that are being held to review grant applications:

Study section/contact person	September–November 1995 meetings	Time	Location
AIDS and Related Research Initial Review Group			
AIDS & Related Research 1, Dr. Sami Mayyasi, 301–435–1216.	Nov. 6–7	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 2, Dr. Gilbert Meier, 301–435–1219.	Nov. 10	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Marcel Pons, 301–435–1217.	Oct. 26–27	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 4, Dr. Mohindar Poonian, 301–435–1218.	Nov. 13–14	8:30 a.m	Doubletree Hotel, Rockville, MD.
AIDS & Related Research 5, Dr. Mohinder Poonian, 301–435–1218.	Nov. 3	8:00 a.m	Doubletree Hotel, Rockville, MD.
AIDS & Related Research 6, Dr. Gilbert Meier, 301–435–1219.	Nov. 13	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, 301–435–1219.	Nov. 17	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Biobehavioral and Social Sciences Initial Review Group			
Behavioral Medicine, Ms. Carol Campbell, 301–435–1257.	Oct. 18–20	8:30 a.m	St. James Hotel, Washington, DC.
Bio-Psychology, Dr. A. Keith Murray, 301–435–1256	Oct. 23–24	9:00 a.m	The Georgetown Inn, Washington, DC.
Human Development & Aging–1, Dr. Teresa Levitin, 301–435–1259.	Oct. 26–27	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging–2, Dr. Peggy McCardle, 301–435–1258.	Oct. 18–19	8:30 a.m	Holiday Inn, Bethesda, MD.
Human Development & Aging–3, Dr. Anita Miller Sostek, 301–435–1260.	Oct. 26–27	9:00 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Social Sciences & Population, Dr. Robert Weller, 301–435–1261.	Oct. 12–13	8:00 a.m	Washington Vista Hilton Hotel, Washington, DC.
Biochemical Sciences Initial Review Group			
Biochemistry, Dr. Chhanda Ganguly, 301–435–1739	Oct. 18–20	8:30 a.m	Holiday Inn, Silver Spring, MD.
Medical Biochemistry, Dr. Alexander Liacouras, 301–435–1740.	Oct. 16–17	8:30 a.m	Hyatt Arlington, at Washington Key Bridge, Arlington, VA.
Pathobiochemistry, Dr. Zakir Bengali, 301–435–1742	Oct. 12–13	8:30 a.m	Holiday Inn, Georgetown, DC.
Physiological Chemistry, Dr. Jerry Critz, 301–435–1741.	Oct. 26–28	8:30 a.m	Holiday Inn, Calverton, MD.
Biophysical and Chemical Sciences Initial Review Group			
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, 301–435–1728.	Oct. 19–21	9:00 a.m	Holiday Inn, Chevy Chase, MD.
Biophysical Chemistry, Dr. John Beisler, 301–435–1727.	Oct. 12–14	8:30 a.m	Ramada Inn, Bethesda, MD.
Medicinal Chemistry, Dr. Ronald Dubois, 301–435–1722.	Oct. 11–13	8:30 a.m	Holiday Inn, Bethesda, MD.
Metallobiochemistry, Dr. Edward Zapolski, 301–435–1725.	Oct. 26–28	8:30 a.m	The Georgetown Inn, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, 301–435–1726.	Oct. 26–28	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Physical Biochemistry, Dr. Gopa Rakhit, 301–435–1721.	Oct. 16–18	8:30 a.m	Doubletree Hotel, Rockville, MD.
Cardiovascular Sciences Initial Review Group			
Cardiovascular, Dr. Gordon Johnson, 301–435–1212	Oct. 11–13	8:00 a.m	Doubletree Hotel, Rockville, MD.
Cardiovascular & Renal, Dr. Anthony Chung, 301–435–1213.	Oct. 16–17	8:30 a.m	Mariott Hotel, Pooks Hill, Bethesda, MD.
Experimental Cardiovascular Sciences, Dr. Anshumali Chaudhardi, 301–435–1210.	Oct. 11–13	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Hematology-1, Dr. Clark Lum, 301–435–1195	Oct. 19–21	8:00 a.m	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, 301–435–1777	Oct. 18–20	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Pharmacology, Dr. Joseph Kaiser, 301–435–1211	Oct. 18–19	8:30 a.m	American Inn, Bethesda, MD.
Cell Development and Function Initial Review Group			
Biological Sciences-2, Dr. Camilla Day, 301–435–1024	Nov. 6–8	8:30 a.m	Holiday Inn, Governor's House, Washington, DC.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, 301–435–1023.	Oct. 12–13	8:30 a.m	Sheraton Reston Hotel, Reston, VA.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, 301–435–1022.	Oct. 11–13	8:30 a.m	Holiday Inn, Bethesda, MD.
Human Embryology & Development-2, Dr. Sherry Dupere, 301–435–1021.	Oct. 16–17	8:00 a.m	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects, Dr. G.B. Warren, 301–435–1019.	Oct. 25–27	8:00 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular Biology, Dr. Robert Su, 301–435–1025	Oct. 12–14	8:00 a.m	Holiday Inn, Georgetown, DC.
Molecular Cytology, Dr. Ramesh Nayak, 301–435–1026.	Oct. 11–12	8:00 a.m	Holiday Inn, Bethesda, MD.
Endocrinology and Reproductive Sciences Initial Review Group			
Biochemical Endocrinology, Dr. Michael Knecht, 301–435–1046.	Oct. 11–13	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Syed Amir, 301–435–1043	Oct. 11–13	8:30 a.m	Holiday Inn, Bethesda, MD.
Human Embryology & Development-1, Dr. Michael Knecht, 301–435–1046.	Oct. 19–20	8:00 a.m	Doubletree Hotel, Rockville, MD.
Reproductive Biology, Dr. Dennis Leszczynski, 301–435–1044.	Oct. 16–17	8:00 a.m	Ramada Inn, Rockville, MD.
Reproductive Endocrinology, Dr. Abubakar Shaikh, 301–435–1042.	Sept. 28–29	8:00 a.m	Holiday Inn, Bethesda, MD.

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Study section/contact person	September–November 1995 meetings	Time	Location
Genetic Sciences Initial Review Group			
Biological Sciences-1, Dr. Nancy Pearson, 301–435–1047.	Nov. 6–8	8:30 a.m	The Georgetown Inn, Washington, DC.
Genetics, Dr. David Remondini, 301–435–1038	Oct. 12–14	9:00 a.m	Holiday Inn, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, 301–435–1045	Oct. 18–20	9:00 a.m	The Georgetown Inn, Washington, DC.
Mammalian Genetics, Dr. Jerry Roberts, 301–435–1037.	Nov. 8–9	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Health Promotion and Disease Prevention Initial Review Group			
Epidemiology & Disease Control-1, Dr. Scott Osborne, 301–435–1782.	Oct. 11–13	8:30 a.m	Marriott Residence Inn, Bethesda, MD.
Epidemiology & Disease Control-2, Dr. Jeanne Ketley, 301–435–1788.	Oct. 18–20	8:30 a.m	Holiday Inn, Alexandria, VA.
Nursing Research, Dr. Gertrude McFarland, 301–435–1784.	Oct. 11–13	8:00 a.m	Doubletree Hotel, Rockville, MD.
Toxicology-1, Dr. Jeanne Ketley, 301–435–1788	Oct. 25–27	8:00 a.m	American Inn, Bethesda, MD.
Toxicology-2, Dr. Jeanne Ketley, 301–435–1788	Oct. 11–13	8:00 a.m	American Inn, Bethesda, MD.
Immunological Sciences Initial Review Group			
Allergy & Immunology, Mr. Howard Berman, 301–435–1220.	Oct. 16–17	8:30 a.m	Doubletree Hotel, Rockville, MD.
Experimental Immunology, Dr. Calbert Laing, 301–435–1221.	Oct. 23–24	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Immunobiology, Dr. Betty Hayden, 301–435–1223	Oct. 18–20	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, 301–435–1224.	Oct. 18–20	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Immunology, Virology & Pathology, Dr. Lynwood Jones, 301–435–1153.	Oct. 18–20	8:30 a.m	Holiday Inn, Georgetown, DC.
Infectious Diseases and Microbiology Initial Review Group			
Bacteriology & Mycology-1, Dr. Timothy Henry, 301–435–1147.	Oct. 19–20	8:30 a.m	Marriott Residence Inn, Bethesda, MD.
Bacteriology & Mycology-2, Dr. William Branche, Jr., 301–435–1148.	Oct. 11–13	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett Keefer, 301–435–1152.	Oct. 16–18	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics-1, Dr. Martin Slater, 301–435–1149.	Oct. 25–27	8:30 a.m	Holiday Inn, Governor's House, Washington, DC.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, 301–435–1150.	Oct. 18–20	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, 301–435–1146.	Oct. 12–13	8:00 a.m	Holiday Inn, Bethesda, MD.
Virology, Dr. Rita Anand, 301–435–1151	Oct. 11–13	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Musculoskeletal and Dental Sciences Initial Review Group			
General Medicine A–1, Dr. Harold Davidson, 301–435–1776.	Oct. 15–17	7:30 p.m	Marriott Hotel, Pooks Hill, Bethesda, MD.
General Medicine B, Dr. Shirley Hilden, 301–435–1198	Oct. 9–11	8:00 a.m	Holiday Inn, Bethesda, MD.
Oral Biology & Medicine-1, Dr. Priscilla Chen, 301–435–1787.	Oct. 23–24	8:30 a.m	Holiday Inn Old Town, Alexandria, VA.
Oral Biology & Medicine-2, Dr. Priscilla Chen, 301–435–1787.	Oct. 16–17	8:30 a.m	Holiday Inn Old Town, Alexandria, VA.
Orthopedics & Musculoskeletal, Dr. Daniel McDonald, 301–435–1215.	Oct. 18–20	8:00 a.m	Holiday Inn, Bethesda, MD.
Neurological Sciences Initial Review Group			
Neurological Sciences-1, Dr. Carl Banner, 301–435–1251.	Oct. 18–20	8:30 a.m	Holiday Inn, Governor's House, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, 301–435–1250.	Oct. 10–12	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Neurology A, Dr. Joe Marwah, 301–435–1253	Nov. 7–9	8:30 a.m	Empress Inn, LaJolla-San Diego, CA.
Neurology B–1, Dr. Lillian Pubols, 301–435–1255	Oct. 10–12	8:30 a.m	Capitol Holiday Inn, Washington, DC.

Study section/contact person	September–November 1995 meetings	Time	Location
Neurology B-2, Dr. Herman Teitelbaum, 301–435–1254.	Oct. 24–26	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Neurology C, Dr. Kenneth Newrock, 301–435–1252	Oct. 11–13	8:30 a.m	Radisson Barcelo Hotel, Washington, DC.
Nutritional and Metabolic Sciences Initial Review Group			
General Medicine A–2, Dr. Mushtaq Khan, 301–435–1778.	Oct. 24–25	8:30 a.m	NIH, Natcher Building, Conf. Ctr, Rm E1, Bethesda, MD.
Metabolism, Dr. Krish Krishnan, 301–435–1779	Oct. 24–25	8:30 a.m	NIH, Natcher Building, Conf. Ctr, Rm G1&2, Bethesda, MD.
Nutrition, Dr. Sooja Kim, 301–435–1780	Oct. 24–25	8:30 a.m	NIH, Natcher Building, Conf. Ctr, Rm E2, Bethesda, MD.
Oncological Sciences Initial Review Group			
Chemical Pathology, Dr. Edmund Copeland, 301–435–1715.	Oct. 25–27	8:30 a.m	Holiday Inn, Bethesda, MD.
Experimental Therapeutics-1, Dr. Philip Perkins, 301–435–1718.	Oct. 11–13	8:30 a.m	Hyatt Hotel, Arlington, VA.
Experimental Therapeutics-2, Dr. Marcia Litwack, 301–435–1719.	Nov. 1–3	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Metabolic Pathology, Dr. Marcelina Powers, 301–435–1720.	Oct. 17–19	8:30 a.m	Ramada Inn, Bethesda, MD.
Pathology A, Dr. Larry Pinkus, 301–434–1214	Oct. 10–12	7:00 p.m	Marriott Hotel, Pooks Hill, Bethesde, MD.
Pathology B, Dr. Martin Padarathsingh, 301–435–1717	Oct. 11–13	8: a.m	Holiday Inn, Georgetown, DC.
Radiation, Dr. Paul Strudler, 301–435–1716	Oct. 16–18	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Pathophsiological Sciences Initial Review Group			
Lung Biology & Pathology, Dr. Anne Clark, 301–435–1017.	Oct. 11–13	8:00 a.m	Holday Inn, Chevey Chase, MD.
Physiology, Dr. Michael Lang, 301–435–1015	Oct. 11–13	8:30 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Respiratory & Applied Physiology, Dr. Everett Sinnett, 301–435–1016.	Oct. 23–25	8:30 a.m	Holiday Inn, Chevey Chase, MD.
Sensory Sciences Initial Review Group			
Hearing Research, Dr. Joseph Kimm, 301–435–1249	Oct. 16–18	8:30 a.m	The Grand Hotel, Washington, DC.
Sensory Disorders & Language, Dr. Jane Hu, 301–435–1245.	Oct. 16–18	8:30 a.m	Capitol Holiday Inn, Washington, DC.
Visual Sciences A, Dr. Luigi Giacometti, 301–435–1246.	Oct. 25–27	8:30 a.m	Doubletree Hotel, Rockville, MD.
Visual Sciences B, Dr. Leonard Jakubczak, 301–435–1247.	Oct. 11–13	8:30 a.m	Radisson Hotel, Alexandria, VA.
Visual Sciences C, Dr. Carole Jelsema, 301–435–1248.	Oct. 10–11	8:00 a.m	The Georgetown, Inn, Washington, DC.
Surgery, Radiology and Bioengineering Initial Review Group			
Diagnostic Radiology, Dr. Eileen Bradley, 301–435–1178.	Oct. 16–17	8:00 a.m	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Suregery & Bioengineering, Dr. Paul Parakkal, 301–435–1172.	Sept. 29–30	8:00 a.m	Holiday Inn, Georgetown, DC.
Suregery, Anesthesiology & Trauma, Dr. Gerald Becker, 301–435–1750.	Oct. 19–20	8:00 a.m	Holiday Inn, Bethesda, MD.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22991 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: September 28, 1995.

Time: 5:00 p.m.

Place: NIH, Rockledge II, Room 6170, Telephone Conference.

Contact Person: Dr. Dennis E. Leszczynski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6170, Bethesda, MD 20892, (301) 435–1044.

Name of SEP: Biological and Physiological Sciences.

Date: September 29, 1995.

Time: 4:00 p.m.

Place: NIH, Rockledge II, Room 6170, Telephone Conference.

Contact Person: Dr. Dennis E. Leszczynski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6170, Bethesda, MD 20892, (301) 435–1044.

Name of SEP: Clinical Sciences.

Date: October 5, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 4128, Telephone Conference.

Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, (301) 435–1210.

Name of SEP: Multidisciplinary Sciences.

Date: October 29–31, 1995.

Time: 6:00 p.m.

Place: New Haven, CT.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, (301) 435–1176.

Name of SEP: Multidisciplinary Sciences.

Date: October 29–30, 1995.

Time: 7:00 p.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, MD 20892, (301) 435–1171.

Name of SEP: Multidisciplinary Sciences.

Date: November 5–7, 1995.

Time: 7:00 p.m.

Place: Marriott LA Airport Hotel, Los Angeles, CA.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, MD 20892, (301) 435–1168.

Name of SEP: Multidisciplinary Sciences.

Date: November 8–10, 1995.

Time: 6:00 p.m.

Place: Sheraton Metrodome Hotel, Minneapolis, MN.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, MD 20892, (301) 435–1177.

Name of SEP: Multidisciplinary Sciences.

Date: November 15–17, 1995.

Time: 6:00 p.m.

Place: St. Louis, Missouri.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, MD 20892, (301) 435–1177.

Name of SEP: Multidisciplinary Sciences.

Date: November 19–21, 1995.

Time: 7:00 p.m.

Place: Woods Hole, Massachusetts.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Multidisciplinary Sciences.

Date: October 22–24, 1995.

Time: 7:00 p.m.

Place: La Guardia Marriott Hotel, New York, NY.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1168.

Name of SEP: Multidisciplinary Sciences.

Date: October 30–November 1, 1995.

Time: 7:00 a.m.

Place: Bethesda Marriott Hotel, Bethesda, Maryland.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1168.

Name of SEP: Multidisciplinary Sciences.

Date: November 5–7, 1995.

Time: 4:00 p.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

Name of SEP: Multidisciplinary Sciences.

Date: November 6–7, 1995.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 11, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–22990 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–M

[Docket No.]

Prospective Grant of Exclusive License: Veterinary Vaccine and Therapeutic Uses of Bartonella Henselae (Formerly Rochalimaea Henselae) Organisms

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a worldwide, limited field of use, exclusive license to practice the inventions embodied in the patents and patent applications referred to below to Paravax, Inc., having a place of business in Fort Collins, Colorado. The patent rights in these inventions have been assigned to the government of the United States of America. The patents and patent applications to be licensed are: "Methods and Compositions for Diagnosing Cat Scratch Disease and Bacillary Angiomatosis Caused by Rochalimaea henselae," U.S. Patent Application Serial No. 07/822,539 filed 17 Jan 92 (U.S. Patent No. 5,399,485 issued 21 Mar 95) and related cases, which include all continuation applications, divisional applications, continuation-in-part applications, and foreign counterpart applications.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Bartonella henselae (formerly *Rochalimaea henselae*) causes no currently known clinical disease in cats, but it has been identified as the cause of Cat Scratch Disease (CDS) in humans. Cats infected with *Bartonella henselae* have been identified as the source or reservoir of these infections in humans where a mild to severe lymphadenopathy can result. Further manifestations of *Bartonella henselae* may include Parinaud oculoglandular syndrome, prolonged fever associated with relapsing bacteremia, bacillary angiomatosis, and endocarditis and bacillary peliosis. The sick and elderly, especially immunocompromised susceptible to infection.

Centers for Disease Control and Prevention (CDC) scientists have discovered a method of diagnosing cat scratch disease and a method of diagnosing bacillary angiomatosis in a subject by detecting the presence of *Bartonella henselae* or an immunogenically specific determinant thereof in the subject, as well as vaccines comprising *Bartonella henselae* or fragments thereof.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to: Carol C. Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852. Telephone: (301) 496–7735, ext. 287; Facsimile: (301) 402–9220. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before November 14, 1995, will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending application.

Dated: August 23, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–22992 Filed 9–14–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–54]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brain Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable /available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real

Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (These are not toll–free numbers).

Dated: September 8, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 09/15/95

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Nahant Towers
Nahant Co: Essex MA
Landholding Agency: DOT
Property Number: 879530001
Status: Unutilized
Comment: 196 sq. ft., 8-story observation tower

Unsuitable Properties

Buildings (by State)

Bldg. 8
Rosenbank—Coast Guard Housing
Staten Island 10301–
Landholding Agency: DOT
Property Number: 879530009
Status: Unutilized
Reason: Secured Area

New York

Bldg. 7
Rosenbank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 879530010
Status: Unutilized
Reason: Secured Area, Extensive deterioration

North Carolina

Bldg. 168
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530015
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 959
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530016
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 977
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530017
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 1056
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530018
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 1739
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530019
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 1741
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530020
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 1990
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530021
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 1991
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530022
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 914
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530023
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 981
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530024
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 986
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530025
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 987
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530026
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 988
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530027
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 1652
Marine Corps Air Station—Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779530028
Status: Excess
Reason: Other
Comment: Detached Latrine

[FR Doc. 95–22825 Filed 9–14–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–14015]

Alaska; Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Sealaska Corporation for approximately 664 acres. The lands involved are in the Tongass National Forest in southeast Alaska.

Copper River Meridian, Alaska

Lots 3, 4 and 5, U.S. Survey No. 2439.

T. 43 S., R. 60 E.,
  Sec. 34.
T. 44 S., R. 60 E.,
  Sec. 12.
T. 44 S., R. 61 E.,
  Secs. 6 and 7.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Juneau Empire*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 16, 1995, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart

E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, Gulf Rim Adjudication.

[FR Doc. 95–22966 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–JA–P

[CO–934–03–1310–04]

Notice of Public Comment Period for the Southern Ute Oil and Gas Environmental Impact Statement

AGENCIES: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Bureau of Land Management (BLM) is proposing to prepare an Environmental Impact Statement (EIS) for oil and gas leasing and operations on Southern Ute Indian Tribal lands and to hold a public scoping meeting and comment period in accordance with the National Environmental Policy Act (NEPA) and Title 40 CFR Part 1500.

ADDRESSES: Mail all comments to the Area Manager, San Juan Resource Area, 701 Camino del Rio, Durango, Colorado 81301.

A mailing list for interested public and agencies is being maintained in the San Juan Resource Area office. The list will be used to provide information about opportunities for public input and for distribution of the draft and final EIS.

DATES: The scoping period opens September 26, 1995, and comments must be received by the close of business, October 26, 1995.

SUMMARY: In accordance with Section 102 of NEPA, an EIS for oil and gas leasing and operations on lands of the Southern Ute Indian Tribe will be prepared by the Southern Ute Indian Tribe (SUIT) Energy and Minerals Division (project lead), the U.S. Bureau of Land Management (lead federal agency), and the U.S. Bureau of Indian Affairs (BIA).

SUPPLEMENTARY INFORMATION: In accordance with Title 40, CFR, Part 1506.3(c), the SUIT, the BLM and the BIA are preparing the EIS for the purposes of evaluating impacts associated with federal approval of tribally issued oil and gas leases and approving exploration and production operations on lands subject to federal jurisdiction within the boundaries of the Southern Ute Indian Tribal lands.

Comments and concerns of the Southern Ute people, the public and interested federal, state, and local agencies will be solicited as part of the EIS scoping process. The 30-day scoping period will begin September 26, 1995, with a public meeting in Ignacio, Colorado, from 7 to 9 p.m. in Rolling Thunder Hall at the Southern Ute Casino. The comment period will be open for 30 days thereafter, through October 26, 1995.

Comments may be presented verbally at the meeting or by telephone to the contacts provided below. Comments may also be submitted in written form at the scoping meeting, to the contacts shown below, and by telefax.

Preliminary Issues

How best can oil and gas development revenues continue to be received and maximized for benefiting the Southern Ute Indian Tribe while at the same time protecting Tribal lands and the environment from injurious impacts.

Preliminary Alternatives

At least two alternatives present themselves before scoping takes place.

No-Action Alternative—Continuation of current oil and gas management actions and conditions of approval in line with the existing BIA Environmental Analysis (EA), BLM field and site development EAs, and existing policies and practices. This alternative would maintain the status quo and is used as the baseline for comparison of impacts from additional proposed actions,.

Enhanced Development—This alternative would modify existing development to allow for new injection technologies and down-spacing based on reasonably foreseeable development.

FOR FURTHER INFORMATION CONTACT:

Jim Rhett, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, Telephone: (303) 239–3752; Telefax: (303) 239–3799; TDD*: (303) 239–3933

Don Englishman, San Juan Resource Area, 701 Camino del Rio, Durango, Colorado 81301, Telephone: (970) 247–4082; Telefax: (970) 385–4818; TDD*: (970) 385–5121. *(Telephone Device for the Deaf)

Documents pertinent to this proposal may be examined at the San Juan Resource Area Office during the business hours from 7:45 a.m. to 4:30 p.m. MST, Monday through Friday.

Dated: September 5, 1995.

Donald R. Glaser,

State Director, Colorado.

[FR Doc. 95–22917 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–JB–M

Resource Advisory Councils, Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils—Notice of Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Department of the Interior, Bureau of Land Management (BLM), has established Resource Advisory Councils for the States of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming.

The Councils are: Alaska, Alaska Resource Advisory Council; Arizona, Arizona Resource Advisory Council; California, Bakersfield Resource Advisory Council, Susanville Resource Advisory Council, and Ukiah Resource Advisory Council; Colorado, Front Range Resource Advisory Council, Northwest Resource Advisory Council, and Southwest Resource Advisory Council; Idaho, Lower Snake River Resource Advisory Council, Upper Columbia-Salmon/Clearwater Resource Advisory Council, and Upper Snake River Resource Advisory Council; Montana/North and South Dakota, Butte Resource Advisory Council, Lewistown Resource Advisory Council, Miles City Resource Advisory Council, and Dakotas Resource Advisory Council; Nevada, Mojave-Southern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Sierra Front-Northwestern Great Basin Resource Advisory Council; New Mexico, New Mexico Resource Advisory Council; Oregon/Washington, John Day-Snake Resource Advisory Council, Southeast Oregon Resource Advisory Council, and Eastern Washington Resource Advisory Council; Utah, Utah Resource Advisory Council; and Wyoming, Wyoming Resource Advisory Council.

These Councils will provide representative counsel and advice to BLM on the planning and management of the public lands. Members of these Councils are appointed by the Secretary of the Interior.

Concurrent meetings of the Councils will be held on September 21–22, 1995. The agenda for each meeting includes Council orientation, prioritization of new business for consideration by each Council, election of Council officers and decisions on other operational issues, discussion of new business, and a meeting evaluation.

All meetings are open to the public. The public may present written

comments to any Council. Each Council meeting will also have time allocated for hearing public comments. The public comment period for each meeting is also listed below. Depending on the number of persons wishing to comment and the time available, the time for individual comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the External Affairs Office of the appropriate BLM State Office listed below. Seating at meetings will be on a first-come basis.

The times and locations of the meetings are as follows:

Alaska

Alaska Resource Advisory Council, Anchorage Hilton Hotel, 500 West 3rd Avenue, Anchorage, AK; 9/21 start time 8 a.m.; 9/22 start time 9 a.m.; public comments 9/22 at 1:30 p.m.

For additional information, contact the Alaska State Office, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599, telephone 907–271–5555.

Arizona

Arizona Resource Advisory Council, National Training Center, 9828 North 31st Avenue, Phoenix, AZ; 9/21 start time 8 a.m.; 9/22 start time 8 a.m.; public comments 9/22 at 1 p.m.

For additional information, contact the Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85014–6563, telephone 602–650–0504.

California

Bakersfield District Resource Advisory Council, Holiday Inn Select, 801 Truxtun Avenue, Bakersfield, CA; 9/21 start time 8 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 1 p.m.

California Desert District Resource Advisory Council, BLM California Desert District Office, 6221 Box Springs Boulevard, Riverside, CA; 9/21 start time 8 a.m. (NOTE—this is a 1-day meeting); public comments 9/21 at 11:30 a.m.

Susanville District Resource Advisory Council, Lassen County Office of Education, 472–013 Johnstonville Road, Susanville, CA; 9/21 start time 8 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 1 p.m.

Ukiah District Resource Advisory Council, BLM Ukiah District Office, 2550 North State Street, Ukiah, CA; 9/21 start time 8 a.m.; 9/22 start time 8:30 a.m.; public comments 9/21 at 1 p.m.

For additional information, contact the California State Office, 2800 Cottage Way, E–2841, Sacramento, California 95825–1889, telephone 916–979–2835.

Colorado

Northwest Colorado Resource Advisory Council, Howard Johnson's 750 Horizon Drive, Grand Junction, CO; 9/21 start time 9 a.m.; 9/22 start time 8 a.m.; public comments 9/21 at 4 p.m., 9/22 at 2 p.m.

Southwest Colorado Resource Advisory Council, BLM Montrose District Office, 2465 South Townsend, Montrose, CO; 9/21 start time 9:30 a.m.; 9.22 start time 9 a.m.; public comments 9/21 at 3:30 p.m.

Front Range Resource Advisory Council, Pikes Peak Community College, Corporate Workforce and Economic Development Center, 100 W. Pikes Peak Avenue, Colorado Springs, CO; 9/21 start time 9 a.m.; 9/22 start time 8:30 a.m.; public comments 9/21 at 4 p.m.

For additional information, contact the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, telephone 303–239–3671.

Idaho

Lower Snake River Resource Advisory Council, 9/21 at Boise State University, Micron Technology Center, 1910 University Drive, Boise, ID, until the Noon break; beginning at 2 p.m., 9/21, and for the remainder of the meeting, the Council will convene at the National Interagency Fire Center, 3833 S. Development Avenue, Boise, ID; 9/21 start time 9 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 1 p.m.

Upper Columbia-Salmon/Clearwater Resource Advisory Council, 9/21 at Idaho Panhandle National Forest Supervisor's Office, 3815 Schreiber Way, Coeur d'Alene, ID, until the Noon break; beginning at 1 p.m., 9/21, and for the remainder of the meeting, the Council will convene at the BLM Coeur d'Alene District Office, 1808 N. Third Street, Coeur d'Alene, ID; 9/21 start time 8 a.m.; 9/22 start time 8 a.m.; public comment 9/22 at 10:30 a.m.

Upper Snake River Resource Advisory Council, BLM Idaho Falls District Office, 1405 Hollipark Drive, Idaho Falls, ID; 9/21 start time 9 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 2:15 p.m.

For additional information, contact the Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, telephone 208–384–3013.

Montana

Lewiston District Resource Advisory Council, Lewistown Elks Club, Country Club Road, Lewistown, MT; 9/21 start time 8 a.m.; 9/22 start time 8 a.m.; public comments 9/22 at 3 p.m.

Miles City District Resource Advisory Council, 9/21 at Miles Community College, 2600 Dickinson, Miles City, MT, until the Noon break; beginning after lunch 9/21 and for the remainder of the meeting, the Council will convene at the BLM Miles City District Office, Garryowen Road, west of Miles City, MT; 9/21 start time 9:30 a.m.; 9/22 start time 8 a.m.; public comments 9/22 at 2 p.m.

Butte District Resource Advisory Council, Montana Tech of the University of Montana, Big Butte/Highlands Rooms, Student Union Building, 1300 W. Park Street, Butte, MT; 9/21 start time 9 a.m.; 9/22 start time 9 a.m.; public comments 9/22 at 1 p.m.

For additional information, contact the Montana State Office, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800, telephone 406–255–2913.

North Dakota

Dakotas District Resource Advisory Council, 9/21 at Consolidated Telephone Cooperative, 507 South Main Street, Dickinson, ND, until the Noon break; beginning at 1:30 p.m., 9/21, and for the remainder of the meeting, the Council will convene at the Gate City Federal Savings Bank, 204 Sims Street, Dickinson, ND, 9/21 start time 8 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 2 p.m.

Nevada

Sierra front/Northwestern Great Basin Resource Advisory Council, BLM Nevada State Office, 850 Harvard Way, Reno, NV; 9/21 start time 8:30 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 2 p.m.

Mojave/Southern Great Basin Resource Advisory Council, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, NV; 9/21 start time 8:30 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 2 p.m.

For additional information, contact the Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520–0006, telephone 702–785–6586.

New Mexico

New Mexico Resource Advisory Council, USDA Resource Conservation Building, 6200 Jefferson Street, N.E., Albuquerque, NM; 9/21 start time 8:30 a.m.; 9/22 start time 8:30 a.m.; public comments 9/22 at 9:30 a.m.

For additional information, contact the New Mexico State Office, 1474 Rodeo Drive, P.O. Box 27115, Santa Fe,

New Mexico 87502–0115, telephone 505–438–7514.

Oregon

Eastern Washington Resource Advisory Council, Southeastern Oregon Resource Advisory Council, and John Day-Snake Resource Advisory Council, Eastern Oregon State College, 1410 L Avenue, LaGrande, OR; 9/21 start time 8 a.m.; 9/22 start time 8 a.m.; public comments 9/21 at 3:30 p.m.

For additional information, contact the Oregon State Office, 1515 S.W. 5th Avenue, P.O. Box 2965, Portland, Oregon 97208–2965, telephone 503–952–6031.

Utah

Utah Resource Advisory Council, Salt Lake Community College, Calvin Hampton Technology Building, Room 325, 4600 South Redwood Road, Salt Lake City, UT; 9/21 start time 9 a.m.; 9/22 start time 8 a.m.; public comments 9/22 at 11 a.m.

For additional information, contact the Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303, telephone 801–539–4021.

Wyoming

Wyoming Resource Advisory Council, Conference Complex of the Laramie County Community College, 1400 East College Drive, Cheyenne, WY; 9/21 start time 9 a.m. (NOTE—this is a 1-day meeting); public comments 9/21 at 4:30 p.m.

For additional information, contact the Wyoming State Office, 2515 Warren Avenue, Cheyenne Wyoming 82003, telephone 307–775–6011.

FOR FURTHER INFORMATION CONTACT: Chris Wood, Policy Analyst, Office of the Assistant Director for Resource Assessment and Planning, Bureau of Land Management, Room 5558, U.S. Department of the Interior, Washington, DC 20240, telephone (202) 208–7013, or Beverly Davis, Regulatory Management Team, Bureau of Land Management, Room 5617, U.S. Department of the Interior, Washington, DC 20240, telephone (202) 208–4864.

SUPPLEMENTARY INFORMATION: The purpose of the Councils is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands. The Councils' responsibilities include providing advice to BLM regarding the preparation, amendment, and implementation of land use plans; providing advice on long-range planning and establishing resource management priorities; and assisting the BLM to identify State or regional standards for ecological health and guidelines for grazing.

Council members represent various industries and interests concerned with the management, protection, and utilization of the public lands. These include (a) holders of Federal grazing permits and representatives of energy and mining development, the timber industry, rights-of-way interests, off-road vehicle use, and developed recreation; (b) representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups; and (c) representatives of State and local government, Native American tribes, academia involved in the natural sciences, and the public at large.

Membership includes individuals who have expertise, education, training, or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the respective Councils.

Dated signed: September 12, 1995.

Bruce Babbit,

Secretary of the Interior

[FR Doc. 95–229994 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–84–M

[NV–930–1430–01; N–42773]

Termination of Segregative Effect and Opening Order for Relinquishment of Airport Lease, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of Airport Lease N–42773 in its entirety, and opens the land to appropriation under the public land laws, including mineral leasing laws, material disposal laws, and general mining laws, subject to valid existing rights.

EFFECTIVE DATE: September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Bureau of Land Management, Winnemucca District Office, 705 E. 4th St., Winnemucca, NV 89445 (702) 623–1500.

SUPPLEMENTARY INFORMATION: On October 29, 1985, the public lands described below were segregated from all other forms of appropriation pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214) as amended by the Act of August 16, 1941 (55 Stat. 621).

Mount Diablo Meridian, Nevada

T. 44 N., R. 34 E.,

Sec. 18, E½W½.

The area described contains 20.66 acres more or less in Humboldt County.

On June 11, 1986, the subject lands were leased to the Humboldt Hunting Club in Kings River Valley for a period of 20 years. On March 28, 1994, the Humboldt Hunting Club submitted a notice of their intent to relinquish lease N–42773. On July 11, 1995 their relinquishment of Airport Lease N–42773, was accepted by the Bureau of Land Management. The segregation no longer serves any purpose.

At 7:30 a.m. on September 15, 1995 the above described land will become open to the operation of the general public land laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules and regulations. The above described lands will become open to the mineral leasing laws, material disposal laws, and location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 8, 1995.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 95–22912 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–HC–P

[AZ–026–05–5440–10–A132; AZA–29170]

Realty Action; Noncompetitive Sale of Public Lands in Pima County, Arizona; Correction

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction.

SUMMARY: In notice document 95–21078 on page 44042 in the issue of Thursday, August 24, 1995, make the following addition. The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the effective date of segregation (August 24, 1995), whichever occurs first.

Dated: September 6, 1995.

David J. Miller,

Associate District Manager.

[FR Doc. 95–22914 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–33–P

(NM–010–1430–01; NMNM 93823)

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 2,937.67 acres of public and non-public lands in Taos and Rio Arriba Counties to protect the riparian, scenic, and recreational values of the Embudo Canyon ACEC. This notice closes the land for up to 2 years from surface entry and mining.

DATES: Comments and requests for a public meeting must be received by December 14, 1995.

ADDRESS: Comments and meeting requests should be sent to the Albuquerque District Manager, BLM, 435 Montano Road N.E., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto, BLM, Taos Resource Area Office, (505) 758–8851.

SUPPLEMENTARY INFORMATION: On August 17, 1995, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land and non-public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 22 N., R. 10 E.,
  Sec. 1, NE¼.
T. 22 N., R. 11 E.,
  Sec. 5, lots 2 to 4, inclusive, NW¼, and N½SW¼;
  Sec. 6, N½.
T. 23 N., R. 10 E.,
  Sec. 36, S½NE¼ and SE¼.
T. 23 N., R. 11 E.,
  Sec. 27, lots 7 and 8, and SW¼;
  Sec. 28, S½S½;
  Sec. 29, S½SE¼;
  Sec. 31, S½;
  Sec. 32;
  Sec. 33, N½ and NW¼SW¼;
  Sec. 34, lot 5 and NW¼.

The area described, including both public and nonpublic lands, aggregate 2,937.67 acres in Taos and Rio Arriba Counties.

The purpose of the proposed withdrawal is to protect the riparian, scenic, and recreational values of the Embudo Canyon Area of Critical Environmental Concern.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meetings.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: August 30, 1995.

Sue E. Richardson,

Acting District Manager.

[FR Doc. 95–22920 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–FB–P

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting Reclamation's clearance officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to Reclamation's clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1006–****), Washington, DC 20503, telephone 202–395–7340.

Title: Power Management Laboratory's Voluntary Customer Satisfaction Surveys: Implementation of Executive Order 12862.

OMB approval number: 1006–****.

Abstract: The Department of the Interior selected the Bureau of Reclamation to conduct a Power Management Laboratory, as a part of the National Performance Review, to provide ways to improve Reclamation's power program. One component will be voluntary customer satisfaction surveys conducted to obtain customer opinions, concerns, expectations, and evaluations specific to its power program.

Bureau form number: None.

Frequency: One time.

Description of respondents: Power Marketing Administrations (e.g., Bonneville Power Administration and Western Area Power Administration), preference power customers, environmental community, electric utility systems, reliability councils, project use power users, Federal and State agencies, and the general public.

Estimated completion time: 15 minutes.

Annual responses: 1,200.

Annual burden hours: 300.

Reclamation clearance officer: Marilyn Rehfeld, 303–236–0305, extension 459.

Dated: July 27, 1995.

Larry Schulz,

Acting Leader, Property and Office Services.

[FR Doc. 95–22913 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–94–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Cave Crayfish (Cambarus aculabrum) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Cave crayfish (*Cambarus aculabrum*). The cave crayfish is only known from two cave streams in Benton County, northwest Arkansas. One of the caves (Logan) is federally owned as part of the National Wildlife Refuge System while the other cave (Bear Hollow) is privately owned. The surrounding watershed and recharge area of both caves is in private ownership. This species is listed as endangered without critical habitat. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 30, 1995, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Jacobson at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is *Cambarus aculabrum*. This cave crayfish inhabits streams and pools located in two Ozarkian solution channels (caves) in the Mississippian cherty-limestone Boone Formation of Benton county, Arkansas. Cave crayfish (troglobites) are highly specialized for living in stable cave environments with low light and low temperatures and as such are unable to cope with changes in their habitats that may be induced by human activities. The cave crayfish was listed as endangered in 1993 due to its limited distribution, with only two known populations containing a small number of individuals; its limited reproductive potential; the potential for take by humans; and threat of water quality degradation.

The objective of this proposed plan is reclassification of the cave crayfish to threatened status. Reclassification will be considered when the two known populations are self-sustaining and are protected to the degree that they are secure from present or foreseeable threats. Actions needed to reach this goal include: (1) protecting populations and habitat, (2) educating the public on sensitivity of groundwater and fauna to pollution, (3) monitoring populations and habitat, including water quality, (4) searching for additional populations, (5) studying species biology, and (6) monitoring and studying troglophilic competitors and predators (non-obligate cave inhabitants).

This Plan is being submitted for agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 11, 1995.

Paul Hartfield,

Acting Field Supervisor.

[FR Doc. 95–22952 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–55–M

Notice to Extend the Public Comment Period for the Draft Environmental Impact Statement on the Proposed Water Rights Acquisition for Lahontan Valley Wetlands, Churchill County, Nevada

AGENCIES: U.S. Fish and Wildlife Service (lead agency); Nevada Division of Wildlife, U.S. Bureau of Reclamation, U.S. Bureau of Indian Affairs, U.S. Bureau of Land Management, U.S. Natural Resources Conservation Service, Naval Air Station—Fallon, Fallon Paiute-Shoshone Tribes, and Churchill County, Nevada (cooperators).

ACTION: Notice to extend the public comment period.

SUMMARY: This notice advises the public that the public comment period has been extended for an additional 30 days for the Draft Environmental Impact Statement (EIS) for Water Rights acquisition for Lahontan Valley Wetlands, Churchill County, Nevada.

DATES: Public comments on the Draft EIS are requested by October 20, 1995. This 30-day extension of the comment period provides the public a 90-day review period for the Draft EIS.

ADDRESSES: Written comments should be addressed to:

Project Leader, Stillwater National Wildlife Refuge, P.O. Box 1236, Fallon, NV 89407.

Copies of the Draft EIS may be inspected at the following locations:

Stillwater National Wildlife Refuge, 1000 Auction Road, Fallon, NV 89406
U.S. Fish and Wildlife Service, Refuge and Wildlife, 911 N.E. 11th Avenue, Portland, OR 97232
Churchill County Public Library, 553 South Maine St., Fallon, NV 89406
Nevada State Library and Archives, Reference Desk, 100 Stewart Street, Carson City, NV 89701
Reno Branch, Washoe County Public Library, 301 S. Center Street, Reno, NV 89501.

FOR FURTHER INFORMATION CONTACT:

Ron Anglin, Project Leader, or Gary Shellhorn, Stillwater National Wildlife Refuge, P.O. Box 1236, Fallon, NV 89407, (702) 423–5128.

Individuals desiring a copy of the draft EIS for review should immediately contact the above individuals. Copies have been sent to agencies and individuals who participated in the scoping process and to those people that requested to be added to the mailing list.

Dated: September 1, 1995.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 95–22456 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Santa Rosa Island Resources Management Plan; Channel Islands National Park, California; Intent to Prepare an Environmental Impact Statement

Summary: The National Park Service will prepare a Santa Rosa Island Resources Management Plan/Environmental Impact Statement (SRI–RMP/EIS) for Santa Rosa Island, Channel Islands National Park, California and is initiating the scoping process for this project. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

Background

This planning effort is intended to supplement and expand upon the parkwide Resources Management Plan, which was approved in 1994 and focused primarily on research, inventory/monitoring, and project needs. The primary objective of the current planning process is to prepare an RMP/EIS specific to Santa Rosa Island which analyzes and selects management actions to accomplish three primary objectives: (1) To conserve and restore rare plant and animal species, as well as the habitats upon which they depend, (2) to ensure that non-native plant species will not threaten restoration of rare species and their habitats, and (3) to ensure that management of non-native ungulates (e.g., cattle, deer, elk, horses) and island infrastructure (e.g., roads and culverts) will protect or recover riparian habitat and water quality sufficiently to ensure compliance with the Clean Water Act. In addition, since Santa Rosa Island has yet to be reviewed for suitability as wilderness (pursuant to the Wilderness Act and Public Law 96–199), all proposed management actions will be evaluated in terms of their impact on wilderness suitability.

Supplementary Information: Persons wishing to express concerns or provide information on the above management issues and proposed future management direction of Santa Rosa Island, Channel Islands National Park may address these to the Superintendent, Channel Islands National Park, 1901 Spinnaker, Ventura, California 93001. Public scoping sessions will be scheduled and additional information given via press release and notices distributed to area libraries. The first scoping session will be held in Fall, 1995 in Ventura, California. Questions or comments regarding this Notice of Intent or the final schedule and location of scoping sessions should be addressed to the Superintendent, either by mail or by telephone at 805/658–5700.

The responsible official is Stanley T. Albright, Field Director, Pacific West Area, National Park Service. The draft SRI–RMP/EIS is expected to be available for public review in Winter-Spring 1995–96.

Dated: September 1, 1995.

Stephen G. Crabtree,

Acting Field Director, Pacific West Area.

[FR Doc. 95–22941 Filed 9–15–95; 8:45 am]

BILLING CODE 4310–70–P

Record of Decision for the General Management Plan/Final Environmental Impact Statement, Lake Chelan National Recreation Area, Washington

ACTION: Ntoice of Approval of Record Decision.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality in 40 CFR 1505.2, the National Park Service has approved the Record of Decision for the General Management Plan/Final Environmental Impact Statement for Lake Chelan National Recreation Area, Washington. The National Park Service will implement the proposed action as described in the Final Impact Statement.

DATES: The Record of Decision was recommended by the Superintendent of North Cascades National Park Service Complex, concurred by the Deputy Field Director, Pacific West Area, and approved by the Field Director, Pacific West Area, on August 30, 1995.

ADDRESSES: Inquiries regarding the Record of Decision or the Environmental Impact Statement should be submitted to the Superintendent, North Cascades National Park Service Complex, 2105 Highway 20, Sedro Woolley, WA 98284–9314; telephone: (360) 856–5700.

SUPPLEMENTARY INFORMATION: The text of the Record of Decision follows: The Department of the Interior, National Park Service, has prepared this Record of Decision on the Final Environmental Impact Statement (EIS) for the General Management Plan for Lake Chelan National Recreation Area, Washington. This Record of Decision is a statement of the decision made, the background of the project, other alternatives considered, the basis for the decision, the environmentally preferable alternative, measures to minimize environmental harm, and public involvement in the decision making process.

Decision (Selected Action)

The National Park Service will implement the proposed action as described in the Final Environmental Impact Statement.

The National Park Service will manage visitor and resident use of the recreation area's resources in order to preserve the natural, scenic and cultural values of the area. The rustic setting of Lake Chelan National Recreation Area will be part of the transition from the downlake, primarily recreational and residential setting, to the wild and natural North Cascades National Park.

The National Park Service will not manipulate the Stehekin river or its tributaries except to protect public roads and bridges. Woody debris could be trimmed or turned in the lower 9 miles of the Stehekin River to allow safer recreational use of the river for rafting, kayaking, and canoeing if it did not alter the function or stability of woody debris accumulations and was permitted by the appropriate regulatory agency. The Park Service will not remove woody debris from the river system except to protect public roads and bridges. The Park Service will discourage private landowners from manipulating the Stehekin River or removing woody debris. The active sand, rock, and gravel borrow pit will be maintained at less than or equal to its current size; no new borrow pits will be opened, and abandoned borrow pits will be restored. Gravel will be sold to the public at fair market value, with restrictions.

Fire suppression, prescribed natural fire, management-ignited prescribed fire, and selective manual fuel reductions will be used to improve wildland fire protection for human life and property and to manage for late-succession stage in ponderosa pine/Douglas fir forest. The practice of woodlot cutting for firewood will be phased out. When available, firewood will be provided from administrative sources, at fair market value.

The Golden West Lodge and the High Bridge Historic District will be rehabilitated and the Buckner homestead and orchard will be preserved. The airstrip will be operated under a special use permit with the Washington State Department of Transportation for private, noncommercial use. Some NPS and concession housing, maintenance, and related facilities will be consolidated beside the airstrip.

The Stehekin Valley road between the Landing and Harlequin Bridge will remain a two-lane paved road; from Harlequin Bridge to 9-Mile, it will become a single-lane, paved road with pullouts; from 9-Mile to High Bridge, a single-lane, gravel road; and from High Bridge to Cottonwood, a high-clearance, shuttle vehicle road. Unconstrained private vehicle use will end at High Bridge. Private vehicle use from High Bridge to Bridge Creek will be allowed, but traffic flow will be regulated. Public shuttle service will be provided from the Landing to Cottonwood. Only the public shuttle service, hikers, horses, and bicycles will be allowed from Bridge Creek to Cottonwood. Company Creek road will be maintained in its current alignment, and will be protected from river erosion at two locations. Stehekin Landing will be redesigned to improve visitor flow and parking, and to relocate lodging and other facilities away from geohazards. The current capacity of concession services for food and lodging will increase somewhat.

Land protection will emphasize high flood influence areas, wetlands, riparian areas, and high visual sensitivity areas.

Background of the Project

Preparation of the EIS was required by a consent decree entered in U.S. District Court, Western District of Washington, on April 22, 1991. The consent decree specified actions for resolving the dispute between the plaintiff, North Cascades Conservation Council, and defendants in the U.S. Department of the Interior. The consent decree resulted from a law suit filed by the North Cascades Conservation Council (Civil Case No. C–89–1342D). This Record of Decision is the last necessary action under the National Environmental Policy Act regulations regarding the consent decree.

Other Alternatives Considered

Four other alternatives to the selected action were considered. Under the no action alternative, the recreation area would be a rural resort community where resources are used, within limits, by an expanding residential presence. This alternative was the 1988 General Management Plan and supporting implementation plans.

Under alternative A, the area would be a wild, natural area where resources and natural processes would be largely undisturbed; natural forces would be allowed to slowly remove evidence of human occupation. The Stehekin River would not be manipulated, mining gravel would not be allowed, prescribed fire would be used to manage wildland fire risk, select cultural properties would be protected, the airstrip closed, and all roads restored to natural conditions as private property was acquired.

Under alternative B, the area would be a rural, woodland gateway to the North Cascades; use of resources by visitors and residents would be limited in order to preserve natural, scenic, and cultural values. Some river manipulation would be allowed, mining gravel would not be allowed, wildland fire protection and cultural resource management would be similar to the selected action, the airstrip closed, and roads would be similar in character to existing conditions.

Under alternative C, the area would be a retreat/refuge/resort where resources and natural processes are showcased for the enjoyment of visitors. All existing public and private improvements would be protected from river erosion, gravel mining would be maintained and expanded if necessary, wildland fire protection would be augmented using selective manual thinning, all cultural properties would be rehabilitated or preserved, the airstrip used for emergency landings only, and roads would be similar in character to existing conditions.

Basis for Decision

As presented in the final EIS, the National Park Service's management objectives are numerous. Twenty seven individual objectives are identified, from natural resource management to land use and development. After evaluation of public comments on the alternatives presented in the draft EIS, the selected action best balances the statutory mission of the National Park Service to provide long term resource preservation while allowing for appropriate levels of visitor use and appropriate means of visitor enjoyment. The selected action provides for projected growth in visitation through the year 2007, while complying with provisions of law under the Endangered Species Act, National Historic Preservation Act, and Wilderness Act; policies of the National Park Service; the recreation area's purpose based on its enabling legislation; constraints imposed on the area's management under the same legislation; and the protection of its significant resources.

Environmentally Preferable Alternative

A Record of Decision must identify the environmentally preferable alternative, which is that alternative which causes the least damage to the biological environment, and that best protects, preserves, and enhances resources. With its emphasis on preservation of the natural ecosystem of the valley, alternative A is the environmentally preferable alternative.

Measures to Minimize Environmental Harm

All practicable measures to avoid or minimize environmental impacts that could result from implementation of the selected action have been identified and incorporated into the selected action. These include protection of high flood influence areas, wetlands, riparian areas, and high visual sensitivity areas; protection of threatened, endangered and rare species; protection of properties eligible for listing on the National Register of Historic Places; and the restoration of wetlands, disturbed sites in the river corridor, abandoned gravel pits, woodlots, old fairways, and road segments. The NPS would not manipulate natural river dynamics except, under certain conditions, to protect roads and bridges.

Additional mitigating measures are identified in the implementation plans associated with the EIS. The implementation plans completed or amended in this EIS are the Sand, Rock, and Gravel Plan; Forest Fuel Reduction / Firewood Management Plan; Wilderness Management Plan; Transportation Plan; Stehekin Landing and Valley Development Concept Plans; and the Land Protection Plan. The environmental impacts of these plans were presented in the final EIS, by impact topic, on pages 274 through 315. Impacts from these plans are incorporated into the impact analysis sections for each of the 13 impact topics. A range of management options for each of the implementation plans was integrated into each of the five alternatives considered in the EIS.

Mitigating and monitoring measures in the implementation plan follow.

Sand, Rock, and Gravel Plan: mining will only occur at the Company Creek borrow pit; this pit will be reclaimed as new mining occurs; sand, rock, and gravel will be conserved and recycled whenever possible; except for emergencies, the use of sand, rock, and gravel from the Company Creek pit will be limited to 1400 cubic yards per year—1200 cubic yards for NPS use and 200 cubic yards for private use; material beyond this limit or for new construction will be imported; material will be used only for maintenance activities listed in the plan; the reclaimed portions of the pit will be topsoiled, fertilized, seeded, and planted with plant stocks indigenous to Stehekin; the working face of the pit will be temporarily covered with native grasses; the pit will be monitored before, during, and after active mining operations to identify sensitive resources, to ensure that operations minimize impacts, and to see that reclamation goals are met; the Rainbow Creek gravel pit will be actively reclaimed including topographic restoration, surface erosion control, nonnative species control, soil building, revegetation, plant irrigation, and monitoring; continued natural recovery at all other abandoned pits will be monitored.

Forest Fuel Reduction/Firewood Management Plan: data from forest stand examinations in the forest fuel reduction areas, and in control plots, will be used as baseline information for monitoring forest changes through time; thirteen attributes, as identified in the plan, will be monitored using the NPS's Fire Monitoring Handbook in order to document the effects of manual thinning and firewood administration activities; except for two transitional woodcutter areas, no woodcutting or manual thinning will occur within any forest fuel reduction area until monitoring plots are established and measured; program effectiveness will be reviewed every five years; during woodcutting, soil compaction will be minimized by limiting skid trails, not allowing vehicle access by woodcutters, and hand raking tire/track ruts; stumps will be flush-cut and slash placed over them; the existing harvested woodlots, and associated access roads, will be rehabilitated; the Stehekin Landing, after mistletoe control and hazard fuel reduction work, will also be rehabilitated; as manual thinning is completed, old roads and log decks will be closed and rehabilitated including eight old road segments; revegetation will include mechanical ripping and recontouring soil, adding mulch, and scattering native plant seeds, litter, and coarse woody debris; if significant revegetation is not observed within five years, native seedlings may be planted.

Wilderness Management Plan: the maximum backcountry party size in the NRA is six pairs of eyes (human or stock) in crosscountry areas, and 12 pairs of eyes otherwise; the existing commercial stock user may exceed this limit at historic levels (up to 30 pairs of eyes, four to six times per year); no oversized parties are allowed at Juanita Lake camp (12 pairs of eyes maximum); open campfires and gathering firewood in subalpine zones (and some other sensitive areas) is prohibited; grazing in the NRA is permitted only at three areas currently used—Rainbow Meadow, Hidden Lake, and Juanita Lake basin; grazing is prohibited within 0.25 mile of Juanita Lake; all grazing will be regulated by monitoring soil moisture conditions, and will be restricted to the dry period of the summer which generally begins about July 15th; otherwise, only certified, weed-free, processed feed is allowed.

Transportation Plan: between Harlequin Bridge and 9-Mile, the road will be paved and reduced to a single-lane (12–14 feet wide) with pullouts; the sides of gravel roads that have become excessively wide will be rehabilitated; unconstrained private vehicle use will end at High Bridge; private vehicle use from High Bridge to Bridge Creek will be regulated by season an/or hour of day; only the public shuttle service, hikers, horses, and bicycles will be allowed to use the road from Bridge Creek to Cottonwood; the road from High Bridge to Cottonwood will be maintained to sustain heavy-duty, high-clearance shuttle vehicles; erosion control systems along the upper Company Creek road will be removed and replaced, designed to keep the road from eroding during frequently recurring flood events (i.e., 10- to 25-year recurrence interval), and will be made from rock, soil, and native vegetation; public roads will be protected in active river erosion zones only if (1) there are no feasible alternatives, (2) funds are available, (3) the actions will have less impacts than other alternatives, and (4) the action are permitted by county, state, and other federal agencies; snowmobile use will be limited to existing roads below High Bridge; the airstrip will be retained and operated under a special use permit for noncommercial public use on a "use at your own risk" basis; the Washington State Department of Transportation, Aeronautics Division (the Division) will keep the airstrip and approaches equipped and maintained in accordance with requirements for state-operated emergency airstrips; there will be no expansion of the permitted area beyond that identified in the current permit; camping will not be permitted within the permit area; the Division will be required to prepare a plan and conduct noxious weed control measures within the area under permit, as approved by the NPS; an annual maintenance and operating plan will be prepared by the Division and submitted for review and approval by the NPS.

Stehekin Landing and Valley Development Concept Plan: the "outpost community" image of the area will be encouraged using the Architectural Character Guidelines; the Golden West Lodge and High Bridge Historic District will be rehabilitated following the Secretary of the Interior Standards for the Treatment of Historic Properties; the Buckner homestead and orchard will be preserved, and items associated with the farming operation will be restored on a priority basis, if owned by the NPS; the genetic stock of the Buckner orchard will be maintained; the natural character of public lands within 200 feet of the lake and river shoreline will be restored; NPS structures will be removed from the shoreline, where appropriate, and no new NPS structures will be constructed on the shoreline; the "fairways" will be restored to natural conditions as appropriate; all abandoned vehicles will be removed from public lands; unnecessary powerlines will be removed and all others will be buried where appropriate, especially in areas with high visitor use; some campsites at Weaver Point Campground will be moved back from the shoreline; at the Landing, as the useful lives of existing structures are approached, new lodging facilities, grocery, and post office will be built away from geohazards, and existing facilities will be demolished and their sites restored; the current NPS headquarters building will be removed; the NPS will provide boat sewage disposal at no cost; visitors will be encouraged to use nonmotorized transportation through rental services.

Land Protection Plan: incompatible uses of private property are (1) any subdivision of land that was not in effect prior to this Record of Decision, except as permitted through the Chelan County Subdivision Regulations and as consistent with Chelan County health standards, (2) the siting or construction of any building in an identified high flood influence area, wetland, riparian area, or highly unstable area, e.g., slopes greater than 20%, where potential impacts cannot be confined to the specific private ownership, (3) any dredging or filing of Lake Chelan or the Stehekin River without full compliance with the U.S. Army Corps of Engineers permitting process and/or appropriate authorization from the state, (4) the cutting of timber for sale or transport outside the Stehekin valley, (5) the cutting of timber by any means other than selective tree harvesting except as required by Washington State Department of Natural Resources regulations, and (6) the mining of sand, rock, or gravel for sale or transport outside the Stehekin valley; the NPS will not site any new building or structure in (1) the 100-year floodplain, unless used for nonhuman occupancy and with conditions on specific uses or mitigation, (2) wetland soils, and those soils not conducive to building foundations, leachfield percolation, or

site drainage, (3) geohazard areas, (4) areas with slopes greater than 20% and (5) areas of high visual sensitivity, except where specific design mitigation can successfully be used; ensure that applicable laws and policies of the state of Washington are followed, including health and safety regulations and Washington Growth Management Act provisions; continue willing buyer/willing seller acquisitions for properties with areas that have a high priority for resource protection, or for which public needs have been identified; emphasize opportunities for easement purchases and other less-than-fee interests for resource protection and public use.

The conclusion on impacts to the northern spotted owl in the final EIS is modified by this Record of Decision. After formal consultation with the U.S. Fish and Wildlife Service (FWS), it is the biological opinion of the FWS that the impacts from the General Management Plan for Lake Chelan NRA are not likely to jeopardize the continued existence of the threatened northern spotted owl. Incidental take of one pair of spotted owls or resident single owl is anticipated. The FWS concurs with the NPS determinations that the General Management Plan for Lake Chelan NRA will have "no effect" on the bald eagle and peregrine falcon and will "beneficially affect" the gray wolf, and "may affect," but will "not likely" "adversely affect," the grizzly bear.

Public Involvement

Public comment has been requested, considered and incorporated into the planning process during four major planning stages, and has also been considered in numerous other ways. Initial public scoping meetings were held in June 1991, in Stehekin, Chelan and Seattle. Public comment was again requested on the primary data set used in planning in April 1933; in a preliminary alternatives document distributed in May 1993; and in public hearings on the draft EIS in October 1994. Additionally, four newsletters were distributed during the planning process, including an extensive data summary booklet. Consultation was also completed with the U.S. Fish and Wildlife Service, the Advisory Council on Historic Preservation, the Washington State Historic Preservation Office, and Native American tribes.

About 750 copies of the draft EIS were distributed. Written comments were accepted for 60 days, and over 1000 comment letters or testimonies were recorded. Responses to substantive comments on the draft EIS were published in Volume II of the final EIS, distributed in July 1995. All substantive comments were addressed by either providing clarification of information, modifying the test, or directly responding in the final EIS.

Dated: September 7, 1995.

Rory D. Westberg,

Acting Deputy Field Director, Pacific West Area, National Park Service.

[FR Doc. 95–23001 Filed 9–14–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

The following Notice was filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP–102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) MFA Incorporated.

(2) 615 Locust Street, Columbia, MO 65201.

(3) 615 Locust Street, Columbia, MO 65201.

(4) Ann Simpson, 615 Locust Street, Columbia, MO 65201.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23004 Filed 9–14–95; 8:45 am]

BILLING CODE 7035–10–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–24]

Carmencita E. Galloza, M.D.; Revocation of Registration

On March 7, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Carmencita E. Galloza, M.D. (Respondent), of Paintsville, Kentucky. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration, AG9685162, under 21 U.S.C. 824(a) (3), (4) and (5) and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. On April 21, 1995, the Government filed a motion for summary disposition, alleging that Respondent was not authorized to handle controlled substances in the Commonwealth of Kentucky. On May 1, 1995, Respondent responded to the Government's motion, arguing that her medical license had only been temporarily suspended by the Board, and that any action by DEA should be delayed until the Board holds an evidentiary hearing regarding Respondent's medical license.

On May 10, 1995, in her opinion and recommended decision, the administrative law judge granted the Government's motion for summary disposition and recommended that Respondent's DEA Certificate of Registration be revoked and that any pending applications for registration be denied. On May 25, 1995, Respondent filed exceptions to the opinion and recommended decision of the administrative law judge. On June 12, 1994, the administrative law judge transmitted the record to the Deputy Administrator. The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Government's motion for summary disposition alleged that Respondent is not authorized to handle controlled substances in Kentucky. The Government's motion was based on the Kentucky Board of Medical Licensure's January 19, 1995, Order of Temporary

Suspension of Respondent's medical license. The administrative law judge also found that Respondent's response to the Government's motion did not deny that her state license has been temporarily suspended. The administrative law judge therefore concurred with the Government's motion regarding Respondent's lack of state authorization to handle controlled substances in Kentucky.

The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See James H. Nickens, M.D.*, 57 FR 59847 (1992); *Elliott Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

The administrative law judge properly granted the Government's motion for summary disposition. It is well-settled that when no question of fact is involved, or when the facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. *Philip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *Alfred Tennyson Smurthwaite, N.D.*, 43 FR 11873 (1978; *see also, NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *United States v. Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

In her exceptions to the opinion and recommended decision of the administrative law judge, the Respondent argued, *inter alia*, that: her state medical license had been temporarily suspended; DEA does not possess the authority to suspend or revoke Respondent's DEA registration pursuant to 21 U.S.C. 824(a)(3) under the circumstances of this case; and, the administrative law judge exceeded her authority by recommending revocation of Respondent's DEA registration without affording Respondent a hearing.

The Respondent acknowledged in her exceptions that she is temporarily suspended from the practice of medicine in the Commonwealth of Kentucky. The action taken by the Board in suspending Respondent's state license to practice medicine has rendered the Respondent without authorization to handle controlled substances in the jurisdiction in which she maintains her DEA registration. As outlined above, DEA cannot register the Respondent to handle controlled substances without such authority, and therefore, the administrative law judge's recommendations in this matter were appropriate. As a result, the Deputy Administrator finds that there is no need to address the remaining arguments as set forth in Respondent's exceptions.

Moreover, since Respondent is not currently authorized to handle controlled substances in the Commonwealth of Kentucky, it is not necessary to reach a conclusion regarding the other grounds for revocation alleged in the Order to Show Cause. The Deputy Administrator hereby adopts the opinion and recommended decision of the administrative law judge in its entirety.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AG9685162, previously issued to Carmencita E. Gallosa, M.D., be, and it hereby is, revoked, and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective October 16, 1995.

Dated: September 8, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–22921 Filed 9–14–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

Texas

Volume VI

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 8th Day of September 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–22751 Filed 9–14–95; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Pilgrim Nuclear Power Plant; Notice of Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request by Boston Edison Company (the licensee) to withdraw its November 22, 1995, application for an amendment to Facility Operating License No. DRP–35, for the operation of the Pilgrim Nuclear Power Station, located in Plymouth, Massachusetts. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on February 1, 1995, (95 FR 6297).

The purpose of the licensee's amendment request was to revise the Technical Specifications to increase the emergency diesel generator allowed out-of-service time from 72 hours to 7 days.

Subsequently, the licensee informed the staff that the amendment would be integrated with proposed changes to the Containment Cooling System and resubmitted at a later date. Thus, the amendment application is considered to be withdrawn by the licensee.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 8th day of September 1995.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22995 Filed 9–14–95; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2647, Reduction or Waiver of Complete Withdrawal Liability

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget extend approval, under the Paperwork Reduction Act, of the collection of information requirements (1212–0044) contained in its regulation on Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 2647). The effect of this notice is to advise the public of the PBGC's request.

DATES: Th PBGC is requesting that OMB complete action on the PBGC's request by September 29, 1995. Comments must be received by September 25, 1995.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9:00 a.m. and 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's regulation on Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 2647), which is promulgated pursuant to section 4207 of the Employee Retirement Income Security Act of 1974. Section 4208 authorizes the Pension Benefit Guaranty Corporation to promulgate rules for the reduction or elimination of an employer's complete withdrawal liability.

Under the regulation, a contributing employer can apply to a multiemployer plan for a determination that it has met the requirements for abatement of complete withdrawal liability, and a multiemployer plan sponsor can apply to the PBGC for approval of individually-tailored plan rules for abatement of complete withdrawal liability. The PBGC uses information submitted to it to determine whether plan rules satisfy statutory standards.

The PBGC estimates that the total annual burden of the regulation is 125½ hours. Of this total, 125 hours represents 100 employer abatement applications and plan responses and one-half hour represents a submission to the PBGC by one plan sponsor.

Issued at Washington, DC., this 12th day of September, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–23000 Filed 9–14–95; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36207; File No. SR–CBOE–95–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Warrants Based on the CBOE Technology 50 Index

September 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 1, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The CBOE subsequently filed Amendment No. 1 to the proposed rule change on August 2, 1995,[2] Amendment No. 2 on August 3, 1995,[3] and Amendment No. 3 on August 29, 1995.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes list and trade warrants on the CBOE Technology 50 Index ("Tech 50 Index" or "Index"), which the Exchange represents is a broad-based index. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled index warrants based on the Tech 50 Index ("Index Warrants"). On August 29, 1995, the Commission approved the Exchange's proposal to amend its standards for the listing and trading of currency warrants and index warrants ("Generic Warrant Listing Standards").[5] The Exchange states that the listing and trading of warrants based on the Tech 50 Index will comply in all respects with the Generic Warrant Listing Standards.

Index Design

The Exchange represents that the Tech 50 Index is a broad-based index comprised of stocks of 50 of the largest domestic technology companies, representing various industries within that general economic category. The Index was designed by and will be maintained by the CBOE. The Index is price-weighted and reflects changes in the prices of the component stocks relative to the Index base date, January 3, 1995, when the Index was set to an initial level of 200.00.

On August 15, 1995,[6] the 50 stocks in the Index ranged in market capitalization from a low of approximately $829.28 million to a high of approximately $82.47 billion. Total market capitalization for the Index on August 15, 1995, was approximately $578.53 billion. The highest weighted stock in the Index on that date accounted for 5.62% of the weight of the Index and the lowest weighted security in the Index accounted for 0.68% of the weight of the Index. In aggregate, the five highest weighted components on that date accounted for 21.45% of the weight of the Index. Currently, the Exchange represents that all of the component stocks are eligible for the listing of standardized options on the Exchange pursuant to CBOE Rule 5.3.

As of August 15, 1995, the Exchange represents that the industry breakdown for the Index, by weight, was as follows: (1) computer hardware—8.20%; (2) computer software—14.63%; (3) computers systems and services—11.12%; (4) integrated circuit components—10.43%; (5) semiconductors—12.66%; (6) precision instrumentation—3.15%; (7) medical technology—8.74%; (8) network and server systems—10.14%; (9) telecommunication components—12.62%; and (10) telecommunications—8.31%.[7]

Warrant Terms

Index Warrants will be direct obligations of the issuing entity and will be cash-settled in U.S. dollars. Upon exercise (or at the warrant expiration date in the case of warrants with European-style exercise), the holder of an Index Warrant structured as a "put" will receive payment in U.S. dollars to the extent that the value of the Index has declined below a pre-stated cash settlement value. Conversely, upon exercise (or at the warrant expiration date in the case of warrants with European-style exercise), the holder of an Index Warrant structures as a "call" will receive payment in U.S. dollars to the extent that the Index value has increased above a pre-stated cash settlement value. Index Warrants that are out-of-the-money at the time of expiration will expire worthless.

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] As a result of the Commission's approval of the Exchange's Generic Warrant Listing Standards (as defined herein), Amendment No. 1 has been rendered moot.

[3] In Amendment No. 2, as discussed herein, the CBOE amended certain of the objective standards set forth in the section of its proposal entitled "Classification of the Index as Broad-Based." *See* Letter from Timothy Thompson, Senior Attorney, Legal Department, CBOE, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated August 3, 1995 ("Amendment No. 2").

[4] In Amendment No. 3, as discussed herein, the Exchange amended the composition of the Index to, in the Exchange's opinion, provide better balance between the technology industry subsectors represented in the Index. *See* Letter from William Speth, Jr., Senior Research Analyst, Research Department, CBOE, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated August 29, 1995 ("Amendment No. 3").

[5] *See* Securities Exchange Act Release No. 36169 (August 29, 1995).

[6] *See* Amendment No. 3, *supra* note 4.

[7] *Id.*

Maintenance of the Index

The Index will be maintained by the Exchange and will be reviewed monthly.[8] The CBOE may change the composition of the Index at any time to reflect changes affecting the components of the Index or the various technology industry subsectors represented in the Index. If it becomes necessary to remove a stock from the Index (*e.g.*, because of a takeover or merger), the CBOE will take into account the capitalization, liquidity, volatility, and name recognition of any proposed replacement security.[9]

The Exchange intends to maintain the Index with 50 components, however, the Exchange may increase the number of components in the Index by up to 33%, *i.e.*, 66 stocks.[10]

Calculation and Dissemination of the Value of the Index

The Index value will be calculated by the CBOE or its designee on a real-time bases using last-sale prices, and will be publicly disseminated[11] every 15 seconds. If a component stock is not currently being traded, the most recent price at which the stock traded will be used in the Index value calculation. The value of the Index as of the close of trading on July 17, 1995, was 335.10.

The Index is price-weighted and reflects changes in the prices of the component stocks relative to the base date of January 3, 1995, when the Index was set to an initial value of 200.00. Specifically, the Index value is calculated by adding the prices of the component stocks and then dividing this sum by the Index divisor.[12] The Index divisor is adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes that may result in divisor changes include, but are not limited to, stock splits and dividends (other than ordinary cash dividends),[13] spin-offs, certain rights issuances, and mergers and acquisitions.

Classification of the Index as Broad-Based[14]

The CBOE has designed the Index to meet certain objective criteria which it believes are appropriate to classify the Index as broad-based. To ensure that the Index remains representative of a broad spectrum of the various high technology industries and that stocks with low trading volumes are not included in the Index, the Exchange chose the current components and will maintain the Index according to the following guidelines: (1) Each underlying security selected for inclusion in the Index must have an average daily trading volume of at least 75,000 shares during the preceding six months; (2) each underlying security included in the Index must maintain an average daily trading volume of at least 50,000 shares during the preceding six months;[15] (3) no underlying security will represent more than 15% of the total weight of the Index; (4) the five most heavily weighted securities in the Index will not represent more than 40% of the total weight of the Index; (5) the Index will be comprised of at least ten technology industry subsectors representing a total of no less than 50 underlying securities; and (6) at least 75% of the total weight of the Index will be represented by underlying securities that are eligible for the listing of standardized options pursuant to CBOE Rule 5.3. The Exchange will conduct semi-annual reviews of the underlying securities included in the Index to assure that the Index continues to meet the standards set forth above. The Exchange represents that the above guidelines are similar to the requirements set forth in Interpretation .01 to Rule 7.3 of the Pacific Stock Exchange ("PSE") regarding the designation of the PSE's High Technology Index as a broad-based index for purposes of the trading of standardized options.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general and with Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation with persons engaged in facilitating and clearing transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–95–38 and should be submitted by October 6, 1995.

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[8] These reviews are mainly for the purpose of determining whether to make composition changes to the Index. These monthly reviews generally are not for the purpose of applying the proposed objective standards for ensuring that the Index remains broad-based (*see* "Classification of the Index as Broad-Based," *infra*). Telephone conversation among Timothy Thompson, Senior Attorney, Legal Department, CBOE, Eileen Smith, Director, Product Department, Research Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on August 3, 1995 ("August 3 Conversation").

[9] Whenever a new component is added to the Index, the CBOE will apply those objective standards proposed for ensuring that the Index remains broad-based (*see* "Classification of the Index as Broad-Based," *infra*) that could be affected by the addition of a new component security to the Index. Telephone conversation between Timothy Thompson, Senior Attorney, Legal Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on August 4, 1995 ("August 4 Conversation").

[10] The Commission notes that the Exchange will be required to distribute a circular to members notifying them of any change in the components of the Index. Further, if the Exchange determines to maintain the Index with some number of components other than 50, the Exchange will be required to change the name of the Index. In such an event, the Exchange should immediately notify the Commission to determine whether a rule filing pursuant to Section 19(b) of the Act will be required.

[11] *See* August 3 Conversation, *supra* note 8.

[12] As of August 15, 1995, the share prices of the Index components ranged from a high of $158.13 to a low of $19.00. *See* Amendment No. 3, *supra* note 4.

[13] *See* August 3 Conversation, *supra* note 8.

[14] *See* Amendment No. 2, *supra* note 3.

[15] *See* August 4 Conversation, *supra* note 9.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22965 Filed 9–14–95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2810]

Florida; Declaration of Disaster Loan Area

Collier and Lee Counties and the contiguous Counties of Broward, Charlotte, Dade, Glades, Hendry, and Monroe in the State of Florida constitute a disaster area as a result of damages caused by Tropical Storm Jerry which occurred on August 24 and 25, 1995. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on November 3, 1995, and for economic injury until the close of business on June 3, 1996, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 281011 and for economic injury the number is 863500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 1, 1995.

John T. Spotila,

Acting Administrator.

[FR Doc. 95–22963 Filed 9–14–95; 8:45 am]

BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2809]

North Carolina (and Contiguous Counties in South Carolina); Declaration of Disaster Loan Area

Mecklenburg, Orange, and Wake Counties and the contiguous Counties of Alamance, Cabarrus, Caswell, Chatham, Durham, Franklin, Gaston, Granville, Harnett, Iredell, Johnston, Lincoln, Nash, Person, and Union in the State of North Carolina, and Lancaster and York Counties in the State of South Carolina constitute a disaster area as a result of damages caused by Tropical Storm Jerry which occurred on August 26–28, 1995. Applications for loans for physical damages may be filed until the close of business on November 9, 1995 and for economic injury until the close of business on June 6, 1996 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

	Percent
The interest rates are:	
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 280911 for North Carolina and 280811 for South Carolina. For economic injury the numbers are 863400 for North Carolina and 863300 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 8, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–22961 Filed 9–14–95; 8:45 am]

BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2806]

Ohio; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 25, 1995, I find that Champaign, Licking, Logan, Marion, Mercer, Miami, Scioto, and Shelby Counties in the State of Ohio constitute a disaster area due to damages by severe storms and flooding which occurred August 7–18, 1995. Applications for loans for physical damages may be filed until the close of business on October 24, 1995, and for loans for economic injury until the close of business on May 28,1996 at the address listed below:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Auglaize, Clark, Coshocton, Crawford, Darke, Delaware, Fairfield, Franklin, Hardin, Jackson, Knox, Lawrence, Madison, Montgomery, Morrow, Muskingum, Peerry, Pike, Union, Van Wert, and Wyandot Counties in Ohio; Adams and Jay Counties in Indiana; and Greenup and Lewis Counties in Kentucky.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizaitons) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 280606. For economic injury the numbers are 862900 for Ohio, 863000 for Indiana, and 863100 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

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[16] 17 CFR 200.30–3(a)(12) (1994)

Dated: September 1, 1995.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95–22962 Filed 9–14–95; 8:45 am]

BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2808]

South Carolina (and Contiguous Counties in North Carolina); Declaration of Disaster Loan Area

Greenville County and the contiguous Counties of Abbeville, Anderson, Laurens, Pickens, and Spartanburg in the State of South Carolina, and Henderson, Polk, and Transylvania Counties in the State of North Carolina constitute a disaster area as a result of damages caused by Tropical Storm Jerry which occurred on August 26 and 27, 1995. Applications for loans for physical damages may be filed until the close of business on November 3, 1995, and for economic injury until the close of business on June 3, 1996, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 280811 for South Carolina and 280911 for North Carolina. For economic injury the numbers are 863300 for South Carolina and 863400 for North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 1, 1995.

Katherin D. Kincaid,

Acting Administrator.

[FR Doc. 95–22959 Filed 9–14–95; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 99000121]

Conrad/Collins Capital, Ltd.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1995)) by Conrad/Collins Capital, Ltd., Plaza of the Americas, North Tower, 700 North Pearl, Suite 1910, Dallas, Texas 75201, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et seq.), and the rules and regulations promulgated thereunder.

The initial investors and their percentage of ownership of the Applicant are as follows:

	Percentage of ownership
General Partners:	
Conrad/Collins Capital Partners, Ltd., 700 North Pearl, Dallas, Texas 75201	4.8
Limited Partners:	
Douglas A. Smith, 700 North Pearl, Dallas, Texas 75201	38.0
Brian A. Harpster, 700 North Pearl, Dallas Texas 75201	28.6
Edwin W. Ross, 700 North Pearl, Dallas, Texas 75201	19.0
Two other individuals shareholders none of which own more than 10 percent	9.6

Conrad/Collins Capital, Ltd. will be managed by Conrad/Collins Capital Partners, Ltd. which is owned equally by:

	Percentage of ownership
General Partners:	
Barry B. Conrad, 700 North Pearl, Dallas, Texas 75201	50
Floyd W. Collins, 700 North Pearl, Dallas, Texas 75201	50

The applicant will begin operations with a capitalization of $10,500,000 and will be a source of equity capital and long term funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 8, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–22960 Filed 9–14–95; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 165, Working Group 6, High Frequency Data Link (HFDL)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 165, Working Group 6 meeting to be held October 2–3, 1995, starting at 9:30 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Welcome and Introductions; (2) Remarks by the Chairman of Special Committee 165; (3) Remarks by the Chairman of Special Committee 165 Working Group 6; (4) Review of Papers (C/SOIT, AMCP/AHWG, etc.); (5) Feasibility Report Outline; (6) Economic and Institutional Issues; (7) Overnight Assignments; (8) Draft of Feasibility Report; (9) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 11, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–22996 Filed 9–14–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 5, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0058

Form Number: ATF F 5120.25 and ATF F 5120.36

Type of Review: Revision

Title: Application to Establish and Operate Wine Premises

Description: ATF F 5120.25 is the form used to establish the qualifications of an applicant for a wine premises. The applicant certifies the intention to produce and/or store a specified amount of wine and takes certain precautions to protect it from unauthorized use. The bond form is used by the proprietor and a surety company as a contract to ensure the payment of the wine excise tax.

Respondents: Business or other for-profit

Estimated Number of Respondents: 1,720

Estimated Burden Hours Per Respondent: 1 hour

Frequency of Response: On occasion

Estimated Total Reporting Burden: 810 hours

OMB Number: 1512–0144

Form Number: ATF F 2736 (5100.12) and ATF F 2737 (5110.67)

Type of Review: Revision

Title: Specific and Continuing Transportation Bond—Distilled Spirits and/or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six

Description: These bonds protect the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bonds identify the shipment, the parties, the date, and the amount of the bond.

Respondents: Business or other for-profit

Estimated Number of Respondents: 1

Estimated Burden Hours Per Respondent: 1 hour

Frequency of Response: On occasion

Estimated Total Reporting Burden: 1 hour

OMB Number: 1512–0341

Recordkeeping Requirement ID Number: ATF REC 5150/8

Type of Review: Extension

Title: Stills: Notices, Registration, and Records

Description: The information collection requirement is used to account for and regulate the distillation of spirits. As there could be a substantial tax revenue loss that would be incurred through the illegal distillation of spirits, the data collected identifies the manufacturers, vendors, and users of spirits as well as providing an accounting of skills and other apparatus.

Respondents: Business or other for-profit

Estimated Number of Respondents/Recordkeepers: 10

Estimated Burden Hours Per Respondent/Recordkeeper:

1. Notice of Manufacture of Still—30 minutes
2. Notice of Set Up of Still—30 minutes
3. Registration; Notice of Change in Ownership or Location of a Registered Still or Distilling Apparatus—30 minutes

Frequency of Response: On occasion

Estimated Total Reporting/Recordkeeping Burden: 21 hours

OMB Number: 1512–0353

Recordkeeping Requirement ID Number: ATF REC 5170/2

Type of Review: Extension

Title: Wholesale Dealers Records of Receipt of Alcoholic Beverages Disposition of Distilled Spirits, and Monthly Summary Report

Description: Accounting tool, audit trail, part of accounting process. Shows from whom purchased, to whom sold, and amount. When required, provides a monthly report of sales activities and on-hand inventories.

Respondents: Business or other for-profit

Estimated Number of Respondents/Recordkeepers: 50

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours

Frequency of Response: Monthly

Estimated Total Reporting/Recordkeeping Burden: 1,200 hours

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22925 Filed 9–14–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

September 8, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0030

Form Number: ATF F 4483–A (5300.11)

Type of Review: Extension

Title: Annual Firearms Manufacturing and Exportation Report

Description: ATF collects this data for the purpose of law enforcement, fitness qualification, Congressional inquiries, disclosure to the public in compliance with a court order, furnishing information to other Federal agencies, compliance inspections, and insuring that the requirements of the National Firearms Act (25 USC 5801–5872) are met.

Respondents: Business or other for-profit

Estimated Number of Respondents: 1,016

Estimated Burden Hours Per Respondent: 45 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden: 762 hours

OMB Number: 1512–0092

Form Number: ATF F 5110.31 (1648/1649/1650)

Type of Review: Revision

Title: Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act

Description: 26 U.S.C. 205(e) requires that persons who label alcoholic beverages obtain a certificate of label approval for labels used. Submission of these forms (ATF F 5110.31) allows ATF to ensure that labels used on alcoholic beverages contain all information required by regulations and do not contain prohibited, deceptive, misleading information.

Respondents: Business or other for-profit

Estimated Number of Respondents: 6,060

Estimated Burden Hours Per Respondent: 30 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 27,300 hours

OMB Number: 1512–0137

Form Number: ATF F 5150.22 and ATF 5150.25

Type of Review: Extension

Title: Application for an Industrial Alcohol Users Permit (5150.22); and Industrial Alcohol Bond (5150.25)

Description: ATF F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). This form identifies the location of the premises and establishes whether the premises will be in conformity with Federal laws and regulations. ATF F 5150.25 provides notification that sufficient bond coverage has been obtained prior to the issuance of a permit.

Respondents: Business or other for-profit

Estimated Number of Respondents/Recordkeepers: 738

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours

Frequency of Response: On occasion

Estimated Total Reporting/Recordkeeping Burden: 1,476 hours

OMB Number: 1512–0192

Recordkeeping Requirement ID Number: ATF REC 5110/01

Form Number: ATF F 5110.11

Type of Review: Extension

Title: Distilled Spirits Plants Warehousing Records and Reports

Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis.

Respondents: Business or other for-profit

Estimated Number of Respondents/Recordkeepers: 230

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours

Frequency of Response: Monthly

Estimated Total Reporting/Recordkeeping Burden: 5,520 hours

OMB Number: 1512–0205

Recordkeeping Requirement ID Number: ATF REC 5110/01

Form Number: ATF F 5110.40

Type of Review: Extension

Title: Distilled Spirits Records (5110/01); and Monthly Report of Production Operations (5110.40)

Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, plan efficient allocation of field resources, audit plant operations, and compile statistics for government economic analysis.

Respondents: Business or other for-profit

Estimated Number of Respondents/Recordkeepers: 150

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours

Frequency of Response: Monthly

Estimated Total Reporting/Recordkeeping Burden: 3,600 hours

OMB Number: 1512–0372

Recordkeeping Requirement ID Number: ATF REC 5400/2

Type of Review: Extension

Title: Records and Supporting Date: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data by Licensed Explosives Manufacturers, and Manufacturers (LTD)

Description: These records, prepared by explosives manufacturers and explosives manufacturers (limited), provide ATF with the ability to trace explosives used in a crime.

Respondents: Business or other for-profit

Estimated Number of Recordkeepers: 1,053

Estimated Burden Hours Per Recordkeeper: 65 hours

Frequency of Response: Other

Estimated Total Recordkeeping Burden: 68,835 hours

OMB Number: 1512–0461

Recordkeeping Requirement ID Number: ATF REC 5110/11

Type of Review: Extension

Title: Marks, Brands, and Labels on Containers of Distilled Spirits, Industrial Alcohol, and Articles

Description: The markings and labeling of containers of spirits, industrial alcohol and articles by distilled spirits plants, industrial alcohol users and dealers, and liquor dealers, provide the data to identify, trace, and quantify actual spirits or spirits used in the production of articles.

Respondents: Business or other for-profit

Estimated Number of Recordkeepers: 10,213

Estimated Burden Hours Per Recordkeeper: 1 hour

Frequency of Response: Other

Estimated Total Recordkeeping Burden: 10,213 hours

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 95–22927 Filed 9–14–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

September 5, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0936

Form Number: IRS Form 8453

Type of Review: Revision

Title: U.S. Individual Income Tax Declaration for Electronic Filing

Description: This form is used to secure taxpayers signatures and declarations in conjunction with the Electronic Filing program. This form, together with the electronic transmission, will comprise the taxpayer's income tax return.

Respondents: Individuals or households

Estimated Number of Respondents: 12,300,000

Estimated Burden Hours Per Respondent: 15 minutes

Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 6,121,610 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22928 Filed 9–14–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review.

September 7, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1397
Form Number: IRS Form 8453–OL
Type of Review: Revision
Title: U.S. Individual Income Tax Declaration for On-Line Service Electronic Filing
Description: This form will be used to secure taxpayers signatures and declarations in conjunction with the On-Line Electronic Filing program. This form, together with the electronic transmission, will comprises the taxpayer's return.
Respondents: Individuals or households
Estimated Number of Respondents: 50,000
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 12,500 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22929 Filed 9–14–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

September 8, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0057
Form Number: None
Type of Review: Extension
Title: Annual Letter—Certification of Authority
Description: The letter is sent to insurance companies that provide surety bonds to protect the Federal government. These companies then provide information necessary for the renewal of their Treasury Certification and the determination of their underwriting limit. Summary information about the company is then published in Circular 570 for use by Federal bond approving officers.
Respondents: Business or other for-profit
Estimated Number of Respondents: 312
Estimated Burden Hours Per Response: 62 hours, 30 minutes
Frequency of Response: Quarterly
Estimated Total Reporting Burden: 19,500 hours
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–22926 Filed 9–14–95; 8:45 am]

BILLING CODE 4810–35–P

Office of Thrift Supervision

[No. 95–157]

Proposed Reduction of Data Collected on the Thrift Financial Report; Correction

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice; correction.

SUMMARY: In the notice document entitled "Proposed Reduction of Data Collected on the Thrift Financial Report," beginning on page 44116 of the issue of August 24, 1995, on page 44118 in the second and third columns under the heading "V. Paperwork Reduction Act," the notice incorrectly stated that a request for approval of an information collection contained in the notice had been submitted to the Office of Management and Budget (OMB) for their review under the Paperwork Reduction Act of 1980. The notice should not have contained that statement and the burden estimates that followed, but should have only stated that a request for approval of an information collection will be sent to OMB after the revisions to the Thrift Financial Report are complete.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552, (202) 906–7135.

Dated: September 11, 1995.

By the Office of Thrift Supervision.

Mary H. Gottlieb,

Federal Register Liaison Officer.

[FR Doc. 95–22939 Filed 9–14–95; 8:45 am]

BILLING CODE 6720–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 179
Friday, September 15, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BROADCASTING BOARD OF GOVERNORS

DATE AND TIME: September 22, 1995; 10:00 a.m.

PLACE: Cohen Building, 330 Independence Avenue, SW., Suite 3300, Washington, DC 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to address internal procedural issues, as well as sensitive foreign policy and personnel issues relating to potential budgetary alternatives and deadlines set by the Congress. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel rules and practices of the BBG, the International Broadcasting Bureau, and USIA. (5 U.S.C. 552b.(c)(2))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Joshua Fouts at (202) 619–3375.

Dated: September 13, 1995.

David W. Burke,

Chairman.

[FR Doc. 95–23100 Filed 9–13–95; 2:50 pm]

BILLING CODE 8155–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on September 11, 1995 (60 FR 47203) of the special meeting of the Farm Credit Administration Board (Board) scheduled for September 12, 1995. This notice is to amend the agenda by adding an item to the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The agenda for September 12, 1995, is amended as follows:

Open Session

A. Approval of Minutes

B. FCSBA Quarterly Report

Dated: September 13, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–23122 Filed 9–13–95; 2:51 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, September 12, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Reports of the Office of Inspector General.

Matters relating to the Corporation's supervisory and corporate activities.

Recommendation regarding the leasing of office space.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Howe, Jr., seconded by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: September 12, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–23080 Filed 9–13–95; 12:13 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 45774, September 1, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Tuesday, September 12, 1995.

CHANGES IN THE MEETING: The following topics were withdrawn from the open portion of the meeting:

- The portion of the dividends discussion on third quarter dividend requests.
- Membership regulation.
- Affordable Housing Program Advisory Councils.
- Review of the FHLBank of San Francisco's AHP/CIP Policy Changes.

Topic added to the open portion of the meeting:

- Federal Home Loan Bank of Des Moines Proposal to Certify Minnesota Chippewa–Tribal Housing Corporation as a Nonmember Mortgagee.

The Board determined that agency business requires its consideration of this matter on less than seven days notice to the public and that no earlier notice of this change in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–23056 Filed 9–13–95; 10:13 am]

BILLING CODE 6725–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on

September 22, 1995. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., 11th Floor, Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of May 12, 1995 Meeting.
3. Report On the Competition Initiative.
4. Report on Other Activities of the Offices of Program Support, and Program Evaluation, Analysis, and Review.
5. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: September 13, 1995.

Suzanne B. Glasow,

Senior Counsel.

[FR Doc. 95–23126 Filed 9–13–95; 2:52 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Finance Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Finance Committee will meet on September 22, 1995. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of September 10, 1995 Meeting.
3. Consideration and Review of Budget and Expenses for the Period Ending August 31, 1995.
4. Consider and Act on Proposed Revisions to the Corporation's Fiscal Year 1995 Consolidated Operating Budget.
5. Consideration of Proposed Fiscal Year 1996 Consolidated Operating Budget.
6. Consideration of Proposed Fiscal Year 1997 Budget Mark.
7. Consider and Act on Proposed Audit Guide.
8. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: September 13, 1995.

Suzanne B. Glasow,

Senior Counsel.

[FR Doc. 95–23127 Filed 9–13–95; 2:52 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on September 22–23, 1995. The meeting will commence at 2:00 p.m. on September 22nd, and at 9:00 a.m. on September 23, 1995.

PLACE: Legal Services Corporation, 750 1st Street, N.E., Board Room, 11th Floor, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board may discuss matters related to internal operational and personnel matters. In addition, the Board may hear and consider the General Counsel's report on litigation in which the corporation is or may become a party. Finally, the Board may be briefed by the Inspector General on Office of the Inspector General Activities.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Section 552b(c) (2) and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5 (a) and (h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street N.E., Washington, D.C. 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda
2. Approval of Minutes of June 24–25, 1995 Meeting
3. Approval of Minutes of June 25, 1995 Executive Session
4. Chairman's and Members' Reports
5. President's Report on Status of Appropriations and Authorization Proceedings
6. Report and Discussion of Planning for the Future of Legal Services
7. Inspector General's Report
8. Consider and Act on Finance Committee Report
    a. Consider and Act on Proposed Revisions to Fiscal Year 1995 Consolidated Operating Budget
    b. Consider and Act on Proposed Fiscal Year 1996 Consolidated Operating Budget
    c. Consider and Act on Proposed Fiscal Year 1997 Budget Mark
    d. Consider and Act on Proposed Audit Guide
9. Consider and Act on Operations and Regulations Committee Report.
10. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
11. Public Comment.

SATURDAY, SEPTEMBER 23, 1995

CLOSED SESSION:

12. Discussion of Issues Relating to Internal Operational and Personnel Matters
13. Briefing of Board by the Inspector General on Office of the Inspector General Activities
14. Consider and Act on the General Counsel's Report on Litigation

OPEN SESSION: (Resumed)

15. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: September 13, 1995.

Suzanne B. Glasow,

Senior Counsel.

[FR Doc. 95–23128 Filed 9–13–95; 2:52 pm]

BILLING CODE 7050–01–M

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[1] Briefings do not constitute "meetings" as defined by the Government in the Sunshine Act. Notice of this briefing is being provided solely as a courtesy to the public.

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 46689, September 7, 1995].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: September 7, 1995.

CHANGE IN THE MEETING: Cancellation.

The closed meeting scheduled for Friday, September 8, 1995, at 10:00 a.m., has been cancelled.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 8, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–23081 Filed 9–13–95; 12:46 pm]

BILLING CODE 8010–01–M

federal register

Friday
September 15, 1995

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 493

CLIA Program; Categorization and Certification Requirements for a New Subcategory of Moderate Complexity Testing; Proposed Rule

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federal register

Friday
September 15, 1995

Part II

Department of Health and Human Services

Health Care Financing [illegible]nistration

42 CFR Part 493

CLIA Program; Categorization and Certification Requirements for a New Subcategory of Moderate Complexity Testing; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 493

[HSQ–222–P]

RIN 0938–AG66

CLIA Program; Categorization and Certification Requirements for a New Subcategory of Moderate Complexity Testing

AGENCY: Health Care Financing Administration (HCFA) and Public Health Service (PHS), HHS.

ACTION: Proposed rule.

SUMMARY: In this proposed rule we are responding to some of the comments on categories of tests received in response to the rule published on February 28, 1992. To reduce the regulations burden on laboratories, we are proposing to revise our regulations to create a new subcategory of high quality moderate complexity procedures called accurate and precise technology (APT) tests.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 14, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Disease Control and Prevention, Public Health Service, Department of Health and Human Services, Attention: HSQ–222–P, 4770 Buford Highway, N.E., MSF11, Atlanta, Georgia 30341–3724.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 714–B, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ–222–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rosemary Bakes-Martin (404) 488–7655, for questions regarding the APT requirements and criteria for APT categorization; and Judy Yost, (410) 786–3531, for certificate, fee, and inspection issues.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 353 of the Public Health Service Act (42 U.S.C. 263a), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), all laboratories that examine human specimens for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings, must meet certain requirements to perform the examination. In accordance with the law, regulations implementing CLIA that HHS published on February 28, 1992 (57 FR 7002) established laboratory requirements based on the complexity of the tests performed. There are currently three test categories: waived, moderate, and high complexity.

Following publication of the February 28, 1992 regulations, HHS established a Clinical Laboratory Improvement Advisory Committee (CLIAC) to advise and make recommendations on technical and scientific aspects of the regulations. The CLIAC is composed primarily of individuals involved in the provision of laboratory services, use of laboratory services, development of laboratory testing devices or methodologies, and others as approved by HHS. The CLIAC has four subcommittees: cytology; personnel; proficiency testing, quality control and quality assurance; and test categorization.

In response to publication of the February 28, 1992 regulations, we received approximately 16,000 letters from professional organizations and individuals providing around 71,000 comments.

In response to those comments, we have published three rules (in addition to this proposed rule). One of those rules responds to the comments received on the waived criteria, tests presently included in the waived category and those tests that commenters believed should be added. At our request, the CLIAC evaluated the waived category and suggested that the Centers for Disease Control and Prevention (CDC) clarify the criteria and develop a process for review of requests for waiver. We clarified the criteria for waiver and the process for requesting waived categorization and published the clarified criteria and process for requesting waiver in a proposed rule with comment on September 13, 1995 (60 FR 47534). (The other two rules appeared in the **Federal Register** on January 19, 1993 (58 FR 5215) and on April 24, 1995.

In this rule, in response to numerous comments regarding the test complexity model, we are proposing to establish a new subcategory of moderate complexity that would include high quality tests that would be subject to less stringent requirements. Establishment of this subcategory should encourage manufacturers to produce accurate, easy-to-use test systems for use by physicians and laboratories to improve test quality and enhance patient care.

II. Response to Comments Received to Previous CLIA Regulations

In this rule we address additional comments received in response to the establishment of the three testing categories. Below we have provided a general overview of the comments and our responses, followed by some additional specific comments concerning the categories of testing and our response to these comments, which includes the rationale used to develop the proposed accurate and precise technology (APT) subcategory.

Upon review of the comments, we believe that additional revision of the test categorization model is warranted. The revisions to the regulations proposed in this rule would address the commenters' concerns that many high quality tests are less complex than many of the tests currently categorized as moderate complexity, but they do not meet the criteria for waiver. The commenters feel and we agree that these tests should be subject to less stringent requirements than those currently associated with moderate complexity tests.

In addition, we received numerous comments from professional organizations and individuals expressing concern about the burden associated with regulating laboratories based on test complexity and the criteria used to categorize tests as moderate or high complexity. Many commenters indicated that the special circumstances involved in physician offices, rural and public health clinics providing laboratory services should justify minimizing the regulatory burden on them. Some commenters believed that regulating laboratories on the basis of test complexity and the requirements applicable to moderate and high complexity tests would increase the cost of laboratory testing. Several commenters thought this regulatory burden would cause many laboratories to discontinue providing services, thereby limiting health care in underserved and rural areas. Some commenters recommended reducing some of the regulatory burden by creating a category of tests at a level between waived and moderate complexity. Other commenters suggested creating additional categories and provided examples for alternatives to the current test complexity model.

In response to these comments, the CDC developed a proposal to create a new subcategory of moderate complexity that would include simple, easy-to-use tests with proven accuracy and precision and therefore would require somewhat less stringent requirements than the requirements currently applicable to other moderate complexity tests.

During the development of the subcategory, we were especially cognizant of the concerns of the commenters who stated that there are many high quality, moderate complexity tests that might not qualify for waiver, but, on the other hand, should not be subject to the full range of requirements currently applicable to moderate complexity testing. We agree with the commenters that regulatory relief for high quality tests is appropriate. In order to justify less stringent application of the requirements, we are proposing that the tests meet rigid performance specifications and have demonstrated, through scientifically valid studies, a high level of accuracy and precision. Through this process, test systems would be evaluated to ensure they provide quality results and physicians and laboratories would have access to this categorization information to employ in test selection and determining types of laboratory services to provide.

We therefore designed a subcategory of moderate complexity testing that we proposed to call APT testing that would include high quality, less complex tests that would be unique in that the test system instructions would not only contain complete procedures for test performance, including instructions regarding the preanalytic, analytic and postanalytic phases of testing, but would also include protocols that would assist laboratories in meeting the CLIA requirements. We proposed that, in order to be considered for categorization in the APT subcategory, the producer or manufacturer of the test system would have to submit data demonstrating that the test system meets the criteria for APT categorization. In addition, the test system instructions would have to specify clearly what laboratories must do to be in compliance with the CLIA requirements. For APT testing, laboratories could rely on the manufacturer's or producer's test system instructions to meet the CLIA requirements. Since, for APT testing, compliance with the CLIA requirements would be based on laboratories following the test system instructions, we believe that random, rather than routine, inspections of laboratories having an APT certificate would be sufficient.

We discussed with the CLIAC the proposed criteria and requirements to be applicable to the new subcategory. The CLIAC supported the concept of the APT subcategory. However, the CLIAC expressed the view that the subcategory (as currently structured) would not provide the amount of regulatory relief desired by many commenters who requested revisions to the complexity model. We understand the CLIAC's concerns; however, we believe that it is essential that we reevaluate the complexity model to determine whether the regulations are effective in ensuring public access to quality laboratory services. When we established the CLIA requirements in 1992, we sought to devise a regulatory model based on the complexity of testing performed that would establish the minimum requirements necessary to ensure accurate testing. At this point, we believe there are many highly accurate, simple, easy-to-use test systems currently categorized as moderate complexity that could be eligible for less stringent requirements, and laboratories performing such testing should be provided financial and regulatory relief through a reduction in the CLIA requirements.

To obtain broad public review, we are publishing this proposed rule and encourage commenters to provide suggestions on how we might revise the CLIA requirements to ensure that they promote access to quality services and stimulate technological advances in testing. With respect to the provisions contained in this rule, we are seeking specific suggestions and recommendations concerning the criteria and process for categorizing tests in the APT subcategory, as well as comments on the appropriateness of the proposed requirements for APT testing.

III. Provisions of the Proposed Rule

Criteria for APT Categorization

In this rule, we are proposing to establish at 42 CFR 493.18 a new subcategory of moderate complexity testing designated as APT, and we are outlining the proposed criteria for determining which tests would be categorized as APT. The proposed criteria for inclusion in the APT subcategory are structurally similar to our proposed clarifications to the criteria for waived tests published on September 13, 1995.

For quantitative and qualitative tests, the similarities between the proposed criteria for APT categorization and the proposed clarifications to the criteria for waiver are as follows:

- Quantitative APT tests and quantitative waived tests would have to meet similar test characteristics and performance specifications by demonstrating, through scientifically valid studies, a high level of accuracy and precision.
- Qualitative APT tests would have to meet the same requirements for allowable error as we have proposed for qualitative waived tests.

The proposed criteria for inclusion in the APT subcategory would differ from the proposed criteria for waiver in that:

- Waived tests must be fail-safe with no operator intervention, whereas APT test protocols could allow some operator intervention to investigate questionable results and to resolve test system failures.
- Waived qualitative tests are limited to reagent impregnated devices (such as dipsticks), whereas qualitative APT tests would not be limited to any specific type of technology. [It is important to clarify what is meant by qualitative tests in this regulation. Qualitative tests are test methods that provide two categorical responses (e.g., positive/negative or presence/absence). For these types of tests, the concentration of the analyte is defined as being above or below a certain discrimination zone that

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defines negativity or positivity.] On the other hand, test methods that give results by defining specific absorbance values at which tests will be considered positive are essentially quantitative tests in that they directly depend on defined concentrations of the analyte producing the discrete absorbance value. In this regulation, we are proposing to consider the latter as quantitative tests.

- Waived tests may use only direct unprocessed specimens, have direct readout of results and require no invasive troubleshooting or electronic or mechanical maintenance. However, APT tests could have simple noncalculated conversions and some troubleshooting and maintenance performed by the analyst.
- Instructions for performance of waived tests must be written at no higher than a seventh grade reading level and include a description of the analytic skills required to perform the test. APT test instructions would have no such requirements, since personnel performing APT testing would, at a minimum, have to have a high school diploma, or equivalent, and relevant training.
- Quantitative waived tests may have a certain amount of random error but they must be shown to be essentially free of systematic error, whereas quantitative APT tests would be allowed a minimal amount of error that may be either random or systematic, or both.

Review Process

Also at § 493.18, we are proposing the process for approving tests for the APT subcategory. We are proposing that requests for placement of tests in this subcategory be in conformance with the proposed submission process outlined in this regulation. The data submitted for evaluation would have to meet specific criteria related to operational characteristics, ease of use, and test performance. The test system's instructions will be reviewed by PHS to ensure that laboratories can rely on these instructions to assist them in meeting the regulations in subparts J, K and P when performing APT testing.

Submission Requirements

Under the proposed rule, the manufacturer or test system producer would have to determine which procedures in the preanalytic, analytic and postanalytic phases of testing are essential to ensure accurate test results. These procedures would be identified in the submission to PHS as mandatory procedures for the laboratory to follow. In addition, the manufacturer or test system producer would have to include protocols to assist laboratories in meeting the CLIA requirements. The test system instructions should remind laboratories to enroll in an HHS-approved proficiency testing program, if applicable.

Since many manufacturers are currently providing this type of assistance to laboratories, often in the form of complete protocols containing instructional materials that cover all aspects of the regulations and, in addition, examples of suggested forms to use to document monitoring activities, we believe that the APT subcategory merely strengthens and confirms that interaction between the producer of the test system and the laboratory user. Formalizing this relationship and making it uniform for all manufacturers and producers of these test systems should reduce the regulatory burden on laboratories, while providing an effective mechanism for laboratories to achieve regulatory compliance with the CLIA requirements.

We encourage individuals to submit their comments and suggestions on how we might improve the APT categorization criteria or process and revise the regulations to incorporate these changes. Following review of comments received in response to this notice, we will make the necessary revisions to the APT requirements, including the criteria for APT categorization and the process for reviewing requests for APT categorization of test systems.

After a final rule responding to the comments received to this proposed rule is published establishing the APT subcategory, requests for APT categorization may be submitted for review. Once a test system review has been completed, the manufacturer or producer would be notified of the APT categorization decision, whether denied or granted. APT categorization would be effective on the date of notification to the applicant. Any test categorized as APT also would be published in the **Federal Register** as a notice with an opportunity for public comment. (As with all comments received on test categorization, our responses to the comments received on APT categorization will be included in a subsequent **Federal Register** notice.) Once we receive comments on the **Federal Register** notice, we reserve the right to reevaluate and recategorize the test based upon those comments.

Administration

We are proposing to make conforming changes to subpart F (General Administration) to accommodate the addition of the new certificate for APT tests. Laboratories that qualify for a certificate of APT tests would have to pay a fee for the issuance of a certificate. Each laboratory would be assessed a fee representing the certificate fee and a fee for the costs of the random inspections. The certificate fee would be based on the fee schedule (which is based on the test volume and scope of specialties tested) in effect. This fee would represent the APT laboratory's share of the general cost to HHS of administering the laboratory certification program. This would include, but would not be limited to, the cost of issuing the certificate, the cost of collecting fees, the administrative costs of determining which tests would qualify for inclusion in the APT test category, and the administrative costs associated with processing and evaluating laboratory applications. The fee for random inspection would represent the cost to HHS of conducting random inspections of approximately five percent of the laboratories issued a certificate for APT tests to assess compliance with the applicable requirements of 42 CFR part 493. Random inspection costs would be shared by all laboratories issued a certificate for APT tests.

If, in the case of a laboratory subject to a random inspection, it is determined that a follow-up survey is necessary because of identified deficiencies, HHS would assess that laboratory an additional fee to cover the cost of the follow-up survey activities. The fee would be based on the actual resources and time necessary to perform the follow-up visits. Failure of a laboratory to pay any assessed costs would result in HHS revoking the laboratory's certificate.

Patient Test Management

We are proposing to add a new § 493.1102 to subpart J (patient test management) to include the new patient test management requirements that would be applicable to APT testing. These requirements would be less burdensome to the laboratory than the requirements currently applicable to other moderate complexity testing because the manufacturer's or producer's PHS-approved test system instructions would specify what laboratories must do to comply with the CLIA patient test management requirements. There would be two requirements in this new standard. The two requirements would be that the laboratory must: (a) have available and follow the patient test management procedures specified in the PHS-approved instructions; and (b) maintain records documenting compliance with

the patient test management requirements for two years.

Quality Control

In subpart K (quality control), we propose to recodify the current § 493.1204 as § 493.1206 and add a new § 493.1204 to accommodate the quality control provisions resulting from the proposed addition of the new subcategory of APT tests. Since the PHS-approved test system instructions for APT procedures would include instructions for meeting the CLIA requirements, the laboratory quality control requirements for APT testing would be less stringent than for other moderate complexity tests. We are proposing that, before reporting patient test results, laboratories, at a minimum, use the PHS-approved test system instructions for verifying the test system's performance specifications. The laboratory may include, as appropriate, expanded or additional protocols for verifying the test system's performance specifications. As with other procedures of moderate complexity, quality control activities for APT tests would have to be documented and the records retained for two years, except immunohematology records, which must be maintained for a period of no less than five years. We would stress that laboratories must not modify the test system's PHS-approved test performance instructions, since any modification would result in the test no longer being categorized as APT. Any modified procedure would become an uncategorized test and would be considered high complexity until categorized by PHS.

Personnel

The personnel requirements for APT testing would be located at § 493.1371 through § 493.1387. APT personnel requirements would be somewhat less stringent than for other moderate complexity testing because APT tests would have been reviewed to ensure that they meet the criteria for simple, reliable, accurate and precise tests. The personnel requirements for this subcategory would not include a technical consultant because manufacturers or producers of APT tests would develop maintenance protocols, calibration and control procedures, remedial action policies and criteria for reporting and interpreting test results, which would fulfill most of the technical consultant's responsibilities. The remaining technical consultant responsibilities (e.g., employee evaluations) would be performed by the laboratory director.

For APT tests, we would require laboratories to have a qualified director, clinical consultant and testing personnel. The qualifications required for director and clinical consultant would be the same as for moderate complexity testing, while the testing personnel training requirements would be modified slightly from the training required for other moderate complexity testing because the test system manufacturer or producer would be providing specific instructions on test system performance, including reagent stability and storage and quality control. The responsibility requirements for each level of personnel within the APT subcategory would be somewhat less stringent in accordance with the laboratory's reliance on the manufacturer or producer of the test system to provide detailed test instructions, protocols for meeting the regulatory requirements, performance specifications and information regarding test results and interpretation.

Quality Assurance

We are proposing to add a new § 493.1702 to the quality assurance requirements located in subpart P to include the proposed requirements applicable to APT testing. These requirements would be less burdensome than the requirements currently applicable to other moderate complexity testing, since the PHS-approved test system instructions would assist the laboratory in meeting the quality assurance requirements. Like § 493.1102 in subpart J (patient test management), there would be two requirements in § 493.1702. To meet the quality assurance requirements in subpart P, we are proposing that: (a) laboratories must have available and follow procedures specified in the test system's PHS-approved instructions to meet the quality assurance requirements; and (b) laboratories must document and maintain records of quality assurance activities for two years.

Inspections

We are proposing to establish a new § 493.1778 specifying that laboratories with a certificate for APT tests are subject to announced or unannounced inspections on a random basis to assess compliance with the applicable requirements of part 493, to evaluate compliance when indicated by unsuccessful participation in proficiency testing and complaints, and to collect information for determining the appropriateness of tests categorized as APT. We are proposing to require random, rather than routine, inspections for a laboratory having an APT certificate since the laboratory would be required only to follow the PHS-approved instructions to meet the CLIA requirements for APT testing. During a random inspection, as with any inspection of other test complexity categories, not all test systems would be reviewed. A few test systems would be randomly selected and assessed for compliance. We would also clarify in this section that if the same laboratory is performing provider-performed microscopy procedures, those tests may also be assessed for compliance with all applicable requirements specific to that subcategory of testing during the random inspection.

Additionally, we would revise the introductory paragraph to § 493.1777, which currently contains the condition concerning inspection of laboratories requesting or issued a certificate of compliance, to clarify the inspection requirements for a laboratory with a certificate of compliance when the laboratory also performs APT procedures. Specifically, for laboratories that perform APT procedures and have a certificate of compliance, APT procedures may be included in the sample of moderate complexity tests inspected during the laboratory's routine, biennial inspections.

Summary of Changes to the Regulations

We are proposing to add or change the following sections to incorporate requirements applicable to APT tests:

- Section 493.18, Accurate and precise technology (APT) tests.
- Section 493.21, Laboratories performing accurate and precise technology (APT) tests.
- Section 493.48, Requirements for a certificate for accurate and precise technology (APT) tests.
- Section 493.1102, Patient test management requirements for accurate and precise technology (APT) tests.
- In subpart K, we are proposing to add the new quality control requirements applicable to APT testing at § 493.1204 and move the facilities requirements (without change) currently located at § 493.1204 to a new § 493.1206.
- To subpart M, we are proposing to add nine new sections to include the personnel requirements for laboratories performing APT testing. At § 493.1371, we are proposing to add the condition requirements for director, and at §§ 493.1373 and 493.1375, respectively, we plan to include the qualification and responsibility requirements for director. The condition level requirements for clinical consultant would be located at § 493.1377, with clinical consultant qualifications to be specified under

§ 493.1379 and responsibilities to be included under § 493.1381. The testing personnel condition requirements would be at § 493.1383, with testing personnel qualifications at § 493.1385 and responsibilities to be included at § 493.1387.

- Section 493.1702, Quality assurance requirements for accurate and precise technology (APT) tests.
- Section 493.1778, Inspection of laboratories issued a certificate for accurate and precise technology (APT) tests.

We are proposing to make conforming technical changes to the following sections and headings: §§ 493.2; 493.3(a)(1); 493.5 (a)(2), (b) and (c)(4); 493.20 (a) and (b); 493.25(c); the headings for subpart C and 493.43; 493.43(a); 493.45 introductory paragraph and (a); 493.49; 493.51 heading, introductory paragraph and paragraphs (b) and (c) and new (d); 493.53(a); 493.602; 493.638 (a) and (b); 493.639(b); 493.643(a); 493.645 heading and new paragraph (c) and paragraph (d) (redesignated from paragraph (c)); subpart H; 493.803(a); 493.807 heading; subheading preceding 493.821; subpart I heading; subpart J heading; 493.1101 heading and introductory paragraph; subpart K heading; 493.1201 heading, revision to paragraph (a) and (b) and addition of new paragraph (c); 493.1202(c); 493.1203; part M heading; 493.1351; subpart P heading; 493.1777 introductory paragraph; 493.1814(b)(3); 493.1834 (b) and (f)(2)(iii); and 493.1836 (c)(2) and (c)(3); and 493.2001.

In addition, we are deleting the words "of this part" wherever they follow a specific section number in regulations text appearing in this **Federal Register** document to conform with rules of the Office of the Federal Register.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Collection of Information Requirements

The proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

§ 493.18: This section outlines the criteria a manufacturer must follow in order to have its moderate complexity test categorized as an "Accuracy and Precise Technology" (APT) test. These include but are not limited to test system characteristics, instructions, field studies and evaluation of data.

§§ 493.43, 493.45, 493.48, 493.49, 493.51, 493.53: Sections 493.43 through 493.53 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. The information is gathered on form number HCFA-R–26. These sections outline the requirements for a laboratory to follow to submit application forms for CLIA certification. The requirements include laboratory notification to HHS of changes to the types of tests performed or changes in ownership, name location or director.

Section 493.48 is a new section added to reflect the addition of the new certificate category for laboratories performing tests categorized as accurate and precise technology testing (APT).

§§ 493.1101 and 493.1102: Sections 493.1101 through 493.1111 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. This section concerns patient test management for laboratories performing tests of moderate and high complexity that implement the CLIA statutory mandate for laboratories to meet requirements relating to the proper collection, transportation, and storage of specimens and the reporting of results. Section 493.1102 is a new section added to reflect the addition of the new subcategory for tests categorized as accurate and precise technology testing (APT).

§§ 493.1201, 493.1202 and 493.1204: Sections 493.1201 and 493.1202 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. These sections set forth the general quality control standards for monitoring and evaluating the quality of the testing process to assure accurate and reliable patient test results and reports as required under CLIA. Section 493.1204 is a new section required to reflect the addition of the new subcategory for accurate and precise technology testing (APT).

§ 493.1702: Sections 493.1701 through 493.1721 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. Section 493.1702 is a new section developed to address specific requirements that relate to quality assurance for a laboratory performing APT testing. Specifically it requires a laboratory to have available and follow the PHS-approved instructions and supplements (where appropriate) and maintain records documenting compliance for a 2-year period.

§§ 493.1777 and 493.1778: Sections 493.1725 through 493.1780 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. Section 493.1777 concerns the inspections of laboratories. The burden associated with inspections consists of retrieving the records and documentation requested by the inspector, participating in the entrance and exit interviews, responding to the statement of deficiencies that may result from the inspection and documenting any corrective actions taken that are appropriate to the plan of correction for the deficiencies cited. Section 493.1778 is a new section developed to address the inspection requirements as they apply to laboratories with an APT certificate. This section sets forth the policy of random inspections for laboratories with an APT certificate.

When OMB approves those provisions not currently approved we will publish a notice in the **Federal Register** to that affect.

Description of Respondents

§ 493.18: Small businesses or organizations, businesses or other for profit, non-profit institutions, who manufacture laboratory tests.

§§ 493.43, 493.45, 493.48, 493.49, 493.51, 493.53; 493.1101 and 493.1102; 493.1201, 493.1202 and 493.1204; 493.1702; 493.1777 and 493.1778: Small businesses or organizations, businesses or other for profit, non-profit institutions, state and local governments, federal agencies.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

CFR sections	Annual number of responses	Annual frequency	Average burden per response (hours)	Annual burden hours
493.18	50	1	336	16,800
493.43, 493.45, 493.48, 493.49, 493.51, 493.53	28,700	1	.25	7,175
493.1101, 493.1102	82,000	1	.5	41,000
493.1201, 493.1202 and 493.1204	82,000	1	12	984,000
493.1702	24,600(a)	1	42	1,033,200
493.1777 and 493.1778	1,230(a)	1	4	4,920

(a) Assuming 30% of 82,000 non-waived laboratories become APT.

The agency has submitted a copy of the proposed rule to OMB for its review of these information collections. Interested persons are invited to send comments regarding this burden estimate or any other aspect of these collections of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. Comments should be sent to HCFA, OFHR, MPAS, C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850 and to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

VI. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all laboratories and manufacturers of laboratory test systems are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would modify CLIA regulations published February 28, 1992 by establishing a new subcategory of moderate complexity testing, accurate and precise technology (APT) tests. There are approximately 157,000 entities enrolled under CLIA that could be affected by this rule; however, the significance of the effect would vary depending on the volume and complexity of tests performed. While we cannot estimate the number of entities that may make changes in their laboratory testing practices, we believe the modifications to the CLIA program would be beneficial to the affected entities and would be well received, since they are being proposed in response to comments requesting revisions to the test complexity categories.

In proposing this new subcategory, we acknowledge the unique aspects of the many tests with proven accuracy and precision that may not qualify for waiver, but should not be subject to all of the requirements applicable to moderate complexity testing, including routine inspection. To this end, this proposed rule would establish less stringent requirements, including less frequent (random) inspections and fewer personnel requirements, for laboratories providing tests categorized as APT. We expect no clinically meaningful decrease in test accuracy, or patient health, from this proposal. Furthermore, to the extent that it encourages cost-effective testing more than the present CLIA rules, and increases the amount of such testing in settings that might otherwise eschew testing, it is likely to improve patient health. In addition, this proposed rule would reduce the financial burden for some laboratories by enabling them to provide an expanded test menu without incurring the higher costs associated with a certificate of compliance.

The changes proposed in this regulation may affect a laboratory's test menu and choice of certificate. Laboratories holding a certificate of compliance that change to a certificate for APT would experience a decrease in compliance costs and the number of surveys, since APT laboratories would not be subject to routine inspections and the associated fees. The laboratories that would realize the greatest benefit from these savings would most likely be physician office laboratories and public health laboratories. Laboratories, specifically many physician offices and other limited service laboratories, expanding from a certificate of waiver or PPM to a certificate for APT would be able to enhance the range of laboratory services available to patients, while their costs (including certification fees and costs inherent in meeting applicable requirements such as personnel and quality control), would remain less than the costs of obtaining a certificate of compliance. The availability of a CLIA certificate that allows an expanded test menu at less cost also may encourage new entities to begin providing services, thereby increasing physician and patient access to health care, particularly in underserved and rural areas.

This proposed rule may affect some manufacturers of laboratory tests who would be required to submit specific information and data demonstrating that their test meets the criteria for APT categorization. We estimate that approximately 500 test systems may qualify for this subcategory. These test systems are predominantly small automated instruments or "desktop" analyzers. Manufacturers of any test system approved by PHS in the APT subcategory also must provide laboratories with complete instructions, which include protocols to assist laboratories in meeting the CLIA requirements. However, many manufacturers are currently providing this type of information and assistance to laboratories in the form of instructional materials and protocols. Because laboratories would not be required to develop their own operational policies and quality control protocols, a wider variety of laboratories might decide to offer APT testing.

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Therefore, we anticipate that categorization as an APT test would result in increased sales and distribution for the manufacturers.

As indicated above, we believe that the creation of the subcategory of APT and subsequent decrease in the regulatory and financial burden for laboratories performing APT tests would benefit patients, laboratories, and manufacturers. However, we are unable to quantify these likely long run effects because they depend on market decisions, research results, and technological change that cannot be predicted.

Regardless, we believe that for the most part these effects would involve relatively small savings of a few hundred or a few thousand dollars a year for each laboratory, mainly due to reduced inspection fees or QC costs. In the aggregate these savings would be substantial, because they are shared by thousands of laboratories. However, few if any entities are likely to achieve very substantial savings.

This proposed rule would establish the process for categorizing moderate complexity tests into a new subcategory of moderate complexity testing and would also establish a new type of certificate. Proper realignment of the fee schedule, if necessary, would follow implementation of this rule.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. We do request comments, however, on possible improvements in these proposed regulations to achieve even greater savings to affected entities and will consider them carefully in formulating the final rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 493

Grant programs-health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR part 493 would be amended as set forth below:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12), 1861(s)(13), 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11), 1395x(s)(12), 1395x(s)(13), 1395x(s)(14), 1395x(s)(15), and 1395x(s)(16)).

2. In Section 493.2, in the definition of "CLIA certificate" the introductory text is republished and paragraph (6) is added to read as follows:

§ 493.2 Definitions.

* * * * *

CLIA certificate means any of the following types of certificates issued by HCFA or its agent:

* * * * *

(6) *Certificate for accurate and precise technology (APT) tests* means a certificate issued or reissued before the expiration date, pending an appeal in accordance with § 493.48, to a laboratory that only performs tests approved by PHS as APT tests and, if desired, tests specified as PPM procedures, tests approved by PHS as waived tests, or both.

* * * * *

3. In § 493.3, the introductory text of paragraph (a) is republished and paragraph (a)(1) is revised to read as follows:

§ 493.3 Applicability.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, a laboratory will be cited as out of compliance with section 353 of the Public Health Service Act unless it—

(1) Has a current, unrevoked or unsuspended certificate of waiver, a registration certificate, a certificate of compliance, certificate for PPM procedures, certificate for APT tests, or a certificate of accreditation issued by HHS applicable to the category of examinations or procedures performed by the laboratory; or

* * * * *

4. Section 493.5 is revised to read as follows:

§ 493.5 Categories of tests by complexity.

(a) Laboratory tests are categorized as one of the following types of tests:

(1) Waived tests.

(2) Tests of moderate complexity, including the subcategories of moderate complexity, which are limited to the following tests and procedures:

(i) PPM procedures.

(ii) APT tests.

(3) Tests of high complexity.

(b) A laboratory has the option of performing only waived tests, only tests of moderate complexity, only PPM procedures, only APT tests, only tests of high complexity, or any combination.

(c) Each laboratory must be either CLIA-exempt or possess one of the following certificates, as defined in this part:

(1) Registration certificate.

(2) Certificate of waiver.

(3) Certificate for PPM procedures.

(4) Certificate for APT tests.

(5) Certificate of compliance.

(6) Certificate of accreditation.

5. A new § 493.18 is added to read as follows:

§ 493.18 Accurate and precise technology (APT) tests.

(a) *Requirement.* To be included in the APT subcategory, the test system must be categorized as moderate complexity using the criteria in § 493.17 and it must meet the descriptive criteria specified in paragraph (b) of this section.

(b) *Criteria.* (1) For quantitative tests, methods must be easy to use, accurate, and precise as evidenced by the following items:

(i) Test systems that have the following characteristics:

(A) Are fully automated (no operator intervention during the analytic phase).

(B) Provide direct readout of results or simple noncalculated conversions.

(ii) Test system instructions that address the following items:

(A) Requirements for specimen collection, handling, storage and preservation.

(B) Reportable range for patient results.

(C) Reference range (normal values) and suggested panic values (values requiring immediate medical intervention).

(D) Units of measurement used for reporting patient results.

(E) Step-by-step protocols that include, as appropriate, the following items:

(*1*) Instrument or test system operation and test performance instructions.

(*2*) Test system maintenance procedures.

(*3*) Preparation and storage of reagents, calibrators, controls, or other materials used in testing.

(*4*) Control procedures including the type of materials, suggested concentrations, and frequency of assay.

(*5*) Calibration procedures including the number and type of materials and frequency of assay.

(*6*) Acceptable ranges for any control or calibration material included with the test system.

(*7*) Action to be taken when calibration or control results do not meet the acceptable range of values.

(*8*) Methods for converting test system values to reportable results.

(*9*) Description of course of action to be taken when the test system becomes inoperable.

(*10*) Any limitations to methodologies such as interfering substances.

(*11*) A written protocol for reporting patient test results.

(iii) Field studies that meet the following requirements:

(A) Demonstrate that the manufacturer's or producer's written instructions are the only protocols required to perform the test accurately and reliably.

(B) Demonstrate that individuals with no formal laboratory training can correctly perform the test.

(iv) Data from field studies that meet the following requirements:

(A) Are generated from protocols that address the points described in paragraph (b)(1)(iii) of this section.

(B) Are adequate to produce measures of performance that are both statistically valid and defensible (estimates must support valid confidence limits for all statistical parameters).

(C) Evaluate performance at all medical decision points and relevant upper and lower limits of the reportable range using at least three concentrations of the analyte being tested.

(D) Evaluate among-operator imprecision using test results of all study participants.

(E) Evaluate within-site imprecision using test results generated at each site by an adequate number of participants to produce measures of performance that are statistically valid and defensible. Testing must be performed at a minimum of three independent study sites.

(F) Evaluate among-site imprecision at an adequate number of sites to produce measures of performance that are statistically valid and defensible using results generated by study participants on aliquots of a single testing material.

(v) Method accuracy studies demonstrating little or no systematic error when—

(A) Using reference materials assayed by study participants that produce data that show there is little or no statistically significant difference between the test results and the value of the reference materials.

(B) Using patient samples instead of reference materials, demonstrating there is little or no introduction of error in patient test results due to the effects of the sample matrix.

(C) Adding or simulating common interfering substances known to affect the analyte in patient samples, demonstrating that there is little or no introduction of error due to the presence of these substances.

(vi) Demonstration that the total amount of error, which includes all components contributing to imprecision and inaccuracy as defined by studies described in paragraphs (b)(1)(iv)(D) through (b)(1)(iv)(F) and (b)(1)(v)(A) through (b)(1)(v)(C) of this section, is less than one fourth of the reference range for the analyte divided by the mean of the reference interval.

(2) For qualitative tests, methods must be easy to use, accurate, and precise as evidenced by the following items:

(i) Test systems that meet the following requirements:

(A) Contain steps that are limited in number and complexity, are self-contained and are packaged as a complete system.

(B) Have a qualitative endpoint that requires no interpretation beyond discerning agglutination patterns, color comparisons, or other easily interpreted reactions.

(ii) Test system instructions that address the following items:

(A) Requirements for specimen collection, handling, storage and preservation.

(B) Reportable range for patient results.

(C) Reference range (normal values).

(D) Step-by-step protocols that include, as appropriate, the following items:

(*1*) Test performance instructions.

(*2*) Preparation and storage of reagents, calibrators, controls, or other materials used in testing.

(*3*) Control procedures including the type of materials and frequency of assay.

(*4*) Calibration procedures including the number and type of materials and frequency of assay.

(*5*) Acceptable ranges for any control or calibration material included with the test system.

(*6*) Action to be taken when calibration or control results do not meet acceptable range of values.

(*7*) The correct interpretation of test reactions or endpoints.

(*8*) Description of course of action to be taken when test reactions or endpoints cannot be determined.

(*9*) Any limitations to methodologies.

(iii) Field studies that meet the following requirements:

(A) Demonstrate that the manufacturer's or producer's written instructions are the only protocols required to perform the test accurately and reliably.

(B) Demonstrate that individuals with no formal laboratory training can correctly perform the test.

(iv) Data from field studies that meet the following requirements:

(A) Are generated from protocols that address the points described in paragraph (b)(2)(iii) of this section.

(B) Are adequate to produce measures of performance that are both statistically valid and defensible.

(C) Confirm that study participants are able to read and interpret test endpoints with the same precision as laboratory professionals.

(D) Confirm that the performance of study participants is essentially the same as laboratory professionals when testing samples at or near the cutoff and at sufficient distance above and below the cutoff to confirm precision at all analytical decision points.

(E) Demonstrate minimal among-operator imprecision using results of all study participants.

(F) Demonstrate minimal within-site imprecision using test results generated at each site by an adequate number of participants to produce measures of performance that are statistically valid and defensible. Testing must be performed at a minimum of three independent study sites.

(G) Using results generated by study participants, demonstrate minimal among-site imprecision at an adequate number of sites to produce measures of performance that are statistically valid and defensible.

(v) Method accuracy studies demonstrating that there is no statistically significant difference between observed values and expected values at the cutoff point when—

(A) The test values are compared to a quantitative result such as the value of a reference material or the presence or absence of a particular biologic component;

(B) Confirming that there are no significant equivocal test results on either side of the cutoff;

(C) Comparing results between study participants and laboratory professionals on samples with values at the cutoff;

(D) The test is performed on patient samples instead of reference materials, confirming there is no introduction of error due to sample matrix; and

(E) Samples contain substances that commonly cause interference confirming there is no introduction of error because of these substances.

(c) *Provisions for inclusion of tests in the APT subcategory*—(1) *Process for requesting APT categorization.*

(i) Requests for APT categorization must be submitted to PHS.

(ii) PHS reviews requests for APT categorization that meet the criteria specified in paragraph (b) of this section and the submission requirements under paragraph (c)(2) of this section.

(iii) The CLIAC, as specified in subpart T of this part, conducts reviews upon the request of HHS and makes recommendations to HHS concerning APT test categorization.

(iv) Any change or modification to an APT test system by the manufacturer or producer that could affect the accuracy or reliability of that test must be resubmitted to PHS for evaluation and review. Until this review is completed and categorization status is determined, the modified test is considered uncategorized and, in accordance with § 493.17(c)(4), is considered high complexity.

(v) A request for reconsideration of a test denied APT categorization is accepted for review if the request is based on information not previously submitted.

(2) *Submission requirements.*

(i) Requests for APT categorization must meet the criteria described in paragraph (b) of this section. In the event that a request does not include complete information, the request is not reviewed and the manufacturer or producer of the test system is notified.

(ii) Data collection protocols and data submitted must be complete and data submitted must be statistically valid and meet the criteria described under paragraph (b) of this section.

(iii) Test system instructions must be complete and must include, as applicable, the items defined in paragraph (b)(1)(ii) of this section for quantitative tests and under paragraph (b)(2)(ii) of this section for qualitative tests. In addition, test system instructions must include the following statements:

(A) "Any modification by the laboratory to the PHS-approved test system instructions will result in the test no longer meeting the requirements for APT categorization. Modified tests are considered high complexity and are subject to all applicable CLIA requirements contained in 42 CFR part 493."

(B) "The laboratory must notify the producer of this test system of any performance, perceived or validated, that does not meet the performance specifications as outlined in these instructions." The name, address and phone number(s) of the producer's contact person(s) must follow this statement.

(C) If applicable: "Laboratories performing accurate and precise technology (APT) tests are subject to the proficiency testing (PT) requirements under 42 CFR part 493, subpart H of this part. The laboratory must enroll and successfully participate in an HHS-approved PT program."

(iv) Patient test management protocols must be complete and include sufficient information to assist laboratories in meeting each of the requirements in subpart J of this part. These protocols must meet the following requirements:

(A) Clearly specify the instructions that must be followed by the laboratory to ensure proper specimen handling and accurate test result reporting and assist laboratories in meeting the requirements of subpart J of this part, including the following requirements listed in paragraphs (c)(2)(iv)(A)(*1*) through (c)(2)(iv)(A)(*4*) and (c)(2)(iv)(B) of this section, as applicable:

(*1*) Section 493.1103(a), procedures for specimen submission and handling, including protocols for preparation of patients, specimen collection, preservation, and conditions for specimen transport.

(*2*) Section 493.1105(f), any test requisition information that is relevant and necessary to a specific test to assure accurate testing and reporting of results.

(*3*) Sections 493.1107(c) and 493.1109(c), test records and test report information related to the criteria for specimen acceptability.

(*4*) Section 493.1109, test report information including the following information:

(*i*) Section 493.1109(d), pertinent "reference" or "normal" ranges.

(*ii*) Section 493.1109(f), any imminent life-threatening laboratory results or panic values.

(*iii*) Section 493.1109(g), the test methodology employed and any information that may affect the interpretation of test results.

(B) Provide information (for example, written instructions, instructional materials or samples of forms for documentation of activities performed) that laboratories may follow or supplement, in accordance with the test system's PHS-approved instructions, in meeting the requirements in subpart J of this part.

(v) Quality control instructions must include the following items:

(A) Protocols for documentation of all control and calibration results, any remedial action to be taken, and the appropriate record retention requirements as described at § 493.1221.

(B) Protocols for documentation of equipment maintenance performance and the appropriate record retention requirements as described at § 493.1221.

(C) Safety precaution instructions that cover any physical hazard or biohazardous material, including the proper handling and disposal of testing materials.

(D) Protocols for developing written procedures for the following activities:

(*1*) Determining specimen acceptability.

(*2*) Reporting patient test results, including suggested panic values, if applicable.

(*3*) The course of action to be taken in the event that a test system becomes inoperable.

(*4*) Referral of samples, as specified in § 493.1111, including procedures for specimen submission and handling as described in § 493.1103.

(E) Verification of method performance specifications and verification that the reference range is appropriate for the laboratory's patient population.

(vi) Quality assurance protocols must be complete and include sufficient information to assist laboratories in meeting each of the requirements in subpart P of this part. These protocols must meet the following requirements:

(A) Clearly specify the instructions that must be followed by the laboratory in establishing a comprehensive quality assurance program for monitoring and evaluating the overall quality of the total testing process (preanalytic, analytic, and postanalytic) and identifying and correcting problems based on the results of the evaluation to assure the accurate, reliable and prompt reporting of patient results and assist laboratories in meeting the requirements of subpart P of this part listed in paragraphs (c)(2)(vi)(A)(*1*) through (c)(2)(vi)(A)(*4*) and (c)(2)(vi)(B) of this section, and, as applicable, meet the requirements of the following sections:

(*1*) Section 493.1703, Patient test management assessment, including the following requirements:

(*i*) The criteria established for patient preparation, specimen collection, preservation and transportation.

(*ii*) The completeness and relevance of the information solicited on the laboratory's test requisition.

(*iii*) The use and appropriateness of the criteria established for specimen rejection.

(*iv*) The completeness, usefulness and accuracy of the test report information necessary for the interpretation or utilization of test results.

(*2*) Section 493.1705, Quality control assessment, including a mechanism to assess the effectiveness of the corrective actions taken in the following situations:

(*i*) Problems identified during the evaluation of calibration and control data for the test method.

(*ii*) Problems identified during the evaluation of patient test values for the purpose of ensuring the appropriateness of the reference range of the test method.

(*3*) Section 493.1709, Comparison of test results, including procedures for evaluating and defining the relationship between test results using different methodologies, instruments, or testing sites.

(*4*) Section 493.1711, Relationship of patient information to patient results, including procedures for identifying and evaluating patient test results that appear inconsistent with any relevant criteria specified in § 493.1711.

(B) Provide information (for example, written instructions, instructional materials, or samples of forms for documentation of activities performed) that laboratories may follow or supplement, in accordance with the test system's PHS-approved instructions, in meeting the requirements in subpart P of this part.

(3) *Notification of decision.*

(i) PHS determines whether a laboratory test meets the criteria listed under paragraph (b) of this section for an APT test.

(ii) PHS notifies the applicant of APT categorization, whether denied or granted.

(iii) APT categorization is effective as of the date of notification to the applicant.

(iv) PHS publishes additions and revisions periodically to tests categorized as APT in the **Federal Register** in a notice with opportunity for public comment. PHS reserves the right to reevaluate and recategorize a test based upon the comments it receives in response to the **Federal Register** notice.

6. In § 493.20, paragraphs (a) and (b) are revised to read as follows:

§ 493.20 Laboratories performing tests of moderate complexity.

(a) A laboratory may qualify for a certificate to perform tests of moderate complexity if it restricts its test performance to waived tests or examinations and one or more tests or examinations meeting criteria for tests of moderate complexity including the subcategories of PPM and APT tests.

(b) A laboratory that performs tests or examinations of moderate complexity must meet the applicable requirements in subpart C or subpart D, and subparts F, H, J, K, M, P, and Q of this part. Under a registration certificate or certificate of compliance, laboratories also performing PPM procedures and APT tests must meet the inspection requirements at § 493.1777.

* * * * *

7. A new § 493.21 is added to read as follows:

§ 493.21 Laboratories performing accurate and precise technology (APT) tests.

(a) A laboratory may qualify for a certificate to perform APT tests if it performs tests categorized by PHS as APT tests and no other procedures, except those specified as PPM procedures or those approved by PHS as waived tests.

(b) Laboratories performing APT tests must meet the following requirements:

(1) Follow each test system's PHS-approved instructions for performing the test; and

(2) Meet the applicable requirements in subpart C or subpart D of this part and subparts F, H, J, K, M, P, and Q of this part.

(c) If the laboratory also performs PPM procedures, the laboratory must meet the applicable requirements in subparts H, J, K, M, P, and Q of this part.

(d) If the laboratory also performs waived tests, the requirements of subparts H, J, K, M, and P of this part are not applicable for the waived tests. However, the laboratory must comply with the requirements in §§ 493.15(e) and 493.1775.

8. In § 493.25, paragraph (c) is revised to read as follows:

§ 493.25 Laboratories performing tests of high complexity.

* * * * *

(c) If the laboratory also performs tests of moderate complexity, the applicable requirements of subparts H, J, K, M, P and Q of this part must be met. Under a registration certificate or certificate of compliance, PPM procedures and APT tests must meet the inspection requirements at § 493.1777.

* * * * *

9. The heading of subpart C is revised to read as follows:

Subpart C—Registration Certificate, Certificate for Provider-Performed Microscopy Procedures, Certificate for Accurate and Precise Technology Tests, and Certificate of Compliance

10. In § 493.43, the section heading and paragraph (a) are revised to read as follows:

§ 493.43 Application for registration certificate, certificate for provider-performed microscopy (PPM) procedures, certificate for accurate and precise technology (APT) tests, and certificate of compliance.

(a) *Filing of application.* Except as specified in paragraph (b) of this section, all laboratories performing tests of moderate complexity (including the subcategories) or high complexity, or any combination of these tests, must file a separate application for each laboratory location.

* * * * *

11. In § 493.45, the introductory paragraph is revised, the introductory text of paragraph (a) is republished, and paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 493.45 Requirements for a registration certificate.

Laboratories performing only waived tests, PPM procedures, APT tests, or any combination of these tests, are not required to obtain a registration certificate.

(a) A registration certificate is required—(1) Initially for all laboratories performing test procedures of moderate complexity (other than the subcategories of APT tests and PPM procedures) or high complexity, or both;

(2) For all laboratories that have been issued a certificate of waiver, certificate for PPM procedures, or certificate for APT tests that intend to perform tests of moderate or high complexity, or both in addition to those tests listed in § 493.15(c) or specified as PPM procedures, or categorized as APT tests; and

* * * * *

12. A new § 493.48 is added to read as follows:

§ 493.48 Requirements for a certificate for accurate and precise technology (APT) tests.

(a) A certificate for APT tests is required for all laboratories that intend to perform only the following tests:

(1) Tests that have been categorized by PHS as APT tests.

(2) APT tests in addition to waived tests or PPM procedures.

(3) APT tests, waived tests and PPM procedures.

(b) HHS issues a certificate for APT tests if the laboratory meets the following requirements:

(1) Complies with the requirements of § 493.43 for applying for a certificate.

(2) Agrees to treat proficiency testing samples in the same manner as it treats patient specimens.

(3) Agrees to be inspected by HHS as specified in § 493.1778.

(4) Remits the fee for the certificate as specified in subpart F of this part.

(c) A laboratory issued a certificate for APT tests is subject to the following requirements:

(1) The notification requirements of § 493.51.

(2) The applicable requirements of this subpart and subparts H, J, K, M, P and Q of this part.

(d) A laboratory requesting a certificate for APT tests that also performs PPM procedures is subject to the following requirements:

(1) Ensuring that PPM procedures are performed only by individuals meeting the personnel requirements of subpart M of this part.

(2) Undergoing random inspections as specified in § 493.1778.

(e) In accordance with subpart R of this part, HHS initiates suspension, limitation, or revocation of a laboratory's certificate for APT tests for failure to comply with the applicable requirements set forth in this subpart. HHS may also impose certain alternative sanctions. In addition, failure to meet the requirements of this subpart may result in suspension of all or part of payments under Medicare and Medicaid.

(f) A certificate for APT tests is valid for a period of no more than 2 years. A laboratory must follow the procedures established by HHS for renewal of this certificate.

13. Section 493.49 is amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 493.49 Requirements for a certificate of compliance.

A certificate of compliance may include any combination of tests categorized as high complexity or moderate complexity or listed in § 493.15(c) as waived tests. Moderate complexity tests may include those specified as PPM procedures or categorized as APT tests.

(a) HHS issues a certificate of compliance to a laboratory only if the laboratory meets the following requirements:

(1) Meets the requirements of §§ 493.43 and 493.45.

(2) Remits the certificate fee specified in subpart F of this part.

(3) Meets the applicable requirements of this subpart and subparts H, J, K, M, P, and Q of this part.

(b) A laboratory issued a certificate of compliance must meet the following requirements:

(1) Meets the notification requirements of § 493.51.

(2) Permits announced or unannounced inspections by HHS in accordance with subpart Q of this part for the following reasons:

(i) Routine determination of compliance with the applicable requirements of this part.

(ii) Evaluation of complaints.

(iii) Nonroutine survey of the laboratory when HHS has substantive reason to believe that tests are being performed, or the laboratory is being operated in a manner that constitutes an imminent and serious risk to human health.

(iv) Collection of information regarding the appropriateness of tests listed in § 493.15 or tests categorized as moderate complexity (including the subcategories) or high complexity.

* * * * *

14. Section 493.51 is revised to read as follows:

§ 493.51 Notification requirements for laboratories issued a certificate for accurate and precise technology (APT) tests or a certificate of compliance.

Laboratories issued a certificate for APT tests or a certificate of compliance must meet the following requirements:

(a) Notify HHS or its designee within 30 days of any change in any of the following items:

(1) Ownership.

(2) Name.

(3) Location.

(4) Director.

(5) Technical supervisor (laboratories performing high complexity testing only).

(b) Notify HHS no later than 6 months after performing any test or examination within a specialty or subspecialty area that is not included on the laboratory's certificate for APT tests or a certificate of compliance, so that compliance with requirements can be determined.

(c) Notify HHS no later than 6 months after any deletions or changes in test methodologies for any test or examination included in a specialty or subspecialty, or both, for which the laboratory has been issued a certificate for APT tests or a certificate of compliance.

(d) Notify HHS before performing and reporting results for tests not included under the certificate for APT tests (which are tests other than waived tests, PPM procedures, and APT tests) unless the laboratory has been issued a registration certificate as required in subpart C or subpart D of this part, as applicable.

15. Section 493.53 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 493.53 Notification requirements for laboratories issued a certificate for provider-performed microscopy (PPM) procedures.

Laboratories issued a certificate for PPM procedures must notify HHS or its designee in the following situations:

(a) Before performing and reporting results for any test of moderate complexity (including the subcategory of APT tests) or high complexity, or both, in addition to tests specified as PPM procedures, or any test or examination that is not specified under § 493.15(c) for which it does not have a registration certificate or certificate for APT technology tests as required in subpart C or subpart D, as applicable, of this part.

* * * * *

16. In § 493.638, introductory paragraph (a) is revised, paragraph (a)(4) is redesignated as (a)(5), new paragraph (a)(4) is added, and paragraph (b) is revised to read as follows:

§ 493.638 Certificate fees.

(a) *Basic rule.* Laboratories must pay a fee for the issuance of a registration certificate, certificate for PPM procedures, certificate of waiver, certificate for APT tests, certificate of accreditation, or a certificate of compliance, as applicable. Laboratories must also pay a fee to reapply for a certificate for PPM procedures, certificate of waiver, certificate for APT tests, certificate of accreditation, or a certificate of compliance. The total of fees collected by HHS under the laboratory program must be sufficient to cover the general costs of administering the laboratory certification program under section 353 of the PHS Act.

* * * * *

(4) For a certificate for APT tests, the costs include issuing the certificate, collecting the fees, determining if a certificate for APT tests should be issued, evaluating which test systems qualify for inclusion in the subcategory of APT tests, and other direct administrative costs.

(5) For a certificate of accreditation, the costs include issuing the certificate, collecting the fees, evaluating the programs of accrediting bodies, and other direct administrative costs.

(b) *Fee amount.* The fee amount is set annually by HHS on a calendar year basis and is based on the category of test complexity, or on the category of test complexity and schedules or ranges of annual laboratory test volume (excluding waived tests and tests performed for quality control, quality assurance, and proficiency testing purposes) and specialties tested, with the amounts of the fees in each schedule being a function of the costs for all aspects of general administration of CLIA as set forth in § 493.649 (b) and (c). This fee is assessed and payable at least biennially. The methodology used to determine the amount of the fee is found in § 493.649. The amount of the fee applicable to the issuance of the registration certificate or the issuance or renewal of the certificate for PPM procedures, certificate of waiver, certificate for APT tests, certificate of accreditation, or certificate of compliance is the amount in effect at

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the time the application is received. Upon receipt of an application for a certificate, HHS or its designee notifies the laboratory of the amount of the required fee for the requested certificate.

17. In § 493.639, paragraphs (b) introductory text and (b)(1) are revised to read as follows:

§ 493.639 Fee for revised certificate.

* * * * *

(b) A laboratory must pay a fee to cover the cost of issuing a revised certificate in any of the circumstances specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The fee for issuing an appropriate revised certificate is based on the cost of issuing the revised certificate to the laboratory as follows:

(i) If a laboratory with a certificate of waiver wishes to perform tests in addition to those listed in § 493.15(c) as waived tests, it must, as set forth in § 493.638, pay an additional fee for the appropriate certificate to cover the additional testing.

(ii) If a laboratory with a certificate for PPM procedures wishes to perform tests in addition to those specified as PPM procedures or listed in § 493.15(c) as waived tests, it must, as set forth in § 493.638, pay an additional fee for the appropriate certificate (registration or certificate for APT tests) to cover the additional testing.

(iii) If a laboratory with a certificate for APT tests wishes to perform tests in addition to those categorized as APT tests, specified as PPM procedures, or listed in § 493.15(c) as waived tests, it must, as set forth in § 493.638, pay an additional fee for a registration certificate to cover the additional testing.

* * * * *

18. In § 493.643, paragraph (a) is revised to read as follows:

§ 493.643 Fee for determination of program compliance.

(a) *Fee requirement.* In addition to the fee required under § 493.638, a laboratory subject to routine inspections must pay a fee to cover the cost of determining program compliance. Laboratories issued a certificate for PPM procedures, certificate of waiver, certificate for APT tests, or a certificate of accreditation are not subject to this fee for routine inspections.

* * * * *

19. In section 493.645, the heading is revised, paragraph (c) is redesignated as (d) and revised, and a new paragraph (c) is added:

§ 493.645 Additional fee(s) applicable to approved State laboratory programs and laboratories issued certain certificates.

* * * * *

(c) *Laboratories with a certificate for APT tests.*

(1) In addition to the certificate fee, a laboratory requesting a certificate for APT tests is also assessed a fee representing the cost to HHS of random inspections to determine compliance with CLIA requirements. All laboratories issued a certificate for APT tests will share in the cost of these inspections.

(2) If a laboratory issued a certificate for APT tests has been inspected and followup visits are necessary because of identified deficiencies, HHS assesses the laboratory a fee to cover the cost of these visits. The fee is based on the actual resources and time necessary to perform the follow up visits. HHS revokes the laboratory's certificate for APT tests for failure to pay the assessed fee.

(d) *Other fees.* If, in the case of a laboratory that has been issued a certificate of accreditation, certificate of waiver, certificate for PPM procedures, or certificate for APT tests, it is necessary to conduct a complaint investigation, impose sanctions, or conduct a hearing, HHS assesses that laboratory a fee to cover the cost of these activities. Costs are based on the actual resources and time necessary to perform the activities and are not assessed until after the laboratory concedes the existence of deficiencies or an ALJ rules in favor of HHS. HHS revokes the laboratory's certificate for failure to pay the assessed costs. If a complaint investigation results in the determination that a complaint is unsubstantiated, or if an HHS adverse action is overturned at the conclusion of the administrative appeals process, the costs of these activities are not imposed upon the laboratory.

20. The heading of subpart H is revised to read as follows:

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate Complexity (Including the Subcategories), High Complexity, or any Combination of These Tests

21. Section 493.803(a) is revised to read as follows:

§ 493.803 Condition: Successful participation.

(a) Each laboratory performing tests of moderate complexity (including the subcategories) and/or high complexity must successfully participate in a proficiency testing program approved by HCFA, if applicable, as described in subpart I of this part for each specialty, subspecialty, and analyte or test in which the laboratory is certified under CLIA.

* * * * *

22. The heading of § 493.807 is revised to read as follows:

§ 493.807 Condition: Reinstatement of laboratories performing tests of moderate complexity (including the subcategories), high complexity, or any combination of these tests, after failure to participate successfully.

* * * * *

23. The undesignated center heading immediately preceding § 493.821 is revised to read as follows:

Proficiency Testing by Specialty and Subspecialty for Laboratories Performing Tests of Moderate Complexity (Including the Subcategories), High Complexity, or Any Combination of These Tests

24. The heading to subpart I is revised to read as follows:

Subpart I—Proficiency Testing Programs for Tests of Moderate Complexity (Including the Subcategories), High Complexity, or any Combination of These Tests

25. The heading to subpart J is revised to read as follows:

Subpart J—Patient Test Management for Moderate Complexity (Including the Subcategories), High Complexity, or any Combination of These Tests

26. Section 493.1101 is revised to read as follows:

§ 493.1101 Condition: Patient test management; moderate complexity (including the subcategories), high complexity testing, or any combination of these tests.

Each laboratory performing moderate complexity (including the subcategories) or high complexity testing, or any combination of these tests, must employ and maintain a system that provides for proper patient preparation; proper specimen collection, identification, preservation, transportation, and processing; and accurate result reporting. This system must assure optimum patient specimen integrity and positive identification throughout the preanalytic (pre-testing), analytic (testing), and postanalytic (post-testing) processes and must meet the standards as they apply to the testing performed.

27. A new § 493.1102 is added to read as follows:

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§ 493.1102 Standard; Patient test management requirements for accurate and precise technology (APT) tests.

For each APT test performed, the laboratory must meet all applicable patient test management requirements specified in §§ 493.1103 through 493.1111. The laboratory meets these requirements by doing both of the following activities:

(a) Having available and following the test system's PHS-approved instructions and, as appropriate, any supplements to the procedures established by the laboratory in accordance with the test system's PHS-approved instructions.

(b) Maintaining all records documenting compliance with paragraph (a) of this section for 2 years.

28. The heading to subpart K is revised to read as follows:

Subpart K—Quality Control for Tests of Moderate Complexity (Including the Subcategories), High Complexity, or any Combination of These Tests

29. Section 493.1201 is amended by revising paragraph (a) introductory text and paragraph (b) and by adding paragraph (c) to read as follows:

§ 493.1201 Condition: General quality control; Moderate complexity (including the subcategories) or high complexity testing, or any combination of these tests.

(a) *General.* Subpart K of this part is divided into two sections, general quality control and quality control for specialties and subspecialties. The quality control requirements are specified in §§ 493.1201 through 493.1285 unless—

* * * * *

(b) *Applicability of subpart K to moderate complexity (excluding APT tests) and high complexity tests.* The laboratory must establish and follow written quality control procedures for monitoring and evaluating the quality of the analytical testing process of each method to assure the accuracy and reliability of patient test results and reports. The laboratory must meet the applicable general quality control standards in §§ 493.1202 through 493.1221, unless an alternative procedure specified in the manufacturer's protocol has been cleared by the Food and Drug Administration (FDA) as meeting certain CLIA requirements for quality control or HHS approves an equivalent procedure specified in appendix C of the State Operations Manual (HCFA Pub. 7). HCFA Pub. 7 is available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, telephone number (703) 487–4630.

(c) *Applicability of subpart K to APT testing.* The laboratory must follow each test system's PHS-approved written instructions for monitoring and evaluating the quality of the analytical testing process to assure the accuracy and reliability of patient test results and reports. For each APT test, the laboratory must meet the quality control requirements of § 493.1204.

30. In § 493.1202, the introductory text of paragraph (c) is revised to read as follows:

§ 493.1202 Standard; Moderate or high complexity testing, or both: Effective from September 1, 1992 to September 1, 1996.

* * * * *

(c) For all other tests of moderate complexity, excluding the subcategory of APT testing, performed using an instrument, kit, or test system cleared by the FDA through premarket notification (510(k)) or the premarket approval (PMA) process for in-vitro diagnostic use, the laboratory must—

* * * * *

31. Section 493.1203 is amended by revising the introductory text to read as follows:

§ 493.1203 Standard; Moderate complexity (excluding accurate and precise technology (APT) tests) or high complexity testing or both: Effective September 1, 1996.

For each moderate complexity (excluding APT tests) or high complexity test performed, the laboratory is in compliance with this section if it—

* * * * *

§ 493.1204 [Redesignated as § 493.1206]

32. Section 493.1204 is redesignated as § 493.1206.

33. New § 493.1204 is added to read as follows:

§ 493.1204 Standard; Quality control requirements for accurate and precise technology (APT) tests.

For each APT test performed, the laboratory is in compliance with this subpart if it meets all applicable quality control requirements in this section. The laboratory must meet the following requirements:

(a) Have available and follow each test system's PHS-approved written instructions, which include the following protocols:

(1) Safety precautions.

(2) Protocols for instrument or test system operation and test performance, including maintenance and function checks.

(3) Calibration procedures.

(4) Quality control procedures defined by the manufacturer or producer of the test system, which include running at least two levels of control each day of testing to monitor all steps in the testing process, including the extraction phase if applicable, unless one of the following circumstances applies:

(i) The test system's PHS-approved instructions specify other than two levels of control.

(ii) The procedure cannot be controlled by conventional procedures and an alternative means of controlling the system has been approved by PHS.

(5) Remedial action procedures.

(b) Ensure that it meets the following requirements:

(1) It has available and follows written procedures, based on each test system's PHS-approved instructions, as applicable, for the following procedures:

(i) Determining specimen acceptability.

(ii) Reporting patient test results, including panic values (values requiring immediate medical intervention).

(iii) Course of action to be taken in the event that a test system becomes inoperable.

(iv) Referral of samples as specified in § 493.1111, including procedures for specimen submission and handling, as described in § 493.1103.

(2) The written procedures, whether provided by the manufacturer, the test system producer, or the laboratory, are approved, signed and dated by the current director of the laboratory.

(3) Any change to a procedure by the manufacturer or producer of a test system is approved by PHS and signed and dated by the laboratory director for use by laboratory personnel.

(4) Any change to a laboratory's protocol designed to meet the requirements is approved, signed and dated by the laboratory director.

(5) A copy of each procedure with the dates of initial use and discontinuance is retained for 2 years after a procedure has been discontinued.

(c) Before reporting patient results, using at least the test system's PHS-approved written instructions, verify that it can obtain performance specifications for accuracy, precision and reportable range of patient results that meet those established by the manufacturer or producer of the test system. The laboratory must also ensure that the laboratory's patient population is included in the reference range specified in the PHS-approved instructions.

(d) Document all remedial actions taken—

(1) In accordance with the test system's PHS-approved written instructions; and

(2) When errors in the reported patient test results are detected. In such a case, the laboratory must perform the following procedures:

(i) Promptly notify the authorized person ordering the test or individual using the test results of report errors.

(ii) Issue corrected reports promptly to the authorized person ordering the test or the individual using the test results.

(iii) Maintain exact duplicates of the original erroneous report as well as the corrected report for 2 years.

(e) Document and maintain records of all quality control activities specified in this section and retain records for at least 2 years or longer as specified by the manufacturer or producer of the test system in accordance with § 493.1221.

(f) Promptly report any inaccurate or imprecise method performance, whether perceived or validated, to the manufacturer or producer of the test system and, if the problem is not rectified, to PHS.

(g) Ensure that no modification is made in the test system's PHS-approved written instructions. Any changes made to the test system will result in the test system no longer meeting the requirements for categorization in the APT category. Modified tests are considered high complexity and are subject to the applicable CLIA quality control requirements contained in subpart K of this part, as well as all other applicable requirements for high complexity testing.

34. The heading to subpart M is revised to read as follows:

Subpart M—Personnel for Moderate Complexity (Including the Subcategories) and High Complexity Testing

35. Section 493.1351 is revised to read as follows:

§ 493.1351 General.

This subpart consists of the personnel requirements that must be met by laboratories performing moderate complexity testing, PPM procedures, APT tests, high complexity testing, or any combination of these tests.

36. Following § 493.1365, a new undesignated center heading and new §§ 493.1371 through 493.1387 are added to read as follows:

Laboratories Performing Accurate and Precise Technology (APT) Tests

Sec.
493.1371 Condition: Laboratories performing APT tests; Laboratory director.
493.1373 Standard; Laboratory director qualifications.
493.1375 Standard; Laboratory director responsibilities.
493.1377 Condition: Laboratories performing APT testing; clinical consultant.
493.1379 Standard; Clinical consultant qualifications.
493.1381 Standard: Clinical consultant responsibilities.
493.1383 Condition: Laboratories performing APT testing; testing personnel.
493.1385 Standard; Testing personnel qualifications.
493.1387 Standard; Testing personnel responsibilities.

Laboratories Performing Accurate and Precise Technology (APT) Tests

§ 493.1371 Condition: Laboratories performing APT tests; Laboratory director.

The laboratory must have a director who meets the qualification requirements of § 493.1373 and provides overall management and direction in accordance with § 493.1375.

§ 493.1373 Standard; Laboratory director qualifications.

The laboratory director must be qualified to manage and direct the laboratory personnel and the performance of APT tests and must be eligible to be an operator of a laboratory within the requirements of subpart R of this part and meet the requirements of § 493.1405, which contain laboratory director qualifications for moderate complexity testing.

§ 493.1375 Standard; Laboratory director responsibilities.

The laboratory director is responsible for the overall operation and administration of the laboratory, including the employment of personnel who are competent to perform APT tests in accordance with each test system's PHS-approved instructions, and record and report test results promptly, accurately, and proficiently, and for assuring compliance with applicable regulations.

(a) The laboratory director, if qualified, may perform the duties of the clinical consultant and testing personnel or may delegate these responsibilities to personnel meeting the qualification requirements of §§ 493.1379 and 493.1385, respectively.

(b) The laboratory director must be accessible to the laboratory to provide onsite, telephone or electronic consultation as needed.

(c) No individual may direct more than five laboratories.

(d) The laboratory director must meet the following requirements:

(1) Ensure that testing systems selected for each of the tests performed in the laboratory are appropriate for the clinical use of the test results.

(2) Ensure that the physical plant and environmental conditions of the laboratory are appropriate for the testing performed and provide a safe environment in which employees are protected from physical, chemical, and biological hazards.

(3) Ensure that the following requirements are met:

(i) Before reporting patient results, using at least the test system's PHS-approved verification procedure, the laboratory can obtain or verify performance specifications for accuracy, precision and reportable range of patient results that meet those established by the manufacturer or producer of the test system and can ensure that the reference range specified by the manufacturer or producer of the test system is appropriate for the laboratory's patient populations.

(ii) Testing personnel are following test analyses and quality control procedures in accordance with each test system's PHS-approved instructions.

(4) Ensure that the laboratory is enrolled in an HHS-approved proficiency testing program for the

testing performed and that the laboratory meets the following requirements:

(i) The proficiency testing samples are tested as required under subpart H of this part.

(ii) The results are returned within the time frames established by the proficiency testing program.

(iii) All proficiency testing reports received are reviewed to evaluate the laboratory's performance and to identify any problems that require corrective action.

(iv) An approved corrective action plan is followed and documented when any proficiency testing results are found to be unacceptable or unsatisfactory.

(5) Ensure that a quality assurance program is established and maintained to assure the quality of laboratory services provided.

(6) Ensure that all necessary remedial actions are taken and documented and that patient results are reported only when the test system is functioning properly.

(7) Ensure that the producer or manufacturer of the test system is notified when the test system does not meet the performance specifications as outlined in the test system's PHS-approved instructions and, if the problem is not rectified, notify PHS.

(8) Ensure that reports of test results include pertinent information required for interpretation.

(9) Ensure that consultation is available to the laboratory's clients on matters relating to the results of APT tests reported and their interpretation concerning specific patient conditions, including any relevant information provided in the test system's PHS-approved instructions.

(10) Employ a sufficient number of testing personnel with the appropriate education and either experience or training to perform tests and report test results in accordance with the personnel responsibilities described in this subpart.

(11) Ensure that, before they test patient samples, testing personnel receive the appropriate training for the services offered and have demonstrated that they can perform all testing operations, in accordance with each test system's PHS-approved instructions, to provide and report accurate results.

(12) Ensure that policies and procedures are established for evaluating and documenting the performance of testing personnel responsible for APT testing to ensure that they are competent and maintain their competency to handle specimens, perform test procedures, report test results promptly and proficiently, and, whenever necessary, identify needs for remedial training or continuing education to improve testing skills. The director must ensure that evaluations are conducted at least semiannually during the first year the individual tests patient specimens and that, thereafter, the evaluations are performed at least annually unless test methodology or instrumentation changes, in which case, before reporting patient test results, the individual's performance must be reevaluated to include the use of the new test methodology or instrumentation. The evaluation of the competency of testing personnel must include at least one or more of the following, but is not limited to the following procedures:

(i) Direct observations of routine patient test performance, including patient preparation, if applicable, specimen handling, and testing.

(ii) Monitoring the recording and reporting of test results.

(iii) Review of work sheets, quality control records, proficiency testing results, and preventive maintenance records.

(iv) Assessment of test performance through testing previously analyzed specimens, internal blind testing samples, or external proficiency testing samples.

(13) Ensure that an approved procedure manual is available to all testing personnel.

(14) Specify, in writing, the responsibilities and duties of each person engaged in the performance of APT testing that identifies which examinations and procedures each individual is authorized to perform.

§ 493.1377 Condition: Laboratories performing APT testing; clinical consultant.

The laboratory must have a clinical consultant who meets the qualification requirements of § 493.1379 and provides clinical consultation in accordance with § 493.1381.

§ 493.1379 Standard; Clinical consultant qualifications.

The clinical consultant must be qualified to consult with and furnish opinions to the laboratory's clients concerning the diagnosis, treatment and management of patient care. The clinical consultant must meet the requirements of § 493.1417, Clinical consultant qualifications for moderate complexity testing.

§ 493.1381 Standard; Clinical consultant responsibilities.

The clinical consultant provides consultation regarding the appropriateness of the testing ordered and interpretation of test results. The clinical consultant must meet the following requirements:

(a) Be available to provide clinical consultation to the laboratory's clients.

(b) Be available to assist the laboratory's clients in ensuring that appropriate tests are ordered to meet the clinical expectations.

(c) Ensure that reports of test results include pertinent information required for specific patient interpretation.

(d) Ensure that consultation is available and communicated to the laboratory's clients on matters related to the results of APT tests reported and their interpretation concerning specific patient conditions, including any relevant information provided in the test system's PHS-approved instructions.

§ 493.1383 Condition: Laboratories performing APT testing; testing personnel.

The laboratory must have a sufficient number of individuals who meet the qualification requirements of § 493.1385 to perform the functions specified in § 493.1387 for the volume of tests performed.

§ 493.1385 Standard; Testing personnel qualifications.

Each individual performing APT testing must meet the following requirements:

(a) Possess a current license issued by the State in which the laboratory is located, if such licensing is required.

(b) Meet one of the following requirements:

(1) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located or have earned a doctoral, master's, or bachelor's degree in a chemical, physical, biological or clinical laboratory science or medical technology from an accredited institution.

(2) Have earned an associate degree in a chemical, physical, or biological science, or in medical laboratory technology from an accredited institution.

(3) Be a high school graduate or equivalent and have successfully completed an official U.S. military medical laboratory procedures course of at least 50 weeks duration and have held the military enlisted occupational specialty of Medical Laboratory Specialist (Laboratory Technician).

(4) (i) Have earned a high school diploma or equivalent; and

(ii) Have documentation of training appropriate for the APT testing performed before analyzing patient

specimens. This training must ensure that the individual has the following skills and knowledge:

(A) The skills required for proper specimen collection, including patient preparation (if applicable), labeling, handling, preservation, transportation and storage of specimens.

(B) The skills required for performing each test method and control procedure and for proper instrument use.

(C) The skills required for performing preventive maintenance, troubleshooting and calibration procedures related to each test performed.

(D) An awareness of the factors that influence test results.

§ 493.1387 Standard; Testing personnel responsibilities.

The testing personnel performing APT tests are responsible for specimen processing, test performance, and for reporting test results.

(a) Each individual performs only those APT tests that they are authorized by the laboratory director to perform.

(b) Each individual performing APT testing must meet the following requirements:

(1) Follow each test system's PHS-approved written instructions and, as applicable, the laboratory's written policies and procedures for specimen submission and handling and for reporting and maintaining records of patient test results.

(2) Maintain records that demonstrate that proficiency testing samples are tested in the same manner as patient samples.

(3) Adhere to each test system's PHS-approved written instructions for quality control procedures, including the documentation of all quality control activities, remedial actions, instrument and procedural calibrations, and maintenance performed.

(4) Be capable of identifying problems that may adversely affect test performance or reporting of test results and either must correct the problems or immediately notify the director.

(5) Notify the director of any test system performance that does not meet the performance specifications as outlined in the test system's PHS-approved instructions.

37. The heading to subpart P is revised to read as follows:

Subpart P—Quality Assurance for Moderate Complexity (Including the Subcategories), High Complexity Testing, or any Combination of These Tests

§ 493.1701 [Amended]

38. Section 493.1701 is amended by revising the word "subcategory" to read "subcategories" wherever it appears in the heading and text.

39. A new § 493.1702 is added to read as follows:

§ 493.1702 Standard; Quality Assurance for accurate and precise technology (APT) tests.

For each APT test performed, the laboratory must meet all applicable quality assurance requirements specified in §§ 493.1703 through 493.1721. The laboratory meets these requirements by doing both of the following activities:

(a) Having available and following the test system's PHS-approved instructions and, as appropriate, any supplements to the procedures established by the laboratory in accordance with the test system's PHS-approved instructions.

(b) Maintaining all records documenting compliance with paragraph (a) of this section for 2 years.

40. In § 493.1777 the introductory text is revised to read as follows:

§ 493.1777 Condition: Inspection of laboratories requesting or issued a certificate of compliance.

Laboratories requesting a certificate of compliance must permit an inspection to assess compliance with part 493 of this chapter. All testing conducted, including testing in the subcategories of APT tests or PPM procedures, may be included in the laboratory's routine or complaint inspection. APT tests and PPM procedures are assessed for compliance with only the applicable requirements specific to those subcategories of testing.

* * * * *

41. A new § 493.1778 is added to read as follows:

§ 493.1778 Condition: Inspection of laboratories issued a certificate for accurate and precise technology (APT) tests.

(a) HHS or its designee may conduct announced or unannounced inspections of any laboratory issued a certificate for APT tests at any time during its hours of operation for the following purposes:

(1) Assess compliance with the following circumstances, as applicable:

(i) On a random basis.

(ii) Following a laboratory's demonstration of unsuccessful participation in proficiency testing for analytes specified in subpart I of this part.

(iii) To evaluate complaints from the public.

(2) Determine whether testing is being performed or the laboratory is being operated in a manner that does not constitute an imminent and serious risk to public health.

(3) Collect information to determine the appropriateness of tests categorized as APT tests according to the criteria listed at § 493.18.

(4) Determine whether the laboratory is performing tests in addition to tests categorized as APT tests according to the criteria listed at § 493.18, specified as PPM procedures, or tests approved by PHS as waived tests that are not included on the laboratory's certificate.

(b) The laboratory may be required as part of this inspection to perform or authorize the following activities:

(1) Test samples (including proficiency testing samples) or perform procedures as HHS or its designee requires.

(2) Allow HHS or its designee to interview all employees of the laboratory concerning the laboratory's compliance with the applicable requirements as noted in paragraph (d) of this section.

(3) Permit employees to be observed performing tests (including proficiency testing specimens), data analysis and reporting.

(4) Permit HHS or its designee access to all areas of the facility, including the following areas:

(i) Specimen procurement and processing areas.

(ii) Storage facilities for specimens, reagents, supplies, records, and reports.

(iii) Testing and reporting areas.

(5) Provide copies to HHS or its designee of all records and data required under this part.

(c) The laboratory must have all records and data accessible and retrievable within a reasonable time frame during the inspection.

(d) Applicable requirements for the purpose of this section are located in subparts C, H, J, K, M, and P of this part and § 493.21.

(e) The laboratory must provide upon reasonable request all information and data needed by HHS or its designee to make a determination of compliance with the applicable requirements.

(f) HHS or its designee may reinspect a laboratory at any time necessary to assess the laboratory's compliance with the applicable requirements.

(g) Failure to permit an inspection under this section will result in the suspension of Medicare and Medicaid payments to the laboratory or termination of the laboratory's participation in Medicare and Medicaid for payment, and suspension of, or action to revoke, the laboratory's CLIA certificate in accordance with subpart R of this part.

42. In § 493.1814, the text of the introductory text of paragraph (b) is republished and paragraph (b)(3) is revised to read as follows:

§ 493.1814 Action when deficiencies are at the condition level but do not pose immediate jeopardy.

* * * * *

(b) *Failure to correct condition level deficiencies.* If HCFA imposes alternative sanctions for condition level deficiencies that do not pose immediate jeopardy and the laboratory does not correct the condition level deficiencies within 12 months after the last day of inspection, HCFA—

* * * * *

(3) May impose (or continue, if already imposed) any alternative sanctions that do not pertain to Medicare payments. (Sanctions imposed under the authority of section 353 of the PHS Act may continue for more than 12 months from the last date of inspection, while a hearing on the proposed suspension, limitation, or revocation of the certificate of compliance, registration certificate, certificate of accreditation, certificate for APT tests, or certificate for PPM procedures is pending.)

* * * * *

43. In § 493.1834, the heading and introductory text of paragraph (f)(2) are republished and paragraphs (b) and (f)(2)(iii) are revised to read as follows:

§ 493.1834 Civil money penalty.

* * * * *

(b) *Scope.* This section sets forth the procedures that HCFA follows to impose a civil money penalty in lieu of, or in addition to, suspending, limiting, or revoking the certificate of compliance, registration certificate, certificate of accreditation, certificate for APT tests, or certificate for PPM procedures of a laboratory that is found to have condition level deficiencies.

* * * * *

(f) *Accrual and duration of penalty.* * * *

(2) *Duration of penalty.* The civil money penalty continues to accrue until the earliest of the following occurs:

* * * * *

(iii) HCFA suspends, limits, or revokes the laboratory's certificate of compliance, registration certificate, certificate of accreditation, certificate for APT tests, or certificate for PPM procedures.

* * * * *

44. In § 493.1836, the heading of paragraph (c) is republished and paragraphs (c)(2) and (c)(3) are revised to read as follows:

§ 493.1836 State onsite monitoring.

* * * * *

(c) *Duration and sanction.* * * *

(2) If the laboratory does not correct all deficiencies within 12 months, and a revisit indicates that deficiencies remain, HCFA cancels the laboratory's approval for Medicare payment for its services and notifies the laboratory of its intent to suspend, limit, or revoke the laboratory's certificate of compliance, registration certificate, certificate of accreditation, certificate for APT tests, or certificate for PPM procedures.

(3) If the laboratory still does not correct its deficiencies, the Medicare sanction continues until the suspension, limitation, or revocation of the laboratory's certificate of compliance, registration certificate, certificate of accreditation, certificate for APT tests, or certificate for PPM procedures is effective.

45. In § 493.2001, the introductory text of paragraph (e) is republished and paragraph (e)(1) is revised to read as follows:

§ 493.2001 Establishment and function of the Clinical Laboratory Improvement Advisory Committee.

* * * * *

(e) The Clinical Laboratory Improvement Advisory Committee or subcommittee at the request of HHS will review and make recommendations concerning—

(1) Criteria for categorizing tests and examinations of moderate complexity (including the subcategories) and high complexity;

* * * * *

Authority: Sec. 353 of the Public Health Service Act (42 U.S.C. 263a)

Dated: May 25, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 26, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Dated: June 5, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–22861 Filed 9–14–95; 8:45 am]

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federal register

Friday
September 15, 1995

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 945

Hawaiian Islands Humpback Whale National Marine Sanctuary Regulations; Proposed Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 945

[Docket No.: 950427120-5120-01]

RIN 0648-AH99

Hawaiian Islands Humpback Whale National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC)

ACTION: Proposed rule; summary of draft management plan; and Notice of public availability of draft management plan and draft environmental impact statement.

SUMMARY: NOAA, as required by section 2306 of the Hawaiian Islands National Marine Sanctuary Act (the "HINMSA" or "Act"), is proposing a comprehensive management plan and implementing regulations for the Hawaiian Islands Humpback Whale National Marine Sanctuary (the "HIHWNMS" or "Sanctuary"). The Sanctuary was designated by Congress in 1992. This document publishes the proposed Designation Document and regulations for the Sanctuary, and summarizes the proposed management plan. The proposed management plan details the proposed goals and objectives, management responsibilities, research and long-term monitoring activities, interpretive and educational programs, resource protection strategies, and enforcement for the Sanctuary. The proposed regulations would implement the comprehensive management plan and govern the conduct of activities consistent with the HINMSA and the National Marine Sanctuaries Act ("NMSA"), and the Designation Document for the Sanctuary. By this notice NOAA also announces the public availability of the draft environmental impact statement and management plan (DEIS/MP) for the Sanctuary.

The primary purposes of the proposed designation document, proposed regulations and proposed management plan are to protect humpback whales and their Sanctuary habitat; to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment; to manage human uses of the Sanctuary consistent with the HINMSA and the NMSA; and to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

DATES: Comments are invited and will be considered if submitted in writing to the address below on or before December 14, 1995.

ADDRESSES: Comments should be submitted to the Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC-4, 12th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Debra Malek, Regional Manager, Pacific Branch, Sanctuaries and Reserves Division, Silver Spring, Maryland, (301) 713-3141, or Allen Tom, On-site Project Specialist, Kihei, Maui, Hawaii, (808) 879-2818 (Maui), (808) 541-3184 (Oahu) or (800) 831-4888 (inter-island toll-free).

SUPPLEMENTARY INFORMATION:

I. Background

The establishment of a national marine sanctuary in the waters around Hawaii was first considered in 1977, when NOAA received the nomination for a proposed Humpback Whale National Marine Sanctuary in the waters between the islands of Maui, Molokai, Lanai, and Kahoolawe. Scientists and resource managers, at a workshop convened in December 1977, recommended that a marine sanctuary would be most beneficial for the long-term protection of the endangered humpback whale. Workshop participants concluded that a Sanctuary that encompassed the marine waters around the main Hawaiian islands would provide the greatest protection for humpback whales in the waters off Hawaii. The nomination was placed on NOAA's List of Recommended Areas in October 1979. In accordance with NOAA regulations, NOAA declared the site an "active candidate" for sanctuary designation in March 1982, and public workshops were conducted in Hawaii during April 1982. Both support for a sanctuary and concerns regarding possible regulation of fishing activities and vessel operation were voiced at these meetings. In early 1984, at the request of the State government, NOAA suspended further consideration of the site as a possible national marine sanctuary.

In October 1990 Congress directed NOAA to determine the feasibility of establishing a national marine sanctuary around Kahoolawe Island, the smallest of the eight main Hawaiian islands (Public Law No. 101-515). NOAA's 1992 report to Congress, "Kahoolawe Island National Marine Sanctuary Feasibility Study", found that although it does not appear that large numbers of humpback whales utilize Kahoolawe Island waters, other biological, cultural and historical resources adjacent to Kahoolawe Island merit further investigation as to their possible national significance. The study recommended that additional areas around the Hawaiian Islands be considered as possible components of a multiple-site, multiple-resource national marine sanctuary.

In 1992, Congress considered the reauthorization of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* ("MPRSA"; also cited as the National Marine Sanctuaries Act). During this time, the State of Hawaii presented testimony at reauthorization hearings citing the need and desirability of designating a Humpback Whale National Marine Sanctuary in the waters around Hawaii. Coupled with the Kahoolawe Feasibility Study, the State's testimony renewed Congressional interest in designation of a sanctuary.

On November 4, 1992, Pub. L. No. 102-587 (the Oceans Act), was signed into law. Subtitle A of Title II of the Oceans Act (the National Marine Sanctuaries Program Amendments Act) reauthorized and amended Title III of the MPRSA. Subtitle C of Title II of the Oceans Act, titled the Hawaiian Islands National Marine Sanctuary Act, designated the Hawaiian Islands Humpback Whale National Marine Sanctuary. The Act specifies a boundary for the Sanctuary subject to modification by the Secretary of Commerce ("Secretary") as may be necessary to fulfill the purpose for which the Sanctuary was designated, and identifies waters around Kahoolawe Island for automatic designation as part of the Sanctuary on January 1, 1996, unless certified by the Secretary as being unsuitable for inclusion in the Sanctuary.

Section 2306 of the Act requires the Secretary to develop a comprehensive management plan and implementing regulations following the procedures of sections 303 and 304 of the NMSA (16 U.S.C. 1433 and 1434; these sections set forth designation standards and procedures for designating and implementing the designation of national marine sanctuaries). To meet these requirements, a series of scoping meetings were conducted in March 1993 on each of the main Hawaiian Islands, and in Washington, DC. During March 1994, additional public meetings were conducted on each of the main Hawaiian Islands to aid the development of a draft management plan for the Sanctuary. On-site staff have also solicited information from Federal, State and county agencies and the public to assist in the development of the DEIS/MP. The DEIS/MP was jointly developed by SRD and the Hawaii Office of State Planning pursuant to a memorandum of agreement signed in June 1993.

The authority of the Secretary to designate national marine sanctuaries was delegated to the Under Secretary of Commerce for Oceans and Atmosphere by Department of Commerce, Organization Order 10-15, § 3.01(z) (Jan. 11, 1988). The authority to administer provisions of Title III of the MPRSA was delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50 (Sept. 21, 1983, as amended).

Comments are solicited from all interested persons on the proposed Designation Document, the proposed regulations, and the DEIS/MP for the Sanctuary. Comments are in particular invited on the Sanctuary boundary, the adequacy of the regulatory regime to protect humpback whales and their habitat, the research and education programs, the structure and role of the Sanctuary Advisory Council, and the process for identifying other marine resources and ecosystems for possible inclusion in the Sanctuary. After the comments received during the public comment period have been considered, a final environmental impact statement and management plan (FEIS/MP) will be prepared, and a notice of final rule implementing the Sanctuary designation will be published in the **Federal Register**. The Designation Document, management plan, and regulations will take effect and become final 45 days after the date of issuance of the comprehensive management plan and implementing regulations, unless the Governor of Hawaii certifies to the Secretary that the management plan, any implementing regulation, or any term of the plan or regulations is unacceptable. If the Governor makes such certification, the management plan, regulations, or term, respectively, will not take effect in the State waters within the Sanctuary boundary. (The Secretary may then terminate the entire designation for the Sanctuary if he considers that an objection by the Governor will prevent the HINMSA's goals and objectives from being fulfilled.) Upon the close of the 45-day period, a notice will be published in the **Federal Register** announcing the effective date of the implementing regulations.

II. Summary of Draft Environmental Impact Statement/Management Plan

The DEIS/MP for the Hawaiian Islands Humpback Whale National Marine Sanctuary sets forth the Sanctuary's location and provides background information on humpback whales and their habitat, other marine resources located in Hawaii, and human uses of the area. The DEIS/MP describes the proposed resource protection, research and long-term monitoring, education and interpretive programs, and details specific activities to be undertaken in each program. The DEIS/MP also includes a discussion, by program area, of agency roles and responsibilities and a description of Sanctuary administration, including the establishment of a Sanctuary Advisory Council. Major components of the Sanctuary management plan are summarized below.

Resource Protection

Unlike most other national marine sanctuaries, which are based on protecting and managing a marine ecosystem environment, the only resources proposed for protection and management under the Sanctuary regime are humpback whales and their habitat. Thus, the highest management priority for the Sanctuary is the long-term protection of the humpback whales and their habitat in Hawaii. In addition to the HINMSA, the humpback whale is specifically protected by two other Federal laws. The humpback whale is listed as an endangered species under the Endangered Species Act, as amended ("ESA"), 16 U.S.C. 1531 *et seq.*, and is protected under the Marine Mammal Protection Act, as amended ("MMPA"), 16 U.S.C. 1361 et seq., both administered by NOAA's National Marine Fisheries Service ("NMFS"). As many of the activities affecting humpback whales and their habitat are presently regulated or governed by existing Federal, State and county authorities, the Sanctuary would primarily work with these authorities to ensure comprehensive, complementary, coordinated and more efficient management and protection of humpback whales and their habitat. The Sanctuary would also work with existing Federal and State enforcement entities to coordinate enforcement efforts, develop annual enforcement plans, and respond to public concerns.

The goals and objectives of the proposed Resource Protection Program are designed to reinforce, complement and coordinate existing management and regulatory efforts; fill gaps in existing authorities; enhance public participation and awareness in protecting humpback whales and their habitat; address some of the problems, objectives and policies identified in the Hawaii Ocean Resource Management Plan (1991), the NMFS Final Recovery Plan for the Humpback Whale (1991), and other programs, such as point and non-point source pollution control measures as they relate to the protection of the humpback whale's Hawaiian habitat. Because the only resources proposed for protection and management under the Sanctuary regime—humpback whales and their habitat—already are protected, directly and indirectly, by a number of other laws (*e.g.*, ESA, MMPA, Clean Water Act, Rivers and Harbors Act, and the Coastal Zone Management Act), the Sanctuary would seek to achieve these goals by working with existing authorities. The Sanctuary would reinforce existing management regimes without adding to current regulatory and administrative requirements.

To fulfill the statutory mandate of providing long-term protection for the population of humpback whales and their Sanctuary habitat, the proposed Resource Protection Program has the following objectives and strategies:

(1) Coordinate and complement policies and procedures among the agencies sharing regulatory responsibility for the protection and management of humpback whales and humpback whale habitat within the Sanctuary (Sanctuary habitat), primarily with NMFS, which administers the ESA and MMPA, and also with various State and county agencies of competent jurisdiction;

(2) Develop and issue Sanctuary regulations only as necessary to reinforce and complement existing efforts and fill gaps in existing authorities for the protection and management of humpback whales and their Sanctuary habitat;

(3) Complement coordination among appropriate Federal, State and county authorities to enhance enforcement of existing laws that fulfill Sanctuary goals;

(4) Encourage participation by interested agencies and the public in the development of procedures to address specific management concerns (*e.g.*, research, long-term monitoring, enforcement, education, and emergency-response programs);

(5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives and other authorities in place that protect humpback whales and their Sanctuary habitat through education and interpretive programs stressing resource

sensitivity and wise use of the marine environment;

(6) Utilize research and monitoring results and other scientific data from resource management agencies and researchers to develop effective, comprehensive resource protection strategies and improve management decision-making; and

(7) Facilitate all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of protection of the humpback whales and their Sanctuary habitat.

Research and Long-Term Monitoring Program

Effective management of the Sanctuary's resources requires the development and implementation of a responsive Sanctuary research and long-term monitoring program. The primary goals of the proposed Research and Long-Term Monitoring Program are to improve our understanding of humpback whales and their habitat requirements; identify, address and resolve specific management concerns; establish a long-term ecological monitoring program with respect to humpback whales and their habitat; coordinate and facilitate information exchange among the various researchers and institutions, agencies, and the general public; and enhance the public's participation in resource stewardship. Other research priorities may result from the process to identify additional marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

The proposed Research and Long-Term Monitoring Program would be part of the overall effort to implement portions of the NMFS Final Recovery Plan for the Humpback Whale and other long-term protection plans for humpback whale habitat (e.g. Hawaii Ocean Resource Management Plan). The specific objectives for the proposed Sanctuary Research and Long-Term Monitoring Program are to:

(1) Improve the present understanding of humpback whales' vital life rates (age at sexual maturity, pregnancy rates, calving intervals, mortality and age-specific mortality), abundance, distribution, movement, behavior, and interrelationships with their Hawaiian habitat;

(2) Characterize the marine environment to establish baseline parameters for identifying, detecting and monitoring natural- and human-induced changes to humpback whales and their habitat, and to identify research needs and gaps;

(3) Establish a coordinating framework and procedures for identifying, selecting and sponsoring research projects to ensure that the research topics are responsive to management concerns and that research results contribute to improved management decision-making in the Sanctuary;

(4) Develop a long-term ecological monitoring program to detect and determine the cause or causes of future changes and trends in the vital parameters and the important habitat components of the humpback whale population that winters in the Hawaiian Islands;

(5) Develop a data and information management system for tracking and integrating new information into an evolving understanding of humpback whales and their habitat; and

(6) Encourage information exchange among all researchers, organizations and agencies undertaking humpback whale and habitat related research in the Sanctuary and elsewhere to promote more informed management and decision-making.

Education and Interpretation Program

The primary goals of the proposed Education and Interpretation Program are to improve public awareness and understanding of the humpback whale and its habitat; enhance knowledge of the Sanctuary's purposes, goals and resource protection strategies; facilitate responsible human uses within the Sanctuary consistent with the primary objective of protection of the humpback whale and its habitat; encourage public participation; and facilitate information exchange among the various environmental educators and interpreters, researchers, agencies, and the general public. Particular focus would be placed on projects which interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment.

On-site visitor programs would be instituted consisting of making available printed materials describing the Sanctuary for distribution at statewide government offices, marine recreation businesses, marinas, whalewatching vessels, humpback whale interpretive centers, libraries, schools, airports, harbors and other local establishments. A local Sanctuary headquarters would be established and the Sanctuary would also use other visitor and information centers throughout Hawaii to inform visitors about the Sanctuary, humpback whales and their habitat.

The specific objectives of the proposed Sanctuary Education and Interpretation Program are to:

(1) Enhance public awareness, understanding and appreciation of humpback whales and their habitat;

(2) Create public awareness of the National Marine Sanctuary Program, the Hawaiian Islands Humpback Whale National Marine Sanctuary, and other humpback whale conservation groups and organizations;

(3) Establish a coordinating framework and procedures for identifying, selecting and sponsoring education projects to ensure that the education topics are responsive to management concerns and that the education products contribute to greater understanding and appreciation of the Sanctuary, humpback whales and the broader Hawaiian Islands marine environment;

(4) Encourage information exchange among all persons, organizations and agencies undertaking environmental education and research activities in the Sanctuary;

(5) Establish a user-friendly Data/Information Center for the location of information and research results pertaining to Sanctuary resources and management information; and

(6) Establish cooperative education programs with native Hawaiian groups to educate people about native Hawaiian traditions, culture, uses and religion as they relate to Hawaii's unique marine environment.

Sanctuary Administration

The National Marine Sanctuary Program is administered by NOAA's Sanctuaries and Reserves Division (SRD). Depending on the resources available to the Sanctuary, staffing would include a Sanctuary manager, administrative assistant, research coordinator, education coordinator, and one or more enforcement/interpreter personnel. Staff would be distributed among the Sanctuary's main office, presently located in Kihei, Maui, other satellite offices located on other islands, or within other agencies. Arrangements may be made among various levels of government agencies and private sector organizations through cooperative agreements or memoranda of understanding to provide personnel and/or resources to carry out the duties associated with the research and education coordinator positions. SRD would coordinate its on-site activities through cooperative arrangements and/or specific memoranda of understanding with other Federal, State, and county agencies, and non-governmental organizations, as appropriate.

A Sanctuary Advisory Council (SAC) would be established pursuant to section 315 of the NMSA (16 U.S.C. 1445a) to enable agencies, interested groups, and individuals to provide advice and recommendations on the management of the Sanctuary. The SAC would consist of a balanced representation of those groups affected by Sanctuary designation, including Federal, State and county authorities, native Hawaiian groups, fishing interests, commercial whalewatching industry, boating industry, environmental interests, researchers, education groups, and members of the community. The SAC would act in an advisory capacity to the Sanctuary Manager and would be instrumental in helping produce annual operating plans and reports by identifying education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The SAC would also play an instrumental role in identifying marine resources and ecosystems of national significance for possible inclusion in the Sanctuary through a process outlined in Part 4(c) of the proposed management plan. The SAC would work in concert with the Manager by keeping her or him informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

In order to function efficiently in an advisory capacity and incorporate the different concerns from all the main Hawaiian Islands, the SAC may appoint subcommittees or working groups that correspond to the main Sanctuary management areas of education, research, resource protection, regulations/enforcement, revenue enhancement, and others as necessary. Additional subcommittees or working groups may be formed to provide recommendations to the SAC on the identification and assessment of other marine resources and ecosystems of national significance for possible inclusion into the Sanctuary. To ensure county representation, the SAC would have one seat for each of the four counties (Kauai, Honolulu, Maui and Hawaii (Big Island)).

III. Proposed Designation Document

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that will be subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus the terms of designation serve as a constitution for the Sanctuary. In the case of this Congressionally designated Sanctuary, many of the terms of designation are contained in the Hawaiian Islands National Marine Sanctuary Act. The proposed Designation Document follows:

Proposed Designation Document for the Hawaiian Islands Humpback Whale National Marine Sanctuary

On November 4, 1992, President Bush signed into law the Hawaiian Islands National Marine Sanctuary Act ("HINMSA" or "Act"; Subtitle C of the Oceans Act of 1992, Pub. L. No. 102–587) which designated the Hawaiian Islands Humpback Whale National Marine Sanctuary ("HIHWNMS" or "Sanctuary").

The purposes of the Sanctuary are to—

(1) Protect humpback whales and their Sanctuary habitat;

(2) Educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment;

(3) Manage human uses of the Sanctuary consistent with the designation and Title III of the Marine Protection, Research and Sanctuaries Act, as amended ("MPRSA"; also cited as the "National Marine Sanctuaries Act" or "NMSA"), 16 U.S.C. 1431 *et seq.*; and

(4) Provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

Article I. Effect of Designation

Section 2306 of the HINMSA requires the Secretary to develop and issue a comprehensive management plan and implementing regulations to achieve the policy and purposes of the Act, consistent with the procedures of sections 303 and 304 of the NMSA. Section 304 of the NMSA also authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and aesthetic resources and qualities of the Hawaiian Islands Humpback Whale National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists those activities that may be regulated on the effective date of the regulations, or at some later date in order to implement the Sanctuary designation.

Article II. Description of the Area

The HINMSA identified a Sanctuary boundary but authorized the Secretary to modify the boundary as necessary to fulfill the purposes of the designation. The Sanctuary boundary was modified by the Secretary to encompass the submerged lands and waters off the coast of the Hawaiian Islands extending seaward from the mean high-water line—

(1) To the 100-fathom (183 meter) isobath adjoining the islands of Maui, Molokai and Lanai, including Penguin Bank, but excluding the area within three nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island;

(2) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward;

(3) To the 100-fathom (183 meter) isobath around the Big Island (Hawaii);

(4) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Makahuena Point, Kauai; and

(5) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Ala Wai Canal eastward to Makapuu Point, Oahu.

Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

Hawaii (Big Island)

Hilo Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor and Small Boat Basin
Keauhou Bay

Kauai

Hanamaulu Bay
Nawiliwili Harbor

Lanai

Kaumalapau Harbor
Manele Harbor

Maui

Kahului Harbor
Lahaina Boat Harbor
Maalaea Boat Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor

As specified at sections 2305(b)(2) (A) and (B) of the HINMSA, on January, 1, 1996, the area of the marine environment within 3 nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island will become part of the Sanctuary, unless during the 3 month period immediately preceding January 1, 1996, the Secretary certifies in writing to Congress that the area is not suitable for inclusion in the Sanctuary. After a certification of unsuitability is made, the Secretary shall annually make a finding concerning the suitability of the area for inclusion in the Sanctuary and submit to Congress a report on the finding and the reasons thereof. If the Secretary finds that the area is suitable for inclusion in the Sanctuary, the area is designated a part of the Sanctuary on the 30th day after such report is submitted.

The Precise Boundary of the Sanctuary is Set Forth at the End of This Designation Document

Article III. Characteristics of the Area That Give It Particular Value

The Hawaiian Islands comprise an archipelago which consists of eight major islands and 124 minor islands, with a total land area of 6,423 square miles, and a general coastline of 750 miles. The central North Pacific stock of endangered humpback whales, the largest of the three North Pacific stocks, estimated to be at approximately 10% of its pre-whaling abundance, uses the waters around the main Hawaiian Islands for reproductive activities including breeding, calving and nursing. The warm, calm waters around the main Hawaiian Islands provide protective environments required for such activities. Of the known wintering and summering areas in the North Pacific used by humpback whales, the waters around the main Hawaiian Islands maintain the largest seasonally-resident population; approximately 2,000 to 3,000 humpback whales use these waters. The proximity to shore helps support an active commercial whalewatch industry, which is supported annually by millions of visitors who either directly or indirectly enjoy the Sanctuary waters.

In sections 2302 (1) and (4) of the HINMSA, Congressional findings state that "many of the diverse marine resources and ecosystems within the Western Pacific region are of national significance," and "the marine environment adjacent to and between the Hawaiian Islands is a diverse and unique subtropical marine ecosystem." In addition, Congress found that that Sanctuary could be expanded to include other marine resources of national significance. The waters around the Hawaiian Islands contain 24 other species of cetaceans, the highly endangered Hawaiian monk seal, three species of sea turtles and many other marine species endemic to this environment. Coastal Hawaiian waters also support spectacular coral reef ecosystems which provide local people with an abundant source of fish and are a popular dive destination for visitors worldwide. These waters also contain a number of cultural/historical resources.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation. In order to implement the Sanctuary designation, the following activities are subject to regulation to the extent necessary and reasonable to ensure the protection and management of the characteristics and values of the Sanctuary described above; primarily the protection and management of humpback whales and their Sanctuary habitat. Regulation may include governing the method, location, and times of conducting the activity, and prohibition of the activity, after public notice and an opportunity to comment. If a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the procedures outlined in section 304(a) of the NMSA. Such activities are:

a. Approaching by any means a humpback whale in the Sanctuary, or causing another vessel, aircraft or other object to approach a humpback whale;

b. Flying over a humpback whale in the Sanctuary in any type of aircraft except when in any designated flight corridor for takeoff or landing from an airport or runway;

c. Discharging or depositing, from within or from beyond the boundary of the Sanctuary, any material or other matter that enters or could enter the Sanctuary, without, or not in compliance with, the terms or conditions of a required, valid Federal, State or county permit, license, lease or other authorization;

d. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary without, or not in compliance with, the terms or conditions of a required, valid Federal, State or county permit, license, lease or other authorization;

e. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of any humpback whale or humpback whale habitat;

f. Operating a vessel (*i.e.*, watercraft of any description) in the Sanctuary in a manner that may adversely impact any humpback whale or humpback whale habitat;

g. Possessing within the Sanctuary a humpback whale or part thereof regardless of where taken, removed, moved, caught, collected or harvested; and

h. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the HINMSA or NMSA or any regulation or permit issued under the HINMSA or NMSA.

Section 2. Emergencies. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss or injury, any activity, including those not listed in Section 1 of this Article, is subject to immediate temporary regulation, including prohibition. If such a situation arises, the Director of NOAA's Office of Ocean and Coastal Resource Management or his or her designee shall seek to notify and consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c)(1) of the NMSA, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of this designation, or as a result of any Sanctuary regulation, if such authorization or right was in existence on the effective date of Sanctuary designation (November 4, 1992).

Article VI. Alteration of This Designation

The terms of designation, as defined under section 304(a) of the NMSA, may be modified only by the procedures outlined in section 304(a), including public hearings, consultation with interested Federal, State, and county agencies, review by the appropriate Congressional committees, and the Governor of the State of Hawaii, and approval by the Secretary of Commerce, or his or her designee.

Appendix I—Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Coordinates

The boundary of the Hawaiian Islands Humpback Whale National Marine Sanctuary—

(Appendix I will set forth the precise boundary based on the comments received on the DEIS/MP)

End of Proposed Designation Document

IV. Summary of Proposed Regulations

The proposed regulations set forth the boundary of the Sanctuary and would augment existing authorities by prohibiting a relatively narrow range of activities that are conducted without, or not in compliance with required, valid authorizations from Federal, State, or local authorities of competent jurisdiction. The proposed regulations set forth the maximum per-day penalties for violating the National Marine Sanctuaries Act (NMSA), Hawaiian Islands National Marine Sanctuaries Act (HINMSA), or any Sanctuary regulation; identify the interagency cooperation requirements under the NMSA; and set forth procedures for administrative appeals.

The HIHWNMS is unlike most other national marine sanctuaries for a number of reasons. First, while most national marine sanctuaries are designated to protect ecosystem environments, the Congress designated the HIHWNMS primarily to protect the humpback whale and its habitat. These are the only resources proposed for protection and management under the Sanctuary regime. Second, the humpback whale is directly protected under two other Federal laws: the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, both administered by NOAA's NMFS.

The proposed regulations reflect the uniqueness of the Sanctuary. For example, with one exception (hindering law enforcement activities) the regulations would not place additional or independent substantive restrictions or prohibitions on activities conducted in the Sanctuary to those already in place under other regulatory authorities. Rather, to protect humpback whales and their Sanctuary habitat the proposed regulations essentially rely on and incorporate restrictions or prohibitions already in place under Federal, State, and county authorities that protect, directly and indirectly, humpback whales and humpback whale habitat within the Sanctuary. By essentially incorporating into the Sanctuary regulatory regime restrictions or prohibitions already existing under other authorities, these restrictions or prohibitions are strengthened because they could be enforced by Sanctuary personnel and would be subject to enforcement mechanisms and penalties of the NMSA. Moreover, monies collected as civil penalties under the NMSA would be available to manage and improve the Sanctuary.

The proposed regulations would prohibit the following activities also prohibited under the MMPA or ESA: approaching any humpback whale; operating an aircraft above a humpback whale; and taking or possessing any humpback whale. However, any of these activities could be conducted if permitted or authorized under the MMPA or ESA. Additionally, the proposed regulations would prohibit the following activities conducted without, or not in compliance with, a required Federal, State or county permit, license, lease or other authorization: discharging or depositing in the Sanctuary any material or other matter; discharging or depositing outside the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a humpback whale or habitat; and altering the seabed of the Sanctuary. It is important to note that these proposed regulations would prohibit these activities only if a permit, license, lease, or other authorization from a Federal, State, or county authority of competent jurisdiction is required to conduct them and they are conducted without, or not in compliance with, such authorization. The only independent prohibition proposed in the regulations is interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either the NMSA or HINMSA or any regulation issued under either of those Acts.

Also, unlike the regulations in effect for other sanctuaries, the proposed regulations do not contain any provision for the issuance of Sanctuary permits or authorizations to conduct an otherwise prohibited activity. Since the regulations essentially incorporate restrictions or prohibitions imposed by other existing authorities, the SRD will recognize permits or other authorizations issued by those authorities to conduct an otherwise prohibited activity. SRD will coordinate with NMFS on the issuance of permits or authorizations under the ESA and MMPA, and with other Federal, State and county agencies that issue permits or other authorizations for activities that could impact humpback whales, or humpback whale habitat within the Sanctuary. Such coordination should eliminate potentially duplicative administrative processes while still allowing the Sanctuary to fulfill its trustee responsibilities to protect and manage humpback whales and humpback whale Sanctuary habitat.

The proposed scheme of relying on, and coordinating with, other authorities is possible because the only resources proposed for protection and management under the Sanctuary regime are humpback whales and humpback whale Sanctuary habitat, and those resources already are protected, directly and indirectly, under other laws and regulations.

Specifically, the proposed regulations would add a new part 945 to Title 15, Code of Federal Regulations.

Proposed § 945.1 would set forth the purpose of the regulations which is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary, consistent with the terms of that designation, by regulating a narrow range of activities in order to protect and manage the North Pacific population of humpback whales, and their wintering habitat in the Sanctuary.

Proposed § 945.2 and proposed Appendix 1 would set forth the boundary of the Sanctuary. Although not presently included in the Sanctuary boundary, pursuant to sections 2305(b)(2)(A) and (B) of the HINMSA, on January, 1, 1996, the area of the marine environment within 3 nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island will become part of the Sanctuary, unless during the 3 month period immediately preceding January 1, 1996, the Secretary certifies in writing to Congress that the area is not suitable for inclusion in the Sanctuary. After a certification of unsuitability is made, the Secretary must annually make a finding concerning the suitability of the area for inclusion in the Sanctuary and submit to Congress a report on the finding and the reasons thereof. If the Secretary finds that the area is suitable for inclusion in the Sanctuary, the area is designated a part of the Sanctuary 30 days after such report is submitted.

Proposed § 945.3 would define various terms used in the regulations. Other terms appearing in the proposed regulations are defined at 15 CFR 922.2 and/or in the Marine Protection, Research and Sanctuaries Act, as amended (33 U.S.C. 1401–1445, and 16 U.S.C. 1431–1445). "Sanctuary resource" would be defined as "any humpback whale, or the humpback whale's habitat within the Sanctuary," because these are the only resources proposed for protection and management under the Sanctuary regime.

Proposed § 945.4 would allow all activities except those prohibited by § 945.5 to be undertaken subject to any emergency regulation promulgated pursuant to § 945.6, subject to the interagency cooperation provisions of section 304(d) of the NMSA, 16 U.S.C.

1434(d), subject to the liability established under section 312 of the NMSA, 16 U.S.C. 1443, and subject to all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction. Under proposed § 945.4, the regulatory prohibitions in § 945.5 expressly would not apply to military activities conducted by the United States Department of Defense, including combined military activities conducted by the Department of Defense and the military forces of a foreign nation, in existence on the effective date of the regulations as identified and listed in the Environmental Impact Statement/Management Plan (EIS/MP) for the Sanctuary. Military activities proposed after the effective date of the regulations would be subject to the regulatory prohibitions unless they are not likely to destroy, cause the loss of, or injure any humpback whale or humpback whale habitat in the Sanctuary, or if after consultation under section 304(d) of the NMSA, the Director of NOAA's Office of Ocean and Coastal Resource Management (OCRM) or his or her designee expressly finds that the regulatory prohibitions do not apply to the military activity. Exemption from the regulatory prohibitions should not result in significant adverse impacts to humpback whales or their Sanctuary habitat. Department of Defense operating procedures require military activities to be conducted in a manner that avoids adverse impacts to humpback whales and requires compliance with applicable authorities already in place to protect humpback whales. Department of Defense military activities remain subject to the statutory requirements of the NMSA (*e.g.*, interagency cooperation provisions of section 304(d), and the liability established by section 312), any emergency regulations promulgated pursuant to § 945.6, and all other applicable laws (*e.g.*, ESA and MMPA).

Proposed § 945.5 would prohibit a relatively narrow range of activities and thus make it unlawful to conduct them. As discussed above, the Sanctuary is unlike most other national marine sanctuaries in that the only resources that would be protected and managed under the Sanctuary regime are humpback whales and their Sanctuary habitat and those resources are already protected under other laws. Therefore, unlike any other national marine sanctuary, the regulations, with the exception of a prohibition on hindering enforcement activities, would not place additional or independent substantive restrictions or prohibitions on activities conducted in the Sanctuary. Rather, the proposed regulations would essentially incorporate restrictions or prohibitions already in place under existing Federal, State, or county authorities, that protect, directly or indirectly, humpback whales and humpback whale habitat. Thus, the proposed regulations prohibit certain activities only if they are conducted without, or not in compliance with, a valid Federal, State or county permit, license, lease or other authorization required to conduct the activity. For example, if a person is discharging any material or matter into the Sanctuary without, or not in compliance with, a required National Pollutant Discharge Elimination System (NPDES) permit from the Hawaii Department of Health, that person will be in violation of the Sanctuary regulations. Similarly, if a person approaches a humpback whale in the Sanctuary in violation of the MMPA or ESA, that person will also be in violation of the Sanctuary regulations. Reinforcing existing restrictions provides additional protection for humpback whales, and humpback whale habitat in the Sanctuary necessary to achieve the purposes of the designation.

The prohibitions would be applied to foreign persons and foreign-flag vessels in accordance with recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

The first activity prohibited would be approaching, while in the Sanctuary, by any means, within 100 yards (90 m) of any humpback whale except as authorized under the MMPA and the ESA.

The second activity prohibited would be causing a vessel or other object to approach, while in the Sanctuary, within 100 yards (90 m) of a humpback whale except as authorized under the MMPA and the ESA.

The third activity prohibited would be operating any aircraft above the Sanctuary within 1,000 feet (300 m) of any humpback whale except when in any designated flight corridor for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA.

The intent of the first three prohibitions is to extend protection to humpback whales from harassment or other disturbance from human approaches by strengthening existing protections under the MMPA and the ESA. These three prohibitions essentially already are in effect through regulations promulgated by the NMFS at 50 CFR 222.31(a) (1)–(3). As prohibitions under the Sanctuary regulations, they would be strengthened since they could be enforced by Sanctuary personnel and would be subject to enforcement mechanisms and civil penalties under the NMSA. Moreover, monies collected as civil penalties under the NMSA would be available to manage and improve the Sanctuary.

The fourth activity prohibited would be the taking of humpback whales in the Sanctuary, except as authorized under the MMPA and the ESA. As with the first three prohibitions, the intent of this prohibition also is to extend protection to humpback whales from taking, as defined by the ESA and MMPA, by reinforcing the protections afforded under these laws.

The fifth activity prohibited would be the possession within the Sanctuary of any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA (regardless of where taken, moved or removed from). This prohibition is designed to facilitate and supplement enforcement for violations of the MMPA, ESA and Sanctuary regulations.

The sixth activity prohibited would be discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures any humpback whale or humpback whale habitat; provided that such activity requires a Federal, State or county permit, license, lease or other authorization, and is conducted (i) without such permit license, lease or other authorization, or (ii) not in compliance with the terms and conditions of such permit, license, lease, or other authorization. Degradation of water quality, sediment quality, and modification of the seabed within the Sanctuary could adversely affect the humpback whale's habitat and, therefore, regulation of discharges and deposits and activities that alter the seabed is necessary. However, this prohibition recognizes that the humpback whale's Hawaiian habitat may not necessarily entail every aspect of the marine environment, and is, therefore, intended to enhance existing protections by supplementing enforcement authority and providing for the application of greater maximum civil penalties under the NMSA against illegal, and potentially harmful, discharge or deposit, or alteration of the seabed activities. Also, this provision does not prohibit or otherwise regulate discharge or deposit, or alteration of the seabed activities which do not require a

Federal, State or county permit, license, lease or other authorization. Rather, this prohibition only applies in instances when a person is conducting a particular activity without, or not in compliance with, a required Federal, State or county permit, license, lease or other authorization. This provision will help ensure that general water quality and seabed conditions in the Sanctuary will not degrade. As a result of the ongoing research and long-term monitoring program contained in the management plan for the Sanctuary, information will identify those specific features and qualities of the marine environment that are significant habitat components. Such information will aid the Sanctuary and other relevant Federal, State and county agencies in devising specific management techniques and, if necessary, additional regulations to further protect humpback whale habitat.

The seventh activity prohibited would be interference with, obstruction, delay or prevention of any investigation, search, seizure or disposition of seized property in connection with enforcement of the HINMSA or NMSA or any regulation issued under either of those Acts. The intent of this prohibition is to ensure the facilitation of Sanctuary enforcement activities, which enhance resource protection.

Proposed § 945.6 would authorize the immediate temporary regulation, including prohibition, of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to any humpback whale or humpback whale Sanctuary habitat, or minimize the imminent risk of such destruction, loss or injury. If such a situation arises, the Sanctuaries and Reserves Division would seek to notify and consult with potentially affected Federal agencies and the Governor of Hawaii prior to taking such action.

Proposed § 945.7 would set forth the maximum statutory civil penalty per day for violating the NMSA, HINMSA or any Sanctuary regulation at $100,000. Each day of a continuing violation would constitute a separate violation. This section would also establish the right of any person subject to a Sanctuary enforcement action to appeal pursuant to applicable procedures in 15 CFR Part 904.

Proposed § 945.8 would implement the consultation with NOAA requirements of section 304(d) of the NMSA, 16 U.S.C. 1434(d), for any proposed Federal agency action internal or external to the Sanctuary, including private activities authorized by licenses, leases, or permits, that is likely to destroy, cause the loss of, or injure any Sanctuary resource, in this case the humpback whale or its Sanctuary habitat. The Federal agency proposing the action would be required to determine whether the activity is likely to destroy, cause the loss of, or injure a humpback whale or humpback whale Sanctuary habitat at the earliest practicable time, but no later than 45 days before final approval of the action, unless a different schedule is agreed upon by the Federal agency and the Director of OCRM. However, should SRD obtain information that a Federal agency action is likely to destroy, cause the loss of, or injure any Sanctuary resource, SRD would notify the Federal agency in writing that it believes section 304(d) applies, and the reasons why. SRD and NMFS are developing a Memorandum of Understanding that will specify agency coordination and cooperation with respect to consultations required under section 304(d) of the NMSA and section 7 of the ESA for Federal activities that may affect humpback whales or their Sanctuary habitat. In essence, the MOU identifies the NMFS as the lead contact agency for consultations pertaining to humpback whales or their habitat.

Proposed § 945.9 repeats the provisions in section 312 of the NMSA that any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, plus interest. Any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury. Person, includes any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 2306 of the HINMSA requires the development of a comprehensive management plan and implementing regulations to achieve the policy and purposes of the Sanctuary. To meet the requirements of section 2306, the comprehensive management plan and implementing regulations must be developed in accordance with sections 303 and 304 of the NMSA. Section 304 of the NMSA requires, on the same day as this notice is published, the submission of documents to the appropriate Senate and House Committees, which contain, among other things, the proposed regulations, a draft management plan detailing the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the area, and a draft environmental impact statement. In accordance with section 304(a)(1), the required documents are being submitted to the specified Congressional Committees.

Executive Order 12866: Regulatory Impact

This action has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The regulations proposed in this notice would allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The prohibitions primarily reinforce existing authorities and do not place additional substantive restrictions on any person. For this reason, the proposed regulations, in total, if adopted in final form as proposed, are not expected to have a significant economic impact on a substantial number of small entities, and the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act of 1980

This rule does not contain collection of information requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96–511).

Executive Order 12612

A Federalism Assessment (FA) was prepared for the draft management plan and proposed implementing regulations. The FA concluded that all were fully consistent with the principles, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request from the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)) and the provisions of the National

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Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a DEIS has been prepared for the proposed implementation of the designation and the proposed regulations. As required by section 304(a)(2) of the NMSA, the DEIS includes the resource assessment report required by section 303(b)(3) of the NMSA (16 U.S.C. 1433(b)(3)), maps depicting the proposed boundary of the designated area, and the existing and potential uses and resources of the area. Copies of the DEIS are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

Executive Order 12630

This proposed rule, if issued in final form as proposed, would not have any takings implications within the meaning of Executive Order 12630 because it would not appear to have an effect on private property sufficiently severe as to effectively deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation.

List of Subjects in 15 CFR Part 945

Administrative practices and procedure, Coastal zone, Education, Environmental Protection, Marine resources, Natural Resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: September 6, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR chapter IX is proposed to be amended as follows.

A new part 945 is added to subchapter B to read as follows:

PART 945—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY

Sec.

945.1 Purpose.
945.2 Boundary.
945.3 Definitions.
945.4 Allowed activities.
945.5 Prohibited activities.
945.6 Emergency regulations.
945.7 Penalties; appeals.
945.8 Interagency cooperation.
945.9 Response costs and damages.

Appendix I to Part 945—Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Coordinates

Authority: Title II, subtitle C, Pub. L. 102–587, 106 Stat. 5055–5059 (16 U.S.C. 1431 *et seq.*).

§ 945.1 Purpose.

(a) The purpose of the regulations in this Part is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities; to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing, and for the long-term survival of their species; and to achieve the other purposes and policies of the Hawaiian Island National Marine Sanctuary Act and National Marine Sanctuaries Act.

(b) These regulations may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations contained in this part that would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

§ 945.2 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the mean high-water line:

(1) To the 100-fathom (183 meter) isobath adjoining the islands of Maui, Molokai and Lanai, including Penguin Bank, but excluding the area within three nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island;

(2) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward;

(3) To the 100-fathom (183 meter) isobath around the Big Island (Hawaii);

(4) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Makahuena Point, Kauai; and

(5) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point and from the Ala Wai Canal eastward to Makapuu Point, Oahu.

(b)(1) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

Hawaii (Big Island)

Hilo Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor and Small Boat Basin
Keauhou Bay

Kauai

Hanamaulu Bay
Nawiliwili Harbor

Lanai

Kaumalapau Harbor
Manele Harbor

Maui

Kahului Harbor
Lahaina Boat Harbor
Maalaea Boat Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor

(2) The precise boundary of the Sanctuary appears in Appendix I of this Part.

§ 945.3 Definitions.

(a)(1) *Acts* means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301–2307 of Pub. L. 102–587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 *et seq.*).

(2) *Adverse impact* means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

(3) *Alteration of the seabed* means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

(4) *Director* means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

(5) *Habitat* means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

(6) *Injure* means to change adversely, either in the long or short term, a chemical, biological, or physical attribute of, or the viability of. To "injure" therefore includes, but is not limited to, to cause the loss of and to destroy.

(7) *Military activities* means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department of Defense and the military forces of a foreign nation.

(8) *Person* means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency, or instrumentality of the Federal Government or of any State, regional, or local unit of government, or of any foreign government.

(9) *Sanctuary* means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

(10) *Sanctuary resource* means any humpback whale, or the humpback whale's habitat within the Sanctuary.

(11) *Take* or *taking* a humpback whale means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct. The term includes, but is not limited to, any of the following activities: collecting any dead or injured humpback whale, or any part thereof; restraining or detaining any humpback whale, or any part thereof, no matter how temporarily; tagging any humpback whale; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any humpback whale.

(12) *Vessel* means a watercraft of any description, including, but not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes used while maneuvering on the water, capable of being used as a means of transportation in/on the waters of the Sanctuary.

(b) Other terms appearing in the regulations in this Part are defined at 15 CFR 922.2, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

§ 945.4 Allowed Activities.

(a) All activities except those prohibited by § 945.5 may be undertaken in the Sanctuary subject to any emergency regulations promulgated pursuant to § 945.6, subject to the interagency cooperation provisions of section 304(d) of the NMSA (16 U.S.C. 1434(d)) and § 945.8 of this Part, and subject to the liability established by section 312 of the NMSA and § 945.9 of this Part. All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State or county authority of competent jurisdiction.

(b) Included as activities allowed under the first sentence of paragraph (a) of this section are all classes of military activities, internal or external to the Sanctuary, that are being or have been conducted before the effective date of these regulations, as identified in the FEIS. Paragraphs (a) (1) through (6) of § 945.5 do not apply to these classes of activities, nor are these activities subject to further consultation under section 304(d) of the NMSA.

(c) Military activities proposed after the effective date of these regulations are also included as allowed activities under the first sentence of paragraph (a). Paragraphs (a) (1) through (6) of § 945.5 apply to these classes of activities unless—

(1) They are not subject to consultation under section 304(d) of the NMSA and § 945.8 of this Part, or

(2) Upon consultation under section 304(d) of the NMSA and § 945.8 of this Part, NOAA's findings and recommendations include a statement that paragraphs (a) (1) through (6) of § 945.5 do not apply to the activity.

(d) If an activity described in paragraphs (b) or (c)(2) of this section is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA and § 945.8 of this Part, or if the modified activity is likely to destroy, cause the loss of, or injure any Sanctuary resource not considered in a previous consultation under section 304(d) of the NMSA and § 945.8 of this Part, the modified activity will be treated as a new activity under paragraph (c) of this section.

(e) If a proposed military activity subject to section 304(d) of the NMSA and § 945.8 of this Part is necessary to respond to an emergency situation and the Secretary of Defense determines in writing that failure to undertake the proposed activity during the period of consultation would impair the national defense, the Secretary of the military department concerned may request the Director or designee that the activity proceed during consultation. If the Director or designee denies such a request, the Secretary of the military department concerned may decide to proceed with the activity. In such case, the Secretary of the military department concerned shall provide the Director or designee with a written statement describing the effects of the activity on Sanctuary resources once the activity is completed.

§ 945.5 Prohibited activities.

(a) The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted.

(1) Approaching, within the Sanctuary, by any means, within 100 yards of any humpback whale except as authorized under the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*;

(2) Causing a vessel or other object to approach, within the Sanctuary, within 100 yards of any humpback whale except as authorized under the MMPA and the ESA;

(3) Operating any aircraft above the Sanctuary within 1,000 feet of any humpback whale except when in any designated flight corridor for takeoff or landing from an airport or runway or as authorized under the MMPA and the ESA;

(4) Taking any humpback whale in the Sanctuary except as authorized under the MMPA and the ESA;

(5) Possessing within the Sanctuary (regardless of where taken) any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA;

(6) Discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a humpback whale or humpback whale habitat; provided that such activity requires a Federal, State or county permit, license, lease or other

authorization, and is conducted (i) without such permit, license, lease or other authorization, or (ii) not in compliance with the terms and conditions of such permit, license, lease, or other authorization.

(7) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either of the Acts or any regulations issued under either of the Acts.

(b) The regulations in this Part shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions and other international agreements to which the United States is a party.

§ 945.6 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director or designee shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii.

§ 945.7 Penalties; appeals.

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this Part is subject to a civil penalty of not more than $100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

(c) A person subject to an action taken for enforcement reasons for violation of these regulations or either of the Acts may appeal pursuant to the applicable procedures in 15 CFR Part 904.

§ 945.8 Interagency Cooperation.

Under section 304(d) of the NMSA, federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director or designee. The federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director or designee will attempt to provide coordinated review and analysis of all environmental requirements.

§ 945.9 Response costs and damages.

Under section 312 of the NMSA, 16 U.S.C. 1443, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages (plus interest) resulting from such destruction, loss, or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

Appendix I to Part 945—Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Coordinates

[Note: Appendix I will set forth the precise boundary coordinates based on the comments received on the DEIS/MP.]

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federal register

Friday
September 15, 1995

Part IV

The President

Proclamation 6822—National Farm Safety and Health Week, 1995

Federal Register
Vol. 60, No. 179
Friday, September 15, 1995

Presidential Documents

Title 3—

The President

Proclamation 6822 of September 13, 1995

National Farm Safety and Health Week, 1995

By the President of the United States of America

A Proclamation

America's agricultural productivity is a gift to our Nation and to people everywhere. Using innovative techniques and the latest technology, our farmers, ranchers, and agricultural workers provide enough food and fiber to satisfy our needs and those of millions of people around the globe. However, we too often forget that farming can be a difficult and dangerous profession.

Agricultural workers are exposed daily to the risks associated with operating powerful machinery, managing livestock, working and travelling in adverse weather conditions, and performing countless other demanding tasks, often miles away from emergency medical care. Sadly, children and young people on our farms and ranches are particularly vulnerable to these hazards and more.

The simplest safety tool we have at hand is education. By word and by example, we must teach each new generation of Americans about the critical importance of knowledge, caution, and vigilance in farming and ranching activities. Wearing protective clothing and gear, learning the safety features that manufacturers build into equipment, and staying alert to possible dangers when working with livestock, chemicals, machinery, and vehicles—all of these measures can help to ensure longer, healthier lives for America's agricultural workers.

As important as education is to the safety and well-being of our agricultural workers, we must remember that quality health care is just as critical. We must strengthen our resolve to provide the citizens of our rural areas with high-quality, affordable, and accessible health care if we are truly to meet their needs.

By setting aside a special week each year to focus on the need for improved safety and health in our Nation's agricultural industry, we demonstrate to all of our agricultural workers that we value their lives and livelihood, that we appreciate their unsurpassed productivity, and that we honor their determined spirit.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 17 through September 23, 1995, as "National Farm Safety and Health Week." I call upon government agencies, businesses, and professional associations that serve our agricultural sector to strengthen efforts to promote safety and health measures among our Nation's farm and ranch workers. I ask these workers to take advantage of educational programs and technical innovations that can help them to avoid injury and illness. Finally, I call upon the citizens of our Nation to reflect on the bounty we enjoy thanks to the labor of agricultural workers across the land. Join me in renewing our commitment to make their health and safety a national priority.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

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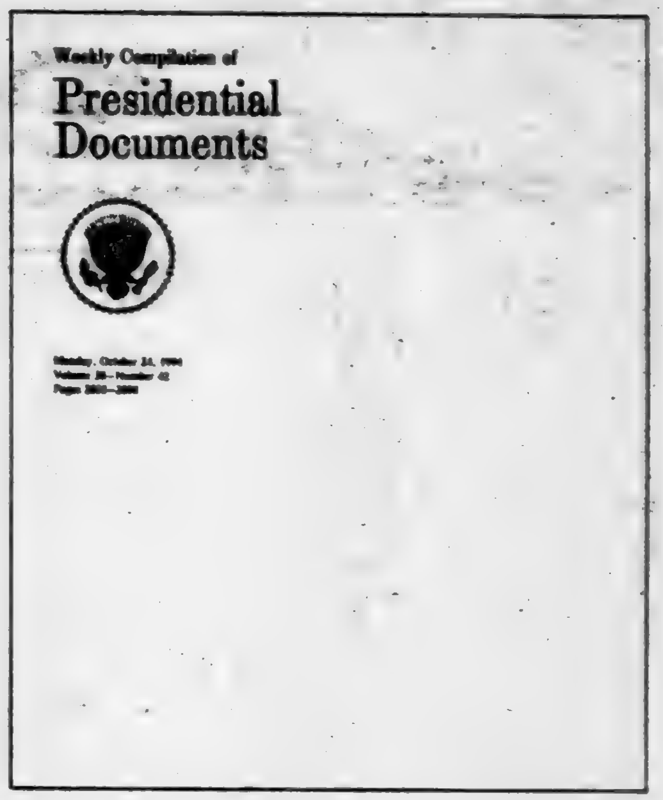

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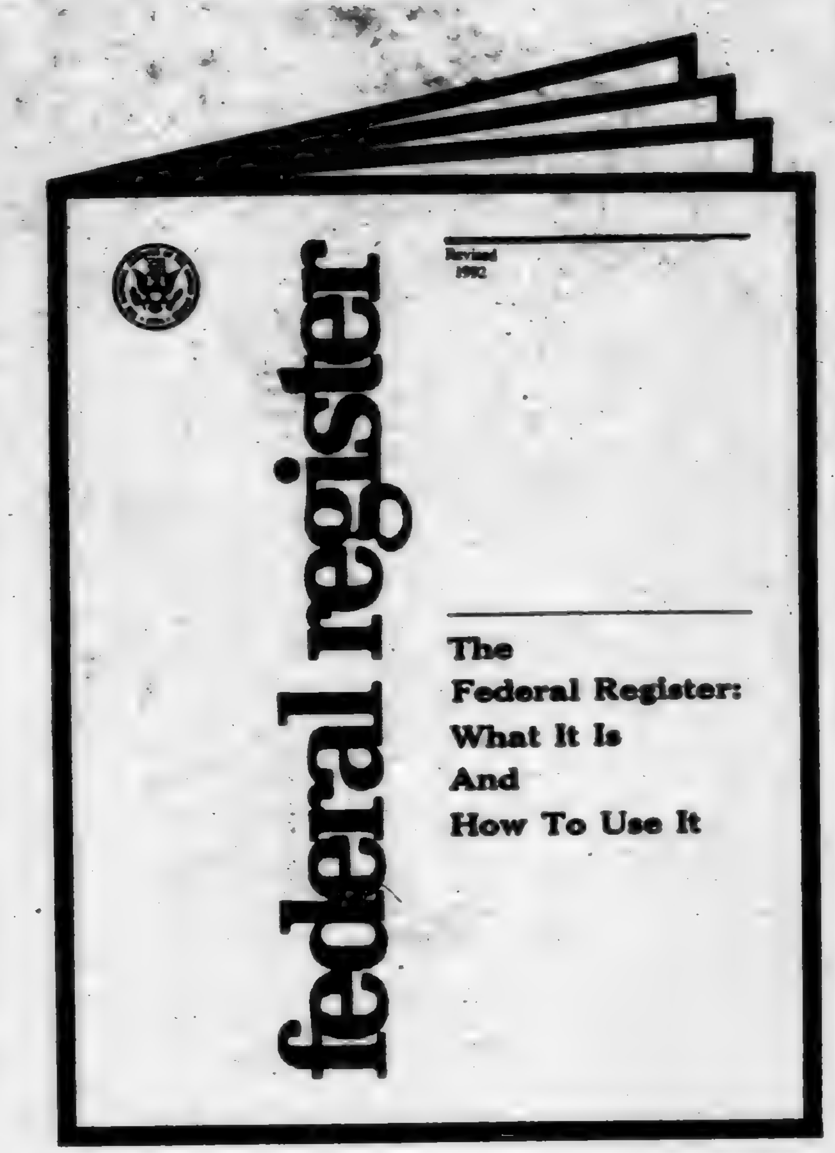
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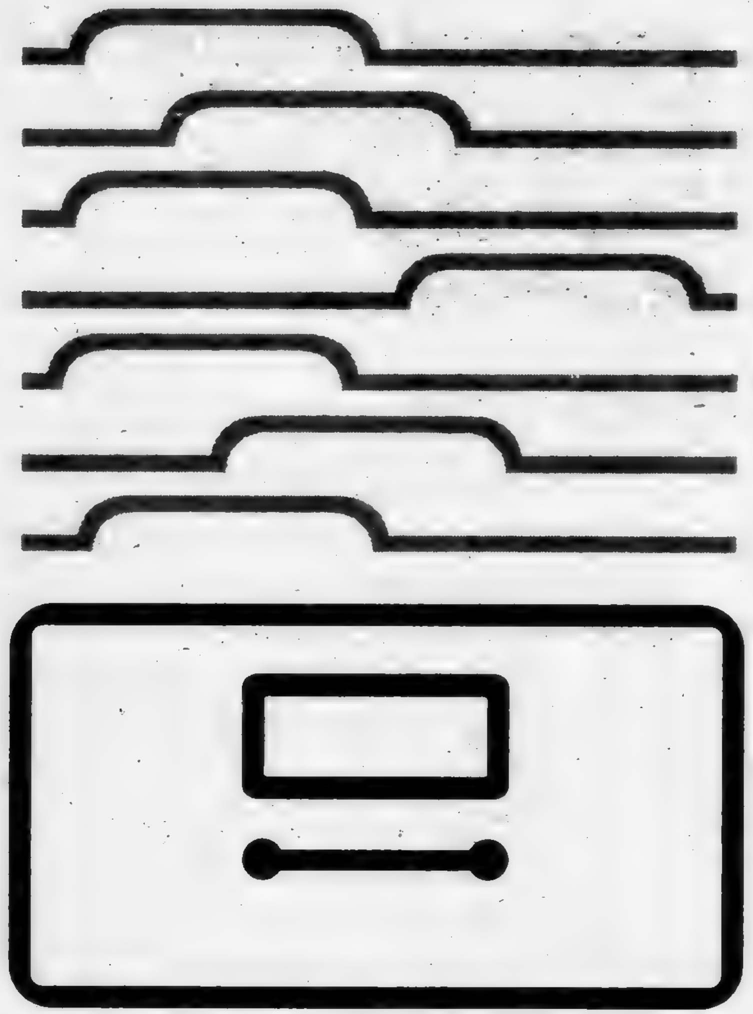

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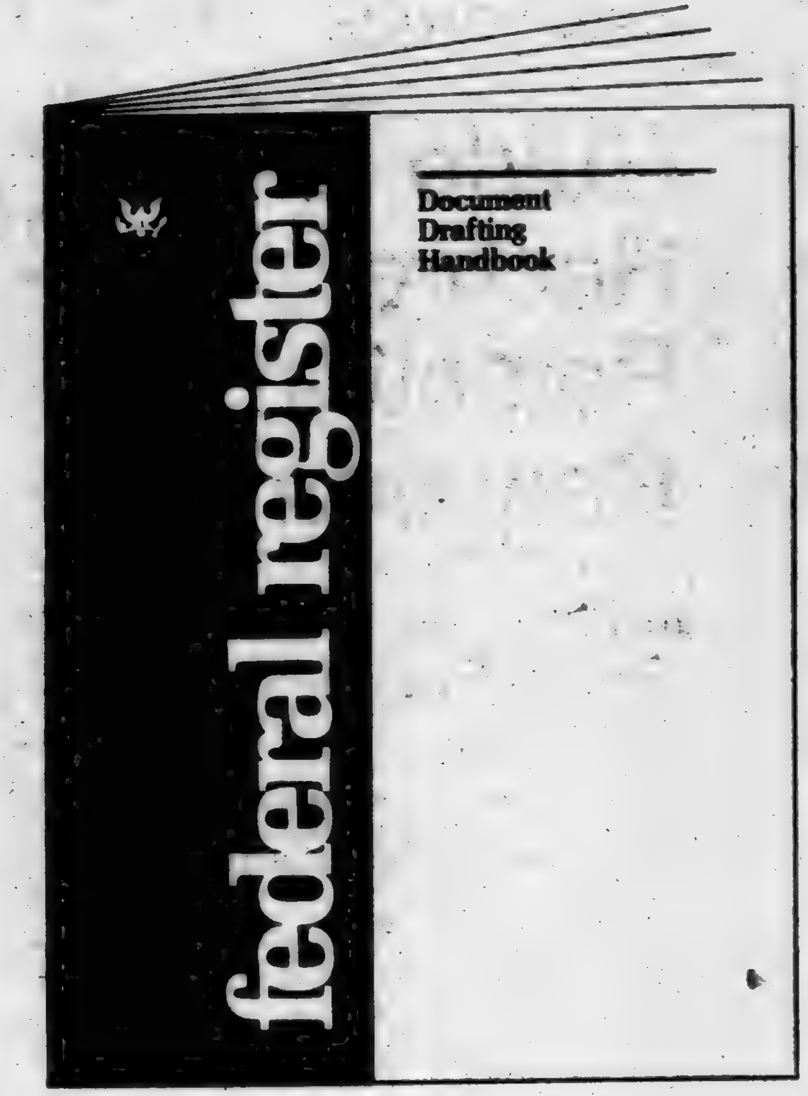

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Federal Register
Vol. 60, No. 180
Monday, September 18, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1413 and 1421

RINS 0560–AD78, 0560–AD37, 0560–AD87, 0560–AD60, and 0560–AD61

1995 Wheat and Feed Grain Acreage Reduction Programs, 1995 Oilseed Price Support Rates, and 1994 Wheat and Feed Grain Farmer-Owned Reserve Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) issued proposed rules with respect to the 1995 Production Adjustment Programs for Wheat on April 6, 1994, and for Feed Grains on August 4, 1994. Accordingly, this final rule amends 7 CFR Parts 1413 and 1421 to set forth: the acreage reduction program (ARP) percentages for the 1995 crops of corn, wheat, grain sorghum, barley, and oats; the determination that a paid land diversion (PLD) program will not be implemented for the 1995 crops of wheat and feed grains; the determination that producers of malting barley must, as a condition of eligibility for feed grain loans, purchases, and payments, comply with requirements of the ARP for the 1995 crop of barley; and the 1995-crop price support rates for wheat, corn, grain sorghum, barley, oats, and rye. In addition, this final rule amends 7 CFR Part 1421 to set forth the 1995-crop price support rates for oilseeds and to set forth determinations with respect to the entry of 1994-crop wheat and 1994-crop feed grains may into the farmer-owned reserve (FOR).

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Consolidated Farm Service Agency, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–4418.

SUPPLEMENTARY INFORMATION:

Final Regulatory Impact Analysis

The Final Regulatory Impact Analyses describing the options considered in developing this rule and the impact of the implementation of each option is available on request from the above-named individual.

Executive Order 12866

This rule has been determined to be economically significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Programs

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are as follows:

Titles	Numbers
Commodity Loans and Purchases .	10.051
Feed Grain Production Stabilization	10.055
Wheat Production Stabilization	10.058

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this final rule because the CCC is required by sections 107B(o) and 105B(o) of the Agricultural Act of 1949, as amended (the 1949 Act), to publish a notice of proposed rulemaking with respect to certain provisions of this rule. Final Regulatory Flexibility Analyses for the 1995 Wheat and Feed Grain ARPs were prepared as part of the Final Regulatory Impact Analyses. Copies of these analyses are available from the above-named individual.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR parts 1413 and 1421 set forth in this final rule do not contain new information collections that require clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 35). Information collections were previously cleared under OMB control numbers 0560–0092 and 0560–0129.

Background

This final rule amends 7 CFR parts 1413 and 1421 to set forth determinations with respect to: The 1995 Price Support and Production Adjustment Programs for Wheat and Feed Grains; the 1995 price support rates for oilseeds; and the entry of 1994-crop wheat and feed grains into the FOR. General descriptions of the statutory basis for the 1995 Wheat and Feed Grain Program determinations in this final rule were set forth at 59 FR 16149 (April 6, 1994) and at 59 FR 39707 (August 4, 1994), respectively.

1995 Wheat Program

The public was asked to comment on whether the 1995 wheat ARP percentage should be set at 0 percent, 5 percent, or 10 percent or another percentage between 0 and 15 percent. Comments received during the comment period are summarized below.

A total of 62 respondents commented on the ARP level. Table 1 shows a breakdown of the comments received by type of respondent.

TABLE 1.—SUMMARY OF COMMENTS ON 1995 WHEAT ARP LEVELS, BY RESPONDENT TYPE

Respondent	Suggested ARP percentage							
	No ARP	0%	5%	10%	12%	15%	Other >15%	Total
Farm Organizations	....	14	2	1	....	2	1	20
Agri-businesses	....	11	....	....	....	....	....	11
Individual Producers	3	10	1	5	1	9	2	31
Total	3	35	3	6	....	12	2	62

Respondents favoring lower ARP percentages indicated that they favored lower ARP percentages for the following reasons: (1) wheat-sector net income is higher with lower ARP levels; (2) the U.S. needs to maintain production in the face of high imports; (3) the U.S. needs to send a message to our competitors that the U.S. will not unilaterally reduce production and abandon world markets; (4) payment acres are higher; and (5) idling acres under the Conservation Reserve Program and annual programs hurt rural economic activity. Respondents favoring higher ARP percentages noted that higher ARP levels: (1) result in higher wheat prices; (2) result in lower Government costs; (3) reduce the risk of stock-building; and (4) help maintain crop rotations.

After considering these comments, on June 1, 1994, the Secretary of Agriculture (the Secretary) announced a 1995 ARP of zero percent. The Secretary was authorized to make adjustments in the 1995 ARP percentage no later than July 31, 1994. No change was made because estimated 1995 wheat supplies did not change significantly (up about 1 percent) from the May 1994 supply estimates. The Secretary determined that a zero-percent ARP for wheat would provide the highest income for producers, maintain U.S. competitiveness in world markets, and signal to domestic and foreign customers that the U.S. will be a reliable supplier.

Table 2 compares supply and demand estimates under three different ARP options based on May 1994 estimates (the estimates used to make the June 1 and July 31, 1994, ARP decision).

TABLE 2.—COMPARISON OF 1995 WHEAT SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Supply and Demand Variable	1995 ARP Options		
	0 percent	5 percent	10 percent
Participation (percent of total base acreage)	86	85	84
Planted Acreage (mil. ac.)	71.8	70.0	67.8
Production (mil. bu.)	2,406	2,347	2,272
Domestic Use (mil. bu.)	1,242	1,227	1,207
Exports (mil. bu.)	1,200	1,190	1,175
Ending Stocks 8/31 (mil. bu.)	659	627	590
Average Market Price ($ per bu.)	2.95	3.00	3.08
Deficiency Payments (mil. $)	1,937	1,712	1,464
Net Income to Wheat Producers (mil. $)	5,547	5,302	5,086

The 1949 Act provides that an ARP of not more than 15 percent may be implemented if the ending stocks-to-use (s/u) ratio for the previous marketing year is equal to or less than 40 percent. When the 1995 ARP was announced, the S/U for the 1994 marketing year was estimated to be 25.8 percent. Section 1104 of the Agricultural Reconciliation Act of 1990 provides for a minimum 5-percent ARP for the 1995 crop of wheat unless the 1994/95 wheat ending s/u ratio is less than 34 percent. Because the 1994/95 wheat s/u ratio was less than 34 percent, the 5-percent ARP minimum does not apply. ARP levels above 10 percent were not considered because expected 1995-crop supplies would fall to unacceptable levels. A PLD will not be implemented for 1995 wheat because it is unnecessary given the supply and use conditions which led to an ARP of zero percent.

1995 Feed Grain Program

The 1949 Act provides that an ARP of zero to 12.5 percent may be implemented if the corn ending s/u ratio for the previous marketing year is equal to or less than 25 percent. The corn ending s/u for the 1994/95 marketing year was estimated to be 18.9 percent when the 1995 ARP levels were announced on September 30 and 23.3 percent on November 15, 1994. In the case of grain sorghum and barley, the 1949 Act provides for ARP percentages from zero to 20 percent. Section 1104 of the Agricultural Reconciliation Act of 1990 provides for a minimum 7.5 percent ARP for the 1995 crop of corn unless the 1994/95 corn ending s/u ratio is less than 20 percent. Because the 1994/95 corn s/u ratio estimated on September 30 was below 20 percent, the 7.5-percent minimum ARP does not apply.

The public was asked to comment on the appropriate 1995 ARP percentage for corn, grain sorghum, and barley and on whether or not malting barley producers, as a condition of eligibility for feed grain loans, purchases, and payments, should be exempt from complying with requirements of the feed grain ARP. The statutory range for establishing the 1995 ARP percentages, based on the supply and demand estimates published in the proposed rule, was zero to 12.5 percent for corn and zero to 20 percent for grain sorghum and barley. The oats ARP percentage is statutorily mandated at zero percent.

Comments received during the specified comment period are summarized as follows:

A total of 1,474 respondents commented on the ARP percentages, including 1,399 from a producer survey collected by the Nebraska Corn Development, Utilization and Marketing Board at Harvest Husker Days. Fourteen hundred and fifty-five of the respondents commented on the corn ARP percentage, 33 of the respondents commented on the grain sorghum ARP percentage, and 28 of the respondents commented on the barley ARP percentage. Table 3 shows a breakdown of the comments received on the corn, grain sorghum, and barley ARP percentage by type of respondent.

TABLE 3.—SUMMARY OF COMMENTS ON THE 1995 FEED GRAIN ARP LEVELS, BY COMMODITY AND RESPONDENT TYPE

Respondent	Suggested ARP percentage					
	0%	5%	7.5%	10%	12.5%	>12.5%
Corn:						
Farm Organizations	0	1	3	1	2	0
Agri-businesses	9	1	0	0	2	0
Individual/Producers	134	261	407	87	448	86
Others	0	0	1	1	11	0
Total	143	263	411	89	463	86
Grain Sorghum:						
Farm Organizations	2	0	0	1	1	0
Agri-businesses	6	0	0	0	1	0
Individual/Producers	3	0	0	3	5	7
Others	0	0	0	1	3	0
Total	11	0	0	5	10	7
Barley:						
Farm Organizations	5	0	0	1	1	0
Agri-businesses	6	0	0	0	1	0
Individual/Producers	4	0	0	1	5	2
Others	0	0	0	0	1	1
Total	15	0	0	2	8	3

Fifty-six percent of the respondents (a majority of producer comments) favored a corn ARP of 7.5 percent or less. In general, most farm organization and agri-business respondents favored an ARP level of 7.5 percent or less.

Respondents favoring the lower ARP percentages noted that the U.S. needs to produce more to take advantage of export opportunities and confirmed USDA's analysis that a lower ARP level results in higher producer incomes. Advocates for a zero-percent barley ARP indicated the need for adequate supplies to aggressively implement the Export Enhancement Program for barley.

Respondents favoring higher ARP percentages commented that feed grain supplies would be lower, prices would be higher, and Government costs would be lower.

Three respondents commented on whether or not malting barley producers should be exempt from the 1995 ARP requirement for barley. One respondent favored and two respondents opposed the malting barley exemption.

After considering these comments, the Secretary announced on September 30, 1994, an ARP level of 7.5 percent for corn, and zero percent for grain sorghum, barley, and oats, and that malting barley producers would not be exempt from complying with the 1995 Barley ARP requirements.

Malting barley producers will not be exempted from complying with the barley ARP requirement because exempting them would increase the complexity of the program and increase program outlays.

The Secretary was authorized to make adjustments in the 1995 ARP percentages no later than November 15, 1994. On November 15, 1994, the Secretary announced that the initially announced ARP levels would not be changed. A change was not warranted because 1994 feed grain supplies had increased only 6 percent and the prospects for larger feed grain demand had improved since the September announcement.

The Secretary determined that a 7.5-percent ARP for corn and zero-percent ARP's for grain sorghum and barley would maintain adequate supplies of quality feed and food for all markets.

Table 4 shows four different 1995 Feed Grain ARP options that were considered when determining the final 1995 ARP percentages.

TABLE 4.—1995 FEED GRAIN ARP OPTIONS

Crop	1995 ARP options			
	1	2	3	4
	Percentages			
Corn	0	5	7.5	12.5
Grain Sorghum	0	0	0	5
Barley	0	0	0	5

Tables 5 through 7 compare the supply and demand estimates of four different 1995 ARP options based on September 1994 estimates for corn, grain sorghum, and barley.

TABLE 5.—COMPARISON OF 1995 CORN SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Supply and Demand Variable	1995 ARP options			
	0	5	7.5	12.5
Participation (percent of the total base acreage)	81	77	75	71
Planted Acreage (mil. ac.)	79.5	78.0	77.0	75.0
Production (mil. bu.)	8,980	8,815	8,705	8,470
Domestic Use (mil. bu.)	7,315	7,275	7,250	7,200
Exports (mil. bu.)	1,650	1,625	1,615	1,590
Ending Stocks 8/31 (mil. bu.)	1,621	1,521	1,446	1,286
Average Market Price ($ per bu.)	2.20	2.25	2.28	2.36
Deficiency Payments (mil. $)	3,081	2,508	2,225	1,633
Net Income to Corn Producers (mil. $)	11,266	10,935	10,786	10,580

TABLE 6.—COMPARISON OF 1995 GRAIN SORGHUM SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Supply and demand variable	1995 ARP options			
	0	0	0	5
Participation (percent of the total base acreage)	80	80	79	76
Planted Acreage (mil. ac.)	10.2	10.1	10.0	9.8
Production (mil. bu.)	605	600	600	585
Domestic Use (mil. bu.)	408	403	403	398
Exports (mil. bu.)	200	200	200	195
Ending Stocks 8/31 (mil. bu.)	94	94	94	89
Average Market Price ($ per bu.)	2.00	2.05	2.08	2.16
Deficiency Payments (mil. $)	300	275	257	196
Net Income to Sorghum Producers (mil. $)	710	716	724	688

TABLE 7.—COMPARISON OF 1995 BARLEY SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Supply and demand variable	1995 ARP options			
	0	0	0	5
Participation (percent of the total base acreage)	79	79	79	78
Planted Acreage (mil. bu.)	7.3	7.3	7.3	7.1
Production (mil. bu.)	395	395	395	385
Domestic Use (mil. bu.)	385	385	385	385
Exports (mil. bu.)	65	65	65	65
Ending Stocks 5/31 (mil. bu.)	129	129	129	124
Average Market Price ($ per bu.)	2.10	2.15	2.18	2.23
Deficiency Payments (mil. $)	155	140	135	113
Net Income to Barley Producers (mil. $)	563	568	575	562

1994-crop Wheat and Feed Grains FOR Program

Section 110 of the 1949 Act sets forth the statutory authority for the FOR program for wheat and feed grains. It provides that the determination of whether there will be entry of a crop into the FOR will be announced by December 15 of the year in which the crop of wheat was harvested and, in the case of feed grains, March 15 of the year following the year in which the crop of corn was harvested.

Entry into the FOR is triggered based upon prices and s/u ratios. Section 110 of the 1949 Act generally provides that the Secretary may make extended loans available to producers of wheat or feed grains if either of the following conditions is met:

(A) *Price Condition:* The Secretary determines that the average market price for wheat or corn, respectively, for the 90-day period prior to the announcement is less than 120 percent of the current loan rate for wheat or corn, respectively; or

(B) *S/U Condition:* As of the announcement date, the Secretary estimates that the s/u ratio on the last day of the current marketing year will be:

(i) in the case of wheat, more than 37.5 percent; and

(ii) in the case of corn, more than 22.5 percent.

Section 110 of the 1949 Act, also provides that the Secretary shall make extended loans available to producers of wheat or feed grains if both of the afore-noted conditions are met for wheat and feed grains, respectively. If neither the price nor the s/u condition is met, the Secretary has no authority to make extended loans available to producers of wheat or feed grains.

In accordance with section 110 of the 1949 Act, if the Secretary makes extended loans available to producers of wheat or feed grains, the Secretary must specify the maximum quantity of wheat or feed grains to be stored under this program that the Secretary determines appropriate to promote the orderly marketing of the commodities. The maximum quantities of wheat may not be established at less than 300 million bushels, nor more than 450 million bushels. The maximum quantities of feed grains may not be established at less than 600 million bushels, nor more than 900 million bushels. Section 110 of the 1949 Act also provides that the Secretary may require producers to repay FOR loans if it is determined that these supplies are required to meet

urgent domestic and international needs.

On November 3, 1994, the CCC authorized up to 900 million bushels of corn, grain sorghum, barley, and oats to be stored under the FOR program. At the time of the decision, the estimated corn S/U ratio at the end of the 1994/95 marketing year was 18.9 percent, the 90-day average market price of corn was $2.16 per bushel, and 120 percent of the 1994 price support rate for corn was $2.27 per bushel. Entry of the 1994-crop of feed grains into the FOR was allowed because the price condition was met (the 90-day average market price of corn was less than 120 percent of the 1994 price support rate for corn) and the prospects for a large 1994 corn crop had caused corn prices to decline significantly through the summer and early fall of 1994. Corn cash prices declined from around $2.70 per bushel in late June to around $2.00 per bushel at harvest.

On June 23, 1995, in accordance with section 110(e) of the 1949 Act, the CCC announced that 1994-crop feed grains may not be pledged as collateral for FOR loans and that all existing 1994 crop feed grain FOR loans were called because the 1995/96 supply and demand outlook for feed grains had tightened significantly since authorizing the FOR entry for 1994-crop feed grain loans in November 1994. Stronger than expected corn export demand for 1994/95 and 1995/96, higher than expected feed use in 1994/95, and prospects for a smaller 1995 corn crop due to unexpected weather-related problems are all contributing factors. Recent excessive rains in major corn-producing states caused the 1995 corn production estimate to be lowered from 8.6 billion bushels in May 1995 to 7.9 billion bushels in June 1995—just one month later. Total use estimates were also lowered by 500 million bushels since May 1995, reflecting lower estimated supply estimates and rising feed costs. Corn ending stocks for 1995/96 are projected at 748 million bushels, 789 million bushels below November 1994 projections and the lowest level since 1975/76. This tightened supply situation is expected to increase feeding costs for livestock and poultry producers. A further tightening of supplies will likely cause liquidation of livestock herds, reducing feed use in subsequent crop years.

As with corn, June estimates of 1995/95 supplies and ending stocks for the other feed grains are lower compared to November estimates and are at or near historically low levels.

On December 13, 1994, the Secretary announced that 1994-crop wheat would not be eligible for the FOR because neither the s/u condition nor the price condition had been met. At the time of the decision, the estimated wheat s/u ratio at the end of the 1994/95 marketing year was 21.1 percent, the 90-day average market price of wheat was $3.74 per bushel, and 120 percent of the 1994 price support rate for wheat was $3.10 per bushel.

1995 Oilseeds Price Support Rates

Section 205 of the 1949 Act provides that the price support rate for the 1995 crop of soybeans shall not be less than $4.92 per bushel and for the 1995 crop of sunflower seed, canola, rapeseed, safflower, mustard seed, and flaxseed shall not be less than $0.087 per pound.

Acreage Reduction Percentages

In accordance with sections 107B(e)(1) and 105B(e)(1) of the 1949 Act, the ARP has been established with respect to the 1995 crop of corn at 7.5 percent, and with respect to the 1995 crops of wheat, grain sorghum, barley, and oats at zero percent. Accordingly, producers of corn will be required to reduce their 1995 acreage of corn for harvest by 7.5 percent from the established corn crop acreage base for a farm to be eligible for price support loans, purchase, and payments. Producers will not be required to reduce their 1995 acreage of grain sorghum, barley and oats for harvest from the established feed grain crop acreage base for a farm in order to be eligible for price support loans, purchase, and payments for the respective feed grain.

Paid Land Diversion

In accordance with sections 107B(e)(5) and 105B(e)(5) of the 1949 Act, a PLD program will not be implemented for the 1995 crops of wheat and feed grains.

Malting Barley Exemption

In accordance with section 105B(e)(2)(G) of the 1949 Act, producers of malting barley shall, as a condition of eligibility of feed grain loans, purchases and payments, comply with the requirements of the zero-percent ARP for the 1995 crop of barley.

Price Support Rates

In accordance with sections 107B(a) and 105B(a) of the 1949 Act, the price support rates have been established with respect to the 1995 crops of wheat at $2.58 per bushel, corn at $1.89 per bushel, grain sorghum at $1.80 per bushel, barley at $1.54 per bushel, oats at $0.97 per bushel, and rye at $1.61 per bushel.

List of Subjects

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1421 are amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraphs (a)(1)(iii) and (a)(1)(iv) and adding paragraph (a)(1)(v),

B. Revising paragraphs (a)(2)(iii)(C) and (a)(2)(iv) and adding paragraph (a)(2)(v),

C. Republishing paragraph (d)(5) introductory text, and adding paragraphs (d)(5)(i) and (d)(5)(ii), and

D. Revising paragraph (e):

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(1) * * *

(iii) 1993 wheat, 0 percent;

(iv) 1994 wheat, 0 percent; and

(v) 1995 wheat, 0 percent.

(2) * * *

(iii) * * *

(C) Barley and oats, 0 percent;

(iv) For the 1994 crop: corn, grain sorghum, barley, and oats, 0 percent; and

(v) For the 1995 crop: corn—7.5 percent; grain sorghum, barley, and oats—0 percent.

* * * * *

(d) * * *

(5) For the 1995 crop:

(i) Shall not be made available to producers of wheat and

(ii) Shall not be made available to producers of feed grains.

* * * * *

(e) With respect to the 1991, 1992, 1993, 1994 and 1995 crop years, in order to receive feed grain loans, purchases, and payments in accordance with this part and part 1421 of this title, producers of malting barley must comply with the acreage reduction requirements of this part.

* * * * *

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

3. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. Section 1421.7 is amended by adding paragraphs (b)(1)(v), (b)(2)(v), (b)(3)(v), (b)(4)(v), (b)(5)(v), (b)(6)(v), (b)(9)(v), and (b)(10)(v):

§ 1421.7 Adjustment of basic support rates.

* * * * *

(b) * * *

(1) * * *

(v) 1995 Wheat— $2.58 per bushel;

(2) * * *

(v) 1995 Corn—$1.89 per bushel;

(3) * * *

(v) 1995 Barley—$1.54 per bushel;

(4) * * *

(v) 1995 Oats—$0.97 per bushel;

(5) * * *

(v) 1995 Grain sorghum—$1.80 per bushel;

(6) * * *

(v) 1995 Rye—$1.61 per bushel;

* * * * *

(9) * * *

(v) 1995 Soybeans—$4.92 per bushel;

(10) * * *

(v) 1995 Canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed—$0.087 per pound.

* * * * *

5. Section 1421.217 is amended by adding paragraph (e):

§ 1421.217 Reserve entry.

* * * * *

(e) No quantity of 1994-crop wheat or 1994-crop feed grains may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended.

Signed at Washington, DC, on September 8, 1995.

Richard O. Newman,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–23030 Filed 9–15–95; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Parts 102 and 114

[Docket No. 93–136–2]

Viruses, Serums, Toxins, and Analogous Products; State-Federal Licensure of Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning State-Federal licensing of veterinary biological products. The effect of the amendment is that a Federally licensed establishment will not be allowed to produce the same veterinary biological product under both a State and Federal product license. Autogenous biologics will not be subject to the same requirement in that a Federally licensed establishment may hold both State and Federal product licenses for autogenous biologics, but must choose to produce each specific serial of such biologic under either a State or Federal product license. No autogenous biologic may be produced at the same time under both a Federal and State license. The amendment is necessary in order to ensure the integrity of the Federal licensing system and the safety of biological products produced in Federally licensed establishments.

We are also removing outdated sections from the regulations referring to interim establishment licenses and exemption procedures that were permitted during the 5-year transition period to attain Federal licensure under the 1985 amendments to the Virus-Serum-Toxin Act.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), licenses veterinary biological products under the Virus-Serum-Toxin Act (21 U.S.C. 151–159, hereinafter, the Act), as amended by the Food Security Act of 1985. Veterinary biologics licensed by APHIS include products such as vaccines, antitoxins, viruses, diagnostics, and autogenous biologics (vaccines, bacterins, and toxoids) which are normally used in the herd of origin (the herd from which the disease causing microorganism is derived) to immunize animals against infectious disease.

Under the Act, veterinary biological products are licensed on the basis of their purity, safety, potency, and efficacy. The 1985 amendments to the Act exempt certain products from the requirement that they be produced pursuant to an unsuspended and unrevoked Federal license. Such products include those which are prepared solely for distribution within the State of production pursuant to a license granted by such State under a program approved by the Administrator of APHIS.

The regulations in 9 CFR part 102 contain Federal licensing provisions for biological products. The regulations in 9 CFR part 114 prescribe conditions under which an unlicensed product may be prepared in a USDA-licensed establishment.

On March 6, 1995, we published in the **Federal Register** (60 FR 12162–12165, Docket No. 93–136–1) a proposal to amend parts 102 and 114.

We proposed to amend part 102 by removing the outdated reference to Federal interim licenses in § 102.1 and by removing § 102.4(h), which refers to outdated provisions. We also proposed minor editorial changes to § 102.4(b)(3) and § 102.6 (introductory paragraph and paragraph (a)) to reflect organizational changes within APHIS.

We also proposed to amend part 114 by removing outdated provisions for interim licenses and certain exemption procedures that were used in implementing the 5-year transition to Federal licensure under the 1985 amendments to the Virus-Serum-Toxin Act. In addition, we proposed to amend part 114 to establish the conditions that must be maintained when a State-licensed veterinary biological product is produced in an establishment holding a U.S. Veterinary Biologics Establishment License.

Under the proposed amendments, a Federally licensed establishment would not be allowed to produce the same veterinary biological product under both a State and Federal product license. Autogenous biologics would not be subject to the same requirement in that a Federally licensed establishment could hold both State and Federal product licenses for autogenous biologics, but would have to choose to produce each specific serial of such biologic under either a State or Federal product license. No autogenous biologic could be produced at the same time under both a Federal and State license.

We solicited comments concerning our proposal for 60 days ending May 5, 1995. We did not receive any comments. The proposed rule provides the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule removes outdated sections from the regulations in §§ 102.1 and 102.4(h) and § 114.2 (b) and (d). These sections refer to outdated provisions related to the implementation of the 1985 amendments to the Virus-Serum-Toxin Act. These provisions expired on June 30, 1991.

This rule also establishes conditions applicable to some 100 producers to prepare a biological product under either a State or USDA product license in a USDA licensed establishment. An exception is provided for autogenous biologics. The amendment will not have an adverse economic impact on these producers of biologics since it still allows the production of both State and Federally licensed products in Federally-licensed establishments. Therefore, it is not anticipated that the amendment will have an economic impact on producers or small businesses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 102

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 114

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 102 and 114 are amended as follows:

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

1. The authority citation for part 102 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 102.1 is revised to read as follows:

§ 102.1 Licenses issued by the Administrator.

Each establishment qualified to prepare biological products under the Virus-Serum-Toxin Act shall hold an unexpired and unrevoked U.S. Veterinary Biologics Establishment License issued by the Administrator and a U.S. Veterinary Biological Product License for each product prepared in such establishment unless the product is subject to the provisions of 9 CFR parts 103 or 106 of this subchapter.

§ 102.4 [Amended]

3. In § 102.4, paragraph (b)(3), the words "Veterinary Services" are removed and the words "Animal and Plant Health Inspection Service" are added in their place.

4. In § 102.4, paragraph (h) is removed.

§ 102.6 [Amended]

5. In § 102.6, in the introductory paragraph and paragraph (a), the term "Deputy" is removed.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

6. The authority citation for part 114 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

7. In § 114.2, paragraphs (b) and (d) are removed; paragraph (c) is redesignated as p[illegible]b) and revised; and a new paragraph (c) is added to read as follows:

§ 114.2 Products not prepared under license.

* * * * *

(b) Except as provided in 9 CFR part 103, a biological product shall not be prepared in a licensed establishment unless the person to whom the establishment license is issued holds an unexpired, unsuspended, and unrevoked product license issued by the Administrator to prepare such biological product, or unless the products prepared are subject to the provisions of § 107.2 of this subchapter.

(c) A biological product produced in a USDA-licensed establishment shall be produced under a U.S. Veterinary Biological Product License or a license granted by a State under § 107.2 (referred to as a State biological product license and the products prepared pursuant thereto as State-licensed biological products, including autogenous biologics), but not under both a U.S. Veterinary Biological Product License and a State biological product license. Before a U.S. Veterinary Biological Product License (including a conditional license) is issued, the licensee shall relinquish its State license for that product: *Provided,* That autogenous biologics shall not be subject to this provision when they are prepared in accordance with the provisions of paragraph (c)(5) of this section.

(1) State-licensed biological products (including autogenous biologics) shall only be distributed or shipped intrastate, must not bear a U.S. Veterinary Biologics Establishment License Number, and must not otherwise be represented in any manner as having met the requirements for a U.S. Veterinary Biological Product license. Labeling of State- and USDA-licensed biological products produced in the same establishment must be distinctly different in color and design.

(2) All biological products in USDA-licensed establishments, whether licensed by USDA or by the State, shall be prepared only in locations indicated in legends filed in accordance with 9 CFR part 108. A description of each State-licensed product must be filed with the Animal and Plant Health Inspection Service as part of the blueprint legends and must be sufficient for Animal and Plant Health Inspection Service to determine any risk to the production of other products in the licensed establishment and to determine that adequate procedures are followed

to prevent contamination during production.

(3) Records in such establishments must be maintained in accordance with §§ 116.1 and 116.2 of this subchapter and shall include all products licensed by the State or USDA.

(4) Reports prescribed in § 116.5 of this subchapter for USDA-licensed establishments shall be submitted for all veterinary biological products in the establishment.

(5) Under the following conditions, an autogenous biologic may be produced in a USDA-licensed establishment under either a State or U.S. Veterinary Biological Product License:

(i) When a culture of microorganisms, isolated from a herd in a State, is received at a USDA-licensed establishment that is in the same State but that holds both a State and a U.S. Veterinary Biological Products License for autogenous biologics, the isolate shall be designated by the licensee for use in the production of an autogenous biological product under either the State product license, or the U.S. Veterinary Biological Product License: *Provided*, That the isolate meets the requirements of the respective regulatory authority for an autogenous biologic. If, after producing the product pursuant to one license, the licensee elects to produce an autogenous biologic from the same isolate under provisions of the other license, the licensee may do so only with the approval of the other licensing authority.

(ii) The true name of a State-licensed autogenous biologic shall specify the State of licensure: e.g.

“ ________ Autogenous Bacterin”
(State)
or ________ Autogenous Vaccine”.
(State)

Done in Washington, DC, this 11th day of September 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–23032 Filed 9–15–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 95–AWP–16]

Establishment of Class D Airspace Area, Chandler Municipal Airport, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class D airspace area at Chandler Municipal Airport, AZ. This action will provide adequate airspace for instrument flight rules (IFR) operations at Chandler Municipal Airport, Chandler, AZ.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On June 15, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class D airspace area at Chandler Municipal Airport, Chandler, AZ. (60 FR 31423). The effect of this action is to provide adequate Class D airspace for aircraft executing an instrument approach procedure at Chandler Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class D airspace area at Chandler Municipal Airport, AZ. This action will provide adequate Class D airspace for aircraft executing instrument approach procedures at Chandler Municipal Airport, Chandler, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP AZ D Chandler Municipal Airport, AZ [New]

Chandler Municipal Airport, AZ
(Lat. 33°16′09″N, long. 111°48′40″W)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4-mile radius of Chandler Municipal Airport, excluding the portion within the Williams-Gateway Airport, AZ, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on August 24, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–23099 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASO–13]

Amendment to Class E Airspace; Brewton, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Brewton, AL, to accommodate a VOR RWY 6 Standard Instrument Approach Procedure (SIAP) for the Brewton Municipal Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On July 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying Class E airspace at Brewton, AL (60 FR 36370). This action would provide adequate Class E airspace for IFR operations at Brewton Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Brewton, AL, to accommodate a VOR RWY 6 SIAP and for IFR operations at the Brewton Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a “significantly regulatory action” under Executive Order 12866; (2) is not a “significantly rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 16, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO AL E5 Brewton, AL [Revised]

Brewton Municipal Airport, AL
(Lat. 31°03′05″N, long. 87°04′05″ W)
Crestview, FL, VORTAC
(Lat. 30°49′34″N, long. 86°40′45″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Brewton Municipal Airport and within 4 miles each side of the Crestview, FL, VORTAC 304° radial, extending from the 7-mile radius to 15 miles northwest of the VORTAC.

* * * * *

Issued in College Park, Georgia, on September 1, 1995.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–23095 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–22]

Establishment of Class E Airspace; Placerville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Placerville Airport, Placerville, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 5 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Placerville Airport, Placerville, CA.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On July 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Placerville Airport, Placerville, CA. (60 FR 36372). The development of a GPS SIAP at Placerville Airport has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Placerville, CA. The development of a GPS SIAP at Placerville Airport has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the GPS RWY 5 SIAP at Placerville Airport, Placerville, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.09C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Placerville, CA [New]

Placerville Airport, CA

(Lat. 38°43′27″ N, long. 120°45′12″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Placerville Airport.

* * * * *

Issued in Los Angeles, California, on September 1, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–23098 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28326; Amdt. No. 1684]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA from documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 9260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents in unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedure (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significantly regulatory action" under Executive Order 12866; (2) is not a "significantly rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on September 8, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23 [Amended]

§ 97.25 [Amended]

§ 97.27 [Amended]

§ 97.29 [Amended]

§ 97.31 [Amended]

§ 97.33 [Amended]

§ 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective November 9, 1995*

Russellville, AR, Russellville Muni, GPS RWY 25, Orig
Carlsbad, CA, McClellan-Palomar, NDB RWY 24, Amdt 3, Cancelled
Perry, GA, Perry-Houston County, VOR or GPS–A, Amdt 5
Perry, GA, Perry-Houston County, LOC RWY 36, Amdt 1
Perry, GA, Perry-Houston County, NDB or GPS RWY 36, Amdt 3
Des Moines, IA, Des Moines Intl, VOR OR GPS RWY 23, Amdt 1
Des Moines, IA, Des Moines Intl, NDB OR GPS RWY 31R, Amdt 18
Des Moines, IA, Des Moines Intl. ILS RWY 13L, Amdt 6
Des Moines, IA, Des Moines Intl, ILS RWY 31R, Amdt 19
Des Moines, IA, Des Moines Intl, RADAR–1, Amdt 17
Newton, IA, Newton Muni, VOR OR GPS RWY 14, Amdt 9
Newton, IA, Newton Muni, VOR OR GPS RWY 32, Amdt 9
Newton, IA, Newton Muni, ILS RWY 32, Amdt 1
Chicago, IL, Lansing Muni, GPS RWY 27, Orig
Michigan City, IN, Michigan City Muni, GPS RWY 20, Orig
Nantucket, MA, Nantucket Memorial, VOR OR GPS RWY 24, Amdt 13
Nantucket, MA, Nantucket Memorial, LOC BC RWY 6 Amdt 8
Nantucket, MA, Nantucket Memorial, NDB RWY 24, Amdt 11
Nantucket, MA, Nantucket Memorial, ILS RWY 24, Amdt 15
Newburyport, MA, Plum Island, VOR OR GPS RWY 10, Amdt 5
Norwood, MA, Norwood Memorial, LOC RWY 35, Amdt 7
Norwood, MA, Norwood Memorial, NDB RWY 35, Amdt 7
Cadillac, MI, Wexford County, GPS RWY 25, Orig
Eveleth, MN, Eveleth-Virginia Muni, GPS RWY 27, Orig
Raton, NM, Raton Municipal/Crews Field, GPS RWY 25, Orig
Mandan, ND, Mandan Muni, VOR or GPS–A, Amdt 1
Mandan, ND, Mandan Muni, RADAR–1, Amdt 4
Wahpeton, ND, Harry Stern, GPS RWY 33, Orig
Allendale, SC, Allendale County, GPS RWY 35, Orig
Spearfish, SD, Black Hills-Clyde Ice Field, GPS RWY 12, Orig
Knoxville, TN, McGhee Tyson, VOR/DME RWY 5R, Amdt 4, Cancelled
Alpine, TX, Alpine-Casparis Municipal, NDB OR GPS RWY 19, Amdt 5
Brenham, TX, Brenham Muni, VOR/DME RWY 16, Amdt 1
Brenham, TX, Brenham Muni, NDB RWY 16, Amdt 5
Gainesville, TX, Gainesville Muni, NDB OR GPS RWY 17, Amdt 8
Houston, TX, Sugar Land Muni/Hull Field, VOR DME–A, Orig
Houston, TX, Sugar Land Muni/Hull Field, VOR/DME RNAV OR GPS RWY 17, Amdt 6, Cancelled
Houston, TX, William P. Hobby, VOR/DME OR GPS RWY 22, Amdt 24
Lyndonville, VT, Caledonia County, NDB RWY 2, Amdt 3

* * * *Effective October 12, 1995*

Spokane, WA, Spokane Intl, ILS RWY 21, Amdt 19

* * * *Effective Upon Publication*

Wadsworth, OH, Wadsworth Muni, VOR/DME–A, Amdt 1

Note: Baltimore, MD, Baltimore-Washington Intl, ILS RWY 28, Amdt 10, published in TL95–19 dated August 25, 1995, missed approach instructions should read as follows: Climb to 2000 via BAL R–284 to JEANS INT/BAL 5.1 DME/RADAR and hold.

[FR Doc. 95–23104 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28327; Amdt. No. 1685]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on September 8, 1995.

Thomas C. Accardi;
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
08/24/95	VT	Springfield	Springfield/Hartness State	FDC 5/4462	NDB OR GPS–A AMDT 5...
08/24/95	VT	Springfield	Springfield/Hartness State	FDC 5/4463	LOC–A AMDT 4...
08/29/95	TX	Dumas	Moore County	FDC 5/4779	VOR/DME OR GPS–A AMDT 5...
08/31/95	MI	Oscoda	Oscoda–Wurtsmith	FDC 5/4650	VOR OR GPS RWY 6 ORIG–A...
08/31/95	MI	Oscoda	Oscoda–Wurtsmith	FDC 5/4651	ILS/DME RWY 24 ORIG...
08/31/95	NV	Reno	Tahoe Intl	FDC 5/4647	ILS RWY 16R AMDT 9...
08/31/95	NV	Reno	Tahoe Intl	FDC 5/4648	LOC–S RWY 16R AMDT 5...
09/06/95	NC	Chapel Hill	Horace Williams	FDC 5/4822	VOR/DME OR GPS RWY 27, ORIG–A...
09/07/95	PA	Pittsburgh	Pittsburgh Intl	FDC 5/4837	ILS RWY 10R AMDT 6...
09/07/95	VA	Hot Springs	Ingalls Field	FDC 5/4835	ILS RWY 24 AMDT 1...

[FR Doc. 95–23103 Filed 9–15–95; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 24, 231, and 247

Guides for the Luggage and Related Products Industry, Guides for Shoe Content Labeling and Advertising, and Guides for the Ladies' Handbag Industry

AGENCY: Federal Trade Commission.

ACTION: Final Rule; Rescission of Guides.

SUMMARY: The Federal Trade Commission (the "Commission"), as part of its periodic review of its rules and guides, announces that it has concluded a review of its Guides for the Luggage and Related Products Industry ("Luggage Guides"); Guides for Shoe Content Labeling and Advertising ("Shoe Content Guides"); and Guides for the Ladies' Handbag Industry ("Handbag Guides"). The Commission has decided to rescind these three Guides. In a document published elsewhere in this issue of the **Federal Register**, the Commission seeks public comment on proposed Guides for Select Leather and Imitation Leather Products. The Commission is taking this action to clarify and streamline the Guides.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Susan E. Arthur, Attorney, (214) 767–5503, Federal Trade Commission, Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION: In response to the Commission's request for public comment on the Luagge Guides, the Shoe Content Guides, and the Ladies' Handbag Guides, the Commission received 12 comments. The comments received are discussed in the Commission's request for public comment concerning its proposed Guides for Select Leather and Imitation Leather Products. That request is located elsewhere in this issue of the Federal Register.

A review of the comments and of the three Guides indicates that consolidation of their basic principles into one set of Guides is clearly warranted. Therefore, on the basis of the discussion in this rule—and the discussion in the Commission's request for public comment concerning its proposed Guides for Select Leather and Imitation Leather Products, which is located elsewhere in this issue of the **Federal Register**, and which is incorporated herein—16 CFR Parts 24, 231, and 247 are hereby rescinded.

List of Subjects

16 CFR Part 24

Advertising, Luggage industry, Trade practices.

16 CFR Part 231

Advertising, Footwear, Labeling, Trade practices.

16 CFR Part 247

Advertising, Handbag industry, Labeling, Trade practices.

PART 24—[REMOVED]

PART 231—[REMOVED]

PART 247—[REMOVED]

The Commission, under authority of Sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of Title 16 of the Code of Federal Regulations by removing Parts 24, 231, and 247.

By Direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 95–23038 Filed 9–15–95; 8:45 am]
BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 95–76]

RIN 1515–AB81

Removal of Cambodia and Vietnam From List of "Non-Entrant" Countries

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On January 3, 1992, the United States lifted the trade embargo against Cambodia, normalizing economic relations between the United States and Cambodia. On February 3, 1994, President Clinton lifted the trade embargo against Vietnam. Effective April 27, 1995, the National Security Council amended its policy toward Cambodia and Vietnam by removing them from the "non-entrant" "Category II" status and placing them in the "Category I" status of vessels that may enter U. S. ports subject to certain limitations.

This document amends footnote 3a of section 4.20 of the Customs Regulations to remove Cambodia and Vietnam from the list of "non-entrant" countries so that foreign vessels entering the United States from these countries are now subject to a lesser special tonnage tax assessment.

DATES: This amendment is effective September 18, 1995. Reduced special tonnage tax assessments for foreign vessels entering the United States from Cambodia and Vietnam applied commencing on April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara E. Whiting, Carrier Rulings Branch, (202) 482–6940.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to information provided by the Departments of State and Transportation, Customs has found that on January 3, 1992, the United States lifted the trade embargo against Cambodia, normalizing economic relations. On February 3, 1994, President Clinton lifted the trade embargo against Vietnam. Effective April 27, 1995, the National Security Council amended its policy toward Cambodia and Vietnam by removing them from the "non-entrant" "Category II" status and placing them in the "Category I" status of vessels that may enter U. S. ports subject to certain limitations.

Accordingly, Customs has determined that vessels which trade in or enter the United States from Democratic Kampuchea (Cambodia) and the Socialist Republic of Vietnam are no longer subject to the payment of special tonnage tax in the amount of $2.00 as provided in 46 U.S.C. App. 121 and 141 and section 4.20 of the Customs

Regulations (19 CFR 4.20), but they will be subject to the $0.50 special tonnage tax and $0.50 light money rates provided therein.

This document amends footnote 3a of section 4.20 of the Customs Regulations (19 CFR 4.20, footnote 3a) to remove Cambodia and Vietnam from the list of "non-entrant" countries, reflecting the lesser special tonnage tax assessments for foreign vessels entering the United States from these countries.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and based upon the information set forth above, it is certified that the regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulation is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Inapplicability of Public Notice and Comment Requirements and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures, but merely announces a benefit for the public, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that the notice and public comment procedures thereon are unnecessary. For the same reasons, it has also been determined, pursuant to 5 U.S.C. 553(d)(1) and (3), that good cause exists for not requiring a delayed effective date.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements.

Amendment to the Regulations

For the reasons set forth in the preamble, part 4 of the Customs Regulations (19 CFR part 4) is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific authority for § 4.20 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306, 14502, 14511, 14512, 14513, 14701, 14702, 46 U.S.C. App. 121, 128;

* * * * *

§ 4.20 [Amended]

2. In § 4.20(c), footnote 3a to the table is amended by removing the words "Democratic Kampuchea (Cambodia);" and "; and, the Socialist Republic of Vietnam".

Approved: August 23, 1995.

William F. Riley,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–22977 Filed 9–15–95; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AH71

Board of Contract Appeals: Rules of the Board

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the rules of the VA Board of Contract Appeals concerning optional small claims (expedited) and accelerated procedures. The maximum jurisdictional amount of $10,000 is changed to $50,000 for cases in which an appellant may elect to have an appeal processed under the small claims (expedited) procedures. Also, the maximum jurisdictional amount of $50,000 is changed to $100,000 for cases in which an appellant may elect to have an appeal processed under the accelerated procedures. These amendments merely reflect statutory changes.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia J. Sheridan, Counsel to the Chairman, VA Board of Contract Appeals, Department of Veterans Affairs, 810 Vermont Ave., NW. Washington, DC 20420, (202) 273–6743.

SUPPLEMENTARY INFORMATION: This document amends Rule 12 of the rules of the VA Board of Contract Appeals (38 CFR 1.780 *et seq.*). Rule 12 includes a number of provisions relating to optional small claims (expedited) and accelerated procedures.

Previously, Rule 12 at 38 CFR 1.783(l)(1)(i) included the following provisions concerning optional small claims (expedited) procedures:

> (i) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in paragraph (1)(2) of this section (rule 12). An appellant may elect the accelerated procedure set forth in paragraphs (1)(3) of this section (Rule 12) in any appeal eligible for small claims (expedited) procedure.

The $10,000 amount in this paragraph was mandated by statute. However, The Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355) changed the $10,000 amount to $50,000. Accordingly, in 38 CFR 1.783(l)(1)(i) the $10,000 amount is changed to $50,000 to reflect the statutory change.

Previously, Rule 12 at 38 CFR 1.783(l)(1)(ii) included the following provisions concerning accelerated procedures:

> (ii) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in paragraph (1)(3) of this section (Rule 12).

The $50,000 amount in this paragraph also was mandated by statute. However, the FASA also changed the $50,000 amount to $100,000. Accordingly, in 38 CFR 1.783(l)(1)(ii) the $50,000 amount is changed to $100,000 to reflect the statutory change.

This final rule reflects statutory changes and, therefore, is not subject to the provisions of 5 U.S.C. 552 or 553, including the notice and comment provisions.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule merely reflects statutory amendments. Therefore, this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: September 7, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: Sections 1.955 to 1.970 issued under 38 U.S.C. 3720(a)(4) and 5302; 5 U.S.C. 5584.

§ 1.783 [Amended]

2. In § 1.783, paragraph (l)(1)(i) is amended by removing "$10,000" and adding in lieu thereof "$50,000"; and paragraph (l)(1)(ii) is amended by removing "$50,000" and adding in lieu thereof "$100,000".

[FR Doc. 95–23036 Filed 9–15–95; 8:45 am]

BILLING CODE 8320-01-P

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38 CFR Parts 1 and 2

RIN 2900–AH69

Contract Appeals Board Regulations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document removes the Department of Veterans Affairs (VA) regulations concerning "APPEALS FROM DECISIONS OF CONTRACTING OFFICERS." These regulations concerned appeals to the VA Contract Appeals Board (VACAB). Prior to 1978, contract disputes were resolved by the VACAB. However, the VACAB was "superseded" and "subsumed" by the VA Board of Contract Appeals (VABCA). The VACAB's functions were to be phased-out. The last VACAB appeal was docketed in 1986, and the phase-out has been completed. Hence, the VACAB regulations are no longer needed.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia J. Sheridan, Counsel to the Chairman, VA Board of Contract Appeals, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202)273–6743.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553 there is a basis for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date since this final rule concerns rules of agency organization, practice, or procedure. Additionally, under 5 U.S.C. there is good cause for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date since the changes made by this document should not affect anyone and, consequently, prior procedures are impracticable, unnecessary, and contrary to the public interest.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule should not have an impact on any individual or entity. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Archives and records; Cemeteries, Claims, Courts, Flags, Freedom of Information, Government contracts Government employees, Government property, Infants and children, Inventions and patents, Investigation, Parking, Penalties, Postal Service, Privacy Reporting and recordkeeping requirements, Seals and insignia Security measures, Wages

38 CFR Part 2

Authority delegations (Government agencies)

Approved: September 7, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 1 and 2 are amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: Sections 1.955 to 1.970 issued under 38 U.S.C. 3720(a)(4) and 5302; 5 U.S.C. 5584.

§§ 1.770–1.776 [Removed]

2. The heading "APPEALS FROM DECISIONS OF CONTRACTING OFFICERS" and §§ 1.770 through 1.776 are removed.

PART 2—DELEGATIONS OF AUTHORITY

3. The authority citation for part 2 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501, unless otherwise noted.

§ 2.5 [Amended]

4. In § 2.5, paragraph (b) is amended by removing "and Contracts Appeals Board".

§§ 2.62–2.65a [Removed]

5. Sections 2.62 through 2.65a are removed.

[FR Doc. 95–23037 Filed 9–15–95; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5294–9]

Inspection/Maintenance Flexibility Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's action revises the motor vehicle Inspection/Maintenance (I/M) Program Requirements. EPA announced its intent to amend the I/M Program Requirements in December 1994 and held stakeholders' meetings on January 24, 1995 and January 31, 1995. This action creates an additional, less stringent enhanced I/M performance standard which allows areas that can meet the 1990 Clean Air Act requirements for Reasonable Further Progress and attainment to implement an I/M program that falls below the originally promulgated enhanced I/M performance standard. Because the new low enhanced I/M performance standard eliminates the need for the special enhanced performance standard for El Paso, Texas, today's action repeals that special performance standard. This action also revises the high enhanced I/M performance standard to include a visual inspection of the positive crankcase ventilation (PCV) valve on all light-duty vehicles and light-duty trucks from model years 1968 to 1971, inclusive, and of the exhaust gas recirculation (EGR) valve on all light-duty vehicles and light-duty trucks from

model years 1972 through 1983, inclusive. The low enhanced performance standard contains similar testing requirements, which are necessary to ensure full compliance with the Clean Air Act's requirement that all federal performance standards for enhanced I/M programs be based upon a model program that includes, at a minimum, two inspections per subject vehicle: an emission inspection and a visual inspection. Today's action also changes the waiver cost requirements by extending the deadline for implementing the minimum expenditure to qualify for a waiver specified in the Clean Air Act; allowing the application of pre-inspection repairs toward meeting the waiver expenditure requirements under limited circumstances; allowing the cost of primary emission control components replaced by family or friends to apply toward the waiver cost requirement; and removing the bar against issuing hardship exemptions more than once per vehicle lifetime. EPA is also including revised regulatory language to change the population cutoff for basic I/M from 50,000 persons to 200,000 persons. Lastly, this rule makes clarifying amendments to the I/M requirements for areas undergoing redesignation. EPA will soon publish a separate Supplemental Notice of Proposed Rulemaking proposing an additional performance standard for attainment and moderate (with less than 200,000 population) ozone nonattainment areas not otherwise required to implement basic I/M programs in the Ozone Transport Region. That proposed standard is based on minimum statutory requirements for these particular areas and would afford them flexibility beyond that provided by this final action.

EFFECTIVE DATE: This rule will take effect on October 18, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket No. A–95–08. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW., Washington, DC 20460. The docket may be inspected between 8 a.m. to 4:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Eugene J. Tierney, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 668–4456.

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II. Summary of Rule

Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C. 7401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992 (40 CFR part 51, subpart S) rules related to plans for Motor Vehicle Inspection and Maintenance (I/M) programs (hereafter referred to as the I/M rule, see 57 FR 52950). EPA published a notice of proposed rule making proposing changes to the I/M rule in the **Federal Register** on April 28, 1995 (60 FR 20934). EPA today takes final action to revise the 1992 I/M rule to provide greater flexibility to states required to implement I/M programs.

Section 182 of the Act was prescriptive regarding the various elements that are required as part of an enhanced I/M performance standard. It also required that EPA provide states with flexibility in meeting the requirement for enhanced or basic I/M programs. States have requested additional flexibility in two areas: the timing of the Act's mandated minimum expenditure required to qualify for a waiver and a lower performance standard for areas that may not need an enhanced I/M program as effective as the one EPA adopted in 1992 to meet the Act's Reasonable Further Progress and attainment demonstration requirements. (These two standards are referred as the low enhanced and high enhanced performance standards, respectively.)

EPA is establishing an alternate, low enhanced I/M performance standard. This standard is designed for nonattainment areas that are required to implement enhanced I/M but which can obtain adequate emission reductions from other sources to meet emission reduction requirements, without the stringency of the high enhanced I/M performance standard. EPA will approve an enhanced I/M SIP meeting the low performance standard provided EPA has approved or is simultaneously approving the state's 1996 15% VOC reasonable further progress SIP and provided that the state's ozone or CO attainment SIP and its post-1996 VOC reasonable further progress SIPs have not been disapproved.

The low enhanced performance standard meets the Act's requirement that it be based on centralized, annual testing of light duty cars and trucks, and checks for tampering and exhaust emissions. Nevertheless, this standard can be met with a comprehensive decentralized, test-and-repair program.

EPA's opinion that states should have the flexibility to implement only the low enhanced I/M program if more is not needed to meet their air quality goals makes common sense for areas whose emissions affect only themselves. With respect to states in the Northeast Ozone Transport Region, however, there is the additional issue of the effect of one area's emissions on downwind areas' air quality, even if the first area's emissions result in achievement of all local goals for clean air. EPA believes that making the low enhanced performance standard available even within the OTR will result in needed reductions on both local and regional scales, while offering useful flexibility especially with respect to areas that themselves have no air quality problem. OTR states are required to submit attainment plans for their nonattainment areas, and these plans must address both local and transported emissions. In fact, EPA now believes that the low performance standard that EPA proposed and is finalizing today offers insufficient flexibility, in that it would require states to create all-new networks of emission testing stations in many cities currently without them, cities with no air quality problem of their own. EPA believes that the affected states will likely be able to find more cost-effective and publicly preferred ways to provide for region-wide attainment. However, EPA did not propose any more flexible policy for these areas, and cannot take final action at this time to provide more flexibility. Therefore, EPA will soon publish a Supplemental Notice of Proposed Rulemaking, which offers additional flexibility by proposing to establish a lower enhanced performance standard for qualified areas in the OTR. The Supplemental Notice will also explain the legal basis for this additional flexibility. The standard will allow attainment areas and marginal and moderate (with less than 200,000 population) ozone areas in the OTR, not otherwise required to implement basic I/M programs, to implement enhanced

programs which meet the requirements of the statute without establishing extensive emission test networks.

EPA published a Notice of Proposed Rulemaking (NPRM) on April 28, 1995 describing these and other proposed amendments to the I/M rule. Proposed changes in the waiver requirements, population cutoff for basic programs and requirements for basic areas which have been redesignated to attainment were designed to offer greater flexibility to the states in the implementation of their I/M programs. The NPRM also proposed the inclusion of visual checks as part of the test procedure for all vehicles subject to enhanced I/M. Readers should refer to the NPRM for a complete description of the background and rationale for the proposed amendments, which will not be restated here.

After receiving and considering public comment on the NPRM, EPA is today finalizing each of the proposed amendments as follows.

(1) EPA is establishing the alternative low enhanced performance standard.

(2) EPA is extending the deadline for the full implementation of the minimum expenditure required to be eligible for a waiver for both basic and enhanced I/M programs until January 1998. In the interim, a state can establish any minimum expenditure it chooses, as long as it accounts for the higher waiver rates that will occur between now and 1998 in its emission inventory forecasts in the Reasonable Further Progress plan.

(3) EPA is allowing states to include qualified repair cost expenditures that occur within 60 days of the initial test toward meeting the minimum waiver expenditure.

(4) Additionally, EPA is allowing the cost of specified emission control components replaced by persons other than recognized repair technicians to apply towards the waiver cost limit.

(5) EPA is deleting language from the November 5, 1992 I/M rule barring motorists from qualifying for more than one hardship exemption during the lifetime of a vehicle.

(6) EPA is adding a visual inspection of the positive crankcase ventilation (PCV) valve on all light-duty vehicles and light-duty trucks of model year 1968 through 1971, inclusive, and of the exhaust gas recirculation (EGR) valve on all light-duty vehicles and light-duty trucks of model year 1972 through 1983, inclusive to the high enhanced performance standard.

(7) In the proposed rule of April 28, 1995, EPA requested comment on whether or not it should change the minimum population cutoff for basic I/M programs. Based on the public comment received, EPA is revising the regulatory language in this rulemaking to increase the minimum threshold for basic I/M programs to 200,000 or more.

(8) Finally, EPA is clarifying the requirements for basic I/M areas that are eligible for redesignation to attainment. Consistent with EPA's original intent, EPA does not believe that a violation of the standard in an area that has been redesignated automatically requires the implementation or upgrade of an I/M program. EPA believes that, in the event of a violation, a state should have the flexibility to select whichever contingency measures are best suited to correcting the problem to bring the area to attainment as quickly as possible. The rule would continue to require, however, that such an upgraded basic I/M program be among the contingency measures from which the state will choose. Changes to remove extraneous language related to the requirements for an implementation schedule will also go into effect.

III. Authority

Authority for the action in this notice is granted to EPA by section 182 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*).

IV. Public Participation

This section discusses the content of the most significant of the flexibility amendments, the submissions to the docket received during the comment period and EPA's response to those comments. Submissions were received from approximately 60 commenters including state governments and agencies, industry, environmental organizations and other organizations. Copies of the original comments can be obtained in their entirety for a reasonable copying fee from the docket for this rule. The docket also includes a complete Response to Comments document for this rule. Substantial comments were received on each of the amendments and were fully addressed in that document.

A. Low Enhanced Performance Standard

1. Summary of Proposal

EPA proposed to establish an alternate, less stringent I/M performance standard called the low enhanced performance standard. This low enhanced standard is designed for areas which are required to implement enhanced programs but which do not have a major mobile source component to the air quality problem, or which can obtain adequate reductions from other sources to meet the 15% VOC reduction requirement and demonstrate attainment.

The low enhanced standard differs from the original standard, now referred to as the high enhanced performance standard, in that it allows for idle testing. Although the standard is based on an annual, test-only network this can also be met with a biennial, test-and-repair network.

2. Summary of Comments

Commenters generally supported the notion of flexibility and the proposed low enhanced option, although most believe that it does not offer enough flexibility. The thrust of these comments was that the proposed flexibility will not be a viable option for most areas because credit discounts for test-and-repair networks and other mandated requirements preclude most states from implementing programs which they believe to be equivalent to required programs. One comment asked for clarification of an apparent inconsistency between the summary and the proposed rule: whether the low enhanced standard can be applied if attainment goals are met for either CO and/or ozone or both CO and ozone.

Several commenters strongly opposed the proposed low enhanced standard, claiming that it is inconsistent with Clean Air Act section 182(c)(3)(C)(vi), which mandates EPA to require centralized networks unless states can demonstrate equivalency of decentralized networks. They argue that these programs will be less effective and will result in failure to meet attainment goals. Comments were also made that EPA is mandated to establish "a" performance standard and that to establish more than one is contrary to law.

3. Response to Comments

EPA has designed this flexibility specifically for those areas which either do not have a major mobile source component to their air pollution problem or which do not require I/M programs which achieve substantial reductions in automotive emissions to achieve air quality goals. To lower the standard any further and make it available to more enhanced I/M areas by granting inappropriately large credits to test-and-repair programs would undermine the goals of I/M and the Clean Air Act. While the Act requires certain program parameters to ensure programs are both effective and enforceable, EPA is mandated to ensure that these programs meet their intended goals. EPA maintains that it offers the states flexibility to do so by making a case-by-case assessment of program effectiveness and assigning credits accordingly. EPA is, in fact, in the process of doing this with two test-and-repair states. EPA believes that to allow more credit for test-and-repair networks than is scientifically justified by the available data or make vital requirements optional would lead to failed programs and attainment goals. EPA supports its credit assessment for test-and-repair networks later in this document.

EPA believes that the low enhanced performance standard is consistent with the Act's requirement that a program be based on a centralized network unless the state demonstrates that a decentralized program is equally effective. EPA believes that low enhanced programs that opt for the decentralized network can make such a demonstration with the MOBILE5a model and a comprehensive program which includes annual testing of heavy duty vehicles, pressure testing, and full anti-tampering programs. EPA also maintains that the Act in no way bars it from establishing multiple performance standards. This is not a new interpretation, but rather one which EPA took in the case of El Paso which was subject to an alternate standard under the original I/M rule.

To clarify the apparent inconsistency between the summary and the rule: low enhanced I/M may be implemented only in those states that can meet all of the 1990 Clean Air Act requirements for Reasonable Further Progress (RFP) for ozone and attainment for both ozone and carbon monoxide, if the area is required to implement enhanced I/M for both pollutants. If an area is required to implement enhanced I/M for only one pollutant (regardless of a requirement to implement basic I/M for the other pollutant), then low enhanced may be implemented if RFP and attainment requirements are met for that pollutant.

B. Extended Deadline for Implementing the $450 Waiver

1. Summary of Proposal

The original I/M rule requires that for enhanced programs, states must implement the $450 minimum expenditure to qualify for a waiver when the I/M program starts in 1995.

EPA proposed to postpone full implementation of the enhanced I/M waiver requirement until January 1, 1998, to allow states time to reach the long-term goals of the Clean Air Act. This action aims to provide the short term regulatory relief states have been requesting and would give states additional time to develop programs to assist low-income vehicle owners to repair their vehicles.

Some states are in the process of developing programs to mitigate the impact of I/M-related repair costs on low-income motorists. Such efforts have generally involved either granting low-income motorists time extensions of up to one full test cycle (per the November 5, 1992 rule), repair subsidy programs for individuals on some form of public assistance, or scrappage programs for low value, high emitting vehicles. Repair subsidy and scrappage based efforts tend to vary most in the area of funding mechanism. In some programs, mitigation efforts are funded by way of late fees collected from motorists who have missed their scheduled testing deadline; in others, revenue is generated by allowing new car buyers to pay a on-time "mitigation fee" which exempts them from the first scheduled inspection. EPA is willing to work with states that wish to develop other creative ways to deal with the issue of repair costs for low-income motorists.

2. Summary of Comments

Comments were divided on the issue of whether EPA should extend the deadline for implementing the $450 waiver. Most of the parties unsatisfied by EPA's proposal argued that a CPI (Consumer Price Index) adjustment of the $450 waiver expenditure would increase the repair cost minimum to between $600–650 when the full waiver requirement would be implemented in 1998, leading to public acceptance problems. With respect to this issue, two parties made the following recommendations: The EPA was urged to allow states to maintain their current minimum waiver amounts until 1998, at which time the phase-in would begin. Once $450 was applied as the limit during 1998, the minimum waiver amount would be adjusted annually based on the CPI with 1998 as the base year. Another commenter asked for revision of the rule language to clearly state that the often-referenced CPI-adjusted $450 amount would be likely to exceed $600 in 1998. One comment claimed that lost credit would occur from extending the waiver and this would have to be made up elsewhere. Another commenter queried why EPA was still interested in identifying high emitters through enhanced test programs when the amendment would mean that individuals would not be required to make all the necessary repairs.

The general thrust of comments supporting the rule focused on the additional flexibility this amendment would give states to phase in the $450 minimum expenditure waiver and implement hardship waiver programs. One comment suggested that the additional time would allow states to work on building public acceptance of the program and improve technician training. Another comment supported the extension of the deadline but suggested that CPI adjustments be applied only to the full minimum expenditure waiver amount no sooner than one full test cycle following final implementation.

3. Response to Comments

For emissions-related repairs not covered by warranty, the Clean Air Act very clearly requires a minimum expenditure of $450 for vehicles to qualify for a waiver. It is also very clear that the waiver limit is to be adjusted annually based on the Consumer Price Index, with a base year of 1989. As the preamble to the original I/M rule states, (page 52964, **Federal Register**), EPA will annually notify states of the adjusted amount.

It is not the EPA's intention that states begin the phase-in in 1998. EPA maintains that states have more than enough flexibility to begin the phase-in now to maintain a minimal increment by 1998. EPA believes that the enhanced I/M program should be fully implemented by 1998, including the CPI adjusted $450 waiver, to enable areas to achieve the reductions contemplated by the program prior to the attainment deadline for serious areas (i.e., 11/15/99). Should areas need reductions between now and 1998 to meet reasonable further progress requirements, they would have to achieve them from other programs should they choose to delay full implementation of the $450 waiver amount.

EPA believes that the extension of the waiver deadline will give states the opportunity to improve technician training so that by 1998 the majority of vehicles would be repaired for well below the CPI-adjusted $450 minimum waiver amount. The additional time will also give states ample opportunity to set up hardship programs for low-income vehicle owners and scrappage programs for vehicles that are not economical to repair.

To clarify the apparent misunderstanding regarding the proposed amendment's effect on repairs: I/M programs will continue as scheduled, motorists will still be required to repair their vehicles, and real emissions reductions will be achieved. However, the minimum waiver amount will depend on the cost limit prescribed by the state's phase-in

program and the levels of emissions reductions will depend upon what waiver rates result.

C. Population Requirements for Basic I/M

1. Summary of Proposal

EPA requested comment on whether it should change the minimum population cut-off for basic I/M programs. Currently, basic I/M programs are required in moderate ozone and carbon monoxide non-attainment areas with a 1990 Census-defined population of 50,000 or more. EPA considered raising this threshold to 200,000 or more.

2. Summary of Comments

The majority of responses to the proposed amendment were generally supportive. Some commenters indicated that the issue did not affect them since they were in the OTR (Ozone Transport Region) and therefore required enhanced testing regardless of whether or not the population cut-off was increased. Many of the commenters who supported the change did so with a proviso: that the rule be applied only to areas that were not currently included in I/M and that were in moderate attainment areas. Two parties indicated that the proposed amendment should only apply if an area can demonstrate that the absence of I/M would not impact downwind areas. A few supported the change because they viewed it as added flexibility for the states.

Commenters opposed to the amendment suggested that EPA had not offered a reasonable explanation for this change and that areas with less than 200,000 people deserved clean air protection. They argued that the amendment would only serve to encourage states to opt-out of OTR to avoid compliance.

3. Response to Comments

EPA proposed this amendment to grant states further flexibility in designing I/M programs to meet local needs. Areas under 200,000 population which are still in nonattainment are required to achieve whatever ozone reductions are needed to meet reasonable further progress or attainment requirements. While exempted from the mandatory basis I/M requirement under this amendment, such areas would have to achieve those reductions from other programs, or implement an I/M program, at the state's discretion.

EPA concludes that the 200,000 population cut-off for basic programs is authorized by the Act because sections 182(a)(2)(B)(i) and 182(b)(4) require implementation only of an I/M program no less stringent than that required under pre-1990 EPA I/M guidance. EPA's pre-1990 I/M guidance required implementation of basic I/M programs only in urbanized areas of 200,000 population. It is true that some moderate areas would not be required to implement I/M programs if their population were under 200,000, despite the fact that section 182(b)(4) requires a basic I/M program in all moderate areas. However, the basic program that is required is a program that applies only to areas of 200,000 or more population. The issue of whether Congress meant to expand the geographic scope of basic I/M programs by requiring them in all moderate areas was presented to the court in litigation on the 1992 I/M rules. The court ruled that the statutory language "does not, in our view, compel the conclusion that Congress sought silently to alter any preexisting exclusions for basic I/M programs, particularly when Congress explicitly incorporated the preexisting guidance by reference." Further, the court concluded that "the requirement that states submit implementation plans for those moderate areas not covered in the previous statute does not by its term affect the scope of I/M programs *within* those areas". *Natural Resources Defense Council, Inc.* v. *EPA,* 22 F.3d 1125, 1141–2. Consequently, EPA believes that although basic I/M programs are required for all moderate areas, they need only be implemented in urbanized areas with populations of 200,000 or more within such moderate areas.

Basic I/M is prescribed to solve local problems. Questions arising from the transport of ozone and CO downwind across state boundaries may be answered by referring to section 184 of the Clean Air Act.

As to the effects on OTR areas, states will not be encouraged to opt out to avoid compliance. Rather, the SNPRM discussed previously outlines the OTR-low enhanced performance standard which gives states more flexibility and incentive to remain in the OTR.

D. Test-and-Repair Discount and Program Equivalency

1. Summary of the Issue

Although today's action does not address the credit allowances for test-and-repair networks and the question of equivalency with test-only networks, the issue has become a point of contention as some states seek more flexibility in program design. A notable quantity of the comments received on today's rulemaking dealt expressly with this issue.

2. Summary of Comments

Commenters in support of the default discount stressed that SIP credits must be based on real quantifiable emissions reductions and that they supported the default discount and would also support data that showed an even greater discount for a test-and-repair network. Another commenter strongly supported the default discount, adding that the undisputed performance disadvantage of "test-and repair" systems should persuade EPA to keep the current credit structure. Another group commented that their independent data analysis of two states, one with a test-only system and one with a test-and-repair system, showed conclusively that the test-and-repair system was achieving significantly less emission reductions than the test-only system and that the default discount used by the EPA accurately reflected the loss of emission reductions for the test-and-repair system.

Commenters opposed to the default discount claimed that test-only I/M does not work as well as EPA claims and that test-and-repair programs are unfairly discounted by their comparison to an inflated estimate of test-only effectiveness. Some commenters added that past performance has shown that test-and-repair could be as effective as test-only and should be credited accordingly. The California I/M Review Committee was frequently cited along with studies by Georgia Tech, and others as scientific evidence that the audit data upon which EPA studies were based was somehow flawed.

3. Response to Comments

It should first be noted that in the original I/M rule EPA had proposed granting "provisional equivalency" to test-and-repair programs for purposes of initial SIP submission and approval, requiring program evaluation to assure that programs meet the performance standard. Comments by state agencies and others at that time were compelling and strongly against provisional equivalency. They argued that because both state and EPA evidence showed that test-and-repair programs were inferior to test-only programs, in terms of emissions reductions, it would be inadequate and probably illegal for EPA to grant them full credit. They suggested that to grant provisional equivalency without proven success would be irresponsible and would allow ineffective and costly programs to continue while air quality improvement would suffer. EPA acknowledged these comments and eliminated provisional equivalency from the final I/M rule. Nevertheless, EPA included provisions in the final rule allowing states to make demonstrations based on local data that test-and-repair was more effective than the national default credits.

EPA's default discount for test-and-repair services is based on the best data from a broad set of indicators and across many programs. Cited studies have not shown evidence that would cause EPA to revoke the default discount. The most comprehensive study of test-and-repair effectiveness was conducted by the California I/M Review Committee in the early 1990s and showed that despite aggressive enforcement, the use of advanced technology, and a huge outlay of government oversight, the program still did not achieve more than half of what a test-only program could achieve. While EPA continues to believe that the default discount is appropriate as a national estimate when there is no local data to prove another level, EPA is willing to consider local data to determine whether it supports a higher or lower credit. EPA believes the I/M rule allows it to give prospective credit based on a retrospective analysis of such local data. EPA is working with Utah and Virginia at this time to analyze local data in an attempt to establish program specific credits.

EPA received only minor comment on all other proposals in the NPRM for this rule. A summary of those comments and of EPA's response may be found in the Response to Comments document included in the docket for this rule.

Based upon the public comment received and a reasoned analysis, EPA is proceeding with the adoption of each of the proposed amendments with no substantive changes.

V. Administrative Requirements

A. Administrative Designation

It has been determined that these amendments to the I/M rule are a significant regulatory action under the terms of Executive Order 12866 and are therefore subject to OMB review.

However, it does not create an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or the environment. Any impacts associated with these revisions do not constitute additional burdens when compared to the existing I/M requirements published in the **Federal Register** on November 5, 1992 (57 FR 52950). It is not inconsistent with nor does it interfere with actions by other agencies. It does not alter budgetary impacts of entitlements or other programs, and it does not raise any new or unusual legal or policy issues.

B. Reporting and Recordkeeping Requirement

There are no information requirements in this final rule which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. A small government jurisdiction is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." This certification is based on the fact that the I/M areas impacted by the rulemaking do not meet the definition of a small government jurisdiction, that is, "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." Furthermore, the impact created by the action does not increase the pre-existing burden which this final rule seeks to amend.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

To the extent that the rules being promulgated by this action would impose any mandate as defined in Section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this rule is not estimated to impose costs in excess of $100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers opportunities to states that would enable them to lower economic burdens from those resulting from the currently existing I/M rule.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Transportation.

Dated: September 6, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 51 of title 40 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. Section 51.350 is amended by revising paragraphs (a)(4), (a)(6), (a)(7), (a)(8), (a)(9) and (b)(4) and by removing and reserving paragraph (a)(5) to read as follows:

§ 51.350 Applicability.

* * * * *

(a) * * *

(4) Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area with a population of 200,000 or more.

(5) [Reserved]

(6) If the boundaries of a moderate ozone nonattainment area are changed pursuant to section 107(d)(4)(A)(i)-(ii) of the Clean Air Act, such that the area includes additional urbanized areas with a population of 200,000 or more, then a basic I/M program shall be implemented in these additional urbanized areas.

(7) If the boundaries of a serious or worse ozone nonattainment area or of a moderate or serious CO nonattainment area with a design value greater than 12.7 ppm are changed any time after enactment pursuant to section 107(d)(4)(A) such that the area includes additional urbanized areas, then an enhanced I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas, if the 1980 Census-defined urban area population is 200,000 or more.

(8) If a marginal ozone nonattainment area, not required to implement enhanced I/M under paragraph (a)(1) of this section, is reclassified to moderate, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) with a

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population of 200,000 or more. If the area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more.

(9) If a moderate ozone or CO nonattainment area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined population is 200,000 or more.

(b) * * *

(4) In a multi-state urbanized area with a population of 200,000 or more that is required under paragraph (a) of this section to implement I/M, any state with a portion of the area having a 1990 Census-defined population of 50,000 or more shall implement an I/M program. The other coverage requirements in paragraph (b) of this section shall apply in multi-state areas as well.

* * * * *

3. Section 51.351 is amended by revising paragraphs (a) introductory text, and (b), by removing and reserving paragraph (e) and by adding paragraphs (f) and (g) to read as follows:

§ 51.351 Enhanced I/M performance standards.

(a) Enhanced I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the program. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model or an alternative model approved by the Administrator, and shall meet the minimum performance standard both in operation and for SIP approval. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas subject to enhanced I/M and subject areas in the Ozone Transport Region, the performance standard must be met for both oxides of nitrogen (NO_X) and volatile organic compounds (VOCs), except as provided in paragraph (d) of this section.

* * * * *

(b) *On-road testing.* The performance standard shall include on-road testing of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection required in paragraphs (f) and (g) of this section. Specific requirements are listed in § 51.371 of this subpart.

(e) [Reserved].

* * * * *

(f) *High Enhanced Performance Standard.* Except as provided in paragraph (g) of this section, the model program elements for the enhanced I/M performance standard shall be as follows:

(1) *Network type.* Centralized testing.

(2) *Start date.* For areas with existing I/M programs, 1983. For areas newly subject, 1995.

(3) *Test frequency.* Annual testing.

(4) *Model year coverage.* Testing of 1968 and later vehicles.

(5) *Vehicle type coverage.* Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

(6) *Exhaust emission test type.* Transient mass-emission testing on 1986 and later model year vehicles using the IM240 driving cycle, two-speed testing (as described in appendix B of this subpart S) of 1981–1985 vehicles, and idle testing (as described in appendix B of this subpart S) of pre-1981 vehicles is assumed.

(7) *Emission standards.* (i) Emission standards for 1986 through 1993 model year light duty vehicles, and 1994 and 1995 light-duty vehicles not meeting Tier 1 emission standards, of 0.80 gpm hydrocarbons (HC), 20 gpm CO, and 2.0 gpm NO_X;

(ii) Emission standards for 1986 through 1993 light duty trucks less than 6000 pounds gross vehicle weight rating (GVWR), and 1994 and 1995 trucks not meeting Tier 1 emission standards, of 1.2 gpm HC, 20 gpm CO, and 3.5 gpm NO_X;

(iii) Emission standards for 1986 through 1993 light duty trucks greater than 6000 pounds GVWR, and 1994 and 1995 trucks not meeting the Tier 1 emission standards, of 1.2 gpm HC, 20 gpm CO, and 3.5 gpm NO_X;

(iv) Emission standards for 1994 and later light duty vehicles meeting Tier 1 emission standards of 0.70 gpm HC, 15 gpm CO, and 1.4 gpm NO_X;

(v) Emission standards for 1994 and later light duty trucks under 6000 pounds GVWR and meeting Tier 1 emission standards of 0.70 gpm HC, 15 gpm CO, and 2.0 gpm NO_X;

(vi) Emission standards for 1994 and later light duty trucks greater than 6000 pounds GVWR and meeting Tier 1 emission standards of 0.80 gpm HC, 15 gpm CO and 2.5 gpm NO_X;

(vii) Emission standards for 1981–1985 model year vehicles of 1.2% CO, and 220 gpm HC for the idle, two-speed tests and loaded steady-state tests (as described in appendix B of this subpart S); and

(viii) Maximum exhaust dilution measured as no less than 6% CO plus carbon dioxide (CO_2) on vehicles subject to a steady-state test (as described in appendix B of this subpart S); and

(viii) Maximum exhaust dilution measured as no less than 6% CO plus carbon dioxide (CO_2) on vehicles subject to a steady-state test (as described in appendix B of this subpart S).

(8) *Emission control device inspections.* (i) Visual inspection of the catalyst and fuel inlet restrictor on all 1984 and later model year vehicles.

(ii) Visual inspection of the positive crankcase ventilation valve on 1968 through 1971 model years, inclusive, and of the exhaust gas recirculation valve on 1972 through 1983 model year vehicles, inclusive.

(9) *Evaporative system function checks.* Evaporative system integrity (pressure) test on 1983 and later model year vehicles and an evaporative system transient purge test on 1986 and later model year vehicles.

(10) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver rate.* A 3% waiver rate, as a percentage of failed vehicles.

(12) *Compliance rate.* A 96% compliance rate.

(13) *Evaluation date.* Enhanced I/M program areas shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO_X shall be the same as for ozone.

(g) *Alternate Low Enhanced I/M Performance Standard.* An enhanced I/M area which is either not subject to or has an approved State Implementation Plan pursuant to the requirements of the Clean Air Act Amendments of 1990 for Reasonable Further Progress in 1996, and does not have a disapproved plan for Reasonable Further Progress for the period after 1996 or a disapproved plan for attainment of the air quality standards for ozone or CO, may select the alternate low enhanced I/M performance standard described below in lieu of the standard described in paragraph (f) of this section. The model program elements for this alternate low enhanced I/M performance standard are:

(1) *Network type.* Centralized testing.

(2) *Start date.* For areas with existing I/M programs, 1983. For areas newly subject, 1995.

(3) *Test frequency.* Annual testing.

(4) *Model year coverage.* Testing of 1968 and newer vehicles.

(5) *Vehicle type coverage.* Light duty vehicles, and light duty trucks, rated up to 8,500 pounds GVWR.

(6) *Exhaust emission test type.* Idle testing of all covered vehicles (as described in Appendix B of Subpart S).

(7) *Emission standards.* Those specified in 40 CFR Part 85, Subpart W.

(8) *Emission control device inspections.* Visual inspection of the positive crankcase ventilation valve on all 1968 through 1971 model year vehicles, inclusive, and of the exhaust gas recirculation valve on all 1972 and newer model year vehicles.

(9) *Evaporative system function checks.* None.

(10) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver rate.* A 3% waiver rate, as a percentage of failed vehicles.

(12) Compliance rate. A 96% compliance rate.

(13) Evaluation date. Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO_x shall be the same as for ozone.

4. Section 51.360 is amended by revising the introductory text and paragraphs (a)(1), (a)(5), (a)(6), (a)(7) introductory text, (a)(9) and (b) to read as follows:

§ 51.360 Waivers and compliance via diagnostic inspection.

The program may allow the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards, as long as the prescribed criteria described below are met.

(a) * * *

(1) Waivers shall be issued only after a vehicle has failed a retest performed after all qualifying repairs have been completed. Qualifying repairs include repairs of the emission control components, listed in paragraph (a)(5) of this section, performed within 60 days of the test date.

* * * * *

(5) General repairs shall be performed by a recognized repair technician (i.e., one professionally engaged in vehicle repair, employed by a going concern whose purpose is vehicle repair, or possessing nationally recognized certification for emission-related diagnosis and repair) in order to qualify for a waiver. I/M programs may allow the cost of parts (not labor) utilized by non-technicians (e.g., owners) to apply toward the waiver limit. The waiver would apply to the cost of parts for the repair or replacement of the following list of emission control components: oxygen sensor, catalytic converter, thermal reactor, EGR valve, fuel filler cap, evaporative canister, PCV valve, air pump, distributor, ignition wires, coil, and spark plugs. The cost of any hoses, gaskets, belts, clamps, brackets or other accessories directly associated with these components may also be applied to the waiver limit.

(6) In basic programs, a minimum of $75 for pre-81 vehicles and $200 for 1981 and newer vehicles shall be spent in order to qualify for a waiver. These model year cutoffs and the associated dollar limits shall be in full effect no later than January 1, 1998. Prior to January 1, 1998, states may adopt any minimum expenditure commensurate with the waiver rate committed to for the purposes of modeling compliance with the basic I/M performance standard.

(7) Beginning on January 1, 1998, enhanced I/M programs shall require the motorist to make an expenditure of at least $450 in repairs to qualify for a waiver. The I/M program shall provide that the $450 minimum expenditure shall be adjusted in January of each year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index of 1989. Prior to January 1, 1998, states may adopt any minimum expenditure commensurate with the waiver rate committed to for the purposes of modeling compliance with the relevant enhanced I/M performance standard.

* * * * *

(9) A time extension, not to exceed the period of the inspection frequency, may be granted to obtain needed repairs on a vehicle in the case of economic hardship when waiver requirements have not been met. After having received a time extension, a vehicle must fully pass the applicable test standards before becoming eligible for another time extension. The extension for a vehicle shall be tracked and reported by the program.

(b) *Compliance via diagnostic inspection.* Vehicles subject to a transient IM240 emission test at the cutpoints established in §§ 51.351 (f)(7) and (g)(7) of this subpart may be issued a certificate of compliance without meeting the prescribed emission cutpoints, if, after failing a retest on emissions, a complete, documented physical and functional diagnosis and inspection performed by the I/M agency or a contractor to the I/M agency show that no additional emission-related repairs are needed. Any such exemption policy and procedures shall be subject to approval by the Administrator.

* * * * *

5. Section 51.372 is amended by revising paragraphs (c) introductory text, (c)(3), (c)(4), and (e) to read as follows:

§ 51.372 State implementation plan submissions.

* * * * *

(c) *Redesignation requests.* Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a State Implementation Plan (SIP) submittal under Sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements:

* * * * *

(3) A contingency measure consisting of a commitment by the Governor or the Governor's designee to adopt or consider adopting regulations to implement an I/M program to correct a violation of the ozone or CO standard or other air quality problem, in accordance with the provisions of the maintenance plan.

(4) A contingency commitment that includes an enforceable schedule for adoption and implementation of the I/M program, and appropriate milestones. The schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart. Schedule milestones shall be listed in months from the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. Unless the state, in accordance with the provisions of the maintenance plan, chooses not to implement I/M, it must submit a SIP revision containing an I/M program no more than 18 months after notification by EPA.

* * * * *

(e) *SIP submittals to correct violations.* SIP submissions required pursuant to a violation of the ambient ozone or CO standard (as discussed in paragraph (c) of this section) shall address all of the requirements of this subpart. The SIP shall demonstrate that performance standards in either

§ 51.351 or § 51.352 shall be met using an evaluation date (rounded to the nearest January for carbon monoxide and July for hydrocarbons) seven years after the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. Emission standards for vehicles subject to an IM240 test may be phased in during the program but full standards must be in effect for at least one complete test cycle before the end of the 5-year period. All other requirements shall take effect within 24 months of the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. The phase-in allowances of § 51.373(c) of this subpart shall not apply.

[FR Doc. 95–23106 Filed 9–15–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 69

[FRL–5296–9]

Special Exemptions From Requirements of the Clean Air Act for the Territory of Guam

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Direct final rulemaking.

SUMMARY: On July 14, 1995, the Governor of Guam filed a petition ("Petition") with the Administrator seeking a waiver of certain Clean Air Act ("CAA") requirements which apply to Guam Power Authority ("GPA"). The Petition was filed under Section 325(a) of the CAA. The waiver will help to ease a severe energy emergency on Guam. Based upon the information in the Petition and supplementary information from GPA and the Guam Environmental Protection Agency ("GEPA"), EPA is granting the waiver requested. EPA finds that there is good cause for a direct final rulemaking and that notice and public procedures are impracticable, unnecessary, and contrary to the public interest.

The waiver allows, with certain conditions, one baseload diesel electric generating facility to operate at the Cabras Power Plant prior to the receipt of a final Prevention of Significant Deterioration ("PSD") permit by GPA. The waiver also allows the construction, but not operation, of a second baseload diesel unit at the Cabras Power Plant prior to GPA's receipt of a final PSD permit.

EFFECTIVE DATE: This direct final rule is effective September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Norman Lovelace, Chief, Office of Pacific Islands and Native American Programs (E–4), Office of External Affairs, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105. Telephone: (415) 744–1599.

SUPPLEMENTARY INFORMATION:

Background

The Petition was submitted by Governor Gutierrez of Guam to the Administrator of EPA in a letter dated July 14, 1995. It is accompanied by supporting documentation, including newspaper accounts describing traffic safety, water supply, and political problems caused by the significant electrical energy shortage on Guam. The Petition incorporates an air quality analysis, based upon computer modeling, which demonstrates the effects of the waiver upon air quality, particularly in the offshore direction, from the generating facilities involved.

The Petition seeks a waiver of certain CAA requirements for the operation and construction by GPA of two baseload diesel electric generators. Both units are part of the Cabras Power Plant. The first facility involved is designated as Cabras Unit No. 3. This forty megawatt diesel generator was constructed, pursuant to 40 CFR 69.11(a)(1), prior to GPA's receipt of a final PSD permit. (This unit is designated Cabras Diesel No. 1 in 40 CFR 69.11(a)(1). Its designation has been changed since the 1993 promulgation of that rule.) The Petition asks EPA to waive CAA requirements as necessary to allow operation of Cabras Unit No. 3, subject to conditions, prior to receipt of a final PSD permit by GPA.

The waiver describes two conditions accompanying the operation of Cabras Unit No. 3. First, during operations under the waiver a lower sulfur fuel oil will be fired in the Cabras Power Plant and in the adjacent Piti Power Plant during certain periods. These power plants operate under a fuel switching intermittent control strategy, and the sulfur-in-fuel reduction in the waiver application applies to operations under offshore wind conditions. Second, the waiver will last only until August 15, 1996, or until issuance of a final PSD permit to GPA for this unit, whichever occurs first.

The Petition also seeks a waiver of CAA requirements as necessary to allow GPA to construct a second forty megawatt baseload unit at the Cabras Power Plant. This facility is designated as Cabras Unit No. 4. The waiver application seeks to allow construction of Cabras Unit No. 4 prior to a receipt by GPA of a PSD permit. Cabras Unit No. 4 will not operate prior to receipt of final PSD permit.

Guam has experienced a longstanding shortage of electrical energy, repeatedly leading to rotating blackouts of areas of the island. The background to this energy shortage is described in the 1993 waiver proceeding before EPA. 58 FR 15579, 15580. The Petition describes how the 1993 energy shortage has continued despite a substantial capital development program by GPA, and in some respects has grown worse. The energy shortage was created originally because of very rapid growth in energy demand due to increased residential electrical consumption and a boom in tourism. The Petition describes how energy shortfalls are now exacerbated as a result of substantial facility outages caused by equipment failures.

As EPA noted in the 1993 waiver proceeding, Guam is an isolated island. 58 FR 13580. GPA generates almost all electric power used on the island (other than power generated by the United States Navy). Unlike power authorities on the mainland United States, GPA does not have the option of purchasing power from other sources. Guam is, and must remain, self sufficient with regard to energy generation.

The Petition states that Guam's energy shortfall has worsened in recent months because of facility outages caused by planned and unplanned maintenance requirements. The longstanding nature of the energy shortage has required GPA to use its existing facilities at peak capacity for several years. GPA has also deferred planned maintenance, when safety considerations have allowed, to permit units to remain in service. Because of the length of time which has elapsed since the beginning of the emergency, the result is now substantially reduced reliability of GPA's electric generating units. The Petition describes several significant and unplanned recent maintenance outages.

The construction and operation of additional, reliable baseload generating units will enable GPA to satisfy electrical demand with an appropriate margin of safety, while at the same time allowing for planned maintenance outages of generating units. Once sufficient baseload capacity exists and can be operated, routine, as well as unplanned blackouts on the island will be ended. Cabras Units Nos. 3 and 4 are such baseload units.

The Petition states that Cabras Unit No. 3 will be ready to begin operation and electrical generation on approximately August 15, 1995. The building which houses Cabras Unit No.

3 and will house Cabras Unit No. 4 has already been constructed under 40 CFR 69.11. The remaining construction of Cabras Unit No. 4 can be carried out immediately pursuant to this rulemaking.

The Petition describes a second potential difficulty with PSD permitting for the operation of Cabras Unit No. 3 and the construction of Cabras Unit No. 4. Absent changes in the current operations of the Cabras and Piti Power Plants, GPA's computer modeling suggests that the operation of the new units, combined with existing facilities, may cause exceedences of sulfur dioxide National Ambient Air Quality Standards ("NAAQS") on Orote Point, a peninsula of elevated terrain located in the offshore direction from the power plants.

GPA is re-evaluating its computer modeling results using state of the art wind tunnel modeling. Preliminary results of wind tunnel modeling seem to confirm the possibility of the exceedences projected by computer models. If a final analysis upholds that result, significant changes to power plant operations likely will be necessary in order for PSD permits to be issued for Cabras Units Nos. 3 and 4.

Section 325(a) of the CAA allows a waiver of certain CAA requirements, based upon local factors, only if the waiver will not cause exceedences of the primary NAAQS or violations of the hazardous air pollutant provisions of the CAA. The hazardous air pollutant provisions of the CAA are not affected by the Petition. The Petition is accompanied by an air quality analysis, utilizing computer modeling, which demonstrates that all NAAQS will be protected if the requested waivers are granted and incorporate the operating conditions described below.

GPA operates the Cabras and Piti Power Plants under an intermittent control strategy which utilizes fuel switching. This intermittent control strategy is described in an EPA document entitled the "Cabras Area ICS." This strategy has required the use of fuel oil with a maximum sulfur content of 1.19 percent when winds blow in an onshore direction, and the use of fuel oil with a maximum sulfur content of 2.84 percent when winds blow in an offshore direction.

As a condition of the waiver sought, GPA is to reduce the sulfur content in the fuel oil fired in the Cabras Power Plant and the Piti Power Plant when winds blow in an offshore direction. The sulfur content of the fuel used will be reduced to a maximum content of 2.00 percent. The Petition describes how GPA will obtain and assure the use of such fuel oil prior to beginning the operation of Cabras Unit No. 3.

EPA is granting the Petition, with the conditions contained therein, and is issuing the requested waiver. Cabras Unit No. 3 will be allowed to operate prior to receipt of a PSD permit. This operation is subject to the use of fuel oil with a maximum sulfur content of 2.00 percent at the Cabras and Piti Power Plants during offshore wind conditions. Moreover, this waiver for Cabras Unit No. 3 is granted only until August 15, 1996, or until a final PSD permit is secured by GPA, whichever event occurs sooner. Cabras Unit No. 4 may be constructed, but not operated, prior to receipt of a PSD permit. Finally, a report on the results of GPA's Orote Point evaluation shall be filed with EPA by October 15, 1995.

Cabras Unit No. 3 is subject to a conditional permit to construct, issued by GEPA on May 12, 1994. GPA has filed an application to GEPA for authority to operate this unit. During the period of this waiver, GPA must comply with the requirements of these GEPA permits.

This rule is promulgated on a direct final basis. EPA is convinced that the energy emergency on Guam creates significant adverse consequences which require immediate action. As documented in the Petition, continuing planned and unplanned power outages on Guam create substantial public health and safety concerns. EPA has been furnished with descriptions of traffic intersections at which traffic lights cannot operate. The water supplies to areas on Guam are serviced by electric pumps, and EPA has also been furnished with descriptions of interruptions of water supplies due to power outages. Finally, as would be expected, significant and sustained citizen displeasure has been voiced regarding this problem. These factors constitute good cause for EPA to waive notice requirements. In this instance, a delay in the effectiveness of this waiver granted would be impracticable and contrary to the public interest. In addition, based on the lack of negative comments in the 1993 waiver proceeding, EPA believes that this is a noncontroversial rulemaking action. Therefore, EPA finds that there is good cause for a direct final rulemaking, pursuant to 5 U.S.C. 553(d)(3), and that notice and public procedures are impracticable, unnecessary, and contrary to the public interest.

GEPA has received and reviewed a copy of the Petition. It supports the issuance of this waiver.

Regulatory Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a Regulatory Flexibility Analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This direct final rule applies only to large sources of air emissions used to generate electrical power on Guam. These sources of electrical power will be constructed, owned, and operated by GPA. This organization is not a small entity. Therefore, this rulemaking will not impact small entities.

This action has been classified as a Table 3 action for signature by the Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 69

Air pollution control.

Dated: September 11, 1995.

Carol Browner,

Administrator.

Part 69 of chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows:

Authority: Section 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

2. Section 69.11 is amended by adding paragraph (c) to read as follows:

§ 69.11 New exemptions.

* * * * *

(c) Pursuant to Section 325(a) of the CAA and a petition submitted by the Governor of Guam on July 14, 1995 ("1995 Petition"), the Administrator of EPA conditionally exempts Guam Power Authority ("GPA") from certain CAA requirements.

(1) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating unit identified in the 1995 Petition as Cabras Unit No. 4, with the following conditions:

(i) Cabras Unit No. 4 shall not operate until a final PSD permit is received by GPA for this unit;

(ii) Cabras Unit No. 4 shall not operate until it complies with all requirements

of its PSD permit, including, if necessary, retrofitting with BACT;

(iii) If Cabras Unit No. 4 operates either prior to the issuance of a final PSD permit or without BACT equipment, Cabras Unit No. 4 shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of the unit.

(2) A waiver of the requirement to obtain a PSD permit prior to the operation of the unit identified in the 1995 Petition as Cabras Unit No. 3 is granted subject to the following conditions:

(i) The protocol to be followed for the ICS of fuel switching for electric generating units shall be modified to require the use of fuel oil with a sulfur content of 2.00 percent or less during offshore wind conditions. This fuel shall be fired in Cabras Power Plant Units Nos. 1 through 3 and in Piti Power Plant Units Nos. 4 and 5.

(ii) Cabras Unit No. 3 shall operate in compliance with all applicable requirements in its permits to construct and to operate as issued by Guam Environmental Protection Agency.

(iii) The waiver provisions allowing Cabras Unit No. 3 to operate prior to issuance of a PSD permit shall expire on August 15, 1996, or upon the receipt by GPA of a PSD permit for Cabras Unit No. 3, whichever event occurs first.

(3) On or before October 15, 1995, GPA shall submit to EPA, Region IX, a report concerning the operation of Cabras Unit No. 3 and the construction of Cabras Unit No. 4. The report shall contain:

(i) A summary of GPA's conclusions from its wind tunnel study;

(ii) A description of the alternatives available to assure compliance with all air quality requirements, including PSD requirements, during the operation of Cabras Units Nos. 3 and 4;

(iii) A description of the alternative GPA chooses to assure compliance with all air quality requirements, including PSD requirements, during the operation of Cabras Units Nos. 3 and 4; and

(iv) A plan of implementation by GPA.

[FR Doc. 95–23107 Filed 9–15–95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPD–766–F]

RIN 0938–AG21

Medicare Program; Standards for Quality of Water Used in Dialysis and Revised Guidelines on Reuse of Hemodialysis Filters for End-Stage Renal Disease (ESRD) Patients

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the Medicare conditions for coverage of suppliers of end-stage renal disease services. The revisions remove general language in the regulations regarding water quality; incorporate by reference standards for monitoring the quality of water used in dialysis as published by the Association for the Advancement of Medical Instrumentation (AAMI) in its document, "Hemodialysis Systems" (second edition); and update existing regulations to incorporate by reference the second edition of AAMI's voluntary guidelines on "Reuse of Hemodialyzers."

EFFECTIVE DATE: These regulations are effective on October 18, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Jackie Sheridan, (410) 966–4635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1881 of the Social Security Act (the Act) authorizes Medicare coverage and payment for the treatment of end-stage renal disease (ESRD) in approved facilities that provide dialysis to ESRD patients. The Health Care Financing Administration (HCFA) grants approval of ESRD facilities after they have been surveyed by a State agency. The State survey agency determines the facility's compliance with the conditions specified in regulations at 42 CFR part 405, subpart U. Medicare payment is limited to ESRD services furnished by facilities meeting these conditions.

A. Water Quality

The existing regulation governing the quality of water used in dialysis (§ 405.2140(a)(5)) requires that the water be analyzed periodically and treated as necessary to maintain a continuous supply that is biologically and chemically compatible with acceptable dialysis techniques. The lack of specificity of these requirements makes it difficult for State agency surveyors to measure facility compliance with the standard.

Realizing that water quality is one of the most important aspects of health and safety in dialysis led us to consult with the Public Health Service and various other professionals in the dialysis industry to redefine the standards used by State surveyors in determining compliance with the regulations. As a result of these consultations, we concluded that there was a need to establish specific measurable standards regarding the quality of water used in dialysis. According to the Public Health Service's Center for Disease Control and Prevention, the Association for the Advancement of Medical Instrumentation (AAMI) standard on water quality is the only standard available, is accepted by the medical community and is currently used by most facilities.

The 1992 AAMI standard, "Hemodialysis Systems," reflects the collective expertise of a committee of health care professionals, in conjunction with device manufacturers and government representatives. This committee developed a standard of performance for manufacturers that will, at a minimum, promote the effective, safe performance of hemodialysis systems, devices, and related materials. The standard includes specific water quality requirements and has an appendix that provides a guideline for the device user with specific emphasis on water purity assurance and monitoring. This standard is outcome-oriented in that it stipulates only specific biological and chemical water purity levels and does not restrict the methods used by facilities to attain and maintain the acceptable levels.

Each AAMI standard or recommended practice is reviewed at least every 5 years because of constant changes in medical technology and to clarify or improve existing guidelines. The standard was originally published in 1982. In 1986, the AAMI Renal Disease and Detoxification Committee appointed task groups to carefully review specific areas of the standard. After review by the task groups and the full committee, a proposed revision was drafted. This document, "Hemodialysis Systems" (second edition), was voted on by the committee, reviewed by the public, and was approved on March 16, 1992.

B. Reuse of Hemodialyzers

Section 1881(f)(7) of the Act requires the Secretary to establish protocols for reuse of hemodialyzers for those facilities that voluntarily elect to reuse the filters. Reuse can be accomplished through a variety of techniques that involve the cleaning, disinfecting, and preparing of disposable hemodialysis devices for subsequent use by the same patient. Although the potential exists for adverse patient outcomes from reuse, reprocessing and reuse of dialyzers are safe when done properly.

Existing regulations at § 405.2150 require ESRD facilities reusing hemodialyzers to meet the voluntary guidelines and standards adopted by AAMI and issued in July 1986 as "Reuse of Hemodialyzers." The AAMI guidelines on reuse of hemodialyzers are based on the national consensus of physicians, other health care professionals, government representatives, patients, and industry. These guidelines (directed to health professionals) describe the details of reprocessing dialyzers and address various areas such as personnel qualifications and training, patient considerations, equipment, reprocessing supplies, monitoring during dialysis, quality assurance and quality control.

After review by the AAMI Renal Disease and Detoxification Committee and the public, the second edition of the "Reuse of Hemodialyzers" was approved. The second edition is directed to the physician in charge of hemodialyzer reprocessing (using a manual or automated method) and describes the essential elements of good practices for reprocessing dialyzers to help assure safety and effectiveness.

II. Provisions of the Proposed Regulations

We published in the **Federal Register** (59 FR 6937) on February 14, 1994, a proposed rule to amend the Medicare regulations to incorporate by reference the AAMI standard for water quality and the AAMI guidelines for monitoring purity of water for hemodialysis found in the following sections of "Hemodialysis Systems" (second edition):

- 3.2.1—Water Bacteriology
- 3.2.2— Maximum Level of Chemical Contaminants
- Appendix B, section B1 through B5— Guidelines for Monitoring Purity of Water Used for Hemodialysis.

We proposed that this incorporation by reference would replace the existing general language in § 405.2140(a)(5) which requires that water used for dialysis must be analyzed periodically and treated as necessary to maintain a continuous supply that is biologically and chemically compatible with acceptable dialysis techniques.

The February 14, 1994, proposed rule also specified the proposed incorporation by reference of the 1993 (second) edition of the AAMI guidelines on "Reuse of Hemodialyzers" to replace the previously incorporated 1986 edition. In addition, we proposed to amend § 405.2150 to remove paragraph (a)(2) concerning staff exposure to chemical germicides, paragraph (a)(3)(iii) concerning reporting adverse patient reactions to the manufacturer, and paragraph (b) concerning the standard for dialyzer caps. These topics (included in the three paragraphs previously mentioned) are covered in the following sections of the revised 1993 AAMI guidelines that are now being incorporated by reference:

- Section 8—Physical plant and environmental safety considerations
- Section 11—Reprocessing
- Section 13—Monitoring
- Annex A—Section A11.4—Germicide.

The proposed rule specified that copies of both AAMI publications may be purchased from AAMI and are available for inspection at the HCFA Information Resource Center or the Office of the Federal Register.

III. Analysis of and Responses to Public Comments

We received five timely public comments on the February 1994 proposed rule. All commenters were generally supportive of the proposed revisions. Their comments and our responses are discussed below.

A. General

Comment: One commenter noted that the Government's regulatory process is slower than the private sector's in making changes. They recommended that we develop a mechanism to automatically incorporate the most recent revision of AAMI guidelines into the regulation rather than revise the regulations each time the AAMI guideline is updated.

Response: We acknowledge that the process of issuing a revision to the regulations each time the AAMI guidelines are updated results in delay in giving the updated guidelines the force of law. It certainly would be simpler for us to merely adopt the most recent version of the AAMI guidelines automatically upon update as the commenter suggested. However, we have some concerns that such a system may not be consistent with our obligation to the ESRD facilities that would be affected.

Under the current system, we carefully review and consider the changes made in the AAMI updates and make a determination as to whether it is appropriate and necessary to incorporate the AAMI provisions in our regulations. Then we offer the public an opportunity to participate in the regulation process through a comment period.

If we were to adopt the commenter's suggestion, the industry would be required to comply with the AAMI guidelines regardless of whether changes are beneficial to Medicare beneficiaries or unduly burdensome to facilities.

In this regard, we note that we received a comment, which is discussed later in this document, expressing concern with the level of influence afforded to the reuse manufacturers under the process of adopting the AAMI guidelines.

We are in the process of preparing a proposed rule that would totally revise the conditions of coverage for ESRD facilities. We will solicit comment from the public on the merits of this proposal at that time. Until we have had an opportunity to hear form the facilities that would be impacted by this suggestion, we believe it is most appropriate to continue to pursue the rulemaking under the Administrative Procedure Act and provide an opportunity for participation by the affected entities.

B. Water Quality

Comment: Two commenters recommended that we also incorporate the AAMI provisions relating to sampling and testing methodologies contained in sections 4.2.1 and 4.2.2 of "Hemodialysis Systems." They noted that the sampling and testing protocols are essential to obtaining results that are meaningful and lead to the desired outcome of good patient health and safety. They presented examples of factors that can erroneously influence test results, such as leaving samples at room temperature, sampling only at one site, and shortened incubation periods.

Response: We note the commenters' concern and fully endorse the provisions contained in sections 4.2.1 and 4.2.2. of the AAMI "Hemodialysis Systems" document. However, we note that the subject provisions are exceedingly detailed and include not only point of water collection within the dialysis system, but also time of assay, storage temperatures, filter technique, and culture media. While we encourage facilities to utilize these guidelines, we

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believe that they are overly prescriptive. Moreover, the subject provisions are procedure-oriented as opposed to outcome-oriented and not necessary for ensuring Medicare beneficiary health and safety. We believe that we can meet the statutory mandate for beneficiary health and safety while permitting facilities some flexibility in sampling and testing procedures.

In addition, the adopted provisions of AAMI water quality standard address specific bacteriological and chemical purity levels. We also adopted the AAMI Appendix guidelines with regard to monitoring frequency. The guidelines address monitoring practices similar to sections 4.2.1 and 4.2,2 but in a more general, less prescriptive nature. We feel confident that these provisions provide enough detail to permit surveyors to adequately determine appropriate water quality. Moreover, these new standards represent a significant improvement over the assurances contained in the existing regulation. We believe that it would be unnecessarily burdensome and prescriptive to specify minute details as to the sampling techniques. Further, such specificity would be inconsistent with the Administration's commitment to reduce Federal regulatory burden. Consequently, we are not adopting the commenters' suggestion at this time.

We are, however, currently developing a complete revision of the ESRD conditions of coverage. One of the principal goals of this project is to make the conditions patient-centered and outcome-oriented. Ultimately, we may choose an outcome-oriented set of conditions regulating sampling methodology more explicitly. We will consider these comments as we develop the new conditions.

Comment: One commenter recommended that we apply the water quality standards to water used for reprocessing as well as for dialysate, noting that contaminated water can adversely affect reprocessing through the water rinse phases.

Response: The AAMI water standards that we have adopted were prepared, in collaboration with the industry, exclusively for water used during hemodialysis. The guidelines were not intended for adoption to the reuse process. We have incorporated water standards specifically for the reuse process from the AAMI reuse standards. The reuse standards contain water requirements in sections 7.1.2. and 11.4.1. We believe these standards are adequate to meet our need to ensure beneficiary health and safety.

C. Hemodialyzer Reuse

Comment: One commenter took issue with the statement in the preamble of the proposed rule stating that, "Although the potential exists for adverse patient outcomes from reuse, reprocessing and reuse of dialyzers are safe when done properly." This commenter referenced the recent research indicating an association between increased mortality and reuse with certain germicides. The commenter concluded that it may be premature to state unequivocally that reprocessing and reuse of dialyzers are safe.

Response: We note that the sentence addressed by the commenter clearly includes the caveat that reprocessing is safe when done "properly". We do not believe the statement is misleading or erroneous in light of research findings.

Although the referenced research finds an association between increased mortality and reuse of certain germicides, it does not conclude that reuse is not safe. In addition, the Food and Drug Administration (FDA) has approved the product and its labelling, reviewed manufacturers' studies, and followed routine procedures that include product testing. Thus, we can conclude that the germicides currently marketed for reprocessing dialyzers do, in fact, work effectively to destroy bacteria.

HCFA and the FDA believe the research in question supports a conclusion that proper technique is essential for effective use of the germicides. Consequently, the FDA has been working with one manufacturer to strengthen product user education. In this regard, the manufacturer in question has taken several voluntary actions to promote proper use of the product, including issuing revised detailed instructions. In addition, the manufacturer has held numerous training sessions all over the nation to educate its customers regarding proper use of the product. Further, the manufacturer in question requires its customers to sign commitments to verify that they understand and will comply with product user instructions before further merchandise will be distributed.

Comment: Two commenters requested clarification of the requirement in § 405.2150(a)(2) that states that facilities may use only one germicide in reprocessing. Specifically, the commenters were concerned about the use of bleach and another germicide during reprocessing. One commenter specifically asked if it was necessary to discard all dialyzers currently being reused if the facility changes germicides.

Response: For purposes of reuse, bleach is considered a cleansing agent, not a germicide. Thus, many facilities use bleach as part of the reuse process to flush and clean blood deposits before the actual germicide soaking process is initiated. We do not intend to imply that this bleach cleansing process adversely affects the reprocessing. Since we do not consider bleach to be a germicide, the requirement to discard dialyzers treated with a different germicide does not apply to bleaching.

We do intend that a facility that changes germicides discard all those dialyzers reprocessed with the old germicide. We are concerned that exposing dialyzers to different germicides may cause membrane leaks. While we recognize that it may be expensive and considered wasteful by some facilities to discard dialyzers with test values that indicate they are still effective, we believe that this precaution is a necessary safety measure. Facilities should take this added expense into consideration when analyzing their alternatives and making a determination regarding the changing of germicides.

Comment: One commenter indicated that the prohibition against reuse of dialyzers for hepatitis B-positive patients that is contained in the AAMI guidelines is unjustified and costly to dialysis facilities. The commenter cited a report from the Centers for Disease Control that concluded that reuse of dialyzers was not associated with increased transmission of hepatitis B. Commenters supported measures other than a total ban against reuse for hepatitis B-positive patients, such as holding dedicated equipment in isolation areas, to eliminate the risk of cross-contamination of dialyzers.

Response: Hepatitis B is a highly contagious disease that has the potential to be extremely damaging to an ESRD patient. Given the highly contagious nature of the disease, the CDC has for many years strongly recommended extreme precaution and isolation of those patients who are hepatitis B-positive. Many physicians, nurses, and other professionals involved in the ESRD field have similarly supported the position of extreme caution in treating the hepatitis B-positive patient.

We want to point out that the AAMI provision related to banning reuse for hepatitis B-positive patients was developed in a public forum and reflects the views of many noted professionals. These guidelines were developed by a committee of national experts in a variety of ESRD-related fields. The committee's recommendations were then distributed to the AAMI membership at large for comment. Thus, the prohibition against reuse of dialyzers for hepatitis B positive patients was developed by the medical community and reflects the general concern of most professionals that extreme caution is necessary in treating patients with the disease.

While there may be no appreciable evidence to demonstrate that reuse would increase the spread of hepatitis B, there is no conclusive evidence that reuse in this population is safe. Given that hepatitis B is very contagious and that the industry generally supports the prohibition, we believe that permitting reuse for hepatitis B-positive patients would be an inappropriate risk to the health and safety of ESRD patients.

Comment: One commenter expressed concern that the AAMI reuse guidelines provide too much latitude to device manufacturers in establishing operating parameters for their equipment. The commenter was concerned that ESRD facilities are a captive audience to manufacturers, who could design expensive equipment or procedures. Under the reuse regulations, which require compliance with the manufacturer's guidelines, facilities may be forced to bear financial burdens with little recourse. The commenter suggested that HCFA develop a process to allow ESRD facilities to appeal the application of excessively restrictive guidelines for equipment.

Response: We do not support the commenter's recommendation for HCFA to develop an appeal process for application of equipment guidelines. It is not within the purview of the HCFA to become involved in manufacturers' guidelines. The FDA, not HCFA, is responsible for approval of devices, equipment, and labelling, including manufacturers' instructions.

Manufacturers' product guidelines are very technical and are developed only after considerable research and deliberation with respect to complex technical and scientific matters. HCFA does not have the appropriate staffing or expertise to adjudicate facilities' appeals of these scientific matters. However, the FDA does offer recourse to facilities through its Office of Compliance. Facilities may contact the FDA by writing to: Food and Drug Administration, Office of Compliance, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20850.

In addition, we note that the manufacture of reprocessing devices, germicides, and equipment takes place in the competitive market arena. ESRD facilities are free to choose among a number of alternative strategies for reprocessing dialyzers, or they may choose not to reuse at all. Thus, we do not believe that the facilities are a captive audience to the manufacturers given that there are a variety of dialyzer processing methods and reprocessing product manufacturers.

D. Impact on the Hemodialysis Community

We specifically solicited input from the commenters on our assumption that the adoption of the AAMI water and reuse standards would not represent a burden on the provider community as most are voluntarily complying with the AAMI guidelines.

Comment: Several commenters agreed with our conclusion that there would be little impact on facilities because most facilities already voluntarily comply with AAMI guidelines. Nonetheless, they voiced support for making the guidelines mandatory to force those few non-compliant facilities into appropriate practices.

Response: We appreciate the support for our proposal and are proceeding to publish the final regulations.

Comment: One commenter challenged our statement that the AAMI water standards are supported by scientific literature. The commenter also disagreed with the statement that the standards are based on industry consensus, since Government representatives participated in the AAMI guideline development.

Response: As noted earlier, the AAMI guidelines were developed by a committee of noted experts in hemodialysis. Once the committee formulated a draft document, it was circulated to AAMI membership for comment. The AAMI membership includes representatives of manufacturers, physicians, patients, technicians, and other fields. The committee seriously considered the comments and made appropriate revisions in the guidelines. Decisions reflected the majority of the committee members; no single member had authority to direct the decision or overrule the majority. While it is true that Government employees participated in the development of the guidelines, we do not believe that the fact that a Government representative participated in the process is an indication that the resulting guidelines are not representative of the industry consensus.

The AAMI committee utilized empirical data regarding microbial limits and epidemiological findings (among other things) in developing the guidelines. We acknowledge that by using the term "scientific literature" we may have inadvertently implied that the AAMI had performed clinical trials and controlled experimentation. The intent of the statement was to indicate that the water quality limits established in the guidelines reflected reasonable assumptions and available empirical data.

IV. Provisions of the Final Regulations

We are adopting the provisions of the February 14, 1994, proposed regulations as final regulations without change.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Regulatory Impact Statement

A. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all ESRD facilities are considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

B. Water Quality Standards

This final rule incorporates industry standards on the quality of water used in dialysis into existing regulations thereby, enabling surveyors to accurately assess a facility's compliance with the standards on water quality. The AAMI standards are the results of a collaborative effort by health professionals and industry representatives to respond to clinical needs and to help ensure patient health and safety. The AAMI's recommended maximum levels for water contaminants have been clearly defined, reflect reasonable assumptions and available empirical data, and were developed through industry consensus. Under the AAMI water standard, the supplier/manufacturer of dialysis water treatment

equipment is responsible for ensuring that the water produced by the system routinely does not exceed the maximum allowable chemical contaminant levels. Because AAMI's acceptable contamination levels have been in effect since 1982 and are recognized as medically acceptable standards, we believe that manufacturers have been producing and facilities have been purchasing equipment capable of meeting these requirements. We understand that technology is in place for all facilities to meet the AAMI water standard. The public comments that we received on the proposed rule support this conclusion. Changes in water quality will be handled through consultation with State and local water authorities. Safe purity levels will be ensured through continued monitoring by the physician in charge of dialysis. Although contaminants in water used in dialysate may cause adverse patient reactions, actual documented adverse incidents are rare when the water is monitored properly. Because the AAMI water quality standard represents long-standing acceptable medical practice, we believe the vast majority of facilities already comply with this standard. Incorporation of the AAMI standard into the regulations will help ensure patient health and safety by providing surveyors with a measurable standard with which they may assess facility compliance, especially in the few facilities that do not voluntarily conform to the water quality guidelines adopted by the industry.

C. Reuse of Hemodialyzers

The AAMI "Reuse of Hemodialyzers" does not promote either single use or reuse of dialyzers. The guidelines were developed to acknowledge the widespread practice of reprocessing and provide recommendations for optimal hemodialyzer reprocessing. In January 1993, HCFA's Health Standards and Quality Bureau canvassed the 2,345 Medicare-certified ESRD facilities to determine if they practiced reuse, and, if so, the disinfecting protocols used. Sixty-five percent (1,532) of the facilities reported practicing reuse. Of these facilities, approximately 51 percent use renalin as the germicide; two-thirds of these facilities use an automated disinfecting system. Approximately 40 percent of the facilities reported using formalin/formaldehyde as the germicide, with manual and automated systems receiving equal use. Approximately 9 percent of the facilities practicing reuse reported using glutaraldehyde as the germicide, with the majority of these facilities using an automated disinfecting system. Less than 1 percent of the facilities use other disinfecting methods.

Because the 1993 AAMI guidelines do not differ significantly from the 1986 guidelines (which all Medicare participating facilities practicing reuse already must meet) we believe that the great majority of the facilities practicing reuse will be in compliance with the new standards in this final regulation. The 1993 AAMI standards were developed through a public forum and their adoption was well publicized. They reflect the most up-to-date reuse procedures already practiced by many of the facilities. Moreover, we do not believe that incorporating the 1993 guidelines into our regulations, in and of itself, will prompt any facility to begin or discontinue reuse.

We expect that each facility will respond to these new standards based on the relationship of these standards to its current reuse practices and to factors such as whether or not the facility can buy new filters in quantity less expensively than it can upgrade its reuse practices. As we indicated earlier, 65 percent of the facilities are already reusing dialyzers. The major effect of this final rule will be to ensure that Medicare standards for reuse reflect safe and effective practices.

D. Conclusion

Because we are unable to predict the decisions facilities will make in response to this regulation, we are unable to quantify the potential effect it will have. All five public responses to the February 1994 proposed rule were favorable.

Beneficiaries may be reassured that HCFA has adopted specific water quality standards and updated its standards for reuse of hemodialyzers to ensure their health and safety. However, we expect that there will be a negligible effect on most beneficiaries and facilities since we believe these revisions will make no major changes in current facility operation or patient experience. This final rule is not expected to result directly in any increases or reductions in Medicare program expenditures.

For these reasons, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In accordance with the provisions of Executive Order 12866, this final rule was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Incorporation by reference, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Chapter IV, Part 405, Subpart U is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

A. The authority citation for part 405, Subpart U continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a), unless otherwise noted.

B. In § 405.2140, the heading of paragraph (a) is republished, and paragraph (a)(5) is revised to read as follows:

§ 405.2140 Condition: Physical environment.

* * * * *

(a) *Standard: building and equipment.* * * *

(5)(i) The ESRD facility must employ the water quality requirements listed in paragraph (a)(5)(ii) of this section developed by the Association for the Advancement of Medical Instrumentation (AAMI) and published in "Hemodialysis Systems," second edition, which is incorporated by reference.

(ii) Required water quality requirements are those listed in sections 3.2.1, Water Bacteriology; 3.2.2, Maximum Level of Chemical Contaminants; and in Appendix B: Guideline for Monitoring Purity of Water Used for Hemodialysis as B1 through B5.

(iii) Incorporation by reference of the AAMI's "Hemodialysis Systems," second edition, 1992, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.[1] If any changes in

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[1] The publication entitled "Hemodialysis Systems," second edition, 1992, is available for inspection at the HCFA Information Resource Center, 7500 Security Boulevard, Baltimore, MD

Continued

"Hemodialysis Systems," second edition, are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**.

* * * * *

C. In § 405.2150, the undesignated introductory text and paragraph (a) are revised, paragraph (b) is removed, paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively, and redesignated paragraph (c)(1) is revised to read as follows:

§ 405.2150 Condition: Reuse of hemodialyzers and other dialysis supplies.

An ESRD facility that reuses hemodialyzers and other dialysis supplies meets the requirements of this section. Failure to meet any of paragraphs (a) through (c) of this section constitutes grounds for denial of payment for the dialysis treatment affected and termination from participation in the Medicare program.

(a) *Standard: Hemodialyzers*. If the ESRD facility reuses hemodialyzers, it conforms to the following:

(1) *Reuse guidelines*. Voluntary guidelines adopted by the AAMI ("Reuse of Hemodialyzers," second edition). Incorporation by reference of the AAMI's "Reuse of Hemodialyzers," second edition, 1993, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.[2] If any changes in "Reuse of Hemodialyzers," second edition, are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**.

(2) *Procedure for chemical germicides*. To prevent any risk of dialyzer membrane leaks due to the combined action of different chemical germicides, dialyzers are exposed to only one chemical germicide during the reprocessing procedure. If a dialyzer is exposed to a second germicide, the dialyzer must be discarded.

(3) *Surveillance of patient reactions*. In order to detect bacteremia and to maintain patient safety when unexplained events occur, the facility—

(i) Takes appropriate blood cultures at the time of a febrile response in a patient; and

(ii) If pyrogenic reactions, bacteremia, or unexplained reactions associated with ineffective reprocessing are identified, terminates reuse of hemodialyzers in that setting and does not continue reuse until the entire reprocessing system has been evaluated.

(b) * * *

(c) * * *

(1) Limit the reuse of bloodlines to the same patient;

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 30, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–22859 Filed 9–15–95; 8:45 am]

BILLING CODE 4120-01-P

21244–1850 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Association for the Advancement of Medical Instrumentation, 3300 Washington Boulevard, Suite 400, Arlington, VA 22201–4598.

[2] The publication entitled "Reuse of Hemodialyzers," second edition, 1993, is available for inspection at the HCFA Information Resources Center, 7500 Security Boulevard, Baltimore, MD 21244–1850 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Association for the Advancement of Medical Instrumentation, 3300 Washington Boulevard, Suite 400, Arlington, VA 22201–4598.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25, 28, 30, 31, 35, 37, 40, 50, 54, 55, 56, 57, 61, 67, 70, 71, 72, 76, 78, 79, 90, 91, 95, 97, 99, 106, 150, 154, 171, 174, 188, and 189

[CGD 95–012]

RIN 2115–AF03

Inspected and Uninspected Commercial Vessels; Removal of Obsolete and Unnecessary Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying its regulations for both inspected and uninspected commercial vessels by removing and revising obsolete and unnecessary provisions. The Coast Guard expects that this final rule will reduce the administrative burden to government and industry, reduce government printing costs, and provide a more concise and useful Title 46, Code of Federal Regulations.

DATES: This rule is effective on October 18, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR R. K. Butturini, Design and Engineering Standards Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this final rule are LCDR R. K. Butturini, Project Manager, Ms. Shereen Bell, Project Assistant and LT Rachel Goldberg, Project Counsel, Office of Chief Counsel.

Regulatory History

On May 9, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Removal of Obsolete and Unnecessary Regulations" (60 FR 24748). The Coast Guard received one letter commenting on the NPRM. No public meeting was requested, and none was held specifically for this project. A public meeting was held on April 20, 1995 (60 FR 16423) to discuss the Coast Guard's regulatory process and regulatory reform. Relevant comments made at that meeting have been considered in this final rule.

Background and Purpose

On March 4, 1995, the President issued a memorandum calling on executive agencies to review regulations with the goals of—

(1) Cutting obsolete regulations;

(2) Focusing on results instead of process and punishment;

(3) Convening meetings with the regulated community; and,

(4) Expanding efforts to promote consensual rulemaking.

At an April 20, 1995 public meeting announced in the March 30, 1995 **Federal Register** (60 FR 16423) and in another notice published in the May 31, 1995 **Federal Register** (60 FR 28376), the Coast Guard declared its commitment to eliminating Coast Guard induced differences between the requirements that apply to U.S. vessels in international trade and those requirements that apply to similar vessels in international trade that fly the flag of responsible foreign nations. The purpose of this final rule is to begin the process of achieving this goal by removing or revising regulations that the Coast Guard has found to be obsolete and unnecessary.

In compiling the list of CFR sections included in this final rule, the Coast

Guard did not consider parts of 46 CFR that are under review as part of other, ongoing regulatory projects. Additional rulemaking projects are expected to adopt accepted industry standards, remove other obsolete or unnecessary Coast Guard regulations and solicit public comment on additional provisions which should be modified or eliminated. Sections were identified for revision or removal by this rule for the following reasons:

(a) A regulation includes citation to a long-passed compliance date;

(b) Vessels or equipment covered under certain regulations have become impractical due to social or economic changes;

(c) Equipment mandated by regulation is no longer manufactured or used;

(d) Requirements imposed by regulations are repeated in another section;

(e) The law cited as authority has been repealed or revoked; or,

(f) The text of the regulation merely repeats statutory language.

Discussion of Comments and Changes

In response to the notice of proposed rulemaking one comment letter was received. The letter was supportive of the overall efforts by the Coast Guard to remove and revise obsolete and unnecessary provisions.

The following discussion summarizes the changes being made by this final rule to Title 46 of the CFR.

1. Passed Compliance Dates

The following regulations are being removed or revised because they include a reference to a compliance date which has passed. For example, 46 CFR 25.40–1(c) states that modifications for the purposes of complying with ventilation requirements must be completed by June 1, 1966. These types of references are no longer needed in the regulations and are being removed.

Cite (46 CFR)	Change made	Subject addressed by regulation
§ 25.40–1(c)	Removed	Motorboat ventilation.
§ 28.110(a)	Date removed	Life preservers
§ 28.115(a)	Date removed	Ring life buoys.
§ 28.135(a)	Date removed	Lifesaving equipment markings.
§ 28.145	Date removed	Distress signals.
§ 28.210 (c), (d) and (e)	Dates removed	First aid equipment and training.
§ 28.240(a)	Date removed	General alarm systems.
§ 28.270(c)	Date removed	Instructions, drills, and safety orientation.

2. Impractical Vessels, Equipment, or Arrangements

Some sections are being removed or revised because they apply to vessels or equipment that have become impractical due to changes in the world economy or social values. For example, most of the following listed regulations concern nuclear-powered vessels, vessels intended to incinerate waste at sea, and facilities and ships intended for energy production from differences in seawater temperature. However, no vessel or facility designed for any of these purposes is currently operating, and construction of any of these types of vessels or facilities is not likely in the foreseeable future. Therefore, these regulations are no longer necessary.

The Coast Guard's regulations concerning ocean thermal energy conversion vessels were issued as a result of a Congressional mandate stated in the Ocean Thermal Conversion Act of 1980 (The Act), codified at 42 U.S.C. 9101 *et seq.* The Act required the Coast Guard, in conjunction with the Department of Energy and the National Oceanic and Atmospheric Administration (NOAA), to promulgate regulations concerning ocean thermal energy conversion (OTEC) facilities and plantships. In the fifteen years since Congress passed the Act, there have been no OTEC facilities or plantships constructed, nor has there been any indication of any future activity in this area. Therefore, as part of its effort to cut obsolete and unnecessary regulations, the Coast Guard after consultation with both the Department of Energy and NOAA, has decided to remove all of its regulations concerning OTEC facilities and plantships.

During internal staff review, additional regulations concerning nuclear vessels and OTEC facilities and plantships were found which had not been identified for removal in the NPRM. These additional regulations are also being removed by this rule since they are no longer necessary. These additional sections being removed from Title 46 CFR are: 31.05–10, 31.40–1, 50.01–10, 50.05–15, 50.20–5, 50.30–10, 54.01–10, 56.01–2, 56.04–1, 56.07–10, 56.20–9, 56.50–25, 56.50–85, 56.60–2, 56.70–15, 57.02–2, 57.06–1, 57.06–4, 57.06–5, 58.03–1, 67.3, 71.01–10, 71.20–15, 71.25–10, 71.75–10, 71.75–20, 91.01–10, 91.20–15, 91.25–10, 91.60–1, 91.60–40, 171.001, 174.005, 189.01–10, 189.20–15, 189.25–10, 189.60–1, 189.60–40.

Another regulation falling into this category concerns steerage passengers. The Steerage Passenger Act of 1882 (ch. 374, 22 Stat. 186 (1882))(The Steerage Act) established accommodation requirements for steerage passengers. Steerage passengers historically were passengers paying the lowest fares for the poorest accommodations and the Steerage Act was written primarily for the safety of immigrants travelling by sea to the United States. The Steerage Act was repealed by Congress in 1983 when Subtitle II of 46 U.S.C. (Pub. L. 98–89, 97 Stat. 500) was revised and consolidated. As a result, regulations addressing carriage of steerage passengers are no longer necessary.

Cite (46 CFR)	Change made	Subject addressed by regulation
§ 30.01–25	Removed	Nuclear vessel inspection.
§ 30.10–44	Removed	Nuclear vessel inspection.
§ 31.01–5(b)	Removed	Nuclear vessel inspection.
§ 31.05–10	Revised	Nuclear vessels.
§ 31.10–15(c)	Removed	Nuclear vessel inspection.
§ 31.40–1(b)	Removed	Nuclear vessels.
§ 31.40–30	Removed	Nuclear vessel inspection.
§ 31.40–40(e)	Revised	Nuclear vessel inspection.
Part 37	Removed	Nuclear vessel inspection.

Cite (46 CFR)	Change made	Subject addressed by regulation
§50.01–10	Revised	Nuclear pressure vessels.
§50.05–15	Revised	Nuclear vessels; Ocean thermal energy conversion facilities and plantships.
§50.20–5(c)	Removed	Nuclear pressure vessels.
§50.30–10	Revised	Nuclear pressure vessels.
§54.01–10	Revised	Nuclear pressure vessels.
§54.15–5(l) note	Removed	Nuclear power plants.
Part 55	Removed	Nuclear power plant components.
§56.01–2	Revised	Nuclear power plant components.
§56.01–10	Revised	Nuclear power plant piping.
§56.04–1	Revised	Nuclear power plant piping.
§56.07–10	Revised	Nuclear power plant piping.
§56.20–9	Revised	Nuclear power plant valves.
§56.30–5(b)(4)	Revised	Nuclear power plant piping.
§56.50–25	Revised	Nuclear power plant safety valves.
§56.50–85	Revised	Nuclear power plant tank venting.
§56.60–2	Revised	Nuclear power plant materials.
§56.70–15	Revised	Nuclear power plant piping.
§57.02–2	Revised	Nuclear power plant welding.
§57.06–1	Revised	Nuclear power plant welding.
§57.06–4	Revised	Nuclear power plant welding.
§56.06–5	Revised	Nuclear power plant welding.
§58.03–1	Revised	Nuclear power plant components.
§61.01–1(a)	Revised	Nuclear pressure vessels.
§61.10–1(b)	Removed	Nuclear power plant components.
§61.15–1(b)	Removed	Hydrostatic test of nuclear plant piping.
Subpart 61.25	Removed	Tests and inspections of nuclear reactor power plants.
§67.3	Revised	Ocean thermal energy conversion facilities and plantships.
§70.05–12	Removed	Nuclear vessel inspection.
§70.10–30	Removed	Nuclear vessel inspection.
§71.01–10	Revised	Nuclear vessels.
§71.20–15(b)	Removed	Nuclear vessels.
§71.25–10	Removed	Nuclear vessel inspection.
§71.75–5	Revised	Nuclear vessel inspection.
§71.75–10(c)	Removed	Nuclear vessels.
§71.75–20(c)	Revised	Nuclear vessels.
§72.25–5	Removed	Steerage passengers.
Part 79	Removed	Requirements for nuclear vessels.
§90.05–40	Removed	Nuclear vessel inspection.
§90.10–24	Removed	Nuclear vessel inspection.
§91.01–10	Revised	Nuclear vessels.
§91.20–15(c)	Removed	Nuclear vessel inspection.
§91.25–10(b)	Removed	Nuclear vessel inspection.
§91.60–1(b)	Removed	Nuclear vessels.
§91.60–30	Removed	Nuclear vessel inspection.
§91.60–40(e)	Removed	Nuclear vessels.
Part 99	Removed	Requirements for nuclear vessels.
Part 106	Removed	Requirements for ocean thermal energy conversion facilities and plantships.
Part 150, Subpart B	Removed	Incinerator vessels.
§171.001	Revised	Stability.
§174.005(c)	Removed	Nuclear vessels; Ocean thermal energy conversion facilities and plantships.
Part 174, Subpart D	Removed	Requirements for nuclear vessels.
Part 174, Subpart F	Removed	Requirements for ocean thermal energy conversion facilities and plantships.
§188.05–15	Removed	Nuclear vessels.
§188.10–47	Removed	Nuclear vessel inspection.
§189.01–10	Revised	Nuclear vessel inspection.
§189.20–15(c)	Removed	Nuclear vessels.
§189.25–10(b)	Removed	Nuclear vessel inspection.
§189.60–1	Revised	Nuclear vessels.
§189.60–30	Removed	Nuclear vessel inspection.
§189.60–40(e)	Removed	Nuclear vessels.

3. Equipment No Longer Manufactured or Used

Section 35.30–5(c), which pertains to maintaining galley fires, is being removed because it addresses equipment that is no longer manufactured or used.

4. Repeated Provisions

The following regulations are being removed because the requirements they impose are repeated in other, more logical locations in Title 46 of the CFR. For example, requirements for carriage of vinyl chloride monomer are contained in 46 CFR part 40, Special Construction, Arrangement, and Other Provisions for Carrying Certain Flammable or Combustible Dangerous Cargoes in Bulk. More up-to-date requirements are also located in 46 CFR 151.50–34 in subchapter O, Certain Bulk Dangerous Cargoes. Also, 46 CFR 56.50–101 and 56.50–102 contain unnecessary references to refrigeration and liquefied petroleum gas piping systems, topics discussed in detail in 46 CFR part 58, Main and Auxiliary Machinery and Related Systems.

In the following list, the citation to the regulations where the repeated requirements are being retained in Title 46 CFR is indicated in square brackets below the section being removed.

Cite (46 CFR)	Change made	Subject addressed by regulation
Part 40 (§151.50–34)	Removed	Requirements for vinyl chloride monomer.
§56.50–101 (Subpart 58.20)	Removed	Refrigeration systems.
§56.50–102 (Subpart 58.16)	Removed	Liquefied petroleum gas for domestic service.
§76.10–10(l)(2) (§76.10–10(l)(3))	Removed	Lined fire hose in the engine room.
§95.10–10(l)(2) (§95.10–10(l)(4))	Removed	Lined fire hose in the engine room.
§154.1745 (§151.50–34)	Revised	Requirements for vinyl chloride.

5. Outdated Authority Citations

The authority citations for parts 25, 30, 31, 35, 50, 54, 56, 71, 72, 78, 91, 97, 171, 174, 188 and 189 are being updated because they either cite statutory provisions which have been repealed or an executive order which has been revoked. Specifically, the majority of these provisions delete references to 46 U.S.C. 4104 and 5115 which were repealed on November 16, 1990 (Pub. L. 101–595, 104 Stat. 2993), E.O. 11735 which was revoked by E.O. 12777 (56 FR 54757, 3 CFR, 1991 Comp., p. 351) and 49 U.S.C. 1804 which was repealed on July 5, 1994 (Pub. L. 103–272, 108 Stat. 1379).

6. Statutory Language Repeated

The regulatory text of the following provisions repeats exactly the statutory language without any further requirements. Regulations which do not add to self-executing statutes are not useful. Therefore, these regulations which only repeat statutory language are being removed.

Cite (46 CFR)	Change made	Subject addressed by regulation
§35.01–30	Removed	Reckless or negligent operation.
§78.30–30	Removed	Reckless or negligent operation.
§97.27–10	Removed	Reckless or negligent operation.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Assessment is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include—(1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and, (2) governmental jurisdictions with populations of less than 50,000.

This final rule will have no economic impact on small entities because it amends portions of regulations that—(1) are purely administrative; (2) do not reflect common marine industry practice; (3) apply to vessels that no longer exist; or, (4) are repeated in other sections. Therefore, the Coast Guard finds that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule imposes on the public no new or added requirements for collecting information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under section 2.B.2.c of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 37

Cargo vessels, Marine safety, Nuclear vessels, Radiation protection.

46 CFR Part 40

Cargo vessels, Hazardous materials transportation, Marine safety, Occupational safety and health, Seamen, Vinyl chloride.

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 55

Nuclear vessels, Reporting and recordkeeping requirements.

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 57

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 67

Vessels.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 72

Fire prevention, Marine safety, Occupational safety and health, Passenger vessels, Seamen.

46 CFR Part 76

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 79

Marine safety, Nuclear vessels, Passenger vessels, Radiation protection, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 99

Cargo vessels, Marine safety, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements.

46 CFR Part 106

Energy, Environmental protection, Hazardous substances, Intergovernmental relations, Marine resources, Marine safety, Vessels.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 171

Marine safety, Passenger vessels.

46 CFR Part 174

Marine safety, Vessels.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 25, 28, 30, 31, 35, 37, 40, 50, 54, 55, 56, 57, 61, 67, 70, 71, 72, 76, 78, 79, 90, 91, 95, 97, 99, 106, 150, 154, 171, 174, 188 and 189 as follows:

PART 25—REQUIREMENTS

1. The authority citation for Part 25 is revised to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

§ 25.40–1 [Amended]

2. Section 25.40–1 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

3. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4506, 6104, 10603; 49 U.S.C. 5103, 5106; 49 CFR 1.46.

§ 28.110 [Amended]

4. In § 28.110, paragraph (a) is amended by removing the words "after November 15, 1991,".

§ 28.115 [Amended]

5. In § 28.115, paragraph (a) is amended by removing the words "after November 15, 1991,".

§ 28.135 [Amended]

6. In § 28.135, paragraph (a) is amended by removing the words "after September 1, 1992,".

§ 28.145 [Amended]

7. Section 28.145 is amended by removing the words "after November 15, 1991,".

8. In § 28.210, paragraphs (c), (d), and (e) are revised to read as follows:

§ 28.210 First aid equipment and training.

* * * * *

(c) Each vessel that operates with more than 2 individuals on board must have at least 1 individual certified in first aid and at least 1 individual certified in CPR. An individual certified in both first aid and CPR will satisfy both of these requirements.

(d) Each vessel that operates with more than 16 individuals on board must have at least 2 individuals certified in first aid and at least 2 individuals certified in CPR. An individual certified in both first aid and CPR may be counted for both requirements.

(e) Each vessel that operates with more than 49 individuals on board must have at least 4 individuals certified in first aid and at least 4 individuals certified in CPR. An individual certified in both first aid and CPR may be counted for both requirements.

§ 28.240 [Amended]

9. In § 28.240, paragraph (a) is amended by removing the words "after September 1, 1992,".

10. In § 28.270, paragraph (c) is revised to read as follows:

§ 28.270 Instructions, drills, and safety orientation.

* * * * *

(c) *Training.* No individual may conduct the drills or provide the instructions required by this section unless that individual has been trained in the proper procedures for conducting the activity. An individual licensed for operation of inspected vessels of 100 gross tons or more need not have additional training to comply with this requirement.

* * * * *

PART 30—GENERAL PROVISIONS

11. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.01–25 [Removed]

12. Section 30.01–25 is removed.

§ 30.10–44 [Removed]

13. Section 30.10–44 is removed.

PART 31—INSPECTION AND CERTIFICATION

14. The authority citation for part 31 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Section 31.10–21a also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.01–5 [Amended]

15. Section 31.01–5 is amended by removing the designation "(a)" from paragraph (a) and removing paragraph (b).

16. In § 31.05–10, paragraph (b) is amended by removing the words "For nuclear vessels see part 37 of this subchapter.", and paragraph (a) is revised to read as follows:

§ 31.05–10 Period of validity of certificate of inspection —TB/ALL.

(a) Certificates of inspection will be issued for periods of either 1 or 2 years.

* * * * *

§ 31.10–15 [Amended]

17. Section 31.10–15 is amended by removing paragraph (c).

18. Section 31.40–1 is revised to read as follows:

§ 31.40–1 Application—T/ALL.

The provisions of this subpart shall apply to all tankships on an international voyage.

§ 31.40–30 [Removed]

19. Section 31.40–30 is removed.

§ 31.40–40 [Amended]

20. Section 31.40–40 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

PART 35—OPERATIONS

21. The authority citation for part 35 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 35.01–30 [Removed]

22. Section 35.01–30 is removed.

§ 35.30–5 [Amended]

23. Section 35.30–5 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

PART 37—[REMOVED]

24. Part 37 is removed.

PART 40—[REMOVED]

25. Part 40 is removed.

PART 50—[AMENDED]

26. The authority citation for part 50 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

§ 50.01–10 [Amended]

27. In § 50.01–10, paragraph (b) is amended by removing the words "nuclear pressure vessels,".

§ 50.05–15 [Amended]

28. In § 50.05–15, the introductory text in paragraph (a) is amended by removing the words "nuclear vessels," and paragraph (c) is removed.

29. In § 50.20–5, paragraph (c) is removed, paragraph (d) is redesignated as paragraph (c) and paragraph (b) is revised to read as follows:

§ 50.20–5 Procedures for submittal of plans.

* * * * *

(b) The plans may be submitted in duplicate to the Officer in Charge, Marine Inspection, at or nearest the place where the vessel is to be built. Alternatively, the plans may be submitted in triplicate to the Marine Safety Center.

* * * * *

30. Section 50.30–10 is revised to read as follows:

§ 50.30–10 Class I, I–L and II–L pressure vessels.

(a) Classes I, I–L and II–L pressure vessels shall be subject to shop inspection at the plant where they are being fabricated, or when determined necessary by the Officer in Charge, Marine Inspection.

(b) The manufacturer shall submit Class I, I–L and II–L pressure vessels, as defined in Parts 54 and 56 of this subchapter for shop inspection at such stages of fabrication as may be requested by the Officer in Charge, Marine Inspection.

PART 54—PRESSURE VESSELS

31. The authority citation for Part 54 is revised to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 54.01–10 [Amended]

32. In § 54.01–10, paragraph (a) is amended by removing the words ", such as steam generators in the secondary system of a nuclear plant,".

§ 54.15–5 [Amended]

33. In § 54.15–5, the colon at the end of paragraph (i) is removed and replaced with a period and the note following paragraph (i) is removed.

PART 55—[REMOVED]

34. Part 55 is removed.

PART 56—PIPING SYSTEMS AND APPURTENANCES

35. The authority citation for part 56 is revised to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 56.01–2 [Amended]

36. In § 56.01–2, paragraph (b) is amended by removing the entry for American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code: Section III, Rules for the Construction of Nuclear Power Plants, 1986 with addenda.

§ 56.01–10 [Amended]

37. Section 56.01–10 is amended by removing paragraph (c)(2)(ii) and redesignating paragraphs (c)(2)(iii) and (c)(2)(iv) as paragraphs (c)(2)(ii) and (c)(2)(iii), respectively.

§ 56.04–1 [Amended]

38. In § 56.04–1, Table 56.04–1—Piping Classifications is amended by removing the entry "Nuclear" in the Service column and the corresponding entry "See part 55 of this subchapter." in the Class column.

§ 56.07–10 [Amended]

39. In § 56.07–10, paragraph (e) is amended by removing the words "and nuclear".

§ 56.20–9 [Amended]

40. In § 56.20–9, paragraph (b) is amended by removing the words "nuclear and".

§ 56.30–5 [Amended]

41. In § 56.30–5, paragraph (b)(4) is amended by removing the words "and nuclear."

§ 56.50–25 [Amended]

42. In § 56.50–25, paragraph (a) is amended by removing the words "Other arrangements may be permitted for nuclear systems when specifically authorized by the Commandant.".

§ 56.50–85 [Amended]

43. In § 56.50–85, paragraph (a)(1) is amended by removing the words "Tanks in nuclear systems shall be provided with means for preventing uncontrolled release of hazardous amounts of radioactive materials.".

§ 56.50–101 [Removed]

44. Section 56.50–101 is removed.

§ 56.50–102 [Removed]

45. Section 56.50–102 is removed.

§ 56.60–2 [Amended]

46. Section 56.60–2 is amended by removing the note at the end of the section.

47. In § 56.70–15, paragraph (a)(3) is revised to read as follows:

§ 56.70–15 Procedure.

(a) * * *

(1) * * *

(3) Sections of pipe shall be welded insofar as possible in the fabricating shop. Prior to welding Class I piping or low temperature piping, the fabricator shall request a marine inspector to visit his plant to examine his fabricating equipment and to witness the qualification tests required by part 57 of this subchapter. One test specimen shall be prepared for each process and welding position to be employed in the fabrication.

* * * * *

PART 57—WELDING AND BRAZING

48. The authority citation for part 57 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 57.02–2 [Amended]

49. In § 57.02–2, paragraph (a)(1) is amended by removing the words "nuclear vessels,".

50. In § 57.06–1, paragraphs (b) and (c) are revised to read as follows:

§ 57.06–1 Production test plate requirements.

* * * * *

(b) Main power boilers shall meet the test plate requirements for Class I pressure vessels.

(c) Test plates are not required for heating boilers or Class III pressure vessels. Test plates are not required for main power boilers or pressure vessels constructed of P–1 material as listed in QW 422 of the ASME Code whose welded joints are fully radiographed as required by Part 52 or 54 of this subchapter as applicable except when toughness tests are required in accordance with § 57.06–5. When toughness tests are required all prescribed production tests shall be performed.

§ 57.06–4 [Amended]

51. In § 57.06–4, paragraph (a) is amended by removing the words "and Classes A and B nuclear vessels".

52. In § 57.06–5, paragraph (a) is revised to read as follows:

§ 57.06–5 Production toughness testing.

(a) In addition to the test specimens required by § 57.06–4(a), production toughness test plates shall be prepared for Classes I–L and II–L pressure vessels in accordance with subpart 54.05 of this subchapter.

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

53. The authority citation for part 58 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 58.03–1 [Amended]

54. In § 58.03–1, paragraph (b) is amended by removing the entry for American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section III, Division 1, Rules for Construction of Nuclear Power Plant Components, July 1989 with 1989 addenda.

PART 61—PERIODIC TESTS AND INSPECTIONS

55. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 61.01–1 [Amended]

56. In § 61.01–1, paragraph (a) is amended by removing the words "nuclear pressure vessels,".

§ 61.10–1 [Amended]

57. Section 61.10–1 is amended by removing the designation "(a)" from paragraph (a) and removing paragraph (b).

§ 61.15–1 [Amended]

58. Section § 61.15–1 is amended by removing the designation "(a)" from paragraph (a) and removing paragraph (b).

Subpart 61.25—[Removed]

59. Subpart 61.25 is removed.

PART 67—DOCUMENTATION OF VESSELS

60. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

61. Section 67.3 is amended by removing the definitions for *Ocean thermal energy conversion facility* and *Ocean thermal energy conversion plantship* and by revising the definition for *Vessel* to read as follows:

§ 67.3 Definitions.

* * * * *

Vessel includes every description of watercraft or other contrivance capable of being used as a means of transportation on water, but does not include aircraft.

* * * * *

PART 70—GENERAL PROVISIONS

62. The authority citation for part 70 is amended to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

§ 70.05–12 [Removed]

63. Section 70.05–12 is removed.

§ 70.10–30 [Removed]

64. Section 70.10–30 is removed.

PART 71—INSPECTION AND CERTIFICATION

65. The authority citation for part 71 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 71.01–10 [Amended]

66. In § 71.01–10, paragraph (a) is amended by removing the words "For nuclear vessels see also § 79.10–1 of this subchapter.".

§ 71.20–15 [Amended]

67. Section 71.20–15 is amended by removing the paragraph designation "(a)" from paragraph (a) and removing paragraph (b).

§ 71.25–10 [Amended]

68. Section 71.25–10 is amended by removing the paragraph designation "(a)" from paragraph (a) and removing paragraph (b).

69. In § 71.75–5, the section heading and paragraph (a) are amended to read as follows:

§ 71.75–5 Passenger Ship Safety Certificate.

(a) All vessels on an international voyage are required to have a "Passenger Ship Safety Certificate."

* * * * *

§ 71.75–10 [Amended]

70. Section 71.75–10 is amended by removing paragraph (c).

§ 71.75–20 [Amended]

71. In § 71.75–20, paragraph (c) is amended by removing the words "or the Nuclear Passenger Ship Safety Certificate".

PART 72—CONSTRUCTION AND ARRANGEMENT

72. The authority citation for part 72 is revised to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 72.25–5 [Removed]

73. Section 72.25–5 is removed.

PART 76—FIRE PROTECTION EQUIPMENT

74. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 76.10–10 [Amended]

75. Section 76.10–10 is amended by removing paragraph (l)(2) and redesignating paragraph (l)(3) as paragraph (l)(2).

PART 78—OPERATIONS

76. The authority citation for part 78 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 78.30–30 [Removed]

77. Section 78.30–30 is removed.

PART 79—[REMOVED]

78. Part 79 is removed.

PART 90—GENERAL PROVISIONS

79. The authority citation for part 90 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 90.05–40 [Removed]

80. Section 90.05–40 is removed.

§ 90.10–24 [Removed]

81. Section 90.10–24 is removed.

PART 91—INSPECTION AND CERTIFICATION

82. The authority citation for part 91 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

83. In § 91.01–10, paragraph (a) is revised to read as follows:

§ 91.01–10 Period of validity.

(a) Certificates of inspection will be issued for periods of either 1 or 2 years. Application may be made by the master, owner, or agent for inspection and issuance of a new certificate of inspection at any time during the period of validity of the current certificate.

* * * * *

§ 91.20–15 [Amended]

84. Section 91.20–15 is amended by removing paragraph (c).

§ 91.25–10 [Amended]

85. Section 91.25–10 is amended by removing the paragraph designation "(a)" from paragraph (a) and removing paragraph (b).

86. Section 91.60–1 is revised to read as follows:

§ 91.60–1 Application.

The provisions of this subpart shall apply to all cargo vessels on an international voyage.

§ 91.60–30 [Removed]

87. Section 91.60–30 is removed.

§ 91.60–40 [Amended]

88. Section 91.60–40 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

PART 95—FIRE PROTECTION EQUIPMENT

89. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 95.10–10 [Amended]

90. Section 95.10–10 is amended by removing paragraph (l)(2) and redesignating paragraphs (l)(3) and (l)(4) as paragraphs (l)(2) and (l)(3), respectively.

PART 97—OPERATIONS

91. The authority citation for Part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 97.27–10 [Removed]

92. Section 97.27–10 is removed.

PART 99—[REMOVED]

93. Part 99 is removed.

PART 106—[REMOVED]

94. Part 106 is removed.

PART 150—COMPATIBILITY OF CARGOES

95. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

Subpart A—[Amended]

96. The designation "Subpart A—Compatibility of Cargoes" for § 150.105 through § 150.170 is removed.

Subpart B—[Removed]

97. Subpart B of Part 150 is removed.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

98. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

99. Section 154.1745 is revised to read as follows:

§ 154.1745 Vinyl chloride: Transferring operations.

A vessel carrying vinyl chloride must meet the requirements of § 151.50–34(g) through (k) of this chapter.

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

100. The authority citation for part 171 is revised to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

101. In § 171.001, paragraph (b) is revised to read as follows:

§ 171.001 Applicability.

* * * * *

(b) Specific sections of this part also apply to nautical school ships, sailing school vessels and oceanographic vessels. The applicable sections are listed in subparts C and D of part 173 of this chapter.

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

102. The authority citation for part 174 is revised to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

103. Section 174.005 is revised to read as follows:

§ 174.005 Applicability.

Each of the following vessels must comply with the applicable provisions of this part:

(a) Deck Cargo Barge.

(b) Mobile offshore drilling unit (MODU) inspected under Subchapter IA of this chapter.

(c) Tugboat and towboat inspected under Subchapter I of this chapter.

(d) Self-propelled hopper dredge having an assigned working freeboard.

(e) Oceangoing ships of 500 gross tons or over, as calculated by the International Convention on Tonnage Measurement of Ships, 1969, designed primarily for the carriage of dry cargoes, including roll-on/roll-off ships.

Subpart D—[Removed and Reserved]

104. Subpart D of part 174 is removed and reserved.

Subpart F—[Removed and Reserved]

105. Subpart F of part 174 is removed and reserved.

PART 188—GENERAL PROVISIONS

106. The authority citation for part 188 is revised to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 188.05–15 [Removed]

107. Section 188.05–15 is removed.

§ 188.10–47 [Removed]

108. Section 188.10–47 is removed.

PART 189—INSPECTION AND CERTIFICATION

109. The authority citation for part 189 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1890 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

110. In § 189.01–10, paragraph (a) is revised to read as follows:

§ 189.01–10 Period of validity.

(a) Certificates of Inspection will be issued for periods of either 1 or 2 years. Application may be made by the master, owner, or agent for inspection and issuance of a new certificate of inspection at any time during the period of validity of the current certificate.

* * * * *

§ 189.20–15 [Amended]

111. Section 189.20–15 is amended by removing paragraph (c).

§ 189.25–10 [Amended]

112. Section 189.25–10 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

113. Section 189.60–1 is revised to read as follows:

§ 189.60–1 Application.

The provisions of this subpart shall apply to all oceanographic research vessels on an international voyage. (See § 188.05–10 of this subchapter.)

§ 189.60–30 [Removed]

114. Section 189.60–30 is removed.

§ 189.60–40 [Amended]

115. Section 189.60–40 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

Dated: September 5, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–22981 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–14–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 091295D]

Atlantic Tuna Fisheries; Bluefin Tuna Closure and Quota Reallocation

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure and reallocation.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (ABT) General category quota and Angling category quota for 1995 have been reached. Therefore, the General category fishery will be closed effective at 11:59 p.m. on September 12, 1995, and the Angling category fishery will be closed effective at 11:59 p.m. on September 17, 1995. This action is being taken to prevent further overharvest of these categories. NMFS also announces a transfer of 15 mt of ABT from the longline-south Incidental subcategory to the longline-north Incidental subcategory. NMFS has determined that the fisheries landing ABT under the longline-south Incidental subcategory will not achieve the full 1995 allocation. NMFS also transfers from the Reserve category to account for overharvest in the General, Harpoon, and Angling categories. These actions are being taken to extend the season for the longline-north Incidental subcategory, ensure additional collection of biological assessment and monitoring data, and prevent waste of bluefin tuna that might otherwise be discarded dead.

EFFECTIVE DATE: The General category closure is effective 11:59 p.m. local time on September 12, 1995, through December 31, 1995. The Angling category closure is effective 11:59 p.m. local time on September 17, 1995, through December 31, 1995. The longline and reserve inseason transfers are effective September 12, 1995.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Kevin B. Foster, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

Closure

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a total annual quota of 438 mt of large medium and giant Atlantic bluefin tuna to be harvested from the regulatory area by vessels permitted in the General category. To date, over 527 mt have been harvested. Regulations also provide for an annual quota of 324 mt for the Angling category. Best available estimates indicate that the Angling category quota has been harvested for 1995.

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota applicable to any period and publish a **Federal Register** announcement stating that fishing for, retaining, possessing or landing ABT must cease on a date and at a specified hour, and not recommence until the opening of the subsequent quota period.

Fishing for, retention, possessing, or landing large medium or giant ABT by vessels in the General category must cease at 11:59 p.m. local time September 12, 1995. Fishing for, retention, possessing, or landing schools, large schools, small medium, large medium, or giant ABT by vessels in the Angling category must cease at 11:59 p.m. local time September 17, 1995. The intent of this action is to prevent further overharvest of the quota established for these categories.

The Harpoon category was previously closed on August 11, 1995 (60 FR 42469, August 16, 1995). The Incidental and Purse Seine categories will remain open until quotas for these categories are reached.

Inseason Transfers

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator for Fisheries, NOAA (AA), has the authority to make adjustments to quotas involving transfers between vessel categories or, as appropriate, subcategories if, during a single year quota period or the second year of a biannual quota period as defined by ICCAT, the AA determines, based on landing statistics, present year catch rates, effort, and other available information, that any category, or as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the AA may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock; (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

The bluefin have migrated to their summer feeding grounds in New England waters and incidental catch by longline vessels operating south of 34° N. lat. is no longer expected to occur. A total of 60 mt currently remain of the amount allocated to this southern subcategory. The Incidental category longline-north has exceeded its allocation of 23 mt for vessels fishing north of 34° N. lat. Once the quota is reached for this northern subcategory, any bluefin tuna incidentally taken by longline vessels must be discarded at sea. In order to prevent waste of bluefin tuna that might otherwise be discarded dead, it is reasonable to transfer quota from the southern to the northern subcategory.

Reallocating 15 mt from the Incidental longline-south category responds to the criteria listed above as follows: Incidental category landings are a major contributor to the collection of biological data on this fishery; incidental catches by longline vessels in 1995 have been high, and it would be necessary to close this subcategory of the fishery unless additional quota allocation were made.

NMFS also transfers from the Reserve to the General, Harpoon, and Angling categories. The purpose of these transfers is to cover overharvest in these categories.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 12, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–23028 Filed 9–12–95; 4:59 pm]

BILLING CODE 3510–22–P

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50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 090895A]

Groundfish of the Gulf of Alaska; Prohibit Retention of Sablefish in the West Yakutat District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the West Yakutat district of the Gulf of Alaska (GOA). NMFS is requiring that catches of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the share of the sablefish total allowable catch (TAC) assigned to trawl gear in the West Yakutat district of the GOA has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 1, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the [illegible] 50 CFR parts 620 and 672.

In accordance with § 672.24(c)(2), the share of the sablefish TAC assigned to trawl gear in the West Yakutat district of the GOA was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8470, February 14, 1995), as 205 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.24(c)(3)(ii), that the share of the sablefish TAC assigned to trawl gear in the West Yakutat district of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the West Yakutat district of the GOA be treated as prohibited species in accordance with § 672.20(e).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 11, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23000 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 675

RIN 0648–AH69

[Docket No. 950414105–5227–03; I.D. 082495D]

Groundfish of the Bering Sea and Aleutian Islands; Observer Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Atmospheric and Oceanic Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a technical amendment to the final rule implementing Amendment 35 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP). This action clarifies observer coverage requirements established for shoreside processing facilities and mothership processor vessels during the second pollock season.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 35 to the FMP was published in the **Federal Register** on July 5, 1995 (60 FR 34904). The preamble to that rule explains that regulatory amendments were implemented that "would increase 1995 observer coverage for mothership processor vessels and for some shoreside processors receiving pollock harvested in the catcher vessel operational area (CVOA)* * *." This technical amendment clarifies the regulatory language of that final rule to more accurately reflect the original purpose and intent of that rule.

The final rule requires a second NMFS-certified observer for mothership processor vessels and certain shoreside processing facilities during the second pollock season, which begins August 15. The intent of the rule is to ensure that processors receiving pollock harvested from the CVOA have adequate observer coverage in order to count accurately the number of nonchinook salmon taken as bycatch in the pollock fishery. Amendment 35 established a bycatch limit of 42,000 nonchinook salmon for the second pollock season.

The preamble to the final rule explains that shoreside processing plants that "receive pollock harvested from the CVOA during the 1995 nonroe season and that offload fish at two locations on the same dock and have distinct and separate equipment to process those fish will also be required to have an extra observer" (60 FR 34905). A second observer is necessary because of the large volume of pollock that could be offloaded at these facilities and the additional time required by observers to count salmon bycatch. While the regulation uses the term "fish," the intent was to require an additional observer only for those shoreside processors that offload and process pollock at more than one location.

NMFS is clarifying the regulation at § 675.25(b)(2) by changing the word "fish" in § 675.25(b)(2) to "pollock." Thus, it will now be clear that two observers are required only at facilities that meet all three of the following criteria: (1) Receive pollock harvested by catcher vessels in the CVOA during the second pollock season, (2) offload pollock at more than one location on the same dock of that facility, and (3) have distinct and separate equipment at each location to process those pollock. Regulations at § 675.25(b)(1) also require an additional observer on mothership processor vessels that receive pollock from catcher vessels harvesting in the CVOA during the second pollock season. The second observer at shoreside processor facilities and on mothership processor vessels is required until the chum salmon savings area (CSSA) is closed due to attainment of the 42,000 nonchinook bycatch limit. The intent of the regulation is to have the additional observer present at the processor to count the salmon to be counted toward the salmon bycatch limit.

Under the final rule, salmon bycatch during the second pollock season is counted through October 14 or until the bycatch limit is reached, whichever occurs first. The additional observer is not necessary once the bycatch limit is reached or after October 14. NMFS is clarifying the intent of the regulations to require the additional observer to be present until either the CSSA is closed (i.e., the bycatch limit has been reached) or October 15, whichever occurs first.

Classification

This technical amendment clarifies the regulations requiring observer coverage in shoreside processing facilities and on mothership processor vessels and relieves a regulatory restriction. The requirement for additional observers to monitor the offloading or processing of fish other than pollock during the second pollock season does not provide accurate salmon bycatch data for the pollock fishery and does not provide any other significant benefits. Similarly, additional observers are not needed once the nonchinook bycatch limit has been reached. These requirements impose a burden that is unnecessary and additional delay in removing that requirement would result in additional observer expense without providing any significant public benefit. Consequently, the Assistant Administrator for Fisheries, NOAA, finds that there is good cause to waive prior notice and opportunity to comment on this action. Because this action relieves a restriction, under U.S.C. 533(d)(1), a delay in the effective date is not necessary.

This rule is exempt from procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment. No analysis has been prepared.

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 11, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For reasons set out in the preamble 50 CFR part 675 is amended to read as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 et *seq.*

2. In § 675.25, paragraph (b) is revised to read as follows:

§ 675.25 Observer requirements.

* * * * *

(b) *Additional observer coverage requirements applicable through December 31. 1995.* (1) Each mothership processor vessel that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g), during the second pollock season that starts on August 15 under § 675.23(e), is required to have a second NMFS-certified observer aboard, in addition to the observer required under § 677.10(a)(1)(i) of this chapter, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2) or October 15, whichever occurs first.

(2) Each shoreside processor that offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g), during the second pollock season that starts on August 15, under § 675.23(e), is required to have a NMFS-certified observer, in addition to the observer required under § 677.10(a)(1)(i) of this chapter, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2) of this chapter, or until October 15, whichever occurs first.

[FR Doc. 95–23033 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 180
Monday, September 18, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 353 and 354

[Docket No. 90–117–2]

Export Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would revise completely the "Phytosanitary Export Certification" regulations, which concern inspection and phytosanitary certification of plants and plant products offered for export.

DATES: Consideration will be given only to written comments on Docket No. 90–117–1 that are received on or before October 16, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 90–117–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 90–117–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Ave., SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard M. Crawford, Senior Operations Officer, Plant Protection and Quarantine, Port Operations, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 139, Riverdale, MD 20737–1228; (301) 734–8537.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1995, we published in the **Federal Register** (60 FR 42472–42479, Docket No. 90–117–1) a proposal to revise completely the "Phytosanitary Export Certification" regulations in 7 CFR 353, which concern inspection and phytosanitary certification of plants and plant products offered for export.

Comments on the proposed rule were required to be received on or before September 15, 1995. We are extending the comment period on Docket No. 90–117–1 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 147a; 21 U.S.C. 136 and 136a; 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 11th day of September 1995.

Terry L. Medley,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–23031 Filed 9–15–95; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL TRADE COMMISSION

16 CFR Part 24

Guides for Select Leather and Imitation Leather Products

AGENCY: Federal Trade Commission.

ACTION: Request for public comment on proposed Guides for Select Leather and Imitation Leather Products.

SUMMARY: The Federal Trade Commission (the "Commission"), as part of its periodic review of its rules and guides, announces that it has concluded a review of its Guides for the Luggage and Related Products Industry ("Luggage Guides"); Guides for Shoe Content Labeling and Advertising ("Shoe Content Guides"); and Guides for the Ladies' Handbag Industry ("Handbag Guides"). The Commission rescinds these three Guides in a document published elsewhere in this issue of the **Federal Register**. The Commission now seeks public comment on proposed Guides for Select Leather and Imitation Leather Products. The proposed Guides combine relevant portions of the three Guides, update certain language used in the Guides, and make other modifications to clarify and streamline the provisions of the Guides. The Commission has included within the coverage of the proposed combined Guides the provisions of the Commission's Trade Regulation Rule Concerning Misbranding and Deception as to Leather Content of Waist Belts ("Waist Belt Rule").

DATES: Written comments on the proposed Guides for Select Leather and Imitation Leather Products must be submitted by October 18, 1995.

ADDRESSES: Written comments should be submitted to the Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone number (202) 326–2506. Comments should be identified as "16 CFR Part 24—Comment—Proposed Guides for Select Leather and Imitation Leather Products".

FOR FURTHER INFORMATION CONTACT: Susan E. Arthur, Attorney, (214) 767–5503, Federal Trade Commission, Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION:

I. Background

The Luggage Guides, promulgated on February 27, 1979, address potential deception in the sale, offering for sale, and distribution of luggage and related products. Specific industry guidance is provided by the Guides in connection with the following:

—disclosures to be made for products made of split leather, imitation leather or processed leather, or products which contain backing material;
—representations that products are made from the skin of a fictitious animal;
—the use of words, terms, depictions or devices that may indicate that a product is made of any material when it is not;
—representations that a product is wholly of a particular composition;
—representations that a product is leather when it contains ground, pulverized or shredded leather;
—representations that a product is colored, finished or dyed with aniline dye or otherwise dyed, embossed, grained, processed, finished or stitched in a certain manner;

—representations about the hardware, box or frame of products; and
—use of the terms "waterproof," "dustproof," "warpproof," "scuffproof," and "scratchproof."

The Shoe Content Guides were adopted by the Commission on October 2, 1962. They contain industry guidance for the labeling and advertising of shoe content with respect to the following:

—use of the term "leather" on labels and in advertisements;
—disclosures on labels concerning simulated or imitation leather, concealed innersoles, split leather, embossed or processed leather, and ground or shredded leather;
—disclosures in advertisements that depict non-leather parts of shoes or slippers which appear to be made of leather;
—disclosures to be used with terms that are suggestive of leather (*e.g.*, "Duraleather"); and
—use of words or terms which would convey the impression that shoes or slippers are made of a certain material when they are not.

The Handbag Guides were promulgated on June 27, 1969, and address potential misrepresentations regarding ladies' handbags and similar articles. These Guides specifically address misrepresentations as to the composition and other characteristics of such products and provide specific industry guidance regarding the following:

—disclosures to be made with respect to a product's composition;
—representations that a product is colored, finished or dyed with aniline dye or otherwise dyed, embossed, grained, processed, finished or stitched in a certain manner;
—use of the terms "scuffproof," "scratchproof," "scuff resistant," and "scratch resistant;" and
—deceptive pricing of products.

In addition, the Handbag Guides address price discrimination, advertising and promotional allowances, and the providing of promotional services and facilities. The Guides also discuss inducing or receiving a discrimination in price, advertising allowance or promotional service or facility.

The Waist Belt Rule, promulgated on June 27, 1964, regulates representations made in the sale, offering for sale, and distribution of men's and boy's belts, and women's and children's belts when not offered for sale as part of a garment. The Rule states that it is an unfair method of competition and an unfair or deceptive act or practice to:

—represent that a belt not made from the hide of an animal is leather;
—represent that a belt is "leather" when it contains ground, pulverized, or shredded leather;
—represent that a product is "leather" when it contains split leather;
—represent that a belt is made from a specified animal hide when it is not
—represent that a product is wholly of a particular composition when it is not;
—sell or distribute belts which have the appearance of leather, but which are made of split leather or ground, pulverized or shredded leather or of non-leather material, unless proper disclosure is made;
—sell or distribute belts which have been processed so as to have the appearance of a different type of leather, unless proper disclosure is made; and
—sell or distribute belts having an outer surface of leather or other material, which are backed with a different kind of leather or non-leather material having the appearance of leather, unless proper disclosure is made.

In response to a request for public comment on the Luggage Guides, the Shoe Content Guides and the Ladies' Handbag Guides, the Commission received 12 comments. The Commission received 10 comments regarding the Waist Belt Rule. Only three of the Waist Belt Rule comments were not also submitted in response to the request for comments on the three Guides.[1]

The **Federal Register** notice requesting comments on the three sets of Guides contained a list of questions designed to assist the Commission in determining whether the Guides should be maintained, amended or rescinded. Ten of the comments supported retaining the Guides in some form,[2] one expressed no opinion on the issue,[3] and one comment merely asked a question.[4] Six of the comments were from consumers,[5] one was from a leather tanning company,[6] one was from a manufacturer of wallets,[7] and four were from trade associations.[8] The following discussion regarding the comments received is grouped according to the questions posed in the notice. A number of the comments dealt with issues common to all of the Guides and the Rule. The comments for all four are addressed together.

(1) Is there a continuing need for the Guides? Ten of the comments indicated that there is a continuing need for the Guides.[9]

(a) What benefits have the Guides provided to purchasers of the products or services affected by the Guides?

The comments received indicate that the Guides provide a number of benefits to consumers. Two comments suggested that consumers benefit from the Guides because the Guides require identification of imitation leather content, which, when used in shoes, may cause feet to sweat excessively.[10] Another comment stated that the disclosure requirements in the Guides benefit consumers because leather has special properties of durability, breathability, and flexibility.[11] One comment indicated that animal lovers, vegetarians and others who do not wish to wear leather need to know what they are buying.[12] Four comments indicated that the requirements of the Guides otherwise assist consumers in making purchasing decisions.[13]

(b) Have the Guides imposed costs on purchasers? The comments indicated that costs to purchasers are minimal.[14]

(2) What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

A number of the comments suggested that certain changes be made to the Guides. Generally, these suggestions fall into the following categories: Definitions and use of the term "Leather," Disclosure Requirements, Scope of the Guides, and Use of the term "Bonded Leather."

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[1] Comments Concerning the Three Guides:

1. Rose E. Kettering ("REK") Same comment sent regarding Waist Belt Rule
2. Matt Anderson ("MA") Same comment sent regarding Waist Belt Rule
3. Marilyn Rasth ("MR") Same comment sent regarding Waist Belt Rule
4. James A. McGarry ("JAM") Same comment sent regarding Waist Belt Rule
5. Lenna Mae Gara ("LMG") Same comment sent regarding Waist Belt Rule
6. Linda D. Lipinski ("LDL")
7. Footwear Industries of America ("FIA")
8. Leather Industries of America, Inc. ("LIA") Same comment sent regarding Waist Belt Rule
9. Luggage and Leather Goods Manufacturers of America, Inc.("LLGMA")
10. Cromwell Leather Company, Inc. ("CL") Same comment sent regarding Waist Belt Rule
11. Enger Kress ("EK")
12. Footwear Distributors and Retailers of America ("FDRA")

Comments Concerning the Waist Belt Rule:

13. Stephen Toso ("ST")
14. Humphreys, Inc. ("HI")
15. Enger Kress ("EK2")

[2] REK, #1; MA, #2 at 1; MR, #3; JAM, #4; LMG, #5; FIA, #7 at 1; LIA, #8 at 1; LLGMA, #9 at 2; CL, #10 at 1; EK, #11.

[3] FDRA, #12.

[4] LDL, #6.

[5] REK, #1; MA, #2; MR, #3; JAM, #4; LMG, #5; LDL, #6.

[6] CL, #10.

[7] EK, #11.

[8] FIA, #7; LIA, #8; LLGMA, #9; FDRA, 12.

[9] REK, #1; MA, #2 at 1; MR, #3; JAM, #4; LMG, #5; FIA, #7 at 1; LIA, #8 at 1; LLGMA, #9 at 1; CL, #10 at 1; EK, #11 at 1.

[10] REK, #1; MA, #2 at 2.

[11] FIA, #7 at 1.

[12] LMG, #5.

[13] MR, #3; JAM, #4; EK, #11 at 1; CL, #10 at 2.

[14] EK, #11 at 1; FIA, #7 at 2.

—Definitions and Use of the Term "Leather"

One comment suggested that the Guides incorporate definitions of the terms "Leather," "Bonded Leather," and "Manmade." [15] Another comment suggested that a section should be added stating what materials are covered and giving a definition of each.[16] These additional definitions are not necessary because the Guides clearly cover all types of leather and all materials with the appearance of leather.

Three comments suggested that "man-made" should be used to describe certain non-leather products rather than "simulated leather" and similar terms using the word "leather." [17] One comment suggested that "man-made" be added to the list of examples of non-leather products and that "urethane" be recognized as a material which is often used in industry products.[18] The terms listed in the Guides as examples of appropriate disclosures for non-leather materials are adequate and would clearly indicate to consumers that a particular material is not leather. Because these terms are merely examples, it is not necessary to make additions to the list.

Two comments urged that the Guides be amended to allow split leather to be called "leather" because the European Union countries allow that term to be used without qualification to describe split leather.[19] However, insufficient support was presented to justify modification of this aspect of the Guides. In support of preservation of the Guides' distinction between top grain and split leather, one comment stated that split grain is less expensive, less attractive, and less durable than top grain leather, and that split leather is subject to "crocking." [20] Another comment stated that the Guides should continue to permit only top grain leather to be called "leather" or "genuine leather" and that other forms of leather should include qualifying words.[21] The apparent differences between the performance and appearance of top grain leather and that of split leather, as well as possible consumer expectations with regard to these materials, indicate that the Guides should continue to state that only top grain leather products should be called "leather" without qualification.

—Disclosure Requirements

The Guides contain a section specifically setting forth a method of making disclosures. Regarding the form of disclosures, one comment suggested that the Luggage Guides should be amended to state that the type of outer material used in the product must be permanently stamped on the product or on a label sewn into the product and that composition information regarding any other part of the product may be stamped either on the product, or on a tag, label, or card attached thereto.[22] There is insufficient justification for this amendment because consumers are adequately protected by the current provision which provides that disclosures should be stamped either on the product or on a tag, label, or card attached to the product until the consumer receives the item. A comment regarding the Waist Belt Rule suggested that using abbreviations in disclosures may be deceptive.[23] Some abbreviations that might be used may not be readily understood by consumers; however, the current disclosure provisions in the Guides already discourage deceptive abbreviations.

A suggestion was made in one comment to adopt the "present industry practice" of identifying embossed products by the name of the animal skin and by the name of the animal which is imitated in the appearance of the material, for example, "pigskin grain cowhide." [24] This method may be deceptive because it may be unclear which term describes the composition and which term describes the imitated grain. The Guides are not changed with regard to this type of disclosure.

One comment urged the Commission to delete the disclosure provision relating to composition of backing material because it was alleged that the provision was confusing and did not reflect current industry practice. It was further alleged that disclosures were unnecessary because backing material is not visible and is only used as support for the outer covering.[25] Because no substantiation was provided for these allegations, this change has not been made.

A suggestion was made that, due to a change in consumer preferences, the Commission should delete the provision regarding affirmative disclosure of manmade materials.[26] This comment stated that great strides have been made in the manufacture of synthetic materials and that such materials are often preferred. However, as discussed above, it appears that consumers believe that the Guides' suggested disclosures relating to manmade materials provide important information. Therefore, the Commission is not making the recommended change. The same comment stated that the Guides should be "clarified" with regard to multi-material uppers, and that a disclosure such as "leather upper with manmade materials" should be allowed. The Guides currently indicate that disclosure as to individual components should be made; therefore, a broad, non-specific disclosure would not be in accordance with the Guides. The recommended change has not been made.

An additional comment argued that the Guides should require country of origin disclosures.[27] Country of origin labeling for imported products is addressed by statute and U.S. Customs Service regulations.[28] The FTC Guides address the nature of the product, not its source. Therefore, incorporation of such a requirement in these Guides would be inappropriate. Another comment stated that efforts to acquaint foreign manufacturers with the Guides should be made.[29] While this suggestion has merit, it is not appropriate to address it in the Guides.

—Scope of the Guides

Several of the comments argued that the scope of the Guides should be modified. One comment concerning the Luggage Guides suggested that Parts 24.3 (deceptive practices as to aniline finish, graining, embossing and processing), 24.4 (deception as to hardware, frame or box) and 24.5 (misuse of the terms "waterproof," "dustproof," "warpproof," "scuffproof," and "scratchproof") should be deleted because they deal with specific deceptive claims that are covered by the general deception paragraph, 24.1.[30] Part 24.4 is deleted because it does not deal with the nature of leather and imitation-leather materials and is appropriately handled in the general deception paragraph. However, the other two sections, which deal primarily with the processing and manufacturing of materials used in leather and imitation-leather products, provide useful guidance for industry members and are retained.

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[15] LIA, #8 at 4–5.

[16] LLGMA, #9 at 2–3.

[17] FIA, #7 at 2; LIA, #8 at 4–5; LLGMA, #9 at 2–3.

[18] EK, #11 at 2.

[19] LIA, #8 at 4; FDRA, #12 at 3.

[20] FIA, #7 at 2. Crocking is the transfer of color from the surface of a colored material to an adjacent area of the same material or to another surface, principally by rubbing.

[21] CL, #10 at 1.

[22] LLGMA, #9 at 4.

[23] ST, #13.

[24] LLGMA, #9 at 3.

[25] LLGMA, #9 at 3.

[26] FDRA, #12 at 3.

[27] EK, #11 at 1–2.

[28] 19 U.S.C. 1304; 19 CFR Part 134.

[29] LIA, #8 at 2.

[30] EK, #11 at 2.

A suggestion was made that the Shoe Content Guides should apply only to shoe uppers and outersoles because those are the parts of a shoe upon which consumers base decisions, and there is limited space on a shoe for markings.[31] Another comment urged that the Guides should not apply to concealed innersoles because consumers expect that the concealed portions of footwear bottoms, particularly innersoles, are made of synthetic material.[32] However, no supporting evidence of consumer beliefs was supplied for either of these comments. Since it appears that useful information regarding other components of industry products is provided pursuant to the Guides, the Guides will remain as they are with respect to this issue.

—Use of the Term "Bonded Leather"

Several of the comments received dealt with the issue of "bonded leather," which generally refers to material made of leather fibers held together with a bonding agent. Several comments suggested permitting use of the term "bonded leather" for materials containing at least 75% leather fiber.[33] This, it was argued, would allow limited addition of non-leather fibers to improve strength, humidity expansion and heat resistance.[34] One comment stated that this 75% figure reflects a "widespread consensus" in the leather tanning and manufacturing industries.[35] Another called 75% an "industry practice." [36] However, insufficient evidence was submitted to establish that the 75% figure is an industry standard.

Even if the 75% figure were an industry practice or standard, it would not prevent deception. In a comment regarding the Waist Belt Rule, consumer survey evidence was provided in support of use of the term "bonded leather." [37] However, this survey indicated that 23.2% of the people surveyed believe the term means genuine cowhide leather. 57.2% believe the term means reprocessed leather scrap.[38] Although the submitters of the survey asserted that "reprocessed leather scrap" was the correct response, if other fibers have been added to leather fibers, it would be deceptive to refer to the entire mixture of materials as leather scrap. Use of the term "bonded leather" standing alone violates the Guides as they existed prior to this time. Without further qualification, the term would not appear to inform consumers that non-leather fibers are contained in the material. Further, some consumers may interpret the term "bonded" to mean material of a greater quality than leather,[39] or strengthened or reinforced leather.

A final comment suggested adding the term "bonded leather" to that section of the Guides which addresses use of the terms "ground, pulverized or shredded leather." [40] This suggestion has merit. Currently, two of the Guides and the Rule would allow use of terms such as "pulverized leather" to describe the content of materials. However, the Luggage Guides appear to suggest that disclosure be made of all materials contained in ground, pulverized or shredded leather. Such disclosures are useful, but may be lengthy. The proposed Guides now state that manufacturers should only use terms such as "ground leather," "pulverized leather," "shredded leather" or "bonded leather" to identify the products made of such materials if there is a disclosure of the amount of leather fibers and of the amount of non-leather substances contained in the material.

One comment specifically opposed use of the term "bonded leather," and suggested that ground, pulverized or shredded leather should continue to be identified as non-leather material, with disclosures such as "simulated leather containing leather fibers." [41] Another comment stated that calling a product leather if it contains little leather is deceptive.[42] The Commission believes that the term "bonded leather" could be confusing to consumers who do not know that "bonded leather" may include substances other than leather. This is equally true with respect to ground, pulverized or shredded leather. However, a disclosure of the amount of leather fiber and of the amount of non-leather materials in a product is an effective way of preventing this deception. Further, providing a means by which a product which contains substantial amounts of leather can be distinguished in some way from totally simulated leather would be in the best interest of consumers. Thus, the proposed Guides state that if the terms "ground leather," "pulverized leather," "shredded leather" or "bonded leather" are used to describe materials, then a disclosure of the percentage of leather fiber and of the percentage of other substances contained should be made.

(a) How would these changes affect the costs the Guides impose on firms subject to their requirements?

The comment suggesting country of origin labeling stated that such a requirement would impose no additional cost on firms.[43] One of the comments urging that the definition of leather include split leather stated that costs would be reduced by permitting a single standard for labeling in this country and in the European Union. No other comments addressed this question.

(b) Would it be useful to the affected industries if the Luggage Guides, the Shoe Content Guides, and the Handbag Guides were combined into one set of industry guides that address all of these products or leather products in general?

One comment recommended that all Guides concerning leather be consolidated.[44] Another said that one set of guides should be made to cover all leather-using industries.[45] One comment stated that the Guides could be generalized to many if not all industries.[46] One comment urged the Commission to maintain separate Guides because the manufacturing processes are separate and distinct.[47] The Luggage and Leather Goods Manufacturers of America stated that it did not endorse combining the Guides.[48] A final comment suggested that a set of leather definitions be developed to apply to all finished goods.[49]

The Commission believes that the three Guides should be combined because of the similarity of the composition issues addressed by each of the Guides. Further, the Commission believes it is appropriate to include in the combined Guides the provisions of the Waist Belt Rule. However, the Commission seeks further comments on the issue of whether the Guides should be expanded to cover other products containing leather and imitation leather. These products would include, for example, clothing, furniture,[50] watchbands, and equestrian items such as saddles. In particular, the Commission seeks comment as to whether there are special considerations for these different products which are not addressed by the proposed Guides.

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[31] FIA, #7 at 3.

[32] FDRA, #12 at 4.

[33] FIA, #7 at 3; LIA, #8 at 5; LLGMA, #9 at 3–4; CL, #10 at 3.

[34] CL, #10 at 3.

[35] CL, #10 at 3.

[36] LLGMA, #9 at 4.

[37] HI, #14, part 6.

[38] HI, #14, part 6.

[39] EK, #11 at 3.

[40] FIA, #7 at 3.

[41] EK, #11 at 3.

[42] CL, #10 at 3.

[43] EK, #11 at 2.

[44] LIA, #8 at 2.

[45] CL, #10 at 1.

[46] EK, #11 at 2.

[47] FIA, #7 at 4.

[48] LLGMA, #9 at 2.

[49] LIA, #8 at 4–5.

(3) What significant burdens or costs, including costs of adherence, have the Guides imposed on firms subject to their requirements?

The comments indicated that the costs are minimal.[51]

(a) Have the Guides provided benefits to such firms?

One comment said that the Guides give industry members some assurance that all companies are labeling their products consistently and that valid comparisons can be made by consumers.[52]

(4) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms subject to their requirements?

One comment indicated that if the Guides cannot realistically be enforced, then eliminating the regulation would reduce costs.[53] The same comment supported simple, less complex regulation.[54] One of the comments stated that costs would be reduced by permitting a single standard for labeling in this country and in the European Union. Another comment stated that no changes to the Guides need be made specifically to reduce costs of compliance.[55]

(a) How would these changes affect the benefits provided by the Guides?

No comments were received regarding this question.

(5) Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

One comment indicated that there is no overlap with other laws or regulations.[56] Another comment suggested that the Commission examine the labeling practices in the European Union and review the North American Free Trade Agreement and the Caribbean Basin Initiative.[57] A review of information provided by one commenter regarding the European Union Directive on Footwear Labeling revealed little similarity between it and the Guides. The calculation of shoe material area used in the directive (if two materials are present, they must be listed in descending order of area or volume) and the differences in terminology may serve to make the Guides more, rather than less, complex. Further, unlike the Guides, the directive allows use of symbols to indicate type of material. While symbols might be an effective, simpler way of providing information to consumers, symbols have not been used before in this country in this context. An extensive consumer education program would be required to implement the use of such symbols. Further, the Guides currently provide consumers with more information than does the use of the symbols adopted by the European Union. A review of NAFTA and CBI revealed no conflicts with the Guides.

(6) Since the Guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on the Guides?

Two comments suggested that today's ecological concerns dictate that leather scraps be used in "bonded leather" rather than disposed of as waste.[58] While not designed to address ecological concerns, the Guides may encourage the use of leather scraps because they provide that, if the term "bonded leather" is used, a disclosure regarding the percentage of leather fibers in the material should be made.

As discussed above, two comments urged that the Guides be amended to allow split leather to be called "leather." One of the reasons given for suggesting this change is that technological advances have resulted in a split leather which is superior to that produced years ago.[59] However, another comment encouraged retaining the distinction because split leather is less expensive, less attractive, and less durable than top grain leather, and split leather is subject to "crocking."[60] Insufficient support was presented to justify modification of this aspect of the Guides.

As discussed above, one comment urged the Commission to delete the requirement that the presence of manmade materials be affirmatively disclosed.[61] The comment stated that great strides have been made in the manufacture of synthetic materials and that such materials are often preferred. This recommended change has not been made because it appears that consumers obtain important information from this disclosure and may use this information to select the material of their choice.

(7) Do members of the ladies' handbag industry require these industry-specific Guides for information about the standards applicable to price discrimination and discriminatory promotional allowances, or could equally helpful guidance be obtained from more general sources such as the Fred Meyer Guides?

No comments were received regarding this question. These interpretive statements are duplicative of Sections (a) and (f) of the Robinson-Patman Act with respect to price discrimination, and duplicative of the Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR Part 240 (commonly known as the "Fred Meyer Guides"), which interpret Sections (d) and (e) of the Robinson-Patman Act, and Section 5 of the Federal Trade Commission Act with respect to discriminatory promotional allowances and services. A general statement of policy, such as that contained in the Fred Meyer Guides, is preferable to industry-specific Guides. Therefore, these sections of the Ladies' Handbag Guides have not been incorporated into the proposed Guides.

II. Conclusion

A review of the comments and of the three Guides indicates that retention and consolidation of their basic principles into one set of Guides is clearly warranted. Furthermore, the provisions of the Waist Belt Rule should be incorporated into the consolidated Guides. The Guides and the Waist Belt Rule deal with very similar issues. The nature of the covered products and the related concerns regarding composition are such that combining their provisions would be an efficient and effective way to prevent deception in this area. The Commission also believes that the Guides probably should cover other products made of leather or imitation leather. However, it is seeking additional comment before deciding whether to include such products within the scope of the Guides.

The proposed Guides consolidate 16 CFR Parts 24, 231, and 247. The language of the proposed Guides has been simplified and clarified, as well as updated to reflect current Commission legal standards.

In addition, the proposed Guides incorporate the following modifications:

—The Guides now include all products formerly covered by the three Guides and the Rule; boots were added as well.

—The scope of the Guides has been broadened to include deception in the marketing and advertising of industry products.

—A sentence setting forth the circumstances under which the unqualified term "leather" may be used is included for clarity. A similar provision was contained in the Shoe Guides.

—With regard to ground, pulverized, shredded, or bonded leather, the proposed Guides state that manufacturers of such materials may choose to identify the material as non-leather, or as ground, pulverized, shredded, or bonded leather. The Guides state that if the terms "ground leather," "pulverized leather," "shredded leather," or "bonded leather" are used, a disclosure of the percentages of leather fibers and non-leather substances in the material should be made. The section regarding visible backing material has been clarified with regard to the use of the terms "ground leather," "pulverized leather," "shredded leather," or "bonded leather" to describe backing materials.

—Provisions relating to the terms "scuffproof" and "scratchproof" have been amended to include other terms indicating that the product is resistant to wear. Use of terms such as "scuff resistant" and "scratch resistant" are addressed in an added section. This provision was taken from the Ladies' Handbag Guides.

—The section specifically dealing with deception as to the hardware, frame, or box of luggage has been deleted as unnecessary. This is covered by the general deception section.

—The Shoe Guides have a specific section relating to concealed innersoles. To avoid being too industry-specific, concealed innersoles are addressed in the proposed Guides in a footnote in the section concerning misrepresentations that a product is wholly of a particular composition.

—The Ladies' Handbag Guides included a section regarding deceptive pricing. Deceptive pricing is specifically covered by the general deception section; a separate section is not necessary and is therefore not included in the proposed Guides.[62]

—Finally, for the reasons discussed above, the price discrimination and related areas are not addressed in the proposed Guides.

III. Questions for Comment

The Commission seeks public comment on the following questions:

1. Should the proposed Guides for Select Leather and Imitation Leather Products be expanded in scope to include other products made of leather or imitation leather? Such products might include, but are not limited to, clothing, furniture, watchbands, and equestrian items.

2. Are there special considerations for these or other leather or imitation-leather goods which are not addressed by the proposed Guides? How could any such special considerations be addressed by the Guides?

List of Subjects in 16 CFR Part 24

Advertising, Distribution, Imitation-leather products, Labeling, Ladies' handbags, Leather and leather products industry, Luggage and related products, Shoes, Trade practices, Waist belts.

The Commission proposes to amend Title 16 of the Code of Federal Regulations by adding a new Part 24 to read as follows:

PART 24—GUIDES FOR SELECT LEATHER AND IMITATION LEATHER PRODUCTS

Sec.
24.0 Scope of Guides.
24.1 Deception (general).
24.2 Deception as to composition.
24.3 Deceptive practices as to aniline finish, graining, embossing and processing.
24.4 Misuse of the terms "waterproof," "dustproof," "warpproof," "scuffproof," "scratchproof," "scuff resistant," or "scratch resistant."

Authority: 15 U.S.C. 45, 46.

§ 24.0 Scope of Guides.

These Guides apply to the manufacture, sale, distribution, marketing, or advertising of all kinds or types of leather or simulated-leather trunks, suitcases, traveling bags, sample cases, instrument cases, brief cases, ring binders, billfolds, wallets, key cases, coin purses, card cases, french purses, dressing cases, stud boxes, tie cases, jewel boxes, travel kits, gadget bags, camera bags, ladies' handbags, shoulder bags, purses, pocketbooks, shoes, boots, slippers, belts (when not sold as part of a garment) and similar articles (hereinafter, "industry product").

§ 24.1 Deception (general).

It is unfair or deceptive to misrepresent, directly or by implication, the kind, grade, quality, quantity, material content, thickness, finish, serviceability, durability, price, origin, size, weight, ease of cleaning, construction, manufacture, processing, distribution, or any other material aspect of an industry product.

§ 24.2 Deception as to composition.

It is unfair or deceptive to misrepresent, directly or by implication, the composition of any industry product or part thereof. It is unfair or deceptive to use the unqualified term "leather" or other unqualified terms suggestive of leather unless the industry product so described is composed in all substantial parts of top grain leather.[1] This section includes, but is not limited to, the following:

(a) *Split leather.* If all or part of an industry product is made of split leather and the split leather is visible or if any representation is made as to the product's composition, then the presence of the split leather should be disclosed. For example:

Split Cowhide.

Note: For purposes of these Guides, leather from portions of hides or skins that have been split into two or more thicknesses, other than the grain or hair side, shall be considered split leather.

(b) *Imitation or simulated leather.* If all or part of an industry product is made of non-leather material that appears to be leather, the fact that the material is not leather, or the general nature of the material as something other than leather, should be disclosed. For example:

Not leather;
Imitation leather;
Simulated leather;
Vinyl;
Vinyl coated fabric; or
Plastic.

(c) *Embossed or processed leather.* The kind and type of leather from which an industry product is made should be disclosed when all or part of the product has been embossed, dyed, or otherwise processed so as to simulate the appearance of a different kind or type of leather. For example:

(1) An industry product made wholly of top grain cowhide that has been processed so as to imitate pigskin may be represented as being made of Top Grain Cowhide.

(2) Any additional representation concerning the simulated appearance of an industry product composed of leather should be immediately accompanied by a disclosure of the kind and type of leather in the product. For example:

Top Grain Cowhide With Simulated Pigskin Grain.

(d) *Backing material.* (1) The backing of any material in an industry product with another kind of material should be disclosed when the backing is not apparent upon casual inspection of the product, or when a representation is made which, absent such disclosure, would be misleading as to the product's composition. For example:

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[50] Representations concerning leather and imitation-leather furniture currently are covered by the Commission's Guides for the Household Furniture Industry, 16 CFR 250.4.

[51] FIA, #7 at 2; LIA, #8 at 2; EK, #11 at 1.

[52] EK, #11 at 2.

[53] LIA, #8 at 2.

[54] LIA, #8 at 3.

[55] EK, #11 at 2.

[56] EK, #11 at 2.

[57] LIA, #8 at 2.

[58] LIA, #8 at 4; CL, #10 at 2.

[59] LIA, #8 at 4; FDRA, #12 at 3.

[60] FIA, #7 at 2.

[61] FDRA, #12 at 3.

[62] Additional guidance regarding this issue is provided by the Commission's Guides Against Deceptive Pricing, 16 CFR Part 233.

[1] The composition of heels, stiffenings, and ornamentation are not considered when making the determination of whether a shoe, boot, or slipper may be called "leather".

Top Grain Cowhide Backed With Split Cowhide; or
Split Cowhide Backed With Simulated Leather.

(2) The composition of the different backing material should be disclosed if it is visible and consists of split leather, non-leather material with the appearance of leather, or leather processed so as to simulate a different kind of leather.

(e) *Fictitious animal designations.* A representation should not be made, directly or by implication, that an industry product is made in whole or in part from the skin or hide of an animal that does not exist.

(f) *Misuse of trade names, etc.* A trade name, coined name, trademark, or other word or term, or any depiction or device should not be used if it misrepresents, directly or by implication, that an industry product is made in whole or in part from animal skin or hide, or that material in an industry product is leather, top grain leather, split leather, or other material. This includes, among other practices, the use of a stamp, tag, label, card, or other device in the shape of a tanned hide or skin or in the shape of a silhouette of an animal, in connection with any industry product that has the appearance of leather but that is not made wholly or in substantial part from animal skin or hide.

(g) *Misrepresentation that product is wholly of a particular composition.* A misrepresentation should not be made, directly or by implication, that an industry product is made wholly of a particular composition. A representation as to the composition of a particular part of a product should clearly indicate the part to which the representation applies.

(1) Where a product is made principally of top grain leather or of split leather but has certain non-leather parts that appear to be leather, the product may be described as made of top grain leather or split leather so long as accompanied by clear disclosure of the non-leather parts.[2] For example:

(i) An industry product made of top grain cowhide except for frame covering, gussets, and partitions that are made of plastic but have the appearance of leather may be described as:

Top Grain Cowhide With Plastic Frame Covering, Gussets and Partitions; or Top Grain Cowhide With Gussets, Frame Covering and Partitions Made of Non-Leather Material.

(ii) An industry product made throughout, except for hardware, of vinyl backed with split cowhide may be described as:

Vinyl Backed With Split Cowhide (See also disclosure provision concerning use of backing material in paragraph (d) of this section).

(iii) An industry product made of top grain cowhide except for partitions and stay, which are made of plastic-coated fabric but have the appearance of leather, may be described as:

Top Grain Cowhide With Partitions and Stay Made of Non-leather Material; or
Top Grain Cowhide With Partitions and Stay Made of Plastic-Coated Fabric.

(2) Where a product is made principally of top grain leather and its only other parts that appear to be leather are made of split leather, the product may be described as made of top grain leather so long as accompanied by adequate disclosure of the split leather parts. For example: An industry product made of top grain cowhide except for frame covering, gussets, and partitions made of split cowhide may be described as:

Top Grain Cowhide With Split Cowhide Frame Covering, Gussets, and Partitions.

(h) *Ground, pulverized, shredded, or bonded leather.* A material in an industry product that contains ground, pulverized, shredded, or bonded leather and thus is not wholly the hide of an animal should not be represented, directly or by implication, as being leather. This provision does not preclude an accurate representation as to the ground, pulverized, shredded, or bonded leather content of the material. However, if the material appears to be leather, it should be accompanied by either:

(1) An adequate disclosure as described by paragraph (b) of this section; or

(2) If the terms "ground leather," "pulverized leather," "shredded leather," or "bonded leather" are used, a disclosure of the percentage of leather fibers and the percentage of non-leather substances contained in the material. For example: An industry product made of a composition material consisting of 60% shredded leather fibers may be described as:

Bonded Leather Containing 60% Leather Fibers and 40% Non-leather Substances.

(i) *Form of disclosures under this section.* All disclosures described in this section should appear in the form of a stamping on the product, or on a tag, label, or card attached to the product, and should be affixed so as to remain on or attached to the product until received by the consumer purchaser. All such disclosures should also appear in all advertising of such products irrespective of the media used whenever statements, representations, or depictions appear in such advertising which, absent such disclosures, serve to create a false impression that the products, or parts thereof, are of a certain kind of composition. The disclosures affixed to products and made in advertising should be of such conspicuousness and clarity as to be noted by purchasers and prospective purchasers casually inspecting the products or casually reading, or listening to, such advertising. A disclosure necessitated by a particular representation should be in close conjunction with the representation.

§ 24.3 Deceptive practices as to aniline finish, graining, embossing and processing.

It is unfair or deceptive to misrepresent, directly or by implication:

(a) That any industry product is colored, finished, or dyed with aniline dye; or

(b) That all or part of any product is dyed, embossed, grained, processed, finished or stitched in a certain manner.

§ 24.4. Misuse of the terms "waterproof," "dustproof," "warpproof," "scuffproof," "scratchproof," "scuff resistant," and "scratch resistant."

It is unfair or deceptive to:

(a) Use the term "Waterproof" to describe all or part of an industry product unless the designated product or material is impermeable to water and moisture.

(b) Use the term "Dustproof" to describe an industry product unless the product is so constructed that when it is closed dust cannot enter it.

(c) Use the term "Warpproof" to describe all or part of an industry product unless the designated product or part is such that it cannot warp.

(d) Use the term "Scuffproof," "Scratchproof," or other terms indicating that the product is not subject to wear in any other respect, to describe an industry product unless the outside surface of the product is immune to scratches or scuff marks, or is not subject to wear as represented.

(e) Use the term "Scuff Resistant," "Scratch Resistant," or other terms indicating that the product is resistant to wear in any other respect, unless there is a basis for the representation and the outside surface of the product is meaningfully and significantly resistant to scuffing, scratches, or to wear as represented.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 95–23039 Filed 9–15–95; 8:45 am]

BILLING CODE 6750-01-P

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[2] In the case of shoes, boots, slippers, and related industry products that have visible parts with the appearance of leather, the composition of concealed innersoles should be disclosed unless the term "leather" can be used to describe the innersole material under these Guides.

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16 CFR Part 400

Rule Concerning Advertising and Labeling of Sleeping Bags

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: the Federal Trade Commission ("Commission") announces the commencement of a rulemaking proceeding for the trade regulation rule concerning Advertising and Labeling of Sleeping Bags ("Sleeping Bag Rule" or "Rule"), 16 CFR Part 400. The proceeding will address whether or not the Sleeping Bag Rule should be repealed. The Commission invites interested parties to submit written data, views, and arguments on how the rule has affected consumers, businesses and others, and on whether there currently is a need for the rule. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2506. Comments and requests to testify should be identified as "16 CFR Part 400—Comment—Sleeping Bag Rule" and "16 CFR Part 400—Request to Testify—Sleeping Bag Rule," respectively. If possible, submit comments both in writing and on a personal computer diskette in Work Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: John A. Crowley, Attorney, Bureau of Consumer Protection, Division of Service Industry Practices, Room H–200, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–3280.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") seeking comment on the proposed repeal of the Sleeping Bag Rule, 60 FR 27240. In accordance with mandates of section 18 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The ANPR comment period closed on June 22, 1995. The Commission received no public comments.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking ("NPR") the Commission initiates a proceeding to consider whether the Sleeping Bag Rule should be repealed or remain in effect, and solicits public comments.[1] The Commission is also interested in comments on whether the Rule should be streamlined or otherwise amended. If the Commission determines, based on the data, views and arguments submitted, that the Commission should consider additional alternatives, it will publish a supplemental notice of proposed rulemaking and will request public comments on those alternatives.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Sleeping Bag Rule regulates the advertising, labeling and marking of the dimensions of sleeping bags. The Commission had found that the practice of labeling sleeping bags by the dimensions of the unfinished material used in their construction (cut size) was misleading consumers about the actual size of the sleeping bag. To correct this misconception, the Commission in 1963 promulgated the Sleeping Bag Rule which provides that it is an unfair method of competition and an unfair or deceptive act or practice to use the "cut size" of the materials from which a sleeping bag is made to describe the size of a sleeping bag in advertising, labeling or marking unless:

(1) "The dimensions of the cut size are accurate measurements of the yard goods used in construction of the sleeping bags"; and

(2) "Such 'cut size' dimensions are accompanied by the words 'cut size' "; and

(3) The reference to "cut size" is "accompanied by a clear and conspicuous disclosure of the length and width of the finished products and by an explanation that such dimension constitute the finished size".[2]

The Commission, as part of its oversight responsibilities, reviews rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Accordingly, on April 19, 1993, the Commission published in the Federal register a request for public comments on its Trade Regulation Rule on Advertising and Labeling as to Size as to Size of Sleeping Bags, 16 CFR 400 ("Rule").

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[1] In accordance with mandates of section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives 30 days prior to publication of the NPR.

[2] The rule then gives an example of proper size marking: "Finished size 33" × 68"" cut size 36" × 72"."

In its Request for Comment, the Commission asked commenters to address the costs and benefits of the rule, whether there was a continuing need for this regulation, the burdens placed on businesses subject to this regulation, whether changes should be made, any conflicts with other laws, and whether changes in technology affected the rule.

Only one specific comment relating to the Sleeping Bag Rule was received, which generally supported a continuation of this regulation.

In addition to this specific comment, one general comment, applicable to several rules being reviewed was received from an advertising agency association. The organization recommended rescission of the Sleeping Bag Rule, because the general prohibitions of the FTC Act covering false and deceptive advertising apply to the sleeping bag industry and the Rule creates unnecessary administrative costs for the government, industry members and consumers.

Commission staff also conducted an informal inquiry and inspected sleeping bags at several national chain stores. This inquiry found no violations of the Rule on either the sleeping bag packaging materials or the labels affixed to the product itself. In fact, it appeared from that limited inquiry that industry products were marked with only the finished size. Additionally, the Commission has no record of receiving any complaints regarding non-compliance with the rule, or of initiating any law enforcement actions alleging violation of the rule's requirements, 60 FR 2724–41. Finally, the Uniform Packaging and Labeling Regulation, which has been adopted by 47 states, regulates the labeling of sleeping bags, and appears to provide that these items must be labeled with their finished size, 60 FR 27241.

On May 23, 1995, the Commission issued an Advance notice of proposed rulemaking (ANPR) based on a review of the submissions received in response to the aforementioned request for comments. The Commission determined that there may no longer be a need to continue the Rule in light of the apparent changes in industry practices and the existence of laws in nearly all of the states that appear to mandate point-of-sale disclosures similar to those required by the Rule. No comments were received in response to this request.

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation to Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experience are relevant to the extent they typify industry experience in general or the experience of similar-size firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2222.

Questions

(1) Do manufacturers and sellers of sleeping bags currently use "cut size" as a means of marking the size of their products for sale at retail to customers?

(2) Does the fact that nearly all of the states have adopted the Uniform Packaging and Labeling Regulation, which governs the labeling of sleeping bags, eliminate or greatly lessen the need for the Sleeping Bag Rule?

(3) Are there other federal or state laws or regulations, or private industry standards that eliminate a need for the Rule?

(4) What are the benefits and costs of the Rule to consumers?

(5) What are the benefits and the costs of the Rule to firms subject to the Rule's requirements?

(6) Does this Rule overlap or conflict with other federal, state, or local government laws or regulations?

(7) Is there a continuing need for the Rule or should the Rule be repealed?

V. Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the DATES and ADDRESSES sections of this Notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[3] The analysis must contain,

as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

In light of these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Sleeping Bag Rule does not impose "information collection requirements" under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.* The Rule, however, does contain disclosure requirements, which specify that certain additional information must be given whenever the words "cut-size" are used to describe the dimensions of a sleeping bag.[4] Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 400

Advertising, Trade practices, Sleeping bags.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 95–23041 Filed 9–15–95; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 402

Rule Concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being Prismatic Binoculars

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") announces the commencement of a rulemaking proceeding for the trade regulation rule concerning deception as to non-prismatic and partially prismatic instruments being prismatic binoculars ("Binocular Rule"), 16 CFR Part 402. The proceeding will address whether or not the Binocular Rule should be repealed. The Commission invites interested parties to submit written data, views, and arguments on how the Rule has affected consumers, businesses and others, and on whether there currently is a need for the Rule. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest in testifying must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue NW., Washington, DC 20580, telephone number (202) 326–2506. Comments and requests to testify should be identified as "16 CFR Part 402—Comment—Binocular Rule" and "16 CFR Part 402—Request to Testify—Binocular Rule," respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Phillip Priesman, Attorney, Bureau of Consumer Protection, Division of Advertising Practices, Sixth Street and Pennsylvania Avenue NW., Washington,

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[3] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to perform "regulatory impact analyses" of a proposed rule, but only if the rule will have certain "significant" economic or regulatory effects. The Commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repealing the Rule will have a "significant" economic or regulatory impact, either beneficial or detrimental, upon persons subject to the Rule or upon consumers.

[4] Under amendments to the P.R.A. in the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163, to be codified at 44 U.S.C. 3501–20), which will become effective on October 1, 1995, these third-party disclosures may constitute a "collection of information" for which OMB clearance must be sought.

DC 20580, telephone number (202) 326–2484.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") seeking comment on the proposed repeal of the Binocular Rule, 60 FR 27240. In accordance with mandates of section 18 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of representatives. The ANPR comment period closed on June 22, 1995. The Commission received one public comment.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking ("NPR") the Commission initiates a proceeding to consider whether the Binocular Rule should be repealed or remain in effect, and solicits public comments.[1] The Commission is also interested in comments on whether the Rule should be streamlined or otherwise amended. If the Commission determines, based on the data, views and arguments submitted, that the Commission should consider additional alternatives, it will publish a supplemental notice of proposed rulemaking and will request public comments on those alternatives.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Binocular Rule was published in final form in the **Federal Register** on June 5, 1964, and became effective on December 2, 1964. The Rule requires a clear and conspicuous disclosure on any advertising or packaging for non-prismatic or partially prismatic binoculars that the instruments are not fully prismatic. Fully prismatic binoculars rely on a prism within the instrument to reverse the visual image entering the lens so that it appears right-side up to the user. Other binoculars rely partially or entirely on mirrors to reverse the visual image. When the rule was promulgated, the Commission was concerned that consumers could be misled into believing that non-prismatic binoculars were in fact prismatic, absent such a disclosure.

To prevent consumer deception, the rule proscribed the use of the term "binocular" to describe anything other than a fully prismatic instrument, unless the term was modified to indicate the true nature of the item. Under the Rule, non-prismatic instruments could be identified as binoculars only if they incorporated a descriptive term such as "binocular-nonprismatic," "binocular-mirror prismatic," or "binocular-nonprismatic mirror."

Following publication of the ANPR, the Commission received one public comment regarding the Binocular Rule. The comment, from an importer and manufacturing company, suggested that there may be a continuing need for the Rule because field glasses and opera glasses, both of which are non-prismatic, are still advertised and sold today. The comment acknowledged, however, that present-day binoculars are fully prismatic, while the non-prismatic instruments are identified as either field glasses or opera glasses rather than binoculars. Thus, since it appears that all instruments sold as binoculars are prismatic, the Commission believes that the Binocular Rule may no longer be needed. Repeal of the Rule will also further the objectives of reducing obsolete government regulation.

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation To Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2222.

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[1] In accordance with mandates of section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to publication of the NPR.

Questions

(1) Is any manufacturer currently manufacturing non-prismatic or partially-prismatic binoculars?

(2) Is any individual or business entity currently marketing non-prismatic or partially-prismatic binoculars?

(3) Do any retail stores or suppliers still maintain stocks of non-prismatic or partially-prismatic binoculars?

(4) Is any manufacturer or marketer identifying non-prismatic field glasses or opera glasses as binoculars?

(5) Has technology changed so that the Rule is no longer needed?

(6) Are there any other federal or state laws or regulations, or private industry standards, that eliminate the need for the Rule?

(7) What are the benefits and costs of the rule to consumers?

(8) What are the benefits and costs of the Rule to firms subject to the Rule's requirements?

(9) Should the Rule be kept in effect or should it be repealed?

V. Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** section of this notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act ("FRA") 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small business.[2] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action, any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

In light of these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Binocular Rule does not impose "information collection requirements" under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq*. The Rule, however, does contain a disclosure requirement, which calls for a clear and conspicuous disclosure on any advertising or packaging for non-prismatic or partially prismatic binoculars that the instruments are not fully prismatic.[3] Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by those disclosure requirements.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 402

Binoculars, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 95–23046 Filed 9–15–95; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 404

Rule Concerning Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") announces the commencement of a rulemaking proceeding for the trade regulation rule concerning Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products ("Tablecloth Rule" or "Rule"), 16 CFR Part 404. The proceeding will address whether or not the Tablecloth Rule should be repealed. The Commission invites interested parties to submit written data, views, and arguments on how the Rule has affected consumers, businesses and others, and on whether there currently is a need for the Rule. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires

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[2] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to perform "regulatory impact analyses" of a proposed rule, but only if the rule will have certain "significant" economic or regulatory effects. The Commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repealing the Rule will have a "significant' economic or regulatory impact, either beneficial or detrimental, upon persons subject to the Rule or upon consumers.

[3] Under amendments to the PRA in the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163, to be codified at 44 U.S.C. 3501–20), which will become effective on October 1, 1995, these third-party disclosures may constitute a "collection of information" for which OMB Clearance must be sought.

comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest in testifying must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, telephone number 202–326–2506. Comments and requests to testify should be identified as "16 CFR Part 404—Comment—Tablecloth Rule" and "16 CFR Part 404—Request to Testify—Tablecloth Rule," respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: John A. Crowley, Attorney, Bureau of Consumer Protection, Division of Service Industry Practices, Room H–200, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, telephone number 202–326–3280.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") seeking comment on the proposed repeal of the Tablecloth Rule, 60 FR 27242. In accordance with mandates of section 18 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 47a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The ANPR comment period closed on June 22, 1995. The Commission received no public comments.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking ("NPR") the Commission initiates a proceeding to consider whether the Tablecloth Rule should be repealed or remain in effect, and solicits public comments.[1] The Commission is also interested in comments on whether the Rule should be streamlined or otherwise amended. If the Commission determines, based on the data,views and arguments submitted, that the Commission should consider additional alternatives, it will publish a supplemental notice of proposed rulemaking and will request public comments on those alternatives.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Tablecloth Rule regulates the advertising, labeling and marking of the dimensions of tablecloths and related products. The Commission had found that the practice of labeling tablecloths and related products by the dimensions of the unfinished material used in their construction (cut size) was misleading consumers about the actual size of tablecloths and related products. To correct this misconception, the Commission in 1964 promulgated the Tablecloth Rule which provides that it is an unfair method of competition and an unfair and deceptive act or practice to use the "cut size" of the materials from which a tablecloth or related product is made to describe the size of a tablecloth or related product unless:

(a) "Such 'cut size' dimensions are accompanied by the words 'cut size' "; and

(b) "The 'cut size' is accompanied by a clear and conspicuous disclosure of the dimensions of the finished products and by an explanation that such dimensions constitute the finished size".[2]

The Commission, as part of its oversight responsibilities, reviews rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Accordingly on April 19, 1993, the Commission published in the **Federal Register** a request for public comments on its Trade Regulation Rule on Deceptive Advertising and labeling as to Size of Tablecloths and Related Products, 16 CFR 404 ("Rule").

In its Request for Comment, the Commission asked commenters to address the costs and benefits of the rule, whether there was a continuing need for this regulation, the burdens placed on businesses subject to this regulation, whether changes should be made, any conflicts with other laws and whether changes in technology affected the rule.

Only one specific comment relating to the Tablecloth Rule was received, which generally supported a continuation of this regulation.

In addition to this specific comment, one general comment, applicable to several rules being reviewed was received from an advertising agency association. This organization recommended rescission of the Tablecloth Rule, because the general prohibitions of the FTC Act covering false and deceptive advertising apply to the tablecloth and related products industry and the Rule creates unnecessary administrative costs for the government, industry members and consumers.

Commission staff also engaged in an informal review of industry practices by examining the marking of dimensions on tablecloths and other items subject to the rule available for retail sale at several national chain stores. This informal review revealed no instances of rule violations. In fact, it appeared from that limited review that industry products were marked with only the finished size. Additionally, the Commission has no record of receiving any complaint regarding non-compliance with the rule or of initiating any law enforcement actions alleging violations of the rule's requirements, 60 FR 27242. Finally, the Uniform Packaging and Labeling Regulation, which has been adopted by 47 states, regulates the labeling of tablecloths and related products, and appears to provide that these items must be labeled with their finished size, 60 FR 27242.

On May 23, 1995, the Commission issued an Advance Notice of Proposed Rulemaking (ANPR) based on a review of the submissions received in response to the aforementioned request for comments. The Commission determined that there may no longer be a need to continue the Rule in light of the apparent changes in industry practices and the existence of laws in nearly all of the states that appear to mandate point-of-sale disclosures similar to those required by the Rule. No comments were received in response to this request.

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation to Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2222.

Questions

(1) Do manufacturers and sellers of tablecloths currently use "cut size" as a means of marking the size of their products for sale at retail to customers?

(2) Does the fact that nearly all of the states have adopted the Uniform Packaging and Labeling Regulation, which governs the labeling of tablecloths, eliminate or greatly lessen the need for the Tablecloth Rule?

(3) Are there other federal or state laws or regulations, or private industry standards that eliminate a need for the Rule?

(4) What are the benefits and the costs of the Rule to consumers?

(5) What are the benefits and the costs of the Rule to firms subject to the Rule's requirements?

(6) Does this Rule overlap or conflict with other federal, state, or local government laws or regulations?

(7) Is there a continuing need for the Rule or should the Rule be repealed?

V. Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this Notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[3] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

In light of these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Tablecloth Rule does not impose "information collection requirements" under the Paperwork Reduction Act

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[1] In accordance with mandates of section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives 30 days prior to publication of the NPR.

[2] The rule then gives an example of proper size marking: "Finished size 50" x 68"; Cut size 52" x 70"."

[3] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to perform "regulatory impact analyses" of a proposed rule, but only if the rule will have certain "significant" economic or regulatory effects. The Commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repealing the Rule will have a "significant" economic or regulatory impact, either beneficial or detrimental, upon persons subject to the Rule or upon consumers.

("PRA"), 44 U.S.C. 3501 *et seq.* The Rule, however, does contain disclosure requirements, which specify that certain additional information must be given whenever the words "cut size" are used to describe the dimensions of a tablecloth or other product.[4] Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 404

Advertising, Trade practices, Tablecloths and related products.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23042 Filed 9–15–95; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 405

Trade Regulation Rule on Misbranding and Deception as to Leather Content of Waist Belts

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "Commission") proposes to commence a rulemaking proceeding to repeal its Trade Regulation Rule on Misbranding and Deception as to Leather Content of Waist Belts ("the Leather Belt Rule" or "the Rule"). The proceeding will address whether the Leather Belt Rule should be repealed or remain in effect. The Commission is soliciting written comment, data, and arguments concerning this proposal.

DATES: Written comments must be submitted on or before October 18, 1995.

ADDRESSES: Written comments should be identified as "16 CFR Part 405" and sent to Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Ave., N.W., Washington DC 20580.

FOR FURTHER INFORMATION CONTACT: Lemuel Dowdy or Edwin Rodriguez, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 601 Pennsylvania, Ave., NW., S–4302, Washington, DC 20580, (202) 326–2981 or (202) 326–3147.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et eq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5 (a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Leather Belt Rule was promulgated on June 27, 1964, to remedy deceptive practices involving misrepresentations about the leather content of waist belts that are not offered for sale as part of a garment. The Rule prohibits representations that belts not made from the hide or skin of an animal are made of leather or that belts are made of a specified animal hide or skin when such is not the case. In addition, it requires that belts made of split leather, and ground, pulverized or shredded leather bear a label or tag disclosing the kind of leather of which the belt is composed. The Rule also requires that non-leather belts having the appearance of leather bear a tag or label disclosing their composition or disclosing that they are not leather.

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission published a **Federal Register** notice on March 27, 1995, asking questions about the benefits and burdens of the Rule to consumers and industry.[1] The request for comments elicited ten comments. Six comments were submitted by consumers and four by leather or leather goods manufacturers. Three comments recommend that the Commission amend the Rule to allow the use of the term "bonded leather" when a leather good is made of ground, pulverized, or shredded leather that is bonded with an adhesive. Seven comments support the continuation of the Leather Belt Rule as it currently exists. Two comments, from industry members, support guidelines for leather goods as a whole, as opposed to piecemeal regulation of individual leather products.

The consumer comment express continuing support for the Rule, contending that its disclosure requirements help consumers make informed purchasing decisions. One industry comment supports the Rule for the same reason. These commenters state that the rule helps consumers identify belts made of different types of cowhide leather, such as top grain leather, and split leather. In addition, they believe that the disclosures required by the Rule allow consumers to identify belts made of vinyl, plastic, polyurethane, paper and other synthetic materials that can be made to look like leather. Without these disclosures, the consumer commenters believe, consumers cannot be certain of the quality of the leather used in belts, or that belts are made of leather at all. Two

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[4] Under amendments to the P.R.A. in the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163, to be codified at 44 U.S.C. 3501–20), which will become effective on October 1, 1995, these third-party disclosures may constitute a "collection of information" for which OMB clearance must be sought.

[1] 60 FR 15725. On the same date, the Commission published a **Federal Register** notice soliciting comments on its Industry Guides for luggage, shoes, and ladies' handbags. 60 FR 15724. *See* Guides for the Luggage and Related Products Industry, 16 CFR Part 24; Guides for Shoe Content Labeling and Advertising, 16 CFR Part 231; and Guides for the Ladies' Handbag Industry, 16 CFR Part 247.

of the comments express support for consolidating the Rule and the Guides into one set of guidelines for leather goods, which would set out definitions for leather that apply to all finished leather goods.

In two separate documents published elsewhere in this issue of the **Federal Register**, the Commission has announced that, to eliminate unnecessary duplication, it has rescinded the three separate guides for various leather products and seeks public comment on one set of proposed, consolidated guidelines: the Guides for Select Leather and Imitation Leather Products.[2] Accordingly, the Commission has tentatively determined that a separate Leather belt Rule is no longer necessary, and seek comments on he proposed repeal of the Rule.

Part B—Objectives

Based on this review, the Commission has tentatively determined that the Leather Belt Rule may not be necessary and in the public interest. The Commission believe that a single set of industry guides for leather products serves the public interest better than a Rule for leather belts and miscellaneous guides for other leather products. The objective of this notice is to solicit comment on whether the Commission should initiate a rulemaking proceeding to repeal the Leather Belt Rule.

Part C—Alternative Actions

The Commission is not considering any alternative other than the possibility of repealing the Leather Belt Rule.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Leather Belt Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies the issues on which it solicits public comments. The identification of issues is designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Is the misrepresentation of the leather contents of belts by manufacturers and distributors of belts still a significant problem in the marketplace?

(2) What benefits do consumers derive from the Rule?

(3) Should the Rule be kept in effect or should it be repealed?

(4) How would repealing the Rule affect the benefits experienced by consumers?

(5) How would repealing the Rule affect the benefits and burdens experienced by firms subject to the Rule's requirements?

(6) Are there any other federal or state laws or regulations, or private industry standards, that eliminate the need for the Rule?

(7) Are the proposed Guides for Select Leather and Imitation Leather Products likely to provide all or most of the benefits now provided by the Rule?

Authority: Section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 405

Advertising, Clothing, Labeling, Leather and leather products industry, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23040 Filed 9–15–95; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 413

Rule Concerning Failure to Disclose That Skin Irritation May Result From Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") announces the commencement of a rulemaking proceeding for the trade regulation rule concerning the "Failure to Disclose that Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics" ("Fiberglass Curtain Rule" or "Rule"), 16 CFR Part 413. The proceeding will address whether or not the Fiberglass Curtain Rule should be repealed. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest in testifying must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2506. Comments and requests to testify should be identified as "16 CFR Part 413—Comment—Fiberglass Curtain Rule" and "16 CFR Part 413—Request to Testify—Fiberglass Curtain Rule," respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Edwin Rodriguez or Janice Podoll Frankle, Attorneys, Bureau of Consumer Protection, Division of Enforcement, 601 Pennsylvania, NW., Washington, DC 20004, (202) 326–3147 or (202) 326–3022.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") seeking comment on the proposed repeal of the Fiberglass Curtain Rule (60 FR 27243). In accordance with section 18 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The ANPR comment period closed on June 22, 1995. The Commission did not receive any public comments.

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[2] Repealing the rule would eliminate the Commission's ability to obtain civil penalties for any future misrepresentations of the leather content of belts. However, the Commission has tentatively determined that repealing the rule would not seriously jeopardize the Commission's ability to act effectively. Any significant problems that might arise could be addressed on a case-by-case basis, administratively under Section 5 of the FTC Act, 15 U.S.C. 45, or through Section 13(b) actions, 15 U.S.C. 53(b), filed in federal district court. Prosecuting serious misrepresentations in district court allows the Commission to obtain injunctive relief as well as equitable remedies, such as redress or disgorgement.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking ("NPR") the Commission initiates a proceeding to consider whether the Fiberglass Curtain rule should be repealed or remain in effect.[1] The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Fiberglass Curtain Rule requires marketers of fiberglass curtains or draperies and fiberglass curtain or drapery cloth to disclose that skin irritation may result from handling fiberglass curtains or curtain cloth and from contact with clothing or other articles which have been washed (1) with such glass fiber products, or (2) in a container previously used for washing such glass fiber products unless the glass particles have been removed from such container by cleaning.

The Rule was promulgated on July 28, 1967 (32 FR 11023). The Statement of Basis and Purpose for the Rule stated that members of the consuming public had made statements that they had experienced skin irritation after washing or handling glass fiber curtains and draperies and glass fiber curtain and drapery fabrics. Consequently, the Commission concluded that it was in the public interest to caution consumers that skin irritation could result from the direct handling of fiberglass curtains, drapes, and yard goods, and from body contact with clothing or other articles that had been contaminated with fiberglass particles when they were washed with fiberglass products when the container had not been cleaned of all glass particles.

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission recently obtained information bearing on the need for this Rule. Based on this review, the Commission has determined that fiberglass curtains and drapes and fiberglass curtain or drape fabric no longer present a substantial threat of skin irritation to the consumer. Fiberglass was used in curtains primarily because of its fire retardant characteristics. Technological developments in fire retardant fabrics have caused fiberglass fabric to be displaced by polyester and modacrylics in the curtain and drapery industry.[2] Fiberglass fabrics are now used almost exclusively for very specialized industrial uses.[3]

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation to Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2222.

Questions

(1) Is any manufacturer currently manufacturing glass fiber curtains or draperies or glass fiber curtain or drapery fabric?

(2) Is any individual or business entity currently marketing glass fiber curtains or draperies or glass fiber curtain or drapery fabric?

(3) Do any retail stores or suppliers still maintain stocks of glass fiber curtains or draperies or glass fiber curtain or drapery fabric for resale?

(4) What are the benefits and the costs of the Rule to consumers?

(5) What are the benefits and the costs of the Rule to firms subject to the Rule's requirements?

(6) Has technology changed so that the Rule is no longer needed?

(7) Are there any other federal or state laws or regulations, or private industry standards, that eliminate the need for the Rule?

(8) Should the Rule be kept in effect or should it be repealed?

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[1] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives 30 days prior to its publication in the **Federal Register**.

[2] *See* Rulemaking Record, Category B, Staff Submissions.

[3] *Id.*

V. Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this Notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act ("RFA", 5 U.S.C. 601–11) requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[4] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. Further, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

For all these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule, that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Fiberglass Curtain Rule does not impose "information collection requirements" under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.* Although the Rule contains disclosure requirements, these disclosures are not covered by the Act because the disclosure language is mandatory and provided by the government. Repeal of the Rule, however, would eliminate any burdens on the public imposed by these disclosure requirements.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 413

Fiberglass curtains and curtain fabric, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,
Secretary.

FR Doc. 95–23045 Filed 9–15–95; 8:45 am]
BILLING CODE 6750–01–M

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[4] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to issue a preliminary regulatory analysis relating to proposed rules when the Commission publishes a notice of proposed rulemaking. The Commission has determined that a preliminary regulatory analysis is not required by section 22 and this proceeding because the Commission has no reason to believe that repeal of the Rule: (1) Will have an annual effect on the national economy of $100,000,000 or more; (2) will cause a substantial change in the cost or price of goods or services that are used exclusively by particular industries, that are supplied extensively in particular geographical industries, or that are acquired in significant quantities by the Federal Government; or (3) otherwise will have a significant impact upon persons subject to regulation under the Rule or upon consumers.

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16 CFR Part 417

Trade Regulation; Rule Concerning the Failure to Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") announces the commencement of a rulemaking proceeding for the trade regulation rule concerning the "Failure to Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses" ("Quick-Freeze Spray Rule" or "Rule"), 16 CFR Part 417. The proceeding will address whether or not the Quick-Freeze Spray Rule should be repealed. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest in testifying must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice of the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2506. Comments and requests to testify should be identified as "16 CFR Part 417—Comment—Quick

Freeze Spray Rule" and "16 CFR Part 417—Request to Testify—Quick Freeze Spray Rule," respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Lemuel W. Dowdy or George Brent Mickum IV, Attorneys, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 601 Pennsylvania Ave., NW., Washington, DC 20004, (202) 326–2981 or (202) 326–3132.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking ("ANR") seeking comment on the proposed repeal of the Quick-Freeze Spray Rule (60 FR 27244). In accordance with section 18 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Subcommittee of Commerce, Trade and Hazardous Materials, United States House of Representatives. The ANR comment period closed on June 22, 1995. The Commission received no public comments.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking ("NPR") the Commission initiates a proceeding to consider whether the Quick-Freeze Spray Rule should be repealed or remain in effect.[1] The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Quick-Freeze Spray Rule requires a clear and conspicuous warning on aerosol spray products used for frosting beverage glasses. The warning states that the contents should not be inhaled in concentrated form and that doing so may cause injury or death. Glass frosting products contain a compound known as Fluorocarbon 12 (dichlorodifluoromethane).

The Rule was promulgated on February 20, 1969 (34 FR 2417). The Statement of Basis and Purpose for the Rule stated that, although the product is not harmful when used as directed, there has been several instances where the intentional misuse of this product by inhaling its vapors resulted in death. Consequently, the Commission concluded that it was in the public interest to caution purchasers who may not otherwise be aware of the lethal effects of inhaling the product.

On October 25, 1989, the Commission published a notice in the **Federal Register** soliciting public comments on the Rule's impact on small entities (54 FR 43435). No comments were received in response to the notice. The Commission determined, however, that a small amount of quick-freeze aerosol products are still available for sale. Therefore, the Commission determined that because the Rule's safety warnings, if followed, could prevent physical harm and loss of life, the Rule should be retained.

Earlier in 1995, the Commission conducted an investigation to determine if there was a continuing need for the Rule. Based on this investigation, which was conducted prior to the issuance of the ANPR, the Commission determined that glass frosting products are no longer produced, can no longer be found in the marketplace, and are precluded by the Clean Air Act from being reintroduced into the market place.[2]

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation to Comment and Question for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Pubic Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2222.

Questions

(1) Is any manufacturer currently manufacturing quick-freeze spray products?

(2) Is any individual or business entity currently marketing quick-freeze spray products?

(3) Do any retail stores or suppliers still maintain stocks of quick-freeze spray products for resale?

(4) What are the benefits and the costs of the Rule to firms subject to the Rule's requirements?

(5) What are the benefits and the costs of the Rule to consumers?

(6) Has technology changed so that the Rule is no longer needed?

(7) Does regulation of this product by the Environmental Protection Agency render the Rule unnecessary?

(8)Are there any other federal or state laws or regulations, or private industry standards, that eliminate the need for the Rule?

(9) Should the Rule be kept in effect or should it be repealed?

V. Request for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this Notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[3] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

For all these reasons the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that, if the Commission determines to repeal the Rule, that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Quick-Freeze Spray Rule does not impose "information collection requirements" under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.* Although the Rule contains disclosure requirements, these disclosures are not covered under the Act because the disclosure language is mandatory and provided by the government. Repeal of the Rule, however, would eliminate any burdens on the public imposed by these disclosure requires.

VIII. Additional Information For Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 417

Quick-freeze aerosol spray trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 95–23044 Filed 9–15–95; 8:45 am]

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16 CFR Part 418

Rule Concerning Deceptive Advertising and Labeling as to Length of Extension Ladders

AGENCY: Federal Trade Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") announces the commencement of a rulemaking proceeding for the trade regulation rule concerning Deceptive Advertising and Labeling as to Length of Extension Ladders ("Extension Ladder Rule" or "Rule"), 16 CFR Part 418. The proceeding will address whether or not the Extension Ladder Rule should be repealed. The Commission invites interested parties to submit written date, views, and arguments on how the Rule has affected consumers, businesses and others, and on whether there currently is a need for the Rule. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

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[1] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[2] 42 U.S.C.A. 7401, 7671i (West Supp. 1995). Regulations promulgated by the Environmental Protection Agency implementing the Clean Air Act ban chlorofluorocarbons in aerosols and foams for non-essential uses. 40 CFR 82.64 (1994). The ban, which includes fluorocarbon 12, became effective on January 17, 1994. *See also* Rulemaking Record, Category B, Staff Submissions.

[3] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to perform "regulatory impact analyses" of proposed rule, but only if the rule will have certain "significant" economic or regulatory effects. The commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repealing the Rule will have a "significant" economic or regulatory impact, either beneficial or detrimental, upon persons subject to the Rule or upon consumers.

Notifications of interest in testifying must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interest parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2506. Comments and requests to testify should be identified as "16 CFR Part 418—Comment—Extension Ladder Rule" and "16 CFR Part 418—Request to Testify—Extension Ladder Rule," respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: John A. Crowley, Attorney, Bureau of Consumer Protection, Division of Service Industry Practices, Room H–200, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–3280.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") seeking comment on the proposed repeal of the Extension Ladder Rule, 60 FR 27245. In accordance with mandates of section 18 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The ANPR comment period closed on June 22, 1995. The Commission received no public comments.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking ("NPR") the Commission initiates a proceeding to consider whether the Extension Ladder Rule should be repealed or remain in effect, and solicits public comments.[1] The Commission is also interested in comments on whether the Rule should be streamlined or otherwise amended. If the Commission determines, based on the data, views and arguments submitted, that the Commission should consider additional alternatives, it will publish a supplemental notice of proposed rulemaking and will request public comments on those alternatives.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urge agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Extension Ladder Rule regulates the advertising, labeling and marking of extension ladders. The Commission had found that the industry practice of representing the sizes or lengths of their products in terms of the total length of their component sections, e.g., a "20-foot" or "20-foot size" extension ladder consisting of two 10-foot sections, tended to mislead the general public into the erroneous belief that such represented sizes or lengths were the maximum working or useful lengths of the products so described. To correct this misconception, the Commission in 1969 promulgated the Extension Ladder Rule, which makes it an unfair or deceptive act or practice and an unfair method of competition to represent the size or length of such product, in terms of the total length of the component sections thereof, unless:

(a) Such size or length representation is accompanied by the words "total length of sections" or words with similar meanings which clearly indicate the basis of the representation; and,

(b) Such size or length representation is accompanied by a statement in close proximity to the size or length representation which clearly and conspicuously shows the maximum length of the product when fully extended for use (i.e., excluding the footage lost in overlapping) along with an explanation for the basis of such representation.[2]

The Commission, as part of its oversight responsibilities, reviews rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Accordingly, on April 19, 1993, the Commission published in the **Federal Register** a request for public comments on its Trade Regulation Rule on Advertising and Labeling As To Length of Extension Ladders, 16 C.F.R. Part 418. 58 FR 21125.

In its Request for Comment, the Commission indicated that if this rule is retained, the Commission intended to revise the examples contained in the rule to include "metric" measurements. The Commission then asked commenters to address questions relating to the costs and benefits of the Rule, the burdens it imposes, and the basis for assessing whether it should be retained, or amended.

Six specific comments were received. One commenter, a consumer, opined that the only label that should be on ladders is the "maximum working length" since consumers should not have to do any figuring to determine the length of the ladder that would meet their needs.

Of the other five commenters, four are manufacturers or suppliers of ladders and one is a trade association. A number of these comments refer to the American National Standards Institute (ANSI) standard A14, which governs the labeling of ladders. ANSI standard A14 details the requirements for labeling portable wood ladders, portable metal ladders, fixed ladders, job made ladders and portable reinforced plastic ladders. The ANSI standard requires specification of the maximum working length of extension ladders, as well as several other pieces of information not required by the Extension Ladder Rule, including the total length of the ladder's sections and the highest standing level of the ladder. Compliance with the ANSI standard therefore ensures compliance with the labeling requirements of the Extension Ladder Rule. Several commenters noted this overlap in coverage of the Extension Ladder Rule and ANSI standard, A14, and recommended that the Rule be retained unchanged.

Another commenter stated that the Rule has imposed minor, incremental costs, but opined that the benefits have been significant in that consumers have a better understanding of extension ladder length. The commenter questioned whether there was a continuing need for this Rule given the existence of ANSI standard A14 and UL Standard 184.

In addition to these specific comments, one general comment, applicable to several rules being reviewed, was received from an advertising agency association. This organization recommended rescission of the Extension Ladder Rule because the general prohibitions of Section 5 of the FTC Act covering false and deceptive advertising apply to the ladder industry, and thus the Rule creates unnecessary administrative costs for the government, industry members and consumers. This commenter did not submit any analysis or data relating to the imposition of unnecessary administrative costs on affected industry members, government or consumers.

Commission staff also engaged in an informal review of industry practices by examining the marking of length on extension ladders available for retail sale at several chain stores. That review indicated general compliance with the requirements of the Rule. Additionally, a check of Commission records failed to find any complaints regarding non-compliance with the Rule, or any initiation of law enforcement actions alleging violations of the Rule's requirements. 60 FR 27245.

On May 23, 1995, the Commission issued an Advance Notice of Proposed Rulemaking ("ANPR") based on a review of the submissions received in response to the Request for Comment. The Commission determined that there may no longer be a need to continue the Extension Ladder Rule in light of the apparent changes in industry practices and the existence of standards mandating the point-of-sale disclosures required by the Rule. 60 FR 27246. No comments were received in response to this request.

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation to Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposal repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2222.

Questions

(1) Does the existence of the ANSI standard governing the labeling of extension ladders eliminate or greatly lessen the need for the Rule?

(2) What are the benefits and the costs of the Rule to consumers?

(3) What are the benefits and the costs of the Rule to firms subject to the Rule's requirements?

(4) Are there other federal or state laws or regulations, or private industry standards, that eliminate a need for the Rule?

(5) Does the Rule overlaps or conflict with other federal, state, or local government laws or regulations?

(6) Is there a continuing need for the Rule or should the Rule be repealed?

V. Requests for Public Hearings

Because there does not appear to be any dispute as to material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the DATES and ADDRESSES sections of this Notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act (RFA"), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[3] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

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[1] In accordance with mandates of section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to publication of the NPR.

[2] The rule then gives an example of proper length representation when the product consists of two ten foot sections: "maximum working length 17', total length of sections 20'" or "17' extension ladder".

[3] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to perform "regulatory impact analyses" of a proposed rule, but only if the rule will have certain "significant" economic or regulatory effects. The Commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repealing the Rule will have a "significant" economic or regulatory impact, either beneficial or detrimental, upon persons subject to the Rule or upon consumers.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

In light of these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Extension Ladder Rule does not impose "information collection requirements' under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq*. The Rule, however, does contain disclosure requirements, which specify that when the size or length of an extension ladder is represented in terms of the total length of the component section such fact must be noted and a statement must be placed in close proximity to the notation which clearly and conspicuously discloses the maximum length of the product when fully extended for use.[4] Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners of Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 418

Advertising, Trade practices, Extension ladders.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23043 Filed 9–15–95; 8:45 am]

BILLING CODE 6750-01-M

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[4] Under amendments to the P.R.A. in the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163, to be codified at 44 U.S.C. 3501–20), which will become effective on October 1, 1995, these third-party disclosures may constitute a "collection of information" for which OMB clearance must be sought.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–36213, International Series Release No. 852, File No. S7–26–95]

RIN 3235–AG65

Exemption of the Securities of the United Mexican States Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment and solicitation of public comments.

SUMMARY: The Commission proposes for comment an amendment to Rule 3a12–8 that would designate debt obligations issued by the United Mexican States ("Mexico") as "exempted securities" for the purpose of marketing and trading of futures contracts on those securities in the United States. The amendment is intended to permit futures on Mexican government debt to be traded in the U.S. This change is not intended to have any substantive effect on the operation of the Rule.

DATES: Comments should be submitted by October 18, 1995.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7–26–95, and will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5–1), 450 Fifth Street, NW., Washington, DC 20549, at 202/942–0190.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission ("SEC" or "Commission"), however, has adopted Rule 3a12–8 under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. As amended, the foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, and the Kingdom of Spain (the "Designated Foreign Governments"). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

The Commission today is soliciting comments on a proposal to amend Rule 3a12–8 (17 CFR 240.3a12–8) to add the debt obligations of Mexico to the list of Designated Foreign Government securities that are exempted by Rule 3a12–8. To qualify for the exemption,

futures contracts on debt obligations of Mexico would have to meet all the other existing requirements of the Rule.

II. Background

Rule 3a12–8 was adopted in 1984[1] pursuant to the exemptive authority in Section 3(a)(12) of the Exchange Act in order to provide limited relief from the CEA's prohibition on futures overlying individual securities.[2] As originally adopted, the Rule provided that the debt obligations of Great Britain and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of "qualifying foreign futures contracts" on such securities, so long as the securities in question were neither registered under the Securities Act nor the subject of any American depositary receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a "qualifying foreign futures contract" if the contract is deliverable outside the United States and is traded on a board of trade.[3]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements.

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, and the Kingdom of Spain.[4]

III. Discussion

The Chicago Mercantile Exchange ("CME") has proposed that the Commission amend Rule 3a12–8 to include the sovereign debt of Mexico.[5] The CME intends to develop a contract market in Mexican Certificados de la Tesoreria de la Federacion ("Cetes"), which are short-term Mexican government securities, and in Mexican Brady bonds, a class of longer term sovereign Mexican debt issues.[6] Brady bonds are issued pursuant to the Brady plan which allowed developing countries to restructure their commercial bank debt by issuing long-term dollar denominated bonds.[7] The Commission understands that Mexican Brady bonds are currently traded primarily in the over-the-counter market in the United States.

Under the proposed amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States,[8] the futures contracts require delivery outside the United States,[9] and the contracts be traded on a board of trade) would continue to apply.

There appears to be an active and liquid market in Mexican debt instruments. As of March 31, 1995, there was approximately US $87.5 billion face amount Mexican government debt issued and outstanding.[10] There are numerous classes of debt instruments with varying maturities. According to the CME petition, the cash market for Cetes evidences active trading; between 1993 and 1994, the monthly trading volume (in principal amount) of Cetes ranged from a low of approximately US $18.5 billion to a high of US $1.1 trillion.[11] There are, of course, less actively traded Mexican debt issues.

The Commission preliminarily believes that the trading of futures on Mexican sovereign debt would provide U.S. investors with a vehicle for hedging the risks involved in the trading of

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[1] *See* Securities Exchange Act Release Nos. 20708 ("Adopting Release") (March 2, 1984), 49 FR 8595 (March 8, 1984) and 19811 ("Proposing Release") (May 25, 1983), 48 FR 24725 (June 2, 1983).

[2] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar the sale of futures on debt obligations of the United Kingdom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Proposing Release, *supra* note 1, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982)(statements of Representatives Daschle and Wirth)).

[3] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[4] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Adopting Release, *supra* note 1. In 1986, the Rule was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1992 the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy, (2) change the country designation of "West Germany" to the "Federal Republic of Germany," and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (January 14, 1992). Finally, the Rule was amended to include debt securities issued by the Kingdom of Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994).

[5] *See* Letter from William J. Brodsky, President and Chief Executive Officer, CME, to Arthur Levitt, Jr., Chairman, Commission, dated May 3, 1995.

[6] The marketing and trading of foreign futures contracts is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, and Rule 9 (17 CFR 30.9), promulgated under Section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale of futures contracts executed on foreign exchanges. Additional rules promulgated under 2(a)(1)(A) of the CEA govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through the CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 17 CFR 30.3, 30.4, and 30.5 (1991).

[7] There are several types of Brady bonds, but "Par Bradys" and "Discount Bradys" represent the great majority of issues in the Brady bond market. In general, both Par Bradys and Discount Bradys are secured as to principal at maturity by U.S. Treasury zero-coupon bonds. Additionally, usually 12 to 18 months of interest payments are also secured in the form of a cash collateral account, which is maintained to pay interest in the event that the sovereign debtor misses an interest payment.

[8] The Commission notes that Mexican Cetes are not currently registered in the United States. The Commission is aware, however, that certain Mexican sovereign debt is registered in the United States and that the trading of futures on these debt issues would not be exempted under Rule 3a12–8 from the CEA's prohibition on futures overlying individual securities that are not exempted securities. With respect to Brady bonds, the Commission notes that its Division of Corporation Finance issued a no-action letter relating to the offer and sale of Mexican Brady bonds in the United States without registration under the Securities Act. *See* Letter from Anita T. Klein, Attorney, Office of International Corporate Finance, Division of Corporation Finance, to Alan L. Beller, Esq., Cleary, Gottlieb, Steen & Hamilton, dated March 28, 1990.

[9] The CME's proposed futures contracts will be cash-settled (*i.e.*, settlement of the futures contracts will not entail delivery of the underlying securities). The Commission has recognized that a cash-settled futures contract is consistent with the requirement of the Rule that delivery must be made outside the United States. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987).

[10] *See* Exhibit D to Form 18–K, Annual Report for Foreign Governments and Political Subdivisions Thereof, 17 CFR 249.218, filed by Mexico.

[11] Moreover, according to a recent survey of members of the Emerging Markets Traders Association ("EMTA"), Mexican debt instruments are the most popularly traded of all emerging markets instruments. According to the survey, the total annual 1994 trading volume for Mexican Cetes amounted to approximately US $27.2 billion, and approximately US $282.3 billion for Mexican Brady bonds. The survey, which was responded to by 80 out of the 333 members of the EMTA, was prepared for the EMTA by Price Waterhouse LLP. *See* 1994 Debt Trading Volume Survey, Emerging Market Traders Association (May 1, 1995).

Mexican Cetes and Mexican Brady bonds. The Commission notes, however, that there are certain differences between the sovereign debt securities of Mexico and the debt securities of the Designated Foreign Governments. In connection with some of the prior amendments to the Rule, the Commission noted that the long-term sovereign debt of those countries was rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations ("NRSROs").[12] This factor, according to the Commission, could be viewed as indirect evidence of an active and liquid secondary trading market.

Mexico's long-term sovereign debt obligations are not rated in one of the two highest rating categories.[13] Although the Commission in 1987 proposed to incorporate a rating standard specifically exempting securities issued by any country with outstanding long-term sovereign debt rated in one of the two highest rating categories by at least two NRSROs,[14] it ultimately declined to adopt such a rule.[15] At the time of the 1987 Rule proposal, the Commission expressed concerns that in the absence of such a requirement, the Rule might be used as a subterfuge to market or trade unregistered sovereign foreign debt through futures trading. The Commission, however, indicated that it did not intend to preclude futures trading on foreign debt that did not meet this ratings requirement and indeed subsequently sought comment on the feasibility of other factors for consideration, such as volume and depth of trading in a sovereign issuer's debt.

IV. Request for Comments

The Commission seeks comments on designating the debt securities of Mexico as exempted securities under Rule 3a12–8. The Commission is particularly interested in receiving comments to the proposed amendment in light of the fact that Mexico would be the first emerging market country to be included as a Designated Foreign Government. Comments should address whether the trading or other characteristics of Mexican debt warrant an exemption for purposes of futures trading.

In addition, the Commission seeks comment on the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted. Comment also is sought on the appropriateness of designating Mexican sovereign debt as exempted securities even though its long-term debt is not rated in one of the two highest rating categories by at least two NRSROs. The Commission seeks additional comment on whether debt ratings should continue to be used in evaluating proposals to add countries to the Rule and what alternative criteria, such as volume and depth of trading or amount of outstanding debt, could be used.[16]

The Commission further seeks comment on the CME's proposal to develop a contract market for Mexican Brady bonds, in light of the domestic trading activity in the over-the-counter market for these bonds. Commentators also are invited to discuss any unique issues associated with Brady bonds.

V. Cost-Benefit Analysis

Preliminarily, the Commission believes that the proposed amendment offers potential benefits for U.S. investors. If adopted, the proposed amendment would allow U.S. boards of trade to offer in the United States, and U.S. investors to trade, a greater range of futures contracts on foreign government debt obligations.

The Commission does not anticipate that the proposed amendment would result in any direct cost for U.S. investors or others. The proposed amendment would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the proposed amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.[17]

The Commission solicits comments on the costs and benefits of the proposed amendment to Rule 3a12–8. Specifically, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors or others.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A.

VII. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VIII. Text of the Proposed Amendment

For the reasons set forth in the preamble, the Commission is proposing to amend Part 240 of Chapter II, Title 17 of the *Code of Federal Regulations* as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

* * * * *

2. § 240.3a12–8 is amended by removing the word "or" at the end of paragraph (a)(1)(xiv), removing the "period" at the end of paragraph (a)(1)(xv) and adding "; or" in its place, and adding paragraph (a)(1)(xvi) to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(xvi) the United Mexican States.

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[12] *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988) (Austria, Denmark, Finland, the Netherlands, Switzerland, and [West] Germany); Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (Republic of Ireland and Italy); Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994) (Kingdom of Spain).

[13] As of June, 1995, Standard and Poor's Corp. ("S&P") rated Mexico's long-term foreign currency debt BB and its long-term local currency debt BBB+. As of the same date, Mexico's Bonos de Desarrollo (Bondes) were rated Baa3 by Moody's Investors Service.

[14] *See* Securities Exchange Act Release No. 24428 (May 5, 1987), 52 FR 18237 (May 14, 1987).

[15] *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987).

[16] *See supra* notes 14 and 15 and accompanying text.

[17] The proposal represents the first time an emerging market sovereign debt would be added to the Rule. Additionally, the amendment would permit the trading of futures on Brady bonds. As noted above, the Commission is interested in the impact of this proposal on the objectives of the Rule.

By the Commission.

Dated: September 11, 1995.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 3a12–8 ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act") set forth in Securities Exchange Act Release No. 36213, which would define government securities of Mexico as exempted securities under the Exchange Act for the purpose of trading futures on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of futures contracts overlying the government securities of Mexico. Second, because futures contracts on the fifteen countries whose debt obligations are designated as "exempted securities" under the Rule, which already can be traded and marketed in the U.S., still will be eligible for trading under the proposed amendment, the proposal will not affect any entity currently engaged in trading such futures contracts. Third, because the level of interest presently evident in this country in the futures trading covered by the proposed rule amendment is modest and those primarily interested are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 27 CFR 240.0–10 and to the extent that it is defined for futures market participants in the Commodity Futures Trading Commission's "Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act."[18]

Dated: September 8, 1995.

Arthur Levitt, Jr.,

Chairman.

[FR Doc. 95–23019 Filed 9–15–95; 8:45 am]

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[18] 45 FR 18618 (April 30, 1982).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5296–2]

RIN 2060–AF33

Hazardous Air Pollutant List; Proposed Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule, upon promulgation, will amend the Clean Air Act (Act) list of hazardous air pollutants (section 112(b)(1), by removing the compound caprolactam (CAS No. 105–60–2). This action is being taken in response to a petition to delete the substance caprolactam which was filed by AlliedSignal, Inc., BASF Corporation, and DSM Chemicals North America under section 112(b)(3) of the Act. The EPA is granting the petition by issuance of this proposed rule. The decision to grant the petition is based on the Agency's examination of the available information concerning the potential hazards of and projected exposures to caprolactam. Based on this information, EPA has made an initial determination that there are adequate data on the health and environmental effects of caprolactam to determine that emissions, ambient concentrations, bioacccumulation, or deposition of the compound are not reasonably anticipated to cause adverse human health or environmental effects. This determination also takes into consideration the likelihood of adverse effects in light of the very limited potential for ambient inhalation exposure.

DATES: Written comments must be received on or before November 2, 1995. The EPA will hold a public hearing if EPA receives a written request for such a hearing on or before October 18, 1995. If a hearing is requested in a timely manner, EPA will keep the record open for thirty days after such hearing to receive rebuttal or supplementary information.

ADDRESSES: Submit written comments (duplicate copies preferred) to: Central Docket Section (A–130), Environmental Protection Agency, Attention: Docket No. A–94–33, 401 M St. SW., Washington, D.C. 20460. The docket includes a copy of the original petition, comments submitted concerning that petition, and additional materials supporting the proposed rule. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M St., SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy B. Pate, Office of Air Quality Planning and Standards, (MD–12), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5347.

SUPPLEMENTARY INFORMATION:

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I. Background

Section 112 of the Act contains a mandate for EPA to evaluate and control emissions of hazardous air pollutants. Section 112(b)(1) includes an initial list of hazardous air pollutants that is composed of specific chemical compounds and compound classes to be used to identify source categories for which the EPA will promulgate emissions standards. The listed categories are subject to emission standards subsequently developed under section 112. The EPA must periodically review the list of hazardous air pollutants and, where appropriate, revise this list by rule. In addition, any person may petition EPA under section 112(b)(3) to modify the list by adding or deleting one or more substances. A petitioner seeking to delete a substance must demonstrate that there are adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to human health or the environment. To sustain this burden, a petitioner must provide a detailed evaluation of the available data concerning the substance's potential adverse health and environmental effects, and estimate the potential exposures through inhalation or other routes resulting from emissions of the substance.

On July 19, 1993, EPA received a petition from AlliedSignal, Inc., BASF Corporation, and DSM Chemicals North America, Inc. ("petitioners"), to delete caprolactam (CAS No. 105–60–2) from the hazardous air pollutant list in section 112(b)(1), 42 U.S.C., section 7412(b)(1). Following receipt of the petition, EPA conducted a preliminary evaluation to determine whether the petition was complete according to Agency criteria. To be deemed complete, a petition must consider all available health and environmental effects data. A petition must also provide comprehensive emissions data, including current peak and annual average emissions for each source, and must estimate the resultant exposures of people living in the vicinity of the source. In addition, a petition must address the environmental impacts associated with emissions to the ambient air and impacts associated with the subsequent cross-media transport of those emissions. The EPA found the petition to delete caprolactam to be complete and published a notice of receipt and request for comments in the **Federal Register** on August 26, 1993 (58 FR 45081).

The EPA received ten submissions in response to the request for comments concerning the caprolactam petition. Eight of these submissions related to an AlliedSignal facility that emits caprolactam which is located in Irmo, South Carolina. A number of Irmo residents reported health problems that they believed were associated with caprolactam emissions from this plant. The EPA subsequently met with a local citizens' group, representatives of AlliedSignal, and the South Carolina Department of Health and Environmental Control to discuss the citizens' concerns regarding caprolactam emissions from the facility, and to explore mechanisms which could lead to prompt installation of additional controls of such emissions.

On March 13, 1995, EPA executed two detailed agreements with AlliedSignal concerning the Irmo manufacturing facility and another facility located in Chesterfield, Virginia, copies of which are included in the public docket for this rulemaking. AlliedSignal agreed that, if caprolactam is delisted pursuant to this proposal, AlliedSignal will install emissions controls which EPA believes are equivalent to the controls which would have been required had EPA issued a standard to control these sources under section 112. The agreed emissions controls will be incorporated in federally enforceable operating permits for the affected facilities, and will be in place years earlier than controls would have otherwise been required. In addition, AlliedSignal has agreed to establish a citizen advisory panel concerning the Irmo facility in order to improve communications with the community and to assure that citizens have an ongoing role in implementation of the agreed emission reductions.

II. Criteria for Delisting

Section 112(b)(2) of the Act requires EPA to make periodic revisions to the initial list of hazardous air pollutants set forth in section 112(b)(1) and outlines criteria to be applied in deciding whether to add or delete particular substances. Section 112(b)(2) identifies pollutants that should be listed as:

> * * * pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise * * *

To assist EPA in making judgments about whether a pollutant causes an adverse environmental effect, section 112(a)(7) defines an "adverse environmental effect" as:

> * * * any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

Section 112(b)(3) establishes general requirements for petitioning EPA to modify the hazardous air pollutant list by adding or deleting a substance. Although the Administrator may add or delete a substance on his own initiative, the burden is on a petitioner to include sufficient information to support the requested addition or deletion under the substantive criteria set forth in sections 112(b)(3) (B) and (C). The Administrator must either grant or deny a petition within 18 months of receipt. If the Administrator decides to grant a petition, the Agency publishes a written explanation of the Administrator's decision, along with a proposed rule to add or delete the substance. If the Administrator decides to deny the petition, the Agency publishes a written explanation of the basis for denial. A decision to deny a petition is final Agency action subject to review in the D.C. Circuit Court of Appeals under Section 307(b) of the Act.

To promulgate a final rule deleting a substance from the hazardous air pollutant list, section 112(b)(3)(C) provides that the Administrator must determine that:

> * * * there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

The EPA will grant a petition to delete a substance, and publish a proposed rule to delete that substance, if it makes an initial determination that this criterion has been met. After affording an opportunity for comment and for a hearing, EPA will make a final determination whether the criterion has been met.

The EPA does not interpret section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects on human health or the environment before it may be deleted from the list. The use of the terms "adequate" and "reasonably" indicate that the Agency must weigh the potential uncertainties and their likely significance. Uncertainties concerning the risk of adverse health or environmental effects may be mitigated if EPA can determine that projected exposures are sufficiently low to provide reasonable assurance that such adverse effects will not occur. Similarly, uncertainties concerning the magnitude of projected exposures may be mitigated if EPA can determine that the levels which might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels. However, the burden remains on a petitioner to resolve any critical uncertainties associated with missing information. The EPA will not grant a petition to delete a substance if there are major uncertainties which need to be addressed before EPA would have sufficient information to make the requisite determination.

III. Summary of the Petition

The petition to delete caprolactam stated that the petitioners comprise 100 percent of the U.S. caprolactam producers and caprolactam by-product ammonium sulfate manufacturers, 88 percent of the Nylon 6 fiber producers, 72 percent of the Nylon 6 plastic producers, and the only major supplier of Nylon 6 films. The petition contained the following information:

(A) Identification and location of all facilities producing or using caprolactam;

(B) Estimated current and future air emissions of caprolactam, atmospheric modeling and monitoring data supporting the estimation of peak short-term and annual average ambient concentrations, estimates of the number people potentially exposed to those concentrations, and estimated deposition of caprolactam to the land and surface water;

(C) Documentation of a literature search conducted within 6 months prior to the petition filing, including identification of the data bases searched, the search strategy, and printed results;

(D) Printed copies of all human, animal, in vitro, or other toxicity studies cited in the literature search. In addition, the petition contained unpublished occupational health data and studies collected at the AlliedSignal facility in Hopewell, Virginia;

(E) Printed copies of environmental effect data characterizing the fate of caprolactam when it is released into the atmosphere. This information includes atmospheric residence time, solubility, phase distribution, vapor pressure, octanol/water partition coefficient, particle size, adsorption coefficients, information on atmospheric transformations, potential degradation or transformation products, and bioaccumulation potential; and

(F) A list of all support documents in the petition.

IV. EPA Analysis of Petition

A. Hazard Evaluation

The EPA reviewed the discussion of health effects in the petition and determined that it comprehensively describes the toxicologic and epidemiologic data concerning caprolactam which is currently available. There is extensive toxicologic information concerning caprolactam, but most of the available studies involve ingestion rather than inhalation of the substance.

The toxicologic information on ingestion of caprolactam includes long-term bioassays in mice and rats, a three generation reproduction study in rats, subchronic studies in rats, developmental toxicity studies in rats and rabbits, and even administration to humans. In general, the oral studies indicate that caprolactam has low toxicity. In the available studies, caprolactam was not found to be carcinogenic or mutagenic. Caprolactam caused neurotoxicity in some acute studies at high doses. The most sensitive endpoint in the available oral studies was reduced mean body weight of offspring in a reproductive study in rats (no observed adverse effect level of 50 mg/kg/day).

The no-observed adverse effect level (NOAEL) for reduced mean body weight of offspring in the rat study was used by EPA to derive its current reference dose (RFD) for caprolactam of 0.5 mg/kg/day. The RFD is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of the daily exposure to the human population (including sensitive subpopulations) that is likely to be without deleterious effects during a life time. The EPA has assigned a "high" confidence level to the RFD for oral exposure to caprolactam.

The available animal data on inhalation of caprolactam consist of two acute toxicity studies, one in guinea pigs and the other in rats. Caprolactam is a highly water soluble solid with a very low vapor pressure at ambient temperatures. These physical properties make it difficult to generate stable atmospheres of caprolactam for use in inhalation toxicity studies and to exclude secondary exposure to caprolactam by other routes.

Given the present lack of suitable inhalation data, EPA concluded that derivation of an inhalation reference concentration (RfC) for caprolactam was infeasible. The petitioners sought to derive an equivalent human inhalation dose from the oral RFD for caprolactam by adjusting for human body weight and inhalation rate. The similarity between the LC_{50} by the inhalation route and the LD_{50} by the oral route in rats does not suggest any important differences in systemic effects from acute exposures between the two routes. However, it is inappropriate to utilize an inhalation dose derived from the oral RFD for all potential adverse effects because caprolactam is a respiratory irritant. Portal of entry effects preclude use of route-to-route extrapolation for such a purpose. Moreover, any comparison between the oral and inhalation routes must consider the possibility of pharmacokinetic and metabolic differences between the routes.

As noted above, the most sensitive endpoint in the available oral studies was reduced mean body weight of offspring in a reproductive toxicity study in rats (no observed adverse effect level of 50 mg/kg/day). The EPA is reluctant to make quantitative comparisons between the oral and inhalation routes and EPA has been unable to validate any general procedures for extrapolation between these routes. Although EPA considers it questionable to evaluate inhalation risks for many chronic effects based on oral data, EPA sometimes evaluates the risk of developmental/reproductive effects by the inhalation route based on an appropriate oral study. In this instance, the oral NOAEL of 50 mg/kg/day would be equivalent to approximately 175 mg/m^3, after adjusting for a human body weight of 70 kg, 100 percent absorption, and a human inhalation rate of 20 m^3/day.

Limited occupational studies of workers with chronic caprolactam exposure have not found any measurable change in pulmonary function compared to matched controls. Chronic workplace exposures to caprolactam in these studies ranged as high as 9,900 μg/m^3 (9.9 mg/m^3). However, respiratory tract irritation from caprolactam vapor has been recorded to occur in workers at 46 mg/m^3. The recommended worker exposure limit for caprolactam vapor, established to reduce the potential for irritation, is 23 mg/m^3 (ACGIH TWA). Both concentrations are far below the figure of 175 mg/m^3 extrapolated above.

B. Exposure Evaluation

The primary use of caprolactam is as the monomer for manufacture of Nylon 6 fiber, resin, and film. Approximately 83 percent of domestically-manufactured caprolactam is used in the production of Nylon 6 fibers, and virtually all of the rest is used to produce Nylon 6 resins and films.

The EPA believes that inhalation is the only important route of nonoccupational exposure resulting from caprolactam emissions. Dermal absorption is likely to be insignificant compared to inhalation. The rapid biodegradation of caprolactam in water as well as the ease of treatability in sewage treatment systems indicates that humans are unlikely to be exposed to significant amounts of caprolactam in drinking water. In addition, caprolactam emitted to the air would be unlikely to concentrate in food sources.

The EPA source category list identifies three categories of sources which emit caprolactam: caprolactam manufacturers, ammonium sulfate manufacturers, and Nylon 6 manufacturers. In their petition, the petitioners evaluated caprolactam releases by each of these types of facilities, as well as two additional categories of facilities: Nylon 6 film manufacturers and facilities that heat set Nylon 6 fiber as part of the manufacture of other products.

The highest annual emissions of caprolactam by an individual facility reported in the petition were at the AlliedSignal Nylon 6 manufacturing plants in Chesterfield, Virginia (233.5 tons/year), and Irmo, South Carolina (164.4 tons/year). As noted above, AlliedSignal has committed to install emission controls at each of these facilities which will be fully operational well before any controls would be required based on any standard promulgated under section 112. These commitments will be implemented through legally enforceable permit terms and are expected to reduce aggregate caprolactam emissions (including uncontrolled fugitive emissions) at these facilities by more than one half, to approximately 111 tons/year and 79 tons/year.

The petitioners presented modeled maximum exposure levels for every major source of caprolactam (sources emitting more than 10 tons annually). The highest estimated caprolactam exposures were for AlliedSignal's Chesterfield manufacturing facility, at which the petitioners estimated that the maximum 1-hour concentration would be 1107.8 $\mu g/m^3$ and the maximum annual concentration would be 44.7 $\mu g/m^3$. After controls are installed at the Chesterfield and Irmo facilities, the projected maximum 1-hour concentrations will be 543 $\mu g/m^3$ and 482 $\mu g/m^3$ respectively, and the projected maximum annual concentrations will be 19 $\mu g/m^3$ and 21 $\mu g/m^3$.

Once the agreed emission controls are installed at the AlliedSignal facilities, the highest modeled caprolactam concentrations will be at certain of the facilities that heat set Nylon 6 fiber. However, the annual caprolactam emissions at these facilities will still be less than the emissions at the AlliedSignal manufacturing facilities, even after controls have been installed at the AlliedSignal facilities. The higher modeled concentrations at facilities that heat set Nylon 6 fiber reflect the more conservative modeling techniques used for these facilities (the petitioners used ISCST modeling for their own manufacturing facilities and Tier II screen modeling for other sources).

C. Human Risk Determination

The maximum modeled concentrations for caprolactam of approximately 1 mg/m^3 for 1-hour, 0.25 mg/m^3 for 24-hour, and 0.05 mg/m^3 for annual are well below the lowest documented nose and throat irritation level of 46 mg/m^3. Moreover, the emission controls which AlliedSignal has agreed to install at its manufacturing facilities will significantly reduce the prospect that any person will be exposed to caprolactam concentrations as great as the maximum estimates presented in the petition.

As noted above, some citizens living near the AlliedSignal facility in Irmo, South Carolina, report that they have experienced adverse health effects in the past which they believe are a result of caprolactam emissions from that facility. The EPA has discussed these concerns at length with local citizens, and has made considerable efforts to assure that prompt and enforceable reductions in caprolactam emissions are achieved at the Irmo facility. However, EPA cannot conclude that there is any relation between caprolactam emissions and the reported health effects based on the information currently available. In 1993, in response to the concerns of citizens living near the Irmo facility, the Agency for Toxic Substance and Disease Registry (ATSDR) conducted a preliminary screening study and recommended that a full study not be conducted since "the concentrations of hazardous substances found in the ambient air sampling were not of health concern and were not plausibly related to the release of hazardous substances." While the ATSDR investigators acknowledged that hazardous substances were present in air releases from the facility, they also stated that the reported symptoms could be associated with naturally occurring allergens in the local environment.

The available oral toxicology data do not suggest that caprolactam is appreciably toxic in humans or test animals. The emission controls which AlliedSignal has agreed to install at its manufacturing plants should further reduce the prospect for actual exposures as great as the maximum exposures estimated in the petition. Even though extrapolation of oral data to the inhalation route of exposure is suspect and uncertainties remain about portal of entry effects from long-term exposure, the available information as a whole indicates that adverse health effects would not be reasonably anticipated in the human populations located near facilities emitting caprolactam. This conclusion is reinforced by consideration of the likelihood of adverse effects given the very limited potential for ambient inhalation exposure. Based on this information, EPA has made an initial determination that there are adequate data on the health and environmental effects of caprolactam to determine that emissions, ambient concentrations, bioacccumulation, or deposition of caprolactam are not reasonably anticipated to cause adverse human health effects.

As explained above, the physical properties of caprolactam tend to make additional inhalation testing difficult to conduct and to interpret. As a result of discussions with EPA, the petitioners conducted an inhalation feasibility study and have now agreed to conduct a 90-day subchronic inhalation study in rats. The variations in exposure concentrations at the targeted exposure levels in the 90 day subchronic inhalation study will likely be high. In addition, the inhalation concentrations generated may not reach the levels which would cause any of the potential systemic effects predicted by studies using the oral route but may achieve concentrations that would produce portal of entry effects.

The EPA anticipates that the results from the 90-day study which the petitioners have agreed to conduct will not materially alter the current EPA assessment. Moreover, EPA does not intend to defer final action in this rulemaking pending submission and analysis of the results from this inhalation study. If the results of this study indicate that there are portal of entry effects or systemic effects from inhalation exposure at levels significantly below those suggested by the Agency's present assessment, EPA will review any final action taken in this rulemaking in light of such data.

D. Environmental Effects

In order to delete a substance from the hazardous air pollutant list, EPA must also evaluate potential environmental effects associated with emissions of the substance. In the case of caprolactam, the information in the petition demonstrates that caprolactam will be rapidly degraded, and is not likely to bioaccumulate, in aquatic ecosystems. Caprolactam also has low toxicity to fish, invertebrates, and higher terrestrial plants. Based on this information, EPA has made an initial determination that there are adequate data on the health and environmental effects of caprolactam to determine that emissions, ambient concentrations, bioacccumulation, or deposition of caprolactam are not reasonably anticipated to cause environmental effects.

V. Proposal to Delete

The EPA hereby proposes to modify the Act list of hazardous air pollutants (section 112(b)(1), 42 U.S.C. 7412(b)(1)) by deleting the compound caprolactam (CAS No. 105–60–2).

VI. Interim Relief

Although EPA has proposed to modify the hazardous air pollutant list by deleting caprolactam, it will remain on the list for most purposes during the pendency of the rulemaking initiated by this notice. However, if caprolactam remains on the hazardous air pollutant list for all purposes during the pendency of the rulemaking to delist caprolactam, certain facilities which would not otherwise be required to obtain operating permits under title V of the Act will be required to prepare and submit applications for operating permits. The EPA has determined that retention, during the rulemaking to delist caprolactam, of permit application requirements which will no longer exist after the delisting process has been completed would result in unnecessary private and public expenditures on preparation, submission, and processing of such applications, and would yield no environmental benefits.

Because retention of the listing of caprolactam for purposes of determining the applicability of title V operating permit requirements during the rulemaking to delist would be burdensome and costly, and would not effectuate the objectives of the Act, and because it would be impracticable and contrary to the public interest to defer administrative relief until after the rulemaking has been completed, EPA has determined that there is good cause to immediately suspend the listing of caprolactam for this limited purpose. Accordingly, EPA is today suspending the listing of caprolactam, for the duration of the rulemaking to delist caprolactam, for purposes of determining the applicability of title V permitting requirements. This action provides sensible regulatory relief for those facilities which manufacture or utilize Nylon 6 products, and who will not otherwise be subject to title V requirements once the delisting of caprolactam has been completed. Any facilities which emit caprolactam but which are otherwise subject to title V requirements are not affected by this action, and must satisfy the applicable permitting requirements.

While the proposed rule to delist caprolactam is pending, State permitting authorities should make any revisions or adjustments in their title V operating programs necessary to implement today's action suspending caprolactam from the hazardous air pollutant list for purposes of determining the applicability of permitting requirements. In the event that the Agency decides at the conclusion of the rulemaking not to delete caprolactam from the list, the Agency will work with affected facilities and State permitting authorities to assure that any title V requirements resulting solely from that decision are implemented in a fair and orderly manner.

VII. Miscellaneous

A. Executive Order 12866

Under Executive Order 12866 (58 FR 57735, October 4, 1993), the Agency must determine whether this regulation, if promulgated, is "significant" and therefore subject to review by the Office of Management and Budget under the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action will not result in an annual effect on the economy of $100 million or another adverse economic impact, does not create a serious inconsistency or interfere with another agency's action, and does not materially alter the budgetary impacts of entitlements, grants, user fees, etc. However, since this proposal reflects the Agency's first decision to grant a petition to modify the hazardous air pollutant list, EPA has concluded that it might be construed as raising novel legal or policy issues and has therefore submitted the proposal for OMB review under Executive Order 12866.

B. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities. However, section 605(b) of the Act provides that an analysis not be required when the head of an agency certifies that the rule will not, if promulgated, have a significant impact on a substantial number of small entities.

Because adoption of this proposal would reduce regulatory burdens which would otherwise result from retention of caprolactam on the hazardous air pollutant list, EPA believes that this rule will have no adverse effect on small businesses. For the preceding reason, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a written statement to accompany any rules that have "Federal mandates" that may result in the expenditure by the private sector of $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising small governments that may be significantly and uniquely affected by the rule.

The Unfunded Mandates Act defines a "Federal private sector mandate" for regulatory purposes as one that, among other things, "would impose an enforceable duty upon the private sector." This proposal to modify the hazardous air pollutant list to delete caprolactam is deregulatory in nature and does not impose any enforceable duties upon the private sector. Therefore, this rulemaking is not a "Federal private sector mandate" and is not subject to the requirements of section 202 or section 205 of the Unfunded Mandates Act. As to section 203, EPA finds that small governments will not be significantly and uniquely affected by this rulemaking.

Dated: September 8, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–22954 Filed 9–15–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 70

[AD-FRL-5296-6]

Clean Air Act Proposed Interim Approval of the Operating Permits Program; Arizona Department of Environmental Quality, Maricopa County Environmental Services Department, Pima County Department of Environmental Quality, Pinal County Air Quality Control District, Arizona: Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Extension of comment period.

SUMMARY: The EPA is extending the comment period for a proposed rule published July 13, 1995 (60 FR 36083) in which EPA proposed interim approval of the title V operating permits program submitted by the State of Arizona. The Arizona program is comprised of programs from the Arizona Department of Environmental Quality, the Maricopa County Environmental Services Department, the Pima County Department of Environmental Quality, and the Pinal County Air Quality Control District.

At the request of the Arizona Center for Law in the Public Interest, EPA is

extending the comment period for 30 days.

DATES: The comment period on the proposed rule is extended until September 25, 1995.

ADDRESSES: Comments should be addressed to Regina Spindler, Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Regina Spindler at (415) 744–1251.

Dated: September 5, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–23108 Filed 9–15–95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 941084–4284; I.D. 083095C]

Endangered and Threatened Species; Proposed Threatened Status for Southern Oregon and Northern California Steelhead

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Supplementary proposed rule; request for comments.

SUMMARY: NMFS is issuing this supplementary proposed rule to rectify the inadvertent omission of proposed protective regulations from the proposed rule to protect natural steelhead (*Oncoryhnchus mykiss*) populations occurring between Cape Blanco, OR, and the Klamath River Basin in Oregon and California inclusive; hereinafter referred to as the Klamath Mountains Province (KMP). The species was proposed for listing as threatened under the Endangered Species Act (ESA) of 1973 on March 16, 1995. Public comments on the supplementary proposed rule are being accepted.

DATES: Comments must be received by October 16, 1995.

ADDRESSES: Comments on the language in this supplementary proposed rule only should be sent to Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin,503–231-2005; R. Craig Wingert, 310–980–4021; or Marta Nammack, 301–713–1401.

SUPPLEMENTARY INFORMATION: The KMP steelhead "species (distinct population segment)" was proposed for listing under the ESA on March 16, 1995 (60 FR 14253). The **Federal Register** document of that proposal should be consulted for all relevant background information.

Public Comments Solicited

To ensure that the final action resulting from the KMP steelhead proposed rule will be as accurate and as effective as possible, NMFS is soliciting comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties (see **ADDRESSES**) regarding this supplementary proposed rule. The final decision on the KMP steelhead proposal will take into consideration the comments received during the initial comment period, comments on this supplementary proposed rule and any additional information received by NMFS, and may differ from the proposed rule.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v.

Andrus, 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of National Environmental Policy Act (48 FR 4413, February 6, 1984).

This proposed rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: September 11, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Section 227.21 is revised to read as follows:

§ 227.21 Threatened Salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to threatened species of salmon listed in § 227.4(g), except as provided in paragraph (b) of this section.

(b) *Exceptions.* The exceptions of section 10 of the Act (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations implementing such exceptions, also apply to the threatened species of salmon listed in § 227.4(g). This section supersedes other restrictions on the applicability of parts 217 and 222 of this chapter, including, but not limited to, the restrictions specified in § 217.2 and 222.22(a) of this chapter with respect to the species identified in § 227.21(a).

[FR Doc. 95–23034 Filed 9–15–95; 8:45 am]

BILLING CODE 3510-22-F

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50 CFR Part 649

[Docket No. 950912229–5229–01; I.D. 082895B]

RIN 0648–AF39

Management Options for the American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS is seeking comment on options for improving management of the American lobster fishery. Two options specifically being considered are withdrawing the American Lobster Fishery Management Plan (FMP) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implementing regulations to govern the lobster fishery under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), or preparing a Secretarial amendment to the FMP under the Magnuson Act.

DATES: Written comments on this ANPR must be received on or before November 2, 1995.

ADDRESSES: Comments on the ANPR should be sent to Dr. Andrew A. Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Dr., Gloucester, MA 01930. Copies of current Effort Management Team (EMT) proposals or Amendment 5 to the American Lobster Fishery Management Plan are available from Douglas

Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

The American lobster fishery is prosecuted primarily in state waters, and is managed under an FMP developed by the New England Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC). The primary objective of the FMP is to serve as a vehicle for coordinated management of the American lobster fishery throughout its range, which encompasses both inshore waters under state jurisdictions and offshore waters under Federal jurisdiction. Because the lobster resource supports important inshore fisheries for States from Maine through New Jersey, these States have developed regulations in compliance with the ASMFC Interstate Management Plan. The Federal FMP and regulations both strengthen and unify the state programs by implementing complementary measures in Federal waters.

In 1993, an assessment of the status of the lobster resource determined that it is overfished. In response, the Council developed Amendment 5 to the FMP, which was implemented on July 20, 1994 (59 FR 31938, June 21, 1994). Amendment 5 established a limited access permit system and an EMT for each of the four management areas. EMTs were made up of industry members, state and Federal government personnel, and Council staff. This approach provided a unique opportunity for members of the industry to participate directly in the development of management measures. Each EMT was required to develop a stock rebuilding program for its area and make recommendations to the Council by January 20, 1995 (50 CFR 649.43(a)). The Council would then determine whether to adopt or modify the EMT's recommendations, provide opportunity for public testimony, and submit management measures sufficient to achieve the objectives of the FMP to the Director, Northeast Region, NMFS (Regional Director), on or before July 20, 1995 (§ 649.43(c)). If the Council failed to submit management measures sufficient to achieve the objectives of the FMP on or before July 20, 1995, NMFS, acting on behalf of the Secretary of Commerce, was to determine whether to prepare an amendment to the FMP (§ 649.42(a)(3)) (Secretarial amendment).

The EMT proposals were submitted on schedule. However, on June 28–29, 1995, the Chair of the Council's Lobster Oversight Committee reported that it would not meet the July 20, 1995, deadline. In addition, several state directors informed the Council that they would be unable to implement the EMT proposals, specifically with reference to achieving the fishing mortality rate reduction rates and administration of a trap-tag system embodied in Amendment 5. Consequently, as called for by Amendment 5, NMFS must now consider whether to prepare a Secretarial amendment or take other action, which could include the option of withdrawal of the FMP.

Options

FMP Withdrawal

One option available to NMFS is to withdraw the FMP and implement regulations under the ACFCMA. Under ACFCMA, these regulations must be: (1) Necessary to support the effective implementation of an ASMFC Interstate Fishery Management Plan and (2) consistent with the national standards set forth in section 301 of the Magnuson Act. These regulations could include continuation of the limited access permit system as well as implementation of the EMT proposals to the extent that such proposals are consistent with ACFCMA. This option would remove management responsibility for the lobster fishery from the Council's purview.

Secretarial Amendment

A second option provided under the Magnuson Act is for NMFS to prepare a Secretarial amendment to the existing FMP, in accordance with the national standards, the other provisions of the Magnuson Act, and any other applicable law. The Magnuson Act provides that such action can be taken if the Council fails to develop and submit, after a reasonable period of time, any necessary amendment to an FMP, if the fishery requires conservation and management.

Under this option, a Secretarial amendment could maintain current regulations, such as the limited access permit system, and implement some or all of the measures proposed by the EMTs as deemed consistent with the objectives of the FMP. However, without the full commitment by the States to implement complementary measures to an FMP amendment, the EMT proposals may no longer be sufficient to achieve the fishing mortality reduction goals. Therefore, additional measures, such as time and/or area closures, for federally permitted vessels would be considered. Under this option, the Council would have the opportunity to comment on a Secretarial amendment and to amend the FMP in the future.

Request for Comments

NMFS is interested in receiving comments on the options explained above. The options discussed are not all-inclusive; suggestions for alternative approaches are encouraged. After consideration of the comments, NMFS will decide whether to proceed with any of the options above or other options, as appropriate.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 5101 *et seq.*

Dated: September 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–23120 Filed 9–15–95; 8:45 am]

BILLING CODE 3510-22-F

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50 CFR Parts 672 and 675

[Docket No. 950905225–5226–01; I.D. 083095A]

RIN 0648–AH00

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Extension of Allocations to Inshore and Offshore Components

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS publishes a proposed rule that would implement through December 31, 1998, allocations of Pacific cod and pollock for processing by the inshore and offshore components in the Gulf of Alaska (GOA) and pollock for processing by the inshore and offshore components in the Bering Sea and Aleutian Islands management area (BSAI). It would also continue the Western Alaska Community Development Quota (CDQ) Program. These provisions are contained in proposed Amendment 40 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and proposed Amendment 38 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, which the North Pacific Fishery Management Council (Council) has submitted to NMFS for review and approval under the Magnuson Fishery Conservation and Management Act (Magnuson Act). If

approved, these amendments would continue measures that were contained in Amendments 18 and 23 to the GOA and BSAI FMPs, respectively. The proposed rule is intended to promote management and conservation of groundfish, enhance stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries.

DATES: Comments are invited on or before November 2, 1995.

ADDRESSES: Send comments to Ronald J. Berg, Chief, Fisheries Management Division, Attn: Lori Gravel, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 or deliver them to Room 457, Federal Building, 709 W. 9th Street, Juneau, AK. Individual copies of the proposed amendments and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Send comments and suggestions regarding Paperwork Reduction Act (PRA) requirements to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed under the BSAI and GOA FMPs. Both FMPs were prepared by the Council under authority of the Magnuson Act. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92, 50 CFR part 672, and 50 CFR part 676; the BSAI FMP, at 50 CFR 611.93, 50 CFR part 675, and 50 CFR part 676. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fisheries for pollock (*Theragra chalcogramma*) and Pacific cod (*Gadus macrocephalus*) and the affected human environment are described in the FMPs, in the environmental impact statements prepared by the Council for each FMP, and in the EA/RIR/IRFA prepared for this action.

Amendments 38 and 40 will extend the provisions of Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP. The only significant change is moving the western border of the Catcher Vessel Operational Area (CVOA) 30 minutes to the east, from 168°00′ to 167°30′ W. long. Because Amendments 18 and 23 and their implementing regulations expire on December 31, 1995, and because the Council has yet to complete development of its comprehensive plan to address problems caused by the open access nature of the Alaska groundfish fisheries, the Council voted unanimously at its June 1995 meeting to extend the provisions of the expiring amendments through December 31, 1998, by Amendments 38 and 40.

The problems and issues addressed by Amendments 38 and 40 are discussed in the proposed rule notice for Amendments 18 and 23 (56 FR 66009, December 20, 1991; corrected at 57 FR 2814, January 23, 1992), the final rule implementing Amendment 23 and the initially approved portions of Amendment 18 (57 FR 23321, June 3, 1992); a proposed rule to implement a revision of the parts of Amendment 18 that were disapproved earlier (57 FR 46133 (October 7, 1992); and a final rule to implement the revised parts of Amendment 18 (57 FR 61326, December 24, 1992; corrected at 58 FR 14172, March 16, 1993).

The following text covers separately two issues. The first addresses the allocation of Pacific cod and pollock for processing by the inshore and offshore components in the GOA and pollock for processing by the inshore and offshore components in the BSAI. The second addresses the Western Alaska Community Development Program and its allocation of pollock.

1. The Inshore-Offshore Issue

A. Summary of the Inshore-Offshore Issue of Amendments 18 and 23

Early in 1989, several catcher-processor vessels (factory trawlers) harvested substantial amounts of pollock in the BSAI and GOA. This large, quick harvest forced an early closure of the GOA pollock fishery and prevented inshore harvesters and processors from realizing their anticipated economic benefit from pollock later in the fishing year. Thus, at the April 1989 Council meeting, fishermen and processors from Kodiak Island requested that the Council consider specific allocations of fish for processing by the inshore and offshore components of the fishery to prevent future preemption of resources by one sector of the industry. The Council considered the request and the impacts on coastal community development and stability of the fisheries and prepared Amendments 18 and 23.

NMFS' review of the amendments began on December 1, 1991. On March 4, 1992, the NMFS approved the proposed pollock and Pacific cod allocations for the GOA and the proposed pollock allocation for the BSAI for 1992, but disapproved the proposed allocations for the BSAI in 1993 through 1995. The approved allocations were implemented on June 1, 1992 (57 FR 23321, June 3, 1992).

In his March 4, 1992, letter notifying the Council of his approval of Amendment 23 and partial disapproval of Amendment 18, the Under Secretary and Administrator of NOAA (Administrator) stated that NOAA is not opposed to the concept of an allocation between onshore and offshore interests as an interim measure pending development of a solution to overcapitalization—ideally, a market-based solution. NMFS' disapproval of the BSAI pollock allocations for 1994 and 1995 was based in part on a cost-benefit analysis prepared by NMFS that indicated a significant net economic loss to the Nation under the proposed allocations for years 1993 through 1995. The Administrator urged the Council to work as expeditiously as possible toward some other method of allocating fish than either the olympic system or direct government intervention. Meanwhile, he noted, preventing preemption by one fleet of another, safeguarding capital investments, protecting coastal communities that are dependent on a local fleet, and encouraging fuller utilization of harvested fish are desirable objectives that are provided for under the Magnuson Act.

At its April 21–26, 1992, meeting, the Council considered the NMFS' actions and recommendations and decided to revise Amendment 18. The Council supplemented its previous analysis of allocation alternatives for the original Amendments 18 and 23.

At a special meeting to consider this issue on August 4–5, 1992, the Council again considered the comments of its advisory bodies and the public, adopted its preferred alternative, and submitted it to NMFS as revised Amendment 18. This action would have allocated pollock in the BSAI for processing by the inshore and offshore components, respectively, of 35 percent and 65 percent in 1993, and of 37.5 percent and 62.5 percent in 1994 and 1995. In addition, it would have created a catcher vessel operational area for the second season pollock fishery in the years 1993 through 1995, and it would have allowed vessels in the offshore component that process only (i.e., motherships) to operate in the CVOA so that the catcher vessels that deliver to these vessels also could operate in the CVOA.

In September 1992, the Council submitted revised Amendment 18 to NMFS for review, approval, and implementation under section 304(a) of the Magnuson Act.

On November 23, 1992, after careful consideration of the revised amendment, public comments, the record developed by the Council, and the analyses of the potential effects of the proposed amendment, NMFS approved pollock allocations of 35 percent for processing by the inshore component and 65 percent for processing by the offshore component for the years 1993 through 1995. NMFS also approved the CVOA, including the provision that motherships could operate within that area, and certain other changes of the regulations proposed by NMFS to clarify the regulations implementing Amendments 18 and 23. The final rule implementing these decisions became effective January 19, 1993 (57 FR 61326, December 24, 1992).

B. The Need for and Development of Amendments 38 and 40

The Council stipulated (e.g., sections 14.4.11.7, BSAI FMP) that Amendments 18 and 23 would expire on December 31, 1995, or earlier if replaced with another management regime approved by NMFS. It did so with the understanding that by December 31, 1995, it would have adopted and NMFS would have approved a more comprehensive long-term management program to address the overcapitalization and allocation problems facing the industry, not only for pollock and Pacific cod, but for all groundfish and crab under the Council's authority.

The Council has made some progress on its long-term plan. For example, in June 1995 it adopted a license-limitation programs for the groundfish and crab fisheries. However, the Council estimates that it will take 2 or 3 more years to develop and implement a comprehensive management regime. Consequently, the Council decided it would be necessary to extend the provisions of Amendments 18 and 23 for an additional 3 years to maintain stability in the industry, facilitate further development of the comprehensive management regime, and allow for realization of the goals and objectives of the pollock CDQ program. In making this decision, the Council continued the mandate it established for itself in 1992 when it recognized that a more permanent solution to overcapacity and preemption was needed.

The Council decided that if the provisions of Amendments 18 and 23 expired, then the fishery would return to the "free-for-all" state it was in before Amendments 18 and 23, and the inshore sector again would be faced with the threat of preemption by the large and efficient offshore sector. Thus, the Council began the process to extend the provisions of Amendments 18 and 23.

In June 1994, the Council reaffirmed that its staff should begin analyzing the impacts of the potential extension of Amendments 18 and 23, including the CDQ program in the BSAI. At its October 1994 meeting, the Council identified this issue as highest priority for analysis. In December 1994, the Council presented a draft statement of the problem and reviewed a plan for analyzing the merits and impacts of continuing Amendments 18 and 23. It also requested a detailed reexamination of the CVOA. Further, it identified the treatment of vessels that fish with longline gear and freeze their catch for possible reevaluation under the definitions of inshore and offshore components. At its January 1995 meeting, the Council reviewed a detailed outline for the analyses and noted that the formal analyses would be presented at its April 1995 meeting, the analyses would undergo public review and comment, and the Council would make its final decision in June 1995. At its April 1995 meeting, the Council released a draft EA and RIR of the proposed reauthorization of Amendments 18 and 23 for public review.

Finally, at its meeting in June 1995, the Council reviewed written comments and considered testimony presented at the meeting by the public and its advisory bodies. It voted unanimously to reauthorize the provisions of Amendments 18 and 23 through December 31, 1998, with two changes. First, it moved the western boundary of the CVOA 30 minutes to the east. Second, it allowed catcher-processor vessels to use the CVOA if the pollock quota for processing by the inshore sector had been harvested for the year.

The Council decided to move the western boundary of the CVOA 30 minutes to the east because (a) that part of the CVOA between 168°00′ W. long. and 167°30′ W. long. was not being used by catcher vessels delivering to inshore processors, (b) some operators of catcher-processor vessels of the offshore component requested that they be allowed to operate there, and (c) the area was not critical for protected species.

In deciding to move the western boundary, the Council considered the impact of this move on the accounting of chum salmon caught as bycatch and the chum salmon savings area (§ 675.22(h)). An analysis of chum salmon bycatch data led the Council to conclude that moving the western boundary would have no significant impact on the controls governing chum salmon bycatch.

Furthermore, because the CVOA and statistical area 518 (the Bogoslof District) overlapped, probably only the northern half of the area removed from the CVOA would be open to the offshore component. Roughly the southern half of the area is in statistical area 518 and is closed to directed fishing for pollock under 1995 regulations (60 FR 8479, February 14, 1995), and likely will be closed to directed fishing for pollock in 1996, 1997, and 1998.

C. Summary of Amendments 38 and 40

Because Amendments 18 and 23 were due to expire on December 31, 1995, the June 1995 Council action led to new amendments. The provisions of Amendment 18 became the basis of Amendment 38, and those of 23 became the basis of Amendment 40. The only significant difference between Amendments 18 and 23 and Amendments 38 and 40 is that Amendment 38 moves the western boundary of the CVOA.

Thus, in the BSAI, the apportionments of pollock for domestic processing in each subarea or district and each season would be allocated 35 percent for processing by the inshore component and 65 percent for processing by the offshore component. The western border of the CVOA is moved 30 minutes to the east, from 168°00′ to 167°30′ W. long., thereby reducing its area by about 15 percent. The CVOA will exist from the start of the second season for directed pollock fishing (§ 675.23(e)) until the quota of pollock for processing by the inshore component has been harvested for the year or until December 31. Processor vessels of the offshore component would be allowed to conduct directed fishing operations for pollock in the CVOA only when they were operating under a valid Community Development Plan. Processor vessels in the offshore component that do not catch groundfish would be allowed to process pollock in the CVOA.

In the GOA, the apportionment of pollock for domestic processing in all regulatory areas will be allocated entirely for processing by the inshore component after subtraction of an amount that is projected by the Director, Alaska Region, NMFS (Regional Director) to be caught by or delivered to the offshore component incidental to directed fishing for other groundfish species. The apportionment of Pacific cod for domestic processing in all regulatory areas will be allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component.

In both amendments the definitions of the terms "inshore component" and "offshore component" are clarified. Also, both amendments continue the requirement that processor vessels will be included with the inshore component or the offshore component based upon a declaration by the owner of that vessel on the annual application for a Federal permit (§§ 672.4 and 675.4).

Separately, Amendment 40 changes two sections of the GOA FMP. First, section 4.3.1.1, Permit Requirements, is revised to emphasize that certain permits are required of participants in the GOA groundfish fisheries. These requirements are found in regulations implementing the GOA FMP. Second, section 4.3.1.6, Inshore/offshore allocations of pollock, is amended by revising the heading to include Pacific cod, by rewriting the text for clarity, and by noting that the provisions of the section will end on December 31, 1998, or earlier if replaced with another management regime approved by NMFS.

Along the same lines, Amendment 38 changes two sections of the BSAI FMP. First, section 14.4.1, Permit requirements, is also revised to emphasize that certain permits are required of participants in the BSAI groundfish fisheries, and that these requirements are found in regulations implementing the BSAI FMP. Second, section 14.4.11, Inshore/offshore allocations of pollock, is rewritten for clarity and to note that the provisions of the section will end on December 31, 1998, or earlier if replaced with another management regime approved by NMFS. Further, Amendment 38 revises § 14.4.11.6, Bering Sea Catcher Vessel Operational Area, moving the western boundary of the CVOA 30 minutes longitude to the east.

Regulations are also proposed to continue the delay in the opening of the first directed fishery for pollock until February 5 for vessels used before January 26 to fish for BSAI or GOA groundfish or BSAI king or Tanner crab. The Council voted at its June 1994 meeting to change the start of the first directed fishery for pollock (the "A-Season" or "roe season") for processing by the offshore component to January 26. It did so to ensure optimum roe quality and increase the associated revenues. It included the delay to February 5 to discourage pollock vessels from shifting into other fisheries before January 26. NMFS published a final rule to implement these measures on December 16, 1994 (59 FR 64867). They expire December 31, 1995.

D. Summary of the Proposed Inshore-Offshore Regulations

The definitions of the terms (§§ 672.2 and 675.2) "inshore component" and "offshore component" would be clarified and extended through December 31, 1998 and the term "catcher vessel operational area" (CVOA) would be added for clarity.

The general prohibitions against vessels operating during any year in more than one category of the inshore component (§§ 672.7(h)(1) and 675.7(i)(1)) or vessels operating in both the inshore and offshore components (§§ 672.7(h)(2) and 675.7(i)(2)) would be extended through December 31, 1998.

The allocations of Pacific cod and pollock for processing by the inshore and offshore components (§§ 672.20(a)(2)(v) and 675.20(a)(2)(iii)) and specifications of annual allocations (§§ 672.20(c)(1)(ii) and 675.20(a)(3)(i)) would be extended through December 31, 1998.

In the regulations governing the CVOA (§ 675.22(g)), the western boundary would be moved 30 minutes to the east to 167°30′ W. long. The regulations would clarify that the CVOA will exist from the start of the second season for directed fishing for pollock (§ 675.23(e)) until the quota of pollock for processing by the inshore component has been harvested for the year or until December 31. These regulations would be extended through December 31, 1998.

Regulations concerning the bycatch of chum salmon (§ 675.22(h)) refer to the definition of the CVOA as found at § 675.22(g). Under these regulations chum salmon caught in the CVOA as bycatch in the nonroe pollock fishery are attributed towards a 42,000 fish bycatch limit. The Council's decision to move the western boundary of the CVOA and, thereby, reduce its size would affect the area of chum salmon accounting. The Council recognized this effect on its program for reducing chum salmon bycatch and expressed its intent to have the chum salmon accounting take place within the revised boundaries of the CVOA. Because, under this proposed rule, the definition of the CVOA would be moved to § 675.2, NMFS now proposes to amend § 675.22(h)) so it will be consistent with this change.

Also, in accordance with Council intent, NMFS proposes to reimplement until December 31, 1998, regulations governing delays in the start of the first directed fishing seasons for pollock for processing by the offshore component (§ 675.23(e)(2)(ii)).

2. Western Alaska Community Development Quota (CDQ) Program

A. Summary of the History and Provisions of the CDQ Program

The approved portion of Amendment 18 and the final rule implementing Amendment 18 (57 FR 23321, June 3, 1992) allocated pollock for the CDQ program only for a temporary period from 1992 through 1995. The amendment allocated 7.5 percent of the pollock total allowable catch for each BSAI subarea or district to be set aside for the CDQ program. A regulatory amendment (57 FR 54936, November 23, 1992) implemented the CDQ program for 1992 and 1993 by specifying the process for applying for CDQ and the required contents of the Community Development Plan applications. A subsequent regulatory amendment (58 FR 32874, June 14, 1993) implemented the CDQ program for 1994 and 1995.

At its June 1995 meeting, the Council reauthorized the provisions of Amendment 18 through December 31, 1998, including the CDQ program. Much has been learned about the CDQ program since 1992. NMFS has worked closely with the State of Alaska's Departments of Community and Regional Affairs, Fish and Game, and Commerce and Economic Development, as well as the CDQ industry, to develop proposed changes to the pollock CDQ regulations.

B. Proposed Changes to the CDQ Implementing Regulations

This proposed rule extends the definitions of "community development plan (CDP)," "community development quota," "community development quota program," and "community development quota reserve" until December 31, 1998; and makes the following nine changes to the CDQ implementing regulations that have been in effect, but which expire on December 31, 1995.

1. The phrase "applicable through December 31, 1995" at the beginning of the CDQ regulations at part 675.27 is proposed to be replaced by the phrase "applicable through December 31, 1998". This would implement the Council's recommendation to reauthorize the CDQ program for 3 additional years. In addition, the phrase "applicable through December 31, 1995" is deleted from the beginning of paragraphs (e) and (f) because it is unnecessary.

2. Introductory text is added in § 675.27 to describe the goals and purpose of the CDQ program as follows: to allocate CDQ pollock to eligible Western Alaska communities to provide the means for starting or supporting commercial seafood activities that will result in ongoing regionally based commercial seafood or related businesses. This statement is a distillation of previous CDQ proposed and final rules that describe the goals and purpose of the CDQ program and is proposed to be added to these regulations to state precisely the purpose and goals of this program.

3. Under current regulations, paragraph (b)(1)(i) states that the CDP must include the goals and objectives of the CDP. However, a CDP does not have goals and objectives that are separate from those of the CDQ program. Therefore, (b)(1)(i) is replaced with a more correct statement. Specifically, CDPs are project-based documents, and should include a description of the CDP projects that are proposed to be funded by the pollock allocation and how the CDP projects satisfy the goals and purpose of the CDQ program.

4. Paragraph (b)(1)(vii) states that a CDP must include a description of how the CDP would generate new capital or equity for the applicant's fishing or processing operations. However, an applicant may have both fishing and processing operations, so it would be more accurate to state that a CDP must include a description of how the CDP would generate new capital or equity for the applicant's fishing and/or processing operations.

5. Paragraph (b)(2)(vii), states that a CDP should include a budget for implementing a CDP. This level of budget oversight has proven to be inadequate for managing the CDQ program. This paragraph is proposed to be expanded, requiring a general budget to be included in the CDP that would be a general account of estimated income and expenditures for each CDP project for each year of the life of the project.

An annual budget would be required at (e)(1)(ii), and it would be a detailed account of the estimated income and expenditures for each CDP project prior to the beginning of a calendar year. An initial annual budget would be required as part of a CDP application. For each subsequent year, the annual budget would be required to be submitted to NMFS in a report by December 15 of the year preceding the year for which the annual budget applies. Annual budgets would be approved upon receipt by NMFS unless subsequently disapproved by NMFS in writing. The annual budget would be reconciled in a report to NMFS by May 15 after the year for which the annual budget applies. The annual budget reconciliation report would list the actual income and expenditures and highlight the variance between the estimated and actual income/expenditures for each CDP project. If the general budget included in the CDP is no longer valid due to the reconciliation of the annual budget, then the general budget would also be required to be revised and submitted to NMFS with the annual budget reconciliation report.

6. Paragraph (b)(3)(ii)(B) states that the CDP must document the legal relationship between the CDP applicant and the managing organization. This implies that the CDP applicant and the managing organization are different entities. However, in some cases, the CDP applicant is the same as the managing organization. Therefore, this paragraph would be changed to state that the CDP must document the legal relationship between the CDP applicant and the managing organization only if the managing organization is different from the CDP applicant.

7. The definition of a CDP amendment under paragraph (e)(3)(i)(A)–(C) has required unnecessary amendments to be submitted to NMFS. Under the current regulations, paragraph (e)(3)(i)(B) states that any change to the budget of a CDP is a CDP amendment. Minor changes (for example, revisions of a CDP's budget for office supplies) were not meant to be amendments. Therefore, the existing paragraphs at (e)(3)(i)(A)–(C) would be deleted and paragraphs (e)(3)(i)(A)–(F) would be added, specifying in more detail what would constitute a CDP amendment.

8. In 1993, when the first CDP amendments were received by NMFS, guidance at paragraph (e)(3)(ii) regarding the contents of a CDP amendment was not sufficient, and more specific guidance was needed. The existing requirements for the contents of CDP amendments resulted in the submission of CDP amendments in different formats and lacking critical information, making them difficult to evaluate and process. Therefore, the Regional Director provided guidance to the Governor in a letter dated November 3, 1993. Since that date, all CDP amendments have followed the suggested format that was provided in that letter. This guidance is proposed to be added at paragraph (e)(3)(ii)(A)–(F).

9. Currently, a CDQ management organization is not required to notify NMFS of any change to a CDP that does not meet the criteria for a CDP amendment at (e)(3)(i)(A)–(C). Such minor changes are technical amendments. However, a CDP is a working business plan and must be kept up-to-date. NMFS proposes to require that CDQ groups notify the Governor and NMFS in writing of any technical amendments to a CDP before any change occurs. Technical amendments would be approved when the CDQ group receives a written notice from NMFS of the receipt of a technical amendment. The notification should include the pages of the CDP with the text highlighted to show additions and deletions, and the amended pages of the CDP would be included for replacement in the CDP.

Environmental and Regulatory Analyses

The Council prepared an EA/RIR/IRFA for Amendments 38 and 40 in accordance with the National Environmental Policy Act, Executive Order 12866, Regulatory Planning and Review, and the Regulatory Flexibility Act. A copy of the EA/RIR/IRFA may be obtained from the Council (see ADDRESSES).

The EA/RIR/IRFA reviews events leading up to Amendments 18 and 23, examines the fisheries since Amendments 18 and 23 went into effect, and examines the alternatives of (a) letting the provisions of Amendments 18 and 23 expire and (b) continuing those provisions as Amendments 38 and 40.

The EA/RIR/IRFA concludes that the potential environmental impacts of Amendments 38 and 40 are expected to be consistent with those previously predicted for Amendments 18 and 23 in the 1992 final supplemental environmental impact statement. They are also consistent with the findings in the supplemental analysis of September 1992 regarding the probable impacts of the CVOA on marine mammals, seabirds, and prohibited species. Total removals of pollock and Pacific cod are controlled by the total allowable catches, and their monitoring has been enhanced recently to guard against overruns. Catches of prohibited species and impacts on marine mammals are expected to be unchanged. Section 7 consultations by NMFS during consideration of Amendments 18 and 23 and again for Amendments 38 and 40 concluded that the groundfish fisheries are unlikely to jeopardize the continued existence or recovery of any endangered or threatened species.

For the analysis of economic and social impacts of Amendments 38 and

40 and the proposed regulations, the Council did not attempt to redo the previous cost-benefit or distributional analyses; rather, the EA/RIR/IRFA provides a review of the current state of the fisheries and identified significant changes that would affect the overall findings of the previous analyses. It also examined stability within the industry, future tradeoffs for affected industry sectors, and potential impacts on the Council's attempts to develop a more comprehensive plan for managing the groundfish, crab, and halibut fisheries.

The EA/RIR/IRFA concluded that reauthorizing the provisions of Amendments 18 and 23 would result in the same general cost-benefit impacts as projected in the 1992 analyses, although the expected net losses to the Nation's economy were probably overstated in the original analyses, and with changes in product recovery rates and prices since 1992, they were expected to move more towards neutral.

The EA/RIR/IRFA found that continuation of the inshore-offshore program would maintain stability and that disruption of this stability could have serious and adverse implications for successful development of a comprehensive management regime for the fisheries (EA/RIR/IRFA, p. E–9). Continuation of the inshore-offshore program would negatively affect Ballard-Seattle, WA; however, the absence of the program would result in negative social and economic impacts on many coastal Alaskan communities, particularly in those participating in the CDP that have developed additional infrastructure since 1992.

In examining the community development program, the EA/RIR/IRFA asked two questions: (a) Can the development projects and initiative underway now be brought to fruition without a continuation of the allocation? and (b) Once the development projects are complete, can they be sustained in the absence of a direct allocation of pollock? For the first question, the EA/RIR/IRFA concluded that the individual projects as well as the overall development objectives of the program would not be realized if the program ends in 1995. For the second question, the EA/RIR/IRFA stated that this was a difficult question to answer at this time and it remained a critical question, likely to be answered within the context of the comprehensive rationalization process.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an FMP or an amendment of an FMP and regulations. At this time, NMFS has not determined that either Amendment 38 of the BSAI FMP or Amendment 40 of the GOA FMP (which these rules would implement) is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared an IRFA as part of the regulatory impact review, which describes the impact this proposed rule would have on small entities, if adopted. The IRFA analysis indicates that specific allocations to the inshore and offshore components could benefit small harvesting and processing operations associated with one component and, conversely, negatively impact small operations associated with the other. The magnitudes of the impacts are related to the sizes of the allocations. The continuation of specific allocations to the inshore component as well as the specific allocations of pollock to the CDQ program will continue direct benefits to many small jurisdictions of Southwest and Western Alaska. The support industry benefits directly from the economic activity in both the inshore and offshore sector. Probably, the loss in revenue associated with one component will be offset by gains obtained from the other. Overall, this proposal will impact more than 20 percent of those small entities, and NMFS considers that amount to be a "substantial number." A copy of the EA/RIR/IRFA is available from the Council (see ADDRESSES).

This proposed rule contains collection-of-information requirements related to the Community Development Quota Program that are subject to the PRA. These requests for collection of information have been submitted to the Office of Management and Budget for approval. The public reporting burden for each year of this collection is estimated to average 40 hours per response for completing annual reports, 40 hours per response for completing annual budget reconciliation reports, 30 hours per response for completing substantial amendments, and 4 hours per response for completing technical amendments. For the first year of the CDQ program, completion of CDP applications is estimated to average 160 hours per response. For each of the last 2 years of the program, completion of annual budget reports is expected to average 40 hours per response. OMB approval has been obtained under OMB control number 0648–0269 for the CDQ-managing organization representative requirement to inform NMFS within 24 hours after the CDQ has been reached and fishing ceased. This requirement has an estimated response time of 2 minutes per response.

All reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to the OMB (see ADDRESSES).

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 11, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 672.2, the definitions of "Inshore component" and "Offshore component" are revised to read as follows:

§ 672.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

(1) All shoreside processing operations;

(2) Any processor vessel less than 125 ft (38.1 m) in length overall that processes no more than 126 mt per week in round-weight equivalents of an aggregate of those fish and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88–155) under § 672.4; and

(3) Any processor vessel that processes those fish at a single geographic location in Alaska State waters (waters adjacent to the State of

Alaska and shoreward of the EEZ) during a fishing year and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88–155) under § 672.4. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§ 672.5(c)(1) and § 675.5(c)(1) of this chapter) when that vessel first engages in processing those fish.

* * * * *

Offshore component (applicable through December 31, 1998) means all processor vessels in the U.S. groundfish fisheries not included in the definition of "inshore component" that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

* * * * *

3. In § 672.7, paragraph (h) heading, and paragraph (h)(2) are revised to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) *Applicable through December 31, 1998.* * * *

(2) Operate any vessel under both the "inshore component" and "offshore component" definitions at §§ 672.2 and 675.2 of this chapter during the same fishing year.

* * * * *

§ 672.20 [Amended]

4. In § 672.20, the headings of paragraphs (a)(2)(v), (c)(1)(i), (c)(1)(ii), (c)(2)(i) and (c)(2)(ii) are revised to read: *"Applicable through December 31, 1998."*.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 675.2, a definition for "Catcher vessel operational area" is added, and the definitions for "Community Development Plan," "Community Development Quota," Community Development Quota Program," Community Development Quota Reserve," "Inshore component," and "Offshore component" are revised to read as follows:

§ 675.2 Definitions.

* * * * *

Catcher vessel operational area (CVOA) (applicable through December 31, 1998) means that part of the Bering Sea subarea south of 56°00′ N. lat. and between 163°00′ and 167°30′ W. long.

Community Development Plan (CDP) (applicable through December 31, 1998) means a plan for a specific Western Alaska community or group of communities approved by the Governor of the State of Alaska and recommended to NMFS under § 675.27.

Community Development Quota (CDQ) (applicable through December 31, 1998) means a Western Alaska community development quota for pollock assigned to an approved CDP. All CDQs, in the aggregate, equal 7.5 percent of the total allowable catch specified for pollock that is placed in reserve under § 675.20(a)(3).

Community Development Quota Program (CDQ program) (applicable through December 31, 1998) means the Western Alaska Community Development Program implemented under § 675.27.

Community Development Quota Reserve (CDQ reserve) (applicable through December 31, 1998) means 7.5 percent of the total allowable catch specified for pollock in each subarea or district that is placed in reserve under § 675.20(a)(3).

* * * * *

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

(1) All shoreside processing operations;

(2) Any processor vessel less than 125 ft (38.1 m) in length overall that processes no more than 126 mt per week in round-weight equivalents of an aggregate of those fish and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88–155) under § 675.4; and

(3) Any processor vessel that processes those fish at a single geographic location in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) during a fishing year and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88–155) under § 675.4. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§ 672.5(c)(1) of this chapter and § 675.5(c)(1)) when that vessel first engages in processing those fish.

* * * * *

Offshore component (applicable through December 31, 1998) means all processor vessels in the U.S. groundfish fisheries not included in the definition of "inshore component" that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

* * * * *

7. In § 675.7, paragraph (i) heading, paragraph (i)(2), and paragraph (j) heading are revised to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) *Applicable through December 31, 1998.* * * *

(2) Operate any vessel under both the "inshore component" and "offshore component" definitions at §§ 672.2 of this chapter and 675.2 during the same fishing year.

(j) *Applicable through December 31, 1998.*

* * * * *

8. In § 675.20, the headings of paragraphs (a)(2)(iii), (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) are revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) * * *

(iii) *Applicable through December 31, 1998.*

* * * * *

(3) * * *

(i) *Applicable through December 31, 1998.* * * *

(ii) *Applicable through December 31, 1998.* * * *

(iii) *Applicable through December 31, 1998; application for approval of a CDP and CDQ allocation.* * * *

* * * * *

9. In § 675.22, paragraphs (g) and (h)(2) are revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1998).* (1) This area is established annually for directed fishing for pollock from the beginning of the second season of directed fishing for pollock (defined at § 675.23(e)) until either the date that NMFS determines that the pollock quota for processing by the inshore component has been harvested or December 31.

(2) Catcher vessels may conduct directed fishing in this area.

(3) Processor vessels in the offshore component are prohibited from conducting directed fishing for pollock in this area unless they are operating under a CDP approved by NMFS.

(4) Processor vessels in the offshore component that do not catch groundfish but do process pollock caught in a directed fishery for pollock may operate within this area to process pollock.

(5) Processor vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within this area.

(h) * * *

(2) When the Regional Director determines that 42,000 nonchinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA (defined in § 675.2), NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area defined under paragraph (h)(1) of this section.

10. In § 675.23, paragraph (e)(2) heading is revised to read as follows:

§ 675.23 Seasons.

* * * * *

(e) * * *

(2) *Applicable through December 31, 1998.* * * *

* * * * *

11. In § 675.27, the section heading is revised, introductory text is added, and paragraphs (b)(1)(i), (b)(1)(vii), (b)(2)(vii), (b)(3)(ii)(B), (e), and the heading of paragraph (f) are revised to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1998).

The goals and purpose of the CDQ program are to allocate CDQ pollock to eligible Western Alaska communities to provide the means for starting or supporting commercial seafood activities that will result in ongoing regionally based commercial seafood or related businesses.

* * * * *

(b) * * *

(1) * * *

(i) A description of the CDP projects that are proposed to be funded by the pollock allocation and how the CDP projects satisfy the goals and purpose of the CDQ program;

* * * * *

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing and/or processing operations;

* * * * *

(2) * * *

(vii) A general budget for implementing the CDP. A general budget is a general account of estimated income and expenditures for each CDP project that is described at paragraph (b)(1)(i) of this section for the total number of calendar years that the CDP is in effect. An annual budget is required to be submitted with a CDP as described at paragraph (e)(1)(ii) of this section;

* * * * *

(3) * * *

(ii) * * *

(B) Documentation of a legal relationship between the CDP applicant and the managing organization (if the managing organization is different from the CDP applicant), which clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

* * * * *

(e) *Monitoring of CDPs*—(1) *CDP reports.* The following reports must be submitted to NMFS.

(i) *Annual progress reports.* CDP applicants are required to submit annual progress reports to the Governor by June 30 of the year following a CDQ allocation. Annual progress reports will include information describing how the CDP has met its milestones, goals, and objectives. On the basis of those reports, the Governor will submit an annual progress report to NMFS and recommend whether CDPs should be continued. NMFS must notify the Governor in writing within 45 days of receipt of the Governor's annual progress report, accepting or rejecting the annual progress report and the Governor's recommendations on multiyear CDQ projects. If NMFS rejects the Governor's annual progress report, NMFS will return it for revision and resubmission. The report will be deemed approved if NMFS does not notify the Governor in writing within 45 days of the report's receipt.

(ii) *Annual budget report.* An annual budget report is a detailed estimation of income and expenditures for each CDP project as described in paragraph (b)(1)(i) of this section for a calendar year. The first annual budget report shall be included in the CDP. Each additional annual budget report must be submitted to NMFS by December 15 preceding the year for which the annual budget applies. Annual budget reports are approved upon receipt by NMFS unless disapproved in writing by December 31. If disapproved, the annual budget report may be revised and resubmitted to NMFS. NMFS will approve or disapprove a resubmitted annual budget report in writing.

(iii) *Annual budget reconciliation report.* A CDQ group must reconcile each annual budget by May 15 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDP project that is described in paragraph (b)(1)(i) of this section. If a general budget as described at paragraph (b)(2)(vii) of this section is no longer correct due to the reconciliation of an annual budget, then the general budget must also be revised to reflect the annual budget reconciliation, and the revised general budget must be included in the annual budget reconciliation report.

(2) If an applicant requests an increase in CDQ allocation under a multiyear CDP, the applicant must submit a new CDP application for review by the Governor and approval by NMFS as described in paragraphs (b) and (c) of this section.

(3) *Substantial amendments.* A CDP is a working business plan and must be kept up-to-date. Substantial amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and NMFS before any change in a CDP can occur. The Governor may recommend to NMFS that the request for an amendment be approved. NMFS may notify the Governor in writing of approval or disapproval of the amendment within 30 days of receipt of the Governor's recommendation. The Governor's recommendation for approval of an amendment will be deemed approved if NMFS does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation. If NMFS determines that the CDP, if changed, would no longer meet the criteria under paragraph (d) of this section, or if any of the requirements under this section would not be met, NMFS shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to, the following:

(A) Any change in the applicant communities or replacement of the managing organization;

(B) A change in the CDP applicant's harvesting or processing partner;

(C) Funding a CDP project in excess of $100,000 that is not part of an approved general budget;

(D) More than a 20 percent increase in the annual budget of an approved CDP project;

(E) More than a 20 percent increase in actual expenditures over the approved annual budget for administrative operations; or

(F) The Governor recommends to NMFS that the following is a substantial amendment:

(*1*) A material change in the contractual agreement(s) between the CDP applicant and their harvesting or processing partner; or

(*2*) A material change in a CDP project.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate;

(B) An explanation of why the proposed change to the CDP is an amendment according to paragraph (e)(3)(i) of this section;

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment;

(D) A comparison of the original CDP text with the text of the proposed changes to the CDP, and the changed pages of the CDP for replacement in the CDP binder;

(E) Identification of any NMFS' findings that would need to be modified if the amendment is approved along with the proposed modified text;

(F) A description of how the proposed amendment meets the requirements of the CDQ regulations in this section. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(4) *Technical amendments.* Any change to a CDP that is not a substantial amendment as defined at paragraph (e)(3)(i) of this section, is a technical amendment. It is the responsibility of the CDQ group to coordinate with the Governor to ensure that a proposed technical amendment does not meet the definition for a substantial amendment. Technical amendments require written notification to the Governor and NMFS before the change in a CDP occurs. A technical amendment will be approved when the CDQ group receives a written notice from NMFS announcing the receipt of the technical amendment. The Governor may recommend to NMFS in writing that a technical amendment be disapproved at any time. NMFS may disapprove a technical amendment in writing at any time with the reasons therefor. Notification should include:

(i) The pages of the CDP with the text highlighted to show deletions and additions; and

(ii) The changed pages of the CDP for replacement in the CDP binder.

(5) It is the responsibility of the CDQ-managing organization to cease fishing operations once its respective CDQ pollock allocation has been reached. Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition as reported on the daily observer catch message. The CDQ-managing organization must arrange for processors to transmit a copy of the observer daily catch message to it in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ-managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased. If NMFS determines that the observer, the processor, or the CDQ-managing organization failed to follow the procedures described in paragraph (h) of this section for estimating the total harvest of pollock, or violated any other regulation in this part, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

(f) *Suspension or termination of a CDP.*

* * * * *

[FR Doc. 95–23029 Filed 9–13–95; 12:03 pm]

BILLING CODE 3510–22–W

Notices

Federal Register

Vol. 60, No. 180

Monday, September 18, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on October 3 and 4, 1995, in Woodland, Washington, at the Oak Tree Restaurant, near Exit No. 21 on Interstate 5. The meeting will begin at 9 a.m. and continue until 4:30 p.m.

Meeting purpose is to assess watershed health conditions within the Cowlitz, Lewis, Wind River, and White Salmon Basins. The Advisory Committee will apply this information in advising Federal land managers on implementing the President's Northwest Forest Plan. Agenda items to be covered include: (1) Basin Health Assessment findings, (2) Basin Goals and Objectives, (3) Forest Program priorities, (4) Public Open Forum, (5) Forest Monitoring Program, and (6) Committee Progress Assessment.

All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled near the conclusion of this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Mark Maggiora, Public Affairs, at (360) 750–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., PO Box 8944, Vancouver, WA 98668–8944.

Dated: September 11, 1995.

J. Sharon Heywood,

Deputy Forest Supervisor.

[FR Doc. 95–23084 Filed 9–15–95; 8:45 am]

BILLING CODE 3410-11-M

ASSASSINATION RECORDS REVIEW BOARD

Notice of Formal Determinations

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on August 28th and August 29th, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice the Review Board complies with the section of the JFK Act that request the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street, NW., Washington, DC 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the *President John F. Kennedy Assassination Records Collection Act of 1992,* 44 U.S.C. 2107.9(c)(4)(A) (1992), On August 28th and August 29th, 1995, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives. For each document, the number of releases of previously redacted information is noted as well as the number of sustained postponements.

REVIEW BOARD DETERMINATIONS

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
FBI Documents				
124–10035–10168	8	0	Open in Full	n/a
124–10037–10020	1	0	Open in Full	n/a
124–10076–10024	8	0	Open in Full	n/a
124–10085–10330	1	2	Postponed in Part	08/28/2005
124–10085–10333	2	1	Postponed in Part	08/28/2005
124–10104–10238	8	0	Open in Full	n/a
124–10157–10384	8	0	Open in Full	n/a
124–10171–10238	1	0	Open in Full	n/a
124–10191–10089	3	0	Open in Full	n/a
124–10242–10180	1	0	Open in Full	n/a
124–10263–10085	1	0	Open in Full	n/a
CIA Documents				
104–10004–10257	11	3	Postponed in Part	12/1995
104–10015–10010	1	0	Open in Full	n/a
104–10015–10017	7	0	Open in Full	n/a
104–10015–10026	4	0	Open in Full	n/a
104–10015–10040	2	0	Open in Full	n/a
104–10015–10046	0	1	Postponed in Part	12/1995
104–10015–10050	1	0	Open in Full	n/a
104–10015–10055	2	0	Open in Full	n/a
104–10015–10059	1	1	Postponed in Part	12/1995
104–10015–10060	2	0	Open in Full	n/a
104–10015–10063	3	0	Open in Full	n/a
104–10015–10066	1	0	Open in Full	n/a
104–10015–10067	4	0	Open in Full	n/a
104–10015–10069	4	0	Open in Full	n/a
104–10015–10071	1	0	Open in Full	n/a
104–10015–10072	3	0	Open in Full	n/a
104–10015–10075	4	0	Open in Full	n/a
104–10015–10077	3	0	Open in Full	n/a
104–10015–10078	3	0	Open in Full	n/a
104–10015–10081	4	1	Postponed in Part	12/1995
104–10015–10082	3	0	Open in Full	n/a
104–10015–10086	7	0	Open in Full	n/a
104–10015–10095	1	0	Open in Full	n/a
104–10015–10098	4	0	Open in Full	n/a
104–10015–10099	1	0	Open in Full	n/a
104–10015–10101	2	0	Open in Full	n/a
104–10015–10102	1	0	Open in Full	n/a
104–10015–10104	0	2	Postponed in Part	12/1995
104–10015–10105	0	1	Postponed in Full	2017
104–10015–10106	2	0	Open in Full	n/a
104–10015–10109	1	0	Open in Full	n/a
104–10015–10111	1	3	Postponed in Part	12/1995
104–10015–10115	3	2	Postponed in Part	12/1995
104–10015–10117	0	2	Postponed in Part	12/1995
104–10015–10122	0	1	Postponed in Part	12/1995
104–10015–10128	1	0	Open in Full	n/a
104–10015–10132	1	2	Postponed in Part	12/1995
104–10015–10136	1	0	Open in Full	n/a
104–10015–10139	1	1	Postponed in Part	12/1995
104–10015–10141	2	1	Postponed in Part	12/1995
104–10015–10152	0	1	Postponed in Part	12/1995
104–10015–10156	5	1	Postponed in Part	12/1995
104–10015–10161	1	2	Postponed in Part	12/1995
104–10015–10162	1	3	Postponed in Part	12/1995

Dated: September 12, 1995.

David G. Marwell,

Executive Director.

[FR Doc. 95–23013 Filed 9–15–95; 8:45 am]

BILLING CODE 6820-TD-M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 950911228–5228–01]

The American Community Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of consideration.

SUMMARY: Notice is hereby given that the Bureau of the Census is considering a proposal to conduct The American Community Survey under the authority of Title 13, United States Code, Sections 182 and 225. On the basis of information and recommendations received by the Bureau of the Census, the data have significant application to the needs of other government agencies and the public. The survey will provide data for small areas and small subpopulations that are necessary to evaluate a continuous measurement system to collect, on a continual basis, data that have traditionally been collected only once every ten years in the decennial census. These data are not publicly available from nongovernment or other governmental sources.

DATES: Any suggestions or recommendations concerning the proposed survey should be submitted in writing by October 18, 1995.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Lawrence S. McGinn, Chief, Continuous Measurement Office, U.S. Census Bureau, on (301) 763–8327.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major census authorized by Title 13, United States Code. The data from this survey will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade for small areas and small subpopulations. Currently, the decennial census is the only source of data available for small area levels and, therefore, these data are collected only once every ten years. A continuous measurement system also would provide a mechanism for identifying and sampling subpopulation groups for future surveys which will be of great benefit to the Federal Statistical System and provide data needed by other agencies.

This survey will be a full-scale implementation of continuous measurement in six test sites. The survey will also include a national sample to test response rates and the Census Bureau's ability to obtain telephone numbers for nonresponse households. The data collected in this survey will be within the general scope and nature of those inquiries covered in the decennial census every ten years.

The Census Bureau will select the housing units for the survey from a sample of six sites selected to test full continuous measurement operations and a sample from designated areas around the country to obtain mail response rates. The Bureau will mail questionnaires to the households covered by this survey and require the submission as soon as possible after receipt. Participation of the selected households will be mandatory in accordance with the provisions of Title 13.

This survey was approved by the Office of Management and Budget (OMB) for public use, in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was given approval number 0607–0810. A previous notice was published in the **Federal Register** on June 15, 1995, Volume 60, Number 115, page 31447, informing the public of this submission and inviting public comment. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that a test be conducted for the purpose of collecting these data for evaluation of the procedures related to a continuous measurement operation.

Dated: September 12, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–23085 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

[Docket No. 2101–01]

In the Matter of: Francesco Grazi, Chez Pietro Grazi, V Cantonale, 6532 Castione, Ticino, Switzerland, Respondent; Final Decision and Order

On August 22, 1995, the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the above-referenced matter. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The Respondent failed to respond to the charges in this matter. After describing the facts of the case and his findings based on those facts, the ALJ found that the Respondent, Francesco Grazi, on two separate occasions violated Section 787.2 of the Export Administration Regulations (EAR). The Respondent caused, aided, abetted, counselled, or induced a third party to reexport U.S.-origin commodities from Switzerland to Bulgaria, without obtaining the reexport authorization required by Section 774.1 of the EAR.

The ALJ found that the appropriate penalty for the violations should be that the Respondent and all successors, assignees, officers, representatives, agents and employees be denied for a period of fifteen years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the entire record, I AFFIRM the Recommended Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: September 4, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended

On January 14, 1992, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), issued a Charging Letter alleging that Francesco Grazi (Grazi) committed two violations of Section 787.2 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1995)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act).[1] As established in the Status Report the Department filed in this matter on May 1, 1992, the Charging Letter was served on Grazi on or about April 21, 1992. Grazi has not answered or otherwise responded to the allegations set forth in the Charging Letter. On June 19, 1995, I issued an Order directing that the Department make its submission pursuant to Section 788.8 of the Regulations by August 18, 1995. In accordance with that Order, the Department made the submission required by Section 788.8 of the Regulations on August 18, 1995.

Background

The January 14, 1992 Charging Letter alleges that, on two separate occasions, on or about January 14, 1987 and on or about May 8, 1987, Grazi caused, aided, abetted, counseled, or induced a third party to reexport U.S.-origin commodities from Switzerland to Bulgaria without first obtaining the reexport authorization required by Section 774.1 of the Regulations. Schedule A to the Charging Letter, which was attached thereto and incorporated by reference therein, identified the approximate date of reexport from Switzerland, the commodity involved, the Samata S.A. (Samata) Purchase Order number, the Air Waybill number for the export from the United States, and the Fincosid[2] Order Number.

Finding

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that Grazi committed the violations alleged in the Charging Letter issued against him on January 14, 1992.

For those violations, the Department urges as a sanction that Grazi's export privileges be denied for 15 years. In light of the nature of the violations, I concur in the Department's recommendation.

Accordingly, it is therefore ordered,

First, that all outstanding individual validated licenses in which Grazi appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Grazi's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, that Francesco Grazi, Chez Pietro Grazi, V Cantonale, 6532 Castione, Ticino, Switzerland, and all of his successors, assigns, officers, representatives, agents, and employees, shall, for a period of 15 years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to the respondent by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on Grazi and the Department in accordance with section 778.16(b)(2) of the Regulations.

Fourth, that this Order, is affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C.A. app. § 2412(c)(1) and the Regulations (15 CFR 788.23).

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., N.W., Room 3898B, Washington, D.C., 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Dated: August 22, 1995.

Edward J. Kuhlmann,

Administrative Law Judge.

[FR Doc. 95–23059 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DT–M

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[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701–1706 (1991)).

[2] At the time of the alleged violations, Grazi was the president of Fincosid SA, a Swiss company. A Charging Letter was also issued against Fincosid. On April 2, 1992, in responding to the Administrative Law Judge's March 4, 1992 Order, the Department advised the Administrative Law Judge that it had learned that Fincosid no longer exists and, therefore, withdrew the Charging Letter issued to Fincosid.

Bureau of Export Administration 9–18

[Docket No. 1107–07]

In the Matter of: Herman Van Croonenburg, Urb. El Paraiso, Parc. 145—Villa Favorita, E–29680 Estepona—Malaga, Spain; Respondent; Final Decision and Order

On August 22, 1995, the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the above-referenced matter. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action.

After describing the facts of the case and his findings based on those facts, the ALJ found that the Respondent on four separate occasions reexported U.S.-origin commodities from Switzerland to Austria, without obtaining the reexport authorization required by Section 774.1 of the Export Administration Regulations.

The ALJ recommended that the appropriate penalty for the violations should be that the Respondent and all successors, assignees, officers, representatives, agents and employees be denied for a period of fifteen years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the record in this proceeding, I AFFIRM the Recommended Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: September 4, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Order

On August 30, 1991, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), issued a Charging Letter alleging that Herman Anton van Croonenburg (van Croonenburg) committed four violations of Section 787.6 of the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1995)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. § § 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act).[1] On November 4, 1991, van Croonenburg answered the Charging Letter, but did not request a hearing.[2]

On September 6, 1991, this matter was consolidated with several other related matters and has proceeded through the administrative process since that time. On March 22, 1995, I issued an Order urging the parties to begin settlement discussions and directed the parties to report to me regarding the progress of those discussions. On April 5, 1995, in accordance with that Order, the Department wrote to van Croonenburg to determine if he was interested in pursuing a possible settlement in this matter. To date, van Croonenburg has not responded to the Department's offer to discuss a possible settlement. However, settlement discussions in several of the other related matters were successful. On June 19, 1995, following the submission of settlement proposals in these other related proceedings, I issued an Order directing the Department to file the submission required under Section 788.14 of the Regulations by August 18, 1995 against van Croonenburg. In accordance with that Order, the Department made the submission required by Section 788.14 of the Regulations on August 18, 1995.

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[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § § 1701–1706 (1991)).

[2] Indeed, other than his answer, van Croonenburg has not filed any pleadings or responded either to any of my Orders or any of the Department's pleadings in this matter.

Background

The August 30, 1991 Charging Letter alleges that, on four separate occasions between on or about September 2, 1986 and on or about June 8, 1987, van Croonenburg, in his capacity as President of Marli S.A. (Marli),[3] reexported U.S.-origin commodities from Switzerland to Austria without first obtaining the reexport authorization required by Section 774.1 of the Regulations. Schedule A to the Charging Letter, which was attached thereto and incorporated by reference therein, identifies the approximate date of reexport from Switzerland to Austria, the commodity involved, the Samata S.A. (Samata) Purchase Order number, the House Air Waybill number for the exports from Switzerland to Austria that were made by air.

Finding

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that van Croonenburg committed the violations alleged in the Charging Letter issued against him on August 30, 1991.

For those violations, the Department urges as a sanction that van Croonenburg's export privileges be denied for 15 years. In light of the nature of the violations, I concur in the Department's recommendation.

Accordingly, it is therefore ordered,

First, that all outstanding individual validated licenses in which van Croonenburg appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of van Croonenburg's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, that Herman van Croonenburg, Urb. El Paraiso, Parc. 145—Villa Favorita, E-29680 Estepona—Malaga, Spain, and all of his successors, assigns, officers, representatives, agents, and employees, shall, for a period of 15 years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to the respondent by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on van Croonenburg and the Department in accordance with Section 788.16(b)(2) of the Regulations.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C. A. app. § 2412(c)(1)) and the Regulations (15 CFR 788.23).

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 389B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Dated: August 22, 1995.

Edward J. Kuhlmann,

Administrative Law Judge.

[FR Doc. 95-23060 Filed 9-15-95; 8:45 am]

BILLING CODE 3510-DT-M

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[3] A Charging Letter was also issued against Marli. However, on January 6, 1992, after several attempts to serve Marli has failed, the Department withdrew that Charging Letter after it determined that Marli had ceased to exist. *See* Notice of Withdrawal of Charging Letter, filed January 6, 1992.

Foreign-Trade Zones Board

[Order No. 774]

Grant of Authority For Subzone Status, Brother Industries (U.S.A.) Inc. (Typewriters and Word Processors) Bartlett, Tennessee

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment* * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade

zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Memphis, Tennessee, grantee of Foreign-Trade Zone 77, for authority to establish special-purpose subzone status for the typewriter and word processor manufacturing facilities of Brother Industries (U.S.A.) Inc., located in Bartlett, Tennessee, was filed by the Board on November 22, 1994, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 38–94, 59 FR 62709, 12/6/94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 77B) at the Brother Industries (U.S.A.) Inc. facilities in Bartlett, Tennessee, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 11th day of September 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95-23119 Filed 9-15-95; 8:45 am]

BILLING CODE 3510-DS-P

[Docket 51-95]

Foreign-Trade Zone 167—Green Bay, WI Application for Subzone Status Robin Manufacturing U.S.A., Inc., Plant (Internal-Combustion Engines) Hudson, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Brown County, Wisconsin, grantee of FTZ 167, requesting special-purpose subzone status for the small internal-combustion engine manufacturing plant of Robin Manufacturing U.S.A., Inc. (RMI) (a joint venture between Polaris Industries, Inc. (Minneapolis, MN), and Fuji Heavy Industries (Japan)), located in Hudson, Wisconsin. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 5, 1995.

The RMI plant (2 acres/56,000 sq.ft.) is located at 1201 Industrial Road in Hudson (St. Croix County), Wisconsin, some 15 miles east of Minneapolis—St. Paul, Minnesota, The facility (19 employees) is used to produce spark-ignition internal combustion engines (up to 500 cc in size) for recreational vehicles such as golf carts and all-terrain vehicles (up to 100,000 units per year). The company also plans to manufacture industrial engines (up to 1,000 cc) for farm, lawn, and garden equipment (HTS# 8407.32.20, 8407.33.30). Currently all of the engines' components are sourced abroad including: crankcases, cylinder heads, manifolds, balancer shafts, connecting rods, pistons, rocker arms, intake/exhaust valves, bearings and housings, flywheels, pulleys, gaskets, magnetos, fasteners, housings, fuel pumps, electrical components, and spark plugs (1995 duty rate range: 0.2—9.3%). The application indicates that 50 percent of all parts (by value) will be purchased from U.S. suppliers within three years after approval of subzone status.

Zone procedures would exempt RMI from Customs duty payments on the foreign components used in export production. On its domestic sales, RMI would be able to choose the lower duty rates that apply to finished engines (duty free, 2.5%) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 17, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 4, 1995.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 108 Federal Building, 110 South Fourth Street, Minneapolis, MN 55401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: September 11, 1995.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 95-23118 Filed 9-15-95; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 090795C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) will convene a public meeting of its salmon stock review teams.

DATES: The meeting will begin on September 28, 1995, at 10 a.m.

ADDRESSES: The meeting will be held at the Natural Resource Building, 1111 Washington Street, SE, Room 630, Olympia, WA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon); telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to initiate a review of the status of some stocks of Puget Sound and Quillayute chinook, and Strait of Juan de Fuca coho. This review is required under the Council's salmon fishery management plan when a stock fails to meet its spawning escapement objective for 3 consecutive years.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Lawrence D. Six, Executive Director, at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: September 12, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-23121 Filed 9-15-95; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

September 12, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On the request of the Government of the Dominican Republic, the Government of the United States has agreed to increase the current guaranteed access level (GAL) for Category 442.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17321, published on April 5, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 12, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 19, 1995, you are directed to increase the guaranteed access level for Category 442 to 105,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23061 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DR–F

Import Charges for Certain Cotton Textile Products Produced or Manufactured in Malaysia

September 12, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs applying charges to 1994 levels.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based on investigations conducted by the Government of the United States, CITA has determined that in 1994 textile products, produced or manufactured in Malaysia and entered into the United States with the incorrect country of origin, were transshipped in circumvention of the Bilateral Textile Agreement, effected by exchange of notes dated January 12 and 28, 1994, between the Governments of the United States and Malaysia. Consultations were held between the Governments of the United States and Malaysia on this matter on June 6–7, 1994. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1994 quota levels, as notified to the Textiles Monitoring Body, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), for the categories listed below. The 1994 level for Category 339 is currently filled. Therefore, charges in the amount of 12,835 dozen will be applied to the 1995 limit for Category 339.

Category	Amount to be charged
339	12,835 dozen.
341	4,455 dozen.

The U.S. Government is taking this action pursuant to the January 12 and 28, 1994 Agreement.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 58 FR 65580, published on December 15, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 12, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Textile Agreement, effected by exchange of notes dated January 12 and 28, 1994, between the Governments of the United States and Malaysia, I request that, effective on September 19, 1995, you charge the following amounts to the following categories for the period which began on January 1, 1994 and extended through December 31, 1994 (see the directive dated December 9, 1993), as notified to the Textiles Monitoring Body, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Amount to be charged
339	12,835 dozen.
341	4,455 dozen.

This letter will be published in the **Federal Register**.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23063 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

September 12, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 443, 647/648 and 659–H are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17334, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 12, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on September 19, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Levels in Group I	
443	41,888 numbers.
647/648	973,502 dozen.
659–H [2]	1,223,903 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23062 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 17, 1995.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 12, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Extension
Title: Addendum to Federal District PLUS Loan Promissory Note Endorser
Frequency: One Time

Affected Public: Individuals or households

Reporting Burden:

Responses: 34,000

Burden Hours: 17,000

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: Applications for Federal Direct PLUS Loans who have adverse credit may obtain endorsers. The information collected on this form is used to check credit of endorsers. The respondents are endorsers.

Office of Postsecondary Education

Type of Review: Extension

Title: Federal Direct PLUS Loan Application and Promissory Note

Frequency: One Time

Affected Public: Individuals or households

Reporting Burden:

Responses: 135,000

Burden Hours: 67,000

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This information is used to determine applicant eligibility for Federal Direct PLUS Loans. The respondents are parents applying for benefits.

Office of Postsecondary Education

Type of Review: Extension

Title: Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Promissory Note and Disclosure

Frequency: One Time

Affected Public: Individuals or households

Reporting Burden:

Responses: 2,757,000

Burden Hours: 459,316

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This information is used to determine eligibility for Federal Direct Stafford/Ford Loans and/or Federal Direct Unsubsidized Stafford/Ford Loans. The respondents are students applying for benefits.

[FR Doc. 95–23035 Filed 9–15–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG95–88–000, et al.]

Central Termoélectrica Buenos Aires S.A., et al.; Electric Rate and Corporate Regulation Filings

September 11, 1995.

Take notice that the following filings have been made with the Commission:

1. Central Termoélectrica Buenos Aires S.A.

[Docket No. EG95–88–000]

On August 30, 1995, Central Termoélectrica Buenos Aires S.A., Avda. Espana 3301, (1107) Capital Federal, Buenos Aires, Argentina, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992. The applicant is a corporation that seeks exempt wholesale generator status with regard to its eligible facility under construction in Buenos Aires, Argentina. The facility will consist initially of one 200 MW simple cycle combustion turbine generator, fueled by oil or gas. In a second phase, the facility will be converted to combined cycle operation and enlarged to 320 MW. The facility will include such interconnection components as are necessary to interconnect the facility with the utility grid.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Entergy S.A.

[Docket No. EG95–89–000]

On August 30, 1995, Entergy S.A., c/o Entergy Power Group, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992. The applicant is a corporation that is engaged directly and indirectly and exclusively in owning and operating natural gas/oil-fired generating units located in and around the greater metropolitan area of Buenos Aires, Argentina. The total installed generating capacity of the facilities currently in operation is 1260 MW.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Entergy Power Development Corporation

[Docket No. EG95–90–000]

On September 1, 1995, Entergy Power Development Corporation, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that is engaged directly or indirectly and exclusively in owning or operating, or both owning and operating, several electric power facilities. The applicant has previously been found to be an exempt wholesale generator. This application is occasioned by the applicant's intended acquisition of an indirect ownership interest in an eligible facility under construction in Buenos Aires, Argentina. The facility will consist initially of one 200 MW simple cycle combustion turbine generator, fueled by oil or gas. In a second phase, the facility will be converted to combined cycle operation and enlarged to 320 MW. The facility will include such interconnection components as are necessary to interconnect the facility with the utility grid.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Northeast Utilities Service Company

[Docket No. ER95–1686–000]

Take notice that Northeast Utilities Service Company (NUSCO) on September 1, 1995, tendered for filing revisions to its Long-Term Firm, Short-Term, Non-Firm and Network Transmission Tariffs. NUSCO states that the revised tariffs reflect the Commission's fixed charge methodology and satisfy the comparability standards contained in the Commission's Open Access NOPR, Docket No. RM95–8.

NUSCO states that a copy of this filing has been mailed to all customers with

whom it has entered into service agreements under its transmission tariffs, to parties in the ongoing compliance proceeding in Docket No. EC90–10–007 and to the state commissions in each of the six New England states and New York.

NUSCO requests that the Tariffs become effective on November 1, 1995.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Power Holding I, Ltd.

[Docket No. EG95–91–000]

On September 1, 1995, Entergy Power Holding I, Ltd., Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that is engaged directly or indirectly and exclusively in owning or operating, or both owning and operating, several electric power facilities. The applicant has previously been found to be an exempt wholesale generator. This application is occasioned by the applicant's intended acquisition of an indirect ownership interest in an eligible facility under construction in Buenos Aires, Argentina. The facility will consist initially of one 200 MW simple cycle combustion turbine generator, fueled by oil or gas. In a second phase, the facility will be converted to combined cycle operation and enlarged to 320 MW. The facility will include such interconnection components as are necessary to interconnect the facility with the utility grid.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. New York State Electric & Gas Corporation

[Docket No. ER95–1589–000]

Take notice that on August 18, 1995, New York State Electric & Gas Corporation (NYSEG) tendered for filing a letter advising the Commission why no termination notice was filed in the agreement scheduled to terminate on June 30, 1995, between NYSEG and the New York Power Authority.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–1662–000]

Take notice that on August 31, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tender and request the Commission to accept a Transmission Service Agreement which provides for 50 MW of Reserved Transmission Service to Wisconsin Power and Light Company. The source party is Otter Tail Power Company and the recipient party is Wisconsin Power and Light Company.

NSP requests that the Commission accept for filing the Transmission Service Agreement effective as of August 5, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER95–1663–000]

Take notice that on August 31, 1995, Illinois Power Company (IPC), tendered for filing an Interchange Agreement between IPC and Wisconsin Power and Light Company (WP&L). IPC states that the purpose of this agreement is to provide for the selling of capacity and energy by IPC to WP&L.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota)

[Docket No. ER95–1664–000]

Take notice that on August 31, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing a Supplemental Power Agreement among NSP, the City of Glencoe (City) and the Central Minnesota Municipal Power Agency (CMMPA) dated July 30, 1995. This agreement allows CMMPA to purchase additional power and energy from NSP on behalf of the City.

NSP requests that the Commission accept for filing this agreement effective as of December 1, 1995.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Hampshire

[Docket No. ER95–1665–000]

Take notice that on August 31, 1995, Public Service Company of New Hampshire (PSNH) pursuant to Section 205 of the Federal Power Act, filed proposed changes to charges for decommissioning Seabrook Unit 1 to be collected under PSNH Federal Energy Regulatory Commission Rate Schedules Nos. 133, 134, 135 and 142. These charges are recovered under a formula rate that is not changed by the filing. The proposed adjustment in charges is necessitated by a ruling of the New Hampshire Nuclear Decommissioning Finance Committee adjusting the funding requirements for decommissioning Seabrook Unit 1.

PSNH has requested an effective date of November 1, 1995 for the adjusted charges.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Great Bay Power Corporation

[Docket No. ER95–1666–000]

Take notice that on August 31, 1995, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Phibro Inc. and Great Bay for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreement is proposed to be effective September 1, 1995.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER95–1667–000]

Take notice that on August 31, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Central Illinois Light Company (CILCo). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on CILCo, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER95–1668–000]

Take notice that on August 31, 1995, Northeast Utilities Service Company tendered for filing: (1) a Notice of Termination of Transmission Tariff No. 4; and (2) a request for waiver of compliance filing.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER95–1669–000]

Take notice that on August 31, 1995, Virginia Electric and Power Company (the Company), tendered for filing a letter agreement implementing the rate schedules included in the Interconnection and Operating Agreement between the Company and Old Dominion Electric Cooperative.

Copies of the filing were served upon Old Dominion Electric Cooperative, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER95–1670–000]

Take notice that on August 31, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Consolidated Edison Company of New York, Inc. and Virginia Power, dated August 31, 1994, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Consolidated Edison Company of New York, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the New York Public Service Commission, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. The Washington Water Power Company

[Docket No. ER95–1671–000]

Take notice that on August 31, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with TransCanada Northridge Power Ltd. along with a Certificate of Concurrence with respect to exchanges. WWP requests waiver of the prior notice requirement and requests an effective date of September 1, 1995.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Northern Indiana Public Service Company

[Docket No. ER95–1672–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Heartland Energy Services, Inc. (Heartland). Under this Service Agreement, Northern Indiana Public Service Company agrees to provide services to Heartland under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER95–1673–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Michigan South Central Power Agency (the Agency). Under this Service Agreement, Northern Indiana Public Service Company agrees to provide services to the Agency under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Northern Indiana Public Service Company

[Docket No. ER95–1674–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and NorAm Energy Services, Inc. (NES). Under this Service Agreement, Northern Indiana Public Service Company agrees to provide services to NES under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Northern Indiana Public Service Company

[Docket No. ER95–1675–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Enron Power Marketing, Inc. (EPU). Under this Service Agreement, Northern Indiana Public Service Company agrees to provide services to EPU under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Northern Indiana Public Service Company

[Docket No. ER95–1676–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Citizens Lehman Power Sales (Citizens). Under this Service Agreement, Northern Indiana Public Service Company agrees to provide services to Citizens under Northern Indiana Public Service Company's Power Sales Tariff, which

was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Northern Indiana Public Service Company

[Docket No. ER95–1677–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Tennessee Power Company (TPCO). Under this Service Agreement, Northern Indiana Public Service agrees to provide services to TPCO under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER95–1680–000]

Take notice that on August 29, 1995, Commonwealth Edison Company (ComEd) submitted two Service Agreements, establishing Heartland Energy Services (Heartland), and Catex Vitol Electric, L.L.C. (Catex Vitol), as customers under the terms of ComEd's Transmission Service Tariff FTS–1 (FTS–1 Tariff). The Commission has previously designated the FTS–1 Tariff as FERC Electric Tariff, Original Volume No. 4.

ComEd requests an effective date of August 4, and August 14, 1995, respectively, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Heartland, Catex Vitol and the Illinois Commerce Commission.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23064 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11142–000 Maine]

Consolidated Hydro Maine, Inc., Notice of Availability of Draft Environmental Assessment

September 12, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Estes Lake Hydroelectric Project, located in the townships of Sanford and Alfredin York County, Maine and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Please affix "Estes Lake Hydroelectric Project No. 11142" to all comments. For further information, please contact Frankie Green at (202) 501–7704.

Lois D. Cashell,

Secretary

[FR Doc. 95–23021 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–56–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 12, 1995.

Take notice that on September 1, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, with a proposed effective date of October 1, 1995:

Eighth Revised Sheet No. 1101

Algonquin states that the purpose of this filing is to reflect a change in Algonquin's index of purchasers.

Algonquin states that copies of this filing were served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23020 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–118–001]

Arkansas Western Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

September 12, 1995.

Take notice that on September 6, 1995, Arkansas Western Pipeline Company (AWP) tendered for filing a corrected hard copy of First Revised Sheet No. 4 to its FERC Gas Tariff First Revised Volume No. 1.

AWP states that the purpose of this filing is to file a corrected hard copy of the tariff sheet (originally filed on August 28, 1995) to implement for the first time an ACA charge in its rates. Specifically, the hard copy of the ACA filing erroneously omitted the word "any" in the following sentence, which appears at the bottom of the First

Revised Sheet No. 4: "All rates exclusive of any fuel usage and applicable shrinkage of zero percent (0%)."

Any person desiring to protest the subject filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23026 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–400–001]

Distrigas of Massachusetts Corporation; Notice of Tariff Filing

September 12, 1995.

Take notice that on September 6, 1995, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing pursuant to Part 154 of the regulations of the Federal Energy Regulatory Commission (Commission) compliance tariff sheets as specified in the letter order issued in this proceeding on August 28, 1995.

DOMAC states that copies of the filing were served upon all of DOMAC's customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23023 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–4–000]

Granite State Gas Transmission Inc.; Notice of Change in Annual Charge Adjustment

September 12, 1995.

Take notice that on September 6, 1995, Granite State Gas Transmission, Inc. (Granite State) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below containing changes in rates for effectiveness on October 1, 1995:

Fifth Revised Sheet No. 21
Sixth Revised Sheet No. 22
Fifth Revised Sheet No. 22

According to Granite State, the revised tariff sheets are submitted to reflect the Annual Charge Adjustment authorized for the 1996 fiscal year in its transportation rate schedules.

Granite State further states that copies of its filing have been mailed to its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23024 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–185–008]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 12, 1995.

Take notice that on September 5, 1995, Northern Natural Gas Company (Northern) tendered for filing to become part of the Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective September 1, 1995:

First Revised Sheet No. 105

Northern states that such tariff sheet is being submitted in compliance with the Commission's "Order on Rehearing", issued August 3, 1995, in Docket No. RP95–185–002, to clarify the tariff provision addressing turnback of TFF capacity.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23022 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ES95–37–001 and ES95–37–002]

Texas-New Mexico Power Company and Texas Generating Company II; Notice of Amended Application

September 12, 1995.

Take notice that on September 8, 1995, Texas-New Mexico Power Company (TNP) and Texas Generating Company II (TGC II) filed amendments the application filed in Docket No. ES95–37–000. Such amendments provide explanations of both an existing credit agreement which was authorized by the Commission in Docket No. ES94–12–000 et al.[1] and an amended credit agreement which TNP and TGC II are proposing to enter into. The amendments differentiate between the two agreements, as well as noting the anticipated benefits to be realized by entry into the proposed amended credit agreement. TNP notes that entry into the amended credit agreement will allow the refinancing of currently outstanding long-term debt with debt under the amended credit agreement which will bear a cost lower than the existing long-term debt. TNP also notes that its long-term debt is not anticipated to be of investment grade until 1998 and would therefore have a cost higher than the debt under the amended credit agreement. In addition to savings to be realized through the refinancing the existing long-term debt, TNP further notes that, under the terms of the amended credit agreement, it will also realize cost savings as compared to borrowings under the present credit agreement which would be replaced by the proposed credit agreement.

TNP and TGC II also note that the proposed credit agreement is, in essence, an extension of the existing credit agreement for an additional two years but under terms that are simpler and more favorable than the terms of the existing credit agreement.

TNP and TGC II also submitted amended Exhibit C, Balance Sheet; Exhibit D, Income Statement; and E, Statement of Cash Flows and Computation of Interest Coverage, for the twelve months ended June 30, 1995, as well as supplemental information on TNP's anticipated financial condition. The amendments also corrected a reference to TGC II in the original filing which should have been a reference to TNP.

TNP and TGC II also request Commission action by September 25, 1995, instead of September 15, 1995 as originally requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants partiers to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23027 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–76–000]

Wyoming Interstate Company, Ltd.; Notice of Filing

September 12, 1995.

Take notice that on August 30, 1995, Wyoming Interstate Company, Ltd. (WIC) filed of the following tariff sheets to its FERC Gas Tariff, with an effective date of September 1, 1995:

First Revised Volume No. 1
First Revised Sheet No. 5.1
Second Revised Volume No. 2
First Revised Sheet No. 4A
Fourth Revised Sheet No. 5

WIC proposes to reduce its current Fuel Gas and Unaccounted-for Gas ("FL&U") percentage from one percent to a new level of zero percent. This filing is a non-annual filing pursuant to Section 24 of WIC's First Revised Volume No. 1 and Article 31 of WIC's Second Revised Volume No. 2. Since the December 1, 1994 effective date of the current FL&U percentage WIC states it has experienced a FL&U percentage of less than one percent on its system and a change at this time will result in WIC's transportation customers receiving the benefit of a lower FL&U percentage during the winter heating season.

WIC states that copies of this filing were served on its customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23025 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL–5296–8]

Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized the California Air Resources Board (CARB) access to information that has been, or will be, submitted to the EPA under Section 114 of the Clean Air Act (CAA), as amended.

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to the EPA will occur no sooner then ten days after issuance of this notice.

FOR FURTHER INFORMATION CONTACT: Doris Maxwell, Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5312.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under Section 114 of the CAA that the EPA may provide the above-mentioned State agency access to these materials on a need-to-know basis.

In accordance with 40 CFR 2.301(h), the EPA has determined that CARB requires access to CBI concerning consumer and commercial products submitted to the EPA under Section 183(e) and Section 114 of the CAA in order to carry out its duties under California environmental protection laws and the CAA. Some of the information may be claimed or determined to be CBI. The CARB will be required to sign a nondisclosure agreement and will be briefed on appropriate security procedures before being permitted access to CBI. All CARB access to CAA CBI will take place at CARB's facilities. The CARB will have appropriate procedures and facilities in place to safeguard the CAA CBI to which CARB has access.

Clearance for access to CAA CBI is scheduled to expire on September 30, 1998.

Dated: September 11, 1995.

Mary Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–23110 Filed 9–15–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5297–2]

Jack's Creek/Sitkin Smelting Superfund Site de Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: United States Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liability under CERCLA of Joseph Smith and Sons, Inc. ("Joseph Smith"), for response costs incurred by the United States Environmental Protection Agency at the Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania.

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[1] 66 FERC ¶ 62,054 (1994).

DATES: Comments must be provided on or before October 18, 1995.

ADDRESS: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania, U.S. EPA Docket No. III–94–40–DC.

FOR ADDITIONAL INFORMATION CONTACT: Daniel Isales (215) 597–4774, or Pamela Lazos (215) 597–8504, United States Environmental Protection Agency, Office of Regional Counsel, (3RC22), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107.

Notice of De Minimis Settlement

In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), and Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), notice is hereby given of a proposed administrative settlement concerning the Jack's Creek/Sitkin Smelting Superfund Site in Maitland County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on June 30, 1995 and is subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee and for the grant of a covenant not to sue for damages to natural resources, is also subject to agreement in writing by the Department of the Interior ("DOI").

The settling party has agreed to pay $14,066.18 to United States Environmental Protection Agency toward EPA CERCLA response costs and $506.25 to DOI for damages to natural resources, subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, Section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. The grant of a covenant not to sue for damages to natural resources by DOI to those parties paying their share of such allocated costs is subject to agreement in writing by DOI pursuant to Section 122(j) of CERCLA, 42 U.S.C. 9622(j).

The Environmental Protection Agency will receive written comments upon this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. Moreover, pursuant to Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), the public may request a meeting in the affected area. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Daniel Isales at (215) 597–4774 or Pamela Lazos at (215) 597–8504.

W.T. Wisniewski,

Acting Regional Administrator, EPA Region III.

[FR Doc. 95–23109 Filed 9–15–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

September 11, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0106.

Expiration Date: 08/31/98.

Title: Reports of Overseas Telecommunications Traffic—Section 43.61.

Estimated Annual Burden: 2,370 total annual hours; 14.81 hours per response; 160 respondents.

Description: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities.

OMB Control No.: 3060–0511.

Expiration Date: 08/31/98.

Title: ARMIS Access Report, FCC Report 43–04.

Estimated Annual Burden: 172,500 total annual hours; 1150 hours per response; 150 respondents.

Description: The Access Report is needed to administer our accounting, jurisdictional separations and access charge rules, and to analyze revenue requirements and rates of return and to collect financial and operating data from all Tier 1 local exchange carriers.

OMB Control No.: 3060–0512.

Title: ARMIS Quarterly Report.

Estimated Annual Burden: 132,000 total annual hours; 220 hours per response; 150 respondents.

Description: The Quarterly Report is needed to administer the accounting, jurisdictional separations and access charge rules, and to analyze revenue requirements and rates of return and to collect financial and operating data from all Tier 1 local exchange carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–23008 Filed 9–15–95; 8:45 am]

BILLING CODE 6712–01–F

[Report No. AUC–95–06]

Auction Notice and Filing Requirements for 493 BTA Authorizations for Multipoint Distribution Service in the 2 GHz Band, Scheduled for November 13, 1995

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This Public Notice, released September 5, 1995, announced the auction and filing requirements for the 493 BTA authorizations for the Multipoint and/or Multichannel Distribution Service (MDS) in the 2 GHz Band, scheduled to begin November 13, 1995. The Public Notice included, as an Appendix, an upfront payment schedule. On September 12, 1995, the FCC's Wireless Telecommunications Bureau issued another Public Notice with a revised upfront payment schedule, which differed slightly from September 5, 1995 Appendix and supersedes the schedule previously published. Both the September 5, 1995 and the September 12, 1995 Public Notices should be read together. These Public Notices are directed toward the Commission's goal of efficiently distributing the unused MDS spectrum through competitive bidding, and are designed to assist prospective bidders in preparing for the upcoming MDS auction.

FOR FURTHER INFORMATION CONTACT: The FCC auction contractor; Tradewinds International, Inc., at (202) 637–FCC1 (637–3221).

The complete text of the Public Notice dated September 5, 1995 follows. Copies of this item is available for public inspection in Room 207, 2033 M Street, NW., Washington, DC and may also be obtained from the FCC copy contractor, ITS, Inc. at (202) 418–0620, and the FCC auction contractor, Tradewinds International, Inc. at (202) 637–FCC1 (637–3221).

Report No. AUC–95–06, Auction No. 6, September 5, 1995

I. Introduction

On Monday, November 13, 1995, the Federal Communications Commission (FCC or Commission) will commence a simultaneous multiple round auction for 493 authorizations to provide single channel Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS), collectively referred to as MDS. The frequencies allocated to MDS are as follows: 2150–2156 MHz (designated as Channel 1); 2156–2162 MHz (designated as Channel 2) or 2156–2160 (designated as Channel 2A); 2596–2602 MHz, 2608–2614 MHz, 2620–2626 MHz, and 2632–2638 MHz (designated as Channels E1, E2, E2, and E4, respectively); 2602–2608 MHz, 2614–2620 MHz, 2626–2632 MHz, and 2638–2644 MHz (designated as Channels F1, F2, F3 and F4, respectively); 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz (designated as Channels H1, H2 and H3, respectively). In 1992, the frequency spectrum of 2160–2162 MHz was reallocated to emerging technologies, and thus, any subsequent MDS use of these 2 MHz will be secondary. The authorizations to be auctioned will authorize the construction of facilities to provide service on the usable MDS channels within the 493 Basic Trading Area (BTAs) and BTA-like areas in the United States. A channel is usable if the proposed station design is in compliance with the Commission's interference standards. The channels allocated to MDS, when supplemented with leased channels from the Instructional Television Fixed Service (ITFS), are generally used to provide multichannel video programming service (popularly referred to as "wirless cable") to subscribers.

In each of the 493 BTAs, one authorization will be offered for bid. Bidders should note that MDS is a service heavily encumbered with previously authorized and proposed MDS and ITFS facilities. Most of the thirteen MDS channels have already been authorized in the largest metropolitan areas, especially in the eastern half of the United States. Given the limited amount of usable MDS spectrum remaining and the presence of incumbents in most BTAs, each prospective bidder should carefully evaluate the BTAs in which it is interested prior to the commencement of bidding. The attached Appendix lists the market number, authorization number and population of each BTA, as well as the upfront payment amount associated with each BTA and reduced upfront payment amount for eligible small businesses.

The precise schedule for bidding in the first week of the auction will be announced approximately two weeks prior to the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all BTA service areas. Bidding in this auction will only be permitted from remote locations, either electronically (by computer) or telephonically.

Those wishing to participate in the auction must submit a "short-form" application on FCC Form 175–M in accordance with the Commission's rules and instructions in this Public Notice and in the Bidder Information Package. Applicants should be aware that the FCC Form 175–M is a revised form specifically for this MDS auction and will be the only form accepted for filing. The FCC Form 175–M must be received no later than 5:30 p.m. Eastern Daylight Time on Tuesday, October 10, 1995, and must be received either electronically or manually pursuant to the instructions set forth in the Bidder Information Package. Applicants for the MDS auction are encouraged to file their FCC Form 175–M electronically. Applicants should also be aware that only those applicants who file applications electronically will be permitted the option to bid electronically. Applicants who file their applications manually will only be permitted to bid telephonically. Limited instructions regarding electronic filing are contained in this Public Notice. More detailed instructions on electronic filing will be contained in the Bidder Information Package. Applicants whose FCC Forms 175–M have been accepted will be required to submit an upfront payment (in U.S. dollars) to be eligible to participate in the auction. As detailed in Section II.B. of this Public Notice, the upfront payment must be made by wire transfer or cashier's check payable to the "Federal Communications Commission" or "FCC" and must be received on or before Monday, October 30, 1995, at the Mellon Bank in Pittsburgh, Pennsylvania. No other form of payment will be accepted.

A. Bidder Information Package

Prospective bidders who have already contacted the FCC Auction Hotline expressing an interest in MDS will receive the Bidder Information Package for the MDS auction approximately ten to fifteen business days from the issuance of this Public Notice. Other prospective applicants may obtain the Bidder Information Package for the MDS auction by contacting Tradewinds International, Inc., at (202) 637–FCC1 (637–3221).

The FCC recently issued a Report and Order (WT Docket No. 95–69, 60 Fed. Reg. 38,276 (July 26, 1995)) establishing fair and reasonable fees for Bidder Information Packages. Although all prospective applicants who request a Bidder Information Package will receive their first copy of this package for free, additional copies will be provided at a cost of $16.00 per package (including postage). Payment for additional Bidder Information Packages may be made by Visa/Master Card or check payable to the "Federal Communications Commission" or "FCC" and mailed to Tradewinds International, Inc.

The Bidder Information Package will contain the following information:

1. A list of BTA authorizations to be offered simultaneously;
2. Detailed procedures, terms and conditions of the auction;
3. Detailed instructions regarding the completion and filing of the FCC Form 175–M, including instructions on electronic filing and remote access of FCC Form 175–M applications filed with the Commission;
4. Electronic and telephone bidding procedures;
5. All applications/forms needed to participate in the FCC Auction:

a. A short-form application to participate in the auction (FCC Form 175–M) for bidders who intend to file manually, Additionally, a supplemental form (FCC Form 175–S) will be included for those who wish to apply for more than five markets.

b. An FCC Remittance Advice Form (FCC Form 159) to be submitted by each bidder with its upfront payment, and by each winning bidder with its down payment, final payment and installment payments, if applicable (as described below), including instructions on filling out the form and samples of completed FCC Form 159s;

c. A registration form to participate in the FCC's Auction Seminar to be held at the FCC's auction facility in Washington, D.C. on Tuesday, October 24, 1995. This seminar is only for applicants whose FCC Forms 175–M have been filed;

d. An order form for the purchase of remote electronic bidding software;

6. Wire transfer instructions;

7. A partial bibliography of auction specific FCC rules and regulations;

8. The Report and Order in MM Docket No. 94–131 and PP Docket No. 93–253, FCC 95–230 (released June 30, 1995), summarized at 60 Fed. Reg. 36,524 (July 17, 1995) (MDS Report and Order), which modified the MDS application process and adopted competitive bidding procedures for MDS. This MDS Report and Order contains the amended part 21 rules pertaining to MDS and a draft application for an MDS authorization (FCC Form 304 or "long-form" application) to be submitted after the auction by winning bidders to obtain a station license;

9. An FCC Licensee Qualification Report (FCC Form 430), which must be submitted after the auction by winning bidders as part of their Form 304 long-form applications or statements of intention; and

10. Other general auction information.

B. Relevant Authority

Prospective Bidders must familiarize themselves thoroughly with the procedures, terms and conditions (collectively, "Terms") contained in the Second Report and order in PP Docket No. 93–253, 9 FCC Rcd 2348 (1994), 59 Fed. Reg. 22,980 (May 4, 1994), Second Memorandum Opinion and Order in PP Docket No. 93–253, 9 FCC Rcd 7245 (1994), 59 Fed. Reg. 44,272 (Aug. 26, 1994); the Erratum to the Second Memorandum Opinion and Order in PP Docket No. 93–253 (Oct. 19, 1994); and the MDS Report and Order (collectively referred to as "the Relevant Orders"). The rules contained in the Relevant Orders, this Public Notice, and Terms in the Bidder Information Package are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the Terms before participating in the auction.

Potential bidders should also be aware of several items pending before the Commission that affect MDS. Thirteen petitions for reconsideration have been filed requesting that the Commission reconsider and/or clarify certain aspects of the MDS Report and Order. In addition, numerous members of the wireless cable industry have filed a request for a declaratory ruling asking that the Commission examine current MDS and ITFS operational requirements that were adopted before digital compression technology was envisioned, and reinterpret them appropriately for digital operations. Further, the Commission has announced the opening of an ITFS filing window from October 16–20, 1995. Prospective bidders should consider the impact of these pending matters in their valuation of the BTA service areas before submitting any bids in the auction.

The information contained in this Public Notice and in the Bidder Information Package may be amended or supplemented by the Commission at any time. The Commission will issue Public Notices to convey the new or supplemental information to prospective bidders. It is the responsibility of all prospective bidders to remain current with all FCC rules and with all Public Notices pertaining to this auction. Copies of FCC documents, including Public Notices, may be obtained for a fee by calling International Transcription Service, Inc. at (202) 857–3800. Additionally, prospective bidders may retrieve some of these documents from the FCC Internet node via anonymous FTP@fcc.gov.

II. Bidder Eligibility

In order to be eligible to bid in the MDS auction, bidders must (i) satisfy the Commission's eligibility requirements; (ii) submit a short-form application on FCC Form 175–M (and Form 175–S if necessary); and (iii) remit an upfront payment in compliance with applicable FCC rules and regulations. To meet the eligibility requirements for participation in this auction, prospective bidders must be qualified to receive a BTA authorization and an MDS station license. See 47 C.F.R. § 21.923. All prospective applicants should review carefully each of the rules contained in subparts A, B, C, D, E and K of Part 21 of the Commission's rules, as amended by the MDS Report and Order, as well as Subparts I and Q of Part 1 of the Commission's rules.

Bidders that qualify as small businesses or as small business consortia are eligible for reduced upfront payments (see Section II.B), bidding credits of 15% (a discount on the winning bid price) and installment payments (which allow eligible winning bidders to pay the net amount of their winning bids in installments). Small businesses are entities that, together with their affiliates, have average annual gross revenues that are not more than $40 million for the preceding three calendar years. See 47 C.F.R. §§ 21.960 and 21.961 for eligibility criteria and other terms pertaining to reduced upfront payments, bidding credits and installments payments. These special measures available to small businesses in the MDS auction are also discussed in the Bidder Information Package.

Winning bidders claiming eligibility as small businesses should note that they will be required to file supporting documentation to establish that they qualify as small businesses. See 47 C.F.R. § 21.960(e). Winning bidders claiming eligibility as small businesses may be subject to audits by the Commission to confirm bidder eligibility. See 47 C.F.R. § 21.960(f) and (g).

A. Short-Form Application (FCC Form 175–M)

In order to be eligible to bid, applicants must submit an FCC Form 175–M application to the Commission. This application must be received by the FCC no later than 5:30 p.m. Eastern Daylight Time on Tuesday, October 10, 1995. Late applications will not be accepted. Applications may be submitted electronically, by hand delivery, by certified U.S. mail (return receipt requested) or by private courier. Applicants should consult the detailed application procedures provided in the Bidder Information Package before submitting their FCC Form 175-M.

1. Completion of Form 175–M

Because of the significance of the FCC Form 175-M application to the auction, it is important to take note of the following requirements. Applicants will be required to complete all the items on the FCC Form 175-M. Applicants should carefully review §§ 1.2105(a)(2), 21.952 and 21.960(e) of the Commission's rules prior to completing FCC Form 175-M. In completing an FCC Form 175-M, applicants should note the following:

a. Applicants should apply for all authorizations for which they seek bidding eligibility. Bids will not be accepted for authorizations for which a applicant has not applied on its FCC Form 175–M.

b. For "Auction Number," applicants filing manually should enter "6".

c. Applicants will be required to create a ten-digit FCC Account Number, which the Commission will use to identify and track applications. Applicants must create this FCC Account Number by using their taxpayer identification number (TIN) with a prefix of "O" (i.e., 0123456789). If, and only if, an applicant does not have a taxpayer identification number, the applicant may use its ten-digit area code and telephone number (i.e., 5552345678). Each applicant must use this same number when submitting additional information or material regarding its application, including on its FCC Form 159 (FCC Remittance Advice) accompanying any required auction deposits or payments submitted to the Commission. This number also must be used whenever an applicant writes, calls, or otherwise inquires about its application. Qualified bidders will need this number to participate in the auction.

d. Applicants must indicate on their FCC Form 175–M, if applicable, their status as a rural telephone company, minority-owned business, women-owned business and/or small business. See 47 C.F.R. §§ 1,2110(b), 21.961. The indication of applicants' status as a rural telephone company, minority-owned business or woman-owned business is for statistical purposes only. In Item #10, by checking the appropriate box to indicate status as a small business, an applicant certifies that it is eligible for the special measures available to small businesses, i.e., that, together with its affiliates, the applicant has annual gross revenues of less than $40 million. See 47 C.F.R. §§ 21.960, 21.961(b). All applicants should pay particular attention to the provisions of 47 C.F.R. §§ 1.2110, 21,960 and 21.961, relating to designed entities.

e. Applicants must identify on the FCC Form 175–M the market number for each authorization on which they seek bidding eligibility. The market number for each BTA is listed in the attached Appendix. The upfront payment amounts for each BTA are also included in this Appendix so that applicants can calculate upfront payments amounts required to be eligible to bid on the largest combination of "activity" or "bidding" units on which the applicants anticipate being active in any single round of bidding. See Section II.B below and the MDS Report and Order for detailed information about upfront payments. Applicants should note that the BTAs in the attached Appendix have been organized within the corresponding Major Trading Area (MTA). BTA service areas are based on Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. Rand McNally organizes the 50 states and the District of Columbia into 487 BTAs. Six additional BTA-like areas will be licensed separately. They are:

(1) American Samoa;

(2) Guam;

(3) Northern Mariana Islands;

(4) Mayagüez/Aguadilla-Ponce, Puerto Rico. Consisting of the following municipos: Adjuntas, Aguada, Aguadilla, Añasco, Arroyo, Cabo Rojo, Coama, Guánica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Díaz, Lajas, Las Marías, Mayagüez, Maricao, Maunago, Moca, Patillas, Peñuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San Germán, Santa Isabel, Villalba, and Yauco;

(5) San Juan, Puerto Rico (including all other municipos not included in Mayagüez/Aguadilla-Ponce); and

(6) United States Virgin Islands.

f. Applicants must list the name(s) of the person(s) authorized to represent them at the auction (up to a maximum of three). Only those individuals listed on the Form 175–M will be authorized to submit and withdraw high bids for the applicant during the auction.

g. Applicants should read the "certifications" on the FCC Form 175–M carefully before submitting their application. Applicants who file their FCC Form 175–M applications electronically will not be required to transmit an original or electronic signature. However, similar to a manually filed FCC Form–M, upon submission, the certifying official has made the representation that he/she is an authorized representative of the applicant for the authorization(s) selected, and that he/she has read the instructions and the certifications and that all matters and things stated in the application and attachments, including exhibits, are true and correct. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure of certain information on agreements or arrangements concerning the auction. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, BTA authorization and/or station license forfeitures, and ineligibility to participate in future auctions, and/or criminal prosecution.

h. If the Commission wishes to communication with the applicant by mail, telephone or fax, such communications will be directed to the contact person identified on the FCC Form 175–M. A space has been provided for both a telephone number and a fax number. All written communications will be directed to the applicant at the address specified on the FCC Form 175–M. (Applicants must provide a street address; P.O. Box addresses should not be used.)

i. Applicants must attach an exhibit providing the name, citizenship and address of all partners, if the applicant is a partnership; of a responsible officer or director, if the applicant is a corporation; of the trustee, if the applicant is a trust; or, if the applicant is none of the foregoing, list the name, address and citizenship of a principal or other responsible person.

j. Applicants must attach an exhibit identifying all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to this auction.

k. Microfiche copies of the FCC Form 175–M and 175–S are required for all manual submissions in excess of five pages. For this auction, the FCC will allow submission of a 3.5″ diskette, in lieu of microfiche, which contains ASCII text (.TXT) files of all exhibit documentation attached to the FCC Form 175–M.

2. Electronic Filing of FCC Form 175–M Applications

The Commission recently implemented a remote access system to allow applicants to submit their FCC Form 175–M applications electronically. The remote access system for initial filing of the FCC Form 175–M applications will generally be available 24 hours per day beginning at approximately the same time as the release of the Bidder Information Package. FCC Form 175–M applications that are filed electronically using this remote access system must be submitted and confirmed by 5:30 p.m. Eastern Daylight Time on Tuesday, October 10, 1995. Late applications or unconfirmed submissions of electronic data will not be accepted. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections. (*See* Paragraph 5. *Procedures after FCC Form 175–M Applications are Filed and Process for Minor Corrections* below.) Detailed filing instructions will be provided in the Bidder Information Package.

Those applicants who wish to file their FCC Form 175–M electronically or review other FCC Form 175–M applications on-line will need the following hardware and software.

Hardware Requirements

- CPU: Intel 80386 or above (80486 or faster recommended).
- RAM: 8MB RAM (more recommended if you have multiple applications open).
- Hard Disk: 10MB available disk space.
- 1.44MB 3.5″ Floppy Drive (to install the remote system).
- Modem: v.32bis 14.4kbps Hayes compatible Modem.
- Monitor: VGA or above.
- Mouse or other pointing device.
- Three 1.44MB Floppy Disks.

Software Requirements

- FCC-provided application software (will be available via Internet or the FCC Bulletin Board Service).
- PPP Asynchronous Communications Package that is Winsock v1.1 compliant (tested—Trumpet v2.0b, NetManage Chaneleon v4.1, Wollongong Pathway Access for Windows v3.2.[1]
- Microsoft Windows 3.1 or above, or Microsoft Windows for WorkGroups v.3.11 or above.[1]

Applicants who wish to file their FCC Form 175–M applications electronically through the FCC Remote Access System must first download the FCC-provided application software from either the Internet or the FCC Bulletin Board System. Applicants should note that previous versions of the Remote FCC Form 175 software will not work. Applicants must download the version specific to this auction, FCC175v3.exe.

Internet Access

In order to download the compressed file from Internet, you will need to have access to the Internet and an ftp client software as follows:

FTP: The following instructions are for the command line version of ftp.

(1) Connect to the FCC ftp server by typing ftp fcc.gov.

(2) At the user name prompt, type anonymous [Enter].

(3) At the password prompt, type your Internet e-mail address [Enter].

(4) To allow the file to be downloaded type: binary [Enter].

(5) Change your current directory to the FCC175 directory by typing: cd/pub/Auctions/MDS/BTA/FCC175 [Enter].

(6) Use the get command to download files from the FCC ftp server by typing: get F175V3.EXE [Enter].

(7) If you wish to exit, type: bye [Enter].

Gopher: gopher.fcc.gov or use any gopher to get to "all the gophers in the world" then 'U.S.' then 'DC' then 'FCC'.

World Wide Web: ftp://fcc.gov.

Dial—In Access to the FCC Auction Bulletin Board System (BBS)

The FCC Auction Bulletin Board System provides dial-in access for the FCC-provided application software. In order to access the FCC Auction BBS, use a communications package that can handle at least xmodem protocol (e.g., pcAnyWhere, Telix, Procomm) to dial in to (202) 682–5851. Use the settings of 8 data bits, no parity and 1 stop bit (8,N,1).

For New Users Follow Steps 1–6, Otherwise Go to Step 7

(1) Type New, [Enter]. If the word ANSI is blinking, type Y for yes. If the word ANSI is not blinking, type N for No.

(2) Type in your first and last name and press [Enter]. This will be your login name.

(3) Type in your Telephone number and press [Enter].

(4) Type in your Fax number and press [Enter].

(5) Type in what you want your password to be and press [Enter].

(6) Retype the password for verification and press [Enter].

Once the Account Is Generated

(7) Type M for MDS Auction Files and press [Enter].

(8) Type P for Programs and Applications and press [Enter].

(9) Move the cursor to the file named F175V3.EXE and type [Control]–D (hold the Ctrl key down and press the D key) for Download and press [Enter].

(10) Type the letter representing the transfer protocol desired and press [Enter]. How the file is downloaded and where it gets downloaded depends on the transfer protocol package used.

(11) Repeat steps 10 and 11 to download additional files, or press X and [Enter] to Exit the screen.

To Exit

(12) Type X to Exit and press [Enter] and continue to do so until asked if you want to Exit the BBS. Press Y for Yes when asked to verify your leaving.

The FCC-provided application software available through Internet and the Auction BBS will be in a self-extracting compressed file format. Once the compressed file has been downloaded, you will need to generate the installation disks.

To generate the installation disks, type F175V3.EXE/! and press [Enter].

The extracted files will be executable programs for submitting and reviewing FCC Form 175-M applications along with a README.TXT file. The text file will provide instructions for installing the software on the applicant's personal computer. For technical assistance in downloading, extracting, installing or using the FCC application software contact the FCC Technical Support Hotline at (202) 414–1260.

3. Manual Filing of FCC Form 175–M

For those applicants who file manually, whether mailed, hand delivered or sent by private courier, applications must be addressed to: Office of the Secretary, Attn: Auction 6 Short-Form Processing, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554.

Applications will not be accepted if delivered to any other location. Applicants who wish to file manually should note that the FCC Form 175–M has been revised specifically for this auction. Only the revised FCC Form 175–M will be accepted for filing. Additionally, applicants should be aware that if they file manually they will only be permitted to submit their bids telephonically. Electronic bidding is reserved for parties who submit their applications electronically.

4. Application Fee

No application fee need accompany the FCC Form 175–M for the auction.

5. Procedures After FCC Form 175–M Applications Are Filed and Procedures for Minor Corrections

After the deadline for filing the FCC Form 175–M applications has passed, the Commission will process all applications to determine whether they are acceptable for filing. The Commission will issue a Public Notice listing all applications which are accepted for filing, rejected, and those which have minor defects that may be corrected. The Public Notice will also announce the deadline for filing corrected applications. As described more fully in the Commission's general auction rules and in the MDS Report and Order, applicants may make minor corrections to their FCC Form 175–M applications. Applicants will not be permitted to make major modifications to their applications. In particular, failure to sign a manually filed FCC Form 175–M cannot be corrected and will cause the application to be dismissed and the applicant to be ineligible to participate in the auction. See 47 C.F.R. §§ 1.2105(b); 21.952(c). Applicants who file their FCC Form 175–M application electronically will not be required to transmit an original or electronic signature.

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[1] The FCC is in the process of testing Windows95. Contact the FCC Technical Support Hotline at (202) 414–1260.

After the deadline for resubmitting corrected applications, the Commission will release another Public Notice announcing all applications that have been accepted for filing, including applicants who have corrected defective applications.

B. Upfront Payments

In order to be eligible to bid in the auction, applicants must submit an upfront payment together with an FCC Remittance Advice, FCC Form 159. The upfront payment will be due on Monday, October 30, 1995. A sample FCC Form 159 and further instructions for making auction payments will be included in the Bidder Information Package.

All payments must be made in U.S. dollars, must be in the form of a wire transfer or cashier's check, and must be made payable to the "Federal Communications Commission" or "FCC." No other form of payment will be accepted. Cashier's checks must be drawn on a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). All payments whether by wire transfer or cashier's check, must be made to the Mellon Bank by Pittsburgh, Pennsylvania. Payments made by cashier's check must be received by 11:59 p.m. Eastern Standard Time, Monday, October 30, 1995. Payments made by wire transfer must be received by 3:00 p.m. Eastern Standard Time, Monday, October 30, 1995. Bidders making payments by wire transfer should allow sufficient time for the wire transfer to be confirmed.

Failure to deliver the upfront payment in a timely manner will result in dismissal of the application and inability to participate in the auction.

A bidder should calculate its upfront payment on the basis of the largest combination of "activity" or "bidding" units on which the bidder anticipates being active in any single round of bidding. (The number of bidding units associated with any particular BTA equals the amount of the upfront payment for that BTA, as set forth in the attached Appendix. These upfront payments were calculated by the Commission, taking into account the population and the approximate amount of usable spectrum in each BTA.) The combination of bidding units on which a bidder is active in a round equals the sum of the bidding units associated with the BTAs on which the bidder has submitted a bid, or on which the bidder is the standing high bidder. The upfront payment submitted by each applicant is not attributed to specific BTA service areas but instead will define the largest combination of bidding units on which the applicant will be permited to bid in any single round of bidding. Thus, if an applicant submits a $100,000 total upfront payment, the applicant could be active in any single round on two BTA service areas with 50,000 bidding units each, on five BTAs with 20,000 bidding units each, on ten BTAs with 10,000 bidding units each, or on any combination of BTAs for which the sum of associated bidding units totals 100,000 or less. See MDS Report and Order at ¶¶ 135–137.

An applicant may, on its FCC Form 175-M, apply for every authorization being offered, but the total upfront payment submitted by the applicant will determine the combinations of BTA service areas on which the applicant will actually be permitted to be active in any single round of bidding.

A prospective bidder in the MDS auction that claims status as a small business will be eligible for a 25% reduction in its upfront payment requirement. Thus, a bidder claiming eligibility as a small business and wishing to be eligible to bid on a particular BTA service area will be required to submit an upfront payment equal to 75% of the upfront payment specified for bidders who don't qualify for the small business credits. A small business eligible for this reduction in its upfront payment will not have the number of its bidding units decreased as a result of submitting a reduced upfront payment. For example, if a small business applicant wants to be eligible to bid on a BTA with an upfront payment of $100,000, it will be required, under the reduced upfront payment measure, to submit only $75,000 to qualify to bid on that BTA. This applicant will still, however, receive 100,000 bidding units—the number of bidding units equivalent to the full upfront payment amount associated with that BTA. See MDS Report and Order at ¶ 138.

The Commission will issue a Public Notice announcing all qualified bidders for the MDS auction. Qualified bidders are those whose FCC Form 175-M applications have been accepted for filing and who have submitted timely upfront payments sufficient to make them eligible to bid on at least one of the BTA authorizations applied for on the FCC Form 175-M application.

III. Auction Event and Bidding Rounds

The MDS auction will begin at 9:00 a.m. Eastern Standard Time on Monday, November 13, 1995. The precise schedule for bidding in the first week of the auction will be announced two weeks prior to the start of the auction.

Generally bids will be submitted twice each day during the first three days of bidding. The Commission may, however, increase or decrease the amount of time for bid submission as well as the number of rounds per day depending upon such factors as the bidding activity level or the aggregate amount of high bids.

IV. Auction Procedures

The BTA authorizations will be awarded through a simultaneous multiple round auction. Bids will be accepted on all BTA service areas in each round of the auction until bidding stops on all BTAs. See Section IV.E for specific information about stopping rules. High bid amounts will be posted after the end of the bid submission period in each round of bidding. Information regarding all valid bids submitted and all bid withdrawals in each round also will be provided along with the minimum accepted bids for the next round.

A. Number of Authorizations That May Be Acquired

The Commission has imposed no limitations on the number of BTA authorizations that any one entity may acquire in the MDS auction.

B. Bid Submission and Withdrawal Procedures

Bidders that are eligible to bid electronically, those that filed their FCC Form 175–M electronically, may order the auction bidding software by filling out the order form contained in the Bidder Information Package. The cost of the bidding software is $175 plus $25 for shipping and handling. Qualified bidders that use the remote electronic auction system will be charged $2.30 per minute pursuant to the recently issued Report and Order (WT Docket No. 95–69, 60 Fed. Reg. 38,276 (July 26, 1995)). All qualified bidders also have the option to submit and withdraw high bids telephonically through an "800" number which will be provided in the registration materials.

1. Bid Submission

Details will be set forth in the Bidder Information Package on the procedures to be used in bidding.

2. Bid Withdrawals

A high bidder that wants to withdraw one or more of its high bids during the course of the auction may do so during the bid withdrawal period subject to the withdrawal penalty specified in Section 21.959(a)(1) of the Commission's rules, 47 C.F.R. § 21.959(a)(1).

C. Minimum Bid Increments and Tie Bids

The minimum bid increment is the amount or percentage by which a bid must be raised above the previous high bid in order to be accepted as a valid bid in the current round. The amount of the minimum accepted bid for each BTA service area (the sum of the minimum bid increment and the high bid from the previous round) will be announced before the beginning of each round. The Commission may, in its discretion, raise or lower the amount of the minimum bid increment at any time during the auction. The Commission generally will raise the amount of the minimum bid increments early in the auction and when bidding activity is high. Conversely, the Commission will generally lower the minimum bid increments towards the end of the auction and when bidding activity is low. There will be no minimum opening bids for any of the BTA service areas in the MDS auction and no minimum bid increment for a BTA service area until that BTA has received a bid.

Each bid will be date and time stamped when it is entered into the computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid.

D. Activity Rule

In order to ensure that the auction closes within a reasonable period of time, the Commission will impose an activity rule to discourage bidders from waiting until the end of the auction before participating. The activity rule provides for three stages with increasing levels of bidding activity required in each stage in order for a bidder to maintain its current eligibility.

We note that the required activity level in Stage I and Stage II of the MDS auction will be relatively high so as to increase the pace of the auction, which is needed to ensure a timely completion given the large number of authorizations being offered. In Stage III of the auction the required activity level will be higher than in Stages I and II, but will still provide bidders with some flexibility to shift their bids to other BTA service areas.

A bidder will be considered active on a BTA service area in the current round if it is either the high bidder at the end of the bid withdrawal period in the previous round or submits a bid in the current round which meets or exceeds the minimum accepted bid. A bidder's activity level in a round is the sum of the "activity" or "bidding" units associated with the BTA service areas on which the bidder is active. The minimum required activity levels for each stage of the MDS auction are as follows:

Stage One: During the first stage of the auction, a bidder that wishes to maintain its current eligibility is required to be active on BTA service areas encompassing at least 50% of the bidding units for which it is currently eligible. Failure to maintain the requisite activity level will result in a reduction in the amount of bidding units associated with BTAs upon which a bidder will be eligible to bid in the next round of bidding (unless an activity rule waiver is used). During the first stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by two (2/1).

Stage Two: In each round of the second stage, a bidder who wishes to maintain its current eligibility is required to be active on BTA service areas encompassing at least 80% of the bidding units for which it is eligible in that particular round. During the second stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Three: In each round of the third stage, a bidder who wishes to maintain its current eligibility is required to be active on BTA service areas encompassing 95% of the bidding units for which it is eligible in that particular round. In the final stage, if activity in the current round is below 95% of current edibility, eligibility in the next round will be calculated by multiplying the current round activity by twenty-nineteenths (20/19).

As stated above, activity requirements increase in each auction stage; therefore, it is especially important for bidders to check current activity during the bid submission period in the first round following a stage transition. Bidders who do not wish to submit any new bids in that round can confirm their current activity level (measured in terms of their standing high bids) telephonically or electronically through the FCC remote access system by entering the bid submission module and comparing the current activity to the activity required.

Bidders will be provided five activity rule waivers that may be used in any round during the course of the auction. If a bidder's activity level is below the required activity level a waiver will be applied automatically, if a bidder still has waivers remaining and does not submit a bid or an automatic waiver override. That is, if a bidder fails to submit a bid in a round or does not submit an automatic waiver override, and its activity level from any standing high bids (high bids at the end of the bid withdrawal period in the previous round) falls below its required activity level, a waiver will be applied automatically. A waiver will preserve current eligibility in the next round. An activity rule waiver applies to an entire round of bidding and not to a particular BTA service area. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

Bidders will be afforded an opportunity to override the automatic waiver mechanism if they wish to intentionally reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility will be permanently reduced and it will not be permitted to retain its bidding eligibility for a previous round.

Bidders also will have the option of proactively entering an activity rule waiver during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open. Therefore in the later rounds of the auction, if a bidder does not intend to bid but wants to ensure that the auction does not close, it should enter a proactive waiver in place of a bid. The submission of a proactive waiver will prevent the auction from closing.

E. Stopping Rules

Bidding will normally remain open on all BTA service areas until bidding stops on every service area. The auction will close after one round passes in which no new bids or proactive waivers are submitted. The Wireless Telecommunications Bureau retains the discretion, however, to keep an auction open even if no new valid bids and no proactive waivers are submitted. In the event the Bureau exercises this discretion, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, if a bidder has any activity rule waivers left, an automatic waiver will be applied if its activity from standing high bids does not meet its required activity level. Bidders whose activity from the standing high bids does not meet its required activity level and that have no activity rule waivers remaining will have their maximum eligibility reduced according to the activity rules described above.

The Bureau may also declare at any time after 40 rounds that the auction will end after a specified number of additional rounds. If the Bureau invokes this stopping rule, it will accept bids in the final round(s) only for BTA service areas on which the high bid increased in at least one of the preceding three rounds. The Bureau also retains the discretion to close bidding on a particular BTA service area or areas individually. In the unlikely event that the Bureau uses such a market-by-market stopping rule, we would anticipate doing so only after 40 rounds, applying it first to the largest BTAs, and only if three or more rounds have passed without any bids on these BTA service areas.

The Bureau does not intend to exercise these options except in extreme circumstances, such as where the auction is proceeding very slowly, there is minimal overall bidding activity and it appears unlikely that the auction will close within a reasonable period of time. Before exercising these options, however, the Bureau would first attempt to increase the pace of the auction by announcing that the auction will move into the next stage, where bidders would be required to maintain a higher level of bidding activity. Under these circumstances, the Bureau may also first increase the number of bidding rounds per day and increase the amount of the minimum bid increments for those limited number of BTA service areas where there is still a high level of bidding activity.

F. Delay, Suspension or Cancellation of the Auction

The Commission may, by Public Notice or by announcement during the auction, delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Commission may, in its sole discretion, resume the auction starting from the beginning of the current or some previous round or cancel the auction in its entirety. The Commission will delay the auction in the event of technical failure involving the electronic bidding system or the telephone lines.

G. Default and Disqualification Penalties

Any high bidder who defaults by failing to remit the required down payment within the prescribed time or is disqualified after bidding is declared closed will be subject to the penalties described in Section 21.959(a)(2) of the Commission's rules, 47 C.F.R. § 21.959(a)(2). In addition, if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations or station licenses held by the applicant. See Second Report and Order in PP Docket No. 93–253, 9 FCC Rcd 2348 (1994), 59 Fed. Reg. 22,980 (May 4, 1994) at ¶ 198.

H. Releasing Bidder Identities

Bidders' identities and FCC Account Numbers will be disclosed prior to the auction. Thus, bidders will know in advance of the auction the identities of the bidders against whom they are bidding.

V. Post-Auction Procedures for High Bidders

A. Down Payment

The winning bidder for each BTA authorization must submit FCC Form 159 along with sufficient additional funds (a "down payment") to bring the amount of money on deposit with the government to 20% of its winning bid within five business days after bidding is declared closed and the high bidders are announced by Public Notice. However, a winning bidder that is a small business eligible for installment financing will be required to bring its total deposit up to only 10% of its winning bid (less any applicable bidding credits) within five business days after bidding is declared closed and the high bidders are announced. The remainder of the down payment, an additional 10% of the applicant's net winning bid, will be due from the small business winning bidder within five business days following the public notice announcing that its BTA authorization is ready to be issued. See MDS Report and Order at ¶¶ 142–144.

In the event that any winning bidder has withdrawn a bid or bids and is subject to a bid withdrawal penalty or penalties, the bidder's upfront payment will be applied to satisfy such bid withdrawal penalties before being applied toward its down payment on the authorizations it has won.

B. Submission of Long-Form Application (FCC Form 304) or Statement of Intention

Within 30 business days after bidding is declared closed and high bidders are announced, a winning bidder must timely submit for each BTA service area for which it is the winning bidder wither: (i) a properly completed FCC Form 304 application for an MDS station license within the BTA service area; or (ii) a statement of intention with regard to the BTA service area, showing the encumbered nature of the BTA, identifying all previously authorized or proposed MDS and ITFS facilities, and describing in detail the winning bidder's plan for obtaining the previously authorized and/or proposed MDS stations within the BTA. See MDS Report and Order at ¶¶ 150–154. FCC Form 304s, with the applicable filing fees, must be sent to Mellon Bank in Pittsburgh, Pennsylvania. Statements of intention must be sent to the Office of the Secretary, Attn: MDS Post-Auction Processing Section, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554.

C. Construction Build-out Requirement

Each BTA authorization holder must submit a showing to the Commission five years after the BTA authorization is issued demonstrating that it is providing a signal level sufficient to provide adequate service to approximately two-thirds of the population of the area within its control in the licensed BTA. The holder of the BTA authorization must submit maps and other supporting documents showing compliance with this construction build-out requirement. See MDS Report and Order at ¶ 43.

VI. Bidder Alert

The terms contained in the Commission's Report and Orders, Public Notices and in the Bidder Information Package are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the Terms before making any bid.

All applicants must certify under penalty of perjury on their FCC Form 175–M applications that they are legally, technically and financially qualified. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe

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penalties including monetary forfeitures, station license or BTA authorization revocations, preclusion from participation in future auctions, and/or criminal prosecution.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

BILLING CODE 6712-01-M

Appendix

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M001 - New York				
B321	New York, NY	MDB321	18,050,615	$113,904.67	$85,428.50
B184	Hartford, CT	MDB184	1,423,678	$16,208.29	$12,156.22
B007	Albany-Schenectady, NY	MDB007	1,028,615	$7,515.38	$5,636.53
B318	New Haven-Waterbury-Meriden, CT	MDB318	978,311	$14,499.56	$10,874.67
B438	Syracuse, NY	MDB438	791,140	$6,017.33	$4,513.00
B010	Allentown-Bethlehem-Easton, PA	MDB010	686,688	$23,279.47	$17,459.61
B412	Scranton-Wilkes Barre-Hazleton, PA	MDB412	678,410	$10,259.99	$7,694.99
B361	Poughkeepsie-Kingston, NY	MDB361	424,766	$6,002.84	$4,502.13
B063	Burlington, VT	MDB063	369,128	$4,832.40	$3,624.30
B319	New London-Norwich, CT	MDB319	357,482	$16,854.55	$12,640.91
B043	Binghamton, NY	MDB043	356,645	$10,342.26	$7,756.69
B453	Utica-Rome, NY	MDB453	316,633	$3,832.48	$2,874.36
B127	Elmira-Corning-Hornell, NY	MDB127	315,038	$8,959.33	$6,719.50
B463	Watertown, NY	MDB463	296,253	$23,224.52	$17,418.39
B352	Plattsburgh, NY	MDB352	123,121	$2,585.36	$1,939.02
B164	Glens Falls, NY	MDB164	118,539	$7,712.49	$5,784.37
B333	Oneonta, NY	MDB333	107,742	$8,043.71	$6,032.78
B388	Rutland-Bennington, VT	MDB388	97,987	$2,500.00	$1,875.00
B435	Stroudsburg, PA	MDB435	95,709	$2,681.69	$2,011.27
B208	Ithaca, NY	MDB208	94,097	$2,500.00	$1,875.00
	M002 - Los Angeles-San Diego				
B262	Los Angeles, CA	MDB262	14,549,810	$51,737.86	$38,803.40
B402	San Diego, CA	MDB402	2,498,016	$7,229.64	$5,422.23
B245	Las Vegas, NV	MDB245	857,856	$8,328.74	$6,246.56
B028	Bakersfield, CA	MDB028	543,477	$8,520.34	$6,390.26
B406	Santa Barbara-Santa Maria, CA	MDB406	369,608	$15,783.93	$11,837.95
B405	San Luis Obispo, CA	MDB405	217,162	$8,537.07	$6,402.80
B124	El Centro-Calexico, CA	MDB124	109,303	$2,500.00	$1,875.00

	M003 - Chicago				
B078	Chicago, IL	MDB078	8,182,076	$48,790.70	$36,593.02
B155	Ft. Wayne, IN	MDB155	646,736	$6,994.71	$5,246.03
B344	Peoria, IL	MDB344	455,643	$2,500.00	$1,875.00
B380	Rockford, IL	MDB380	412,120	$6,739.14	$5,054.35
B424	South Bend-Mishawaka, IN	MDB424	330,821	$7,033.22	$5,274.91
B426	Springfield, IL	MDB426	254,696	$9,420.82	$7,065.61
B109	Decatur-Effingham, IL	MDB109	247,608	$2,500.00	$1,875.00
B126	Elkhart, IN	MDB126	235,152	$5,134.10	$3,850.58
B071	Champaign-Urbana, IL	MDB071	222,312	$2,500.00	$1,875.00
B046	Bloomington, IL	MDB046	215,795	$3,785.61	$2,839.21
B039	Benton Harbor, MI	MDB039	161,378	$5,169.14	$3,876.85
B243	La Salle-Peru-Ottawa-Streator, IL	MDB243	148,331	$14,414.10	$10,810.57
B225	Kankakee, IL	MDB225	127,042	$11,824.75	$8,868.57
B103	Danville, IL	MDB103	114,241	$4,255.34	$3,191.51
B294	Michigan City-La Porte, IN	MDB294	107,066	$2,500.00	$1,875.00
B161	Galesburg, IL	MDB161	75,574	$2,500.00	$1,875.00
B213	Jacksonville, IL	MDB213	70,795	$2,500.00	$1,875.00
B286	Mattoon, IL	MDB286	62,314	$2,500.00	$1,875.00
	M004 - San Francisco-Oakland-San Jose				
B404	San Francisco-Oakland-San Jose, CA	MDB404	6,420,984	$53,204.29	$39,903.21
B389	Sacramento, CA	MDB389	1,656,581	$17,790.79	$13,343.10
B157	Fresno, CA	MDB157	755,580	$5,667.82	$4,250.86
B434	Stockton, CA	MDB434	512,626	$2,500.00	$1,875.00
B372	Reno, NV	MDB372	439,279	$8,549.13	$6,411.85
B303	Modesto, CA	MDB303	418,978	$5,089.38	$3,817.04
B458	Visalia-Porterville-Hanford, CA	MDB458	413,390	$10,004.12	$7,503.09
B397	Salinas-Monterey, CA	MDB397	355,660	$2,500.00	$1,875.00
B371	Redding, CA	MDB371	253,255	$9,218.40	$6,913.80
B079	Chico-Oroville, CA	MDB079	206,918	$2,500.00	$1,875.00
B291	Merced, CA	MDB291	192,705	$9,556.47	$7,167.35
B134	Eureka, CA	MDB134	142,578	$13,237.37	$9,928.03
B485	Yuba City-Marysville, CA	MDB485	122,643	$2,500.00	$1,875.00

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M005 - Detroit				
B112	Detroit, MI	MDB112	4,705,164	$54,188.03	$40,641.02
B169	Grand Rapids, MI	MDB169	916,060	$22,111.29	$16,583.47
B444	Toledo, OH	MDB444	782,184	$7,777.96	$5,833.47
B390	Saginaw-Bay City, MI	MDB390	615,364	$12,906.02	$9,679.52
B145	Flint, MI	MDB145	500,229	$6,397.44	$4,798.08
B241	Lansing, MI	MDB241	489,698	$9,196.20	$6,897.15
B223	Kalamazoo, MI	MDB223	352,384	$10,980.58	$8,235.44
B255	Lima, OH	MDB255	249,734	$2,500.00	$1,875.00
B033	Battle Creek, MI	MDB033	227,541	$6,255.68	$4,691.76
B310	Muskegon, MI	MDB310	206,974	$8,483.03	$6,362.27
B446	Traverse City, MI	MDB446	204,600	$11,079.16	$8,309.37
B209	Jackson, MI	MDB209	193,187	$2,712.35	$2,034.26
B143	Findlay-Tiffin, OH	MDB143	147,523	$6,266.50	$4,699.87
B307	Mt. Pleasant, MI	MDB307	118,558	$8,255.35	$6,191.51
B005	Adrian, MI	MDB005	91,476	$2,500.00	$1,875.00
B345	Petoskey, MI	MDB345	85,863	$9,161.93	$6,871.44
B011	Alpena, MI	MDB011	63,429	$6,391.43	$4,793.57
B409	Sault Ste. Marie, MI	MDB409	51,041	$4,926.67	$3,695.00
	M006 - Charlotte-Greensboro-Greenville-Raleigh				
B074	Charlotte-Gastonia, NC	MDB074	1,671,037	$28,236.03	$21,177.02
B174	Greensboro-Winston-Salem-High Point, NC	MDB174	1,241,349	$35,028.00	$26,271.00
B368	Raleigh-Durham, NC	MDB368	1,089,423	$27,991.77	$20,993.83
B177	Greenville-Spartanburg, SC	MDB177	768,212	$10,758.93	$8,069.20
B072	Charleston, SC	MDB072	624,369	$7,363.81	$5,522.86
B141	Fayetteville-Lumberton, NC	MDB141	571,328	$39,667.58	$29,750.69
B091	Columbia, SC	MDB091	568,754	$7,960.63	$5,970.47
B020	Asheville-Hendersonville, NC	MDB020	510,055	$39,927.14	$29,945.36
B016	Anderson, SC	MDB016	305,120	$2,723.77	$2,042.83
B189	Hickory-Lenoir-Morganton, NC	MDB189	292,409	$27,558.23	$20,667.18

B478	Wilmington, NC	MDB478	249,711	$9,168.82	$6,876.61
B147	Florence, SC	MDB147	239,208	$3,193.58	$2,395.19
B176	Greenville-Washington, NC	MDB176	218,937	$12,331.20	$9,248.40
B165	Goldsboro-Kinston, NC	MDB165	217,319	$11,839.15	$8,879.37
B382	Rocky Mount-Wilson, NC	MDB382	199,296	$7,680.82	$5,760.61
B316	New Bern, NC	MDB316	154,955	$9,954.97	$7,466.23
B214	Jacksonville, NC	MDB214	149,838	$5,890.43	$4,417.82
B436	Sumter, SC	MDB436	149,524	$2,500.00	$1,875.00
B312	Myrtle Beach, SC	MDB312	144,053	$2,500.00	$1,875.00
B335	Orangeburg, SC	MDB335	114,458	$3,745.32	$2,808.99
B062	Burlington, NC	MDB062	108,213	$2,734.76	$2,051.07
B377	Roanoke Rapids, NC	MDB377	76,314	$2,500.00	$1,875.00
B178	Greenwood, SC	MDB178	68,435	$2,746.85	$2,060.14
	M007 - Dallas-Ft. Worth				
B101	Dallas-Ft. Worth, TX	MDB101	4,329,924	$25,728.24	$19,296.18
B027	Austin, TX	MDB027	899,361	$4,670.74	$3,503.06
B419	Shreveport, LA	MDB419	583,266	$23,757.84	$17,818.38
B264	Lubbock, TX	MDB264	392,901	$7,914.57	$5,935.93
B013	Amarillo, TX	MDB013	380,341	$17,094.24	$12,820.68
B304	Monroe, LA	MDB304	324,397	$9,215.19	$6,911.39
B260	Longview-Marshall, TX	MDB260	292,659	$7,415.78	$5,561.84
B441	Temple-Killeen, TX	MDB441	291,768	$2,500.00	$1,875.00
B459	Waco, TX	MDB459	270,052	$5,560.81	$4,170.61
B452	Tyler, TX	MDB452	269,762	$20,545.31	$15,408.98
B443	Texarkana, TX/AR	MDB443	255,983	$5,366.46	$4,024.84
B003	Abilene, TX	MDB003	253,174	$15,702.59	$11,776.94
B327	Odessa, TX	MDB327	213,420	$17,631.90	$13,223.93
B473	Wichita Falls, TX	MDB473	209,339	$6,295.31	$4,721.48
B400	San Angelo, TX	MDB400	155,645	$4,498.57	$3,373.93
B418	Sherman-Denison, TX	MDB418	151,914	$2,500.00	$1,875.00
B296	Midland, TX	MDB296	111,567	$7,205.44	$5,404.08
B341	Paris, TX	MDB341	89,422	$5,156.80	$3,867.60
B087	Clovis, NM	MDB087	71,024	$3,994.74	$2,996.05
B057	Brownwood, TX	MDB057	57,684	$3,001.54	$2,251.16

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M007 - Dallas-Ft. Worth (cont.)				
B191	Hobbs, NM	MDB191	55,765	$3,740.40	$2,805.30
B040	Big Spring, TX	MDB040	34,589	$2,680.12	$2,010.09
	M008 - Boston-Providence				
B051	Boston, MA	MDB051	4,133,895	$6,285.90	$4,714.43
B364	Providence-Pawtucket, RI-New Bedford-Fall River, MA	MDB364	1,509,789	$8,820.25	$6,615.19
B480	Worcester-Fitchburg-Leominster, MA	MDB480	709,705	$6,240.08	$4,680.06
B427	Springfield-Holyoke, MA	MDB427	672,970	$17,273.69	$12,955.27
B274	Manchester-Nashua-Concord, NH	MDB274	540,704	$11,828.81	$8,871.61
B357	Portland-Brunswick, ME	MDB357	471,614	$3,141.15	$2,355.86
B030	Bangor, ME	MDB030	316,838	$23,674.00	$17,755.50
B251	Lewiston-Auburn, ME	MDB251	221,697	$7,000.16	$5,250.12
B201	Hyannis, MA	MDB201	204,256	$6,449.24	$4,836.93
B249	Lebanon-Claremont, NH	MDB249	167,576	$2,500.00	$1,875.00
B465	Waterville-Augusta, ME	MDB465	165,671	$11,452.85	$8,589.63
B351	Pittsfield, MA	MDB351	139,352	$5,478.21	$4,108.65
B227	Keene, NH	MDB227	111,709	$3,696.13	$2,772.10
B363	Presque Isle, ME	MDB363	86,936	$7,005.27	$5,253.95
	M009 - Philadelphia				
B346	Philadelphia, PA-Wilmington, DE-Trenton, NJ	MDB346	5,899,345	$18,710.26	$14,032.70
B181	Harrisburg, PA	MDB181	654,808	$6,858.62	$5,143.96
B240	Lancaster, PA	MDB240	422,822	$2,766.96	$2,075.22
B483	York-Hanover, PA	MDB483	417,848	$2,500.00	$1,875.00
B370	Reading, PA	MDB370	336,523	$11,918.36	$8,938.77
B025	Atlantic City, NJ	MDB025	319,416	$2,500.00	$1,875.00
B116	Dover, DE	MDB116	251,257	$10,587.21	$7,940.41
B437	Sunbury-Shamokin, PA	MDB437	187,362	$17,102.18	$12,826.63
B475	Williamsport, PA	MDB475	161,996	$14,260.38	$10,695.28
B360	Pottsville, PA	MDB360	152,585	$5,266.11	$3,949.58
B429	State College, PA	MDB429	123,786	$3,823.50	$2,867.63

	M010 - Washington-Baltimore				
B461	Washington, DC	MDB461	4,118,628	$18,720.05	$14,040.04
B029	Baltimore, MD	MDB029	2,430,563	$2,948.08	$2,211.06
B179	Hagerstown, MD-Chambersburg, PA-Martinsburg, WV	MDB179	327,893	$6,939.37	$5,204.53
B075	Charlottesville, VA	MDB075	190,128	$2,500.00	$1,875.00
B398	Salisbury, MD	MDB398	163,043	$3,110.25	$2,332.69
B100	Cumberland, MD	MDB100	156,707	$15,970.42	$11,977.82
B479	Winchester, VA	MDB479	137,549	$2,500.00	$1,875.00
B183	Harrisonburg, VA	MDB183	128,910	$2,500.00	$1,875.00
B156	Fredericksburg, VA	MDB156	124,654	$10,680.28	$8,010.21
	M011 - Atlanta				
B024	Atlanta, GA	MDB024	3,197,171	$30,664.84	$22,998.63
B410	Savannah, GA	MDB410	630,180	$25,190.27	$18,892.70
B271	Macon-Warner Robins, GA	MDB271	569,206	$21,114.57	$15,835.93
B026	Augusta, GA	MDB026	521,822	$28,078.74	$21,059.05
B076	Chattanooga, TN	MDB076	510,980	$2,993.71	$2,245.28
B092	Columbus, GA	MDB092	342,333	$6,296.06	$4,722.05
B006	Albany-Tifton, GA	MDB006	324,899	$12,371.75	$9,278.81
B160	Gainesville, GA	MDB160	170,365	$2,500.00	$1,875.00
B022	Athens, GA	MDB022	166,030	$2,664.69	$1,998.52
B334	Opelika-Auburn, AL	MDB334	124,022	$2,500.00	$1,875.00
B384	Rome, GA	MDB384	115,066	$8,161.39	$6,121.04
B102	Dalton, GA	MDB102	98,609	$3,080.25	$2,310.19
B085	Cleveland, TN	MDB085	87,355	$2,500.00	$1,875.00
B237	La Grange, GA	MDB237	64,164	$2,500.00	$1,875.00
	M012 - Minneapolis-St. Paul				
B298	Minneapolis-St. Paul, MN	MDB298	2,840,561	$28,619.51	$21,464.63
B119	Duluth, MN	MDB119	400,771	$31,952.14	$23,964.11
B138	Fargo, ND	MDB138	298,015	$6,216.52	$4,662.39
B277	Mankato-Fairmont, MN	MDB277	245,144	$5,766.43	$4,324.82
B391	St. Cloud, MN	MDB391	243,888	$2,500.00	$1,875.00
B378	Rochester-Austin-Albert Lea, MN	MDB378	233,167	$9,311.45	$6,983.59

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M012 - Minneapolis-St. Paul (cont.)				
B166	Grand Forks, ND	MDB166	213,932	$10,600.99	$7,950.74
B422	Sioux Falls, SD	MDB422	207,716	$2,916.33	$2,187.25
B123	Eau Claire, WI	MDB123	180,559	$9,173.12	$6,879.84
B477	Willmar-Marshall, MN	MDB477	123,749	$7,168.14	$5,376.11
B045	Bismarck, ND	MDB045	123,682	$3,983.67	$2,987.75
B299	Minot, ND	MDB299	122,687	$5,761.29	$4,320.96
B142	Fergus Falls, MN	MDB142	120,167	$3,814.54	$2,860.91
B481	Worthington, MN	MDB481	96,602	$2,500.00	$1,875.00
B001	Aberdeen, SD	MDB001	88,891	$4,742.79	$3,557.10
B301	Mitchell, SD	MDB301	84,095	$4,903.66	$3,677.74
B054	Brainerd, MN	MDB054	78,465	$3,973.32	$2,979.99
B464	Watertown, SD	MDB464	74,555	$3,084.82	$2,313.62
B037	Bemidji, MN	MDB037	57,632	$5,768.13	$4,326.09
B199	Huron, SD	MDB199	53,189	$3,471.41	$2,603.56
B113	Dickinson, ND	MDB113	38,001	$2,500.00	$1,875.00
B207	Ironwood, MI	MDB207	33,059	$2,500.00	$1,875.00
B476	Williston, ND	MDB476	27,512	$2,500.00	$1,875.00
	M013 - Tampa-St. Petersburg-Orlando				
B440	Tampa-St. Petersburg-Clearwater, FL	MDB440	2,249,405	$13,956.27	$10,467.21
B336	Orlando, FL	MDB336	1,256,429	$2,500.00	$1,875.00
B408	Sarasota-Bradenton, FL	MDB408	513,348	$4,973.46	$3,730.09
B239	Lakeland-Winter Haven, FL	MDB239	405,382	$2,795.58	$2,096.69
B107	Daytona Beach, FL	MDB107	399,413	$2,500.00	$1,875.00
B289	Melbourne-Titusville, FL	MDB289	398,978	$5,353.83	$4,015.37
B326	Ocala, FL	MDB326	194,833	$2,735.46	$2,051.59
	M014 - Houston				
B196	Houston, TX	MDB196	4,054,253	$44,454.95	$33,341.21
B034	Beaumont-Port Arthur, TX	MDB034	432,129	$5,961.18	$4,470.89
B238	Lake Charles, LA	MDB238	259,425	$5,093.03	$3,819.77
B059	Bryan-College Station, TX	MDB059	150,998	$2,500.00	$1,875.00
B456	Victoria, TX	MDB456	149,963	$7,823.93	$5,867.95
B265	Lufkin-Nacogdoches, TX	MDB265	144,081	$6,287.13	$4,715.35

	M015 - Miami- Ft. Lauderdale				
B293	Miami-Ft. Lauderdale, FL	MDB293	3,270,606	$8,976.81	$6,732.61
B469	West Palm Beach-Boca Raton, FL	MDB469	893,145	$2,819.38	$2,114.53
B151	Ft. Myers, FL	MDB151	479,452	$3,887.56	$2,915.67
B152	Ft. Pierce-Vero Beach-Stuart, FL	MDB152	341,279	$2,500.00	$1,875.00
B313	Naples, FL	MDB313	152,099	$5,511.49	$4,133.61
	M016 - Cleveland				
B084	Cleveland-Akron, OH	MDB084	2,894,133	$7,286.93	$5,465.20
B065	Canton-New Philadelphia, OH	MDB065	513,623	$36,790.81	$27,593.11
B484	Youngstown-Warren, OH	MDB484	492,619	$2,500.00	$1,875.00
B131	Erie, PA	MDB131	275,572	$3,869.03	$2,901.77
B278	Mansfield, OH	MDB278	221,514	$3,491.96	$2,618.97
B403	Sandusky, OH	MDB403	133,019	$7,977.81	$5,983.36
B416	Sharon, PA	MDB416	121,003	$2,500.00	$1,875.00
B122	East Liverpool-Salem, OH	MDB122	108,276	$2,500.00	$1,875.00
B021	Ashtabula, OH	MDB021	99,821	$5,280.13	$3,960.10
B287	Meadville, PA	MDB287	86,169	$2,500.00	$1,875.00
	M017 - New Orleans-Baton Rouge				
B320	New Orleans, LA	MDB320	1,367,169	$11,215.38	$8,411.53
B032	Baton Rouge, LA	MDB032	623,657	$2,500.00	$1,875.00
B302	Mobile, AL	MDB302	594,397	$14,930.66	$11,197.99
B236	Lafayette-New Iberia, LA	MDB236	496,579	$8,306.13	$6,229.60
B343	Pensacola, FL	MDB343	344,406	$2,500.00	$1,875.00
B042	Biloxi-Gulfport-Pascagoula, MS	MDB042	339,791	$2,500.00	$1,875.00
B009	Alexandria, LA	MDB009	280,133	$8,339.96	$6,254.97
B195	Houma-Thibodaux, LA	MDB195	263,681	$4,234.05	$3,175.54
B154	Ft. Walton Beach, FL	MDB154	171,536	$9,645.90	$7,234.42
B186	Hattiesburg, MS	MDB186	161,894	$9,133.09	$6,849.82
B269	McComb-Brookhaven, MS	MDB269	107,298	$6,888.48	$5,166.36

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M017 - New Orleans-Baton Rouge (cont.)				
B180	Hammond, LA	MDB180	95,583	$6,239.89	$4,679.92
B246	Laurel, MS	MDB246	79,145	$4,061.94	$3,046.46
	M018 - Cincinnati-Dayton				
B081	Cincinnati, OH	MDB081	1,990,451	$11,831.66	$8,873.75
B106	Dayton-Springfield, OH	MDB106	1,207,689	$16,614.24	$12,460.68
B073	Charleston, WV	MDB073	481,387	$31,634.41	$23,725.81
B197	Huntington, WV-Ashland, KY	MDB197	363,936	$22,086.46	$16,564.85
3474	Williamson, WV-Pikeville, KY	MDB474	185,682	$15,274.86	$11,456.15
B048	Bluefield, WV	MDB048	184,020	$15,543.15	$11,657.36
B035	Beckley, WV	MDB035	167,112	$16,433.59	$12,325.19
B359	Portsmouth, OH	MDB359	93,356	$6,117.23	$4,587.92
B259	Logan, WV	MDB259	43,032	$4,174.65	$3,130.99
	M019 - St. Louis				
B394	St. Louis, MO	MDB394	2,742,114	$25,768.11	$19,326.09
B428	Springfield, MO	MDB428	532,880	$35,724.69	$26,793.52
B067	Carbondale-Marion, IL	MDB067	209,497	$9,057.30	$6,792.97
B090	Columbia, MO	MDB090	190,536	$4,230.19	$3,172.64
B066	Cape Girardeau-Sikeston, MO	MDB066	181,795	$7,967.51	$5,975.63
B367	Quincy, IL-Hannibal, MO	MDB367	177,213	$2,500.00	$1,875.00
B355	Poplar Bluff, MO	MDB355	148,240	$2,837.97	$2,128.48
B217	Jefferson City, MO	MDB217	141,404	$3,173.63	$2,380.22
B308	Mt. Vernon-Centralia, IL	MDB308	119,286	$2,500.00	$1,875.00
B383	Rolla, MO	MDB383	98,233	$8,867.93	$6,650.95
B470	West Plains, MO	MDB470	67,165	$3,144.08	$2,358.06
B230	Kirksville, MO	MDB230	55,563	$2,500.00	$1,875.00

	M020 - Milwaukee				
B297	Milwaukee, WI	MDB297	1,751,525	$2,500.00	$1,875.00
B272	Madison, WI	MDB272	593,145	$10,700.71	$8,025.53
B018	Appleton-Oshkosh, WI	MDB018	399,261	$11,440.10	$8,580.08
B173	Green Bay, WI	MDB173	310,435	$10,527.59	$7,895.69
B234	La Crosse, WI-Winona, MN	MDB234	295,769	$7,082.14	$5,311.60
B466	Wausau-Rhinelander, WI	MDB466	220,060	$16,795.51	$12,596.63
B216	Janesville-Beloit, WI	MDB216	214,510	$2,500.00	$1,875.00
B432	Stevens Point-Marshfield-Wisconsin Rapids, WI	MDB432	201,240	$17,637.42	$13,228.07
B417	Sheboygan, WI	MDB417	103,877	$2,500.00	$1,875.00
B148	Fond du Lac, WI	MDB148	90,083	$2,500.00	$1,875.00
B276	Manitowoc, WI	MDB276	80,421	$2,500.00	$1,875.00
B282	Marquette, MI	MDB282	79,859	$4,126.25	$3,094.68
B279	Marinette, WI-Menominee, MI	MDB279	65,468	$6,627.16	$4,970.37
B132	Escanaba, MI	MDB132	46,082	$4,917.13	$3,687.85
B194	Houghton, MI	MDB194	45,101	$3,744.65	$2,808.49
B206	Iron Mountain, MI	MDB206	44,596	$4,074.58	$3,055.94
	M021 - Pittsburgh				
B350	Pittsburgh, PA	MDB350	2,507,839	$22,017.23	$16,512.92
B218	Johnstown, PA	MDB218	241,247	$14,030.92	$10,523.19
B012	Altoona, PA	MDB012	222,625	$9,937.01	$7,452.75
B471	Wheeling, WV	MDB471	219,937	$8,891.88	$6,668.91
B082	Clarksburg-Elkins, WV	MDB082	190,498	$9,787.73	$7,340.80
B431	Steubenville, OH-Weirton, WV	MDB431	142,523	$2,500.00	$1,875.00
B117	Du Bois-Clearfield, PA	MDB117	124,180	$9,165.15	$6,873.86
B328	Oil City-Franklin, PA	MDB328	105,882	$10,939.30	$8,204.47
B306	Morgantown, WV	MDB306	104,546	$5,323.71	$3,992.78
B317	New Castle, PA	MDB317	96,246	$2,500.00	$1,875.00
B203	Indiana, PA	MDB203	89,994	$7,156.29	$5,367.21
B137	Fairmont, WV	MDB137	57,249	$2,500.00	$1,875.00
	M022 - Denver				
B110	Denver, CO	MDB110	2,073,952	$19,833.93	$14,875.45
B089	Colorado Springs, CO	MDB089	409,482	$2,500.00	$1,875.00
B366	Pueblo, CO	MDB366	266,001	$11,595.92	$8,696.94
B168	Grand Junction, CO	MDB168	187,062	$19,960.26	$14,970.20
B149	Ft. Collins-Loveland, CO	MDB149	186,136	$2,500.00	$1,875.00

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M022 - Denver (cont.)				
B369	Rapid City, SD	MDB369	181,278	$8,180.12	$6,135.09
B069	Casper-Gillette, WY	MDB069	135,172	$12,190.56	$9,142.92
B172	Greeley, CO	MDB172	131,821	$2,500.00	$1,875.00
B077	Cheyenne, WY	MDB077	103,939	$10,063.79	$7,547.85
B411	Scottsbluff, NE	MDB411	101,954	$8,286.27	$6,214.70
B381	Rock Springs, WY	MDB381	56,981	$5,141.78	$3,856.33
B375	Riverton, WY	MDB375	46,859	$3,884.79	$2,913.59
	M023 - Richmond-Norfolk				
B324	Norfolk-Virginia Beach-Newport News-Hampton, VA	MDB324	1,635,296	$36,654.18	$27,490.64
B374	Richmond-Petersburg, VA	MDB374	1,090,869	$23,996.05	$17,997.04
B376	Roanoke, VA	MDB376	609,215	$11,497.85	$8,623.39
B104	Danville, VA	MDB104	165,434	$6,426.54	$4,819.91
B266	Lynchburg, VA	MDB266	154,497	$2,500.00	$1,875.00
B430	Staunton-Waynesboro, VA	MDB430	100,322	$2,500.00	$1,875.00
B284	Martinsville, VA	MDB284	90,577	$2,867.51	$2,150.63
	M024 - Seattle (Excluding Alaska)				
B413	Seattle-Tacoma, WA	MDB413	2,708,949	$16,154.78	$12,116.08
B331	Olympia-Centralia, WA	MDB331	258,937	$11,040.85	$8,280.64
B482	Yakima, WA	MDB482	215,548	$2,500.00	$1,875.00
B055	Bremerton, WA	MDB055	189,731	$2,500.00	$1,875.00
B468	Wenatchee, WA	MDB468	166,563	$11,708.23	$8,781.17
B036	Bellingham, WA	MDB036	127,780	$3,574.61	$2,680.96
B002	Aberdeen, WA	MDB002	83,057	$5,126.20	$3,844.65
B356	Port Angeles, WA	MDB356	76,610	$5,629.00	$4,221.75
	M025 - Puerto Rico-U.S. Virgin Islands				
B488	San Juan, PR	MDB488	2,170,246	$36,023.37	$27,017.52
B489	Mayaguez-Aguadilla-Ponce, PR	MDB489	1,351,600	$28,230.60	$21,172.95
B491	US Virgin Islands	MDB491	102,000	$7,590.02	$5,692.52

	M026 - Louisville-Lexington-Evansville				
B263	Louisville, KY	MDB263	1,352,955	$16,206.33	$12,154.75
B252	Lexington, KY	MDB252	816,101	$27,721.74	$20,791.30
B135	Evansville, IN	MDB135	504,859	$10,354.26	$7,765.70
B052	Bowling Green-Glasgow, KY	MDB052	222,748	$17,271.07	$12,953.30
B339	Paducah-Murray-Mayfield, KY	MDB339	217,062	$4,209.55	$3,157.17
B338	Owensboro, KY	MDB338	157,104	$5,320.74	$3,990.55
B098	Corbin, KY	MDB098	128,186	$3,677.14	$2,757.86
B423	Somerset, KY	MDB423	111,487	$2,500.00	$1,875.00
B273	Madisonville, KY	MDB273	46,126	$2,500.00	$1,875.00
	M027 - Phoenix				
B347	Phoenix, AZ	MDB347	2,404,760	$19,932.38	$14,949.29
B447	Tucson, AZ	MDB447	666,880	$2,500.00	$1,875.00
B362	Prescott, AZ	MDB362	107,714	$2,500.00	$1,875.00
B486	Yuma, AZ	MDB486	106,895	$2,500.00	$1,875.00
B420	Sierra Vista-Douglas, AZ	MDB420	97,624	$7,035.86	$5,276.89
B144	Flagstaff, AZ	MDB144	96,591	$4,659.05	$3,494.29
B322	Nogales, AZ	MDB322	29,676	$2,916.56	$2,187.42
	M028 - Memphis-Jackson				
B290	Memphis, TN	MDB290	1,396,390	$25,191.06	$18,893.29
B210	Jackson, MS	MDB210	615,521	$17,944.56	$13,458.42
B449	Tupelo-Corinth, MS	MDB449	291,701	$16,681.56	$12,511.17
B211	Jackson, TN	MDB211	255,379	$16,930.96	$12,698.22
B175	Greenville-Greenwood, MS	MDB175	213,943	$14,917.84	$11,188.38
B292	Meridian, MS	MDB292	200,024	$14,813.55	$11,110.16
B094	Columbus-Starkville, MS	MDB094	166,415	$8,840.58	$6,630.44
B120	Dyersburg-Union City, TN	MDB120	113,943	$2,500.00	$1,875.00
B049	Blytheville, AR	MDB049	79,446	$4,063.72	$3,047.79
B315	Natchez, MS	MDB315	73,214	$5,824.98	$4,368.73
B455	Vicksburg, MS	MDB455	59,250	$2,500.00	$1,875.00

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M029 - Birmingham				
B044	Birmingham, AL	MDB044	1,200,336	$28,316.29	$21,237.22
B305	Montgomery, LA	MDB305	440,745	$12,202.47	$9,151.85
B196	Huntsville, AL	MDB196	439,832	$5,131.57	$3,848.68
B450	Tuscaloosa, AL	MDB450	237,918	$4,780.67	$3,585.50
B115	Dothan-Enterprise, AL	MDB115	210,225	$2,500.00	$1,875.00
B158	Gadsden, AL	MDB158	174,034	$6,797.84	$5,098.38
B146	Florence, AL	MDB146	173,078	$2,500.00	$1,875.00
B017	Anniston, AL	MDB017	161,897	$5,283.88	$3,962.91
B108	Decatur, AL	MDB108	131,556	$2,500.00	$1,875.00
B415	Selma, AL	MDB415	74,457	$5,228.04	$3,921.03
	M030 - Portland				
B358	Portland, OR	MDB358	1,690,930	$19,136.02	$14,352.02
B395	Salem-Albany-Corvallis, OR	MDB395	440,062	$10,695.42	$8,021.56
B133	Eugene-Springfield, OR	MDB133	282,912	$15,629.43	$11,722.07
B268	Medford-Grants Pass, OR	MDB268	209,038	$2,500.00	$1,875.00
B038	Bend, OR	MDB038	102,745	$2,500.00	$1,875.00
B385	Roseburg, OR	MDB385	94,649	$8,509.98	$6,382.49
B261	Longview, WA	MDB261	85,446	$8,668.06	$6,501.05
B097	Coos Bay-North Bend, OR	MDB097	79,600	$8,076.06	$6,057.05
B231	Klamath Falls, OR	MDB231	74,566	$7,232.95	$5,424.71
	M031 - Indianapolis				
B204	Indianapolis, IN	MDB204	1,321,911	$2,500.00	$1,875.00
B235	Lafayette, IN	MDB235	247,523	$3,426.62	$2,569.96
B442	Terre Haute, IN	MDB442	236,968	$3,162.23	$2,371.67
B047	Bloomington-Bedford, IN	MDB047	217,914	$3,231.41	$2,423.56
B233	Kokomo-Logansport, IN	MDB233	184,899	$3,341.51	$2,506.14
B309	Muncie, IN	MDB309	182,368	$3,735.89	$2,801.92
B015	Anderson, IN	MDB015	178,808	$2,500.00	$1,875.00
B093	Columbus, IN	MDB093	139,128	$4,756.50	$3,567.37
B280	Marion, IN	MDB280	109,238	$2,500.00	$1,875.00
B373	Richmond, IN	MDB373	104,942	$2,500.00	$1,875.00
B457	Vincennes-Washington, IN	MDB457	93,758	$4,172.05	$3,129.04

	M032 - Des Moines- Quad Cities				
B111	Des Moines, IA	MDB111	728,830	$42,574.62	$31,930.96
B105	Davenport, IA-Moline, IL	MDB105	419,650	$2,500.00	$1,875.00
B421	Sioux City, IA	MDB421	328,919	$11,207.83	$8,405.87
B462	Waterloo-Cedar Falls, IA	MDB462	261,009	$14,397.10	$10,797.83
B070	Cedar Rapids, IA	MDB070	260,686	$4,673.35	$3,505.01
B118	Dubuque, IA	MDB118	176,542	$8,202.53	$6,151.90
B086	Clinton, IA-Sterling, IL	MDB086	147,981	$2,500.00	$1,875.00
B061	Burlington, IA	MDB061	137,543	$6,288.97	$4,716.73
B150	Ft. Dodge, IA	MDB150	131,731	$4,713.69	$3,535.26
B337	Ottumwa, IA	MDB337	122,988	$3,428.78	$2,571.58
B285	Mason City, IA	MDB285	118,834	$7,661.68	$5,746.26
B205	Iowa City, IA	MDB205	115,731	$2,500.00	$1,875.00
B283	Marshalltown, IA	MDB283	55,695	$3,503.86	$2,627.90
	M033 - San Antonio				
B401	San Antonio, TX	MDB401	1,530,954	$11,580.77	$8,685.58
B099	Corpus Christi, TX	MDB099	499,988	$2,500.00	$1,875.00
B268	McAllen, TX	MDB268	424,063	$7,590.39	$5,692.79
B056	Brownsville-Harlingen, TX	MDB056	277,825	$3,900.66	$2,925.50
B242	Laredo, TX	MDB242	152,881	$10,584.98	$7,938.73
B121	Eagle Pass-Del Rio, TX	MDB121	100,813	$10,446.30	$7,834.73
	M034 - Kansas City				
B226	Kansas City, MO	MDB226	1,839,569	$16,138.12	$12,103.59
B445	Topeka, KS	MDB445	245,679	$4,781.51	$3,586.13
B220	Joplin, MO-Miami, OK	MDB220	215,095	$2,500.00	$1,875.00
B393	St. Joseph, MO	MDB393	191,489	$4,091.26	$3,068.45
B275	Manhattan-Junction City, KS	MDB275	122,878	$6,236.42	$4,677.32
B349	Pittsburg-Parsons, KS	MDB349	90,934	$4,157.99	$3,118.49
B247	Lawrence, KS	MDB247	81,798	$2,500.00	$1,875.00

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M034 - Kansas City (cont.)				
B414	Sedalia, MO	MDB414	79,705	$4,357.52	$3,268.14
B129	Emporia, KS	MDB129	46,157	$2,721.79	$2,041.34
	M035 - Buffalo- Rochester				
B060	Buffalo-Niagara Falls, NY	MDB060	1,231,795	$19,364.61	$14,523.46
B379	Rochester, NY	MDB379	1,118,963	$21,624.15	$16,218.11
B330	Olean, NY-Bradford, PA	MDB330	239,343	$20,083.78	$15,062.84
B215	Jamestown-Dunkirk, NY-Warren, PA	MDB215	186,945	$6,344.85	$4,758.64
	M036 - Salt Lake City				
B399	Salt Lake City-Ogden, UT	MDB399	1,308,035	$36,525.34	$27,394.00
B050	Boise-Nampa, ID	MDB050	416,503	$11,921.93	$8,941.45
B365	Provo-Orem, UT	MDB365	269,407	$2,500.00	$1,875.00
B202	Idaho Falls, ID	MDB202	190,267	$7,119.05	$5,339.29
B451	Twin Falls, ID	MDB451	136,831	$6,466.09	$4,849.57
B353	Pocatello, ID	MDB353	89,651	$4,355.78	$3,266.83
B392	St. George, UT	MDB392	83,263	$3,397.10	$2,547.83
B258	Logan, UT	MDB258	79,415	$8,337.09	$6,252.82
	M037 - Jacksonville				
B212	Jacksonville, FL	MDB212	1,114,847	$9,255.15	$6,941.36
B439	Tallahassee, FL	MDB439	418,963	$26,524.14	$19,893.11
B159	Gainesville, FL	MDB159	260,538	$4,501.75	$3,376.31
B340	Panama City, FL	MDB340	171,195	$10,638.75	$7,979.07
B454	Valdosta, GA	MDB454	139,226	$2,500.00	$1,875.00
B467	Waycross, GA	MDB467	99,034	$7,449.28	$5,586.96
B058	Brunswick, GA	MDB058	71,130	$2,500.00	$1,875.00

	M038 - Columbus				
B095	Columbus, OH	MDB095	1,477,891	$8,723.97	$6,542.98
B342	Parkersburg, WV-Marietta, OH	MDB342	180,025	$2,500.00	$1,875.00
B487	Zanesville-Cambridge, OH	MDB487	178,179	$16,417.25	$12,312.94
B023	Athens, OH	MDB023	123,864	$4,640.05	$3,480.03
B080	Chillicothe, OH	MDB080	93,579	$8,386.22	$6,289.67
B281	Marion, OH	MDB281	92,023	$2,915.37	$2,186.53
	M039 - El Paso-Albuquerque				
B008	Albuquerque, NM	MDB008	688,612	$9,253.27	$6,939.95
B128	El Paso, TX	MDB128	649,860	$5,486.44	$4,114.83
B244	Las Cruces, NM	MDB244	197,166	$5,358.47	$4,018.85
B407	Santa Fe, NM	MDB407	174,526	$4,725.50	$3,544.13
B139	Farmington, NM-Durango, CO	MDB139	162,776	$12,035.45	$9,026.59
B162	Gallup, NM	MDB162	122,277	$8,751.27	$6,563.45
B386	Roswell, NM	MDB386	70,068	$5,211.18	$3,908.38
B068	Carlsbad, NM	MDB068	48,605	$3,139.11	$2,354.33
	M040 - Little Rock				
B257	Little Rock, AR	MDB257	852,026	$39,296.81	$29,472.61
B153	Ft. Smith, AR	MDB153	282,187	$8,573.30	$6,429.97
B140	Fayetteville-Springdale-Rogers, AR	MDB140	222,526	$8,437.58	$6,328.18
B219	Jonesboro-Paragould, AR	MDB219	159,439	$11,318.13	$8,488.60
B348	Pine Bluff, AR	MDB348	152,918	$15,434.31	$11,575.73
B193	Hot Springs, AR	MDB193	117,439	$10,032.34	$7,524.26
B125	El Dorado-Magnolia-Camden, AR	MDB125	108,810	$9,001.51	$6,751.13
B387	Russellville, AR	MDB387	81,863	$8,045.50	$6,034.12
B182	Harrison, AR	MDB182	74,459	$7,578.19	$5,683.64
	M041 - Oklahoma City				
B329	Oklahoma City, OK	MDB329	1,305,472	$10,916.16	$8,187.12
B248	Lawton-Duncan, OK	MDB248	177,830	$2,500.00	$1,875.00
B130	Enid, OK	MDB130	85,998	$2,500.00	$1,875.00
B019	Ardmore, OK	MDB019	83,979	$2,500.00	$1,875.00
B433	Stillwater, OK	MDB433	72,552	$4,577.69	$3,433.27
B004	Ada, OK	MDB004	52,677	$2,500.00	$1,875.00
B267	McAlester, OK	MDB267	50,914	$2,500.00	$1,875.00
B354	Ponca City, OK	MDB354	48,056	$4,453.06	$3,339.80

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M042 - Spokane-Billings				
B425	Spokane, WA	MDB425	612,862	$21,542.51	$16,156.88
B041	Billings, MT	MDB041	290,242	$14,984.59	$11,238.45
B171	Great Falls, MT	MDB171	161,038	$15,905.25	$11,928.94
B460	Walla Walla, WA-Pendelton, OR	MDB460	151,563	$10,074.54	$7,555.90
B228	Kennewick-Pasco-Richland, WA	MDB228	150,033	$2,549.52	$1,912.14
B300	Missoula, MT	MDB300	139,270	$14,177.24	$10,632.93
B250	Lewiston-Moscow, ID	MDB250	110,028	$10,343.64	$7,757.73
B064	Butte, MT	MDB064	65,252	$6,815.20	$5,111.40
B053	Bozeman, MT	MDB053	65,077	$2,500.00	$1,875.00
B224	Kalispell, MT	MDB224	59,218	$2,500.00	$1,875.00
B188	Helena, MT	MDB188	58,752	$6,269.07	$4,701.81
	M043 - Nashville				
B314	Nashville, TN	MDB314	1,429,309	$40,159.13	$30,119.35
B083	Clarksville, TN-Hopkinsville, KY	MDB083	220,469	$3,573.34	$2,680.01
B096	Cookeville, TN	MDB096	117,613	$12,499.94	$9,374.95
	M044 - Knoxville				
B232	Knoxville, TN	MDB232	948,055	$34,558.48	$25,918.86
B229	Kingsport-Johnston City, TN-Bristol, VA/TN	MDB229	652,639	$31,998.36	$23,998.77
B295	Middlesboro-Harlan, KY	MDB295	121,217	$6,516.20	$4,887.15
	M045 - Omaha				
B332	Omaha, NE	MDB332	905,991	$22,665.95	$16,999.47
B256	Lincoln, NE	MDB256	309,515	$4,454.88	$3,341.16
B167	Grand Island-Kearney, NE	MDB167	141,541	$6,438.66	$4,828.99
B323	Norfolk, NE	MDB323	112,526	$11,490.92	$8,618.19
B325	North Platte, NE	MDB325	80,249	$3,854.31	$2,890.73
B185	Hastings, NE	MDB185	72,833	$2,500.00	$1,875.00
B270	McCook, NE	MDB270	36,618	$2,500.00	$1,875.00

	M046 - Wichita				
B472	Wichita, KS	MDB472	597,494	$14,832.06	$11,124.04
B396	Salina, KS	MDB396	143,408	$4,639.97	$3,479.98
B200	Hutchinson, KS	MDB200	125,094	$7,343.50	$5,507.62
B163	Garden City, KS	MDB163	65,059	$6,126.87	$4,595.16
B187	Hays, KS	MDB187	60,926	$3,452.49	$2,589.37
B253	Liberal, KS	MDB253	53,960	$5,619.43	$4,214.58
B170	Great Bend, KS	MDB170	40,779	$3,584.96	$2,688.72
B114	Dodge City, KS	MDB114	37,454	$2,500.00	$1,875.00
	M047 - Honolulu				
B192	Honolulu, HI	MDB192	836,231	$11,740.68	$8,805.51
B190	Hilo, HI	MDB190	120,317	$9,004.16	$6,753.12
B222	Kahului-Wailuku-Lahaina, HI	MDB222	100,504	$2,500.00	$1,875.00
B254	Lihue, HI	MDB254	51,177	$5,460.79	$4,095.59
	M048 - Tulsa				
B448	Tulsa, OK	MDB448	836,559	$37,962.85	$28,472.13
B311	Muskogee, OK	MDB311	148,267	$7,079.89	$5,309.92
B088	Coffeyville, KS	MDB088	63,504	$4,456.93	$3,342.70
B031	Bartlesville, OK	MDB031	48,066	$3,410.59	$2,557.94
	M049 - Alaska				
B014	Anchorage, AK	MDB014	388,943	$30,107.13	$22,580.35
B136	Fairbanks, AK	MDB136	92,111	$2,500.00	$1,875.00
B221	Juneau-Ketchikan, AK	MDB221	88,989	$5,090.70	$3,818.03
	M050 - Guam-Northern Mariana Islands				
B490	Guam	MDB490	133,000	$3,361.18	$2,520.88
B493	Northern Mariana Islands	MDB493	43,000	$4,588.27	$3,441.20

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	**Basic Trading Area**	**Authorizations***	**Population****	**Upfront Payments**	**Upfront Payments for Small Businesses**
	M051 - American Samoa				
B492	American Samoa	MDB492	47,000	$2,500.00	$1,875.00
	Totals		[illegible]	$4,647,394.76	$3,485,546.07

Notes:

* This authorization number must be used on the FCC Form 159 in FCC Code 2 block when making down payments, final payments, or installment payments.

Do not specify individual authorizations on the FCC Form 159 accompanying an upfront payment.

** All population figures are 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census.

The population that a BTA authorization holder could serve may be significantly lower than this due to the presence of incumbent licensees.

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BILLING CODE 6712-01-C

[Correction to Report No. AUC-95-06]

Auction Notice and Filing Requirements for 493 BTA Authorizations for Multipoint Distribution Service in the 2 GHz Band, Scheduled for November 13, 1995

AGENCY: Federal Communications Commission.

ACTION: Public Notice.

SUMMARY: This Public Notice, released September 12, 1995, revised the Appendix attached to Report No. AUC–95–06 dated September 5, 1995. Both the September 5, 1995 and the September 12, 1995 Public Notices should be read together. These Public Notices are directed toward the Commission's goal of efficiently distributing the unused MDS spectrum through competitive bidding, and are designed to assist prospective bidders in preparing for the upcoming MDS auction.

FOR FURTHER INFORMATION CONTACT: The FCC auction contractor, Tradewinds International, Inc., at (202) 637–FCC1 (637–3221).

The complete text of the Public Notice dated September 12, 1995 follows. Copies of this item are available for public inspection in Room 207, 2033 M Street, N.W., Washington, D.C. and may also be obtained from the FCC copy contractor, ITS, Inc. at (202) 418–0620, and the FCC auction contractor, Tradewinds International, Inc. at (202) 637–FCC1 (637–3221).

This Public Notice corrects the Appendix attached to Report No. AUC–95–06, dated September 5, 1995. The upfront payment amounts listed in the following table differ slightly from those in the September 5, 1995 Appendix and supersede those previously published. The revised upfront payments have been rounded up to the next dollar. The revised small business payments are 75 percent of the total upfront payments due, rounded up to the next dollar. This rounding procedure is being implemented to ensure that the maximum initial eligibility for each bidder will be a whole number (a condition required by the Commissions' auction implementation software) and to ensure that, when the upfront payment of a small business bidder is adjusted (by multiplying it by 4/3) to calculate the maximum initial eligibility, the small business bidder will have an appropriate number of "activity" or "bidding" units.

The upfront payment schedule guarantees that if a small business bidder and a bidder that is not a small business each submit upfront payments for the same combination of markets, the maximum initial eligibility for the bidder that is not a small business will equal the sum of the upfront payments for those markets, whole the maximum initial eligibility for the small business bidder will be equal to or possibly slightly larger than the sum of the upfront payments for those markets. For example, a small business bidder submitting an upfront payment for all markets would have a maximum initial eligibility equal to 4,647,790 bidding units, while a bidder that is not a small business would have a maximum initial eligibility of 4,647,596 bidding units. Differences of this nature are a result of the rounding process employed.

Small business bidders should monitor their eligibility carefully during the course of the auction, especially during stage transitions. When a bidder's activity level in a particular round is below its required bidding activity level for that round, even by one bidding unit, the bidding software will automatically charge a waiver to that bidder. Thus, small business bidders may be charged a waiver that they did not intend to exercise. To avoid this, small business bidders would need to use the automatic waiver override procedures. A discussion of the activity rule is contained in Report No. AUC–95–06, dated September 5, 1995. For further information, contact Karen Wrege, Auctions Division, at (202) 418–0660.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

BILLING CODE 6712-01-M

Revised Appendix

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

REVISED SEPTEMBER 12, 1995

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M001 - New York				
B321	New York, NY	MDB321	18,050,615	$113,905	$85,429
B184	Hartford, CT	MDB184	1,123,678	$16,209	$12,157
B007	Albany-Schenectady, NY	MDB007	1,028,615	$7,516	$5,637
B318	New Haven-Waterbury-Meriden, CT	MDB318	978,311	$14,500	$10,875
B438	Syracuse, NY	MDB438	791,140	$6,018	$4,514
B010	Allentown-Bethlehem-Easton, PA	MDB010	686,688	$23,280	$17,460
B412	Scranton-Wilkes Barre-Hazleton, PA	MDB412	678,410	$10,260	$7,695
B361	Poughkeepsie-Kingston, NY	MDB361	424,766	$6,003	$4,503
B063	Burlington, VT	MDB063	369,128	$4,833	$3,625
B319	New London-Norwich, CT	MDB319	357,482	$16,855	$12,642
B043	Binghamton, NY	MDB043	356,645	$10,343	$7,758
B453	Utica-Rome, NY	MDB453	316,633	$3,833	$2,875
B127	Elmira-Corning-Hornell, NY	MDB127	315,038	$8,960	$6,720
B463	Watertown, NY	MDB463	296,253	$23,225	$17,419
B352	Plattsburgh, NY	MDB352	123,121	$2,586	$1,940
B164	Glens Falls, NY	MDB164	118,539	$7,713	$5,785
B333	Oneonta, NY	MDB333	107,742	$8,044	$6,033
B388	Rutland-Bennington, VT	MDB388	97,987	$2,500	$1,875
B435	Stroudsburg, PA	MDB435	95,709	$2,682	$2,012
B208	Ithaca, NY	MDB208	94,097	$2,500	$1,875
	M002 - Los Angeles-San Diego				
B262	Los Angeles, CA	MDB262	14,549,810	$51,738	$38,804
B402	San Diego, CA	MDB402	2,498,016	$7,230	$5,423
B245	Las Vegas, NV	MDB245	857,856	$8,329	$6,247
B028	Bakersfield, CA	MDB028	543,477	$8,521	$6,391
B406	Santa Barbara-Santa Maria, CA	MDB406	369,608	$15,784	$11,838
B405	San Luis Obispo, CA	MDB405	217,162	$8,538	$6,404
B124	El Centro-Calexico, CA	MDB124	109,303	$2,500	$1,875

	M003 - Chicago				
B078	Chicago, IL	MDB078	8,182,076	$48,791	$36,594
B155	Ft. Wayne, IN	MDB155	646,736	$6,995	$5,247
B344	Peoria, IL	MDB344	455,643	$2,500	$1,875
B380	Rockford, IL	MDB380	412,120	$6,740	$5,055
B424	South Bend-Mishawaka, IN	MDB424	330,821	$7,034	$5,276
B426	Springfield, IL	MDB426	254,696	$9,421	$7,066
B109	Decatur-Effingham, IL	MDB109	247,608	$2,500	$1,875
B126	Elkhart, IN	MDB126	235,152	$5,135	$3,852
B071	Champaign-Urbana, IL	MDB071	222,312	$2,500	$1,875
B046	Bloomington, IL	MDB046	215,795	$3,786	$2,840
B039	Benton Harbor, MI	MDB039	161,378	$5,170	$3,878
B243	La Salle-Peru-Ottawa-Streator, IL	MDB243	148,331	$14,415	$10,812
B225	Kankakee, IL	MDB225	127,042	$11,825	$8,869
B103	Danville, IL	MDB103	114,241	$4,256	$3,192
B294	Michigan City-La Porte, IN	MDB294	107,066	$2,500	$1,875
B161	Galesburg, IL	MDB161	75,574	$2,500	$1,875
B213	Jacksonville, IL	MDB213	70,795	$2,500	$1,875
B286	Mattoon, IL	MDB286	62,314	$2,500	$1,875
	M004 - San Francisco-Oakland-San Jose				
B404	San Francisco-Oakland-San Jose, CA	MDB404	6,420,984	$53,205	$39,904
B389	Sacramento, CA	MDB389	1,656,581	$17,791	$13,344
B157	Fresno, CA	MDB157	755,580	$5,668	$4,251
B434	Stockton, CA	MDB434	512,626	$2,500	$1,875
B372	Reno, NV	MDB372	439,279	$8,550	$6,413
B303	Modesto, CA	MDB303	418,978	$5,090	$3,818
B458	Visalia-Porterville-Hanford, CA	MDB458	413,390	$10,005	$7,504
B397	Salinas-Monterey, CA	MDB397	355,660	$2,500	$1,875
B371	Redding, CA	MDB371	253,255	$9,219	$6,915
B079	Chico-Oroville, CA	MDB079	206,918	$2,500	$1,875
B291	Merced, CA	MDB291	192,705	$9,557	$7,168
B134	Eureka, CA	MDB134	142,578	$13,238	$9,929
B485	Yuba City-Marysville, CA	MDB485	122,643	$2,500	$1,875

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

REVISED SEPTEMBER 12, 1995

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M005 - Detroit				
B112	Detroit, MI	MDB112	4,705,164	$54,189	$40,642
B169	Grand Rapids, MI	MDB169	916,060	$22,112	$16,584
B444	Toledo, OH	MDB444	782,184	$7,778	$5,834
B390	Saginaw-Bay City, MI	MDB390	615,364	$12,907	$9,681
B145	Flint, MI	MDB145	500,229	$6,398	$4,799
B241	Lansing, MI	MDB241	489,698	$9,197	$6,898
B223	Kalamazoo, MI	MDB223	352,384	$10,981	$8,236
B255	Lima, OH	MDB255	249,734	$2,500	$1,875
B033	Battle Creek, MI	MDB033	227,541	$6,256	$4,692
B310	Muskegon, MI	MDB310	206,974	$8,484	$6,363
B446	Traverse City, MI	MDB446	204,600	$11,080	$8,310
B209	Jackson, MI	MDB209	193,187	$2,713	$2,035
B143	Findlay-Tiffin, OH	MDB143	147,523	$6,267	$4,701
B307	Mt. Pleasant, MI	MDB307	118,558	$8,256	$6,192
B005	Adrian, MI	MDB005	91,476	$2,500	$1,875
B345	Petoskey, MI	MDB345	85,863	$9,162	$6,872
B011	Alpena, MI	MDB011	83,429	$6,392	$4,794
B409	Sault Ste. Marie, MI	MDB409	51,041	$4,927	$3,696
	M006 - Charlotte-Greensboro-Greenville-Raleigh				
B074	Charlotte-Gastonia, NC	MDB074	1,671,037	$28,237	$21,178
B174	Greensboro-Winston-Salem-High Point, NC	MDB174	1,241,349	$35,029	$26,272
B368	Raleigh-Durham, NC	MDB368	1,089,423	$27,992	$20,994
B177	Greenville-Spartanburg, SC	MDB177	788,212	$10,759	$8,070
B072	Charleston, SC	MDB072	624,369	$7,364	$5,523
B141	Fayetteville-Lumberton, NC	MDB141	571,328	$39,668	$29,751
B091	Columbia, SC	MDB091	568,754	$7,961	$5,971
B020	Asheville-Hendersonville, NC	MDB020	510,055	$39,928	$29,946
B016	Anderson, SC	MDB016	305,120	$2,724	$2,043
B189	Hickory-Lenoir-Morganton, NC	MDB189	292,409	$27,557	$20,668

B478	Wilmington, NC	MDB478	249,711	$9,169	$6,877
B147	Florence, SC	MDB147	239,208	$3,194	$2,396
B176	Greenville-Washington, NC	MDB176	218,937	$12,332	$9,249
B165	Goldsboro-Kinston, NC	MDB165	217,319	$11,840	$8,880
B382	Rocky Mount-Wilson, NC	MDB382	199,296	$7,681	$5,761
B316	New Bern, NC	MDB316	154,955	$9,955	$7,467
B214	Jacksonville, NC	MDB214	149,838	$5,891	$4,419
B436	Sumter, SC	MDB436	149,524	$2,500	$1,875
B312	Myrtle Beach, SC	MDB312	144,053	$2,500	$1,875
B335	Orangeburg, SC	MDB335	114,458	$3,746	$2,810
B062	Burlington, NC	MDB062	108,213	$2,735	$2,052
B377	Roanoke Rapids, NC	MDB377	76,314	$2,500	$1,875
B178	Greenwood, SC	MDB178	68,435	$2,747	$2,061
	M007 - Dallas-Ft. Worth				
B101	Dallas-Ft. Worth, TX	MDB101	4,329,924	$25,729	$19,297
B027	Austin, TX	MDB027	899,361	$4,671	$3,504
B419	Shreveport, LA	MDB419	583,266	$23,758	$17,819
B264	Lubbock, TX	MDB264	392,901	$7,915	$5,937
B013	Amarillo, TX	MDB013	380,341	$17,095	$12,822
B304	Monroe, LA	MDB304	324,397	$9,216	$6,912
B260	Longview-Marshall, TX	MDB260	292,659	$7,416	$5,562
B441	Temple-Killeen, TX	MDB441	291,768	$2,500	$1,875
B459	Waco, TX	MDB459	270,052	$5,561	$4,171
B452	Tyler, TX	MDB452	269,762	$20,546	$15,410
B443	Texarkana, TX/AR	MDB443	255,983	$5,367	$4,026
B003	Abilene, TX	MDB003	253,174	$15,703	$11,778
B327	Odessa, TX	MDB327	213,420	$17,632	$13,224
B473	Wichita Falls, TX	MDB473	209,339	$6,296	$4,722
B400	San Angelo, TX	MDB400	155,845	$4,499	$3,375
B418	Sherman-Denison, TX	MDB418	151,914	$2,500	$1,875
B296	Midland, TX	MDB296	111,567	$7,206	$5,405
B341	Paris, TX	MDB341	89,422	$5,157	$3,868
B087	Clovis, NM	MDB087	71,024	$3,995	$2,997
B057	Brownwood, TX	MDB057	57,684	$3,002	$2,252

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

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Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M007 - Dallas-Ft. Worth (cont.)				
B191	Hobbs, NM	MDB191	55,765	$3,741	$2,806
B040	Big Spring, TX	MDB040	34,589	$2,681	$2,011
	M008 - Boston-Providence *				
B051	Boston, MA	MDB051	4,133,895	$6,286	$4,715
B364	Providence-Pawtucket, RI-New Bedford-Fall River, MA	MDB364	1,509,789	$8,821	$6,616
B480	Worcester-Fitchburg-Leominster, MA	MDB480	709,705	$6,241	$4,681
B427	Springfield-Holyoke, MA	MDB427	672,970	$17,274	$12,956
B274	Manchester-Nashua-Concord, NH	MDB274	540,704	$11,829	$8,872
B357	Portland-Brunswick, ME	MDB357	471,614	$3,142	$2,357
B030	Bangor, ME	MDB030	316,838	$23,674	$17,756
B251	Lewiston-Auburn, ME	MDB251	221,697	$7,001	$5,251
B201	Hyannis, MA	MDB201	204,256	$6,450	$4,838
B249	Lebanon-Claremont, NH	MDB249	167,576	$2,500	$1,875
B465	Waterville-Augusta, ME	MDB465	165,671	$11,453	$8,590
B351	Pittsfield, MA	MDB351	139,352	$5,479	$4,110
B227	Keene, NH	MDB227	111,709	$3,697	$2,773
B363	Presque Isle, ME	MDB363	86,936	$7,006	$5,255
	M009 - Philadelphia				
B346	Philadelphia, PA-Wilmington, DE-Trenton, NJ	MDB346	5,899,345	$18,711	$14,034
B181	Harrisburg, PA	MDB181	654,808	$6,859	$5,145
B240	Lancaster, PA	MDB240	422,822	$2,767	$2,076
B483	York-Hanover, PA	MDB483	417,848	$2,500	$1,875
B370	Reading, PA	MDB370	336,523	$11,919	$8,940
B025	Atlantic City, NJ	MDB025	319,416	$2,500	$1,875
B116	Dover, DE	MDB116	251,257	$10,588	$7,941
B437	Sunbury-Shamokin, PA	MDB437	187,362	$17,103	$12,828
B475	Williamsport, PA	MDB475	181,996	$14,261	$10,696
B360	Pottsville, PA	MDB360	152,585	$5,267	$3,951
B429	State College, PA	MDB429	123,786	$3,824	$2,868

	M010 - Washington-Baltimore				
B461	Washington, DC	MDB461	4,118,628	$18,721	$14,041
B029	Baltimore, MD	MDB029	2,430,563	$2,949	$2,212
B179	Hagerstown, MD-Chambersburg, PA-Martinsburg, WV	MDB179	327,693	$6,940	$5,205
B075	Charlottesville, VA	MDB075	190,128	$2,500	$1,875
B398	Salisbury, MD	MDB398	163,043	$3,111	$2,334
B100	Cumberland, MD	MDB100	156,707	$15,971	$11,979
B479	Winchester, VA	MDB479	137,549	$2,500	$1,875
B183	Harrisonburg, VA	MDB183	128,910	$2,500	$1,875
B156	Fredericksburg, VA	MDB156	124,654	$10,681	$8,011
	M011 - Atlanta				
B024	Atlanta, GA	MDB024	3,197,171	$30,665	$22,999
B410	Savannah, GA	MDB410	630,180	$25,191	$18,894
B271	Macon-Warner Robins, GA	MDB271	589,208	$21,115	$15,837
B026	Augusta, GA	MDB026	521,822	$28,079	$21,060
B076	Chattanooga, TN	MDB076	510,860	$2,994	$2,246
B092	Columbus, GA	MDB092	342,333	$6,297	$4,723
B006	Albany-Tifton, GA	MDB006	324,899	$12,372	$9,279
B160	Gainesville, GA	MDB160	170,365	$2,500	$1,875
B022	Athens, GA	MDB022	166,030	$2,665	$1,999
B334	Opelika-Auburn, AL	MDB334	124,022	$2,500	$1,875
B384	Rome, GA	MDB384	115,066	$8,162	$6,122
B102	Dalton, GA	MDB102	98,609	$3,081	$2,311
B085	Cleveland, TN	MDB085	87,355	$2,500	$1,875
B237	La Grange, GA	MDB237	64,164	$2,500	$1,875
	M012 - Minneapolis-St. Paul				
B298	Minneapolis-St. Paul, MN	MDB298	2,840,561	$28,620	$21,465
B119	Duluth, MN	MDB119	400,771	$31,953	$23,965
B138	Fargo, ND	MDB138	298,015	$6,217	$4,663
B277	Mankato-Fairmont, MN	MDB277	245,144	$5,767	$4,326
B391	St. Cloud, MN	MDB391	243,888	$2,500	$1,875
B378	Rochester-Austin-Albert Lea, MN	MDB378	233,167	$9,312	$6,984

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Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M012 - Minneapolis-St. Paul (cont.)				
B166	Grand Forks, ND	MDB166	213,932	$10,601	$7,951
B422	Sioux Falls, SD	MDB422	207,716	$2,917	$2,188
B123	Eau Claire, WI	MDB123	180,559	$9,174	$6,881
B477	Willmar-Marshall, MN	MDB477	123,749	$7,169	$5,377
B045	Bismarck, ND	MDB045	123,682	$3,984	$2,988
B299	Minot, ND	MDB299	122,687	$5,762	$4,322
B142	Fergus Falls, MN	MDB142	120,167	$3,815	$2,862
B481	Worthington, MN	MDB481	96,602	$2,500	$1,875
B001	Aberdeen, SD	MDB001	88,891	$4,743	$3,558
B301	Mitchell, SD	MDB301	84,095	$4,904	$3,678
B054	Brainerd, MN	MDB054	78,465	$3,974	$2,981
B464	Watertown, SD	MDB464	74,555	$3,085	$2,314
B037	Bemidji, MN	MDB037	57,632	$5,769	$4,327
B199	Huron, SD	MDB199	53,189	$3,472	$2,604
B113	Dickinson, ND	MDB113	38,001	$2,500	$1,875
B207	Ironwood, MI	MDB207	33,059	$2,500	$1,875
B476	Williston, ND	MDB476	27,512	$2,500	$1,875
	M013 - Tampa-St. Petersburg-Orlando				
B440	Tampa-St. Petersburg-Clearwater, FL	MDB440	2,249,405	$13,957	$10,468
B336	Orlando, FL	MDB336	1,256,429	$2,500	$1,875
B408	Sarasota-Bradenton, FL	MDB408	513,348	$4,974	$3,731
B239	Lakeland-Winter Haven, FL	MDB239	405,382	$2,796	$2,097
B107	Daytona Beach, FL	MDB107	399,413	$2,500	$1,875
B289	Melbourne-Titusville, FL	MDB289	398,978	$5,354	$4,016
B326	Ocala, FL	MDB326	194,833	$2,736	$2,052
	M014 - Houston				
B196	Houston, TX	MDB196	4,054,253	$44,455	$33,342
B034	Beaumont-Port Arthur, TX	MDB034	432,129	$5,962	$4,472
B238	Lake Charles, LA	MDB238	259,425	$5,094	$3,821
B059	Bryan-College Station, TX	MDB059	150,998	$2,500	$1,875
B456	Victoria, TX	MDB456	149,963	$7,824	$5,868
B265	Lufkin-Nacogdoches, TX	MDB265	144,081	$6,288	$4,716

	M015 - Miami- Ft. Lauderdale				
B293	Miami-Ft. Lauderdale, FL	MDB293	3,270,606	$8,977	$6,733
B469	West Palm Beach-Boca Raton, FL	MDB469	893,145	$2,820	$2,115
B151	Ft. Myers, FL	MDB151	479,452	$3,888	$2,916
B152	Ft. Pierce-Vero Beach-Stuart, FL	MDB152	341,279	$2,500	$1,875
B313	Naples, FL	MDB313	152,099	$5,512	$4,134
	M016 - Cleveland				
B084	Cleveland-Akron, OH	MDB084	2,894,133	$7,287	$5,466
B065	Canton-New Philadelphia, OH	MDB065	513,623	$36,791	$27,594
B484	Youngstown-Warren, OH	MDB484	492,619	$2,500	$1,875
B131	Erie, PA	MDB131	275,572	$3,870	$2,903
B278	Mansfield, OH	MDB278	221,514	$3,492	$2,619
B403	Sandusky, OH	MDB403	133,019	$7,978	$5,984
B416	Sharon, PA	MDB416	121,003	$2,500	$1,875
B122	East Liverpool-Salem, OH	MDB122	108,276	$2,500	$1,875
B021	Ashtabula, OH	MDB021	99,821	$5,281	$3,961
B287	Meadville, PA	MDB287	86,169	$2,500	$1,875
	M017 - New Orleans-Baton Rouge				
B320	New Orleans, LA	MDB320	1,367,169	$11,216	$8,412
B032	Baton Rouge, LA	MDB032	623,657	$2,500	$1,875
B302	Mobile, AL	MDB302	594,397	$14,931	$11,199
B236	Lafayette-New Iberia, LA	MDB236	496,579	$8,307	$6,231
B343	Pensacola, FL	MDB343	344,406	$2,500	$1,875
B042	Biloxi-Gulfport-Pascagoula, MS	MDB042	339,791	$2,500	$1,875
B009	Alexandria, LA	MDB009	280,133	$8,340	$6,255
B195	Houma-Thibodaux, LA	MDB195	263,681	$4,235	$3,177
B154	Ft. Walton Beach, FL	MDB154	171,536	$9,646	$7,235
B186	Hattiesburg, MS	MDB186	161,894	$9,134	$6,851
B269	McComb-Brookhaven, MS	MDB269	107,298	$6,889	$5,167

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Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M017 - New Orleans-Baton Rouge (cont.)				
B180	Hammond, LA	MDB180	95,583	$6,240	$4,680
B246	Laurel, MS	MDB246	79,145	$4,062	$3,047
	M018 - Cincinnati-Dayton				
B081	Cincinnati, OH	MDB081	1,990,451	$11,832	$8,874
B106	Dayton-Springfield, OH	MDB106	1,207,689	$16,615	$12,462
B073	Charleston, WV	MDB073	481,387	$31,635	$23,727
B197	Huntington, WV-Ashland, KY	MDB197	363,936	$22,087	$16,566
B474	Williamson, WV-Pikeville, KY	MDB474	185,682	$15,275	$11,457
B048	Bluefield, WV	MDB048	184,020	$15,544	$11,658
B035	Beckley, WV	MDB035	167,112	$16,434	$12,326
B359	Portsmouth, OH	MDB359	93,356	$6,118	$4,589
B259	Logan, WV	MDB259	43,032	$4,175	$3,132
	M019 - St. Louis				
B394	St. Louis, MO	MDB394	2,742,114	$25,769	$19,327
B428	Springfield, MO	MDB428	532,880	$35,725	$26,794
B067	Carbondale-Marion, IL	MDB067	209,497	$9,058	$6,794
B090	Columbia, MO	MDB090	190,536	$4,231	$3,174
B066	Cape Girardeau-Sikeston, MO	MDB066	181,795	$7,968	$5,976
B367	Quincy, IL-Hannibal, MO	MDB367	177,213	$2,500	$1,875
B355	Poplar Bluff, MO	MDB355	148,240	$2,838	$2,129
B217	Jefferson City, MO	MDB217	141,404	$3,174	$2,381
B308	Mt. Vernon-Centralia, IL	MDB308	119,286	$2,500	$1,875
B383	Rolla, MO	MDB383	98,233	$8,868	$6,651
B470	West Plains, MO	MDB470	67,165	$3,145	$2,359
B230	Kirksville, MO	MDB230	55,563	$2,500	$1,875

	M020 - Milwaukee				
B297	Milwaukee, WI	MDB297	1,751,525	$2,500	$1,875
B272	Madison, WI	MDB272	593,145	$10,701	$8,026
B018	Appleton-Oshkosh, WI	MDB018	399,261	$11,441	$8,581
B173	Green Bay, WI	MDB173	310,435	$10,528	$7,896
B234	La Crosse, WI-Winona, MN	MDB234	295,769	$7,083	$5,313
B466	Wausau-Rhinelander, WI	MDB466	220,060	$16,796	$12,597
B216	Janesville-Beloit, WI	MDB216	214,510	$2,500	$1,875
B432	Stevens Point-Marshfield-Wisconsin Rapids, WI	MDB432	201,240	$17,638	$13,229
B417	Sheboygan, WI	MDB417	103,877	$2,500	$1,875
B148	Fond du Lac, WI	MDB148	90,083	$2,500	$1,875
B276	Manitowoc, WI	MDB276	80,421	$2,500	$1,875
B282	Marquette, MI	MDB282	79,859	$4,127	$3,096
B279	Marinette, WI-Menominee, MI	MDB279	65,468	$6,628	$4,971
B132	Escanaba, MI	MDB132	46,082	$4,918	$3,689
B194	Houghton, MI	MDB194	45,101	$3,745	$2,809
B206	Iron-Mountain, MI	MDB206	44,596	$4,075	$3,057
	M021 - Pittsburgh				
B350	Pittsburgh, PA	MDB350	2,507,839	$22,018	$16,514
B218	Johnstown, PA	MDB218	241,247	$14,031	$10,524
B012	Altoona, PA	MDB012	222,625	$9,938	$7,454
B471	Wheeling, WV	MDB471	219,937	$8,892	$6,669
B082	Clarksburg-Elkins, WV	MDB082	190,498	$9,788	$7,341
B431	Steubenville, OH-Weirton, WV	MDB431	142,523	$2,500	$1,875
B117	Du Bois-Clearfield, PA	MDB117	124,180	$9,166	$6,875
B328	Oil City-Franklin, PA	MDB328	105,882	$10,940	$8,205
B306	Morgantown, WV	MDB306	104,546	$5,324	$3,993
B317	New Castle, PA	MDB317	96,246	$2,500	$1,875
B203	Indiana, PA	MDB203	89,994	$7,157	$5,368
B137	Fairmont, WV	MDB137	57,249	$2,500	$1,875
	M022 - Denver				
B110	Denver, CO	MDB110	2,073,952	$19,834	$14,876
B089	Colorado Springs, CO	MDB089	409,482	$2,500	$1,875
B366	Pueblo, CO	MDB366	266,001	$11,596	$8,697
B168	Grand Junction, CO	MDB168	187,062	$19,961	$14,971
B149	Ft. Collins-Loveland, CO	MDB149	186,136	$2,500	$1,875

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Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M022 - Denver (cont.)				
B369	Rapid City, SD	MDB369	181,278	$8,181	$6,136
B069	Casper-Gillette, WY	MDB069	135,172	$12,191	$9,144
B172	Greeley, CO	MDB172	131,821	$2,500	$1,875
B077	Cheyenne, WY	MDB077	103,939	$10,064	$7,548
B411	Scottsbluff, NE	MDB411	101,954	$8,287	$6,216
B381	Rock Springs, WY	MDB381	56,981	$5,142	$3,857
B375	Riverton, WY	MDB375	46,859	$3,885	$2,914
	M023 - Richmond-Norfolk				
B324	Norfolk-Virginia Beach-Newport News-Hampton, VA	MDB324	1,635,296	$36,655	$27,492
B374	Richmond-Petersburg, VA	MDB374	1,090,869	$23,997	$17,998
B376	Roanoke, VA	MDB376	609,215	$11,498	$8,624
B104	Danville, VA	MDB104	165,434	$6,427	$4,821
B266	Lynchburg, VA	MDB266	154,497	$2,500	$1,875
B430	Staunton-Waynesboro, VA	MDB430	100,322	$2,500	$1,875
B284	Martinsville, VA	MDB284	90,577	$2,868	$2,151
	M024 - Seattle (Excluding Alaska)				
B413	Seattle-Tacoma, WA	MDB413	2,708,949	$16,155	$12,117
B331	Olympia-Centralia, WA	MDB331	258,937	$11,041	$8,281
B482	Yakima, WA	MDB482	215,548	$2,500	$1,875
B055	Bremerton, WA	MDB055	189,731	$2,500	$1,875
B468	Wenatchee, WA	MDB468	166,563	$11,709	$8,782
B036	Bellingham, WA	MDB036	127,780	$3,575	$2,682
B002	Aberdeen, WA	MDB002	83,057	$5,127	$3,846
B356	Port Angeles, WA	MDB356	76,610	$5,630	$4,223
	M025 - Puerto Rico-U.S. Virgin Islands				
B488	San Juan, PR	MDB488	2,170,246	$36,024	$27,018
B489	Mayaguez-Aguadilla-Ponce, PR	MDB489	1,351,600	$28,231	$21,174
B491	US Virgin Islands	MDB491	102,000	$7,591	$5,694

	M026 - Louisville-Lexington-Evansville				
B263	Louisville, KY	MDB263	1,352,955	$16,207	$12,156
B252	Lexington, KY	MDB252	816,101	$27,722	$20,792
B135	Evansville, IN	MDB135	504,859	$10,355	$7,767
B052	Bowling Green-Glasgow, KY	MDB052	222,748	$17,272	$12,954
B339	Paducah-Murray-Mayfield, KY	MDB339	217,082	$4,210	$3,158
B338	Owensboro, KY	MDB338	157,104	$5,321	$3,991
B098	Corbin, KY	MDB098	128,186	$3,678	$2,759
B423	Somerset, KY	MDB423	111,487	$2,500	$1,875
B273	Madisonville, KY	MDB273	46,126	$2,500	$1,875
	M027 - Phoenix				
B347	Phoenix, AZ	MDB347	2,404,760	$19,933	$14,950
B447	Tucson, AZ	MDB447	666,880	$2,500	$1,875
B362	Prescott, AZ	MDB362	107,714	$2,500	$1,875
B486	Yuma, AZ	MDB486	106,895	$2,500	$1,875
B420	Sierra Vista-Douglas, AZ	MDB420	97,624	$7,036	$5,277
B144	Flagstaff, AZ	MDB144	96,591	$4,660	$3,495
B322	Nogales, AZ	MDB322	29,676	$2,917	$2,188
	M028 - Memphis-Jackson				
B290	Memphis, TN	MDB290	1,396,390	$25,192	$18,894
B210	Jackson, MS	MDB210	615,521	$17,945	$13,459
B449	Tupelo-Corinth, MS	MDB449	291,701	$16,682	$12,512
B211	Jackson, TN	MDB211	255,379	$16,931	$12,699
B175	Greenville-Greenwood, MS	MDB175	213,943	$14,918	$11,189
B292	Meridian, MS	MDB292	200,024	$14,814	$11,111
B094	Columbus-Starkville, MS	MDB094	166,415	$8,841	$6,631
B120	Dyersburg-Union City, TN	MDB120	113,943	$2,500	$1,875
B049	Blytheville, AR	MDB049	79,446	$4,064	$3,048
B315	Natchez, MS	MDB315	73,214	$5,825	$4,369
B455	Vicksburg, MS	MDB455	59,250	$2,500	$1,875

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

REVISED SEPTEMBER 12, 1995

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M029 - Birmingham				
B044	Birmingham, AL	MDB044	1,200,336	$28,317	$21,238
B305	Montgomery, LA	MDB305	440,745	$12,203	$9,153
B198	Huntsville, AL	MDB198	439,832	$5,132	$3,849
B450	Tuscaloosa, AL	MDB450	237,918	$4,781	$3,586
B115	Dothan-Enterprise, AL	MDB115	210,225	$2,500	$1,875
B158	Gadsden, AL	MDB158	174,034	$6,798	$5,099
B146	Florence, AL	MDB146	173,076	$2,500	$1,875
B017	Anniston, AL	MDB017	161,897	$5,284	$3,963
B108	Decatur, AL	MDB108	131,556	$2,500	$1,875
B415	Selma, AL	MDB415	74,457	$5,229	$3,922
	M030 - Portland				
B358	Portland, OR	MDB358	1,690,930	$19,137	$14,353
B395	Salem-Albany-Corvallis, OR	MDB395	440,062	$10,696	$8,022
B133	Eugene-Springfield, OR	MDB133	282,912	$15,630	$11,723
B288	Medford-Grants Pass, OR	MDB288	209,038	$2,500	$1,875
B038	Bend, OR	MDB038	102,745	$2,500	$1,875
B385	Roseburg, OR	MDB385	94,649	$8,510	$6,383
B261	Longview, WA	MDB261	85,446	$8,669	$6,502
B097	Coos Bay-North Bend, OR	MDB097	79,600	$8,077	$6,058
B231	Klamath Falls, OR	MDB231	74,566	$7,233	$5,425
	M031 - Indianapolis				
B204	Indianapolis, IN	MDB204	1,321,911	$2,500	$1,875
B235	Lafayette, IN	MDB235	247,523	$3,427	$2,571
B442	Terre Haute, IN	MDB442	236,968	$3,163	$2,373
B047	Bloomington-Bedford, IN	MDB047	217,914	$3,232	$2,424
B233	Kokomo-Logansport, IN	MDB233	184,899	$3,342	$2,507
B309	Muncie, IN	MDB309	182,386	$3,736	$2,802
B015	Anderson, IN	MDB015	178,808	$2,500	$1,875
B093	Columbus, IN	MDB093	139,128	$4,757	$3,568
B280	Marion, IN	MDB280	109,238	$2,500	$1,875
B373	Richmond, IN	MDB373	104,942	$2,500	$1,875
B457	Vincennes-Washington, IN	MDB457	93,758	$4,173	$3,130

	M032 - Des Moines- Quad Cities				
B111	Des Moines, IA	MDB111	728,830	$42,575	$31,932
B105	Davenport, IA-Moline, IL	MDB105	419,650	$2,500	$1,875
B421	Sioux City, IA	MDB421	328,919	$11,208	$8,406
B462	Waterloo-Cedar Falls, IA	MDB462	261,009	$14,398	$10,799
B070	Cedar Rapids, IA	MDB070	260,686	$4,674	$3,506
B118	Dubuque, IA	MDB118	176,542	$8,203	$6,153
B086	Clinton, IA-Sterling, IL	MDB086	147,981	$2,500	$1,875
B061	Burlington, IA	MDB061	137,543	$6,289	$4,717
B150	Ft. Dodge, IA	MDB150	131,731	$4,714	$3,536
B337	Ottumwa, IA	MDB337	122,988	$3,429	$2,572
B285	Mason City, IA	MDB285	118,834	$7,662	$5,747
B205	Iowa City, IA	MDB205	115,731	$2,500	$1,875
B283	Marshalltown, IA	MDB283	55,695	$3,504	$2,628
	M033 - San Antonio				
B401	San Antonio, TX	MDB401	1,530,954	$11,581	$8,686
B099	Corpus Christi, TX	MDB099	499,988	$2,500	$1,875
B268	McAllen, TX	MDB268	424,063	$7,591	$5,694
B056	Brownsville-Harlingen, TX	MDB056	277,825	$3,901	$2,926
B242	Laredo, TX	MDB242	152,881	$10,585	$7,939
B121	Eagle Pass-Del Rio, TX	MDB121	100,813	$10,447	$7,836
	M034 - Kansas City				
B226	Kansas City, MO	MDB226	1,839,569	$16,139	$12,105
B445	Topeka, KS	MDB445	245,679	$4,782	$3,587
B220	Joplin, MO-Miami, OK	MDB220	215,095	$2,500	$1,875
B393	St. Joseph, MO	MDB393	191,489	$4,092	$3,069
B275	Manhattan-Junction City, KS	MDB275	122,878	$6,237	$4,678
B349	Pittsburg-Parsons, KS	MDB349	90,934	$4,158	$3,119
B247	Lawrence, KS	MDB247	81,798	$2,500	$1,875

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED
MDS AUCTION
REVISED SEPTEMBER 12, 1995

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M034 - Kansas City (cont.)				
B414	Sedalia, MO	MDB414	79,705	$4,358	$3,269
B129	Emporia, KS	MDB129	46,157	$2,722	$2,042
	M035 - Buffalo- Rochester				
B060	Buffalo-Niagara Falls, NY	MDB060	1,231,795	$19,365	$14,524
B379	Rochester, NY	MDB379	1,118,963	$21,625	$16,219
B330	Olean, NY-Bradford, PA	MDB330	239,343	$20,084	$15,063
B215	Jamestown-Dunkirk, NY-Warren, PA	MDB215	186,945	$6,345	$4,759
	M036 - Salt Lake City				
B399	Salt Lake City-Ogden, UT	MDB399	1,308,035	$36,526	$27,395
B050	Boise-Nampa, ID	MDB050	416,503	$11,922	$8,942
B365	Provo-Orem, UT	MDB365	269,407	$2,500	$1,875
B202	Idaho Falls, ID	MDB202	190,267	$7,120	$5,340
B451	Twin Falls, ID	MDB451	136,831	$6,467	$4,851
B353	Pocatello, ID	MDB353	89,651	$4,356	$3,267
B392	St. George, UT	MDB392	83,263	$3,398	$2,549
B258	Logan, UT	MDB258	79,415	$8,338	$6,254
	M037 - Jacksonville				
B212	Jacksonville, FL	MDB212	1,114,847	$9,256	$6,942
B439	Tallahassee, FL	MDB439	418,963	$26,525	$19,894
B159	Gainesville, FL	MDB159	260,538	$4,502	$3,377
B340	Panama City, FL	MDB340	171,195	$10,639	$7,980
B454	Valdosta, GA	MDB454	139,226	$2,500	$1,875
B467	Waycross, GA	MDB467	99,034	$7,450	$5,588
B058	Brunswick, GA	MDB058	71,130	$2,500	$1,875

	M038 - Columbus				
B095	Columbus, OH	MDB095	1,477,891	$8,724	$6,543
B342	Parkersburg, WV-Marietta, OH	MDB342	180,025	$2,500	$1,875
B487	Zanesville-Cambridge, OH	MDB487	178,179	$16,418	$12,314
B023	Athens, OH	MDB023	123,864	$4,641	$3,481
B080	Chillicothe, OH	MDB080	93,579	$8,387	$6,291
B281	Marion, OH	MDB281	92,023	$2,916	$2,187
	M039 - El Paso-Albuquerque				
B008	Albuquerque, NM	MDB008	688,612	$9,254	$6,941
B128	El Paso, TX	MDB128	649,860	$5,487	$4,116
B244	Las Cruces, NM	MDB244	197,166	$5,359	$4,020
B407	Santa Fe, NM	MDB407	174,526	$4,726	$3,545
B139	Farmington, NM-Durango, CO	MDB139	162,776	$12,036	$9,027
B162	Gallup, NM	MDB162	122,277	$8,752	$6,564
B386	Roswell, NM	MDB386	70,068	$5,212	$3,909
B068	Carlsbad, NM	MDB068	48,605	$3,140	$2,355
	M040 - Little Rock				
B257	Little Rock, AR	MDB257	852,026	$39,297	$29,473
B153	Ft. Smith, AR	MDB153	282,187	$8,574	$6,431
B140	Fayetteville-Springdale-Rogers, AR	MDB140	222,526	$8,438	$6,329
B219	Jonesboro-Paragould, AR	MDB219	159,439	$11,319	$8,490
B348	Pine Bluff, AR	MDB348	152,918	$15,435	$11,577
B193	Hot Springs, AR	MDB193	117,439	$10,033	$7,525
B125	El Dorado-Magnolia-Camden, AR	MDB125	108,810	$9,002	$6,752
B387	Russellville, AR	MDB387	81,863	$8,046	$6,035
B182	Harrison, AR	MDB182	74,459	$7,579	$5,685
	M041 - Oklahoma City				
B329	Oklahoma City, OK	MDB329	1,305,472	$10,917	$8,188
B248	Lawton-Duncan, OK	MDB248	177,830	$2,500	$1,875
B130	Enid, OK	MDB130	85,998	$2,500	$1,875
B019	Ardmore, OK	MDB019	83,979	$2,500	$1,875
B433	Stillwater, OK	MDB433	72,552	$4,578	$3,434
B004	Ada, OK	MDB004	52,677	$2,500	$1,875
B267	McAlester, OK	MDB267	50,914	$2,500	$1,875
B354	Ponca City, OK	MDB354	48,056	$4,454	$3,341

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED
MDS AUCTION
REVISED SEPTEMBER 12, 1995

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M042 - Spokane-Billings				
B425	Spokane, WA	MDB425	612,862	$21,543	$16,158
B041	Billings, MT	MDB041	290,242	$14,985	$11,239
B171	Great Falls, MT	MDB171	161,038	$15,906	$11,930
B460	Walla Walla, WA-Pendelton, OR	MDB460	151,563	$10,075	$7,557
B228	Kennewick-Pasco-Richland, WA	MDB228	150,033	$2,550	$1,913
B300	Missoula, MT	MDB300	139,270	$14,178	$10,634
B250	Lewiston-Moscow, ID	MDB250	110,028	$10,344	$7,758
B064	Butte, MT	MDB064	65,252	$6,816	$5,112
B053	Bozeman, MT	MDB053	65,077	$2,500	$1,875
B224	Kalispell, MT	MDB224	59,218	$2,500	$1,875
B188	Helena, MT	MDB188	58,752	$6,270	$4,703
	M043 - Nashville				
B314	Nashville, TN	MDB314	1,429,309	$40,160	$30,120
B083	Clarksville, TN-Hopkinsville, KY	MDB083	220,469	$3,574	$2,681
B096	Cookeville, TN	MDB096	117,613	$12,500	$9,375
	M044 - Knoxville				
B232	Knoxville, TN	MDB232	948,055	$34,559	$25,920
B229	Kingsport-Johnston City, TN-Bristol, VA/TN	MDB229	652,639	$31,999	$24,000
B295	Middlesboro-Harlan, KY	MDB295	121,217	$6,517	$4,888
	M045 - Omaha				
B332	Omaha, NE	MDB332	905,991	$22,666	$17,000
B256	Lincoln, NE	MDB256	309,515	$4,455	$3,342
B167	Grand Island-Kearney, NE	MDB167	141,541	$6,439	$4,830
B323	Norfolk, NE	MDB323	112,526	$11,491	$8,619
B325	North Platte, NE	MDB325	80,249	$3,855	$2,892
B185	Hastings, NE	MDB185	72,833	$2,500	$1,875
B270	McCook, NE	MDB270	36,618	$2,500	$1,875

	M046 - Wichita				
B472	Wichita, KS	MDB472	597,494	$14,833	$11,125
B396	Salina, KS	MDB396	143,408	$4,640	$3,480
B200	Hutchinson, KS	MDB200	125,094	$7,344	$5,508
B163	Garden City, KS	MDB163	65,059	$6,127	$4,596
B187	Hays, KS	MDB187	60,926	$3,453	$2,590
B253	Liberal, KS	MDB253	53,960	$5,620	$4,215
B170	Great Bend, KS	MDB170	40,779	$3,585	$2,689
B114	Dodge City, KS	MDB114	37,454	$2,500	$1,875
	M047 - Honolulu				
B192	Honolulu, HI	MDB192	836,231	$11,741	$8,806
B190	Hilo, HI	MDB190	120,317	$9,005	$6,754
B222	Kahului-Wailuku-Lahaina, HI	MDB222	100,504	$2,500	$1,875
B254	Lihue, HI	MDB254	51,177	$5,461	$4,096
	M048 - Tulsa				
B448	Tulsa, OK	MDB448	836,559	$37,963	$28,473
B311	Muskogee, OK	MDB311	148,267	$7,080	$5,310
B088	Coffeyville, KS	MDB088	63,504	$4,457	$3,343
B031	Bartlesville, OK	MDB031	48,066	$3,411	$2,559
	M049 - Alaska				
B014	Anchorage, AK	MDB014	388,943	$30,108	$22,581
B136	Fairbanks, AK	MDB136	92,111	$2,500	$1,875
B221	Juneau-Ketchikan, AK	MDB221	68,989	$5,091	$3,819
	M050 - Guam-Northern Mariana Islands				
B490	Guam	MDB490	133,000	$3,362	$2,522
B493	Northern Mariana Islands	MDB493	43,000	$4,589	$3,442

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

REVISED SEPTEMBER 12, 1995

Market No.	**Basic Trading Area**	**Authorizations***	**Population****	**Upfront Payments**	**Upfront Payments for Small Businesses**
	M051 - American Samoa				
B492	American Samoa	MDB492	47,000	$2,500	$1,875
	Totals		252,556,719	$4,647,596	$3,485,842

Notes:

* This authorization number must be used on the FCC Form 159 in FCC Code 2 block when making down payments, final payments, or installment payments.

Do not specify individual authorizations on the FCC Form 159 accompanying an upfront payment.

** All population figures are 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census.

The population that a BTA authorization holder could serve may be significantly lower than this due to the presence of incumbent licensees.

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[FR Doc. 95–23163 Filed 9–15–95; 8:45 am]

BILLING CODE 6712-01-C

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1066–DR]

Oklahoma; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–1066–DR), dated September 1, 1995, and related determinations.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma dated September 1, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 1, 1995:

The Counties of Canadian, Greer, and Harmon for Public Assistance, and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Craig S. Wingo,

Division Director, Infrastructure Support Division.

[FR Doc. 95–23088 Filed 9–15–95; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL MARITIME COMMISSION

Inquiry Into Port Restrictions and Requirements in the United States/Japan Trade

September 12, 1995.

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission is collecting information regarding certain restrictions and requirements for the use of port and terminal facilities in Japan, to determine whether they create conditions unfavorable to shipping in the United States/Japan trade, or constitute adverse conditions affecting U.S. carriers that do not exist for Japanese carriers in the United States. The Commission is collecting information regarding (1) The "prior consultation" system, a process of mandatory discussions and operational approvals for port usage; (2) mandatory weighing and measuring requirements; (3) restrictions on Sunday work; and (4) the disposition of the Japanese Harbor Management Fund.

DATES: Comments may be submitted on or before November 17, 1995.

ADDRESSES: Send submissions to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission") is collecting information about certain restrictions and requirements for the use of port and terminal facilities in Japan, to assess whether they create conditions unfavorable to shipping in the United States/Japan trade, or constitute adverse conditions affecting U.S. carriers that do not exist for Japanese carriers in the United States. The Commission is specifically concerned with: (1) The effects of the "prior consultation" system, a process of mandatory discussions and operational approvals involving Japanese port and terminal management, shoreside labor unions, and containership operators; (2) the requirement that all containerized cargo exported from Japan be weighed and measured, apparently without regard for commercial necessity; (3) restrictions on the operation of Japanese ports on Sunday; and (4) the disposition of the Japan Harbor Management Fund.

Prior Consultation

The prior consultation system in Japan is administered and controlled by the Japan Harbor Transportation Association ("JHTA"), an association of companies providing harbor transportation services, including terminal operators, stevedores, and sworn measures. Under this system, carriers serving Japan must consult with JHTA about any operational matters involving Japanese ports or harbor labor. Such matters appear to include, inter alia, inauguration of new services, rationalization agreements between carriers which involve vessel sharing or berthing changes, changes in stevedoring contractors, technological or equipment changes, weighing and measuring, and Sunday work. Prior consultation also appears to be required for minor matters, such as change of vessel name or route, or substitution of vessels. After it consults with a shipowner, JHTA may conduct consultations with labor interests, then approve or deny the shipowner's request.

This system of consultations—between JHTA and carriers on the one hand, and JHTA and unions on the other—originated in the 1960's, as a means for resolving labor disputes arising out of the introduction of containerization. Over time, however, prior consultation requirements have been extended to even minor matters, such as vessel substitution, which do not appear to involve potential labor relations issues. While its scope has increased, the prior consultation system itself has remained characterized by a lack of transparency. The process is said to lack written records, clear written bases for decisions, and appeal rights, and to include a system of closed "pre-prior consultation" meetings to determine which user requests will be accepted for prior consultation.

Because of its broad discretion to review and disapprove virtually all aspects of shipowners' harbor operations, JHTA appears to have amassed an exceptional level of control over the market for terminal operations and services in Japan. In particular, it appears that shipowners have no free choice of terminal operators and stevedores; instead, JHTA assigns operators to carriers, virtually eliminating competition in this area. Circumvention of JHTA in dealings with individual operators is generally viewed to be impossible, as it could lead to disapproval of shipowner plans and disruption of cargo handling labor.

It appears that the prior consultation requirement and the attendant lack of competition in the harbor services market has had a number of adverse effects on carriers serving Japan. These include increased port charges and costs, inefficiency, and inflexibility. Among other things, the prior consultation requirement may impede the ability of shipowners, both individually and in vessel sharing consortia, to reduce costs by rationalizing port operations and dealing with operators of their choice.

Mandatory Weighing and Measuring

Currently, it appears that all containerized cargo exported from Japan is required to be weighed and measured by one of two sworn measuring associations, Nippon Kaiji Kentei Kyokai and Shin Nihon Kentei Kyokai, both of which appear to be members of JHTA. This policy is set forth in a 1980

memorandum between JHTA and the Japan Council of Port and Harbor Transport Workers' Unions. Rates for weighing and measuring services are filed with, and approved by, the Japanese Ministry of Transport ("MOT").

There is no clear justification for the policy of mandatory weighing and measuring of cargo. Internationally applied liability conventions do not require carriers to weigh and measure cargo, as carriers may accept shipper-provided weights and measurements. Furthermore, in many instances physical weighing and measuring of cargo may not even take place; instead, measurers' figures may be derived from samples or statistical information.

It appears that mandatory weighing and measuring was implemented to provide constant work for sworn measures, as the industry shifted toward the use of containers and box-rated cargo. However, the justification for continuing this practice indefinitely is unclear, given that many harbor workers have retired or left the ports since the introduction of containerization in Japan's trades over two decades ago. Also, it appears that the measuring companies have recently increased weighing and measuring charges—with MOT approval—based in part on a need to attract *new* labor to perform these services.

Sunday Work

In recent years, the performance of harbor work on Sundays in Japanese ports has been either severely restricted or prevented altogether, causing inefficiency and disruption for both carriers and shippers. Recent press reports have indicated a provisional easing of restrictions on Sunday work; however, the extent of that progress is not clear.

Prior to 1988, work was not performed on Sundays at Japanese ports. In 1988, a policy of limited Sunday work was put in place; carriers wishing services on Sunday were allowed to seek prior consultation and approval from JHTA. However, Sunday work was discontinued entirely in 1991. It appears that Sunday work was halted as a result of an ongoing dispute involving JHTA and the two large harbor labor organizations, the National Council of Dockworkers' Unions of Japan and the Japanese Confederation of Port and Transport Workers' Unions, regarding compliance with a 1991 labor agreement.

The restriction of Sunday work has been a matter of longstanding concern for the United States Government, and has been raised in bilateral maritime discussions with Japanese officials. In September 1992 Maritime Administrator Warren G. Leback indicated that the Sunday work practices caused serious problems for U.S. carriers, and affected ship scheduling throughout the Pacific Basin.

It has recently been reported that an "Agreement on Exceptional Measures for the No-Cargo-Handling-on-Sundays System" was concluded by JHTA, representing harbor management, and the labor groups, the Japan Council of Port and Harbor Transport Workers' Unions and the Japanese Confederation of Port and Transport Workers' Unions. This agreement, effective June 11, 1995, calls for the implementation of Sunday cargo handling at Japan's six major ports: Tokyo, Yokohama, Nagoya, Osaka, Kobe, and Kitakyushu. The agreement is said to be "provisional" in nature, and is effective for one year only.

The agreement is reported to contain several conditions for the provision of Sunday work. Sunday work is limited to terminals which conform to the "5–9 Accord" labor agreement (signed May 9, 1991) which guarantees, among other things, a 5-day work week, 8-hour days, limits on overtime, and certain numbers of Saturdays, Sundays, and holidays off. Only carriers who have paid all MOT-approved port charges will be eligible. Cargo will be moved only between vessels and containeryards; no cargo will be accepted at the yard or delivered on Sunday.

It appears that Sunday work will be from 8:30 a.m. to 4:30 p.m. only. Extra wages will be determined regionally, and carriers and harbor transportation firms will be required to apply for Sunday work through the district harbor transportation associations by noon on Fridays. The trade press has reported that fees for Sunday cargo handling will be 60 percent higher than ordinary fees.

Despite these positive steps, a number of concerns regarding Sunday work remain. We are uncertain of the extent to which the agreement has been implemented, as well as the effects of remaining restrictions and increased fees applicable to Sunday work. Also, the outlook for a long-term solution to the Sunday work issue is unclear, given the one-year "provisional" nature of the recent agreement.

Harbor Management Fund

In Docket No. 91–19, *Actions to Address Conditions Affecting U.S. Carriers Which do not Exist for Foreign Carriers in the U.S./Japan Trade*, the Commission launched an investigation into a fund, known as the "Harbor Management Fund," collected by JHTA from ocean carriers. In particular, the Commission examined whether JHTA, with the support of MOT, coerced payments from carriers into the fund by threatening labor instability and unavailability. It was alleged that the fund was to be used for import distribution centers or other projects from which U.S. carriers would receive no economic benefits.

Docket No. 91–19 was discontinued on June 13, 1991, based on an agreement between JHTA and participating carriers. It was agreed that collections from carriers for the fund would be discontinued after March 31, 1992, and similar assurances were provided by the Government of Japan Minister of Transport to American President Lines. Also, JHTA committed to use the fund proceeds only for harbor labor-related purposes, to ensure that benefits would accrue to all carriers contributing to the fund.

While collections for the fund were stopped in 1992 as agreed, it appears that the commitment to use remaining proceeds for labor-related purposes has not been satisfied. When Docket No. 91–19 was discontinued, the Commission directed Japanese carrier parties to file quarterly reports on the status of the fund. The last of these reports, filed May 31, 1994, showed that only nominal amounts had been expended from the fund since 1992. Fund activity for the past year, as well as JHTA's plans for disposition of the fund monies, remain unclear.

Government Supervision of Port Transportation Services

While port services in Japan are generally provided by private companies, the Government of Japan may exercise substantial regulatory control and oversight over these operators. For example, under the Japanese Port Transportation Business Law, persons wishing to provide port transportation services must apply for a certificate from MOT. In deciding whether to grant such a certificate, MOT evaluates, inter alia, whether the business in question "has an appropriate plan to perform the business," and whether it would "cause port transportation supply to be excessively over transportation demand." Art. 5 & 6. It appears that restrictive use of this licensing authority by MOT may effectively prevent new operators from entering terminals to compete with existing JHTA members, and to prevent non-Japanese flag lines from establishing their own terminal operations in Japan.

MOT also has broad statutory authority to correct restrictive or unfair harbor practices. Rates charged by port transportation businesses must be approved by MOT, which determines whether the rates are reasonable and non-discriminatory. Art. 9. MOT must approve operators' "terms and conditions on port transportation," to determine that "there is no fear that the terms and conditions may impede the benefits of users," and also approve any changes in operators' business plans. Art. 11 & 17. If MOT determines that the port transportation businesses "impeded benefits of users" it may order changes in business plans, terms and conditions, or rates. Art. 21.

JHTA itself operates with the permission of, and under the supervision of, MOT. JHTA was incorporated in 1965 as a "juristic person" under Article 34 of the Civil Code of Japan, which provides that public interest, not-for-profit organizations may be incorporated subject to the permission of "competent authorities." As the competent authority, MOT may, inter alia, annul its incorporation if JHTA violates MOT orders or acts in contravention of the public interest.[1]

In addition, it appears that the Japanese Fair Trade Commission ("FTC"), which administers the Antimonopoly Law, exercises some authority over JHTA. It was reported in the press that, in the 1970's and 1980's, the FTC warned JHTA that the prior consultation system might be in violation of the Antimonopoly Law of Japan. Because of these concerns, the JHTA announced in 1985 the abolishment of the prior consultation system. However, it appears that the prior consultation system was reestablished in 1986, with the conclusion of an agreement between JHTA and an organization of Japanese carriers. The terms of that agreement expressly state that it was concluded "under the guidance of the Ministry of Transport," and the agreement was signed, as a witness, by an MOT official.

Antimonopoly concerns resurfaced in 1990, when four stevedoring companies in Tokyo and Yokohama filed a complaint with the FTC, claiming that JHTA and prior consultation had incapacitated their businesses. While the resolution of these complaints is not clear, it has been reported in the press that in 1993 MOT advised JHTA to take remedial action to ensure that the prior consultation system is administered in a fair manner. Also, in 1994, the FTC released a report calling for a review of the existing licensing system and for substantial deregulation of the harbor transportation system.

Discussion

The Commission is statutorily charged with addressing restrictive or unfair foreign practices in the maritime services area. Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, authorizes the Commission, *inter alia:*

> To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade * * * including intermodal movements, terminal operations, * * * and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; * * *.

Also, the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a ("FSPA"), authorizes the Commission to

> Investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in the existence of conditions that—
>
> (1) Adversely affect the operations of United States carriers in the United States oceanborne trade; and
>
> (2) Do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

Under the FSPA, if the Commission determines that such adverse conditions exist, it may "take such action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions." Such action may include limitations on sailings, suspension of tariffs, suspension of agreements, or fees not to exceed $1,000,000 per voyage.

The Commission has serious concerns that prior consultation, mandatory weighing and measuring, and restrictions on Sunday work may create conditions unfavorable to shipping in the U.S. trade with Japan, or conditions which adversely affect the operations of U.S. carriers in Japan that do not exist for foreign carriers in the United States. In addition to subjecting carriers to potentially high costs and charges, such restrictions may prevent carriers from pursuing efficiency through the rationalization of harbor operations, thereby disadvantaging importers, exporters, and carriers in the U.S.-Japan trades. The Commission is further concerned that commitments regarding disposition of the Harbor Management Fund, made upon the discontinuation of Docket No. 91–19, may not be fully satisfied.

While these matters are largely administered by JHTA and private terminal operators, they appear to be implemented with the approval and cooperation of the Government of Japan. Such support may include the protection of JHTA operators from competition by MOT's restrictive use of licensing authority, the approval of charges for unnecessary mandatory weighing and measuring, and the failure of the Government of Japan to use its substantial regulatory and oversight authority to prevent JHTA from abusing its effective control over harbor operations and the prior consultation system.

Therefore, by this Notice, the Commission is inviting all interested parties to file information, views, and comments with respect to prior consultation, mandatory weighting and measuring, Sunday work, and the Harbor Management Fund, and their effects on the oceanborne carriage of goods between the United States and Japan. Confidential or sensitive information and documents submitted pursuant to this Order shall, upon request of the responding parties, be treated confidentially to the full extent permitted by law; provided, however, that such confidential treatment shall not foreclose use by the Commission of such information in any subsequent formal proceeding.

Also, by separate Orders issued pursuant to Section 19(6) of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876(6), and section 10002(d) of the Foreign Shipping Practices Act, 46 U.S.C. app. § 1710a(d), the Commission is requiring ocean common carriers in the U.S./Japan trades to provide information on these matters. It is expected that the information received in response to this Notice and the corresponding Orders will allow for a full consideration of these matters, and will enable the Commission to determine whether further action in this area is warranted.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–23052 Filed 9–15–95; 8:45 am]

BILLING CODE 6730-01-M

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[1] *See* Regulations Regarding the Incorporation and Supervision of Juristic Persons Belonging to the Iurisdiction of the Minister of Transport, Ministry of Transport Regulations No. 22 (1969), Art. 11.

FEDERAL RESERVE SYSTEM

Timothy Ken Driskell, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 2, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Timothy Ken Driskell*, Alpharetta, Georgia, and Daniel Crawford Chasteen, Roswell, Georgia; to collectively acquire as trustees of First Colony Bank 401(k) Stock Bonus Plan, Alpharetta, Georgia, an additional 4.29 percent, for a total of 14.26 percent, of the voting shares of First Colony Bancshares, Inc., Alpharetta, Georgia, and thereby indirectly acquire First Colony Bank, Alpharetta, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cyrus A. Ansary*, Bethesda, Maryland; to acquire a total of 21 percent of the voting shares of Pinnacle Financial Services, Inc., St. Joseph, Michigan, and thereby indirectly acquire Peoples State Bank of St. Joseph, St. Joseph, Michigan.

Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-23072 Filed 9-15-95; 8:45 am]

BILLING CODE 6210-01-F

First Midwest Bancorp, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-22208) published on page 46597 of the issue for Thursday, September 7, 1995.

Under the Federal Reserve Bank of Chicago heading, the entry for First Midwest Bancorporation, Inc., is revised to read as follows:

1. *First Midwest Bancorp, Inc.*, Itasca, Illinois; to acquire 100 percent of the voting shares of CF Bancorp, Inc., Davenport, Iowa (savings and loan holding company), and thereby indirectly acquire Citizens Federal Savings Bank, F.S.B., Davenport, Iowa.

In connection with this application, Applicant also has applied for approval to exercise an option to acquire up to 19.9 percent CF Bancorp, Inc., Davenport, Iowa.

Comments on this application must be received by September 20, 1995.

Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-23073 Filed 9-15-95; 8:45 am]

BILLING CODE 6210-01-F

Investors Financial Services Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 12, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Investors Financial Services Corp.*, Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Investors Bank & Trust Company, Boston, Massachusetts.

2. *Walden Bancorp, Inc.*, Acton, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of The Co-operative Bank of Concord, Acton, Massachusetts, and Braintree Savings Bank, Braintree, Massachusetts.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *1st United Bancorp*, Boca Raton, Florida; to acquire 100 percent of the voting shares of The American Bancorporation of the South, Merritt Island, Florida, and thereby indirectly acquire The American Bank of the South, Merritt Island, Florida.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens National Bancshares, Inc.*, Hope, Arkansas; to acquire 100 percent of the voting shares of Peoples Bancshares, Inc., Lewisville, Arkansas, and thereby indirectly acquire Peoples Bank and Loan Company, Lewisville, Arkansas.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Pinnacle Bancorp, Inc.*, Central City, Nebraska; to acquire 100 percent of the voting shares of State Bank, Palmer, Nebraska, and to acquire an additional 5.3 percent, for a total of 11.5 percent of the voting shares of The Farmers National Bank of Central City, Central City, Nebraska.

Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-23074 Filed 9-15-95; 8:45 am]

BILLING CODE 6210-01-F

Pinnacle Financial Services, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Pinnacle Financial Services, Inc., St. Joseph, Michigan; to acquire Maco Bancorp, Inc., Merrillville, Indiana, and its subsidiary, First Federal Savings Bank of Indiana, Merrillville, Indiana, and thereby engage in the operation of a savings association, pursuant § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-23075 Filed 9-15-95; 8:45 am]

BILLING CODE 6210-01-F

PSB Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. PSB Corporation, Wellsburg, Iowa; to engage *de novo* through its subsidiary, PSB Finance, Inc., Wellsburg, Iowa, in making, acquiring and servicing loans or other extensions of credit directly or for the account of others (primarily in the area of indirect dealer paper), such as would be made by a finance company, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. WCN Bancorp, Inc, Wisconsin Rapids, Wisconsin; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles

Secretary of the Board.

[FR Doc. 95-23076 Filed 9-15-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

"Made in USA" Consumer Perception Study Information Collection Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of information collections to gather information on consumer perception and attitudes regarding "Made in USA" and other country of origin advertising and labeling claims.

SUMMARY: OMB clearance is being sought for two questionnaires to be used in connection with a survey to gather information regarding "Made in USA" and other country of origin claims in advertising and labeling of products. Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, directs the Commission to prevent "deceptive acts and practices." Under this general authority, the Commission has prohibited deceptive "Made in USA" claims in product advertising and labeling. The Commission's longstanding standard in this area is that a manufacturer can make an unqualified "Made in USA" claim only if the product is "wholly of domestic origin." *See, e.g., Windsor Pen Corp.*, 64 F.T.C. 454 (1964).

Recently, the Commission sought public comments on a proposed consent agreement prohibiting unqualified "Made in USA" claims for both imported products and products assembled in the United States from domestic and foreign components. In response, the Commission received 150 comments, many of which urged reconsideration of the standard, stating that it is too stringent, does not reflect current consumer perceptions in today's globalized economy, and is inconsistent with other government standards. At the same time, Congress has shown interest in this issue, most notably by passing the 1994 Crime Bill, which provides that certain "Made in USA" labels must comply with the Commission's standards under Section 5 of the FTC Act. On July 11, 1995, the Commission announced that it would re-examine the standard by (1) conducting a comprehensive review of consumers' perceptions of "Made in USA" and

similar claims and (2) holding a public workshop to examine issues relevant to the standard.

The proposed survey is necessary to assist the Commission in evaluating its existing standard, determining whether it should be changed, and formulating a new standard if appropriate. The Commission's existing "Made in USA" policy is supported by a 1991 study showing that approximately 77% of consumers who were asked about an unqualified "Made in USA" claim interpreted the claim to mean that "all or nearly all" parts and labor are domestic. The test involved two different products and asked questions of 400 participants.

While the test results appear to support the Commission's existing policy, evidence also suggests that consumer perceptions are influenced by the nature of the claims and the product being tested. Therefore, the Commission believes that testing different claims and different products would provide a more complete understanding of consumer perceptions of country of origin claims. In addition, including a larger number of consumers in the survey will provide a broader basis from which to evaluate consumer perceptions. Finally, consumer perceptions may have changed—even since 1991—due to the rapid globalization of our economy. These changes may have occurred to differing extents for different products.

Accordingly, the survey is designed to expand the Commission's knowledge by eliciting, for several different products, current consumer perceptions of country of origin claims, including "Made in USA claims." Although consumer perceptions and attitudes are not the only factors to consider in determining the appropriate standard for law enforcement in this area, they are extremely important because they help to identify which claims deceive consumers. The survey data will also be used to assist the Commission in preparing for the upcoming public workshop and ensuring that the workshop is as useful, productive, and focused as possible.

The FTC is seeking clearance for two questionnaires to be used in connection with the survey. Both questionnaires will be used to interview adult consumers in shopping malls around the country. Using the first questionnaire, approximately 1,200 consumers will be shown advertisements and/or product labels and then asked questions concerning product claims. This questionnaire consists of approximately 30 questions and will take an estimated ten minutes to complete, for a total burden estimate of 200 hours.

The second questionnaire will be used to ask an additional 400 consumers different questions about product claims. It consists of approximately 15 questions and will take an estimated ten minutes to complete, for a total burden estimate of 67 hours.

DATES: Comments on this clearance application must be submitted on or before October 18, 1995.

ADDRESSES: Send comments both to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, Attn: Desk Officer for the Federal Trade Commission and to the Office of the General Counsel, Federal Trade Commission, Washington, DC 20580. Copies of the application may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Easton, Special Assistant, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580 (202) 326–3029.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23078 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 08/14/95 AND 08/25/95

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
NEC Corporation, Packard Bell Electronics, Inc., Packard Bell Electronics, Inc	95–2259	08/15/95
The Chase Manhattan Corporation, Wireless One, Inc., Wireless One, Inc	95–2292	08/16/95
English China Clays plc, Redland PLC, Genstar Stone Products Company	95–2294	08/16/95
Thomas & Betts Corporation, Catamount Manufacturing, Inc., Catamount Manufacturing, Inc	95–2298	08/16/95
DQE, Inc., Exide Electronics Group, Inc., Exide Electronics Group, Inc	95–2300	08/16/95
Iowa Health System, Allen Health Systems, Inc., Allen Health Systems, Inc	95–2314	08/16/95
Heartland Wireless Communications, Inc., Wireless One, Inc., Wireless One, Inc	95–2315	08/16/95
Sequa Corporation, Vestar/Hampshire Investment Limited Partnership, Hampshire Chemical Corp	95–2319	08/16/95
The Morgan Stanley Leveraged Equity Fund II, L.P., Coho Energy, Inc., Coho Energy, Inc	95–2334	08/16/95
Sierra Health Services, Inc., CII Financial, Inc., CII Financial, Inc	95–2335	08/16/95
Thermo Electron Corporation, Bird Medical Technologies, Inc., Bird Medical Technologies, Inc	95–2338	08/16/95
Jupiter Partners L.P., American Marketing Industries Holdings Inc., American Marketing Industries Holdings, Inc	95–2350	08/16/95
Mail-Well Holdings, Inc., Graphic Arts Center, Inc., Graphic Arts Center, Inc	95–2355	08/16/95
First USA, Inc., James L. Waters, DMGT Corp	95–2362	08/16/95
WMX Technologies, Inc., Wellman, Inc., New England CR Inc	95–1663	08/17/95
Sentrachem Limited, Vestar/Hampshire Investment Limited Partnership, Vestar/Hampshire Holdings Corp	95–2224	08/18/95
Occidental Petroleum Corporation, General Electric Company, General Electric Capital Corporation	95–2285	08/18/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 08/14/95 AND 08/25/95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
FMC Corporation, Francois Carrette, FR Mfg. Corporation and Ramacher Manufacturing, Inc	95–2308	08/18/95
Methodist Health Systems, Inc., LeBonheur Health Systems, Inc., LeBonheur Ambulatory Services, Inc	95–2331	08/18/95
Carolina Medicorp, Inc., Carolina Physicians Associates, P.A., Carolina Physicians Associates, P.A	95–2347	08/18/95
Knight-Ridder, Inc., Blackwell Limited, Uncover Company	95–2354	08/18/95
Hannaford Bros. Co., FF Holdings Corporation, Farm Fresh, Inc	95–2358	08/18/95
Benson Eyecare Corporation, Bolle America, Inc., Bolle America, Inc	95–2359	08/18/95
Tiger (a limited partnership), Kjell Inge Rokke, Norway Seafoods AS	95–2360	08/18/95
First USA, Inc., Thomas J. Litle IV, Litle & Company, Inc	95–2361	08/18/95
Tenneco Inc., Royal Dutch Petroleum Company, Shell Offshore Inc	95–2364	08/18/95
Kaydon Corporation, Mr. and Mrs. Donald Yadon, Seabee Corporation	95–2365	08/18/95
ALPHA Airports Group Plc, DynCorp, DynAv Services, Inc	95–2369	08/18/95
HPB Associates, L.P., Addington Resources, Inc., Addington Resources, Inc	95–2374	08/18/95
MLGA Fund II, L.P., ICM Industries, Inc., ICM Industries, Inc	95–2376	08/18/95
Acxiom Corporation, Donald L. Cohn, DataQuick Information Systems	95–2394	08/18/95
Code, Hennessy & Simmons II, L.P., Avi Ruimi, Auto-Shade, Inc	95–2380	08/21/95
Isolyser Company, Inc., White Knight Healthcare, Inc., White Knight Healthcare, Inc	95–2389	08/21/95
Host Marriott Corporation, Plaza Inter Corp., Plaza LRP San Antonio Ltd	95–2391	08/21/95
Agrium Inc., Nu-West Industries, Inc., Nu-West Industries, Inc	95–2422	08/21/95
Charter Communications Group, Gaylord Entertainment Co., Gaylord Entertainment Co	95–2349	08/22/95
Kelso Investment Associates V, L.P., CCT Holdings Corp. (Joint Venture), CCT Holdings Corp. (Joint Venture)	95–2351	08/22/95
PriCellular Corporation, Telephone and Data Systems, Inc. Voting Trust, USCOC of Ohio RSA #7, Inc	95–2373	08/22/95
Kelso Partners IV, L.P., Sumner M. Redstone, KSLA–TV, Shreveport, Louisiana	95–2245	08/23/95
Kelso Investment Associates V, L.P., Gaylord Entertainment Company, Gaylord Entertainment Company	95–2348	08/23/95
Health Systems International, Inc., Graduate Health System, Inc., G.H. Holding Corporation	95–2379	08/23/95
Henry Ford Health System, Horizon Health Systems, Horizon Health Systems	95–2384	08/23/95
Classic Communications, Inc., The Toronto-Dominion Bank, Mission Cable Company, L.P	95–2402	08/23/95
Monsanto Company, Dr. h.c. Paul Sacher, Syntex (U.S.A.), Inc	95–2256	08/24/95
Hanson PLC, Nielsons, Inc., West States Constructors, Inc	95–2281	08/25/95
Zurich Insurance Company, Kemper Corporation, Kemper Corporation	95–2301	08/25/95
Schering-Plough Corporation, ICN Pharmaceuticals, Inc., ICN Pharmaceuticals, Inc., Assets	95–2332	08/25/95
State Street Boston Corporation, Bank of Boston Corporation, First National Bank of Boston	95–2366	08/25/95
Alper Holdings USA, Inc., ARTRA Group Incorporated, Arcar Graphics, Inc	95–2398	08/25/95
Fenway Partners Capital Fund, L.P., U.S. Industries, Inc., Bear Archery	95–2399	08/25/95
Kelso Investment Associates V, L.P., Lawrence Flinn, Jr., United Video Cablevision, Inc	95–2400	08/25/95
Aramark Corporation, Todd Uniform, Inc., Todd Uniform, Inc	95–2404	08/25/95
FS Equity Partners II, L.P., Aramark Corporation, WearGuard Corporation	95–2408	08/25/95
Bessemer Securities Corporation, Graphic Holdings, Inc., Graphic Holdings, Inc	95–2410	08/25/95
Belk Brothers Company, Ivey Properties, Inc., Ivey Properties, Inc	95–2411	08/25/95
Hollinger Inc., Kenneth R. Thomson, Thomson Holdings Inc	95–2412	08/25/95
PriCellular Corporation, AT&T Corporation, Parkersburg Cellular Telephone Company, Inc	95–2415	08/25/95
Applied Power Inc., Christian Sorensen, Vision Plastics Manufacturing Company	95–2416	08/25/95
Applied Power Inc., Ole Sorensen, Vision Plastics Manufacturing Company	95–2417	08/25/95
Westcor Realty Limited Partnership, John J. Fedigan, Business Realty of Arizona, Inc	95–2418	08/25/95
Kenneth R. Thomson, Peter W. Hegener, Peterson's Guides, Inc	95–2424	08/25/95
Atlantic Richfield Company, Dow Chemical Company, Destec Fuel Resources, Inc	95–2425–	08/25/95
Insurance Partners, L.P., ZIP Acquisition Corp., ZIP Acquisition Corp	95–2431	08/25/95
General Electric Company, Equitable Resources, Inc., Equitable Resources Energy Company	95–2432	08/25/95
Pfizer Inc., The Procter & Gamble Company, The Procter & Gamble Company	95–2433	08/25/95
Zurich Insurance Company, ZIP Acquisition Corp., ZIP Acquisition Corp	95–2434	08/25/95
FirstCity Financial Corporation, Randall R. Geist, Diversified Financial Systems, Inc	95–2440	08/25/95
CUC International Inc., North American Outdoor Group, Inc., North American Outdoor Group, Inc	95–2444	08/25/95
Fenway Partners Capital Fund, L.P., Grand Metropolitan Public Limited Company, The Pillsbury Company	95–2445	08/25/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23065 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Regional Offices and Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter H, Public Health Service (PHS), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Chapters HB, HD, and HG are amended as follows:

(1) Chapter HB, Health Resources and Services Administration (47 FR 38409–24, August 31, 1982, as amended most recently at 60 FR 29859–62, June 6, 1995);

(2) Chapter HD, PHS Regional Offices (44 FR 21711, April 11, 1979, as amended most recently at 58 FR 30066, May 25, 1993); and

(3) Chapter HG, Indian Health Service (52 FR 47053–67, December 11, 1987, as amended most recently at 58 FR 36693, July 8, 1993).

These changes will provide the Health Resources and Services Administration (HRSA) with direct responsibility for their field programs and associated resources by formalizing and redirecting field responsibilities. Responsibility and resources in the Regional Offices for facilities and construction engineering activities related to the Indian Health Service will be redirected to the Indian Health Service. Additionally, the responsibility and resources in the Regional Offices for facilities and construction engineering activities currently supported by HRSA will be redirected to HRSA. Although, the changes will not affect Chapter HC, Centers for Disease Control and Prevention (CDC), by way of this **Federal Register** notice the Division of Preventive Health Services in the PHS Regional Offices is deleted.

Health Resources and Services Administration

Under Chapter HB, Health Resources and Services Administration, Section HB–10, Organization and Functions, amend the functional statements as indicated below:

Under the Office of the Administrator (HBA1), delete the "and" preceding item (3), add an "and", and add a new item (4) as follows:

(4) serves as the HRSA focal point for activities pertaining to field coordination.

Public Health Service Regional Offices

Under Chapter HD, Public Health Service (PHS) Regional Offices, delete the title Public Health Service (PHS) Regional Offices and substitute the following:

Office of the Regional Health Administrator (HD)

Under Section HD–00 Mission, delete the statement in its entirety and substitute the following:

Section HD–00 Mission. The Office of the Regional Health Administrator supports the PHS mission of improving the health of the Nation's population by assuring a coordinated regional effort in support of national health policies and State and local needs within each region.

Under Section HD–10, Organization and Functions, delete the statement in its entirety and *substitute the following:*

Section HD–10 Organization. The Office of the Regional Health Administrator (HD1–HDX).

Under Section HD–20, Functions. Public Health Service (PHS Regional Offices (HD1–HDX)

(a) *Delete the statement Public Health Service (PHS) Regional Offices (HD1–HDX) in its entirety and substitute the following:*

Office of the Regional Health Administrator (HD1–HDX). The Office of the Regional Health Administrator is headed by the Regional Health Administrator (RHA) who serves as the regional field representative of the Assistant Secretary for Health (ASH) who: (1) Conducts support activities as the senior public health official in the region, providing liaison with State, Territorial, and local health officials and private and professional organizations; (2) directs the staff of the Office of Women's Health, the Office of Minority Health and directs and coordinates regional implementation of family planning programs and related activities; (3) provides input from regional, State, and local perspectives to assist ASH and PHS agencies in the formulation, development, analysis, and evaluation of PHS field programs and initiatives; (4) assists with the implementation of PHS programs in the regions by supporting the coordination of activities, alerting program officials of potential issues, and assessing the effectiveness of programs for purposes of identifying opportunities for improving policies and service delivery systems; (5) serves as the focal point for PHS regional emergency preparedness activities; (6) acts as liaison to provide regional administrative support services to PHS field components, as appropriate, and provides advice and assistance upon request to ASH and PHS agencies regarding personnel and other administrative matters affecting field staff; (7) works with the Regional Directors and regional representatives of other Federal agencies; and (8) at the direction of ASH, or at the request of a PHS Agency Head, operates special programs in one or more regions.

(b) *Delete the following functional statements in their entirety:*

Office of Engineering Services (HD2E, HD6E and HDXE)

Division of Federal Employee Occupational Health (HD1H–X)

Division of Community Health Services (HD4C)

Division of Family Health and Resources Development (HD3R–4R)

Division of Health Services Delivery (HD1V–HD3V and HD5V–XV)

Division of Preventive Health Services (HD1U–HDXU)

Division of Health Resources Development (HD1W–2W and HD5W–XW)

Delegations of Authority

Under Chapter HD, Regional Offices, Section HD–30, Delegations of Authority.

All authorities delegated to officials in the PHS Regional Offices will continue in effect in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Indian Health Service

Under Chapter HG, Indian Health Service, Section HG–20 Functions, following the title for the Office of Environmental Health and Engineering (HGA6) at the end of item (3) add a comma after Engineering and the following:

"including providing total architectural/engineering/contracting services;"

This reorganization is effective upon date of signature.

Dated: September 7, 1995.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 95–23066 Filed 9–15–95; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3917–N–21]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for

review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: November 17, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1955 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 8 Housing Assistance Payment (HAP) Contract, Part II.

OMB Control Number: 2502–0409.

Description of the need for the information and proposed use: The Secretary of HUD, according to Multifamily Housing Property Disposition (MFPD) Reform Act of 1994 (section 203(e)(1), is authorized under certain circumstances to enter into contracts under Section 8 of the Untied States Housing Act of 1937, with owners of multifamily housing projects. 24 CFR 886, Subpart C authorizes the use of the Housing Assistance Payment (HAP) contract, Part II as the administrative mechanism to provide Section 8 housing assistance to purchasers of HUD-owned and foreclosure sale multifamily projects. The HAP Contract, Part II (HUD–52522-D) is a legal document, which as the administrative mechanism to provide Section 8 housing assistance from the Federal Government to the owner, commits the owner to HUD regulations and procedures governing the purpose and use of Section 8 assistance funds.

Agency form numbers: HUD–52522–D.

Members of affected public: Property Owners and Property Management Agents.

An estimation of the total numbers of hours needed to prepare the information collection is 22,824, the number of respondents is 729, frequency of response is 1, and the hours of response is 2,597.

Status of the proposed information collection: Extension with change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 8, 1995.

Nicolas P. Retsinas,

A/S Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–22940 Filed 9–15–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Madison Cave Isopod for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Madison Cave Isopod (Antrolana lira). The Madison Cave Isopod is a subterranean freshwater crustacean endemic to the Shenandoah Valley in Virginia. The species was listed as threatened in November 1982 due to its extremely limited distribution and threats to the quality of its deep karst habitat. The objective of the proposed Recovery Plan is to protect Madison Cave isopod populations by conserving its groundwater habitat, thereby enabling its removal from the Federal list of endangered and threatened wildlife and plants. To accomplish this, the draft Plan recommends recovery activities that should continue or be initiated. If the Recovery Plan is successfully implemented, full recovery may be achieved by 2005. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received December 18, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401, telephone 410/573–4537 and fax 410/269–0832. Comments should be sent to the same address, to the attention of G. Andrew Moser.

FOR FURTHER INFORMATION CONTACT: G. Andrew Moser at 410/573–4537 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Madison Cave Isopod (Antrolana lira) Recovery Plan. The Madison Cave isopod is a subterranean crustacean endemic to the Shenandoah Valley of Virginia. This monotypic genus is the only freshwater member of the family Cirolanidae found north of Texas. Until 1990, A. lira was known only from two sites, Madison Saltpetre

Cave and a fissure near the cave; since June 1990, the isopod has been collected from five additional sites. Although specimens from all seven sites are morphologically identical, they probably represent more than one but less than seven genetic populations. Population size appears to be extremely small at five of the species' seven occurrence sites.

The Madison Cave isopod was listed as a threatened species in November 1982. Urban and agricultural development threaten the quality of its groundwater habitat, and the small population size at most of its sites indicates that this species is highly sensitive to disturbance. The Madison Cave isopod, which is difficult to study and collect, is known only from areas where fissures descend to the groundwater table, thus allowing access to the surface of underground lakes, or deep karst aquifers. Little is known of the physical and chemical conditions of A. lira habitat. The temperature of the water ranges from 11–14 °C, as is typical of groundwater for the latitude, and the water is saturated with calcium carbonate, a condition also typical of groundwater in areas of limestone. The level of the karst aquifers can fluctuate for tens of meters at some sites. The extent of the recharge zone of the aquifer at any site is unknown.

The objective of the draft Recovery Plan is to protect populations of Antrolana lira from potential threats to the quality of its deep karst aquifer habitat, thereby enabling the removal of this threatened species from the Federal list of endangered and threatened wildlife and plants. Delisting may be considered when: (1) Populations of Antrolana lira and groundwater quality at Front Royal Caverns, Linville Quarry Cave No. 3, and Madison Saltpetre Cave/Steger's Fissure are shown to be stable over a ten-year monitoring period; (2) the recharge zone of the deep karst aquifer at each of these population sites is protected from all significant contamination sources; and (3) sufficient population sites are protected to maintain the genetic diversity of the species.

Recovery activities designed to achieve these objectives include: (1) Determining the number of genetic populations, (2) searching for additional populations, (3) identifying potential sources and entry points of contamination of the deep karst aquifer habitat, (4) protecting known populations and habitats from a watershed perspective, (5) collecting baseline ecological data for management and recovery, and (6) implementing a program to monitor recovery progress and future needs. Contingent on vigorous implementation of all recovery tasks, full recovery is anticipated by the year 2005.

The draft Recovery Plan is being submitted for technical and agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 8, 1995.

Ralph C. Pisapia,

Acting Regional Director.

[FR Doc. 95–23083 Filed 9–15–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–963–1410–00–P; F–14893–A2]

Alaska; Modified Notice for Publication; Alaska Native Claims Selection

On August 7, 1995, a notice was published stating that a decision to issue conveyance of certain lands to Mary's Igloo Native Corporation would be forthcoming. The first paragraph stated that the lands to be conveyed aggregated approximately 11,529 acres and proceeded to give a land description of T. 2 S., R. 29 W., and Tps. 3, 4, and 5 S., R. 30 W., Kateel River Meridian. That paragraph is modified to read as follows:

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Mary's Igloo Native Corporation for certain lands within Tps. 3 and 4 S., R. 30 W., Kateel River Meridian, aggregating approximately 5,603 acres. The lands involved are in the vicinity of Mary's Igloo, Alaska.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until October 18, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified above, the Notice of August 7, 1995, remains as written.

Katherine L. Flippen,

Acting Chief, Branch of Southwest Adjudication.

[FR Doc. 95–23082 Filed 9–15–95; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–738 (Preliminary)]

Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–738 (Preliminary) under section 733(a) of the Tariff Act of 1930, as amended by section 212(b) of the Uruguay Round Agreements Act (URAA), Public Law 103–465, 108 Stat. 4809 (1994) (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the United Kingdom of foam extruded PVC and polystyrene framing stock, provided for in subheadings 3924.90.20 and 3926.90.98 of the Harmonized Tariff Schedule of the United States, that is alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 23, 1995. The Commission's views are due at the Department of Commerce within 5 business days thereafter, or by October 30, 1995.

For further information concerning the conduct of this investigation and rules of general application, consult the

Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on September 8, 1995, by Marley Mouldings, Inc., Marion, VA.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on September 29, 1995, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than September 26, 1995, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 4, 1995, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 13, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–23091 Filed 9–15–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 171X)]

Norfolk Southern Railway Company—Abandonment Exemption—Between Jacksonville and Fort McClellan, AL

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost 48.0–N at Jacksonville and milepost 55.3–N at Fort McClellan, in Calhoun County, AL, a total distance of 7.3 miles.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 18, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by September 28, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 10, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 22, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 11, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23105 Filed 9–15–95; 8:45 am]

BILLING CODE 7035–01–P

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

MERIT SYSTEMS PROTECTION BOARD

Opportunity to File Amicus Briefs in Cases Involving Possible Furlough of Administrative Law Judges

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board is providing an opportunity for interested parties to submit amicus briefs in a number of pending cases filed pursuant to 5 U.S.C. § 7521 and 5 CFR 1201.131.

SUMMARY: The Merit Systems Protection Board currently has seven pending complaints filed by separate agencies pursuant to 5 U.S.C. § 7521 and 5 CFR 1201.131. The basic premise of each complaint is that there is a possibility that Congress may not enact an appropriation or continuing resolution for fiscal year 1996 on or before October 1, 1995, and that the resulting lapse in funding would necessitate the furlough of all agency employees, including administrative law judges. Therefore, the agencies are requesting that the Board make a finding that there is good cause for the imposition of a furlough action against each agency's administrative law judges.

The Board also has a complaint filed by the National Labor Relations Board seeking permission to furlough its administrative law judges. The NLRB states in its filing that it anticipates its fiscal year 1996 budget will be insufficient to cover its present rate of spending, and that the furlough of its administrative law judges will thus be necessary to avoid deficit spending.

The Board has issued orders in each of the eight cases noting that there is a question whether the procedure provided for by 5 U.S.C. § 7521 is intended to cover the situations described in the agencies' complaints. Specifically, the Board has determined that there is a question whether a furlough which seven agencies allege would be necessitated by a lapse in funding caused by the failure of Congress to enact an appropriation or continuing resolution is the type of personnel action to which the protections of 5 U.S.C. § 7521 need by applied. In the case of the NLRB, the Board has determined that there is a question whether a furlough allegedly necessitated by a cut by Congress in the agency's appropriation is an action to which the protections of 5 U.S.C. § 7521 may be applied. In *Horner* v. *Andrzjewski*, 811 F.2d 571 (Fed. Cir. 1987), which involved furloughs under a similar statute, 5 U.S.C. § 7513, the court recognized that not all furloughs are within the Board's jurisdiction. The court stated that where a furlough action is taken "because an agency has no choice * * * it can reasonably be said that an agency did not 'take an action' covered by Chapter 75." *Id.* at 576.

In considering these questions, the Board is concerned with the possibility that the provisions of the Antideficiency Act (31 U.S.C. §§ 1341, 1350) may be violated by any action the Board might take in declining to authorize an agency the right to furlough administrative law judges due to a lapse in funding caused by the failure to enact appropriation bills or a continuing resolution, or by Congress' failure to fund an agency at current budget levels. The Board is inviting any interested party to submit amicus briefs addressing these jurisdictional issues.

DATES: All briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before September 22, 1995.

ADDRESSES: All briefs shall be captioned "Administrative Law Judge Furlough Appeals" and entitled "Amicus Brief." Only one copy of the brief need be submitted. Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Dated: September 13, 1995.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 95–23067 Filed 9–15–95; 8:45 am]

BILLING CODE 7400–1–M

NATIONAL SCIENCE FOUNDATION

Notice of Conference

The National Science Foundation's (NSF) Directorate for Education and Human Resources (EHR) will host its Fourth National Conference, September 21–September 23, 1995 at the Washington Hilton and Towers Hotel, 1919 Connecticut Avenue, NW., Washington, DC 20009. The hours of the Conference are: September 21, from 6:00 p.m. until 7:30 p.m.; September 22 from 8:00 a.m. until 5:30 p.m. and September 23, from 8:30 a.m. until 6:00 p.m.

This event represents a continuation of last year's conference which focused on major issues related to minority education, along with an update on efforts implemented in the last year and results to date. Planned activities include workshops to exhibit EHR's accomplishments in broadening diversity in science and technology fields through its human resource development programs, as well as discussions by national leaders of strategies to disseminate successful efforts nationwide. There also will be presentations of research by NSF-supported students, and presentations by the NSF research directorates.

The conference will not operate as an advisory committee. It will be open to the public. Participants will include persons representing the heads of national associations, education, science, mathematics and engineering practitioners, and Federal and state government officials.

For additional information, contact Dr. Elmima C. Johnson, Staff Associate, Office of the Assistant Director for Education & Human Resources, Room 805, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1605; 6841.

Dated: September 8, 1995.

Luther S. Williams,

Assistant Director, Education and Human Resources.

[FR Doc. 95–23079 Filed 9–15–95; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority

[Docket No. 50–328]

Sequoyah Nuclear Plant Unit 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (the licensee) to withdraw its July 19, 1995, application for proposed amendment to Facility Operating License No. 79 for the Sequoyah Nuclear Plant Unit 2, located in Soddy Daisy, Tennessee.

The proposed amendment would have revised the technical specification surveillance requirements and bases to incorporate alternate steam generator tube plugging criteria at tube support plate intersections. The approach was similar to guidance given in Generic Letter 95–05, "Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking."

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 1, 1995 (60 FR 39189). However, by letter dated September 7, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 19, 1995, and the licensee's letter dated September 7, 1995, which withdrew the application for license amendment.

The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 11th day of September 1995.

For the Nuclear Regulatory Commission.

David E. LaBarge, Sr.

Project Manager, Project Directorate II–3, Division of Reactor Projects— I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23057 Filed 9–15–95; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Expedited Review of a Revised Information Collection; RI 30–2 and RI 30–44

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for expedited approval of an information collection. The form RI 30–2, Annuitant's Report of Income, is used by disability annuitants under age 60 to report their earnings annually to the Office of Personnel Management. Form RI 30–44, Report of Income is Not Usable, is used to follow-up with the annuitant when the information from the RI 30–2 is not usable.

It is estimated that there will be 21,000 respondents to the RI 30–2, and 260 respondents to the RI 30–44. It takes approximately 35 minutes to complete the RI 30–2, and approximately 5 minutes to complete the RI 30–44. The combined annual burden is 12,272 hours.

Copies of these two forms are appended to this notice.

DATES: Comments on this proposal should be received within 7 calendar days from the date of this publication. OMB has been requested to act within 10 calendar days.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Retirement and Insurance Service, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street NW., Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

BILLING CODE 6325-01-M

Form Approved:
OMB No. 3206-0034

Annuitant's Report of Earned Income for 1995

If the address shown below is not correct, please complete and return the enclosed address change card.

United States Office of Personnel Management
Retirement Programs, P.O. Box 579, Washington, DC 20044-0579

○ A	○ 0	○ 0	○ 0	○ 0	○ 0	○ 0	○ 0	○ 0	○ 0	○ 0
○ F	○ 1	○ 1	○ 1	○ 1	○ 1	○ 1	○ 1	○ 1	○ 1	○ 1
	○ 2	○ 2	○ 2	○ 2	○ 2	○ 2	○ 2	○ 2	○ 2	○ 2
	○ 3	○ 3	○ 3	○ 3	○ 3	○ 3	○ 3	○ 3	○ 3	○ 3
	○ 4	○ 4	○ 4	○ 4	○ 4	○ 4	○ 4	○ 4	○ 4	○ 4
	○ 5	○ 5	○ 5	○ 5	○ 5	○ 5	○ 5	○ 5	○ 5	○ 5
	○ 6	○ 6	○ 6	○ 6	○ 6	○ 6	○ 6	○ 6	○ 6	○ 6
	○ 7	○ 7	○ 7	○ 7	○ 7	○ 7	○ 7	○ 7	○ 7	○ 7
	○ 8	○ 8	○ 8	○ 8	○ 8	○ 8	○ 8	○ 8	○ 8	○ 8
	○ 9	○ 9	○ 9	○ 9	○ 9	○ 9	○ 9	○ 9	○ 9	○ 9

For Agency Use Only

○ I ○ II ○ III ○ IV

Please complete and return this form ONLY if:
1. *You had earned income for the calendar year 1995; or*
2. *You are a Federal Employees Retirement System retiree receiving an award of monthly Social Security disability benefits; or*
3. *You have been reemployed in the Federal service after you separated for disability retirement.*

Dear Annuitant:

This form, Annuitant's Report of Earned Income, is mailed each year to Civil Service Retirement System and Federal Employees' Retirement System annuitants who are receiving disability retirement benefits and who were under age 60 during the prior year. OPM is required by title 5, U.S. Code, sections 8337 (d) and 8455(a)(2), as stated in title 5, Code of Federal Regulations, sections 831.502(e)(1) and 844.402(d), to obtain information about your income from wages or self-employment. This is needed because your annuity must be terminated effective June 30 of the year following the one in which your income exceeds 80 percent of the current rate of pay of the position you occupied immediately before retirement. **If you are age 60 this current year, this will be the last time we will send you this income reporting form.**

If we determine that you are restored to earning capacity, we will send you information about your annuity terminating on June 30; we will also notify you whether you are eligible for an immediate, non-disability retirement or a deferred retirement beginning at age 62.

This year we will not be sending follow-up notices.

Privacy Act and Public Burden Statement

Information you furnish will be used to determine your eligibility to continue receiving annuity benefits. Information may be shared, and is subject to verification, via paper, electronic media, or through use of computer matching programs, with national, state, local, or other agencies in order to determine and issue benefits under their programs, to obtain information necessary for continuation of benefits under this program, or to report income for tax purposes. It may also be shared and verified, as noted above, with law enforcement agencies when they are investigating a violation or potential violation of the civil or criminal law.

Solicitation of this information is authorized by 5 U.S.C. 8347(a) and 5 U.S.C. 8461(g). Provision of this information is voluntary; however, failure to supply all of the information requested IF YOU HAD EARNED INCOME may result in suspension of your annuity benefit.

We think this form takes an average 35 minutes per response to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the OPM Reports and Forms Management Officer, OMB Clearance Number 3206-0034, Office of Personnel Management, Washington, DC 20415.

Enclosure: RI 30-2A

Previous editions not usable

RI 30-2
Revised January 1996

Annuitant's Report of Earned Income for 1995

If it is necessary to reply, please complete all the questions and use a pencil to darken the circles. Please be sure to read the enclosed information and instruction sheet, RI 30-2A.

1. If you had EARNED INCOME FOR 1995, please fill in the boxes below and return this form.

The enclosed instructions (RI 30-2A) specifically state what to include as income and what not to include as income.

Enter the highest amount shown on your W-2's. Also include self-employment and deferred income, if applicable.

Fill in all 6 boxes using as many beginning zeros as you need. Do NOT show the cents.

Use a number 2 PENCIL to darken the corresponding circle below each number.

Dollars						Cents	
						0	0

0	0	0	0	0	0
1	1	1	1	1	1
2	2	2	2	2	2
3	3	3	3	3	3
4	4	4	4	4	4
5	5	5	5	5	5
6	6	6	6	6	6
7	7	7	7	7	7
8	8	8	8	8	8
9	9	9	9	9	9

2. If you have been reemployed in the Federal service after you separated for disability retirement, please fill in the boxes below and return this form.

Dates of reemployment From	To
Appointment type	Grade and step
Agency name and address	

3. FEDERAL EMPLOYEES RETIREMENT SYSTEM RETIREES ONLY (Your claim number begins with CSA 8)

If you are receiving an award of monthly Social Security disability benefits, answer the 2 questions below and return this form.

3A. Show the total dollar amount below. Fill in all 6 boxes, using as many beginning zeros as you need. Do NOT show the cents.

Dollars						Cents	
						0	0

0	0	0	0	0	0
1	1	1	1	1	1
2	2	2	2	2	2
3	3	3	3	3	3
4	4	4	4	4	4
5	5	5	5	5	5
6	6	6	6	6	6
7	7	7	7	7	7
8	8	8	8	8	8
9	9	9	9	9	9

3B. Enter the effective date of your SSA disability benefit.

Month	Year	
JAN	0	0
FEB	1	1
MAR	2	2
APR	3	3
MAY	4	4
JUN	5	5
JUL	6	6
AUG	7	7
SEP	8	8
OCT	9	9
NOV		
DEC		

Warning Your earnings for 1995 will be verified through a computer match with the Social Security Administration's Earnings Files. Any intentionally false statement, willful concealment of material fact, or use of a writing or document knowing the same to contain a false, fictitious, or fraudulent statement or entry, is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years or both.

4. You must sign here in all cases.		If signature is by mark "X", a witness must also sign, date, and enter his or her address below. Witness' signature	Date
5. Date	6. Please provide your daytime telephone number, including the area code.	Witness' address	

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
RETIREMENT PROGRAMS
P.O. BOX 579
WASHINGTON, DC 20044-0579

Information and Instructions for Completing the Annuitant's Report of Earned Income

Please complete and return this form **only** if:

1. You had earned income for the calendar year 1995; or
2. You are a Federal Employees Retirement System retiree receiving an award of monthly Social Security disability benefits; or
3. ~~You have been reemployed in the Federal service after you separated for disability retirement.~~

What To Report As Earned Income - All income from wages and self-employment plus deferred income you actually earned between January 1 and December 31 of the past year, as explained below.

- Income from wages is any gross pay, salary, bonus, or award you received for working for someone else (including overtime, vacation pay, etc.) before ***any*** withholdings or deductions.
- If your W-2 shows different amounts for "Wages, tips, other compensation" and "Social Security wages," enter the ***higher amount*** on the Report of Earned Income. If you have more than one W-2, add the amounts shown and report the total.
- **Deferred Income** for "restored to earning capacity" determination is any income, cash or property, where you have the option of receiving or deferring receipt until sometime in the future. In short, if you voluntarily defer a portion of your earnings, that income is still considered for earning capacity purposes. Even if deferred income is not subject to income tax until a future year, it is still counted as earning capacity in the year in which it is earned.
- Income from self-employment is any net profit you made from working or managing your own business, whether at home or elsewhere. Net profit is the amount remaining after deduction for business expenses and before deduction of any personal expenses or exemptions as allowed by the Internal Revenue Service. A net loss from self-employment in one business may not offset 1) income from wages and 2) income from another self-employment endeavor, unless the two businesses are interrelated components of a single enterprise.
- Income resulting from personal services such as rents, royalties, etc.
- Interest or dividends resulting from your own trade or business.
- Do not deduct business expenses from wages or commission you receive for working for someone else.
- If you are reemployed in the Federal service, you must report the gross amount of your salary. Your agency should be deducting the gross amount of your annuity from your salary.

If all or a portion of your income was derived from a partnership, corporation, or sole proprietorship, please complete form RI 30-2 and enclose a detailed explanation,including the following items: income you received directly from wages, fringe benefits, and employee expenses; gross revenue and pre-tax profit of the enterprise; number of workers employed (if a partnership, give the number of partners); your role or position and hours worked; the principle product produced or service supplied; and your total cash investment and percentage of ownership in the enterprise (include your individual share plus shares held by immediate family members). Report separately income received from independent businesses and salary received from working for someone else. Please write your CSA claim number on your explanation.

What Not To Report As Earned Income - Any income from the following sources:

- ***Pensions or annuities***
- Gifts
- Social Security proceeds
- Insurance proceeds
- Unemployment compensation
- Money which you earned before retirement
- Inheritances
- Capital gains
- Non-employment prizes or awards
- Fellowships or scholarships
- Business losses
- Alimony/child support

PLEASE CAREFULLY REVIEW THE EXAMPLE ON THE REVERSE SIDE

RI 30-2A
Revised January 1995

Instructions for Completing the Enclosed Form

IT IS IMPORTANT THAT YOU FOLLOW ALL OF THE INSTRUCTIONS BELOW.

1. The enclosed form has been designed to allow your answers to be read using optical scanning equipment. Therefore, use **only a pencil** to darken the circles. If you make a mistake, erase it completely and darken the correct circles. Do not use a felt tip pen or other pen to complete this form.

2. Complete the Annuitant's Report of Earned Income for 1995 as illustrated in the example below:

EXAMPLE

Item 1 of the form is reproduced here to illustrate how you should make your entries on this form. The example illustrates how this question would be completed for an annuitant whose earned income in 1995 was $8,289.39.

(1) In the box begin with zeros and write the highest amount shown on your W-2's rounded to the nearest dollar (008289), and (2) darken the appropriate circles for that amount. For earnings of $8,289.39, you would complete block 1 as shown.

	DOLLARS						CENTS	
$	0	0	8	2	8	9	0	0
	●	●	0	0	0	0		
	1	1	1	1	1	1		
	2	2	2	●	2	2		
	3	3	3	3	3	3		
	4	4	4	4	4	4		
	5	5	5	5	5	5		
	6	6	6	6	6	6		
	7	7	7	7	7	7		
	8	8	●	8	●	8		
	9	9	9	9	9	●		

3. If the Annuitant's Report of Earned Income for 1995 is stapled or damaged, delays in processing may occur. **Please do not** send a photocopy or duplicate this form. If you send a photocopy or damage this form, it will delay processing your response. If you need another form, please write to the address shown in item 4 or call (202)606-0249 or (202) 606-0238.

4. Please be sure to sign the enclosed Annuitant's Report of Earned Income for 1995 and mail it in the enclosed envelope to:

U.S. Office of Personnel Management
P.O. Box 579
Washington, DC 20044-0579

If you need assistance:

If, after carefully reading the instructions, you need assistance to complete the form, you may contact us weekdays from 8:00 a.m. to 5:00 p.m. Eastern Time on (202) 606-0249 or (202) 606-0238.

Reverse of RI 30-2A
Revised January 1996

United States
Office of Personnel Management
Office of Retirement Programs
Post Office Box 579
Washington, DC 20044

Form Approved:
OMB No. 3206-0034

Annuitant's Report of Income - Followup

Claim number	
Disability Earnings Survey document number	

We have received the "Annuitant's Report of Income" form which you completed and returned to this office. However, due to the poor condition in which it reached us or because it contained conflicting or apparently erroneous information, we were unable to process the form. For this reason, we are asking you again to supply the amount of your earnings from wages and self-employment by completing the items below:

1. My income for calendar year was $ .00	**Do *NOT* include your annuity from OPM in the amount you report here.**

2. Please sign your name *(do not print)* and give the date of signature below.

Signature	Date

Return this letter in the envelope provided to:

Office of Personnel Management
P.O. Box 579
Washington, DC 20044

Your annuity payments may be suspended if this letter is not received at OPM by

Thank you for your cooperation.

Retirement Surveys Branch

Public Burden Statement

We think this form takes an average 5 minutes per response to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Personnel Management, Reports and Forms Management Officer, (3206-0034), Washington, DC 20415.

Previous edition is usable.

RI 30-44
Revised January 1995

[FR Doc. 95–23086 Filed 9–15–95; 8:45 am]

BILLING CODE 6325–01–C

Notice of Request for Clearance of Commercial Garnishment Application Form

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of an information collection, voluntary commercial garnishment application form. The application is intended to be completed by creditors and will facilitate the processing by Federal agencies of commercial garnishment orders by providing information about the order in a uniform manner that would otherwise not be possible as a result of the wide variety of commercial garnishment orders issued by various State and local jurisdictions.

OPM anticipates that approximately 100 forms will be completed annually for OPM employees, each requiring an estimated ten minutes to complete, for a total public burden of approximately 17 hours. OPM anticipates, however, that many other Federal agencies will also be suggesting that creditors complete the form.

A copy of the proposed form is appended to this notice.

DATES: Comments on this proposed form should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Lorraine Lewis, General Counsel, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

BILLING CODE 6325–01–M

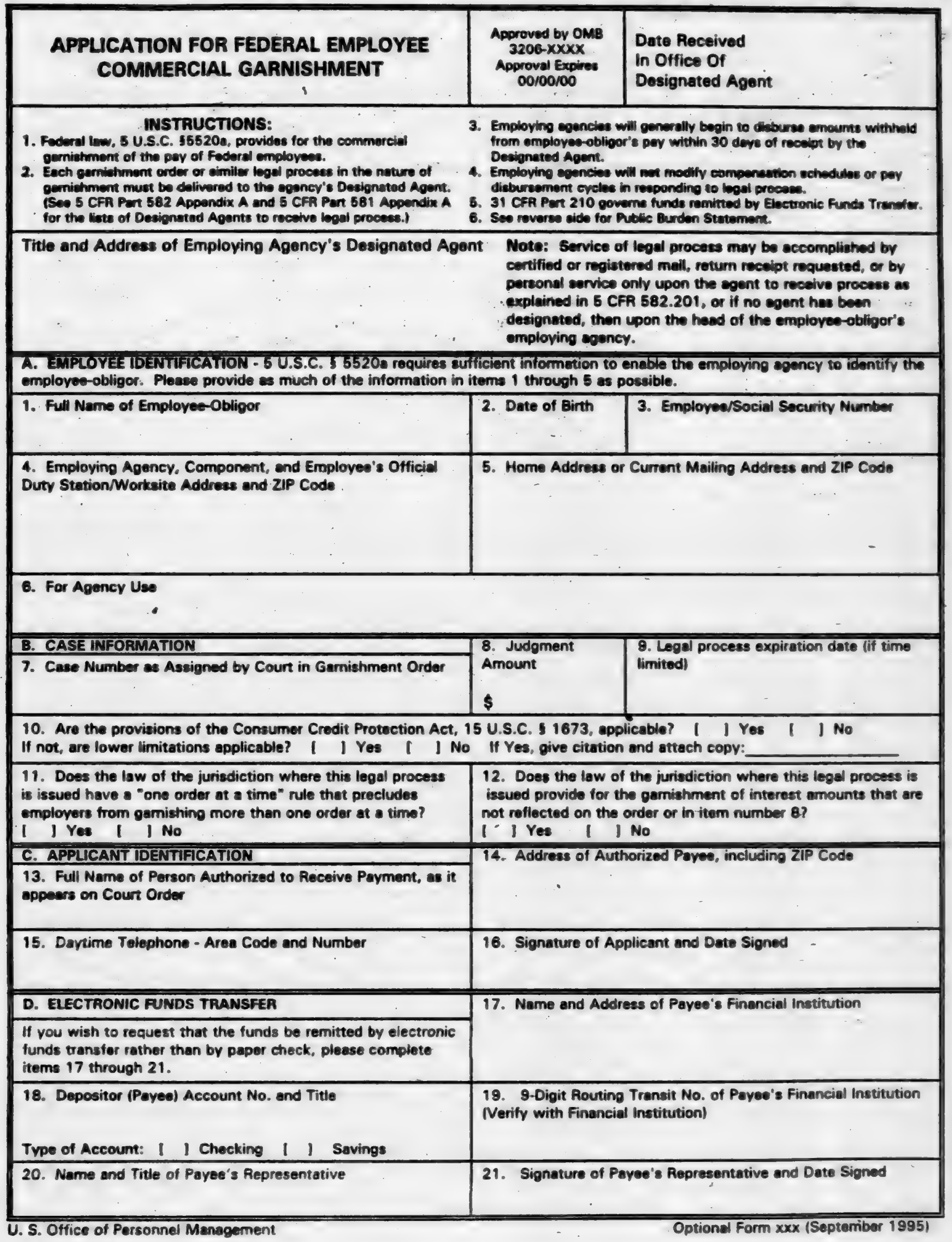

APPLICATION FOR FEDERAL EMPLOYEE COMMERCIAL GARNISHMENT	Approved by OMB 3206-XXXX Approval Expires 00/00/00	Date Received In Office Of Designated Agent

INSTRUCTIONS:

1. Federal law, 5 U.S.C. §5520a, provides for the commercial garnishment of the pay of Federal employees.
2. Each garnishment order or similar legal process in the nature of garnishment must be delivered to the agency's Designated Agent. (See 5 CFR Part 582 Appendix A and 5 CFR Part 581 Appendix A for the lists of Designated Agents to receive legal process.)
3. Employing agencies will generally begin to disburse amounts withheld from employee-obligor's pay within 30 days of receipt by the Designated Agent.
4. Employing agencies will not modify compensation schedules or pay disbursement cycles in responding to legal process.
5. 31 CFR Part 210 governs funds remitted by Electronic Funds Transfer.
6. See reverse side for Public Burden Statement.

Title and Address of Employing Agency's Designated Agent

Note: Service of legal process may be accomplished by certified or registered mail, return receipt requested, or by personal service only upon the agent to receive process as explained in 5 CFR 582.201, or if no agent has been designated, then upon the head of the employee-obligor's employing agency.

A. EMPLOYEE IDENTIFICATION - 5 U.S.C. § 5520a requires sufficient information to enable the employing agency to identify the employee-obligor. Please provide as much of the information in items 1 through 5 as possible.

1. Full Name of Employee-Obligor
2. Date of Birth
3. Employee/Social Security Number
4. Employing Agency, Component, and Employee's Official Duty Station/Worksite Address and ZIP Code
5. Home Address or Current Mailing Address and ZIP Code
6. For Agency Use

B. CASE INFORMATION

7. Case Number as Assigned by Court in Garnishment Order
8. Judgment Amount $
9. Legal process expiration date (if time limited)
10. Are the provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1673, applicable? [ ] Yes [ ] No
If not, are lower limitations applicable? [ ] Yes [ ] No If Yes, give citation and attach copy:____________
11. Does the law of the jurisdiction where this legal process is issued have a "one order at a time" rule that precludes employers from garnishing more than one order at a time? [ ] Yes [ ] No
12. Does the law of the jurisdiction where this legal process is issued provide for the garnishment of interest amounts that are not reflected on the order or in item number 8? [ ] Yes [ ] No

C. APPLICANT IDENTIFICATION

13. Full Name of Person Authorized to Receive Payment, as it appears on Court Order
14. Address of Authorized Payee, including ZIP Code
15. Daytime Telephone - Area Code and Number
16. Signature of Applicant and Date Signed

D. ELECTRONIC FUNDS TRANSFER

If you wish to request that the funds be remitted by electronic funds transfer rather than by paper check, please complete items 17 through 21.

17. Name and Address of Payee's Financial Institution
18. Depositor (Payee) Account No. and Title
Type of Account: [ ] Checking [ ] Savings
19. 9-Digit Routing Transit No. of Payee's Financial Institution (Verify with Financial Institution)
20. Name and Title of Payee's Representative
21. Signature of Payee's Representative and Date Signed

U. S. Office of Personnel Management

Optional Form xxx (September 1995)

BILLING CODE 6325–01–C

Paperwork Reduction Act Statement on Public Burden

This request for information is in accordance with the clearance requirements of 44 U.S.C. 3507. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, gathering the necessary data, and completing the form. Send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing the burden, to the U.S. Office of Personnel Management, Reports and Forms Management Officer, Washington, DC 20415.

[FR Doc. 95–23087 Filed 9–15–95; 8:45 am]

BILLING CODE 6325-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval Under the Paperwork Reduction Act of a Revision of a Currently Approved Collection of Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of revision.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for a revision of the collection of information in the PBGC's premium forms (currently approved under OMB control number 1212–0009). The premium forms are being modified to require a certification by the plan administrator relating to the participant notice required under the PBGC's recently-published regulation on Disclosure to Participants.

DATES: The PBGC is requesting that OMB complete action on the PBGC's request for extension of approval by September 29, 1995. Comments must be received by that date.

ADDRESSES: All written comments should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503, with a copy to the Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005–4026. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, N.W., Washington, DC 20005–4026, between 9:00 a.m. and 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: Section 4011 of the Employee Retirement Income Security Act of 1974 requires plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the Pension Benefit Guaranty Corporation's guarantee of plan benefits. The PBGC's regulation on Disclosure to Participants (60 FR 34412 (June 30, 1995), to be codified as 29 CFR Part 2627) implements section 4011. Under section 4011 and Part 2627, a plan that must pay a variable-rate premium under ERISA section 4006 and Part 2610 must furnish the participant notice unless the plan is otherwise exempt under Part 2627.

The participant notice requirement only applies (subject to certain exemptions) to plans that must pay a variable rate premium. In order to monitor compliance with Part 2627, the PBGC has added a participant notice certification to Schedule A to PBGC Form 1. Schedule A is promulgated by the PBGC under ERISA sections 4006 and 4007 and the PBGC's regulation on Payment of Premiums (29 CFR Part 2610), and is used to report information to the PBGC about the variable rate premium. Office of Management and Budget approval (1212–0009) of Schedule A expires February 28, 1998.

At the same time, the PBGC is removing from the 1996 Schedule A the special certification language in existing items 10(a), (b) and (c). The general certification in item 10, preceding item 10(a), is broad enough to include the three existing special certifications.

The PBGC has redrafted item 10 on the 1996 Schedule A, including the new participant notice certification, to read as follows:

10. Certification of Plan Administrator

All single-employer plan administrators *must* sign and complete this line. (See instructions, page 23.)

I certify, under penalties of prejury (18 U.S.C. 1001), that I have examined the completed PBGC Form 1 (including Schedule A and attachments) and, to the best of my knowledge and belief, the Form 1 (including Schedule A and attachments) and this certificate are in conformance with the premium regulation and instructions, complete, and accurate, and any information I made available to the enrolled actuary is true, correct, and complete.

I further certify, under penalties of perjury (18 U.S.C. 1001), that, for the plan year preceding the premium payment year, a Participant Notice as provided for in ERISA section 4011 (29 U.S.C. 1311) and the PBGC's regulation on Disclosure to Participants (29 CFR Part 2627):

(a) [ ] Was not required to be issued; or

(b) [ ] Was issued as required.

(c) [ ] Explanation attached.

Note. Check box (a), (b), or (c). If you check box (c), attach an explanation and check the box in item 19 on Form 1. Check box (a) if no variable rate premium was required for the plan year preceding the premium payment year or the plan was otherwise exempt (see instructions).

The draft instructions for the redrafted item 10 are as follows:

8. Certification of Plan Administrator

The plan administrator of a single-employer plan must sign and date the certification in item 10 of Schedule A. We may return any filing that does not have your original signature in item 10. The certification has two parts: a general certification about the correctness of your premium filing, and a new certification regarding compliance with the participant notice requirements in ERISA section 4011 (29 U.S.C. 1311) and the PBGC's regulation on Disclosure to Participants (29 CFR Part 2627).

For each plan year in which a variable rate premium is payable for a plan, the plan administrator must issue a notice to participants about the plan's funding status and the limits on the PBGC's guarantee, unless the plan is exempt from the notice requirement under the Disclosure to Participants regulation. The participant notice is due no later than two months after the Form 5500 due date (or extended due date) for the prior plan year.

The new certification relates to the participant notice requirement for the plan year preceding the premium payment year. You must check box (a), (b), or (c). If you check box (c) (*e.g.*, because a required participant notice was not issued or was issued late), you must attach an explanation and check the box in item 19 of Form 1.

Note: If your plan had no variable rate premium for the plan year preceding the premium payment year, the participant notice requirement did not apply for that year and you can check box (a). Other exemptions are described in the Disclosure to Participants regulation. Note in particular that the regulation contains exemptions for certain new and newly-covered plans and, for the 1995 plan year, for certain small plans (generally under 100 participants).

The PBGC is requesting OMB to approve this revision of Schedule A and related instructions without any change in the expiration date of OMB's current approval. Other changes to the premium forms for 1996 (*e.g.*, allowing plans to claim overpayment credits on Form 1–ES) will be minor and non-substantive.

The participant notice certification will require simply that a box be checked to indicate whether, for the prior year, the plan was exempt from, or complied with, the participant notice requirement. The burden of redrafted item 10 as it will appear on the 1996 Schedule A, including the new certification, will therefore be no greater than the burden of existing item 10 as it appears on the 1995 Schedule A.

The PBGC estimates that it receives a total of about 66,300 premium filings annually from a total of 56,000 single-employer and 2,000 multiemployer plans (some of which make an estimated filing in addition to the final filing), an average of about 1.14 filings per plan. The PBGC also estimates that the total burden of the collection of information, including the new participant notice certification, is about 80,670 hours, or an average of about 1.22 hours per filing. (The estimated burden includes recordkeeping under 29 CFR § 2610.11.)

Issued at Washington, D.C., this 14th day of September 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–23195 Filed 9–15–95; 8:45 am]

BILLING CODE 7708-01-M

POSTAL RATE COMMISSION

[Docket No. A95–19; Order No. 1076]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued September 12, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

In the Matter of: Eckhart Mines, Maryland 21528: (Walter Rankin, Petitioner).

Docket Number: A95–19
Name of Affected Post Office: Eckhart Mines, Maryland 21528
Name(s) of Petitioner(s): Walter Rankin
Type of Determination: Closing
Date of Filing of Appeal Papers: September 5, 1995
Categories of Issues Apparently Raised:
1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by September 20, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

September 5, 1995
  Filing of Appeal letter
September 12, 1995
  Commission Notice and Order of Filing of Appeal
September 29, 1995
  Last day of filing of petitions to intervene [*see* 39 C.F.R. 3001.111(b)]
October 10, 1995
  Petitioner's Participant Statement or Initial Brief [*see* 39 C.F.R. 3001.115 (a) and (b)]
October 30, 1995
  Postal Service's Answering Brief [*see* 39 C.F.R. 3001.115(c)]
November 14, 1995
  Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. 3001.115(d)]
November 21, 1995
  Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. 3001.116]
January 3, 1996
  Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 95–23014 Filed 9–15–95; 8:45 am]

BILLING CODE 7710-FW-P

[Docket No. A95–20; Order No. 1077]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued September 12, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

In the Matter of: Taintor, Iowa 50253 (Cornelia Lambert, et al., Petitioners).

Docket Number: A95–20
Name of Affected Post Office: Taintor, Iowa 50253
Name(s) of Petitioner(s): Cornelia Lambert, et al.
Type of Determination: Closing
Date of Filing of Appeal Papers: September 5, 1995
Categories of issues apparently raised:
1: Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by September 20, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

September 5, 1995
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November 21, 1995
  Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]
January 3, 1996
  Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 95–23015 Filed 9–15–95; 8:45 am]

BILLING CODE 7710–FW–P–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36212; File No. SR–Amex–95–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Disclaimer Provisions of Amex Rule 902C

September 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 902C to include Inter@ctive Enterprises L.L.C., publisher and owner of Inter@ctive Week, a bi-weekly magazine in the disclaimer provisions of that Rule. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In conjunction with the Exchange's proposal to trade options on the Inter@ctive Week Internet Index ("Index"), the Exchange proposes to amend Rule 902C to provide a disclaimer for Inter@ctive Enterprises L.L.C., publisher and owner of Inter@ctive Week, a bi-weekly magazine. The Exchange's proposal to list and trade options on the Index was filed pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 on August 23, 1995.[3] The disclaimer, identical in content to disclaimers currently in place for Standard & Poors Corporation[4] and Morgan Stanley & Co. Incorporated,[5] states that Inter@ctive Enterprise L.L.C. does not guarantee the accuracy or completeness of the Index, makes no express or implied warranties with respect to the Index and shall have no liability for any damages, claims, losses or expenses caused by errors in the Index calculation.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–Amex–95–36 and should be submitted by October 10, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23016 Filed 9–15–95; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36163 (August 29, 1995).

[4] *See* Amex Rule 902C(c).

[5] *See* Amex Rule 902C(d).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–36219; File No. SR–DTC–95–09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Seeking to Establish a Legal Guidance System

September 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 27, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–95–09) as described in Items I, II, and III below, which items have been prepared primarily by DTC. On July 25, 1995, DTC filed an amendment to the proposed rule change.[2] On August 22, 1995, DTC filed a second amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing the proposed rule change to establish a service whereby DTC participants and nonparticipants (*e.g.*, transfer agents) can obtain information and documentation necessary to effect a legal transfer of a deposit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish an inquiry-only Legal Guidance System ("LGS"), which is a menu-driven, user-friendly system designed to provide DTC participants and nonparticipants (*e.g.*, transfer agents)[5] with information regarding the documents necessary to effect a legal deposit.[6] Lgs will be accessible by DTC participants and nonparticipants through DTC's Participant Terminal System ("PTS"). LGS contains industry requirements, individual state and province requirements, and transfer agent requirements for processing legal deposits. DTC will post a disclaimer in the LGS user guide notifying users that DTC shall not be liable to the user for any liability for damages resulting from mistakes or omissions in LGS.[7]

The LGS menu approach will guide users through a step-by-step process to ascertain the relevant requirements for transferring legal deposits. LGS also will have a "fast forward" navigation option that will allow an experienced user to quickly access the requisite information. Users also will be able to request through LGS that certain transfer documents be sent to their offices via facsimile transmission. In the near future, DTC plans to interface LGS with its Pending Legal Deposit System to track and monitor document expiration. The fee charged to DTC participants and nonparticipants for the LGS service will be DTC's standard fee for PTS inquires.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–09 and should be submitted by October 10, 1995.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] DTC amended its proposal to allow organizations that are not DTC participants, such as transfer agents, to subscribe to the Legal Guidance System. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division of Market Regulation ("Division"), Commission (July 21, 1995).

[3] As proposed in the original filing, once a user logged onto the Legal Guidance System a disclaimer of liability message appeared on the terminal screen. DTC has amended its proposal to eliminate this message from the Legal Guidance System terminal screen. Instead, the disclaimer will appear in a user guide. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Peter Geraghty, Division, Commission (August 17, 1995).

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] Presently, DTC envisions that LGS will be utilized only by nonparticipant transfer agents. However, the availability of LGS will not be limited to nonparticipants who are transfer agents. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC, and Mark Steffensen, Attorney, Division, Commission (September 11, 1995).

[6] A "legal deposit" consists of a registered security and any legal documentation required to effect the legal transfer and registration of the security from the registered holder's name into DTC's nominee name.

[7] Specifically, the disclaimer will state that "DTC does not represent the accuracy, adequacy, or fitness for a particular purpose of the following information, which is provided as is. DTC shall not be liable for: 1) any loss resulting directly or indirectly from mistakes, omissions, interruptions, delays, errors, or defects arising from or related to this service; and 2) any special, consequential, exemplary, incidental, or punitive damages."

[8] 15 U.S.C. 78q–1 (1988).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–23089 Filed 9–15–95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–36211; File No. SR–NASD–95–16]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Customer Complaint Reporting Rule

September 8, 1995.

On July 6, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change[1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The rule change amends the NASD Rules of Fair Practice to require NASD members to report to the NASD the occurrence of certain specified events and quarterly summary statistics concerning customer complaints.

Notice of the proposed rule change, together with its terms of substance, was provided by issuance of a Commission release[4] and by publication in the **Federal Register**.[5] No comments were received in response to the notice. This order approves the proposed rule change.

On May 19, 1994, the Commission's Large Firm Project Report was published, detailing the findings of a review it undertook, in conjunction with the New York Stock Exchange ("NYSE") and the NASD, regarding the hiring, retention and supervisory practices of nine of the largest broker-dealers in the United States. This review was commenced because of increased concerns on the part of the Commission and others over the frequency and severity of sales practice abuses.

In the Report, Commission staff stressed the need for self-regulatory organizations ("SROs") to develop better means of identifying sales practice problems at an earlier stage. Commission staff noted, in connection with its review, that the NYSE Rule 351 database was extremely useful and was a significant help to the staff in conducting its review. In general, NYSE Rule 351 is a broad reporting rule that requires members to report to the NYSE certain specified information that may reflect a violation of, among other things, the federal securities laws or the rules of the NYSE. In addition, NYSE Rule 351 requires members to report, on a periodic basis, statistical information regarding customer complaints. In the Report, Commission staff recommended that the NASD adopt a rule based on NYSE Rule 351 and require its members to report customer complaint information on a quarterly basis as an additional tool to aid in the identification of problem brokers.

In its rule filing, the NASD expressed concern that critical material information identified in the proposed rule, such as reports on statutory disqualifications, internal disciplinary actions, and quarterly statistical data regarding customer complaints received by a member is not currently required by Form U–4 or other forms to be reported to the NASD. The NASD believes, therefore, that the affirmative obligation of members to provide the NASD with notice of certain events concerning member firms or their associated persons will significantly enhance the NASD's ability to quickly identify and take appropriate action against problem representatives.

The proposed rule change is similar to NYSE Rule 351. The Rule will require a member to file a report with the NASD when any of 10 different specified events occur. These events range from situations where a court, government agency, or SRO has determined that there has been a violation of the securities laws, to circumstances where a firm has received a written customer complaint alleging theft or misappropriation of funds or securities, or forgery. The rule also will require a person associated with a member to promptly report the existence of any of the ten events to the member. Moreover, the rule will require a member to report to the NASD statistical and summary information regarding written customer complaints received by the member or relating to the firm or any of its associated persons. The reporting requirements of the proposed rule will not apply to members that are subject to similar reporting requirements of another SRO. For example, NASD members that are also members of the NYSE will not be subject to the NASD's rule.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Sections 15A(b) (6) and (7) of the Act.[6] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and to protect investors and the public interest. Section 15A(b)(7) requires that the rules of a national securities association provide that its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the Act, the rules or regulations thereunder, or the rules of the association. The Commission believes that the proposed rule will provide important regulatory information that will assist in the detection and investigation of sales practice violations. This, in turn, should assist the NASD in carrying out its disciplinary responsibilities as well as assist it in protecting investors and the public from fraudulent and manipulative acts and practices. As noted above, the Commission itself found such information extremely useful in its review of sales practice abuses.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change SR–NASD–95–16 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

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[9] 17 CFR 200.30–3(a)(12) (1994).

[1] The proposed rule change was initially submitted on May 1, 1995, but was amended twice prior to publication in the **Federal Register**; once on May 25, 1995, and again on July 6, 1995.

[2] 15 U.S.C. 78s(b)(1)

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 35956 (July 11, 1995).

[5] 60 FR 36838 (July 18, 1995).

[6] 15 U.S.C. 78*o*–3(b) (6) & (7).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23017 Filed 9–15–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–21347; 812–9560]

London Pacific Life & Annuity Company, et al.; Notice of Application

September 12, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: London Pacific Life & Annuity Company (the "Company"), London Pacific Financial and Insurance Services (the "Distributor"), and LPLA Separate Account One (the "Separate Account"); on behalf of themselves and other separate accounts that the Company or the Distributor may establish to support individual variable deferred annuity contracts issued by the Company ("Future Accounts" and, together with the Separate Account, the "Accounts").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicants from sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit them to deduct a mortality and expense risk charge and a distribution charge from the assets of the Accounts, in connection with individual variable deferred annuity contracts.

FILING DATES: The application was filed on March 30, 1995, and amended on August 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants: 3109 Poplarwood Court, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company organized in North Carolina and is authorized to sell life insurance and annuities in forty states and the District of Columbia.

2. The Separate Account is a segregated asset account established by the Company to fund certain individual variable deferred annuity contracts to be issued by the Company (the "Contracts"). In the future, the Company may issue other variable annuity contracts that are materially similar to the Contracts ("Future Contracts").

3. The Separate Account is registered as a unit investment trust under the Act. The Separate Account is divided into subaccounts. Each subaccount will invest in the shares of a portfolio of LPT Variable Insurance Series Trust (the "Trust"). The Trust is registered as an open-end management investment company under the Act. In the future, the Company may create additional subaccounts.

4. The Distributor will serve as the distributor of the Contracts. The Distributor is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Security Dealers, Inc.

5. The Contracts would be available for individuals in retirement plans that may or may not qualify for federal income tax advantages. The Contracts require a minimum initial contribution of $10,000, except for Individual Retirement Annuities, which require a $1,000 minimum initial contribution. The minimum subsequent contribution is $1,000, or $100 if the owner elects the periodic investment plan option. Contract owners may allocate contributions to one or more subaccounts of the Separate Account and to the fixed account.

6. The Contracts provide for different guaranteed death benefits, depending on the age of the Contract owner and the maturity date. If the Contract owner or the oldest joint owner dies before age 75 and during the accumulation period, the death benefit is equal to the greater of the following: (a) the "Adjusted Contribution," which is the initial contribution increased for subsequent contributions and reduced for subsequent partial withdrawals in the same proportion that the Contract value was reduced on the date of the withdrawal; (b) the Contract value determined as of the end of the valuation period during which the Company receives both due proof of death and an election of the payment method; or (c) the Contract value on the most recent seven year Contract anniversary or the Adjusted Contributions as of the most recent seven year Contract anniversary, whichever is greater. This amount is increased for subsequent contributions and reduced for subsequent partial withdrawals in the same proportion that the Contract value was reduced on the date of the withdrawal. If the owner or oldest joint owner dies on or after age 75, but before age 85 and during the accumulation period, the death benefit will follow the same formula as above and will be subject to any applicable Contingent Deferred Sales Charge ("CDSC") determined at the time the death benefit is paid. If the Contract owner or oldest joint owner dies on or after age 85 and during the accumulation period, the death benefit will be the Contract value determined as of the end of the valuation period during which the Company receives due proof of death and an election for the payment method, less any applicable CDSC determined at the time the death benefit is paid.

7. The Contract owner may transfer all or part of the owner's interest in a subaccount or the fixed account. If more than the number of free transfers have been made in a Contract year, the Company will deduct a Transfer Fee for each subsequent transfer.

8. If all or a portion of an owner's unliquidated (not previously surrendered or withdrawn) contribution is withdrawn within the first seven Contract years, applicants will assess a CDSC. The amount of the CDSC is as follows:

Contract year in which withdrawal occurs	Charge as percentage of amount withdrawn
1	7
2	7
3	6
4	5
5	4
6	3
7	2
8 and after	0

The Company may issue other Contracts in the future which will not impose a CDSC. Once each Contract year, Contract owners may withdraw up to 10% of their unliquidated contributions without incurring a CDSC.

9. The Company will deduct an annual contract maintenance charge of $36 each Contract year. No contract maintenance charge is payable if the Contract value in the Separate Account and the fixed account is greater than or equal to $50,000 on the Contract anniversary. The Company also will deduct an administration charge from the assets of the Separate Account at an annual rate of .15%

10. Applicants represent that the annual contract maintenance charge and the asset-based administration charge will not increase during the life of the Contracts. In addition, applicants represent that the charges represent reimbursement for the expenses expected to be incurred over the life of the Contracts, and applicants do not intend to profit from the charges. Applicants will rely on rule 26a–1 under the Act to deduct these charges.[1]

11. The Company proposes to deduct a distribution charge at an annual rate of .10% of the average daily net asset value of each subaccount. This charge and the CDSC would compensate the Company for the costs associated with the distribution of the Contracts. The Company does not intend to profit from this charge, and the Company would not increase this charge. The Company would monitor the performance of the Separate Account to ensure that with respect to any Contract owner the cumulative sum of the distribution charge and the CDSC would not exceed 9% of the total contributions paid.

12. The Company proposes to deduct a daily mortality and expense risk charge of 1.25%. Of that amount, approximately .25% is for mortality risk and 1.00% is for expense risk. The Company assumes the mortality risk that annuitants may live for a longer period than estimated when the guarantees in the Contract were established, thus requiring the Company to pay out more in annuity income than it had planned. The Company also assumes a mortality risk in that it may be obligated to pay a death benefit, in excess of the Contract value. The expense risk assumed by the Company is that the other fees may be insufficient to cover the actual cost of administering the Contracts.

13. If the mortality and expense risk charge is insufficient to cover the actual cost of the risks, the Company will bear the shortfall. Conversely, if the charge is more than sufficient, the excess will be profit to the Company and will be available for any proper corporate purpose, including payment of distribution expenses.

14. If the premium taxes are applicable to a Contract, they may be deducted when incurred. Currently, the Company pays premium taxes when incurred, and deducts the tax upon withdrawal, payment of a death benefit, or purchase of an annuity under the Contract.

Applicants' Legal Analysis

1. Applicants request an exemption pursuant to section 6(c) from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction from the Separate Account and Future Accounts of the distribution charge and the mortality and expense risk charge. Sections 26(a)(2)(C) and 27(c)(2), in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Section 6(c) authorizes the Commission to exempt any person from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants also request relief with respect to Future Contracts. Applicants present that the terms of the relief requested with respect to any Future Contracts are consistent with the standards of section 6(c). Applicants represent that additional requests for exemptive relief would present no issues under the Act not already addressed in this application, and that investors would not receive any benefit or additional protections thereby.

4. Applicants represent that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for applicants to file redundant exemptive applications, thereby reducing their administrative expenses and maximizing the efficient use of resources. The delay and expense involved in repeatedly seeking exemptive relief would reduce applicants' ability effectively to take advantage of business opportunities as they arise.

5. Applicants represent that the distribution charge is an appropriate method to help defray the Company's costs associated with the sale of the Contracts. Applicants will describe the purpose of the distribution charge in the prospectus and applicants will state in the perspectus that the staff of the SEC deems the distributions charge to constitute a deferred sales charge.

6. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. This representation is based on an analysis of the mortality risks, the expense risks, estimated costs, and industry practice. The Company will maintain and make available to the SEC upon request a memorandum setting forth in detail the products analyzed and the methodology and results of applicants' analysis.

7. Prior to relying on any exemptive relief granted herein with respect to Future Contracts, applicants will determine that the mortality and expense risk charges will be within the range of industry practice for comparable contracts, and/or reasonable in relation to the risks assumed by the Company. The Company will maintain and make available to the SEC upon request a memorandum setting forth the basis of such conclusion.

8. The Company acknowledges that distribution expenses may in part be financed by profits derived from the mortality and expense risk charges. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and the Contract owners. The Company will maintain and make available to the SEC upon request a memorandum setting forth the basis of such conclusion.

9. Prior to relying on any exemptive relief granted herein with respect to Future Contracts or Future Accounts, applicants will determine that there is a reasonable likelihood that the distribution financing arrangement will benefit the Accounts and their investors. The Company will maintain and make available to the SEC upon request a memorandum setting forth the basis of such conclusion.

10. The Separate Account and Future Accounts will invest in a management investment company that has adopted a plan pursuant to rule 12b–1 under the Act only if that Company has undertaken to have such plan formulated and approved by its board of directors, a majority of whom are not "interested persons" of the company within the meaning of section 2(a)(19) of the Act.

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[1] Rule 26a–1, allows for payment of a fee for bookkeeping and other administrative expenses provided that the fee is no greater than than the cost of the services provided, without profit.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23090 Filed 9–15–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–21344; File No. 812–9472]

The Northwestern Mutual Life Insurance Company, et. al.

September 11, 1995.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Northwestern Mutual Life Insurance Company ("Northwestern"), Northwestern Mutual Variable Life Account ("Account") and Northwestern Mutual Investment Services, Inc. ("NMIS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from: the provisions of, and the rules under, the 1940 Act—other than Sections 7 and 8(a)—specified in Rule 6e–2(b) thereunder; and the provisions of Sections 2(a)(32), 2(a)(35), 12(b), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act, subparagraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (c)(1) and (c)(4) of Rule 6e–2, and Rules 12b–1(a)(1) and 22c–1 under the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order permitting them to offer and sell certain scheduled premium variable life insurance policies ("Policies") that provide for the following: a death benefit which may include a portion which is not guaranteed for the lifetime of the insured; premiums, the payment of which may be suspended in defined circumstances; optional unscheduled additional premiums; both a contingent deferred sales charge and a sales charge deducted from premiums, neither of which is subject to refunds; deduction of an administrative surrender charge on lapse or surrender; deduction from the Policy's account value of cost of insurance charges, charges for substandard risks and incidental insurance benefits, and minimum death benefit guarantee risk charges; values and charges based on the Commissioners 1980 Standard Ordinary Mortality Tables (the "1980 CSO Tables"); the deduction from premium payments of an amount that is reasonably related to Northwestern's increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended; the holding of mutual fund shares funding the Account in an open account arrangement, without a trust indenture or use of a trustee; and the sale of mutual fund shares to the Account without the use of an underwriter for the mutual fund.

FILING DATE: The application was filed originally on February 8, 1995. An amended and restated application was filed on September 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the exemption will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 6, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202, Attn: John M. Bremer, Senior Vice President, General Counsel and Secretary.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Special Counsel, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Northwestern, a mutual life insurance company organized under the laws of Wisconsin, is licensed to do business in all of the states and the District of Columbia.

2. In 1983, Northwestern established the Account to fund the Policies. The Account is organized as a separate account under Wisconsin law, and is registered as a unit investment trust under the 1940 Act.

3. The Account has nine separate divisions ("Divisions"), each of which invests solely in a corresponding portfolio ("Portfolio") of Northwestern Mutual Series Fund, Inc. ("Fund"), an open-end management company registered under the 1940 Act. Shares of each portfolio are purchased by Northwestern for the corresponding Account Division at net asset value.

4. NMIS, a wholly owned subsidiary of Northwestern, serves as investment adviser to the Fund and underwriter for the Policies. NMIS is registered as a broker-dealer under the Securities Exchange Act of 1934, and is registered as an investment advisor under the Investment Advisers Act of 1940.

5. The Policy incorporates certain fundamental features characteristic of scheduled premium variable life insurance policies contemplated by Rule 6e–2, including a guarantee against lapse if specified required premiums are paid by their due dates. In addition, Policy owners will have the options of: (i) Making premium payments in excess of the required premiums, either to increase the Policy value which supports the gua[illegible] amount or to purchase var[illegible] additional insurance, or (ii) [illegible]g premium payments when th[illegible] value already is sufficient to pay future premiums.

6. The death benefit under a Policy will vary based upon investment performance of the Fund's Portfolios, subject to the minimum guarantee as provided by the Policy. The minimum guaranteed death benefit available under every Policy corresponds to the guaranteed minimum face amount of a traditional scheduled premium variable life insurance policy, and will neither increase nor decrease as long as premiums are paid when due and no Policy debt is outstanding. In addition to the minimum guaranteed feature, the death benefit may include one or more other parts: "Additional Protection" which is guaranteed for only a specified period, depending on the age and risk classification of the insured; "Variable paid-up additional insurance" which may be purchased by either paying additional premium or by applying any dividends to purchase paid-up additions; and "Excess Amount"—the amount by which Policy value exceeds what is required to support the minimum guaranteed death benefit and

Additional Protection—which reflects the payment of additional premiums or Policy dividends, or favorable investment performance. Each of these death benefit features may vary, to some degree, to reflect investment performance.

7. Partial surrenders of the Policies will be permitted so long as the Policy that remains meets the regular minimum size requirements. A partial surrender will cause the Policy to be split into two; one Policy will be surrendered, the other will continue in force on the same terms as the original Policy except that the premiums will be based on the reduced amount of insurance. The owner will receive a new Policy document. The cash value and death benefit will be proportionately reduced.

8. Premiums, dividends and most charges for the Policies follow an annualized structure, based on the Policy anniversary, with adjustment to reflect the dates on which events take place during a Policy year. The Policies permit payment of premiums as often as monthly, but Northwestern places the scheduled net annual premium in the Account on the anniversary date at the beginning of each Policy year regardless of the frequency on which premiums are being paid. Northwestern advances this amount on that date (unless the entire annual premium already has been paid), and Northwestern is reimbursed as premium payments are thereafter received from the Policy owner. Premiums paid on other than an annual basis are increased to: (i) reflect the time value of money, based on an 8% interest rate; and (ii) cover the administrative costs to process the additional premium payments.

A. Deductions and Charges From Premiums

1. Northwestern will deduct from premiums 8% of each premium paid. This deduction is for sales expenses (4.5%), state premium taxes (2.25%), and a federal deferred acquisition cost tax charge (1.25%).

2. An annual Policy fee of up to $84.00 is deducted; Northwestern expects to reduce the deduction to $60.00 after the first ten years.

3. For the minimum guaranteed death benefit there is an annual charge of $0.12 per $1,000 of insurance, for the guarantee that the amount of the death benefit will not be reduced if the net rate of return is less than the 4% rate assumed.

4. An annual administrative expense charge of $0.12 per $1,000 of minimum guaranteed death benefit and Additional Protection will be deducted for the first ten years. Northwestern expects to waive the charge thereafter. This charge is for issuance expenses (other than sales expenses) which tend to vary with Policy amount.

5. Any extra premium charged for insureds who do not qualify for one of the three best underwriting classifications, and any premium for additional benefits, also are deducted before determining the net premium to be placed in the Account.

B. Deductions and Charges From Policy Value

1. While payment of premiums is suspended,[1] a portion of the annual charges which ordinarily would be deducted from premiums will be deducted instead from Policy value. This deduction also will be made each year on the Policy anniversary.

2. Northwestern will deduct cost of insurance charges from the Policy value and from the value of any paid-up additional insurance. Generally, these charges are assessed on each Policy anniversary at rates that do not exceed those prescribed in the 1980 CSO Tables.

3. The Policy value also will be reduced by any surrender charges, administrative charges, or decrease in Policy debt that may result from a withdrawal, a decrease in the face amount of insurance, or a change to variable benefit paid-up insurance.

C. Deductions and Charges From Assets of the Account and the Fund

1. Northwestern will assess the daily mortality and expense risk charge at an effective rate of 0.6% per annum of the Account assets attributable to the Policy. This charge is for the (mortality) risk that insureds may live for shorter periods of time than estimated, and for the (expense) risk that costs of issuing and administering the Policies may be higher than estimated.

2. Total Fund expenses for investment advisory and other services provided to the Fund will be assessed on a daily basis. These expenses will vary by portfolio, and currently fall in the approximate range of 0.22% to 1.0% of assets, on an annual basis.

D. Transaction Charges

1. Twenty-five dollars ($25.00) may be deducted from the Policy value upon each withdrawal of excess value or each transfer of invested amounts among the Account Divisions. These charges are designed to defray only the estimated costs of effecting the transactions. Currently, Northwestern is waiving these charges.

2. Northwestern will assess a charge for the administrative costs incurred in processing a partial surrender. Current estimates place this charge at $250.

E. Surrender Charges

1. Surrender charges are deducted from the Policy value and will reduce the Policy proceeds if a Policy is surrendered before the premium due at the beginning of the fifteenth Policy year has been paid. These charges include the administrative surrender charge for issue expenses, and the premium surrender charge for sales expenses. Both of these surrender charges are based on the minimum annual premium for the minimum guaranteed death benefit and the Additional Protection, excluding any amount for extra mortality benefits or for additional Policy benefits.

2. An administrative surrender charge may be deducted if the Policy is surrendered or lapses in the first ten (10) Policy years. This charge provides partial compensation for estimated administrative expenses, such as the cost of collecting and processing premiums, processing applications, conducting medical examinations, establishing Policy records, determining insurability and assigning the insured to a risk classification, and issuing the Policy. These expenses exclude any costs properly attributable to sales or distribution activity. The maximum administrative surrender charge is $216, plus $1.08 per $1,000 of the face amount of insurance. This charge decreases to zero after the first ten (10) Policy years.

3. Northwestern will deduct a premium surrender charge, for sales expenses, upon surrender or lapse of a Policy during the first fifteen (15) Policy years. The premium surrender charge is a percentage of the annual premium for the Policy face amount (including a term insurance premium for the portion which is not guaranteed for the lifetime of the insured), reduced proportionately if total premiums actually paid are less than those annual premiums due during the first five (5) Policy years.

4. A deduction from the Policy proceeds for a proportionate part of the surrender charges will be made if a partial surrender takes place before the premium due at the beginning of the fifteenth Policy year has been paid.

F. Deduction of Charge for Section 848 Deferred Acquisition Costs

1. Northwestern will deduct a charge equal to 1.25% of each premium payment to cover the estimated cost of

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[1] Payment of premiums may be suspended, at the Policyowner's option, when certain conditions are met.

its increased federal tax burden related to receipt of premiums in connection with the Policies. This increased federal tax burden results from Section 848 of the Internal Revenue Code of 1986 (as amended), which was enacted in 1990 to modify the federal income taxation of life insurance companies. Section 848 requires life insurance companies to capitalize and amortize, over a period of ten years, part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income.

2. The amount of deductions that would have to be amortized over ten years rather than deducted in the year incurred is a percentage of the current year's net premiums received in connection with certain types of insurance contracts. The percentage varies, depending on the type of insurance contract involved, according to a schedule set forth in Section 848(c)(1).

3. In effect, Section 848 accelerates the realization of income from insurance contracts covered by that section and, accordingly, accelerates the payment of taxes on the income generated by those contracts. Consequently, taking into account the time value of money, the tax burden of the insurance company related to those contracts is increased. Because the amount of general deductions that must be capitalized and amortized is measured by premiums paid, an increased federal tax burden results from the receipt of those premiums. Applicants state that, in this respect, the impact of Section 848 can be compared to that of a state premium tax.

4. The Policies fall under the category of "specified contracts" under Section 848, so that 7.7% of the net premiums received under the Policies must be capitalized and amortized. The increased tax burden on Northwestern resulting from this requirement can be quantified as follows. For every $10,000 of new premiums received by Northwestern under the Policies in a given year, the general deductions of Northwestern are reduced by $731.50, or (a) $770 (7.7% of $10,000) minus (b) $38.50 (one-half year's portion of the ten-year amortization). Using a 35% corporate tax rate, this results in an increase in tax for the current year of $256.03. This increase in tax will be partially offset by increased deductions which will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in the tenth).

5. To the extent that capital must be used by Northwestern to satisfy its increased federal tax burden under Section 848 resulting from the receipt of premiums, such capital is not available for investment. Because the targeted rate of return for Northwestern (*i.e.*, the return Northwestern seeks on invested capital) exceeds 11%,[2] Northwestern submits that a discount rate of 11% is appropriate when calculating the present value of its future tax deductions resulting from the amortization described above. To the extent that the 11% discount rate is lower than Northwestern's actual targeted rate of return, a measure of comfort is provided that the calculation of Northwestern's increased tax burden attributable to receipt of premiums will continue to be reasonable over time, even if the corporate tax rate applicable to Northwestern is reduced, or its targeted rate of return is lowered.

6. Applying this 11% discount rate, and assuming a 35% corporate tax rate, the present value of the increased deductions amounts to a tax savings of $153.97. Thus, the present value of the increased tax burden resulting from the effect of Section 848 of each $10,000 of net premiums received under the policies is $102.06 ($256.03 minus $153.97).

7. Because state premium taxes are deductible when computing an insurance company's federal income taxes, Northwestern does not incur incremental income tax when it passes on state premium taxes to its policy owners. In contrast, federal income taxes are not deductible in computing a company's federal income taxes. Therefore, to compensate Northwestern fully for the impact of Section 848, it would be necessary to allow Northwestern to impose an additional charge which would make it whole not only for the $102.06 additional tax burden attributable to Section 848, but also for the tax on the additional $102.06 itself. This additional charge can be determined by dividing $102.06 by the complement of the 35% federal corporate income tax rate (*i.e.*, 65%) resulting in an additional charge of $157.01 for each $10,000 of net premiums, or 1.57%.

8. Tax deductions are of value to a company only to the extent that a company has sufficient gross income to take the deductions fully. Based on prior experience, Northwestern believes that it is reasonable to expect that future federal income tax deductions will be taken fully.

9. It is the judgment of Northwestern that a charge of 1.25% would reimburse it appropriately for the impact of Section 848 on its federal tax liabilities. Applicants represent that the proposed "DAC tax" charge is reasonably related to Northwestern's increased federal tax burden under Section 848, taking into account the benefit to Northwestern of the amortization permitted by Section 848 and the use of an 11% discount rate in computing the future deductions resulting from such amortization, such rate being no greater than Northwestern's targeted rate of return.

Applicants' Legal Analysis and Conclusions

Applicants request exemptions pursuant to Section 6(c) of the 1940 Act from: the provisions of, and those rules under, the 1940 Act—other than Sections 7 and 8(a)—specified in Rule 6e–2(b) thereunder; Sections 2(a)(32), 2(a)(35), 12(b), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act; and subparagraphs (b)(1), (b)(12), (b)(13)(i), (b)(12)(ii), (b)(13)(iii), (b)(13(iv), (b)(13)(v), (c)(1) and (c)(4) of Rule 6e–2, and Rules 12b–1(a)(1) and 22c–1, under the 1940 Act. Applicants seek these exemptions to the extent necessary to permit them to offer and sell the Policies.

A. Request for Exemptions Relating to Definition of "Variable Life Insurance Contract"

1. Rule 6c–3 under the 1940 Act grants exemptions from numerous provisions of the 1940 Act to separate accounts of life insurance companies that support variable life insurance policies. The exemptions provided by Rule 6c–3 are available only to registered separate accounts whose assets are derived solely from the sale of "variable life insurance contracts" which meet the definitions set forth in Rule 6e–2(c)(1) or "flexible premium variable life insurance contracts" which meet the definition set forth in Rule 6e–3(T)(c)(1) under the 1940 Act, and from certain advances made by the insurer.

2. A "variable life insurance contract" is defined in Rule 6e–2(c)(1) to include only life insurance policies which provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and which guarantee that the death benefit will not be less than an amount stated in the policy. The required guaranteed minimum death benefit need be provided only so long as

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[2] In determining the targeted rate of return used in arriving at this discount rate, Northwestern first identified a reasonable risk-free rate of return that it could expect to earn over the long term. Northwestern then determined the premium it must earn over that risk-free rate of return given the inherently risky nature of the insurance products it sells. Applicants represent that such factors are appropriate to consider in determining the targeted rate of return.

premiums are duly paid in accordance with the terms of the policy.

3. The death benefit will vary with investment performance when the value is sufficiently large that, in order to qualify the Policy as life insurance for federal income tax purposes, the death benefit must be increased. This could happen, for example, because of very favorable investment performance, the payment of additional premiums, or both. In addition, to some degree, each of the possible additional components of the death benefit—*i.e.*, the Additional Protection, the Variable paid-up additional insurance, and Excess Amount—also will vary to reflect investment performance.

4. Applicants submit that the death benefit under the Policy varies to reflect investment experience within the meaning of Rule 6e–2(c)(1). Applicants concede, however, that the death benefit under the Policy is not precisely the type of variable death benefit contemplated when Rule 6e–2 was adopted, and that the Policy contains other provisions that are not specifically addressed in Rule 6e–2. Accordingly, Applicants request exemptions from the definition of "variable life insurance contract" in Rule 6e–2(c)(1) and from all sections of and rules under the 1940 Act—other than Sections 7 and 8(a)—specified in Rule 6e–2(b), under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2(a), and to the extent necessary to permit the offer and sale of the Policy in reliance on Rule 6e–2, except as otherwise set forth in the application.

5. Applicants submit that the definition of "variable life insurance contract" in Rule 6e–2(c)(1) was drafted at a time when less flexibility regarding premium payments and other policy features were offered than subsequently have been permitted. The Policy provides considerable latitude for the purchaser to select the desired combination of minimum guaranteed death benefit, Additional Protection, and Variable paid-up additional insurance. While such a choice may not have been contemplated when Rule 6e–2 was drafted, Applicants submit that purchasers are well served by the opportunity to choose a combination of features which they believe suits their own need with respect to the relationship of cash value, death benefit and investment performance.

6. Applicants further submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to the Account and the Policy, and that the exemptions provided by those rules should be granted to Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested.

B. Request for Exemptions Relating to Sales Charges

1. Sections 26(a)(2) and 27(c)(2) may be construed to require that the proceeds of all payments under a Policy be deposited in the Account and that no payment be made from the Account to Northwestern or any affiliated person of Northwestern, except for bookkeeping and other administrative services. The premium surrender charge (for sales expenses) may be deemed inconsistent with the foregoing provisions, to the extent that the deduction from the Policy value would constitute payment for an expense not specifically permitted. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the premium surrender charge to be deducted upon surrender or lapse of a Policy, as described in the application.

2. Section 2(a)(35) and Rules 6e–2(b)(1) and 6e–2(c)(4) may be construed to contemplate that the sales charge for a variable life insurance policy will be deducted from premiums. The deduction of a premium surrender charge under the Policies may be deemed inconsistent with those provisions. Applicants request exemptions from Section 2(a)(35) and Rules 6e–2(b)(1) and 6e–2(c)(4), to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part as a surrender charge.

3. Applicants submit that Rule 6e–2(c)(4) may be construed to comprehend a sales charge imposed on other than premiums. This is because the definition is an intellectual construct rather than a reflection of the actual methodology of administering variable life insurance policies, referring in paragraphs (i) and (ii), for example, to other amounts that are *not* deducted from premiums.

4. Section 27(a)(1) and Rule 6e–2(b)(13)(i) may be construed to contemplate that the sales charge under a policy will be deducted from premiums. Northwestern's deduction of part of its sales charge on a contingent deferred basis may be deemed inconsistent with the foregoing provisions, to the extent that the sales charge is deducted from other than premiums. Applicants request an exemption from those provisions to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part to be deducted as a surrender charge.

5. In pertinent part, Sections 2(a)(32), 27(c)(1), and 27(d) prohibit Applicants from selling the Policy unless it is a "redeemable security."[3] Subparagraphs (b)(12), (b)(13)(iv), and (b)(13)(v) of Rule 6e–2 afford exemptions from Section 27(c)(1), and subparagraphs (b)(13)(iv) and (b)(13)(v) of Rule 6e–2 afford exemptions from Section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. However, the exemptions afforded by subparagraphs (b)(12), (b)(13)(iv), and (b)(13)(v) of Rule 6e–2 may not contemplate a contingent deferred sales charge. Moreover, Northwestern's deduction of the premium surrender charge may be viewed as reducing the proceeds that the Policy owner would receive on surrender below the Policy owner's proportionate share of the current net assets of the Account. Applicants request an exemption from the foregoing provisions to the extent necessary to permit part of the sales charge under a Policy to be deducted from premium payments, and part to be deducted as a surrender charge.

6. Applicants represent that Rule 6e–2 was adopted at a time when less flexibility regarding premium payments and other policy features were offered than subsequently have been permitted. Because of these features, particularly premium flexibility, it is possible that the premiums actually received by the insurance company by the date of surrender or lapse of a Policy may be less than the full amount of scheduled minimum premiums paid on or before the relevant due dates. It is unclear how the technical sales load computation provisions in Rule 6e–2 apply under such circumstances, particularly with respect to the premium surrender charge.

7. Applicants submit that, although the definition of "redeemable security" found in Section 2(a)(32) does not expressly provide for the imposition of a sales charge at the time of redemption, such a charge is not necessarily inconsistent with the definition of "redeemable security." Applicants further submit that the premium surrender charge is similar to the "redemption" charge authorized in Section 10(d)(4) of the 1940 Act, and that Congress obviously intended that such a "redemption charge"—which is expressly described as a "discount from net asset value"—be deemed consistent with the concept of "proportionate share" under Section 2(a)(32).

8. Applicants submit that there will be no restriction on, or impediment to, surrender that should cause the Policy to be considered other than a redeemable security within the meaning of the 1940 Act and the rules thereunder. The Policy provides for surrender and withdrawals of excess Policy value. The prospectus for the Policy will disclose the contingent deferred nature of part of the sales charge. Upon surrender or lapse, a Policy owner will receive his or her "proportionate share" of the Account—*i.e.*, the amount of net premiums paid, reduced by the amount of all charges and increased by the amount of all return credited to the Policy.

9. Rule 22c–1, adopted pursuant to Section 22(c), prohibits Applicants from redeeming a Policy except at a price based on the current net asset value of the Policy that is next computed after receipt of the request for full or partial surrender of the Policy. Rule 6e–2(b)(12) affords exemptions from Rule 22c–1. Rules 22c–1 and 6e–2(b)(12), read together, impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated. The proposed premium surrender charge may be deemed inconsistent with Section 22(c) and Rule 22c–1 to the extent that the sales charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after full or partial surrender of the Policy.

10. Applicants submit that the premium surrender charge will not have the dilutive effect which Rule 22c–1 is designed to prohibit because a surrendering Policy owner would receive no more than an amount equal to the cash surrender value determined pursuant to the formula set out in his or her Policy and after receipt of his or her request. Furthermore, variable life insurance policies, by nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against and, even if they could be so used, the surrender charge would discourage, rather than encourage, any such trading.

11. Applicants submit that deduction of part of the sales charge as a deferred charge on surrender or lapse will be more favorable to Policy owners than deduction of the same amount of charge from premiums. First, the amount of the Policy owner's premium payment that will be allocated to the Account and be available to earn a return for the Policy owner will be greater than it would be if the sales charge were deducted from premiums. Second, the total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e–2(b)(3)(13) for a conventional scheduled premium variable life insurance policy. For a Policy owner who does not lapse or surrender in the early Policy years, the dollar amount of sales load is lower than would be permitted if taken entirely as front-end deductions from premium payments made under a Policy. Third, the cost of insurance charge imposed will be less than it otherwise would be if the same amount of sales charge were deducted from premium payments, because the allocation of a greater amount of the Policy owner's premium to the Account reduces the amount at risk (*i.e.*, the amount of death benefit less the Policy value) upon which the cost of insurance charge is based. Moreover, Applicants represent that the proposed sales load structure provides equitable treatment to both surrendering and persisting Policy owners. That is, if the insurer is not permitted to charge a sales load in the form of a contingent deferred charge, it would have to deduct the sales load entirely from premium payments, thereby charging persisting Policy owners more than may otherwise be necessary to recover the distribution costs attributable to such Policy owners.

12. The premium surrender change, although imposed on other than the premium, will cover expenses associated with the offer and sale of the Policy, just as other forms of sales loads do. Applicants submit that the mere fact that the timing of the imposition of the surrender charge may not fall neatly within the literal pattern of all provisions discussed above, does not change its essential nature as a sales charge. Moreover, Applicants represent that proposed amendments to Rule 6e–2 would permit assessment of a sales charge on a contingent deferred basis.

13. Applicants represent that the percentages of sales load never will exceed the sum of 30% of the premium payments paid for the first Policy year plus 10% of premium payments paid for the second Policy year, and will not exceed 9% of premium payments expected to be paid over the lesser of 20 years or the expected lifetime of the insured. For this reason, Applicants submit that the Policy is consistent with the principles and policies underlying the sales load limitations in Section 27(a)(2) of the 1940 Act, and Rules 6e–2 (b)(13)(i) and (b)(13)(v).

14. Applicants submit that premium and other flexibility options under the Policy are a potential benefit to Policy owners.

C. Request for Exemptions Relating to Collection of Administrative Surrender Charge

1. Although the expenses that the administrative surrender charge is designed to recover are associated with the issuance of a Policy, Northwestern will deduct the administrative surrender charge from the Policy Value—not premiums—in the event of early surrender or lapse of a Policy, and such a deduction will reduce the proceeds otherwise payable. Such a deduction of the administrative surrender charge pursuant to the Policies may be deemed to violate Sections 2(a)(32), 22(c), 27(c)(1), 27(d), and Rule 22c–1 for essentially the same reasons as the premium surrender charge might be deemed to violate those 1940 Act sections and rules. Accordingly, Applicants request exemptions from the foregoing provisions of the 1940 Act to the extent necessary to permit the deduction of the administrative surrender charge upon early surrender or lapse of a Policy.

2. Applicants submit that imposition of the administrative surrender charge is more favorable to Policy owners than a charge deducted entirely from premiums or from the Policy value over the life of the Policy. Because the reduction of the Policy owner's investment in the Account is less than it would be were the administrative surrender charge taken in full in the first Policy year, there is a larger Policy value initially earning a return for the Policy owner. In addition, for a Policy owner who does not lapse or surrender in the early Policy years, the total dollar amount of the charges for issuance and maintenance expenses is no more than Northwestern would be permitted to deduct from premium payments or by way of periodic deductions from Policy value. Also, the total dollar amount of the administrative surrender charge will be no higher than Northwestern would be permitted to deduct if this charge were in the form of a deduction from premium payments and/or from the Policy value prior to the lapse or surrender of a Policy.

3. Applicants represent that the administrative surrender charge has not been increased to take account of the time value of money (*i.e.*, the investment costs attributable to deferment of the charge) or the fact that not all Policy owners would incur the charge.

4. Northwestern does not intend to make a profit on the administrative surrender charge.

5. Administrative charges deducted in the form of a surrender charge are

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[3] A "redeemable security," as defined in Section 2(a)(32), entitles a Policy owner to receive his or her approximate proportionate share of the current net assets of the Account upon surrender.

specifically permitted by Rule 6e–3(T)(b)(13)(iv)(C) for variable life insurance policies offered and sold in reliance on the rule. Applicants submit that the relief requested herein with respect to the administrative surrender charge under the Policies is equally appropriate.

D. Request for Exemptions Relating to Deduction of Insurance Charges From Policy Value

1. Sections 26(a)(2) and 27(c)(2) may be construed to prohibit Northwestern from deducting certain insurance charges from the Policy value. Applicants request exemptions from the foregoing sections and Rule 6e–2(b)(13)(iii)[4] to the extent necessary to permit the deduction of certain insurance charges from Policy value, as described in the application.

2. Applicants submit that the deduction of cost of insurance charges from the Policy value is fair and reasonable, and in accordance with the practice under most other variable life insurance policies.

3. Applicants further submit that deduction from the Policy value of charges for substandard risks and incidental insurance benefits also is reasonable and appropriate. If all such charges were required to be deducted solely from premiums, it would be necessary for Northwestern to: (a) reduce the premium flexibility under the Policy; and/or (b) limit further the classes of insureds for whom the Policy will be available, and limit or eliminate the kinds of rider benefits that Northwestern intends to make available.

4. Applicants submit that Rule 6e–3(T) authorizes deductions from account value for all of these insurance charges in connection with policies eligible to rely on that rule, and that proposed amendments to Rule 6e–2 would authorize deductions from account value of the risk charges for guaranteed benefits.

5. Applicants submit that their method of deducting cost of insurance charges is fair and reasonable, and consistent with general industry practice.

6. Applicants submit that charges for substandard risks and incidental insurance benefits must be deducted from Policy value, as a practical matter.

7. The Policy provides for an annual charge, based on the face amount of insurance, for the death benefit guarantee. Generally, this charge is deducted from annual premiums, but if payment of premiums is suspended, the charge will be deducted from Policy value. In addition, an annual cost of insurance charge based on the amount at risk and the attained age and risk classification of the insured is deducted from Policy value; this charge also applies to the values which support any variable paid-up additional insurance.

8. Applicants represent that the proposed method of deducting insurance charges is not designed to yield more revenues than if these charges were assessed solely against premiums.

9. Northwestern represents that these risk charges are reasonable in relation to the risks assumed under the Policy. The methodology used to support this representation is based on an analysis of the pricing structure of the Policies—including other charges, and an analysis of the various risks—including special risks arising out of provisions that allow additional and unscheduled premium payments and, in certain circumstances, suspension of premium payments. Northwestern undertakes to keep and make available to the Commission the documentation used to support this representation.

10. Northwestern further represents that there is a reasonable likelihood that the distribution financing arrangement of the Account will benefit the Account and Policy owners. Northwestern will keep and make available to the Commission on request a memorandum setting forth the basis for this representation.

11. Applicants agree that if the requested order is granted, such order will be expressly conditioned on Applicants' compliance with the following: the Account will invest only in management investment companies which have undertaken, in the event they should adopt any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve such plan.

E. Request for Exemptions Relating to Use of 1980 Standard Ordinary Mortality Tables

1. Section 27(a)(1) prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e–2(b)(13)(i) provides an exemption from Section 27(a)(1) to the extent that the sales load, as defined in Rule 6e–2(c)(4), does not exceed 9% of the payments to be made on the variable life insurance policy during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured, based on the Commissioners 1958 Standard Ordinary Mortality Table (the "1958 CSO Table").

2. Rule 6e–2(c)(4), in defining "sales load," contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Table and the assumed investment return specified in the Policy. Following the adoption of Rule 6e–2, the National Association of Insurance Commissioners adopted the 1980 CSO Tables, which reflect more recent information and data about mortality. The guaranteed cost of insurance rates under the Policy are based on the 1980 CSO Tables. Applicants request exemptions from Section 27(a)(i) and Rules 6e–2(c)(1), 6e–2(b)(13)(i), and 6e–2(4) to the extent necessary to permit cost of insurance to be calculated based on the 1980 CSO Tables, for purposes of testing compliance with those rules and that statutory provision.

3. Applicants represent that proposed amendments to Rule 6e–2 would require use of the 1980 CSO Tables for purposes of Rules 6e–2(b)(13)(i) and 6e–2(c)(4), where the 1980 CSO Tables relate to the insurance rates guaranteed under an insurance policy.

4. Applicants further represent that because cost of insurance charges based on the 1980 CSO Tables generally are lower than those based on the 1958 CSO Table, lower charges and higher Policy values generally result if charges are based on the 1980, rather than the 1958, CSO Tables.

F. Request for Exemptions Relating to the DAC Tax

1. Section 2(a)(35), in pertinent part, defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale that is received and invested or held for investment by the depositor, less any portion of such difference deducted for trustee's or custodian's fees or other fees that are not properly chargeable to sales or promotional activities.

2. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from payments made under periodic plan certificates other than a deduction for sales load. Sections 27(a)(1) and 27(h)(1) of the 1940 Act, as modified by Rule 6e–2(b)(13)(i), limit the amount of sales load that can be deducted in connection with variable life insurance policies issued in reliance on Rule 6e–2.

3. Applicants state that Rules 6e–2(b)(13)(iii) and 6e–3(T)(b)(13)(iii) each provide exemptive relief from Section 27(c)(2) to permit an insurer to deduct certain charges other than sales load, including deductions to pay the insurer's tax liabilities—imposed by any State or other governmental entity—arising as a result of its receipt of premium payments. Applicants seek relief from Section 27(c)(2) only to the extent necessary to permit deductions from premium payments received in connection with the Policies in an amount that is reasonable in relation to Northwestern's increased federal tax burden related to the receipt of such premiums. Applicants also request exemptions from Rule 6e–2(c)(4)(v) so that the proposed "DAC tax" charge is treated as other than sales load for purposes of Section 27 and the provisions of Section 27 referred to in Rule 6e2.

4. The exemption requested by Applicants is necessary in order for them to rely on certain provisions of Rule 6e–2(b)(13)(i), which provides exemptions from Sections 27(a)(1)and 27(h)(1). Issuers and their affiliates may rely on subparagraph (b)(13)(i) of Rule 6e–2 only if they meet the limitations on "sales load," as defined in paragraph (c)(4) of that rule. Applicants state that these limitations may not be met if the deduction for an increase in Northwestern's federal tax burden is included in sales load.

5. Rule 6e–2(c)(4) defines "sales load" as the excess of premium payments over certain itemized charges and adjustments. Applicants submit that a deduction for an insurer's increased federal tax burden as described above does not fall squarely into any of those itemized charges or adjustments. Arguably, then, such a deduction may be treated as "sales load" under a literal reading of Rule 6e–2(c)(4).

6. Applicants submit that there is no public policy reason for including deductions made to pay federal taxes in sales load, nor is there any language in the releases in which the Commission adopted Rule 6e–2 or adopted and amended Rule 6e–3(T) suggesting that the exclusion from the definition of sales load of deductions for tax liabilities attributable to premiums was based on the type of governmental entity imposing the taxes.

7. Applicants submit that the public policy underlying Rule 6e–2(b)(13)(i), like that underlying Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a tax burden charge attributable to premium payments as sales load would not further this objective because such a deduction bears no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of "sales load" in Rule 6e–2(c)(4).

8. Applicants assert that the source for the definition of sales load found in Rule 6e–2(c)(4) supports this analysis. Applicants submit that the Commission's intent in adopting subparagraph (c)(4) of Rule 6e–2 was to tailor the general terms of Section 2(a)(35) to variable life insurance contracts. Just as the percentage limits of Sections 27(a)(1) and 27(h)(1) depend on the definition of sales load in Section 2(a)(35) for their efficacy, the percentage limits in subparagraph (b)(13)(i) of Rule 6e–2 depend on subparagraph (c)(4). Applicants submit, therefore, that Rule 6e–2(c)(4) does not depart, in principle, from Section 2(a)(35).

9. Applicants assert that Section 2(a)(35) excludes from the definition of "sales load" deductions from premiums for "issue taxes." Applicants submit that this suggests that excluding deductions made to pay an insurer's costs attributable to its tax obligations from the definition of "sales load" in Rule 6e–2 is consistent with the policies of the 1940 Act.

10. Applicants further submit that the reference in Section 2(a)(35) to administrative expenses or fees that are "not properly chargeable to sales or promotional activities" suggests that the only deductions intended to fall within the definition of "sales load" are those properly chargeable to such activities. Because the proposed deductions will be used to compensate Northwestern for its increased federal tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, Applicants assert that the language in Section 2(a)(35) also indicates that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

11. Applicants represent that Northwestern will monitor the reasonableness of the "DAC tax" charge to be deducted. Applicants represent, further, that the registration statement for the Policies will: (a) Disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to Northwestern's increased federal tax burden under Section 848 resulting from the receipt of premiums. Applicants also represent that the registration statement for the Policies will contain as an exhibit an actuarial opinion as to: (a) The reasonableness of the charge in relation to Northwestern's increased federal tax burden under Section 848 resulting from the receipt of premiums; (b) the reasonableness of the targeted rate of return that is used in calculating such charge; and (c) the appropriateness of the factors taken into account in determining such targeted rate of return.

12. Applicants assert that it is proper for an insurer to deduct a charge for the tax burden attributable to premiums received from variable life insurance policies, and to exclude such a deduction from sales load, because the deduction for the insurer's increased federal tax burden is a legitimate expense of the company, and is not for sales and distribution expenses. Applicants note that the Commission has previously considered similar deductions for premium taxes in connection with its adoption of Rule 6e–2 and Rule 6e–3(T). In each case, the Commission permitted deductions for such taxes to be made and to be treated as other than sales load. Applicants assert that the proprietary of a charge for an insurers tax burden attributable to premiums received is the same whether such burden arises under state or federal law.

G. Request for Exemptions Relating to Custodianship Arrangements

1. In pertinent part, Sections 26(a)(1) and 26(a)(2) prohibit Applicants from selling the Policy unless it is issued pursuant to a trust indenture or other such instrument that designates one or more trustees or custodians, qualified as specified, to have possession of all securities in which the Account invests.

2. In pertinent part, Section 27(c)(2) may be read to prohibit Applicants from selling the Policy unless the proceeds of all purchase payments are deposited with a trustee or custodian as specified.

3. Rule 6e–2(b)(13)(iii) affords an exemption from Sections 26(a)(1), 26(a)(2), and 27(c)(2), provided that the life insurer complies, to the extent applicable, with all other provisions of Section 26 as if it were a trustee or custodian for the Account, and assuming that it meets the other requirements set forth in the rule.

4. Applicants represent that the holding of Fund shares by the Account or its depositor under an open account arrangement—without having possession of share certificates and without a trust indenture or other such instrument—may be deemed inconsistent with the foregoing provisions. Accordingly, Applicants request exemptions from Sections

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[4] In pertinent part, Rule 6e–2(b)(13)(iii) provides an exemption from Sections 26(a)(2) and 27(c)(2), subject to certain conditions which Applicants submit that they satisfy.

26(a)(1), 26(a)(2) and 27(c)(2), to the extent necessary.

5. Applicants represent that current industry practice calls for unit investment trust separate accounts, such as the Account, to hold shares of management investment companies in uncertificated form. Applicants further represent that holding shares of underlying management investment companies in uncertificated form contributes to efficiency in the operation and sale of such shares by separate accounts, and generally saves costs.

6. Applicants note that, in contrast to the Policies (which are covered by Rule 6e–2), policies covered by Rule 6e–3(T) may rely on Rules 6e–3(T)(b)(13)(iii) (B) and (C) which, in effect, afford the exemptions requested here by the Applicants. The Commission has proposed amendments to Rule 6e–2(b)(13)(iii) to permit life insurers to hold the assets of a separate account without a trust indenture or other such instrument, and to permit a separate account organized as a unit investment trust to hold the securities of any registered investment company that offers its shares to the separate account in uncertificated form. Applicants also note that the Commission has adopted 1940 Act Rule 26a–2 which affords exemptions in connection with variable annuity separate accounts that are essentially similar to those requested here. Accordingly, Applicants presume that the Commission adopted or proposed the foregoing exemptive rules based on a determination that, where state insurance law protects separate account assets and open account arrangements foster administrative efficiency and cost savings, safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture, or the issuance of share certificates.

7. Northwestern represents that: it will comply with all other applicable provisions of Section 26 of the 1940 Act as if it were a trustee or custodian for its Account (subject to the other exemptive relief requested in the application); it will file with the insurance regulatory authority of Wisconsin an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners—the most recent such statement indicated that Northwestern has a combined capital and surplus of at least $1 million; it is examined from time to time by the insurance regulatory authority of Wisconsin as to its financial condition and other affairs; and it is subject to supervision and inspection with respect to its separate account operations.

H. Request for Exemptions Relating to Sale of Fund Shares Without an Underwriter

1. Section 12(b) of the 1940 Act provides, in pertinent part, that it shall be unlawful for any registered open-end company to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations as the Commission may prescribe. Rule 12b–1(a)(1) provides, in pertinent part, that, except in compliance with the provisions of that rule, it shall be unlawful for a registered open-end management investment company to act as a distributor of securities of which it is the issuer, except through an underwriter.

2. Applicants request exemption from Section 12(b) and Rule 12b–1(a)(1) to the extent necessary to permit the Fund to sell the shares of its portfolios to the Account without the use of an underwriter, on the condition that Applicants not use the Fund's assets for distribution expenses unless the Fund complies with 1940 Act Rule 12b–1(b).

3. Applicants state that shares of the Fund Portfolios have been and will be sold only to the Account and to other separate accounts of Northwestern, except for the seed money shares purchased by Northwestern itself. The shares will be sold at net asset value without any sales charge or underwriting spread. Applicants represent that the Fund bears no expenses for distribution of its shares.

4. Applicants submit that, in view of the foregoing facts, no useful purpose would be served by requiring the Fund to use an underwriter for the sale of the shares of its portfolios to the Account. Direct sales of these shares to the Account would not expose the Fund to any underwriting risks, since such shares are issued only when requests for their purchase are received from the Account. Nor would the direct sales to the Account create any expenses for the Fund.

Conclusion

Applicants assert that, for the reasons set forth above, the requested exemptions meet the standards of Section 6(c) of the 1940 Act. The requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23016 Filed 9–15–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Georgia Greene, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Disaster Survey Worksheet.

SBA Form No.: SBA Form 987.

Frequency: On Occasion.

Description of Respondents: Individuals, businesses and public officials within an area requesting a disaster declaration.

Annual Responses: 4,000.

Annual Burden: 333.

Dated: August 21, 1995.

Jackie White,

Acting Chief, Administrative Information Branch.

[FR Doc. 95–23117 Filed 9–15–95; 8:45 am]

BILLING CODE 8025–01–P

Augusta District Advisory Council Public Meeting

The U.S. Small Business Administration Augusta District Advisory Council will hold a public meeting on Tuesday, September 26, 1995 at 10 a.m. at The Woodlands Club, 39 Woods Road, Falmouth, Maine, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration , or others present.

For further information, write or call Mr. Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, (207) 622–8242 x 110.

Dated: September 11, 1995.

Art DeCoursey,

Director, Office of Advisory Council.

[FR Doc. 95–23116 Filed 9–15–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTAION

Federal Aviation Administration

Receipt of a Noise Compatibility Program Revision and Request for Review; Charlotte/Douglas International Airport, Charlotte, NC

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed revision to the noise compatibility program that was submitted for Charlotte/Douglas International Airport under the provisions of Title I of the Aviation Safety and Noise Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the City of Charlotte. This revised program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Charlotte/Douglas International Airport were in compliance with applicable requirements effective July 11, 1989.

Upon acceptance of the Noise Exposure Maps, the FAA received the initial noise compatibility program on November 20, 1989. It was approved May 18, 1990. The proposed revision to the noise compatibility program will be approved or disapproved on or before February 19, 1996.

EFFECTIVE DATE: The effective date of the start of FAA's review is August 23, 1995. The public comment period ends October 22, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts, Program Manager, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747. Telephone (404) 305–7153. Comments on the revised noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program revision for Charlotte/Douglas International Airport which will be approved or disapproved on or before February 19, 1996. This notice also announces availability of this program for public review and comment.

This revision will add Churches within the definitions of "public buildings" under the approved noise compatibility program Land-Use Corrective Measure No. 2 paragraph entitled "Soundproofing of Public Buildings."

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAA) Part 150 promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program revision for Charlotte/Douglas International Airport, effective on August 23, 1995. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for submittal of noise compatibility programs, but further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 19, 1996.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program revision with specific reference to these factors. All comments, other than those properly addressed to the local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 30591

Federal Aviation Administration, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747

T.J. Orr, Aviation Director, Charlotte/Douglas International Airport, P.O. Box 19066, Charlotte, North Carolina

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Atlanta, Georgia, August 23, 1995.

Dell T. Jernigan,

Manager, Atlanta Airports District Office.

[FR Doc. 95–23097 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and To Hold an Environmental Scoping Meeting for Airport Improvements at Manchester Airport, Manchester, New Hampshire

AGENCY: Federal Aviation Administration.

ACTION: Notice of public environmental scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for airport improvements under consideration by the City of Manchester Department of Aviation for Manchester Airport in the City of Manchester and Town of Londonderry, New Hampshire. To insure that all significant issues related to this planning effort are identified, a public scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: John Silva, Environmental Program Manager, Federal Aviation Administration, New

England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone no.: 617–238–7602.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the City of Manchester Department of Aviation, will prepare an EIS on a proposal to implement a program of airfield and terminal area improvements to meet current and future safety and capacity demands.

The EIS will evaluate a range of actions, including runway and taxiway improvements for Runways 17–35 and 6–24 as well as improvements to the Terminal Complex; Air Cargo Facilities; Aircraft Rescue and Firefighting, and Maintenance/Snow Removal buildings; and Traffic and Access routes.

Comments and suggestions are invited from federal, state, and local agencies, and other interested parties, in order to ensure that a full range of issues related to the airfield and terminal area improvements under consideration are identified and addressed in the scope of work for the EIS.

PUBLIC SCOPING MEETINGS: In order to provide for both agency and public input, two scoping sessions have been scheduled on October 19, 1995. An afternoon Agency Scoping Meeting will be held for federal, state and local agencies at 1:00 pm in the 3rd floor Board Room at Manchester Airport. An evening Public Scoping Workshop for public input will be held at 5:00 pm. This meeting, to which agency personnel are invited, will be held at the Londonderry High School cafeteria (on the left side of the building), 295 Mammoth Road, Londonderry, New Hampshire.

Issued in Burlington, Massachusetts, on September 8, 1995.

John C. Silva,

Acting Manager, Airports Division, FAA, New England Region.

[FR Doc. 95–23906 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) to be held October 11 at 10:00 a.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC in rooms 10234–10236.

The agenda for the fourth meeting of the CTRDAC will include: (1) discussion of the committee report; (2) identification of policy issues; (3) review of work plans/schedule; (4) other business.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Karen Braxton, Staff Assistant to the Designated Federal Official on (202) 267–9451 prior to close of business on October 3. Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Braxton.

Members of the public may present a written statement to the Committee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton (202) 267–9451 at least seven days prior to the meeting.

Issued in Washington, DC on September 12, 1995.

Robert D. Smith,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 95–23101 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on October 10, 1995, at 1 p.m. Arrange for oral presentations by September 29, 1995.

ADDRESSES: The meeting will be held at the Aerospace Industries Association of America, 1250 Eye Street, NW., Wright Room, Washington, DC, 1 p.m.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration (ARM–25), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on October 10, 1995, at the Aerospace Industries Association of America, 1250 Eye Street, NW., Wright Room, Washington, DC, 1 p.m. The agenda will include:

- A vote on the proposed recommendation developed by the Flight Data Recorder Working Group.
- Other business.

Copies of the proposed recommendation will be available to interested persons prior to the meeting. A copy may be obtained by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by September 29, 1995, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on September 12, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–23092 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering And Development Advisory Committee, Challenge 2000 Subcommittee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the Challenge 2000 Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development Advisory Committee to be held Friday, September 29, 1995, 9 a.m. to 5 p.m. The meeting will take place at the FAA, 800 Independence Avenue, SW., Rooms 5 BC, Washington, DC.

This will be an informational meeting for the subcommittee members, with briefings on both the FAA certification process and comparative briefings from other safety-critical industries such as nuclear power and pharmaceutical industries.

Attendance is open to the interested public but limited to the space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or attend the meeting should contact Ms. Nancy Lane, AIR–510, 800 Independence Ave., SW., Washington, DC at (202) 267–7061, who will serve as the FAA Designated Federal Official to the Subcommittee.

Members of the public may present a written statement to the Subcommittee at any time.

Issued in Washington, DC, on September 12, 1995.

Randall J. Stevens,

Acting Manager, Research Division.

[FR Doc. 95–23111 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Deadhorse, Alaska; Notice of Change in Facility Operation

Notice is hereby given that on or about October 14, 1995, the Deadhorse, Alaska, Flight Service Station (FSS) hours will change permanently from operating 24 hours a day to operating from 6:00 a.m. to 9:30 p.m. daily. Services to the general aviation public provided by this facility will be provided by the Automated Flight Service Station (AFSS) at Fairbanks, Alaska, during the hours the Deadhorse FSS is closed. This information will be reflected in the FAA Organization Statement the next time it is reissued. Sec. 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska on September 7, 1995.

Jacqueline L. Smith,

Regional Administrator, Alaskan Region.

[FR Doc. 95–23094 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Iliamna, Alaska; Notice of Change in Facility Operation

Notice is hereby given that on September 30, 1995, the Iliamna, Alaska, Flight Service Station (FSS) will close until May 1, 1996. Upon reopening on May 1, 1996, the hours of the Iliamna FSS will be 5:45 a.m. to 9:45 p.m. From that date on, Iliamna FSS will operate annually as a seasonal facility, open March 1 through September 30, 5:45 a.m. to 9:45 p.m. When open, Iliamna FSS will operate as a full-service FSS. Services provided to the general aviation public by this facility when open, will be provided by the Automated Flight Service Station at Kenai, Alaska, when Iliamna FSS is closed.

This information will be reflected in the FAA Organization Statement the next time it is reissued. Sec. 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska on September 7, 1995.

Jacqueline L. Smith,

Regional Administrator, Alaskan Region.

[FR Doc. 95–23093 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3365

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

Consolidated Rail Corporation (Conrail) seeks approval of the proposed discontinuance and removal of "CP Esplen" Interlocking, milepost 2.4, on Conrail's Mon Line, Pittsburgh Division, and discontinuance of the Form D Control System on the single main track Carnegie Secondary, near Pittsburgh, Pennsylvania. The proposed changes are associated with track reconfiguration and extension of the No. 2 main track southward to "CP Beck" on the Mon Line. The proposed changes include: conversion of the Carnegie Secondary to an industrial track; conversion of old No. 1 power-operated switch to hand operation; removal of signals 3E, 3S, 22N, and 21N; installation of new "CP 2" near milepost 3.0 on the Mon Line; and installation of an electrically lock hand-operated switch north of "CP 2" for the industrial track connection on track No. 2.

The reason given for the proposed changes is to facilitate the extension of track No. 2, which is necessitated by increased coal traffic on the Mon Line.

BS–AP–No. 3366

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director of Signal Engineering, 1900 Continental Plaza, Fort Worth, Texas 76102–5304.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system on the two main tracks, near Alliance, Nebraska, on the Alliance Division, Angora Subdivision, consisting of the discontinuance and removal of "Prairie" control point, milepost 3.1 and the reduction of the traffic control system limits from "Prairie", milepost 3.1 to "South Alliance", milepost 4.53.

The reason given for the proposed changes is to make better use of signals in a traffic congested area.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on September 12, 1995,

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–23115 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 95–77; Notice 1]

Cantab Motors, Ltd.; Receipt of Application for Decision of Inconsequential Noncompliance

Cantab Motors, Ltd. (Cantab) of Purcellville, Virginia, had determined that some of its vehicles fail to comply with the automatic restraint system requirements of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Cantab has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4.1.4 of FMVSS No. 208 requires that vehicles manufactured on or after September 1, 1989, be equipped with a restraint system at each front outboard designated seating position that meets the standard's frontal crash protection requirements by means that require no action by vehicle occupants. This type of system is referred to as an automatic restraint system.

The agency granted an exemption for Cantab to manufacture vehicles without automatic restraints between May 16, 1990 and May 1, 1993. Cantab imported and manufactured nine vehicles without automatic restraint systems during this time period. However, after the exemption had expired, Cantab imported and manufactured nine more vehicles without automatic restraint systems. Of these nine vehicles, seven entered the U.S. during 1994 and two in 1995. These vehicles all meet the requirements of Standard No. 208 prior to the implementation of automatic restraint requirements. Cantab has subsequently applied for an exemption from the automatic restraint requirements for this type of vehicle. Notice of receipt of its application was published on July 14, 1995 [60 FR 36328].

Cantab supports its application for inconsequential noncompliance with the following:

> [Cantab] submits that, during the entire time period subsequent to its initial grant of exemption in May of 1990, it has imported and manufactured a total of eighteen cars. Nine of these were imported during the period of exemption, nine subsequent to its lapsing and prior to [Cantab's] submission of a second application for exemption. Each of these eighteen cars were identically constructed to meet all applicable FMVSS, including those of FMVSS 208 prior to implementation of the automatic restraint requirements. During this time, [Cantab] has made substantial progress in the development of a dual air bag system and expects to have it installed and operative within a year.
>
> [Cantab] has previously suggested to NHTSA in its [May 10, 1995] petition for exemption, the unusual nature of its vehicles—cars driven by enthusiasts for pleasure, rather than daily for business commuting or on long trips, by people who own two or more other passenger cars for such purposes.
>
> [Cantab] respectfully suggests that its nine noncomplying cars, representing a minuscule proportion of the total number of motor vehicles sold and operated in the U.S. during the period of 1994–1995, operated as noted above, constructed with well-proven safety systems, would not materially affect overall motor vehicle safety, and that their operation would be in the public interest and would be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

Interested persons are invited to submit written data, views, and arguments on the application of Cantab, described above. Comments should refer to the docket number and be submitted to: Docked Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C., 20509. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 18, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 12, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–23055 Filed 9–15–95; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 95–78; Notice 1]

Ford Motor Company; Receipt of Application for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan has determined that some of its vehicles fail to comply with the display identification requirements of 49 CFR 571.101, Federal Motor Vehicle Safety Standard (FMVSS) No. 101, "Controls and Displays," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Report." Ford has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In Footnote 3 to Table 2 in Standard No. 101, it is specified that, "[i]f the odometer indicates kilometers, then 'KILOMETERS' or 'km' shall appear, otherwise, no identification is required."

Ford manufactured approximately 300,000 vehicles (1995 model year Rangers, Explorers, Crown Victorias, and Grand Marquis, certain 1994 and 1995 Mustangs, and certain 1995 Ford-built Mazda B-Series pickup trucks) which may not comply with the display identification requirements of Standard No. 101. Within the total population of 300,000 vehicles, any number of between 24 and 124 vehicles were manufactured with an odometer that measures distance in units of kilometers but is not labeled as such as Standard No. 101 requires. Ford has already found and corrected 24 of these noncompliant odometers in service, therefore, up to 100 of them could still exist.

Ford supports its application for inconsequential noncompliance with the following:

> In Ford's judgment, this condition is inconsequential as it relates to motor vehicle safety. [Ford's] basis for this belief is that: 1) an owner of an affected vehicle will readily recognize the condition and return the vehicle to a Ford dealer for corrections; 2) even if the condition were to go undetected, the role of the odometer in alerting drivers to potential safety-related problems is minimal; and 3) no reports of accidents or injuries related to this condition are known or expected.
>
> Ford believes, as evidenced by those odometers already identified by owners, that this condition becomes obvious to an owner early in the "life" of a vehicle because of more rapid mileage accumulations, better than expected fuel economy, etc., and that an owner will seek repair for the condition through a Ford dealer. Ford will continue to remedy the condition of any of the vehicles brought to its attention at no cost to the owners, under normal warranty terms.
>
> With respect to the relationship of the odometer to safety, in past rulemaking (FR Vol. 47, No. 216 at 50497) the agency concluded that the role of the odometer in alerting drivers to potential safety-related problems is not crucial. This conclusion was among those leading to the rescission of Federal Motor Vehicle Safety Standard No. 127, Speedometers and Odometers. That standard contemplated that the purpose of the odometer requirement was twofold. First, it was to inform purchasers of used vehicles of the actual mileage of the vehicles they were purchasing to enable them to ascertain the probable condition of the vehicle. Second, it was to provide an owner with information so that he or she could maintain a periodic maintenance schedule. In rescinding Safety Standard No. 127, the agency acknowledged that its reliance on the Tri-Level Study of the Causes of Traffic Accidents by the Indiana University Institute for Research in Public Safety, which led to the odometer requirement, was misplaced. The agency concluded that although the study found that problems with vehicle systems were causal or contributing factors in up to 25 percent of the accidents studies—such as problems with the brake system, tires, lights and signals, for example—all of those causes involved components which must be periodically replaced or serviced regardless of mileage. The agency thereby concluded that deterioration in performance, such as brake pulling, or in appearance, such as tire wear, etc., are readily apparent to the driver and should do more to alert the driver to potential safety-related problems than the distance traveled indication on the odometer.
>
> Ford agrees with the agency's conclusion that the odometer reading is not a crucial factor in alerting drivers to potential safety-related vehicle problems, and therefore, it submits that the absence of the "km" designation is not crucial in this regard. We believe the vehicles that are the subject of this petition present no direct or indirect risk to motor vehicle safety. Furthermore, in the case of the vehicles in question, even if the odometer indication were a crucial indicator or required periodic maintenance, the odometer reading, if relied on for this purpose, would cause a driver to seek maintenance sooner than required because the indicated mileage would be approximately 1.6 times greater than the distance actually traveled.
>
> Therefore, while the absence of the "km" designation is technically a noncompliance, and the odometer of the affected vehicles registers distance traveled in kilometers while the speedometer registers in miles per hour, we believe, for the reasons cited above, the condition presents no risk to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application of Ford, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 18, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 12, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–23054 Filed 9–15–95; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 95–39; Notice 2]

Volkswagen of America, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc. (VWoA) of Auburn Hills, Michigan, determined that some of its vehicles fail to comply with the power window requirements of 49 CFR 571.118, Federal Motor Vehicle Safety Standard (FMVSS) No. 118, "Power-Operated Window, Partition, and Roof Panel Systems," and filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." VWoA has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on May 17, 1995, and an opportunity afforded for comment (60 FR 26475).

Paragraph S4(e) of FMVSS No. 118 states that power operated windows may be closed only "during the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of its front doors."

From September 1, 1992 through March 5, 1995, VWoA manufactured approximately 1,200 1995 GTI vehicles and 18,795 1993–1995 Jetta III vehicles that do not comply with the power window requirements of FMVSS No. 118. The power windows in these vehicles can be operated when the ignition key is in the "off" position and the passenger side front door has been opened. The windows should not be able to be operated in this scenario.

VWoA supported its application for inconsequential noncompliance with the following:

The purpose of the requirement in S4(e) of FMVSS 118 specifying that the power window system not be functional if the ignition key is in the "off" position and one of the front doors has been opened, is to reduce the possibility of unsupervised children operating the power windows in the vehicle. S4(e) is based upon the assumption that before one of the front doors has been opened, an adult remains in the vehicle to supervise and protect children from the safety risks associated with the operation of the power window system. S4(e) further assumes that after one of the front vehicle doors has been opened, no adult remains in the vehicle and thereby creates a risk that children remaining in the vehicle may injure themselves by activating operational power windows without supervision. S4(e) seeks to eliminate that risk.

In the case of the affected vehicles, the power windows cease to be operable if the driver door is opened, but remain operational for a period of 10 minutes after the passenger side front door has been opened. The rationale supporting the 10 minute period is to allow the driver to close any open windows even though he may already have turned off the ignition and the passenger may have opened the door and exited the vehicle. It is a convenience feature permitted by law in Europe and offered by Volkswagen to the market in Europe as a convenience feature.

The power-operated roof panel systems cannot be operated after the ignition key has been turned off.

VWoA believes that its European configuration inadvertently built into certain vehicles delivered in the United States does not affect their safety in a discernible way. VWoA believes that as long as the driver door of the vehicle has not been opened, a person of driving age inevitably remains in the vehicle because the exiting of the driver on the passenger side front door is extremely difficult and therefore unlikely. The affected vehicles are equipped with bucket seats and a center transmission console which cause the movement of the driver to the passenger side of the vehicle without contortion to be difficult and virtually impossible. Also, it makes no sense to suggest that a driver would exit the vehicle on the passenger side of a vehicle with bucket seats and [a] floor mounted transmission lever when he can conveniently open the driver's door for exit.

VWoA has received no customer complaints or claims relating to the ability of the windows to operate after the passenger door has been opened.

It should also be noted that the Volkswagen Owner's Manual contains an express warning against leaving children unattended in a vehicle and against misuse of the ignition key. The warning reads as follows:

WARNING

Do not leave children unattended in the vehicle especially with access to vehicle keys. Unsupervised use of the keys can result in starting of the engine and use of vehicle systems such as the power windows and power sunroof, which could result in serious personal injury.

As explained, the probability of unsupervised children being exposed to injury from power-operated window systems during the 10 minute interval after the ignition key has been turned off and the passenger side front door is opened and before the driver side front door is opened, is non-existent and that therefore this noncompliance is inconsequential to motor vehicle safety.

VWoA requests that this [application] be granted so that an unnecessary and costly consumer recall action [can] be avoided. VWoA expects a particularly low owner response to such a recall, if it were undertaken, because the ability to operate the power windows after the front passenger side door has been opened would likely be viewed by the owner to offer a valuable convenience feature without any apparent safety disadvantage.

No comments were received on the application.

VWoA is correct that the purpose of requiring inoperative power windows is to reduce the possibility of unsupervised children operating them. In the noncompliant vehicles, the power window system remains operable only when the front passenger side door is opened, a time when the operator presumably remains behind the wheel. If the operator exits by the driver's door, the system is disabled; it is not likely that an operator would exit by means of the passenger door since that would entail passing over the cumbersome console between the two seats. Thus, the purpose of the requirement in this situation is still highly likely to be met.

In consideration of the foregoing, the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to motor vehicle safety. Accordingly, the applicant is hereby exempted from the requirements of 49 U.S.C. 30118 and 30120 to notify and remedy a noncompliance with a Federal motor vehicle safety standard.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 12, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–23053 Filed 9–15–95; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 15–12]

Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms, to Investigate Violations of 18 U.S.C. §§ 1956 and 1957

September 11, 1995.

1. *Purpose.* This Directive delegates to the Director, Bureau of Alcohol, Tobacco and Firearms (ATF), authority to investigate violations of 18 U.S.C. §§ 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. §§ 981, 1956(e) and 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Director, ATF:

a. investigatory authority over violations of 18 U.S.C. § 1956 or 1957 involving 18 U.S.C. §§ 2341–2346 (trafficking in contraband cigarettes); § 38 of the Arms Export Control Act, 22 U.S.C. § 2778 (relating to the importation of items on the U.S. Munitions Import List, except violations relating to exportation, in transit, temporary import, or temporary export transactions); and 18 U.S.C. § 1952 (relating to travelling in interstate commerce, with respect to liquor on which Federal excise tax has not been paid); or any act or activity constituting an offense listed in 18 U.S.C. § 1961(1), with respect to any act or threat involving arson, which is chargeable under State law and punishable for more than one year imprisonment; and

b. seizure and forfeiture authority and related authority under 18 U.S.C. § 981 relating to violations of 18 U.S.C. § 1956 or 1957 within the investigatory jurisdiction of ATF under paragraph 2.a., and seizure authority under 18 U.S.C. § 981 relating to any other violation of 18 U.S.C. § 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. § 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Director, ATF, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. *Redelegation.* The authority delegated by this Directive may be redelegated.

5. *Coordination.*

a. If at any time during an investigation of a violation of 18 U.S.C. § 1956 or 1957, the Director, ATF, discovers evidence of a matter within the jurisdiction of another Treasury bureau, the Director, ATF, shall immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. The Director, ATF, shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus. The Under Secretary (Enforcement) shall settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, the Director, ATF, shall adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. § 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, ATF shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance shall include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. *Authorities.*

a. 18 U.S.C. §§ 981, 1952, 1956, 1957, 1961, and 2341–2346.

b. 31 U.S.C. §§ 5311–5326 (other than violations of 31 U.S.C. § 5316).

c. 22 U.S.C. § 2778.

d. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

e. TO 102–14, "Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992," dated January 10, 1995.

7. *Cancellation.* Treasury Directive 15–12, "Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms to Investigate Violations of 18 U.S.C. §§ 1956 and 1957," dated May 1, 1991, is superseded.

8. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

9. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,

Under Secretary (Enforcement).

[FR Doc. 95–23071 Filed 9–15–95; 8:45 am]

BILLING CODE 4810-25-P

[Treasury Directive Number 15–29]

Delegation of Authority to the Commissioner, United States Customs Service, To Investigate Violations of 18 U.S.C. §§ 1956 and 1957

September 11, 1995.

1. *Purpose.* This Directive delegates to the Commissioner, United States Customs Service, authority to investigate violations of 18 U.S.C. §§ 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. §§ 981, 1956(e) and 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Commissioner, United States Customs Service:

a. investigatory authority over violations of 18 U.S.C. § 1956 or 1957 involving 18 U.S.C. §§ 542, 545, 549, 659, 1461–63, 1465, 2251–52, 2314, and 2321; 19 U.S.C. § 1590; 21 U.S.C. § 863; offenses under § 11 of the Export Administration Act of 1979 (50 U.S.C. App. § 2410); offenses under § 206 of the International Emergency Economic Powers Act (50 U.S.C. § 1705); offenses under § 16 of the Trading With the Enemy Act (50 U.S.C. App. § 16); and offenses under § 38 of the Arms Export Control Act (22 U.S.C. § 2778) (relating to the exportation, intransit, temporary import, or temporary export transactions);

b. investigatory authority over violations of 18 U.S.C. § 1956(a)(2)(B)(ii), involving a reporting violation under 31 U.S.C. § 5316;

c. investigatory authority over violations of 18 U.S.C. § 1956(a)(3) relating to violations within the investigatory jurisdiction of the U.S. Customs Service under paragraphs 2.a. and b.; and

d. seizure and forfeiture authority and related authority under 18 U.S.C. § 981 relating to violations of 18 U.S.C. § 1956 or 1957 within the investigatory jurisdiction of the Customs Service under paragraphs 2.a., 2.b., and 2.c., and seizure authority under 18 U.S.C. § 981 relating to any other violation of 18 U.S.C. § 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. § 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Commissioner, United States Customs Service, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.d.

4. *Redelegation.* The authority delegated by this directive may be redelegated.

5. Coordination.

a. If at any time during an investigation of a violation of 18 U.S.C. § 1956 or 1957, the U.S. Customs Service discovers evidence of a matter within the jurisdiction of another Treasury bureau or office, the U.S. Customs Service shall immediately notify that bureau or office with investigatory jurisdiction of the investigation and invite that bureau or office to participate in the investigation. The Commissioner, U.S. Customs Service, shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level or in the case of the Office of Foreign Assets Control, at the headquarters level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus. The Under Secretary (Enforcement) shall settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, the U.S. Customs Service shall adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. § 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, U.S. Customs Service shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance will include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. Authorities.

a. 18 U.S.C. §§ 542, 545, 549, 659, 981,1461–1463, 1465, 1956, 1957, 2251–52, 2314, and 2321.

b. 19 U.S.C. § 1590.

c. 21 U.S.C. § 863.

d. 22 U.S.C. § 2778.

e. 31 U.S.C. § 5316.

f. 50 U.S.C. App. § 16, 1705, and App. 2410.

g. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

h. TO 102–14, "Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992," dated January 10, 1995.

7. *Cancellation.* Treasury Directive 15–29, "Delegation of Authority to the Commissioner, United States Customs Service to Investigate Violations of 18 U.S.C. §§ 1956 and 1957," dated May 1, 1991, is superseded.

8. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

9. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,

Under Secretary (Enforcement).

[FR Doc. 95–23070 Filed 9–15–95; 8:45 am]

BILLING CODE 4810-25-P

[Treasury Directive Number 15–42]

Delegation of Authority to the Commissioner, Internal Revenue Service, To Perform Functions Under the Money Laundering Control Act of 1986, as Amended

September 11, 1995.

1. *Purpose.* This Directive delegates to the Commissioner, Internal Revenue Service (IRS), investigatory, seizure and forfeiture authority under the Money Laundering Control Act of 1986, Public Law 99–570, Subtitle H (October 27, 1986), as amended.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. §§ 981, 1956(e), 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Commissioner, IRS:

a. investigatory authority over violations of 18 U.S.C. §§ 1956 and 1957 where the underlying conduct is subject to investigation under Title 26 or under the Bank Secrecy Act, as amended; 31 U.S.C. §§ 5311–5328 (other than violations of 31 U.S.C. § 5316);

b. seizure and forfeiture authority over violations of 18 U.S.C. § 981 relating to violations of:

(1) 31 U.S.C. §§ 5313 and 5324; and

(2) 18 U.S.C. §§ 1956 and 1957 which are within the investigatory jurisdiction of IRS pursuant to paragraph 2.a.; and

c. seizure authority relating to any other violation of 18 U.S.C. § 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. § 981 where investigatory jurisdiction is solely with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Commissioner, IRS, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. *Redelegation.* The authority delegated by this directive may be redelegated.

5. *Coordination.*

a. If at any time during an investigation of a violation of 18 U.S.C. § 1956 or 1957, IRS discovers evidence of a matter within the jurisdiction of another Treasury bureau, to the extent authorized by law, IRS shall immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. The Commissioner, IRS, shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus in consultation with the Commissioner, IRS.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, IRS shall adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. § 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, IRS shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance will include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. *Authorities.*

a. 18 U.S.C. §§ 981, 1956 and 1957.

b. 31 U.S.C. §§ 5311–5328 (other than violations of 31 U.S.C. § 5316).

c. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

d. TO 102–14, "Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992," dated January 10, 1995.

7. *Cancellation.* Treasury Directive 15–42, "Delegation of Authority to the Commissioner, Internal Revenue Service to Perform Functions Under the Money Laundering Control Act of 1986, as amended," dated May 1, 1991, is superseded.

8. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

9. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,

Under Secretary (Enforcement).

[FR Doc. 95–23069 Filed 9–15–95; 8:45 am]

BILLING CODE 4810–25–P

[Treasury Directive Number 15–54]

Delegation of Authority to the Director, United States Secret Service, To Investigate Violations of 18 U.S.C. §§ 1956 and 1957

September 11, 1995.

1. *Purpose.* This Directive delegates to the Director, United States Secret Service, authority to investigate violations of 18 U.S.C. §§ 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. §§ 981, 1956(e), 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Director, United States Secret Service:

a. investigatory authority over violations of 18 U.S.C. §§ 1956 and 1957 involving an offense under 18 U.S.C. §§ 471–473 (counterfeiting of obligations or securities of the United States); 18 U.S.C. §§ 500–503 (counterfeiting of blank or postal money orders, postage stamps, foreign government postage and revenue stamps, and postmarking stamps); 18 U.S.C. § 657 (involving theft, embezzlement or misapplication by employees of the Federal Deposit Insurance Corporation); and 18 U.S.C. § 1029 (fraud and related activity in connection with access devices); and

b. seizure and forfeiture authority and related authority under 18 U.S.C. § 981 relating to violations of § 1956 or 1957 within the investigatory jurisdiction of Secret Service under paragraph 2.a., and seizure authority under 18 U.S.C. § 981 relating to any other violations of 18 U.S.C. § 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. § 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Director, United States Secret Service, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. *Redelegation.* The authority delegated by this directive may be redelegated.

5. *Coordination.*

a. If at any time during an investigation of a violation of 18 U.S.C. § 1956 or 1957, Secret Service discovers evidence of a matter within the jurisdiction of another Treasury bureau, Secret Service shall immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. Secret Service shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus. The Under Secretary (Enforcement) shall settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, Secret Service shall adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. § 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, Secret Service shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance will include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. *Authorities.*

a. 18 U.S.C. §§ 471–473, 500–503, 657, 981, 1029, 1956 and 1957.

b. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

c. TO 102–14, "Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992," dated January 10, 1995.

7. *Cancellation.* Treasury Directive 15–54, "Delegation of Authority to the Director, United States Secret Service to Investigate Violations of 18 U.S.C. §§ 1956 and 1957," dated May 1, 1991, is superseded.

8. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

9. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,

Under Secretary (Enforcement).

[FR Doc. 95–23068 Filed 9–15–95; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459); Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Johannes Vermeer" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art from on or about November 12, 1995, through February 11, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: September 12, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–23011 Filed 9–15–95; 8:45 am]

BILLING CODE 8230–01–M

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[1] A copy of this list may be obtained by contacting Mr. Paul Manning, Assistant General Counsel, at 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547–0001.

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Splendors of Imperial China: Treasures from the National Palace Museum, Taipei" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York on or about March 12, 1996 through May 19, 1996, at The Art Institute of Chicago, Chicago, Illinois on or about June 28, 1996 through August 25, 1996, at the Asian Art Museum of San Francisco, San Francisco, California on or about October 14, 1996 through December 8, 1996, and at the National Gallery of Art, Washington, DC on or about January 27, 1997 through April 6, 1997 is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: September 11, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–23012 Filed 9–15–95; 8:45 am]

BILLING CODE 8230–01–M

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[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202 619–5997, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 60, No. 180
Monday, September 18, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION WASHINGTON, DC 20207

TIME AND DATE: Thursday, September 21, 1995, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Acetone Petition HP 95–2

The staff will brief the Commission on petition HP 95–2 requesting that the Commission issue a rule to ban acetone packaged for household use in one-gallon containers.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

September 13, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–23236 Filed 9–14–95; 3:12 pm]

BILLING CODE 6355-01-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the following Board meeting:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 47438.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., September 20, 1995.

CHANGES IN THE MEETING: The meeting time has been changed to 2:30 p.m.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

Dated: September 14, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–23217 Filed 9–14–95; 3:12 pm]

BILLING CODE 3670-01-M

FEDERAL COMMUNICATIONS COMMISSION

MATTER TO BE CONSIDERED:

Deletion of agenda items from September 14th open meeting.

The following items have been deleted from the list of agenda items scheduled for consideration at the September 14, 1995, Open Meeting and previously listed in the Commission's Notice of September 7, 1995.

Item No., Bureau, and Subject

2—Common Carrier— Title: Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1, Phase II). Summary: The Commission will consider revising proposals related to establishing a permanent method for determining the "X" factor for price cap local exchange carriers.

5—Wireless Telecommunications— Title: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services (CC Docket No. 94–54). Summary: The Commission will consider whether commercial mobile radio services should be prohibited from restricting resale of their services.

Dated September 14, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–23229 Filed 9–14–95; 3:40 am]

BILLING CODE 6712-01-F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, September 22, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23159 Filed 9–14–95; 11:46 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 60, No. 180
Monday, September 18, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-91-010A]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Colby Cheese

Correction

In rule document 95–4953 beginning on page 11246, in the issue of Wednesday, March 1, 1995, make the following correction:

§58.2479 [Corrected]

On page 11249, in the third column, in §58.2479, in the table entitled "TABLE I--CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE", in the subheading entitled "A", in the sixth line, "S" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Consolidated Farm Service Agency

7 CFR Part 718

RIN 0560-AE29

1995 Wheat, Feed Grains, Upland and Extra Long Staple Cotton, and Rice Price Support Programs

Correction

In rule document 95–20782 beginning on page 44255, in the issue of Friday, August 25, 1995, make the following correction:

On page 44257, in the first column, amendatory instruction No. 5 should read:

"5. Section 718.40 is amended by removing paragraphs (a)(1) and (b)(3), redesignating paragraphs (a)(2) as (a)(1), (b)(4) as (b)(3), respectively, and revising paragraph (c), introductory text, (c)(1) and (c)(2), introductory text, to read as follows:".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49-95]

Proposed Foreign-Trade Zone - St. Lucie County, FL; Application and Public Hearing

Correction

In notice document 95–22503 appearing on page 47148 in the issue of Monday, September 11, 1995, make the following corrections:

In the third column, in the second full paragraph, beginning in the seventh line, "[60 days from date of publication]" should read "November 13, 1995"; and in the last line, "[75 days from date of publication]" should read "November 27, 1995".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty; Administrative Reviews

Correction

In notice document 95–9405 beginning on page 19017 in the issue of Friday, April 14, 1995, make the following correction:

On page 19018, in the second column of the table, under the headings, The People's Republic of China: Hainan Garden Trading Co*, "08/01/94" should read "08/01/93".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34081; FRL 4972-4]

Certain Chemicals; Availability of Reregistration Eligibility Decision Documents for Comment

Correction

In notice document 95–22055 beginning on page 46278 in the issue of Wednesday, September 6, 1995, make the following correction:

On page 46278, in the second column, in the DATES section, in the second and third lines "October 6, 1995" should read "November 6, 1995".

BILLING CODE 1505-01-D

federal register

Monday
September 18, 1995

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1 and Parts 1, et al.
Federal Acquisition Regulation (FAR);
Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–32]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document serves to introduce the final rules which follow and which comprise Federal Acquisition Circular (FAC) 90–32. The Federal Acquisition Regulatory Council has agreed to issue FAC 90–32 to amend the Federal Acquisition Regulation (FAR).

DATES: For effective dates, see individual documents following this one.

FOR FURTHER INFORMATION CONTACT: The team leader or FAR Staff Analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC, 20405 (202) 501–4755. Please cite FAC 90–32 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–32 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Team leader
I	Truth in Negotiations Act and Related Changes	94–720 & 94–721.	Al Winston (703) 602–2119.
II	Protests, Disputes and Appeals	94–730	Craig Hodge (703) 274–8940.
III	Acquisition of Commercial Items	94–790	Lawrence Trowel (703) 695–3858.
IV	Whistleblower Protections for Contractor Employees (Ethics).	94–803	Jules Rothlein (703) 697–4349.
V	Small Business	94–780	Victoria Moss (202) 501–4764.
VI	Publicizing Contract Actions	95–606	Ralph DeStefano (202) 501–1758.
VII	Subcontractor Payments	94–762	John Galbraith (703) 697–6710.
VIII	Reimbursement of Protest Costs	94–731	Craig Hodge (703) 274–8940.

Case Summaries

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—Truth in Negotiations Act and Related Changes (FAR Cases 94–720 and 94–721)

This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103–355 to implement those portions of FASA that make specific changes to the Truth in Negotiations Act (TINA) or that impact other areas of the FAR that affect contract pricing.

This rule implements Sections 1201 through 1210 and Sections 1251 and 1252 of the FASA. A new exception is added to the requirement for the submission of "cost or pricing data" for commercial items; the approval level for waivers is changed, and prohibitions are placed on acquiring "cost or pricing data" when an exception applies. The coverage includes a clear explanation of adequate price competition as required by the FASA.

Coverage has been included that addresses (1) "information other than cost or pricing data," (2) exceptions based on established catalog or market price, (3) interorganizational transfers of commercial items at price, and (4) price competition when only one offer has been received.

The new policy also expands the exception based on adequate price competition and provides for a special exception for commercial items. A new section addressing "information other than cost or pricing data" is created and a Standard Form 1448 is provided for use by contractors.

The new policy at FAR 15.804–1(b)(1)(ii) recognizes circumstances when it can be determined that adequate price competition exists even though only one offeror has responded to the Government"s requirement.

In addition, this rule finalizes, with changes, the interim rule in FAC 90–22 that made TINA requirements for civilian agencies substantially the same as those for the Department of Defense (increasing the threshold for submission of "cost or pricing data" to $500,000 and adding penalties for defective pricing). Provisions were also included that increase the threshold for cost or pricing data submission every 5 years beginning October 1, 1995.

Although the instruction to amend contracts without consideration to update the cost or pricing data threshold has been removed from the FAR, the statutory authority and requirement to update the threshold remain in effect. Accordingly, contracting officers shall, if requested by a prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data threshold in paragraph 15.804–2(a)(1), without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of the clauses 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications, and 52.215–25, Subcontractor Cost or Pricing Data–Modifications, or 52.215–24, Subcontractor Cost or Pricing Data, as applicable. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses.

Item II—Protests, Disputes, and Appeals (FAR Case 94–730)

This final rule implements requirements of the Federal Acquisition Streamlining Act of 1994 pertaining to protests, disputes, and appeals.

The primary changes included in this rule are new definitions of "day," "filed," and "protest." Most of the adjustments merely reflect current practice, except for the definition of "day," which changes from a presumed "working day" to a presumed "calendar day." Agencies are now clearly allowed to take corrective action to include payment of costs to the protester and are allowed to stay contract performance in the face of a likely protest. Both agency and GAO protests must now be filed within fourteen calendar days of discovery of protest grounds, instead of the former ten working days. There is also an explicit warning that, in the event of a conflict between the FAR and GAO protest procedure regulations, the GAO regulations govern. The period of time for submission of the agency administrative report has been adjusted from the former 25 working days to 35 calendar days. Agencies are required to prepare a protest file for prospective, non intervening offerors to review, and to suspend performance of the contract if the protest is filed within ten days of award or five days of debriefing, where the debriefing is required. GAO decisions are normally due out within 125 days, and attorney fees are generally capped at $150 an hour, except for small businesses.

There is also an explicit statement that, in case of conflict with the FAR, GSBCA rules govern questions of GSBCA protest procedure. The GSBCA now has more GAO-like suspension standards and time periods. Agencies are required to reimburse the judgment fund for costs awarded the protester. Protest costs are limited at the GSBCA as they are with GAO protests, such as with the attorney fee cap. Settlements are now generally to be made public information.

In the disputes area, the claims certification threshold begins at $100,000. Claims must be filed within six years of accrual, except for Government claims involving fraud. Small claims now reach disputes of $50,000, and accelerated claims have a threshold of $100,000.

Item III—Acquisition of Commercial Items (FAR Case 94–790)

This final rule implements Title VIII of the Federal Acquisition Streamlining Act of 1994. The rule encourages the acquisition of commercial end items and components by Federal Government agencies as well as contractors and subcontractors at all levels. The most significant revisions are in the following FAR parts:

Part 2 has been amended to incorporate the definitions of "commercial item," "component," "commercial component" and "non developmental item."

Part 10 has been completely revised by establishing the requirement for market research as the first step in the acquisition process. Market research is an essential element in the later steps of describing the agency's need, developing the overall acquisition strategy and identifying terms and conditions unique to the item being acquired.

Part 11 has been completely revised to address the process of describing agency needs. It contains some of the language on specifications and standards formerly found in FAR Part 10, but takes a more streamlined approach. In addition, the revised Part 11 establishes the Government's order of precedence for requirements documents and addresses the concept of market acceptance. Part 11 also contains coverage on Delivery or Performance Schedules, Liquidated Damages, Priorities and Allocations, and Variations in Quantity taken from the current Part 12 with only minor editorial revisions. The current Part 12 coverage on Suspension of Work, Stop Work Orders, and Government Delay of Work has been moved to Subpart 42.13 with only minor editorial revisions.

Part 12 has been completely revised to address the acquisition of commercial items.

- —Subpart 12.1 states that the policies in the revised Part 12 are applicable to all acquisitions of commercial items above the micro-purchase threshold. The requirements of other parts of the FAR apply to commercial items to the extent they are not inconsistent with Part 12.
- —Subpart 12.2 identifies special requirements for the acquisition of commercial items.
- —Subpart 12.3 establishes standard provisions and clauses for use in the acquisition of commercial items. It is essential that contracting officers be allowed to tailor solicitations and contracts to meet the needs of the particular acquisition and the marketplace for that item. Subpart 12.3 gives contracting officers broad authority to tailor solicitations and contracts, a practice itself that is consistent with commercial practices.
- —A new form, the Standard Form (SF) 1449, Solicitation/Contract/Order for Commercial Items, is established. The most significant element is the addition of acceptance blocks at the bottom of the form that will allow suppliers of commercial items to utilize the SF 1449 to document receipt of the supplies or services by the Government, avoiding the need for preparation of separate receipt/acceptance forms.
- —Subpart 12.5 identifies the applicability of certain laws to the acquisition of commercial items. It contains the list of laws determined to be inapplicable to executive agency prime contracts for acquisition of commercial items. This list has been expanded to also include those laws that have been revised in some manner to modify their applicability to commercial items. Agency unique laws determined to be inapplicable to prime contracts are not addressed in this rule and may be addressed separately by the respective agencies. This subpart also contains the list of laws determined to be inapplicable to subcontracts for commercial items. This list has been expanded to also include those laws that have been revised in some manner to modify their applicability to subcontracts for commercial items.
- —Subpart 12.6 identifies two streamlined procedures for the evaluation and solicitation of contracts for commercial items. These procedures may be used at the discretion of the contracting officer.

Part 52 has been amended to include several new provisions and clauses to be used in all solicitations and contracts for the acquisition of commercial items:

- —Section 52.212–1, Instructions to Offerors—Commercial Items, contains solicitation instructions for the acquisition of commercial items.
- —Section 52.212–2, Evaluation—Commercial Items, contains evaluation information that has been simplified and tailored to meet the requirements of commercial items.
- —Section 52.212–3, Offeror Representations and Certifications—Commercial Items, includes, in one provision, the certifications and representations required to comply with laws or Executive orders.
- —Section 52.212–4, Contract Terms and Conditions—Commercial Items, contains the terms and conditions believed to be consistent with customary commercial practice.
- —Section 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, implements provisions of law or Executive Orders applicable to Government acquisitions of commercial items or commercial components. The clause at 52.212–5 represents the minimum number of clauses required to implement statutes and Executive orders. Certain clauses may apply depending upon the circumstances; the contracting officer will indicate which of these clauses apply for the specific acquisition.
- —Section 52.244–6, Subcontracts for Commercial Items and Commercial Components, implements the preference for the acquisition of commercial items or nondevelopmental items as components of items to be supplied under Federal contracts. This clause will be used in all solicitations and contracts for supplies and services other than commercial items.

Item IV—Whistleblower Protections for Contractor Employees (Ethics) (FAR Case 94–803)

The final rule published as Item III of FAC 90–30 added FAR Subpart 3.9, Whistleblower Protections for Contractor Employees, to implement Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994. The rule contained an effective date of September 19, 1995, but did not discuss the subject of applicability. The rule applies to all contracts in existence as of September 19, 1995, for reprisals to Government contractor employees occurring on or after that date.

Some existing Department of Defense contracts contain a clause addressing whistleblower protections based on a prior statute, 10 U.S.C. 2409a. The remedies provided by FAR Subpart 3.9 do not apply to contracts otherwise covered by the provisions of 10 U.S.C. 2409a.

Item V—Small Business (FAR Case 94–780)

This final rule implements Sections 7101(a) 7106, and 10004 of the Federal Acquisition Streamlining Act (FASA) of 1994. Section 7101(a) of FASA deletes Sections 15(e) and (f) of the Small Business Act (15 U.S.C. 631, et seq.). Those sections established the priority for award of set-asides and provided the statutory basis for a procurement preference for concerns located in Labor Surplus Areas (LSA). Based on this deletion, this rule removes the LSA set-aside program and LSA subcontracting program from the FAR.

Section 7106 of FASA revises Sections 8 and 15 of the Small Business Act to accommodate a Governmentwide goal of 5 percent for women-owned small businesses. This rule deletes existing, separate coverage relating to women-owned businesses and revises existing coverage to place women-owned small businesses on an equal footing with small disadvantaged businesses. In connection with this revision, the Standard Forms 294 and 295 are revised and streamlined.

Section 10004 of FASA, which requires the collection of specified data through the Federal Procurement Data System, is being implemented by FAR case 94–701. This rule augments that coverage by providing a solicitation provision to collect the information on women-owned businesses as required by that FAR case.

Item VI—Publicizing Contract Actions (FAR Case 95–606)

This final rule amends FAR sections 5.207(b)(4) and (b)(6). The amendment deletes the requirement for the Federal Information Processing Standard (FIPS) Number in Commerce Business Daily synopses and, in lieu thereof, requests Government Printing Office (GPO) Billing Account Code Information.

Item VII—Subcontractor Payments (FAR Case 94–762)

This final rule implements Sections 2091 and 8105 of the Federal Acquisition Streamlining Act of 1994. The rule amends FAR Parts 28, 32, and 52 to reflect: statutory requirements related to providing information to subcontractors and prospective subcontractors concerning bonds under the Miller Act; that while the Government does not have privity with subcontractors, and does not serve as a collection agent for them, the Government properly has an interest in the financial capability, managerial competence, and business ethics of companies doing business with the Government; that the contracting officer should be informed about both sides of the argument in a dispute between the prime contractor and its subcontractor in order to exercise good business judgment; and finally, when an assertion raises a creditable question concerning the accuracy of a contractor certification, the contracting officer must decide whether the certification is inaccurate in any material respect, and, if so, bring the matter to the attention of the appropriate authorities, in accordance with agency regulations.

Item VIII—Reimbursement of Protest Costs (FAR Case 94–731)

This final rule implements Sections 1016, 1403, and 1435 of the Federal Acquisition Streamlining Act of 1994. The primary effect of this rule is to allow the Government to seek reimbursement for protest costs it has paid a protester, such as the protester's attorney fees, where that protest has been sustained based upon the awardee's misrepresentation. In addition to any other remedies available, the Government may collect this debt by offsetting the amount against any payment due the awardee under any Government contract the awardee might have.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Federal Acquisition Circular

[Number 90–32]

Federal Acquisition Circular (FAC) 90–32 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified below, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–32 is effective October 1, 1995. FAC Items I, and V through VIII, are applicable for solicitations issued on or after October 1, 1995.

Item II—Where this rule repeats a GSBCA rule that went into effect earlier, the date of the GSBCA rule and its applicability provision prevail; otherwise, this rule is applicable to protests or claims filed on or after October 1, 1995.

Item III—For solicitations issued on or after October 1, 1995: Use of the new policies, provisions and clauses is optional for solicitations issued before December 1, 1995, and mandatory for solicitations issued on or after December 1, 1995.

Item IV—Effective September 19, 1995.

Dated: September 7, 1995.

Roland A. Hassebrock,

Col, USAF Director, Defense Procurement (Acting).

Dated: September 6, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy, General Services Administration.

Dated: September 7, 1995.

Tom Luedtke,

Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 95–22775 Filed 9–15–95; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53

[FAC 90–32; FAR Cases 94–720 and 94–721; Item I]

RIN 9000–AG19; 9000–AG30

Federal Acquisition Regulation; Truth in Negotiations Act and Related Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rules.

SUMMARY: These final rules are issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement those portions of Pub. L. 103–355 that make specific changes to the Truth in Negotiations Act (TINA) or that impact other areas of the FAR that affect contract pricing. These regulatory actions were subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Al Winston, Truth in Negotiations Act (TINA) Team Leader, at (703) 602–2119 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 94–721.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

FAR case 94–721 implements Sections 1201 through 1210 and Sections 1251 and 1252 of the Act. Highlights include making TINA requirements for civilian agencies substantially the same as those for the Department of Defense (increasing the threshold for submission of "cost or pricing data" to $500,000 and adding penalties for defective pricing). Provisions are also included that increase the threshold for cost or pricing data submission every 5 years beginning October 1, 1995. A new exception is added to the requirement for the submission of "cost or pricing data" for commercial items; the approval level for waivers is changed, and prohibitions are placed on acquiring "cost or pricing data" when an exception applies. The coverage includes a clear explanation of adequate price competition as required by the Act.

Also, FAR coverage has been included that addresses (1) "information other than cost or pricing data", (2) exceptions based on established catalog or market price, (3) inter-divisional transfers of commercial items at price, and (4) price competition when only one offer has been received.

The FAR language primarily modifies Part 15, together with associated Part 52 clauses and Part 53 forms. However, changes are also made to clauses where threshold changes are made in Part 14 pertaining to sealed bid contracting, and in Part 31 where the cost principle on material costs has been amended to address inter-divisional transfers of commercial items at price. Additional miscellaneous changes in Parts 1, 4, 16, 33, 36, 45, 46, and 49 have also been included.

The interim rule published at 59 FR 62498, December 5, 1994 (FAR case 94–720, FAC 90–22) is adopted as final, as amended by this FAR case 94–721. FAR case 94–720 provided for an immediate increase to the threshold for "cost or pricing data" submission by contractors to civilian agencies to $500,000. FAC 90–22 (FAR case 94–720) also removed the certification requirement of commercial pricing for parts or components for contractors doing business with civilian agencies.

Policy for Determining Reasonableness of Price

Two major changes are found in the new coverage. The first change shifts the policy of FAR Part 15 with respect to determining price reasonableness. A hierarchical policy preference for the types of information to be used in assessing reasonableness of price is established. The policy states that no additional information should be obtained from the contractor if there is adequate price competition. This is followed by allowing progressively more intrusive types of data requirements. Obtaining "cost or pricing data" is designated as the last choice. Use of "cost or pricing data" is coupled with a reminder that unnecessarily requiring that type of data is not desirable and can lead to additional costs to both the Government and the contractor.

New FAR coverage, based on the Act, is presented that expands the exception based on adequate price competition and provides for a special exception for commercial items. A new section addressing "information other than cost or pricing data" is created and a Standard Form 1448 is provided for use by contractors.

The new policy at FAR 15.804–1(b)(1)(ii) recognizes circumstances when it can be determined that adequate price competition exists even though only one offeror has responded to the Government's requirement.

Defining "Cost or Pricing Data"

The second major change accomplished by the coverage is the clarification of the meaning of the term "cost or pricing data." Currently, the FAR uses the term inconsistently. In some places, "certified cost or pricing data" is used and in other locations, it states "cost or pricing data." In the new coverage, the term has been clarified in the definition to mean that, among other things, "cost or pricing data" is required to be certified in accordance with TINA and FAR 15.804–4, and means all facts that as of the date of agreement on price (or other mutually agreeable date) prudent buyers and sellers would reasonably expect to affect the price negotiations significantly.

Information Other Than Cost or Pricing Data

Since a bright-line test for "cost or pricing data" has now been established, it is also possible to craft a second category of data—"information other than cost or pricing data"—that may be required by the contracting officer in order to establish cost realism or price reasonableness. This information can include limited cost information, sales data or pricing information. The intent is also clear with respect to this category of information. Because it is not "cost or pricing data," certification shall not be required and approval to obtain this information is vested in the contracting officer. The new FAR coverage gives a detailed discussion of "information other than cost or pricing data" at 15.804–5.

B. Regulatory Flexibility Act

The proposed rule was not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Accordingly, an initial regulatory flexibility analysis was not prepared. Although there were no public comments on this rule that indicated that this line of reasoning was incorrect nor that treatment of small entities in the proposed rule was inappropriate, the final rule may have a significant economic impact on a substantial number of small entities because the final rule will substantially affect the price negotiations of non-competitive commercial item contracts. Small businesses may receive a substantial portion of these awards. The rule is expected to decrease the administrative expense of negotiating these awards by reducing the amount of cost or pricing data that must be submitted, reducing the amount of information necessary to qualify for an exception from cost or pricing data requirements, and streamlining the requirements for information supporting price proposals. Accordingly, a Final Regulatory Flexibility Analysis (FRFA) has been prepared and provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Pub. L. 96–511, is deemed to apply because this final rule contains information collection requirements. Approval was obtained from the Office of Management and Budget (OMB) on March 24, 1995, under OMB Control No. 9000–0013. A request for a three-year extension was submitted to OMB on July 11, 1995. Public comments concerning this request were invited through a **Federal Register** notice at 60 FR 36406, July 17, 1995.

D. Public Comments

On January 6, 1995, a proposed rule was published in the **Federal Register** (60 FR 2282). The proposed rule afforded the public a 60-day comment period. During that time, 40 organizations submitted more than 213 comments. A public meeting was also held on this rule on February 13, 1995. Based upon comments received, the TINA drafting team refined the coverage.

On June 19, 1995, at 60 FR 31935, a notification of additional changes was published that revised the original January 6, 1995 proposed rule. Interested parties were advised that the original rule had been modified as a result of earlier comments and that a copy of the revised proposed rule could be obtained from the FAR Secretariat. Those who had commented on the original rule were provided with the updated document. A 30-day written comment period was provided for, and another public hearing was conducted on July 7, 1995. As a result of the second public comment period, the Team received 148 pages of written comments from 18 commenters and one telephonic comment. Based upon comments received, the TINA drafting team further refined the coverage.

The following are highlights of changes that were made to the proposed rule as a result of both rounds of public comments and both public meetings:

- The Rule was edited to improve readability.
- The hierarchical policy at FAR 15.802 was clarified to ensure that it is consistent with TINA and FASA.
- Regulatory guidance implementing the catalog or market price exception to TINA was replaced with more flexible procedures (See 52.215–41 & –42).
  - —The Standard Form (SF) 1412, "Request for Exemption from Submission of Cost or Pricing Data," was eliminated.
  - —Relational tests were eliminated.
  - —Disclosure of lowest prices is no longer mandated.
  - —TINA based postaward audit access is no longer required.
  - —Expanded guidance was provided on what constitutes substantial sales.
  - —Requirement for offerors to account for "government end use" when addressing sales to the general public was eliminated.
  - —Reference to GSA certifications was removed.
- Flexibility in requesting an exception to TINA was improved via generic provisions at FAR 52.215–41 & 52.215–42 that provide broad guidelines on the type of data that would be needed to qualify for a TINA exception.
- The barriers in the proposed rule that prevented easier access to the new commercial item exception have been substantially decreased, to the maximum extent permitted by FASA.
- A Commercial Item definition cross-reference was given.
- A definition of cost realism was added.
- Additional data requirements were removed for qualification under the commercial item exception created by FASA (rebates, credits, warranties, sales to resellers).
- Expanded guidance was provided on effective dates for certification of cost or pricing data.
- The new SF 1448 has been substantially revised to remove reference to cost related information that may not be appropriate for all users of the form.

Disposition of Public Comments

Commercial Exception

Several commenters expressed concern that the proposed coverage continued to subordinate the new commercial item exception to TINA to the traditional TINA exceptions of adequate price competition, catalog or market price, or price set by law or regulation.

The Team has carefully considered this issue. The Team concludes that making the new commercial item exception (Section 1204(d)(2), 1251(d)(2)) co-equal with the original TINA exceptions is consistent with the philosophy of FASA which is intended to make it easier for commercial companies to do business with the Government. However, the Team also concludes that the language at (d)(2), "and the procurement is not covered by an exception in subsection (b)," is clear on its face and prevents an absolute co-equal relationship. Nevertheless, upon further consideration of the issue, the Team has decided that there is sufficient statutory flexibility to provide for a more liberal regulatory implementation of the commercial item exception. Therefore, the Team has modified its proposed FAR language to make regulatory use of the commercial item exception more readily available while still providing for a consistent interpretation of statutory requirements. This is accomplished by replacing the words, "if an exception does not apply" with the words "if the contracting officer does not have sufficient information to support an exception" at 15.804–1(a)(2) and 15.804–1(b)(4).

The Team has also reduced the contractor's risk of doing business with the Government by including a statement in the solicitation provision at 52.215–41 that indicates that providing information on one TINA exception is not a representation that only one TINA exception may apply.

Most Favored Customer

Other commenters were pleased to see that the SF 1412, "Request for Exemption from Submission of Cost or Pricing Data," had been eliminated from the coverage. However, the treatment of "most favored customer" pricing remains a major concern. The commenters continue to press for a FAR prohibition on asking for this type of information.

The Team believes that establishing a FAR prohibition on any specific contracting practice is contrary to the philosophy of FASA to empower the contracting officer and to provide for regulatory flexibility. Furthermore, it is bad policy guidance to construct an absolute prohibition because it is not possible to foresee all circumstances and an absolute prohibition could preclude a reasonable course of action under circumstances that could not be foreseen.

With respect to the specific issue, just as the Team believes having requirements that always mandate obtaining "most favored customer" pricing is flawed, so would a policy that prohibits obtaining this kind of information also be flawed. The Team is convinced that both policy and procedural rules need to be constructed in a flexible manner so they may be adapted to specific sets of circumstances. As a result of earlier comments, the Team removed the Standard Form 1412 and its associated requirement to disclose this type of information as a condition of applying for a catalog or market price exception to TINA.

The Team has also included policy guidance at 15.802 that indicates a strong preference for pricing contracts with the minimum amount of data needed to accomplish the task.

Specifically, when adequate price competition is present, the contracting officer is strongly admonished not to obtain any additional information from the offeror. As the situation moves away from that of adequate price competition, the negotiation position between the parties moves more in favor of the contractor and the contracting officer is allowed to use more pricing tools. Nevertheless, the policy is to price the contract in the least intrusive manner.

SF 1448, "Proposal Cover Sheet/Cost or Pricing Data Not Required"

Concern was also expressed that with the elimination of the SF 1412, contracting officers might request submission of catalog or market price exception data on the new SF 1448. The commenters believed that the SF 1448 was not properly designed for that purpose.

Although the SF 1448 is not intended as a substitute for the SF 1412, the Team modified the SF 1448 to eliminate reference to cost related information. This preserves the bright line between "cost or pricing data" that can only be submitted on an SF 1411 and all other "information other than cost or pricing data" that may be submitted using the SF 1448.

Cost Accounting Standards

Several commenters stated that the Cost Accounting Standards (CAS) needed to be revised to narrow the definition of what constitutes "cost or pricing data" for purposes of CAS covered contracts. The commenters believe that until CAS is modified the coverage in the TINA rule would not completely address the issue of commercial contractors being required to expose cost data to the Government and to be accountable for such data.

The Team believes the commenters have identified a valid concern. However, the matter rests with the CAS Board as the problem is that the CAS definition of "cost data" is more broadly based than the "cost or pricing data" definition in the FAR coverage.

Market Price Exception

Commenters also stated that for the market price exception to be useful to industry it should not be tied to independent verification.

The Team does not agree with the commenters. It believes that it makes sense to maintain this requirement as FASA requires clear FAR standards as to what is required to qualify for a TINA exception. The Team believes independent verification is an essential element of a market price. Furthermore, with the creation of the new FASA commercial item exception to TINA, it is useful to differentiate a price reasonableness determination based on market price from information provided directly by an offeror under the authority of the new FASA commercial item exception.

List of Subjects in 48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

The interim rule published at 59 FR 62498, December 5, 1994, FAC 90–22, FAR case 94–720, is adopted as final, as amended by this FAR case 94–721. Therefore, 48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. The table in section 1.106 is amended under the "FAR Segment" and "OMB Control Number" columns by removing "52.215–32" and "9000–0105", and "SF 1412" and "9000–0013"; and adding entries, in numerical order, to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * *	*
52.215–41	9000–0013
52.215–42	9000–0013
* * * *	*
SF 1448	9000–0013
SF 1449	9000–0136

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.702 is amended by adding paragraph (a)(3) to read as follows:

4.702 Applicability.

* * * * *

(a)(3) Audit—Commercial Items (52.215–43).

* * * * *

4. Section 4.803 is amended by revising paragraphs (a)(17) and (b)(4) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver, or information other than cost or pricing data.

* * * * *

(b) * * *

(4) Cost or pricing data, Certificates of Current Cost or Pricing Data, or information other than cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office.

* * * * *

PART 14—SEALED BIDDING

14.201–7 [Amended]

5. Section 14.201–7 is amended by removing paragraph (d) and redesignating paragraph "(e)" as paragraph "(d)."

PART 15—CONTRACTING BY NEGOTIATION

6. Section 15.106–2 is added to read as follows:

15.106–2 Audit—Commercial Items.

(a) This subsection implements 10 U.S.C. 2306a(d)(2) and (3) and 41 U.S.C. 254b(d)(2) and (3).

(b) The contracting officer shall, when contracting by negotiation, insert clause 52.215–43, Audit—Commercial Items, in solicitations and contracts when submission of cost or pricing data is expected to be excepted under 15.804–1(a)(2) (i.e., a commercial item where price is otherwise fair and reasonable). The clause shall also be included in solicitations and contracts when cost or pricing data are required, for incorporation into subcontracts that may be excepted under 15.804–1(a)(2).

15.406–5 [Amended]

7. Section 15.406–5(b) is amended by inserting at the end of the paragraph the parenthetical "(see 15.804–6 and 15.804–8).".

8. Section 15.703(a)(2) is revised to read as follows:

15.703 Acquisitions requiring make-or-buy programs.

(a) * * *

(2) Qualifies for an exception from the requirement to submit cost or pricing data under 15.804–1; or

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9. Section 15.801 is amended by revising the definitions of "Cost analysis" and "Cost or pricing data", and adding in alphabetical order "Information other than cost or pricing data", "Subcontract", "Commercial item", and "Cost realism" to read as follows:

15.801 Definitions.

Commercial item is defined in 2.101.

Cost analysis means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data or information other than cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

Cost or pricing data means all facts that, as of the date of price agreement or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.804–4. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—

(a) Vendor quotations;

(b) Nonrecurring costs;

(c) Information on changes in production methods and in production or purchasing volume;

(d) Data supporting projections of business prospects and objectives and related operations costs;

(e) Unit-cost trends such as those associated with labor efficiency;

(f) Make-or-buy decisions;

(g) Estimated resources to attain business goals; and

(h) Information on management decisions that could have a significant bearing on costs.

Cost realism means the costs in an offeror's proposal are (a) realistic for the work to be performed; (b) reflect a clear understanding of the requirements; and (c) are consistent with the various elements of the offeror's technical proposal.

* * * * *

Information other than cost or pricing data means any type of information that is not required to be certified, in accordance with 15.804–4, that is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

* * * * *

Subcontract, as used in this subpart, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

* * * * *

10. Section 15.802 is revised to read as follows:

15.802 Policy.

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that the Truth in Negotiations Act, as implemented in 15.804–2 and 15.804–5(b) permits, the contracting officer shall generally use the following order of preference in determining the type of information required:

(1) No further information from the offeror if the price is based on adequate price competition, except as provided by 15.804–5(a)(3).

(2) Information other than cost or pricing data:

(i) Information related to prices (*e.g.*, established catalog or market prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror.

(ii) Cost information, which does not meet the definition of cost or pricing data at 15.801.

(3) *Cost or pricing data*. The contracting officer should use every means available to ascertain a fair and reasonable price prior to requesting cost or pricing data. Contracting officers shall not unnecessarily require the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead-time, and wastes both contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor, or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

11. Section 15.803 is amended in paragraph (a) by revising the last sentence to read as follows:

15.803 General.

(a) * * * This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data supporting the proposal.

15.804 Cost or pricing data and information other than cost or pricing data.

12. Section 15.804, heading, is revised to read as set forth above.

13. Section 15.804–1 is revised to read as follows:

15.804–1 Prohibition on obtaining cost or pricing data.

(a) *Exceptions to cost or pricing data requirements.* The contracting officer shall not, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, require submission of cost or pricing data (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) If the contracting officer determines that prices agreed upon are based on—

(i) Adequate price competition (see exception standards at paragraph (b)(1) of this subsection);

(ii) Established catalog or market prices of commercial items sold in substantial quantities to the general public (see exception standards at paragraph (b)(2) of this section); or

(iii) Prices set by law or regulation (see exception standards at paragraph (b)(3) of this subsection).

(2) For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under paragraph (a)(1) of this section, but the contracting officer can determine the price is fair and reasonable (see exception standards at paragraph (b)(4) of this section and pricing requirements at 15.804–5(b));

(3) For exceptional cases where a waiver has been granted (see exception standards at paragraph (b)(5) of this section); or

(4) For modifications to contracts or subcontracts for commercial items, if the basic contract or subcontract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements under paragraph (a)(1) of this section and the modification does not change the contract or subcontract to a contract or subcontract for the acquisition of other than a commercial item (see exception standards at paragraph (b)(6) of this subsection).

(b) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition.* A price is based on adequate price competition if—

(i) Two or more responsible offerors, competing independently, submit priced offers responsive to the Government's expressed requirement and if—

(A) Award will be made to a responsible offeror whose proposal offers either—

(*1*) The greatest value (see 15.605(c)) to the Government and price is a substantial factor in source selection; or

(*2*) The lowest evaluated price; and

(B) There is no finding that the price of the otherwise successful offeror is unreasonable. Any such finding must be supported by a statement of the facts and approved at a level above the contracting officer;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers responsive to the solicitation's expressed requirement, even though only one offer is received from a responsible, responsive offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that—

(*1*) The offeror believed that at least one other offeror was capable of submitting a meaningful, responsive offer; and

(*2*) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination that the proposed price is based on adequate price competition and is reasonable is approved at a level above the contracting officer; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions under contracts that resulted from adequate price competition.

(2) *Established catalog or market prices*—(i) *Established catalog price.* Established catalog prices are prices (including discount prices) recorded in a catalog, price list, schedule, or other verifiable and established record that (A) are regularly maintained by the manufacturer or vendor; and (B) are published or otherwise available for customer inspection.

(ii) *Established market price.* An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

(iii) *Based on.* A price may also be based on an established catalog or market price if the item or class of items being purchased is not itself a catalog or market priced commercial item but is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resorting to cost analysis.

(iv) *Sold in substantial quantities.* An item is sold in substantial quantities if there are sales of more than a nominal quantity based on the norm of the industry segment. In determining what constitutes a substantial quantity, the contracting officer should consider such things as the size of the market; and how recently the item was introduced into the market. Models, samples, prototypes, and experimental units are not substantial quantities. For services to be sold in substantial quantities, they must also be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained principally to provide the services.

(A) The method used to establish sales may be sales order, contract, shipment, invoice, actual recorded sales, or other records, so long as the method used is consistent, provides an accurate indication of sales activity, and is verifiable. If the item would not otherwise qualify for an exception, sales of the item by affiliates may be considered. In addition, sales of essentially the same commercial item by other manufacturers or vendors may be considered in determining whether sales are substantial, provided that the price of those sales is also considered. Data to support sales quantities may also come from other manufacturers, industry associations or marketing groups, annual financial reports, etc.

(B) An exception may apply for an item based on the market price of the item regardless of the quantity of sales of the item previously made by the offeror or the types of customers for these sales, provided that sales of the same or similar items by other sellers meet the exception criteria.

(v) *General public.* The general public ordinarily consists of buyers other than the U.S. Government or its instrumentalities, *e.g.*, U.S. Government corporations. Sales to the general public do not include sales to affiliates of the offerors or purchases by the U.S. Government on behalf of foreign governments, such as for Foreign Military Sales. If the contracting officer can determine without requiring information from the offeror that sales are for Government end use, these sales need not be considered sales to the general public.

(3) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws are sufficient to set a price.

(4) *Commercial items.* For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under 15.804–1(a)(1) or (a)(4), the contracting officer shall grant an exception for a contract, subcontract, or modification of a contract or subcontract if the contracting officer obtains the pricing information described in 15.804–5(b). Cost or pricing data may be obtained for such a commercial item only if the contracting officer makes a written determination that the pricing information is inadequate for performing a price analysis and determining price reasonableness.

(5) *Exceptional cases.* The head of the contracting activity may, without power of delegation, waive the requirement for submission of cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. A waiver may be considered if another exception does not apply but the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the head of the contracting activity has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless an exception otherwise applies to the subcontract.

(6) *Modifications.* This exception only applies when the original contract or subcontract was exempt from cost or pricing data based on adequate price competition, catalog or market price, or price set by law or regulation (15.804–1(a)(1)). For modifications of contracts or subcontracts for commercial items, the exception at 15.804–1(a)(4) applies if the modification does not change the item from a commercial item to a noncommercial item. However, if the modification to a contract or a subcontract changes the nature of the work under the contract or subcontract either by a change to the commercial item or by the addition of other noncommercial work, the contracting officer is not prohibited from obtaining cost or pricing data for the added work.

(c) *Special circumstances when purchasing commercial items.* (1) It is not necessary to obtain information supporting an exception for each line item. Sampling techniques may be used.

(2) If the U.S. Government has acted favorably on an exception request for the same or similar items, the contracting officer may consider the prior submissions as support for the current exception request. Relief from the submission of new information does not relieve the contracting officer from the requirement to determine reasonableness of price on the current acquisition.

(3) When acquiring by separate contract an item included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, the contracting officer should grant an exception and not require documentation if the offeror has provided proof that an exception has been granted for the schedule item. Price analysis shall be performed in accordance with 15.805–2 to determine reasonableness of price.

(4) The contracting officer and offeror may make special arrangements for the submission of exception requests for repetitive acquisitions. These arrangements can take any form as long as they set forth an effective period and the exception criteria at 15.804–1 are satisfied. Such arrangements may be extended to other Government offices with their concurrence.

(d) *Requesting an exception.* In order to qualify for an exception, other than an exception for adequate price competition, from the requirements to submit cost or pricing data, the offeror must submit a written request. The solicitation provision at 52.215–41 or other methods may be used. It is the responsibility of the contracting officer to determine, based on the information submitted, and any other information available to the contracting officer, which exception, if any, applies.

14. Section 15.804–2 is revised to read as follows:

15.804–2 Requiring cost or pricing data.

(a) (1) Pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.804–1 applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.804–1(b)(5) should be considered. The threshold for obtaining cost or pricing data is $500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect on the date of agreement on price, or the date of award, whichever is later; or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data (but see exceptional cases at 15.804–1(b)(5)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases. (For example, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(2) Unless prohibited because an exception at 15.804–1(a)(1) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804–4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.801 and shall not be certified in accordance with 15.804–4.

(d) The requirements of this section also apply to contracts entered into by the head of an agency on behalf of a foreign government.

15.804–3 [Reserved]

15. Section 15.804–3 is removed and reserved.

16. Section 15.804–4 is amended by revising paragraph (a), the double asterisk footnote to the certification statement following paragraph (a), paragraph (c), and paragraph (e); and in paragraphs (f) and (h) by removing the word "certified". The revised text reads as follows:

15.804–4 Certificate of Current Cost or Pricing Data.

(a) When cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown following this paragraph (a), and shall include the executed certificate in the contract file.

Certificate of Current Cost or Pricing Data

* * * * *

* * * Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price.

* * * * *

(c) The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (*e.g.*, actual indirect costs). Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

* * * * *

(e) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this subsection.

* * * * *

17. Section 15.804–5 is added to read as follows:

15.804–5 Requiring information other than cost or pricing data.

(a)(1) If cost or pricing data are not required because an exception applies, or an action is at or below the cost or pricing data threshold, the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation.

(2) The contracting officer may require submission of information other than cost or pricing data only to the extent necessary to determine reasonableness of the price or cost realism. The contractor's format for submitting such information shall be used unless the contracting officer determines that use of a specific format is essential. The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.804–4.

(3) When an acquisition is based on adequate price competition, generally no additional information is necessary to determine the reasonableness of price. However, if it is determined that additional information is necessary to determine the reasonableness of the price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(4) When cost or pricing data are not required because an action is at or below the cost or pricing data threshold, information requested shall include, as a minimum, appropriate information on the prices and quantities at which the same or similar items have previously been sold, that is adequate for evaluating the reasonableness of the proposed price. Cost information may also be required. For example, cost information might be necessary to support an analysis of material costs.

(b)(1) When acquiring commercial items for which an exception under 15.804–1(a)(2) may apply, the contracting officer shall seek to obtain from the offeror or contractor information on prices at which the same or similar items have been sold in the commercial market, that is adequate for evaluating, through price analysis, the reasonableness of the price of the action.

(2) If such information is not available from the offeror or contractor, the contracting officer shall seek to obtain such information from another source or sources.

(3) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(4) In requesting information from an offeror under this paragraph (b), the contracting officer shall, to the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.

(5) Any information obtained pursuant to this paragraph (b) that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed by the Government.

(c) If, after receipt of offers, the contracting officer concludes there is insufficient information available to determine price reasonableness and none of the exceptions applies, then cost or pricing data shall be obtained.

18. Section 15.804–6 is amended by revising the heading and paragraphs (a) and (b);

Amending Table 15–2 by:

(a) Revising the heading;

(b) Adding introductory text;

(c) Revising the first paragraph of item 1, and the fourth paragraph of Item 1 entitled "Established Catalog or Market Prices/Prices Set by Law or Regulation";

(d) Revising item 4; and

(e) Amending 8B by revising the paragraph "Under Column (2)" instruction under the table;

Adding Table 15–3 following Table 15–2;

And revising paragraph (c) of 15.804–6; and revising the first sentence of paragraph (d).

The revised and added text reads as follows:

15.804–6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(a) Taking into consideration the hierarchy at 15.802, the contracting officer shall specify in the solicitation (see 15.804–8 (h) and (i))—

(1) Whether cost or pricing data are required;

(2) That, in lieu of submitting cost or pricing data, the offeror may submit a request for exception from the requirement to submit cost or pricing data;

(3) Whether information other than cost or pricing data is required, if cost or pricing data are not necessary;

(4) The format (see paragraph (b) of this subsection) in which the cost or pricing data or information other than cost or pricing data shall be submitted; and

(5) Necessary preaward or postaward access to offeror's records if not provided by the use of a standard form or clause.

(b)(1) Cost or pricing data shall be submitted on a SF 1411 unless required to be submitted on one of the termination forms specified in subpart 49.6. The SF 1411 shall not be used unless cost or pricing data are required to be submitted. Contract pricing proposals submitted on a SF 1411 with supporting attachments shall be prepared in accordance with Table 15–2 or as specified by the contracting officer. Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.

(2) If information other than cost or pricing data is required to support price reasonableness or cost realism, the contracting officer may require such information to be submitted using a SF 1448. Requests for information should be tailored so that only necessary data are requested. The information is not considered cost or pricing data and shall not be certified in accordance with 15.804–4. Information submitted on a SF 1448 shall be prepared following the instructions provided in Table 15–3.

Table 15–2 Instructions for Submission of a Contract Pricing Proposal When Cost or Pricing Data are Required

The SF 1411 provides a cover sheet for use by offerors to submit to the Government a pricing proposal of estimated and/or actual costs only when cost or pricing data are required.

1. The pricing proposal shall be segregated by contract line item with sufficient detail to permit cost analysis. Attach cost-element breakdowns, using the applicable formats prescribed in Item 8A, B, or C of this section, for each proposed line item. These breakdowns must conform to the instructions in the solicitation and any specific requirements established by the contracting officer. Furnish supporting breakdowns for each cost element, consistent with the offeror's cost accounting system.

* * * * *

Established Catalog or Market Prices or Prices Set by Law or Regulation or Commercial Item Not Covered By Another Exception—When an exception from the requirement to submit cost or pricing data is requested, whether the item was produced by others or by the offeror, provide justification for the exception as required by 15.804–1(d).

* * * * *

4. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer or an authorized representative. As later information comes into the offeror's possession, it should be promptly submitted to the contracting officer in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or another date agreed upon between the parties if applicable.

* * * * *

8. Headings for Submission of Line-Item Summaries:

* * * * *

B. Change Orders, Modifications, and Claims.

* * * * *

Under Column (2)—Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

* * * * *

Table 15–3 Instructions for Submission of Information Other Than Cost or Pricing Data

SF 1448 is a cover sheet for use by offerors to submit information to the Government when cost or pricing data are not required but the contracting officer has requested information to help establish price reasonableness or cost realism. Such information is not considered cost or pricing data, and shall not be certified in accordance with 15.804–4.

1. The information submitted shall be at the level of detail described in the solicitation or specified by the contracting officer. The offeror's own format is acceptable unless the contracting officer determines that use of a specific format is essential.

A. If adequate price competition is expected, the information may include cost or technical information necessary to determine the cost realism and adequacy of the offeror's proposal, e.g., information adequate to validate that the proposed costs are consistent with the technical proposal, or cost breakdowns to help identify unrealistically priced proposals.

B. If the offer is expected to be at or below the cost or pricing data threshold, and adequate price competition is not expected, the information may consist of data to permit the contracting officer and authorized representatives to determine price reasonableness, e.g., information to support an analysis of material costs (when sufficient information on labor and overhead rates is already available), or information on prices and quantities at which the offeror has previously sold the same or similar items.

2. Any information submitted must support the price proposed. Include sufficient detail or cross references to clearly establish the relationship of the information provided to the price proposed. Support any information provided by explanations or supporting rationale as needed to permit the contracting officer and authorized representatives to evaluate the documentation.

* * * * *

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal (see 15.804–4(c)).

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or specifically identified in writing by the time of agreement on price or another time agreed upon by the parties. * * *

* * * * *

19. Section 15.804–7 is amended by revising paragraphs (b)(7)(i), (ii)(B), and (iii) to read as follows:

15.804–7 Defective cost or pricing data.

* * * * *

(b) * * *

(7)(i) In addition to the price adjustment amount, the Government is entitled to interest on any overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments would not result from amounts paid for contract financing as defined in 32.902.

(ii) * * *

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be (*1*) the date payment was made for the related completed and accepted contract items, or (*2*) for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

* * * * *

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

* * * * *

20. Section 15.804–8 is amended by revising the heading and adding paragraphs (h) and (i) to read as follows:

15.804–8 Contract clauses and solicitation provisions.

* * * * *

(h) *Requirements for cost or pricing data or information other than cost or pricing data.* Considering the hierarchy at 15.802, the contracting officer may insert the provision at 52.215–41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. Use the provision with Alternate I to specify a format for cost or pricing data other than the format required by Table 15–2 of 15.804–6(b). Use the provision with Alternate II when copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the provision with Alternate III when submission via electronic media is required. Replace the basic provision with Alternate IV when a SF 1411 will not be required because an exception may apply, but information other than cost or pricing data is required as described in 15.804–5.

(i) *Requirements for cost or pricing data or information other than cost or pricing data—modifications.* Considering the hierarchy at 15.802, the contracting officer may insert the clause at 52.215–42, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception. Use the clause with Alternate I to specify a format for cost or pricing data other than the format required by Table 15–2 of 15.804–6(b). Use the clause with Alternate II if copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the clause with Alternate III if submission via electronic media is required. Replace the basic clause with Alternate IV if a SF 1411 is not required because an exception may apply, but information other than cost or pricing data is required as described in 15.804–5.

21. Section 15.805–1 is amended in the first sentence of paragraph (a) by inserting a comma after the word "engineering"; and by adding paragraph (d) to read as follows:

15.805–1 General.

* * * * *

(d) The Armed Services Pricing Manual (ASPM Volume I, "Contract Pricing," and Volume 2, "Price Analysis") was issued by the Department of Defense to guide pricing and negotiating personnel. The ASPM provides detailed discussion and examples applying pricing policies to pricing problems. The ASPM is available for use for instruction and professional guidance. However, it is not directive and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM Vol. 1 (Stock No. 008–000–00457–9) and Vol. 2 (Stock No. 008–000–00467–6) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, by telephone (202) 512–1800 or facsimile (202) 512–2250, or by mail order from the Superintendent of Documents, P. O. Box 371954, Pittsburgh, PA 15250–7954.

22. Section 15.805–2 is amended by adding paragraph (f) to read as follows:

15.805–2 Price analysis.

* * * * *

(f) Comparison of proposed prices with prices for the same or similar items obtained through market research.

23. Section 15.806–1 is amended in the first sentence of paragraph (a)(2) by removing the phrase "claims for exemption" and inserting "requests for exception" in its place, and revising (b) to read as follows:

15.806–1 General.

* * * * *

(b) Unless the subcontract qualifies for an exception under 15.804–1, any contractor required to submit cost or pricing data also shall obtain cost or pricing data before awarding any subcontract or purchase order expected to exceed the cost or pricing data threshold, or issuing any modification involving a price adjustment expected to exceed the cost or pricing data threshold.

* * * * *

24. Section 15.806–2 is amended by revising paragraph (a), the first sentence of (c), and (d) to read as follows:

15.806–2 Prospective subcontractor cost or pricing data.

(a) The contracting officer shall require a contractor that is required to submit cost or pricing data also to submit to the Government (or cause submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is

(1) $1,000,000 or more,

(2) Both more than the cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, or

(3) Considered to be necessary for adequately pricing the prime contract. These subcontract cost or pricing data may be submitted using a Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).

* * * * *

(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exceptions, the contracting officer shall not require submission of cost or pricing data to the Government in that case. * * *

(d) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of price agreement or, if applicable, another date agreed upon between the parties, given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

* * * * *

25. Section 15.808 is amended in paragraph (a)(5) introductory text by removing the word "certified"; by revising paragraph (a)(6); by removing paragraph (a)(7) and redesignating paragraphs (a)(8) through (a)(10) as (a)(7) through (a)(9) to read as follows:

15.808 Price negotiation memorandum.

(a) * * *

(6) If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it.

* * * * *

26. Section 15.812–1 is amended by revising paragraph (b) and the second sentence of paragraph (c) to read as follows:

15.812–1 General.

* * * * *

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public under 15.804–1(b)(2) or a commercial item exception under 15.804–1(b)(4).

(c) * * * The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804–1(b)(1)). * * *

PART 16—TYPES OF CONTRACTS

16.203–4 [Amended]

27. Section 16.203–4 is amended in paragraphs (a)(1)(ii) and (b)(1)(ii) by removing "15.804–3" and inserting "15.804–1" in its place.

28. Section 16.501(c) is amended by revising the first sentence to read as follows:

16.501 General.

* * * * *

(c) Indefinite-delivery contracts may provide for firm-fixed-prices (see 16.202), fixed prices with economic price adjustment (see 16.203), fixed prices with prospective redetermination (see 16.205), or prices based on catalog or market prices (see 15.804–1(b)(2)).

* * *

28a. Section 16.603–4 is amended after the first sentence in paragraph (b)(3) by adding a sentence to read as follows:

16.603–4 Contract clauses.

* * * * *

(b)(3) * * * If, at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 15.804–1 for not requiring submission of cost or pricing data, the words "and cost or pricing data supporting its proposal" may be deleted from paragraph (a) of the clause. * * *

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

29. Section 31.205–26 is amended by revising paragraphs (e) and (f) to read as follows:

31.205–26 Material costs.

* * * * *

(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when the item being transferred qualifies for an exception under 15.804–1 and the contracting officer has not determined the price to be unreasonable.

(f) When a catalog or market price exception under 15.804–1(a)(1)(ii) applies under paragraph (e) of this subsection, the price should be adjusted to reflect the quantities being acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements.

PART 33—PROTESTS, DISPUTES, AND APPEALS

30. Section 33.207(d) is revised to read as follows:

33.207 Contractor certification.

* * * * *

(d) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in 15.804–2(a)(1)(iii) regarding cost or pricing data).

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT ENGINEERING CONTRACTS

31. Section 36.402 is amended by revising the introductory text of paragraph (b) and (b)(1) to read as follows:

36.402 Price negotiation.

* * * * *

(b) The contracting officer shall evaluate proposals and associated cost or pricing data or information other than cost or pricing data and shall compare them to the Government estimate.

(1) When submission of cost or pricing data is not required (see 15.804–1 and 15.804–2), and any element of proposed cost differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost information concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

* * * * *

PART 45—GOVERNMENT PROPERTY

32. Section 45.103(b)(1) is revised to read as follows:

45.103 Responsibility and liability for Government property.

* * * * *

(b) * * *

(1) Negotiated fixed-price contracts for which the contract price is not based upon an exception at 15.804–1;

* * * * *

33. Section 45.106(b)(2) is revised to read as follows:

45.106 Government property clauses.

* * * * *

(b) * * *

(2) If the contract is—

(i) A negotiated fixed-price contract for which prices are not based on an exception at 15.804–1; or

(ii) A fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.

* * * * *

PART 46—QUALITY ASSURANCE

46.804 [Amended]

34. Section 46.804 is amended by removing the parenthetical "(see 15.804–3(c))" and inserting "(see 15.804–1(b)(2))".

PART 49—TERMINATION OF CONTRACTS

35. Section 49.208 is amended in the introductory paragraph by revising the last sentence to read as follows:

49.208 Equitable adjustment after partial termination.

* * * The contractor shall submit the proposal on SF 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

35a. Part 52 is amended by removing the derivation lines following all "(End of provision)" or "(End of clause)" parentheticals and Alternates.

36. Section 52.214–27 is amended by revising the date of the clause and paragraphs (a) and (e)(2) to read as follows:

52.214–27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding (Oct. 1995)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.804–2(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.804–1 applies.

* * * * *

(e) * * *

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause.)

37. Section 52.214–28 is amended by revising the date of the clause and paragraphs (b) and (d) to read as follows:

52.214–28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Oct. 1995)

* * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804–1 applies.

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1).

(End of clause.)

52.214–29 [Amended]

37a. Section 52.214–29 is amended in the introductory text by removing the citation "14.201–7(e)" and inserting "14.201–7(d)" in its place.

38. Section 52.215–22 is amended by revising the date of the clause, and paragraph (d)(2) to read as follows:

52.215–22 Price Reduction for Defective Cost or Pricing Data.

* * * * *

Price Reduction for Defective Cost or Pricing Data (Oct. 1995)

* * * * *

(d) * * *

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause.)

39. Section 52.215–23 is amended by revising the clause date and paragraphs (a) and (e)(2) to read as follows:

52.215–23 Price Reduction for Defective Cost or Pricing Data—Modifications

* * * * *

Price Reduction for Defective Cost or Pricing Data—Modifications (Oct. 1995)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), except that this clause does not apply to any modification if an exception under FAR 15.804–1 applies.

* * * * *

(e) * * *

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

40. Section 52.215–24 is amended by revising the date of the clause, and paragraph (a) to read as follows:

52.215–24 Subcontractor Cost or Pricing Data.

* * * * *

Subcontractor Cost or Pricing Data (Oct 1995)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804–1 applies.

* * * * *

41. Section 52.215–25 is amended by revising the date of the clause and paragraphs (b) and (d) to read as follows:

52.215–25 Subcontractor Cost or Pricing Data—Modifications.

* * * * *

Subcontractor Cost or Pricing Data—Modifications (Oct 1995)

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804–1 applies.

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1) on the date of agreement on price or the date of award, whichever is later.

(End of clause)

42. Section 52.215–26 is amended by revising the clause date and paragraph (b) to read as follows:

52.215–26 Integrity of Unit Prices.

* * * * *

Integrity of Unit Prices (Oct 1995)

* * * * *

(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public or to an item qualifying for a commercial item exception to cost or pricing data. A price is based on an established catalog or market price only if the item being purchased is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resort to cost analysis.

* * * * *

43. Sections 52.215–41 through 52.215–43 are added to read as follows:

52.215–41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

As prescribed in 15.804–8(h), insert the following provision:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (Oct 1995)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds ______ * (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information.* Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) For a commercial item exception, information on prices at which the same item or similar items have been sold in the commercial market.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

---

*Insert dollar amount for sampling (see 15.804–1(c)(1))

(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15–2 of FAR 15.804–6(b)(2).

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804–4.

(c) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(End of provision)

Alternate I (Oct 1995). As prescribed in 15.804–8(h), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

Alternate II (Oct 1995). As prescribed in 15.804–8(h), add the following paragraph (d) to the basic provision:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (Oct. 1995). As prescribed in 15.804–8(h), add the following paragraph (d) to the basic provision (if Alternate II is also used, redesignate as paragraph (e)):

(d) Submit the cost portion of the proposal via the following electronic media: *(Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.).*

Alternate IV (Oct. 1995). As prescribed in 15.804–8(h), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804–6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data).*

52.215–42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.

As prescribed in 15.804–8(i), insert the following clause:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications (Oct. 1995)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.804–2(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds _____* (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information*. Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) Information on modifications of contracts or subcontracts for commercial items.

(A) If (*1*) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, catalog or market prices of commercial items, or prices set by law or regulation; and (*2*) the modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor may provide information on prices at which the same item or similar items have been sold in the commercial market.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(3) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15–2 of FAR 15.804–6(b)(2).

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804–4.

(End of clause.)

Alternate I (Oct. 1995). As prescribed in 15.804–8(i), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

Alternate II (Oct. 1995). As prescribed in 15.804–8(i), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) The Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (Oct. 1995). As prescribed in 15.804–8(i), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: (*Insert media format*).

Alternate IV (Oct. 1995). As prescribed in 15.804–8(i), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804–6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.*)

---

*Insert dollar amount for sampling (see 15.804–1(c)(1)).

52.215–43 Audit—Commercial Items.

As prescribed at 15.106–2, insert the following clause:

Audit—Commercial Items (Oct. 1995)

(a) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form.

(b) This paragraph applies to solicitations and contracts or subcontracts for commercial items that may be or have been granted an exception from submittal of cost or pricing data only under FAR 15.804–1(a)(2). In order to determine the accuracy of the information on prices at which the same or similar items have been sold in the commercial market, the Contracting Officer and authorized representatives have a right to examine such information provided by the offeror, Contractor, or subcontractor, and all records that directly relate to such information. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the marketplace. This right shall expire two years after the date of award of the contract, or two years after the date of any modification to the contract, with respect to which this information is provided.

(c) If the prime Contractor and each higher-tier subcontractor were required to submit cost or pricing data, the Contractor and each subcontractor shall insert the substance of this clause, including this paragraph (c), in each subcontract for which submission of cost or pricing data was required or for which an exception was granted under FAR 15.804–1(a)(2).

(End of clause.)

52.216–2 [Amended]

44. Section 52.216–2 is amended in the clause heading by revising the date to read "(Oct. 1995)"; in paragraph (a)(2) by removing "15.804–3" and inserting "15.804–1" in its place; and removing the parenthetical following "(End of clause)".

52.216–3 [Amended]

45. Section 52.216–3 is amended in the clause heading by removing "(APR 1984)" and inserting "(Oct. 1995)"; in paragraph (a)(2) by removing the reference "15.804–3" and inserting "15.804–1"; and by removing the parenthetical following "(End of clause)".

46. Section 52.216–5 is amended by revising the clause date and paragraph (d)(1)(i)(A); and by removing the parenthetical following "(End of clause)" to read as follows:

52.216–5 Price Redetermination—Prospective.

* * * * *

Price Redetermination—Prospective (Oct. 1995)

* * * * *

(d) * * *

(1) * * *

(i) * * *

(A) An estimate and breakdown of the costs of these supplies or services on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree;

* * * * *

47. Section 52.216–6 is amended by revising the introductory text, the clause date, and paragraph (c)(1)(ii) to read as follows:

52.216–6 Price Redetermination—Retroactive.

As prescribed in 16.206–4, insert the following clause:

Price Redetermination—Retroactive (Oct. 1995)

* * * * *

(c) * * *

(1) * * *

(ii) A statement on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

* * * * *

48. Section 52.216–25 is amended by revising the introductory paragraph; and the parentheticals following the end of the main clause and the end of Alternate I are removed to read as follows:

52.216–25 Contract Definitization.

As prescribed in 16.603–4(b)(3), insert the following clause:

* * * * *

49. Section 52.222–48 is amended by revising the clause date, redesignating paragraphs (a) (i), (ii), and (iii) as (a) (1), (2), and (3), and revising newly redesignated paragraph (a)(2) to read as follows:

52.222–48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical and/or Office and Business Equipment—Contractor Certification.

* * * * *

Exemption From Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical and/or Office and Business Equipment—Contractor Certification (Oct. 1995)

(a) * * * (2) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain ADP, scientific and medical and/or office and business equipment. An "established catalog price" is a price (including discount price) recorded in a catalog, price list, schedule, or other verifiable and established record that is regularly maintained by the manufacturer or the Contractor and is either published or otherwise available for inspection by customers. An "established market price" is a current price, established in the course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated by data from sources independent of the manufacturer or Contractor; and * * *

* * * * *

PART 53—FORMS

50. Section 53.215–2 is revised to read as follows:

53.215–2 Price negotiation (SF's 1411 and 1448).

The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data or information other than cost or pricing data from offerors or contractors, as specified in 15.804:

(a) SF 1411 (REV. OCT./95), *Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).* (See 15.804–6(b)(1).) SF 1411 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

(b) SF 1448 (OCT/95), *Proposal Cover Sheet (Cost or Pricing Data Not Required).* (See 15.804–6(b)(2).) SF 1448 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

51. Section 53.301–1411 is revised and 53.301–1448 is added to read as follows:

BILLING CODE 6820–EP–P

53.301–1411 Contract Pricing Proposal Cover Sheet.

CONTRACT PRICING PROPOSAL COVER SHEET
(Cost or Pricing Data Required)

1. SOLICITATION/CONTRACT/MODIFICATION NUMBER

OMB No.: 9000-0013
Expires:

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.

2a. NAME OF OFFEROR
2b. FIRST LINE ADDRESS
2c. STREET ADDRESS
2d. CITY
2e. STATE
21. ZIP CODE

3a. NAME OF OFFEROR'S POINT OF CONTACT
3b. TITLE OF OFFEROR'S POINT OF CONTACT
3c. TELEPHONE
AREA CODE
NUMBER

4. TYPE OF CONTRACT ACTION *(Check)*

☐	a. NEW CONTRACT	☐	d. LETTER CONTRACT
☐	b. CHANGE ORDER	☐	e. UNPRICED ORDER
☐	c. PRICE REVISION/ REDETERMINATION	☐	f. OTHER *(Specify)*

5. TYPE OF CONTRACT *(Check)*

☐ FFP ☐ CPFF ☐ CPIF ☐ CPAF
☐ FPI ☐ OTHER *(Specify)*

6. PROPOSED COST *(A+B=C)*

A. COST
B. PROFIT/FEE
C. TOTAL

7. PERFORMANCE

PLACE	a.		PERIOD	a.	
	b.			b.	

8. List and reference the identification, quantity and total price proposed for each contract line item. A line item cost breakdown supporting this recap is required unless otherwise specified by the Contracting Officer. *(Continue on reverse, and then on plain paper, if necessary. Use same headings.)*

a. LINE ITEM NO.	b. IDENTIFICATION	c. QUANTITY	d. TOTAL PRICE	e. PROP. REF. PAGE

9. PROVIDE THE FOLLOWING *(If available)*

NAME OF CONTRACT ADMINISTRATION OFFICE	NAME OF AUDIT OFFICE
STREET ADDRESS	STREET ADDRESS
CITY / STATE / ZIP CODE	CITY / STATE / ZIP CODE
TELEPHONE ▶ AREA CODE / NUMBER	TELEPHONE ▶ AREA CODE / NUMBER

10. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK? *(If "yes" identify)*
☐ YES ☐ NO

11a. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? *(If "Yes," complete Item 11B)*
☐ YES ☐ NO

11b. TYPE OF FINANCING *(Check one)*
☐ ADVANCE PAYMENT ☐ PROGRESS PAYMENTS
☐ GUARANTEED LOANS

12. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS FOR THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS? *(If "Yes," identify item(s), customer(s) and contract number(s) on reverse of form.)*
☐ YES ☐ NO

13. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND FAR PART 31, COST PRINCIPLES? *(If "no," explain on reverse of form)*
☐ YES ☐ NO

14. COST ACCOUNTING STANDARDS BOARD (CASB) DATA *(Public Law 91-379 as amended and FAR PART 30)*

a. WILL THIS CONTRACT ACTION BE SUBJECT TO CASB REGULATIONS? *(If "No," explain in proposal)*
☐ YES ☐ NO

b. HAVE YOU SUBMITTED A CASB DISCLOSURE STATEMENT (CASB DS-1 or 2)? *(If "Yes," specify in proposal the office to which submitted and if determined to be adequate)*
☐ YES ☐ NO

c. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NONCOMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS? *(If "Yes," explain in proposal)*
☐ YES ☐ NO

d. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS? *(If "Yes," explain in proposal)*
☐ YES ☐ NO

This proposal is submitted in response to the solicitation, contract, modification, etc., in Item 1 and reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.804-6(b)(1), and Table 15-2. By submitting this proposal, the offeror, if selected for negotiation, grants the contracting officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form, or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

15. NAME OF OFFEROR *(Type)*
15. TITLE OF OFFEROR *(Type)*
16. NAME OF FIRM
17. SIGNATURE
18. DATE OF SUBMISSION

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 1411 (REV. 10-95)
Prescribed by GSA - FAR (48 CFR) 53.215-2(a)

BILLING CODE 6820-EP-C

53.301 Proposal Cover Sheet

PROPOSAL COVER SHEET
(Cost or Pricing Data Not Required)

1. SOLICITATION/CONTRACT/MODIFICATION NUMBER

OMB NO.: 9000-0013
Expires:

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.

2a. NAME OF OFFEROR
2b. FIRST LINE ADDRESS
2c. STREET ADDRESS
2d. CITY
2e. STATE
21. ZIP CODE

3a. NAME OF OFFEROR'S POINT OF CONTACT
3b. TITLE OF OFFEROR'S POINT OF CONTACT
3c. TELEPHONE
AREA CODE
NUMBER

4. TYPE OF CONTRACT ACTION *(Check)*

☐	A. NEW CONTRACT	☐	D. LETTER CONTRACT
☐	B. CHANGE ORDER	☐	E. UNPRICED ORDER
☐	C. PRICE REVISION/ REDETERMINATION	☐	F. OTHER *(Specify)*

5. TYPE OF CONTRACT *(Check)*

☐ FFP ☐ CPFF ☐ CPIF ☐ CPAF
☐ FPI ☐ OTHER *(Specify)*

6. PERFORMANCE

PLACE(S)	a.		PERIOD(S)	a.	
	b.			b.	
	c.			c.	

7. List and reference the identification, quantity and total price proposed for each contract line item. *(Continue on reverse, if necessary. Use same headings)*

a. LINE ITEM NO.	b. IDENTIFICATION	c. QUANTITY	d. TOTAL PRICE	e. PROP. REF. PAGE

8. PROVIDE THE FOLLOWING *(If available)*

NAME OF CONTRACT ADMINISTRATION OFFICE	NAME OF AUDIT OFFICE
STREET ADDRESS	STREET ADDRESS
CITY / STATE / ZIP CODE	CITY / STATE / ZIP CODE
TELEPHONE ▶ AREA CODE / NUMBER	TELEPHONE ▶ AREA CODE / NUMBER

This proposal is submitted in response to the solicitation, contract, modification, etc. in Item 1. By submitting this proposal, the offeror, if selected fo discussions, grants the contracting officer or an authorized representative the right to examine, at any time before award, any of those books, records documents, or other records directly pertinent to the information requested or submitted. See instructions at Table 15-3.

9a. NAME OF OFFEROR *(Typed)*
9b. TITLE OF OFFEROR *(Typed)*
10. NAME OF FIRM
11. SIGNATURE
12. DATE OF SUBMISSION

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48 CFR Parts 1, 33, 42, 50, and 52

[FAC 90–32; FAR Case 94–730; Item II]

RIN 9000–AG28

Federal Acquisition Regulation; Protests, Disputes, and Appeals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (the Act) dated October 13, 1994, to implement the Act's requirements with respect to disputes and protests to the General Accounting Office and General Services Administration Board of Contract Appeals. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective date:* October 1, 1995.

Applicability date: Where this rule repeats a GSBCA rule that went into effect earlier, the date of the GSBCA rule and its applicability provision prevails; otherwise, this rule is applicable to protests or claims filed on or after the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Mr. Craig E. Hodge, Protests/Disputes Team Leader, at (703) 274–8940 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 94–730, Protests, Disputes and Appeals.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, (the Act) provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements.

This notice announces FAR revisions developed under FAR Case 94–730, Protests, Disputes, and Appeals. The Act changed the General Accounting Office (GAO) protest procedures, the General Services Board of Contract Appeals (GSBCA) protest procedures, and the alternative dispute resolution (ADR) procedures. This rule reflects those changes to GAO, GSBCA, and ADR procedures that require revisions to the FAR.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because a relatively small number of firms file protests or claims. In addition, this rule is generally derivative of GAO and GSBCA rules which implement the statute. Neither the GAO nor the GSBCA concluded that the rules they were promulgating, which form the basis for this rule, had a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

On January 10, 1995, a proposed rule was published in the **Federal Register** (60 FR 2630). In response to the notice of proposed rulemaking, 19 public comments were received.

The largest number of public comments concerned the definition of "accrual". Some commenters felt that contractor and Government claims were to be treated differently because "accrual" was defined only in terms of the contractor claim. To resolve that problem, a general definition of "accrual" has been added. Several commenters requested retroactive language be added. Therefore, the six-year limitation was specifically applied only to contracts awarded after the end of the current fiscal year. There were also a number of alternate definitions of "accrual" proposed. In addition to the discovery of the events, a discovery of some damage has been added to cover the unusual case where the party is aware of the events giving rise to the claim, but not of any resulting damage.

In the protest area, commenters exhibited the most interest in the GAO bid protest file, and requested guidance on GAO and GSBCA witness fee limitations. The protest file requirement has been clarified. Although the GAO rule was concerned with providing protest files to the intervenors, Congress mandated protest files be made available by the contracting officer even to parties which failed to intervene. The extent to which the discussion of protest files differs between the proposed GAO regulation and this regulation reflects that difference. In any event, the GAO final regulation dropped the requirement for a protest file. Further specific guidance concerning witness fee limitations has now been incorporated in the regulation.

List of Subjects in 48 CFR Parts 1, 33, 42, 50 and 52

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 1, 33, 42, 50, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 33, 42, 50, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

2. Section 1.602–3 is amended by revising paragraph (c)(2) to read as follows:

1.602–3 Ratification of unauthorized commitments.

* * * * *

(c) * * *

(2) The ratifying official has the authority to enter into a contractual commitment;

* * * * *

PART 33—PROTESTS, DISPUTES, AND APPEALS

3. Section 33.101 is amended by adding in alphabetical order the definitions "Day" and "Filed", and revising the definition "Protest" to read as follows:

33.101 Definitions.

Day, as used in this subpart, means a calendar day, unless otherwise specified. In the computation of any period—

(a) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(b) The last day after the act, event, or default is included unless—

(1) The last day is a Saturday, Sunday, or legal holiday; or

(2) In the case of a filing of a paper at any appropriate administrative forum, the last day is a day on which weather or other conditions cause the closing of the forum for all or part of the day, in which event the next day on which the appropriate administrative forum is open is included.

(c) In the case of the 5-day period after a debriefing date and the 10-day period after contract award for filing a protest resulting in a suspension (as described at 33.104(c)), Saturdays, Sundays, and legal holidays shall be counted.

Filed, as used in this subpart, means the complete receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m., local time.

* * * * *

Protest, as used in this subpart, means a written objection by an interested party to any of the following:

(a) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.

(b) The cancellation of the solicitation or other request.

(c) An award or proposed award of the contract.

(d) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

4. Section 33.102 is amended by revising paragraph (a); redesignating paragraphs (b) and (c) as (c) and (e), respectively, and adding new paragraphs (b) and (d); and revising newly designated paragraphs (e)(2) and (e)(3) to read as follows:

33.102 General.

(a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency, the General Accounting Office (GAO), or for automatic data processing acquisitions under 40 U.S.C. 759 (ADP contracts), the General Services Board of Contract Appeals (GSBCA or the Board). (See 19.302 for protests of small business status and 22.608–3 for protests involving eligibility under the Walsh-Healey Public Contracts Act.)

(b) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—

(1) Take any action that could have been recommended by the Comptroller General had the protest been filed with the General Accounting Office; and

(2) Pay appropriate costs as stated in 33.104(h).

* * * * *

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in 33.104(c)(1) if the contracting officer makes a written determination that—

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

(e) * * *

(2) May protest to the GAO in accordance with GAO regulations (4 CFR Part 21). An interested party who has filed a protest regarding an ADP procurement with the GAO may not file a protest with the GSBCA with respect to that procurement.

(3) May protest to the GSBCA regarding an award of an ADP contract in accordance with GSBCA Rules of Procedure (48 CFR Chapter 61). An interested party who has filed a protest regarding an ADP procurement with GSBCA (40 U.S.C. 759(f)) may not file a protest with the GAO with respect to that procurement.

---

5. Section 33.103 is amended in the first sentence of (b)(1) by removing "or" and inserting "and" in its place; revising the second and third sentences of (b)(2) and the second sentence in (b)(4); and adding (b)(5) to read as follows:

33.103 Protests to the agency.

* * * * *

(b) * * *

(2) * * * In all other cases, protests shall be filed not later than 14 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not timely filed.

* * * * *

(4) * * * Failure to substantially comply with any of the requirements of this paragraph (b) may be grounds for dismissal of the protest.

(5) The agency should furnish a copy of the written protest ruling to the protester by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

6. Section 33.104 is amended—

a. By revising the introductory text, paragraphs (a)(1), (a)(3), the first sentence of (a)(4)(i) introductory text, (a)(4)(ii) (A) and (B), (a)(5) introductory text, (a)(5) (i), (ii), and (iii), (a)(6), (c)(1), (c)(5), (e), (f), (g), and (h);

b. By removing from the first sentence of (a)(2) the words "substantial and";

c. By adding a sentence to the end of paragraph (a)(2)(ii); and

d. By removing from (b)(1)(ii) the word "calendar"; and by removing the word "protestor" and inserting "protester" in (a)(4)(i) introductory text, (a)(4)(ii)(C), and (d), and by removing the word "Protestor's" in paragraph (a)(4)(i)(B) and adding "Protester's" in its place.

The revised and added text reads as follows:

33.104 Protests to GAO.

Procedures for protests to GAO are found at 4 CFR Part 21 (GAO Bid Protest Regulations). In the event guidance concerning GAO procedure in this section conflicts with 4 CFR Part 21, 4 CFR Part 21 governs.

(a) *General procedures.* (1) A protester is required to furnish a copy of its complete protest to the official and location designated in the solicitation or, in the absence of such a designation, to the contracting officer, so it is received no later than 1 day after the protest is filed with the GAO. The GAO may dismiss the protest if the protester fails to furnish a complete copy of the protest within 1 day.

(2) * * *

(ii) * * * However, if the protester has identified sensitive information and requests a protective order, then the contracting officer shall obtain a redacted version from the protester to furnish to other interested parties, if one has not already been provided.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within 35 days after the GAO notifies the agency by telephone that a protest has been filed, or within 20 days after receipt from the GAO of a determination to use the express option, unless the GAO—

(A) Advises the agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to an agency's request for an extension. Any new date is documented in the agency's file.

(ii) When a protest is filed with the GAO, and an actual or prospective offeror so requests, the procuring agency shall, in accordance with any applicable protective orders, provide actual or prospective offerors reasonable access to the protest file. However, if the GAO dismisses the protest before the documents are submitted to the GAO, then no protest file need be made available. Information exempt from disclosure under 5 U.S.C. 552 may be redacted from the protest file. The protest file shall be made available to non-intervening actual or prospective offerors within a reasonable time after submittal of an agency report to the GAO. The protest file shall include an index and as appropriate—

(A) The protest;

(B) The offer submitted by the protester;

(C) The offer being considered for award or being protested;

(D) All relevant evaluation documents;

(E) The solicitation, including the specifications or portions relevant to the protest;

(F) The abstract of offers or relevant portions; and

(G) Any other documents that the agency determines are relevant to the protest, including documents specifically requested by the protester.

(iii) The agency report to the GAO shall include—

(A) A copy of the documents described in 33.104(a)(3)(ii);

(B) The contracting officer's signed statement of relevant facts and a memorandum of law. The contracting officer's statement shall set forth findings, actions, and recommendations, and any additional evidence or information not provided in the protest file that may be necessary to determine the merits of the protest;

(C) A list of the documents withheld from the protester, or intervenors, and the reasons for withholding them. The list identifies any documents specifically requested by, and withheld from, the protester; and

(D) A list of parties being provided the documents.

(4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protestor and any intervenors. * * *

* * * * *

(ii)(A) If the protester requests additional documents within 2 days after the protester knew the existence or relevance of additional documents, or should have known, the agency shall provide the requested documents to the GAO within 5 days of receipt of the request.

(B) The additional documents shall also be provided to the protester and other interested parties within this 5-day period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the order.

* * * * *

(5) The GAO may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to an interested party. Protective orders prohibit or restrict the disclosure by the party of procurement sensitive information, trade secrets or other proprietary or confidential research, development or commercial information that is contained in such document. Protective orders do not authorize withholding any documents or information from the United States Congress or an executive agency.

(i) *Requests for protective orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, with copies furnished simultaneously to all parties.

(ii) *Exclusions and rebuttals.* Within 2 days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties.

(iii) *Additional documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties.

* * * * *

(6) The protester and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within 14 days, or 7 days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 7 days after the hearing.

* * * * *

(c) *Protests after award.* (1) When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by 15.1004, whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c) (2) and (3) of this section.

* * * * *

(5) When the agency receives notice of a protest filed with the GAO after the dates contained in subparagraph (c)(1), the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

* * * * *

(e) *Hearings.* The GAO may hold a hearing at the request of the agency, a protester, or other interested party who has responded to the notice in paragraph (a)(2) of this section. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO. All parties may file comments on the hearing and report within 7 days of the hearing.

(f) *GAO decision time.* GAO issues its recommendation on a protest within 125 days from the date of filing of the protest with the GAO, or within 65 days under the express option. The GAO attempts to issue its recommendation on an amended protest that adds a new ground of protest within the time limit of the initial protest. If an amended protest cannot be resolved within the initial time limit, the GAO may resolve the amended protest through an express option.

(g) *Notice to GAO.* If the agency has not fully implemented the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, the head of the contracting activity responsible for that contract shall report the failure to the GAO not later than 5 days after the expiration of the 60-day period. The report shall explain the reasons why the GAO's recommendation, exclusive of costs, has not been followed by the agency.

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney, consultant and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available for the procurement to pay the costs awarded.

(2) If the GAO recommends the award of costs to an interested party, the agency shall attempt to reach an agreement on the amount of the cost to be paid. If the agency and the interested party are unable to agree on the amount to be paid, GAO may, upon request of the interested party, recommend to the agency the amount of cost that the agency should pay.

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (h)(2) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and Expert and Consultant Appointments, 60 FR 45649, September 1, 1995 (5 CFR 304.105); or

(ii) For attorneys' fees that exceed $150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a "reasonable" level for attorneys' fees for small businesses.

(4) A recommended award of costs may be paid by the agency from funds available to or for the use of the agency for the acquisition of supplies or services. Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs which have not yet been paid.

(5) If the GAO recommends that the agency pay costs (as defined in paragraph (h)(1) of this section) and the agency does not promptly pay the costs, the agency shall promptly report to GAO the reasons for the failure to follow the GAO recommendation.

(6) Any costs the contractor receives under this section shall not be the subject of subsequent proposals, billings, or claims against the Government and those exclusions should be reflected in the cost agreement.

7. Section 33.105 is amended—

a. By adding an introductory paragraph;

b. By revising (a)(1) and the introductory text of (d)(1);

c. By removing from (a)(2)(i) "working day" and inserting "work day" in its place, from (a)(2)(ii) "five working days" and inserting "3 work days"; from (b)(6) "protestors" and inserting "protesters"; from (c) "15" and inserting "10", from (d)(1)(i) the word "calendar", and from (e) "25 work days" and "45 work days" and inserting "35 days" and "65 days", respectively;

d. By redesignating paragraphs (f) and (g) as (g) and (h), respectively, and revising the newly redesignated (g) and (h), and

f. By adding new paragraphs (d)(4) and (f).

The revised and added text reads as follows:

33.105 Protests to GSBCA.

Procedures for protests to the GSBCA, are found at 48 CFR Chapter 61 (GSBCA Rules). In the event guidance concerning GSBCA procedures in this subpart conflicts with 48 CFR Chapter 61, 48 CFR Chapter 61 governs.

(a)(1) Upon request of an interested party in connection with any procurement that is subject to Section 111 of the Federal Property and Administrative Services Act (40 U.S.C. 759), the GSBCA reviews any decision by the contracting officer that is alleged to violate a statute, a regulation, or the conditions of a delegation of procurement authority. ADP acquisition protests not covered under this section may not be heard by the GSBCA, but may be heard by the agency, the courts, or GAO. A protester shall furnish a copy of its complete protest to the official and location designated in the solicitation, or in the absence of such a designation, to the contracting officer on the same day the protest is filed with the GSBCA. Any request for a hearing on either a suspension of procurement authority or on the merits shall be in the protest.

* * * * *

(d)(1) If a protest contains a timely request for a suspension of procurement authority, the Board will hold a hearing, unless the agency does not contest an order suspending its procurement authority. A timely request for suspension of procurement authority is one that is filed before award, within 10 days of award, or within five days of the offered debriefing, when the debriefing is required by 15.1004, whichever applies. The Board suspends the procurement authority unless the agency establishes that—

* * * * *

(4) A suspension shall not preclude the agency concerned from continuing the procurement process up to, but not including, the award of the contract unless the Board determines the action is not in the best interests of the United States.

* * * * *

(f) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be made part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest. If an agency is party to a settlement agreement, the submission of the agreement to the Board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

(g)(1) The GSBCA may declare an appropriate prevailing party to be entitled to the cost, exclusive of profit, of—

(i) Filing and pursuing the protest, including reasonable attorney, consultant and expert witness fees; and

(ii) Bid and proposal preparation.

(2) Costs awarded under subparagraph (g)(1) of this section, or payments of amounts due under settlement agreements, shall be paid out in accordance with the procedures provided in 31 U.S.C. 1304 (the Permanent Indefinite Judgment Fund). The agency concerned shall reimburse that fund out of funds available for the procurement.

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (g)(1) of this section for—

(i) Consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and Expert and Consultant Appointments, 60 FR 45649, September 1, 1995 (5 CFR 304.105); or

(ii) Attorneys' fees that exceed $150 per hour, unless the Board determines, on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a "reasonable" level for attorneys' fees for small businesses.

(4) Within 30 days after receipt by the agency of an application for costs, the agency may file an answer.

(h) The GSBCA's final decision may be appealed by the agency or by any interested party, including any intervening interested parties, as set forth in the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

8. Section 33.201 is amended by adding in alphabetical order definitions for "Accrual of a claim" and "Alternative dispute resolution (ADR)" removing the definition "Alternative means of dispute resolution (ADR)"; and in the definition "Claim" by removing the amount "$50,000" and inserting "$100,000" in its place.

33.201 Definitions.

Accrual of a claim occurs on the date when all events, which fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.

Alternative dispute resolution (ADR) means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures may include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration.

* * * * *

9. Section 33.206 is revised to read as follows:

33.206 Initiation of a claim.

(a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision within 6 years after accrual of a claim, unless the contracting parties agreed to a shorter time period. This 6-year time period does not apply to contracts awarded prior to October 1, 1995. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period. The 6-year period shall not apply to contracts awarded prior to October 1, 1995, or to a Government claim based on a contractor claim involving fraud.

33.207 [Amended]

10. Section 33.207 is amended in paragraph (a)(1) by removing "$50,000" and inserting "$100,000" in its place.

33.208 [Amended]

11. Section 33.208 is amended in paragraph (c) by removing "as defined in 33.201,".

12. Section 33.211 is amended in paragraph (a)(4)(v) by removing "$10,000" and "$50,000" and inserting "$50,000" and "$100,000", respectively; in (c)(1), (c)(2) and (e) by removing "$50,000" and inserting "$100,000" in its place; and by revising paragraph (f) to read as follows:

33.211 Contracting officer's decision.

* * * * *

(f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the tribunal concerned to direct the contracting officer to issue a decision in a specified time period determined by the tribunal.

* * * * *

13. Section 33.214 is amended by redesignating paragraphs (b) through (d) as (c) through (e) and adding a new paragraph (b) to read as follows:

33.214 Alternative dispute resolution (ADR).

* * * * *

(b) If the contracting officer rejects a request for ADR from a small business contractor, the contracting officer shall provide the contractor written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

* * * * *

14. Subpart 42.16 is added to read as follows:

Subpart 42.16—Small Business Contract Administration

42.1601 General.

The contracting officer shall make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with respect to a contract administration matter. In the event the contracting officer cannot respond to the request within the 30-day period, the contracting officer shall, within the period, transmit to the contractor a written notification of the specific date the contracting officer expects to respond. This provision shall not apply to a request for a contracting officer decision under the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

15. Section 50.303 is redesignated as 50.303–1 and a new 50.303 heading is added to read as follows:

50.303 Contract adjustment.

* * * * *

16. Section 50.303–2 is added to read as follows:

50.303–2 Contractor certification.

A contractor seeking a contract adjustment that exceeds the simplified acquisition threshold shall, at the time the request is submitted, submit a certification by a person authorized to certify the request on behalf of the contractor that (a) the request is made in good faith and (b) the supporting data are accurate and complete to the best of that person's knowledge and belief.

50.304, 50.305 & 50.306 [Amended]

17. Sections 50.304(a) introductory text, 50.305(a) and 50.306 introductory text are amended by removing the reference "50.303" and inserting "50.303–1" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 52.233–1 is amended by revising the date of the clause, the third sentence in paragraph (c), and paragraphs (d)(1) and (g); in (d)(2)(i)(A) and twice in (e) by removing "$50,000" and inserting "$100,000" to read as follows:

52.233–1 Disputes.

* * * * *

Disputes (Oct 1995)

* * * * *

(c) * * * However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. * * *

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

* * * * *

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent,

may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575–580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

* * * * *

19. Section 52.233–2 is amended by revising the date of the clause and adding paragraph (c) to read as follows:

52.233–2 Service of Protest.

* * * * *

Service of Protest (Oct 1995)

* * * * *

(c) In this procurement, you may not protest to the GSBCA because of the nature of the supplies or services being procured. (*Contracting Officer shall strike the word "not" where the GSBCA is a correct forum.*)

(End of provision)

20. Section 52.233–3 is amended by revising the date of the clause and the first sentence of (a) to read as follows:

52.233–3 Protest after Award.

* * * * *

Protest After Award (Oct 1995)

* * * * *

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. * * *

* * * * *

[FR Doc. 95–22777 Filed 9–15–95; 8:45 am]

BILLING CODE 6820-EP-P

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48 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 22, 23, 31, 36, 42, 44, 46, 47, 49, 52, and 53

[FAC 90–32; FAR Case 94–790; Item III]

RIN 9000–AG38

Federal Acquisition Regulation; Acquisition of Commercial Items

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement the revised statutory authorities in Title VIII of the Act for the acquisition of commercial items and components by Federal Government agencies as well as contractors and subcontractors at all levels. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

Applicability date: For solicitations issued on or after October 1, 1995; use of the new policies, provisions and clauses is optional for solicitations issued before December 1, 1995, and mandatory for solicitations issued after December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Colonel Laurence M. Trowel, Commercial Item Team Leader, at (703) 695–3858 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 94–790.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. This notice announces revisions developed under FAR case 94–790, Acquisition of Commercial Items, which encourage the acquisition of commercial end items and components by Federal Government agencies as well as contractors and subcontractors at all levels. The most significant revisions are in the following FAR parts:

Part 2 has been amended to incorporated the definitions of "commercial item," "component," "commercial component" and "nondevelopmental item" from the Act with only minor revisions for clarification. The clause at 52.202–1, Definitions, has been similarly revised to make the definitions available to prime and subcontractors.

Part 10 has been completely revised to address market research. It contains some language taken from the current FAR Part 11. This new part establishes the requirement for market research as the first step in the acquisition process. Market research is an essential element in the later steps of describing the agency's need, developing the overall acquisition strategy and identifying terms and conditions unique to the item being acquired.

Part 11 has been completely revised to address the process of describing agency needs. It contains some of the language on specifications and standards formerly found in FAR Part 10, but takes a more streamlined approach. In addition, the revised Part 11 establishes the Government's order of precedence for requirements documents and addresses the concept of market acceptance contained in the Act. The revised Part 11 also contains coverage on Delivery or Performance Schedules, Liquidated Damages, Priorities and Allocations, and Variations in Quantity taken from the current Part 12 with only minor editorial revisions. The current Part 12 coverage on Suspension of Work, Stop Work Orders, and Government Delay of Work has been moved to Subpart 42.13 with only minor editorial revisions.

Part 12 has been completely revised to address the acquisition of commercial items. The Team created this entirely new coverage to address in one FAR part the policies for the acquisition of commercial items.

—Subpart 12.1 states that the policies in the revised Part 12 are applicable to all acquisitions of commercial items above the micro-purchase threshold. The requirements of other parts of the FAR apply to commercial items to the extent they are not inconsistent with Part 12;

—Subpart 12.2 identifies special requirements for the acquisition of commercial items. These requirements generally reflect the requirements of Title VIII.

—Subpart 12.3 establishes standard provisions and clauses for use in the acquisition of commercial items. This approach is essential to meet the requirements of the statute and provide contracting officers and industry with an easy to use, simplified method for acquiring commercial items. However, it is essential that contracting officers be allowed to tailor solicitations and contracts to meet the needs of the particular acquisition and the marketplace for that item. Subpart 12.3 gives contracting officers broad authority to tailor solicitations and contracts, a practice itself that is consistent with commercial practices. The Act requires that some limitations be placed on this authority to tailor, and that has also been accommodated in this subpart.

—A new form, the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, was established.

The SF 1449 combines features of the SF 33, Solicitation, Offer and Award; the SF 1447, Solicitation/Contract; and the DD 1155, Order for Supplies and Services. The most significant element is the addition of acceptance blocks at the bottom of the form (patterned after the DD Form 1155). This will allow suppliers of commercial items to utilize the SF 1449 to document receipt of the supplies or services by the government avoiding the need for preparation of separate receipt/acceptance forms.

—Subpart 12.5 identifies the applicability of certain laws to the acquisition of commercial items. This subpart is intended to meet the requirements of Section 8003(a) of the Act which requires that the FAR contain a list of laws determined to be inapplicable to prime contracts for commercial items.

—Section 12.503 contains the list of laws determined to be not applicable to executive agency prime contracts for acquisition of commercial items. This list has been expanded to also include those laws that have been revised in some manner to modify their applicability to commercial items. In each instance, the specific prescriptive language elsewhere in the FAR has been revised to reflect this modified applicability. FAR 12.503 only includes those laws that apply to prime contracts awarded by both DOD and civilian agencies. Agency unique laws determined to be not applicable to prime contracts are not addressed in this rule and may be addressed separately by the respective agencies.

—Section 12.504 contains the list of laws determined to be not applicable to subcontracts for commercial items. This list has been expanded to also include those laws that have been revised in some manner to modify their applicability to subcontracts for commercial items.

—Subpart 12.6 identifies two streamlined procedures for the evaluation and solicitation of contracts for commercial items. These procedures may be used at the discretion of the contracting officer.

Part 52 has been amended to include several new provisions and clauses to be inserted in all solicitations and contracts for the acquisition of commercial items:

—Section 52.212–1, Instructions to Offerors—Commercial Items, contains solicitation instructions unique to Government procurement and is based upon existing FAR language. The information has been simplified and tailored to meet the requirements of commercial items. For the most part, the simplified paragraphs in the new provision do not contain new concepts.

—Section 52.212–2, Evaluation—Commercial Items, contains evaluation information that has been simplified and tailored to meet the requirements of commercial items. Again, this provision does not contain new concepts and is generally based upon provisions prescribed in Parts 14 and 15. This provision may be used at the discretion of the contracting officer. It requires the contracting officer to establish specific evaluation factors and the relative order of importance for each acquisition.

—Section 52.212–3, Offeror Representations and Certifications—Commercial Items, includes the certifications and representations required to comply with laws or Executive orders. Instead of using the numerous certifications contained in the FAR, the Team drafted a single provision containing all the requirements that may apply to the acquisition of commercial items.

—Section 52.212–4, Contract Terms and Conditions—Commercial Items, contains the terms and conditions the Team believes are consistent with customary commercial practice by addressing general areas that previous studies have identified as the "core" areas covered by commercial contracts. Several concepts included in the clause at 52.212–4 represent significant changes from standard Government practices to commercial-like practices.

—Section 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive orders—Commercial Items, implements provisions of law or executive orders applicable to Government acquisitions of commercial items or commercial components. The Team believes the clause at 52.212–5 represents the minimum number of clauses required to implement statutes and Executive orders. Certain clauses may apply depending upon the circumstances; the contracting officer will indicate which of these clauses apply for the specific acquisition. In addition, this clause provides that the contractor is not required to include any FAR provision or clause in its subcontracts other than those listed in the clause as applying to subcontracts for commercial items.

—Section 52.244–6, Subcontracts for Commercial Items and Commercial Components, implements the preference for the acquisition of commercial items or nondevelopmental items as components of items to be supplied under Federal contracts. This clause will be inserted in all solicitations and contracts for supplies and services other than commercial items. It provides that the contractor is not required to include in its subcontracts for commercial items any FAR provision or clause, other than those listed in the clause.

B. Regulatory Flexibility Act

This final rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. This rule will have this impact as a result of the following:

(1) It establishes a much broader definition of "commercial items" compared to the language of Part 11, it includes certain modifications to existing items, and includes certain commercial services. In all these cases, small business is very likely to benefit from this expanded definition;

(2) It establishes a requirement for conducting market research in certain circumstances before issuing solicitations which should benefit small business by ensuring the contracting activity has conducted sufficient research to be aware of the availability of commercial items and the practices used in the commercial marketplace to acquire them. The rule also cautions contracting officers not to request potential sources to submit more than the minimum information necessary as a part of market research.

(3) It establishes a preference for the acquisition of commercial items thereby enabling more small businesses that offer commercial items to participate in Government acquisition;

(4) It establishes a preference for stating Government requirements in terms of functions to be performed, performance required, or essential physical characteristics rather than detailed, Government-unique design specifications thereby allowing a broader range of products of small businesses to satisfy the Government need;

(5) It establishes the Government order of precedence for requirements documents emphasizing performance-oriented documents and nongovernment standards rather than Federal/Military-unique standards thereby allowing a broader range of small businesses to participate in Government acquisitions;

(6) It allows contracting officers the flexibility to use either the streamlined solicitation procedure in the revised Subpart 12.6 for acquiring commercial items, or the existing procedures in Parts 13, 14 or 15, as applicable, if they are more streamlined and beneficial, thereby allowing maximum flexibility for contracting with small businesses;

(7) It allows the use of the streamlined terms and conditions for acquiring commercial items for every acquisition above the micropurchase threshold thereby allowing the maximum number of small businesses to benefit from these procedures;

(8) It requires, except in unique circumstances, that the Government rely on the contractor's quality assurance system thereby allowing small businesses to utilize their own quality system when selling commercial items rather than a Government-specified system;

(9) It requires that, when acquiring commercial items, the contracting officer use the solicitation provisions and contract clauses specifically established for acquiring commercial items. The contracting officer may tailor those provisions and clauses when the customary practices in the market dictate the use of other terms and conditions or when a waiver is approved; and

(10) By significantly limiting the flow down of Government-unique terms and conditions to subcontractors at all levels thereby minimizing the burden on a significant number of small businesses.

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Acquisition of Commercial Items was submitted to the Office of Management and Budget and approved through OMB Control No. 9000–0136. Public comments concerning this request were invited in a **Federal Register** notice at 60 FR 11219, March 1, 1995.

D. Public Comments

Title VIII of the Act makes significant statutory revisions to facilitate the acquisition of commercial items and components by Federal Government agencies, as well as contractors and subcontractors at all levels. This final rule incorporates revisions to two proposed rules resulting from a public meeting held on April 3, 1995, and written comments received in response to publication of the two proposed rules in the **Federal Register**. The first proposed rule was published in the **Federal Register** on March 1, 1995 (60 FR 11198), under FAR case 94–790. That proposed rule made changes throughout the FAR to incorporate provisions of Title VIII. The second proposed rule was published in the **Federal Register** on March 22, 1995 (60 FR 15220), under FAR case 94–791. That case contained the list of laws required by Section 8003(a) of the Act that were determined to be inapplicable to Executive agency contracts and subcontracts for commercial items. FAR case 94–791 also contained the list of contract clauses determined to be applicable to subcontracts for the acquisition of commercial items. On April 4, 1995, a correction to the proposed rule under FAR case 94–791 was published in the **Federal Register** (60 FR 17184), to correct section 52.212–5 to include access to contractor records by the Comptroller General of the United States for contracts awarded using other than sealed bidding in excess of the simplified acquisition threshold.

A total of 559 written comments were received on the proposed rule from 60 commentors. Each comment was analyzed by the Commercial Items Drafting Team and, where appropriate, changes were made in the proposed FAR language as reflected in this final rule. The comments largely fell in the following general areas:

1. Definitions of Commercial Items and Nondevelopmental Item

The language describing a "minor" modification was revised to clarify the intent. The revised language was drawn from a related Congressional report. The definition of nondevelopmental items was also clarified to alleviate confusion regarding what commentors identified as the "circular logic" of commercial items being a subset of nondevelopmental items, and certain nondevelopmental items being a subset of commercial items. The revision clarifies the distinction between commercial items and nondevelopmental items. Several commentors asked that specific examples of items that would be considered "commercial" be included in the definition. The Team rejected this suggestion citing the impossibility of developing examples that would adequately describe the range of commercial items the government might buy while not unnecessarily limiting the breadth of the definition.

2. Decision to Utilize Commercial Items Authority

Several commentors expressed confusion over how the Government would decide when the commercial items authorities in Part 12 could be used. FAR 10.002 was revised to include language explaining the decision process that would follow the completion of market research.

3. Market Acceptance

Several commentors were concerned with the lack of sufficient guidance on market acceptance. Several changes were made in an effort to balance the concerns expressed by the public and those expressed by Government agencies. The final rule clarifies the circumstances where market acceptance may be appropriate, cautions that it is not appropriate when new or evolving commercial items may meet the agency's needs, and contains guidance on developing criteria for demonstrating market acceptance.

4. Relationship of Part 12 to Other FAR Parts

Several commentors expressed confusion over the relationship of Part 12 to other Parts, especially Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; and Part 15, Contracting By Negotiation. FAR 12.203 was revised to clarify that Part 12 contains unique policies for the acquisition of commercial items. These unique policies are intended to be used in conjunction with the existing procedures contained in Parts 13, 14, and 15 for the solicitation, evaluation, and award of contracts, purchase orders and other instruments. Part 12 will take precedence over other FAR parts only where the policies in those parts are inconsistent.

5. Use of the Standard Form (SF) 1449

Several commentors questioned the rationale for requiring the use of the new SF 1449 for all acquisitions of commercial items. The SF 1449 was specifically developed in conjunction with the provisions and clauses developed for the acquisition of commercial items. The SF 1449 and the prescribed provisions and clauses are designed to complement each other in several respects. Forms currently prescribed in the FAR contain references to FAR provisions and clauses that are not used for commercial items, and references to the Uniform

Contract Format, also not used for acquiring commercial items. Finally, the use of a single form throughout the Federal Government for all acquisitions of commercial items will aid those offerors that will, as a result of the publication of this rule, seek to do business with the Federal Government.

6. Quality Assurance

Several commentors questioned the intent of the language regarding the reliance on contractors' existing quality assurance systems. The rule has been revised to clarify that where buyer in-process inspection is a customary practice, any Government inprocess inspection shall be conducted in a manner consistent with commercial practice.

7. Commercial Item Pricing

Commentors suggested that Part 12 should discuss the techniques for pricing commercial items. The policies and procedures for determining the price reasonableness of commercial items are contained in Subpart 15.8 and the Team did not want to conflict with those policies. However, a brief summary of pricing considerations used when contracting by negotiation under Part 15 has been included in Part 12.

8. Technical Data and Computer Software

In response to numerous comments on technical data and computer software, the final rule has been revised. The subpart on technical data has been revised to cover the general principle that the Government will acquire only technical data customarily provided to the public, except as provided by agency-specific statutes. The technical data subpart references FAR Part 27 and agency supplements, where detailed rules implementing the technical data statutes can be found. A new section on computer software was added to require that commercial computer software be acquired under licenses customarily provided to the public to the extent those licenses are consistent with Federal procurement law.

9. Discretionary Use of FAR Provisions and Clauses

Several commentors asked if existing FAR provisions and clauses could be used if needed. Guidance concerning the discretionary use of other FAR clauses, consistent with market research and customary commercial practice, has been provided in the final rule. Specific examples of FAR clauses that may be appropriate for use include clauses for ordering procedures for indefinite delivery contracts and option exercise.

10. Tailoring of Provisions and Clauses

Additional guidance concerning contracting officer authority to tailor Part 12 clauses, consistent with customary commercial market practices, has also been provided. Specific paragraphs of the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, that are based in statute and may not be tailored, have been identified.

11. Unique Requirements Regarding Terms and Conditions for Commercial Items.

Many commentors from both industry and Government noted that the new terms and conditions prescribed for commercial items are significantly different than the existing FAR provisions and clauses. In response to the numerous questions and concerns, the Team expanded the discussion in the proposed rule describing the key features of these unique provisions and clauses.

12. Laws Inapplicable to Contractors and Subcontractors

The language describing the laws determined inapplicable to prime and subcontractors has been revised to clarify several areas of confusion. In addition, the Service Contract Act (SCA) was added to the list of laws inapplicable to subcontractors. The proposed rule clearly did not call out the SCA for flow down to subcontractors in paragraph (e) of the clause at 52.212–5, but inadvertently omitted the law from the list of laws inapplicable to subcontractors. Finally, as indicated in the March 22, 1995, **Federal Register** notice, the DOD-unique laws identified in the proposed rule have been removed from the FAR rule and will appear in the DOD FAR Supplement (DFARS) coverage.

13. Certification Regarding Debarment and Suspension

A certification regarding an offeror's debarment, suspension or ineligibility for award was added to the provision at 52.212–3 to implement the requirements of Executive Order 12549.

14. Acceptance and Warranties

The language concerning acceptance and warranties in the clause at 52.212–4 was revised to incorporate the acceptance principles found in the Uniform Commercial Code. It was also revised to establish the implied warranties of merchantability and fitness for a particular purpose as the Government's minimum warranties. Corresponding guidance is provided in Part 12 on evaluating and incorporating express warranties, which may overcome the implied warranties, and ensuring any express warranty and the acceptance terms of the contract are consistent with the concepts contained in the rule.

15. Terminations

Guidance on procedures for contract terminations, reflecting the language in the clause at 52.212–4, has been provided in FAR Part 12. In addition, language has been included to clarify that negotiation of termination charges in terminations for the Government's convenience does not require government unique record keeping, compliance with the cost accounting standards or the contract cost principles.

16. Limitation of Liability

The limitation of contractor liability language, which appeared in the proposed rule in the "Warranty" paragraph of the clause at 52.212–4, has been moved to a separate paragraph to clarify that the limitation does not apply solely to liability relating to any warranty.

17. Subcontracting Plans

The requirement for Small, Small Disadvantaged and Women Owned Small Business Subcontracting Plans was included in the clause at 52.212–5 after it was determined that there was no exemption from this requirement for commercial items. However, in this regard, the Office of Procurement Policy (OFPP) is preparing to issue Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items. This Policy Letter states that when a subcontracting plan is required, annual commercial subcontracting plans that relate to the company's commercial and noncommercial production are authorized and preferred for (1) prime contracts for commercial items; or (2) subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item. The policy revisions contained in Policy Letter 95–1 will be incorporated into the FAR by a separate FAR case.

18. Other Revisions to the Proposed Rule

Numerous other revisions were made to the proposed rule to correct inconsistencies, clarify intent, improve editorial clarity and to bring the language of the case up to the latest FAR baseline through FAC 90–31.

List of Subjects in 48 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 22, 23, 31, 36, 42, 44, 46, 47, 49, 52 and 53

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 22, 23, 31, 36, 42, 44, 46, 47, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 22, 23, 31, 36, 42, 44, 46, 47, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding in alphabetical order the definitions "Commercial component", "Commercial item", "Component", "Market research", and "Nondevelopmental item" to read as follows:

2.101 Definitions.

* * * * *

Commercial component means any component that is a commercial item.

Commercial item means—

(a) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(1) Has been sold, leased, or licensed to the general public; or,

(2) Has been offered for sale, lease, or license to the general public;

(b) Any item that evolved from an item described in paragraph (a) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(c) Any item that would satisfy a criterion expressed in paragraphs (a) or (b) of this definition, but for—

(1) Modifications of a type customarily available in the commercial marketplace; or

(2) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(d) Any combination of items meeting the requirements of paragraphs (a), (b), (c), or (e) of this definition that are of a type customarily combined and sold in combination to the general public;

(e) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (a), (b), (c), or (d) of this definition, and if the source of such services—

(1) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(2) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(f) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(g) Any item, combination of items, or service referred to in paragraphs (a) through (f), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(h) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

Component means any item supplied to the Federal Government as part of an end item or of another component.

* * * * *

Market research means collecting and analyzing information about capabilities within the market to satisfy agency needs.

* * * * *

Nondevelopmental item means—

(a) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(b) Any item described in paragraph (a) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(c) Any item of supply being produced that does not meet the requirements of paragraph (a) or (b) solely because the item is not yet in use.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.404 is amended by removing "or" from the end of paragraph (b)(4); by redesignating paragraph (b)(5) as (b)(6) and adding a new paragraph (b)(5); and by revising paragraph (c) to read as follows:

3.404 Solicitation provision and contract clause.

* * * * *

(b) * * *

(5) The solicitation is for a commercial item (see parts 2 and 12); or

* * * * *

(c) The contracting officer shall insert the clause at 52.203–5, Covenant Against Contingent Fees, in solicitations and contracts exceeding the simplified acquisition threshold in part 13 other than those for commercial items (see Parts 2 and 12).

4. Section 3.502–2 is amended by revising the introductory text of paragraph (i) to read as follows:

3.502–2 General.

* * * * *

(i) Requires each contracting agency to include in each prime contract, except contracts for commercial items (see part 12), a requirement that the prime contractor shall—

* * * * *

5. Section 3.502–3 is revised to read as follows:

3.502–3 Contract clause.

The contracting officer shall insert the clause at 52.203–7, Anti-Kickback Procedures, in solicitations and contracts exceeding the simplified acquisition threshold in part 13, other than those for commercial items (see part 12).

6. Section 3.503–2 is revised to read as follows:

3.503–2 Contract clause.

The contracting officer shall insert the clause at 52.203–6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold in part 13. For the acquisition of commercial items, the contracting officer shall use the clause with its Alternate I.

PART 5—PUBLICIZING CONTRACT ACTIONS

7. Section 5.203 is amended by revising paragraphs (a), (b), and (c) to read as follows:

5.203 Publicizing and response time.

* * * * *

(a) A notice of contract action shall be published in the CBD at least 15 days before issuance of a solicitation except when the combined CBD synopsis/solicitation procedure for acquisition of commercial items is used (see 12.603).

(b) The contracting officer shall establish a solicitation response time which will afford potential offerors a reasonable opportunity to respond for (1) each contract action, including actions via FACNET, in an amount estimated to be greater than $25,000, but not greater than the simplified acquisition threshold; or (2) each contract action for the acquisition of commercial items in an amount estimated to be greater than $25,000 (see part 12). The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

(c) Except for the acquisition of commercial items (see 5.203(b)), agencies shall allow at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation, if the contract action is expected to exceed the simplified acquisition threshold.

* * * * *

8. Section 5.207 is amended by adding paragraph (e)(4) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(e) * * *

(4) If, under the proposed acquisition, the Government does not intend to acquire a commercial item using part 12, the synopsis shall refer to Numbered Note 26.

* * * * *

PART 6—COMPETITION REQUIREMENTS

9. Section 6.303–2 is amended by revising paragraph (a)(8) to read as follows:

6.303–2 Content.

(a) * * *

(8) A description of the market research conducted (see part 10) and the results or a statement of the reason market research was not conducted.

* * * * *

10. Section 6.502 is revised to read as follows:

6.502 Duties and responsibilities.

(a) Agency and procuring activity competition advocates are responsible for promoting the acquisition of commercial items, promoting full and open competition, challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics, and challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

(b) Agency competition advocates shall—

(1) Review the contracting operations of the agency and identify and report to the agency senior procurement executive—

(i) Opportunities and actions taken to acquire commercial items to meet the needs of the agency;

(ii) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency;

(iii) Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;

(iv) Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contracting actions of the agency;

(2) Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing—

(i) Such advocate's activities under this subpart;

(ii) New initiatives required to increase the acquisition of commercial items;

(iii) New initiatives required to increase competition;

(iv) New initiatives to ensure requirements are stated in terms of functions to be performed, performance required or essential physical characteristics;

(v) Any barriers to the acquisition of commercial items or competition that remain; and

(vi) Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research;

(3) Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and

(4) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

PART 7—ACQUISITION PLANNING

7.101 [Amended]

11. Section 7.101 is amended by removing the definition "Market survey".

12. Section 7.102 is revised to read as follows:

7.102 Policy.

(a) Agencies shall perform acquisition planning and conduct market research (see part 10) for all acquisitions in order to promote and provide for—

(1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable (10 U.S.C. 2377 and 41 U.S.C. 251, *et seq.*); and

(2) Full and open competition (see part 6) or, when full and open competition is not required in accordance with part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1)).

(b) This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

13. Section 7.103 is amended by revising paragraph (b); and in paragraph (m) by removing "10.002(c)" and inserting "11.001(b)" to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(b) Encouraging offerors to supply commercial items, or to the extent that commercial items suitable to meet the agency needs are not available, nondevelopmental items in response to agency solicitations (10 U.S.C. 2377 and 41 U.S.C. 251, *et seq.*); and

* * * * *

14. Section 7.105 is amended in paragraph (a)(5) by removing "subpart 12.1" and inserting "subpart 11.4" in its place; in paragraph (a)(8)(iii) by removing the parenthetical "(see 10.002(c))"; by revising paragraph (b)(1); in paragraph (b)(6) by removing "part 10" and inserting "part 11" in its place; in paragraph (b)(7) by removing "subpart 12.3" and inserting "subpart 11.6" in its place; and by revising paragraph (b)(12)(i) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action*—(1) *Sources.* Indicate the prospective sources of supplies and/or services that can meet the need. Consider required sources of supplies or services (see part 8). Include consideration of small business, small disadvantaged business, and women-owned small business concerns (see part 19). Address the extent and results of the market research and indicate their impact on the various elements of the plan (see part 10).

* * * * *

(12) * * *

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see subpart 7.3) and distribution of commercial items;

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.1104 [Amended]

15. Section 8.1104 is amended in paragraph (e)(1) by removing "52.212–9" and inserting "52.211–16" in its place.

PART 9—CONTRACTOR QUALIFICATIONS

16. Section 9.106–1 is amended by revising paragraph (a) to read as follows:

9.106–1 Conditions for preaward surveys.

(a) A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility. However, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see part 12), the contracting officer should not request a preaward survey unless circumstances justify its cost.

* * * * *

17. Section 9.306 is amended in the introductory text of paragraph (f) by revising the parenthetical to read "(see 11.404)".

18. Section 9.405–2 is amended by revising the second sentence of paragraph (b) introductory text to read as follows:

9.405–2 Restrictions on subcontracting.

* * * * *

(b) * * * By operation of the clause at 52.209–6, Protecting the Government's Interests When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment, contractors shall not enter into any subcontract in excess of $25,000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. * * *

* * * * *

19. Part 10 is revised to read as follows:

PART 10—MARKET RESEARCH

Sec.

10.000 Scope of part.
10.001 Policy.
10.002 Procedures.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements requirements of 41 U.S.C. 253a(a)(1), 41 U.S.C 264b, and 10 U.S.C. 2377.

10.001 Policy.

(a) Agencies shall—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items which meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold; and

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost; and

(3) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial items, such as terms for warranties, buyer financing, maintenance and packaging, and marking; and

(v) Ensure maximum practicable use of recovered materials (see subpart 23.4) and promote energy conservation and efficiency.

(b) When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.

10.002 Procedures.

(a) Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.

(b) Market research is then conducted to determine if commercial items or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs.

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. Market research involves obtaining information specific to the item being acquired and should include—

(i) Whether the Government's needs can be met by—

(A) Items of a type customarily available in the commercial marketplace;

(B) Items of a type customarily available in the commercial marketplace with modifications; or

(C) Items used exclusively for governmental purposes;

(ii) Customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs;

(iii) Customary practices, including warranty, buyer financing, discounts, etc., under which commercial sales of the products are made;

(iv) The requirements of any laws and regulations unique to the item being acquired;

(v) The availability of items that contain recovered materials and items that are energy efficient;

(vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and

(vii) Size and status of potential sources (see part 19).

(2) Techniques for conducting market research may include any or all of the following:

(i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.

(ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.

(iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.

(iv) Querying Government data bases that provide information relevant to agency acquisitions.

(v) Participating in interactive, on-line communication among industry, acquisition personnel, and customers.

(vi) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.

(vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.

(viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

(c) If market research indicates commercial or nondevelopmental items might not be available to satisfy agency needs, agencies shall reevaluate the need in accordance with 10.001(a)(3)(ii) and determine whether the need can be restated to permit commercial or nondevelopmental items to satisfy the agency's needs.

(d)(1) If market research establishes that the Government's need may be met by a type of item or service customarily available in the commercial marketplace that would meet the definition of a commercial item at subpart 2.1, the contracting officer shall solicit and award any resultant contract using the policies and procedures in part 12.

(2) If market research establishes that the Government's need cannot be met by a type of item or service customarily available in the marketplace, part 12 shall not be used. When publication of the notice at 5.201 is required, the contracting officer shall include a notice to prospective offerors that the Government does not intend to use part 12 for the acquisition (see 5.207(e)(4)).

(e) Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

20. Part 11 is revised to read as follows:

PART 11—DESCRIBING AGENCY NEEDS

Sec.

11.000 Scope of part.
11.001 Definitions.
11.002 Policy.

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents.
11.102 Standardization program.
11.103 Market acceptance.
11.104 Items peculiar to one manufacturer.

Subpart 11.2—Using and Maintaining Requirements Documents

11.201 Identification and availability of specifications.
11.202 Maintenance of standardization documents.
11.203 Customer satisfaction.
11.204 Solicitation provisions and contract clauses.

Subpart 11.3—Acquiring Other Than New Material, Former Government Surplus Property and Residual Inventory

11.301 Policy.
11.302 Solicitation provisions and contract clauses.

Subpart 11.4—Delivery or Performance Schedules

11.401 General.
11.402 Factors to consider in establishing schedules.
11.403 Supplies or services.
11.404 Contract clauses.

Subpart 11.5—Liquidated Damages

11.501 General.
11.502 Policy.
11.503 Procedures.
11.504 Contract clauses.

Subpart 11.6—Priorities and Allocations

11.600 Scope of part.
11.601 Definitions.
11.602 General.
11.603 Procedures.
11.604 Solicitation provisions and contract clauses.

Subpart 11.7—Variation in Quantity

11.701 Supply contracts.
11.702 Construction contracts.
11.703 Contract clauses.

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs.

11.001 Definitions.

Material, as used in this part, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this part, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this part, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

Reconditioned, as used in this part, means restored to an earlier normal operating condition by readjustments and replacement of parts.

Remanufactured, as used in this part, means factory rebuilt to new equipment performance specification and unused subsequent to rebuilding.

11.002 Policy.

(a) In fulfilling requirements of 10 U.S.C. 2305(a)(1), 10 U.S.C. 2377, 41 U.S.C. 253a(a), and 41 U.S.C. 264b, agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see part 6), with due regard to the nature of the supplies or services to be acquired; and

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

(A) Functions to be performed;

(B) Performance required; or

(C) Essential physical characteristics;

(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, in response to the agency solicitations;

(iii) Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;

(iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and

(v) Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial

items suitable to meet the agency's needs are not available, nondevelopmental items.

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its acquisitions, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(c) To the extent practicable and consistent with subpart 9.5, potential offerors should be given an opportunity to comment on agency requirements or to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see 7.101 and 7.105(a)(8)).

(d) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), as amended, and Executive Order 12873, dated October 20, 1993, establish requirements for the procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services. Requiring activities shall prepare plans, drawings, specifications, standards (including voluntary standards), and purchase descriptions that consider the requirements set forth in part 23.

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents.

(a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

(1) Documents mandated for use by law.

(2) Performance-oriented documents.

(3) Detailed design-oriented documents.

(4) Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

(b) Agencies should prepare product descriptions to achieve maximum practicable use of recovered material and other materials that are environmentally preferable (see subparts 23.4 and 23.7).

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual and, for DOD components, DOD 4120.3–M, Defense Standardization Program Policies and Procedures. The Federal Standardization Manual may be obtained from General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407. DOD 4120.3–M may be obtained from DOD Single Stock Point, Standardization Document Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094.

11.103 Market acceptance.

(a) Section 8002(c) of Pub. L. 103–355 provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

(1) Have either—

(i) Achieved commercial market acceptance; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency's minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency's needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation—

(1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item's acceptability to meet the agency's minimum need;

(2) Relate to an item's performance and intended use, not an offeror's capability;

(3) Are supported by market research;

(4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and

(5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance shall not be used as a sole criterion to evaluate whether an item meets the Government's requirements.

(e) When commercial market acceptance is used, the contracting officer shall document the file to—

(1) Describe the circumstances justifying the use of commercial market acceptance criteria; and

(2) Support the specific criteria being used.

11.104 Items peculiar to one manufacturer.

Agency requirements shall not be written so as to require a particular brand-name, product, or a feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(a) The particular brand-name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or can not be modified to meet, the agency's minimum needs; and

(b) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302–1).

Subpart 11.2—Using and Maintaining Requirements Documents

11.201 Identification and availability of specifications.

(a) Solicitations citing requirements documents listed in the General Services Administration (GSA) Index of Federal Specifications, Standards and Commercial Item Descriptions, the DoD Index of Specifications and Standards (DoDISS), or other agency index shall identify each document's approval date and the dates of any applicable amendments and revisions. Do not use general identification references, such as "the issue in effect on the date of the solicitation." Contracting offices will not normally furnish these cited documents with the solicitation, except when—

(1) The requirements document must be furnished with the solicitation to

enable prospective contractors to make a competent evaluation of the solicitation;

(2) In the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the documents in reasonable time to respond to the solicitation; or

(3) A prospective contractor requests a copy of a Government promulgated requirements document.

(b) Contracting offices shall clearly identify in the solicitation any pertinent documents not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions or DoDISS. Such documents shall be furnished with the solicitation or specific instructions shall be furnished for obtaining or examining such documents.

(c) When documents refer to other documents, such references shall

(1) Be restricted to documents, or appropriate portions of documents, that apply in the acquisition;

(2) Cite the extent of their applicability;

(3) Not conflict with other documents and provisions of the solicitation; and

(4) Identify all applicable first tier references.

(d) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from the General Services Administration, Federal Supply Service Bureau, Specification Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407, telephone (202) 755–0325/0326. The DoDISS may be purchased from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, telephone (215) 697–2569.

(e) Agencies may generally obtain from the GSA Specification Section or the DOD Standardization Documents Desk those nongovernment (voluntary) standards adopted for use by Federal or Defense activities. Standards not available from these sources may be obtained from Government libraries, activities subscribing to document handling services or the organization responsible for the preparation, publication or maintenance of the standard.

11.202 Maintenance of standardization documents.

(a) Recommendations for changes to standardization documents listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions should be submitted to the General Services Administration, Federal Supply Service, Office of Acquisition, Washington, DC 20406. Agencies shall submit recommendations for changes to standardization documents listed in the DoDISS to the cognizant preparing activity.

(b) When an agency cites an existing standardization document but modifies it to meet its needs, the agency shall follow the guidance in Federal Standardization Manual and, for Defense components, DoD 4120.3–M, Defense Standardization Program Policies and Procedures.

11.203 Customer satisfaction.

Acquisition organizations shall communicate with customers to determine how well the requirements document reflects the customer's needs and to obtain suggestions for corrective actions. Whenever practicable, the agency may provide affected industry an opportunity to comment on the requirements documents.

11.204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.211–1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that

(1) Are issued by civilian agency contracting offices and

(2) Cite specifications listed in the Index that are not furnished with the solicitation.

(b) The contracting officer shall insert the provision at 52.211–2, Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS), in solicitations that

(1) Are issued by DoD contracting offices and

(2) Cite specifications listed in the DoDISS that are not furnished with the solicitation.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.211–3, Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are not furnished with the solicitation, but may be obtained from a designated source.

(d) The contracting officer shall insert a provision substantially the same as the provision at 52.211–4, Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are available for examination at a specified location.

Subpart 11.3—Acquiring Other Than New Material, Former Government Surplus Property, and Residual Inventory

11.301 Policy.

(a) Agencies shall allow offers of other than new material, former Government surplus property, or residual inventory unless it is determined that such materials are unacceptable. When acquiring commercial items, the contracting officer should consider the customary practice in the industry for the item being acquired. When only new material is acceptable, the solicitation shall clearly identify the material that must be new. Offerors providing other than new material shall be required to comply with the clause at 52.211–5, New Material, the provision at 52.211–6, Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property, and the clause at 52.211–7, Other Than New Material, Residual Inventory, and Former Government Surplus Property, as appropriate.

(b) Agencies shall specify products, including packaging, that contain the highest practicable percentage of recovered and environmentally preferable materials, and where applicable, post-consumer material, consistent with performance requirements, availability, price reasonableness, and cost-effectiveness.

(c) Contracting officers shall consider the following when determining whether other than new materials, former Government surplus property, or residual inventory are acceptable:

(1) Safety of persons or property.

(2) Specification and performance requirements.

(3) Price reasonableness.

(4) Total cost to the Government (including maintenance, inspection, testing, and useful life).

(d) When a contract calls for material to be furnished at cost, the allowable charge for former Government surplus property shall not exceed the cost at which the contractor acquired the property.

11.302 Solicitation provisions and contract clauses.

(a) The contracting officer may insert the clause at 52.211–5, New Material, in solicitations and contracts for supplies. The clause shall not be used if it would be contrary to customary commercial practices for the item being acquired.

(b) The contracting officer shall insert the provision at 52.211–6, Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property, in solicitations containing the clause at 52.211–5.

(c) The contracting officer shall insert the clause at 52.211–7, Other Than New Material, Residual Inventory, and Former Government Surplus Property, in contracts containing the clause at 52.211–5.

Subpart 11.4—[Redesignated from 12.1]

21. and 22. Subpart 11.4 is redesignated from Subpart 12.1 and sections 12.101 through 12.104 are redesignated as sections 11.401 through 11.404, respectively.

23. Newly redesignated section 11.401 is amended in paragraph (a) by revising the last sentence; and in the parenthetical of paragraph (c) by removing "Subpart 12.2" and inserting "Subpart 11.5". The revised text reads as follows:

11.401 General.

(a) * * * Schedules that are unnecessarily short or difficult to attain

(1) Tend to restrict competition,

(2) Are inconsistent with small business policies, and

(3) May result in higher contract prices.

* * * * *

24. Newly redesignated section 11.402 is amended by revising paragraphs (a)(2) and (5) to read as follows:

11.402 Factors to consider in establishing schedules.

(a) * * *

(2) Industry practices;

* * * * *

(5) Production time;

* * * * *

11.404 [Amended]

25. Newly redesignated section 11.404 is amended in paragraph (a)(2) by removing "52.212–1" and inserting "52.211–8"; in paragraph (a)(3) by removing "52.212–2" and inserting "52.211–9"; and in paragraph (b) by removing "52.212–3" and inserting "52.211–10".

Subpart 11.5—[Redesignated From Subpart 12.2]

26. Subpart 11.5 is redesignated from Subpart 12.2 and sections 11.501 through 11.504 are redesignated from sections 12.201 through 12.204, respectively.

11.504 [Amended]

27. Newly designated 11.504 is amended in paragraph (a) by removing "52.212–4" and inserting "52.211–11"; in paragraph (b) by removing "52.212–5" and inserting "52.211–12"; and in paragraph (c) by removing "52.212–6" and "52.212–5" and inserting "52.211–13" and "52.211–12", respectively.

Subpart 11.6 [Redesignated From 12.3]

28. Subpart 11.6 is redesignated from Subpart 12.3 and sections 11.600 through 11.604 are redesignated from sections 12.300 through 12.304, respectively.

11.604 [Amended]

29. Newly redesignated section 11.604 is amended in paragraph (a) by removing "52.212–7" and inserting "52.211–14"; and in paragraph (b) by removing "52.212–8" and inserting "52.211–15".

Subpart 11.7—[Redesignated From 12.4]

30. Subpart 11.7 is redesignated from Subpart 12.4 and sections 11.701 through 11.703 are redesignated from 12.401 through 12.403, respectively.

11.703 [Amended]

31. Newly redesignated section 11.703 is amended in paragraph (a) by removing "52.212–9" and inserting "52.211–16"; in paragraph (b) by removing "52.212–10" and inserting "52.211–17"; and in paragraph (c) by removing "52.212–11" and inserting "52.211–18".

32. Subpart 12.5 is redesignated as Subpart 42.13 and sections 12.501 through 12.505 are redesignated as sections 42.1301 through 42.1305, respectively.

33. Part 12 is revised to read as follows:

PART 12—ACQUISITION OF COMMERCIAL ITEMS

Sec.
12.000 Scope of part.
12.001 Definition.

Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.
12.102 Applicability.

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.
12.202 Market research and description of agency need.
12.203 Procedures for solicitation, evaluation, and award.
12.204 Solicitation/contract form.
12.205 Offers.
12.206 Use of past performance.
12.207 Contract type.
12.208 Contract quality assurance.
12.209 Pricing of commercial items when contracting by negotiation.
12.210 Contract financing.
12.211 Technical data.
12.212 Computer software.
12.213 Other customary commercial practices.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.
12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
12.302 Tailoring of provisions and clauses for the acquisition of commercial items.
12.303 Contract format.

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

12.401 General.
12.402 Acceptance.
12.403 Termination.
12.404 Warranties.

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items

12.500 Scope of subpart.
12.501 Applicability.
12.502 Procedures.
12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.
12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

12.601 General.
12.602 Streamlined evaluation of offers.
12.603 Streamlined solicitation for commercial items.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

12.000 Scope of part.

This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government's preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

12.001 Definition.

Subcontract, as used in this part, includes, but is not limited to, a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

Subpart 12.1—Acquisition of Commercial Items— General

12.101 Policy.

Agencies shall—

(a) Conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements;

(b) Acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and

(c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

12.102 Applicability.

(a) This part shall be used for the acquisition of supplies or services that meet the definition of commercial items at section 2.101.

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in part 13, Simplified Acquisition Procedures; part 14, Sealed Bidding; or part 15, Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of this chapter. When a policy in another part of this chapter is inconsistent with a policy in this part, this part 12 shall take precedence for the acquisition of commercial items.

(d) This part shall not apply to the acquisition of commercial items—

(1) At or below the micro-purchase threshold (see subpart 13.6);

(2) Using the SF 44 (see section 13.505–3);

(3) Using the imprest fund (see subpart 13.4); or

(4) Using the Governmentwide commercial purchase card (see subpart 13.6).

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.

Public Law 103–355 establishes special requirements for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial marketplace. This subpart identifies those special requirements as well as other considerations necessary for proper planning, solicitation, evaluation and award of contracts for commercial items.

12.202 Market research and description of agency need.

(a) Market research (see 10.001) is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see part 11), the solicitation, and resulting contract.

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services to offer. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's need in these terms allows offerors to propose methods that will best meet the needs of the Government.

(c) Follow the procedures in subpart 11.2 regarding the identification and availability of specifications, standards and commercial item descriptions.

12.203 Procedures for solicitation, evaluation, and award.

Contracting officers shall use the policies unique to the acquisition of commercial items prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in part 13, Simplified Acquisition Procedures; part 14, Sealed Bidding; or part 15, Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the streamlined procedure for soliciting offers for commercial items prescribed in 12.603.

12.204 Solicitation/contract form.

The Standard Form 1449, Solicitation/Contract/Order for Commercial Items, shall be used by the contracting officer when issuing written solicitations and awarding contracts and placing orders for commercial items. This form contains the information necessary for solicitations and contracts. The form may also be used for documenting receipt, inspection and acceptance of commercial items. Other forms shall not be used for solicitation or award of contracts or orders for the acquisition of commercial items.

12.205 Offers.

(a) Where technical information is necessary for evaluation of offers, agencies should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall request existing product literature from offerors of commercial items in lieu of unique technical proposals.

(b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.

(c) Contracting officers may, considering the circumstances described in 5.203(b), allow fewer than 30 days response time for receipt of offers for commercial items.

12.206 Use of past performance.

Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government in accordance with the policies and procedures contained in subpart 9.1, section 13.106–1, or subpart 15.6, as applicable.

12.207 Contract type.

Agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. Indefinite-delivery contracts (see subpart 16.5) may be used where the prices are established based on a firm-fixed-price or fixed-price with economic price adjustment. Use of any other contract type to acquire commercial items is prohibited.

12.208 Contract quality assurance.

Contracts for commercial items shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

12.209 Pricing of commercial items when contracting by negotiation.

(a) When contracting by negotiation for commercial items, the policies and procedures in part 15 shall be used to establish the reasonableness of prices.

(b) The provisions and clauses prescribed in this part for the acquisition of commercial items do not include the provisions and clauses prescribed in part 15 because they assume prices for commercial items will either

(1) Not be subject to the Truth in Negotiations Act because the contract

price is below the dollar threshold for application of the Act; or

(2) Be based upon one of the exceptions to cost or pricing data requirements contained in 15.804–1(a)(1).

(c) If the contracting officer determines it is appropriate to use the commercial item exception to cost or pricing data requirements (see 15.804–1(a)(2)), the provisions and clauses prescribed in 15.804–8 and 15.106 for this purpose shall be inserted in an addendum to the solicitation and contract.

(d) If the contracting officer is required to obtain cost or pricing data (see 15.804–1(b)(4) and 15.804–2), the provisions and clauses prescribed in 15.804–8 and 15.106 for this purpose shall be inserted in an addendum to the solicitation and contract.

(e) When a contract is priced using the exceptions at 15.804–1(a)(1), no cost or pricing data may be obtained for modifications unless the proposed modification would change the contract from a contract for a commercial item to a contract for other than a commercial item (see 15.804–1(b)(6)). If the exceptions at 15.804–1(a)(1) are not used, the contracting officer may be required to obtain cost or pricing data to determine the reasonableness of prices for subsequent modifications (see 15.804–2(a)(1)) and the contracting officer shall insert the provisions and clauses prescribed for this purpose in an addendum to the solicitation and contract.

12.210 Contract financing.

Customary market practice for some commercial items may include buyer contract financing. The contracting officer may offer Government financing in accordance with the policies and procedures in part 32.

12.211 Technical data.

Except as provided by agency-specific statutes, the Government shall acquire only the technical data and the rights in that data customarily provided to the public with a commercial item or process. The contracting officer shall presume that data delivered under a contract for commercial items was developed exclusively at private expense. When a contract for commercial items requires the delivery of technical data, the contracting officer shall include appropriate provisions and clauses delineating the rights in the technical data in addenda to the solicitation and contract (see part 27 or agency FAR supplements).

12.212 Computer software.

(a) Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs. Generally, offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

(b) With regard to commercial computer software and commercial computer software documentation, the Government shall have only those rights specified in the license contained in any addendum to the contract.

12.213 Other customary commercial practices.

It is customary practice in the commercial marketplace for both the buyer and seller to propose terms and conditions for a given transaction, each written from their particular perspectives. The terms and conditions prescribed in this part 12 seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other customary commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or executive order.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) In accordance with Section 8002 of Public Law 103–355 (41 U.S.C 264, note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) To implement this Act, the contracting officer shall insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) The provision at 52.212–1, Instructions to Offerors—Commercial Items. This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 26, SF 1449). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with 12.302;

(2) The provision at 52.212–3, Offeror Representations and Certifications—Commercial Items. This provision provides a single, consolidated list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4;

(3) The clause at 52.212–4, Contract Terms and Conditions—Commercial Items. This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 26, SF 1449). The contracting officer may tailor this clause in accordance with 12.302; and

(4) The clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.2125(b) or (c) are applicable to the specific acquisition. When cost information is obtained pursuant to part 15 to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at 52.212–2, Evaluation— Commercial Items, in solicitations for commercial items (see 12.602); or

(2) Include a similar provision containing all evaluation factors required by section 13.106–1, Subpart 14.2 or subpart 15.6, as an addendum (see 12.302(d)).

(d) *Use of required provisions and clauses.* Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in 12.302. For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at 16.505 may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in 17.208 may be used for this purpose. If the provision at 52.212–2 is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in part 23 regarding the use of recovered material when appropriate for the item being acquired.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, customary commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in customary commercial practices across markets and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212–1, Instructions to Offerors—Commercial Items, and the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring 52.212–4, Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—

(1) Assignments;

(2) Disputes;

(3) Payment;

(4) Invoice;

(5) Other compliances; and

(6) Compliance with laws unique to Government contracts.

(c) *Tailoring inconsistent with customary commercial practice.* The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 26 of the SF 1449 if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the SF 1449; a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the SF 1449; any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

12.303 Contract format.

Solicitations and contracts for the acquisition of commercial items prepared using this part 12 shall be assembled, to the maximum extent practicable, using the following format:

(a) Standard Form (SF) 1449;

(b) Continuation of any block from SF 1449, such as—

(1) Block 10 if set-aside for emerging small businesses;

(2) Block 16B for remittance address;

(3) Block 18 for contract line item numbers;

(4) Block 19 for schedule of supplies/services; or

(5) Block 24 for accounting data;

(c) Contract clauses—

(1) 52.212–4, Contract Terms and Conditions—Commercial Items, by reference (see SF 1449, Block 26);

(2) Any addendum to 52.212–4; and

(3) 52.212–5, Contract Terms and Conditions Required to Implement Statutes and Executive Orders;

(d) Any contract documents, exhibits or attachments; and

(e) Solicitation provisions—

(1) 52.212–1, Instructions to Offerors—Commercial Items, by reference (see SF 1449, Block 26);

(2) Any addendum to 52.212–1;

(3) 52.212–2, Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and

(4) 52.212–3, Offeror Representations and Certifications—Commercial Items.

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

12.401 General.

This subpart provides—

(a) Guidance regarding tailoring of the paragraphs in the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, when the paragraphs do not reflect the customary practice for a particular market; and

(b) Guidance on the administration of contracts for commercial items in those areas where the terms and conditions in 52.212–4 differ substantially from those contained elsewhere in the FAR.

12.402 Acceptance.

(a) The acceptance paragraph in 52.212–4 is based upon the assumption that the Government will rely on the contractor's assurances that the commercial item tendered for acceptance conforms to the contract requirements. The Government inspection of commercial items will not

prejudice its other rights under the acceptance paragraph. Additionally, although the paragraph does not address the issue of rejection, the Government always has the right to refuse acceptance of nonconforming items. This paragraph is generally appropriate when the Government is acquiring noncomplex commercial items.

(b) Other acceptance procedures may be more appropriate for the acquisition of complex commercial items or commercial items used in critical applications. In such cases, the contracting officer shall include alternative inspection procedure(s) in an addendum and ensure these procedures and the postaward remedies adequately protect the interests of the Government. The contracting officer must carefully examine the terms and conditions of any express warranty with regard to the effect it may have on the Government's available postaward remedies (see 12.404).

(c) The acquisition of commercial items under other circumstances such as on an "as is" basis may also require acceptance procedures different from those contained in 52.212–4. The contracting officer should consider the effect the specific circumstances will have on the acceptance paragraph as well as other paragraphs of the clause.

12.403 Termination.

(a) *General.* The clause at 52.212–4 permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause. However, the paragraphs in 52.212–4 entitled "Termination for the Government's Convenience" and "Termination for Cause" contain concepts which differ from those contained in the termination clauses prescribed in part 49. Consequently, the requirements of part 49 do not apply when terminating contracts for commercial items and contracting officers shall follow the procedures in this section. Contracting officers may continue to use part 49 as guidance to the extent that part 49 does not conflict with this section and the language of the termination paragraphs in 52.212–4.

(b) *Policy.* The contracting officer should exercise the Government's right to terminate a contract for commercial items either for convenience or for cause only when such a termination would be in the best interests of the Government. The contracting officer should consult with counsel prior to terminating for cause.

(c) *Termination for cause.* (1) The paragraph in 52.2124 entitled "Excusable Delay" requires contractors notify the contracting officer as soon as possible after commencement of any excusable delay. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract. The contracting officer shall send a cure notice prior to terminating a contract for a reason other than late delivery.

(2) The Government's rights after a termination for cause shall include all the remedies available to any buyer in the marketplace. The Government's preferred remedy will be to acquire similar items from another contractor and to charge the defaulted contractor with any excess reprocurement costs together with any incidental or consequential damages incurred because of the termination.

(3) When a termination for cause is appropriate, the contracting officer shall send the contractor a written notification regarding the termination. At a minimum, this notification shall—

(i) Indicate the contract is terminated for cause;

(ii) Specify the reasons for the termination;

(iii) Indicate which remedies the Government intends to seek or provide a date by which the Government will inform the contractor of the remedy; and

(iv) State that the notice constitutes a final decision of the contracting officer and that the contractor has the right to appeal under the Disputes clause (see 33.211).

(d) *Termination for the Government's convenience.* (1) When the contracting officer terminates a contract for commercial items for the Government's convenience, the contractor shall be paid—

(i) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination, and

(ii) Any charges the contractor can demonstrate directly resulted from the termination. The contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the cost accounting standards or the contract cost principles in part 31. The Government does not have any right to audit the contractor's records solely because of the termination for convenience.

(2) Generally, the parties should mutually agree upon the requirements of the termination proposal. The parties must balance the Government's need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

12.404 Warranties.

(a) *Implied warranties.* The Government's post award rights contained in 52.212–4 are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph.

(1) The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium-grade quality and must be comparable in quality to those that will pass without objection in the trade or market for items of the same description.

(2) The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Government will use the items. The Government can rely upon an implied warranty of fitness for particular purpose when—

(i) The seller knows the particular purpose for which the Government intends to use the item; and

(ii) The Government relied upon the contractor's skill and judgment that the item would be appropriate for that particular purpose.

(3) Contracting officers should consult with legal counsel prior to asserting any claim for a breach of an implied warranty.

(b) *Express warranties.* The Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 264 note) requires contracting officers to take advantage of commercial warranties. To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.

(1) Any express warranty the Government intends to rely upon must meet the needs of the Government. The contracting officer should analyze any commercial warranty to determine if—

(i) The warranty is adequate to protect the needs of the Government, e.g., items covered by the warranty and length of warranty;

(ii) The terms allow the Government effective postaward administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the contractor for repair or replacement, and collection of product performance information; and

(iii) The warranty is cost-effective.

(2) In some markets, it may be customary commercial practice for contractors to exclude or limit the implied warranties contained in 52.212–4 in the provisions of an express warranty. In such cases, the contracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.

(3) Express warranties shall be included in the contract by addendum (see 12.302).

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items

12.500 Scope of subpart.

As required by Section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), this subpart lists provisions of laws that are not applicable to contracts for the acquisition of commercial items, or are not applicable to subcontracts, at any tier, for the acquisition of a commercial item. This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

12.501 Applicability.

(a) This subpart applies to any contract or subcontract at any tier for the acquisition of commercial items.

(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial items of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.

(c) For purposes of this subpart, contractors awarded subcontracts under subpart 19.8, Contracting with the Small Business Administration (the 8(a) Program), shall be considered prime contractors.

12.502 Procedures.

(a) The FAR prescription for the provision or clause for each of the laws listed in 12.503 has been revised in the appropriate part to reflect its proper application to prime contracts for the acquisition of commercial items.

(b) For subcontracts for the acquisition of commercial items or commercial components, the clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.244–6, Subcontracts for Commercial Items and Commercial Components, reflect the applicability of the laws listed in 12.504 by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial items or commercial components.

12.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 43, Walsh-Healey Act (see subpart 22.6).

(2) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 3.404).

(3) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 5.203).

(4) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see 23.501).

(b) Certain requirements of the following laws have been eliminated for executive agency contracts for the acquisition of commercial items:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see 23.105).

(2) 40 U.S.C. 327 *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 22.305).

(3) 41 U.S.C. 57(a) and (b), and 58, Requirement for a clause and certain other requirements related to the Anti-Kickback Act of 1986 (see 3.502).

(4) 41 U.S.C. 423(e)(1)(B), Requirement for a certain certification under the Procurement Integrity Act (see 3.104–9).

(5) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see 23.105).

(6) 49 U.S.C. 40118, Requirement for a certificate and clause under the Fly American provisions (see 47.405).

(c) The applicability of the following laws have been modified in regards to Executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 3.503).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 15.804).

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR chapter 99).

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:

(1) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see subpart 19.2).

(2) 19 U.S.C. 1202, Tariff Act of 1930 (see subpart 25.6).

(3) 19 U.S.C. 1309, Supplies for Certain Vessels and Aircraft (see subpart 25.6).

(4) 19 U.S.C. 2701, *et seq.*, Authority to Grant Duty Free Treatment (see subpart 25.6).

(5) 31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions (see subpart 3.8).

(6) 41 U.S.C. 43, Walsh-Healey Act (see subpart 22.6).

(7) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see subpart 27.4).

(8) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see subpart 3.4).

(9) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see subpart 15.1).

(10) 41 U.S.C. 351, Service Contract Act of 1965, as amended (see subpart 22.10).

(11) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see subpart 5.2).

(12) 41 U.S.C. 418a, Rights in Technical Data (see subpart 27.4).

(13) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see subpart 23.5).

(14) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see subpart 47.5) (inapplicability effective May 1, 1996).

(15) 49 U.S.C. 40118, Fly American provisions (see subpart 47.4).

(16) Public Law 90–469, William Langer Jewel Bearing Plant Special Act (see subpart 8.2).

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see subpart 23.1).

(2) 40 U.S.C. 327, *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see subpart 22.3).

(3) 41 U.S.C. 423(e)(1)(B), Requirement for certain certifications under the Procurement Integrity Act (see subpart 3.1).

(4) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see subpart 23.1).

(c) The applicability of the following laws have been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see subpart 3.5).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see subpart 15.8).

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR chapter 99).

Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

12.601 General.

This subpart provides optional procedures for—

(a) Streamlined evaluation of offers for commercial items; and

(b) Streamlined solicitation of offers for commercial items for use where appropriate.

These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices.

12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212–2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106–1 if the acquisition is being made using the procedures in part 13. When the provision at 52.212–2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. This provision contemplates an approach designed to select the source whose offer will provide the Government with the greatest value in terms of performance and other factors. Other methods of evaluation and basis for award may be more appropriate for a given acquisition.

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes the item's intended use. A technical evaluation would normally include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures in section 13.106–1 or subpart 15.6, as applicable. The contracting officer shall ensure the instructions provided in the provision at 52.212–1, Instructions to Offerors—Commercial Items, and the evaluation criteria provided in the provision at 52.212–2, Evaluation—Commercial Items, are in agreement.

(c) Select the offer that is most advantageous to the Government based on the factors contained in the solicitation. Fully document the rationale for selection of the successful offeror including discussion of any tradeoffs considered.

12.603 Streamlined solicitation for commercial items.

(a) When a written solicitation will be issued, the contracting officer may use the following procedure to reduce the time required to solicit and award contracts for the acquisition of commercial items. This procedure combines the Commerce Business Daily (CBD) synopsis required by 5.203 and the issuance of the solicitation into a single document with the following limitations:

(1) Section 5.207 limits submissions to the CBD to 12,000 textual characters (approximately 3 ½ single-spaced pages).

(2) This combined CBD synopsis/solicitation is only appropriate where the solicitation is relatively simple and is not recommended for use when lengthy addenda to the solicitation are necessary.

(b) When using the combined synopsis/solicitation procedure, the SF 1449 is not used for issuing the solicitation.

(c) To use these procedures, the contracting officer shall—

(1) Prepare the synopsis as described at 5.207 for items 1–16.

(2) In item 17, Description, include the following additional information:

(i) The following statement:

> This is a combined synopsis/solicitation for commercial items prepared in accordance with the format in FAR Subpart 12.6, as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued.

(ii) The solicitation number and a statement that the solicitation is issued as an invitation to bid (IFB), request for quotation (RFQ) or request for proposal (RFP).

(iii) A statement that the solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular ______.

(iv) A notice regarding any set-aside and the associated standard industrial classification code and small business size standard. Also include a statement regarding the Small Business Competitiveness Demonstration Program, if applicable.

(v) A list of contract line item number(s) and items, quantities and units of measure, (including option(s), if applicable).

(vi) Description of requirements for the items to be acquired.

(vii) Date(s) and place(s) of delivery and acceptance and FOB point.

(viii) A statement that the provision at 52.212–1, Instructions to Offerors—Commercial, applies to this acquisition and a statement regarding any addenda to the provision.

(ix) A statement regarding the applicability of the provision at 52.212–2, Evaluation—Commercial Items, if used, and the specific evaluation criteria to be included in paragraph (a) of that provision. If this provision is not used, describe the evaluation procedures to be used.

(x) A statement advising offerors to include a completed copy of the provision at 52.212–3, Offeror Representations and Certifications—Commercial Items, with its offer.

(xi) A statement that the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, applies to this acquisition and a statement regarding any addenda to the clause.

(xii) A statement that the clause at 52.212–5, Contract Terms and Conditions Required To Implement Statutes Or Executive Orders—Commercial Items, applies to this acquisition and a statement regarding which, if any, of the additional FAR clauses cited in the clause are applicable to the acquisition.

(xiii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements, warranty requirements or GSA Delegation of Procurement Authority (DPA) case number (see 48 CFR 201–39.106–4)) determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices.

(xiv) A statement regarding the Defense Priorities and Allocations System (DPAS) and assigned rating, if applicable.

(xv) A statement regarding any applicable Commerce Business Daily numbered notes.

(xvi) The date, time and place offers are due.

(xvii) The name and telephone number of the individual to contact for information regarding the solicitation.

(3) Allow response time for receipt of offers as follows:

(i) Because the CBD synopsis and solicitation are contained in a single document, it is not necessary to publish a separate CBD synopsis 15 days before the issuance of the solicitation.

(ii) When using the combined CBD synopsis/solicitation, contracting officers shall establish a response time in accordance with 5.203(b), but shall allow at least 15 days response time from the date the notice is published in the CBD.

(4) Publish amendments to solicitations in the same manner as the initial synopsis/solicitation.

PART 14—SEALED BIDDING

14.201–2 [Amended]

34. Section 14.201–2 is amended in the parenthetical of paragraphs (b) and (c) by removing "part 10, Specifications, Standards, and Other Product Descriptions" and inserting "part 11" in its place; in paragraph (d) by removing "(see 10.004(e))"; and in the parenthetical of paragraph (f) by revising the parenthetical to read "(see subpart 11.4, Delivery or Performance Schedules)."

14.404–1 [Amended]

35. Section 14.404–1 is amended in paragraph (b) by removing "10.008" and inserting "11.201".

PART 15—CONTRACTING BY NEGOTIATION

15.406–2 [Amended]

36. Section 15.406–2 is amended in the parenthetical of paragraph (c) by removing "part 10, Specifications, Standards, and Other Product Descriptions" and inserting "part 11"; in paragraph (d) by removing "(see 10.004(e))"; and in paragraph (f) by revising the parenthetical to read "(subpart 11.4, Delivery or Performance Schedules, and 47.301–1)."

37. Section 15.501 is amended by revising the definition "Commercial product offer" to read as follows:

15.501 Definitions.

* * * * *

Commercial item offer means an offer of a commercial item the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item.

* * * * *

15.503 [Amended]

38. Section 15.503 is amended in paragraph (b) by removing the word "product" and inserting "item".

39. Section 15.704 is amended by revising the second sentence to read as follows:

15.704 Items and work included.

* * * Raw materials, commercial items (see 2.101), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. * * *

PART 16—TYPES OF CONTRACTS

40. Section 16.201 is amended by adding a sentence at the end of the paragraph to read as follows:

16.201 General.

* * * The contracting officer shall use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial items.

41. Section 16.202–2 is amended by revising the introductory paragraph to read as follows:

16.202–2 Application.

A firm-fixed-price contract is suitable for acquiring commercial items (see parts 2 and 12) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications (see part 11) when the contracting officer can establish fair and reasonable prices at the outset, such as when—

* * * * *

42. Section 16.301–3 is amended by redesignating paragraphs (a) through (c) as paragraph (a)(1) through (a)(3), respectively; designating the introductory text as paragraph (a) introductory text and adding new (b) to read as follows:

16.301–3 Limitations.

* * * * *

(b) The use of cost-reimbursement contracts is prohibited for the acquisition of commercial items (see parts 2 and 12).

16.603–2 [Amended]

43. Section 16.603–2 is amended in paragraph (e) by removing "12.304" and inserting "11.604".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

44. Section 22.305 is amended by redesignating paragraph (g) as (h) and adding a new paragraph (g) to read as follows:

22.305 Contract clause.

* * * * *

(g) Contracts for commercial items (see parts 2 and 12).

* * * * *

45. Section 22.604–1 is amended by revising paragraph (a) to read as follows:

22.604–1 Statutory exemptions.

* * * * *

(a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase "in the open market" generally (such as commercial items, see part 12); or where a specific purchase is made under the conditions described in 6.302–2 in circumstances where immediate delivery is required by the public exigency.

* * * * *

PART 23—ENVIRONMENTAL, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

46. Section 23.104 is amended in paragraph (a)(1) by removing the word "or" the second time it is used; in paragraph (a)(2) by removing the period and inserting "; or" and adding paragraph (a)(3) to read as follows:

23.104 Exemptions.

(a) * * * (3) for commercial items.

* * * * *

47. Section 23.501 is amended by redesignating paragraphs (b) through (d) as (c) through (e) and adding a new paragraph (b) to read as follows:

23.501 Applicability.

* * * * *

(b) Contracts for the acquisition of commercial items (see part 12);

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.106–3 [Amended]

48. Section 31.106–3 is amended in the section heading and the first sentence of the undesignated paragraph by removing the word "products" and inserting "items" in their place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.202 [Amended]

49. Section 36.202 is amended in paragraph (a) by removing "part 10" and inserting "part 11" in its place.

36.206 [Amended]

50. Section 36.206 is amended by removing "12.202" and inserting "11.502".

36.303 [Amended]

51. Section 36.303 is amended in paragraph (c)(4) by removing "12.1" and inserting "11.4".

PART 42—CONTRACT ADMINISTRATION

42.1105 [Amended]

53. Section 42.1105 is amended by removing the reference "subpart 12.3" and inserting "subpart 11.6".

Subpart 42.13—[Redesignated from Subpart 12.5]

42.1304 [Amended]

54. and 55. Newly redesignated section 42.1304 (redesignated from 12.504) is amended in paragraph (a) by removing "52.212–15" and inserting "52.242–17"; and at the end of paragraph (d) by removing the period and inserting ", or information other than cost or pricing data." in its place.

42.1305 [Amended]

56. Newly redesignated section 42.1305 (redesignated from 12.505) is amended in paragraph (a) by removing "52.212–12" and inserting "52.24214"; in paragraph (b)(1) by removing "52.212–13" and inserting "52.242–15"; in paragraph (c) by removing "52.21214" and inserting "52.242–16"; and in paragraph (d) by removing "52.212–15" and inserting "52.242–17".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

57. Subpart 44.4, consisting of sections 44.400 through 44.403, is added to read as follows:

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

Sec.
44.400 Scope of subpart.
44.401 Applicability.
44.402 Policy requirements.
44.403 Contract clause.

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

44.400 Scope of subpart.

This subpart prescribes the policies limiting the contract clauses a prime contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with Section 8002(b)(2) (Public Law 103–355).

44.401 Applicability.

This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term "subcontract" has the same meaning as defined in part 12.

44.402 Policy requirements.

(a) Contractors and subcontractors at all tiers shall, to the maximum extent practicable:

(1) Be required to incorporate commercial items or nondevelopmental items as components of items delivered to the Government; and

(2) Not be required to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are furnishing commercial items or commercial components any clause, except those—

(i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) Determined to be consistent with customary commercial practice for the item being acquired.

(b) The clause at 52.244–6, Subcontracts for Commercial Items and Commercial Components, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at 52.244–6 are required to be in subcontracts for commercial items or commercial components.

(c) Agencies may supplement the clause at 52.244–6 only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items.

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244–6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts for supplies or services other than commercial items.

PART 46—QUALITY ASSURANCE

58. Section 46.101 is amended by adding in alphabetical order the definition "Commercial item" to read as follows:

46.101 Definitions.

* * * * *

Commercial item (see 2.101).

* * * * *

59. Section 46.102 is amended in paragraph (e) by removing "and"; by redesignating paragraph (f) as (g) and adding a new paragraph (f) to read as follows:

46.102 Policy.

* * * * *

(f) Contracts for commercial items shall rely on a contractor's existing quality assurance system as a substitute for compliance with Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired permit in-process inspection (Section 8002 of Public Law 103–355). Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice; and

* * * * *

46.202 [Amended]

60. Section 46.202 is amended by removing "three" and inserting "four".

61. Sections 46.202–1 through 46.202–3 are redesignated as 46.202–2 through 46.202–4 and a new 46.202–1 is added to read as follows:

46.202–1 Contracts for commercial items.

When acquiring commercial items (see part 12), the Government shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

46.202–2 [Amended]

62. Newly redesignated section 46.202–2 is amended in paragraph (b)(1) by removing "(see 46.204 and Table 46–1)".

46.202–4 [Amended]

63. Newly redesignated section 46.202–4 is amended in paragraph (a)(1) by removing "(see 46.204 and Table 46–1)".

64. Section 46.203 is amended by revising paragraph (a)(1); at the end of paragraph (a)(2) by removing ";or" and inserting a period; and by removing paragraph (a)(3). The revised text reads as follows:

46.203 Criteria for use of contract quality requirements.

* * * * *

(a) * * *

(1) Commercial (described in commercial catalogs, drawings, or industrial standards; see part 2); or

* * * * *

46.204 [Removed and reserved]

65. Section 46.204 and Table 46–1 are removed.

46.301 [Amended]

66. Section 46.301 is amended by removing "46.202–1(b)" and inserting "46.202–2(b)" in its place.

46.311 and 46.402 [Amended]

67. Sections 46.311 and 46.402(e) are amended by removing "46.202–3" and inserting "46.202–4" in their place.

46.404 [Amended]

68. Section 46.404 is amended at the end of paragraph (a) by removing "46.202–1" and inserting "46.202–2" in its place; in paragraph (b) introductory text by removing "46.202–1(b)" and inserting "46.202–2(b)" in its place; and in paragraph (b)(2) by removing the last sentence.

69. Section 46.709 is revised to read as follows:

46.709 Warranties of commercial items.

The contracting officer should take advantage of commercial warranties, including extended warranties, where appropriate and in the Government's best interests, offered by the contractor for the repair and replacement of commercial items (see part 12).

70. Section 46.710 is amended by revising the first sentence of the introductory paragraph; by removing paragraphs (a)(2) and (b)(2) and redesignating paragraphs (a)(3) through (a)(6) as (a)(2) through (a)(5), and paragraphs (b)(3) through (b)(5) as (b)(2) through (b)(4), respectively. The revised text reads as follows:

46.710 Contract clauses.

The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of a warranty is appropriate (see 46.709 for warranties for commercial items). * * *

* * * * *

PART 47—TRANSPORTATION

71. Section 47.405 is amended by revising the last sentence to read as follows:

47.405 Contract clause.

* * * This clause does not apply to contracts awarded using the simplified acquisition procedures in part 13 or contracts for commercial items (see part 12).

72. Section 47.504 is amended by adding paragraph (e) to read as follows:

47.504 Exceptions.

* * * * *

(e) Beginning May 1, 1996, subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(13)). This exception does not apply to grants-in-aid shipments, such as agricultural and food-aid shipments, to shipments covered under Export-Import Bank loans or guarantees, and to subcontracts under Government contracts or agreements for ocean transportation services.

PART 49—TERMINATION OF CONTRACTS

49.402–7 [Amended]

73. Section 49.402–7 is amended in the last sentence of paragraph (a) by removing "52.212–4" and inserting "52.211–11" in its place.

74. Section 49.501 is revised to read as follows:

49.501 General.

This subpart prescribes the principal contract termination clauses. For contracts for the acquisition of commercial items, this part provides administrative guidance which may be followed when it is consistent with the requirements and procedures in the clause at 52.212–4, Contract Terms and Conditions—Commercial Items. In appropriate cases, agencies may authorize the use of special purpose clauses, if consistent with this chapter.

49.607 [Amended]

75. Section 49.607 is amended by removing from the introductory text "12.5" and inserting "42.13".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

76. Section 52.202–1 is amended by revising the date of the clause; by redesignating paragraphs (b) and (c) as (f) and (g), and adding new paragraphs (b), (c), (d), and (e) to read as follows:

52.202–1 Definitions.

* * * * *

Definitions (Oct. 1995)

* * * * *

(b) *Commercial component* means any component that is a commercial item.

(c) *Commercial item* means—

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) *Minor* modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services—

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) *Component* means any item supplied to the Federal Government as part of an end item or of another component.

(e) *Nondevelopmental item* means—

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

* * * * *

(End of clause)

52.203–4 [Amended]

77. Section 52.203–4 is amended in the first sentence of the introductory text by removing "(b)(5)" and inserting "(b)(6)" in its place.

78. Section 52.203–6 is amended by revising the date of the clause and adding an Alternate I following paragraph (c) to read as follows:

52.203–6 Restrictions on Subcontractor Sales to the Government.

Restrictions on Subcontractor Sales to the Government (Oct. 1995)

* * * * *

Alternate I (OCT. 1995). As prescribed in 3.503–2, substitute the following paragraph in place of paragraph (b) of the basic clause:

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).

52.210–1 through 52.210–7 [Redesignated]

79. Sections 52.210–1 through 52.210–7 are redesignated as 52.211–1 through 52.211–7.

52.212–1 through 52.212–11 [Redesignated]

80. Sections 52.212–1 through 52.212–11 are redesignated as 52.211–8 through 52.211–18.

52.212–12 through 52.212–15 [Redesignated]

81. Sections 52.212–12 through 52.212–15 are redesignated as 52.242–14 through 52.242–17, respectively.

52.212–1 through 52.212–5 [Added]

82. Part 52 is amended by adding new sections 52.212–1 through 52.212–5 to read as follows:

Sec.
52.212–1 Instructions to Offerors-Commercial Items.
52.212–2 Evaluation-Commercial Items.
52.212–3 Offeror Representations and Certifications-Commercial Items.
52.212–4 Contract Terms and Conditions-Commercial Items.
52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items.

52.212–1 Instructions to Offerors—Commercial Items.

As prescribed in 12.301(b)(1), insert the following provision:

Instructions to Offerors—Commercial Items (Oct. 1995)

(a) *Standard industrial classification (SIC) code and small business size standard.* The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show——

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.212–3;

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late offers.* Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

(g) *Contract award (not applicable to Invitation for Bids).* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards.* The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule [illegible] may not be submitted for [illegible] than those specified. The [illegible] reserves the right to make an [illegible] for a quantity less than the [illegible], at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation.* (1) The Index of Federal Specifications, Standards and Commercial Item Descriptions and the documents listed in it may be obtained from the General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW., Washington, DC 20407 ((202) 755–0325/0326).

(2) The DOD Index of Specifications and Standards (DODISS) and documents listed in it may be obtained from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094 (telephone (215) 697–2569).

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Individual documents may be ordered from the Telespecs ordering system by touch-tone telephone. A customer number is required to use this service and can be obtained from the Standardization Documents Order Desk or the Special Assistance Desk (telephone (610) 607–2667/2179).

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication or maintenance.

(End of provision)

52.212-2 Evaluation—Commercial Items.

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

Evaluation—Commercial Items (Oct. 1995)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

____

____

(Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.605) and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.)

Technical and past performance, when combined, are ____ (Contracting Officer state, in accordance with FAR 15.605, the relative importance of all other evaluation factors, when combined, when compared to price.)

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

52.212-3 Offeror Representations and Certifications Commercial Items.

As prescribed in 12.301(b)(2), insert the following provision:

Offeror Representations and Certifications—Commercial Items (Oct. 1995)

(a) *Definitions.* As used in this provision:

Emerging small business means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

Small disadvantaged business concern means a small business concern that—

(1) Is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business, having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and

(2) Has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization and which meets the requirements of 13 CFR Part 124.

Women-owned small business concern means a small business concern—

(a) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(b) Whose management and daily business operations are controlled by one or more women.

Women-owned business concern means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Taxpayer identification number (TIN) (26 U.S.C. 6050M).* (1) Taxpayer Identification Number (TIN).

☐ TIN: ____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis. ____

(2) Corporate Status.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity:

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(3) Common Parent.

☐ Offeror is not owned or controlled by a common parent.

Name and TIN of common parent:

Name ____

TIN ____

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) *Small business concern.* The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) *Small disadvantaged business concern.* The offeror represents and certifies that it ☐ is, ☐ is not a small disadvantaged business concern.

(3) *Women-owned small business concern.* The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

Note: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

(4) *Women-owned business concern.* The offeror represents that it ☐ is, ☐ is not, a women-owned business concern.

(5) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

____

(6) *Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has certified itself to be a small business concern under the size standards for this solicitation.]*

(i) *(Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).) The offeror represents as part of its offer that it ☐ is, ☐ is not an emerging small business.*

(ii) (*Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).)* Offeror represents and certifies as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts)

(Check one of the following):

Number of Employees	*Average Annual Gross Revenues*
____ 50 or fewer	____ $1 million or less
____ 51–100	____ $1,000,001–$2 million
____ 101–250	____ $2,000,001–$3.5 million
____ 251–500	____ $3,500,001–$5 million
____ 501–750	____ $5,000,001–$10 million
____ 751–1,000	____ $10,000,001–$17 million
____ Over 1,000	____ Over $17 million

(d) Certifications and representations required to implement provisions of Executive Order 11246—

(1) *Certification of non-segregated facilities.* (Applies only if the contract amount is expected to exceed $10,000)—

By submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees, any facilities that are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise and that it does not and will not permit its employees to perform their services at any location where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(2) Previous Contracts and Compliance. The offeror represents that—

(i) It ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order 10925, or the clause contained in Section 201 of Executive Order 11114; and

(ii) It ☐ has, ☐ has not, filed all required compliance reports.

(3) Affirmative Action Compliance. The offeror represents that—

(i) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60–1 and 60–2), or

(ii) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352).* (Applies only if the contract is expected to exceed $100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) *Buy American Act—Trade Agreements—Balance of Payments Program Certificate.* (Applies only if FAR clause 52.225–9, Buy American Act—Trade Agreement—Balance of Payments Program, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—Trade Agreements Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(2) Excluded End Products:

Line item No.	Country of origin
____	____
____	____

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (f)(2) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(i) The offeror certifies that the following supplies qualify as "designated or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program:"

____

____

____

(Insert line item numbers)

(ii) The offeror certifies that the following supplies qualify as "Caribbean Basin country end products" as that term is defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program":

____

____

____

(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR Part 25.

(g) *Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program Certificate.* (Applies only if FAR clause 52.22521, Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (g)(2) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act-Balance of Payments Program" and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(2) Excluded End Products:

Line item No.	Country of origin
____	____
____	____

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(2) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA coun' :y end products. Offerors must certify by inserting the applicable line item numbers in the following:

The offeror certifies that the following supplies qualify as "NAFTA country end products" as that term is defined in the clause entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program:"

____

____

____

(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR Part 25.

(h) *Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549).* The offeror certifies, to the best of its knowledge and belief, that—

(1) The offeror and/or any of its principals ☐ are, ☐ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and

(2) ☐ Have, ☐ have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving

stolen property; and ☐ are, ☐ are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) *Procurement Integrity Certification (41 U.S.C. 423).* (Applies only if the contract is expected to exceed $100,000.)

I, the undersigned, am the officer or employee responsible for the preparation of this offer. I certify, to the best of my knowledge and belief, that either—

☐ I have no information, or

☐ I have disclosed information to the Contracting Officer concerning a violation or possible violation of subsection (a), (b), (d) or (f) of 41 U.S.C. 423, Procurement Integrity, or its implementing regulations that may have occurred during the conduct of this procurement.

Signature of the officer or employee responsible for the offer and date.

(End of Provision)

52.212-4 Contract Terms and Conditions—Commercial Items.

As prescribed in 12.301(b)(3), insert the following clause:

Contract Terms and Conditions—Commercial Items (Oct 1995)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727).

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233–1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202–1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.* The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include—

(1) Name and address of the Contractor;

(2) Invoice date;

(3) Contract number, contract line item number and, if applicable, the order number;

(4) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(6) Terms of any prompt payment discount offered;

(7) Name and address of official to whom payment is to be sent; and

(8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment. Payments under this contract may be made by the Government either by check, electronic funds transfer, or the Automated Clearing House, at the option of the Government.

In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules

and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51–58, Anti-Kickback Act of 1986; 41 U.S.C. 251 related to whistle blower protections; and 49 U.S.C 40118, Fly American.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212–5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(End of clause)

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Oct 1995)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.222–3, Convict Labor (E.O. 11755); and

(2) 52.233–3, Protest After Award (31 U.S.C 3553 and 40 U.S.C. 759).

(b) The Contractor agrees to comply with the FAR and FIRMR clauses in this paragraph (b) which the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer shall check as appropriate.)

________ (1) 52.203–6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

________ (2) 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).

________ (3) 52.219–8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d) (2) and (3));

________ (4) 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4));

________ (5) 52.219–14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

________ (6) 52.222–26, Equal Opportunity (E.O. 11246).

________ (7) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

________ (8) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

________ (9) 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

________ (10) 52.225–3, Buy American Act—Supplies (41 U.S.C. 10).

________ (11) 52.225–9, Buy American Act—Trade Agreements Act—Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501–2582).

________ (12) 52.225–17, Buy American Act—Supplies Under European Community Sanctions for End Products (E.O. 12849).

________ (13) 52.225–18, European Community Sanctions for End Products (E.O. 12849).

________ (14) 52.225–19, European Community Sanctions for Services (E.O. 12849).

________ (15) 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (41 U.S.C 10, Pub. L. 103–187).

________ (16) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

________ (17) 201–39.5202–3, Procurement Authority (FIRMR).

(This acquisition is being conducted under ____________ delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is ____________).

(c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer check as appropriate.)

________ (1) 52.222–41, Service Contract Act of 1965, As amended (41 U.S.C. 351, *et seq.*).

________ (2) 52.222–42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

________ (3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

________ (4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

________ (5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record.* The Contractor agrees to comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215–2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components—

(1) 52.222–26, Equal Opportunity (E.O. 11246);

(2) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a)); and

(3) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(4) 52.247–64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(End of clause)

83. In the list of newly designated sections below, for each clause or provision indicated in the left column, remove the reference listed in the middle column and insert the reference listed in the right column:

Clause/provision	Remove	Insert
52.211–1	10.011(a)	11.203(a)
52.211–2	10.011(b)	11.203(b)
52.211–3	10.011(c)	11.203(c)
52.211–4	10.011(d)	11.203(d)
52.211–5	10.011(e)	11.203(e)
52.211–6	10.011(f)	11.203(f)
52.211–7	10.011(g)	11.203(g)
52.211–8	12.104(a)(2)	11.404(a)(2)
52.211–9	12.104(a)(3)	11.404(a)(3)
52.211–10	12.104(b)	11.404(b)
52.211–11	12.204(a)	11.504(a)
52.211–11	12.202	11.502(b)
52.211–12	12.202	11.502(b)
52.211–12	12.204(b)	11.504(b)
52.211–13	12.204(c)	11.504(c)
52.211–14	12.304(a)	11.604(a)
52.211–15	12.304(b)	11.604(b)
52.211–16	12.403(a)	11.703(a)
52.211–17	12.403(b)	11.703(b)
52.211–18	12.403(c)	11.703(c)
52.242–14	12.505(a)	42.1305(a)
52.242–15	12.505(b)	42.1305(b)
52.242–16	12.505(c)	42.1305(c)
52.242–17	12.505(d)	42.1305(d)

84. Section 52.244–6 is added to read as follows:

52.244–6 Subcontracts for Commercial Items and Commercial Components.

As prescribed in 44.403, insert the following clause:

Subcontracts for Commercial Items and Commercial Components (Oct 1995)

(a) *Definition.*

Commercial item, as used in this clause, has the meaning contained in the clause at 52.202–1, Definitions.

Subcontract, as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222–26, Equal Opportunity (E.O. 11246);

(2) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(3) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247–64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

52.246–11 [Amended]

85. & 86. Section 52.246–11 is amended in the introductory text by removing "46.202–3" and inserting "46.202–4" in its place.

52.246–17 and 52.246–18 [Amended]

87. Sections 52.246–17 and 52.246–18 are amended by removing and reserving Alternate I.

PART 53—FORMS

88. Section 53.212 is added to read as follows:

53.212 Acquisition of commercial items.

SF 1449 (OCT 1995), Solicitation/Contract/Order for Commercial Items. SF 1449 is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.

89. Section 53.301–1449 is added to read as follows:

53.301–1449 (OCT 1995), Solicitation/Contract/Order for Commercial Items

BILLING CODE 6820–EP–P

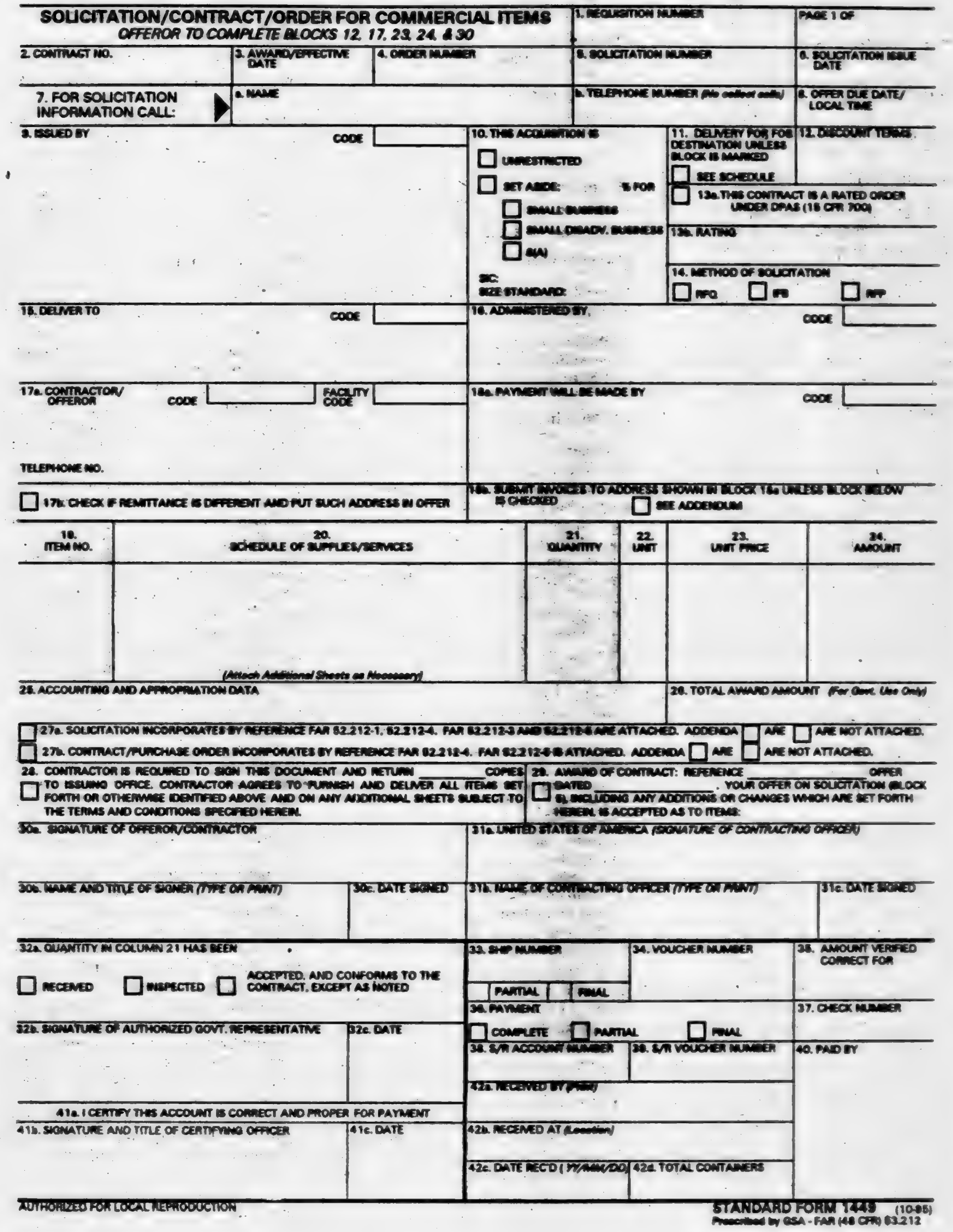

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER
PAGE 1 OF
2. CONTRACT NO.
3. AWARD/EFFECTIVE DATE
4. ORDER NUMBER
5. SOLICITATION NUMBER
6. SOLICITATION ISSUE DATE
7. FOR SOLICITATION INFORMATION CALL: ▶ a. NAME
b. TELEPHONE NUMBER *(No collect calls)*
8. OFFER DUE DATE/LOCAL TIME
9. ISSUED BY CODE
10. THIS ACQUISITION IS ☐ UNRESTRICTED ☐ SET ASIDE: % FOR ☐ SMALL BUSINESS ☐ SMALL DISADV. BUSINESS ☐ 8(A) SIC: SIZE STANDARD:
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED ☐ SEE SCHEDULE
12. DISCOUNT TERMS
☐ 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)
13b. RATING
14. METHOD OF SOLICITATION ☐ RFQ ☐ IFB ☐ RFP
15. DELIVER TO CODE
16. ADMINISTERED BY CODE
17a. CONTRACTOR/OFFEROR CODE FACILITY CODE
TELEPHONE NO.
18a. PAYMENT WILL BE MADE BY CODE
☐ 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER
18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED ☐ SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	(Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA
26. TOTAL AWARD AMOUNT *(For Govt. Use Only)*
☐ 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED.
☐ 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED.
☐ 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ______ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.
☐ 29. AWARD OF CONTRACT: REFERENCE ______ OFFER DATED ______. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:
30a. SIGNATURE OF OFFEROR/CONTRACTOR
31a. UNITED STATES OF AMERICA *(SIGNATURE OF CONTRACTING OFFICER)*
30b. NAME AND TITLE OF SIGNER *(TYPE OR PRINT)*
30c. DATE SIGNED
31b. NAME OF CONTRACTING OFFICER *(TYPE OR PRINT)*
31c. DATE SIGNED
32a. QUANTITY IN COLUMN 21 HAS BEEN ☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED
33. SHIP NUMBER ☐ PARTIAL ☐ FINAL
34. VOUCHER NUMBER
35. AMOUNT VERIFIED CORRECT FOR
36. PAYMENT ☐ COMPLETE ☐ PARTIAL ☐ FINAL
37. CHECK NUMBER
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE
32c. DATE
38. S/R ACCOUNT NUMBER
39. S/R VOUCHER NUMBER
40. PAID BY
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER
41c. DATE
42a. RECEIVED BY *(Print)*
42b. RECEIVED AT *(Location)*
42c. DATE REC'D (YY/MM/DD)
42d. TOTAL CONTAINERS
AUTHORIZED FOR LOCAL REPRODUCTION
STANDARD FORM 1449 (10-95)
Prescribed by GSA - FAR (48 CFR) 53.212

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BILLING CODE [illegible]

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48 CFR Part 3

[FAC 90–32; FAR Case 94–803; Item IV]

RIN [illegible]–AG16

Federal Acquisition Regulation; Whistleblower Protections for Contractor Employees (Ethics)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendment to final rule.

SUMMARY: At 60 FR 37774, July 21, 1995, a final rule was issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is now issuing an *Applicability Date*, in addition to the *Effective Date*, of the regulation.

DATES: Effective Date: September 19, 1995.

Applicability Date: This regulation will apply to contracts in existence as of September 19, 1995, for reprisals to Government contractor employees occurring on or after that date. The remedy provided by this regulation does not apply to contracts otherwise covered by provisions of 10 U.S.C. 2409a.

FOR FURTHER INFORMATION CONTACT: Mr. Julius Rothlein, Ethics Team Leader, at (703) 697–4349 in reference to this FAR case.

SUPPLEMENTARY INFORMATION:

Background:

FAC 90–30, FAR case 94–803, implemented Sections 6005 and 6006 of the Act, Whistleblower Protections for Contractor Employees. These protections are now virtually identical for contractors employed by both DOD and civilian agencies.

The rule as originally published did not specifically discuss the extent of retroactivity. The rule did not require a contract clause. To clarify this, the FAR Council is establishing the extent of the rule's retroactivity.

Some existing Department of Defense contracts contain a contractor employee whistleblower clause, based on prior statute (10 U.S.C. 2409a). That law was narrower in scope and only applied to certain DoD contracts.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–22779 Filed 9–15–95; 8:45 am]

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48 CFR Parts 4, 5, 6, 9, 14, 15, 16, 17, 19, 20, 25, 26, 42, 44, 52 and 53

[FAC 90–32; FAR Case 94–780; Item V]

RIN 9000–AG37

Federal Acquisition Regulation; Small Business

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council has agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement sections 7101(a) and 7106 and to augment regulation implementation of Section 10004 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), dated October 13, 1994. Section 7101(a) of FASA deletes sections 15(e) and (f) from the Small Business Act. Those sections established the priority for award of set-asides and provided the statutory basis for a procurement preference for concerns located in Labor Surplus Areas (LSA). Based on this deletion, this rule removes the LSA set-aside program and LSA subcontracting program from the FAR.

Section 7106 of FASA revises sections 8 and 15 of the Small Business Act to accommodate a Governmentwide goal of 5 percent for women-owned small businesses. This rule deletes existing, separate coverage relating to women-owned businesses and revises existing coverage to place women-owned small businesses on an equal footing with small disadvantaged businesses. In connection with this revision, the Standard Forms 294 and 295 are revised and streamlined.

Section 10004 of FASA, which requires the collection of specified data through the Federal Procurement Data System, is being implemented by FAR case 94–701. This rule augments that coverage by providing a solicitation provision to collect the information on women-owned businesses as required by that FAR case.

This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Small Business Team Leader, at (202) 501–4764 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 94–780.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. The following sections of the Federal Acquisition Streamlining Act are implemented by this final rule;

Section 7101, Repeal of Certain Requirements, paragraph (a), deletes sections 15(e) and (f) from the Small Business Act. These sections established the priority for the award of contracts and subcontracts in carrying out the set-aside programs.

Section 7106, Procurement Goals for Small Business Concerns Owned by Women, establishes a Governmentwide goal for participation by women-owned small business concerns in prime and subcontracts and revises sections 8 and 15 of the Small Business Act to accommodate the goal.

Section 10004, Data Collection through the Federal Procurement Data System, has been implemented in FAR case 94–701. This rule augments that implementation.

These sections are implemented in this final rule by way of the following substantial changes:

Elimination of the Labor Surplus Area (LSA) set-aside program;

Development of coverage giving women-owned small businesses equal standing with small and small disadvantaged business in subcontracting plans;

Issuance of an abbreviated provision to allow firms to represent their status as small, small disadvantaged and/or women-owned small business in one place;

Simplification and streamlining of the Standard Form (SF) 294, Subcontract for Individual Contracts, and SF 295, Summary Subcontract Report;

Inclusion of a solicitation provision collecting information on women-owned businesses.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule requires large business contractors to submit and negotiate a subcontracting plan addressing subcontracting with women-owned small businesses. The rule further provides for imposition of liquidated damages on those firms which do not make a good faith effort to comply with that subcontracting plan. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the final rule contains information collection requirements. Requests for approval of the revised information collection requirements concerning OMB Control Numbers 9000–0006, Subcontracting Plans/Subcontracting Report for Individual Contracts, and 9000–0007, Summary Subcontract Report, were submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collections were approved through March 31, 1998. Public comments concerning this request were invited through a **Federal Register** notice published on January 6, 1995. Based on the comments received concerning these information collection requirements, substantial changes were made to SFs 294 and 295. The most significant changes include removal of blocks which collect information not essential to program management, changing the reporting frequency for the SF 295 from quarterly to semi-annually (DOD only), removing signature blocks from the SF 294 (to facilitate electronic submittal) and clarifying the instructions on the reverse.

D. Public Comments

On January 6, 1995, a proposed rule was published in the **Federal Register** (60 FR 2302). In response to the notice of proposed rulemaking, 114 public comments were received. In order to more effectively implement those sections of the Act addressed in the proposed rule, the proposed rule has been divided into distinguishable segments. Section 4004, Small Business Reservation, has been added to FAR Case 94–770. Section 7102, Contracting Program for Certain Small Business Concerns, remains under consideration in light of the Supreme Court's recent decision in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995), which set forth a new standard for evaluating the constitutionality of race-based affirmative action programs, and the President's directive of July 19, 1995, that executive agencies review such programs under that standard. Section 7102 has been assigned FAR case 94–781. The comments of all respondents were considered in developing this final rule. As a result, the following changes have been made:

Requirements for acquisition plans were revised to include consideration of women-owned small business concerns.

Use of the provision entitled "Priority for Labor Surplus Area Concerns" was limited to sealed bids.

The Standard Forms 294 and 295 were simplified and streamlined.

List of Subjects in 48 CFR Parts 4, 5, 6, 9, 14, 15, 16, 17, 19, 20, 25, 26, 42, 44, 52 and 53

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 4, 5, 6, 9, 14, 15, 16, 17, 19, 20, 25, 26, 42, 44, 52 and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 5, 6, 9, 14, 15, 16, 17, 19, 20, 25, 26, 42, 44, 52 and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.602 is amended by revising paragraph (a)(2) to read as follows:

4.602 Federal Procurement Data System.

(a) * * *

(2) A means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small, small disadvantaged and women-owned small business concerns are sharing in Federal contracts; and

* * * * *

3. Section 4.603 is added to read as follows:

4.603 Solicitation provision.

The contracting officer shall insert the provision at 52.204–5, Women-Owned Business, in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold in Part 13, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.002 [Amended]

4. Section 5.002 is amended in paragraph (c) by removing "labor surplus area" and inserting "women-owned small business" in its place.

5.207 [Amended]

5. Section 5.207 is amended in paragraph (c)(2)(xiii) by removing "and labor surplus area concerns", and in paragraph (d) by removing "or labor surplus area (LSA)".

5.404–1 [Amended]

6. Section 5.404–1 is amended in paragraph (b)(6)(ii) by removing "or LSA".

7. Section 5.503 is amended by revising the second sentence of paragraph (a) to read as follows:

5.503 Procedures.

(a) * * * Contracting officers shall give small, small disadvantaged and women-owned small business concerns maximum opportunity to participate in these acquisitions.

* * * * *

PART 6—COMPETITION REQUIREMENTS

8. Section 6.203 is revised to read as follows:

6.203 Set-asides for small business concerns.

(a) To fulfill the statutory requirements relating to small business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97–219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business concerns.

(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to set-asides.

6.501 [Amended]

9. Section 6.501 is amended in paragraph (c) by removing "and disadvantaged".

PART 9—CONTRACTOR QUALIFICATIONS

10. Section 9.104–3 is amended by revising the last sentence of paragraph (c) to read as follows:

9.104–3 Application of standards.

* * * * *

(c) * * * If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, Subcontracting with Small, Small Disadvantaged Business and Women-Owned Small Business Concerns, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

* * * * *

PART 14—SEALED BIDDING

14.205–1 [Amended]

11. Section 14.205–1(e) is amended in the last sentence after the word "Disadvantaged" by inserting "and women-owned".

14.205–4 [Amended]

12. Section 14.205–4 is amended in the fourth sentence of paragraph (b) by inserting after the word "small" the phrase ", small disadvantaged and women-owned small"; and removing "and labor surplus areas (see 20.104(e) and (f))"; and in the last sentence of paragraph (b) by removing "parts 19 and 20" and inserting in its place "part 19".

13. Section 14.206 is revised to read as follows:

14.206 Small business set-asides.

(See Part 19.)

14.408–6 [Amended]

14. Section 14.408–6 is amended by removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3).

14.502 [Amended]

15. Section 14.502(b)(3) is amended by removing the text following the word "business" and inserting in its place "set-aside (see 19.502–2)."

PART 15—CONTRACTING BY NEGOTIATION

15.705 [Amended]

16. Section 15.705 is amended in paragraph (b) by removing "business and labor surplus area" and inserting in its place ", small disadvantaged and women-owned small business".

15.706 [Amended]

17. Section 15.706 is amended at the end of the first sentence of paragraph (b) by removing "and disadvantaged business utilization" and inserting in its place "business"; and in paragraph (d)(4) by removing "labor surplus area" and inserting in its place "women-owned small business".

15.905–1 [Amended]

18. Section 15.905–1 is amended in the first sentence of paragraph (c) by inserting after the word "individuals," the phrase "women-owned small businesses,"; and removing the phrase "labor surplus areas,".

PART 16—TYPES OF CONTRACTS

16.103 [Amended]

19. Section 16.103 is amended in paragraph (d)(3) by removing the words "or labor surplus area concerns".

16.505 [Amended]

20. Section 16.505 is amended in paragraphs (d)(4) and (d)(5)(ii) by removing the phrase "or labor surplus area".

PART 17—SPECIAL CONTRACTING METHODS

17.104–1 [Amended]

21. Section 17.104–1 is amended—

a. In paragraph (a) by removing the phrase "or labor surplus area",

b. In paragraph (b) by removing the phrase "or labor surplus area"; and

c. In paragraph (b)(2) by removing "(Partial labor surplus area set-asides are only authorized for DOD activities at this time.)".

PART 19—SMALL BUSINESS PROGRAMS

22. The heading of Part 19 is revised to read as set forth above.

* * * * *

23. Section 19.001 is amended by adding, in alphabetical order, the definitions *Labor surplus area, Labor surplus area concern, and Women-owned small business concern* to read as follows:

19.001 Definitions.

* * * * *

Labor surplus area means a geographical area identified by the Department of Labor in accordance with 20 CFR Part 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

Labor surplus area concern means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

* * * * *

Women-owned small business concern means a small business concern—

(a) Which is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(b) Whose management and daily business operations are controlled by one or more women.

24. Section 19.201 is amended by revising paragraphs (a), (b), (c)(9), and (d) to read as follows:

19.201 General policy.

(a) It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business concerns, small disadvantaged business concerns, and women-owned small business concerns. Such concerns shall also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.

(b) Heads of contracting activities are responsible for effectively implementing the small business programs within their activities, including achieving program goals. They are to ensure that contracting and technical personnel maintain knowledge of small, small disadvantaged and women-owned small business program requirements and take all reasonable action to increase participation in their activities' contracting processes by these businesses.

(c) * * *

(9) Make recommendations in accordance with agency regulations as to whether a particular acquisition should be awarded under Subpart 19.5 as a set-aside, or under Subpart 19.8 as a Section 8(a) award.

(d) Small Business Specialists shall be appointed and act in accordance with agency regulations.

25. Section 19.202 is amended by revising the first sentence to read as follows:

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed

in this section and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subpart 19.5 or 19.8. * * *

26. Section 19.202–3 is revised to read as follows:

19.202–3 Equal low bids.

In the event of equal low bids (see 14.408–6), awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns.

27. Section 19.202–5 is amended by revising paragraphs (a) and (b) to read as follows:

19.202–5 Data collection and reporting requirements.

* * * * *

(a) Require each prospective contractor to represent whether it is a small business, small disadvantaged business or women-owned small business (see the provision at 52.219–1, Small Business Program Representations).

(b) Accurately measure the extent of participation by small, small disadvantaged, and women-owned small businesses in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see Subpart 4.6).

* * * * *

28. Section 19.301 is amended by revising the first sentence of paragraph (d) to read as follows:

19.301 Representation by the offeror.

(d) If the SBA determines that the status of a concern as a "small business," a "small disadvantaged business" or a "women-owned small business" has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references Section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in Section 16(d) of the Act. * * *

* * * * *

29. Section 19.304 is revised to read as follows:

19.304 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.219–1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) When contracting by sealed bidding, the contracting officer shall insert the provision at 52.219–2, Equal Low Bids, in solicitations and contracts when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

19.401 [Amended]

30. Section 19.401 is amended in paragraph (a) by removing the phrase "and small disadvantaged business".

31. Section 19.402 is amended by revising paragraph (c)(1)(ii) to read as follows:

19.402 Small Business Administration procurement center representatives.

* * * * *

(c) * * *

(1) * * *

(ii) New qualified small, small disadvantaged and women-owned small business sources, and

* * * * *

32. Section 19.501 is amended in the third sentence of paragraph (a) by removing "or, except for the Department of Defense, restricted to small businesses located in labor surplus areas"; and by revising the first sentence of paragraph (h) to read as follows:

19.501 General.

* * * * *

(h) Section 305 of Public Law 103–403 authorizes public and private organizations for the handicapped to participate for fiscal year 1995 in acquisitions set-aside for small business concerns. * * *

* * * * *

19.504 [Reserved]

33. Section 19.504 is removed and reserved.

34. Section 19.505 is revised to read as follows:

19.505 Rejecting Small Business Administration recommendations.

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center representative, written notice shall be furnished to the appropriate SBA center representative within 5 working days of the contracting officer's receipt of the recommendation.

(b) The SBA procurement center representative may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 working days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 working days. Pending issuance of a decision to the SBA procurement center representative, the contracting officer shall suspend action on the acquisition.

(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate, the SBA procurement center representative may—

(1) Within 1 working day, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and

(2) The SBA shall be allowed 15 working days after making such a written request, within which the Administrator of SBA

(i) May appeal to the Secretary of the Department concerned, and

(ii) Shall notify the contracting officer whether the further appeal has, in fact, been taken.

If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken.

(d) When the contracting officer has been notified within the 15-day period that the SBA has appealed to the agency head, the head of the contracting activity (or designee) shall forward justification for its decision to the agency head. The contracting officer shall suspend contract action until notification is received that the SBA appeal has been settled.

(e) The agency head shall reply to the SBA within 30 working days after receiving the appeal. The decision of the agency head shall be final.

(f) A request to suspend action on an acquisition need not be honored if the contracting officer determines that proceeding to contract award and performance is in the public interest. The contracting officer shall include in the contract file a statement of the facts justifying the determination, and shall promptly notify the SBA representative of the determination and provide a copy of the justification.

35. Section 19.506 is revised to read as follows:

19.506 Withdrawing or modifying set-asides.

(a) If, before award of a contract involving a set-aside, the contracting officer considers that award would be detrimental to the public interest, (*e.g.*, payment of more than a fair market price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.

(b) If the agency small business specialist does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small business specialist and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides (see 19.507) or dissolution of set-asides under $100,000.

(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a set-aside and include it in the contract file.

19.508 [Amended]

36. Section 19.508 is amended by removing and reserving paragraph (b).

Subpart 19.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

37. The heading of Subpart 19.7 is revised to read as set forth above.

38. Section 19.702 is amended by revising the introductory text and paragraph (b)(4) to read as follows:

19.702 Statutory requirements.

Any contractor receiving a contract for more than the simplified acquisition threshold in Part 13 shall agree in the contract that small business concerns, small disadvantaged business concerns and women-owned small business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small disadvantaged business concerns and women-owned small business concerns.

* * * * *

(b) * * *

(4) For modifications to contracts that do not contain the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (or equivalent prior clauses).

* * * * *

39. Section 19.703 is amended by revising paragraph (a) introductory text, (a)(1), and (b) to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business concern, small disadvantaged business concern or a woman-owned small business concern.

(1) To represent itself as a small business concern or a women-owned small business concern, a concern must meet the appropriate definition in 19.001.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1601 through 121.1608. Protests challenging a subcontractor's disadvantaged status representation shall be filed in accordance with 13 CFR 124.601 through 124.610. Protests challenging a subcontractor's status as a women-owned small business concern shall be filed in accordance with Small Business Administration procedures.

40. Section 19.704 is amended by revising paragraphs (a)(1), (a)(3), (a)(4), (a)(6), and (b) to read as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(1) Separate percentage goals for using small business concerns, small disadvantaged business concerns and women-owned small business concerns as subcontractors;

* * * * *

(3) A description of the efforts the offeror will make to ensure that small business concerns, small disadvantaged business concerns and women-owned small business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (see 19.708(b)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction) to adopt a plan similar to the plan required by the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (see 19.708(c));

* * * * *

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master subcontracting plan which contains all the elements required by the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, except goals. Master plans shall be effective for a 1-year period after approval by the contracting officer; however, a master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract.

* * * * *

19.705–1 [Amended]

41. Section 19.705–1 is amended in the first sentence by removing the phrase "for Small and Small Disadvantaged Business Concerns".

19.705–2 [Amended]

42. Section 19.705–2 is amended in the first sentence of paragraph (d) introductory text by removing the words "small business and small disadvantaged" and inserting in their place, "small, small disadvantaged and women-owned small".

43. Section 19.705–4 is amended by revising the last sentence of paragraph (b), the second and last sentences of paragraph (c); the first sentence of paragraphs (d)(1) and (d)(5); and paragraphs (d)(4) and (d)(6) to read as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(b) * * * If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the contracting officer may find the bidder nonresponsible.

(c) * * * Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small, small disadvantaged and women-owned small business subcontractors to the maximum practicable extent. * * * An incentive subcontracting clause (see 52.219–10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small, small disadvantaged or women-owned small businesses.

(d) * * *

(1) Evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small, small disadvantaged and women-owned small business concerns. * * *

* * * * *

(4) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the products or services to be subcontracted, the known availability of small, small disadvantaged and women-owned small business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

(5) Advise the offeror of available sources of information on potential small, small disadvantaged and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. * * *

(6) Obtain advice and recommendations from the SBA procurement center representative (if any) and the agency small business specialist.

19.705–7 [Amended]

44. Section 19.705–7 is amended—

a. In the first sentence of paragraph (a) by removing the word "and" the first time it appears and inserting a comma in its place; and adding the phrase "and women-owned small" after the word "disadvantaged";

b. In the third sentence of paragraph (d) by removing the words "business and" and replacing them with a comma; and adding the phrase "and women-owned small" after the word "disadvantaged";

c. In the fourth sentence of paragraph (d) by removing the phrase "business or" and inserting a comma in its place; and adding the phrase "or woman-owned small" after the word "disadvantaged";

d. In paragraph (f) by removing the words "Business and" and replacing them with a comma; and adding the phrase "and Women-Owned Small" after the word "Disadvantaged".

45. Section 19.706 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

19.706 Responsibilities of the cognizant administrative contracting officer.

(a) * * *

(2) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small, small disadvantaged and women-owned small business concerns;

(3) Information on whether the contractor's efforts to ensure the participation of small, small disadvantaged and women-owned small business concerns are in accordance with its subcontracting plan;

* * * * *

46. Section 19.708 is amended by revising paragraph (a) introductory text, (b) and (c) to read as follows:

19.708 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, in solicitations and contracts when the contract amount is expected to be over the simplified acquisition threshold in Part 13 unless—

* * * * *

(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, in solicitations and contracts that

(i) Offer subcontracting possibilities,

(ii) Are expected to exceed $500,000 ($1,000,000 for construction of any public facility), and

(iii) Are required to include the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, unless the acquisition has been set aside or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(2) The contracting officer shall insert the clause at 52.219–16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, or its Alternate I.

(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219–10, Incentive Subcontracting Program, when a subcontracting plan is required (see 19.702(a)(1)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small, small disadvantaged and women-owned small business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in paragraph (c)(3) of this section are applicable. The contracting officer may vary the terms of the clause as specified in paragraph (c)(2) of this section.

(2) Various approaches may be used in the development of small, small disadvantaged and women-owned small business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria (see paragraph (c)(3) of this section). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in paragraph (c)(2) of this section, the contracting officer may include small, small disadvantaged and women-owned small business subcontracting as one of the factors to be considered in determining the award fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at 52.219–10, Incentive Subcontracting Program.

19.811–3 [Amended]

47. Section 19.811–3(d)(3) is amended by removing the citation "19.502–2(b)" and inserting "19.502–2(c)" in its place.

Subpart 19.9 [Remove and Reserved]

48. Subpart 19.9, consisting of sections 19.901 and 19.902, is removed and reserved.

PART 20 [REMOVED AND RESERVED]

49. Part 20 is removed and reserved.

PART 25—FOREIGN ACQUISITION

25.105 [Amended]

50. Section 25.105 is amended in paragraph (a)(1) by removing the phrase "that is not a labor surplus area concern"; and in paragraph (a)(2) by

removing the phrase "or any labor surplus area concern".

25.404 [REMOVED AND RESERVED]

51. Section 25.404 is removed and reserved.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

52. The Note to Part 26 is amended by removing "20,".

26.104 [Amended]

53. Section 26.104 is amended in paragraphs (a) and (b) by removing "Business and" and inserting a comma in its place; and inserting after the word "Disadvantaged" the phrase "and Women-Owned Small".

PART 42—CONTRACT ADMINISTRATION

54. Section 42.302 is amended by revising paragraphs (a)(52) through (a)(55) to read as follows:

42.302 Contract administration functions.

* * * * *

(a) * * *

(52) Review, evaluate, and approve plant or division-wide small, small disadvantaged and women-owned small business master subcontracting plans.

(53) Obtain the contractor's currently approved company- or division-wide plans for small, small disadvantaged and women-owned small business subcontracting for its commercial products, or, if there is no currently approved plan, assist the contracting officer in evaluating the plans for those products.

(54) Assist the contracting officer, upon request, in evaluating an offeror's proposed small, small disadvantaged and women-owned small business subcontracting plans, including documentation of compliance with similar plans under prior contracts.

(55) By periodic surveillance, ensure the contractor's compliance with small, small disadvantaged and women-owned small business subcontracting plans and any labor surplus area contractual requirements; maintain documentation of the contractor's performance under and compliance with these plans and requirements; and provide advice and assistance to the firms involved, as appropriate.

* * * * *

42.501 [Amended]

55. Section 42.501 is amended in paragraph (b) by removing the word "and" and inserting a comma in its place; and inserting after the word "disadvantaged" the phrase "and women-owned small".

56. Section 42.502 is amended by revising paragraphs (i) and (j) to read as follows:

42.502 Selecting contracts for postaward orientation.

* * * * *

(i) Contractor's status, if any, as a small business, small disadvantaged or women-owned small business concern;

(j) Contractor's performance history with small, small disadvantaged and women-owned small business subcontracting programs;

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.202–2 [Amended]

57. Section 44.202–2 is amended in paragraph (a)(4) by removing the phrase "labor surplus area or"; removing the phrase "business concerns and" and inserting a comma in its place; and inserting after the word "disadvantaged" the phrase "and women-owned small".

44.303 [Amended]

58. Section 44.303 is amended in paragraph (e) by removing the phrase "labor surplus area concerns and"; and inserting after the word "disadvantaged" the phrase "and women-owned small".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

59. Section 52.204–5 is added to read as follows:

52.204–5 Women-Owned Business.

As prescribed in 4.603, insert the following provision:

Women-Owned Business (Oct 1995)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a women-owned business concern.

(b) *Definition.* "Women-owned business concern," as used in this provision, means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(End of provision)

52.216–21 [Amended]

60. Section 52.216–21 is amended by revising the clause date to read (OCT 1995), in Alternates III and IV by revising the dates to read "(OCT 1995)" and by removing the phrase "or labor surplus area" from the introductory texts.

61. Section 52.219–1 is revised to read as follows:

52.219–1 Small Business Program Representations.

As prescribed in 19.304(a), insert the following provision:

Small Business Program Representations (Oct 1995)

(a)(1) The standard industrial classification (SIC) code for this acquisition is ________ *(insert SIC code).*

(2) The small business size standard is ________ *(insert size standard).*

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.* (1) The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a small disadvantaged business concern.

(3) (Complete only if offerer represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.

(c) *Definitions. Small business concern,* as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

Small disadvantaged business concern, as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR Part 124.

Women-owned small business concern, as used in this provision, means a small business concern—

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small or small disadvantaged business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

52.219–2 [Removed]

52.220–1 [Redesignated as 52.219]

62. Section 52.219–2 is removed and 52.220–1 is redesignated in its place and is revised to read as follows:

52.219–2 Equal Low Bids.

As prescribed in 19.304(b), insert the following provision:

Equal Low Bids (Oct 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

____

____

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

52.219–3 and 52.219–5 [Removed and reserved]

63. Sections 52.219–3 and 52.219–5 are removed and reserved.

64. Section 52.219–6 is amended by revising Alternate I to read as follows:

52.219–6 Notice of Total Small Business Set-Aside.

* * * * *

Alternate I (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502–2(c), delete paragraph (c).

65. Section 52.219–7 is amended by revising the date of the clause; in paragraph (a) by removing the definitions *Labor surplus area, Labor surplus area concern,* and *Perform substantially in labor surplus areas*; and by revising paragraphs (b)(4) and (c) and Alternate I to read as follows:

52.219–7 Notice of Partial Small Business Set-Aside.

* * * * *

Notice of Partial Small Business Set-Aside (Oct 1995)

* * * * *

(b) * * *

(4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion.

* * * * *

(c) *Agreement.* For the set-aside portion of the acquisition, a manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502–2(c), delete paragraph (c).

66. Section 52.219–8 is amended by revising the section heading; the clause heading and date; paragraph (a); redesignating paragraph (d) as (e) and revising it; and adding a new paragraph (d) to read as follows:

52.219–8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.

* * * * *

Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (Oct 1995)

(a) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

* * * * *

(d) The term "small business concern owned and controlled by women" shall mean a small business concern (i) which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (ii) whose management and daily business operations are controlled by one or more women; and

(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

(End of clause)

67. Section 52.219–9 is amended by revising—

a. The section heading;

b. The clause heading and date;

c. The first two sentences of paragraph (c);

d. Paragraphs (d), (e), (i), and Alternate I to read as follows:

52.219–9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

* * * * *

Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Oct 1995)

* * * * *

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). * * *

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

(i) Total dollars planned to be subcontracted;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(iv) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns, (ii) small disadvantaged business concerns and (iii) women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns, (ii) small disadvantaged business concerns, and (iii) women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small, small disadvantaged and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PASS), guides, and other data that identify small, small disadvantaged and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, (C) whether women-owned small business concerns were solicited and if not, why not, and (D) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small, small disadvantaged and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small, small disadvantaged and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small, small disadvantaged and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

* * * * *

(l) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small, Small Disadvantaged and Women-Owned Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

Alternate I (OCT 1995). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

52.219–10 [Amended]

68. Section 52.219–10 is amended in—

(a) The section heading and clause heading by removing "for Small and Small Disadvantaged Business Concerns" and revising the clause date to read "Oct. 1995".

(b) The introductory text by removing the text following "19.708(c)(1)," and

inserting in its place "insert the following clause:"; and

(c) Paragraph (a) of the clause by removing "and", inserting a comma, and removing the period at the end of the sentence and inserting "and a certain percentage to women-owned small business concerns."

52.219–13 [Removed and reserved]

69. Section 52.219–13 is removed and reserved.

70. Section 52.219–16 is amended by revising the section heading, clause heading and date; paragraph (a); the first sentence of paragraph (b); and paragraphs (d) and (f) to read as follows:

52.219–16 Liquidated Damages—Subcontracting Plan.

* * * * *

Liquidated Damages—Subcontracting Plan (Oct 1995)

(a) *Failure to make a good faith effort to comply with the subcontracting plan*, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. * * *

* * * * *

(d) With respect to commercial product plans; *i.e.*, company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial product plan.

* * * * *

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

71. Section 52.219–18 is amended by revising Alternate III to read as follows:

52.219–18 Notification of Competition Limited to Eligible 8(a) Concerns.

* * * * *

Alternate III (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502–2(c), delete paragraph (d).

52.219–22 [Removed and reserved]

72. Section 52.219–22 is removed and reserved.

52.220–2, 52.220–3, and 52.220–4 [Removed]

73. Sections 52.220–2, 52.220–3, and 52.220–4 are removed.

PART 53—FORMS

74. Section 53.219 is revised to read as follows:

53.219 Small business programs.

The following standard forms are prescribed for use in reporting small, small disadvantaged and women-owned small business subcontracting data, as specified in Part 19:

(a) *SF 294 (REV OCT 1995), Subcontracting Report for Individual Contracts.* (See 19.704(a)(5).)

(b) *SF 295 (REV OCT 1995), Summary Subcontract Report.* (See 19.704(a)(5).) SF 295 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

75. Sections 53.301–294 and 53.301–295 are revised to read as follows:

BILLING CODE 6820-EP-P

53.301–294 Subcontracting Report for Individual Contracts.

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS

(See instructions on reverse)

OMB No.: 9000-0006
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY
d. STATE
e. ZIP CODE

2. CONTRACTOR'S ESTABLISHMENT CODE

3. DATE SUBMITTED

4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:
☐ MAR 31 ☐ SEPT 30 YEAR

5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY
☐ NAVY
☐ AIR FORCE
☐ GSA
☐ DOE
☐ DEFENSE LOGISTICS AGENCY
☐ NASA
☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*
☐ PRIME CONTRACTOR
PRIME CONTRACT NUMBER
☐ SUBCONTRACTOR
SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT
a. AGENCY'S OR CONTRACTOR'S NAME
b. STREET ADDRESS
c. CITY
d. STATE
e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:
☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)*				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*		▨		
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*				

13. REMARKS

14a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN

14b. TELEPHONE NUMBER
AREA CODE
NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV. 10-96)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This report is not required for commercial products for which a company-wide annual plan (i.e., a Commercial Products Plan) has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

BLOCK 2: Enter the nine-position Contractor Establishment Code (CEC) that identifies the specific contractor establishment. (The CEC consists of eight digits followed by one letter. It is the responsibility of the contracting activity to obtain the CEC for a company that does not have one. The CEC is to coincide with the address in Block 1.)

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 12. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 12: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, and, WOSB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 13. The amounts entered in Blocks 10a through 12 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 and 12: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in both Block 11 and Block 12 (i.e., SDBs owned by women).

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs owned by women).

BLOCK 13: Enter a short narrative explanation if (a) SB, SDB, or WOSB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

DEFINITIONS

1. Commercial products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

4. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

STANDARD FORM 294 (REV. 10-96) BACK

53.301-295 Summary Subcontract Report.

SUMMARY SUBCONTRACT REPORT
(See Instructions on reverse)

OMB No.: 9000-0007
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY
d. STATE
e. ZIP CODE

2. CONTRACTOR'S ESTABLISHMENT CODE

3. DATE SUBMITTED

4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU
☐ OCT 1 - MAR 31 ☐ OCT 1 - SEPT 30 YEAR

5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY
☐ NAVY
☐ AIR FORCE
☐ DEFENSE LOGISTICS AGENCY
☐ NASA
☐ GSA
☐ DOE
☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one)*
☐ PRIME CONTRACTOR ☐ BOTH
☐ SUBCONTRACTOR

8. TYPE OF PLAN
☐ INDIVIDUAL ☐ COMMERCIAL PRODUCTS
IF PLAN IS A COMMERCIAL PRODUCT PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶

9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES

a		c	
b		d	

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report cumulative figures for reporting period in Block 4)

TYPE	WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI)* *(Dollar Amount and Percent of 10c.)*		
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*		
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable)* *(Dollar Amount and Percent of 10c.)*		

14. REMARKS

15. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM
a. NAME
b. TITLE
c. TELEPHONE NUMBER
AREA CODE
NUMBER

16. CHIEF EXECUTIVE OFFICER
a. NAME
b. TITLE
c. SIGNATURE
d. DATE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 295 (REV. 10-95)
Prescribed by GSA - FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Products Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.

4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.

5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)

6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.

7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

10. See special instructions in right-hand column for Commercial Products Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: Enter the nine-position Contractor Establishment Code (CEC) that identifies the specific contractor establishment. (The CEC consists of eight digits followed by one letter. It is the responsibility of the contracting activity to obtain the CEC for a company that does not have one. The CEC is to coincide with the address in Block 1.)

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period, (i.e., Mar 31 or Sept 30).

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Products Plan" only if this report is under an approved Commercial Products Plan. For a Commercial Products Plan, the contractor must specify the percentage of dollars in Blocks 10a through 13 attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 13: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial Products" is checked in Block 8 (see Special Instructions for Commercial products Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 and 12: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported on both Block 11 and Block 12 (i.e., SDBs owned by women). Likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs owned by women).

BLOCK 13 (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial products shall include all subcontracting activity under commercial products plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial products, if any.

3. Enter in Blocks 10a through 13 the total of all subcontract awards under the contractor's Commercial Products Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial products covered by an approved Commercial Products Plan were received.

DEFINITIONS

1. Commercial products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HC), Washington, DC 20546

2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown..

STANDARD FORM 295 (REV. 10-95) BACK

[FR Doc. 95–22780 Filed 9–15–95; 8:45 am]

BILLING CODE 6820-EP-C

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48 CFR Part 5

[FAC 90–32; FAR Case 95–606; Item VI]

RIN 9000–AG60

Federal Acquisition Regulation; Publicizing Contract Actions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to a final rule to revise FAR section 5.207(b)(4), Preparation and transmittal of synopses. The revision deletes the requirement for the Federal Information Processing Standard (FIPS) Number in Commerce Business Daily synopses and, in lieu thereof, requests Government Printing Office (GPO) Billing Account Code information.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 95–606, Publicizing Contract Actions.

SUPPLEMENTARY INFORMATION:

A. Background

For approximately 45 years, the Commerce Business Daily (CBD) has provided free printing services to the agencies. During this period, printing expenses were paid with appropriated funds. Beginning October 1, 1995, the CBD will no longer receive appropriated funds for this purpose, and the Department of Commerce will be required to charge agencies a fee for printing services. The cost will be a flat rate of $18 per notice and bills will be sent to the agency that issues the notice. The Government Printing Office (GPO) has agreed to provide billing and collection services and, in order to facilitate this, agencies will need to include their GPO account number in all CBD notices. The proposed changes to the FAR will enable GPO to properly bill and collect from the individual agency that has placed a CBD notice.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite FAR case 95–606 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this final rule imposes no new reporting requirements or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq*.

List of Subjects in 48 CFR Part 5

Government procurement.

Dated: September 7, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Part 5 is amended as set forth below:

1. The authority citation for 48 CFR Part 5 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.207 is amended by revising paragraph (b)(4), Item 4, and paragraph (b)(6), Item 4, to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(b)(4) * * *

* * * * *

4. GOVERNMENT PRINTING OFFICE (GPO) BILLING ACCOUNT CODE.

(The originating office's account number used by the GPO for billing and collection purposes. The field length is nine alpha-numeric characters. The first three characters entered are "GPO" and then the following six characters are the numeric account number. Agencies should contact the GPO's Office of Comptroller for additional information. Enter N/A if an account number has not been assigned.)

* * * * *

(b)(6) * * *

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4. GPO123456!!

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[FR Doc. 95–22781 Filed 9–15–95; 8:45 am]

BILLING CODE 6820-EP-P

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48 CFR Parts 28, 32, and 52

[FAC 90–32; FAR Case 94–762; Item VII]

RIN 9000–AG35

Federal Acquisition Regulation; Subcontractor Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to implement Sections 2091 and 8105 of the Act which address subcontractor payments, requests for information, and bonds. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Galbraith, Finance/Payment Team Leader, at (703) 697–6710, in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 94–762.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

This notice announces revisions developed under FAR case 94–762. The following sections of the Federal Acquisition Streamlining Act are implemented by this final rule:

Section 2091 of the Act changed section 806, subsection (c), of the Fiscal Years 1992 and 1993 Defense Authorization Act by striking the existing subsection (c) and inserting a

new subsection (c). The stricken words had permitted the FAR Council to substitute FAR coverage for coverage otherwise required from the Secretary of Defense. The substituted words require the FAR Council to place in the FAR, for Government-wide applicability, the coverage required of the Secretary of Defense.

Additionally, Section 8105 of the Act changed section 806 of the Fiscal Years 1992 and 1993 Defense Authorization Act by striking the existing subsection (b) and inserting a new subsection (b). The stricken words dealt with deadlines for the implementation in regulations of the statutory requirements, and that coverage is no longer pertinent. The substituted language creates an exemption from the requirements of the statute for the acquisition of commercial items. Therefore, the clause prescription at FAR 28.106–4(b) has been revised to reflect this exemption.

The final rule is, except for minor adjustments, the same language which was previously in the Defense Federal Acquisition Regulation Supplement, at 228.106–4–70, 228.106–6, 232.970, and 252.228–7006 and proposed in the **Federal Register** on February 2, 1995.

It should be noted that Section 4104(b) of the Act concerning subcontractor payments under smaller construction contracts is being addressed in a separate case. This case, 94–762, addresses only the changes required by Sections 2091 and 8105. It should also be noted that the duplication of responsibilities for furnishing copies of bonds in 28.106–6(d)(3) and the clause in 52.228–12 is intentional. The statute assigns this responsibility to both the Government and contractor. Finally, the language in 32.112–1(c) concerning "administrative and other remedial action" deliberately does not go into detail as to what these actions are. The specifics of these areas and especially the regulations and procedures are peculiar to each agency. The wording is derived from the underlying statute.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely requires the contracting officer or the contractor to furnish bonding information to subcontractors upon request, and provides for remedies which only apply to contractors who fail to make payment to subcontractors.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Subcontractor Payments was submitted to the Office of Management and Budget and approved through March 31, 1998, OMB Control No. 9000–0135. Public comments concerning this request were invited through a **Federal Register** notice at 60 FR 6526, February 2, 1995.

D. Public Comments

A proposed rule was published in the **Federal Register** at 60 FR 6602, February 2, 1995. During the public comment period, six comments were received. For the most part, these comments raised editorial and cross-reference points, which have been corrected. One commentor expressed concern about the use of the term "non-commercial", and suggested, as an alternative, the term "other-than-commercial." While the suggested term may be logically more accurate, the term "non-commercial" has been used throughout all the new Part 32 coverage, and appears to be correctly understood. It was concluded that this change in terminology would not significantly improve the coverage, so the suggestion was not adopted.

List of Subjects in 48 CFR Parts 28, 32, and 52

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 28, 32, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 28, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Section 28.106–4 is amended by designating the existing text as paragraph (a) and adding (b) to read as follows:

28.106–4 Contract clause.

* * * * *

(b) In accordance with Section 806(a)(3) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, the contracting officer shall insert the clause at 52.228–12, Prospective Subcontractor Requests for Bonds, in solicitations and contracts with respect to which a payment bond will be furnished pursuant to the Miller Act (see 28.102–1), except for contracts for the acquisition of commercial items as defined in Subpart 2.1.

3. Section 28.106–6 is amended by adding paragraph (d) to read as follows:

28.106–6 Furnishing information.

* * * * *

(d) Section 806(a)(2) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, requires that the Federal Government provide information to subcontractors on payment bonds under contracts for other than commercial items as defined in Subpart 2.1. Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract with respect to which a payment bond has been furnished pursuant to the Miller Act, the contracting officer shall promptly provide to the requester, either orally or in writing, as appropriate, any of the following:

(1) Name and address of the surety or sureties on the payment bond.

(2) Penal amount of the payment bond.

(3) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond.

PART 32—CONTRACT FINANCING

4. Sections 32.112, 32.112–1 and 32.112–2 are added to read as follows:

32.112 Payment of subcontractors under contracts for non-commercial items.

32.112–1 Subcontractor assertions of nonpayment.

(a) In accordance with Section 806(a)(4) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, upon the assertion by a subcontractor or supplier of a Federal contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with Chapter 39 of Title 31, United States Code (Prompt Payment Act); or

(ii) Final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor; or

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraphs (a)(1) and (2) of this section, the contracting officer finds the prime contractor is not in compliance, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.

(c) If the contracting officer determines that a certification referred to in paragraph (a)(3) of this section is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

32.112–2 Subcontractor requests for information.

(a) In accordance with Section 806(a)(1) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, upon the request of a subcontractor or supplier under a Federal contract for a non-commercial item, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the prime contractor has submitted requests for progress payments or other payments to the Federal Government under the contract; and

(2) Whether final payment under the contract has been made by the Federal Government to the prime contractor.

(b) In accordance with 5 U.S.C. 552(b)(1), this subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept classified in the interest of national defense or foreign policy; and

(2) Properly classified pursuant to such Executive order.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.228–12 is added to read as follows:

52.228–12 Prospective Subcontractor Requests for Bonds.

As prescribed in 28.106–4(b), use the following clause:

Prospective Subcontractor Requests For Bonds (Oct 1995)

In accordance with Section 806(a)(3) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of clause)

[FR Doc. 95–22782 Filed 9–15–95; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 32, 33, and 52

[FAC 90–32; FAR Case 94–731; Item VIII]

RIN 9000–AG52

Federal Acquisition Regulation; Reimbursement of Protest Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council is promulgating this final rule to allow the Government to seek reimbursement for protest costs it has paid a protester where the protest has been sustained based upon the awardee's misrepresentation. In addition to any other remedies available, the Government may collect this debt by offsetting the amount against any payment due the awardee under any Government contract the awardee might have. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Hodge, Protests/Disputes Team Leader at (703) 274–8940 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 94–731, Reimbursement of Protest Costs.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements.

This case presents FAR amendments developed under FAR Case 94–731, Reimbursement of Protest Costs. Sections 1016, 1403, and 1435 of the Act provide that agencies may be required to pay protest and offer preparation costs to protesters under certain circumstances. Often as the result of discovery during a protest, misrepresentations may be detected that could not have been reasonably known to the agency's evaluators. A protest may be sustained where the award has been induced by a material misrepresentation by the awardee. Such situations often involve proposed "key personnel."

The agency is without effective remedy in such cases. Theoretically, the agency could ask the Department of Justice to file a lawsuit against the offeror making the misrepresentations. However, due to the heavy workload of the Justice attorneys, this is not a practical alternative. This FAR change will not adversely affect any substantive right of an offeror. Under the language, the Government remedy is to offset such costs on the same or an unrelated contract. If the offeror believes that the offset is not justified, it may appeal the action to the agency, or under the Contract Disputes Act to either a Board of Contract Appeals or the Court of Federal Claims.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the vast majority of contracts do not involve protests where misrepresentation is detected through discovery.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

A proposed rule was published in the **Federal Register** at 60 FR 15450, March 23, 1995. During the public comment period, seven comments were received. Some commenters were concerned that the proposed rule might be in conflict with the Debt Collection Act. However, based on *Cecile Ind.* v. *Department of Defense*, 995 F.2d 1052 (Fed. Cir. 1993), we do not believe that the Debt Collection Act applies. If it does, the final rule would comply with the Debt Collection Act. Some commenters felt the clause lacked adequate due process. In response, more procedural guidance has been supplied. In particular, the rule provides for a review by the head of the contracting activity, if requested, before there is any final decision. In addition, actions taken under the clause in this rule may be reviewed by courts or boards under the Contract Disputes Act, like any other contract administration decision.

Several commenters suggested the clause was not necessary because the Government already has adequate remedies for contractor misrepresentation. The drafting team agreed that there are additional remedies. For example, the rule now provides that the contracting officer should consider referring contractor misrepresentations to the agency debarring official. However, these remedies do not always prove adequate in the context of misrepresentations discovered as the result of bid protests.

One commenter recommended clarification of whether the agency head or the contracting officer is responsible for issuing the demand letter. The final rule states that this is the responsibility of the contracting officer.

List of Subjects in 48 CFR Parts 32, 33, and 52

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 32, 33, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 32, 33, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Section 32.602 is amended by adding paragraph (h) to read as follows:

§ 32.602 General.

* * * * *

(h) Reimbursement of costs, as provided in 33.102(b), 33.104(h)(1), and 33.105(g)(1), paid by the Government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

3. Section 32.603 is revised to read as follows:

§ 32.603 Applicability.

Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services, and debts arising from the Government's payment of costs, as provided in 33.102(b), 33.104(h)(1), and 33.105(g)(1), where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

4. Section 32.605(b) is amended by inserting the phrase "including reimbursement of protest costs," between the words "contract debts," and "the contracting officer".

PART 33—PROTESTS, DISPUTES, AND APPEALS

5. Section 33.102 is amended by adding paragraph (b)(3) to read as follows:

§ 33.102 General.

* * * * *

(b) * * *

(3) Require the awardee to reimburse the Government's costs, as provided in this paragraph, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(i) When a protest is sustained by GAO or GSBCA under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the awardee's negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs shall be apportioned according to the costs attributable to the awardee's actions.

(ii) The contracting officer shall review the amount of the debt, degree of the awardee's fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the Government to seek reimbursement, the contracting officer shall notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the contracting officer shall afford the contractor an opportunity to inspect and copy agency records pertaining to the debt to the extent permitted by statute and regulation, and to request review of the matter by the head of the contracting activity.

(iii) When appropriate, the contracting officer shall also refer the matter to the agency debarment official for consideration under Subpart 9.4.

* * * * *

6. Section 33.104 is amended by adding paragraph (h)(7) to read as follows:

33.104 Protests to GAO.

* * * * *

(h) * * *

(7) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

7. Section 33.105 is amended by adding paragraph (g)(5) to read as follows:

33.105 Protests to GSBCA.

* * * * *

(g) * * *

(5) If the Government pays costs, as provided in paragraph (g)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.233–3 is amended by adding paragraph (f) to read as follows:

52.233-3 Protest after Award.

* * * * *

Protest After Award (Oct 1995)

* * * * *

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2), 33.104(h)(1), or 33.105(g)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

[FR Doc. 95-22783 Filed 9-15-95; 8:45 am]

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federal register

Monday
September 18, 1995

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888

Fair Market Rents for Section 8 Housing Assistance Payments Program—Fiscal Year 1996; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. FR–3933–N–02]

Fair Market Rents for Section 8 Housing Assistance Payments Program—Fiscal Year 1996

AGENCY: Office of the Secretary, HUD.

ACTION: Final fiscal year (FY) 1996 fair market rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify their use.

On March 2, 1995 (60 FR 11870), HUD published a proposed rule to revise 24 CFR part 888 to change the FMR rent standard from the 45th to 40th percentile rent level. That change was published in the **Federal Register** on August 15, 1995 (60 FR 42222), and made effective on September 14, 1995.

HUD also published proposed FY 1996 FMRs on August 15, 1995 (60 FR 42290). Because of the delay in publishing the proposed FMRs, the public comment period will extend beyond the October 1 statutory date for publishing final FMRs. Therefore, there will be two notices of final FMRs. Today's document provides final FY 1996 FMRs at the level of the proposed FMRs, except for the small number of areas with proposed FMR reductions that will have their FMRs held at the FY 1995 40th percentile level pending evaluation of public comments. The second publication of final FY 1996 FMRs, which will announce revised FMRs for the areas that submitted successful public comments, will occur early next year.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing, telephone (202) 708–0477. (TDD: (202) 708–0850). For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0577 (TDD: (202) 708–0770). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by FMRs established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

II. Publication of FMRs

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. The Department's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment and after evaluating the public comments, publish the final FMRs (see 24 CFR 888.115). The final FY 1996 FMR schedules at the end of this document list the FMR levels for the Rental Certificate program (Schedule B) and for the areas where modifications have been approved for the manufactured home space FMRs (Schedule D).

III. Method Used to Develop FMRs

FMR Standard

The FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 40th percentile rent, the dollar amount below which 40 percent of the standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of units which are occupied by recent movers (renter households who moved into their unit within the past 15 months). Newly built units less than two years old are excluded, and adjustments have been made to correct for the below market rents of public housing units included in the data base.

Data Sources

HUD uses the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) the 1990 Census, which provides statistically reliable rent data for all FMR areas;

(2) the Bureau of the Census' American Housing Surveys (AHSs), which are used to develop between-Census revisions for the largest metropolitan areas and which have accuracy comparable to the decennial Census; and

(3) the Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing.

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or HUD regional rent change factors developed from RDD surveys. Annual average CPI data are available individually for 102 metropolitan FMR areas. RDD Regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

FY 1996 FMRs

This document makes effective revised FMRs that reflect estimated 40th percentile rent levels trended to April 1, 1996. The FMRs have been calculated separately for each bedroom size category based on 1990 Census data. For most FMR areas, the ratios developed from the Census for that area were applied to the two-bedroom FMR estimate to derive the FMRs for the other bedroom size categories. Exceptions have been made for areas with local bedroom size rent intervals below an acceptable range. For those areas the bedroom size intervals selected were the minimums determined after outliers had been excluded from the distribution of bedroom ratios for all metropolitan areas. Higher ratios continue to be used for three-bedroom and larger size units than would result from using the actual market relationships. This is done to assist the largest, most difficult to house families in finding program-eligible units.

FMR Areas With Proposed Reductions

In the August 15, 1995, notice of proposed FMRs, HUD announced that the FMRs for 31 areas were being proposed with reduced FMRs as the result of recent RDD and AHS surveys. Until the affected PHAs have had the opportunity to submit public comments, these areas will continue to use the FY 1995 40th percentile FMRs (included in Schedule B of this notice). The reductions in the FMRs, or any revisions resulting from public comments, for these areas will be made effective in the second publication of final FY 1996 FMRs.

RDD Areas With Proposed FMR Reductions

Atlantic-Cape May, NJ
Bergen-Passaic, NJ
Bridgeport, CT
Dayton-Springfield, OH
Evansville-Henderson, IN–KY
Fitchburg-Leominster, MA
Fort Lauderdale, FL
Hartford, CT
Honolulu, HI
Jackson, MS
Jersey City, NJ
Las Vegas, NV
Miami, FL
Middlesex-Somerset-Hunterdon, NJ
Modesto, CA
Monmouth-Ocean, NJ
Newark, NJ
Omaha, NE–IA
Salinas, CA
Santa Rosa, CA
Stamford, CT
Trenton, NJ
Vallejo-Fairfield-Napa, CA
Ventura, CA
West Palm Beach-Boca Raton, FL

AHS Areas With Proposed FMR Reductions

Boston, MA–NH
Oakland, CA
San Jose, CA
San Francisco, CA
Tampa-St. Petersburg-Clearwater, FL
Washington, DC–MD–VA–WV

FMRs for Puerto Rico

The August 15, notice of proposed FMRs also announced that HUD was in the process of re-benchmarking the FMRs for Puerto Rico. Specially designed RDD surveys have been, or are in the process of being, conducted of each of the metropolitan FMR areas and of the nonmetropolitan area of Puerto Rico. These surveys were modified by adding housing quality questions to account for the high incidence of substandard rental housing in Puerto Rico. Based on the survey results, today's notice makes effective higher FMRs for Mayaguez. The FMRs for the San Juan-Bayamon and the Caguas FMR areas will remain at the FY 1995 40th percentile levels pending evaluation of any public comments received concerning the reductions proposed for FY 1996.

The FMRs for Arecibo, Ponce, and for the nonmetropolitan areas remain at their FY 1995 40th percentile levels. The slight increase proposed in the FMRs for Aguadilla is being made effective in this notice. Results of the RDD surveys now underway for the Aguadilla, Arecibo, and Ponce metropolitan FMR areas and for the nonmetropolitan FMR areas of Puerto Rico will be announced in the **Federal Register** notice of proposed FY 1997 FMRs.

State Minimum FMRs

Today's document implements HUD's new minimum FMR policy, which establishes FMRs at the higher of the local FMR or the State-wide average FMR of nonmetropolitan counties, subject to a ceiling rent cap of $450 on the nonmetropolitan State averages. HUD adopted this procedure in recognition of the difficulty that small PHAs in lightly populated rural areas were having in developing valid FMR surveys and the concern that their FMRs may be affected by small sample sizes and a higher incidence of substandard housing and assisted housing with below market rents. The new policy raises the FMRs for many of the nonmetropolitan counties. HUD also has decided to apply the policy to a small number of metropolitan areas that otherwise would have had FMRs below the State-wide nonmetropolitan county average. The new State minimum policy may be subject to change, based on further analysis and public comment.

Manufactured Home Space FMRs

Manufactured home space FMRs are 30 percent of the applicable Section 8 Rental Certificate program FMR for a two-bedroom unit. HUD accepts public comments requesting modifications of these FMRs where they are thought to be inadequate to run the program. In order to be accepted as a basis for revising the FMRs, such comments must contain statistically valid survey data that show the 40th percentile space rent (excluding the cost of utilities) for the entire FMR area. This program uses the same FMR area definitions as the Section 8 Rental Certificate program. Manufactured home space FMR revisions are published as final FMRs in Schedule D. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to update the Rental Certificate program FMRs.

New Metropolitan FMR Areas

This publication makes final the definitions of three new metropolitan FMR areas based on the most recent OMB changes. The Grand Junction CO FMR area (Mesa County) is the same as the MSA definition. HUD has decided, however, not to use the Flagstaff, AZ-UT MSA definition as a FMR area because Kane County, UT is not considered to be part of the Flagstaff housing market area. The Flagstaff metropolitan FMR area, therefore, is defined to include only Coconino County, AZ, while Kane County, UT is identified as a separate metropolitan FMR area under the State of Utah listing.

IV. HUD Rental Housing Survey Guides

HUD recommends use of professionally-conducted Random Digit Dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $10,000–$15,000. Areas with 500 or more program units usually meet this criterion, and areas with fewer units may meet it if the actual two-bedroom FMR rent standard is significantly different than that proposed by HUD. In addition, HUD has developed a simplified version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of around $5,000 or less.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. All grouped surveys must be approved in advance by HUD. PHAs are cautioned that the resultant FMRs will not be identical within the group; each individual FMR area will have a separate FMR based on its relationship to the combined rent of the group of FMR areas.

PHAs that plan to use the RDD survey technique may obtain a copy of the appropriate survey guide by calling HUD USER on 1–800–245–2691. Larger PHAs should request "Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain "Rental Housing Surveys; A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments."

HUD prefers but does not mandate the use of RDD telephone surveys or the more traditional method described in the small PHA survey guide. Other survey methodologies are acceptable as long as they provide statistically reliable, unbiased estimates of the 40th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. All survey results must be fully documented.

V. FMRs for Federal Disaster Areas

Under the authority granted in 24 CFR part 899, the Secretary finds good cause to waive the regulatory requirements that govern requests for geographic area FMR exceptions for areas that are declared disaster areas by the Federal Emergency Management Agency (FEMA) during FY 1996. HUD is prepared to grant disaster-related exceptions up to 10 percent above the applicable FMRs. HUD field offices are authorized to approve such exceptions for: (1) single-county FMR areas and for individual county parts of multi-county FMR areas that qualify as disaster areas under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; if (2) the PHA certifies that damage to the rental housing stock as a result of the disaster is so substantial that it has increased the prevailing rent levels in the affected area. Such exceptions must be requested in writing by the responsible PHAs. Once approved by HUD, they will remain in effect until superseded by the publication of the final FY 1998 FMRs.

VI. Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this Notice will not have a significant impact on family formation, maintenance, or well-being. The Notice amends Fair Market Rent schedules for various Section 8 assisted housing programs, and does not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this Notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will be codified in 24 CFR Part 888, are amended as follows:

Dated: August 30, 1995.

Henry G. Cisneros,

Secretary.

Fair Market Rents for the Section 8 Housing Assistance Payments Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. The FMRs shown in Schedule B incorporate the Office of Management and Budget's (OMB) most current definitions of metropolitan areas (with the exceptions discussed in paragraph b). HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions. FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition.

b. The exceptions are counties deleted from metropolitan areas whose revised OMB definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the "Metropolitan FMR Areas" listing:

Metropolitan Area and Counties Deleted

Atlanta, GA—Carroll, Pickens, and Walton Counties
Chicago, IL—DeKalb, Grundy and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN—Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX—Henderson County
Flagstaff, AZ–UT—Kane County, UT
Lafayette, LA—St. Landry and Acadia Parishes
New Orleans, LA—St. James Parish
Washington, DC–MD–VA–WV—Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia

c. FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states and for FMR areas in Puerto Rico, the Virgin Islands, and the Pacific Islands.

d. FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county. The complete definitions of these areas including the independent cities are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED

County	Cities
Allegheny	Clifton Forge and Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southhampton	Franklin.
Wise	Norton.

e. FMRs for Section 8 manufactured home spaces are 30 percent of the two-bedroom Section 8 Rental Certificate program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been revised on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that

are updated annually using the same data used to estimate the Rental Certificate program FMRs. The FMR area definitions used for manufactured home spaces are the same as for the Section 8 Certificate program.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropoliten part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210–32–P

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	239	283	353	494	559	Calhoun
Birmingham, AL MSA	340	384	447	605	672	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	322	359	430	563	610	Russell
Decatur, AL MSA	317	320	405	523	625	Lawrence, Morgan
Dothan, AL MSA	287	294	365	503	510	Dale, Houston
Florence, AL MSA	269	310	398	496	556	Colbert, Lauderdale
Gadsden, AL MSA	239	292	338	438	539	Etowah
Huntsville, AL MSA	333	390	481	641	762	Limestone, Madison
Mobile, AL MSA	321	358	411	553	649	Baldwin, Mobile
Montgomery, AL MSA	364	389	459	626	753	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	314	337	448	615	651	Tuscaloosa

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	234	278	332	430	492	Bibb	234	278	332	447	536
Bullock	234	278	332	430	492	Butler	234	278	332	430	492
Chambers	234	278	332	430	493	Cherokee	234	278	332	430	492
Chilton	242	278	332	430	492	Choctaw	234	278	332	430	492
Clarke	234	278	332	430	492	Clay	234	278	332	430	492
Cleburne	234	278	332	430	492	Coffee	234	329	427	594	667
Conecuh	234	278	332	430	492	Coosa	234	278	332	430	492
Covington	234	278	332	430	492	Crenshaw	234	278	332	430	492
Cullman	234	278	332	440	535	Dallas	234	278	332	430	492
Dekalb	234	278	332	430	492	Escambia	234	278	332	430	492
Fayette	234	278	332	430	492	Franklin	234	278	332	430	492
Geneva	234	278	332	430	492	Greene	234	278	332	430	492
Hale	234	278	332	430	492	Henry	234	278	332	430	492
Jackson	253	278	332	430	528	Lamar	234	278	332	430	492
Lee	247	345	442	575	727	Lowndes	234	278	332	430	492
Macon	255	287	383	479	536	Marengo	234	278	332	430	492
Marion	234	278	332	430	492	Marshall	268	278	338	469	555
Monroe	234	278	332	430	492	Perry	234	278	332	430	492
Pickens	234	278	332	430	492	Pike	239	278	332	430	500
Randolph	234	278	332	430	492	Sumter	234	278	332	430	492
Talladega	234	278	332	430	492	Tallapoosa	235	278	332	430	492
Walker	234	289	340	439	560	Washington	234	278	332	430	492
Wilcox	234	278	332	430	492	Winston	234	278	332	430	492

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	473	557	740	1029	1215	Anchorage

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutian East	491	553	623	778	1020	Aleutian West	421	475	533	668	748
Bethel	633	792	1003	1256	1406	Bristol Bay	508	586	660	917	997
Dillingham	612	622	827	1036	1159	Fairbanks North Star	386	525	689	947	1117
Haines	456	565	644	876	902	Juneau	681	787	1002	1334	1386
Kenai Peninsula	368	469	565	785	927	Ketchikan Gateway	502	613	821	1143	1201
Kodiak Island	653	717	931	1164	1510	Lake & Peninsula	392	634	713	890	998
Matanuska-Susitna	357	484	544	739	873	Nome	645	798	896	1247	1407
North Slope	732	750	927	1290	1503	Northwest Arctic	775	873	980	1363	1608
Pr.Wales-Outer Ketchikan	342	544	625	868	918	Sitka	540	641	719	1000	1181
Skagway-Yakutat-Angoon	419	426	552	691	775	Southeast Fairbanks	430	451	544	680	764
Valdez-Cordova	512	627	697	890	1060	Wade Hampton	366	552	622	777	871
Wrangell-Petersburg	373	550	668	851	934	Yukon-Koyukuk	489	551	621	776	899

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ	401	435	564	757	909	Coconino
Las Vegas, NV-AZ MSA	450	534	636	884	1044	Mohave
Phoenix-Mesa, AZ MSA	370	447	561	780	920	Maricopa, Pinal
Tucson, AZ MSA	347	416	553	770	908	Pima
Yuma, AZ MSA	347	401	534	743	748	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	347	364	463	604	718	Cochise	347	364	463	604	718
Gila	347	364	463	604	718	Graham	347	364	463	604	718
Greenlee	347	364	463	604	718	La Paz	347	364	463	604	718
Navajo	347	364	463	604	718	Santa Cruz	347	384	475	604	718
Yavapai	368	384	512	714	786						

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	261	327	430	582	602	Benton, Washington
Fort Smith, AR-OK MSA	282	286	376	504	528	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	352	390	464	641	748	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	321	374	440	611	642	Crittenden
Pine Bluff, AR MSA	268	318	419	529	688	Jefferson

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

ARKANSAS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Texarkana, TX-Texarkana, AR MSA	286	350	427	563	597	Miller

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	250	270	345	473	513
Baxter	227	290	385	494	602
Bradley	227	270	345	458	513
Carroll	267	292	345	458	547
Clark	250	270	350	458	553
Cleburne	257	270	345	458	520
Columbia	227	270	345	458	513
Craighead	294	320	377	520	549
Dallas	227	270	345	458	513
Drew	227	294	393	543	552
Fulton	235	270	345	458	513
Grant	236	281	345	458	518
Hempstead	227	270	345	458	513
Howard	227	270	345	458	513
Izard	237	270	345	458	513
Johnson	227	270	345	458	513
Lawrence	227	270	345	458	513
Lincoln	246	270	351	470	513
Logan	238	270	345	458	513
Marion	227	270	345	458	513
Monroe	231	270	345	458	513
Nevada	227	270	345	474	513
Ouachita	265	270	345	477	563
Phillips	227	270	345	458	513
Poinsett	227	270	345	458	513
Pope	227	297	376	522	601
Randolph	227	270	345	458	513
Scott	227	270	345	458	513
Sevier	249	270	345	458	513
Stone	227	270	345	458	513
Van Buren	227	270	345	458	566
Woodruff	227	270	345	458	513

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	227	270	345	458	542
Boone	269	274	363	506	597
Calhoun	227	270	345	458	513
Chicot	227	270	345	458	513
Clay	227	270	345	458	513
Cleveland	227	270	345	458	513
Conway	227	281	376	469	526
Cross	236	298	345	465	548
Desha	227	270	345	458	513
Franklin	238	270	345	458	513
Garland	227	290	388	540	638
Greene	244	270	345	458	513
Hot Spring	227	270	345	458	513
Independence	239	277	345	458	513
Jackson	235	270	345	458	513
Lafayette	238	270	345	458	513
Lee	251	270	345	458	513
Little River	227	270	351	487	574
Madison	259	270	351	458	513
Mississippi	258	281	376	495	555
Montgomery	227	270	345	458	513
Newton	227	270	345	458	513
Perry	227	270	345	458	513
Pike	227	270	345	458	513
Polk	227	270	345	458	513
Prairie	227	270	345	458	513
St. Francis	227	276	345	468	550
Searcy	227	270	345	458	513
Sharp	227	270	345	458	513
Union	285	300	361	484	593
White	227	270	345	474	513
Yell	236	270	345	458	513

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	377	425	532	739	819	Kern
Chico-Paradise, CA MSA	314	402	535	734	878	Butte
Fresno, CA MSA	386	432	516	717	826	Fresno, Madera
Los Angeles-Long Beach, CA PMSA	564	676	855	1154	1377	Los Angeles
Merced, CA MSA	374	421	511	706	833	Merced
Modesto, CA MSA	422	455	555	774	911	Stanislaus
Oakland, CA PMSA	530	642	804	1102	1319	Alameda, Contra Costa
Orange County, CA PMSA	637	696	860	1197	1333	Orange
Redding, CA MSA	355	394	493	685	808	Shasta
Riverside-San Bernardino, CA PMSA	455	507	618	859	1014	Riverside, San Bernardino
Sacramento, CA PMSA	444	501	626	870	1025	El Dorado, Placer, Sacramento
Salinas, CA MSA	534	625	754	1048	1099	Monterey
San Diego, CA MSA	473	541	677	940	1109	San Diego
San Francisco, CA PMSA	605	784	991	1358	1437	Marin, San Francisco, San Mateo
San Jose, CA PMSA	674	768	949	1301	1461	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	481	544	690	959	1132	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	585	650	824	1147	1294	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	596	709	948	1317	1544	Santa Cruz
Santa Rosa, CA PMSA	541	613	795	1105	1306	Sonoma
Stockton-Lodi, CA MSA	415	470	602	837	988	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	509	580	707	983	1160	Napa, Solano
Ventura, CA PMSA	609	698	885	1177	1371	Ventura
Visalia-Tulare-Porterville, CA MSA	347	369	480	671	766	Tulare
Yolo, CA PMSA	447	510	630	875	1033	Yolo
Yuba City, CA MSA	309	360	463	646	746	Sutter, Yuba

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	294	441	498	692	746
Calaveras	356	411	548	762	898
Del Norte	301	412	548	763	900
Humboldt	303	420	551	768	908
Inyo	304	411	527	691	746
Lake	331	421	562	708	921
Mariposa	317	403	519	679	802
Modoc	321	360	463	646	746
Nevada	368	503	670	932	1080
San Benito	441	519	650	905	1060
Siskiyou	308	360	463	646	746
Trinity	330	360	463	646	746

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Amador	405	447	596	830	925
Colusa	321	360	463	646	746
Glenn	294	360	463	646	746
Imperial	332	415	511	712	746
Kings	341	395	494	687	810
Lassen	360	364	473	646	746
Mendocino	406	489	601	837	843
Mono	449	538	715	994	1175
Plumas	324	360	463	646	746
Sierra	294	393	485	674	796
Tehama	307	360	463	646	746
Tuolumne	325	444	592	823	971

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	434	520	667	929	1095	Boulder
Colorado Springs, CO MSA	372	398	531	739	874	El Paso
Denver, CO PMSA	365	435	579	804	949	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	384	474	585	812	960	Larimer
Grand Junction, CO MSA	354	367	459	618	736	Mesa
Greeley, CO PMSA	365	403	507	704	833	Weld
Pueblo, CO MSA	372	386	482	649	773	Pueblo

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	354	367	459	618	736	Archuleta	354	388	459	618	736
Baca	354	367	459	618	736	Bent	354	367	459	618	736
Chaffee	354	367	459	618	736	Cheyenne	354	367	459	618	736
Clear Creek	354	412	467	650	766	Conejos	354	367	459	618	736
Costilla	354	367	459	618	736	Crowley	354	367	459	618	736
Custer	354	367	459	618	736	Delta	354	367	459	618	736
Dolores	354	367	459	618	736	Eagle	476	518	691	962	1134
Elbert	390	434	494	618	811	Fremont	354	367	459	618	736
Garfield	411	440	556	694	910	Gilpin	354	470	597	788	872
Grand	420	424	537	672	813	Gunnison	354	367	459	618	736
Hinsdale	354	374	459	618	736	Huerfano	354	367	459	618	736
Jackson	354	367	459	618	736	Kiowa	354	367	459	618	736
Kit Carson	354	367	459	618	736	Lake	354	367	459	618	736
La Plata	394	435	574	799	943	Las Animas	354	377	459	618	736
Lincoln	354	367	459	618	736	Logan	354	367	459	618	736
Mineral	354	367	459	618	736	Moffat	354	367	459	618	736
Montezuma	354	367	459	618	736	Montrose	354	367	464	643	759
Morgan	354	367	459	618	736	Otero	354	367	459	618	736
Ouray	354	367	464	618	751	Park	354	391	510	708	805
Phillips	354	367	459	618	736	Pitkin	531	726	967	1276	1450
Prowers	354	367	459	618	736	Rio Blanco	354	367	459	618	736
Rio Grande	354	367	459	618	736	Routt	354	428	565	785	925
Saguache	354	367	459	618	736	San Juan	354	367	459	618	736
San Miguel	651	940	1033	1291	1665	Sedgwick	354	367	459	618	736
Summit	456	546	699	973	1198	Teller	354	419	559	777	783
Washington	354	367	459	618	736	Yuma	354	367	459	618	736

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	525	682	821	1027	1282	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	636	761	950	1255	1446	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	438	545	697	873	1061	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	528	648	802	1026	1189	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	476	575	700	877	1002	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	772	905	1103	1479	1633	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	403	545	674	842	942	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	455	551	689	859	963	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	342	552	623	866	1021	Hartland town
Litchfield	397	540	721	901	1025	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	588	666	890	1237	1459	Chester town, Deep River town, Essex town Westbrook town
New London	498	610	693	895	1136	Lyme town, Voluntown town
Tolland	342	552	623	866	872	Union town
Windham	393	481	623	780	979	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	415	460	525	681	773	Kent
Wilmington-Newark, DE-MD PMSA	409	541	630	856	1033	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	364	386	493	647	691						

DIST. OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	625	710	834	1135	1368	District of Columbia

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	375	438	561	745	790	Flagler, Volusia
Fort Lauderdale, FL PMSA	483	568	702	977	1152	Broward
Fort Myers-Cape Coral, FL MSA	417	481	580	809	845	Lee
Fort Pierce-Port Lucie, FL MSA	428	470	609	792	854	Martin, St. Lucie
Fort Walton Beach, FL MSA	375	409	463	629	742	Okaloosa
Gainesville, FL MSA	375	409	497	681	804	Alachua
Jacksonville, FL MSA	391	438	528	698	776	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	375	409	463	588	674	Polk
Melbourne-Titusville-Palm Bay, FL MSA	375	445	557	746	870	Brevard
Miami, FL PMSA	474	594	742	1018	1181	Dade
Naples, FL MSA	401	565	679	944	1053	Collier
Ocala, FL MSA	375	409	463	609	715	Marion
Orlando, FL MSA	464	528	629	826	1008	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	375	409	463	592	635	Bay
Pensacola, FL MSA	375	409	463	620	732	Escambia, Santa Rosa
Punta Gorda, FL MSA	375	429	571	793	936	Charlotte
Sarasota-Bradenton, FL MSA	376	477	606	781	849	Manatee, Sarasota
Tallahassee, FL MSA	384	423	559	731	881	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	370	440	545	725	878	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	480	563	696	926	1143	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	368	402	455	564	614	Bradford	368	402	455	564	614
Calhoun	368	402	455	564	614	Citrus	368	402	455	564	614
Columbia	368	402	455	564	614	Desoto	368	402	455	564	614
Dixie	368	402	455	564	614	Franklin	368	402	455	564	614
Gilchrist	368	402	455	564	614	Glades	368	402	455	564	614
Gulf	368	402	455	564	614	Hamilton	368	402	455	564	614
Hardee	368	402	455	564	614	Hendry	368	402	469	587	658
Highlands	368	402	455	566	633	Holmes	368	402	455	564	614
Indian River	368	460	591	739	827	Jackson	368	402	455	564	614
Jefferson	368	402	455	564	614	Lafayette	368	402	455	564	614
Levy	368	402	455	564	614	Liberty	368	402	455	564	614
Madison	368	402	455	564	614	Monroe	527	594	763	1052	1251
Okeechobee	368	402	455	564	620	Putnam	368	402	455	564	614
Sumter	368	402	455	564	614	Suwannee	368	402	455	564	614
Taylor	368	402	455	564	615	Union	368	402	455	564	614
Wakulla	368	402	455	564	614	Walton	368	402	455	585	732
Washington	368	402	455	564	614						

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	279	327	400	546	590	Dougherty, Lee
Athens, GA MSA	345	371	480	654	788	Clarke, Madison, Oconee
Atlanta, GA	465	518	604	803	973	Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale, Spalding
Augusta-Aiken, GA-SC MSA	331	396	466	634	750	Columbia, Mcduffie, Richmond
Carroll County, GA	310	325	419	583	689	Carroll
Chattanooga, TN-GA MSA	318	373	447	577	658	Catoosa, Dade, Walker
Columbus, GA-AL MSA	322	359	430	563	610	Chattahoochee, Harris, Muscogee
Macon, GA MSA	335	374	434	599	616	Bibb, Houston, Jones, Peach, Twiggs
Pickens County, GA	270	325	401	557	585	Pickens
Savannah, GA MSA	337	418	486	655	682	Bryan, Chatham, Effingham
Walton County, GA	344	371	478	664	784	Walton

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	267	322	393	510	579	Atkinson	267	322	393	510	579
Bacon	267	322	393	510	579	Baker	267	322	393	510	579
Baldwin	267	342	417	534	583	Banks	267	322	393	510	579
Ben Hill	267	322	393	510	587	Berrien	267	322	393	510	579
Bleckley	267	322	393	510	579	Brantley	267	322	393	510	579
Brooks	267	322	393	510	579	Bulloch	322	327	420	541	687
Burke	267	322	393	510	579	Butts	267	353	470	628	658
Calhoun	267	322	393	510	579	Camden	374	423	474	658	778
Candler	267	322	393	510	579	Charlton	267	322	393	510	579
Chattooga	267	322	393	510	579	Clay	267	322	393	510	579
Clinch	267	322	393	510	579	Coffee	267	322	393	510	587
Colquitt	267	322	393	510	579	Cook	267	322	393	510	579
Crawford	267	322	393	510	579	Crisp	270	322	393	510	579
Dawson	267	347	463	578	714	Decatur	267	322	393	510	579
Dodge	267	322	393	510	579	Dooly	267	322	393	510	579
Early	267	322	393	510	579	Echols	267	322	393	510	579
Elbert	267	322	393	510	579	Emanuel	267	322	393	510	579
Evans	267	322	393	510	579	Fannin	267	322	393	510	579
Floyd	267	322	394	521	579	Franklin	267	322	393	510	579
Gilmer	267	322	393	510	579	Glascock	267	322	393	510	579
Glynn	373	417	473	634	777	Gordon	317	322	401	518	661
Grady	272	322	393	510	579	Greene	267	322	393	510	579
Habersham	287	322	393	510	584	Hall	283	430	505	633	707
Hancock	267	322	393	510	579	Haralson	267	322	393	510	579
Hart	267	322	393	510	579	Heard	267	322	393	510	579
Irwin	267	322	393	510	579	Jackson	298	322	404	510	665

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Jasper	267	322	398	541	579	Jeff Davis	267	322	393	510	579
Jefferson	267	322	393	510	587	Jenkins	267	322	393	510	579
Johnson	267	322	393	510	579	Lamar	267	331	393	510	624
Lanier	267	322	393	510	579	Laurens	273	322	393	510	579
Liberty	333	371	422	586	591	Lincoln	267	322	393	510	579
Long	267	347	393	510	579	Lowndes	300	362	438	615	679
Lumpkin	267	360	405	542	665	Mcintosh	267	322	393	510	579
Macon	267	322	393	510	579	Marion	267	322	393	510	579
Meriwether	267	322	393	510	579	Miller	267	322	393	510	579
Mitchell	267	322	393	510	579	Monroe	267	322	393	519	579
Montgomery	267	322	393	510	579	Morgan	267	322	408	510	579
Murray	267	322	393	510	579	Oglethorpe	267	322	393	510	579
Pierce	267	322	393	510	579	Pike	310	337	426	593	597
Polk	267	322	393	532	579	Pulaski	267	322	393	510	579
Putnam	267	322	393	510	587	Quitman	267	322	393	510	579
Rabun	267	322	393	510	579	Randolph	267	322	393	510	579
Schley	267	322	393	510	579	Screven	267	322	393	510	579
Seminole	267	322	393	510	579	Stephens	267	322	393	510	579
Stewart	267	322	393	510	579	Sumter	267	327	393	510	579
Talbot	267	322	393	510	579	Taliaferro	267	322	393	510	579
Tattnall	267	322	393	510	579	Taylor	267	322	393	510	579
Telfair	267	322	393	510	579	Terrell	267	322	393	510	579
Thomas	267	332	393	510	579	Tift	267	322	393	510	579
Toombs	267	322	393	510	579	Towns	267	322	393	510	579
Treutlen	267	322	393	510	579	Troup	267	364	410	512	579
Turner	267	322	393	510	579	Union	267	322	411	515	579
Upson	276	322	393	510	579	Ware	296	332	393	510	613
Warren	267	322	393	510	579	Washington	267	322	393	510	579
Wayne	276	322	393	510	579	Webster	267	322	393	510	579
Wheeler	267	322	393	510	579	White	267	322	393	510	593
Whitfield	267	350	422	539	636	Wilcox	267	322	393	510	579
Wilkes	267	322	393	510	579	Wilkinson	267	322	393	510	579
Worth	267	322	393	510	579						

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 11

H A W A I I

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	756	904	1064	1438	1556	Honolulu

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	459	598	687	914	1126
Maui	741	919	1121	1448	1640

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kauai	586	876	1067	1410	1625

I D A H O

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	371	424	515	715	845	Ada, Canyon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	263	305	394	521	617
Bear Lake	263	305	394	521	617
Bingham	280	305	394	521	617
Boise	263	340	394	521	617
Bonneville	268	338	463	623	761
Butte	263	305	394	521	617
Caribou	263	305	394	521	617
Clark	263	305	394	521	617
Custer	263	305	394	521	617
Franklin	263	305	394	521	617
Gem	263	305	394	521	617
Idaho	263	305	394	521	617
Jerome	263	305	394	521	617
Latah	263	305	394	521	625
Lewis	263	305	394	521	617
Madison	263	305	394	521	617
Nez Perce	268	305	394	521	617
Owyhee	263	305	394	521	617
Power	263	305	394	521	617
Teton	287	305	394	533	630
Valley	274	305	394	521	617

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bannock	263	305	394	539	635
Benewah	263	305	394	521	617
Blaine	407	448	597	832	981
Bonner	302	375	463	643	740
Boundary	263	305	394	521	617
Camas	263	305	394	521	617
Cassia	263	305	394	521	617
Clearwater	263	305	394	521	617
Elmore	263	305	394	521	617
Fremont	263	305	394	521	617
Gooding	263	305	394	521	617
Jefferson	271	305	394	521	617
Kootenai	335	394	515	717	847
Lemhi	263	305	394	521	617
Lincoln	263	305	394	521	617
Minidoka	263	305	394	521	617
Oneida	264	305	394	521	617
Payette	263	305	394	521	617
Shoshone	263	305	394	521	617
Twin Falls	263	305	399	525	617
Washington	263	305	394	521	617

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

I L L I N O I S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	301	368	493	684	723	Mclean
Champaign-Urbana, IL MSA	324	397	514	705	844	Champaign
Chicago, IL	492	591	704	881	985	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	263	364	450	582	630	Henry, Rock Island
Decatur, IL MSA	252	326	419	566	587	Macon
De Kalb County, IL	381	444	563	781	906	Dekalb
Grundy County, IL	333	384	511	675	717	Grundy
Kankakee, IL PMSA	302	366	488	623	683	Kankakee
Kendall County, Il	460	524	632	880	885	Kendall
Peoria-Pekin, IL MSA	310	343	459	611	750	Peoria, Tazewell, Woodford
Rockford, IL MSA	301	386	470	591	689	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA	297	362	471	612	677	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	291	359	479	637	724	Menard, Sangamon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	244	275	353	463	562
Bond	244	275	353	463	520
Bureau	244	308	362	463	520
Carroll	244	275	353	463	520
Christian	263	275	355	465	520
Clay	244	275	353	463	520
Crawford	244	275	353	463	520
De Witt	248	275	353	467	520
Edgar	244	275	353	463	520
Effingham	244	283	353	463	520
Ford	244	275	353	463	520
Fulton	244	275	353	463	520
Greene	244	275	353	463	520
Hancock	244	275	353	463	520
Henderson	244	275	353	463	520
Jackson	296	297	375	533	596
Jefferson	245	288	360	491	520
Johnson	244	275	353	463	520
La Salle	244	286	382	516	579
Lee	273	281	374	468	526
Logan	274	291	387	485	608
Macoupin	244	275	353	463	520
Marshall	244	275	353	463	520
Massac	245	275	353	463	520
Montgomery	244	275	353	463	520

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alexander	244	275	353	463	520
Brown	244	275	353	463	520
Calhoun	244	275	353	463	520
Cass	245	275	353	463	520
Clark	244	275	353	463	520
Coles	258	307	409	543	642
Cumberland	244	275	353	463	520
Douglas	261	275	353	463	520
Edwards	244	275	353	463	520
Fayette	244	275	353	463	520
Franklin	244	275	353	463	520
Gallatin	244	275	353	463	520
Hamilton	244	276	353	463	520
Hardin	244	275	353	463	520
Iroquois	244	275	353	463	520
Jasper	244	277	353	463	520
Jo Daviess	271	293	353	463	520
Knox	244	275	353	463	537
Lawrence	244	275	353	463	520
Livingston	244	301	402	518	565
Mcdonough	244	280	353	463	557
Marion	249	275	353	463	520
Mason	244	275	353	463	527
Mercer	244	275	353	463	520
Morgan	244	309	412	548	578

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

ILLINOIS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Moultrie	244	275	353	476	520
Piatt	244	297	386	527	541
Pope	244	275	353	463	520
Putnam	244	275	353	463	520
Richland	244	275	353	463	520
Schuyler	244	275	353	463	520
Shelby	244	275	353	463	520
Stephenson	258	295	373	467	524
Vermilion	244	311	389	487	544
Warren	258	275	353	463	520
Wayne	244	275	353	463	520
Whiteside	258	294	391	490	551

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Perry	245	275	353	463	520
Pike	244	275	353	463	520
Pulaski	244	275	353	463	520
Randolph	244	275	353	463	520
Saline	244	275	353	463	520
Scott	244	275	353	463	520
Stark	244	275	353	463	520
Union	244	275	353	463	520
Wabash	244	275	353	463	549
Washington	244	293	390	489	634
White	244	275	353	463	520
Williamson	244	275	355	494	520

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	302	391	521	723	854	Monroe
Cincinnati, OH-KY-IN	289	372	498	667	720	Dearborn
Elkhart-Goshen, IN MSA	346	395	500	640	734	Elkhart
Evansville-Henderson, IN-KY MSA	264	323	420	526	588	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	297	379	470	606	659	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	313	412	513	644	720	Lake, Porter
Indianapolis, IN MSA	339	425	511	640	717	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	278	329	429	552	600	Howard, Tipton
Lafayette, IN MSA	297	376	502	698	824	Clinton, Tippecanoe
Louisville, KY-IN MSA	293	377	461	638	673	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	276	344	407	552	652	Delaware
Ohio County, IN	269	303	387	499	549	Ohio
South Bend, IN MSA	298	396	522	651	730	St. Joseph
Terre Haute, IN MSA	268	314	400	500	558	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	374	403	487	608	800
Blackford	264	297	392	491	549
Carroll	264	297	380	490	538
Crawford	264	297	380	490	538
Decatur	264	322	412	533	580
Fayette	264	297	381	490	577
Franklin	264	297	380	490	602

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benton	264	297	380	490	538
Brown	264	350	461	641	664
Cass	264	297	380	490	538
Daviess	264	297	380	490	538
Dubois	264	297	380	490	555
Fountain	264	297	380	490	538
Fulton	291	304	380	511	538

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INDIANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Gibson	264	297	380	490	538
Greene	264	297	380	490	538
Jackson	324	339	419	554	595
Jay	264	297	380	490	538
Jennings	276	297	380	490	538
Kosciusko	264	349	421	546	590
La Porte	269	325	435	557	609
Marshall	312	317	421	531	590
Miami	264	297	380	490	538
Newton	276	297	380	490	538
Orange	264	297	380	490	538
Parke	264	297	380	490	562
Pike	264	297	380	490	538
Putnam	287	334	411	551	556
Ripley	264	297	380	498	563
Spencer	264	297	380	490	538
Steuben	323	365	436	544	609
Switzerland	264	297	380	490	538
Wabash	264	297	380	490	538
Washington	264	297	380	490	538
White	264	297	380	490	594

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Grant	279	297	380	492	538
Henry	264	297	380	490	538
Jasper	264	320	380	490	538
Jefferson	264	297	380	490	538
Knox	269	297	385	490	539
Lagrange	269	309	395	513	597
Lawrence	264	297	380	494	538
Martin	264	297	380	490	538
Montgomery	308	324	404	512	567
Noble	304	310	386	499	551
Owen	264	297	380	490	563
Perry	264	297	380	490	538
Pulaski	264	297	380	490	538
Randolph	264	297	380	490	538
Rush	272	297	380	490	563
Starke	264	297	380	490	538
Sullivan	264	297	380	490	538
Union	264	297	380	490	538
Warren	264	297	380	490	538
Wayne	264	297	380	490	538

IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	258	363	466	650	697	Linn
Davenport-Moline-Rock Island, IA-IL MSA	263	364	450	582	630	Scott
Des Moines, IA MSA	350	444	545	707	743	Dallas, Polk, Warren
Dubuque, IA MSA	273	334	430	549	669	Dubuque
Iowa City, IA MSA	311	401	515	715	845	Johnson
Omaha, NE-IA MSA	283	387	490	642	720	Pottawattamie
Sioux City, IA-NE MSA	290	348	434	542	618	Woodbury
Waterloo-Cedar Falls, IA MSA	255	325	406	541	635	Black Hawk

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	250	309	388	492	543
Allamakee	250	309	388	497	569
Audubon	250	309	388	492	543
Boone	250	328	388	497	589
Buchanan	264	309	388	492	543
Butler	266	309	388	492	543
Carroll	250	309	388	492	543
Cedar	250	313	388	492	543
Cherokee	250	309	388	492	543
Clarke	257	309	388	492	543
Clayton	250	309	388	492	543
Crawford	250	309	388	492	543
Decatur	250	309	388	492	543
Des Moines	250	318	410	513	573
Emmet	250	309	388	492	573
Floyd	272	309	388	492	543
Fremont	275	309	388	492	571
Grundy	250	309	388	492	557
Hamilton	285	323	392	492	549
Hardin	250	309	388	492	543
Henry	250	316	402	503	569
Humboldt	250	309	388	492	543
Iowa	250	309	388	492	543
Jasper	250	316	401	501	561
Jones	259	309	388	492	543
Kossuth	250	309	388	492	543
Louisa	250	309	388	492	543
Lyon	250	309	388	492	543
Mahaska	250	309	388	492	543
Marshall	250	309	388	492	543
Mitchell	250	309	388	492	543
Monroe	250	325	388	492	571
Muscatine	250	309	410	545	573
Osceola	250	309	388	492	543
Palo Alto	250	309	388	492	543
Pocahontas	250	309	388	492	543
Ringgold	250	309	388	492	543
Shelby	250	309	388	492	543
Story	325	395	465	646	739
Taylor	250	309	388	492	544

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	250	309	388	492	543
Appanoose	250	309	388	492	546
Benton	257	309	388	492	543
Bremer	250	309	388	492	577
Buena Vista	265	309	388	492	543
Calhoun	250	309	388	492	543
Cass	250	309	388	492	543
Cerro Gordo	250	327	405	540	566
Chickasaw	250	309	388	492	543
Clay	250	309	388	492	543
Clinton	250	309	393	492	550
Davis	250	309	388	492	543
Delaware	250	309	388	492	543
Dickinson	250	309	388	492	543
Fayette	250	309	388	492	543
Franklin	257	309	388	492	543
Greene	250	309	388	492	543
Guthrie	250	309	388	492	570
Hancock	250	309	388	492	543
Harrison	250	309	388	492	543
Howard	250	309	388	492	566
Ida	257	309	388	492	543
Jackson	250	309	390	492	546
Jefferson	250	315	420	547	691
Keokuk	250	309	388	492	543
Lee	250	309	400	500	560
Lucas	250	309	388	492	543
Madison	250	309	403	516	565
Marion	250	342	420	525	589
Mills	250	334	394	494	552
Monona	250	309	388	492	543
Montgomery	275	310	388	492	543
O'Brien	250	309	388	492	543
Page	250	309	388	492	543
Plymouth	250	309	405	506	566
Poweshiek	265	328	420	525	589
Sac	250	309	388	492	543
Sioux	250	309	388	492	543
Tama	250	309	388	492	543
Union	250	309	388	492	571

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Van Buren	250	309	388	492	543
Washington	250	309	388	492	571
Webster	250	309	393	494	551
Winneshiek	250	309	388	492	543
Wright	250	309	388	492	543

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wapello	250	309	391	492	547
Wayne	250	309	388	492	543
Winnebago	250	314	388	492	543
Worth	250	309	388	492	551

K A N S A S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	319	402	483	668	740	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	332	397	510	710	817	Douglas
Topeka, KS MSA	312	359	466	630	711	Shawnee
Wichita, KS MSA	306	368	493	665	719	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	255	288	370	477	531
Atchison	255	288	370	477	569
Barton	255	288	370	477	531
Brown	255	288	370	477	531
Chautauqua	255	288	370	477	531
Cheyenne	255	288	370	477	531
Clay	255	288	370	477	531
Coffey	264	288	370	477	555
Cowley	272	288	370	489	531
Decatur	255	288	370	477	531
Doniphan	255	288	370	477	531
Elk	255	288	370	477	531
Ellsworth	255	288	370	477	531
Ford	273	322	402	506	570
Geary	313	329	411	531	576
Graham	255	288	370	477	531
Gray	255	288	370	477	531
Greenwood	255	288	370	477	531
Harper	255	288	370	477	531
Hodgeman	255	288	370	477	531
Jefferson	255	288	377	500	531
Kearny	283	288	381	512	562
Kiowa	255	288	370	477	531
Lane	255	288	370	477	531
Linn	255	288	370	477	531
Lyon	255	288	370	477	566

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	255	288	370	477	531
Barber	255	288	370	477	531
Bourbon	255	288	370	477	531
Chase	255	288	370	477	531
Cherokee	255	288	370	477	531
Clark	255	288	370	477	531
Cloud	255	288	370	477	531
Comanche	255	288	370	477	531
Crawford	255	288	377	477	531
Dickinson	255	288	370	477	531
Edwards	255	288	370	477	531
Ellis	255	288	370	477	531
Finney	314	336	430	559	707
Franklin	276	288	373	477	583
Gove	255	288	370	477	531
Grant	255	323	370	507	552
Greeley	255	288	370	477	531
Hamilton	255	288	370	477	531
Haskell	255	295	370	477	531
Jackson	255	288	370	477	531
Jewell	255	288	370	477	531
Kingman	255	288	370	477	531
Labette	255	288	370	477	531
Lincoln	255	288	370	477	531
Logan	255	288	370	477	531
Mcpherson	257	288	370	477	531

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Marion	255	288	370	477	531
Meade	255	288	370	477	531
Montgomery	255	288	370	477	531
Morton	255	310	370	477	531
Neosho	255	288	370	477	531
Norton	255	288	370	477	531
Osborne	255	288	370	477	532
Pawnee	255	288	370	477	531
Pottawatomie	255	288	370	477	544
Rawlins	255	288	370	477	531
Republic	255	288	370	477	531
Riley	315	347	462	578	701
Rush	255	288	370	477	531
Saline	279	288	381	526	533
Seward	286	312	415	520	581
Sherman	255	288	370	477	531
Stafford	255	288	370	477	531
Stevens	255	289	370	477	546
Thomas	255	288	370	477	531
Wabaunsee	255	288	370	477	531
Washington	255	288	370	477	531
Wilson	255	288	370	477	531

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Marshall	255	288	370	477	531
Mitchell	255	288	370	477	531
Morris	255	288	370	477	531
Nemaha	255	288	370	477	531
Ness	255	288	370	477	531
Osage	255	288	370	477	531
Ottawa	255	288	370	477	531
Phillips	255	288	370	477	531
Pratt	255	288	370	487	531
Reno	255	288	370	477	577
Rice	255	288	370	477	531
Rooks	255	288	370	477	531
Russell	255	288	370	477	531
Scott	255	288	370	487	559
Sheridan	255	288	370	477	531
Smith	255	288	370	477	531
Stanton	255	288	370	477	531
Sumner	255	288	370	500	531
Trego	255	288	370	477	531
Wallace	255	288	370	477	531
Wichita	255	288	381	477	593
Woodson	255	288	370	477	531

K E N T U C K Y

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	289	372	498	667	720	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	313	351	411	561	576	Christian
Evansville-Henderson, IN-KY MSA	264	323	420	526	588	Henderson
Gallatin County, KY	242	330	404	506	662	Gallatin
Grant County, KY	241	287	380	531	627	Grant
Huntington-Ashland, WV-KY-OH MSA	261	306	377	481	529	Boyd, Carter, Greenup
Lexington, KY MSA	309	382	471	642	726	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	293	377	461	638	673	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	276	286	377	506	529	Daviess
Pendleton County, KY	243	281	375	471	527	Pendleton

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	238	291	343	454	498
Anderson	262	277	359	448	503
Barren	238	288	343	443	498
Bell	238	277	346	443	498
Bracken	238	277	343	443	498
Breckinridge	238	277	343	443	498
Caldwell	238	277	343	443	498
Carlisle	238	277	343	443	498
Casey	238	277	343	443	498
Clinton	238	277	343	443	498
Cumberland	238	277	343	443	498
Elliott	238	277	343	443	498
Fleming	238	277	343	443	498
Franklin	238	349	429	554	700
Garrard	238	277	343	443	498
Grayson	238	277	343	443	498
Hancock	238	277	343	447	531
Harlan	238	361	412	537	634
Hart	238	277	343	443	498
Hickman	238	277	343	443	498
Jackson	238	277	343	443	498
Knott	238	277	343	443	498
Larue	238	277	343	443	498
Lawrence	238	277	343	443	498
Leslie	238	277	343	443	498
Lewis	238	277	343	443	498
Livingston	274	277	370	514	518
Lyon	238	277	343	443	498
Mccreary	238	277	343	443	498
Magoffin	238	277	343	443	498
Marshall	238	283	343	443	533
Mason	238	277	343	443	498
Menifee	238	277	343	443	498
Metcalfe	238	277	343	443	498
Montgomery	238	277	343	443	498
Muhlenberg	238	277	343	443	498
Nicholas	238	277	343	443	498
Owen	238	277	343	443	511
Perry	266	277	357	446	500
Powell	238	277	343	443	498

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	238	277	343	443	498
Ballard	238	277	343	443	498
Bath	238	277	343	443	498
Boyle	283	287	383	479	536
Breathitt	238	277	343	443	498
Butler	238	277	343	443	498
Calloway	238	277	343	443	498
Carroll	238	277	343	443	498
Clay	238	277	343	443	498
Crittenden	238	277	343	443	498
Edmonson	238	277	343	443	498
Estill	238	277	343	443	498
Floyd	251	304	343	476	547
Fulton	238	277	343	443	498
Graves	238	277	343	443	498
Green	238	277	343	443	498
Hardin	296	303	380	511	606
Harrison	238	278	351	443	543
Henry	238	277	343	443	498
Hopkins	238	277	343	443	503
Johnson	238	277	343	443	498
Knox	238	329	421	528	647
Laurel	310	350	416	561	581
Lee	238	277	343	443	498
Letcher	238	277	343	443	498
Lincoln	238	277	343	443	498
Logan	238	277	343	452	498
Mccracken	269	290	362	464	595
Mclean	238	277	343	443	498
Marion	238	277	343	443	498
Martin	238	277	343	443	498
Meade	246	305	351	465	578
Mercer	238	277	343	452	498
Monroe	238	277	343	443	498
Morgan	238	277	343	443	498
Nelson	261	277	353	443	498
Ohio	238	277	343	443	498
Owsley	238	277	343	443	498
Pike	255	292	353	443	524
Pulaski	261	277	351	444	498

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Robertson	238	277	343	443	498
Rowan	238	277	343	443	518
Shelby	239	314	351	490	498
Spencer	238	283	343	443	498
Todd	238	277	343	443	498
Trimble	238	277	343	443	498
Warren	238	307	411	513	593
Wayne	238	277	343	443	498
Whitley	238	277	343	443	498

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Rockcastle	238	277	343	443	498
Russell	238	277	343	443	498
Simpson	238	298	347	444	498
Taylor	287	339	380	508	574
Trigg	238	277	343	443	498
Union	238	277	343	443	498
Washington	238	281	343	443	498
Webster	238	277	343	443	498
Wolfe	238	277	343	443	498

L O U I S I A N A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	260	325	409	566	576	Rapides
Acadia Parishes, LA	256	284	343	449	501	Acadia
Baton Rouge, LA MSA	282	351	435	604	713	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	256	301	385	535	633	Lafourche, Terrebonne
Lafayette, LA MSA	291	336	401	551	652	Lafayette, St. Martin
Lake Charles, LA MSA	286	333	422	553	692	Calcasieu
Monroe, LA MSA	281	315	420	567	589	Ouachita
New Orleans, LA	337	386	482	656	793	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	256	289	385	481	539	St. James
St. Landry Parish, LA	256	279	343	449	501	St. Landry
Shreveport-Bossier City, LA MSA	317	360	453	606	743	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	256	279	343	449	501
Avoyelles	256	279	343	449	503
Bienville	256	279	343	455	538
Cameron	256	279	343	449	501
Claiborne	256	279	343	449	501
De Soto	256	279	343	449	505
East Feliciana	256	279	343	449	501
Franklin	256	279	343	449	505
Iberia	271	283	350	449	501
Jackson	256	279	343	449	501
La Salle	256	279	343	449	505
Madison	256	279	343	449	501
Natchitoches	274	281	362	502	505
Red River	256	279	343	449	505

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Assumption	281	301	357	449	501
Beauregard	312	340	403	527	579
Caldwell	256	279	343	449	501
Catahoula	256	279	343	449	501
Concordia	256	279	343	449	501
East Carroll	256	279	343	449	501
Evangeline	256	279	343	449	501
Grant	256	279	343	449	501
Iberville	256	279	343	449	517
Jefferson Davis	256	279	343	449	509
Lincoln	301	303	379	520	622
Morehouse	256	279	343	449	501
Pointe Coupee	256	279	343	449	544
Richland	256	279	343	449	505

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

L O U I S I A N A continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sabine	256	286	343	449	528
St. Mary	281	300	378	515	536
Tensas	256	279	343	449	501
Vermilion	256	279	343	449	501
Washington	256	279	343	449	501
West Feliciana	256	333	446	558	626

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Helena	256	279	343	449	501
Tangipahoa	275	286	367	481	513
Union	256	279	343	449	505
Vernon	294	328	374	483	571
West Carroll	256	279	343	449	501
Winn	256	279	343	449	501

M A I N E

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	336	411	526	686	737	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town Waldo county towns of Winterport town
Lewiston-Auburn, ME MSA	303	373	480	600	672	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	399	514	676	846	948	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	433	520	668	855	1049	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	303	373	496	621	695	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	303	355	455	580	667	
Cumberland	443	451	601	818	938	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	309	355	455	580	667	
Hancock	326	400	494	623	692	
Kennebec	315	393	473	592	667	
Knox	303	390	506	674	710	
Lincoln	394	438	498	693	818	
Oxford	303	355	455	580	667	

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Penobscot	303	355	455	580	667	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Piscataquis	303	355	455	580	667	
Sagadahoc	426	488	601	800	987	
Somerset	317	362	455	580	684	
Waldo	303	355	455	580	667	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	303	355	455	580	667	
York	373	428	574	717	802	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD	401	491	599	792	906	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	532	715	832	1100	1375	Columbia
Cumberland, MD-WV MSA	314	378	464	617	705	Allegany
Hagerstown, MD PMSA	313	377	463	615	703	Washington
Washington, DC-MD-VA	625	710	834	1135	1368	Calvert, Charles, Frederick, Montgomery, Prince George's

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MARYLAND continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Wilmington-Newark, DE-MD PMSA	409	541	630	856	1033	Cecil

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	350	377	472	619	703
Garrett	313	420	472	615	775
St. Mary's	478	567	654	911	1042
Talbot	414	438	585	732	959
Worcester	313	377	473	657	703

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Dorchester	313	405	472	615	703
Kent	317	390	520	650	784
Somerset	372	419	472	655	774
Wicomico	352	408	525	668	735

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	450	603	805	1008	1128	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town
Boston, MA-NH PMSA	550	619	775	969	1137	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA	420	554	679	846	963	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA	364	511	663	855	928	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA	433	522	656	820	1010	Essex county towns of Andover town, Boxford town Georgetown town, Groveland town, Haverhill city Lawrence city, Merrimac town, Methuen town North Andover town, West Newbury town
Lowell, MA-NH PMSA	425	549	664	831	930	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA MSA	407	498	566	707	793	Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town Rochester town
Pittsfield, MA MSA	327	464	573	718	890	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA	393	534	642	805	992	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA	386	476	602	752	923	Franklin county towns of Sunderland town Hampden county towns of Agawam town, Chicopee city East Longmeadow to, Hampden town, Holyoke city Longmeadow town, Ludlow town, Monson town Montgomery town, Palmer town, Russell town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Southwick town, Springfield city, Westfield city West Springfield t, Wilbraham town Hampshire county towns of Amherst town, Belchertown town Easthampton town, Granby town, Hadley town Hatfield town, Huntington town, Northampton city Southampton town, South Hadley town, Ware town Williamsburg town
Worcester, MA-CT	455	551	689	859	963	Hampden county towns of Holland town, Worcester county towns of Auburn town, Barre town Boylston town, Brookfield town, Charlton town Clinton town, Douglas town, Dudley town East Brookfield to, Grafton town, Holden town Leicester town, Millbury town, Northborough town Northbridge town, North Brookfield t, Oakham town Oxford town, Paxton town, Princeton town, Rutland town Shrewsbury town, Southbridge town, Spencer town Sterling town, Sturbridge town, Sutton town Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Barnstable	426	585	779	974	1090	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Berkshire	359	436	514	706	845	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town
Dukes	577	586	780	975	1093	
Franklin	387	480	614	768	927	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Hampden	391	532	710	945	1166	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Hampshire	547	554	741	926	1038	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Nantucket	692	926	1236	1545	1731	
Worcester	435	454	605	757	847	Athol town, Hardwick town, Hubbardston town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MASSACHUSETTS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
						New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	434	526	649	851	954	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	351	355	466	583	655	Berrien
Detroit, MI PMSA	340	463	559	699	784	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	328	374	467	598	654	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	368	430	525	658	735	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	277	372	471	589	661	Jackson
Kalamazoo-Battle Creek, MI MSA	327	394	497	622	695	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	349	410	529	691	799	Clinton, Eaton, Ingham
Saginaw-Bay City-Midland, MI MSA	321	354	471	589	661	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	273	310	394	511	584
Alpena	273	310	394	511	587
Arenac	273	310	394	511	584
Barry	273	336	448	561	628
Branch	315	323	397	542	584
Charlevoix	331	335	424	577	597
Chippewa	273	310	394	511	584
Crawford	298	310	402	549	584
Dickinson	273	335	413	516	584
Gladwin	273	310	394	511	584
Grand Traverse	361	386	515	645	722
Hillsdale	273	310	394	511	584
Huron	273	310	394	511	584
Iosco	273	310	394	511	617
Isabella	304	325	435	587	713
Keweenaw	273	310	394	511	584
Leelanau	369	400	467	611	766
Mackinac	273	310	394	511	584
Marquette	273	310	394	511	584
Mecosta	273	310	394	533	632
Missaukee	287	310	394	511	584
Montmorency	273	310	394	511	584
Oceana	291	310	394	511	584

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alger	273	310	394	511	584
Antrim	273	326	394	511	584
Baraga	273	310	394	511	584
Benzie	285	310	394	529	584
Cass	273	310	396	540	584
Cheboygan	287	310	394	511	598
Clare	283	310	394	511	584
Delta	273	310	394	511	584
Emmet	304	365	431	565	602
Gogebic	273	310	394	511	584
Gratiot	285	310	394	511	584
Houghton	273	310	394	511	584
Ionia	334	338	423	528	593
Iron	273	310	394	511	584
Kalkaska	273	310	395	513	649
Lake	276	310	394	511	584
Luce	273	310	394	511	584
Manistee	273	310	394	511	584
Mason	273	310	394	511	584
Menominee	273	310	394	511	584
Montcalm	277	310	394	511	584
Newaygo	313	336	395	511	584
Ogemaw	284	311	394	511	584

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ontonagon	273	310	394	511	584
Oscoda	273	310	394	511	584
Presque Isle	273	310	394	511	584
St. Joseph	273	317	394	513	584
Schoolcraft	273	310	394	511	584
Tuscola	296	323	431	538	602

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Osceola	273	310	394	511	584
Otsego	280	338	426	592	687
Roscommon	301	310	394	511	584
Sanilac	273	320	394	513	584
Shiawassee	273	342	412	573	614
Wexford	273	314	408	534	632

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	254	335	431	574	669	St. Louis
Fargo-Moorhead, ND-MN MSA	295	407	491	681	729	Clay
Grand Forks, ND-MN MSA	305	364	478	660	736	Polk
La Crosse, WI-MN MSA	263	340	433	578	701	Houston
Minneapolis-St. Paul, MN-WI MSA	369	474	605	820	928	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	292	408	533	739	829	Olmsted
St. Cloud, MN MSA	317	409	483	612	779	Benton, Stearns

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	253	328	438	548	613
Beltrami	250	320	428	561	599
Blue Earth	307	371	462	592	752
Carlton	250	304	386	484	553
Chippewa	250	304	386	484	553
Cook	296	304	398	543	565
Crow Wing	250	304	406	508	638
Douglas	250	304	386	484	553
Fillmore	250	304	386	484	553
Goodhue	250	322	430	548	602
Hubbard	255	304	386	484	553
Jackson	250	304	386	484	553
Kandiyohi	250	317	386	484	582
Koochiching	302	308	410	511	671
Lake	250	304	386	484	553
Le Sueur	250	304	386	484	596
Lyon	250	304	386	484	573
Mahnomen	250	304	386	484	653
Martin	250	304	386	484	553
Mille Lacs	266	304	387	539	635
Mower	250	304	386	484	553

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Becker	250	359	403	504	585
Big Stone	250	304	386	484	553
Brown	250	323	386	484	553
Cass	250	304	386	484	553
Clearwater	250	304	386	484	553
Cottonwood	250	304	386	484	553
Dodge	250	304	386	484	553
Faribault	250	304	386	484	553
Freeborn	250	304	394	518	555
Grant	250	304	386	484	553
Itasca	320	324	422	528	591
Kanabec	250	314	408	509	571
Kittson	250	304	386	484	553
Lac qui Parle	250	304	386	484	553
Lake of the Woods	250	304	386	484	553
Lincoln	250	304	386	484	553
Mcleod	250	323	430	535	600
Marshall	250	304	386	484	553
Meeker	259	304	386	484	553
Morrison	278	304	386	484	653
Murray	250	304	386	484	553

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Nicollet	313	335	447	591	626
Norman	250	304	386	484	553
Pennington	250	304	386	516	553
Pipestone	250	304	386	484	553
Red Lake	250	315	386	484	553
Renville	250	304	386	484	553
Rock	250	304	386	484	553
Sibley	250	304	386	484	553
Stevens	285	360	406	508	569
Todd	250	304	386	484	553
Wabasha	250	304	386	484	553
Waseca	277	304	386	484	553
Wilkin	250	304	386	484	553
Yellow Medicine	250	304	386	484	553

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Nobles	250	304	386	484	553
Otter Tail	250	304	386	484	553
Pine	277	304	386	487	553
Pope	250	304	386	484	553
Redwood	250	304	386	484	553
Rice	262	358	477	596	668
Roseau	302	308	404	521	567
Steele	270	312	416	520	583
Swift	250	304	386	484	553
Traverse	250	304	386	484	553
Wadena	250	304	386	484	553
Watonwan	250	304	386	484	553
Winona	255	332	421	526	590

MISSISSIPPI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	329	386	445	619	731	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	243	299	365	492	586	Forrest, Lamar
Jackson, MS MSA	347	397	484	644	679	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	321	374	440	611	642	Desoto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	237	281	349	447	570
Amite	237	281	347	447	503
Benton	237	281	347	447	503
Calhoun	237	281	347	447	503
Chickasaw	237	281	347	447	503
Claiborne	237	281	347	447	503
Clay	237	281	347	447	508
Copiah	237	281	347	447	503
Franklin	240	281	347	447	503
Greene	237	281	347	447	503
Holmes	237	281	347	447	503
Issaquena	249	342	454	568	637
Jasper	237	281	347	447	503
Jefferson Davis	237	281	347	447	503
Kemper	239	281	347	447	503
Lauderdale	237	305	385	498	539

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcorn	237	281	347	447	503
Attala	237	281	347	447	503
Bolivar	269	281	362	452	517
Carroll	237	281	347	447	503
Choctaw	237	281	347	447	503
Clarke	237	281	347	447	503
Coahoma	275	281	371	466	521
Covington	237	281	347	447	503
George	237	281	347	447	503
Grenada	237	282	347	475	503
Humphreys	237	281	347	447	503
Itawamba	237	281	347	447	503
Jefferson	237	281	347	447	503
Jones	237	281	347	447	503
Lafayette	240	329	438	549	614
Lawrence	237	281	347	447	503

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Leake	237	281	347	447	503
Leflore	237	281	347	448	538
Lowndes	293	315	374	469	529
Marshall	237	281	347	447	511
Montgomery	237	281	347	447	503
Newton	237	281	347	447	503
Oktibbeha	291	302	370	514	607
Pearl River	249	281	347	449	503
Pike	241	281	347	447	503
Prentiss	240	281	347	447	503
Scott	237	281	347	447	503
Simpson	240	281	347	447	503
Stone	237	281	347	447	503
Tallahatchie	237	281	347	447	503
Tippah	237	281	347	447	503
Tunica	237	281	347	447	503
Walthall	237	281	347	447	503
Washington	256	304	407	526	578
Webster	239	281	347	447	503
Winston	237	281	347	447	503
Yazoo	241	281	347	447	503

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lee	297	319	385	481	539
Lincoln	237	281	347	447	503
Marion	237	281	347	447	503
Monroe	237	281	347	447	503
Neshoba	237	281	347	447	503
Noxubee	241	281	347	447	503
Panola	245	281	347	447	503
Perry	237	281	347	447	503
Pontotoc	237	281	347	447	503
Quitman	237	281	347	447	503
Sharkey	241	281	347	447	503
Smith	237	281	347	447	503
Sunflower	262	285	347	447	534
Tate	237	320	370	464	609
Tishomingo	237	281	347	447	503
Union	237	281	347	447	503
Warren	237	309	387	533	639
Wayne	237	281	347	447	503
Wilkinson	237	281	347	447	503
Yalobusha	239	281	347	447	503

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	245	344	448	623	735	Boone
Joplin, MO MSA	239	276	367	483	519	Jasper, Newton
Kansas City, MO-KS MSA	319	402	483	668	740	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	229	278	372	468	520	Andrew, Buchanan
St. Louis, MO-IL MSA	297	362	471	612	677	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	251	318	411	567	591	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	225	281	373	469	563
Audrain	240	260	334	451	521
Barton	225	260	334	434	497
Benton	254	260	344	434	497
Butler	225	260	334	434	497
Callaway	266	270	359	456	590

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Atchison	225	260	334	434	497
Barry	228	268	334	434	497
Bates	225	260	334	434	507
Bollinger	225	260	334	434	497
Caldwell	225	262	351	440	497
Camden	296	299	400	555	652

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cape Girardeau	232	285	379	505	619
Carter	225	260	334	434	497
Chariton	225	260	334	434	497
Cole	225	297	396	528	554
Crawford	247	297	335	441	497
Dallas	225	260	334	434	497
Dekalb	233	260	334	439	497
Douglas	225	260	334	434	497
Gasconade	225	260	334	434	497
Grundy	225	260	334	434	497
Henry	257	262	348	437	573
Holt	225	260	334	434	497
Howell	225	260	334	434	497
Johnson	271	302	394	522	617
Laclede	225	260	334	437	497
Lewis	225	260	334	434	497
Livingston	225	260	335	434	497
Macon	225	260	334	434	497
Maries	225	260	334	434	497
Mercer	225	260	334	434	497
Mississippi	225	260	334	434	497
Monroe	225	260	334	434	497
Morgan	225	260	334	434	497
Nodaway	237	287	354	450	543
Osage	225	260	334	434	497
Pemiscot	225	260	334	434	497
Pettis	241	283	379	476	570
Pike	225	260	334	434	523
Pulaski	225	315	354	468	523
Ralls	225	260	334	434	497
Reynolds	225	260	334	434	497
St. Clair	225	260	334	434	497
St. Francois	237	299	379	475	623
Schuyler	225	260	334	434	497
Scott	271	273	364	492	566
Shelby	225	260	334	434	497
Stone	262	278	345	441	497
Taney	255	281	368	497	585
Vernon	225	260	334	444	497
Wayne	225	260	334	434	497

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Carroll	225	260	334	434	497
Cedar	225	260	334	434	497
Clark	225	260	334	434	497
Cooper	225	260	334	434	497
Dade	225	260	334	434	497
Daviess	225	260	334	434	497
Dent	225	260	334	434	497
Dunklin	225	260	334	434	497
Gentry	225	260	334	434	497
Harrison	225	260	334	434	497
Hickory	225	260	334	434	497
Howard	225	260	334	434	499
Iron	225	260	334	434	497
Knox	225	260	334	434	497
Lawrence	238	266	334	434	497
Linn	225	260	334	434	497
Mcdonald	225	260	334	434	497
Madison	225	260	334	434	497
Marion	225	260	334	434	497
Miller	247	297	334	437	516
Moniteau	225	260	334	434	497
Montgomery	225	260	334	434	497
New Madrid	225	260	334	434	497
Oregon	225	260	334	434	497
Ozark	225	260	334	434	497
Perry	262	266	355	472	497
Phelps	233	279	358	486	527
Polk	225	261	334	434	521
Putnam	225	260	334	434	497
Randolph	225	260	334	434	497
Ripley	225	260	334	434	497
Ste. Genevieve	225	268	344	441	558
Saline	225	260	342	434	497
Scotland	225	260	334	434	497
Shannon	225	260	334	434	497
Stoddard	225	260	334	434	497
Sullivan	225	260	334	434	497
Texas	225	260	334	434	497
Washington	264	318	357	446	500
Worth	225	260	334	434	497

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wright	225	260	334	434	497

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

M O N T A N A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	287	334	447	600	728	Yellowstone
Great Falls, MT MSA	287	332	438	570	679	Cascade

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	273	316	417	542	634
Blaine	273	316	417	542	634
Carbon	273	320	417	542	634
Chouteau	273	316	417	542	634
Daniels	273	336	417	542	634
Deer Lodge	273	316	417	542	634
Fergus	273	316	417	542	634
Gallatin	273	319	428	550	703
Glacier	273	316	417	542	634
Granite	273	316	417	542	634
Jefferson	288	316	417	542	634
Lake	298	316	417	542	634
Liberty	273	316	417	542	634
Mccone	273	334	417	542	634
Meagher	273	336	417	542	634
Missoula	299	351	467	602	765
Park	273	316	417	542	640
Phillips	273	316	417	542	634
Powder River	273	320	417	542	634
Prairie	273	316	417	542	634
Richland	273	342	417	542	634
Rosebud	273	316	417	542	634
Sheridan	281	316	417	542	634
Stillwater	279	316	417	542	634
Teton	273	316	417	542	634
Treasure	273	316	417	542	634
Wheatland	273	316	417	542	634

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	273	316	417	542	634
Broadwater	273	316	417	542	676
Carter	273	336	417	542	634
Custer	273	316	417	542	634
Dawson	273	316	417	542	634
Fallon	273	316	417	542	634
Flathead	273	317	424	590	695
Garfield	273	316	417	542	634
Golden Valley	273	335	417	542	634
Hill	282	316	417	542	634
Judith Basin	273	336	417	542	634
Lewis and Clark	305	357	474	660	781
Lincoln	298	316	417	542	634
Madison	279	316	417	542	634
Mineral	273	316	417	542	647
Musselshell	278	316	417	542	634
Petroleum	273	316	417	542	634
Pondera	273	335	417	542	634
Powell	278	316	417	542	634
Ravalli	273	316	417	542	634
Roosevelt	286	316	417	542	634
Sanders	273	316	417	542	634
Silver Bow	273	316	417	542	634
Sweet Grass	295	316	417	542	634
Toole	279	316	417	542	634
Valley	273	316	417	542	634
Wibaux	273	336	417	542	634

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	277	353	468	621	725	Lancaster
Omaha, NE-IA MSA	283	387	490	642	720	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	290	348	434	542	618	Dakota

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	224	301	398	499	598
Arthur	224	288	368	470	536
Blaine	224	288	368	470	536
Box Butte	243	288	368	471	556
Brown	224	288	368	470	547
Burt	224	288	368	470	536
Cedar	224	288	368	470	536
Cherry	224	303	368	473	557
Clay	224	288	368	470	536
Cuming	224	304	368	470	536
Dawes	239	288	368	474	559
Deuel	224	288	368	470	536
Dodge	224	288	380	500	536
Fillmore	224	288	368	470	536
Frontier	252	288	368	470	536
Gage	224	289	375	477	536
Garfield	224	288	368	470	536
Grant	224	288	368	470	536
Hall	224	295	393	517	580
Harlan	224	288	368	471	536
Hitchcock	224	288	368	470	536
Hooker	224	302	368	471	536
Jefferson	224	288	368	470	536
Kearney	224	288	368	470	559
Keya Paha	224	288	368	470	536
Knox	224	299	368	470	536
Logan	224	288	368	470	560
Mcpherson	224	288	368	471	536
Merrick	224	288	368	470	536
Nance	224	288	368	470	536
Nuckolls	224	288	368	470	536
Pawnee	224	288	368	474	536
Phelps	251	288	368	471	559
Platte	224	288	368	514	536
Red Willow	224	288	368	470	545
Antelope	224	303	368	473	536
Banner	224	288	368	471	536
Boone	224	288	368	470	557
Boyd	224	301	368	470	536
Buffalo	228	330	414	517	624
Butler	224	288	368	470	536
Chase	224	304	368	470	561
Cheyenne	251	288	368	470	536
Colfax	244	300	368	470	536
Custer	251	290	368	470	556
Dawson	246	300	368	474	536
Dixon	250	288	368	470	536
Dundy	224	288	368	470	536
Franklin	224	288	368	475	536
Furnas	224	288	368	470	557
Garden	224	300	368	473	559
Gosper	224	288	368	470	543
Greeley	224	288	368	470	545
Hamilton	224	288	368	474	536
Hayes	224	302	368	470	557
Holt	224	288	368	470	536
Howard	224	288	368	470	536
Johnson	224	292	368	470	536
Keith	224	288	368	470	536
Kimball	224	288	368	471	559
Lincoln	230	300	368	470	536
Loup	224	288	368	470	558
Madison	230	302	400	517	631
Morrill	224	290	368	470	557
Nemaha	224	288	368	470	536
Otoe	224	288	368	470	560
Perkins	224	288	368	470	536
Pierce	224	288	368	470	536
Polk	224	288	368	470	536
Richardson	224	288	368	470	536

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Rock	224	295	368	470	536
Saunders	224	288	368	470	536
Seward	278	288	376	470	536
Sherman	224	290	368	470	560
Stanton	224	288	368	470	536
Thomas	224	288	368	470	536
Valley	224	288	368	470	536
Webster	224	288	368	470	536
York	224	288	373	470	536
Saline	224	301	368	470	536
Scotts Bluff	228	299	380	470	557
Sheridan	224	288	368	470	537
Sioux	224	288	368	470	559
Thayer	224	303	368	470	536
Thurston	224	288	368	470	536
Wayne	257	288	368	470	557
Wheeler	224	288	368	471	536

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	450	534	636	884	1044	Clark, Nye
Reno, NV MSA	448	520	667	928	1097	Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	422	428	572	789	937
Elko	384	438	584	771	959
Eureka	311	507	571	711	796
Lander	314	486	571	714	936
Lyon	372	445	571	795	937
Pershing	432	438	584	731	835
White Pine	312	429	571	771	810
Douglas	379	553	692	961	1071
Esmeralda	406	507	571	712	799
Humboldt	457	479	578	758	811
Lincoln	312	468	571	715	800
Mineral	315	431	574	752	942
Storey	438	444	584	813	959
Carson City	328	449	599	833	984

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	550	619	775	969	1137	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	433	522	656	820	1010	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	425	549	664	831	930	Hillsborough county towns of Pelham town
Manchester, NH PMSA	342	488	609	761	853	Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town Londonderry town
Nashua, NH PMSA	403	562	697	948	1128	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E W H A M P S H I R E continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA................	433	520	668	855	1049	Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap..	407	470	618	834	1014	
Carroll..	340	466	621	777	970	
Cheshire.......................................	421	500	640	833	987	
Coos...	290	355	455	593	703	
Grafton..	373	451	601	777	982	
Hillsborough...................................	399	498	665	879	1057	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack......................................	419	501	625	801	895	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham.....................................	435	510	682	946	1092	Deerfield town, Northwood town, Nottingham town
Strafford......................................	385	523	698	875	980	Middleton town, New Durham town, Strafford town
Sullivan.......................................	406	412	534	702	749	

N E W J E R S E Y

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA.....................	500	568	758	948	1084	Atlantic, Cape May
Bergen-Passaic, NJ PMSA........................	621	756	888	1183	1459	Bergen, Passaic
Jersey City, NJ PMSA...........................	580	684	796	1011	1114	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA..........	681	746	931	1266	1462	Hunterdon, Middlesex, Somerset

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E W J E R S E Y continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Monmouth-Ocean, NJ PMSA........................	566	677	859	1141	1339	Monmouth, Ocean
Newark, NJ PMSA................................	538	687	828	1043	1317	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA.......................	446	549	678	848	1063	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA...............................	453	631	769	1040	1256	Mercer
Vineland-Millville-Bridgeton, NJ PMSA..........	442	538	649	810	909	Cumberland

N E W M E X I C O

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA............................	365	435	544	750	885	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA.............................	272	342	407	557	657	Dona Ana
Santa Fe, NM MSA...............................	393	558	690	925	1048	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron..................	259	303	377	506	571	Chaves..................	259	295	390	535	571
Cibola..................	270	295	377	506	571	Colfax..................	259	301	377	506	571
Curry...................	259	301	395	506	571	Debaca..................	259	295	377	506	571
Eddy....................	266	294	377	506	588	Grant...................	259	294	377	506	571
Guadalupe...............	259	294	377	506	574	Harding.................	259	294	377	506	571
Hidalgo.................	259	294	377	506	571	Lea.....................	259	294	377	506	571
Lincoln.................	294	301	398	524	655	Luna....................	268	294	377	506	571
Mckinley................	259	326	414	517	578	Mora....................	259	294	377	506	571
Otero...................	259	294	377	525	571	Quay....................	259	376	423	529	592
Rio Arriba..............	303	310	382	506	571	Roosevelt...............	259	294	377	506	571
San Juan................	293	314	392	544	644	San Miguel..............	288	294	389	506	571
Sierra..................	259	294	377	506	571	Socorro.................	259	294	377	506	586
Taos....................	355	360	480	600	789	Torrance................	285	307	377	506	571
Union...................	259	316	377	506	571						

N E W Y O R K

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA................	386	473	584	731	818	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA.............................	343	387	483	615	687	Broome, Tioga
Buffalo-Niagara Falls, NY PMSA.................	340	415	499	624	698	Erie, Niagara
Dutchess County, NY PMSA.......................	513	651	804	1045	1222	Dutchess
Elmira, NY MSA.................................	343	387	475	600	718	Chemung
Glens Falls, NY MSA............................	343	450	548	686	768	Warren, Washington
Jamestown, NY MSA..............................	343	387	463	600	687	Chautauqua

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NEW YORK continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Nassau-Suffolk, NY PMSA	690	831	1014	1410	1511	Nassau, Suffolk
New York, NY PMSA	645	719	817	1022	1144	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	620	807	983	1280	1526	Westchester
Newburgh, NY-PA PMSA	505	657	803	1019	1163	Orange
Rochester, NY MSA	372	483	589	754	824	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	370	446	552	705	783	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	343	387	474	600	687	Herkimer, Oneida

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	338	381	456	591	676	Cattaraugus	338	381	456	591	676
Chenango	360	381	456	591	676	Clinton	338	381	492	615	689
Columbia	423	444	570	747	799	Cortland	338	404	507	634	749
Delaware	338	381	456	591	726	Essex	338	386	483	605	676
Franklin	338	381	456	591	676	Fulton	338	381	456	591	676
Greene	338	438	526	680	828	Hamilton	338	407	468	591	676
Jefferson	364	430	506	634	708	Lewis	338	381	456	591	676
Otsego	338	400	460	595	756	St. Lawrence	338	381	456	591	676
Schuyler	366	391	463	645	760	Seneca	361	389	469	606	676
Steuben	350	398	456	598	676	Sullivan	438	492	600	828	840
Tompkins	441	476	611	852	1005	Ulster	416	577	695	904	1140
Wyoming	338	381	456	591	676	Yates	338	381	456	591	676

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	284	344	448	583	629	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	403	454	511	674	807	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	348	394	442	611	727	Cumberland
Goldsboro, NC MSA	284	327	398	512	598	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	357	407	485	669	680	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	343	347	451	606	742	Pitt
Hickory-Morganton, NC MSA	358	390	453	570	678	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	323	378	426	592	700	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	407	457	542	756	887	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	383	465	546	732	863	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	303	327	398	527	581	Edgecombe, Nash
Wilmington, NC MSA	369	406	497	680	811	Brunswick, New Hanover

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	279	327	391	503	596	Anson	279	322	391	503	571
Ashe	279	322	391	503	571	Avery	311	350	427	535	598
Beaufort	279	322	391	503	571	Bertie	279	322	391	503	571
Bladen	279	322	391	503	571	Camden	279	356	475	594	667
Carteret	316	346	422	586	652	Caswell	279	322	391	503	571
Cherokee	279	322	391	503	571	Chowan	279	322	391	503	571
Clay	279	322	391	503	571	Cleveland	279	328	391	518	571
Columbus	279	322	391	503	571	Craven	279	348	420	550	588
Dare	290	459	529	724	740	Duplin	279	322	391	503	571
Gates	279	322	391	503	571	Graham	279	322	391	503	571
Granville	295	322	391	518	585	Greene	279	322	391	503	571
Halifax	279	322	391	503	571	Harnett	279	322	391	505	571
Haywood	283	322	391	525	571	Henderson	324	334	413	550	634
Hertford	279	322	391	503	571	Hoke	279	322	391	503	571
Hyde	279	322	391	503	571	Iredell	336	345	455	568	637
Jackson	279	322	391	547	715	Jones	279	322	391	503	571
Lee	279	356	422	547	592	Lenoir	279	322	391	503	571
Mcdowell	279	340	408	558	660	Macon	279	334	391	503	571
Martin	279	322	391	503	571	Mitchell	279	365	419	572	598
Montgomery	279	322	391	503	571	Moore	279	337	401	549	658
Northampton	279	322	391	503	571	Pamlico	279	322	391	503	571
Pasquotank	322	344	429	596	602	Pender	279	338	391	503	616
Perquimans	279	322	391	503	571	Person	279	322	419	547	640
Polk	279	353	396	503	571	Richmond	279	322	391	503	571
Robeson	279	329	391	503	571	Rockingham	279	322	391	503	571
Rutherford	282	322	391	503	571	Sampson	279	322	391	503	571
Scotland	279	322	391	503	571	Stanly	279	322	396	535	571
Surry	279	322	391	503	571	Swain	279	322	391	503	571
Transylvania	309	330	418	555	593	Tyrrell	279	322	391	503	571
Vance	296	335	391	503	571	Warren	279	322	391	503	571
Washington	279	322	391	503	571	Watauga	364	437	553	752	906
Wilkes	317	357	402	557	625	Wilson	292	422	395	503	571
Yancey	279	328	391	503	589						

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	301	337	449	625	738	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	295	407	491	681	729	Cass
Grand Forks, ND-MN MSA	305	364	478	660	736	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	211	263	341	443	517
Benson	239	263	341	443	517
Bottineau	211	263	341	443	517
Burke	229	263	341	443	517
Dickey	229	263	341	443	517
Dunn	211	263	341	443	517
Emmons	211	263	341	443	517
Golden Valley	211	270	361	450	517
Griggs	211	263	341	443	517
Kidder	211	263	341	443	517
Logan	211	263	341	443	517
Mcintosh	211	263	341	443	517
Mclean	223	263	341	443	517
Mountrail	233	263	341	443	517
Oliver	211	263	341	443	517
Pierce	211	263	341	457	517
Ransom	214	263	341	443	517
Richland	221	263	348	443	517
Sargent	211	263	341	443	517
Sioux	211	263	341	443	517
Stark	211	263	341	443	517
Stutsman	253	263	345	481	566
Traill	221	281	341	443	517
Ward	211	289	386	522	622
Williams	211	263	341	443	517

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barnes	211	265	353	461	517
Billings	229	269	341	443	517
Bowman	211	263	341	443	517
Cavalier	211	271	362	451	557
Divide	211	263	341	443	517
Eddy	211	263	341	443	517
Foster	211	263	343	443	517
Grant	211	263	341	443	517
Hettinger	211	263	341	443	517
Lamoure	229	263	341	443	517
Mchenry	211	263	341	443	517
Mckenzie	211	263	341	443	517
Mercer	211	263	341	443	517
Nelson	211	263	341	443	517
Pembina	211	263	341	449	535
Ramsey	216	289	386	484	632
Renville	244	263	341	446	527
Rolette	228	290	351	443	517
Sheridan	211	263	341	443	517
Slope	211	263	341	443	517
Steele	211	263	341	443	517
Towner	241	270	361	450	592
Walsh	280	300	372	466	521
Wells	224	263	341	443	517

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	326	397	509	636	713	Portage, Summit
Brown County, OH	268	315	395	510	563	Brown
Canton-Massillon, OH MSA	266	346	443	554	621	Carroll, Stark
Cincinnati, OH-KY-IN	289	372	498	667	720	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH PMSA	327	412	510	648	731	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	318	377	483	614	706	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

OHIO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dayton-Springfield, OH MSA	346	387	495	638	717	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	291	414	531	664	744	Butler
Huntington-Ashland, WV-KY-OH MSA	261	306	377	481	529	Lawrence
Lima, OH MSA	266	319	420	535	588	Allen, Auglaize
Mansfield, OH MSA	266	319	406	507	568	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	287	342	392	508	523	Washington
Steubenville-Weirton, OH-WV MSA	266	314	393	502	560	Jefferson
Toledo, OH MSA	333	405	495	638	692	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	292	318	393	502	560	Belmont
Youngstown-Warren, OH MSA	279	329	411	518	589	Columbiana, Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	262	310	387	495	553
Athens	309	350	412	539	663
Clinton	262	336	404	562	567
Darke	288	310	390	495	553
Erie	262	349	436	588	713
Gallia	262	310	387	495	553
Hancock	332	336	425	543	594
Harrison	262	310	387	495	553
Highland	262	310	387	495	553
Holmes	262	310	387	495	553
Jackson	262	310	387	495	553
Logan	307	311	402	541	563
Meigs	262	310	387	495	553
Monroe	262	310	387	495	553
Morrow	262	310	387	495	553
Noble	262	310	387	495	561
Paulding	262	310	387	495	553
Pike	262	310	387	495	553
Putnam	272	310	387	495	553
Sandusky	262	340	436	549	608
Seneca	263	310	387	499	553
Tuscarawas	262	310	406	508	569
Van Wert	262	314	387	495	553
Wayne	262	347	426	541	596
Wyandot	262	310	387	495	553

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	262	310	409	510	572
Champaign	262	319	415	518	581
Coshocton	262	310	387	495	553
Defiance	274	310	410	516	574
Fayette	285	310	387	495	553
Guernsey	262	310	387	495	553
Hardin	262	310	387	495	553
Henry	283	313	391	504	574
Hocking	262	310	387	495	553
Huron	303	330	412	543	578
Knox	287	315	404	522	578
Marion	262	310	387	495	553
Mercer	262	310	387	495	569
Morgan	262	315	387	495	553
Muskingum	262	310	387	495	553
Ottawa	262	387	446	606	647
Perry	262	310	387	495	553
Preble	278	310	387	495	553
Ross	303	316	387	495	553
Scioto	262	310	387	495	553
Shelby	262	319	426	532	596
Union	262	363	478	598	693
Vinton	262	310	387	495	563
Williams	279	310	387	495	553

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	276	280	371	517	590	Garfield
Fort Smith, AR-OK MSA	282	286	376	504	528	Sequoyah
Lawton, OK MSA	341	343	437	607	664	Comanche
Oklahoma City, OK MSA	293	319	414	577	645	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	309	370	484	675	796	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	237	272	339	451	518
Atoka	237	272	339	451	518
Beckham	241	272	339	451	518
Bryan	237	272	339	451	518
Carter	237	274	342	476	518
Choctaw	237	272	339	451	518
Coal	237	272	339	451	518
Craig	237	272	339	463	547
Delaware	237	272	339	451	527
Ellis	237	272	339	451	518
Grady	259	272	351	478	576
Greer	237	272	339	451	518
Harper	237	272	339	451	518
Hughes	237	272	339	451	518
Jefferson	237	272	339	451	518
Kay	262	278	365	509	596
Kiowa	237	272	339	451	518
Le Flore	237	272	339	451	518
Love	237	272	343	451	518
Mcintosh	237	272	339	451	518
Marshall	237	272	339	451	518
Murray	237	272	339	451	518
Noble	237	272	339	451	518
Okfuskee	237	272	339	451	518
Ottawa	255	272	339	451	518
Payne	274	323	413	571	640
Pontotoc	237	272	339	451	518
Roger Mills	237	272	339	451	518
Stephens	241	272	339	451	538
Tillman	237	272	339	451	518
Washita	237	272	339	451	518
Woodward	237	272	339	451	518

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	237	272	339	451	518
Beaver	237	276	339	451	518
Blaine	237	272	339	451	518
Caddo	237	272	339	451	518
Cherokee	249	281	339	451	525
Cimarron	237	272	339	451	518
Cotton	237	272	339	451	518
Custer	237	272	347	483	558
Dewey	237	272	339	451	518
Garvin	237	272	339	451	522
Grant	237	272	339	451	518
Harmon	237	272	339	451	518
Haskell	237	272	339	451	518
Jackson	237	307	375	492	555
Johnston	237	272	339	451	518
Kingfisher	237	280	346	454	518
Latimer	237	272	339	451	518
Lincoln	254	272	339	451	518
Mccurtain	237	272	339	451	518
Major	237	285	339	471	518
Mayes	237	276	367	463	518
Muskogee	256	289	339	469	518
Nowata	237	272	339	451	518
Okmulgee	241	272	339	451	518
Pawnee	267	272	351	452	518
Pittsburg	237	272	339	451	518
Pushmataha	237	272	339	451	518
Seminole	237	272	339	451	518
Texas	237	282	339	452	518
Washington	237	325	396	525	614
Woods	237	272	339	451	518

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	318	436	569	794	918	Lane
Medford-Ashland, OR MSA	327	429	572	796	888	Jackson
Portland-Vancouver, OR-WA PMSA	387	476	587	817	887	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR PMSA	357	420	538	741	777	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	294	348	452	622	693
Clatsop	294	348	456	622	698
Crook	294	348	452	622	693
Deschutes	363	418	559	778	901
Gilliam	294	371	452	622	693
Harney	294	348	452	622	693
Jefferson	294	348	452	622	693
Klamath	294	348	452	622	736
Lincoln	357	362	483	672	730
Malheur	294	348	452	622	693
Sherman	294	348	452	622	693
Umatilla	294	348	452	622	693
Wallowa	294	348	452	622	693
Wheeler	294	348	452	622	693

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benton	310	402	510	768	815
Coos	294	359	476	664	693
Curry	294	400	531	679	836
Douglas	294	348	452	622	741
Grant	294	348	452	622	693
Hood River	324	364	496	644	761
Josephine	294	357	459	622	725
Lake	294	348	452	622	693
Linn	294	348	452	622	693
Morrow	294	348	452	622	693
Tillamook	294	348	452	622	693
Union	294	348	452	622	693
Wasco	358	443	497	676	759

PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	390	528	629	819	920	Carbon, Lehigh, Northampton
Altoona, PA MSA	271	342	412	535	599	Blair
Erie, PA MSA	270	351	414	535	599	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	330	422	541	683	759	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	270	342	412	535	599	Cambria, Somerset
Lancaster, PA MSA	354	435	542	707	761	Lancaster
Newburgh, NY-PA PMSA	505	657	803	1019	1163	Pike
Philadelphia, PA-NJ PMSA	446	549	678	848	1063	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	315	387	467	585	653	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	281	414	511	639	721	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	270	377	451	563	681	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	295	342	412	535	599	Mercer
State College, PA MSA	388	474	587	769	823	Centre
Williamsport, PA MSA	270	344	414	535	599	Lycoming
York, PA MSA	300	412	511	638	714	York

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	269	361	480	621	787
Bedford	269	341	410	534	597
Cameron	269	341	410	534	597
Clearfield	269	341	410	534	597
Crawford	269	341	410	534	597
Forest	269	341	410	534	597
Fulton	269	341	410	534	597
Huntingdon	269	341	410	534	597
Jefferson	269	341	410	534	597
Lawrence	269	341	410	534	597
Mifflin	298	341	410	534	597
Montour	318	341	429	597	705
Potter	269	341	410	534	597
Snyder	324	341	411	534	597
Susquehanna	322	341	410	534	633
Union	325	430	538	673	752
Warren	269	341	410	534	597

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Armstrong	273	360	410	534	672
Bradford	269	341	417	544	597
Clarion	269	341	410	534	597
Clinton	269	341	410	534	597
Elk	269	341	410	534	597
Franklin	269	341	415	571	597
Greene	269	341	410	534	597
Indiana	308	343	410	534	597
Juniata	269	341	410	534	597
Mc Kean	269	343	410	534	597
Monroe	429	512	632	865	966
Northumberland	284	359	438	583	648
Schuylkill	269	341	425	534	597
Sullivan	269	341	410	534	597
Tioga	269	341	410	534	597
Venango	269	341	410	534	597
Wayne	270	417	491	625	803

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	476	575	700	877	1002	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	393	534	642	805	992	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Newport	526	613	787	984	1101	Middletown town, Newport city, Portsmouth town
Washington	622	699	786	1014	1117	New Shoreham town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	331	396	466	634	750	Aiken, Edgefield
Charleston-North Charleston, SC MSA	372	431	495	658	767	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	403	454	511	674	807	York
Columbia, SC MSA	399	439	505	667	767	Lexington, Richland
Florence, SC MSA	302	336	436	545	610	Florence
Greenville-Spartanburg-Anderson, SC MSA	328	397	449	565	664	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	391	398	509	637	714	Horry
Sumter, SC MSA	318	353	402	550	652	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville	274	320	389	499	571
Bamberg	274	320	389	499	571
Beaufort	392	481	554	691	774
Chester	274	320	389	499	571
Clarendon	274	320	389	499	571
Darlington	274	320	389	499	571
Fairfield	274	368	419	523	585
Greenwood	275	320	389	499	571
Jasper	274	320	389	499	571
Lancaster	288	321	389	499	571
Lee	274	320	389	499	571
Marion	274	320	389	499	571
Newberry	274	320	389	499	571
Orangeburg	274	320	389	499	571
Union	274	320	389	499	571

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allendale	274	320	389	499	571
Barnwell	289	320	391	499	571
Calhoun	274	320	389	499	571
Chesterfield	274	320	389	499	571
Colleton	274	320	389	499	571
Dillon	274	320	389	499	571
Georgetown	274	348	392	499	595
Hampton	274	320	389	499	571
Kershaw	274	320	389	499	571
Laurens	274	320	389	499	571
Mccormick	274	320	389	499	609
Marlboro	274	320	389	499	571
Oconee	274	320	389	499	571
Saluda	274	320	389	499	571
Williamsburg	274	320	389	499	571

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	311	370	493	670	810	Pennington
Sioux Falls, SD MSA	301	416	527	667	766	Lincoln, Minnehaha

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	234	312	388	514	595
Bennett	234	310	388	514	595
Brookings	251	396	439	593	700
Brule	234	310	388	514	595
Butte	268	367	488	637	752
Charles Mix	234	310	388	514	595
Clay	234	310	388	514	638
Corson	234	310	388	514	595
Davison	245	310	388	521	595
Deuel	234	310	388	514	595
Douglas	260	310	388	514	595
Fall River	265	310	388	514	595
Grant	234	310	388	514	595
Haakon	234	317	388	514	595
Hand	234	310	388	514	595
Harding	234	317	388	514	595
Hutchinson	234	310	388	514	595
Jackson	234	314	388	514	595
Jones	234	310	388	514	595
Lake	234	314	388	514	595
Lyman	234	310	388	514	595
Mcpherson	234	310	388	514	595
Meade	328	370	493	646	763
Miner	234	314	388	514	595
Perkins	234	310	388	514	595
Roberts	234	310	388	514	595
Shannon	234	314	388	514	595
Stanley	234	317	388	514	595
Todd	259	340	388	514	595
Turner	234	310	388	514	595
Walworth	234	317	388	514	595
Ziebach	234	310	388	514	595

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beadle	234	310	388	514	595
Bon Homme	260	310	388	514	595
Brown	234	310	388	514	595
Buffalo	234	310	388	514	601
Campbell	234	310	388	514	595
Clark	234	310	388	514	595
Codington	234	310	388	514	595
Custer	234	310	388	514	595
Day	261	310	388	514	595
Dewey	234	310	388	514	595
Edmunds	234	310	388	514	595
Faulk	234	310	410	514	595
Gregory	235	310	388	514	595
Hamlin	234	310	388	514	595
Hanson	237	324	433	543	608
Hughes	258	310	410	540	638
Hyde	234	315	388	514	595
Jerauld	234	312	388	514	595
Kingsbury	256	310	388	514	595
Lawrence	266	385	485	664	751
Mccook	234	310	388	514	595
Marshall	275	310	388	514	595
Mellette	278	314	388	514	595
Moody	234	310	388	514	595
Potter	234	310	388	514	595
Sanborn	234	310	388	514	595
Spink	265	310	395	514	595
Sully	234	310	388	514	595
Tripp	234	310	388	514	595
Union	246	310	388	514	595
Yankton	234	310	388	514	595

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	318	373	447	577	658	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	313	351	411	561	576	Montgomery
Jackson, TN MSA	243	319	428	593	597	Madison

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

TENNESSEE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	248	287	366	475	540	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	281	347	434	579	696	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	321	374	440	611	642	Fayette, Shelby, Tipton
Nashville, TN MSA	357	426	526	717	806	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	227	293	357	450	500
Bledsoe	227	266	337	442	495
Campbell	229	266	337	442	495
Carroll	227	276	337	442	495
Claiborne	227	266	337	442	495
Cocke	227	266	337	442	495
Crockett	227	266	337	442	495
Decatur	227	266	337	442	495
Dyer	284	288	384	480	598
Franklin	238	266	337	463	544
Giles	227	290	358	448	501
Greene	227	266	337	442	495
Hamblen	227	267	350	467	495
Hardeman	227	266	337	442	495
Haywood	239	277	370	463	518
Henry	227	266	337	442	495
Houston	227	266	337	442	495
Jackson	227	266	337	442	495
Johnson	227	266	337	442	495
Lauderdale	227	266	339	442	495
Lewis	227	266	337	442	495
Mcminn	227	266	337	444	495
Macon	227	266	337	442	495
Maury	326	333	442	555	619
Monroe	227	266	337	442	495
Morgan	227	266	337	442	495
Overton	227	266	337	442	495
Pickett	227	266	337	442	495
Putnam	276	279	358	492	531
Roane	245	266	337	452	544
Sequatchie	227	266	337	442	495
Stewart	227	266	337	442	495
Van Buren	227	266	337	442	495

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benton	245	279	337	442	495
Bradley	227	287	383	518	629
Cannon	227	266	337	442	495
Chester	227	266	337	442	495
Clay	231	266	337	442	495
Coffee	227	317	356	495	564
Cumberland	240	266	348	486	495
Dekalb	227	266	337	442	495
Fentress	227	266	337	442	495
Gibson	227	266	337	442	495
Grainger	231	266	337	442	495
Grundy	227	266	337	442	495
Hancock	227	266	337	442	495
Hardin	227	266	337	442	495
Henderson	227	266	337	442	495
Hickman	268	272	361	476	505
Humphreys	227	277	337	442	495
Jefferson	248	266	345	442	549
Lake	227	266	337	442	495
Lawrence	227	266	337	442	495
Lincoln	227	266	340	442	495
Mcnairy	227	266	337	442	495
Marshall	267	292	380	480	533
Meigs	227	266	337	442	495
Moore	227	266	337	442	495
Obion	263	267	342	453	495
Perry	227	268	337	442	495
Polk	227	266	337	442	495
Rhea	227	284	337	447	495
Scott	227	266	337	442	495
Smith	227	266	337	442	495
Trousdale	227	279	371	466	610
Warren	253	266	344	442	495

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	227	266	337	442	495
White	231	266	337	442	495

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Weakley	246	266	337	442	495

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	273	304	393	530	644	Taylor
Amarillo, TX MSA	263	332	413	577	680	Potter, Randall
Austin-San Marcos, TX MSA	395	477	636	883	1043	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	300	362	442	585	620	Hardin, Jefferson, Orange
Brazoria, TX PMSA	419	467	584	814	958	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	315	397	496	621	774	Cameron
Bryan-College Station, TX MSA	351	408	516	719	847	Brazos
Corpus Christi, TX MSA	328	403	515	700	828	Nueces, San Patricio
Dallas, TX	397	456	586	811	959	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	370	414	491	681	805	El Paso
Fort Worth-Arlington, TX PMSA	380	413	537	747	882	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	412	423	531	738	870	Galveston
Henderson County, TX	272	323	395	540	648	Henderson
Houston, TX PMSA	390	437	567	788	929	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	369	384	486	677	743	Bell, Coryell
Laredo, TX MSA	299	344	452	565	635	Webb
Longview-Marshall, TX MSA	296	334	410	558	610	Gregg, Harrison, Upshur
Lubbock, TX MSA	283	358	466	648	718	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	263	359	411	514	577	Hidalgo
Odessa-Midland, TX MSA	283	327	437	608	704	Ector, Midland
San Angelo, TX MSA	263	336	408	559	660	Tom Green
San Antonio, TX MSA	346	399	517	719	849	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	263	359	434	554	663	Grayson
Texarkana, TX-Texarkana, AR MSA	286	350	427	563	597	Bowie
Tyler, TX MSA	329	363	444	616	651	Smith
Victoria, TX MSA	325	329	415	578	651	Victoria
Waco, TX MSA	286	351	462	615	647	Mclennan
Wichita Falls, TX MSA	315	353	425	566	667	Archer, Wichita

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	316	356	400	556	562
Angelina	288	333	376	522	615
Armstrong	263	304	398	499	562
Austin	263	304	367	503	562
Bandera	283	304	367	499	562
Bee	263	304	367	492	562
Borden	263	304	367	492	562
Brewster	263	304	367	496	594
Brooks	263	304	367	492	562
Burleson	263	304	386	522	635
Calhoun	282	304	367	508	601
Camp	356	361	451	565	631
Cass	263	304	367	492	562
Cherokee	294	305	374	492	562
Clay	263	310	367	492	573
Coke	263	304	367	492	562
Collingsworth	263	304	367	492	562
Comanche	263	304	367	492	562
Cooke	286	304	387	525	582
Crane	263	304	367	492	562
Crosby	263	304	367	492	562
Dallam	263	304	367	492	562
Deaf Smith	263	304	367	492	571
Dewitt	263	304	367	492	562
Dimmit	263	304	367	492	562
Duval	263	304	367	492	562
Edwards	263	304	367	492	562
Falls	263	304	367	492	562
Fayette	263	304	367	492	562
Floyd	263	304	367	492	562
Franklin	263	304	367	508	562
Frio	263	304	367	492	562
Garza	263	304	367	492	562
Glasscock	263	304	367	492	562
Gonzales	263	304	367	492	562
Grimes	263	304	367	496	585
Hall	263	304	367	492	562
Hansford	263	304	367	492	576
Hartley	263	304	367	492	562
Hemphill	263	339	380	529	562

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Andrews	263	304	367	492	562
Aransas	263	324	432	601	605
Atascosa	263	304	367	492	562
Bailey	263	304	367	492	562
Baylor	263	304	367	492	562
Blanco	263	304	389	541	570
Bosque	263	304	367	492	562
Briscoe	263	304	367	492	562
Brown	263	304	368	494	604
Burnet	263	304	375	521	609
Callahan	263	304	367	492	562
Carson	263	304	367	492	562
Castro	265	304	367	492	562
Childress	263	304	367	492	562
Cochran	263	304	367	492	562
Coleman	263	304	367	492	562
Colorado	263	304	367	492	562
Concho	263	304	367	492	562
Cottle	263	304	367	492	562
Crockett	263	304	367	492	562
Culberson	263	304	367	492	562
Dawson	263	304	367	492	562
Delta	263	315	367	492	562
Dickens	263	304	367	492	562
Donley	263	304	367	492	562
Eastland	263	304	367	492	562
Erath	273	309	400	518	562
Fannin	267	304	367	494	562
Fisher	263	304	367	492	562
Foard	263	304	367	492	562
Freestone	263	304	367	492	562
Gaines	269	304	367	492	562
Gillespie	263	331	430	591	603
Goliad	263	304	367	492	562
Gray	289	304	391	492	580
Hale	263	304	367	492	562
Hamilton	263	304	367	492	562
Hardeman	263	304	367	492	562
Haskell	263	304	367	492	562
Hill	263	304	367	492	562

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hockley	269	314	367	497	562
Houston	263	304	367	492	562
Hudspeth	317	358	400	502	659
Irion	263	304	367	492	562
Jackson	263	305	367	492	562
Jeff Davis	263	304	367	492	562
Jim Wells	263	304	367	492	569
Karnes	263	304	367	492	562
Kenedy	263	304	367	492	562
Kerr	263	341	426	593	699
King	263	304	367	492	562
Kleberg	320	331	404	565	665
Lamar	263	327	385	537	635
Lampasas	263	304	367	499	589
Lavaca	263	304	367	492	562
Leon	263	338	379	492	623
Lipscomb	263	304	367	492	562
Llano	263	339	451	566	742
Lynn	263	304	367	492	562
Mcmullen	263	304	367	492	562
Marion	263	304	367	492	582
Mason	263	304	367	492	562
Maverick	263	304	367	492	562
Menard	263	304	367	492	562
Mills	263	304	367	492	562
Montague	263	304	367	492	562
Morris	263	304	367	492	562
Nacogdoches	278	335	435	543	641
Newton	263	304	367	492	562
Ochiltree	263	304	367	492	562
Palo Pinto	263	304	367	492	584
Parmer	263	304	367	492	562
Polk	294	321	374	503	611
Rains	263	341	412	572	576
Real	263	304	367	492	562
Reeves	263	304	367	492	562
Roberts	263	307	367	492	562
Runnels	263	304	367	492	562
Sabine	263	304	367	492	562
San Jacinto	276	311	367	492	574

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hopkins	307	330	389	541	582
Howard	281	304	367	496	562
Hutchinson	263	304	380	529	625
Jack	263	304	367	492	562
Jasper	263	304	375	499	613
Jim Hogg	263	304	367	492	562
Jones	263	304	367	492	562
Kendall	263	385	432	601	710
Kent	263	304	367	492	562
Kimble	263	304	400	501	562
Kinney	263	304	367	492	562
Knox	263	304	367	492	562
Lamb	263	304	367	492	562
La Salle	263	304	367	492	562
Lee	298	335	377	526	590
Limestone	263	304	367	492	562
Live Oak	263	304	367	492	562
Loving	263	304	367	492	562
Mcculloch	271	304	367	492	562
Madison	263	313	367	492	578
Martin	263	304	367	492	562
Matagorda	304	332	412	572	576
Medina	263	304	367	492	562
Milam	263	304	367	492	562
Mitchell	263	304	367	492	562
Moore	263	309	367	492	571
Motley	263	304	367	492	562
Navarro	315	331	399	506	562
Nolan	271	304	367	492	562
Oldham	263	304	398	499	583
Panola	263	310	367	492	562
Pecos	263	304	367	496	585
Presidio	263	304	367	492	562
Reagan	335	341	453	569	745
Red River	263	339	380	492	562
Refugio	263	304	367	492	562
Robertson	263	348	390	492	562
Rusk	275	304	367	492	562
San Augustine	263	304	367	492	562
San Saba	263	304	367	492	562

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Schleicher	263	304	367	492	562
Shackelford	263	304	367	492	562
Sherman	263	304	367	492	562
Starr	263	304	367	492	562
Sterling	263	304	367	492	562
Sutton	263	304	367	492	562
Terrell	263	304	367	492	562
Throckmorton	263	304	367	492	562
Trinity	274	309	367	492	562
Upton	263	304	367	492	562
Val Verde	263	349	411	514	606
Walker	355	378	462	614	647
Washington	327	333	445	556	731
Wheeler	263	304	367	492	562
Willacy	263	304	367	492	562
Wise	263	307	369	515	562
Yoakum	263	346	426	532	699
Zapata	263	304	367	492	562

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Scurry	263	304	381	531	627
Shelby	263	304	367	492	562
Somervell	301	339	380	522	562
Stephens	263	304	367	492	562
Stonewall	263	304	367	492	562
Swisher	263	304	367	492	562
Terry	263	304	367	492	562
Titus	280	347	394	544	562
Tyler	263	304	392	492	645
Uvalde	263	304	367	492	562
Van Zandt	282	304	381	520	627
Ward	263	304	367	492	562
Wharton	263	304	367	492	562
Wilbarger	263	304	367	492	579
Winkler	263	304	367	492	562
Wood	263	304	380	529	625
Young	263	304	367	492	569
Zavala	263	304	367	492	562

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kane County, UT	273	336	420	562	677	Kane
Provo-Orem, UT MSA	377	398	493	684	808	Utah
Salt Lake City-Ogden, UT MSA	328	380	482	670	786	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	273	336	420	562	677
Cache	273	336	420	562	677
Daggett	298	407	541	678	760
Emery	273	336	420	562	677
Grand	273	336	420	562	677
Juab	273	336	420	562	677
Morgan	273	336	420	562	677
Rich	273	336	420	562	677
Sanpete	273	336	420	562	677
Summit	405	499	624	841	1023
Uintah	273	336	420	562	677
Washington	337	415	551	736	903

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Box Elder	303	336	420	562	677
Carbon	294	336	420	562	677
Duchesne	273	336	420	562	677
Garfield	273	336	420	562	677
Iron	273	372	464	580	682
Millard	273	336	420	562	677
Piute	273	336	420	562	677
San Juan	273	336	420	562	677
Sevier	277	336	420	562	677
Tooele	273	349	420	562	677
Wasatch	273	349	420	562	677
Wayne	273	336	420	562	677

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

V E R M O N T

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	390	478	637	869	1047	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	369	447	520	724	812	
Bennington	344	432	557	708	824	
Caledonia	312	372	455	575	659	
Chittenden	319	517	582	808	952	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex	306	366	455	575	659	
Franklin	328	370	455	579	665	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	306	366	455	575	659	Alburg town, Isle La Motte town, North Hero town
Lamoille	306	423	505	694	795	
Orange	306	401	493	651	730	
Orleans	306	366	455	575	659	
Rutland	343	447	545	684	765	
Washington	328	410	549	687	770	
Windham	368	427	567	719	792	
Windsor	395	446	558	715	849	

V I R G I N I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	387	457	585	778	873	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	290	407	528	724	740	Clarke
Culpeper County, VA	356	520	605	799	956	Culpeper
Danville, VA MSA	274	344	405	544	655	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	248	287	366	475	540	Scott, Washington, Bristol city
King George County, VA	351	465	523	727	732	King George
Lynchburg, VA MSA	326	358	413	544	655	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	407	457	542	756	887	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						Suffolk city, Virginia Beach city, Williamsburg city
Richmond-Petersburg, VA MSA	409	463	538	749	884	Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	276	344	447	573	715	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	283	387	516	676	845	Warren
Washington, DC-MD-VA	625	710	834	1135	1368	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	324	349	409	542	653
Amelia	273	343	404	542	653
Augusta	273	353	428	564	687
Bland	273	343	404	542	653
Buchanan	273	343	404	542	653
Caroline	386	391	522	694	731
Charlotte	273	343	404	542	653
Cumberland	273	373	433	542	653
Essex	273	383	453	629	743
Franklin	273	343	404	542	653
Giles	273	343	404	542	653
Greensville	273	353	404	542	653
Henry	273	343	404	542	653
King and Queen	273	391	440	550	653
Lancaster	340	382	431	575	700
Louisa	273	355	437	608	653
Madison	274	407	457	573	750
Middlesex	273	345	404	542	653
Nelson	273	343	404	542	653
Northumberland	273	343	404	542	653
Orange	302	412	550	765	897
Patrick	273	343	404	542	653
Pulaski	273	343	404	542	653
Richmond	273	363	408	542	670
Rockingham	273	377	478	655	767
Shenandoah	359	368	454	628	713
Southampton	273	343	404	542	653
Sussex	273	343	404	542	653

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	284	343	404	542	653
Appomattox	273	343	404	542	653
Bath	273	343	404	542	653
Brunswick	273	343	404	542	653
Buckingham	273	343	404	542	653
Carroll	273	343	404	542	653
Craig	273	343	404	542	653
Dickenson	273	343	404	542	653
Floyd	273	343	404	542	653
Frederick	369	426	513	703	842
Grayson	273	343	404	542	653
Halifax	273	343	404	542	653
Highland	273	343	404	542	653
King William	273	373	419	542	653
Lee	273	343	404	542	653
Lunenburg	273	343	404	542	653
Mecklenburg	273	343	404	542	653
Montgomery	281	368	432	601	710
Northampton	273	343	404	542	653
Nottoway	273	343	404	542	653
Page	317	357	404	542	653
Prince Edward	305	345	404	542	653
Rappahannock	277	448	503	699	824
Rockbridge	273	343	404	542	653
Russell	273	343	404	542	653
Smyth	273	343	404	542	653
Surry	283	343	404	542	653
Tazewell	273	343	404	542	653

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Westmoreland............	273	368	490	615	797
Wythe..................	285	343	404	542	653

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wise....................	273	343	404	542	653

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA..............................	376	488	650	897	1065	Whatcom
Bremerton, WA PMSA..............................	383	441	572	772	939	Kitsap
Olympia, WA PMSA................................	393	483	603	831	979	Thurston
Portland-Vancouver, OR-WA PMSA..................	387	476	587	817	887	Clark
Richland-Kennewick-Pasco, WA MSA................	469	538	643	896	1052	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA...............	440	535	678	942	1113	Island, King, Snohomish
Spokane, WA MSA.................................	316	436	526	715	800	Spokane
Tacoma, WA PMSA.................................	356	424	565	786	887	Pierce
Yakima, WA MSA..................................	340	418	517	694	725	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams..................	298	357	463	613	679
Chelan.................	298	357	463	613	679
Columbia...............	298	357	463	613	679
Douglas................	348	368	463	613	679
Garfield...............	298	357	463	613	679
Grays Harbor...........	304	357	468	632	729
Kittitas...............	298	357	463	613	679
Lewis..................	298	357	463	613	679
Mason..................	339	420	516	678	729
Pacific................	298	357	463	613	679
San Juan...............	368	503	670	863	1051
Skamania...............	298	357	463	613	679
Wahkiakum..............	298	357	463	613	679
Whitman................	321	365	487	676	800

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Asotin.................	298	357	463	613	679
Clallam................	347	430	547	703	769
Cowlitz................	335	374	482	669	679
Ferry..................	298	357	463	613	679
Grant..................	320	357	463	613	679
Jefferson..............	298	385	473	642	679
Klickitat..............	298	357	463	613	679
Lincoln................	298	357	463	613	679
Okanogan...............	298	357	463	613	679
Pend Oreille...........	298	357	463	613	816
Skagit.................	406	497	585	731	818
Stevens................	298	357	463	613	679
Walla Walla............	298	357	463	621	734

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County, WV.............................	348	370	441	551	617	Berkeley
Charleston, WV MSA..............................	241	328	415	570	624	Kanawha, Putnam
Cumberland, MD-WV MSA...........................	314	378	464	617	705	Mineral
Huntington-Ashland, WV-KY-OH MSA................	261	306	377	481	529	Cabell, Wayne
Jefferson County, WV............................	352	389	481	625	708	Jefferson

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

WEST VIRGINIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA.................	287	342	392	508	523	Wood
Steubenville-Weirton, OH-WV MSA.................	266	314	393	502	560	Brooke, Hancock
Wheeling, WV-OH MSA.............................	292	318	393	502	560	Marshall, Ohio

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour................	241	307	343	442	514
Braxton................	241	295	343	442	514
Clay...................	241	295	343	442	514
Fayette................	241	295	343	442	514
Grant..................	241	295	343	442	514
Hampshire..............	241	295	345	455	514
Harrison...............	266	327	377	471	565
Lewis..................	241	324	343	442	514
Logan..................	247	295	343	445	526
Marion.................	241	305	376	483	556
Mercer.................	241	295	343	442	514
Monongalia.............	304	336	411	565	669
Morgan.................	298	335	377	473	528
Pendleton..............	241	295	343	442	514
Pocahontas.............	241	295	343	442	514
Raleigh................	250	295	343	442	518
Ritchie................	241	295	343	442	514
Summers................	241	295	343	442	514
Tucker.................	241	295	343	442	514
Upshur.................	241	295	345	442	514
Wetzel.................	274	295	370	463	585
Wyoming................	241	295	343	442	514

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Boone..................	241	295	343	442	514
Calhoun................	241	295	343	442	514
Doddridge..............	250	295	343	442	514
Gilmer.................	266	295	343	442	514
Greenbrier.............	241	333	356	444	514
Hardy..................	241	295	343	442	514
Jackson................	241	302	343	470	514
Lincoln................	241	295	343	442	514
Mcdowell...............	241	295	343	442	514
Mason..................	241	295	343	442	528
Mingo..................	241	295	343	442	520
Monroe.................	241	295	343	442	514
Nicholas...............	241	295	343	442	514
Pleasants..............	249	295	343	442	527
Preston................	241	310	343	442	514
Randolph...............	241	295	343	442	514
Roane..................	241	295	343	442	514
Taylor.................	296	320	349	442	514
Tyler..................	241	295	361	453	514
Webster................	241	295	343	442	514
Wirt...................	241	295	343	442	514

WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA.................	297	366	464	586	675	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA......................	259	335	431	574	669	Douglas
Eau Claire, WI MSA..............................	320	348	457	587	662	Chippewa, Eau Claire
Green Bay, WI MSA...............................	325	358	459	638	642	Brown
Janesville-Beloit, WI MSA.......................	327	412	511	640	717	Rock
Kenosha, WI PMSA................................	339	420	517	710	798	Kenosha
La Crosse, WI-MN MSA............................	263	340	433	578	701	La Crosse
Madison, WI MSA.................................	406	511	617	857	1011	Dane

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

WISCONSIN continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	343	449	564	706	789	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	369	474	605	820	928	Pierce, St. Croix
Racine, WI PMSA	305	378	499	644	705	Racine
Sheboygan, WI MSA	284	365	446	557	690	Sheboygan
Wausau, WI MSA	347	360	450	613	680	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	259	302	385	492	554
Barron	259	302	385	492	554
Buffalo	259	302	385	492	554
Clark	259	302	385	492	554
Crawford	259	302	385	492	554
Door	259	321	399	512	622
Florence	259	302	385	492	554
Forest	259	302	385	492	554
Green	264	302	385	518	554
Iowa	269	302	385	506	554
Jackson	259	302	385	492	554
Juneau	265	302	385	492	554
Lafayette	264	302	385	492	554
Lincoln	259	302	385	492	554
Marinette	259	302	385	492	554
Menominee	259	302	385	492	554
Oconto	259	302	385	492	554
Pepin	259	302	385	492	554
Portage	315	333	432	539	668
Richland	259	302	385	492	554
Sauk	303	313	418	521	585
Shawano	264	302	385	492	554
Trempealeau	259	302	385	492	554
Vilas	259	302	385	492	554
Washburn	259	302	385	492	554
Waushara	259	302	385	492	554

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	283	313	385	492	554
Bayfield	259	302	385	492	554
Burnett	259	302	385	492	554
Columbia	259	308	405	531	595
Dodge	328	333	438	548	613
Dunn	259	302	396	529	653
Fond du Lac	262	355	421	571	590
Grant	263	302	385	492	554
Green Lake	259	302	385	492	554
Iron	259	302	385	492	554
Jefferson	259	344	447	577	630
Kewaunee	259	302	385	492	554
Langlade	259	302	385	492	554
Manitowoc	262	302	385	492	554
Marquette	259	302	385	492	554
Monroe	259	302	385	513	554
Oneida	259	303	385	496	593
Polk	259	302	392	492	554
Price	259	302	385	492	554
Rusk	259	302	385	492	554
Sawyer	259	302	385	492	554
Taylor	259	302	385	492	554
Vernon	259	302	385	492	554
Walworth	271	380	495	644	722
Waupaca	259	302	385	492	583
Wood	282	322	400	501	562

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	282	327	418	573	677	Natrona
Cheyenne, WY MSA	319	399	533	682	828	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	283	355	473	658	777
Campbell	291	310	397	529	624
Converse	268	310	397	527	606
Fremont	268	310	397	527	606
Hot Springs	268	310	397	527	606
Lincoln	268	310	397	527	606
Park	268	310	397	527	611
Sheridan	268	310	397	527	611
Sweetwater	280	310	397	529	624
Uinta	282	310	397	528	637
Weston	268	310	397	527	606

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	268	310	397	527	606
Carbon	268	310	397	527	606
Crook	268	310	397	527	606
Goshen	268	310	397	527	606
Johnson	268	310	397	527	606
Niobrara	268	310	397	527	606
Platte	268	310	397	527	606
Sublette	300	337	397	527	606
Teton	360	458	608	817	891
Washakie	268	310	397	527	606

PACIFIC ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	655	787	932	1168	1314

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	225	274	325	404	455	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	320	387	455	572	640	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	266	320	378	475	528	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	232	282	335	416	468	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	310	378	446	557	625	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	310	378	446	557	625	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

PUERTO RICO continued

METROPOLITAN FMR AREAS 0 BR 1 BR 2 BR 3 BR 4 BR Counties of FMR AREA within STATE

Naguabo Municipio, Naranjito Municipio
Rio Grande Municipio, San Juan Municipio
Toa Alta Municipio, Toa Baja Municipio
Trujillo Alto Municipio, Vega Alta Municipio
Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adjuntas Municipio......	208	257	300	378	421
Arroyo Municipio........	208	257	300	378	421
Ciales Municipio........	208	257	300	378	421
Culebra Municipio.......	208	257	300	378	421
Guayama Municipio.......	208	257	300	378	421
Jayuya Municipio........	208	257	300	378	421
Lares Municipio.........	208	257	300	378	421
Maricao Municipio.......	208	257	300	378	421
Orocovis Municipio......	208	257	300	378	421
Quebradillas Municipio..	320	387	455	572	640
Salinas Municipio.......	208	257	300	378	421
Santa Isabel Municipio..	208	257	300	378	421
Vieques Municipio.......	208	257	300	378	421

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aibonito Municipio......	208	257	300	378	421
Barranquitas Municipio..	208	257	300	378	421
Coamo Municipio.........	208	257	300	378	421
Guanica Municipio.......	208	257	300	378	421
Isabela Municipio.......	218	266	315	392	441
Lajas Municipio.........	208	257	300	378	421
Las Marias Municipio....	208	257	300	378	421
Maunabo Municipio.......	208	257	300	378	421
Patillas Municipio......	208	257	300	378	421
Rincon Municipio........	208	257	300	378	421
San Sebastian Municipio.	208	257	300	378	421
Utuado Municipio........	208	257	300	378	421

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Virgin Islands..........	528	642	755	943	1055

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091195

SCHEDULE D - FY 1996 40th PERCENTILE FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES

STATE/FMR AREA	SPACE RENT
CALIFORNIA	
Orange County, CA PMSA	$449
San Diego, CA MSA	388
COLORADO	
Boulder-Longmont, CO PMSA	282
Denver, CO PMSA	268
DELAWARE	
Dover, DE MSA	163
Sussex County	115
MARYLAND	
Hagerstown, MD MSA	204
St. Marys County	251
MINNESOTA	
Minneapolis-St. Paul, MN-WI MSA	243
NEW YORK	
Dutchess, NY PMSA	329
Jamestown, NY MSA	172
Newburgh, NY MSA	309
Tompkins County, NY	196
OREGON	
Salem, OR PMSA	205
VERMONT	
Washington County	196
WEST VIRGINIA	
Berkeley County	132
Jefferson County	135
Morgan County	133

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Part IV

Department of Housing and Urban Development

Office of the Secretary

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–3956–N–01]

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document provides revised designations of "Difficult Development Areas" for purposes of the Low-Income Housing Tax Credit ("LIHTC") under section 42 of the Internal Revenue Code of 1986, and provides the methodology used by the United States Department of Housing and Urban Development ("HUD"). The new Difficult Development Areas are based on FY 1995 Fair Market Rents ("FMRs"), FY 1995 income limits and 1990 census population counts as explained below. The corrected designations of "Qualified Census Tracts" under section 42 of the Internal Revenue Code published May 1, 1995, at 60 FR 21246 remain in effect.

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SUPPLEMENTARY INFORMATION:

Background

The U.S. Treasury Department and the Internal Revenue Service are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the "Code"), including the Low-Income Housing Tax Credit ("LIHTC") found at section 42 of the Code, as enacted by the Tax Reform Act of 1986 [Pub. L. 99–514], as amended by the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647]; the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239]; the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508]; the Tax Extension Act of 1991 [Pub. L. 102–227]; and as amended and made permanent by the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66]. The Secretary of HUD is required to designate Difficult Development Areas by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the "credit ceiling") is limited by population. Each state is allocated credit based on $1.25 per resident. Also, states may carry forward unused or returned credit for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low income housing buildings whose owners have applied for the credit.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income ("AMGI"), or 40 percent of units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term "rent-restricted" means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low income character of the building for an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized (i.e., financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the acquisition of existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000. This equals $9,900 at the 39.6 percent maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or professional service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct the losses from the project.

The qualified basis represents the product of the "applicable fraction" of the building and the "eligible basis" of the building. The applicable fraction is based on the number of low income units in the building as a percentage of the total number of units, or based on the floor space of low income units as a percentage of the total floor space in the building. The eligible basis is the adjusted basis attributable to acquisition rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if the 70 percent credit is available, it effectively could be increased up to 91 percent.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI. There is a limit on the Qualified Census Tracts in any Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of Qualified Census Tracts, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area. This Notice does not redesignate Qualified Census Tracts. The corrected designation of Qualified Census Tracts published May 1, 1995, at 60 FR 21246 remains in effect. Qualified Census Tracts will not be redesignated until year 2000 census data become available.

Section 42 defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. Again, limits apply. All designated Difficult Development Areas in MSAs/PMSAs may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all non-metropolitan counties.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 1990 Census data and the MSA/PMSA definitions as published by the Office of Management and Budget ("OMB") in OMB Bulletin No. 94–07 on July 5, 1994, *with the exceptions described in section C., below*. The basis for these comparisons was the fiscal year ("FY") 1995 HUD income limits for Very Low Income households ("VLILs") and Fair Market Rents ("FMRs") used for the section 8 Housing Assistance Payments Program. The procedure used in making these calculations follows (Note that while the description of HUD's selection methodology differs from previous designations of Difficult Development Areas, the methodology is mathematically equivalent):

1. For each MSA/PMSA and each non-metropolitan county, a ratio was calculated. This calculation used the FY 1995 two-bedroom FMR and the FY 1995 four-person VLIL. The numerator of the ratio was the area's FY 1995 FMR. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as $1/12$ of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for non-metropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 1990 population of all metropolitan areas and of all non-metropolitan counties.

B. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan counties.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to three decimal places) to the last area selected, *and* its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and non-metropolitan Difficult Development Areas there are minimal overruns of the caps. HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 94–07 defining metropolitan areas: OMB establishes and maintains the definitions of the [Metropolitan Areas] MAs solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds.

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas. In addition, HUD is required by statute to calculate a separate FMR and VLIL for Westchester County, New York, which OMB includes as part of the New York, NY PMSA. Thus the following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Atlanta, GA—Carrol, Pickens, and Walton Counties.
Chicago, IL—DeKalb, Grundy, and Kendall Counties.
Cincinnati-Hamilton, OH-KY-IN—Brown County, Ohio; Gallatin, Grant, and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX—Henderson County.
Lafayette, LA—St. Landry and Acadia Parishes.
New York, NY—Westchester County.
New Orleans, LA—St. James Parish.
Washington, DC-MD-VA-WV—Clarke, Culpeper, King George, and Warren Counties in Virginia; and Berkeley and Jefferson Counties in West Virginia.
Affected MSAs/PMSAs are assigned the indicator "(part)" in the list of Metropolitan Difficult Development Areas.

Finally, in the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions ("MCDs") rather than county boundaries. Thus, when a

New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Geographic definitions of the nonmetropolitan parts of New England counties can be found in HUD's Rule establishing FY 1995 FMRs at 60 FR 42230 or 24 CFR Part 888. Affected counties are assigned the indicator "(part)" in the list of Nonmetropolitan Difficult Development Areas.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts will not be redesignated until year 2000 census data become available.

Effective Date

The list of Difficult Development Areas is effective for allocations of credit made after December 31, 1995. In the case of a building described in Internal Revenue Code section 42(h)(4)(B), the list is effective if the bonds are issued and the building is placed in service after December 31, 1995. The corrected designations of Qualified Census Tracts published May 1, 1995, at 60 FR 21246 remain in effect.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20 of the HUD regulations, the policies and actions in this document are determined not to have the potential of having a significant impact on the quality of the human environment and therefore further environmental review under the National Environmental Policy Act is not necessary.

Regulatory Flexibility Act

In accordance with 5 U.S.C. § 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of "Difficult Development Areas" for use by political subdivisions of the States in allocating the LIHTC as required by section 42 of the Code, as amended. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates "Difficult Development Areas" for use by political subdivisions of the States in allocating the LIHTC as required by section 42 of the Code, as amended. The notice also details the technical methodology used in making such designations.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The notice involves the designation of "Difficult Development Areas" for use by political subdivisions of the States in allocating the LIHTC as required by section 42 of the Code, as amended. The notice also details the technical methodology used in making such designations.

Dated: September 11, 1995.

Henry G. Cisneros,

Secretary.

IRS SECTION 42(D)(5)(C) DIFFICULT DEVELOPMENT AREAS—METROPOLITAN AREAS

State	Metropolitan area	Metropolitan area	Metropolitan area	Metropolitan area
AZ	Yuma, AZ.			
CA	Chico-Paradise, CA.	Los Angeles Long Beach, CA	Salinas, CA	San Francisco, CA.
	San Luis Obispo-Atascadero-Paso Robles, CA.	Santa Barbara-Santa Maria Lompoc, CA.	Santa Cruz-Watsonville, CA	Santa Rosa, CA
	Ventura, CA.			
CT	Bridgeport, CT	New Haven-Meriden, CT	Stamford-Norwalk, CT	
FL	Daytona Beach, FL	Fort Lauderdale, FL	Fort Myers-Cape Coral, FL	Fort Pierce-Port Lucie, FL.
	Miami, FL	Punta Gorda, FL	Sarasota-Bradenton, FL	West Palm Beach-Boca Raton, FL.
HI	Honolulu, HI.			
MA	Barnstable-Yarmouth, MA	Fitchburg-Leominster, MA	Worcester, MA–CT	
ME	Portland, ME.			
NH	Portsmouth-Rochester, NH–ME.			
NJ	Atlantic-Cape May, NJ	Jersey City, NJ	Monmouth-Ocean, NJ	Vineland-Millville-Bridgeton, NJ.
NY	Nassau-Suffolk, NY	New York, NY (part)	Newburgh, NY–PA	
OR	Eugene-Springfield, OR.			
PR	Aguadilla, PR	Arecibo, PR	Caguas, PR	Mayaguez, PR.
	Ponce, PR	San Juan-Bayamon, PR.		
RI	Providence-Fall River-Warwick, RI–MA..			
SC	Myrtle Beach, SC.			
TX	Brownsville-Harlingen-San Benito, TX.	El Paso, TX	Laredo, TX	
WA	Bellingham, WA	Yakima, WA.		

IRS SECTION 42(D)(5)(C) DIFFICULT DEVELOPMENT AREAS—NONMETROPOLITAN AREAS

State	County	County	County	County
	Pacific Islands.			
AK	Bethel Census Area	Dillingham Census Area	Fairbanks North Star Borough	Haines Borough.
	Juneau Borough	Ketchikan Gateway Borough	Kodiak Island Borough	Lake And Peninsula Borough.
	Nome Census Area	North Slope Borough	Northwest Arctic Borough	
AL	Coffee County	Macon County		
AR	Baxter County	Conway County	Garland County	Madison County.
	Mississippi County.			
AZ	Cochise County	Coconino County	Gila County	Santa Cruz County.
	Yavapai County			
CA	Alpine County	Amador County	Calaveras County	Del Norte County.
	Humboldt County	Imperial County	Inyo County	Kings County.
	Lake County	Mariposa County	Mendocino County	Mono County.
	Nevada County	Plumas County	San Benito County	Sierra County.
	Siskiyou County	Tuolumne. County		
CO	Eagle County	Garfield County	Gilpin County	Grand County.
	La Plata County	Lake County	Ouray County	Pitkin County.
	Routt County	San Miguel County.		
CT	Litchfield County (part)	Middlesex County (part)	New London County (part)	Windham County (part).
DE	Sussex County.			
FL	Citrus County	Desoto County	Franklin County	Glades County.
	Hardee County	Hendry County	Highlands County	Indian River County.
	Monroe County	Okeechobee County	Taylor County.	
GA	Bulloch County	Butts County	Camden County	Dawson County.
	Liberty County	Union County.		
HI	Hawaii County	Kauai County	Maui County	
ID	Bonner County	Kootenai County		
KS	Riley County.			
KY	Adair County	Bell County	Estill County	Floyd County.
	Johnson County	Lincoln County	Morgan County	Nicholas County.
	Perry County	Pike County	Pulaski County.	
LA	Morehouse Parish.	Natchitoches Parish	Tangipahoa Parish	Vernon Parish.
	West Feliciana Parish.			
MA	Barnstable County (part)	Dukes County	Franklin County (part)	Hampden County (part).
	Hampshire County (part)	Nantucket County	Worcester County (part).	
MD	St. Mary's County	Wicomico County.		
ME	Androscoggin County (part)	Aroostook County	Cumberland County	Franklin County.
	Hancock County	Kennebec County	Knox County	Lincoln County.
	Oxford County	Penobscot County (part)	Piscataquis County	Sagadahoc County
	Somerset County	Waldo County (part)	Washington County	York County (part).
MO	Camden County.			
MS	Adams County	Bolivar County	Claiborne County	Coahoma County.
	Copiah County	George County	Issaquena County	Lafayette County.
	Lauderdale County	Leflore County	Sunflower County	Tate County.
	Washington County	Yazoo County.		
MT	Missoula County.			
NC	Camden County	Dare County	Pasquotank County	Watauga County.
NH	Belknap County	Carroll County	Cheshire County	Grafton County.
	Hillsborough County (part)	Merrimack County (part)	Rockingham County (part)	Strafford County.
	Sullivan County.			
NM	Chaves County	Curry County	Lincoln County	Mckinley County.
	Quay County	Rio Arriba County	San Miguel County	Taos County.
NV	Douglas County	Mineral County	Pershing County.	
NY	Clinton County	Columbia County	Cortland County	Essex County.
	Greene County	Hamilton County	Jefferson County	Otsego County.
	Schuyler County	Sullivan County	Tompkins County	Ulster County.
OR	Clatsop County	Coos County	Curry County	Deschutes County.
	Hood River County	Jefferson County	Josephine County	Klamath County.
	Lincoln County.			
PA	Monroe County	Northumberland County	Schuylkill County	Wayne County.
PR	All.			
RI	Newport County (part)	Washington County (part)		
SC	Beaufort County	Fairfield County.		
SD	Faulk County	Spink County.		
TN	Haywood County	Trousdale County.		
TX	Aransas County	Burleson County	Camp County	Gillespie County.
	Hopkins County	Hudspeth County	Jasper County	Kerr County.
	Kimble County	Kleberg County	Llano County	Nacogdoches County.
	Polk County	Rains County	Red River County	Robertson County.
	Tyler County	Val Verde County	Van Zandt County	Walker County.
	Washington County.			
UT	Daggett County	Iron County	Washington County	
VA	Caroline County	Cumberland County	Frederick County	King And Queen County.

IRS SECTION 42(D)(5)(C) DIFFICULT DEVELOPMENT AREAS—NONMETROPOLITAN AREAS—Continued

State	County	County	County	County
	Madison County	Orange County	Shenandoah County	Westmoreland County.
VI	Virgin Islands.			
VT	Addison County	Bennington County	Lamoille County	Orange County.
	Rutland County	Washington County	Windham County	Windsor County.
WA	Clallam County	Douglas County	Grays Harbor County	Jefferson County.
	San Juan County	Skagit County.		
WV	Greenbrier County	Harrison County	Taylor County	Upshur County.
WY	Teton County.			

[FR Doc. 95–23051 Filed 9–15–95; 8:45 am]

BILLING CODE 4210–32–P

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federal register

Monday
September 18, 1995

Part V

Department of the Interior

Bureau of Indian Affairs

Power Rate Adjustment; Mission Valley Power Utility, Montana; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Power Rate Adjustment: Mission Valley Power Utility, Montana

ACTION: Notice of Proposed Rate Increase.

SUMMARY: The Bureau of Indian Affairs is proposing to increase the cost of electric power (energy) to customers of Mission Valley Power (MVP), the entity operating the power facility of the Flathead Indian Irrigation Project of the Flathead Reservation. The Bureau of Indian Affairs (BIA) has been informed that the Montana Power Company (MPC), which sells electric power to MVP, has raised its wholesale power rates by approximately 2.0 percent. The MPC increase went into effect on September 5, 1995, and is based on adjustments in the Consumer Price index pursuant to the Federal Energy Regulatory Commission license for MPC's Kerr Dam Hydroelectric Facility. Accordingly, the BIA is proposing to adjust the local retail power rates charged by MVP to reflect the increased cost of purchased power.

DATES: Comments must be submitted on or before October 18, 1995.

ADDRESSES: Written comments on rate changes should be sent to: Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, Attn: Branch of Irrigation and Power, MS#4559–MIB, 1849 "C" Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702; or, General Manager, Mission Valley Power, P.O. Box 890, Polson, Montana 59860–0890. Telephone (406) 883–5361 or 1–800–823–3758 (in-State Watts).

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8. 1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices. The approximate 2.0 percent MPC increase causes the BIA to raise its retail rates to recover $28,000 which is the approximate annual financial impact of that increase. This proposed adjustment is the result of an increase in the electric power rates charged by MPC, one of three sources of electric power marketed by MVP. The MPC increase, which went into effect on September 5, 1995, is based on adjustments in the Consumer Price index pursuant to the Federal Energy Regulatory Commission license for MPC's Kerr Dam Hydroelectric Facility. The following table illustrates the financial impact of the new retail rates on each rate class:

Rate class	Present rate	New rate
Residential:		
Basic Charge	$11.00/mo. (includes 125kwh)	No Change
Energy Charge	0.04817/kwh (over 122 kwh)	$0.04828
#2 General:		
Basic Charge	11.00/mo. (includes 107 kwh)	No Change
Energy Charge	0.05604/kwh (over 107 kwh)	0.05615
Irrigation:		
Horsepower Charge	11.25/HP	11.30/HP
Energy Charge	0.03638/kwh	0.03642
Minimum Seasonal Charge	132.00 or $6.00/HP, whichever is greater	No Change
Small and Large Commercial:		
Basic Charge	None	No Change
Monthly Minimum	38.00	No Change
Demand Rate	4.50/KW of billing demand	4.51/KW
Energy Rate	0.04305/kwh—First 18,000 kwh	0.04345
	0.03588/kwh—Over 18,000 kwh	0.03592
Area Lights:		
Area light installed on existing pole or structure:		
7,000 lumen unit, M.V.*	7.00	7.00
20,000 lumen unit, M.V.*	10.00	10.00
9,000 lumen unit, H.P.S.	6.50	6.50
22,000 lumen unit, H.P.S.	8.75	8.75
Area light installed with new pole:		
7,000 lumen unit, M.V.*	8.75	8.75
20,000 lumen unit, M.V.*	11.50	11.50
9,000 lumen unit, M.V.*	8.25	8.25
22,000 lumen unit, H.P.S*	10.50	10.50
Street Lighting (metered):		
Basic Charge	11.00/mo (includes 107kwh)	11.00
Energy Charge	0.0560/kwh (over 107 kwh)	0.05615
Street Lighting (Unmetered)	This rate class applies to municipalities or communities where there are ten or more lighting units billed in a group. This rate schedule is subject to a negotiated contract with MVP.	No Change

*Continuing service only.

Dated: September 12, 1995.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–23058 Filed 9–15–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
September 18, 1995

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71
Alteration of the Salt Lake City Class B Airspace; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–11]

RIN 2120–AF56

Alteration of the Salt Lake City Class B Airspace Area, Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Salt Lake City Class B airspace area, Salt Lake City, Utah. This rule will maintain the ceiling of the Salt Lake City Class B airspace area at 10,000 feet mean sea level (MSL); subdivide and redefine existing subareas by altering its floors and boundaries except for Area B; and create additional Areas E, F, G, H, I, J, K, L, and M. This rule will improve the flow of aviation traffic and enhance safety in the Salt Lake City area, while accommodating the concerns of the airspace users.

EFFECTIVE DATE: 0701 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Background

Airspace reclassification, effective September 16, 1993, discontinued the use of the term "Terminal Control Area" (TCA) and replaced it with the designation "Class B Airspace." This change in terminology is reflected in this rule. On May 21, 1970, the FAA published Amendment No. 91–78 to part 91 of Title 14 Code of Federal Aviation Regulations (CFR) that provided for the establishment of Class B airspace areas (35 FR 7782). The Class B airspace area program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). Class B airspace areas provides a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by providing air traffic control (ATC) increased capability to provide aircraft separation service, this minimizes the mix of controlled and uncontrolled aircraft. To date, the FAA has established a total of 29 Class B airspace areas.

On June 21, 1988, the FAA published a final rule which required aircraft to have Mode C equipment when operating within 30 nautical miles of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL, excluding those aircraft not certificated with an engine-driven electrical system, balloons, or gliders (53 FR 23356).

Discussions of Comments

The proposed changes to the SLC Class B airspace area were published in a Notice of Proposed Rulemaking (NPRM) on August 4, 1995 (60 FR 40020). The FAA did not receive any written comments regarding the proposed alteration of the SLC Class B airspace area. However, the FAA placed two documents in the docket to memorialize communication between the FAA and one user group that occurred during the comment period.

The FAA has determined that alterations to the SLC Class B airspace area, as contained herein, will promote the safe and efficient use of the airspace and will meet users' concerns.

The Rule

This amendment to 14 CFR part 71 modifies Class B airspace area around Salt Lake City International Airport. The Class B airspace area utilizes the Runway 17 ILS/DME antenna, latitude and longitude points, and landmarks. The upper limits of the Salt Lake City Class B airspace area remain at 10,000 feet mean sea level (MSL); however, the subareas within the area are modified. Area A is reduced to the west and northeast of the Salt Lake City International Airport. Modifying Area A enhances the utilization of the airspace for northeast-bound and west-bound VFR traffic transiting over the Skypark Airport. Area C is revised to provide more transition routes for VFR operations, particularly for aircraft not equipped with the required flotation equipment to fly over the Greater Salt Lake. Additionally, this area will relieve the potential for traffic congestion around the Tooele Valley Airport. Areas D and E are subdivided and retain the original floor altitudes of 6,000 and 7,000 feet MSL respectively. The floor of Area F is raised from 6,000 to 7,000 feet MSL to provide more airspace for the VFR aircraft transiting the area of Point of the Mountain. The floor of Area G is raised from 7,000 to 8,000 feet MSL. Area H is altered to provide controlled airspace for the new instrument approach procedures to the new parallel instrument runway 16R/34L at the Salt Lake City International Airport. A new area, Area M, is established north of the Salt Lake City International airport to include the airspace from 9,000 to 10,000 feet MSL to provide controlled airspace for the new instrument approach procedures to the new parallel instrument runway 16R/34L at the Salt Lake City International Airport. All alterations of the Salt Lake City Class B airspace area are depicted on the chart found in the attached appendix.

Class B airspace designations are published in Paragraph 3000 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR part 71.1. The Class B airspace area listed in this airspace alteration will be published subsequently in the Order. The coordinates for this airspace docket are based on North American Datum 83.

Regulatory Evaluation

This section summarized the regulatory evaluation prepared by the FAA on the amendment to 14 CFR part 71 to alter the SLC Class B airspace. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, and Federal, State, and local governments as well as anticipated benefits.

The FAA has determined that this rulemaking is not "a significant rulemaking action," as defined by Executive Order (EO) 12866, Regulatory Planning and Review, and therefore, no Regulatory Impact Analysis is required. Nevertheless, in accordance with the Department of Transportation policies and procedures, the FAA has evaluated the anticipated costs and benefits associated with this final rule and are summarized below. A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this final rule.

Benefit-Cost Analysis

This regulatory evaluation analyzes the potential costs and benefits of the modifications to the Salt Lake City International Airport, Utah, Class B airspace area. These modifications will raise the floor of the Class B airspace in Areas A, C, and D and reduce the lateral boundaries east of the airport in Area E to enhance safe and efficient VFR traffic operations. The new floor altitudes will be raised by as much as 500 to 6,000 feet MSL in areas A, C, and D without changing the original lateral boundaries. The original areas of the Class B airspace will be subdivided and renamed as A, K, and L (from A); C, D, and F (from C); E and G (from D); H (from F); and I (from E). These modifications will provide additional airspace for VFR traffic operations. Also, an area of controlled airspace (Area M) will be added to the north, and the lateral boundaries of Area H will be expanded to the south with floor and ceiling altitudes of 9,000 and 10,000 feet MSL respectively. These two modifications are designed to provide additional controlled airspace for new IFR procedures to the new parallel instrument runway that is scheduled to open in the latter part of 1995. The Salt Lake City Tower/Tracon (SLC ATCT) has determined that the above modifications will not adversely impact their ability to monitor and control IFR and VFR traffic in the Class B airspace.

The rule will enhance aviation safety and operational efficiency by lowering the risk of midair collisions, while accommodating the legitimate concerns of system users. The modifications to the Salt Lake City Class B airspace will provide VFR traffic with more operating room, aid controllers vectoring IFR traffic to and from the new parallel instrument runway, and improve the SLC ATCT's ability to separate controlled and uncontrolled aircraft near the floor and lateral boundaries of the airspace.

Cost

The FAA has determined that the implementation of the rule will not impose any additional cost of either the agency or aircraft operators for the reasons discussed below.

In terms of the FAA, the rule will not impose any additional administrative costs for personnel, facilities, or equipment. This assessment is based on the fact that the modification will not increase the volume of air traffic using the Salt Lake City Class B airspace. The simultaneous contraction and expansion of the Class B airspace will not dramatically change the overall size of the airspace and will not impose additional workloads on current personnel and equipment resources. Required revisions to aeronautical charts will be accomplished during normal charting cycles. Therefore, no additional costs beyond routine operating expenses will be imposed.

Costs to Aircraft Operators

The modifications should impose little, if any, additional cost for items such as required avionics equipment, installation, or circumnavigation. Many affected GA aircraft operators are assumed to already have the types of avionic equipment (such as an operable two-way radio and very high frequency omni-directional range receiver) required for entering a Class B airspace area. The only aircraft without Mode C transponders would be aircraft not originally certified with an engine-driven electrical system or not subsequently certified with such a system installed. These potential costs to aircraft operators without Mode C transponders have already been accounted for by the Mode C rule.

Similarly, the modifications should not adversely impact aircraft operators who routinely operate under IFR, primarily large air carriers, business jets, commuters and air taxis, nor should the proposed modifications impose substantial cost to VFR users as most are assumed to have the required avionics equipment.

Benefits

The modifications are expected to generate benefits primarily in the form of safety enhancements to the aviation community and the flying public. Such benefits include reduced aviation fatalities and property damages as a result of a lowered risk of midair collisions. The changes to the airspace will enable VFR aircraft to circumnavigate the Salt Lake City Class B airspace area operations, thereby enhancing operational efficiency.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. A substantial number of small entities is defined as a number that is 11 or more and which is more than one-third of the small entities subject to the NPRM. The only potentially affected small entities will be unscheduled air taxis owning nine or fewer aircraft and flight training schools around the Oquirrh Mountains and none meet the applicable definition. The rule will maintain aviation safety and operational efficiency for VFR traffic while imposing negligible additional costs or requirements. Therefore, the regulation will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor the sale of United States' products or services in foreign countries. The regulation will impose negligible costs on aircraft operators or aircraft manufacturers (United States or foreign).

Federalism Implications

This rule will not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41695; October 30, 1987), it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations (JAR)

The FAA has determined that this regulation will not conflict with any international agreements of the United States.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis and Review of Regulations. A final regulatory evaluation of the regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis has been placed in the docket.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 3000—Subpart B–Class B Airspace

* * * * *

ANM UT B Salt Lake City, UT [Revised]

Salt Lake City International Airport (Primary Airport)
(Lat. 40°47′12″N, long. 111°58′08″W).
Salt Lake City International Airport Runway 17 ILS (I–BNT) ILS/DME Antenna
(Lat. 40°46′10″N, long. 111°57′44″W).

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at a point where the 13-mile arc of the Salt Lake City International Airport Runway 17 ILS (I–BNT) instrument landing system/distance measuring equipment (ILS/DME) antenna intercepts Interstate 15 (I–15), extending south on I–15 until intercepting a 4.3-mile arc from the Salt Lake City International Airport, extending south along the 4.3-mile arc from the Salt Lake City International Airport until intercepting I–15, extending south on I–15 until intercepting 11-mile arc of the I–BNT ILS/DME antenna clockwise until intercepting the Union Pacific railroad tracks, extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–BNT ILS/DME antenna clockwise until the point of beginning, excluding Areas C, D, K, and L described hereinafter.

Area B. That airspace extending upward from 7,600 feet MSL to and including 10,000 feet MSL between the 13-mile radius and the 25-mile radius of the I–BNT ILS/DME antenna, excluding that airspace south of the Union Pacific railroad tracks and that airspace east of where the 25-mile arc intercepts the Ogden-Hinckley Airport, UT, Class D airspace area and the Ogden, Hill AFB, UT, Class D airspace area until intercepting U.S. Highway 89, extending south on U.S. Highway 89 until intercepting the 11-mile arc of the I–BNT ILS/DME antenna.

Area C. That airspace extending upward from 6,500 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I–BNT ILS/DME antenna intercepts the Union Pacific railroad tracks extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–BNT ILS/DME antenna clockwise until a point at lat. 40°46′30″N, long. 112°14′50″W, extending east to a bend on interstate 80 (I–80) at lat. 40°46′30″N, long. 112°08′48″W, then southeast to the drive-in theater north of the city of Magna at lat. 40°43′00″N, long. 112°04′48″W, then southeast to the water tank at lat. 40°40′00″N, long. 112°03′33″W, extending southeast to a point at lat. 40°39′20″N, long. 112°02′33″W, extending south along long. 112°02′33″W, until intercepting the 11-mile arc of the I–BNT ILS/DME antenna then northwest on the 11-mile arc of the I–BNT ILS/DME antenna clockwise to the point of beginning.

Area D. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point at lat. 40°39′20″N, long. 112°02′33″W, extending east to a point at lat. 40°39′20″N, long. 111°58′13″W, extending south along long. 111°58′13″W, until intercepting the 11-mile arc of the I–BNT ILS/DME antenna, then counterclockwise until intercepting I–15, extending south on I–15 until intercepting a line at lat. 40°31′05″N, extending west on lat. 40°31′05″N, until a point at lat. 40°31′05″N, long. 112°00′33″W, then north along long. 112°00′33″W, to intercept the 11-mile arc of the I–BNT ILS/DME antenna at lat. 40°35′22″N, long. 112°00′33″W, then clockwise on the 11-mile arc of I–BNT ILS/DME antenna to long. 112°02′33″N, then to the point of beginning.

Area E. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I–BNT ILS/DME antenna intercepts a line at long. 112°09′03″W, bounded on the west by long. 112°09′03″W, on the south by a line at lat. 40°31′05″N, to a point at lat. 40°31′05″N, long. 112°00′33″W, extending north to lat. 40°35′22″N, long. 112°00′33″W, then clockwise on the 11-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area F. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at lat. 40°31′05″N, intercepts I–15 extending west on lat. 40°31′05″N, to long. 112°00′33″W, then south on long. 112°00′33″W, to lat. 40°27′30″N, then east along lat. 40°27′30″N, to I–15, then north to the point of beginning.

Area G. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL beginning at the Bingham Copper Mine at lat. 40°31′05″N, long. 112°09′03″W, extending south to lat. 40°27′30″N, long. 112°09′03″W, then east to lat. 40°27′30″N, long. 112°00′33″W, then north to lat. 40°31′05″N, extending west to the point of beginning.

Area H. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at lat. 40°27′30″N intercepts the I–15 freeway, extending south along I–15 to lat. 40°23′30″N, extending west along lat. 40°23′30″N to long. 111°54′00″W thence south along long. 111°54′00″W, until intercepting the 30-mile arc of the I–BNT ILS/DME, then clockwise along the 30-mile arc until intercepting long. 112°06′00″W then north along long. 112°06′00″W until intercepting lat. 40°23′30″N, extending west along lat. 40°23′30″N, until along long. 112°09′06″W, then north along long. 112°09′06″W until intercepting lat. 40°27′30″N extending east to the point of beginning, excluding that airspace contained in Restricted Areas R–6412A and R–6412B when active.

Area I. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at long. 111°45′03″W, intercepts Interstate 84 (I–84), extending south on long. 111°45′03″W, until intercepting lat. 40°31′05″N, extending west until intercepting I–15, then north along I–15 until intercepting the Salt Lake City International Airport 4.3-mile arc, extending north along the Salt Lake City International Airport 4.3-mile arc until intercepting I–15, then north along I–15 until intercepting U.S. Highway 89, extending north along U.S. Highway 89 until intercepting the Ogden, Hill AFB, UT, Class D airspace area, then north along the Ogden, Hill AFB, UT, Class D airspace area until intercepting I–84, extending east along I–84 until the point of beginning, excluding that block of airspace east of Salt Lake City International Airport between lat. 40°52′16″N, and lat. 40°42′00″N.

Area J. That airspace extending upward from 7,800 feet MSL to and including 10,000 feet MSL beginning at a point where the 25-mile arc of the I–BNT ILS/DME antenna intercepts the Ogden-Hinckley Airport, UT, Class D airspace area counterclockwise along the Ogden-Hinckley Airport, UT, Class D airspace area and the Ogden, Hill AFB, UT, Class D airspace area until intercepting the 25-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area K. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point on the 13-mile arc of the I–BNT ILS/DME antenna at lat. 40°46′30″N, long. 111°14′50″W, extending east to the bend on I–80 at lat. 40°46′30″N, long. 112°08′48″W, then north along long. 112°08′48″W, until intercepting the 13-mile arc of the I–BNT ILS/DME antenna, then counterclockwise along the 13-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area L. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL west of I–15 bounded on the south by Cudahy Lane, on the west by Redwood Road until intercepting the Utah Power Transmission lines, extending northeast

along the power transmission lines until intercepting the 13-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area M. That airspace extending upward from 9,000 MSL to and including 10,000 feet MSL beginning at a point where the 25-mile arc of the I–BNT ILS/DME intersects the I–15 freeway south of the Ogden Municipal Airport extending north along the I–15 freeway to the 30-mile arc of the I–BNT ILS/DME, thence counterclockwise along the 30-mile arc to long. 112°10′00″W, then south along long. 112°10′00″W to the 25-mile arc of the I–BNT ILS/DME, then clockwise along the 25-mile arc to the point of beginning.

* * * * *

Lane Speck,
Program Director for Air Traffic Rules and Procedures.

Appendix—Salt Lake City International Airport Class B Airspace Areas

Note: This appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4910–13–M

SALT LAKE CITY INTERNATIONAL AIRPORT
CLASS B AIRSPACE AREA

Field Elevation - 4227 feet
(Not to be used for navigation)

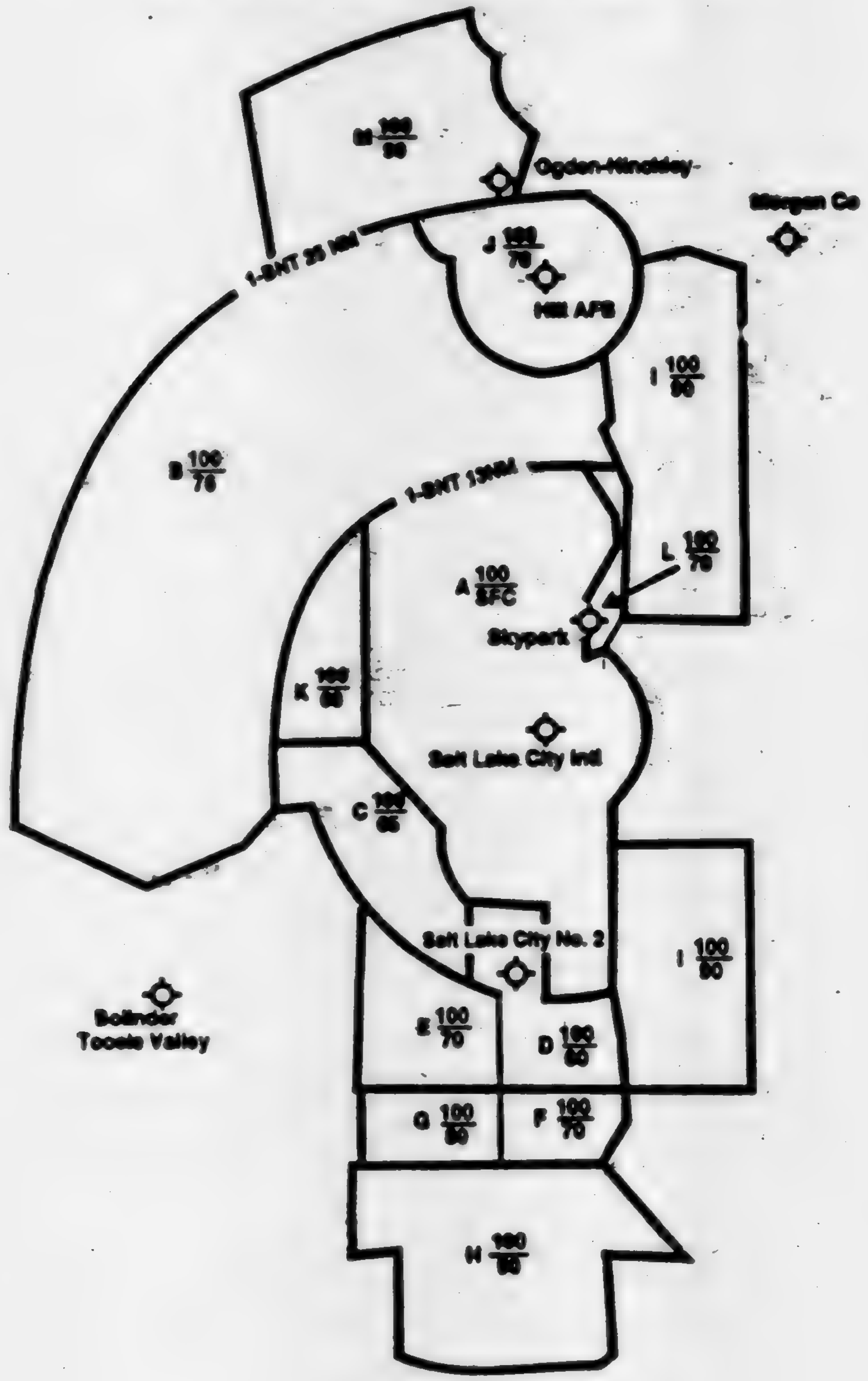
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Morgan Co
1-SNT 25 NM
J $\frac{100}{70}$
Hill AFB
I $\frac{100}{80}$
B $\frac{100}{70}$
1-SNT 13NM
L $\frac{100}{70}$
A $\frac{100}{SFC}$
Skypark
K $\frac{100}{80}$
Salt Lake City Intl
C $\frac{100}{65}$
Salt Lake City No. 2
I $\frac{100}{80}$
Bolinder
Tooele Valley
E $\frac{100}{70}$
D $\frac{100}{80}$
G $\frac{100}{80}$
F $\frac{100}{70}$
H $\frac{100}{80}$

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federal register

Monday
September 18, 1995

Part VII

The President

Proclamation 6823—National Hispanic Heritage Month, 1995

Executive Order 12970—Further Amendment to Executive Order No. 12864

Federal Register
Vol. 60, No. 180
Monday, September 18, 1995

Presidential Documents

Title 3—

The President

Proclamation 6823 of September 14, 1995

National Hispanic Heritage Month, 1995

By the President of the United States of America

A Proclamation

America has always drawn strength from the extraordinary diversity of its people. The earliest settlers came to this great land seeking opportunity, bringing with them an abundant wealth of traditions from countries the world over. Thus the vibrant Hispanic culture has long been entwined with our Nation's heritage, and people of Latin American and Spanish ancestry have infused our national life with energy and vision. In the arts, the sciences, the business world, academia, and government, Hispanic Americans have added immeasurably to our progress.

Later this month, I will proudly bestow on the late Willie Velasquez our Nation's highest civilian honor, the Presidential Medal of Freedom. His landmark work to register Hispanic voters helped to bring these Americans into the mainstream of American public life, and the Southwest Voter Registration Education Project that he founded continues to thrive today.

Last year, I was pleased to sign an Executive order creating the President's Advisory Commission and White House Initiative on Educational Excellence for Hispanic Americans. Recognizing the vital importance of providing every one of our children with fundamental knowledge and skills, the Commission was charged with creating an agenda to increase educational opportunities for Hispanic Americans.

Today, as we stand on the threshold of a new century, we look to the outstanding contributions of Hispanic Americans for inspiration and leadership. Let us join in support of Hispanic children and families as they strive to fulfill the American Dream.

To pay tribute to the achievements of Hispanic citizens and to honor the importance of Latin American and Spanish traditions in our national culture, the Congress, by Public Law 100–402, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as "National Hispanic Heritage Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 15 through October 15, 1995, as National Hispanic Heritage Month. I call upon government officials, educators, and all the people of the United States to honor this observance with appropriate programs, ceremonies, and activities, and encourage all Americans to rededicate themselves to the pursuit of equality.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–23291
Filed 9–15–95; 10:59 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 12970 of September 14, 1995

Further Amendment to Executive Order No. 12864

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the United States Advisory Council on the National Information Infrastructure, it is hereby ordered that section 4(b) of Executive Order No. 12864, as amended, is further amended by deleting "for a period of two years from the date of this order, unless the Council's charter is subsequently extended prior to the aforementioned date" and inserting in lieu thereof "until June 1, 1996, unless otherwise extended."

William J Clinton

THE WHITE HOUSE,
September 14, 1995.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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3 (1994 Compilation and Parts 100 and 101)	(869-026-00002-6)	40.00	[1] Jan. 1, 1995
4	(869-026-00003-4)	5.50	Jan. 1, 1995
5 Parts:			
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7 Parts:			
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9 Parts:			
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200-End	(869-026-00028-0)	23.00	Jan. 1, 1995
10 Parts:			
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51-199	(869-026-00030-1)	23.00	Jan. 1, 1995
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12 Parts:			
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200-219	(869-026-00036-1)	16.00	Jan. 1, 1995
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500-599	(869-026-00039-5)	19.00	Jan. 1, 1995
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13	(869-026-00041-7)	32.00	Jan. 1, 1995
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21 Parts:			
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600-End	(869-022-00202-3)	27.00	Oct. 1, 1994

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-026-00053-1)	36.00	Jan. 1, 1995
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

[9] Note: Title 19, CFR Parts 141-199, revised 4-1-95 volume is being republished to restore inadvertently omitted text.

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[Two Sessions]

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WHEN: September 20 at 9:00 am
WHERE: Centers for Disease Control and Prevention
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA
RESERVATIONS: 404–639–3528 (Atlanta area)
1–800–688–9889 (Outside Atlanta area)

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV95–955–2IFR]

Vidalia Onions Grown in Georgia; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 955 for the 1995–96 fiscal period. Authorization of this budget enables the Vidalia Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective September 16, 1995, through September 15, 1996. Comments received by October 19, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 941–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Vidalia onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995–96 fiscal period, which begins September 16, 1995, and ends September 15, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 250 producers of Georgia Vidalia onions under this marketing order, and approximately 145 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met July 20, 1995, and unanimously recommended a 1995–96 budget of $343,000, $11,000 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Dues and subscriptions, $2,500 ($2,000), equipment maintenance, $1,600 ($750), office overhead, $6,000 ($3,000), office supplies, $3,500 ($3,000), telephone, $5,000 ($4,000), printing, $2,200 ($2,000), postage and courier, $6,000 ($5,000), employee salaries, $65,000

($60,000), miscellaneous general and administrative, $1,700 ($1,000), marketing, $146,500 ($132,000), $6,500 for retirement, which was included in the employee benefits category last year, and $25,400 for a newly created compliance category. Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Equipment purchases, $2,000 ($3,000), FICA employer, $3,100 ($4,250), employee benefits (health and dental), $7,000 ($13,500), research, $48,500 ($80,000), and ($8,000) for contract outside labor, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions, the same as last year. This rate, when applied to anticipated shipments of 3,017,500 50-pound bags or equivalents of Vidalia onions, would yield $301,750. The Committee also anticipates shipments of 50,000 50-pound bags of previously unassessed Vidalia onions which have been in storage, which will yield an additional $5,000 in assessment income. This, along with $4,250 in interest income and $32,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve of $167,766 are within the maximum permitted by the order of three fiscal periods' expenses.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on September 16, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 955.208 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 955.208 Expenses and assessment rate.

Expenses of $343,000 by the Vidalia Onion Committee are authorized, and an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions is established for the fiscal period ending September 15, 1996. Unexpended funds may be carried over as a reserve.

Dated: September 13, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–23192 Filed 9–18–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 77, 78, and 80

[Docket No. 95–006–2]

Tuberculosis, Brucellosis, and Paratuberculosis in Cattle and Bison; Identification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the tuberculosis, brucellosis, and paratuberculosis regulations by requiring brands for certain cattle and bison to be placed on the hip rather than the jaw. This action will reduce distress to cattle and bison that need to be identified with a brand by moving the brand to a location that is less sensitive, but that is still clearly visible. We are also allowing certain cattle and bison to be moved interstate to slaughter without branding if they are accompanied directly to slaughter by an Animal and Plant Health Inspection Service or State representative or are moved in vehicles closed with official seals. These actions respond to increasing public concern that branding on the jaw causes unnecessary distress to cattle and bison.

EFFECTIVE DATE: October 19, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. J.D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–6188.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations in 9 CFR parts 50, 51, 77, and 78 (referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) administers programs designed to control and eradicate tuberculosis and brucellosis in cattle and bison. As part of these programs, hot-iron branding on the jaw and on the tailhead has been used to identify certain cattle and bison. Specifically, hot-iron branding on the jaw has been required or allowed in the following cases: (1) To identify cattle or bison that have contracted or been exposed to tuberculosis or brucellosis; (2) to identify certain cattle or bison to be moved interstate to slaughter because of tuberculosis or brucellosis; and (3) to identify adult cattle or bison that have been immunized against brucellosis.

There has been increasing public concern that hot-iron branding on the jaw may cause undue distress to cattle and bison. A number of animal rights groups and other members of the public have requested that APHIS remove hot-iron branding on the jaw from our regulatory programs.

On May 17, 1995, we published in the **Federal Register** (60 FR 26377–26381, Docket No. 95–006–1) a proposal to remove hot-iron branding on the jaw from the regulations in 9 CFR parts 50, 51, 77, and 78. In places where branding has been required to be on the jaw, we proposed to move the required location of the brand to high on the hip near the tailhead. In places where the regulations have offered an owner the option of branding either on the jaw or on the hip, we proposed to remove the option of

branding on the jaw, but retain the brand on the hip. We also proposed several alternatives to branding certain cattle and bison that are to be moved interstate for slaughter. We proposed to allow brucellosis reactor and exposed cattle or bison moving directly to slaughter to be moved without branding if they are accompanied directly to slaughter by an APHIS or State representative. We proposed to allow tuberculosis reactor and exposed cattle or bison moving interstate directly to slaughter to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian; or an individual authorized for this purpose by an APHIS representative. We proposed to allow brucellosis reactor and exposed cattle or bison moving interstate in slaughter channels (e.g, to a specifically approved stockyard or an approved intermediate handling facility, and then to slaughter) and brucellosis exposed cattle and bison moving interstate to quarantined feedlots to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We also proposed that tuberculosis reactor cattle and bison would have to be identified by a permanent and legible "TB" tattooed in the left ear, and by spraying the left ear with yellow paint, in order to be moved interstate without branding.

We solicited comments concerning our proposal for 30 days ending June 16, 1995. We received 11 comments by that date. They were from livestock associations, animal welfare organizations, veterinarians, and members of Congress. Three commenters opposed the proposed rule; four commenters supported the proposed rule completely; and the remaining four commenters supported the proposed rule but asked APHIS to consider making some additions and changes. We carefully considered all of the comments we received. They are discussed below by topic.

Several commenters supported the proposed amendments to the tuberculosis and brucellosis regulations, but asked that we make the same amendments to the regulations in 9 CFR part 80, "Paratuberculosis in Domestic Animals," which have required a "T" brand on the left jaw for paratuberculosis reactor cattle. We have chosen to make this amendment in our final rule. The amendment is in keeping with the intent of the proposal to remove branding on the jaw from all APHIS disease control programs, and our failure to include part 80 in the proposed rule was an oversight. In addition, we are making a change to require that paratuberculosis reactors be branded with the letter "J" instead of the letter "T". Paratuberculosis is also commonly known as Johne's disease. A "J" brand would distinguish paratuberculosis reactors from bovine tuberculosis reactors (which are branded with the letter "T"). We are therefore amending 9 CFR part 80 to require that paratuberculosis reactors be branded with the letter "J" high on the left hip near the tailhead. We are also adding the option for paratuberculosis reactor cattle moving interstate directly to slaughter to be moved without branding if they are accompanied by an APHIS or State representative; and for paratuberculosis reactor cattle moving interstate in slaughter channels to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We are also making another change to part 80. Section 80.4 currently states that the inscription on the metal eartags for paratuberculosis reactors must read "U.S.B.A.I. Reacted" or "U.S. Reacted." These inscriptions are out of date, so we are amending § 80.4 to require that the inscription read "U.S. Reactor." This inscription is consistent with the inscriptions required by the regulations for other disease reactors.

One commenter was opposed to the proposed options for moving tuberculosis and brucellosis reactor and exposed cattle and bison to slaughter without branding. The commenter argued that branding ensures that such animals are slaughtered, and said that the agency will be unable to accomplish its goals of disease eradication if identification requirements are weakened. We have made no changes based on this comment. As discussed in the proposed rule, we believe that the provisions under which we would allow disease-affected animals to be moved without branding will provide owners with an alternative to branding without negatively affecting APHIS' ability to conduct its disease eradication activities.

Two commenters stated that the location of the brands should either remain on the jaw or be moved to the neck or high on the shoulder. They argue that some State livestock agencies have set aside the jaw for brands used in State and Federal animal disease control programs. They also argue that a Federal brand on the hip may be confused or conflict with registered ownership brands on the hip—a number of which are similar to the "S", "T", "B", and "V" brands called for in the proposed rule. We have made no changes based on these comments. The same location specified in the proposed rule for all brands required by 9 CFR parts 50, 51, 77, and 78 has been used by APHIS for the placement of "S" and "V" brands under the regulations in 9 CFR part 78 since 1983, and for "M" brands under 9 CFR part 92 since the beginning of this year. We are unaware of any identification problems resulting from those existing brands. Further, the proposed location of "high on the hip near the tailhead" is a different location on the hip from where registered ownership brands are placed, and we therefore do not believe that any confusion will result.

One commenter stated that it is unnecessary to require tuberculosis reactors moved without branding in sealed vehicles to be tattooed and spray-painted on the ear. The commenter believes that properly sealed vehicles, eartags, accompanying shipping permits, and good communication with meat inspection personnel would provide adequate assurance that tuberculosis reactors are not diverted from slaughter. Conversely, another commenter stated that the proposed requirement to tattoo and spray-paint tuberculosis reactors should also be applied to tuberculosis exposed animals and brucellosis reactors and exposed animals that are moved interstate to slaughter without branding. The latter commenter argues there are numerous opportunities to divert cattle and bison from slaughter—for example, in slaughter pens, or when cattle and bison must be transferred from one truck to another due to equipment failure—and that for this reason it is important that all cattle and bison moving to slaughter because of tuberculosis or brucellosis be permanently identified.

We have made no changes to the rule based on these comments. We recognize that there may be incentives to divert valuable, but diseased, cattle or bison from slaughter channels in order to avoid the monetary loss from the slaughter of the animal. We stated in the proposed rule that we believe this incentive is significantly greater for tuberculosis reactors than for other diseased cattle or bison, because unlike tuberculosis exposed or brucellosis reactor and exposed cattle or bison, tuberculosis reactors can only be sold for consumption if the meat is cooked.

Currently, there are only four slaughtering facilities in the United States that have established markets for meat required to be cooked, so this option is not available to the majority of cattle and bison owners. Consequently, most tuberculosis reactor cattle and bison sent to slaughter constitute an average monetary loss of $400 or more to the owner, creating an incentive to divert valuable animals that are tuberculosis reactors from slaughter to be used for some other purpose. Since tuberculosis exposed animals and brucellosis reactor and exposed animals do not have to be cooked before they can be sold for consumption, their slaughter value is potentially greater, and the incentive to divert is not as significant. In light of this, we believe that the precautions we proposed for moving tuberculosis exposed animals and brucellosis reactor and exposed animals to slaughter without branding are adequate to prevent diversion of the animals and dissemination of the diseases they carry. Perhaps more importantly, the post-mortem examination and specific disposition of tuberculosis reactor carcasses required by the United States Department of Agriculture's Food Safety and Inspection Service (FSIS) regulations is more stringent than that required of tuberculosis exposed and brucellosis reactor and exposed carcasses. It is imperative that tuberculosis reactors are identified at slaughter to ensure they are properly examined and disposed of in accordance with FSIS requirements.

One commenter stated that APHIS should consider eliminating the need for branding altogether by requiring that all brucellosis and tuberculosis reactor and exposed cattle and bison moved interstate to slaughter be accompanied by an APHIS or State representative or be moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We have made no changes based on this comment.

It is our belief that most cattle and bison owners will choose to move their animals to slaughter without branding using one of the options provided in the proposed rule. Branding a herd of cattle or bison is time-consuming, difficult, and costly because of the effort and personnel needed to restrain each animal. It is far easier to simply herd the animals into a truck which is then sealed by the APHIS representative, State representative, or accredited veterinarian who identified the herd. However, there are always circumstances under which it is impractical or unfeasible for owners to move their animals in this manner, such as lack of a proper vehicle, unavailability of APHIS or State personnel, or inability to market the animals immediately. Under such circumstances, it would be necessary for owners to have the cattle or bison branded.

The same commenter also asked that we amend numerous paragraphs in § 78.9 of the brucellosis regulations, "Cattle from herds not known to be affected," to allow such cattle to be moved interstate without branding if they are accompanied directly to slaughter by an APHIS or State representative. Section 78.9 concerns movement of cattle from brucellosis Class Free, Class A, Class B, and Class C States and areas to quarantined feedlots, specifically approved stockyards, or approved intermediate handling facilities, and then to slaughter. Section 78.9 requires certain cattle moving from Class B and Class C States and areas to be branded. We proposed to amend this section to allow those cattle which are required to be branded to be moved without branding if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We have made no changes based on this comment.

We did not propose the option which the commenter requests because, given the large number of movements under § 78.9 to feedlots, stockyards, and handling facilities, and given the limited number of APHIS and State personnel available to accompany such shipments, it would be impractical, if not impossible, to offer this option. It is for this reason that we proposed to allow reactor and exposed cattle and bison to be moved without branding and accompanied by an APHIS or State representative only if they are moving directly to slaughter. We believe that allowing cattle that would otherwise be branded to be moved without branding in slaughter channels if they are moved in a sealed vehicle is adequate to allow owners to move their animals without branding if they so choose. Further, there are currently no Class B or Class C States or areas. Therefore, no cattle are branded under the regulations in § 78.9.

One commenter asked that APHIS allow owners to mark their cattle in some way other than with a hot iron, such as freeze-branding. The commenter said that, according to previous APHIS policy, a mark for a disease-affected animal must be "permanent, distinct, and legible"; APHIS' assertion in the proposed rule that a mark must also be "instantly recognizable" is a novel criteria. Relative to this, the commenter said that "(c)learly what APHIS intends here is not that all letter marks be instantaneously readable, but, rather, that letter marks be readable *at the time animals begin their interstate journeys to slaughter*." Accordingly, even though freeze-branding takes a minimum of 18 to 21 days to become readable, and in order to claim indemnity for cattle and bison destroyed because of tuberculosis or brucellosis the owner must destroy the animals within 15 days, APHIS should allow identification options such as freeze-branding for cattle and bison owners who do not wish to claim indemnity. We have made no changes based on this comment.

In the past, APHIS has set forth its criteria that a mark for identifying cattle and bison must be permanent, distinct, and legible. In a recent rulemaking, which is cited by the commenter, we offered these criteria as justification for allowing marking methods such as freeze-branding to be employed when identifying certain cattle from Mexico for importation into the United States (Docket No. 93–006–3, 59 FR 65893–65897). The Mexican cattle of concern in that rulemaking are not known to be diseased. We require that such animals be identified by a distinct, permanent, and legible mark for traceback purposes, in the event that they are diseased and U.S. livestock are exposed to them. The mark must be visible at the time the Mexican cattle are presented for importation, but the owner may brand them at any time prior to the importation, making branding methods that take several weeks to become visible a viable option.

This rulemaking, in contrast, concerns cattle and bison which are known to be affected with tuberculosis or brucellosis, or are known to have been exposed to an animal that is affected with tuberculosis or brucellosis. It is imperative that animals known to be affected with a disease as destructive as brucellosis or tuberculosis be either identified immediately or moved to slaughter in such a manner that there is no significant risk the animals will be diverted from their destination. For this reason we did not propose to allow marking methods that are not instantly recognizable for identifying brucellosis and tuberculosis reactor and exposed cattle and bison.

As we stated in the proposal, the necessity for an instantly recognizable mark is so that the animals are not unknowingly commingled with healthy animals after they leave the premises where they were identified for slaughter. Even if the "instantly recognizable" requirement were to be waived to allow freeze-branding, the owners of reactor or exposed cattle and bison would have to keep those animals under quarantine for the 18–21 days that it takes for a freeze-brand to become visible. That extra time on the farm would increase the chances that healthy animals might become exposed or infected. A central goal of the brucellosis and tuberculosis eradication programs is to identify diseased animals and get them away from other animals before the disease can spread. To require the animals to be kept on the farm runs counter to that goal. The owners of the quarantined cattle and bison would also be subject to economic losses associated with feeding and caring for the animals, potential decreases in market prices, and animals dying before sale.

The same commenter asked that we allow a tattoo and paint as an alternative to hot-iron branding. Since we say in the proposal that we believe a tattoo and yellow paint would be permanent and legible, the commenter asserts that it follows that it would be distinct as well, and would therefore fulfill the three criteria of distinct, permanent, and legible. We have made no changes based on this comment. We proposed that tuberculosis reactor cattle and bison that are moved to slaughter without branding be moved in a sealed vehicle or accompanied by an APHIS or State representative, and also be marked in the left ear with a tattoo and the ear be sprayed with yellow paint. Marking the ear with a permanent and legible tattoo will help eliminate the possibility that a tuberculosis reactor could be sold for any purpose other than slaughter, because the seller would risk a civil lawsuit should the buyer discover the tattoo in the reactor's ear. We proposed this type of mark as an alternative to branding in this case because we needed to provide an alternative, but did not believe we could safely allow tuberculosis reactors to move to slaughter without some sort of permanent mark.

There are problems with tattooing that prevent us from offering it as a general alternative for all disease-affected animals. One is that the tattoo must be on skin (not hair) in order to be legible. We have chosen the inside of the ear as the most accessible and reliable area on which to place a tattoo. Further, the animal's head must be restrained in order to tattoo the ear, and in order to see the tattoo at a later time. Yellow paint on the ear can help identify an animal which has a "TB" tattoo, but it is not foolproof, as paint can wear or rub off. Tuberculosis reactor animals are moved directly to slaughter, making it less likely that this will occur. Brucellosis exposed animals are often shipped through feedlots and other slaughter channels, increasing the possibility that the paint will have worn off by the time the animal reaches the slaughtering facility. For these reasons, we have chosen to confine the use of a tattoo as disease identification to tuberculosis reactors that are moved to slaughter without branding.

One commenter asked that we state in the regulations that the proposed shipments in sealed vehicles for unmarked cattle and bison would be subject to the requirements of the Twenty-Eight Hour Law. In conjunction with this, the commenter asked that we add to the regulations definitions for "moved directly" and "sealed vehicle" to clarify that these stipulations do not conflict with the requirements of the Twenty-Eight Hour Law. We have made no changes based on this comment.

The commenter is referring to a statute at 45 U.S.C 71–74, which requires, among other things, that animals may not be confined during transport for a period longer than 28 consecutive hours without unloading them in a humane manner for rest, water, and feeding. The regulations in 9 CFR part 89, "Statement of Policy Under the Twenty-Eight Hour Law," set forth APHIS policy concerning the authorizing statute at 45 U.S.C. 71–74, and are written to apply only to transport by railcar. Virtually no transportation of tuberculosis and brucellosis affected cattle and bison is done today by railcar, as nearly all such transport today is by truck. The Twenty-Eight Hour Law does not apply to transport by truck.

In our proposal, we state that the official seals on a sealed vehicle must be "applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative." The operator of the conveyance in which the animals are being transported will have been furnished with the telephone numbers of APHIS representatives in the States of origin and destination prior to his or her departure from the State of origin. If, for any reason, the operator is unable to reach the slaughtering establishment as planned, or otherwise determines that it is necessary to unload the animals from the sealed vehicle, the operator will be able to contact an APHIS representative, who will make the necessary arrangements for APHIS or State personnel to travel to the location of the conveyance in order to remove the seal, apply a new seal when the animals are reloaded, and take whatever precautions are necessary in the interim to ensure that the animals are maintained in isolation sufficient to prevent dissemination of the diseases they carry. This practice is standard, and we do not believe it is necessary to describe it in the regulations.

The same commenter suggested that APHIS create an incentive for cattle and bison owners to ship their tuberculosis- and brucellosis-affected cattle and bison to slaughter without branding by awarding certificates of recognition to owners who regularly opt to ship their animals in sealed vehicles or under APHIS or State escort as an alternative to branding. The commenter said that APHIS should publicize the award of these certificates periodically through agency press releases and reports. The commenter reasons that most cattle producers and brokers will continue to brand their disease-affected animals despite the alternative offered in the proposed rule, and that if APHIS is committed to reducing distress to cattle and bison, some further incentive will need to be offered.

We are making no changes based on this comment. As stated in response to a previous comment, it is our belief that most cattle and bison owners will choose to move their animals to slaughter without branding using one of the options provided in this rule. Branding a herd of cattle or bison is time-consuming, difficult, and costly because of the effort and personnel needed to restrain each animal. It is far easier to simply herd the animals into a truck which is then sealed. Regardless of this belief, the primary concern of APHIS is to move these animals to slaughter without disseminating the diseases they carry to healthy animals. While we are attempting to achieve this in the most humane manner possible, there are circumstances under which we would advise branding over the other alternatives we proposed, such as if the cattle or bison cannot be moved immediately to slaughter. For this reason, we are not promoting the consistent use of one alternative over another. Further, it is likely that most owners of tuberculosis or brucellosis affected herds would not elect to publicize the fact that their animals were slaughtered because of these diseases. We are offering owners several options for moving their animals, and we are available to advise them about which option would be most appropriate, and safe, given the circumstances under which their animals will be moved. If a private entity wishes to award such certificates of recognition, and they find that cattle and bison owners are willing to accept such recognition, they may feel free to do so.

One commenter pointed out that, although the Supplementary Information in the proposal states that "(w)e would allow brucellosis reactor and exposed cattle or bison moving directly to slaughter to be moved without branding if they are accompanied directly to slaughter by an APHIS or State representative," we do not include this allowance in the regulatory amendments to part 78. Our failure to make the change was an oversight, as it was clearly our intention to allow exposed cattle and bison to be moved directly to slaughter without branding if they are accompanied directly to slaughter by an APHIS or State representative, and we did make the necessary changes to part 51 to allow for that. We are, therefore, in this final rule amending § 78.8(a)(2)(iii)(D) to allow brucellosis exposed cattle and bison to be moved directly to slaughter without branding if they are accompanied directly to slaughter by an APHIS or State representative.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We do not anticipate that this rule will have an economic impact on any entities, large or small. Cattle and bison that have contracted or been exposed to tuberculosis, brucellosis, or paratuberculosis, or that have been immunized against brucellosis, are already required to be identified by a brand; this rule will simply change the location of the brand. Under the tuberculosis, brucellosis, and paratuberculosis eradication programs, the Animal and Plant Health Inspection Service and cooperating States bear the costs of branding cattle and bison, and changing the location of the brand will not result in any change in costs to APHIS or the States. Further, although branding is generally done on the ranch or farm where the cattle or bison are located, no new equipment will be necessary for branding the cattle or bison on the hip, so there will be no new costs to the owner of the animals.

This rule will also allow certain cattle and bison to be moved interstate to slaughter without branding if they are accompanied directly to slaughter by an APHIS or State representative, or if they are moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. Such movement will be a voluntary alternative to branding, and will not impose any additional costs to owners of cattle or bison that are to be moved interstate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

9 CFR Part 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 80

Animal diseases, Livestock, Transportation.

Accordingly, 9 CFR parts 50, 51, 77, 78, and 80 are amended as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 50.6, paragraphs (a) and (b) are revised to read as follows:

§ 50.6 Identification of animals to be destroyed because of tuberculosis.

* * * * *

(a) *Reactor cattle and bison.* Reactor cattle and bison shall be identified by branding the letter "T," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag. Reactor cattle and bison may be moved interstate to slaughter without branding if they are permanently identified by the letters "TB" tattooed legibly in the left ear, they are sprayed on the left ear with yellow paint, and they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(b) *Exposed cattle and bison.* Exposed cattle and bison shall be identified by branding the letter "S," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to the left ear an approved metal eartag bearing a serial number. Exposed cattle and bison may be moved interstate to slaughter without branding if they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

3. The authority citation for part 51 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.17, 2.51, and 371.2(d).

4. In § 51.5, paragraph (b) is revised to read as follows:

§ 51.5 Identification of animals to be destroyed because of brucellosis.

* * * * *

(b) Except as provided in paragraph (b)(4) of this section, cattle and bison to be destroyed because of brucellosis shall be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor," or a similar State reactor tag, and must be:

(1) "B" branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

(4) Reactor and exposed cattle and bison in herds scheduled for herd depopulation may be moved interstate without eartagging or branding if they are identified by USDA approved backtags and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 77—TUBERCULOSIS

5. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

6. In § 77.5, the heading is amended by removing the word "comtaining" and adding the word "containing" in its place, and paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 77.5 Interstate movement of cattle and bison that are exposed, reactors, or suspects, or from herds containing suspects.

(a) *Reactor cattle and bison.* * * *

(1) Reactor cattle and bison must be individually identified by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag, and must be:

(i) Branded with the letter "T," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(ii) Permanently identified with the letters "TB" tattooed legibly in the left ear and sprayed with yellow paint on the left ear, and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

(b) *Exposed cattle and bison.* * * *

(1) Exposed cattle and bison must be individually identified by attaching to the left ear an approved metal eartag bearing a serial number, and must be:

(i) Branded with the letter "S," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(ii) Accompanied directly to slaughter by an APHIS or State representative; or

(iii) Moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

PART 78—BRUCELLOSIS

7. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A—General Provisions

§ 78.1 [Amended]

8. Section 78.1 is amended as follows:

a. In the definition for *"B" branded,* the phrase "at least 5 sq. cm. (2X2 inches) in size on the left jaw" is removed and "high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size" is added in its place.

b. In the definition for *Official adult vaccinate,* paragraph (b)(1) is amended by removing "on the right jaw or" and by adding "at least 5 by 5 centimeters (2 by 2 inches) in size" immediately after "tailhead".

c. In the definition for *"S" branded,* the phrase "at least 5 sq. cm. (2X2 inches) in size on the left jaw or high on the tailhead (over the fourth to the seventh coccygeal vertebrae)" is removed and "high on left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size" is added in its place.

Subpart B—Restrictions on Interstate Movement of Cattle Because of Brucellosis

9. In § 78.7, paragraph (b) is revised to read as follows:

§ 78.7 Brucellosis reactor cattle.

* * * * *

(b) *Identification.* Brucellosis reactor cattle must be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors, and must be:

(1) "B" branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

* * * * *

10. Section 78.8 is amended as follows:

a. Paragraph (a)(2)(iii)(D) is redesignated as paragraph (a)(2)(iii)(E); and a new paragraph (a)(2)(iii)(D) is added to read as set forth below.

b. The period at the end of paragraphs (a)(3)(iii)(C), (a)(5)(iii)(C), and (b)(3)(ii) is removed, and "; or" is added in its place; and new paragraphs (a)(3)(iii)(D), (a)(5)(iii)(D), and (b)(3)(iii) are added to read as set forth below.

§ 78.8 Brucellosis exposed cattle.

* * * * *

(a) * * *

(2) * * *

(iii) * * *

(D) Accompanied directly to slaughter by an APHIS or State representative; or

* * * * *

(3) * * *

(iii) * * *

(D) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

* * * * *

(5) * * *

(iii) * * *

(D) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

* * * * *

(b) * * *

(3) * * *

(iii) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit or "S" brand permit.

* * * * *

11. Section 78.9 is amended by removing the period and adding "; or" in its place at the end of the following paragraphs:

a. (c)(1)(v)(C).
b. (c)(1)(vii)(C).
c. (c)(2)(i)(C).
d. (c)(2)(ii)(B).
e. (d)(1)(v)(C).
f. (d)(1)(vii)(C).
g. (d)(2)(i)(C).
h. (d)(2)(ii)(B).

12. Section 78.9 is amended by adding new paragraphs (c)(1)(v)(D), (c)(1)(vii)(D), (c)(2)(i)(D), (c)(2)(ii)(C), (d)(1)(v)(D), (d)(1)(vii)(D), (d)(2)(i)(D), and (d)(2)(ii)(C) to read as follows:

§ 78.9 Cattle from herds not known to be affected.

* * * * *

(c) * * *

(1) * * *

(v) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(vii) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

(2) * * *

(i) * * *

(D) A quarantined feedlot, a specifically approved stockyard and then directly to a quarantined feedlot, or an approved intermediate handling facility and then directly to a quarantined feedlot if the cattle are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

(ii) * * *

(C) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(d) * * *

(1) * * *

(v) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

(vii) * * *

(D) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

(2) * * *

(i) * * *

(D) A quarantined feedlot, a specifically approved stockyard and then directly to a quarantined feedlot, or an approved intermediate handling facility and then directly to a quarantined feedlot if the cattle are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

(ii) * * *

(C) They are accompanied by an "S" brand permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying "S" brand permit.

* * * * *

Subpart C—Restrictions on Interstate Movement of Bison Because of Brucellosis

13. In § 78.22, paragraph (b) is revised to read as follows:

§ 78.22 Brucellosis reactor bison.

* * * * *

(b) *Identification.* Brucellosis reactor bison must be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor," or a metal tag bearing a serial number designated by the State animal health official for identifying brucellosis reactors, and must be:

(1) "B" branded (as defined in § 78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official seal numbers must be recorded on the accompanying permit.

* * * * *

PART 80—PARATUBERCULOSIS IN DOMESTIC ANIMALS

14. The authority citation for part 80 is revised to read as follows:

Authority: 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, and 125; 7 CFR 2.17, 2.51, and 371.2(d).

15. In § 80.4, paragraph (a) is revised to read as set forth below.

§ 80.4 Movement of paratuberculosis reactors.

* * * * *

(a) Cattle and other domestic animals that have reacted to such a test must be individually identified by attaching to

the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag. Cattle must also be:

(1) Branded with the letter "J," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead; or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

* * * * *

Done in Washington, DC, this 13th day of September 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–23191 Filed 9–18–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 21

RIN 3150–AF01

Procurement of Commercial Grade Items by Nuclear Power Plant Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to provide added flexibility in procuring commercial grade items for safety-related service by nuclear power plant licensees. This action provides the requirements for the procurement of basic components, which will be procured initially as commercial grade items with subsequent dedication for safety-related service, in a manner that avoids unnecessary delay and expense while maintaining an adequate level of plant safety.

EFFECTIVE DATE: October 19, 1995.

ADDRESSES: Copies of the public record, including the final regulatory analysis and any public comments received on the proposed rule, may be examined and copied for a fee in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: M. L. Au, P.E., Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6181; E-mail MLA@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1994 (59 FR 53372), the NRC published a proposed rule in the **Federal Register** that would clarify and add flexibility to 10 CFR Part 21 requirements for the procurement of commercial grade items for safety-related service by nuclear power plant licensees. This action was in response to a petition for rulemaking (PRM–21–2) from the Nuclear Management and Resources Council (NUMARC), which has been incorporated into the Nuclear Energy Institute (NEI). The notice of receipt of the petition for rulemaking was published on October 14, 1993 (58 FR 53159). The petitioner contended that many of the manufacturers and suppliers of original equipment no longer maintain programs that meet the requirements of Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," because of the high cost of maintaining and implementing these programs relative to the diminishing demand for plant parts. Thus, according to NEI, an increasing number of safety-related items are being purchased as commercial grade items from manufacturers and suppliers who no longer maintain quality assurance programs required by Appendix B to 10 CFR Part 50. Because this is a relatively small market, the petitioner stated that many vendors are unwilling to develop and maintain evaluation and notification procedures that meet the reporting requirements in 10 CFR Part 21. With fewer vendors agreeing to comply with these requirements, the petitioner claimed that it is becoming increasingly difficult for nuclear power plant licensees to procure items for safety-related applications.

The petitioner believed that the sections in 10 CFR Part 21 that relate to procurement of commercial grade items, the dedication of these items for use in safety-related applications, and the reporting requirements associated with these items are unworkable and ineffective and consequently may adversely affect safety. Furthermore, the petitioner believed that the effect of these provisions has been to discourage vendors from maintaining programs that meet NRC requirements and to even refuse to provide parts to licensees. To alleviate these problems, the petitioner proposed the following three changes to 10 CFR Part 21:

First, the petitioner suggested that the NRC broaden the definition of "commercial grade item" in 10 CFR 21.3 to read as follows: "Commercial grade item means any item that has not been dedicated for use as a basic component." Essentially this definition would cover any item obtained on the open market. The petitioner believed that allowing commercially available items to qualify as commercial grade items would result in more reasonable prices and delivery times with no adverse impacts on safe plant operations.

Second, the petitioner suggested a more flexible generic definition of "dedication" in 10 CFR 21.3 to read as follows: "Dedication is the evaluation process undertaken to provide reasonable assurance that a commercial grade item to be used as a basic component will perform its intended function." According to the petitioner, dedication methods could include testing, inspection, surveying the commercial grade supplier to determine that the appropriate quality control is in place, observing the manufacturing process, and analyzing the historical record of the item for acceptable performance. The petitioner also proposed that the dedicating entity maintain documentation of the dedication process for an audit or inspection.

The petitioner believed that the benefits of establishing this approach would be that the licensee or third-party performing the dedication:

(1) Understands the safety significance and function of the proposed component;

(2) Is able to identify the characteristics necessary to perform its intended function better than the manufacturer; and

(3) Is responsible for the quality of the commercial grade item.

This would require the party performing the dedication to determine the suitability of the component by analyzing its ability to perform successfully in a safety-related application.

Third, the petitioner suggested that the responsibility for reporting defects and failures to comply for commercial grade items that have been dedicated should reside with the entity responsible for performing the dedication process. The petitioner suggested that the following language be added to 10 CFR 21.21(b): "The entity that performs the dedication is responsible for identifying, evaluating and reporting the deviations and failures to comply associated with substantial safety hazards of a commercial grade item." Since the manufacturers, suppliers, and sub-tier suppliers of commercial grade items do not necessarily know whether the item is destined for a safety-related application, the petitioner believes it is appropriate to clarify that the responsibility for reporting defects and failures to comply found in commercial grade items falls on the entity performing the dedication process.

To sum up, the petitioner requested that 10 CFR Part 21 be amended to:

(1) Replace the existing definition of commercial grade item with a more inclusive definition;

(2) Include a flexible generic process for dedication of commercial grade items for safety-related use; and

(3) Clarify that the entity performing the dedication of a commercial grade item is responsible for discovering and evaluating deviations and for reporting defects and failures to comply as required by 10 CFR Part 21.

The rule grants in part and denies in part the petition for rulemaking (PRM–21–2) from the NEI and completes action on the petition.

Public Comment

The NRC received 23 letters of public comments in response to the **Federal Register** notice announcing the receipt of the petition for rulemaking. All but one letter supported the petition and called for a revision of the NRC's regulations consistent with the proposal set forth in the petition. The NRC considered these comments in the development of the proposed rule that was published in October 1994.

The NRC received 19 letters of comment in response to the proposed rule. The NRC considered these comments in developing the final rule, the objective of which is to provide requirements for the procurement of basic components, initially procured as commercial grade items and subsequently dedicated for safety-related service, in a timely and cost effective manner that avoids unnecessary delay and expense to the licensee while maintaining an adequate level of plant safety.

The 19 letters of comment received in response to the proposed rule can be categorized as follows: 1 from an interested individual, 1 from an individual in a citizen's group, 1 from the Nuclear Energy Institute (NEI) with a supplemental letter re-emphasizing comments important to NEI, 1 from a law firm, 14 from nuclear power plant licensees, and 1 from a nuclear power plant supplier. Many of the letters contained comments that were similar in nature. The majority of the commenters were supportive of the proposed rule. Only one commenter, an individual from a citizens group, objected to the proposed rule. The following section summarizes the public comments received and provides NRC's responses to the concerns expressed.

Comment. The proposed rule contains changes developed by NRC staff which differ from the proposal originally submitted by NEI (formerly NUMARC), and in addition, codifies new prescriptive requirements for the dedication process.

Response. Part 21 currently does not contain a regulatory definition of "dedication," indicating only the time when dedication occurs; however, the NEI petition sought, among other matters, to define and establish by rulemaking a standard for the dedication process. As such, it was appropriate for the Commission to consider the elements of a dedication process for commercial grade items which assure the protection of the health and safety of the public rather than limit this standard to the industry's proposal. Therefore, it is not inappropriate for the NRC to consider "provisions not sought by the petitioner." The NRC has never interpreted, nor has it implemented, the 10 CFR 2.802 rulemaking petition process in a manner which requires either the wholesale acceptance or rejection of specific rulemaking proposals contained in a 10 CFR 2.802 petition.

Comment. Amendments to the definitions are ambiguous and do not provide a clear demarcation between basic components and commercial grade items. The definition of "basic component" raises two problems involving wording. The definition states that it "includes" two categories of items, i.e., those designed "or" manufactured under Appendix B to 10 CFR Part 50 quality assurance programs, and commercial grade items successfully dedicated as basic components. The first problem is the use of the term "includes" in the definition of basic component. This opens the possibility that other categories of items could also exist which is not the intent. The second problem is the use of the word "or" between "design" and "manufactured." An item designed under an Appendix B quality assurance program, but manufactured commercial grade should not be categorized as a basic component. It requires dedication to be categorized as a basic component.

Response. The NRC agrees with the commenter's observation that the Commission's intent was for the definition of basic component to be limited to only two categories of items: (1) those designed and manufactured under 10 CFR Part 50, Appendix B quality assurance programs, and (2) those commercial grade items successfully dedicated as basic components. The definition of "basic component" has been revised to address the commenter's concern.

Comment. The proposed definition of "Commercial Grade Items" appears to be unnecessarily restrictive and could give rise to interpretational difficulties that could limit or preclude options available to the licensee, rather than enhance the flexibility of licensees or utilities in dedicating commercial grade items for safety-related applications. The difficulty with the proposed definition of commercial grade item is that it would force utilities to always purchase a product as nuclear grade if a manufacturer with an Appendix B to 10 CFR Part 50 quality assurance program exists, which would result in a monopoly or a "captive market."

Response. The new definition is not intended to restrict the licensee from purchasing commercial grade items for subsequent dedication for safety-related applications even though a basic component designed and manufactured under an Appendix B to 10 CFR Part 50 quality assurance program is currently available. The commercial grade item, when properly and successfully dedicated, is deemed by the NRC to be equivalent in its safety function performance to the same or a similar item designed and manufactured under an Appendix B to Part 50 quality assurance program.

Comment. The phrase "or part of a basic component" should be deleted from the definition of commercial grade items because it could be interpreted to mean that all commercial grade items used in basic components are required to be dedicated for safety-related use.

Response. To address this comment, the NRC has modified the definition of "commercial grade item" to clarify that a commercial grade item that is part of a basic component but does not affect a safety-related function need not be dedicated. Therefore, a commercial grade item which is part of a basic component is considered to be a basic component after it has been dedicated prior to installation only if it affects a safety function.

Comment. The proposed new definition of "commercial grade item" and other changes to Part 21 should not be limited to only nuclear power plant licensees under Part 50, and their vendors, since these entities hold other licenses and would benefit from changes to Part 21.

Response. Proposed changes to Part 21 regulatory requirements for

nonreactor licensees are currently being considered.

Comment. The definition of the term "dedication" needs to be clarified as it lacks flexibility for dedication of a commercial grade item for safety-related applications. The graded approach should be used for applying Appendix B to 10 CFR Part 50.

Response. The dedication process must be performed using the applicable quality assurance criteria of Appendix B to 10 CFR Part 50. Appendix B already allows the level of quality assurance implemented to be consistent with the item's importance to safety (i.e., the graded approach).

Comment. The complexity of an item's design or manufacturing process should not be a criterion for excluding commercial grade items from eligibility to undergo a dedication process.

Response. To the extent the term "complexity" has caused confusion, the language of the rule has been modified to remove that term. The NRC maintains that if the design of an item and its manufacturing process are such that the dedication process cannot reasonably ensure the absence of a defect or failure to comply that affects one or more critical characteristics of the item, then the item cannot be dedicated, and must be designed and manufactured as a basic component. Included are items for which the manufacturing process requires in-process inspections and verifications to ensure that defects are identified and corrected. Typical examples include, but are not limited to, fuel assemblies, control rod assemblies, and reactor coolant pressure boundary components.

Comment. In the definition of term "dedication," the example of "pressure vessels" does not meet the specific nuclear-unique requirement since pressure vessels are used widely outside the nuclear industry and should be considered a potential candidate for dedication.

Response. The example is no longer included in the definition. In the Statement of Considerations, "pressure vessel" has been replaced with "reactor coolant pressure boundary components" since the NRC believes such components, due to their importance to safety, should continue to be designed and manufactured as basic components under an Appendix B quality assurance program.

Comment. In the definition of "dedicating entity," the word "qualify" should be replaced with the word "accept" to ensure that the dedication process is differentiated from equipment qualification.

Response. The NRC agrees that the word "qualify" could lead to misinterpretation. The definition of "dedicating entity" has been revised.

Comment. The proposed definition of "critical characteristics" should not be codified for two reasons. First, it is not necessary or beneficial to codify the processes. Second, the term was originally developed by industry to support improved dedication and procurement programs under NUMARC procurement initiatives. There are fundamental differences in the interpretation of the term "critical characteristics" between the NRC and much of the nuclear industry.

Response. The NRC believes it is important to define and codify "critical characteristics" because this term represents a subject of importance in the dedication process for commercial grade items. The Commission is aware that in the Electric Power Research Institute's (EPRI) "Guideline for the Utilization of Commercial Grade Items in Nuclear Safety Related Applications," EPRI NP–5652, "critical characteristics" is defined primarily in procurement terms, i.e., that the item received is the item specified as verified by part number. However, in the Commission's view, this is an appropriate term by which to convey the intent of this rulemaking that the dedication process specify those characteristics important to the design, material, and performance of an item so that the verification of those characteristics will provide reasonable assurance that the item will perform its intended safety function.

Comment. One utility commented that a backfit analysis should be required because new requirements for dedication are being specified.

Response: The current Part 21 regulation already provides for the dedication of commercial grade items to be used in safety-related applications. The final rule provides for a broadening of the definition of commercial grade items and their subsequent dedication for safety-related service. The rule does not impose a more restrictive requirement upon any licensee or dedicating entity; therefore, it does not constitute a backfit as defined in 10 CFR 50.109(a)(1), and no backfit analysis is necessary.

Comment. Part 21 does not clearly address the responsibilities for reporting defects and failures to comply associated with the purchase and subsequent transfer of a basic component by one utility to another. A provision should be included in the rulemaking allowing one utility to accept an item as a basic component when the utility supplying the item is unwilling to accept the Part 21 responsibilities associated with this kind of transaction. The utility purchasing the item should document the qualification of the vendor during the time of original manufacture and sale of the item.

Response: The NRC does not agree with the position set forth in this comment. The Part 21 regulation specifies the responsibilities of any individual or corporation and each director and responsible officer of such organization that supplies basic components. Those responsibilities are also applicable to utilities which supply basic components to other utilities. Nothing in the regulation prevents a utility from contacting the original supplier or manufacturer for the direct transfer of information regarding the item.

Basis for Commission's Decision

The NRC has reviewed the public comments that were submitted on the proposed rule. The final rule has taken into consideration many of the suggested changes as indicated in this Statement of Considerations.

When Part 21 was first issued in 1977, the suppliers of all parts making up a basic component were subject to the reporting requirements under Part 21. However, recognizing that the Commission lacked experience in implementing a reporting program of this scope, the Commission also pointed out in the Statement of Considerations accompanying this part that it would examine closely the implementation of Part 21 as the Commission gained experience. Following the issuance of Part 21, the NRC received many requests for clarification of the regulations. The NRC examined the issue of how far down the procurement chain Part 21 should be applicable and on October 19, 1978 (43 FR 4862), amended Part 21 to exempt commercial grade items from the reporting requirements of Part 21 until the items were dedicated for use as a basic component. The NRC held that the October 1978 rule was needed for safety reasons. Problems such as the inability to obtain needed parts and services were all cited as detriments to safety. The NRC was challenged on this amendment and the court of appeals upheld the Commission's interpretation of section 206 of the ERA requiring the Commission to "draw a line somewhere to demarcate the outer boundaries of the duty to report" (*Natural Resources Council* v. *NRC,* 666 F.2d 595 (D.C. Cir. 1981)).

Problems such as the inability to obtain parts and services from the most qualified suppliers and excessive delays in procurements were all cited as detriments to safety. With the development of increased confidence in licensee implementation of dedication activities through NRC inspection and experience, and because the availability of basic components has further declined, the NRC believes that the current definition of commercial grade items has become unnecessarily restrictive.

The petitioner proposed that a commercial grade item be defined as any item that has not been dedicated for use as a basic component. Thus, any commercial grade item could be subject to a dedication process to verify its qualification as a basic component. The Commission maintains that not all commercial grade items can be properly dedicated for safety-related use after the manufacturing process is completed. In fact several commenters agreed that there is a limited category of components for which quality assurance is an integral part of the manufacturing process and that their critical characteristics cannot be attested to after-the-fact. The Commission believes that if the design or manufacturing process of an item is such that dedication cannot reasonably assure the absence of a defect that could affect one or more critical characteristics of the item, the item must be designed and manufactured as a basic component in accordance with 10 CFR Part 50, Appendix B requirements. There are components in this limited category that generally have requirements and applications in which the design and manufacturing processes require in-process inspections and verifications to ensure that defects and failures to comply are identified and corrected. Thus, the NRC believes that commercial grade items cannot encompass the full spectrum of items envisioned by the petitioner.

Part 21 currently defines a commercial grade item as an item that is (1) Not subject to nuclear-unique design or specification requirements; (2) used in applications outside the nuclear industry; and (3) ordered on the basis of specifications set forth in the manufacturer's published product description. This set of conditions resulted in very limited use of the commercial grade item designation. To provide added flexibility in using commercial grade items for safety-related service by nuclear power plant licensees, the NRC is replacing the set of conditions and adopted a new definition for commercial grade item. Under this new definition, a "commercial grade item," when applied to nuclear power plants, means a structure, system, or component, or part thereof that affects its safety function, that was not designed and manufactured as a basic component. The definition makes clear that a commercial grade item that is part of a basic component but does not affect a safety-related function need not be dedicated and that item is not considered a basic component. Commercial grade items do not include items in which their design and manufacturing process require in-process inspections and verifications to ensure that defects or failures to comply are identified and corrected (i.e., one or more critical characteristics of the item cannot be verified). Typical examples include, but are not limited to, fuel assemblies, control rod assemblies, and reactor coolant pressure boundary components. Thus the definition of "commercial grade item" does not include items whose quality assurance is an integral part of the manufacturing process and whose acceptance is based primarily on the vendor's certification of compliance with specific design requirements. For facilities and activities licensed pursuant to 10 CFR Parts 30, 40, 50 (other than nuclear power plants), 60, 61, 70, 71, or 72, the existing definition is retained, although proposed revisions to Part 21 for application to these facilities and activities (including those certified under 10 CFR Part 76) are under consideration in a separate rulemaking.

The new definition is not intended to restrict the licensee from purchasing commercial grade items for subsequent dedication for safety-related applications even though a basic component designed and manufactured under an Appendix B to 10 CFR Part 50 quality assurance program is currently available. The commercial grade item, when properly and successfully dedicated, is deemed by the NRC to be equivalent in its safety function performance to the same or a similar item designed and manufactured under an Appendix B to Part 50 quality assurance program.

Sections 21.6, 21.21, 21.31, 21.41, and 21.51 contain the NRC's requirements for posting, notification, inspection, records, and maintenance and inspection of records, respectively. The NRC is clarifying these sections to point out that dedicating entities are subject to the regulations in these sections. In addition, minor editorial changes have been made in § 21.51(b).

Section 21.61 has been amended to clarify the scope of this section. NRC licensees and their employees subject to Part 21 are also subject to the normal enforcement process and sanctions. In addition, Section 206 of the Energy Reorganization Act of 1974, as amended, and implemented by 10 CFR Part 21, imposes an obligation on firms and organizations that are involved in the nuclear industry, and further, imposes these obligations as a direct liability on certain individuals in these firms and organizations. The "knowingly and consciously" standard specified in § 21.61 applies only to non-licensees.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in the categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This rule does not contain a new information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0035.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies may be obtained from (See FOR FURTHER INFORMATION CONTACT.)

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rule primarily impacts nuclear power plant licensees because they are expected to assume a greater role in the dedication process. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). In addition, the rule, when promulgated, will allow small entities to more effectively compete in providing components and services to nuclear power plants, and to the extent this occurs, the rule is advantageous to them.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule. These amendments do not involve any provision that would impose additional requirements requiring a backfit analysis as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 21.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation for Part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended; sec. 234, 83 Stat. 444, as amended; sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

§ 21.2 [Amended]

2. Section 21.2 (d) is amended by revising the reference reading "(see § 21.3(a–1)" to read "(as defined in § 21.3)," and in the third sentence of this section, change the word "five" to "four."

3. Section 21.3 is amended by removing the paragraph designations from each of the defined terms and arranging the definitions in alphabetical order, removing the words "paragraph (d)(1) of" in paragraph (2) of the term *Defect*, removing the parenthetical references in the terms *Defect* and *Deviation*, revising the terms *Basic component, Commercial grade item*, and *Dedication*, and adding the terms *Critical characteristics* and *Dedication entity* to read as follows:

§ 21.3 Definitions.

Basic component. (1)(i) When applied to nuclear power plants licensed pursuant to 10 CFR Part 50 of this chapter, basic component means a structure, system, or component, or part thereof that affects its safety function necessary to assure:

(A) The integrity of the reactor coolant pressure boundary;

(B) The capability to shut down the reactor and maintain it in a safe shutdown condition; or

(C) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 100.11 of this chapter.

(ii) Basic components are items designed and manufactured under a quality assurance program complying with 10 CFR Part 50, Appendix B, or commercial grade items which have successfully completed the dedication process.

(2) When applied to other facilities and when applied to other activities licensed pursuant to 10 CFR Parts 30, 40, 50 (other than nuclear power plants), 60, 61, 70, 71, or 72 of this chapter, basic component means a structure, system, or component, or part thereof that affects their safety function, that is directly procured by the licensee of a facility or activity subject to the regulations in this part and in which a defect or failure to comply with any applicable regulation in this chapter, order, or license issued by the Commission could create a substantial safety hazard.

(3) In all cases, basic component includes safety-related design, analysis, inspection, testing, fabrication, replacement of parts, or consulting services that are associated with the component hardware whether these services are performed by the component supplier or others.

Commercial grade item. (1) When applied to nuclear power plants licensed pursuant to 10 CFR Part 50, commercial grade item means a structure, system, or component, or part thereof that affects its safety function, that was not designed and manufactured as a basic component. Commercial grade items do not include items where the design and manufacturing process require in-process inspections and verifications to ensure that defects or failures to comply are identified and corrected (i.e., one or more critical characteristics of the item cannot be verified).

(2) When applied to facilities and activities licensed pursuant to 10 CFR Parts 30, 40, 50 (other than nuclear power plants), 60, 61, 70, 71, or 72, commercial grade item means an item that is:

(i) Not subject to design or specification requirements that are unique to those facilities or activities;

(ii) Used in applications other than those facilities or activities; and

(iii) To be ordered from the manufacturer/supplier on the basis of specifications set forth in the manufacturer's published product description (for example, a catalog).

* * * * *

Critical characteristics. When applied to nuclear power plants licensed pursuant to 10 CFR Part 50, critical characteristics are those important design, material, and performance characteristics of a commercial grade item that, once verified, will provide reasonable assurance that the item will perform its intended safety function.

Dedication. (1) When applied to nuclear power plants licensed pursuant to 10 CFR Part 50, dedication is an acceptance process undertaken to provide reasonable assurance that a commercial grade item to be used as a basic component will perform its intended safety function and, in this respect, is deemed equivalent to an item designed and manufactured under a 10 CFR Part 50, Appendix B, quality assurance program. This assurance is achieved by identifying the critical characteristics of the item and verifying their acceptability by inspections, tests, or analyses performed by the purchaser or third-party dedicating entity after delivery, supplemented as necessary by one or more of the following: commercial grade surveys; product inspections or witness at holdpoints at the manufacturer's facility, and analysis of historical records for acceptable performance. In all cases, the dedication process must be conducted in accordance with the applicable provisions of 10 CFR Part 50, Appendix B. The process is considered complete when the item is designated for use as a basic component.

(2) When applied to facilities and activities licensed pursuant to 10 CFR Parts 30, 40, 50 (other than nuclear power plants), 60, 61, 70, 71, or 72, dedication occurs after receipt when that item is designated for use as a basic component.

Dedicating entity. When applied to nuclear power plants licensed pursuant to 10 CFR Part 50, dedicating entity means the organization that performs the dedication process. Dedication may be performed by the manufacturer of the item, a third-party dedicating entity, or the licensee itself. The dedicating entity, pursuant to § 21.21(c) of this part, is responsible for identifying and evaluating deviations, reporting defects and failures to comply for the dedicated item, and maintaining auditable records of the dedication process.

* * * * *

3. In § 21.6, paragraph (a) is revised to read as follows:

§ 21.6 Posting requirements.

(a) (1) Each individual, partnership, corporation, dedicating entity, or other entity subject to the regulations in this part shall post current copies of—

(i) The regulations in this part;

(ii) Section 206 of the Energy Reorganization Act of 1974; and

(iii) Procedures adopted pursuant to the regulations in this part.

(2) These documents must be posted in a conspicuous position on any premises within the United States where the activities subject to this part are conducted.

* * * * *

4. In § 21.21, the introductory text of paragraph (a) is revised, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), and a new paragraph (c) is added to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect and its evaluation.

(a) Each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall adopt appropriate procedures to—

* * * * *

(c) A dedicating entity is responsible for—

(1) Identifying and evaluating deviations and reporting defects and failures to comply associated with substantial safety hazards for dedicated items; and

(2) Maintaining auditable records for the dedication process.

* * * * *

5. Section 21.31 is revised to read as follows:

§ 21.31 Procurement documents.

Each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall ensure that each procurement document for a facility, or a basic component issued by him, her or it on or after January 6, 1978, specifies, when applicable, that the provisions of 10 CFR Part 21 apply.

6. Section 21.41 is revised to read as follows:

§ 21.41 Inspections.

Each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall permit the Commission to inspect records, premises, activities, and basic components as necessary to accomplish the purposes of this part.

7. In § 21.51 the introductory text of paragraph (a) and paragraph (b) are revised to read as follows:

§ 21.51 Maintenance and inspection of records.

(a) Each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall prepare and maintain records necessary to accomplish the purposes of this part, specifically—

* * * * *

(b) Each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall permit the Commission the opportunity to inspect records pertaining to basic components that relate to the identification and evaluation of deviations, and the reporting of defects and failures to comply, including any advice given to purchasers or licensees on the placement, erection, installation, operation, maintenance, modification, or inspection of a basic component.

8. Section 21.61 is revised to read as follows:

§ 21.61 Failure to notify.

(a) Any director or responsible officer of an entity (including dedicating entity) that is not otherwise subject to the deliberate misconduct provisions of this chapter but is subject to the regulations in this part who knowingly and consciously fails to provide the notice required as by § 21.21 shall be subject to a civil penalty equal to the amount provided by section 234 of the Atomic Energy Act of 1954, as amended.

(b) Any NRC licensee subject to the regulations in this part who fails to provide the notice required by § 21.21 or otherwise fails to comply with the applicable requirements of this part shall be subject to a civil penalty as provided by section 234 of the Atomic Energy Act of 1954, as amended.

(c) The dedicating entity, pursuant to § 21.21(c) of this part, is responsible for identifying and evaluating deviations, reporting defects and failures to comply for the dedicated item, and maintaining auditable records of the dedication process. NRC enforcement action can be taken for failure to identify and evaluate deviations, failure to report defects and failures to comply, or failure to maintain auditable records.

Dated at Rockville, Maryland, this 8th day of September 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–23179 Filed 9–18–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1000 and 1002

[Docket No. 82N–0273]

RIN 0905–AD78

Records and Reports Regulations for Radiation Emitting Electronic Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations regarding the requirements for recordkeeping and reporting of adverse experiences and other information relating to radiation emitting electronic products. This rule reduces recordkeeping and reporting requirements for some products, requires only abbreviated reporting for other products, and clarifies certain requirements. The timing and content of certain reports will be revised to enhance the usefulness of the information. These amendments will improve protection of the public health while reducing regulatory burdens on manufacturers, dealers, and distributors of radiation emitting electronic products.

EFFECTIVE DATE: October 19, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne Barron, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4654.

SUPPLEMENTARY INFORMATION:

I. Background

The Regulatory Flexibility Act (5 U.S.C. 601) and Executive Order 12866 require FDA to periodically conduct a comprehensive review of existing regulations. This review is to analyze alternative regulatory approaches and to identify regulations that need to be revised or revoked because they impose an unnecessary burden on specific segments of the public, such as manufacturers, dealers, small businesses, or the general public. In the **Federal Register** of July 2, 1982 (47 FR 29004), FDA announced its plan to review the records and reports regulations in part 1002 (21 CFR part 1002). FDA recognized that, although part 1002 does not appear to have a major impact on the overall radiation emitting electronic products industry, its impact on small manufacturers

should not be overly burdensome and should be determined.

FDA recognizes that, for some products, meeting the full recordkeeping and reporting requirements is not necessary to protect the public health. Therefore, in the final rule, FDA has reduced the recordkeeping and reporting requirements for some products and determined that an abbreviated report is sufficient regulatory monitoring for other products. FDA also recognizes that some sections of the regulations need additional clarification to be more meaningful and reduce regulatory burdens. Thus, FDA has adopted certain amendments to clarify its regulations.

On October 25, 1990, FDA published in the **Federal Register** (55 FR 43066) a proposed rule amending its regulations regarding the requirements for recordkeeping, reporting, and other information relating to radiation emitting electronic products. FDA invited interested parties to comment on the proposed rule by January 22, 1991. The comment period was later extended until March 25, 1991 (56 FR 7316). FDA received 11 comments. A summary of these comments and FDA's responses to them are set forth below. FDA is finalizing the proposed rule at this time and incorporating changes that are the result of the agency's review of the comments.

FDA is also amending references to statutory citations to reflect changes in the law. On November 28, 1990, the President signed into law the Safe Medical Devices Act of 1990 (the SMDA), which amended the Federal Food, Drug, and Cosmetic Act (the act). Section 19 of the SMDA transferred the Radiation Control for Health and Safety Act of 1968 from the Public Health Service Act (the PHS Act) into the act as subchapter C. Thus, all references to the PHS Act in parts 1000 and 1002 (21 CFR parts 1000 and 1002) are being revised to reflect this change. Additionally, the agency is changing all references to the "Office of Compliance and Surveillance" throughout parts 1000 and 1002 to the "Office of Compliance" to reflect an organizational change within the Center for Devices and Radiological Health (CDRH). The agency is also changing references to "the Secretary" and to "the Director" of CDRH in order to reflect the delegation of the Secretary's authority in accordance with 21 CFR 5.90.

II. Highlights of the Final Rule

To reduce the regulatory burden on the industry, FDA is amending regulations regarding the recordkeeping and reporting requirements for certain radiation emitting electronic products.

First, the reporting requirements in § 1002.12 (reports of model changes) have been consolidated with the requirements of § 1002.10 (initial reports), and the name "initial report" has been changed to "product report."

Second, FDA has developed two new categories of reports, "supplemental reports" in § 1002.11, and "abbreviated reports" in § 1002.12. New § 1002.11 (supplemental reports), which requires manufacturers to provide information on product safety and testing, applies to a smaller subset of manufacturers, and reduces the number of required reports by approximately 40 percent. New § 1002.12 (abbreviated reports) requires manufacturers to report abbreviated information on product safety and testing and replaces the existing requirements for many initial reports and model change reports. Although the total combined number of product reports and abbreviated reports will remain about the same as the former initial reports and model change reports, the time necessary to complete the reports will be reduced by approximately 60 percent.

Finally, FDA has limited the applicability of the records requirements in §§ 1002.30 and 1002.40. These changes have reduced the number of records to be maintained by manufacturers and by dealers/distributors by 50 percent and 99 percent, respectively.

Overall, this final rule will reduce the annual reporting and recordkeeping burden hours on the industry by 81 percent, without reducing public health protection.

III. Comments

The following is a summary of the comments and the agency's responses to them.

A. Reporting Requirements

1. One comment stated that there are no relevant changes in the content or format of the initial report to warrant a name change to "product report." The comment states that the name change would result in unnecessary additional costs because personnel, particularly nonregulatory staff, who are familiar with the term initial report, would need to be reeducated.

FDA recognizes that, as with any new requirement, the affected parties may need some training in order to appreciate and understand the changes. In this case, the change is intended to lessen the burden of this requirement by clearly describing the reports that are required, and the filing and content requirements of such reports. For example, FDA has deleted the reference to a 90-day due date for filing an initial report (see revised § 1002.10) because that requirement was applicable only to newly listed products. FDA believes that the long-term benefits of such changes—clearer regulatory requirements, a reduced regulatory burden on industry, and improved cost effectiveness and efficiency—outweigh its short-term training costs. Because FDA and the industry have used the previous term for 20 years, it is expected that there will be a period of transition to the new term over the next year for both the industry and FDA personnel.

2. One comment stated that industrial x-ray systems should not be included in the list of products for which abbreviated reports, rather than initial reports (to be called "product reports"), are required. The comment expressed the belief that industrial x-ray systems should follow the same reporting requirements as diagnostic x-ray and other x-ray systems.

FDA included analytical and industrial x-ray equipment in the list of products for which abbreviated reports are required because there is no FDA radiation performance standard for these products and, unlike diagnostic x-ray systems, any exposure of people to radiation would be unintentional. In addition, the users of such equipment are trained to be more aware of precautions necessary to reduce or eliminate exposures. In the event that a public health concern arises, however, the regulation would permit FDA to request additional safety information from the manufacturer.

3. One comment asked whether FDA will exempt linear accelerators and low-energy therapy x-ray devices from annual reporting requirements.

Linear accelerators and low-energy therapy x-ray equipment are included in § 1002.1, Table 1, under the category of "Products Intended to Produce Particulate Radiation or X-rays Other Than Diagnostic or Cabinet X-ray." The format of Table 1 has been modified to make clear that the requirements are the same for all medical, analytical, and industrial systems that fall within this product category. Specifically, manufacturers are required to submit abbreviated and annual reports and to maintain test and distribution records for these products.

4. One comment expressed the concern that, unlike television receivers, video display terminals (VDT's) are not specifically delineated by FDA under the reporting and recordkeeping provisions of the regulations. The comment stated that there is little

difference between television receivers and VDT screens and monitors and, therefore, these products should be treated similarly in these provisions. The comment stated that recent investigations of VDT use have shown that low levels of electromagnetic radiation are emitted from certain brands and models. The comment stated that the health and safety effects of these emissions are unknown, but the nature of most VDT work suggests that the effects may be detrimental. Given the health concerns, and the fact that such emissions have generally not been examined, the comment recommended that manufacturers be required to provide product reports, supplemental reports, annual reports, and test records to VDT purchasers, who in turn should be required to relay such information to their employees and representatives. The comment suggested that the hazard communication standard under the Occupational Safety and Health Act (29 CFR 1910.1200) would provide a model for FDA in constructing radiation recordkeeping requirements for VDT's.

FDA has used the designation "television products" in § 1002.1, Table 1, to reflect the scope of the product category that is the subject of the performance standard for television receivers at 21 CFR 1020.10. The intent of that standard has been to reduce unnecessary x-ray exposure to persons from any electronic product that can display a viewable picture on a cathode ray tube (CRT). FDA agrees that there are a number of clarifications that need to be made regarding this category of products. FDA anticipates issuing a notice of proposed rulemaking to amend the television receiver standard to address the issues raised in this comment and other issues concerning VDT's. FDA will propose the appropriate changes to part 1002 when the performance standard for television receivers is amended.

With respect to the suggestion that manufacturers be required to provide reports and records to users of VDT's, amended § 1002.3 will provide the mechanism for FDA to require manufacturers to provide the ultimate purchaser of the product with necessary performance and technical data.

5. One comment stated that a 25 kilovolt (kV) criterion should be established for television receivers to differentiate between television receivers that will be subject to relatively moderate reporting requirements (abbreviated reports and annual reports) and those that will be subject to more substantial reporting requirements (product reports, supplemental reports, and annual reports).

FDA agrees with this comment and adopted a 25 kV criterion in the rule. See § 1002.1, Table 1.

6. One comment stated that television receivers with less than 25 kV and less than 0.1 milliroentgen per hour (mR/hr) should be relieved of the annual report requirement of 1002.13 and the preservation and inspection of records provisions of § 1002.31. The comment asserted that exemptions from these provisions already apply to receivers with less than 25 kV pursuant to a 1987 letter to industry which stated that only status identification is required for annual reports on these products.

Consistent with the November 16, 1987, letter to manufacturers of television receiver products from the Director of CDRH (Ref. 1), television receivers which, when tested under phase III conditions, will not equal or exceed 25 kV and for which the chassis power curve will not reach or exceed the 0.1 mR/hr isoexposure rate limit curve (IRLC) are relieved of the annual report requirement of § 1002.13 and the preservation and inspection of records provisions of § 1002.31. Section 1002.1, Table 1, has been revised accordingly.

7. One comment noted discrepancies between the preamble language and Table 1 of the proposed rule. The preamble states that abbreviated reports will replace initial and supplemental reports for "certain television products." The text further states that product reports, but not supplemental reports, will be required for television receivers emitting less than 0.1 mR/hr. However, Table 1 of the proposed rule states that television receivers with less than 25 kV and less than 0.1 mR/hr will require abbreviated reports and television receivers emitting greater than 0.1 mR/hr will require only product reports (not supplemental reports). The comment supports the requirements as set forth in Table 1, but recommends, consistent with the preamble, that the requirement for supplemental reports be deleted for television receivers with greater than 25 kV and less than 0.1 mR/hr.

FDA has corrected the errors appearing in Table 1. Since November 16, 1987, the policy at CDRH has been that certain categories of television products may be exempt from some of the reporting and recordkeeping requirements, depending on the maximum high voltage on the picture tube and the possibility of emission of x-rays at or above 0.1 mR/hr. Manufacturers were given the responsibility to conduct phase III tests and inform CDRH, through annual reports, which models qualify for such exemptions. The agency's intention was to maintain the same level of requirements under the amended reporting and recordkeeping regulations that has previously been in effect for products that may operate at or above 25 kV and products that may emit x-rays at a rate of 0.1 mR/hr or above. The agency believes that these products represent different levels of risks and that different levels of recordkeeping and reporting requirements continue to be appropriate for each category.

Therefore, any television product that contains a CRT or other component capable of producing x-rays, and which, when tested under phase III conditions, will not equal or exceed 25 kV and for which the chassis power curve will not reach or exceed the 0.1 mR/hr IRLC, will require only abbreviated reports. A television product containing a CRT, which, when tested under phase III conditions, may equal or exceed 25 kV but for which the chassis power curve does not reach or exceed the 0.1 mR/hr IRLC, will require product reports, supplemental reports, and annual reports. A television product containing a CRT, for which, when tested under phase III conditions, the chassis power curve reaches or exceeds the 0.1 mR/hr IRLC, will require product reports, supplemental reports, annual reports, and maintenance of the records of test results and distribution of products for 5 years.

Manufacturers must continue to conduct an adequate quality control and testing program to ensure continued compliance of all models with the performance standard. Products for which there is no requirement that test results be kept for 5 years must, nevertheless, be tested adequately and the results should be reviewed by a quality control manager. These products should be rejected at a maximum limit of 0.1 mR/hr when tested under phase III conditions.

The agency retains the authority to inspect all documents supporting the adequacy of the manufacturer's quality control and testing program, including programs for these products for which it is not necessary to retain test results for 5 years. The final rule has added a footnote to Table 1 (footnote 1) to clarify this point.

8. One comment stated that FDA should codify its existing practice concerning importation of products for compliance testing and other related purposes to reduce the potential for confusion about the precise terms and conditions surrounding these activities. The comment stated that bulletins sent by FDA to the industry have stated, at

least with respect to television receivers and laser products, that FDA performance standards do not apply to products "that are imported for purpose of research, investigations, studies, demonstrations, or training, and that consist of 10 or fewer units per shipment," so long as certain administrative safeguards are observed.

The scope of this rule is limited to the reporting andrecordkeeping requirements in part 1002 and is not intended to amend FDA practices and regulations regarding the scope of the applicability of performance standards. Under current policies, FDA allows exemptions from performance standards for 10 or fewer units of certain products (i.e., television products, microwave ovens, and certain laser products), that are imported for test and evaluation and remain under the importer's control, if such products are properly labeled. These exemptions are referenced in FDA Compliance Program 7382.007 which is available from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800–638–2041 or 301–443–6597. These policies will be continued but this rule does not expand the scope of that exemption to all products. However, the rule codifies procedures that allow manufacturers to apply for special exemptions from the reporting and recordkeeping requirements of part 1002 or the Director of CDRH to grant such exemptions on his or her own. See §§ 1002.50(a)(3) and 1002.50(b).

9. One comment requested that FDA clarify the distinctionbetween television receivers and CRT's and explain whether there are differences in the regulations that apply to the products that fall within these two categories. The comment noted that the majority of television receivers use CRT's to display video images (a small minority of receivers use liquid crystal displays), and the comment was uncertain why television receivers remain subject to various reporting requirements while CRT's will be generally exempt from reporting requirements, with the exception of § 1002.20. The comment further stated that FDA's distinction apparently depends on whether a device is limited by design to display only alphanumeric characters (CRT) or whether it can also display other video images (television receiver). The comment stated that FDA's distinction does not appear to be based on public health considerations, and that confusion and potential compliance problems would be avoided by adopting a definition of television that is more consistent with that of the affected industry. The comment suggests that FDA consider adopting the definition used by the FCC, which defines television receiver as a "device designed to receive television pictures that are broadcast simultaneously with sound on the television channels authorized under part 73 of the FCC's rules." (See 47 CFR 15.3(w)(1990)).

Previously, the regulations required manufacturers to submit initial, model change, and annual reports for television receivers and to submit initial and model change reports for CRT's. A CRT is an electronic product component and, as such, is subject to the general radiation safety requirements, but not subject to a performance standard. FDA has determined that the Joint Electron Device Engineering Council/Tube Engineering Panel Advisory Council (JEDEC/TEPAC) data on CRT's that is available from the Electronic Industries Association is sufficient for FDA to assess the potential radiation hazards for CRT's; therefore, any additional reports on the CRT's are not necessary. However, the monitors and video display products that contain the CRT's and associated electronics are subject to the television receiver standard. Accordingly, manufacturers are required to demonstrate that these products, including the CRT's contained in them, meet the standard and to report how the products are tested for compliance. FDA currently is reviewing whether to change the performance standard for television receivers to clarify the definitions of products to which the standard is applicable. This comment will be included in that review.

B. Exemptions

10. One comment proposed that manufacturers of products forwhich there is no applicable performance standard under 21 CFR part 1020 and for which a 510(k) premarket notification (510(k)) has been submitted and cleared in accordance with part 807, subpart E, be exempt from submitting all reports listed in Table 1 of proposed § 1002.1. The comment believes it would be appropriate to include manufacturers of these products in the exemption under proposed § 1002.50(e), because sufficient information regarding safety and effectiveness has been obtained through FDA review of the 510(k) submission. Alternatively, the comment suggests that the fact that any particular electronic product is also a medical device subject to 510(k) notifications should be included among the criteria for considering a special exemption under proposed § 1002.50(a).

Generally, a 510(k) notice on a medical device is submitted to FDA to demonstrate that a design specification is substantially equivalent to the specifications of a predicate device. The radiation safety reporting required by this part of the regulations is intended to provide information on actual production testing and quality control and on the actual product design as produced. If the two are redundant in any particular circumstance, the Director of CDRH can issue exemptions from the reporting and recordkeeping requirements in accordance with § 1002.50(b). FDA does not believe a general exemption from the reporting requirement is in the interest of public health.

11. One comment objected to the exemption of distributors and dealers from the recordkeeping requirement for microwave ovens. The comment states that if such an exemption is granted, these products would be much more difficult to locate to ensure their safety. The comment notes that customer warranty registrations are not sufficient to locate products because such registrations are returned by the customers at such a low rate. The comment states that if the dealer/distributor records are no longer required, the burden of locating the microwave oven shifts to the manufacturer who would have no other alternative but to launch an advertising campaign that would be more expensive, less effective, and slower than any recordkeeping on the part of distributors or dealers.

It has been FDA's experience that dealer and distributor records are rarely needed for the intended purpose of notifying purchasers of product noncompliance. In light of the fact that there have been limited recalls of microwave ovens in the past 10 years (due in part to prototype examinations by FDA), FDA believes that it would be overly burdensome to require distributors and dealers to comply with the recordkeeping requirement. When recalls are necessary, FDA believes that purchasers can be notified by other means, such as general media announcements.

12. One comment recommended that FDA exempt televisionreceivers whose voltage on the CRT is less than 5 kV at zero beam current from the recordkeeping and reporting requirements of part 1002, with the exception of § 1002.20. The comment stated that there is no evidence to suggest that products with such a low voltage (generally, videocamera

viewfinders and televisions with 2 or 3 inch screens) are capable of generating x-rays, which is the primary concern in part 1002. Another comment contended that it would be inappropriate to impose testing and reporting requirements on television receivers with less than 5 kV on the CRT, while CRT's with comparable or even greater voltages are exempted.

Under the amended reporting and recordkeeping requirements, television products whose voltage on the CRT is less than 5 kV will require only abbreviated reports and annual reports, and manufacturers may apply for special exemption from these requirements under the new regulations in § 1002.50. FDA will include these comments in the agency's review of possible amendments to the television performance standard.

13. One comment noted that the preamble to the proposed rule states that television receivers emitting less than 0.1 mR/hr will be exempt from the requirements of maintaining manufacturer's testing and distribution records. The preamble also notes that other products, including "television receivers," are already exempt from these requirements. In comparison, Table 1 of the proposed rule exempts all television receivers from the requirements to maintain manufacturer testing and distribution records. The comment supports the exemption for all television receivers as reflected in Table 1.

A similar concern about the discrepancy between the preamble and Table 1 was addressed above in comment 7. There was an error in the printing of Table 1 of the proposed rule. For television receivers for which the chassis power curve reaches or exceeds the 0.1 mR/hr IRLC, there should have been an X in the following columns: Supplemental reports, Test records, and Manufacturer distribution records. These reports and records are important for FDA to monitor the safety of those products which, by design, can emit radiation levels above background. Table 1 has been amended accordingly.

14. One comment noted an inadvertent error with respect tomanufacturer distribution recordkeeping requirements under § 1002.30(b). The comment stated that FDA has eliminated these requirements for class I lasers and products containing such lasers. Proposed Table 1 to § 1002.1, however, appears to state that class I lasers and products containing class I lasers will be subject to manufacturer distribution recordkeeping requirements under § 1002.30(b). The comment requested FDA to clarify, by amendment of proposed Table 1, that class I lasers and products containing such lasers will retain the exemptions that already apply, including the exemption for manufacturer's distribution records.

Table 1 has been amended to clarify that the exemption for these products from certain reporting requirements remains in effect. FDA has added to Table 1 a category for "Class I lasers and laser products containing such lasers," that will have X's in the columns for Product Reports, Annual Reports, Manufacturer's Test Records, but not for Supplemental Reports, Abbreviated Reports, Manufacturer's Distribution Records, or Dealer/Distributor Distribution Records.

FDA will determine which reporting category is applicable to a product that may have more than one class of laser on the basis of the worst-case hazard in the product. Thus, a class I laser product containing a class IV laser and a class II alignment laser will fall in the category "Class IIIb and IV lasers and products containing such lasers," because this represents the worst-case hazard within the product. Table 1 has been supplemented with a footnote to explain this policy (footnote 7).

15. One set of comments supported the agency's efforts to minimize the reporting and recordkeeping requirements for radiation emitting electronic products. Another comment disagreed with the intent to eliminate initial reports for diagnostic ultrasound equipment. Instead, that comment proposed that diagnostic ultrasound equipment be added to the category of products for which an abbreviated report is required, and that such products be exempt from annual reports. The comment stated that this proposal would reduce the burden on the industry from the medical device premarket clearance process.

Currently, diagnostic ultrasound devices are subject to initial reports but not annual reports. However, in a letter to all manufacturers of diagnostic ultrasound products from the CDRH Director dated February 24, 1986 (Ref. 2), these devices were exempted from the initial reports as long as a 510(k) was filed. CDRH issued this letter to reduce the burden and duplication of paperwork on the industry. The agency recognizes the increase in the timeframe necessary to gather all the information that must be submitted in the 510(k) notification, including production test information that otherwise would be contained in the initial report. Therefore, FDA has amended Table 1 to include abbreviated reports for diagnostic ultrasound equipment in order to retain its ability to obtain production test information about these products. However, CDRH intends to continue to exempt these products from the abbreviated (formerly initial) report requirement until documentation submitted for premarket clearance or for special controls is no longer duplicative of information that would be contained in the abbreviated report.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the provisions of the final rule reduce or simplify the records and reporting requirements for manufacturers, dealers, and distributors of radiation emitting electronic products, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. A copy of the document supporting this determination, "Report of the CDRH Task Force for Retrospective Review of the Recordkeeping and Reporting Requirements of 21 CFR 1002," is on file at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons in

that office between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1980

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Reporting and Recordkeeping Requirements for Electronic Products Under Pub. L. 90–602—General Requirements.

Description: The Food and Drug Administration is amending its regulations regarding the requirements for recordkeeping, reporting, and other information relating to radiation emitting electronic products. The timing and content of certain reports will be revised to enhance the usefulness of the information. The purpose of these changes is to improve the protection of the public health while also reducing the regulatory burden on manufacturers, dealers, and distributors of radiation emitting electronic products.

Description of Respondents: Businesses or other for profit organizations.

Estimated annual reporting and recordkeeping burden

Section	Annual number of reports and records	Average burden per response (hours)	Annual burden (hours)
1002.10, 1002.12			
Existing:			
Initial	320	34	10,880
Model Change	725	42	30,450
Supplements	2,520	0.5	1,260
Subtotal	3,565	avg 11.9	42,590
Amended:			
Product	850	24	20,400
Supplements	1,500	0.5	750
Abbreviated	150	5	750
Subtotal	2,500	avg 8.8	21,900
Total Reports Reduction			20,690
1002.30			
Existing:	4,000,000	0.12	480,000
Amended:	1,904,000	0.12	480,000
Reduction:			251,520
1002.40			
Existing:	17,000,000	0.048	816,000
Amended:	145,000	0.048	6,960
Reduction:			809,040
Total Records Reduction			1,060,560
Total existing annual burden hours			1,338,590
Total amended annual burden hours			257,340
Total difference in annual burden hours			1,081,250
			(81% reduction)

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burden, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Director, CDRH, FDA, letter to manufacturers of television receiver products, dated November 16, 1987.
2. Director, CDRH, FDA, letter to manufacturers of ultrasound products, dated February 24, 1986.

List of Subjects

21 CFR Part 1000

Electronic products, Radiation protection, Reporting and recordkeeping requirements, X-rays.

21 CFR Part 1002

Electronic products, Radiation protection, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Radiation Control for Health and Safety Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 1000 and 1002 are amended as follows:

PART 1000—GENERAL

1. The authority citation for 21 CFR part 1000 is revised to read as follows:

Authority: Secs. 530–542 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360hh–360ss).

2. Section 1000.3 is revised to read as follows:

§ 1000.3 Definitions.

As used in this Subchapter J:

(a) Accidental radiation occurrence means a single event or series of events that has/have resulted in injurious or potentially injurious exposure of any person to electronic product radiation as a result of the manufacturing, testing, or use of an electronic product.

(b) Act means the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360hh–360ss).

(c) Chassis family means a group of one or more models with all of the following common characteristics:

(1) The same circuitry in the high voltage, horizontal oscillator, and power supply sections;

(2) The same worst component failures;

(3) The same type of high voltage hold-down or safety circuits; and

(4) The same design and installation.

(d) Commerce means:

(1) Commerce between any place in any State and any place outside thereof, and

(2) Commerce wholly within the District of Columbia.

(e) Component, for the purposes of this part, means an essential functional part of a subassembly or of an assembled electronic product, and which may affect the quantity, quality, direction, or radiation emission of the finished product.

(f) Dealer means a person engaged in the business of offering electronic products for sale to purchasers, without regard to whether such person is or has been primarily engaged in such business, and includes persons who offer such products for lease or as prizes or awards.

(g) Director means the Director of the Center for Devices and Radioloical Health.

(h) Distributor means a person engaged in the business of offering electronic products for sale to dealers, without regard to whether such person is or has been primarily or customarily engaged in such business.

(i) Electromagnetic radiation includes the entire electromagnetic spectrum of radiation of any wavelength. The electromagnetic spectrum illustrated in Figure 1 includes, but is not limited to, gamma rays, x-rays, ultra-violet, visible, infrared, microwave, radiowave, and low frequency radiation.

Figure 1

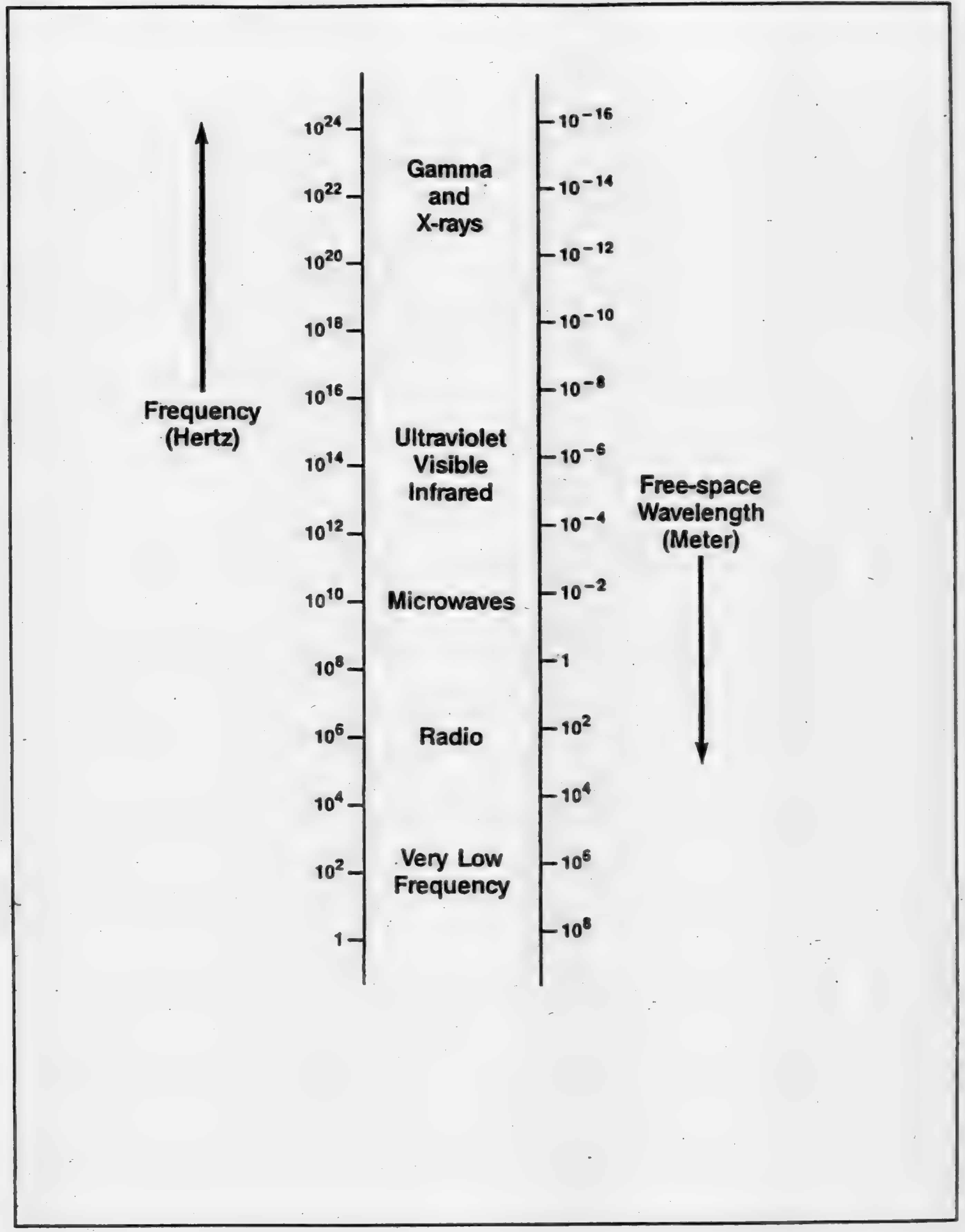

BILLING CODE 4160-01-C

(j) Electronic product means:

(1) Any manufactured or assembled product which, when in operation:

(i) Contains or acts as part of an electronic circuit and

(ii) Emits (or in the absence of effective shielding or other controls would emit) electronic product radiation, or

(2) Any manufactured or assembled article that is intended for use as a component, part, or accessory of a product described in paragraph (j)(1) of this section and which, when in operation, emits (or in the absence of effective shielding or other controls would emit) such radiation.

(k) Electronic product radiation means:

(1) Any ionizing or nonionizing electromagnetic or particulate radiation, or

(2) Any sonic, infrasonic, or ultrasonic wave that is emitted from an electronic product as the result of the operation of an electronic circuit in such product.

(l) Federal standard means a performance standard issued pursuant to section 534 of the Federal Food, Drug, and Cosmetic Act.

(m) Infrasonic, sonic (or audible) and ultrasonic waves refer to energy transmitted as an alteration (pressure, particle displacement or density) in a property of an elastic medium (gas, liquid or solid) that can be detected by an instrument or listener.

(n) Manufacturer means any person engaged in the business of manufacturing, assembling, or importing electronic products.

(o) Model means any identifiable, unique electronic product design, and refers to products having the same structural and electrical design characteristics and to which the manufacturer has assigned a specific designation to differentiate between it and other products produced by that manufacturer.

(p) Model family means products having similar design and radiation characteristics but different manufacturer model numbers.

(q) Modified model means a product that is redesigned so that actual or potential radiation emission, the manner of compliance with a standard, or the manner of radiation safety testing is affected.

(r) Particulate radiation is defined as:

(1) Charged particles, such as protons, electrons, alpha particles, or heavy particles, which have sufficient kinetic energy to produce ionization or atomic or electron excitation by collision, electrical attractions or electrical repulsion; or

(2) Uncharged particles, such as neutrons, which can initiate a nuclear transformation or liberate charged particles having sufficient kinetic energy to produce ionization or atomic or electron excitation.

(s) Phototherapy product means any ultraviolet lamp, or product containing such lamp, that is intended for irradiation of any part of the living human body by light in the wavelength range of 200 to 400 nanometers, in order to perform a therapeutic function.

(t) Purchaser means the first person who, for value, or as an award or prize, acquires an electronic product for purposes other than resale, and includes a person who leases an electronic product for purposes other than subleasing.

(u) State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

PART 1002—RECORDS AND REPORTS

3. The authority citation for 21 CFR part 1002 is revised to read as follows:

Authority: Secs. 502, 510, 519, 520, 531–542, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 360hh–360ss, 371, 374).

4. Section 1002.1 is revised to read as follows:

§ 1002.1 Applicability.

The provisions of this part are applicable as follows:

(a) All manufacturers of electronic products are subject to § 1002.20.

(b) Manufacturers, dealers, and distributors of electronic products are subject to the provisions of part 1002 as set forth in Table 1 of this section, unless excluded by paragraph (c) of this section, or unless an exemption has been granted under § 1002.50 or § 1002.51.

(c) The requirements of part 1002 as specified in Table 1 of this section are not applicable to:

(1) Manufacturers of electronic products intended solely for export if such product is labeled or tagged to show that the product meets all the applicable requirements of the country to which such product is intended for export.

(2) Manufacturers of electronic products listed in Table 1of this section if such product is sold exclusively to other manufacturers for use as components of electronic products to be sold to purchasers, with the exception that the provisions are applicable to those manufacturers certifying components of diagnostic x-ray systems pursuant to provisions of § 1020.30(c) of this chapter.

(3) Manufacturers of electronic products that are intended for use by the U.S. Government and whose function or design cannot be divulged by the manufacturer for reasons of national security, as evidenced by government security classification.

(4) Assemblers of diagnostic x-ray equipment subject to the provisions of § 1020.30(d) of this chapter, provided the assembler has submitted the report required by § 1020.30(d)(1) or (d)(2) of this chapter and retains a copy of such report for a period of 5 years from its date.

Table 1.—Record and Reporting Requirements By Product

	Manufacturer						
Products	Product reports § 1002.10	Supplemental reports § 1002.11	Abbreviated reports § 1002.12	Annual reports § 1002.13	Test records § 1002.30(a)[1]	Distribution records § 1002.309(b)[2]	Dealer Distributor—Distribution records §§ 1002.40 and 1002.41
DIAGNOSTIC X RAY[3] (1020,30, 1020,31, 1020.32, 1020.33)							
Computed tomography	X	X		X	X	X	X
X-ray system[4]	X	X		X	X	X	X
Tube housing assembly	X	X		X	X	X	
X-ray control	X	X		X	X	X	X
X-ray high voltage generator	X	X			X	X	X
X-ray table or cradle			X		X	X	X
X-ray film changer			X		X	X	X
Vertical cassette holders mounted in a fixed location and cassette holders with front panels			X		X	X	X
Beam-limiting devices	X	X		X	X	X	X
Spot-film devices and image intensifiers manufactured after April 26, 1977	X	X		X	X	X	X
Cephalometric devices manufactured after February 25, 1978			X		X	X	
Image receptor support devices for mammographic x-ray systems manufactured after September 5, 1978			X		X	X	
CABINET X RAY (§ 1020.40)							
Baggage inspection	X	X		X	X	X	X
Other	X	X		X	X	X	

Table 1.—Record and Reporting Requirements By Product

	Manufacturer						
Products	Product reports § 1002.10	Supplemental reports § 1002.11	Abbreviated reports § 1002.12	Annual reports § 1002.13	Test records § 1002.30(a)[1]	Distribution records § 1002.309(b)[2]	Dealer Distributor—Distribution records §§ 1002.40 and 1002.41
PRODUCTS INTENDED TO PRODUCE PARTICULATE RADIATION OR X-RAYS OTHER THAN DIAGNOSTIC OR CABINET X-RAY							
Medical			X	X	X	X	
Analytical			X	X	X	X	
Industrial			X	X	X	X	
TELEVISION PRODUCTS (§ 1020.10)							
<25 kilovolt (kV) and <0.1 milliroentgen per hour (mR/hr IRLC[1,2]			X	X[6]			
≤=24kV and <0.1mR/hr IRLC[5]	X	X		X	X	X	
≤=0.1mR/hr IRLC[5]	X	X		X	X	X	
MICROWAVE/RF							
MW ovens (§ 1030.10)	X	X		X	X	X	
MW diathermy			X				
MW heating, drying, security systems			X				
RF sealers, electromagnetic induction and heating equipment, dielectric heaters (2–500 megahertz)			X				
OPTICAL							
Phototherapy products	X	X					
Laser products (§§ 1040.10, 1040.11)							
Class I lasers and products containing such lasers[2]	X			X	X		
Class I laser products containing class IIa, II, IIIa, lasers[7]	X			X	X	X	
Class IIa, II, IIIa lasers and products other than class I products containing such lasers[7]DX	X		X	X	X	X	
Class IIIb and IV lasers and products containg such lasers[7]	X	X		X	X	X	X
Sunlamp products (§ 1040.20)							
Lamp only	X						
Sunlamp products	X	X		X	X	X	X
Mercury vapor lamps (§ 1040.30)							
T lamps	X	X		X			
R lamps			X				
ACOUSTIC							
Ultrasonic therapy (1050.10)	X	X		X	X	X	X
Diagnostic ultrasound			X				
Medical ultrasound othe than therapy or diagnostic	X	X					
Nonmedical ultrasound			X				

[1] However, authority to inspect all appropriate documents supporting the adequacy of a manufacturer's compliance testing program is retained.

[2] The requirement includes §§ 1002.31 and 1002.42, if applicable.

[3] Report of Assembly (Form FDA 2579) is required for diagnostic x-ray components; see 21 CFR 1020.30(d)(1) through (d)(3).

[4] Systems records and reports are required if a manufacturer exercises the option and certifies the system as permitted in 21 CFR 1020.30(c).

[5] Determined using the isoexposure rate limit curve (IRLC) under phase III test conditions (1020.10(c)(3)(iii)).

[6] Annual report is for production status information only.

[7] Determination of the applicable reporting category for a laser product shall be based on the worst-case hazard present within the laser product.

§ 1002.2 [Removed]

5. Section 1002.2 Definitions is removed from subpart A.

6. Section 1002.3 is revised to read as follows:

§ 1002.3 Notification to user of performance and technical data.

As authorized by § 5.90 of this chapter, the Director and Deputy Director of the Center for Devices and Radiological Health may require a manufacturer of a radiation emitting electronic product, to provide to the ultimate purchaser at the time of original purchase, such performance data and other technical data related to safety of the product as the Director or Deputy Director finds necessary.

7. Section 1002.7 is amended by adding a new sentenceto the end of the introductory text, by revising the first sentence in paragraph (b), and by adding new paragraph (c) to read as follows:

§ 1002.7 Submission of data and reports.

* * * The submissions required by this part shall be addressed to the Center for Devices and Radiological Health, Electronic Product Reports, Office of Compliance (HFZ–307), 2098 Gaither Rd., Rockville, MD 20850.

* * * * *

(b) Where guides or instructions have been issued by the Director for the submission of material required by this part, such as test data, product reports, abbreviated reports, supplemental reports, and annual reports, the material submitted shall conform to the applicable reporting guides or instructions.

* * *

(c) Where the submission of quality control and testing information is common to more than one model, or model family of the same product category, a "common aspects report" consolidating similar information may be provided, if applicable.

8. Subpart B, consisting of §§ 1002.10 through 1002.13, is revised to read as follows:

Subpart B—Required Manufacturers' Reports for Listed Electronic Products

Sec.

1002.10 Product reports.
1002.11 Supplemental reports.
1002.12 Abbreviated reports.
1002.13 Annual reports.

Subpart B—Required Manufacturers' Reports for Listed Electronic Products

§ 1002.10 Product reports.

Every manufacturer of a product or component requiring aproduct report as set forth in Table 1 of § 1002.1 shall submit a product report to the Center for Devices and Radiological Health, Electronic Product Reports, Office of Compliance (HFZ–307), 2098 Gaither Rd., Rockville, MD 20850, prior to the introduction of such product into commerce. The report shall be distinctly marked "Radiation Safety Product Report of (name of manufacturer)" and shall:

(a) Identify which listed product is being reported.

(b) Identify each model of the listed product together with sufficient information concerning the manufacturer's code or other system of labeling to enable the Director to determine the place of manufacture.

(c) Include information on all components and accessories provided in, on, or with the listed product that may affect the quantity, quality, or direction of the radiation emissions.

(d) Describe the function, operational characteristics affecting radiation emissions, and intended and known uses of each model of the listed product.

(e) State the standard or design specifications, if any, for each model with respect to electronic product radiation safety. Reference may be made to a Federal standard, if applicable.

(f) For each model, describe the physical or electrical characteristics, such as shielding or electronic circuitry, incorporated into the product in order to meet the standards or specifications reported pursuant to paragraph (e) of this section.

(g) Describe the methods and procedures employed, if any, in testing and measuring each model with respect to electronic product radiation safety, including the control of unnecessary, secondary, or leakage electronic product radiation, the applicable quality control procedures used for each model, and the basis for selecting such testing and quality control procedures.

(h) For those products which may produce increased radiation with aging, describe the methods and procedures used, and frequency of testing of each model for durability and stability with respect to electronic product radiation safety. Include the basis for selecting such methods and procedures, or for determining that such testing and quality control procedures are not necessary.

(i) Provide sufficient results of the testing, measuring, and quality control procedures described in accordance with paragraphs (g) and (h) of this section to enable the Director to determine the effectiveness of those test methods and procedures.

(j) Report for each model all warning signs, labels, and instructions for installation, operation, and use that relate to electronic product radiation safety.

(k) Provide, upon request, such other information as the Director may reasonably require to enable him/her to determine whether the manufacturer has acted or is acting in compliance with the Act and any standards prescribed thereunder, and to enable the Director to carry out the purposes of the Act.

§ 1002.11 Supplemental reports.

Prior to the introduction into commerce of a new or modified model within a model or chassis family of a product listed in Table 1 of § 1002.1 for which a report under § 1002.10 is required, each manufacturer shall submit a report with respect to such new or modified model describing any changes in the information previously submitted in the product report. Reports will be required for changes that:

(a) Affect actual or potential radiation emission.

(b) Affect the manner of compliance with a standard or manner of testing for radiation safety.

§ 1002.12 Abbreviated reports.

Manufacturers of products requiring abbreviated reports as specified in Table 1 of § 1002.1 shall submit, prior to the introduction of such product, a report distinctly marked "Radiation Safety Abbreviated Report" which shall include:

(a) Firm and model identification.

(b) A brief description of operational characteristics that affect radiation emissions, transmission, or leakage or that control exposure.

(c) A list of applications or uses.

(d) Radiation emission, transmission, or leakage levels.

(e) If necessary, additional information as may be requested to determine compliance with the Act and this part.

§ 1002.13 Annual reports.

(a) Every manufacturer of products requiring an annual report as specified in Table 1 of § 1002.1 shall submit an annual report summarizing the contents of the records required to be maintained by § 1002.30(a) and providing the volume of products produced, sold, or installed.

(b) Reports are due annually by September 1. Such reports shall cover the 12-month period ending on June 30 preceding the due date of the report.

(c) New models of a model family that do not involve changes in radiation emission or requirements of a performance standard do not require supplemental reports prior to introduction into commerce. These model numbers should be reported in quarterly updates to the annual report.

9. Section 1002.20 is amended by adding a sentence at the end of paragraph (c) to read as follows:

§ 1002.20 Reporting of accidental radiation occurrences.

* * * * *

(c) * * * A manufacturer need not file a separate report under this section if an incident involving an accidental radiation occurrence is associated with a defect or noncompliance and is reported pursuant to § 1003.10 of this chapter.

10. Section 1002.30 is amended in the first sentence of paragraph (a) introductory text, by removing "paragraphs (b) and (c) of § 1002.61" and adding in its place "Table 1 of § 1002.1"; and adding new paragraph (a)(5) to read as follows:

§ 1002.30 Records to be maintained by manufacturers.

(a) * * *

(5) Data on production and sales volume levels if available.

* * * * *

§ 1002.31 [Amended]

11. Section 1002.31 Preservation and inspection of records is amended in paragraph (c) by removing "paragraph (c) of § 1002.61" and adding in its place "Table 1 of § 1002.1".

12. Section 1002.40 is amended by revising paragraph (a) to read as follows:

§ 1002.40 Records to be obtained by dealers and distributors.

(a) Dealers and distributors of electronic products for which there are performance standards and for which the retail price is $50 or more shall obtain such information as is necessary to identify and locate first purchasers if the product is subject to this section by virtue of Table 1 of § 1002.1.

* * * * *

13. Section 1002.50 is revised to read as follows:

§ 1002.50 Special exemptions.

(a) Manufacturers of electronic products may submit to the Director a request, together with accompanying justification, for exemption from any requirements listed in Table 1 of § 1002.1. The request must specify each requirement from which an exemption is requested. In addition to other information that is required, the justification must contain documented evidence showing that the product or product type for which the exemption is requested does not pose a public health risk and meets at least one of the following criteria:

(1) The products cannot emit electronic product radiation in sufficient intensity or of such quality, under any conditions of operation, maintenance, service, or product failure, to be hazardous;

(2) The products are produced in small quantities;

(3) The products are used by trained individuals and are to be used by the same manufacturing corporation or for research, investigation, or training.

(4) The products are custom designed and used by trained individuals knowledgeable of the hazards; or

(5) The products are produced in such a way that the requirements are inappropriate or unnecessary.

(b) The Director may, subject to any conditions that the Director deems necessary to protect the public health, exempt manufacturers from all or part of the record and reporting requirements of this part on the basis of information submitted in accordance with paragraph (a) of this section or such other information which the Director may possess if the Director determines that such exemption is in keeping with the purposes of the Act.

(c) The Director will provide written notification of the reason for any denial. If the exemption is granted, the Director will provide written notification of:

(1) The electronic product or products for which the exemption has been granted;

(2) The requirements from which the product is exempted; and

(3) Such conditions as are deemed necessary to protect the public health and safety. Copies of exemptions shall be available upon request from the Office of Compliance (HFZ–307), Center for Devices and Radiological Health, 2098 Gaither Rd., Rockville, MD 20850.

(d) The Director may, on the Director's own motion, exempt certain classes of products from the reporting requirements listed in Table 1 of § 1002.1, provided that the Director finds that such exemption is in keeping with the purposes of the act.

(e) Manufacturers of products for which there is no applicable performance standard under parts 1020 through 1050 of this chapter and for which an investigational device exemption has been approved under § 812.30 of this chapter or for which a premarket approval application has been approved in accordance with § 814.44(d) of this chapter are exempt from submitting all reports listed in Table 1 of § 1002.1.

Subpart G—[Removed]

14. Subpart G, consisting of § 1002.61 *List of specific product groups*, is removed.

Dated: September 11, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–23130 Filed 9–18–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AG75

Organizational Contact for Missing Children Official Mail Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulations concerning the use of official mail in the location and recovery of missing children. This rule updates the Departmental contact person and organizational units, reflects current practices, and clarifies provisions.

EFFECTIVE DATE: This amendment is effective September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Mrs. Roslynd R. Stewart, Information Management Service (045A4), Office of Policy and Program Assistance, Office of Information Resources Management, Office of Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420–0001, (202) 565–8949.

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

The changes made by this final rule constitute rules of agency organization. The remainder of the changes made by this final rule are nonsubstantive and there is good cause for concluding that notice and public procedure thereon are unnecessary and contrary to the public interest. Accordingly, pursuant to 5 U.S.C. 553, we are dispensing with prior notice and comment and with a 30-day delay of the effective date.

Regulatory Flexibility Act

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The amendments made by this final rule will not have a substantial effect on any individuals or entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number is 16.543.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Veterans Affairs Department, Wages.

Approved: September 8, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation following the table of contents for part 1 is revised to read as follows:

Authority: 38 U.S.C. 501, except as otherwise noted.

2. Section 1.700 is revised to read as follows:

§ 1.700 Purpose.

Sections 1.700 through 1.705 of this title provide a Missing Children Official Mail Program in the Department of Veterans Affairs.

(Authority: 39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

3. Section 1.701 is revised to read as follows:

§ 1.701 Contact person for missing children official mail program.

The Department of Veterans Affairs contact person for the Missing Children Official Mail Program is: Mrs. Roslynd R. Stewart, Information Management Service (045A4), Office of Policy and Program Assistance, Office of Information Resources Management, Office of Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420–0001. Telephone: (202) 565–8949.

(Authority: 39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

§ 1.702 [Amended]

4. In § 1.702, paragraph (b) is amended by removing "If doing so would be cost effective, the Department of Veterans Affairs shall insert via automated insertion equipment" and adding, in its place, "The Department of Veterans Affairs will insert"; by removing "types of"; by removing "data processing" and adding, in its place, "automation"; and by removing "may be" and adding, in its place, "are".

5. In § 1.702, paragraph (c) is amended by removing "will be" in both places and adding, in its place in both places, "is"; and by removing "the Mail and Travel Policy Division" and adding, in its place, "Information Management Service".

6. In § 1.702, paragraph (d) is amended by removing "(i.e. use or destroy)"; by removing "will be" and adding, in its place, "is"; by removing "contract" and adding, in its place, "contact"; by removing "envelopes"; and by removing "as to" and adding, in its place, "as of".

7. In § 1.702, paragraph (h) is amended by removing "reguations" and adding, in its place, "regulations".

8. Section 1.703 is revised to read as follows:

§ 1.703 Percentage estimate.

It is the Department of Veterans Affairs objective that 20 percent of its first class official mail addressed to the public contain missing children photographs and information.

(Authority: 39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

§ 1.705 [Amended]

9. In § 1.705, paragraph (a) is amended by removing "which are ordered and/or stocked in quantities which" and adding, in its place, "ordered and stocked in quantities that".

10. In § 1.705, paragraph (c) is amended by removing "and/or" and adding, in its place, "or".

11. In § 1.705, paragraph (e) is amended by removing "return, address areas" and adding, in its place, "return address area"; and by removing "OJJDP" and adding, in its place, "Office of Juvenile Justice and Delinquency Prevention".

[FR Doc. 95–23146 Filed 9–18–95; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD-FRL-5272-8]

RIN 2060-AD02

Federal Standards for Marine Tank Vessel Loading Operations and National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates standards under section 183(f) of the Clean Air Act (the Act) and requires reasonably available control technology (RACT) to limit air emissions of volatile organic compounds (VOC) and hazardous air pollutants (HAP) from new and existing marine tank vessel loading operations. VOC emissions, together with nitrogen oxides are precursors to the formation of tropospheric ozone, which can impair lung capacity, cause eye, nose and throat irritation, timber and other valuable crops such as soybeans and cotton. The health effects of exposure to HAPs can include cancer, respiratory irritation and damage to the nervous system. An additional set of standards promulgate national emission standards for hazardous air pollutants (NESHAP) under section 112 of the Act for marine tank vessel loading operations and require existing and new major sources to control emissions using maximum achievable control technology (MACT) to control HAP.

EFFECTIVE DATE: This regulation is effective September 19, 1995. See **SUPPLEMENTARY INFORMATION** section concerning judicial review.

ADDRESSES: *Technical Support Document.* The Technical Support Document (TSD) for the promulgated standards may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161, telephone number (703) 487–4650. Please refer to "Federal Standards for Marine Tank Vessel Loading Operations and National Emission Standards For Hazardous Air Pollutants For Marine Tank Vessel Loading Operations—Technical Support Document for Final Standards," Document Number PB95–234514. The TSD contains, (1) a summary of public comments made on the proposed standards and the Administrator's response to the comments and (2) a summary of the changes made to the standards since proposal.

Electronic versions of the promulgation TSD as well as this final rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards (select "CAAA" "Title III"). The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to a 14,400 bits per second (bps). If more information on TTN is needed, contact the systems operator at (919) 541–5384. A copy of the TSD has also been placed in the Docket at the address given below.

Docket. Docket No. A–90–44, containing supporting information used in developing the promulgated standards, is available for public inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards or technical aspects, contact Mr. David Markwordt at (919) 541–0837, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Under section 307(b)(1) of the Act, judicial review of NESHAP is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings

brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. The Standards
II. Summary of Impacts
III. Significant Changes to the Proposed Standards
  A. Public Participation
  B. Comments on the Proposed Standards
  C. Significant Changes
  D. Minor Changes
  E. Other Significant Issues
IV. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Administrative Designation and Regulatory Analysis
  D. Regulatory Flexibility Act
  E. Unfunded Mandates Act

I. The Standards

A summary of today's final standards is listed in Table 1. Included in this table are applicability cutoffs based on annual throughput (under section 183(f)) and HAP emissions (under section 112), separation of marine tank vessel loading operations at petroleum refineries (which are now included under the petroleum refineries source category), and emission standards based on subcategory determinations for offshore terminals and the Alyeska Pipeline Service Company's (APSC's) Valdez Marine Terminal (VMT). The promulgated regulations allow for several alternative compliance technologies to allow owners or operators maximum compliance flexibility.

TABLE 1.—FINAL STANDARDS, NATIONAL COSTS, AND EMISSION REDUCTIONS

Section of act	Subcategory	Standard	Emission reduction, Mg/yr	Annual cost, $MM
183(f)	New and existing terminals having throughput of ≥1.6 billion liters per year (10 million barrels per year) of gasoline or ≥32 billion liters per year (200 million barrels per year) of crude oil.	98 percent reduction in emissions if using combustion techniques; 95 percent reduction in emissions if using recovery techniques.	13,000 (VOC), 900 (HAP).	20–40.
112	Existing major source terminals having emissions of hazardous air pollutants (HAP) of 10/25 tons per year or more from loading of marine tank vessels.	97 percent reduction in HAP emissions	7,000 (VOC), 750 (HAP).	20–40.
112	Existing major source terminals collocated at petroleum refineries having HAP emissions of 10/25 tons per year or more from loading of marine tank vessels; new major source terminals regardless of HAP emissions from marine tank vessel loading (both existing and new sources are regulated under the Gasoline Refineries NESHAP).	97 percent reduction in HAP emissions for existing sources, 98 percent reduction in HAP emissions for new sources; emissions averaging with petroleum refinery emissions points is allowed.	Impacts included in previous subcategory data.	Impacts included in previous subcategory data.
112	Existing major source terminals having HAP emissions of less than 10/25 tons per year from loading of marine tank vessels.	No control	None	None.
112	New major source terminals regardless of HAP emissions from marine tank vessel loading.	98 percent reduction in HAP emissions	None	None.
112 and 183(f)	Existing major source terminals located more than 0.8 kilometers (0.5 miles) offshore.	No control	None	None.
112	New major source terminals located more than 0.8 kilometers (0.5 miles) offshore.	95 percent reduction in HAP emissions	None	None.
112 and 183(f)	Alyeska Pipeline Service Company's Valdez Marine Terminal.	98 percent reduction in emissions with maximum throughput limits.	19,000 (VOC), 2,500 (HAP).	20.

Sources required to reduce emissions are also required to monitor the performance of control technology installed to achieve the required emissions reductions. Baseline parameters may be established by owners or operators during initial performance tests, or continuous emissions monitoring devices may be used to provide indicators of performance. The baseline parameters may be based on manufacturer's recommended operating parameters or other parameters selected by the source and approved by the Administrator. Sources are also required to develop and implement an operation and maintenance plan that describes a program of corrective action for varying (i.e., exceeding baseline parameters) air pollution control equipment and monitoring equipment used to comply with these emissions standards. This plan includes operating parameters that shall be monitored and recorded as indicators of proper operation of the air pollution control devices.

In developing these final monitoring requirements and compliance provisions, the Agency has provided significant flexibility to owners or operators of sources required to reduce emissions in regard to selecting monitoring protocols, yet has assured compliance with the standards. Compliance is assured through reporting and recordkeeping requirements that specify annual reports of system performance. This reporting interval is compressed to semi-annual for sources that experience excess emissions.

Owners or operators of all marine tank vessel loading operations subject to the federal standards promulgated under section 183(f) of the Act (RACT sources) are required to commence construction of its vapor collection system and air pollution control device(s) within 2 years from September 19, 1995. These RACT sources are required to complete the installation of the control technology needed to comply with the standards within 3 years from September 19, 1995. Owners or operators of new RACT sources with an initial startup after September 21, 1998 are required to comply with all requirements upon startup. A RACT source may request a waiver of final compliance for up to 1 year if it can prove that the additional time is necessary for the installation of controls.

Owners or operators of marine tank vessel loading operations subject only to the requirements promulgated under section 112(d) of the Act (MACT standards) are required to install the control technology needed to comply with the standards within 4 years from September 19, 1995. Owners or operators of new MACT-only sources with initial startup after September 20, 1999 are required to comply with all requirements upon startup.

The VMT owners or operators are required to install the control technology needed to comply with the standards within 30 months from September 19, 1995.

II. Summary of Impacts

These standards will reduce nationwide emissions of hazardous air pollutants (HAP) from marine tank vessel loading operations by approximately 4,150 Mg (4,565 tons) after 1999 compared to the emissions that would result in the absence of the standards. These standards will reduce emissions of volatile organic compounds (VOC) from marine tank vessel loading operations by approximately 39,000 Mg (42,900 tons) after 1999 compared to the emissions that would result in the absence of the standards. No significant adverse secondary air, water, solid waste, or energy impacts are anticipated from the promulgation of these standards.

The implementation of this regulation is expected to result in nationwide annualized costs for existing marine tank vessel loading operations of $60 million to $100 million beyond baseline based on an analysis of applying controls to all existing facilities not currently controlled to the level of the standards. Nationwide capital costs expected to result from these regulations are approximately $266 million to $440 million.

As discussed in this preamble under Regulatory Flexibility Act Compliance, the economic impact analysis performed for this rulemaking showed that the estimated maximum price increases for the affected products varied, but were not large (less than 1%). These price-increase estimates reflect the control cost increases for transporting crude and products. Because these increases are small and because the elasticities of demand for petroleum products are small, estimated percent output reductions were minimal. Correspondingly, estimated employment reductions were also relatively small.

Potentially significant economic impacts on some of the smaller affected terminal operations were identified, although the decision not to require emission controls for existing smaller operations greatly reduces the potential for adverse economic impacts on small terminal operations. These potential impacts would result from the high per barrel control cost differential between the smaller and larger terminal operations that would need to control emissions. Some of these smaller terminal operations, to the extent that they are competing with nearby larger or unaffected terminal operations, could have had difficulty raising prices to cover cost increases and could have been significantly adversely impacted by this rule.

The potential economic impact on marine tank vessel owners was substantially reduced because of the decision not to require emission controls on small existing terminals in this rulemaking. Because only a small percentage of U.S. marine transported volume of products will be impacted by the standard, only a relatively small percentage of U.S. marine tank vessels will need to retrofit. Thus, only the vessels that will need the least cost to retrofit (most likely the larger, newer, double-skin vessels) will do so, leading to some degree of dedicated service. It is expected that vessel owners that do retrofit will be able to pass most retrofit costs forward in terms of higher prices.

III. Significant Changes to the Proposed Standards

Proposed standards for marine tank vessel loading operations were published in the **Federal Register** on May 13, 1994 (59 FR 25004). Under section 183(f) of the Act, the proposed rule would have required a 98 percent reduction in emissions (or a 95 percent reduction, if recovery techniques were used) from marine tank vessel loading and unloading operations that load either 100 million barrels per year of crude oil or 5 million barrels per year of gasoline. Sources would have had 2 years to comply with these RACT standards. Under section 112(d) of the Act, the proposed rule also would have required owners or operators of major sources that emit 1 ton per year or more of HAP from marine tank vessel loading and unloading operations to reduce total HAP emissions by at least 93 percent. Sources would have had 3 years to comply with these MACT standards. The control devices used to meet these standards were required to be operated at 98 and 95 percent efficiencies for combustion and recovery control technologies respectively. The EPA also proposed to regulate emissions from ballasting.

Three alternatives were proposed to ensure vessel tightness: (1) Pressure test the vessel, (2) perform a leak test on all components using Method 21 of appendix A of 40 CFR part 60, or (3) load the vessel at less than atmospheric pressure.

Proposed monitoring requirements required owners or operators to monitor any valves that could divert flow from a control device if those bypass valves could not be secured. Monitoring criteria were also proposed for combustion devices, carbon adsorbers, condensers, absorbers, and flares. Owners or operators were generally required to establish operating parameters during an initial performance test and then monitor combustion temperature for combustion devices, VOC concentration in the exhaust stream for carbon adsorbers, exhaust stream temperature for condensers, VOC outlet concentration for absorbers, and continuous presence of a flame and the vent stream flow for flares. Criteria to apply for and obtain approval for alternative monitoring criteria (and for alternative monitoring devices) were also specified in the proposed rule.

Under the proposed rule, owners or operators of sources required to install controls would have had to fulfill the reporting and recordkeeping requirements of the part 63 General Provisions, including submittal of the following reports: (1) Initial notification that the source is subject to the standards, (2) notification of initial performance test, (3) initial notification of compliance status, (4) annual excess emissions and monitoring system performance report and/or summary report, and (5) an annual emissions estimation report. These sources would also have been required to maintain documentation that vessels loaded at the facility were vapor tight. All information was to have been made readily available to the Administrator or

delegated State authority for a minimum of 5 years.

In addition, the Agency requested comment on several issues, including the subcategorization of certain types of terminals. On August 31, 1994, the Agency published a notice reopening the comment period to request comment on amending the Marine Tank Vessel Loading and the Petroleum Refinery source categories to move marine terminals collocated at petroleum refineries to the Petroleum Refineries source category (59 FR 44955). On March 8, 1995, the Agency reopened the comment period to request comment on extending the proposed compliance dates (60 FR 12703).

A. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (56 FR 1186) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the regulation of this source category. This meeting was held on January 31, 1991. The meeting was open to the public, and each attendee was given an opportunity to comment on the standards recommended for proposal.

The standards were proposed, and the preamble was published in the **Federal Register** on May 13, 1994 (59 FR 25004). The preamble to the proposed standards discussed the availability of the regulatory text and proposal TSD, which described the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the regulatory text and TSD were distributed to interested parties. Electronic versions of the preamble, regulation, and TSD were made available to interested parties via the TTN (see **ADDRESSES** section of this preamble).

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on June 15, 1994 in Research Triangle Park, North Carolina. The public comment period was from May 13 to July 18, 1994. The Agency also reopened the public comment period for specific comments on two occasions—August 31, 1994 (59 FR 44955) and March 8, 1995 (60 FR 12723). In all, over 150 comment letters were received (including seven duplicates). Additional information received from interested parties but not submitted directly to the docket was included in the docket as additional comments on the proposed regulation. Information submitted after the close of the comment period is also included in the docket and may appear on the docket index as public comments in docket category IV–D. The comments have been carefully considered, and changes have been made to the proposed standards when determined by the Administrator to be appropriate.

B. Comments on the Proposed Standards

Comments on the proposed standards were received from 143 commenters composed mainly of States, environmental groups, private citizens, control device vendors, industry, and trade associations. A detailed discussion of these comments and responses can be found in the promulgation TSD, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the TSD serves as the basis for the revisions that have been made to the regulations between proposal and promulgation. Most of the comment letters contained multiple comments. A summary of the revisions to the regulations along with discussion of the comments on the major issues is provided below. In the TSD, the comments have been divided into the following areas:

(1) Applicability of standards.

(2) Inclusion of certain terminals with the petroleum refinery source category.

(3) Subcategorization issues.

(4) RACT/MACT.

(5) Compliance schedule for Titles I and III standards.

(6) Compliance, performance testing, and monitoring requirements.

(7) Vapor tightness requirements.

(8) Leak detection and repair.

(9) Reporting and recordkeeping requirements.

(10) General provisions interaction.

(11) Wording of regulation.

(12) Administrative record/sources of information.

(13) Cost effectiveness/impacts.

(14) Miscellaneous.

(15) Comments on proposed appendices to 40 CFR part 64.

C. Significant Changes

Several changes have been made since the proposal of these standards. The majority of the changes have been made to clarify portions of the rule that were unclear to the commenters. A summary of the major changes is presented below.

(1) *Removal of unloading operations (ballasting) from the source category.* In the proposed rule, the Agency included regulations proscribing emissions from ballasting of vessels following unloading of vessels. Comments asserted that ballasting operations are performed by vessel operators, not by the regulated terminal sources. The Agency agrees with this interpretation of the affected source. The Agency also agrees that regulating ballasting operations would be difficult to enforce. The Agency's intent in prohibiting ballasting emissions in the proposed regulation was to provide a cross-reference with existing Coast Guard regulations addressing ballasting in vessels. The Coast Guard rules require vessels to have segregated ballast tanks for crude oil loadings. The Agency sees no benefit to restating Coast Guard requirements for ballasting. Moreover, EPA agrees that the relatively low amount of actual emissions associated with ballasting does not justify dual regulation of ballasting. As discussed in the proposal TSD, the total VOC emissions from crude oil tankship ballasting were estimated to be approximately 950 Mg/yr. Based on the portion of HAP in crude oil vapor, total HAP emissions from ballasting are less than 120 Mg/yr. Ballasting emissions will diminish in the future because tankships built since 1980 are required by domestic law and international agreement to use segregated ballast tanks that do not emit vapors during ballasting. Therefore, in order to prevent confusion in the regulated community, the Agency does not address ballasting or bunkering emissions in the final regulation. The Agency defers to the U.S. Coast Guard's existing standards (33 CFR parts 155 and 157; and 46 CFR parts 30 et al.).

(2) *Extension of the compliance schedule for section 183(f) ("Title I") and section 112 ("Title III") standards.* In the proposed rule, EPA proposed to establish compliance deadlines of 2 years for the section 183(f) standards, and 3 years for the section 112 standards. The Agency received numerous comments regarding these schedules that stated the length of the compliance periods was insufficient to comply with the standards. Commenters noted that facilities' abilities to install pollution control devices are constrained by several factors, including the following: (1) The limited number of contractors experienced in installing control equipment in marine loading facilities; (2) the numerous facilities that will need to meet the standards at the same time; and (3) the lead time needed to meet permitting and safety requirements from permitting authorities and the U.S. Coast Guard.

Commenters stated that EPA had discretion to extend the compliance period under section 183(f), noting the ambiguity of the term "effective date" and that the evidence indicated that the proposed emission control technologies would not be "reasonably available, considering costs, nonair-quality benefits, environmental impacts, energy requirements, and safety factors" within 2 years. Commenters also noted that EPA had the authority to provide for a waiver of compliance with MACT standards under section 112 for up to 1 year if certain findings were made.

On March 8, 1995, EPA reopened the comment period to receive more comments on the issue of whether the compliance periods for the RACT and MACT regulations should be extended. Numerous commenters indicated support for extending the compliance periods, generally reiterating the views expressed in earlier comments. Some commenters also pointed out that greater environmental benefits can sometimes be obtained by granting longer compliance periods, which can allow for better designed, more robust, safer and more advanced technologies, and in this instance, could result in greater use of recovery technologies (rather than incineration). Commenters also noted that previous attempts by States to regulate tank vessel loading in less than 3 years resulted in the need for numerous waivers as it became clear that the deadlines could not be met. One commenter provided a list of several marine loading terminals in California that had installed emission control equipment and indicated that almost all of these installation projects took at least 3 years to complete.

The Agency agrees with the commenters that permitting and safety approvals from permitting authorities and the Coast Guard, the dearth of skilled engineering and construction firms, and the history of facilities being unable to comply with existing regulations compels the Agency to extend the date for full compliance with the RACT and MACT rules. In these final standards, EPA allows sources regulated under section 183(f) 3 years to be in full compliance with the emission control requirements promulgated under section 183(f). In addition, RACT sources may request a waiver of up to 1 year to achieve full compliance with the requirements if they can show that the additional period is necessary for the installation of controls. The Agency believes that this result is consistent with section 183(f). Section 183(f) requires the application of "reasonably available" control technology, considering costs, any non-air quality benefits, environmental impacts, energy requirements, and safety factors. The overwhelming evidence received by the Agency indicates that most, if not all, sources that must install emission control devices cannot do so within 2 years. States that have attempted to enforce such a requirement have been forced to provide waivers to the regulated sources. Given the relative scarcity of qualified contractors and the permitting and other requirements necessary for such construction, it is clear that the emission control technologies required by this rule will not be "reasonably available" within 2 years of the promulgation of this rule. Moreover, the information provided to the Agency indicates that a 2-year deadline may force regulated sources to install equipment that is less reliable and that may cause safety concerns. Given the emphasis that Congress put on safety in these regulations and the fact that the Coast Guard will need to review such installations prior to operation, a 2-year deadline seems contrary to Congress' broad intent and may result in conflicts with Coast Guard requirements. The Agency has in the past provided sources with reasonable time to complete actions required by the Clean Air Act. *See* EPA rulemaking on fuel/fuel additives published on June 27, 1994 (59 FR 33042).

Moreover, EPA believes that the imprecision of the term "effective date" could also provide EPA with the ability to allow compliance after 2 years. The distinction between "effective dates" of regulations and "compliance dates" is important and has been a clear part of administrative procedure for many years. *See, e.g.*, section 112(i)(3); *Natural Resources Defense Council* v. *Environmental Protection Agency*, 22 F. 3d 1125, 1138 (D.C. Cir. 1994).

The Agency is requiring regulated RACT sources to provide proof that they have commenced construction of vapor collection systems and air pollution control devices within 2 years after promulgation of the final standards. The Agency believes that these actions can reasonably be achieved within 2 years of promulgation.

The Agency believes that most RACT terminals will be able to meet the emissions reduction requirements contained in the final standards within the 3 years following the promulgation date. The Agency estimates that only 8 terminals subject to the RACT requirements are not presently controlling emissions to the level specified in the standards. These terminals are among the largest terminals in the U.S., and can reasonably be expected to have in-house staff capable of assisting in the design and installation of control technology. Furthermore, the Agency is aware that some of these terminals are already designing control equipment in anticipation of these final RACT requirements.

The EPA shall allow existing sources regulated solely under section 112 four years to be in full compliance with the emission control requirements promulgated under section 112. Sources must generally comply with MACT standards under section 112 within 3 years of promulgation. However, section 112(i) of the Act specifically allows EPA to provide sources with a waiver of up to 1 year to achieve full compliance with the requirements if they can show that the additional period is necessary for installing the controls. Commenters stated that standards containing similar compliance dates for a large number of sources would result in numerous facilities competing for a limited number of experienced contractors in order to meet the standards at the same time. Commenters suggested a staggered compliance schedule for the sources affected by the standards. Commenters also stated that many sources would require more than 3 years to install the required control equipment given the limited number of contractors experienced in installing control equipment in marine loading facilities and the lead time needed to meet permitting and safety requirements from permitting authorities and the U.S. Coast Guard.

The Agency agrees with the commenters that many MACT sources would probably require 1-year waivers if there was a 3-year compliance date for MACT sources in the final rule. The Agency notes that these sources are typically smaller than the sources regulated under RACT, and would not be as likely to have in-house staff capable of assisting in the design and installation of control technology. Therefore, the Agency believes that the sources controlled under section 112 that are not controlled under section 183(f) should automatically receive a waiver of 1 year that will allow a total of four years from September 19, 1995 to comply with the MACT emission reduction requirements. The Agency believes that this total of 4 years is sufficient time for the estimated 20 sources presently uncontrolled to design and install control technologies sufficient to meet the MACT standards. The Agency believes that the staggered compliance schedule (i.e., 3 years for RACT terminals and 4 years for MACT terminals) coupled with the reduced number of terminals required to control emissions under the final rule should alleviate commenters' concerns about the scarcity of qualified installation consultants and vendors. This extended schedule is also expected to address concerns regarding permitting delays.

The Agency is providing the VMT with 30 months to be in full compliance with these regulations. The Agency believes, per its discussions with APSC, that this extension provides sufficient time to comply with the promulgated rule.

(3) *Addition of new subcategories under the section 112 regulations for offshore terminals and for the Alyeska Pipeline Service Corporation's Valdez Marine Terminal.* In the proposed rule, the Agency established two subcategories based on size for the section 112 MACT regulations. The Agency also solicited comments on whether additional subcategories should be established under the MACT regulations for specific types of terminals based on particular characteristics of those types of terminals of which the Agency had no information at that time. Based on information received in the public comments, the Agency has determined that two additional subcategories exist within the marine tank vessel loading operation source category.

(a) Subcategory for offshore terminals. As stated in the solicitation of comments in the proposed rule, the Agency does not believe that a facility at least one-half mile offshore is part of a land-based contiguous site. The Agency also stated that such offshore terminals present unique regulatory challenges such as costs, environmental impacts, and/or size constraints. The Agency requested information regarding the feasibility and costs of controlling emissions from offshore terminals. The Agency also requested comments on whether offshore terminals should be grouped into a separate subcategory and what the control status of terminals in such a subcategory should be. Comments in response to this request indicated that these types of vessel loading operations face significant challenges in controlling emissions that were different from land-based, contiguous loading operations. These challenges include high costs, technical complications, and permitting requirements that would result from requirements to construct new platforms to locate control equipment adjacent to the offshore terminal or additional subsea or surface lines to route loading vapors to onshore control equipment. Commenters noted that these challenges are either non-existent or not as pronounced for onshore, contiguous terminals. The Agency has therefore determined that a subcategory for these types of terminals is justified and has based its definition for offshore terminals on a minimum distance of one-half mile from the terminal's furthest loading point to the shore, regardless of the existence of subsea lines. [See the discussion in section 2.3.2 of the TSD for the rationale supporting the one-half mile limit].

Once the Agency determined that offshore terminals should be placed in a subcategory for the MACT standards, the MACT floor was determined (see Docket A–90–44, Item Number IV–B–2). Based on information received from commenters, (see Docket A–90–44, Item Number IV–D–136) the Agency estimates that there are fewer than 20 offshore terminals having subsea lines. None of these terminals presently control emissions from marine tank vessel loading. The Agency is also aware of additional offshore terminals that do not have subsea lines. Two of these terminals are known to presently control emissions (see Docket A–90–44, Item Number IV–D–80). Based on the information available to the Agency, the MACT floor for this subcategory is no control of HAP emissions (see MACT floor memorandum in Docket A–90–44, Item Number IV–B–2). Data submitted by commenters showed that the costs associated with the control of offshore terminals are between two and five times more expensive than comparable onshore control techniques (see Docket A–90–44, Item numbers IV–D–108 and IV–D–136). Because of the poor cost effectiveness resulting from these significantly higher costs, as well as the environmental, safety, and technical challenges associated with requiring control more efficient than the MACT floor, the Agency has selected the MACT floor level of no control for offshore marine tank vessel loading operations.

The Agency also determined that offshore terminals loading 10 million barrels or more per year of gasoline or 200 million barrels or more of crude oil should not be required to control VOC or HAP emissions under section 183(f) RACT requirements. Although one commenter (see Docket A–90–44, Item Number IV–D–80) noted two controlled offshore terminals, no information was submitted regarding the specific control techniques used at these two terminals. Since most of the other comments noted that the significantly higher costs and poor cost effectiveness shown by these sources (see previous paragraph) would make control requirements unreasonable for these offshore terminals, the Agency determined that requirement for controls at offshore RACT terminals would not be consistent with the requirements for the technology to be "reasonable."

(b) Subcategory for Alyeska Pipeline Service Company's Valdez Marine Terminal. In the proposed rule, the Agency solicited comment on the possibility of placing the VMT in a separate subcategory. Comments from APSC and several other commenters representing State and local governments, industry, private citizens, and environmental groups were considered by the Agency in developing this final rule.

The Agency has determined that the VMT should be placed in a separate subcategory for the following reasons: (1) The VMT is the largest (by a significant amount) crude oil loading operation in the U.S.; (2) special circumstances, including climatic and economic conditions, require keeping the oil moving through the pipeline; (3) severe meteorological conditions result in increased loading irregularity; (4) the VMT throughput projections show declining throughput over the next several years. Several comments from environmental groups, State and local agencies, and private citizens in the Valdez area did not object to placing VMT in a separate subcategory provided that emissions were controlled. Based on all of these factors, [illegible] Agency determined th[illegible] VMT should be placed in a separate subcategory.

Once the subcategory for VMT was established, the Agency determined the MACT floor for the subcategory (see Docket A–90–44, Item Number IV–B–2). The VMT presently does not control emissions, therefore the MACT floor is no control. However, the Agency noted that in all of the comments received concerning the establishment of this subcategory, the cost effectiveness associated with requiring controls more stringent than the MACT floor is not prohibitive. The annual emissions reductions anticipated from controlling VMT are expected to be approximately 19,000 Mg (20,900 tons) of VOC and approximately 2,500 Mg (2,750 tons) of HAP. The annual costs anticipated with today's regulation of VMT are expected to be $20 million. The resulting cost effectiveness is approximately $1,050 per megagram based on VOC or approximately $8,000 per megagram based on HAP. The Agency therefore selected a strategy for both MACT and RACT standards for VMT that requires a reduction in emissions by 98 percent efficiency of all throughput loaded from at least two of the terminal's loading berths. Maximum limits for total throughput and throughput at uncontrolled berths (above which all VMT loading berths would be required to reduce emissions by 98 percent) are included as part of these standards.

These throughput limits address the projected decreasing throughput that would necessitate the use of only two berths for routine loading after 2001. Provisions to allow for scheduled maintenance of the controlled berths are also established in the VMT standards.

Some commenters initially noted that the cost of controlling VOC may be high relative to the benefits of controlling VOC at a remote site in an Arctic ozone attainment area. Additionally, some commenters initially stated that the benefits of controlling HAP would not appear to justify the costs. However, the Agency has also considered later comments from the APSC, the State of Alaska, the Prince William Sound Regional Citizens Advisory Committee (a local citizens group) and private citizens in determining MACT/RACT for the VMT. These commenters agreed that a Federal rule mandating control of primary emissions at the APSC was acceptable. After careful consideration of the costs, the environmental impacts and the comments, the Agency decided that MACT for this subcategory was control beyond the level of the MACT floor (see Docket A–44–90, Item Number IV–B–2).

(4) *Expansion of the petroleum refineries source category to include marine tank vessel loading operations collocated at petroleum refinery operations.* The preamble to the proposed petroleum refinery NESHAP published in the **Federal Register** on July 15, 1994 (59 FR 36130) requested comments on whether marine tank vessel loading operations at refineries should be included in emissions averaging. On August 31, 1994, the EPA also reopened the comment period for the proposed NESHAP for Marine Tank Vessel Loading Operations (59 FR 44955) to request comment on whether marine terminals collocated at refineries should be moved to the petroleum refinery source category. During the comment period for the gasoline distribution NESHAP, commenters requested that bulk gasoline terminals contiguous to a refinery be regulated by the petroleum refinery NESHAP.

Several commenters responding to the marine tank vessel loading operations proposed NESHAP supported averaging of refinery process unit emissions with emissions from marine terminals and gasoline distribution operations that are located at refineries. The commenters cited more cost effective emission reduction as the advantage of including these emission points in emissions averaging and specifically commented that the costs per Mg emission reduction of the marine tank vessel loading emission controls are high. These commenters also claimed that emission calculation procedures for loading are well established and that adding marine loading to the averaging provisions will not appreciably increase the complexity of enforcement. Other commenters opposed including marine tank vessel loading and gasoline distribution in emissions averaging. Some commenters claimed that these are separate source categories, and the Act does not permit averaging across source categories. Others were concerned that including marine loading in averages could result in uncontrolled peak emissions.

In the final rules, emissions from marine tank vessel loading operations, bulk gasoline terminal or pipeline breakout station storage vessels, and bulk gasoline terminal loading racks at petroleum refineries are allowed to be included in emissions averages. The petroleum refinery source category and source definitions have been changed to include marine tank vessel loading operations, bulk gasoline terminal and pipeline breakout station storage vessels, equipment leaks, and bulk gasoline terminal loading racks classified under SIC codes 5171 (Petroleum Bulk Stations and Terminals) and 4613 (Refined Petroleum Pipelines) that are located at refinery plant sites. Note that these operations are closely connected with refinery process unit operations since they transfer products of the refinery process units.

A marine tank vessel loading operation or gasoline terminal or pipeline breakout station that is collocated at a petroleum refinery can be considered part of the same source as the refinery subject to this rule. Because these operations are redefined to be part of the source subject to the rule, the prohibition against intersource averaging is not violated. However, all terminals subject to section 183(f) regardless of location will not be allowed to average emissions with petroleum refinery sources.

In keeping with EPA's stated goal of increasing flexibility in rulemakings, this decision has been made to provide more opportunities to average. This decision optimizes the opportunities for refiners to find cost-effective emission reductions from overall facility operations on-site. Costs and cost effectiveness of controlling a particular kind of emission point, such as marine tank vessel loading, will vary depending on many site-specific factors. Emissions averaging allows the owner and operator to find the optimal control strategy for their particular situation.

Including emissions from marine tank vessel loading operations, bulk gasoline terminal or pipeline breakout station storage vessels, and bulk gasoline terminal loading racks in emissions averages will result in equivalent or greater overall HAP emission reduction at each refinery. The averaging provisions are structured such that "debits" generated by not controlling an emission point that otherwise would require control must be balanced by achieving extra control at other refinery emission points covered by the NESHAP.

With regard to commenter's concerns about peak emissions, the quarterly cap on the ratio of debits to credits is intended to limit the possibility of exposure peaks. Furthermore, because loading operations occur fairly frequently and emissions from an individual vessel filling or loading event are relatively small, such emissions are not expected to cause significant exposure peaks. Moreover, no evidence has been presented that emissions averaging would permit a very different mix of emissions to occur than would point-by-point compliance. That is, peaks of exposures from batch streams, storage, and loading operations should be equally likely under point-by-point compliance as under emissions averaging; therefore, emissions averaging does not represent a less effective control strategy. Furthermore, in order to receive approval for an emissions average, the owner or operator is required to demonstrate that the emissions average does not increase the risk or hazard relative to compliance without averaging.

(5) *Revision to the subcategories established based on annual HAP emissions from 1 ton per year to 10 tons per year of any single HAP or 25 tons per year of total HAP.* The proposed standards grouped major source terminals into two subcategories based on HAP emissions: Terminals with HAP emissions of 1 ton per year or more and terminals having HAP emissions of less than 1 ton per year. In the preamble of the proposed rule, the Agency requested comment on establishing these subcategories based on size (i.e., HAP emissions). In the public comments, the Agency found general, though not universal, agreement on establishing subcategories based on size for this source category. However, some of the comments encouraged the Agency to raise the HAP emissions level of the controlled subcategory. The final standards continue to group major source terminals into subcategories based on HAP emissions; however, these subcategories were changed to terminals with emissions of 10 tons per year or more of any single HAP or 25

tons per year or more of total HAP and terminals having HAP emissions of less than 10 tons per year of all single HAP or less than 25 tons per year of total HAP. The Agency based this decision on information found in the comments received. Commenters noted that prior state regulations generally (though not invariably) distinguished between large tank vessel loading facilities that are responsible for the vast majority of emissions and small tank vessel loading facilities that are substantially less cost effective to regulate. (As discussed below, the incremental cost effectiveness of moving from the 10/25 ton per year distinction to the 1-ton delineation is between $80,000 and $112,000 per megagram, while the cost effectiveness of the 10/25 ton delineation is between $14,500 and $24,000 per megagram.)

Though section 112 does not provide any language indicating the criteria for subcategorization, section 112(d)(1) of the Act states that EPA may distinguish among classes, types, and sizes of sources in establishing standards. EPA believes that division of this source category into two subcategories based on size is appropriate in this instance. (See section 2.3.1 of the promulgation TSD for additional discussion of the subcategories based on size.)

(6) *Incorporation of minimum vapor pressure limit.* The Agency received several comments regarding HAP having low vapor pressures. Most of these commenters stated that these low vapor pressure HAPs are not presently controlled under existing State regulations and that the control of these low vapor pressure compounds presents technical challenges and imposes significantly greater costs to the affected industry. The proposed rule enabled individual facilities to determine which products to control to achieve the 93 percent mass limit. Therefore, facilities would not have had to control low vapor pressure liquids under the proposed rule if higher vapor pressure liquids were available for control. Based on the comments received, the Agency altered the format of the MACT standards to explicitly exempt low vapor pressure liquids consistent with State requirements and recalculated the control requirement for liquids above the vapor pressure limit. Therefore, the MACT floor for existing sources is no control for liquids having a vapor pressure below 1.5 psia and 97 percent control for liquids having a vapor pressure 1.5 psia or greater. Because no low vapor pressure liquids are required to be controlled at any of the known existing sources, the MACT floor for new sources is also no control for liquids having a vapor pressure below 1.5 psia and 98 percent control for liquids having a vapor pressure 1.5 psia or greater. The format of the standard was changed to an efficiency format to reflect the new approach.

The issue of cost effectiveness to control emission streams from the loading of these low vapor pressure materials was also a realistic concern of the commenters. As the MACT floor for regulation of such activities is no control, EPA has discretion, based on section 112(d)'s criteria used for going beyond the floor, to institute a vapor pressure limit. Because of the high costs cited by commenters, the Agency elected not to require controls more stringent than the MACT floor for these low vapor pressure HAP. The Agency therefore selected a vapor pressure limit of 1.5 psia for determining the HAP emissions reduction for the final standards. Control of HAP having vapor pressures below this limit is not required to meet the standards.

(7) *Recalculation of the MACT floors.* The MACT floors determined for this final rulemaking are different than those in the proposed rule. These final rule MACT floors reflect changes in the Agency's regulation of marine tank vessel loading including: (1) The establishment of subcategories for offshore terminals and the VMT terminal; (2) the incorporation of a 1.5 psia minimum vapor pressure limit instead of the weighted average as was proposed; and (3) the increase of the levels of the subcategories based on size (i.e., HAP emissions) from 1 ton per year to 10/25 tons per year. The MACT floors for the final rule also reflect comments on the proposed rule. However, the Agency has not changed the way in which the MACT floors for the final rule have been calculated. With the exception of the MACT floor for VMT, the MACT floors for existing and new sources in the marine tank vessel loading source category are shown in Table 1.

Using the criteria established in section 112(d)(3) of the Act, and after inclusion of information supplied in the public comments, the MACT floors for existing source marine terminal subcategories subject to regulation under Title III of the Clean Air Act were determined. Additional information on the determination of these MACT floors is in the docket (Docket Number A–90–44, Item Number IV-A–2). There are approximately 44 major source terminals (not including the VMT) that emit 10 tons per year or more of any one hazardous air pollutant (HAP) or 25 tons per year or more of any combination of HAP. Twenty-three of these terminals are controlled. The resulting MACT floor level of control is a 97 percent reduction of HAP emissions. There are approximately 1,435 terminals that emit less than 10 tons per year of all individual HAP and less than 25 tons per year of combined HAP. Seventy-nine of these terminals reduce emissions from marine tank vessel loading. The resulting MACT floor level of control is no reduction in HAP emissions. The Agency estimated that there are less than 30 offshore terminals (i.e., loading terminals located 0.5 miles or more from shore). The Agency is aware of only 2 controlled offshore terminals. Therefore the resulting MACT floor level of control is no reduction in HAP emissions. The VMT is presently uncontrolled. Since this is the only terminal in the VMT source category, the MACT floor level of control is no control.

The MACT floors for new source marine terminal subcategories subject to regulation under Title III of the Act were also calculated following the criteria in section 112(d)(3) of the Act. For new major source onshore terminals (not including the VMT) regardless of the marine tank vessel loading HAP emissions, the best performing source achieves a 98 percent reduction of controlled emissions. Therefore, the resulting MACT floor for these sources is 98 percent reduction of HAP emissions. For new major source offshore terminals whose marine tank vessel loading HAP emissions exceed the limits for a major source (i.e., 10 tons of any one HAP, or 25 tons of total HAP), the best controlled similar source achieves a 95 percent reduction of controlled emissions. The resulting MACT floor for new offshore major sources is therefore a 95 percent reduction in HAP emissions. Since the VMT subcategory only contains a single source, and it is not possible for an additional source to be added to this subcategory, no new source MACT floor was calculated for the VMT subcategory.

(8) *Incorporation of additional flexibility to the monitoring requirements and compliance provisions.* The proposed rule required parametric monitoring or continuous emissions monitoring (CEM) as a means of showing compliance with the standards. Any exceedance of the parameters or concentration limits established during a performance test would have resulted in a violation of the standard. Comments indicated that this approach was too severe and warranted additional flexibility. Although the Agency continues to believe that parametric monitoring can be used to determine compliance given availability

of sufficient test data to establish the relationship between control performance and associated parameters, in consideration of the lack of test data establishing the relationship between marine tank vessel loading emissions control efficiency and parametric monitoring and because of the batch nature of marine tank vessel loading operations, the Agency has thoroughly revised the monitoring requirements and compliance provisions of the final rule. A requirement for an operation and maintenance (O & M) plan has been added to the final regulation to ensure proper operation of the air pollution control and monitoring equipment. The O & M plan contains an inspection schedule for each component of the control and monitoring equipment. The "compliance" language that appeared in § 63.563 of the proposed rule has been removed. In its place, the final rule contains provisions that require an unscheduled inspection and corrective actions when operating parameters exceed the applicable baseline parameters.

Flexibility has also been added to the methods for determining baseline parameters. Owners or operators of a source required to reduce emissions may establish baseline parameters during a performance test or may choose to set the applicable baseline based on a manufacturer's recommended baseline operating parameter.

Commenters on the proposed rule also requested that additional operating parameters be added to the regulation and that sources be allowed to apply for alternatives to the Administrator. Additional operating parameters have been added to the final regulation for several control devices. A cross reference to the general provisions found in 40 CFR part 63 (containing requirements for establishing alternative monitoring procedures) has been provided to assist sources seeking approval of alternative monitoring procedures. Commenters also requested that time intervals of the monitoring requirements be made consistent for each of the operating parameters. In the final rule, sources are required to monitor and record data points every 15 minutes for each operating parameter.

D. Minor Changes

(1) Revisions to definitions and phrasing have been made to clarify the regulation.

(2) Based on comments received and on changes to the monitoring and compliance provision requirements, the reporting requirements have been changed. Under today's final rule, the Agency is requiring the following one-time reports as specified in the general provisions found in 40 CFR part 63, subpart A: report of startup, construction or modification; notification and report of emissions tests and results and/or initial notification of compliance status; notification and report of physical/operational changes; notification and report of waiver applications; and an engineering report describing the vent system used to vent each vent stream to a control device.

The final rule also requires owners or operators to submit yearly summary reports and yearly reports of excess emissions and monitoring system performance reports. However, in order to provide relief from the reporting requirements to well-controlled sources while assuring compliance with the standards, the Agency has provided that sources whose exceedances have durations that total less than 5 percent of the total reporting time for that reporting period and whose CMS downtime for the reporting period is less than 10 percent of the total operating time for that reporting period may submit only the summary report found in 40 CFR part 63 subpart A instead of both the summary report and the full excess emissions and continuous monitoring system performance report found in § 63.567(d)(2).

The final rule does not require quarterly reports of excess emissions or monitoring parameter exceedances. The Agency agreed with commenters that quarterly reporting did not add sufficient compliance assurance to warrant the high costs associated with the quarterly reporting. Quarterly reporting also did not agree with the revised monitoring and compliance determination requirements found in the final rule (see section 3(c)(5) of this preamble and section 2.6 of the promulgation TSD for additional discussion of the revised monitoring requirements contained in the final rule).

(3) Several commenters requested clarification of the general provisions found in 40 CFR part 63 as they relate to this rule. A table identifying the relationship of the final General Provisions requirements has been added to the final regulation. Language similar to that in the General Provisions has been added to subpart Y in cases where a direct reference to the General Provisions was not appropriate.

(4) References to the proposed Performance Specifications 101 and 102 have been updated to incorporate the Agency's promulgation of Performance Specifications 8 and 9.

E. Other Significant Issues

(1) Regulation Under Sections 183(f) and 112

The EPA proposed to regulate tank vessel loading operations under both sections 183(f) and 112 of the Act. Some commenters suggested that regulation under section 112 was inappropriate because section 183(f) specifically provides for regulation of tank vessel loading operations, whereas section 112 is a more general standard. On the other hand, one commenter believed that regulation was more appropriate, at least for certain facilities, under section 112.

The Agency believes that the best interpretation of the Clean Air Act requires that standards be issued under both sections 183(f) and 112. The language of section 112 of the Act is clear. "[T]he Administrator shall publish * * * a list of *all* categories and subcategories of major sources and area sources of [HAP]." Clean Air Act section 112(c)(1), 42 U.S.C. § 7412(c)(1) [emphasis added]. Further, the Administrator "shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c)." Clean Air Act section 112(d)(1), 42 U.S.C. § 7412(d)(1). The marine tank vessel loading operations source category is clearly a category of major sources, as defined in the Act. The Act is thus clear on its face that this source category should be regulated under section 112.

The fact that two separate sections of the Act regulate the same source category does not necessitate that one of the sections should be ignored. In fact, unless the regulations promulgated under one section would create an inescapable conflict with regulations promulgated under the other section, both must be followed. The regulations promulgated under section 112 are not in conflict with those promulgated under section 183(f). EPA believes that any source regulated under both sections would have no problem meeting the requirements of both standards at the same time.

Congress often provides for regulation of sources under two separate sections. The legislative history indicates that Congress was well aware that sources could be subject to dual regulation under section 112 and other sections of the Act. *See* page 167 of the Senate Committee Report (Report 101–228). In addition, where Congress wanted one section of the Clean Air Act to be exclusive of further regulation under

section 112(d), they said so explicitly; *see* sections 129(h)(2), 112(d)(9). Thus, Congress could have added specific language to section 183(f) preventing the Agency from regulating this source category under section 112; however, it did not do so.

In addition, neither the statute nor the legislative history indicates that Congress intended EPA regulations under section 183(f) to be the exclusive regulation of these sources. In fact, section 183(f) explicitly provides that states may regulate tank vessel loading processes and, in fact, *requires* that any such regulations be as stringent or *more* stringent than the Agency's regulations under section 183(f).

IV. Administrative Requirements

A. Docket

The Docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The Docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system allows members of the public and industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the contents of the Docket will serve as the record in case of judicial review [section 307(d)(7)(A)].

B. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number (2060–0289). An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1679.02) to reflect the changed information requirements of the final rule.

This collection of information has an estimated burden per affected facility of about 685 hours for the first year. In subsequent years, the burden is approximately 280 hours per affected facility. These burden estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Director, Regulatory Information Division, EPA, 401 M St., S.W. (Mail Code 2136), Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA is required to judge whether a regulation is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it will have an annual effect on the economy of $100 million or more. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record (see Docket A–90–44, Item Number IV–H–2).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business "entities," which are small businesses, small organizations, and small governments. It is EPA's current policy to perform a regulatory flexibility analysis whenever a regulation is anticipated to adversely affect any small entities. An economic impact and regulatory flexibility analysis for this regulation was performed and included within the regulatory impact analysis that has been submitted to the public docket (Docket Number A–90–44, Item Number IV–A–2).

The regulatory flexibility analysis identified two types of businesses that could incur adverse economic impacts from this standard, marine terminal operations and marine vessel operations. With regard to marine terminal operations, only the very largest terminal operations are expected to be affected by this standard. The decision not to require controls at existing smaller operations greatly reduces the potential for adverse economic impacts on small terminal operations. Nevertheless, some of the smaller terminal operations that will be affected by this regulation could be put under increased competitive pressure as a result of this rule. Of these terminals, however, it is expected that few or none are independently owned. The rest are part of large integrated petroleum operations. The number of small business terminal operations affected by this regulation is expected to be minimal.

With regard to marine vessel operations, the economic impact analysis considered the majority of these operations to be small businesses. However, the number of vessel operations significantly impacted from the proposed standard is not expected to be substantial. Only a relatively small percentage of U.S. marine transported throughput will be impacted by the standard. Excluding crude oil volume shipped by large tankers from the VMT, no more than one-third of the remaining U.S. marine transported throughput is expected be impacted by the standard. It is expected that an even smaller percentage of U.S. vessels will need to be retrofitted to accommodate the volume of affected products. Only the largest and newest vessels (i.e., those that will cost least to retrofit) will therefore need to be retrofitted. Moreover, it is expected that vessel owners will be able to pass forward most retrofit costs in the form of higher prices. Vessels that cannot retrofit cost effectively and that cannot pass through costs can be dedicated to transporting unregulated products.

Economic Impacts

The EPA performed an economic impact analysis of the regulatory requirements in this regulation. Potential price, output, and employment impacts for affected products and for the marine transport industry were examined. Detailed results from the analysis are included in the regulatory impact analysis for this rule that has been submitted to the public docket.

Estimated maximum price increases for the affected products varied but were not large (less than 1%). These price-increase estimates reflect the control cost increases for transporting crude and products. Because these increases are small and because the elasticities of demand for petroleum products are small, estimated percent output reductions were minimal. Correspondingly, estimated employment reductions were also relatively small.

Potentially significant economic impacts on some of the smaller affected terminal operations were identified, although the decision not to require emission controls for existing smaller operations greatly reduces the potential for adverse impacts on small terminal operations. These potential impacts would result from the high per barrel control cost differential between the smaller and larger terminal operations that would need to control emissions. Some of these smaller terminal operations, to the extent that they are competing with nearby larger or unaffected terminal operations, could have had difficulty raising prices sufficiently to cover cost increases and could have been significantly and adversely impacted by this rule if the rule were applicable to such operations.

The potential economic impact on marine vessel owners was substantially reduced because of the decision not to require emission controls for small terminals in this rulemaking. Because only a relatively small percentage of U.S. marine transported volume of products will be impacted by the standard, only a relatively small percentage of U.S. marine vessels will need to retrofit. Thus only the vessels that will cost least to retrofit (most likely the larger, newer, double-skin vessels) will do so, leading to some degree of dedicated service. Vessel owners that do retrofit probably will be able to pass most retrofit costs forward in terms of higher prices.

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector of $100 million or more. The budgetary impact statement must include: (1) An identification of the Federal law under which the rule is promulgated; (2) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance; (3) if feasible, estimates of the future compliance costs and any disproportionate budgetary effects of the mandate; (4) if feasible, estimates of the effect on the national economy; and (5) a description of the Agency's prior consultation with elected representatives of State, local, and tribal governments and a summary and evaluation of the comments and concerns presented. Section 203 provides that if any small governments may be significantly or uniquely impacted by the rule, the Agency must establish a plan for obtaining input from and informing, educating, and advising any such potentially affected small governments.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative for State, local, and tribal governments and the private sector, that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments in aggregate or by the private sector of $60 million to $100 million per year starting in 2000, EPA has prepared a supplement to the Regulatory Impact Analysis (RIA) in compliance with the Unfunded Mandates Act. The EPA summarizes that supplement as follows:

This final rule is promulgated under section 112 and section 183(f) of the Clean Air Act. The analysis in the RIA developed in preparation of the proposed rule and revised in preparation of the final rule contains the information to be considered in response to the requirements of the Unfunded Mandates Act.

Total expenditures resulting from the final rule are estimated at between $60 million and $100 million (of which less than $75,000 is by State, local, and tribal governments) per year in 1997–2000; and $550,000 (of which $38,000 is by State, local, and tribal governments) per year starting in 2001. There are no federal funds available to assist State, local, and tribal governments in meeting these costs. There are important benefits from VOC and HAP emission reductions because these compounds have significant, adverse impacts on human health and welfare and on the environment. The rule does not have any disproportionate budgetary effects on any particular region of the nation, any State, local, or tribal government, or urban or rural or other type of community. On the contrary, the rule will result in only a minimal increase in the average product rates (less than 1 percent). Moreover, the rule will not have a material effect on the national economy.

Prior to issuing this rule, the EPA provided numerous opportunities (e.g., National Air Pollution Control Techniques Advisory Committee proceedings; public comment period; public hearing; meetings with industry, trade associations, state and local air pollution representatives; State, local, and tribal governments; and concerned citizens) for consultation with interested parties. In general, State and local environmental agencies advocated that EPA adopt more stringent environmental controls. The Agency evaluated the comments and concerns expressed, and the final rule reflects, to the extent consistent with sections 112 and 183(f) of the Act, those comments and concerns. While small governments are not significantly or uniquely affected by the rule, these procedures, as well as additional public conferences and meetings, gave small governments an opportunity to give meaningful and timely input and obtain information, education, and advice on compliance.

The Agency considered several regulatory options in developing the rule. As discussed above, the Agency has found that regulation solely under section 183(f) of the Act would not be consistent with the law. The options selected in the final rule for all subcategories of sources except the VMT subcategory are the least costly and least burdensome alternatives currently available for achieving the objectives of sections 112 and 183(f) of the Act. Regarding regulation of the VMT, the Agency notes that the cost effectiveness of controlling VOC at this terminal is approximately $1,050 per Mg and the cost effectiveness of controlling HAP is approximately $8,000 per Mg. The Agency initially received comments stating that the cost of controlling VOC at this terminal is high relative to the benefits of controlling VOC at a remote site in an Arctic ozone attainment area. Additionally, some commenters initially stated that the benefits of controlling HAP would not appear to justify the costs. However, the Agency has also considered later comments from the APSC, the State of Alaska, the Prince William Sound Regional Citizens Advisory Committee (a local citizens group) and private citizens in determining MACT/RACT for the VMT. These commenters agreed that a Federal rule mandating control of the primary emissions at the APSC was acceptable. After careful consideration of the costs, the environmental impacts and the comments, the Agency decided that MACT for this subcategory was control beyond the level of the MACT floor (see Docket A–44–90, Item Number IV–B–2).

List of Subjects in 40 CFR Parts 9 and 63

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Tank vessel standards.

Dated: July 28, 1995.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 135–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * * * *	
National Emissions Standards for Hazardous Air Pollutants for Source Categories.	
* * * * * * *	
63.563–63.567	2060–0289
* * * * * * *	

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. By adding a new subpart Y consisting of §§ 63.560 through 63.567 to read as follows:

Subpart Y—National Emission Standards for Marine Tank Vessel Loading Operations

Sec.
63.560 Applicability and designation of affected source.
63.561 Definitions.
63.562 Standards.
63.563 Compliance and performance testing.
63.564 Monitoring requirements.
63.565 Test methods and procedures.
63.566 Construction and reconstruction.
63.567 Recordkeeping and reporting requirements.

Subpart Y—National Emission Standards for Marine Tank Vessel Tank Loading Operations

§ 63.560 Applicability and designation of affected source.

(a) *Maximum achievable control technology (MACT) standards.*

(1) The provisions of this subpart pertaining to the MACT standards in § 63.562(b) and (d) of this subpart are applicable to existing and new sources with emissions of 10 or 25 tons, as that term is defined in § 63.561, except as specified in paragraph (d) of this section, and are applicable to new sources with emissions less than 10 and 25 tons, as that term is defined in § 63.561, except as specified in paragraph (d) of this section.

(2) Existing sources with emissions less than 10 and 25 tons are not subject to the emissions standards in § 63.562(b) and (d).

(3) The recordkeeping requirements of § 63.567(j)(4) and the emission estimation requirements of § 63.565(l) apply to existing sources with emissions less than 10 and 25 tons.

(b) *Reasonably available control technology (RACT) standards.*

(1) The provisions of this subpart pertaining to RACT standards in § 63.562(c) and (d) of this subpart are applicable to sources with throughput of 10 M barrels or 200 M barrels, as that term is defined in § 63.561, except as specified in paragraph (d) of this section.

(2) Sources with throughput less than 10 M barrels and 200 M barrels, as that term is defined in § 63.561, are not subject to the emissions standards in § 63.562(c) and (d).

(c) *General Provisions applicability.* Owners or operators of affected sources, as that term is defined in § 63.561, of this subpart must comply with the requirements of subpart A of this part in accordance with the provisions for applicability of subpart A to this subpart in Table 1 of this section.

(d) *Exemptions from MACT and RACT standards.*

(1) This subpart does not apply to emissions resulting from marine tank vessel loading operations, as that term is defined in § 63.561, of commodities with vapor pressures less than 10.3 kilopascals (kPa) (1.5 pounds per square inch, absolute) (psia) at standard conditions, 20°C and 760 millimeters Hg (mm Hg).

(2) The provisions of this subpart pertaining to the MACT standards in § 63.562(b)(2), (3) and (4) and to the RACT standards in § 63.562(c)(3) and (4) do not apply to marine tank vessel loading operations where emissions are reduced by using a vapor balancing system, as that term is defined in § 63.561. The provisions pertaining to the vapor collection system, ship-to-shore compatibility, and vapor tightness of marine tank vessels in § 63.562(b)(1) and (c)(2) do apply.

(3) The provisions of this subpart pertaining to the MACT standards in § 63.562(b)(2), (3), and (4) do not apply to marine tank vessel loading operations that are contiguous with refinery operations at sources subject to and complying with subpart CC of this part, National Emissions Standards for Organic Hazardous Air Pollutants from Petroleum Refineries, except to the extent that any such provisions of this subpart are made applicable by subpart CC of this part.

(4) The provisions of this subpart pertaining to the MACT standards in § 63.562(b) and (d) do not apply to benzene emissions from marine tank vessel loading operations that are subject to and complying with 40 CFR part 61, subpart BB, National Emissions Standards for Benzene Emissions from Benzene Transfer Operations, except that benzene emissions or other HAP emissions (i.e., nonbenzene HAP emissions) from marine tank vessel loading operations that are not subject to subpart BB are subject to the provisions of this subpart.

(5) The provisions of this subpart pertaining to the MACT standards in § 63.562(b) and (d) do not apply to marine tank vessel loading operations at loading berths that only transfer liquids containing organic HAP as impurities, as that term is defined in § 63.561.

(6) The provisions of this subpart do not apply to marine tank vessel loading operations at existing offshore loading terminals, as that term is defined in § 63.561.

(7) The provisions of this subpart do not apply to ballasting operations, as that term is defined in § 63.561.

(e) *Compliance dates.*

(1) *MACT standards compliance dates, except the Valdez Marine Terminal (VMT) source.*

(i) A new or existing source with emissions of 10 or 25 tons, except the VMT source, and a new source with emissions less than 10 and 25 tons, except the VMT source, that has an initial startup date on or before September 20, 1999 shall comply with the provisions of this subpart pertaining to the MACT standards in § 63.562(b) no later than 4 years after the effective date.

(ii) A new source with emissions of 10 or 25 tons, except the VMT source, and a new source with emissions less than 10 and 25 tons, except the VMT source, that has an initial startup date after September 20, 1999 shall comply with provisions of this subpart pertaining to the MACT standards in § 63.562(b) immediately upon startup.

(iii) A source with emissions less than 10 and 25 tons that increases its emissions subsequent to September 20, 1999 such that it becomes a source with emissions of 10 or 25 tons shall comply with the provisions of this subpart pertaining to the MACT standards in § 63.562(b) within 3 years following the exceedance of the threshold level.

(2) *RACT standards compliance dates, except the VMT source.*

(i) A source with throughput of 10 M barrels or 200 M barrels, except the VMT source, with an initial startup date on or before September 21, 1998 shall comply with § 63.562(c)(1) no later than 2 years after the effective date.

(ii) A source with throughput of 10 M barrels or 200 M barrels, except the VMT source, with an initial startup date on or before September 21, 1998 shall comply with the provisions of this subpart pertaining to the RACT standards in § 63.562(c) other than § 63.562(c)(1), no later than 3 years after the effective date.

(iii) A source with throughput of 10 M barrels or 200 M barrels, except the VMT source, with an initial startup date after September 21, 1998 shall comply with the provisions of this subpart pertaining to the RACT standards in § 63.562(c) immediately upon startup.

(iv) A source with throughput less than 10 M barrels and 200 M barrels that increases its throughput subsequent to September 21, 1998 such that it becomes a source with throughput of 10 M barrels or 200 M barrels shall comply with the provisions of this subpart pertaining to the RACT standards in § 63.562(c) within 3 years following the exceedance of the threshold levels.

(v) A source with throughput of 10 M barrels or 200 M barrels may apply for approval from the Administrator for an extension of the compliance date of up to 1 year if it can demonstrate that the additional time is necessary for installation of the control device.

(3) *MACT and RACT compliance dates for the VMT source.*

The VMT source, as that term is defined in § 63.561, shall comply with the provisions of this subpart pertaining to the MACT and RACT standards in § 63.562(d) no later than 30 months after the effective date.

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y

Reference	Applies to affected sources in subpart Y	Comment
63.1(a)(1)	Yes	Additional terms are defined in § 63.561; when overlap between subparts A and Y occurs, subpart Y takes precedence.
63.1(a)(2)	Yes	
63.1(a)(3)	Yes	
63.1(a)(4)	Yes	Subpart Y clarifies the applicability of each paragraph in subpart A to sources subject to subpart Y in this table.
.63.1(a)(5)	No	Reserved.
63.1(a)(6)	Yes	
63.1(a)(7)	Yes	
63.1(a)(8)	Yes	
63.1(a)(9)	No	Reserved.
63.1(a)(10)	Yes	
63.1(a)(11)	Yes	§ 63.567(a) also allows report submissions via facsimile and on electronic media.
63.1(a)(12)	Yes	
63.1(a)(13)	Yes	
63.1(a)(14)	Yes	
63.1(b)(1)	Yes	
63.1(b)(2)	Yes	
63.1(b)(3)	No	§ 63.560 specifies applicability.
63.1(c)(1)	Yes	Subpart Y clarifies the applicability of each paragraph in subpart A to sources subject to subpart Y in this table.
63.1(c)(2)	Yes	Subpart Y is not applicable to area sources.
63.1(c)(3)	No	Reserved.
63.1(c)(4)	Yes	

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y—Continued

Reference	Applies to affected sources in subpart Y	Comment
63.1(c)(5)	No	§ 63.560 specifies applicability.
63.1(d)	No	Reserved.
63.1(e)	Yes	
63.2	Yes	Additional terms are defined in § 63.561; when overlap between subparts A and Y occurs, subpart Y takes precedence.
63.3	Yes	Other units used in subpart Y are defined in the text of subpart Y.
63.4(a)(1)	Yes	
63.4(a)(2)	Yes	
63.4(a)(3)	Yes	
63.4(a)(4)	No	Reserved.
63.4(a)(5)	Yes	
63.4(b)	Yes	
63.4(c)	Yes	
63.5(a)	Yes	
63.5(b)(1)(i)	Yes	
63.5(b)(1)(ii)	No	
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes	
63.5(b)(4)–(5)	No	
63.5(b)(6)	Yes	
63.5(c)	No	Reserved.
63.5(d)(1)(i)	No	See § 63.566(b)(2).
63.5(d)(1)(ii)(A)(H)	Yes	
63.5(d)(1)(ii)(I)	No	Reserved.
63.5(d)(1)(ii)(J)	Yes	
63.5(d)(1)(iii)	Yes	
63.5(d)(2)–(4)	Yes	
63.5(e)	Yes	
63.5(f)(1)(i) and (ii)	Yes	
63.5(f)(1)(iii) and (iv)	No	
63.5(f)(2)	No	See § 63.566(c).
63.6(a)(1)	Yes	
63.6(a)(2)	No	§ 63.560 specifies applicability.
63.6(b)(1)–(5)	No	§ 63.560(e) specifies compliance dates for sources.
63.6(b)(6)	No	Reserved.
63.6(b)(7)	No	§ 63.560(e) specifies compliance dates for sources.
63.6(c)(1)	No	§ 63.560(e) specifies compliance dates for sources.
63.6(c)(2)	No	
63.6(c)(3)–(4)	No	Reserved.
63.6(c)(5)	No	§ 63.560(e) specifies compliance dates for sources.
63.6(d)	No	Reserved.
63.6(e)	No	See § 63.562(e).
63.6(f)(1)	Yes	
63.6(f)(2)(i)	Yes	
63.6(f)(2)(ii)	No	
63.6(f)(2)(iii)	Yes	
63.6(f)(2)(iv)	Yes	
63.6(f)(2)(v)	No	See § 63.562(e)(1).
63.6(f)(3)	Yes	
63.6(g)	Yes	
63.6(h)	No	No opacity monitoring is required under subpart Y.
63.6(i)(1)–(3)	Yes	
63.6(i)(4)(i)(A)	No	
63.6(i)(4)(i)(B)	Yes	
63.6(i)(4)(ii)	No	
63.6(i)(5)–(12)	Yes	
63.6(i)(13)	No	
63.6(i)(14)	Yes	
63.6(i)(15)	No	Reserved.
63.6(i)(16)	Yes	
63.6(j)	Yes	
63.7(a)(1)	Yes	
63.7(a)(2)(i)–(iv)	No	See § 63.563(b)(1).
63.7(a)(2)(v)	Yes	
63.7(a)(2)(vi)	No	
63.7(a)(2)(vii)–(viii)	No	Reserved.
63.7(a)(2)(ix)	No	
63.7(a)(3)	Yes	

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y—Continued

Reference	Applies to affected sources in subpart Y	Comment
63.7(b)	Yes	
63.7(c)(1)–(2)	Yes	The site-specific test plan must be submitted only if requested by the Administrator.
63.7(c)(3)(i)–(ii)(A)	Yes	
63.7(c)(3)(ii)(B)	No	See § 63.565(m)(2).
63.7(c)(3)(iii)	Yes	
63.7(c)(4)	Yes	
63.7(d)	Yes	
63.7(e)	Yes	
63.7(f)	Yes	
63.7(g)(1)	Yes	
63.7(g)(2)	No	Reserved.
63.7(g)(3)	Yes	
63.7(h)	Yes	
63.8(a)(1)–(2)	Yes	
63.8(a)(3)	No	Reserved.
63.8(a)(4)	Yes	
63.8(b)(1)	Yes	
63.8(b)(2)	No	
63.8(b)(3)	Yes	
63.8(c)(1)(i)	Yes	
63.8(c)(1)(ii)	No	
63.8(c)(1)(iii)	Yes	
63.8(c)(2)	Yes	
63.8(c)(3)	Yes	
63.8(c)(4)	No	See § 63.564(a)(3).
63.8(c)(5)	No	
63.8(c)(6)	Yes	See also performance specifications for continuous monitoring systems § 63.564(a)(4).
63.8(c)(7)(i)(A)–(B)	Yes	See also § 63.564(a)(5).
63.8(c)(7)(i)(C)	No	
63.8(c)(7)(ii)	Yes	
63.8(c)(8)	No	See § 63.564(a)(5).
63.8(d)	No	See § 63.562(e)(2)(iv).
63.8(e)(1)–(4)	Yes	
63.8(e)(5)(i)	Yes	
63.8(e)(5)(ii)	No	
63.8(f)(1)	Yes	
63.8(f)(2)(i)–(vii)	Yes	
63.8(f)(2)(viii)	No	
63.8(f)(2)(ix)	Yes	
63.8(f)(3)–(6)	Yes	
63.8(g)	Yes	
63.9(a)(1)	Yes	
63.9(a)(2)	Yes	
63.9(a)(3)	Yes	
63.9(a)(4)	Yes	
63.9(b)(1)(i)	Yes	
63.9(b)(1)(ii)	No	See § 63.567(b)(1)
63.9(b)(1)(iii)	Yes	
63.9(b)(2)	No	See § 63.567(b)(2).
63.9(b)(3)	No	See § 63.567(b)(3).
63.9(b)(4)	No	See § 63.567(b)(4).
63.9(b)(5)	No	See § 63.567(b)(4).
63.9(c)	No	See § 63.567(c).
63.9(d)	No	
63.9(e)	Yes	
63.9(f)	No	
63.9(g)(1)	Yes	
63.9(g)(2)	No	
63.9(g)(3)	Yes	
63.9(h)(1)–(3)	Yes	
63.9(h)(4)	No	Reserved.
63.9(h)(5)–(6)	Yes	
63.9(i)	Yes	
63.9(j)	Yes	
63.10(a)	Yes	
63.10(b)(1)	Yes	
63.10(b)(2)(i)	No	
63.10(b)(2) (ii)–(iii)	Yes	

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y—Continued

Reference	Applies to affected sources in subpart Y	Comment
63.10(b)(2)(iv)	No	
63.10(b)(2)(v)	No	
63.10(b)(2)(vi)–(xiv)	Yes	
63.10(b)(3)	No	See § 63.567(j)(4).
63.10(c)(1)	Yes	
63.10(c)(2)–(4)	No	Reserved.
63.10(c)(5)	Yes	
63.10(c)(6)	No	See § 63.564(a)(5).
63.10(c)(7)	No	
63.10(c)(8)	Yes	
63.10(c)(9)	No	Reserved.
63.10(c)(10)–(13)	Yes	
63.10(c)(14)	No	See § 63.562(d)(2)(iv).
63.10(c)(15)	No	
63.10(d)(1)–(2)	Yes	
63.10(d)(3)	No	See § 63.567(d).
63.10(d)(4)	Yes	
63.10(d)(5)	No	
63.(10)(e)(1)	Yes	
63.10(e)(2)(i)	Yes	
63.10(e)(2)(ii)	No	
63.10(e)(3)(i)–(v)	No	See § 63.567(e)
63.10(e)(3)(vi).	Yes	
63.10(e)(3)(vii)–(viii)	No	See § 63.567(e)
63.10(e)(4)	No	
63.10(f)	Yes	
63.11	Yes	
63.12–63.15	Yes	

§ 63.561 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act or in subpart A of this part.

Affected source means a source with emissions of 10 or 25 tons, a new source with emissions less than 10 and 25 tons, a new major source offshore loading terminal, a source with throughput of 10 M barrels or 200 M barrels, or the VMT source, that is subject to the emissions standards in § 63.562.

Air pollution control device or *control device* means a combustion device or vapor recovery device.

Ballasting operations means the introduction of ballast water into a cargo tank of a tankship or oceangoing barge.

Baseline operating parameter means a minimum or maximum value of a process parameter, established for a control device during a performance test where the control device is meeting the required emissions reduction or established as the manufacturer recommended operating parameter, that, if achieved by itself or in combination with one or more other operating parameters, determines if a control device is operating properly.

Boiler means a device that combusts any fuel and produces steam or heats water or any other heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system.

Car-seal means a seal that is placed on a device used to change the position of a valve (e.g., from open to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Combustion device means all equipment, including, but not limited to, thermal incinerators, catalytic incinerators, flares, boilers, and process heaters used for combustion or destruction of organic vapors.

Commenced means, with respect to construction of an air pollution control device, that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

Commodity means a distinct product that a source loads onto marine tank vessels.

Continuous means, with respect to monitoring, reading and recording (either in hard copy or computer readable form) of data values measured at least once every 15 minutes.

Crude oil means a naturally occurring mixture consisting predominantly of hydrocarbons and/or sulfur, nitrogen, and oxygen derivatives of hydrocarbons that is removed from the earth in a liquid state or is capable of being so removed.

Exceedance or *Variance* means, with respect to parametric monitoring, the operating parameter of the air pollution control device that is monitored as an indication of proper operation of the control device is outside the acceptable range or limits for the baseline parameter given in § 63.563(b)(4) through (9).

Excess emissions means, with respect to emissions monitoring, the concentration of the outlet stream of the air pollution control device is outside the acceptable range or limits for the baseline concentration given in § 63.563(b)(4) through (9).

Flow indicator means a device that indicates whether gas flow is present in a line or vent system.

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kPa (4.0 psia) or greater, that is used as a fuel for internal combustion engines.

Impurity means HAP substances that are present in a commodity or that are produced in a process coincidentally with the primary product or commodity and that are 0.5 percent total HAP by weight or less. An impurity does not serve a useful purpose in the production or use of the primary product or commodity and is not isolated.

Leak means a reading of 10,000 parts per million volume (ppmv) or greater as methane that is determined using the test methods in Method 21, appendix A of part 60 of this chapter.

Lightering or *Lightering operation* means the offshore transfer of a bulk liquid cargo from one marine tank vessel to another vessel.

Loading berth means the loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill marine tank vessels. The loading berth includes those items necessary for an offshore loading terminal.

Loading cycle means the time period from the beginning of filling a single marine tank vessel until commodity flow to the marine tank vessel ceases.

Maintenance allowance means a period of time that an affected source is allowed to perform maintenance on the loading berth without controlling emissions from marine tank vessel loading operations.

Marine tank vessel loading operation means any operation under which a commodity is bulk loaded onto a marine tank vessel from a terminal, which may include the loading of multiple marine tank vessels during one loading operation. Marine tank vessel loading operations do not include refueling of marine tank vessels.

Marine vessel or *Marine tank vessel* means any tank ship or tank barge that transports liquid product such as gasoline or crude oil in bulk.

Nonvapor-tight means any marine tank vessel that does not pass the required vapor-tightness test.

Offshore loading terminal means a location that has at least one loading berth that is 0.81 km (0.5 miles) or more from the shore that is used for mooring a marine tank vessel and loading liquids from shore.

Primary fuel means the fuel that provides the principal heat input to the device. To be considered primary, the fuel must be able to sustain operation of the device without the addition of other fuels.

Process heater means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

Recovery device means an individual unit of equipment, including, but not limited to, a carbon adsorber, condenser/refrigeration unit, or absorber that is capable of and used for the purpose of removing vapors and recovering liquids or chemicals.

Routine loading means, with respect to the VMT source, marine tank vessel loading operations that occur as part of normal facility operation over a loading berth when no loading berths are inoperable due to maintenance.

Secondary fuel means any fuel other than the primary fuel. The secondary fuel provides supplementary heat in addition to the heat provided by the primary fuel and is generally fired through a burner other than the primary burner.

Source(s) means any location where at least one dock or loading berth is bulk loading onto marine tank vessels, except offshore drilling platforms and lightering operations.

Source(s) with emissions less than 10 and 25 tons means major source(s) having aggregate actual HAP emissions from marine tank vessel loading operations at all loading berths as follows:

(1) Prior to the compliance date, of less than 9.1 Mg (10 tons) of each individual HAP calculated on a 24-month annual average basis after September 19, 1997 and less than 22.7 Mg (25 tons) of all HAP combined calculated on a 24-month annual average basis after September 19, 1997, as determined by emission estimation in § 63.565(l) of this subpart; and

(2) After the compliance date, of less than 9.1 Mg (10 tons) of each individual HAP calculated annually after September 20, 1999 and less than 22.7 Mg (25 tons) of all HAP combined calculated annually after September 20, 1999, as determined by emission estimation in § 63.565(l) of this subpart.

Source(s) with emissions of 10 or 25 tons means major source(s) having aggregate actual HAP emissions from marine tank vessels loading operations at all loading berths as follows:

(1) Prior to the compliance date, emissions of 9.1 Mg (10 tons) or more of each individual HAP calculated on a 24-month annual average basis after September 19, 1997 or of 22.7 Mg (25 tons) or more of all HAP combined calculated on a 24-month annual average basis after September 19, 1997, as determined by emission estimation in § 63.565(l); or

(2) After the compliance date, emissions of 9.1 Mg (10 tons) or more of each individual HAP calculated annually after September 20, 1999 or of 22.7 Mg (25 tons) or more of all HAP combined calculated annually after September 20, 1999, as determined by emission estimation in § 63.565(l).

Source(s) with throughput less than 10 M barrels and 200 M barrels means source(s) having aggregate loading from marine tank vessel loading operations at all loading berths as follows:

(1) Prior to the compliance date, of less than 1.6 billion liters (10 million (M) barrels) of gasoline on a 24-month annual average basis and of less than 32 billion liters (200 M barrels) of crude oil on a 24-month annual average basis after September 19, 1996; and

(2) After the compliance date, of less than 1.6 billion liters (10 M barrels) of gasoline annually and of less than 32 billion liters (200 M barrels) of crude oil annually after September 21, 1998.

Source(s) with throughput of 10 M barrels or 200 M barrels means source(s) having aggregate loading from marine tank vessel loading operations at all loading berths as follows:

(1) Prior to the compliance date, of 1.6 billion liters (10 M barrels) or more of gasoline on a 24-month annual average basis or of 32 billion liters (200 M barrels) or more of crude oil on a 24-month annual average basis after September 19, 1996; or

(2) After the compliance date, of 1.6 billion liters (10 M barrels) or more of gasoline annually or of 32 billion liters (200 M barrels) or more of crude oil annually after September 21, 1998.

Terminal means all loading berths at any land or sea based structure(s) that loads liquids in bulk onto marine tank vessels.

Twenty-four-month (24-month) annual average basis means annual HAP emissions, with respect to MACT standards, or annual loading throughput, with respect to RACT standards, from marine tank vessel loading operations averaged over a 24-month period.

Valdez Marine Terminal (VMT) source means the major source that is permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. § 1651 *et seq.*). The source is located in Valdez, Alaska in Prince William Sound.

Vapor balancing system means a vapor collection system or piping system that is designed to collect organic HAP vapors displaced from marine tank vessels during marine tank vessel loading operations and that is designed to route the collected organic HAP vapors to the storage vessel from which the liquid being loaded originated or to compress collected organic HAP vapors and commingle with the raw feed of a process unit.

Vapor collection system means any equipment located at the source, i.e., at the terminal, that is not open to the atmosphere, that is composed of piping, connections, and flow inducing devices, and that is used for containing and transporting vapors displaced during

the loading of marine tank vessels to a control device or for vapor balancing. This does not include the vapor collection system that is part of any marine vessel vapor collection manifold system.

Vapor-tight marine vessel means a marine tank vessel that has demonstrated within the preceding 12 months to have no leaks. A marine tank vessel loaded at less than atmospheric pressure is assumed to be vapor tight for the purpose of this standard.

Volatile organic compounds or *VOC* is as defined in 40 CFR 51.100(s) of this chapter.

§ 63.562 Standards.

(a) The emissions limitations in paragraphs (b), (c), and (d) of this section apply during marine tank vessel loading operations.

(b) *MACT standards, except for the VMT source.*

(1)(i) *Vapor collection system of the terminal.* The owner or operator of a new source with emissions less than 10 and 25 tons and an existing or new source with emissions of 10 or 25 tons shall equip each terminal with a vapor collection system that is designed to collect HAP vapors displaced from marine tank vessels during marine tank vessel loading operations and to prevent HAP vapors collected at one loading berth from passing through another loading berth to the atmosphere, except for those commodities exempted under § 63.560(d).

(ii) *Ship-to-shore compatibility.* The owner or operator of a new source with emissions less than 10 and 25 tons and an existing or new source with emissions of 10 or 25 tons shall limit marine tank vessel loading operations to those vessels that are equipped with vapor collection equipment that is compatible with the terminal's vapor collection system, except for those commodities exempted under § 63.560(d).

(iii) *Vapor tightness of marine vessels.* The owner or operator of a new source with emissions less than 10 and 25 tons and an existing or new source with emissions of 10 or 25 tons shall limit marine tank vessel loading operations to those vessels that are vapor tight and to those vessels that are connected to the vapor collection system, except for those commodities exempted under § 63.560(d).

(2) *MACT standards for existing sources with emissions of 10 or 25 tons.* The owner or operator of an existing source with emissions of 10 or 25 tons, except offshore loading terminals and the VMT source, shall reduce captured HAP emissions from marine tank vessel loading operations by 97 weight-percent, as determined using methods in § 63.565 (d) and (l).

(3) *MACT standards for new sources.* The owner or operator of a new source with emissions less than 10 and 25 tons or a new source with emissions of 10 or 25 tons, except offshore loading terminals and the VMT source, shall reduce HAP emissions from marine tank vessel loading operations by 98 weight-percent, as determined using methods in § 63.565 (d) and (l).

(4) *MACT standards for new major source offshore loading terminals.* The owner or operator of a new major source offshore loading terminal shall reduce HAP emissions from marine tank vessel loading operations by 95 weight-percent, as determined using methods in § 63.565 (d) and (l).

(5) *Prevention of carbon adsorber emissions during regeneration.* The owner or operator of a source subject to paragraph (b)(2), (3), or (4) shall prevent HAP emissions from escaping to the atmosphere from the regeneration of the carbon bed when using a carbon adsorber to control HAP emissions from marine tank vessel loading operations.

(6) *Maintenance allowance for loading berths.* The owner or operator of a source subject to paragraph (b)(2), (3) or (4), may apply for approval to the Administrator for a maintenance allowance for loading berths based on a percent of annual throughput or annual marine tank vessel loading operation time for commodities not exempted in § 63.560(d). The owner or operator shall maintain records for all maintenance performed on the air pollution control equipment. The Administrator will consider the following in approving the maintenance allowance:

(i) The owner or operator expects to be in violation of the emissions standards due to maintenance;

(ii) Due to conditions beyond the reasonable control of the owner or operator, compliance with the emissions standards during maintenance would result in unreasonable economic hardship;

(iii) The economic hardship cannot be justified by the resulting air quality benefit;

(iv) The owner or operator has given due consideration to curtailing marine vessel loading operations during maintenance;

(v) During the maintenance allowance, the owner or operator will endeavor to reduce emissions from other loading berths that are controlled as well as from the loading berth the owner or operator is seeking the maintenance allowance; and

(vi) During the maintenance allowance, the owner or operator will monitor and report emissions from the loading berth to which the maintenance allowance applies.

(c) *RACT standards, except the VMT source.*

(1) *Commencement of construction.* The owner or operator of a source with throughput of 10 M barrels or 200 M barrels, except the VMT source, with an initial startup date on or before September 21, 1998 shall provide the Agency no later than 2 years after the effective date with proof that it has commenced construction of its vapor collection system and air pollution control device.

(2) (i) *Vapor collection system of the terminal.* The owner or operator of a source with throughput of 10 M barrels or 200 M barrels shall equip each terminal with a vapor collection system that is designed to collect VOC vapors displaced from marine tank vessels during loading and to prevent VOC vapors collected at one loading berth from passing through another loading berth to the atmosphere, except for those commodities exempted under § 63.560(d).

(ii) *Ship-to-shore compatibility.* The owner or operator of a source with throughput of 10 M barrels or 200 M barrels shall limit marine tank vessel loading operations to those vessels that are equipped with vapor collection equipment that is compatible with the terminal's vapor collection system, except for those commodities exempted under § 63.560(d).

(iii) *Vapor tightness of marine vessels.* The owner or operator of a source with throughput of 10 M barrels or 200 M barrels shall limit marine tank vessel loading operations to those vessels that are vapor-tight and to those vessels that are connected to the vapor collection system, except for those commodities exempted under § 63.560(d).

(3) *RACT standard for sources with throughput of 10 M or 200 M barrels, except the VMT source.* The owner or operator of a source with throughput of 10 M barrels or 200 M barrels, except the VMT source, shall reduce captured VOC emissions from marine tank vessel loading operations by 98 weight-percent when using a combustion device or reduce captured VOC emissions by 95 weight-percent when using a recovery device, as determined using methods in § 63.565(d) and (l).

(4) The owner or operator of a source with throughput of 10 M barrels or 200 M barrels, except the VMT source, may meet the requirements of paragraph (c)(3) by reducing gasoline loading

emissions to, at most, 1,000 ppmv outlet VOC concentration.

(5) *Prevention of carbon adsorber emissions during regeneration.* The owner or operator of a source with throughput of 10 M barrels or 200 M barrels shall prevent HAP emissions from escaping to the atmosphere from the regeneration of the carbon bed when using a carbon adsorber to control HAP emissions from marine tank vessel loading operations.

(6) *Maintenance allowance for loading berths.* The owner or operator of a source with throughput of 10 M barrels or 200 M barrels may apply for approval to the Administrator for a maintenance allowance for loading berths based on a percent of annual throughput or annual marine tank vessel loading operation time for commodities not exempted in § 63.560(d). The owner or operator shall maintain records for all maintenance performed on the air pollution control equipment. The Administrator will consider the following in approving the maintenance allowance:

(i) The owner or operator expects to be in violation of the emissions standards due to maintenance;

(ii) Due to conditions beyond the reasonable control of the owner or operator, compliance with the emissions standards during maintenance would result in unreasonable economic hardship;

(iii) The economic hardship cannot be justified by the resulting air quality benefit;

(iv) The owner or operator has given due consideration to curtailing marine vessel loading operations during maintenance;

(v) During the maintenance allowance, the owner or operator will endeavor to reduce emissions from other loading berths that are controlled as well as from the loading berth the owner or operator is seeking the maintenance allowance; and

(vi) During the maintenance allowance, the owner or operator will monitor and report emissions from the loading berth to which the maintenance allowance applies.

(d) *MACT and RACT standards for the VMT source.*

(1) (i) *Vapor collection system of the terminal.* The owner or operator of the VMT source shall equip each terminal subject under paragraph (d)(2) with a vapor collection system that is designed to collect HAP vapors displaced from marine tank vessels during marine tank vessel loading operations and to prevent HAP vapors collected at one loading berth from passing through another loading berth to the atmosphere, except for those commodities exempted under § 63.560(d).

(ii) *Ship-to-shore compatibility.* The owner or operator of the VMT source shall limit marine tank vessel loading operations at berths subject under paragraph (d)(2) of this section to those vessels that are equipped with vapor collection equipment that is compatible with the terminal's vapor collection system, except for those commodities exempted under § 63.560(d).

(iii) *Vapor tightness of marine vessels.* The owner or operator of the VMT source shall limit marine tank vessel loading operations at berths subject under paragraph (d)(2) of this section to those vessels that are vapor-tight and to those vessels that are connected to the vapor collection system, except for those commodities exempted under § 63.560(d).

(2) The owner or operator of the VMT source shall reduce captured HAP and VOC emissions by 98 weight-percent, as determined using methods in § 63.565(d) and (l) for loading berths subject under this paragraph according to paragraphs (d)(2)(i), (ii), (iii), and (iv):

(i) The owner or operator of the VMT source shall equip at least two loading berths and any additional berths indicated pursuant to paragraph (d)(2)(iii) with a vapor collection system and air pollution control device and shall load marine tank vessels over loading berths equipped with a vapor collection system and control device to the maximum extent practicable. The owner or operator shall equip all loading berths that will be used for routine loading after March 19, 1998 with a vapor collection system and control device if the annual average daily loading rate for all loading berths exceeds the limits in paragraphs (d)(2)(i)(A), (B), and (C) of this section.

(A) For 1995, 1,630,000 barrels per day; and

(B) For 1996, 1,546,000 barrels per day; and

(C) For 1997, 1,445,000 barrels per day.

(ii) Maximum extent practicable means that the total annual average daily loading over all loading berths not equipped with a vapor collection system and control device shall not exceed the totals in paragraphs (d)(2)(ii)(A) and (B):

(A) *Loading allowances for marine tank vessel loading operations at loading berths not equipped with control devices.* The following maximum annual average daily loading rate for routine loading at loading berths not equipped with control devices in any of the following years shall not exceed:

(*a*) For 1998, 275,000 barrels per day;

(*b*) For 1999, 205,000 barrels per day;

(*c*) For 2000, 118,000 barrels per day;

(*d*) For 2001, 39,000 barrels per day; and

(*e*) For 2002 and subsequent years, no marine tank vessel loading operations shall be performed at berths not equipped with a vapor collection system and control device, except as allowed for maintenance under paragraph (B).

(B) *Maintenance allowances for loading berths subject under paragraph (d)(2)(i).* Beginning in the year 2000, the owner or operator of the VMT source may have a maximum of 40 calendar days per calendar year use of loading berths not equipped with a vapor collection system and control device, in accordance with the limits in paragraph (d)(2)(ii)(B)(*a*), (*b*), or (*c*), to allow for maintenance of loading berths subject to paragraph (d)(2)(i). Beginning in the year 2002, the total annual average daily loading of crude oil over all loading berths not equipped with a vapor collection system and control device shall not exceed the amount stated in paragraph (d)(2)(ii)(B)(*b*). The 40 days allowed for maintenance shall be converted into a compliance measure of annual average daily loading over the loading berths not equipped with a vapor collection system and control device as follows:

(*a*) If the total annual average daily volume of crude oil loaded at the facility was greater than or equal to 1,100,000 barrels per day in the prior calendar year, the maintenance allowance shall not exceed an annual average daily loading of 60,000 barrels per day.

(*b*) If the total annual average daily volume of crude oil loaded at the facility was less than 1,100,000 barrels per day and greater than or equal to 550,000 barrels per day in the prior calendar year, the maintenance allowance for the calendar year shall not exceed Q_m:

$$Q_m = \frac{(P-550{,}000)\times 40}{365}$$

Where:

Q_m = maintenance allowance, barrels per day

P = prior calendar year's average daily volume of crude oil loaded at the facility, barrels per day.

(*c*) If the total annual average daily volume of crude oil loaded at the facility was less than 550,000 barrels per day in the prior calendar year, there shall be no maintenance allowance.

(iii) If the average daily loading rate for the loading berths not equipped with a vapor collection system and control device is greater than the combined

amounts in any year listed in paragraphs (d)(2)(i)(A), (B), and (C) and (d)(2)(ii)(A) and (B), then the owner or operator of the VMT source shall equip all loading berths used for routine loading with a vapor collection system and control device within 2 years of the exceedance except that in an emergency situation the Administrator may, instead of requiring controls, approve an alternative plan to reduce loading over the unequipped berth(s) to a level which will ensure compliance with the applicable limit. Beginning in the year 2002, the owner or operator of the VMT source shall equip all uncontrolled loading berths used for marine tank vessel loading operations beyond the maintenance allowance in paragraph (d)(2)(ii)(B) with a vapor collection system and control device.

(iv) The owner or operator of the VMT source shall develop a program to communicate to relevant facility operations and marine transportation personnel and engage their active and consistent participation in honoring the intent and goal of minimizing loaded volumes over the unequipped berths and maximizing the loaded volumes at the berths equipped with a vapor collection system and control device to prevent exceedance of the load volume limits in paragraphs (d)(2)(ii)(A) and (B). This program is to be presented semi-annually during the first year of compliance and annually thereafter until the use of unequipped berths for routine loading is no longer required.

(3) The owner or operator of the VMT source shall submit annual reports on or before January 31 of each year to the Administrator certifying the annual average daily loading rate for the previous calendar year. Beginning on January 31, 1996, for the reported year 1995, the annual report shall specify the annual average daily loading rate over all loading berths. Beginning on January 31, 1999, for the reported year 1998, the annual report shall specify the annual average daily loading rate over all loading berths, over each loading berth equipped with a vapor collection system and control device, and over each loading berth not equipped with a vapor collection system and control device. The annual average daily loading rate under this section is calculated as the total amount of crude oil loaded during the calendar year divided by 365 days or 366 days, as appropriate.

(e) *Operation and maintenance requirements for air pollution control equipment and monitoring equipment for affected sources.* At all times, including periods of startup, shutdown, and malfunction, owners or operators of affected sources shall operate and maintain a source, including associated air pollution control equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(1) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards by evaluating an owner or operator's conformance with operation and maintenance requirements.

(2) The owner or operator of an affected source shall develop and implement a written operation and maintenance plan that describes in detail a program of corrective action for varying (i.e., exceeding baseline parameters) air pollution control equipment and monitoring equipment, based on monitoring requirements in § 63.564, used to comply with these emissions standards. The plan shall also identify all routine or otherwise predictable continuous monitoring system (thermocouples, pressure transducers, continuous emissions monitors (CEMS), etc.) variances.

(i) The plan shall specify procedures (preventive maintenance) to be followed to ensure that pollution control equipment and monitoring equipment functions properly and variances of the control equipment and monitoring equipment are minimal.

(ii) The plan shall identify all operating parameters to be monitored and recorded for the air pollution control device as indicators of proper operation and shall establish the frequency at which the parameters will be monitored (see § 63.564).

(iii) Owners or operators of affected sources shall incorporate a standardized inspection schedule for each component of the control device used to comply with the emissions standards in § 63.562(b), (c), and (d). To satisfy the requirements of this paragraph, the owner or operator may use the inspection schedule recommended by the vendor of the control system or any other technical publication regarding the operation of the control system.

(iv) Owners or operators shall develop and implement a continuous monitoring system (CMS) quality control program. The owner or operator shall develop and submit to the Administrator for approval upon request a site-specific performance evaluation test plan for the CMS performance evaluation required in § 63.8(e) of subpart A of this part. Each quality control program shall include, at a minimum, a written protocol that describes procedures for initial and any subsequent calibration of the CMS; determination and adjustment of the calibration drift of the CMS; preventive maintenance of the CMS, including spare parts inventory; data recording, calculations, and reporting; and accuracy audit procedures, including sampling and analysis methods. The owner or operation shall maintain records of the procedures that are part of the quality control program developed and implemented for CMS.

(3) Based on the results of the determination made under paragraph (e)(2), the Administrator may require that an owner or operator of an affected source make changes to the operation and maintenance plan for that source. Revisions may be required if the plan:

(i) Does not address a variance of the air pollution control equipment or monitoring equipment that has occurred that increases emissions;

(ii) Fails to provide for operation during a variance of the air pollution control equipment or the monitoring equipment in a manner consistent with safety and good air pollution control practices; or

(iii) Does not provide adequate procedures for correcting a variance of the air pollution control equipment or monitoring equipment as soon as reasonable.

(4) If the operation and maintenance plan fails to address or inadequately addresses a variance event at the time the plan was initially developed, the owner or operator shall revise the operation and maintenance plan within 45 working days after such an event occurs. The revised plan shall include procedures for operating and maintaining the air pollution control equipment or monitoring equipment during similar variance events and a program for corrective action for such events.

(5) The operation and maintenance plan shall be developed by the source's compliance date. The owner or operator shall keep the written operation and maintenance plan on record to be made available for inspection, upon request, by the Administrator for the life of the source. In addition, if the operation and maintenance plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the plan on record to be made available for inspection upon request by the Administrator for a period of 5 years after each revision to the plan.

(6) To satisfy the requirements of the operation and maintenance plan, the owner or operator may use the source's standard operating procedures (SOP) manual, an Occupational Safety and Health Administration (OSHA) plan, or other existing plans provided the alternative plans meet the requirements of this section and are made available for inspection when requested by the Administrator.

§ 63.563 Compliance and performance testing.

(a) The following procedures shall be used to determine compliance with the emissions limits under § 63.562(b)(1), (c)(2), and (d)(1):

(1) *Vent stream by-pass requirements for the terminal's vapor collection system.*

(i) In accordance with § 63.562(b)(1)(i), (c)(2)(i), and (d)(1)(i), each valve in the terminal's vapor collection system that would route displaced vapors to the atmosphere, either directly or indirectly, shall be secured closed during marine tank vessel loading operations either by using a car-seal or a lock-and-key type configuration, or the by-pass line from the valve shall be equipped with a flow indicator, except for those valves used for pressure/vacuum relief, analyzers, instrumentation devices, sampling, and venting for maintenance. Marine tank vessel loading operations shall not be performed with open by-pass lines.

(ii) Repairs shall be made to valves, car-seals, or closure mechanisms no later than 15 days after a change in the position of the valve or a break in the car-seal or closure mechanism is detected or no later than prior to the next marine tank vessel loading operation, whichever is later.

(2) *Ship-to-shore compatibility of vapor collection systems.* Following the date on which the initial performance test is completed, marine tank vessel loading operations must be performed only if the marine tank vessel's vapor collection equipment is compatible to the terminal's vapor collection system; marine tank vessel loading operations must be performed only when the marine tank vessel's vapor collection equipment is connected to the terminal's vapor collection system, as required in § 63.562(b)(1)(ii), (c)(2)(ii), and (d)(1)(ii).

(3) *Pressure/vacuum settings for the marine tank vessel's vapor collection equipment.* During the initial performance test required in paragraph (b)(1) of this section, the owner or operator of an affected source shall demonstrate compliance with operating pressure requirements of 33 CFR 154.814 using the procedures in § 63.565(b).

(4) *Vapor-tightness requirements of the marine vessel.* The owner or operator of an affected source shall use the procedures in paragraph (a)(4)(i), (ii), (iii), or (iv) of this section to ensure that marine tank vessels are vapor tight, as required in § 63.562(b)(1)(iii), (c)(2)(iii), and (d)(1)(iii).

(i) *Pressure test documentation for determining vapor tightness of the marine vessel.* The owner or operator of a marine tank vessel, who loads commodities containing HAP not determined to be exempt under § 63.560(d) at an affected source, shall provide a copy of the vapor-tightness pressure test documentation described in § 63.567(i) for each marine tank vessel prior to loading. The date of the test listed in the documentation must be within the preceding 12 months, and the test must be conducted in accordance with the procedures in § 63.565(c)(1). Following the date on which the initial performance test is completed, the affected source must check vapor-tightness pressure test documentation for marine tank vessels loaded at positive pressure.

(ii) *Leak test documentation for determining vapor tightness of the marine vessel.* If no documentation of the vapor tightness pressure test as described in paragraph (a)(4)(i) of this section is available, the owner or operator of a marine tank vessel, who loads commodities containing HAP not determined to be exempt under § 63.560(d) at an affected source, shall provide the leak test documentation described in § 63.567(i) for each marine tank vessel prior to loading. The date of the test listed in the documentation must be within the preceding 12 months, and the test must be conducted in accordance with the procedures in § 63.565(c)(2). If the marine tank vessel has failed its most recent vapor-tightness leak test at that terminal, the owner or operator of the non-vapor-tight marine tank vessel shall provide documentation that the leaks detected during the previous vapor-tightness test have been repaired and documented with a successful vapor-tightness leak test described in § 63.565(c)(2) conducted during loading. If the owner or operator of the marine tank vessel can document that repair is technically infeasible without cleaning and gas freeing or dry-docking the vessel, the owner or operator of the affected source may load the marine tank vessel. Following the date on which the initial performance test is completed, an affected source must check the vapor-tightness leak test documentation for marine tank vessels loaded at positive pressure.

(iii) *Leak test performed during loading using Method 21 for determining vapor tightness of the marine vessel.* If no documentation of vapor tightness as described in paragraphs (a)(4)(i) or (ii) of this section is available, the owner or operator of a marine tank vessel, who loads commodities containing HAP not determined to be exempt under § 63.560(d) at an affected source, shall perform a leak test of the marine tank vessel during marine tank vessel loading operation using the procedures described in § 63.565(c)(2).

(A) If no leak is detected, the owner or operator of a marine tank vessel shall complete the documentation described in § 63.567(i) prior to departure of the vessel.

(B) If a leak is detected, the owner or operator of the marine tank vessel shall document the vapor-tightness failure for the marine tank vessel prior to departure of the vessel. The leaking component shall be repaired prior to the next marine tank vessel loading operation at a controlled terminal unless the repair is technically infeasible without cleaning and gas freeing or dry-docking the vessel. If the owner or operator of the vessel provides documentation that repair of such equipment is technically infeasible without cleaning and gas freeing or dry-docking the vessel, the equipment responsible for the leak will be excluded from future Method 21 tests until repairs are effected. A copy of this documentation shall be maintained by the owner or operator of the affected source. Repair of the equipment responsible for the leak shall occur the next time the vessel is cleaned and gas freed or dry-docked. For repairs that are technically feasible without dry-docking the vessel, the owner or operator of the affected source shall not load the vessel again unless the marine tank vessel owner or operator can document that the equipment responsible for the leak has been repaired.

(iv) *Negative pressure loading.* The owner or operator of an affected source shall ensure that a marine tank vessel is loaded with the product tank below atmospheric pressure (i.e., at negative gauge pressure). The pressure shall be measured between the facility's vapor connection and its manual isolation valve, and the measured pressure must be below atmospheric pressure. Following the date on which the initial performance test is completed, marine tank vessel loading operations for nonvapor-tight vessels must be performed below atmospheric pressure

(i.e., at negative gauge pressure) in the product tank.

(b) *Compliance determination for affected sources.* The following procedures shall be used to determine compliance with the emissions limits under § 63.562(b), (c), and (d).

(1) *Initial performance test.* An initial performance test shall be conducted using the procedures listed in § 63.7 of subpart A of this part according to the applicability in Table 1 of § 63.560, the procedures listed in this section, and the test methods listed in § 63.565. The initial performance test shall be conducted within 180 days after the compliance date for the specific affected source. During this performance test, sources subject to MACT standards under § 63.562(b)(2), (3), (4), and (5) and (d)(2) shall determine the reduction of HAP emissions, as VOC, for all combustion or recovery devices other than flares. Sources subject to RACT standards under § 63.562(c)(3), (4), and (5) and (d)(2) shall determine the reduction of VOC emissions for all combustion or recovery devices other than flares.

(2) *Performance test exemptions.* An initial performance test required in this section and in § 63.565(d) and the continuous monitoring in § 63.564(e) is not required in the following cases:

(i) When a boiler or process heater with a design heat input capacity of 44 Megawatts or less is used to comply with § 63.562(b)(2), (3), or (4), (c)(3) or (4), or (d)(2) and the vent stream is used as the primary fuel or with the primary fuel;

(ii) When a boiler or process heater with a design heat input capacity of 44 Megawatts or greater is used to comply with § 63.562(b)(2), (3) or (4), (c)(3) or (4), or (d)(2); or

(iii) When a boiler subject to 40 CFR part 266, subpart H, "Hazardous Waste Burned in Industrial Furnaces," that has demonstrated 99.99 percent destruction or recovery efficiency is used to comply with § 63.562(b)(2), (3), or (4), (c)(3) or (4), or (d)(2).

(3) *Operation and maintenance inspections.* If the 3-hour or 3-cycle block average operating parameters in paragraphs (b)(4) through (9) of this section, outside the acceptable operating ranges, are measured and recorded, i.e., variances of the pollution control device or monitoring equipment, the owner or operator of the affected source shall perform an unscheduled inspection of the control device and monitoring equipment and review of the parameter monitoring data. The owner or operator of the affected source shall perform an inspection and review when total parameter variance time for the control device is greater than 10 percent of the operating time for marine tank vessel loading operations on a 30-day, rolling-average basis. The inspection and review shall be conducted within 24 hours after passing the allowable variance time of 10 percent. The inspection checklist from the requirements of § 63.562(e)(2)(iii) and the monitoring data from requirements in §§ 63.562(e)(2)(ii) and 63.564 should be used to identify any maintenance problems that may be associated with the variance. The unscheduled inspection should encompass all components of the control device and monitoring equipment that can be inspected while in operation. If any maintenance problem is identified during the inspection, the owner or operator of the affected source must take corrective action (e.g., adjustments to operating controls, etc.) as soon as practicable. If no immediate maintenance problems are identified from the inspection performed while the equipment is operating, a complete inspection in accordance with § 63.562(e)(2) must be conducted prior to the next marine tank vessel loading operation and corrective action (e.g., replacement of defective parts) must be taken as soon as practicable for any maintenance problem identified during the complete inspection.

(4) *Combustion device, except flare.* During the initial performance test required in paragraph (b)(1) of this section, the owner or operator shall determine the efficiency of and/or the outlet VOC concentration from the combustion device used to comply with § 63.562(b)(2), (3), and (4), (c)(3) and (4), and (d)(2) using the test methods in § 63.565(d). The owner or operator shall comply with paragraph (b)(4)(i) or (ii) of this section.

(i) *Outlet VOC concentration limit for required percent combustion efficiency.* The owner or operator shall establish as an operating parameter the baseline VOC concentration using the procedures described in § 63.565(g). Following the date on which the initial performance test is completed, the facility shall be operated with a block average outlet VOC concentration as determined in § 63.564(e)(1) no more than 20 percent above the baseline VOC concentration.

(ii) *Baseline temperature for required percent combustion efficiency.* The owner or operator shall establish as an operating parameter the baseline temperature using the procedures described in § 63.565(f). Following the date on which the initial performance test is completed, the facility shall be operated with the block average temperature as determined in § 63.564(e)(2) or (3) no more than 28°C (50°F) below the baseline temperature.

(5) *Flare.* During the initial performance test required in paragraph (b)(1) of this section, the owner or operator shall establish that the flare used to comply with the emissions standards in § 63.562(b)(2), (3), and (4), (c)(3) and (4), and (d)(2) is in compliance with the design requirements for flares cited in § 63.565(e). Following the date on which the initial determination of compliance is established, the facility shall operate with the presence of a pilot flame in the flare, as determined in § 63.564(f).

(6) *Carbon adsorber.* During the initial performance test required in paragraph (b)(1) of this section, the owner or operator shall determine the efficiency of and/or the outlet VOC concentration from the recovery device used to comply with § 63.562(b)(2), (3), (4), and (5), (c)(3), (4), and (5), and (d)(2) using the test methods in § 63.565(d). The owner or operator shall comply with paragraph (b)(6)(i) as well as either paragraph (b)(6)(ii) or (iii) of this section. The owner or operator of affected sources complying with paragraph (b)(6)(ii)(B) or (C) of this section shall conduct a performance test once each year.

(i) *Compliance determination for carbon bed regeneration.* Desorbed hydrocarbons from regeneration of the off-line carbon bed shall be vented to the on-line carbon bed.

(ii) *Baseline parameters for required percent recovery efficiency.* The owner or operator shall comply with paragraph (b)(6)(ii)(A), (B), or (C) of this section.

(A) *Outlet VOC concentration limit for required percent recovery efficiency.* The owner or operator shall establish as an operating parameter the baseline VOC concentration using the procedures described in § 63.565(g). Following the date on which the initial performance test is completed, the facility shall be operated with a block average outlet VOC concentration as determined in § 63.564(g)(1) no more than 20 percent above the baseline VOC concentration.

(B) *Carbon adsorbers with vacuum regeneration.* The owner or operator shall establish as operating parameters the baseline regeneration time for the vacuum stage of carbon bed regeneration using the procedures described in § 63.565(h) and shall establish the baseline vacuum pressure (negative gauge pressure) using the procedures described in § 63.565(i). Following the date on which the initial performance test is completed, the facility shall be operated with block average regeneration time of the vacuum stage of carbon bed regeneration as determined in § 63.564(g)(2) no more than 20 percent below the baseline regeneration time, and the facility shall be operated with the block average vacuum pressure (negative gauge pressure) as determined in § 63.564(g)(2) no more than 20 percent above the baseline vacuum pressure.

(C) *Carbon adsorbers with steam regeneration.* The owner or operator shall establish as operating parameters the baseline total stream flow using the procedures described in § 63.565(j) and a baseline carbon bed temperature after cooling of the bed using the procedures in § 63.565(f)(2). Following the date on which the initial performance test is completed, the facility shall be operated with the total stream flow, as determined in § 63.564(g)(3), no more than 20 percent below the baseline stream flow and with the carbon bed temperature (measured within 15 minutes after completion of the cooling cycle), as determined in § 63.564(g)(3), no more than 10 percent or 5.6°C (10°F) above the baseline carbon bed temperature, whichever is less stringent.

(iii) *Outlet VOC concentration of 1,000 ppmv for gasoline loading.* Following the date on which the initial performance test is completed, the facility shall operate with a block average outlet VOC concentration as determined in § 63.564(g)(1) of no more than 1,200 ppmv VOC.

(7) *Condenser/refrigeration unit.* During the initial performance test required in paragraph (b)(1) of this section, the owner or operator shall determine the efficiency of and/or the outlet VOC concentration from the recovery device used to comply with § 63.562(b)(2), (3), and (4), (c)(3) and (4), and (d)(2) using the test methods in § 63.565(d). The owner or operator shall comply with either paragraph (b)(7)(i), (ii), or (iii) of this section.

(i) *VOC outlet concentration limit for required percent recovery efficiency.* The owner or operator shall establish as an operating parameter the baseline VOC concentration using the procedures described in § 63.565(g). Following the date on which the initial performance test is completed, the facility shall be operated with a block average outlet VOC concentration as determined in § 63.564(h)(2) no more than 20 percent above the baseline VOC concentration.

(ii) *Baseline temperature for required percent recovery efficiency.* The owner or operator shall establish as an operating parameter the baseline temperature using the procedures described in § 63.565(f). Following the date on which the initial performance test is completed, the facility shall operate with a block average temperature, as determined in § 63.564(h)(1), no more than 28°C (50°F) above the baseline temperature.

(iii) *Baseline parameters for 1,000 ppmv VOC concentration limit for gasoline loading.* The owner or operator shall monitor either the outlet VOC concentration or the outlet temperature of the unit. For sources monitoring temperature, the owner or operator shall establish as an operating parameter the baseline temperature using the procedures described in § 63.565(f). Following the date on which the initial performance test is completed, the facility shall operate with a block average outlet VOC concentration, as determined in § 63.564(h)(2), of no more than 1,200 ppmv VOC or with a block average temperature, as determined in § 63.564(h)(1), no more than 28°C (50°F) above the baseline temperature.

(8) *Absorber.* During the initial performance test required in paragraph (b)(1) of this section, the owner or operator shall determine the efficiency of the absorber and/or the outlet VOC concentration from the recovery device used to comply with § 63.562(b)(2), (3), and (4), (c)(3) and (4), and (d)(2) using the test methods in § 63.565(d). The owner or operator shall comply with either paragraph (b)(8)(i) or (ii) of this section.

(i) *VOC outlet concentration limit for required percent recovery efficiency.* The owner or operator shall establish as an operating parameter the baseline VOC concentration using the procedures described in § 63.565(g). Following the date on which the initial performance test is completed, the facility shall be operated with a block average outlet VOC concentration as determined in § 63.564(i)(1) no more than 20 percent above the baseline VOC concentration.

(ii) *Baseline liquid-to-vapor ratio for required percent recovery efficiency.* The owner or operator shall establish as an operating parameter the baseline liquid flow to vapor flow (L/V) ratio using the procedures described in § 63.565(k). Following the date on which the initial performance test is completed, the facility shall operate with a block average L/V ratio, as determined in § 63.564(i)(2), no more than 20 percent below the baseline L/V ratio.

(9) *Alternative control devices.* For sources complying with § 63.562(b)(2), (3), and (4), (c)(3) and (4), and (d)(2) with the use of a control technology other than the devices discussed in paragraphs (b)(4) through (8) of this section, the owner or operator of an affected source shall provide to the Administrator information describing the design and operation of the air pollution control system, including recommendations for the operating parameter(s) to be monitored to indicate proper operation and maintenance of the air pollution control system. Based on this information, the Administrator shall determine the operating parameter(s) to be established during the performance test. During the initial performance test required in paragraph (b)(1) of this section, the owner or operator shall determine the efficiency of the air pollution control system using the test methods in § 63.565(d). The device shall achieve at least the percent destruction efficiency or recovery efficiency required under § 63.562(b)(2), (3), and (4), (c)(3) and (4), and (d)(2). The owner or operator shall establish the operating parameter(s) approved by the Administrator. Following the date on which the initial performance test is complete, the facility shall operate either above or below a maximum or minimum operating parameter, as appropriate.

(10) *Emission estimation.* The owner or operator of a source subject to § 63.562(b)(2), (3), and (4) shall use the emission estimation procedures in § 63.565(l) to calculate HAP emissions.

(c) *Leak detection and repair for vapor collection systems and control devices.* The following procedures are required for all sources subject to § 63.562(b), (c), or (d).

(1) *Annual leak detection and repair for vapor collection systems and control devices.* The owner or operator of an affected source shall inspect and monitor all ductwork and piping and connections to vapor collection systems and control devices once each calendar year using Method 21.

(2) *Ongoing leak detection and repair for vapor collection systems and control devices.* If evidence of a potential leak is found by visual, audible, olfactory, or any other detection method, all ductwork and piping and connections to vapor collection systems and control devices shall be inspected to the extent necessary to positively identify the potential leak and any potential leaks shall be monitored within 5 days by Method 21. Each detection of a leak shall be recorded, and the leak shall be tagged until repaired.

(3) When a leak is detected, a first effort to repair the vapor collection system and control device shall be made within 15 days or prior to the next marine tank vessel loading operation, whichever is later.

§ 63.564 Monitoring requirements.

(a) (1) The owner or operator of an affected source shall comply with the

monitoring requirements in § 63.8 of subpart A of this part in accordance with the provisions for applicability of subpart A to this subpart in Table 1 of § 63.560 and the monitoring requirements in this section.

(2) Each owner or operator of an affected source shall monitor the parameters specified in this section. All monitoring equipment shall be installed such that representative measurements of emissions or process parameters from the source are obtained. For monitoring equipment purchased from a vendor, verification of the operational status of the monitoring equipment shall include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(3) Except for system breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level calibration drift adjustments, all continuous parametric monitoring systems (CPMS) and CEMS shall be in continuous operation while marine tank vessel loading operations are occuring and shall meet minimum frequency of operation requirements. Sources monitoring by use of CEMS and CPMS shall complete a minimum of one cycle of operation (sampling, analyzing, and/or data recording) for each successive 15-minute period.

(4) The owner or operator of a CMS installed in accordance with these emissions standards shall comply with the performance specifications either in performance specification (PS) 8 in 40 CFR part 60, appendix B for CEMS or in § 63.7(c)(6) of subpart A of this part for CPMS.

(5) A CEMS is out of control when the measured values (i.e., daily calibrations, multipoint calibrations, and performance audits) exceed the limits specified in either PS 8 or in § 63.8(c)(7) of subpart A of this part. The owner or operator of a CEMS that is out of control shall submit all information concerning out of control periods, including start and end dates and hours and descriptions of corrective actions taken, in the excess emissions and continuous monitoring system performance report required in § 63.567(e).

(b) *Vapor collection system of terminal.* Owners or operators of a source complying with § 63.563(a)(1) that uses a vapor collection system that contains valves that could divert a vent stream from a control device used to comply with the provisions of this subpart shall comply with paragraph (b)(1), (2), or (3) of this section.

(1) Measure and record the vent stream flowrate of each by-pass line once every 15 minutes. The owner or operator shall install, calibrate, maintain, and operate a flow indicator and data recorder. The flow indicator shall be installed immediately downstream of any valve (i.e., entrance to by-pass line) that could divert the vent stream from the control device to the atmosphere.

(2) Measure the vent stream flowrate of each by-pass line once every 15 minutes. The owner or operator shall install, calibrate, maintain, and operate a flow indicator with either an audio or visual alarm. The flow indicator and alarm shall be installed immediately downstream of any valve (i.e., entrance to by-pass line) that could divert the vent stream from the control device to the atmosphere. The alarm shall be checked every 6 months to demonstrate that it is functioning properly.

(3) Visually inspect the seal or closure mechanism once during each marine tank vessel loading operation and at least once every month to ensure that the valve is maintained in the closed position and that the vent stream is not diverted through the by-pass line; record all times when the car seals have been broken and the valve position has been changed. Each by-pass line valve shall be secured in the closed position with a car-seal or a lock-and-key type configuration.

(c) *Pressure/vacuum settings for the marine tank vessel's vapor collection equipment.* Owners or operators of a source complying with § 63.563(a)(3) shall measure continuously the operating pressure of the marine tank vessel during loading.

(d) *Loading at negative pressure.* Owners or operators of a source complying with § 63.563(a)(4)(iv) that load vessels at less than atmospheric pressure (i.e., negative gauge pressure) shall measure and record the loading pressure. The owner or operator shall install, calibrate, maintain, and operate a recording pressure measurement device (magnehelic gauge or equivalent device) and an audible and visible alarm system that is activated when the pressure vacuum specified in § 63.563(a)(4)(iv) is not attained. The owner or operator shall place the alarm system so that it can be seen and heard where cargo transfer is controlled. The owner or operator shall verify the accuracy of the pressure device once each calendar year with a reference pressure monitor (traceable to National Institute of Standards and Technology (NIST) standards or an independent pressure measurement device dedicated for this purpose).

(e) *Combustion device, except flare.* For sources complying with § 63.563(b)(4), use of a combustion device except a flare, the owner or operator shall comply with paragraph (e)(1), (2), or (3) of this section. Owners or operators complying with paragraphs (e)(2) or (3) shall also comply with paragraph (e)(4) of this section.

(1) *Outlet VOC concentration.* Monitor the VOC concentrations at the exhaust point of the combustion device and record the output from the system. For sources monitoring the outlet VOC concentration established during the performance test, a data acquisition system shall record a concentration every 15 minutes and shall compute and record an average concentration each cycle (same time period or cycle as the performance test) and a 3-cycle block average concentration every third cycle. For sources monitoring the 1,000 ppmv VOC concentration for gasoline loading, a data acquisition system shall record a concentration every 15 minutes and shall compute and record an average concentration each hour and a 3-hour block average concentration every third hour. The owner or operator will install, calibrate, operate, and maintain a CEMS consistent with the requirements of PS 8 to measure the VOC concentration. The daily calibration requirements are required only on days when marine tank vessel loading operations occur.

(2) *Operating temperature determined during performance testing.* If the baseline temperature was established during the performance test, the data acquisition system shall record the temperature every 15 minutes and shall compute and record an average temperature each cycle (same time period or cycle of the performance test) and a 3-cycle block average every third cycle.

(3) *Manufacturer's recommended operating temperature.* If the baseline temperature is based on the manufacturer recommended operating temperature, the data acquisition system shall record the temperature every 15 minutes and shall compute and record an average temperature each hour and a 3-hour block average every third hour.

(4) *Temperature monitor.* The owner or operator shall install, calibrate, operate, and maintain a temperature monitor accurate to within ±5.6°C (±10°F) or within 1 percent of the baseline temperature, whichever is less stringent, to measure the temperature. The monitor shall be installed at the exhaust point of the combustion device but not within the combustion zone. The owner or operator shall verify the accuracy of the temperature monitor once each calendar year with a reference temperature monitor (traceable to National Institute of Standards and

Technology (NIST) standards or an independent temperature measurement device dedicated for this purpose). During accuracy checking, the probe of the reference device shall be at the same location as that of the temperature monitor being tested.

(f) *Flare.* For sources complying with § 63.563(b)(5), use of a flare, the owner or operator shall monitor and record continuously the presence of the flare pilot flame. The owner or operator shall install, calibrate, maintain, and operate a heat sensing device (an ultraviolet beam sensor or thermocouple) at the pilot light to indicate the presence of a flame during the entire loading cycle.

(g) *Carbon adsorber.* For sources complying with § 63.563(b)(6), use of a carbon adsorber, the owner or operator shall comply with paragraph (g)(1), (2), or (3) of this section.

(1) *Outlet VOC concentration.* Monitor the VOC concentrations at the exhaust point of each carbon adsorber unit and record the output from the system. For sources monitoring the outlet VOC concentration established during the performance test, a data acquisition system shall record a concentration every 15 minutes and shall compute and record an average concentration each cycle (same time period or cycle as the performance test) and a 3-cycle block average concentration every third cycle. For sources monitoring the 1,000 ppmv VOC concentration for gasoline loading, a data acquisition system shall record a concentration every 15 minutes and shall compute and record an average concentration each hour and a 3-hour block average concentration every third hour. The owner or operator will install, calibrate, operate, and maintain a CEMS consistent with the requirements of PS 8 to measure the VOC concentration. The daily calibration requirements are required only on days when marine tank vessel loading operations occur.

(2) *Carbon adsorbers with vacuum regeneration.* Monitor and record the regeneration time for carbon bed regeneration and monitor and record continuously the vacuum pressure of the carbon bed regeneration cycle. The owner or operator will record the time when the carbon bed regeneration cycle begins and when the cycle ends for a single carbon bed and will calculate a 3-cycle block average every third cycle. The owner or operator shall install, calibrate, maintain, and operate a recording pressure measurement device (magnehelic gauge or equivalent device). A data acquisition system shall record and compute a 3-cycle (carbon bed regeneration cycle) block average vacuum pressure every third cycle. The owner or operator shall verify the accuracy of the pressure device once each calendar year with a reference pressure monitor (traceable to National Institute of Standards and Technology (NIST) standards or an independent pressure measurement device dedicated for this purpose). During accuracy checking, the probe of the reference device shall be at the same location as that of the pressure monitor being tested.

(3) *Carbon adsorbers with steam regeneration.* Monitor and record the total stream mass flow and monitor and record the carbon bed temperature after regeneration (but within 15 minutes of completion of the cooling cycle). The owner or operator will install, calibrate, maintain, and operate an integrating stream flow monitoring device that is accurate within ±10 percent and that is capable of recording the total stream mass flow for each regeneration cycle. The owner or operator will install, calibrate, maintain, and operate a temperature monitor accurate to within ±5.6°C (10°F) or within 1 percent of the baseline carbon bed temperature, whichever is less stringent, to measure the carbon bed temperature. The monitor shall be installed at the exhaust point of the carbon bed. The data acquisition system shall record the carbon bed temperature after each cooling cycle (measured within 15 minutes of completion of the cooling cycle). The owner or operator shall verify the accuracy of the temperature monitor once each calendar year with a reference temperature monitor (traceable to National Institute of Standards and Technology (NIST) standards or an independent temperature measurement device dedicated for this purpose). During accuracy checking, the probe of the reference device shall be at the same location as that of the temperature monitor being tested.

(h) *Condenser/refrigeration unit.* For sources complying with § 63.563(b)(7), use of a condenser/refrigeration unit, the owner or operator shall comply with either paragraph (h)(1) or (2) of this section.

(1) *Baseline temperature.* Monitor and record the temperature at the outlet of the unit. The owner or operator shall install, calibrate, operate, and maintain a temperature monitor accurate to within ±5.6°C (±10°F) or within 1 percent of the baseline temperature, whichever is less stringent, to measure the temperature. The monitor shall be installed at the exhaust point of the condenser/refrigeration unit. For sources monitoring the temperature established during the performance test, the data acquisition system shall record the temperature every 15 minutes and shall compute and record an average temperature each cycle (same time period or cycle of the performance test) and a 3-hour block average every third cycle. For sources monitoring the manufacturer recommended temperature, the data acquisition system shall record the temperature every 15 minutes and shall compute and record an average temperature each hour and a 3-hour block average every third hour. The owner or operator shall verify the accuracy of the temperature monitor once each calendar year with a reference temperature monitor (traceable to National Institute of Standards and Technology (NIST) standards or an independent temperature measurement device dedicated for this purpose). During accuracy checking, the probe of the reference device shall be at the same location as that of the temperature monitor being tested.

(2) *Outlet VOC concentration.* Monitor the VOC concentrations at the outlet of the unit and record the output from the system. For sources monitoring the outlet VOC concentration established during the performance test, a data acquisition system shall record a concentration every 15 minutes and shall compute and record an average concentration each cycle (same time period or cycle as the performance test) and a 3-cycle block average concentration every third cycle. For sources monitoring the 1,000 ppmv VOC concentration for gasoline loading, a data acquisition system shall record a concentration every 15 minutes and shall compute and record an average concentration each hour and a 3-hour block average concentration every third hour. The owner or operator will install, calibrate, operate, and maintain a VOC CEMS consistent with the requirements of PS 8 to measure the VOC concentration. The daily calibration requirements are required only on days when marine tank vessel loading operations occur.

(i) *Absorber.* For sources complying with § 63.563(b)(8), use of an absorber, the owner or operator shall comply with either paragraph (i)(1) or (2) of this section.

(1) *Outlet VOC concentration.* Monitor the VOC concentrations at the outlet of the absorber and record the output from the system. For sources monitoring the outlet VOC concentration established during the performance test, a data acquisition system shall record a concentration every 15 minutes and shall compute and record an average concentration each cycle (same time period or cycle as the

performance test) and a 3-cycle block average concentration every third cycle. For sources monitoring the 1,000 ppmv VOC concentration for gasoline loading, a data acquisition system shall record a concentration every 15 minutes and shall compute and record an average concentration each hour and a 3-hour block average concentration every third hour. The owner or operator will install, calibrate, operate, and maintain a VOC CEMS consistent with the requirements of PS 8. The daily calibration requirements are required only on days when marine tank vessel loading operations occur.

(2) *L/V ratio.* Monitor and record the inlet liquid flowrate and the inlet gas flowrate to the absorber and record the calculated L/V ratio. The owner or operator shall install, calibrate, maintain, and operate liquid and gas flow indicators. For sources monitoring the L/V ratio established during the performance test, a data acquisition system shall record the flowrates and calculated ratio every 15 minutes and shall compute and record an average ratio each cycle (same time period or cycle as the performance test) and a 3-cycle block average ratio every third cycle. For sources monitoring the manufacturer recommended L/V ratio, a data acquisition system shall record the flowrates and calculated ratio every 15 minutes and shall compute and record an average ratio each hour and a 3-hour average ratio every third hour. The liquid and gas flow indicators shall be installed immediately upstream of the respective inlet lines to the absorber.

(j) *Alternate monitoring procedures.* Alternate procedures to those described in this section may be used upon application to, and approval by, the Administrator. The owner or operator shall comply with the procedures for use of an alternative monitoring method in § 63.8(f).

§ 63.565 Test methods and procedures.

(a) *Performance testing.* The owner or operator of an affected source in § 63.562 shall comply with the performance testing requirements in § 63.7 of subpart A of this part in accordance with the provisions for applicability of subpart A to this subpart in Table 1 of § 63.560 and the performance testing requirements in this section.

(b) *Pressure/vacuum settings of marine tank vessel's vapor collection equipment.* For the purpose of determining compliance with § 63.563(a)(3), the following procedures shall be used:

(1) Calibrate and install a pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument) capable of measuring up to the maximum relief set pressure of the pressure-vacuum vents;

(2) Connect the pressure measurement device to a pressure tap in the terminal's vapor collection system, located as close as possible to the connection with the marine tank vessel; and

(3) During the performance test required in § 63.563(b)(1), record the pressure every 5 minutes while a marine tank vessel is being loaded and record the highest instantaneous pressure and vacuum that occurs during each loading cycle.

(c) *Vapor-tightness test procedures for the marine tank vessel.* When testing a vessel for vapor tightness to comply with the marine vessel vapor-tightness requirements of § 63.563(a)(4)(i), the owner or operator of a source shall use the methods in either paragraph (c)(1) or (2) in this section.

(1) *Pressure test for the marine tank vessel.*

(i) Each product tank shall be pressurized with dry air or inert gas to no more than the pressure of the lowest pressure relief valve setting.

(ii) Once the pressure is obtained, the dry air or inert gas source shall be shut off.

(iii) At the end of one-half hour, the pressure in the product tank and piping shall be measured. The change in pressure shall be calculated using the following formula:

$P = P_i - P_f$

Where:

P=change in pressure, inches of water.

P_i=pressure in tank when air/gas source is shut off, inches of water.

P_f=pressure in tank at the end of one-half hour after air/gas source is shut off, inches of water.

(iv) The change in pressure, P, shall be compared to the pressure drop calculated using the following formula:

$PM = 0.861 \, P_{ia} \, L/V$

Where:

PM=maximum allowable pressure change, inches of water.

P_{ia}=pressure in tank when air/gas source is shut off, psia.

L=maximum permitted loading rate of vessel, barrels per hour.

V=total volume of product tank, barrels.

(v) If $P \leq PM$, the vessel is vapor tight.

(vi) If $P > PM$, the vessel is not vapor tight and the source of the leak must be identified and repaired prior to retesting.

(2) *Leak test for the marine tank vessel.* Each owner or operator of a source complying with §§ 63.563(a)(4)(ii) or (iii) shall use Method 21 as the vapor-tightness leak test for marine tank vessels. The test shall be conducted during the final 20 percent of loading of each product tank of the marine vessel, and it shall be applied to any potential sources of vapor leaks on the vessel.

(d) *Combustion (except flare) and recovery control device performance test procedures.*

(1) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(2) All testing shall be performed during the last 20 percent of loading of a tank or compartment.

(3) All emission testing intervals shall consist of each 5 minute period during the performance test. For each interval, the following shall be performed:

(i) *Readings.* The reading from each measurement instrument shall be recorded.

(ii) *Sampling Sites.* Method 1 or 1A of appendix A of part 60 of this chapter, as appropriate, shall be used for selection of sampling sites. Sampling sites shall be located at the inlet and outlet of the combustion device or recovery device except for owners or operators complying with the 1,000 ppmv VOC emissions limit for gasoline vapors under § 63.563(b)(6) or (7), where the sampling site shall be located at the outlet of the recovery device.

(iii) *Volume exhausted.* The volume exhausted shall be determined using Method 2, 2A, 2C, or 2D of appendix A of part 60 of this chapter, as appropriate.

(4) *Combustion devices, except flares.* The average VOC concentration in the vent upstream and downstream of the control device shall be determined using Method 25 of appendix A of part 60 of this chapter for combustion devices, except flares. The average VOC concentration shall correspond to the volume measurement by taking into account the sampling system response time.

(5) *Recovery devices.* The average VOC concentration in the vent upstream and downstream of the control device shall be determined using Method 25A of appendix A of part 60 of this chapter for recovery devices. The average VOC concentration shall correspond to the volume measurement by taking into account the sampling system response time.

(6) The VOC mass at the inlet and outlet of the combustion or recovery device during each testing interval shall be calculated as follows:

$M_j = FKV_sC_{voc}$

Where:

M_j=mass of VOC at the inlet and outlet of the combustion or recovery

device during testing interval j, kilograms (kg).
$F=10^{-6}$=conversion factor, (cubic meters VOC/cubic meters air)(1/ppmv) (m^3 VOC/m^3 air)(1/ppmv).
K=density, kilograms per cubic meter (kg/m^3 VOC), standard conditions, 20 °C and 760 mm Hg.
V_s=volume of air-vapor mixture at the inlet and outlet of the combustion or recovery device, cubic meters (m^3) at standard conditions, 20 °C and 760 mm Hg.
C_{VOC}=VOC concentration (as measured) at the inlet and outlet of the combustion or recovery device, ppmv, dry basis.
s=standard conditions, 20 °C and 760 mm Hg.

(7) The VOC mass emission rates at the inlet and outlet of the recovery or combustion device shall be calculated as follows:

$$E_i = \frac{\sum_{j=1}^{n} M_{ij}}{T}$$

$$E_o = \frac{\sum_{j=1}^{n} M_{oj}}{T}$$

Where:
E_i, E_o=mass flow rate of VOC at the inlet (i) and outlet (o) of the recovery or combustion device, kilogram per hour (kg/hr).
M_{ij}, M_{oj}=mass of VOC at the inlet (i) or outlet (o) during testing interval j, kg.
T=Total time of all testing intervals, hour.
n=number of testing intervals.

(8) Where Method 25 or 25A is used to measure the percent reduction in VOC, the percent reduction across the combustion or recovery device shall be calculated as follows:

$$R = \frac{E_i - E_o}{E_i}(100\%)$$

Where:
R=control efficiency of control device, percent.
E_i=mass flow rate of VOC at the inlet to the combustion or recovery device as calculated under paragraph (c)(7) of this section, kg/hr.
E_o=mass flow rate of VOC at the outlet of the combustion or recovery device, as calculated under paragraph (c)(7) of this section, kg/hr.

(9) Repeat the procedures in paragraph (d)(1) through (d)(8) of this section 3 times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

(10) Use of methods other than Method 25 or Method 25A shall be validated pursuant to Method 301 of appendix A of part 63 of this chapter.

(e) *Performance test for flares.* When a flare is used to comply with § 63.562(b)(2), (3), and (4), (c)(3) and (4), and (d)(2), the source must demonstrate that the flare meets the requirements of § 63.11 of subpart A of this part. In addition, a performance test according to Method 22 of appendix A of part 63 shall be performed to determine visible emissions. The observation period shall be at least 2 hours and shall be conducted according to Method 22. Performance testing shall be conducted during three complete loading cycles with a separate test run for each loading cycle. The observation period for detecting visible emissions shall encompass each loading cycle. Integrated sampling to measure process vent stream flow rate shall be performed continuously during each loading cycle. The owner or operator shall record all visible emission readings, heat content determinations, flow rate measurements, maximum permitted velocity calculations, and exit velocity determinations made during the performance test.

(f) *Baseline temperature.* The procedures in this paragraph shall be used to determine the baseline temperature required in § 63.563(b)(4), (6), and (7) for combustion devices, carbon adsorber beds, and condenser/refrigeration units, respectively, and to monitor the temperature as required in § 63.564(e), (g), and (h). The owner or operator shall comply with either paragraph (f)(1) or (2) of this section.

(1) *Baseline temperature from performance testing.* The owner or operator shall establish the baseline temperature as the temperature at the outlet point of the unit averaged over three test runs from paragraph (d) of this section. Temperature shall be measured every 15 minutes.

(2) *Baseline temperature from manufacturer.* The owner or operator shall establish the baseline temperature as the manufacturer recommended minimum operating temperature for combustion devices, maximum operating temperature for condenser units, and maximum operating temperature for carbon beds of carbon adsorbers.

(g) *Baseline outlet VOC concentration.* The procedures in this paragraph shall be used to determine the outlet VOC concentration required in § 63.563(b)(4), (6), (7), and (8) for combustion devices except flare, carbon adsorbers, condenser/refrigeration units, and absorbers, respectively, and to monitor the VOC concentration as required in § 63.564(e), (g), (h), and (i). The owner or operator shall use the procedures outlined in Method 25A. For the baseline VOC concentration, the arithmetic average of the outlet VOC concentration from three test runs from paragraph (d) of this section shall be calculated for the control device. The VOC concentration shall be measured at least every 15 minutes. Compliance testing of VOC CEMS shall be performed using PS 8.

(h) *Baseline regeneration time for carbon bed regeneration.* The procedures in this paragraph shall be used to demonstrate the baseline regeneration time for the vacuum stage of carbon bed regeneration required in § 63.563(b)(6) for a carbon adsorber and to monitor the regeneration time for the vacuum regeneration as required in § 63.564(g). The owner or operator shall comply with paragraph (h)(1) or (2).

(1) *Baseline regeneration time from performance testing.* The owner or operator shall establish the baseline regeneration time as the length of time for the vacuum stage of carbon bed regeneration averaged over three test runs from paragraph (d) of this section.

(2) *Baseline regeneration time from manufacturer recommendation.* The owner or operator shall establish the baseline regeneration time as the manufacturer recommended minimum regeneration time for the vacuum stage of carbon bed regeneration.

(i) *Baseline vacuum pressure for carbon bed regeneration.* The procedures in this paragraph shall be used to demonstrate the baseline vacuum pressure for the vacuum stage of carbon bed regeneration required in § 63.563(b)(6) for a carbon adsorber and to monitor the vacuum pressure as required in § 63.564(g). The owner or operator shall establish the baseline vacuum pressure as the manufacturer recommended minimum vacuum for carbon bed regeneration.

(j) *Baseline total stream flow.* The procedures in this paragraph shall be used to demonstrate the baseline total stream flow for steam regeneration required in § 63.563(b)(6) for a carbon adsorber and to monitor the total stream flow as required in § 63.564(g). The owner or operator shall establish the baseline stream flow as the manufacturer recommended minimum total stream flow for carbon bed regeneration.

(k) *Baseline L/V ratio.* The procedures in this paragraph shall be used to

determine the baseline L/V ratio required in § 63.563(b)(8) for an absorber and to monitor the L/V ratio as required in § 63.564(i). The owner or operator shall comply with either paragraph (k)(1) or (2) of this section.

(1) *Baseline L/V ratio from performance test.* The owner or operator shall establish the baseline L/V ratio as the calculated value of the inlet liquid flow divided by the inlet gas flow to the absorber averaged over three test runs using the procedures in paragraph (d) of this section.

(2) *Baseline L/V ratio from manufacturer.* The owner or operator shall establish the baseline L/V ratio as the manufacturer recommended minimum L/V ratio for absorber operation.

(l) *Emission estimation procedures.* For sources with emissions less than 10 or 25 tons and sources with emissions of 10 or 25 tons, the owner or operator shall calculate an annual estimate of HAP emissions, excluding commodities exempted by § 63.560(d), from marine tank vessel loading operations. Emission estimates and emission factors shall be based on test data, or if test data is not available, shall be based on measurement or estimating techniques generally accepted in industry practice for operating conditions at the source.

(m) *Alternate test procedures.*

(1) Alternate test procedures to those described in this section may be used upon application to, and approval by, the Administrator.

(2) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified, the owner or operator shall refrain from conducting the performance test until the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan (if review of the site-specific test plan is requested) or until after the alternative method is approved (see § 63.7(f) of subpart A of this part). If the Administrator does not approve the site-specific test plan (if review is requested) or the use of the alternative method within 30 days before the test is scheduled to begin, the performance test dates specified in § 63.563(b)(1) shall be extended such that the owner or operator shall conduct the performance test within 60 calendar days after the Administrator approves the site-specific test plan or after use of the alternative method is approved. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

§ 63.566 Construction and reconstruction.

(a) The owner or operator of an affected source shall fulfill all requirements for construction or reconstruction of a source in § 63.5 of subpart A of this part in accordance with the provisions for applicability of subpart A to this subpart in Table 1 of § 63.560 and construction or reconstruction requirements in this section.

(b) (1) *Application for approval of construction or reconstruction.* The provisions of this paragraph and § 63.5(d)(1)(ii) and (iii), (2), (3), and (4) of subpart A implement section 112(i)(1) of the Act.

(2) *General application requirements.* An owner or operator who is subject to the requirements of § 63.5(b)(3) of subpart A shall submit to the Administrator an application for approval of the construction of a new source, the reconstruction of a source, or the reconstruction of a source not subject to the emissions standards in § 63.562 such that the source becomes an affected source. The application shall be submitted as soon as practicable before the construction or reconstruction is planned to commence. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of § 63.567(b)(3). The owner or operator may submit the application for approval well in advance of the date construction or reconstruction is planned to commence in order to ensure a timely review by the Administrator and that the planned commencement date will not be delayed.

(c) *Approval of construction or reconstruction based on prior State preconstruction review.* The owner or operator shall submit to the Administrator the request for approval of construction or reconstruction under this paragraph and § 63.5(f)(1) of subpart A of this part no later than the application deadline specified in paragraph (b)(2) of this section. The owner or operator shall include in the request information sufficient for the Administrator's determination. The Administrator will evaluate the owner or operator's request in accordance with the procedures specified in § 63.5(e) of subpart A of this part. The Administrator may request additional relevant information after the submittal of a request for approval of construction or reconstruction.

§ 63.567 Recordkeeping and reporting requirements.

(a) The owner or operator of an affected source shall fulfill all reporting and recordkeeping requirements in §§ 63.9 and 63.10 of subpart A of this part in accordance with the provisions for applicability of subpart A to this subpart in Table 1 of § 63.560 and fulfill all reporting and recordkeeping requirements in this section. These reports will be made to the Administrator at the appropriate address identified in § 63.13 of subpart A of this part.

(1) Reports required by subpart A and this section may be sent by U.S. mail, facsimile (fax), or by another courier.

(i) Submittals sent by U.S. mail shall be postmarked on or before the specified date.

(ii) Submittals sent by other methods shall be received by the Administrator on or before the specified date.

(2) If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(b) *Notification requirements.* The owner or operator of an affected source shall fulfill all notification requirements in § 63.9 of subpart A of this part in accordance with the provisions for applicability of that section to this subpart in Table 1 of § 63.560 and the notification requirements in this paragraph.

(1) *Applicability.* If a source that otherwise would not be subject to the emissions standards subsequently increases its HAP emissions calculated on a 24-month annual average basis after September 19, 1997 or increases its annual HAP emissions after September 20, 1999 or subsequently increases its gasoline or crude loading throughput calculated on a 24-month annual average basis after September 19, 1996 or increases its gasoline or crude loading annual throughput after September 21, 1998 such that the source becomes subject to the emissions standards, such source shall be subject to the notification requirements of § 63.9 of subpart A of this part and the notification requirements of this paragraph.

(2) *Initial notification for sources with startup before the effective date.* The owner or operator of a source with initial startup before the effective date shall notify the Administrator in writing that the source is subject to the relevant standard. The notification shall be submitted not later than 365 days after the effective date of the emissions standards and shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (i.e., physical location) of the source;

(iii) An identification of this emissions standard that is the basis of the notification and the source's compliance date;

(iv) A brief description of the nature, size, design, and method of operation of the source;

(v) A statement that the source is a major source.

(3) *Initial notification for sources with startup after the effective date.* The owner or operator of a new or reconstructed source or a source that has been reconstructed such that it is subject to the emissions standards that has an initial startup after the effective date but before the compliance date, and for which an application for approval of construction or reconstruction is not required under § 63.5(d) of subpart A of this part and § 63.566 of this subpart, shall notify the Administrator in writing that the source is subject to the standard no later than 365 days or 120 days after initial startup, whichever occurs before notification of the initial performance test in § 63.9(e) of subpart A of this part. The notification shall provide all the information required in paragraph (b)(2) of this section, delivered or postmarked with the notification required in paragraph (b)(4) of this section.

(4) *Initial notification requirements for constructed/reconstructed sources.* After the effective date of these standards, whether or not an approved permit program is effective in the State in which a source subject to these standards is (or would be) located, an owner or operator subject to the notification requirements of § 63.5 of subpart A of this part and § 63.566 of this subpart who intends to construct a new source subject to these standards, reconstruct a source subject to these standards, or reconstruct a source such that it becomes subject to these standards, shall comply with paragraphs (b)(4)(i), (ii), (iii), and (iv) of this section.

(i) *Notify the Administrator in writing of the intended construction or reconstruction.* The notification shall be submitted as soon as practicable before the construction or reconstruction is planned to commence. The notification shall include all the information required for an application for approval of construction or reconstruction as specified in § 63.5 of subpart A of this part. The application for approval of construction or reconstruction may be used to fulfill the requirements of this paragraph.

(ii) Submit a notification of the date when construction or reconstruction was commenced, delivered or postmarked not later than 30 days after such date, if construction was commenced after the effective date.

(iii) Submit a notification of the anticipated date of startup of the source, delivered or postmarked not more than 60 days nor less than 30 days before such date;

(iv) Submit a notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.

(5) *Additional initial notification requirements.* The owner or operator of sources subject to § 63.562(b)(2), (3), and (4), MACT standards, shall also include in the initial notification report required by paragraph (b)(2) and (3) the 24-month annual average or the annual actual HAP emissions from marine tank vessel loading operations, as appropriate, at all loading berths, as calculated according to the procedures in § 63.565(l). Emissions will be reported by commodity and type of marine tank vessel (barge or tanker) loaded.

(ii) As an alternative to reporting the information in paragraph (b)(5)(i) of this section, the source may submit documentation showing that all HAP-containing marine tank vessel loading operations, not exempt by § 63.560(d), occurred using vapor tight vessels that comply with the procedures of § 63.563(a) and that the emissions were routed to control devices meeting the requirements specified in § 63.563(b).

(c) *Request for extension of compliance.* If the owner or operator has installed BACT or technology to meet LAER consistent with § 63.6(i)(5) of subpart A of this part, he/she may submit to the Administrator (or State with an approved permit program) a request for an extension of compliance as specified in § 63.6(i)(4)(i)(B), (i)(5), and (i)(6) of subpart A of this part.

(d) *Reporting for performance testing of flares.* The owner or operator of a source required to conduct an opacity performance test shall report the opacity results and other information required by § 63.565(e) and § 63.11 of subpart A of this part with the notification of compliance status.

(e) *Summary reports and excess emissions and monitoring system performance reports.*

(1) *Schedule for summary report and excess emissions and monitoring system performance reports.* Excess emissions and parameter monitoring exceedances are defined in § 63.563(b). The owner or operator of a source subject to these emissions standards that is required to install a CMS shall submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator once each year, except, when the source experiences excess emissions, the source shall comply with a semi-annual reporting format until a request to reduce reporting frequency under paragraph (e)(2) of this section is approved.

(2) *Request to reduce frequency of excess emissions and continuous monitoring system performance reports.* An owner or operator who is required to submit excess emissions and continuous monitoring system performance and summary reports on a semi-annual basis may reduce the frequency of reporting to annual if the following conditions are met:

(i) For 1 full year the sources's excess emissions and continuous monitoring system performance reports continually demonstrate that the source is in compliance; and

(ii) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and subpart A of this part.

(3) The frequency of reporting of excess emissions and continuous monitoring system performance and summary reports required may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the 5-year recordkeeping prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation maintenance requirements. Such information may be used by the Administrator to make a judgement about the source's potential for noncompliance in the future. If the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

(4) *Content and submittal dates for excess emissions and monitoring system performance reports.* All excess emissions and monitoring system performance reports and all summary reports, if required per paragraph (e)(5) and (6) of this section, shall be delivered or postmarked within 30 days following the end of each calendar year, or within 30 days following the end of each six month period, if appropriate. Written reports of excess emissions or exceedances of process or control system parameters shall include all information required in § 63.10(c)(5) through (13) of subpart A of this part as applicable in Table 1 of § 63.560 and information from any calibration tests in which the monitoring equipment is not in compliance with PS 8 or other methods used for accuracy testing of temperature, pressure, or flow monitoring devices. The written report shall also include the name, title, and signature of the responsible official who is certifying the accuracy of the report. When no excess emissions or exceedances have occurred or monitoring equipment has not been inoperative, repaired, or adjusted, such information shall be stated in the report. This information will be kept for a minimum of 5 years and made readily available to the Administrator or delegated State authority upon request.

(5) If the total duration of excess emissions or control system parameter exceedances for the reporting period is less than 5 percent of the total operating time for the reporting period, and CMS downtime for the reporting period is less than 10 percent of the total operating time for the reporting period, only the summary report of § 63.10(e)(3)(vi) of subpart A of this part shall be submitted, and the full excess emissions and continuous monitoring system performance report of paragraph (e)(4) of this section need not be submitted unless required by the Administrator.

(6) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is 5 percent or greater of the total operating time for the reporting period, or the total CMS downtime for the reporting period is 10 percent or greater of the total operating time for the reporting period, both the summary report of § 63.10(e)(3)(vi) of subpart A of this part and the excess emissions and continuous monitoring system performance report of paragraph (e)(4) of this section shall be submitted.

(f) *Vapor collection system of the terminal.* Each owner or operator of an affected source shall submit with the initial performance test and maintain in an accessible location on site an engineering report describing in detail the vent system, or vapor collection system, used to vent each vent stream to a control device. This report shall include all valves and vent pipes that could vent the stream to the atmosphere, thereby bypassing the control device, and identify which valves are car-sealed opened and which valves are car-sealed closed.

(g) If a vent system, or vapor collection system, containing valves that could divert the emission stream away from the control device is used, each owner or operator of an affected source shall keep for at least 5 years up-to-date, readily accessible continuous records of:

(1) All periods when flow bypassing the control device is indicated if flow indicators are installed under § 63.563(a)(1) and § 63.564(b), and

(2) All times when maintenance is performed on car-sealed valves, when the car-seal is broken, and when the valve position is changed (i.e., from open to closed for valves in the vent piping to the control device and from closed to open for valves that vent the stream directly or indirectly to the atmosphere bypassing the control device) if valves are monitored under § 63.564(b).

(h) The owner or operator of an affected source shall keep the vapor-tightness documentation required under § 63.563(a)(4) on file at the source in a permanent form available for inspection.

(i) *Vapor tightness test documentation for marine tank vessels.* The owner or operator of an affected source shall maintain a documentation file for each marine tank vessel loaded at that source to reflect current test results as determined by the appropriate method in § 63.565(c)(1) and (2). Updates to this documentation file shall be made at least once per year. The owner or operator shall include, as a minimum, the following information in this documentation:

(1) Test title;

(2) Marine vessel owner and address;

(3) Marine vessel identification number;

(4) Loading time, according to § 63.563(a)(4)(ii) or (iii), if appropriate;

(5) Testing location;

(6) Date of test;

(7) Tester name and signature;

(8) Test results from § 63.565(c)(1) or (2), as appropriate;

(9) Documentation provided under § 63.563(a)(4)(ii) and (iii)(B) showing that the repair of leaking components attributed to a failure of a vapor-tightness test is technically infeasible without dry-docking the vessel; and

(10) Documentation that a marine tank vessel failing a pressure test or leak test has been repaired.

(j) *Emission estimation reporting and recordkeeping procedures.* The owner or operator of each source complying with the emission limits specified in § 63.562(b)(2), (3), and (4) shall comply with the following provisions:

(1) Maintain records of all measurements, calculations, and other documentation used to identify commodities exempted under § 63.560(d);

(2) Keep readily accessible records of the emission estimation calculations performed in § 63.565(l) for 5 years; and

(3) Submit an annual report of the source's HAP control efficiency calculated using the procedures specified in § 63.565(l), based on the source's actual throughput.

(4) Owners or operators of marine tank vessel loading operations specified in § 63.560(a)(3) shall retain records of the emissions estimates determined in § 65.565(l) and records of their actual throughputs by commodity, for 5 years.

(k) *Leak detection and repair of vapor collection systems and control devices.* When each leak of the vapor collection system, or vapor collection system, and control device is detected and repaired as specified in § 63.563(c) the following information required shall be maintained for 5 years:

(1) Date of inspection;

(2) Findings (location, nature, and severity of each leak);

(3) Leak determination method;

(4) Corrective action (date each leak repaired, reasons for repair interval); and

(5) Inspector name and signature.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 411

[BPD–841–FC]

RIN 0938–AH21

Medicare Program; Criteria and Procedures for Extending Coverage to Certain Devices and Related Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule establishes in regulations that certain devices with an investigational device exemption (IDE) approved by the Food and Drug Administration (FDA) and certain services related to those devices may be covered under Medicare. Specifically, it sets forth the process by which the FDA will assist HCFA in identifying non-experimental investigational devices that are potentially covered under Medicare.

This rule responds to the mandate that Federal agencies streamline their regulatory processes to make them less burdensome and more customer-focused. It is intended to provide Medicare beneficiaries with greater access to advances in medical technology and encourage clinical researchers to conduct high quality studies of newer technologies.

DATES: *Effective Date:* This rule is effective November 1, 1995.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 20, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–841–FC, P.O. Box 26688, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or
Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–841–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

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FOR FURTHER INFORMATION CONTACT: Sharon Hippler, (410) 786–4633.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Basis

The Social Security Act (the Act) provides Medicare coverage for broad categories of benefits through the hospital insurance program, known as Part A, and the supplementary medical insurance program, known as Part B.

The Act does not, however, provide an all-inclusive list of covered items, services, treatments, procedures, or technologies. Except for certain items of durable medical equipment identified in section 1861(n) of the Act, some of the medical and other health services listed in section 1861(s) of the Act, and exclusions from coverage listed in section 1862 of the Act, the statute does not specify devices that are covered or excluded from coverage.

The Congress understood that questions about the coverage of specific services would invariably arise and would require a specific decision of coverage by the Secretary. Thus, it vested in the Secretary the authority to make those decisions. Among the provisions relevant to the determination of coverage is section 1862(a)(1)(A) of the Act, which states "Notwithstanding any other provision of this title, no payment may be made under Part A or Part B for any expenses incurred for items or services which * * * are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." This is a key provision since the words "notwithstanding any other provision of this title * * *" make this an overriding exclusion that may be applicable in a given situation despite the existence of provisions that would otherwise permit coverage. Thus, while the Congress provided for the coverage of certain services, with limited exceptions specified by HCFA, coverage for those services is prohibited unless they are "reasonable" and "necessary."

B. Implementation of the Law

Historically, HCFA has interpreted the statutory terms "reasonable" and "necessary" to mean that a device must be safe and effective, medically necessary, and not experimental. For most Medicare coverage purposes, the term experimental has been used synonymously with the term investigational. Therefore, a device categorized by the FDA as being investigational served as an indication that it was not "reasonable" and "necessary" within the meaning of the Medicare program. As a general rule, these devices currently are not covered.

There is increasing recognition, however, that there are devices that are refinements of existing technologies or replications of existing technologies by other manufacturers. The FDA places many of these devices within the investigational device exemption (IDE) category as a means of gathering the scientific information necessary to establish the safety and effectiveness of the particular device, even though there is scientific evidence that similar devices can be safe and effective. Arguably, these devices could be viewed as "reasonable" and "necessary" under Medicare and recognized for payment if it were possible to identify them in the FDA's process.

C. January 1989 Proposed Rule on Coverage Decision Process

On January 30, 1989, we published a proposed rule (54 FR 4302) that proposed to establish in regulations generally applicable criteria for determining whether a service is "reasonable" and "necessary" under the Medicare program, and the coverage decisionmaking process. In response to that rule, we received comments pertaining to the coverage of experimental procedures and services related to those procedures. In this rule, we are choosing to respond to comments on investigational devices and services related to those devices and to announce our final policy. We have not completed our deliberations on the other issues addressed in the January 1989 proposed rule. This rule does not respond to comments other than those pertaining to devices.

Comment: Twenty-two commenters suggested that we revise our proposed policy so that we do not automatically exclude from Medicare coverage all devices that the FDA considers investigational. Several of these commenters recommended that we allow coverage of investigational devices when they are used in FDA-approved clinical trials.

Response: We agree that there are some investigational devices that should be considered for coverage if they are used in accordance with an FDA-approved protocol. The devices that will be considered for possible coverage are those investigational devices for which the FDA has determined that the device type can be safe and effective. For example, we will consider for possible coverage those investigational devices

that are of the same type as a device for which a manufacturer has received FDA clearance or approval for marketing. We have entered into an interagency agreement with the FDA to identify those investigational devices that are of a device type for which the underlying questions of safety and effectiveness have been resolved. These devices may be covered if all other applicable Medicare coverage requirements are met.

Comment: One commenter recommended that we not change our previous policy that excluded coverage of investigational devices.

Response: We do not agree. We believe that there are certain investigational devices that should be covered if all other applicable coverage requirements are met. However, the investigational devices that we will consider for coverage will not include any device for which the FDA is unsure whether the device type in general can be safe and effective.

Comment: A number of commenters requested that we clarify the coverage rules concerning the furnishing of services related to experimental procedures (for example, a hospital stay).

Response: As stated earlier, we are limiting the focus of this rule to Medicare coverage of certain investigational devices and services related to those devices. Also, in the preamble to this rule and in new § 405.207, we explain our coverage policy concerning services related to a noncovered device.

II. Provisions of This Final Rule

While the policies contained in this final rule will be effective November 1, 1995, we are providing a 60-day comment period for the receipt of public comments. We believe it is appropriate to provide an opportunity for comment on these policies because we are broadening the proposals concerning certain devices contained in the January 1989 proposed rule. Consequently, beneficiaries, providers, and suppliers that may have chosen not to comment because they may have believed they were not affected by the 1989 proposals may wish to comment on these broadened final policies. If our consideration of the comments we receive leads us to a change in these policies, we will publish another document.

A. HCFA Coverage Decision Process

The Administration has set forth a mandate that all Federal agencies must streamline their regulatory processes to make them less burdensome and more customer-focused. Agencies have been directed to review their policies and processes to determine which requirements can be reduced or eliminated without lowering health and safety standards. In accordance with this directive, the FDA reviewed its regulatory processes for devices and HCFA reviewed its Medicare coverage policies. This rule results in an improved process for covering certain investigational devices that is expected to benefit Medicare beneficiaries.

This new policy will lead to broader coverage of certain investigational devices and certain services related to those devices. A long-term benefit is to facilitate the collection of information about these devices through approved clinical trials, which will enable the marketing of these devices. Medicare beneficiaries will have earlier access to the latest advances in medical technology.

To assist HCFA in its coverage decision process, the FDA will follow a categorization process that differentiates between the clinical assessment of novel, first-of-a-kind devices and newer generations of legally marketed devices. The policy changes in this rule reflect the categorization of investigational devices that are the subject of FDA-approved IDEs.

The FDA uses the definition of a device that appears in 21 U.S.C. 321(h). A device, for purposes of the FDA process, refers to an instrument, apparatus, implement, machine, contrivance, implant, *in vitro* reagent, or other similar or related article, including any component, part, or accessory, which is—

- Recognized in the official National Formulary, or the U.S. Pharmacopeia, or any supplement to them,
- Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals,
- Intended for use in the diagnosis of conditions other than diseases such as pregnancy,
- Intended to affect the structure or any function of the body of man or other animals, or
- Considered an *in vitro* diagnostic product, including those previously regulated as drugs, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals

and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

When a sponsor (usually a manufacturer) submits a marketing application for clearance or approval of a device to the FDA, the FDA evaluates the safety and effectiveness of the device. If sufficient information exists to determine its safety and effectiveness, the FDA may clear the device for marketing. In some instances, for certain devices, the FDA may require that clinical trials be conducted to obtain clinical information to determine the device's safety and effectiveness. Generally, in order for these devices to be shipped lawfully for purposes of conducting the clinical trial, the sponsor must obtain an approved investigational device exemption (IDE).

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes:

Class I—Devices for which the general controls of the Food, Drug, and Cosmetic Act, such as adherence to good manufacturing practice regulations, are sufficient to provide a reasonable assurance of safety and effectiveness.

Class II—Devices that, in addition to general controls, require special controls, such as performance standards or postmarket surveillance, to provide a reasonable assurance of safety and effectiveness.

Class III—Devices that cannot be classified into Class I or Class II because insufficient information exists to determine that either special or general controls would provide reasonable assurance of safety and effectiveness. Class III devices require premarket approval.

Under the new categorization process to assist HCFA, the FDA assigns each device with an FDA-approved IDE to one of two categories: Experimental/Investigational (Category A) Devices, or Non-Experimental/Investigational (Category B) Devices. Under this categorization process, an experimental/investigational device (Category A) is an innovative device in Class III for which "absolute risk" of the device type has not been established (that is, initial questions of safety and effectiveness have not been resolved and the FDA is unsure whether the device type can be safe and effective). A non-experimental/investigational (Category B) device is a device believed to be in Class I or Class II, or a device believed to be in Class III for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of that device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained FDA approval for that device type. The criteria the FDA will use to categorize an investigational device is described in the addendum to this rule.

Currently there are about 1,200 FDA-approved clinical trials of devices. The FDA is categorizing those devices as "experimental/investigational (Category A)" or "non-experimental/investigational (Category B)," a process that is expected to be completed by November 1, 1995. The great majority of these devices in clinical trials are likely to be categorized as "non-experimental/investigational (Category B)".

The FDA will notify HCFA, when it notifies the sponsor, either by electronic means or written communication, of its categorization decisions. Through these categorization decisions, the FDA will be advising HCFA as to the similarity of a device that has been approved for use in an FDA-approved clinical trial to a device that has been approved or cleared by the FDA for marketing.

HCFA excludes from Medicare coverage a device with an IDE that is categorized by the FDA as experimental/investigational (Category A). HCFA will continue to view these experimental/investigational (Category A) devices as not satisfying the statutory requirement that Medicare pay for only devices determined to be reasonable and necessary. HCFA is not changing its policy on this issue because essential considerations of health and safety are involved.

This rule does not affect HCFA's policy on services related to a noncovered device. That is, services related to the use of a noncovered device are not covered under Medicare. We are codifying in the regulations a provision explaining that services related to a noncovered device are not covered under Medicare. These services include all services furnished in preparation for the use of a noncovered device, services furnished contemporaneously with and necessary to the use of a noncovered device, and services furnished as necessary after-care that are incident to recovery from the use of the device or from receiving related noncovered services.

Services furnished to address medical complications arising from the use of the device (and that are not incident to normal recovery) may be covered. Services not related to the use of a noncovered device, which meet all other coverage requirements, can be covered under Medicare.

The following are some examples of services "related to" and "not related to" noncovered devices furnished while the beneficiary is an inpatient:

- A beneficiary is hospitalized to receive a noncovered device and breaks a leg while in the hospital. Services related to care of the broken leg during this stay are "not related to" services and are covered under Medicare.
- A beneficiary is admitted to the hospital for a covered service and during the hospital stay received a noncovered investigational device. The services related to the admitting condition are covered because the reason for the admission was to receive covered services and not related to the diagnoses that led to the need for the noncovered device.
- A beneficiary is admitted to the hospital for covered services related to a condition that led to receiving a noncovered device during the same hospital stay. We would review all of the services and make a comparison of the date they are received to the date the beneficiary is identified as needing the noncovered device. If our review reveals that services were required because of receiving the noncovered device, the services "related to" the noncovered device will not be covered.
- After a beneficiary is discharged from a hospital stay during which he or she receives a noncovered investigational device, medical and hospital services to treat a condition or complication that arises as a result of the noncovered device or related noncovered services may be covered when they are reasonable and necessary in all other respects. Thus, coverage could be provided for subsequent inpatient hospital stays or outpatient treatment ordinarily covered by Medicare, even if the need for treatment arose because of a previous noncovered device or related noncovered services. Any subsequent services that could be expected to have been incorporated into a global fee, however, will not be covered.

The related services policy will also apply to experimental/investigational (Category A) and non-experimental/investigational (Category B) devices that are excluded from Medicare coverage. Therefore, Medicare policy will continue to preclude coverage of certain devices and services related to the use of those devices when they are furnished as part of a hospital stay.

It is our intention that a beneficiary not pay for a noncovered device or services related to a noncovered device when a beneficiary did not know that the device or related services are not covered. Existing regulations concerning limitations on liability in §§ 411.400 through 411.406 will apply to this broader coverage of certain investigational devices and services related to those devices. Medicare payment may be made for certain assigned claims for a service related to a noncovered device if the service was excluded from coverage in accordance with § 411.15(k) as not medically necessary under section 1862(a)(1)(A) of the Act. A beneficiary who did not know and could not reasonably have been expected to know that payment would be denied under section 1862(a)(1)(A) of the Act receives protection from financial liability in accordance with §§ 411.400 through 411.406 under the limitation on liability provision of section 1879 of the Act. Similarly, when the beneficiary is protected and the provider or supplier also did not know and could not reasonably have been expected to know that payment would be denied, the provider or supplier also receives protection from financial liability in accordance with the limitation on liability provision. Consequently, Medicare payment may be made to the provider or supplier.

For unassigned claims for related physician services excluded from coverage as not medically necessary under section 1862(a)(1)(A) of the Act, a beneficiary who did not know and could not reasonably have been expected to know that payment would be denied as not medically necessary may receive protection from financial liability in accordance with existing § 411.408 under the refund requirement provision of section 1842(l) of the Act. If the beneficiary is found not to have known, and the provider or supplier also did not know and could not reasonably have been expected to know that payment would be denied, the provider or supplier will receive protection from financial liability under the refund requirement provision.

Under changes made by this final rule, HCFA will consider coverage of a device with an FDA-approved IDE, categorized by the FDA as non-experimental/investigational (Category B) for Medicare beneficiaries participating in FDA-approved clinical trials. As a general rule for all medical care, HCFA has authority to conduct a separate assessment of an item—s or service's appropriateness for Medicare coverage, including whether it is reasonable and necessary specifically for its intended use for Medicare beneficiaries. Medicare coverage of a non-experimental/investigational (Category B) device will be subject to the same process and criteria used by Medicare contractors when making coverage decisions for legally marketed devices. Coverage of the device is dependent on it meeting all other Medicare coverage requirements contained in the statute, regulations, and instructions issued by HCFA.

The FDA-approved IDE study protocols restrict investigational device shipment to a limited number of investigational sites for testing on a specific number of patients. To the extent Medicare covers a non-experimental/investigational (Category B) device, coverage is limited to beneficiaries meeting the protocol requirements. For example, coverage of an investigational device may be limited to Medicare beneficiaries participating in trials conducted by certain health care practitioners in an approved clinical trial.

Medicare coverage of a non-experimental/investigational (Category B) device is predicated, in part, upon the device continuing to meet criteria that led to this designation by the FDA. In the event a device fails to meet the criteria for Category B designation or its use violates relevant IDE requirements necessitating the withdrawal of the IDE approval, the FDA will immediately notify the sponsor and HCFA. HCFA will re-evaluate the device's continued eligibility for Medicare payment.

Payment under Medicare for a non-experimental/investigational (Category B) device will be based on, and may not exceed, the amount that would have been paid for a currently used device serving the same medical purpose that has been approved or cleared for marketing by the FDA. In cases involving a hospital stay, the diagnosis related group (DRG) payment under the prospective payment system ordinarily will not be affected.

B. Re-evaluation of Categorization Decision

We anticipate that instances will arise under which a device sponsor believes that a device, categorized by the FDA as experimental/investigational (Category A), should be categorized as non-experimental/investigational (Category B). In these instances, the sponsor may request that the FDA re-evaluate its categorization decision. Only after the FDA has completed its re-evaluation, and concluded that the device still is an experimental/investigational (Category A) device, may a sponsor request review by HCFA. A sponsor may request review by HCFA even if no Medicare claims are involved.

1. FDA Action

Under this process, the sponsor may submit a written request for re-evaluation to the FDA (at the same address it submitted its original application), together with information and rationale that it believes support recategorization. Only the sponsor of a device may seek a re-evaluation of the FDA IDE categorization decision.

Time limits on seeking a re-evaluation will not be imposed. The FDA will review the request and inform the sponsor, and HCFA, of its decision. If the FDA does not agree to recategorize the device, the sponsor may seek further review by HCFA.

2. HCFA Action

Upon written request to the HCFA Administrator from the sponsor of a device with an FDA-approved IDE, HCFA will review the categorization of the device. As part of this process, HCFA will review all information submitted by the sponsor and the FDA's recommendation. HCFA will review only information in the FDA record to determine whether to change the categorization. HCFA will not accept or review any information from the sponsor that was not previously reviewed by the FDA. While HCFA, during the re-evaluation process, will be the final decisionmaker concerning categorization of a device for Medicare coverage purposes, HCFA relies heavily on the FDA review of the scientific information related to the device and consequently the FDA recommendation. HCFA will issue a written decision and notify the sponsor and the FDA. No further reviews will be available to the sponsor.

3. Update of Categorization Decision

If the circumstances that led to the initial categorization decision change (for example, a premarket approval application is approved for a device similar to one under investigation), the FDA will re-evaluate the categorization designation and notify the sponsor and HCFA of any change. Neither the FDA categorization and re-evaluation nor HCFA's review constitute an initial determination for purposes of the Medicare appeals processes under 42 CFR part 405, subparts G or H, or parts 417, 473, or 498.

C. Quarterly Announcement of Categorization Decisions

HCFA publishes quarterly in the **Federal Register** a notice that lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that relate to the Medicare and Medicaid programs. HCFA will announce in the quarterly notice all IDE categorizations, using IDE numbers the FDA assigns. The initial notice will include all FDA-approved IDE numbers organized by the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the IDE number). Subsequent notices will include the additions and deletions to the initial list of all devices with an FDA-approved IDE.

D. Confidentiality of Investigational Device Exemption Information

Data and information otherwise exempt from public disclosure may be revealed in judicial proceedings if the data or information are relevant. HCFA will take appropriate measures, or request that appropriate measures be taken, to reduce disclosure to the minimum necessary under the circumstances. Because HCFA relies on information submitted to the FDA under 21 U.S.C. 360j(g), HCFA will consult with the FDA to ensure that the confidentiality of the information is protected to the extent possible.

E. Contractor Coverage Decisions of Devices With an FDA-approved IDE

1. Current Contractor Functions

Sections 1816 and 1842 of the Act provide for most claims processing and administrative functions for Medicare to be handled by public or private insurance organizations (commercial insurers or Blue Cross/Blue Shield Associations) acting as fiscal agents or contractors for the Medicare program.

The contractors responsible for the administration of Part A benefits are called fiscal intermediaries. The major role of the intermediaries is to review and pay claims submitted by providers (such as hospitals, skilled nursing facilities, and home health agencies) for covered services furnished to Medicare beneficiaries. The intermediary makes payments for hospital inpatient services generally under the prospective payment system. It makes payments for hospital and other provider outpatient services by reviewing submitted cost reports and making reasonable cost determinations or payment determinations under a fee schedule following policies set by HCFA.

Under Part B, the contractors are called carriers. Part B services are paid on a fee schedule, reasonable charge, or reasonable cost basis. One of the major functions of the carriers is to determine the appropriate amount of payment for each medical care service paid for under the program. Carriers also are responsible for reviewing and paying claims to or on behalf of beneficiaries for the services furnished.

The functions performed by Medicare contractors include utilization review, beneficiary hearings and appeals, professional relations, and statistical activities, in addition to claims review and processing. Currently, there are 29 carriers, 46 intermediaries, and some other entities under contract with HCFA that perform reviews and process claims for Medicare beneficiaries.

2. Current Criteria and Procedures for Contractor Coverage Decisions

Contractors make Medicare coverage decisions within the parameters set by statutory authority and regulations and program instructions issued by HCFA. If HCFA has issued a national coverage decision, contractors are bound by that decision. If no national coverage decision has been issued, a contractor must decide whether the service in question is reasonable and necessary and therefore covered by Medicare.

Medicare contractors may specifically consider, among other factors, whether the service is—

- Medically necessary in the particular case and whether the amount, duration, and frequency of use or application of the service are medically appropriate;
- Furnished in accordance with accepted standards of medical practice; and
- Furnished in a setting appropriate to the patient's medical needs and condition (such as inpatient care at a hospital or skilled nursing facility, outpatient care at a hospital or physician's office, or home care).

3. Changes to Contractor Process

Under this rule, contractors will review the instructions HCFA issues to determine if a non-experimental/investigational (Category B) device is potentially covered under Medicare. After determining that a device is potentially covered, the contractor will apply HCFA's long-standing criteria and procedures for making coverage decisions. When considering whether a non-experimental/investigational (Category B) device is furnished in accordance with accepted standards of medical practice, it will consider those standards that relate to an FDA-approved clinical trial.

In accordance with HCFA coverage policy, Medicare contractors are precluded from covering any device that is an experimental/investigational (Category A) device.

F. Appeals Under Part A and Part B

While the categorization decision is not itself an initial determination, if HCFA denies a Medicare claim on the basis that the device is an experimental/investigational (Category A) device, the initial determination denying the claim encompasses the categorization decision. A proper party to the denied Medicare claim has a right to appeal the experimental/investigational (Category A) categorization as an initial determination under 42 CFR part 405, subparts G or H.

A decision that a device is experimental/investigational (Category A) means that the device is experimental and, therefore, excluded from coverage as not reasonable and necessary under section 1862(a)(1)(A) of the Act. HCFA's acceptance of the FDA categorization of an experimental/investigational (Category A) device constitutes a national coverage decision and is binding on HCFA's contractors. In accordance with section 1869(b)(3)(A) of the Act, national coverage decisions made by HCFA under section 1862(a)(1) of the Act may not be reviewed by administrative law judges.

III. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all device manufacturers and providers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This regulation removes certain investigational devices from being presumed excluded by Medicare and places them in a category under which they may be covered. On a claim-by-claim basis, Medicare contractors verify or determine that devices are covered under the circumstances presented by the claim or bill. This regulation does not change that process, except the contractors must ascertain whether these devices were furnished to beneficiaries participating in, and in accordance with the requirements of, approved clinical trials. Once coverage is verified, payment is made at the level established for a similar device that has been approved as covered by Medicare.

We anticipate that this regulation will lead to a beneficial but not a major expansion of coverage of devices. Each year the FDA receives approximately 200 IDE applications for review. The majority of these IDEs are approved for study. At the present time, there are approximately 1,200 clinical trials underway involving devices, which are being conducted under FDA-approved IDEs.

We expect that this regulation will have a number of beneficial effects. It will provide Medicare beneficiaries with greater access to advances in medical technology. It will allow Medicare beneficiaries faced with a decision of choosing between a fully covered device and one undergoing clinical trials to choose the investigational device without losing Medicare coverage. Because Medicare payment is based on the payment for a fully covered device, that choice would not result in increased costs to Medicare for those devices.

At the present time, device manufacturers and the providers that furnish services involving non-experimental/investigational devices (Category B) are not eligible for Medicare payments. We estimate that this regulation will result in negligible costs to the Medicare program. We expect affected entities would receive less than $10 million per year over the next 5 years.

Virtually all of these devices replace devices for which Medicare coverage is currently available and which would have been furnished to beneficiaries if we had not changed the policy. The services are primarily furnished on an inpatient basis in hospitals. Hospitals are paid on a prospective basis so that prices are not adjusted based on changes in the price-components (that is, device costs) of individual DRGs. Instead, the payment base under the prospective payment system is annually updated based on a host of considerations, including the increased cost of inputs. As a result, this change in coverage will not significantly affect Medicare's current payments and will only affect its future payments in concert with the other factors affecting the DRG update decisions.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR Chapter IV is amended as follows:

A. 42 CFR part 405 is amended to read as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. A new subpart B, consisting of §§ 405.201–405.215, is added to read as follows:

Subpart B—Medical Services Coverage Decisions That Relate to Health Care Technology

Sec.
405.201 Scope of subpart and definitions.
405.203 FDA categorization of investigational devices.
405.205 Coverage of a non-experimental/investigational (Category B) device.
405.207 Services related to a noncovered device.
405.209 Payment for a non-experimental/investigational (Category B) device.
405.211 Procedures for Medicare contractors in making coverage decisions for a non-experimental/investigational (Category B) device.
405.213 Re-evaluation of a device categorization.
405.215 Confidential commercial and trade secret information.

Subpart B—Medical Services Coverage Decisions That Relate to Health Care Technology

Authority: Secs. 1102, 1862, and 1871 of the Social Security Act as amended (42 U.S.C. 1302, 1395y, and 1395hh).

§ 405.201 Scope of subpart and definitions.

(a) *Scope.* This subpart establishes that—

(1) HCFA uses the FDA categorization of a device as a factor in making Medicare coverage decisions; and

(2) HCFA may consider for Medicare coverage certain devices with an FDA-approved investigational device exemption (IDE) that have been categorized as non-experimental/investigational (Category B).

(b) *Definitions.* As used in this subpart—

Class I refers to devices for which the general controls of the Food, Drug, and Cosmetic Act, such as adherence to good manufacturing practice regulations, are sufficient to provide a reasonable assurance of safety and effectiveness.

Class II refers to devices that, in addition to general controls, require special controls, such as performance standards or postmarket surveillance, to provide a reasonable assurance of safety and effectiveness.

Class III refers to devices that cannot be classified into Class I or Class II because insufficient information exists to determine that either special or general controls would provide reasonable assurance of safety and effectiveness. Class III devices require premarket approval.

Contractors refers to carriers, fiscal intermediaries, and other entities that contract with HCFA to review and adjudicate claims for Medicare services.

Experimental/investigational (Category A) device refers to an innovative device believed to be in Class III for which "absolute risk" of the device type has not been established (that is, initial questions of safety and effectiveness have not been resolved and the FDA is unsure whether the device type can be safe and effective).

IDE stands for investigational device exemption. An FDA-approved IDE application permits a device, which would otherwise be subject to marketing clearance, to be shipped lawfully for the purpose of conducting a clinical trial in accordance with 21 U.S.C. 360j(g) and 21 CFR parts 812 and 813.

Non-experimental/investigational (Category B) device refers to a device believed to be in Class I or Class II, or a device believed to be in Class III for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of that device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained FDA approval for that device type.

PMA stands for "premarket approval" and refers to a marketing application for a Class III device, which includes all information submitted with or incorporated by reference in the application in accordance with 21 U.S.C. 360e and 360j and 21 CFR 814.3(e).

Sponsor refers to a person or entity that initiates, but does not conduct, an investigation under an IDE.

§ 405.203 FDA categorization of investigational devices.

(a) The FDA assigns a device with an FDA-approved IDE to one of two categories:

(1) Experimental/Investigational (Category A) Devices.

(2) Non-Experimental/Investigational (Category B) Devices.

(b) The FDA notifies HCFA, when it notifies the sponsor, that the device is categorized by FDA as experimental/investigational (Category A) or non-experimental/investigational (Category B).

(c) HCFA uses the categorization of the device as a factor in making Medicare coverage decisions.

§ 405.205 Coverage of a non-experimental/investigational (Category B) device.

(a) For any device that meets the requirements of the exception at § 411.15(o) of this chapter, the following procedures apply:

(1) The FDA notifies HCFA, when it notifies the sponsor, that the device is categorized by FDA as non-experimental/investigational (Category B).

(2) HCFA uses the categorization of the device as a factor in making Medicare coverage decisions.

(b) If the FDA becomes aware that a categorized device no longer meets the requirements of the exception at § 411.15(o) of this chapter, the FDA notifies the sponsor and HCFA and the procedures described in paragraph (a)(2) of this section apply.

§ 405.207 Services related to a noncovered device.

(a) *When payment is not made.* Medicare payment is not made for medical and hospital services that are related to the use of a device that is not covered because HCFA determines the device is not "reasonable" and "necessary" under section 1862(a)(1)(A) of the Act or because it is excluded from coverage for other reasons. These services include all services furnished in preparation for the use of a noncovered device, services furnished contemporaneously with and necessary to the use of a noncovered device, and services furnished as necessary after-care that are incident to recovery from the use of the device or from receiving related noncovered services.

(b) *When payment is made.* Medicare payment may be made for services, ordinarily covered by Medicare, to treat a condition or complication that arises because of the use of a noncovered device or from the furnishing of related noncovered services.

§ 405.209 Payment for a non-experimental/investigational (Category B) device.

Payment under Medicare for a non-experimental/investigational (Category B) device is based on, and may not exceed, the amount that would have been paid for a currently used device serving the same medical purpose that has been approved or cleared for marketing by the FDA.

§ 405.211 Procedures for Medicare contractors in making coverage decisions for a non-experimental/investigational (Category B) device.

(a) *General rule.* In their review of claims for payment, Medicare contractors are bound by the statute, regulations, and all HCFA administrative issuances, including all national coverage decisions.

(b) *Potentially covered non-experimental/investigational (Category B) devices.* Medicare contractors may approve coverage for any device with an FDA-approved IDE categorized as a non-experimental/investigational (Category B) device if all other coverage requirements are met.

(c) *Other considerations.* Medicare contractors must consider whether any restrictions concerning site of service, indications for use, or any other list of conditions for coverage have been placed on the device's use.

§ 405.213 Re-evaluation of a device categorization.

(a) *General rules.* (1) Any sponsor that does not agree with an FDA decision that categorizes its device as experimental/investigational (Category A) may request re-evaluation of the categorization decision.

(2) A sponsor may request review by HCFA only after the requirements of paragraph (b) of this section are met.

(3) No reviews other than those described in paragraphs (b) and (c) of this section are available to the sponsor.

(4) Neither the FDA original categorization or re-evaluation (described in paragraph (b) of this section) nor HCFA's review (described in paragraph (c) of this section) constitute an initial determination for purposes of the Medicare appeals processes under part 405, subpart G or subpart H, or parts 417, 473, or 498 of this chapter.

(b) *Request to FDA.* A sponsor that does not agree with the FDA's categorization of its device may submit a written request to the FDA at any time requesting re-evaluation of its original categorization decision, together with any information and rationale that it believes support recategorization. The FDA notifies both HCFA and the sponsor of its decision.

(c) *Request to HCFA.* If the FDA does not agree to recategorize the device, the sponsor may seek review from HCFA. A device sponsor must submit its request in writing to HCFA. HCFA obtains copies of relevant portions of the application, the original categorization decision, and supplementary materials. HCFA reviews all material submitted by the sponsor and the FDA's recommendation. HCFA reviews only information in the FDA record to determine whether to change the categorization of the device. HCFA issues a written decision and notifies the sponsor of the IDE and the FDA.

§ 405.215 Confidential commercial and trade secret information.

To the extent that HCFA relies on confidential commercial or trade secret information in any judicial proceeding, HCFA will maintain confidentiality of the information in accordance with Federal law.

Subpart G—[Amended]

2. The authority citation for subpart G continues to read as follows:

Authority: Secs. 1102, 1151, 1154, 1155, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1320c–3, 1320c–4, 1395ff(b), 1395hh, 1395ii and 1395pp).

3. In subpart G, a new § 405.753 is added to read as follows:

§ 405.753 Appeal of a categorization of a device.

(a) HCFA's acceptance of the FDA categorization of a device as an experimental/investigational (Category A) device under § 405.203 is a national coverage decision under section 1862(a)(1) of the Act.

(b) HCFA's acceptance of the FDA categorization of a device as an experimental/investigational (Category A) device under § 405.203 is an aspect of an initial determination that, under section 1862 of the Act, payment may not be made.

(c) In accordance with section 1869(b)(3)(A) of the Act, HCFA's acceptance of the FDA categorization of a device as an experimental/investigational (Category A) device under § 405.203 may not be reviewed by an administrative law judge.

Subpart H—[Amended]

4. The authority citation for subpart H continues to read as follows:

Authority: Secs. 1102, 1842(b)(3)(C), and 1869(b) of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), 1395ff(b)).

5. In subpart H, a new § 405.877 is added to read as follows:

§ 405.877 Appeal of a categorization of a device.

(a) HCFA's acceptance of the FDA categorization of a device as an experimental/investigational (Category A) device under § 405.203 is a national coverage decision under section 1862(a)(1) of the Act.

(b) HCFA's acceptance of the FDA categorization of a device as an experimental/investigational (Category A) device under § 405.203 is an aspect of an initial determination that, under section 1862 of the Act, payment may not be made.

(c) In accordance with section 1869(b)(3)(A) of the Act, HCFA's acceptance of the FDA categorization of a device as an experimental/investigational (Category A) device under § 405.203 may not be reviewed by an administrative law judge.

B. 42 CFR part 411 is amended as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 411.15, the introductory text is republished and new paragraph (o) is added to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(o) *Experimental or investigational devices, except for certain devices—*

(1) Categorized by the FDA as a non-experimental/investigational (Category B) device defined in § 405.201(b) of this chapter; and

(2) Furnished in accordance with the FDA-approved protocols governing clinical trials.

3. In § 411.406, paragraph (e) is revised to read as follows:

§ 411.406 Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

* * * * *

(e) *Knowledge based on experience, actual notice, or constructive notice.* It is clear that the provider, practitioner, or supplier could have been expected to have known that the services were excluded from coverage on the basis of the following:

(1) Its receipt of HCFA notices, including manual issuances, bulletins, or other written guides or directives from intermediaries, carriers, or PROs, including notification of PRO screening criteria specific to the condition of the beneficiary for whom the furnished services are at issue and of medical procedures subject to preadmission review by a PRO.

(2) **Federal Register** publications containing notice of national coverage decisions or of other specifications regarding noncoverage of an item or service.

(3) Its knowledge of what are considered acceptable standards of practice by the local medical community.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 11, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 12, 1995.

Donna E. Shalala,

Secretary.

Note: This addendum will not appear in the Code of Federal Regulations.

Addendum—Criteria for Categorization of Investigational Devices

Category A: Experimental/Investigational

Category A devices include the following:

(1) Class III devices of a type for which no marketing application has been approved through the premarket approval (PMA) process for any indication for use. (For pre-amendments[1] Class III devices, refer to the criteria under Category B).

(2) Class III devices that would otherwise be in Category B but have undergone significant modification for a new indication for use.

Category B: Non-experimental/Investigational

Category B devices include the following:

(1) Devices, regardless of the classification, under investigation to establish substantial equivalence to a predicate device, that is, to establish substantial equivalence to a previously/currently legally marketed device.

(2) Class III devices whose technological characteristics and indications for use are comparable to a PMA-approved device.

(3) Class III devices with technological advances compared to a PMA-approved device, that is, a device with technological changes that represent advances to a device that has already received PMA-approval (generational changes).

(4) Class III devices that are comparable to a PMA-approved device but are under investigation for a new indication for use. For purposes of studying the new indication, no significant modifications to the device were required.

(5) Pre-amendments Class III devices that become the subject of an IDE after the FDA requires premarket approval, that is, no PMA application was submitted or the PMA application was denied.

(6) Nonsignificant risk device investigations for which the FDA required the submission of an IDE.

Note: Some investigational devices may exhibit unique characteristics or raise safety concerns that make additional consideration necessary. For these devices, HCFA and the FDA will agree on the additional criteria to be used. The FDA will use these criteria to assign the device(s) to a category. As experience is gained in the categorization process, this addendum may be modified.

[FR Doc. 95–23132 Filed 9–13–95; 4:00 pm]

BILLING CODE 4120–01–P

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[1] Pre-amendments devices are devices that were marketed before the enactment of the 1976 Medical Device Amendments to the Food, Drug, and Cosmetic Act; that is, in commercial distribution before May 28, 1976.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Pat 73

[MM Docket No. 90–189; RM–6904, RM–7114, RM–7166, 7415, RM–7298]

Radio Broadcasting Services; Farmington, Grass Valley, Jackson, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 232A to Farmington, California, and substitutes Channel 232B1 for Channel 232A at Grass Valley, California, and modifies the license of Station KNCO, Grass Valley to specify operation on Channel 232B1. to accommodate these actions, this document substitutes Channel 259A for Channel 232A at Jackson, California, and modifies the license of Station KNGT, Jackson, California, to specify operation on Channel 259A. The reference coordinates for the Channel 232A allotment at Farmington, California, are 37–57–00 and 121–00–00. The reference coordinates for Channel 232B1 at Grass Valley, California, are 39–14–44 and 120–57–52. The reference coordinates for Channel 259A at Jackson, California, are 38–20–24 and 120–43–13. *See* 55 FR 13810 (April 12, 1990).

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 776–1654.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *First Report and Order* in MM Docket No. 90–189, adopted September 1, 1995, and released September 12, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs.303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 232A at Farmington.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 232A and adding Channel 232B1 at Grass Valley.

4. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 232A and adding Channel 259A at Jackson.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22943 Filed 9–18–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[FCC 95–385]

Mass Media: AM Expended Band Allotment Plan

AGENCY: Federal Communications Commission.

ACTION: Final rule; Interpretation.

SUMMARY: On September 1, 1995, in response to requests for reconsideration, the FCC adopted a Memorandum Opinion and Order which rescinded its original AM Expanded Band Allotment Plan, released October 14, 1994, and provides a thirty-day period for comments to correct the AM database and a thirty-day period for comments on the procedures which will be used to generate a new plan based on recalculated ranking factors. A fifteen-day reply period is also provided. This will enable an accurate AM expanded Band Allotment Plan to be issued by the FCC.

DATES: Comments to correct the AM database must be filed on or before October 19, 1995. Comments regarding the procedures which will be used to generate a new Allotment Plan must be submitted on or before October 19, 1995. Reply comments are due on or before November 3, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Burtle, Audio Services Division, Mass Media Bureau, (202) 418–2670.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order adopted September 1, 1995, and released September 6, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., NW, Washington, DC (See MM Docket 87–267). The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M St., NW, Suite 640, Washington, DC 30036.

The FCC rescinded the AM Expanded Band Allotment Plan Adopted October 14, 1994 (DA 94–1154). The Allotment Plan identified stations that were eligible to apply for authorization for specific expanded band (1605 kHz–1705 kHz) frequency allotments. The Commission also verified that certain errors existed in the AM database used to generate the improvement factor rankings on which the Allotment Plan was based (June 30, 1993–A database) and rescinded the improvement factor ranking list. The Commission called for changes to the June 30, 1993–A AM database to be filed within thirty days of the publication of this Memorandum Opinion and Order in the **Federal Register**.

The FCC further identified and clarified the standards used to implement a new Allotment Plan and gave interested parties a period of thirty days from the publication of the Memorandum Opinion and Order in the **Federal Register** to comment thereon. Reply comments may be filed within fifteen days of the comment date.

Final Regulatory Flexibility Analysis

The FCC granted in part requests for reconsideration and review of the AM Expanded Band Allotment Plan adopted October 14, 1994 (DA 94–1154) and rescinded the Allotment Plan and improvement factor ranking list. The Commission will receive requests to change the June 30, 1993–A database during a thirty-day comment period. The FCC also sets forth the procedures to implement the Allotment Plan and provides for a thirty-day comment period and fifteen-day reply period, thereon.

This action is authorized under Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and 303(r), and Section 553(b)(3)(A) of the Administrative Procedures Act.

Ordering Clause

Accordingly, it is ordered that the public is afforded thirty days from September 19, 1995 to change the June 30, 1993–A database, thirty days from September 19, 1995 to comment on the allotment plan procedures; and fifteen days from the comment date to file replies to the comments.

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–23171 Filed 9–18–95; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 60, No. 181
Tuesday, September 19, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AD10

Acceptance of Products Purchased for Use in Nuclear Power Plant Structures, Systems, and Components; Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing an advance notice of proposed rulemaking (ANPR) concerning the procurement and dedication of commercial grade items. The ANPR sought comment on the need for additional regulatory requirements and for obtaining an improved understanding of alternatives to regulatory requirements. On the basis of its findings, the NRC staff recommended to the Commission that this ANPR be withdrawn. The Commission has approved the withdrawal of this rulemaking.

FOR FURTHER INFORMATION CONTACT: Gregory Cwalina, Office of Nuclear Reactor Regulation, Division of Technical Support, Special Inspection Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2983.

SUPPLEMENTARY INFORMATION: On March 6, 1989 (54 FR 9229), the NRC staff published in the **Federal Register** an ANPR, on the need for regulatory actions to effect improvements for procurement, receipt inspection and testing, and dedication programs, in response to the findings of 13 inspections performed on licensees from 1986 through 1989. In the ANPR, the NRC staff explained that the NRC was considering the need for additional regulatory requirements and needed to obtain an improved understanding of alternatives to regulatory requirements.

The inspections on commercial grade dedication programs identified major programmatic deficiencies. On February 21, 1990, the NRC staff submitted to the Commission SECY–90–057, "Acceptance of Products Purchased for Use in Nuclear Power Plant Structures, Systems, and Components," to summarize the NRC's analysis of the public comments on the ANPR and its actions regarding the proposed rulemaking. The NRC staff concluded that (1) More regulatory guidance and direction may be necessary to ensure that the basic requirements for procurement and dedication are clearly stated and understood, (2) the NRC may not need to perform the rulemaking if the industry properly implemented the initiatives it had begun, and (3) the NRC staff would monitor the industry's efforts to determine if the progress made warranted deferring the rulemaking.

On March 7, 1990, the NRC staff forwarded to the Commission SECY–90–076, "Inspection and Enforcement Initiatives for Commercial-Grade Procurement and Dedication Programs," in which the NRC staff described its actions to defer programmatic inspections of licensees' procurement and dedication programs for about 1 year while monitoring the industry's developments, improvements, and initiatives in this area.

On August 24, 1990, the NRC staff forwarded to the Commission SECY–90–304, "Nuclear Management and Resources Council (NUMARC) Initiatives on Procurement," in which the NRC staff reported the status of NUMARC's initiatives on general procurement practices. The NRC staff stated it would conduct assessments at selected sites to review the licensees' implementation of improved procurement and commercial grade dedication programs and to assess improvements made in the areas covered by the NUMARC initiatives. The NRC staff began the first of eight planned assessments on February 4, 1991.

On April 9, 1991, the NRC staff issued Generic Letter 91–05, "Licensee Commercial-Grade Procurement and Dedication Programs," in which the NRC staff expressed NRC positions regarding certain aspects of licensee procurement and dedication programs and discussed a number of deficiencies in licensees' commercial grade dedication programs noted during previous team inspections.

On September 16, 1991, the NRC staff forwarded to the Commission SECY–91–291, "Status of NRC's Procurement Assessments and Resumption of Programmatic Inspection Activity," in which the NRC staff reported on the findings of its assessments from February 1991 through July 1991. The NRC staff concluded that although improvements had been made in licensees' procurement and dedication programs, weaknesses in implementation still existed. The NRC staff began developing an inspection procedure (IP) and conducted five pilot inspections between December 1991 and June 1992. The NRC staff continued to identify weaknesses in the implementation of licensees' dedication programs. Because of the findings of these inspections, the NRC staff held numerous meetings with NUMARC, industry, and licensees from November 1992 to March 1993. After the pilot inspections were completed, the IP was revised and in March 1993, the NRC staff submitted the draft IP for public comment.

Weaknesses identified during the procurement assessments and pilot inspections were related to implementation of the programs (i.e., dedication of specific items), and not to the programs themselves. Adoption of the industry guidance has, for the most part, resulted in licensees having acceptable programs for the dedication of commercial grade items. These programs also adequately assure that counterfeit, substandard or fraudulently marketed materials will not be accepted for use. The NRC staff's assessment and inspection activities did not identify any instances of counterfeit or fraudulent material being accepted for use by any of the plants examined.

In April 1993, the NRC staff held a public workshop, at which the draft IP and various dedication issues were discussed. The public comment period closed in May 1993. The comment analysis and the revisions to the IP and dedication guidance were finished in June 1993. On November 8, 1993, the NRC staff issued the IP. Recent experience with the new IP demonstrated that the current inspection approach provides an effective means for assuring that licensee procurement and dedication activities will prevent the acceptance of counterfeit and fraudulent materials.

Based on the findings of the original inspections, assessments, and pilot inspections, the NRC staff believes that problems identified with respect to the quality of items dedicated for use in safety-related applications are adequately addressed by the requirements of Appendix B of Part 50 and are problems of compliance, rather than of inadequate rules. The NRC staff and industry worked closely together to improve industry efforts in procurement and commercial grade dedication. Therefore, there appears to be no need for new regulations addressed to the quality of items dedicated for use in safety-related applications.

Part of the NRC staff's reason for originally proposing rulemaking was to reduce the likelihood of counterfeit or fraudulently marketed products from being accepted for use. The NRC staff has issued numerous information notices regarding specific cases of fraudulent parts being found in nuclear facilities and guidance on how to detect them. The NRC staff has also issued two generic letters presenting information regarding procurement program improvements to help prevent the acceptance and use of counterfeit or fraudulently marketed products. This issue is also addressed as part of the NUMARC Comprehensive Procurement Initiative.

Finally, the Commission issued a rule change to 10 CFR Part 50 (§ 50.5, Deliberate misconduct) that gives the NRC staff an additional regulatory tool to pursue cases in which a licensee contractor or subcontractor has deliberately provided material, goods, or services that causes or may cause the licensee to be in violation of a rule. A supplier providing counterfeit and/or substandard materials to be used in safety-related applications is subject to that rule. Therefore, additional rulemaking to specifically address fraudulent parts appears unnecessary.

For these reasons, the Commission has concluded that the nuclear industry has made significant progress toward improving its procurement and commercial grade dedication programs and believes that problems identified with respect to the quality of items dedicated for use in safety-related applications are adequately addressed by the requirements of 10 CFR Part 50, Appendix B. Therefore, there appears to be no need for new regulations addressed to the quality of items dedicated for use in safety-related applications. Accordingly, the Commission is withdrawing the ANPR.

Dated at Rockville, Maryland, this 8th day of September, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–23178 Filed 9–18–95; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–19–AD]

Airworthiness Directives; Flight Trails Helicopters, Inc., Hardpoint Assemblies Installed on McDonnell Douglas Helicopter Systems Model 369D, 369E, 369F, 369FF, and 500N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Flight Trails Helicopters, Inc. hardpoint assemblies, installed in accordance with Supplemental Type Certificate (STC) No. SH6080NM, or in accordance with Federal Aviation Administration (FAA) Form 337, "Major Repair and Alteration," approved on McDonnell Douglas Helicopter Systems (MDHS) Model 369D, 369E, 369F, 369FF, and 500N helicopters. This proposal would require removing any Flight Trails Helicopters, Inc. hardpoint assembly not identified by part number (P/N) and serial number (S/N). This proposal is prompted by two incidents in which the hardpoint assembly used to support a search light or night vision system reportedly failed. The actions specified by the proposed AD are intended to prevent failure of the hardpoint assembly, separation of the hardpoint assembly from the helicopter, and subsequent contact between the hardpoint assembly and the fuselage or rotor system of the helicopter.

DATES: Comments must be received by November 20, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–19–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James Wang, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5232, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–SW–19–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–19–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD that is applicable to Flight Trails Helicopters, Inc. hardpoint assemblies installed in accordance with STC No. SH6080NM, or in accordance with FAA Form 337, "Major Repair and Alteration," approved on MDHS Model 369D, 369E, 369F, 369FF, and 500N helicopters. Two incidents have occurred in which the hardpoint assembly reportedly failed at its installation weld. The hardpoint assembly is used to attach equipment such as a search light or night vision

system to the helicopter's fuselage. In the first incident, a failure occurred in the hardpoint installation weld area due to a fatigue crack. The discovery of a crack in the hardpoint assembly installation weld on a second helicopter occurred during a visual ground check. This condition, if not corrected, could result in failure of the hardpoint assembly, separation of the hardpoint assembly from the helicopter, and subsequent contact between the hardpoint assembly and the fuselage or rotor system of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other Flight Trails Helicopters, Inc. hardpoint assemblies installed on MDHS Model 369D, 369E, 369F, 369FF, and 500N helicopters of the same type design, the proposed AD would require, before further flight, removing the hardpoint assembly that secures a searchlight or night vision system to the helicopter.

The FAA estimates that 59 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,540.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Flight Trails Helicopters, Inc.: Docket No. 95–SW–19–AD.

Applicability: McDonnell Douglas Helicopters Systems (MDHS) Model 369D, 369E, 369F, 369FF, and 500N helicopters, that have been modified in accordance with Supplemental Type Certificate (STC) No. SH6080NM, or in accordance with a Federal Aviation Administration (FAA) Form 337, "Major Repair and Alteration," using Flight Trails Helicopters, Inc. hardpoint assemblies, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Note 2: Information concerning the hardpoint assemblies may be obtained from Flight Trails Helicopters, Inc., ATTN: Mr. Larry Anderson, 4805 Falcon Drive, Mesa, Arizona, 85205, telephone (602) 396–8242.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the hardpoint assembly, separation of the hardpoint assembly from the helicopter, and subsequent contact between the hardpoint assembly and the fuselage or rotor system of the helicopter, accomplish the following:

(a) Before further flight, remove from the helicopter any Flight Trails Helicopters, Inc. hardpoint assembly not marked with a part number (P/N) and serial number (S/N) by removing the NAS 1351–3 cap screw that secures the hardpoint assembly to the jacking fitting, P/N 369H2521, and slipping the hardpoint assembly out of the step mount.

The only Flight Trails Helicopters, Inc. hardpoint assemblies that are considered airworthy and eligible for installation are those hardpoint assemblies marked with a serial number and either P/N FTH 105 LH Mod 1, for a hardpoint assembly mounted on the left side of the helicopter, or P/N FTH 105 RH Mod 1, for a hardpoint assembly mounted on the right side.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on September 11, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–23123 Filed 9–18–95; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 95–CE–44–AD]

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Jetstream Aircraft Limited (JAL) HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The proposed AD would require repetitively inspecting the main landing gear (MLG) pintle to cylinder interface for cracks, and replacing any cylinder that has a crack exceeding certain limits. Reports of MLG cracks in the area of the pintle to cylinder interface on three of the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent failure of the MLG caused by cracks in the pintle to cylinder interface area, which, if not detected and

corrected, could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before November 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–44–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–44–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–44–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA reports that the main landing gear (MLG) has cracked in the area of the pintle to cylinder interface on three of the affected airplanes. This condition, if not detected and corrected, could result in failure of the MLG and possible loss of control of the airplane.

Jetstream has issued Alert Service Bulletin (ASB) 32–A–JA 941245, Revision 2, dated March 28, 1995, which specifies procedures for preparing the affected airplanes for a non-destructive testing (NDT) eddy current inspection of the MLG pintle to cylinder interface. The procedures for the NDT eddy current inspection are included in AP Precision Hydraulics Ltd. Service Bulletin (SB) 32–56, Revision 3, dated February 1995.

The CAA classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is considered equivalent in the United Kingdom to the FAA issuing an AD in the United States.

The airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information including the above-referenced service information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of the same type design, the proposed AD would require repetitively inspecting (using NDT eddy current methods) the MLG pintle to cylinder interface for cracks, and replacing any cylinder that has a crack exceeding certain limits. Accomplishment of the proposed inspections would be in accordance with Jetstream ASB 32–A–JA 941245, Revision 2, dated March 28, 1995, and AP Precision Hydraulics Ltd. SB 32–56, Revision 3, dated February 1995.

The FAA estimates that 250 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $90,000. This figure does not take into account the cost of repetitive inspections or the cost of replacement cylinders if cracks are found that exceed certain limits. The FAA has no way of determining the number of repetitive inspections each operator would incur or the number of cylinders that may be found cracked during the inspections proposed by this action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules

Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Jetstream Aircraft Limited: Docket No. 95–CE–44–AD.

Applicability: HP 137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category, that are equipped with one of the following main landing gear (MLG) part numbers:

1863, 1863/4A, 1863/4B, 1863/4C, 1864,
1864/4A, 1864/4B, 1864/4C,
BOOA702850A, BOOA702851A,
BOOA702925A, BO1A702925A,
BOOA703065A, BO1A703065A,
BOOA703030A, BOOA702926A,
BO1A702926A, BOOA703066A,
BO1A703066A, BOOA703031A,

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially upon the accumulation of 8,500 landings on an affected MLG or within the next 100 landings after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated.

Note 2: If the number of MLG landings is unknown, hours time-in-service (TIS) may be used by multiplying the number of hours TIS times 0.75. If hours TIS are utilized to come up with the number of landings, this would make the AD effective "initially upon the accumulation of 11,333 hours TIS or within the next 133 hours TIS after the effective date of this AD, whichever occurs later."

To prevent failure of the MLG caused by cracks in the pintle to cylinder interface area, which, if not detected and corrected, could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Using non-destructive testing (NDT) eddy current methods, inspect the MLG pintle to cylinder interface for cracks in accordance with the following:

(1) Jetstream Alert Service Bulletin 32–A–JA 941245, Revision 2, dated March 28, 1995; and

(2) AP Precision Hydraulics Ltd. Service Bulletin 32–56, Revision 3, dated February 1995.

(b) Based on the inspection results, accomplish the following, as applicable:

(1) If any crack is found that is .05 inch or more in length, prior to further flight, replace the cylinder with a new part, and reinspect at intervals not to exceed 4,000 landings provided the MLG pintle to cylinder interface is crack-free.

(2) If any crack is found that is less than .05 inch, reinspect at intervals not to exceed 40 landings provided the crack remains less than .05 inch or replace the cylinder with a new part and reinspect at intervals not to exceed 4,000 landings provided the MLG pintle to cylinder interface is crack-free.

(3) If no cracks are found, reinspect at intervals not to exceed 4,000 landings provided the MLG pintle to cylinder interface is crack-free.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 13, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–23218 Filed 9–18–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–40–AD]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes. The proposed action would require drilling inspection access holes in the elevator torque tube arm, inspecting the elevator torque tube for corrosion, replacing any corroded elevator torque tube, and applying a corrosion preventive compound. Several reports of corrosion found in the elevator torque tube area on the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent failure of the flight control system caused by a corroded elevator torque tube, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before November 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguygen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth,.Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–40–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of internal corrosion found in the elevator torque tube on over 20 Fairchild Aircraft SA226 and SA227 series airplanes. This condition, if not detected and corrected, could result in failure of the airplane flight control system and subsequent loss of control of the airplane.

Fairchild Aircraft Service Bulletin (SB) 226–27–050 and SB 227–27–028, both issued: January 22, 1990, specify procedures for the following:

- Drilling inspection access holes in the elevator torque tube arm;
- Inspecting the elevator torque tube for corrosion; and
- Applying a corrosion preventive compound.

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent failure of the flight control system caused by a corroded elevator torque tube, which, if not detected and corrected, could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, the proposed AD would require drilling inspection access holes in the elevator torque tube arm, inspecting the elevator torque tube for corrosion, replacing any corroded elevator torque tube, and applying a corrosion preventive compound. Accomplishment of the proposed inspection access hole drilling, the inspection, and the corrosion preventive compound application would be in accordance with either Fairchild SB 226–27–050 or SB 227–27–028, both issued: January 22, 1990.

The compliance time for the proposed AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance would be the most desirable method because the unsafe condition described by the proposed AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service or on the ground.

The FAA estimates that 390 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours to accomplish the proposed actions, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $234,000. This figure is based on the assumption that no owner/operator of the affected airplanes has accomplished the proposed inspection access hole drilling, inspection, or corrosion preventive compound application. It also is based on the assumption that no elevator torque tube would be found corroded and need replaced. The FAA has no way of determining how many owners/operators of the affected airplanes may have already complied with the proposed AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Fairchild Aircraft: Docket No. 95–CE–40–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial Nos.
SA226–T	T201 through T275 and T277 through T291.
SA226–T(B)	T(B)276 and T(B)292 through T(B)417.
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.
SA227–TT	TT421 through TT541.
SA227–AT	AT423 through AT695.
SA227–AC	AC406, AC415, AC416, and AC420 through AC772.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent failure of the flight control system caused by a corroded elevator torque tube, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Drill two .5 inch diameter holes in the inboard side of the elevator torque tube arm in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of and as specified in Figure 1 of Fairchild Aircraft Service Bulletin (SB) 226–27–050 or SB 227–27–028, both Issued: January 22, 1990, as applicable.

(b) Inspect the elevator torque tube in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft SB 226–27–050 or SB 227–27–028, both Issued: January 22, 1990, as applicable. Prior to prior further flight, replace any corroded elevator torque tube with a new part of like design in accordance with the applicable maintenance manual.

(c) Apply a corrosion preventive compound in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft SB 226–27–050 or SB 227–27–028, both Issued: January 22, 1990, as applicable.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(f) All persons affected by this directive may obtain copies of the service bulletins referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these service bulletins at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 13, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–23216 Filed 9–18–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–35–AD]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA23, PA23–150, PA23–160, PA23–235, and PA23–250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 92–13–04, which currently requires preflight draining procedures on The New Piper Aircraft, Inc. (Piper) Models PA23–150 and PA23–160 airplanes. This proposed action would require installing external fuel ramp assemblies on Piper Models PA23, PA23–150, PA23–160, PA23–235, and PA23–250 airplanes, and incorporating pilots' operating handbook (POH) revisions for Piper Models PA23, PA23–150, and PA23–160 airplanes. Reports of water-in-the-fuel on the affected airplanes, regardless of whether the airplane owners/operators have accomplished preflight draining procedures, prompted the proposed action. The actions specified by the proposed AD are intended to prevent rough engine operation or complete loss of engine power caused by water-in-the-fuel.

DATES: Comments must be received on or before December 26, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FFC Engineering Specification 2810–002, Revision A, dated March 21, 1995, may be obtained from Floats & Fuel Cells, 4010 Pilot Drive, suite 3, Memphis, Tennessee 38118. Piper Service Bulletin (SB) No. 827A, dated November 4, 1988, may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Craft-Lloyd, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7373; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Sixteen accidents since 1975 involving Piper PA23 series airplanes where water-in-the-fuel was believed to cause engine stoppage prompted the FAA to issue AD 90–23–18, Amendment 39–6782 (55 FR 46787; November 7, 1990), and AD 92–13–04, Amendment 39–8274 (57 FR 24938;

June 12, 1992). AD 92–13–04 superseded AD 90–23–18 and currently requires preflight draining procedures on Piper Models PA23–150 and PA23–160 airplanes, and was issued to prevent rough engine operation or complete loss of engine power because of water contamination in the fuel. AD 92–13–04 exempts from its requirements airplanes with a dual fuel drain kit, part number (P/N) 765–363, installed in accordance with Piper Service Bulletin (SB) 827A, dated November 4, 1988. AD 90–23–18 required the installation of dual fuel drain kits and the installation of internal wedges in the fuel tanks before its effectiveness was suspended and eventually superseded by AD 92–13–04.

Even with the issuance of, and the owners/operators' compliance with, AD 92–13–04, the FAA continues to receive reports of fuel-related problems where the cause is believed to be water-in-the-fuel. Some of these reports specify incidents involving Piper Models PA23–235 and PA23–250 airplanes. AD 92–13–04 did not apply to these airplane models because the FAA believed that the baffled fuel tanks included with these airplane models would channel the water towards the drain instead of the low spot.

Floats and Fuel Cells (FFC) has issued Engineering Specification 2810–002, Revision A, dated March 21, 1995, which specifies procedures for installing external fuel ramps on Piper PA23 series airplanes.

After examining all information related to the incidents and service reports described above including the referenced service information, the FAA has determined that:

- The preflight draining procedures required by AD 92–13–04 are not adequate in eliminating water from the fuel on the applicable Piper Models PA23–150 and PA23–160 airplanes, and external fuel ramps should be installed on these airplanes;
- External fuel ramps should be installed on certain Piper Models PA23, PA23–235, and PA23–250 airplanes in order to eliminate water in the fuel;
- External fuel ramps should be installed on any affected airplane with a dual fuel drain kit, part number (P/N) 765–363, installed in accordance with Piper SB 827A, dated November 4, 1988;
- Any affected airplane with Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper SB 932A, dated August 30, 1990, should not have external fuel ramps installed until the fuel tank is replaced; and
- AD action should be taken to require the installation of these external fuel ramps in accordance with the instructions in FFC Engineering Specification 2810–002, Revision A, dated March 21, 1995.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA23, PA23–150, PA23–160, PA23–235, and PA23–250 airplanes of the same type design, the proposed AD would supersede AD 92–13–04, Amendment 39–8274, with a new AD that would:

- Retain the preflight draining procedures required by AD 92–13–04 to require incorporating pilots' operating handbook (POH) revisions for Piper Models PA23, PA23–150, and PA23–160 airplanes that are not equipped with a dual fuel drain kit, part number (P/N) 765–363 (unless already accomplished). The POH revisions are included in Piper SB No. 827A, dated November 4, 1988;
- Require installing external fuel ramp assemblies on all the affected airplanes in accordance with FFC Engineering Specification 2810–002, Revision A, dated March 21, 1995; and
- Delay the compliance time for airplanes with Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper SB 932A, dated August 30, 1990, until a new fuel tank is installed.

The FAA estimates that 6,973 airplanes in the U.S. registry would be affected by the proposed installation, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $280 per airplane ($140 per tank X 2 tanks per airplane). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,462,720. This figure is based on the assumption that no affected airplane owner/operator has installed external fuel ramps. No fuel ramps have been distributed to the owners/operators of the affected airplanes.

In addition, incorporating the POH revisions as proposed would be required for approximately 2,046 airplanes in the U.S. registry. Since an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this proposed action, the only cost impact upon the public is the time it takes to incorporate these POH revisions.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 92–13–04, Amendment 39–8274 (57 FR 24938; June 12, 1992), and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 95–CE–35–AD; Supersedes AD 92–13–04, Amendment 39–8274.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial No.
PA23, PA23–150, and PA23–160.	23–1 through 23–2046.
PA23–235.	27–505 through 27–622.
PA23–250.	27–1 through 27–7405476 and 26–7554001 through 27–8154030.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required with whichever of the following is applicable:

- For airplanes that do not have Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper Service Bulletin (SB) 932A, dated August 30, 1990: Within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished; or
- For airplanes that do have Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper SB 932A, dated August 30, 1990: Upon installation of a new fuel tank, unless already accomplished.

To prevent water in the fuel tanks, which could result in rough engine operation or complete loss of engine power, accomplish the following:

(a) For all of the affected model and serial number airplanes, install external fuel ramps in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Floats and Fuel Cells (FFC) Engineering Specification 2810–002, Revision A, dated March 21, 1995.

(b) For all of the affected Models PA23, PA23–150, and PA23–160 airplanes that do not have a dual fuel drain kit, part number (P/N) 765–363, installed in accordance with Piper SB 827A, dated November 4, 1988, incorporate, into the Owners Handbook and Pilots' Operating Handbook, paragraphs 1 through 5 of the *Aircraft Systems Operating Instructions* that are contained in Part I of Piper SB 827A, unless already accomplished (compliance with superseded AD 92–13–04).

Note 2: Paragraphs 6 and 7 of the Handling and Servicing instructions that are contained in Part I of Piper SB No. 827A, dated November 4, 1988, are covered by AD 88–21–07 R1.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the Engineering Specification 2810–002, Revision A, dated March 21, 1995, upon request to Floats & Fuel Cells, 4010 Pilot Drive, suite 3, Memphis, Tennessee 38118. Piper SB No. 827A, dated November 4, 1988, may be obtained upon request from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. These documents may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 92–13–04, Amendment 39–8274.

Issued in Kansas City, Missouri, on September 13, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–23215 Filed 9–18–95; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5298–1]

Clean Air Act Proposed Disapproval of Operating Permits Program; Commonwealth of Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed disapproval.

SUMMARY: EPA is proposing to disapprove the Commonwealth of Virginia's Operating Permits Program, which Virginia submitted in response to Federal requirements that States adopt programs providing for the issuance of operating permits to all major stationary sources and to certain other sources. EPA is proposing disapproval of Virginia's submittal because Virginia's program does not afford all persons who are entitled to seek judicial review of operating permits with the legal standing to obtain such review, does not assure that all sources required by the Clean Air Act (CAA) to obtain Title V permits will be required to obtain such permits, and does not contain an adequate provision for collection of Title V program fees.

DATES: Comments on this proposed action must be received in writing by October 19, 1995.

ADDRESSES: Comments should be submitted to Ray Chalmers, USEPA Region III; Air, Radiation, & Toxics Division; 841 Chestnut Building; Philadelphia, PA 19107.

Copies of the State's submittal and other supporting information used in developing the proposed disapproval are available for inspection during normal business hours at the following location: U.S. EPA Region III; Air, Radiation, & Toxics Division; 841 Chestnut Building; Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, 3AT23; U.S. EPA Region III; Air, Radiation, & Toxics Division; 841 Chestnut Building; Philadelphia, PA 19107. (215) 597–9844.

SUPPLEMENTARY INFORMATION:

I. Introduction

Title V of the CAA, 42 U.S.C. §§ 7661–7611f, requires that States develop programs for issuing operating permits to all major stationary sources and to certain other sources, that they submit those programs to EPA by November 15, 1993, and that EPA approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the CAA and regulations promulgated at 40 Code of Federal Regulations (CFR) Part 70. The regulations promulgated at 40 CFR Part 70 define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve or disapprove and oversee implementation of State operating permits programs (see 57 FR 32250 (July 21, 1992)). Where a program substantially, but not fully, meets the requirements of section 502 of the CAA or of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

Due in part to pending litigation over several aspects of the Part 70 rule promulgated on July 21, 1992, Part 70 is in the process of being revised. When the final revisions to Part 70 are promulgated, the requirements of the revised Part 70 will define EPA's criteria for the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will review State operating permits program submittals. Until the date on which the revisions to Part 70 are promulgated, the currently effective July 21, 1992 version of Part 70 shall be used as the basis for EPA review.

Virginia submitted a Title V program to EPA on November 12, 1993. The submittal included regulations, an Attorney General's opinion, a program description, permitting program documentation, and other required elements. On January 14, 1994, Virginia submitted a supplemental letter pertaining to enhanced monitoring. In a **Federal Register** notice published December 5, 1994 (59 Fed. Reg. 62324), EPA disapproved this program.[1] On January 9, 1995, Virginia submitted revised regulations and a revised Attorney General's opinion as amendments to its original program, and asked that EPA approve the revised program. On January 17, 1995, Virginia submitted an additional copy of the revised regulations (the version published in the Virginia Register). On April 18, 1995, EPA found Virginia's January 9, 1995 submittal to be administratively complete, pursuant to 40 CFR 70.4(e)(1). Finally, on May 17, 1995, Virginia again amended its program by submitting revised statutory language and an amended Attorney General's opinion.

The analysis contained in this document focuses on the major corrections required in Virginia's operating permit program submittals to enable Virginia's program to meet the minimum requirements of 40 CFR Part 70 and the CAA. The full program submittal, the Technical Support Document (TSD), providing additional analysis of Virginia's submittal, and other relevant materials providing more detailed information are available as part of the public docket.

II. Analysis of State Submittal

A. Statutes, Regulations and Program Implementation

Virginia's operating program submittal does not substantially meet the requirements of the CAA and of the implementing regulations at 40 CFR Part 70 because it: (1) Does not adequately afford persons the opportunity to seek judicial review of final permit decisions; (2) does not assure that all sources required by the CAA to obtain Title V permits will be required to obtain such permits; and (3) does not contain an adequate provision for collection of Title V program fees. These issues are discussed below, and in the TSD. In addition, this notice and the TSD specify other deficiencies which must be corrected before EPA can grant full approval to Virginia's operating permits program.

1. Standing for Judicial Review

EPA is proposing to disapprove Virginia's Title V program because it does not adequately provide interested parties with adequate standing to obtain judicial review of final Title V permit decisions. As described in the December 5, 1994 final disapproval notice, EPA interprets section 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x) as requiring that approvable Title V permit programs provide any party who participated in the public comment process on a permit action and who meets the threshold standing requirements of Article III of the U.S. Constitution with the opportunity to obtain judicial review of an operating permit in State court. (See 59 FR 62325). The Commonwealth's January 9, 1995, submittal did not correct the previously identified deficiency in Virginia's standing provisions. In particular, Virginia did not amend the standing provisions of Section 10.1–1318(B) of the Code of Virginia. Those provisions continue to extend the right to seek judicial review only to persons who have suffered an "actual, threatened, or imminent injury * * *" where "such injury is an invasion of an immediate, legally protected, pecuniary and substantial interest which is concrete and particularized * * *" Virginia's statute does not enable a party who meets the minimum threshold standing requirements of Article III of the U.S. Constitution to obtain access to Virginia's court system and therefore it fails to meet the minimum requirements for providing an opportunity for judicial review as required by section 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x).

The Commonwealth's Attorney General has questioned the validity of EPA's interpretation of section 502(b)(6) of the CAA and, if that interpretation is valid, of the constitutionality of the CAA. EPA believes that its interpretation of section 502(b)(6) of the CAA is reasonable and is supported by the language of the CAA, its legislative history, and the goals Congress sought to achieve under Title V of the CAA. In addition, EPA believes that Title V of CAA and its related sanctions provisions do not violate the U.S. Constitution. (See 59 FR 62325–62327).

EPA must disapprove Virginia's program and cannot merely grant it interim approval on this issue because this deficiency is so significant that it prevents the entire program from substantially meeting the requirements of 40 CFR Part 70. If Virginia is permitted to narrowly preclude public commenters from exercising judicial review rights, one of the chief incentives for permit decision makers to fully consider public comments would be significantly reduced and the public comments process would thereby be rendered less meaningful. The guiding principle that EPA considers in all evaluations of approvability of interim programs is whether the proposed program can ensure the issuance of good permits. Only after a permit program is found to substantially meet the requirements of Part 70 can the criteria in 40 CFR § 70.4(d)(3) be applied to determine if the program is eligible for interim approval.

EPA cannot approve Virginia's operating permit program until Virginia amends *Va. Code* § 10.1–1318(B) to correct this deficiency.

2. Applicability Under the Operating Permits Program

EPA is also proposing to disapprove Virginia's submittal because it does not ensure the applicability of the Title V operating permit program to all sources subject to the program under 40 CFR 70.3. Virginia's regulations provide that the operating permit program applies to sources subject to certain listed air pollution control requirements. (See § 120–08–0501 and § 120–08–0601.) In these applicability sections the Commonwealth should have listed all the CAA requirements which trigger Title V applicability, as they are set forth at 40 CFR 70.3. Instead, Virginia lists, in several cases, its own air pollution control regulations, in which Virginia incorporates federal CAA § 111 and § 112 requirements. Virginia states in Rule 8–5, § 120–08–0501, and in Rule 8–6, § 120–08–0601, that sources are subject to its operating permits rule if they are subject to Virginia's regulatory provisions of Parts IV, V and VI as adopted pursuant to sections 111 and 112 of the CAA. To meet the requirements of 40 CFR 70.3, Virginia must revise § 120–08–0501 and § 120–08–0601 to state that sources are subject to the operating permits rule if they are subject to a standard, limitation or other requirement under sections 111 or 112 of the CAA.

EPA cannot approve Virginia's operating permit program until Virginia corrects the deficiencies discussed above.

3. Permit Fee Demonstration

EPA is also proposing to disapprove Virginia's submittal because it does not contain an adequate permit fee demonstration. Virginia's Rule 8–6, entitled "Permit Program Fees for Stationary Sources," includes a formula to be used for calculating permit fees. Under this formula a base year fee

amount is to be increased each year by the amount of inflation as measured by the consumer price index for all urban consumers. This part of the formula meets the permit fee requirements of 40 CFR § 70.9.

However, in the formula Virginia defines the base year amount not as $25, which is the minimum required for EPA to presume a State fee to be adequate, as specified under 40 CFR § 70.9, but rather as "the base year amount specified in § 10.1–1322(B) of the Virginia Air Pollution Control Law, expressed in dollars per ton." Section 10.1–1322(B) does not define a certain base year fee, but states only that "The annual permit program fees shall not exceed a base year amount of twenty-five dollars per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act." For Virginia's program to be approvable, the fee assessment formula in Virginia Rule 8–6 must be revised to specify a base year fee amount of $25 per ton, with a base year of 1989 adjusted for inflation, as provided for under 40 CFR § 70.9. Also, § 10.1–1322(B) should be changed to specify a base year of 1989.

Virginia Rule 8–6 also includes a provision, in §§ 120–08–0604.D. and E., which allows Virginia to assess a fee of less than $25 per ton (1989 dollars) adjusted for inflation, if Virginia determines that it would collect more money than required to fund its Title V program if it assessed the full $25 per ton fee (1989 dollars), adjusted for inflation. If Virginia chooses in the future to collect a fee of less than $25 (1989 dollars), adjusted for inflation, its fee assessment would no longer meet the requirement for presumed adequacy under 40 CFR §70.9. Accordingly, Virginia would trigger the requirements under 40 CFR § 70.9(b)(5) that it provide EPA with a detailed accounting that its fee schedule meets the requirements of 40 CFR § 70.9(b)(1).

Before the Commonwealth assesses a fee lower than the presumptive minimum of § 25 per ton (1989 dollars), adjusted for inflation, it must obtain EPA approval of such a fee. EPA would approve such a fee if Virginia submitted a detailed accounting showing that the fee would result in the collection of sufficient funds to run a fully adequate Title V program. This requirement for EPA approval of any fee lower than the presumptive minimum is consistent with the requirements of 40 CFR § 70.9, and is implied by § 120–08–0604.D. which states that "Any adjustments made to the annual permit program fee shall be made within the constraints of 40 CFR § 70.9."

4. Insignificant Activities

Section 70.4(b)(2) requires States to include in their operating programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) provides that an application for a Part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) further states that EPA may approve, as part of a State program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under Part 70, a State may approve as part of that State's program any activity or emission level that the State wishes to consider insignificant. Part 70, however, does not establish specific emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the Part 70 program under review.

In Appendix W of Rules 8–5 and 8–6 Virginia defines various specified types of emission units as insignificant for purposes of Title V permitting, and states that these units are not required to be identified in Title V applications. The Appendix also states that other unspecified types of units can be considered insignificant if their emissions or their size or production rate are below certain levels. These units must be listed in Title V applications, and their emissions, size, or production rate must be given, whichever is relevant, but no additional information must be supplied regarding them.

EPA has several concerns regarding Virginia's classifications of insignificant sources. One overall concern is that under Virginia Rule 8–5 and Appendix W the determination of whether or not a source is subject to the operating permit program can be done without taking into account emissions from units considered to be insignificant. If the total emissions from units subject to Title V requirements were just below the level which would trigger Title V program applicability, failure to take into account additional emissions from units which are exempt could result in a source avoiding Title V requirements when it should be subject to those requirements. EPA recommends that Virginia correct this deficiency by modifying the statements found in § 120–08–505D(1)(a)(2) and in Appendix W(I)(A)(4), which require that "the emissions from any emissions unit shall be included in the permit application if the omission of those emission units from the application would interfere with the determination or imposition of any applicable requirement or the calculation of permit fees." The last portion of this statement should be modified to state "if the omission of those emission units would interfere with the determination of Title V applicability, the determination or imposition of an applicable requirement, or the calculation of permit fees."

EPA is also concerned that when Virginia defined emissions units as insignificant based on their emissions levels, Virginia used emissions levels which are too high. Specifically, EPA is concerned that Virginia defined as insignificant all emissions units with uncontrolled emissions of less than 10 tons per year of nitrogen dioxide, sulfur dioxide, and total suspended particulates or particulate matter (PM10), less than seven tons per year of volatile organic compounds, and less than 100 tons per year of carbon monoxide. Virginia defines "uncontrolled emissions" as emissions from a source when operating at maximum capacity without air pollution control equipment. Insignificant activity thresholds that are considered to be "sound" by EPA would fall in the range of 1 to 2 tons per year for criteria pollutants. EPA is also concerned that Virginia defined as insignificant all other pollutant emission sources (many of them hazardous emission sources) with emissions less than the section 112(g) de minimis levels set forth at 40 CFR § 63.44 or the accidental release threshold levels found at 40 CFR § 68.130. These levels are appropriate in many cases, but are too high in others. Accordingly, EPA believes that Virginia should modify this provision to indicate that sources emitting other air pollutants are considered insignificant if their emissions are below the lesser of the § 112(g) threshold levels set forth at 40 CFR § 63.44, the accidental release thresholds set forth at 40 CFR § 68.130, or 1000 pounds per year. EPA believes that the above criteria and other pollutant emission levels are sufficiently below the applicability thresholds for many applicable requirements to assure that no unit potentially subject to an applicable requirement would be omitted from a Title V application.

EPA is concerned that Virginia did not provide EPA with sufficient information to properly evaluate whether or not all of the activities

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[1] The Commonwealth of Virginia filed an appeal of this rulemaking in the United States Court of Appeals for the Fourth Circuit (Case No. 95–1052).

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which Virginia included on its list of insignificant activities are appropriate. Of key importance to EPA in reviewing such lists is that no source subject to an applicable federal requirement should be included on the list, pursuant to 40 CFR § 70.5. Virginia did not provide a demonstration that the activities it listed are not likely to be subject to such requirements. Also important in reviewing such lists is that the emissions from the activities listed be truly insignificant, and Virginia did not provide EPA with information on the likely emissions of the activities listed. However, it is clear that Virginia has incorrectly listed as insignificant both "comfort air conditioning" and "refrigeration systems," which are subject to stratospheric ozone protection requirements established by Title VI of the CAA. Virginia should remove both comfort air conditioning and refrigeration systems from the insignificant activities list.

EPA cannot fully approve Virginia's operating permit program until Virginia corrects the deficiencies discussed above.

5. Variance Provision

While not a disapproval issue, it should be noted that Virginia has the authority to issue a variance from requirements imposed by Virginia law. The variance provision at *Va. Code* § 10.1–1307.C. empowers the Air Pollution Control Board, after a public hearing, to grant a local variance from any regulation adopted by the board. EPA regards this provision as wholly external to the program submitted for approval under Part 70, and consequently is proposing to take no action on this provision of Virginia law. EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the CAA. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable permit, except where such relief is consistent with the applicable requirements of the CAA and is granted through procedures allowed by Part 70. EPA reserves the right to enforce the terms of the permit where the permitting authority purports to grant relief from the duty to comply with a permit in a manner inconsistent with the CAA and Part 70 procedures.

B. Provisions Implementing Other CAA Requirements

1. Authority and Commitments for Section 112 Implementation

Virginia requested that EPA grant Virginia "delegation of authority upon approval of the operating permit program for all Section 112 programs except Section 112(r), prevention of accidental releases." Because EPA is disapproving Virginia's Title V submittal, Virginia's request for delegation has not been triggered.

Virginia demonstrated that it has in Va. Code § 10.1–1322.A. and Rule 8–5 the broad legal authority to incorporate into permits and to enforce most applicable CAA section 112 requirements. However, Virginia also indicated that it may require additional authority to conduct certain specific section 112 activities. Virginia supplemented its broad legal authority with a commitment to "develop the state regulatory provisions as necessary to carry out these programs and the responsibilities under the delegation after approval of the operating permit program and EPA has issued the prerequisite guidance for development of these title III programs." Also, Virginia has the authority under § 120–08–0505.K. to require that an applicant state that the source has complied with CAA § 112(r) or state in the compliance plan that the source intends to comply and has set a schedule to do so.

EPA had until recently interpreted the CAA as requiring sources to comply with section 112(g) beginning on the date of approval of a Title V program regardless of whether or not EPA had completed its section 112(g) rulemaking. EPA has since revised this interpretation of the CAA as described in a February 14, 1995 **Federal Register** notice (see 60 FR 83333). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The rationale for the revised interpretation is set forth in detail in the February 14, 1995 interpretive notice.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule to allow States time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Virginia would be required, if it were delegated authority to implement section 112(g), to be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of implementing Virginia regulations.

2. Acid Rain Provisions

Virginia's program does not contain all provisions required relating to acid rain sources, but Virginia has committed to submit the required provisions shortly, and EPA find Virginia's commitment acceptable. Virginia's program properly requires "affected sources" to obtain operating permits, and Virginia defines an "affected source" as a source containing one or more "affected units," which are themselves defined as "a unit subject to any acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Parts 72, 73, 75, 76, 77, or 78." However, Virginia has not defined as an "applicable requirement" any of these acid rain emissions reduction requirements or limitations. Therefore, Virginia's operating permits would not be required to include any of these requirements.

Virginia is aware of this deficiency and has committed to correct it. In Virginia's operating permits program submittal of January 9, 1995, Virginia committed to adopting an acid rain regulation by the latter half of 1995. Virginia stated that under this regulation it would issue acid rain sources operating permits which would include all requirements of the acid rain program. In a statement included in that submittal, Virginia's Attorney General also committed to provide EPA, when Virginia submits its acid rain regulation, with the required legal opinion regarding Virginia's legal authority to carry out the acid rain portion of the operating permits program.

III. Proposed Action and Implications

The EPA is proposing to disapprove the operating permits program contained in submittals from Virginia dated November 12, 1993, January 14, 1994, January 9, 1995, January 17, 1995, and May 17, 1995. If promulgated, this disapproval would constitute a disapproval under section 502(d) of the CAA (see generally 57 FR 32253–54). As provided under section 502(d)(1) of the CAA, Virginia would have up to 180 days from the date of EPA's notification of disapproval to the Governor to revise and resubmit the program.

If EPA finalizes this proposed disapproval, Virginia may become subject to sanctions under the CAA. Pursuant to section 502(d)(2)(A) of the CAA, EPA may, at its discretion, apply any of the sanctions in section 179(b) at any time following the effective date of

a final disapproval. The available sanctions include a prohibition on the approval by the Secretary of Transportation of certain highway projects or the awarding of certain federal highway funding, and a requirement that new or modified stationary sources or emissions units for which a permit is required under Part D of Title I of the CAA achieve an emissions reductions-to-increases ratio of at least 2-to-1. In addition, EPA is required by section 502(d)(2)(B) of the CAA to apply one of the sanctions in section 179(b), as selected by the Administrator, on the date 18 months after the effective date of a final disapproval, unless prior to that date Virginia has submitted a revised operating permits program and EPA has determined that it corrects the deficiencies that prompted the final disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Virginia, both sanctions shall apply after the expiration of the 18-month period until the Administrator determines that Virginia has come into compliance. In all cases, if, six months after EPA applies the first sanction, Virginia has not submitted a revised program that EPA has determined corrects the disapproved program's deficiencies, a second sanction is required. Finally, if EPA has not granted full approval to Virginia's program by November 15, 1995, and Virginia's program at that point does not have interim approval status, EPA must promulgate, administer and enforce a Federal permits program for Virginia on that date.

EPA first disapproved Virginia's operating permits program in a **Federal Register** notice published on December 5, 1994, which became effective on January 5, 1995. As a result, EPA's authority to apply discretionary sanctions to Virginia arose on January 5, 1995, and the 18-month period before which EPA is required to apply sanctions also began on that date.

Consequently, following today's proposed disapproval EPA continues to have the authority to apply discretionary sanctions to Virginia and will be required to apply sanctions on July 5, 1996, unless by that date EPA determines Virginia has corrected each of the deficiencies that prompted EPA's original disapproval. Moreover, if today's proposed disapproval is finalized, EPA would be required to apply sanctions 18 months after the effective date of such action, unless by that date EPA determines Virginia has corrected each of the deficiencies that prompted EPA's disapproval and that were not the subject of the original final disapproval action.

IV. Proposed Action

EPA is proposing to disapprove the submittals made on January 9, 1995 and May 17, 1995 by the Commonwealth of Virginia to satisfy the requirements for the operating permits program required by Title V of the Clean Air Act for the reasons outlined in this notice.

V. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed disapproval. Copies of the State's submittal and other information relied upon for the proposed disapproval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed disapproval. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the disapproval process; and (2) to serve as the record in case of judicial review. The EPA will consider any comments received by October 19, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the CAA do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Federal Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final action that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must consider the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that this proposed disapproval action of Virginia's Title V Operating Permits Program does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action disapproves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 8, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95–23204 Filed 9–18–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 81

[AD–FRL–5297–9]

Clean Air Act Reclassification; Pennsylvania—Liberty Borough Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to find that the Liberty Borough, Pennsylvania nonattainment area has not attained national ambient air quality standards (NAAQS) for particulate matter of nominal aerodynamic diameter smaller than 10 micrometers (PM–10) by the Clean Air Act (the Act) mandated attainment date for moderate nonattainment areas. The Act established an attainment date of no later than December 31, 1994 for areas classified as moderate nonattainment areas. This proposed finding is based on monitored air quality data for the PM–10 NAAQS during the years 1992–94. EPA is soliciting public comment on all relevant matters associated with this proposed action, including comment as to whether there are any mitigating facts or extenuating circumstances that it should consider in its review of the monitoring data used to propose to find that the area has not achieved the

NAAQS. All comments and information submitted, in writing, at the address and within the time frame specified below will be fully considered by EPA in determining its final action.

DATES: Comments must be received on or before October 19, 1995.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Thomas A. Casey, U.S. EPA Region III, (215) 597–2746.

SUPPLEMENTARY INFORMATION:

I. Background

A. Health and Welfare Effects of Particulate Matter

Based on studies of human populations exposed to high concentrations of particles (at times in the presence of SO_2) and laboratory studies of animals and humans, there are major human health concerns associated with particulate matter. These include deleterious effects on breathing and respiratory systems, aggravation of existing respiratory and cardiovascular disease, alterations in the body's immune systems against foreign materials, damage to lung tissue, carcinogenesis, and premature death. The major subgroups of the population that appear to be most sensitive to the effects of particulate matter include individuals with chronic obstructive pulmonary or cardiovascular disease, those with influenza, asthmatics, the elderly, and children. Particulate matter also soils and damages materials, and fine particles are a major cause of visibility impairment in the United States.[1]

B. Clean Air Act Requirements Concerning Designation and Classification

On November 15, 1990, the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas meeting the criteria of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. Pursuant to section 188(a), all PM–10 nonattainment areas were initially classified as moderate by operation of law upon designation as nonattainment. These nonattainment designations and moderate area classifications were codified in 40 CFR Part 81 on November 6, 1991 (56 FR 56694).

C. Clean Air Act's Requirements for Moderate PM–10 Nonattainment Areas

States containing areas which were designated as moderate nonattainment by operation of law under section 107(d)(4)(B) were to develop and submit State Implementation Plans (SIPs) to provide for the attainment of the PM–10 NAAQS. Those SIPs were to include the adoption and implementation of PM–10 reduction requirements which constitute reasonably available control measures, (RACM), including reasonably available control technology (RACT). Pursuant to section 189(a)(2) of the Act, those SIP revisions were to be submitted to EPA by November 15, 1991. The Commonwealth of Pennsylvania submitted this SIP revision (developed and adopted by the Allegheny County Health Department) on January 11, 1994. On April 11, 1995 (60 FR 18385), in a rulemaking separate from today's action, EPA proposed approval of the Commonwealth's SIP revision for the Liberty Borough moderate PM–10 nonattainment area. EPA received numerous comments on its proposed action, some in support and some in opposition, and has yet to take final action on that SIP revision.

D. Reclassification to Serious Nonattainment

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date, whether PM–10 nonattainment areas have attained the NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's "air quality as of the attainment date", and section 188(b)(2) is consistent with this requirement. EPA makes the determination of whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with 40 CFR Part 50, Appendix K.

Pursuant to Appendix K, attainment of the annual PM–10 standard is achieved when the expected annual arithmetic mean PM–10 concentration is equal to or less than 50 micrograms per cubic meter ($\mu g/m^3$). Attainment of the 24-hour standard is determined by calculating the expected number of exceedances of the 150 $\mu g/m^3$ limit per year. The 24-hour standard is attained when the expected number of exceedances is 1.0 or less. A total of 3 consecutive years of non-violating air quality data is generally necessary to show attainment of the 24-hour and annual standards for PM–10. A complete year of air quality data, as defined in 40 CFR Part 50, Appendix K, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.[2]

Under section 188(b)(2)(A), a moderate PM–10 nonattainment area is reclassified as serious by operation of law if the Administrator finds that the area has failed to attain the NAAQS by the statutory attainment date. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a notice in the **Federal Register** identifying those areas that failed to attain the standard and the resulting reclassifications. EPA is fulfilling its responsibility for this requirement via the federal rulemaking process initiated by today's action.

E. Clean Air Act's Requirements for Serious PM–10 Nonattainment Areas

PM–10 nonattainment areas reclassified as serious under section 188(b)(2) of the Act are required to submit, within 18 months of the area's reclassification, SIP revisions providing for, among other things, the adoption and implementation of best available control measures (BACM), including best available control technology (BACT), for PM–10 and PM–10 precursors no later than four years from the date of reclassification. The SIP also must contain a demonstration that its implementation will provide for attainment of the PM–10 NAAQS no later than December 31, 2001. EPA has provided specific guidance on developing serious area PM–10 SIP revisions in an addendum to the General Preamble to Title I of the Clean Air Act. See 59 FR 41998 (August 16, 1994). These requirements are in addition to the moderate PM–10 nonattainment area requirements for RACT/RACM.

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[1] Air Quality Criteria for Particulate Matter (External Review Draft), EPA–600/AP–95/001a–c, April 1995 (NTIS #: PB95–22–1727, –1735, –1743).

[2] EPA is currently under court order to review the NAAQS for particulate matter (*American Lung Association* v. *Browner*, No. 93–643 D. Ariz., October 6, 1994).

II. Rationale for EPA's Proposed Action

By today's action, EPA is proposing to find that the Liberty Borough area did not attain the PM–10 NAAQS by the required attainment date of December 31, 1994. As discussed below, this proposed finding is based upon air quality data which revealed violations of the PM–10 NAAQS during 1992–1994. If EPA takes final action on this proposed finding, the Liberty Borough nonattainment area (comprised of the City of Clairton and the Boroughs of Liberty, Lincoln, Glassport, and Port Vue) located in Allegheny County, Pennsylvania) will be reclassified by operation of law as a serious nonattainment area for PM–10 under section 188(b)(2)(A) of the Act.

A. Ambient Air Monitoring Data

Table 1 lists each of the monitoring sites in the Liberty Borough area where the 24-hour PM–10 NAAQS has been exceeded during 1992–1994 and the concentration, in micrograms per cubic meter, on the day of the exceedance.

TABLE 1

Year and date	Lincoln (high-volume sampler) ($\mu g/m^3$)	Lincoln (continuous sampler) ($\mu g/m^3$)	Liberty (high-volume sampler) ($\mu g/m^3$)
1992:			
1/28			175
12/15	186		
1993:			
5/10	167		
11/23	223	195	
1994:			
2/19	163		
3/7	157		

The monitors in the nonattainment area that recorded exceedances of the PM–10 NAAQS have operated on varying sampling schedules with varying data capture rates. EPA requires the adjustment of observed exceedances to account for incomplete data pursuant to 40 CFR Part 50 Appendix K. In the case of the Lincoln high-volume sampler, five exceedances of the 24-hour NAAQS were observed from 1992 through 1994.[3] Before adjusting for incomplete sampling, the number of exceedances per year for the three year period would be 1.7. After adjusting for incomplete sampling, the number of expected exceedances of the NAAQS at this site during the three year period was 2.2.

According to 40 CFR Part 50, the 24-hour NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m3$ is equal to or less than one. In the simplest case, the number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year, accounting for incomplete data, and then averaging them over the past three calendar years. Therefore from 1992–1994, the number of expected exceedances at the Lincoln high-volume sampler is 2.2. This estimation of expected exceedances indicates that the Lincoln site had not attained the 24-hour PM–10 NAAQS during 1992–1994.

Only one exceedance of the annual NAAQS has been recorded in the Liberty Borough area from 1992–1994. (The Lincoln high-volume sampler recorded a weighted-average concentration of 52.5 $\mu g/m^3$ in 1994.) No station in the Liberty Borough area recorded an annual average concentration, averaged (as prescribed in Appendix K) from 1992–1994, which exceeded the annual NAAQS.

III. Proposed Action

By today's action, EPA is proposing to find that the Liberty Borough area did not attain the PM–10 NAAQS by December 31, 1994. As discussed above, this proposed finding is based upon air quality data which revealed violations of the PM–10 NAAQS during 1992–1994. If EPA takes final action on this proposed finding, the Liberty Borough nonattainment area will be reclassified by operation of law as a serious nonattainment area for PM–10 under section 188(b)(2)(A) of the Act.

IV. Request for Public Comment

EPA is requesting comment on all aspects of today's proposal, including, but not limited to: The PM–10 control requirements adopted to date by the County and the timing and status of their implementation, the compliance status and history of the sources subject to the PM–10 control requirements, the efforts made to date to meet the requirements, air quality data and trends as they relate to implementation of the control requirements, and weather system occurrances (meteorology). EPA is also soliciting comment as to whether there are any mitigating facts or extenuating circumstances that it should consider in its review of the monitoring data used to propose to find that the area has not achieved the NAAQS, including any relevant comparison of the data collected from the ambient monitors. EPA is soliciting comment as to the relevancy of such information in determining whether the area has achieved the NAAQS.

As indicated earlier in this notice, EPA will consider any comments received, in writing, by October 19, 1995.

V. Executive Order (E.O.) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 188(b)(2) of the Act, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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[3] The Lincoln high volume sampler began operation in the Fall of 1992.

As discussed in section V of this notice, findings of failure to attain and reclassification of nonattainment areas under section 188(b)(2) of the Act do not in-and-of-themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

VII. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate.

EPA believes, as discussed earlier in section V of this notice, that the proposed finding of failure to attain and reclassification of the Liberty Borough nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 11, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95–23205 Filed 9–18–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 441 and 447

[MB–046–P]

RIN 0938–AF42

Medicaid Program; Payment for Covered Outpatient Drugs Under Drug Rebate Agreements With Manufacturers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would specify requirements for State Medicaid agencies and conditions under which Federal payments would be made under Medicaid for covered outpatient prescription drugs. The rule would also specify the conditions for approval and renewal of rebate agreements with drug manufacturers participating in the Medicaid program.

The proposed rule would interpret sections 1902(a)(54), 1903(i)(10), and 1927 of the Social Security Act, as added by section 4401 of the Omnibus Budget Reconciliation Act of 1990, and amended by section 13602 of the Omnibus Budget Reconciliation Act of 1993, and section 601(b) of the Veterans Health Care Act of 1992. We consider this rule necessary to adequately implement the provisions of section 1927 of the Act.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided in the "Addresses" section below, no later than 5:00 p.m. on November 20, 1995.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–046–P, P.O. Box 7518, Baltimore, MD 21207–0518.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C., or C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–046–P. Written comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (telephone: (202) 690–7890).

If you wish to submit comments on the information collection requirements contained in this rule, you may submit written comments to: Office of Information and Regulatory Affairs, Attention: Laura Oliven, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Estelle Chisholm, (410) 786–3286.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Drug Rebate Provisions

Under section 1927 of the Social Security Act (the Act), manufacturers that have entered into a national rebate agreement must provide each State Medicaid program with rebate period payments (or other periodic rebate payments, as determined by the Secretary). The rebate must be calculated in accordance with sections 1927(b) and (c) of the Act, using manufacturing pricing data and State drug utilization information as outlined in the statute.

The requirements concerning rebate agreements apply to drugs dispensed and paid for under Medicaid on or after January 1, 1991. For manufacturers who entered into rebate agreements before March 1, 1991, section 1927(a)(1) of the Act provided for Federal financial participation (FFP) retroactively calculated as if the agreement had been entered into on January 1, 1991. For agreements that are entered into on or after March 1, 1991, Medicaid coverage and FFP begin, as specified in section 1927(a)(1), the first day of the rebate period that begins more than 60 days after the date the agreement is entered into. We are interpreting the term "entered into" to mean the date the agreement is postmarked by the U.S. Postal Service or other common mail carrier. We will not consider the date stamped by a postage meter to be a postmark.

Although the statute provides specific deadlines for manufacturers to sign rebate agreements, section 1927(a)(3) of the Act provides, in part, for payment of drugs not covered under rebate agreements if the Secretary determines that in the first calendar quarter of 1991 there were extenuating circumstances. Therefore, in light of the deadlines imposed by the statute for signing the agreement, and in accordance with the extenuating circumstances clause in section 1927(a)(3) of the Act, HCFA extended through April 30, 1991, the deadline for manufacturers to enter into Medicaid rebate agreements that are retroactive to January 1, 1991. Therefore, rebate agreements entered into on or after May 1, 1991, are effective on the first day of the calendar quarter that begins more than 60 days after the date the agreement is entered into.

The statute does not specify whether the drug provisions are applicable in areas other than the 50 States and the District of Columbia. However, in the

legislative history, the Congress specifically noted that the drug rebate provisions "[r]equire drug manufacturers to comply with the rebate requirements in all States and the District of Columbia." (H. R. Conf. Rep. 964, 101st Cong., 2d Sess. 822 (1990).) Therefore, in accordance with our understanding of Congressional intent, we are applying the drug rebate requirements only to the 50 States and the District of Columbia.

Section 1115 of the Act contains provisions for State demonstration projects that are likely to assist in promoting the objectives of certain Federal programs, including the Medicaid program. Specifically, under the authority of section 1115(a)(1), the Secretary may waive compliance with the requirements of section 1902 of the Act for any State that is operating an experimental, pilot or demonstration project. Under section 1115(a)(2), the Secretary may also make payments notwithstanding restrictions under section 1903. In accordance with these provisions, a State operating under a section 1115(a) demonstration project waiver may have the requirements of section 1902(a)(54) of the Act, concerning compliance with applicable requirements of section 1927, waived. In addition to the extent that section 1927 requirements act as conditions under section 1903 for Federal matching funds to such a State, these conditions may be excused.

We note that section 1115(a) does not provide authority to waive or excuse requirements applicable to States other than the waiver State. Thus, there is no authority to waive inclusion of manufacturer sales within a waiver State from the calculation of best price or average manufacturer price applicable to other States.

Section 1927(j) of the Act specifies that the provisions of the drug rebate program do not apply to covered outpatient drugs dispensed by (1) health maintenance organizations (HMOs), including those organizations that contract to provide services to Medicaid recipients under section 1903(m) of the Act; and (2) hospitals that dispense covered outpatient drugs using drug formulary systems and bill the Medicaid program no more than the hospitals' purchasing costs for these drugs as determined under the State plan. Even though HMOs and certain hospitals are exempt from the requirements of the rebate program, section 1927(j) specifically states that its provisions should not be construed as providing that the amounts paid by these organizations should be excluded from the best price calculations. (Section V.B.2.a. of this preamble contains a discussion on best price.)

On February 15, 1991, we made available to drug manufacturers a national rebate agreement developed in response to section 1927 of the Act. Prior to that date, we held extensive discussions with representatives from States and drug manufacturers. These parties reviewed and commented on the proposed language of the national rebate agreement. We also provided information to the public regarding the national drug rebate agreement through a notice with comment period in the **Federal Register** on February 21, 1991 (56 FR 7049). The February 1991 notice reprinted the text of the national drug rebate agreement. We received a number of timely public comments in response to this notice.

A detailed discussion of the public comments and the Department's responses appear under section X. of this preamble. We have given these public comments full consideration and have incorporated certain provisions in this proposed rule based on that consideration. We are not amending the national rebate agreement at this time. We will amend the national rebate agreement in the future, as necessary, to conform the agreement with the regulations and to take into consideration public comments received on the February 21, 1991, notice that are not addressed in this rule and public comments that we receive on this proposed rule.

This proposed rule would interpret in regulations the amendments made by section 4401 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508, enacted on November 5, 1990; section 601(b)(1) of the Veterans Health Care Act of 1992 (VHCA), Public Law 102–585, enacted on November 4, 1992; and section 13602 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103–66, enacted on August 10, 1993, as discussed below.

B. Changes Made by the Omnibus Budget Reconciliation Act of 1990

Under the Medicaid program, States may provide coverage of prescription drugs as an optional service under section 1905(a)(12) of the Act. Section 1903(a) of the Act provides for FFP in State expenditures for these drugs.

Section 4401 of OBRA '90 added a Medicaid State plan requirement under section 1902(a)(54) of the Act to provide that: (1) if a State elects to cover outpatient prescription drugs, the State plan must provide that any formulary or similar restriction, except as provided in section 1927(d) of the Act, shall permit coverage of covered outpatient drugs of any manufacturer that enters into and complies with a rebate agreement under section 1927 of the Act, if the drugs are prescribed for a medically accepted indication; and (2) the State must comply with certain reporting and other coverage requirements specified in section 1927 of the Act.

Section 4401 of OBRA '90 also redesignated the existing section 1927 of the Act as section 1928 and added a new section 1927. New section 1927 provides that for payment to be made under section 1903 of the Act for covered outpatient drugs, the manufacturer must enter into and have in effect a rebate agreement with the Secretary of the Department of Health and Human Services (HHS) on behalf of the States (except that the Secretary may authorize a State to enter directly into agreements with manufacturers). (Section I.D. of this preamble contains a description of changes to sections 1902(a)(54) and 1927 made by section 13602 of the OBRA '93.)

Section 1927 of the Act specifies the requirements for the rebate agreements with manufacturers of covered outpatient drugs, the terms and length of the agreement, the requirements for States to provide State Medicaid drug utilization information to HCFA and the manufacturers, the requirements for manufacturers to provide pricing information to HCFA, the formulas to be used to determine the amount of the drug rebate, and the limitations on coverage of drugs. Section 1927 of the Act also contains provisions on termination procedures for agreements, and the imposition of civil money penalties on manufacturers that fail to comply with the requirements concerning pricing data submissions.

Section 4401 of OBRA '90 also amended section 1903(i) of the Act by adding a new paragraph (10) to provide for the denial of FFP in expenditures for covered outpatient drugs of a manufacturer dispensed in any State if, except as specified in section 1927(a) of the Act (whereby the Secretary may authorize a State to enter directly into agreements with a manufacturer), the manufacturer does not comply with the rebate requirements specified in section 1927; and, effective January 1, 1993, if the State does not provide for drug use review in accordance with section 1927(g) of the Act. (Section I.D. of this preamble contains a description of changes to section 1903(i)(10) made by section 13602 of OBRA '93.)

C. Changes Made by the Veterans Health Care Act of 1992

The VHCA amended section 1927 of the Social Security Act in several areas. This proposed regulation reflects the self-implementing amendments required under VHCA.

One major change required by VHCA affects the conditions that manufacturers must meet so that payment can be made under Medicaid for a manufacturer's covered outpatient drugs. Section 601(b)(1) of VHCA amended section 1927(a)(1) of the Act to provide that a manufacturer must meet the requirements of section 1927(a)(5) (with respect to drugs purchased by a covered entity on or after December 1, 1992) and section 1927(a)(6) of the Act (with respect to drugs purchased by the Department of Veterans Affairs (DVA) and certain other Federal agencies).

A manufacturer meets the requirements of section 1927(a)(5)(A) of the Act if it has entered into an agreement with the Secretary that meets the requirements of section 340B of the Public Health Service (PHS) Act with respect to covered outpatient drugs purchased by a covered entity on or after December 1, 1992. The term "covered entity" means an entity described in section 340B(a) of the PHS Act. In general, VHCA amended section 1927 of the Act to require that drug manufacturers enter into pharmaceutical pricing agreements with the PHS and offer discounts on covered outpatient drugs to PHS covered entities that are at least as great as the rebates (both basic and additional rebates) received by State Medicaid agencies.

A manufacturer meets the requirements of section 1927(a)(6) of the Act if it complies with the provisions of section 8126 of title 38 of the United States Code, including the requirement of entering into a master agreement with the Secretary of the DVA under such section. In general, effective January 1, 1993, a manufacturer must enter into a pharmaceutical pricing agreement (master agreement) with the DVA for all single source drugs, innovator multiple source drugs, biologicals, and insulin. Generally, beginning January 1, 1993, the prices that manufacturers charge Federal agencies listed in the master agreement may not exceed the annual Federal ceiling prices specified for such drugs.

In accordance with these amendments to section 1927(a) of the Act, a manufacturer must enter into a pharmaceutical pricing agreement with the PHS and, if necessary, the DVA in order for a manufacturer's drugs to be paid for under Medicaid. Manufacturers that do not enter into and comply with these agreements are subject to termination of the Medicaid national rebate agreement.

Section 1927(b)(4)(B)(ii) of the Act specifies that a manufacturer may terminate its rebate agreement for any reason. Section 601(b)(4) of VHCA amended section 1927(b)(4)(B) of the Act to provide that any such termination not be effective until the rebate period beginning at least 60 days after the date the manufacturer provided notice to the Secretary. Section 601(b)(4) of VHCA also added section 1927(b)(4)(B)(iv) of the Act, which provided that, in the case of a termination of a manufacturer, the Secretary will provide notice of the termination to the State not less than 30 days before the effective date of the termination.

D. Changes made by the Omnibus Budget Reconciliation Act of 1993

Section 13602 of OBRA '93 modified the Medicaid drug rebate program by amending sections 1902(a)(54), 1903(i)(10), and 1927 of the Act.

This section of the preamble contains a discussion of the amendments to the sections of the Act and how they differ from the original language under OBRA '90. Where applicable, effective dates are noted in the discussion.

Sections 13602(d)(1) and (2) of OBRA '93 specify two different effective dates of the OBRA '93 amendments. Section 13602(d)(1) provides that, except for changes made to sections 1902(a)(54) and 1927(d) of the Act, the OBRA '93 amendments are effective as if included in the enactment of OBRA '90. Under section 13602(d)(2) of OBRA '93, amendments to sections 1902(a)(54) and 1927(d) of the Act are effective with rebate periods (calendar quarters) beginning on or after October 1, 1993, without regard to whether or not regulations to carry out these amendments have been published by that date.

1. Payment for Covered Outpatient Drugs

Section 13602(b) of OBRA '93 amended section 1903(i)(10) of the Act to provide that FFP for covered outpatient drugs will be denied (l) unless there is a rebate agreement in effect under section 1927 for covered outpatient drugs or unless the drug is rated 1–A by the Food and Drug Administration, and (2) with respect to any amount expended for innovator multiple source drugs dispensed on or after July 1, 1991, if, under applicable State law, a less expensive multiple source drug could have been dispensed, but only to the extent that such amount exceeds the upper payment limit for such multiple source drug.

OBRA '93 amended section 1903(i)(10) of the Act to remove from this section the requirement for States to provide for drug use review as a condition to receive FFP. (A drug use review is still required under section 1927(g).) Former section 1927(e) of the Act, with respect to multiple source drugs, has also been added to section 1903(i)(10) and modified. This section now requires only that any amount above the upper payment limit be disallowed for an innovator multiple source drug if, under applicable State law, a less expensive multiple source drug could have been dispensed. As is the case with our current policy, this provision only applies to drugs subject to the Federal upper limits payment.

2. Formulary Provisions and Permissible Restrictions

Section 13602(c) of OBRA '93 amended section 1902(a)(54) of the Act to delete the reference that prohibits a State from maintaining a restrictive formulary. Section 1927(d)(1)(B)(iv) provides that a State may exclude a covered outpatient drug if the State has excluded coverage from its formulary in accordance with section 1927(d)(4). Section 13602(a)(1) of OBRA '93 added section 1927(d)(4) which provides that States may establish a formulary if the formulary meets the requirements specified in that section, as discussed below. States may continue to exclude or restrict drugs or classes of drugs specified in section 1927(d)(2). Previously, any State formulary or similar restriction must have permitted coverage, for all medically accepted indications, of a participating manufacturer's drugs except for those drugs or classes of drugs specified in the list of permissible restrictions in section 1927(d)(2).

a. Formulary Requirements. Section 13602(a)(1) of OBRA '93 added section 1927(d)(4) which provides that States may establish a formulary if it meets certain requirements, effective October 1, 1993. The formulary must:

(i) Be developed by an appropriate Governor-appointed committee consisting of physicians, pharmacists, and other appropriate individuals, or, at State option, the State drug use review board;

(ii) Except as specified in item (iii), include covered outpatient drugs, other than those drugs excluded from coverage or restricted under section 1927(d)(2), of manufacturers which have entered into and comply with the Medicaid drug rebate agreement;

(iii) Exclude only those drugs (with respect to the treatment of a specific disease or condition for an identified population) where the drug's labeling or its medically acceptable indication (based on appropriate compendia) does not have a significant, clinically meaningful therapeutic advantage, in terms of safety, effectiveness, or clinical outcome, over other drugs included in the formulary;

(iv) Have available to the public, a written explanation of the reasons for excluding drugs under item (iii); and

(v) Permit coverage of drugs that are excluded under item (iii) from the State's drug formulary (other than those drugs excluded from coverage in accordance with section 1927(d)(2)) and subject them to prior authorization consistent with the requirements in section 1927(d)(5).

This proposed rule does not address any further requirements that a formulary must meet. If we determine later that additional requirements should be imposed on States with regard to formularies, we will address them in a separate notice of proposed rulemaking.

b. List of Drugs Subject to Restriction. Section 1927(d)(1)(B) of the Act permits States to exclude or restrict drugs contained in the list of permissible restrictions in section 1927(d)(2) of the Act. Prior to OBRA '93, section 1927(d)(2) contained a paragraph (I) which meant that States could exclude or restrict drugs described in section 107(c)(3) of the Drug Amendments of 1962 ("DESI" drugs) and those identical, similar, or related drugs (IRS drugs). OBRA '93 amended section 1927(d)(2) to eliminate paragraph (I). However, the removal of coverage restrictions from section 1927(d)(1)(B) does not mean that coverage is necessarily required in light of existing funding restrictions under section 1903(i)(5) and restrictions in the definition of a covered outpatient drug.

Thus, effective with rebate periods beginning on or after October 1, 1993, States cannot exclude or restrict these DESI/IRS drugs. This includes DESI/IRS drugs approved prior to 1962 that have not yet been approved under or subject to the DESI review process. If these drugs otherwise meet the criteria of a covered outpatient drug and are not subject to funding restrictions under section 1903 (i)(5) of the Act, States must provide coverage of these drugs and manufacturers must pay rebates on these drugs if they are dispensed and paid for by the State.

3. Terms of the Rebate Agreement

a. Periodic Rebates. Section 13602(a)(2)(A) of OBRA '93 amended sections 1927(b)(1)(A) and (b)(2)(A) of the Act and made technical changes to the original language under OBRA '90 as follows:

- The period of time used to calculate rebates was previously referenced as "calendar quarter." OBRA '93 changed this term of reference to "rebate period." However, this change does not alter the quarterly rebate period as previously established.
- OBRA '93 clarified the language in section 1927(b)(1)(A). This clarification supports the policy in the national rebate agreement that manufacturers will be responsible for rebates calculated for drugs dispensed after December 31, 1990 for which payment was made under the State Medicaid plan during a rebate period. Since the beginning of the Medicaid rebate program, Medicaid utilization data and rebates have been based on the date the State paid for the drug and not the date it was dispensed.

b. State Provision of Information. Section 13602(a)(2)(A)(ii) of OBRA '93 amended section 1927(b)(2)(A) of the Act to specify that States must report information to each manufacturer on the total number of units of each dosage form and strength and package size of each covered outpatient drug dispensed and paid for by the State. This change clarifies the language in section 1927(b)(2)(A), and supports the standard reporting format established by the Secretary and approved by the Office of Management and Budget that States must report drug utilization data to manufacturers using an 11-digit National Drug Code (NDC) number for each drug. Previously, section 1927(b)(2)(A) of the Act did not specify that States must report information on the package size, which represents the last two digits of the 11-digit NDC code.

4. Amount of Rebate

a. Revisions to Definition of Best Price. Section 13602(a)(1) of OBRA '93 amended section 1927(c)(1)(C) of the Act to ratify our interpretation that the definition of "best price" includes those prices available to providers and health maintenance organizations (HMOs). This interpretation of the definition of best price has been in effect since OBRA '90. Manufacturers must include in their best price calculation, for a single source or innovator multiple source drug, the lowest price available from the manufacturers during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States except for those entities specifically excluded by statute.

Section 13602(a)(1) of OBRA '93 also amended section 1927 of the Act to clarify the term "free good" to specify which free goods must be included in the best price calculation. Section 1927(c)(1)(C)(ii)(I) of the Act specifies that best price must include free goods that are contingent on any purchase requirement. Thus, only those free goods that are not contingent on any purchase requirements may be excluded from best price.

5. Additional Rebate for Single Source and Innovator Multiple Source Drugs

Section 13602(a)(1) of OBRA '93 amended section 1927(c)(2) of the Act regarding how additional rebates for single source and innovator multiple source drugs are calculated if the increase in the average manufacturer price (AMP) of the drug exceeds the increase in the Consumer Price Index-Urban (CPI-U). OBRA '93 deleted the requirement that effective January 1, 1994, additional rebates would be calculated using a weighted average manufacturer price (WAMP). Amended section 1927(c)(2) provides that additional rebates for single source and innovator multiple source drugs will continue to be calculated on a drug-by-drug basis, that is, the method in effect since January 1, 1991.

The additional rebate calculation utilizes the drug's "base date AMP" (the AMP of the drug when it was first marketed) and the "base CPI-U" (the CPI-U in effect when the drug was first marketed). Section 1927(c)(2) of the Act further clarifies "base date AMP" and "base CPI-U" for the calculation of the additional rebates as follows:

a. For Drugs Approved on or Before October 1, 1990. Base Date AMP—For drugs approved by the FDA on or before October 1, 1990, the base date AMP means the AMP for the calendar quarter beginning July 1, 1990. This base date AMP remains the same as the definition in the national rebate agreement. Consequently, the base date AMP remains the AMP reported for the July - September 1990 calendar quarter. OBRA '93 clarified our interpretations of section 1927(c)(2)(A)(ii) of the Act previously contained in language in the rebate agreement and in operating instructions provided to manufacturers, and, thus, there is no change in methodology. Therefore, the base date AMP is the AMP for the calendar quarter beginning July 1, 1990, without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such calendar quarter.

Base CPI-U—The base CPI-U used for calculating the additional rebate amounts for drugs approved by the FDA before October 1, 1990 is also unchanged, that is, the base CPI-U in effect for September 1990.

b. For Drugs Approved After October 1, 1990. Base Date AMP—OBRA '93 changed the criteria for determining base date AMP for drugs approved by the FDA after October 1, 1990. However, as discussed in section VI.C. of this preamble, for rebate periods beginning on or after January 1, 1991 through September 30, 1993, the original policy in effect under OBRA '90 and explained in paragraph 5.a. of this section will continue to be used. That is, the base date AMP will continue to be the AMP for the first day of the first full month in which the drug was first marketed.

In accordance with the amended language of section 1927(c)(2)(B) of the Act, effective for rebate periods beginning on or after October 1, 1993 (as discussed in section VI.C. of this preamble), the AMP in effect for the first full rebate period after the day on which the drug was first marketed is the base date AMP and will be used to calculate the additional rebate.

Thus, for drugs approved by the FDA after October 1, 1990, but before October 1, 1993, there is the potential for the same drug to have different base date AMPs, that is, one AMP for the January 1, 1991 through September 30, 1993 period and one AMP for the period beginning October 1, 1993.

OBRA '93 amended section 1927(c)(2)(A)(ii) of the Act to clarify that the base date AMP in effect for both of these periods is to be determined without regard to whether or not the drugs have been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such rebate period. Thus, a manufacturer's base date AMP (whether for drugs approved by FDA prior to or after October 1, 1990) is drug-specific and should follow the drug regardless of which manufacturer has current legal title.

Base CIP–U—OBRA '93 also amended the criteria for determining the base CIP–U for drugs approved by the FDA after October 1, 1990. In accordance with the amended language of section 1927(c)(2)(A)(ii), effective for rebate periods beginning on or after October 1, 1993, the CIP–U for the month prior to the month of the first full rebate period on which the drug was first marketed is used to calculate the additional rebate as the base CIP–U.

In accordance with section 1927(c)(2)(A)(ii)(II) of the Act, the base CIP–U is the CPI in effect for the month prior to the month of the first full rebate period after the day on which the drug was first marketed. This change will be effective for rebate periods beginning on or after October 1, 1993.

For rebate periods beginning January 1, 1991 through September 30, 1993, the original policy in effect under OBRA '90 will be used. That is, the base CIP–U continues to be the CIP–U for the month before the month in which the drug was first marketed.

6. Requirements of the Prior Authorization Program

Except with respect to new drugs, OBRA '93 did not modify existing requirements on a State's ability to establish and maintain a program to subject drugs to prior authorization. The statute clarified in section 1927(d)(4) of the Act that a prior authorization program established by a State under section 1927(d)(5) is not a formulary subject to the requirements of section 1927(d)(4) (A) through (E).

7. Treatment of New Drugs

OBRA '93 eliminated all special coverage requirements for new drugs by deleting the former section 1927(d)(6) and deleting a reference to new drugs in sections 1902(a)(54), 1927(d)(1)(A) and 1927(d)(3) of the Act. Former section 1927(d)(6) provided that States could not exclude from coverage, subject to prior authorization, or otherwise restrict any new biological or drug approved by the FDA for 6 months after FDA approval.

Effective for rebate periods on or after October 1, 1993, States may exclude or restrict from coverage or prior authorize any new drugs approved by the FDA. New drugs approved by the FDA prior to October 1, 1993 will only receive the unrestricted coverage specified in former section 1927(d)(6) of the Act through September 30, 1993. Beginning October 1, 1993 the unrestricted coverage no longer applies to these new drugs.

8. Treatment of Pharmacy Reimbursement

a. Treatment of Pharmacy Reimbursement Limits. Section 13602(a)(1) of OBRA '93 redesignated section 1927(f) of the Act as section 1927(e), "Treatment of Pharmacy Reimbursement Limits". This section continues to specify that for the moratorium period of January 1, 1991 through December 31, 1994, a State cannot reduce its reimbursement limits or dispensing fees for certain covered outpatient drugs below the limits in effect as of January 1, 1991. For this provision to apply, States must have been in compliance with Federal regulations at 42 CFR 447.331 through 447.334.

OBRA '93 amended section 1927(e)(2) of the Act to clarify that if a State is not in compliance with the regulations at 42 CFR 447.331 through 447.334, the moratorium provisions do not apply to the State until it is in compliance with these regulations.

b. Effect on State Maximum Allowable Cost Limitations. Section 13602(a)(1) of OBRA '93 also added section 1927(e)(3) to clarify that the moratorium provisions do not affect State Maximum Allowable Cost (MAC) limitations in effect prior to or after the moratorium period. That is, as allowed under OBRA '90, States may continue to operate their MAC programs in effect prior to January 1, 1991, in accordance with the terms of that program, for example, adjusting limits and adding drugs within the requirements of the MAC.

9. Average Manufacturer Price

Section 13602(a)(2)(B)(i)(II) of OBRA '93 amended section 1927(k)(1) of the Act to clarify that the AMP for a rebate period is the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade after deducting customary prompt pay discounts. The policy that AMP will be calculated after deducting customary prompt pay discounts is reflected in the national rebate agreement.

10. Limiting Definition of Covered Outpatient Drug

Section 13602(a)(2)(B)(ii) of OBRA '93 amended section 1927(k)(3) to clarify the limiting definition of what is not included in the definition of a covered outpatient drug. In addition to the criteria originally defined in section 1927(k)(3), a covered outpatient drug does not include the following two items:

- Any drug or product for which a NDC number is not required by the FDA. This category includes whole blood and blood components separated by physical or mechanical means.
- Any drug, biological, or insulin provided as part of, or as incident to and in the same setting as, services in an intermediate care facility for the mentally retarded (ICF/MR) (and for which payment is made as part of the service and not as direct reimbursement for the drug.)

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11. Medically Accepted Indication

Section 13602(a)(2)(B)(iii) of OBRA '93 amended section 1927(k)(6) to further define the term "medically accepted indication." OBRA '93 deleted the reference to the use of peer-reviewed medical literature and specified that the medical indication must be on the label or be supported by one or more citations included or approved for inclusion in any of the compendia described in section 1927(g)(1)(B)(i).

OBRA '93 amended section 1927(k)(6) to specify that the term "medically accepted indication" means any use for a covered outpatient drug which is approved under the Federal Food, Drug and Cosmetic Act or the use which is supported by one or more citations or approved for inclusion in any of the specified compendia. Those compendia have not changed and are the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, and the United States Pharmacopeia-Drug Information.

E. Organization of Remainder of Preamble

The following sections of the preamble explain the actual provisions of the regulations being issued at this time without a description of the history of the statute. In the remainder of the preamble, unless otherwise indicated, references to the statute should be read as the provisions as amended by both the VHCA and OBRA '93. The preamble is structured into six main sections which discuss all related drug covered rebate issues and policies: rebate agreements, drugs covered under the rebate agreement, limitations on drug coverage, reporting requirements, computation of drug rebates, and payment limitations for covered drugs. The balance of the preamble deals with other required regulatory sections, such as responses to comments and an impact analysis. The accompanying regulation text follows section XV. of the preamble.

II. Rebate Agreements

In general, section 1927(a)(1) of the Act provides that, in order for payment to be available under section 1903(a) of the Act for covered outpatient drugs of a manufacturer, the manufacturer must (1) have entered into and have in effect a national rebate agreement with the Secretary on behalf of the States; and (2) also enter into a pharmaceutical pricing agreement with PHS and, if necessary, with DVA (as discussed in Section I.B. of this preamble) for payment to be made under Medicaid for a manufacturer's covered outpatient drugs. The requirements for the rebate agreements are specified in section 1927(b) of the Act.

Section 1927(a)(1) also provides that the Secretary may authorize States to enter directly into separate agreements with manufacturers. For purposes of this rule, we are referring to separate agreements as either "existing," that is, agreements that were entered into on or before the date of enactment of OBRA '90 (November 5, 1990); or "new," that is, agreements that were entered into after the date of enactment of OBRA '90.

The Secretary's authority to approve separate State agreements is consistent with the statute and HCFA's understanding of Congressional intent to decrease program costs and maximize Medicaid savings. Section 1927(a)(1) of the Act gives the Secretary broad authority to authorize separate State agreements. There are no provisions in section 1927 that circumscribe the Secretary's authority to establish criteria for approving separate State agreements.

Thus, in accordance with the authority under section 1927(a)(1) of the Act, we would not approve a new agreement unless the manufacturer has entered into the national rebate agreement and the new agreement provides rebates at least as large as those required by the national agreement. (42 CFR 447.510) We believe these requirements are necessary to effectuate section 1927 of the Act and to uphold Congressional intent.

We would require that a manufacturer enter into the national rebate agreement as a condition of entering into a new State agreement, in order to ensure that Medicaid recipients in all 50 States and the District of Columbia have access to that manufacturer's drugs. In passing various provisions of section 1927, the Congress made it clear that Medicaid recipients be assured access to all medically necessary covered outpatient drugs. (H.R. Rept. No. 881, 101st Cong., 2d Sess. 96–98 (1990)). Without requiring that manufacturers enter into the national agreement, recipients could be denied access if a manufacturer only entered into separate agreements with several large States with a lucrative market for that manufacturer's drugs. Thus, access could be denied in other States.

We would require that a new State agreement provide rebates at least as large as those required by the national agreement because there would be little or no benefit to the Secretary in terms of savings to approve a new State agreement that provides less savings. Approving a new agreement that provides less savings would be contrary to the general understanding of Congressional intent to decrease program costs and maximize Medicaid savings.

The conditions that all existing agreements and new agreements between a State Medicaid agency and a manufacturer must meet in order to comply with the requirements in section 1927 of the Act are described below. The statute defines the entities considered manufacturers to which section 1927 applies. Section 1927(k)(5) of the Act defines the term "manufacturer" to mean any entity that is engaged in—

- The production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or
- The packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Under the statutory definition, the term "manufacturer" does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law. For the reasons set forth below, we would clarify and interpret this statutory definition to require that the entity must possess legal title to the National Drug Code (NDC) number for a covered outpatient drug, insulin, or biological product. The NDC is a national, readily available numbering system maintained by the Food and Drug Administration (FDA) that identifies each drug by manufacturer, product, and package size. We believe this clarification is necessary to permit a practical means of identifying the manufacturer of the drug to determine which manufacturer is responsible for paying the rebate due under the statute to the State. This approach prevents duplicative manufacturer responsibilities for the drug.

In addition, we would further clarify and interpret the term to specify that if a corporation meets the statutory definition of manufacturer and possesses legal title to the NDC number, we would consider the term to include—

- Any corporation that owns at least 80 percent of the total combined voting power of all classes of stock or 80 percent of the total value of shares in all classes of stock in such entity (that is, a parent corporation);
- Any other corporation in which a parent corporation of the entity owns at least 80 percent of the total combined voting power of all classes of stock or 80 percent of the total value of shares

of all classes of stock in the other corporation (that is, a brother-sister corporation); and

- Any other corporation in which the entity owns at least 80 percent of the total combined voting power of all classes of stock or 80 percent of the total value of shares of all classes of stock in the other corporation (that is, a subsidiary corporation).

We would establish this definition of "manufacturer" because we believe that the statutory definition requires clarification to implement the provisions of OBRA '90 consistent with Congressional intent. As noted previously, section 1927(k)(5) of the Act defines a manufacturer, in part, as "any entity" engaged in the production, packaging or distribution of prescription drug products. We believe that when defining a manufacturer, the term "entity" should be interpreted to include any parent, brother-sister, or subsidiary corporation. Such an interpretation, in our opinion, comports with the Congress' desire to maximize recipient access to medically necessary drugs, while at the same time providing a more favorable drug purchasing arrangement for State Medicaid programs. (H. R. Conf. Rept. No. 964, 101st Cong., 2d Sess. 822, 832 (1990); H. R. Rept. No. 881, 101st Cong., 2d Sess. 996 (1990).)

The Congress, in passing the drug rebate provisions, made it clear that States that elect to cover prescription drugs must, except for certain restriction/exclusions allowed under the statute, for the most part, cover the drugs of a manufacturer that enters into and complies with a drug rebate agreement. In return for such coverage, a manufacturer would be responsible for providing a rebate to the State that would give the Medicaid program the benefit of those discounts that other large public and private purchasers receive. (*Id.*) We believe that it would be directly contrary to such intent for us to define manufacturer in a fashion that would permit a manufacturer (by forming a subsidiary corporation) to exclude some of its drugs from the drug rebate program.

A. Existing Agreements

Section 1927(a)(4) of the Act sets forth the conditions that an existing agreement must meet to be in compliance with the provisions of section 1927. Under section 1927(a)(4), existing agreements that were in effect between a manufacturer and a State Medicaid agency on November 5, 1990, will be considered to be in compliance with section 1927 of the Act until the end of the initial period specified in the agreement if (1) the State agrees to report any rebates paid under the agreement to HCFA; and (2) the agreement provides for a minimum aggregate 10-percent rebate of the State's total expenditures under the State plan for all of that manufacturer's drugs paid for by Medicaid in the rebate period. During the initial agreement period, manufacturers may calculate rebates in accordance with that existing agreement as long as these two requirements are met. (Because no manufacturer had existing agreements in all 50 States and the District of Columbia, and in light of the requirements of sections 1927(a) and 1903(i)(10) of the Act, we required all drug manufacturers with approvable existing agreements with State Medicaid agencies as of November 5, 1990, to enter into and comply with the national agreement to cover those States where manufacturers did not have existing agreements.)

As stated above, section 1927(a)(4) of the Act requires that existing individual State agreements provide for a minimum aggregate rebate of 10 percent of the State's total expenditures under the State plan for coverage of the manufacturer's drugs. However, given other provisions of the statute and the legislative history of OBRA '90, we do not believe that the Congress intended that the minimum aggregate rebate be calculated using State expenditures. Other provisions in section 1927 of the Act calculate rebates using manufacturer prices, and there is no evidence in the legislative history that the Congress intended existing rebates to be calculated using a different formula. In fact, the Conference Report specifies that manufacturer sales, not State expenditures, be used to calculate the minimum aggregate rebate. (H. R. Conf. Rept. No. 964, 101st Cong., 2d Sess. 822 (AMP), 832 (manufacturer sales) (1990).)

The House Conference Report, in discussing the House bill, specifically states that existing rebate agreements must be considered in compliance with the statute if the State can establish that "the agreement can reasonably be expected to provide rebates at least as large as the rebates under this bill [which uses manufacturer prices]." (H. R. Conf. Rept. 964, 101st Cong., 2d Sess. 822 (1990); *Id.* at 822 (Senate Amendment).) Similarly, the Conference agreement establishes a similar standard and specifies an aggregate rebate test using manufacturer pricing data. The Conference agreement provides that existing agreements should be considered in compliance with the statute if "the amount of the rebate under the [existing] contract totals at least 10 percent of the manufacturer's sales to Medicaid in the State." (*Id.* at 832.) Therefore, to read the statute in its proper context, and to give effect to our understanding of Congressional intent, we have decided to use manufacturer prices to calculate the minimum aggregate rebate.

Furthermore, as noted previously, using State total expenditures conflicts with other rebate provisions that use manufacturer prices (referred to as average manufacturer prices (AMPs) and best prices) to calculate rebates. (Section V.B.2.a. of this preamble contains the definition of AMP.) A State's total expenditures include, among other items, wholesaler and retailer markup and dispensing fees. These additional charges are not included in the rebate calculations that base rebates on the AMP. Thus, using other than AMP as a percentage of a rebate test would result in an inequitable treatment of manufacturers participating in the rebate program. In light of the legislative history, we believe that the Congress intended that a similar formula based on manufacturer pricing data be used to calculate minimum aggregate rebates under section 1927(a)(4) of the Act.

Therefore, we have concluded that the 10-percent rebate test applies to the manufacturer's AMP (which represents the manufacturer's sale of the drug) and not other State components of drug expenditures. Accordingly, we would specify in our regulations at § 447.510(b)(1)(i) that, to calculate a State's total quarterly expenditures for a manufacturer's drugs for purposes of determining whether the minimum aggregate 10-percent rebate requirement for existing rebate agreements is met, the State must receive a minimum rebate of 10 percent of the AMP for the manufacturer's drugs. Actual rebates on specific drugs may be less than 10 percent as long as the aggregate rebate from that manufacturer for all of its covered outpatient drugs in that separate agreement meets the minimum 10-percent rebate.

An existing agreement must have provided for the minimum aggregate rebate as of November 5, 1990. If this minimum rebate condition was met, we believe it would be consistent with section 1927(a)(4) of the Act to permit States to modify an existing agreement to provide for a greater rebate. Therefore, under these regulations, States would be permitted to modify existing agreements if the State and the manufacturer are in agreement with all modifications and the terms of the agreement allow such modifications. Existing agreements would also be amended to add other drugs of the manufacturer if the agreement continues to meet a minimum aggregate rebate of 10 percent of AMP. However, we do not believe it would be consistent with the statute or our understanding of Congressional intent to permit modifications to increase the length of the initial term since section 1927(a)(4) of the Act specifically references the initial agreement period.

In cases where an existing agreement did not have a stated percentage of rebate, we have required the State to submit to the HCFA regional office (RO) a written assurance from the manufacturer that the minimum 10-percent rebate, as calculated above, was met as of November 5, 1990. We would require in § 447.510(b)(2) that the rebates under an existing agreement also continue to meet the 10-percent threshold in order for payment to be made available under section 1903(a) of the Act for the manufacturer's covered outpatient drugs throughout the initial period specified in the agreement. We would monitor the savings figures, and, if this threshold is not met, we would consider the existing agreement as no longer in compliance with section 1927(a) of the Act. In this case, HCFA would notify the State that the manufacturer's drugs are subject to the rebate terms of the national drug rebate agreement.

The requirements for renewal of existing rebate agreements between States and manufacturers at the end of the initial period specified in the agreement are generally specified in section 1927(a)(4) of the Act. Under this section, a State/manufacturer agreement is renewable after the initial period specified in the agreement if the State establishes to HCFA's satisfaction that the agreement provides for rebates that are at least as large as the rebates required under the national rebate agreement, and the State agrees to report to HCFA any rebates received under the agreement. We would not approve the renewal of an existing agreement unless the manufacturer has entered into the national rebate agreement. As is the case for existing agreements in the initial period, the State is responsible for submitting to the HCFA RO, along with the agreement, a written assurance from the manufacturer that the agreement submitted for renewal meets the minimum rebate requirements described above.

If the actual rebates fail to be at least as large as those rebates required under the national agreement for the renewal period, the renewed agreement would not be considered to be in compliance with section 1927(a) of the Act. In this case, HCFA would notify the State that the manufacturer's drugs are subject to the rebate terms of the national agreement.

B. New Agreements

New rebate agreements are those individual rebate agreements between a manufacturer and a State that are entered into on or after November 6, 1990, and specifically authorized by HCFA. Section 1927(a)(1) of the Act provides that the manufacturer may enter into a rebate agreement with the Secretary on behalf of a State, or the Secretary may authorize a State to enter directly into a rebate agreement with a manufacturer, thus providing an alternative to the national rebate agreement.

In accordance with section 1927 of the Act, HCFA would authorize State Medicaid agencies to enter directly into new agreements with drug manufacturers. However, we would apply the requirements in section 1927(a)(4) to these new State manufacturer agreements, that is, the agreements must provide rebates at least as large as those required under the national rebate agreement, and the State must agree to report any rebates under the agreement to HCFA. Therefore, we would require in § 447.510(c)(4) that the State include with its agreement authorization request to HCFA a written assurance from the manufacturer that the agreement provides rebates that equal or exceed the rebate amounts specified in the national agreement.

We believe this additional verification of the rebate amounts specified in the new agreement would be necessary since these contracts can differ in form and content in each State. A written assurance from the manufacturer would be evidence that both parties certify that the rebate amounts under the new agreement meet or exceed the rebate amounts in the national agreement.

We would not authorize individual State agreements that provide for rebates less than those required under the national agreement. In our opinion, such agreements are contrary to our understanding of Congressional intent to maximize program savings while expanding access to covered outpatient drugs. Thus, since there is little or no additional benefit for either the States or HCFA to authorize these types of individual agreements, which would increase Medicaid drug costs without offsetting national rebate savings, we would not approve such agreements.

C. Length of Agreements

We would specify in § 447.512(a) that the initial period of an existing State/manufacturer agreement and a new State/manufacturer agreement is the period specified in the agreement, and that the national rebate agreement is effective for an initial period of at least 1 year. While we would not require a 1-year timeframe for the initial period in a new State/manufacturer agreement, we recommend its use to avoid administrative delays from HCFA reviewing new agreements with shorter timeframes. More frequent reviews add to unnecessary administrative costs and burdens for all parties involved.

Under this section we also would specify that the national agreement will be automatically renewed for successive periods of at least 1 year unless (1) HCFA terminates the agreement under the conditions specified in section 1927(b)(4)(B)(i) of the Act; or (2) the manufacturer terminates the agreement for any reason as permitted under section 1927(b)(4)(B)(ii) of the Act.

D. Termination of Agreements

1. Termination by HCFA

In accordance with section 1927(b)(4)(B)(i) of the Act, a rebate agreement may be terminated by the Secretary if the manufacturer violates the requirements of the agreement or for "other good cause shown." HCFA has been delegated the Secretary's authority under section 1927(b)(4)(B) to provide for termination of a rebate agreement. We would interpret "other good cause shown" to be any violations of the provisions of the national rebate agreement, section 1927 or the related regulations, or the persistent failure to provide timely information on pricing and other required information or to pay timely rebates. HCFA would send a written notice of the decision to terminate the agreement to the manufacturer. HCFA would also notify State agencies of the termination. The termination would not be effective earlier than 60 days after the date a notice of the termination is sent to the manufacturer (§ 447.514(b)). If a manufacturer is dissatisfied with a termination decision made by HCFA, the manufacturer may request a hearing (as specified in section II.D.5. of this preamble). However, a request for a hearing would not delay the effective date of the termination.

2. Termination by the Manufacturer

In accordance with section 1927(b)(4)(B)(ii) of the Act, the manufacturer may terminate its rebate agreement for any reason. Section 601(b)(4) of VHCA amended section 1927(b)(4)(B) of the Act to provide that any such termination not be effective until the rebate period beginning at least

60 days after the date the manufacturer provides notice to the Secretary. A termination notice from a manufacturer is considered a request to end its participation in the national rebate agreement with the understanding that there is a delay before reinstatement (as discussed in section II.D.4. of this preamble).

We would provide in § 447.514(c)(1) that a manufacturer that wishes to terminate an agreement must provide to HCFA a written notice of intent to terminate at least 60 days before the beginning of the rebate period in which the termination will occur. We would specify that the effective date of a requested termination will be the first day of the first rebate period beginning at least 60 days after the manufacturer gives written notice requesting termination, or a later date if specified by the manufacturer. We would specify in § 447.514(c)(3) that the date of notice will be considered to be the postmark date of the U.S. Postal Service or common mail carrier.

If the manufacturer fails to terminate the agreement at least 60 days before the renewal date, the automatic renewal provisions of section 1927(b)(4)(A) would be effective and the agreement would not terminate until the rebate period following the renewal. For example, if a manufacturer intended to terminate the rebate agreement effective January 1, 1994, HCFA must have received the written notice on or before November 1, 1993. Otherwise, if HCFA received the notice on November 15, 1993, the termination date would be April 1, 1994 (the first day of the first rebate period beginning at least 60 days after receipt of the notice).

Any termination would not affect rebates due under the agreement before the effective date of the termination.

3. Nonrenewal of Rebate Agreement

To effectuate sections 1927(b)(4)(A) and (b)(4)(B)(ii) of the Act, we would require in § 447.514(c)(2)(i) that a manufacturer give written notice of its decision not to renew the rebate agreement (nonrenewal notice) at least 60 days before the end of the current agreement period. (We would consider the date a manufacturer gives written notice of its decision not to renew to be the date of the postmark of the U.S. Postal Service or common mail carrier (§ 447.514(c)(3)).) If HCFA receives a manufacturer's nonrenewal notice at least 60 days before the end of the agreement period, the nonrenewal would be effective on the ending date of the agreement period. This 60-day period would give HCFA the time needed to notify States that the manufacturer's drugs are no longer eligible for FFP under Medicaid.

If the manufacturer fails to meet this 60-day advance notice requirement, the agreement would be automatically renewed for another 1-year term. In this case, HCFA would deem the nonrenewal notice a termination notice because the manufacturer missed the nonrenewal deadline. Therefore, in accordance with the regulations at § 447.514(c)(2)(ii)(B), HCFA would terminate the rebate agreement effective the second calendar quarter of the renewed agreement period.

4. Reinstatements

Section 1927(b)(4)(C) of the Act provides that, if a rebate agreement is terminated, another agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed from the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of the agreement. We would incorporate this provision in § 447.514(d) of our regulations. For example, if HCFA received a written notice on October 1, 1993, to terminate an agreement, the rebate agreement would be terminated on January 1, 1994, and a manufacturer could not enter into another agreement until April 1, 1994, unless HCFA finds good cause to do otherwise. An example of good cause might be if a manufacturer's drug is medically necessary to a significant number of Medicaid recipients and there is no therapeutic substitute available.

5. Opportunity for Appeal

Section 1927(b)(4)(B) of the Act provides that the Secretary must provide a manufacturer with a hearing concerning a termination of a rebate agreement if the manufacturer requests one. In accordance with this section of the Act, we would provide in § 447.514(b)(4) that, if a manufacturer is dissatisfied with a termination of a rebate agreement by HCFA, the manufacturer may appeal the termination under the administrative procedures specified in the contract provision in the rebate agreement. We believe the appeal procedures specified in the national rebate agreement afford manufacturers the due process rights to which they are entitled under section 1927 of the Act, since the process provides a written notification process, the right to appeal the termination and, if applicable, a hearing before a HCFA official or other party.

Section 1927(b)(4)(B)(i) of the Act also requires that the hearing not delay the effective date of the termination. Accordingly, we would provide in § 447.514(b)(4) that, while manufacturers have the right to an administrative hearing, such a hearing would not delay the effective date of the termination.

6. Notice to States

Section 601(b)(4) of VHCA added section 1927(b)(4)(B)(iv) of the Act, which provides that in the case of a termination of a manufacturer, the Secretary will provide notice of the termination to the States not less than 30 days before the effective date of the termination. In accordance with this section of the Act, we would provide in § 447.514(f) that HCFA will notify States of any termination from the drug rebate program at least 30 days prior to the effective date of the termination.

III. Drugs Covered Under the Rebate Agreement

A. Rebated and Non-Rebated Drugs

Sections 1927(k)(2) and (k)(4) of the Act specify the covered outpatient drugs that are subject to rebate agreements. Covered outpatient drugs are defined as (1) those drugs that may be covered as prescribed drugs under Medicaid under section 1905(a)(12) of the Act, are dispensed only upon prescription (except over-the-counter drugs), and that meet certain requirements specified in sections 1927(k)(2)(A)(i) through (iii) of the Act; (2) a biological product other than a vaccine that may be dispensed only upon prescription, is licensed under section 351 of the Public Health Service Act, and is produced at an establishment licensed under section 351 to produce such products; (3) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act; and (4) "over-the-counter" drugs that are prescribed by a physician or other person authorized to prescribe under State law, if the State provides for coverage of these drugs as prescribed drugs under its approved State plan. We would add this definition to § 447.516(a) of our regulations.

We would require in § 447.516(b) that a manufacturer submit as part of its rebate agreement a listing of all of its drugs that fall within the definition of covered outpatient drugs in sections 1927(k)(2) through (k)(4) of the Act. We also would require use of National Drug Code (NDC) numbers to identify the drugs.

We would interpret "covered outpatient drug," as defined in section 1927(k)(2) of the Act, to include all covered outpatient drugs for which that manufacturer holds legal title to the NDC number. The statutory definition encompasses all FDA-approved prescription drugs and biologicals except for vaccines or drugs that fall within the limiting definition in section 1927(k)(3) of the Act (§§ 447.504 and 447.516(b)(2)). Manufacturers that have entered into the national rebate agreement have agreed to submit a listing of all covered outpatient drugs, not a partial listing. Therefore, in accordance with the statute and the provisions of the national rebate agreement, manufacturers that enter into a rebate agreement could not exclude any covered outpatient drug specified in section 1927(k) of the Act from its listing of covered outpatient drugs.

Even though States may choose to exclude or restrict certain drugs under section 1927(d) of the Act (as discussed in section IV.B of this preamble), the drugs may be covered in other States or covered by that State at a later date. Therefore, a manufacturer would be required to list by NDC number all of its covered outpatient drugs, regardless of whether its drugs are dispensed or covered by Medicaid programs in all States. In addition, HCFA would not allow a manufacturer to withhold its covered outpatient drugs from being subject to the rebate provisions, regardless of whether the drugs are sold by the manufacturer's subsidiaries or parent company, as discussed in section I.A. of this preamble.

In § 447.522(a), we would provide for an exclusion from the definition of covered outpatient drugs consistent with section 1927(k)(3) of the Act. Section 1927(k)(3) of the Act, as amended by section 13602(a)(2)(B)(ii) of OBRA '93, provides certain exclusions from the definition of covered outpatient drugs. This section specifies that covered outpatient drugs do not include "any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under [Medicaid] as part of payment for the following and not as direct reimbursement for the drug): Inpatient hospital services; hospice services; dental services (except that drugs for which the State plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs); physicians' services; outpatient hospital services; nursing facility services and services provided by an intermediate care facility for the mentally retarded; other laboratory and x-ray services; and renal dialysis" (§ 447.522(a)).

The term "covered outpatient drug" also would not include any such drug, biological product, or insulin for which an NDC number is not required by the FDA that is used for an indication that is not "medically accepted" (§ 447.522(b)). A medically accepted indication is defined under section 1927(k)(6) of the Act, as amended by section 13602(a)(2)(B)(iii) of OBRA '93, as any use for a covered outpatient drug that is approved under the Federal Food, Drug and Cosmetic Act, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia: The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, and the United States Pharmacopeia-Drug Information. We would incorporate this definition in § 447.504 of our regulations.

There are additional drugs and biologicals that do not fall within the definition of covered outpatient drugs set forth in section 1927(k) of the Act. These drugs are not subject to rebates, although Medicaid coverage may be provided under section 1905(a)(12) of the Act at State option, and FFP is available. Generally, these additional drugs and biologicals that do not fall within the section 1927(k) definition are discussed below and would be specified in § 447.522(c) through (g) of the regulations. We do not consider this a definitive list due to the vast nature of drugs and biologicals regulated by the FDA and the unique situations that exist for particular products. Drugs that fall outside of the scope of section 1927 of the Act would not be considered covered outpatient drugs and, therefore, would not be subject to rebate.

- Any drug, biological product, or insulin for which an NDC number is not required by the FDA would not meet the definition of a covered outpatient drug in section 1927(k) and, therefore, would not be subject to a rebate as a condition of FFP. This would include whole blood (collected from a single human donor) and blood components (which are the result of physical or mechanical separation either as part of the collection process or subsequent to the collection of whole blood).
- Medical items and supplies, such as syringes (except insulin-filled syringes), urine and blood glucose testing strips and devices, lancets, and inhalers (except pre-filled inhalers) do not meet the definition of covered outpatient drugs in sections 1927(k)(2) through (k)(4) of the Act and, therefore, would not be subject to a rebate as a condition of FFP.
- Certain nutritional products that are regulated as drugs would be covered under the rebate program. Parenteral products that are administered intravenously are approved as drugs by the FDA under section 505 of the Federal Food, Drug, and Cosmetic Act. These parenteral products that are approved as drugs, are administered intravenously, and meet the definition of a covered outpatient drug in accordance with section 1927(k) of the Act would be subject to a rebate as a condition of FFP. Parenteral products that are not administered intravenously are regulated as "foods" by the FDA and would not meet the definition of a covered outpatient drug.
- Enteral nutrition products that are not approved by FDA as a drug under sections 505, 506, or 507 of the Federal Food, Drug, and Cosmetic Act would not be considered covered outpatient drugs under section 1927(k)(2)(4) of the Act, and would not be subject to rebate.

HCFA has permitted States the option to cover enteral nutrition products that are not approved as a drug by the FDA, under Medicaid benefit categories other than prescription drugs. These categories include outpatient hospital services, home health services, clinic services, and rural health clinic services. The nutrient products may be covered in these settings as a medical supply. These supplies would not be considered covered outpatient drugs and, therefore, would not be subject to rebate.

- States have the option to cover under their Medicaid program investigational new drugs (IND) (for example, Treatment IND drugs, Parallel Track, and Group C cancer drugs). (State Medicaid programs often use the term "experimental" when referring to these types of drugs.) Since section 1927 of the Act made no changes to a State's previous ability to cover these drugs, FFP continues to be available for these drugs. However, because they do not meet the definition of covered outpatient drugs in sections 1927(k)(2) through (4) of the Act, they would not be covered under the drug rebate program or subject to a rebate.

B. Definitions of Drug Categories

As defined in section 1927(k)(7)(A)(iv) of the Act, "single source drug" means a covered outpatient drug that is produced or distributed under an original new drug application (NDA) approved by the FDA, including a drug product marketed by any cross-licensed producers or distributors operating under the NDA. (Section III.C.3. of this preamble contains the definition of original new drug application.) Section 1927(k)(7)(A)(i) of the Act defines "multiple source drug" as a covered outpatient drug for which there are two or more drug products that are—

- Rated as therapeutically equivalent by the FDA under its most recent publication of*Approved Drug Products with Therapeutic Equivalence Evaluations;*
- Are pharmaceutically equivalent and bioequivalent as determined by the FDA; and
- Are sold or marketed in the State during a calendar quarter.

Drugs are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity.

Drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence. (This condition does not apply if FDA changes by regulation the requirement that in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent.)

Sections 1927(k)(7)(A)(ii) and (iii) of the Act define "innovator multiple source drug" as a multiple source drug that was originally marketed under an original NDA approved by the FDA and "noninnovator multiple source drug" as a multiple source drug that is not an innovator multiple source drug. To clarify the statutory definition, we would further define multiple source drugs to distinguish the differences between an innovator multiple source drug and a noninnovator multiple source drug.

In accordance with our understanding of Congressional intent, we would define an "innovator multiple source drug" as a multiple source drug from 1938 to present that was originally marketed under an original NDA approved by the FDA. We would define a "noninnovator multiple source drug" as a multiple source drug that was marketed under an abbreviated NDA or any marketed, unapproved pre-1938 drug product for which the FDA has not made a final determination about its legal status. This would include (1) all products approved under an abbreviated NDA (authorized under the Drug Price Competition and Patent Term Restoration Act of 1984, Public Law 98–417), paper NDA under the FDA's former "Paper NDA" policy (54 FR 28873), or an application under section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act; and (2) any marketed, unapproved pre-1938 drug product that has not been evaluated under the new drug provisions of the Federal Food, Drug and Cosmetic Act. (§ 447.504)

C. Treatment of New Drugs

1. Elimination of New Drug Coverage Under OBRA '93

OBRA '93 eliminated all special requirements for new drugs by deleting the former section 1927(d)(6) of the Act. That section provided that a State may not exclude, subject to prior authorization, or otherwise restrict from coverage under the rebate program any new drug or biological approved by the FDA after the date of enactment of OBRA '90 (November 5, 1990) for a period of 6 months after the date of FDA approval. OBRA '93 also deleted the references to new drugs in section 1927(d)(1)(A) and (d)(3) of the Act.

Section 13602(d)(2) of OBRA '93 provided that amendments to section 1927(d) of the Act are effective with rebate periods beginning on or after October 1, 1993. That is, effective October 1, 1993, States may exclude or restrict from coverage or prior authorize any new drugs approved by the FDA. In accordance with section 13602(d)(2), new drugs approved by the FDA prior to October 1, 1993 may only receive the unrestricted coverage specified in former section 1927(d)(6) of the Act through the rebate period ending September 30, 1993. Beginning October 1, 1993 the unrestricted coverage no longer applies to these new drugs.

2. New Drug Coverage Provision in Effect for January 1, 1991–September 30, 1993

(Note: The discussions of sections 1927(d)(1), (3), and (7) throughout this section III.C.2. of the preamble pertain to any amendments made by OBRA '93.)

Prior to OBRA '93, section 1927(d)(6) of the Act provided that a State may not exclude, subject to prior authorization, or otherwise restrict from coverage under the rebate program any new drug or biological approved by the FDA after the date of enactment of OBRA '90 (November 5, 1990) for a period of 6 months after the date of FDA approval. Except as authorized in section 1927(d)(1) and (2) of the Act for the period of January 1, 1991–September 30, 1993, States must have covered these drugs with no restrictions for 6 months from the date of FDA approval, regardless of when the manufacturer began to market the drugs. We would incorporate these provisions in § 447.520(a) of our regulations. For purposes of these provisions, we did not consider a delay in the marketing of a new drug following FDA approval a cause for extending the 6-month period.

The mandatory coverage provisions of section 1927(d)(6) of the Act did not encompass those drugs that a State may exclude under sections 1927(d)(1) and (d)(2) of the Act. Sections 1927(d)(1) and (d)(2) provide that a State may exclude or otherwise restrict coverage of a covered outpatient drug if the drug is used to treat, for example, anorexia, weight gain, hair loss, or cough or cold symptoms. Section 1927(d)(2), when read in conjunction with sections 1927(d)(1) and 1927(k)(2) of the Act, circumscribes those covered outpatient drugs that must be covered by States under their State plan. In other woads, the mandatory coverage provisions of section 1927(d)(6) did not affect those drugs that a State may exclude or otherwise restrict under sections 1927(d)(1) or (d)(2).

In addition, we would provide under § 447.520(c) of the regulations that coverage of new drugs between January 1, 1991 and September 30, 1993 for the first 6 months after approval by the FDA would not be available for manufacturers that did not have agreements in existence with HCFA for this 6-month time period, since section 1927(a) of the Act provides FFP only for covered outpatient drugs of manufacturers with rebate agreements. However, if the new drug is rated as 1–A, section 1927(a)(3) of the Act authorizes payment, at State option, for certain 1–A drugs not covered under a rebate agreement. (Section III.D.1 of this preamble contains a discussion of 1–A drugs.)

Before the enactment of OBRA '93, sections 1927(d)(1) and (d)(6) of the Act provided that a State may not subject a new drug to prior authorization during the 6-month period after FDA approval. If the State chose to cover a new drug or class of drugs that was listed in section 1927(d)(2) of the Act, it could not prior authorize a new drug within that category during the 6-month period. After the 6-month period, a drug that was considered a new drug could be subject to the prior authorization provisions of section 1927(d)(1) at State option. We would incorporate these provisions in § 447.520(b) of our regulations.

Before the enactment of OBRA '93, section 1927(d)(3) of the Act prohibited new drugs from being added to the list of drugs subject to restriction in section 1927(d)(2) during the 6-month period specified in section 1927(d)(6). After the 6-month period, new drugs could be added to the list, as discussed in section IV.B.2. of this preamble.

Before the enactment of OBRA '93, section 1927(d)(7) of the Act permitted a State to impose limitations on all drugs in a therapeutic class, on the minimum or maximum quantities per prescription, or on the number of refills, provided such limitations are necessary to discourage waste. We believe that to effectuate Congressional intent, sections 1927(d)(6) and 1927(d)(7) of the Act must have been read in concert to discourage waste in the use of new drugs during the 6-month period after FDA approval. Section 1927(d)(7), in our opinion, permitted States to impose limitations on all drugs, including new drugs, in a therapeutic class, on the minimum or maximum quantities per prescription, or on the number of refills, provided such limitations were necessary to discourage waste.

We believe such an interpretation would be consistent with the statutory provisions in both section 1927(d)(6) and section 1927(d)(7). We believe the Congress mandated that States could not exclude from coverage, subject to prior authorization, or otherwise restrict a new drug for 6 months from FDA approval to ensure that medically necessary new drugs were made available to the general population. The limitations for waste in section 1927(d)(7) of the Act did nothing to discourage the proper prescribing, dispensing, and use of a new drug. They simply ensure that, for Medicaid recipients, the minimum supply of the drug is sufficient to be medically effective and economical and that the maximum supply of the drug discourages waste in the event the drug cannot be used (for example, because of allergic reactions, side effects, drug interaction, or other reasons of medical necessity). The foregoing would give effect to the provisions in both section 1927(d)(6) and section 1927(d)(7) and, thus, would uphold the intent of the Congress as set forth in the statute. (See section IV.C. of the preamble for a discussion of a State's attorney authority to impose limitations as amended by OBRA '93.)

3. Definition of Original New Drug Application (NDA)

Sections 1927(k)(7)(A)(ii) and (iv) of the Act reference the term "original NDA" in the definitions of "innovator multiple source drug" and "single source drug." Under the national rebate agreement, a drug marketed under an original NDA, in addition to other criteria, may be classified as either a single source or an innovator multiple source drug. Neither the statute nor the rebate agreement, however, define the term "original NDA." This term is also not defined in the Federal Food, Drug, and Cosmetic Act.

Because the statute does not provide specific guidance on this term, we would interpret it to comport with our understanding of the intent of the Congress. We would define in regulations at § 447.504 the term "original NDA" as an FDA-approved drug or biological application that received one or more forms of patent protection, patent extension under title II of Public Law 98–417, the Drug Price Competition and Patent Term Restoration Act, or marketing exclusivity rights granted by the FDA. This definition would include an NDA, an amended NDA, an antibiotic drug application (ADA), an amended ADA, a product license application (PLA), and an amended PLA.

Based on the statute, which requires larger rebates for single source and innovator multiple source drugs, we believe the term "original NDA" was included in sections 1927(k)(7)(A)(ii) and (iv) of the Act for the purposes of extracting larger rebates from those products that received some form of patent or marketing protection for a specific period of time. This form of protection could have been achieved through either some type of patent on the drug or some type of marketing exclusivity rights granted by the FDA.

Patent protection is generally granted for 17 years. Exclusivity rights generally run for a period of 3 to 7 years and are granted by the FDA for such innovations as new medical indications, new dosage strengths, new dosage forms, new regimens, or new routes of administration. Exclusivity rights can extend beyond the life of the patent and protect the manufacturer from competition in one or more specific market areas. Thus, the innovators of drug products with market protection often benefitted from a lack of competition and increased profits for a specific period of time. Therefore, innovators with market protection are required to pay larger rebates than noninnovators that produce generic drugs with no market protection. We believe the term "original NDA," as proposed above, produces this effect.

The rebate classification system has raised questions among manufacturers regarding how to classify certain products. We believe some drugs that appear to meet the rebate agreement's definition of innovator multiple source drug are actually noninnovator multiple source drugs. The FDA may consider a previously approved drug product to be a new drug and require an NDA before marketing. However, in accordance with our understanding of these provisions, this drug may actually be a noninnovator. For example, under 21 CFR 310.509, the FDA does not generally recognize any parenteral drug product packaged in a plastic immediate container as safe and effective. Therefore, this type of drug product is considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act and requires an approved NDA as a condition for marketing. In this case, if no patent protection or marketing exclusivity rights were granted by the FDA for the covered outpatient drug of that manufacturer, we would consider it to be a noninnovator multiple source drug.

D. Covered Drugs of Manufacturers Without Rebate Agreements

1. Coverage of 1–A Rated Drugs

Prior to 1992, the FDA maintained a rating system under which drugs were rated based on various factors. Under that system, the FDA rating "1–A" signified the chemical type (1) and the therapeutic potential (A). The FDA, in its 1991 publication *Offices of Drug Evaluation Statistical Report,* defined the rating 1–A as follows:

- The chemical type "1" identifies the drug as a new molecular entity, that is, a drug for which the active moiety has not been previously marketed in the United States for use in a drug product, either as a single ingredient or as part of a combination product, or as part of a mixture of stereoisomers. The term "new molecular entity" is equivalent to "new chemical entity".
- The therapeutic potential type "A" is defined as a drug with important therapeutic gain. The drug may provide effective therapy or diagnosis for a disease not adequately treated or diagnosed by any marketed drug, or provide improved treatment of a disease through improved effectiveness or safety (including decreased abuse potential).

A 1–A drug may also be labeled "1–A/AA". The 1–A/AA designation means it is a 1–A drug that is generally being developed for AIDS and AIDS-related opportunistic infections and that the FDA has placed the drug on a fast track and will monitor it through the drug review process.

Section 1927(a)(3)(A) of the Act authorizes FFP for single source or innovator multiple source drugs rated by the FDA as 1–A that are furnished by manufacturers without rebate agreements if certain conditions are met. Under this section, Medicaid payments may be made if: (1) The State has determined that the availability of the drug is essential to the health of recipients under the approved State plan; and (2) the physician has obtained approval for use of the drug before it is dispensed in accordance with a prior authorization program, or the Secretary has approved the State's determination regarding drug necessity to obviate the need for prior authorization (§ 447.518(b)). Necessity would be judged based on alternative therapies available and the probable outcome if a specific drug is not dispensed.

Even though section 1927(a)(3) of the Act authorizes HCFA to provide FFP for 1–A rated drugs under certain circumstances, States retain the option under sections 1902(a) and 1905 of the Act to choose which 1–A drugs they will cover under their approved State Medicaid plans.

The FDA recently changed its therapeutic classification system in which drugs were rated as either A, B, or C. As indicated in the FDA's *Staff Manual Guide*, Center for Drug Evaluation and Research, this three-tiered system has been replaced by a mutually exclusive two-tiered system in which the potential therapeutic classification of a drug product is either a Type P (Priority review, therapeutic gain) or a Type S (Standard review, substantially equivalent drug product). Type P is assigned to drugs that appear to represent a therapeutic gain over already marketed or approved drugs (formerly rated A or B). Type S is assigned to drug products that appear to have therapeutic qualities similar to drugs already approved or marketed (formerly rated C).

The Type P and S therapeutic classification system is effective for all NDAs approved on or after January 1, 1992. The classifications for NDAs approved prior to January 1, 1992, will remain unchanged, that is, these drugs will retain their A, B, or C therapeutic classification and 1–A drugs would continue to be covered by States as specified in this regulation. For purposes of section 1927(a)(3)(A) of the Act, we are inviting public comments on possible methods to identify 1–P-rated drugs that we could include as 1–A-drugs under this provision using the FDA's former classification system.

2. Coverage of Drugs During the First Rebate Period of 1991

Section 1927(a)(3)(B) of the Act provides for Medicaid payment for drugs not covered under rebate agreements if the Secretary determined that in the first rebate period of 1991 there were extenuating circumstances. On March 8, 1991, HCFA notified all State Medicaid Directors of its determination that extenuating circumstances did exist and that, for the first rebate period of 1991, outpatient prescribed drugs of manufacturers without rebate agreements were covered under Medicaid if they were included in the approved State Medicaid plan. States were not formally notified until March 15, 1991, of manufacturers participating in the rebate program. There was no practical way States could retroactively discontinue drug coverage on January 1, 1991, for drugs of nonparticipating manufacturers. However, as of April 1, 1991, FFP is available only for those covered outpatient drugs of manufacturers with rebate agreements.

Section 1927(a)(1) of the Act required that manufacturers enter into a rebate agreement by March 1, 1991, for payment to be available for their drugs under Medicaid for the January–March 1991 rebate period. As discussed earlier, HCFA also extended through April 30, 1991, the deadline for manufacturers to enter into rebate agreements that are retroactive to January 1, 1991.

IV. Limitations on Coverage of Drugs

Section 1927(d) of the Act, as amended by OBRA '93, permits States to place certain limitations on drugs that are covered under a rebate agreement. States may limit the coverage of drugs by: (1) Implementing a prior authorization program that complies with the requirements in section 1927(d) (5); (2) restricting or excluding from coverage drugs listed in section 1927(d) (2); (3) restricting the quantities of outpatient drugs per prescription and the number of refills under section 1927(d) (6); and (4) excluding coverage of the drug from its formulary in accordance with section 1927(d)(4). These limitations, that are proposed in the regulations at §§ 447.524 and 447.526, are explained below.

A. Prior Authorization

Section 1902(a)(54) of the Act provides that in the case of a State plan that provides medical assistance for covered outpatient drugs (as defined in section 1927(k) of the Act), the State must comply with the applicable requirements of section 1927 of the Act. Section 1927(d)(1)(A) provides that a State may subject any covered outpatient drug to prior authorization; that is, require approval of the drug before its dispensing for any medically accepted indication. The prior authorization system must meet two conditions specified under section 1927(d)(5) of the Act.

For drugs dispensed on or after July 1, 1991 section 1927(d)(5) of the Act permits a State to maintain a prior authorization program if the State responds by telephone or other telecommunication device to requests within 24 hours of a request for prior authorization. A State must, except for those drugs listed in section 1927(d)(2) of the Act, further provide for the dispensing of at least a 72-hour supply of the drug in emergency situations.

The provisions in section 1927 of the Act make no other changes to the State's ability to maintain or establish prior authorization programs. Thus, as specified in section 1927(d)(1) of the Act, States may subject to prior authorization any covered outpatient drug.

In passing these provisions, the Congress made it clear that Medicaid recipients should be assured access to all medically necessary covered outpatient drugs. (H. R. Rep. No. 881, 101st Cong., 2d Sess. 96–98 (1990).) Even though OBRA '93 added section 1927(d)(4) of the Act to allow States to establish formularies which meet specific requirements, section 1927(d)(4)(D) provides that the State plan must permit coverage of a drug excluded from the formulary (other than any drug excluded or restricted under section 1927(d)(2)) pursuant to a prior authorization program. In accordance with our understanding of Congressional intent, we believe that it is necessary to prevent States from using a prior authorization program as a proxy for a closed formulary beyond what the statute allows under the formulary provisions of section 1927(d)(4). In addition, we believe it is necessary to ensure that States respond to prior authorization requests within the timeframes specified in the statute. We believe these requirements are necessary to effectuate section 1927 of the Act and to uphold Congressional intent.

Prior authorizing drugs as a proxy for a closed formulary, beyond what the statute allows under the formulary provisions of section 1927(d)(4) without regard for medical necessity could result in recipients being treated with alternate therapies that may not be in their best interest. This could result in increased program costs if other medical services, such as inpatient hospital services, are necessary because a drug therapy is made less accessible under the State Medicaid program. Thus, a recipient's access to medically needed drugs could be unduly hampered if medical necessity is not used in a prior authorization program.

Therefore, we are proposing requirements to ensure that States utilize individuals with the appropriate level of medical expertise when determining which drugs are prior authorized and when deciding if the drug can be dispensed. Accordingly, we

believe it most appropriate that the level of expertise be reflected by the ability to prescribe/dispense drugs. We believe individuals with this knowledge would more likely be aware of negative consequences that could result if a specific drug is prior authorized or not approved for dispensing. Thus, the State Medicaid program and recipients would benefit from such a prior authorization system that considers medical necessity as its primary concern.

We note that this same level of expertise need not be present in those individuals responding to the prior authorization requests, as these persons would be acting in accordance with guidelines developed by those persons who place the drugs on prior authorization. However, as there may be requests for prior authorized drugs that do not fit into present guidelines, access to those persons responsible for putting drugs into a prior authorization program is needed.

Therefore, in accordance with section 1902(a)(54) of the Act, we would specify in these regulations at § 447.526(d) and (e) that:

- State staff who place drugs in a prior authorization system must be licensed to prescribe or dispense drugs in the State, for example, physicians or pharmacists, since these persons would have the medical knowledge necessary to determine criteria for prior authorization.
- State staff who respond to prior authorization requests are not limited to persons licensed to prescribe or dispense drugs as long as all decisions involving drugs subject to prior authorization are made—
  - + In consultation with these licensed professionals; or
  - + Under guidelines promulgated by such individuals as long as States provide access to licensed professionals in difficult or unusual cases.
- The State must establish a process to ensure recipients access to medically necessary covered outpatient drugs. We would not permit a State to use a prior authorization program as a means to deny covered outpatient drugs when medical necessity is shown.
- The State must provide annual written assurances to HCFA that the State's prior authorization program does not prevent recipients from gaining access to medically needed drugs.

Generally, we would allow States flexibility in implementing the statutory provisions relating to a 24-hour turnaround time for prior authorization requests and at least a 72-hour supply for emergency situations. For example, States may continue to prescribe the format for sending the request (for example, mail, telephone, or telefax). States may also continue to staff this function only during normal business hours, provided the requirement concerning a response to prior authorization requests within 24 hours of a request can be met.

However, to ensure access to medically necessary drugs, we would require States to structure their system so that, in emergency situations, a State's response is given to the dispenser or physician requesting the authorization before the emergency supply is exhausted. In these emergency situations, we would require the State to provide a mechanism so that a dispenser or physician can make a prior authorization request 24 hours before the supply is exhausted and a response returned by the State within that 24-hour period. We would require the State to allow a dispenser to provide a sufficient emergency supply (of at least 72 hours) until the prior authorization response can be returned to the dispenser. For example, the supply of a drug dispensed on Friday evening should not be exhausted before the prior authorization is requested on Monday morning and a response returned to the requester by the State on Tuesday morning (within 24 hours of a request).

We would allow States to develop a reasonable definition of emergency situations, as long as the definition does not prevent recipients from acquiring medically necessary covered outpatient drugs within the parameters set forth below. We would require in § 447.526(c)(2)(i) that States specify in their State plans the process that will be used to determine what constitutes an emergency situation. Emergency situations may involve immediate and severe adverse consequences or continuation of an immediate and severe adverse consequence if a covered outpatient drug is not dispensed when a prescription is submitted. We would not consider an emergency situation to exist if (1) the lack of a drug supply does not pose an immediate threat to the recipient, or (2) a drug must be prior authorized before it can be dispensed if there is no immediate threat to the recipient.

B. Exclusion or Restriction of Drugs

1. Drugs Subject to Restriction

Section 1905(a)(12) of the Act and regulations at 42 CFR 440.120 define prescribed drugs that may be covered by a State under its Medicaid program. Existing regulations under § 441.25 contain prohibitions on FFP for certain prescribed drugs. Except for covered outpatient drugs defined in section 1927 of the Act, these rules are not affected by the requirements for rebate agreements as a condition of FFP. This proposed rule would implement, in part, the provisions of section 1927(d)(2) of the Act, which specify the specific drugs or classes of drugs that States may exclude or restrict from coverage.

As noted previously in this preamble, section 1927(d)(1)(B) of the Act as amended by OBRA '93 specifies conditions under which a State may exclude or restrict coverage of an outpatient drug under a drug rebate agreement. A State may exclude or restrict a drug if—

- The prescribed use of the drug is not for a medically accepted indication;
- The drug is contained in the list of drugs subject to restriction under section 1927(d)(2) of the Act;
- The drug is subject to restrictions in a separate or existing agreement between a manufacturer and a State agency that has been authorized by HCFA under sections 1927(a)(1) of the Act or in effect in accordance with section 1927(a)(4) of the Act (§ 447.524(b)); or
- The State has excluded coverage of the drug from its formulary established in accordance with the requirements for formularies specified in section 1927(d)(4).

Section 1927(d)(2) limits a State's option to exclude or restrict drugs from coverage under the rebate program to the following drugs, classes of drugs, or their medical uses:

- Agents when used for anorexia, weight loss or weight gain.
- Agents when used to promote fertility.
- Agents when used for cosmetic purposes or hair growth.
- Agents when used for the symptomatic relief of cough or colds.
- Agents when used to promote smoking cessation.
- Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparation.
- Nonprescription drugs.
- Covered outpatient drugs that the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.
- Barbiturates.
- Benzodiazepines.

We would allow States flexibility in specifying the drugs and medical uses that fall within these descriptions. We do not intend to further identify or define these drugs at this time. We would allow States to exclude or restrict drugs that fall within these descriptions. However, when a drug that is primarily formulated to treat a medically accepted indication not included on the list set forth in section 1927(d)(2) of the Act is also prescribed for a medical use included in section 1927(d)(2), that use of the drug for the medically accepted indication outside of section 1927(d)(2) would not be excludable. For example, a drug that is primarily formulated to treat asthma or some condition other than coughs and colds should not be excluded for the treatment of asthma. However, a State could prior authorize the drug and exclude or restrict it if the drug is prescribed for a cough or cold in an individual case.

We would require in § 447.524(g) that a State amend its State Medicaid plan to include a list of those drugs or classes of drugs or medical uses under section 1927(d)(2) of the Act that the State is excluding or restricting from coverage. We would also require a State to describe in its plan limitations or conditions of coverage for these drugs. However, we would not require the State to list those drugs for which it requires prior authorization. We would require States to amend their State plans in this manner to ensure that both HCFA and the public are adequately informed of those drugs covered by various State plans.

2. Updating the List of Drugs Subject to Restriction

a. Adding Drugs to the List. In accordance with section 1927(d)(3) of the Act as amended by OBRA '93, the Secretary must periodically update, by regulation, the list of drugs, classes of drugs, or their medical uses subject to restriction under the rebate program if there is evidence of clinical abuse or inappropriate use. Section 1927(d)(3) provides that the Secretary must update the list on the basis of data collected by the State Medicaid agencies' surveillance and utilization review (SUR) programs. We would incorporate this provision in our regulations at § 447.524(d). As necessary, we will announce a proposed updated list in the **Federal Register** and allow public comment before the list is issued in final.

We request public comments with suggestions on how we should administer a process to determine when a drug, class of drug, or its medical use should be added to the list in section 1927(d)(2) of the Act when the item is subject to clinical abuse or inappropriate use. At a minimum, any suggestions made for the process must take into consideration that we must use SUR data to substantiate any proposal to add an item to the list. In accordance with section 1927(d)(3) of the Act, a SUR report submitted as supporting documentation would need to provide HCFA with the data necessary to make an objective analysis regarding clinical abuse or inappropriate use of an item.

While we currently have reporting requirements for SUR data, we would need to modify them to accommodate the additional information needed to update the list of drugs subject to restriction. These reporting requirements would be addressed in a separate document.

b. Deleting Drugs From the List. Section 1927(d)(3) of the Act provides that the Secretary must "update" the list of drugs subject to exclusion or restriction. In this proposed rule, we would interpret this provision to mean that drugs subject to clinical abuse or inappropriate use may be added to the list. However, we do not believe that section 1927(d)(3) allows the Secretary to delete drugs from the list. That list, set forth in section 1927(d)(2) of the Act, represents drugs that, as noted in the Senate Report, are "commonly subject to exclusion or restriction by State Medicaid programs." (136 *Cong. Rec.*, S15658, daily ed. October 18, 1990) The tenor of that report, as with the statute, is that drugs may be added to the list, but that the categories already on the list will remain subject to State restriction.

An example to reinforce this point can be made with paragraph (H) under section 1927(d)(2) of the Act. Paragraph (H) refers to "covered outpatient drugs that the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee." If we were to conclude that we have the authority to remove any drug from the list if it were not subject to clinical abuse or inappropriate use (as noted in section 1927(d)(3) of the Act), and data were available demonstrating that a product was not subject to clinical abuse or inappropriate use, we would have to remove the drug from the list (regardless of any exclusive arrangement) and require all State Medicaid programs to cover the drug. This result would clearly conflict with the statute and with the legislative history. Accordingly, the drugs on the list would be statutorily mandated and could only be deleted from the list by amendments to the statute.

3. DESI and IRS Drugs

a. The DESI Program. Before enactment of the Federal Food, Drug, and Cosmetic Act of 1938, drugs could be marketed in the United States as long as a drug's label did not present false information regarding the drug's strength and purity. The Federal Food, Drug, and Cosmetic Act first established the requirement that a manufacturer has to prove the safety of a drug before the manufacturer could market it in the United States. In accordance with that statute, drugs marketed before the passage of the Federal Food, Drug, and Cosmetic Act were "grandfathered" so that manufacturers, if they do not change the representations on the drugs' labels, were allowed to continue to market them unless evidence was developed to indicate that they were not safe (referred to as pre-38 drugs). However, once a manufacturer changed the representation on a pre-38 drug's label, that drug was considered by the FDA to be a "new drug" and the manufacturer was required to prove that the drug was safe for its intended use.

In 1962, the Federal Food, Drug, and Cosmetic Act was amended to require that drugs sold in the United States be regulated more closely. Under the provisions of the Drugs Amendments of 1962 (Public Law 87–781), all new drugs must be shown by adequate studies to be both safe and effective before they can be marketed. This legislation also applied retroactively to all drugs approved as safe from 1938 to 1962 (referred to as pre-62 drugs). These pre-62 drugs were permitted to remain on the market while evidence of their effectiveness was reviewed. The program established under which the FDA would review the effectiveness of drugs approved between 1938 and 1962 was named the Drug Efficacy Study Implementation (DESI) program.

If the DESI review indicates a lack of substantial evidence of a drug's effectiveness for all of its labeled indications, the FDA will publish a Notice of Opportunity for a Hearing (NOOH) in the **Federal Register** concerning its proposal to withdraw approval of the drug for marketing. At that time, a manufacturer of that drug or identical, related, or similar (IRS) drugs has the opportunity to request a hearing and provide FDA with documentation of the effectiveness of the drug product before a final determination is made. Drugs for which a NOOH has been published are referred to as less than effective (LTE) DESI drugs. The IRS drug counterpart of a LTE DESI drug is also considered less than effective. (We note that the terms "DESI drug" and "LTE DESI drug" are not synonymous.)

If all the labeled indications of the product are found to lack substantial evidence of effectiveness, a withdrawal notice is published in the **Federal Register** withdrawing approval of the NDA for the product. At that time, shipping this product and any IRS drug product in interstate commerce after the

effective date of the withdrawal notice is unlawful.

If only some of the labeled indications of the product are found to lack substantial evidence of effectiveness, the manufacturer must delete those LTE indications from the drug's label. If a manufacturer does not comply with this requirement, the manufacturer's NDA can be withdrawn by the FDA. All manufacturers of IRS drug products must also revise their labeling and submit an application to the FDA to obtain approval for their product to be allowed to continue marketing their drug.

In accordance with section 1903(i)(5) of the Act, FFP is not available for LTE DESI/IRS drugs for which a NOOH is issued for all labeled indications. Under the drug rebate program, a drug is not considered a covered outpatient drug if a NOOH is issued for some or all labeled indications.

At present, drugs subject to the DESI review process are in various stages of review. The mandatory and optional State coverage requirements and FFP restrictions on these drugs are discussed in section IV.B.3.b. of this preamble. The term "DESI/IRS drugs" is used when discussing coverage of a DESI drug and its IRS counterparts.

b. Coverage of DESI/IRS Drugs Under the Medicaid Program. This section describes the general coverage, FFP requirements, and rebate requirements for DESI/IRS drugs. Detailed instructions on how to identify DESI drugs and the roles that HCFA, States, manufacturers, and the FDA play in this process have been sent to the manufacturers and States.

- Non-DESI/IRS Drugs or DESI/IRS Drugs Determined Safe and Effective. Non-DESI/IRS drugs (pre-38 drugs and post-62 drugs) and pre-62 DESI/IRS drugs that have undergone the DESI review process and have been determined by the FDA to be safe and effective for their labeled uses under sections 505 and 507 of the Federal Food, Drug, and Cosmetic Act meet the definition of a covered outpatient drug. Therefore, these drugs of a participating manufacturer must be covered under the drug rebate program and are, therefore, subject to a rebate and FFP.
- DESI/IRS Drugs under Review (No NOOH Issued). DESI/IRS (pre-62 drugs) of participating manufacturers which meet the definition of a covered outpatient drug that are undergoing the DESI review process but for which a NOOH has not been issued must be covered under the rebate program. These drugs include:
  + Drugs described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related to such a drug; and
  + Drugs for which the Secretary has not issued a NOOH under section 505(e) of the Federal Food, Drug, and Cosmetic Act to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

In other words, a State must cover DESI/IRS drugs of a participating manufacturer for which a NOOH has not been issued for some or all of the drug's labeled indications. FFP is available and the drugs are subject to a rebate. DESI/IRS drugs under this category do not include drugs that have been found to be safe and effective under the DESI review program.

- Less Than Effective (LTE) DESI/IRS Drugs for Some Indications. Section 1903(i)(5) of the Act does not prohibit FFP if a DESI drug is effective for at least one indication. A drug would meet this criterion if a NOOH has been issued for some, but not all, indications. These DESI/IRS drugs may be covered at State option and FFP is available.

For purposes of the rebate program, the definition of a covered outpatient drug in section 1927(k)(2)(A)(iii) of the Act specifically excludes those DESI/IRS drugs for which a NOOH has been issued because the FDA has determined that the drugs are less than effective for some or all of their prescribed recommended uses. However, when these drugs have an FDA-approved, labeled indication for which a NOOH has not been issued, the drug is considered a covered outpatient drug for that indication (and other medically accepted indications). Therefore, these drugs of participating manufacturers must be included in the drug rebate program for their approved indications (and other medically accepted indications) and are subject to a rebate and FFP.

- Less Than Effective (LTE) DESI/IRS Drugs for All Indications. Under section 1903(i)(5) of the Act, FFP is prohibited for DESI drugs for which a NOOH has been issued for all conditions of use prescribed, recommended, or suggested in its labeling. Therefore, if a State chooses to cover these LTE DESI/IRS drugs, FFP is not available. This prohibition was not changed by OBRA '90 and applies regardless of whether the manufacturer is appealing the NOOH for some or all of the drug's indications.
- Less Than Effective DESI/IRS Drugs Withdrawn from the Market. The FDA has determined this group of DESI/IRS drugs to be less than effective and published a NOOH and subsequent withdrawal notice in the **Federal Register**. Based on these findings, the manufacturer is required to discontinue the distribution of these drug products. However, because the FDA does not institute recalls of these drug products to the retail level, these products may still be available in pharmacies. In any event, under section 1903(i)(5), FFP is not available for these DESI/IRS drugs.

c. Reporting DESI/IRS Drugs. The rebate agreement requires that the manufacturer's list of covered outpatient drugs include the NDC numbers for all drugs currently marketed by the manufacturer. Manufacturers are also required to list the NDC number for a drug that it no longer markets because the manufacturer will be responsible for providing a rebate on the drug until the entire supply of the drug under an NDC has expired, the drug has been taken off the market, or for other reasons, the potential no longer exists that the covered outpatient drug may be dispensed under the manufacturer's NDC number. To comply with these requirements, manufacturers must include on their lists of covered outpatient drugs all DESI/IRS drugs.

Even though some drugs are not subject to the rebate program, manufacturers must report to HCFA the required information for all LTE DESI/IRS drugs. A change from one DESI category to another DESI category, as described in section IV.B.3.b. of this preamble, could change a drug's coverage under Medicaid. For example, LTE DESI/IRS drugs could be potentially covered at some point under the rebate program if the FDA reverses its decision on a NOOH. HCFA must have the baseline pricing data (for single source and innovator multiple source drugs) from October 1, 1990, and for all drugs, the DESI drug indicator, as well as other data, in the event they are covered at a later date.

A manufacturer is responsible for knowing the status of DESI/IRS drugs by reviewing DESI notices published in the **Federal Register** by the FDA. (See 52 FR 1663 and 1668, January 15, 1987.) Manufacturers must identify in their list of covered outpatient drugs which they submit to HCFA those DESI/IRS drugs that they produce that are the subject of a NOOH.

In accordance with section 1927(b)(3)(C)(ii) of the Act, any manufacturer with an agreement under section 1927 that knowingly provides false information is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. This provision also applies to any manufacturer that knowingly reports false information to HCFA regarding the status of a DESI/IRS drug for coverage purposes. In addition to civil money penalties, the manufacturer may also be subject to termination because it is not in compliance with section 1927 of the Act, the national rebate agreement, and regulations under § 447.534 that specify manufacturer reporting requirements.

C. Amount, Duration, and Scope of Services. Prior to the enactment of OBRA '90, States could establish amount, duration, and scope restrictions on Medicaid services, including prescription drugs. These restrictions could be based on such criteria as medical necessity and utilization control, or could be based on other factors so long as the amount of the services provided was sufficient to "reasonably achieve its purpose" (See section 1902(a)(10) of the Act and § 440.230 (Sufficiency of amount, duration, and scope)). States could impose prior authorization restrictions and also limit the number of prescription drugs that they covered through a formulary.

Section 1927 of the Act curtails a State's authority to exclude drugs from coverage and limited its authority to impose prior authorization requirements under section 1927(d)(5). However, the statute did not alter the State's authority to establish amount, duration, and scope restrictions, and, in fact, specifically recognized States' authority to impose additional restrictions on the quantities per prescription and the number of refills. Specifically, section 1927(d)(6) of the Act allows a State to impose restrictions on minimum and maximum quantities of outpatient drugs per prescription and on the number of refills within a therapeutic class to discourage waste. Section 1927(d)(6) also allows a State to impose these limitations and address instances of fraud or abuse by individuals in any manner authorized under the Act.

The legislative history of OBRA '90 indicates that this statutory provision was designed to enhance, not limit or replace, a State's authority to impose reasonable amount, duration, and scope restrictions. The House Report, adopted by the Conference Committee, states that "States are not prevented from restricting the amount, duration, and scope of coverage of covered outpatient drugs consistent with the need to safeguard against unnecessary utilization." (H. R. Conf. Rept. No. 964, 101st Cong., 2nd Sess., 825, 832 (1990)) This statement supports the conclusion that the Congress did not intend to circumscribe a State's authority to impose amount, duration, and scope restrictions. Therefore, in regulations at § 447.524(e), we would specify that a State may continue to impose limitations on the minimum and maximum quantities of drugs per outpatient prescription and the number of prescriptions or dispensing fees allowed per month as it did before the enactment of OBRA '90.

A State, in accordance with section 1927(d)(6) of the Act, may impose coverage restrictions on package sizes of a drug when required to prevent waste. We do not believe that, given the general goals of the drug rebate provisions, Congress intended for States to pay for more expensive package sizes when less costly alternatives exist. Thus, we would permit States to impose coverage restrictions based on the relative economy, or the high cost, of a specific package size. For example, a State may exclude from coverage the unit dose packaging of a particular drug based on its cost; however, such restrictions may be imposed, given the formulary requirements of section 1927(d), only if the manufacturer packages the drug in other sizes which the State covers.

V. Reporting Requirements

Under section 1927(b)(2) of the Act as amended by OBRA '93, States are responsible for providing to the manufacturer Medicaid utilization data for a rebate period regarding the quantity of drugs that they have dispensed after December 31, 1990 for which payment was made under their State plan during a rebate period. Section 1927(b)(3) of the Act requires a manufacturer to supply to HCFA, for each rebate period, information concerning AMP and, as required, best price for its covered outpatient drugs. Rebates are calculated for each rebate period on the basis of this information, as explained in section VI. of this preamble.

A. State Reporting Requirements

Under section 1927(b)(2)(A) of the Act, the State Medicaid agency must provide to manufacturers with drug rebate agreements State drug utilization data regarding the total number of "units" of each dosage form, strength, and package size of the manufacturer's drug that were dispensed after December 31, 1990 and paid for under the State plan during a rebate period. In the regulations at § 447.530(a)(2), we would define "unit" as the lowest commonly identifiable amount of a drug for example, tablet or capsule for solid dosage form, milliliter for liquid forms, and gram for ointments or creams, as supplied to HCFA in accordance with instructions in the rebate agreement. The use of units with regard to State reporting requirements and rebate calculations is discussed throughout sections V. and VI. of the preamble.

To comply with the provisions of section 1927(b)(2)(A), we would specify in our regulations at § 447.530(b) that States provide Medicaid drug utilization data based on claims paid by the State Medicaid agency during a rebate period.

1. Pharmacy Coding, Oversight, and Audit

To comply with the provisions of section 1927(b)(2)(A) of the Act, and to facilitate uniform reporting, we would require in § 447.530(a)(1) that States report their utilization data by the 11-digit NDC number. We note that FDA's regulations at 21 CFR 207.35 refer to the NDC number as a 10-character code. This code can show leading zeros in any segment of the NDC number. However, for standardization purposes in the drug rebate program, we are using a consistent 11-digit code that reflects leading zeros and the maximum number of digits that can appear in each segment of the NDC code.

We are recommending that, in order to implement these provisions in the most efficient and cost-effective manner, State Medicaid agencies identify for pharmacies certain information, as discussed below, that will enable them to determine those drugs that are covered under a State plan. The State should make available to pharmacies information concerning the labeler codes of manufacturers with rebate agreements; drugs under section 1927(d) of the Act that are excluded or restricted from coverage and the limitations or conditions of coverage; and drugs that are subject to prior authorization.

For purposes of this regulation, the term "pharmacy" applies to any entity authorized by the State to dispense covered outpatient drugs in that State. Thus, these requirements will be binding on all dispensers of covered outpatient drugs to Medicaid recipients.

The State agency may establish its own policies to ensure accurate pharmacy coding. However, we would require the agency to establish and implement an oversight and auditing process to ensure proper pharmacy coding and reporting practices. We would also require States to establish and implement procedures for investigating allegations of erroneous utilization data at the pharmacy level by participating manufacturers or other

interested parties (§ 447.530(e) (2) and (3)). We would require State agencies to establish procedures to comply with section 1927(b)(2)(B) of the Act, which gives manufacturers the authority to audit State data. The agency would also be responsible for taking the actions necessary to ensure accurate coding (§ 447.530(e)(4)).

We believe these requirements regarding accurate pharmacy coding are necessary to effectuate OBRA '90 drug rebate provisions. Accurate pharmacy coding is a fundamental and critical component of the Medicaid drug rebate program under section 1927 of the Act. Without these requirements, pharmacies may use incorrect NDC numbers when billing the Medicaid State agencies, which could result in numerous problems.

Use of incorrect NDC numbers could have a detrimental effect that would carry through the entire drug rebate process. First, pharmacies could bill States for a brand name drug although a generic drug was dispensed, resulting in overpayments to pharmacies, increased drug costs, and erroneous utilization data. If pharmacies substitute the NDC numbers of one manufacturer for another, even if the drugs cost the same amount, the Medicaid utilization data would be flawed. Secondly, flawed data would cause the States to invoice manufacturers for erroneous rebates, resulting in over and under billing for rebates. Thirdly, erroneous data may increase the likelihood that manufacturers would dispute the data and withhold rebate payments to States. Thus, inaccurate pharmacy coding would increase a State's dispute resolution workload, delay rebate payments, and cause interest to accrue on unpaid amounts. The dispute resolution process is an expensive, lengthy, and resource-intensive process for all parties involved.

In addition to disputing the data, manufacturers may, in accordance with section 1927(b)(2)(B) of the Act, audit the drug utilization data provided (or required to be provided) by the State. A manufacturer could also request a State to audit a pharmacy, which is also expensive and resource intensive. Because of the magnitude of the problems and costs inaccurate pharmacy coding can cause, we believe the requirements discussed above are necessary to properly and efficiently effectuate the drug rebate program requirements in OBRA '90.

Therefore, we would require in § 447.530(e)(1) that the State must inform pharmacies that they are required to use accurate NDC numbers for the drugs dispensed in submitting their Medicaid claims and that payment can be denied for a drug that has been inaccurately coded by a pharmacy. States may consider inaccurate coding to be good cause for terminating provider agreements subject to applicable Federal and State laws. Also, under anti-fraud provisions, pharmacy claims with incorrect NDC numbers may subject these pharmacies to criminal or civil money penalties, as well as exclusion from the Medicare and Medicaid programs.

States must implement the requirements of § 447.530(e) within 60 days after publication of the final rule. We believe this timeframe is adequate for establishing procedures to ensure accurate pharmacy coding since we informed States of these requirements in mid-1991. We are aware that many States have since established procedures to ensure accurate pharmacy coding. States that do not ensure accurate pharmacy coding may be considered to be out of compliance with section 1927 of the Act and, therefore, subject to compliance proceedings. In addition to effectuating OBRA '90 drug rebate provisions, we believe these pharmacy coding requirements are essential to comply with section 1902(a)(30) of the Act. Section 1902(a)(30) generally provides that methods and procedures relating to the utilization and payment of services under the State plan safeguard against unnecessary utilization and to ensure that payments are consistent with efficiency, economy and quality of care.

In accordance with section 1927(b)(2)(B) of the Act, a manufacturer may audit the drug utilization data provided (or required to be provided) by the State. If the information indicates that utilization was greater or less than the amount previously specified, adjustments to the rebates must be made on the next quarterly report submitted by the State. All corrections must be applied to the quarter for which utilization data are adjusted. If the adjustments result in a manufacturer owing an additional rebate amount, the manufacturer must include that amount, plus interest, in the rebate payment for next rebate period.

Since the statute permits manufacturers to audit drug utilization data but does not authorize manufacturers to directly audit pharmacies, we would require States to have procedures to investigate manufacturers' allegations of erroneous utilization data produced at the pharmacy level. If the State agrees to such a request, it may apply a process that uses a sampling methodology to audit pharmacies in a targeted area where erroneous data are believed to be occurring, or by other means that will address the alleged problem. Given the large volume of Medicaid drug claims, we believe a targeted sampling of pharmacies and their claims is a reliable method to discover inaccurate coding and billing practices, especially when targeted for specific drugs. Doing otherwise could prove costly for States without providing a significant amount of additional information. If erroneous data are discovered, a State could expand the audit to determine the severity of inaccurate billing practices.

An audit may be performed at any time throughout the dispute resolution process. However, both parties must agree to the audit and develop mutually agreeable audit procedures. (Section V.F. of this preamble contains a discussion of dispute resolution.)

2. Format and Contents of Report

Section 1927(b)(2)(A) of the Act requires that the Secretary establish a standard reporting format that States must use to report dr[illegible]ization data to manufactu[illegible]s a[illegible]CFA. Using this standard r[illegible]ormat, States must identify d[illegible]anufacturer to ensure that the proper rebates are paid. As indicated earlier, we selected the NDC number that identifies each drug by manufacturer, product, and package size as part of the standard reporting format to be used throughout the rebate program.

We have issued, through the rebate agreement and a notice published in the **Federal Register** on May 1, 1991 (56 FR 20006), the standard reporting format for States to use in reporting for the rebate period to HCFA and manufacturers. We have also issued subsequent letters to State Medicaid Directors containing instructions to provide additional guidance in using the reporting format. This standard reporting format includes the following information:

- State identification;
- Rebate period and year for which data apply;
- NDC number to identify labeler code, product code, and package size code;
- Total number of units paid for during the rebate period for each NDC;
- FDA registration name to provide a cross-check for the product code;
- Total amount of rebate that a State claims for each NDC;
- Number of prescriptions reimbursed by NDC;
- Rebate amount per unit and total reimbursement amount to verify manufacturer's payment; and

- A correction record flag to alert HCFA of a change or correction from a previous report.

These data elements will be updated through separate instructions as needed to further program objectives in this area. We would incorporate in the regulations at § 447.530(a) through (d) the basic reporting requirements and timeframes. HCFA instructions will provide guidelines for States to use when reporting utilization data.

3. Timeframe for State Reporting of Utilization Data

In accordance with section 1927(b)(2)(A) of the Act, we would require in § 447.530(c) that each State Medicaid agency report drug utilization data to HCFA and the manufacturer no later than 60 days after the end of each rebate period. The data for the first rebate period (January-March 1991) were originally due to HCFA and the manufacturer on May 30, 1991. However, since the Secretary had not developed a standard reporting format, we extended the May 30, 1991, deadline to July 30, 1991, for States to submit data to HCFA and the manufacturer. This delay resulted, in part, from a lack of either baseline and/or first rebate period data from many of the manufacturers, including the majority that joined the rebate program during the extension period to April 30, 1991. We believe the extension alleviated the need for States to send to HCFA and manufacturers multiple updates of corrected data, prevented disputes on partial data, and allowed for smoother implementation of the drug rebate program.

States should mail the utilization data to manufacturers in a form that will provide evidence of the date the data were received by the manufacturers. Manufacturers must pay rebates for each rebate period or provide a written notice of disputed utilization data by the 30th day after receipt of State utilization data. Evidence of the date received is important so that States can accurately determine when rebate payments are due, when interest begins accruing on any unpaid balances, and when the interest period begins for purposes of the dispute resolution process. (Section V.F.4. of this preamble contains a discussion of the interest provision.)

4. Effect of Timeliness of State Utilization Data on Payment of Rebates

Section 1927(b)(2)(A) of the Act provides that a State Medicaid agency shall report rebate period information on the drugs dispensed and paid for to each manufacturer not later than 60 days after the end of each rebate period and in a form consistent with a standard reporting format established by the Secretary. As noted previously in section V.A. of this preamble, we would specify in regulations that States provide Medicaid drug utilization data based on claims paid by the State during a rebate period. However, we believe circumstances could arise that prevent States from being able to generate Medicaid utilization information in the standard reporting format to meet this 60-day deadline. While the statute requires States to meet this 60-day requirement, we do not believe the statute relieves manufacturers from the obligation of paying rebates if States cannot meet the requirement. States do not have an incentive to submit late rebate claims to manufacturers since they are losing revenue by doing so. While processing late rebate claims may be an inconvenient administrative task for manufacturers, manufacturers have the advantage, in this case, by having access to these rebate funds which should have been paid to the State had the State submitted the data within the specified timeframe.

Thus, we realize that we must establish a maximum timeframe during which the manufacturer is bound to pay rebates on all drugs sold to Medicaid recipients. We would, therefore, establish a maximum time limit of 1 year from the end of a rebate period for States to bill a manufacturer for a rebate. However, if a State submits claims later than the required 60-day period, the State can only bill the manufacturer for the rebate amount that would have been due during the rebate period in which the State paid the drug claim. Consequently, we would specify in regulations at § 447.530(c) that the manufacturer is not required to pay a rebate on its drugs when a State does not submit its rebate period utilization data to the manufacturer within 1 year after the rebate period ended.

We believe this 1-year timeframe meets the needs of both States and manufacturers and is equitable because it parallels the maximum 1-year timeframe for providers' and States' responsibilities. Other Medicaid provisions allow a maximum timeframe of 1 year for pharmacies to submit claims and up to 1 year for States to pay claims (42 CFR 447.45(d)). A State would not lose rebates on those drugs for which it cannot compile the data within 60 days, and a manufacturer would not be held liable for rebates for an extensive period of time due to a State's failure to report utilization data within 60 days. As a general matter, HCFA will not find a State to be out of compliance if its utilization data are submitted to the manufacturer within this 1-year timeframe.

We consider any time period longer than 1 year after the rebate period ended to be extensive since this period could ultimately translate into a manufacturer being responsible for rebates for more than 3 years after the drug is dispensed. In accordance with § 447.45, pharmacies have up to 1 year to bill the State agency for drugs dispensed to Medicaid recipients, and States could take as long as 1 year to pay a drug claim. Thus, these two processing timeframes and the 1-year cutoff total 3 years. This 3-year time period also comports with general business principles. The Internal Revenue Service generally requires that records be maintained for 3 years unless they are involved in some type of action requiring their use. Manufacturers may not be able to substantiate rebate claims for more than 3 years after a drug is dispensed since they are not required to maintain records for more than 3 years. Adding more disputes to the resolution process for data where no records may exist is not, in our opinion, a cost effective or efficient manner of operating the drug rebate program. Thus, we believe this 1-year threshold for States to submit utilization data to manufacturers is reasonable and consistent with the drug rebate provisions of section 1927 of the Act and necessary to effectuate the OBRA '90 drug rebate provisions.

States that lose rebates required under section 1927 of the Act for failure to submit rebate period utilization data to manufacturers within 1 year after the rebate period ended may be considered out of compliance with section 1927. Therefore, HCFA could initiate a compliance action against a State if it fails to collect rebates to reduce the amount expended under their State plan for medical assistance (§ 447.530(c)).

5. Data Edits on State Utilization Data

As discussed in section V.A.2. of this preamble, States are required, under section 1927(b)(2)(A) of the Act, to submit drug utilization data to manufacturers in a format established by HCFA. Since the accuracy of the invoiced rebates is dependent upon the reliability of the State utilization data, we would require States to establish a system of edits to its Medicaid utilization information. These edits must be performed before the State submits it utilization data to the manufacturer. The data reports generated from these edits will not be disclosed to the manufacturer but will be used to verify the accuracy of the information disclosed. We believe this requirement is necessary to effectuate

the OBRA '90 drug rebate provisions and to prevent unnecessary disputes between States and manufacturers that delay the timely payment of rebates.

The types of edits described in this section are intended to verify the accuracy of the Medicaid utilization information by examining whether:

- The unit types claimed are appropriate for NDC number claimed;
- The units claimed match the amount paid by the State; and
- The amount paid by the State is an amount allowable for the NDC (for example, a brand name payment amount was not made for a generic drug or the opposite).

We believe that, by verifying the accuracy of such items described in this section before submitting the information to the manufacturer, the State will identify inconsistencies, correct them, and reduce the number of subsequent disputes. The State must submit the utilization data to the manufacturer within the timeframes contained in § 447.530(c), as described in sections V.A.3. and V.A.4. of this preamble, and only after the State has performed the types of edits described in § 447.530(f) and believes the data are accurate.

The requirement in § 447.530(f) for State edits on Medicaid utilization information would be effective 60 days following publication of the final rule. That is, State data submitted to manufacturers for that rebate period must have been verified through the use of system edits.

6. Use of Rounding Indicator

We also would establish the requirement in § 447.530(g) that States must identify by NDC number those drugs for which the number of units has been rounded by showing a rounding indicator for the number of units dispensed. States must include this information in their rebate period Medicaid utilization information submitted to the manufacturers. We have determined that this requirement is necessary since some pharmacies lack the ability to report decimal quantities in the Medicaid utilization information and, thus, in accordance with accepted industry standards, round up decimal quantities to the nearest whole unit. This practice can result in manufacturers being sent inflated utilization data or lead to disputes over the number of units billed.

We believe this requirement is necessary to effectuate the OBRA '90 drug rebate provisions and to prevent unnecessary disputes between States and manufacturers which delay the timely payment of rebates. We would, therefore, require States to indicate in the appropriate data field whether or not the number of units reported in the Medicaid utilization information has been rounded. This indicator will alert the manufacturer that a rounding adjustment factor has been applied to appropriately deflate the State's utilization data.

The requirement in § 447.530(g) for States to use the rounding indicator would be effective 60 days following publication of the final rule. That is, State data submitted to manufacturers for that rebate period must include the rounding indicator field and the number of units billed. We will provide separate instructions to the States and manufacturers regarding the use of the rounding indicator.

7. Rebate Tolerance Limits for Invoicing

Many States have informed us that the costs of preparing an invoice for drug rebates can often exceed the amount of a minimal rebate. For instance, some States have spent $50 preparing an invoice for a $5 rebate. We believe that if administrative costs are more than the rebates, the State should not expend its resources to collect a rebate that reduces State savings. Thus, to effectuate the OBRA '90 drug rebate provisions in the most efficient manner, we would establish a rebate tolerance limit for States to use in determining whether it should bill a manufacturer for a rebate when the administrative expense exceeds the rebate savings.

Generally, if the rebate amount due per labeler code is less than the administrative costs associated with preparing the invoice and collecting the rebate, the State should not invoice the labeler for that rebate amount. We have determined that a maximum tolerance of $50 per rebate period would be acceptable if State-supplied information establishes this as the reasonable cost of preparing a labeler's utilization data. In situations where the tolerance is applied, the State need not invoice the manufacturer, although it is free to establish its own tolerance below $50 and continue to submit utilization data above that tolerance. (We note that, in either event, the unit rebate amount must have been supplied by HCFA for all of that manufacturer's drugs in that rebate period and the State applied that unit rebate amount to its utilization data. If the manufacturer fails to supply pricing information for a drug, the unit rebate amount would be zero or missing from the HCFA pricing file. In this case, the tolerance would not apply.) Further, the State would not be at risk of loss of FFP on that portion of the uncollected rebates within the tolerance limits.

The State should maintain supporting documentation that identifies the instances when the tolerance levels were applied. We believe our policy promotes efficiency by allowing States the authority to pursue only those rebate amounts that exceed the States' administrative costs associated with those rebate amounts. Our policy also alleviates States' concern that they may be liable for the Federal share of those rebates that are within the tolerance limits.

B. Reporting Requirements for Manufacturers

Section 1927(b)(3)(A) of the Act requires manufacturers to supply drug pricing information to HCFA. In addition to pricing data, we would require manufacturers to complete and submit to States Form HCFA–304, the Medicaid Remittance Advice Report (RAR), within 30 days of receiving State Medicaid utilization information. The RAR has been approved by OMB prior to publication of this proposed regulation (OMB approval No. 0983–0676). The basis and timeframes for meeting this requirement, as well as what information is required on the RAR, are discussed below.

1. Timeframes for Reporting

Under the terms of the statute and the national rebate agreement, manufacturers must supply HCFA with a list of all covered outpatient drugs, the applicable baseline AMP, and, for single source and innovator multiple source drugs, best price within 30 calendar days of entering into the national rebate agreement. Manufacturers must update the list for each rebate period under the agreement to include AMP and, as appropriate, best price of drugs (both terms are discussed more fully below) and must report the update to HCFA no later than 30 days after the last day of each rebate period. We would incorporate these requirements in the regulations under § 447.534 (a) and (b).

In accordance with the dispute resolution process described in section V.F. of this preamble, and as set forth in regulations under § 447.536(b), we would require manufacturers to complete and submit to States the RAR within 30 days of receiving a State's Medicaid utilization information. We believe this requirement is necessary to effectuate the drug rebate provisions in OBRA '90, and to aid in the timely resolution of disputes and the timely payment of rebates.

2. Content of Reporting

a. Manufacturer Reporting Requirements to HCFA. Section

1927(b)(3)(A)(i) of the Act requires that the manufacturer's list of covered outpatient drugs submitted under the rebate agreement must be updated by the manufacturer on a rebate period basis to include the AMP and, for single source drugs and innovator multiple source drugs, the manufacturer's best price.

(1) Definition of Average Manufacturer Price (AMP). As stated earlier, under section 1927(k)(1) of the Act, AMP means, with respect to a rebate period, the average unit price paid to the manufacturer for the drug in the States by wholesalers for drugs distributed to the retail pharmacy class of trade after deducting customary prompt pay discounts. We would incorporate the definition of AMP in § 447.534(c). Under this definition, sales that a manufacturer makes to other than the retail class of trade must be excluded. Thus, sales where the buyer relabels or repackages the drug with another NDC number and sales through wholesalers where the manufacturer pays a chargeback for sales to an excluded buyer, such as a hospital, would not be considered sales to the retail class of trade.

We would also exclude from this definition direct sales to hospitals, health maintenance organizations and to distributors where the drug is relabeled under that distributor's NDC number because these entities are not considered the retail pharmacy class of trade. We would also exclude Federal Supply Schedule (FSS) prices from the calculations of AMP since the statute does not include FSS and FSS does not represent a retail level of trade.

We have interpreted AMP to include cash discounts and all other price reductions and customary prompt pay discounts (other than rebates under section 1927 of the Act) that reduce the actual price paid. This definition comports with the statute and HCFA's understanding of Congressional intent as set forth in the legislative history. (H.R. Conf. Rept. No. 964, 101st Cong., 2nd Sess. 825 (1990).)

The manufacturer must calculate AMP as a weighted average price for all of its package sizes for each covered outpatient drug sold during that rebate period but only report a single AMP for the weighted average. AMP must be calculated as net sales divided by number of units sold, excluding goods or any other items given away that are not contingent on any purchase requirements. For bundled sales, the allocation of the discount is made proportionately to the dollar value of the units of each drug sold under the bundled arrangement. In this context, bundled sale refers to the packaging of drugs of different product codes where the condition of rebate or discount is that more than one drug is purchased, or where the resulting discount or rebate is greater than that which would have been received had the drug products been purchased separately. Because we are defining the AMP to include cash discounts allowed and all other price reductions, we would require in § 447.534(c)(5) that the manufacturer adjust the AMP for a rebate period if cumulative discounts or other arrangements subsequently adjust the prices actually realized.

(2) Definition of Best Price. We have interpreted "best price," as defined in section 1927(c)(1)(C) of the Act, to mean, with respect to single source and innovator multiple source drugs, the lowest price at which the manufacturer sells the covered outpatient drug to any purchaser (as discussed later in this section of the preamble) in the United States (excluding the Territories). We would further interpret best price at § 447.534(d) to mean the lowest price in any pricing structure (including capitated payments) in the same rebate period for which the AMP is computed.

The best price must include cash discounts, free goods that are contingent on any purchase requirements, volume discounts, and rebates other than rebates under section 1927 of the Act. Best price must be determined on a unit basis without regard to special packaging, labeling, or identifiers on the dosage form or product or package, and will not take into account prices that are nominal in amount (that is, less than 10 percent of AMP). Unlike AMP, the best price is the single lowest price of the drug at the product code level during the rebate period and is not a weighted average.

For bundled sales, the allocation of the discounts is made proportionately to the dollar value of the units of each drug sold under the bundled arrangement. We would require the manufacturer to adjust the best price for a rebate period if cumulative discounts, rebates, or other arrangements subsequently adjust the prices actually realized. We believe this is consistent with our understanding of the statute and the Congress' desire that the Medicaid program benefit from the same discounts available to other bulk purchasers.

OBRA '93 amended section 1927(c)(1)(C) of the Act by adding to the definition of "best price" providers and health maintenance organizations (HMOs) as entities included in the best price calculation. This reflects our existing policy in this area as the result of OBRA '90. The best price reflects any price of a manufacturer except those prices specifically exempted by the law. For purposes of best price we interpret "provider" to mean a physician, hospital and other health maintenance organizations or entities that treat individuals for illnesses and injuries or provide services or items in the provision of health care.

OBRA '93 amended section 1927(k)(3) to specify that any drug, biological, or insulin excluded from the definition of covered outpatient drug as a result of section 1927(k)(3) must be treated as a covered outpatient drug for the purpose of determining the drug's best price. That is, any prices offered to the entities listed in section 1927(k)(3) of the Act must be included in a manufacturer's best price calculation even though drugs provided as part of these settings are not considered covered outpatient drugs.

Because of legislative changes, best price varies over time regarding the prices that are included and excluded from its definition. To identify these variances, we have separated them into the specific time periods.

(a) *Best Price Definition Effective January 1, 1991–October 27, 1991 and July 1, 1992–September 30, 1992.* For these periods, best price includes prices to wholesalers, retailers, providers, HMOs, nonprofit entities or governmental entities within the States (excluding depot prices and single-award contract prices of any agency of the Federal Government). "Depot prices" mean prices available to any depot of the Federal Government for purchase of drugs from a manufacturer through the depot system of procurement, irrespective of whether the drug products physically flow through the depot. "Depot" means any Federal warehousing facility and distribution arrangement whether: (1) Government owned and operated; (2) government owned and privately operated; or (3) privately owned and operated. The Department of Defense's (DOD's) Electronic Commerce Initiative (ECI), which is an electronic ordering system that ships drugs directly to Federal Government medical facilities that were previously shipped through the depot system, is included in this definition. "Single-award contract prices" mean prices under a contract between the Federal Government and a manufacturer resulting in a single supplier for a covered outpatient drug within a class of drugs.

Given the definition of best price provided in section 1927(c)(1)(C) of the Act, it is our opinion that the FSS prices must be included in the best price calculation for these periods, since FSS

prices are neither depot nor single award prices, which are the only statutory exclusions relative to best price. Since prices for drugs and biologicals that are either paid by the DVA or in contracts administered by the DVA are listed in the FSS, these prices must also be included in the best price calculation for these periods.

(b) *Best Price Definition Effective October 28, 1991–June 30, 1992.* For this period, best price includes prices to wholesalers, retailers, providers, HMOs, nonprofit entities, governmental entities within the States (excluding depot prices and single-award contract prices of any agency of the Federal Government). The Department of Veterans Affairs Appropriations Act (Public Law 102–139), enacted on October 28, 1991, provides that effective October 28, 1991, through either June 30, 1992, or the date of enactment of other DVA drug price legislation, whichever is earlier, prices for drugs and biologicals paid by the DVA, and drugs and biologicals sold under contracts administered by that Department that are listed in the FSS, shall not be considered in the Medicaid drug rebate calculation. Therefore, for the period October 28, 1991, through June 30, 1992, the definition of best price excludes FSS prices for drugs and biologicals paid by the DVA and drugs and biologicals sold under contracts administered by that Department that are listed in the FSS. (Note: In accordance with this legislation, manufacturers must reflect any sales of drugs or biologicals to the DVA or of drugs and biologicals sold under contracts with that Department that are listed in the FSS during the period of October 1, 1991, through October 27, 1991, in their best price for the fourth quarter of 1991 and again beginning in the rebate period starting July 1, 1992.)

(c) *Best Price Definition Effective October 1, 1992.* Beginning October 1, 1992, best price includes prices to wholesalers, retailers, providers, HMOs, nonprofit entities or governmental entities within the States (excluding depot prices and single award contract prices of any agency of the Federal Government). The Veterans Health Care Act broadened the exclusions from best price effective October 1, 1992. Section 601(a) of VHCA amends section 1927(c)(1)(C) of the Act to exclude from best price any prices charged on or after October 1, 1992, to the Indian Health Service, the DVA, a State home receiving funds under section 1741 of title 38 of the United States Code, the Department of Defense, the Public Health Services, or a covered entity described in section 1927(a)(5)(B) of the Act; any prices charged under the FSS of the General Services Administration; or any prices used under a State pharmaceutical assistance program. Best price excludes depot prices and single-award contract prices of any agency of the Federal Government.

(3) Requirements for the List of Covered Outpatient Drugs. We would require that the manufacturer's list of covered outpatient drugs include the NDC numbers for all drugs currently marketed by the manufacturer and continue to list the NDC numbers for drugs that are no longer marketed until such time as it is no longer possible for a State Medicaid agency to properly make payment for the drug and report this payment to the manufacturer. We would require that a manufacturer continue to list an NDC number for a drug that it no longer markets because the manufacturer will be responsible for providing a rebate on the drug until the entire supply of the drug under an NDC has expired, the drug has been taken off the market, or, for other reasons, there no longer exists the potential that the drug may be dispensed under the manufacturer's NDC number (for example, the FDA recalls the drug or reverses its approval on an approved NDA). In addition, since the manufacturer must pay the rebate on State utilization data for up to 1 year after the rebate period in which the data are submitted (as discussed in section V.A.4. of this preamble), the manufacturer must continue to report the data during this period. A rebate would be calculated on drugs that are no longer marketed using the AMP and best price from the last rebate period reported for those drugs (§ 447.534(b)).

In accordance with the provisions of the rebate agreement and the May 1, 1991, **Federal Register** notice (56 FR 20006), and to implement the drug rebate provisions of OBRA '90, we would require the manufacturer to supply the following information:

- NDC number with labeler code, product code, and package size code;
- Period covered for rebates (rebate period and year);
- Product FDA registration name;
- Drug category of single source, innovator multiple source, or noninnovator multiple source;
- DESI drug indicator;
- FDA therapeutic equivalence explanation code;
- Unit type;
- Units per package size;
- Average manufacturer price (AMP);
- Base date AMP;
- Best price;
- FDA approval date;
- Date drug entered market;
- Drug termination date;
- Drug type (Rx/OTC indicator);
- Rounding adjustment factor; and
- Correction record flag.

The above information is needed to meet the requirements set out in section 1927 of the Act. To calculate the rebate amounts required for each manufacturer under section 1927(c) of the Act, we need specific information to identify the manufacturers, drugs, prices, number of units sold, and the time period covered. The drug category is used to determine which rebate calculation to apply. The FDA approval date and the date the drug entered the market are necessary to determine baseline AMP for drugs approved by the FDA after October 1, 1990. The drug termination date is necessary to avoid making payment for a drug that is no longer on the market. The FDA registration name, DESI drug indicator, FDA therapeutic equivalence code, and the drug type indicate whether the drug meets the definition of a covered outpatient drug in sections 1927(k)(2) and (4) of the Act, and allow States to properly exclude drugs under section 1927(d)(2) of the Act. The rounding adjustment factor is supplied for drugs sold in decimal quantities and is used by a State when the quantity of a drug has been rounded up. The correction flag signals that the record contains corrected information from a previous submission.

(4) Rounding Adjustment Factor. We would establish a requirement that manufacturers include a rounding adjustment factor for those drugs sold in decimal quantity sizes, for example, a 1.4 gram of ointment. We have determined that this requirement is necessary to effectuate the OBRA '90 drug rebate provisions because, as described in section V.A.6. of this preamble, some pharmacies lack the capability to report decimal quantities of drugs to the State agencies. In this situation, the pharmacy rounds the utilization data upward so that a 1.4-gram tube is reported as a 2-gram tube. Rounding up is the pharmacy industry standard and is a common practice in all States that round decimal quantities of drug utilization data. Since, in this case, the rebate amount is calculated on a unit basis of grams, the manufacturer may be invoiced for an excessive rebate amount. Thus, the use of a rounding adjustment factor can reduce the amount of disputes for decimal quantity packages. Therefore, we would require manufacturers to provide a rounding adjustment factor for each of their rebate period pricing data submitted to HCFA for those drugs sold in decimal quantities.

As described in section V.A.6. of this preamble, we would also require States to identify for manufacturers those utilization data by NDC number that have been rounded. Therefore, HCFA will submit the rounding adjustment factors to the States with the rebate period unit rebate amount information. This will enable States that round decimal quantity packages to apply the rounding factor to its data before submitting utilization data to the manufacturer. Such data will help ensure that rebates are an accurate reflection of the units paid during a rebate period.

We will issue specific program instructions to States and manufacturers regarding the use of the rounding adjustment factor.

The requirements for reporting the rounding adjustment factor for manufacturers and the requirements for States to identify rounded utilization data with the rounding indicator, as described in section V.A.6. of this preamble, would be effective 60 days following publication of the final rule. That is, the rebate period pricing data submitted to HCFA by manufacturers for that rebate period must include the rounding adjustment factor for those applicable NDCs. We believe this allows sufficient time for manufacturers and States to implement the rounding requirements.

As stated earlier, section 1927(b)(3)(A)(i) of the Act requires that the manufacturer's list of covered outpatient drugs submitted under the rebate agreement be updated by the manufacturer on a rebate period basis to include the AMP and, for single source drugs and innovator multiple source drugs, the manufacturer's best price. We will issue program instructions to manufacturers to update the data elements, as needed, to further program objectives in this area.

b. Manufacturer Reporting Requirements to States. We would require manufacturers to complete and submit to States Form HCFA–304, the Medicaid Remittance Advice Report (RAR). The RAR has been approved by OMB prior to publication of this proposed regulation (OMB approval No. 0938–0676). The RAR is a mandatory form that provides a uniform format for manufacturers to report the remittance of rebate payments to States, adjustments to previous rebate period payments, and disputed rebate amounts. The RAR is available in two formats, electronic and paper, depending on the preference of the manufacturer. Each participating manufacturer would be required to complete and submit the RAR to States within 30 days of receiving State Medicaid drug utilization information. In addition to reporting regular rebate period rebates and disputed amounts, manufacturers would use the RAR on an unscheduled basis when the States need the RAR to process adjustments to prior periods. The regulations pertaining to the RAR are found in §§ 447.534(f) and 447.536(b).

HCFA developed the RAR in response to a need for improved data exchange between manufacturers and States. In order to develop the RAR to meet the needs of both manufacturers and States, HCFA convened several dispute resolution conferences beginning in February 1992. These conferences were attended by groups representing manufacturers, pharmacists, States and HCFA. HCFA received suggestions from these groups to help develop a uniform reconciliation report to improve data exchange between manufacturers and States, to enable States to verify rebate payments, and to provide a vehicle for manufacturers to identify specific disputed amounts. HCFA considered these suggestions in preparing the final version of the RAR.

The RAR will function as a reconciliation report with the intent of reducing disputes by standardizing data exchange and improving communication between manufacturers and States regarding Medicaid utilization data, rebates, adjustments, and disputes. For these reasons, we have determined that the requirement for the completion and submission of the RAR is necessary to effectuate the OBRA '90 drug rebate provisions and to provide for the efficient administration and function of the Medicaid drug rebate program as required under section 1927 of the Act.

The RAR includes the following information:

- Manufacturer name;
- Labeler code;
- Manufacturer address;
- Name of manufacturer contact person;
- Telephone number of contact person;
- Facsimile (FAX) number of contact person;
- State;
- Rebate period and year for which the information applies;
- Invoice number, if State provided one;
- NDC number;
- Product name;
- Rebate amount per unit;
- Units invoiced;
- Rebate amount invoiced;
- Rebate amount paid;
- Adjusted rebate per unit, if applicable;
- Adjustment code, if applicable;
- Credit/debit indicator, if applicable;
- Adjusted invoice amount, if applicable;
- Units disputed, if applicable;
- Dispute code, if applicable;
- Withheld invoice amount, if applicable;
- Total rebate amount invoiced;
- Total rebate amount paid;
- Total adjusted invoice amount, if applicable; and
- Total withheld invoice amount, if applicable.

These data elements will be updated, as needed, through separate instructions to further program objectives in this area. We would incorporate the basic reporting requirements and timeframes in our regulations at § 447.534(f).

We believe the above information is needed for the State to identify and verify rebates per NDC and reconcile any disputed amounts as a result of the requirements set forth in section 1927 of the Act and these regulations. We further believe the information is necessary for HCFA to more accurately monitor the operation of the drug rebate program. To verify the rebate amounts paid as calculated under section 1927(c) of the Act, or to reconcile any disputed amounts, it is essential that the information contained in the RAR identify the manufacturers, drugs by NDCs, rebate amounts per units, units invoiced, rebate amounts invoiced, and rebate amounts paid, as well as any adjusted rebate amounts, reasons for any adjustments, units disputed, reasons for any disputed amounts, and any withheld invoice amounts, if applicable. We would also require that manufacturers separately report supporting documentation if a State requests it to verify the information contained on the RAR.

c. Prior Period Adjustments. A prior period adjustment is a change in the unit rebate amount based on a manufacturer's revised AMP or best price data for a prior rebate period after that rebate period's pricing data has been submitted to HCFA. HCFA uses the manufacturer's pricing data to generate the unit rebate amount for each 9-digit NDC which States use to calculate rebate amounts due from manufacturers. Any changes to a manufacturer's AMP or best price result in changes to the unit rebate amount and rebates due from the manufacturer. Thus, prior period adjustments are necessary to correct rebate amounts that are owed by manufacturers or credits due to manufacturers.

We would establish a time limitation of 3 years during which prior period adjustments will be generated based on

revised AMP or best price data from manufacturers. Therefore, we would require manufacturers to report changes to AMP or best price for 3 years after the rebate period to which the data pertains (§ 447.334(h)). No prior period adjustments will be generated for a quarter more than 12 quarters prior to the current quarter. For example:

(1) No prior period adjustment pertaining to the rebate period ending December 31, 1991, may be generated after December 31, 1994.

(2) All prior period adjustments pertaining the rebate period ending June 30, 1992, must be generated prior to July 1, 1995.

We believe this 3-year timeframe is reasonable since it is consistent with the record retention requirements we would establish under § 447.534(g)(1). That is, we would require manufacturers to retain records (written or electronic) for 3 years after the date the manufacturer reports its rebate period AMP or best price. This 3-year time-frame also comports with the requirements for the maintenance of records on State Medicaid expenditures imposed on States. (See section V.C. of the preamble for a discussion of the record retention requirements.)

The 3-year timeframe during which manufacturers must report changes to AMP or best price parallels the record retention period and the possible corrective actions from audits during this 3-year period. During this timeframe, a manufacturer's records on the drug rebate program could be audited with findings that result in an adjustment of pricing information and rebate payments. Thus, any changes to AMP or best price should also be required during this 3-year timeframe.

After States receive prior period adjustments from HCFA on the quarterly pricing file, States should calculate the difference between the original and revised unit rebate amounts and adjust the rebate amounts due from or credited to manufacturers.

We note that changes to the unit rebate amount from prior period adjustments cannot be disputed by manufacturers nor handled through the normal dispute resolution mechanism because this information is reported by manufacturers to HCFA. Any discrepancies in the unit rebate amounts should be reported to HCFA for clarification and resolution. HCFA will review all pricing information changes that result in a revised unit rebate amount.

C. Recordkeeping Requirements

1. AMP and Best Price Calculations

Section 1927(b)(3)(B) of the Act gives the Secretary the authority to survey a manufacturer's records and data to verify the pricing information reported under section 1927(b)(3)(A) of the Act. To facilitate such surveys, we would require under § 447.534(g) that a manufacturer must retain for 3 years from the date the manufacturer reports that rebate period's data, all records (written or electronic) of the data and any other materials from which the calculations of the AMP and best price were derived. A manufacturer must retain records beyond the 3-year period if audit findings related to the AMP and best price have not been resolved. In addition, if the manufacturer makes reasonable assumptions in its calculations of AMP and best price, the manufacturer must also maintain a written or electronic record outlining these assumptions. We will consider reasonable assumptions to include: that the AMP can never be zero or a negative number; that the methodology used to determine basedate AMP, as well as AMP and best price, is used consistently for all rebate period calculations; and that accounting methods are in accordance with generally acceptable accounting principles and conform to the manufacturer's tax reporting accounting policies.

We would require manufacturers to maintain records for 3 years since this time period is necessary to verify the accuracy of information received. Also, the 3-year time period comports with the requirements for the maintenance of records on State Medicaid expenditures imposed on States. Regulations at § 433.32 require that States retain records for 3 years from the date of submission of a final expenditure report for FFP. Therefore, we believe that manufacturers should also maintain records for this same timeframe, in the event that manufacturers' records on the drug rebate program are audited and the audit results in an adjustment of pricing information and rebate payments.

2. Dispute Resolution Process and RAR

The dispute resolution process described in section V.F. of this preamble and § 447.536 would require that both States and manufacturers maintain supporting documentation at various stages of the dispute resolution process. For example, manufacturers and States must maintain supporting documentation for certain types of disputes indicated on the RAR, data inconsistencies, and agreements reached between both the manufacturer and State in settling a dispute. States must also maintain documentation if States choose to cease the dispute resolution process based on the cost effectiveness thresholds. Thus, in § 447.534(g)(2) we would require both States and manufacturers to keep all supporting documentation required under the dispute resolution process and in conjunction with the RAR for a 3-year period from the date the dispute is resolved between the manufacturer and the State.

As discussed in section V.C.1. of this preamble, States are required to maintain records on State Medicaid expenditures for 3 years from the date of submission of a final expenditure report for FFP. The final expenditure report for FFP must contain any rebate payment adjustments as a result of the final dispute settlement (§ 447.534(g)(2)).

We would require manufacturers to maintain supporting documentation for this 3-year period under our general rulemaking authority since this requirement comports with the State maintenance of record requirements and is necessary to effectuate the provisions of OBRA '90 and the dispute resolution process.

D. Confidentiality of Reported Information

In accordance with section 1927(b)(3)(D) of the Act (as amended by VHCA), we would specify in § 447.540(a) that manufacturer-specific pricing information disclosed by the manufacturer in connection with the rebate agreement is confidential and, notwithstanding other provisions of law (including the Freedom of Information Act (FOIA), 5 U.S.C. 552), must not be disclosed by the Secretary of HHS, the Secretary of Veterans Affairs, the State Medicaid agency or its contractors in a form that reveals the manufacturer or wholesaler, or prices charged by the manufacturer or wholesaler, except as necessary for:

- The Secretary to carry out the provisions of section 1927 of the Act;
- The Comptroller General to review the information provided; and
- The Director of the Congressional Budget Office to review the information provided.

Based on this explicit confidentiality language, HCFA is prohibited from disclosing specific manufacturer data that identify the base date AMP, AMP, best price, unit rebate amount, or the total rebate amount claimed. We believe that it is reasonable to expect that disclosure of any of these data would lead to the identity of a manufacturer and its prices. We do not believe, however, that this prohibits us from releasing data in a non-manufacturer specific or aggregate form, such as that required in section 1927(i) of the Act, which describes the information to be included in the Secretary's annual report regarding the operation of the drug rebate program. Under this section, the Secretary must include in the annual report such information as the total value of rebates received and the number of manufacturers providing such rebates, and the effect of inflation on the value of rebates required under the drug rebate program.

While we are not precluded from releasing AMP and best price to the States (inasmuch as the confidentiality provisions of section 1927(b)(3)(D) of the Act contemplate such release), we have determined that supplying the specific unit rebate amount to the States, as opposed to other pricing data, will give States sufficient information to invoice and verify rebate payments.

States are prohibited from releasing any manufacturer-specific pricing data supplied by HCFA in relation to the drug rebate program. States are also prohibited from releasing these data to individual pharmacists or pharmacy groups. However, release of a State's utilization data, excluding manufacturer-specific pricing data, is permitted to the extent it is allowed under Federal or State confidentiality laws.

These confidentiality provisions will remain in full force and effect on the States and HCFA, regardless of the nonrenewal or termination of the rebate agreement. The statute does not specify that the confidentiality provisions are limited to the period when an agreement is in effect.

E. Penalty for Failure to Report Information or for Reporting False Information

Section 1927(b)(3)(B) of the Act provides that the Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices reported to HCFA. The Secretary may impose a civil monetary penalty in an amount not to exceed $100,000 on a wholesaler, manufacturer, or direct seller of a covered outpatient drug if the wholesaler, manufacturer, or direct seller refuses a request for information about charges or prices by the Secretary in connection with a survey or knowingly provides false information. The provisions of section 1128A of the Act regarding civil monetary penalties (except for subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) apply to the imposition of these penalties in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

If a manufacturer fails to provide the required information on AMP and best price or the list of covered outpatient drugs, the amount of the civil money penalty is $10,000 for each day beyond the due date that the information is not provided. We have included the list of covered outpatient drugs as a required item because we believe it is a necessary component of the pricing information required by the statute. The corresponding drug identifiers provided by the list of covered outpatient drugs, such as NDC numbers, names, and package sizes, are needed to accurately verify the pricing information of the vast number of drugs on the market. If all of the required information is not reported within 90 days of the required timeframe, HCFA is authorized to suspend the drug rebate agreement after the end of that 90-day period and continue the suspension until the information is provided. The suspension period must not be for less than 30 days. A manufacturer will continue to be responsible for rebates on drugs covered during the period the agreement was not suspended.

Any manufacturer with an agreement, that knowingly provides false information, will be subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. These penalties are in addition to other penalties prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). We would incorporate these provisions under § 447.542.

F. Dispute Resolution for Medicaid Utilization Information

1. Background

As required under section 1927(b)(1) of the Act, a manufacturer must provide to each State a rebate for covered outpatient drugs within 30 days after receipt of the State utilization information. For purposes of the Medicaid drug rebate program, and, as set forth in section II.(b) of the national rebate agreement, the manufacturer is responsible for timely payment of the rebate amounts within 30 days of receiving, at a minimum, information, by NDC number, on the number of units reported by the State. Additionally, section V.(b) of the national rebate agreement sets forth broad guidelines for a dispute resolution process for States and manufacturers to follow in cases where the manufacturer believes the State utilization data are erroneous. We would clarify these guidelines and timeframes for dispute resolution in these regulations.

The resolution of disputes has been a source of concern for manufacturers and States alike. The type of process needed to resolve disputes over utilization data is unique to the drug rebate program under Medicaid. Because these disputes often do not involve legal issues but can be resolved by exchange of information and refinement of data collection methods through discussions between the principals, the process must provide a full opportunity for such resolution before any proceeding before a hearing officer (the method commonly used to resolve other types of disputes). There are no existing regulations, under either the Medicaid or Medicare program, that can be applied to this dispute process. Likewise, there are no regulations that could be used as a model for developing the dispute resolution requirements.

Recognizing the need for improvements in this area, HCFA convened a meeting in February 1992 on dispute resolution with members of organizations representing manufacturers, pharmacists, and States. At that meeting, we discussed the concerns of the participants relating to dispute resolution. A workgroup was formed from the conferees to explore ways in which HCFA could develop a uniform set of guidelines for States and manufacturers to follow in the resolution of disputes.

In May 1992, the conferees reconvened and recommendations of the workgroup were discussed. As a result of the meetings and suggestions received from participants, HCFA decided to provide more detailed requirements in the area of dispute resolution. In part, we have established a two-phase process for settling disputes. Phase I involves the manufacturer and State working jointly to resolve the dispute. Phase II involves using the State hearing process or an arbitrator or mediator to help resolve the dispute. We would identify specific steps and timeframes within each phase for the resolution of disputes and have incorporated them into our regulations at § 447.536. We believe these requirements are necessary to effectuate the drug rebate provisions of OBRA '90, and to ensure that rebates are paid in a timely manner.

Under phase I of the process, there is a 240-day timeframe after the State receives the manufacturer's RAR for the States and manufacturers to seek resolution of the dispute through exchange of information and informal negotiation. If both parties cannot reach a resolution within this timeframe, they must take one of several actions described in Step 4 of phase I or proceed to phase II of the dispute resolution process.

Under phase II of the process, the State must schedule a hearing to settle the dispute. Proceeding to phase II to settle disputes is generally done after all steps in phase I have been completed. However, either a State or a manufacturer may proceed to phase II if either party has not fulfilled its obligations under any step in the first phase of the process. For example, the manufacturer may request that the State schedule a hearing at any stage of the dispute resolution process if the State fails to perform required phase I actions within the specified timeframes. Conversely, the State may schedule a hearing at any stage of the process if the manufacturer fails to perform required phase I actions within the specified timeframes, and/or request HCFA, through the HCFA Regional Office (RO), to terminate the manufacturer's national rebate agreement.

We believe the timeframes established for each of the steps in the first and second phases of the dispute resolution process are reasonable for both States and manufacturers based on our experience to date with the drug rebate program, and based on feedback from States and manufacturers in compiling such data and working with the original dispute resolution process under the national rebate agreement. The timeframes established in these proposed regulations were extensively discussed with the workgroup participants for the dispute resolution process. We believe that delaying the payments of rebates due to a more time-consuming dispute resolution process would harm both States and manufacturers. Rebates are needed on a predictable basis to reduce State expenditures for drugs and to allow States to estimate future budgeting for drug spending based on expected rebates. Longer timeframes could result in the manufacturer being liable for substantial amounts of interest accruing on disputed data.

Therefore, to effectuate the OBRA '90 drug rebate provisions and to ensure that rebates are paid in a timely manner, we would require manufacturers and States to comply with the process and timeframes outlined in this section of the preamble beginning with disputes associated with data for the rebate period occurring 60 days following publication of the final rule. We believe this timeframe is sufficient since both manufacturers and States have had extensive experience in handling a variety of disputes since 1991. Disputes in existence prior to this rebate period would not be subject to the dispute resolution requirements of the final rule, as in some cases the applicable timeframes will already have passed. However, we expect such disputes to be resolved as quickly as possible or the State hearing process, as specified in the initial rebate agreement, to be made available to the manufacturer by the State.

While current State law may not include manufacturers as "providers" under State Medicaid programs, for purposes of these proposed regulations, we would require States to provide a hearing which we anticipate will involve the same procedure as provider hearings. There are no specific Federal requirements that govern this hearing process. In these regulations, we would not establish any new requirements or criteria for this process, except for the overall timeframe for the conduct of the hearing.

2. Identifying and Resolving Data Inconsistencies Prior to Phase I of the Dispute Resolution Process

In general, within prescribed timeframes after a State submits to a manufacturer the Medicaid utilization information, the manufacturer must review the data and pay a rebate on the undisputed portion. The disputed portion of the data must be resolved through the dispute resolution process. However, to prevent both phase I and phase II of the process from being used to handle disputes involving data inconsistencies, we would require both States and manufacturers to take certain actions, as discussed below, to resolve data inconsistencies before they initiate phase I of the dispute resolution process. We would consider data inconsistencies to be data errors unrelated to actual utilization, such as incorrect NDC numbers, unit types, or decimal positions (§ 447.536(a)).

The dispute resolution process is a costly and time-consuming activity for all parties, delays the payment of rebates for disputed data, and causes interest to accrue on disputed amounts. Therefore, to effectuate the drug rebate provisions of OBRA '90 and to ensure the timely payment of rebates, we would require in § 447.536(a) that manufacturers attempt to identify and resolve State Medicaid utilization data inconsistencies with the State no later than 30 days after receipt of the data. We believe that requiring States and manufacturers to resolve data inconsistencies during the 30-day period before a manufacturer must pay a rebate on the undisputed data will result in timely rebates being paid for a larger percentage of State utilization data and reduce the volume of data involved in disputes. Thus, administrative costs incurred from the dispute resolution process would be reduced for both States and manufacturers.

Examples of data inconsistencies that manufacturers must screen for are items such as:

- Incorrect unit types;
- Reported NDC numbers failing to match manufacturer's NDC numbers; and
- Incorrect decimal position in units reported.

If, in any rebate period, a manufacturer discovers discrepancies in a State's utilization data, the manufacturer must distinguish between disputes that will require further resolution and data inconsistencies before initiating phase I of the dispute resolution process. If data inconsistencies are detected, a manufacturer must contact the State, identify the inconsistencies, and propose possible corrective actions. Examples of an attempt by the manufacturer and State to resolve these data inconsistencies could involve:

- Verifying that unit types are appropriate for the product;
- Examining the data to verify that the total number of units is appropriate for the amount paid; and
- Matching State-reported NDCs to the manufacturer's NDCs.

If an agreement is reached and the data inconsistencies are resolved, both the State and manufacturer must maintain written documentation of the resolution. The manufacturer must record the resolution of data inconsistencies on the RAR. If these preliminary attempts to resolve the data inconsistencies fail, the manufacturer and State must initiate phase I of the dispute resolution process as described below.

3. Steps in the Dispute Resolution Process

a. Steps in Phase I of the Dispute Resolution Process. Phase I of the dispute resolution process is divided into four steps. These steps describe the actions that manufacturers and States must take and specify the timeframes within which the actions must be completed. The HCFA RO will monitor the dispute resolution process, and problems that occur in the process should be referred to the appropriate RO.

Step 1: Manufacturer Submits RAR to State (To be completed within 30 days after the manufacturer receives State utilization information)

In the event a manufacturer discovers a discrepancy in the Medicaid utilization information that the manufacturer and the State are unable to resolve within the 30-day timeframe, as discussed in section V.F.2. of this preamble, the manufacturer must complete the following actions:

- Pay the rebate on undisputed data and provide written notice of any discrepancies by submitting the RAR to the State Medicaid agency. The manufacturer may, at this time, pay rebates on the disputed portion of the data;
- Ensure that the RAR is postmarked by the United States Postal Service or common mail carrier no later than 30 days after receipt of State data; and
- Identify on the RAR, among the other requirements of that form, the reason(s) why the data are disputed, by NDC number, and, if the entire amount of the rebate is not paid, why the disputed portion of the rebate is withheld.

We would require the manufacturer to submit supporting documentation with the RAR for certain types of disputes, as indicated on the RAR. The manufacturer must submit supporting documentation for other types of disputes if a State requests it to verify information contained on the RAR. This support will allow the State to verify the dispute and submit relevant information in the next step to move towards a resolution.

Interest begins to accrue on the withheld portion of rebates for disputed data on the 31st day after the manufacturer receives State data. Interest ceases to accrue only when payment is made for both rebates and accumulated interest, or an excess payment is refunded, consistent with the resolution of the dispute.

Step 2: State Responds to Manufacturer Regarding Disputes Identified on RAR (To be completed within 90 days after the State receives the manufacturer's RAR).

Within 90 days after the State receives the manufacturer's RAR, the State must complete two actions. First, the State must contact the manufacturer to discuss, by NDC number, the items disputed and the reasons why the manufacturer is disputing the items. Second, the State must present its preliminary response on the items identified on the RAR as being in dispute. Both the State and manufacturer must maintain documentation of the items disputed and the State's preliminary response to the manufacturer.

Step 3: Exchange of Data and Negotiations Between Manufacturer and State (To be completed within 150 days after the State receives the manufacturer's RAR).

Within 150 days after the State receives the manufacturer's RAR, the State must take definitive steps, as discussed below, to resolve the disputed items. If State confidentiality laws allow, we would require that the State provide the manufacturer with zip code or pharmacy-level data, a sampling of pharmacy claims, or historical trends data on such items as the manufacturer may have found in dispute. We would require the State to provide the manufacturer with the same type of data that the manufacturer used to dispute the rebate payment. That is, if the manufacturer based its dispute on pharmacy-level data, the State must provide pharmacy-level data to enable the manufacturer to analyze and compare the two sources in an effort to resolve the discrepancies. We would define zip code-level data or pharmacy-level data as a report by NDC number for a particular covered outpatient drug dispensed by pharmacies within a particular zip code or dispensed by a particular pharmacy respective to Medicaid recipients.

We believe these requirements for data exchange between States and manufacturers are necessary to effectuate the OBRA '90 drug rebate provisions and to resolve disputes in a timely manner. Without additional like data to substantiate or refute disputes, neither party may be able to resolve the discrepancies and, thus, further delay the payment of rebates and increase the amount of interest accruing on disputed rebates. Further, if the State disagrees with the manufacturer on the disputed items, the State must provide the manufacturer with this further breakdown of data or other reasons to support its position. Otherwise, the process may reach an impasse if the State and the manufacturer have no basis to resolve the underlying dispute.

Both the State and the manufacturer must ensure that any exchange of data protects the confidentiality requirements of section 1927(b)(3)(D) of the Act. Specifically, the statute prohibits disclosure by the State of any information that would disclose the identity of the manufacturer or the prices of the manufacturer's drugs.

Furthermore, if State confidentiality laws prohibit the release of certain data, such as pharmacy specific data, the State may require the manufacturer to supply to the State the data on which it based its dispute. If the manufacturer supplies the State with like data in this situation, we will consider the manufacturer to have satisfied this data exchange requirement and to be in compliance with the requirements under this step of phase I of the dispute resolution process.

Step 4: Post-Negotiations Decision (To be completed within 240 days after the State receives the manufacturer's RAR) Within 240 days after the State receives the manufacturer's RAR, the negotiations between the State and the manufacturer must be completed and one of the following options must be chosen and acted upon:

- The State may decide to cease the dispute resolution process based on its cost-effectiveness determination as described in section V.F.6 of this preamble. However, the State maintains the discretion to continue the dispute resolution process for disputed amounts that fall below the thresholds. Further, the State must maintain adequate documentation to support its determination to discontinue the dispute based on cost-effectiveness or maintain adequate documentation that clearly describes any settlement reached with a manufacturer.
- The State and the manufacturer may agree to a settlement based on the State's Medicaid utilization information.
- The State and the manufacturer may agree to a settlement based on valid documentation that other data were more representative of the actual Medicaid utilization.
- If none of the above settlements are reached, the State and manufacturer must proceed to phase II of the process to settle the dispute.

b. Phase II of the Dispute Resolution Process. Phase II of the dispute resolution process is initiated when the dispute is not resolved in step 4 of phase I, or when either party does not comply with the requirements under any of the phase I steps and either the manufacturer or State wants to proceed to phase II. In either case, under phase II the State must schedule a hearing within 30 days from the end of the phase I process, or within 30 days from the date the manufacturer or the State chooses to proceed to phase II due to noncompliance. We would require that the hearing be conducted no later than one year from the 240th day after the State receives the manufacturer's RAR (§ 447.536(d)). The State and the manufacturer could continue to attempt to settle the dispute between themselves before the hearing is conducted. However, we would require that the hearing be scheduled and conducted, if

still necessary, within the one-year timeframe.

In lieu of a State hearing, the State and the manufacturer may agree to arbitration or mediation to settle the dispute. In this case, we would require the State to maintain documentation that clearly describes the agreement with the manufacturer to settle the dispute through arbitration or mediation rather than a State hearing (§ 447.536(e)).

After the dispute is resolved, the disputed amount plus the rate of interest, as set forth in section 1903(d)(5) of the Act, must be paid or credited on the entire balance by the manufacturer or the State no later than the due date of the next rebate period payment. As noted in section V.F.4 of this preamble, interest would begin to accrue 38 calendar days from the date the State mails its Medicaid utilization information to the manufacturer. Interest would continue to accrue until the date payment is made or excess payment is refunded for the part of the disputed Medicaid utilization information that the State and manufacturer agree is appropriate, as resolved through the dispute resolution procedures set forth in this section.

4. Interest Rate under Section 1903(d)(5) of the Act

The interest rate under section 1903(d)(5) of the Act is the average of the yield of the weekly 90-day Treasury bill auction rates during the period for which interest will be charged. For purposes of section 1903(d)(5) of the Act, the investment yield is considered the bond equivalent rate or the true discount rate. HCFA will supply the manufacturers and States with the rates to assure that both parties are using the same interest rates in the calculation.

Interest would be applied to disputed or unpaid amounts and late rebate payments but not to prior period adjustments of unit rebate amounts or State utilization adjustments.

Interest would begin accruing 38 calendar days from the date the State mails the State utilization data, as evidenced by the postmark by the United States Postal Service or other common mail carrier on the envelope (not a postage meter stamp). We would allow 7 additional days (from the 31st day after utilization data are sent from a State) to begin the interest clock which will allow time for receipt of the mailing by the manufacturer. For documentation purposes, we would require States to maintain a record of the date of mailing and manufacturers must maintain the envelope bearing the postmark from the State.

Interest accrues on the disputed portion of the rebate amount or on the total amount of the late rebate payment for all rebate periods beginning January 1, 1991 and only stops accruing on the date the check is disbursed. We would consider the date of disbursement to be the date the check is mailed by the manufacturer. Interest must be collected and may not be disregarded as part of the dispute resolution process by the State or manufacturer.

Interest calculation is based on a 365-day year with simple interest applied to the average of the yield of the weekly 90-day Treasury bill auction rates during the period for which interest will be charged. (For purposes of this calculation, include the rate for the entire week if the beginning and/or ending date fall within that week.)

The following formula and example illustrate how interest should be calculated:

Obtain yield rates (bond equivalent rates) for period involved:

Auction dates	Yield rates (Percent)
March 1, 1993	3.035
March 8, 1993	3.043
March 15, 1993	3.064
March 22, 1993	3.003
March 29, 1993	3.022

(a) Total the yield rates of each weekly auction of 90-day Treasury Bill. Total = 15.167%

(b) Divide the total from (a) by the number of rates to determine the average interest rate.

15.167% divided by 5 = 3.0334% = Average Interest Rate.

(c) Multiply average interest rate by amount of unpaid rebate.

$1,000 × 3.0334% = $30.33 Amount of Interest Due.

(d) Divide the amount of the interest due by 365 days to obtain the amount of interest due per day.

$30.33 divided by 365 days = $.08309 = Amount of Interest Due Per Day.

(e) Multiply daily amount of interest due per day by the number of days the unpaid rebate amount is outstanding.

$.08309 × 29 days (March 4, 1993–April 1, 1993) = $2.41 Total Interest Due.

5. Manufacturer's Right To Audit Data

The manufacturer retains the right provided under section 1927(b)(2)(B) of the Act to audit the Medicaid utilization information reported (or required to be reported) by the State. While not mandated by the statute or this regulation, but as specified in the national rebate agreement, we encourage the manufacturer and the State to develop mutually beneficial audit procedures that promote a cooperative relationship that saves time and money for both parties.

Adjustments to rebate payments will be made if information indicates either that Medicaid utilization were greater or less than the amount previously specified, or that other information is inaccurate (for example, a drug is not properly classified as a single source, innovator multiple source, or noninnovator multiple source drug that affects the amount of rebates).

6. Cost-Effectiveness of Dispute Resolution

In some cases, a State may consider that engaging in continued attempts to resolve a dispute with a manufacturer is not cost-effective in that the State resources required to settle the dispute exceed the amount in dispute, or that the accuracy of the utilization data can be established only to a certain degree. Many States have expressed concern that guidelines are needed to determine cost-effectiveness tolerance limits for the dispute resolution process. Thus, to effectuate the OBRA '90 drug rebate provisions in the most efficient manner, we would establish the following cost-effectiveness tolerance limits for States.

For any rebate period, a State need not proceed into further dispute resolution process steps beyond final negotiations (Step 4 of phase I) with a manufacturer if the disputed amount is (1) under $10,000 per manufacturer's labeler code, and (2) under $1,000 per product code. States must maintain supporting documentation of the determination that may be subject to review by the Department. Further, when a State decides to cease the dispute resolution process based on these cost-effectiveness criteria and adequately documents that the process is not cost-effective, as discussed above, FFP will generally be available for the drugs dispensed and the Federal portion of the rebate will generally not be required from the State.

States maintain the discretion to proceed with the dispute resolution process in cases that fall below the thresholds described in this section. We believe this policy provides States with the flexibility to determine the merits of pursuing disputed rebates in terms of cost-effectiveness.

VI. Formulas for Computation of Amount of Drug Rebates

Section 1927(c) of the Act specifies that each manufacturer must remit a basic rebate and an additional rebate to the State Medicaid agency for single source drugs and innovator multiple source drugs, and a rebate for covered outpatient drugs other than single source and innovator multiple source drugs. We would require in regulations at § 447.546(a) and (b) that the manufacturer must make timely payment of the rebate, that is, within 30 days of receiving State Medicaid utilization information that includes, at a minimum, the number of units paid by NDC number during the rebate period under the approved State plan. We would also require in § 447.546(a)(3) that the manufacturer continue to make rebate payments for all of its covered outpatient drugs for as long as an agreement is in force and utilization information reports are made. Also, a rebate payment would be required for all drugs until the entire supply of the drug under an NDC number has expired; the drug has been taken off the market; or, for other reasons, there no longer exists the potential that the drug may be dispensed under the manufacturer's NDC number or paid for and a rebate requested by the State Medicaid agency.

Section 1927(c) of the Act specifies the formulas to be used to compute the rebates as follows:

A. Rebate for Noninnovator Multiple Source Drugs

The rebate for noninnovator multiple source drugs is—

For October 1, 1992—December 31, 1993: 10 percent of the AMP.

For January 1, 1994, and thereafter: 11 percent of the AMP.

B. Basic Rebate for Single Source Drugs and Innovator Multiple Source Drugs

In general, section 1927(c)(1)(B) of the Act, as established under OBRA '90, provided for the following basic rebate for single source drugs and innovator multiple source drugs:

For January 1, 1991–December 31, 1991: The greater of 12.5 percent of the AMP or the AMP minus best price. (The rebate is capped at 25 percent of AMP.)

For January 1, 1992–December 31, 1992: The greater of 12.5 percent of the AMP or the AMP minus best price. (The rebate is capped at 50 percent of AMP.)

For January 1, 1993 and thereafter: The greater of 15 percent of the AMP or the AMP minus best price. (The rebate is not capped.)

Section 601(c) of VHCA amended section 1927(c)(1)(B) of the Act to account for a budget neutrality adjustment to the basic rebate for single source drugs and innovator multiple source drugs. This budget neutrality adjustment was established to offset a reduction in rebates resulting from the additional exclusion of prices from the best price calculation required under section 601(a) of VHCA. On April 12, 1993, the Veterans Health Care Act of 1992—Technical Corrections (Public Law 103–18) was enacted. Section 2(a) of Public Law 103–18 amended section 1927(c)(1)(B)(ii)(II), as amended by section 601(c) of VHCA, to restore the 50 percent rebate cap for the rebate period October 1, 1992, through December 31, 1992. This amendment is effective as if it were included in the enactment of section 601(c) of VHCA. Thus, section 1927(c)(1)(B)(ii)(II) of the Act has been amended to provide that for the rebate period beginning after September 30, 1992, and before January 1, 1993, the amount of the rebate may not exceed 50 percent of the AMP.

In general, for period beginning with October 1, 1992, the following basic rebate for single source or innovator multiple source drugs are as follows:

For October 1, 1992–December 31, 1993: The greater of 15.7 percent of the AMP or the AMP minus best price. (The rebate is capped at 50 percent of AMP for the rebate period October 1, 1992–December 31, 1992.)

For January 1, 1994–December 31, 1994: The greater of 15.4 percent of the AMP or the AMP minus best price.

For January 1, 1995–December 31, 1995: The greater of 15.2 percent of the AMP or the AMP minus best price.

For January 1, 1996, and thereafter: The greater of 15.1 percent of the AMP or the AMP minus best price.

C. Additional Rebate for Single Source and Innovator Multiple Source Drugs

Section 1927(c)(2) of the Act requires that manufacturers pay an additional rebate amount for single source and innovator multiple source drugs if, for rebate periods beginning January 1, 1991, the AMP exceeds the "base date" AMP by a greater percentage than the percentage increase in the CPI–U for the rebate period from the "base CPI–U." Section 13602(a)(1) of OBRA '93 made clarifying changes to section 1927(c)(2), deleted requirements that would have replaced the calculation with one based on a weighted average manufacturer price (WAMP), and changed the calculation method for drugs approved by the FDA after October 1, 1990. Under section 13602(d)(2) of OBRA '93, these amendments are effective without regard to whether or not regulations to carry out these amendments have been promulgated by that date. HCFA adopted an October 1, 1993 effective date with respect to the OBRA '93 amendments to section 1927(c). Using a retroactive effective date for these provisions would require HCFA, manufacturers, and States to recalculate additional rebates for 11 quarters. This would generate an enormous amount of prior period adjustments and changes to rebate amounts in the dispute resolution process. Such a volume of changes would place an undue administrative burden on States, manufacturers, and HCFA without a level of additional rebates to warrant the administrative costs involved in such a task. We believe our adoption of an October 1, 1993 effective date comports with HCFA's understanding of Congressional intent, as demonstrated in the legislative history. Since the amendments clarified but did not substantively change methods for calculating the additional rebate for drugs approved by the FDA before October 1, 1990, a single calculation method can be used for those drugs. Since OBRA '93 substantively changed the method for calculating the additional rebate for drugs approved by the FDA after October 1, 1990, different calculation methods must be used for the periods January 1, 1991 through September 30, 1993 and October 1, 1993 and thereafter. We discuss all of these methods in more detail below.

1. For Drugs Approved on or Before October 1, 1990

Section 1927(c)(2)(A) of the Act requires that manufacturers pay an additional rebate amount for single source and innovator multiple source drugs if, for rebate periods beginning January 1, 1991, the AMP exceeds the base date AMP by a greater percentage than the percentage increase in the CPI–U for the rebate period from the base CPI–U. The statute provides that the CPI–U used for calculating the additional rebate amounts be based on the CPI–U in effect for the month preceding the rebate period (or other period) involved. Therefore, to be consistent with the statute and the national rebate agreement, we have defined the following terms to be used in the formulas for calculating additional rebates:

Base Date AMP—The base date AMP means the AMP for the calendar quarter beginning July 1, 1990, i.e., that originally reported for the July–September 1990 rebate period. Section 1927(c)(2)(A)(ii)(II) of the Act, as amended by OBRA '93, provides that the base date AMP is the base date in effect at the time of the rebate period beginning July 1, 1990, without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such rebate period.

Base CPI–U—The base CPI–U means the CPI–U in effect for September 1990; for example, the CPI–U in effect that month was 132.7.

2. For Drugs Approved After October 1, 1990

For drugs approved by the FDA after October 1, 1990, OBRA '93 defines base date AMP and base CPI–U different from how they are defined in OBRA '90. These changes affect how additional rebates are calculated for single source and innovator multiple source drugs approved after October 1, 1990. Generally, the base date AMP is the AMP in effect for the first full rebate period after the day the drug was first marketed. The base CPI–U is the CPI–U in effect for the month prior to the first full rebate period after the day the drug was first marketed.

HCFA adopted on October 1, 1993 effective date for these changes to section 1927(c). Therefore, these changes are effective with rebate periods beginning on or after October 1, 1993, and additional rebates will be calculated differently for these drugs for the period of January 1, 1991 through September 30 1993 and rebate periods beginning on or after October 1, 1993. Therefore, to be consistent with the statute, we have defined the following terms to be used in the formulas for calculating additional rebates. HCFA will issue specific instructions to manufacturers and States on how to calculate additional rebates for these different periods.

Base Date AMP for rebate periods beginning on or after January 1, 1991 through September 30 1993—The original policy in effect under OBRA '90 will continue to be used for base date AMP. That is, for this period, the base date AMP will continue to be that for the first day of the first full month in which the drug was first marketed.

Base CPI–U for rebate periods beginning January 1, 1991 through September 30, 1993—The original policy in effect under OBRA '90 will be used for the base CPI–U. That is, the base CPI–U continues to be the CPI–U in effect for the month before the month in which the drug was first marketed.

Base Date AMP for rebate periods beginning on or after October 1, 1993—In accordance with section 1927(c)(2)(B), the base date AMP is the AMP in effect for the first full rebate period after the day on which the drug was first marketed.

Base CPI–U for rebate periods beginning on or after October 1, 1993—The base CPI–U means the CPI–U in effect for the month prior to the month of the first full rebate period after the day on which the drug was first marketed.

VII. Payment Limitations for Covered Drugs

A. Applying Federal Reimbursement Upper Limits

OBRA '93 amended section 1927 of the Act regarding pharmacy reimbursement limits. Section 13602(a)(1) of OBRA '93 amended section 1927(f) by redesignating it as section 1927(e) and modifying the language in several subsections. OBRA '93 revised and redesignated section 1927(f)(1) of OBRA '90 as sections 1927(e)(1) and (e)(2), added section 1927(e)(3), and redesignated section 1927(f)(2) of OBRA '93 as section 1927(f)(4) of the Act.

Existing regulations at 42 CFR 447.331 through 447.334 establish methodologies for upper limits for payment of drugs covered under the Medicaid program, in accordance with section 1902(a)(30)(A) of the Act. Section 1927(e)(1) of the Act (redesignated from section 1927 (f)(1) under OBRA '90) imposed a moratorium period beginning January 1, 1991, and ending on December 31, 1994 with regard to pharmacy reimbursement limits. During this moratorium period, in accordance with section 1927(e)(1)(a), a State cannot reduce its reimbursement limits for covered outpatient drugs or the dispensing fees for these drugs in effect as of January 1, 1991 which were established in accordance with 42 CFR 447.331 through 447.334. In accordance with the statute, up to January 1, 1991, States retained the right to reduce payments to pharmacies.

Section 1927(e)(2) establishes a special rule for States that were not in compliance with these regulations. If a State is not in compliance with §§ 447.331 through 447.334, the provisions in section 1927(e)(1)(A) do not apply to the State until it is in compliance. That is, States which reduce reimbursement rates during January 1, 1991 through December 31, 1994 to comply with the regulations will not be violating the moratorium provision under section 1927(e)(1).

Since the statute refers specifically to States "in compliance," States that were not in compliance with the regulations on January 1, 1991, are still required to come into compliance with the regulations and reduce reimbursement limits, as required by these regulations, after January 1, 1991. To be in compliance with the regulations, the State must demonstrate that the estimated acquisition cost (EAC) is set at the State Medicaid agency's "best estimate" of the prices that pharmacists in the State are generally and currently paying. (Section 447.301 contains the definition of EAC.)

Section 1927(e)(1)(B) of the Act provides that the Secretary may not modify by regulation the Federal upper limits formula used to determine reimbursement limits in §§ 447.331 through 447.334 to reduce the reimbursement limits for covered outpatient drugs. This provision applies to the Federal upper limits formula that was in effect on November 5, 1990 (the date of enactment of OBRA '90).

In accordance with section 1927(e)(3) of the Act (as added by OBRA '93), the moratorium provisions will not supersede or affect provisions in effect for State maximum allowable cost (MAC) limitations prior to January 1, 1991, or after December 31, 1994. MAC programs established by States prior to January 1, 1991, or after December 31, 1994 are allowable under the statute and are not considered a reduction in pharmacy reimbursement. States may continue to operate MAC programs in effect prior to January 1, 1991 in accordance with the terms of that program, e.g., States may adjust limits and add drugs within the requirements of the MAC programs in effect prior to January 1, 1991.

B. Multiple Source Drugs

1. Drugs Subject to Federal Upper Limits Under Section 447.332 (Upper Limits for Multiple Source Drugs)

Under existing § 447.332(a), an upper limit for a multiple source drug may be established if the following requirements are met:

- All of the formulations of the drug approved by the FDA have been evaluated as therapeutically equivalent in the current edition of the FDA publication, *Approved Drug Products with Therapeutic Equivalence Evaluations*; and
- At least three suppliers list the drug (which has been classified by the FDA as category "A") in the current editions (or updates) of published compendia of cost information for drugs available for sale nationally.

Under these existing provisions of § 447.332, a State agency's payment for multiple source drugs must not exceed in the aggregate the payment levels determined by applying for each drug a reasonable dispensing fee established by the agency plus an amount established by HCFA that is equal to 150 percent of the published price for the least costly therapeutic equivalent (using all available national compendia) that can be purchased by pharmacists in quantities of 100 tablets (or capsules) or the commonly listed size. Upper limits do not apply to brand name drugs if a physician certifies in his or her own handwriting on the prescription that a specific brand is medically necessary for the recipient. HCFA identifies the multiple source drugs that are subject to upper limits and their prices on a periodic basis in the *State Medicaid Manual* under Part 6, Payment for Services.

2. Drugs Subject to Federal Upper Limits Under Section 1927(e)(4) of the Act

Section 1927(e)(4) of the Act (redesignated from section 1927(f)(2) under OBRA '93) contains a provision that establishes new conditions for determining which multiple source drugs are subject to upper limits and, thus, establishes a new group of drugs subject to upper limits. Section 1927(e)(4) requires HCFA to establish an upper reimbursement limit for each multiple source drug when there are at least three therapeutically and pharmaceutically equivalent (A-rated by the FDA) multiple source drugs. When this condition is met, an upper limit will be applied to the multiple source drug whether or not the FDA rating of the additional formulations of the drug are either A-rated or B-rated drugs. (§ 447.335.)

Given the moratorium provisions in section 1927(e)(1)(B) of the Act (discussed in section VII.A. of this preamble), we view section 1927(e)(4) of the Act as authority to establish upper payment limits for additional multiple source drugs, rather than a mandate to change the formula set forth in § 447.332. Any modification to existing § 447.332 during the moratorium period of January 1, 1991, to December 31, 1994, would conflict with section 1927(e)(1)(B) of the Act, which prohibits the Secretary from modifying by regulation the Federal upper limits formula in §§ 447.331 through 447.334. By prohibiting a change in the reimbursement methodology under section 1927(e)(1)(B), we believe that the Congress recognizes and approves of the current method of establishing upper limits under § 447.332.

In accordance with the moratorium provisions in section 1927(e)(1)(B) of the Act, we would not change the formula used to determine reimbursement limits that is presently set forth in §§ 447.331 through 447.334. However, we do not believe the moratorium provisions prevent HCFA from applying the existing upper payment limit formula to existing and additional drugs as required by section 1927(e)(4) of the Act.

To comply with the requirements of both 42 CFR 447.332 and section 1927(e)(4) of the Act, HCFA would establish an upper reimbursement limit for multiple source drugs using both sets of criteria found at the existing § 447.332 and the new § 447.335. We would specify in regulations at § 447.335 the conditions under which covered outpatient drugs will be subject to the Federal upper limits under section 1927(e)(4) of the Act. On a periodic basis, HCFA would consolidate both groups of drugs, including their prices, into one listing of drugs that are subject to the Federal upper limits. HCFA will issue this listing to the States in an electronic medium and in the *State Medicaid Manual* under Part 6, Payment for Services.

3. Inclusion of A- and B-Rated Drugs

The FDA publication, Approved Drug Products with Therapeutic Equivalence Evaluations, lists the application holders for the drugs and the accompanying A or B drug rating. This publication, however, does not list the current owner of the drug or distributors, that is, packagers or relabelers, and there is no Federal requirement that these repackagers or relabelers identify the source of their drug product. Therefore, the A and B rating is lost for all such drugs in the marketplace once they are repackaged or relabeled.

Because we are unable to identify an A or B rating for what we believe are the majority of drugs sold at the retail level of trade, we are including all drugs (A and B rated) in the rebate program. Otherwise, since there is no method to identify A-rated drugs, we would have to require all manufacturers that participate in the drug rebate program to sell only A-rated drugs to all its customers (as there is no method to determine which particular drug will be dispensed to a Medicaid recipient). This requirement would be the only feasible way to ensure that Medicaid recipients receive only A-rated drugs. However, such a requirement is not authorized under the provisions of section 1927 of the Act and would be contrary to FDA's current drug approval process which allows B-rated drugs to be marketed. Such a requirement would also not be consistent with our understanding of Congressional intent of the drug rebate program since it might reduce the number of manufacturers participating in the program that sell only B-rated products or a combination of A- and B-rated products, which could then decrease the availability of needed drugs to Medicaid recipients.

C. Denial of FFP When a Generic Substitution is Available

Section 1903(i)(10) of the Act provides that payment will not be made to a State for an innovator multiple source drug dispensed on or after July 1, 1991 if, under applicable State law, a less expensive noninnovator multiple source drug could have been dispensed but only to the extent that such amount exceeds the upper payment limit for such multiple source drugs. Consistent with our understanding of the statute and Congressional intent, we would interpret this provision in our regulations at § 447.550(b) to apply to drugs subject to the Federal upper limits under § 447.332(a). Therefore, we would include in regulations at § 447.335 that therapeutic equivalent drugs for upper limits under section 1903(i)(10) of the Act means drugs rated A or B by the FDA. We would apply this policy to only those drugs subject to the Federal upper limits to provide an established drug data base available to all States for determining if generic substitution is appropriate. The Federal upper limits program offers both pharmacists and the State Medicaid agencies a familiar, regularly updated guideline that can be easily used to compare the innovator and noninnovator drug prices.

We considered using national compendia prices or pharmacy charges in applying the generic substitution requirements; however, either alternative would be difficult to administer. Both alternatives would require the comparison of prices for the innovator and noninnovator multiple source drugs. These prices frequently change and, therefore, would require frequent update by the State Medicaid agency, possibly resulting in different lists in each State. Such alternatives could also disadvantage Medicaid recipients by substituting the regular medication they receive due to constant fluctuations in price which would determine whether the innovator multiple source drug could be dispensed at a given point in time.

Section 1903(i)(10) of the Act specifies that the substitution will be under applicable State law. FFP will be available for the dispensing of the innovator drug where the prescription has been hand annotated by the prescriber either as "brand medically necessary" or other such words to that effect as may be required under State law. Current regulations under § 447.331(c)(3) prohibit the use of a checkoff box on a form but allow the use

of a notation such as "brand medically necessary."

VIII. Compliance Action

A State's failure to comply with the reporting or drug access requirements of section 1927 of the Act is cause for compliance action against the State. Accordingly, we would specify in § 447.538 that a manufacturer may request HCFA to initiate compliance action against a State if the State fails to comply with the drug access requirements of section 1927 of the Act. A manufacturer may also request compliance action against a State if the manufacturer can show a pattern or history of inaccuracy in the drug utilization information provided by the State. It is incumbent upon the State to report accurate utilization data to ensure that rebates are paid in accordance with the statute.

Compliance actions taken by HCFA will not relieve the manufacturer from its obligation of making the rebate payment to States as set forth in section 1927 of the Act and will not bar the manufacturer from taking other actions against the State that are legally available to the manufacturer.

IX. Drug Rebate Agreement Provisions Not Addressed in This Document

On November 2, 1992, we published in the **Federal Register** (57 FR 49397) an interim final rule with comment period that addressed the following provisions of section 1927 of the Act:

- Drug Use Review—Section 1927(g) of the Act provides that a State must have, by January 1, 1993, a drug use review program for covered outpatient drugs that meet certain statutory requirements.
- Electronic Claims Management—Section 1927(h) of the Act provides that the Secretary shall encourage each State Medicaid agency to establish, as its principal means of processing claims for covered outpatient drugs under drug rebate agreements, a point-of-sale electronic claims management system, for the purpose of performing on-line, real time eligibility verifications, claims data capture, and adjudication of claims, and assisting pharmacists and other authorized persons in applying for and receiving payment.

A document that addresses public comments and finalizes rules is under development.

X. Summary of Public Comments on Notice and Departmental Responses

We received 20 timely pieces of correspondence from manufacturers, State agencies, a pharmaceutical manufacturer association, and other parties on the notice published in the **Federal Register** on February 21, 1991 (56 FR 7049) that reprinted the text of the national drug rebate agreement. A summary of these comments and the Department's responses follow:

A. Enforcement of Enhanced Access Provisions

1. Restrictive Formularies

Comment: The majority of the commenters stated that the rebate agreement, State instructions, and regulations implementing the drug rebate program should prohibit States from developing restrictive formularies.

Response: We agree that prior to OBRA '93, section 1902(a)(54) of the Act generally prohibited restrictive formularies (that is, formularies that impose access limitations for covered outpatient drugs covered under a rebate agreement). OBRA '93 revised section 1902(a)(54) to require that States comply with the applicable requirements of section 1927 and added section 1927(d)(4) which allows States to establish a drug formulary, effective October 1, 1993, which meets specific requirements. A State formulary must include covered outpatient drugs other than: (1) those drugs excluded under section 1927(d)(2); and (2) those drugs (with respect to the treatment of a specific disease or condition for an identified population) where the drug's labeling or compendia-based medically accepted indication does not have a significant, clinically meaningful therapeutic advantage, in terms of safety, effectiveness, or clinical outcome over other drugs included in the formulary.

We would require States to list in their State plans those drugs in section 1927(d) that they are excluding or restricting from coverage and also describe limitations or conditions of coverage (not including prior authorization programs). We would not require States to list in their State plans those drugs they are excluding or restricting from coverage with respect to the treatment of a specific disease or condition since States must have available to the public a written explanation of reasons for excluding the drugs. We believe requiring States to amend their State plans to include these drugs would be an unnecessary use of State resources.

2. Prior Authorization

Comment: The majority of commenters were adamant that States be required to implement what they characterized as statutorily acceptable prior authorization programs. They believed that medical factors should be the only criteria for approving or denying drugs subject to prior authorization and suggested that HCFA establish standards for State prior authorization programs to prevent abusive restrictions. One commenter was concerned that States would place on prior authorization: (1) All but the least expensive product in a therapeutic class; (2) the drugs of a manufacturer that does not provide an additional rebate above the amount required in the national agreement; and (3) the most expensive drug in a therapeutic class without regard for improved outcomes or reduction in total treatment costs associated with the more expensive drug therapy.

Response: Section 1927(d)(1)(A) of the Act provides that a State may subject any covered outpatient drug to prior authorization; that is, require approval of the drug before its dispensing for any medically accepted indication. In accordance with section 1927(d)(4)(E), a State's prior authorization formula is not considered a formulary subject to the requirements specified in section 1927(d)(4). The prior authorization system must meet two conditions specified under section 1927(d)(5) of the Act.

These proposed regulations would implement these provisions of section 1927 and allow States to maintain their prior authorization programs as they currently exist except that—

- A State must respond to a prior authorization request within 24 hours of the request; and
- A State must provide for the dispensing of at least a 72-hour supply of the drug in emergency situations.

In response to items numbered (1) and (3) in the comment, we believe that States should be able to consider both clinical and economic criteria in their prior authorization programs as long as medically necessary drugs are not denied. Prior to the drug rebate provisions, States could consider such criteria. We believe that OBRA '90 did not change that provision. We recognize, however, that the Congress, in passing the statutory provisions of the drug rebate program, was concerned with ensuring recipient access to medically necessary drugs. We would, therefore, require assurances from States that their prior authorization programs do not prevent access to medically necessary drugs.

In regard to item numbered (2) in this comment, States may, in accordance with sections 1927(a) (1) and (4) of the Act, negotiate separate agreements for additional rebates as long as they can establish that the requirements in section 1927 (as discussed in section II.

of this preamble) have been met. We will monitor the prior authorization programs to ensure that States are in compliance with these regulations.

We do not believe that, in light of the provisions of section 1927(d)(1)(A) of the Act, the Congress intended to set up any further requirements than those explicitly stated in the statute that would preclude States from requiring that prior authorization be obtained for any medically accepted indications, or requiring that the physician provide medical justification for using a particular drug within a therapeutic class, as long as access to medically necessary drugs is ensured. In accordance with the statute, we believe that a State continues to maintain the authority to prior authorize drugs provided the State approves the drug if medically necessary.

Additionally, section 4401(d)(3) of OBRA '90 requires that the Secretary, acting in consultation with the Comptroller General, study prior approval procedures utilized by State Medicaid programs conducted under title XIX of the Act. We will review the results of this study and, if necessary, consider additional changes to prior authorization programs at that time.

Comment: One commenter suggested that (1) a State should use a review board (similar to the drug utilization board) to establish criteria for selecting drugs subject to prior authorization; (2) the manufacturer should have input before a drug is placed on prior authorization or petition a State to remove a drug from prior authorization status; (3) the prior authorization process should be subject to the State Administrative Procedures Act; and (4) the prior authorization process should apply only for new prescriptions.

Response: We would require in § 447.526 that State staff who place drugs in a prior authorization system must be licensed to prescribe or dispense drugs, for example, physicians or pharmacists. We would provide, however, that State staff who respond to prior authorization requests need not be limited to persons licensed to prescribe or dispense drugs as long as all responses are made in consultation with these licensed professionals, or are made under guidelines promulgated by these licensed professionals and they are available for consultation in difficult or unusual cases. We believe that a State might benefit from a formulary committee for determining drugs that will be subjected to prior authorization but are not mandating this. However, we do not believe that we should limit the States' flexibility in operating their prior authorization programs to accommodate the commenter's other concerns since the statute supports the States' authority to maintain their prior authorization programs as they currently exist.

Comment: One commenter suggested that States should be required to disclose all information regarding the basis for selecting drugs and for denying drugs subject to prior authorization, and to generate a report for HCFA on all claims that were denied.

Response: In accordance with section 1927(d)(5) of the Act and our understanding of the legislative intent of OBRA '90, we expect States to operate their prior authorization programs in a manner that does not preclude access to medically necessary drugs. We believe States will be consistent in applying criteria as to how drugs are selected for prior authorization. We would also require annual assurances that a State's prior authorization program does not prevent access to medically necessary drugs. States may continue to disclose their records for prior authorization in the same manner that they did before the change in statute, as the statute made no changes in this area. We believe it would be overly burdensome to require States to generate specific reports on prior authorization claims and would be of nominal benefit to HCFA.

Comment: Several commenters believed that, if a State does not comply with the prior authorization requirements that the commenters believe are appropriate (as discussed above in other comments on prior authorization), the manufacturer should be able to withhold the rebate due the State.

Response: The statute requires a manufacturer to provide a rebate to the State for each rebate period based on utilization data submitted by the State. The rebate must be paid by the manufacturer to the State no later than 30 days after the date of receipt of the State's utilization data. There is no authority for the Secretary to permit a manufacturer to withhold a rebate (nor for a manufacturer to unilaterally withhold such a rebate) where a State does not comply with prior authorization requirements. We have a compliance process to ensure that States comply with all provisions of the Medicaid program and, as noted in the rebate agreement, manufacturers may notify the appropriate HCFA RO if they believe a State is not complying with a provision of the drug rebate program.

B. New Drug Coverage

Comment: Several commenters were concerned that States would not allow unrestricted access to new drugs. Some commenters believed that the new drug coverage protection afforded by section 1927(d)(6) prior to OBRA '93 should have provided that the 6 months of coverage for a new drug begin with the date when it is first marketed, and not from the date it is approved by the FDA. One commenter asserted that the Congress inadvertently reduced the time to less than 6 months because it may take several weeks, if not months, to bring a new drug on the market and suggested that HCFA support a technical amendment to the law. This commenter believed that prior to OBRA '93, section 1927(d)(6) of the Act encouraged manufacturers to bring new drugs to market prematurely since a manufacturer may need to educate and train physicians on a drug's use or administration once the drug is approved. Also, the commenter suggested that the FDA's approval of promotional materials and manufacturing specifications may not coincide with the drug approval date.

Response: OBRA '93 deleted section 1927(d)(6) and special coverage provisions for new drugs. Prior to OBRA '93, section 1927(d)(6) of the Act provided that a State may not exclude from coverage, subject to prior authorization or otherwise restrict any new drug or biological approved by the FDA for a 6-month period following the date of FDA approval. Effective October 1, 1993, these requirements no longer exist. New drugs approved by the FDA prior to October 1, 1993 will only receive the unrestricted coverage as specified in section 1927(d)(6) of the Act prior to OBRA '93 through September 30, 1993.

Based on our understanding of Congressional intent, we believe this 6-month period was specifically intended to be effective from the date of FDA approval to make prescribers familiar with a new drug and allow it to be introduced into the market place before it might require prior authorization by a State. Because this date was statutorily mandated, HCFA lacked authority to change this requirement to the date the drug was marketed.

Generally, with the exception of certain biological products, the approval of a new drug by the FDA under the NDA process does not include the approval of promotional materials. However, since the mid-1970s, the FDA has offered voluntary review and recommendations on proposed launch promotional materials to all sponsors. This review is utilized by well over 90 percent of the companies when marketing new products. With regard to manufacturing specifications, there are a few cases where compliance with the manufacturing specifications was part of a post-NDA approval agreement that would be completed prior to marketing the product. However, since there are so few exceptions in this area and because we are bound to follow the statute, HCFA considered the 6-month period effective from the date the drug is approved by the FDA.

C. Confidentiality of Manufacturer Price Information

Comment: Many of the commenters believed that States should not have access to manufacturers' price information, including unit rebate amounts, since HCFA has access to this information. The commenters stated that the risk of disclosure and use of information for other purposes is too great.

Response: We have agreed not to disclose AMP and best price to States but maintain that the statute contemplates the disclosure of manufacturer pricing data to States. Section 1927(b)(3)(D) of the Act provides that information concerning drug prices must not be disclosed by "the Secretary or a State agency (or contractor therewith)." By including States within the confidentiality provisions, we believe that the Congress intended that States have the right to access of sufficient pricing information to calculate their rebates as required by the statute. The unit rebate amount, which provides the rebate due per tablet, etc., and which is the end result of the manufacturer's calculation, is, in our opinion, the minimum amount of information States need to accomplish this. At the same time, the statute protects the manufacturer's pricing data from disclosure. In accordance with section 1927(b)(3)(D) of the Act, information disclosed by manufacturers in connection with the rebate agreement is confidential and, notwithstanding other provisions of law (including the Freedom of Information Act, 5 U.S.C. 552) must not be disclosed by HCFA, the State agency, or its contractors in a form that reveals the manufacturer, except as necessary for the Secretary of HHS to carry out the provisions of section 1927 and for the Comptroller General or the Director of the Congressional Budget Office to review the information provided.

D. Unit Rebate Amounts

Comment: Several commenters believed that HCFA is not authorized by the statute to calculate the unit rebate amount since the law clearly states that the manufacturers will compute the information. They indicated that the penalties that may be imposed on manufacturers and HCFA's auditing authority are sufficient to ensure that manufacturers make accurate and timely calculations.

Response: In accordance with sections 1902(a)(4), 1903, and 1927 of the Act, we believe that the Secretary has the authority and duty to implement and oversee various aspects of the drug rebate program. The Secretary has delegated this responsibility to HCFA. In accordance with this authority, HCFA is not precluded from calculating the unit rebate amount. We agree that manufacturers are responsible for calculating and paying rebates correctly. However, we believe that the administrative approach of HCFA supplying the States with unit rebate information to verify rebates is a practical and acceptable administrative oversight responsibility to ensure that States receive correct rebate payments and that the proper amount of FFP is made available to States.

E. Manufacturer's Requirements To List All Drugs

Comment: One commenter asserted that a manufacturer should not have to provide to HCFA a list of all of its covered outpatient drugs since some of its drugs may not be covered under Medicaid, that is, those drugs that a State may restrict or exclude from coverage under section 1927(d)(2) of the Act. The commenter believed that the requirement to list all of its drugs places an unnecessary administrative burden on the manufacturers and States. The commenter also believed that HCFA should review and evaluate each manufacturer's list of covered drugs after several rebate periods of experience in the drug rebate program and delete those drugs that are not covered under Medicaid or delete drugs that provide a minimal rebate.

Response: Under the terms of the national rebate agreement, a manufacturer is required to provide to HCFA rebates for all its covered outpatient drugs dispensed under the plan. Thus, in our opinion, there is no authority under the statute to delete drugs from the list of covered outpatient drugs where those drugs provide a minimal rebate from the drug rebate program.

F. Enforcement of State's Obligations

Comment: Several commenters asserted that HCFA's compliance action initiated against a State that fails to meet the various requirements under the drug rebate program, (for example, covering all drugs or new drugs from the date of FDA approval) is an ineffective and inadequate means of ensuring that States obey the requirements of sections 1902(a)(54) and 1927 of the Act.

The majority of commenters believed that manufacturers should be able to withhold rebate payments to a State until the State conforms its policies to the law. One commenter suggested that manufacturers should be allowed to withhold rebate payments in an amount equal to the sales lost during a rebate period, which would be estimated by the manufacturer, as a result of a State not properly covering drugs. Otherwise, the commenter was concerned that a State could "reap a windfall" since it would receive rebates and, at the same time, avoid paying for selected products that the State was required by statute to cover.

Response: Section 1904 of the Act and regulations at 42 CFR part 430, subpart C, provide that we may initiate a noncompliance action if States do not comply with all provisions of the Medicaid program. As noted in the rebate agreement, manufacturers may notify HCFA if they believe a State is not complying with a provision of the drug rebate program. The statute requires a manufacturer to provide a rebate to the State for each calendar rebate period based on utilization data submitted by the State. The rebate must be paid by the manufacturer to the State not later than 30 days after the date of receipt of the State's utilization data. Section 1927 of the Act does not contemplate that manufacturers can withhold rebates in those situations where a State does not comply with all of the provisions of the Medicaid program.

G. Adequacy of State Medicaid Utilization Data

Comment: One commenter asserted that section II. (b) of the national rebate agreement requires manufacturers to pay rebates to the States even if a State has failed to report all of the utilization data required by the statute and the agreement. The commenter believed this requirement is an attempt to relieve States of one of their primary responsibilities under the statute.

Response: Section 1927(b)(2)(A) of the Act requires that States use a standard reporting format established by the Secretary. In accordance with the statute, HCFA has defined the format for utilization data to include, in part, the use of NDC numbers. Given the provisions of the statute and our regulations at § 447.530, States would be required to report, at a minimum, the utilization data indicating the NDC number for the covered outpatient drugs and the total number of units of the drugs paid for during a rebate period. In accordance with the statute, manufacturers must calculate and pay the rebate amounts within 30 days of the receipt of these two items of information. Furthermore, a manufacturer may audit these data that a State provides or is required to provide. If a manufacturer believes that a State has reported erroneous utilization data, the manufacturer is not required to pay a rebate on the portion of drugs for which the data are in question until the dispute is resolved.

Comment: Several commenters believed that Medicaid utilization data that States are required to supply to manufacturers are inadequate. They suggested that States should provide data at zip code level, and at a more detailed level if a manufacturer needs it, such as a claims history file that includes recipient, pharmacy, dispensing date and other claim information. They asserted that if States do not currently have this capability, we should require them to do so. These commenters also suggested that State utilization data should include monthly totals by NDC number and a rebate period summary, and that States should also be required to maintain the date that the drug was dispensed.

Several commenters stated that manufacturers should have the right to audit pharmacies and HCFA should ensure State cooperation with manufacturers in conducting these audits.

Response: We believe the data that the States provide under this regulation would be adequate for purposes of calculating the rebate. In addition, the manufacturer has the right, by law, to audit these data and adjustments to rebate amounts will be made to the extent that the data indicate that utilization was greater or less than the amount previously indicated. We would not require States to submit additional data, such as zip code-level information or a claims history, with their rebate period information. However, in the event of a dispute, we would require States to provide the manufacturer with this type of data if State confidentiality laws allow. (Section V.F. of the preamble contains further discussion on this issue.) Specific claim information that identifies a recipient is generally prohibited from being released to the public under the authority of section 1902(a)(7) of the Act and regulations at 42 CFR 431.300 through 431.307.

Manufacturers do not have the authority to audit pharmacies under section 1927 of the Act, but we expect States to audit pharmacy data in response to manufacturer requests when warranted.

H. Dispute Mechanism

Comment: One commenter believed that the timeframe of 30 days after receipt of a State's data is inadequate for a manufacturer to challenge errors made by the State. The commenter believed that the 30-day timeframe is unfair and may encourage premature challenges by manufacturers seeking to preserve their rights to use the dispute resolution process described in section V. of the rebate agreement.

Response: Section 1927(b)(1)(A) of the Act requires that manufacturers provide rebates within 30 days of receipt of State utilization data. In accordance with this requirement, we believe that the 30-day timeframe is reasonable for manufacturers to distinguish between legitimate disputed items and data inconsistencies and to attempt to resolve those disputes since data used to contest State data are similar to that needed to pay the rebate. If a manufacturer and State are unable to resolve discrepancies within the 30-day timeframe, the manufacturer must pay the rebate on the undisputed data and provide written notice of any discrepancies by submitting the RAR to the State agency. We would view it as a violation of these regulations and the rebate agreement if a manufacturer challenges the data simply as a method to extend the time period for reviewing data and avoid paying a rebate. The manufacturer also will be responsible for paying interest, as set forth in section 1903(d)(5) of the Act, on the disputed portion of the rebate if the State's data are not erroneous. (Section V.F. of the preamble contains a detailed discussion of the dispute resolution process.)

Comment: One commenter asserted that the dispute resolution process leaves States at financial risk when a dispute arises since HCFA will require its portion of the rebate payments from the States even though a manufacturer will withhold payments. The commenter believed that HCFA should assume some financial risk as well as play a more significant role in the dispute resolution.

Response: Manufacturers must pay States a rebate on the portion of the State utilization data that is not in dispute. We do not require the State to pay HCFA the Federal portion of the rate on the amount that is in dispute. Rather, we are requiring payment on those amounts that States receive in accordance with section 1927(b)(1)(B) of the Act. As a general rule, we believe we play a significant part as an overseer of the dispute resolution process between manufacturers and States. However, since both of these parties are directly responsible for the data they generate, we believe they must primarily work together to reconcile any differences.

I. Separate State Agreements

Comment: Several commenters believed that: (1) Modifications to existing State agreements are not permitted under the statute; (2) a State agreement may not legally provide for a different rebate amount than the amount in the national agreement; and (3) approval of an agreement under which a State exempts products from prior approval restrictions in exchange for rebates greater than those provided in the national agreement would be an abuse of HCFA's discretion even if the greater rebates were legal.

Response: We do not agree that modifications to existing agreements are prohibited under the statute. Section 1927(a)(4) of the Act specifies conditions that existing agreements must meet to be in compliance with the law. (Section II.A. of this preamble contains a discussion of the provisions of section 1927(a)(4).) Section 1927(a)(4) does not preclude modifications to existing agreements, such as allowing greater rebates.

We disagree that there is no legal authority to approve a separate agreement that provides for a different rebate amount than the amount in the national agreement. Section 1927(a)(1) of the Act recognizes the Secretary's authority to authorize individual State agreements and does not require that the individual State agreements incorporate the rebate amount requirements set forth in the national agreement. Thus, rebates under the individual State agreements need not match the rebates mandated under the national agreement. However, for the Secretary to accept them, as discussed in section II. of this preamble, they must be at least as large as the amount specified in the national agreement.

HCFA has the authority under the statute to approve individual State agreements and will review the agreements to ensure that the State is operating its prior authorization program in a manner consistent with the statute and regulations. However, given the provisions of section 1927(a) of the Act, we disagree that a State may not negotiate a separate rebate agreement that requires a higher rebate in exchange for removing drugs from the State's prior authorization program, provided that medically necessary drugs continue to be available to Medicaid recipients.

Comment: Several States contend that the 60-day timeframe allowed for the resolution of disputes is inadequate.

The States suggested that we expand the timeframe to approximately 120 days as a more realistic standard.

Response: We acknowledge that this timeframe is not adequate due to the complexity of resolving disputes. Therefore, we have revised the dispute resolution process, as discussed in section V.F. of the preamble, to reasonably accommodate all of the steps necessary to resolve a dispute. We are proposing to extend the entire timeframe to 240 days after the State receives the manufacturer's RAR for a State and manufacturer to settle the dispute. After this point, both parties may use arbitration, mediation, or the State hearing mechanism to settle the dispute. As discussed in section V.F. of the preamble, we established this timeframe after much discussion with States, manufacturers, and pharmacy groups. We believe the proposed dispute resolution process and the expanded timeframes meet the needs of both States and manufacturers.

J. Right of the Secretary to Audit AMP and Best Price Data

Comment: One commenter claimed that the statute does not give the Secretary an unqualified right to audit a manufacturer's data regarding AMP and best price calculations, as stated in the rebate agreement.

Response: Section 1927(b)(3)(B) of the Act clearly states that the Secretary has the right to survey wholesalers and manufacturers to verify manufacturer prices reported on AMP and best price. We believe this provision includes the right to audit pricing data, since an audit is often necessary to verify such pricing data.

K. Nonrenewal and Termination of Agreements

Comment: One commenter recommended that the national rebate agreement should be modified to specify that the effective date of manufacturer initiated termination/nonrenewal is the "earlier" of 60 days after a notice or the ending date of the term of contract if proper notice is given. The language of the published national agreement indicated that it is the "later" of these events.

Response: This was an error in the national agreement and will be corrected in the next revision of the national rebate agreement. We will honor nonrenewals up to 60 days before the end of the current period of the agreement and terminations up to 60 days before the end of the current rebate period (effective at the end of that rebate period). We have indicated the correct date in the regulations at § 447.514(c).

L. Administrative Procedure Act

Comment: Several commenters stated that they believed HCFA violated the Administrative Procedure Act (APA), 5 U.S.C. section 553, by using a model rebate agreement to implement the drug rebate program instead of developing formal regulations that allowed for public comment. They indicated that HCFA did not have adequate input from the States, manufacturers, pharmacy organizations, and the public while developing the policies that govern the rebate program. One commenter believed that failure to develop regulations or allow amendments to the national rebate agreement puts manufacturers in the untenable situation of having to sign an agreement without fully understanding the terms or risk losing their drug coverage under Medicaid.

Response: Section 4401 of OBRA '90 requires manufacturers to enter into and comply with the terms of the national rebate agreement by March 1, 1991, in order for payment to be made available under section 1903 of the Act for covered outpatient drugs. (As noted earlier, this date was extended to April 30, 1991, under the extenuating circumstances provision of section 1927(a)(3) of the Act.) Because of the short timeframe imposed by the Congress to implement the drug rebate provisions, it was impossible to issue regulations prior to the date that the national rebate agreement was required to be signed. In light of these short timeframes, and in the interest of receiving public comments, the contents of the rebate agreement were developed in direct consultation with representatives of drug manufacturers, States, and other interested parties. We considered this process an adequate means of providing actual notice and for obtaining public comments of affected parties within the time constraints. We believe that, given the circumstances, this approach was consistent with the provisions of the APA.

In addition, section 4207(j) of OBRA '90 authorizes the Secretary to issue regulations on an interim or other basis as may be necessary to implement the amendments made by the provisions of OBRA '90. In developing this proposed rule with comment period, we have taken into consideration, as appropriate, the public comments we received on the February 21, 1991, **Federal Register** notice, which included the contents of the national rebate agreement.

M. Timeframes for Signing Rebate Agreements

Comment: The majority of commenters indicated that manufacturers did not have adequate time to analyze and sign the national rebate agreement if they wanted their drugs covered retroactively to January 1, 1991. If they did not sign the agreement by the given deadline, their drugs would not be covered until July 1, 1991, thereby resulting in a large span of time within which drugs would not be covered.

Response: We realized that the timeframe that manufacturers had to analyze and sign the rebate agreement for their drugs to be covered retroactively to January 1, 1991 was very limited. The majority of manufacturers were able to sign the rebate agreement by the deadline. However, for those few that did not, we extended, under the extenuating circumstances clause in section 1927(a)(3)(B) of the Act, the original deadline of February 28, 1991, to April 30, 1991, for manufacturers to enter into a rebate agreement effective for drug coverage retroactive to January 1, 1991.

N. Amending the Language of the Rebate Agreement

Comment: One commenter recommended that HCFA include in regulations the process and timeframes that will be used to make changes to the national rebate agreement.

Response: We plan to periodically revise the rebate agreement language as needed. However, we believe that a scheduled timeframe for publication is not warranted since manufacturers have entered into the rebate agreement with coverage beginning in different rebate periods. We will further consider all comments from the February 21, 1991 notice and this proposed rule when we revise the national rebate agreement language.

O. Definition of Terms in the National Rebate Agreement

Comment: We received numerous comments on the definitions included in section I. of the national rebate agreement. Commenters claimed that our definitions were not in compliance with the statute.

Response: We considered comments on definitions when developing this proposed rule. Where we believed changes were necessary, we included them in the definitions contained in this proposed rule. After publication of the final rule, we intend to amend the national rebate agreement to reflect any new regulatory requirements and definitions.

P. National Drug Code

Comment: Several commenters recommended that States be required to maintain their records of NDC numbers by full 11-digit NDC numbers after a reasonable transition time period. The commenters also suggested that if a State does not comply with the 11-digit NDC number requirement by the specified deadline, manufacturers should have no responsibility to pay the rebate amounts until such a system is in place.

Response: OBRA '93 amended section 1927(b)(2)(A) of the Act to require that States report to manufacturers information on the total number of units of each dosage form and strength and package size of each covered outpatient drug, that is, States must use an 11-digit NDC number. This change is effective as if it was included in OBRA '90.

Prior to the enactment of OBRA '93, we agreed that States should maintain their records by the full 11-digit NDC number that indicates the manufacturer, product, and package size of a drug. In accordance with sections 1902(a)(54) and 1927(b)(2) of the Act, we began requiring States to report drug utilization data to HCFA and manufacturers using the 11-digit NDC numbers for claims paid on and after March 1, 1992. (During a transitional period of January 1, 1991 through February 29, 1992, we allowed States that did not have the technical capability to report the 11-digit NDC number to use the 9-digit number (that is, the NDC number without the package size.)

We disagree, however, with the statement that a manufacturer should be able to withhold rebates. As stated earlier, the statute requires manufacturers to pay a rebate within 30 days of receiving State utilization data and does not authorize manufacturers to withhold a rebate when the State has submitted utilization data to the manufacturer. We will consider any State that does not maintain an 11-digit NDC number to be out of compliance.

Q. Definition of Nominal Price

Comment: One commenter contended that the definition of "nominal price" should not be predicated on a fixed percentage of 10 percent since this definition is not authorized by law and ignores the unique marketing and pricing practices of each drug manufacturer. This commenter believed that the company that claims a nominal price for a drug should have the burden of demonstrating to HCFA that the facts and circumstances concerning the drug render the price as nominal. The commenter stated that the standards and procedures to demonstrate a nominal price should be specified in the regulations. Another commenter agreed with the nominal price definition in the rebate agreement of "any price less than 10 percent of the AMP."

Response: We originally gave consideration to a definition that a nominal price be less than 1 percent of AMP. However, after discussions with manufacturers, States, and other parties, we believe the current definition of "less than 10 percent of AMP" to be sufficient to encompass the nominal prices offered by manufacturers. Prices greater than this appear to be for sales of the type meeting the definition for inclusion of AMP or best price.

We believe the administrative costs and burdens are too great to justify a policy that would require HCFA to review each manufacturer's case of why a nominal price for a drug is warranted and would offer no greater assurance of more accurately defining nominal price.

R. Additional Rebates Based on Rebate Period CPI–U Increases

Comment: One commenter recommended that the additional rebates (for increases in drug costs in excess of the increase in the CPI–U) should not be computed on a rebate period basis because manufacturers do not raise prices each rebate period and the effects of a rebate period CPI–U calculation would be uneven. However, the commenter believed that if the additional rebate is computed on a rebate period basis, it should be reconciled at the end of the year based on the increase of CPI–U compared to the increase in price. The commenter also suggested that we should consider comparing increases in prices to the projected annual increase in the CPI–U.

Response: The revision to the additional rebate calculation suggested by the commenter is contrary to section 1927 of the Act, which provides that the additional rebate is computed on the increase in CPI–U from a base date to the month before the beginning of the rebate period. OBRA '93 amended section 1927(c)(2) and removed the reference that an alternate period could be considered. We believe the intent of the law is to ensure that, for Medicaid purposes, drug price increases are equal to or less than the increase in the CPI–U on a rebate period basis.

Both of the commenter's proposals would allow drug prices to increase in excess of the rebate period CPI–U until the CPI–U "caught up", for example, a price increase of 10 percent in December 1990 would not cause an additional rebate for all of 1991 if the CPI–U increased 10 percent by December 1991.

Comment: One commenter suggested that the base CPI–U should be modified to use the June 1990 figure, the month before the rebate period used to determine the base AMP. The commenter believed this would make the time periods between the measurement of CPI–U and AMP the same.

Response: Section 1927(c)(2) of the Act provides that for drugs approved before October 1, 1990, we use the CPI–U from October 1, 1990. The CPI–U in effect on October 1, 1990, is the September 1990 CPI–U. For drugs approved after October 1, 1990, section VI. A. 2. of the preamble explains the criteria for determining the base CPI–U for the periods January 1, 1991—September 30, 1993, and October 1, 1993 and thereafter.

XI. Responses to Public Comments

Because of the large number of items of correspondence we normally receive on a rule, we are not able to acknowledge or respond to written public comments individually. However, we will consider all comments that we receive by the date specified in the "Comment Date" section of this preamble and respond to them in the preamble to any final rule that we issue.

XII. Paperwork Burden

Sections 447.508, 447.510, 447.514, 447.516(b), 447.524 (f) and (g), 447.526(c)(2)(i), 447.530, 447.534, 447.536, and 447.540(a)(2) of these proposed regulations contain requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). These requirements have been approved by OMB under approval numbers 0938–0578 (for manufacturers) and 0938–0582 (for States).

Based on our experience with establishing new reporting systems, we estimate that the reporting requirements contained in these sections would be 39,289 burden hours per rebate period for manufacturers and 1,531 burden hours per rebate period for State Medicaid agencies.

XIII. Impact Analysis

A. Overall Impact

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant impact on a

substantial number of small entities. For purposes of the RFA, States and individuals are not small entities, but we consider some participating manufacturers as small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural hospital impact statement because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Although we view the anticipated results of these interim final regulations as beneficial to the Medicaid program as well as to Medicaid recipients and State governments, we recognize that some of the provisions could be controversial and may be responded to unfavorably by some affected entities. We also recognize that not all of the potential effects of these provisions can be definitely anticipated, especially in view of their interaction with other Federal, State and local activities regarding outpatient prescription drug costs. In particular, considering the effects of our simultaneous efforts to improve the delivery of Medicaid-covered outpatient prescription drugs, it is impossible to quantify meaningfully a projection of the future effect of all of these provisions on State and manufacturers' operating costs or on the frequency of substantial noncompliance and termination proceedings.

However, in a General Accounting Office report entitled "Changes in Drug Prices Paid by Health Maintenance Organizations (HMOs) and Hospitals Since Enactment of Rebate Provisions" (January, 1993, GAO/HRD–93–43), there was very little evidence of a significant effect on small rural hospitals. This report compares the year before and year after rebates went into effect. It concludes that there were only negligible effects on drug costs to hospitals (in fact, a slight decrease for inpatient drugs), but that HMOs' costs went up about 8 percent.

It is clear that a large number of small entities, such as manufacturers and pharmacies, will be affected by the implementation of these statutory provisions, and a substantial number of these entities may be required to make changes in their operations. For these reasons, we have prepared the following voluntary analysis. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by the RFA.

B. Anticipated Effects

1. Effects on the Medicaid Program

Primarily, the Medicaid drug rebate law was intended to reduce the amount State Medicaid programs pay for outpatient drugs by requiring manufacturers to offer States discounted prices for covered outpatient drugs. Below are estimates of Medicaid drug rebates. These estimates are based on data from actual rebates reported or paid for fiscal year 1992. These estimates also include the impact of section 601 of VHCA, which eliminated prices paid by the DVA and other entities from calculation of best price under the Medicaid drug rebate program. Projected Federal and State rebates have each been reduced by $10 million per year to account for the impact of the VHCA provisions.

[$ in millions]

	FY 94	FY 95	FY 96	FY 97
Federal	$870	$985	$1135	$1330
State	620	700	810	950

For fiscal year 1992, we estimated 12.76 percent rebate as a percentage of drug costs to the Medicaid program. Fiscal year 1993 data indicated an increase of the drug rebate of approximately 16 percent. Although we expect the percentage rebate to increase slightly over the estimable period reflected above, we are unable to do so with any degree of accuracy.

The estimates in the table represent savings generated from rebate payments from pharmaceutical manufacturers. They were the result of the following process:

- We developed a formula to estimate the manufacturer rebates as a percentage of Medicaid ingredient costs from a sample of drug claims drawn from the Medicaid Statistical Information System, otherwise known as MedStat.
- Average manufacturer prices were approximated by applying a discount to published average wholesale prices; the "best price" was developed from the DVA Federal supply schedule.
- The rebate formulas were modeled using a sample database from the data described above. The savings that resulted were expressed as a percentage of calculated Medicaid ingredient costs for the sample drugs.
- These saving percentages were applied to budget projections of Medicaid ingredient costs to obtain projected future savings. For this step the ingredient cost proportion of Medicaid drug spending and the distribution of brand name drugs versus generic drugs was derived from an analysis of data from the Pharmaceutical Data Service survey databases and MedStat data.
- The potential savings were reduced to account for rebate agreements that would have been negotiated between States and manufacturers in the absence of section 4401 of OBRA '90.

Further, section 13602 of OBRA '93 exhibited modifications to the Medicaid Drug Rebate law as previously indicated. We have made the following estimates of savings as a result of these changes.

[$ in millions]

	FY 94	FY 95	FY 96	FY 97	FY 98
Federal..	$25	$55	$65	$70	$75
State	20	40	45	50	55

2. Effects on Pharmaceutical Manufacturers

Initially, it was anticipated that the outcome of these provisions would provide the Medicaid outpatient prescription drug program, representing 12 to 20 percent of all retail prescriptions in their respective States, with access to the best price for single source and innovator multiple source drugs. However, it was predicted in many circles that the pharmaceutical manufacturers would be unable to absorb these losses from 12 to 20 percent of retail sales and would respond by shifting the cost to other non-Medicaid sectors of the prescription drug business. Various articles in newspapers and health journals have indicated that the pharmaceutical industry has elevated some prescription prices in non-Medicaid sectors. The overall impact of manufacturers raising drug prices for the non-Medicaid population cannot be accurately predicted.

Current data shows that approximately 515 manufacturers have signed agreements to participate in the Medicaid drug rebate program. Manufacturers appear to support the system and have minimal dissatisfaction. Recent studies done by the Office of Inspector General (OIG) show well over 90 percent of the drugs (and all major drugs) are covered compared to those covered prior to the program.

3. Effects on Non-Medicaid Sector

Reports indicate that some drug manufacturers are shifting higher drug costs to the DVA and the private sector. At one point, the DVA estimated that it would incur an additional $150 million in drug costs in 1991 and believed that these increased drug costs would be the result of manufacturers attempting to level out their pricing structure to avoid paying Medicaid significantly discounted best prices. In part, as a result of these estimates, the DVA Appropriations Act was enacted, which temporarily excluded until June 30, 1992, prices paid for drugs by the DVA from the best price. In addition, VHCA was enacted on November 4, 1992, which amended section 1927 in several areas and excluded prices paid by numerous entities from the best price component of the Medicaid drug rebate calculation. However, sufficient data do not exist to make a comprehensive evaluation of the overall impact on the non-Medicaid sectors.

If manufacturers attempt to maintain revenues as predicted by some sources, there could be several entities of the non-Medicaid sector affected other than government. If all discounts and contracts were rescinded and one price instituted for all, the economic impact on the hospital industry, for example, would be substantially negative since the industry receives large discounts for drug purchases, but for some other purchasers, it would be substantially positive.

C. Alternatives Considered

Section 1927 of the Act imposes strict legal and monetary savings requirements that the drug rebate program must meet. The only alternative to implementing the drug rebate program is to repeal section 4401 of OBRA '90 and section 13602 of OBRA '93. However, a repeal would impose additional costs on the Medicaid program since the drug rebate program is expected to generate substantial savings. Also, Federal and State administrative costs would be incurred to reverse the policy and operational procedures that were established to implement the drug rebate program.

A cost/benefit analysis of repealing the legislation was not conducted since the primary effect of this program simply includes what economists term an economic "transfer"—reducing simultaneously and equally costs to the government and revenues of manufacturers through a change in purchasing procedures. The Congress passed this law to generate program savings from rebates to obtain price reduction that other sectors of the economy have received for years, and to provide the Medicaid population with equal access to the same prescription drugs that benefit the non-Medicaid population.

D. Interaction With Other Activities

The drug rebate program, in combination with the reimbursement moratorium, prospective and retrospective drug use review, electronic claims processing system, and demonstration projects, should ensure that the Medicaid prescription drug program will operate in the most economical manner possible. These provisions should result in decreased costs for both States and pharmacies once all aspects of section 1927 of the Act are fully implemented.

E. Conclusion

State and Federal Medicaid expenditures have grown at an extraordinary rate in recent years. Medicaid expenditures on prescription drugs, in particular, during the last half of the 1980s, grew at a rate greater than spending for many other Medicaid services. Therefore, we believe that the implementation of the above mentioned provisions in combination with measures that obtain an additional rebate based on the rate of growth of drug expenditures would help to reduce costs of the Medicaid program. We solicit public comments on the extent that any of the above mentioned entities are significantly economically affected by these provisions.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 441

Family planning, Grant programs—ealth, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements, Safety.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR chapter IV, subchapter C would be amended as follows:

A. Part 441 is amended as follows:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 441.10, the introductory text is republished, and a new paragraph (j) is added to read as follows:

§ 441.10 Basis.

This subpart is based on the following sections of the Act which state requirements and limits on the services specified or provide Secretarial authority to prescribe regulations relating to services:

* * * * *

(j) Sections 1903(a) and (i)(10) concerning FFP for State expenditures for drugs.

3. Section 441.25 is amended by adding a new paragraph (c) to read as follows:

§ 441.25 Prohibition on FFP for certain prescribed drugs.

* * * * *

(c) FFP is not available in State expenditures for covered outpatient drugs unless the requirements and conditions specified in subpart E of part 447 of this subchapter are met.

B. Part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 447.300 is revised to read as follows:

§ 447.300 Basis and purpose.

In this subpart—

(a) Sections 447.302 through 447.335 and 447.361 implement section

1902(a)(30) of the Act, which requires that payments be consistent with efficiency, economy, and quality of care; and section 1927(e)(4) of the Act, which specifies requirements for establishing upper limits on reimbursement for multiple source drugs dispensed under drug rebate agreements.

(b) Section 447.342 implements section 1902(a)(43) of the Act, which permits the State plan to provide for payment to a physician for laboratory services which the physician did not personally perform or supervise.

(c) Section 447.371 implements section 1902(a)(13)(F) of the Act, which requires that the State plan provide for payment for rural health clinic services in accordance with regulations prescribed by the Secretary.

3. Section 447.332 is revised to read as follows:

§ 447.332 Upper limits for multiple source drugs.

(a) *Establishment and issuance of listings.*

(1) HCFA will establish listings that identify and set upper limits for multiple source drugs that meet the following requirements:

(i) All of the formulations of the drug approved by the Food and Drug Administration (FDA) have been evaluated as therapeutically equivalent in the most current edition of its publication *Approved Drug Products with Therapeutic Equivalence Evaluations* (including supplements or in successor publications).

(ii) At least three suppliers list the drug (which has been classified by the FDA as category "A" in its publication, *Approved Drug Products with Therapeutic Equivalence Evaluations* (including supplements or in successor publications)) based on all listings contained in current editions (or updates) of published compendia of cost information for drugs available for sale nationally.

(2) HCFA will publish the lists of multiple source drugs for which upper limits have been established and revisions to the lists in Medicaid program instructions.

(3) HCFA will identify the sources used in compiling these lists.

(b) *Specific upper limits.*

(1) The agency's payment for multiple source drugs identified and listed in accordance with paragraph (a) of this section must not exceed, in the aggregate, payment levels determined by applying for each drug entity a reasonable dispensing fee established by the agency plus an amount established by HCFA that is equal to 150 percent of the published price for the least costly therapeutic equivalent drug (using all available national compendia) that can be purchased by pharmacists in quantities of 100 tablets or capsules (or, if the drug is not commonly available in quantities of 100, the package size commonly listed) or, in the case of liquids, the commonly listed size.

(2) For multiple source outpatient prescribed drugs identified in subpart E of this part, the formula specified in paragraph (b)(1) of this section is not subject to change by HCFA during the period January 1, 1991, through December 31, 1994.

(3) A State that is in compliance with the formula under paragraph (b)(1) of this section and § 447.331 may not reduce its reimbursement limits for covered outpatient drugs or dispensing fees for these drugs established under this formula during the period January 1, 1991, through December 31, 1994.

4. A new § 447.335 is added to read as follows:

§ 447.335 Additional upper limits for multiple source drugs.

(a) *Establishment and issuance of listings.*

(1) In addition to establishing listings specified in § 447.332, HCFA will establish listings that identify and set upper limits for multiple source drugs for which at least three of the formulations of the drug approved by the Food and Drug Administration (FDA) have been evaluated as therapeutically and pharmaceutically equivalent (category "A") in the most current edition of its publication *Approved Drug Products with Therapeutic Equivalence Evaluations* (including supplements or in successor publications), regardless of whether all additional formulations are rated as such.

(2) HCFA will publish the lists of multiple source drugs for which upper limits have been established and revisions to the lists in Medicaid program instructions.

(3) HCFA will identify the source(s) used in compiling these lists.

(b) *Specific upper limits.* The agency's payment for multiple source drugs identified and listed in accordance with paragraph (a) of this section must not exceed, in the aggregate, payment levels determined by applying for each drug entity a reasonable dispensing fee established by the agency plus an amount established by HCFA that is equal to 150 percent of the published price for the least costly therapeutic equivalent drug (using all available national compendia) that can be purchased by pharmacists in quantities of 100 tablets or capsules (or, if the drug is not commonly available in quantities of 100, the package size commonly listed) or, in the case of liquids, the commonly listed size. For purposes of this paragraph, therapeutic equivalent drugs mean drugs rated A or B by the FDA.

5. A new subpart I, consisting of §§ 447.500–447.550, is added to read as follows:

Subpart I—Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements

Sec.

447.500 Basis and purpose.
447.502 Applicability.
447.504 Definitions.
447.506 Requirement for rebate agreements as a condition for payment for outpatient prescription drugs.
447.508 State plan requirements.
447.510 Rebate agreements: General requirements.
447.512 Terms of agreements.
447.514 Termination and nonrenewal of national rebate agreements.
447.516 Outpatient drugs subject to rebates.
447.518 Outpatient drugs of manufacturers without rebate agreements.
447.520 New drugs subject to rebates.
447.522 Drugs not subject to rebates.
447.524 Exclusions and restrictions on drugs subject to rebates.
447.526 Prior authorization programs.
447.530 State reporting requirements.
447.534 Manufacturer reporting requirements.
447.536 Resolution of disputes relating to information reported.
447.538 Resolution of disputes relating to drug access and State systems.
447.540 Confidentiality of reported information.
447.542 Penalties for failure to report or reporting false information.
447.546 Payment of rebates.
447.548 Computation of unit rebate amount.
447.550 Denial of FFP.

Subpart I—Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements

§ 447.500 Basis and purpose.

(a) *Basis.* This subpart—

(1) Interprets section 1927 of the Act which provides in part that, in order for payment to be made under Medicaid for covered outpatient drugs of a manufacturer, the manufacturer must enter into and comply with a rebate agreement with the Secretary of HHS on behalf of States (or with States directly under specific authorization of the Secretary);

(2) Implements section 1902(a)(54) of the Act which includes a State plan requirement that provides that if a State elects to cover prescription drugs, the State must comply with the

requirements of section 1927 of the Act; and

(3) Implements section 1903(i)(10) of the Act which provides for denial of FFP in expenditures—

(i) For covered outpatient drugs of a manufacturer dispensed in any State if the manufacturer does not enter into and comply with a rebate agreement, except as prescribed in section 1927(a)(3) of the Act; and

(ii) For any amount expended which exceeds the upper payment limit for an innovator multiple source drug dispensed on or after July 1, 1991, if under applicable State law, a less expensive multiple source drug could have been dispensed.

(b) *Purpose*. This subpart specifies the requirements for State Medicaid agencies and the conditions under which FFP will be made for covered outpatient prescription drugs dispensed on or after January 1, 1991, under drug rebate agreements with manufacturers. This subpart also specifies the conditions for approval and renewal of rebate agreements with drug manufacturers and manufacturer reporting requirements.

§ 447.502 Applicability.

(a) The provisions of this subpart E apply to the 50 States (including any State that is furnishing medical assistance under a waiver granted under section 1115 of the Act) and the District of Columbia.

(b) The provisions of this subpart do not apply to covered outpatient drugs dispensed by:

(1) Health maintenance organizations (HMOs), including those organizations that contract with HCFA under section 1903(m) of the Act; and

(2) Hospitals that dispense covered outpatient drugs using drug formulary systems and bill Medicaid no more than the hospital's purchasing costs for these drugs as determined under the approved State plan.

§ 447.504 Definitions.

As used in this subpart E—

Covered outpatient prescription drugs or *covered outpatient drugs* means those drugs as defined in sections 1927(k) (2) through (4) of the Act and specified in § 447.516.

Depot means any Federal warehousing facility and distribution arrangement, including the Department of Defense's Electronic Commerce Initiative (ECI), whether:

(1) Government owned and operated;

(2) Government owned and privately operated; or

(3) Privately owned and operated.

Depot prices mean prices available to any depot of the Federal Government for purchase of drugs from a manufacturer through the depot system of procurement, irrespective of whether the drug products physically flow through the depot.

FDA refers to the Food and Drug Administration, Department of Health and Human Services.

Innovator multiple source drug means a multiple source drug from 1938 to present that was originally marketed under an original new drug application approved by the FDA.

Manufacturer. (1) A manufacturer means any entity that—

(i) Is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis;

(ii) Is engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products and is not a wholesale distributor of drugs or a retail pharmacy licensed under State law; and

(iii) Possesses legal title to the National Drug Code (NDC) number for a covered drug, or biological product.

(2) In the case of a corporation that meets the conditions of paragraphs (1)(i) and (1)(ii) of this definition, the entity includes—

(i) Any corporation that owns at least 80 percent of the total combined voting power of all classes of stocks or 80 percent of the total value of shares of all classes of stock in the entity (that is, a parent corporation);

(ii) Any other corporation in which the parent corporation of the entity owns at least 80 percent of the total combined voting power of all classes of stock or 80 percent of the total value of shares of all classes of stock in the other corporation (that is, a brother-sister corporation); and

(iii) Any other corporation in which the entity owns at least 80 percent of the total combined voting power of all classes of stock or 80 percent of the total value of shares of all classes of stock in the other corporation (that is, a subsidiary corporation).

Manufacturer-specific pricing data includes the average manufacturer price (AMP) (as defined in § 447.534(c)(1)), base date AMP, best price, or unit rebate amount in connection with a rebate agreement.

Marketed means that a drug was first sold by a manufacturer in the United States after FDA approval.

Medically accepted indication means any use for a covered outpatient drug approved under the Federal Food, Drug, and Cosmetic Act, or any use that is supported by one or more citations included or approved for inclusion in any of the following compendia: the American Hospital Formulary Service-Drug Information; the American Medical Association Drug Evaluations; and the United States Pharmacopeia-Drug Information.

Multiple source drug means a covered outpatient drug for which there are two or more drug products which—

(1) Are rated as therapeutically equivalent by the FDA in its current edition of its publication *Approved Drug Products with Therapeutic Equivalence Evaluations*;

(2) As determined by FDA, are pharmaceutically equivalent (the drug products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity) and are bioequivalent (the drugs do not present a known or potential bioequivalence problem, or if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence). (This condition does not apply if FDA changes by regulation the requirement that in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent);

(3) For purposes of coverage under the drug rebate program, are rated as "A" or "B" (therapeutic equivalence code) by the FDA in its current edition of its publication *Approved Drug Products with Therapeutic Equivalence Evaluations*; and

(4) Are sold or marketed in the State during a rebate period.

National rebate agreement means the rebate agreement developed by HCFA to implement section 1927 of the Act.

NDC refers to the National Drug Code number maintained by the FDA.

Nominal price refers to a price that is less than 10 percent of AMP.

Noninnovator multiple source drug means a multiple source drug that is not an innovator multiple source drug and that was marketed under an abbreviated new drug application approved by FDA, or any marketed, unapproved pre-1938 drug product for which the FDA has not made a final determination about its legal status. The term includes—

(1) All products approved under an abbreviated new drug application, paper new drug application under the FDA's former "Paper NDA" policy, or an application under section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act; and

(2) Any marketed, unapproved pre-1938 drug product that has not been evaluated under the new drug provisions of the Federal Food, Drug and Cosmetic Act.

Original New Drug Application (NDA) means an FDA-approved drug or biological application that received one or more forms of patent protection, patent extension under title II of Public Law 98–417, the Drug Price Competition and Patent Term Restoration Act, or marketing exclusivity rights granted by the FDA. This definition includes a new drug application (NDA), an amended NDA, an antibiotic drug application (ADA), an amended ADA, a product license application (PLA), and an amended PLA.

Single award contract prices means prices under a contract between the Federal Government and a manufacturer resulting in a single supplier for a covered outpatient drug within a class of drugs.

Single source drug means a covered outpatient drug which is produced or distributed under an original new drug application approved by the FDA, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application.

Wholesaler means any entity (including a pharmacy or chain of pharmacies) to which the manufacturer sells the covered outpatient drugs, but that does not relabel or repackage the covered outpatient drug.

§ 447.506 Requirement for rebate agreements as a condition for payment for outpatient prescription drugs.

In order for payments to be made under Medicaid for covered outpatient prescribed drugs described in §§ 440.120 and 447.516 of this subchapter, except as provided in § 447.518, the manufacturers of the drugs must have entered into and comply with:

(a) A rebate agreement with the Secretary on behalf of States, or with States directly, that meets the requirements of this subpart.

(b) A pharmaceutical pricing agreement with the Public Health Service, in accordance with section 340B of the Public Health Service Act, for all covered outpatient drugs purchased by a covered entity (as described in section 340B(a)(4) of the Public Health Service Act) on or after December 1, 1992.

(c) A pharmaceutical pricing agreement with the Department of Veterans Affairs (DVA), in accordance with 38 U.S.C. 8126, for all single source drugs, innovator multiple source drugs, biologicals, and insulin, effective January 1, 1993.

§ 447.508 State plan requirements.

A State Medicaid plan must provide that the Medicaid agency will comply with all of the applicable requirements of this subpart.

§ 447.510 Rebate agreements: General requirements.

(a) *Basic requirements.*

(1) Except as specified in paragraph (a)(2) of this section, a manufacturer of covered outpatient drugs that are dispensed under a State Medicaid program must have entered into and must comply with—

(i) A national rebate agreement authorized by HCFA; or

(ii) A State agreement that meets the conditions of paragraph (b) or (c) of this section and is authorized by HCFA.

(2) A manufacturer that has entered into a State agreement that meets the requirements of paragraph (b) or (c) of this section must also enter into the national rebate agreement.

(3) A manufacturer must include in its rebate agreement a list all of its drugs, by NDC numbers, that fall within the definition of covered outpatient drugs.

(4) A manufacturer may not specify that only a partial list of its covered outpatient drugs are subject to rebate under this subpart.

(b) *Existing State/manufacturer agreements.*

(1) HCFA will consider an individual drug rebate agreement between a manufacturer and a State Medicaid agency that is in effect on November 5, 1990, to be in compliance with the Federal requirements for drug rebates for the initial agreement period if—

(i) The initial term of the agreement provides for a minimum aggregate rebate of 10 percent of the average manufacturer price, as defined in § 447.534(c), for all of the manufacturer's drugs paid for by the State under Medicaid in a rebate period;

(ii) The State agency agrees to report to HCFA any rebates paid under the rebate agreement; and

(iii) The State agency submits to HCFA a written assurance from the manufacturer that the minimum 10-percent rebate was met under the agreement as of November 5, 1990.

(2) HCFA will consider an existing individual State rebate agreement to be in compliance with Federal requirements for drug rebates throughout the initial period of the agreement only if the manufacturer continues to provide rebates that meet the minimum 10-percent rebate requirement specified in paragraph (b)(1)(i) of this section throughout the initial period. If this requirement is not met, the manufacturer's drugs are subject to the terms of the national rebate agreement.

(3) A State and a manufacturer may amend the initial period of a rebate agreement that was in effect on November 5, 1990, that meets the requirements of paragraph (b)(1) of this section if the State and manufacturer are in agreement with all modifications and the terms of the agreement allow such modifications. Existing agreements may be amended to:

(i) Provide for a greater rebate; or

(ii) Add drugs if the minimum 10-percent aggregate rebate requirement is met.

(4) The manufacturer must have a rebate agreement that meets the requirements of section 1927(a) of the Act in every State and the District of Columbia for FFP to be available under Medicaid.

(c) *New State/manufacturer agreements*. If a State Medicaid agency did not have an existing agreement with its drug manufacturers in effect on November 5, 1990, it may enter into a new agreement under the conditions of this paragraph.

(1) The agreement must provide drug rebates as least as great as those required under the national rebate agreement.

(2) The State agency must agree to report to HCFA any rebates paid under the rebate agreement.

(3) The manufacturer must enter into the national rebate agreement.

(4) The State agency must provide to HCFA a written assurance from the manufacturer that the agreement provides rebates that equal or exceed the amounts in the national agreement.

(d) *Authorization by HCFA*. Existing and new agreements, and their renewals, must be specifically authorized by HCFA.

§ 447.512 Terms of agreements.

(a) *Initial period.*

(1) The initial period of an existing State/manufacturer agreement and a new State/manufacturer agreement is the period specified in the agreement. In the event no period is specified, the initial period is 1 year.

(2) The initial period of the national rebate agreement must be for at least 1 year.

(b) *Renewal of agreements.*

(1) An existing agreement may be renewed if—

(i) The agreement provides drug rebates as least as great as those required under the national rebate agreement;

(ii) The State agency agrees to report to HCFA any rebates paid under the rebate agreement;

(iii) The State agency provides to HCFA a written assurance from the manufacturer that the agreement provides rebates that equal or exceed the amounts in the national agreement; and

(iv) The manufacturer enters into the national rebate agreement.

(2) Each national agreement will be automatically renewed for successive periods of at least 1 year if the agreement continues to meet the conditions of the initial period of the agreement and requirements of these regulations, unless the manufacturer gives a written notice of intent not to renew the agreement or HCFA or the manufacturer terminates the agreement in accordance with § 447.514.

(c) *Effective dates of national rebate agreements.*

(1) A national rebate agreement that was entered into and authorized by HCFA between February 15, 1991, and April 30, 1991, is effective retroactive to January 1, 1991, unless the manufacturer requests a later effective date.

(2) A national rebate agreement that is entered into and authorized by HCFA on or after May 1, 1991, is effective the first day of the rebate period that begins more than 60 days after the date the agreement is entered into unless the manufacturer requests a later effective date.

§ 447.514 Termination and nonrenewal of national rebate agreements.

(a) *Who may terminate.* National rebate agreements may be terminated by HCFA or by the manufacturer as specified in paragraphs (b) and (c) of this section.

(b) *Termination by HCFA.*

(1) HCFA may terminate an agreement if the manufacturer violates the requirements of the rebate agreement or for "other good cause" shown. "Other good cause" includes, but is not limited to, any violations of the provisions of the national rebate agreement, section 1927 or the related regulations, or the persistent failure to provide timely information on pricing and other required information or to pay timely rebates.

(2) HCFA will send a written notice of the existence of a violation and the decision to terminate the agreement to the manufacturer and notify all State Medicaid agencies of the termination.

(3) The termination will be effective no earlier than 60 days after the date the notice of termination is sent to the manufacturer.

(4) If a manufacturer is dissatisfied with a termination decision made by HCFA, the manufacturer may request a hearing to appeal the termination under the procedures established in the national rebate agreement. However, a request for a hearing will not delay the effective date of the termination.

(c) *Termination by the manufacturer.* A manufacturer may terminate an agreement for any reason.

(1) *Reasons other than nonrenewal*—(i) *Written notice.* To terminate an agreement for reasons other than nonrenewal, a manufacturer must provide a written notice of termination to HCFA at least 60 days before the beginning of the calendar quarter in which the termination will occur.

(ii) *Effective dates.* Termination will be effective on the first day of the first rebate period beginning at least 60 days after the manufacturer gives written notice requesting termination, or a later date if so specified by the manufacturer.

(2) *Nonrenewals*—(i) *Written notice.* A manufacturer that wishes not to renew an agreement must provide a written notice of nonrenewal of the agreement to HCFA at least 60 days before the end of the current agreement period.

(ii) *Effective dates.*

(A) Termination resulting from nonrenewal will be effective on the ending date of the term of the agreement if the manufacturer has given the 60-day advance notice.

(B) If the manufacturer has not given the 60-day advance notice, the effective dates of termination specified in paragraph (c)(1)(ii) of this section will apply.

(3) *Date of notice.* The postmark date of the U.S. Postal Service or common mail carrier will be considered as the date a manufacturer gives written notice.

(d) *Reinstatement after termination.* If an agreement is terminated by either HCFA or the manufacturer, another agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of one calendar quarter has elapsed from the date of the termination, unless HCFA finds good cause for an earlier reinstatement.

(e) *Effect of termination or nonrenewal on rebates due.* Any nonrenewal or termination of a rebate agreement will not affect rebates due before the effective date of nonrenewal termination.

(f) *Notification of termination.* HCFA will notify States of any termination of a manufacturer from the drug rebate program at least 30 days prior to the effective date of the termination.

§ 447.516 Outpatient drugs subject to rebates.

(a) Except for the drugs or items listed in § 447.522, the following covered outpatient drugs are subject to rebates under this subpart:

(1) Drugs that are—

(i) Covered outpatient drugs of participating manufacturers under an approved State Medicaid plan; and

(ii) Dispensed by prescription (except certain over-the-counter drugs as specified in paragraph (a)(5) of this section);

(2) Drugs that meet the requirements of the Federal Food, Drug, and Cosmetic Act and the Drug Amendments of 1962 specified in section 1927(k)(2)(A) (i) through (iii) of the Act;

(3) A biological product other than a vaccine that may only be dispensed by prescription, is licensed under section 351 of the Public Health Service Act, and is produced at an establishment licensed under section 351 to produce such products;

(4) Insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act; and

(5) "Over-the-counter" drugs that are prescribed by a physician or other person authorized to prescribe drugs under State law, if the State provides for coverage of these drugs as prescribed drugs under its approved State Medicaid plan.

§ 447.518 Outpatient drugs of manufacturers without rebate agreements.

(a) *Definition.* For purposes of this section, *1–A rated drugs* means drugs classified as such by the FDA, prior to January 1, 1992, as new molecular or chemical entities that may provide effective therapy or diagnosis for a disease not adequately treated or diagnosed by any marketed drug, or provide improved treatment of a disease through improved effectiveness or safety (including decreased abuse potential) and identified in the FDA publication *Office of Drug Evaluation Statistical Report,* issued yearly. The term includes drugs rated as 1–A/AA.

(b) *Federal financial participation (FFP).* FFP is available for payments for single source and innovator multiple source 1–A rated drugs that are furnished by manufacturers without rebate agreements if—

(1) The State agency has determined that the availability of the drug is essential to the health of Medicaid recipients under the approved State plan;

(2) The prescribing physician has obtained approval for use of the drug before it is dispensed in accordance with a prior authorization program specified in § 447.526, or the Secretary has approved the State agency's determination regarding drug necessity under paragraph (b)(1) of this section.

§ 447.520 New drugs subject to rebates.

(a) Effective October 1, 1993, there is no special treatment for new drugs under the Medicaid drug rebate program.

(b) For the period January 1, 1991 through September 30, 1993—

(1) Subject only to the exclusions and restrictions specified in § 447.524 (a)(2) and (a)(3), a new drug of participating manufacturers must be covered for a period of 6 months after the date of approval of the drug by the FDA, regardless of when the manufacturer begins to market the drug.

(2) Except as specified in § 447.524(b), a State agency may not exclude, subject to the prior authorization conditions specified in § 447.526, or otherwise restrict the coverage of covered outpatient drugs under a drug rebate agreement any new drug or biological approved by the FDA for a period of 6 months after FDA approval.

(c) FFP is not available for coverage of new drugs furnished by manufacturers who do not have rebate agreements that were in effect for the 6-month period after FDA approval of the new drug, unless covered during the retroactive period of January 1, 1991, through March 31, 1991, or covered as a 1–A rated drug under § 447.518(b).

§ 447.522 Drugs not subject to rebates.

The following list indicates drugs or items that are not subject to rebates under this subpart:

(a) Any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as any of the following (and for which Medicaid payment may be made as part of payment for the following and not as direct reimbursement for the drug):

(1) Inpatient hospital services;

(2) Hospice services;

(3) Dental services (except for drugs for which the approved State plan authorizes direct reimbursement to the dispensing dentist);

(4) Physician services;

(5) Outpatient hospital services;

(6) Nursing facility services and services provided by an intermediate care facility for the mentally retarded;

(7) Other laboratory and x-ray services; and

(8) Renal dialysis.

(b) Any drug, biological product, or insulin that is used for a medical indication that is not a medically accepted indication.

(c) Any drug, biological product, or insulin for which a NDC number is not required by the FDA.

(d) Medical supply items such as syringes (excluding insulin-filled syringes), urine and blood glucose testing strips and devices, lancets, and inhalers.

(e) Enteral nutrition products that are not approved by FDA as a drug under sections 505, 506, and 507 of the Federal Food, Drug, and Cosmetic Act.

(f) Parenteral nutrition products that are not approved by the FDA under section 505 of the Federal Food, Drug, and Cosmetic Act and given by the intravenous route of administration.

(g) Investigational new drugs (for example, Treatment IND drugs, Group C cancer drugs, and Parallel Track drugs).

§ 447.524 Exclusions and restrictions on drugs subject to rebates.

(a) A State agency may limit coverage of outpatient drugs that are subject to rebate by—

(1) Implementing a prior authorization program, as specified in § 447.526;

(2) Restricting or excluding certain drugs from coverage as specified in paragraphs (b) and (c) of this section; and

(3) Restricting the quantity of drugs per prescription and the number of refills, as specified in paragraph (e) of this section.

(b) A State may exclude or restrict from coverage, as an outpatient drug subject to rebate, any drug if—

(1) The prescribed use of the drug is not for a medically accepted indication;

(2) The drug, the class of drug, or its medical use is contained on the list as specified in paragraph (c) of this section;

(3) The drug is subject to restrictions in an existing or new manufacturer rebate agreement with the State agency that has been authorized by HCFA in accordance with § 447.510; or

(4) The State has excluded coverage of the drug from its formulary established in accordance with section 1927(d)(4) of the Act.

(c) A State may exclude or restrict from coverage, as outpatient drugs subject to rebate, any of the prescribed drugs it has elected to cover under its approved State Medicaid plan that fall within the following descriptions of drugs, classes of drugs, or their medical uses:

(1) Agents when used for anorexia, weight loss, or weight gain.

(2) Agents when used to promote fertility.

(3) Agents when used for cosmetic purposes or hair growth.

(4) Agents when used for the symptomatic relief of cough or colds.

(5) Agents when used to promote smoking cessation.

(6) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparation.

(7) Nonprescription drugs.

(8) Covered outpatient drugs for which the manufacturer seeks to require, as a condition of sale, that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

(9) Barbiturates.

(10) Benzodiazepines.

(d) HCFA will periodically update, by regulation, the list of drugs subject to restriction as specified in paragraph (c) of this section by adding drugs, classes of drugs, or medical uses if it determines that there is evidence of clinical abuse or inappropriate use. HCFA will make this determination on the basis of data collected by the State Medicaid agency's surveillance and utilization review (SUR) program under part 456 of this subchapter.

(e) A State may restrict the minimum and maximum quantities of covered outpatient drugs per prescription and the number of refills within a therapeutic class of drugs. A State may also restrict one or more package sizes of a drug to be dispensed as long as the restriction does not result in a participating manufacturer's drugs not being covered at all under the Medicaid program.

(f) The agency must specify in its State Medicaid plan that, except for the restrictions and exclusions specified in this section, and drugs excluded from its formulary which meets the requirements of section 1927(d)(4) of the Social Security Act, the formulary will permit coverage of covered outpatient drugs of manufacturers which have met the requirements of § 447.506 that are prescribed for a medically accepted indication.

(g) The agency must include in its State Medicaid plan a list of covered outpatient drugs, classes of drugs, or medical uses under paragraph (c) of this section that it is excluding or restricting from coverage under this section and specify the limitations or conditions on coverage.

§ 447.526 Prior authorization programs.

(a) A State agency may establish a prior authorization program for any covered outpatient drug under which the drug must be approved before it is dispensed for any medically accepted indication.

(b) A State agency may determine which persons (for example, physician, pharmacist) are permitted to request prior authorization of a drug.

(c) Under a prior authorization program, the State agency must—

(1) Provide for a response by telephone or telecommunications device to a request for prior authorization

within 24 hours of receipt of a request; and

(2) In emergency situations, provide for dispensing of at least a 72-hour supply of drugs, except for those drugs that are excluded or restricted as outpatient prescribed drugs under § 447.524.

(i) The State agency must specify in its State plan the process that will be used to determine what constitutes an emergency situation.

(ii) The State agency must ensure that its response to a prior authorization request is given to the dispenser before the emergency supply is exhausted.

(iii) In emergency situations, the State must provide a mechanism so that a dispenser or physician can make a prior authorization request 24 hours before the supply is exhausted and a response returned by the State within that 24-hour period.

(d) State staff who place drugs in a prior authorization system must be licensed to prescribe or dispense drugs in the State, for example, physicians or pharmacists.

(e) State staff who respond to prior authorization requests are not limited to persons licensed to prescribe or dispense drugs as long as all decisions involving drugs subject to prior authorization are made—

(i) In consultation with these licensed professionals; or

(ii) Under guidelines promulgated by such individuals as long as States provide access to these licensed professionals in difficult or unusual cases.

(f) The State agency must establish a process to ensure that recipients have access to medically necessary covered outpatient drugs and must provide annual written assurances to HCFA that its prior authorization program does not prevent recipients from gaining access to medically needed drugs.

§ 447.530 State reporting requirements.

(a) *Basic requirement.* The State agency must provide to manufacturers with drug rebate agreements State drug utilization data specified in paragraph (b) of this section for which Medicaid payments have been made during a rebate period. For purposes of this section—

(1) The agency must use the 11-digit NDC number to report drug utilization data.

(2) *Unit* means the lowest commonly identifiable amount of a drug—for example, tablet or capsule for solid dosage forms, milliliter for liquid forms, and gram for ointments or creams, as described in the rebate agreement and accompanying appendices.

(b) *Type of data to be reported.* The State agency must submit to manufacturers the following information, based on claims paid by the agency during a rebate period:

(1) State identification;

(2) Rebate period and year for which data apply;

(3) The NDC number;

(4) Total units paid for during a rebate period by NDC.

(5) The product name (FDA registration name);

(6) Total amount of rebate that a State claims for each NDC;

(7) Total number of prescriptions paid for during the rebate period by NDC number; and

(8) The rebate amount per unit and the total amount paid for during the rebate period by NDC number to verify rebate payment.

(c) *Timeframe for reporting.*

(1) The State agency must report the utilization data no later than 60 days after the end of each rebate period.

(2) In the event that a due date falls on a weekend or Federal holiday, the report or other item will be due on the first business day following that weekend or Federal holiday.

(3) If a State does not submit its rebate period utilization data to the manufacturer within 1 year after the rebate period ends—

(i) A manufacturer is not required to pay a rebate on those drugs; and

(ii) A State may be considered out of compliance with section 1927 of the Act for failure to collect rebates.

(d) *Format of report.* The State agency must report the utilization data, using the NDC number, in a form prescribed by HCFA.

(e) *Administrative procedures for data collection.* The State agency must—

(1) Inform Medicaid participating drug dispensers that they are required to use accurate NDC numbers for the drugs dispensed in submitting their Medicaid claims and of potential payment denial, sanctions, including those for fraud and abuse, and possible termination of provider agreements, for incorrect coding of NDC numbers;

(2) Establish and implement an oversight and auditing plan to ensure proper pharmacy coding and reporting practices;

(3) Establish and implement procedures for investigating at the pharmacy level allegations of erroneous utilization data by manufacturers with rebate agreements; and

(4) Establish procedures for taking actions necessary to ensure accurate coding.

(f) *Use of data edits.* The State must verify the accuracy of utilization data through the use of data edits such as, but not limited to—

(1) Unit types are appropriate for NDCs;

(2) Units match amount paid by the State; and

(3) Amount paid by the State is appropriate for the drug.

(g) *Use of rounding indicators.* States must identify by NDC number those drugs for which the number of units has been rounded by showing a rounding indicator for the number of units dispensed.

§ 447.534 Manufacturer reporting requirements.

(a) *Basic requirements.* Under the terms of the drug rebate agreement, a manufacturer must—

(1) Supply HCFA with a list of all covered outpatient drugs (as specified in paragraph (c) of this section), the average manufacturer price, and, for single source and innovator multiple source drugs, the best price (as specified in paragraph (d) of this section) within 30 calendar days of entering into an agreement;

(2) Update the list of covered outpatient drugs as provided for in paragraph (b) of this section;

(3) Supply the information specified in paragraph (e) of this section for each rebate period in a format prescribed by HCFA in regulations or instructions; and

(4) Complete and submit to States the HCFA Form 302, the Remittance Advice Report (RAR), in a format prescribed by HCFA in regulations or instructions. The RAR must include the information specified in paragraph (f) of this section, along with any rebate period rebates due within 30 days of receiving from the State Medicaid drug utilization data.

(b) *Update to manufacturer's drug list.* A manufacturer must update its list of all covered outpatient drugs for each rebate period, including the average manufacturer price of each drug, and, for single source and innovator multiple source drugs, the manufacturer's best price.

(1) The updated list must be reported by the manufacturer to HCFA no later than 30 days after the last day of each rebate period.

(2) The updated list reported by the manufacturer must include the NDC number for each covered outpatient drug currently marketed by the manufacturer and for all drugs that the manufacturer no longer markets until the supply of the drug under an NDC has expired, the drug has been taken off the market, or for any other reason, there no longer exists the potential that the drug may be paid for under the manufacturer's NDC number.

(c) *"Average manufacturer price" defined.*

(1) "Average manufacturer price" (AMP) means, with respect to a covered outpatient drug of the manufacturer for a rebate period, the average unit price paid to the manufacturer for the drug in the State by wholesalers for drugs distributed to the retail pharmacy class of trade (excluding sales to hospitals, health maintenance organizations and to wholesalers where the drug is relabeled under that distributor's NDC number), after deducting customary prompt pay discounts.

(2) Federal supply schedule prices are not included in the calculation of AMP.

(3) AMP includes cash discounts allowed and all other price reductions (other than rebates under this subpart), which reduce the actual price paid.

(4) AMP is calculated as a weighted average of prices for all the manufacturer's package sizes for each covered outpatient drug sold by the manufacturer during that rebate period. It is calculated as net sales divided by numbers of units sold, excluding goods or any other items given away, but not contingent on any purchase requirements. "Net sales" means quarterly gross sales revenues less cash discounts allowed and all other price reductions (other than rebates under section 1927 of the Act) which reduce the actual price paid. For bundled sales, the allocation of the discount is made proportionately to the dollar value of the units of each drug sold under the bundled arrangement. "Bundled sales" refers to the packaging of drugs of different types where the condition of rebate or discount is that more than one drug type is purchased, or where the resulting discount or rebate is greater than that which would have been received had the drug been purchased separately.

(5) The manufacturer must adjust the AMP for a rebate period if cumulative discounts or other arrangements subsequently adjust the prices actually realized.

(d) *"Best price" defined.*

(1) "Best price" means, with respect to single source and innovator multiple source drugs, the lowest single price at which the manufacturer sells the covered outpatient drug to any purchaser in the United States in any package size in any pricing structure (including capitated payments), in the same quarter for which the AMP is computed.

(2) To determine best price, use the following prices in the best price calculation:

(i) *Prices included in best price.*

(A) Except for those prices specifically exempted by law, as specified in paragraphs (d)(2)(i)(B) and (d)(2)(ii) of this section, best price includes prices to wholesalers, retailers, providers, HMOs, nonprofit entities, or governmental entities within the States (excluding depot prices and single award contract prices of any agency of the Federal Government).

(B) For periods January 1, 1991, through October 27, 1991, and July 1, 1992, through September 30, 1992, best price includes any prices charged under the Federal Supply Schedule of the General Services Administration, including prices for drugs and biologicals paid by the DVA and drugs and biologicals in contracts administered by the DVA.

(ii) *Prices excluded from best price.*

(A) For periods beginning on or after October 1, 1992, best price excludes any prices charged to the Indian Health Service, the DVA, a State home receiving funds under 38 U.S.C. 1741, the Department of Defense, the Public Health Service, or a covered entity described in section 1927(a)(5)(B) of the Social Security Act; any prices charged for drugs and biologicals under the Federal Supply Schedule of the General Services Administration; or any prices used under a State pharmaceutical assistance program.

(B) For the period October 28, 1991, through June 30, 1992, best price excludes any prices charged under the Federal Supply Schedule of the General Services Administration for drugs and biologicals paid by the DVA and drugs and biologicals in contracts administered by the DVA.

(3) Calculations of best prices must include cash discounts, free goods that are contingent on any purchase requirements, volume discounts, and rebates, other than rebates under section 1927 of the Act.

(4) Best price must be determined on a unit basis without regard to special packaging, labeling, or identifiers on the dosage form or product or package, and must not take into account prices that are nominal in amount.

(5) For bundled sales, the allocation of the discount is made proportionately to the dollar value of the units of each drug sold under the bundled arrangement.

(6) The manufacturer must adjust the best price for a rebate period if cumulative discounts, rebates, or other arrangements subsequently adjust the prices actually realized.

(7) For purpose of this section, *provider* means a physician, hospital and other health maintenance organizations or entities that treat individuals for illnesses or injuries or provides services or items in the provisions of health care.

(e) *Contents of quarterly report.* The manufacturer's quarterly reports to HCFA must include—

(1) NDC number with labeler code, product code, and package size code;

(2) Period covered for rebates (rebate period and year);

(3) Product FDA registration name;

(4) Drug category of single source, innovator multiple source, or noninnovator multiple source;

(5) Indicator for drug reviewed under the Drug Efficacy Study Implementation (DESI) program;

(6) FDA therapeutic equivalence explanation code;

(7) Unit type;

(8) Units per package size;

(9) AMP;

(10) Basedate AMP;

(11) Best price;

(12) FDA approval date;

(13) Date drug entered market;

(14) Drug termination date;

(15) Drug type; and

(16) Correction record flag which signals that the record contains corrected information from a previous submission.

(f) *Contents of Remittance Advice Report (RAR) (HCFA Form 304).* The manufacturer's RARs to States must include—

(1) Manufacturer name, labeler code, address, and name, telephone number, and facsimile number of contact person;

(2) State;

(3) Rebate period and year for which the information applies;

(4) Invoice number, if State provided one;

(5) NDC number and product name;

(6) Rebate amount per unit;

(7) Units invoiced;

(8) Rebate amount invoiced;

(9) Rebate amount paid;

(10) Adjusted rebate per unit, if applicable;

(11) Adjustment code, if applicable;

(12) Credit/debit indicator, if applicable;

(13) Adjusted invoice amount, if applicable;

(14) Units disputed, if applicable;

(15) Dispute code, if applicable;

(16) Withheld invoice amount, if applicable;

(17) Total rebate amount invoiced;

(18) Total rebate amount paid;

(19) Total adjusted invoice amount, if applicable; and

(20) Total withheld invoice amount, if applicable.

(g) *Recordkeeping requirements.*

(1)(i) Except as set forth in paragraph (e) of this section, a manufacturer must retain records (written or electronic) for

3 years from the date the manufacturer reports that rebate period's data. The records must include the data and any other materials from which the calculations of the AMP and best price are derived, including a record of any assumptions made in the calculations.

(ii) A manufacturer must retain records beyond the 3-year period if audit findings have not been resolved.

(2) Both the State and manufacturer must retain supporting documentation (written or electronic) related to the dispute resolution process and the RAR for 3 years from the date a dispute is resolved between the manufacturer and State.

(h) *Timeframe for reporting revised AMP or best price.* A manufacturer must report changes to AMP or best price for 3 years after the quarter to which the data pertains.

§ 447.536 Resolution of disputes relating to information reported.

(a) *Resolving data inconsistencies.*

(1) The manufacturer must attempt to identify and resolve data inconsistencies in State Medicaid drug utilization data prior to initiating the dispute resolution process described in paragraphs (b) and (c) of this section.

(2) The manufacturer must attempt to resolve any data inconsistencies under paragraph (a)(1) of this section with the State by no later than 30 days after receipt of State Medicaid drug utilization data. The manufacturer may initiate this process through telephone contact with the State.

(3) If data inconsistencies are resolved by the manufacturer and State, the manufacturer must record this fact on the RAR and the State must maintain supporting documentation to substantiate the resolution of the data inconsistencies.

(b) *Reporting disputes.*

(1) If, in any rebate period, a manufacturer and the State are unable to resolve data inconsistencies under paragraph (a) of this section or other disputed items within 30 days after the manufacturer receives State Medicaid drug utilization data, the manufacturer must complete and submit the RAR to the State in accordance with § 447.534(a)(4) or the State's utilization data are considered final and binding and the entire rebate payment is due.

(2) The RAR must include the information specified in § 447.534(f) and identify by each NDC the reason(s) why the manufacturer is disputing the data.

(3) The manufacturer must submit to the State supporting documentation for certain types of disputes as indicated on the RAR. The manufacturer must submit supporting documentation for certain types of disputes as indicated on the RAR if a State requests the documentation to verify information.

(4) The RAR must be postmarked by the United States Postal Service or common mail carrier on or prior to the due date for the rebate period payment of the rebates to the State agency.

(c) *Resolving disputes.*

(1) Within 90 days after the State receives the RAR, the State must contact the manufacturer in writing or by telephone to discuss the dispute and to present the State's preliminary response on the disputed items to the manufacturer. If the dispute is resolved, the manufacturer and the State must both maintain supporting documentation of the resolution for 3 years from the date the dispute is resolved.

(2) If the dispute is not resolved in accordance with paragraph (c)(1) of this section, the State must, within 150 days after the State receives the RAR and in accordance with State confidentiality laws—

(i) Provide the manufacturer with drug utilization data, such as zip code-level data, pharmacy-level data, sampling of pharmacy claims, or historical trends on those items in dispute; and

(ii) Submit to the manufacturer the same type of drug utilization data used by the manufacturer to identify disputed items.

(3) If State confidentiality laws prohibit the State from releasing the types of information in paragraph (c)(2) of this section, the State may require the manufacturer to provide the data upon which the manufacturer based the dispute to the State. Upon such request, the manufacturer must furnish such data to the State within 150 days after the State receives the RAR.

(4) Within 240 days after the State receives the RAR, the State and manufacturer must complete negotiations. One of the following actions must occur:

(i) The State ceases the dispute resolution process based on a cost-effectiveness determination in accordance with paragraph (k) of this section;

(ii) The State and the manufacturer settle on the State Medicaid drug utilization data and agree to make appropriate adjustments to any rebate amounts;

(iii) The State and the manufacturer agree to a resolution based on mutually acceptable data which is more representative of actual Medicaid utilization;

(iv) If no resolution is reached, the State must schedule a hearing in accordance with paragraph (d) of this section or the State may be subject to a compliance action by HCFA; or

(v) In lieu of a State hearing, the State and manufacturer may agree to arbitration or mediation to settle the dispute.

(5) The State must maintain documentation which clearly describes its decision to—

(i) Cease the dispute resolution based on cost-effectiveness as specified in paragraph (k) of this section; or

(ii) Agree with the manufacturer on a settlement as specified in paragraphs (c)(4)(ii) or (c)(4)(iii) of this section.

(d) *State hearing.*

(1) If no settlement has been reached between the State and the manufacturer within 240 days after the State receives the RAR, the State, must within 30 days, schedule a hearing. The hearing must be conducted within 1 year from the 240th day after the State receives the manufacturer's RAR.

(2) The manufacturer may require a State to schedule a hearing at any stage of the process if the State does not take the required actions of the dispute process within the specified timeframes. The State must, within 30 days, schedule a hearing.

(3) If the manufacturer does not comply with its timeframes specified in the agreement, the State may—

(i) At any stage of the process schedule a hearing which must be conducted within 1 year from the 240th day after the State received the manufacturer's RAR;

(ii) Follow the administrative law or judicial process for collecting rebate payments; and/or

(iii) Request HCFA, through the Regional Office, to terminate the manufacturer's national rebate agreement.

(e) *Use of arbitration or mediation.*

(1) In lieu of a State hearing, the State and the manufacturer may agree to arbitration or mediation to resolve the dispute.

(2) The State must maintain documentation which clearly describes the agreement with the manufacturer to resolve the dispute through arbitration or mediation rather than a State hearing.

(3) The State must maintain documentation for a period of 3 years from the date the dispute is resolved through arbitration or mediation.

(f) *Payment of rebate pending resolution of disputes.*

(1) The manufacturer must pay the State agency that portion of the rebate claimed which is not in dispute by the due date of the required rebate period rebate payment.

(2) The manufacturer may, at its option, make payment on the disputed portion of the data.

(g) *Interest on disputed amounts.*

(1) The manufacturer or the State agency must pay or credit the balance due, if any, plus a rate of interest as specified in section 1903(d)(5) of the Act by the due date of the first rebate period payment after resolution of the dispute.

(2) For disputed amounts withheld by the manufacturer and due the State, the interest is computed from the 38th day after the State mails its Medicaid drug utilization data and stops accruing on the later of the date the dispute is resolved, and the date the disputed amount is paid or credited to the proper party.

(3) For amounts paid by the manufacturer on the disputed the amount, interest must be paid by the State when resolution results in payment to the manufacturer. Interest must be paid for the period from the date of receipt of payment for the disputed data to the date the dispute is resolved and the disputed amount is paid or credited to the manufacturer.

(h) *Adjustment of rebate payment.* The State agency must adjust rebate payments if information indicates that Medicaid utilization data was greater or less than previously specified on the State's invoice for rebate payments.

(i) *Availability of FFP for rebates lost in a dispute.* FFP is available for otherwise properly dispensed drugs that involve disputed drug utilization data, and the Federal portion of the rebate is not required from the State, when—

(1) A dispute was terminated because the State determined and adequately documented that the dispute resolution process was not cost-effective as specified in paragraph (k) of this section; or

(2) Less than the full rebate resulted from a dispute resolution between a State and a manufacturer as specified in paragraph (c)(4)(ii) or (c)(4)(iii) of this section.

(j) *Rebate tolerances*—(1) *Administrative cost tolerance.* Generally, the State is not required to invoice manufacturers for rebates per labeler code which are less than the administrative cost tolerance of $50 associated with the preparation of the invoice.

(2) *Updates to administrative cost tolerance.* HCFA will update the administrative cost tolerance through Medicaid program instructions.

(k) *Cost-effectiveness tolerance for disputed amounts*—(1) *Cost-effectiveness tolerance.* Under paragraph (c)(4)(i) of this section, a State may cease the dispute resolution process based on the following cost-effectiveness tolerances:

(i) The disputed amount is less than $10,000 per labeler code; and

(ii) The disputed amount is less than $1,000 per product code.

(2) *Updates to cost-effectiveness tolerance.* HCFA will update the cost-effectiveness tolerances through Medicaid program instructions.

§ 447.538 Resolution of disputes relating to drug access and State systems.

(a) A manufacturer may request HCFA to initiate compliance action against a State if the State fails to comply with section 1927 of the Act. The manufacturer may also request HCFA to initiate compliance action when the State agency shows a pattern or history of inaccuracy in reporting Medicaid drug utilization data.

(b) Any compliance action initiated by HCFA will not relieve the manufacturer from its obligation of making the rebate payment as provided in § 447.546.

§ 447.540 Confidentiality of reported information.

(a) *State agency requirements.*

(1) Except as specified in paragraph (a)(2) of this section and notwithstanding other laws, including, but not limited to, the Freedom of Information Act (5 U.S.C. 552), the State agency and its contractors must not disclose any manufacturer-specific pricing data collected or reported in connection with a rebate agreement in any form that reveals the manufacturer or wholesaler of a drug or prices for the drugs that are charged by the manufacturer or wholesaler.

(2) The State agency and its contractors must provide to HCFA information that is necessary to carry out the provisions of section 1927 of the Act and to permit review under section 1927 of the Act by the Comptroller General and the Director of the Congressional Budget Office.

(3) A State agency may release its utilization data, excluding manufacturer-specific pricing data, to the extent such release of information is allowed under a State's confidentiality laws.

(b) *Manufacturer requirements.*

(1) A manufacturer or its contractors must not disclose information contained in the State's drug utilization reports.

(2) A manufacturer must observe State confidentiality laws and regulations.

§ 447.542 Penalties for failure to report or reporting false information.

(a) *Surveys and audits.*

(1) HHS surveys wholesalers, manufacturers, and direct sellers that distribute covered outpatient drugs, when necessary, to verify manufacturer prices reported to HCFA.

(2) HHS may audit a manufacturer's calculations of AMP and best price of covered outpatient drugs, as necessary, to verify reported data.

(b) *Imposition of penalties.*

(1) The Secretary may impose on any wholesaler, manufacturer, or direct seller of a covered outpatient drug that refuses a request for information about charges or prices in connection with a survey or knowingly provides false information a civil monetary penalty in an amount not to exceed $100,000 for each item.

(2) The Secretary may impose on a manufacturer who fails to provide the required information on AMP and best price or the list of covered outpatient drugs on a timely basis a civil money penalty of $10,000 for each day beyond the due date that the information is not provided.

(i) If the information is not reported within 90 days of the due date, HCFA may suspend the drug rebate agreement after the end of the 90-day period.

(ii) The suspension is for a period of at least 30 days and continues until the information is provided.

(3) The Secretary may impose on a manufacturer that knowingly provides false information an additional penalty not to exceed $100,000 for each item of false information. These civil money penalties are in addition to other penalties as may be prescribed by law.

(c) *Procedures for imposing penalties.* The imposition of a civil money penalty will be made in accordance with the provisions of sections 1128A and 1927(b)(3) of the Act.

§ 447.546 Payment of rebates.

(a) *Basic requirements.* In order for FFP to be available to a State for expenditures for covered outpatient drugs of a manufacturer, the manufacturer must agree to—

(1) Calculate a rebate payment using the formulas specified in paragraph (b) of this section and make a rebate payment to each State Medicaid agency for the manufacturer's covered outpatient drugs paid for by the State Medicaid agency during the rebate period;

(2) Make the rebate payments for each rebate period within 30 days after receiving from the State Medicaid drug utilization data on the total number of units of covered outpatient drugs, by NDC number, paid by the State under the plan during the rebate period, as

reported in accordance with § 447.530; and

(3) Continue to make rebate payments for all of its covered outpatient drugs for as long as an agreement is in force and drug utilization data reports are made and until—

(i) The entire supply of the drug under an NDC number has expired;

(ii) The drug has been taken off the market; or

(iii) For another reason, there no longer exists the potential that the drug may be paid for under the manufacturer's NDC number.

(b) *Formulas for rebates.*

(1) The basic rebate for single source drugs and innovator multiple source drugs is—

(i) For January 1, 1991, through December 31, 1991: The greater of 12.5 percent of the AMP or the AMP minus best price. (The rebate is capped at 25 percent of AMP.)

(ii) For January 1, 1992, through September 30, 1992: The greater of 12.5 percent of the AMP or the AMP minus best price. (The rebate is capped at 50 percent of AMP.)

(iii) For October 1, 1992, through December 31, 1993: The greater of 15.7 percent of the AMP or the AMP minus best price. (The rebate is capped at 50 percent of the AMP for the rebate period of October 1, 1992, through December 31, 1992.)

(iv) For January 1, 1994, through December 31, 1994: The greater of 15.4 percent of the AMP or the AMP minus best price.

(v) For January 1, 1995, through December 31, 1995: The greater of 15.2 percent of the AMP or the AMP minus best price.

(vi) For January 1, 1996, and thereafter: The greater of 15.1 percent of the AMP or the AMP minus best price.

(2) The additional rebate for single source and innovator multiple source drugs is for calendar years 1991 through 1993: On a drug-by-drug basis, the amount by which the increase in the AMP exceeds the increase in the Consumer Price Index-Urban (CPI-U) from October 1, 1990, to the month before the rebate period of the rebate.

(3) The rebate for noninnovator multiple source and other drugs is—

(i) For calendar years 1991 through 1993: 10 percent of the AMP.

(ii) For calendar years 1994 and thereafter: 11 percent of the AMP.

(c) *Late submittal of data.* The manufacturer is not required to pay a rebate if the State does not submit its rebate period utilization data to the manufacturer within 1 year after the rebate period ended.

§ 447.548 Computation of unit rebate amount.

(a) HCFA computes a per drug unit rebate amount on the basis of the formulas specified in § 447.546(b). The rebate amount will be based on unit pricing information supplied by the manufacturer in accordance with § 447.534.

(b) HCFA supplies the per drug unit rebate amount to each State on a rebate period basis. The State must compute the total rebate anticipated, based on its own utilization records, and send an invoice to the manufacturers for a total rebate amount due. However, the manufacturer remains responsible for correctly calculating the rebate amount based on State reported utilization data and its correct determination of AMP and, where applicable, base date AMP and best price, as defined in § 447.534.

§ 447.550 Denial of FFP.

(a) Except for those drugs described in § 447.518, FFP will be denied for payment of any dispensed covered outpatient drug of a manufacturer that does not have in effect and comply with:

(1) A drug rebate agreement, as specified in this subpart;

(2) A pharmaceutical pricing agreement with the Public Health Service, in accordance with section 340B of the Public Health Service Act, for all covered outpatient drugs purchased by a covered entity (as described in section 340B(a)(4) of the Public Health Service Act) on or after December 1, 1992; and

(3) A pharmaceutical pricing agreement with the DVA, in accordance with 38 U.S.C. 8126, for all single source drugs, innovator multiple source drugs, biologicals, and insulin, effective January 1, 1993.

(b) FFP is not available for payment for expenditures that exceed the upper payment limit for an innovator multiple source drug that is subject to the Federal upper limits in §§ 447.332(a) and 447.335 dispensed on or after July 1, 1991, if, under applicable State law, a less expensive noninnovator multiple source drug could have been dispensed.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Programs)

Dated: April 12, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 31, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–22860 Filed 9–18–95; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 92–235, DA 95–1967]

Examination of Exclusivity and Frequency Assignment Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 15, 1995, the Commission adopted a *Further Notice of Proposed Rule Making* which seeks to introduce market forces into the Private Land Mobile Radio (PLMR) bands. The *Further Notice of Proposed Rule Making* proposed three options to introduce market forces into these bands: exclusivity, user fees, and competitive bidding. The Commission sought comment on each of these options in order to assist in the development and implementation of an overall strategy on how to promote greater efficiency in these bands. This proposed rule extends the period of time in which commenters have to file comments and reply comments.

DATES: Comments are to be filed on or before October 16, 1995, and reply comments are to be filed on or before November 20, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Rubin of the Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

Order Extending Comment and Reply Comment Period

Adopted: September 12, 1995
Released: September 13, 1995

By the Chief, Private Wireless Division:

1. On September 1, 1995, the American Public Transit Association (APTA) requested that the time for filing comments in response to the *Further Notice of Proposed Rule Making* in the above-captioned proceeding released by the Commission on June 23, 1995,[1] be extended from September 15, 1995, to October 16, 1995. Likewise, on September 5, 1995, the Land Mobile Communications Council (LMCC) filed a Motion For Extension Of Time until November 20, 1995, to file comments. LMCC also requested that the time for filing reply comments be extended from October 16, 1995, to January 5, 1996.

2. APTA, which represents approximately 400 American public and private mass transit systems, states that it needs additional time to submit comments in order to afford its membership a chance to respond to the Commission's June 15, 1995, action. LMCC states that a deadline for filing comments on November 20th is warranted as that date is coterminous with the due date for the industry's report on its service consolidation efforts. LMCC emphasizes that service consolidation decisions must be made in tandem with those relating to channel exclusivity in order to respond adequately to the Commission's proposals.

3. The Commission does not routinely grant extensions of time. In this instance, however, it is desirable that the record be as complete as possible and that it include the views of as large a cross section of the private land mobile radio (PLMR) user community as possible. We believe an extension of thirty (30) days to be adequate to give the PLMR community sufficient time to respond to the above-captioned proceeding. We therefore extend the period of time for filing comments to and including October 16, 1995, and we extend the period for filing reply comments to and including November 20, 1995. The new reply comment date coincides with the due date for the industry's report on radio service consolidation.

4. Accordingly, it is hereby ordered that AMTA's request to extend the deadline for filing comments in this proceeding is granted and LMCC's Motion For Extension of Time is granted to the extent indicated herein and otherwise denied.

5. This action is taken pursuant to the authority provided in Section 1.46 of the Commission's Rules, 47 C.F.R. 1.46.

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division.

[FR Doc. 95–23170 Filed 9–18–95; 8:45 am]

BILLING CODE 6712–01–M

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[1] FCC 95–255, 60 Fed. Reg. 37148 (1995).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 85

RIN 1018–AC67

Clean Vessel Act Pumpout Symbol, Slogan and Program Crediting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides definitions for facilities open to the public and public versus private facilities, clarification on submitting proposals and points for education, and the requirements for a pumpout symbol, slogan and program crediting for the Clean Vessel Act of 1992 as authorized in 50 CFR Part 85. This rule provides a uniform symbol, slogan and crediting logo for the Clean Vessel Act Pumpout Grant Program.

DATES: Comments must be received November 20, 1995.

ADDRESSES: Comments may be mailed to the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, 1849 C Street, NW., (MS 140 ARLSZ), Washington, DC 20240, or delivered to Room 140, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Robert D. Pacific, (703) 358–1845.

SUPPLEMENTARY INFORMATION:

Background

Section 5604 of the Clean Vessel Act (Pub. L. 102–587, Title V, Subtitle F) authorizes the Director of the U.S. Fish and Wildlife Service to make grants to coastal States for constructing/renovating pumpout and portable toilet dump stations and for implementing associated education programs.

In response to a request from a State and the marine community, the definitions of facilities open to the public, and public versus private facilities have been added. The definition of public/private follows definitions developed earlier by the marine community for surveying marinas for pumpout and other information.

Two proposals are required by coastal States when submitting projects in coastal and inland portions of the State. Without this differentiation, adequate evaluation of proposals is not possible since points are different for the two zones.

Clarification on points for education was added so that States could receive points for education if they had an active, ongoing education program and did not need additional funds in a particular year. Otherwise, States would be forced to request funds to get points even if they did not need the funds.

In order to increase public awareness of the program, the marine community has recommended developing a pumpout symbol, slogan, and program crediting logo. This rule provides the requirements for that pumpout symbol, slogan, and crediting logo.

There has been an International Standards Organization international symbol since 1972. This symbol is depicted below.

BILLING CODE 4310–55–M

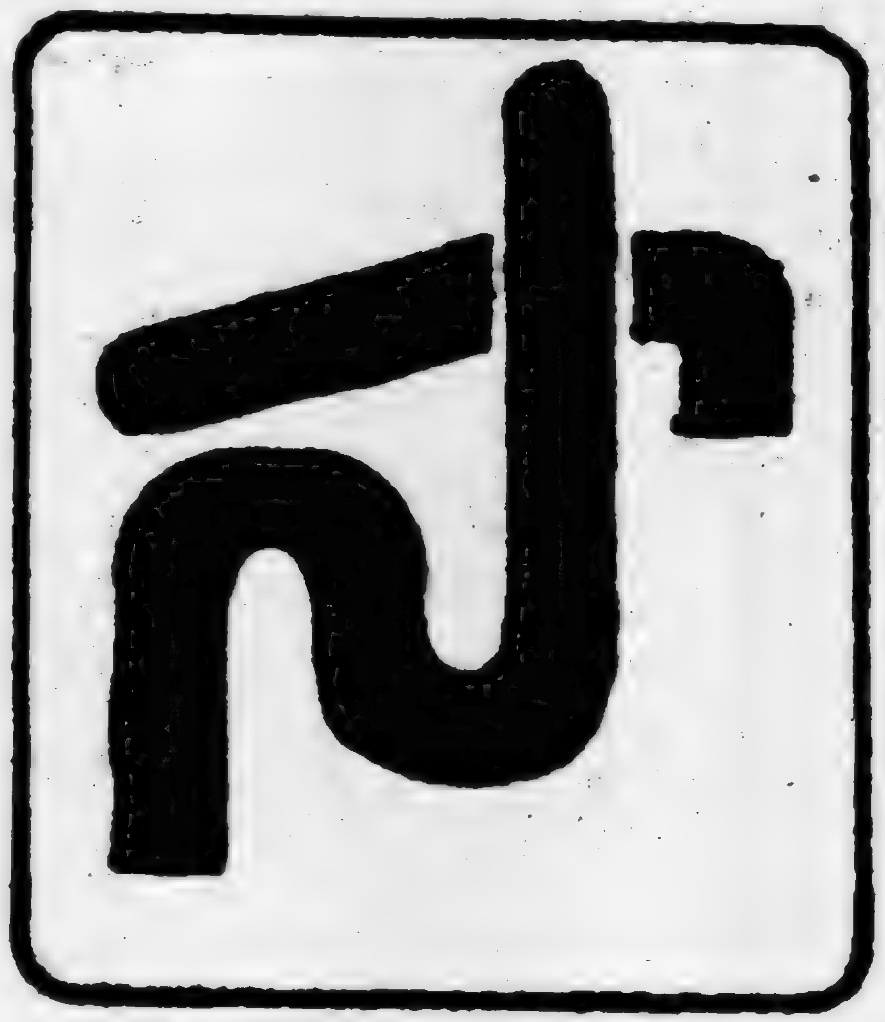

BILLING CODE 4310-55-C

There is also a symbol which appears on National Oceanic and Atmospheric Administration's National Ocean Service nautical charts. The letter "P" and the circle around the "P" are magenta-colored. This symbol is depicted below.

BILLING CODE 4310-55-M

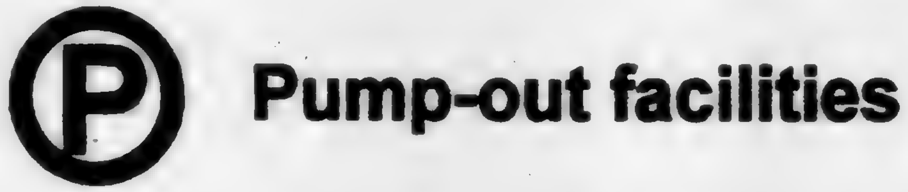

BILLING CODE 4310-55-C

The international symbol has been described by the marine community as not conveying a distinct meaning and is not understood by boaters. That symbol, therefore, has not been accepted by boaters and is not in general use in the United States. Likewise, the NOAA magenta "P" and circle on charts was not accepted as having a distinct message when presented to the marine community and has been deemed by Federal Highway Administration and marine community groups as possibly being in conflict with the symbol for "parking". Therefore, there is no nationally recognized pumpout symbol in general use to indicate to boaters traveling in different parts of the country where pumpout and portable toilet dump stations are located.

Likewise, there is no nationally recognized slogan. There are several State and private pumpout and portable toilet dump station symbols and slogans in use. Each one is different, so that the image and words are different from State to State. In order to have a successful campaign nationwide to get boaters to use pumpouts, a single, coordinated message and symbol is needed.

Therefore, a pumpout symbol and slogan have been developed to provide boaters with a single nationwide symbol of pumpout and portable toilet dump station locations, and to provide a consistent message about the program nationally in education materials produced by each State. Advertising the program with one widely-accepted symbol and slogan will decrease confusion, better advertise the program, result in greater use of pumpout and portable toilet dump stations, improve the aquatic environment, and thus contribute to improve economic and health conditions. The symbol and slogan contributes to environmental improvement goals of other Federal, State and local governmental agencies and has the support of boaters, the boating industry and the marine community.

Currently, § 80.26 of 50 CFR Part 80 contains a crediting logo, and § 85.47 of 50 CFR Part 85 contains suggested language to acknowledge that facilities were constructed with Clean Vessel Act funds. These sections were also reviewed and suggestions made for changes.

Developing a Pumpout Symbol

The Fish and Wildlife Service consulted with Federal and State agencies, and with organizations and individuals within the marine industry and boating community, in developing a pumpout symbol. A scoping meeting was held April 8, 1993 to obtain input on a pumpout symbol. States that presently have pumpout symbols were invited to attend, as well as others. Maryland and Virginia attended, as well as the following Federal agency representatives: National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. Coast Guard, and Federal Highway Administration. Representatives from States Organization of Boating Access, National Marine Manufacturers Association, American League of Anglers and Boaters, and the International Association of Fish and Wildlife Agencies also attended. Oregon and the National Association of State Boating Law Administrators did not attend, but provided comments, examples of their current symbols and/or suggested symbols.

A draft scoping document, encompassing the information in this notice, was sent to nearly 250 individuals and organizations for review and comment on July 8, 1994. Comments were received from three Fish and Wildlife Service Regions, Environmental Protection Agency Chesapeake Bay Program, Federal Highway Administration, U.S. Coast Guard (3 letters), Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement, Oregon State Marine Board, Maryland Department of Natural Resources Boating Administration, Florida Department of Environmental Protection, National Marine Manufacturers Association, Sealand Technology, Inc., Keco, Inc., and Neil Ross Consultants. A summary of their comments follow.

General: Letters were received from the U.S. Coast Guard, Massachusetts and Oregon, and Keco, Inc., supporting the development of a symbol. Florida expressed concern with publishing a final rule without publishing a draft. Response: The symbol is being developed, and will be published in draft.

Symbol criteria: Oregon agreed with the criteria. Florida and Neil Ross Consultants does not believe that Criterion 7, use of symbol on deck fitting caps, is necessary or important. Response: Criterion 7 was dropped.

Pumpout symbol: The suggested symbol had a white arrow with a blue background, similar to the arrow proposed in this rule, except without the holding tank or boat. Maryland and Neil Ross Consultants supported the symbol, while the Federal Highway Administration, EPA Chesapeake Bay Program, Florida, Oregon, Massachusetts, National Marine Manufacturers Association, Keco, Inc., and Sealand Technology felt it was too abstract, non-communicative, and could be confused with a directional arrow. Fourteen alternative symbols were suggested, ten of which included boats. EPA included a marine toilet, and Massachusetts suggested words only, such as "Pumpout". Response: The overwhelming comments were in favor of a symbol. Therefore, the use of words only was not selected. A boat and holding tank have been added to the symbol.

Sign color and shape: Coast Guard and Florida provided copies of Code of Federal Regulations with sign color and shape requirements on waterways which follow the U.S. Aids to Navigation System. Depending on purpose the sign could have a white background with orange border and orange or black symbol. Oregon and NMMA agreed with the blue and white colors as providing consistency with FHWA standards. Massachusetts stated the FHWA blue and white color scheme would not be visible on the water, and suggested a black symbol on an orange background. Maryland suggested using a red symbol with an orange background, which would not conflict with Coast Guard regulations. Florida suggested an orange border, white background, and black symbol and letters. FWS Atlanta Region, FHWA, Florida and NMMA suggested using reflectorized paint or illuminating the sign. Response: An international orange border with white background and black symbol and letters was selected. These colors follow the Coast Guard colors because of boater recognition and because they are easily visible on the water. Coast Guard colors were selected over FHWA colors because signs will be located on the water rather than on highways. Reflectorized paint or film, or sign illumination is suggested.

Qualifying signs: FHWA, Massachusetts, and NMMA recommended educational plaques to explain the symbol until boaters learn its meaning. Oregon and Keco, Inc. do not support additional signs due to cost and over-signage. Response: The rule provides for both options.

Slogan: Maryland suggested its slogan "Pump Don't Dump", and Oregon and NMMA supports that slogan. Massachusetts and Neil Ross Consultants believe the Maryland slogan is not adequate. Keco, Inc. has indicated the slogan "PUMP IT DON'T DUMP IT" is trademarked by them and no similar slogan should be used. Fifty-two alternative slogans were suggested. Response: The 52 alternatives were reduced to 17, and boaters at four focus group meetings identified the most acceptible slogans. The top four were then reviewed by the FWS, USCG, EPA, and NOAA and one of the four, "KEEP OUR WATER CLEAN—USE PUMPOUTS", was selected.

Crediting logo: FHWA suggested placing the crediting logo away from the symbol so it would not interfere with the pumpout message. Florida suggested the symbol and crediting logo should be strongly correlated. Florida and Oregon suggested crediting language. NMMA supports a crediting logo. Response: A crediting logo is identified in the rule along with crediting language, with instructions on when and where to use the logo and language.

Numerous consultations and scoping meetings were held with Federal, State and marine community staffs, groups and individuals throughout this period. Focus group meetings were held in Miami, FL, Minneapolis, MN, Seattle, WA, and Annapolis, MD, between June 14 and 28, to obtain inputs on a symbol, slogan, and boater attitudes toward pumping out their sewage. Each group was shown the suggested symbol and results show that "the symbol, as tested, is appropriate and easily understood. Boaters volunteered that this symbol can become the 'universal' visual for pumpout stations."

Consultation occurred with the International Standards Organization, American National Standards Institute, American Boat and Yacht Council, Society of Automotive Engineers, American Institute of Graphic Arts, British Standards Institution, and Permanent International Association of Navigation Congresses. Input was obtained on several pumpout symbol designs at the following meetings: seven EPA-sponsored Regional Workshops in 1994, through a grant with The International Marina Institute; at the University of Wisconsin-Madison Docks and Marina National Conference; and, at several marine community conferences, workshops and meetings.

The following current symbols were reviewed: ISO international pumpout symbol, NOAA National Ocean Service

Nautical Chart magenta "P" and circle. Maryland, North Carolina and Keco, Inc. (Pumpout symbols), and Virginia (Pumpout and portable toilet dump station symbols).

The following documents were reviewed: (1) Symbol Signs, The System of Passenger/Pedestrian Oriented Symbols, Developed for the U.S. Dept. of Transportation (DOT), The American Institute of Graphic Arts, 1981; (2) Surface Vehicle Recommended Practice, SAE International, Graphic Symbols for Boats, SAE J1449, Society of Automotive Engineers, Inc., February 1987; (3) British Standard Marine Series: Specification for Shipbuilding—Yachts—Waste water fittings, BS MA 84:1978, ISO 4567–1978, UDC [629.125.12 + 629.125.22] : 628.2, British Standards Institution, London, England; (4) American National Standard Graphic Symbols for Plumbing Fixtures, American National Standards Institute Y32.4–1977; (5) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), U.S. DOT, FHWA, 1988; (6) Standard Highway Signs as Specified in the MUTCD, DOT, FHWA; (7) Standard Alphabets for Highway Signs, DOT, FHWA, Reprinted 4/84.

Over 50 alternative symbols were reviewed by the Service. These symbols were developed by and were reviewed by members of the marine community, and State and Federal agencies. These symbols ranged from very complex, with depictions of water, boats, toilets, docks, pumpout stations, arrows and messages, to very simple, with an arrow and messages.

In addition to a pumpout symbol, three different portable toilet dump station symbols, and three combination pumpout/portable toilet dump station symbols were suggested. Some were completely separate portable toilet dump station or combination symbols, and some were pumpout symbols adapted to portable toilet dump station or combination symbols.

Criteria Used To Develop the Symbol

The following criteria were developed to select the pumpout symbol after discussions with individuals involved in the marine community and State and Federal agencies, and review of the documents identified in this rule: (1) How well the symbol represents the message (It should be kept in mind that many symbols must be learned before there is adequate recognition of the symbol. Constant repetition of the symbol is more important than the style of drawing or appropriateness of concept). (2) The ease with which people learn the symbol (The simpler the symbol, the easier to learn). (3) How well the symbol relates to national standards. (4) How well the symbol is reproducible on letters, etc. (5) How visible the sign is to viewers (The simpler the symbol, the easier to recognize it at greater distances and under all light and background conditions). (6) How easy to reproduce, reduce and enlarge the symbol (The symbol must be legible when reduced significantly).

The Proposed Pumpout Symbol

The current international symbol was rejected by nearly all who commented as not being understood by boaters and not communicating a distinct meaning. The NOAA NOS nautical magenta "P" and circle, although it may be suitable on the NOAA nautical charts, also does not convey the pumpout message adequately on signs and may be in conflict with other symbols such as parking signs, according to comments made by people in the marine community. The current symbols used by States, and the suggested complex symbols, did not fully comply with the criteria. A suggestion was made to develop separate symbols for pumpout and portable toilet dump stations. Comments on this suggestion favored one single symbol which would encompass both pumpout and portable toilet dump stations to decrease confusion and costs.

The proposed symbol encompasses the one feature that invariably appeared in the 50 symbols: the "arrow", as well as the "holding tank" and "boat". The proposed symbol, therefore, represents the core of current and suggested symbols. The symbol is simple and should be easy to learn. The symbol follows U.S. Coast Guard format and color standards for signs on waterways (Symbol is black, border is international orange, and background is white). The symbol is easily reproducible on charts, etc., and should be easily recognizable to viewers at a great distance. The symbol is easily reduced or enlarged without losing legibility.

Developing a Pumpout Slogan

In addition to the pumpout symbol, the Service is proposing a slogan. Some States currently have a slogan, however, no slogan exists which would provide a national level focus for the program. The July 8, 1994, scoping document resulted in 52 suggested slogans. This number was reduced to 17 and presented to boaters at the focus group meetings held June 14 through 28, 1995, around the country. The proposed slogan, "KEEP OUR WATER CLEAN—USE PUMPOUTS", was then selected by the cooperating Federal agencies (FWS, NOAA, EPA and USCG), based on the top four slogans recommended by the boaters. "Boaters prefer a short, straight-forward slogan" as identified during the focus group meetings.

Developing a Program Crediting Logo

In addition to the crediting logo for the Federal Aid in Sport Fish Restoration Act in § 80.26 of 50 CFR Part 80. § 85.47 of 50 CFR Part 85 contains examples of suggested language for crediting the Clean Vessel Act. Inputs were received from the July 8, 1994, scoping document request, and subsequently from States and Fish and Wildlife Service Regions. Suggested language was selected based on these comments.

Public Comment

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the location identified in the Address section. Comments must be received on or before November 20, 1995.

Environmental Effects

Because this rule is an administrative action, the effects on the physical biological and sociological environment are too broad, speculative, and conjectural to be analyzed meaningfully. Therefore, the action is categorically excluded from any National Environmental Policy Act documentation pursuant to 516 DM 2.3 A (2). However, installation of symbol signs will be reviewed as part of the construction or renovation of pumpout and portable toilet dump stations which will require separate environmental consideration.

Information Collection Requirements

This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Statement of Effects

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The program does not have significant "taking" implications, as described in Executive Order 12630. The rule allows eligible States to make decisions regarding the use of the pumpout symbol, slogan and crediting logo. This rule does not

contain any federalism impacts as described in Executive Order 12612 on Federalism. This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*) The effects of these rules occur to agencies in the States, Puerto Rico, Guam, the Virgin Islands, American Samoa, the District of Columbia and the Northern Mariana Islands. These are not small entities under the Regulatory Flexibility Act.

Intergovernmental Review of Federal Programs

This Clean Vessel Act Grant Program is covered under Executive Order 12372 "Intergovernmental Review of Federal Programs" and 43 CFR Part 9 "Intergovernmental Review of Department of the Interior Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Author

The primary author of this rule is Robert D. Pacific, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 85

Coastal zone, Grant programs—Natural resources, Reporting and recordkeeping requirements, Sewage disposal, and Vessels.

Regulation Promulgation

For the reasons set out in the preamble, Subchapter F of Chapter I, Title 50, Part 85 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 85—CLEAN VESSEL ACT GRANT PROGRAM

1. The authority citation continues to read as follows:

Authority: Public Law 102–587, Title V, Subtitle F.

Subpart A—General

2. Section 85.11 is amended by removing the paragraph designations and adding the following definitions, in alphabetical order, to read as follows:

§ 85.11 Definitions.

* * * * *

Equitable fees. Fees should be equal for all pumpout users at a marina, for that facility to be open and available to the public. However, members and customers may prepay for pumpouts within a fee structure, so that a separate fee for pumpouts would not be needed for those members and customers.

Facility open to the public. A Clean Vessel Act facility that is open and available to the public is one in which the public has full and reasonable access to the pumpout/dump station at that public or private facility for pumping out, including provisions of signage visible from the water to direct boaters to pumpout/dump stations, location of pumpouts to facilitate ease of use by all boats typical to that particular marina, equitable fees, and reasonable open periods.

Private Facilities. Private facilities include those operated by the following:

(1) For profit or non-profit private marinas, docks etc.,

(2) For profit or non-profit concessionaires, whether they are leased or private facilities, on public lands, and

(3) Yacht or boating clubs, whether they are open to the public or members-only facilities.

Public facilities. Public facilities include municipal, port authority, State and Federal marinas, docks, etc., operated by those agencies.

Reasonable open periods. While no specific hours, days and seasons are specified, some suggested examples, provided no other factors are involved, are presented:

(1) Pumpout/dump stations may be open during the same period the fuel docks are normally open.

(2) Pumpout stations may be open when the marina is open and staff is present to pump out boats.

(3) Pumpout/dump stations may be open during the hours considered to be normal marina business hours as adjusted by seasonal differences, and may be closed entirely during cold winter months.

* * * * *

Subpart B—Application for Grants

3. Section 85.21 is amended by adding a second sentence to the introductory text of paragraph (a) to read as follows:

§ 85.21 Application procedures.

(a) * * * If coastal States submit proposals for both the coastal zone and the inland portion of their States, two separate proposals must be submitted.

* * * * *

Subpart C—Grant Selection

4. Section 85.30(f) is revised to read as follows:

§ 85.30 Grant selection criteria.

* * * * *

(f) Proposals that include an education/information component, or the State has an active, ongoing education program;

* * * * *

Subpart D—Conditions on Use/Acceptance of Funds

5. Section 85.43 is revised to read as follows:

§ 85.43 Signs and symbols.

(a) *Signs.* Appropriate information signs should be installed at pumpout and portable toilet dump stations. Such information should indicate fees, restrictions, hours of operation, operating instructions, and a contact name and telephone number if the facility is inoperable.

(b) *Pumpout symbol.* (1) A pumpout symbol should be used according to Service specifications at the appropriate times to increase public awareness of the Clean Vessel Act Pumpout Grant Program. The symbol is meant to be used

(i) As a sign at the entrance to a marina advertising the presence of a pumpout and/or portable toilet dump station.

(ii) As a directional sign within a marina.

(iii) As a sign at a pumpout and/or portable toilet dump station.

(iv) As a symbol on education and informational material, and

(v) For other uses as appropriate to advance the purposes of the Clean Vessel Act

(2) To avoid confusion with having two symbols, the selected symbol is to be used both for pumpout stations and portable dump stations. This pumpout symbol is not copyrighted, and its appropriate use is encouraged. The NOAA NOS magenta "P" within a magenta circle will continue to be used on nautical charts to identify the location of pumpout and portable toilet dump stations. NOAA will include information about the selected pumpout symbol in the U.S. Coast Pilots, a supplement to the charts, to relate this symbol to the NOAA Nautical Chart magenta "P" and circle.

(3) All recipients identified in § 85.11 should display the appropriate pumpout symbol on facilities, such as pumpout and portable toilet dump stations, or on printed material or other visual representations relating to project accomplishments or education/information, and should encourage others to do so. Subrecipients should also display the symbol and should encourage use by others for purposes as stated in this paragraph.

(4) Other persons or organizations are encouraged to use the symbol to

advance the purposes of the Clean Vessel Act program, such as marinas with pumpout stations not constructed with Clean Vessels Act funds.

(5) The following specifications shall apply: The symbol is black, the background is white, and the border is international orange. There is no standard for the black and white, but use black and white colors, not shades. The standards for the international orange color is as follows: For day boards (signs), use retroflective international orange film. For paint, use international orange conforming to FED–STD 595B, chip number 12197 in daylight conditions. For inks us Pantone Matching System color chart 179C. The symbol sign should use reflectorized film or paint, or should be illuminated so it is viewable at night. Currently, the symbol shown is a rough mockup. When the symbol is finalized, the symbol will be developed on a grid and technical specifications will be completed for constructing signs and for other purposes.

(6) The following rules govern the graphic reproduction of the symbols:

(i) The symbol should not be used smaller than is legible.

(ii) The size and position relationship of the symbol should not be changed in any way.

(iii) No portion of the symbol should be obscured by overprinting.

(iv) The symbol should not be placed where it will be split by unlike backgrounds.

(v) The symbol should not be placed on a background that is highly textured or patterned.

(7) The pumpout symbol is depicted as follows:

BILLING CODE 4310-55-M

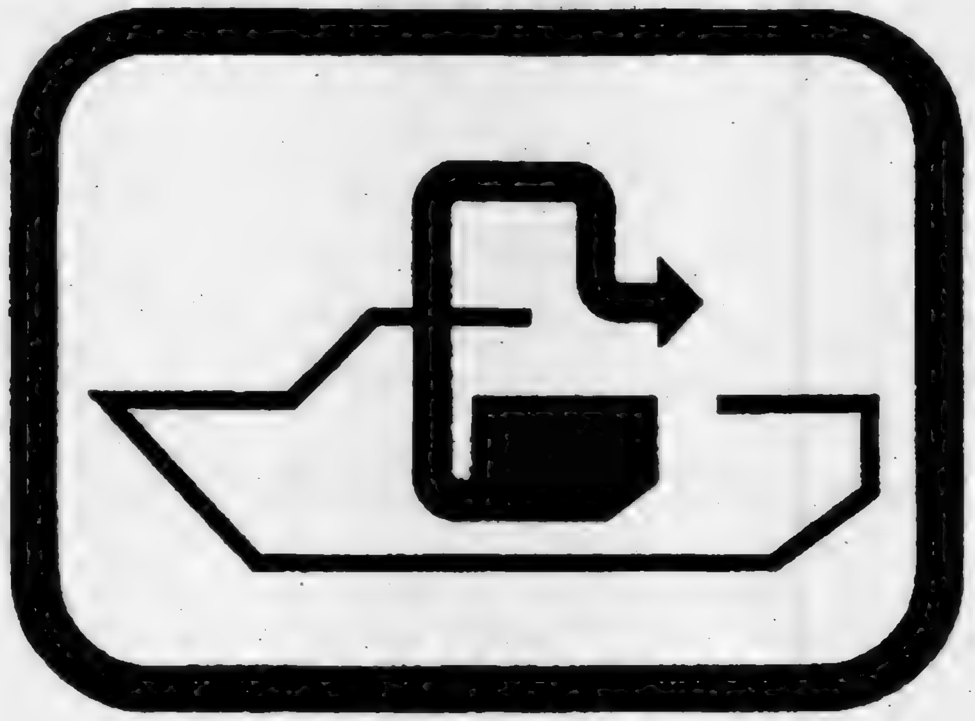

BILLING CODE 4310-55-C

(c) *Qualifying signs.* (1) In conjunction with the symbol, other qualifying signs may be used below the symbol, either on the same sign or on a separate sign.

(i) The message "Ⓟ PUMP OUT", "Ⓟ PUMPOUT STATION", "Ⓟ PORTABLE" appropriate qualifier, may be placed beneath the symbol. The magenta-colored "P" and circle should be placed in front of the message to relate the pumpout symbol to the NOAA NOS nautical charts. Messages may be appropriate for several years until the symbol is understood without the message.

(ii) Directional arrows may be placed beneath the symbol to indicate the direction of pumpout or portable toilet dump station facilities.

(2) The following specifications shall apply: Symbols, such as directional arrows, and letters, are black, and the background is white. For using inks to create the magenta color, use PMS color chart 259U. Letters and black and white colors shall follow the Federal Highway Administration's Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). FHWA, 1988. The 1988 MUTCD, including Revision No. 3 dated September 3, 1993, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and has Stock No. 050–001–00308–2.

(3) The same rules governing the graphic reproduction of the pumpout symbol shall apply to qualifying signs.

(d) *Pumpout slogan.* (1) A pumpout slogan should be used according to Service specifications to help increase awareness of the Clean Vessel Act Pumpout Grant Program. The slogan is meant to be used in conjunction with the pumpout symbol, on educational/informational material, and for other uses as appropriate to advance the purposes of the Clean Vessel Act. The slogan is not copyrighted, and its appropriate use is encouraged.

(2) All recipients identified in § 85.11 should display the pumpout slogan on facilities, such as pumpout and portable toilet dump stations as appropriate, and on printed material or other visual representations relating to project accomplishments or education/information, and should encourage others to do so. Subrecipients should display the slogan for purposes as stated in this paragraph and should encourage others to do so.

(3) Other persons or organizations are encouraged to use the slogan to advance the purposes of the Clean Vessel Act program, such as marinas with pumpout stations not constructed with Clean Vessel Act funds.

(4) The following specifications shall apply for signs: Letters are black and background is white. The same reference for paragraph (c)(2) of this section shall apply.

(5) The same rules governing the graphic reproduction of the pumpout symbol shall apply to the pumpout slogan.

(6) The pumpout slogan is depicted as follows:

KEEP OUR WATER CLEAN—USE PUMPOUTS

6. Section 85.47 is revised to read as follows:

§ 85.47 Program crediting.

(a) *Crediting logo.* Signs should acknowledge that the facility was constructed or improved with funds from the Sport Fish Restoration Account. The crediting logo identified in § 80.26 of this chapter is prescribed to identify projects funded by the Clean Vessel Act and to identify items on which taxes and duties have been collected to support the Act. That logo is depicted as follows:

BILLING CODE 4310-55-M

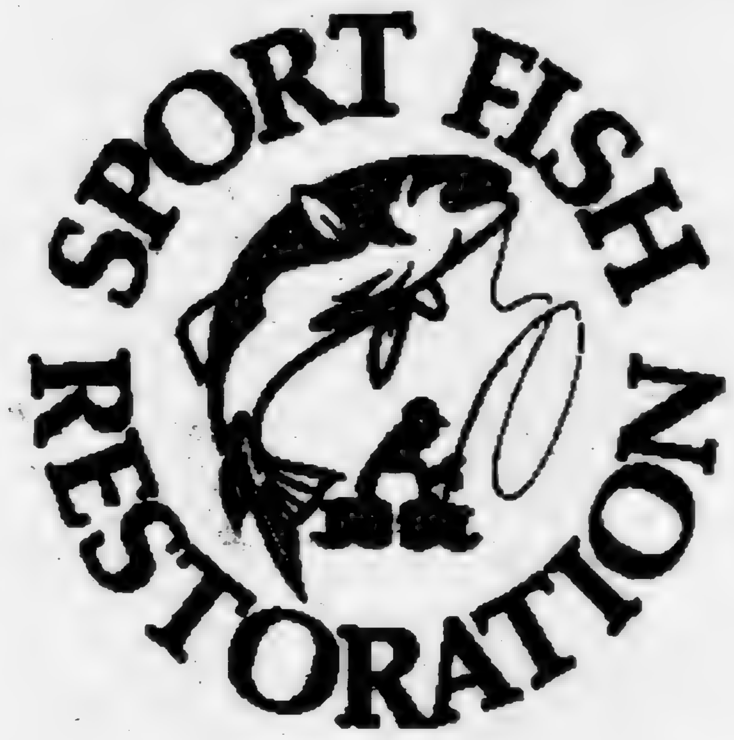

BILLING CODE 4310-55-C

(b) *Recipient logo display.* All recipients identified in § 85.11 are authorized, according to § 80.26 of this chapter, to display the appropriate logo on facilities, such as pumpout and portable toilet dump stations, acquired, developed, operated or maintained by these grants, or on printed material or other visual representations relating to project accomplishments or education/information. Recipients may require sub-recipients to display the logo.

(c) *Other display of logo.* Other persons or organizations may use the logo for purposes related to the Federal Aid Clean Vessel Act program as authorized in § 80.26 of this chapter.

(d) *Crediting language.* Following are suggested examples of language to use when crediting the Clean Vessel Act:

(1) Example 1: This pumpout facility was funded under the Sport Fish Restoration Program by your purchase of fishing equipment and motorboat fuels.

(2) This facility is being constructed under the Sport Fish Restoration Program by your purchase of fishing equipment and motorboat fuels.

(3) This pamphlet was funded under the Sport Fish Restoration Program by your purchase of fishing equipment and motorboat fuels.

Dated: August 3, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–23144 Filed 9–18–95; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[I.D. 091295B]

Shrimp Fishery of the Gulf of Mexico; Amendment 8

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 8 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) for review by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before November 13, 1995.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 8, which includes an environmental assessment and a regulatory impact review, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609-2486, FAX: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), requires that a council-prepared amendment to a fishery management plan be submitted to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving an amendment, immediately publish a notice that the amendment is available for public review and comment.

Amendment 8 proposes to establish a framework rulemaking procedure for establishing or modifying the maximum sustainable yield (MSY), optimum yield (OY), and total allowable catch (TAC) for royal red shrimp harvested from the exclusive economic zone of the Gulf of Mexico. That procedure would authorize the Council to recommend, and NMFS to approve and implement, TAC for royal red shrimp no higher than MSY plus 30 percent for a test period of up to 2 consecutive years. This action will allow for testing the response of the resource to a controlled increase in fishing effort and to obtain additional management data on the royal red shrimp resource for refining estimates of MSY and OY.

Proposed regulations to implement Amendment 8 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 13, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management. National Marine Fisheries Service.

[FR Doc. 95–23149 Filed 9–14–95; 12:25 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 181
Tuesday, September 19, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Historical Reservation Advisory Council Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Wednesday, September 27, 1995. The meeting will be held in Room M09 at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C., beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Task Force Report on Council's Future
III. Status Report on Appropriations for FY 1996
IV. Report on Council's Regulations
V. Section 106 Cases
VI. Executive Director's Report
VII. New Business
VIII. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC., 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: September 14, 1995.

Robert D. Bush,

Executive Director.

[FR Doc. 95–23200 Filed 9–18–95; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, October 19, 1995. The meeting will be at the Monarch Hotel and Conference Center, 12566 SE 93rd Avenue; Clackamas, Oregon; phone (503) 652–1515; located in the Clackamas Town Center. The meeting is scheduled to begin at 9:00 a.m. and conclude at approximately 4:00 p.m. Topics scheduled on the agenda include: (1) FY 1995 Status Report of Northwest Forest Plan Implementation in the Willamette Province, (2) NW Forest Plan Standards and Guidelines—Riparian Reserves Practices and Adjustments. (3) Recession Bill Timber Provisions and Linkages to the NW Forest Plan, (4) Watershed Restoration—Examples of Private/Public Initiatives and PAC Role.

The meeting is open to the public and opportunity will be available to address the Advisory Committee during a public forum. The public forum will follow the agenda topics mentioned above and will occur in the afternoon. Time allotted for individual presentations to the committee will be limited to 3–5 minutes each. Written comments are encouraged and can be submitted prior to the meeting.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, such as a detailed agenda, contact Neal Forrester, Designated Federal Official; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon; 503–465–6924.

Dated: September 12, 1995.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 95–23196 Filed 9–18–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Shipper's Export Declaration Form.

Form Number(s): Form 7525–V–Alternate (Intermodal).

Agency Approval Number: 0607–0152.

Type of Request: Extension of a currently approved collection.

Burden: 473,445 hours.

Number of Respondents: 2,544,037.

Avg Hours Per Response: 11 minutes.

Needs and Uses: Shipper's Export Declarations (SED's) are required from exporters for all shipments valued over $2500 from the United States, Puerto Rico, and the U.S. Virgin Islands to all foreign countries except Canada; between the United States and Puerto Rico; and from the United States or Puerto Rico to the U.S. Virgin Islands. Information on the cargo, its origin and destination, and method and date of export are requested. Customs officials gather the SED forms from export carriers and transmit them to the Census Bureau. The Census Bureau designed Form 7525–V–Alternate primarily for waterborne shipments to simplify documentation. SED's are the basic source of the official U.S. export statistics compiled by the Census Bureau. These statistics provide data for the merchandise trade balance, a major economic indicator and component of the gross domestic product.

Affected Public: Business or other for-profit; Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald TacheAE1, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 12, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95-23228 Filed 9-18-95; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Shipper's Export Declaration.

Form Number(s): Form 7525–V.

Agency Approval Number: 0607–0018.

Type of Request: Extension of a currently approved collection.

Burden: 627,590 hours.

Number of Respondents: 3,372,394.

Avg Hours Per Response: 11 minutes.

Needs and Uses: Shipper's Export Declarations (SED's) are required from exporters for all shipments valued over $2500 from the United States, Puerto Rico, and the U.S. Virgin Islands to all foreign countries except Canada; between the United States and Puerto Rico; and from the United States or Puerto Rico to the U.S. Virgin Islands. Information on the cargo, its origin and destination, and method and date of export are requested. Customs officials gather the SED forms from export carriers and transmit them to the Census Bureau. The vertical SED, Form 7525–V is the standard form used to collect these data. SED's are the basic source of the official U.S. export statistics compiled by the Census Bureau. These statistics provide data for the merchandise trade balance, a major economic indicator and component of the gross domestic product.

Affected Public: Business or other for–profit, Individuals or households, Not–for–profit institutions, Farms, Federal Government, State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 12, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–23227 Filed 9–18–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Shipper's Export Declaration.

Form Number(s): Form 7513.

Agency Approval Number: 0607–0001.

Type of Request: Extension of a currently approved collection.

Burden: 26,165 hours.

Number of Respondents: 140,626.

Avg Hours Per Response: 11 minutes.

Needs and Uses: Shipper's Export Declarations (SED's) are required from exporters for all shipments valued over $2500 from the United States, Puerto Rico, and the U.S. Virgin Islands to all foreign countries except Canada; between the United States and Puerto Rico; and from the United States or Puerto Rico to the U.S. Virgin Islands. Information on the cargo, its origin and destination, and method and date of export are requested. Customs officials gather the SED forms from export carriers and transmit them to the Census Bureau. Carriers must file Form 7513 for merchandise shipped in bond by vessel through the United States enroute from one foreign country to another without having been entered as an import (in-transit goods). SED's are the basic source of the official U.S. export statistics compiled by the Census Bureau. These statistics provide data for the merchandise trade balance, a major economic indicator and component of the gross domestic product.

Affected Public: Business or other for–profit, Individuals or households, Not–for–profit institutions, Farms, Federal Government, State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 12, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–23226 Filed 9–18–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Export of Parcels Through the Postal Service.

Agency Form Numbers: None.

OMB Approval Number: None.

Type of Request: Existing collection in use without an OMB control number.

Burden: 11,110 hours.

Number of Respondents: 8,000,000.

Avg Hours Per Response: A few seconds.

Needs and Uses: The Export Administration Regulations require that persons exporting through the U.S. Postal Service place on the parcel the authorization for the export — i.e., the validated license number or the general license symbol. This information is the declaration to the government that the shipment is allowed.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration.

Title: Destination Control Statement.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: Existing collection in use without an OMB control number.

Burden: 1,700 hours.

Number of Respondents: 612,000.

Avg Hours Per Response: 5 seconds.

Needs and Uses: The Destination Control Statement serves as notice to all foreign parties in an export transaction that further shipment to any country not authorized is prohibited. In any Office of Export Enforcement proceeding, evidence of the sending of the commercial invoice, bill of lading or other form of notice of the prohibition against diversion will serve as proof of the person's receipt of the notice.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration.

Title: Export License Information on Bill of Lading.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: Existing collection in use without an OMB control number.

Burden: 4,600 hours.

Number of Respondents: 3,500,000.

Avg Hours Per Response: Several seconds.

Needs and Uses: The Export Administration Regulations requires that all forwarders or brokers who are exempt from filing an individual Shipper's Export Declaration to include on shipping documentation the general license symbol or validated license number. This information furnishes official representation to customs officials that the export is permitted.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Five Year Record Retention Period.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Recordkeeping Requirement.

Burden: 259 hours.

Number of Respondents: 154,816.

Avg Hours Per Response: 10 seconds per record.

Needs and Uses: BXA is proposing that its record retention requirements for records pertaining to exports and foreign boycotts be increased to five years. This change when implemented will correspond with the five year statute of limitations for criminal actions brought under the Export Administration Act. Most firms now have electronic systems for recordkeeping and thus the burden per response is minimal. This request will supplement documents already approved for a five year retention period — namely supporting documentation that was previously submitted to BXA at the time of making application for a license.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Delivery Verification Procedure.

Agency Form Number: BXA–647P.

OMB Approval Number: 0694–0016.

Type of Request: Extension of a currently approved collection.

Burden: 57 hours.

Number of Respondents: 200.

Avg Hours Per Responses: Approximately 15 minutes and recordkeeping.

Needs and Uses: In order to increase the effectiveness of export controls on international trade in strategic commodities, certain countries participate in the import certificate – delivery verification procedure. Its purpose is to make sure that strategic items are not diverted. When a U.S. importer is requested to furnish their foreign supplier with a certificate, the importer must supply certain information to BXA so that the documentation can be issued.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Short Supply Regulations – Petroleum Products.

Agency Form Number: None.

OMB Approval Number: 0694–0026.

Type of Request: Revision of a currently approved collection.

Burden: 43 hours.

Number of Respondents: 165.

Avg Hours Per Response: 15 minutes required for general license shipments and 30 minutes for documentation supporting an export license.

Needs and Uses: The Naval Petroleum Reserves Production Act of 1976 restricts the export of any petroleum product produced from crude oil derived from National Petroleum Reserves. Under very limited circumstances, petroleum products can be exported if a validated license is obtained. For other shipments under a general license, support documentation is required to prove that the petroleum being exported in not from the Naval Reserves.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Statement by Foreign Consignee in Support of Special License Application.

Agency Form Number: BXA–6052P (BXA–752 under new regulations).

OMB Approval Number: 0694–0050.

Type of Request: Extension of a currently approved collection.

Burden: 173 hours.

Number of Respondents: 323.

Avg Hours Per Response: 30 minutes.

Needs and Uses: This form is used as supporting document for three of BXA's special licenses: Project, Distribution and Service Supply Licenses. The completed form provides BXA with end–use and reexport information to aid in controlling commodities shipped under special license procedures.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Procedures for Supporting Documentation.

Agency Form Number: None.

OMB Approval Number: 0694–0064.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 313 hours.

Number of Respondents: 3,558.

Avg Hours Per Response: Varies between 1 and 30 minutes depending on the requirement.

Needs and Uses: The Export Administration Act requires exporters to maintain certain supporting documentation in their files in support of license applications. This clearance also covers the procedures for returning an unused or partially used import certification, as well as what must be done when a change in representation occurs.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Multi–Purpose Application.

Agency Form Number: BXA–622P, BXA–685P, BXA–699P, BXA–748P.

OMB Approval Number: 0694–0088.

Burden: 13,631 hours.

Number of Respondents: 14,910.

Avg Hours Per Response: Varies between 2 and 45 minutes depending on the requirement.

Needs and Uses: This collection is required in compliance with U.S. export regulations. The information furnished by U.S. exporters provides the basis for decisions to grant licenses for export, reexport, and classifications of commodities, goods and technologies that are controlled for reasons of national security and foreign policy. This revision is necessary to comply with the Paperwork Reduction Act of 1995, which now recognizes and includes the burden associated with third party disclosures, certifications and notification requirements imposed on the public.

Affected Public: Businesses and other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 12, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–23225 Filed 9–18–95; 8:45 am]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

[Docket 52–95]

Foreign-Trade Zone 12—McAllen, Texas, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the McAllen Economic Development Corporation, grantee of Foreign-Trade Zone 12, McAllen, Texas, requesting authority to expand its zone to include an additional site in the McAllen, Texas, area, within the Hidalgo Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 11, 1995.

FTZ 12 was approved on October 23, 1970 (Board Order 84, 35 FR 16962, 11/3/70) and expanded on May 2, 1984 (Board Order 254, 49 FR 22842, 6/1/84) and June 19, 1990 (Board Order 469, 55 FR 26225, 6/27/90). The zone currently consists of: Site 1 (80 acres)—within the McAllen Southwest Industrial Area, FM 1016 and Ware Road, Hidalgo County, and, Site 2 (8.5 acres)—at the Air Cargo Facility within McAllen Miller International Airport complex, McAllen, Texas.

The applicant is now requesting authority to expand Site 1 to include an adjacent 695-acre industrial park area located on FM 1016 between Bentsen Road and Shary Road, Hidalgo County, 5 miles south of the McAllen Miller International Airport.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 20, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 4, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Administration Building, International Bridge, Hidalgo, Texas 78557

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: September 13, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–23221 Filed 9–18–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–401–805]

Certain Cut-to-Length Carbon Steel Plate From Sweden: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by a respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on *Certain Cut-to Length Carbon Steel Plate from Sweden* (A–401–805). This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR) February 4, 1993, through July 31, 1994.

We have preliminarily determined that sales to the United States have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patience or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 9, 1993, the Department published in the **Federal Register** (58 FR 37213) the final affirmative antidumping duty determination on Certain Cut-to-Length Carbon Steel Plate from Sweden, and published an antidumping duty order on August 19, 1993 (58 FR 44168). On August 3, 1994, the Department published the notice of "Opportunity to Request an Administrative Review" of this order for the period February 4, 1993, through July 31, 1994 (59 FR 39543). The Department received a request for an administrative review from Svenskt Stal AB (SSAB). On September 8, 1994 (59 FR 46391), we initiated the administrative review of SSAB.

The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). This review covers sales of certain cut-to-length carbon steel plate from Sweden. The POR is February 4, 1993 through July 31, 1994.

Scope of the Review

The products covered by this administrative review constitute one "class or kind" of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000,7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 776(b) of the Tariff Act, we verified information provided by the respondent by using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

United States Price

All of SSAB's U.S. sales were based on the packed price to the first unrelated purchaser in the United States. Because the sales were made prior to importation to the United States, the Department determined that purchase price, as defined in section 772(b) of the Tariff Act, was the appropriate basis for calculating USP. For terms of sale, please see Analysis Memorandum to the File, August 31, 1995. We made deductions from purchase price, where appropriate, for foreign inland freight and insurance, ocean freight, marine insurance, brokerage and handling, port charges, U.S. customs duties and fees, wharfage, and U.S. inland freight.

We used as date of sale the date of contract (if the contract set quantity and value) or, if either price or quantity was not set, the date of order confirmation (the date on which price and quantity are fixed).

We adjusted USP for Swedish value-added taxes (VAT) in accordance with our practice as outlined in recent determinations, including Silicomanganese from Venezuela, Final Determination of Sales at Less Than Fair Value, 59 FR 55435, 55439 (November 7, 1994).

Foreign Market Value

Based on a comparison of the volume of home market and third country sales, we determined that the home market was viable because the amount of similar merchandise sold in the home market is more than five percent of the amount sold to third countries. See 19 CFR 353.48(a). Further, SSAB had sales both to related and unrelated parties in the home market during the POR. In order to determine whether sales to related parties might be appropriate to use as the basis of FMV, the Department compared prices of those sales to prices to unrelated parties, on a model-by-model basis. When possible, the Department used unrelated party sales at the same level of trade as the related party sales for this comparison. When the price ratio of related to unrelated purchases was less than 99.5 percent, we determined that those sales were not arm's length sales and disregarded those sales. See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, (58 FR 37062, July 9, 1993).

We used prices to related purchasers only if such sales were made at arm's length as defined above. In addition, we determined that sales made by SSAB through its related distributor, Tibnor AB (TAB), were a significant portion of the home market sales listing. We asked SSAB to report the portion of home market sales made through TAB to the first unrelated customer. SSAB claimed TAB could not identify the supplying producer for sales to unrelated customers. We verified this claim. We also verified that TAB's reported price is set without regard to the supplying producer. We asked SSAB to develop an allocation methodology to account for SSAB sales through TAB to unrelated customers. However, TAB's proposed allocation methodology for reporting the downstream sales is inconsistent with standard accounting principles because it does not consider the impact of purchases from non-SSAB suppliers, it assumes that TAB's beginning inventory was zero, and it assumes that the first plate sold is always SSAB plate. It is also inconsistent with TAB's normal methodology for valuing its inventory. Additionally, at verification, we found that the percentage of TAB purchases of SSAB merchandise is significantly less than respondent's methodology assumes. Therefore, the impact of merchandise sourced from producers other than SSAB is greater than indicated by respondent's methodology. After evaluating the larger percentage of non-SSAB merchandise purchased by TAB, the lack of information regarding

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non-SSAB purchases, and the inconsistencies with standard accounting practices, we decided not to use respondent's methodology. However, we determined that as the final price to the customer was set regardless of producer, and that TAB accurately reported most of its expenses and adjustments, it was reasonable to use TAB's sales listing. Therefore, we rejected TAB's allocation methodology, revised TAB's reported sales to neutralize the effect of non-SSAB suppliers and used the revised sales listing in our calculations. For more information on our use of SSAB's downstream sales, see Analysis Memorandum to the File, August 31, 1995.

In accordance with 19 CFR 353.58 and 353.55, we compared U.S. sales to home market sales made at the same level of trade, and in comparable commercial quantities, where possible. SSAB reported a number of sales in its home market database in currencies other than the Swedish currency. Company officials explained these are typically sales where the merchandise was shipped to an address in Sweden, as indicated by the destination code of the sale, but customer's invoicing address was not in Sweden. We verified that SSAB properly included these home market sales in its reporting to the Department. Therefore, we included these sales in our calculations.

SSAB had sales of secondary merchandise (non-prime) in the home market; however, there were no sales of secondary merchandise in the U.S. market during the POR. Therefore, as per our established model match criteria, the Department only compared prime merchandise sold in the United States to prime merchandise sold in the home market.

Based on the Department's previous determination of sales made at below the cost of production (COP) in the original LTFV investigation in accordance with section 773(b) of the Tariff Act, we determined that there were reasonable grounds to believe or suspect that, for this review period, SSAB had made sales of subject merchandise in the home market at prices less than the COP. As a result, we investigated whether SSAB sold such or similar merchandise in the home market at prices below the COP over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with 19 CFR 353.51(c), we calculated COP for SSAB as the sum of reported materials, labor, factory overhead, and general expenses. We compared COP to home market prices, net of price adjustments, discounts, and movement expenses.

Based upon data collected during verification of SSAB, we recalculated SSAB's general and administrative expenses, after adjusting cost of goods sold for one subsidiary for the effect of inter-company transfers. We also recalculated finance expense using SSAB's consolidated financial statements.

Pursuant to the Department's practice, for each model for which less than 10 percent, by quantity, of the home market sales during the POR were made at prices below COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below COP, we excluded from the calculation of FMV those home market sales which were priced below COP, provided that they were made over an extended period of time. For each model for which 90 percent or more of the home market sales during the POR were priced below COP and were made over an extended period of time, we disregarded all sales of that model in our calculation. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom, (60 FR 10558, February 27, 1995).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews, 58 FR 64720, 64729 (December 8, 1993).

Because SSAB provided no indication that its below-cost sales of models within the "greater than 90 percent" and the "between 10 and 90 percent" categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales of models within the "10 to 90 percent" category which were made below cost over an extended period of time.

SSAB did not report COP information for all product models. This affected both the home market and downstream sales listings. For certain of these models, respondent provided a methodology for assigning average costs for similar products. We used their methodology to the extent possible. However, this methodology did not cover all product models with missing COP. We have assigned the highest costs for similar products to the sales of models missing COP information as partial BIA. For more information, see our Analysis Memorandum of August 31, 1995.

In accordance with section 773(b) of the Tariff Act, the Department normally uses the constructed value (CV) of those models for which home market price has been disregarded as below COP. See, e.g., Mechanical Transfer Presses from Japan, Final Results of Antidumping Duty Administrative Review, 59 FR 9958 (March 2, 1994). We did not use CV as FMV for those U.S. models for which we were unable to find a home market match because we found during verification that SSAB had not reported certain home market sales of subject merchandise. We therefore assume that all unmatched sales were the result of this reporting failure. We used a margin based upon BIA only for those unmatched U.S. sales. As BIA, we applied to those sales SSAB's final margin determined in the less-than-fair value (LTFV) investigation. We have determined that resorting to total BIA is not warranted because SSAB's U.S. database is not sufficiently flawed such that the response as a whole is unreliable. *See National Steel Corporation* v. *United States,* 870 F. Supp. 1130, 1135 (CIT 1994).

In accordance with section 773 (a)(1)(A) of the Tariff Act, for those U.S. models for which we were able to find a home market such or similar match, we calculated FMV based on the packed home market sales price to unrelated and related purchasers in the home market. For terms of sale, please see Analysis Memorandum to the File, August 31, 1995.

Pursuant to section 773(a)(4)(B) of the Tariff Act and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments to FMV, where applicable, for credit expenses, handling expense, inland freight, discounts and rebates. Where appropriate, we deducted from FMV home market packing costs and added to FMV packing expenses incurred in Sweden for U.S. sales. We also adjusted FMV, where appropriate, for physical differences in the merchandise, in accordance with 19 CFR 353.57. Due to discrepancies found at verification, reporting errors, and unsupported adjustments, we disallowed and/or recalculated certain expenses and adjustments. See Analysis Memorandum to the File, August 31, 1995 for more information on these disallowed and/or recalculated adjustments.

Preliminary Results of Review

As a result of our comparison of USP to FMV, we preliminarily determine that the following margin exists for the period February 4, 1993, through July 31, 1994:

Manufacturer	Margin (percent)
SSAB	10.96

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentages stated above.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act. A cash deposit of estimated antidumping duties shall be required on shipments of Certain Cut-to-Length Carbon Steel Plate from Sweden as follows: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 24.23 percent, which is the "all others" rate from the LTFV investigation. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Sweden, (58 FR 37213, July 9, 1993).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23220 Filed 9–18–95; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95-067. *Applicant:* The Salk Institute for Biological Studies, 10010 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* DIP-2000 Imaging Plate X-ray Diffraction Image Processor with Kappa-goniometer and SRA M18XHF Rotating Anode X-ray Generator. *Manufacturer:* MAC Science Co., Ltd., Japan. *Intended Use:* The instrument will be used to collect X-ray diffraction data from crystals made with biological macromolecules such as signal transduction, ion conductance, and protein-DNA recognition during the study of proteins such as transducin from bovine eye and potassium channels from rat kidney. *Application Accepted by Commissioner of Customs:* August 1, 1995.

Docket Number: 95–068. *Applicant:* University of California, Department of Nutritional Sciences, 119 Morgan Hall, Berkeley, CA 94720-3104. *Instrument:* Mass Spectrometer, Model JMS-AX505WA. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used to measure isotope incorporation levels in different metabolites during studies of glucose, fat and protein metabolism in animals and humans. *Application Accepted by Commissioner of Customs:* August 1, 1995.

Docket Number: 95–069. *Applicant:* Saint Barnabas Medical Center, 94 Old Short Hills Road, Livingston, NJ 07039. *Instrument:* Electron Microscope, Model JEM-1210. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used in several research projects to study ultrastructural features of biomedical research specimens from experimental animals, cultured cells and various tissues from patients with pathological disorders. In addition, the instrument will be used to train pathology residents in the application of the electron microscope. *Application Accepted by Commissioner of Customs:* August 1, 1995.

Docket Number: 95–070. *Applicant:* Rutgers, The State University, Waksman Institute, P.O. Box 6999, Piscataway, NJ 08855-6999. *Instrument:* Cryogenic Cooling System. *Manufacturer:* Oxford Cryosystems, United Kingdom. *Intended Use:* The instrument will be used for X-ray crystallographic studies of proteins with the objective of solving the atomic structure of a subject protein. The instrument will also be used to teach undergraduate courses in crystallography in which students will be trained in the skills necessary to the analysis of protein crystal by means of X-ray Diffraction. *Application Accepted by Commissioner of Customs:* August 4, 1995.

Docket Number: 95–071. *Applicant:* Colorado State University, Natural

Resource Ecology Lab, NESB Building, Fort Collins, CO 80523. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* VG - Fisons, United Kingdom. *Intended Use:* The instrument will be used to measure the isotopic abundance of carbon, nitrogen, hydrogen, and oxygen in plant, soil and air samples in experiments ranging from field studies to laboratory analysis. In addition, the instrument will be used in the course Physiological Plant Ecology and Isotope Biogeochemistry to examine plant and soil processes that modify isotope fractionation. *Application Accepted by Commissioner of Customs:* August 4, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95-23223 Filed 9-18-95; 8:45 am]

BILLING CODE 3510-DS-F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–072. *Applicant:* University of Michigan, Department of Geological Sciences, 425 E. University, Ann Arbor, MI 48109-1063. *Instrument:* ICP Multicollector Mass Spectrometer, Model Plasma 54. *Manufacturer:* Fisons Elemental, United Kingdom. *Intended Use:* The instrument will be used in experiments that consist of extracting and purifying elements of interest and measuring their isotopic compositions, with or without enriched spikes to measure concentrations. In addition, the instrument will be used for training purposes in relevant geochemistry courses. *Application Accepted by Commissioner of Customs:* August 11, 1995.

Docket Number: 95–073. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Automatic Carbonate Preparation Device, Model Kiel II. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument is an accessory to an existing mass spectrometer that will be used to provide the means for measuring the stable oxygen and carbon isotopic ratios of very small, individually reacted carbonate mineral samples under study. The instrument will also be used to collect data for classroom teaching and M.S. and Ph.D. thesis. *Application Accepted by Commissioner of Customs:* August 11, 1995.

Docket Number: 95–074. *Applicant:* University of South Florida, Marine Science Department, MSL 119, 830 1st Street South, St. Petersburg, FL 33701. *Instrument:* Fluorimeter, Model Aquatraka MKIII. *Manufacturer:* Chelsea Instruments Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure chlorophyll *a* fluorescence in aquatic environments in a study of the plant plankton in the Caribbean Sea. part of a larger effort to identify and analyze the biological/chemical constituents of marine waters in the Caribbean Sea. In addition, the instrument will be used for educational purposes in the course Remote Sensing in Oceanography. *Application Accepted by Commissioner of Customs:* August 16, 1995.

Docket Number: 95–075. *Applicant:* Georgetown University, 37th and "O" Streets, NW, Washington, DC 20057. *Instrument:* Time-Correlated Single Photon Counting Spectrometer, Model FL900. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used to monitor the excited state lifetime of organic and polymeric molecules by their emissive properties during the study of basic and exotic polymers, gels, liquid crystals, crystals and other materials. The objective of the studies is to characterize the environment in which molecules in the above phases are located. In addition, the instrument will be used for training graduate and undergraduate students to characterize materials of significance. *Application Accepted by Commissioner of Customs:* August 25, 1995.

Docket Number: 95–076. *Applicant:* University of Michigan, 1028 College of Pharmacy, 428 Church Street, Ann Arbor, MI 48109-1065. *Instrument:* Stopped-flow Spectrometer System, Model SF-61AFX. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used to study rapid reaction kinetics over the millisecond time scale in experiments involving purification of the enzymes from either bovine lung (guanylate cyclase) or a macrophage cell line (nitric oxide synthase). *Application Accepted by Commissioner of Customs:* August 25, 1995.

Docket Number: 95–077. *Applicant:* Shriners Hospital - Spokane Unit, 911 West Fifth Avenue, Spokane, WA 99204-2472. *Instrument:* 3-Dimensional Motion Analyser System, Model VICON 370. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the gait cycle/walking patterns, muscle activity and various motions of human subjects. The analysis of this data will then be used in aiding the physicians and therapists in determining the needs of the patient (i.e. continuing therapy, a change in therapy, surgery, etc.). *Application Accepted by Commissioner of Customs:* August 29, 1995.

Docket Number: 95–079. *Applicant:* University of California, Department of Pharmaceutical Chemistry, San Francisco, CA 94143-0446. *Instrument:* Tandem Mass Spectrometer, Model AUTOSPEC - 5000. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for studies of the macromolecular components of normal human and tumor cells and bacterial and viral human pathogens in the context of correlations between cell phenotype and genotype. Overall research purposes will emphasize interdisciplinary studies addressing key unsolved structural issues revolving around the delineation of protein sequence and covalent modification, protein glycosylation, peptide antigens, glycolipid antigens and xenobiotic protein and DNA covalent adducts. In addition, the instrument will be used for educational purposes in the course Pharmaceutical Chemistry 235: Mass Spectrometry in the Health and Life Sciences. *Application Accepted by Commissioner of Customs:* August 29, 1995.

Docket Number: 95–080. *Applicant:* Santa Rosa Outpatient Rehab, 4319 Medical Drive, San Antonio, TX 78229-4899. *Instrument:* 3-Dimensional Motion Analyser System, Model VICON 370. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended Use:* The instrument will be used for the study of the walking patterns (i.e. gait) of human subjects, to provide precise information on muscle activity, joint motion, and the forces acting at the joint at different points of human gait or various motions. *Application Accepted by Commissioner of Customs:* August 29, 1995.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95-23222 Filed 9-18-95; 8:45 am]

BILLING CODE 3510-DS-F

University of Pennsylvania, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 95–030. *Applicant:* University of Pennsylvania, Philadelphia, PA 19104. *Instrument:* Olfactometer, Transformation Unit and Compressor-Vacuum-Unit, Model OM/4. *Manufacturer:* Heinrich Burghart, Germany. *Intended Use:* See notice at 60 FR 29826, June 6, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) filtered and humidified pulsed odor/air stimuli, (2) controlled stimulus duration between 50ms and infinity, and (3) thermostabilized odorant flow with manual or external triggering. The National Institutes of Health advises in its memorandum dated July 11, 1995 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–23224 Filed 9–18–95; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

Monterey Bay National Marine Sanctuary Advisory Council; Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Monterey Bay National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: The Advisory Council was established in December 1993 to advise NOAA's Sanctuaries and Reserve Division regarding the management of the Monterey Bay National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Friday, September 29, 1995, from 8:30 until 4:30. The meeting will be held at the Moss Landing Chamber of Commerce, Moss Landing, California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including an update from the Sanctuary Manager, reports from the working groups, an update on the Sanctuary license plate marketing program, and discussions about the establishment of a Sanctuary Foundation and proposed central valley water reclamation projects.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Jane Delay at (408) 647–4246 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429

Marine Sanctuary Program

Dated: September 12, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–23157 Filed 9–18–95; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ballistic Missile Defense Advisory Committee; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Washington, D.C., on October 5–6, 1995.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense, through the Under Secretary of Defense (Acquisition and Technology), on all matters relating to BMD acquisition, system development, and technology.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended by 5 U.S.C., Appendix II, it is hereby determined that this BMD Advisory-Committee meeting concerns matters listed in 5 U.S.C., 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: September 14, 1995.

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–23190 Filed 9–18–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Meeting of the Industry/Government Working Group for Performance Criteria of Military Clothing and Equipment

AGENCY: U.S. Army Soldier Systems Command, DoD.

ACTION: Meeting announcement.

SUMMARY: The Industry/Government Working Group for Performance Criteria of Military Clothing and Equipment will meet on Wednesday, 25 October 1995 in the Conference Center at the Soldier Systems Command, Natick Research, Development and Engineering Center, Natick, MA. The meeting will be devoted to Comfort, Durability, and Protection Performance Criteria subgroup activities.

The purpose of the Industry/Government Working Group is to identify performance criteria and test methodology that will be used to measure comfort, durability, and protection performance of military clothing and individual equipment. The U.S. Army is interested in consumer and market research data in the areas of comfort, durability, and flame resistance of fabrics, clothing and equipment, as well as related test methods, standards, specifications, or handbooks.

FOR FURTHER INFORMATION CONTACT: Carole A. Faria, Textile Technologist, at (508) 651–5460.

Dated: September 18, 1995.

Carole A. Faria,

Textile Technologist.

[FR Doc. 95–23140 Filed 9–18–95; 8:45 am]

BILLING CODE 3710–08–M

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information System Agency.

ACTION: Notice of Membership of the Defense Information Systems Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency. The publication of membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATE: August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie K. Bazemore, SES Program Manager, Civilian Personnel Division, Personnel and Administration Directorate, Defense Information Systems Agency (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the SES Performance Review Board. They will serve a one-year renewable term, effective 14 August 1995.

Slawson, Michael F., Deputy Director, Personnel and Administration
Neill, Louise T., Deputy Director for Procurement and Logistics
Fountaine, D. Diane, Deputy Manager, National Communication Systems
Gauss, John, RADM, USN, Deputy Director for Engineering and Interoperability
Mestrovich, Michael, Dr., Deputy Director for Enterprise Integration

William McAlpin,

Lieutenant Colonel, USA, Acting Chief, Civilian Personnel.

[FR Doc. 95–23189 Filed 9–18–95; 8:45 am]

BILLING CODE 3610–05–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 20, 1995.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 13, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision
Title: Reporting and Recordkeeping requirements for the William D. Ford Federal Direct Loan Program
Frequency: Varies by Section
Affected Public: Individuals or households
Reporting Burden:
  Responses: 6,394,992
  Burden Hours: 1,990, 713
Recordkeeping Burden:
  Recordkeepers: 0
  Burden Hours: 0
Abstract: The proposed rules require collection activities that enable the Secretary to determine borrower eligibility and repayment schedules for Direct Loans.

[FR Doc. 95–23124 Filed 9–18–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG95–79–000, et al.]

Brooklyn Navy Yard Cogeneration Partners, L.P., et al.; Electric Rate and Corporate Regulation Filings

September 12, 1995.

Take notice that the following filings have been made with the Commission:

1. Brooklyn Navy Yard Cogeneration Partners, L.P.

[Docket No. EG95–79–000]

On August 16, 1995, Brooklyn Navy Yard Cogeneration Partners, L.P., 366 Madison Avenue, Suite 1103, New York, New York 10017, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that will be engaged directly and exclusively in owning and operating an eligible facility under construction in Brooklyn, New York. The facility will consist of a 315 MW (net) topping-cycle cogeneration facility fueled primarily by natural gas. The facility will include such interconnection components as are necessary to interconnect the facility with the facilities of the applicant's wholesale customers.

Comment date: October 3, 1995, in accordance with Standard Paragraph E

at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Pennsylvania Power & Light Company

[Docket No. ER95–1267–000]

Take notice that on August 31, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing supplemental information with respect to its adoption of certain accounting methods in compliance with the Commission's Statement of Policy issued December 17, 1993, in Docket No. PL93–1–000, *Post-Employment Benefits Other Than Pensions,* 61 FERC ¶ 61,330 (1992), *order on reh'g,* 65 FERC ¶ 61,035 (1993) concerning the treatment of post-retirement benefits other than pensions (PBOPs).

Comment date: September 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER95–1338–000]

Take notice that on August 30, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing an amendment to its July 3, 1995 filing in this docket of a rate change to Rate Schedule FERC No. 149 between PG&E and Lassen Municipal Utility District (Lassen). On July 3, 1995 PG&E submitted the following amendments to the September 22, 1993 Power and Transmission Services Agreement (Agreement) between Lassen and PG&E: 1) a First Amendment to the Agreement (First Amendment); 2) a revised Appendix A—Rates (Revised Appendix A) to the Agreement; and 3) a February 3, 1995 Letter Agreement that establishes the Power Service Demand rate under the Agreement.

At the request of the Commission Staff, PG&E is submitting revised cost support and workpapers to aid the Commission's review of the proposed rate change.

Copies of this filing have been served upon Lassen and the California Public Utilities Commission.

Comment date: September 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. The Washington Water Power Company

[Docket No. ER95–1683–000]

Take notice that on September 1, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 and 35.12a Transmission Service Agreement between WWP and Vaagen Brothers Lumber, Inc. WWP requests waiver of the prior notice requirement and requests an effective time and date of 0001 hours, September 1, 1995.

Comment date: September 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER95–1695–000]

Take notice that on September 5, 1995, Florida Power & Light Company (FPL), tendered for filing a proposed Service Agreement with MidCon Power Services Corp. for transmission service under FPL's Transmission Tariff No. 3.

FPL requests that the proposed Service Agreement be permitted to become effective on September 11, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: September 27 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER95–1696–000]

Take notice that on September 5, 1995, Northeast Utilities Service Company (NU), tendered for filing a new Sale for Resale Tariff No. 7, which provides for wholesale sales by the NU System Companies to customers located outside of New England at market-based rates. NU is requesting an effective date of November 4, 1995.

Comment date: September 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Green Mountain Power Corporation

[Docket No. ER95–1697–000]

Take notice that on September 5, 1995, Green Mountain Power Corporation (GMP), tendered for filing an executed Service Agreement dated September 1, 1995 pursuant to which it has agreed to sell capacity and energy to LGE Power Marketing (LGE) in accordance with the terms and conditions of GMP's FERC Electric Tariff, Original Volume No. 2, and a Certificate of Concurrence to the filing by LGE. GMP has requested that the Commission waive its notice requirements in order to make the Service Agreement and Certificate of Concurrence effective as of September 6, 1995.

Comment date: September 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Company

[Docket No. ER95–1698–000]

Take notice that on September 5, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission four Service Agreements (the Agreements) between PP&L and (1) North American Energy Conservation, Inc., dated August 1, 1995; (2) Rainbow Energy Marketing Corp., dated August 11, 1995; (3) Phibro Inc., dated August 23, 1995; and (4) KCS Power Marketing, Inc., dated August 23, 1995.

The Agreements supplement a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act,* 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part,* 65 FERC ¶ 61,081 (1993). PP&L requests the Commission to make the Agreement effective as of the date of execution of each, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.3(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to the customers involved and to the Pennsylvania Public Utility Commission.

Comment date: September 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER95–1699–000]

Take notice that on September 5, 1995, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with NorAm Energy Services, Inc. for transmission service under FPL's Transmission Tariff No. 2 and FPL's Transmission Tariff No. 3.

FPL requests that the proposed service agreements be permitted to become effective on September 11, 1995, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: September 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23201 Filed 9–18–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP85–221–051]

Frontier Gas Storage Co.; Notice of Sale Pursuant to Settlement Agreement

September 13, 1995.

Take notice that on September 7, 1995, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Avenue, NW., Suite 800, Washington, D.C. 20004, in compliance with the provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 50,000 MMBtu, not to exceed 5 Bcf for the term of the Agreement, of Frontier's gas storage inventory on an "as metered" basis to Western Gas Resources, Inc.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is "authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Any person desiring to be heard or to make a protest with reference to said filing should within 10 days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (825 North Capitol Street NE., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23138 Filed 9–18–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–47–007]

Texas Gas Transmission Corporation; Notice of Filing

September 13, 1995.

Take notice that on September 7, 1995, Texas Gas Transmission Corporation (Texas Gas) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] Texas Gas states that it is revising its standards of conduct to incorporate the changes required by Order Nos. 566 and 566–A. The modifications also reflect changes to Texas Gas's list of marketing affiliates and changes to its list of shared Directors.

Texas Gas states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23139 Filed 9–18–95; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988) FERC Stats. & Regs. 1986–1990 ¶30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 19861990 ¶30,908 (1990); Order No. 497–C, *order extending sunset date, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, order on remand and extending sunset date,* III FERC Stats. & Regs. ¶30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir. No. 94–1745 (December 14, 1994).

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the proposed procedures for disbursement of $4,567,399.72 (plus accrued interest) in alleged or adjudicated crude oil overcharges obtained by the DOE from Malcolm Turner (Case No. VEF–0013), Revere Petroleum Corporation (Case No. VEF–0014), Granite Petroleum Corporation (Case No. VEF–0015), and Dalco Petroleum Corporation (Case No. VEF–0016). The OHA has tentatively determined that the funds obtained from these firms, plus accrued interest, be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

DATE AND ADDRESSES: Comments must be filed in duplicate on or before October 19, 1995, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Nos. VEF–0013, *et al.*

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW.,

Washington, D.C. 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 C.F.R. 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $4,567,399.72, plus accrued interest, remitted to the DOE by Malcolm Turner, Revere Petroleum Corporation, Granite Petroleum Corporation and Dalco Petroleum Corporation. The DOE is currently holding these funds in interest bearing escrow accounts pending distribution.

The OHA proposes to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Because the June 30, 1995, deadline for crude oil refund applications has passed, we propose not to accept any new applications from purchasers of refined petroleum products for these funds. As we state in the Proposed Decision, any party who has previously submitted a refund application in the crude oil refund proceeding should not file another Application for Refund. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the proceedings are finalized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1:00 p.m. to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: September 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms:
  Malcolm M. Turner
  Revere Petroleum Corporation *et al.*
  Granite Petroleum Corporation
  Dalco Petroleum Corporation
Dates of Filing:
  April 10, 1995
  April 10, 1995
  April 10, 1995
  May 2, 1995
Case Numbers:
  VEF–0013
  VEF–0014
  VEF–0015
  VEF–0016

September 13, 1995.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Office of General Counsel, Regulatory Litigation (OGC) (formerly the Economic Regulatory Administration (ERA), Office of Enforcement Litigation), filed four Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on April 10, 1995, and May 2, 1995. The Petitions request that OHA formulate and implement procedures to distribute funds received by the DOE from Malcolm M. Turner (Turner), Revere Petroleum Corporation (Revere), Granite Petroleum Corporation (Granite), and Dalco Petroleum Corporation (Dalco), pursuant to court-approved settlements between the parties and the DOE, DOE consent orders or remedial orders. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

As indicated by the following summaries of the relevant enforcement proceedings, all of the funds that are subject to this Decision were obtained through enforcement actions involving alleged or adjudicated crude oil overcharges.

A. Malcolm Turner

Turner, the sole Director and President of Bayport Refining Co. (Bayport), was a reseller of crude oil during the period of petroleum price controls and was subject to regulations governing the pricing and allocation of crude oil set forth at 10 CFR Parts 211 and 212 of the Mandatory Petroleum Price and Allocation Regulations. As the result of an ERA audit of Turner's and Bayport's operations, the ERA issued a Proposed Remedial Order (PRO) on September 20, 1984, alleging that they violated the provisions of 10 CFR § 212.186, by charging prices for crude oil in excess of actual purchase prices without providing any service or other function traditionally and historically associated with the resale of crude oil during the period from September 1978 through December 1980. According to the PRO, those transactions resulted in overcharges amounting to $11,810,639.84. The PRO further alleged that during the period from December 1979 through December 1980, the Respondents violated the provisions of 10 CFR § 212.131 by the miscertification of crude oil. According to the PRO, those transactions resulted in overcharges amounting to $12,554,371.74. The OHA in large part affirmed the findings of the PRO and issued a Remedial Order (RO) to the Respondents on February 16, 1989. *Bayport Refining Co.*, 18 DOE ¶ 83,007, (1989). The RO was upheld by the Federal Energy Regulatory Commission (FERC) on October 4, 1993. *Bayport Refining Company and Malcolm M. Turner*, 65 FERC ¶ 61,021 (1993). Turner appealed to the United States District Court for the Northern District of Texas on March 31, 1994.[1] In January 1995, the court entered an Agreed Judgment resolving the issues addressed by the RO against Turner. Pursuant to the Agreed Judgment, Turner agreed to pay to the DOE the sum of $65,000. Turner has fulfilled his financial obligation to the DOE. As of May 31, 1995, the Bayport Consent Order fund contained $65,000 in principal plus accrued interest.[2]

B. Revere Petroleum Corp.

During the period of Federal petroleum price controls, Revere was engaged in crude oil reselling.[3] The firm was therefore subject to regulations governing the pricing of crude oil set forth at 10 CFR Parts 205, 210, 211, and 212 of the Mandatory Petroleum Price and Allocation Regulations. As a result of an ERA investigation of Revere's compliance with the price and allocation regulations, the ERA issued a PRO to Revere on January 18, 1983. However, on August 9, 1983, that PRO was amended by the ERA to include additional violations of 10 CFR § 212.186, alternative violations of 10 CFR § 212.183, and five additional parties as co-respondents of the PRO.[4] On May 29, 1992, the OHA issued the Amended PRO, with modifications, as an RO. *Revere Petroleum Corp.*, 22 DOE ¶ 83,004 (1992). The RO found Revere liable for violations of 10 CFR § 212.186 in connection with its resales of crude oil during the period April 1979 through March 1980. Revere appealed to FERC (Case No;. R092–4–00). However, subsequently, this enforcement proceeding was settled when Revere and DOE entered into a settlement on an ability-to-pay basis in order to resolve DOE's claims against the firm. Revere agreed to pay the DOE the sum of $50,000.00, plus a percentage of the proceeds of Revere's asset liquidation. As of May 31, 1995, Revere and the other respondents have paid to the DOE the sum of $1,310,140.13 in satisfaction of their obligations.[5] Although additional revenues may be collected, no good reason exists to delay implementing distribution of the current balance of the fund.

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[1] Bayport, which was dissolved in November 1982, did not appeal the RO. While the matter was referred for enforcement of the RO against Bayport, no funds were ever collected from the corporation.

[2] The funds submitted by Turner pursuant to the Agreed Judgment are deposited in the Bayport Consent Order fund, No. 6AOX00329.

[3] References to Revere in this Decision include Richard E. Dobyns, President of Revere, during the price control period.

[4] Those five individuals were James J. Cross, M. Kemp McMillan, Gordon K. Walz, and Milton E. Walz, who entered into a separate Consent Order with the DOE in December 1987, and John E. Woolsey, who entered into a separate Consent Order with the DOE in September 1986.

C. Granite Petroleum Corporation

Granite engaged in the reselling and marketing of crude oil during the period of petroleum price controls. The firm was therefore subject to regulations governing the pricing and allocation of crude oil set forth at 10 CFR Parts 211 and 212 of the Mandatory Petroleum Price and Allocation Regulations. The ERA conducted a detailed audit to determine Granite's compliance with the federal petroleum price and allocation regulations during the period from September 1, 1979 through January 27, 1981. As a result of the audit, on March 4, 1983, the ERA issued a PRO to the firm alleging violations of the crude oil price and allocation regulations (Case No. 640X00447). In September 1983, Granite and the DOE entered into a Consent Order which resolved a number of outstanding enforcement issues involving Granite. Under the terms of the settlement, Granite agreed to pay $200,000 in installment payments to the DOE.[6] As of May 31, 1995, Granite has paid to the DOE the sum of $176,698.85. Granite is currently delinquent in its payments to the DOE. Although we anticipate that additional sums may be collected from Granite, no good reason exists to forestall distribution of the current balance of the fund.

D. Dalco Petroleum Corporation

Dalco[7] was a reseller of crude oil during the period of price controls and was subject to regulations governing the pricing and allocation of crude oil set forth at 10 CFR Parts 211 and 212 of the Mandatory Petroleum Price and Allocation Regulations. As the result of an ERA audit, the ERA issued a PRO to Dalco on April 30, 1982, alleging that between March 1976 and September 1978, Dalco violated the DOE mandatory petroleum price regulations which governed the resale of domestic crude oil, pursuant to 10 CFR §§ 212.93, 212.10, 212.131, 205.202, 210.62(c), and 212.185, resulting in the illegal receipt of revenues. After the issuance of the PRO, but before a Statement of Objections was filed, Dalco filed for bankruptcy.[8] In August 1983, the Bankruptcy Court for the Northern District of Oklahoma issued an injunction which stayed the enforcement proceeding against the respondents. The bankruptcy court ultimately approved and allowed the DOE's claims against Dalco and as of May 31, 1995, Dalco has paid $3,015,560.74 to the DOE. Although the possibility exists that additional revenues will be obtained by the DOE in the Dalco bankruptcy proceeding, no reason exists to delay in implementing distribution of the current balance of the funds.[9]

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of fund received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. §§ 4501 et seq.; *see also Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the OGC's petitions that we implement Subpart V proceedings with respect to the Turner, Revere, Granite and Dalco funds and have determined that such proceedings are appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Before taking the actions proposed in this Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

III. Proposed Refund Procedures

A. Crude Oil Refund Policy

We propose to distribute the monies remitted pursuant to the Turner, Revere, Granite, and Dalco enforcement proceedings in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), 51 FR 27899 (August 4, 1986), which was issued as a result of the Settlement Agreement approved by the court in *The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *See City of Columbus Georgia*, 16 DOE ¶ 85,550 (1987).

The amount of money subject to this Proposed Decision is $4,567,399.72, plus accrued interest. In accordance with the MSRP, we propose initially to reserve 20 percent of those funds ($913,479.94 plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges. We propose to base refunds to claimants on a volumetric amount which has been calculated in accordance with the description in the April 10 Notice. That volumetric refund amount is currently $0.0016 per gallon. *See* 60 FR 15562 (March 24, 1995).

Applicants who have executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement have waived their rights to apply for a crude oil refund under Subpart V. *See Mid-America Dairyman Inc.* v. *Herrington*, 878 F.2d 1448, 3 Fed. Energy Guidelines ¶ 26,617 (Temp. Emer. Ct. App. 1989); *In re Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987). Because the June 30, 1995, deadline for crude oil refund applications has passed, we propose not to accept any new applications from purchasers of refined petroleum products for these funds. *See Western Asphalt Service, Inc.*, 25 DOE ¶ ________, LEF–0047 (July 17, 1995). Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.[10]

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $3,653,919.78 plus accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share of ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That

The refund amounts remitted to the Department of Energy by Malcolm M. Turner, Revere Petroleum Corporation, Granite Petroleum Corporation, and Dalco Petroleum Corporation pursuant to their respective settlement agreements or judgments will be distributed in accordance with the foregoing Decision.

[FR Doc. 95–23230 Filed 9–18–95; 8:45 am]

BILLING CODE 6450–01–P

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[5] Revere and all of the named individuals except Woolsey have satisfied their obligations to the DOE. Although Woolsey has made substantial payments to the DOE, he is delinquent in his payments, and the possibility exists that additional funds will be paid by him.

[6] Granite Petroleum Corporation and John E. Woolsey, President of Granite, are collectively referred to as Granite in the text. Both were parties to the Consent Order.

[7] References to Dalco in this Decision include W. Darryl Zang and Louis Porter, the firm's owners.

[8] Zang, Porter and Dalco filed for bankruptcy on August 16, 1982, June 15, 1983, and July 20, 1983 respectively.

[9] Porter has satisfied his obligations to the DOE under the PRO. Additional funds may be collected from the Dalco and Zang estates.

[10] A crude oil refund application is only required to submit one application for its share of all available crude oil overcharge funds. *See, e.g., Ernest A. Allerkamp*, 17 DOE § 85,079 at 88,176 (1988).

Office of Fossil Energy

[FE Docket Nos. 95–60–NG, 95–61–NG]

Phibro Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and To Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Phibro Inc. (Phibro) authorization to import up to 200 billion cubic feet (Bcf) of Canadian natural gas, including liquefied natural gas (LNG) and to import up to 200 Bcf of Mexican natural gas. Phibro is also authorized to export up to 200 Bcf of natural gas to Canada and to export up to 200 Bcf of natural gas to Mexico. Phibro's authorization is for a two-year term beginning on the date of first delivery of imported natural gas or LNG, or exported natural gas.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., September 11, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–23232 Filed 9–18–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–59–NG]

Universal Resources Corporation; Order Granting Blanket Authorization to Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Universal Resources Corporation blanket authorization to export up to 50 Bcf of natural gas to Canada. This authorization is for a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on September 5, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–23233 Filed 9–18–95; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project Transmission Service, Phoenix Area

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of sale of additional capacity on the Pacific Northwest-Pacific Southwest Intertie Project.

SUMMARY: The Western Area Power Administration (Western) is requesting comments on the proposed sale of firm transmission service available as a result of the completion of construction of the Mead-Phoenix and Mead-Adelanto Transmission Projects which are a part of the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie).

DATE: Comments from all interested parties will be accepted until October 19, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. J. Tyler Carlson, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, Telephone: (602) 352–2521, Facsimile: (602) 352–2630.

SUPPLEMENTARY INFORMATION:

Background

The Mead-Phoenix Project (MPP) is an electrical transmission system that consists of 256 miles of 500-kV alternating current, convertible to direct current, transmission line constructed from the Perkins Switchyard, located next to Westwing Substation, northwest of Phoenix, Arizona; through Mead Substation, located south of Boulder City, Nevada; and on to Marketplace Switching Station. Mead-Adelanto Project (MAP) is an electrical transmission system that consists of 202 miles of 500-kV AC transmission line from Marketplace Substation to Adelanto Switching Station in southern California. The 500-kV Marketplace Switching Station will be constructed adjacent to and interconnected with the existing McCullough Switching Station in southern Nevada. As part of the MPP, a 1300 megavolt-ampere (MVA), 500/230-kV transformer will be added to the Mead Substation. Western will have approximately 525 MW of capacity entitlement on this transformer.

Marketing Issues

Western is requesting comments on the proposed sale of additional capacity in the AC Intertie created by the completion and availability of MPP and MAP. The quantity of marketable capacity will be limited by Western's entitlement to the available capacity. The additional capacity on the AC Intertie is anticipated to be available as of January 1, 1996. Western's contracted firm transmission service will begin after the MPP and MAP are released for commercial service.

Marketing Criteria

Western will be marketing the capacity from MPP and MAP by line segments in each direction. The following priority method will be used in selecting allotees for this additional capacity and will be based on requests for usage of each line segment as follows:

1. Perkins to Mead, Mead to Marketplace or Marketplace to Adelanto
   (a) Both directions, same amount
   (b) Both directions, different amounts
   (c) one direction only
2. Perkins to Marketplace or Mead to Adelanto
   (a) Both directions, same amount
   (b) Both directions, different amounts
   (c) one direction only
3. Perkins to Adelanto
   (a) Both directions, same amount
   (b) Both directions, different amounts
   (c) one direction only.

Where the priority of requests will be in the following order: 1(a), 1(b), 1(c); 2(a), 2(b), 2(c); 3(a), 3(b), 3(c).

Where if any one path is oversubscribed, the allocations will be prorated.

Marketable Resource

Point of receipt	Point of delivery	Capacity
Perkins Switchyard.	Mead Substation.	412 MW.
Mead Substation.	Perkins Switchyard.	412 MW.
Mead Substation.	Marketplace Switching Station.	580 MW.
Marketplace Switching Station.	Mead Substation.	580 MW.
Marketplace Switching Station.	Adelanto Switching Station.	100 MW.
Adelanto Switching Station.	Marketplace Switching Station.	100 MW.

Selection Process

Based on the comments received on this proposal, Western will furnish the terms, conditions, and procedures governing the selection of allotees in the next **Federal Register** notice to be published by mid-October 1995. The mid-October **Federal Register** notice will also provide a mechanism for applications of requests for transmission capacity.

Applicant deadline and Western's schedule will also be published in the mid-October **Federal Register** notice.

Other Issues

The proposed rate for the additional capacity resulting from the completion of MPP and MAP will be set forth in a public rate process currently under way in the Phoenix Area Office. The proposed rate will be based on Western's expectation that the Marketable Capacity used in the proposed rate calculation for the 500-kV transmission lines will be 668 MW. A rate for firm transmission service will be determined in the public rate process.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866 (58 FR 51735). Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Evaluation

Western will comply with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*; Council On Environmental Quality (40 CFR Parts 1500–1508) and DOE NEPA regulations (10 CFR Parts 1500–1508) and DOE NEPA regulations (10 CFR Part 1021). Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Issued in Golden, Colorado, September 7, 1995.

J. M. Shafer,

Administrator

[FR Doc. 95–23231 Filed 9–18–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5297–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

CTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.)*, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 27, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740, please refer to EPA #ICR 1230.08.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Review and Prevention of Significant Deterioration Permitting Programs (EPA ICR #1230.08; OMB #2060–0003). This ICR requests an 18 month renewal of the existing clearance while the Agency revises the underlying regulations at 40 CFR parts 51 and 52.

Abstract: New and modified stationary sources must supply information on estimated emissions, proposed control technology, and air quality impact when applying for a preconstruction permit. EPA or the State or local air pollution control agency uses the information in the permit application to ensure that all regulatory requirements are being met and that the new emissions, in conjunction with existing source emissions in the same area, will not interfere with the attainment or maintenance of the national ambient air quality standards.

The average annual burden to respondents for this collection of information is approximately 5,000 hours per year. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owers or operators of new or modified sources of air pollution.

Estimated Number of Respondents: 20,410.

Estimated Total Annual Burden on Respondents: 1,006,070 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, (please refer to EPA ICR #1230.08 and OMB #2060–0003) to:

Sandy Farmer, EPA ICR #1230.08, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460.
and
Chris Wolz, OMB #2060–0003, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, D.C. 20503.

Dated: September 13, 1995.

Joseph Retzer,

Regulatory Information Division.

[FR Doc. 95–23206 Filed 9–18–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5298–2]

Notice of Open Meeting of the Office of Water, Environmental Protection Agency on Alternative Financing Options for Water Infrastructure

The Office of Water of the Environmental Protection Agency (EPA) will hold an open meeting on alternative financing options for water infrastructure. The meeting is scheduled for October 10, 1995, in the Conference Center of the Region II Office of EPA located at 290 Broadway in New York City. The meeting will run from 10:00 am to 5:00 pm.

This meeting is the fourth in a series to collect public input on alternative financing options to help pay for

wastewater and drinking water infrastructure. The study is being prepared by the Environmental Finance Center at the Maxwell School of Citizenship and Public Affairs at Syracuse University at the direction of EPA's Office of Wastewater Management (OWM), in response to a congressional request for an evaluation of alternative financing options for water and wastewater projects in EPA's FY 95 appropriations legislation.

The first three meetings have focused primarily on options for a wide variety of fee systems. This meeting will consider other financing options that include encouraging increased investments by the private sector in public purpose water infrastructure, and examining ways to lower the costs of public borrowing for water infrastructure.

Following a discussion among invited panel members, interested parties who wish to speak at the meeting will be allowed to do so. These parties are encouraged to notify the Syracuse University Environmental Finance Center by calling Ms. Ronda Garlow at (315) 443–5612. There will also be a sign-in list for speakers at the meeting. Ten minutes will be available for each presentation. Written comments in advance are encouraged. Please send all written material to: Victoria Kennedy, Syracuse University, Environmental Finance Center, 219 Maxwell Hall, Syracuse, NY 13244–1090.

Dated: September 13, 1995.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 95–23203 Filed 9–18–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Safety Wireless Advisory Committee; Procedures for Contacts

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of Establishment of Procedures for Oral or Written Contacts with the Chairman of the Public Safety Wireless Advisory Committee (PSWAC) or with any of its members.

SUMMARY: The NTIA and the FCC have established a Public Safety Wireless Advisory Committee to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of federal, state and local Public Safety entities through the year 2010. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the PSWAC. This is to assure full public participation in the discussion of all matters of substance before the PSWAC.

We wish to assure that all contacts regarding the merits or substance of any PSWAC consideration which occur outside the scope of formal meetings are a matter of record. Therefore, the PSWAC will require that any person or entity that makes an oral or written presentation to the Chairman of the PSWAC (Philip L. Verveer) or any of the members of the PSWAC (Louis J. Freeh, Ronald K. Noble, Alan D. Bersin, William Bratton, Michael Freeman, Steven Proctor, Dennis C. Connors, and Fred Kuznik) must provide a document which summarizes that presentation. In the case of an oral communication, the document must be a memorandum reflecting who initiated the contact, which PSWAC officials were involved, and the substance of the conversation. In the case of a written contact, the document must be a copy of the letter or pleading constituting the written contact. The document must be labelled WTB–1.

DATES: This requirement is effective immediately.

ADDRESSES: Documents provided to the PSWAC for the public file should be sent to: John J. Borkowski, Designated Federal Official, Public Safety Wireless Advisory Committee, Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION: All submissions concerning such contacts will be available for public inspection in a file designated WTB–1 maintained in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, in Room 8010, 2025 M Street NW.

FOR FURTHER INFORMATION CONTACT:

William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officials of the Public Safety Wireless Advisory Committee. You may also obtain more information about the PSWAC from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–23169 Filed 9–18–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Designation of Geographic Shortage Areas for Waiver of Two-Year Home-Country Physical Presence Requirement, International Medical Graduates, Exchange Visitor Program

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice of availability of information about areas with shortages of health care professionals.

FOR FURTHER INFORMATION CONTACT: Dr. Evan R. Arrindell, Acting Director, Division of Shortage Designation, Bureau of Primary Health Care, 4350 East-West Highway, Room 9–1D–1, Bethesda, Maryland 20814, (301) 594–0816.

SUPPLEMENTARY INFORMATION: Section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103–416) amended the Immigration and Nationality Act ("the Act") (8 U.S.C. 1182(e)) to add a new subsection (k) to Section 214 of that Act (8 U.S.C. 1184) concerning waiver of the 2-year foreign residence requirement for international medical graduates ("IMGs"). IMGs who were admitted to the United States on a J–1 visa in the exchange visitor program, or who acquired this status after admission to the United States, are subject to a 2-year home country residence and physical presence requirement. This means that they must reside and be physically present in their country of nationality or last residence abroad for an aggregate of at least 2 years following departure from the United States prior to acquiring lawful permanent resident status, unless they have been granted a waiver of this requirement.

Under section 212(e) of the Act, a waiver of the 2-year requirement may be granted by the Immigration and Naturalization Service ("INS") upon favorable recommendation of the Director of the United States Information Agency (USIA) on the basis of: (a) Exceptional hardship to the applicant's U.S. citizen or permanent resident spouse or children; (b) persecution on account of race, religion, or political opinion; (c) a "no objection" statement issued by the applicant's "home" country; or (d) a request made to USIA by an interested U.S. Government agency to recommend a waiver to USIA because the applicant's work is important to the public interest.

The Immigration and Nationality Technical Corrections Act provided an additional basis for waiver of the 2-year requirement. A State Department of Public Health or its equivalent can request the Director of USIA to recommend that INS grant up to 20 waivers a year. Conditions for these requests are that: (a) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of that country provides USIA with a written statement that it has no objection to the waiver; (b) the IMG demonstrates that he or she has a bona fide offer of full-time employment and will begin this employment within 90 days of receipt of a waiver, for a period totaling not less than 3 years; (c) the employment is in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals. Both INS and USIA have published in the **Federal Register** interim-final regulations, with requests for comments, setting forth procedures and requirements for obtaining State-requested waiver requests. 60 F.R. 26676 (May 18, 1995) and 60 F.R. 16785 (April 3, 1995).

Section 214(k)(1) of the Act (8 U.S.C. 1184) authorizes the Secretary of HHS to designate "geographic area or areas * * * as having a shortage of health care professionals" for purposes of the State-requested waiver. Notice is hereby given that both Health Professional Shortage Areas ("HPSAS") and Medically Underserved Areas/Medically Underserved Populations ("MUAs/MUPs"), determined under Sections 332 and 330 of the Public Health Service Act, respectively, (42 U.S.C. 254e and 254c) are designated by the Secretary of HHS for purposes of 2-year home residency waiver requests by States under Section 214(k)(1) of the Act. HPSAs can be geographic areas, population groups, and health care facilities meeting regulatory criteria set forth at 42 CFR Part 5. Only physicians specialized in *primary care* (family practice, general internal medicine, pediatrics, and obstetrics and gynecology) are considered for physician shortage areas.

MUAs/MUPs are shortage areas and population groups designated pursuant to criteria set forth at 42 CFR § 51c.102(e) based on weighted values related to primary care physician ratios, infant mortality rates, the percentage of the population age 65 and over, and the percentage of the population below the poverty level. Whole counties and groups of contiguous counties can be designated.

The Bureau of Primary Health Care, Health Resources Services Administration publishes periodically a list of HPSAs in the **Federal Register**. The latest list was published on January 21, 1994 (59 F.R. 3412). This office also issues a list of MUAs/MUPs. Persons interested in obtaining this list or other information concerning HPSAs and MUAs/MUPs should contact: Dr. Evan R. Arrindell, Acting Director, Division of Shortage Designation, Bureau of Primary Health Care, 4350 East-West Highway, Room 9–1D–1 Bethesda, Maryland 20814 (phone: (301) 594–0816).

Dated: September 1, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–23199 Filed 9–18–95; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

[Docket No. 93N–0293]

Guide to Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Food Labeling, Questions and Answers Volume II; A Guide for Restaurants and Other Retail Establishments" that addresses various questions concerning the regulations that FDA issued to implement the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). The agency has received a large number of inquiries about how these final rules are being implemented in restaurants and other retail establishments, and it has prepared "Food Labeling, Questions and Answers Volume II; A Guide for Restaurants and Other Retail Establishments" to respond generally to many of the questions that it has received. Answers to some of the most frequently asked questions are included as an appendix to this notice. This document is intended to facilitate compliance with the new rules.

DATES: Written comments may be submitted at anytime.

ADDRESSES: Copies of the document "Food Labeling, Questions and Answers Volume II; A Guide for Restaurants and Other Retail Establishments" will be available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, 202–512–1800. Please request order No. 017–012–00374–5. Submit written comments on "Food Labeling, Questions and Answers Volume II; A Guide for Restaurants and Other Retail Establishments" to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. "Food Labeling, Questions and Answers Volume II; A Guide for Restaurants and Other Retail Establishments" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: FDA has received a number of inquiries from industry, consumers, and others concerning how the regulations it has adopted, implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) apply to retail Food establishments, including restaurants. FDA has prepared a document entitled "Food Labeling, Questions and Answers Volume II; A Guide for Restaurants and Other Retail Establishments" to serve as general guidance on the regulations. This document provides answers to many of the questions that the agency has received. Answers to some of the most frequently asked questions are included as an appendix to this notice.

"Food Labeling, Questions and Answers Volume II; A Guide for Restaurants and Other Retail Establishments" is intended only to be guidance to facilitate compliance with the regulations. It does not bind the agency, nor does it create or confer any rights, privileges, or benefits for or on any person. While "Food Labeling, Questions and Answers Volume II; A Guide for Restaurants and Other Retail Establishments" represents the best advice of FDA, it does not have the force and effect of law. The interpretations presented herein are obviously subject to the requirements of law both in the statute and in the regulations.

Interested persons may, submit written comments on "Food Labeling, Questions and Answers Volume II; A Guide for Restaurants and Other Retail Establishments" to the Dockets Management Branch (address above). FDA will consider these comments in determining whether revisions to the document are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Appendix—Food Labeling: Questions and Answers, Volume II; A Guide for Restaurants and Other Retail Establishments— Sample Questions

The Guide presents answers to a range of questions, including questions about the application of exemptions and other special labeling provisions in restaurants, about the format for nutrition labeling when it is required, and about other issues concerning the nutrition labeling of retail foods. The Guide also responds to questions about the use of nutrient content claims and health claims on restaurant and other retail foods. It explains how to determine whether there is a reasonable basis for a claim, what foods to use as reference foods, and how to determine reference amounts.

Sample Questions

Question: How does FDA define "restaurants"?

Answer: "Restaurants" include conventional full service restaurants and other establishments where food is sold for immediate, on-site consumption (e.g., institutional food service, delicatessens, and catering where there are facilities for immediate consumption on the premises) and establishments where foods are generally consumed immediately where purchased or while walking away (e.g., lunch wagons, cookie counters in a mall, and vending machines including similar foods sold from convenience stores); and food delivery systems or establishments where ready-to-eat foods are delivered to homes or offices for immediate consumption.

Question: If a restaurant makes a claim for one item, does it need to provide nutrition information for all the foods it serves?

Answer: No. The exemptions from nutrition labeling set out in §§ 101.9(j)(2)(i) through (iii) apply to individual food items that are served or sold in a restaurant or similar establishment, not to the establishment. A restaurant need only provide nutrition information for those items that bear a claim. The restaurant may voluntarily provide nutrition information for foods that do not bear a claim.

It should be noted that the January 6, 1993, final regulations implementing the NLEA currently apply to all forms of restaurant labeling *except for menus*. Thus, a claim on a menu does not trigger FDA's nutrition labeling or claims requirements. However, States are not prohibited from enforcing these requirements with respect to menus. Furthermore, in the **Federal Register** of June 15, 1993 (58 FR 33055), FDA published a proposal to remove the exemption for claims on menus. Should the agency publish a final regulation deleting the menu exemption, the requirements discussed herein for non-menu labeling (e.g., signs, posters, placards, brochures, banners, etc.) will apply to all forms of labeling, including menus.

Question: A restaurant serves a food that is commercially manufactured and packaged and labeled. The food is served to consumers in the form it was purchased by the restaurant, e.g., individual serving size packages of condiments are placed in a bowl for consumer use. Would FDA hold the restaurant that serves the food responsible if the label of the food does not meet FDA's requirements, for example, if a package of salad dressing bears a "lowfat" claim but fails to bear nutrition information?

Answer: FDA requires that the label of a food sold in packaged form identify conspicuously the name and place of business of the manufacturer, packer, or distributor (§ 101.5). The firm that is so identified is generally the firm that is responsible for insuring that the food is properly labeled.

Question: Does a restaurant have to use the Nutrition Facts format to provide nutrition information for a food that bears a claim?

Answer: No. FDA is not requiring full nutrition labeling for restaurant foods, nor is it requiring that nutrition information be presented in the Nutrition Facts format. Because restaurant foods tend to be prepared or sold differently from foods from other sources, FDA is providing flexibility for restaurants in how they determine the nutrient content of a food (e.g., using a cookbook, reliable nutrient data base, or other reasonable bases) and in how this information may be presented to consumers. Information on the nutrient amounts that are the basis for the claim (e.g., "low fat, this meal provides less than 10 grams of fat") may serve as the functional equivalent of complete nutrition labeling (§ 101.10).

Question: Does nutrition information have to appear on the same labeling that bears the claim?

Answer: No. Nutrition information for restaurant foods may appear on the same or different labeling from that which bears the claim. Nutrition information may be presented in various forms, including those specified in § 101.9 (Nutrition Facts), § 101.45 (e.g., displayed at point of purchase by an appropriate means, such as affixing it to the food, by posting a sign, or by making the information readily available in a brochure, notebook, or leaflet, in close proximity to the foods), and by other reasonable means, such as orally by waiters or waitresses. (The agency notes, however, that to ensure that the information is presented accurately by waitpersons the nutrition information should also be maintained in written form by the restaurant management.)

Question: When making a claim for a food, does a restaurateur have to have the food that bears the claim analyzed by a lab to determine its nutrient content?

Answer: No. A restaurant food may bear a nutrient content claim or health claim if the restaurateur has a "reasonable basis" for believing that the food meets the definition for the claim. If a restaurateur labels a food "low fat," for example, he or she must have a reasonable basis for believing that the food complies with FDA's definition for "low fat," i.e., that it contains no more than 3 g of fat per reference amount customarily consumed or, in the case of meals and main dishes, no more than 3 g of fat per 100 g.

Question: Will FDA require prior approval for labeling that bears a claim?

Answer: No. FDA does not have the authority to require prior approval of restaurant labeling that bears a nutrient content claim, health claim, or other nutrition information.

Question: Will restaurants be required to have claim bearing foods "certified" by a third party or an independent dietary professional?

Answer: No. FDA has provided broad flexibility in establishing the "reasonable basis" criterion for restaurant foods. Thus, while some restaurateurs may choose to work with a third party to modify recipes or revise labeling, there is no requirement to do so. Restaurants should be able to make their own determinations once they are familiar with the claims requirements.

Question: Many food service items are partially or wholly processed when they are purchased for use in a restaurant or similar establishment. Thus, it is difficult for the restaurant to keep track of the sodium content of foods. It may also be difficult for a restaurant to monitor the use of sodium in the cooking process and to develop recipes for "low sodium" foods that taste good. How will these problems be addressed in implementing the new requirements?

Answer: FDA does not intend to impose an unrealistic regime (e.g., to require exacting measurements or strict portion controls) in restaurants. However, the agency is requiring that a restaurant have a reasonable basis for believing that a food meets the nutrient requirements for a claim, and that it be able to provide reasonable assurance that the preparation of the food adheres to the basis for the claim. If a restaurateur has no knowledge of, or control over, the sodium content of a food, or some other aspect of its nutrient content, he/she should not attempt to make a sodium content or other claim about the nutrient levels in that food.

Question: What is a "reference amount"? Do restaurants need to alter their serving size to be equal to the reference amount?

Answer: The reference amount or reference amount customarily consumed (RACC) is the amount of a food item customarily consumed per eating occasion as determined by FDA for the purpose of establishing realistic and consistent serving sizes for use in food labeling. Reference amounts for 139 different food categories are set out in 21 CFR 101.12. (Reference amounts for meat and poultry products are listed in 9 CFR 317.312.)

Restaurants do not need to alter the size of the portions they serve to be the same as the reference amount, nor does the serving size used in the labeling for a particular food need to be the same as the reference amount. However, in order to make certain nutrient content claims or health claims, an individual food must meet the definition for the claim based on the amount of the subject nutrient in an amount of the food equal to its reference amount, e.g., a "low fat" food may contain up to 3 grams of fat per reference amount. When a food's reference amount is small (i.e., 30 g or less or 2 tablespoons or less), the food (e.g., a sauce or condiment) must also meet the requirements for the claim based on its nutrient content per 50 grams.

Question: Must a restaurant develop recipes for, analyze, and market, a reference food for every food that bears a relative claim?

Answer: No. The reference food may be the restaurant's regular product, or that of another restaurant, that has been offered for sale to the public on a regular basis for a substantial period of time. Nutrient values for a reference food may also be derived from such sources as a valid data base, an average of top national or regional brands, or a market basket norm (§ 101.13(j)(1)(ii)).

Dated: September 14, 1995

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–23242 Filed 9–18–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 30092, June 7, 1995) is amended to reflect the reorganization of the Office of the Director, National Institute of Allergy and Infectious Diseases (OD/NIAID). The reorganization consists of the following: (1) Retitle the Office of Financial Management (HNM12) to the Office of Financial Management and Technology Transfer (HNM12) and revise the functional statement; and (2) retitle the Office of Policy Analysis and Technology Transfer (HNM16) to the Office of Policy Analysis (HNM16) and revise the functional statement. This reorganization will enable the NIAID to better fulfill its mission by restructuring the OD/NIAID to better integrate related program areas and streamline operations.

Section HN–B, Organization and Functions is amended as follows:

(1) Under the heading *Office of Financial Management (HNM12),* delete the title and functional statement in their entirety and substitute the following:

Office of Financial Management and Technology Transfer (HNM12). (1) Is the principal organization that provides advice to the NIAID Director, Deputy Director, and senior staff on all financial management and technology transfer issues affecting the NIAID; (2) has functional responsibilities in financial management and technology transfer, and (3) is intricately involved in (a) program planning, (b) budget preparation and execution, (c) developing position papers for the NIAID Director and other senior staff, (d) managing NIAID's extensive technology transfer program, and (e) accelerating the transfer of NIAID technology to the private sector.

(2) Under the heading *Office of Policy Analysis and Technology Transfer (HNM16),* delete the title and functional statement in their entirety and substitute the following:

Office of Policy Analysis (HNM16). (1) Serves as principal advisor to the Institute Director, Deputy Director, and Division Directors regarding the planning, evaluation, and program, policy, and legislative analytical needs of the Institute; (2) provides support and serves as liaison to program managers in coordinating, integrating, and articulating long-range program goals and strategies; (3) is responsible for the development and coordination of the Institute's annual Planning and Reporting process; (4) maintains a continuing liaison with program planning, evaluation, and legislation counterparts in other ICDs in the OD/NIH; (5) advises Institute Task Forces to assure that the charge and work of the Task Forces are directed toward the projected planning and evaluation needs of the Institute; (6) conducts the intra-institute program assignments of all research, training, career and fellowship grant applications; (7) analyzes, interprets, and classifies the scientific content of research grants, contracts, and intramural research projects, and manages the scientific information data and coding of the Multi-Axis Coding System (MACS); (8) directs and coordinates all program evaluation activities, assessing the impact and focus of programs which are of major concern to the Institute; (9) advises on material for all stages related to Congressional budget presentations; (10) designs, develops and maintains the computer-based scientific and fiscal data collection, storage, and retrieval system for the Institute's contracts, grants, intramural research projects, fellowships and training awards; (11) directs and coordinates the legislative liaison, legislative tracking and analysis for the Institute; (12) manages the Executive Secretariat (controlled correspondence) functions for the Institute; and (13) serves as the focus for communications for trans-NIH concerns.

Dated: August 9, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–23135 Filed 9–18–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1990–01]

Notice of Availability for the Round Mountain Mill and Tailings Facility Draft Environmental Impact Statement and Notice of Comment Period and Public Meetings

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability for the Round Mountain Mill and Tailings Facility Draft Environmental Impact Statement (EIS), for the Smoky Valley Common Operation, Nye County, Nevada; and notice of comment period and public meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act, 40 CFR 1500–1508, and 43 CFR 3809, notice is given that the Bureau of Land Management (BLM) has prepared, with the assistance of a third-party consultant, a Draft EIS on the proposed Round Mountain Mill and Tailings Facility, and has made copies available for public and agency review.

DATES: Written comments on the Draft EIS must be submitted or postmarked to the BLM no later than November 22, 1995. Oral and/or written comments may also be presented at two public meetings, to be held:

October 17, 1995; 7 p.m.; Donald Simpson Community Center, Hadley, Nevada

October 18, 1995; 7 p.m.; Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada

ADDRESSES: Written comments on the Draft EIS should be addressed to: Bureau of Land Management, Battle Mountain District, Post Office Box 1420, Battle Mountain, Nevada 89820, Attn.: Christopher J. Stubbs, Round Mountain EIS Project Manager. A limited number of copies of the Draft EIS may be obtained at the same address. In addition, the Draft EIS and supporting documentation are available for review at the following locations: BLM, Battle Mountain District Office, Battle Mountain, Nevada; BLM, Nevada State Office, Reno, Nevada; and the Getchell Library, University of Nevada, Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Christopher J. Stubbs, Round Mountain EIS Project Manager, Bureau of Land Management, Post Office Box 1420, Battle Mountain, Nevada 89820, (702) 635–4000.

SUPPLEMENTARY INFORMATION: The Smoky Valley Common Operation has submitted a Plan of Operations Amendment for the construction, operation, and reclamation of a mill and tailings facility at the Round Mountain Mine. The mine currently consists of 4,767 acres of surface disturbance: 3,659 acres of land administered by the BLM, 515 acres of land administered by the Toiyabe National Forest, and 593 acres of patented land owned by the Smoky Valley Common Operation. The proposed facilities would comprise an expansion of the existing operation at the Round Mountain Mine to improve the recovery of gold from ore that is being mined from the existing open pit. Ancillary facilities would include a new primary crusher; a power line; fresh water, reclaim water, and tailings pipelines; and a septic system. The proposed facilities would be located on approximately 757 acres of public land administered by the BLM, Battle Mountain District Office, Tonopah Resource Area. Of this acreage, approximately 250 acres occur on public lands outside of the existing permit boundary. Construction is scheduled to begin in early 1996; operation of the mill and tailings facility would begin in 1997 and continue until 2008.

This Draft EIS analyzes the environmental impacts associated with the proposed mill and tailings facility and ancillary facilities, a range management alternative, an alternative tailings impoundment site, and the no action alternative. In addition, the Draft EIS analyzes potential impacts associated with pit dewatering and pit water quality, and the leach offload piles. Issues analyzed in the Draft EIS include geology and minerals, water resources, soils and watershed, vegetation, wildlife and fisheries, range resources, paleontological resources, cultural resources and Native American concerns, air quality, access and land use, recreation and wilderness, social and economic values, visual resources, noise, and hazardous materials.

A copy of the Draft EIS has been sent to all individuals, agencies, and groups who have expressed interest in the project or as mandated by regulation or policy. A limited number of copies are available upon request from the BLM at the address listed above.

Public participation has occurred during the EIS process. A Notice of Intent was filed in the **Federal Register** in August 1993, and an open scoping period was held for 120 days. Two public scoping meetings to solicit comments and ideas were held in November 1993, and a newsletter was issued to keep the public informed of the progress of the EIS. All comments presented to the BLM throughout the EIS process have been considered.

To assist the BLM in identifying and considering issues and concerns on the proposed action and alternatives, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters in the document. Comments may address the adequacy of the Draft EIS and/or the merits of the alternatives formulated and discussed in the document. Reviewers may wish to refer to the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. After the comment period ends on the Draft EIS, comments will be analyzed and considered by the BLM in preparing the Final EIS.

Dated: September 12, 1995.

Jeffrey A. Weeks,

Acting District Manager.

[FR Doc. 95–23129 Filed 9–18–95; 8:45 am]

BILLING CODE 4310–HC–P

[WY–981–1640–00–370F; WYW129948]

Notice of Realty Action: Modified Competitive Bidding Sale of Public Lands in Washakie County, WY

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management (BLM) has determined that the public lands described below are suitable for disposal under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713, 1719).

Sixth Principal Meridian

T. 47 N. R. 92 W.

Sec. 23, W½NE¼SW¼, NW¼SE¼SW¼.

The land aggregates 30 acres more or less.

The BLM must receive fair market value for the land and any bid for less than fair market value will be rejected. The appraised value for the 30 acres is $45,000. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

DATES: All bids must be received in the Bighorn Basin Resource Area Office no later than 10:00 a.m., November 15, 1995.

ADDRESSES: Sealed bids may be handcarried to the Bighorn Basin Resource Area Office, 101 South 23rd Street, Worland, Wyoming, or mailed to the Bighorn Basin Resource Area Office, P.O. Box 119, Worland, Wyoming 82401–0119. The sealed bid envelope must be marked in the front lower-left corner with the words "Public Land Sale, WYW129948, Sale held November 15, 1995. Sealed Bid—Do Not Open in Mail Room."

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale is available for review at the BLM office in Worland. For further information contact Karen Hepp, Range Management Specialist or Charles F. Wilkie, Area Manager, Bighorn Basin Resource Area, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401–0119, (307)347–9871.

SUPPLEMENTARY INFORMATION: A bid will also constitute an application for conveyance of the unreserved mineral estate, excluding oil and gas resources. The mineral interests being offered have no known value. At the time of the sale, the bidder will be required to pay a $50 filing fee (in addition to their bid) for all unreserved mineral interests.

Sale of the above land will be conducted by modified competitive bidding. Timberline Feedlot Inc. will be allowed preference consideration to meet the high bid. The proposed sale is consistent with the Washakie Resource Management Plan and meets the sale criteria of 43 CFR 2710.0–3(a)(2). Disposal of this tract will serve to increase the economic development of the Worland area through the expansion of Timberline's feedlot.

All bidders must be United States citizens, 18 years of age or older, corporations subject to laws in the state of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in land in Wyoming.

All sealed bids must be accompanied by a payment of not less than ten (10) percent of the total bid, plus a $50 filing fee for all unreserved mineral interests. Each bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management.

The apparent high bidder and the designated bidder (Timberline Feedlot Inc.) will be notified immediately following the opening of the sealed bids on November 15, 1995. If the designated bidder (Timberline Feedlot Inc.) fails to exercise their preference consideration to meet the highest bid within 30 days of the sale, the BLM will offer the lands to the high bidder. If the apparent high bidder is disqualified, the next highest qualified bid will be accepted. If Timberline Feedlot Inc. chooses not to meet the high bid and two (2) or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid.

The successful bidder shall submit the remainder of the full bid price prior to the expiration of 180 days from the date of the sale. Failure to pay the remainder of the full bid price shall result in cancellation of the sale and the deposit shall be forfeited and disposed of as other receipts of the sale. Conveyance of the public land will except and reserve to the United States:

1. A right-of-way (ROW) thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).
2. All the oil and gas in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of July 17, 1914, as supplemented (30 U.S.C. 121–124).

Conveyance of the public land will also be subject to:

1. Oil and Gas Pipeline ROW WYW75340.
2. Road ROW WYW81772.
3. Federal Aid Highway ROW WYW0189320.
4. Power Transmission Line ROW WYW72986.
5. Surface Water Flowline ROW WYW75336.
6. Telephone/Telegraph ROW WYW68159.
7. Gas Pipeline and Road ROW WYW94115.
8. Telephone Line ROW WYW89760.

Publication of this notice in the **Federal Register** shall segregate the land from all forms of appropriation under the public land laws, including the general mining laws. The segregative effect will terminate upon issuance of the patent, 270 days from the date of the publication of this notice, or upon publication in the **Federal Register** of a notice of termination of segregation, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Worland District Office, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401–0119. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any action by the State Director, this realty action will become final.

Dated: September 8, 1995.

David Atkins,

Acting District Manager Worland, Wyoming.

[FR Doc. 95–23188 Filed 9–18–95; 8:45 am]

BILLING CODE 4310–22–P

Bureau of Reclamation

Central Valley Project Improvement Act, Review of Criteria for Evaluating Water Conservation Plans

SUMMARY: Section 3405(e) of the Central Valley Project Improvement Act (CVPIA) Title 34 of Public Law 102–575, requires Reclamation to develop criteria to evaluate water conservation plans for Central Valley Project contractors and to evaluate all the plans by that criteria, including plans required by Section 210 of the Reclamation Reform Act. The Act also requires Reclamation to review the criteria periodically, "but no less than every three years." Reclamation finalized the Criteria for Evaluating Water Conservation Plans (Criteria) in April 1993. The Criteria must now be reviewed and revised, if necessary.

EFFECTIVE DATE: Comments should be provided to Reclamation by November 17, 1995.

ADDRESSES: Written comments should be mailed to the Bureau of Reclamation, Attention: Betsy Reifsnider, 2800 Cottage Way, MP–402, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Copies of the Criteria may be obtained by writing the Bureau of Reclamation, Attention: Betsy Reifsnider, 2800 Cottage Way, MP–402, Sacramento, CA 95825; or by calling Betsy at (916) 979–2388.

SUPPLEMENTARY INFORMATION: After considerable public input, Reclamation finalized the initial Criteria for Evaluating Water Conservation Plans (Criteria) in April 1993, and immediately began evaluating plans accordingly. As required by Section 3405(e), the Criteria must now be reviewed and updated if necessary to further promote the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.

As the first step in this review, Reclamation requests public comments on the contents of the April 1993 Criteria. The public is asked to note any problems with the existing Criteria, recommend any modifications which they believe Reclamation should make to the Criteria, and suggest new technology which has been shown to be cost effective in promoting water use efficiency.

Following review of the public comments received, Reclamation will consider whether to make changes to the existing Criteria. If changes are proposed, they will first be released as a draft for public review and comment. At that time, a series of public workshops will be held. Thereafter, changes will be finalized and revised Criteria issued by April 1996.

Dated: September 11, 1995.

Dan M. Fults,

Assistant Regional Director.

[FR Doc. 95–23197 Filed 9–18–95; 8:45 am]

BILLING CODE 4310–94–M

National Park Service

Pecos National Historical Park, Draft General Management Plan/Development Concept Plan/Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Draft General Management Plan/Development Concept Plan/Environmental Impact Statement for Pecos National Historical Park, Santa Fe and San Miguel Counties, New Mexico.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the Draft General Management Plan/Development Concept Plan/Environmental Impact Statement (GMP/DCP/EIS) for Pecos National Historical Park. This notice also announces public meetings for the purpose of receiving public comments on the Draft GMP/DCP/EIS.

On June 27, 1990, Congress repealed the act to establish Pecos National Monument and authorized the establishment of Pecos National Historical Park to include the former Pecos National Monument and 5,500 acres of the Forked Lightning Ranch. On November 8, 1990, Congress expanded Pecos National Historical Park to include the 682 acre Glorieta unit. The purpose of this Draft GMP/DCP/EIS is to set forth the basic management philosophy of the park and the overall approaches to resource management, visitor use, and facility development that would be implemented over the next 10–15 years.

This Draft GMP/DCP/EIS describes and analyzes alternatives for the Pecos and Glorieta units of Pecos National Historical Park. Proposed action and no-action alternatives have been developed for each unit. In addition to the proposed action and no-action alternatives, two additional action alternatives have been developed for the Pecos unit; and one additional action alternative has been identified for the Glorieta unit. These alternatives propose future management and use options for the newly established Pecos National Historical Park. Under Pecos Unit Alternative A (no action), present use and management would continue. The primary interpretive focus would continue to be at the Pecos Pueblo/mission ruins complex, and no new visitor facilities would be developed. Under Pecos Unit Alternative B (the proposed action), two visitor staging areas would be developed—the Fogelson visitor center area and Kozlowski's Stage Stop. New visitor facilities would include trails and trailheads and interpretive exhibits. Under Pecos Unit Alternative C, three visitor staging areas would be developed—the Fogelson visitor center, Kozlowski's Stage Stop, and the Gateway overlook. Staging areas and associated facilities would have easy vehicle access. Under Pecos Unit Alternative D, visitors would enter the park from the south; and a new visitor center would be developed at the Gateway overlook area. Other visitor facilities would continue to be provided at Kozlowski's Stage Stop and the Fogelson visitor center. Under Glorieta Unit Alternative 1 (no-action), no new facilities would be provided. Glorieta Unit Alternative 2 (proposed action) would incorporate a staffed visitor contact facility and interpretive trails and exhibits at Pigeon's Ranch and an exterior interpretive exhibit at a pulloff overlooking Cañoncito. Glorieta Unit Alternative 3 would incorporate the same facilities as Alternative 2; however, the staffed contact station would be at a different location. The major impact topics assessed for the proposals and the alternatives are cultural and natural resources and the socioeconomic environment, including the local economy and National Park Service operations.

This Draft GMP/DCP/EIS was prepared in order to evaluate a range of alternatives and an assessment of impacts of these alternatives and to provide the public with an opportunity to comment. This document will be on public review for 60 days. The park would appreciate any comments on these alternatives or other ways to manage the park over the next 15 years.

DATES: Comments on the Draft GMP/DCP/EIS should be received no later than November 17, 1995. The dates and times for public meetings regarding the draft GMP/DCP/EIS can be obtained by contacting Pecos National Historical Park at 505–757–6414.

ADDRESSES: Comments on the Draft GMP/DCP/EIS should be submitted to Superintendent, Pecos National Historical Park, Post Office Drawer 418, Pecos, New Mexico 87552, telephone 505–757–6414.

SUPPLEMENTARY INFORMATION: Public reading copies of the Draft GMP/DCP/EIS will be available for review at the following locations: Office of Public Affairs, National Park Service, 1849 C Street, NW, Washington, D.C.; Department of the Interior Natural Resource Library, 1849 C Street, NW, Washington, D.C.; National Park Service, Southwest System Support Office, 1100 Old Santa Fe Trail, Santa Fe, New Mexico; Santa Fe Public Library Reference Desk, 145 Washington Avenue, Santa Fe, New Mexico; Pecos National Historical Park, Administrative Office, 2 miles south of Pecos, New Mexico on State Highway 63; and local public libraries. You may call the park at 505–757–6032 to arrange for a tour through October 15, 1995.

Dated: September 8, 1995.

Ernest W. Ortega,

Associate Regional Director.

[FR Doc. 95–23002 Filed 9–18–95; 8:45 am]

BILLING CODE 4310–70–M

Saint Croix Island International Historic Site Draft General Management Plan/Environmental Impact Statement; Intent

SUMMARY: This notice is to advise the public that the National Park Service is preparing a Draft General Management Plan (GMP)/Environmental Impact Statement (DEIS) for Saint Croix Island International Historic Site, Calais, Maine. The formal 30-day public scoping period for such effort begins October 1 and closes October 31, 1995. This scoping effort allows the public to help the National Park Service identify the most important issues to be addressed and the range of alternatives to be considered, proposed and evaluated in the Draft GMP/EIS.

A public information document is available. The purpose of the document is to invite public participation and to serve as an outline for discussion during public consultations. To ensure that the full range of issues are addressed and a full range of alternatives are identified and evaluated, comments and suggestions are invited from all interested parties. Written comments are welcome and must be postmarked no later than October 31, 1995. A public workshop will be held on Wednesday, October 25, 1995, at 7 pm, at the Washington County Technical College, River Road, U.S. Route 1, Calais, Maine.

SUPPLEMENTARY INFORMATION: The public information document briefly describes the significance of the site, the NPS planning process, preliminary management objectives, as well as an outline of preliminary ideas for the future of the site. No decision has been made regarding what the contents of the draft GMP/EIS will be or what alternatives will be proposed and evaluated in the draft GMP/EIS.

FOR FURTHER INFORMATION CONTACT: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, (207) 288–5472.

Dated: September 11, 1995.

Robert W. McIntosh,

Acting, Deputy Field Director.

[FR Doc. 95–23152 Filed 9–18–95; 8:45 am]

BILLING CODE 4310–70–P

Delta Region Preservation Commission; Meeting

AGENCY: National Park Service, Jean Lafitte National Historical Park and Preserve, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m. at the following location and date.

DATES: October 18, 1995.

LOCATION: Beauregard House, Chalmette Unit, Jean Lafitte National Historical Park and Preserve, 8606 W. Saint Bernard Highway, Chalmette, Louisiana 70043.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana 70130–1142, (504) 589–3882, extension 108.

SUPPLEMENTARY INFORMATION: The Delta Region Preservation Commission was established pursuant to section 907 of Pub. L. 95–625 (16 U.S.C. 203f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Impanelment of New Members
—Old Business
—New Business
—Education Program
—General Park Update

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: September 6, 1995.

W. Thomas Brown,

Acting Field Director, Southeast Area.

[FR Doc. 95–23154 Filed 9–18–95; 8:45 am]

BILLING CODE 4310–70–M

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Maine Acadian Culture Preservation Commission will meet on Thursday, October 19, 1995. The meeting will convene at 7 PM in the cafeteria of Van Buren High School on Main Street (U.S. Route 1) in Van Buren, Aroostook County, Maine.

The eleven-member Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (PL 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

- the development and implementation of an interpretive program of Acadian culture in the state of Maine; and
- the selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the meeting held August 17, 1995.
2. Presentation: "Where Two Worlds Met," early history of Saint Croix Island—Wayne Kerr, Heritage Presentation Specialist, Canadian Heritage (Parks Canada).
3. Reports of Maine Acadian Culture Preservation Commission working groups.
4. Report of the National Park Service planning team and project staff.
5. Opportunity for public comment.
6. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, PO Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

Robert W. McIntosh,

Acting Deputy Director, Northeast Field Area.

[FR Doc. 95–23151 Filed 9–18–95; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 9, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 4, 1995.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Madera County

Clark, Mary Andrews, Memorial Home, 306–336 S. Loma Dr., Los Angeles, 95001152

Mendocino County

Larsen Family House, 84 State St., Willits, 95001153

Napa County

Special Internal Revenue Bonded Warehouse, First District, No. 13, 1216 Church St., St. Helena, 95001154

Tulare County

Wilsonia Historic District, Roughly bounded by Pine Ln., Fern Ln., Hillcrest Rd., Sierra Ln., Kaweah Ln., Goddard Ln. and Park Rd., Wilsonia, 95001151

LOUISIANA

Iberia Parish

Erath, Auguste, Building, 333–335 W. St. Peter St., New Iberia, 95001156

Wormser's Department Store, 112 E. Main St., New Iberia, 95001158

MICHIGAN

Manistee County

Manistee Harbor, South Breakwater, Mouth of the Manistee R., at Lake Michigan, Manistee, 95001162

Ottawa County

Piers and Revetments at Grand Haven, Michigan, Mouth of Grand R., Grand Haven, 95001161

Van Buren County

Navigation Structures at South Haven Harbor, Michigan, Mouth of the Black R., at Lake Michigan, South Haven, 95001160

MINNESOTA

St. Louis County

United States Army Corps of Engineers Duluth Vessel Yard, Jct. of Ninth St., S. and Minnesota Ave., Duluth, 95001163

NORTH CAROLINA

Macon County

Satulah Mountain Historic District, Roughly bounded by NC 28, Satulah, Brooks, Worley, Warren and Old Walhalla Rd., Highlands, 95001155

OHIO

Portage County

Olin, Arvin, House, 1425 Ravenna Rd., Kent vicinity, 95001157

[FR Doc. 95–23131 Filed 9–18–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Nebraska State Museum, Anthropology Research Division, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory for Native American human remains and associated funerary objects from six sites in Nebraska currently in the possession of the University of Nebraska State Museum, Anthropology Research Division, Lincoln, NE.

A detailed inventory and assessment has been made by members of the professional staff of the University of Nebraska State Museum, in consultation with representatives of the Northern Ponca Tribe of Nebraska and the Southern Ponca Tribe of Oklahoma. Meetings with these tribal representatives have been held at the

Nebraska State Museum on eight occasions during 1993–1995, in addition to many phone conversations during this period.

During 1936–1938, the Nebraska State Archeological Survey conducted excavations of these six sites under the authority of the W.P.A. Official Project #165–81–8095, Work Project #3140. Under agreement with the W.P.A., the collections resulting from these excavations were accessioned by the University of Nebraska State Museum.

Human remains from the Ponca Fort Site (*Nanza*), Knox County, NE consist of sixty-six individuals. No known individuals were identified. A total of 5,310 cultural items are associated with these burials including: Wood (bark fragments, scraper, shaft smoother, shaft straightener); copper (beads, bracelets, bells, buttons, coils; neck rings, projectile points, rings, sheets, and cones); glass (beads, button), pipestone (bannerstone, pipe fragments), bone (bison tools, pendent, hair pipe bead); stone (grinding slab, unknown artifact); iron (ax, bracelets, projectile points, fragments); lead (bracelet, coils); leather fragments; shell (unmodified, gorgets).

The Ponca Fort Site's occupation by the Ponca Tribe is estimated as c. 1790–1800, based on associated cultural items and oral evidence of Ponca ethnohistoric informants in the 1930s (Wood 1965). The J.O. Dorsey "Omaha Map" (1884) indicated the presence of Ponca earthlodges on this site and Ponca ethnohistoric informant J. LaFleshe described "curvilinear entrenchments" and "many earth-lodges" inside the fort (Dorsey 1884). Prince Maximilian in 1832 described a uninhabited Ponca fort at this location. Cultural items found with the burials (such as copper fragments and trade beads), osteological evidence (such as copper staining, marked anterior dental wear, fair to good preservation, and morphological changes related to horseback riding), and the ethnohistoric evidence are consistent with Ponca occupation of the site.

Human remains from the Ponca Point Site (*Ma-azi*), Knox County, NE, consist of the remains of one infant. No known individuals were identified. Two associated funerary objects, consisting of one blue and one white glass bead, were found with this burial.

In 1966, Ponca tribal historian Peter LeClaire identified the Ponca Point site as "*Ma-azi*" or "the burying place on the top of the ridge" used by the Ponca in the historic period. Osteological evidence of red staining on the arm and rib and the two historic beads associated with this burial, the assessment of the site as protohistoric/historic Ponca, and Ponca ethnohistoric informants are consistent with Ponca occupation of this site.

Human remains from the Hogan Site, Knox County, NE consist of the remains of three individuals. No known individuals were identified. Two hundred eighty-one associated funerary objects include glass (beads), copper (button), and unidentified metal (pendant).

Describing this site in the *Report to the Chancellor* (1937), Bell reports that the Hogan site "has been used as a burial ground until very recent times by the Ponca." Osteological evidence of red staining, good preservation, morphological changes related to horseback riding, and the associated funerary objects are consistent with Ponca occupation of this site.

Human remains from the Davis Site, Knox County, NE consist of the remains of nine individuals. No known individuals were identified. Two hundred and thirty-eight associated funerary objects include: Glass (beads, bottle); copper (bell, bracelets, buttons, bands, coils); iron (sheet, nails); pumice; wood (paper, post); tin (bowl, plate); textile (black cloth).

Reference is made to the Ponca living in this area as early as Truteau in 1795, Mackay in 1797, Clark in 1804, and Prince Maximilian in 1832. Ponca tribal members working on the site during excavations in 1937 identified these burials as Ponca. Osteological evidence of brachycephalic skulls, and associated cultural items are consistent with Ponca occupation of this site.

Human remains from the Minaric II Site (25KX9), Knox County, NE, consist of the remains of six individuals. No known individuals were identified. Sixty-eight associated funerary objects include: bone (antler fragments, antler scraper); pipestone (fragments); glass (beads); ceramics (sherds); copper (cones); sandstone abrader; and shells.

In 1938, Chief Birdhead identified the Minaric II Site as a Ponca village "occupied by the lesser chiefs and the common people of the tribe." Chief Birdhead also said that his grandfather had lived in one of the houses on the bottom land. In 1966, Ponca tribal historian Peter LeClaire compiled a list of Ponca sites, and identified the Minaric II site as "Farming Ground Village." Osteological evidence of copper staining, marked anterior dental wear, fair to good preservation, morphological changes related to horseback riding, and Ponca oral history are consistent with Ponca occupation of this site.

Human remains from the Minaric III Site, Knox County, NE, consist of the remains of one individual. No known individual was identified. Twenty-eight associated funerary objects include: glass (beads); metal (ring, copper necklace band); lithic (projectile point).

The archeological evidence of the Minaric III site, located between the Minaric II site and the Ponca Fort Site, indicates Ponca occupation during the historic period consistent with the surrounding Ponca sites. Osteological evidence of copper staining, marked anterior dental wear, good preservation, and the associated cultural items are consistent with Ponca occupation of this site.

Based on the above-mentioned information from these six sites, officials of the Nebraska State Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identify which can be reasonably traced between these human remains and associated funerary objects and the Northern Ponca Tribe of Nebraska and the Southern Ponca Tribe of Oklahoma.

This notice has been sent to officials of the Northern Ponca Tribe of Nebraska and the Southern Ponca Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Thomas Myers, Curator of Anthropology, University of Nebraska State Museum, Systematics Collections W436 Nebraska Hall, Lincoln, NE 68588–0544, telephone (402) 472–5033 before October 19, 1995. Repatriation of these human remains to the Northern Ponca Tribe of Nebraska and the Southern Ponca Tribe of Oklahoma may begin after this date if no additional claimants come forward.

Dated: September 13, 1995.

Francis P. McManamon,

Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 95–23153; Filed 9–18–95; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Petition for Amerasians, Widow or Special Immigrant.

(2) Form: I–360. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and Households. Other: None. The information collected on Form I–360 will be used by the Immigration and Naturalization Service to determine eligibility for the requested immigration benefit. The form serves the purpose of standardizing request for the benefit, and ensuring that basic information required to assess eligibility is provided by applicants.

(4) 11,000 responses per year at 2 hours per response.

(5) 22,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 18, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–23155 Filed 9–18–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Trainer's Bureau/Trainer's Bureau Application Form.

(2) Form: None. Office of Victims of Crime, Office of Justice Programs, United States Department of Justice.

(3) Primary: Not-for-profit institutions. Other: State, Local or Tribal Government. The information requested is necessary for the Office for Victims of Crime to review request for training and provide a trainer that meets the needs of an agency or community seeking to improve the response to crime victims through providing consultation or training. Victims of Crime Act administrators, U.S. Attorneys and victim service providers across the nation will be given an opportunity to apply for needed training and technical assistance via this application.

(4) 150 responses per year at 2 hours per response.

(5) 300 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 13, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–23156 Filed 9–18–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,389]

Don Shapiro Industries, AKA Action West Jeans; El Paso, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 5, 1995 in response to a worker petition which was filed on September 5, 1995 on behalf of workers at Don Shapiro Industries (aka Action West Jeans), El Paso, Texas.

An active certification covering the petitioning group of workers remains in effect (TA–W–31,352). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 5th day of September, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23185 Filed 9–18–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,247]

Fina Oil and Chemical Company Exploration & Production Group Offshore Division at Various Locations in Texas; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

And Also Operating in The Following Other States:

TA–W–31,247A	Louisiana
TA–W–31,247B	Alabama
TA–W–31,247C	Colorado
TA–W–31,247D	Oklahoma

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated in response to a petition received on July 17, 1995 and filed on behalf of workers at Fina Oil and Chemical Company, at various locations in Texas, and also operating in the following other states: Louisiana, Alabama, Colorado & Oklahoma. The workers are engaged in occupations related to the production of crude oil and natural gas.

The investigation revealed that production and employment declined at the subject firm in 1994 and in January through June 1995. Company imports of crude oil increased in these same periods.

The investigation also disclosed that crude oil produced by the subject firm is marketed through normal retail channels and has been impacted by the high penetration of imports into the crude oil market.

U.S. imports of crude oil increased absolutely and relative to domestic shipments and consumption in 1994 and again in the twelve month period ending in May 1995. The ratio of imports to domestic production is over 102 percent.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with crude oil and natural gas produced at Fina Oil and Chemical Company, at various locations in Texas, and also operating in the following other states: Louisiana, Alabama, Colorado and Oklahoma contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

> "All workers of Fina Oil and Chemical Company at various locations in Texas (TA–W–31,247) & operating in the following cited States, engaged in employment related to the production of crude oil and natural gas who became totally or partially separated from employment on or after October 8, 1994 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

TA–W–31,247A	Louisiana
TA–W–31,247B	Alabama
TA–W–31,247C	Colorado
TA–W–31,247D	Oklahoma

Signed in Washington, D.C. this 25th day of August, 1995

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23181 Filed 9–18–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August and September, 1995.

In order for an affirmative to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,260; IBM Corp., Banks Manufacturing, Endicott, NY

TA–W–31,160; Noll Printing Co., Inc., Huntington, IN

TA–W–31,300; Omega News & Advertising, Inc., El Paso, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,301; Electron Wire, El Paso, TX

TA–W–31,316; Collegiate Pacific, Roanoke, VA

TA–W–31,353; Dura Convertible System, Adrian, MI

TA–W–31,295, TA–W–31,296; Portac, Inc. of Tacoma [illegible]er, WA & Forks, [illegible]

TA–W–31,2[illegible] [illegible]lle Machine Products [illegible]rsville, PA

TA–W–31,291; Lucas AU1, Hazleton Div., Hazleton, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,176; Handy & Harman, East Providence, RI

U.S. imports of gold declined in 1994 compared to 1993. The ratio of gold imports to domestic production declined in the same comparative periods.

TA–W–31,172; International Marine Carriers, Mineola, NY

TA–W–31,320; Associated Gas Services, Inc., (A subsidiary of Panhandle Eastern Corp.), Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

TA–W–31,214, TA–W–31,215, TA–W–31,216, TA–W–31,217; Buddy L., Inc., Lincoln St. Gloversville, NY, Patch Rd., Gloversville, NY Mayfield, NY and New York, NY: July 26, 1994.

TA–W–31,310; Cassaro Manufacturing Co., Carbondale, PA: July 24, 1994.

TA–W–31,308; American Safety Razor, Verona, VA: July 21, 1994.
TA–W–31,307; Exide Corp., Hamburg, PA: July 7, 1994.
TA–W–31,285; Red Level Fashions, Red Level, AL: July 7, 1994.
TA–W–31,319; American Standard, Inc., US Plumbing Products Div., Hamilton Township, NJ: July 27, 1994.
TA–W–31,293; Movie Star of Purvis, Purvis, MS: July 31, 1994.
TA–W–31,196; Cornik Fashion, Jersey City, NJ: May 16, 1994.
TA–W–31,311; Hillin-Simon/Prime Exploration, L.C., Midland, TX: August 25, 1995.
TA–W–31,161 & A; AEP Industries, Inc., South Hackensack, NJ and Moonachie, NJ: June 12, 1994.
TA–W–31,189; Cuddle Teen Frocks, Inc., New York, NY: June 21, 1994.
TA–W–31,195; Belden Wire & Cable Co (Formerly American Electric Cordsets Co), Cord Products Div., Bensenville, IL: June 15, 1994.
TA–W–31,197; H.H. Cutler Co., Statesboro, GA: June 1, 1994.
TA–W–31,233 & A; Jos J. Pietrafesa Co., Carrollton, GA & Liverpool, NY: July 7, 1994.
TA–W–31,347, TA–W–31,348, TA–W–31,349; Atlantic Oil Co., Glendale, CA, Bakersfield, CA and Sutter, CA: July 11, 1994.
TA–W–31,242; Fina Oil & Chemical Co., Exploration & Production Group, Dallas, TX: October 8, 1994.
TA–W–31,243, TA–W–31,244, TA–W–31,245, TA–W–31,246; Fina Oil & Chemical Co., South Louisiana Div., South Texas Div., East Texas Div., & West Texas Div. Located Through out the States of Texas & Louisiana: October 8, 1994.
TA–W–31,247; Fina Oil & Chemical Co., Offshore Div., With Locations in the States of Texas &, Operating in the Following Other States: A; Louisiana, B; Alabama, C; Colorado, D; Oklahoma: October 8, 1994.
TA–W–31,167, TA–W–31,168, TA–W–31,169; GCO Apparel Genesco, Bowdon, GA, Woodland, AL, Heflin, AL: June 13, 1994.
TA–W–31,324 & A; New Vision, Brooklyn, NY & New York, NY: August 1, 1994.
TA–W–31,299; P & M Tile, Inc., Mt. Gilead, NC: July 21, 1994.
TA–W–31,208; Delta Castings, Cooper, TX: June 19, 1994.
TA–W–31,234; Calvin Manufacturing Co., Tallapoosa, GA: July 7, 1994.
TA–W–31,222; Pamco Shoe Machinery Co., Inc., Lewiston, ME: June 22, 1994.
TA–W–31,254; Dexter Shoe Co., Milo Plant, Milo, ME: July 7, 1994.
TA–W–31,177; ITT Automotive, Tonawanda, NY: June 9, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of August and September, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00530; Omega News & Advertising, Inc., El Paso, TX
NAFTA–TAA–00370; Washington South Sound Services, Olympia, WA
NAFTA–TAA–00382; Titanium Metals Corp (TIMET), Tremont Div., Henderson, NV

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–00544; National Tea Co., In., DBA "The Treal Superstore", New Orleans, LA
NAFTA–TAA–00526; USDA Forest Service, Superior, MT

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00549; American Standard, Inc., U.S. Plumbing Products Div., Trenton, NJ: August 4, 1994.
NAFTA–TAA–00554; P&M Tile, Inc., Mount Gilead, NC: July 21, 1994.
NAFTA–TAA–00541; Gould Electronics, Inc., A.K.A. Gould Shawmut Marble Falls, TX: July 31, 1994.
NAFTA–TAA–00537; Vaagen Brothers Lumber, Inc., Colville, WA: July 22, 1994.
NAFTA–TAA–00539 &A, B; The 500 Fashion Group, Northampton, PA, Whitehall, PA & Philadelphia, PA: July 14, 1994.
NAFTA–TAA–00532; Anchor Glass Container Corp., Keyser, WV: July 14, 1994.
NAFTA–TAA–00555; AMCO Manufacturing Corp., Adrian Div., Adrian, MI: August 7, 1994.
NAFTA–TAA–00567; Roadware Corp., Kylertown, PA: August 10, 1994.

I hereby certify that the aforementioned determinations were issued during the months of August and September, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 7, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23182 Filed 9–18–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the data on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than September 29, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 29, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 5th day of September, 1995.

Victor J. Trunzo,

Program manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON SEPTEMBER 5, 1995

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,385	Johnson Controls (UAW)	Louisville, KY	08/22/95	Batteries.
31,386	Huffy Bicycles (USWA)	Celina, OH	08/18/95	Bicycles and parts.
31,387	General Power Equip. Co (Wkrs)	Harvard, IL	07/14/95	Outdoor power products.
31,388	Acadia Polymers (Wkrs)	Clifton Forge, VA	08/14/95	Piston seals—auto industries.
31,389	Action West Jeans (Wkrs)	El Paso, TX	08/18/95	Jeans and jean products.
31,390	Bailey Corporation (Comp)	Portland, IN	08/18/95	Painted spoilers and trim components.
31,391	OshKosh B'Gosh (UFCW)	Marrowbone, KY	08/23/95	Jeans.
31,392	Exxon Chemical (Comp)	Casper, WY	08/18/95	Crude oil and natural gas.
31,393	Bethlehem Steel Corp (USWA)	Bethlehem, PA	08/22/95	Structural steel.
31,394	Bike Athletic Co. (UNITE)	Knoxville, TN	08/23/95	Sports apparel.
31,395	Great American Knitting (Comp)	Scotland Neck, NC	08/25/95	Men's and women's athletic white socks.
31,396	Nylomatic (Wkrs)	Fallsington, PA	08/24/95	Plastic injected molded parts.
31,397	Gold Medal, Inc. (Wkrs)	Crewe, VA	08/21/95	Bean bags, ottomans, cushions.
31,398	G III Fashions, Inc (Wkrs)	New York, NY	08/12/95	Leather outerwear.
31,399	AT&T Global Information (Wkrs)	Springfield, MA	08/03/95	Reprinted power supplies.
31,400	Motor Wheel Corp. (UAW)	Ypsilanti, MI	08/16/95	Vehicle wheel components.
31,401	Lanier Clothes (Comp)	Decherd, TN	08/21/95	Men's suits and sport coats.
31,402	Copper Range Co. (Comp)	White Pine, MI	08/21/95	Concentrate electro lytic cathode copper.
31,403	Liz Claiborne (Comp)	New York, NY	08/24/95	Ladies' apparel.
31,404	Lanier Clothes (Comp)	Winchester, TN	08/24/95	Men's suits, sportcoats.

[FR Doc. 95–23184 Filed 9–18–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,941]

Miller Brewing Co., Fulton, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued an Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 14, 1995, applicable to workers of Miller Brewing Company in Fulton, New York.

The Amended Certification revised the impact date to cover major layoffs that occurred in January 1994. Recent information revealed that layoffs also occurred in 1993. The Department is issuing another amended notice applicable to TA–W–30,941 to make the impact date one year prior to the date of the petition. The petition date for the subject case was April 13, 1994.

the amended notice applicable to TA–W–30,941 is hereby issued as follows:

> All workers of Miller Brewing Company, Fulton, New York engaged in employment related to the production of beer who became totally or partially separated from employment on or after April 13, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1994.

Signed at Washington, D.C., this 31st day of August, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23186 Filed 9–18–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,119]

Wirekraft Industries, Incorporated, Burcliff Industries Division, Cardington, OH; TA–W–31,119A, Wirekraft Industries, Incorporated, Burcliff Industries Division, South Bend, IN; and TA–W–31,119B, Wirekraft Industries, Incorporated, Burcliff Industries Division, Lakeville, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 9, 1995, applicable to all workers of Wirekraft Industries, Incorporated, Burcliff Industries Division, located in Cardington, Ohio. The notice was published in the **Federal**

Register on August 24, 1995 (60 FR 44079).

The certification was amended August 18, 1995, to cover workers of the subject firm located in South Bend, Indiana. The notice will soon be published in the **Federal Register**.

New information received from the State Agency shows that worker separations have occurred at Wirekraft Industries, Incorporated, Burcliff Industries Division in Lakeville, Indiana. The workers produce electrical wire harnesses for appliances.

The intent of the Department's certification is to include all workers of Wirekraft Industries adversely affected by imports.

The amended notice applicable to TA–W–31,119 is hereby issued as follows:

> All workers of the Burcliff Industries Division of Wirekraft Industries, Incorporated, Cardington, Ohio (TA–W–31,119), South Bend, Indiana (TA–W–31,119A), and Lakeville, Indiana (TA–W–31,119B) who became totally or partially separated from employment on or after May 26, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23183 Filed 9–18–95; 8:45 am]

BILLING CODE 4510-30-M

Public Meeting; Federal Committee on Apprenticeship

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on October 1, 1995, at the Washington Hilton Hotel, 1919 Connecticut Avenue, NW., Washington, DC 20009.

The agenda will include:

12:00 a.m. Call to Order
Administrative Matters
- Meeting Logistics
- Approval of Minutes

Remarks: Assistant Secretary for ETA
Bureau of Apprenticeship and Training Report

Work Group Reports and Recommendations

- Briefing on National Apprenticeship Conference
- Reauthorization/funding Carl Perkins Vocational Education Act
- Pilot test projects for promotion/expansion of registered apprenticeship
- National Registered Apprenticeship Award Program
- Regulatory Barriers to Expansion of Registered Apprenticeship
- Legislation affecting registered apprenticeship
- National Association of State and Territorial Apprenticeship Directors (NASTAD) Report
- National Association of Governmental Labor Officials (NAGLO) Report
- Public Comments
- Other Business

4:00 p.m. Adjournment

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion M. Winters at (202) 219–5921, Ext. 114 no later than September 19, 1995, if special accommodations are needed.

Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Designated Federal Official at any time prior to the meeting. His address is: Mr. Anthony Swoope, Director, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4649 Washington, D.C. 20210.

Fifteen duplicate copies are needed for the members and for inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official by September 23, 1995. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, D.C., this 13th day of September 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor for Employment and Labor.

[FR Doc. 95–23187 Filed 9–18–95; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Indian Point Nuclear Generating Unit No. 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one time schedular exemption from the requirements of 10 CFR 50.71(e)(4) for the submittal of the periodic Final Safety Analysis Report (FSAR) update from Facility Operating License No. DPR–64, issued to the Power Authority of the State of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 3 (IP3), located at the licensee's site in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed schedular exemption would reschedule the required FSAR update from July 22, 1995, to December 27, 1995 (i.e. 6 months after restart from the extended shutdown). Title 10 of the Code of Federal Regulations (10 CFR), 10 CFR 50.71(e)(4) requires that FSAR revisions must be submitted annually or 6 months after a refueling outage provided the interval between updates does not exceed 2 years. In addition, 10 CFR 50.54(a)(3) requires that changes to the quality assurance program description that do not reduce commitments must be submitted to the NRC in accordance with the FSAR update requirements of 10 CFR 50.71(e).

The licensee shut down IP3 in February 1993 for a performance improvement outage. The plant was recently restarted on June 27, 1995. Although this extended shutdown was not a refueling outage, the number of facility changes made by the licensee during the shutdown equates it to one. As such, a one time FSAR update schedular exemption would enable the licensee to include most of the modifications, technical specifications amendments, and other changes completed during the extended shutdown in the next FSAR update.

The proposed action is in accordance with the licensee's application for exemption dated June 20, 1995.

The Need for the Proposed Action

The proposed schedular exemption is needed to permit the licensee to include most of the modifications, technical specifications amendments, and other changes completed during the extended shutdown in the next FSAR update.

Literal compliance with the FSAR update schedule of 10 CFR 50.71(e)(4) would result in an FSAR update which would be incomplete and not adequately reflect the actual design of the facility.

Environmental Impacts of the Proposed Action

The proposed action to allow the licensee an additional 6 months to update the IP3 FSAR is administrative in nature. The Commission has completed its evaluation of the proposed action and concludes that the probability or consequences of accidents will not increase, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action is administrative in nature and involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. However, as an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action considered are the same.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the Indian Point Nuclear Generating Station Unit No. 3," dated February 1975.

Agencies and Persons Consulted

In accordance with its stated policy, on August 17, 1995, the staff consulted with the New York State official, Jack Spath of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 20, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York.

Dated at Rockville, Maryland, this 12th day of September 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23177 Filed 9–18–95; 8:45 am]

BILLING CODE 7590-01-P

Application for a License To Export a Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of the application for a license to export a utilization facility as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this application follows:

Name of applicant	ABB Combustion Engineering., Inc.	Description of facility	End use
Date of Application	10 August 1995	2 (Two) Nuclear Power Reactors/ 1000 MWe (ea) pressurized water reactors/Ulchin units 5 & 6.	Commercial Generation of Electricity.
Date Received	15 August 1995		
Application Number	XR 163		
Country of Destination	Republic of Korea		

Dated this 7th day of September 1995 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 95–23180 Filed 9–18–95; 8:45 am]

BILLING CODE 7590-01-M

Generic Letter 88–20, Supplement 5, Individual Plant Examination of External Events for Severe Accident Vulnerabilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 88–20, Supplement 5 to (1) notify all holders of operating licenses (except those licenses that have been amended to possession-only status) or construction permits for nuclear power reactors of modifications in the recommended scope of seismic reviews that are performed as part of individual plant examinations of external events (IPEEE) for the focused-scope and full-

scope plants and (2) provide guidance to licensees who wish to voluntarily modify their previously committed seismic IPEEE programs. This generic letter will be made available in the NRC Public Document Room. The information that was sent to the Committee to Review Generic Requirements, including the resolution of public comments received on this generic letter, will be made available in the NRC Public Document Room. This generic letter is also discussed in Commission information paper SECY–95–213 which will made available in the NRC Public Document Room.

DATES: The generic letter was issued on September 8, 1995.

ADDRESSES: Not Applicable.

FOR FURTHER INFORMATION CONTACT: John T. Chen (301) 415–6549.

SUPPLEMENTARY INFORMATION: None.

Dated at Rockville, MD, this 11th day of September, 1995.

For the Nuclear Regulatory Commission.

Alfred E. Chaffee,

Chief, Events Assessment and Generic Communications Branch, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23175 Filed 9–18–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–278]

PECO Energy Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–56, issued to PECO Energy Company, et al., (the licensee), for operation of the Peach Bottom Atomic Power Station, Unit 3, located in York County, Pennsylvania.

The proposed amendment would delete License Condition 2.C(5) from Facility Operating License DPR–56 which restricts power levels to no less than seventy percent in the coastdown condition.

The amendment is being proposed on a exigent basis in accordance with 10 CFR 50.91(a)(6). On August 29, 1995, the licensee discovered that it was operating at sixty-two percent power in the coastdown condition in violation of License Condition 2.C(5). On August 30, 1995, in order to avoid an unwarranted plant shutdown, the licensee requested enforcement condition for this violation until such time as the staff could process a permanent change to the facility operating license that would delete License Condition 2.C(5). The NRC staff authorized enforcement discretion verbally on August 30, 1995 and in writing on September 1, 1995, by letter to Mr. George Hunger, PECO Energy Company. The amendment is being considered on an exigent basis in order to minimize the length of time the licensee is operating in violation of License Condition 2.C(5).

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Deletion of License Condition 2.C(5) is an administrative change that will not involve a significant increase in the probability or consequences of any accident previously evaluated. This license condition is more appropriately controlled by other licensing bases documents, which include the NRC approved GESTAR II analyses and the cycle specific reload licensing reports, and should not be part of the FOL. Accidentally, this FOL change will not alter any safety limits which ensure the integrity of fuel barriers, and will not result in any increase to onsite or offsite dose.

No physical changes are being made to the plant, nor are there any changes being made in the operation of the plant as a result of this change which could involve a significant increase in the probability or consequences of any accident previously evaluated. Additionally, this change will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Deletion of License Condition 2.C(5) is an administrative change that will not create the possibility of a new or different type of accident from any previously evaluated. Deletion of License Condition 2.C(5) is an administrative change that will not involve any changes to plant systems, structures or components (SCCs) which could act as new accident initiators. This change will not impact the manner in which SSCs are tested such that a new or different type of accident from any previously evaluated could be created.

3. The proposed change does not result in a significant reduction in the margin of safety.

No margins of safety are reduced as a result of the proposed deletion of License Condition 2.C(5). No safety limits will be changed as a result of this change. The proposed change does not involve a reduction in the margin of safety because this change is an administrative change which will not impact core limits or any other parameters that are used in the mitigation of a UFSAR design basis accident or transient. The change to the FOL does not introduce any hardware changes, and will not alter the intended operation of plant structures, systems or components utilized in the mitigation of UFSAR design basis accidents or transients. Additionally, this change will not introduce any new failure modes of plant equipment not previously evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of

this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 18, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see letter dated August 30, 1995, and the application for amendment dated September 1, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room, located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, MD, this 13th day of September 1995.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23176 Filed 9–18–95; 8:45 am]

BILLING CODE 7590-01-P

[Docket Nos. 50–338 and 50–339]

Virginia Electric & Power Company, North Anna Power Station Units 1 and 2; Exemption Amendment

I

The Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Operating License No. NPF–4 which authorizes operation of North Anna Power Station Unit 1 and Operating License No. NPF–7 which authorizes operation of Unit 2. These operating licenses provide, among other things, that the North Anna Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station comprises two pressurized water reactors at the Licensee's site located in Louisa County, Virginia.

II

By letter to the licensee dated November 6, 1986, Exemption 1 (among others) was approved by the NRC. Exemption 1 was from the technical requirements of Section III.G.3 of Appendix R to 10 CFR Part 50 to the extent that fire detection and fixed suppression systems were not installed throughout the Auxiliary, Fuel, and Decontamination Building (Fire Area 11). The original Safety Evaluation supporting Exemption 1 stated the charging pump cubicles had 3-hour fire-rated walls, and that the penetrations in these walls were sealed to a rating of 3 hours. By letter dated December 11, 1992, the licensee requested an addendum (exemption amendment) which revises the original Exemption 1 to account for non-fire-rated penetration seals and unprotected openings located in the south wall of the charging pump cubicles. The lack of penetration seals was identified in an NRC Inspection Report 50–338, 339/92–18 dated October 19, 1992.

The Commission's staff has evaluated the information provided by the licensee to support the addendum to Exemption 1. The Commission's Safety Evaluation relating to an Addendum to Exemption 1 From Certain Requirements of Appendix R to 10 CFR Part 50 is being issued concurrently with this exemption amendment. The Safety Evaluation concludes that the lack of fire-rated penetration seals in the south wall of the pump cubicles does not present an undue risk to the public health and safety and that special circumstances are present in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

III

The underlying purpose of Section III.G.3 of Appendix R to 10 CFR Part 50 is to ensure that safe shutdown capability is maintained. Notwithstanding the lack of three hour rated penetration seals, the circumstances, as fully described in the Safety Evaluation, are such that the installation of fire detection and fixed suppression systems throughout Fire Area 11 is not necessary to provide reasonable assurance that safe shutdown capability is maintained.

Therefore, the staff concludes that "special circumstances" exist for the licensee's requested exemption amendment in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Section III.G.3 of Appendix R to 10 CFR Part 50. The Commission hereby grants an amendment to Exemption 1 granted November 6, 1986, and authorizes the subject addendum (attached) to revise Exemption 1 to account for non-fire-rated penetrations in the south wall of the charging pump cubicles.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12(a), (1) the exemption amendment as described in Section II is authorized by law and will not present an undue risk to the public health and safety and is consistent with common defense and security, and (2) special circumstances are present for the exemption amendment in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption amendment will have no significant impact on the environment (60 FR 45747).

This exemption amendment is effective upon its issuance.

Dated at Rockville, Maryland this 12th day of September 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23174 Filed 9–18–95; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade Advisory Committee on Africa

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the September 28, 1995 meeting of the Trade Advisory Committee on Africa will be held from 11:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 11:00 a.m. to 1:15 p.m. The meeting will be open to the public from 1:15 p.m. to 2:00 p.m.

SUMMARY: The Trade Advisory Committee on Africa will hold a meeting on September 28, 1995 from 11:00 a.m. to 2:00 p.m. The meeting will be closed from 11:00 a.m. to 1:15 p.m. when the meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:15 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for September 28, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Jefferson Hotel at 16th and M Street, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–23172 Filed 9–18–95; 8:45 am]

BILLING CODE 3190-01-M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purpose of this document is to publish notice of a new Privacy Act system of records, USPS 120.154, Personnel Records—Employee Survey Process System Records. The new system contains a collection of statistical data compiled from surveys completed by employees on various topics and issues related to their employment. Some surveys within the system relate directly to individual managers or supervisors whose performance has been rated by the questionnaire respondents. Other surveys concern particular work locations rather than individual managers, but these surveys have the potential for being associated, though indirectly, with the particular manager or supervisor who is responsible for the work location.

DATES: This proposal will become effective without further notice October 30, 1995, unless comments are received on or before that date that result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting/Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8650, Washington, DC 20260–5242. Copies of all written comments will be available for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Postal Service has, in various stages of development, a number of employee survey processes that are intended to help improve postal operations, employee-management relations and communications, and the leadership skills of managers and supervisors. These survey processes involve the collection of data from employees by means of printed questionnaires or by telephone interviews, tabulation and analysis of the responses, and feedback of the results to the particular manager or supervisor concerned. The manager or supervisor is then expected to develop and implement plans for improvement based upon the problems identified by the responding employees. While intended primarily for developmental purposes, some information also may be used to evaluate a manager or supervisor's success in improving the survey results over time. Records maintained as a result of the data collection contain primarily statistical information and do not identify individual respondents. They are retrieved by reference to a particular manager, supervisor, or work location.

Two examples of surveys that relate to identifiable managers or supervisors are the "Employee Feedback" questionnaire, in which employees are asked to rate their supervisors, and the "360 Degree Feedback" instrument, which is completed by a manager, and his superiors, peers, and subordinates. Respondents to the 360 Degree questionnaire are asked to rate numerically the extent to which the manager has exhibited certain job-related behaviors. In all instances, respondents participate in these surveys voluntarily and anonymously. The results are tabulated and provided to the manager or supervisor in statistical form. The manager or supervisor is instructed how to use the information as a tool for improving his or her leadership skills. Survey results are reported and maintained by reference to the manager's or supervisor's name and social security number.

The Postal Service also periodically asks its employees to complete the Employee Opinion Survey. This survey contains questions that concern a particular work location rather than particular managers or supervisors. The questions cover general topics such as leadership and supervision, communication practices, treatment of employees, working conditions, and attention to quality. As with the other surveys, care is taken to preserve the anonymity of the employees surveyed. Managers and supervisors receive the results in the form of ratings for their own offices. They are instructed to analyze the results, share them with their employees, and prepare a list of strengths and opportunities for improvement from which an action plan may be developed and monitored. Because the results of the Employee Opinion Survey are reported and kept by work location, rather than by an individual manager or supervisor's name or other personal identifier, the information is not maintained or retrieved in a manner that prompts its establishment as a Privacy Act system of records. Since, however, there is the possibility, as noted above, that survey results for a specific work location may become associated with the responsible manager and may also be used in evaluating the manager's progress in implementing an action plan, the Postal Service deems it appropriate to include results of the Employee Opinion Survey in this system of records.

Maintenance of these records is not expected to have a significant effect on individual privacy rights. Individual respondents to the various surveys are assured anonymity. Information kept is limited to aggregate ratings and analyses associated with a particular work location or manager or supervisor. Managers and supervisors are provided the survey results that relate to themselves or to the work locations for which they are responsible. Because the survey results are intended for internal, developmental use, only three of the following Postal Service's general routine uses are being applied to this system of records: Disclosure to a Postal Service contractor, litigation, or storage. The information will be kept in a secured environment, with automated data processing (ADP) physical and administrative security and technical software applied to information on computer media. Contractors who maintain information collected by this system will be made subject to subsection (m) of the Privacy Act and be required to apply appropriate protections subject to audit and inspection by the Postal Inspection Service.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the following proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS 120.154

SYSTEM NAME:

Personnel Records—Employee Survey Process System Records, USPS 120.154.

SYSTEM LOCATIONS:

Human Resources at Headquarters, and at a contractor site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Supervisors and managers who are rated under an employee survey process or have responsibility for a rated work location.

CATEGORIES OF RECORDS IN THE SYSTEM:

Work location, name and social security number of manager or supervisor, aggregate data and analyses of data, and national feedback reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1001.

PURPOSE(S):

To improve the quality of postal services, employee-management relations, and communication between managers and employees by soliciting employee feedback on job-related issues; to provide management and supervisors with information needed to improve their leadership skills; and to provide information for evaluating manager and supervisor performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements b, f, and g listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer storage media.

RETRIEVABILITY:

Some survey information in the system is retrieved only by work location. Other information is retrieved by manager or supervisor name or social security number.

SAFEGUARDS:

Hardcopy records are maintained in a secured environment, with access limited to those individuals whose official duties require such access. Access to automated records is restricted by authorized user identification codes. Information on computer storage media maintained at a contractor site is protected by ADP physical security, technical software, and administrative security subject to audit and inspection by the Postal Inspection Service.

RETENTION AND DISPOSAL:

a. Employee Opinion Survey Process Records—Retain for 20 years. Destroy paper records by shredding or burning. Destroy computer records by erasure or degaussing.

b. Management Development Process Records: (1) Paper Survey Feeder Records—Cut off at the end of the calendar year and destroy by shredding or burning 3 years from cutoff date; (2) Computer Records—Retain for 20 years and then erase or degauss.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Human Resources, United States Postal Service, 475 L'Enfant PLZ SW, Washington DC 20260–4200.

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to the system manager.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the notification procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Postal employees.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–23134 Filed 9–18–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extensions:

Form N–8A—File No. 270–135
Rule 6c–6—File No. 270–160
Proposed Rule 0–5—File No. 270–378

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted requests for approval of extension for the following:

Form N–8A is the form that investment companies file with the Commission pursuant to Section 8(a) of the Investment Company Act of 1940 ("1940 Act"), which provides that an investment company may register by filing with the Commission a notification of registration. It is estimated that 610 respondents file form N–8A annually. The form requires approximately one hour of reporting per respondent annually.

Rule 6c–6 continues exemptive relief granted by Commission order to certain investment companies that responded to Internal Revenue Service Revenue Ruling 81–225 (September 25, 1981) by organizing new companies and substituting them for existing companies without prior Commission approval. No respondents incur a burden complying with the rule.

Proposed Rule 0–5 under the 1940 Act would establish an expedited review procedure for certain exemptive applications filed by registered investment companies with the Commission. It is estimated that 60 respondents may expend an estimated 300 total burden hours annually meeting the proposed requirements for receiving expedited review of their exemptive applications.

General comments regarding the estimated burden hours should be directed to the OMB Clearance Officer at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Clearance Officer, Project Numbers: 3235–0175 (Form N–8A), 3235–0245 (Rule 6c–6), and 3235–0432 (Proposed Rule 0–5), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: September 11, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23166 Filed 9–18–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. Nos. 33–7215; 34–36220]

Changes and Corrections to EDGAR Phase-In List

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: The Commission is publishing a list of changes and corrections to the EDGAR phase-in list for companies whose filings are processed by the Division of Corporation Finance.

FOR FURTHER INFORMATION CONTACT: Sylvia J. Reis, Assistant Director, CF EDGAR Policy, Division of Corporation Finance at (202) 942–2940.

SUPPLEMENTARY INFORMATION: In connection with the adoption of the final rules fully implementing the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system, on December 19, 1994 the Commission published a list of companies whose filings are processed by the Division of Corporation Finance to place registrants on notice as to when they would become subject to mandated electronic filing.[1] The registrants were divided into ten groups, all of which will be phased in by May 1996. Rule 901 of Regulation S–T[2] provides that registrants may request a change to their assigned phase-in dates. Such requests may be granted pursuant to delegated authority. In addition, modifications are made to the list to reflect name changes, corporate restructurings, the addition of new entities, and similar factors. Changes to the Division of Corporation Finance phase-in list are published from time to time in the SEC News Digest. The Commission today is publishing a comprehensive list of all changes in the Division of Corporation Finance phase-in group assignments made since the phase-in list was published in December 1994. This publication supersedes the last comprehensive list of changes published in the **Federal Register** on April 12, 1995 (Securities Act Release No. 7156). This procedure will be repeated from time to time, in order to further notify the public of changes to the list. A change to a company's phase-in date is of particular importance to persons or entities filing documents with respect to that company, since generally such persons must file electronically with the company become subject to mandated electronic filing.[3]

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122

[December 19, 1994]

Name	CIK No.	Former group	New group
202 DATA SYSTEMS INC /PA/	718246	CF–08	REMOVE
3DO CO	898441	NONE	CF–10
3 D SYSTEMS CORP	910638	NONE	CF–10
625 LIBERTY AVENUE CORP	915893	NONE	CF–10
7TH LEVEL INC	920038	NONE	CF–10
A PLUS COMMUNICATIONS INC /TN/	908526	NONE	CF–10
AAA NET REALTY FUND XI LTD	924576	NONE	CF–10
AAMES CAPITAL CORP	913951	NONE	CF–10
AASCHE TRANSPORTATION SERVICES INC	927809	NONE	CF–10
ABBEY NATIONAL TREASURY SERVICES PLC/ENG	931061	NONE	CF–10
ABR INFORMATION SERVICES INC	920985	NONE	CF–10
ABSOLUTE ENTERTAINMENT INC	898739	NONE	CF–10
ABT BUILDING PRODUCTS CORP	902476	NONE	CF–10
ACACIA RESEARCH CORP	934549	CF–10	CF–08
ACCESS HEALTHNET INC/DE	911403	NONE	CF–10
ACCUGRAPH CORP	811703	CF–07	REMOVE
ACCUHEALTH INC	840401	CF–06	CF–10
ACCUSTAFF INC	924646	NONE	CF–10
ACME BOOT CO INC	918250	NONE	CF–10
ACME HOLDINGS INC	899824	NONE	CF–10
ACME METALS INC /DE/	002093	CF–04	CF–04
Change to ACME METALS INC /DE/	883702	CF–04	CF–04
ACORDIA INC /DE/	863881	NONE	CF–10
ACRES GAMING INC	912601	NONE	CF–10
ACR GROUP INC	711307	NONE	CF–07
ACT III BROADCASTING INC /DE/	914029	NONE	CF–10
ACT III CINEMAS INC	938342	NONE	CF–10
ACT MANUFACTURING INC	937971	NONE	CF–10
ACT NETWORKS INC	942132	NONE	CF–10
ACTIVE APPAREL GROUP INC	934795	NONE	CF–10
ADCO TECHNOLOGIES INC	934649	NONE	CF–10
ADFLEX SOLUTIONS INC	925743	NONE	CF–10
ADSONLY GROUP INC	943142	NONE	CF–10
ADTRAN INC	926282	NONE	CF–10
ADVANCED DEPOSITION TECHNOLOGIES INC	909963	NONE	CF–10
ADVANCED MEDIA INC	932779	NONE	CF–10
ADVANCED MEDICAL DYNAMICS INC	823314	CF–10	CF–10
Change to ADVANCED FINANCIAL INC	823314	CF–10	CF–10
ADVANCED SURGICAL INC	887893	NONE	CF–10
ADVANCED TECHNOLOGY MATERIALS INC	912841	NONE	CF–10
ADVANCED VOICE TECHNOLOGIES INC	932694	NONE	CF–10
ADVANTA MORTGAGE CONDUIT SERVICES INC	901833	NONE	CF–10
ADVOCAT INC	919956	NONE	CF–10
AEGIS CONSUMER FUNDING GROUP INC	932278	NONE	CF–10
AERO SERVICES INTERNATIONAL INC	350200	NONE	CF–06
AEROSPACE CREDITORS LIQUIDATING TRUST	908258	NONE	CF–10
AES CHINA GENERATING CO LTD	916792	NONE	CF–10
AES CORP	874761	NONE	CF–10
AETRIUM INC	908598	NONE	CF–10

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[1] *See* Release No. 33–7122 (December 19, 1994) [59 FR 67752]. The timing for each phase-in group was included in that release as Appendix A, and the phase-in list as Appendix B. As is true with all rules of the Commission, persons making filings with the Commission are responsible for apprising themselves of their new obligations associated with filing on the EDGAR system. While the Commission attempts to contact registrants in each phase-in group by furnishing a copy of the EDGAR Filer Manual and EDGARLink software prior to phase-in, filers will not be relieved of their electronic filing obligations in the absence of such notification.

[2] 17 CFR 232.901.

[3] Rule 901(b) provides that a party making a filing pursuant to Section 13 or 14 of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78n, respectively] with respect to a registrant that has become subject to mandated electronic filing is required to submit that filing in electronic format. Consequently, persons filing a Schedule 13D or 13G, a proxy statement, or tender offer material with respect to an electronic filer are required to make such filings electronically.

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

[December 19, 1994]

Name	CIK No.	Former group	New group
AFC CABLE SYSTEMS INC	913360	NONE	CF–10
AFFILIATED NEWSPAPERS INVESTMENTS INC	918943	NONE	CF–10
AFFINITY GROUP INC	910560	NONE	CF–10
AFFYMAX N V	875133	CF–10	REMOVE
AFG RECEIVABLES CORP	927655	NONE	CF–10
AFGL INTERNATIONAL INC	914435	NONE	CF–10
AFP IMAGING CORP	319126	CF–06	CF–09
AFTERMARKET TECHNOLOGY CORP	933405	NONE	CF–10
AG ASSOCIATES INC	942124	NONE	CF–10
AG-CHEM EQUIPMENT CO INC	935503	NONE	CF–10
AGES HEALTH SERVICES INC	908516	NONE	CF–10
AG HOLDINGS INC /WA/	917300	NONE	CF–10
AGREE REALTY CORP	917251	NONE	CF–10
AGRI-NUTRITION GROUP LTD	922814	NONE	CF–10
AGRIPOST INC	313997	CF–06	REMOVE
AID AUTO STORES INC /DE/	937599	NONE	CF–10
AILEEN INC	002904	CF–06	CF–10
AIM GROUP INC	928032	NONE	CF–10
AIM TECHNOLOGY INC	928428	NONE	CF–10
AIRPORT SYSTEMS INTERNATIONAL INC	914398	NONE	CF–10
AIR TRANSPORTATION HOLDING COMPANY INC	353184	CF–07	CF–09
AK STEEL CORP	918192	NONE	CF–10
AK STEEL HOLDING CORP	918160	NONE	CF–10
ALABAMA NATIONAL BANCORPORATION	926966	NONE	CF–10
ALAFIRST BANCSHARES INC	870382	CF–10	REMOVE
Change to BNF BANCORP INC	870382	CF–10	REMOVE
ALAMO GROUP INC	897077	NONE	CF–10
ALASKA NORTHWEST PROPERTIES INC	313809	CF–07	CF–08
ALBEMARLE CORP	915913	NONE	CF–10
ALBION BANC CORP	899654	NONE	CF–10
ALCO HEALTH DISTRIBUTION CORP /DE/	855042	CF–10	CF–04
Change to AMERISOURCE DISTRIBUTION CORP	855042	CF–10	CF–04
ALDEN JOHN FINANCIAL CORP	822079	NONE	CF–10
ALDILA INC	902272	NONE	CF–10
ALERT CENTRE INC	915867	NONE	CF–10
ALL AMERICAN BOTTLING CORP	825811	NONE	CF–10
ALL AMERICAN TELEVISION INC	783265	CF–06	CF–06
Change to ALL AMERICAN COMMUNICATIONS INC	783265	CF–06	CF–06
ALLEGHENY GENERATING CO	774459	CF–08	CF–06
ALLEN ETHAN INC	003711	NONE	CF–10
ALLERGAN LIGAND RETINOID THERAPEUTICS INC	934592	NONE	CF–10
ALLIANCE FARMS COOPERATIVE ASSOCIATION	927536	NONE	CF–10
ALLIANCE SEMICONDUCTOR CORP/DE/	913293	NONE	CF–10
ALLIED DIGITAL TECHNOLOGIES CORP	933151	NONE	CF–10
ALLIED HOLDINGS INC	909950	NONE	CF–10
ALLIED LIFE FINANCIAL CORP	912154	NONE	CF–10
ALLISON ENGINE CO INC	916254	NONE	CF–10
ALLMINE INC	932008	NONE	CF–10
ALL PRO PRODUCTS INC	906600	NONE	CF–10
ALLSTATE CORP	899051	NONE	CF–10
ALL STATE PROPERTIES LP	745543	CF–07	CF–10
ALLTEL GEORGIA COMMUNICATIONS CORP	922328	NONE	CF–10
ALLTRISTA CORP	895655	NONE	CF–10
ALOE VERA NATUREL INC /MN/	917246	NONE	CF–10
ALPHA BETA CO	880800	NONE	CF–04
ALPHA BETA TECHNOLOGY INC	841168	NONE	CF–10
ALPHA HOSPITALITY CORP	906780	NONE	CF–10
ALTAI INC	796313	CF–07	CF–10
ALTERNATIVE RESOURCES CORP	920521	NONE	CF–10
ALUMAX INC	912600	NONE	CF–10
AMCON DISTRIBUTING CO	928465	NONE	CF–10
AMERIBANC INVESTORS GROUP	068336	CF–06	CF–09
AMERICAN APARTMENT COMMUNITIES INC	925927	NONE	CF–10
AMERICAN ASSET ADVISERS TRUST INC	913957	NONE	CF–10
AMERICAN BINGO & GAMING CORP	931683	NONE	CF–10
AMERICAN BUILDINGS CO /DE/	799208	NONE	CF–10
AMERICAN CINEMASTORES INC	908338	NONE	CF–10
AMERICAN CLASSIC VOYAGES CO	315136	NONE	CF–10
AMERICAN COMMUNICATIONS SERVICES INC	932140	NONE	CF–10

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

[December 19, 1994]

Name	CIK No.	Former group	New group
AMERICAN CORPORATE ACCRUALS INC	924641	NONE	CF–10
AMERICAN CREDIT OPTICAL INC /DE/	819913	CF–08	CF–08
Change to HALLMARK FINANCIAL SERVICES INC	819913	CF–08	CF–08
AMERICAN DIVERSIFIED GROUP INC	919742	NONE	CF–10
AMERICAN DRUG CO	922408	NONE	CF–10
AMERICAN EAGLE OUTFITTERS INC	919012	NONE	CF–10
AMERICAN ELECTRONIC COMPONENTS INC	920426	NONE	CF–10
AMERICAN EXPRESS MASTER TRUST SERIES 1993	921029	NONE	CF–10
AMERICAN FAMILY RESTAURANTS INC	925779	NONE	CF–10
AMERICAN FILM GROUP INC /FL/	932468	NONE	CF–10
AMERICAN FUEL CORP	912873	NONE	CF–10
AMERICAN HEALTHCARE INC/DE	704415	NONE	CF–10
Change to AMERICAN HEALTHCORP INC	704415	NONE	CF–10
AMERICAN HOMESTAR CORP	922812	NONE	CF–10
AMERICAN INCOME HOLDING INC	882322	CF–10	REMOVE
AMERICAN INTERNATIONAL CONSTRUCTION INC	933724	NONE	CF–10
AMERICAN INTERNATIONAL PETROLEUM CORP	799119	CF–06	CF–07
AMERICAN MIDLAND CORP	066052	CF–06	CF–09
AMERICAN MOBILE SATELLITE CORP	913665	NONE	CF–10
AMERICAN MORTGAGE INVESTORS TRUST II	914023	NONE	CF–10
AMERICAN MORTGAGE SECURITIES INC	863957	CF–10	REMOVE
AMERICAN OILFIELD DIVERS INC	906520	NONE	CF–10
AMERICAN ONCOLOGY RESOURCES INC /DE/	943061	NONE	CF–10
AMERICAN ONLINE INC	883780	NONE	CF–10
Change to AMERICAN ONLINE INC	883780	NONE	CF–10
AMERICAN PAGING INC	916065	NONE	CF–10
AMERICAN PREMIER GROUP INC	933537	CF–10	CF–04
AMERICAN PUBLISHING CO	868512	NONE	CF–10
AMERICAN QUALITY MANUFACTURING CORP	927237	NONE	CF–10
AMERICAN RADIO SYSTEMS CORP	943581	NONE	CF–10
AMERICAN RECREATION CO HOLDINGS INC	913773	NONE	CF–10
AMERICAN REPUBLIC REALTY FUND I	711512	CF–06	CF–08
AMERICAN RESTAURANT GROUP HOLDINGS INC	917540	NONE	CF–10
AMERICAN SENSORS INC	912090	NONE	CF–10
AMERICAN SOUTHWEST FINANCIAL SECURITIES CORP	912957	NONE	CF–10
AMERICAN TAX EXEMPT BOND TRUST	916824	NONE	CF–10
AMERICAN TECHNOLOGY CORP /DE/	924383	NONE	CF–10
AMERICAN TELECASTING INC/DE/	913271	NONE	CF–10
AMERICAN TOYS INC	912083	NONE	CF–10
AMERICAN VIDEO CLEARING HOUSE INC	837037	CF–09	REMOVE
AMERICAN WHITE CROSS INC	887622	NONE	CF–10
AMERICO LIFE INC	908139	NONE	CF–10
AMERIFED FINANCIAL CORP	874735	CF–10	REMOVE
AMERIGAS PARTNERS LP	932628	NONE	CF–10
AMERIGON INC	903129	NONE	CF–10
AMERILINK CORP	924774	NONE	CF–10
AMERISTAR CASINOS INC	912145	NONE	CF–10
AMERITECH CAPITAL FUNDING CORP	858662	NONE	CF–10
AMITY BANCSHARES INC /DE	879984	CF–10	REMOVE
AMNEX INC	793526	NONE	CF–10
AMPACE CORP	935678	NONE	CF–10
AMRECORP REALTY FUND II	745061	CF–09	CF–08
AMRECORP REALTY FUND III	776813	CF–09	CF–08
AMTRAN INC	898904	NONE	CF–10
AMTRUST CAPITAL CORP	934541	NONE	CF–10
AMWEST ENVIRONMENTAL GROUP INC	941813	NONE	CF–10
ANADIGICS INC	940332	NONE	CF–10
ANALYTICAL NURSING MANAGEMENT CORP	896262	NONE	CF–10
ANCHOR GAMING	914923	NONE	CF–10
ANCOR COMMUNICATIONS INC /MN/	920636	NONE	CF–10
ANDEAN DEVELOPMENT CORP	943184	NONE	CF–10
ANDOVER BANCORP INC	810589	CF–07	CF–08
ANDYNE COMPUTING LTD	930708	NONE	CF–10
ANESTA CORP /DE/	915916	NONE	CF–10
ANGELES HOUSING CONCEPTS INC	870561	CF–10	REMOVE
ANICOM INC	935802	NONE	CF–10
ANIKA RESEARCH INC	898437	NONE	CF–10
ANTEC CORP	908610	NONE	CF–10
ANTHEM ELECTRONICS INC /DE/	727120	CF–05	REMOVE

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

[December 19, 1994]

Name	CIK No.	Former group	New group
APARTMENT INVESTMENT & MANAGEMENT CO	922864	NONE	CF–10
APOGEE INC	915859	NONE	CF–10
APPAREL VENTURES INC	925866	NONE	CF–10
APPLIED CELLULAR TECHNOLOGY INC	924642	NONE	CF–10
APPLIED DIGITAL ACCESS INC	919048	NONE	CF–10
APPLIED INNOVATION INC	798399	NONE	CF–10
APPLIED SCIENCE & TECHNOLOGY INC	912842	NONE	CF–10
APPLIED VOICE TECHNOLOGY INC /WA/	931784	NONE	CF–10
APPLIX INC /MA/	932112	NONE	CF–10
APPS DENTAL INC	941553	NONE	CF–10
APOLLO GROUP INC	929887	NONE	CF–07
APROGENEX INC	907285	NONE	CF–10
APTARGROUP INC	896622	NONE	CF–10
AQUA CARE SYSTEMS INC /DE/	910566	NONE	CF–10
AQUAGENIX INC/DE	923604	NONE	CF–10
AQUAJET CORP	936807	NONE	CF–10
AQUILA GAS PIPELINE CORP	911535	NONE	CF–10
ARCH LEASING CORP	925555	NONE	CF–10
ARCH LEASING CORP TRUST	925556	NONE	CF–10
ARCH PETROLEUM INC	722144	CF–06	CF–06
Change to ARCH PETROLEUM INC /NEW/	320678	CF–06	CF–06
ARCSYS INC	943892	NONE	CF–10
ARDEN INDUSTRIAL PRODUCTS INC	916835	NONE	CF–10
ARDEN INTERNATIONAL KITCHENS INC	353575	CF–07	REMOVE
ARDOUR CORP	917860	NONE	CF–10
ARDUS CORP	941220	NONE	CF–10
ARETHUSA OFF SHORE LIMITED	867941	NONE	CF–10
ARGOSY GAMING CO	895385	NONE	CF–10
ARGUS PHARMACEUTICALS INC /DE/	854691	NONE	CF–10
ARIEL CORP	911167	NONE	CF–10
ARI HOLDINGS INC	792126	CF–06	CF–09
ARIL GROUP INC	765883	CF–08	REMOVE
ARIZONA CHARLIES INC	919565	NONE	CF–10
ARIZONA LAND INCOME CORP	830748	CF–06	CF–10
ARKANSAS BEST CORP /DE/	894405	NONE	CF–03
ARM FINANCIAL GROUP INC	910562	NONE	CF–10
ARRIS PHARMACEUTICAL CORP/DE/	913056	NONE	CF–10
ASANTE TECHNOLOGIES INC	913598	NONE	CF–10
ASB FINANCIAL CORP	915393	NONE	CF–10
ASCEND COMMUNICATIONS INC	921146	NONE	CF–10
ASECO CORP	896645	NONE	CF–10
ASPEN TECHNOLOGY INC /MA/	929940	NONE	CF–10
ASSISTED LIVING CONCEPTS INC	929994	NONE	CF–10
ASSOCIATED BUSINESS & COMMERCE INSURANCE CORP	928775	NONE	CF–10
ASSOCIATED COMMUNICATIONS CORP	230036	CF–05	REMOVE
ASSOCIATED ESTATES REALTY CORP	911635	NONE	CF–10
ASSOCIATED GROUP INC	931183	NONE	CF–10
ASTRO SCIENCES CORP	771642	NONE	CF–10
ASTRUM INTERNATIONAL CORP	914478	NONE	CF–10
ASV INC /MN/	926763	NONE	CF–10
ATC CAPITAL GROUP LTD	799900	NONE	CF–10
ATCHISON CASTING CORP	911115	NONE	CF–10
ATEL CASH DISTRIBUTION FUND VI LP	927569	NONE	CF–10
ATHENA ACQUISITIONS INC	929705	NONE	CF–10
ATLANTIC BEVERAGE CO INC	912609	NONE	CF–10
ATLANTIC COAST AIRLINES INC	904020	NONE	CF–10
ATLANTIC PROPERTIES LTD	943321	NONE	CF–10
ATLANTIS PLASTICS INC/FL	926196	NONE	CF–10
ATLAS AIR INC	941552	NONE	CF–10
ATLAS ENERGY FOR THE NINETIES PUBLIC NO 3 LTD	927804	NONE	CF–10
AUSPEX SYSTEMS INC	860749	NONE	CF–10
AUSTINS STEAKS & SALOON INC	930686	NONE	CF–10
AUTOCLAVE ENGINEERS INC	350067	CF–05	CF–06
AUTO BOND RECEIVABLES CORP	901179	NONE	CF–10
AUTOIMMUNE INC	879106	NONE	CF–10
AUTOMATED COMPLIANCE & TRAINING INC	850218	NONE	CF–10
AUTOMOBILE CREDIT FINANCE INC	891317	CF–10	CF–08
AUTOMOBLIE CREDIT FINANCE 1992–II	877665	CF–10	CF–08
AUTOMOBILE CREDIT FINANCE III	894373	CF–10	CF–08

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Name	CIK No.	Former group	New group
AUTOMOBILE CREDIT FINANCE IV	905803	CF–10	CF–08
AUTOMOBILE CREDIT FINANCE V	916939	CF–10	CF–08
AUTOMOBILE CREDIT FINANCE VI	922053	CF–10	CF–08
AUTO ONE SECURITIZATION CORP	932131	NONE	CF–10
AVALON PROPERTIES INC	911536	NONE	CF–10
AVONDALE FINANCIAL CORP	908143	NONE	CF–10
AW COMPUTER SYSTEMS INC	319037	CF–08	CF–09
AXIS CAPITAL CORP	933978	NONE	CF–10
AYP CAPITAL INC	931750	NONE	CF–10
BABBAGES INC	833443	CF–05	REMOVE
BABY SUPERSTORE INC	927806	NONE	CF–10
BACK YARD BURGERS INC	901495	NONE	CF–10
BALDWIN BUILDERS	911642	NONE	CF–10
BALLARD MEDICAL PRODUCTS	723534	CF–06	CF–04
BALLY MANUFACTURING CORP	009435	CF–02	CF–02
Change to BALLY ENTERTAINMENT CORP	009435	CF–02	CF–02
BALLYS CASINO HOLDINGS INC	908611	NONE	CF–10
BALLYS GRAND INC /DE/	065297	NONE	CF–10
BALLYS HEALTH & TENNIS CORP	770944	NONE	CF–10
BALTIC INTERNATIONAL USA INC	918545	NONE	CF–10
BALTIMORE BANCORP	751926	CF–03	REMOVE
BANC ONE CREDIT CARD MASTER TRUST	930459	NONE	CF–10
BANC ONE STUDENT LOAN FUNDING CORP	925954	NONE	CF–10
BANCORP CONNECTICUT INC	921746	NONE	CF–10
BANCROFT PLAZA INC	909188	NONE	CF–10
BANK BUILDING CORP	907250	NONE	CF–10
BANK HOLDING CO	907584	NONE	CF–10
BANK JOS A CLOTHIERS INC /DE/	920033	NONE	CF–10
BANK MARYLAND CORP	819540	CF–05	CF–09
BANK OF KENTUCKY FINANCIAL CORP	934547	NONE	CF–10
BANK OF NEW YORK CO INC /NY/	904021	NONE	CF–10
BANK ONE COLUMBUS NA	930458	NONE	CF–10
BANK ONE TEXAS N A	905604	NONE	CF–10
BANK WEST FINANCIAL CORP	934598	NONE	CF–10
BANKATLANTIC BANCORP INC	921768	NONE	CF–10
BANYAN MORTGAGE INVESTORS L P III /IL/	802678	CF–05	REMOVE
BAOA INC	923771	NONE	CF–10
BARBERS HAIRSTYLING FOR MEN & WOMEN INC	926202	NONE	CF–10
BARRISTER INFORMATION SYSTEMS CORP	754128	CF–06	CF–09
BASQUE COUNTRY	928594	NONE	CF–10
BAY APARTMENT COMMUNITIES INC	915912	NONE	CF–10
BAY AREA HOLDINGS INC	060798	CF–08	CF–10
BAY AREA WAREHOUSE STORES INC	932721	NONE	CF–04
BCB FINANCIAL SERVICES CORP /PA/	920865	NONE	CF–10
BDM INTERNATIONAL INC /DE	870763	CF–10	CF–07
BEACH PATROL INC	924899	NONE	CF–10
BEACON PROPERTIES CORP	920114	NONE	CF–10
BEAZER HOMES USA INC	915840	NONE	CF–10
BECKER GAMING INC	920376	NONE	CF–10
BEDFORD BANCSHARES INC	921435	NONE	CF–10
BEI HOLDINGS LTD /DE/	225569	CF–05	CF–05
Change to AMRESCO INC	225569	CF–05	CF–05
BELCOR INC	099286	CF–06	CF–09
BELDEN & BLAKE CORP	734778	CF–06	CF–06
Change to BELDEN & BLAKE CORP /OH/	734778	CF–06	CF–06
BELL MARKETS INC	880801	NONE	CF–04
BELL MICROPRODUCTS INC	900708	NONE	CF–10
BELMONT HOMES INC	934651	NONE	CF–10
BENCHMARK BIOMEDICAL INC	918025	NONE	CF–10
BENEDEK BROADCASTING CORP	923027	NONE	CF–10
BENEFICIAL CALIFORNIA INC /DE/	917853	NONE	CF–10
BENIHANA NATIONAL CORP	715384	CF–06	CF–06
Change to BENIHANA INC	935226	CF–06	CF–06
BENSON FINANCIAL CORP	927717	NONE	CF–10
BERG ELECTRONICS INC	904899	NONE	CF–10
BERRY & BOYLE DEVELOPMENT PARTNERS III	841239	CF–10	CF–08
BERRY PLASTICS CORP	919463	NONE	CF–10
BEST POWER TECHNOLOGY INC	906054	CF–10	CF–08
BETTIS CORP /DE/	919964	NONE	CF–10

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Name	CIK No.	Former group	New group
BEVERLY NATIONAL CORP	742275	CF–08	CF–09
BFP HOLDINGS CORP	924146	NONE	CF–10
BIG ENTERTAINMENT INC	912544	NONE	CF–10
BIG FLOWER PRESS INC	906306	NONE	CF–10
BIG SKY BANCORP INC	923265	NONE	CF–10
BIG SKY TRANSPORTATION CO	313522	CF–07	CF–09
BIG SMITH BRANDS INC	931688	NONE	CF–10
BIOCRYST PHARMACEUTICALS INC	882796	NONE	CF–10
BIOLASE TECHNOLOGY INC	811240	NONE	CF–10
BIOPLASTY INC	040944	CF–07	REMOVE
BIOSEPRA INC	919015	NONE	CF–10
BK I REALTY INC	783462	CF–09	CF–07
BK II PROPERTIES INC	783463	CF–09	CF–07
BK III RESTAURANTS INC	783464	CF–09	CF–07
BLACK HAWK GAMING & DEVELOPMENT CO INC	896495	NONE	CF–10
BLANCHE E W HOLDINGS INC	898438	NONE	CF–10
BLC FINANCIAL SERVICES INC	912737	NONE	CF–10
BLYTH INDUSTRIES INC	921503	NONE	CF–10
BLUE SKY MLS INC	939215	NONE	CF–07
BMC BANKCORP INC	702903	CF–05	REMOVE
BNSF CORP	934612	NONE	CF–04
BOARDWALK CASINO INC	915281	NONE	CF–10
BOCA RESEARCH INC	895642	NONE	CF–10
BOETTCHER WESTERN PROPERTIES II LTD	703152	CF–06	CF–08
BOETTCHER WESTERN PROPERTIES III LTD	716822	CF–06	CF–08
BOISE CASCADE OFFICE PRODUCTS CORP	938839	NONE	CF–10
BOLLE AMERICA INC /DE/	932422	NONE	CF–10
BOLLINGER INDUSTRIES INC	912894	NONE	CF–10
BOMBARDIER RECEIVABLES MASTER TRUST I	912542	NONE	CF–10
BORDEN CHEMICALS & PLASTICS OPERATING LIMITED PARTNERSHIP	933485	NONE	CF–10
BOONTON ELECTRONICS CORP	013191	CF–06	CF–10
BORDERS GROUP INC	940510	NONE	CF–10
BORG WARNER AUTOMOTIVE INC	908255	NONE	CF–10
BOS ENVIRONMENTAL INC	917134	NONE	CF–10
BOSTON CAPITAL TAX CREDIT FUND IV LP	913778	NONE	CF–10
BOSTON CHICKEN INC	894751	NONE	CF–10
BOSTON FINANCIAL APARTMENT PROPERTIES LTD	922319	NONE	CF–10
BOSTON FINANCIAL TAX CREDIT FUND VIII LP	911568	NONE	CF–10
BOSTON RESTAURANT ASSOCIATES INC	926295	NONE	CF–10
BOWLINE CORP	034682	CF–07	CF–08
BOYD BROS TRANSPORTATION INC	920907	NONE	CF–10
BOYD GAMING CORP	906553	NONE	CF–10
BRAE LAND CORP.	940715	NONE	CF–10
BRANDT TECHNOLOGIES INC	896771	NONE	CF–10
BRASSIE GOLF CORP	916184	NONE	CF–10
BRAUVIN NET LEASE V INC	913762	NONE	CF–10
BREWER C HOMES INC	912153	NONE	CF–10
BRIDGEPORT MACHINES INC	931125	NONE	CF–10
BRIDGEVILLE FINANCIAL CORP	916299	NONE	CF–10
BRISTOL OAKS LP	930545	NONE	CF–10
BROADBAND TECHNOLOGIES INC /DE/	904898	NONE	CF–10
BROADCASTING PARTNERS INC	908663	NONE	CF–10
BROADCAST INTERNATIONAL INC	832411	CF–07	CF–09
BROCK CANDY CO	784275	CF–10	REMOVE
BROCK CONTROL SYSTEMS INC	897078	NONE	CF–10
BROCK EXPLORATION CORP	014399	CF–08	CF–10
BROCKWAY STANDARD HOLDINGS CORP	943897	NONE	CF–10
BRODERBUND SOFTWARE INC /DE/	812490	NONE	CF–10
BROOKS AUTOMATION INC	933974	NONE	CF–10
BROOKTREE CORP	764271	NONE	CF–10
BROWNE BOTTLING CO	825813	NONE	CF–10
BRYLANE INC	932698	NONE	CF–10
BRYLANE L P	912274	NONE	CF–10
BT ENERGY CORPORATION	716786	CF–07	CF–10
BTG INC /VA/	932279	NONE	CF–10
BUCKEYE CELLULOSE CORP	899597	NONE	CF–10
BUCKHEAD AMERICA CORP	909725	NONE	CF–10
BUDGET STORAGE ASSOCIATES I LP	790939	CF–08	REMOVE
BUGABOO CREEK STEAK HOUSE INC	919167	NONE	CF–10

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Name	CIK No.	Former group	New group
BUILDING MATERIALS CORP OF AMERICA	927314	NONE	CF–10
BURGER KING INVESTORS MASTER LP	785994	CF–05	CF–05
Change to U S RESTAURANTS PROPERTIES MASTER LP	785994	CF–05	CF–05
BURLINGTON MOTOR HOLDINGS INC	912504	NONE	CF–10
BURLINGTON RESOURCES COAL SEAM GAS ROYALTY TRUST	906547	NONE	CF–10
BUSH BOAKE ALLEN INC	919998	NONE	CF–10
C & F FINANCIAL CORP	913341	NONE	CF–10
CABLEMAXX INC /DE	928507	NONE	CF–10
CABLEMAXX TEXAS INC	912891	NONE	CF–10
CAI WIRELESS SYSTEMS INC	914749	NONE	CF–10
CALA CO	880803	NONE	CF–04
CALA FOODS INC	838196	NONE	CF–04
CALCASIEU REAL ESTATE & OIL CO INC	352955	CF–08	CF–10
CALI REALTY L P	924901	NONE	CF–10
CALIFORNIA BELL INDUSTRIES INC	945489	NONE	CF–07
CALIFORNIA PETROLEUM TRANSPORT CORP	923649	NONE	CF–10
CALIFORNIA PRO SPORTS INC	899444	NONE	CF–10
CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM	919079	NONE	CF–10
CALLON PETROLEUM CO /DE/	942125	NONE	CF–10
CALPINE CORP	916457	NONE	CF–10
CAMBRIDGE SOUNDWORKS INC	919234	NONE	CF–10
CAMBRIDGE TECHNOLOGY PARTNERS MASSACHUSETTS INC	895462	NONE	CF–10
CAMCO INTERNATIONAL INC	913267	NONE	CF–10
CAMERA PLATFORMS INTERNATIONAL INC	775714	CF–07	CF–10
CAMERON ASHLEY INC	918858	NONE	CF–10
CAMERON FINANCIAL CORP /DE/	934884	NONE	CF–10
CAMPBELL STRATEGIC ALLOCATION FUND LP	910467	NONE	CF–10
CAMPO ELECTRONICS APPLIANCES & COMPUTERS INC	895693	NONE	CF–10
CANADIAN REYNOLDS METALS CO LTD	898442	NONE	CF–10
CANMAX INC /WY/	913659	NONE	CF–10
CANNONDALE CORP /DE/	930795	NONE	CF–10
CANTERBURY PARK HOLDING CORP	926761	NONE	CF–10
CAPCO AUTOMOTIVE PRODUCTS CORP	919549	NONE	CF–10
CAPITAL ONE FINANCIAL CORP	927628	NONE	CF–10
CAPITAL ONE MASTER TRUST	922869	NONE	CF–10
CAPITAL PREFERRED YIELD FUND III L P	914786	NONE	CF–10
CAPITAL RESOURCES REAL ESTATE PARTNERSHIP II	017294	CF–07	CF–08
CAPITOL QUEEN & CASINO INC	919566	NONE	CF–10
CAPITOL RESOURCES INC	017377	CF–08	REMOVE
CAPSTONE CAPITAL CORP	921767	NONE	CF–10
CAPSURE HOLDING CORP	837906	CF–06	CF–06
Change to CAPSURE HOLDINGS CORP	073313	CF–06	CF–06
CAPT CRAB INC	356622	CF–07	CF–07
Change to BAYPORT RESTAURANT GROUP INC	356622	CF–07	CF–07
CAPTEC FRANCHISE CAPITAL PARTNERS LP III	921794	NONE	CF–10
CARAUSTAR INDUSTRIES INC	825692	NONE	CF–10
CARBIDE GRAPHITE GROUP INC /DE	888918	NONE	CF–10
CARCO AUTO LOAN MASTER TRUST	873446	NONE	CF–07
CARDINAL REALTY SERVICES INC	903324	NONE	CF–10
CARDIVAN CO	919676	NONE	F–10
CAREADVANTAGE INC	937252	NONE	CF–10
CAREER HORIZONS INC	917673	NONE	CF–10
CAREERSTAFF UNLIMITED INC	922888	NONE	CF–10
CARELINE INC	912275	NONE	CF–10
CAREMARK INTERNATIONAL INC	890548	NONE	CF–10
CARENETWORK INC	867188	CF–10	REMOVE
CARLYLE GOLF INC	922867	NONE	CF–10
CARNEGIE BANCORP	915277	NONE	CF–10
CARROLLTON BANCORP	859222	NONE	CF–10
CASCADE FINANCIAL CORP	928911	NONE	CF–10
CASE CORP	922321	NONE	CF–10
CASE RECEIVABLES II INC	931152	NONE	CF–10
CASINO CASH INC	935702	NONE	CF–10
CASINO & CREDIT SERVICES INC	904902	NONE	CF–10
CASINO DATA SYSTEMS	898756	NONE	CF–10
CASINO MAGIC FINANCE CORP	914291	NONE	CF–10
CASINO RESOURCE CORP	899778	NONE	CF–10
CASINOS INTERNATIONAL INC	900138	NONE	CF–10
CASTLE GROUP INC	918543	NONE	CF–10

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Name	CIK No.	Former group	New group
C ATS SOFTWARE INC	937266	NONE	CF–10
CBL & ASSOCIATES PROPERTIES INC	910612	NONE	CF–10
CB&T INC	357130	CF–08	CF–09
CCF HOLDING CO	943033	NONE	CF–10
C CUBE MICROSYSTEMS INC	919870	NONE	CF–10
CD RADIO INC	908937	NONE	CF–10
CDP TECHNOLOGIES INC	922520	NONE	CF–10
CDW COMPUTER CENTERS INC	899171	NONE	CF–10
CEC RESOURCES LTD	933435	NONE	CF–10
CECIL BANCORP INC	926865	NONE	CF–10
CELADON GROUP INC	865941	NONE	CF–10
CELEX GROUP INC	911323	NONE	CF–10
CELLEX BIOSCIENCES INC	704384	CF–07	CF–10
CELL GENESYS INC	865231	NONE	CF–10
CELLSTAR CORP	913590	NONE	CF–10
CELLTRONICS INC	740664	CF–07	CF–09
Change to R F INDUSTRIES LTD	740664	CF–07	CF–09
CENSTOR CORP /CA/	932094	NONE	CF–10
CENTENNIAL TECHNOLOGIES INC	919006	NONE	CF–10
CENTERPOINT PROPERTIES CORP	912893	NONE	CF–10
CENTEX CONSTRUCTION PRODUCTS INC	918646	NONE	CF–10
CENTRAL CAPITAL CORP /DE/	924707	NONE	CF–10
CENTRAL COAST BANCORP	921085	NONE	CF–10
CENTRAL EUROPEAN MEDIA ENTERPRISES LTD	925645	NONE	CF–10
CENTRAL MORTGAGE BANCSHARES INC /MO/	891286	NONE	CF–10
CENTRAL PENNSYLVANIA FINANCIAL CORP	769751	CF–05	REMOVE
CENTRAL RENTS INC	926845	NONE	CF–10
CENTRAL TRACTOR FARM & COUNTRY INC	928156	NONE	CF–10
CENTRAL VIRGINIA BANKSHARES INC	804561	NONE	CF–10
CENTURY CASINOS INC	911147	NONE	CF–10
CERPLEX GROUP INC	915870	NONE	CF–10
CFB BANCORP INC	932780	NONE	CF–10
CFS REAL ESTATE INVESTORS LTD	735585	CF–07	CF–10
CHAMPION CAPITAL CO L L C	931153	NONE	CF–10
CHAMPS ENTERTAINMENT INC	919862	NONE	CF–10
CHANCELLOR BROADCASTING CO	925744	NONE	CF–10
CHARTER FUNDING CORP	922919	NONE	CF–10
CHARTER FSB BANCORP INC	865160	CF–10	REMOVE
CHARTER GOLF INC	820774	CF–08	CF–08
Change to ASHWORTH INC	820774	CF–08	CF–08
CHARTWELL RE CORP	912047	NONE	CF–10
CHATEAU PROPERTIES INC	912393	NONE	CF–10
CHECKMATE ELECTRONICS INC	910320	NONE	CF–10
CHELMSFORD CAPITAL LTD	943657	NONE	CF–10
CHELSEA ATWATER INC /NV/	932127	NONE	CF–10
CHELSEA GCA REALTY INC	911215	NONE	CF–10
CHESAPEAKE ENERGY CORP	895126	NONE	CF–10
CHIC BY H I S INC	895519	NONE	CF–10
CHICAGO MINIATURE LAMP INC	942138	NONE	CF–10
CHICKS NATURAL INC	916303	NONE	CF–10
CHICOS FAS INC	897429	NONE	CF–10
CHILDROBICS INC	921685	NONE	CF–10
CHINA INTERNATIONAL TRUST & INVESTMENT CORP	908659	NONE	CF–10
CHS ELECTRONICS INC	924374	NONE	CF–10
CIBER INC	918581	NONE	CF–10
CIDCO INC	917639	NONE	CF–10
CIMA LABS INC	833298	NONE	CF–10
CINEMA RIDE INC	925956	NONE	CF–10
CINEMARK MEXICO USA INC	910280	NONE	CF–10
CINERGI PICTURES ENTERTAINMENT INC	922519	NONE	CF–10
CINTECH TELE MANAGEMENT SYSTEMS INC	926038	NONE	CF–10
CIRCLE K CORP /DE/	936287	NONE	CF–10
CITATION CORP /AL/	924648	NONE	CF–10
CITIBANK SOUTH DAKOTA NA STAN CRED CARD MAS TR I SER 1995–2	941709	NONE	CF–10
CITIBANK SOUTH DAKOTA NA STAN CRED CARD MAS TR I SER 1995–3	941707	NONE	CF–10
CITIBANK SOUTH DAKOTA NA STAN CRED CARD MAS TR I SER 1995–4	941702	NONE	CF–10
CIT GROUP SECURITIZATION CORP II	931494	NONE	CF–10
CITISAVE FINANCIAL CORP	942790	NONE	CF–10
CITYFED FINANCIAL CORP	744765	NONE	CF–10

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Name	CIK No.	Former group	New group
CITY OF SEOUL	926302	NONE	CF–10
CKF BANCORP INC	930203	NONE	CF–10
CLAIRES STORES INC	034115	CF–05	CF–04
CLARK USA INC /DE/	898444	NONE	CF–10
CLASSICS INTERNATIONAL ENTERTAINMENT INC	894789	NONE	CF–10
CLEAN X PRESS INC /CO/	894847	NONE	CF–10
CLUB CORP INTERNATIONAL	929455	NONE	CF–10
CMAC INVESTMENT CORP	890926	NONE	CF–10
CMC INDUSTRIES INC	913270	NONE	CF–10
CMG INFORMATION SERVICES INC	914712	NONE	CF–10
CMI INDUSTRIES INC	911221	NONE	CF–10
CMS ENERGY MICHIGAN LIMITED PARTNERSHIP	937910	NONE	CF–05
CMS NOMECO OIL & GAS CO	946036	NONE	CF–07
CNB HOLDINGS INC	912566	NONE	CF–10
CNL AMERICAN PROPERTIES FUND INC	922981	NONE	CF–10
CNL FINANCIAL CORP	021193	CF–08	REMOVE
CNL INCOME FUND XV LTD	913057	NONE	CF–10
CNL INCOME FUND XVII LTD	943718	NONE	CF–10
CNL INCOME FUND XVIII LTD	943730	NONE	CF–10
COASTAL FINANCIAL CORP /DE/	935930	NONE	CF–10
COASTWIDE ENERGY SERVICES INC	913851	NONE	CF–10
COBRA GOLF INC	910072	NONE	CF–10
COBRA INDUSTRIES INC	911505	NONE	CF–10
COCENSYS INC	895034	NONE	CF–10
COCONUT CODE INC /FL/	908181	NONE	CF–10
COGENCO INTERNATIONAL INC	730729	NONE	CF–10
COGENTRIX ENERGY INC	917711	NONE	CF–10
COHERENT COMMUNICATIONS SYSTEMS CORP	921147	NONE	CF–10
COHESANT TECHNOLOGIES INC	928420	NONE	CF–10
COHO ENERGY INC	908797	NONE	CF–10
COIN BILL VALIDATOR INC	933020	NONE	CF–10
COLD METAL PRODUCTS INC	918653	NONE	CF–10
COLDWELL BANKER CORP	914067	NONE	CF–10
COLE KENNETH PRODUCTIONS INC	921691	NONE	CF–10
COLEMAN HOLDINGS INC	910387	NONE	CF–10
COLEMAN WOOD PRODUCTS INC	921429	NONE	CF–10
COLEMAN WORLDWIDE CORP	901038	NONE	CF–10
COLE TAYLOR FINANCIAL GROUP INC	721059	NONE	CF–10
COLONIAL PROPERTIES TRUST	909111	NONE	CF–10
COLOROCS CORP /GA/	789990	NONE	CF–10
COLUMBIA BANCORP	834105	NONE	CF–10
COLUMBIA HEALTHCARE CORP	860730	CF–01	CF–01
Change to COLUMBIA HCA HEALTHCARE CORP	860730	CF–01	CF–01
COLUMBUS REALTY TRUST	913602	NONE	CF–10
COMBINED COMPANIES INTERNATONAL CORP	911521	NONE	CF–10
COMCAST UK CABLE PARTNERS LTD	919957	NONE	CF–10
COMMONWEALTH ALUMINUM CORP	934747	NONE	CF–10
COMMONWEALTH INCOME & GROWTH FUND I	913141	NONE	CF–10
COMMONWEALTH INCOME & GROWTH FUND II	938322	NONE	CF–10
COMMONWEALTH INDUSTRIES CORP	022626	CF–05	CF–09
COMMUNICATIONS CENTRAL INC	914249	NONE	CF–10
COMMUNITY BANK SHARES OF INDIANA INC	933590	NONE	CF–10
COMMUNITY BANCSHARES INC /TN/	763585	CF–08	REMOVE
COMMUNITY BANKSHARES INC /GA/	927478	NONE	CF–10
COMMUNITY BANKSHARES INC /SC/	894506	NONE	CF–10
COMMUNITY FINANCIAL CORP /DE/	850606	NONE	CF–07
COMMUNITY FINANCIAL CORP /IL/	934858	NONE	CF–10
COMMUNITY INVESTORS BANCORP INC	930277	NONE	CF–10
COMMUNITY MEDICAL TRANSPORT INC	925602	NONE	CF–10
COMPUTER LEARNING CENTERS INC	943206	NONE	CF–10
COMPUTER MARKETPLACE INC	900475	NONE	CF–10
COMSTOCK TAILINGS CO INC	917558	NONE	CF–10
COM VU CORP	714281	CF–08	REMOVE
CONCENTRA CORP	933091	NONE	CF–10
CONCEPT TECHNOLOGIES GROUP INC	916485	NONE	CF–10
CONCORDE GAMING CORP	215503	CF–08	CF–09
CONCORD HEALTH GROUP INC	896499	NONE	CF–10
CONCORD HOLDING CORP	916610	NONE	CF–10
CONDEV LAND FUND II LTD	828744	CF–07	CF–10

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Name	CIK No.	Former group	New group
CONDEV LAND GROWTH FUND 86 LTD	795280	CF–07	CF–10
CONGOLEUM CORP	023341	NONE	CF–10
CONGRESS STREET PROPERTIES INC	745770	CF–06	REMOVE
CONNECTICUT GENERAL REALTY INVESTORS L P	356456	CF–06	REMOVE
CONNECTICUT GENERAL REALTY INVESTORS II LP	716008	CF–06	REMOVE
CONSEP INC	914978	NONE	CF–10
CONSOLIDATED CAPITAL GROWTH FUND	201529	CF–05	CF–08
CONSOLIDATED CAPITAL INSTITUTIONAL PROPE 3	768890	CF–05	CF–08
CONSOLIDATED CAPITAL PROPERTIES III	317331	CF–05	CF–08
CONSOLIDATED CAPITAL PROPERTIES IV	355804	CF–09	CF–08
CONSOLIDATED CAPITAL PROPERTIES V	725614	CF–05	CF–08
CONSOLIDATED CAPITAL PROPERTIES VI	755908	CF–06	CF–08
CONSOLIDATED GRAPHICS INC /TX/	921500	NONE	CF–10
CONSOLIDATED ROYAL MINES INC	933157	NONE	CF–10
CONSOLIDATED STAINLESS INC	909726	NONE	CF–10
CONSO PRODUCTS CO	914448	NONE	CF–10
CONSULTING GROUP MANAGED FUTURES FUND LP	923660	NONE	CF–10
CONTEMPRI HOMES INC	897926	NONE	CF–10
CONTINENTAL AMERICAN TRANSPORTATION INC	866457	NONE	CF–10
CONTINENTAL CABLEVISION INC	355069	NONE	CF–04
CONTINENTAL CHOICE CARE INC	922488	NONE	CF–10
CONTINENTAL WASTE INDUSTRIES INC	876035	NONE	CF–07
CONTISECURITIES ASSET FUNDING CORP	917819	NONE	CF–10
CONVERGENT SOLUTIONS INC /NY/	811870	CF–06	REMOVE
CONVERSE INC	716934	NONE	CF–10
CONVERSION INDUSTRIES INC	766849	NONE	CF–10
COOPER CAMERON CORP	941548	NONE	CF–10
COOPERATIVE BANKSHARES INC	923529	NONE	CF–10
COPART INC	900075	NONE	CF–10
COPELCO CAPITAL FUNDING CORP II	930299	NONE	CF–10
CORNERSTONE IMAGING INC	909276	NONE	CF–10
CORPORATE ASSET BACKED CORP	916791	NONE	CF–10
CORPORATE PROPERTY ASSOCIATES 12 INC	912046	NONE	CF–10
CORRPRO COMPANIES INC /OH/	907072	NONE	CF–10
CORVITA CORP	925174	NONE	CF–10
COTY INC /DE/	939919	NONE	CF–10
COUNTRY STAR RESTAURANTS INC	911220	NONE	CF–10
COUNTY SEAT INC	933035	NONE	CF–10
COUNTY SEAT STORES INC	910112	NONE	CF–10
COVENANT TRANSPORT INC	928658	NONE	CF–10
CP FUNDING CORP	929701	NONE	CF–10
CP LTD PARTNERSHIP	931917	NONE	CF–10
CRA MANAGED CARE INC	942136	NONE	CF–10
CREATIVE COMPUTERS INC	937941	NONE	CF–10
CREATIVE MEDICAL DEVELOPMENT INC	919045	NONE	CF–10
CREATIVE PROGRAMMING & TECHNOLOGY VENTURES	913160	NONE	CF–10
CREE RESEARCH INC /NC/	895419	NONE	CF–10
CRESCENT AIRWAYS CORP	910614	NONE	CF–10
CRESCENT REAL ESTATE EQUITIES INC.	918958	NONE	CF–10
CRESTMONT FINANCIAL CORP	864901	CF–10	REMOVE
CRONOS GLOBAL INCOME FUND XIV LP	891332	CF–10	CF–08
CRONOS GLOBAL INCOME FUND XV LP	912605	CF–10	CF–08
CROP GROWERS CORP	921584	NONE	CF–10
CROSSMANN COMMUNITIES INC	911644	NONE	CF–10
CROWN AMERICAN REALTY TRUST	905134	NONE	CF–10
CROWN LABORATORIES INC /DE/	847385	NONE	CF–10
CROWN PACIFIC PARTNERS L P	930735	NONE	CF–10
CRW FINANCIAL INC /DE	943809	NONE	CF–10
CSA INCOME FUND LIMITED PARTNERSHIP I–C	764628	CF–07	CF–09
CSA INCOME FUND LIMITED PARTNERSHIP I–D	764629	CF–07	CF–09
CSA INCOME FUND LIMITED PARTNERSHIP II	809224	CF–08	CF–09
CSA INCOME FUND LIMITED PARTNERSHIP III	831890	CF–08	CF–09
CSA INCOME FUND IV LIMITED PARTNERSHIP	858801	CF–08	CF–09
CSB FINANCIAL GROUP INC	940006	NONE	CF–10
CSC INDUSTRIES INC	806400	CF–04	CF–10
CS FIRST BOSTON STRUCTURED PRODUCTS CORP	920031	NONE	CF–10
CSI COMPUTER SPECIALISTS INC	923141	NONE	CF–10
CSL LIGHTING MANUFACTURING INC	916068	NONE	CF–10
CSX TRADE RECEIVABLES CORP	911703	NONE	CF–10

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

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Name	CIK No.	Former group	New group
CUMBERLAND FEDERAL BANCORPORATION INC	830315	CF–09	REMOVE
CURTIS MATHES HOLDING CORP	755229	NONE	CF–10
CVD EQUIPMENT CORP	766792	CF–07	CF–10
CVD FINANCIAL CORP	906549	NONE	CF–10
CWMBS INC	906410	NONE	CF–10
CYBERONICS INC	864683	NONE	CF–10
CYCLO 3 PSS CORP	895319	NONE	CF–10
CYCLODEXTRIN TECHNOLOGIES DEVELOPMENT INC	922247	NONE	CF–10
CYPRUS AMAX FINANCE CORP	925132	NONE	CF–10
CYRIX CORP	867105	NONE	CF–10
CYTEC INDUSTRIES INC/DE/	912513	NONE	CF–10
CZECH INDUSTRIES INC /DE/	899627	NONE	CF–10
DADE INTERNATIONAL INC	942307	NONE	CF–10
DAIMLER BENZ AUTO GRANTOR TRUST 1993–A	911423	NONE	CF–10
DAIMLER BENZ VEHICLE RECEIVABLES CORP	924381	NONE	CF–10
DAIMLER BENZ VEHICLE TRUST 1994–A	924382	NONE	CF–10
DAINE INDUSTRIES INC	824845	CF–08	CF–10
DAINE INCOME PROPERTIES–86	813367	CF–09	REMOVE
DAINE PENSION INVESTORS 84	726370	CF–09	REMOVE
DAINE PENSION INVESTORS 85	756765	CF–09	REMOVE
DAIN REAL ESTATE PARTNERS I LP	715764	CF–09	REMOVE
DAKOTA EQUITIES LTD	915401	NONE	CF–10
DAKTRONICS INC /SD/	915779	NONE	CF–10
DAL TILE INTERNATIONAL INC	906611	NONE	CF–10
DAN RIVER INC /GA/	914384	NONE	CF–10
DARDEN RESTAURANTS INC	940944	NONE	CF–10
DARLING INTERNATIONAL INC	916540	NONE	CF–10
DATA SOUTH COMPUTER CORP	722582	CF–06	REMOVE
DATA SYSTEMS NETWORK CORP	926849	NONE	CF–10
DATASTREAM SYSTEMS INC	938481	NONE	CF–10
DAVE & BUSTERS INC	943823	NONE	CF–10
DAVEL COMMUNICATIONS GROUP INC	911016	NONE	CF–10
DAVIDSON & ASSOCIATES INC	897722	NONE	CF–10
DAVIN ENTERPRISES INC	815017	CF–08	CF–10
DB PAN AMERICAN ENERGY CORP	095626	CF–09	CF–08
Change to SUNBASE ASIA INC	095626	CF–09	CF–08
DDI PHARMACEUTICALS INC	109657	CF–07	CF–07
Change to OXIS INTERNATIONAL INC	109657	CF–07	CF–07
DEANE HOMES	932788	NONE	CF–10
DEARBORN BANCORP INC /MI/	895541	NONE	CF–10
DEBARTOLO REALTY CORP	912045	NONE	CF–10
DECATHLON ADVISORS LP	850340	CF–10	REMOVE
DECKERS OUTDOORS CORP	910521	NONE	CF–10
DEFAULT PROOF CREDIT CARD SYSTEM INC /FL/	803260	NONE	CF–10
DEFLECTA SHIELD CORP /DE/	914605	NONE	CF–10
DELAWARE MANAGEMENT HOLDINGS INC	921739	NONE	CF–10
DELPHI FILM ASSOCIATES	700579	CF–09	REMOVE
DENVER & EPHRATA TELEPHONE & TELEGRAPH CO	903269	NONE	CF–10
DENVER BANKSHARES INC	923214	NONE	CF–10
DEPARTMENT 56 INC	902270	NONE	CF–10
DESKTOP DATA INC	858912	NONE	CF–08
DETROIT DIESEL CORP	910058	NONE	CF–10
DEVELOPED TECHNOLOGY RESOURCES INC	890725	NONE	CF–10
DHB CAPITAL GROUP INC /NY/	899166	NONE	CF–10
D H MARKETING & CONSULTING INC	933954	NONE	CF–10
DIAGNOSTIC HEALTH SERVICES INC /DE/	895659	NONE	CF–10
DIAL CALL COMMUNICATIONS INC	918645	NONE	CF–10
DIALOGIC CORP	899042	NONE	CF–10
DIAMETRICS MEDICAL INC	895380	NONE	CF–10
DIAMOND CABLE COMMUNICATIONS PLC	929649	NONE	CF–10
DIAMOND SHAMROCK OFFSHORE PARTNERS L P	773350	CF–04	REMOVE
DIASENSE INC /PA/	895650	NONE	CF–10
DIASYS CORP	916380	NONE	CF–10
DICKINSON HOLDING CORP	918963	NONE	CF–10
DIMAC CORP	820999	NONE	CF–10
DIMAC DIRECT INC	916399	NONE	CF–10
DIMECO INC	898037	NONE	CF–10
DIMON INC	939930	NONE	CF–10
DIPLOMAT CORP	910319	NONE	CF–10

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

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Name	CIK No.	Former group	New group
DIRECT CONNECT INTERNATIONAL INC	840815	CF–08	CF–10
DISCOVER CARD TRUST 1993–A	896244	NONE	CF–10
DISCOVER CARD TRUST 1993–B	896245	NONE	CF–10
DISCOVERY ZONE INC	900392	NONE	CF–10
DIVERSIFIED FUTURES TRUST I	926805	NONE	CF–10
DIY HOME WAREHOUSE INC	899595	NONE	CF–10
DOAK PHARMACAL CO INC	029386	CF–08	REMOVE
DOLLAR TREE STORES INC	935703	NONE	CF–10
DOMINGUEZ SERVICES CORP	860673	CF–10	CF–07
DOMTAR GYPSUM INC	924780	NONE	CF–10
DORSEY TRAILERS INC	924117	NONE	CF–10
DOUBLE EAGLE PETROLEUM & MINING CO	029834	CF–08	CF–10
DOUBLETREE CORP	923472	NONE	CF–10
DOVATRON INTERNATIONAL INC	899047	NONE	CF–10
DOVE AUDIO INC	930436	NONE	CF–10
DOWNEY FINANCIAL CORP	935063	NONE	CF–10
DR STRUCTURED FINANCE CORP	909750	NONE	CF–10
DRYPERS CORP	894232	NONE	CF–10
DSP COMMUNICATIONS INC	934545	NONE	CF–10
DSP GROUP INC /DE/	915778	NONE	CF–10
DT INDUSTRIES INC	918999	NONE	CF–10
DTE HOLDINGS INC	936340	NONE	CF–10
DUAL DRILLING CO /DE/	907245	NONE	CF–10
DUALSTAR TECHNOLOGIES CORP	929546	NONE	CF–10
DUFF & PHELPS CREDIT RATING CO	928599	NONE	CF–10
DUNNS SUPPLY STORE INC	916357	NONE	CF–10
DURACRAFT CORP	911561	NONE	CF–10
DW BANKSHARES INC	916715	NONE	CF–10
DWFCM INTERNATIONAL ACCESS FUND LP	914747	NONE	CF–10
EAGLE EXPLORATION CO	030906	CF–08	CF–10
EAGLE FINANCE CORP	921863	NONE	CF–10
EASCO INC /DE/	938145	NONE	CF–10
EASTERN AMERICAN NATURAL GAS TRUST	895474	NONE	CF–10
EASTERN STAINLESS CORP	836437	CF–07	REMOVE
Change to EASTERN STAINLESS CORP /VA/	843867	CF–07	REMOVE
EASTMAN CHEMICAL CO	915389	NONE	CF–10
EASTOVER CORP	036207	CF–06	REMOVE
EAST PEORIA REAL ESTATE INC	909122	NONE	CF–10
EAST TEXAS FINANCIAL SERVICES INC	929646	NONE	CF–10
ECCS INC	900619	NONE	CF–10
ECHO BAY FINANCE CORP	887864	CF–07	CF–10
ECHO BAY MINES LTD	722080	CF–07	CF–10
ECHOSTAR COMMUNICATIONS CORP	920425	NONE	CF–10
EDELBROCK CORP	929037	NONE	CF–10
EDISON THOMAS INNS INC	808219	CF–06	CF–07
EDUCATIONAL INSIGHTS INC	919570	NONE	CF–10
EIA TECHNOLOGIES	920385	NONE	CF–10
EIGHT HOLDINGS INC	858365	CF–10	REMOVE
ELSON INDUSTRIES INC /DE/	032032	CF–05	REMOVE
ELECTRIC FUEL CORP	916529	NONE	CF–10
ELECTROCOM AUTOMATION INC	881404	CF–10	REMOVE
ELECTROGRAPH SYSTEMS INC	722641	CF–08	REMOVE
ELECTRONIC CLEARING HOUSE INC	721773	CF–07	CF–08
ELECTRONIC FAB TECHNOLOGY CORP	916797	NONE	CF–10
ELECTRONIC RETAILING SYSTEMS INTERNATIONAL INC	898747	NONE	CF–10
ELECTRONICS COMMUNICATIONS CORP	926366	NONE	CF–10
ELECTROPHARMACOLOGY INC	934849	NONE	CF–10
ELEK TEK INC	908613	NONE	CF–10
ELEPHANT & CASTLE GROUP INC	899849	NONE	CF–10
ELLETT BROTHERS INC	902055	NONE	CF–10
ELETRAX SYSTEMS INC	797448	NONE	CF–10
ELTRON INTERNATIONAL INC	915910	NONE	CF–10
EMCARE HOLDINGS INC	900083	NONE	CF–10
EMC FUNDING CORP TWO	906276	NONE	CF–10
EMERGING ALPHA CORP	904147	NONE	CF–10
EMERGING BETA CORP	904144	NONE	CF–10
EMERGING DELTA CORP	904145	NONE	CF–10
EMERGING GAMMA CORP	904146	NONE	CF–10
EMMIS BROADCASTING CORP	783005	NONE	CF–10

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Name	CIK No.	Former group	New group
EMPHESYS FINANCIAL GROUP INC	916356	NONE	CF–10
EMPIRE OF CAROLINA INC	312840	NONE	CF–10
EMPLOYEE SOLUTIONS INC	904897	NONE	CF–10
EMPRESS RIVER CASINO FINANCE CORP	918648	NONE	CF–10
ENCAD INC	913599	NONE	CF–10
ENERGY BIOSYSTEMS CORP	895677	NONE	CF–10
ENERGY CONVERSION DEVICES INC	032878	CF–06	CF–10
ENERGY MANAGEMENT CONCEPTS INC	937815	NONE	CF–10
ENSERCH EXPLORATION INC	931006	NONE	CF–10
ENSERCH EXPLORATION PARTNERS LTD	764625	CF–03	REMOVE
ENTERGY CORP /DE/	893928	CF–03	REMOVE
Change to ENTERGY CORP /DE/	065984	CF–01	CF–01
ENTERPRISE FEDERAL BANCORP INC	922036	NONE	CF–10
ENTERTAINMENT MEDIA ACQUISITION CORP	917079	NONE	CF–10
ENTREE CORP	814579	CF–06	CF–05
ENVIROMETRICS INC /DE/	917253	NONE	CF–10
ENVIRONMENTAL RESOURCES & DISPOSAL INC	919997	NONE	CF–10
ENVIRONMENT ONE CORP	033081	CF–07	CF–08
ENVIROPUR WASTE REFINING & TECHNOLOGY INC	895947	NONE	CF–10
EOTT ENERGY PARTNERS LP	917464	NONE	CF–10
EPIC DESIGN TECHNOLOGY INC /CA/	929457	NONE	CF–10
EPIC HEALTHCARE GROUP INC /DE/	841940	CF–10	REMOVE
EP TECHNOLOGIES INC	896978	NONE	CF–10
EQCC RECEIVABLES CORP	897897	NONE	CF–10
EQUALNET HOLDING CORP	936163	NONE	CF–10
EQUITEC 80 REAL ESTATE INVESTORS	314887	CF–09	REMOVE
EQUITEC 82 REAL ESTATE INVESTORS	701437	CF–09	REMOVE
EQUITEC LEASING INVESTORS 9	798050	CF–09	REMOVE
EQUITEC VENTURE LEASING INVESTORS A	747409	CF–09	REMOVE
EQUITEC VENTURE LEASING INVESTORS B	747410	CF–09	REMOVE
EQUITY CORP INTERNATIONAL	928155	NONE	CF–10
EQUITY INNS INC	916530	NONE	CF–10
EQUITY MARKETING INC	911151	NONE	CF–10
EQUITY RESIDENTIAL PROPERTIES TRUST	906107	NONE	CF–10
EQUIVANTAGE ACCEPTANCE CORP	933505	NONE	CF–10
EQUUS GAMING CO LP	928423	NONE	CF–10
ERNST HOME CENTER INC	924635	NONE	CF–10
ERP OPERATING LTD PARTNERSHIP	931182	NONE	CF–10
ESKIMO PIE CORP	787520	NONE	CF–10
ESMOR CORRECTIONAL SERVICES INC	914670	NONE	CF–10
ESQUIRE COMMUNICATIONS LTD	898015	NONE	CF–10
ESQUIRE RADIO & ELECTRONICS INC	033541	CF–06	REMOVE
ESSEX FINANCIAL PARTNERS LP	847325	CF–05	CF–10
Change to ESSEX BANCORP INC /NEW	847325	CF–05	CF–10
ESSEX HOSPITALITY ASSOCIATES III LP	911217	NONE	CF–10
ESSEX PROPERTY TRUST INC	920522	NONE	CF–10
ETI/US/INC	859369	CF–10	REMOVE
EUROPEAN GATEWAY ACQUISITION CORP	908517	NONE	CF–10
EVANS SYSTEMS INC	904901	NONE	CF–10
EVANS WITHYCOMBE RESIDENTIAL INC	925267	NONE	CF–10
EVERGREEN BANCSHARES INC	930199	NONE	CF–10
EXCALIBUR INDUSTRIES	201779	CF–08	CF–10
EXPERT SOFTWARE INC	939730	NONE	CF–10
EXPRESSAIR MESSENGER INC	926299	NONE	CF–10
EXSTAR FINANCIAL CORP	893963	NONE	CF–10
EXTREME TECHNOLOGIES INC	907166	NONE	CF–10
EYE CARE CENTERS OF AMERICA INC	759896	NONE	CF–10
FACTORY STORES OF AMERICA INC	899757	NONE	CF–10
FAILURE GROUP INC	851520	NONE	CF–10
FAIRFIELD MANUFACTURING CO INC	904543	NONE	CF–10
FALCON BUILDING PRODUCTS INC	923286	NONE	CF–10
FALCON HOLDING GROUP LP	900346	NONE	CF–10
FALLEYS INC /KS/	835678	NONE	CF–04
FAMILY DENTAL CENTER SERVICE CO OF AMERICA	935869	NONE	CF–10
FAMILY GOLF CENTERS INC	929941	NONE	CF–10
FARMERS NATIONAL BANCORP /MD/	700850	CF–04	REMOVE
FARREL CORP	034645	NONE	CF–10
FBD HOLDING CO INC	942595	NONE	CF–10
F & C BANCSHARES INC	878671	CF–10	REMOVE

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Name	CIK No.	Former group	New group
FCC RECEIVABLES CORP	940182	NONE	CF–10
FCS LABORATORIES INC	719130	CF–07	CF–10
FEATHERLITE MFG INC	928064	NONE	CF–10
FED ONE BANCORP INC	929549	NONE	CF–10
FEDERAL AFFORDABLE HOUSING CORP	911356	NONE	CF–10
FEDERAL MORTGAGE MANAGEMENT INC	909962	NONE	CF–10
FEDERATED DEPARTMENT STORES INC	034945	CF–02	REMOVE
FED ONE BANCORP INC	929549	NONE	CF–10
FEI CO	914329	NONE	CF–10
FELCOR SUITE HOTELS INC	923603	NONE	CF–10
FENTURA BANCORP INC	919865	NONE	CF–10
FERRELLGAS PARTNERS L P	922358	NONE	CF–10
FERTECH ENVIRONMENTAL SERVICES INC	933090	NONE	CF–10
FF BANCORP INC	885727	CF–10	REMOVE
FF HOLDINGS CORP	838448	NONE	CF–10
FFLC BANCORP INC	912738	NONE	CF–10
FFVA FINANCIAL CORP	924285	NONE	CF–10
FIBERONICS INTERNATIONAL INC	724968	CF–05	REMOVE
FIBERSTARS INC /CA/	924168	NONE	CF–10
FIDELITY FINANCIAL BANKSHARES CORP	937688	NONE	CF–10
FIDELITY LEASING INCOME FUND V LP	830660	CF–09	CF–08
FIDELITY LEASING INCOME FUND VI LP	846471	CF–10	CF–08
FIDELITY LEASING INCOME FUND VII LP	858661	CF–10	CF–08
FIDELITY LEASING INCOME FUND VIII LP	870742	CF–10	CF–08
FIDELITY MEDICAL INC	320017	CF–07	CF–09
FINANCECO AUTO RECEIVABLES CORP	920207	NONE	CF–10
FINANCIAL BANCORP INC	855932	NONE	CF–10
FINANCIAL SECURITY ASSURANCE HOLDINGS LTD	913357	NONE	CF–10
FINANCIAL SERVICES ACQUISITION CORP /DE/	931707	NONE	CF–10
FINANCING FOR SCIENCE INTERNATIONAL INC	914244	NONE	CF–10
FINGERHUT RECEIVABLES INC	921751	NONE	CF–10
FINISHMASTER INC	917321	NONE	CF–10
FINLAY ENTERPRISES INC /DE	878731	NONE	CF–10
FINLAY FINE JEWELRY CORP	898684	NONE	CF–10
FIREFOX COMMUNICATIONS INC	942167	NONE	CF–10
FIRST ALERT INC	918960	NONE	CF–10
FIRST ALLIANCE CORP /KY/	910603	NONE	CF–10
FIRST ASHLAND FINANCIAL CORP	934793	NONE	CF–10
FIRST BANCSHARES INC /MO/	912967	NONE	CF–10
FIRST BANKSHARES INC /GA/	925944	NONE	CF–10
FIRSTBANK PUERTO RICO	932625	NONE	CF–10
FIRST BANKS INC	710507	NONE	CF–10
FIRST BELL BANCORP INC	932697	NONE	CF–10
FIRST CENTRAL BANCSHARES INC	897979	NONE	CF–10
FIRST CHESAPEAKE FINANCIAL CORP	899164	NONE	CF–10
FIRST CHOICE HEALTH NETWORK INC	922622	NONE	CF–10
FIRST CITY BANCORPORATION OF TEXAS INC	828678	CF–09	CF–09
Change to FIRSTCITY FINANCIAL CORP	828678	CF–09	CF–09
FIRST COMMUNITY BANCSHARES INC/GA/	825351	CF–08	REMOVE
FIRST COMMUNITY CORP /SC/	932781	NONE	CF–10
FIRST COMMUNITY CORP /TN/	924960	NONE	CF–10
FIRST DEPOSIT NAT BK FIRST DEP MAS TR ASST BK CER SER 1993–1	909823	NONE	CF–10
FIRST DEPOSIT NAT BK FIRST DEP MAS TR ASST BK CER SER 1993–2	909826	NONE	CF–10
FIRST DEPOSIT NATL BK FIRST DEP MA TR ASS BK CERT SER 1994–1	926216	NONE	CF–10
FIRST FAMILY FINANCIAL CORP	927313	NONE	CF–10
FIRST FEDERAL BANCORPORATION /MN/	933461	NONE	CF–10
FIRST FEDERAL BANCSHARES OF EAU CLAIRE INC	920526	NONE	CF–10
FIRSTFED NORTHERN KENTUCKY BANCORP INC	877867	CF–10	REMOVE
FIRST FIDELITY ACCEPTANCE CORP	789874	NONE	CF–10
FIRST INDEPENDENCE CORP /DE/	908486	NONE	CF–10
FIRST INDUSTRIAL REALTY TRUST INC	921825	NONE	CF–10
FIRST KENT FINANCIAL CORP	920770	NONE	CF–10
FIRST MERCHANTS ACCEPTANCE CORP	926296	NONE	CF–10
FIRST MERCURY FINANCIAL CORP	929186	NONE	CF–10
FIRST MIDWEST FINANCIAL INC	907471	NONE	CF–10
FIRST MISSOURI BANCSHARES INC	916526	NONE	CF–10
FIRST MUTUAL FINANCIAL INC	934738	NONE	CF–10
FIRST NATIONWIDE HOLDINGS INC	928358	NONE	CF–10
FIRST NORTH AMERICAN NATIONAL BANK	928596	NONE	CF–10

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Name	CIK No.	Former group	New group
FIRST OF AMERICA BANK MICHIGAN NA	934842	CF–10	CF–07
FIRST OF AMERICA BANK NORTHEAST ILLINOIS NA	934841	NONE	CF–10
FIRST OPTION HEALTH PLAN OF NEW JERSEY INC	919868	NONE	CF–10
FIRST OZAUKEE CAPITAL CORP	920612	NONE	CF–10
FIRST SAVINGS BANCORP OF LITTLE FALLS INC	902435	NONE	CF–10
FIRST SOUTHERN BANCSHARES INC	934302	NONE	CF–10
FIRST SUNBELT BANKSHARES INC	802776	CF–06	REMOVE
FIRST WASHINGTON REALTY TRUST INC	926861	NONE	CF–10
FIRST WESTERN FINANCIAL CORP	037059	CF–07	REMOVE
FISCHER IMAGING CORP	750901	NONE	CF–10
FISHER SCIENTIFIC INTERNATIONAL INC	880430	NONE	CF–10
FISHKILL NATIONAL CORP	749923	CF–06	REMOVE
FLAIR CORP	913953	NONE	CF–10
FLAMEMASTER CORP	037358	CF–07	CF–10
FLORES & RUCKS INC /DE/	930550	NONE	CF–10
FLORIDA AUTOMOBILE FINANCE CORP	926297	NONE	CF–10
FLORIDA WEST AIRLINES INC	836190	NONE	CF–10
FLORISTS TRANSWORLD DELIVERY INC	935870	NONE	CF–10
FLORSHEIM SHOE CO /DE/	928908	NONE	CF–10
FLOYD VALLEY PACKING CO	037727	CF–08	REMOVE
FLUOROSCAN IMAGING SYSTEMS INC	923856	NONE	CF–10
FNBH BANCORP INC	943119	NONE	CF–10
FOAMEX INTERNATIONAL INC	912908	NONE	CF–10
FOAMEX-JPS AUTOMOTIVE LP	927584	NONE	CF–10
FOCAL CORP	915461	NONE	CF–10
FOCUS SURGERY INC	909727	NONE	CF–10
FOHP INC	937817	NONE	CF–10
FOILMARK INC	914066	NONE	CF–10
FOOD 4 LESS GM INC	886141	NONE	CF–10
FOOD 4 LESS HOLDINGS INC /CA	898470	NONE	CF–10
FOOD 4 LESS HOLDINGS INC /DE	936523	NONE	CF–04
FOOD 4 LESS MERCHANDISING INC	880824	NONE	CF–04
FOOD 4 LESS OF CALIFORNIA INC	880823	NONE	CF–04
FOOD 4 LESS OF SOUTHERN CALIFORNIA INC	880825	NONE	CF–04
FOOD COURT ENTERTAINMENT NETWORK INC	940800	NONE	CF–10
FOOD TRENDS ACQUISITION CORP	923134	NONE	CF–10
FOR HIRE INC	935000	NONE	CF–10
FORECAST GROUP LP	915350	NONE	CF–10
FORE SYSTEMS INC /DE/	920000	NONE	CF–10
FORREST CITY FINANCIAL CORP	922288	NONE	CF–10
FORTE COMPUTER EASY INC	940034	NONE	CF–10
FOTOBALL USA INC	922251	NONE	CF–10
FOUNTAIN POWERBOAT INDUSTRIES INC	764858	NONE	CF–06
FOURTH SHIFT CORP	905724	NONE	CF–10
FPA MEDICAL MANAGEMENT INC	920173	NONE	CF–10
FRANCOR FINANCIAL INC	726317	CF–06	REMOVE
FRANKFORD CORP	700714	CF–07	REMOVE
FRANKFORT FIRST BANCORP INC	930182	NONE	CF–10
FRANKLIN OPHTHALMIC INSTRUMENTS CO INC	898630	NONE	CF–10
FRAWLEY CORP	038824	CF–06	CF–10
FREDERICKSBURG NATIONAL BANCORP INC	707177	CF–07	REMOVE
FREMONT CORP	038981	NONE	CF–10
FRESH AMERICA CORP	921614	NONE	CF–10
FRIEDMANS INC	911004	NONE	CF–10
FRIENDLY ICE CREAM INC	930588	NONE	CF–10
FRIENDLYS HOLDING CO INC	932090	NONE	CF–10
FRONTIER AIRLINES INC /CO/	921929	NONE	CF–10
FRONTIER NATURAL GAS CORP	901611	NONE	CF–10
FRONTIER OIL & GAS CO /DE	906350	NONE	CF–10
FRONTIER OIL EXPLORATION CO	907649	NONE	CF–10
FROST HANNA ACQUISITION GROUP INC	906598	NONE	CF–10
FROST HANNA MERGERS GROUP INC	916844	NONE	CF–10
FSA MUNICIPAL ASSET BACKED CORP	930647	NONE	CF–10
FSB FINANCIAL CORP	920856	NONE	CF–10
FSF FINANCIAL CORP	924370	NONE	CF–10
FTP SOFTWARE INC	912548	NONE	CF–10
FUELCELL CORP OF AMERICA	924638	NONE	CF–10
FULCRUM TECHNOLOGIES INC	912152	NONE	CF–10
FUND AMERICA INVESTORS CORP II	895730	NONE	CF–10

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

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Name	CIK No.	Former group	New group
FUSION SYSTEMS CORP	920029	NONE	CF–10
FUTUREBIOTICS INC	922200	NONE	CF–10
G&L REALTY CORP	912240	NONE	CF–10
G/O INTERNATIONAL INC	928447	NONE	CF–10
GALLERY RODEO INTERNATIONAL	837852	NONE	CF–10
GALVESTON HOUSTON CO	039838	CF–05	REMOVE
GAME FINANCIAL CORP	920106	NONE	CF–10
GARDEN FRESH RESTAURANT CORP /DE/	942133	NONE	CF–10
GARDEN STATE NEWSPAPERS INC	918944	NONE	CF–10
GARDNER DENVER MACHINERY INC	916459	NONE	CF–10
GARMENT GRAPHICS INC	895641	NONE	CF–10
GARTNER GROUP INC	749251	NONE	CF–10
GASONICS INTERNATIONAL CORP	918647	NONE	CF–10
GATES FA DISTRIBUTING INC	827838	CF–05	REMOVE
GATEWAY BANCORP INC/KY	931066	NONE	CF–10
GATEWAY BANCORP INC /NY	758029	CF–05	CF–10
GATEWAY INDUSTRIES INC /CA/	725876	CF–07	CF–10
GB PROPERTY FUNDING CORP	912906	NONE	CF–10
GC COMPANIES INC	912295	NONE	CF–10
GEERLINGS & WADE INC	922810	NONE	CF–10
GENCARE HEALTH SYSTEMS INC	879028	CF–10	REMOVE
GENEMEDICINE INC	907111	NONE	CF–10
GENERAL ACCEPTANCE CORP /IN/	937965	NONE	CF–10
GENERAL CELLULAR CORP	831104	CF–09	REMOVE
GENERAL CHEMICAL GROUP INC	929697	NONE	CF–10
GENERAL DEVICES INC	040528	CF–07	CF–09
GENERAL GROWTH PROPERTIES INC	895648	NONE	CF–10
GENERAL MAGIC INC	933524	NONE	CF–10
GENERAL MEDIA INC	920771	NONE	CF–10
GENERAL MEDICAL CORP /VA	880123	NONE	CF–10
GENERAL TEXTILES	899690	NONE	CF–10
GENMAR HOLDINGS INC	823619	NONE	CF–10
GENZYME DEVELOPMENT PARTNERS LP	856312	NONE	CF–10
GENZYME TRANSGENICS CORP	904973	NONE	CF–10
GEO ENVIRONMENTAL RESOURCES INC	914553	NONE	CF–10
GEONEX CORP	796318	CF–06	CF–08
GEORGIA BANK FINANCIAL CORP /GA	880116	NONE	CF–10
GEOWORKS /CA/	922285	NONE	CF–10
GF BANCORP INC	906787	NONE	CF–10
GFSB BANCORP INC	942129	NONE	CF–10
GIANT CEMENT HOLDING INC	922405	NONE	CF–10
GILLETT HOLDINGS INC	812011	NONE	CF–10
GILMAN & CIOCIA INC	914142	NONE	CF–10
GILMER FINANCIAL SERVICES INC	930540	NONE	CF–10
GLENDALE BANCORPORATION/NJ	769800	CF–08	REMOVE
GLEN ROCK STATE BANCORP INC	921906	NONE	CF–10
GLENBOROUGH REALTY TRUST INC	929454	NONE	CF–10
GLENGATE APPAREL INC	916394	NONE	CF–10
GLIMCHER REALTY TRUST,	912898	NONE	CF–10
GLOBAL CAPITAL ACCESS CORP	943941	NONE	CF–10
GLOBAL INDUSTRIES LTD	895663	NONE	CF–10
GLOBALINK INC	899679	NONE	CF–10
GLOBAL MARKET INFORMATION INC	922811	NONE	CF–10
GLOBALSTAR TELECOMMUNICATIONS LTD	933401	NONE	CF–10
GLOBAL TELECOMMUNICATION SOLUTIONS INC	925004	NONE	CF–10
GLOBAL TELEMEDIA INTERNATIONAL INC	789562	CF–08	CF–09
GLOBUS CELLULAR & USER PROTECTION LTD	939402	NONE	CF–10
GLYKO BIOMEDICAL LTD	908401	NONE	CF–10
GMAC 1990–A GRANTOR TRUST	868571	CF–01	REMOVE
GM HOLDINGS INC	916486	NONE	CF–10
GMI 94 LLC	928729	NONE	CF–10
GNAC CORP	311905	NONE	CF–10
GNC ENERGY CORP	043398	CF–07	CF–10
GNC INC	936512	NONE	CF–10
GOLD CAPITAL CORP /CO/	919626	NONE	CF–10
GOLDEN INTERSTATE MEDICAL MANAGEMENT INC	911225	NONE	CF–10
GOLDEN STAR RESOURCES LTD	903571	NONE	CF–10
GOLDEN SYSTEMS INC	911876	NONE	CF–10
GOLDEN TRIANGLE ROYALTY & OIL INC	042284	CF–08	CF–09

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

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Name	CIK No.	Former group	New group
GOLF ENTERPRISES INC /DE/	921756	NONE	CF–10
GOOD IDEAS ENTERPRISES INC	916714	NONE	CF–10
GOODRICH PETROLEUM CORP	943861	NONE	CF–10
GORAN CAPITAL INC	925600	NONE	CF–10
GOVERNMENT EXPORT TRUST SERIES 1993–1	898313	NONE	CF–10
GRAHAM INCOME FUND 82A	400001	CF–07	REMOVE
GRAND GAMING CORP	911760	NONE	CF–10
GRANITE DEVELOPMENT PARTNERS LP	925171	NONE	CF–10
GRAPHIX ZONE INC	915684	NONE	CF–10
GREAT AMERICAN BACKRUB STORE INC	934006	NONE	CF–10
GREAT AMERICAN BANCORP INC	943064	NONE	CF–10
GREAT AMERICAN BROADCASTING CORP	849143	CF–10	REMOVE
GREAT AMERICAN COOKIE CO INC	920110	NONE	CF–10
GREAT AMERICAN CORP	043271	CF–07	REMOVE
GREAT AMERICAN INVESTMENT NETWORK INC	901514	NONE	CF–10
GREATER ROME BANCSHARES INC	928484	NONE	CF–10
GREAT LAKES AVIATION LTD	914397	NONE	CF–10
GREAT PINES WATER CO INC	906285	NONE	CF–10
GREAT TRAIN STORE CO	924380	NONE	CF–10
GREAT WESTERN AIR INC	909232	NONE	CF–10
GREEN MOUNTAIN COFFEE INC	909954	NONE	CF–10
GREENBRIER COMPANIES INC	923120	NONE	CF–10
GREENFIELD INDUSTRIES INC /DE/	906419	NONE	CF–10
GREENMAN TECHNOLOGIES INC	932699	NONE	CF–10
GREENSTONE INDUSTRIES INC	922862	NONE	CF–10
GREENWICH AIR SERVICES INC	891461	NONE	CF–10
GREENWOOD RESOURCES INC /CO/	718474	CF–07	CF–09
Change to PACKAGING RESEARCH CORP	718474	CF–07	CF–09
GREG MANNING AUCTIONS INC	895516	NONE	CF–10
GRIFFIN REAL ESTATE FUND II	319716	CF–06	CF–08
GRIFFIN REAL ESTATE FUND IV	728526	CF–06	CF–08
GRIFFIN REAL ESTATE FUND V	760451	CF–06	CF–08
GRIFFIN REAL ESTATE FUND VI	783452	CF–06	CF–08
GRIFFITH CONSUMERS CO /DE/	935814	NONE	CF–10
GRIFFITH CONSUMERS CO /MD/	801937	CF–09	REMOVE
GRILL CONCEPTS INC	895041	NONE	CF–10
GROVE REAL ESTATE ASSET TRUST	920776	NONE	CF–10
GROW BIZ INTERNATIONAL INC	908315	NONE	CF–10
GROWTH ENVIRONMENTAL INC	913890	NONE	CF–10
GRYPHON HOLDINGS INC	912558	NONE	CF–10
GS FINANCIAL PRODUCTS US LP	914720	NONE	CF–10
GS TECHNOLOGIES OPERATING CO INC	925906	NONE	CF–10
GUARANTY BANCSHARES CORP	768536	CF–06	REMOVE
GUARANTY STATE BANCORP	900342	NONE	CF–10
GUIDANT CORP	929987	NONE	CF–10
GUILFORD PHARMACEUTICALS INC	918066	NONE	CF–10
GUINNESS TELLI-PHONE CORP	940036	NONE	CF–10
GULF & SOUTHERN FINANCIAL CORP	774555	CF–06	REMOVE
GUTHRIE SAVINGS INC	925533	NONE	CF–10
GWC CORP	779244	CF–03	REMOVE
GWINNETT BANCSHARES INC	858862	CF–10	REMOVE
HAAGEN ALEXANDER PROPERTIES INC	913292	NONE	CF–10
HAGGAR CORP	892533	NONE	CF–10
HALLMARK HEALTHCARE CORP	765052	CF–04	REMOVE
HALLWOOD HOLDINGS INC	874238	CF–10	CF–08
Change to OAKHURST CAPITAL INC	874238	CF–10	CF–08
HALLWOOD INDUSTRIES INC	046535	CF–06	CF–08
Change to STEEL CITY PRODUCTS INC	046535	CF–06	CF–08
HAMILTON FINANCIAL SERVICES CORP	899161	NONE	CF–10
HAMMONS JOHN Q HOTELS LP	916536	NONE	CF–10
HANCOCK JOHN REAL ESTATE L P	708319	CF–06	REMOVE
HANCOCK JOHN REALTY INCOME FUND III LP	842741	CF–09	CF–07
HAPPINESS EXPRESS INC	923662	NONE	CF–10
HARBOR INVESTMENT CORP	874386	CF–10	REMOVE
HARBOUR CAPITAL CORP	897082	NONE	CF–10
HARBOUR INTERMODAL LTD	933649	NONE	CF–10
HARMONEY STREET CAPITAL INC	830488	CF–09	CF–09
Change to NETWORK LONG DISTANCE INC	830488	CF–09	CF–09
HARRAHS JAZZ CO	916611	NONE	CF–10

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Name	CIK No.	Former group	New group
HARRIER INC	789847	CF–07	CF–09
HARRIS CHEMICAL NORTH AMERICA INC	910711	NONE	CF–10
HARRIS COMPUTER SYSTEMS CORP	927133	NONE	CF–10
HARRYS FARMERS MARKET INC	899755	NONE	CF–10
HARVARD FUTURES FUND LLC	932093	NONE	CF–10
HARVEST E-XPRESS INC	937601	NONE	CF–10
HARVEST HOME FINANCIAL CORP	919624	NONE	CF–10
HARVEY ENTERTAINMENT CO	904350	NONE	CF–10
HARVEY UNIVERSAL INC	911671	NONE	CF–10
HARVEYS CASINO RESORTS	914022	NONE	CF–10
HASKEL INTERNATIONAL INC	918022	NONE	CF–10
HAUPPAUGE DIGITAL INC	930803	NONE	CF–10
HAYWOOD BANCSHARES INC	940941	NONE	CF–10
HB COMMUNICATIONS ACQUISITION CORP	900029	NONE	CF–10
HCA HOSPITAL CORPORATION OF AMERICA	846489	CF–10	REMOVE
HCIA INC	935001	NONE	CF–10
HDS NETWORK SYSTEMS INC	894743	NONE	CF–10
HEALTHCARE AMERICA INC	914627	NONE	CF–10
HEALTH CARE PROPERTIES II L P	760689	CF–06	REMOVE
HEALTH & COMMUNITY LIVING INC	904919	NONE	CF–10
HEALTHDYNE TECHNOLOGIES INC	900307	NONE	CF–10
HEALTH MANAGEMENT SYSTEMS INC	861179	NONE	CF–10
HEALTHPLAN SERVICES CORP	942319	NONE	CF–10
HEALTH POWER INC /DE/	917674	NONE	CF–10
HEALTHWISE OF AMERICA INC	912955	NONE	CF–10
HEALTHY PLANET PRODUCTS INC	768260	CF–08	CF–07
HEARTLAND FINANCIAL USA INC	920112	NONE	CF–10
HEARTLAND GROUP OF COMPANIES INC	909108	NONE	CF–10
HEARTLAND WIRELESS COMMUNICATIONS INC	917707	NONE	CF–10
HEILEMAN G BREWING CO INC	914982	NONE	CF–10
HELEN OF TROY LTD	916789	NONE	CF–10
HELICON GROUP LP	915767	NONE	CF–10
HELLO DIRECT INC /DE/	937265	NONE	CF–10
HEMASURE INC	919745	NONE	CF–10
H.E.R.C. PRODUCTS INC	919010	NONE	CF–10
HERITAGE OAKS BANCORP	921547	NONE	CF–10
HF BANCORP INC	941547	NONE	CF–10
HFC REVOLVING CORP	923147	NONE	CF–10
HI RISE RECYCLING SYSTEMS INC	906605	NONE	CF–10
HI SHEAR TECHNOLOGY CORP	918027	NONE	CF–10
HIGH HOPES INC	800181	CF–08	REMOVE
HIGHWAYMASTER COMMUNICATIONS INC	944400	NONE	CF–10
HIGHWOODS PROPERTIES INC	921082	NONE	CF–10
HILITE INDUSTRIES INC	915197	NONE	CF–10
HIRSCH INTERNATIONAL CORP	915909	NONE	CF–10
HMN FINANCIAL INC	921183	NONE	CF–10
HMO AMERICA INC	742415	CF–07	REMOVE
HOLLY PRODUCTS INC	909753	NONE	CF–10
HOLLY RESIDENTIAL PROPERTIES INC	900340	CF–10	REMOVE
HOLLYWOOD ENTERTAINMENT CORP	905895	NONE	CF–10
HOLMES PROTECTION GROUP INC	926764	NONE	CF–10
HOLNAM INC	860602	CF–02	REMOVE
HOME BANCORP/IN	916822	NONE	CF–10
HOME BUILDING BANCORP INC	930594	NONE	CF–10
HOMECAPITAL INVESTMENT CORP	320545	NONE	CF–10
HOME EXPRESS INC /DE/	934597	NONE	CF–10
HOME FINANCIAL CORP/DE	921151	NONE	CF–10
HOME NATIONAL CORP/MA	715128	CF–04	REMOVE
HOME PROPERTIES OF NEW YORK INC	923118	NONE	CF–10
HOME STATE HOLDINGS INC	906524	NONE	CF–10
HOMEOWNERS FINANCIAL CORP	932268	NONE	CF–10
HOMETOWN BUFFET INC	910558	NONE	CF–10
HORIZON BANCORP INC	931332	NONE	CF–10
HORIZON CELLULAR TELEPHONE CO LP	898675	NONE	CF–10
HORIZON FINANCIAL SERVICES CORP	920600	NONE	CF–10
HORIZON MENTAL HEALTH MANAGEMENT INC	935007	NONE	CF–10
HORIZON OUTLET CENTERS INC	911645	NONE	CF–10
HOSIERY CORP OF AMERICA INC	934383	NONE	CF–10
HOSSS STEAK & SEA HOUSE INC	937258	NONE	CF–10

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Name	CIK No.	Former group	New group
HOTEL INVESTORS CORP	316206	CF–04	CF–04
Change to STARWOOD LODGING CORP	316206	CF–04	CF–04
HOTEL INVESTORS TRUST	048595	CF–04	CF–04
Change to STARWOOD LODGING TRUST	048595	CF–04	CF–04
HOULIHANS RESTAURANT GROUP INC	909723	NONE	CF–10
HOUSEHOLD AFFINITY FUNDING CORP	906327	NONE	CF–10
HOUSEHOLD FINANCE CORP HOUSEHOLD AFFINITY CRED CARD MAS TR I	906328	NONE	CF–10
HOUSEHOLD RECEIVABLES FUNDING CORP	877655	NONE	CF–10
HOUSEHOLD RECEIVABLES FUNDING CORP II	894153	NONE	CF–10
HOUSTON OIL TRUST	355118	CF–05	REMOVE
HOUSTON SAM RACE PARK LTD	911082	NONE	CF–10
HRSI FUNDING INC	880283	NONE	CF–10
HUB GROUP INC	940942	NONE	CF–10
HUDSON RESOURCES INC	924710	NONE	CF–10
HUDSON TECHNOLOGIES INC /NY	925528	NONE	CF–10
HUGOTON ENERGY CORP	914144	NONE	CF–10
HUMPHREY HOSPITALITY TRUST INC	929545	NONE	CF–10
HUNGARIAN TELECONSTRUCT CORP	905428	NONE	CF–10
HUNTCO INC	905722	NONE	CF–10
HUNTER RESOURCES INC	031063	CF–08	CF–09
HUNTSMAN CORP	918763	NONE	CF–10
HWCC TUNICA INC	927801	NONE	CF–10
HYPERMEDIA COMMUNICATIONS INC	894680	NONE	CF–10
IBS FINANCIAL CORP	925780	NONE	CF–10
ICHI-BON INVESTMENT CORP	935730	NONE	CF–10
ICN BIOMEDICALS INC	798166	CF–04	REMOVE
ICN PHARMACEUTICALS INC	930184	NONE	CF–10
ICN PHARMACEUTICALS INC /DE/	049601	CF–03	REMOVE
ICON HEALTH & FITNESS INC	934798	NONE	CF–10
ICU MEDICAL INC /DE	883984	NONE	CF–10
IDAHO CO	809365	CF–08	CF–10
IDEON GROUP INC	943097	NONE	CF–10
IDM CORP	932143	NONE	CF–10
IDM ENVIRONMENTAL CORP	909792	NONE	CF–10
IEA INCOME FUND VI	774482	CF–09	CF–08
IEA INCOME FUND VII	803511	CF–09	CF–08
IEA INCOME FUND VIII	821097	CF–09	CF–08
IEA INCOME FUND IX LP	836972	CF–09	CF–08
IEA INCOME FUND X LP	853735	CF–10	CF–08
IEA INCOME FUND XI LP	867640	CF–10	CF–08
IEA INCOME FUND XII LP	879045	CF–10	CF–08
IEA MARINE CONTAINER FUND II	315806	CF–09	CF–08
IEA MARINE CONTAINER INCOME FUND III	350202	CF–09	CF–08
IEA MARINE CONTAINER INCOME FUND IV	357047	CF–09	CF–08
IEA MARINE CONTAINER INCOME FUND V-A	727047	CF–09	CF–08
IEA MARINE CONTAINER INCOME FUND V-B	727048	CF–09	CF–08
IEC FUNDING CORP	934665	NONE	CF–10
IGEN INC /CA/	916304	NONE	CF–10
ILLINOVA CORP	914755	NONE	CF–10
ILM I LEASE CORP	932091	NONE	CF–10
ILM II LEASE CORP	932092	NONE	CF–10
IMAC MERGER SUBSIDIARY INC	932124	NONE	CF–10
IMAGE INDUSTRIES INC	905435	NONE	CF–10
IMAGE SENSING SYSTEMS INC	943034	NONE	CF–10
IMAGE SYSTEMS CORP	049852	NONE	CF–10
IMAGEX SERVICES INC	927798	NONE	CF–10
IMAX CORP	921582	NONE	CF–10
IMCLONE SYSTEMS INC /DE	765258	NONE	CF–10
IMMO FINANCE CORP	919605	NONE	CF–10
IMMUNE RESPONSE CORP	817785	NONE	CF–10
IMPERIAL GOVERNMENT INCOME TRUST SERIES I	900472	NONE	CF–10
IMPERIAL INDUSTRIES INC	049930	CF–07	CF–10
IMREG INC	730757	CF–07	CF–10
IMSCO INC /MA/	924396	NONE	CF–10
IN BRAND CORP	909278	NONE	CF–10
INCO HOMES CORP	897432	NONE	CF–10
INCONTROL INC	871629	NONE	CF–10
INDEPENDENT AMERICAN PARTICIPATING INCOME FUND LP	760688	CF–07	CF–10
INDEPENDENT BANCORP OF ARIZONA INC	915305	NONE	CF–10

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Name	CIK No.	Former group	New group
INDEPENDENT BANKS OF VIRGINIA INC	719731	CF–08	CF–09
Change to HERITAGE BANKSHARES INC /VA	719731	CF–08	CF–09
INDEPENDENT RESEARCH AGENCY FOR LIFE INSURANCE INC	354242	NONE	CF–10
INDIANA WIRELESS LTD	932982	NONE	CF–10
INDIANTOWN COGENERATION FUNDING CORP	927630	NONE	CF–10
INDUSTRIAL BANCORP INC	942899	NONE	CF–10
INDUSTRIAL SCIENTIFIC CORP	906108	NONE	CF–10
INDUSTRIAL TRAINING CORP	764867	NONE	CF–10
INFOMED HOLDINGS INC	896157	NONE	CF–10
INFORMATION AMERICA INC /GA	879772	CF–10	REMOVE
INFORMATION SOLUTIONS INC	723574	CF–07	CF–07
Change to IMAGE SOFTWARE INC	723574	CF–07	CF–07
INFORMATION STORAGE DEVICES INC /CA/	932980	NONE	CF–10
INFOSAFE SYSTEMS INC	894738	NONE	CF–10
INFOSOFT INTERNATIONAL INC	917471	NONE	CF–10
INHALE THERAPEUTIC SYSTEMS	906709	NONE	CF–10
INITIAL ACQUISITION CORP	899394	NONE	CF–10
INLAND GOLD & SILVER CORP /WA/	811038	CF–07	CF–07
Change to INLAND RESOURCES INC	717754	CF–07	CF–07
INLAND MONTHLY INCOME FUND III INC	923284	NONE	CF–10
INNERDYNE INC	822084	NONE	CF–10
INNERSPACE INC	891162	NONE	CF–10
INNKEEPERS USA TRUST/FL	926866	NONE	CF–10
INNODATA CORP	903651	NONE	CF–10
INNOVATIVE GAMING CORP OF AMERICA	897795	NONE	CF–10
INNOVIR LABORATORIES INC	901099	NONE	CF–10
INOVISION CORP	775526	CF–05	CF–10
INPHYNET MEDICAL MANAGEMENT INC	925170	NONE	CF–10
INSCI CORP	878612	NONE	CF–10
INSET INDUSTRIES INC	929140	NONE	CF–10
INSIGHT ENTERPRISES INC	932696	NONE	CF–10
INSITUFORM SOUTHEAST CORP	799096	CF–06	CF–09
Change to ENVIROQ CORP	799096	CF–06	CF–09
INTEGRACARE INC	912081	NONE	CF–10
INTEGRATED COMMUNICATION NETWORK INC	927856	NONE	CF–10
INTEGRATED RESOURCES INC	050857	CF–09	REMOVE
INTEGRITY MUSIC INC	922865	NONE	CF–10
INTELLICORP INC	730169	CF–06	CF–10
INTEL OVERSEAS CORP	768545	CF–10	CF–07
INTERACTIVE FLIGHT TECHNOLOGIES INC	932021	NONE	CF–10
INTERACTIVE GROUP INC	943354	NONE	CF–10
INTERACTIVE MEDIA TECHNOLOGIES INC	850510	CF–08	CF–10
INTERCONTINENTAL TRAVEL SERVICES INC	858449	CF–10	REMOVE
INTERCOUNTY BANCSHARES INC	908837	NONE	CF–10
INTERFILM INC	911216	NONE	CF–10
INTERGROUP HEALTHCARE CORP /DE	876718	CF–10	REMOVE
INTERIM SERVICES INC	914536	NONE	CF–10
INTERIORS INC	921563	NONE	CF–10
INTERLINK ELECTRONICS	828146	NONE	CF–10
INTERMETRICS IN	702736	CF–06	CF–09
INTERNATIONAL ASSETS HOLDING CORP	913760	NONE	CF–10
INTERNATIONAL FRANCHISE SYSTEMS INC	923142	NONE	CF–10
INTERNATIONAL METALS ACQUISITION CORP	907116	NONE	CF–10
INTERNATIONAL MOVIE GROUP INC /DE/	835640	NONE	CF–10
INTERNATIONAL PIZZA CORP	910111	NONE	CF–10
INTERNATIONAL POWER MACHINES CORP	318775	CF–06	REMOVE
INTERNATIONAL TRAINING & EDUCATION CORP	925376	NONE	CF–10
INTERNATIONAL VITAMIN CORP	916614	NONE	CF–10
INTERPOOL INC	898777	NONE	CF–10
INTERSCIENCE COMPUTER CORP /CA/	907686	NONE	CF–10
INTERSTATE NATIONAL DEALER SERVICES INC	918184	NONE	CF–10
INTERTAN INC	803227	NONE	CF–10
INTERVEST BANCSHARES CORP	927807	NONE	CF–10
INTIME SYSTEMS INTERNATIONAL INC	934539	NONE	CF–10
INTRAMED LABORATORIES INC /CA/	884509	CF–10	REMOVE
INTRAV INC	942317	NONE	CF–10
INTUIT INC	896878	NONE	CF–10
INVESTMENT TECHNOLOGY GROUP INC	920424	NONE	CF–10
INVESTORS INSURANCE GROUP INC	043340	CF–06	CF–08

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

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Name	CIK No.	Former group	New group
INVESTORS TRUST INC	052441	CF–05	CF–09
IVEY PROPERTIES INC	315882	CF–08	CF–10
IONIC FUEL TECHNOLOGY INC	925006	NONE	CF–10
IOWA BANCORP INC	921184	NONE	CF–10
IOWA SOUTHERN UTILITIES CO	052508	CF–04	REMOVE
IPC INFORMATION SYSTEMS INC	923071	NONE	CF–04
IPI INC	921753	NONE	CF–10
IRG TECHNOLOGIES INC	899283	NONE	CF–10
ISB FINANCIAL CORP/LA	933141	NONE	CF–10
ISOLYSER CO INC /GA/	929299	NONE	CF–10
ISRAEL TECH ACQUISITION CORP	918275	NONE	CF–10
ITHACA BANCORP INC	846656	CF–10	REMOVE
ITI TECHNOLOGIES INC	930542	NONE	CF–10
ITT EDUCATIONAL SERVICES INC	922475	NONE	CF–10
ITT FLOORPLAN RECEIVABLES LP	914063	NONE	CF–10
IVEX HOLDINGS CORP	900367	NONE	CF–10
IVI PUBLISHING INC	910391	NONE	CF–10
JABIL CIRCUIT INC	898293	NONE	CF–10
JACKSON HEWITT INC	840346	NONE	CF–10
JACKSON HOLDING CORP	925527	NONE	CF–10
JACOBS JAY INC	812127	CF–05	CF–08
JACQUES MILLER REALTY PARTNERS LP	703710	CF–07	REMOVE
JACQUES MILLER REALTY PARTNERS LP IV	784040	CF–06	REMOVE
J A INDUSTRIES INC	919723	NONE	CF–10
JAKES PIZZA INTERNATIONAL INC	904148	NONE	CF–10
JALATE LTD INC	914026	NONE	CF–10
JAMES RIVER BANKSHARES INC	935037	NONE	CF–10
JASON NORTHCO PROPERTIES LP II	746031	CF–07	REMOVE
JAVA CENTRALE INC /CA/	920528	NONE	CF–10
JDN REALTY CORP	916836	NONE	CF–10
JEFFERSON BANCORP INC /LA/	921581	NONE	CF–10
JEFFERSON SMURFIT CORP	727742	CF–02	CF–02
Change to JSCE INC	727742	CF–02	CF–02
JETFLEET III	930832	NONE	CF–10
JOHNSTOWN AMERICA INDUSTRIES INC	906114	NONE	CF–10
JOHNSTOWN CONSOLIDATED INCOME PARTNERS	787621	CF–06	CF–08
JOHNSTOWN CONSOLIDATED INCOME PARTNERS 2	812431	CF–07	CF–08
JONES INTERACTIVE MULTIMEDIA TRUST	935809	NONE	CF–10
JONES PROGRAMMING PARTNERS 3 LTD	934390	NONE	CF–10
JORGENSEN EARLE M HOLDING CO INC	931687	NONE	CF–10
JOS A BANK CLOTHIERS INC	814675	NONE	CF–10
JOSHUA J LTD	925604	NONE	CF–10
JOTAN INC	921381	NONE	CF–10
JPS AUTOMOTIVE PRODUCTS CORP	919233	NONE	CF–10
JP FOODSERVICE INC	928395	NONE	CF–10
JUNO ACQUISITIONS INC	927040	NONE	CF–10
JUPITER NATIONAL INC	043620	NONE	CF–10
JUST FOR FEET INC	918111	NONE	CF–10
JUST LIKE HOME INC	934380	NONE	CF–10
KAHLER MANAGEMENT CORP	929536	NONE	CF–06
KAHLER REALTY CORP	928697	CF–10	CF–08
KANEB PIPE LINE PARTNERS LP	853890	CF–05	CF–04
KARCHER CARL ENTERPRISES INC	353718	CF–04	REMOVE
KASLER HOLDING CO	906469	NONE	CF–10
KATZ MEDIA GROUP INC	934494	NONE	CF–10
KBK CAPITAL CORP	921559	NONE	CF–10
KEARNY STREET REAL ESTATE CO LP	901080	NONE	CF–10
KELLER FINANCIAL SERVICES OF CENTRAL FLORIDA INC /FL/	915776	NONE	CF–10
KELLER FINANCIAL SERVICES OF CLEARWATER INC	895779	NONE	CF–10
KELLER FINANCIAL SERVICES OF FLORIDA INC	886021	NONE	CF–10
KELLER FINANCIAL SERVICES OF MID FLORIDA INC	922363	NONE	CF–10
KELLER FINANCIAL SERVICES OF NORTH FLORIDA INC	923170	NONE	CF–10
KELLER FINANCIAL SERVICES OF PINELLAS INC	906604	NONE	CF–10
KELLER FINANCIAL SERVICES OF WEST FLORIDA INC	927974	NONE	CF–10
KELLEY OIL CORP	746627	CF–06	REMOVE
KELLEY OIL & GAS CORP	930529	NONE	CF–10
KELLEY PARTNERS 1991 DEVELOPMENT DRILLING PROGRAM	876859	CF–10	REMOVE
KELLEY PARTNERS 1994 DEVELOPMENT DRILLING PROGRAM	915915	NONE	CF–10
KENDALL INTERNATIONAL INC	851961	CF–10	REMOVE

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Name	CIK No.	Former group	New group
KENETECH CORP	807708	NONE	CF–10
KENMAR PERFORMANCE PARTNERS LP /NY/	922575	NONE	CF–10
KENTUCKY ELECTRIC STEEL INC /DE/	910394	NONE	CF–10
KENTUCKY FIRST BANCORP INC	943891	NONE	CF–10
KEPTEL INC	819840	CF–07	REMOVE
KEYSTONE CUSTODIAN FUNDS INC	907244	NONE	CF–10
KEYSTONE INVESTMENTS INC	907243	NONE	CF–10
KEY TECHNOLOGY INC	906193	NONE	CF–10
KFX INC	912365	NONE	CF–10
KIRLIN HOLDING CORP	930797	NONE	CF–10
KIRSCHNER MEDICAL CORP	785022	CF–06	REMOVE
KITTY HAWK INC	932110	NONE	CF–10
KLS ENVIRO RESOURCES INC	894988	NONE	CF–10
KMS INDUSTRIES INC	056356	CF–06	CF–09
KM SYSTEMS INC	730991	CF–06	CF–10
KNICKERBOCKER CAPITAL CORPORATION	818806	NONE	CF–10
KNICKERBOCKER L L CO INC	932136	NONE	CF–10
KNICKERBOCKER VILLAGE INC	056396	CF–07	CF–09
KNIGHT NATURAL GAS INC	940516	NONE	CF–10
KNIGHT TRANSPORTATION INC	929452	NONE	CF–10
KNOGO CORP	056439	CF–05	REMOVE
KNOGO NORTH AMERICA INC	933161	NONE	CF–10
KNOWLEDGEWARE INC	854992	CF–05	REMOVE
Change to STERLING SOFTWARE SOUTHERN INC	854992	CF–05	REMOVE
KOALA CAPITAL CORP	894539	NONE	CF–10
KOALA CORP /CO/	913285	NONE	CF–10
KOGER PROPERTIES INC /FL/	355357	CF–03	REMOVE
KOPPERS INDUSTRIES INC	916075	NONE	CF–10
KP GRUBB & ELLIS REALTY INCOME FUND LP	806186	CF–07	CF–09
KP MILLER REALTY GROWTH FUND I LP	700834	CF–06	CF–09
KRELITZ INDUSTRIES INC	056808	CF–06	REMOVE
KRUPP INSTITUTIONAL MORTGAGE FUND LTD PARTNERSHIP	757549	CF–06	CF–04
K&S VENTURES INC	928373	NONE	CF–10
KTI INC	931581	NONE	CF–10
KURZWEIL APPLIED INTELLIGENCE INC /DE/	769191	NONE	CF–10
LABORATORY SPECIALISTS OF AMERICA INC	925052	NONE	CF–10
LACROSSE FOOTWEAR INC	919443	NONE	CF–10
LADY LUCK GAMING FINANCE CORP	921178	NONE	CF–10
LAFAYETTE INDUSTRIES INC	918377	NONE	CF–10
LA JOLLA PHARMACEUTICAL CO	920465	NONE	CF–10
LAKEVIEW FINANCIAL CORP /NJ/	921692	NONE	CF–10
LAMAR ADVERTISING CO	899045	NONE	CF–10
LAMBERT COMMUNICATIONS INC	913755	NONE	CF–10
LANCER INDUSTRIES INC /DE/	722069	CF–09	REMOVE
LANDAIR SERVICES INC	912728	NONE	CF–10
LANDMARK BANCORP	705403	CF–08	CF–10
LANDRYS SEAFOOD RESTAURANTS INC	908652	NONE	CF–10
LA PETITE HOLDINGS CORP	901116	NONE	CF–10
LA QUINTA MOTOR INNS LTD PARTNERSHIP	799169	CF–04	REMOVE
LARK TECHNOLOGIES INC	942134	NONE	CF–10
LASERTECHNICS INC	710597	CF–07	CF–09
LAS VEGAS COMMUNICATIONS CORP	933031	NONE	CF–10
LAS VEGAS MAJOR LEAGUE SPORTS INC	918764	NONE	CF–10
LAZER TRON CORP	906730	NONE	CF–10
LCI INTERNATIONAL INC /VA/	899760	NONE	CF–10
LCS BANCORP INC	929989	NONE	CF–10
LDB CORP /TX/	740745	CF–05	REMOVE
LEADER FINANCIAL CORP	901829	NONE	CF–10
LEADING EDGE EARTH PRODUCTS INC	911212	NONE	CF–10
LEAK X ENVIRONMENTAL CORP	842697	CF–08	CF–10
LEASEWAY TRANSPORTATION CORP	313153	NONE	CF–10
LEATHER FACTORY INC	909724	NONE	CF–10
LEGGOONS INC	911934	NONE	CF–10
LEHMAN STRUCTURED ASSETS INC	898738	NONE	CF–10
LESLIE BUILDING PRODUCTS INC	922984	NONE	CF–10
LEVEL ONE COMMUNICATIONS INC /CA/	908985	NONE	CF–10
LEVIATHAN GAS PIPELINE PARTNERS L P	895040	NONE	CF–10
LEVITZ FURNITURE INC	902279	NONE	CF–10
LEXINGTON CORPORATE PROPERTIES INC	910108	NONE	CF–10

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Name	CIK No.	Former group	New group
LIBBEY INC	902274	NONE	CF–10
LIBERTY GROWTH PROPERTIES LTD PARTNERSHIP	775527	NONE	CF–10
LIBERTY HIGH INCOME PLUS LTD PARTNERSHIP	813246	NONE	CF–10
LIBERTY HOUSING PARTNERS LTD PARTNERSHIP	744766	NONE	CF–10
LIBERTY INCOME PROPERTIES LTD PARTNERSHIP	783901	NONE	CF–10
LIBERTY MEDIA CORPORATION	869614	CF–10	REMOVE
LIBERTY PROPERTY LIMITED PARTNERSHIP	921113	NONE	CF–10
LIBERTY PROPERTY TRUST	921112	NONE	CF–10
LIBERTY REAL ESTATE LTD PARTNERSHIP	701545	NONE	CF–10
LIBERTY REAL ESTATE LTD PARTNERSHIP II	711248	NONE	CF–10
LIBERTY REAL ESTATE LTD PARTNERSHIP III	737169	NONE	CF–10
LIBERTY TECHNOLOGIES INC	897730	NONE	CF–10
LIDA INC	822372	NONE	CF–10
LIFE BANCORP INC	926039	NONE	CF–10
LIFECELL CORP	849448	NONE	CF–10
LIFERATE SYSTEMS INC	937251	NONE	CF–10
LIFESTAR CORP	923137	NONE	CF–10
LIFETIME PRODUCTS INC	039503	CF–06	REMOVE
LIGHT SAVERS U S A INC	911434	NONE	CF–10
LIN TELEVISION CORP	931058	NONE	CF–10
LINCOLN FINANCIAL BANCORP INC	921214	NONE	CF–10
LINCOLN FOODSERVICE PRODUCTS INC	791726	CF–06	REMOVE
LINCOLN LOGS LTD	717422	CF–07	CF–08
LINCOLN SNACKS CO	914642	NONE	CF–10
LINDAS FLAME ROASTED CHICKEN INC	920210	NONE	CF–10
LOAN AMERICA FINANCIAL CORP	759578	CF–09	REMOVE
LOCKHEED MARTIN CORP	936468	NONE	CF–05
LODGENET ENTERTAINMENT CORP	911002	NONE	CF–10
LOEWENSTEIN FURNITURE GROUP INC	905723	CF–10	REMOVE
LOGANSPORT FINANCIAL CORP	939928	NONE	CF–10
LOIS/USA INC	930004	NONE	CF–10
LONE MOUNTAIN MINING CORP	943379	NONE	CF–10
LONE STAR CASINO CORP	897545	NONE	CF–10
LONGPORT INC	919043	NONE	CF–10
LORONIX INFORMATION SYSTEMS INC	925538	NONE	CF–10
LOTTERY ENTERPRISES INC	896195	NONE	CF–10
LOUIS DREYFUS NATURAL GAS CORP	912264	NONE	CF–10
LOUISIANA CASINO CRUISES INC	916758	NONE	CF–10
LSB FINANCIAL CORP	930405	NONE	CF–10
LUCILLE FARMS INC	908179	NONE	CF–10
LUCOR INC /FL/	914791	NONE	CF–10
LUNDGREN BROS CONSTRUCTION INC	898148	NONE	CF–10
LUND INTERNATIONAL HOLDINGS INC	820526	CF–07	CF–09
LXR BIOTECHNOLOGY INC	899504	NONE	CF–10
LYMAN LUMBER CO /MN	889605	NONE	CF–10
LYNX THERAPEUTICS INC	913275	NONE	CF–10
M&M FINANCIAL CORP /SC/	919162	NONE	CF–10
MACE SECURITY INTERNATIONAL INC	912607	NONE	CF–10
MACERICH CO	912242	NONE	CF–10
MACHEEZMO MOUSE RESTAURANTS INC	928065	NONE	CF–10
MACROMEDIA INC	913949	NONE	CF–10
MADDEN STEVEN LTD	913241	NONE	CF–10
MADISON GROUP ASSOCIATES INC /DE/	016926	CF–07	CF–10
MADISON HOLDINGS INC	934847	NONE	CF–10
MADISON SPORTS & ENTERTAINMENT GROUP INC	907238	NONE	CF–10
MAGNA LAB INC	895464	NONE	CF–10
MAIL WELL CORP	920944	NONE	CF–10
MALAN REALTY INVESTORS INC	914735	NONE	CF–10
MALRITE GUARANTEED BROADCAST PARTNERS LP	803018	CF–10	REMOVE
MANATEE AMERICAN FINANCIAL CORP	911355	NONE	CF–10
MANHATTAN BAGEL CO INC	914565	NONE	CF–10
MANUFACTURED HOME COMMUNITIES INC	895417	NONE	CF–10
MAPINFO CORP	916238	NONE	CF–10
MARBLEDGE GROUP INC	907161	NONE	CF–10
MARCUS CABLE CO LP	910629	NONE	CF–10
MARINER HEALTH GROUP INC	900304	NONE	CF–10
MARK CENTERS TRUST	899629	NONE	CF–10
MARKER INTERNATIONAL	925172	NONE	CF–10
MARQUETTE ELECTRONICS INC	062675	NONE	CF–10

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Name	CIK No.	Former group	New group
MARRIOTT INTERNATIONAL INC	905036	NONE	CF–10
MARS ACQUISITIONS INC	936001	NONE	CF–10
MARSHALLTOWN FINANCIAL CORP	916395	NONE	CF–10
MARTIN COLOR-FI INC	898311	NONE	CF–10
MARTIN INDUSTRIES INC /DE/	942143	NONE	CF–10
MARTIN MARIETTA MATERIALS INC	916076	NONE	CF–10
MARTIN MARIETTA TECHNOLOGIES INC	062857	CF–02	REMOVE
MARVEL HOLDINGS INC	904083	NONE	CF–10
MARVEL III HOLDINGS INC	921145	NONE	CF–10
MARVEL PARENT HOLDINGS INC	909169	NONE	CF–10
MASTER GLAZIERS KARATE INTERNATIONAL INC	906249	NONE	CF–10
MATHSOFT INC	895095	NONE	CF–10
MATTSON TECHNOLOGY INC	928421	NONE	CF–10
MAXIM GROUP INC	910468	NONE	CF–10
MAXIS INC	943583	NONE	CF–10
MAXWELL SHOE CO INC	918578	NONE	CF–10
MBLA FINANCIAL CORP	897999	NONE	CF–10
MCARTHUR GLEN REALTY CORP	909283	NONE	CF–10
MCB FINANCIAL CORP	902789	NONE	CF–10
MCCAW CELLULAR COMMUNICATIONS INC	818687	CF–02	REMOVE
MCCORMICK COMMODITY FUND I LP	354995	CF–06	REMOVE
MCCORMICK COMMODITY FUND II LP	843819	CF–09	REMOVE
MCCRORY PARENT CORP	055211	CF–09	REMOVE
MCDERMOTT J RAY SA	934590	CF–10	CF–07
MCMORAN OIL & GAS CO /DE/	921941	NONE	CF–10
MCQUIDDY HOLDINGS INC	943089	NONE	CF–10
MCRAE INDUSTRIES INC /DE/	729284	CF–06	CF–05
MDL INFORMATION SYSTEMS INC	895330	NONE	CF–10
MEADOW VALLEY CORP	934749	NONE	CF–10
MECKLERMEDIA CORP	916759	NONE	CF–10
MED-DESIGN CORP	943736	NONE	CF–10
MEDCATH INC	931782	NONE	CF–10
MEDIA ARTS GROUP INC	924645	NONE	CF–10
MEDICAL AMBULATORY CARE INC	924775	NONE	CF–10
MEDICALCONTROL INC	897546	NONE	CF–10
MEDICAL DEFENSE HOLDING CO	934384	NONE	CF–10
MEDICAL MANAGEMENT INC	911691	NONE	CF–10
MEDICAL POLYMERS TECHNOLOGIES INC	898770	NONE	CF–10
MEDIQ PRN LIFE SUPPORT SERVICES INC	887420	CF–10	REMOVE
MEDISENSE INC /MA/	922872	NONE	CF–10
MEDITE CORP	934610	CF–10	CF–04
MEDPARTNERS INC	906568	NONE	CF–10
MEDPLUS INC /OH/	922723	NONE	CF–10
MEDSTAT SYSTEMS INC	726732	CF–08	REMOVE
Change to MEDSTAT GROUP INC	726732	CF–08	REMOVE
MEGAHERTZ HOLDING CORP	797164	CF–08	REMOVE
MENDOCINO BREWING CO INC	919134	NONE	CF–10
MEPC CAPITAL CORP	819343	CF–03	REMOVE
MERCANTILE BANK OF ILLINOIS NATIONAL ASSOCIATION	937939	NONE	CF–10
MERIDIAN FINANCIAL CORP	917214	NONE	CF–10
MERIDIAN POINT REALTY TRUST 82	315138	CF–08	REMOVE
MERIDIAN POINT REALTY TRUST 83	703702	CF–08	CF–09
MERIDIAN POINT REALTY TRUST IV CO	759819	CF–08	CF–09
MERIDIAN POINT REALTY TRUST VI CO	786050	CF–08	CF–09
MERIDIAN POINT REALTY TRUST VII CO	774653	CF–08	CF–09
MERIDIAN SPORTS INC	926474	NONE	CF–10
MERIT HOLDING CORP	930807	NONE	CF–10
MERIT SECURITIES CORP	929426	NONE	CF–10
MERIT SOFTWARE INC	914380	NONE	CF–10
MERIX CORP	921365	NONE	CF–10
METAMORPHIC CORP	899173	NONE	CF–10
METROLOGIC INSTRUMENTS INC	815910	NONE	CF–10
METRO ONE DIRECT INFORMATION SERVICES INC	920990	NONE	CF–10
METROCALL INC	906525	NONE	CF–10
METROTRANS CORP	920464	NONE	CF–10
MEWBOURNE ENERGY 95–96 DRILLING PROGRAMS	942308	NONE	CF–10
MEYERSON M H & CO INC /NJ/	913781	NONE	CF–10
MFRI INC	914122	NONE	CF–10
MFS COMMUNICATIONS CO INC	898623	NONE	CF–10

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Name	CIK No.	Former group	New group
MICOM COMMUNICATIONS CORP	920611	NONE	CF–10
MICREL INC	932111	NONE	CF–10
MICRION CORP /MA/	919646	NONE	CF–10
MICROCHIP TECHNOLOGY INC	827054	NONE	CF–10
MICRO COMPONENT TECHNOLOGY INC	911149	NONE	CF–10
MICROELECTRONIC PACKAGING INC /CA/	916232	NONE	CF–10
MICRO INTEGRATION CORP /DE/	920863	NONE	CF–10
MICROTEC RESEARCH INC /DE/	932203	NONE	CF–10
MICROTERRA INC	830991	CF–07	CF–09
MICROTEST INC	891920	NONE	CF–10
MICROS TO MAINFRAMES INC	906282	NONE	CF–10
MID AMERICA APARTMENT COMMUNITIES INC	912595	NONE	CF–10
MIDAMERICAN ENERGY CO	928576	NONE	CF–10
MID ATLANTIC BANKCORP	759727	CF–09	REMOVE
MID CENTRAL FINANCIAL CORP	916790	NONE	CF–10
MIDCOM COMMUNICATIONS INC	943357	NONE	CF–10
MIDDLE BAY OIL CO INC	903267	NONE	CF–10
MIDGARD ENERGY CO	934591	NONE	CF–10
MIDLAND RESOURCES INC /TX/	868424	NONE	CF–10
MID SOUTH PHYSICIAN ALLIANCE INC	943308	NONE	CF–10
MID STATE TRUST II	828978	CF–09	REMOVE
MID STATE TRUST IV	936157	NONE	CF–10
MIKASA INC	920758	NONE	CF–10
MIKOHN GAMING CORP	912241	NONE	CF–10
MILLBURN WORLD RESOURCE TRUST	943487	NONE	CF–10
MILLER INDUSTRIES INC /TN/	924822	NONE	CF–10
MILLS CORP	914713	NONE	CF–10
MILTON FEDERAL FINANCIAL CORP	925722	NONE	CF–10
MINERAL KING BANCORP INC	842179	CF–09	REMOVE
MINISTOR PERIPHERALS INTERNATIONAL LTD	922871	NONE	CF–10
MINNESOTA EDUCATIONAL COMPUTING CORP	917390	NONE	CF–10
MISSION ENERGY CO	930835	NONE	CF–10
MISSISSIPPI VIEW HOLDING CO	933404	NONE	CF–10
MISTER JAY FASHIONS INTERNATIONAL INC	895092	NONE	CF–10
MITCHAM INDUSTRIES INC	926423	NONE	CF–10
MITY LITE INC	921030	NONE	CF–10
MK GOLD CO	913586	NONE	CF–10
MK RAIL CORP	919563	NONE	CF–10
MLF BANCORP INC	920616	NONE	CF–10
ML GLOBAL HORIZONS LP	904918	NONE	CF–10
MLH INCOME REALTY PARTNERSHIP	317150	CF–09	CF–10
MLH INCOME REALTY PARTNERSHIP II	701285	CF–09	CF–10
MLH INCOME REALTY PARTNERSHIP III	710132	CF–08	CF–10
MLH INCOME REALTY PARTNERSHIP IV	718417	CF–08	CF–10
MLH INCOME REALTY PARTNERSHIP V	755643	CF–08	CF–10
MLH INCOME REALTY PARTNERSHIP VI	771586	CF–08	CF–10
ML PRINCIPAL PROTECTION PLUS LP	917259	NONE	CF–10
ML REAL ESTATE RECOVERY FUND LP	825036	CF–09	REMOVE
MMCA AUTO RECEIVABLES INC	910224	NONE	CF–10
MMI COMPANIES INC	767308	NONE	CF–10
M MORTGAGE 1993–B	942286	NONE	CF–10
M MORTGAGE INC 1993–D	942399	NONE	CF–10
MNX INC	795425	CF–05	CF–05
Change to MARK VII INC	795425	CF–05	CF–05
MOBILE MINI INC	911109	NONE	CF–10
MOBILEMEDIA COMMUNICATIONS INC	912192	NONE	CF–10
MOBILEMEDIA CORP	912091	NONE	CF–10
MOBILE NATIONAL CORP	783739	CF–08	CF–08
Change to SOUTH ALABAMA BANCORPORATION INC /DE/	783739	CF–08	CF–08
MODEL IMPERIAL INC	921550	NONE	CF–10
MODERN MEDICAL MODALITIES CORP	902635	NONE	CF–10
MODERN TECHNOLOGY CORP	711422	CF–08	CF–10
MOLINE REAL ESTATE INC	909125	NONE	CF–10
MOLTEN METAL TECHNOLOGY INC /DE/	895517	NONE	CF–10
MONACO COACH CORP /DE/	910619	NONE	CF–10
MONDAVI ROBERT CORP	902276	NONE	CF–10
MONEY MARKET AUTO LOAN TRUST 1990–1	864920	CF–10	CF–07
MONOCACY BANCSHARES INC	908962	NONE	CF–10
MONOCLONAL MEDICAL INC	841112	CF–09	REMOVE

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Name	CIK No.	Former group	New group
MONROC INC	919016	NONE	CF–10
MONTANA NATURALS INTERNATIONAL INC	819182	CF–08	REMOVE
MONTEDISON SPA /ITALY/	814287	NONE	CF–07
MONTEREY BAY BANCORP INC	930429	NONE	CF–10
MONTEREY PASTA CO	913032	NONE	CF–10
MORAN TRANSPORTATION CO	928188	NONE	CF–10
MORGAN FOOD CORP	881767	NONE	CF–10
MORGAN GROUP INC	906609	NONE	CF–10
MORGAN J P STRUCTURED FINANCE CORP	920466	NONE	CF–10
MORGAN JP COMMERCIAL MORTGAGE FINANCE CORP	937955	NONE	CF–10
MORNINGSTAR FOODS INC	832768	CF–03	CF–03
Change to MORNINGSTAR GROUP INC	832768	CF–03	CF–03
MOSLER INC	792851	NONE	CF–10
MOTHERS WORK INC	896985	NONE	CF–10
MOTORCAR PARTS & ACCESSORIES INC	918251	NONE	CF–10
MOUNTAIN PARKS FINANCIAL CORP	901375	NONE	CF–10
MOUNTASIA ENTERTAINMENT INTERNATIONAL INC	912027	NONE	CF–10
MOUNTBATTEN INC	922597	NONE	CF–10
MOVIE GALLERY INC	925178	NONE	CF–10
MOVIEFONE INC	919867	NONE	CF–10
MRI OF NORTHERN NEW JERSEY LP	810143	CF–08	CF–10
MSB FINANCIAL INC	930541	NONE	CF–10
MSI INCOME FUND 104 LP	906935	NONE	CF–10
MSR EXPLORATION LTD	719187	NONE	CF–10
MTI TECHNOLOGY CORP	901696	NONE	CF–10
MULTI BENEFIT REALTY FUND 87–1	802200	CF–06	CF–08
MULTI MARKET RADIO INC	900302	NONE	CF–10
MULTI-MEDIA TUTORIAL SERVICES INC	935496	NONE	CF–10
MULTIVEST REAL ESTATE FUND LTD SERIES VI	068842	CF–06	REMOVE
MUSTANG SOFTWARE INC	940986	NONE	CF–10
MUTUAL BAN CO INC /MO/	929589	NONE	CF–10
MUTUAL BENEFIT COMMERCIAL PROPERTIES INCOME PARTNERSHIP LP	766828	CF–09	CF–10
MUTUAL BENEFIT INCOME PARTNERS LP I	830350	CF–09	CF–10
MUTUAL BENEFIT MORTGAGE INVESTORS III LP	786420	CF–09	CF–10
MUTUAL BENEFIT MORTGAGE INVESTORS 1985	760994	CF–09	CF–10
MUTUAL BENEFIT TRAMMELL CROW RESIDENTIAL OPPORTUNITY FUND	779317	CF–09	CF–10
MUTUAL RISK MANAGEMENT LTD	826918	NONE	CF–10
MVE HOLDINGS INC	930404	NONE	CF–10
MVSI INC	937603	NONE	CF–10
N–VISION INC	940518	NONE	CF–10
NABISCO HOLDINGS CORP	932130	NONE	CF–10
NACO INDUSTRIES INC	931585	NONE	CF–10
NACOLAH HOLDING CORP	913667	NONE	CF–10
NASHVILLE COUNTRY CLUB INC	913201	NONE	CF–10
NATIONAL CITY BANCORPORATION	069968	NONE	CF–10
NATIONAL DIAGNOSTICS INC	925894	NONE	CF–10
NATIONAL ENERGY GROUP INC	870756	NONE	CF–07
NATIONAL ENVIRONMENTAL SERVICE CO	922868	NONE	CF–10
NATIONAL GAMING CORP	929929	NONE	CF–10
NATIONAL GOLF PROPERTIES INC	905897	NONE	CF–10
NATIONAL GYPSUM CO /DE/	910071	NONE	CF–10
NATIONAL HEALTH LABORATORIES INC	832427	CF–03	REMOVE
NATIONAL HEALTH & SAFETY CORP	901899	NONE	CF–10
NATIONAL HOUSING TRUST LP	818803	CF–06	CF–09
NATIONAL INDUSTRIAL SECURITY CORP	104401	CF–08	CF–09
NATIONAL INSTRUMENTS CORP /DE/	935494	NONE	CF–10
NATIONAL MEDICAL FINANCIAL SERVICES CORP	934548	NONE	CF–10
NATIONAL PROPERTY ANALYSTS MASTER LIMITED PARTNERSHIP	926843	NONE	CF–10
NATIONAL RECORD MART INC /DE/	904535	NONE	CF–10
NATIONAL SPECIALTY NETWORKS INC	895521	NONE	CF–10
NATIONAL TELEPHONE COMMUNICATIONS INC	862883	CF–10	REMOVE
NATIONAL WIRELESS HOLDINGS INC	915016	NONE	CF–10
NATIONSBANK OF DELAWARE NA	912838	NONE	CF–10
NATIONSMART CORP	896502	NONE	CF–10
NATIONWIDE ACQUISITION CORP	943754	NONE	CF–10
NATTEM USA INC	729443	NONE	CF–10
NATURADE INC	797167	NONE	CF–10
NATURAL ALTERNATIVES INTERNATIONAL INC	787253	CF–07	CF–09
NATURAL MICROSYSTEMS CORP	915866	NONE	CF–10

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Name	CIK No.	Former group	New group
NDL PRODUCTS INC /DE/	814930	CF–07	REMOVE
NEIMAN MARCUS FUNDING CORP	934844	NONE	CF–10
NEOPHARM INC	942788	NONE	CF–10
NEOPATH INC	851729	NONE	CF–10
NEOSTAR RETAIL GROUP INC	932790	NONE	CF–08
NETCOM ON LINE COMMUNICATIONS SERVICES INC	909624	NONE	CF–10
NETMANAGE INC	909793	NONE	CF–10
NETVANTAGE INC	934620	NONE	CF–10
NETWORK CONNECTION INC	932088	NONE	CF–10
NETWORK EXPRESS INC	896281	NONE	CF–10
NETWORK FINANCIAL SERVICES INC	820771	CF–09	CF–09
Change to WESTMARK GROUP HOLDINGS INC	820771	CF–09	CF–09
NETWORK PERIPHERALS INC	922521	NONE	CF–10
NEUROBIOLOGICAL TECHNOLOGIES INC /CA/	918112	NONE	CF–10
NEURO NAVIGATIONAL CORP	896726	NONE	CF–10
NEVADA ENERGY COMPANY INC	712803	NONE	CF–10
NEW CENTRAL ILLINOIS FINANCIAL CO INC	941622	NONE	CF–10
NEW DANA ACQUISITION CORP	933750	NONE	CF–10
NEW DOSKOCIL INC	938348	NONE	CF–06
NEW ENVIROQ CORP	937256	NONE	CF–10
NEW GMH INC	932202	NONE	CF–10
NEW ISRAEL ACQUISITION CORP	936387	NONE	CF–10
NEW LFC INC	936372	NONE	CF–10
NEW PROSPERITY BANKING CORP	934856	NONE	CF–10
NEW SOUTH FEDERAL SAVINGS BANK	923663	NONE	CF–10
NEW WEST EYEWORKS INC	914538	NONE	CF–10
NEW WORLD COMMUNICATION GROUP INC	916083	NONE	CF–10
NEW YORK LIFE OIL & GAS NET PROFITS PRODUCING PROP III G L P	895201	NONE	CF–10
NEW YORK LIFE OIL & GAS NET PROFITS PRODUCING PROP III H L P	895204	NONE	CF–10
NEW YORK LIFE OIL & GAS OPERATING PRODUCING PROP III G L P	895203	NONE	CF–10
NEW YORK LIFE OIL & GAS OPERATING PRODUCING PROP III H L P	895202	NONE	CF–10
NEWCARE HEALTH CORP	923020	NONE	CF–10
NEWFIELD EXPLORATION CO /DE/	912750	NONE	CF–10
NEXGEN INC	909183	NONE	CF–10
NEXSTAR PHARMACEUTICALS INC	915359	NONE	CF–10
NFS FINANCIAL CORP	794103	CF–07	CF–09
NICHOLS INSTITUTE /DE/	765410	CF–09	REMOVE
NICKELODEON THEATER CO INC	931085	NONE	CF–10
NN BALL & ROLLER INC	918541	NONE	CF–10
NNRC INC	927522	NONE	CF–10
NOEL GROUP INC	829269	NONE	CF–10
NOONEY REAL PROPERTY INVESTORS TWO LP	312155	CF–09	CF–06
NOONEY REAL PROPERTY INVESTORS THREE LP	350113	CF–06	REMOVE
NORTH AMERICAN ADVANCED MATERIALS CORP	919169	NONE	CF–10
NORTH AMERICAN TRUST INC	773654	CF–06	CF–09
NORTH BAY BANCORP	754440	CF–06	CF–09
NORTHERN STATES FINANCIAL CORP /DE/	744485	NONE	CF–10
NORTH JERSEY ENERGY ASSOCIATES	934666	NONE	CF–10
NORTHCORP REALTY ADVISORS INC	915338	NONE	CF–10
NORTHEAST ENERGY ASSOCIATES	934667	NONE	CF–10
NORTHEAST INDIANA BANCORP INC	942898	NONE	CF–10
NORTHERN BORDER PARTNERS LP	909281	NONE	CF–10
NORTHERN DANCER CORP	820408	NONE	CF–10
NORTHSTAR HEALTH SERVICES INC	896880	NONE	CF–10
NORTHWEST AIRLINES CORP	917678	NONE	CF–10
NORTHWEST AIRLINES INC /MN	919897	NONE	CF–10
NORTHWEST EQUITY CORP	916527	NONE	CF–10
NORTHWEST INDIANA BANCORP	919864	NONE	CF–10
NORTHWESTERN FINANCIAL CORP	912611	NONE	CF–10
NORWEST MORTGAGE CONVENTIONAL 1 INC	731162	CF–07	CF–10
NORWEST MORTGAGE INSURED 1 INC	731767	CF–07	CF–10
NORWEST MORTGAGE INSURED 2 INC	740768	CF–08	CF–10
NORWOOD PROMOTIONAL PRODUCTS INC	902793	NONE	CF–10
NOVA CAPITAL INC	840404	CF–09	CF–09
Change to VISUAL EQUITIES INC	840404	CF–09	CF–09
NSC SERVICE GROUP INC	810111	CF–09	CF–09
Change to FIBERCORP INTERNATIONAL INC	810111	CF–09	CF–09
NS&L BANCORP INC	939929	NONE	CF–10
NSD BANCORP INC	898624	NONE	CF–10

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Name	CIK No.	Former group	New group
NU KOTE HOLDING INC /DE	812423	NONE	CF–10
NUMBER NINE VISUAL TECHNOLOGY CORP	936448	NONE	CF–10
NUMED SURGICAL INC	921878	NONE	CF–10
NUTRITION FOR LIFE INTERNATIONAL INC	913614	NONE	CF–10
NVF CO	073515	CF–05	CF–09
N–VIRO RECOVERY INC	895565	CF–10	CF–10
Change to SYNAGRO TECHNOLOGIES INC	895565	CF–10	CF–10
NVR INC	906163	NONE	CF–10
NWCG HOLDINGS CORP	927805	NONE	CF–10
NWPS CAPITAL FINANCING I	946925	NONE	CF–07
NW VENTURE CORP	929752	NONE	CF–10
NYNEX CABLECOMMS GROUP INC	939916	NONE	CF–10
NYTEST ENVIRONMENTAL INC	766823	CF–07	CF–09
OAKWOOD MORTGAGE INVESTORS INC	929541	NONE	CF–10
OASIS RESIDENTIAL INC	910846	NONE	CF–10
OCCUSYSTEMS INC	924639	NONE	CF–10
ODETICS INC	350868	CF–05	CF–06
COUNSEL ENTERPRISES INC	912146	NONE	CF–10
OFFICE PRODUCTS NETWORK OF NORTH AMERICA INC	943087	NONE	CF–10
OFFICEMAX INC /OH/	929428	NONE	CF–10
OGDEN MCDONALD & CO	928375	NONE	CF–10
OGDEN PROJECTS INC	851945	CF–02	REMOVE
OHIO STATE BANCSHARES INC	919644	NONE	CF–10
OKLAHOMA SAVINGS INC	900626	CF–10	REMOVE
OLD AMERICA STORES INC	897506	NONE	CF–10
OLDE WINDSOR BANCORP INC	752324	CF–08	CF–08
Change to NEW ENGLAND COMMUNITY BANCORP	752324	CF–08	CF–08
OLD LYME HOLDING CORP	907575	NONE	CF–10
OLIVER TRANSPORTATION INC	900339	NONE	CF–10
OLYMPIC ENTERTAINMENT GROUP INC /NV/	934646	NONE	CF–10
OLYMPIC RECEIVABLES FIN CORP OLYMPIC AUTOMOBILE RE TR 1994–B	930558	NONE	CF–10
OLYMPIC RECEIVABLES FINANCE CORP	896982	NONE	CF–10
OLYMPIC STEEL INC	917470	NONE	CF–10
OMNI INSURANCE GROUP INC	906786	NONE	CF–10
OMNI MULTIMEDIA GROUP INC	933586	NONE	CF–10
OMNITEC INC	838872	CF–07	REMOVE
ONCORMED INC	922821	NONE	CF–10
ONECOMM CORP	906421	NONE	CF–10
ONSITE ENERGY CORP	909171	NONE	CF–10
ONYX ACCEPTANCE FINANCIAL CORP	927764	NONE	CF–10
OPAL INC	934385	NONE	CF–10
OPEN ENVIRONMENT CORP	940033	NONE	CF–10
OPPENHEIMER LANDMARK PROPERTIES LIQUIDATING TRUST	205741	CF–07	CF–10
OPPORTUNITY MANAGEMENT CO INC	912395	NONE	CF–10
OPTEX BIOMEDICAL INC /DE/	920374	NONE	CF–10
OPTICAL DATA SYSTEMS INC	736012	NONE	CF–10
OPTICAL SECURITY GROUP INC	843961	CF–08	CF–09
OPTI INC	899297	NONE	CF–10
OPTIONS CLEARING CORP	074751	NONE	CF–10
OPTO MECHANIK INC	031688	CF–06	CF–10
OPT SCIENCES CORP	074688	CF–08	CF–10
ORANGE BANCORP	702302	CF–08	CF–10
ORANGE COUNTY BREWING CO	927913	NONE	CF–10
ORAVAX INC	900122	NONE	CF–10
ORBIT SEMICONDUCTOR INC	930599	NONE	CF–10
ORBIT TECHNOLOGIES INC /DE/	937814	NONE	CF–10
ORPHAN MEDICAL INC	929548	NONE	CF–10
ORTEL CORP/DE/	928878	NONE	CF–10
ORTHODONTIC CENTERS OF AMERICA INC /DE/	931702	NONE	CF–10
ORTHOMET INC	765353	CF–06	REMOVE
ORTHOPEDIC TECHNOLOGY INC	896840	NONE	CF–10
ORYX TECHNOLOGY CORP	915355	NONE	CF–10
OSCC HOME EQUITY LOAN TRUST 1993–1	895146	NONE	CF–10
OSI SPECIALTIES HOLDING CO	922505	NONE	CF–10
OSI SPECIALTIES INC	909284	NONE	CF–10
OSMONICS INC	075049	CF–05	CF–04
OSTEX INTERNATIONAL INC /WA/	932631	NONE	CF–10
OSTRICH RESEARCH & TECHNOLOGIES CO INC	933506	NONE	CF–10
O'SULLIVAN INDUSTRIES HOLDINGS INC	915354	NONE	CF–10

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Name	CIK No.	Former group	New group
OTTAWA FINANCIAL CORP	920604	NONE	CF–10
OVERHEAD DOOR INC	918857	NONE	CF–10
OWEN HEALTHCARE INC	919242	NONE	CF–10
OWOSSO CORP	921046	NONE	CF–10
OXFORD CAPITAL CORP	818475	NONE	CF–10
OXFORD RESOURCES CORP	911570	NONE	CF–10
OXIGENE INC	908259	NONE	CF–10
PACE HEALTH MANAGEMENT SYSTEMS INC	943324	NONE	CF–10
PACIFIC GREYSTONE CORP	920760	NONE	CF–10
PACIFIC GULF PROPERTIES INC	912597	NONE	CF–10
PACIFICORP FINANCIAL SERVICES INC	072965	CF–08	CF–10
PACIFIC REHABILITATION & SPORTS MEDICINE INC	910109	NONE	CF–10
PACIFIC RIM ENTERTAINMENT INC	898802	NONE	CF–10
PACIFIC SNAX CORP	923211	NONE	CF–10
PACIFIC SUNWEAR OF CALIFORNIA INC	874841	NONE	CF–10
PACKAGE MACHINERY CO	075675	CF–08	CF–10
PAGEMART INC	922227	NONE	CF–10
PAGING PARTNERS CORP	920854	NONE	CF–10
PAINEWEBBER COMMODITY LP II	352911	CF–08	REMOVE
PAINEWEBBER INSURED MORTGAGE PARTNERS 1–A	846557	CF–10	REMOVE
PAINEWEBBER MORTGAGE ACCEPTANCE CORP V	917248	NONE	CF–10
PAINEWEBBER MUNICIPAL ASSETS CORP	928361	NONE	CF–10
PAINEWEBBER MUNICIPAL STRUCTURED ASSETS CORP	931412	NONE	CF–10
PAIRGAIN TECHNOLOGIES INC /CA/	910032	NONE	CF–10
PALACE CASINOS INC	914626	NONE	CF–10
PALM BEACH TAN INC	914003	NONE	CF–10
PALM HARBOR HOMES INC /FL/	923473	NONE	CF–10
PALMER WIRELESS INC	919044	NONE	CF–10
PANAMSAT CORP	931134	NONE	CF–10
PANAMSAT LP	906283	NONE	CF–10
PANAX PHARMACEUTICAL CO LTD	929547	NONE	CF–10
PANDA PROJECT INC	917736	NONE	CF–10
PANTRY INC	915862	NONE	CF–10
PARAGON GROUP INC	921744	NONE	CF–10
PARAGON TRADE BRANDS INC	889429	NONE	CF–10
PARALLAN COMPUTER INC	864568	NONE	CF–10
PARCPLACE SYSTEMS INC	916354	NONE	CF–10
PARFUMS PARQUET INC	933749	NONE	CF–10
PARIS BUSINESS FORMS INC	789660	CF–06	CF–08
PARKERVISION INC	914139	NONE	CF–10
PARTNER RE HOLDINGS LTD	911421	NONE	CF–10
PATHFINDER CORP	757073	NONE	CF–10
PATHMARK STORES INC	095585	NONE	CF–10
PAXSON COMMUNICATIONS CORP	923877	CF–10	CF–07
P-COM INC	935493	NONE	CF–10
PC SERVICE SOURCE INC	919999	NONE	CF–10
PDC 1993–E LIMITED PARTNERSHIP	921111	NONE	CF–10
PDC 1994–1995 DRILLING PROGRAM	913779	NONE	CF–10
PDG REMEDIATION INC	927761	NONE	CF–10
PDK LABS INC	855352	NONE	CF–10
PDS FINANCIAL CORP	921438	NONE	CF–10
PDT INC /DE/	933745	NONE	CF–10
PEARCE SYSTEMS INTERNATIONAL INC	898901	NONE	CF–10
PEMEX EXPORT FUNDING CORP	933092	NONE	CF–10
PEMI BANCORP INC	768868	CF–08	CF–09
PENDA CORP	921745	NONE	CF–10
PENFED BANCORP INC	933158	NONE	CF–10
PENGUIN REFRIGERATION INC	901639	NONE	CF–10
PENN AMERICA GROUP INC	910110	NONE	CF–10
PENNFED FINANCIAL SERVICES INC	920945	NONE	CF–10
PENNICHUCK CORP	788885	NONE	CF–10
PENN NATIONAL GAMING INC	921738	NONE	CF–10
PENN OCTANE CORP	893813	NONE	CF–10
PENSKE TRUCK LEASING CO LP	921086	NONE	CF–10
PEOPLES BANK	906111	NONE	CF–10
PEOPLES BANK CORP OF INDIANAPOLIS	796322	NONE	CF–10
PEOPLES CHOICE TV CORP	903275	NONE	CF–10
PEOPLES FINANCIAL CORP	770460	NONE	CF–10
PEOPLES FINANCIAL CORP INC /PA/	936948	NONE	CF–10

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Name	CIK No.	Former group	New group
PEOPLES SAVINGS FINANCIAL CORP /PA/	912861	NONE	CF–10
PEORIA REAL ESTATE INC	909123	NONE	CF–10
PEREGRINE FUTURES FUND L P	875263	CF–10	REMOVE
PERFECTDATA CORP	719662	CF–08	CF–10
PERFORMANCE FOOD GROUP CO	908254	NONE	CF–10
PERFORMANCE SYSTEMS INTERNATIONAL INC /NY/	940716	NONE	CF–10
PERIPHONICS CORP	937598	NONE	CF–10
PERRY COUNTY FINANCIAL CORP	931074	NONE	CF–10
PERSEPTIVE TECHNOLOGIES II CORP	914842	NONE	CF–10
PERSONNEL MANAGEMENT INC	916606	NONE	CF–10
PETCO ANIMAL SUPPLIES INC	888455	NONE	CF–10
PET FOOD WAREHOUSE INC	909752	NONE	CF–10
PET METRO INC	919148	NONE	CF–10
PET PRACTICE INC	931612	NONE	CF–10
PET PRODUCTS INC	881915	CF–10	REMOVE
PETROCORP INC	911359	NONE	CF–10
PETSTUFF INC	907147	NONE	CF–10
PHAMIS INC /WA/	932280	NONE	CF–10
PHARMACEUTICAL RESOURCES INC	878088	NONE	CF–04
PHC INC /MA/	915127	NONE	CF–10
PHILLIPS R H INC	925712	NONE	CF–10
PHOENIX GOLD INTERNATIONAL INC	943032	NONE	CF–10
PHOENIX LEASING AMERICAN BUSINESS FUND LP	898628	NONE	CF–10
PHOENIX LEASING INCOME FUND 1982–1	355945	CF–09	REMOVE
PHOTONICS CORP	912844	NONE	CF–10
PHYSICIAN CORPORATION OF AMERICA /DE/	812929	NONE	CF–10
PHYSICIAN RELIANCE NETWORK INC	930610	NONE	CF–10
PHYSICIAN SALES & SERVICE INC /FL/	920527	NONE	CF–10
PHYSICIANS CLINICAL LABORATORY INC	890685	NONE	CF–10
PICNIC POINT DEVELOPMENT CO LTD	277318	CF–08	REMOVE
PICO HOLDINGS INC	943893	NONE	CF–10
PIERCING PAGODA INC	925544	NONE	CF–10
PILLOWTEX CORP	896265	NONE	CF–10
PILOT TRANSPORT INC /NV/	943317	NONE	CF–10
PINNACLE FINANCIAL CORP	910678	NONE	CF–10
PIONEER BANCORPORATION	909953	NONE	CF–10
PITTENCRIEFF COMMUNICATIONS INC	903869	NONE	CF–10
PLAID CLOTHING GROUP INC	906769	NONE	CF–10
PLAINS REFRIGERANT RECLAIM CORP	909214	NONE	CF–10
PLANAR SYSTEMS INC /OR/	914251	NONE	CF–10
PLASTIGONE TECHNOLOGIES INC	835494	CF–08	CF–09
PLAY CO TOYS	927643	NONE	CF–10
PLAZA HOME MORTGAGE CORP /DE/	884500	CF–10	REMOVE
PLM EQUIPMENT GROWTH FUND	788813	CF–05	CF–04
PLM TRANSPORTATION EQUIPMENT PARTNERS IXD 1986 INCOME FUND	778794	CF–08	CF–07
PMC COMMERCIAL TRUST /TX	908311	NONE	CF–10
PM HOLDINGS CORP	909987	NONE	CF–10
PMI GROUP INC	935724	NONE	CF–10
PM MANAGEMENT SYSTEMS INC	910415	NONE	CF–10
PMT SERVICES INC /TN/	923410	NONE	CF–10
POCONO HOTELS CORP	079274	CF–07	CF–08
POINDEXTER J B & CO INC	918962	NONE	CF–10
POINTE FINANCIAL CORP	917331	NONE	CF–10
POLAR EXPRESS CORP	932508	NONE	CF–10
POLARIS INDUSTRIES INC /MN	931015	NONE	CF–04
POLAR MOLECULAR CORP /UT/	810613	CF–08	REMOVE
POLISH TELEPHONES & MICROWAVE CORP	925928	NONE	CF–10
POLLO TROPICAL INC	911601	NONE	CF–10
POLYMER GROUP INC	927417	NONE	CF–10
PORTLAND BREWING CO /OR/	943658	NONE	CF–10
PORTSMOUTH CORP /FL/	934768	NONE	CF–10
PORTSMOUTH SQUARE INC	079661	CF–08	CF–10
POSITIVE RESPONSE TELEVISION INC	921044	NONE	CF–10
POST PROPERTIES INC	903127	NONE	CF–10
POTOMAC BANCSHARES INC	925173	NONE	CF–10
PRECISION SYSTEMS INC	886074	NONE	CF–10
PREFERRED ENTERTAINMENT INC	906606	NONE	CF–10
PREISS BYRON MULTIMEDIA CO INC	919005	NONE	CF–10
PREMISYS COMMUNICATIONS INC	938733	NONE	CF–10

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Name	CIK No.	Former group	New group
PRESIDIO CAPITAL CORP	943358	NONE	CF–10
PRESTIGE FINANCIAL CORP	899163	NONE	CF–10
PRI AUTOMATION INC	927362	NONE	CF–10
PRICE CO	356461	CF–01	REMOVE
PRICELLULAR CORP	932089	NONE	CF–10
PRICELLULAR WIRELESS CORP	935303	NONE	CF–10
PRIMADONNA RESORTS INC	901118	NONE	CF–10
PRIMECO INC	934387	CF–10	CF–07
PRIME MANAGEMENT GROUP INC	926234	NONE	CF–10
PRIME RESIDENTIAL INC	921946	NONE	CF–10
PRIME RETAIL INC	911708	NONE	CF–10
PRINCETON NATIONAL BANCORP INC	707855	NONE	CF–10
PRINTRONIX INC	311505	CF–05	CF–04
PRISMASYSTEMS CORP	925603	NONE	CF–10
PROBAC INTERNATIONAL CORP	800401	CF–08	CF–08
Change to TRIDENT ENVIRONMENTAL SYSTEMS	800401	CF–08	CF–08
PRODUCTION SYSTEMS ACQUISITION CORP	911787	NONE	CF–10
PROFESSIONAL BENEFITS INSURANCE CO	911690	NONE	CF–10
PROFESSIONAL SPORTS CARE MANAGEMENT INC NY	927122	NONE	CF–10
PROGRAMMING & SYSTEMS INC	080630	CF–06	REMOVE
PROJECT SOFTWARE & DEVELOPMENT INC	920354	NONE	CF–10
PROLOGIC MANAGEMENT SYSTEMS INC	938320	NONE	CF–10
PROMETHEUS INCOME PARTNERS	803026	CF–06	CF–09
PROMUS HOTEL CORP	944647	NONE	CF–06
PROPHET 21 INC	917823	NONE	CF–10
PROTECTION ONE INC	916230	NONE	CF–10
PROTOSOURCE CORP	932772	NONE	CF–10
PROXIM INC /DE/	914027	NONE	CF–10
PROXYMED INC /FT LAUDERDALE/	906337	NONE	CF–10
PRT FUNDING CORP	912897	NONE	CF–10
PRUDENTIAL BACHE FUTURES GROWTH FUND LP	823347	CF–09	REMOVE
PRUDENTIAL HOME MOR SEC CO INC MOR PA THRO CERT SER 1993–36	914133	NONE	CF–10
PRUDENTIAL HOME MOR SEC CO INC MOR PA THRO CERT SER 1993–43	914149	NONE	CF–10
PRUDENTIAL HOME MOR SEC CO INC MOR PA THRO CERT SER 1993–44	914644	NONE	CF–10
PRUDENTIAL HOME MOR SEC CO INC MOR PA THRO CERT SER 1993–45	914646	NONE	CF–10
PRUDENTIAL HOME MOR SEC CO INC MOR PA THRO CERT SER 1993–48	916139	NONE	CF–10
PRUDENTIAL HOME MOR SEC CO INC MOR PA THRO CERT SER 1993–61	916147	NONE	CF–10
PRUDENTIAL HOME MOR SEC INC MOR PA THRO CERT SER 1993–35	912041	NONE	CF–10
PRUDENTIAL SECURITIES AGGRESSIVE GROWTH FUND LP	899174	NONE	CF–10
PRUDENTIAL SECURITIES CMO TRUST	874242	CF–10	REMOVE
PS CAROLINAS BALANCED FUND LTD	724536	CF–07	REMOVE
PSF FINANCE LP	934546	NONE	CF–10
PSI RESOURCES INC	829966	CF–02	REMOVE
PST VANS INC	933589	NONE	CF–10
PUEBLO XTRA INTERNATIONAL INC	906307	NONE	CF–10
PURE TECH NEWCO INC	928451	NONE	CF–10
PURUS INC	912156	NONE	CF–10
PUTUMAYO INC	934854	NONE	CF–10
PVF CAPITAL CORP	928592	NONE	CF–10
Q STEAKS INC	912287	NONE	CF–10
QCF BANCORP INC	933508	NONE	CF–10
QHI GROUP HOLDINGS INC	939921	NONE	CF–10
QMC TECHNOLOGIES INC	809800	CF–07	CF–09
Q MED INC	729213	CF–07	CF–08
QUAD CITY HOLDINGS INC	906465	NONE	CF–10
QUAD SYSTEMS CORP /DE/	899823	NONE	CF–10
QUALCOMM INC /DE/	804328	NONE	CF–10
QUALITY DINING INC	917126	NONE	CF–10
QUALITY SEMICONDUCTOR INC	869886	NONE	CF–10
QUANTUM COMMUNICATIONS GROUP INC	943443	NONE	CF–10
QUANTUM FINANCIAL HOLDINGS INC	941810	NONE	CF–10
QUICKRESPONSE SERVICES INC	906551	NONE	CF–10
QUIDEL CORP /DE/	353569	CF–07	CF–08
QUINTESSENCE INC	939923	NONE	CF–10
QUINTILES TRANSNATIONAL CORP	919623	NONE	CF–10
QUIZNOS FRANCHISE CORP	915803	NONE	CF–10
QUME CORP	812544	CF–05	CF–10
Change to DTC DATA TECHNOLOGY CORP	812544	CF–05	CF–10
QVC NETWORK INC	797565	CF–03	REMOVE

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Name	CIK No.	Former group	New group
RADIANT TECHNOLOGY CORP	310235	CF–07	CF–10
RADIATION DISPOSAL SYSTEMS INC	758256	CF–08	CF–10
RAILTEX INC	877326	NONE	CF–10
RAINFOREST CAFE INC	924919	NONE	CF–10
RALCORP HOLDINGS INC	918021	NONE	CF–10
RAM–Z ENTERPRISES INC	937136	NONE	CF–10
RAMSAY MANAGED CARE INC	932275	NONE	CF–10
RANCON DEVELOPMENT FUND VII LP	861456	CF–10	REMOVE
RATTLESNAKE HOLDING CO INC	935499	NONE	CF–10
RAUCH INDUSTRIES INC	715817	CF–06	CF–09
RAWLINGS SPORTING GOODS CO INC	921915	NONE	CF–10
R B RUBBER PRODUCTS INC	942615	NONE	CF–10
RC ARBYS CORP	904892	NONE	CF–10
RCL CAPITAL CORP	904541	NONE	CF–10
REALAMERICA CO/NEW	716266	CF–08	CF–10
REAL GOODS TRADING CORP	912953	NONE	CF–10
RECEIVABLES PARTNERS LP	896643	NONE	CF–10
RECKSON ASSOCIATES REALTY CORP	930548	NONE	CF–10
RECONDITIONED SYSTEMS INC	891915	NONE	CF–10
RED HOT CONCEPTS INC	932623	NONE	CF–10
RED LION HOTELS INC	941557	NONE	CF–10
RED ROOF INNS INC	920941	NONE	CF–10
REDWOOD EQUIPMENT LEASING INCOME FUND LP	857615	NONE	CF–10
REDWOOD FINANCIAL INC /MN/	942895	NONE	CF–10
REDWOOD MORTGAGE INVESTORS VI	811592	CF–07	CF–08
REDWOOD MORTGAGE INVESTORS VIII	889123	NONE	CF–10
REGAL CINEMAS INC	905035	NONE	CF–10
REGAN HOLDING CORP	870069	CF–07	CF–10
REGENCY BANCORP	927718	NONE	CF–10
REGENCY REALTY CORP	910606	NONE	CF–10
REGI U S INC	922330	NONE	CF–10
REGIONAL ACCEPTANCE CORP	901077	NONE	CF–10
RELIABLE FINANCIAL CORP	882072	CF–10	REMOVE
RELIANCE FINANCIAL INC	934737	NONE	CF–10
RELIFE INC /DE/	875491	CF–10	REMOVE
REMEDY CORP	936653	NONE	CF–10
RENAISSANCE COSMETICS INC /DE/	933747	NONE	CF–10
RENAISSANCE GOLF PRODUCTS INC	912592	NONE	CF–10
RENAISSANCE SOLUTIONS INC	937948	NONE	CF–10
RENCO METALS INC	911566	NONE	CF–10
RENTERS CHOICE INC	933036	NONE	CF–10
RENT WAY INC	893046	NONE	CF–10
REPAP WISCONSIN INC	913669	NONE	CF–10
REPLIGEN CLINICAL PARTNERS LP	885434	NONE	CF–10
REPTRON ELECTRONICS INC	918765	NONE	CF–10
REPUBLIC BANCORP INC /KY/	921557	NONE	CF–10
REPUBLIC ENGINEERED STEELS INC	913883	NONE	CF–10
RESIDENTIAL ASSET SECURITIES CORP	932858	NONE	CF–04
RESMED INC	943819	NONE	CF–10
RESOLUTION TRUST CORP COMM MORT PASS THRU CERT SER 1993–C1	900701	NONE	CF–10
RESTRUCTURING ACQUISITION CORP	907333	NONE	CF–10
RESURGENCE PROPERTIES INC	929223	NONE	CF–10
RETIREMENT CARE ASSOCIATES INC /CO/	798540	NONE	CF–10
REXALL SUNDOWN INC	901620	NONE	CF–10
R F MANAGEMENT CORP	934011	NONE	CF–10
RF MONOLITHICS INC /DE/	922204	NONE	CF–10
RGB COMPUTER & VIDEO INC	902056	NONE	CF–10
R H MACY & CO INC	794367	CF–10	CF–06
Change to FEDERATED DEPARTMENT STORES INC /DE/	794367	CF–10	CF–06
RIC 26 LTD	855660	CF–05	REMOVE
RICHMAN GORDMAN 1/2 PRICE STORES INC.	924120	NONE	CF–10
RICHWOOD INDUSTRIES INC	916986	NONE	CF–10
RICKEL HOME CENTERS INC	929036	NONE	CF–10
RICKS CABARET INTERNATIONAL INC	935419	NONE	CF–10
RIDE SNOWBOARD CO	917734	NONE	CF–10
RIO MAR ASSOCIATES L P S E	918652	NONE	CF–10
RIVER OAKS FURNITURE INC	908309	NONE	CF–10
RIVIANA FOODS INC /DE/	934650	NONE	CF–10
RIVIERA HOLDINGS CORP	899647	NONE	CF–10

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

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Name	CIK No.	Former group	New group
RKS FINANCIAL GROUP INC	816330	CF–06	CF–07
Change to JB OXFORD HOLDINGS INC	816330	CF–06	CF–07
ROBEC INC	854462	CF–05	CF–09
ROBERDS INC	912952	NONE	CF–10
ROC COMMUNITIES INC	906325	NONE	CF–10
ROCHESTER TELEPHONE CORP /NEW/	936105	NONE	CF–10
ROCK BOTTOM RESTAURANTS INC	924896	NONE	CF–10
ROCKLAND ELECTRIC CO	084613	CF–03	REMOVE
ROCKY MOUNTAIN FINANCIAL ENTERPRISES INC	927131	NONE	CF–10
ROCKY SHOES & BOOTS INC	895456	NONE	CF–10
ROMAC INTERNATIONAL INC	930420	NONE	CF–10
ROSEWOOD CARE CENTERS CAPITAL FUNDING CORP	909110	NONE	CF–10
ROSEWOOD CARE CENTERS INC OF ALSTON	909117	NONE	CF–10
ROSEWOOD CARE CENTERS INC OF EAST PEORIA	909115	NONE	CF–10
ROSEWOOD CARE CENTERS INC OF GALESBURG	909114	NONE	CF–10
ROSEWOOD CARE CENTERS INC OF MOLINE	909118	NONE	CF–10
ROSEWOOD CARE CENTERS INC OF PEORIA	909116	NONE	CF–10
ROSEWOOD CARE CENTERS INC OF SWANSEA	909113	NONE	CF–10
ROSS MARTIN CO INC	943092	NONE	CF–10
ROTARY POWER INTERNATIONAL INC	914539	NONE	CF–10
ROTOR TOOL CO	085357	CF–05	REMOVE
ROTTLUND CO INC	891329	NONE	CF–10
ROYAL CANADIAN FOODS CORP	911318	NONE	CF–10
ROYAL CAPITAL CORP	828956	CF–08	CF–09
Change to NUOASIS GAMING INC	828956	CF–08	CF–09
ROYAL GRIP INC	910568	NONE	CF–10
RS FINANCIAL CORP	840252	CF–09	CF–10
RTW INC /MN/	915781	NONE	CF–10
RURAL METRO CORP /DE/	906326	NONE	CF–10
RUSSEL METALS INC	903657	NONE	CF–07
RUST INTERNATIONAL INC	901172	NONE	CF–10
RYKA INC	828750	CF–07	CF–09
S3 INC	850519	NONE	CF–10
SABER SOFTWARE CORP	862564	NONE	CF–10
SABRELINER CORP	910649	NONE	CF–10
SAFESKIN CORP	911636	NONE	CF–10
SAFETY 1ST INC	898306	NONE	CF–10
SAFETY COMPONENTS INTERNATIONAL INC	918964	NONE	CF–10
SAGE TECHNOLOGIES INC	876346	CF–10	CF–10
Change to AMERIDATA TECHNOLOGIES INC	876346	CF–10	CF–10
SAINT ANDREWS GOLF CORP	930245	NONE	CF–10
SALOMON PHIBRO OIL TRUST	929180	NONE	CF–10
SALVATORI OPHTHALMICS INC	823187	CF–07	CF–07
Change to AMERICAN CONSOLIDATED LABORATORIES INC	823187	CF–07	CF–07
SANGSTAT MEDICAL CORP	913610	NONE	CF–10
SANGUINE CORP	926287	NONE	CF–10
SANIFILL INC	834263	NONE	CF–10
SANITAS INC	086727	CF–07	CF–10
SANMARK STARDUST INC	093631	CF–05	CF–05
Change to MOVIE STAR INC	093631	CF–05	CF–05
SAN MATEO COUNTY BANCORP	775473	CF–08	CF–08
Change to MID PENINSULA BANCORP	775473	CF–08	CF–08
SANMINA CORP/DE	897723	NONE	CF–10
SANTA CRUZ OPERATION INC	851560	NONE	CF–10
SANTA FE FINANCIAL CORP	086759	CF–07	CF–10
SANTA FE PACIFIC GOLD CORP	921754	NONE	CF–10
SARATOGA BEVERAGE GROUP INC	904362	NONE	CF–10
SARNIA CORP	923021	NONE	CF–10
SATURN ACQUISITIONS INC	931150	NONE	CF–10
SAUL CENTERS INC	907254	NONE	CF–10
SAVOY PICTURES ENTERTAINMENT INC	897079	NONE	CF–10
SBC TECHNOLOGIES INC /DE/	812955	CF–06	REMOVE
SCANSOURCE INC	918965	NONE	CF–10
SCHMITT INDUSTRIES INC	922612	NONE	CF–10
SCHNITZER STEEL INDUSTRIES INC	912603	NONE	CF–10
SCHULLER INTERNATIONAL GROUP INC	930818	NONE	CF–10
SCHWABACHER FREY INC	943093	NONE	CF–10
SCIENCE ACCESSORIES CORP /DE/	803498	CF–07	REMOVE
SCIENTIFIC SOFTWARE INTERCOMP INC	087822	CF–06	CF–09

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Name	CIK No.	Former group	New group
SCOTSMAN HOLDINGS INC	923144	NONE	CF–10
SCOTT MILLS INC	920375	NONE	CF–10
SCRIPT SYSTEMS INC	750485	CF–10	REMOVE
SDL INC	934741	NONE	CF–10
SDO PARENT CO /CA	940170	NONE	CF–06
SEABRITE FOODS INC	932135	NONE	CF–10
SEA GALLEY STORES INC	275985	CF–08	CF–09
SEAGO GROUP INC	063516	CF–07	REMOVE
SEARCH EXPLORATION INC	853630	NONE	CF–10
SEARS CREDIT ACCOUNT MASTER TRUST II	923569	NONE	CF–10
SEARS MORT SEC CORP MORT PASS THRU CERT SERIES 1992–20	894388	NONE	CF–10
SEATTLE BREWING CO	924952	NONE	CF–10
SECTOR STRATEGY FUND VI LP	904364	NONE	CF–10
SECURITIZED ASSET SALES INC	895035	NONE	CF–10
SECURITY CAPITAL CORP /WI/	912243	NONE	CF–10
SECURITY CAPITAL INDUSTRIAL TRUST	899881	NONE	CF–10
SECURITY CONNECTICUT CORP	913601	NONE	CF–10
SECURITY DYNAMICS TECHNOLOGIES INC /DE/	932064	NONE	CF–10
SECURITY FEDERAL BANCORP INC	929931	NONE	CF–10
SECA SPECIALTY PACKAGING CORP	912034	NONE	CF–10
SEILER POLLUTION CONTROL SYSTEMS INC	718827	NONE	CF–10
SEL-LEB MARKETING INC	934853	NONE	CF–10
SELECT BEVERAGES INC	797279	NONE	CF–10
SELECT MEDIA COMMUNICATIONS INC	925648	NONE	CF–10
SELKIRK COGEN FUNDING CORP	929518	NONE	CF–10
SELKIRK COGEN PARTNERS LP	929540	NONE	CF–10
SELMER CO INC	918904	NONE	CF–10
SELMER INDUSTRIES INC	911583	NONE	CF–10
SEMITOOL INC	934550	NONE	CF–10
SENIOR TOUR PLAYERS DEVELOPMENT INC	927471	NONE	CF–10
SENSOR CONTROL CORP	806168	CF–07	CF–07
Change to SAFETYTEK CORP	806168	CF–07	CF–07
SENTINEL FINANCIAL CORP	912959	NONE	CF–10
SEVEN FIELDS DEVELOPMENT CO	931405	NONE	CF–10
SEVEN FIELDS DEVELOPMENT PA INC	931429	NONE	CF–10
SFC FINANCIAL CORP /CO/	930317	NONE	CF–10
SFS BANCORP INC	942135	NONE	CF–10
SFX BROADCASTING INC	908612	NONE	CF–10
SGV BANCORP INC	940511	NONE	CF–10
SHARED TECHNOLOGIES CELLULAR INC	933583	NONE	CF–10
SHAW GROUP INC	914024	NONE	CF–10
SHEFFIELD STEEL CORP	910719	NONE	CF–10
SHILOH INDUSTRIES INC	904979	NONE	CF–10
SHIPHOLDING INTERNATIONAL INC	943356	NONE	CF–10
SHOE CARNIVAL INC	895447	NONE	CF–10
SHRP INC	911080	NONE	CF–10
SHURGARD INCOME PROPERTIES II	353812	CF–07	REMOVE
SHURGARD MINI STORAGE LP I	313297	CF–07	REMOVE
SIEKERT & BAUM INC	943099	NONE	CF–10
SIERRA HOME SERVICE COMPANIES INC	910709	NONE	CF–10
SIERRA PACIFIC POWER CO	090144	CF–09	CF–10
SIERRA PACIFIC RESOURCES	741508	CF–09	CF–10
SIGMA ALPHA ENTERTAINMENT GROUP LTD	941814	NONE	CF–10
SIGMATRON INTERNATIONAL INC	915358	NONE	CF–10
SIGNAL TECHNOLOGY CORP	901119	NONE	CF–10
SILICON VALLEY RESEARCH INC	708367	CF–07	CF–10
SILVER KING COMMUNICATIONS INC	891103	NONE	CF–10
SILVER SLIPPER INC	919701	NONE	CF–10
SIMETCO INC	073967	CF–06	REMOVE
Change to OHIO FERRO ALLOYS CORP /OH/	073967	CF–06	REMOVE
SIMMONS OUTDOOR CORP	907585	NONE	CF–10
SIMON PROPERTY GROUP INC	912564	NONE	CF–10
SIMPSON HOUSING CORP	926235	NONE	CF–10
SIMPSON MANUFACTURING CO INC /CA/	920371	NONE	CF–10
SIMS COMMUNICATIONS INC	907127	NONE	CF–10
SINCLAIR BROADCAST GROUP INC	912752	NONE	CF–10
SINGING MACHINE CO INC	923601	NONE	CF–10
SINTER METALS INC	927970	NONE	CF–10
SIRENA APPAREL GROUP INC	925543	NONE	CF–10

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Name	CIK No.	Former group	New group
SITEL CORP	943820	NONE	CF–10
SITHE ENERGIES INC	901376	NONE	CF–10
SITHE INDEPENDENCE FUNDING CORP	899281	NONE	CF–10
SJS BANCORP INC	930836	NONE	CF–10
SKYLANDS PARK MANAGEMENT INC	904075	NONE	CF–10
SKYLINE MULTIMEDIA ENTERTAINMENT INC	916271	NONE	CF–10
SKYSAT COMMUNICATIONS NETWORK CORP	919374	NONE	CF–10
SLB MIDWEST FUTURES FUND LP	924875	NONE	CF–10
SLED DOGS CO	918573	NONE	CF–10
SLUDGE MANAGEMENT INC	874144	CF–10	REMOVE
SMC CORP	932129	NONE	CF–10
S&M CO	217058	CF–07	REMOVE
SMITH BARNEY SHEARSON HOLDINGS INC /DE/	911562	NONE	CF–10
SMITH BARNEY SHEARSON INTERNATIONAL ADVISORS CURRENCY FD LP	912547	NONE	CF–10
SMITH CHARLES E RESIDENTIAL REALTY INC	919004	NONE	CF–10
SMITH CHARLES E RESIDENTIAL REALTY LP	906785	NONE	CF–10
SMITH MADRONE VINEYARDS & WINERY	921822	NONE	CF–10
SMITH MIDLAND CORP	924719	NONE	CF–10
SMITHWAY MOTOR XPRESS CORP	941914	NONE	CF–10
SMITTYS SUPER VALU INC	927773	NONE	CF–10
SMITTYS SUPERMARKETS INC	927774	NONE	CF–10
S/M REAL ESTATE FUND IV LTD	319303	CF–09	REMOVE
SMR NATURAL GAS INCOME FUND 1995	926901	NONE	CF–10
SNB BANCSHARES INC	925464	NONE	CF–10
SOBIESKI BANCORP INC	934860	NONE	CF–10
SODAK GAMING INC	903856	NONE	CF–10
SOFTDESK INC	916397	NONE	CF–10
SOFTWARE ETC STORES INC	883999	CF–10	REMOVE
SOFTWARE PROFESSIONALS INC	919175	NONE	CF–10
SOIL TECHNOLOGIES CORP /IA/	924404	NONE	CF–10
SOLA INTERNATIONAL INC	912088	NONE	CF–10
SOLARATTIC INC	927654	NONE	CF–10
SOLARCELL CORP	091649	CF–09	CF–09
Change to 4 FRONT SOFTWARE INTERNATIONAL INC /CO/	091649	CF–09	CF–09
SOLAR-MATES INC	940183	NONE	CF–10
SOLIGEN TECHNOLOGIES INC	916460	NONE	CF–10
SOLOMON PAGE GROUP LTD	926259	NONE	CF–10
SONIC ENVIRONMENTAL SYSTEMS INC	900393	NONE	CF–10
SONIC SOLUTIONS /CA/	916235	NONE	CF–10
SOURCE MEDIA INC	900029	NONE	CF–10
SOUTH CAROLINA COMMUNITY BANCSHARES INC	920615	NONE	CF–10
SOUTH DAKOTA STATE MEDICAL HOLDING CO INC	919176	NONE	CF–10
SOUTHEASTERN BANKING CORP	353386	CF–05	CF–08
SOUTHEAST REALTY CORP	935897	NONE	CF–10
SOUTHERN ENERGY HOMES INC	896397	NONE	CF–10
SOUTHERN HEALTH MANAGEMENT CORP /VA/	869813	CF–10	REMOVE
SOUTHERN PACIFIC RAIL CORP	904691	NONE	CF–10
SOUTHFIRST BANCSHARES INC	925963	NONE	CF–10
SOUTHSIDE FINANCIAL GROUP INC	922286	NONE	CF–10
SOUTH STANDARD MINING CO	091950	CF–08	CF–10
SOUTHWEST BANCORP INC	914374	NONE	CF–10
SOUTHWEST ROYALTIES INCOME FUND XII LP	922889	NONE	CF–10
SPANISH BROADCASTING SYSTEM INC	927720	NONE	CF–10
SPECIALTY EQUIPMENT COMPANIES INC	814013	NONE	CF–10
SPECIALTY TELECONSTRUCTORS INC	925269	NONE	CF–10
SPECTRANETICS CORP	789132	NONE	CF–10
SPECTRIAN CORP /CA/	925054	NONE	CF–10
SPECTRUM INFORMATION TECHNOLOGIES INC	812551	CF–07	CF–08
SPEEDWAY MOTORSPORTS INC	934648	NONE	CF–10
SPIEGEL CREDIT CORP III	931781	NONE	CF–10
SPIEKER PROPERTIES INC	911361	NONE	CF–10
SPI PHARMACEUTICALS INC	723046	CF–04	REMOVE
SPIRIT OF AMERICA NATIONAL BANK	917312	NONE	CF–10
SPORTS AUTHORITY INC /DE/	929470	NONE	CF–10
SPORTS CLUB CO INC	924373	NONE	CF–10
SPORTS & RECREATION INC	890093	NONE	CF–10
SPORTS SCIENCES INC	915766	NONE	CF–10
SPRINGHILL LAKE INVESTORS LTD PARTNERSHIP	763399	NONE	CF–10
SP VENTURES INC	927653	CF–04	CF–04

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Name	CIK No.	Former group	New group
Change to MCKESSON CORP	927653	CF–04	CF–04
STANDARD FINANCIAL INC	920603	NONE	CF–10
STANDARD FUNDING CORP	919007	NONE	CF–10
STANLY CAPITAL CORP	898171	NONE	CF–10
STANT CORP	906523	NONE	CF–10
STAR CARD ENTERPRISES INC	935801	NONE	CF–10
STARCRAFT AUTOMOTIVE CORP	906473	NONE	CF–10
STAR MARKETS CO INC	933160	NONE	CF–10
STARBASE CORP	911577	NONE	CF–10
STARLOG FRANCHISE CORP	907435	NONE	CF–10
STAR MARKETS CO INC	933160	NONE	CF–10
STARSIGHT TELECAST INC	906612	NONE	CF–10
STATE BANCSHARES INC /PA/	904101	NONE	CF–10
STARTER CORP	897507	NONE	CF–10
STATER BROS HOLDINGS INC	882829	NONE	CF–10
STAT HEALTHCARE INC	932424	NONE	CF–10
STATEWIDE BANCORP	700722	CF–07	CF–10
STATORDYNE CORP ET AL	899684	NONE	CF–10
STB SYSTEMS INC	934596	NONE	CF–10
STECK VAUGHN PUBLISHING CORP	904081	NONE	CF–10
STERILE CONCEPTS HOLDINGS INC	925966	NONE	CF–10
STERLING BANCSHARES CORP	810962	CF–05	REMOVE
ST FRANCOIS COUNTY FINANCIAL CORP	912501	NONE	CF–10
STILLWATER MINING CO /DE/	931948	NONE	CF–10
ST JOHN KNITS INC	896100	NONE	CF–10
ST LANDRY FINANCIAL CORP	933981	NONE	CF–10
STONE ENERGY CORP	904080	NONE	CF–10
STORAGE COMPUTER CORP	933452	NONE	CF–10
STORAGE TRUST REALTY	928735	NONE	CF–10
STORAGE USA INC	912116	NONE	CF–10
STORMEDIA INC	942787	NONE	CF–10
ST PAUL CAPITAL LLC	943639	NONE	CF–06
STRATASYS INC	915735	NONE	CF–10
STRATEGIC DISTRIBUTION INC	073822	CF–08	CF–09
STRATOSPHERE CORP	897743	NONE	CF–10
STRATTEC SECURITY CORP	933034	NONE	CF–10
STROUDS INC	927760	NONE	CF–10
STRUTHERS INDUSTRIES INC	094945	CF–08	CF–10
STUDIO PLUS OF AMERICA INC	934599	NONE	CF–10
STYLES ON VIDEO INC	897074	NONE	CF–10
SUAVE SHOE CORP	095052	CF–05	CF–10
SUBURBAN BANKSHARES INC /FL	793080	CF–09	REMOVE
SUGEN INC	908121	NONE	CF–10
SUMMA METALS CORP /NV/	927578	NONE	CF–10
SUMMIT BANCORP INC	879096	CF–10	REMOVE
SUMMIT COMMUNICATIONS GROUP INC	898304	NONE	CF–10
SUMMIT HEALTH LTD	725555	CF–04	REMOVE
SUMMIT PETROLEUM CORP	353196	NONE	CF–10
SUN COMMUNITIES INC	912593	NONE	CF–10
SUNBELT COMPANIES INC	911623	NONE	CF–10
SUNDANCE HOMES INC	900616	NONE	CF–10
SUNGROWTH PROPERTY INVESTORS LTD	727165	CF–07	REMOVE
SUN HEALTHCARE GROUP INC	904978	NONE	CF–10
SUNNYLAND HOLDINGS CORP	923860	NONE	CF–10
SUNRISE BANCORP INC	701709	CF–08	CF–10
SUPERMAC TECHNOLOGY INC	885592	CF–10	REMOVE
SUPERMAIL INTERNATIONAL INC	832508	CF–08	CF–09
SUPER VISION INTERNATIONAL INC	917523	NONE	CF–10
SUPERCART INTERNATIONAL INC /CN/	928762	NONE	CF–10
SUPERCONDUCTOR TECHNOLOGIES INC	895665	NONE	CF–10
SUPERIOR BANK FSB	897845	NONE	CF–10
SUPERTEL HOSPITALITY INC	919640	NONE	CF–10
SUPREME INTERNATIONAL CORP	900349	NONE	CF–10
SURE SHOT INTERNATIONAL INC /FL/	923291	NONE	CF–10
SURGICAL CARE AFFILIATES INC	722692	CF–05	CF–04
SUSSEX VENTURES LTD	876320	CF–10	CF–10
Change to AGRIBIOTECH INC	876320	CF–10	CF–10
SWANSEA REAL ESTATE INC	909120	NONE	CF–10
SWEETWATER INC	914271	NONE	CF–10

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Name	CIK No.	Former group	New group
SWIFT ENERGY INCOME PARTNERS 1986–A LTD	799064	NONE	CF–08
SWVA BANCSHARES INC	925656	NONE	CF–10
SYBASE INC	768262	NONE	CF–10
SYLVAN LEARNING SYSTEMS INC	912766	NONE	CF–10
SYMBOLLON CORP	912086	NONE	CF–10
SYNCRONYS SOFTCORP	798077	NONE	CF–10
SYNTELLECT INC	758830	NONE	CF–10
SYNTEX CORP	096000	CF–02	REMOVE
SYNTHETIC INDUSTRIES LP	901175	NONE	CF–10
SYSCON ENTERPRISES INC	923024	NONE	CF–10
SYSTEM INDUSTRIES INC	317781	CF–05	CF–07
Change to ANCHOR PACIFIC UNDERWRITERS	317781	CF–05	CF–07
TAITRON COMPONENTS INC	942126	NONE	CF–10
TALBOTS INC	912263	NONE	CF–10
TAPE SPECIALTY INC	353821	CF–08	REMOVE
TARGETED GENETICS CORP /WA/	921114	NONE	CF–10
TATHAM OFFSHORE INC	913358	NONE	CF–10
TAUBMAN REALTY GROUP LTD PARTNERSHIP	917473	NONE	CF–10
TAYCO DEVELOPMENTS INC	894952	NONE	CF–10
TAYLOR INVESTMENT CORP /MN/	934373	NONE	CF–10
TCC MANAGED FUTURES TRUST	931580	NONE	CF–10
TDINDUSTRIES INC	716757	CF–06	REMOVE
TEAM RENTAL GROUP INC	922471	NONE	CF–10
TECHE HOLDING CO	934538	NONE	CF–10
TECHNICAL CHEMICALS & PRODUCTS INC	924921	NONE	CF–10
TECHNOLOGY FUNDING PARTNERS I	744964	CF–07	CF–06
TECHNOLOGY FUNDING PARTNERS II	772001	CF–07	CF–06
TECHNOLOGY FUNDING SECURED INVESTORS III	844217	CF–09	CF–06
TECH SQUARED INC	939077	NONE	CF–10
TECNOL MEDICAL PRODUCTS INC	876968	NONE	CF–10
TEL COM WIRELESS CABLE TV CORP	929061	NONE	CF–10
TELEBANC FINANCIAL CORP	920986	NONE	CF–10
TELECOMMUNICATIONS INCOME FUND X LP	904005	NONE	CF–10
TELE MATIC CORP	929757	NONE	CF–10
TELE-MEDIA BROADCASTING CO	930297	NONE	CF–10
TELETOUCH COMMUNICATIONS INC	928659	NONE	CF–10
TELEWEST COMMUNICATIONS PLC	922574	NONE	CF–10
TELEWORLD ENTERPRISES LTD	798543	NONE	CF–10
TELMARK INC /NY/	914028	NONE	CF–10
TELTREND INC	943822	NONE	CF–10
TELULAR CORP	915324	NONE	CF–10
TENERE GROUP INC	922887	NONE	CF–10
TENET INFORMATION SERVICES INC	845696	CF–07	CF–09
TERMIFLEX CORP	726431	CF–07	REMOVE
TESSCO TECHNOLOGIES INC	927355	NONE	CF–10
TETRA TECH INC	831641	NONE	CF–10
TEXARKANA FIRST FINANCIAL CORP	943355	NONE	CF–10
TEXAS BOTTLING GROUP INC	912499	NONE	CF–10
TEXAS STAR RESOURCES CORP	908177	NONE	CF–10
TEXASGULF INC /DE/	936286	NONE	CF–10
TEXAS VANGUARD OIL CO	315261	CF–08	CF–09
TEXCON ENERGY CORP	312827	CF–06	CF–10
TEXTAINER EQUIPMENT INCOME FUND V LP	915194	NONE	CF–10
TFC ENTERPRISES INC	913958	NONE	CF–10
TGV SOFTWARE INC	935495	NONE	CF–10
THERAGENICS CORP	796762	CF–07	CF–07
Change to THERAGENICS CORP	795551	CF–07	CF–07
THERAPEUTIC DISCOVERY CORP	899753	NONE	CF–10
THERATX INC /CA/	922980	NONE	CF–10
THERMO REMEDIATION INC	913771	NONE	CF–10
THERMOLASE CORP	901416	NONE	CF–10
THOMAS GROUP INC	900017	NONE	CF–10
THOMASVILLE INDUSTRIES INC	940032	NONE	CF–10
THOMPSON PBE INC	929035	NONE	CF–10
THRIFTY PAYLESS INC	916794	NONE	CF–10
THRUSTMASTER INC	932290	NONE	CF–10
TIMELINE INC	909736	NONE	CF–10
TIMES MIRROR CO	098349	CF–02	REMOVE
TIMES MIRROR CO /NEW/	925260	NONE	CF–05

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

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Name	CIK No.	Former group	New group
TIME WARNER ENTERTAINMENT CO LP	893657	NONE	CF–10
TITAN HOLDINGS INC	904975	NONE	CF–10
TITAN TECHNOLOGIES INC	932144	NONE	CF–10
TITAN WHEEL INTERNATIONAL INC	899751	NONE	CF–10
TIVOLI INDUSTRIES INC	924835	NONE	CF–10
TIVOLI SYSTEMS INC	900120	NONE	CF–10
T J CINNAMONS INC	915661	NONE	CF–10
TLC BEATRICE INTERNATIONAL HOLDINGS INC	835589	NONE	CF–10
TOP SOURCE INC	800055	CF–07	CF–07
Change to TOP SOURCE TECHNOLOGIES INC	800055	CF–07	CF–07
TORCH ENERGY ROYALTY TRUST	912030	NONE	CF–10
TOTAL CONTAINMENT INC	913666	NONE	CF–10
TOTAL RESEARCH CORP	803058	CF–07	CF–08
TOWER AUTOMOTIVE INC	925548	NONE	CF–10
TOWER TECH INC	913034	NONE	CF–10
TOWN & COUNTRY TRUST	906110	NONE	CF–10
TOY BIZ INC	933730	NONE	CF–10
TPEX EXPLORATION INC	312842	CF–08	CF–08
Change to KRESTREL ENERGY INC	312842	CF–08	CF–08
TRACTOR SUPPLY CO /DE/	916365	NONE	CF–10
TRAMWAY BUILDING CORP	940325	NONE	CF–10
TRANSCOLOR CORP	832444	CF–09	REMOVE
TRANS ENERGY INC	919721	NONE	CF–10
TRANSNATIONAL INDUSTRIES INC	796228	CF–06	CF–10
TRANSNATIONAL RE CORP	911628	NONE	CF–10
TRANS OCEAN CONTAINER CORP	917691	NONE	CF–10
TRANS PACIFIC GROUP INC	922659	NONE	CF–10
TRANSTECTOR SYSTEMS INC	746630	CF–07	REMOVE
TRANS WORLD GAMING CORP	914577	NONE	CF–10
TRANS WORLD INSURANCE CO	932095	NONE	CF–10
TRANSWORLD TELECOMMUNICATIONS INC	830381	NONE	CF–10
TRANSACTION NETWORK SERVICES INC	920231	NONE	CF–10
TRANSACTION SYSTEMS ARCHITECTS INC	935036	NONE	CF–10
TRANSAMERICAN REFINING CORP	927762	NONE	CF–10
TRANSMEDIA EUROPE INC	906906	NONE	CF–10
TRANSNATIONAL RE CORP	911628	NONE	CF–10
TRANSTAR HOLDINGS LP	916533	NONE	CF–10
TRANSTEXAS GAS CORP	904977	NONE	CF–10
TRANSTEXAS TRANSMISSION CORP	908852	NONE	CF–10
TREASURE HOUSE NORTH L P	936353	NONE	CF–10
TREND LINES INC	922978	NONE	CF–10
TRI LITE INC /PA/	910350	NONE	CF–10
TRIAD GUARANTY INC	911631	NONE	CF–10
TRIANGLE CORP	099703	CF–05	CF–05
Change to AUDITS & SURVEYS WORLDWIDE INC	099703	CF–05	CF–05
TRICO PRODUCTS CORP	099724	CF–04	REMOVE
TRIGEN ENERGY CORP	925655	NONE	CF–10
TRINET CORPORATE REALTY TRUST INC	899162	NONE	CF–10
TRINITECH SYSTEMS INC	099047	NONE	CF–10
TRINITY SIX INC	907069	NONE	CF–10
TRIPLE S PLASTICS INC	918642	NONE	CF–10
TRIPOS INC	920691	NONE	CF–10
TRISM INC /DE/	914480	NONE	CF–10
TRIUMPHE LEASING IX LP	916364	NONE	CF–10
TROY HILL BANCORP INC	921363	NONE	CF–10
TRUCK COMPONENTS INC	923151	NONE	CF–10
TRUMP HOTELS & CASINO RESORTS HOLDINGS LP	943322	NONE	CF–10
TRUMP HOTELS & CASINO RESORTS INC	943320	NONE	CF–10
TSB FINANCIAL INC	920107	NONE	CF–10
TSX CORP	896560	NONE	CF–10
TUCKER PROPERTIES CORP	908257	NONE	CF–10
TUFCO TECHNOLOGIES INC	895329	NONE	CF–10
TURBOCHEF INC	916545	NONE	CF–10
TWIN CITY BANCORP INC	930373	NONE	CF–10
TYLAN GENERAL INC	894776	NONE	CF–10
TYREX OIL CO	317889	CF–08	CF–10
UAC SECURITIZATION CORP	935301	NONE	CF–10
UCAR GLOBAL ENTERPRISES INC	940404	NONE	CF–10
UCAR INTERNATIONAL INC	931148	NONE	CF–10

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

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Name	CIK No.	Former group	New group
UCFC ACCEPTANCE CORP	901488	NONE	CF–10
UFP TECHNOLOGIES INC	914156	NONE	CF–10
ULTIMATE ELECTRONICS INC	911626	NONE	CF–10
ULTRADATA SYSTEMS INC	931947	NONE	CF–10
ULTRATECH STEPPER INC	909791	NONE	CF–10
UMC ELECTRONICS CO	100619	CF–08	CF–10
UNAPIX ENTERTAINMENT INC	902787	NONE	CF–10
UNCLE BS BAKERY INC	911886	NONE	CF–10
UNIMARK GROUP INC	922712	NONE	CF–10
UNION ACCEPTANCE CORP	927790	NONE	CF–10
UNION BANKSHARES LTD	895688	NONE	CF–10
UNION FINANCIAL BANCSHARES INC	926164	NONE	CF–10
UNION INSURANCE CO OF PROVIDENCE	914746	NONE	CF–10
UNION PLAZA HOTEL & CASINO INC	087918	CF–05	CF–08
UNION SWITCH & SIGNAL INC	912464	NONE	CF–10
UNIPHASE CORP /CA/	912093	NONE	CF–10
UNIROYAL INVESTORS MANAGEMENT CO	890096	CF–10	CF–10
Change to UNIROYAL TECHNOLOGY CORP	890096	CF–10	CF–10
UNISOURCE ENERGY CORP	941138	NONE	CF–10
UNISTAR GAMING CORP	940327	NONE	CF–10
UNITECH INDUSTRIES INC	921620	NONE	CF–10
UNITED AIR SPECIALISTS INC /OH/	932985	NONE	CF–10
UNITED FINANCIAL BANKING COMPANIES INC	714286	CF–06	CF–09
UNITED GROCERS CLEARING HOUSE INC	932734	NONE	CF–10
UNITED HERITAGE CORP	354567	CF–07	CF–10
UNITED MARKET SERVICES CO	919861	NONE	CF–10
UNITED MORTGAGE SECURITIES CORP	910033	NONE	CF–10
UNITED NATIONAL BANCORPORATION	355453	CF–08	REMOVE
UNITED PAYPHONE SERVICES INC	923150	NONE	CF–10
UNITED RESTAURANTS INC	909483	NONE	CF–10
UNITED STATES LEATHER INC /WI/	906613	NONE	CF–10
UNITED STATES PAGING CORP	813239	NONE	CF–10
UNITED VANGARD HOMES INC /DE/	021221	NONE	CF–10
UNITED VIDEO SATELLITE GROUP INC	913061	NONE	CF–10
UNITED WASTE SYSTEMS INC	879688	NONE	CF–10
UNIVERSAL AUTOMOTIVE INDUSTRIES INC /DE/	931457	NONE	CF–10
UNIVERSAL OUTDOOR HOLDINGS INC	928063	NONE	CF–10
UNIVERSAL OUTDOOR INC	916079	NONE	CF–10
UNIVERSAL STAINLESS & ALLOY PRODUCTS INC	931584	NONE	CF–10
UNIVERSITY REAL ESTATE FUND 10 LTD	356311	CF–08	CF–09
UNIVERSITY REAL ESTATE FUND 12 LTD	713010	CF–08	CF–09
UNIVERSITY REAL ESTATE PARTNERSHIP V	311173	CF–06	CF–09
UNIVISION TELEVISION GROUP INC	898804	NONE	CF–10
UNSL FINANCIAL CORP	846807	CF–09	REMOVE
UPWARD TECHNOLOGY CORP	062600	CF–08	CF–10
URBAN OUTFITTERS INC	912615	NONE	CF–10
URBAN SHOPPING CENTERS INC	907077	NONE	CF–10
UROMED CORP	917821	NONE	CF–10
US 1 INDUSTRIES INC	351498	NONE	CF–10
USAIR INC /NEW/	714560	CF–02	CF–02
Change to USAIR INC	714560	CF–02	CF–02
U S ALCOHOL TESTING OF AMERICA INC	853017	NONE	CF–10
USANA INC	896264	NONE	CF–10
US AUTOMOBILE ACCEPTANCE 1995–I INC	936652	NONE	CF–10
U S AUTOMOBILE ACCEPTANCE CORP	910107	NONE	CF–10
US BRIDGE OF NEW YORK INC	937931	NONE	CF–10
US CHINA INDUSTRIAL EXCHANGE INC	922717	NONE	CF–10
US DELIVERY SYSTEMS INC	920755	NONE	CF–10
U S DIAGNOSTIC LABS INC	911012	NONE	CF–10
U S DRUG TESTING INC	910523	NONE	CF–10
US ELECTRICAR INC	922237	NONE	CF–10
US EXIM TRUST PDVSA	920470	NONE	CF–10
US FLYWHEEL SYSTEMS INC	928958	NONE	CF–10
US INTELCO HOLDINGS INC	929139	NONE	CF–10
USLICO CORP	750234	CF–03	REMOVE
U S MEDICAL PRODUCTS INC	919168	NONE	CF–10
US OFFICE PRODUCTS CO	934852	NONE	CF–10
US ORDER INC	943652	NONE	CF–10
U S ROBOTICS CORP/DE/	933353	NONE	CF–10

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

[December 19, 1994]

Name	CIK No.	Former group	New group
U S THRIFT OPPORTUNITY PARTNERS LP	831660	CF–09	REMOVE
US TRADE FUNDING CORP	927567	NONE	CF–10
U S WIRELESS DATA INC	895716	NONE	CF–10
US XPRESS ENTERPRISES INC	923571	NONE	CF–10
USA COMMUNICATIONS INC /DE/	929056	NONE	CF–10
USA ENTERTAINMENT CENTER INC	896429	NONE	CF–10
USA MOBILE COMMUNICATIONS HOLDINGS INC	929544	NONE	CF–10
USA MOBILE COMMUNICATIONS HOLDINGS INC ET AL	915390	NONE	CF–10
USA MOBILE COMMUNICATIONS INC II	916122	NONE	CF–10
USANA INC	896264	NONE	CF–10
USDATA CORP	943895	NONE	CF–10
USTEL INC	919274	NONE	CF–10
UTI ENERGY CORP	912899	NONE	CF–10
VAALCO ENERGY INC /DE/	894627	NONE	CF–10
VALLEY FINANCIAL CORP /VA/	921590	NONE	CF–10
VALRICO BANCORP INC	942789	NONE	CF–10
VALUE SOFTWARE CORP	928493	NONE	CF–10
VALUJET AIRLINES INC	914277	NONE	CF–10
VANDERBILT MORTGAGE & FINANCE INC	816512	NONE	CF–10
VANDERBILT SQUARE CORP	764773	NONE	CF–10
VARCO INTERNATIONAL INC	102993	CF–05	CF–04
VARI L CO INC	917173	NONE	CF–10
VARIFLEX INC	921366	NONE	CF–10
VASTAR RESOURCES INC	918252	NONE	CF–10
VECTOR ENERGY CORP /TX/	931180	NONE	CF–10
VECTOR ENVIRONMENTAL TECHNOLOGIES INC	918997	NONE	CF–10
VECTRA BANKING CORP	862695	NONE	CF–10
VEECO INSTRUMENTS INC	103145	NONE	CF–10
VENDELL HEALTHCARE INC	896646	NONE	CF–10
VENTRITEX INC	793354	NONE	CF–10
VENTURE ENTERPRISES INC	778165	CF–09	CF–09
Change to HANOVER GOLD COMPANY INC	778165	CF–09	CF–09
VENTURIAN CORP	745756	CF–06	CF–08
VERDIX CORP	722056	CF–06	CF–09
Change to RATIONAL SOFTWARE CORP	722056	CF–06	CF–09
VERITAS MUSIC ENTERTAINMENT INC	940672	NONE	CF–10
VERITAS SOFTWARE CORP	867666	NONE	CF–10
VERMONT TEDDY BEAR CO INC	912960	NONE	CF–10
VESTA INSURANCE GROUP INC	911576	NONE	CF–10
VETCO INC/NY	931753	NONE	CF–10
VETERINARY CENTERS OF AMERICA INC	817366	NONE	CF–10
VIASOFT INC /DE/	935418	NONE	CF–10
VICON INDUSTRIES INC /NY/	310056	CF–05	CF–06
VIDAMED INC	929900	NONE	CF–10
VIDEONICS INC	932113	NONE	CF–10
VIDEO PROFESSOR INDUSTRIES INC	851965	CF–10	REMOVE
VIDEOTELECOM CORP /DE/	884144	CF–10	CF–10
Change to VTEL CORP	884144	CF–10	CF–10
VIDEO UPDATE INC	920042	NONE	CF–10
VIDEOSERVER INC	943894	NONE	CF–10
VIKING RECYCLING INC	915651	NONE	CF–10
VILLAGE BANKSHARES INC	858754	NONE	CF–10
VIRATEK INC	351237	CF–04	REMOVE
VISION MARKETING GROUP INC	920757	NONE	CF–10
VISTA 2000 INC	916802	NONE	CF–10
VISTA BANCORP INC	831979	NONE	CF–10
VITAMIN SPECIALTIES CORP	910329	NONE	CF–10
VOLUNTEER STATE BANCSHARES INC	709417	CF–08	REMOVE
VOXEL /CA/	927472	NONE	CF–10
VU VIDEOS INC	917697	NONE	CF–10
WACKENHUT CORRECTIONS CORP	923796	NONE	CF–10
WALDEN RESIDENTIAL PROPERTIES INC	913280	NONE	CF–10
WALKER INTERNATIONAL INDUSTRIES INC	104224	CF–07	CF–09
WALL DATA INC	722607	NONE	CF–10
WALTER INDUSTRIES INC /NEW/	837173	NONE	CF–10
WANDEL & GOLTERMANN TECHNOLOGIES INC	918381	NONE	CF–10
WARREN S D CO /PA/	935704	NONE	CF–10
WASHINGTON COMMERCIAL BANCORP	817643	CF–08	REMOVE
WASHINGTON CORP	314625	CF–09	CF–10

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

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Name	CIK No.	Former group	New group
WASHINGTON FEDERAL INC	936528	NONE	CF–10
WASHINGTON HOMES INC	104834	NONE	CF–10
WATERS CORP	930809	NONE	CF–10
WATSON PHARMACEUTICALS INC	884629	NONE	CF–10
WAVE SYSTEMS CORP	919013	NONE	CF–10
WAVE TECHNOLOGIES INTERNATIONAL INC	925869	NONE	CF–10
WAVEFRONT TECHNOLOGIES INC /CA/	921301	NONE	CF–10
WCI STEEL INC	897745	NONE	CF–10
WEBCO INDUSTRIES INC	916314	NONE	CF–10
WEEKS CORP	925558	NONE	CF–10
WEGENER CORP	715073	CF–06	CF–07
WEINGARTEN PROPERTIES TRUST	913584	NONE	CF–10
WEITZER HOMEBUILDERS INC	926613	NONE	CF–10
WELBILT CORP	105494	CF–10	REMOVE
WELCOME HOME INC	922817	NONE	CF–10
WELLCARE MANAGEMENT GROUP INC	900630	NONE	CF–10
WELLFLEET COMMUNICATIONS INC	876516	CF–10	CF–10
Change to BAY NETWORKS INC	876516	CF–10	CF–10
WELLINGTON PROPERTIES TRUST	928953	NONE	CF–10
WELLS FINANCIAL CORP	934739	NONE	CF–10
WELLS REAL ESTATE FUND VI L P	895334	NONE	CF–10
WELLS REAL ESTATE FUND VII L P	895347	NONE	CF–10
WELLS REAL ESTATE FUND VIII LP	929920	NONE	CF–10
WEST MARINE INC	912833	NONE	CF–10
WEST TOWN BANCORP INC	926867	NONE	CF–10
WESTCOTT FINANCIAL CORP	922257	NONE	CF–10
WESTERN ATLAS INC	913340	NONE	CF–10
WESTERN COUNTRY CLUBS INC	916298	NONE	CF–10
WESTERN NATIONAL CORP	913202	NONE	CF–10
WESTERN OHIO FINANCIAL CORP	920769	NONE	CF–10
WESTERN POWER & EQUIPMENT CORP	939729	NONE	CF–10
WESTINGHOUSE AIR BRAKE CO /DE/	943452	NONE	CF–10
WESTSIDE BANK & TRUST CO	922244	NONE	CF–10
WESTVIEW HEALTH CARE ASSOCIATES LP	930315	NONE	CF–10
WFS BANCORP INC	919888	NONE	CF–10
WHAT A WORLD INC /DE/	931073	NONE	CF–10
WHEELING PITTSBURGH CORP /DE/	941738	NONE	CF–10
WHITE RIVER CORP	913338	NONE	CF–10
WICKES LUMBER CO /DE/	910620	NONE	CF–10
WILD WINGS INC	939728	NONE	CF–10
WILLIAMS COAL SEAM GAS ROYALTY TRUST	895007	NONE	CF–10
WILLIAMS INDUSTRIES INC	107294	CF–05	CF–10
WILLIAMS J B HOLDINGS INC	929651	NONE	CF–10
WILSHIRE TECHNOLOGIES INC	891762	NONE	CF–10
WINSLOEW FURNITURE INC	931814	NONE	CF–10
WINSTON FURNITURE COMPANY INC	818015	CF–10	REMOVE
WINSTON HOTELS INC	920605	NONE	CF–10
WIRELESS CABLE OF ATLANTA INC	904355	NONE	CF–10
WISCONSIN REAL ESTATE INVESTMENT TRUST	107835	CF–05	CF–09
WISCONSIN SOUTHERN GAS CO INC	107841	CF–06	REMOVE
WITTER DEAN DISCOVER & CO	895421	NONE	CF–10
WITTER DEAN DIVERSIFIED FUTURES FUND LTD PART /DE/	941912	NONE	CF–10
WITTER DEAN PRINCIPAL GUARANTEED FUND II	841754	NONE	CF–10
WITTER DEAN PRINCIPAL PLUS FUND LP	854915	NONE	CF–10
WITTER DEAN SPECTRUM STRATEGIC LP	925263	NONE	CF–10
WITTER DEAN WORLD CURRENCY FUND L P	895239	NONE	CF–10
WIZ TECHNOLOGY INC	914282	NONE	CF–10
WNC CALIFORNIA HOUSING TAX CREDITS IV LP SERIES 4	921052	NONE	CF–10
WNC HOUSING TAX CREDIT FUND IV LP	907253	NONE	CF–10
WNC HOUSING TAX CREDIT FUND V LP SERIES 3	943904	NONE	CF–10
WNC HOUSING TAX CREDIT FUND V LP SERIES 5	943907	NONE	CF–10
WNC HOUSING TAX CREDIT FUND V LP SERIES 6	943908	NONE	CF–10
WNC HOUSING TAX CREDIT FUND V LP SERIES 7	943909	NONE	CF–10
WNC HOUSING TAX CREDIT FUND V LP SERIES 8	943934	NONE	CF–10
WOMACK APARTMENT INVESTORS I LTD PART	921159	NONE	CF–10
WONDERWARE CORP	906519	NONE	CF–10
WOODROAST SYSTEMS INC	919273	NONE	CF–10
WORLD OMNI 1994 B AUTOMOBILE LEASE SECURITIZATION TRUST	931355	NONE	CF–10
WORLD OMNI 1994–A AUTOMOBILE LEASE SECURITIZATION TRUST	920344	NONE	CF–10

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 7122—Continued

[December 19, 1994]

Name	CIK No.	Former group	New group
WORLD OMNI DEALER FUNDING INC	929543	NONE	CF–10
WORLD OMNI LEASE SECURITIZATION L P	920343	NONE	CF–10
WORLD TRADITIONAL TAEKWONDO UNION INC	940031	NONE	CF–10
WPC OPERATING PARTNERSHIP LP	931783	NONE	CF–10
WPS REC CO WESTPOINT STE RE MA TR FL RT TR RE PA CE S 1994–1	930224	NONE	CF–10
WPS RECEIVABLES CORP	921045	NONE	CF–10
WRIGHT MEDICAL TECHNOLOGY INC	912580	NONE	CF–10
XCELLENET INC /GA/	919746	NONE	CF–10
XECHEM INTERNATIONAL INC	919611	NONE	CF–10
Y&A GROUP INC	813350	CF–07	REMOVE
YAMAHA MOTOR RECEIVABLES CORP	916095	NONE	CF–10
YARDVILLE NATIONAL BANCORP	787849	NONE	CF–10
YOUNG BROADCASTING INC /DE/	929144	NONE	CF–10
YOUNKERS CREDIT CORP	937604	NONE	CF–10
ZARING HOMES INC	899750	NONE	CF–10
ZEIGLER COAL HOLDING CO	925942	NONE	CF–10
ZENITH LABORATORIES INC	109259	CF–06	REMOVE
ZONAGEN INC	897075	NONE	CF–10
ZOOM TELEPHONICS INC	822708	NONE	CF–10
ZURICH REINSURANCE CENTRE HOLDINGS INC	898612	NONE	CF–10
ZYTEC CORP /MN/	912092	NONE	CF–10
TOTAL: 2754			

Dated: September 13, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23141 Filed 9–18–95; 8:45 am]

BILLING CODE 8010-01-P

[Release No. 34–36222; File No. SR–NYSE–95–25]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to Rules 600 (Arbitration), 619 (General Provision Governing Subpoenas, Production of Documents, etc.), 629 (Schedule of Fees), and 637 (Failure to Honor Award)

September 13, 1995.

On June 26, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt certain arbitration procedures.

The proposed rule change was published for comment in the **Federal Register** on July 26, 1995.[3] No comments were received on the proposal.

As described more fully below, the Exchange has proposed amendments to its arbitration procedures that were developed primarily by the Securities Industry Conference on Arbitration.[4]

The Commission has reviewed carefully the NYSE's proposed rule changes and concludes that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] The Exchange proposes to amend NYSE Rules 600 (Arbitration), 619 (General Provision Governing Subpoenas, Production of Documents, etc.) 629 (Schedule of Fees), and 637 (Failure to Honor Award).[6]

NYSE Rule 600(d)(iii) currently bars members, allied members, member organizations, and associated persons from seeking to enforce an agreement to arbitrate against a customer where the customer has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action. The rule, however, omits specific reference to claims filed by members, allied members, member organizations, and associated persons against other members, allied members, member organizations, and associated persons. This proposed amendment clarifies that all class actions, including claims involving members, allied members, member organizations, and associated persons, are ineligible for submission to the Exchange's arbitration facility.

The Commission finds that the proposed amendment to NYSE Rule 600(d)(iii) is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent unfair discrimination between customers, issuers, brokers, or dealers, and, in general, protect investors and the public. Over the years, the courts have developed procedures and expertise for managing class action litigation and duplicating the often complex procedural safeguards necessary for these lawsuits is unnecessary. In addition, access to the courts for class action litigation should be preserved for claims filed by members, allied members, member organizations, and associated persons against other members, allied members, member organizations, and associated persons, as well as for claims involving investors. Hence, this rule change should provide a sound procedure for the management of class action disputes, should promote the efficient resolution of these types of class action disputes, and should prevent wasteful litigation over the possible applicability of agreements to arbitrate between members, allied members, member organizations, and associated persons, notwithstanding the exclusion of class action claims from NYSE arbitration.

NYSE Rule 619(c) currently requires all parties to serve on each other copies of documents in their possession that they intend to present at the hearing and to identify witnesses they intend to present at the hearing not less than ten calendar days prior to the first scheduled hearing date. The Exchange is proposing to amend this rule to allow parties to: (1) Provide a list of documents that have been produced previously to the other side, instead of providing the actual documents; (2) require the list identifying witnesses to include the address and business affiliation of the witnesses listed; and (3) require prehearing exchanges of documents and the list of documents previously produced to occur twenty days in advance of the hearing, instead of ten days as is presently required.

The Commission finds that the proposed amendments to NYSE Rule 619(c) are consistent with Section 6(b)(5) because they are designed to promote just and equitable principles of trade, prevent unfair discrimination between customers, issuers, brokers, or dealers, and, in general, protect investors and the public,.[8] The proposed amendments should increase the efficiency of the arbitration process because they: (1) Eliminate duplicative prehearing document exchanges; (2) should assist parties in the process of preparing and organizing their cases by providing them with advance notice regarding the background of witnesses and the location of nonparty witnesses; (3) should reduce the number of instances of surprise; and (4) should provide the parties with a more reasonable time frame in which to address last minute discovery requests.

NYSE Rule 629(e) presently provides that the nonrefundable filing fee for a dispute that does not specify a money claim shall be $250, while NYSE Rule 629(i) charges industry parties a $500 nonrefundable filing fee when the dispute does state a money claim. The proposed amendment to NYSE Rule 629(e) would unify the nonrefundable filing fee for all industry claims at $500.

The commission finds that this proposed amendment is consistent with Section 6(b)(4)[9] because it provides for the equitable allocation of reasonable fees among its members and other persons using its facilities. A uniform filing fee would remove any temptation for an industry party to purposely omit the monetary amount of their claim in order to reduce the nonrefundable filing fee from $500 to $250.[10]

Currently, NYSE Rule 637 subjects any member, allied member, registered representative, or member organization who fails to honor an award of arbitrators appointed by the Exchange to disciplinary proceedings in accordance with the Exchange's constitution and rules. The proposed amendment to NYSE Rule 637 would expand the coverage of this rule to include arbitration awards issued at another self-regulatory organization or by the American Arbitration Association. As amended, the penalties authorized under this rule would include disciplinary proceedings at the Exchange or the imposition of a fine by way of a summary proceeding.

The Commission finds that this proposed amendment is consistent with the section 6(b)(6)[11] requirement that the rules of an exchange provide for appropriate disciplinary action for violating the provisions of the Act, the rules and regulations thereunder, or the rules of the Exchange. This proposal would establish the enforceability of arbitration awards issued by other self-regulatory organizations and by the American Arbitration Association and, in turn, should increase the effectiveness of the arbitration process.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–95–25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23164 Filed 9–18–95; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1–12212]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (CVD Financial Corporation, Common Stock, $.01 Par Value, Variable Rate Bonds Due 2008)

September 13, 1995.

CVD Financial Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2 (d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, it received a letter dated May 26, 1995, from the Exchange stating that it was considering delisting the Securities. The Exchange believed the Company's financial condition was substantially impaired, and it had failed to comply with the Exchange's listing agreement by not holding an annual meeting of shareholders since being listed in August 1993. After the Company submitted its response to the Exchange by a letter dated June 28, 1995 and met with Amex officials on July 6, 1995, the Exchange sent a letter to the Company dated July 13, 1995, stating that the Exchange had decided to delist the Securities. Although the Company initially elected to appeal the Exchange's decision to delist the Securities to the Exchange's Board of Governors, the Company has decided to settle matters by voluntarily removing the Securities from listing on the Exchange. It is now the Company's position, in view of the impasse between the Exchange and the Company and the large expenditures of money and management time that would be required before a final resolution of the matters at issue could be obtained, that it is in the best interest of both the Company and its shareholders that matters be settled by voluntarily delisting the Securities from the Exchange.

The Exchange also has agreed that it would be in the best interest of the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 36001 (July 20, 1995), 60 FR 38380.

[4] NYSE Rule 600(d)(iii) corresponds to Securities Industry Conference on Arbitration Uniform Code of Arbitration ("SICA UCA") Section 1(d)(iii) (as amended Jan. 20, 1994); NYSE Rule 619(c) corresponds to SICA UCA Section 20(c) (as amended Jan. 7, 1993 and Oct. 21, 1994); NYSE Rule 629(e) corresponds to SICA UCA Section 30(e) (as amended Oct. 21, 1994).

[5] 15 U.S.C. 78f(b).

[6] The Commission notes that it has approved some of the proposals contained in this filing previously for another self-regulatory organization. See Securities Exchange Act Release Nos. 35525 (Mar. 23, 1995), 60 FR 16219 (increasing the NASD's prehearing document exchange deadline from 10 days to 20 days before the arbitration hearing); 35167 (Dec. 28, 1994), 60 FR 1816 (unifying the NASD's nonrefundable filing fee for industry parties at $500); 33939 (Apr. 20, 1994), 59 FR 22032 (excluding all class action claims from NASD arbitration.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(4).

[10] See Securities Exchange Act Release No. 35167 (Dec. 28, 1994), 60 FR 1816 (approving File No. SR–NASD–94–75 and publishing the NASD's determination that there have been situations in which industry parties have purposely not disclosed the monetary amount of their claim in order to reduce the nonrefundable filing fee from $500 to $250).

[11] 15 U.S.C. 78f(b)(6).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

Exchange and the investing public to resolve this issue between the Company and the Exchange in this manner.

Any interested person may, on or before October 4, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–23165 Filed 9–18–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–21349; File No. 812–9388]

Integrity Life Insurance Company, et al.

September 12, 1995.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Integrity Life Insurance Company ("Integrity"), Separate Account I of Integrity Life Insurance Company ("Account I"), Separate Account II of Integrity Life Insurance Company ("Account II," and collectively with Account I, the "Separate Accounts") and Integrity Financial Services, Inc. ("Services").

RELEVANT 1940 ACT SECTIONS: Exemptions requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Accounts or other Separate Accounts ("Other Accounts") established by Integrity to support certain flexible premium variable annuity policies ("Contracts") as well as other variable annuity contracts that are substantially similar in all material respects to the Contracts ("Future Contracts"). In addition, Applicants propose that Services replace Integrity as principal underwriter for the Contracts, and that the order extend the same exemptions granted to Services, and to any other broker-dealer that may in the future serve a principal underwriter for the Contracts or Future Contracts, the same exemptions currently granted to Integrity.

FILING DATES: The application was filed on December 22, 1994, and was amended on August 2, 1995 and September 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on October 10, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Kevin L. Howard, Esq., Integrity Life Insurance Company, 239 S. Fifth Street, 12th Floor, Louisville, Kentucky, 40202.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Integrity, a stock life insurance company, is organized in Ohio and licensed to sell life insurance and annuities in forty-four states and the District of Columbia. In addition, Integrity is licensed to sell variable contracts in forty-three states and the District of Columbia. Integrity is an indirect wholly-owned subsidiary of ARM Financial Group, Inc. ("ARM Financial"). Integrity is currently the principal underwriter of the Contracts and is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. ("NASD").

2. Account I and Account II are separate accounts established by Integrity to fund the Contracts. Both Separate Accounts are registered under the 1940 as unit investment trusts. Interests in the Contracts are registered as securities under the 1933 Act.

3. Account I has ten investment divisions ("Divisions"), each of which invests in one of the ten corresponding portfolios of the Variable Insurance Products Fund and the Variable Insurance Products Fund II, which are both part of the Fidelity Investments (R) group of companies (collectively, "Trusts"). Account II has ten Divisions, each of which invests in a corresponding portfolio of The Legends Fund, Inc. ("Legends Fund," and collectively with the Trusts, "Funds"). The Funds are diversified, open-end management investment companies registered under the 1940 Act.

4. Services, a wholly-owned subsidiary of ARM Financial, is registered with the Commission under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the NASD. Applicants now seek to substitute Services for Integrity as the principal underwriter for the Contracts.[1]

5. Integrity, the Separate Accounts, and Services will enter into an agreement under which Services will become principal underwriter for the Contracts. Integrity and Services propose to enter into selling agreements with broker-dealers for the distribution of the Contracts.

6. The Contracts are flexible premiums variable annuity contracts. Contract owners ("Participants") may allocate premium payments to one or more of the Separate Accounts' Divisions, or to one or more of Integrity's guaranteed periods, or both. Amounts allocated to guarantee periods accumulate on a fixed basis, except as adjusted for any applicable value adjustment.

7. A death benefit is available under the Contracts if a Participant dies prior to his or her retirement date. The amount of the death benefit is equal to the greatest of (1) the Participant's annuity value, (2) the minimum death benefit, which equals total contributions less the sum of the market value adjusted withdrawals, and (3) the Participant's highest annuity value at the beginning of any participation year, plus subsequent contributions and minus subsequent withdrawals ("Enhanced Death Benefit").

8. Retirement benefits under the Contracts may take the form of a lump sum payment or an annuity. The retirement benefits are calculated as of the retirement date selected by the Participant. If no annuity payment option is elected by the retirement date, Integrity will deem the retirement date to have been extended.

9. Certain charges and fees are assessed under the Contracts. Until annuity payments begin, Participants may transfer their Contract values among Divisions of the relevant Separate Account and the relevant guarantee periods, except that transfers to any guarantee period must be to a newly elected guarantee period at the current guaranteed interest rate. No fee currently is imposed for a Participant's first twelve transfers per participation year. Integrity reserves the right to impose a fee of up to $25 for each transfer in excess of twelve per participation year. The transfer fee will be paid to Integrity to compensate it for the anticipated actual administrative expenses relating to transfers and is guaranteed not to increase during the life of the Contracts. In addition, Applicants reserve the right to impose a transfer fee in connection with Future Contracts of up to $25 on transfers beginning with the first transfer of Contract values in any participation year. No charges will be assessed for transfers made under Integrity's dollar cost averaging program.

10. A contingent deferred sales charge ("CDSC") may be imposed on certain withdrawals. The amount of the CDSC decreases annually from 7% to 0% over 7 participation years. No CDSC will be applied to partial withdrawals made during any participation year that do not exceed the specified amount. In addition, Integrity may waive the CDSC in certain circumstances.

11. If a Participant's Contract value is less than $50,000 on the last day of any participation year prior to the Participant's retirement date, Integrity charges an annual administrative charge of $30. In addition, all Contracts are subject to a daily charge equal, on an annual basis, to .15% of the net asset value of the relevant Separate Account to cover policy administration expenses. These daily and annual fees are guaranteed for the life of the Contracts and will not exceed the cost of services to be provided over the life of the Contract.

12. Integrity imposes charges as compensation for bearing certain mortality and expense risks under the Contracts. The amount of the mortality and expense risk charges under the Contracts is equal, on an annual basis, to 1.20% (of which .35% is attributable to mortality risks and .85% to expense risks) of the daily net asset value of the relevant Separate Account. For the Future Contracts, the annual mortality and expense risk charge will not exceed an effective annual rate of 1.20% of the net asset value of any Separate Account, or of Other Accounts, attributable to such contracts.

13. Integrity assumes the mortality risk that the life expectancy of the annuitant will be greater than that assumed in the guaranteed annuity purchase rates, thus requiring Integrity to pay out more in annuity income than it had planned. Integrity assumes an additional mortality risks because of its contractual obligation to provide a minimum death benefit and an Enhanced Death Benefit prior to the annuity date. Thus, Integrity assumes the risk that it may not be able to cover its distribution expenses and that the owner may die at a time when the amount of the death benefit payable exceeds the then net surrender value of the Contracts. The expense risk assumed by Integrity is that the administration charge will be sufficient to cover the actual cost of administering the Contracts.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request an order under Section 6(c) exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Separate Accounts or Other Accounts that issue the Contracts or Future Contracts. Applicants also propose that Services replace Integrity as principal underwriter for the Contracts, and that the order extend the same exemptions granted to Services, and to any other broker-dealer that may in the future serve a principal underwriter for the Contracts or Future Contracts, the same exemptions currently granted to Integrity. Any such principal underwriter will be wholly-owned, directly or indirectly, by ARM Financial.

4. Applicants submit that their request for an order is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity contract market by eliminating the need for Integrity to file redundant exemptive applications, thereby reducing Integrity's administrative expenses and maximizing the efficient use of Integrity's resources. The delay and expense involved in having repeatedly to seek exemptive relief would impair Integrity's ability effectively to take advantage of business opportunities as these opportunities arise. Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Integrity were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby. Thus, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

5. Applicants represent that they have reviewed publicly-available information regarding the aggregate level of the mortality and expense risk charges under variable annuity contracts comparable to the Contracts currently being offered in the insurance industry taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge-level or annuity-rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, Applicants further represent that the mortality and expense risk charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a

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[1] The Commission has previously granted relief permitting Integrity to deduct mortality and expense risk charges from the assets of the Separate Accounts in connection with the sales of the Contracts. See, Integrity Life Insurance Company, Investment Company Act Release No. 19120 (Nov. 24, 1992) and The Equitable Life Assurance Society of the United States, Investment Company Act Release No. 15406 (Nov. 7, 1986) ("Existing Orders"). Applicants are not requesting that the order sought herein amend or supersede the Existing Orders.

memorandum outlining the methodology underlying this representation. Similarly, prior to making available any Future Contracts through the Separate Accounts or Other Accounts, Applicants will represent that the mortality and expense risk charges under any such contracts will be within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying such representation.

6. Applicants do not believe that the contingent withdrawal charges under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any "shortfall" will be made up from Integrity's general account assets which will include amounts derived from mortality and expense risk charges. Integrity has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Separate Accounts and the Contract owners. Integrity will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation. Similarly, Integrity will maintain and make available to the Commission, upon request, a memorandum setting forth the basis for the same representation with respect to Future Contracts offered by the Separate Accounts or by Other Accounts established by Integrity.

7. Applicants represent that the Separate Accounts and Other Accounts will invest only in a management investment company which has undertaken, in the event such company adopts a plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Separate Accounts or Other Accounts that issue the Contracts and/or the Future Contracts, and in connection with Contracts or Future Contracts for which broker-dealers other than Services will serve as principal underwriter, meet the applicable statutory standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23143 Filed 9–18–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–21350– 812–9680]

Northstar Advantage Multi-Sector Bond Fund, et al.; Notice of Application

September 13, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Northstar Advantage Multi-Sector Bond Fund (the "Acquired Fund"), a series of Northstar Advantage Trust (the "Trust"), Northstar Advantage Strategic Income Fund (the "Acquiring Fund"), NWNL Northstar Distributors, Inc. (the "Distributor"), Northstar Investment Management Corporation (the "Adviser"), ReliaStar Financial Corp. ("ReliaStar"), Northwestern National Life Insurance Company, and Northern Life Insurance Company.

RELEVANT ACT SECTIONS: Order requested under section 17(b) granting an exemption from section 17(a) and under rule 17d–1 permitting certain joint transactions under section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Acquiring Fund to acquire all of the assets of the Acquired Fund. Because of certain affiliations, the two funds may not rely on rule 17a–8 under the Act.

FILING DATES: The application was filed on July 19, 1995, and amended on September 1, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 4, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: The Acquired Fund, the Acquiring Fund, the Distributor, and Adviser, Two Pickwick Plaza, Greenwich, Connecticut 08630; ReliaStar and Northwestern National Life Insurance Company, 20 Washington Avenue South, Minneapolis, Minnesota 55401; and Northern Life Insurance Company, 1110 Third Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust and the Acquiring Fund are Massachusetts business trusts that are registered under the Act as open-end management investment companies. The Trust offers its shares in three series, one of which is the Acquired Fund. The Acquiring Fund and the Acquired Fund (each a "Fund") offer their shares in three classes. For the Acquired Fund, Class A shares are sold with a maximum front-end sales load of 4.75% and a rule 12b-1 fee of .30% annually of average net assets; Class B shares are sold with a maximum contingent deferred sales load (a "CDSL") of 5% and a 1% rule 12b-1 fee; Class C shares are sold with a 1% CDSL if redeemed within one year of purchase and a 1% rule 12b-1 fee. The three classes and expense structure for each class of the Acquiring Fund will be similar to the existing expense structure of the Acquired Fund, except that the Acquiring Fund has a lower advisory fee and is not subject to any administrative services fee.

2. On June 2, 1995, as a result of a transfer to the Adviser of the advisory business of Advest, Inc. and its affiliates, the Adviser and the Distributor became, respectively, the investment adviser and principal underwriter of the Trust and the Acquiring Fund. The Adviser and the Distributor are wholly-owned by NWNL

Northstar, Inc., which in turn is majority-owned by ReliaStar. Northwestern National Life Insurance Company and Northern Life Insurance Company (collectively, the "Life Insurance Companies") are wholly-owned by ReliaStar. The Life Insurance Companies collectively own approximately 40% of the outstanding voting securities of the Acquired Fund.

3. The Acquiring Fund proposes to acquire all of the assets of the Acquired Fund in exchange for shares of the Acquiring Fund pursuant to an agreement and plan of reorganization (the "Reorganization Agreement"). The Adviser submitted the proposal to the trustees of the Acquired Fund based on, among other things, the Funds' very similar investment objectives, policies, and techniques, and the burdens of marketing two virtually identical Funds. Under the Reorganization Agreement, the number of shares of each class of the Acquiring Fund to be issued to the Acquired Fund will be determined on the basis of each party's relative net asset value per its respective classes of shares computed as of 4:00 p.m. (New York time) on the Closing Date, as set forth in the Reorganization Agreement. The Acquired Fund then will liquidate and distribute such shares of the Acquiring Fund pro rata to its shareholders.

4. The trustees of each Fund, in approving the terms of the proposed reorganization, made an inquiry into a number of matters and considered the following factors, among others: The relative expense ratios of the Funds; the terms and conditions of the reorganization and whether the reorganization would result in dilution of shareholder interests; the compatibility of the Funds' investment objectives, policies and restrictions, as well as varying service features available to shareholders of each Fund; the benefits anticipated to inure to the shareholders of both Funds as a result of the combination; and the tax consequences of the reorganization. In addition, the board of trustees of the Acquired Fund determined that the proposed reorganization would likely provide certain benefits to shareholders. In making such determination, the trustees considered, among other things, that the reorganization would promote more efficient operations and eliminate the duplication inherent in marketing two Funds with similar investment objectives.

5. The proposed reorganization was unanimously approved by the boards of trustees of each Fund, including a majority of the trustees who are not interested persons, on April 26, 1995, and June 2, 1995, respectively. In approving the proposed reorganization, each board found that participation in the reorganization is in the best interests of the relevant Fund and that the interests of existing Fund shareholders will not be diluted as a result of the reorganization. The reorganization is subject to approval by the holders of a majority of the outstanding shares of the Acquired Fund expected at a meeting to be held on or about September 28, 1995. Such approval will be solicited pursuant to a prospectus/proxy statement that the Acquiring Fund filed with the SEC on August 17, 1995. No material change affecting the application will be made to the agreement and plan of reorganization without prior approval of the SEC.

6. The Acquiring Fund will bear all expenses related to the registration of its shares to be issued in the reorganization. The Acquired Fund will bear all expenses related to the solicitation of its shareholders in seeking approval of the reorganization. The Adviser will bear all expenses related to obtaining the requested order.

Applicants' Legal Analysis

1. Section 17(a) in relevant part prohibits an affiliated person or principal underwriter of a registered investment company, or affiliated person of such affiliated person or principal underwriter, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 2(a)(3) defines "affiliated person" in relevant part to include persons under common control, and, under section 2(a)(9), it is presumed that an entity that owns 25% or more of the outstanding voting securities of another entity controls such other entity.

2. Rule 17a–8 under the Act exempts from section 17(a) mergers, consolidations, or purchases or sales of substantially all the assets involving registered investment companies that may be affiliated persons solely by reason of having a common investment adviser, common directors/trustees and/or common officers, provided that certain conditions are satisfied. In this case, ReliaStar controls the Acquired Fund by virtue of its wholly-owned subsidiaries, the Life Insurance Companies, owning more than 25% of the shares of the Acquired Fund. Thus, the Funds may be affiliated persons of each other for reasons other than the fact that the Funds have a common adviser.

3. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policies of the registered investment companies concerned and with the general purposes of the Act.

4. Applicants believe that the terms of the proposed reorganization satisfy the standards set forth in section 17(b). Applicants indicate that section 17(a) is designed to protect investors from transactions in which a party thereto has both the ability and the pecuniary interest to influence the actions of the investment company. Applicants assert that any pecuniary interest ReliaStar has in the Acquired Fund is aligned with the best interests of the Acquired Fund's other shareholders. In addition, because ReliaStar's interests in the Funds is insignificant when compared to its aggregate overall net worth, applicants believe that it is reasonable to conclude that ReliaStar has no pecuniary incentive to influence the actions of the Funds.

5. Applicant submit that many of the elements of the type of combination specifically contemplated by rule 17a–8 exist with respect to the proposed reorganization. The boards of the Funds have reviewed the terms of the reorganization as set forth in the Reorganization Agreement, including the consideration to be paid or received, and have found that participation in the reorganization is in the best interests of each Fund and that the interests of the existing shareholders of each Fund will not be diluted as a result of the reorganization. The investment objectives of the Funds, moreover, are essentially the same. Accordingly, applicants argue that the proposed reorganization will be consistent with the policies of each Fund.

6. Section 17(d) and rule 17d–1 prohibit an affiliated person or principal underwriter of an investment company, or an affiliated person of such affiliated person or principal underwriter, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants believe that the proposed merger could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

7. Applicants believe that the terms of the proposed transaction are consistent with the provisions, policies, and purposes of the Act, and not on a basis less advantageous than that of other participants. Applicants further note

that the proposed merger is consistent with the investment policies of the Funds.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23167 Filed 9–18–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–21348; File No. 812–9622]

SAFECO Life Insurance Company, et al.

September 12, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: SAFECO Life Insurance Company ("SAFECO"), First SAFECO National Life Insurance Company of New York ("First SAFECO"), SAFECO Separate Account C ("Account C"), SAFECO Resource Variable Account B (the "Resource Account"), SAFECO Securities, Inc. ("SAFECO Securities"), and PNMR Securities, Inc. ("PNMR").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(C) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of Account C, the Resource Account, or any separate account established by SAFECO or First SAFECO in connection with certain variable annuity contracts ("Contracts"). The exemptions also would apply to any other registered broker-dealer, which is or will be controlling, controlled by, or under common control with SAFECO, and which may serve in the future as principal underwriter for variable annuity contracts that are similar in all material respects to the Contracts and that are offered in the future by SAFECO or First SAFECO ("Future Contracts").

FILING DATE: The application was filed on May 31, 1995, and amended and restated on September 6, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, P.O. Box 34690, Seattle, Washington 98124–1690, Attn: William E. Crawford, Esq.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Wendy Friedlander, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. SAFECO is a stock life insurance company organized under the laws of Washington and is the depositor of Account C and the Resource Account. First SAFECO, a wholly-owned subsidiary of SAFECO, is a stock life insurance company organized under the laws of New York.

2. Account C and the Resource Account, organized by SAFECO under Washington law as insurance company separate accounts to fund certain variable annuity contracts, are registered under the 1940 Act as unit investment trusts. Account C currently funds certain individual variable annuity contracts ("Current C Contracts"), and will fund certain additional forms of variable annuity contracts currently being registered and to be offered by SAFECO through Account C (the "Account C Contracts"). The Resource Account currently funds certain individual and group variable annuity contracts ("Current Resource Contracts") and, in the future, may fund certain additional forms of variable annuity contracts offered by SAFECO. The Current C Contracts and the Current Resource Contracts collectively are referred to as the "Current Contracts"; the Current Contracts and Account C Contracts constitute the "Contracts."

3. SAFECO or First SAFECO may establish one or more separate accounts in the future ("Other Accounts") (Other Accounts, Account C, and Resource Account are referred to collectively as the "Separate Accounts") to support certain variable annuity contracts that are materially similar to the Contracts and are offered through any other broker-dealer that (i) may serve in the future as principal underwriter in respect of certain variable annuity contracts offered by SAFECO or First SAFECO, (ii) is registered under the Securities Exchange Act of 1934 as a broker-dealer and which is or will be a member of the National Association of Securities Dealers, Inc. (the "NASD"), and (iii) is controlling, controlled by, or under common control with SAFECO ("Other Principal Underwriters").

4. The Separate Accounts are comprised of sub-accounts each of which invests in the corresponding portfolio or series of a management investment company registered under the 1940 Act. SAFECO and First SAFECO may create new sub-account(s) of the Separate Accounts.

5. SAFECO Securities, a registered broker-dealer and a member of the NASD, is the principal underwriter of the Current C Contracts and will be the principal underwriter of the Account C Contracts. SAFECO Securities also is the principal underwriter for the Current Resource Contracts, for which PNMR, a registered broker-dealer and a member of the NASD, previously had been the principal underwriter. SAFECO Securities or PNMR may act as principal underwriter for any Contracts issued in the future by SAFECO or First SAFECO.

6. Applicants intend to offer the Account C Contracts to the public for individuals who qualify for federal income tax advantages available under Section 408 of the Internal Revenue Code of 1986, as amended ("qualified Account C Contracts"), and for individuals desiring such benefits who do not qualify for such tax advantages ("non-qualified Account C Contracts"). Account C Contracts will be offered on a flexible payment basis. Owners may allocate purchase payments to SAFECO's general account under the fixed account portion of the Account C Contracts, or to one of several sub-accounts of Account C.

7. Applicants state that the minimum initial purchase payment for an Account C Contract is $2,000 for a qualified Account C Contract and $5,000 for a non-qualified Account C Contract. The minimum additional purchase payment is $250, except for additional purchase payments made through a systematic investing program, in which case the minimum payment is $100.

8. Regarding the Current C Contracts and the Current Resource Contracts, Applicants only seek relief to assess mortality and expense risk charges from the assets of the Separate Accounts in connection with the offering of variable annuity contracts that are materially similar to those contracts. SAFECO, the Resource Account and SAFECO Securities were granted exemptive relief under Section 6(c) of the 1940 Act from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act permitting the assessment of a mortality and expense risk charge (the "Resource Application") to the extent set forth therein.[1] Applicants represent that no material facts contained in the Resource Application have changed since the issuance of the Resource Order and incorporate that application herein by reference. SAFECO, Account C and PNMR were granted exemptive relief under Section 6(c) oft he 1940 Act from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act permitting the deduction of a mortality and expense risk charge (the "Account C Application") to the extent set forth therein.[2] Applicants represent that no material facts contained in the Account C Application have changed since the issuance of the Account C Order and incorporate that application herein by reference.

9. Certain charges and fees are assessed under the Contracts. A Contract owner will be able to make up to twelve transfers each Contract year at no charge. Each additional transfer will be subject to a charge of $10, which, according to Applicants, will not exceed the average costs associated with administering the Contracts.

10. Contract owners will be permitted to make one withdrawal of Contract Value (the amount that the Contract provides for investment at any time), subject to the other limitations and charges under the Contracts, without the assessment of an excess withdrawal charge. A maximum charge of $25 is assessed for each withdrawal in excess of one withdrawal per Contract year.

11. For non-qualified Account C Contracts, SAFECO intends to deduct, as a charge against Contract Value, an amount equal to and for premium taxes. For qualified Account C Contracts, SAFECO intends to pay premium taxes, although SAFECO reserves the right to deduct, as a charge against Contract Value, an amount equal to and for premium taxes. For non-qualified Current Contracts, SAFECO deducts, as a charge against Contract Value, an amount equal to and for premium taxes. For qualified Current Contracts, SAFECO has reserved the right to deduct, as a charge against Contract Value, an amount equal to and for premium taxes. Premium taxes generally range up to 3.5%.

12. No front-end sales charge is imposed when purchase payments are applied under the Account C Contracts. However, a contingent deferred sales charge ("CDSC") is assessed if the Account C Contract is surrendered or partial withdrawals exceeding certain amounts are taken during the six-year period from the issue date of the Account C Contract. Each Contract year, an Account C Contract owner generally may withdraw a total of 10% of the Contract Value as of the date of the withdrawal, without payment of the CDSC. The percentage imposed at the time of surrender or partial withdrawal depends on when the Account C Contract is surrendered or partial withdrawals are taken. The maximum CDSC is 7% of the amount withdrawn during the first Contract year. The percentage scales downward by one percent each year. In no event will the CDSC under the Account C Contracts be greater than 9% of purchase payments.

13. Applicants submit that proceeds from the CDSC may not cover the expected cost of distributing the Contracts and that any shortfall will be recovered from SAFECO's or First SAFECO's general assets, which may include revenue from the mortality and expense risk charge deducted from the Separate Accounts.

14. The administrative charges to be assessed with respect to the Account C Contracts will be (i) an annual administration maintenance charge, currently $30 per Contract year, and (ii) an asset-related administration charge at an annual rate of approximately .15%, which rate may not be increased for the duration of the Account C Contracts. The annual administration maintenance charge is imposed only on Account C Contracts with a Contract Value less than $100,000. SAFECO states that it may change the annual administration maintenance charge over the period that the Account C Contracts are in force, but in no event will the annual administration maintenance charge exceed $40 per Contract year.

15. SAFECO represents that it does not expect that the total revenues from the administrative charges will be greater than the total expected cost of administering the Contracts, on average, excluding costs that are properly categorized as distribution expenses, over the period that the Contracts are in force. Applicants represent that they rely on and are in compliance with the requirements of Rule 26a–1 in connection with charges under the Contracts.

16. Applicants propose to deduct a daily charge for mortality and expense risks from the assets of the Separate Accounts. With respect to the Account C Contracts, SAFECO will assess the Separate Accounts with a daily charge for mortality and expense risks at an aggregate annual rate of 1.25%. Approximately .90% of the annual charge is allocated to the mortality risks and .35% is allocated to the expense risks.

17. SAFECO will assume a mortality risk by its contractual obligation to pay a death benefit to the beneficiary if the owner, as defined in the Account C Contract ("Account C Contract Owner"), dies prior to the Annuity Date. Applicants assert that the Account C Contracts provide a guaranteed death benefit that is the greater of: (a) the Contract Value at the time of notification of death and election of a settlement option, but not later than six months following the date of death; or (b) the previous minimum guaranteed death benefit. Applicants represent that the minimum guaranteed death benefit is reset at the end of each sixth Contract Year (the "Six Year Contract Anniversary"), as described below. At each Six Year Contract Anniversary the last minimum guaranteed death benefit value on record is compared to the then current Contract Value. The greater of the two values becomes the new minimum guaranteed death benefit value. At the first Six year Contract Anniversary the last minimum guaranteed death benefit value of record is the sum of all payments less any withdrawals during the first six Contract Years; that value will be compared to Contract Value. The minimum guaranteed death benefit value is fixed as of the last Six Year Contract Anniversary preceding the Account C Contract Owner's 76th birthday. If an Account C Contract Owner makes withdrawals during the period between Six Year Contract Anniversaries, the minimum guaranteed death benefit value is reset to equal the sum of: (a) The previous minimum guaranteed death benefit value; multiplied by (b) the Contract Value after the withdrawal; divided by (c) the Contract Value before the withdrawal. Similarly, if an Account C Contract Owner makes purchase payments during the period between Six Year Contract Anniversaries, the previous minimum guaranteed death benefit is adjusted to reflect the amount of the purchase payments.

18. Applicants also represent that SAFECO assumes a similar mortality risk under the Current Contracts. The

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[1] Safeco Life Insurance Company, Investment Company Act Release Nos. 15396 (Nov. 5, 1986) (notice) and 15459 (Dec. 5, 1986) ("Resource Order").

[2] Safeco Life Insurance Company, Investment Company Act Release Nos. 20043 (Jan. 28, 1994) (notice) and 20097 (Feb. 25, 1994) (the "Account C Order").

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Current Contracts provide a guaranteed death benefit that is the greater of: (1) Net purchase payments plus any deposits less any withdrawals (including any applicable charges) at the time of death; or (2) the Contract Value determined as of the "Valuation Period" (as defined in the Current Contract), next following the date both proof of death and an election of a single sum payment or of a form of annuity payment is received by SAFECO.

19. SAFECO also represents that it assumes a mortality risk by its contractual obligation to continue to make annuity payments for the life of the annuitant under annuity options involving life contingencies. This assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under an Account C Contract. This relieves the annuitant from the risk of outliving the amounts accumulated for retirement. At the same time, SAFECO represents that it assumes the risk that annuitants as a group will live a longer time than SAFECO's annuity tables predict, which would require SAFECO to pay out more in annuity income than planned. SAFECO assumes an additional mortality risk because the Account C Contract does not impose CDSC or similar charge on the death benefit or upon annuitization.

20. In addition to mortality risks, SAFECO asserts that it assumes an expense risk under the Contracts because the administrative charges under the Contracts may be insufficient to cover actual administrative expenses.

21. Applicants represent that if the administrative charges and mortality and expense risk charges assessed against Separate Account assets are insufficient to cover the expenses and costs assumed, the loss will be borne by SAFECO or First SAFECO. If the amount deducted for mortality and expense risk charges proves more than sufficient, the excess will be profit to SAFECO or First SAFECO. SAFECO anticipates earning a profit from the mortality and expense risk charge.

Applicants' Legal Analysis

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Accounts under the Contracts and Future Contracts as described herein.

2. Section 6(c) of the 1940 Act, in relevant part, provides that the Commission may issue an order exempting any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act as may be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor thereof or principal underwriter therefor, from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified trustee or custodian and held under an agreement that provides that no payment to the depositor or principal underwriter shall be allowed except as a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

4. Applicants assert that the requested exemptions meet the standards of Section 6(c) of the 1940 Act, and that the terms of the relief requested with respect to the Contracts or Future Contracts funded by a Separate Account and distributed by SAFECO Securities, PNMR or any Other Principal Underwriters are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants state that without the requested future relief, they would have to request and obtain exemptive relief in connection with Contracts or Future Contracts to the extent required. Applicants submit that any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application, the Account C Application, and the Resource Application.

5. Applicants submit that the requested exemptive relief is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for SAFECO, First SAFECO and their appropriate affiliates to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of resources. The delay and expense involved in having to seek exemptive relief repeatedly would impair SAFECO's, First SAFECO's, Other Accounts', and Other Principal Underwriters' ability effectively to take advantage of business opportunities as they arise. If SAFECO and First SAFECO were required to seek exemptive relief repeatedly with respect to the issues addressed in this Application, the Resource Application and the Account C Application, investors would not receive any benefit or additional protection thereby. Indeed, they might be disadvantaged as a result of SAFECO's and First SAFECO's increased overhead expenses. Applicants further submit that, for the same reasons, the requested relief is consistent with the purposes of the 1940 Act and the protection of investors.

6. Applicants represent that the mortality and expense risk charge of 1.25% is within the range of industry practice for comparable annuity products. Applicants state that this determination is based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees, and guaranteed annuity rates. SAFECO and First SAFECO undertake to maintain at their home offices, and make available to the Commission upon request, a memorandum setting forth in appropriate detail the products analyzed, the methodology, and the results of the analysis relied upon, in making the foregoing determination.

7. Similarly, Applicants represent, regarding the Future Contracts, that the mortality and expense risk charges under any Future Contracts will be within the range of industry practice for comparable annuity products. Applicants state that this determination will be based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees, and guaranteed annuity rates. SAFECO and First SAFECO undertake to maintain at their home offices, and make available to the Commission upon request, a memorandum setting forth in appropriate detail the products analyzed, the methodology, and the results of the analysis relied upon, in making the foregoing determination.

8. The CDSC may be insufficient to cover all costs relating to the distribution of the Contracts. In that event, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the CDSC. Notwithstanding the foregoing, SAFECO has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and Contract owners.

SAFECO undertakes to maintain at its home office, and make available upon request to the Commission and its staff, a memorandum setting out the basis for such conclusion.

9. SAFECO and First SAFECO also represent that the Separate Accounts will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan pursuant to Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants submit, for the reasons stated herein, that the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the assessment of a mortality and expense risk charge meet the standards set out in Section 6(c) of the 1940 Act. Accordingly, Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 95–23142 Filed 9–18–95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2806]

Ohio; Declaration of Disaster Loan Area (Amendment #1)

The above-numbered Declaration is hereby amended, effective September 1, 1995, to include Erie and Lorain Counties in the State of Ohio as a disaster area due to damages caused by severe storms and flooding which occurred August 7–18, 1995.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Ashland, Cuyahoga, Huron, Medina, and Sandusky in the State of Ohio may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is October 24, 1995, and for loans for economic injury the deadline is May 28, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 13, 1995.

James W. Hammersley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95–23198 Filed 9–18–95; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Austin Straubel International Airport, Green Bay, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Brown County under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On January 20, 1995 the FAA determined that the noise exposure maps submitted by Brown County under part 150 were in compliance with applicable requirements. On July 19, 1995, the Administrator approved the Austin Straubel International Airport noise compatibility program as modified by supplemental information provided by the Austin Straubel International Airport Manager dated June 15, 1995 and comments with addenda and errata sheets dated November 16, 1995. Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Austin Straubel International Airport noise compatibility program is July 19, 1995.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725–4463. Documents reflecting this FAA action may be reviewed at this location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise program for Austin Straubel International Airport, effective July 19, 1995.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program that sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Minneapolis-Airports District Office in Minneapolis, Minnesota.

Brown County submitted to the FAA on July 28, 1993 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from December 1991 through July 1993. The Austin Straubel International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 20, 1995. Notice of this determination was published in the **Federal Register** on February 21, 1995.

The Austin Straubel International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 20, 1995 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained fourteen (14) proposed actions for noise mitigation on and off the Airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective July 19, 1995.

Outright approval was granted for twelve (12) of the fourteen (14) specific program elements. Of the six (6) Operational Measures, the four (4) that were approved include Part 91 Stage 2 phase out, runway 12/30 relocation, balanced runway use, and noise abatement climb procedures. Both of the two (2) Capital Improvement Measures were approved including acquisition of noise buffer zones and instrument landing system (ILS) for runway 18. All six (6) of the Land Use Measures were approved. These include comprehensive planning efforts, airport zoning districts, compatible development of airport property, noise level reduction requirements for new construction, airport noise disclosure statements, and a citizens advisory committee.

The two (2) Operational Measures that were disapproved pending submission of additional information were a restriction on "touch & go" landing operations and the monitoring of non-emergency night maintenance run-ups. The restriction on "touch & go" operations was determined to be lacking adequate analysis to satisfy part 150 approval requirements, such as how existing training operations might be affected or how the proposal was determined to be noise beneficial. The measure to monitor non-emergency night maintenance run-ups was also lacking in adequate analysis such as discussion of the airport's existing policy, existing location of run-ups in proximity to noise sensitive land uses, or other factors required to meet the approval requirements of 14 CFR part 150.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on July 19, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the airport administrative offices of Brown County.

Issued in Minneapolis, Minnesota on August 22, 1995.

Robert A. Huber,

Acting Manager, Minneapolis Airports District Office.

[FR Doc. 95–23210 Filed 9–18–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Christie, Director, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; phone (202) 267–9677; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following task:

> Digital Information and Use: Review 14 CFR Parts 43, 121, 125, 129, 135, and 145, the corresponding sections of the European Joint Aviation Requirements (JAR), and supporting policy and guidance material, and recommend to the FAA appropriate revisions for harmonization, including advisory material, relative to the issue of regulations that prohibit or discourage the access or use of information, guidance material or performance data that is in digital or electronic form in order to permit the use of the other digital media.

The FAA also has asked that ARAC determine if rulemaking action (e.g., NPRM), should be taken, or advisory material should be issued. If so, ARAC has been asked to prepare the necessary documents, including economic analysis, to justify and carry out its recommendation(s).

ARAC Acceptance of Task

The ARAC Executive Committee has accepted the task and has chosen to establish a new Digital Information Working Group. The working group will serve as staff to the ARAC Executive Committee to assist it in the analysis of the assigned task. Working group recommendations must be reviewed and approved by the Executive Committee. If the Executive Committee accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Digital Information Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the meeting of the ARAC Executive Committee held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.
3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to the appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.
4. Provide a status report at each meeting of the ARAC Executive Committee.

Participation in the Working Group

The Digital Information Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed by the chair, the executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC Executive Committee will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Digital Information Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on September 13, 1995.

Chris Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–23209 Filed 9–18–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc. Special Committee 135; Environmental Conditions and Test Procedures for Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 135 meeting to be held October 5–6, 1995, starting at 9:30 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Opening Remarks; (2) Introductions; (3) Review and Approval of Minutes of the Previous Meeting; (4) Review of All New Papers; (5) Review of Schedule Milestones to Complete Revision (D); (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 14, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–23212 Filed 9–18–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc. Special Committee 182; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource (ACR)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 182 meeting to be held October 4–6, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes from the Meeting Held July 18–20; (4) Refine the List of ACR Objectives/Benefits; (5) Continue Creation of "Story Board" Topical Sentences for Major Sections of the MOPS: Section 1.0 (review last meeting results and complete); Section 2.1; (6) Discuss Industry Expectations for Regulatory Approval of ACR Appliance and Appliance Software: Daimler Benz Model, Honeywell Discussion Paper, Collins Paper (Revisited); (7) Update Glossary (RTCA Paper No. 280–94/SC182–10); (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 14, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–23213 Filed 9–18–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose Only and Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Seattle-Tacoma International Airport, Submitted by the Port of Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose only and impose and use PFC revenue at Seattle-Tacoma International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before October 19, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 540; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Gina Marie Lindsey, Managing Director, Aviation, at the following address: Port of Seattle, P.O. Box 68727, Seattle, WA 98168.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Seattle-Tacoma International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Johnson, (206) 227–2655; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 540; Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose only and impose and use PFC revenue at Seattle-Tacoma International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 12, 1995, the FAA determined that the application to impose only and impose and use the revenue from a PFC submitted by the Port of Seattle was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 23, 1995.

The following is a brief overview of the application. Level of the proposed PFC: $3.00; Proposed charge effective date: January 1, 1996; Proposed charge expiration date: December 30, 2000; Total estimated PFC revenues: $162,000,000.00.

Brief description of proposed project: Impose and Use projects: Terminal apron improvements; Runway 16R rehabilitation; Aircraft rescue fire fighting (ARFF) training facility; Noise programs; Skybridge elevators installation; Emergency power generators refurbishment; Electrical system power upgrade; Land acquisition for South Aviation Support Area (SASA) development; Impose only projects: Safety area improvements; Passenger conveyance system.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Seattle-Tacoma International Airport.

Issued in Renton, Washington on September 12, 1995.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95–23211 Filed 9–18–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which NHTSA will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, the National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on September 21, 1995, beginning at 1:30 p.m. and ending by 5 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the eleventh of a series of quarterly public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on September 21, 1995. The meeting was announced on August 24, 1995 (60 FR 44114). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5 p.m., NHTSA's Office of Research and Development will discuss the following topics:

* Variable Dynamics Test Vehicle,

* Child Safety Research (Specifically ISOFIX),

* Frontal Offset Test Procedure Development,

* On-Line Tracking System for NHTSA's Research Projects.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by September 5, 1995, in response to the announcement published on August 24, 1995.

As announced on August 24, 1995, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by September 12, 1995, to the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: September 14, 1995.

William A. Boehly,

Associate Administrator for Research and Development.

[FR Doc. 95–23173 Filed 9–18–95; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before October 4, 1995.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
5749–M	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE (See Footnote 1)	5749
7280–M	U.S. Department of Defense, Falls Church, VA (See Footnote 2)	7280
9909–M	Taylor-Wharton, Harrisburg, PA (See Footnote 3)	9909
10326–M	Allied Signal Inc., Tempe, AZ (See Footnote 4)	10326
10660–M	American Radiolabeled Chemicals Inc., St. Louis, MO (See Footnote 5)	10660
10867–M	Pacific Scientific, Duarte, CA (See Footnote 6)	10867
11197–M	Chem Coast Inc., La Porte, TX (See Footnote 7)	11197
11481–M	ITT Automotive Aftermarket Division (See Footnote 8)	11481
11499–M	Brownie Tank Mfg., Co., Minneapolis, MN (See Footnote 9)	11499
11509–M	Alliance Petroleum Corp. et al (See Footnote 10)	11509
11515–M	R.J. Reynolds Tobacco Co., Winston-Salem, NC (See Footnote 11)	11515

(1) To modify the exemption to provide for construction of an additional DOT Specification MC–331 cargo tank for use in transporting Division 2.3, PIH material.

(2) To modify exemption to provide for containerized vehicles or equipment to include battery cables that are disconnected and secured to prevent sparks or ignition with container stowed in a mechanical ventilated hole or compartment, or stowed above deck.

(3) To modify exemption to provide for several modifications to the cylindrical section of each cylinder after heat treatment of DOT–3AA specification cylinders.

(4) To modify the exemption to provide for alternative tests of non-DOT specification welded pressure vessel comperable to DOT 3HT cylinders.

(5) To modify the exemption to provide for shipment of sodium borohydride, Division 4.3, in small quantities without secondary hazard label in DOT-specification packaging.

(6) To modify the exemption to provide for several construction changes to non-DOT specification cylinders for use in transporting nitrogen, classed as nonflammable gas, Division 2.2.

(7) To modify the exemption to increase the quantity to 12 liters per package of various hazardous materials known as test kits to be shipped in specially designed packaging.

(8) To reissue an exemption originally issued on an emergency basis to authorize the manufacture, mark and sale of shock absorbers, containing a Division 2.2. gas, for transportation as accumulators.

(9) To reissue an exemption originally issued on an emergency basis to authorize the manufacture, mark and sale of non-DOT specification cargo tanks comparable to DOT specification 406 for shipment of certain Class 3 material.

(10) To reissue an exemption originally issued on an emergency basis to authorize the continued intrastate transportation of certain Class 3 liquids in non-DOT specification cargo tanks whose designs have been approved by the California State Fire Marshal.

(11) To reissue an exemption originally issued on an emergency basis to authorize transportation of aluminum processing by products, Division 4.3, contained in open top trailers covered with a tarpaulin.

Application No.	Applicant	Parties to exemption
5704–P	California Advanced Environmental Technology Corp., Hayward, CA	5704
5704–P	Advanced Environmental Technology Corp. (AETC), Flanders, NJ	5704
5704–P	Advanced Environmental Technical Services (AETS), Flanders, NJ	5704
6670–P	Matheson Gas Products, Secaucus, NJ	6670
6670–P	FIBA Technologies, Inc., Westboro, MA	6670
6971–P	Crescent Chemical Co., Inc., Hauppauge, NY	6971
8008–P	Wheaton, Inc., Millville, NJ	8008
8451–P	Advanced Environmental Technical Services (AETS), Flanders, NJ	8451
8451–P	Applied Energy Technology Corp., Tempe, AZ	8451
8627–P	Technical Service Company, Long Beach, CA	8627
9275–P	Dragoco, Inc., Totowa, NJ	9275
9275–P	Elias Fragrances, Inc., Brooklyn, NY	9275
9723–P	Carolina Environmental Associates, Inc., Burlington, NC	9723
9723–P	Advanced Environmental Technical Services (AETS), Flanders, NJ	9723
9723–P	Environmental Waste Resources, Inc., Waterbury, CT	9723
9769–P	Advanced Environmental Technical Services (AETS), Flanders, NJ	9769
9769–P	Environmental Waste Resources, Inc., Waterbury, CT	9769
10001–P	Mills Welding Supply, Inc., Buffalo, NY	10001
10298–P	Woods Air Fuel, Inc., Palmer, AK	10298
10307–P	Clearon Corporation, South Charleston, WV	10307
10441–P	Advanced Environmental Technical Services (AETS), Flanders, NJ	10441
10441–P	Environmental Waste Resources, Inc., Waterbury, CT	10441
10441–P	Environmental Response, Inc., Hendersonville, TN	10441
10798–P	Clearon Corporation, South Charleston, WV	10798
10880–P	ETI Explosives Technologies International, Inc., Wilmington, DE	10880
10933–P	Advanced Environmental Technical Services (AETS), Flanders, NJ	10933
10933–P	Environmental Waste Resources, Inc., Waterbury, CT	10933
10933–P	Environmental Response, Inc., Hendersonville, TN	10933
10984–P	Matheson Gas Products, Secaucus, NJ	10984
10987–P	Los Alamos National Laboratory, Los Alamos, NM	10987
11043–P	Advanced Environmental Technical Services (AETS), Flanders, NJ	11043
11043–P	Chemical Analytics, Inc., Romulus, MI	11043

Application No.	Applicant	Parties to exemption
11043–P	Environmental Response, Inc., Hendersonville, TN	11043
11055–P	Advanced Environmental Technology Corp. (AETC), Flanders, NJ	11055
11055–P	California Advanced Environmental Technology Corp., Hayward, CA	11055
11055–P	Chemical Analytics, Inc., Romulus, MI	11055
11055–P	Advanced Environmental Technical Services (AETS), Flanders, NJ	11055
11055–P	Environmental Waste Resources, Inc., Waterbury, CT	11055
11080–P	ETI Explosives Technologies International, Inc., Wilmington, DE	11080
11156–P	Southern Energy, Inc., Louisville, TN	11156
11156–P	Alpha-IRECO, Inc., Lincoln, CA	11156
11184–P	BASF Corporation, Mount Olive, NJ	11184
11197–P	Uniroyal Chemical Company, Middlebury, CT	11197
11197–P	Diversey Water Technologies, Inc., Chagrin Falls, OH	11197
11207–P	Northern States Power Company, Minneapolis, MN	11207
11230–P	Viking Explosives & Supply, Inc., Rosemount, MN	11230
11230–P	Mt. State Bit Service, Inc., Morgantown, WV	11230
11230–P	Nelson Brothers, Inc., Parrish, AL	11230

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 14, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–23234 Filed 9–18–95; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Safety; Notice of applications for exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before October 19, 1995.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11511–N	Brenner Tank Inc., Fond du Lac, WI	49 CFR 178.345–19(c), 178.345–8(c).	To authorize the manufacture, mark and sale of piston carrying DOT 407 cargo tank motor vehicles for use in transporting certain hazardous materials. (mode 1)
11514–N	Jet Propulsion Lab, Pasadena, CA	49 CFR 172.101 Column (9B)	To authorize a spacecraft test vehicle equipped with rocket motors to be shipped as an external load by helicopter. (mode 4)
11526–N	BOC Gases, Murray Hill, NJ	49 CFR 172.302(c), 173.34(e)	To authorize the use of ultrasonic inspection method in lieu of hydrostatic testing of 3A and 3AA cylinders. (modes 1, 2, 3)
11527–N	Technical Service Co., Long Beach, CA.	49 CFR 173.201, 173.202, 173.203, 178.253.	To authorize the transportation of Class 3 and 8 material in 60 gallon capacity non-DOT specification portable tanks manifolded together within a frame, having top and bottom opening designed and constructed to DOT specification 57 except for marking and capacity. (mode 1)
11529–N	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.192(a)(3)	To authorize the transportation of Division 2.3, PIH, Zone A material in DOT-Specification 3AL aluminum cylinders. (mode 3)
11530–N	Department of Energy, Washington, DC.	49 CFR 173.244(c)	To authorize the transportation of partially filled sodium metal storage tanks to offsite disposal processing facility. (modes 1, 2)
11531–N	Grand Aire Express, Inc., Monroe, MI.	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize the transportation in commerce of Division 1.1, 1.2, 1.3, 1.4, explosives that are not permitted for shipment by air or are in quantities greater than those authorized. (mode 4, 5)
11532–N	APD Cryogenics Inc., Allentown, PA	49 CFR 173.306	To authorize the transportation of a refrigeration machine that utilizes a mixture containing propane and nitrogen in quantities that exceed those specified. (modes 1, 3, 4, 5)
11533–N	Research Products Co., Salina, KS	49 CFR 106, 107, 171–180	To authorize the transportation in commerce of an aluminum phosphide based pesticide which meets the definition of a Division 4.3 material to be shipped as aluminum phosphide pesticide, a Division 6.1 material. (mode 1)
11536–N	Hughes Space & Communications Co., Los Angeles, CA.	49 CFR 173.159, 173.302, 173.304, 173.62.	To authorize the transportation in commerce of various hazardous materials contained within a propulsion system of a communication satellite. (mode 4)
11537–N	Babson Bros. Co., Romeoville, IL	49 CFR 177.834(h)	To authorize the transportation in commerce of certain Class 8 material [illegible] IBCs that are securely mounte[illegible] to a [illegible] trailer, but not removed for th[illegible] vehi[illegible] to loading or unloading of con[illegible] 1)
11538–N	Process Engineering, Plaistow, NH	49 CFR 173.320	To authorize the [illegible]ation in commerce of liquid argon, liquid oxygen and liquid nitrogen in AAR–204W tank cars equipped with 60 psig safety relief valve and 90 psig rupture disk. (mode 2)
11539–N	C–CAM International L.L.C., Sand Springs, OK.	49 CFR 173.315(a), 178.245–1(b)	To authorize the manufacture, mark and sale of non-DOT specification IMO Type 5 portable tanks to be used for the transportation in commerce of Division 2.1, 2.2, and 2.3 materials. (modes 1, 2, 3)
11540–N	Convenience Products, Fenton, MO	49 CFR 173.1200(a)(8)(ii)(E)	To provide for an alternative test of aerosol containers with polyurethane prepolymer components to attain internal pressure of at least 130 degrees. (modes 1, 2, 3, 4, 5)
11541–N	Kaiser Compositek, Brea, CA	49 CFR 173.302(a), 173.304(a)(d), 175.3.	To authorize the manufacture, mark and sale of non-DOT specification fiber reinforced plastic full composite cylinders constructed from seamless 6061–T6 aluminum alloy liner for use in transporting certain flammable gases, Division 2.1. (modes 1, 2, 3, 4, 5)
11542–N	Sunrise Supply Enterprises, Ltd., Albuquerque, NM.	49 CFR 107.503(1), 107.503(1), 178.340–5(d).	To authorize the transportation in commerce of a non-DOT specification cargo tank built to MC 306 requirements except for ASME "U" stamp for use in transporting flammable liquid, Class 3. (mode 1)
11543–N	E. I. Dupont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 172.203(d)(4), 172.403(g)(2)	To authorize the transportation in commerce of non-bulk packages containing low-level radioactive isotopes to be transported using becquerel units for curie units, transported by public highway without prior or subsequent air transport. (mode 1)
11544–N	Dupont Merck Pharmaceutical Co., N. Billerica, MA.	49 CFR 172.203(d)(4), 172.403(g)(2)	To authorize the transportation of non-bulk packages containing low-level radioactive isotopes with becquerel units for curie units specifying the quantity on shipping papers and labels transported by public highway without prior or subsequent air transport. (mode 1)
11545–N	Bernzomatic, Medina, NY	49 CFR 173.304(d)(ii)	To authorize the transportation in commerce of a DOT Specification 2Q canister with a butane propane mixture, with a vapor pressure of 55 psig maximum at 70 degrees F. (modes 1, 2, 4)
11546–N	Trinity River Authority of Texas, Grand Prairie, TX.	49 CFR 174.67(i)	To authorize rail cars to remain connected during the unloading process without the physical presence of an unloader. (mode 2)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11547–N	RTS Technology, Inc., North Andover, MA.	49 CFR 173.431	To authorize the transportation of up to 27 curies of radioactive material in special form in Type A package. (modes 4, 5)
11548–N	Akzo Nobel, Chicago, IL	49 CFR 173.211, 173.212, 173.213	To authorize the transportation in commerce of various solid hazardous materials in compressed gas type cylinders except for specification 8 and 3HT type. (mode 1)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 14, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–23235 Filed 9–18–95; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF VETERANS AFFAIRS

National Service Life Insurance Policy Loan Interest Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is hereby giving notice of the variable loan interest rate for loans granted on National Service Life Insurance (NSLI).

DATES: The effective date for the new variable loan interest rate is October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. George Poole, Chief, Insurance Program Administration Staff (290B), Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101 (215) 951–5718.

SUPPLEMENTARY INFORMATION: VA's National Service Life Insurance Regulations at 38 CFR 8.28 (amended at 59 FR 65717) provide that NSLI policy loans will bear a variable interest rate, which could be adjusted annually, and that such rate shall equal the yield on the Ten-Year Constant Maturities Index for U.S. Treasury Securities for the month of June of the year of calculation rounded down to the next whole percentage point. These regulations further provide that the adjusted loan rate would be effective, subject to computer readiness, on or after the first day of October. The Council of Economic Advisers established the above-mentioned index for June 1995 at 6.17 percent. Rounding down, the NSLI variable policy loan rate, effective October 1, 1995, will be 6 percent.

Dated: September 7, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–23145 Filed 9–18–95; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 181
Tuesday, September 19, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12 noon, Monday, September 25, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23360 Filed 9–15–95; 3:19 pm]

BILLING CODE 6210-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 18, 25, October 2 and 9, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of September 18

There are no meetings scheduled for the Week of September 18.

Week of September 25—Tentative

There are no meetings scheduled for the Week of September 25.

Week of October 2—Tentative

Tuesday, October 3

10:00 a.m.

Briefing by National Academy of Sciences (NAS) on Recommendations for Technical Bases of Yucca Mountain Standards (Public Meeting)

Week of October 9—Tentative

Tuesday, October 10

10:00 a.m.

Briefing on NRC's Technical Training Program (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of "Revisions to Regulatory Requirements for Reactor Pressure Vessel Integrity in 10 CFR Part 50" scheduled for September 11, was *postponed*.

Affirmation of "Final Amendment to 10 CFR Part 50, Appendix J, "Containment Leakage Testing," to Adopt Performance-Oriented and Risk-Based Approaches" (Public Meeting) was held on September 12.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: September 14, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–23287 Filed 9–15–95; 11:26 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 47439, September 12, 1995].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: September 12, 1995.

CHANGE IN THE MEETING: Cancellation.

The closed meeting scheduled for Thursday, September 14, 1995, at 10:30 a.m., has been cancelled.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 13, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–23370 Filed 9–15–95; 3:48 pm]

BILLING CODE 8010-01-M

federal register

Tuesday
September 19, 1995

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 251, 252, and 255
Conversion From Coinsurance to Full Insurance; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

[Docket No. FR–3813–I–01]

RIN 2502–AG50

Conversion From Coinsurance to Full Insurance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: HUD is amending its multifamily coinsurance regulations to provide coinsuring lenders with two new options in dealing with defaulted coinsured mortgages. Specifically, this interim rule permits coinsuring lender-issuers to request that HUD endorse certain defaulted mortgages for full insurance, without a GNMA takeover of the lender-issuer's entire portfolio. Additionally, this interim rule allows coinsuring lenders to advance funds to cure mortgage delinquencies on a coinsured mortgage and to reduce principal on that mortgage to a level that restores the financial viability of the project.

DATES: Effective date: October 19, 1995.

Sunset Provision: Sections 251.3, 251.4, 251.5, 252.3, 252.4, 252.5, 255.3, 255.4, and 255.5 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

Comments due date: November 20, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gwen Chandler, Acting Deputy Director, Coinsurance Management Division, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500, Room 6176, telephone (202) 401–3272. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594 or 1–800–877–8339 (Federal Information Relay Service TDD). (Other than the "800" number, these telephone numbers are not toll free).

SUPPLEMENTARY INFORMATION:

I. Background

On October 10, 1990 (55 FR 41312), a final rule was published terminating the authority of the FHA Commissioner to insure mortgage loans under the FHA multifamily coinsurance programs and revising 24 CFR parts 251, 252 and 255. As a result of that final rule, parts 251, 252 and 255 were each reduced to a single section dealing with the program phase-out process. A subsequent rulemaking added an additional section to each part revising the requirements concerning the Government National Mortgage Association's (GNMA) right to assignment. (See 55 FR 41319, October 10, 1990.) While they are no longer included in the Code of Federal Regulations, those regulations in effect before November 12, 1990 continue to govern the rights and obligations of mortgagors, coinsuring lenders and HUD under contracts of coinsurance entered into before the termination of the coinsurance programs.

HUD is making two changes in the coinsurance regulations in 24 CFR parts 251, 252, and 255. These amendments are designed to reduce Government costs and to benefit coinsuring lenders by minimizing their risk of default under a GNMA guaranty agreement and encouraging the continued viability of housing financed with coinsured mortgages. These amendments are intended to apply to existing coinsured mortgages which are in default. Under 24 CFR 251.4, 252.4, and 255.4 (1990 and earlier), the FHA Commissioner may amend the regulations that constitute the contract of coinsurance, but the amendments may not adversely affect a lender under an existing contract of coinsurance. HUD believes that these amendments are mutually beneficial to HUD and the lenders. The amendments provide additional options for dealing with defaulted coinsured mortgages. Their use is at the option of the coinsuring lender, subject to HUD approval.

The first change (see §§ 251.3, 252.3, and 255.3) affects only coinsured mortgages that back securities guaranteed by GNMA. It permits a coinsuring lender, for mortgages meeting the rule's requirements, to request that HUD endorse the mortgage for full insurance. Under current regulations, the option to have a mortgage endorsed for full insurance is available only to GNMA after it has taken over all loans in a coinsuring lender-issuer's portfolio following the lender-issuer's default under the GNMA guaranty agreement. After GNMA has taken over such a portfolio, it may have all of the coinsured mortgages in the portfolio endorsed for full insurance. This interim rule permits a coinsuring lender-issuer to request that certain seriously defaulted coinsured mortgages be converted to full insurance, thereby minimizing the risk of a lender-issuer's default under the GNMA guaranty agreement and of a GNMA takeover of the lender-issuer's entire portfolio. HUD will impose a fee on the coinsuring lender that is intended to have the lender share an equitable portion of the cost of the mortgage loan default.

The second amendment (see §§ 251.4, 251.5, 252.4, 252.5, 255.4, and 255.5) would apply to all coinsuring lenders. It is intended to give coinsuring lenders additional flexibility in dealing with less serious defaults by providing a partial payment of claim mechanism that would enable the mortgagor and the lender to recast the coinsured mortgage so that it becomes a viable performing coinsured mortgage. The partial payment of claim procedure also benefits the government as it results in a current reinstated first mortgage, and prevents a full claim being made on the insurance fund. This option is modelled after the partial payment of claim procedure in HUD's Housing Finance Agency Risk-Sharing Program. (See 24 CFR part 266, in particular § 266.630.)

Under the partial payment of claim procedure, a coinsuring lender that meets the regulatory requirements and that receives HUD approval could cure the first mortgage interest delinquency on the coinsured mortgage and could reduce principal on that mortgage to a level that restores the financial viability of the project by accepting a note in that amount. The coinsuring lender must secure this note with a mortgage that is subordinate to the coinsured mortgage. HUD will make a partial payment of claim in an amount equal to 80 percent of the above amount. The lender must remit to HUD 80 percent of all amounts collected on the lender's junior mortgage.

The junior mortgage is a second note and is similar to a surplus cash note. Surplus cash constitutes any amount of cash remaining on a monthly basis after payment of debt service on the first note, operating expenses, deferred maintenance and any other reasonable expenses required to be paid under the insured mortgage. Since the mortgage is considered to be soft and similar to a surplus cash note, HUD expects to be repaid from net cash produced by the project. However, if for any reason a project is unable to produce surplus cash (i.e. a downturn in the market), neither HUD, nor the lender, nor the owner will receive disbursements from the project. There is no commitment between HUD and the lender for repayment on the junior mortgage.

Where the mortgage that is a candidate for the partial payment procedure is backing a GNMA guaranteed mortgage-backed security, the mortgagee should understand clearly that, while GNMA does not object to a partial payment arrangement, GNMA procedures require (1) that the full amount of the partial claim payment be passed through to security holders and (2) that subsequent monthly payments to security holders must include: (a) The scheduled principal due on the mortgage based on the fixed monthly payment specified in the loan prior to any modification resulting from the partial payment of claim arrangement and (b) interest at the security rate on the unpaid pool principal balance. Mortgagees who agree to a recasting of the mortgage which reduces the mortgagor's monthly payment must therefore, make up, from the mortgagee's own funds, the difference between the amount paid by the mortgagor and the amount due to the security holders, until the security holders have received all principal and interest due under the terms of the security. Alternatively, simultaneous with the partial payment of claim transaction for a loan more than 90 days in default, the existing pool may be terminated and a new GNMA security issued and marketed in the amount of the reduced first mortgage.

II. Justification for Interim Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1). HUD finds that in this case prior comment is contrary to the public interest, since immediate implementation of this interim rule will benefit the public. Specifically, this interim rule allows coinsuring lender-issuers to minimize their risk of default under a GNMA guaranty agreement by requesting the conversion of certain mortgages to full insurance. This interim rule also permits coinsuring lenders to restore the financial viability of projects by advancing funds to cure mortgage delinquencies. Although HUD believes issuing this interim rule for immediate effect will benefit the public, HUD welcomes public comment. All comments will be considered in the development of the final rule.

HUD has adopted a policy of setting an expiration date for an interim rule unless a final rule is published before that date. These "sunset" provisions appear in §§ 251.3(c), 251.4(e), 251.5(b), 252.3(c), 252.4(e), 252.5(b), 255.3(c), 255.4(e), and 255.5(b), and provide that the amendments made to 24 CFR parts 251, 252, and 255 by this interim rule will expire on a date 18 months from their effective date.

III. Regulatory Reinvention

Consistent with Executive Order 12866, and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on the subject of Regulatory Reinvention, the Department is reviewing all its regulations to determine whether certain regulations can be eliminated, streamlined or consolidated with other regulations. As part of this review, this interim rule, at the final rule stage, may undergo revisions in accordance with the President's regulatory reform initiatives. In addition to comments on the substance of these regulations, the Department welcomes comments on how this interim rule may be made more understandable and less burdensome.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this interim rule are directed toward participants in the FHA multifamily coinsurance program. It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with this program.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this interim rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The interim rule merely amends the regulations governing HUD's multifamily coinsurance program. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of the interim rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities.

E. Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects

24 CFR Part 251

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 252

Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 255

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 251, 252, and 255 are amended as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 251 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9; 42 U.S.C. 3535(d).

2. Sections 251.3, 251.4 and 251.5 are added to read as follows:

§ 251.3 Case-by-case conversion to full insurance.

(a) Upon the request of a coinsuring lender, the Commissioner may endorse a coinsured Mortgage for full insurance effective as of date of such endorsement, if the Commissioner is satisfied that:

(1) The Mortgage backs securities guaranteed by GNMA;

(2) Continuing the Mortgage under coinsurance could jeopardize the lender's viability and ability to service its remaining portfolio of coinsured Mortgages;

(3) The lender has made reasonable efforts to work out any Mortgage default consistent under applicable regulations in effect prior to November 12, 1990, but the remedies available to the lender have not been adequate to reinstate the Mortgage;

(4) The conversion would be less costly to the Department than if the Mortgage remained coinsured; and

(5) The lender agrees to pay HUD a fee in an amount equal to 5 dollars for every 1,000 dollars of the unpaid principal balance.

(i) Lenders submitting a claim for the full insured mortgage amount following the Commissioner's endorsement of the mortgage will pay HUD a fee in an amount equal to 10 percent of the outstanding principal balance on the mortgage. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(ii) Lenders submitting a claim for partial payment following the Commissioner's endorsement of the Mortgage will pay HUD a fee in an amount equal to 10 percent of the reduction in the unpaid principal balance resulting from the partial payment. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(iii) HUD will credit all advances made by the lender on the project's behalf against the fees set forth in paragraphs (a)(5) (i) and (ii) of this section. For the purposes of this section, advances made on the project's behalf are defined as those amounts included under applicable regulations in effect prior to November 12, 1990. However, the credit for legal fees may not exceed 30 percent of the total credit which the lender will offset against the fee established in paragraphs (a)(5) (i) and (ii) of this section.

(b) After endorsement of the Mortgage by the Commissioner, any future insurance claim or any assignment of the fully insured Mortgage shall be governed by 24 CFR part 221, except that any payment will be made in cash instead of debentures.

(c) Section 251.3 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

§ 251.4 Partial payment of claim.

(a) *General.* As an alternative to filing a notice of election to acquire the property under applicable regulations in effect prior to November 12, 1990 or appplicable earlier provision, a lender may file a claim for partial payment. Upon receipt of such a claim, the Commissioner may make a partial payment of claim in accordance with the requirements of this section.

(b) *Lender submission.* The lender must provide the following information with its application for a partial claim payment:

(1) The amount by which the lender will reduce the principal on the coinsured Mortgage and the amount of delinquent interest on the coinsured Mortgage that the lender will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured Mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment, when considered with other resources available to the project, is sufficient to restore the financial viability of the project;

(iii) The project is or can be made (at reasonable cost) structurally sound;

(iv) The management of the property is satisfactory; and

(v) The default under the coinsured Mortgage was beyond the control of the mortgagor.

(c) *Claim processing*—(1) *Acceptable application.* If the lender's submission satisfies the requirements of paragraph (b) of this section and is acceptable to the Commissioner, the Commissioner shall notify the lender to proceed to closing on its junior mortgage authorized by paragraph (d)(3) of this section. When the junior mortgage is closed, the lender shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the lender, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the lender of the information needed to make the application acceptable or shall advise the lender that by a date specified it must institute action to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made on a mortgage coinsured under this part.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to 80 percent of the amount of relief provided by the lender in the form of a reduction in principal and a deferral of delinquent interest on the coinsured Mortgage.

(3) *Lender junior mortgage.* Repayment of the relief provided by the lender must be secured by a mortgage to the lender, junior to the remaining coinsured Mortgage. This junior mortgage may provide for postponed amortization and may not be assigned by the lender. This junior mortgage is not coinsured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by owner to HUD.* The owner must remit to HUD 80 percent of all amounts due under the junior mortgage. Payments made after the 15th of the month must include a 5 percent late charge plus accrued interest at the debenture rate in effect as of the date of the firm commitment or initial endorsement of the coinsured mortgage, whichever rate is higher.

(5) *Partial claim repayment by owner to lender.* The owner must remit all amounts due for repayment of the relief provided by the lender's junior mortgage to the lender.

(6) *Certified statements of amounts collected.* As long as the junior mortgage remains of record, the lender must submit to the Commissioner a quarterly certified statement of the amounts collected by the lender. The lender must submit a final certified statement within 30 days after the junior mortgage is paid in full, foreclosed, or otherwise terminated.

(e) Section 251.4 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

§ 251.5 Mortgage insurance premiums after a partial claim payment.

(a) After a partial claim payment is made, mortgage insurance premiums shall continue to be calculated as if there had been no partial claim payment. HUD will bill the lender on the .05 percent portion of the mortgage insurance premium.

(b) Section 251.5 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

3. The authority citation for 24 CFR part 252 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9; 42 U.S.C. 3535(d).

4. Sections 252.3, 252.4 and 252.5 are added to read as follows:

§ 252.3 Case-by-case conversion to full insurance.

(a) Upon the request of a coinsuring lender, the Commissioner may endorse a coinsured Mortgage for full insurance effective as of date of such endorsement, if the Commissioner is satisfied that:

(1) The Mortgage backs securities guaranteed by GNMA;

(2) Continuing the Mortgage under coinsurance could jeopardize the lender's viability and ability to service its remaining portfolio of coinsured Mortgages;

(3) The lender has made reasonable efforts to work out any Mortgage default consistent with applicable regulations in effect prior to November 12, 1990, but the remedies available to the lender have not been adequate to reinstate the Mortgage;

(4) The conversion would be less costly to the Department than if the Mortgage remained coinsured; and

(5) The lender agrees to pay HUD a fee in an amount equal to 5 dollars for every 1,000 dollars of the unpaid principal balance.

(i) Lenders submitting a claim for the full insured mortgage amount following the Commissioner's endorsement of the mortgage will pay HUD a fee in an amount equal to 10 percent of the outstanding principal balance on the mortgage. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(ii) Lenders submitting a claim for partial payment following the Commissioner's endorsement of the Mortgage will pay HUD a fee in an amount equal to 10 percent of the reduction in the unpaid principal balance resulting from the partial payment. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(iii) HUD will credit all advances made by the lender on the project's behalf against the fees set forth in paragraphs (a)(5) (i) and (ii) of this section. For the purposes of this section, advances made on the project's behalf are defined as those amounts included under applicable regulations in effect prior to November 12, 1990. However, the credit for legal fees may not exceed 30 percent of the total credit which the lender will offset against the fees established in paragraphs (a)(5) (i) and (ii) of this section.

(b) After endorsement of the Mortgage by the Commissioner, any future insurance claim or any assignment of the fully insured Mortgage shall be governed by 24 CFR part 221, except that any payment will be made in cash instead of debentures.

(c) Section 252.1 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

§ 252.4 Partial payment of claim.

(a) *General.* As an alternative to filing a notice of election to acquire the property under applicable regulations in effect prior to November 12, 1990 or applicable earlier provision, a lender may file a claim for partial payment. Upon receipt of such a claim, the Commissioner may make a partial payment of claim in accordance with the requirements of this section.

(b) *Lender submission.* The lender must provide the following information with its application for a partial claim payment:

(1) The amount by which the lender will reduce the principal on the coinsured Mortgage and the amount of delinquent interest on the coinsured Mortgage that the lender will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured Mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment, when considered with other resources available to the project, is sufficient to restore the financial viability of the project;

(iii) The project is or can be made (at reasonable cost) structurally sound;

(iv) The management of the property is satisfactory; and

(v) The default under the coinsured Mortgage was beyond the control of the mortgagor.

(c) *Claim processing*—(1) *Acceptable application.* If the lender's submission satisfies the requirements of paragraph (b) of this section and is acceptable to the Commissioner, the Commissioner shall notify the lender to proceed to closing on its junior mortgage authorized by paragraph (d)(3) of this section. When the junior mortgage is closed, the lender shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the lender, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the lender of the information needed to make the application acceptable or shall advise the lender that by a date specified it must institute action to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made on a mortgage coinsured under this part.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to 80 percent of the amount of relief provided by the lender in the form of a reduction in principal and a deferral of delinquent interest on the coinsured Mortgage.

(3) *Lender junior mortgage.* Repayment of the relief provided by the lender must be secured by a mortgage to the lender, junior to the remaining coinsured Mortgage. This junior mortgage may provide for postponed amortization and may not be assigned

by the lender. This junior mortgage is not coinsured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by owner to HUD.* The owner must remit to HUD 80 percent of all amounts due under the junior mortgage. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate in effect as of the date of the firm commitment or initial endorsement of the coinsured mortgage, whichever rate is higher.

(5) *Partial claim repayment by owner to lender.* The owner must remit all amounts due for repayment of the relief provided by the lender's junior mortgage to the lender.

(6) *Certified statements of amounts collected.* As long as the junior mortgage remains of record, the lender must submit to the Commissioner a quarterly certified statement of the amounts collected by the lender. The lender must submit a final certified statement within 30 days after the junior mortgage is paid in full, foreclosed, or otherwise terminated.

(e) Section 252.4 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

§ 252.5 Mortgage insurance premiums after a partial claim payment.

(a) After a partial claim payment is made, mortgage insurance premiums shall continue to be calculated as if there had been no partial claim payment. HUD will bill the lender on the .05 percent portion of the mortgage insurance premium.

(b) Section 252.5 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

5. The authority citation for 24 CFR part 255 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9; 42 U.S.C. 3535(d).

6. Sections 255.3, 255.4 and 255.5 are added to read as follows:

§ 255.3 Case-by-case conversion to full insurance.

(a) Upon the request of a coinsuring lender, the Commissioner may endorse a coinsured Mortgage for full insurance effective as of date of such endorsement, if the Commissioner is satisfied that:

(1) The Mortgage backs securities guaranteed by GNMA;

(2) Continuing the Mortgage under coinsurance could jeopardize the lender's viability and ability to service its remaining portfolio of coinsured Mortgages;

(3) The lender has made reasonable efforts to work out any Mortgage default consistent with applicable regulations in effect prior to November 12, 1990, but the remedies available to the lender have not been adequate to reinstate the Mortgage;

(4) The conversion would be less costly to the Department than if the Mortgage remained coinsured; and

(5) The lender agrees to pay HUD a fee in an amount equal to 5 dollars for every 1,000 dollars of the unpaid principal balance.

(i) Lenders submitting a claim for the full insured mortgage amount following the Commissioner's endorsement of the mortgage will pay HUD a fee in an amount equal to 10 percent of the outstanding principal balance on the mortgage. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(ii) Lenders submitting a claim for partial payment following the Commissioner's endorsement of the Mortgage will pay HUD a fee in an amount equal to 10 percent of the reduction in the unpaid principal balance resulting from the partial payment. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(iii) HUD will credit all advances made by the lender on the project's behalf against the fees set forth in paragraphs (a)(5) (i) and (ii) of this section. For the purposes of this section, advances made on the project's behalf are defined as those amounts included in applicable regulations in effect prior to November 12, 1990. However, the credit for legal fees may not exceed 30 percent of the total credit which the lender will offset against the fees established in paragraphs (a)(5) (i) and (ii) of this section.

(b) After endorsement of the Mortgage by the Commissioner, any future insurance claim or any assignment of the fully insured Mortgage shall be governed by 24 CFR part 207, except that any payment will be made in cash instead of debentures.

(c) Section 255.3 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

§ 255.4 Partial payment of claim.

(a) *General.* As an alternative to filing a notice of election to acquire the property under applicable regulations in effect prior to November 12, 1990 or applicable earlier provision, a lender may file a claim for partial payment. Upon receipt of such a claim, the Commissioner may make a partial payment of claim in accordance with the requirements of this section.

(b) *Lender submission.* The lender must provide the following information with its application for a partial claim payment:

(1) The amount by which the lender will reduce the principal on the coinsured Mortgage and the amount of delinquent interest on the coinsured Mortgage that the lender will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured Mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment, when considered with other resources available to the project, is sufficient to restore the financial viability of the project;

(iii) The project is or can be made (at reasonable cost) structurally sound;

(iv) The management of the property is satisfactory; and

(v) The default under the coinsured Mortgage was beyond the control of the mortgagor.

(c) *Claim processing*—(1) *Acceptable application.* If the lender's submission satisfies the requirements of paragraph (b) of this section and is acceptable to the Commissioner, the Commissioner shall notify the lender to proceed to closing on its junior mortgage authorized by paragraph (d)(3) of this section. When the junior mortgage is closed, the lender shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the lender, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the lender of the information needed to make the application acceptable or shall advise the lender that by a date specified it must institute action to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made on a mortgage coinsured under this part.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to 80 percent of the amount of relief provided by the lender in the form of a reduction in principal and a deferral of delinquent interest on the coinsured Mortgage.

(3) *Lender junior mortgage.* Repayment of the relief provided by the lender must be secured by a mortgage to the lender, junior to the remaining coinsured Mortgage. This junior mortgage may provide for postponed amortization and may not be assigned by the lender. This junior mortgage is not coinsured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by owner to HUD.* The owner must remit to HUD 80 percent of all amounts due under the junior mortgage. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate in effect as of the date of the firm commitment or initial endorsement of the coinsured mortgage, whichever rate is higher.

(5) *Partial claim repayment by owner to lender.* The owner must remit all amounts due for repayment of the relief provided by the lender's junior mortgage to the lender.

(6) *Certified statements of amounts collected.* As long as the junior mortgage remains of record, the lender must submit to the Commissioner a quarterly certified statement of the amounts collected by the lender. The lender must submit a final certified statement within 30 days after the junior mortgage is paid in full, foreclosed, or otherwise terminated.

(e) Section 255.4 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

§ 255.5 Mortgage insurance premiums after a partial claim payment.

(a) After a partial claim payment is made, mortgage insurance premiums shall continue to be calculated as if there had been no partial claim payment. HUD will bill the lender on the .05 percent portion of the mortgage coinsurance premium.

(b) Section 255.5 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the **Federal Register** to extend the effective date of the interim rule.

Dated: May 31, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–22826 Filed 9–18–95; 8:45 am]

BILLING CODE 4210–27–P

federal register

Tuesday
September 19, 1995

Part III

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budgetary resources, totaling $1.2 billion.

The deferral affects the International Security Assistance program.

William J. Clinton

The White House,
September 8, 1995.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE

(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D95-1B	Economic Support Fund and International Fund for Ireland	1,246,056
	Total, deferral	1,246,056

D95-1B

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D95-1A, which was transmitted to Congress on December 13, 1994.

This revision increases by $18,808,000 the previous deferral of $1,227,248,360 in the Economic support fund, resulting in a total deferral of $1,246,056,360. This increase results from combining the International Fund for Ireland with the Economic Support Fund. The two funds were combined into a single budget account in the FY 1996 Budget because of their programmatic similarity.

Deferral No. 95-1B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President **BUREAU:** International Security Assistance **Appropriations title and symbol:** Economic support fund and International fund for Ireland 1/ 115/61037 114/51037 72X1037*	**New budget authority** .... * $ 2,359,475,903 (P.L. 103-306) **Other budgetary resources** ..... * $ 547,105,518 **Total budgetary resources** ..... * $ 2,906,581,421
	Amount to be deferred: **Part of year** .... * $ 1,246,056,360 2/ **Entire year** .... ________
OMB identification code: 11-1037-0-1-152 **Grant program:** ☒ Yes ☐ No	**Legal authority (in addition to sec. 1013):** ☒ Antideficiency Act ☐ Other ________
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1995 September 30, 1996 (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other ________

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund	72X1037*	11-1037-0-1-152	* $ 36,256,360
Economic support fund	114/51037	11-1037-0-1-152	$ 60,800,000
Economic support fund	115/61037	11-1037-0-1-152	$ 1,149,000,000
			* $ 1,246,056,360

JUSTIFICATION: The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country.

Funds are deferred pending the development of country-specific plans that assure that aid is provided in an efficient manner and are reserved for unanticipated program needs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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* Revised from previous report.

1/ This account was the subject of a similar deferral in FY 1994 (D94-1B).

2/ This deferred amount has been reduced to $314,814,963 due to subsequent releases.

[FR Doc. 95-23147 Filed 9-18-95; 8:45 am]

BILLING CODE 3110-01-C

federal register

Tuesday
September 19, 1995

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 58

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 58

[Docket No. FR–3811–I–02]

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

AGENCY: Office of the Secretary, HUD.

ACTION: Technical amendment to interim rule.

SUMMARY: HUD is adopting certain technical amendments relating to an interim rule published in the **Federal Register** on March 13, 1995 that amended 24 CFR part 58 to implement certain environmental provisions enacted in the Multifamily Housing Property Disposition Reform Act of 1994. One technical amendment pertains to the effective date. The interim rule establishes April 12, 1995 as the effective date, except as otherwise provided for certain programs. However, some regulations for programs newly covered by part 58 have existing environmental provisions that conflict with the applicability of part 58 under the interim rule and have not yet been amended. The technical amendment makes clear that, for programs to which the effective date of April 12, 1995 applies, the interim rule supersedes preexisting program regulations that would otherwise conflict with the application of part 58 procedures under the interim rule. HUD is also adopting two technical amendments clarifying the designation of the entity responsible for environmental review, including a clarification applicable where the recipient is an Indian housing authority in Alaska.

EFFECTIVE DATE: April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Community Viability, Room 7240, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3297. For telephone communication, contact Roy Gonnella, Director, Environmental Review Division at (202) 708–3436. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On March 13, 1995 (60 FR 13518) HUD published an interim rule amending 24 CFR part 58 with an effective date of April 12, 1995, except with respect to applicability to Public Housing programs under title I of the United States Housing Act, as to which a later effective date was provided. The interim rule implements certain environmental provisions enacted in the Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA). The latter provides for the assumption of environmental review responsibilities by States and units of general local government, including those that are not recipients, under certain public and Indian housing programs, housing assistance under Section 8 of the United States Housing Act, special projects, and the FHA multifamily housing finance agency risk sharing pilot program.

Section 58.10 of the interim rule requires the responsible entity to assume the environmental responsibilities for projects under programs cited in § 58.1(c) in accordance with procedural provisions of the National Environmental Policy Act (NEPA) and the regulations of the Council on Environmental Quality (CEQ) (40 CFR parts 1500 through 1508), as well as the procedures set forth in part 58, "unless otherwise provided for in program regulations." HUD intended this provision to allow the flexibility for regulations of individual programs that are subject to part 58 to provide exceptions to the assumption of environmental responsibilities by responsible entities designated under part 58, if appropriate for a specific program. However, some existing program regulations covered by the MHPDRA provisions—in particular, regulations under Section 8 of the United States Housing Act—still call for environmental review by HUD under 24 CFR part 50 and have not yet been amended to provide for responsible entities to assume review responsibilities under part 58. The quoted provision in § 58.10, as written, unintentionally implies that these earlier program regulations preclude responsible entities from assuming environmental review responsibilities under part 58, thus essentially delaying the effective date of the interim rule for these programs. In fact, HUD intended the effective date of April 12, 1995 to apply to all the programs affected by the interim rule except the Public Housing programs referenced in the "Effective Date" block of the preamble, so that responsible entities could begin assuming responsibilities notwithstanding existing contrary provisions in program regulations. HUD expects to conform existing program regulations to the interim rule during program rulemaking, but did not intend to delay the application of the interim rule during that time. Accordingly, the technical amendment would add to the end of the first sentence of § 58.10 the phrase "issued after April 12, 1995", to indicate that only program regulations issued *after* that date may supersede the responsible entity's duty to assume environmental review responsibilities.

HUD is also adopting two technical amendments to the definition of "responsible entity" in § 58.2(a)(7). The first amendment clarifies the applicability of the first sentence of § 58.2(a)(7)(ii), which indicates that a State, unit of general local government, Indian tribe or Alaska native village is the responsible entity for programs listed in § 58.1(c) (6) through (8). Currently, while the second sentence provides additional designations of "nonrecipient responsible entities" for those programs, the first sentence does not explicitly indicate that it applies only when the governmental entities designated are recipients. The amendment would so indicate.

The second amendment to § 58.2(a)(7)(ii) adds a new paragraph (a)(7)(ii)(E) that applies specifically to Indian housing authorities (IHAs) in Alaska. It provides that for such IHAs, the responsible entity is the Alaska native village in whose community the project is located, or if HUD determines this infeasible, a unit of general local government or the State, as designated by HUD. This amendment is necessary because paragraph (a)(7)(ii)(D) does not specifically reference projects located in Alaska native villages and because the reference in paragraph (a)(7)(ii)(D) to the Indian tribe that established the Indian housing authority would not apply to IHAs established by regional corporations in Alaska. Paragraph (a)(7)(ii)(D) is now amended to apply only outside Alaska.

This document also makes two corrections to the interim rule that was published on March 13, 1995. First, the title of § 58.77(d) should read as follows: Responsibility for monitoring and training. Also, § 58.77(d)(2) should reference § 58.13 instead of § 58.17.

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, under 24 CFR part 10, notice and public procedure (comments) can be omitted if the Department determines in a particular case or class of cases that notice and public procedure are impracticable, unnecessary or contrary to the public interest. Soliciting public comments on this technical amendment would be unnecessary and contrary to the public interest. This rule only makes technical

amendments to the interim rule published on March 13, 1995.

List of Subjects in 24 CFR Part 58

Environmental protection, Community development block grants, Environmental Impact Statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 58 is amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 12 U.S.C. 1707 note; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

2. Section 58.2 is amended by revising paragraph (a)(7)(ii) introductory text and paragraph (a)(7)(ii)(D), and by adding a new paragraph (a)(7)(ii)(E) to read as follows:

§ 58.2 Terms, abbreviations and definitions.

(a) * * *

(7) * * *

(ii) With respect to environmental responsibilities under the programs listed in § 58.1(c) (6) through (8), a State, unit of general local government, Indian tribe or Alaska native village, when it is the recipient under the program. Nonrecipient responsible entities are designated as follows:

* * * * *

(D) For Indian housing authorities (outside of Alaska), the Indian tribe in whose jurisdiction the project is located, or if the project is located outside of a reservation, the Indian tribe that established the authority.

(E) For Indian housing authorities in Alaska, the Alaska native village in whose community the project is located, or if HUD determines this infeasible, a unit of general local government or the State, as designated by HUD.

* * * * *

§ 58.10 [Amended]

3. Section 58.10 is amended by adding to the end of the first sentence ending with "program regulations" and before the period, the clarifying phrase "issued after April 12, 1995".

§ 58.77 [Amended]

4. Section 58.77 is amended by revising the title of paragraph (d), to read, "*(d). Responsibility for monitoring and training.*"

5. In § 58.77, the second sentence in paragraph (d)(2) is amended to refer to "§ 58.13" instead of "§ 58.17".

Dated: September 12, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–23158 Filed 9–18–95; 8:45 am]

BILLING CODE 4210–32–P

federal register

Tuesday
September 19, 1995

Part V

The President

Proclamation 6824—National Rehabilitation Week, 1995

Executive Order 12971—Amendment to Executive Order No. 12425

Proclamation 6825—Citizenship Day and Constitution Week, 1995

Notice of September 18, 1995—Continuation of Emergency With Respect to UNITA

Federal Register
Vol. 60, No. 181
Tuesday, September 19, 1995

Presidential Documents

Title 3—

The President

Proclamation 6824 of September 15, 1995

National Rehabilitation Week, 1995

By the President of the United States of America

A Proclamation

National Rehabilitation Week offers us a unique opportunity each year to measure our progress on the long road to creating a totally accessible society in America. This year, as we also mark the 5th anniversary of the Americans with Disabilities Act and the 75th anniversary of the Rehabilitation Act of 1920, we can look back with satisfaction on the tremendous advances we have made on our journey.

Because of the passage and implementation of these landmark pieces of legislation, millions of Americans with disabilities have received the training and skills to become competitive and productive employees. Working Americans who became disabled in mid-life have received the help they need to adapt to their changed circumstances and to resume their contributions to our society. Today, employers across the Nation are working closely with State rehabilitation agencies to ensure that men and women with disabilities are trained to succeed at the jobs of tomorrow.

Thanks largely to the efforts of people with disabilities, America has come a long way from the time when these citizens were kept out of sight and out of mind. Today, our Nation's disability policies emphasize inclusion, independence, and empowerment. Our laws declare that Americans with disabilities have a fundamental right to full equality—and are entitled to the same choices and opportunities as their fellow citizens who are not disabled.

But we still have a long way to travel before we reach our goal of full equality in fact as well as in law. Today, two-thirds of all persons with disabilities remain unemployed, although many of them already have received appropriate training and rehabilitative services. And even more distressing, millions of these individuals would find it difficult to work if a job were offered to them simply because our society has not instituted the changes needed to help them perform their work responsibilities.

People with disabilities want to work, and it is vital that we offer them the means to gain full employment. Not only is this the right thing to do, it is the prudent thing as well. If America is to continue to succeed in our rapidly changing global economy, we cannot afford to waste the talents, knowledge, vision, or abilities of a single individual.

Let us celebrate National Rehabilitation Week by rededicating ourselves to the spirit of equality. As we move toward the era of hope and opportunity promised by the 21st century, we must guarantee that every American has a share in that hope and ensure that the doors of opportunity are open to all. By empowering each person, including those with disabilities, to live up to his or her full potential, we will infuse our Nation with fresh energy for the challenges before us.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 17 through September 23, 1995, as "National Rehabilitation Week." I call upon the people of the United States, including government officials, employers, educators, and volunteers, to observe this week with appropriate programs, ceremonies, and activities honoring all those who work for self-determination, equal treatment, and full participation.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J Clinton

[FR Doc. 95-23440
Filed 9-18-95; 12:34 pm]
Billing code 3195-01-P

Presidential Documents

Executive Order 12971 of September 15, 1995

Amendment to Executive Order No. 12425

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the appropriate privileges, exemptions, and immunities upon the International Criminal Police Organization ("INTERPOL") it is hereby ordered that Executive Order No. 12425 be amended by deleting, in the first sentence, the words "the portions of Section 2(d) and" and the words "relating to customs duties and federal internal-revenue importation taxes".

William J Clinton

THE WHITE HOUSE,
September 15, 1995.

[FR Doc. 95-23423
Filed 9-18-95; 11:28 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 6825 of September 16, 1995

Citizenship Day and Constitution Week, 1995

By the President of the United States of America

A Proclamation

Americans, unlike many other peoples, are linked to one another neither by the confines of geography nor by centuries of tradition. Instead, we base our citizenship on a foundation of shared ideals and ideas, bringing gifts from every country, race, and culture. Those whose ancestors came to these shores long ago and first-generation immigrants alike – all are bound by the unique set of principles set forth in the documents that established and continue to define this Nation.

We find our heritage in profound words: in the declaration that all men are created equal, endowed with unalienable rights to life, liberty, and the pursuit of happiness; in the invitation of liberty extended to the tired, the poor, the huddled masses yearning to breathe free; and in the pledge to remain one Nation, under God, with liberty and justice for all.

Perhaps the greatest expression of our national identity is the United States Constitution. Adopted on September 17, 1787, the Constitution describes the parameters of our Government and the rights and responsibilities that accompany American citizenship. From its phrases we derive our precious rights to free expression and religious liberty, and we assume the responsibilities of electing our leaders and participating in the workings of government.

Yet the genius of the Constitution is not simply in forming "a more perfect Union," but in framing an ideal and providing a means for progress toward its realization. As Abraham Lincoln once stated, our Founding Fathers "meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere."

Indeed, this bold experiment in self-government has inspired more than 200 years of striving for true justice and freedom. From the beginning, there was a dissonance between the plain meaning of our creed and the reality of American life, and constitutional history reflects the vital changes wrought by amendments, civil war, and tremendous social transformations. Emancipation, women's suffrage, civil rights, voting rights—all these began as the struggles of citizens who joined together to push our Nation toward the ideals enshrined in our Constitution and whose efforts were encouraged by the Constitution itself.

In honor of the paramount importance of the Constitution in setting forth the fundamental doctrines of our country and in recognition of the role each American must play in bringing these words to life, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 153), designated September 17 as "Citizenship Day," and by joint resolution of August 2, 1956 (36 U.S.C. 159), requested the President to proclaim the week beginning September 17 and ending September 23 of each year as "Constitution Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 17, 1995, as Citizenship Day and September 17 through September 23, 1995, as Constitution Week. I call upon Federal, State, and local officials, as well as leaders of civic, educational, and religious organizations, to conduct meaningful ceremonies and programs in their schools, churches, and other community gathering places to foster a better understanding of the Constitution and the rights and duties of citizenship.

I further call upon the officials of the Government to display the flag of the United States on all Government buildings on September 17, 1995, in honor of Citizenship Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–23441
Filed 9–18–95; 12:35 pm]
Billing code 3195–01–P

Presidential Documents

Notice of September 18, 1995

Continuation of Emergency With Respect to UNITA

On September 26, 1993, by Executive Order No. 12865, I declared a national emergency to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of the National Union for the Total Independence of Angola ("UNITA"), prohibiting the sale or supply by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of arms and related materiel of all types, and petroleum and petroleum products to the territory of Angola, other than through designated points of entry. The order also prohibits the sale or supply of such commodities to UNITA. Because of our continuing international obligations and because of the prejudicial effect that discontinuation of the sanctions would have on the Angolan peace process, the national emergency declared on September 26, 1993, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond September 26, 1995. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to UNITA.

This notice shall be published in the Federal Register and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
September 18, 1995.

[FR Doc. 95–23442
Filed 9–18–95; 12:36 pm]
Billing code 3195–01–P

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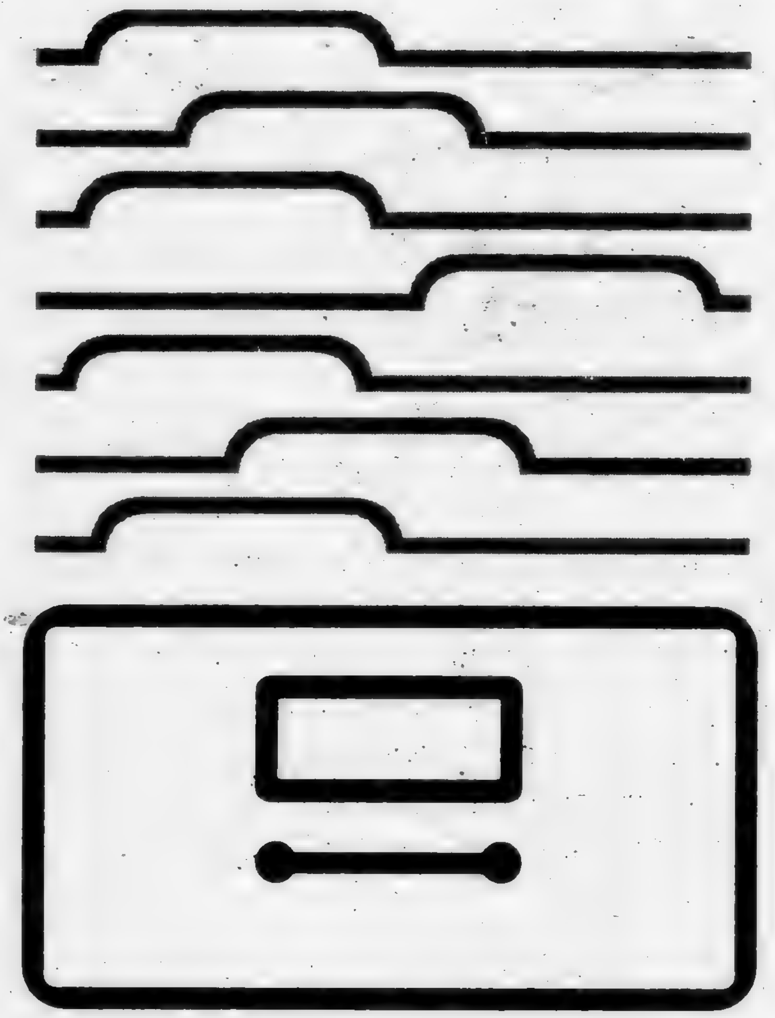

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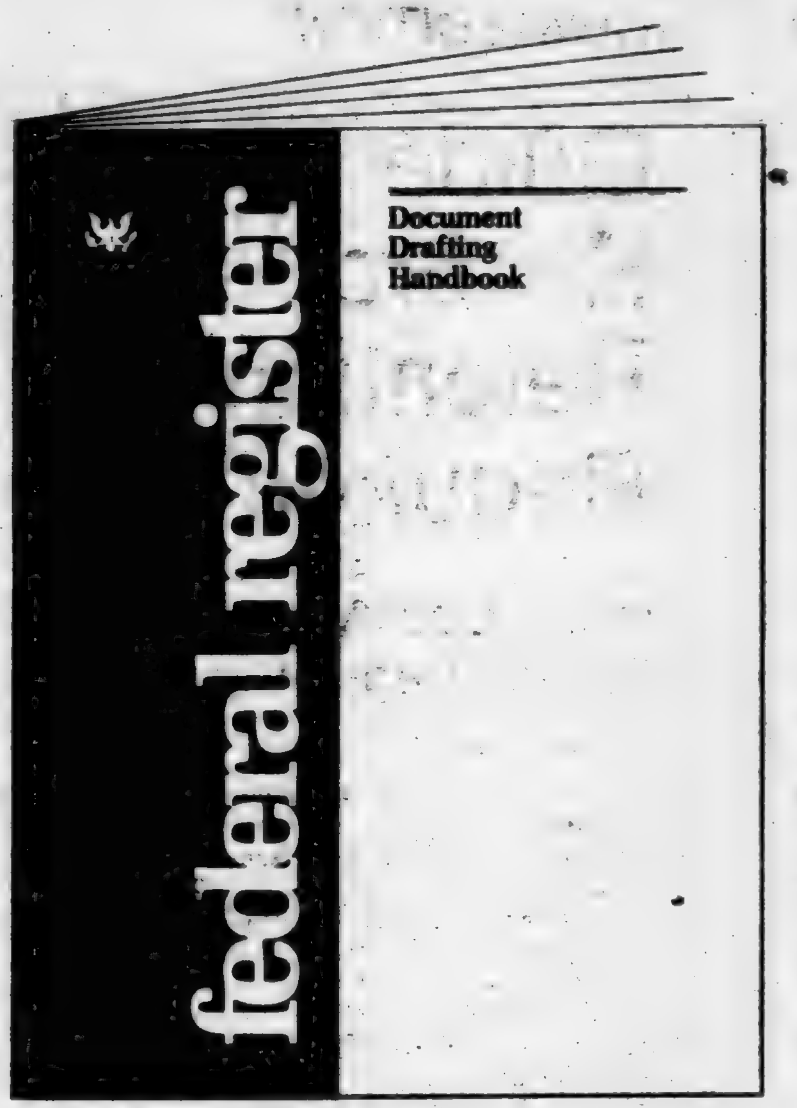

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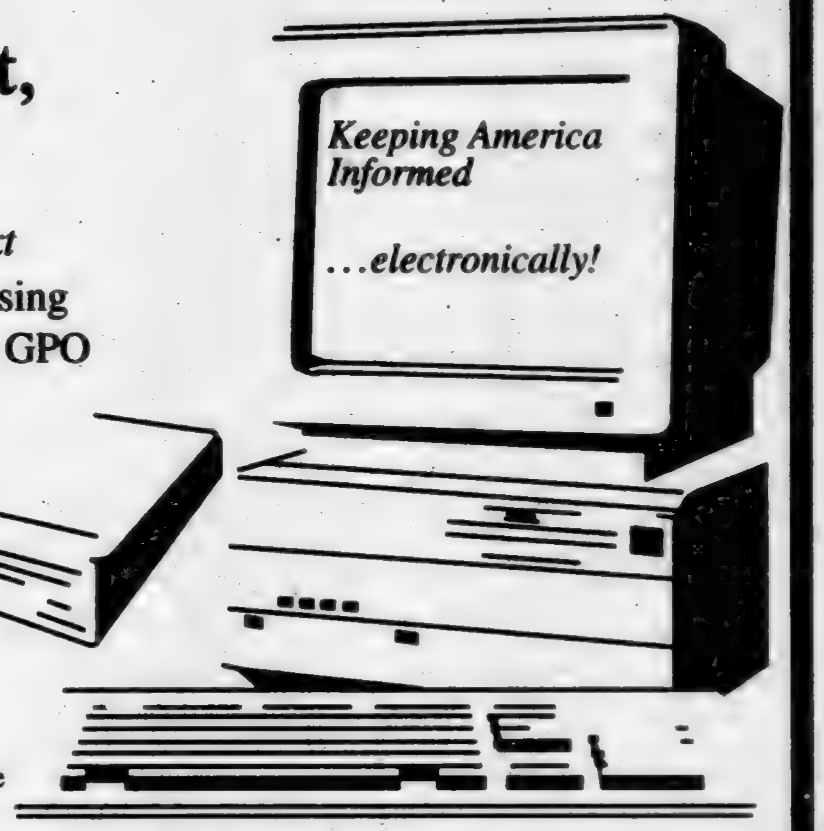

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 35

RIN 3150–AF10

Medical Administration of Radiation and Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify that the medical administration of radiation or radioactive materials to any individual, even an individual not supposed to receive a medical administration, is regulated by the NRC's provisions governing the medical use of byproduct material rather than by the dose limits in the NRC's regulations concerning standards for protection against radiation. The rule does not represent a change in policy, but is necessary to indicate clearly that this is the NRC's policy and to clarify the relationship of NRC's regulations.

DATES: Effective date: October 20, 1995.

ADDRESSES: Examine comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6204.

SUPPLEMENTARY INFORMATION:

I. Background

Radioactive materials are administered in the practice of medicine to roughly 8 to 9 million patients per year for the diagnosis or treatment of disease. Occasionally, a radioactive material is administered to an individual for whom it is not intended. The misadministration of radiopharmaceuticals is dealt with in NRC regulations in 10 CFR Part 35, "Medical Use of Byproduct Material." As defined in § 35.2, misadministrations include administrations of licensed radioactive material to the wrong individual in excess of certain specified quantities ("30 microcuries of either sodium iodide I–125 or I–131") or doses ("5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ"). The practical effect of the definition of a misadministration is that some diagnostic administrations of radiopharmaceuticals to individuals for whom they were not intended are not misadministrations as defined in § 35.2 because the specified quantities or doses are not exceeded, and therefore part 35 does not require notification of the NRC or the individual.

Separate from the requirements for misadministrations, § 20.1301(a)(1) contains a dose limit for members of the public of 0.1 rem (1 millisievert). However, the scope of Part 20 in § 20.1002 states that, "The limits in this part do not apply to doses due * * * to exposure of patients to radiation for the purpose of medical diagnosis or therapy * * *."

A question arose about the applicability of those words in a particular case in which an individual mistakenly received an administration of a diagnostic radiopharmaceutical because of an error on the part of the physician requesting the test. In that particular case, the dose to the individual receiving the administration was below the threshold for reporting of the misadministration, but above the 0.1-rem (1-millisievert) dose limit in § 20.1301(a)(1) for a member of the public. The question that arose was whether § 20.1301(a)(1) had been violated or did the words in the scope of Part 20 exclude this event from being subject to the dose limits in Part 20. In other words, does the exclusion from the Part 20 dose limits exclude any medical administration to any individual, even an individual not supposed to receive an administration?

This same issue was raised in a Petition for Rulemaking (PRM–35–11) filed by the American Medical Association (59 FR 37950; July 26, 1994). That petition requested, in part, that Part 20 specifically exclude all medical administrations.

Because of these concerns, the Commission proposed an amendment to 10 CFR Part 20 to clarify the regulations (60 FR 4872, January 25, 1995). The proposed rule explained that the Commission believed that, in general, the administration of radiopharmaceuticals should be regulated by Part 35 rather than by Part 20. The medical administration of radioactive materials is a special use of radioactive materials that is best dealt with by specific regulations covering those administrations. In particular, the Commission believed that an administration to any individual is and should be subject to the regulations in Part 35. That was the Commission's intent when the current misadministration requirements were adopted in the final rule, "Quality Management Programs and Misadministrations," (56 FR 34104; July 25, 1991). Further explanation of the Commission's rationale is contained in the **Federal Register** notice for the proposed rule (60 FR 4872; January 25, 1995).

II. Comments on the Proposed Rule and Petition for Rulemaking PRM–35–11

Four comment letters were received on the proposed rule, three from Agreement States and one from a medical health physicist. All supported the proposed rule. Three comment letters were received on PRM–35–11. Each of the letters supported the petition.

The **Federal Register** notice on the proposed rule specifically asked for comment on whether to adopt a requirement to inform an individual of the error in the case of administration of a radiopharmaceutical to the wrong individual, but in a quantity below the misadministration threshold. Section 35.33 generally requires notification of the individual in the case of a misadministration. However, if the dose or the amount is less than the misadministration threshold, § 35.33 does not require that the individual who received an administration of a radiopharmaceutical by error be notified of the error. The NRC's Advisory Committee on Medical Uses of Isotopes (ACMUI), an advisory committee on rulemakings and other initiatives related to the medical use of byproduct materials, has assured the NRC that standard medical practice is that a physician who becomes aware that a medical procedure has been performed on the wrong individual should, and almost always would, notify the individual of the mistake.

Two comments addressed this question. One, from an employee at a medical facility, favored an NRC regulation requiring notification of the individual regardless of the dose because sometimes an attempt might be made to keep this information from the individual. The other, from an Agreement State, opposed such a requirement because it would be inconsistent with the NRC's medical policy statement, "The NRC will minimize intrusion into medical judgements affecting patients and into other areas traditionally considered to be a part of the practice of medicine." The NRC has decided to retain the notification requirements that it established in the misadministration rulemaking and thus not amend the notification requirements. Therefore, the NRC will require notification only for the more serious errors. Notification requirements for less serious errors are left to the medical profession and to State and local regulations. The NRC sees no need to interject itself into medical judgements or to override State and local regulations for the less serious errors.

III. Summary of the Changes

Neither the comments received nor any other information available to the Commission give any reasons for not adopting the amendments substantially as proposed, which would regulate administrations to individuals under Part 35 and not Part 20. Therefore, the NRC is adopting the amendments as described below.

To clarify the meaning and intent of Part 20, the NRC is amending the scope of Part 20, the definitions of public dose and occupational dose, and the wording in § 20.1301(a)(1) on public dose limit to clarify that the dose limit for individual members of the public does not apply to dose contributions from any medical administration the individual has received. Thus, the medical administration of radioactive materials or radiation to any individual, even to an individual not supposed to receive an administration, is not subject to the public dose limit in § 20.1301(a)(1), but is within the scope of Part 35.

The changes in Part 20 replace the word "patient" with the word "individual." The word "patient" has sometimes been taken to mean only the individual intended to receive the administration. At other times, the view has been that anyone who receives a medical procedure is a "patient." Replacing "patient" with "individual" clarifies that the statement refers to anyone receiving a medical administration.

In § 20.1002, the phrase "for the purpose of medical diagnosis and therapy" is replaced by the phrase "any medical administration the individual has received." The existing wording raised the question of whether an administration was within the scope of Part 20 if the administration had no valid medical purpose. The new wording makes it clear that regardless of the purpose or lack of purpose, dose to an individual from any medical administration the individual has received is not within the scope of Part 20, but is within the scope of Part 35.

For the sake of consistency and clarity, the same words are used in § 20.1002, "Scope," in § 20.1003, "Definitions," (in the definitions of both public dose and occupational dose), and in § 20.1301, "Dose limits for individual members of the public." Also for consistency and clarity, the exclusion of dose from background radiation and from voluntary participation in medical research programs that are now included in §§ 20.1002 and 20.1003 are added to § 20.1301(a).

A proposed rule published on June 15, 1994 (59 FR 30724), which deals with criteria for the release of individuals administered radioactive material, would also amend § 20.1301(a)(1). When that amendment of § 20.1301(a)(1) is published in final form, the wording on what is excluded from the dose limit will be inserted in §§ 20.1002 and 20.1003 (in the definitions of public dose and occupational dose) so that the same parallelism will exist throughout Part 20.

In Part 35, for consistency in terminology between parts, the phrase "patient or human research subject" in the definition of misadministration in § 35.2, "Definitions," and in the misadministration reporting requirements in § 35.33, "Notifications, reports, and records of misadministrations," is replaced by the word "individual." Note that § 35.33(a)(3) also requires the licensee to notify the referring physician of a misadministration. If a misadministration occurs because the material was administered to the wrong individual, there may be no referring physician. If there is no referring physician, the licensee is relieved of the responsibility of notifying the referring physician, but must comply with all other requirements of § 35.33.

The changes made by these amendments have the effect of granting the request in PRM–35–11 that Part 20 specifically exclude all medical administrations.

IV. Consistency With the 1979 Medical Policy Statement

On February 9, 1979 (44 FR 8242), the NRC published a "Statement of General Policy on the Regulation of the Medical Uses of Radioisotopes." The first statement of the policy states, "The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public." The rule is consistent with this statement because it continues to provide for administrations of radioactive materials to be regulated under 10 CFR Part 35. The rule further clarifies that additional regulations are not considered necessary.

The second statement of the policy states, "The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate." The rule is consistent with the statement because it clarifies that existing requirements concerning misadministrations continue to be concentrated on administrations having the greatest risk significance.

The third statement of the policy states, "The NRC will minimize intrusion into medical judgements affecting patients and into other areas traditionally considered to be a part of the practice of medicine." The rule is consistent with this statement because it limits its specific regulatory requirements for notification to the most serious errors in administration and minimizes requirements on errors in administrations that have less risk significance.

Thus, the rule is considered to be consistent with the 1979 medical policy statement.

V. Coordination With the Advisory Committee on Medical Uses of Isotopes

The subject of this final rule was discussed with the NRC's Advisory Committee on Medical Uses of Isotopes (ACMUI) on May 11, 1995. The ACMUI is an advisory body established to advise the NRC staff on matters that involve the administration of radioactive material and radiation from radioactive material. The ACMUI agreed that medical administrations, including those to an individual not supposed to receive an administration, should be regulated by Part 35 rather than by Part 20. The ACMUI stated that notification of an individual of an error in administration below the misadministration threshold is the current medical practice and should not be regulated. A transcript of the meeting is available for examination at the NRC Public Document Room, 2120 L St., NW. (Lower Level), Washington, DC.

VI. Coordination With and Issue of Compatibility for Agreement States

This rulemaking was discussed with representatives of Agreement States at a meeting in Portland, ME, on October 24, 1994. The States were polled on how they regulated an administration to the wrong individual, and it was found that they appear to regulate such administrations consistent with this rule. Two States commented on the rule, and both fully supported the rule.

The NRC believes that the modification of Part 20 should be a Division 1 matter of compatibility consistent with past practice of requiring basic definitions to be essentially identical for effective communication of basic radiation concepts. One Agreement State commenting on the compatibility issue supported a Division 1 level. Another Agreement State supported Division 1 compatibility "*provided* that Division 1 compatibility means the intent, but not the language must be identical."

VII. Finding of No Significant Environmental Impact

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

The NRC prepared an environmental assessment for the proposed rule, which was contained within the **Federal Register** notice for that rule. That assessment continues to stand for the final rule.

VIII. Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0014 and 3150–0010.

IX. Regulatory Analysis

The regulatory analysis prepared for the proposed rule and published as part of the **Federal Register** notice on the proposed rule is still valid for this final rule.

X. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. The impact of the revised regulation will not be significant because the amendment represents a continuation of current practice and merely clarifies existing requirements.

XI. Backfit Analysis

The NRC has determined that the backfit rule, § 50.109, does not apply to this rule and; therefore, that a backfit analysis is not required for this rule, because these amendments do not involve any provisions which impose backfits as defined in § 50.109(a)(1).

XII. List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recording requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and Recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 20 and 35.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. Section 20.1002 is revised to read as follows:

§ 20.1002 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility under Parts 30 through 36, 39, 40, 50, 60, 61, 70, or 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter. The limits in this part do not apply to doses due to background radiation, due to any medical administration the individual has received, or due to voluntary participation in medical research programs.

3. In § 20.1003, the definitions of occupational dose and public dose are revised to read as follows:

§ 20.1003 Definitions.

* * * * *

Occupational dose means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from voluntary participation in medical research programs, or as a member of the public.

* * * * *

Public dose means the dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, or from voluntary participation in medical research programs.

* * * * *

4. In § 20.1301, paragraph (a)(1) is revised to read as follows:

§ 20.1301 Dose limits for individual members of the public.

(a) * * *

(1) The total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1 millisievert) in a year, exclusive of the dose contributions from background radiation, any medical administration the individual has received, voluntary participation in

medical research programs, and the licensee's disposal of radioactive material into sanitary sewerage in accordance with § 20.2003.

* * * * *

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

5. The authority citation for Part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 35.2 [Amended]

6. In § 35.2, the definition for *misadministration* is amended in paragraphs (1)(i), (2)(i), (3)(i), (4)(i), (5)(i), (6)(i), and (6)(ii) by removing the term "patient or human research subject" and inserting the word "individual."

7. In § 35.33, paragraphs (a)(2), (a)(3), (a)(4), (b), and (c) are revised to read as follows:

§ 35.33 Notifications, reports, and records of misadministrations.

(a) * * *

(2) The licensee shall submit a written report to the appropriate NRC Regional Office listed in 10 CFR 30.6 within 15 days after discovery of the misadministration. The written report must include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the individual who received the misadministration; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not; and if there was notification, what information was provided. The report must not contain the individual's name or any other information that could lead to identification of the individual. To meet the requirements of this section, the notification of the individual receiving the misadministration may be made instead to that individual's responsible relative or guardian, when appropriate.

(3) The licensee shall notify the referring physician and also notify the individual receiving the misadministration of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the individual or that, based on medical judgement, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the individual receiving the misadministration cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(4) If the individual was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the individual by sending either:

(i) A copy of the report that was submitted to the NRC; or

(ii) A brief description of both the event and the consequences as they may affect the individual, provided a statement is included that the report submitted to the NRC can be obtained from the licensee.

(b) Each licensee shall retain a record of each misadministration for 5 years. The record must contain the names of all individuals involved (including the prescribing physician, allied health personnel, the individual who received the misadministration, and that individual's referring physician, if applicable), the individual's social security number or other identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the individual, improvements needed to prevent recurrence, and the actions taken to prevent recurrence.

(c) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, to individuals receiving misadministrations, or to that individual's responsible relatives or guardians.

Dated at Rockville, Maryland, this 14th day of September, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–23288 Filed 9–19–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–148–AD; Amendment 39–9364; AD 95–19–03]

Airworthiness Directives; Aerospatiale Model ATR 42–300 and 42–320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and -320 series airplanes. This action requires modification of the electrical wire bundle associated with the smoke detection system. This amendment is prompted by a report of a short circuit in this electrical wire bundle, which was caused by chafing of the wire against a smoke detection pipe. The actions specified in this AD are intended to prevent such chafing, which could result in short circuits of the electrical wire bundle and a potential fire hazard.

DATES: Effective October 5, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 1995.

Comments for inclusion in the Rules Docket must be received on or before November 20, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile

(DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–300 and –320 series airplanes. The DGAC advises that there has been a report of a short circuit of the electrical wire bundle between frames 16 and 21 on an in-service airplane equipped with an interior modified for a container cargo compartment. The crew reported that there was an electrical smoke warning indication, which was associated with multiple system failure indications and the popping of circuit breakers. The short circuit was caused by chafing of the 1M wire bundle against a smoke detection pipe. This condition, if not corrected, could result in a fire.

Aerospatiale has issued Service Bulletin ATR42–25–0094, dated June 23, 1995, which describes procedures for modifying the smoke detection system. The modification consists of (1) replacing the smoke detection pipe in the forward cargo compartment at Frame 16, and (2) installing spacers between the electrical wire bundle (route 1M) and the smoke detection pipe from Frame 16 to Frame 21. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 95–103–059(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent chafing in the electrical wire bundle associated with the smoke detection system. This AD requires modification of the smoke detection system by replacing the smoke detection pipe in the forward cargo compartment, and installing spacers between the electrical wire bundle and the smoke detection pipe. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Model ATR42–300 or –320 series airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would be provided by the manufacturer at no charge to operators. Based on these figures, the total cost impact of this AD would be $240 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–148–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–03 Aerospatiale: Amendment 39–9364. Docket 95–NM–148–AD.

Applicability: Model ATR42–300 and –320 series airplanes; as listed and described in Aerospatiale Service Bulletin ATR42–25–0094, dated June 23, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire bundle associated with the smoke detection system, which could result in short circuits in the electrical wire bundle and a potential fire hazard, accomplish the following:

(a) Within 2,400 flight hours or 12 months after the effective date of this AD, whichever occurs later, modify the smoke detection system in accordance with Aerospatiale Service Bulletin ATR42–25–0094, dated June 23, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Aerospatiale Service Bulletin ATR42–25–0094, dated June 23, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 5, 1995.

Issued in Renton, Washington, on September 5, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22458 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–15–AD; Amendment 39–9377; AD 95–19–15]

Airworthiness Directives; American General Aircraft Corporation Models AA–5, AA–5A, AA–5B, and AG–5B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to American General Aircraft Corporation (American General) Models AA–5, AA–5A, AA–5B, and AG–5B airplanes. This action requires inspecting the wing attach shoulder bolts for fretting, scoring, wear, or enlarged or elongated mounting holes (known as damage from hereon), and replacing any damaged parts and repairing any damaged areas; and inspecting the wing spar at the center spar clearance gap for excessive clearance, and shimming the spar if excessive clearance is found. The actions specified by this AD are intended to prevent wing attach shoulder bolt failure, which, if not detected and corrected, could lead to structural damage to the wing/fuselage to the point of failure.

DATES: Effective November 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 17, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Fletch Air, Inc., 9000 Randolph Street, Houston, Texas 77061; telephone (713) 649–8700 or (800) 329–4647; facsimile (713) 643–0070. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ozzie Lopez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7359; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain American General Models AA–5, AA–5A, AA–5B, and AG–5B airplanes was published in the **Federal Register** on September 28, 1994 (59 FR 49359). The action proposed to require inspecting the wing attach shoulder bolts for fretting, scoring, wear, or enlarged or elongated mounting holes (known as damage from hereon), and replacing any damaged parts and repairing any damaged areas; inspecting the wing spar at the center spar clearance gap for excessive clearance, and shimming the spar if excessive clearance is found; and reporting to the FAA the results of the inspections. Accomplishment of the proposed inspections would be in accordance with American General Critical Service Bulletin SB–185, dated July 6, 1994. Accomplishment of the proposed possible repairs, replacements, and excessive clearance shimming would be in accordance with the applicable maintenance manual.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from one commenter.

The commenter states that the NPRM calls out an incorrect part number (901044–3 and 901044–2) for serial numbers AA–5–0001 through AA–5–0714 of the AA–5 series airplanes. The commenter suggests that the AD be changed to reflect wing attach bolt, part number 901044–1, for the referenced airplanes. The FAA concurs and has incorporated reference to wing attach bolt, part number 901044–1, into the applicable portion of the AD.

The commenter also explains that serial numbers AA–5–0001 through AA–5–0714 of the AA–5 series airplanes have a 38-gallon gas tank capacity, which is smaller than the 52-gallon capacity of the rest of the fleet. The commenter recommends that this action not affect these airplanes because the bolts are subjected to different loads. The FAA concurs that these earlier models of the AA–5 series airplanes contain smaller fuel tanks and that the airplanes incur different loads than the rest of the fleet. However, failure of these bolts is also attributable to excessive wing spar to center spar clearance. This excessive clearance could occur through failure to check and shim to the proper clearance after a major wing repair. In fact, since issuing the NPRM, the FAA has received a report from Outlaw Aviation in Clarksville, Tennessee, that details nine airplanes (out of a total of 11 inspected) having excessive wing spar to center spar clearance. Each of these nine airplanes had wing replacement accomplished at American General. No changes to the AD have been made as a result of this comment; however, the FAA has removed the reporting requirement from the AD since the above-referenced report confirms the FAA's belief that the affected airplanes could have excessive wing spar to center spar clearance.

No comments were received on the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the incorporation of the wing attach bolt part number, the removal of the reporting requirement, and minor editorial corrections. The FAA has determined that this part number incorporation, reporting requirement removal, and the minor editorial corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 3,700 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 10 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,220,000 ($600 per airplane × 3,700 airplanes). This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed inspection, and does not take into account the cost for replacing any damaged bolts. The FAA has no way of determining the number of bolts that may need to be replaced based on the results of the inspections.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–19–15 American General Aircraft Corporation: Amendment 39–9377; Docket No. 94–CE–15–AD.

Applicability: Models AA–5, AA–5A, AA–5B, and AG–5B airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent wing attach shoulder bolt failure, which, if not detected and corrected, could lead to structural damage of the wing/fuselage to the point of failure, accomplish the following:

(a) Inspect the wing attach shoulder bolts (4), part numbers as specified in paragraphs (a)(1) and (a)(2) below, for fretting, scoring, wear, or enlarged or elongated mounting holes (known as damage from hereon) in accordance with the procedures included in the *INSPECTION* section of American General Critical Service Bulletin SB–185, dated July 6, 1994. Prior to further flight, replace any damaged parts with new or serviceable parts and repair any damaged areas in accordance with the applicable maintenance manual.

(1) The wing attach shoulder bolt part number for serial numbers AA–5–0001 through AA–5–0714 of the AA–5 series airplanes is 901044–1.

(2) The wing attach shoulder bolt part numbers for all serial numbers of the AA–5 series airplanes, except for serial numbers AA–5–0001 through AA–5–0714, is either 901044–3 or 901044–2.

(b) Inspect the wing spar at the center spar clearance gap for excessive clearance in accordance with the procedures included in the *INSPECTION* section of A[illegible]ican General Critical Service [illegible]B–185, dated July 6, 1994. [illegible] an[illegible]ceeds .016-inch, prior to further [illegible] the spar to reduce the gap to a le[illegible] exceed .008 inches in accordance with the instructions in the applicable maintenance manual.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) The inspection required by this AD shall be done in accordance with American General Critical Service Bulletin SB–185, dated July 6, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fletch Air, Inc., 9000 Randolph Street, Houston, Texas 77061. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment (39–9377) becomes effective on November 17, 1995.

Issued in Kansas City, Missouri, on September 13, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–23219 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–35–AD; Amendment 39–9370; AD 95–19–08]

Airworthiness Directives; Boeing Model 727–100 and –200 Series Airplanes Equipped With an Engine Nose Cowl for Engine Numbers 1 and 3, Installed in Accordance With Supplemental Type Certificate (STC) SA4363NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727–100 and –200 series airplanes, that requires replacing the attaching nutplates on certain engine nose cowls with washers and self-locking nuts. This amendment is prompted by reports indicating that nose cowls separated (or nearly separated) from the engines of certain airplanes following failure of the engine fan blade and subsequent vibration of the engine, which caused loosening of the attach bolts on the nose cowl of the engine. The actions specified by this AD are intended to prevent the attach bolts from becoming loose, which could result in subsequent separation of the nose cowl from the engine.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from VALSAN Partnership Ltd., Aviation Products Management, Product Support Office, 39450 Third Street East, suite 121, Palmdale, California 93550. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727–100 and –200 series airplanes was published in the **Federal Register** on May 3, 1995 (60 FR 21774). That action proposed to require replacing the attaching nutplates on certain engine nose cowls with washers and selflocking nuts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the subject title of the proposed rule be revised to indicate that the specific nose cowls affected are those for the No. 1 and No. 3 engines. The FAA concurs. The FAA has revised the final rule as requested by the commenter, and has added this information to the applicability of the AD.

The same commenter requests that paragraph (b) of the proposed rule be revised to specify that the part numbers listed for the nose cowl are VALSAN part numbers. The FAA concurs and has revised the final rule accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 22 Model 727–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost for required parts will be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,840, or $360 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–08 Boeing: Amendment 39–9370. Docket 95–NM–35–AD.

Applicability: Model 727–100 and -200 series airplanes equipped with an engine nose cowl for engine numbers 1 and 3, installed in accordance with Supplemental Type Certificate (STC) SA4363NM, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the attach bolts on the nose cowl of the engine from becoming loose, and subsequent separation of the nose cowl from the engine, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace the attaching nutplates of the No. 1 and No. 3 engine nose cowls with washers and self-locking nuts in accordance with VALSAN B727–RE Service Bulletin 71–006, Revision 1, dated March 3, 1995.

(b) As of the effective date of this AD, no person shall install a nose cowl having VALSAN part number 259–0002–501 or 259–0002–503 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with VALSAN B727–RE Service Bulletin 71–006, Revision 1, dated March 3, 1995, which contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	March 3, 1995.
2–9 .	Original	February 3, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from VALSAN Partnership Ltd., Aviation Products Management, Product Support Office, 39450 Third Street East, suite 121, Palmdale, California 93550. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 7, 1995.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22716 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFB Part 39

[Docket No. 94–NM–131–AD; Amendment 39–9375; AD 95–19–13]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A airplanes, that requires repetitive inspections for cracking of fuselage frame 29, and repair, if necessary. This amendment is prompted by testing that revealed fatigue cracking in the web and inboard flange of frame 29. The actions specified by this AD are intended to prevent reduced structural integrity of the fuselage due to fatigue cracking in frame 29.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Avro International Aerospace, Inc., 22111 Pacific Blvd., Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A airplanes was published in the **Federal Register** on April 20, 1995 (60 FR 19693). That action proposed to require repetitive visual inspections to detect cracking of the fuselage at frame 29, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 43 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $23,220, or $540 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–13 British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft, Limited): Amendment 39–9375. Docket 94–NM–131–AD.

Applicability: All Model BAe 146–100A, –200A, and –3300A airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage of the airplane due to fatigue cracking in frame 29, accomplish the following:

(a) Perform a detailed visual inspection for cracking of frame 29 between stringers 12 and 18 on the left and right side of the fuselage, in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–130, dated May 10, 1994. If the polymer coating on frame 29 prevents a detailed visual inspection, perform a surface eddy current inspection for cracking in accordance with the service bulletin. Perform the inspections at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Model BAe 146–100A airplanes: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 30,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 6,000 landings.

(2) For Model BAe 146–200A airplanes, and for Model BAe 146–300A airplanes other than those airplanes identified in paragraph (a)(3) of this AD: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 24,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 6,000 landings.

(3) For Model BAe 146–300A airplanes having serial numbers E3207, E3212, E3214, E3216, E3218, E3219, and E3222: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 13,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(b) If any cracking is found during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Accomplishment of the modification of each affected bolt position in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–130, dated May 10, 1994, prior to the embodiment times shown in Table 'A' of that service bulletin, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 2: Repair Instruction Leaflet (RIL) HC536H9159 provides detailed instructions for modification of all bolt positions in the affected areas of frame 29.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and modification shall be done in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–130, dated May 10, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avro International Aerospace, Inc., 22111 Pacific Blvd., Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22855 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–129–AD; Amendment 39–9367; AD 95–19–05]

Airworthiness Directives; British Aerospace Model BAe 146–100A and –200A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A and –200A airplanes, that requires modification of the glareshield and certain electrical equipment of the airplane. This amendment is prompted by a report indicating that, if the lift spoilers fail to deploy on landing, the flight crew may not receive any indication that this situation exists. The actions specified by this AD are intended to ensure that the flight crew is advised when the lift spoilers fail to deploy on landing; such failure could result in the airplane overrunning the end of the runway during landing.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Avro International Aerospace, Inc., 22111 Pacific Blvd., Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A and –200A airplanes was published in the **Federal Register** on May 18, 1995 (60 FR 26702). That action proposed to require modification of the glareshield and certain electrical equipment of the airplane.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 21 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $275,880, or $7,260 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–05 British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9367. Docket 94–NM–129–AD.

Applicability: Model BAe 146–100A and –200A airplanes; as listed in British Aerospace Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised when the lift spoilers fail to deploy on landing, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the glareshield and certain electrical equipment of the airplane by installing an amber warning light in the glareshield that will illuminate if the lift spoilers fail to deploy on landing; perform a test of the glareshield warning light; and perform a lift spoiler inhibit and fault monitoring operational test; in accordance with British Aerospace Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with British Aerospace Service Bulletin SB.27–70–00913A&B, Revision 7, dated March 21, 1994, which contains the specified effective pages:

Page No.	Revision level shown on page	Date shown on page
4–14, 16–34, 37–40,45.	4	None.
41–44	5	None.
2, 3	6	None.
1, 15, 35–36	7	March 21, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AVRO International Aerospace, Inc., 22111 Pacific Blvd., Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22590 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–111–AD; Amendment 39–9373; AD 95–19–11]

Airworthiness Directives; British Aerospace Model Viscount 744, 745D, and 810 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model Viscount 744, 745D, and 810 airplanes, that requires inspections to detect cracking of certain fittings of the tailplane spar, and replacement of the fittings with serviceable parts, if necessary. This amendment is prompted by reports of fatigue cracking of certain fittings in the tailplane spar. The actions specified by this AD are intended to prevent such cracking, which could result in structural degradation of the attachment of the horizontal stabilizer to the fuselage.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft Ltd., Engineering Support Manager, Military Business Unit, Chadderton Works, Greengate, Middleton, Manchester M24 1SA, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model Viscount 744, 745D, and 810 airplanes was published in the **Federal Register** on May 1, 1995 (60 FR 21056). That action proposed to require repetitive high frequency eddy current inspections to detect cracking of certain fittings of the tailplane spar, and replacement of the fittings with serviceable parts, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,960, or $240 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–11 British Aerospace Regional Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited, Vickers-Armstrongs Aircraft Limited): Amendment 39–9373. Docket 94–NM–111–AD.

Applicability: All Model Viscount 744, 745D, and 810 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural degradation of the attachment of the horizontal stabilizer to the fuselage, accomplish the following:

(a) For Model Viscount 744 and 745D airplanes: Within 3,000 landings or 3 years after the effective date of this AD, whichever occurs first, perform a high frequency eddy current (HFEC) inspection to detect cracking of the bolt holes on the top fittings of the root joint of the tailplane spar, in accordance with British Aerospace Alert Preliminary Technical Leaflet (PTL) 264, Issue 3, dated September 1, 1992. Repeat the inspection thereafter at intervals not to exceed 3,000 landings or 3 years, whichever occurs first.

(b) For Model Viscount 810 airplanes: Within 1,000 landings or 1 year after the effective date of this AD, whichever occurs first, perform an HFEC inspection to detect cracking of the bolt holes on the top fittings of the root joint of the tailplane spar, in accordance with British Aerospace Alert PTL 127, Issue 3, dated June 1, 1992. Repeat the inspection thereafter at intervals not to exceed 3,000 landings or 3 years, whichever occurs first.

(c) If any cracking is found during the inspections required by paragraph (a) or (b) of this AD, prior to further flight, replace the cracked fitting with a serviceable part, in accordance with British Aerospace Alert PTL 264, Issue 3, dated September 1, 1992 (for Model 744 and 745D airplanes), or Alert PTL 127, Issue 3, dated June 1, 1992 (for Model 810 airplanes); as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with British Aerospace Alert Preliminary Technical Leaflet (PTL) 264, Issue 3, dated September 1, 1992; or British Aerospace Alert PTL 127, Issue 3, dated June 1, 1992; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft Ltd., Engineering Support Manager, Military Business Unit, Chadderton Works, Greengate, Middleton, Manchester M24 1SA, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22856 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–184–AD; Amendment 39–9374; AD 95–19–12]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that requires various repetitive inspections to detect cracks in certain panels of the lower skin of the wing, and in certain fixed ribs of the leading edge of the wing. This amendment also requires repair or replacement of cracked parts, which would terminate certain repetitive inspections. This amendment is prompted by reports of cracking in certain panels of the lower skin of the wing, and in certain fixed ribs of the leading edge of the wing due to fatigue-related stress. The actions specified by this AD are intended to ensure the structural integrity of the wing by detecting fatigue-related cracking in a timely manner in the panels of the lower skin of the wing or in the fixed ribs of the leading edge of the wing.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes was published in the **Federal Register** on June 9, 1995 (60 FR 30474). That action proposed to require various repetitive inspections to detect cracks in panel number 1 at rib 6 and in panel number 2 at rib 10 of the lower skin of the wing, in the rebate radius of panel number 2 at the joint between panels 1 and 2 of the lower skin of the wing, and in the top and bottom flanges of fixed ribs 6, 10, and 14 of the leading edge of the wing. That action also proposed to require repair or replacement of cracked parts, which constitutes terminating action for certain repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $26,040, or $840 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–12 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–9374. Docket 94–NM–184–AD.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure the structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform a close visual and dye penetrant inspection to detect cracks in panel number 1 at rib 6 and in panel number 2 at rib 10 of the lower skin of the wing, in accordance with British Aerospace Alert Service Bulletin 57–A-PM5992, Issue 1, dated October 14, 1992.

(1) If no crack is detected, repeat the inspections thereafter at intervals not to exceed 8,000 landings.

(2) If any crack is detected at rib 6, prior to further flight, repair panel number 1 in accordance with the alert service bulletin. Accomplishment of this repair constitutes terminating action for the repetitive inspections of panel number 1 as required by this paragraph.

(3) If any crack is detected at rib 10, prior to further flight, repair panel number 2 in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) Prior to the accumulation of 30,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the rebate radius of panel number 2 at the joint between panels 1 and 2 of the lower skin of the wing, in accordance with British Aerospace Alert Service Bulletin 57–A-PM5992, Issue 1, dated October 14, 1992.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If any crack is detected, prior to further flight, repair panel number 2 in accordance with the alert service bulletin. Accomplishment of this repair constitutes terminating action for the repetitive inspections of panel number 2 as required by this paragraph.

(c) Prior to the accumulation of 30,000 total landings or within 1,500 landings after the effective date of this AD, whichever occurs later, perform a close visual inspection to detect cracks in the top and bottom flanges of fixed ribs 6, 10, and 14 of the leading edge of the wing, in accordance with British Aerospace Alert Service Bulletin 57–A-PM5992, Issue 1, dated October 14, 1992.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If any crack is detected, prior to further flight, replace the cracked rib with a new rib, in accordance with the alert service bulletin. Prior to the accumulation of 30,000 total landings on the newly installed rib, perform a close visual inspection to detect cracks on the newly installed rib in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections, certain repairs, and replacement shall be done in accordance with British Aerospace Alert Service Bulletin 57–A-PM5992, Issue 1, dated October 14, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 7, 1995.

Darrell M. Pedersen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22857 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–214–AD; Amendment 39–9363; AD 95–19–02]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of the flight control lock (FCL) handle and switch with a modified unit. This amendment is prompted by a report of sudden engagement of the FCL system during approach for landing. The actions specified by this AD are intended to prevent inadvertent engagement of the FCL system during flight and subsequent reduced controllability of the airplane.

DATE: Effective October 20,1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on December 27, 1994 (59 FR 66494). That action proposed to require replacement of the flight control lock (FCL) handle and switch with a modified unit.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the compliance time of one year be extended to a calendar date of September 1997. The commenter explains that 10 work hours are necessary to accomplish the required replacement, and that this figure is considerably more than that estimated in the proposal. Therefore, in order to accomplish the modification on its affected fleet within the proposed compliance time, the commenter indicates that it would be required to special schedule the replacement. The commenter adds that such special scheduling would be disruptive to its operating schedule and would result in additional expense over that estimated in the economic impact information specified in the proposal. The commenter states that extending the compliance time to September 1997 would allow it to accomplish the modification during scheduled maintenance visits.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required replacement within an interval of time that parallels regularly scheduled maintenance for the majority of affected operators. The FAA finds that a compliance time of one year, as proposed, should provide ample time for the replacement to be accomplished during scheduled maintenance intervals. Further, the FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required replacement without compromising safety. While the commenter cites the number of work hours as its primary reason that special scheduling would be necessary, the commenter provides no data demonstrating that extending the compliance time would not compromise safety, nor does the commenter suggest any alternative actions to ensure safe operation in the interim. In addition, the FAA based its work hour estimate on the service bulletin option not to remove the FCL handle assembly from the pedestal when performing the replacement. The FAA would consider a request for an adjustment of the compliance time, however, in accordance with the provisions of paragraph (b) of this AD, provided that adequate justification is presented to support such a request.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $88,500, or $1,180 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action." under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–02 Fokker: Amendment 39–9363. Docket 94–NM–214–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11419 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within one year after the effective date of this AD, remove the existing flight control lock (FCL) handle and switch and replace it with a modified FCL handle and switch, in accordance with Fokker Service Bulletin SBF100–27–051, Revision 1, dated May 6, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Fokker Service Bulletin SBF100–27–051, Revision 1, dated May 6, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 20,1995.

Issued in Renton, Washington, on September 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22303 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–139–AD; Amendment 39–9376; AD 95–19–14]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model ATP airplanes, that requires modification of certain doors. This amendment is prompted by a report that an operator was unable to unlock a Type I passenger door due to migration of a shootbolt bush. The actions specified by this AD are intended to prevent such migration, which could jam the Type I passenger door, and subsequently could delay or impede the evacuation of passengers during an emergency.

DATES: Effective October 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes was published in the **Federal Register** on June 6, 1995 (60 FR 29800). That action proposed to require modification of the Type I passenger doors and aft baggage door.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 35 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of the required parts will be nominal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,000, or $2,100 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–14 Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Amendment 39–9376. Docket 94–NM–139–AD.

Applicability: Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent migration of a shootbolt bush, which could jam the Type I passenger door, and subsequently could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 1,500 hours time-in-service after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, modify the Type I passenger doors and aft baggage door, in accordance with Jetstream Service Bulletin ATP–52–26–10350B, dated June 29, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Jetstream Service Bulletin ATP–52–26–10350B, dated June 29, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 20, 1995.

Issued in Renton, Washington, on September 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22854 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–144–AD; Amendment 39–9371; AD 95–19–09]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. This action requires an inspection to detect damage, burn marks, or discoloration at certain electrical plugs and receptacles of the sidewall lighting in the passenger cabin, and correction of discrepancies. This action also requires modification of the electrical connectors, which would terminate the inspection requirement. This amendment is prompted by reports of failures of the electrical connectors in the sidewall fluorescent lighting, which resulted in smoke or lighting interruption in the passenger cabin. The actions specified in this AD are intended to prevent failures of the electrical connectors, which could result in poor socket/pin contact, excessive heat, electrical arcing, and subsequently, connector burn through and smoke in the passenger cabin.

DATES: Effective October 5, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 1995.

Comments for inclusion in the Rules Docket must be received on or before November 20, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5344; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On April 5, 1995, the FAA issued AD 95–08–04, amendment 39–9193 (60 FR 19348, April 18, 1995), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, to require a visual inspection to detect damage, burn marks, or black or brown discoloration at certain electrical plugs and receptacles of the sidewall lighting in the passenger cabin. The amendment also requires modification of the electrical connectors of the sidewall lighting in the passenger cabin, which would constitute terminating action for the inspection requirement. That action was prompted by reports of failures of the electrical connectors in the sidewall fluorescent lighting, which resulted in smoke or lighting interruption in the passenger cabin. The requirements of that AD are intended to prevent failures of the electrical connectors, which could result in poor socket/pin contact, excessive heat, electrical arcing, and subsequently, connector burn through and smoke in the passenger cabin.

Since the issuance of AD 95–08–04, the FAA has reviewed and approved Revision 1 of McDonnell Douglas MD–80 Service Bulletin 33–99, dated February 23, 1995. The inspection, replacement, and modification procedures described in this revision are identical to those described in the original version, which was referenced in AD 95–08–04 as the appropriate source of service information. (This revision also contains certain minor editorial changes.) Additionally, this effectivity listing in this revision is expanded to include ten additional airplanes: those having serial numbers 49614, 49626 through 49632 inclusive, 496368, and 49707. The FAA has determined that these additional airplanes are subject to the addressed unsafe condition.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failures of the electrical connectors, which could result in poor socket/pin contact, excessive heat, electrical arcing, and subsequently, connector burn through and smoke in the passenger cabin. This AD requires a visual inspection to detect damage, burn marks, or black or brown discoloration at certain electrical plugs and receptacles of the sidewall lighting in the passenger cabin. The AD also requires modification of the electrical connectors of the sidewall lighting in the passenger cabin, which would constitute terminating action for the inspection requirement. The actions are required to be accomplished in accordance with the service bulletin described previously. This AD varies from the service bulletin in that it only applies to Model DC–9–80 series airplanes and Model MD–88 airplanes having serial numbers 49614, 49626 through 49632 inclusive, 49668, and 49707.

None of the Model DC–9–80 series airplanes and Model MD–88 airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 75 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts will cost approximately $1,870 per airplane. Based on these figures, the total cost impact of this AD would be $6,370 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–144–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–19–09 McDonnell Douglas: Amendment 39–9371. Docket 95–NM–144–AD.

Applicability: Model DC–9–80 series airplanes and Model MD–88 airplanes having serial numbers 49614, 49626 through 49632 inclusive, 49668, and 49707; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent poor socket/pin contact, excessive heat, electrical arcing, and subsequently, connector burn through and smoke in the passenger cabin, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform a visual inspection to detect damage, burn marks, or black or brown discoloration caused by electrical arcing at electrical plugs, having part number (P/N) MS3126F–15P, and receptacles, having P/N MS3124E–15S, of the sidewall lighting in the passenger cabin, in accordance with McDonnell Douglas MD–80 Service Bulletin 33–99, Revision 1, dated February 23, 1995.

(1) If no discrepancies are found, no further action is required by this paragraph.

(2) If any discrepancy is found, prior to further flight, replace the damaged connectors, pins, sockets, or wire with new parts, in accordance with the service bulletin.

(b) Within 18 months after the effective date of this AD, modify the electrical connectors of the sidewall lighting in the passenger cabin, in accordance with McDonnell Douglas MD–80 Service Bulletin 33–99, Revision 1, dated February 23, 1995. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, replacement, and modification shall be done in accordance with McDonnell Douglas MD–80 Service Bulletin 33–99, Revision 1, dated February 23, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 5, 1995.

Issued in Renton, Washington, on September 7, 1995.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22714 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–ANM–40]

Realignment of Jet Route J–15

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will realign Jet Route J–15 to include the Twin Falls, ID, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility. This action will enhance traffic flow and reduce controller workload on a frequently used high altitude route.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On November 16, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign Jet Route J–15 to include the Twin Falls, ID, VORTAC (59 FR 59181).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations realigns Jet Route J–15 to include the Twin Falls, ID, VORTAC. This will enhance traffic flow and reduce controller workload on a frequently used high altitude route.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–15 [Revised]

From Humble, TX, via INT Humble 269° and Junction, TX, 112° radials; Junction; Wink, TX; Chisum, NM; Corona, NM; Albuquerque, NM; Farmington, NM; Grand Junction, CO; Salt Lake City, UT; Twin Falls, ID; Boise, ID; Kimberly, OR; INT Kimberly 288° and Battle Ground, WA, 136° radials; to Battle Ground.

* * * * *

Issued in Washington, DC, on September 12, 1995.

Reginald C. Matthews,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–23341 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–AAL–1]

Extension of Jet Route J–179 and Establishment of Jet Route J–510; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters Jet Route J–179 between the Middleton Island, AK, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the Sparrevohn, AK, VOR/DME and from the St. Mary's, AK, Nondirectional Radio Beacon (NDB) to the Emmonak, AK, VOR/DME. Also, this rule establishes Jet Route J–510 between the Galena, AK, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Emmonak, AK, VOR/DME. This action will enhance navigation for aircraft flying from the continental United States and aircraft departing from Anchorage International Airport. This action will also reduce pilot and air traffic controller workload.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On March 16, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter Jet Route J–179 and establish Jet Route J–510 (59 FR 12209).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters Jet Route J–179 by extending J–179 from the Middleton Island, AK, VOR/DME to the Emmonak, AK, VOR/DME, and establishes Jet Route J–510 from the Galena, AK, VORTAC to the Emmonak, AK, VOR/DME. This action will enhance navigation for aircraft flying from the continental United States and aircraft departing from Anchorage International Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–179 [Revised]

From Middleton Island, AK; Kenai, AK; Sparrevohn, AK; Aniak, AK, NDB; St. Mary's, AK, NDB; to Emmonak, AK.

* * * * *

J–510 [New]

From Galena, AK; Unalakleet, AK; to Emmonak, AK.

* * * * *

Issued in Washington, DC, on September 12, 1995.

Reginald C. Matthews,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–23342 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 95–ANM–2]

Realignment of VOR Federal Airway V–86; Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will extend Federal Airway V–86 from Coppertown, MT, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the Missoula, MT, VOR/DME. This action will improve the efficiency of air traffic operations between Coppertown, MT, VOR/DME and Missoula, MT, VOR/DME facilities, and will reduce pilot/controller workload.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On June 1, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend Federal Airway V–86 from Coppertown, MT, VOR/DME to the Missoula, MT, VOR/DME (60 FR 28551).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations extends Federal Airway V–86 from the Coppertown, MT, VOR/DME to the Missoula, MT, VOR/DME facility. The extension of V–86 will improve the efficiency of air traffic operations between the Coppertown, MT, VOR/DME and Missoula, MT, VOR/DME facilities, and will reduce pilot/controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–86 [Revised]

From Missoula, MT; Coppertown, MT; Whitehall, MT; Bozeman, MT; INT Bozeman 128° and Livingston, MT, 261° radials; Livingston; 11 miles, 25 miles, 85 MSL, Billings, MT; 32 miles, 35 miles, 75 MSL; Sheridan, WY; 20 miles, 45 miles, 70 MSL, 63 miles, 80 MSL, to Rapid City, SD.

* * * * *

Issued in Washington, DC, on September 12, 1995.

Reginald C. Matthews,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–23343 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 91

[Docket No. 26834; Special Federal Aviation Regulation (SFAR) No. 65–1]

RIN 2120–AF85

Prohibition Against Certain Flights Between the United States and Libya

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule replaces the flight prohibition implemented by the FAA in SFAR 65, which became effective on April 20, 1992, and expired on April 16, 1993. This action prohibits the takeoff from landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of Libya. This action further prohibits the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight's origin or ultimate destination is Libya. Exceptions are made for particular flights approved by the United States Government in consultation with the UN Security Council committee established under Security Council Resolution 748 (1992) and for certain emergency operations. This action is necessary to implement Executive Orders 12543 (1986) and 12801 (1992) and Resolution 748 mandating an embargo of air traffic with Libya.

DATES: The removal of SFAR 65 and the addition of SFAR 65–1 are effective on September 20, 1995. SFAR 65–1 shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Mark W. Bury, International Affairs and Legal Policy Staff, AGC–7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–3515.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Public Inquiry Center, APA–230, 800 Independence Avenue S.W., Washington, DC 20591, or by calling 202–267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of the Advisory Circular No. 11–2A, which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 40101(d)(1) of Title 49, United States Code, requires the Administrator of the FAA to consider the regulation of air commerce in a manner that best promotes safety and fulfills the requirements of national security as being in the public interest. In addition, 49 U.S.C. 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the United States Government under an international agreement.

One such international agreement is the Charter of the United Nations (the Charter) (59 Stat. 1031; 3 Bevans 1153 (1945)). Under Article 25 of the Charter, "the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Article 48(1) of the Charter further provides, in pertinent part, that "[t]he action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all members of the United Nations * * *."

On March 31, 1992, acting under Chapter VII of the Charter, the Security Council adopted Resolution 748, mandating an embargo of certain air traffic with Libya. Paragraph 4(a) of Resolution 748 requires all states to deny permission to any aircraft to take off from, land in, or overfly their territory if the aircraft is destined to land in or has taken off from the territory of Libya. An exception to this prohibition is made for flights that have been approved on the grounds of urgent humanitarian need by the Security Council committee established by paragraph 9 of Resolution 748. The terms of Resolution 748 were reaffirmed by the Security Council in Resolution 883 (1993).

The United States Government has taken several actions to restrict air transportation between the United States and Libya. On January 7, 1986, the President issued Executive Order 12543, which prohibits "[a]ny transaction by a United States person relating to transportation to or from Libya * * * or the sale in the United States by any person holding authority under the Federal Aviation act of any transportation by air which includes any stop in Libya." On January 30, 1986, the Secretary of Transportation implemented Executive Order 12543 by issuing Order 86–2–23, which amended all Department of Transportation (DOT) certificates issued under section 401 of the Federal Aviation Act, all permits issued under section 402 of the Act, and all exemptions from sections 401 and 402 accordingly.

In response to UN Resolution 748, the President issued Executive Order 12801 on April 15, 1992. Section 1 of Executive order 12801 prohibits:

> the granting of permission to any aircraft to take off from, land in, or overfly the United States, if the aircraft, as part of the same part of the same flight or a continuation of that flight, is destined to land in or has taken off from the territory of Libya * * *.

Executive Order 12801 cited the President's authority under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C.

1601 *et seq.*), section 1114 of the Federal Aviation Act of 1958, as amended (formerly codified at 49 U.S.C. app. 1514, now recodified at 49 U.S.C. 40106), section 301 of Title 3, United States Code (3 U.S.C. 301), and section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c). In particular, the United Nations Participation Act provides that:

> Notwithstanding the provisions of any other law, whenever the United States is called upon by the (UN) Security Council to apply measures which said Council has decided * *, * are to be employed to give effect to its decisions under the (United Nations) Charter, the President may, to the extent necessary to apply such measures,through any agency which he may designate, and under such orders, rules, or regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations of rail, sea, (and) air * * * between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof * * *.

In support of Executive Order 12801, the FAA adopted SFAR 65 on April 16, 1992. SFAR 65 prohibited the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of the Libya. SFAR 65 also prohibited the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight is destined to land in or take off from the Libya. SFAR 65 expired on April 16, 1993.

Copies of UN Security Council Resolution 748, Executive Orders 12543 and 12801, and DOT Order 86–2–23, all of which remain in effect, have been placed in the docket for this rulemaking.

Prohibition Against Certain Flights Between the United States and Libya

On the basis of the above, and in support of the Executive Order of the President of the United States, I find that immediate action by the FAA is required to implement Executive Orders 12543 and 12801 and to meet the obligations of the United States under international law as evidenced by U.N. security Council Resolution No. 748. Accordingly, I am ordering a prohibition on the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight that has Libya as its origin or ultimate destination. Operations approved by the United States Government in consultation with the UN Security Council committee established under Resolution 748 and certain emergency operations shall be excepted from this prohibition. For the reasons stated above, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon publication. I also find that this action is fully consistent with my obligations under section 49 U.S.C. 40105(b)(1)(A) to act consistently with the obligations of the United States under international agreements.

The rule contains no expiration date, and will be terminated as soon as the underlying legal requirements leading to its adoption are removed.

Regulatory Evaluation

The potential cost of this regulation is limited to the net revenue of commercial flights between the United States and Libya. However, revenue flights to Libya are currently prohibited by DOT Order 86–2–23. Accordingly, this action will impose no additional burden on those operators.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

International Trade Impact Assessment

DOT Order 86–2–23 prohibits U.S. and foreign air carriers from engaging in the sale of air transportation to or from Libya. This SFAR does not impose any restrictions on commercial carriers beyond those imposed by the DOT Order. Therefore, the SFAR will not create a competitive advantage or disadvantage for foreign companies in the sale of aviation products or services in the United States, nor for domestic firms in the sale of aviation products or services in foreign countries.

Federalism Determination

The amendment set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 4168; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this action is not a "significant regulatory action" under Executive Order 12866. This action is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Libya are already prohibited by DOT Order 86–2–23, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Freight, Libya.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

Part 9 SFAR 65 [Removed]

2. SFAR 65, which expired April 16, 1993, is removed.

Part 91 SFAR 65–1 [Added]

3. Special Federal Aviation Regulation (SFAR) No. 65–1 is added to read as follows:

Special Federal Aviation Regulation No. 65–1—Prohibition Against Certain Flights Between the United States and Libya

1. Applicability. This Special Federal Aviation Regulation (SFAR) No. 65–1 applies to all aircraft operations originating from, landing in, or overflying the territory of the United States.

2. Special flight restrictions. Except as provided in paragraphs 3 and 4 of this SFAR No. 65–1—

(a) No person shall operate an aircraft on a flight to any point in Libya, or to any intermediate point on a flight where the ultimate destination is any point in Libya or that includes a landing at any point in Libya in its intended itinerary, from any point in the United States;

(b) No person shall operate an aircraft on a flight to any point in the United States from any point in Libya, or from any intermediate point on a flight where the origin is in Libya, or from any point on a flight which includes a departure from any point in Libya in its intended itinerary; or

(c) No person shall operate an aircraft over the territory of the United States if that aircraft's flight itinerary includes any landing at or departure from any point in Libya.

3. Permitted operations. This SFAR shall not prohibit the flight operations between the

United States and Libya described in section 2 of this SFAR by an aircraft authorized to conduct such operations by the United States Government in consultation with the committee established by UN Security Council Resolution 748 (1992), as affirmed by UN Security Council Resolution 883 (1993).

4. Emergency situations. In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations or the aircraft involved in the deviation, including a description of the deviation and the reasons therefor.

5. Duration. This SFAR No. 65–1 shall remain in effect until further notice.

Issued in Washington, DC on September 13, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–23346 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178, 181 and 191

[T.D. 95–68]

RIN 1515–AB33

North American Free Trade Agreement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the document published in the **Federal Register** that adopts as a final rule, with some changes, interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement (NAFTA) and the North American Free Trade Agreement Implementation Act. The correction concerns the discussion of a comment in the Background portion of the document regarding the calculation of NAFTA drawback.

EFFECTIVE DATE: This correction is effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Entry Rulings Branch (202–482–7040).

SUPPLEMENTARY INFORMATION:

Background

On September 6, 1995, Customs published in the **Federal Register** (60 FR 46334) T.D. 95–68 to adopt as a final rule, with some changes, interim amendments to the Customs Regulations implementing the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement (NAFTA) and the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057. These final NAFTA implementing regulations take effect on October 1, 1995.

The SUPPLEMENTARY INFORMATION portion of T.D. 95–68 included a detailed discussion of the public comments submitted to Customs on the interim NAFTA implementing regulations. One such comment concerned interim § 181.44(b) and stated, with reference to a specific example, that the regulation was unclear as to the calculation of NAFTA drawback (that is, with regard to how the required duty comparison is to be made) when two or more components are used in the process of manufacture. The Customs response to this comment included a general statement of the principle to be applied and also stated that a new paragraph (b) was being added to § 181.44 to set forth the relative value calculation and individual comparison principle.

On further review of the response to the submitted comment, Customs has determined that the response neither specifically addressed the example provided in the comment nor adequately expressed the principle reflected in the new paragraph (b) text. This document corrects the Customs response in question accordingly.

Correction of Publication

In the document published in the **Federal Register** as T.D. 95–68 on September 6, 1995 (60 FR 46334), on page 46339, under the heading "Section 181.44(b)", the paragraph beginning at the bottom of the first column and ending at the top of the second column before the example is corrected to read as follows:

Customs response: With respect to the duty comparison referred to in the comment, the comparison should be made between the total duty paid on all imported materials or component parts and the duty paid on the finished article exported to Canada or Mexico: In the example cited by the commenter, the total duty of $6.00 paid on the two imported parts would be compared to the $5.00 in Canadian or Mexican duty paid on the exported finished article, resulting in $5.00 in drawback. Where multiple finished articles are produced from one imported component or material, relative value will be used to determine how the comparison is to be made between the duty paid on the imported component or material and the duty paid on each individual exported finished article. Section 181.44, as set forth below, has been modified by redesignating paragraphs (b)–(e) as (c)–(f) and adding a new paragraph (b) which sets forth the relative value calculation and individual comparison principle and includes the following example to illustrate the rule where multiple articles are produced from one component or material:

Dated: September 14, 1995.

Harvey B. Fox,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 95–23269 Filed 9–19–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 88F–0303]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the following additives as components of coatings that contact food: meta-xylylenediamine (1,3-benzenedimethanamine), para-xylylenediamine (1,4-benzenedimethanamine), 3-diethylaminopropylamine, benzyl alcohol, salicylic acid, N-*beta*-(aminoethyl)-*gamma*-aminopropyltrimethoxysilane, and castor oil, hydrogenated polymer with ethylenediamine, 12-hydroxyoctadecanoic acid, and sebacic acid. This action responds to a petition filed by Sigma Coatings.

DATES: Effective September 20, 1995;written objections and requests for a hearing by October 20, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 17, 1988 (53 FR 46505), FDA announced that a food additive petition (FAP 8B4067) had been filed by Sigma Coatings, Harvey, LA 70059. The petition proposed that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of the following additives as components of coatings that contact food: 1,3-benzenedimethanamine, 1,4-benzenedimethanamine, 3-diethylaminopropylamine, benzyl alcohol, salicylic acid, N-*beta*-(aminoethyl)-*gamma*-aminopropyltrimethoxysilane, and castor oil, hydrogenated polymer with ethylenediamine, 12-hydroxyoctadecanoic acid, and sebacic acid.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed uses for the additives in resinous and polymeric coatings in contact with foods are safe and that the regulations in § 175.300 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 20, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.300 is amended in paragraph (b)(3)(viii)(*b*) and in paragraph (b)(3)(xxxiii) by alphabetically adding the following new items to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(viii) * * *

(*b*) Catalysts and cross-linking agents for epoxy resins:

* * * * *

N-*Beta*-(aminoethyl)-*gamma*-aminopropyltrimethoxysilane (CAS Reg. No. 1760–24–3), for use only in coatings at a level not to exceed 1.3 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

Benzyl alcohol (CAS Reg. No. 100–51–6), for use only in coatings at a level not to exceed 4 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

* * * * *

3-Diethylaminopropylamine (CAS Reg. No. 104–78–9), for use in coatings at a level not to exceed 6 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

* * * * *

Salicylic acid (CAS Reg. No. 69–72–7), for use only in coatings at a level not to exceed 0.35 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

* * * * *

Meta-Xylylenediamine (1,3-benzenedimethanamine, CAS Reg. No. 1477–55–0), for use only in coatings at a level not to exceed 3 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

Para-Xylylenediamine (1,4 benzenedimethanamine, CAS Reg. No. 539–48–0), for use only in coatings at a level not to exceed 0.6 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E and F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

* * * * *

(xxxiii) * * *

* * * * *

Castor oil, hydrogenated polymer with ethylenediamine, 12-hydroxyoctadecanoic acid and sebacic acid (CAS Reg. No. 68604-06-8). The condensation product formed by the reaction of hydrogenated castor oil with polyamide derived from ethylenediamine, sebacic acid and 12-hydroxystearic acid, for use only in coatings at a level not to exceed 3.2 percent by weight of the resin when such coatings are intended for repeated use in contact with foods only of the types identified in paragraph (d) of this section, Table 1, under Types I, II, and III, under conditions of use C, D, E, or F as described in Table 2 of paragraph (d) of this section; or when such coatings are intended for repeated use in contact with foods of the types identified in paragraph (d) of this section, Table 1, under Types V, VI, VII, and VIII, under conditions of use E or F as described in Table 2 of paragraph (d) of this section. Use shall be limited to coatings for tanks of capacity greater than 530,000 gallons.

* * * * *

Dated: September 6, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95-23244 Filed 9-19-95; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 177

[Docket No. 92F-0237]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,1′-sulfonylbis[4-chlorobenzene] polymer with 4,4′-(1-methylethylidene)bis[phenol] (maximum 8 percent) and 4,4′-sulfonylbis[phenol] (minimum 92 percent) as repeat-use articles or components of repeat-use articles that contact food. This action is in response to a petition filed by BASF Corp.

DATES: Effective September 20, 1995; written objections and requests for a hearing by October 20, 1995. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication listed in § 177.2440, effective September 20, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 8, 1992 (57 FR 30224), FDA announced that a food additive petition (FAP 1B4263) had been filed by BASF Corp., 1609 Biddle Ave., Wyandotte, MI 48192-3799. The petition proposed to amend the food additive regulations in § 177.2440 *Polyethersulfone resins* (21 CFR 177.2440) to provide for the safe use of 1,1′-sulfonylbis[4-chlorobenzene] polymer with 4,4′-(1-methylethylidene)bis[phenol] (maximum 8 percent) and 4,4′-sulfonylbis[phenol] (minimum 92 percent) as repeat-use articles or components of repeat-use articles that contact food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that § 177.2440 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 20, 1995, file with the Dockets Management Branch (address above) written objection thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.2440 is amended by revising paragraphs (a) and (b) to read as follows:

§ 177.2440 Polyethersulfone resins.

* * * * *

(a) For the purpose of this section, polyethersulfone resins are:

(1) Poly(oxy-*p*-phenylenesulfonyl-*p*-phenylene) resins (CAS Reg. No. 25667-42-9), which have a minimum number average molecular weight of 16,000.

(2) 1,1′-sulfonylbis[4-chlorobenzene] polymer with 4,4′-(1-methylethylidene)bis[phenol] (maximum 8 percent) and 4,4′-sulfonylbis[phenol] (minimum 92 percent) (CAS Reg. No. 88285-91-0), which have a minimum number average molecular weight of 26,000.

(3) In paragraphs (a)(1) and (a)(2) of this section, the minimum number average molecular weight is determined by reduced viscosity in dimethyl formamide in accordance with ASTM method D2857-70 (Reapproved 1977), "Standard Test Method for Dilute Solution Viscosity of Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Division of Petition Control (HFS-215), Center for Food Safety and Applied Nutrition, 1110 Vermont Ave. NW., suite 1200, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(b) The basic resins identified in paragraphs (a)(1) and (a)(2) of this section may contain optional adjuvant substances described in § 174.5(d) of this chapter and the following:

List of substances	Limitations
Diphenylsulfone	Not to exceed 0.2 percent as residual solvent in the finished basic resin described in paragraph (a)(1) of this section.
Dimethyl sulfoxide .	Not to exceed 0.01 percent as residual solvent in the finished basic resin described in paragraph (a)(1) of this section.
N-methyl-2-pyrrolidone.	Not to exceed 0.01 percent as residual solvent in the finished basic resin described in paragraph (a)(2) of this section.

* * * * *

Dated: September 6, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–23248 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin Meglumine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Fort Dodge Laboratories. The ANADA provides for intravenous or intramuscular use of flunixin meglumine injection for alleviation of inflammation and pain associated with musculoskeletal disorders and visceral pain associated with colic in horses.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, 800 Fifth St. NW., P.O. Box 518, Fort Dodge, IA 50501, filed ANADA 200–142, which provides for intravenous or intramuscular use of flunixin meglumine injection for alleviation of inflammation and pain associated with musculoskeletal disorders and visceral pain associated with colic in horses.

ANADA 200–142 for Fort Dodge's flunixin meglumine injection is approved as a generic copy of Banamine® (flunixin meglumine) Injection in Schering-Plough's NADA 101–479. The ANADA is approved as of August 18, 1995, and the regulations are amended in 21 CFR 522.970(b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.970 is amended by revising paragraph (b) to read as follows:

§ 522.970 Flunixin meglumine solution.

* * * * *

(b) *Sponsors.* See Nos. 000061 and 000856 in § 510.600(c) of this chapter.

* * * * *

Dated: September 5, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–23245 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Pharmaceutical, Inc. The ANADA provides for intravenous use of oxytetracycline hydrochloride injection in cattle for treatment of certain diseases caused by pathogens sensitive to oxytetracycline.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center For Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Phoenix Pharmaceutical, Inc., 4621 Easton Rd., P.O. Box 6457 Farleigh Station, St. Joseph, MO 64506–0457, filed ANADA 200–068, which provides for intravenous use of oxytetracycline hydrochloride injection in cattle for the treatment of bacterial pneumonia and shipping fever complex associated with *Pasteurella* spp., bacterial enteritis (scours) caused by *Escherichia coli*, necrotic pododermatitis (foot rot) and calf diphtheria caused by *Spherophorus necrophorus*, wooden tongue caused by *Actinobacillu lignieresii*, wound infection and traumatic injury caused by oxytetracycline susceptible strains of streptococcal and staphylococcal bacteria.

Phoenix Pharmaceutical, Inc.'s, ANADA 200–068 for oxytetracycline hydrochloride injection is approved as a generic copy of Fermenta's NADA 108–963 for Medamycin®-100. The ANADA is approved as of July 31, 1995, and the regulations are amended in 21 CFR 522.1662a(h) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1662a is amended by revising paragraph (h)(2) to read as follows:

§ 522.1662a Oxytetracycline hydrochloride injection.

* * * * *

(h) * * *

(2) *Sponsors.* See 054273 in § 510.600(c) of this chapter for use of 50 and 100 milligrams/milliliter solution, and see No. 057319 in § 510.600(c) for use of 100 milligrams/milliliter solution.

* * * * *

Dated: September 1, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–23250 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Cyclosporine Ophthalmic Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for use of cyclosporine ophthalmic ointment for treatment of chronic keratoconjunctivitis sicca in dogs.

EFFECTIVE DATE: October 20, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., P.O. Box 529, Galloping Hill Rd., Kenilworth, NJ 07033, filed NADA 141–052, which provides for use of Optimmune® (0.2 percent cyclosporine, USP) Ophthalmic Ointment for treatment of chronic keratoconjunctivitis sicca in dogs. The drug product is available on a prescription basis. The NADA is approved as of August 2, 1995, and the regulations are amended in part 524 (21 CFR part 524) by adding new § 524.575 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning August 2, 1995, because no active ingredient (including any ester or salt of the active ingredient) of the drug has been approved in any other application under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 524.575 is added to read as follows:

§ 524.575 Cyclosporine ophthalmic ointment.

(a) *Specifications.* Each gram of ointment contains 2 milligrams of cyclosporine.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Apply a 1/4-inch strip of ointment to the affected eye(s) every 12 hours.

(2) *Indications for use.* For treatment of chronic keratoconjunctivitis sicca in dogs.

(3) *Limitations.* Place ointment directly on cornea or into the conjunctival sac. Safety of use in puppies, pregnant or breeding animals has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 1, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–23247 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Department of the Army Reg. 340-21]

Department of the Army Privacy Program

AGENCY: Department of the Army, DoD.

ACTION: Final Rule.

SUMMARY: The Department of the Army is revising an existing exemption rule. The exemption rule is for the system of records notice identified as A0381–100bDAMI, entitled Technical Surveillance Index.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: *Executive Order 12866.* The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action.' Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the right and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense, certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, the Department of the Army revises 32 CFR part 505 as follows:

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–597, 88 Stat. 1896 (5 U.S.C. 552a)

2. Section 505.5(e), paragraph ag. is revised as follows:

*   *   *   *   *

(e) * * *

ag. *System identifier and name:* A0381-l00bDAMI, Technical Surveillance Index.

(1) *Exemption.* This system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(2) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2) or (k)(5).

(3) *Reasons.* From subsection (c)(3) because disclosing the identities of agencies to which information from this system has been released could inform the subject of an investigation of an actual or potential criminal violation or intelligence operation; of the existence of that investigation or operation; of the nature and scope of the information and evidence obtained as to his/her activities or of the identify of confidential sources, witnesses, and intelligence or law enforcement personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, intelligence or law enforcement personnel, and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified and sensitive sources and operational methods and could constitute an unwarranted invasion of the personal privacy of others.

From subsection (d)(1) through (d)(5) because granting access to records in this system of records could inform the subject of an investigation of an actual or potential criminal violation; of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his/her activities; or of the identity of confidential sources, witnesses and intelligence or law enforcement personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, intelligence or law enforcement personnel and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, sensitive sources and operational methods and could constitute an unwarranted invasion of the personal privacy of others.

From subsection (e)(1) because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation or operation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation or operation, the investigator may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation or operation, the investigator may obtain information concerning violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective intelligence operations and law enforcement, criminal law enforcement investigators and military intelligence agents should retain this information, since it can aid in establishing patterns of criminal or intelligence activity and can provide valuable leads for other law enforcement or intelligence agencies.

From subsections (e)(4)(G) and (e)(4)(H) because this system of records is being exempt from subsections (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that this system of records will be exempt from subsections (d)(1) through (d)(5) of the Act. Although the system would be exempt from these requirements, the Deputy Chief of Staff for Intelligence and the U.S. Army Criminal Investigations Command have published information concerning its notification, access, and contest procedures for their respective areas because, under certain circumstances, the Deputy Chief of Staff for Intelligence or the U.S. Army Criminal Investigations Command could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

From subsection (e)(4)(I) because it is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses and to avoid the disclosure of investigative techniques and procedures. Although the system will be exempt from this requirement, the Deputy Chief of Staff for Intelligence and the U.S. Army Criminal Investigations Command have

published such a notice in broad, generic terms.

*   *   *   *   *

Dated: September 13, 1995.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–23238 Filed 9–19–95; 8:45 am]

BILLING CODE 5000-04-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY89–1–7168; FRL–5297–6]

Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky: Correction to the Boundary of the Kentucky Portion of the Louisville Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is correcting the boundaries of the Kentucky portion of the Louisville moderate ozone (O_3) nonattainment area, pursuant to Section 110(k)(6) of the Clean Air Act (the Act). The boundary of the Louisville moderate O_3 nonattainment area (nonattainment area) is being revised to include additional sources that contribute to violation of the O_3 National Ambient Air Quality Standard (NAAQS).

EFFECTIVE DATE: This final rule will be effective October 5, 1995.

ADDRESSES: Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, x4207.

SUPPLEMENTARY INFORMATION: On November 6, 1991 (56 FR 56694), EPA designated portions of Oldham and Bullitt Counties as moderate O_3 nonattainment. Sections 107(d)(4)(A)(i) and (ii) of the 1990 Clean Air Act Amendments (CAAA) set out the general process by which areas were to be designated for O_3 attainment/nonattainment immediately after enactment of the CAAA. Under the CAAA, preenactment O_3 and carbon monoxide (CO) nonattainment areas were classified on the date of enactment according to the severity of their problem. Within 120 days of enactment of the CAAA, the Governor of each state was required to submit a list of areas within the state, designating each area as attainment, nonattainment, or unclassifiable (120-day letter). Within 60 days of submitting the state lists, EPA was required to notify states of any potential modifications to the state's recommendations and encourage states to comment within 20 days to EPA's proposal. EPA was required to promulgate the lists, including boundary modifications, within 240 days of enactment.

On March 14, 1991, the Commonwealth of Kentucky (the Cabinet) submitted a list of ozone nonattainment, attainment and unclassifiable areas and boundaries. The Cabinet proposed that Jefferson County be the only Kentucky county in the Louisville nonattainment area. EPA gave 60 day notification to the Cabinet on May 13, 1991, that it intended to modify the proposed designation list. Pursuant to section 107(d)(1)(i) of the CAAA, EPA indicated that it intended to include Bullitt and Oldham Counties in the Louisville nonattainment area due to monitored violations of the NAAQS for O_3 in these counties.

On June 3, 1991, the cabinet formally disagreed with EPA's decision to include Bullitt and Oldham Counties in the Louisville nonattainment area. EPA and the Cabinet subsequently agreed to include the portions of Bullitt and Oldham Counties that contained the monitors that recorded the O_3 NAAQS violations and the sources whose emissions contributed to the O_3 NAAQS violations. Partial boundaries were developed and EPA published the nonattainment designation for the Louisville area on November 6, 1991 (FR 56 56694). Natural boundaries, roads, powerlines, etc., were used to detail the nonattainment area. When these boundaries were developed, sources on one side of the street or intersection were included in the nonattainment area while sources on the other side inadvertently were not. As a result, not all sources contributing to the violation of the O_3 NAAQS in Louisville were included in the nonattainment area, and inequitable economic impacts have been placed upon small competing businesses. This has affected the well being of some small businesses and it has undermined the effectiveness of the plan to attain the standard in the Louisville nonattainment area.

Final Action

In the **Federal Register** of November 6, 1991 (56 FR 56694), EPA issued a final rule promulgating the designations, boundaries, and classifications of O_3 nonattainment areas (and for nonattainment areas for other pollutants not addressed in this action). Pursuant to section 110(k)(6) of the CAAA, EPA is correcting the boundary of the Kentucky portion of the Louisville moderate O_3 nonattainment area to extend the nonattainment area 750 ft. outward from the center of a road or intersection.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 20, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

The OMB has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This correction under Section 110(k)(6) of the Act simply imposes previously existing requirements on a few small entities which were inadvertently left out of the designated nonattainment area. Therefore, I certify that this action does not have a significant impact on a substantial number of small entities.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined that this action does include a mandate. However, the estimated cost is less than $100 million to State, local, or tribal governments in the aggregate or to the private sector.

In accordance with CAAA sections 107(d)(2)(B) and 110(k)(6), this action is a final rule and is not subject to the notice and comment provisions of sections 553 through 557 of Title 5.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Ozone, Intergovernmental relations.

Dated: September 12, 1995.

Carol M. Browner,

Administrator.

Part 81 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In section 81.318, the ozone table is amended by revising the entries for "Bullitt County (part)" and "Oldham County (part)" under the "Louisville Area" to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type*
*	*	*	*	*
Bullitt County (part): The area boundary is as follows: Beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County Line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County Line; proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on Ky 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox Military Reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with Ky 2723; proceeding north on Ky 2723 to the junction of Chillicoop Road; proceeding northeast on Chillicoop Road to the junction of KY 2673; proceeding north on KY 2673 to the junction of KY 1020; proceeding north on KY 1020 to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.		Non-attainment		Moderate.

KENTUCKY-OZONE—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type*
Jefferson County		Non-attainment		Moderate
Oldham County (part): The area boundary is as follows: Beginning at the intersection of the Oldham-Jefferson County Line with the southbound lane of Intestate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of Ky 329 and the southbound lane of Interstate 71; proceeding to the northwest on Ky 329 to the intersection of Zaring Road an Ky 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of Ky 393 and Cedar Point Road; proceeding to the south-southeast on Ky 393 to the junction of (the access road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on the access road to the junction with Dawkins Lane and the access road; proceeding to follow an electric power line east-northeast across from the junction of county road 746 and Dawkins Lane to the east-northeast across Ky 53 on to the La Grange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on Ky 146; proceeding along the power line south across Ky 146 and the Seaboard System Railroad track to adjoin the incorporated city limits of La Grange; then proceeding east then south along the La Grange city limits to a point abutting the north side of Ky 712; proceeding east-southeast on Ky 712 to the junction of Massie School Road and Ky 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northeast on Zale Smith Road to the junction of KY 53 and Zale Smith Road; proceeding on Ky 53 to the north-northwest to the junction of New Moody Lane and Ky 53; proceeding on New Moody Lane to the south-southwest until meeting the city limits of La Grange; then briefly proceeding north following the La Grange city limits to the intersection of the northbound lane of Interstate 71 and the La Grange city limits; proceeding southwest on the north-bound lane of Interstate 71 until inter-secting with the North Fork of Currys Fork; proceeding south-southwest beyond the con-fluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection.		Non-attainment		Moderate.
*	*	*	*	*

(1) This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 95–23320 Filed 9–19–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 180

[PP 0E3858/R2171; FRL–4977–7]

RIN 2070–AB78

Cinnamaldehyde; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a pesticide tolerance for residues of the fungicidal pest control agent Cinnamaldehyde in or on all raw agricultural commodities. The Interregional Research Project No. 4 (IR-4) requested this tolerance exemption on behalf of Monterey Laboratories and pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). This regulation eliminates the need to establish a maximum permissible level for residues of cinnamaldehyde.

DATES: This regulation becomes effective September 20, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0E3858/R2171], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [0E3858/R2171]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository

Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number: CS1, 5th floor, 2800 Crystal Drive, Crystal City, VA 22202, (703)-308-8733; e-mail: bacchus.shanus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 1995 (60 FR 38331), EPA issued a notice of PP OE3858 from IR-4, New Jersey, 08903, proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(d), to exempt from the requirement of a tolerance the residues of cinnamaldehyde, a pest control agent, in or on all raw agricultural commodities when used to control certain fungal pest species.

There were no comments received in response to the notice of filing. The data submitted in the petition and all other relevant material have been evaluated and are summarized below.

Cinnamaldehyde (cinnamic aldehyde) is the main component in cassia oil as well as cinnamon bark oil and is used in flavoring compounds to impart a cinnamon flavor. Considerable safety data exist from the food and flavoring industry, which use food-grade cinnamaldehyde in nonalcoholic beverages, ice cream, candy, baked goods, chewing gum, condiments, and meats at levels ranging from 9 parts per million (ppm) to 4,900 ppm. Cinnamaldehyde is Generally Recognized As Safe (GRAS) by the Flavoring Extract Manufacturers' Association and is approved for food use (21 CFR 182.60) by the Food and Drug Administration. Cinnamon oil, which contains 70% to 90% cinnamaldehyde, is also classified as GRAS and, like cinnamaldehyde, is used in the food and flavoring industry.

Toxicology Assessment

The toxicological data provided in support of the exemption from the requirement of a tolerance include the following: two acute dermal toxicity studies and published data/information for acute oral toxicity, eye irritation, dermal irritation, and dermal sensitization. The registrant has requested waivers for the remaining acute mammalian toxicology requirements (Series 152B) as outlined in 40 CFR 158.690.

Acute Oral Toxicity in Rats, Guideline 152B-10. The published information submitted was used to establish an acute oral LD$_{50}$ of 1.15 g/kg (guinea pig), 2.25 g/kg or 3.35 g/kg (rat). *Classification:* Acceptable. Toxicity Category III.

Acute Dermal Toxicity in Rats, Guideline No. 152B-11. Two acute dermal toxicity studies were submitted. From these studies, the LD$_{50}$, was determined to be greater than 1.2 g/kg. This LD$_{50}$ value corresponds to the dermal LD$_{50}$ value of 1.31 g/kg (rabbit) provided in the material safety data (MSDS) sheet submitted by the registrant. *Classification:* Acceptable. Toxicity Category II.

Primary Eye Irritation, Guideline No. 152B-13. Exposure of human test subjects for 48 hours to a solution of 8% active ingredient demonstrated that it is an eye irritant. Although no corneal involvement was observed in this study, no information was provided as to the time for the eye irritation to clear. *Classification:* Acceptable. Toxicity Category II.

Primary Dermal Irritation, Guideline 152B-14. No primary dermal irritation was observed in human subjects exposed for 48 hours to a solution containing 3% active ingredient, while severe primary dermal irritation was observed in human subjects after exposure to 8% active ingredient. *Classification:* Acceptable. Dermal irritant.

Dermal Sensitization, Guideline 152B-15. Cinnamaldehyde was considered a sensitizer based on published results of the dermal effects of a 2% active ingredient on guinea pigs. *Classification:* Acceptable. Strong sensitizer.

Other Toxicology Data: Reference Dose (RfD) and maximum permissible intake (MPI) considerations are not relevant to this petition because of the low toxicity of the pesticide as reported in the data submitted.

Residue Chemistry Data

Residue chemistry data are necessary only if the submitted toxicology studies indicate that additional Tier II or III toxicology data would be required as specified in 40 CFR 158.165(e). The submitted toxicology data for this use indicate that the product is of low mammalian toxicity via the oral route. Therefore, neither Tier II or III toxicology data nor residue chemistry data were required for this registration action.

The toxicological data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from cinnamaldehyde when applied as a pesticide to mushrooms because of its low toxicity profile and the long history of use of both the active and inert ingredients in the food and flavoring industry.

Based on the information cited above, the Agency concludes that the establishment of a tolerance for the active ingredient, antifungal agent cinnamaldehyde, is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary: and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [0E3858/R2171] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2,

1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 0E3858/R2171], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-365, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 11, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1156, to read as follows:

§ 180.1156 Cinnamaledhyde; exemption from the requirement of a tolerance.

Cinnamaldehyde is exempted from the requirement of a tolerance when used as a plant pesticide on soil casing for mushrooms.

[FR Doc. 95–23317 Filed 9–19–95; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 4F4368/R2166; FRL–4974–1]

RIN 2070–AB78

Filocladium Virens Isolate GL-21; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the microbial pesticide *Gliocladium virens* GL-21 in or on terrestrial food crops grown outdoors. W.R. Grace & Co. requested this tolerance exemption pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective September 20,1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4368/R2166], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4F4368/R2166]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: CS51L6, CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 28, 1994 (59 FR 49397), which announced that W.R. Grace & Co., 7379 Route 32, Columbia, MD 21044, had submitted pesticide petition (PP) 4F4368 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C 346a(d), establish an exemption from the requirement of a tolerance for residues of *Gliocladium* *virens* GL-21 on terrestrial food crops grown outdoors. An error in the September 24, 1994 notice of filing is corrected to specify that the area of title 40 of the Code of Federal Regulations (CFR) to be amended is 40 CFR 180.1100, not 40 CFR 180.1001.

There were no comments received in response to the notice of filing.

In the **Federal Register** of December 6, 1990 (55 FR 50325), EPA established an exemption from the requirement of a tolerance for residues of the biofungicide *Gliocladium virens* GL-21 in or on all raw agricultural commodities when used as a fungicide for inoculation of plant growth media in greenhouses in accordance with good agricultural practices.

W.R. Grace & Co. has subsequently proposed to include use of *Gliocladium virens* GL-21 on terrestrial food crops grown outdoors. Like the greenhouse treatment use for which an exemption from tolerance now exists (40 CFR 180.1100), *Gliocladium virens* GL-21 blended with the soil will control damping-off diseases, particularly those caused by *Pythium* and *Rhizoctonia* on terrestrial food crops grown outdoors. The Agency has determined that this use presents no new hazard issues and that the following submitted data can support the registration for use on terrestrial food crops grown outdoors:

Gliocladium virens GL-21 is a naturally occurring, ubiquitous soil fungus found throughout the United States in various soil types. *Gliocladium virens* GL-21 is demonstrated to be nonpathogenic and noninfective to mammalian species as determined by the toxicological data below. Inoculation of soil with spores of *Gliocladium virens* GL-21 at the dosage levels provides a sufficiently high population to control plant pathogenic fungi of economic importance. The organism is not persistent at the inoculated high concentrations and falls off to background levels over a period of a few weeks. No indications of toxicity have been reported in workers following 1 to 2 years of working with the organism.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of tolerance include an acute oral toxicity/pathogenicity study, an acute pulmonary toxicity/pathogencity study, and an acute intravenous toxicity/pathogenicity study. All studies were conducted with the rat as the test animal. A review of these studies indicated that the organism was not acutely toxic, infective, or pathogenic to test animals when administered via the oral, pulmonary, or intravenous route. Primary eye irritation and acute dermal toxicity studies were also considered in support of the exemption from the requirement of a tolerance. A review of the acute dermal study indicated that the organism was not toxic to rabbits. No reports of hypersensitivity have been recorded from personnel working with this organism. The toxicity data provided are sufficient to show that there are no foreseeable health hazards to humans or domestic animals likely to arise from the use of this organism on terrestrial food crops grown outdoors.

Residue chemistry data were not required; such data are necessary only if the submitted toxicity studies indicate that additional Tier II or Tier III toxicology data are needed. These additional data were not needed. Therefore, no residue data are required in order to establish an exemption from the requirement of a tolerance for the biological pesticide *Gliocladium virens* GL-21 in or on terrestrial food crops grown outdoors.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. Enforcement actions based on the level of residue found in a commodity are not expected because of the low toxicity. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

The Agency hereby amends the current tolerance exemption (40 CFR 180.1100) by expanding it to include the proposed use on terrestrial food crops grown outdoors.

Gliocladium virens GL-21 is considered useful for the purposes for which the exemption from the requirement of tolerance is sought. Based on the information considered, the Agency concludes that the establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from requirement of a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections and the relief sought (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possiblity that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4368/R2166] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4F4368/R2166], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing

requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Pursuant to requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 23, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1100 is revised to read as follows:

§ 180.1100 Gliocladium virens GL-21; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biofungicide *Gliocladium virens* GL-21 in or on all raw agricultural commodities when used either as a fungicide for inoculation of plant growth media in greenhouses or on terrestrial food crops grown outdoors in accordance with good agricultural practices.

[FR Doc. 95–23318 Filed 9–19–95; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 3F2792/R2164; FRL–4973–4]

RIN 2070–AB78

Pendimethalin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues of the herbicide pendimethalin (*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzeneamine) and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol in or on the raw agricultural commodities pea pods, shelled peas, pea vines, and peas plus pods each at 0.1 part per million (ppm). The American Cyanamid Co. requested this regulation in a petition submitted under the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective September 20, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F2792/R2164], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 3F2792/R2164]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 1995 (60 FR 38295), EPA issued a proposed rule that gave notice that American Cyanamid Co. had submitted pesticide petition (PP) 3F2792 to EPA requesting that the Administrator, pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, amend 40 CFR 180.361 by establishing a tolerance for the combined residues of the herbicide pendimethalin in or on the raw agricultural commodities pea pods, shell peas, pea vines, and peas plus pods each at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the

Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F2792/R2164] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F2792/R2164], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 30, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.361, paragraph (a) is amended in the table therein by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Peas (except field peas)	0.1
* * * *	*

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[FR Doc. 95–22871 Filed 9–19–95; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 716

[OPPTS–84030; FRL–4960–7]

Health and Safety Data Reporting Period Terminations

AGENCY: Environmental Protection Agency

ACTION: Final rule.

SUMMARY: EPA is terminating the reporting periods for 234 chemical substances by amending the sunset dates on the list of substances, mixtures, and categories in the Toxic Substances Control Act (TSCA) section 8(d) model Health and Safety Data Reporting rule. Pursuant to 40 CFR 716.65, EPA has reviewed all of the substances listed in § 716.120 and determined that at this time the Agency no longer needs continuing health and safety data reporting on these 234 chemical substances. For these chemicals, reporting under the section 8(d) model rule is no longer required except for those studies which were initiated before the end of the reporting period or were ongoing at the end of the reporting period. Persons who believe that EPA should not terminate the reporting requirements for these substances on the section 8(d) model rule may notify EPA and provide their reasons.

DATES: This rule becomes effective on December 19, 1995. Written comments should be received by October 20, 1995.

ADDRESSES: All comments should include the docket control number OPPTS–84030 and should be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. NE–G99, Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–84030. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR part 716). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking.

By adding a substance to part 716, EPA triggers the section 8(d) model rule's reporting requirements. Past, current, and prospective manufacturers, importers, and processors of the listed substance are required to submit certain information at the time the substance is listed. Further submissions are required of those who later initiate a study of the listed substance or who later propose to manufacture, import, or process the listed substance up to 10 years from the effective date of the rule. The only reporting requirement unaffected by the sunset provision found at § 716.65(a) applies to those manufacturers, importers, and processors who initiate a study on a listed substance before the reporting period terminates. These studies must be submitted upon their completion regardless of the completion date (§ 716.65(c)). For chemicals that have reached their sunset date, reporting under the section 8(d) model rule is no longer required except for those studies which were initiated before the end of the sunset period or were ongoing at the end of the sunset period.

In addition to the 10–year sunset provision to prevent unnecessary reporting burdens, EPA has instituted a biennial review process to identify and terminate the reporting periods for those substances for which the Agency does not currently need continued health and safety data reporting (40 CFR 716.65(b)). Pursuant to this process, the EPA Office of Pollution Prevention and Toxics requested from other EPA offices and certain other Federal agencies all reasonable justifications for retaining each substance or mixture from the list at § 716.120. As a result, EPA has determined that the Agency's health and safety data needs no longer justify continued health and safety data reporting for 234 chemical substances presently listed in the section 8(d) model rule. Amending the reporting sunset date for a substance listed in § 716.120(a) and (d) to reflect the effective date of this rule terminates the reporting period for the substance. This action eliminates the potential reporting burdens for prospective manufacturers, importers, and processors of the substance, and removes the requirement that current manufacturers, importers, and processors of the substance must notify EPA whenever they initiate a study of the substance. However, any manufacturer, importer, or processor who initiates a study on the substance before its removal from the 8(d) list must notify EPA of the study's initiation and submit the study upon its completion regardless of the completion date (§ 716.65(c)). For the foregoing reason, EPA is amending the reporting sunset dates for the substances rather than removing all reference to the substances.

Authority for this action is stated in § 716.65 of the section 8(d) model rule. This section directs the EPA Office of Pollution Prevention and Toxics to conduct a biennial review of all the chemical substances and mixtures listed in § 716.120, and to request from other EPA offices and certain Federal agencies all reasonable justifications for retaining each substance or mixture on, or removing each substance or mixture from, the § 716.120 list. EPA is issuing this action without prior proposal in accordance with 40 CFR 716.65(b). This final rule terminates the reporting periods for 234 substances on the § 716.120 list 90 days following publication of this rule in the **Federal Register**. Persons are invited to comment on the determinations presented in this document. Written comments must be received by October 20, 1995. If a reasonable justification is received for requiring continued health and safety data reporting for any of these 234 substances on the section 8(d) model rule, EPA will, by notice published in the **Federal Register**, withdraw the sunset date amendment for the substance from the final rule prior to the final rule's effective date.

II. Amendments to 40 CFR 716.120

In order to affect the termination of health and safety data reporting on the chemical substances and categories for which there exists no justification for continuing reporting, § 716.120 will be amended. Sunset dates for 234 chemical substances will be amended to reflect the effective date of this rule. As previously stated, once a sunset date is reached, the reporting period for the chemical substance is terminated except as provided in § 716.65(c). A listing of the chemical substances subject to sunset date amendments are listed in the regulatory text.

III. Rulemaking Record

EPA has established a public record for this rulemaking (docket control number OPPTS–84030). This record includes basic information considered by the Agency in developing this rule. EPA will supplement the rulemaking record with additional information as it is received. The record now includes the following:

1. Section 8(d) model Health and Safety Rule Data Reporting Rule (51 FR 32720, September 15, 1986).
2. EPA memoranda to program offices requesting comments on substances listed in 40 CFR 716.120.
3. Comments from program offices and other Federal agencies.

A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

IV. Regulatory Requirements

The Office of Management and Budget (OMB) has exempted this action from OMB review under Executive Order 12866 (58 FR 51735, October 4, 1993). The section 8(d) rule does not impose any Federal mandate on any State, local, or tribal governments or on the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this action will not have a significant economic impact on a significant number of small entities.

In addition, the information collection requirements related to the section 8(d) rule have already been approved by OMB pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* under OMB control number 2070–0004. For the 234 chemical substances in this final rule, the reporting requirements under the section 8(d) rule will no longer apply, except for in those circumstances where a study has been initiated before or was ongoing at the end of the sunset period. In these cases, the reporting requirement continues until the studies are submitted to EPA upon their completion. This action does not include any burdens requiring additional OMB approval.

List of Subjects in 40 CFR Part 716

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: August 30, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 716 is amended to read as follows:

PART 716—[AMENDED]

1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. Section 716.120 is amended by revising 234 entries in paragraph (a) and revising entries under the categories in paragraph (d) to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

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(a) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
	* * * *	* *	*	
68-12-2	Dimethyl formamide-Formamide, N,N-dimethyl-		4/13/89	12/19/95
	* * * *	* *	*	
74-95-3	Methane, dibromo-		6/1/87	12/19/95
74-97-5	Methane, bromochloro-		6/1/87	12/19/95
	* * * *	* *	*	
75-04-7	Ethanamine		6/1/87	12/19/95
	* * * *	* *	*	
75-27-4	Methane, bromodichloro-		6/1/87	12/19/95
75-29-6	Propane, 2-chloro-		6/1/87	12/19/95
	* * * *	* *	*	
75-37-6	1,1-Difluoroethane-Ethane, 1,1-difluoro-		4/13/89	12/19/95
	* * * *	* *	*	
75-43-4	Dichloromonofluoromethane-Methane, dichlorofluoro-		4/13/89	12/19/95
	* * * *	* *	*	
75-52-5	Nitromethane-Methane, nitro-		4/13/89	12/19/95
	* * * *	* *	*	
75-68-3	1-Chloro-1,1-difluoroethane-Ethane, 1-chloro-1,1-difluoro		4/13/89	12/19/95
75-86-5	Propanenitrile, 2-hydroxy-2-methyl-		3/7/86	12/19/95

CAS No.	Substance	Special exemptions	Effective date	Sunset date
	* * * *	* *	*	
76-13-1	1,1,2-Trichloro-1,2,2-trifluoroethane-Ethane, 1,1,2-trichloro-1,2,2-trifluoro-1		4/13/89	12/19/95
	* * * *	* *	*	
78-88-6	1-Propene, 2,3-dichloro-		6/1/87	12/19/95
	* * * *	* *	*	
78-97-7	Propanenitrile, 2-hydroxy-		6/1/87	12/19/95
78-99-9	Propane, 1,1-dichloro-		3/7/86	12/19/95
	* * * *	* *	*	
79-24-3	Nitroethane-Ethane, nitro-		4/13/89	12/19/95
	* * * *	* *	*	
80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl		3/7/86	12/19/95
	* * * *	* *	*	
88-04-0	p-Chloro-m-xylenol-Phenol, 4-chloro-3,5-dimethyl-		4/13/89	12/19/95
90-30-2	N-Phenyl-1-naphthylamine		9/30/91	12/19/95
	* * * *	* *	*	
91-08-7	Benzene, 1,3-diisocyanato-2-methyl-		6/1/87	12/19/95
	* * * *	* *	*	
92-69-3	[1,1'-Biphenyl]-4-ol		6/1/87	12/19/95
	* * * *	* *	*	
95-14-7	1,2,3-Benzotriazole-1H-Benzotriazole		4/13/89	12/19/95
	* * * *	* *	*	
95-53-4	Benzenamine, 2-methyl-		3/7/86	12/19/95
	* * * *	* *	*	
96-29-7	2-Butanone, oxime		12/15/86	12/19/95
	* * * *	* *	*	
97-18-7	Phenol, 2,2'-thiobis[4,6-dichloro-		6/1/87	12/19/95
97-23-4	Phenol, 2,2'-methylenebis[4-chloro-		6/1/87	12/19/95
97-88-1	Butyl methacrylate-2-Propenoic acid, 2-methyl-,butyl ester		4/13/89	12/19/95
	* * * *	* *	*	
98-06-6	Benzene, (1,1-dimethylethyl)-		6/1/87	12/19/95
98-09-9	Benzenesulfonyl chloride		3/7/86	12/19/95
	* * * *	* *	*	
98-73-7	p-tert-Butylbenzoic acid-Benzoic acid, 4-(1,1-dimethylethyl)-		6/25/86	12/19/95
	* * * *	* *	*	
102-71-6	Triethanolamine-Ethanol, 2,2',2''-nitrilotris-		4/13/89	12/19/95
	* * * *	* *	*	
104-51-8	Benzene, butyl-		6/1/87	12/19/95
104-76-7	1-Hexanol, 2-ethyl-		6/1/87	12/19/95
	* * * *	* *	*	
106-43-4	Benzene, 1-chloro-4-methyl-		6/1/87	12/19/95

CAS No.	Substance	Special exemptions	Effective date	Sunset date
	* * * *	* *	*	
107-10-8	1-Propanamine		3/7/86	12/19/95
107-19-7	2-Propyn-1-ol		3/7/86	12/19/95
	* * * *	* *	*	
108-60-1	Propane, 2,2'-oxybis[1-chloro-		6/1/87	12/19/95
	* * * *	* *	*	
108-86-1	Benzene, bromo-		6/1/87	12/19/95
	* * * *	* *	*	
108-95-5	Thiophenol		1/26/94	12/19/95
	* * * *	* *	*	
109-77-3	Propanedinitrile		3/7/86	12/19/95
109-87-5	Methane, Dimethoxy-		6/1/87	12/19/95
	* * * *	* *	*	
110-75-8	Ethene, (2-chloroethoxy)-		3/7/86	12/19/95
110-82-7	Cyclohexane		12/19/85	12/19/95
	* * * *	* *	*	
111-69-3	Hexanedinitrile		6/1/87	12/19/95
	* * * *	* *	*	
111-77-3	Diethylene glycol monomethyl ether-Ethanol, 2-(2-methoxyethoxy)-		4/13/89	12/19/95
111-90-0	Diethylene glycol monoethyl ether-Ethanol, 2-(2-ethoxyethoxy)-		4/13/89	12/19/95
111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-		3/7/86	12/19/95
111-92-2	1-Butanamine, N-butyl-		6/1/87	12/19/95
	* * * *	* *	*	
120-32-1	2-Benzyl-4-chlorophenol-Phenol, 4-chloro-2-chlorophenol(phenyl methyl)-		4/13/89	12/19/95
	* * * *	* *	*	
122-09-8	Benzeneethanamine, alpha,alpha-dimethyl-		3/7/86	12/19/95
	* * * *	* *	*	
123-72-8	Butanal		12/16/88	12/19/95
124-16-3	1-Butoxyethoxy-2-propanol-2-Propanol, 1-(2-butoxyethoxy)-		4/13/89	12/19/95
	* * * *	* *	*	
131-17-9	Diallyl phthalate-1,2-Benzenedicarboxylic acid, di-2-propenyl ester		4/13/89	12/19/95
135-98-8	Benzene, (1-methylpropyl)-		6/1/87	12/19/95
	* * * *	* *	*	
137-26-8	Thioperoxydicarbonic diamide, tetramethyl-		6/1/87	12/19/95
	* * * *	* *	*	
142-28-9	Propane, 1,3,-dichloro-		3/7/86	12/19/95
	* * * *	* *	*	
143-33-9	Sodium cyanide		10/29/90	12/19/95

CAS No.	Substance	Special exemptions	Effective date	Sunset date
	* * * *	* *	*	
357-57-3	Strychnidin-10-one, 2,3-dimethoxy-		3/7/86	12/19/95
	* * * *	* *	*	
506-96-7	Acetyl bromide		6/1/87	12/19/95
	* * * *	* *	*	
530-50-7	Hydrazine, 1,1-diphenyl-		6/1/87	12/19/95
534-07-6	2-Propanone, 1,3-dichloro-		6/1/87	12/19/95
540-54-5	Propane, 1-chloro-		6/1/87	12/19/95
540-84-1	Pentane, 2,2,4-trimethyl-		6/1/87	12/19/95
	* * * *	* *	*	
591-08-2	Acetamide, N-(aminothioxomethyl)-		3/7/86	12/19/95
594-20-7	Propane, 2,2-dichloro-		3/7/86	12/19/95
598-21-0	Acetyl bromide, bromo-		6/1/87	12/19/95
598-31-2	2-Propanone, 1-bromo-		3/7/86	12/19/95
616-23-9	1-Propanol, 2,3-dichloro-		3/7/86	12/19/95
	* * * *	* *	*	
630-20-6	Ethane, 1,1,1,2-tetrachloro-		6/1/87	12/19/95
632-79-1	Tetrabromophthalic anhydride		1/11/90	12/19/95
	* * * *	* *	*	
692-42-2	Arsine, diethyl-		3/7/86	12/19/95
696-28-6	Arsonous dichloride, phenyl-		3/7/86	12/19/95
757-58-4	Tetraphosphoric acid, hexaethyl ester		3/7/86	12/19/95
	* * * *	* *	*	
812-03-3	Propane, 1,1,1,2-tetrachloro-		6/1/87	12/19/95
822-06-0	Hexane, 1,6-diisocyanato-		6/1/87	12/19/95
828-00-2	1,3-Dioxan-4-ol, 2,6-dimethyl-, acetate		6/1/87	12/19/95
	* * * *	* *	*	
1070-78-6	Propane, 1,1,1,3-tetrachloro-		6/1/87	12/19/95
1300-71-6	Phenol, dimethyl-		6/1/87	12/19/95
	* * * *	* *	*	
1649-08-7	Ethane, 1,2-dichloro-1,1-difluoro		10/15/90	12/19/95
	* * * *	* *	*	
1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-		3/7/87	12/19/95
	* * * *	* *	*	
2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-		3/7/86	12/19/95
	* * * *	* *	*	
2861-02-1	2,6-Anthracenedisulfonic acid, 4,8-diamino-9,10-dihydro-1,5-dihydroxy-9,10-dioxo-, disodium salt		12/21/87	12/19/95
	* * * *	* *	*	
3173-72-6	Naphthalene, 1,5,-diisocyanato-		6/1/87	12/19/95
3194-55-6	Hexabromocyclododecane		1/11/90	12/19/95
3288-58-2	Phosphorodithioic acid, O,O-diethyl-S-methyl ester		3/7/86	12/19/95
3296-90-0	1,3-Propanediol, 2,2-bis(bromomethyl)-		6/1/87	12/19/95
	* * * *	* *	*	
4170-30-3	2-Butenal		3/7/86	12/19/95

CAS No.	Substance	Special exemptions	Effective date	Sunset date
	* * * *	* *	*	
5131-66-8	1-Butoxy-2-propanol-2-Propanol, 1-butoxy-		4/13/89	12/19/95
5344-82-1	Thiourea, (2-chlorophenyl)-		3/7/86	12/19/95
	* * * *	* *	*	
6424-85-7	2-Anthracenesulfonic acid, 4-[[4-(acetylamino)phenyl]amino]- 1-amino-9,10-dihydro-9,10-dioxo-, monosodium salt		12/21/87	12/19/95
	* * * *	* *	*	
9016-87-9	Isocyanic acid, polymethylenepolyphenylene ester		6/1/87	12/19/95
	* * * *	* *	*	
10436-39-2	1-Propene, 1,1,2,3-tetrachloro-		6/1/87	12/19/95
12001-85-3	Naphthenic acids, zinc salts		6/1/87	12/19/95
	* * * *	* *	*	
13674-87-8	2-Propanol, 1,3-dichloro-, phosphate (3:1)		12/16/88	12/19/95
	* * * *	* *	*	
17418-58-5	9,10-Anthracenedione, 1-amino-4-hydroxy-2-phenoxy-		12/21/87	12/19/95
	* * * *	* *	*	
25498-49-1	Tripropylene glycol monomethyl ether-Propanol, [2-(2-methoxy methylethoxy)methylethoxy]-		4/13/89	12/19/95
	* * * *	* *	*	
25550-98-5	Phosphorous acid, diisodecyl phenyl ester		12/19/85	12/19/95
	* * * *	* *	*	
26952-23-8	1-Propene, dichloro-		6/1/87	12/19/95
29385-43-1	Tolyl triazole-1H-Benzotriazole, methyl-		4/13/89	12/19/95
32588-76-4	Ethylene Bis-(tetrabromophthalimide)		1/11/90	12/19/95
	* * * *	* *	*	
41291-34-3	Ethylene(5,6-dibromonorbornane-2,3-dicarboximide)		1/11/90	12/19/95
52907-07-0	Ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide		1/26/94	12/19/95
57137-10-7	Tribrominated polystyrene		1/11/90	12/19/95
61262-53-1	Ethylene bis(pentabromophenoxide)		1/11/90	12/19/95
	* * * *	* *	*	
68122-86-1	Imidazolium compounds, 4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), methyl sulfates		6/20/88	12/19/95
	* * * *	* *	*	
68410-69-5	Poly(oxy-1,2-ethanediyl), alpha-[2-[bis(2-aminoethyl) methylammonio]ethyl]-w-hydroxy,- N,N'-ditallow acyl derivatives, methyl sulfates (salts)		6/20/88	12/19/95
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* * * * * (d) * * *

Category	CAS No (exemptions for category)	Special Exempions	Effective Date	Sunset Date
Aldehydes:				
* * *	*	* *	*	
Benzaldehyde, 4-butyl-	1200-14-2		9/30/91	12/19/95
* * *	*	* *	*	
Benzaldehyde, 2,4-dihydroxy-	95-01-2		9/30/91	12/19/95
* * *	*	* *	*	
Benzaldehyde, (dimethylamino)-	28602-27-9		9/30/91	12/19/95
* * *	*	* *	*	
Benzaldehyde, 4-ethoxy-	10031-82-0		9/30/91	12/19/95
* * *	*	* *	*	
Benzaldehyde, 4-hydroxy-	123-08-0		9/30/91	12/19/95
* * *	*	* *	*	
Benzaldehyde, 2-hydroxy-5-nitro-	97-51-8		9/30/91	12/19/95
* * *	*	* *	*	
Benzaldehyde, 2-methoxy-	135-02-4		9/30/91	12/19/95
Benzaldehyde, methyl-	1334-78-7		9/30/91	12/19/95
* * *	*	* *	*	
Benzaldehyde, 2-nitro-	552-89-6		9/30/91	12/19/95
* * *	*	* *	*	
Benzaldehyde, 4-(trifluoromethyl)-	455-19-6		9/30/91	12/19/95
* * *	*	* *	*	
Benzeneacetaldehyde, alpha-methyl-	93-53-8		9/30/91	12/19/95
Benzeneacetaldehyde, 4-methyl-	104-09-6		9/30/91	12/19/95
* * *	*	* *	*	
1,3-Benzodioxole-5-carboxaldehyde, 7-methoxy-	5780-07-4		9/30/91	12/19/95
* * *	*	* *	*	
3-Cyclohexene-1-carboxaldehyde, 4-(4-methyl-3-pentenyl)-	37677-14-8		9/30/91	12/19/95
3-Cyclohexene-1-carboxaldehyde, 2,4,6-trimethyl-	1423-46-7		9/30/91	12/19/95
* * *	*	* *	*	
5-Heptenal, 2,6-dimethyl-	106-72-9		9/30/91	12/19/95
* * *	*	* *	*	
Hexanal, 3,5,5-trimethyl-	5435-64-3		9/30/91	12/19/95
2-Hexenal	505-57-7		9/30/91	12/19/95
* * *	*	* *	*	
1-Naphthalene carboxaldehyde	66-77-3		9/30/91	12/19/95
* * *	*	* *	*	
2,6-Octadienal, 3,7-dimethyl-, (E)	141-27-5		9/30/91	12/19/95
2,6-Octadienal, 3,7-dimethyl-, (Z)	106-26-3		9/30/91	12/19/95

Category	CAS No (exemptions for category)	Special Exempions	Effective Date	Sunset Date
* * *	*	*	*	
Octanal, 3,7-dimethyl-	5988-91-0		9/30/91	12/19/95
* * *	*	*	*	
6-Octenal, 3,7-dimethyl-, (S)-	5949-05-3		9/30/91	12/19/95
* * *	*	*	*	
2-Propenal, 2-methyl-	78-85-3		9/30/91	12/19/95
* * *	*	*	*	
2-Pyridinecarboxaldehyde	1121-60-4		9/30/91	12/19/95
2-Thiophene carboxaldehyde	98-03-3		9/30/91	12/19/95
* * *	*	*	*	
9-Undecenal	143-14-6		9/30/91	12/19/95
* * *	*	*	*	
Alkyl, Chloro-, and Hydroxymethyl Diaryl Ethers:				
* * *	*	*	*	
Benzenemethanol, 3-phenoxy-, acetate	50789-44-1		4/12/93	12/19/95
* * *	*	*	*	
Benzene, 1,1'-oxybis[dodecyl-	69834-19-1		4/12/93	12/19/95
* * *	*	*	*	
Benzene, 1,1'-oxybis[(1,1,3,3-tetramethylbutyl)-	61702-88-3		4/12/93	12/19/95
* * *	*	*	*	
1,4-Diphenoxybenzene	3061-36-7		4/12/93	12/19/95
* * *	*	*	*	
Alkyl Phosphates:				
Ethanol, 2-butoxy-, phosphate (3:1)	78-51-3		10/29/90	12/19/95
* * *	*	*	*	
Phosphoric acid, bis(2-ethylhexyl) ester	298-07-7		10/29/90	12/19/95
* * *	*	*	*	
Phosphoric acid, triethyl ester	78-40-0		10/29/90	12/19/95
Phosphoric acid, tris(2-ethylhexyl) ester	78-42-2		10/29/90	12/19/95
* * *	*	*	*	
Brominated flame retardants:				
Alkanes, C10-18, bromochloro-	68955-41-9		10/29/90	12/19/95
Benzamide, 3,5-dibromo-N-(4-bromophenyl)-2-hydroxy-	87-10-5		10/29/90	12/19/95
* * *	*	*	*	
Benzene, pentabromomethyl-	87-83-2		10/29/90	12/19/95
Cyclohexane, 1,2,3,4,5-pentabromo-6-chloro-	87-84-3		10/29/90	12/19/95
Cyclohexane, tetrabromodichloro-	30554-72-4		10/29/90	12/19/95
Cyclohexane, tribromotrichloro-	30554-73-5		10/29/90	12/19/95

Category	CAS No (exemptions for category)	Special Exempions	Effective Date	Sunset Date
Ethanol, 2,2'-((1-methylethylidene)bis((2,6-dibromo-4,1-phenylene)oxy)) bis-	4162-45-2		10/29/90	12/19/95
* * *	*	*	*	
Phenol, 2,4-dibromo-	615-58-7		10/29/90	12/19/95
Phenol, 2,4(or 2,6)-dibromo-,homopolymer	69882-11-7		10/29/90	12/19/95
1-Propanol, 2,3-dibromo-	96-13-9		10/29/90	12/19/95
1-Propanol, 2,2-dimethyl-,tribromo deriv	36483-57-5		10/29/90	12/19/95
2-Propenoic acid,(1-methylethylidene)bis (2,6-dibromo-4,1-phenylene) ester	55205-38-4		10/29/90	12/19/95
Chloroalkyl phosphates:				
2,2-Bis(chloromethyl)-1,3-propanediyltetrakis(2-chloroethyl) phosphate	38051-10-4		6/14/93	12/19/95
2-Chloro-1-methylethylbis(2-chloropropyl) phosphate-	76649-15-5		6/14/93	12/19/95
1,2-Ethanediyl tetrakis(2-chloro-1-methylethylene) phosphate	34621-99-3		6/14/93	12/19/95
Oxydi-2,1-ethanediyltetrakis(2-choloroethyl) phosphate	53461-82-8		6/14/93	12/19/95
Cyanoacrylates:				
2-Propenoic acid, 2-cyano-, methyl ester	137-05-3		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, isobutyl ester	1069-55-2		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-3,3-diphenyl-, 2-ethylhexyl ester	6197-30-4		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, butyl ester	6606-65-1		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, ethyl ester	7085-85-0		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, 2-propenyl ester	7324-02-9		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, 1-methylethyl ester	10586-17-1		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, ethoxy ethyl ester	21982-43-4		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, 2,2,2-trifluoromethyl ester	23023-91-8		1/26/94	12/19/95
2-Propenoic acid, 2-cyano-, 2-methoxyethyl ester	27816-23-5		1/26/94	12/19/95
Ethanaminium, 2-[[2-cyano-3-[4-(diethylamino)phenyl]-1-oxo-2-propenyl]oxy]-N,N,N-trimethyl-, chloride	64992-16-1		1/26/94	12/19/95
IRIS Chemicals:				
3,4-Dimethylphenol	95-65-8		9/30/91	12/19/95
2,4-Dinitrophenol	51-28-5		9/30/91	12/19/95
* * *	*	*	*	
Isocyanates:				
Ethane, isocyanato-	109-90-0		10/29/90	12/19/95
* * *	*	*	*	
Methane, isocyanato-	624-83-9		10/29/90	12/19/95
* * *	*	*	*	
2-Propenoic acid, 2-methyl-, 2-isocyanatoethyl ester	30674-80-7		10/29/90	12/19/95

Category	CAS No (exemptions for category)	Special Exempions	Effective Date	Sunset Date
* * *	*	* *	*	
Methyl ethylene glycol ethers and esters:				
Ethylene glycol monomethy ether acrylate	3121-61-7		1/26/94	12/19/95
Tetraethylene glycol monomethyl ether	23783-42-8		1/26/94	12/19/95
* * *	*	* *	*	
Propylene glycol ethers and esters:				
Dipropylene glycol	110-96-5		1/26/94	12/19/95
Dipropylene glycol butyl ether	29911-28-2		1/26/94	12/19/95
Dipropylene glycol monomethyl ether acetate	88917-22-0		1/26/94	12/19/95
1-(2-Methoxy-1-methylethoxy)-2-propanol	20324-32-7		1/26/94	12/19/95
Methoxy-1-propanol	28677-93-2		1/26/94	12/19/95
1-Phenoxy-2-propanol	770-35-4		1/26/94	12/19/95
Propylene glycol monobutyl ether	29387-86-8		1/26/94	12/19/95
Propylene glycol monomethyl ether acetate	108-65-6		1/26/94	12/19/95
Propylene glycol mono-tert-butyl ether	57018-52-7		1/26/94	12/19/95
Tripropylene glycol diacrylate	42978-66-5		1/26/94	12/19/95
Tripropylene glycol methyl ether	20324-33-8		1/26/94	12/19/95
* * *	*	* *	*	
Substantially produced chemicals in need of subchronic tests:				
Acetoacetanilide	102-01-2		9/30/91	12/19/95
* * *	*	* *	*	
7-Amino-4-hydroxy-2-naphthalenesulfonic acid	87-02-5		9/30/91	12/19/95
Ammonium carbamate	1111-78-0		9/30/91	12/19/95
1,3-Benzenedisulfonic acid	98-48-6		9/30/91	12/19/95
Bis(2-ethylhexyl)-2-butenedioate	142-16-5		9/30/91	12/19/95
Bromamine acid	116-81-4		9/30/91	12/19/95
Butyric anhydride	106-31-0		9/30/91	12/19/95
* * *	*	* *	*	
1,2-Dichlorobutane	616-21-7		9/30/91	12/19/95
3,4-Dichlorobutene	760-23-6		9/30/91	12/19/95
* * *	*	* *	*	
2-Ethylanthraquinone	84-51-5		9/30/91	12/19/95
* * *	*	* *	*	
3-Hydroxy-2-naphthoic acid	92-70-6		9/30/91	12/19/95
Isobutyl acrylate	106-63-8		9/30/91	12/19/95
Isophthaloyl chloride	9-63-8		9/30/91	12/19/95
* * *	*	* *	*	
2-(4-Morpholinyldithio)-benzothiazole	95-32-9		9/30/91	12/19/95
* * *	*	* *	*	
1-Naphthol	90-15-3		9/30/91	12/19/95
* * *	*	* *	*	
2,4-Pentanedione	123-54-6		9/30/91	12/19/95
Perfluoro-N-hexane	355-42-0		9/30/91	12/19/95

Category	CAS No (exemptions for category)	Special Exempions	Effective Date	Sunset Date
Perfluorotributylamine	311-89-7		9/30/91	12/19/95
Propanoic anhydride	123-62-6		9/30/91	12/19/95
Quinacridone	1047-16-1		9/30/91	12/19/95
Terephthaloyl chloride	100-20-9		9/30/91	
* * *	*	* *	*	
Triethylene glycol bis(2-ethylhexanoate)	94-28-0		9/30/91	12/19/95
Sulphones:				
2-Amino-4-[(2-hydroxyethyl) sulfonyl]phenol	17601-96-6		9/30/91	12/19/95
2-Amino-4-(methylsulfonyl)phenol	98-30-6		9/30/91	12/19/95
2-[(6-Amino-2-naphthalenyl) sulfonyl]ethanol	52218-35-6		9/30/91	12/19/95
2-[(3-Aminophenyl)sulfonyl]ethanol	5246-57-1		9/30/91	12/19/95
Bisphenol S	80-09-1		9/30/91	12/19/95
3-(Decyloxy)tetrahydrothiophene 1,1-dioxide	18760-44-6		9/30/91	12/19/95
4,4'-Diaminodiphenyl sulfone	80-08-0		9/30/91	12/19/95
4-[4-[(2,6-Dichloro-4-nitrophenyl)azo]phenyl] thiomorpholine, 11,1-dioxide	17741-62-7		9/30/91	12/19/95
1-(Diiodomethyl)sulfonyl-4-methyl benzene	20018-09-1		9/30/91	12/19/95
Dimethylsulfone	67-71-0		9/30/91	12/19/95
Diphenylsulfone	127-63-9		9/30/91	12/19/95
3-[N-Ethyl-4-[[6-(methylsulfonyl)-2-benzothiazolyl]azo]-m-toluidino]propionitrile	16588-67-3		9/30/91	12/19/95
1,1'-[Methylenebis(sulfonyl)]bis-2-chloroethane	41123-59-5		9/30/91	12/19/95
2,2'-[Methylenebis(sulfonyl)]bisethanol	41123-69-7		9/30/91	12/19/95
1,1'-[Methylenebis(sulfonyl)]bisethene	3278-22-6		9/30/91	12/19/95
6-Methylsulfonyl)-2-benzothiazolamine	17557-67-4		9/30/91	12/19/95
2-[(3-Nitrophenyl)sulfonyl]ethanol	41687-30-3		9/30/91	12/19/95
1,1'-[Oxybis(methylenesulfonyl)]bis-2-chloroethane	53061-10-2		9/30/91	12/19/95
2,2'-[Oxybis(methylenesulfonyl)] bisethanol	36724-43-3		9/30/91	12/19/95
1,1'-[Oxybis(methylenesulfonyl)] bisethene	26750-50-5		9/30/91	12/19/95
4-[[4-(Phenylmethoxy)phenyl]sulfonyl] phenol	63134-33-8		9/30/91	12/19/95
4-Phenylthiomorpholine, 1,1-dioxide	17688-68-5		9/30/91	12/19/95
Sulfolane	126-33-0		9/30/91	12/19/95
3-Sulfolene	77-79-2		9/30/91	12/19/95
Sulfonyl bis(4-chlorobenzene)	80-07-9		9/30/91	12/19/95
2,2'-Sulfonyl bisethanol	2580-77-0		9/30/91	12/19/95

[FR Doc. 95–23315 Filed 9–19–95; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–273]

Organization and Delegation of Powers and Duties Delegations of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority to carry out the Merchant Marine Decorations and Medals Act of 1988, Pub. L. 100–324 (46 App. U.S.C. 2001 et seq.). The act authorizes the Secretary to award decorations and medals of appropriate design (including ribbons, ribbon bars, emblems, rosettes, miniature facsimiles, plaques, citations, or other suitable devices or insignia) for individual acts or service in the United States merchant marine. This amendment revises language in subparagraph 1.66(k) to cite the current statutory authority.

EFFECTIVE DATE: This rule becomes effective September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia Thomas, Maritime Industry Analyst, Office of Maritime Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street SW, Washington, DC 20590, (202) 366–5755, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), Department of Transportation, Room 10424, 400 Seventh Street SW, Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: The Maritime Administration (MARAD) has been delegated authority to carry out the Merchant Marine Medals Act of 1956 (46 App. U.S.C. 249 *et seq.*) since enactment. Delegation is through the Secretary of Transportation at 49 CFR 1.66(k). The 1956 act was repealed by the Merchant Marine Decorations and Medals Act of 1988, Pub. L. 100–324, (46 App. U.S.C. 2001 *et seq.*). The act authorizes the Secretary to award decorations and medals of appropriate design (including ribbons, ribbon bars, emblems, rosettes, miniature facsimiles, plaques, citations, or other suitable devices or insignia) for individual acts or service in the United States merchant marine. This amendment revises language in subparagraph 1.66(k) to cite the current statutory authority. Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub.L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.66 [Amended]

2. Section 1.66 is amended by revising paragraph (k) to read as follows:

* * * * *

(k) Carry out the Merchant Marine Decorations and Medals Act of 1988 (46 App. U.S.C. 2001 et seq.);

* * * * *

Issued at Washington, DC this 7th day of September, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–23253 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 091495A]

Pacific Halibut Fisheries; Area 2A Non-treaty Commercial Fishery Reopening

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock.

EFFECTIVE DATE: Area 2A non-treaty commercial fishery reopening 8 a.m. through 6 p.m., local time, September 12, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 14

Area 2A Non-treaty Commercial Fishery To Reopen

The August 29 fishing period in Area 2A resulted in a catch of 20,000 lb (9.07 metric tons (mt)). The revised total commercial catch from Area 2A to date is 93,000 lb (42.18 mt), leaving approximately 12,000 lb (5.44 mt) to be taken.

Area 2A will reopen on September 12 for 10 hours from 8:00 a.m. to 6:00 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, WA (46°53'18" N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (lb)	
Length	Letter	Dressed, head-on	Dressed, head-off[1]
0–25	A	225	200
26–30	B	225	200
31–35	C	225	200
36–40	D	530	465
41–45	E	570	500
46–50	F	675	595
51–55	G	755	665
56+	H	1,135	1,000

[1] Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Dated: September 14, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23348 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–22–W

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50 CFR Part 661

[Docket No. 950426116-5116-01; I.D. 090695B]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California; Closures From U.S.-Canadian Border to Carroll Island, WA, and from Leadbetter Point, WA to Cape Falcon, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closures.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the U.S.-Canadian border to Carroll Island, WA, was closed at 12 midnight, September 3, 1995, and the recreational salmon fishery in the area from Leadbetter Point, WA, to Cape Falcon, OR, was closed at 12 midnight, September 5, 1995. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial quota of 25,000 coho salmon and the recreational quota of 37,500 coho salmon for the respective areas have been reached. This action is necessary to conform to the preseason announcement of the 1995 management measures and is intended to ensure conservation of coho salmon.

DATES: Closure from the U.S.-Canadian border to Carroll Island, WA, effective at 2400 hours local time, September 3, 1995, until the effective date of the 1996 management measures, as published in the **Federal Register**. Closure from Leadbetter Point, WA, to Cape Falcon, OR, effective at 2400 hours local time, September 5, 1995, until the effective date of the 1996 management measures, as published in the **Federal Register**. Comments will be accepted through October 5, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: Under regulations at 50 CFR 661.21(a)(1), NMFS will close the commercial or recreational fishery, or both, for ocean salmon when the quota has been projected to have been reached.

In the annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), NMFS announced that the 1995 commercial fishery in the area between the U.S.-Canadian border and Carroll Island, WA, would open on August 5 and fishing would follow a cycle of 4 days open and 3 days closed. The fishery would close the earliest of September 15, attainment of the adjusted 25,000 coho salmon quota (60 FR 40302, August 8, 1995), or attainment of the 160,000 pink salmon guideline.

The best available information on August 31 indicated that commercial catches in this area totaled 21,358 coho salmon through the most recent opening on August 26-29. Based on the most recent catch and effort levels, commercial fishing could take place for an additional 2 days without exceeding the coho salmon quota. The next scheduled opening for this fishery was on September 2. Therefore, NMFS determined to close the commercial fishery for all salmon from the U.S.-Canadian border to Carroll Island, WA, for the remainder of the season at 12 midnight, September 3.

In the annual management measures for ocean salmon fisheries, NMFS also announced that the 1995 recreational fishery in the area between Leadbetter Point, WA, and Cape Falcon, OR, would open on July 24 and close the earlier of September 28 or attainment of the adjusted 37,500 coho salmon quota (60 FR 21746, May 3, 1995; revised at 60 FR 40302, August 8, 1995).

The best available information on August 31 indicated that recreational catches in this area totaled 26,450 coho salmon through August 27. Based on estimated catch and effort levels, 36,150 coho salmon were projected to be caught through September 4, leaving 1,350 coho salmon of the quota unharvested. This amount of fish was determined to provide an additional day of harvest. Therefore, NMFS determined to close the recreational fishery for all salmon from Leadbetter Point, WA, to Cape Falcon, OR, at midnight, September 5.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fish and Wildlife, and the Oregon Department of Fish and Wildlife regarding these closures. The States of Washington and Oregon will manage the commercial and recreational fisheries in State waters adjacent to these areas of the exclusive economic zone in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice was given to fishermen of the commercial closure prior to 2400 hours local time, September 3, 1995, and of the recreational closure prior to 2400 hours local time, September 5, 1995, by telephone hotline number (206) 526-6667 and (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to conserve coho salmon, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 12, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23258 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 182
Wednesday, September 20, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–027–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas permanent regulatory program (hereinafter the "Texas program") under the Office of Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas Coal Mining Regulations pertaining to identification of interests and compliance information and Commission of Texas (Commission) review of outstanding permits and revisions to the Texas Surface Coal Mining and Reclamation Act pertaining to rulemaking and permitting and suspension or rescission of improvidently issued permits. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received by 4 p.m., c.d.t., October 20, 1995. If requested, a public hearing on the proposed amendment will be held on October 16, 1995. Requests to speak at the hearing must be received by 4 p.m., c.d.t., on October 5, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Tim L. Dieringer, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated August 30, 1995 (Administrative Record No. TX–595), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to the required program amendments codified at 30 CFR 943.16(r), (t), and (u) [59 FR 13200, March 21, 1994, and 60 FR 15675, March 27, 1995]. The provisions of the Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 and of the Texas Surface Coal Mining and Reclamation Act (TSCMRA) that Texas proposes to amend are:

1. TCMR 778.116(m), Identification of Interests and Compliance Information

Texas proposes to revise and delete existing language and add new language which requires a permit application to include information on all outstanding violation notices, not just those for unabated cessation orders and unabated air and water quality violation notices, received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or by any person who is deemed or presumed to own or control the applicant under Texas' definition of "owned or controlled" and "owns or controls" at § 701.008. Texas is also incorporating an ownership and control provision which requires the applicant to certify that each unabated violation notice issued under the Texas program or a Federal or state program is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation.

2. TCMR 788.225(g)(1), Commission Review of Outstanding Permits

Texas proposes to require that the Commission's findings pertaining to a permittee's challenge to the Commission's decision to suspend or rescind an improvidently issued permit be consistent with the provisions of the Federal regulations at 30 CFR 773.25.

3. Article 5920–11, TSCMRA, Section 6(b), Rulemaking and Permitting Pursuant to the Administrative Procedure Act

Texas proposes to amend section 6(b) of TSCMRA by deleting the language "and Texas Register Act, as amended" and adding the following new language.

(b) * * * Act (Chapter 2001, Government Code).

The Administrative Procedure Act does not apply to actions by the Commission to suspend or rescind an improvidently issued permit as authorized by Section 21a of this Act, except that a permittee who is the subject of a suspension or rescission notice issued by the Commission under Section 21a of this Act may file an appeal for administrative review of the notice as provided by Commission rules, and such review shall be governed by the Administrative Procedure Act.

4. Article 5920–11, TSMCRA, Section 21(c), Reporting Notices of Violations in Permit Applications

Texas proposes to revise the existing language of the first sentence of section 21(c) by adding the requirement that applicants report notices of violations of SMCRA; by adding the word "other" after the word "any" in the phrase "and

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any law, rule, or regulation of the United States"; by deleting the words "within the state" from the phrase "in connection with any surface coal mining operation within the state during the three-year period"; by deleting the words "shall include in" from the phrase "shall include in the schedule"; and by adding the words shown in italics to the revised phrase "the schedule shall indicate the final resolution of *any such* notice of violation." Texas proposes to add new language requiring that the schedule include notices of violations of Federal regulations or Federal or state programs adopted under SMCRA. Texas is, also, revising the existing second sentence by deleting the phrase "or that the notice of violation is being contested by the applicant" and adding the phrase "or other laws referred to in this subsection" after the phrases "with a demonstrated pattern of willful violations of this Act" and "with such resulting irreparable damage to the environment as to indicate an intent not to comply with this Act."

5. Article 5920–11, TSMCRA, Section 21a, Suspension or Rescission of Improvidently Issued Permits

Texas proposes to add a new section which authorizes the Commission to adopt and enforce rules relating to suspension or rescission of improvidently issued permits that are consistent with and no less effective than Federal regulations adopted under SMCRA.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t., on October 5, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 13, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–23267 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 943

[SPATS No. TX–026–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program (hereinafter the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a revision to the Texas rule pertaining to preparation and certification of cross sections, maps, and plans required for surface mining permit applications. The amendment is intended to provide an additional safeguard and improve operational efficiency.

DATES: Written comments must be received by 4 p.m., c.d.t., October 20, 1995. If requested, a public hearing on the proposed amendment will be held on October 16, 1995. Requests to speak at the hearing must be received by 4 p.m., c.d.t., on October 5, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Tim L. Dieringer, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma, 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas, 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT:

Mr. Tim L. Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated August 31, 1995 (Administrative Record No. TX–596), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. The provision of Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 that Texas proposes to amend is TCMR 779.137(l), cross sections, maps, and plans.

Specifically, Texas proposes to revise TCMR 779.137(l) to allow professional biologists to certify, as appropriate, cross sections, maps, and plans included in a surface mining permit application.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t., on October 5, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30

U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–23266 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 950

Wyoming Abandoned Mine Land Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Wyoming AMLR plan (hereinafter, the "Wyoming plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information for Wyoming's proposed statute pertains to the amount of a lien placed on private lands upon the completion of reclamation operations. The amendment is intended to clarify ambiguities and improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.d.t., October 5, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918.

Stan Barnard, Acting AML Administrator, Department of Environmental Quality, Abandoned Mine Land Division, Herschler Building, Third Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002.

Telephone: (307) 777–6145.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Plan

On February 14, 1983, the Secretary of the Interior approved the Wyoming plan. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings, the disposition of comments, and the approval of the Wyoming plan can be found in the February 14, 1983, **Federal Register** (48 FR 6536). Subsequent actions concerning Wyoming's plan and plan amendments can be found at 30 CFR 950.30 and 950.35.

II. Proposed Amendment

By letter dated April 21, 1995, Wyoming submitted a proposed amendment to its plan pursuant to SMCRA (administrative record No. WY–AML–18–8). Wyoming submitted the proposed amendment at its own initiative. The provisions of the Wyoming plan that the State proposed to revise were:

Wyoming Statute (W.S.) 35–11–1206 (a) and (b), liens for reclamation on private lands, and W.S.35–11–1209, contractor eligibility.

OSM announced receipt of the proposed amendment in the May 18, 1995, **Federal Register** (60 FR 26704), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. WY–AML–18–9). The public comment period ended on June 19, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of W.S.35–11–1206(a) that limit the amount of any lien to the cost of reclamation work or to the amount determined by the appraisal to be the increase in the fair market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal or noncoal mining practices, whichever is less. OSM also identified concerns relating to the provisions of W.S.35–11–1206(b) that provide that the amount reported to be the increase in the value of the land, but not exceeding the cost of the reclamation work, shall constitute the amount of the lien. OSM notified Wyoming of the concerns by letter dated August 8, 1995 (administrative record No. WY–AML–18–16).

Wyoming responded in a letter dated August 29, 1995, by submitting additional explanatory information concerning W.S. 35–11–1206 (a) and (b) and the inclusion of the cost of reclamation in determining the amount of the lien to be placed on reclaimed lands (administrative record No. WY–AML–18–17). In its response, Wyoming stated that when proposed W.S. 35–11–1206 was presented to the Wyoming legislature, there was considerable debate on it with regard to a potential governmental takings if the property owner had to pay a lien amount that

was more than the cost to perform the reclamation work. Debate focused on who would pay for costs associated with potential lawsuits should a lien be placed for more than the reclamation cost, and whether the reclamation would be authorized by a property owner if the lien for the reclamation exceeded the actual cost of the reclamation. Wyoming further stated that over 25,000 acres have been reclaimed since the start of the Wyoming AMLR program and that there had never been an instance where the cost of reclamation was less than the increase in property value.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Wyoming plan amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 884.14 and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Wyoming plan.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et. seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 950

Abandoned mine land reclamation program, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 7, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–23268 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5300–1]

40 CFR Parts 64 and 70

Compliance Assurance Monitoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting; notice of document availability.

SUMMARY: On October 22, 1993, the EPA published a notice of proposed rulemaking (58 FR 54648) that contained proposed rules to govern a new enhanced monitoring program under section 114(a)(3) and related provisions of the Clean Air Act. In light of the President's concerns regarding flexibility and cost-effectiveness, the EPA believes that it may be inappropriate to take final action on the rule as proposed and has proceeded to develop an alternative approach to meet the statutory requirement of section 114(a)(3), as well as the periodic monitoring requirements under section 503(b) of the Clean Air Act; this approach is called compliance assurance monitoring or CAM.

The EPA is planning to propose regulations on compliance assurance monitoring in December 1995. These regulations will impose new monitoring requirements on major stationary sources of air pollution. Notice is hereby given that the EPA will hold a public meeting on September 22, 1995 to provide the stakeholders potentially affected by these regulations with an opportunity to discuss the issues raised by the regulations in advance of the EPA's formal proposal. This notice also announces the public availability of a draft regulatory package for review in advance of the public meeting. In addition, the Agency will accept written comments on the draft package provided that comments are received by September 22, 1995.

DATES: *Meeting:* The public meeting will be held on September 22, 1995 from 8:30 a.m. to 4:30 p.m. at the address set forth below. *Comments:* Written comments may be submitted to the docket at the address provided below until September 22, 1995. *Document Availability:* The draft regulatory package will be available in early September 1995 at the address provided below.

ADDRESSES: *Meeting Location:* The public meeting will be held at the Sheraton Inn—University Center, 2800 Middleton Avenue, Durham, North Carolina 27705, telephone (919) 383–8575. Participants wishing to arrange for overnight accommodations should advise the hotel that they are attending the EPA CAM meeting. To assist the EPA in planning the public meeting, persons interested in attending should contact Ms. Andrea Lewis, Public Meeting Coordinator, at (804) 979–3700, telefax (804) 296–2860, Perrin Quarles Associates, Inc., 501 Faulconer Drive, Suite 2–D, Charlottesville, Virginia

22903, to give their name and affiliation. *Docket:* Supporting information related to this rulemaking, including the draft regulatory package, is contained in Docket No. A–91–52. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m. Monday through Friday, excluding government holidays, and is located at: EPA Air Docket (LE–131), Room M–1500, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying. *Comments:* Comments must be mailed (in duplicate) to the docket at the address provided above. All comments should be marked to the attention of Docket No. A–91–52. *Document Availability:* A copy of the draft regulatory package will be located in the docket at the address provided above, and will also be available via the Emission Measurement Technical Information Center Computer Bulletin Board of the EPA's Technology Transfer Network at (919) 541–5742, Internet address TELNET ttnbbs.rtpnc.epa.gov, 24 hours a day, 7 days a week (except 8 a.m.–12 a.m. EST). Contact the system operator at (919) 541–5384 if you have any questions concerning access to the Technology Transfer Network.

FOR FURTHER INFORMATION CONTACT: Robin Segall, Office of Air Quality Planning and Standards, (919) 541–0893.

SUPPLEMENTARY INFORMATION: On May 1, 1995, the EPA received a 60-day extension of the court-ordered deadline in *Sierra Club v. Browner*, No. 93–0564 NHJ (D.D.C.) for final promulgation of enhanced monitoring rules in order for the Agency to reassess the approach it has developed and to consider other, alternative approaches. During this 60-day period, the EPA held an initial stakeholders' meeting and worked with representatives of industry, State and local agencies, and environmental groups to formulate a new approach to accomplish the substantive goals of the periodic monitoring requirements, as well as the enhanced monitoring requirements of the Clean Air Act, in a cost-effective manner. On June 30, 1995, the EPA received a further extension of the court-ordered deadline until July 1, 1996, in order to propose and, as appropriate, promulgate rules embodying the new approach to enhanced and periodic monitoring, referred to as compliance assurance monitoring or CAM.

The CAM approach has been developed in consideration of the President's regulatory reform efforts to design performance-based environmental programs that provide industry with the flexibility to comply in cost-effective ways, while requiring accountability for achieving results. It focuses on enhancing and supplementing current operation and maintenance (O&M) monitoring requirements. The compliance assurance monitoring approach would require that a source owner document operation and maintenance of a control device or process operation in accordance with established, reliable operating and maintenance practices and implement any necessary corrective action to ensure that emissions have been reduced. The Agency has combined the enhanced and periodic monitoring requirements of Titles V and VII of the Clean Air Act Amendments of 1990 in the draft CAM rule so that all compliance-related monitoring requirements would be integrated in one set of requirements. The CAM approach also addresses the requirements for compliance certifications under Titles V and VII of the Clean Air Act Amendments of 1990. Under the draft CAM proposal, the owner or operator would certify compliance with (1) the emission limitation or standard based on the results of applying the determining and certifying compliance with that emission limitation or standard, and (2) the associated monitoring, reporting, and record keeping requirements in the permit that provide an assurance of ongoing compliance with the emission limitation or standard.

The Agency has now drafted a regulatory proposal package for CAM and will make it available to the public on or before September 1, 1995 (see *"Document Availability"* above). Following release of this draft, the Agency will hold a public meeting, as described above, to review the major elements of the draft regulatory package and to solicit opinions and suggestions from the stakeholders' on the draft document. The meeting will include a number of representative stakeholders that will sit at the main meeting table by invitation; they will include industry, State and local agencies, and environmental organizations. Additional seating is available by contacting the Public Meeting Coordinator listed in the **ADDRESSES** section above. It is important to note that the Agency will be seeking the opinions of the individuals/organizations present and *not* consensus.

Dated: August 28, 1995.

Peter R. Westlin,

Designated Federal Official.

[FR Doc. 95–23431 Filed 9–18–95; 1:41 pm]

BILLING CODE 6560–50–P

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40 CFR Part 170

[OPP–250109; FRL–4974–2]

Notification to the Secretary of Agriculture of Proposed Regulations on Worker Protection Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture two proposed regulations under section 25(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The first proposed rule would revise the Worker Protection Standard (WPS) to allow the substitution of an alternate language for the Spanish portion of the warning sign and to allow the use of smaller warning signs in keeping with the nature of the agricultural operation. The second proposed rule would modify the requirements that decontamination supplies be provided to agricultural workers. The modifications would add flexibility and promote the use of less toxic pesticides, while ensuring that worker risks are not increased. This action is required by FIFRA section 25(a)(2)(A).

FOR FURTHER INFORMATION CONTACT: By mail: For the decontamination proposal Joshua First and for the sign proposal John MacDonald, Certification, Training and Occupational Safety Branch (7506C), Field Operation Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–7437 and 703–305–7370, respectively, e-mail: first.joshua@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA requires that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days before signing it for publication in the **Federal Register**. If within 30 days after receiving it, the Secretary comments on the proposed regulation in writing, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime thereafter. As required by FIFRA section 25(a)(3), a copy of the proposed regulations have been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

List of Subjects in Part 170

Environmental protection, Intergovernmental relations, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136 et seq.

Dated: September 1, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–23202 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 3F4258/P630; FRL–4973–8]

RIN 2070–AC18

Avermectin B_1 and Its Delta-8,9-Isomer; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity bell peppers. Merck Research Laboratories requested the proposed regulation to establish a maximum permissible level for residues of the insecticide pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: Comments, identified by the document control number [PP 3F4258/P630], must be received on or before October 20, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 3F4258/P630]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On August 17, 1993, Merck Research Laboratories, Inc., submitted a pesticide petition (PP 3F4258) requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity (RAC) group, fruiting vegetables (tomatoes, peppers, and eggplants) at 0.01 part per million (ppm). On August 9, 1994, Merck requested that the pesticide petition be amended by withdrawing group tolerances and proposing tolerances for bell peppers only at 0.01 ppm., since EPA had concluded there was insufficient data to establish the crop group tolerance and insufficient data to establish a tolerance on all varieties of peppers except for bell peppers.

The data submitted in support of the tolerance and other relevant material have been reviewed. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of the tolerance are discussed in detail in related documents published in the **Federal Registers** of May 31, 1989 (54 FR 23209, cottonseed) and August 2, 1989 (54 FR 31836, citrus).

The Agency used a two-generation rat reproduction study with an uncertainty factor of 300 to establish a Reference Dose (RfD). The 300-fold uncertainty factor was utilized for (1) inter- and intra-species differences, (2) the extremely serious nature (pup death) observed in the reproduction study, (3) maternal toxicity (lethality) no-observable-effect level (NOEL) (0.05 mg/kg/day), and (4) cleft palate in the mouse developmental toxicity study with isomer (NOEL = 0.06 mg/kg/day). Thus, based on a NOEL of 0.12 mg/kg/day from the two-generation rat reproduction and an uncertainty factor of 300, the RfD is 0.0004 mg/kg/body weight(bwt)/day.

A chronic dietary exposure/risk assessment has been performed for avermectin B_1 using the above RfD. Available information on anticipated residues and 100% crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on the tolerance level residues. The ARC for established tolerances and the current action is estimated at 0.000022 mg/kg/bwt/day and utilizes 5.4 percent of the RfD for the U.S. population. For nonnursing infants less than 1-year-old (the subgroup population with the highest exposure level) the ARC for established tolerances and the current action is estimated at 0.000072 mg/kg bwt/day and utilizes 17.9% of the RfD. Generally speaking, the Agency has no cause for concern if the anticipated residue contribution for all published and proposed tolerances is less than the RfD.

Because of the developmental effects seen in animal studies, the Agency used the mouse teratology study (with a NOEL of 0.06 mg/kg/day for developmental toxicity for the delta-8,9 isomer) to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end point pertains to developmental toxicity, the population group of interest for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis, the Agency calculated the MOE for the high-end exposures for women ages 13 and above. The MOE is 120. Generally speaking, MOEs greater than 100 for developmental toxicity do not raise concerns.

The metabolism of the chemical in plants and animals for the use is adequately understood. Secondary residues occurring in livestock and their byproducts are not expected since there are no known animal feed stock uses for bell peppers. Adequate analytical methodology (HPLC-Fluorescance Methods) is available for enforcement purposes. Prior to publication in the Pesticide Analytical Manual, Vol II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The tolerances established by amending 40 CFR part 180 will be adequate to cover residues in or on bell peppers. There are currently no actions pending against the continued registration of this chemical. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3F4258/P630]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 3F4258/P630] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 28, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation of part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.449 in paragraph (b) in the table therein, by adding and alphabetically inserting an entry for bell pepper, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Peppers, bell	0.01
* * * * *	

[FR Doc. 95–22869 Filed 9–19–95; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 300

[FRL–5299–4]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: The Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Arkansas City Dump Site from the National Priorities List (NPL): Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces its intent to delete the Arkansas City Dump Site from the NPL and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. This action, to delete the site from the NPL, is proposed because the EPA has completed the Superfund remedial action at this site.

DATES: Comments concerning this action may be submitted by October 20, 1995.

ADDRESSES: Comments to be considered by EPA in this decision should be mailed to: David V. Crawford, Remedial Project Manager, Superfund Division, U.S. Environmental Protection Agency/Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: David Crawford at (913) 551–7702.

SUPPLEMENTARY INFORMATION: Comprehensive information on this site is available for public review in the Docket prepared by EPA, which contains the documents and information EPA reviewed in the decision to delete this site from the NPL. The Docket is available for public review during normal business hours at the EPA Region VII Docket Room at the above address and at the Public Library, 125 East Fifth Avenue, Arkansas City, Kansas 67005. To obtain copies of documents in the Docket or in the EPA Administrative Record or for additional information, contact: David V. Crawford, Remedial Project Manager, Superfund Division, U.S. Environmental Protection Agency/Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Bibliography

Section I is an introduction providing background information about this site. Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures for deleting sites from the NPL. Section IV discusses how the site meets the NPL deletion criteria. Section V lists references and sources of information.

I. Introduction

The Environmental Protection Agency (EPA) Region VII announces its intent to delete the Arkansas City Dump Site in Arkansas City, Kansas from the National Priorities List (NPL), which constitutes Appendix B of the NCP, and requests comments on this action.

The EPA identifies sites which may present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund or by responsible parties. Pursuant to the NCP at 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for Fund-financed actions if conditions at the site ever warrant.

The EPA will accept comments concerning the proposal to delete the Arkansas City Dump Site from the NPL for thirty (30) calendar days after publication of this notice in the **Federal Register**.

II. NPL Deletion Criteria

The NCP established the criteria that the Agency uses to delete sites from the NPL. In accordance with the NCP at 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup is appropriate; or

(iii) Based upon a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health, welfare or the environment, and, therefore, remedial measures are not required.

In addition to the above, for all remedial actions which result in hazardous substances, pollutants or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, EPA will reassess the continued adequacy and protectiveness of the remedial actions periodically, and no less than once every five years. The EPA expects to conduct five-year reviews on the remedial action completed on the Arkansas City Dump Site even after this site has been deleted from the NPL.

III. Deletion Procedures

In the NPL rule-making published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures following for adding sites to the NPL should also be used before sites are deleted. The NCP, at 40 CFR 300.425(e)(4) and (5) directs that the same **Federal Register** notice procedures for placing sites on the NCP will be used for deleting sites from the NPL.

This **Federal Register** notice is EPA's notice of its intent to delete the Arkansas City Dump Site from the NPL. The EPA will accept comments from the public on this proposal for a period of thirty (30) calendar days beginning today, the date of this notice in the **Federal Register**. The EPA will address all significant comments received on this proposal in a Responsiveness Summary, which EPA will place in the Docket on this decision. After considering these comments, if EPA decides to proceed with the deletion of the Arkansas City Dump Site from the NPL, EPA will publish another notice in the **Federal Register** recording this decision.

IV. Basis for Intended Site Deletion

The EPA has completed a final remedy remedial action at this site. The remedial action was implemented by EPA using the Hazardous Substances Response Trust Fund, because financially viable and liable potentially responsible parties could not be identified.

The remedial action consisted of treating the acidic sludges with cement kiln dust and lime to eliminate the acidity of the sludge. All acidic sludge above the water table was treated, capped on the site, and seeded with vegetation to minimize erosion. The site was then posted with warning no-trespassing signs.

The EPA also completed the first year of operation and maintenance (O&M) for the remedial action in November 1993. The O&M then became the responsibility of the State of Kansas.

The EPA, in consultation with the State of Kansas, has determined that a final remedy has been successfully completed by EPA at this site. In consultation with the State of Kansas, EPA has further determined that these remedial actions continue to be protective of public health, welfare and the environment, thereby satisfying Deletion Criteria "ii" above.

V. Bibliography

Remedial Investigation/Feasibility Study Reports, Kansas Department of Health and Environment.

U.S. EPA Operable Unit Record of Decision, September 29, 1988.

U.S. EPA Explanation of Significant Difference, May 25, 1990.

U.S. EPA Proposed Plan, August 1989.

U.S. EPA Final Record of Decision, September 19, 1989.

Community Relations Plan, May 22, 1981.

Fluor Daniel, Inc. (EPA contractor) Final Report, Remedial Action Implementation, Arkansas City Dump Site, February 1994.

U.S. EPA Superfund Site Closeout Report, August 1995.

Superfund State Contract, September 6, 1991.

Dated: August 31, 1995.

Gale Hutton,

Acting Regional Administrator.

[FR Doc. 95–23319 Filed 9–19–95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–103; RM–8659]

Radio Broadcasting Services; Wyeville, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by Josephine Miracle proposing the allotment of Channel 267A to Wyeville, Wisconsin. *See* 60 FR 35548, July 10, 1995. Josephine Miracle withdrew her petition in accordance with Section 1.420(j) of the Commission's Rules and no other interest has been expressed for a channel in Wyeville. It is the Commission's general policy to refrain from making a new allotment to a community absent an expression of interest. Since there is no interest here, we will dismiss Josephine Miracle's petition. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 95–103, adopted September 7, 1995, and released September 14, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–23290 Filed 9–19–95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To List the Riverside Cuckoo Bee as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day petition finding to list the Riverside cuckoo bee (Holcopasites ruthae) as endangered under the Endangered Species Act of 1973, as amended (Act). The Service finds that substantial information has not been presented to indicate the requested action may be warranted. Information is lacking to adequately identify the status and distribution of the Riverside cuckoo bee.

DATES: The finding in this notice was made on September 11, 1995. Comments and materials regarding this petition finding may be submitted to the Field Supervisor at the address listed below until further notice.

ADDRESSES: Information, comments, or questions regarding this petition finding should be submitted to the Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. The petition, the Service's finding, and additional information are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Nagano, Fish and Wildlife Biologist, at the above address (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition.

On April 14, 1992, the Service received a petition dated April 13, 1992, from Dr. K.W. Cooper of the University of California at Riverside, California. The petitioner requested that the Service list the Riverside cuckoo bee (*Holcopasites ruthae*) as an endangered species. The petition was clearly identified as such and contained the name, signature, and address of the petitioner. A letter acknowledging receipt of the petition by the Service was sent to the petitioner on May 15, 1992. On April 16, 1992, Dr. Cooper submitted a second letter requesting the Service list the Riverside cuckoo bee under an emergency basis.

The Service's finding is based on information contained in the petition, the literature provided by the petitioner, and information available in the Service's files. All documents are on file in the Carlsbad Field Office (See **ADDRESSES** section).

The Riverside cuckoo bee is associated with coastal sage scrub containing brittle bush (*Encelia farinosa*) within a relatively small area of northwestern Riverside County, California (Visscher *et al.* 1992). Its known distribution extends from the City of Riverside east to near Calimesa and south to the Lake Perris Recreation Area. This species is a solitary cleptoparasite (an organism that feeds on food stored for the host larvae). The only known host of the Riverside cuckoo bee is the dagger andrenid bee (*Calliopsis pugionis*) (Visscher *et al.* 1992; Cooper 1993), which is endemic to Los Angeles, Riverside, and San

Diego Counties in southwestern California (Shinn 1967; Krombein 1979).

The petitioner stated that the Riverside cuckoo bee merited protection under the Act because it was imperiled by the proposed construction of a U.S. Department of Agriculture soil laboratory. At that time the proposed laboratory site contained the only known population of the species. A survey was subsequently conducted in April and May 1992 to find the Riverside cuckoo bee in portions of westernmost Riverside County and a few adjacent portions of San Bernardino County (Visscher *et al.* 1992). The survey was designed to cover areas of habitat similar to the coastal sage scrub where the Riverside cuckoo bee was originally discovered at the proposed laboratory site. The 1992 survey found the Riverside cuckoo bee at 7 of 84 sites (8 percent) containing potential habitat. The dagger andrenid bee was located at 19 of the 84 sites (23 percent). Construction of the soil laboratory was completed in 1994 (G. Ballmer pers. comm. to C. Nagano, March 28, 1995).

The ecology and distribution of cleptoparasitic anthrophorid bees are poorly known (R.R. Snelling, Natural History Museum of Los Angeles County, pers. comm. to C. Nagano February 9, 1995; G. Eickwort, University of Arizona, *in litt.* June 12, 1992). Bees of the genus *Holcopasites* are extremely cryptic in their ecology and behavior. These small bees are usually collected when they are either searching for mates or for suitable hosts at the host colonies. They are highly alert and extremely fast fliers that are unlikely to be observed or captured during entomological studies of a "casual" nature.

Although other cleptoparasitic anthrophorid bees are known to use more than one bee species as hosts (R.R. Snelling, pers. comm. to. C.D. Nagano, April 27, 1995), ecological studies have not been conducted to determine if the Riverside cuckoo bee utilizes other andrenid bees of the genus *Calliopsis.* Given the ecology and biology of the Riverside cuckoo bee, surveying for the dagger andrenid bee is the most appropriate method of ascertaining the distribution of the petitioned species. Surveys of this nature or specific surveys for the Riverside cuckoo bee throughout the entire range of the dagger andrenid bee or other suitable host species have not been completed (Ballmer *ibid;* Snelling pers. comm. to C. D. Nagano, February 9, 1995; Visscher *et al.* 1992). Although other invertebrate groups are well known, such as butterflies and tiger beetles, there are few specialists working on cleptoparasitic bees and their hosts.

The Service has carefully reviewed the petition. On the basis of the best scientific and commercial information currently available, the Service has determined that the petition does not present substantial information indicating the requested action may be warranted. Information is lacking to adequately identify the status and distribution of the Riverside cuckoo bee. However, the Service is interested in any additional information about the Riverside cuckoo bee that may be available. Please submit any additional information to the Carlsbad Field Office (see **ADDRESSES** section). If additional data become available in the future, the Service may reassess the listing priority for this species or the need for listing.

References Cited

Cooper, K.W. 1993. The first *Holcopasites* from western California, *H. ruthae* new species, and *H. linsleyi,* a new species from southwestern Arizona (Hymenoptera, Nomadinae). Proc. Entomol. Soc. Wash. 95(1);113–125.

Krombein, K. 1979. Catalog of Hymenoptera in America north of Mexico. Volume 2 Apocrita (Aculeata). Smith. Inst. Press., Washington, DC.

Shinn, A.F. 1967. A revision of the bee genus *Calliopsis* and the biology and ecology of *C. andreniformis* (Hymenoptera, Andrenidae). The Univ. of Kansas Sci. Bull. 46(21)753–936.

Visscher, P.K., B.N. Danforth, and M.M. Barnes. 1992. Investigations of the biology and distribution of a new species of *Holcopasites* found on the proposed salinity laboratory site. Department of Entomology, Univ. of Calif., Riverside.

Author

The primary author of this document is Chris Nagano (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 11, 1995.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–23251 Filed 9–19–95; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register

Vol. 60, No. 182

Wednesday, September 20, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-602]

Certain Carbon Steel Butt-Weld Pipe Fittings From Japan; Negative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Negative Preliminary Determination of Circumvention of Antidumping Duty Order.

SUMMARY: On March 22, 1994, the Department of Commerce (the Department) received a request for a circumvention inquiry on the antidumping duty order on certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings) from Japan, with respect to imports of Awaji Sangyo (Thailand) Co., Ltd. (AST). Pursuant to that request, the Department initiated a circumvention inquiry on October 31, 1994 (59 FR 54433).

We preliminarily determine that AST is not circumventing the antidumping duty order on butt-weld pipe fittings from Japan. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise stated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1994, the Department received a petition from the U.S. Fittings Group (the petitioner) requesting that the Department conduct a circumvention inquiry on the antidumping duty order on certain carbon steel butt-weld pipe fittings from Japan (52 FR 4167 (February 10, 1987)). The petitioner is an *ad hoc* trade association of domestic producers of butt-weld pipe fittings whose members currently consist of Hackney, Inc., Ladish Co., Inc., Mill Iron Works, Inc., Steel Forgings, Inc., and Tube Forgings of America, Inc.

The petitioner alleged that unfinished pipe fittings from Japan are being finished in Thailand by AST, and thereafter imported into the United States free of any antidumping duties. The Department initiated a circumvention inquiry on October 31, 1994 (59 FR 54433).

Scope of the Circumvention Inquiry

The products covered by this inquiry are certain carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting. These fittings are currently provided for under item 7307.93.30

Induction pipe bends classifiable under item 7307.93.30 which have at one or both ends tangents that equal or exceed 12 inches in length are excluded from the scope of this inquiry.

The inquiry covers one manufacturer/exporter of butt-weld pipe fittings, AST. The period of inquiry is October 1, 1993 through September 30, 1994.

Case History

The Department sent an anti-circumvention questionnaire to AST on January 3, 1995. On January 9, 1995, AST replied that it had not sold or exported any butt-weld pipe fittings to the United States manufactured from Japanese unfinished butt-weld pipe fittings during the period for which the Department requested such information, or subsequent to that period. AST requested that the Department therefore terminate the inquiry.

In submissions of January 17, 1995, and February 3, 1995, petitioner argued that the Department should change the period of inquiry to January 1991 through August 1993, so as to include the time frame from which the evidence in the anti-circumvention petition was drawn. Petitioner also claimed that, since the Department did not initiate the inquiry until approximately seven months after the petition was filed, AST had ample opportunity to change its business practices in response to the petition, and the period after the date of the petition is therefore inherently unrepresentative.

On January 20, 1995, AST submitted additional comments and additional support for its request to terminate the inquiry. AST stated that it had not altered its behavior as a result of the anti-circumvention petition. AST stated that it had not exported any butt-weld pipe fittings to the United States manufactured from Japanese unfinished butt-weld pipe fittings since the period the Department reviewed in the circumvention inquiry regarding the antidumping duty order on carbon steel butt-weld pipe fittings from the People's Republic of China (PRC) (which ended August 31, 1993).

Negative Preliminary Determination of Circumvention Inquiry

Because record evidence concerning AST's production capabilities during the period of inquiry supports AST's assertion that it did not sell or export any butt-weld pipe fittings to the United States manufactured from Japanese unfinished butt-weld pipe fittings during the period of this circumvention inquiry and because evidence indicates that this fact was not in any way influenced by the filing of a request to conduct this inquiry, the Department preliminarily determines that extension of the period of inquiry is unwarranted and that no circumvention of the antidumping duty order is occurring within the meaning of section 781(b) of the Tariff Act.

Any interested party may request a hearing within ten days of publication of this notice. Any hearing, if requested, will be held approximately 44 days after the publication of this notice. Interested parties may submit written comments (case brief) within 30 days of the date of publication of this notice. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish its final determination of this circumvention inquiry, including the results of its analysis of issues raised in any such written comments.

This preliminary negative determination of circumvention is in accordance with section 781(b) of the Tariff Act (19 U.S.C. 1677j(b)) and 19 C.F.R. 353.29(f).

September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23335 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[A-570-808]

Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China.

SUMMARY: On April 20, 1995, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its 1991–1992 and 1992–1993 administrative reviews of the antidumping duty order on chrome-plated lug nuts (lug nuts) from the People's Republic of China (PRC) (60 FR 19720). These reviews cover shipments of this merchandise to the United States during the periods April 18, 1991, through August 31, 1992, and September 1, 1992, through August 31, 1993. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: October 20, 1995.

FOR FURTHER INFORMATION CONTACT: Donald Little, Elisabeth Urfer, or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on lug nuts from the PRC on April 24, 1992 (57 FR 15052). On September 11, 1992, and September 7, 1993, the Department published in the **Federal Register** (57 FR 41725 and 58 FR 47116), respectively, notices of opportunity to request administrative reviews of the antidumping duty order on lug nuts from the PRC covering the periods April 18, 1991, through August 31, 1992, (91–92 review) and September 1, 1992, through August 31, 1993 (92–93 review).

For the 91–92 review, in accordance with 19 CFR 353.22(a)(1994), the petitioner, Consolidated International Automotive, Inc. (Consolidated), requested that we conduct an administrative review of China National Automotive Industry I/E Corp.; China National Machinery & Equipment Import and Export Corporation, Jiangsu Co., Ltd. (Jiangsu); Rudong Grease Gun Factory (Rudong); China National Automotive Industry Shanghai Automobile Import & Export Corp. (Shanghai Automobile); Chu Fong Metallic Industrial Corporation (Chu Fong); and San Chien Electric Industrial Works, Ltd. (San Chien). We published a notice of initiation of this antidumping duty administrative review on October 22, 1992 (57 FR 48201).

For the 92–93 review, in accordance with 19 CFR 353.22(a), Consolidated requested that we conduct an administrative review of China National Automotive Industry I/E Corp; Jiangsu; China National Automobile Import and Export Corp., Yangzhou Branch (Yangzhou); Rudong; Ningbo Knives & Scissors Factory (Ningbo); Shanghai Automobile; and Tianjin Automotive Import and Export Co. (Tianjin). In accordance with 19 CFR 353.22(a), Krossdale Accessories, Inc. requested a review of its supplier, China National Machinery & Equipment Import & Export Corp., Nantong Branch (Nantong). We published a notice of initiation of this antidumping duty administrative review on October 18, 1993 (58 FR 53710).

On April 20, 1995, the Department published in the **Federal Register** the preliminary results of its 1991–1992 and 1992–1993 administrative reviews of the antidumping duty order on lug nuts from the PRC (60 FR 19720). There was no request for a hearing. The Department has now conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

On April 19, 1994, the Department issued its "Final Scope Clarifications on Chrome-Plated Lug Nuts from Taiwan and the PRC." The scope, as clarified, is described in the subsequent paragraph. All lug nuts covered by these reviews conform to the April 19, 1994, scope clarification.

Imports covered by these reviews are one-piece and two-piece chrome-plated lug nuts, finished or unfinished. The subject merchandise includes chrome-plated lug nuts, finished or unfinished, which are more than 11/16 inches (17.45 millimeters) in height and which have a hexagonal (hx) size of at least 3/4 inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus 1/16 of an inch (1.59 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not included in the scope of this review. Chrome-plated lock nuts are also not subject to this review.

Chrome-plated lug nuts are currently classified under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

These reviews cover the periods April 18, 1991, through August 31, 1992, and September 1, 1992, through August 31, 1993. The 91–92 review covers six producers/exporters of Chinese lug nuts. The 92–93 review covers eight producers/exporters of Chinese lug nuts.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a case brief from petitioner, and a rebuttal brief from respondents, Rudong and Nantong.

Comment 1: Petitioner concurs with the Department's decision to use best information available (BIA) with respect to Rudong and the non-responding firms. Petitioner asserts that for the 91–92 review, the response by Rudong was incomplete with regard to factor information on packing costs, that the Department treated Rudong as a non-shipper, and that the Department applied BIA due to Rudong's incomplete response to the Department's questionnaire.

Petitioner states that for the 92–93 review, of the seven firms that were potential respondents, the Department again determined that one firm, Rudong, had responded to the Department's requests for information, but had reported no direct exports to the United States. Petitioner contends that, as in 91–92 review, Rudong provided deficient factor information, and that the Department correctly used BIA to apply the PRC rate of 45.41 percent. Petitioner argues that the remaining six companies did not respond to the Department's questionnaires and received either a PRC or company-specific rate based on the highest rate ever calculated in either the investigation of sales at less-than-fair-value (LTFV) or the previous review, 45.41 percent. Petitioner notes that Jiangsu, which had previously been investigated, received a company-specific rate. Petitioner states that the named exporter in the 92–93 review, Nantong, responded to the questionnaire and received a separate rate; however, the company-specific rate and the PRC rate are identical.

Rudong and Nantong disagree with petitioner's positions that it is appropriate to use BIA with respect to Rudong and Nantong, and they disagree that the Department correctly applied the factors of production methodology in these reviews. They argue that Rudong was fully responsive to the Department's requests for information, and, contrary to petitioner's claims, provided full factors of production information. They maintain that the reported factors data, and not BIA or other factors data used for the preliminary results, should be used by the Department for the final results of these proceedings.

Rudong and Nantong disagree with the Department and the petitioner's claims that Rudong did not provide proper information on packing costs. They state that Rudong provided packing data in its August 3, 1994 submission. Rudong and Nantong maintain that the Department erred in its assessment that Rudong did not provide factor information for transporting steel wire rod. They further maintain the Department should use the surrogate information contained in the Indian publication *Steel Scenario* which they submitted, rather than Indian import statistics, to value steel.

Department's Position: We disagree with both petitioner and respondent, in part. During the 91–92 review Rudong did not export lug nuts to the United States; therefore, we treated Rudong as a non-shipper and applied the PRC rate of 42.42 percent, the highest rate for any firm in the LTFV investigation. We did not apply BIA to Rudong. For the remaining five companies, none of which responded to our requests for information, we applied a BIA rate of 42.42 percent. In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is BIA. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's review, the Department will normally assign to that company the higher of (1) The highest rate for any firm in the investigation or prior administrative reviews of sales of subject merchandise from that same country; or (2) the highest rate found in the review for any firm. When a company has cooperated with the Department's request for information but fails to provide the information requested in a timely manner or in the form required, the Department will normally assign to that company the higher of either: (1) The highest margin calculated for that company in any previous review or the original investigation; or (2) the highest calculated margin for any respondent that supplied an adequate response for the current review. (*See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, et. al.* (58 FR 39729, (July 26, 1993).) Therefore, we applied as BIA to the firms which did not respond to our questionnaire a PRC rate based on BIA which was the highest rate for any firm in the investigation, or the 91–92 review.

During the 92–93 review, we calculated a rate for Nantong, the only exporter that submitted a questionnaire response. Since Rudong produced the merchandise sold by Nantong, we compared Nantong's United States price with Rudong's foreign market value (FMV). We calculated FMV based on Rudong's factors of production. Rudong generally complied with our requests for information; however, Rudong did not report the amount of the steel input purchased from each supplier and packing weights. While Rudong did provide the information we requested with regard to types of materials used in packing, Rudong did not provide kilogram weights of packing materials, which we needed to value the input materials. The questionnaire specifically asks respondents to prove actual material usage, and requests specifically that respondents provide the method of allocating packing costs for each unit of the subject merchandise. (*See Letter, with Attachment, from Bernard Carreau to Lu Dong Grease Gun Factory,* dated March 4, 1994). Because Rudong did not provide this information, as BIA, we applied a rate of one percent of the cost of production to determine packing costs. This percentage was used in the *Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings from Italy* (52 FR 24198, June 29, 1987). This methodology is consistent with the Department's valuation of packing in the *Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings from the People's Republic of China* (56 FR 67590, December 31, 1991). We also applied partial BIA in calculating transportation costs between the factory and its steel suppliers, because, while Rudong provided distances from its suppliers, it did not provide the percentage purchased from each. Without such information we could not allocate purchases to specific suppliers. In our supplemental questionnaire we specifically asked Rudong to supply the quantity supplied for each input in those instances where there was more than one supplier of the input. (*See Letter from Bernard Carreau to Jiangsu Rudong Grease Gun Factory,* dated July 12, 1994.) As BIA, we used the longest distance between the factory and any of its suppliers of steel.

We disagree with Rudong and Nantong with regard to which source we should use to value steel. Rudong stated in its supplemental questionnaire response that it uses international standard steel #1010, which is a low carbon steel with a carbon content of .08 to .13 percent. The Indian import statistics are more specific in that they indicate the carbon content of the steel. The HTS category we used, 7213.39, "other bars & rods by weight less than .25 percent carbon," covers the low carbon steel used by Rudong to produce lug nuts. By contrast, *Steel Scenario* does not specify either the carbon content of the steel or other chemicals present in the steel. In addition, *Steel Scenario* prices include taxes and levies, without indicating the amount of taxes and levies included. Therefore, since the Indian import statistics are more specific to the type of steel used in the production of lug nuts, we have continued to use them for these final results.

Because it did not export during the 92–93 period of review we treated Rudong as a nonshipper. We applied BIA to the companies that did not respond to our requests for information. Because the rate calculated for Nantong was the highest rate in this or any other review, or from the investigation of sales at LTFV, the calculated rate for Nantong and the PRC rate are identical. Petitioner correctly notes that we determined that Nantong received a separate rate. However, we disagree that it is appropriate to continue assigning a separate rate to Jiangsu. The test to determine whether to treat an entity as separate from the state was established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) and was amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994). Under this policy, exporters in non-market economies are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. While Jiangsu did receive a separate rate under our old test, because Jiangsu did not respond to our request for information in this review, we were unable to determine whether it is appropriate to assign Jiangsu a separate rate under the current test.

Comment 2: Petitioner contends that the finding that Nantong is entitled to a separate rate does not equate to finding that the Chinese industry is market-oriented. Petitioner argues that Nantong is but one member of an industry that has been unresponsive to the Department's requests for information.

Department's Position: We agree with petitioner that a finding that an entity is entitled to a separate rate does not equate to a finding that the industry is market oriented; however, in neither the 91–92 review nor the 92–93 review did any party make a claim that the Chinese lug nut industry is a market-oriented industry.

Comment 3: Rudong and Nantong contend that there is a mathematical error in the calculation of the surrogate value for steel based on the Indian import statistics.

Department's Position: We agree and have changed our calculation accordingly.

Final Results of Reviews

As a result of the comments received, we have changed the results from those presented in our preliminary results of review:

Manufacturer/exporter	Time period	Margin (percent)
China National Machinery & Equipment Import & Export Corp., Nantong Branch	09/01/92–08/31/93	44.99
PRC Rate	04/18/91–08/31/92	42.42
	09/01/92–08/31/93	44.99

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of these administrative reviews for all shipments of lug nuts from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For Nantong, which has a separate rate, the cash deposit rate will be the company-specific rate published for the most recent (1992–1993) period; (2) for Jiangsu, which was previously investigated and given a separate rate, but did not respond to our request for information to determine whether it still qualified for a separate rate under our current test, the cash deposit rate, which is based on BIA, will be the PRC rate published for the most recent (1992–1993) period; (3) for the companies named above which did not respond to our questionnaire (China National Automotive Industry I/E Corp., Yangzhou, Ningbo, Shanghai Automobile, San Chien, Chu Fong and Tianjin) and for all other PRC exporters, the cash deposit rate will be the PRC rate for the most recent (1992–1993) period; (4) for Rudong, which was a nonshipper and has not been found eligible for a separate rate, the cash deposit rate will be the PRC rate for the most recent (1992–1993) period; and (5) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23334 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–804, A–791–803]

Notice of Postponement of Preliminary Determinations: Antidumping Duty Investigations of Circular Welded Non-Alloy Steel Pipe From Romania and South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: John Beck or Jennifer Stagner, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3464 or (202) 482–1673, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

SUMMARY: The Department of Commerce (the Department) is postponing its preliminary determinations in the antidumping duty investigations of circular welded non-alloy steel pipe from Romania and South Africa. The deadline for issuing these preliminary determinations is now no later than November 15, 1995.

SUPPLEMENTARY INFORMATION: On May 16, 1995, the Department initiated antidumping duty investigations of circular welded non-alloy steel pipe from Romania and South Africa (60 FR 27078, May 22, 1995). The notice stated that we would issue our preliminary determinations on October 5, 1995.

On June 12, 1995, the U.S. International Trade Commission determined that there was a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of circular welded non-alloy steel pipe from Romania and South Africa.

Postponement of Preliminary Determination

We have determined that the investigations are extraordinarily complicated within the meaning of section 733(c)(1)(B)(i) of the Act. Given the non-market economy status of Romania, the nature of government ownership of the participating companies raises novel issues which must be further examined. In addition, establishing surrogate values for the factors of production is complex and will require additional time.

For South Africa, we find that additional time is necessary to make the preliminary determination due to the novelty of issues presented in this case. The questionnaire used in this investigation was significantly revised to reflect the changes mandated by the URAA. Since issuing this questionnaire to the respondents, we have discovered that it contains certain ambiguities. Accordingly, we need additional time to issue clarified questions to the respondents, to allow them to submit responses, and to incorporate this information into our analysis for purposes of the preliminary determination.

Furthermore, we have determined that the parties concerned are cooperating, as required by section 733(c)(1)(B)(i) of the Act, and that additional time is necessary to make these preliminary determinations in accordance with section 733(c)(1)(B)(ii) of the Act.

For these reasons, the deadline for issuing these determinations is now no later than November 15, 1995.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated September 14, 1995.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 95–23336 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on August 1, 1995, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–427–009

France
Industrial Nitrocellulose
Objection Date: August 23, 1995
Objector: Aqualon Division, Hercules Incorporated
Contact: David Dirstine at (202) 482–4033

A–588–055

Japan
Acrylic Sheet
Objection Date: August 22, 1995
Objector: ICI Acrylics Inc.
Contact: Karen Park at (202) 482–3518

A–588–704

Japan
Brass Sheet & Strip
Objection Date: August 16, 1995
Objector: The Copper & Brass Fabricators Council
Contact: Thomas Killiam at (202) 482–2704

A–549–601

Thailand
Malleable Pipe Fittings
Objection Date: August 23, 1995
Objector: Grinnell Corp., Ward Manufacturing Inc.
Contact: Matthew Blaskovich at (202) 482–5831

A–570–504

The People's Republic of China
Petroleum Wax Candles
Objection Date: August 15, 1995
Objector: National Candle Association
Contact: Valerie Turoscy at (202) 482–0145.

Dated: September, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–23332 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Termination of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation of Antidumping Duty Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation of Antidumping Duty Finding.

SUMMARY: On September 7, 1977, the U.S. Treasury Department (Treasury) published an antidumping duty finding on replacement parts for self-propelled bituminous paving equipment (hereinafter "paving parts") from Canada. On October 22, 1992, and on October 18, 1993, the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty finding covering the periods September 1, 1991 through August 31, 1992 (1991–92), and September 1, 1992 through August 31, 1993(1992–93), respectively. On August 23, 1995, the Department initiated a changed circumstances antidumping duty administrative review and issued the preliminary results of changed circumstances antidumping duty administrative review stating its intent to revoke the antidumping duty finding based on petitioner's request of August 1, 1995. We are now revoking the finding, effective September 1, 1991, based on the fact that the finding is no longer of interest to domestic parties. As a result, we are also terminating the two ongoing reviews.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1977, Treasury published an antidumping duty finding on paving parts from Canada (42 FR 41811). On September 11, 1992, Blaw-Knox Construction Equipment Corporation (Blaw-Knox), the petitioner, and on September 28, 1992, the Allatt Paving Equipment Division of Ingersoll-Rand (IR), the respondent, requested an administrative review of the antidumping duty finding, covering the period September 1, 1991 through August 31, 1992. On October 22, 1992, the Department initiated the administrative review (57 FR 48201). On September 21, 1993, and September 30, 1993, IR and Blaw-Knox, respectively, requested an administrative review of the antidumping duty finding covering the period September 1, 1992 through August 31, 1993. On October 18, 1993, the Department initiated this administrative review (58 FR 53710).

On August 1, 1995, Blaw-Knox, the petitioner in this proceeding, submitted a request for a changed circumstances administrative review to revoke the finding on paving parts from Canada. In addition, Blaw-Knox requested that the revocation be effective retroactively to September 1, 1991, thereby terminating the currently pending 1991–92 and 1992–93 administrative reviews. Blaw-Knox made this request based on the fact that the finding on paving parts is no longer of interest to the petitioner.

Pursuant to 19 CFR 353.25(d)(1), we preliminarily determined that Blaw-Knox's affirmative statement of no interest constitutes good cause for conducting a changed circumstances review. Consequently, on August 23, 1995, the Department published a notice of initiation and preliminary results of changed circumstances antidumping duty administrative review stating its intent to revoke the finding (60 FR 43772). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of Review

The merchandise covered by this changed circumstances review is replacement parts for self-propelled bituminous paving equipment from Canada, excluding attachments and parts for attachments. This merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This changed circumstances administrative review covers all manufacturers/exporters of replacement parts for self-propelled bituminous paving equipment from Canada.

Final Results of Review; Revocation of Antidumping Duty Finding; Termination of Antidumping Duty Administrative Reviews

The evidence of record indicates that the finding is no longer of interest to interested parties, as defined in paragraphs (k)(3), (k)(4), (k)(5), and (k)(6) of section 353.2 of the Department's regulations. Therefore, the Department is revoking the finding on paving parts from Canada in accordance with sections 751(d) and 782(h) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.25(d)(1). This revocation applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1991. Accordingly, the Department is terminating the 1991–92 and 1992–93 reviews.

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of paving parts from Canada entered, or withdrawn from warehouse, for consumption on or after September 1, 1991. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of paving parts from Canada entered, or withdrawn from warehouse, for consumption on or after September 1, 1991, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, revocation of the antidumping duty finding, termination of the 1991–92 and 1992–93 administrative reviews, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23337 Filed 9–19–95; 8:45 am]

BILLING CODE 3510-DS-P

[C–351–406]

Certain Agricultural Tillage Tools From Brazil: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On August 4, 1995, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain agricultural tillage tools from Brazil for the period January 1, 1993 through December 31, 1993. We have completed this review and determine the net subsidy to be zero for all companies. The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Brazil exported on or after January 1, 1993 and on or before December 31, 1993.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Richard Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1995, the Department published in the **Federal Register** (60 FR 39933) the preliminary results of its administrative review of the countervailing duty order on certain agricultural tillage tools from Brazil. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. We received no comments.

The review covers the period January 1, 1993 through December 31, 1993. The review involves one company and four programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered in this review are certain tillage tools from Brazil (discs) with plain or notched edges, such as colters and furrow-opener blades. The products covered in this review are currently classifiable under the following item numbers of the Harmonized Tariff Schedule of the United States (HTSUS): 8432.21.00, 8432.29.00, 8432.80.00 and 8432.90.00. The HTSUS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Programs Found Not to be Used

In the preliminary determination we found, based upon our analysis of our questionnaire response that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

- Preferential Financing under FINEP
- Preferential Financing for Industrial Enterprises by the Banco do Brazil (FST and EGF loans)
- Accelerated Depreciation for Brazilian-made Capital Goods
- Preferential Financing Under PROEX (Formerly under Resolution Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act

Since we received no comments to our preliminary results, our results remain unchanged in these final results.

Final Results of Review

For the period January 1, 1993 through December 31, 1993, we determine the net subsidy to be zero for all companies.

The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Brazil, exported on or after January 1, 1993 and on or before December 31, 1993.

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.43(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23333 Filed 9–19–95; 8:45 am]

BILLING CODE 3510-DS-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Settlement on Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

September 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing

limits and announcing Guaranteed Access Levels.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated September 15, 1995 the Governments of the United States and Honduras agreed, pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), to establish limits for Categories 352/652 and 435 for three-year terms—March 27, 1995 through December 31, 1995; January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through March 26, 1998 (Categories 352/652) and April 24, 1995 through December 31, 1995; January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through April 23, 1998 (Category 435). The governments also agreed to establish Guaranteed Access Levels (GALs) for Categories 352/652 and 435 for the periods January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through March 26, 1998 (Categories 352/652) and January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through April 23, 1998 (Category 435).

Beginning on November 1, 1995, the U.S. Customs Service will start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 352/652 and 435 that are destined for Honduras and subject to the GAL established for Categories 352/652 and 435 for the period beginning on January 1, 1996 and extending through December 31, 1996. These products are governed by Harmonized Tariff item number 9802.00.8015 and chapter 61 Statistical Note 5 and chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule. Interested parties should be aware that shipments of cut parts in Categories 352/652 and 435 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Honduras in order to qualify for entry under the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint periods for Categories 352/652 and 435 to end on December 31, 1995 at increased levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 32654, published on June 23, 1995; and 60 FR 19892, published on April 21, 1995.

Requirements for participation in the Special Access Program are provided in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 60 FR 2740, published on January 11, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on June 16, 1995, and July 18, 1995 by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Honduras and exported during the twelve-month periods beginning on March 27, 1995 and extending through March 26, 1996 (Categories 352/652); and beginning April 24, 1995 and extending through April 23, 1996 (Category 435).

Effective on September 18, 1995, you are directed, pursuant to the Memorandum of Understanding dated September 15, 1995 between the Governments of the United States and Honduras, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, to amend the current restraint periods for Categories 352/652 and 435 to end on December 31, 1995 and increase the limits for Categories 352/652 and 435 as follows:

Category	New Limit[1]
352/652	45,424,731 dozen, of which not more than 43,516,129 dozen shall be in Categories 352/652–K[2].
435	33,893 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 26, 1995 (Categories 352/652) and April 23, 1995 (Category 435).

[2] Category 352/652–K: Only HTS numbers 6107.11.0010, 6107.11.0020, 6108.19.9010, 6108.21.0010, 6108.21.0020, 6108.91.0005, 6108.91.0015, 6108.91.0025, 6109.10.0005, 6109.10.0007, 6109.10.0009, 6109.10.0037, 6107.12.0010, 6107.12.0020, 6108.11.0010, 6108.11.0020, 6108.22.9020, 6108.22.9030, 6108.92.0005, 6108.92.0015, 6108.92.0025, 6109.90.1047, and 6109.90.1075

Beginning on November 1, 1995, the U.S. Customs Service is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 352/652 and 435 that are destined for Honduras and re-exported to the United States on and after January 1, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23400 Filed 9-18–95; 10:42 am]

BILLING CODE 3510-DR-F

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Hungary

September 14, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased for swing and special shift, reducing the limits for Categories 410 and 434 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62717, published on December 6, 1994; and 60 FR 16623, published on March 31, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, as amended on March 27, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on September 21, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit[1]
410	856,527 square meters.
434	13,125 dozen.
443	179,303 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23284 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

September 14, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on August 15, 1995 announces that, effective on September 1, 1995, for goods produced or manufactured in the Philippines and exported from the Philippines on and after September 1, 1995, part-category visas will no longer be required for certain part-categories, including Categories 669–P and 669–O.

The purpose of this notice is to announce that the part-category visa requirement shall continue for Categories 669–P and 669–O.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to continue to require a part-category visa for goods in Categories 669–P and 669–O, produced or manufactured in the Philippines and entered into the United States for consumption and withdrawn from warehouse for consumption.

See 52 FR 11308, published on April 8, 1987.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to amend export visa requirements for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Philippines.

Effective on September 21, 1995, you are directed to continue to require a part-category visa for goods in Categories 669–P[1] and 669–O[2], produced or manufactured in the Philippines and entered into the United States for consumption and withdrawn from warehouse for consumption.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23283 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DR–F

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[1] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[2] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Change to the 1995 Correlation

September 14, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1995 Correlation.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1995) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the textile program. The Correlation should be amended to include the following change which was effective on July 1, 1995:

Change in the 1995 Correlation
Replace 4202.92.3040 (870) with 4202.90.3090—Definition remains the same.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23282 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of Russia on Certain Wool Textile Products

September 14, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On August 31, 1995, in accordance with Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Russia with respect to women's and girls' wool coats in Category 435, produced or manufactured in Russia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Russia, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the twelve-month period which began on August 31, 1995 and extends through August 30, 1996, at a level of not less than 45,896 dozen.

A summary market statement concerning Category 435 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 435, or to comment on domestic production or availability of products included in Category 435, is invited to submit 10 copies of such comments or information to D. Michael Hutchinson, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Russia.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 435. Should such a solution be reached in consultations with the Government of Russia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Russia

Women's and Girls' Wool Coats—Category 435

August 1995

Import Situation and Conclusion

Imports of women's and girls' wool coats, Category 435, from Russia reached 44,174 dozen for the year ending June 1995, 34 percent above the 32,991 dozen imported in the year ending June 1994. Imports from Russia during the year ending June 1995 were 3.6 percent of total U.S. imports of Category 435, and were equivalent to 5.0 percent of U.S. production of Category 435 in 1994.

U.S. imports of women's and girls' wool coats from Russia in Category 435 during the year ending June 1995 entered the U.S. at an average landed duty-paid value of $318.13 per dozen, 61 percent below the U.S. producers' average price for women's and girls' wool coats.

The sharp and substantial increase of low priced imports from Russia is causing serious damage to the U.S. industry producing women's and girls' wool coats.

U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' wool coats, Category 435, declined in 1993 and in 1994, falling to 874,000 dozen, 7 percent below the 942,000 dozen produced in 1993 and 11 percent below the 987,000 dozen produced in 1992. In contrast, U.S. imports of Category 435 from all sources increased to 1,203,000 dozen in [illegible] 8 percent above the [illegible] 4 percent above the [illegible] egory 435 imports contin[illegible] ease in 1995, reaching 1,246,[illegible] zen in the year ending June 1995.

The ratio of imports to domestic production increased from 84 percent in 1992 to 118 percent in 1993 to 138 percent in 1994. The share of the U.S. women's and girls' wool coat market held by domestic manufacturers fell from 54 percent in [illegible] to 42 percent in 1994, a decline of 12 percentage points.

[FR Doc. 95–23281 Filed 9–19–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision to Upgrade the Wastewater Treatment System in the San Onofre Basin of Marine Corps Base Camp Pendleton, CA

Pursuant to Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council of Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to upgrade the wastewater treatment system in the San Onofre Basin of Marine Corps Base (MCB) Camp Pendleton, California. This upgrade will construct twelve new percolation basins; about 30 acres in total size and located down stream of existing potable water wells; a new pumping station; and a 5.76 mile pipeline from sewage treatment plants 10 and 11 to the new percolation ponds.

Sewage treatment plants 10 and 11 were constructed in the 1950's and discharge secondary treated effluent to percolation basins adjacent to San Onofre Creek, upstream of potable water wells that serve developments within San Onofre Basin. This condition violates the San Diego Water Quality Control Basin Plan, the State of California Porter Cologne Water Quality Act of 1969, and the National Pollution Discharge Elimination System requirements of the Federal Water Pollution Control Act of 1972. As a result of these violations, the San Diego Regional Water Quality Control Board issued a Cease and Desist Order to MCB Camp Pendleton in January 1989.

Alternatives considered for correcting the conditions cited in the Cease and Desist order included no action, water disposal of effluent, and land disposal of effluent. Water disposal alternatives included construction of an ocean outfall or via live-stream discharge of either secondary- or tertiary-treated effluent. Land disposal alternatives included construction of new percolation basins, leach fields, deep vertical injection wells, biological ponds, discharge to an off-base publicly owned treatment facility, and amendment of the Basin Plan. The Draft Environmental Impact Statement (DEIS) identified discharge of secondary-treated effluents to new percolation basins located downstream from existing potable water wells as the preferred alternative. This alternative was identified in the Final Environmental Impact Statement (FEIS) as the environmentally preferred alternative.

A systematic and multi-disciplinary approach was utilized which incorporated criteria based upon technical suitability, economic feasibility, and compliance with applicable environmental regulations. The analysis determined that the preferred alternative is the only alternative that meets all criteria. This alternative is environmentally preferable to the alternatives considered, and all practicable means to avoid or minimize environmental harm have been adopted as identified below and amplified in the Environmental Impact Statement.

Percolation basin construction will involve grading and excavation. A soil erosion control plan will be prepared for project construction. It will include restricting grading and excavation during the rainy season, restricting heavy equipment to existing rights-of-way, installing sediment control measures, and post-construction revegetation.

The California gnatcatcher, a federally listed threatened species, is present near the percolation basin and pipeline sites. The U.S. Fish and Wildlife Service expressed in their biological opinion that the project is not likely to jeopardize the continued existence of this species. Project impacts include a temporary loss of 0.3 acres coastal sage scrub, the preferred habitat of this species, temporary loss of 1.5 acres of valley needlegrass habitat, and temporary loss of 3.0 acres of riparian habitat during construction of the pipeline. A permanent loss of 3.5 acres of coastal sage scrub will occur due to construction of the percolation basins. To mitigate these impacts, the Marine Corps will regrade, replant, and restore the temporarily impacted vegetative communities and will create 2.85 acres of new coastal sage scrub habitat. The U.S. Fish and Wildlife Service concurs in this mitigation scheme.

In compliance with the biological opinion issued for the project, the Marine Corps will conduct water quality monitoring of areas potentially impacted by possible nutrient loading of coastal waters due to operations of the percolation basins. Should changes in water quality be detected the Marine Corps will consult with the San Diego Regional Water Quality Control Board and the U.S. Fish and Wildlife Service to implement appropriate measures.

The proposed action will not affect archeological, cultural, or historic resources listed, or determined eligible for listing on the National Register of Historic Places. The California State Historic Preservation Officer concurs with this determination.

Analysis of air emissions that would occur during construction and operation of the percolation ponds determined that these emissions will be below *de minimis* levels and that the project conforms with the State Implementation Plan for air quality.

A Coastal Consistency Determination was prepared for this project and it concluded that the proposed action is being carried out in a manner consistent, to the maximum extent practicable, with the enforceable policies of the California Coastal Management Plan. The California Coastal Commission concurs with this determination.

Preparation of the Environmental Impact Statement began with a public scoping process to identify issues that should be addressed in the document. Involvement in scoping was offered through a combination of documented public announcements and meetings with State of California agencies. Public announcements were handled through scoping letters sent to Federal, State, and local governmental agencies, citizen groups and associations, and the general public. Also, a Notice of Intent to prepare an Environmental Impact Statement was published in local newspapers and the **Federal Register**. A public scoping meeting was held on October 17, 1991 in Oceanside, California.

The Notice of Availability of the DEIS appeared in the **Federal Register** on January 13, 1995. The DEIS was distributed to officials of Federal, State and local governmental agencies, citizens groups and associations, public libraries, and to other interested parties. The public review period for the DEIS was from January 13, 1995 through March 6, 1995. Comments received on the DEIS focused on alternative analysis and endangered species issues. The FEIS addressed these comments and was distributed to officials of Federal, State and local governmental agencies, citizens groups and associations, public libraries, and to other interested parties on July 21, 1995. No comments were received on the FEIS.

The Department of the Navy believes that there are no outstanding issues to be resolved with respect to this project. Questions regarding the Environmental Impact Statement prepared for this action may be directed to Mr. Lupe Armas, Assistant Chief of Staff, Environmental Security, MCB Camp Pendleton, CA 92055, telephone (619) 725–4512.

Dated: September 14, 1995.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 95–23279 Filed 9–19–95; 8:45 am]

BILLING CODE 3810-AE-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 20, 1995.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill,

Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 14, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement
Title: Application for the National Assessment of Educational Progress Data Reporting Program
Frequency: Annually
Affected Public: Business or other for-profit; Not for Profit institutions; State, Local or Tribal Government
Reporting Burden:
  Responses: 15
  Burden Hours: 360
Recordkeeping Burden:
  Recordkeepers: 0
  Burden Hours: 0
Abstract: This form will be used by State Educational agencies to apply for funding under the National Assessment of Educational Progress Data Reporting Program. The Department will use the information to make grant awards.

[FR Doc. 95–23237 Filed 9–19–95; 8:45 am]

BILLING CODE 4000-01-M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: September 28–29, 1995 from 9 a.m. to 5 p.m. daily or until the conclusion of business.

ADDRESS: The meeting will be held at the Ramada Inn Old Town, 901 North Fairfax, Alexandria, Virginia, 22314. Telephone: (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: John W. Cheek, Acting Director, National Advisory Council on Indian Education, 600 Independence Avenue S.W., The Portals-Suite 6211, Washington, DC 20202–7556. Telephone: (202) 205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education (NACIE) is established under section 9151 of Title IX, of the Elementary and Secondary Education Act of 1965, as amended, (20 U.S.C. 7871). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under this Title and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The Chair of the National Advisory Council on Indian Education has called a meeting for Thursday, September 28, and Friday, September 29, 1995. The agenda will include a briefing on the status of Indian Education for the upcoming 1996 fiscal year. Specifically, the budget being proposed for Indian Education Act programs is being drastically reduced with no appropriations designated for all FY 96 discretionary programs and the National Advisory Council on Indian Education. This proposal will have a direct and immediate affect on the quantity and quality of educational services to American Indian and Alaska Native communities nationwide. The purpose of this meeting is to determine the impact this will have on the Office of Indian Education, NACIE and the Department of Education.

The public is being given less than 15 days notice due to problems in scheduling this meeting.

Records shall be kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Indian Education located at 1250 Maryland Avenue S.W., Washington, DC 20202–7556 from the hours of 9 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dated: September 18, 1995.

John W. Cheek,

Acting Director, National Advisory Council on Indian Education.

[FR Doc. 95–23411 Filed 9–19–95; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Notice of Competitive Financial Assistance for the Office of Environment, Safety and Health

AGENCY: U. S. Department of Energy.

ACTION: Notice of competitive financial assistance solicitation.

SUMMARY: The Department of Energy announces that competitive applications will be solicited for scientific and administrative assistance for the development of a postdoctoral research program in the radiation sciences that will both foster human health effects studies in the national and international programs of the DOE and create a U.S. center of excellence for radiation sciences. Estimated total funding in the amount of $5,000,000 will be provided over a five year period of performance. This action is restricted to institutions of higher learning as defined by OMB Circular A–122.

DATES: Applications must be received on or before November 20, 1995.

ADDRESSES: Requests for copies of solicitation number DE-PS01–95EH89678 must be made in writing and should be submitted to: U.S. Department of Energy, Office of Placement and Administration, ATTN: Document Control Specialist, HR–562, 1615 M Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Lynnette Desorcie, at (202) 634–4598.

SUPPLEMENTARY INFORMATION:

Restriction

The proposed financial assistance award will be restricted to United States institutions of higher learning based upon the following qualifications: (a) Such institutions are eminently qualified to establish and run a U.S. postdoctoral fellowship program for radiation research; (b) personnel of such institutions will have the established technical expertise and credibility as well as established rapport with international experts in the field of human health effects of radiation; (c) collectively, U.S. institutions of higher learning are the foremost institutions for scientific research and have the reputation and demonstrated ability to attract new scientists into research and postdoctoral positions in the radiation sciences; and, (d) these institutions have the curricula, laboratories and scientific experts in place that will ensure successful performance of the project requirements.

Background

As part of the mission of the Assistant Secretary for Environment, Safety and Health, studies are undertaken to improve the scientific knowledge of the health effects of ionizing radiation and other major environmental hazards associated with the nuclear weapons programs and technologies in order to further our ability to protect workers and the public from the harmful effects of these hazards. Multidisciplinary environmental and occupational health research is also fostered in a number of international programs. These research needs require a continued flow of young investigators trained in radiobiology, epidemiology, environmental sciences, medical and health physics, and related basic and applied sciences. In support of this national and worldwide need for radiation scientists, the DOE is funding a cooperative program that will stimulate the development of a center(s) of excellence in radiation sciences at a U.S. institution of higher learning.

The grantee will be responsible for establishing and administering a postdoctoral fellowship program for U.S. citizens at a U.S. institution of higher learning. The focus of the program should be to both train future generations of radiation researchers in the U.S. and develop a center of excellence in radiation sciences. The postdoctoral fellowship program should prepare scientists to a degree that they can effectively serve in DOE programs in human health effects as part of their fellowship tenure.

Pursuant to 10 CFR 600.9, a solicitation, which will include the project objectives, application instructions, evaluation criteria, and a model grant, is expected to be issued in late September 1995. Applications will be due 60 days after the date of issuance. The Department intends to award only one grant as a result of this solicitation.

Issued in Washington, DC on September 15, 1995.

Scott Sheffield,

Director, Headquarters Operations Division B.

[FR Doc. 95–23339 Filed 9–19–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–744–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

September 13, 1995.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company Of America

[Docket No. CP95–744–000]

Take notice that on September 8, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP95–744–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, requesting authority to abandon a rescheduling of deliveries service provided by Natural under its Rate Schedule X–68 for The Peoples Gas Light and Coke Company (Peoples), North Shore Gas Company (North Shore) and Northern Illinois Gas Company (NI-Gas) authorized in Docket No. CP76–333.

Natural states that pursuant to a storage agreement dated April 8, 1976 between Natural, Peoples, North Shore and NI-Gas (Agreement—Natural's Rate Schedule X–68), Natural stored gas of up to 5,000,000 Mcf for Peoples, up to 1,000,000 Mcf for North Shore and up to 5,000,000 Mcf for NI-Gas for a limited period ending December 31, 1981. Peoples, North Shore and NI-Gas released gas in the above amounts from their daily quantity entitlements under Natural's Rate Schedule DMQ–1 for injection into storage in Natural's North Lansing Field in Harrison County, Texas. The Agreement provided for: (1) A consecutive twelve (12) month injection period beginning the first day of the month in which gas was first injected and (2) a consecutive thirty-six (36) month withdrawal period immediately following the injection period.

Natural further states that by letters of Peoples, North Shore and NI-Gas dated July 24, 1995, July 24, 1995 and August 24, 1995, respectively, these customers stated they no longer needed the storage service provided under the Agreement and Natural's Rate Schedule X–68. Therefore, Natural requests authority to abandon its storage service for Peoples, North Shore and NI-Gas performed under the Agreement and Natural's Rate Schedule X–68 authorized in Docket No. CP76–333.

Comment date: September 29, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP95–720–000]

Take notice that on August 31, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–720–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a bi-directional point for Seneca Resources Corporation (Seneca) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to establish a bi-directional point for receipts and deliveries of natural gas under Seneca's interruptible transportation agreement. The proposed point will be located at M.P. 523M–7301+2.13, Offshore, Louisiana. Tennessee proposes to install electronic gas measurement (EGM),

provide material for fabrication of tie-in assembly, inspect side valve assembly fabrication and installation, inspect customer's installation of interconnecting piping, and inspection of Seneca's measurement facilities. Tennessee will own, operate and maintain the side valve assembly, and operate the meter. Seneca will install and fabricate the side valve assembly, install, own, operate and maintain the interconnecting pipe and install, own, and maintain the meter.

Tennessee does not propose to increase the maximum contract quantity for Seneca, so no impact on peak day or annual deliveries is anticipated. The establishment of the new point is not prohibited by Tennessee's existing tariff. Tennessee states it has sufficient capacity to accomplish receipts and deliveries at the proposed meter without detriment or disadvantage to its other customers.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Murphy Exploration & Production Company v. Quivira Gas Company

[Docket No. CP95–735–000]

Take notice that on September 5, 1995, Murphy Exploration & Production Company (Murphy Exploration), P.O. Box 7000 (71730), Eldorado, Arkansas 71731–7000, filed with the Commission in Docket CP95–735–000 a complaint and request for refunds and investigation of transportation rates pursuant to Rules 206 and 212 of the Commission's Rules of Practice and Procedure (18 CFR 385.206(a) and 385.212), against Quivira Gas Company (Quivira) alleging that the transportation rates of Quivira for transporting Murphy Exploration's Eugene Island Block 24 volumes are unjust and unreasonable and otherwise unlawful.

Murphy Exploration asserts that Quivira owns and operates a 12-inch, 22-mile pipeline in Louisiana state waters and onshore (Eugene Island Pipeline) that connects Tennessee Gas Pipeline Company's (Tennessee) interstate transmission line in the Outer Continental Shelf (OCS) originating at Eugene Island Block 24 to Tennessee's onshore interstate transmission in St. Mary's Parish, Louisiana.

Murphy Exploration claims that although Quivira's Eugene Island Pipeline transports gas in interstate commerce, Quivira has not obtained a certificate under Section 7(c) of the Natural Gas Act (NGA) nor has it obtained Commission authorization under Section 4 of the NGA or Section 311 of the Natural Gas Policy Act of 1978 to charge just and reasonable rates for the interstate transportation service it provides to shippers of OCS gas.

Murphy Exploration requests that the Commission institute an investigation to determine not only Quivira's just and reasonable rates, but to determine the amount of refunds owed by Quivira for its overcharges for the period October 1985 to the present.

Comment date: October 13, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

4. K N Interstate Gas Transmission Co.

[Docket No. CP95–741–000]

Take notice that on September 8, 1995, K N Interstate Gas Transmission Co. (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP95–741–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon approximately 14 miles of 4-inch top-of-ground pipeline and appurtenant facilities located on its Flat Top Lateral in Converse County, Wyoming under K N Interstate's blanket certificate issued in Docket No. CP83–140–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N Interstate states that the pipeline segment has historically been used to facilitate the delivery of natural gas to end users; however, there are currently no customers connected to this pipeline segment. K N Interstate also states that, due to its age, condition and safety considerations associated with top-of-ground pipeline, K N Interstate proposes to abandon this pipeline segment, either by sale or removal. K N Interstate estimates the net cost to remove and salvage the pipeline segment and any appurtenant facilities to be $19,000.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Transwestern Pipeline Company

[Docket No. CP95–743–000]

Take notice that on September 8, 1995, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–743–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate delivery point facilities in Ward County, Texas, to accommodate deliveries of natural gas to Mobil Gas Services, Inc. (Mobil), under Transwestern's blanket certificate issued in Docket No. CP82–534–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern proposes to install and operate a 2-inch meter station at a new delivery point for the delivery of gas transported for Mobil, a gatherer and producer of natural gas, to be used by Mobil as fuel gas for compressor units. It is stated that the new delivery point would utilize an existing tap on Transwestern's 24-inch West Texas lateral. It is further stated that the meter station would be capable of delivering up to 1,000 Mcf of natural gas per day. It is explained that the gas would be transported on an interruptible basis pursuant to a service agreement under Transwestern's Rate Schedule ITS–1. It is asserted that the delivery point would be used for the delivery of up to 1,000 Mcf on a peak day, 500 Mcf on an average day and 275,000 Mcf on an annual basis. The construction cost of the facilities is estimated at approximately $15,000. It is asserted that the volumes delivered would be within Mobil's certificated entitlement from Transwestern and that Transwestern's tariffs do not prohibit the addition of delivery points.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP95–745–000]

Take notice that on September 8, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–745–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to install a 2-inch tap, measuring, regulating and appurtenant facilities for the delivery of natural gas transported for J–M Farms, Inc. (J–M Farms) in Ottawa County, Oklahoma. The projected volumes are approximately 52,900 Dth annually and 175 Dth on a peak day. WNG estimates that the cost of construction will be $22,930 which would be reimbursed by J–M Farms.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP95–747–000]

Take notice that on September 8, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–747–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new delivery point for service to Anchor Glass Container Corporation (Anchor Glass) in Twiggs County, Georgia, under its blanket certificate issued in Docket No. CP82–406–000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide interruptible transportation service to Anchor Glass at a new delivery point, at or near Mile Post 23.2, on Southern's 12-inch Brunswick Line. Specially, the facilities will consist of a dual 3-inch orifice meter, tap, tie-in piping, electric custody transfer equipment and the necessary appurtenant facilities. The estimated cost of the facilities is approximately $341,271, and Anchor Glass will reimburse Southern for the cost of the facilities. Southern states that the station has been designed to provide up to 4,802 Mcf per day.

Southern holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP88–316–000.[2] Southern states that construction of the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to deliver the requested gas volumes without detriment or disadvantage to it's other customers.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23270 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–P

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[1] *See*, 20 FERC ¶ 62,414 (1982).

[2] *See*, 43 FERC ¶ 61,233 (1988).

[Docket No. CP62–205–002, et al.]

Washington Gas Light Company, et al.; Natural Gas Certificate Filings

September 12, 1995.

Take notice that the following filings have been made with the Commission:

1. Washington Gas Light Company

[Docket No. CP62–205–002]

Take notice that on September 7, 1995, Washington Gas Light Company (WGL), 1100 H Street, N.W., Washington, D.C. 20080, filed in Docket No. CP62–205–002 a petition pursuant to Section 7(f) of the Natural Gas Act to amend its certificate issued in Docket No. CP62–205, as amended, authorizing a service area determination, all as more fully set forth in the petition on file with the Commission and open to public inspection.

WGL proposes to amend its service area by adding Frederick County, Maryland, as a result of its merger with Frederick Gas Company, Inc. (Frederick), a wholly owned subsidiary of WGL. It is stated that the merger will be effective January 1, 1996. It is asserted that Frederick is a Maryland corporation engaged in the transportation, sale and distribution of natural within the state of Maryland, receiving all of its gas within Maryland and with no facilities which cross state lines. It is explained that WGL's gas distribution service in Frederick County will be regulated by the Public Service Commission of Maryland (PSCMD) and will be provided at the same rates and under the same terms and conditions as those offered to WGL's existing customers in Maryland and already on file with the PSCMD.

Comment date: October 3, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP95–725–000]

Take notice that on September 1, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–725–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a bi-directional point in Iberia Parish, LA, in order to receive and deliver gas to a storage facility operated by Equitable Storage Company (Equitable) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to install a 12 inch hot tap, approximately 50 feet of interconnecting pipe on Tennessee's right-of-way, a chromatograph and electronic gas measurement.[1] Tennessee also asserts that gas will be moved to and from the bi-directional point under existing agreements for firm or interruptible transportation on Tennessee's system. Tennessee also states that the bi-directional point will accommodate up to 200,000 Dth/d of receipts from and deliveries to Tennessee's system.

Comment date: October 27, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP95–732–000]

Take notice that on September 5, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–732–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by reclamation the Enid Compressor Station in Garfield County, Oklahoma, which was authorized in Docket No. CP70–53, all as more fully set forth in the application on file with the Commission and open to public inspection.

WNG seeks authority to abandon the 1,000 horsepower compressor unit, the compressor building, and appurtenant facilities, which compose the Enid Compressor Station. The cost of the proposed abandonment is approximately $47,300 with an estimated salvage value of $25,000.

Comment date: October 3, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Williston Basin Interstate Pipeline Company

[Docket No. CP95–736–000]

Take notice that on September 7, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed with the Commission in Docket No. CP95–736–000 pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add a new metering station and associated appurtenant facilities to provide transportation service in Cass County, North Dakota, authorized in blanket certificate issued in Docket No. CP82–487–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to add a new metering station and associated appurtenant facilities which would be used for delivering gas into facilities to be owned by Prairielands Energy Marketing, Inc. (PEMI). The gas would ultimately be delivered to the National Sun sunflower plant, in Enderlin, North Dakota. The facilities to be constructed at the metering station would consist of a new tap to the pipeline, a 12 x 14 foot building to house the meter, regulator and miscellaneous gages and valves and a 5 x 7 foot building to house the SCADA system, and would be enclosed with a security fence. The total estimated cost of the proposed metering station and lateral pipeline would be $110,000. The actual cost of the facilities would be reimbursed to Williston Basin by PEMI.

Comment date: October 27, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP95–739–000]

Take notice that on September 7, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma, 74101, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for an order permitting and approving the abandonment by reclaim of five horizontal compressor units and appurtenant facilities at the Welda compressor station located in Anderson County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, WNG seeks authority to abandon by reclaim five Cooper horizontal compressor units totaling 5,400 horsepower at the Welda compressor station. The units were installed in the late 1940's and early 1950's and have not been used since the winter of 1992–93. The compressor units remaining at the Welda station will continue to provide the same level of service. The total cost of the proposed abandonment is approximately $25,000, with an estimated salvage value of $0.

Comment date: October 3, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. Columbia Gas Transmission Corporation

Docket No. CP95–740–000

Take notice that on September 7, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–740–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate facilities for nine new points of delivery for Mountaineer Gas Company (Mountaineer) to serve nine residential customers located in various counties in West Virginia under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a 4-inch by 1-inch saddle tap and less than 20 feet of pipe for each of the nine residential customers on Columbia's existing right-of-way in order to provide firm service of up to 1.5 dekatherms (dth) per day and up to 150 dth annually for each customer under Columbia's Rate Schedules SST and FTS within certificated entitlements. Columbia states that Mountaineer would set the meter and regulator at each location. The new delivery points would be located in Lincoln (2), Kanawha, Clay, Wayne (2), Randolph, and Roane (2) Counties, West Virginia to serve individual residential customers, it is stated. Columbia states that there is no impact on Columbia's existing design day and annual obligations to its other customers as a result the construction and operation of these facilities. Columbia states that the estimated cost of each delivery point is $150 and would be treated as an O&M expense.

Comment date: October 27, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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[1] Tennessee states that Equitable will install, own and maintain measuring facilities and will install, own operate, and maintain the interconnecting pipe between Tennessee's right-of-way and the meter station.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23271 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11077–0001]

Alaska Power and Telephone Company; Errata Notice to Notice of Application

August 16, 1995.

In the notice issued August 9, 1995, published at 60 FR 4872 (August 29, 1995), item "j" should read: "Deadline for comments, recommendations, terms and conditions, and prescriptions: October 10, 1995."

Lois D. Cashell,

Secretary.

[FR Doc. 95–23272 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–11–000]

Egan Hub Partners, L.P.; Order to Show Cause

Issued September 14, 1995.

On May 11, 1995, Egan Hub Partners, L.P. (Egan) filed a petition, supplemented on August 11 and August 18, 1995, in Docket No. PR95–11–000 for authority to charge and collect individually-negotiated, market-based rates for interstate storage and transportation services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). The instant order establishes a show cause proceeding, pursuant to sections 5, 7, and 16 of the Natural Gas Act (NGA), to investigate the jurisdictional implications of Egan's proposed construction of storage facilities for NGPA "section 311 only." As discussed below, the Commission is requiring Egan to show cause why the proposed storage facilities should not be subject to the Commission's NGA jurisdiction.

Background and Description of the Facilities

Egan is owned by Egan Hub Partners, Inc., its sole general partner and Market Hub Partners, L.P., its sole limited partner. Tejas Power Corporation (Tejas) indirectly owns a 66 percent interest in Egan. Egan provides intrastate transportation services through its intrastate pipeline facilities located in Calcasieu, East Baton Rouge, and Pointe Coupee Parishes, Louisiana. Egan currently provides intrastate transportation services to three gas customers: an electric utility, a university, and an industrial user.

On February 3, 1994, Egan filed a notice with the Commission under 18 CFR 284.11 stating that it intended to commence construction of an underground salt dome storage cavern and appurtenant facilities, including pipeline facilities in Acadia Parish, Louisiana, to be used solely for the purpose of providing services pursuant to section 311(a)(2) of the NGPA. Egan anticipated that construction of the facilities would cost approximately $56 million and take approximately two years to complete, with the facilities available for service during the 1995–1996 winter heating season.

Egan states that the storage facilities are approximately nine miles from Louisiana Gas System Inc.'s (LGS) intrastate pipeline facilities. According to Egan, an interconnection with LGS has not been pursued because of a lack of firm demand for Egan's services. Egan adds that if both intrastate and section 311 gas are stored in the field, the gas may become subject to state regulatory control in the event of a curtailment. As a result of these uncertainties, Egan states that it elected to construct the storage and transportation facilities as "section 311 only" facilities.

On May 11, 1995, Egan filed a petition in Docket No. PR95–11–000 for authority to charge and collect individually-negotiated, market-based rates for interstate storage and transportation services performed under section 311. Egan states that construction of the first cavern is nearing completion and will be ready for service on or about September 1, 1995. The cavern will have a capacity for 4.5 Bcf of working gas, with an additional 1.2 Bcf of pad gas. The maximum injection rate is expected to be 135,000 Mcf/d and the maximum deliverability rate is expected to be 750,000 Mcf/d. Two compressors, having a total of 6,260 horsepower, will also be installed. Egan states that as many as four additional caverns could be located at the site, if future demand justifies a need for such additional storage.

Egan states that it has constructed approximately 9,240 feet of dual 20-inch pipeline, and 19,117 feet of dual 24-inch pipeline, as well as other related pipeline facilities in Acadia Parish to provide the "section 311 only" services.[1] These facilities will enable Egan to transport, store and/or deliver gas to and from the interstate pipeline systems of ANR Pipeline Company, Trunkline Gas Company, Tennessee Gas Pipeline Company, and Texas Gas Transmission Corporation.

Egan states that pursuant to an open season conducted between January 3

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[1] The facilities are the subject of a 30-day prior notice filed with the Commission on February 3, 1994 in Docket CP94–217–000.

and January 14, 1994, three customers have signed long-term firm storage contracts. Those customers are the East Ohio Gas Company, the Northern Indiana Public Service Company, and Tejas Power Corporation. The committed capacity under these contracts totalled 2,900,000 Mcf. Egan contends that if its petition to charge market-based rates is approved, Egan's contract storage and transportation services will be available to help facilitate the Commission's on-going restructuring of the natural gas industry.

Discussion

The Commission is concerned that Egan's construction of storage facilities in Acadia Parish pursuant to section 311 actually may be construction of interstate facilities subject to the Commission's jurisdiction under section 7(c) of the NGA. It appears that Egan's sole purpose in constructing the storage facilities is to provide interstate storage and hub services, in facilities that are physically separate from its existing intrastate facilities, for a purpose that bears no apparent intrastate/local distribution purpose and appears unconnected to any other nonjurisdictional operation.

In 1978, the NGPA was passed to reduce the restraints on the flow of gas between interstate and intrastate markets in order to remedy supply and demand imbalances. The Commission recognizes that one purpose of NGPA section 311 is to enable intrastate pipelines to transport gas destined for the interstate market and thus spare interstate pipelines from having to construct duplicative facilities.[2] The NGPA accomplishes this by permitting intrastate pipelines to perform such transportation without becoming subject to NGA jurisdiction over the entirety of their operations. As the Commission stated in *Lear Petroleum Corporation*:

> NGPA sections 601(a)(1)(C) and (a)(2)(A) provide that the intrastate pipelines do not become subject to the NGA by virtue of section 311 transactions. This ensures that intrastate pipelines are only subject to Commission regulation of their rates for section 311 transactions. Intrastate pipelines do not become subject to Commission regulation of their intrastate activities or of construction of facilities used for intrastate transportation.[3]

In Order No. 46, the Commission explained that "if a corporate entity qualifies as an intrastate pipeline under [NGPA] section 2(16), it will retain that identity for its entire system even if it constructs a new portion of its system to be used exclusively for section 311(a)(2) transportation." [4] Further, the Commission has determined in prior orders that an intrastate pipeline may, in certain circumstances, construct new facilities that are not contiguous to the intrastate pipeline's existing intrastate facilities for use in transactions under section 311(a)(2).

For instance, in *Seagull Pipeline Corporation*, 11 FERC ¶ 61,267 (1980), Seagull, an intrastate pipeline wholly owned by Houston Oil & Minerals Corporation (HO&M), proposed to transport gas produced under HO&M's Cavallo Field leases. Seagull transported 50% of the reserves from the Cavallo Field leases on behalf of Valley Pipe Lines Offshore (Valley), an intrastate pipeline subsidiary of Houston Natural Gas Company, to Houston Pipe Line Company's (HPC) existing intrastate pipeline facilities on State Tract 526. To transport Valley's gas, Seagull constructed the Cavallo line. The Cavallo line, consisting of approximately 15.5 miles of 16-inch pipeline, was not physically connected to any other pipeline facilities included in Seagull's existing intrastate pipeline system. Seagull sought also to transport the remaining gas produced at the Cavallo Field to Texas Gas, an interstate pipeline. Texas Gas would purchase the gas at a point of delivery on HO&M's platform for delivery to HPC's existing intrastate facilities through the Cavallo line. Seagull sought a declaratory order that the Cavallo line was an "intrastate pipeline" and that Texas Gas' volumes could be transported pursuant to NGPA section 311(a)(2).

The Commission determined that the construction of the new facility (the Cavallo line) by an existing intrastate company did not change the intrastate status of the existing facilities or system, and that the new facility was itself an intrastate facility. The Commission reasoned that the definition of an "intrastate pipeline" applies to the person or corporate entity engaged in natural gas transportation and does not apply to each discrete facility of or operation by the pipeline company.[5]

Like the facts presented in *Seagull*, it appears that Egan's storage cavern and appurtenant facilities in Acadia Parish are not physically connected to any intrastate facilities which comprise Egan's existing intrastate system. However, unlike *Seagull*, Egan intends to use the storage facilities for section 311 service only. As discussed, section 311 was implemented to integrate the intrastate and interstate gas markets, and intrastate pipelines were authorized to transport natural gas on behalf of any interstate pipeline without subjecting the intrastate pipeline to NGA jurisdiction. This purpose was clearly served in *Seagull* because construction of the Cavallo line permitted Seagull to engage in intrastate transportation to deliver gas on behalf of Valley, another intrastate pipeline, as well as to perform section 311 service on behalf of Texas Gas, an interstate pipeline, through the same facility.[6] The Commission questions whether the NGPA's purpose of integrating the interstate and intrastate gas markets will be advanced if Egan constructs facilities that are separate from its existing intrastate facilities, for the sole purpose of providing jurisdictional services to interstate customers.

While the Commission has stated that it is not unusual, much less unlawful, for persons to structure transactions either to qualify for regulation by one entity or to avoid regulation by another,[7] at some point such structuring may nevertheless be contrary to the public interest and inconsistent with the underlying purpose of statutes effecting a federal scheme of regulation. The Commission recognizes that construction and operation of Egan's storage caverns and appurtenant facilities would not frustrate the Commission's regulation over the rates Egan proposes to charge and collect for interstate storage and transportation services provided pursuant to section 311, since the Commission regulates those rates. Rather, the Commission is concerned that the purpose of the NGA may be frustrated because Egan will construct facilities to be used entirely in interstate commerce without becoming subject to the Commission's section 7(c) certification procedures, or complying with the environmental and other requirements of 18 CFR Part 157[8] and

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[2] Lear Petroleum Corp., 42 FERC ¶ 61,015 at 61,043 (1988).

[3] *Id. See also* Mustang Energy Corp. v. FERC, 859 F.2d 1447 (10th Cir. 1988).

[4] *See* Sales and Transportation of Natural Gas, Order No. 46, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,061 at 30,536 (1979); *see also* section 284.3(c) ("The Natural Gas Act shall not apply to facilities utilized solely for transportation authorized by section 311(a) of the NGPA").

[5] Seagull Pipeline Corp., 11 FERC ¶ 61,267 at 61,522 (1980).

[6] The question addressed in Seagull was whether intrastate status is changed where the new, separate facility was constructed "for the purpose, *in part*, of providing" 311 service. 11 FERC at 61,522 (emphasis supplied) (1980).

[7] *See, e.g.*, Riverside Pipeline Co., L.P., 46 FERC ¶ 61,309 at 62,015–16 (1989).

[8] Although intrastate pipelines are required to follow the environmental requirements of 18 CFR 157.206(d) for facilities constructed under NGPA section 311(a), a section 7(c) certificate requires case-specific environmental review and conditions.

Order No. 636.[9] In Order No. 636, the Commission required pipelines to unbundle transportation and sales and implement certain procedures including the requirement that interstate pipelines must offer open access to its storage facilities on a firm and interruptible basis.

If the Commission determines that Egan's facilities are in fact jurisdictional storage facilities, Egan may be required to obtain a NGA section 7(c) certificate. In *Petal Gas Storage Company,*[10] the Commission determined that Petal Gas Storage Company (Petal), a wholly owned subsidiary of Chevron U.S.A. Inc. (Chevron), and/or Chevron violated section 7(c) of the NGA because construction of jurisdictional storage facilities commenced before the requisite certificate authorization and environmental clearances were obtained. Petal was required to obtain a section 7(c) certificate to operate leased gas capacity in Chevron's salt dome storage cavern, and to construct and operate related facilities.[11] The Commission also required Petal to file a tariff conforming to Order No. 636, and imposed environmental conditions.

The Commission questions whether Egan should be deemed an interstate pipeline, subject to the requirements of the NGA and Order No. 636, when it constructs and operates new storage facilities for exclusive use in interstate commerce. Accordingly, the Commission is instituting this show cause proceeding, pursuant to sections 5, 7, and 16 of the NGA, to investigate further these matters. In its response, Egan and other interested persons are encouraged to address the concerns raised above by the Commission.

The Commission Orders

(A) Within 30 days of the issuance of this order:

Egan is required to show cause why the Commission should not require Egan to obtain a NGA section 7(c) certificate to construct and operate the storage facilities since the facilities are intended for use in interstate commerce and appear unrelated to any other nonjurisdictional operation on Egan's system.

(B) Notice of this proceeding will be published in the **Federal Register**. Interested persons will have 20 days from the date of publication of the notice to intervene.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23313 Filed 9–19–95; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP95–738–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

September 14, 1995.

Take notice that on September 7, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–738–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to revise an existing meter station to enable Koch Gateway to transport natural gas to serve Phoenix Gas Pipeline Company (Phoenix) for ultimate delivery to Calciner Industries Inc. (Calciner) at this location in Louisiana, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to install two 4-inch positive meters and three 2-inch regulators at an existing delivery meter station located on its Baton Rouge-New Orleans Line designated as TPL 270–8, St. Charles Parish, Louisiana. The additional meter will increase delivery capacity to Calciner from 4,200 MMBtu to 6,050 MMBtu per day. The estimated cost is $42,535. The revision of existing metering facilities will involve only above-ground assembly within existing and previously disturbed right-of-way. Koch Gateway states it is authorized to provide interruptible transportation service to Phoenix under a November 1, 1993 transportation agreement and that the proposed installation of facilities will provide Phoenix with a better means of serving Calciner. Koch Gateway states that the proposed interruptible service provided through these facilities will remain within current certificated levels and will be rendered without detriment or disadvantage to existing customers. Koch Gateway's tariff does not prohibit the proposed modification of facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23273 Filed 9–19–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL95–35–000]

Order Establishing Hearing

Issued September 14, 1995.

In the matter of Kootenai Electric Cooperative, Inc., Clearwater Power Company, Idaho County Light & Power Cooperative Association, Inc., and Northern Lights, Inc. v. Public Utility District No. 2 of Grant County, Washington

On March 2, 1995, Kootenai Electric Cooperative, Inc., Clearwater Power Company, Idaho County Light & Power Cooperative Association, Inc., and Northern Lights, Inc. (collectively referred to as the Idaho Cooperatives or Complainants) tendered for filing a complaint against Public Utility District No. 2 of Grant County (Grant County). In their complaint, the Idaho Cooperatives request the Commission to determine and fix the applicable portion of capacity and output to be made available to the Idaho Cooperatives from the Priest Rapids Project upon relicensing and expiration of existing power sales contracts. Grant County and the Purchasers[1] oppose this request.

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[9] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992).

[10] 64 FERC ¶ 361,190 (1993), *as amended*, 67 FERC ¶ 61,135 (1994).

[11] Chevron, an independent producer, initially planned to use its salt dome cavern in a nonjurisdictional manner or to obtain a certificate from the State of Mississippi. Subsequently, Chevron decided to form its subsidiary, Petal, to provide jurisdictional stand-alone storage service to third parties.

[1] The Purchasers are: City of Tacoma, Washington Water Power Company, Puget Sound Power & Light Company, Seattle City Light, Eugene Water & Electric Board, PacifiCorp, Portland General Electric Company, and Cowlitz County PUD No. 1.

They provide retail electric service in the States of Oregon, Washington, Idaho and Montana, and also engage in wholesale purchases and sales of electricity and transmission services, including transactions with Grant County. The Purchasers each entered into similar contracts with Grant County for the purchase and sale of output of the Priests Rapids Development. The contracts terminate on October 31, 2005. Certain of the Purchasers also entered into contracts with Grant County for the purchase and sale of output of the Wanapum Development. These contracts terminate on October 31, 2009. Both of these forms of contract contain rights of first refusal entitling the Purchasers to further output of the Priest Rapids Project upon contract termination.

As explained below, we set this matter for trial-type, evidentiary hearing.

I. Background

Grant County is a municipal corporation organized under the laws of the State of Washington, and is the licensee of the Priest Rapids Project No. 2114. The license for the Priest Rapids Project No. 2114 was issued on November 4, 1955, effective November 1, 1955, and expires by its terms on October 31, 2005.[2] The Priest Rapids Project No. 2114 consists of two hydroelectric developments on the Columbia River, the Priest Rapids Development with an installed capacity of 886 MW and the upstream Wanapum Development with an installed capacity of 1017 MW.[3]

The Priest Rapids Project No. 2114 had originally been authorized for Federal development by the Flood Control Act of 1950.[4] In 1954 Congress enacted Public Law No. 83–544, 68 Stat. 573 (1954), which expressly modified the Flood Control Act to permit the development of the Priest Rapids Project No. 2114 pursuant to a license issued under Part I of the Federal Power Act. Section 6 of Public Law No. 83–544[5] provided in pertinent part that, if any disagreements arise under the statute the Commission may be called on to "determine and fix the applicable portion of power capacity and power output to be made available."

II. The Complaint

On March 2, 1995, the Complainants filed a complaint claiming, *inter alia*, that Grant County has violated section 6 of Public Law No. 83–544, and asking the Commission to determine and fix an amount of up to 288 MW which Grant County should be required to make available from its Priest Rapids Project No. 2114 to the Idaho Cooperatives when Grant County receives a new license for the project.

Specifically, the Complainants argue that Grant County has violated the terms of Public Law No. 83–544 and/or its existing license in the following ways:[6]

1. Grant County has not offered to make any portion of the capacity or output of the Priest Rapids Project No. 2114 available to the Complainants upon expiration of the existing contracts, after more than sixteen months of requests by the Complainants.
2. Grant County has not cooperated with the Complainants, which are agencies in a neighboring state, to insure compliance with the requirement of Public Law No. 83–544 after 2005. To the contrary, Grant County has been unwilling to even consider the Complainants' request, and instead has proceeded with negotiations with the Purchasers[7] for the future sale of Priest Rapids Project No. 2114 power and energy to the exclusion of the Complainants.
3. Grant County may have made sales of power and energy from the Priest Rapids Project No. 2114 that are not surplus to the requirements of the licensee and other non-Federal marketing agencies.[8]
4. Grant County has contracted for the sale of power and energy from the Wanapum Development after expiration of the original license without obtaining requisite approval; Grant County has already entered into contracts for an allocation of power and energy from the Wanapum Development through October 31, 2009, four years after the original license expires.[9]

III. Notice and Responses to Complaint

Notice of the filing of the complaint was published in the **Federal Register**,[10] with responses due on or before April 21, 1995.

On April 21, 1995, Grant County filed in opposition to the complaint. Grant County asks that the Commission dismiss the complaint. Grant County states that it has fully complied with Public Law No. 83–544 and, in any event, the complaint addresses matters not ripe for consideration.

Specifically, Grant County states that Complainants themselves concede that they have no problem with the offer of Priest Rapids Project No. 2114 power to date under Grant County's existing license.[11] Grant County states that what the Complainants are seeking from the Commission is that Grant County be ordered now to offer Complainants some yet to be determined amount of power upon relicensing.[12] Grant County states that the Complainants' argument assumes that section 6 of Public Law No. 83–544 applies on relicensing and in any event there is no pending application for relicensing and, therefore, the matter is not ripe for consideration.

Finally, Grant County states that it is not required to offer to the Bonneville Power Administration (BPA), and BPA is not required to purchase, power from the Priest Rapids Project No. 2114 under the statute in question. Grant County argues that the language of the statute is permissive, giving local authorities the opportunity to sell surplus power. Furthermore, according to Grant County, the clause was added to facilitate project financing, not to dictate power sales.[13]

On April 21, 1995, the Purchasers[14] filed in opposition to the complaint. The Purchasers state that the credit support provided by the Purchasers' contracts was essential to the ability of Grant County to construct the Priest

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[2] Public Utility District No. 2 of Grant County, Washington, 14 FPC 1067 (1955).

[3] 64 FERC ¶62,056 (1993).

[4] 64 Stat. 170, 179 (1950).

[5] The full text of Section 6 is as follows:

The operation and maintenance of a project under license pursuant to this Act shall be subject to reasonable rules and regulations by the Secretary of the Army in the interest of flood control and navigation. To assure that there shall be no discrimination between States in the area served by the project, such license shall provide that the licensee shall offer a reasonable portion of the power capacity and a reasonable portion of the power output of the project for sale within the economic market area in neighboring States and shall cooperate with agencies in such States to insure compliance with this requirement: *Provided*, That in the event of disagreement between the licensee and the power marketing agencies (public or private) in any of the other States within the economic market area, the Federal Power Commission may determine and fix the applicable portion of power capacity and power output to be made available hereunder and the terms applicable thereto. Power surplus to the requirements of the licensee and other non-Federal marketing agencies (public or private) within the economic marketing area, as may be economically usable to the Federal system, may be made available to and may be purchased by the Bonneville Power Administrator at rates not higher than the rates charged such non-Federal marketing agencies, and under such terms and conditions as shall be mutually agreeable to the licensee and the Secretary of the Interior. Such power may be co-mingled with power from Federal dams in the Columbia River system for which the Bonneville Power Administrator has been designated marketing agent and shall be sold by the Administrator in accordance with the provisions of the Bonneville Project Act at established rate schedules.

[6] *See* Complaint at 11–13.

[7] *See supra* note 1.

[8] The question with regard to "surplus power," according to Complainants, is whether power which is, in effect, surplus from Priest Rapids Project No. 2114 is being sold to other entities without first being made available to Complainants or other agencies within the economic marketing area of the neighboring states.

[9] Section 22 of the Federal Power Act (FPA), 16 U.S.C. § 815 (1994), provides that contracts for the sale of power beyond the expiration date of a license require "the joint approval of the [Federal Energy Regulatory Commission] and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made. . . ."

[10] 60 FR 18094 (April 10, 1995).

[11] Grant County Response at 15, citing Complaint at 4 n. 3.

[12] *Id.*

[13] *Id.* at 17–18.

[14] On April 21, 1995, each of the Purchasers also filed separate motions to intervene.

Rapids Project No. 2114.[15] The Purchasers further note that at no time prior to the March 2, 1995 filing by Complainants had any protest been made to the methodology utilized by Grant County or to the contracts negotiated to finance the Priest Rapids Project No. 2114 in accordance with Public Law No. 83–544.[16] The Purchasers, like Grant County, state that in order for the Commission to be in a position to uphold Complainants' request for power, Grant County must first successfully relicense the Priest Rapids Project No. 2114. And Grant County has not yet even submitted an application for relicense and therefore the matter is not ripe for consideration.[17] The Purchasers also state that, when the existing power purchase agreements expire, the Purchasers are entitled to renew their contracts under terms similar to those contained in the existing contracts.[18] Finally, the Purchasers are in agreement with Grant County on the "surplus power" question raised by Complainants.[19]

IV. Complainants' Motion for Summary Disposition

On June 9, 1995, Complainants filed a motion for summary disposition. Complainants move that the Commission issue an order granting partial summary disposition of the complaint at this time by:[20]

1. Finding that the Idaho Cooperatives are agencies in neighboring states entitled to a reasonable allocation of power and energy upon expiration of the existing power sales contracts;
2. Directing Grant County to provide copies of the existing draft power sales contracts for the Idaho Cooperatives' consideration without further delay;
3. Directing Grant County to henceforth provide the Idaho Cooperatives with all revised drafts of the power sales contracts on an ongoing basis;
4. Directing Grant County to enter into good faith negotiations and to otherwise cooperate with the Idaho Cooperatives as required by Public Law No. 83–544 for the sale of the Priest Rapids Project No. 2114 power upon expiration of the existing contracts; and
5. Directing the parties to report to the Commission by December 31, 1996, regarding the progress of their negotiations and the status of any contracts executed or contemplated between Grant County and any prospective purchasers.

On June 30, 1995, Grant County and the Purchasers filed in opposition to Complainants' motion for summary judgment, essentially restating their arguments as to why the Idaho Cooperatives' complaint should be dismissed.

V. Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure,[21] the timely, unopposed motions to intervene of Grant County, City of Tacoma, Washington Water Power Company, Puget Sound Power & Light Company, Seattle City Light, Eugene Water & Electric Board, PacifiCorp, Portland General Electric Company, and Cowlitz County PUD No. 1 serve to make them parties to this proceeding.[22]

At the outset, we will address two issues important to the resolution of this complaint:

A. Does Public Law No. 83–544 apply on relicensing (or just to initial licensing)?

B. Did Grant County violate section 22 of the FPA by contracting for the sale and delivery of power beyond the date of termination of the license for Priest Rapids Project No. 2114 without obtaining the requisite approval of this Commission?

A. Public Law No. 83–544 (68 Stat. 573)

1. Background

Public Law No. 83–544, enacted in July 1954, provided for the hydropower development of the Priest Rapids site on the Columbia River in Washington State "under and in accordance with the terms and conditions of a license duly issued pursuant to the Federal Power Act and in accordance with this Act." Section 6 of Public Law No. 83–544 states in relevant part:

> The operation and maintenance of a project under license pursuant to this Act shall be subject to reasonable rules and regulations by the Secretary of the Army in the interest of flood control and navigation. To assure that there shall be no discrimination between States in the area served by the project, such license shall provide that the licensee shall offer a reasonable portion of the power capacity and a reasonable portion of the power output of the project for sale within the economic market area in neighboring States and shall cooperate with agencies in such States to insure compliance with this requirement: *Provided,* That in the event of disagreement between the licensee and the power marketing agencies (public or private) in any of the other States within the economic market area, the Federal Power Commission may determine and fix the applicable portion of power capacity and power output to be made available hereunder and the terms applicable thereto.

As discussed above, Complainants argue that the licensee is violating this provision by refusing to negotiate over the sale of power after the existing license expires in 2005.

Grant County and the Purchasers respond that: (1) Public Law No. 83–544 only applies to the original license and does not apply in the relicensing context; (2) Grant County's current allocation method already shares small amounts of project power with Idaho utilities and has already been approved as consistent with the law; (3) Complainants missed their opportunity when they turned down the option to purchase project power in 1955 (at the time of original licensing) because they viewed Grant County's project power as too expensive; and (4) Complainants' concerns are premature because an application for relicensing for the project has not yet been filed.

2. Discussion

The first question to be addressed is whether section 6 of Public Law No. 83–544 applies after the initial license term for this project expires. We start with the language of the statute itself.[23] Nothing therein indicates that the provision applies *only* to the original license to be issued under Part I of the FPA, even though in the FPA Congress made distinctions between original licenses and "new" licenses (*i.e.,* relicenses). This would indicate that Public Law No. 83–544 was intended to comprehend both original and new licenses for the Priest Rapids Project.

We turn next to the legislative history of section 6.[24] The legislative history is bare of any reference to or discussion of the applicability of section 6 after expiration of the initial license term.[25] In the main, the committee reports and the debate on the floor of the House and Senate addressed the consistency of this proposal with the then-existing comprehensive Federal plan for development of the Columbia River, as set out in the Flood Control Act,[26] and the requirement to utilize the water

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[15] Purchasers' April 21, 1995 Response at 4.

[16] *Id.* at 4–5.

[17] *Id.* at 9.

[18] *Id.* at 11.

[19] *Id.* at 13–14.

[20] Complainants' Motion at 24.

[21] 18 CFR 385.214.

[22] All of the above parties, except for Grant County, have also filed jointly in this proceeding as the Purchasers. *See supra* note 1.

[23] Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980).

[24] INS v. Cardoza-Fonseca, 480 U.S. 421, 432 (1987); Mead Corp. v. Tilley, et al., 490 U.S. 714, 722 (1989).

[25] *See* H.R. Rep. No. 1601, 83rd Cong., 2d Sess. (1954); S. Rep. No. 1656, 83rd Cong., 2d Sess. (1954); 100 Cong. Rec. 6846–50; 10211–28, 10247–57 (1954).

[26] *See supra* note 4.

resources in the Columbia River Basin for the benefit of the people generally by making a reasonable portion of the power generated available for equitable distribution within the economic marketing area in adjacent states. Although there was frequent mention of the fact that the project would be issued a license under the FPA, the consequences of that action were not fully articulated.

We turn next to the order issuing the license for Project No. 2114.[27] The order identifies Public Law No. 83–544 as applicable, but there is no further discussion. The Commission found that Grant County submitted satisfactory evidence of its financial ability to construct and operate the project.[28] The Commission also found that a portion of the energy generated would be used to meet Grant County's own requirements and the balance of the output and a reasonable portion of the power capacity would be sold to other electric utility systems in Washington and in neighboring states in accordance with the provisions of section 6 of Public Law No. 83–544. There is no discussion in the order regarding future relicensing or future allocation of power from the project.

We have also examined an analogous statute, the Niagara Redevelopment Act (NRA),[29] to see if its power allocation provisions address future applicability or provide any other general guidance on the issue before us. The NRA was being considered by Congress at the same time the Senate was debating the Priest Rapids legislation, and in fact the Senate debates on Priest Rapids referred specifically to the NRA legislation.[30]

As in the Priest Rapids case, Congress passed the NRA directing the Commission to issue a license for the Niagara Project to the Power Authority of the State of New York upon certain conditions contained therein. Two of those conditions, incorporated into the license, provide that "at least 50 per centum of the project power shall be available for sale and distribution primarily for the benefit of the people as consumers, particularly domestic and rural consumers, to whom such power shall be made available at the lowest rates reasonably possible and in such manner as to encourage the widest possible use," and that the licensee "shall make a reasonable portion of the project power subject to the preference provisions * * * available for use within reasonable economic transmission distance in neighboring States." In addition, those conditions also provide that "[i]n any case in which project power subject to the preference provisions * * * is sold to utility companies organized and administered for profit, the Licensee shall make flexible arrangements and contracts providing for the withdrawal upon reasonable notice and fair terms of enough power to meet the reasonably foreseeable needs of the preference customers."[31]

There are some important similarities (and differences) between these NRA provisions and the Priest Rapids provision in dispute here. Although both intend project power to be sold over a wide geographic area for the benefit of the people at low rates, the NRA provision is more detailed and restrictive. The licensee is required to write its contracts in such a way as to allow power to be withdrawn as the needs of the preference customers grow. However, the NRA provisions, like the provisions of Public Law No. 83–544, do not expressly address future relicensing or power allocations after the initial license ends.

The Commission has interpreted the NRA allocation provisions in a number of decisions during a decade or more of litigation.[32] The Commission has found, among other things, that this language requires reallocation of the power at the end of each contract term, and that these provisions could even justify rescission of a contract if the licensee had not reasonably foreseen, and thus reserved sufficient power to withdraw for, the needs of preference customers.[33] However, it has not expressly addressed whether the provisions apply after the initial license ends. Therefore, neither the NRA itself nor the Commission's orders explicitly addresses the analogous issue before us.

In these circumstances, we believe that the most reasonable construction of Public Law No. 83–544 is that section 6 applies after issuance of a new license as well as from the issuance of the original license. First, as discussed above, there is no indication in the statutory language or its legislative history that Congress intended section 6 to apply *only* during the initial license term. In fact, had Congress intended this policy to apply for only a limited period, it would have expressly said so.[34] Second, to interpret the statute to be so limited would be inconsistent with Congress' intent to provide for the most widespread distribution and use of the project's power—both as reflected in the statute's language which prohibits discrimination between states and expressly provides for power to be sold in neighboring states, quoted *supra,* and also as reflected in the legislative history which expressed a desire to utilize the water resources in the Columbia River Basin for the benefit of the people generally including the people of neighboring states.[35] There is no indication whatsoever on the face of the statute or in the legislative history that this intent was to apply only during the initial license term and that after the initial license term the water resources of the Columbia River Basin were to be used differently. Accordingly, we find that section 6 applies after relicensing of the Priest Rapids Project No. 2114.

B. Section 22 of the FPA (16 U.S.C. 815)

The Complainants charge that Grant County has violated section 22 of the Federal Power Act by contracting for the sale and delivery of power from the Wanapum Development beyond the date of termination of the project license, 2005, without obtaining the approval of the Commission.

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[27] *See supra* note 2.

[28] The power sales contracts which provided the economic underpinnings for project financing took longer than anticipated to negotiate and resulted in a delay in the commencement of construction. *See* P.U.D. No. 1 of Grant County, Washington, 15 FPC 1487 (1956).

[29] Public Law No. 85–159, 71 Stat. 401 (1957).

[30] *See* 100 Cong. Rec. 10225–26 (1954).

[31] Power Authority of the State of New York, 19 FPC 186, 193–94 (1958).

[32] *See generally* Municipal Electric Utilities Association of the State of New York, et al. v. Power Authority of the State of New York, Opinion No. 151, 21 FERC ¶ 61,021 (1982), *order on rehearing,* Opinion No. 151–A, 23 FERC ¶ 61,031 (1983), *affirmed,* PASNY v. FERC, 743 F.2d 93 (2d Cir. 1984); Massachusetts Municipal Wholesale Electric Company, et al. v. Power Authority of the State of New York, Opinion No. 229, 30 FERC ¶ 61,323, order on rehearing, Opinion No. 229–A, 32 FERC ¶ 61,194 (1985), affirmed, Metropolitan Transit Authority, et al. v. FERC, 796 F.2d 584 (2d Cir. 1986), cert. denied, 479 U.S. 1085 (1987); Municipal Electric Utilities Association of the State of New York, et al. v. Power Authority of the State of New York, Opinion No. 329, 48 FERC ¶ 61,124, *rehearing denied,* 49 FERC ¶ 61,068 (1989), *affirmed,* Allegheny Electric Cooperative, Inc. v. FERC, 922 F.2d 73 (2d Cir. 1990), *cert. denied,* 112 S.Ct. 55 (1991); Villages of Andover, et al., 64 FERC ¶ 61,066, *rehearing denied,* 64 FERC ¶ 61,358 (1993), *affirmed,* Village of Bergen, et al v. FERC, 33 F.3d 1385 (D.C. Cir. 1994).

[33] Municipal Electric Utility Association of New York, et al., 9 FERC ¶ 61,128 at 61,249 (1979); reh'g denied, 10 FERC ¶ 61,001 (1980); cf. Municipal Electric Utilities Association of the State of New York, et al., Opinion No. 151, 21 FERC ¶ 61,021 (1982), order on rehearing, Opinion No. 151–A, 23 FERC ¶ 61,031 (1983), affirmed, PASNY v. FERC, 743 F.2d 93 (2d Cir. 1984).

[34] *See* 33 F.3d at 1389.

[35] *See* H.R. Rep. No. 1601, 83rd Cong. 2d Sess. 3 (1954) ("Safeguards have been included in the bill to assure development of the Priest Rapids site for its optimum capabilities as a part of the comprehensive plan for the development and utilization of water resources in the Columbia Basin for the benefit of the people generally," and "[i]t is desirable that the public benefits to accrue from power made available by this project be over as extensive an area as practical"); S. Rep. No. 1656, 83rd Cong. 2d Sess. 3–5 (1954) (Senate report contains similar language to House report); *cf.* 33 F.3d at 1389–90 (noting Congress' general intent in various statutes to use resources for benefit of people generally); 796 F.2d at 591–95 (noting Congress' intent as to NRA); 743 F.2d at 103–07 (noting Congress' intent as to NRA).

In response, Grant County argues that the language of section 22 is permissive instead of restrictive toward entering into contracts beyond the license term. Grant County reasons that the provision exists for the protection of investors and purchasers, and thus if these entities do not wish to seek that protection by obtaining Commission approval of a contract that extends beyond the term of the license, that is their prerogative. Grant County states that the willingness of its power purchasers to accept measured business risk is not a proper cause for concern by the complainants.[36]

> Section 22 of the FPA states: Whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the commission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, or if sold or delivered in a State which has no such public-service commission, then upon the approval of the commission, and thereafter, in the event of failure to issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts.

The legislative history is not extensive, but it demonstrates that the Commission was to use its sound discretion in approving contracts beyond the license term.[37] The Commission has received only a small number of requests for approval of contracts under section 22.[38] While we agree that the purpose of section 22 is to remove a potential obstacle from a licensee's ability to finance the project,[39] the section states that a licensee may enter into power sales contracts extending beyond the license term "upon the joint approval of" the Commission and the relevant state authority. The plain meaning of this text is that a licensee is not to enter into such a contract *without* the approval of the Commission and state authority, and there is no legislative history to the contrary.

We therefore conclude that section 22 required that Grant County obtain Commission approval of the approximately four-year period that the power purchase contract for the Wanapum Development extended beyond the license term. Accordingly, we direct Grant County to file an application under section 22 in a separate docket for approval of any power purchase agreements for periods extending beyond the termination date of the license.[40]

C. Setting the Matter for Hearing

We have found above that section 6 of Public Law No. 83–544 applies to relicensing. We also have reaffirmed that power sales contracts that extend beyond the term of a license require Commission approval under section 22 of the FPA. All other questions raised in the pleadings in this proceeding are set for trial-type, evidentiary hearing. All entities who have an interest in this proceeding must participate in this proceeding or they will be foreclosed later as to matters at issue in this proceeding.

Finally, we recognize that the license for Project No. 2114 does not expire until 2005, and under the Commission's regulations a relicense application is not due until at least 24 months before the existing license expires.[41] However, the parties have indicated that a licensee must begin the process of consulting with the public and the relevant resource agencies, as well as conducting the necessary environmental and economic studies long before that date,[42] and in this case, there is some indication that Grant County has already begun this process.[43] Indeed, Grant County in its June 30, 1995 filing states as follows: [44]

> Grant is in the early process of developing an application for a new license for its Priest Rapids Project in accordance with Part 16 of the Commission's regulations. As part of that process, it commenced in 1992 negotiations with its existing power purchasers to determine, among other things, whether agreement could be reached on mutually beneficial terms and conditions for the sale of project power under any new license which might be issued for the Project.

Additionally, the complainants have indicated that prompt action is important because BPA has begun renegotiating all of its regional power sales contracts including those with the complainants.

Accordingly, we conclude that it is appropriate to take up the instant dispute at this time, rather than later. Moreover, we encourage the presiding judge and the parties to resolve the instant dispute expeditiously so that the relicensing proceeding may commence and be concluded in a timely manner.

The Commission Orders

(A) The Secretary is hereby directed to publish a copy of this order in the **Federal Register**.

(B) The Secretary is hereby directed to serve a copy of this order on all parties to this proceeding.

(C) Within 30 days from the date of issuance of this order, Grant County shall file in a separate docket an application for approval of its power sales agreements with the Purchasers under section 22 of the Federal Power Act, as described in this order.

(D) Pursuant to the authority contained in the Department of Energy Organization Act and in the Federal Power Act (particularly Sections 4(g), 10(h), 306, 307(a), 308, and 309), and the license for Project No. 2114, a public hearing shall be held in conformance with the Commission's Rules of Practice and Procedure to consider all matters of fact and law, consistent with the provisions of this order, concerning those issues in Docket No. EL95–35–000 not summarily decided in this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge for that purpose, shall preside at the hearing in this proceeding, and shall convene a prehearing conference within 30 days of the date of this order in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426. The conference shall be held for the purposes of clarification of the positions of the parties, delineation of the specific issues to be litigated, discussion of procedures for expediting the hearing, and establishment by the presiding judge of any procedural dates necessary for this hearing.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23314 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–P

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[36] In their response to the complaint (at 12), the Purchasers similarly state:

> When the Purchasers entered into their long-term contracts to purchase power, that power was more expensive than available alternatives in the short term and involved substantial financial risks. Therefore, the Purchasers insisted upon and received power purchase contracts not only for the term of the initial license, but rights of first refusal to purchase their proportionate part of the project's output at the termination of their contracts. Those rights of first refusal gave the purchasers enforceable contractual rights under Washington law, which would be jeopardized by the relief requested by the [Complainants].

[37] *See* 58 Cong. Rec. 2240–41 (1919) (debate on H.R. 3184, which became the Federal Water Power Act of 1920).

[38] *See* Swift Creek Power Company, Inc., 61 FERC ¶61,227 (1992), and the cases discussed therein; *see also* Department of Water Resources of the State of California, 39 FPC 292 (1968).

[39] *See, e.g.*, Susquehanna Power Company, et al., 32 FPC 826, 830 (1964).

[40] *See* New York Irrigation District, *et al.*, 58 FERC ¶61,271 (1992) (when the Commission discovered, in the course of examining a contract for the sale of project power, that the term of the contract extended about eight years beyond the termination date of the license, it ordered the licensee to file a request under section 22 for approval of the power purchase agreement.)

[41] 18 CFR 16.9(b).

[42] *See* 18 CFR Part 16.

[43] *See* Motion of Idaho Cooperatives for Summary Disposition at Attachment 2.

[44] *See* Response of Grant County to Motion for Summary Disposition at 3.

[Docket Nos. ER94–1529–001, ER94–1529–002, and EL95–77–000]

Mid-Continent Area Power Pool; Notice of Initiation of Proceeding and Refund Effective Date

September 15, 1995.

Take notice that on September 14, 1995, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL95–77–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL95–77–000 will be 60 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23312 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–730–000]

Mid Louisiana Gas Company; Application

September 14, 1995.

Take notice that on September 1, 1995, Mid Louisiana Gas Company (Mid Louisiana), 2 Allen Center, Suite 2885, 1200 Smith Street, Houston, Texas 77002 filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon (i) the storage services it receives at and from the Hester Storage Field (Hester) and appurtenant facilities owned by Transcontinental Gas Pipe Line Corporation (Transco); (ii) a related transportation and exchange service with Transco; (iii) certain services currently provided by Mid Louisiana to the extent that such services rely on the availability of the storage services at and from Hester, as well as related transportation and exchanges services; and (iv) the firm and interruptible storage services it provides to customers under its Rate Schedules FSS and ISS and its small merchant service provided under Rate Schedule SMS (to replace such services, Mid Louisiana states it will file a separate application, under Section 4 of the Natural Gas Act, to amend its existing no-notice service), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mid Louisiana states that the purpose of the requested abandonment authorizations and the Section 4 changes to be proposed in a later filing is to make available a revised no-notice service that will more accurately reflect the manner in which no-notice service has been used by its customers since the implementation of Order No. 636 on its system, while also providing those customers with an improved level of reliability of service at reduced costs. Mid Louisiana requests that the abandonment authorizations be permitted to become effective September 1, 1996. Consistent with this request, Mid Louisiana states that it will file the separate Section 4 rate application on March 1, 1996 so as to permit the proposed changes in its no-notice services to also become effective September 1, 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mid Louisiana to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23274 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–260–002]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

September 14, 1995

Take notice that on September 8, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised, Fourth Revised Sheet No. 319, to be effective October 8, 1995.

Natural states that the purpose of the filing is to comply with the Commission's August 18, 1995, letter order in Docket No. RP95–260–001. The letter order directed Natural to amend its tariff to reflect actual practice used to develop billing determinants used in Account 858 surcharge filings under Section 21 of the General Terms and Conditions of Natural's tariff.

Natural states that it has revised Section 21.3(d) to state that billing determinants will be based on those in effect sixty (60) days prior to the effective date of the semi-annual tracking filing adjusted for known and measurable changes that will occur by the effective date of the adjustment.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective October 8, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP95–260.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23275 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–397–001]

Panhandle Eastern Pipe Line Company; Notice Of Compliance Filing

September 14, 1995.

Take notice that on September 8, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing pro forma tariff language and information regarding the relationship of Section 284.8(a)(3) of the Commission's regulations as required by Ordering Paragraphs (B) and (D) respectively, of the Commission's August 24, 1995 Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Technical Conference.

Panhandle states that the pro forma tariff sheet included herewith sets forth supplemental clarification that when service is provided under Rate Schedule LFT: (i) It will be subject to the nomination and scheduling procedures included in Sections 8 of the General Terms and Conditions; (ii) it will be subject to the curtailment and interruption procedures included in Section 9 of the General Terms and Conditions; and (iii) that shipper may release all or a part of their Rate Schedule LFT Maximum Daily Contract Quantities in accordance with the procedures established for the assignment of service rights under Section 15 of the General Terms and Conditions. These provisions are applicable to all firm transportation services.

Panhandle further states that it has provided additional information in this compliance filing regarding the relationship of Section 284.8(a)(3) of the Commission's Regulations to service under Rate Schedule LFT.

Panhandle states that copies of this filing have been served on all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before September 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23276 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1625–000]

USGen Power Services, L.P.; Notice of Filing

September 14, 1995.

Take notice that USGen Power Services, L.P. ("USGenPS"), on August 24, 1995, tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

USGenPS intends to engage in electric power and energy transactions as a marketer. In these transactions, USGenPS proposes to charge market-determined rates, mutually agreed upon by the parties. All sales and purchases will be arms-length transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 26, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23277 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–136–000]

Williams Natural Gas Company; Notice of Informal Settlement Conference

September 14, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, September 21, 1995, at 9 a.m., and continuing on Friday, September 22, 1995 at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23302 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–5–49–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

September 14, 1995.

Take notice that on August 25, 1995, in compliance with the Commission's July 26, 1995, Letter Order, Williston Basin Interstate Pipeline Company (Williston Basin) submitted its explanation of the projected cost of gas utilized in the calculation of fuel use rates included in its Annual Fuel Reimbursement Adjustment filing dated June 30, 1995 in the above referenced docket.

Williston Basin states that copies of the filing is being served upon those listed on the mailing list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23278 Filed 9–19–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5298–9]

Proposed Settlement; Hilton Davis Chemical Co. Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of *Hilton Davis Chemical Co.* v. *United States Environmental Protection Agency*, No. 94–3414 (6th Cir.).

This petition for judicial review involves a challenge to a Request For Information ("RFI") issued by EPA on February 15, 1994, that *inter alia* required Hilton Davis to submit certain information to EPA pursuant to section 114(a) of the Act.

For a period of thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the proposed settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Samantha Hooks, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Mark M. Kataoka at the above address and must be received by October 20, 1995.

Dated: September 5, 1995.

Jonathan Z. Cannon,

Assistant Administrator, (Acting General Counsel).

[FR Doc. 95–23326 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5298–7]

Technical Advisory Committee; Notice of Open Meeting

The Technical Advisory Sub-Committee to the Clean Air Act Advisory Committee will hold its opening meeting October 13 from 9:00 am to 5:00 pm at Ramada Metro, 8270 Wickham Road, Romulus, Michigan. This meeting is open to the public.

The Sub-Committee is established to provide the Office of Mobile Sources independent counsel and advise on scientific and technical aspects of its program. The Sub-Committee will create working groups to evaluate technical materials and approaches in the topics of Modeling, In-Use Deterioration, certifications Program Reform, and Engine Vehicle and Fuel Standards.

Anyone wishing to speak at either or both of the meeting should make a request in writing to Katherine McMillan, Office of Mobile Sources, OAR, Mail Code 6401, U.S. Environmental Protection Agency, Washington, D.C. 20460. Public statements will be limited to ten minutes. For more information, please contact Katherine McMillan at (202) 260–3420 or Fax (202) 260–6011.

Katherine H. McMillan,

Designated Federal Officer, OMS, OAR.

[FR Doc. 95–23324 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5299–5]

Risk Assessment and Risk Management Commission Revision of Earlier Notice of Public Meetings—1995; October 26–27 Cancelled

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Risk Assessment and Risk Management Commission, established as an Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will not meet on October 26 and October 27 at the Rockefeller University in New York, New York. Unexpected budget problems prevent the Commission from meeting during the month of October.

November 17

The Commission will meet, as scheduled, November 17 from 8:00 a.m. until 3:00 p.m. at the Capitol Hill Hotel, 200 C Street, SW., Capitol Hill Conference Room, Washington, DC 20003.

December 14—Time Change

The meeting times for the December 14 meeting have been changed. The new times are 1 to 5 at the Breakers Hotel, Palm Beach, Florida 33480.

This amends an earlier notice in the **Federal Register.**

Dated: September 13, 1995.

Gail Charnley,

Executive Director, Commission on Risk Assessment And Risk Management.

[FR Doc. 95–23322 Filed 9–19–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5298–4]

North Dakota; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of full program adequacy for North Dakota's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the

Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

North Dakota applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed North Dakota's application and proposed a determination that North Dakota's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. Since no comments were received, EPA is today issuing a final determination that the State/Tribe's program is adequate.

EFFECTIVE DATE: The determination of adequacy for North Dakota shall be effective September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald Allen (8HWM–WM), Waste Management Branch, US EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone 303/293–1496.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On September 27, 1993, the EPA Administrator signed the final rule extending the effective date of the landfill Criteria for certain classifications of landfills (proposed rule 58 FR 40568, July 28, 1993). Thus, for certain small landfills that fit the small landfill exemption as defined in 40 CFR Part 258.1(f), the Federal Criteria will not be effective until October 9, 1995, instead of October 9, 1993. The final ruling on the effective date extension was published in the **Federal Register** October 1, 1993.

B. State of North Dakota

On August 25, 1994, North Dakota submitted an application for adequacy determination for the States MSWLF permit program. On November 25, 1994, EPA published a tentative determination of adequacy for all portions of North Dakota's program. Further background on the tentative determination of adequacy appears at 59 FR 60631 (November 25, 1994).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA also tentatively scheduled a public hearing for January 12, 1995, to be held if a sufficient number of people expressed interest in participating. After no one expressed interest, the Agency cancelled the public hearing.

EPA has reviewed North Dakota's application and has determined that all portions of the State's MSWLF permit program will ensure compliance with the revised Federal Criteria. In its application, North Dakota demonstrated that the State's permit program adequately meets the location restrictions, operating criteria, design criteria, ground-waster monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal Criteria. In addition, the State of North Dakota also demonstrated that its MSWLF permit program contains specific provision for public participation, compliance monitoring, and enforcement.

C. Public Comment

The EPA received no public comments on the tentative determination of adequacy for North Dakota's MSWLF permit program.

D. Decision

Since we received no public comments, I conclude that North Dakota's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, North Dakota is granted a determination of adequacy for all portions of its MSWLF permit program.

In its application for adequacy determination, North Dakota has not asserted jurisdiction over Indian Country, as defined in 18 U.S.C. 1511. Accordingly, this approval does not extend to lands within Indian Country in North Dakota including lands within the exterior boundaries of the Turtle Mountain, Fort Berthold, Fort Totten, and Standing Rock Indian Reservations. Until EPA approves a State or Tribal MSWLF permitting program in North Dakota for any part of Indian Country, the requirements of 40 CFR Part 258, will automatically apply to that area. Thereafter, the requirements of 40 CFR Part 258 will apply to all owner/s operators of MSWLF's located in any part of Indian Country that is not covered by an approved State or Tribal MSWLF permitting program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

This action takes effect on September 18, 1995. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law.

Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010 of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945, 6949(a).

Dated: September 7, 1995.

Robert L. Duprey,

Acting Regional Administrator.

[FR Doc. 95–23323 Filed 9–19–95; 8:45 am]

BILLING CODE 6560-50-P

[OPP–180961; FRL–4975–8]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 20 States as listed below. Five crisis exemptions were initiated by various states. These exemptions, issued during the month of May 1995, except for the one in March, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemption requests from the Arkansas State Plant Board and the Washington Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703)–308–8417; e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Florida Department of Agriculture and Consumer Services for the use of imidacloprid on citrus to control citrus leafminers; May 5, 1995, to May 4, 1996. (David Deegan)
2. Idaho Department of Agriculture for the use of bifenthrin on canola to control aphids; May 15, 1995, to August 15, 1995. (David Deegan)
3. Louisiana Department of Agriculture and Forestry for the use of norflurazon on Bermudagrass to control annual grassy weeds; May 1, 1995, to June 15, 1995. Louisiana had initiated a crisis exemption for this use. (Libby Pemberton)
4. Oklahoma Department of Agriculture for the use of cypermethrin on mustard greens to control various insects; May 19, 1995, to October 31, 1995. (Libby Pemberton)
5. Oregon Department of Agriculture for the use of clomazone on cucumbers to control broadleaf weeds and grasses; May 23, 1995, to August 15, 1995. (David Deegan)
6. Oregon Department of Agriculture for the use of bifenthrin on canola to control aphids; May 15, 1995, to July 15, 1995. (David Deegan)
7. Washington Department of Agriculture for the use of bifenthrin on canola to control aphids; May 15, 1995, to August 15, 1995. (David Deegan)
8. Wisconsin Department of Agriculture for the use of metolachlor on spinach to control grasses and weeds; May 5, 1995, to July 1, 1995. (Margarita Collantes)

The following States listed below were granted an emergency exemption for the use of dimethomorph and/or cymoxanil on potatoes to control late blight; May 18, 1995, to September 30, 1995, except for Florida and Oregon whose expiration date is May 18, 1996, and October 31, 1995, respectively. A notice of receipt published in the **Federal Register** of May 3, 1995 (60 FR 21814). The exemption was granted on the basis that the situation appears to be urgent and nonroutine. Late blight is not a new pest phenomenon; however, new strains of *P.* infestants have been introduced in or adjacent to each of the applicant potato-producing States, and these new strains of late blight are resistant to the primary registered alternative. With no other registered alternative products that exhibit acceptable efficacy against this pest problem, potato growers are expected to suffer significant economic losses without the use of these two fungicides. If this situation persists without an effective control program, the economic viability of potato production in the United States is uncertain. These uses can be toxicologically supported and are not expected to result in hazard to nontarget organisms:

1. Delaware Department of Agriculture.
2. Florida Department of Agriculture and Consumer Services.
3. Georgia Department of Agriculture.
4. Maine Department of Agriculture.
5. Maryland Department of Agriculture.
6. Michigan Department of Agriculture.
7. Minnesota Department of Agriculture.
8. New Jersey Department of Environmental Protection.
9. New York Department of Environmental Conservation.
10. North Dakota Department of Agriculture.
11. Ohio Department of Agriculture.
12. Oregon Department of Agriculture.
13. Pennsylvania Department of Agriculture.
14. South Dakota Department of Agriculture.
15. Virginia Department of Agriculture and Consumer Services.
16. Wisconsin Department of Agriculture, Trade, and Consumer Protection. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. California Department of Pesticide Regulations on March 16, 1995, for the use of maneb on walnuts to control bacterial blight. This program has ended. (Margarita Collantes)
2. Idaho Department of Agriculture on May 3, 1995, for the use of sethoxydim on mint to control grassy weeds. The need for this program is expected to last until November 1, 1995. (Libby Pemberton)
3. Montana Department of Agriculture on May 3, 1995, for the use of sethoxydim on mint to control green foxtail, quackgrass, and wild oats. The need for this program is expected to last until November 1, 1995. (Libby Pemberton)
4. Oregon Department of Agriculture on May 2, 1995, for the use of sethoxydim on mint to control grassy weeds. This program has ended. (Libby Pemberton)
5. Washington Department of Agriculture on May 31, 1995, for the use of clopyralid on asparagus to control Canada thistles. This program has ended. (Libby Pemberton)

EPA has denied a specific exemption request from the:

1. Arkansas State Board for the use of pyrithiobac-sodium on cotton to control weeds. The Agency denied the exemption because the situation is routine and not urgent and significant economic loss is not expected. (Margarita Collantes)

2. Washington Department of Agriculture for the use of imidacloprid on pears to control grape mealybugs. The Agency denied the exemption because of insufficient data to show resistance to alternatives. (David Deegan)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Crisis exemptions.

Dated: August 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–22964 Filed 9–19–95; 8:45 am]

BILLING CODE 6560-50-F

[EPA/OSW–FR–95–FRL–5296–8]

Procedures for Submission of Recycled Content Products Information to EPA

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for information.

SUMMARY: This notice explains the procedures for interested persons to (1) suggest items for EPA to consider for designation in the updates of the Comprehensive Guideline for Procurement of Products Containing Recovered Materials (CPG) and (2) provide information for EPA to use in developing or revising its recommendations for recovered materials content levels contained in the Recovered Materials Advisory Notices (RMANs) that accompany the CPG updates. Specifically, this notice describes the types of information EPA is interested in receiving as well as how to submit information to EPA concerning designation of items or recovered materials content levels. This information will be considered by the Agency when issuing revisions to the items designated in the CPG and recommendations in the RMANs.

DATES: EPA will accept the information described below from December 1, 1995 through February 29, 1996.

ADDRESSES: Commenters must send an original and two copies of their written comments referencing docket number F–95–CPGN–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. Comments may also be submitted electronically through the Internet to: RCRA-Docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–95–CPGN–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. All comments, including those submitted electronically, will be available for viewing in the RIC, located in Room M2616 at the address listed above. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323.

For more detailed information on specific aspects of this Notice, contact Terry Grist, (703)308–7257, Office of Solid Waste (5306W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

In Section 6002 of the Resource Conservation and Recovery Act (RCRA), Congress established a program to promote recycling by increasing purchases of products containing recovered materials. Section 6002 requires EPA to designate products that may be produced with recovered materials and to recommend practices for buying these products containing recovered materials. Once a product is designated, Federal, state and local agencies and their contractors that use appropriated Federal funds to purchase the items, must purchase them with the highest recovered materials content level practicable (see 59 FR 18857, April 20, 1995).

On October 20, 1993, President Clinton further addressed the need to develop markets for recovered materials in Executive Order 12873 (58 FR 5491, October 22, 1993). The Executive Order directed EPA to designate procurement items in a Comprehensive Procurement Guideline (CPG) and to recommend content levels in Recovered Materials Advisory Notices (RMANs). EPA published the CPG and RMAN on May 1, 1995 (see 60 FR 21370–21394). The CPG designates 19 items made from recovered materials that procuring agencies must purchase as well as includes the five items previously designated by EPA. The RMAN identifies the range of the recovered materials content levels within which each designated item is now available. The items are listed in seven product categories: Paper and Paper Products, Vehicular Products, Construction Products, Transportation Products, Park and Recreation Products, Landscaping Products, and Non-Paper Office Products. The CPG also contains an eighth category, Miscellaneous Products, for future designations that do not fall within the other categories.

Executive Order 12873 also directed EPA to designate additional items annually and to update the recommended recovered material content ranges periodically. To aid in this process, in the proposed CPG the Agency solicited public comments on procedures that would allow the public to (1) Suggest items for designation in future updates of the CPG and (2) provide information on products made from recovered materials (see 59 FR 18861, April 20, 1994). EPA asked for, but did not receive, comments on these procedures. EPA believes that the solicitation of public input will broaden the information that the Agency can consider in designating items and recommending recovered materials content levels for designated items. This notice explains these procedures.

II. Procedures for Providing Recycled Content Product Information to EPA

Once a year, EPA plans to issue a **Federal Register** notice asking for information on products containing recovered materials. The timeframe specified in each notice will be chosen to allow the Agency sufficient time to review the information for consideration in the ensuing update to the CPG and RMAN. Throughout the period designated in the Notice, interested parties will be able to suggest items containing recovered materials for EPA to designate, recommend recovered materials content levels, and suggest revisions to EPA's recommendations for purchasing existing designated items containing recovered materials. Respondents may rely on existing information including brochures, sales manuals and specifications, as long as this information addresses the types of information listed in section III below.

EPA will consider the submitted information we receive for future updates or revisions to the CPG and recommended materials content levels. Submission of information and/or requests for consideration for a new item designation or recommended content levels does not guarantee that EPA will designate that item or revise a recommended materials content level.

III. Today's Request for Information

Today, EPA is announcing that it will accept information from December 1, 1995 through February 29, 1996 about products containing recovered materials. EPA invites respondents to provide information on products in all product categories, with one exception. The exception is products addressed by EPA's previous designation of "paper and paper products." On March 15, 1995, EPA issued a draft Paper Products Recovered Materials Advisory Notice (60 FR 14182), which contained draft updates to EPA's 1988 recommendations for the recovered materials content of paper and paper products. Today's notice does not re-open the comment period on the Paper Products RMAN. Rather, EPA will accept information only on paper products that fall outside the scope of the draft Paper Products RMAN.

Respondents should submit information as described above under **ADDRESSES**. The Agency will provide written confirmation of receipt of submitted materials.

EPA requests that respondents provide information regarding the seven areas listed below.

(1) Barriers to Purchasing Products Containing Recovered Materials:

—What government specifications, standards, purchasing policies, or purchasing procedures preclude government agencies from purchasing the item containing recovered materials?

(2) Use of Materials in Solid Waste:

—Is the item made using a material that represents a significant portion of the solid waste stream or presents a solid waste disposal problem?

(3) Economic and Technological Feasibility and Performance:

—Does the item perform as well as necessary to meet a procuring agency's needs?

—Are there government, ASTM or other consensus standards or specifications that would enable a procuring agency to buy the item containing recovered materials?

—Is the item available at a reasonable price considering normal market fluctuations?

(4) Impact of Government Procurement:

—Is the item purchased in appreciable quantities by the Federal government or by state and local governments?

(5) Availability and Competition:

—Is the item available from an adequate number of sources to ensure competition?

—Is the item generally available, rather than available in a limited market area?

(6) Recovered Materials Content Levels:

—What levels of recovered materials content are used in the product?

—Is the recovered materials content postconsumer material? What percentage is postconsumer?

(7) Source of information:

—What is the source of the information provided (e.g., industry studies, technical journals)? Where can purchasing agencies purchase the item? Provide the vendor's company name, address, contact name and phone number.

The first area, barriers to procurement of products containing recovered materials, derives from the underlying objective of RCRA section 6002 which is to use the Federal government's purchasing power to develop markets for materials diverted or recovered from solid waste. It is EPA's intention that, by issuing procurement guidelines, we will help remove barriers to increasing the procurement of products containing recovered materials.

The next four areas of information relate to the key criteria that RCRA section 6002 requires EPA to consider. The sixth area will be used by EPA in recommending recovered materials content levels or other relevant information to assist procuring agencies in purchasing new or existing designated items. The final area of information will be used by EPA to obtain additional information, if needed, and to prepare lists of vendors of designated items for use by procuring agencies.

To reduce the volume of information to be reviewed and stored, EPA requests that respondents not submit the following types of information: video tapes, item samples, and material samples. Also, respondents should not submit confidential business information because the Agency considers the information supporting its guideline program to be public information. Respondents do not need to resend information to EPA if that information was submitted to the Municipal and Industrial Solid Waste Division of EPA within the last two years.

Dated: September 11, 1995.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 95–23325 Filed 9–19–95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0221]

DuCoa L.P.; Filing of Food Additive Petition (Animal Use) Natamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that DuCoa L.P. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of natamycin as a mold retardant of *Aspergillus parasiticus*, *Penicillium rubrum*, and *Fusarium moniliforme* in broiler chicken feed for up to 14 days when used at a level of 11 parts per million (ppm).

DATES: Written comments on the petitioner's environmental assessment by November 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sharon A. Benz, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1724.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2234) has been filed by DuCoa L.P., Technical Products Division, P.O. Box 219, Highland, IL 62249–0219. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of natamycin as a mold retardant of *A. parasiticus*, *P. rubrum*, and *F. moniliforme* for up to 14 days in broiler chicken feed when used at a level of 11 ppm.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 20, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's findings of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 7, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–23249 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0306]

Pfizer, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polydextrose as a bulking agent/texturizer in fruit and water ices.

DATES: Written comments on the petitioner's environmental assessment by October 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles,Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3107.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5A4478) has been filed by Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755. The petition proposes to amend the food additive regulations in § 172.841 *Polydextrose* (21 CFR 172.841) to provide for the safe use of polydextrose as a bulking agent/texturizer in fruit and water ices.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before October 20, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 28, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–23246 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

RIN 0905–ZA90

Final Project Requirements, Review Criteria, and Funding Preference for Cooperative Agreement for A Model Hispanic Health Careers Opportunity Program for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces the final project requirements, review criteria and funding preference for the Cooperative Agreement for a Model Hispanic Health Careers Opportunity Program (HCOP) for FY 1995 under the authority of section 740, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992.

Purpose and Eligibility

Section 740 authorizes the Secretary to make grants to and enter into contracts with schools of allopathic medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from such schools. Assistance may be used for the following five legislative purposes:

1. Recruitment—activities designed to identify, recruit and select individuals from disadvantaged backgrounds for education in the health or allied health professions, e.g., motivational activities, distribution of information, exposure to role models, and counseling.
2. Preliminary Education—education designed to expand the academic ability and otherwise prepare student participants from disadvantaged backgrounds during their preprofessional training that they may subsequently complete the regular course of education in a health professions school or school of allied health. This education must be offered prior to entry in a health professions or allied health professions school and may not include courses already taught as part of the regular course of education leading to a degree.
3. Facilitating Entry—activities designed to enhance the competitiveness of student participants from disadvantaged backgrounds for admission to health professions schools or schools of allied health, such as improving performance on admissions tests, counseling concerning the application process, and assisting admissions committees in the evaluation of disadvantaged applicants.
4. Retention—activities designed to help student participants from disadvantaged backgrounds, who have been accepted to or are enrolled in health professions schools or schools of allied health, to complete their education. These activities may include tutorial assistance, counseling, and assistance in adjusting to the environment of the school. Activities may not include courses already taught as part of the school's curriculum.
5. Financial Aid Information Dissemination—the distribution of information to student participants from disadvantaged backgrounds about financial aid available in health professions schools, schools of allied health or schools and entities which provide training necessary to qualify for enrollment in health professions schools or schools of allied health.

The program announcement, published in the **Federal Register** on June 22, 1995 at 60 FR 32531, proposed project requirements, review criteria, and funding preference. No comments were received during the 30-day comment period. Therefore, the following project requirements, review criteria, and funding preference will be retained as proposed:

Final Project Requirements

I. The Model Hispanic HCOP will establish an educational continuum from high school graduation through graduation from a health or allied health professions school through development and implementation of activities related to all five of the legislative purposes.

II. A plan for selecting students including criteria for selection must be developed and implemented.

III. Activities related to all of the five legislative purposes undertaken must be evaluated. Modifications must be made in activities based on evaluation.

IV. Activities and experiences related to the establishment of the Model Hispanic HCOP must be documented in a format that would allow for future replication by HCOP applicants.

Final Review Criteria

The following criteria are established for this program:

1. Compliance with the Standard Application Instructions for Form 6025–1, and the Supplement to Instructions for Form 6025–1.
2. The relationship of the proposed project to the purposes stated in the legislative authorization, the stated problem, the particular needs to be addressed, and the relevance of proposed objectives to the identified needs.
3. The extent and outcomes of past efforts and activities of the institution in conduct of disadvantaged student programs particularly for Hispanics and enrollment data on the target population (current and past three years) and the extent to which these data indicate trends.
4. The relevance of objectives to the stated problem and need, and to Model Hispanic HCOP purposes; their measurability and attainability within a specific time frame; and the extent to which they represent outcome measures.
5. The number of Hispanic individuals who can be expected to benefit from the project, types of participants by gender, metropolitan area, and educational level; the appropriateness of the proposed participant eligibility requirements and student selection criteria and process.
6. The specific activities and their scope and relevance to the stated objectives and project outcomes, and the appropriateness of these activities for Model Hispanic HCOP support along with the extent and nature of the academic content and non-academic services and their suitability to the needs of the target group.
7. The logic and sequencing of the planned approaches, soundness for delivery of academic content and non-academic services and appropriateness of scheduling and time allocation.
8. The administrative and managerial capability of the applicant to carry out the project in a cost effective manner considering the extent of past efforts and institutional commitment to disadvantaged students.
9. The adequacy of the staff and faculty to carry out the program; the academic and experiential background, and time commitment of key staff and faculty, the nature and level of their involvement, and their experience in working with the proposed target group.
10. The soundness of the budget for assuring effective utilization of cooperative agreement funds and the cost effectiveness of the proposed project; the compatibility of budget requests with program objectives and activities, the adequacy of the line item justifications, and the extent of the applicant's in-kind contributions.
11. Institutional or organizational plan for phasing-in income from other sources; developing self-sufficiency funding initiatives and strategies (after the end of the current federally funded project period); and achieving self-sufficiency based on a timetable and the level of financial support needed.
12. Extent to which project plans are transferable to other institutions.

Final Funding Preference

A funding preference will be given to a nonprofit, accredited four-year undergraduate college or university:

1. where Hispanic students constitute a minimum of 25 percent of the total enrollment at either the graduate or undergraduate level;
2. which is located in a geographic area with a high concentration of Hispanic residents (approximately 20 percent of the area's total population) such as the following: Anaheim, Los Angeles, Riverside, San Diego and San Jose, California; Miami, Florida; Chicago, Illinois; Northern New Jersey; Long Island and New York City, New York; El Paso, Dallas, Fort Worth, Galveston, Houston, and San Antonio, Texas; and
3. which is able to establish and document formal linkage arrangements with local community colleges, community health organizations and health professions and/or allied health professions schools.

Additional Information

Request for technical or programmatic information should be directed to: Mr. Darl Stephens, Chief, Program Development Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–3843 FAX: (301) 443–5242.

This program, Model Hispanic HCOP, is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: September 11, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–23252 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C.

Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202)–690–5526.

1. Tamper-Resistant Packaging Requirements for OTC Human Drug Products—0910–0149—Reinstatement, no change—This regulation requires certain OTC human drug and cosmetic products to be appropriately labeled, alerting customers to the tamper-resistant packaging. Respondents: Business or other for-profit; Number of Respondents: 500 hours; Number of Responses per Respondent: 1; Average Burden per Response: 4 hours; Estimated Annual Burden: 2000 hours. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

2. Anthelmintic Drug Products for OTC Human Use—0910–0232—Reinstatement, no change—The existing rule provides conditions for the market of anthelmintic drug products for OTC use. One provision of the regulation requires the preparation and distribution of a consumer package insert related to the use of the drug by discussing pinworm infestation and its symptoms, identification, detection and treatment. Respondents: Business or other for-profit; Number of Respondents: 1; Number of Responses per Respondent: 1; Average Burden per Response: 24 hours; Estimated Annual burden: 24 hours. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

3. Aspartame as an Inactive Ingredient in Human Drug Products: Labeling Requirements—Reinstatement, no change—0910–0242—The final rule requires manufacturers of human drug products containing aspartame to declare on their product's label and labeling, a statement alerting phenylketonuries to the presence and amount of the component phenylalanine that is contained in the product per dosage unit. Respondents: Business or other for-profit. Number of Respondents: 50; Number of Responses per Respondent: 2; Average Burden per Response: .1 hour; Estimated Annual burden: 10 hours. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

4. Foreign Language Disclosure Labeling—0910–0235—Reinstatement, no change—This label/labeling requirement is directed at manufacturers who wish to label their food products for foreign speaking consumers. Also, these provisions assure that the food is labeled with complete information in both English and the foreign language. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	Number of responsents	Number of responses/respondent	Average burden/response
21 CFR 101.15(c)(2)—Disclosure—Labeling	600	1	1 hour.
21 CFR 101.15(c)(2)—Disclosure—Labeling	600	1	1 hour.

Estimated Total Annual Burden: 1,200 hours.

Written comments and recommendations concerning the proposed information collections should be sent by September 29 directly to the individual designated.

Dated: September 15, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–23289 Filed 9–19–95; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3917–N–22]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* November 20, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 4240, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202)–708–0846, (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Low-Income Public and Indian Housing Financial Statements.

OMB Control Number, if applicable: 2577–0067.

Description of the need for the information and proposed use: These forms are needed to provide data for tracking the major accounts of the HUD prescribed Housing Authority (HA) accounting system and provide essential financial information on the operations of HAs.

Agency form numbers, if applicable: HUD–52595, HUD–52596, HUD–52598, HUD–52599, HUD–52603, HUD–52656, HUD–53049 Members of affected public: State, Local or Tribal Government Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3,800 respondents, annually and semi-annually, 1.30 average hours per response, 21,758 hours for a total reporting burden.

Status of the proposed information collection: Extension, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 13, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–23259 Filed 9–19–95; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. FR–3884–N–03]

Announcement of Funding Awards for the Public Housing (PH) Apprenticeship Demonstration Program in the Construction Trades and PH Operations—Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(c) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1995 Public Housing Authority applicants under the PH Apprenticeship Demonstration Program in the Construction Trades and PH Operations. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to further the Department's commitment to providing apprenticeship and employment opportunities to youth living in public and assisted housing, in partnership with the PHAs and labor-management initiatives designed to focus on job training and employment opportunities leading to self-sufficiency. Recipients were chosen in a competition under selection criteria announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on March 23, 1995 (60 FR 15436).

FOR FURTHER INFORMATION CONTACT: Landry Williams, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–4214. (This is not a toll free number). Hearing or speech impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or (202) 708–9300 for information on the program.

SUPPLEMENTARY INFORMATION: The PH Apprenticeship Demonstration Program in the Construction Trades and PH operations is funded under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for 1994 (Pub. L. 103–124, approved October 28, 1993) (the 1994 Appropriations Act).

The purpose of the PH Apprenticeship Demonstration Program in the Construction Trades and PH operations is part of HUD's comprehensive strategy to restore and revitalize communities in urban America, preserve and rebuild public housing stock and create ladders of economic opportunity for public housing residents. This demonstration program specifically links public housing authorities (PHAs) and their residents and the following organizations: the Laborers International Union of North America (LIUNA); the United Brotherhood of Carpenters and the International Brotherhood of Painters or the American Federation of State, County and Municipal Employees (AFSCME).

This demonstration will bring together the skills needed to provide public housing youth with job training, apprenticeship opportunities and employment opportunities leading to self-sufficiency. Further, the PH Apprenticeship Demonstration Program in the Construction Trades and PH Operations will assist in achieving the objectives of section 3 by preparing youths residing in public and assisted housing for the work force.

Section 3 of the 1968 Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) requires that economic opportunities generated by certain HUD financial assistance for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low and very-low income persons.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) the Department is publishing details regarding the recipients of funding awards. This information is provided in Appendix A to this document.

Dated: September 13, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A

Public Housing Authorities

New England—$750,000

Boston Office $250,000
- The City of Boston Housing Authority, 52 Cinch Street, Boston, MA 02111–02375—$250,000

Hartford Office $500,000
- The City of Bridgeport Housing Authority, 150 Highland Ave., Bridgeport, CT 06602—$250,000
- The City of New Haven Housing Authority, 360 Orange Street, New Haven, CT 06509—$250,000

New York/New Jersey—$1,000,000

New York City Office $500,000
- The City of New York Housing Authority/AFSCME, 250 Broadway, Room 901, New York, NY 10007—$250,000
- The City of New York Housing Authority/United Brotherhood of Carpenters and Painters, 250 Broadway, Room 901, New York, NY 10007—$250,000

Buffalo Office $250,000
- Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo, NY 14204–2299—$250,000

Newark Office $250,000
- The Newark Redevelopment and Housing Authority, 57 Sussex Avenue, Newark, NJ—$250,000

Mid-Atlantic—$1,350,000

Philadelphia Office $600,000
- The City of Philadelphia Housing Authority/AFSCME, 2012 Chestnut Street, Philadelphia, PA 19103–4497—$250,000
- The City of Philadelphia Housing Authority/LIUNA 2012 Chestnut Street, Philadelphia, PA 19103–4497—$350,000

Pittsburgh Office $250,000
- The City of Pittsburgh Housing Authority, 200 Ross Street, 9th Floor, Pittsburgh, PA 15219–2068—$250,000

Baltimore Office $250,000
- The City of Baltimore Housing Authority, 417 E. Fayette Street, Baltimore, MD 21202—$250,000

Washington DC Office $250,000
- The Washington DC's Department of Public and Assisted Housing, 1133 North Capitol Street, NE, Washington, DC 20002—$250,000

Southeast/Caribbean—$1,250,000

Nashville Office $250,000
The City of Memphis Housing Authority, 700 Adams Avenue, Memphis, TN 38105—$250,000
Atlanta Office $500,000
The Fulton County Housing Authority, 10 Park Place, Atlanta, GA 30303—$250,000
The City of Atlanta Housing Authority, 739 W. Peachtree Street, NE, Atlanta, GA 30303—$250,000
Jacksonville Office $500,000
The Housing Authority of the City of Jacksonville, 1300 Broad Street, Jacksonville, FL 32202—$250,000
Dade County Housing and Urban Development, 1401 N. West 7th Street, Miami, FL 33125—$250,000

Midwest—$2,149,788

Milwaukee Office $350,000
The City of Milwaukee Housing Authority, 809 N. Broadway, Milwaukee, WI 53202—$350,000
Minneapolis/St. Paul Office $799,788
The City Minneapolis Housing Authority/AFSCME, 1001 Washington Avenue, Minneapolis, MN 55401—$299,788
The City of Minneapolis Housing Authority/United Brotherhood of Carpenters and Painters, 1001 Washington Avenue, Minneapolis, MN 55401—$250,000
The Saint Paul Housing Authority, 480 Cedar Street, St. Paul, MN 55101–2240—$250,000
Detroit Office $250,000
The City of Detroit Housing Authority, 2211 Orleans, Detroit, MI 48207–2780—$250,000
Cincinnati Office $250,000
The Cincinnati Metropolitan Housing Authority/United Brotherhood of Carpenters and Painters, 16 W. Central Parkway, Cincinnati, OH 45210–1991—$250,000
Indianapolis Office $250,000
The City of Indianapolis Housing Authority, 410 N. Meridian Street, Indianapolis, IN 46204–1790—$250,000
Cleveland Office $250,000
The Cuyahoga Metropolitan Housing Authority, 1441 W. 25th Street, Cleveland, OH 44113–3101—$250,000

Southwest—$250,000

The New Orleans Office $250,000
The City of New Orleans Housing Authority, 918 Carondelet Street, New Orleans, LA 70130—$250,000

Greatplains—$600,000

Kansas City Office $350,000
The Kansas City Missouri Housing Authority, 299 The Paseo, Kansas City, MO 64106—$350,000
The St. Louis Office $250,000
The Saint Louis Housing Authority, 4100 Lindell Boulevard, St. Louis, MO 63108–2999—$250,000

Pacific/Hawaii—$1,000,000

Los Angeles Office $500,000
The Housing Authority of the City of Los Angeles, 2600 Wilshire Boulevard, Los Angeles, CA 90057—$250,000
The City of San Diego Housing Authority, 1625 Newton Street, San Diego, CA 92113—$250,000
The San Francisco Office $500,000
The City of San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102—$250,000
The City of Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612—$250,000

Northwest/Alaska—$500,000

Portland Office $250,000
The Portland Housing Authority, 135 Southwest Ash Street, Portland, Oregon 97204—$250,000
Seattle Office $250,000
The City of Seattle Housing Authority, 120 Sixth Avenue North, Seattle, WA 98109—$250,000

TOTAL ASSIGNMENT: $8,849,788

[FR Doc. 95–23280 Filed 9–19–95; 8:45 am]

BILLING CODE 4210–33–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Availability of Final Environmental Assessment and Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the Operational Procedures of the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC), for implementing section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094); the USIBWC hereby gives notice that the Final Environmental Assessment and Final Finding of No Significant Impact for Quisto Energy Corporation (Quisto) to construct, operate, and maintain a gas well located on the Main Floodway of the Lower Rio Grande Flood Control Project (LRGFCP) are available. The USIBWC finds that the proposed action to issue a license to Quisto for such works is not a major federal action that would have a significant adverse effect on the quality of the human environment. A Notice of Finding of No Significant Impact was signed August 2, 1995, (60 FR 40603) and provided a thirty (30) day review and comment period before making the finding final.

ADDRESS: Mr. Yusuf E. Farran, Division Engineer, Environmental Management Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1441, telephone: 915/534–6704, Fax: 915/534–668.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is for the USUBWC to issue a license to Quisto to construct, operate, and maintain a gas well and install related features within Meyerhoff No. 5 Drilling Unit, Lot 271, Kelly-Pharr Subdivision, Hidalgo County, Texas. The gas well is proposed to be located on privately owned land within the Main Floodway of the USIBWC LRGFCP approximately 8 kilometers southeast of the town of Pharr. Access to the drilling site is by way of existing county and private roads.

Alternatives Considered

Three alternatives were considered in the Final Environmental Assessment (EA):

The Proposed Action Alternative is for Quisto to construct, operate, and maintain a gas well in a cultivated field within the Main Floodway of the USIBWC LRGFCP. This proposed action will require USIBWC to issue a license to ensure that such works do not cause an obstruction to flood flows within the floodway or interfere with the operation and maintenance of the LRGFCP.

The No Action Alternative is for Quisto to not construct, operate, and maintain a gas well within the Main Floodway of the LRGFCP. The no action alternative will not require the USIBWC to issue a license since no work will be done within the LRGFCP. The no action alternative will result in the denial of access to the mineral owner to rightfully owned minerals, loss of tax revenues to the State of Texas, and result in an unrecoverable clean energy source.

The Directional Well Alternative is for Quisto to drill a well from outside the Main Floodway to a depth below the

proposed surface location. The directional well alternative will not require USIBWC to issue a license since no work will be done within the LRGFCP. The directional well alternative is considered not workable because of a lack of an available surface drillsite outside the Main Floodway and technical problems associated with a bottomhold location some 457 meters or more from the surface location.

Environmantal Assessment

The USIBWC received from Quisto a completed Environmental Assessment (EA) for the proposed gas well and related features. The EA is currently available for review and comment.

Finding of the Final Environmental Assessment

The Final EA finds that the proposed action for Quisto to construct, operate, and maintain a gas well within the Main Floodway of the USIBWC LRGFCP (and USIBWC to issue a license for such work) does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. The United States Army Corps of Engineers has determined that no waters of the United States including the wetlands will be impacted by the proposed gas well and related features.

2. The United States Fish and Wildlife Service has determined that federally listed endangered or threatened species are unlikely to be adversely affected by the proposed gas well and related features.

3. The Texas Historical Commission has determined that no survey is required and the project may proceed.

4. The USIBWC has determined that the proposed gas well and related features will have no significant effect upon the flood carrying capacity of the Main Floodway.

Availability

Single copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained by request at the above address.

Dated: September 11, 1995.

Randall A. McMains,

Attorney.

[FR Doc. 95–23240 Filed 9–19–95; 8:45 am]

BILLING CODE 4710–03–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued operation of boat transportation services to and from Isle Royale National Park for the public at Isle Royale National Park, Michigan, for a period of approximately five (5) years from date of execution through December 31, 2000.

EFFECTIVE DATE: November 20, 1995.

ADDRESSES: Interested parties should contact the Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931, to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared. The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1994, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 USC § 20), is entitled to be given preference in the negotiation of a new proposed permit providing the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60) day following publication of this notice to be considered and evaluated.

Dated: September 11, 1995.

William W. Schenk,

Field Director, Midwest Region.

[FR Doc. 95–23254 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–70–M

Fish and Wildlife Service

Application for Permit

AGENCY: Fish and Wildlife Service, DOI.

ACTION: Notice of receipt of application for permit.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–806710

Applicant: Christopher Dean Scott, Boynton Beach; Florida.

The applicant requests a permit to take (capture, photograph, and release) one individual of each of the following threatened (T) or endangered (E) species: rice rat (E), *Oryzomys palustris natator* (=O. argentatus); Key Largo woodrat (E), *Neotoma floridana smalli;* Key Largo cotton mouse (E), *Peromyscus gossypinus allapaticola;* Perdido Key beach mouse (E), *Peromyscus polionotus trissyllepis;* bluetail mole skink (T), *Eumeces egregius lividus;* sand skink (T), *Neoseps reynoldsi;* Atlantic salt marsh snake (T), *Nerodia clarkii* (=fasciata) *taeniata;* eastern indigo snake (T), *Drymarchon corais couperi;* and Stock Island tree snail (T), *Orthalicus reses*. Requested activities would occur throughout the species' ranges in Florida for the purpose of enhancement of survival of the species.

Written data or comments on this application should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit

Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: September 13, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–23331 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Petroglyph National Monument; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that three public meetings of the Petroglyph National Monument Advisory Commission will be held on Thursday, October 19, 1995 and Friday, October 20, 1995.

Public meetings to hear public comments on the Draft General Management Plan will be held at 2 pm–5:30 pm and at 7 pm–9:30 pm on Thursday, October 19, 1995, at Albuquerque's Technical-Vocational Institute, Board Room 100, Smith Brasher Hall, 717 University Boulevard, SE, Albuquerque, New Mexico.

Comments on the Draft General Management Plan will be discussed by Petroglyph National Monument Advisory Commission members on Friday, October 20, 1995, 8:30 am–12 pm, at the University of New Mexico Continuing Education Conference Center, Room I, 1634 University Boulevard, NE, Albuquerque, New Mexico.

The Petroglyph National Monument Advisory Commission was established pursuant to Public Law 101–313, establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

Any member of the public may file a written statement concerning the matters to be discussed at the Commission meeting with the Acting Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contact Douglas E. Eury, Acting Superintendent, Petroglyph National Monument, 6001 Unser Boulevard, N.W., Albuquerque, New Mexico 87120, telephone 505/899–0205.

Minutes of the commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

Dated: September 13, 1995.

Douglas E. Eury,

Acting Superintendent, Petroglyph National Monument.

[FR Doc. 95–23255 Filed 9–19–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–378]

In the Matter of Certain Asian-Style Kamaboko Fish Cakes; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 15, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Yamasa Enterprises, 515 Stanford Avenue, Los Angeles, California 90013. A supplementary complaint was filed on September 6, 1995. The supplementary complaint alleges violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain Asian-style kamaboko fish cakes by reason of infringement of common law trademarks "YAMASA" and a Japanese character logo, the threat or effect of which is to substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 12, 1995, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States or in the sale within the United States after importation of certain Asian-style kamaboko fish cakes by reason of infringement of the alleged common law trademarks "YAMASA" and a Japanese character logo, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Yamasa Enterprises, 515 Stanford Avenue, Los Angeles, California 90013.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Yamasa Kamaboko Co., Ltd., 419 Higashinobusue, Himeji, Japan
Alpha Oriental Foods, Inc., 4101 "C" Industry Drive, Tacoma, Washington 98424
N.A. Sales, Inc., 150 Industrial Way, Brisbane, California 94005
New Japan Food Corp., 9505 Berger Road, Columbia, Maryland 21046
Rhee Brothers, Inc., 9505 Berger Road, Columbia, Maryland 21046
Rokko Trading Co., Inc., 2020 W. 166th Street, Torrance, California 90504.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–Q, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to sections 201.16(d) and 210.13(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the

date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: September 12, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–23328 Filed 9–19–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–371]

Notice

In the matter of Certain Memory Devices with Increased Capacitance and Products Containing Same.

Notice is hereby given that the prehearing conference in this matter that was to commence at 10 a.m. on September 18, 1995, in Courtroom B (Room 111), U.S. International Trade Commission Building, 500 E St. S.W., Washington, D.C., and the hearing commencing immediately thereafter (60 Fed. Reg. 46626) are postponed until 10 a.m. on November 6, 1995, in Courtroom A (Room 100) at the same address.

The Secretary shall publish this notice in the **Federal Register**.

Issued: September 12, 1995.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 95–23329 Filed 9–19–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32678]

Rio Valley Railroad, Inc., and Rio Valley Switching Company—Acquisition and Operation Exemption—Certain Lines of Missouri Pacific Railroad Company in Cameron County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45, subject to standard labor protective conditions, the acquisition by Rio Valley Railroad, Inc. (RVRI), and the operation by Rio Valley Switching Company (RVSC) of 9.124 miles of rail line (the line known as the Rio Hondo Industrial Lead) between milepost 0.066 at or near San Benito, and milepost 9.19 at or near Rio Hondo, in Cameron County, TX.[1]

DATES: This exemption is effective on October 20, 1995. Petitions to stay must be filed by October 5, 1995.

Petitions to reopen must be filed by October 16, 1995.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32678, to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423–0001; and (2) Petitioners' representative: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland & Herman, 20 North Wacker Drive, Suite 3118, Chicago, IL 60606–3101.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision, To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423–0001. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: September 7, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23311 Filed 9–19–95; 8:45 am]

BILLING CODE 7035–01–P

[Ex Parte No. 388 (Sub-No. 29)]

Intrastate Rail Rate Authority—South Carolina

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of South Carolina has filed an application for recertification. The Commission, under *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 685 (1989), provisionally recertifies the State of South Carolina to regulate intrastate rail rates, classifications, rules, and practices. After its review, the Commission will issue a recertification decision or take other appropriate action.

DATES: This provisional recertification will be effective on September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green (202) 927–5269 or Beryl Gordon (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

Decided: September 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23309 Filed 9–19–95; 8:45 am]

BILLING CODE 7035–01–P

Release of Waybill Data

The Commission has received a request from the Association of American Railroads, for permission to use certain data from the Commission's 1986 through 1994 I.C.C. Waybill Samples. A copy of the request (WB448____—8/30/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections

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[1] RVRI also seeks to acquire and RVSC seeks to operate what they term as "incidental overhead trackage rights." These rights extend over 8.11 miles of MP's rail line extending between milepost 27.50 near Harlingen, and milepost 19.39 at or near San Benito, also in Cameron County, TX, thereby extending the operations of RVRI and RVSC a total of 17.234 miles from Harlingen to Rio Hondo via San Benito.

Exemption of the acquisition of incidental trackage rights pertains to qualifying instances in transactions under 49 U.S.C. 10901. *See* 49 CFR 1150.31(a)(4). Because the acquisition of the trackage rights at issue here is governed by 49 U.S.C. 11343 and is covered by a class exemption, petitioners should file a notice of exemption with the Commission under 49 CFR 1180.2(d)(7), which would provide notice of its qualification to acquire these rights under the class exemption.

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with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 95–23305 Filed 9–19–95; 8:45 am]

BILLING CODE 7035-01-P

Release of Waybill Data

The Commission has received a request from Consolidated Rail Corporation, for permission to use certain data from the Commission's 1992 through 1994 I.C.C. Waybill Samples. A copy of the request (WB454—9/7/95) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 95–23306 Filed 9–19–95; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32751]

Consolidated Rail Corporation and CSX Transportation, Inc.—Rationalization of Facilities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the rationalization by lease and trackage rights of certain joint facilities, subject to standard labor protective conditions. It is contemplated that the transaction would vest control of each joint facility in the carrier making the greatest use thereof: CSX Transportation, Inc., (CSXT) would lease the Consolidated Rail Corporation (Conrail) facility at Lansing, MI—that segment of Conrail's Lansing Branch between milepost 36.80, at Michigan Avenue, and milepost 37.86, at Grand River Avenue—and grant back to Conrail trackage rights to operate thereover; Conrail would lease CSXT's facility at Toledo, OH—that segment of CSXT's Rockwell Branch between the connection with Conrail at Rockwell Junction and the connection with track of the former Toledo Terminal Railroad (now owned and operated by CSXT) at the limit of Walbridge Interlocking—and grant back to CSXT trackage rights to operate thereover.

DATES: The exemption will be effective October 20, 1995 unless stayed. Petitions to stay must be filed by October 5, 1995 and petitions to reopen must be filed by October 16, 1995.

ADDRESSES: An original and 10 copies of all pleadings, referring to Finance Docket No. 32751, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of all pleadings must be served on John J. Paylor, 2001 Market Street—16A, Philadelphia, PA 19101, and on Charles M. Rosenberger, 500 Water Street, J–150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing-impaired is available through TDD at (202) 927–5721.)

Decided: September 11, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23310 Filed 9–19–95; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32757]

Fordyce & Princeton Railroad Company—Purchase Exemption—Line of Ashley, Drew & Northern Railway Company

Fordyce & Princeton Railroad Company (FP) has filed a notice of exemption for FP to purchase from its corporate affiliate, Ashley, Drew & Northern Railway Company (ADN), approximately 5 miles of ADN's rail line after ADN abandons and discontinues operations over its entire line.[1] The involved line extends between milepost 4.7 at Whitlow Junction, AR, to milepost 0.0 at Crossett, AR, including 1,941 feet of ancillary track running east from milepost 0.5 to the Arkansas Louisiana & Mississippi Railroad (ALM) interchange at Crossett. FP currently operates over this line pursuant to a trackage rights agreement with ADN.[2] FP states that that agreement gives it the option to purchase the involved line if ADN abandons and discontinues operations.

The purchase transaction is expected to be consummated on the effective date of ADN's proposed abandonment in Docket No. AB–455X.

Because the parties are members of the same corporate family, and the purchase will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside the corporate family, the transaction qualifies for the class exemption at 49 CFR 1180.2(d)(3). The purpose of the transaction is to preserve FP's access to Crossett and the ALM interchange after ADN abandons its rail line.

As a condition to use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Eugenia Langan, Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

Decided: September 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23307 Filed 9–19–95; 8:45 am]

BILLING CODE 7035-01-P

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[1] FP and ADN are wholly owned subsidiaries of Georgia-Pacific Corporation. Concurrent with the filing of this notice, ADN filed a petition in *Ashley, Drew & Northern Railway Company—Abandonment Exemption—in Ashley and Drew Counties, AR*, Docket No. AB–455X, seeking an exemption to abandon its entire line.

[2] *See Fordyce and Princeton Railroad Company, Inc.—Purchase (Portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Between Fordyce and Crossett, AR*, Finance Docket No. 29541 (ICC served Mar. 3, 1981).

[Finance Docket No. 32772]

The New York, Susquehanna and Western Railway Corporation—Trackage Rights Exemption—Onondaga County Industrial Development Agency and Consolidated Rail Corporation

Onondaga County Industrial Development Agency (OCIDA) has agreed to grant local and overhead trackage rights to The New York, Susquehanna and Western Railway Corporation (NYS&W) over 10 miles of rail line, known as the Jamesville Cluster, in Onondaga County, NY.[1] The trackage rights include: (1) the Jamesville Industrial Track from approximately milepost 264.3 to approximately milepost 272.0; (2) the Lake Industrial Track from approximately milepost 272.0 to approximately milepost 273.5 (including the Saltland Spur); and (3) Track 7 of the Chicago Line from approximately milepost 292.0 to approximately milepost 292.8.

It is asserted that the trackage rights will improve operating economies and rail service to local shippers. The exemption became effective on September 7, 1995. The trackage rights were to become effective on September 8, 1995.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Nathan R. Fenno, The New York, Susquehanna and Western Railway Corporation, 1 Railroad Avenue, Cooperstown, NY 13326.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: September 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23308 Filed 9–19–95; 8:45 am]

BILLING CODE 7035-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 25–26, 1995
   Time: 9 a.m. to 5 p.m.
   Room: 430
   Program: This meeting will review applications submitted to Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after January 1, 1996.

The delay in publication of this notice was caused by the reorganization and restructuring of the agency which is currently taking place.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–23256 Filed 9–19–95; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 4, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 4, 1995—2 p.m. Until the Conclusion of Business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, and deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

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[1] The line is currently owned by OCIDA and operated by Consolidated Rail Corporation (Conrail). OCIDA acquired the line from Conrail in *Onondaga County Industrial Development Agency—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation,* Finance Docket No. 32287 (ICC served May 19, 1993). Trackage rights over the line were granted by OCIDA to Conrail in *Consolidated Rail Corporation—Trackage Rights Exemption—Onondaga County Industrial Development Agency,* Finance Docket No. 32288 (ICC served May 10, 1993). Pursuant to the Agreement underlying this transaction, OCIDA consents to the assignment of trackage rights by Conrail to NYS&W.

[2] Samuel J. Nasca, New York State Legislative Director for United Transportation Union (UTU), has filed a petition to reject the notice or, in the alternative, to stay the exemption in the instant proceeding, and to revoke the notices of exemption in Finance Docket Nos. 32772 and 32288. UTU's stay request was not received in time for the Commission to act on it prior to effectiveness of the exemption. The notice appears to satisfy the Commission's class exemption provisions under 49 CFR 1180.2(d) and will not be rejected. The merits of UTU's arguments for rejection can be addressed, if appropriate, when the Commission addresses the petition for revocation of the exemptions.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 14, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–23327 Filed 9–19–95; 8:45 am]

BILLING CODE 7590-01-M

Correction to Bi-Weekly Notice Application and Amendments to Operating Licenses Involving No Significant Hazards Consideration

In the **Federal Register** published on August 30, 1995, page 45175, first column, under Commonwealth Edison Company, the sixth through eighth lines which read, "Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois" should be corrected to read, "Docket Nos. 50–10, 50–237 and 50–249, Dresden Nuclear Power Station, Units 1, 2 and 3, Grundy County, Ilinois."

Dated at Rockville, Maryland, this 13th day of September 1995.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23286 Filed 9–19–95; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–390, 50–391; License Nos. CPPR–91, CPPR–92]

Tennessee Valley Authority (Watts Bar); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petition filed by Mr. George M. Gillilan (Petitioner) dated February 25, 1994 as supplemented by letters dated June 16, June 28, July 6, 1994, and February 24 and February 28, 1995. The Petition requested that the Nuclear Regulatory Commission (NRC or Commission) (1) immediately impose a $25,000 per day fine on TVA until all reprisal, intimidation, harassment and discrimination actions involving Gillilan are settled to his satisfaction, and (2) appoint an independent arbitration board to review all past DOL suits and EEO complaints filed against TVA concerning Watts Bar. Since the latter remedy is beyond the scope of the Commission's authority, it was denied in a letter to Petitioner dated April 7, 1994, which acknowledged receipt of the Petition. In that letter, the Petitioner was also informed that the request for immediate action was denied.

Based on a review of Petitioner's request and supplemental submissions, the Licensee's response dated May 20, 1994, the report of NRC's Office of Investigations (OI Report No. 2–94–042), the results of investigations of the TVA Inspector General and the decisions of the Department of Labor on Petitioner's complaints, the Director, Office of Enforcement, has denied this Petition. The reasons for the denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–95–20) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW, Washington, D.C. 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Dated at Rockville, Maryland this 13th day of September 1995.

Attachment to: Issuance of Director's Decision Under 10 CFR 2.206, Tennessee Valley Authority.

I. Introduction

On February 25, 1994, George M. Gillilan (Petitioner) filed a request for enforcement action pursuant to 10 CFR 2.206 (Petition). The Petitioner requested that the Nuclear Regulatory Commission (NRC or Commission): (1) Immediately impose a $25,000 per day fine on Tennessee Valley Authority (TVA or Licensee) until all reprisal, intimidation, harassment and discrimination actions involving Petitioner are settled to his satisfaction, and (2) appoint an independent arbitration board to review all past DOL suits and EEO complaints filed against TVA concerning Watts Bar. Since the latter remedy is beyond the scope of the Commission's authority, it was denied in a letter to Petitioner dated April 7, 1994, which acknowledged receipt of the Petition.[1]

Petitioner supplemented his Petition by letter dated June 16, 1994, rebutting the Licensee's May 20, 1994 letter responding to the Petition. On June 28 and July 6, 1994, Petitioner reiterated his allegation that the Licensee was continuing to discriminate against him and described the Licensee's actions to deny Petitioner his nuclear plant access security clearance. In a letter dated February 24, 1995, Petitioner stated that TVA's continued pattern of harassment and intimidation had resulted in Petitioner's being "blackballed" in the nuclear industry. In a letter dated February 28, 1995, Petitioner advised the NRC that he had been terminated by TVA.

II. Background

As the basis for his February 25, 1994 request, Petitioner asserted that he had reported safety concerns to the Commission and that, as a result, TVA management had subjected him to continuous intimidation, harassment, discrimination and reprisal actions, that his name had been placed on a blackball list that had been circulated nationwide preventing him from obtaining suitable employment outside of TVA, and that these actions by TVA had affected his mental and physical health. In a letter dated February 28, 1995, Petitioner asserted that TVA's pattern of harassment and intimidation had culminated in the termination of his employment with TVA.

III. Discussion

Specific Allegations

Petitioner bases his requests for sanctions on his assertion that he was a victim of unlawful discrimination pursuant to 10 CFR 50.7. Petitioner alleges a general pattern of discrimination, and mentions several specific acts by TVA: (1) putting his name on TVA's list of whistleblowers (Petitioner's February 24, 1995 letter), (2) failure to select Petitioner for a position (Petitioner's June 16, 1994 letter), (3) denying him plant access by withholding his security clearance (Petitioner's June 28 and July 6, 1994 letters), and (4) terminating him (Petitioner's February 28, 1995 letter).

The allegation that Petitioner was subjected to discrimination by having his name put on a list of whistleblowers[2] by TVA was investigated by the TVA Inspector General (TVA/IG) which concluded that the creation of this list was not discriminatory. Furthermore, the Department of Labor (DOL) investigated a complaint with respect to the same list filed by another individual and found that creation of the list of individuals who had filed complaints under Section 210/211 of the Energy Reorganization Act (ERA) with DOL did not constitute discrimination (Case No. 90–ERA–024, Secretary of Labor's Final Decision and Order of Dismissal, July 3, 1991, slip op. at 4–6). The staff finds that the inclusion of Petitioner's name on a list of ERA cases did not constitute discrimination or violate 10 CFR 50.7.

Petitioner also alleges that he was blacklisted from the industry because the list discussed above was distributed nationwide. In Case No. 90–ERA–024 discussed above, the Secretary of Labor said that "the record contains no evidence that TVA disseminated these documents to the newspaper or to other outside sources," concluding that Petitioner did not establish a prima facie case that the TVA memorandum and accompanying list of ERA cases was used for a discriminatory purpose (id. at 4–5). Petitioner has not provided to the NRC evidence that shows that the list was used to "blackball" those on the list. Therefore, we are not able to find that the creation and alleged distribution of the list was discrimination against Petitioner or warrants the enforcement action requested by Petitioner.

With respect to TVA's failure to select Petitioner for a position for which he had applied, Petitioner's complaint on this matter (dated October 10, 1991) was dismissed by the Secretary of Labor as untimely filed (Case Nos. 92–ERA–046 and 50, Final Decision and Order, April 20, 1995, slip op. at 3–5). The TVA/IG investigated this complaint and found that Petitioner did not return phone calls or respond to a registered letter inviting him to schedule an interview for the position and, thus, the individual was not selected. The TVA/IG consequently concluded that the failure to select Petitioner was not discriminatory. Based on a review of the TVA/IG investigation and the limited information provided by the Petitioner, the NRC staff concludes that Petitioner has not provided information that would show that he was discriminated against in this instance.

With respect to withholding Petitioner's security clearance, Petitioner filed a complaint with the DOL on September 1, 1994. On November 4, 1994, the DOL Area Director concluded there was no discrimination in that case and his ruling was not appealed by Petitioner. The TVA/IG investigated this issue and determined that Petitioner's security clearance was suspended following a psychological evaluation relating to fitness-for-duty issues and the TVA/IG concluded that the suspension was not discriminatory. After reviewing the TVA/IG investigation and information provided by the Petitioner, the staff concludes that Petitioner has not provided information that would show that TVA's suspension of Petitioner's security clearance was discriminatory.

With respect to Petitioner's allegation of discriminatory termination in September 1994, on April 27, 1995 the DOL Area Director dismissed Petitioner's complaint as untimely filed. Petitioner appealed this finding and the appeal is pending before the DOL Administrative Law Judge (ALJ) (Case No. 95–ERA–026). The issue was investigated by the TVA/IG who concluded that Petitioner's termination was due to his arrest for carrying a concealed weapon. The NRC's Office of Investigations (OI) reviewed documentation from the DOL and TVA/IG on this matter and concluded that there was insufficient evidence to substantiate Petitioner's allegation that his termination was discriminatory (OI Case No. 2–94–042, April 24, 1995). Based on a review of documentation by OI, DOL, and TVA/IG, the NRC staff concludes that there is not sufficient evidence to establish that TVA's termination of Petitioner's employment was discriminatory.

General Allegations

In addition to the specific acts of discrimination alleged by Petitioner, he also referred to a continuing pattern of discrimination by the licensee against him. While such general allegations are difficult to investigate, the staff decided to review all the Department of Labor complaints filed by Petitioner to assess the likelihood that there is some form of generalized discriminatory treatment of Petitioner that goes beyond the specific acts which he alleges in the Petition. This broader review was undertaken as an attempt to evaluate Petitioner's otherwise unsupported general claim that he was subject to a continuing pattern of discrimination and to determine whether some action against the licensee would be appropriate at this time.

TVA notes, in its May 20, 1994 response to the Petition, that Mr. Gillilan has filed thirteen complaints with the Department of Labor (DOL). NRC's records reflect that some of these were filed as supplements to earlier complaints; only nine are distinct complaints. Three of these complaints deal directly with the specific acts of discrimination alleged by Petitioner, as discussed above. In addition, Petitioner filed several complaints with DOL dealing with allegations of discrimination not raised in his Petition. These complaints allege a pattern of behavior purported to demonstrate that TVA has discriminated against Petitioner. They are addressed below.

Petitioner's complaint to DOL filed on March 2, 1989 was dismissed by the ALJ as settled. The Secretary of Labor disapproved that settlement because one of the conditions required that the record be sealed, a condition that is incompatible with the requirement to make records of discrimination complaints available to the public. The Secretary remanded the case to the ALJ (Case No. 89–ERA–040, Order to Submit Briefs, May 13, 1994, slip op. at 1) and a decision is pending. The DOL Area Director found no discrimination with regard to Petitioner's complaint of November 16, 1990 involving Petitioner's assignment to evening shift and alleged harassment and intimidation by a supervisor. The Area Director also found in that case that the complaint of violation of an earlier settlement agreement was untimely filed. This decision was appealed, assigned Case No. 91–ERA–031, and consolidated with Case No. 91–ERA–034. Ruling in both 91–ERA–031 and 91–ERA–034, the ALJ determined that certain of Petitioner's allegations did not involve discrimination and that the remainder were untimely filed. In accordance with a request by both parties to dismiss 91–ERA–034, the Secretary of Labor dismissed it but remanded 91–ERA–031 to the ALJ for further proceedings, including an evidentiary hearing, noting that in remanding this case, he reached no conclusions regarding the timeliness or the merits of the allegations.[3] (Decision and Remand Order, August 28, 1995). A decision is pending in that case.

Petitioner's combined complaints received by DOL on November 17 and 26, 1991 and January 10, 1992 (combined with that received on October 10, 1991, Case No. 92–ERA–046) were dismissed by the Secretary of Labor, who found that Petitioner had failed to present an issue of material fact with respect to these complaints, and therefore had not demonstrated discrimination.[4] In Petitioner's combined complaints of December 21 and 29, 1993, the DOL Area Director concluded there was no discrimination and the ruling was not appealed. Petitioner's combined complaints of June 10 and August 26, 1993 were originally found by the DOL Area Director to involve discrimination, but after appeal to the ALJ, the hearing was cancelled because Petitioner was deemed "not . . . mentally capable to withstand trial." (Case No. 94–ERA–005, Order Transferring the Record, January 23, 1995, slip op. at 1). A decision is still pending in this case, pending Petitioner's ability to resume the case at trial. In Petitioner's complaint of November 6, 1994, the DOL Area Director concluded that Petitioner's removal was not motivated by his protected activities, therefore there was no discrimination. The ruling was appealed and a decision is pending in that case. *See* Case No. 95–ERA–009.

Although Petitioner's complaints before DOL are numerous, the DOL findings thus far do not establish a pattern of continuing discrimination against Petitioner. After reviewing the status of Petitioner's DOL complaints, the NRC cannot conclude that enforcement action is necessary against the licensee at this time. In accordance with its normal practice, the NRC will monitor those complaints that remain before DOL and consider the need for enforcement action based on the results of the DOL proceedings.

IV. Conclusion

Based on a review of the Petition and supplemental submissions, the Licensee's response dated May 20, 1994, the report of NRC's Office of Investigations (OI Report No. 2–94–042), the results of the investigations of the TVA/IG, and the decisions of the Department of Labor on several of Petitioner's complaints, I have concluded that Petitioner has provided insufficient information or evidence to indicate that TVA has engaged in a pattern of harassment, intimidation, or discrimination against Petitioner in violation of 10 CFR 50.7, or to warrant additional NRC investigation of general harassment and intimidation with regard to Petitioner. I conclude that Petitioner's claims of harassment, intimidation, and discrimination have not been substantiated. Accordingly, the request for daily civil penalties is denied.

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[1] The letter also denied Petitioner's request for immediate action.

[2] The list was a status report of complaints filed by TVA employees with the Department of Labor.

[3] The Secretary directed that the Acting Chief ALJ first review and decide whether to consolidate Case No. 91–ERA–031 with Case No. 89–ERA–040.

[4] Note that while the Secretary combined the four complaints received October 10, November 17 and 26, 1991, and January 10, 1992 he addressed the October 10 complaint sepa[illegible] See Case No. 92–ERA–046, Final [illegible] isio [illegible] er, April 20, 1995.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by that regulation, the decision will constitute final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 13th day of September 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 95–23298 Filed 9–19–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–19 and DPR–25 issued to Commonwealth Edison Company (the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

The proposed amendment would upgrade the Dresden TS to the standard Technical Specifications (STS) contained in NUREG–0123. The Technical Specification Upgrade Program (TSUP) is not a complete adaption of the STS. The TS upgrade focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GL), and (4) relocating specific items to more appropriate TS locations. The September 1, 1995, application proposed to upgrade only Section 6.0 (Administrative Controls) of the Dresden TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:
>
> In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide contained assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.
>
> Some of the proposed changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden Station's Technical Specification Section 6.0 are based on STS guidelines or later operating plant's NRC accepted changes. Any deviations from STS requirements do not significantly increase the probability or consequences of any previously evaluated accidents for Dresden Station. The proposed amendment is consistent with the current safety analyses and has been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.
>
> Create the possibility of a new or different kind of accident from any previously evaluated because:
>
> In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these provide additional restrictions which are in accordance with the current safety analysis, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses.
>
> The proposed amendment for Dresden Station's Technical Specification Section 6.0 is based on STS guidelines or later operating plants' NRC accepted changes. The proposed amendment has been reviewed for acceptability at the Dresden Nuclear Power Station considering similarity of system or component design versus the STS or later operating plants. Any deviations from STS requirements do not create the possibility of a new or different kind of accident previously evaluated for Dresden Station. No new modes of operation are introduced by the proposed changes. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.
>
> Involve a significant reduction in the margin of safety because:
>
> In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain with their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.
>
> The proposed amendment to Technical Specification Section 6.0 implements present requirements, or the intent of present STS. Any deviations from STS requirements do not significantly reduce the margin of safety for Dresden Station. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden based on system design, safety analysis requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden and maintain necessary levels of system or component reliability, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, MD, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 20, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Morris Public Library, 604 Liberty Street, Morris, IL 60450. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800)–248–5100 (in Missouri 1–(800)–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Robert Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear

Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i–v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 1, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Morris Public Library, 604 Liberty Street, Morris, IL 60450.

Dated at Rockville, Maryland, this 13th day of September 1995.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23285 Filed 9–19–95; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Senior Executive Service Performance Review Board Membership

AGENCY: President's Council on Integrity and Efficiency (PIE).

ACTION: Notice.

SUMMARY: This notice sets forth the names and titles of the current membership of the PCIE Performance Review Board.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Individual Offices of (the) Inspector General.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General's Act of 1978, as amended, has created independent audit and investigative units—Offices of (the) Inspector General—at 61 Federal agencies. In 1981, the President's Council on Integrity and Efficiency (PCIE) was established by Executive Order is an interagency committee charged with promoting integrity and effectiveness in Federal programs. The PCIE is chaired by the Office of Management and Budget's Deputy Director for Management, and comprised principally of the 29 Presidential appointed Inspectors General (IGs). The primary objectives of the PCIE are (1) mounting collaborative efforts to address integrity, economy and effectiveness issues that transcend individual Federal agencies; and (2) increasing the professionalism and effectiveness of IG personnel throughout the Government.

II. PCIE Performance Review Board

Under 5 U.S.C. 4314(c)(1)–(5) and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards are to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the President's Council on Integrity and Efficiency Performance Review Board are as follows:

Members	Title
AGENCY FOR INTERNATIONAL DEVELOPMENT	
Everett L. Mosley	Deputy Inspector General.
Carol L. Levy	Assistant Inspector General for Investigations.
C. Michael Flannery	Assistant Inspector General for Security.
Robert S. Perkins	Legal Counsel.
DEPARTMENT OF AGRICULTURE	
Charles R. Gillum	Deputy Inspector General.
Paula F. Hayes	Assistant Inspector General for Policy Development and Resources Management.
James R. Ebbitt	Assistant Inspector General for Audit.
Richard D. Long	Deputy Assistant Inspector General for Audit.
Robert W. Young, Jr	Deputy Assistant Inspector General for Audit.
Craig L. Beauchamp	Assistant Inspector General for Investigations.
Jon E. Novak	Deputy Assistant Inspector General for Investigations.
DEPARTMENT OF COMMERCE	
Michael Zimmerman	Deputy Inspector General.
John Newell	Assistant Inspector General for Audits.
DEPARTMENT OF DEFENSE	
Derek J. Vander Schaaf	Deputy Inspector General.
Donald Mancuso	Assistant Inspector General for Investigations.
William G. Dupree	Deputy Assistant Inspector General for Investigations.
John F. Keenan	Director, Investigative Operations.
Joel J. Leson	Assistant Inspector General for Criminal Investigative Policy and Oversight.
David A. Brinkman	Assistant Inspector General for Analysis and Follow-up.
Donald E. Davis	Assistant Inspector General for Audit Policy and Oversight.
Michael G. Huston	Director of Audit Planning and Technical Support.
Robert J. Lieberman, Jr	Assistant Inspector General for Auditing.
David K. Steensma, II	Deputy Assistant Inspector General for Auditing.
Thomas F. Gimble	Director, Readiness and Operational Support.
Paul J. Granetto	Director, Contract Management.
Shelton R. Young	Director, Logistics and Support.
Russell A. Rau	Director, Financial Management.
Donald E. Reed	Director, Acquisition Management.
John C. Speedy, III	Deputy Assistant Inspector General for Program Evaluation.
Stephen A. Whitlock	Deputy Assistant Inspector General for Inspections.
Nicholas T. Lutsch	Assistant Inspector General for Administration and Information Management.
Clifford F. Broome	Deputy Assistant Inspector General for Administration and Information Management.
DEPARTMENT OF ENERGY	
Gordon W. Harvey	Principal Deputy Inspector General.
Michael W. Conley	Deputy Inspector General for Inspections.
William H. Garvie	Assistant Inspector General for Investigations.
Herbert Richardson	Deputy Assistant Inspector General for Investigations.
Judith D. Gibson	Assistant Inspector General for Policy Planning and Management.
Gregory H. Friedman	Deputy Inspector General for Audit Services.
Nancy L. Hendricks	Assistant Inspector General for Audits.
Stanley R. Sulak	Director Audit Policy Plans and Programs.
DEPARTMENT OF HEALTH AND HUMAN SERVICES	
Michael F. Mangano	Principal Deputy Inspector General.
Thomas D. Roslewicz	Deputy Inspector General for Audit Services.
Joseph E. Vengrin	Assistant Inspector General for Audit Policy/Oversight.
George Reeb	Assistant Inspector General for Health Care Financing Audits.
Joe Green	Assistant Inspector General for Public Health Service Audits.
John A. Ferris	Assistant Inspector General for Human, Family and Departmental Services Audits.
John E. Hartwig	Deputy Inspector General for Investigations.
Paul F. Conroy	Assistant Inspector General for Policy and Oversight.
George Grob	Deputy Inspector General for Evaluation and Inspections.
Dennis J. Duquette	Deputy Inspector General for Management and Policy.
Eileen Boyd	Assistant Inspector General for Office of Civil Fraud and Administrative Adjudication.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	
John J. Connors	Deputy Inspector General.
John H. Greer	Assistant Inspector General for Audit.
Patrick J. Neri	Assistant Inspector General for Investigation.
Judith Hetherton	Counsel to the Inspector General.
DEPARTMENT OF INTERIOR	
Joyce N. Fleischman	Deputy Inspector General.
DEPARTMENT OF JUSTICE	
Robert L. Ashbaugh	Deputy Inspector General.
Mary W. Demory	Assistant Inspector General for Management and Planning.
Howard L. Sribnick	General Counsel.
DEPARTMENT OF LABOR	
Patricia Dalton	Deputy Inspector General
Sylvia Horowitz	Assistant Inspector General for Office of Management and Council.
Joseph Fisch	Assistant Inspector General for Audit.
F.M. Broadaway	Assistant Inspector General for Investigations.
DEPARTMENT OF STATE	
John C. Payne	Assistant Inspector General for Audits.
M. Milton MacDonald	Deputy Assistant Inspector General for Audits.
James K. Blubaugh	Assistant Inspector General for Inspections.
Robert S. Terjesen	Assistant Inspector General for Investigations.
Donald S. Norman	Deputy Assistant Inspector General for Security Oversight.

Members	Title
DEPARTMENT OF TRANSPORTATION	
Mario A. Lauro, Jr	Deputy Inspector General.
Roger P. Williams	Senior Counsel.
Raymond J. DeCarli	Assistant Inspector General for Auditing.
Wilbur L. Daniels	Assistant Inspector General for Inspections and Evaluations.
Lawrence H. Weintrob	Deputy Assistant Inspector General for Auditing.
Patricia J. Thompson	Director of Administration.
Alexis M. Stefani	Director, Office of Transportation Program Audits.
David F. Kent	Director, Office of Information Technology, Financial and Secretarial Audits.
DEPARTMENT OF TREASURY	
Vacant	Deputy Inspector General.
Richard Calahan	Assistant Inspector General for Audit.
James Cottos	Assistant Inspector General for Investigations.
Gary Whittington	Assistant Inspector General for Policy, Planning and Resources.
Dennis Schindel	Deputy Assistant Inspector General for Program Audits.
Vacant	Deputy Assistant Inspector General for Financial Audits.
John Balakos	Director of Oversight.
Robert Cesca	Executive Assistant to the Assistant Inspector General for Audit.
DEPARTMENT OF VETERANS AFFAIRS	
Michael J. Costello	Assistant Inspector General for Investigations.
David H. Gamble	Deputy Assistant Inspector General for Investigations.
Michael G. Sullivan	Assistant Inspector General for Auditing.
Michael Slachta, Jr	Deputy Assistant Inspector General for Auditing.
Victor F. Bouril	Director, Planning, Financial Review and Operation Support in the Office of the Assistant Inspector General for Auditing.
Jack H. Kroll	Assistant Inspector General for Departmental Reviews and Management Support.
Alastair M. Connell, M D	Assistant Inspector General for Healthcare Inspections.
Maureen T. Regan	Counselor to the Inspector General.
ENVIRONMENTAL PROTECTION AGENCY	
Nikki Tinsley	Deputy Inspector General.
Kenneth Konz	Assistant Inspector General for Audit.
John Jones	Assistant Inspector General for Management.
FEDERAL EMERGENCY MANAGEMENT AGENCY	
Richard Skinner	Assistant Inspector General for Audit.
Paul Lillis	Assistant Inspector General for Investigations.
GENERAL SERVICES ADMINISTRATION	
Joel S. Gallay	Deputy Inspector General.
Kathleen S. Tighe	Counsel to the Inspector General.
James E. Henderson	Assistant Inspector General for Investigations.
William E. Whyte, Jr	Assistant Inspector General for Auditing.
Eugene L. Waszily	Deputy Assistant Inspector General for Auditing.
Lawrence J. Dempsey	Assistant Inspector General for Quality Management.
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	
Lewis D. Rinker	Deputy Inspector General.
OFFICE OF PERSONNEL MANAGEMENT	
Joseph R. Willever	Deputy Inspector General.
Harvey D. Thorp	Assistant Inspector General for Audits.
SMALL BUSINESS ADMINISTRATION	
Karen S. Lee	Deputy Inspector General.
Phyllis K. Fong	Assistant Inspector General for Management and Legal Counsel.
Stephen Marica	Assistant Inspector General for Investigations.
Peter L. McClintock	Assistant Inspector General for Auditing.
Thomas C. Cross	Assistant Inspector General for Inspection and Evaluation.
SOCIAL SECURITY ADMINISTRATION	
Daniel W. Blades	Assistant Inspector General for Audit.
U S INFORMATION AGENCY	
J. Richard Berman	Assistant Inspector General for Audit.
LeRoy Lowery, III	Assistant Inspector General for Inspections.

Dated: September 11, 1995.

June Gibbs Brown,

Inspector General, Department of Health and Human Services; and Vice Chair, PCIE.

[FR Doc 95–23260 Filed 9–19–95; 8:45 am]

BILLING CODE 4150-04-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36226; PA–19; File No. S7–27–95]

Privacy Act of 1974; Establishment of New System of Records, Telephone Call Detail Records (SEC–39)

AGENCY: Securities and Exchange Commission.

ACTION: Notification of the establishment of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission (Commission) gives notice of a new Privacy Act system of records, Telephone Call Detail Records (SEC–39).

DATES: Comments on the establishment of the new system of records must be received no later than October 20, 1995. The new system of records will be effective October 30, 1995, unless the Commission receives comments which would result in a contrary determination.

ADDRESSES: Persons wishing to submit comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. S7–27–95. Copies of the submission and all written comments will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Hannah R. Hall, Privacy Act Officer, Tel. (202) 942–4320, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549

SUPPLEMENTARY INFORMATION: This report is to give notice of the establishment of a new system of records entitled Telephone Call Detail Records—SEC–39, which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

The Commission is establishing the Telephone Call Detail Records system to enhance its ability to assess employee use of the telephone systems provided by the Commission (i.e. Private Automated Branch Exchange (PABX) telephone system installed at the Headquarters Building in Washington, DC, and the Operations Center and the Operations Center Annex in Alexandria, Virginia, and the Federal Telecommunications System (FTS) throughout the entire Commission), and to assist investigations into possible employee and contractor misconduct. Since parts of this system may be used to retrieve information about an individual through the telephone number that has been assigned to that individual, the Privacy Act of 1974, as amended, requires a general notice of the existence of this system of records—to the public. The information may be used for telecommunication traffic studies, cost projections or other management studies and to enable the Commission to determine responsibility for placement of specific calls in connection with inquiries into possible employee or contractor misconduct, including misuse of Government-provided telephones. The records generated by the telephone system used by the Commissions's Headquarters Building, the Operations Center and the Operations Center Annex may identify the numbers called from a particular extension, calls made from or received at a particular extension, the date and time of the call and the length of the call. This system may also contain telephone assignment records, records reflecting the location of government telephones and requests for information concerning calls made to or from particular extensions.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Oversight and Reform of the U.S. House of Representatives, the Committee on Government Affairs of the U.S. Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated July 15, 1994.

Accordingly, the Commission is giving notice of the establishment the following system of records, entitled Telephone Call Detail Records:

SEC–39

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on individuals (generally Commission employees and contractor personnel) who make local and/or long distance calls and individuals who receive telephone calls placed from Commission telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of Commission telephones to place or receive local and/or long distance calls, whether through the Private Automated Branch Exchange (PABX) telephone system, the Federal Telecommunications System (FTS), commercial systems, or similar systems; records indicating assignment of telephone numbers to employees; and records relating to requests for telephone call detail information (specifically, it includes the telephone number that is assigned to an individual, the telephone number called for all outgoing calls, the date and time of the call and the length of the call).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 78d; 15 U.S.C. 78w; 5 U.S.C. 301; and 41 CFR subpart 201–21.6.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records and data may be disclosed as necessary (1) to employees of the Office of Inspector General in connection with investigations of employee or contractor misconduct; (2) to employees or contractors of the Commission to determine individual responsibility for telephone calls; (3) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906; (4) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; (5) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (6) in the event that material in this system indicates a violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto; (7) to a telecommunications company providing telecommunications support to permit servicing the account; (8) to agency management in connection with employees suspected of misuse of Government-provided telephones that might result in the initiation of disciplinary action; and (9) to agency personnel for use in obtaining a sample of callers for follow-up surveys to assess customer service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Records are maintained on computer diskettes, electronic media, and/or hard copy media.

RETRIEVABILITY:

Records are retrievable by a Commission telephone number that is assigned to an individual, by the telephone number called for all outgoing calls, by the date and time of the call, and by the length of the call.

SAFEGUARDS:

Records are safeguarded through the use of appropriate computer passwords to restrict access. In addition, floppy disks are kept in a locked room which may only be entered with a pass key.

RETENTION AND DISPOSAL:

Records are retained on-site for three (3) years. Thereafter, records will be transferred in accordance with National Archives and Records Administration General Records Schedule 12.

SYSTEM MANAGER AND ADDRESS:

Voice Communications Manager, Facilities Branch, Office of Administrative and Personnel Management, Securities and Exchange Commission, Room 2C05, 450 Fifth Street, NW, Washington, DC 20549.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the Privacy Act Officer, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

RECORD SOURCE CATEGORIES:

Telephone directory, call detail listing, and requests for call detail information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: September 14, 1995.

By the Commission.

Margaret H. McFarland,

Deput Secretary.

[FR Doc. 95–23292 Filed 9–19–95; 8:45 am]

BILLING CODE 8010–01–P

[Release No. 34–36225; File No. SR–Amex–95–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to Debt Listing Standards

September 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 19, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 703 and Sections 104, 216, 330 and 1003 of the Amex Company Guide.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In light of recent rule changes adopted by the Commission,[1] as well as significant rule changes implemented by the New York Stock Exchange ("NYSE"),[2] all to facilitate the exchange listing of debt securities, the Amex has similarly reviewed its rules and policies with a view towards making the Exchange more accessible to debt issuers and facilitating the listing of such securities. The Exchange believes that it is important to both investors and companies that the Exchange be able to list debt securities more easily, as an Exchange listing provides debtholders with a transparent auction market for secondary trading.

Original Listing Guidelines

Currently, the Amex applies its original listing guidelines[3] in evaluating the listing eligibility of an issuer of debt securities. The Exchange also specifies that the issuer should be able to demonstrate that it appears to be in a financial position sufficient to satisfactorily service the debt issue to be listed. The debt issue should be at least $5 million in principal amount and aggregate market value, for issuers whose common stock is traded on the Amex or the NYSE, or $20 million with at least 100 holders, for non-listed issuers. The Exchange will consider delisting a bond issue if the aggregate market value or the principal amount of the bonds publicly held is less than $400,000.

The Exchange proposes to replace its numerical listing guidelines with new guidelines based on issuer or bond rating status. Under these new guidelines, if an issuer has equity securities listed on the Amex or NYSE, and is in "good standing,"[4] the Exchange will normally list that company's debt securities so long as they have an aggregate market value or principal amount of at least $5 million. If an issuer does not have equity securities listed on the Amex or NYSE, the Amex will rely (as set forth below) on the analyses of nationally recognized securities rating organizations ("NYSROs"),[5] such as Standard & Poor's or Moody's.[6]

Specifically, the Exchange proposes to make the following changes to Section 104 of the Amex Company Guide:

- Eliminate the guideline calling for a debt issuer to satisfy the size and earnings guidelines applicable to issuers listing common stock;
- Eliminate the guideline calling for the issuer to demonstrate that it will be able to satisfactorily service the debt issue to be listed;
- Eliminate the guideline calling for non-listed issuers to have at least 100 holders;
- Permit the Exchange to list a debt issue if it has an aggregate market value *or* principal amount of at least $5 million (as opposed to aggregate market value *and* principal amount of $5 million);
- Permit the Exchange to list debt securities that are issued or guaranteed by an issuer which has equity securities listed on the Amex or NYSE (or which is affiliated with a listed issuer); and
- Permit the Exchange to list the debt securities of "unaffiliated" issuers[7] if an NRSRO has assigned a current rating to the debt security that is no lower than an Standard & Poor's Corporation "B" rating (*i.e.*, B– or better) or the equivalent rating of another NRSRO. A "B" rating indicates that the debt issuer currently has the capacity to meet interest payments and principal repayments, and that such capacity is not dependent upon favorable business, financial or economic conditions. If no NRSRO has assigned a rating to the issue, an NRSRO must have currently assigned either an investment grade rating (*i.e.*, an S&P or equivalent rating no lower than "BBB–") to a senior issue or a rating that is no lower than an S&P "B" rating (or equivalent) to a *pari passu* or junior issue.[8]

The Exchange is also proposing to be able to list municipal and sovereign bonds (*i.e.*, the debt of foreign governments, American states and localities, or government agencies).[9] The Exchange will evaluate whether to list these issuers on a case-by-case basis and will treat the issuer as an "unaffiliated" corporate issuer so that the rating guidelines described above will have to be met.

Continued Listing Guidelines

The Amex will still consider delisting a debt issue if its aggregate market value or principal amount is less than $400,000. However, the Exchange proposes to amend Section 1003 of the Amex Company Guide to clarify that any debt issuer that is unable to meet its obligation on the listed debt securities may be delisted. As with all the guidelines in Section 1003, this will permit, but not require, the delisting of the security in such a circumstance. In applying this standard, the Exchange will normally not delist the debt if there is value in the security and continued Exchange trading is in the best interests of investors. However, if an issuer is unable to meet its financial obligations and there is minimal or no value in the security, the Exchange will give serious consideration to delisting the bond issue. The Exchange will also consider delisting debt that was listed based on the issuer being either majority-owned or guaranteed by an Amex or NYSE issuer when the equity securities of such owner or guarantor are delisted.

In the case of debt securities that are convertible into equity securities, the Exchange proposes to review the continued listing of the debt security when the underlying equity security is delisted. The Exchange will delist the convertible bond when the underlying equity security is no longer subject to real-time trade reporting or if the Exchange delists the underlying equity security for violation of any of the Exchange's "corporate governance" guidelines.[10]

Listing Procedures

The Exchange also is proposing to simplify the listing process for debt issuers by reducing the number of supporting documents that an applicant must file in support of its debt listing application. In the course of the Exchange's review, several such documents were identified as being either unnecessary, duplicative, or unduly burdensome to issuers.

Specifically, the following changes are proposed to Section 216 of the Company Guide:

- Schedule of distribution—Since the Exchange is proposing to eliminate distribution (holder) guidelines for debt securities, this schedule will no longer be necessary.

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[1] Recently, the Commission took action to make it easier for exchanges to list debt securities, removing restrictions that existed for listed debt securities but not for over-the-counter traded debt securities. Among other things, the Commission made inapplicable to listed debt certain Commission borrowing restrictions and proxy rules, none of which are applicable to unlisted debt. *See* Securities Exchange Act Release No. 34922 (November 1, 1994), 59 FR 55342 (November 7, 1994).

[2] In Securities Exchange Act Release No. 34019 (May 5, 1994), 59 FR 24765 (May 12, 1994), the Commission approved amendments to the NYSE listings standards for debt that were similar to this Amex proposal.

[3] The Exchange guidelines provide for the issuer to have stockholders' equity of at least $4,000,000 and pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[4] A company is in "good standing" if it is above the relevant continued listing guidelines.

[5] *See* Securities Exchange Act Release No. 34616 (August 31, 1994), 59 FR 46304 (September 7, 1994) (Concept Release discussing Commission's oversight role with respect to NRSROs).

[6] Like the NYSE, the Exchange will not conduct a review in either instance to determine whether the issuer satisfies its original equity listing guidelines.

[7] An "unaffiliated" issuer is one that has no equity securities listed on the Exchange or the NYSE, and is not affiliated with or guaranteed by an issuer of Amex (or NYSE)-listed equity securities.

[8] An S&P debt rating is a current assessment of the creditworthiness of an obligor with respect to a specific obligation. The ratings range from "AAA" to "D." Debt rated "AAA" has the highest rating assigned by S&P because the capacity to pay interest and repay principal is extremely strong. "Investment grade ratings" include bonds rated in the top four categories ("AAA," "AA," "A," and "BBB"). Bonds rated "CCC" or lower are dependent on favorable business, financial or economic conditions to meet timely payments of interest and repayment of principal. Debt rated "D" is in default.

[9] This does not include debt issued or guaranteed by the United States Government or agencies thereof that can be admitted to dealings on the Exchange pursuant to Amex Rule 140.

[10] The Amex Company Guide contains guidelines regarding, for example, conflicts of interest, independent directors, quorum, and remedies available to bondholders upon default.

- Trustee's certificate—The Exchange currently requires a certificate from the trustee that shows (1) acceptance of the trust; (2) that the securities have been issued in accordance with the terms of the indenture; (3) what disposition has been made of securities redeemed or refunded; (4) that pledged collateral has been deposited; and (5) what disposition has been made of prior obligations. Issuers often complain that it is unduly burdensome for them to obtain the trustee's certificate because many trustees are reluctant to certify the issuer-specific information required by items (2) through (5). Therefore, the Exchange proposes to require that the certificate show only the trustee's acceptance of the trust. This would conform the Exchange's practice to that of the NYSE.
- Listing resolution—The Exchange currently requires bond issuers to obtain a resolution of their board of directors authorizing the filing of the listing application. This requirement is often burdensome to comply with, and can delay a listing if the company's board is not scheduled to meet for a month or more. The requirement to obtain a listing resolution is essentially ceremonial in nature and does not serve any significant purpose. Therefore, the Exchange proposes to eliminate this requirement.[11]

It is expected that by making the application process less burdensome, the Exchange will be able to increase the number of debt listings.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and to perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submission should refer to File No. SR–Amex–95–29 and should be submitted by October 11, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23293 Filed 9–19–95; 8:45 am]

BILLING CODE 8010–01–M

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[11] The Commission notes that the NYSE also does not require listing resolutions. Like the NYSE, the Amex requires an opinion of counsel that the issuance of the debt has been approved by the company's board of directors.

[Release No. 34–36231; File No. SR–NYSE–95–17]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Specialists Displaying the Full Size of Certain Orders

September 14, 1995

I. Introduction

On April 21, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to issue an Information Memo discussing procedures under exchange rules with respect to the display of limit orders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35687 (May 8, 1995), 60 FR 25751 (May 12, 1995). No comments were received on the proposal.

II. Description

The Exchange proposes to issue an Information Memo outlining its policy with respect to displaying certain orders received by a specialist. The policy requires specialists to display the full size of all orders received through the SuperDOT order routing system and the full size of all orders received by specialists manually that are subsequently entered into the electronic book. This requirement includes increasing the size of a quotation for orders at the same price as the current bid or offer. The policy also sets forth the specialist's responsibility when a member who gives an order requests that less than the full size of the order be shown in the quotation. In that situation, a specialist is only responsible to enter in the electronic book and show the size requested. The portion not requested to be shown will be handled manually as a "held" order, but will be last in terms of time priority to all other orders on the specialist's electronic book at that price. If the specialist is subsequently requested to show an additional portion, or the remainder, of the order, the specialist will enter the price and size into the electronic book, with the order so entered having priority on the book *vis-à-vis* other orders as of the time of entry on the book. The specialist will increase the

quotation size to reflect the additional amount entered on the book.

Specialists will be expected to display as soon as practicable any order that, in relation to currently market conditions in a particular security, represents a material change in the supply or demand for that security. For example, if the market in XYZ security is 20 bid to 20¼ offered, 1,000 shares bid and 1,000 shares offered, and the specialist receives an order to sell 10,000 shares at 20¼, the specialist will be expected to change the size of the offer to 11,000 shares as soon as he or she becomes aware of the order. If the quotation already reflects significant supply (demand), and the specialist receives an order that is relatively *de minimis* in relation to such supply (demand), the specialist may take a reasonable period of time, which should not generally exceed two minutes, before updating the quotation, so as to avoid constant revisions of quotations that do not reflect material changes in supply and demand. For example, if the market in XYZ security is 20 bid to 20¼ offered, 5,000 shares bid and 50,000 shares offered, and the specialist receives an order to sell 200 shares at 20¼, the specialist will be permitted to wait a reasonable period of time before changing the size of the offer to 50,200 shares.

Under exceptional circumstances, the specialist will not necessarily display the full quotation size. For example, as noted in NYSE Information Memo 94–32,[3] when a member proposes to effect a block transaction at a significant premium or discount from the prevailing market and the specialist is aware of interest on the contra side, it may be more appropriate for the specialist and Floor Official(s) to gap the quotation in a security for a brief period, generally not exceeding five minutes, with a view toward contacting and/or attracting contra market interest. In such case, the bid or asked price should touch the prior sale price and reflect size of 100 shares. The same principles will also apply to a situation where there is a sudden influx of market orders on one side of the market that would be likely to result in significant price change.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11A.[4] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. The Commission also believes the proposal is consistent with Section 11A(1)(b) of the Act, which directs the Commission to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in securities. Rule 11Ac1–1 under the Act[5] requires exchanges to establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from brokers or dealers, processing such bids, offers and sizes, and making such bids, offers and sizes available to quotation vendors.

The Commission has long believed that transparency—the real-time, public dissemination of trade and quote information—plays a fundamental role in the fairness and efficiency of the secondary markets. Commission efforts to ensure that data concerning trading interest, volume, and prices is available to investors, analysts, and all other participants in the U.S. equity markets, have been predicated on the Commission's belief that transparency helps to link dispersed markets and improves the price discovery, fairness, competitiveness, and, attractiveness of equity markets.

In its Market 2000 Study,[6] the Division of Market Regulation ("Division") recommended that the self-regulatory organizations encourage the display of all limit orders in listed stocks that are better than the best intermarket quotes, because it believed that such a requirement would provide a more accurate picture of trading interest, result in tighter spreads, and contribute to improved price discovery. In NYSE Information Memo No. 93–12, the Exchange advised specialists that, pursuant to NYSE Rule 79A.10,[7] all orders received by specialists through the SuperDOT system were deemed to be accompanied by an instruction that they be quoted at the limit price on the order when such limit price is *better* than the current quotation.

The Exchange now is expanding this policy by requiring that specialists display the full size of all orders (unless specifically instructed otherwise), including increasing the size of a quotation for orders at the same price as the current bid or offer.[8] The policy being adopted herein, in combination with the policy expressed in NYSE Information Memo 93–12, will require in most circumstances that specialists' quotations reflect the full size of the best prices available for securities traded on the NYSE.[9]

The Commission believes that the NYSE proposal to require specialists to display the full size of limit orders received through SuperDot or limit orders received manually and subsequently entered into the electronic book (unless requested by a member to display less than the full size of an order) will add to the transparency of the market for stocks traded on the NYSE. The proposal will ensure that the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 34303 (July 1, 1994), 59 FR 35157 (July 8, 1994).

[4] 15 U.S.C. 78f(b) and 78k–1 (1988).

[5] 17 CFR 240.11Ac1–1 (1994).

[6] *See* Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developments*, January 1994, at Study IV ("Market 2000 Study"). The Division also recommended that the NASD consider encouraging the display of limit orders in Nasdaq securities that improve the best Nasdaq quotation.

[7] NYSE Rule 79A.10 requires that all Exchange members represent limit orders at their limit prices when requested by their customers to do so.

[8] For orders at the same price as the current bid or offer, specialists will be expected to increase the size of the quotation as soon as practicable when, in relation to current market conditions in a particular security, the order represents a material change in the supply or demand for that security. Nonetheless, if the quotation already reflects significant supply (demand), and the specialist receives an order at the current bid or offer that is relatively *de minimis* in relation to such supply (demand) at that price, the specialist may take a reasonable period of time, which should not generally exceed two minutes, before increasing the size of the quotation. The Commission notes that an accumulation of orders considered *de minimis* individually could, in the aggregate, represent a material change in the supply or demand for a security. In that case, the specialist should increase the size of the quotation as soon as practicable to reflect the new aggregate interest.

[9] NYSE Information Memo 93–12 sets forth the Exchange's view that all limit orders received by specialists through the SuperDot system are deemed to contain an implicit instruction to represent such orders at their limit prices. This memo states that specialists must reflect SuperDot limit orders in the Exchange's published quotation at their limit prices as soon as practicable following receipt of the orders. It also states that the mere existence of different size between the existing bid and offer, or a substantial sized bid or offer on the same side of the market as the limit order (compared to the size of the limit order received), would not justify failure to represent the limit order at the limit price immediately. Consequently, the display requirement in Information Memo 93–12 precludes the application of the *de minimis* standard discussed herein (*see supra* note 8) to situations requiring the specialist to change the current quotation to reflect a limit order at a better price. In fact, the policy being adopted in the instant proposal, in conjunction with the policy expressed in Information Memo 93–12, requires specialists in almost all instances to change their quotation upon the receipt of a limit order that betters the market and also to display the full size of that order regardless of its size in relation to the size of the existing bid or offer.

NYSE disseminates quotes that reflect not only the best bid and offer in a stock, but also the depth of the trading interest at those prices. This added transparency should benefit investors and promote the efficiency of the NYSE market.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–95–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23297 Filed 9–19–95; 8:45 am]

BILLING CODE 8010–01–M

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[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1994).

[Investment Company Act Release No. 21356; 811–5913]

The INDEPENDENCE CAPITAL Group of Funds, Inc.; Notice of Application for Deregistration

September 13, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The INDEPENDENCE CAPITAL Group of Funds, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on July 26, 1995 and amended on August 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Bellevue Park Corporate Center, 103 Bellevue Parkway, Wilmington, Delaware, 19809.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end, registered investment company, incorporated in the state of Maryland on September 21, 1989. Applicant has three money market series: Money Market Fund; Government Money Market Fund; and Tax-Free Money Market Fund (collectively, the "Money Market Funds"). Each Money Market Fund has two classes of stock: INDEPENDENCE CAPITAL Class and Janney Montgomery Scott Class. In addition, applicant has eight non-money market series: Total Return Growth Fund; Opportunities Fund, Total Return Bond Fund; Municipal Bond Fund; New York Municipal Bond Fund; Short-Intermediate Government Fund; Balanced Fund; and Small Capitalization Stock Fund. Each Non-Money Market Fund has one class of common stock.

2. On September 29, 1989, applicant filed a Notification of Registration on Form N–8A and a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on January 31, 1990. The initial public offering for: Total Return Growth Fund, Opportunities Fund, and Total Return Bond Fund commenced on February 1, 1990; the Money Market Funds commenced on April 30, 1990; Municipal Bond Fund and New York Municipal Bond Fund commenced on November 1, 1990; Short-Intermediate Government Fund commenced on April 30, 1992; and Balanced Fund and Small Capitalization Stock Fund commenced on December 31, 1993.

Merging Series

3. On December 12, 1994, applicant's board of directors approved a reorganization plan whereby shares of common stock of Total Return Growth Fund, Opportunities Fund, Total Return Bond Fund, Municipal Bond Fund, New York Municipal Bond Fund, Short-Intermediate Government Fund, and Balanced Fund (collectively, the "Non-Money Market Funds") would be exchanged for shares of beneficial interest of corresponding series of Sentinel Group Funds, Inc. (the "Acquiring Fund"). The board approved the reorganization because the Acquiring Fund had twice the asset size of applicant and was generally able to achieve greater economies of scale and lower expense ratios than applicant. In addition, the Acquiring Fund had a greater capacity for distribution.

4. On January 6, 1995, preliminary copies of proxy materials were filed with the SEC. Applicant and the Acquiring Fund also entered into an Agreement and Plan of Reorganization dated as of February 6, 1995 (the "Reorganization Agreement"). On February 9, 1995, definitive proxy materials were distributed to shareholders of the Non-Money Market Funds. At a special meeting held on March 10, 1995, the shareholders of the Non-Money Market Funds approved the Reorganization Agreement.

5. On March 24, 1995, Total Return Growth Fund had 2,289,319.870 shares outstanding with an aggregate and per share net asset value of $25,653,998 and $11.21, respectively. On that date, Opportunities Fund had 2,491,972.672 shares outstanding with an aggregate and per share net asset value of $26,240,738 and $10.53, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Total Return Growth Fund and Opportunities Fund to the Acquiring Fund's Common Stock Fund in exchange for shares of beneficial interest of Acquiring Fund's Common Stock Fund.

6. On March 24, 1995, Balanced Fund had 426,144.768 shares outstanding with an aggregate and per share net asset value of $4,084,150 and $9.58, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Balanced Fund to Acquiring Fund's Balanced Fund in exchange for shares of beneficial interest of Acquiring Fund's Balanced Fund.

7. On March 24, 1995, Total Return Bond Fund had 3,219,052.158 shares outstanding with an aggregate and per share net asset value of $31,075,198 and $9.65, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Total Return Bond Fund to Acquiring Fund's Bond Fund in exchange for shares of beneficial interest of Acquiring Fund's Bond Fund.

8. On March 24, 1995, Municipal Bond Fund had 414,491.194 shares outstanding with an aggregate and per share net asset value of $4,493,940 and $10.82, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Municipal Bond Fund to Acquiring Fund's Tax-Free Income Fund in exchange for shares of beneficial interest of Acquiring Fund's Tax-Free Income Fund.

9. New York Municipal Bond Fund had 514,573.737 shares outstanding with an aggregate and per share net asset value of $5,759,369 and $11.19, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of New York Municipal Bond Fund to Acquiring Fund's New York Tax-Free Income Fund in exchange for shares of beneficial interest of Acquiring Fund's New York Tax-Free Income Fund.

10. On March 24, 1995, Short-Intermediate Government Fund had 1,578,443.284 shares outstanding with an aggregate and per share net asset value of $15,218,556 and $9.64, respectively. On March 27, 1995, applicant transferred all of the assets and liabilities of Short-Intermediate Government Fund to Acquiring Fund's Short-Intermediate Government Fund in exchange for shares of beneficial interest of Acquiring Fund's Short-Intermediate Government Fund.

11. Each shareholder of the Non-Money Market Fund received, in exchange for his or her shares in applicant, shares of the corresponding series of the Acquiring Fund having a net asset value equal to the aggregate net asset value of his or her shares in applicant immediately prior to the reorganization.

Liquidating Series

12. On December 29, 1994, Small Capitalization Stock Fund had 100,010 shares outstanding with an aggregate and per share net asset value of $1,000,100 and $10.00, respectively. On that date, the sole shareholder gave notice that it wanted to redeem its entire holdings. On December 30, 1995 complete redemption distributions were made. Such distributions effectively liquidated the Small Capitalization Stock Fund.

13. On March 24, 1995, Money Market Fund had 363,147.490 INDEPENDENCE CAPITAL Class shares outstanding with an aggregate and per share net asset value of $363,154 and $1.00, respectively. Government Money Market Fund had 3,130,200 INDEPENDENCE CAPITAL Class shares outstanding with an aggregate and per share net asset value of $3,136 and $1.00, respectively. Tax-Free Money Market Fund had 111,213.310 INDEPENDENCE CAPITAL Class shares outstanding with an aggregate and per share net asset value of $111,215 and $1.00, respectively. On March 27, 1995, applicant made complete redemption distributions to the shareholders of the INDEPENDENCE CAPITAL Class of stock of the Money Market Funds.

14. On June 9, 1995, Money Market Fund had 407,919,678.080 Janney Montgomery Scott Class shares outstanding with an aggregate and per share net asset value of $407,919,678 and $1.00, respectively. Government Money Market Fund had 279,565,212.580 Janney Montgomery Scott Class shares outstanding with an aggregate and per share net asset value of $279,565,213 and $1.00, respectively. Tax-Free Money Market Fund had 107,965,238.920 Janney Montgomery Scott Class shares outstanding with an aggregate and per share net asset value of $107,965,239 and $1.00, respectively. On June 9, 1995, the sole shareholder of the Money Market Funds' Janney Montgomery Class of stock gave notice that it wanted to redeem its holdings and complete redemption distributions were made.

General Matters

15. Total expenses of the reorganization were $313,000. Total Return Growth Fund bore $1,543.65 and Opportunities Fund bore 1,502.04. The remainder was borne by applicant's investment adviser, Independence Capital Management, Inc. Such expenses were for printing and professional fees.

16. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

17. Applicant will terminate its existence as a Maryland corporation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23296 Filed 9–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21354; 812–7679]

The Managers Funds and The Managers Funds, L.P.; Notice of Application

September 13, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Managers Funds (the "Trust") and The Managers Funds, L.P. (the "Manager").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) and rule 18f–2.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Manager to enter into sub-advisory agreements on behalf of each series of the Trust without receiving approval of the series' shareholders.

FILING DATES: The application was filed on February 8, 1991, and amendments thereto were filed on May 18, 1994, July 29, 1994, July 28, 1995, and September 13, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, 40 Richards Avenue, Norwalk, Connecticut 06854.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney at (202) 942–0579, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered open-end management investment company organized as a Massachusetts business trust. The Trust is a series company currently consisting of eleven separate series, each constituting a different investment portfolio (each a "Fund" and, collectively, the "Funds"). Applicants also request relief with

respect to any Fund that may be created in the future.

2. The Manager serves as investment manager to each Fund. Under its investment management agreement with the Trust, the Manager provides certain administrative services to the Trust and the Funds. In addition, the Manager selects and recommends to the trustees investment advisers to manage the portfolio of each Fund (the "Sub-Advisers"). The portfolio of a Fund may be managed by a single Sub-Adviser or may be allocated by the Manager between or among more than one Sub-Adviser.

3. The Manager monitors the performance of the various Sub-Advisers and researches and tracks the performance of potential new Sub-Advisers. The Manager has the authority to reallocate, from time to time, Fund assets among Sub-Advisers or terminate a sub-advisory relationship without prior approval by the trustees.[1] The Manager also makes recommendations to the trustees for the addition of new Sub-Advisers as it deems appropriate. For these services the Manager receives a management fee from each Fund, and the Manager in turn pays the advisory fee of each Sub-Adviser.

4. Applicants request an order permitting the Manager to enter into contracts with new Sub-Advisers for the Funds without obtaining shareholder approval. Although shareholders will not vote on Sub-Adviser changes, applicants will provide shareholders with an information statement that includes all the information about a new Sub-Adviser or sub-advisory contract that would be included in a proxy statement. The investment management contracts between the Manager and the Trust or between the Manager and the Funds would remain subject to the shareholder voting requirements of the Act.

5. In 1983, the SEC issued an order to applicants granting an exemption similar to the one now being requested.[2] At that time, each investor in the Funds entered into a separate asset management consulting agreement with the Manager and paid an individually negotiated fee directly to the Manager. No advisory fees were paid by the Funds to the Manager. Subsequently, the fee structure was changed so that the Funds, rather than individual shareholders, pay management fees to the Manager. Applicants ceased relying on the 1983 order after the Funds' fee structure was changed. The requested order would supersede the 1983 order.

Applicants' Legal Analysis

1. Section 15(a) makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants argue that the requested exemption would permit the Manager to perform to the fullest extent the principal function the Funds are paying it to perform: selecting Sub-Advisers, monitoring their performance, and making whatever changes in the roster of Sub-Advisers are appropriate, subject to the approval of the Fund trustees. To require that shareholders approve each new Sub-Adviser would result not only in unnecessary administrative expense to the Funds, but could result in harmful delays in executing changes in Sub-Advisers or their sub-advisory agreements that the Manager and the trustees have determined are necessary.

3. Primary responsibility for management of the Funds is vested in the Manager, subject to oversight by the trustees. The Manager continuously monitors the performance of each Sub-Advisor, and from time to time recommends the replacement of a particular Sub-Adviser, or allocation of a portion of the assets of a particular Fund to an additional Sub-Adviser. Applicants argue that this practice distinguishes the Trust from the vast majority of other investment companies. Applicants note that the Trust currently has eleven Funds that were organized at various times over the last eleven years. During this time, fifty different Sub-Advisers have been employed by the Trust.

Applicants state that the frequency of Sub-Adviser changes and the reasons underlying these changes relate to a variety of factors including, the size of a Fund's assets, the type of assets the Fund purchases, the performance of a particular Sub-Adviser, a change in control that causes the sub-advisory agreement to terminate, or a decision to change investment styles. Applicants argue that their arrangements are distinguishable from those of most other investment companies where the identity of the company providing portfolio management is the primary basis for choosing among funds with similar investment objectives and policies.

4. Applicants submit that investors will be in a position to make a fully informed investment decision as to the purchase, redemption, or retention of Fund shares. The Trust's prospectus discloses information concerning the identity, ownership, and qualifications of the Sub-Advisers in full compliance with Form N–1A. Further, the information statements would provide shareholders with all information regarding a new Sub-Adviser or a material change in a sub-advisory agreement to the same extent as would set forth in a proxy statement. These arrangements are consistent with the protection of investors because they both permit the Trust to avoid the administrative burden and expense associated with a proxy solicitation (which benefits all shareholders, including those that might redeem their shares after review of an information statement relating to a new Sub-Adviser or a material change in a sub-advisory agreement they did not favor) and provide full disclosure to investors, permitting them to "vote with their feet."

5. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the same extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The Manager will provide general management and administrative services to the Trust, and, subject to review and approval by the board of trustees (the "Trustees"), will (a) set the Funds' overall investment strategies; (b) select Sub-Advisers; (c) monitor and evaluate the performance of Sub-Advisers; (d) allocate and, when appropriate, reallocate a Fund's assets among its Sub-Advisers; and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Trust's investment objectives, policies, and restrictions.

2. The operation of the Funds in the manner described in this application has been approved by a majority of each Fund's outstanding voting securities, as defined in the Act. Before a future Fund that does not presently have an effective registration statement may rely on the order, its initial shareholder will approve the multi-manager structure before that Fund's shares are offered to the public.

3. The Trust will furnish to shareholders the information about a new Sub-Adviser or material change in a sub-advisory contract that would be included in a proxy statement. The Trust will meet this condition by providing shareholders, within sixty (60) days of the hiring of a Sub-Adviser or the implementation of any material change to the terms of a sub-advisory contract, with an information statement complying with Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the "Exchange Act"). This information statement also will meet the requirements of Schedule 14A under the Exchange Act.

4. Each Fund's prospectus will disclose the existence, substance, and effect of the order requested hereby.

5. No trustee or officer of the Trust or general partner or officer of the Manager owns or will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such trustee, officer or general partner) any interest in any Sub-Adviser, except for: (a) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

6. The Manager will not enter into any sub-advisory contract with any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Manager (an "Affiliated Sub-Adviser") without such contract, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

7. At all times, a majority of the trustees of the Trust will be persons each of whom is not an "interested person" of the Trust as defined in section 2(a)(19) of the Act. ("Independent Trustees"), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

8. When a change in Sub-Advisers is proposed for a Fund that has an Affiliated Sub-Adviser, the trustees, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trustee's board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 95–23294 Filed 9–19–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21357; 812–9612]

Sierra Trust Funds, et al.; Notice of Application

September 13, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Sierra Trust Funds, The Sierra Variable Trust (collectively, the "Existing Funds"), any registered investment companies, or series thereof, for which Sierra Investment Advisors Corporation ("Sierra Advisors") or any entity controlling, controlled by, or under common control with Sierra Advisors, acts in the future as investment adviser or principal underwriter ("Future Funds," and together with the Existing Funds, the "Funds"), and Sierra Advisors.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) and rule 2a–7 thereunder, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1), and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit each applicant investment company to enter into deferred compensation arrangements with its trustees who are not interested persons of the company.

FILING DATES: The application was filed on May 19, 1995 and amended on August 18, 1995 and September 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 9301 Corbin Avenue, Suite 333 Northridge, California 91324.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Existing Funds is a Massachusetts business trust registered under the Act as an open-end management investment company. The Sierra Trust Funds continuously offers its shares for sale to the general investing public and has three money market series. The Sierra Variable Trust continuously offers its shares for sale to insurance company separate accounts that fund variable annuity contracts and has one money market series. Sierra Advisors is the investment adviser to each Fund and is registered under the Investment Advisers Act of 1940.

2. Each Existing Fund has a board of trustees (collectively, the "Boards"), a majority of the members of which are not "interested persons" (the "Independent Trustees") of such Existing Fund within the meaning of section 2(a)(19) of the Act. Each Independent Trustee or one or more of the Funds receives fees each year which collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Funds. Applicants request an order to permit the Independent Trustees to elect to defer receipt of 50% or more of their trustees' fees pursuant to a deferred compensation plan (the "Plan") and related election agreement entered into between each Independent Trustee and the appropriate Fund. Under the Plan, the Independent Trustees could defer payment of trustees' fees (the "Deferred Compensation") in order to defer payment of income taxes, or for other

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[1] As a matter of practice, however, the trustees are kept apprised of such actions contemplated by the Manager, and all such actions are subject to review by the trustees.

[2] Investment Company Act Release Nos. 13594 (Oct. 24, 1983) (notice) and 13635 (Nov. 22,1983) (order). At the time of the 1983 order, only nine of the current eleven Funds were in existence.

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reasons. Participation in the Plan will be limited to the Independent Trustees.

3. Under the Plan, the deferred fees payable by a Fund to a participating Independent Trustee (a "Participant") will be credited to a book reserve account established by the Fund (an "Account"), as of the first business day following the date such fees would have been paid to the Independent Trustee. The value of an Account will be determined by reference to a hypothetical investment in shares of one or more of the Funds, as selected by each Participant or the Boards from a list as designated from time to time by the committee established to administer the Plan, in its sole discretion, as eligible for hypothetical investment under the Plan (the "Investment Funds"). Each Participant may elect to have his or her Deferred Compensation treated as if it had been invested and reinvested in shares of one or more of the Investment Funds (the "Underlying Securities").

4. With respect to open-end Funds, the initial value of Deferred Compensation credited to an Account will be effected at the respective current net asset value of each such open-end Fund. With respect to closed-end Funds, the initial value of Deferred Compensation credited to an Account will be effected at the respective current market price, less any brokerage fees which would be payable upon the acquisition of shares of such closed-end Fund in the open market. Thereafter, the value of such Account will fluctuate as the net asset value of the shares of each open-end Fund fluctuates or as the market value of the shares of each closed-end Fund fluctuates, as the case may be, and will also reflect the value of assumed reinvestment of dividends and capital gains distributions from each open-end and closed-end Fund in additional shares of such Fund.

5. The Funds' respective obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their respective general assets and property. The Plan provides that the Funds will be under no obligation to purchase, hold or dispose of any investments under the Plan, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Plan, then any and all such investments will continue to be a part of the respective general assets and property of such Funds.

6. As a matter of prudent risk management, to the extent a Participant selects an Investment Fund other than the Fund for which the Participant is deferring his or her trustee's fees, each Fund intends to and, with respect to any money market Fund that values its assets by the amortized cost method, will, purchase and hold shares of the Underlying Securities in amounts equal in value to the deemed investments of the Accounts of its Participants. Thus, in cases where the Funds purchase shares of the Underlying Securities, liabilities created by the credits to the Accounts under the Plan are expected to be matched by an equal amount of assets (i.e., a direct investment in Underlying Securities), which assets would not be held by the Fund if trustee's fees were paid on a current basis.

7. Payments under the Plan will be made in one lump sum or in generally equal annual installments over a five year period beginning as soon as administratively feasible after the Participant's termination of service. In the event of Participant's death, amounts payable under the Plan will thereafter be payable to the Participant's designated beneficiaries. In all other events, a Participant's right to receive payments will be nontransferable. In the event of the liquidation dissolution, or winding up of a Fund or the distribution of all or substantially all of a Fund's assets and property to its shareholders (unless the Fund's obligation under the Plan have been assumed by a financially responsible party purchasing such assets) or in the event of a merger or reorganization of a Fund (unless prior to such merger or reorganization, the Fund' Board determines that the Plan shall survive the merger or reorganization), all unpaid amounts in the Accounts maintained by such Fund shall be paid in a lump sum to the Participants on the effective date thereof.[1] The Plan will not obligate any participating Fund to retain a trustee in such a capacity, nor will it obligate any Fund to pay any (or any particular level of) trustee's fees to any trustee.

Applicants' Legal Analysis

1. Applicants request an order which would exempt the Funds (including each Fund's successors in interest[2]): (a) under section 6(c) of the Act from sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) and rule 2a–7 thereunder, to the extent necessary to permit the Funds to adopt and implement the Plan; (b) under sections 6(c) and 17(b) of the Act from section 17(a)(1) to permit the funds to sell securities for which they are the issuer to participating Funds in connection with the Plan; and (c) under section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to effect certain joint transactions incident to the Plan.

2. Sections 18(a) and 18(c) restrict the ability of a registered closed-end investment company to issue senior securities.[3] Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact these sections. The Plan would not: (a) induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; or (c) confuse investors or convey a false impression as to the safety of their investments. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth all such restrictions, which would be included primarily to benefit the Participants and would not adversely affect the interests of the trustees or of any shareholder.

4. Sections 22(g) and 23(a) prohibit registered open-end investment companies and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

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[1] Applicants acknowledge that the requested order would not permit a party acquiring a Fund's assets to assume a Fund's obligations under the Plan if such obligations would constitute a violation of the Act by the assuming party.

[2] "Successors in interest" is herein limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] Although none of the Funds currently are closed-end funds, applicants request relief from sections 18(a), 18(c), and 23(a) of the Act in the event that Future Funds may include closed-end funds.

5. Section 13d(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. The relief requested from section 13(a)(3) would extend only to Future Funds for which Sierra Advisors becomes investment adviser subsequent to such Future Fund's initial public offering and that have investment policies prohibiting the purchase of investment company shares without shareholder approval. Applicants believe that relief from section 13(a)(3) is appropriate to enable the affected Funds to invest in Underlying Securities without a shareholder vote. Applicants will provide notice to shareholders in the prospectus of each affected Fund of the Deferred Compensation under the Plan. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Fund, and will at all times equal the value of the Fund's obligations to pay deferred fees (plus any increase in value thereof.)

6. Rule 2a–7 imposes certain restrictions on the investments of "money market funds." as defined under the rule, that would prohibit a Fund that is a money market Fund from investing in the shares of any other Fund. Applicants believe that the requested exemption would permit the Funds to achieve an exact matching of Underlying Securities with the deemed investments of the Accounts, thereby ensuring that the deferred fees would not affect net asset value.

7. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief requested from the above provisions satisfies this standard.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company. Funds that are advised by the same entity may be "affiliated persons" under section 2(a)(3)(C) of the Act by reason of being under common control. Applicants asserts that section 17(a)(1) was designed to prevent, among other things, sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interest in such enterprises. Applicants submit that the sale of securities issued by the Funds pursuant to the Agreement does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred trustees' fees with the Underlying Securities that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the general purposes of the Act. Applicants assert that the proposed transaction satisfies the criteria of section 17(b). The finding that the terms of the transaction are consistent with the policies of the registered investment company is predicated on the assumption that relief is granted from section 13(a)(3). Applicants also request relief from section 17(a)(1) under section 6(c) to the extent necessary to implement the Deferred Compensation under the Plan and Agreement on an ongoing basis.

10. Section 17(d) and rule 17d–1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan "on a basis different from or less advantageous than that of" the affiliated person. Participants will not receive a benefit, directly or indirectly, that would otherwise inure to a Fund or its shareholders. Participants will receive tax deferral but the Plan otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a Participant, the Participant will be no better off (apart from the effect of tax deferral) than if he or she had received trustees fees on a current basis and invested them in Underlying Securities.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the relief requested from rule 2a–7, any money market Fund, or series thereof, that values its assets in accordance with a method prescribed by rule 2a–7 will buy and hold Underlying Securities that determine the value of the Accounts to achieve an exact match between such Fund's or series' liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other shareholders of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23295 Filed 9–19–95; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from October 23 through October 26, 1995, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held October 23 and October 26 in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, and on October 24 and October 25 at the National Business Aircraft Association, 1200 Eighteenth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic Rules and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held October 23 and October 26 in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC, and on October 24 and October 25 at the

National Business Aircraft Association, 1200 Eighteenth Street, NW, Washington, DC.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 20, 1995. The next quarterly meeting of the FAA ATPAC is planned to be held from January 22–25, 1996, in San Francisco, CA.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on September 14, 1995.

Charles R. Bramble,

Acting Manager, Procedures Division, ATP-100.

[FR Doc. 95–23340 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on October 17 and 18, 1995 beginning at 8:30 a.m. on October 17. Arrange for oral presentations by October 5, 1995.

ADDRESSES: The meeting will be held at the Hawthorne Hotel; On The Common; Salem, MA 01970.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held October 17 and 18, 1995 at the Hawthorne Hotel, On The Common, Salem, MA 01970.

The agenda for the meeting will include:

- Opening remarks.
- Review of action items.
- Reports of working groups.
- Vote on a draft Advisory Circular and Notice of Proposed Rulemaking on Hydraulic Test Harmonization.
- Vote on a draft Advisory Circular on 16G Seats.
- Vote on a draft Advisory Circular and Notice of Proposed Rulemaking on Inclement Weather.
- Vote on a draft Notice of Proposed Rulemaking on Braked Roll Conditions.
- Vote on a draft Notice of Proposed Rulemaking on Repairs.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 5, 1995, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on September 14, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–23344 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–M

Impose and Use, and Use a Passenger Facility Charge (PFC) at Pensacola Regional Airport, Pensacola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to Impose and Use, and Use a PFC at Pensacola Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 20, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank Miller, Airport Director of the City of Pensacola at the following address: 2430 Airport Blvd, Suite 225, Pensacola, FL 32504–8977.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Pensacola under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra A. Nazar, Project Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827, 407–648–6586. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to Impose and Use, and Use a PFC at Pensacola Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 6, 1995, the FAA determined that the application to Impose and Use, and Use a PFC submitted by the City of Pensacola was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 21, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1993.

Proposed charge expiration date: December 31, 2018.

Total estimated PFC revenue: $22,208,000.

Brief description of proposed project(s): Expand Terminal Building, Expand Terminal Apron/Baggage.

Class or classes of air carriers which the public agency has requested to be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office

listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pensacola.

Issued in Orlando, Florida on September 6, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office Southern Region.

[FR Doc. 95–23345 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Supplemental Environmental Impact Statement: Salt Lake County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement will be prepared to amend the design features on a proposed highway project in Salt Lake County, Utah.

FOR FURTHER INFORMATION CONTACT: Tom Allen, Project Development Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963–0182; or Byron Parker, Preconstruction Engineer, Utah Department of Transportation, Region Two, 2060 South 2400 West, Salt Lake City, Utah 84104, Telephone: (801) 975–4806.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare a supplemental environmental impact statement (SEIS) on a proposal to amend the design features of the West Valley Highway (Bangerter Highway) 9000 to 126000 South, project to accommodate an at-grade intersection with 9800 South. The record of decision was made on March 7, 1994 on the final EIS, FHWA–UT–EIS–92–01–F. West Valley Highway (Bangerter Highway), 9000 South to 12600 South, in Salt Lake County, Utah. The final EIS did not address an intersection connection with 9800 South because the road was constructed by South Jordan City after the record of decision on the final EIS was made.

The proposal would provide for an intersection at 9800 South which is on the long range plan for South Jordan City. Alternatives under consideration include: (1) No Action, which would require the construction of a grade separated structure without access to Bangerter Highway; and (2) At-grade Intersection, with access to Bangerter Highway. The proposal is considered to be limited in scope and does not affect other project activities, therefore, design and construction of Bangerter Highway, from 9000 South to 12600 South, will proceed as provided for in 23 CFR 771.130(f).

South Jordan City has conducted several public meetings and a public hearing leading to their decision to construct 9800 South and to request an intersection with the Bangerter Highway. Considerable public interest has been identified, both for and against the intersection. Knowledge of this interest has led to the decision to conduct an SEIS. No additional formal scoping is expected at this time. A public hearing will be held. Public notice will be given of the time and place of the public hearing. The draft SEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited for all interested parties. Comments or questions concerning this proposed action and the SEIS should be directed to the FHWA or UDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: September 11, 1995.

Michael G. Ritchie,

Division Administrator, Salt Lake City, Utah.

[FR Doc. 95–23261 Filed 9–19–95; 8:45 am]

BILLING CODE 4910–22–P–M

National Highway Traffic Safety Administration

[Docket No. 95–40; Notice 2]

Vector Aeromotive Corporation Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Vector Aeromotive Corporation of Jacksonville, Florida, applied to be exempted from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The basis of the application was that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on June 26, 1995, and an opportunity afforded for comment (60 FR 33029). This notice grants the application.

According to its application, Vector intends to begin production of a two-seat high performance sport car in September 1995 called the Vector Avtech SC ("Avtech"). Design concept specifications were developed several years ago for the Avtech, and a prototype shown at the Geneva Automobile Show in March 1992. During this time, Vector produced a sports car called the Vector W8. This car went out of production in early 1993 after a run of 22 vehicles, and Vector has produced no motor vehicles since.

Vector's single largest shareholder is V'Power Corp., a Bahamian Corporation, which is also the controlling shareholder of Automobili Lamborghini S.p.A. Lamborghini, which manufactured 1,475 cars between 1989 and 1994, was recently granted a temporary exemption from Motor Vehicle Safety Standard No. 214 *Side Impact Protection* (59 FR 59458). V'Power will provide Vector with $5.5 million in funds to finance Vector's proposed development schedule over the next 12 months. Vector's cumulative net losses in the three years preceding the filing of its application were approximately $12,400,000.

Vector evaluated "the original Avtech prototype" in order to determine "what changes had to be made to install a driver and passenger side airbag system. The specific areas which are projected to require design changes or additional development are related to the main chassis design forward of the A pillar, instrument panel, steering column, steering wheel, and seats." The applicant has begun to integrate these design changes into the Avtech SC. Vector has received airbag development program cost estimates of approximately $1,500,000 from airbag suppliers. At the time of its application, it stated that it had already spent $56,000 in pursuit of the project and an estimated 1000 man hours. Vector estimates that a year will be required in order to complete development, and that vehicles conforming to Standard No. 208 will be available in the time period June–September 1996. However, to allow for development problems, Vector asked for an exemption until May 1, 1997. In the meantime, it promises that the Avtech will be equipped "with an active, three point, seat belt system that meets, or exceeds, all FMVSS performance requirements."

The applicant also argued that an exemption would be in the public

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interest as its development and production "will result in additional employment at the factory, vendor, dealer, and service levels." Its success "should establish the US as a major source for ultrahigh performance vehicles and technology". The Avtech will be equipped with "the only twelve cylinder engine offered by a US manufacturer." In its view, an exemption would be consistent with traffic safety objectives because the vehicle will otherwise comply with all applicable Federal motor vehicle safety standards. In addition, the company's production would be limited. It estimated sales of 60 cars through the second quarter of 1996.

No comments were received on the petition.

Pursuant to 49 U.S.C. 30113(b)(3)(B)(i), small manufacturers such as Vector may be temporarily exempted from a Federal motor vehicle safety standard such as Standard No. 208 if "compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith." The application must contain "a complete description of the manufacturer's good faith effort to comply" with the standard (49 U.S.C. 30113(c)(1)).

As a general rule, the agency is sympathetic to the economic problems of small manufacturers and tends to equate a cumulative net loss position to a per se showing of "substantial economic hardship." NHTSA recognizes that the engineering and testing of prototypes are costly and may be more easily borne by small manufacturers if conducted over a more extended period of time than is the custom with the major manufacturers. With the cumulative net losses of over $12,000,000 as mentioned above, Vector has made a sufficient demonstration to convince the agency that, to require immediate compliance with the automatic restraint requirements of Standard No. 208 would cause it substantial economic hardship.

However, in order for the agency to make the requisite finding of good faith, a manufacturer who applies for an exemption under section 30113(b)(3)(B)(i) must demonstrate that it has made at least a colorable attempt to meet the requirements of the standard from which it requests exemption.

In 1991, Congress decided that 95% of passenger cars manufactured between September 1, 1996, and September 1, 1997, must be equipped with a driver and front seat passenger airbag, plus a manual lap/shoulder belt, and that 100% of all cars manufactured on and after September 1, 1997, be so equipped. This requirement originated in Section 2508 of the NHTSA Authorization Act of 1991 (part of the Intermodal Surface Transportation Efficiency Act of 1991, known as "ISTEA"), enacted in December 1991. To implement this requirement, NHTSA published a notice of proposed rulemaking (NPRM) on December 14, 1992 and a final rule on September 2, 1993.

Thus, by the time Vector displayed its prototype at Geneva in March 1992, the industry had been aware for at least three months that it would eventually have to provide air bags for the driver and front seat passenger. By the time of the Geneva show, Vector was on notice that, four and one-half years later, 95% of its production would have to be so equipped. When the production of the Vector W8 terminated in early 1993, NHTSA had already issued the NPRM reiterating the compliance schedule mandated by Congress. The final rule was issued 20 months before Vector's application. These regulatory actions were widely publicized at the time.

Vector identified the Avtech SC shown at Geneva as a "prototype", rather than a "concept", indicating to NHTSA that the vehicle was intended for eventual production. NHTSA believes that a good faith effort to conform the Avtech SC to the automatic restraint requirements of Standard No. 208 (whether automatic belts or airbags) should have begun as part of the further development of the prototype for production, and that the modification of the chassis, instrument panel, seats, etc. mentioned in the application should have commenced years earlier than it apparently has. Although the applicant states that it has spent $56,000 on its efforts to conform, this figure represents less than two percent of the amount that it has spent on research and development, a total of $3,178,501 for its fiscal years 1992, 1993, and 1994.

Very simply, NHTSA expects an American manufacturer to develop and engineer new products to conform to all applicable Federal motor vehicle safety standards, especially when a leadtime of this length has been provided.

However, NHTSA recognizes that the applicant was experiencing well-publicized problems when the W8 went out of production which eventually resulted in a complete change of corporate management. It may have been that, until these problems were resolved, the applicant had not decided as to the course of its future production and whether such would include the Avtech. Thus, NHTSA is willing to give Vector the benefit of the doubt in finding that it has made a good faith effort to comply with Standard No. 208. However, in the belief that it might have done more, NHTSA is providing an exemption that will expire on September 1, 1996, eight months less than Vector requested.

In granting an exemption of only one year instead of twenty months, NHTSA has taken into account the company's financial position. Its single largest shareholder intends to provide it with $5.5 million in funds to finance its proposed development schedule over the next 12 months, and a short exemption period will encourage Vector to achieve conformance by September 1, 1996.

The applicant believes that an exemption would be in the public interest as its development and production "will result in additional employment at the factory, vendor, dealer, and service levels." In the past, NHTSA has found such an argument sufficient to uphold the public interest in granting an exemption, no matter how minimal the positive impact might be on the economy.

In its view, an exemption would be consistent with traffic safety objectives because the vehicle will otherwise comply with all applicable Federal motor vehicle safety standards. NHTSA notes also that the market for so-called "supercars" like the Vector has softened considerably and that the company's projected estimate of sales of 60 cars through the second quarter of 1996 may be unduly optimistic. Vector's limited exemption is likely to have only the most minimal impact upon motor vehicle safety. Finally, one of the objectives of Chapter 301 is to provide temporary relief to small manufacturers attempting to comply with the Federal motor vehicle safety standards.

In consideration of the foregoing, it is hereby found that to require immediate compliance with Standard No. 208 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and that an exemption is consistent with the public interest and 49 U.S.C. Chapter 301—*Motor Vehicle Safety*. Accordingly, Vector Aeromotive Inc. is hereby granted NHTSA Exemption No. 95–3 from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*, expiring September 1, 1996.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on September 13, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–23262 Filed 9–19–95; 8:45 am]

BILLING CODE [illegible]

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on September 20 in Room 600, 301 4th Street, S.W., Washington, DC. from 9 a.m.–12 noon.

At 9 a.m. the Commission will meet with Ms. Donna Oglesby, Counselor, USIA, to discuss USIA 2000, a report of the Agency's Senior Review Committee identifying adaptive challenges facing the U.S. Information Agency.

FOR FURTHER INFORMATION CONTACT: Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: September 14, 1995.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 95–23330 Filed 9–19–95; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 182
Wednesday, September 20, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATE: Tuesday, September 26, 1995.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: This entire meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Dividends
Membership
Appointment of Financing Corporation Directors
Approval of an Increase in the Office of Finance Global Debt Authority
Affordable Housing Program Application Subsidy Limits—Interim Final Rule

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–23388 Filed 9–18–95; 9:51 am]

BILLING CODE 6725–01–P

Corrections

Federal Register
Vol. 60, No. 182
Wednesday, September 20, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Commission

[A-580-812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

Correction

In notice document 95–22501 beginning on page 47149 in the issue of Monday, September 11, 1995, make the following correction:

On page 47152, in the first column, in the table, in the second column, in the entry corresponding to "Samsung Electronics Co., Ltd" remove "(de minimis)".

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-297-000]

Wyoming Interstate Company, Ltd.; Notice of Filing of Refund Report

August 8, 1995

Correction

In notice document 95–19965 appearing on page 41886, in the issue of Monday, August 14, 1995, the docket number is corrected as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 400 and 411

[BPD-482-FC]
RIN 0938-AD73

Medicare Program; Medicare Secondary Payer for Individuals Entitled to Medicare and Also Covered Under Group Health Plans

Correction

In rule document 95–21265 beginning on page 45344 in the issue of Thursday, August 31, 1995, in the second column, under DATES, beginning in the second line, "October 2, 1995" should read "September 29, 1995".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-ANM-11]

Amendment of Class E Airspace; Salt Lake City, Utah

Correction

In rule document 95–18917, appearing on page 39247 in the issue of Wednesday, August 2, 1995, make the following corrections:

§71.1 [Corrected]

1. On the same page, in the third column, in the 32nd line, insert "east" after "airspace".

2. On the same page, in the third column, in the 38th line, "east" should read "west".

BILLING CODE 1505–01–D

federal register

Wednesday
September 20, 1995

Part II

Federal Reserve System

12 CFR Part 213

Consumer Leasing; Proposed Rules

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–0892]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is issuing this proposal to revise Regulation M, which implements the Consumer Leasing Act. The act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. The Board has reviewed Regulation M, pursuant to its policy of periodically reviewing its regulations, and proposes revisions to simplify and clarify its provisions to carry out more effectively the purposes of the act. The proposal contains several substantive revisions, for example: additional disclosure requirements about early termination charges, disclosure of the gross cost of leases, the residual value, and the estimated lease charge; a requirement that certain leasing disclosures be segregated from other information; and pursuant to a statutory change, new advertising provisions for radio and television. The proposal also simplifies the language and format of the regulation, deleting obsolete provisions and eliminating the footnotes or moving them to the Official Staff Commentary. A proposal to revise the commentary is being published elsewhere in today's issue of the **Federal Register**.

DATES: Comments must be received by November 17, 1995.

ADDRESSES: Comments should refer to Docket No. R–0892, and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR section 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller, Obrea O. Poindexter, or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background on the Consumer Leasing Act and Regulation M

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq*. The Board was given rulewriting authority, and its Regulation M (12 CFR part 213) implements the CLA. An official staff commentary that interprets the regulation has also been published (Supplement I–CL–1 to 12 CFR 213).

The CLA generally applies to consumer leases of personal property involving $25,000 or less and a term of more than four months. An automobile lease is the most common type of consumer lease covered by the CLA. Like the credit provisions of the TILA, the CLA requires lessors to provide uniform cost and other disclosures in consumer lease transactions and lease advertising. Prior to entering into a lease agreement, lessors must give consumers 15 to 20 disclosures, including the amount of initial charges to be paid, an identification of leased property, a payment schedule, the responsibilities for maintaining the leased property, and the liability for terminating a lease early. The law also regulates balloon payments by limiting liability at the end of a lease term to no more than three times the monthly payment.

II. The Review of Regulation M

The Board's Regulatory Planning and Review Program calls for the periodic review of a regulation with four goals in mind: to clarify and simplify regulatory language; to determine whether regulatory amendments are needed to address technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. Regulation M has not been substantially revised or reviewed since it was first issued. The Board began a review of Regulation M in November 1993 by publishing an advance notice of proposed rulemaking (58 FR 61035, November 19, 1993). While comment was solicited generally on the provisions of Regulation M and the CLA, the Board identified three specific issues on which comment was desired: (1) Disclosure of early termination charges, (2) broadcast media advertising of leases, and (3) segregation of leasing disclosures from other information.

The Board received 70 comment letters on the advance notice of proposed rulemaking. Most commented only on the three issues addressed in the advance notice. Based on its review and on the comments received, the Board now proposes revisions to Regulation M. While several revisions would make substantive changes to the regulation, including new disclosure requirements, the proposal leaves many provisions substantively unchanged. In addition to seeking comment on the proposed regulatory changes, the Board again solicits views on whether specific legislative revisions to the CLA may also be warranted. For example, several commenters on the advance notice suggested that CLA coverage be expanded to cover leases that exceed the current $25,000 total contractual obligation limitation.

The proposal simplifies the language and format of the regulation to state the requirements more clearly. Footnotes have been either moved to the staff commentary or deleted as unnecessary. Obsolete provisions have been deleted and explanatory material transferred to the commentary. In addition to comments on the proposed changes, the Board requests specific suggestions for other revisions that would facilitate compliance without causing an adverse impact on consumer protections.

Although the regulation applies to all consumer leases covered by the CLA (for example, automobile leases and furniture leases), much of the focus of the review has been on automobile leasing. The Board solicits specific comment on whether any of the proposed rules are more appropriately limited to automobile lease transactions.

It is anticipated that proposed revisions to Regulation M will be adopted in final form in the Spring of 1996 with compliance optional until October 1, 1996, the uniform effective date for mandatory compliance.

III. Discussion of Proposed Revisions

The following discussion covers the proposed revisions section-by-section. In many cases, the proposed changes would simplify or clarify the current text, with no substantive change intended. Captions have been added to each paragraph, to conform with current Board style; the addition or wording of captions alone is not meant as a substantive change in the meaning of the paragraph itself. The entire proposed regulation and its appendices have been printed in full.

Section 213.1—Authority, Scope, Purpose, and Enforcement

1(b) Scope and Purpose

This paragraph is revised to add a sentence about the scope of the law and to more closely parallel the purpose clause in § 102 of the TILA, 15 U.S.C. 1601.

1(d) Issuance of Staff Interpretations.

Current paragraph 1(d) has been moved to appendix C.

Section 213.2—Definitions

2(a) Definitions

Most of the definitions remain unchanged and are not discussed below. The current definitions of "Period" and "Real Property" in paragraphs (a) (10) and (13) respectively have been deleted as unnecessary. Definitions of "gross cost," "estimated lease charge," "residual value," and of a "closed-" and an "open-end lease" are added.

The following definitions are redesignated as indicated below:

Current	Proposed
"Arrange for lease of personal property" in 2(a)(4).	moved to comment 2(a)(10)–1.
"Board" in 2(a)(5)	moved to section 2(a)(4).
"Lessee" in 2(a)(7) ...	moved to section 2(a)(9).
"Lessor" in 2(a)(8)	moved to section 2(a)(10).
"Organization" in 2(a)(9).	moved to section 2(a)(12).
"Person" in 2(a)(11) .	moved to section 2(a)(13).
"Personal property" in 2(a)(12).	moved to section 2(a)(14).
"Realized value" in 2(a)(14).	moved to section 2(a)(15).
"Security interest" in 2(a)(15).	moved to section 2(a)(17).
Examples of security interests in 2(a)(15).	moved to comment 2(a)(17)–1.
"State" in 2(a)(16)	moved to section 2(a)(18).
"Total lease obligation" in 2(a)(17).	moved to section 2(a)(19).
"Value at consummation" in 2(a)(18).	moved to section 2(a)(20).

2(a)(2) Advertisement

The definition of "advertisement" is simplified and the examples moved to the commentary as part of proposed comment 2(a)(2)–1. The simplified language is consistent with other consumer regulations. The definition of an advertisement is broad; it covers commercial messages in any medium that directly or indirectly promote a consumer lease transaction. No substantive change in the definition is intended by the proposed revision.

2(a)(3) Agricultural Purpose

For simplicity, the portion of this statutory definition which describes agricultural products is moved to the commentary as proposed comment 2(a)(3)–1.

2(a)(5) Closed-End Lease

The proposal adds a definition of a closed-end lease, modeled after the definition of closed-end credit in Regulation Z (12 CFR § 226.2(a)(10)). The term covers any lease that does not fall within the definition of an open-end lease. In closed-end leases, sometimes referred to as "walk-away" leases, the lessee is not responsible for the residual value of the leased property at the end of the lease term.

2(a)(6) Consumer Lease

The rule of construction, currently in § 213.2(b)(1), has been moved to this paragraph.

2(a)(7) Estimated Lease Charge

The proposal adds a definition of "estimated lease charge" to provide guidance in making the proposed disclosure in § 213.5(q). The estimated lease charge would reflect the total dollar amount of the cost of the lease attributable to interest and other charges (whether paid upfront or during the term of the lease). The Board believes that such a disclosure together with a statement indicating what the figure represents and the formula for calculating the estimated lease charge (as provided in § 213.5(q)) would further assist the consumer in comparing leases. A first monthly or other periodic payment paid at or before consummation is not included in the calculation of the estimated lease charge, as it is reflected in the total periodic payment disclosure. Any refundable charge such as a security deposit would also not be included in the calculation.

2(a)(8) Gross Cost

The proposal adds a definition of "gross cost" to provide guidance in making the proposed disclosure in § 213.5(p) for closed-end lease transactions. The Board proposes to define gross cost as the total dollar amount of all items included in the value of a lease at consummation. This figure would include the base price of the leased property and any other items added to that price—such as a lessor's markup, taxes, service agreements, insurance, and any outstanding balance from a prior lease that is included in a new lease—prior to being offset by any downpayment or trade-in by the consumer. Amounts consisting of fees and other charges paid out-of-pocket at consummation by the lessee are also included in the gross cost figure. The gross cost is the amount upon which the periodic and other payments and terms of the lease are based. The Board solicits comment on this definition.

2(a)(10) Lessor

The proposal deletes the phrase "in the ordinary course of business," as it may not be very helpful in determining whether a person must comply with the CLA. In its place, a numerical test is set forth. Under this test, a person who leases, offers, or arranges to lease personal property more than five times in the preceding calendar year is subject to the CLA and Regulation M. If a person did not meet this numerical test in the preceding calendar year, the test is applied to the current year. The Board solicits comment on the proposed numerical test.

2(a)(11) Open-End Lease

The proposal adds a definition of "open-end lease." The Board believes the definition will provide useful guidance given that certain disclosures are only relevant to open-end leases, those in § 213.5(m), and (o), and § 213.8(d)(2)(vi).

2(a)(16) Residual Value

The proposal adds a definition of "residual value" to provide guidance in making the proposed disclosure in § 213.5(r) for closed-end lease transactions. The residual value of leased property is the amount determined at consummation to be the value of the leased property at the end of the lease term.

2(b) Rules of Construction

This section is deleted from the regulation. Current paragraph 2(b)(1) is moved to paragraph 2(a)(6) of this section. Paragraphs (b)(2) and (b)(3) of this section are deleted as unnecessary.

Section 213.3—Exempt Transactions

No changes have been proposed to this section.

Section 213.4—General disclosure requirements

4(a) General Requirements

Paragraph (a) contains general rules about the disclosures required under § 213.5, including the form, content, and timing of disclosures. The major revision is the proposed requirement that certain disclosures be segregated from other information. Several existing format rules have been eliminated as unnecessary because of the proposed segregation requirement. Other provisions would be simplified and clarified to ease compliance.

4(a)(1) Form of Disclosures

The general disclosure requirements are found in section 182 of the CLA. Clear and conspicuous lease disclosures must be given prior to consummation of a lease on a dated written statement that identifies the lessor and lessee. Generally, all the disclosures must be made together on a separate statement or in the lease contract to be signed by the lessee. Under the proposal, the segregated disclosures in § 213.4(a)(2), discussed below, may be provided on a separate document and other CLA disclosures provided in the lease contract, as long as all disclosures are given to a consumer at the same time.

Where the disclosures are included in the lease contract, the regulation currently requires that the disclosures be provided above the lessee's signature. Under the proposal, this specific requirement is deleted as unnecessary. However, lessors must continue to ensure that the disclosures are given to lessees before the lessee becomes obligated on the lease transaction. To provide evidence of compliance, disclosures may still be placed above the lessee's signature where disclosures are included in a lease agreement. Alternatively, lessors may include instructions alerting a lessee to read the disclosures prior to signing the lease or could provide a signature line or an acknowledgement of receipt for the lessee on the disclosure statement.

To satisfy the statutory standard that disclosures be made clearly and conspicuously, the regulation currently requires that disclosures be made on the same page and in a meaningful sequence—the grouping together of related disclosures. The regulation also imposes type-size requirements on numerical disclosures. In light of the proposal to segregate certain disclosures, discussed below, the meaningful sequence and the same page rule, and type-size disclosure requirements are deleted as unnecessary.

Nonsegregated disclosures need not be on the same page but they should be grouped together. Disclosures should also be presented in a way that does not obscure the relationship of the terms to each other.

4(a)(2) Segregation of Certain Disclosures

The CLA does not require the segregation of the required leasing disclosures from other information given to the consumer in a lease transaction. There is some concern that the absence of a requirement that the consumer leasing disclosures be segregated from general contract or other terms limits the effectiveness of these disclosures in meeting one of the goals of the CLA—to assure clear, conspicuous, and meaningful disclosure of lease terms to consumers.

Lease contracts can be long, detailed, and complex and often contain leasing disclosures interspersed among contract provisions. Consumers generally have little time to review their lease contracts before signing them. The Board believes a requirement that certain of the mandated disclosures be segregated would highlight these disclosures and thereby enhance consumers' ability to understand lease terms and thus make more informed choices.

In its advance notice of proposed rulemaking, the Board specifically requested comment on whether a segregation requirement should be imposed. Thirty of the seventy commenters addressed the issue. Twenty-six commenters favored some form of disclosure segregation. The other four commenters believed that any consumer benefit associated with isolating certain disclosures would not outweigh the costs to lessors of revising forms, or that a segregated disclosure requirement would require a statutory change.

Under section 105(a) of the TILA, which includes the CLA, the Board has the authority to prescribe regulations containing "such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purpose of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." Pursuant to this authority, the Board proposes that certain disclosures be segregated from other disclosures and information. As discussed previously, lessors may include the segregated disclosures in their lease contracts, but would be required to separate them from other information. Alternatively, lessors may provide the segregated disclosures to consumers on a separate document. The content, format, and headings for these disclosures should be substantially similar to those contained in the model forms in appendix A of the regulation. To ensure uniformity, no additional information may be included among the segregated disclosures, except as permitted under any future provision found in the official staff commentary to Regulation M.

The following disclosures (some of which are new) would be segregated from other information:

- Gross cost of the lease (new)—§ 213.5(p).
- Total payment due at lease signing, subdivided into an itemization of the costs to be paid at lease signing, and an itemization of the means of paying these costs (this type of itemization would be new)—§ 213.5(b).
- Total of periodic payments and payment schedule—§ 213.5(c).
- Total of other charges payable to lessor—§ 213.5(e).
- Residual value (new)—§ 213.5(r).
- Statement concerning the consumer's right to purchase the leased property at the end of the lease term—§ 213.5(k)(1).
- Estimated lease charge (new)—§ 213.5(q).
- Statement that a substantial charge may be imposed for terminating a lease early and an example of an early termination charge (new)—§ 213.5(l)(2).
- Statement concerning lessee's possible wear and use liability, including liability for excessive mileage (new in part)—§ 213.5(h)(3).
- Statement that the consumer should refer to lease documents for nonsegregated CLA-required information (new)—§ 213.5(s).
- In an open-end lease, the value of the property at consummation, the total lease obligation, and the difference between them—§ 213.5(o)(1).

The remaining disclosures required by Regulation M and the CLA would continue to be provided in a nonsegregated format (typically, together with the other terms and conditions that comprise the lease agreement). Comment is solicited on whether any items should be excluded from, or others added to, the segregated disclosures.

Regulation M currently contains model forms for open-end leases, for closed-end leases, and for furniture leases. These forms have been revised to reflect how the segregated disclosures would appear. The model forms are in appendix A.

4(a)(5) Language of Disclosures

Current paragraph 4(a)(4) states that lease disclosures must be provided in English, except in the Commonwealth of Puerto Rico. The proposal revises this position. Lessors would be permitted to give disclosures in another language as long as disclosures in English are given to a lessee who requests them. The Board believes that a more permissive rule could promote the delivery of more meaningful disclosures to consumers.

4(b) Additional Information

Current paragraph 4(b) permits additional information to be included with any disclosures required by the regulation. The proposal would permit additional information only with the nonsegregated CLA leasing disclosures, provided the information does not detract from those disclosures.

Current paragraphs 4(b) (1) and (2) have been deleted as unnecessary. Pursuant to section 186(a) of the CLA and Regulation M, proposed § 213.10, if information required by state law is inconsistent with the requirements of the act or regulation, the state law is preempted.

4(c) Multiple Lessors or Lessees

Paragraph (c) provides that when a transaction involves multiple lessors, one lessor may make the disclosures on behalf of all of them. The phrase "and the one that discloses shall be the one chosen by the lessors" is deleted as unnecessary. No substantive change is intended.

4(d) Use of Estimates

Current paragraph 4(d), which implements section 182 of the CLA on the use of estimated disclosures, is proposed (4)(d)(1) and (2).

4(e) Effect of Subsequent Occurrence

Paragraph 4(e) provides that generally when an event occurs after disclosures have been delivered which makes a disclosure inaccurate, the inaccuracy does not constitute a violation of the act. This paragraph clarifies that this rule applies to events occurring after consummation of a lease. The first sentence of footnote 1 of the current regulation, which contains a specific example of a subsequent occurrence, has been incorporated into the staff commentary in comment 4(e)-3. The second sentence of the footnote is deleted as unnecessary guidance under this regulation.

4(f) Minor Variations

Current paragraph 4(f) allows lessors to disregard February 29 in a leap year when making disclosures. Proposed paragraph (f) incorporates into the regulation all rules on minor variations that may be disregarded in making disclosures, thus provisions currently contained in comment 4(a)–2 of the commentary have been moved to this paragraph. No substantive change is intended.

Section 213.5—Content of Disclosures

Section 213.4(g) is proposed § 213.5. Several new disclosures have been added under paragraphs (b), (h)(3), (l)(2), and (p) through (s). Paragraphs which have not been changed, or which contain no substantive changes, have been redesignated as follows:

Current	Proposed
Paragraph 4(g)(1)	redesignated as 5(a).
Paragraph 4(g)(3)	redesignated as 5(c).
Paragraph 4(g)(4)	redesignated as 5(d).
Paragraph 4(g)(5)	redesignated as 5(e).
Paragraph 4(g)(6)	redesignated as 5(f).
Paragraph 4(g)(7)	redesignated as 5(g).
Paragraph 4(g)(9)	redesignated as 5(i).
Paragraph 4(g)(11) ...	redesignated as 5(k).
Paragraph 4(g)(13) ...	redesignated as 5(m).
Paragraph 4(g)(15) ...	redesignated as 5(o).

5(b) Total Amount Due at Lease Signing

Paragraph 5(b), currently § 213.4(g)(2), requires lessors to disclose to consumers the total amount of any payment due at the consummation of a lease. The payment may include a security deposit, a trade-in allowance or a downpayment (the "capitalized cost reduction"), a first periodic payment in advance, and fees such as delivery charges. Under the current regulation, these charges must be itemized by type but need not be itemized by amount. The Board is proposing several changes to this paragraph. The language has been revised to clarify that a total amount of payments due at lease signing is required. The Board proposes to require that amounts paid at lease signing be itemized by amount as well as by type. The Board believes that these lease costs should be more completely and uniformly disclosed, and requiring itemization by type and amount would ensure this result. Under the proposal, the type and amount of each charge due at consummation is included among the segregated disclosures under the subheading "itemized costs." Also, to enhance consumer understanding of what payments are made and how they are allocated—particularly the amount agreed upon as the trade-in allowance of property being provided by the lessee—the lessor should disclose the net trade-in allowance, any rebate, payments in cash, and any other credits under the subheading "means of paying itemized costs." (See the model forms in appendix A for format.) The Board believes that standardization of the terminology to be used and the full itemization of the initial costs and means of payment will provide consumer benefit without imposing substantial compliance costs on lessors.

5(h) Maintenance Responsibilities

Paragraph 5(h), currently § 213.4(g)(8), requires disclosures about maintaining or servicing leased property. Lessors currently must identify the party responsible for maintaining or servicing the leased property, along with a description of the responsibility, and as applicable, a statement of reasonable wear and use standards. For example, an automobile lease may state that a consumer will be liable for excessive wear and use if the vehicle is returned with little tread on the tires, with rust, dents or broken parts or accessories, or if the vehicle is driven over a certain number of miles.

Some of the consumer representatives commenting on the Board's advance notice expressed concerns about excess wear and use standards. Generally, they suggested that lessors should have to describe, in detail, the standard applied and the penalties that would be charged. They also called for the development of standardized measurements of excess wear and use. One commenter suggested that the Board prohibit charges for excess wear and use beyond actual repair costs. In addition, the Board's Consumer Advisory Council and others have advised the Board that highlighting information about excessive mileage charges is important.

Although the Board receives very few consumer complaints about leasing, it has over the years received complaints about reasonable wear and use standards. Consumers sometimes do not realize that lessors may impose strict standards for what they consider normal use of lease property, particularly leased automobiles, and that these standards may vary depending on the lessor. While issues concerning excessive wear and use liability are generally a matter of contract between a lessee and lessor, the Board believes that a disclosure notice about the possibility that a charge may be imposed at the end of the lease term for excessive wear and use of leased property, based on the standards imposed by the lessor, may heighten a consumer's awareness about maintenance responsibilities without any substantial compliance costs on lessors. Therefore, the Board proposes to add a disclosure requirement in paragraph 5(h)(3), to be included among the segregated disclosures, that "you may be charged for excessive wear and use based on the lessor's standard for normal use." In a vehicle lease transaction, any applicable charge for excessive mileage must also be included. The Board solicits comment on the proposed new disclosure, including the required language.

5(j) Penalties and Other Charges for Delinquency

The Board proposes to add that any penalty or charge shall be reasonable, to reflect the requirement found in section

183(b) of the CLA. No substantive change is intended.

5(l) Early Termination

Paragraph 5(l), currently § 213.4(g)(12), requires a disclosure about charges for terminating a lease early. The Board proposes additional disclosure requirements, in § 213.5(l)(2), that would be included among the segregated disclosures. Lessors would have to include a statement alerting consumers about charges for terminating a lease early, including an example of an early termination penalty based on an assumed termination of the lease at the end of the first year.

The CLA requires lessors to disclose the conditions under which the lessee or lessor may terminate the lease before the end of the lease term and the amount or method of determining a penalty or other charge for early termination. Lessors typically disclose the method of determining an early termination charge and such a disclosure is often complex.

In its advance notice of proposed rulemaking, the Board solicited comment on whether the disclosure of early termination charges could be revised to more easily inform consumers about these charges. The Board also solicited comment on whether the disclosure of the name of the lessor's early termination method along with a representative example of a lease termination charge should be considered, as well as any other disclosure alternative. The notice mentioned a U.S. Court of Appeals case, *Lundquist* v. *Security Pacific Automotive Financial Services Corp.*, 993 F.2d 11 (2d Cir.), *cert. denied*, 62 U.S.L.W. 3320 (U.S. Nov. 1, 1993), that has caused lessors concern. In that case, the court held a lessor liable for violating the "reasonably understandable" standard for disclosure under Regulation M; the lessor had an early termination formula that the court found to be overly complex and beyond the understanding of the average consumer. Many lessors say that, given the complexity of modern automobile lease transactions, it is difficult to describe every part of an early termination formula in terms clearly understandable to consumers. In particular, lessors state that the various methods used to determine the "unamortized capitalized cost" portion of their early termination formulas are inherently complex and cannot be reduced to a disclosure that is easily understandable.

In responding to the Board's request for comment on this issue, many lessor representatives favored allowing a reference to the name of the method employed to determine the unamortized capitalized cost portion of the early termination formula instead of requiring a detailed description of that method. Some suggested that the Board also define the most common amortization methods currently used (such as the "actuarial" or the "constant yield" methods) to provide for uniformity. They believed that through education and exposure to the names of the most commonly used methods, consumers would eventually become aware of their advantages and disadvantages. Opponents believed that merely providing the name of the method would not be useful and would make it difficult or impossible for consumers to compute the amount of an early termination charge. Some consumer advocates said that in using complex methods and highly complicated descriptions in determining early termination charges, lessors preclude consumers from determining whether the charges themselves are reasonable. (The CLA specifies that charges for early termination must be "reasonable.") Other commenters, including both lessors and consumer representatives, favored a full description of all aspects of a lessor's early termination method, along with an example of how that method would work. In addition, some commenters suggested a general statement warning the consumer of the possibility of a substantial charge for early termination.

Based on the comments received and upon further analysis, the Board proposes to require that, along with an example of an early termination charge, a statement be given by lessors among the segregated disclosures that "you may have to pay a substantial charge if you end this lease early," that "the actual charge will vary depending on when the lease is terminated," and that "other charges such as for excessive wear and use may also be imposed." The Board believes these highlighted disclosures would serve to better inform consumers about the consequences if they were to terminate their leases early.

The Board believes that the CLA mandates full disclosure of a lessor's method of determining an early termination charge, even if it is complex. Therefore, in addition to the above statement and example, a full description of the complete early termination method must be disclosed by lessors outside of the segregated disclosures. However, given the complexity of the methods involved, a lessor is permitted—in giving the full description of its early termination method—to include a reference to the name of a generally accepted method of computing the unamortized gross or capitalized cost (also known as the "adjusted lease balance") portion of its early termination charge. For example, a lessor may state that the "constant yield" method would be utilized in obtaining the unamortized portion of the gross cost, but the lessor would have to specify how that figure—and any other term or figure—is used in computing the total early termination charge that would be imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, it would have to provide a written explanation of that method if requested by the consumer. While lessors should attempt to provide clear and understandable explanations of their early termination provisions to consumers, explanations that are full, accurate, and not intended to be misleading are in compliance with CLA and Regulation M disclosure requirements. (And, of course, the statute requires that the early termination charges themselves must be "reasonable.") These positions are codified in the proposed revisions to the Official Staff Commentary to Regulation M.

Finally, regarding the selection of an assumed termination period for the early termination example, several approaches were considered by the Board. The proposed example is based on an assumption that the consumer terminates the lease near the beginning of the lease term—at the end of the first year. This approach provides a "worst case" scenario. Early termination charges are typically highest at the beginning of the lease term. The example could have been based on an assumption that the consumer terminates the lease towards the end of the lease—such as the end of the third year for a four-year lease, and at the end of the second year for a three-year lease. The last year of a lease is the period when many early terminations occur. An example could have been based on an assumed early termination occurring for instance, at the 50 percent mark of the lease term. Arguably, this approach could allow an easier comparison of early termination examples among leases, in contrast to the first two approaches where the assumed early termination would not occur at proportionately equivalent points in leases of different lengths.

While there is some merit to each alternative (and there are others), the Board is proposing an early termination example based on the assumption that the lease terminates at the end of the first year, which illustrates to

consumers how substantial the charge could be if the lease is terminated very early during the lease term. The figure used to calculate the example must be calculated in the same manner the residual value is calculated for purposes of § 213.5(r). Therefore, if a lessor uses the fair market value of the leased property to estimate the value of the property at the end of the lease, the early termination example must also be calculated using the fair market value. Comment is solicited on the proposed example including whether using an assumed termination period other than the one proposed would be more appropriate.

5(n) Right of Appraisal

Paragraph 5(n), currently § 213.4(g)(14), requires disclosure of the right to an appraisal of leased property. Generally this provision is applicable to open-end leases, but it also applies to closed-end leases. Language is revised for clarity and accuracy, for example, the term "realized value" replaces "estimated value." No substantive change is intended.

5(p) Gross Cost

The Board proposes to require disclosure of the gross cost among the segregated disclosures. This disclosure is applicable only to closed-end leases; proposed § 213.5(o), currently § 213.4(g)(15), requires the disclosure of the "value at consummation" in open-end leases. Federal law does not currently require disclosure of information on the base price of the leased property in closed-end leases. Because this figure usually is not given, consumers may assume that the lease is based on the manufacturer's suggested retail price, or on the negotiated sales price (if the parties initially contemplated that the consumer would finance or purchase the property). However, the starting price of the leased property may actually be significantly higher than either of these figures.

Sixteen of the seventy commenters on the advance notice favored a "capitalized cost" disclosure. They included representatives of both the leasing industry and consumer groups. Several trade associations representing a large segment of the industry have recently asked their members to voluntarily disclose this item. In addition, a few lessors have been disclosing this figure for some time.

Pursuant to its authority under section 105(a) of the TILA, the Board proposes to require disclosure of the "gross cost" in closed-end lease transactions, using that term, in order to further effectuate the purposes of the law. The Board believes such a disclosure (together with a brief description such as "the agreed upon acquisition value of the vehicle including but not limited to items such as taxes, fees, service contracts, and insurance") would further the CLA's goal that cost disclosures enable consumers to draw comparisons between leases and, where appropriate, between leases and credit transactions. The gross cost would include the agreed upon price of the leased property and any other items added to that price—such as a lesser's markup, taxes, fees, extended warranties, insurance, and any outstanding balance from a prior lease that is included in a new lease—prior to being offset by any downpayment or trade-in by the consumer. The gross cost is the amount that the periodic and other payments and terms of the lease are based upon, and is intended to be used by consumers to compare a lease with similar lease and non-lease transactions. The gross cost would be readily available to lessors from worksheets they utilize in setting the terms and conditions of the lease. However, as discussed in 5(q) below, the inclusion of a gross cost figure in the segregated disclosures in some cases could invite consumers to make misleading comparisons of leasing and financing options. The Board solicits specific comment on this disclosure and its definition.

5(q) Estimated Lease Charge

Pursuant to its authority under section 105(a) of the TILA, the Board proposes to require disclosure of the estimated lease charge among the segregated disclosures to further effectuate the CLA's goal of enabling consumers to comparison shop. This figure would show the total dollar amount of the "financing" costs that will be charged to the consumer over the lease term, including the amount attributable to interest, or the "time-price differential." Although this figure is similar in concept to the finance charge required to be disclosed in consumer credit transactions subject to the TILA, it is not identical to a finance charge. As proposed, the lease charge would include items such as use taxes, registration and other fees, and insurance—items that are (under certain circumstances, at least) excluded from the finance charge. Therefore, the lease charge would not typically be an appropriate tool to make comparisons between lease and financing transactions.

The Board currently does not propose to exclude any of the fees and charges in the lease transaction from the estimated lease charge. However, comment is solicited on whether and how this disclosure could be made more comparable to the finance charge under the TILA. For example, the Board requests comment on whether insurance charges—which typically are not included directly in the finance charge—or charges payable in a comparable cash transaction (such as automobile registration fees)—should be excluded from the estimated lease charge.

When consumers are comparing different lease transactions with the same gross costs and durations (for example, three-year auto leases from two different dealers with the same gross cost but different monthly payments and purchase option prices), the estimated lease charge could be used to compare the transactions. However, as discussed below, an estimated lease charge disclosure would not be useful in comparing different leases where the gross costs or durations differ substantially.

Lease rate. Some commenters on the advance notice—including a number of consumer representatives and several small depository institutions—recommended that the Board require lessors to disclose the interest rate implicit in a lease transaction. Some recommended that this lease rate reflect an annual percentage rate concept—that is, a uniformly calculated rate that would include both interest and other charges imposed in connection with the lease transaction. These commenters suggested that the true cost of leasing would not be known to consumers without a lease rate disclosure. They noted that if the gross or capitalized cost and residual value of leased property are to be disclosed to consumers, the lease rate would be the only missing component necessary to determine the full cost of a lease. Commenters opposed to an interest rate disclosure noted that it would not necessarily reflect the "true cost" of leasing, as lessors might simply be able to manipulate the residual value in order to show a lower interest rate.

As noted by some commenters, the lease rate is the only key information about the cost of leasing property that would not be disclosed to consumers under the Board's proposed rule. Showing a lease rate seems important if consumers are to consider adequately the choice between leases involving different gross costs or leases of different durations. For example, if the same automobile could be leased for either three or five years, and the lessor applies the same rate in either case, the two transactions would have significantly different estimated lease charges (based on one lease incurring interest charges for two years more than the other), yet they would have the same annual lease rate.

A lease rate is clearly defined only in leases that have a fixed dollar purchase option. In that case, a lease rate would be based on a standard formula using the same information as in the estimated lease charge: gross cost, total payment due at lease signing (less a first monthly or other periodic payment and any refundable charges), total of monthly payments, total of other charges payable to the lessor, and the purchase option price. In view of some commenters' concerns that the residual value could be manipulated to show a misleading lease rate, the Board would not contemplate requiring a lease rate in leases that do not have a dollar purchase price option

Unlike the estimated lease charge, the lease rate disclosure may be of use to consumers in comparing a lease with a credit transaction. However, the lease rate may be of less use in cases when the fees reflected in that rate differ substantially from the fees reflected in the APR under the TILA. For example, leases typically include insurance charges; these are included in the estimated lease charge, and the Board would contemplate them being included in a lease rate disclosure as well. If a lease and a credit transaction had the same annualized rate, but the lease rate included insurance charges that are not included in the credit transaction, the consumer would be misled if he or she simply compared the two rates. In the instance where insurance was not a factor and other fees were similar in amount, however, such a comparison could prove to be of use to consumers in analyzing the costs of these alternative transactions. The Board solicits comment on whether and how a lease rate could be made more comparable to an APR to facilitate such comparisons.

If the disclosure of a lease rate were not required, the inclusion of a gross cost figure (which is prominently displayed in the disclosure statement) could, in some instances, invite misleading comparisons between competing leases or between a lease and a financed purchase. For example, assume a consumer and an auto dealer negotiate a $17,000 purchase price and a 9 percent APR to finance a car. The dealer then suggests that the consumer consider leasing the car instead. Assuming that potential lessees are likely to attach significance to the gross cost of the leased car, the dealer could agree to base the monthly lease payments on a gross cost figure of $17,000. The dealer could then apply a higher interest rate of 14 percent to calculate the monthly payments, and this rate would not be disclosed to the consumer. Even using this 14 percent interest rate, the monthly payments on the lease may be less than the monthly payments if the car were financed. The consumer might prefer the financing alternative if he or she realized that the implicit interest rate on the lease was 14 percent. However, absent a lease rate disclosure, the consumer could conclude that the lease was a better deal. On the other hand, since the dollar amount of the increase attributable to the lessor's use of a higher interest rate would be reflected in the estimated lease charge, this could be sufficient to inform the consumer. In addition, there may be competitive and operational pressures upon lessors that could prevent them from artificially decreasing the gross cost, such as limits on dealer markups in interest rates. Thus any deception that would be associated with disclosure of a low gross cost may be minimal.

While an annualized lease rate may improve comparison shopping between leases, some believe that the disclosure of the estimated lease charge would be sufficient for these purposes (assuming that consumers comparison shop items with similar gross costs and lease durations), and thus the disclosure of a lease rate would be unnecessary. Moreover, disclosure of a uniform lease rate disclosure may significantly increase the cost of complying with the requirements of the CLA and Regulation M, and this burden may outweigh any benefit to consumers of such a disclosure.

In light of the above discussion, the Board has not proposed requiring the disclosure of a lease rate. However, comment is solicited on this matter, including the advantages and disadvantages of such a disclosure to consumers. In the event that the Board were to require disclosure of a lease rate, the Board further solicits comment on whether the rate should be defined in such a way as to make it more comparable to the APR in a credit transaction (such as by excluding insurance charges from the calculation in certain circumstances). The Board also solicits comment on whether the gross cost (and therefore the estimated lease charge) figures should be de-emphasized or removed from the required disclosures to avoid potential manipulation of these figures in order to mislead consumers; or whether in commenters' views, this type of manipulation would not arise. Finally, the Board solicits comments on how and whether the costs of imposing a lease rate disclosure would outweigh the consumer benefit of having such a rate disclosed.

5(s) Statement Referencing Nonsegregated Disclosures

It is important that the value of the nonsegregated CLA disclosures not be diminished. Therefore, the Board proposes to add a statement among the segregated disclosures to alert consumers to other CLA-required disclosures (not contained among the segregated disclosures) that they should read in the lease documents. The disclosures include information about conditions for and the amount or method of determining early termination charges, charges for delinquency, default or late payments, maintenance responsibilities, any purchase option prior to the end of the lease term, insurance, total taxes and official fees, warranties, liability at the end of the lease term, and any security interest in the leased property.

Section 213.6—Renegotiations, Extensions, and Assumptions

Section 213.6 contains all the redisclosure rules governing leases that are renegotiated, extended, or assumed, including the exceptions, which currently are generally contained in § 213.4(h). The section has been rearranged and revised for clarity. For example, rules on assumptions in the current staff commentary have been moved to this section. Proposed § 213.6(d) retains the substance of the exceptions found in the current regulation, but has been rephrased. Several exceptions located in the current commentary under current comments 3, 7, and 8 to § 213.4(h) have also been moved to proposed § 213.6(d).

Section 213.7—Reserved

Section 213.7 has been reserved. Section 213.7 in the current regulation has been moved to § 213.10.

Section 213.8—Advertising

Section 213.5 in the current regulation is proposed § 213.8. Some of the language of the existing provisions have been revised for simplicity.

Under the CLA, if a lease advertisement states certain cost information (such as the amount of a monthly lease payment) as many as six additional disclosures must be clearly and conspicuously given. The Board proposes to make several clarifications and substantive revisions in this section that it believes will ease the compliance concerns of lessors while providing uniform and more meaningful information to consumers and furthering the CLA mandate that disclosures in advertisements be clearly and conspicuously displayed.

8(b) Clear and Conspicuous Standard

For clarity and simplicity, the Board proposes to state the clear and conspicuous standard in this section in one place; currently in § 213.5 references to the clear and conspicuous standard are made in several places.

Several representatives of state attorneys general and others have questioned the way advertisements of automobile leases display the required Regulation M disclosures. Lessors sometimes conspicuously advertise low or no downpayments when, in much smaller print, other upfront charges such as an acquisition fee, a security deposit, or the first monthly lease payment may be given. Some leasing representatives have expressed concern about their possible exposure to liability due to the potential for differing state interpretations of what is clear and conspicuous. The Board is therefore proposing that a reference in an advertisement to any component of the total amount of payments due at consummation, such as the downpayment (or that there is no downpayment), may not be more prominently displayed in the advertisement than the required disclosure in § 213.8(d)(2)(ii) of the total amount of payments due at lease signing. The Board believes this rule would address some of the concerns about lease advertisements without adding significant burdens on lessors or interfering with the effective marketing of their products. The proposed rule would not control what terms are to be advertised, but only that components of the total amount due at lease signing could not be emphasized without giving equal prominence to the disclosure of the total amount due itself. It should be noted that lessors can advertise lease transactions without including any CLA disclosures. Disclosures are only required when certain "trigger" terms are included in the advertisement, for example, a payment amount.

8(c) Catalogs and Multi-Page Advertisements

Section 8(c), currently § 213.5(b), has been simplified. No substantive change is intended.

8(d) Advertisement of Terms That Require Additional Disclosure

Section 8(d) incorporates current § 213.5(c). The introductory language of current § 213.5(c) is simplified. No substantive change is intended.

Currently, some advertisements do not provide a total of payments required at or before consummation, but instead give an itemization of each charge due at that time. In paragraph 8(d)(2)(ii), the Board proposes to clarify that the CLA requires only that the total of payments due by the consumer before or at lease signing be stated in an advertisement in which a trigger term has been used. (The language of the statute is somewhat ambiguous on this point.) Lessors may provide an itemized list of the payments due by lease signing but would not be required to under the proposed rule. Full disclosure of these initial fees by type and amount are among the required disclosures given to consumers who actually enter into lease transactions.

In paragraph 8(d)(2)(iv), the Board proposes to clarify that disclosing the method for determining the purchase price is limited to instances where the lessee has the option to purchase the leased property prior to the end of the lease. Language is added to the second sentence of this paragraph, consistent with the specific disclosure requirements in § 213.5(k), which the Board believes is consistent with congressional intent to provide the price of the leased property if the option to purchase is available at the end of the term.

Current § 213.5(c)(5) contains two requirements. Under the first requirement, lessors must disclose the amount of "any liabilities" that the lessee may be required to pay at the end of the term. To remove any ambiguity as to the applicability of this provision to both open- and closed-end leases, the Board proposes to incorporate this portion of the current paragraph in paragraph 8(d)(2)(v). For example, charges for excessive wear and use (such as an excessive mileage charge) on an automobile lease under both open- and closed-end leases would have to be disclosed in advertisements under this proposed provision.

Under the second requirement in current § 213.5(c)(5), lessors must disclose whether the lessee is liable for any difference between the estimated value of the leased property and its realized value at the end of the lease, applies only to open-end leases. The Board has moved this requirement to § 213.8(d)(2)(vi).

8(e) Alternative Disclosures—Merchandise Tags

Section 213.8(e) broadens current § 213.5(d) by allowing the use of triggering terms on merchandise tags, for items normally used in multiple-item leases, without providing full advertising disclosures on the tag itself.

8(f) Alternative Disclosures—Telephone or Radio Advertisements

Section § 213.8(f) implements amendments to section 184 of the CLA made by section 336 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160). Section 336 amended the CLA to provide an alternative disclosure scheme for radio lease advertisements in order to reduce the amount of information in such advertisements.

Before the statutory revisions, if any of the trigger terms (such as a payment amount) were used in any type of lease advertisement, as many as six additional disclosures had to be given. These disclosures include statements specifying (1) whether or not the lessee has the option to purchase the leased property, and at what price and time, (2) the amount or method of determining the amount of any liabilities the lease imposes at the end of the term, and (3) that the consumer is liable for the difference between the estimated value of the leased property and its realized value at the end of the term, if such liability exists.

Under the statutory amendments, in radio advertisements, lessors are permitted to substitute a reference to a toll-free telephone number or to a specified print advertisement for the disclosures about the purchase option and the end-of-term liability. If consumers call the toll-free number, they must receive all the required disclosures (not simply the ones omitted from the radio advertisement) orally, or in writing if requested by the consumer. Alternatively, all of the disclosures could be provided in a publication in general circulation in the community served by the radio station.

Although the statutory amendment is limited to radio advertisements, the legislative history takes note of the Board's Regulation M review and states that, after public comment, the Board should consider extending the new radio advertising provisions to television and print advertisements. It stated that television advertisements, for example, "raise complex questions regarding the content prominence, and duration of disclosures necessary to simplify the process and to convey more meaningful information to consumers." The Board believes that television lease advertisements have time constraints similar to those on radio; given these constraints, it is generally agreed that consumers cannot comprehend all the disclosure information provided currently. It is not clear that similar concerns exist with print advertisements. Therefore, in § 213.8(f), pursuant to its authority under section 105(a) of the TILA, the Board is proposing to apply the new statutory disclosure alternative to lease advertisements in both radio and television broadcasts to effectuate the purpose of the CLA and to facilitate compliance. The Board specifically solicits comment on this matter and on whether similar constraints exist for print advertisements that would warrant their inclusion in any final rule.

When a television or radio advertisement includes any of the trigger terms in § 213.8(d)(1), the alternative disclosure rules allow lessors to comply with § 213.8(d)(2) by combining certain required disclosures with a referral to either a toll-free number or a written advertisement. Required information in § 213.8(d)(2)(i)–(iii) must be stated in the television or radio advertisement along with the alternative disclosures in § 213.8(f)(1). The remaining disclosures in § 213.8(d)(2)(iv)–(vi), are not required to be disclosed. However, all the required disclosures in § 213.8(d)(2) must be given to consumers through the toll-free number or in a written advertisement appearing in a publication of general circulation in the community served by the media station on which the advertisement is broadcast.

The Board solicits comment on its approach in implementing section 336 of the Riegle Community Development and Regulatory Improvement Act.

Section 213.9—Record Retention

Section 213.9, currently § 213.6, has been revised for simplicity. The language "or action is required to be taken" has been added to cover circumstances requiring action by a lessor other than providing disclosures. The language in current § 213.6(b) is eliminated as unnecessary. The caption "Preservation and Inspection of Evidence of Compliance" has been changed to "Record Retention" to conform with usage in other of the Board's regulations.

Section 213.10—Relation to State Laws

Section 213.10 combines and simplifies current §§ 213.7 and 213.8. No substantive changes are intended. Information about procedures and criteria for preemption or exemption determinations is removed.

Appendix A—Model Forms

To simplify the regulation, the written information contained in the current appendix about the procedures and criteria for an exemption determination has been removed. Such information would be available from the Board upon request.

Model forms, currently in appendix C of the regulation, have been moved to this appendix and revised to illustrate the new segregated disclosure scheme required by § 213.4(a)(2). Instructions to the current model forms have been deleted as repetitive of the regulation and unnecessary. The Board solicits comment on whether any additional model forms or model clauses are warranted (such as for single or "lump sum" payment leases). Specific comment is also solicited on whether the open-end lease model form is needed and to what extent such leases are being offered.

Appendix B—Federal Enforcement Agencies

The list of federal agencies that enforce the CLA for particular classes of businesses is moved from appendix D to this appendix. To simplify the regulation, the written information contained in the current appendix about the procedures and criteria for a preemption determination has been removed. Such information would be available from the Board upon request.

Appendix C—Issuance of Staff Interpretations

Current paragraph § 213.1(d) is moved to this appendix. Model forms have been moved to proposed appendix A.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–0892. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type-size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format, but must be accompanied by an original document in paper form.

V. Regulatory Flexibility Analysis

The Board's Office of the Secretary has prepared a preliminary regulatory analysis of the proposal. A copy of the analysis may be obtained from Publication Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

Concerning the impact on small firms, the Board believes that most consumer leasing subject to Regulation M is undertaken by large firms. Therefore, elements of revised Regulation M that might increase burden on lessors should not have much impact, if any, on small firms. There is evidence from other regulations of economies of scale (that is, cost conditions that lead to higher average costs at small firms than large firms) in start-up costs for new regulations or for changes in regulations. Thus, implementation of proposed revisions to Regulation M could be disproportionately costly to small firms, to the extent that they engage in covered consumer leasing.

Provisions of the CLA are similar to those of the credit provisions of the TILA, and available evidence suggests also the existence of economies of scale in on-going costs for Truth in Lending. Since the requirements of the existing regulation and the proposed revised regulation do not differ by size of firm, small firms would possibly continue to face relatively higher costs under the proposed revised rule.

It appears, however, that few, if any, firms that provide consumer leases are small firms. Moreover, evidence on scale economies for other regulations indicates that scale economies are exhausted at relatively low levels of output. Therefore, it is unlikely that the proposed revisions would cause any firms in the industry to incur disproportionately higher costs because of their size.

VI. Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The third-party disclosure requirements contained in 12 CFR 213.5 will aid consumers in understanding leases they negotiate. The respondents are for-profit institutions, including small businesses. Because the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

Institutions are not required to respond to this collection of information unless it displays a currently valid OMB control number. The OMB control

number is 7100–0202. OMB has deemed that inclusion of the OMB control number in this preamble satisfies this requirement.

The Board estimates that the annual burden for state member banks will increase from 9,272 hours to 10,786 hours. The Board estimates that the average length of time to disclose the costs and terms to a consumer will increase from fifteen minutes to seventeen minutes. The Board also estimates that the average length of time to prepare basic lease information for inclusion in all advertisements will decrease from thirty minutes to twenty-five minutes.

The Board has found that few state member banks engage in consumer leasing and that while the prevalence of leasing has increased in recent years, it has not increased substantially among state member banks. It also has been found that among state member banks that engage in consumer leasing, only a very few advertise consumer leases. For estimates of the annual burden imposed on other institutions that engage in consumer leasing, please contact their regulator.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 213 as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604.

2. The table of contents to part 213 is revised to read as follows:

Sec.
213.1 Authority, scope, purpose, and enforcement.
213.2 Definitions.
213.3 Exempt transactions.
213.4 General disclosure requirements.
213.5 Content of disclosures.
213.6 Renegotiations, extensions, and assumptions.
213.7 [Reserved].
213.8 Advertising.
213.9 Record retention.
213.10 Relation to State laws.
Appendix A to Part 213—Model Forms
Appendix B to Part 213—Federal Enforcement Agencies
Appendix C to Part 213—Issuance of Staff Interpretations
Supplement I–CL–1 to Part 213—Official Staff Commentary to Regulation M

3. Part 213 would be amended as follows:

a. Sections 213.1 through 213.6 are revised;

b. Section 213.7 is removed and reserved;

c. Section 213.8 is revised;

d. Sections 213.9 and 213.10 are added;

e. Appendices A through C are revised; and

f. Appendix D is removed.

The revisions and additions read as follows:

§ 213.1 Authority, scope, purpose, and enforcement.

(a) *Authority.* The regulation in this part, known as Regulation M, is issued by the Board of Governors of the Federal Reserve System to implement the consumer leasing provisions of the Truth in Lending Act, which is Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*).

(b) *Scope and purpose.* This part applies to all persons who are lessors of consumer leases as defined in § 213.2(a)(6) and (10). The purpose of this part is:

(1) To ensure that lessees of personal property receive meaningful disclosures that enable them to compare lease terms with other leases and with credit transactions, where appropriate;

(2) To limit the amount of balloon payments in consumer lease transactions; and

(3) To provide for the accurate disclosure of lease terms in advertising.

(c) *Enforcement and liability.* Section 108 of the act contains the administrative enforcement provisions. Sections 112, 130, 131, and 185 of the act contain the liability provisions for failing to comply with the requirements of the act and this part.

§ 213.2 Definitions.

(a) *Definitions.* For the purposes of this part the following definitions apply:

(1) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *Advertisement* means a commercial message in any medium that directly or indirectly promotes a consumer lease transaction.

(3) *Agricultural purpose* means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products including but not limited to the acquisition of personal property and services used primarily in farming.

(4) *Board* refers to the Board of Governors of the Federal Reserve System.

(5) *Closed-end lease* means a consumer lease other than an open-end lease as defined in this section.

(6) *Consumer lease* means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding $25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. It does not include a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a). It also does not include a lease for agricultural, business, or commercial purposes or a lease made to an organization. Unless the context indicates otherwise in this part, "lease" shall be construed to mean "consumer lease."

(7) *Estimated lease charge* means the estimated total dollar amount of the cost of the lease attributable to interest and other charges regardless of when such charges are [illegible] calculated under § 213.5(q).

(8) *Gross cost* means the total dollar amount of all items included in the value of a lease at consummation, including but not limited to the base price of the leased property and any other items added to that price, such as any markup by the lessor, taxes, insurance, service agreements, and any outstanding balance from a prior lease that is included in the new lease.

(9) *Lessee* means a natural person who leases or who is offered a consumer lease.

(10) *Lessor* means a person who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease. A person who leased, offered, or arranged to lease personal property more than five times in the preceding calendar year is subject to the act and this part; if a person did not meet this numerical test in the preceding calendar year, the numerical test is applied to the current year.

(11) *Open-end lease* means a consumer lease in which the lessee's liability at the end of the lease term is based on the difference between the estimated value of the leased property and its realized value.

(12) *Organization* means a corporation, trust, estate, partnership, cooperative, association, or government entity or instrumentality.

(13) *Person* means a natural person or an organization.

(14) *Personal property* means any property that is not real property under the law of the state where the property is located at the time it is offered or made available for lease.

(15) *Realized value* means:

(i) The price received by the lessor for the leased property at disposition;

(ii) The highest offer for disposition; or

(iii) The fair market value at the end of the lease term.

(16) *Residual value* means the amount determined at consummation to be the value of the leased property at the end of the lease term.

(17) *Security interest* and *security* mean any interest in property that secures the payment or performance of an obligation.

(18) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(19) *Total lease obligation* applicable to an open-end lease, means the total of:

(i) The scheduled periodic payments under the lease;

(ii) Any nonrefundable cash payment required of the lessee or agreed upon by the lessor and lessee including any trade-in allowance made at consummation; and

(iii) The estimated value of the leased property at the end of the lease term.

(20) *Value at consummation* means the cost to the lessor of the leased property including, if applicable, any increase or markup by the lessor prior to consummation.

(b) [Reserved]

§ 213.3 Exempt transactions.

This part does not apply to consumer lease transactions of personal property which are incident to the lease of real property and which provide that:

(a) The lessee has no liability for the value of the property at the end of the lease term except for abnormal wear and use; and

(b) The lessee has no option to purchase the leased property.

§ 213.4 General disclosure requirements.

(a) *General requirements.* A lessor shall make the disclosures required by § 213.5, as applicable. The disclosures shall be made clearly and conspicuously in writing, and in accordance with this section.

(1) *Form of disclosures.* Except as provided in paragraph (a)(4) of this section, the disclosures required by § 213.5 shall be given to the lessee together on a dated statement that identifies the lessor and the lessee. All the disclosures may be made either on a separate statement that identifies the consumer lease transaction or on the contract or other document evidencing the lease transaction. As an alternative, the disclosures required under paragraph (a)(2) of this section to be segregated from other information may be provided on a separate statement that identifies the lease transaction and other required disclosures provided in the lease contract.

(2) *Segregation of certain disclosures.* The following disclosures shall be segregated from other information and shall contain only permissible related or additional information: the disclosures required by § 213.5(b), (c), (e), (h)(3), (k)(1), (l)(2), (o)(1) and (p) through (s). The content, format, and headings for these disclosures shall be provided in a manner substantially similar to the applicable model form in appendix A of this part.

(3) *Timing of disclosures.* A lessor shall provide disclosures to the lessee prior to the consummation of a consumer lease.

(4) *Multiple leased items.* In a lease of multiple items, the description required by § 213.5(a) may be given on a separate statement that is incorporated by reference in the disclosure statement required by paragraph (a)(1) of this section.

(5) *Language of disclosures.* The disclosures required by § 213.5 may be made in a language other than English, provided that the disclosures are made available in English upon the lessee's request.

(b) *Additional information.* Additional information may be provided with the disclosures that are not required by paragraph (a)(2) of this section to be segregated from other information. The additional information shall not be stated, used, or placed so as to mislead or confuse the lessee or contradict, obscure, or detract attention from any disclosures required by this part.

(c) *Multiple lessors or lessees.* When a transaction involves more than one lessor, the disclosures required by this part may be made by one lessor on behalf of all of the lessors. When a lease involves more than one lessee, the disclosures may be provided to any lessee who is primarily liable on the lease.

(d) *Use of estimates*—(1) *Standard.* At the time disclosures are made, if an amount or other item required to be disclosed, or needed to determine a required disclosure, is unknown or is not available to the lessor and the lessor has made a reasonable effort to ascertain the information, the lessor may use an estimate, provided that the estimate is reasonable, is clearly identified as an estimate, is based on the best information available to the lessor, and is not used to circumvent or evade the disclosure requirements of this part.

(2) *Open-end purchase option lease.* Notwithstanding that an estimate shall be based on the best information available, a lessor is not precluded in an open-end lease with a purchase-option from understating the estimated value of the leased property at the end of the term in computing the total lease obligation required by § 213.5(o)(1).

(e) *Effect of subsequent occurrence.* If information required to be disclosed becomes inaccurate because of an event occurring after consummation of a lease, the inaccuracy is not a violation of this part.

(f) *Minor variations.* A lessor may disregard the effects of the following in making calculations and disclosures:

(1) That payments must be collected in whole cents;

(2) That dates of scheduled payments may be different because the scheduled date is not a business day;

(3) That months have different numbers of days; and

(4) That February 29 occurs in a leap year.

§ 213.5 Content of disclosures.

For a consumer lease subject to this part, the lessor shall disclose the following information, as applicable:

(a) *Description of property.* A brief description of the leased property sufficient to identify the property to the lessee and lessor.

(b) *Total amount due at lease signing.* The total amount to be paid by the lessee prior to or at consummation of the lease, using the term "total amount due at lease signing." The lessor shall itemize each payment by type and amount, including any refundable security deposit, advance monthly or periodic payment, and any downpayment (capitalized cost reduction), and shall disclose the means of payment, including any trade-in allowance, payments in cash, or rebates, in a format substantially similar to that contained in the model forms in appendix A of this part.

(c) *Payment schedule.* The number, amount, and due dates or periods of payments scheduled under the lease, and the total amount of the periodic payments.

(d) *Fees and taxes.* The total dollar amount for all official and license fees, registration, title, or taxes required to be paid by the lessee in connection with the lease.

(e) *Other charges.* The total amount of other charges payable by the lessee to the lessor, itemized by type and amount, that are not included in the periodic payments. This total includes the amount of any liability the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values referred to in paragraph (m) of this section.

(f) *Insurance.* A brief identification of insurance associated with the consumer lease including:

(1) If provided or paid for by the lessor, the types and amounts of coverage and cost to the lessee; or

(2) If not provided or paid for by the lessor, the types and amounts of coverage required of the lessee.

(g) *Warranties or guarantees.* A statement identifying all express warranties and guarantees available to the lessee made by the manufacturer or lessor with respect to the leased property.

(h) *Maintenance responsibilities.* The following are required:

(1) A statement identifying the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility;

(2) A statement of standards for wear and use, which must be reasonable, if the lessor sets such standards; and

(3) A notice regarding wear and use which shall be substantially similar to the following: "*wear and use*: you may be charged for excessive wear and use based on the lessor's standard for normal use." In a vehicle lease transaction, the notice shall also specify any charge for excess mileage.

(i) *Security interest.* A description of any security interest, other than a security deposit disclosed under paragraph (b) of this section, held or to be retained by the lessor and a clear identification of the property to which the security interest relates.

(j) *Penalties and other charges for delinquency.* The amount or the method of determining the amount of any penalty or other charge for delinquency, default, or late payments, which must be reasonable.

(k) *Purchase option.* A statement of whether or not the lessee has the option to purchase the leased property and:

(1) If at the end of the lease term, the purchase price; and

(2) If prior to the end of the lease term, the purchase price or the method for determining the price and when the lessee may exercise this option.

(l) *Early termination*—(1) *Conditions and disclosure of charges.* A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or the description of the method of determining the amount of any penalty or other charge for early termination, which must be reasonable.

(2) *Notice and example.* A notice about any charge for terminating a consumer lease early, and an example of a charge for terminating a lease at the end of the first year, which shall be substantially similar to the following: "You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year', you may owe the lessor [amount]. The actual charge will vary depending on when the lease is terminated. Other charges such as for excessive wear and use may also be imposed."

(m) *Liability between estimated and realized values.* A statement that the lessee is liable for the difference between the estimated value of the leased property and its realized value at early termination or at the end of the lease term, if such liability exists.

(n) *Right of appraisal.* If the lessee's liability at early termination or at the end of the lease term is based on the realized value of the leased property, a statement that the lessee may obtain at the lessee's expense, a professional appraisal, by an independent third party agreed to by the lessee and the lessor, of the value that could be realized at sale of the leased property. The appraisal shall be final and binding on the parties.

(o) *Liability at end of lease term based on estimated value.* If the lessee's liability at the end of the lease term is based on the estimated value of the leased property:

(1) *Value at consummation and total lease obligation.* The value of the property at consummation, the itemized total lease obligation at the end of the lease term, and the difference between them;

(2) *Excess liability.* A statement about the rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period; and that the lessor cannot collect the excess amount unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees;

(3) *Exception for unreasonable wear.* A statement that the provision regarding the rebuttable presumption and attorney's fees does not apply to the extent the excess of the estimated value over the realized value is due to unreasonable or excessive wear or use; and

(4) *Mutually agreeable final adjustment.* A statement that the requirements of this paragraph (o) do not preclude a willing lessee from making any mutually agreeable final adjustment regarding such excess liability.

(p) *Gross cost.* In a closed-end consumer lease, the gross cost, using that term, with a brief description such as "the agreed upon acquisition value of the vehicle including but not limited to items such as taxes, fees, service contracts, and insurance."

(q) *Estimated lease charge.* The estimated lease charge.

(1) *Closed-end lease.* In a closed-end lease, the estimated lease charge is calculated by subtracting the gross cost from the sum of the total payment due at lease signing (less a first periodic payment and any refundable charges), the total of periodic payments, the total of other charges payable to the lessor and the price the leased property may be purchased for at the end of the lease term. Where there is no purchase option, the residual value shall be used in the calculation.

(2) *Open-end lease.* In an open-end lease, the estimated lease charge is calculated in the same manner set forth in paragraph (q)(1) of this section, except that the initial value of the leased property, the value at consummation, is substituted for the gross cost, and the estimated value of the leased property substitutes for the residual value, to the extent there is any difference.

(r) *Residual value.* In a closed-end consumer lease, the residual value.

(s) *Statement referencing nonsegregated disclosures.* A statement that the lessee should refer to the lease documents for information on: conditions for and the amount or method of determining early termination charges; charges for delinquency, default, or late payments; maintenance responsibilities; any purchase option prior to the end of the lease term; insurance; total taxes and official fees paid; warranties; liability at the end of the lease term; and any security interest.

§ 213.6 Renegotiations, extensions, and assumptions.

(a) *Renegotiations.* A renegotiation occurs when a consumer lease subject to this regulation is satisfied and replaced by a new lease undertaken by the same consumer. A renegotiation is a new lease requiring new disclosures, except as provided in paragraph (d) of this section.

(b) *Extensions.* An extension is the continuation of an existing consumer lease beyond the originally scheduled termination date that is agreed to by the lessor and the lessee, except when the continuation is the result of a renegotiation. An extension that exceeds six months is a new lease requiring new disclosures, except as provided in paragraph (d) of this section.

(c) *Assumptions.* New disclosures are not required when a consumer lease is assumed by another person, whether or not an assumption fee is charged.

(d) *Exceptions.* New disclosures under this part shall not be required for the following, even if they meet the definition of a renegotiation or an extension:

(1) The addition, deletion, or substitution of leased property in a multiple-item lease, provided the average payment is not changed by more than 25 percent;

(2) A lease that is extended for not more than six months on a month-to-month basis or otherwise;

(3) A reduction in the lease charge;

(4) A substitution of leased property with property that has a substantially equivalent or greater economic value, provided no other lease terms are changed;

(5) An agreement involving a court proceeding; or

(6) The deferment of one or more payments, whether or not a fee is charged.

§ 213.7 [Reserved]

§ 213.8 Advertising

(a) *General rule.* No advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease the property at those amounts or terms.

(b) *Clear and conspicuous standard.* Disclosures required by this section shall be made clearly and conspicuously. Any reference to a charge that is a part of the total of payments required prior to or at consummation under § 213.8(d)(2)(ii), such as the amount of any downpayment (or that no downpayment is required), shall not be more prominent than the disclosure of the total amount required to be paid by the lessee prior to or at consummation of the lease.

(c) *Catalogs and multi-page advertisements.* If a catalog or other multi-page advertisement provides a table or schedule of the disclosures required by this section for the leased property being advertised, the catalog or multi-page advertisement shall be considered a single advertisement if, whenever any lease term not accompanied by all the required disclosures is located elsewhere, it refers to the page or pages on which the table or schedule appears.

(d) *Advertisement of terms that require additional disclosure.*—(1) *Triggering terms.* An advertisement that states any of the following items shall contain the disclosures required by paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:

(i) The amount of any payment;

(ii) The number of required payments; or

(iii) A statement of any downpayment or other payment required at consummation, or that no payment is required.

(2) *Additional terms.* An advertisement containing any item under paragraph (d)(1) of this section shall state the following items:

(i) That the transaction advertised is a lease;

(ii) The total amount required to be paid by the lessee prior to or at consummation of the lease, or that no payment is required;

(iii) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease;

(iv) A statement of whether or not the lessee has the option to purchase the leased property and at what price and time. The method of determining the price may be substituted for the price in disclosing that the lessee has the option to purchase the leased property prior to the end of the lease;

(v) A statement of the amount or method of determining the amount of any liabilities the lease imposes on the lessee at the end of the term; and

(vi) A statement that the lessee will be liable for any difference between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

(e) *Alternative disclosures—merchandise tags.* A merchandise tag setting forth information listed under paragraph (d)(1) of this section need not contain the disclosures required by paragraph (d)(2) of this section, provided the tag refers to a sign or display prominently posted in the lessor's showroom. The sign or display shall contain a table or schedule of the information required to be disclosed by paragraph (d)(2) of this section.

(f) *Alternative disclosures—television or radio advertisements.*—(1) *Toll-free number or print advertisement.* An advertisement made through television or radio containing any information listed in paragraph (d)(1) of this section complies with paragraph (d)(2) of this section if the advertisement states the information required by paragraphs (d)(2)(i)–(iii) of this section; and:

(i) Lists a toll-free telephone number established in accordance with paragraph (f)(2) of this section that may be used by consumers to obtain the information required by paragraph (d)(2) of this section; or

(ii) Refers to a written advertisement appearing in a publication of general circulation in the community served by the media station on which the advertisement is broadcast, including the name and the date of the publication, published beginning three days before and ending ten days after the broadcast. The written advertisement shall include the information required to be disclosed by paragraph (d)(2) of this section.

(2) *Establishment of toll-free number.* If a toll-free telephone number is referred to in a television or radio advertisement for the purposes of complying with this section, the lessor shall:

(i) Establish the toll-free telephone number no later than the date the advertisement is broadcast;

(ii) Maintain the telephone number for no less than ten days, beginning on the date of the broadcast; and

(iii) Provide the information required by paragraph (d)(2) of this section to any person who calls. The information shall be provided orally, or in writing if requested by the consumer.

§ 213.9 Record retention.

A lessor shall retain evidence of compliance with the requirements imposed under this part, other than the advertising requirements under § 213.8, for a period of not less than two years after the date disclosures are required to be made or action is required to be taken.

§ 213.10 Relation to state laws.

(a) *Inconsistent state laws.* A state law that is inconsistent with the requirements of the act and this part is preempted to the extent of the inconsistency. If a lessor cannot comply with a state law without violating a provision of this part the state law is inconsistent with the requirements of the act and this part within the meaning of section 186(a) of the act and is preempted, unless the state law gives greater protection and benefit to the consumer. A state, through an appropriate official having primary enforcement or interpretative responsibilities for its consumer leasing law, may apply to the Board for a preemption determination.

(b) *Exemptions.*—(1) *Applications.* A state may apply to the Board for an exemption from the requirements of the act and this part for any class of lease transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of leasing transactions is subject to state law requirements substantially similar to the act and this part or that lessees are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Enforcement and liability.* After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by federal law) will constitute the requirements of the act and this part. No exemption will extend to the civil liability provisions of sections 130, 131, and 185 of the act.

(c) *Procedures and criteria for preemptions and exemptions.* The procedures and criteria for requesting a preemption or an exemption determination are available from the Board upon request.

Appendix A to Part 213—Model Forms

A–1 Model Open-End or Finance Vehicle Lease Disclosures
A–2 Model Closed-End or Net Vehicle Lease Disclosures
A–3 Model Furniture Lease Disclosures

A–1 Model Open-End or Finance Vehicle Lease Disclosures

Federal Consumer Leasing Act Disclosure Statement

Date ____________

1. LESSOR(S) ______________________________

LESSEE(S) ______________________________

2. Description of leased property

Year	Make	Model	Body style	Vehicle ID#

3. a. Initial Value of Vehicle .... $______
b. Total Payment Due at Lease Signing .... $______
(Total of the itemized costs should equal the means of paying itemized costs)

Itemized Costs		**Means of paying Itemized Costs**	
Downpayment	$______	Net Trade-in Allowance	$______
Registration Fee	$______	Rebate	
______	$______	Cash	$______
* First Monthly Payment	$______	....	
* Refundable Security Deposit	$______	....	

c. Total of Monthly Payments .... $______
Base Payment .... $______
Use/Lease Tax .... $______
Insurance .... $______
______ .... $______
Total Monthly Payment .... $______

Payment Schedule: The first monthly payment of $______ is due on ____, followed by ____ payments of ____ due on the ____ of each month.

d. Total of Other Charges Payable to Lessor (not included in b or c) .... $______
Disposition Fee .... $______
______ .... $______

e. Estimated [Retail/Wholesale] Value of Vehicle .... $______
(Your liability for this sum may be limited, see item 6)

f. Purchase Option: You have __ /do not have __ an option to purchase the leased property at the end of the lease term. If you purchase the property at that time, the price will be $______

g. Total Lease Obligation (Downpayment, trade-in + c + e) .... $______

h. Estimated Lease Charge .... $______
(Cost of the lease attributable to interest and other charges obtained by adding b (less less *first monthly payment and *any refundable charges) + c + d + f (but if no purchase option is available then e) − a))

Early Termination. You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor $______. The actual charge will vary depending on when the lease is terminated. Other charges such as for excessive wear and use may also be imposed.

Excessive Wear and Use. You may be charged for excessive wear and use of the vehicle based on the *lessor's standards* for normal use. [In addition, you will be charged ______ cents per mile for each mile in excess of ______ miles shown on the odometer.]

Other Important Terms. Before signing this lease, please read your lease documents for further information about Conditions for and the Amount or Method of Determining Early Termination Charges, Charges for Delinquency, Default, or Late Payments, Maintenance Responsibilities, Any Purchase Option Prior to the End of the Lease Term, Insurance, Total Taxes and Official Fees Paid, Warranties, Liability at the End of the Lease Term, and Any Security Interest, if applicable.

4. Official Fees and Taxes

The total amount you will pay for official and license fees, registration, title and taxes during the lease term is $______.

5. Insurance

The following types and amounts of insurance will be acquired in connection with this lease: ______________________________

____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $______.
____ You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

6. End of Term Liability

(a) The estimated value of the vehicle stated in item 3(e) is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is *greater* than the estimated value, you will have no further liability under this lease, except for other charges already incurred [and are entitled to a credit or refund of any surplus]. If the actual value of the vehicle is *less* than the estimated value, you will be liable for any difference up to $ ______ (3 times the monthly payment). For any difference in excess of that amount, you will be liable only if

1. Excessive use or damage [as described in item 7] [representing more than normal wear and tear] resulted in an unusually low value at the end of the term.

2. You voluntarily agree with us after the end of the lease term to make a higher payment.

3. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment. Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle. Unless we prove that the excess amount owed was the result of excessive use or unreasonable wear and use, we will pay your reasonable attorney's fees.

(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the ________ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

7. Standards for Wear and Use

The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle ____.

8. Maintenance

[You are responsible for the following maintenance and servicing of the leased vehicle: ____.]

[We are responsible for the following maintenance and servicing of the leased vehicle: ____.]

9. Warranties

The leased vehicle is subject to the following express warranties: ____.

10. Early Termination and Default

(a) You may terminate this lease before the end of the lease term under the following conditions: ____.

The charge for such early termination is ____.

(b) We may terminate this lease before the end of the lease term under the following conditions: ____.

Upon such termination we shall be entitled to the following charge(s) for ____.

(c) To the extent these charges take into account the value of the vehicle at the end of the lease term, you have the same right to a professional appraisal as that stated in item 6(b):

____.

11. Security Interest

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

____.

12. Late Payments

The charge for late payments is ____.

13. Option to Purchase

[You have an option to purchase the leased vehicle prior to the end of the term. The price will be $________/or the method of determining the price].

[You have no option to purchase the leased vehicle.]

A-2 Model Closed-End or Net Vehicle Lease Disclosures

FEDERAL CONSUMER LEASING ACT DISCLOSURE STATEMENT

Date ________________

1. LESSOR(S) ____

LESSEE(S) ____

2. Description of leased property

Year	Make	Model	Body style	Vehicle ID#

3. a. Gross Cost .... $________

(The agreed upon acquisition value of the vehicle including but not limited to items such as taxes, fees, service contracts, and insurance. The gross cost is commonly referred to by the industry as the "gross capitalized cost.")

b. Total Payment Due at Lease Signing .... $________

(Total of the itemized costs should equal the means of paying itemized costs)

Itemized Costs	....	Means of Paying Itemized Costs	
Downpayment	$________	Net Trade-in Allowance	$________
Registration Fee	$________	Rebate	$________
$________	$________	Cash	$________
*First Monthly Payment	$________		
*Refundable Security Deposit	$________		

c. Total of Monthly Payments .... $________

Base Payment .... $________

Use/Lease Tax .... $________

Insurance .... $________

$________________ .... $________

Total Monthly Payment .... $________

Payment Schedule: The first monthly payment of $________ is due on ____, followed by ____ payments of ________ due on the ____ of each month.

d. Total of Other Charges Payable to Lessor (not included in b or c) .... $________

Disposition Fee .... $________

________________ .... $________

e. Residual Value .... $________

(The estimated value of the vehicle at the end of the lease term)

f. Purchase Option: You have __ / do not have __ an option to purchase the leased property at the end of the lease term. If you purchase the property at that time, the price will be $________

g. Estimated Lease Charge .... $________

(Cost of the lease attributable to interest and other charges obtained by adding b (less *first monthly payment and *any refundable charges) + c + d + f (but if no purchase option is available, then e) − a))

Early Termination. You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor $________. The actual charge will vary depending on when the lease is terminated. Other charges such as for excessive wear and use may also be imposed.

Excessive Wear and Use. You may be charged for excessive wear and use of the vehicle based on the *lessor's standards* for normal use. [In addition, you will be charged ________ cents per mile for each mile in excess of ________ miles shown on the odometer.]

Other Important Terms. Before signing this lease, please read your lease documents for further information about Conditions for and the Amount or Method of Determining Early Termination Charges, Charges for Delinquency, Default, or Late Payments, Maintenance Responsibilities, Any Purchase Option Prior to the End of the Lease Term, Insurance, Total Taxes and Official Fees Paid, Warranties, Liability at the End of the Lease Term, and Any Security Interest, if applicable.

4. Official Fees and Taxes

The total amount you will pay for official and license fees, registration, title and taxes during the lease term is $________.

5. Insurance

The following types and amounts of insurance will be acquired in connection with this lease: ____.

____We (lessor) will provide the insurance coverage quoted above for a total premium cost of $________.

____You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

6. Standards for Wear and Use

The following standards are applicable for determining unreasonable or excess wear and use of the leased vehicle: ____.

7. Maintenance

[You are responsible for the following maintenance and servicing of the leased vehicle: ____.]

[We are responsible for the following maintenance and servicing of the leased vehicle: ____.]

8. Warranties

The leased vehicle is subject to the following express warranties: ____.

9. Early Termination and Default

(a) You may terminate this lease before the end of the lease term under the following conditions: ____.

The charge for such early termination is ____.

(b) We may terminate this lease before the end of the lease term under the following conditions: ____.

Upon such termination we shall be entitled to the following charge(s) for: ____.

(c) To the extent that these charges take into account the value of the vehicle at the end of the lease term, if you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the ________ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

10. Security interest

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease:

____.

11. Late Payments

The charge for late payments is: ____.

12. Option to Purchase

[You have an option to purchase the leased vehicle prior to the end of the term. The price will be $________ / the method of determining the price.]

[You have no option to purchase the leased vehicle.]

A-3 Model Furniture Lease Disclosures

FEDERAL CONSUMER LEASING ACT DISCLOSURE STATEMENT

Date ________________

1. LESSOR(S) ____

LESSEE(S) ____

2. Description of leased property

Item	Color	Stock #	Mfg.	Qty.

3. a. Gross Cost .... $______

(The agreed upon acquisition value of the furniture including but not limited to items such as taxes, fees, and insurance.)

b. Total Payment Due at Lease Signing .... $______

(Total of the itemized costs should equal the means of paying itemized costs)

Itemized Costs		Means of Paying Itemized Costs	
Downpayment	$______	Net Trade-in Allowance	$______
Delivery Fee	$______	Rebate	$______
______	$______	Cash	$______
*First Monthly Payment	$______		
*Refundable Security Deposit	$______		

c. Total of Monthly Payments .... $______

Base Payment	$______
Use/Lease Tax	$______
______	$______
Total Monthly Payment	$______

Payment Schedule: The first monthly payment of $______ is due on ______, followed by ______ payments of $______ due on the ____ of each month.

d. Total of Other Charges Payable to Lessor (not included in b or c) .... $______

Pick-up Charge	$______
______	$______

e. Residual Value .... $______

(The estimated value of the furniture at the end of the lease term)

f. Purchase Option: You have ____ / do not have ____ an option to purchase the leased property, at the end of the lease term. If you purchase the property at that time, the price will be $______

g. Estimated Lease Charge .... $______

(Cost of the lease attributable to interest and other charges obtained by adding b (less *first monthly payment and *any refundable charges) + c + d + f (but if no purchase option is available, then e) − a))

Early Termination. You may have to pay a substantial charge if you end this lease early. For example, if you terminate this lease at the end of the first year, you may owe the lessor $______. The actual charge will vary depending on when the lease is terminated. [Other charges such as for excessive wear and use may also be imposed.]

Excessive Wear and Use. You may be charged for excessive wear and use of the furniture based on the *lessor's standards* for normal use.

Other Important Terms. Before signing this lease, please read your lease documents for further information about Conditions for and the Amount or Method of Determining Early Termination Charges, Charges for Delinquency, Default, or Late Payments, Maintenance Responsibilities, Any Purchase Option Prior to the End of the Lease Term, Insurance, Total Taxes and Official Fees Paid, Warranties, Liability at the End of the Lease Term, and Any Security Interest, if applicable.

4. Official Fees and Taxes

The total amount you will pay for official and license fees, registration, title and taxes during the lease term is $______.

5. Insurance

The following types and amounts of insurance will be acquired in connection with this lease: ______ ____________

____ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $______.

____ You (lessee) agree to provide insurance coverage in the amounts and types indicated above.

6. Maintenance

[You are responsible for the following maintenance of the leased furniture: ____________ ____________.]

[We are responsible for the following maintenance of the leased furniture: ____________ ____________.]

7. Warranties

The leased furniture is subject to the following express warranties: ____________ ____________.

8. Standards for Wear and Use

The following standards are applicable for determining unreasonable or excess wear and use of the leased furniture: ____________ ____________.

9. Early Termination and Default

(a) You may terminate this lease before the end of the lease term under the following conditions: ____________ ____________.

The charge for such early termination is ____________ ____________.

(b) We may terminate this lease before the end of the lease term under the following conditions: ____________ ____________.

Upon such termination we shall be entitled to the following charge(s) for: ____________ ____________.

10. Security interest

We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: ____________ ____________.

11. Late Payments

The charge for late payments is: ____________

12. Option to Purchase

[You have an option to purchase the leased furniture prior to the end of the term. The price will be $______/ the method of determining the price].

[You have no option to purchase the leased vehicle.]

Appendix B to Part 213—Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation M (12 CFR part 213) for particular classes of business. Any questions concerning compliance by a particular business should be directed to the appropriate enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

1. *National banks and federal branches and federal agencies of foreign banks.*

District office of the Office of the Comptroller of the Currency for the district in which the institution is located.

2. *State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.*

Federal Reserve Bank serving the District in which the institution is located.

3. *Nonmember insured banks and insured state branches of foreign banks.*

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

4. *Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).*

Office of Thrift Supervision regional director for the region in which the institution is located.

5. *Federal credit unions.*

Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

6. *Air carriers.*

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590.

7. *Those subject to Packers and Stockyards Act.*

Nearest Packers and Stockyards Administration area supervisor.

8. *Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations.*

Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, DC 20578.

9. *All other lessors* (lessors operating on a local or regional basis should use the address of the FTC regional office in which they operate).

Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

Appendix C to Part 213—Issuance of Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this Regulation M (12 CFR part 213). These interpretations provide the formal protection afforded under section 130(f) of the act. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official commentary to Regulation M, which will be amended periodically. No staff interpretations will be issued approving lessor's forms, statements, or calculation tools or methods.

By order of the Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23046 Filed 9–19–95; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–0893]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation M which implements the Consumer Leasing Act. The Consumer Leasing Act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. The Board is issuing this proposal to revise the commentary that applies and interprets the requirements of Regulation M pursuant to the Board's policy of periodically reviewing its regulations and official interpretations. A proposal to revise Regulation M is published elsewhere in today's issue of the **Federal Register**.

DATES: Comments must be received by November 17, 1995.

ADDRESSES: Comments should refer to Docket No. R–0893, and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) any time. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR section 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Kyung Cho-Miller, Obrea O. Poindexter, or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. General

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, governs consumer leasing transactions and is implemented by the Board's Regulation M (12 CFR part 213). Effective May 13, 1982, an official staff commentary (Supplement I–CL–1 to 12 CFR part 213) was published to interpret the regulation. The commentary is designed to provide guidance to lessors in applying the regulation to specific transactions and is intended to be updated periodically to address significant questions that arise. It is anticipated that the proposed revisions to the Regulation M commentary will be adopted in final form in the Spring of 1996 with compliance optional until October 1, 1996, the uniform effective date for mandatory compliance.

II. The Review of Regulation M

The Board's Regulatory Planning and Review Program calls for the periodic review of a regulation and its official interpretations with four goals in mind: to clarify and simplify regulatory language; to determine whether regulatory amendments are needed to address technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. The official staff commentary has never been substantially revised or reviewed. The Board initially began a review of Regulation M according to the goals of its review program in November 1993, when it published an advance notice of proposed rulemaking on Regulation M (58 FR 61035, November 19, 1993). In its advance notice, the Board solicited comments generally on the provisions of Regulation M and the CLA, including coverage, exempt transactions, and general format and disclosure requirements. In addition, the Board identified specific issues about disclosures of early termination charges, broadcast media advertising of leases, and segregation of leasing disclosures from other information. Most of the seventy comment letters on the advanced notice addressed those issues. The proposed revisions to the regulation are published elsewhere in today's issue of the **Federal Register**.

III. Discussion of Proposed Revisions

The following discussion covers the proposed revisions to the Regulation M commentary section-by-section. Most of the discussion focuses on new comments and significant revisions to existing comments.

Introduction

Comments I–3, I–4, and I–6 are deleted as obsolete or unnecessary.

Section 213.1—Authority, Scope, Purpose, and Enforcement

Current	Proposed
1–2	Deleted as unnecessary.

Section 213.2—Definitions

2(a) Definitions

Current	Proposed
2(a)(2)–1	2(a)(2)–1 and –2.
2(a)(2)–2	2(a)(2)–3.
	2(a)(3)–1 new.
2(a)(4)–1	2(a)(10)–1.
2(a)(4)–2	2(a)(10)–4.
2(a)(4)–3	2(a)(10)–2.
	2(a)(6)–3 new.
2(a)(6)–3 through –6	2(a)(6)–4 through 7.
2(a)(7)–1	2(a)(9)–1.
2(a)(8)–1	2(a)(10)–3.
2(a)(9)–1	2(a)(12)–1.
2(a)(12)–1	2(a)(14)–1.
2(a)(14)–1 through –6	2(a)(15)–1 through –6.
	2(a)(17)–1 incorporates list from the regulatory definition of security interest.
2(a)(15)–1 through –3	2(a)(17)–2 through –4.
2(a)(17)–1 through –3	2(a)(19)–1 through –4.
2(a)(17)–4 and –5	2(a)(19)–5 and –6.
2(a)(18)–1 through –3	2(a)(20)–1 through –3.
2(b)–1 and –2	Deleted.

2(a)(2) Advertisement

Comment 2(a)(2)–1 would be revised to incorporate examples of advertisements, currently in § 213.2(a)(2).

2(a)(3) Agricultural Purpose

Proposed comment 2(a)(3)–1 incorporates the portion of current § 213.2(a)(3) and the statutory definition in section 103(s) of the Truth in Lending Act which describes agricultural products.

2(a)(6) Consumer Lease

Comment 2(a)(6)–2 would be revised to provide additional guidance on when a lease is deemed to exceed four months and, therefore, covered under the act and regulation. An example has been added to clarify that a month-to-month lease with a penalty for cancelling within the first year is deemed to be a consumer lease subject to the act and regulation.

Proposed comment 2(a)(6)–3 provides guidance on the total contractual obligation for purposes of determining whether a lease is covered under the regulation, and clarifies that the total contractual obligation may be different from the total lease obligation which applies only to open-end leases.

Comment 2(a)(6)–7, currently comment 2(a)(6)–6, would be revised to add another example of a lease deemed incidental to a service. The narrow list of exceptions in the existing commentary of leases incidental to a service is exhaustive, rather than illustrative. Questions have arisen about Regulation M coverage of cellular phones leased in conjunction with obtaining cellular service. Cellular service providers typically offer customers the opportunity to lease or purchase cellular telephones when subscribing for cellular service. The leasing of a cellular telephone is not incidental to obtaining cellular service and is, thus, covered under the regulation.

2(a)(7) Estimated Lease Charge

Proposed comment 2(a)(7)–1 clarifies that a monthly or other periodic payment paid at or before consummation is not included in the calculation of the estimated lease charge, as it is reflected in the total periodic payment disclosure. Any refundable charge such as a security deposit would also not be included in the calculation.

2(a)(8) Gross Cost

Proposed comment 2(a)(8)–1 provides guidance in making the proposed disclosure in § 213.5(p). Amounts consisting of fees and other charges paid out of pocket at consummation by the lessee are included in the gross cost figure.

2(a)(10) Lessor

Proposed comment 2(a)(10)–1 incorporates the existing regulatory definition of "arrange for leasing of personal property" (in § 213.2(a)(4) and provisions in the current commentary) into the proposed commentary under the definition of lessor.

Section 213.4—General Disclosure Requirements

4(a) General requirements

Current	Proposed
4(a)–1	Revised to adopt "legal obligation" terminology of Regulation Z.
4(a)–2	Moved to proposed § 213.4(f) of the regulation on minor variations that may be disregarded in making disclosures.
4(a)–3	4(a)(1)–1.
4(a)–5	Deleted as no longer applicable.
4(a)(1)–1	4(a)–2 (deleted the word "or format"); 4(a)–3.
4(a)(1)–2	Deleted as no longer applicable.
4(a)(2)–1	Deleted.
4(a)(2)–2	4(a)(1)–2.
4(a)(2)–3	4(a)(1)–3.
4(a)(2)–4	4(a)(1)–4.
4(a)(2)–5	4(a)(1)–5.
	4(a)(2)–1 new.
4(a)(4)–1	Deleted as unnecessary because of revised position in proposed § 213.4(a)(5).
4(a)(4)–2	Deleted as unnecessary because of revised position in proposed § 213.4(a)(5).

4(a)(2) Segregation of Certain Disclosures

Proposed comment 4(a)(2)–1 provides guidance in making the segregated disclosures required by § 213.4(a)(2).

4(b) Additional Information

Comment 4(b)–1 would be revised by deleting the second sentence.

4(d)(2) Open-End Purchase Option Lease

Comment 4(d)(2)–1, currently comment 4(d)–6, would be revised to clarify that this paragraph only applies to open-end leases. No substantive change is intended.

4(e) Effect of Subsequent Occurrence

Proposed comment 4(e)–3 incorporates the first sentence of footnote 1 of the regulation.

Section 213.5—Content of Disclosures

All of the comments in § 213.4(g) would be redesignated according to a new proposed § 213.5.

Current	Proposed
4(g)–1	Deleted as unnecessary.
4(g)–2	5–1.
4(g)(1)–1	Deleted as unnecessary.
4(g)(2)–1	Deleted as unnecessary 5(b)–1 new (incorporated from the instructions to the model form in the current appendix C–2).
4(g)(2)–2	5(b)–2 (incorporates current comment 2(b)–2).
4(g)(2)–3	5(b)–3.
4(g)(3)–1 and –2	5(c)–1 and –2.
4(g)(4)–1	5(d)–1.
4(g)(5)–1	5(e)–1 and –2.
4(g)(5)–2	Deleted as unnecessary.
4(g)(5)–3	5(e)–3 and –4.
4(g)(5)–4	5(e)–5.
4(g)(6)–1 and –2	5(f)–1 and –2.
	5(f)–3 new.
4(g)(7)–1 through –3	5(g)–1 through –3.
4(g)(8)–1	5(h)–1.
4(g)(9)–1	5(i)–1.
4(g)(10)–1 through –5	5(j)–1 through –5.
4(g)(11)–1 through –3	5(k)–1 through –3.
4(g)(12)–1 through –3	5(l)–1 through –3; the word "capitalized" in comment 2 is deleted.
	5(l)–4 new.
	5(l)–5 new.
4(g)(14)–1 through –3	5(n)–1 through –3.
4(g)(15)–1	5(o)–1.
4(g)(15)–2	5(o)(1)–1.
4(g)(15)–3	5(o)(1)–2.
4(g)(15)–4	5(o)–2.
4(g)(15)–5	5(o)(2)–1.
4(g)(15)–6	5(o)(2)–2; the word "capitalized" is deleted.
	5(o)(2)–3 new.
	5(p)–1 new.

5(b) Total Amount Due at Lease Signing

Proposed comment 5(b)–1 incorporates a definition of "capitalized cost reduction" from the instructions in current appendix C–1.

Comment 5(b)–2 would incorporate the first sentence of current comment 2(b)–2.

5(d) Fees and Taxes

Comment 5(d)–1 is revised to provide guidance on taxes that should be disclosed pursuant to this paragraph. If the tax is payable by the lessor (such as a gas guzzler tax), but the tax is passed on to the consumer and the existence of the tax is indicated in the consumer's lease documents—for example on the lease agreement—or the sticker or tag affixed to the personal property—then the tax should be disclosed pursuant to this paragraph. However, if the existence of the tax is not indicated, and the tax is absorbed by the lessor as a cost of doing business, then the tax should not be disclosed under this section.

5(f) Insurance

Proposed comment 5(f)–3 is added to indicate that this paragraph applies to voluntary and required insurance provided in connection with a lease transaction.

5(l) Early Termination

Proposed comment 5(l)–4 provides guidance in disclosing a full description of the method used to determine the amount of an early termination charge. A full description of the complete early termination method must be disclosed by lessors outside of the segregated disclosures. However, given the complexity of the methods involved, a lessor is permitted—in giving the "full description" of its early termination method—to include a reference to the name of a generally accepted method of computing the unamortized gross or capitalized cost portion of its early termination charge. For example, a lessor may state that the "constant yield" method would be utilized in obtaining the unamortized portion of the gross cost, but the lessor would *also* have to specify how that figure—and any other term or figure—is used in computing the total early termination charge that would be imposed upon the consumer. A lessor referring to a named method in this manner must provide a written explanation of that method if requested by the consumer.

Proposed comment 5(l)–5 provides guidance on what value such as the fair market value or the wholesale value should be used when calculating the required example of an early termination charge based on termination at the end of the first year.

5(o) Liability at End of Lease Term Based on Estimated Value

The proposed regulation reformats this section, currently section 213.4(g)(15), for clarity. The commentary has been similarly reformatted.

Proposed comment 5(o)(2)–3 states the intent of section 183(a) of the CLA that lessors must pay the lessees' attorney's fees in all actions brought by lessors under this subsection, even if those actions are decided in favor of the lessee.

5(s) Statement Referencing Nonsegregated Disclosures

Proposed comment 5(s)–1 provides guidance in making the proposed new disclosure referencing and alerting consumers to read CLA required disclosures not included among the segregated disclosures. It is only necessary to refer to the applicable items, thus, the lessor may delete inapplicable items from the disclosure.

Section 213.6—Renegotiations, Extensions, and Assumptions

Current	Proposed
4(h)–1	6–1.
4(h)–2	First sentence moved to regulation; second sentence moved to 6–1.
4(h)–3	Moved to the regulation.
4(h)–4	Moved to the regulation.
4(h)–5	6(b)–1.
	6(b)–2 new.
4(h)–6	6–2.
4(h)–7	Moved to the regulation.
4(h)–8	Moved to the regulation.
4(h)–9	Moved to the regulation.

Section 213.6 of the proposed regulations contain the disclosure rules governing leases that are renegotiated, extended or assumed (currently in section 213.4(h) and the commentary). Many of the commentary provisions have been moved to the regulation. For example, the definitions of a renegotiation and an extension would be included in the regulation. (This change parallels the approach under Regulation Z for refinancings and assumptions, section 226.20.) Other commentary provisions have been reformatted to conform to the proposed regulatory changes.

Comment 6(b)–1, currently comment 4(h)–5, would be revised to clarify that where a consumer lease is extended on a month-to-month basis for more than 6 months, new disclosures are required at the beginning of the seventh month, and also at the start of each seventh month thereafter. This revision incorporates into the commentary a longstanding interpretation originally issued under leasing provisions that were a part of Regulation Z (Truth in Lending) prior to 1982.

Proposed comment 6(b)–2 also incorporates a longstanding interpretation originally issued under the pre-1982 leasing provisions in Regulation Z that disclosures for a consumer lease, as defined by the regulation, extended on a month-to-month basis for more than 6 months should reflect the month-to-month nature of the transaction.

Section 213.8—Advertising

Current	Proposed
5(a)–1	8(a)–1.
5(a)–2	8(a)–2.
5(b)–1	8(c)–1.
5(b)–2	8(c)–2.
5(c)–1	8(b)–1.
	8(b)–2 new.
5(c)–2	8(d)(1)–1.
	8(d)(2)–1 new.
5(d)–1	8(e)–1.
	8(e)–2 new.
	8(f)–1 new.
	8(f)(1)–2 new.

8(b) Clear and Conspicuous Standard

Proposed 8(b)–2 provides that lease disclosures must appear on a television screen for at least five seconds, which parallels the "five second rule" adopted by the Federal Trade Commission.

8(e) Alternative Disclosures—Merchandise Tags

Proposed comment 8(e)–2 clarifies that merchandise tags are generally considered a multiple item lease.

8(f) Alternative Disclosures—Television or Radio Advertisements

8(f)(1) Toll-Free Number or Print Advertisement

Proposed comment 8(f)(1)–1 clarifies that a newspaper circulated nationally qualifies as a publication in general circulation.

Section 213.10 Relations to State Laws

Section 213.10 in the proposed regulation combines and simplifies current §§ 213.7 and 213.8. The comments to these sections have been deleted as unnecessary.

Appendix A Model Forms

Under the proposed rule, the model forms are moved to appendix A. Comment app. A–2 would be deleted. Minor revisions would be made to other comments in this appendix. For example, comment app. A–1 would be revised to indicate that changes to the headings, format, and the content of the segregated disclosures should be minimal. Also the definition of a closed–and lease in comment app. A–3 would be deleted because a definition would be added in the regulation.

IV. Form of Comment Letters

As discussed above, comment letters should refer to Docket No. R–0893. The Board requests that, when possible, comments be prepared using a standard courier type-face with a type-size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5 ¼ inch computer diskettes in any IBM-compatible DOS-based format, but must be accompanied by an original document in paper form.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, 12 CFR part 213, as proposed to be amended by a document published elsewhere in today's issue of the **Federal Register**, is further proposed to be amended as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604

2. Supplement I–CL–1 to Part 213—Official Staff Commentary to Regulation M would be revised to read as follows:

Supplement I–CL–1 to Part 213—Official Staff Commentary to Regulation M

Introduction

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M (12 CFR part 213). Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under appendix C of Regulation M, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the **Federal Register**. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 213.4(a) are further divided by subparagraph, such as comment 4(a)(1)–1 and comment 4(a)(1)–2. In other cases, comments have more general application and are designated, for example, as comment 4(a)–1. This introduction may be cited as comments I–1 through I–3. An appendix may be cited as comments app. A–1.

Section 213.1—Authority, Scope, Purpose, and Enforcement

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents (including resident aliens) of any state as defined in § 213.2(a)(18). The regulation does not apply to a foreign branch of a U.S. bank or leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

Section 213.2—Definitions

2(a) Definitions

2(a)(2) Advertisement

1. *Coverage.* Only commercial messages that promote consumer lease transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of consumer leases, whether in visual, oral, or print media, are covered by the definition. The term includes the following:

i. Print media.

ii. Broadcast media, including radio and television messages.

iii. Catalogs and fliers.

iv. Direct mail literature.

v. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag which is delivered or made available to a lessee or prospective lessee in any manner whatsoever.

vi. Telephone solicitations.

2. *Exceptions.* The term does not include the following:

i. Direct personal contacts, such as follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.

ii. Informational material distributed only to businesses.

iii. Notices required by federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

iv. News articles, the use of which is controlled by the news medium.

v. Market research or educational materials that do not solicit business.

3. *Persons covered.* See the commentary to § 213.8(a).

2(a)(3) Agricultural purpose

1. *Agricultural products.* Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

2(a)(6) Consumer lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If some question exists as to the primary purpose for a lease, the lessor is, of course, free to make the disclosures, and the fact that disclosures are made in such circumstances is not controlling on the question of whether the transaction was exempt. The primary purpose of a lease is generally determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in primary usage.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. A lease with a penalty for cancelling during the first four months is considered to have a term of more than four months. A month-to-month or week-to-week extension of a lease that was originally for four months or less is not a consumer lease, even if the extension actually lasts for more than four months. See the comments on § 213.6(b) for guidance on extensions of covered leases. To illustrate:

i. A month-to-month lease with a penalty for terminating before one year, such as the forfeiture of a security deposit, is a consumer lease covered by this definition.

ii. A three-month lease extended on a month-to-month basis and terminated after one year is not a consumer lease covered by this definition.

3. *Total contractual obligation.* The term total contractual obligation includes all nonrefundable amounts a lessee is contractually obligated to pay under a lease for the purpose of determining whether the lease is covered by this regulation. The total contractual obligation is not necessarily the same as the total lease obligation defined in § 213.2(a)(19).

4. *Organization.* A consumer lease does not include a lease made to an organization, such as a corporation or a government agency or instrumentality. A lease to an organization is outside the requirements of the regulation even if the property is used (by an employee, for example) primarily for personal, family or household purposes. Likewise, a lease made to an organization is not a consumer lease even if it is guaranteed by or subsequently assigned to a natural person.

5. *Credit sale.* A lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), is not a consumer lease. Regulation Z defines a credit sale, in part, as "a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement."

6. *Safe deposit boxes.* A lease of a safe deposit box is not a consumer lease for purposes of this regulation.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and are not consumer leases subject to the requirements of the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Burglar alarm systems requiring the installation of leased equipment that triggers a telephone call when a home is burglarized.

iii. Propane gas service where the consumer is required to lease a propane tank to receive the service.

2(a)(7) Estimated lease charge

1. *Advance periodic payment and refundable charges.* A first monthly (or other periodic payment) paid at or before consummation which is included in the total periodic payment disclosure and refundable charges are not included in the calculation of the estimated lease charge.

2(a)(8) Gross cost

1. *Fees and other charges paid at lease signing.* This figure includes all nonrefundable fees and charges required to be paid before or at lease signing as well as those fees and charges which are capitalized over the lease term.

2(a)(9) Lessee

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

2(a)(10) Lessor

1. *Arranger of a lease.* To "arrange" for the lease of personal property means to provide or offer to provide a lease which is or will be extended by another person under a business or other relationship pursuant to which the person arranging the lease (a) receives or will receive a fee, compensation, or other consideration for the service; or (b) has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease.

To illustrate:

i. An automobile dealer who, pursuant to a business relationship, completes the necessary lease agreement before forwarding it to the leasing company (to whom the obligation is payable on its face) for execution is "arranging" for the lease.

ii. An automobile dealer who, receiving no fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not "arranging" for the lease.

2. *Consideration.* The term "other consideration" used in the definition of arranger in comment 2(a)(10)–1 refers to an actual payment corresponding to a fee or similar compensation. It does not refer to intangible benefits, such as the advantage of increased business, which may flow from the relationship between the parties.

3. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances such as those described in *Ford Motor Credit Co.* v. *Cenance,* 452 U.S. 155 (1981). In that case, the U.S. Supreme Court held that an assignee was a creditor for purposes of previous Regulation Z because of its substantial involvement in the credit transaction.

4. *Multiple lessors.* See the commentary to § 213.4(c).

2(a)(12) Organization

1. *Coverage.* The term includes joint ventures and persons operating under a business name.

2(a)(14) Personal property

1. *Coverage.* Whether property is considered personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

2(a)(15) Realized value

1. *General.* Realized value is not a required disclosure. It refers to the value of the property at early termination or at the end of the lease term. It may be either the retail or wholesale value. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term is the difference between the estimated value of the property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may choose any of the three methods for calculating the realized value in determining the lessee's liability at the end of the lease term or at early termination. If the lessor sells the property prior to making that determination, the price received for the property is the realized value. If the lessor does not sell the property prior to making that determination, the lessor may choose either the highest offer or the fair market value as the realized value.

3. *Exclusions.* The realized value may exclude any amount attributable to taxes.

4. *Disposition charges.* Disposition charges may not be subtracted in determining the realized value. If the lessor charges the lessee a fee to cover the disposition expenses, the fee must be disclosed at consummation under § 213.5(e). Disposition charges may be estimated in accordance with § 213.4(d), and this does not prevent the lessor from collecting the actual disposition costs incurred.

5. *Offers.* In determining the highest offer for disposition, the lessor need not consider offers that an offeror has withdrawn or is unable or unwilling to perform.

6. *Appraisals.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act and § 213.5(n); those provisions refer to the lessee's right to an independent professional appraisal.

2(a)(17) Security interest and security

1. *Coverage.* The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialman's, artisan's, and other similar liens, vendor's liens in both real and personal property, any

lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

2. *State or other applicable law.* Other than those listed, only interests that are security interests under state or other applicable law are encompassed by the definition. For example, any interest the lessor may have in the leased property falls within this definition only if it is considered a security interest under state or other applicable law.

3. *Disclosable interests.* For purposes of the regulation, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

4. *Insurance.* The lessor's right to insurance proceeds or unearned insurance premiums is not a security interest for purposes of this regulation.

2(a)(19) Total lease obligation

1. *Disclosure.* The total lease obligation is disclosed under § 213.5(o)(1). It is relevant only to open-end leases.

2. *Periodic payments; disclosure distinguished.* Certain items that may be paid periodically are not part of the lessee's total lease obligation. Therefore, the amount of the scheduled periodic payments for purposes of calculating the total lease obligation may be less than the amount of the periodic payments disclosed under § 213.5(c).

3. *Periodic payments; inclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation is composed of the following items:

i. Any portion of the periodic payments attributable to depreciation, cost of money, and profit.

ii. Taxes in some cases. See the commentary to § 213.5(o)(1).

iii. The cost of mechanical breakdown protection contracts.

4. *Periodic payments; exclusions.* The total of scheduled periodic payments under the lease for purposes of calculating the total lease obligation does not include the following:

i. Any amount not paid periodically.

ii. Any portion of periodic payments attributable to official fees, registration, certificate of title, or license fees.

iii. Taxes in some cases. See the commentary to § 213.5(o)(1).

iv. At the lessor's option, the capitalized cost of service contracts and insurance premiums may be either included or excluded from this calculation.

5. *Initial payments.* The following amounts are not included among the payments at consummation when calculating the total lease obligation:

i. Refundable security deposits.

ii. Official fees and charges disclosable under § 213.5(d).

iii. Other charges disclosable under § 213.5(e).

iv. The cost of a mechanical breakdown protection contract purchased at consummation.

6. *Estimated value.* See the commentary to § 213.4(d) regarding the use of estimates and section 183(a) of the act regarding the criteria for estimating the value of the leased property at the end of the lease term.

2(a)(20) Value at consummation

1. *Disclosure.* The value at consummation is relevant only to open-end leases and is disclosed and subtracted from the total lease obligation under § 213.5(o)(1).

2. *Taxes.* The value at consummation includes taxes paid by the lessor in connection with the acquisition of leased property and amortized over the lease term. See the commentary to § 213.5(o)(1).

3. *Other amounts.* The definition of the value at consummation explicitly permits the lessor to include a profit or markup (without separate itemization). The lessor may include costs of doing business, such as insurance that the lessor purchases on its own behalf. See the commentary to § 213.5(f). The lessor may not include in this amount other items (such as maintenance or extended warranty insurance) that are purchased by the lessee.

Section 213.4—General Disclosure Requirements

4(a) General requirements

1. *Basis of disclosures.* The disclosures must reflect the terms of the legal obligation between the parties. For example:

i. In a three-year lease with a one-year minimum term after which there is no penalty for termination, disclosures should be based on the full three-year term of the lease. The one-year minimum term is only relevant to the early termination provisions of §§ 213.5(l), (m) and (n).

2. *Clear and conspicuous standard.* The clear and conspicuous standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. Appendix A contains model forms that meet this standard, although lessors are not required to use the forms. In addition, although no minimum typesize is mandated, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

3. *Multipurpose disclosure forms.* Lessors are not precluded from using a multipurpose disclosure form that enables a lessor to designate the specific disclosures applicable to a given transaction, consistent with the requirement that disclosures be clearly and conspicuously provided.

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

i. When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.

ii. When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: a single lease transaction or a lease and a credit sale transaction.

4(a)(1) Form of disclosures

1. *Form of disclosures.* In making disclosures lessors may cross-reference rather than repeat items that are disclosed among the segregated disclosures. In addition, when a required disclosure consists of a total amount only, lessors need not separately itemize each component part of the total charge. Similarly, if a required disclosure must be separately itemized, a total amount is not required.

2. *Identification of parties.* While disclosures must always be made clearly and conspicuously, lessors are not required to use the word "lessor" and "lessee" when identifying those parties.

3. *Multiple lessors and multiple lessees.* In transactions involving multiple lessors and lessees, the disclosure statement must identify all the lessors and lessees; however, § 213.4(c) permits a single lessor to make all the disclosures for a single lessee.

4. *Lease disclosures integrated in lease contract.* Contract terms or disclosures that are not required by the regulation may be added to the disclosure statement so long as the required disclosures are made together and the lessor adheres to the limits of § 213.4(b) governing the inclusion of additional information.

5. *Lessee's signature.* The regulation does not require the lessee to sign the disclosure statement, whether disclosures are separately provided or are part of the lease contract.

Nevertheless, for contract or evidentiary purposes, the lessor may want a lessee to sign the disclosure statement or an acknowledgement of receipt.

4(a)(2) Segregation of certain disclosures

1. *Permissible related or additional information among segregated disclosures.* The disclosures required to be segregated under this paragraph must contain only the information required or permitted to be included among the segregated disclosures (see § 213.5 and its commentary for guidance on information required or permitted in the segregated disclosures.) The segregated disclosures in § 213.4(a)(2) may be provided on a separate document and other CLA disclosures provided in the lease contract, so long as all disclosures are given at the same time.

4(b) Additional information

1. *State law disclosures.* If state law disclosures are not inconsistent with the act and regulation under § 213.10, in accordance with the standard set forth in § 213.4(b) for providing additional information, the lessor may make those disclosures along with the nonsegregated disclosures required under the regulation.

4(c) Multiple lessors or lessees

1. *Multiple lessors.* If a lease transaction involves more than one lessor, the lessors may choose which of them will make the disclosures. All disclosures for the transaction must be given, even if the lessor making the disclosures would not otherwise have been obligated to make a particular disclosure.

4(d) Use of estimates

4(d)(1) Standard

1. *Time of estimated disclosure.* The lessor may use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made. For example:

i. Section 213.5(d) requires the lessor to disclose the total amount payable by the lessee during the lease term for official and license fees, registration, certificate of title fees, or taxes. If these amounts are subject to indeterminable increases or decreases over the course of the lease, the lessor may estimate its disclosures based on the rates or charges in effect at the time of the disclosure.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The "reasonably available" standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor normally may rely on the representations of other parties in obtaining information. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery.

3. *Estimated value of leased property at termination.* When the lessee's liability at the end of the lease term is based on the estimated value of the leased property (see § 213.5(o)), the estimate must be reasonable and based on the best information reasonably available to the lessor. That standard permits a lessor to use a generally accepted trade publication listing estimated current or future market prices for the leased property, rather than investing in the most sophisticated computer equipment to determine the estimated value at the end of the lease term. The lessor should rely on other information, its experience, or reasonable belief, if those sources provide the best information. For example:

i. An automobile lessor offering a three-year open-end lease intends to assign a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values, if the trade publication is the best information available.

ii. Same facts as above, except that the lessor discloses an estimated value derived by adjusting the value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used-vehicle markets. The lessor may adjust estimated values quoted in trade publications based on the lessor's experience or reasonable belief that the values will be understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of leased property at termination, provided that choice is consistent with the lessor's general practice or intention when determining the value of the property at the end of the lease term.

5. *Labelling estimates.* Generally, only the disclosure for which the exact information is unknown is labelled as an estimate. Nevertheless, when several disclosures are affected because of the unknown information, the lessor has the option of labelling as an estimate either every affected disclosure or only the disclosure primarily affected.

4(d)(2) Open-end purchase option lease

1. *Understating the estimated value.* In non-purchase-option open-end leases, the lessor must not use a value lower than that indicated by the best information available when disclosing the estimated value of leased property at the end of the lease term under § 213.5(o).

4(e) Effect of subsequent occurrence

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

i. An agreement between the lessee and lessor to change from a monthly to a weekly payment schedule.

ii. The addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease.

iii. An increase in official fees or taxes.

iv. An increase in insurance premiums or coverage caused by a change in the law.

v. Late delivery of an automobile caused by a strike.

2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.6.

3. *Lessee's failure to perform.* The act is not violated if a previously given disclosure becomes inaccurate when a lessee fails to perform obligations under the contract and a lessor takes actions that are necessary and proper in such circumstances to protect its interest.

Section 213.5—Content of Disclosures

1. *Other required disclosures.* The disclosure statement must include the date and identify the lessor and the lessee. See the commentary to § 213.4(a)(1). The lessor need only be identified by name; an address may be provided but is not required.

5(b) Total amount due at lease signing

1. *Capitalized cost reduction.* Capitalized cost reduction is a payment in the nature of a downpayment which reduces the amount of the leased property to be amortized over the term of the lease.

2. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law; the regulation does not make that determination.

3. *Fees payable upon delivery.* This provision does not apply to fees paid at delivery, when delivery occurs after consummation. For example, the lessee agrees to pay registration fees, sales taxes, and a delivery charge in one lump sum on the date the automobile is delivered, sometime after consummation. None of these charges is an initial payment under § 213.5(b) because they are paid after consummation of the lease. The registration fees and sales taxes are disclosed under § 213.5(d), and the delivery charge is disclosed as an "other charge" under § 213.5(e).

5(c) Payment schedule

1. *Itemization not required.* Although the model forms in appendix A itemize the components of the periodic payments, a lessor may but is not required to do so. Some of the components must be disclosed separately if their disclosure is required by other provisions of the regulation, such as official fees and lessee's insurance.

2. *Periodic payments.* The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments made periodically. The disclosed payments must include all amounts, such as maintenance and insurance charges, that are paid periodically. In addition, the lessor must disclose the total of the periodic payments. In an open-end lease, however, the lessor may disclose as the total of periodic payments the sum of the scheduled periodic payments referred to in § 213.2(a)(19). See the commentary to § 213.2(a)(19).

5(d) Fees and taxes

1. *Taxes.* Taxes that are included in the value at consummation are not disclosed pursuant to this paragraph. See the commentary to § 213.2(a)(20). Taxes payable by the lessor that are separately imposed on the consumer and thus noted in the lease documentation must be disclosed under this paragraph. However, taxes payable by the lessor and absorbed as a cost of doing business are not disclosed under this paragraph.

5(e) Other charges

1. *Coverage.* Section 213.5(e) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement.

2. *Excluded charges.* This section does not require disclosure of charges that are imposed when the lessee terminates early or fails to abide by the lease agreement, such as charges for:

i. Late payment.

ii. Default.

iii. Early termination.

iv. Deferral of payments.

v. Extension of the lease.

3. *Relationship to other provisions.* The other charges mentioned in § 213.5(e) are charges that are not required to be disclosed under another provision of § 213.5.

4. *Other charges.* Examples of charges not disclosed under this section include:

i. A delivery charge that is paid after consummation is disclosed as an "other charge." A delivery charge that is paid at consummation, however, is disclosed as part of the total initial charges under § 213.5(b), not as an "other charge."

ii. Occasionally, the price of a mechanical breakdown protection (MBP) contract is disclosed as an "other charge." More often, the price of MBP is reflected in the periodic payment disclosure under § 213.5(c), in which case it is not disclosed as an "other charge." In states where MBP is regarded as insurance, however, the cost should be disclosed in accordance with § 213.5(f), not as an "other charge." See the commentary to § 213.5(f).

5. *Lessee's liabilities at the end of the lease term.* Liabilities that the lease imposes upon the lessee at the end of the scheduled lease term and that must be disclosed under this section include, but are not limited to, disposition and "pick-up" charges.

5(f) Insurance

1. *Lessor's insurance.* Insurance that is purchased by the lessor primarily for its own benefit, and that is absorbed as a business expense and not separately charged to the lessee, need not be disclosed under this section even if it provides an incidental benefit to the lessee.

2. *Mechanical breakdown protection.* Whether mechanical breakdown protection (MBP) purchased in conjunction with a lease should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP as insurance, the lessor need not make § 213.5(f) disclosures. The lessor may, however, disclose the § 213.5(f) information in such cases in accordance with the additional information provision in § 213.4(b).

3. *Voluntary Insurance.* Insurance not required but provided by the lessor must be disclosed under this section.

5(g) Warranties or guarantees

1. *Brief identification.* The statement identifying warranties may be brief and need not describe or list all warranties applicable to specific parts such as for air conditioning, radio, or tires in an automobile. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty.

2. *Warranty disclaimers.* A disclaimer of warranties is not required by the regulation, but the lessor may give a disclaimer as additional information in accordance with § 213.4(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other law.

5(h) Maintenance responsibilities

1. *Standards for wear and use.* No disclosure is required for lessors that do not set standards for wear and use (such as excess mileage.) See the commentary to § 213.5(o).

5(i) Security interest

1. *Disclosable security interests.* See § 213.2(a)(17) and accompanying commentary to determine what security interests must be disclosed.

5(j) Penalties and other charges for delinquency

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.5(j). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditure of amounts in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under § 213.5(l). The § 213.5 (j) and (l) disclosures may be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix A.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional lease charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the lease charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. In either case, if the additional charge accrues at a rate higher than the normal lease charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.5(j).

4. *Extension charges.* Extension charges that exceed the lease charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.5(j).

5. *Reasonableness of charges.* Pursuant to section 183(b) of the act, penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

5(k) Purchase option

1. *Mandatory disclosure of no purchase option.* Although generally the lessor need only make the specific required disclosures that apply to a transaction, it must disclose affirmatively that the lessee has no option to purchase the leased property when the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under § 213.5(k) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase option fees.* A purchase option fee must be disclosed under this paragraph unless the lessor discloses the fee under § 213.5(e) as an "other charge."

5(l) Early termination

1. *Default.* When default is also a condition for early termination of a lease, default charges must be disclosed under this paragraph. See the commentary to § 213.5(j).

2. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized cost and the realized value at early termination, the amount or the method of determining the amount of the difference must be disclosed under this paragraph.

3. *Reasonableness of charges.* See the commentary to § 213.5(j).

4. *Description of the method.* A full description of the method of determining any early termination charge is required by the act and this regulation. Lessors should attempt to provide clear and understandable descriptions to consumers of their early termination charges. Descriptions that are full, accurate, and not intended to be misleading are in compliance with the act and this regulation, even if complex. (And, of course, the statute requires that the early termination charges themselves be reasonable.) In providing a full description of an early termination method, a lessor may use the name of a generally accepted method of computing the unamortized cost (also known as the "adjusted lease balance") portion of its early termination charges. For example, a lessor may state that the "constant yield" method would be utilized in obtaining the adjusted lease balance, but the lessor would have to specify how that figure, and any other term or figure, is used in computing the total early termination charge imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, the lessor would have to provide a written explanation of that method if requested by the consumer.

5. *Example.* The figure used to calculate the early termination example must be calculated in the same manner the residual value is calculated for purposes of § 213.5(r). Therefore, if a lessor uses the fair market value to estimate the value of the property at the end of the lease, the example must also be calculated using the fair market value.

5(n) Right of appraisal

1. *Disclosure inapplicable.* When the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use but not for the estimated value of the leased property, the lessor need not disclose the lessee's right to an independent appraisal. For example:

i. The automobile lessor may reasonably expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it holds the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the lessor is not required to disclose the lessee's appraisal right.

2. *Lessor's appraisal.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act and in § 213.5(o) of the regulation, and the lessor still must disclose the lessee's independent right to an appraisal under § 213.5(n).

3. *Time restriction on appraisal.* Neither the act nor the regulation specifies any time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease. The regulation does not define what is a "reasonable time."

5(o) Liability at end of lease term based on estimated value

1. *Coverage.* The disclosure under § 213.5(o) limiting the lessee's liability for the value of the leased property does not apply at early termination.

2. *Leases with a minimum term.* If a lease has an alternative minimum term, the § 213.5(o) disclosures governing the liability limitation are not applicable for the minimum term. See the commentary to § 213.4(a).

5(o)(1) Value at consummation and total lease obligation

1. *Total lease obligation.* The requirement that the total lease obligation be itemized is satisfied by disclosing the three components

in the definition of total lease obligation in § 213.2(a)(19) with their corresponding amounts. The lessor may cross-reference the individual components disclosed in the segregated disclosures, as done in the model forms in appendix A–1.

2. *Taxes.* Taxes included in the value at consummation are included in the total lease obligation. Taxes not included in the value at consummation may, but need not, be included in the total lease obligation at the lessor's option. See the commentary to § 213.2(a)(20).

5(o)(2) Excess liability

1. *Average payment allocable to a monthly period.* The phrase "average payment allocable to a monthly period" is based on the periodic payment used to compute the total lease obligation. See the commentary to § 213.2(a)(19).

2. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability that is based on the estimated value of the property at the end of the lease term. The lessor also may recover additional charges from the lessee at the end of the lease term. Examples of such additional charges include:

i. Disposition charges.

ii. Excess mileage charges.

iii. Late payment and default charges.

iv. Amounts by which the unamortized cost exceeds the estimated residual value that have accrued in simple interest accounting leases because the lessee has made late payments.

3. *Lessor's payment of attorney's fees.* Section 183(a) of the act requires that the lessor pay the lessee's attorney's fees in all actions brought by the lessor under this paragraph, whether successful or not.

5(p) Gross cost

1. *Basis.* The gross cost is the amount that the periodic and other payments and terms of the lease are based upon, and is intended to be used by consumers to compare a lease with similar lease and non-lease transactions.

5(s) Statement referencing nonsegregated disclosures

1. *Content.* A lessor may delete inapplicable items, for example, when the contract documents contain no information regarding a purchase option.

Section 213.6—Renegotiations, Extensions and Assumptions

1. *Coverage.* Section 213.6 applies only to existing leases that are covered by the requirements of the regulation. It therefore does not apply to the renegotiation or extension of leases with an initial term of four months or less, because such leases are not covered by the definition of consumer lease in § 213.2(a)(6). Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

2. *Inapplicable disclosures.* Disclosures that are inapplicable to the terms of a renegotiation or extension need not be given. For example:

i. If the term for which extension disclosures are given is one month and the lessee will pay no official fees and taxes during that month, no disclosure of those amounts is necessary.

ii. If a renegotiation involves no initial charges, no disclosure of initial charges is necessary.

6(b) Extensions

1. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than six months, at the time the extension is agreed to, new disclosures are required. If the lease is extended on a month-to-month basis and exceeds six months, new disclosures are required at the commencement of the seventh month, and at the commencement of each seventh month thereafter. If a consumer lease is extended for several terms, one of which will exceed six months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed 6 months beyond the originally scheduled termination date.

2. *Content of disclosures for month-to-month extensions.* The disclosures for a lease extended on a month-to-month basis for more than six months should reflect the month-to-month nature of the transaction.

Section 213.8—Advertising

8(a) General rule

1. *Persons covered.* All "persons" must comply with the advertising provisions in this section, not just those that meet the definition of lessor in § 213.2(a)(10). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. Pursuant to section 184(c) of the act, the owner and personnel of the medium in which an advertisement appears or through which it is disseminated, however, are not subject to civil liability for violations under section 185(b) of the act.

2. *"Usually and customarily."* This paragraph does not prohibit the advertising of a single item or the promotion of new leasing programs, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

8(b) Clear and conspicuous standard

1. *Standard.* Section 213.8 prescribes no specific rules for the format of the necessary disclosures. The terms need not be printed in a certain type size and need not appear in any particular place in the advertisement.

2. *Television advertisements.* In lease television advertisements, the lease disclosures required under paragraph 8(d) or the alternate disclosures under paragraph 8(f)(1) must be visible for at least five seconds to satisfy the requirements of this paragraph.

8(c) Catalogs and multi-page advertisements

1. *General rule.* The multiple-page advertisements referred to in this paragraph are advertisements consisting of a numbered series of pages—for example, a supplement to a newspaper. A mailing comprised of several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule clearly stating sufficient information for the reader to determine the disclosures required under § 213.8(d)(2) (i) through (vi). If one of the triggering terms listed in § 213.8(d)(1) appears on another page of the catalog or other multiple-page advertisement, that page must clearly refer to the specific page where the table, chart, or schedule begins.

8(d)(1) Triggering terms

1. *Triggering terms.* When triggering terms appear in lease advertisements, the additional terms enumerated in § 213.8(d)(2) (i) through (vi) must also appear. An example of one or more typical leases with a statement of all the terms applicable to each may be used. The additional terms must be disclosed even if the triggering term is not stated explicitly, but is readily determinable from the advertisement. For example, if an advertisement states a five-year lease term with monthly payments, the number of required payments—a triggering term—is readily apparent.

8(d)(2) Additional terms

1. *Lease transaction.* An advertisement must clearly and conspicuously disclose that the transaction is a lease.

8(e) Alternative disclosures—merchandise tags

1. *Alternative disclosure rule.* This section provides a method for using merchandise tags without including all the required disclosures on the tags. As an alternative to this disclosure method, a merchandise tag may state all the necessary terms on one or both sides of the tag. If the terms are on both sides of the tag, both sides must be accessible to the consumer.

2. *Multiple item leases.* Multiple item leases which utilize merchandise tags requiring additional disclosures may use the alternate disclosure rule.

8(f) Alternative disclosures—television or radio advertisements

8(f)(1) Toll-free number or print advertisement

1. *Publication in general circulation.* A referral to a written advertisement appearing in a newspaper circulated nationally, for example, The Wall Street Journal, meets the general circulation requirement in § 213.8(f)(1)(ii).

2. *Toll-free number, local or collect calls.* In complying with the disclosure requirement of this paragraph, generally a lessor must provide a toll-free number for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to call for information and reverse the phone charges.

Section 213.9—Record Retention

1. *Manner of retaining evidence.* A lessor must retain evidence of having performed required actions and of having made required disclosures. Such records may be retained on microfilm, microfiche, computer, or by any

other method designed to reproduce records accurately, as well as paper form. The lessor need retain only enough information to reconstruct the required disclosures or other records.

Appendix A—Model Forms

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms, therefore, any changes in the segregated disclosures should be minimal. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. The changes to the model forms may not be so extensive as to affect the substance and the clarity of the forms.

2. *Examples of acceptable changes.*

i. Using the first person, instead of the second person, in referring to the lessee.

ii. Using "lessee," "lessor," or names instead of pronouns.

iii. Rearranging the sequence of the nonsegregated disclosures.

iv. Incorporating certain state "plain English" requirements.

v. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multi-purpose standard forms.)

vi. Adding language or symbols to indicate estimates.

3. *Model closed-end or net vehicle lease disclosure.* Model A–2 is designed for a closed-end or net lease of a vehicle. Item 9(c) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's estimated value. (See section 213.5(n))

4. *Model furniture lease disclosures.* Model A–3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination that is required under § 213.5(n) because few closed-end furniture leases base the lessee's liability at early termination on the estimated value of the leased property. Of course, the disclosure should be added, if it is applicable.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23049 Filed 9–19–95; 8:45 am]

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Wednesday
September 20, 1995

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.
Infectious Substances; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, and 178

[Docket No. HM–181G; Amdt. Nos. 171–138, 172–146, 173–247, 178–111]

RIN 2137–AC36

Infectious Substances

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA published a notice of proposed rulemaking (NPRM) in December 1994 that proposed to revise the regulations pertaining to infectious substances, including regulated medical waste (RMW). In this final rule, RSPA is revising requirements for Division 6.2 materials (infectious substances). This rule clarifies the scope of regulation for infectious substances, provides relief for certain shipments of RMW that conform to other Federal agency regulations, allows certain quantities of RMW to be transported by aircraft, and makes other changes to clarify regulatory provisions applicable to infectious substances. This rulemaking action is necessary to ensure that the regulations for infectious substances and regulated medical waste are cost effective and provide an adequate level of safety in transportation.

DATES: *Effective date.* The effective date of these amendments is October 1, 1995.

Compliance date. Voluntary compliance with the regulations, as amended herein, is authorized immediately. The mandatory compliance date for these regulations is January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Antonielli, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

In a final rule published on September 22, 1994 (59 FR 48762), RSPA revised 49 CFR 171.14(b) to delay the compliance date for requirements applicable to RMW and materials infectious only to animals from October 1, 1994, to October 1, 1995. RSPA also delayed the compliance date for requirements for infectious substances, other than RMW and animal-only pathogens, from October 1, 1994, to January 1, 1995.

On December 21, 1994, RSPA published a notice of proposed rulemaking and announced a public meeting under Docket HM–181G (59 FR 65860). In the notice, RSPA proposed to revise the requirements for infectious substances, including regulated medical waste, which were adopted in final rules under Docket HM–181 in December 1990 and 1991. Some of the proposals contained in the NPRM were substantive, such as the proposal to add an exception from specific packaging and labeling requirements for RMW if it is prepared in accordance with the regulations of the Occupational Safety and Health Administration (OSHA). However, the majority of the changes proposed in the notice were minor and primarily intended to ease compliance by clarifying the requirements. Also in the NPRM, RSPA outlined issues for possible future rulemaking action. The public meeting, which gave interested persons an opportunity to orally present their comments on the notice, was held on January 17, 1994, in Washington, DC.

This rule was developed, with the concerns of the health care industry and medical waste companies in mind, in coordination with other Federal agencies (e.g., OSHA, Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and Environmental Protection Agency (EPA)) to minimize differences between the Hazardous Materials Regulations (HMR) and other Federal agency regulations to ease compliance and eliminate gaps and inadequacies in regulatory coverage to assure that safety is maintained in transportation. RSPA will continue to be aware of significant steps being taken by other Federal agencies to remain cognizant of potential impacts regarding infectious substances and regulated medical waste prior to their entering, and in, transportation.

In March 1995, the President directed Federal agencies to review all agency regulations to eliminate or revise those that are outdated or in need of reform. RSPA issued a notice on April 4, 1995, under Docket HM–222 (60 FR 17049), that announced its review of the HMR and related programs and solicited comments on possible candidates for elimination or revision to provide clarity or relief from undue requirements. The provisions contained in this final rule contribute to meeting the goals of the President's Regulatory Reinvention Initiative.

II. Summary of Comments and Regulatory Changes

RSPA received 41 written comments on the notice of proposed rulemaking and 4 oral statements at the public meeting. The comments were submitted by hospitals, pharmaceutical companies, trade associations, packaging manufacturers, academic institutions, transporters of medical waste, and private individuals. Commenters generally supported RSPA's efforts to amend the regulations to regulating those materials that likely pose a threat in transportation to ensure the safe transportation of infectious substances and RMW. The commenters also were pleased that RSPA coordinated with other Federal agencies in the development of these regulations. Several commenters stated that, although the proposed amendments narrowed the scope of and clarified the infectious substance and RMW provisions, they need more refinement. The commenters predominantly addressed the following topics: (1) The definition of "regulated medical waste"; (2) exclusion of discarded cultures and stocks from the definition of RMW; (3) a packaging and labeling exception for RMW; (4) a laundry exception; (5) the definitions of "biological product" and "diagnostic specimen" and retention of exceptions for these materials; and (6) aligning the infectious substance provisions with the international standards. A detailed discussion of the comments and RSPA's response to them is provided in the following summary.

A. Definition of RMW

RSPA received numerous comments concerning the proposed revision of the definition of "regulated medical waste" (RMW). The majority of commenters favored RSPA's proposal to limit the definition of RMW to materials containing an infectious substance. Commenters stated that RSPA defined RMW rationally, and that this definition would significantly reduce the amount of medical waste required to be specially handled without jeopardizing transportation safety. Also, commenters stated that the proposed definition, which allows shippers to segregate their waste, is more cost-effective than treating all waste as RMW. One commenter stated, "Adoption of a criteria-based definition, as opposed to a list-based definition, also eliminates the categories of waste (e.g., unused sharps) that are not hazardous."

Some commenters raised concerns that the proposed definition of RMW is impractical and does not account for the fact that RMW is rarely "known to contain" an infectious substance. Commenters claimed that, in order to confirm the presence of an infectious substance, medical waste would have to undergo cost-prohibitive testing.

Commenters stated that shippers are forced to make a "best guess" as to whether a medical waste is subject to the HMR, increasing the potential for undeclared shipments of RMW. In addition, commenters argued that not all personnel who are responsible for identifying and packaging the wastes' possess the knowledge required to make an accurate assessment. A commenter claimed that if RMW is not clearly defined and if guidance is not provided, the volume of waste treated as RMW will increase and potentially infectious waste will go undeclared in the solid waste stream. One commenter stated that the definition "fails to provide the appropriate guidance to the health care worker responsible for segregating the regulated medical waste stream and is virtually impossible to enforce." Some commenters recommended that RSPA adopt "Universal Precautions," a method of infection control introduced by CDC which considers all blood and certain body fluids, whether or not known to be infectious, are treated as if known to be potentially infectious. The commenters added that universal precautions are widely used in the health care industry and, if adopted, would be consistent with current practices. Some commenters requested that RSPA add language to the definition of RMW to include those materials that "may" or "are suspected to" contain an infectious substance to eliminate some of the guesswork. While some commenters asked RSPA to expand the definition of RMW, other commenters stated that RSPA's definition should be narrowed further. One commenter asserted that the proposed definition is "inaccurate and inconsistent with science" and claimed that essentially all material, including human skin, harbor a population of microorganisms capable of causing infection in a susceptible host. The commenter stated, "[T]he mere presence of an infectious substance does not result in risk of infection." The commenter claimed that other factors have to be present for infection to occur such as, the presence of an infectious agent in the environment, a susceptible host, a portal of entry into the host, and a sufficient dose of organisms. Some commenters requested that RSPA limit the definition of RMW to "waste * * * which contains an infectious substance and has been causally linked scientifically to human disease acquisition." Another commenter added, "RSPA's definition, if applied literally, would result in classifying as regulated medical waste virtually all of the waste that is generated in the health care environment."

RSPA has considered the commenters' suggestions. With regard to universal precautions, RSPA acknowledges that they are widely used in the workplace as recommended in CDC guidelines and required under OSHA regulations contained in 29 CFR 1910.1030. In addition, RSPA agrees that broadening the scope of RMW to include all waste containing blood or certain body fluids may ease RMW identification when the exact constituents of a waste stream are not known. However, RSPA believes that this concept might result in overregulation if adopted for the purposes of transportation. At this time, RSPA has no evidence to support the conclusion that the benefits associated with implementing universal precautions in transportation outweigh the compliance costs and regulatory burdens imposed. Therefore, RSPA is not adopting universal precautions in this rule. RSPA agrees with commenters that the principles of disease transmission (i.e., presence of an infectious agent in the environment, susceptible host, portal of entry, sufficient virulence, and sufficient dose of organisms to cause infection) would support limiting the definition to those wastes that in fact pose a hazard in transportation. However, RSPA believes that this definition would be difficult and, in some cases, impossible to implement since certain factors, such as the dose of organisms sufficient to cause infection, are not known by most shippers. Therefore, RSPA is not adopting the principles of disease transmission for general applicability. RSPA does not agree with the commenters who requested that the definition of RMW be revised to mean "waste * * * which contains an infectious substance and has been causally linked scientifically to human disease acquisition." While the commenters' suggestion supports a definition based on scientific considerations, RSPA believes that the definition is not practical for all shippers. To determine whether a particular waste has been linked to disease acquisition requires knowledge of any incidents that have occurred involving that waste. This information is not available to most shippers. Therefore, RSPA is not revising the definition as requested. However, for shippers that possess this information for a given waste stream, RSPA believes that the information may be used to determine whether the waste requires special handling as RMW.

In the proposed rule, RSPA attempted to correct an existing oversight in the HMR with regard to hazard precedence in a case involving a material that meets the definitions of both Division 6.2 and Class 7. The oversight is found in § 173.2a(c), which prescribes that a Division 6.2 material that meets the definition of another hazard class or division is required to be classed as Division 6.2. RSPA did not intend for Division 6.2 to take precedence over Class 7, other than for limited quantities of Class 7. To correct the oversight, RSPA proposed to exclude waste materials meeting the definition of Class 7 from the definition of RMW but failed to exclude Class 7 materials from the definition of an infectious substance. As proposed, Class 7 materials, including wastes, containing an infectious substance would be excepted from the RMW requirements but subject to all applicable requirements for infectious substances. In this final rule, RSPA is not adopting the wording "other than Class 7 (Radioactive) materials" in the proposed definition of regulated medical waste. RSPA is amending § 173.2a(c)(3) to exclude Class 7 (radioactive) materials, other than limited quantities, which also meet the definition of Division 6.2 from being classed as Division 6.2. This will alleviate the need to make changes in § 173.134 for the definitions of "regulated medical waste" and "infectious substances."

Based on the merits of comments received and RSPA's own initiative, RSPA is revising the definition of "regulated medical waste" as proposed. RMW is defined as "a waste or reusable material, other than a culture or stock of an infectious substance, which contains an infectious substance and is generated in: (1) The diagnosis, treatment or immunization of human beings or animals; (2) research pertaining to the diagnosis, treatment or immunization of human beings or animals; or (3) the production or testing of biological products." RSPA understands that it is not always feasible for shippers to verify the presence of an infectious substance in a waste stream. The wording "contains an infectious substance" does not imply that the shipper is required to verify the presence of an infectious substance by testing or other means. Shippers may use information that is available to them (e.g., source of material, patient's medical history, preliminary test data) to make the most accurate determination possible as to whether or not a waste meets the definition of RMW under the HMR. If the shipper does not possess any information concerning a waste stream, the shipper may employ universal precautions, which considers waste containing human blood and certain human body fluids as infectious. However, as previously stated, it is not RSPA's intent to require the use of universal precautions. RSPA strongly encourages the use of segregation and separation practices at the point of generation. It is our understanding that many entities currently implement such practices, which help to minimize shipping costs and ensure that only those wastes that pose a hazard are regulated.

In the NPRM, RSPA proposed to except certain categories of waste from the definition of RMW. Included was an exception for waste generated in animal husbandry or food production. RSPA received a comment requesting clarification of whether waste generated in animal research activities also would be excluded from the definition of RMW. The answer is no. Waste, generated in research activities, that contains an infectious substance and is offered for transportation or transported in commerce is regulated as RMW. The definition of RMW, as adopted in this final rule, includes waste that is generated in the diagnosis, treatment or immunization of human beings or animals or research pertaining thereto. RSPA is excluding waste generated in animal husbandry or food production because regulation of these activities under the HMR could impose burdens on agricultural and farm operations disproportionate to benefits likely to be achieved. Regulation of waste that is generated in animal research activities and contains an infectious substance is fully within the scope of the HMR.

RSPA clarified in the notice that the exceptions applicable to biological products and diagnostic specimens do not apply to materials which have become wastes. One commenter recommended that RSPA limit the definition of RMW to include only those discarded (waste) biological products and diagnostic specimens that have been confirmed to contain an infectious substance by a screening test required or recommended by the Food and Drug Administration. RSPA understands that not all biological products or diagnostic specimens are tested before shipment for treatment or disposal. Therefore, RSPA is not adopting a requirement to limit the application of the definition of RMW as requested by the commenter. If the discarded biological product or diagnostic specimen contains an infectious substance and has not been treated to eliminate the hazard, it must be shipped as RMW.

Another commenter requested that RSPA clarify that it is the responsibility of the shipper, and not the carrier, to properly class a material. The commenter stated that the waste generator is in the best position to determine whether the waste is a regulated medical waste, an infectious substance, or not regulated. In accordance with § 173.22, a person who offers a hazardous material for transportation in commerce is responsible for properly classing the material in accordance with the hazard class definitions of 49 CFR Part 173. Because this requirement already appears in the HMR, RSPA is not adding an additional requirement. Also, RSPA notes that some carriers assume responsibilities of the waste generator through contractual arrangement.

B. Discarded Cultures and Stocks

Several commenters agreed with RSPA's proposal to exclude waste cultures and stocks from the definition of RMW and subject them to requirements applicable to non-waste cultures and stocks of infectious substances. Commenters stated that cultures and stocks contain a high concentration of microorganisms that have the potential to cause disease in humans or animals and require special handling. In addition, the commenters claimed that cultures and stocks typically are treated on-site by autoclave or other treatment method. Therefore, commenters affirmed that RSPA would not be imposing an unreasonable burden on shippers by requiring the infectious substance requirements for untreated cultures and stocks. However, other commenters believed that discarded cultures and stocks should be considered as RMW. According to one commenter, most laboratories and hospitals sterilize cultures and stocks before transporting them off-site; therefore, the packaging for RMW should be adequate for the hazards posed by these materials. Another commenter asserted that waste cultures and stocks should not be treated differently from RMW but did not substantiate its claim.

In the notice, RSPA clarified that if a material has been sterilized or treated to eliminate its hazard as an infectious substance, it is not subject to the HMR, provided it does not meet the definition of any other hazard class. Therefore, cultures and stocks that have been autoclaved, incinerated, or treated by other effective means are not subject to the HMR, provided they do not meet the definition of any other hazard class. In view of the comments, RSPA is excluding untreated cultures and stocks intended for disposal from the definition of RMW. These materials are included under the definition of infectious substances.

C. RMW Packaging and Labeling Exception

In the notice, RSPA proposed to except RMW from the specific packaging requirements of § 173.197 and labeling requirements of Subpart E of Part 172 if packaged in rigid non-bulk packagings conforming to the general packaging requirements of §§ 173.24 and 173.24a and OSHA packaging and marking requirements in 29 CFR 1910.1030. RSPA proposed to limit the exception to RMW that is offered for transportation or transported by private or contract carrier. The majority of the commenters addressing this subject supported the proposed exception. Some commenters indicated that the exception will allow generators of RMW to maintain their current practices. One commenter recommended that RSPA limit the application of the RMW exception to contract carriers registered with the Federal Highway Administration (FHWA) and vehicles operated by drivers holding a Commercial Drivers License (CDL). If the exception is not modified, the commenter stated that the exception "would be abused by any number of carriers who may not be familiar or in compliance with DOT Motor Carrier Safety Regulations or familiar with industry standards and practices."

RSPA disagrees with this commenter. Familiarity with the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 300–399) and possession of a CDL would not necessarily enhance a carrier's or driver's specialized knowledge of medical waste requirements. In addition, the FMCSR and CDL requirements are only applicable to highway motor carriers and drivers. Because the HMR relate to all modes of transportation, the commenter's suggestion to limit the applicability of the exception to RMW transported by contract carriers registered under the FMCSR and drivers with CDLs is not adopted.

Another commenter asserted that the exception allowing OSHA packaging and marking does not sufficiently communicate the nature and risk of the package to the carrier. The commenter requested that RSPA require packages containing RMW to display the name, address, and telephone number of the generator and the date of generation. The commenter stated that in the event of a needle stick injury, OSHA requires the employer/carrier to ascertain the route of exposure. According to the

commenter, some carriers pick up RMW from several generators on a given route and it is impossible to determine the route of exposure if the source of the package is unknown.

In the NPRM, RSPA proposed to except RMW from specific packaging and labeling requirements, but not from marking or other hazard communication requirements. Section 172.301(d) requires that non-bulk packages of hazardous material be marked with the name and address of the consignee or consignor, unless the package is transported by highway and is not being transferred from one carrier to another; or is part of a carload, truckload, or freight container load, and the entire contents of the rail car, truck or freight container are shipped from one consignor to one consignee. In cases which the name and address of the consignor or consignee are not required on package markings, a carrier may, by contractual arrangement, have the waste generator mark its name and address on packages or use other means to keep track of where packages originate. RSPA does not believe there is a need for a regulatory requirement for the consignor's name and address to appear on a package in all instances. Therefore, the commenter's recommendation is not adopted.

In this final rule, RSPA is authorizing non-bulk, non-specification packagings for RMW under the conditions specified in the NPRM. RSPA intends to monitor incident reports for these shipments to ensure that the packaging and handling requirements achieve an acceptable level of safety. If they do not, RSPA will propose adjustments in future rulemaking action.

D. Exception for Laundry and Medical Equipment

To relieve the burden of compliance with both the HMR and OSHA regulations, RSPA proposed to except from the HMR contaminated laundry and medical equipment that conforms to OSHA regulations at 29 CFR 1910.1030. Of the few commenters addressing this issue, most supported RSPA's proposed exception. However, one commenter contended that laundry should not be regulated differently than RMW. The commenter reported that although OSHA requires sharps to be separated from other RMW, in reality, sharps are occasionally left in laundry which poses a hazard to personnel handling the laundry. The commenter stated, "it is appropriate to include laundry in a RMW category because laundry, while not itself a waste, does contain RMW."

RSPA agrees with the commenter that laundry and disposable garments share similar characteristics. However, laundry and disposable materials are handled differently from the point of generation to decontamination or disposal. Typically, laundry is segregated from waste materials at the point of generation and specially handled and reprocessed by employees dealing exclusively with laundry. Conversely, disposable garments and the like are combined with other non-sharp wastes at the point of generation and managed as medical waste, regulated or non-regulated. RSPA believes that the OSHA requirements applicable to laundry and medical equipment provide an adequate level of safety in transportation and it is unreasonable and impractical to require RMW packaging and hazard communication for laundry and medical equipment that are intended for reuse. OSHA prescribes that contaminated laundry shall be placed and transported in bags or containers labeled or color-coded in accordance with 29 CFR 1910.1030(g)(1)(i) of the OSHA regulations or, if utilizing universal precautions, alternative labeling is permitted if it is recognizable to all employees as requiring compliance with universal precautions. In addition, OSHA requires contaminated laundry that is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container to be placed in bags or containers which prevent soak-through and/or leakage of fluids to the exterior. See 29 CFR 1910.1030(d)(4)(iv). OSHA prescribes that medical equipment, including equipment used for diagnosis, research, or treatment, shall be decontaminated, to the maximum extent practicable, before transportation. If decontamination is impractical, the equipment should be labeled with the "BIOHAZARD" label. See 29 CFR 1910.1030(d)(2)(xiv). In this final rule, RSPA is adopting the exception for laundry and medical equipment as proposed in the NPRM.

E. Biological Products and Diagnostic Specimens

In an attempt to clarify the scope of the HMR, RSPA proposed to amend the definitions of "biological product" and "diagnostic specimen" to include only those materials that contain an infectious substance. However, commenters' responses suggest that the proposal may have added confusion. Some commenters contended that it was illogical for RSPA to amend the definitions of biological products and diagnostic specimens to limit them to materials that contain an infectious substance, but continue to except them from the HMR. Commenters asserted that defining a "diagnostic specimen" as "a material that contains an infectious substance being shipped for purposes of diagnosis" is contradictory. One commenter argued that the primary reason a diagnostic specimen is shipped is to determine, through testing, whether or not it contains an infectious substance. Another commenter requested that RSPA keep its previous definitions of diagnostic specimen and biological product because they are consistent with other Federal regulations. RSPA agrees with the commenters and is not amending the definitions of "biological product" and "diagnostic specimen" as proposed in the notice.

Several commenters also opposed retaining the exceptions for biological products and diagnostic specimens, asserting that insufficient protection will be afforded to transport workers and the public if biological products and diagnostic specimens, especially those that are known to contain an infectious substance, are excepted from regulation. One commenter stated that these exceptions effectively eliminate Division 6.2 materials from the HMR.

RSPA agrees with commenters that some level of regulation may be needed for biological products and diagnostic specimens under the HMR to ensure safety, but RSPA is not imposing any requirements for these materials in this rule. Under the current requirements, a biological product or diagnostic specimen that contains an infectious substance is excepted from the HMR, unless the biological product or diagnostic specimen is being discarded, in which case it would be regulated as RMW. RSPA anticipates proposing to delete the exceptions for biological products and diagnostic specimens and impose appropriate requirements for these materials, if justified after evaluation of associated benefits and costs, in future rulemaking action.

F. Extension of Compliance Date

In the notice, RSPA proposed to extend the compliance date for the requirements applicable to RMW and infectious substances affecting animals only, from October 1, 1995, to January 1, 1996. Some commenters supported having additional time to come into compliance with the requirements for RMW and infectious substances affecting animals only. The commenters stated that an extension will also allow RSPA time to issue its final rule and provide regulated industry sufficient time to comply with the new changes. However, other commenters expressed concern in regard to RSPA's proposal to extend the compliance date from October 1, 1995, to January 1, 1996. These commenters suggested that the compliance date be delayed for an indefinite period of time until the final rule has been issued and RSPA has resolved all of the issues.

RSPA disagrees with these latter comments and believes there is a need to put these requirements in place as quickly as practicable, to help eliminate ongoing confusion over what regulatory requirements apply. Also, RSPA believes that implementation on January 1, 1996 is a reasonable extension of time. Therefore, the proposal is adopted.

Because these amendments extend the compliance date from October 1, 1995, to January 1, 1996, they are effective without the customary 30–day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

G. Air Transportation

RSPA received several comments concerning the proposal to add Special Provisions "A13" and "A14" to allow certain quantities of regulated medical waste aboard aircraft. Most of the commenters supported removal of the prohibition to transport RMW by air. Some commenters questioned RSPA's rationale for the quantities selected in the proposed rule. One commenter expressed concern about allowing 12 liters of RMW by air without prescribing higher integrity packaging requirements. Some commenters stated that RMW should not be restricted to any quantity limits since the International Civil Aviation Organization (ICAO) Technical Instructions do not impose quantity limits for RMW.

RSPA selected the proposed quantity limits in the NPRM based on comments received on the March 3, 1993 advance notice of proposed rulemaking and for consistency with quantity limits under U.S. Postal Service regulations. Therefore, RSPA is adding these special provisions, as proposed, to facilitate air transportation of RMW.

H. Animal Pathogens

In the NPRM, RSPA requested comments concerning HMR regulation of infectious substances affecting animals only. RSPA received limited comments on this issue. One commenter stated that RSPA does not have the authority to regulate infectious substances affecting animals only and that the likelihood of an incident involving an animal exposed to an infectious substance as a result of a release in transportation is small.

RSPA agrees with the commenter that the probability of an incident occurring involving animals exposed to animal pathogens during transportation might be low. However, the potential exists and RSPA is aware of at least one such incident. Under the Federal hazardous material transportation law, RSPA is required to promulgate regulations for the transport of materials that may pose an unreasonable risk to health, safety and property. Protection of animals is encompassed within this jurisdiction. In addition, RSPA has determined that the costs incurred by regulation of these materials is minimal compared to the benefits acquired. In regard to other applicable Federal regulations, RSPA has examined the Department of Agriculture's regulations concerning animal pathogens contained in 9 CFR parts 1–199 and determined that they do not adequately address transportation concerns with regard to communication of hazard, provision of emergency response information, and packaging. Therefore, RSPA is regulating infectious substances affecting animals only, as proposed.

I. Other Issues

Two commenters asked RSPA to clarify its preemption authority in the preamble. The commenters suggested that States may impose requirements on the transportation of medical waste that go beyond those imposed by this rule. In particular, the commenters noted, States may define infectious substances and medical waste more broadly, to include categories of materials not regulated under the HMR. One commenter stated: "a decision by RSPA *not* to regulate (e.g., a decision to exclude certain materials from the definition of regulated medical waste), should carry as much preemptive effect as a decision to regulate."

As provided in Subpart C to Part 107, any law, regulation, order, ruling, provision or other requirement of a State, political subdivision, or Indian tribe that concerns a "covered subject," as defined at § 107.202(a), and that is not substantively the same as any provision of the Federal hazmat law or any regulation issued thereunder, is preempted. Covered subjects include classification of, and specification of packaging and hazard communication requirements for the transportation of, hazardous materials. Non-Federal requirements pertaining to the transportation of infectious substances that concern a covered subject accordingly are subject to preemption under this standard.

The HMR do not, however, preempt non-Federal requirements imposed on the transportation of materials that are not hazardous materials as defined in the HMR. One exception to this general principle, however, would be where a non-Federal law or regulation requires a method of hazard communication for non-hazardous materials sufficiently similar to that prescribed by the HMR for a hazardous material that the regulation is "tantamount to the creation of an additional class of hazardous materials with its own marking requirements." 59 FR 6186, 6192 (Feb. 9, 1994) (preemption determination PD–6). Short of this type of circumstance (*de facto* classification of materials as hazardous materials), however, State, local and tribal regulation of materials that are not hazardous materials is not subject to preemption by the Federal hazmat law. RSPA has proposed to extend application of the HMR to all intrastate transportation in a notice of proposed rulemaking published on July 9, 1993, under Docket HM–200 (58 FR 36920). Further action under that docket is pending.

RSPA received comments requesting that RSPA require treated medical waste to be physically altered until it is unrecognizable so that it can be readily identified as non-regulated. Although this practice may be required under certain State medical waste regulatory programs, RSPA is not adopting it at this time because it is beyond the scope of this rule.

In the NPRM, RSPA invited comments on possible adoption of a vehicle placarding requirement for Division 6.2 materials based on a petition for reconsideration (P–1080). Due to inadequate information, RSPA did not propose to adopt such a requirement in the NPRM but stated that it is under consideration for future rulemaking. Several commenters urged RSPA to clarify that RMW is not and will not be subject to placarding requirements. The commenters asserted that bloodmobiles carrying bulk blood intended for disposal would be subject to CDL and drug and alcohol regulations if placarding is required. RSPA is not adopting a placarding requirement, as requested by the petitioner, or vehicle marking requirement for Division 6.2 materials in this rule. However, RSPA is aware that several States have differing marking requirements for medical wastes. It may be appropriate, for purposes of national uniformity and minimum communication, to propose in future rulemaking a special marking, other than a placard, to identify the presence of these materials in a vehicle.

In the preamble of the notice, RSPA stated that this rulemaking action was limited to amendments that could be accomplished in the short term and that more substantive issues would be addressed in future rulemaking. Some commenters contended that dividing the problematic issues into two or more rulemakings would be confusing. These commenters urged RSPA to make all necessary adjustments to the regulations in one rule.

RSPA believes that certain changes to the requirements for RMW adopted under Docket HM–181 on December 20, 1991, are necessary, before they become mandatory, to eliminate confusion and facilitate transportation of RMW. However, in order to make the necessary changes to the RMW requirements and publish the rule before October 1, 1995, RSPA had to limit the amendments in this rule to minor, short-term adjustments.

RSPA received comments requesting that bulk packaging standards for RMW be incorporated into the HMR. Currently, their use is authorized under the provisions of a number of exemptions. RSPA stated in the preamble of the notice that it anticipates proposing to convert the provisions of some or all of these exemptions into regulations of general applicability. RSPA intends to address bulk packagings for RMW in a future rulemaking.

Several commenters encouraged RSPA to align the classification, hazard communication, and packaging requirements for Division 6.2 materials in the HMR with the most recent edition of the UN Recommendations and ICAO Technical Instructions. Specifically, some commenters recommended that RSPA require infectious substances packagings to be UN marked and certified for consistency with international standards.

RSPA believes that uniform standards, applicable to both domestic and international transportation, are essential to ensuring the safe and efficient movement of infectious substances. To this end, RSPA continues to work with other Federal agencies and the United Nations Subcommittee of Experts on the Transport of Dangerous Goods to improve standards for classification, hazard communication, packaging and operational control of infectious substances. The HMR generally are consistent with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), although there are differences. RSPA anticipates proposing changes to the HMR in future rulemaking concerning defining criteria, particularly the adoption of risk groups and regulation of genetically-modified organisms and microorganisms, biological products and diagnostic specimens, and new shipping descriptions and marking requirements for non-bulk packagings based on the UN Recommendations. Both through rulemaking action and in working with other Federal agencies, RSPA anticipates advocating standards based on UN Recommendations.

RSPA intends to continue its review of the HMR and the regulations of other Federal agencies and to work with these agencies to identify and eliminate inconsistencies, overlaps, gaps and inadequacies in regulatory coverage. Moreover, as new information becomes available, RSPA may propose to make adjustments to the requirements for Division 6.2 materials in future rulemaking as necessary.

III. Section-by-Section

Part 171

Section 171.14. RSPA is amending § 171.14(b)(7) to change the compliance date from October 1, 1995, to January 1, 1996, to give industry additional time to comply with the changes adopted in this final rule.

Part 172

Section 172.101. RSPA is amending Column (8A) of the Hazardous Materials Table for the entries, "Infectious substances, affecting humans", "Infectious substances, affecting animals" and "Regulated medical waste", to reflect the correct section references. RSPA is revising the identification number in Column 4 for "Regulated medical waste" from "NA9275" to "UN3291." RSPA also is adding two special provisions, "A13" and "A14," in Column 7 for "Regulated medical waste."

Section 172.102. RSPA is adding Special Provisions "A13" and "A14" to permit transportation of RMW by aircraft as proposed. Special Provision A13 allows the transportation of sharps aboard passenger and cargo-carrying aircraft in quantities not exceeding 16 kilograms (35 pounds) per package and maximum liquid content of 50 milliliters (1.7 ounces) for each inner packaging. Special Provision A14 permits the transportation of RMW by aircraft in quantities of not more than 16 kilograms (35 pounds) for solid waste and 12 liters (3 gallons) for liquid waste, when means of transportation other than air are impracticable or unavailable. These provisions are necessary to facilitate transportation of RMW in rural areas and ensure that shippers of used sharps do not encounter unnecessary delays or frustration of shipments.

Part 173

Section 173.2a. RSPA is amending § 173.2a(c)(3) to provide that Division 6.2 materials do not include those meeting the criteria for Class 7 (radioactive) materials, other than limited quantities. RSPA did not intend for Division 6.2 to take precedence over Class 7 materials.

Section 173.134. RSPA is revising § 173.134 for clarity and to provide relief from overly restrictive requirements for certain shipments of RMW. RSPA is not amending the definitions of "biological product" and "diagnostic specimen" as proposed. RSPA believes, based on commenters' observations, that clarifying RSPA's intent in the preamble is likely to be more effective than revising the definitions.

Based on comments received, RSPA is relocating the definition of "regulated medical waste" and its exceptions from Appendix G of Part 173 to § 173.134 to ease compliance with the HMR. In addition, RSPA is relocating the exceptions for biological products and diagnostic specimens from § 173.196 to § 173.134. RSPA is adding an exception for material that once contained an infectious substance but has been treated to eliminate the hazard. In addition, RSPA is clarifying that the following materials are not considered RMW: (1) EPA hazardous wastes; (2) waste derived from households; (3) corpses, remains, and anatomical parts intended for ceremonial interment or cremation, and (4) animal waste generated in animal husbandry or food production.

Based on commenters' requests and RSPA initiative, RSPA is revising the definition of RMW by adopting a criteria-based definition as opposed to a list-based definition, that is, removing the categories in Appendix G and replacing them with a general definition. Regulated medical waste is defined as a waste or reusable material, other than a culture or stock of an infectious substance, that contains an infectious substance and is generated in the diagnosis, treatment or immunization of human beings or animals, research pertaining thereto, or the production or testing of biological products.

Also in § 173.134, RSPA is adding an exception for RMW that is packaged in a rigid, non-bulk packaging that meets the general packaging requirements of §§ 173.24 and 173.24a, meets packaging and marking requirements in 29 CFR 1910.1030, and is offered for transportation or transported by private or contract carrier.

In paragraph (c) of this section, RSPA is clarifying that Division 6.2 materials other than RMW are not assigned a packing group. RMW is assigned to a Packing Group II performance level.

Part 178

Section 178.609. RSPA is adding a new paragraph (i) to clarify that packagings for infectious substances conforming to this section are not required to be marked and certified in accordance with § 178.503.

IV. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. This rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034), because of substantial public interest. A regulatory evaluation is available for review in the docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) the designation, description, and classification of hazardous material;

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of those documents;

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule concerns the classification, packaging, labeling, and handling of hazardous material, among other covered subjects.

This rule preempts any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption for the requirements in this final rule that concern covered subjects is January 1, 1996.

C. Regulatory Flexibility Act

This final rule revises requirements for infectious substances and regulated medical waste contained in the HMR by narrowing the scope of these provisions. The changes in this rule provide relief to shippers, carriers of infectious substances and regulated medical waste, and some packaging manufacturers. Although the changes will affect many small entities, such as medical clinics, we expect the economic impact on each of them to be minimal. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN numbers contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, and 178 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.8, the following definition is added in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Regulated medical waste. See § 173.134 of this subchapter.

* * * * *

§ 171.14 [Amended]

3. In § 171.14, as revised at 59 FR 67406, effective October 1, 1995, in paragraph (a)(1)(ii), in the heading, the wording "*October 1, 1995*" is revised to read "*January 1, 1996*" and, in the regulatory text, the wording "October 1, 1995" is revised to read "January 1, 1996".

§ 171.15 [Amended]

4. In § 171.15, the wording "etiologic agents" in paragraphs (a)(3) and (b) introductory text is revised to read "infectious substances (etiologic agents)".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

5. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

6. In § 172.101, in the Hazardous Materials Table, as revised at 59 FR 67409, effective October 1, 1995, the following changes are made:

a. For the entry, "Infectious substances, affecting animals *only*", in Column (8A), "196" is removed and replaced with "134".

b. For the entry, "Infectious substances, affecting humans", in Column (8A), "196" is removed and replaced with "134".

c. For the entry, "Regulated medical waste", in Column (4), the identification number "NA9275" is removed and replaced with "UN3291"; in Column (7), "A13, A14" is added; and in Column (8A), "197" is removed and replaced with "134".

7. In § 172.102, in paragraph (c)(2), Special Provisions A13 and A14 are added in alphanumeric sequence, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(2) * * *

Code/Special Provisions

* * * * *

A13 Non-bulk packagings conforming to § 173.197 of this subchapter not exceeding 16 kilograms (35 pounds) gross mass containing only used sharps are permitted for transportation by aircraft. Maximum liquid content in each inner packaging may not exceed 50 milliliters (1.7 ounces).

A14 Non-bulk packagings of regulated medical waste conforming to § 173.197 of this subchapter not exceeding 16 kilograms (35 pounds) gross mass for solid waste or 12 liters (3 gallons) total volume for liquid waste may be transported by passenger and cargo aircraft when means of transportation other than air are impracticable or not available.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

8. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In § 173.2a, paragraph (c)(3) is revised to read as follows:

§ 173.2a Classification of a material having more than one hazard.

* * * * *

(c) * * *

(3) A Division 6.2 (infectious substance) material that also meets the definition of another hazard class or division, other than Class 7, or that also is a limited quantity Class 7 material, shall be classed as Division 6.2;

* * * * *

10. Section 173.134 is revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions, exceptions and packing group assignments.

(a) *Definitions.* For the purposes of this subchapter, the categories of materials that constitute Division 6.2 are defined as follows:

(1) An *infectious substance* means a viable microorganism, or its toxin, that causes or may cause disease in humans or animals, and includes those agents listed in 42 CFR 72.3 of the regulations of the Department of Health and Human Services and any other agent that causes or may cause severe, disabling or fatal disease. The terms *infectious substance* and *etiologic agent* are synonymous.

(2) A *diagnostic specimen* means any human or animal material including, but not limited to, excreta, secreta, blood, blood components, tissue, and tissue fluids, being shipped for purposes of diagnosis.

(3) A *biological product* means a material that is prepared and manufactured in accordance with the provisions of 9 CFR part 102 (Licenses for biological products), 9 CFR part 103 (Experimental products, distribution, and evaluation of biological products prior to licensing), 9 CFR part 104 (Permits for biological products), 21 CFR part 312 (Investigational new drug application), or 21 CFR parts 600 to 680 (Biologics).

(4) A *regulated medical waste* means a waste or reusable material, other than a culture or stock of an infectious substance, that contains an infectious substance and is generated in—

(i) The diagnosis, treatment or immunization of human beings or animals;

(ii) Research pertaining to the diagnosis, treatment or immunization of human beings or animals; or

(iii) The production or testing of biological products.

(b) *Exceptions.* (1) The following are not subject to any requirements of this subchapter if the items as packaged do not contain any material otherwise subject to the requirements of this subchapter:

(i) Biological products;

(ii) Diagnostic specimens;

(iii) Laundry or medical equipment that conforms to 29 CFR 1910.1030 of the regulations of the Occupational Safety and Health Administration of the Department of Labor;

(iv) A material, including waste, that previously contained an infectious substance and has been treated by steam sterilization, chemical disinfection, or other appropriate method, so that it no longer poses the hazard of an infectious substance;

(v) Any waste material, including garbage, trash and sanitary waste in septic tanks, derived from households, including but not limited to single and multiple residences, hotels and motels;

(vi) Corpses, remains and anatomical parts that are intended for ceremonial interment or cremation; and

(vii) Animal waste generated in animal husbandry or food production.

(2) A hazardous waste is not subject to regulation as a regulated medical waste.

(3) A regulated medical waste that is transported by a private or contract carrier is excepted from—

(i) The requirement of an "INFECTIOUS SUBSTANCE" label if the outer packaging is marked with a "BIOHAZARD" marking in accordance with 29 CFR 1910.1030; and

(ii) The specific packaging requirements of § 173.197, if packaged in a rigid non-bulk packaging conforming to—

(A) The general packaging requirements of §§ 173.24 and 173.24a; and

(B) Packaging requirements specified in 29 CFR 1910.1030.

(c) *Assignment of packing groups and applicable packaging sections.* (1) Division 6.2 materials, other than regulated medical waste, are not assigned a packing group. Packaging requirements for these materials are prescribed in § 173.196.

(2) Except as otherwise provided, regulated medical waste is assigned to Packing Group II and must be packaged as specified in § 173.197.

Appendix G [Removed]

11. Appendix G to part 173 is removed.

PART 178—SPECIFICATIONS FOR PACKAGINGS

12. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 178.609, paragraph (i) is added to read as follows:

§ 178.609 Test requirements for packagings for infectious substances (etiologic agents).

* * * * *

(i) Packagings subject to this section are not subject to § 178.503 or any other requirements of this subpart, except § 178.608.

Issued in Washington, DC on September 14, 1995, under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 95–23243 Filed 9–15–95; 8:45 am]

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Wednesday
September 20, 1995

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 21

Type Certification Procedures for Changes in Helicopter Type Design; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 22334; Notice No. 95–15]

RIN 2120–AF10

Proposed Amendment of the Type Certification Procedures for Changes in Helicopter Type Design To Attach or Remove External Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend the existing helicopter noise certification procedures with respect to certain changes in type designs. This proposal would amend the applicability of the noise certification procedures to exclude those changes in type design that involve the attachment or removal of external equipment, floats and skis, and certain airframe and operational changes made to accommodate such changes in type design (acoustical change requirements). This proposal would also exclude helicopter flight operations with doors and/or windows removed or in an open position from the applicability of the acoustical change requirements. This change would reconcile 14 CFR part 21 with the procedural treatment of external equipment in the original helicopter noise certification rulemaking effort and would make U.S. helicopter noise certification regulations more consistent with the International Civil Aviation Organization (ICAO) standards.

DATES: Comments must be submitted on or before November 20, 1995.

ADDRESSES: Send comments on this proposal to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC–10), Docket No. 28334, 800 Independence Avenue, S.W., Room 915G, Washington, DC 20591 or deliver comments in triplicate to: FAA Rules Docket, Room 915G, 800 Independence Avenue, S.W., Washington, DC 20591. Comments may also be submitted electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be inspected in Room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth E. Jones, Research and Engineering Branch (AEE–110), Technology Division, Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–8933, facsimile (202) 267–5594.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impacts of this proposal. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All comments received, as well as a report summarizing any substantive public contact with Federal Aviation Administration (FAA) personnel on this rulemaking will be filed in the docket, and will be considered by the Administrator before taking action on this proposed rulemaking. The docket is available for public inspection both before and after the closing date for comments. The FAA will acknowledge the receipt of a comment if the commenter includes a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28334". When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3474. Requests should be identified by the docket number of this proposed rule.

Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

The certification procedures for aeronautical products and parts are contained in 14 CFR part 21. Under part 21, an applicant for approval of a change to a helicopter type certificate must show compliance with the noise regulations in 14 CFR part 36 (part 36) if the change in type design may increase the noise level of the helicopter (an acoustical change). Section 21.93 defines an "acoustical change" and classifies the aircraft which must demonstrate compliance with part 36 following an acoustical change. Section 21.93(b)(4) described helicopters required to demonstrate compliance with part 36 for an acoustical change, and specifically excludes helicopters designated exclusively for "agricultural aircraft operations," "dispensing firefighting materials," or "carrying external loads." The intent of the existing § 21.93(b)(4) is to exclude helicopters designated exclusively to carry external loads from the requirement to demonstrate compliance with part 36.

This proposal addresses type certification (including noise requirements) procedures for changes to helicopter type designs to configure helicopters for carriage of external equipment. External equipment is defined herein as any instrument, mechanism, part, apparatus, or accessory that is attached to or extends from the helicopter exterior but is not used nor is intended to be used in operating or controlling a helicopter in flight and is not part of an airframe or engine. Examples of external equipment are spotlights, cameras, airborne signs, and cargo tanks and baskets.

External equipment may be attached to a helicopter as a Class A Rotorcraft External Load Combination under 14 CFR part 133 (part 133) "Rotorcraft External Load Operations", or alternatively, the external equipment may be attached to the helicopter as a change in type design under Subpart D of part 21. The noise certification requirements do not apply to any helicopter, regardless of airworthiness certification category, that is designated exclusively for carrying external loads pursuant to part 133. Section 133.51 states that "[a] Rotorcraft External-Load Operator Certificate is a current and valid airworthiness certificate for each rotorcraft . . . listed by registration number on a list attached to the certificate, when the rotorcraft is being used in operations conducted under [part 133]." However, when the original helicopter noise certification rules were adopted in part 21, external equipment was not excluded from the acoustical change provisions of § 21.93. Thus, except for helicopters operated under part 133, the addition of external equipment is currently subject to the acoustical change provisions of § 21.93. This proposed change to § 21.93 would reconcile the procedural treatment of external equipment added to helicopters with the intent of § 21.93(b)(4) by expanding the acoustical change

exception to include carriage of external equipment.

While many helicopter operators would like to use their aircraft to perform specialized operations that require the use of external equipment, many of these operations do not take place because the cost of complying with the noise regulations is financially impractical; i.e., the cost of demonstrating compliance with the noise regulations would substantially deplete any profit the operation might generate. Some helicopter operators suggest that the current acoustical change type certification procedures are hampering the growth of their industry because compliance costs deter them from performing certain operations that require the addition of external equipment.

History of Aircraft Noise Certification Regulations Relevant to This Proposed Amendment

On November 3, 1969, the Administrator of the FAA adopted part 36 entitled "Noise Standards: Aircraft Type Certification." That action implemented the FAA's regulatory noise abatement program by prescribing type certification noise standards for subsonic turbojet powered airplanes. Procedural changes were concurrently made to part 21, "Certification Procedures for Products and Parts," to provide criteria and requirements for demonstrating compliance with the specifications in part 36 (34 FR 13855, November 18, 1969). The noise certification requirements of parts 21 and 36 are designed to promote the incorporation of noise abatement technology into aircraft design. Parts 21 and 36 have been amended as appropriate to add new aircraft types to the certification requirements or change the technical specifications as necessary. Subsequently, helicopter noise certification requirements were adopted with amendment 36–14 to part 36 and amendment 21–61 to part 21 (53 FR 3534, February 5, 1988).

The first amendment to part 21 relevant to the original aircraft noise certification regulation was amendment 21–27 (34 FR 18355, November 10, 1969). That amendment established the general requirement that an applicant must demonstrate compliance with the applicable provisions of the part 36 procedures prior to issuance of an original, amended, or supplemental type certificate. The same amendment to part 21 included the addition under § 21.93(b) that specified an "acoustical change" as any voluntary change in type design of a transport category or turbojet-powered airplane that may increase the noise levels of that airplane. Section 21.93 was subsequently amended in response to the promulgation of part 36 noise standards for propeller-driven small airplanes (Amdt. 21–42; 40 FR 1029, January 6, 1975), supersonic airplanes (Amdt. 21–47; 43 FR 28406, June 29, 1978), commuter category airplanes (Amdt. 21–59; 52 FR 1806, January 15, 1987), and helicopters (Amdt. 21–61; 53 FR 3534, February 5, 1988).

Section 21.93 has also been amended to exclude certain changes in aircraft type design from the acoustical change requirements. The necessity for exempting these changes in type design became apparent only after experience was gained from implementation of the original noise certification regulations for the aircraft type in question. For turbojet-powered airplanes, amendment 21–56 (47 FR 756, January 7, 1982) excludes time-limited engine and/or nacelle changes, where the change in type design specifies that the airplane may not be operated for a period of more than 90 days, and amendment 21–62 (53 FR 16360, May 6, 1988) excludes both gear down flight with one or more retractable landing gear down during the entire flight and spare engine and nacelle carriage external to the skin of the aircraft. For propeller-driven commuter category and propeller-driven small airplanes, amendment 21–63 (53 FR 47394, November 22, 1988) excludes "antique" airplanes (i.e., those airplanes that have flight time before January 1, 1955) and land configured aircraft reconfigured with floats and skis.

Synopsis of the Proposal

The FAA has determined that this proposed rulemaking would provide benefits in the form of regulatory relief to the helicopter industry and to individual helicopter operators. From a number of noise certification studies, the FAA has concluded that this rulemaking will result in little or no increase of public exposure to helicopter noise emissions. The portion of the existing helicopter regulations relevant to this rulemaking imposes an undue financial burden on the helicopter industry and operators without providing any measurable benefit to the public.

This proposal would amend the acoustical change provisions of § 21.93 to exclude helicopters that have been modified by the addition or removal of external equipment mounted on the helicopter airframe or floats (rigid or bag) and skis. The proposal would also exclude certain changes in helicopter type design from the acoustical change requirements to certain airframe changes made to accommodate the external equipment, and to helicopter flight operations with doors and/or windows removed or in an open position. The proposal also applies to any operating limitations placed on, or removed from, the helicopter as a consequence of the addition or removal of external equipment, floats, and skis.

The FAA recognizes the utility aspect of the helicopter as an aerial platform for external equipment. It is a common practice in the helicopter industry to add or remove external equipment as mission requirements vary. Although external equipment may be offered by the original manufacturer of the helicopter, it is usually added as an after-market addition by individual operators to meet specific mission needs. Given the potential variety of external equipment, the nature of the external equipment is not considered part of the basic design of a given helicopter and does not influence the basic aerodynamic design or the incorporation of noise abatement technology into the helicopter design. As stated in the preamble of the final rule (cited previously) for the original helicopter noise certification rulemaking, "* * * the [helicopter] noise standards apply [only] to internal load configurations."

This proposed rule is consistent with a similar provision in the applicability section of the helicopter noise certification standard approved by the ICAO under its International Standards and Recommended Practices: Environmental Protection; Annex 16, Volume 1, Chapters 8 and 11 (Third Edition-July 1993). The proposed rule change would bring the acoustical change provision in the U.S. noise certification regulations into closer harmony with that used by foreign noise certification authorities.

Details of the proposed amendment and limitations of the amendment are provided in the following analysis.

Section 21.93 Classification of Changes in Type Design

Part 21 prescribes that certain types of aircraft, including helicopters, must demonstrate compliance with the applicable requirements of part 36 if a change in type design results in an acoustical change. Section 21.93 specified an "acoustical change" as any voluntary change in type design (including operational limitations) that may increase the noise levels of an aircraft. The proposed rule, applicable only to helicopters, would exclude the installation or removal of external equipment from being considered an acoustical change. The proposed rule would specifically exclude from the acoustical change provision the addition or removal of all external equipment where "external equipment" means any instrument, mechanism, part, apparatus, appurtenance, or accessory (e.g., spotlights, cameras and other optical devices, public address systems, hoists, airborne signs, tow banners, cargo tanks and baskets, emergency flotation gear, personnel platforms, wire strike kits, crop spraying equipment, scientific apparatus and their accessories) that is not used or intended to be used in operating or controlling an aircraft in flight, that is attached to the helicopter, and is not part of an airframe or engine. The proposed rule would apply to changes in the airframe made to:

(1) Accommodate the addition or removal of external equipment;

(2) facilitate the use of external equipment; or

(3) facilitate the safe operation of the helicopter with external equipment mounted on the helicopter.

Examples of airframe changes that would be excepted include fairings, attachment hardware, cavities constructed in the airframe to accommodate conformally attached equipment, and bubble windows. The proposed rule would also exclude from the acoustical change provision external load attaching means, the airworthiness certification of which is specified in §§ 27.865 and 29.865.

The proposed rule change would also exclude the addition or removal of floats and skis on helicopters from the acoustical change provision. The proposal would also make it clear that any changes in the operating limitations placed on the helicopter as a consequence of the addition or removal of external equipment, floats, and skis is not an acoustical change. Similarly, it would also exclude flight operations conducted with one or more doors and/or windows removed or in an open position.

The FAA has included addition or removal of floats and skis on helicopters under this proposed rule change in order to provide the same provision for helicopters as is currently provided small propeller driven airplanes and propeller driven commuter category airplanes under § 21.93(b)(3). The acoustical change requirements of § 21.93 do not require a noise certification compliance demonstration for such airplanes, and would not for helicopters under this proposal, because the FAA did not have a rational basis to consider such design configurations in the original rulemaking that established noise certification requirements for these aircraft. While the additions of floats and skis adversely affects the aerodynamic performance, and consequently the noise levels, of both small airplanes and helicopters, the FAA lacks the acoustical and performance data necessary to develop noise certification regulations relevant to small airplanes and helicopters that are reconfigured by the addition of floats or skis.

If a noise compliance demonstration is otherwise required for compliance with part 36, the noise flight test must be conducted without any external equipment, floats, or skis mounted to the helicopter and with doors and windows mounted and closed (i.e., aerodynamically clean configuration) unless otherwise approved or required by the FAA. In granting exemptions and establishing conditions of exemptions, the rationale for the FAA's decision will be based on whether or not the measured helicopter noise levels from a proposed noise compliance demonstration would be representative of a "clean configured" helicopter. For example, assume a cavity was created in the fuselage (as a related airframe change) to accommodate a conformally (flush) fitted camera. Under the proposed rule change, both the camera and the cavity would be exempt from the acoustical change requirements of part 21. However, in the event of any future noise testing of that helicopter for a change in type design unrelated to the camera and cavity, such a noise test without the camera mounted and the cavity exposed would likely lead to unrepresentative noise levels due to alteration of the aerodynamic performance of the helicopter. In this example, during the actual noise test for the unrelated change in type design, the FAA would probably require that the flush-mounted camera be inserted in its associated fuselage cavity or that the fuselage cavity be covered in a manner that would return the fuselage to its original aerodynamic shape. Similarly, any analysis for the purpose of demonstrating a "nonacoustical change" under § 21.93 must assume performance levels consistent with an aerodynamically clean helicopter (relative to the changes in type design excepted under this proposed rulemaking). That is, a decrease in a noise certification level effected by the addition of equipment exempted under this proposed rulemaking may not be used to "mathematically' offset an increase in noise from a change in type design not affected by this proposed rulemaking. For example, assuming the certification basis for a given helicopter is part 36 Appendix J, an increase in flyover noise certification level caused by the upgrade of a transmission may not be offset by the decrease in noise from the assumed addition of external equipment, floats or skis as part of the change in type design for the transmission.

The FAA also proposed to delete the current text in § 21.93(b)(4) (i) and (ii). These paragraphs indicate examples of design changes which would be considered acoustical changes. Since § 21.93(b) already makes it clear that "any voluntary change in the type design of an aircraft that may increase the noise levels of the aircraft is an 'acoustical change' * * *" existing paragraphs § 21.93(b)(4) (i) and (ii) may be erroneously interpreted to indicate that (any) change to a muffler (including a change to a quieter muffler) is by regulation an acoustical change. The existing paragraphs (i) and (ii) do not represent a regulatory requirement and add nothing toward the interpretation of the acoustical change requirements for helicopters. The proposed new text addresses the definition of external equipment and the exclusions discussed earlier in this synopsis.

During development of this proposed rule change, the FAA has examined such factors as the utility aspect of the helicopter mission, the necessity for the addition or removal of external equipment to meet mission needs, the relevance of such equipment with regard to the incorporation of noise abatement technology in the design of the helicopter, and the desire for commonality of U.S. noise certification regulations with relevant international standards and foreign national regulations. After consideration of these factors, the Administrator has determined that the proposed rule change is consistent with the criteria set forth for proposing and amending aircraft noise abatement regulations under the authority of § 611(d) of the Federal Aviation Act of 1958.

International Compatibility

The FAA has reviewed corresponding ICAO standards and JAA regulations, where they exist. These proposed amendments would make U.S. helicopter noise certification regulations more consistent with the ICAO standards.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Regulatory Evaluation Summary

Three principal requirements pertain to the economic impacts of changes to the Federal Regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the expected benefits to society outweigh the expected costs. Second, the regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits exceeding costs; (2) is not "significant" as defined in the Executive Order and DOT's policies and procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will lessen restraints on international trade. These analyses, available in the docket, are summarized below.

Benefits

The proposed rule would provide regulatory relief and a cost savings of $31,690,468 (non-discounted) or $23,409,159 discounted, over a ten year period, to helicopter manufacturers, modifiers, and operators. Of this amount, the projected cost savings for part 36 noise certification testing under Appendix H for major helicopter manufacturers is $4,800,000 (non-discounted) or $4,264,244 discounted; Appendix J Testing for light helicopter manufacturers, $3,000,000 (non-discounted) or $2,330,305 discounted; and Appendix J Testing for modifiers, $22,500,000 (non-discounted) or $15,803,025 discounted. The FAA would also realize a cost savings under these appendices: Appendix H, $222,460 (non-discounted) or $178,312 discounted; Appendix J, $231,740 (non-discounted) or $173,525 discounted; and Appendix J (for modifiers), $936,268 (non-discounted) or $659,748 discounted.

Costs

From the number of noise certification studies, the FAA has learned that allowing applicants to attach external equipment to their helicopters will result in no net increase in helicopter noise or, at worst, insignificant increases in noise levels.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The order defines "small entities" in terms of size thresholds, "significant economic impact" in terms of annualized cost threshold, and "substantial number" as a number that is not less than eleven and that is more than one-third of the small entities subject to the proposed rule.

The FAA has determined that, in accordance to the above order, the proposed rule to part 21 would not have a significant economic impact on a substantial number of small entities. The proposed rule would directly affect two types of entities: (1) Light helicopter manufacturers, and (2) small helicopter modifiers.

For small aircraft and aircraft parts manufacturers, Order 2100.14A specifies a size threshold for classification as a small entity as 75 or fewer employees. Based upon this size threshold, all of the affected U.S. manufacturers are large. For the purpose of the regulatory flexibility determination, an aircraft modifier is considered a small entity if it has 200 or fewer employees.

The FAA concludes that a substantial number of small entities (less than one third) would not be significantly affected by the proposed rule. Therefore, the proposed rule would not impose a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Trade Impact Assessment

The FAA has determined that the proposed rule would neither affect the sale of foreign aviation products and services in the United States nor the sale of U.S. products and services in foreign countries. This determination is based on the FAA's contention that the proposed rule would parallel more closely the U.S. standards with foreign standards for noise certification of external equipment.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Analysis

Pursuant to the Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a draft environmental analysis will be prepared and placed in the docket.

Conclusion

The FAA has determined that this proposed rule: (1) is not a significant regulatory action under Executive Order 12866; (2) is not a significant regulatory action under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this proposed rule would have little or no effect on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

List of Subjects in 14 CFR Part 21

Aircraft, Helicopters, Noise control.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend 14 CFR part 21 as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 49 U.S.C. App. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 7572; E.O. 11514; 49 U.S.C. 106(g).

2. Section 21.93 is amended by revising paragraph (b)(4) to read as follows:

§ 21.93 Classification of changes in type design.

* * * * *

(b) * * *

(4) Helicopters except:

(i) Those helicopters that are designated exclusively:

(A) For "agricultural aircraft operations", as defined i[illegible] § 137.3 of this chapter, as effe[illegible]ive [illegible]ary 1, 1966;

(B) For disp[illegible]sin[illegible]ghting materials; or

(C) For carryin[illegible]al loads, as defined in § 133.1(b) of this chapter, as effective on December 20, 1976.

(ii) Those helicopters modified by installation or removal of external equipment. For purposes of this paragraph, "external equipment" means any instrument, mechanism, part, apparatus, appurtenance, or accessory that is attached to, or extends from the helicopter exterior but is not used nor is intended to be used in operating or controlling a helicopter in flight and is not part of an airframe or engine. An "acoustical change" does not include:

(A) Addition or removal of external equipment;

(B) Changes in the airframe made to accommodate the addition or removal of external equipment, to provide for an external load attaching means, to facilitate the use of external equipment or external loads, or to facilitate the safe operation of the helicopter with external equipment mounted to, or external loads carried by, the helicopter;

(C) Reconfiguration of the helicopter by the addition or removal of floats and skis;

(D) Flight with one or more doors and/or windows removed or in an open position; or

(E) Any changes in the operational limitations placed on the helicopter as a consequence of the addition or removal of external equipment, floats, and skis, or flight operations with doors and/or windows removed or in an open position.

* * * * *

Issued in Washington, DC, on September 11, 1995.

James D. Erickson,

Director, Office of Environment and Energy.

[FR Doc. 95–23208 Filed 9–19–95; 8:45 am]

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federal register

Wednesday
September 20, 1995

Part V

Environmental Protection Agency

Alaskan Outer Continental Shelf; Draft National Pollutant Discharge Elimination System General Permit; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5297–3]

Alaskan Outer Continental Shelf; Draft National Pollutant Discharge Elimination System General Permit

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of Draft NPDES General Permit (Reissuance), Notice of State of Alaska Certification and Notice of State of Alaska Determination of Consistency with the Alaska Coastal Management Program.

SUMMARY: The Regional Administrator, Region 10, is proposing to issue a draft National Pollutant Discharge Elimination System (NPDES) general permit for oil and gas stratigraphic test and exploration wells on the Alaskan Outer Continental Shelf (OCS) in addition to exploration, production and development wells in offshore and coastal waters of the State of Alaska. A general NPDES permit (51 FR 35460, 10/03/86) was issued September 4, 1986, for all areas offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sales 55 (Gulf of Alaska) and 60 (Cook Inlet) and all Cook Inlet blocks offered for lease by the State of Alaska in Lease Sales 32, 33, 35, 40, 46A, and 49. The permit issued in 1986 also covered areas offered under state lease sales held during the effective period of the permit (i.e., 10/10/86–10/10/91). The permit proposed today will not cover areas outside of Cook Inlet (i.e., Federal Lease Sale 55).

When issued, the proposed permit will establish effluent limitations, standards, prohibitions, and other conditions on discharges from facilities in the general permit area. These conditions are based on the administrative record. EPA regulations and the permit contain a procedure which allows the owner or operator of a point source discharge to apply for an individual permit instead. A total of 23 facilities were covered under the previous general permit. Of those 23 facilities, 16 are currently active. All of those permittees have complied with the reissuance application procedures and have indicated preference to be covered under this general permit as well. Therefore, Region 10 hereby announces its intention to cover these facilities under this general permit. If any individual objects to this automatic coverage, that objection should be submitted in writing during the public comment period.

A brief description of the basis for the conditions and requirements of the proposed permit is given in the fact sheet published below.

DATES: Interested persons may submit comments of the draft general permit by 4 pm on November 30, 1995.

ADDRESSES: Public comments and requests for coverage should be sent to: Environmental Protection Agency, Region 10, Attn: Ocean Programs Section, WD–137, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kris Flint, Region 10, at the address listed above or telephone (206) 553–8155. Copies of the draft general permit and today's publication will provided upon request.

SUPPLEMENTARY INFORMATION:

State Certification

This Notice will also serve as Public Notice of the intent of the State of Alaska, Department of Environmental Conservation to consider certifying that the subject discharge will comply with the applicable provisions of Section 208(e), 301, 303, 306 and 307 of the Clean Water Act. The NPDES permit will not be issued until the certification requirements of Section 401 have been met. Persons wishing to comment on State Certification should submit written comments within this 60 day period to the State of Alaska, Southcentral Regional Office, Alaska Department of Environmental Conservation (ADEC), 555 Cordova Street, Anchorage, Alaska 99501.

State Consistency Determination

This Notice will also serve as Public Notice of the intent of the State of Alaska, Office of Management and Budget, Division of Governmental Coordination, to review this action for consistency with the approved Alaska Coastal Management Program. Persons wishing to comment on the State Determination of Consistency with the Alaska Coastal Management Program should submit written comments within this 60 day period, to the State of Alaska, Office of Management and Budget, Division of Governmental Coordination at the Joint Pipeline Office, 411 West 4th Street, Anchorage, Alaska 99501. Comments should be addressed to the attention of Alaska Coastal Management Program Consistency Review.

Public Hearing

Public hearings on the proposed general permit are tentatively scheduled to be held in Anchorage and Soldotna, Alaska. The Anchorage hearing will be held in Room 154 of the Anchorage Federal Building at 222 West Seventh on November 28, 1995, from 1 p.m. to 5 p.m. The Soldotna hearing will be held in the Assembly Chambers of the Kenai Peninsula Borough at 144 North Binkley Road on November 29, 1995, from 4 p.m. until all persons have been heard. Either or both of the public hearings will be cancelled if insufficient interest is expressed in them. People interested in making a statement at either hearing must contact Kris Flint at the address below or at (206) 553–8155 by 4 pm on November 16, 1995, to confirm that the hearing will take place. At the hearings, interested people may submit oral or written statements concerning the draft general permit.

Request for Coverage

Written request for authorization to discharge under the general permit shall be provided, as described in Part I.A. of the permit, to EPA, Region 10, at least 60 days prior to initiation of discharges. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to operations at the discharge site. The permit also requires permittees to notify EPA no more than seven (7) days prior to the initiation of discharges at the site, and prior to the initiation of discharges from each new well at a given site.

Administrative Record

The proposed NPDES permit and other related documents are on file and may be inspected any time between 8:30 a.m. and 4 p.m., Monday through Friday at the addresses shown below.

U.S. EPA, Anchorage Operations Office, Anchorage Operations Office, Room 537, Federal Building, 222 West Seventh Avenue, #19, Anchorage, Alaska 99513–7588

U.S. EPA, Region 10, Office of Water, WD–137, Ocean Programs Section, 1200 6th Avenue, Seattle, Washington 98101

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Fact Sheet

I. General Permits and Requests for Individual Permits

Section 301(a) of the Clean Water Act (the "Act") provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. The Regional Administrator has determined that oil and gas facilities operating in the areas described in the proposed general NPDES permit are more appropriately controlled by a general permit than by individual permits. This decision is based on 40 CFR 122.28, 40 CFR 125 (Subpart M) and the Agency's previous permit decisions in other areas of the Alaskan Outer Continental Shelf (OCS).

Any owner and/or operator authorized to discharge under a general permit may request to be excluded from coverage under the general permit by applying for an individual permit as provided by 40 CFR 122.28(b). The operator shall submit an application together with the reasons supporting the request to the Director, Water Division, EPA, Region 10 ("Director").

A source located within the general permit area, excluded from coverage under the general permit solely because it already has an individual permit (i.e., a permit that has not been continued under the Administrative Procedures Act), may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply. Procedures for modification, revocation, termination, and processing of NPDES permits are provided by 40 CFR 122.62–122.64. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act that is enforceable under section 309 of the Act.

II. Covered Facilities and Nature of Discharges

A. Types of Discharges Authorized

The proposed permit will authorize discharges from exploratory operations in all areas, and from development and production operations only in state waters of Upper Cook Inlet, north of the Forelands (see Part II.D. below). The Agency considers it appropriate to include exploration discharges with development and production discharges in this permit because, although some development and production discharges vary from exploration discharges, all exploratory discharges are a subset of those occurring in development and production.

Exploratory operations involve drilling to determine the nature of potential hydrocarbon reserves. Under the permit, exploratory operations would be limited to a maximum of five wells per site. Development operations are engaged in the drilling and completion of production wells. Development operations may occur prior to, or simultaneously with, production operations, which are engaged in active recovery of hydrocarbons from producing formations.

The proposed general permit will authorize the following discharges in all areas of coverage: drilling mud; drill cuttings and washwater; deck drainage; sanitary wastes; domestic wastes; desalination unit wastes; blowout preventer fluid; boiler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; and mud, cuttings, and cement at the seafloor. Waterflooding discharges, produced water discharges, and well treatment fluids (other than test fluids) will also be authorized for Upper Cook Inlet development and production operations. Descriptions of discharges are given in Part V. of this fact sheet.

Operators of existing facilities are encouraged to consider whether the above discharge categories will cover all discharges at their facilities. If additional categories are necessary, notification should be given to Region 10 during the public comment period.

B. Existing Facilities

Oil and gas are extracted from drilling operations on the production platforms. The oil and gas are in emulsion with water and must be separated for sale. There are various ways in which oil and gas ("products") are separated from the water ("produced water"). Some of the production platforms are equipped to separate product from produced water onboard and discharge produced water directly to Cook Inlet. Other production platforms perform initial oil/water separation and route their produced water to onshore facilities for further treatment. In these cases, produced water is discharged from the onshore facility. Platforms that send produced water to shore-based facilities for treatment are not authorized to discharge produced water. Produced water is an authorized discharge from the following facilities: (Unocal) Granite Point Treatment Facility, (Unocal) Trading Bay Facility, (SWEPI) East Forelands Treatment Facility, and platforms (Unocal) Anna, (Unocal) Baker, (Unocal) Bruce, Phillips Tyonek A, SWEPI A, SWEPI C, and (Marathon) Spark. The shore-based produced water treatment facilities are authorized to discharge only produced water.

The proposed permit lists 23 operations which may, or may not, all be operating and discharging at any given time during the course of the proposed permit. Occasionally, operators may decide to "close in" a platform, ceasing production and subsequent discharges for some period of time. These facilities may resume production and discharging during the effective period of the proposed permit and, if so, will be subject to requirements at Part I.B.3 of the proposed permit. "Inactive" refers to operations which are complete, such as exploration operations from mobile units. Previous "inactive" operations are listed in the proposed permit simply to ensure that the NPDES permit numbers assigned to those operations are not reassigned to future operations.

C. Discharges Not Authorized

During the effective period of the general permit issued in 1986 ("1986 permit"), permittees identified several discharges that were not authorized. Region 10 has reviewed the questioned wastestreams and has determined that they cannot be covered by this permit. The bases for excluding the following wastestreams are listed below:

- Paint chips, paint overspray, or wastes from paint removal resulting from maintenance of platforms—

MARPOL, Annex V (see Part VI.E. below)

- Water resulting from the cleaning of contaminated soils—40 CFR 122.28(a)(2)
- Wastes resulting from the treatment of contaminated groundwaters—40 CFR 122.28(a)(2)

D. Areas of Coverage

It is important to understand the differences among "federal" and "state" waters, and the Offshore and Coastal subcategories of discharges. "Federal" and "state" waters *do not* coincide with the Coastal and Offshore discharge subcategories. Figure 1 illustrates the differences among these terms, and the way in which they apply to oil and gas operations in general.

"State" waters or "territorial seas" are the waters extending 3 miles seaward from the baseline. The "baseline" typically follows the line of ordinary low water along the portion of the coast that is in direct contact with the open sea, although closing lines may be drawn straight across the mouth of bays. These closing lines, or baselines, are established by the U.S. Department of State and NOAA. In Cook Inlet, the primary baseline runs across the southern end of Kalgin Island (see Figure 1). Federal waters extend seaward from the territorial seas. All operations north of the baseline in Cook Inlet are part of the Coastal Subcategory of oil and gas operations, while all operations south of the baseline are part of the Offshore Subcategory. In Cook Inlet, all waters north of the Kalgin Island baseline are state and Coastal, while waters south of the baseline are Offshore only, but include state and federal properties.

1. Areas of Coverage in Federal Waters

As discussed above, federal waters are located three miles from the ordinary low tide mark along the shoreline. The permit proposed today will cover a smaller area than the 1986 permit (i.e., only Cook Inlet v. Cook Inlet & Gulf of Alaska). The 1986 general permit authorized discharges in all areas offered for lease by MMS in Federal Lease Sales 55 (Gulf of Alaska) and 50 (Cook Inlet). No federal lease sales were held during the effective period of the 1986 permit. At this time, MMS has tentatively scheduled Lease Sale 149 (Cook Inlet/Shelikof Strait) for late 1996. To the knowledge of Region 10, specific development and production operations are not planned and do not presently exist in federal waters in Cook Inlet; therefore, the proposed permit will cover only exploratory operations in federal waters.

2. Areas of Coverage in State Waters

The proposed permit will authorize discharges from all Cook Inlet blocks previously offered for lease by the State of Alaska, or offered under state lease sales held during the effective period of the 1986 permit. State sales that have occurred and will be covered under the proposed permit are 67A (Cook Inlet Exempt, held January 1991) and 74 (Cook Inlet, held September 1991). The proposed permit will also authorize discharges from blocks offered for lease during the effective period of the permit. Lease sales planned for state waters within the next five years include Sale 85, 85A and 90 (based on Alaska's proposed 5-year state leasing program (ADNR/O&G 1994)). For the purposes of the proposed permit, the southern boundary of Cook Inlet is defined to be the line between Cape Douglas on the west and Port Chatham on the east.

Discharges from new exploratory operations would be allowed in all state waters in Cook Inlet. These include operations in both the Coastal and Offshore Subcategories (40 CFR Part 435, Subparts A and D). Operations in the Offshore Subcategory in state waters would be located within either three miles of the ordinary low tide mark along the shoreline, or of closure lines.

Discharges from development and production operations would be allowed only for Coastal Subcategory operations north of the Forelands in Upper Cook Inlet, where the existing production platforms are located. The proposed permit covers discharges from three shore-based facilities which discharge produced water extracted at several of the platforms. Region 10 has excluded potential development and production in other areas from this permit for two reasons. First, the number and precise nature of such future operations is unknown, in contrast to existing operations in Upper Cook Inlet. Second, other areas are generally richer in biota and more sensitive to discharges than Upper Cook Inlet.

The proposed permit will not authorize discharges into any wetlands adjacent to territorial waters of the State or from facilities in the Onshore Subcategory as defined in 40 CFR Part 435, Subpart C.

E. Nature of Discharges

The Agency has established that drilling muds and cuttings are the major pollutant sources discharged from exploratory and development drilling operations. Produced water and well treatment fluids are the major pollutant sources discharged from production operations. The 1986 permit required the permittees, singly or jointly, to provide information on the composition, quantities, and in some cases the toxicity, of development and production discharges. Region 10 encouraged Cook Inlet operators to participate in a joint study with a single contractor to ensure uniform sampling, analyses, and data compilation. Permittees participating in the study, known as the Cook Inlet Discharge Monitoring Study (CIDMS), included the following:

- Amoco Production Company.
- Marathon Oil Company.
- Shell Western E&P, Inc.
- ARCO Alaska, Inc.
- Phillips Petroleum Company.
- Unocal Corporation.

The CIDMS yielded the following six reports:

- Deck Drainage,
- Non-Contact Cooling Water and Desalination Wastes,
- Blowout Preventer Fluid, Boil Blowdown, Fire Control System Test Water, Uncontaminated Ballast Water, Uncontaminated Bilge water, and Waterflooding Discharges,
- Excess Cement Slurry and Mud, Cuttings, Cement at the Seafloor,
- Well Treatment Fluids, and
- Produced Water.

The pollutants present in the discharges, as reported in the CIDMS, discharge monitoring reports and Agency documents, are summarized below. The toxic pollutants (defined at 40 CFR 401.15) are also known as priority pollutants. Conventional pollutants are defined at 40 CFR 401.16 as pH, biochemical oxygen demand (BOD_5), oil and grease, total suspended solids (TSS), and fecal coliform. The category of nonconventional pollutants includes all pollutants not included in either of the other categories.

1. Conventional Pollutants. pH, BOD_5, oil and grease, TSS and fecal coliform.

2. Toxic Pollutants. Benzene; ethylbenzene; naphthalene; toluene; phenol; 2,4-dimethylphenol; bis (2-ethylhexyl) phthalate; anthracene; phenanthrene; and zinc. The pollutants listed here have been reported as components of produced water discharges in both Cook Inlet and the Gulf of Mexico.

3. Nonconventional Pollutants. Nonconventional pollutants comprise the remaining pollutants and parameters for which the Agency has determined that effluent limits or monitoring is necessary in NPDES permits. These include: chemical oxygen demand (COD), toxicity, total organic carbon (TOC), salinity, temperature, and chlorine.

In developing the proposed permit conditions, EPA has evaluated the concentrations of these pollutants relative to the levels allowed under federal regulations and state water quality standards. The pollutants and discharge parameters limited in each waste stream are summarized in section V.A., and discussed in sections V.C—IV.H.

III. Basis for Permit Conditions

Sections 301(b), 304, 306, 307, 308, 401, 402, 403, and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), 33 U.S.C. 1311, 1314 (b), (c), and (e), 1316, 1317, 1318 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 101 Stat. 7, Pub. L. 100–4 ("the Act" or "CWA"), and the U.S. Coast Guard regulations (33 CFR Part 151), provide the basis for the permit conditions contained in the permit. The general requirements of these sections fall into four categories, which are described in sections A-D below. In section E, the way in which water quality based permit limitations are derived from the Alaska water quality standards is described. In section F, mixing zones are discussed.

A. Technology Bases

1. BPT Effluent Limitations

The Act requires particular classes of industrial discharges to meet effluent limitations established by EPA. EPA promulgated effluent limitations guidelines requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore and Coastal Subcategories of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subparts A and D) on April 13, 1979 (44 FR 22069).

BPT effluent limitations guidelines require "no discharge of free oil" for discharges of deck drainage, drilling muds, drill cuttings, and well treatment fluids. This limitation requires that a discharge shall not cause a film or sheen upon, or discoloration on, the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR 435.11(d)). The BPT effluent limitation guideline for sanitary waste required that the concentration of chlorine be maintained as close to 1 mg/l as possible in discharges from facilities housing ten or more persons. No floating solids are allowed as a result of sanitary waste discharges from facilities continuously staffed by nine or fewer persons or intermittently staffed by any number. A "no floating solids" guideline also applies to domestic waste. BPT limitations on oil and grease in produced water allowed a daily maximum of 72 mg/l and a monthly average of 48 mg/l.

2. BAT and BCT Effluent Limitations

As of March 31, 1989, all permits are required by section 301(b)(2) of the Act to contain effluent limitations for all categories and classes of point sources which: (1) Control toxic pollutants (40 CFR 401.15) and nonconventional pollutants through the use of Best Available Technology Economically Achievable (BAT), and (2) represent Best Conventional Pollutant Control Technology (BCT). BCT effluent limitations apply to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliform). In no case may BCT or BAT be less stringent than BPT.

BAT and BCT effluent limitations guidelines and New Source Performance Standards (NSPS) for the Offshore Subcategory were proposed on August 26, 1985 (50 FR 34592) and signed on January 15, 1993 (58 FR 12454, March 4, 1993). The new guidelines were established under the authority of sections 301(b), 304, 306, 307, 308, and 501 of the Act. The new guidelines were also established in response to a Consent Decree entered on April 5, 1990 (subsequently modified on May 28, 1993) in *NRDC* v. *Reilly*, D. D.C. No. 79–3442 (JHP) and are consistent with EPA's Effluent Guidelines Plan under section 304(m) of the CWA (57 FR 41000, September 8, 1992). This permit incorporates BAT and BCT effluent limitations based upon the BAT and BCT effluent limitations guidelines.

BAT and BCT effluent limitations guidelines and NSPS for the Coastal Subcategory were proposed on February 17, 1995 (60 FR 9428). In the absence of final BAT and BCT effluent limitations guidelines for the Coastal Subcategory, permit conditions must be established using Best Professional Judgment (BPJ) procedures (40 CFR 122.43, 122.44, and 125.3). The proposed permit incorporates BAT and BCT effluent limitations for the Coastal Subcategory based on the Agency's BPJ and previous permit actions for similar discharges. Previous BPJ determinations for the Coastal Subcategory were incorporated into the 1986 permit for Cook Inlet/Gulf of Alaska (51 FR 35460, October 10, 1986) and the individual permit issued to ARCO Alaska, Inc. for exploration discharges in upper Cook Inlet (EPA 1993b). Best Professional Judgement (BPJ) procedures are also used to establish permit conditions for wastestreams not addressed in the offshore effluent guidelines (e.g., desalination unit wastes, blow out preventer fluid, boiler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; uncontaminated bilge water; excess cement slurry; and muds, cuttings, cement at seafloor).

As required by section 304(b)(2)(B) of the Act, in developing the BPJ/BAT permit conditions, the Agency considered the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Director deemed appropriate.

The types of equipment and processes used in exploratory, development, and production operations are well known to the Agency. Region 10 has issued numerous individual permits for such operations, as well as the general permits referenced above. The records for this permit and those earlier permits thoroughly discuss the types of equipment, facilities and processes used in exploratory, development, and production operations. With regard to the engineering aspects of the application of various types of control techniques, there are no BAT permit limitations based on installation of control equipment. All proposed BAT permit limitations can be achieved through product substitution. Any costs of achieving the effluent limitations and any non-water quality environmental impacts were also evaluated. Such evaluations are discussed below with respect to any limitation where applicable.

As required by section 304(b)(4)(B) of the Act, the same factors as in BAT are considered in determining BCT permit conditions, with one exception. Rather than considering "the cost of achieving such effluent reduction," any BCT determination includes "consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived and the comparison of the cost and level of reduction of such pollutants from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources." BCT effluent limitations cannot be less stringent than BPT; therefore, if the candidate industrial technology fails the BCT "cost test," BCT effluent limitations are set equal to BPT.

The Agency's evaluation of the BAT factors, as discussed above, is also applicable to BCT, as well as to the Agency's BPJ determinations of BPT in cases where there is no BPT effluent limitation guideline for a particular wastestream. There is one BCT limitation based on installation of control equipment: oil and grease limits for produced water are based on the use of oil-water separators. With respect to the BCT "cost test," all BCT limitations are equal to the BPT effluent limitations guidelines or to Region 10's BPJ determinations of BPT. Therefore, no incremental cost will be incurred.

B. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas (i.e., state and federal offshore waters) be issued in accordance with guidelines for determining the potential degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Criteria (40 CFR Part 125, Subpart M), and section 403 of the Act are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (49 FR 65942, October 3, 1980).

If EPA determines that the discharge will cause unreasonable degradation, an NPDES permit will not be issued. If a definitive determination of no unreasonable degradation cannot be made because of insufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternatives to on-site disposal. To assess the probability of irreparable harm, EPA is required to make a determination that the discharger, operating under appropriate permit conditions, will not cause permanent and significant harm to the environment during a monitoring period in which additional information is gathered. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge shall be halted or additional permit limitations established.

Preliminary Ocean Discharge Criteria Evaluations for Sale 60, and a Revised Preliminary Ocean Discharge Criteria Evaluation for Sale 88 and state lease sales located in Cook Inlet, were completed for discharges from operations in these lease sale areas covered under the current permit. For the proposed permit, the Region recently updated the existing ODCE information in the *ODCE for Cook Inlet (Oil & Gas Lease Sale 149) and Shelikof Strait* (Tetra Tech 1995). The Region has determined that discharges occurring under the proposed permit will not cause unreasonable degradation as long as the depth-related conditions and environmental monitoring requirements imposed under section 403 of the Act are met.

C. Section 308 of the Clean Water Act

Under section 308 of the Act and 40 CFR 122.44(i), the Director must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. EPA has included several monitoring requirements in the permit, as listed in the table in section V.A. of this fact sheet.

D. State of Alaska Standards and Limitations

Permits for discharges to state waters must ensure compliance with water quality standards and limitations imposed by the State as part of its certification of NPDES permits under section 401 of the Act. The state waters of Cook Inlet and the Gulf of Alaska have been classified by the Alaska Department of Environmental Conservation (ADEC) as marine water with water use classes 2A through 2D (water supply; water recreation; growth and propagation of fish, shellfish, other aquatic life, and wildlife; and harvesting for consumption of raw mollusks or other raw aquatic life).

The NPDES regulations at 40 CFR 122.44(d) require that permits include limits on all pollutants or parameters which "are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard, including state narrative criteria for water quality" (54 FR 23868–23899, June 2, 1989). The regulations require that this evaluation be made using procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant in the effluent, species sensitivity (for toxicity), and where appropriate, dilution in the receiving water. The limits must be stringent enough to ensure that water quality standards are met, and must be consistent with any available wasteload allocation.

The regulations at 40 CFR 122.44(d) also specifically address when toxicity and chemical-specific limits are required. A toxicity limit is required whenever toxicity is at a level of concern relative to either a numeric or narrative standard for toxicity. The only exception is where chemical-specific limits will fully achieve the narrative standard. A chemical-specific limit is required whenever an individual pollutant is at a level of concern relative to the numeric standard for that pollutant. The regulations also provide three options for developing a chemical-specific limit needed to control a pollutant which does not have a numeric standard, but is contributing to a problem with achieving the narrative standard.

In proposing to reissue this permit, EPA has considered Alaska's antidegradation policy (18 Alaska Administrative Code (AAC) 70.101(c)). The reissuance of this permit will not result in additional pollutant loading to the receiving water; therefore, this action complies with the State's antidegradation policy.

E. Water Quality-based Permit Limit Derivation

Water quality-based permit limits have been derived for state waters only. In deriving permit limits, reported effluent values are compared to wasteload allocations to determine if limits are needed for individual pollutants. The wasteload allocation is the concentration (or loading) of a pollutant that may be discharged by a permittee without causing or contributing to a violation of water quality standards in the receiving water. It is calculated based on the available dilution, if appropriate, and the water quality standard. As discussed above, 40 CFR 122.44(d)(1) requires consideration of existing controls on all point or nonpoint sources of pollutants when establishing water quality-based limits on point sources.

Under 40 CFR 122.44(d)(1), water quality-based effluent limits must be included in a permit if the discharge shows "reasonable potential" to exceed water quality standards. EPA's *Technical Support Document for Water Quality-based Toxics Control* (EPA 1991b) ("TSD") defines "reasonable potential" as being within a percentage of the wasteload allocation. The percentage increases as the uncertainty decreases. Uncertainty decreases with increased numbers of samples. The percentage is also based on the coefficient of variation (a measure of the variability) of the data. When there are not enough data to reliably determine a coefficient of variation, the TSD

recommends using 0.6 as a default value.

In deriving the water quality-based permit limits, Region 10 applied the statistical permit limit derivation approach described in the EPA guidance documents, *Permit Writer's Guide to Water Quality-Based Permitting for Toxic Pollutants* (EPA 1987), and the TSD. This approach takes into account effluent variability, as well as the difference in timeframes between the water quality standards and monthly average and daily maximum limits, and sampling frequency. In addition to the wasteload allocation values, EPA used the following values in deriving limits using the formulas in the guidance documents:

Probability value for long-term average calculation: 99%
Probability value for monthly average limit calculation: 95%
Probability value for daily maximum limit calculation (for parameters with greater than monthly monitoring): 99%
Probability value for daily maximum limit calculation (for parameters with monthly or less frequent monitoring): 95%
Coefficient of Variation: 0.6

The water quality-based limits proposed in the draft permit are further discussed in section V.

F. Mixing Zones

The State has issued a preliminary mixing zone determination for produced water that specifies mixing zones and dilutions for eight facilities discharging produced water to Cook Inlet. The State has notified EPA that the mixing zone request submitted by Unocal, Marathon, Phillips and Shell is adequate for incorporation into the draft permit (ADEC 1995). At each of the eight facilities, individual mixing zones are proposed for metals (acute, chronic & human health), total aromatic hydrocarbons (TAH) and total aqueous hydrocarbons (TAqH), and toxicity (see section V.G.). Wasteload allocations for produced water pollutants are calculated using the dilutions modeled by the permittees; permit limits are then calculated based on the wasteload allocation (see section III.E.).

As part of the state's certification under section 401 of the Act, the mixing zones will either be approved or modified. A mixing zone for total residual chlorine in the sanitary waste stream may also be added to the final permit, as discussed in section V.E.

The state's preliminary mixing zone determination includes mixing zones for arsenic and benzene (as a subset of TAH), both of which are human carcinogens. The state water quality standards at 18 AAC 70.032 state that

"(a) * * * The department will not authorize a mixing zone if it finds that available evidence reasonably demonstrates that * * *

(1) pollutants discharged could * * *

(B) be expected to cause carcinogenic, mutagenic, or teratogenic effects on biota or human health, so that significant human health risks could occur to consumers of water, fish, or shellfish when evaluated using reasonable assumptions about exposure pathways, including exposure duration of affected aquatic organisms in the proposed mixing zone and the patterns of fisheries use and consumption in the area; * * *

(4)(b) * * * Human health and chronic aquatic life criteria apply at and beyond the boundaries of the mixing zone. Acute aquatic life criteria apply at and beyond the boundaries of a smaller initial zone surrounding the outfall. * * *"

As part of the proposal for arsenic and TAH mixing zones, permittees evaluated the potential risks to aquatic life and human health at the edge of each site-specific mixing zone. The results of the aquatic life risk assessment indicate that produced water discharged to Cook Inlet from the oil and gas facilities is not expected to be acutely or chronically toxic at the edge of the mixing zones. Similarly, the human health risk assessment results indicate that produced waters are not expected to pose significant risks to human health from the consumption of fish and shellfish in Cook Inlet.

Public comments to EPA on the proposed mixing zone and other water quality standards issues will be copied to the state of Alaska for its review. If the mixing zone approved by the state is different from the mixing zones used to calculate the limits for the draft permit, the limits in the final permit will reflect these changes.

IV. Summary of New and Changed Permit Conditions

The following discussion is intended to provide a summary of the parts of the proposed permit which are substantively different from the 1986 permit. For a detailed discussion of requirements and their bases, please refer to section V of this fact sheet. Many of the new and changed requirements result from promulgation of the final Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory in March, 1993 (see 40 CFR Part 435, Subpart A). As discussed above, the promulgated offshore guidelines apply directly to dischargers in the Offshore segment of Cook Inlet (i.e., the lower inlet). For the Coastal segment of Cook Inlet (i.e., the upper inlet), the Offshore rule is the primary basis for Region 10's best professional judgement regarding technology-based control of pollutant discharge (see section III.A.2., above); although, the proposed Coastal guidelines (60 FR 9428, February 17, 1995) are also referenced throughout this fact sheet.

The balance of new and changed requirements in the proposed permit are the result of the inclusion of water-quality based effluent limits for the produced water and any wastestreams which may be commingled with it. Water-quality based effluent limits were developed based on data collected as part of the *Cook Inlet Discharge Monitoring Study* (Envirosphere 1988–1990).

For drilling muds and drill cuttings:

- Combined wastestreams: In accordance with the Offshore guidelines, drilling muds, drilling cuttings and washwater are combined and addressed in the proposed permit as a single wastestream (Discharge 001). Previously, washwater and cuttings were considered as a separate wastestream; they are now considered by the Agency to be an intrinsic component of the drilling wastes discharge.
- Toxicity limit for drilling muds: In accordance with the Offshore guidelines, a toxicity limit of 30,000 ppm SPP is proposed.
- Oil content on cuttings: In accordance with the Offshore guidelines, Region 10 has removed the 10% by weight limitation of the oil content of cuttings.
- Barite: In previous permits, Region 10 had an option for a case-by-case waiver for stock barite not meeting mercury and cadmium limits. This waiver has been eliminated to ensure consistency with the Offshore guidelines.
- Mud Plan and Authorized Muds & Specialty Additives: Region 10 is discontinuing the case-by-case evaluation and authorization process developed under previous permits. Subsequently, discussions of authorized muds and additives and tables of approved mud formulations and specialty additives are not included in the proposed permit. The Region is proposing a requirement for operators to develop a Mud Plan to plan for compliance with the toxicity limit. Mud Plan requirements were also part of an individual NPDES permit issued to ARCO Alaska for exploratory operations

in Cook Inlet (EPA 1993b) and in the general NPDES permit for the Arctic (60 FR 27508, May 24, 1995).

For other wastes:

- Elimination of wastestream: In accordance with the Offshore guidelines and the proposed Coastal guidelines, Region 10 is prohibiting the discharge of produced sands. This prohibition is listed with limitations on produced water (Discharge 015).
- Oil and grease: In accordance with the Offshore guidelines, Region 10 is proposing oil and grease limits for produced water discharges of 29 mg/l as a monthly average and 42 mg/l as a daily maximum. (The numerical oil and grease limits are also applied to the discharge of workover, completion, well treatment and test fluids.) Limits in the previous permit were 42 mg/l and 72 mg/l (for all operators except Phillips Petroleum, which has more stringent limits).
- Best Management Practices: The proposed general permit requires permittees to develop and implement a Best Management Practices (BMP) plan which prevents or minimizes the generation of pollutants, their release, and potential release from the permitted facilities to waters of the United States.
- Produced Water: Water-quality based effluent limitations have been added for metals, total aromatic hydrocarbons, total aqueous hydrocarbons, and chronic toxicity. Not all metals are limited at all locations; monthly monitoring for metals for which compliance monitoring will not already be done, is required for one year.
- Produced Water Mixing Zones: The 1986 permit contained produced water mixing zones for Marathon Granite Point (450 m), Marathon Trading Bay (750 m) and Shell East Foreland (750 m); and interim mixing zones for Amoco platforms Anna, Baker Bruce and Dillon (625 m) and Phillips Tyonek-A (150 m). The interim mixing zones were never finalized; and none of the mixing zones was used to calculate wasteload allocations for produced water pollutants.

The State has issued a preliminary mixing zone determination for produced water that specifies mixing zones and dilutions for eight facilities discharging produced water to Cook Inlet. Chemical specific mixing zones are proposed to meet water quality criteria for metals, total aromatic hydrocarbons (TAH), total aqueous hydrocarbons (TAqH), and chronic toxicity.

- Sanitary: Chlorine limits have been changed to more accurately reflect the Alaska water quality standards pending section 401 certification of the final permit.

V. Specific Permit Conditions

A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

(1) Consideration of technology-based effluent limitations to control conventional pollutants under BCT,

(2) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT,

(3) For state waters, inclusion of permit terms necessary to ensure compliance with state water quality standards and stipulations of state lease sales.

(4) Evaluation of the Ocean Discharge Criteria for discharges in the Offshore Subcategory (given conditions 1 and 2 are in place), and,

EPA first determines which technology-based limits are required and then evaluates the effluent quality expected to result from these controls. If water quality standards could occur as a result of discharge, EPA must include water quality-based limits in the permit. The permit limits will thus reflect whichever limits (technology-based or water quality-based) are most stringent. Finally, Ocean Discharge Criteria are evaluated to identify any areal or depth-related discharge requirements.

General area and depth related requirements are discussed in section V.B. of this fact sheet. Specific effluent limitations and monitoring requirements derived from 1 through 4 above are discussed separately for each wastestream in sections V.C. through H. Additional monitoring requirements based on 1 and 2 are also discussed in section III., above. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in the following table.

Discharge and permit condition	Statutory basis	
	Coastal	Offshore
Drilling Muds and Cuttings (001):		
Flow rate limitations	§ 403	§ 403.
Depth related limits	§ 403	§ 403.
Volume	§ 308	§ 308.
Mud plan	CWA §§ 308, 304, 402, PPA § 107.	CWA §§ 308, 304, 402, PPA § 107.
Toxicity	BPJ/BAT	BAT.
No free oil	BPT, BPJ/BCT, BPJ/BAT	BPT, BCT, BAT.
No oil-based fluids	BPT, BPJ/BCT, BPJ/BAT	BPT, BCT, BAT.
No diesel	BPJ/BAT	BAT.
Mercury and cadmium in barite	BPJ/BAT	BAT.
Monitor metals	§ 308	§ 308.
Inventory of added substances	§ 308	§ 308.
Environmental monitoring requirement	§ 403	§ 403.
Deck Drainage (002):		
No free oil	BPT, BPJ/BCT, BPJ/BAT	BPT, BCT, BAT.
Monitor free oil	§ 308	§ 308.
Monitor whole effluent toxicity (direct discharge only)	§ 308	§ 308.
Sanitary Wastes (003):		
Chlorine (facilities >10 people)	BPJ/BCT	BCT.
Biological oxygen demand (BOD)	§ 401/AK WQS	not applicable.
Suspended solids (SS)	§ 401/AK WQS	not applicable.
Floating solids	BPJ/BAT	BPJ/BAT.
Monitor flow rate	§ 308	§ 308.
Marine Sanitation Devices (fecals, solids, chlorine)	§ 312, § 308	§ 312, § 308.
Domestic Wastes (004):		
No foam	BPJ/BAT	BAT.
No floating solids	BPJ/BCT	BCT.
Monitor flow rate	§ 308	§ 308.
Miscellaneous Discharges (005–014):		
Monitor flow rate (all)	§ 308	§ 308.
No free oil (006, 010, 011, 012, 013, 014)	BPJ/BPT	BPJ/BPT.
Inventory chemicals added (005, 009, 014)	§ 308	§ 308.
Produced Water (015)		No Discharge.
Flow rate	§ 308	Do.
Produced sands	BCT, BAT	Do.
Oil and grease	BPJ/BAT	Do.
pH	BPJ/BCT	Do.
Zinc	AK WQS	Do.
Total aromatic hydrocarbons (TAH)	AK WQS	Do.
Whole effluent toxicity (WET)	AK WQS	Do.
Total aqueous hydrocarbons (TAqH)	§ 308	Do.
Completion, Workover, Well Treatment Fluids (016–018)		No Discharge.
Frequency & flow rate	§ 308	Do.
No free oil	BPT, BPJ/BCT	Do.
No oil-based fluids	BPT, BPJ/BCT	Do.
Oil and grease	BPJ/BCT, BPJ/BAT	Do.
pH	AK WQS	Do.
Monitor metals	§ 308	Do.
Test Fluids (019):		
No free oil	BPJ/BPT, BPJ/BCT	BPT, BCT.
Oil and grease limits	BPJ/BAT, BPJ/BCT	BCT, BAT.
No oil-based fluids	BPJ/BCT, BPJ/BAT	BCT, BAT.
pH	BPJ/BPT, BPJ/BCT	BPJ/BPT, BPJ/BCT.
Monitor frequency and flow rate	§ 308	§ 308.
All Discharges (001–019):		
No halogenated phenol compounds, diesel oil trisodium nitrilo-triacetic acid, sodium chromate, or sodium dichromate.	BPJ/BAT	BAT.
Sufactants, detergents, dispersants	BPJ/BAT	BPJ/BAT.
No floating solids, visible foam	BPJ/BCT	BCT.
No oily wastes	BPJ/BCT	BCT.
Area and depth related requirements	§ 403, AK WQS	§ 403, AK WQS.
Best Management Plan	§ 402(a)	§ 402(a).

B. Area and Depth-Related Requirements

The discharge restrictions and requirements listed below are necessary to ensure that unreasonable degradation of these areas will not occur as discussed above in part III.B. of this fact sheet (Ocean Discharge Criteria) and are largely unchanged from the 1986 permit to the proposed permit. Discharge within the area described below for Shelikof Strait is prohibited because of the recent determination by the National Marine Fisheries Service (NMFS) which establishes this area as a special aquatic foraging area for the Stellar Sea Lion (58 FR 45278, September, 27, 1993: 50 CFR 226.12(c)(1)).

Pertaining to all discharges, no discharge is allowed:

- In water depths less than 5 m (as measured from mean lower low water).
- Within the boundaries or within 1000 m of a coastal marsh, river delta, river mouth designated Area Meriting Special Attention (AMSA), game refuge, game sanctuary, or critical habitat area. The seaward edge of a coastal marsh is defined as the seaward edge of emergent wetland vegetation.
- In Kamishak Bay west of a line from Cape Douglas to Chinitna Point.
- In Chinitna Bay inside of the line between the points of the shoreline at latitude 59°52′45″ N, longitude 152°48′18″ W on the north and latitude 59°46′12″ N, longitude 153°00′24″ W on the south (Figure 1).
- In Tuxedni Bay inside of the lines on either side of Chisik Island (Figure 1)

—from latitude 60°04′06″ North, longitude 152°34′12″ West on the mainland to the southern tip of Chisik Island (latitude 60°05′45′ North, longitude 152°33′30″ West).

—from the point on the mainland at latitude 60°13′45″ North, longitude 152°32′42″ West to the point on the north side of Snug Harbor on Chisik Island (latitude 60°06′36″ North, longitude 152°32′54″ West).

- In Shelikof Strait south of a line between Cape Douglas (at 58°51′ North, 153°15′ West) on the west and the northernmost tip of Shuyak Island on the east (at 58°37′ North, 152°22′ West).
- Within 20 nautical miles of Sugarloaf Island as measured from a centerpoint at 58°53′ North and 152°02′ West.

Discharges are prohibited in waters shallower than 5 m because shallow nearshore waters in Lower Cook Inlet are an important habitat for many species. In addition, dilution and dispersion of drilling mud discharges in waters less than 5 m deep is uncertain given that the field data are limited and that the available models of mud dilution and dispersion are not field-verified for shallow depths. Chinitna, Tuxedni, and Kamishak Bays are, or are continuous with, areas of high resource value. In addition, Kamishak Bay is a known net depositional environment where accumulation of drilling mud solids and other pollutants would be likely to occur if allowed to be discharged in this area.

The condition restricting discharges within 1,000 m of coastal marshes, river deltas, and other areas is necessary to comply with local and state Coastal Zone Management Plan prohibitions on discharges of silt materials in these areas, or on activities that may alter the protected biological resources of these areas. The following state game refuges (SGR), game sanctuaries (SGS), critical habitat areas (CHA), and areas meriting special attention (AMSA) are located in the area covered by this permit.

Palmer Bay Flats SGR
Goose Bay SGR
Potter Point SGR
Susitna Flats SGR
McNeil River SGS
Redoubt Bay CHA
Trading Bay SGR
Kalgin Island CHA
Clam Gulch CHA
Kachemak Bay CHA
Anchorage Coastal Wildlife Refuge
Port Graham/Nanwalek AMSA

The legal descriptions of these state specialty areas are found in Alaska Statute (AS) 16.20. The present boundaries of these state special areas are described in "State of Alaska Game Refuges, Critical Habitat Areas, and Game Sanctuaries." Further information may also be obtained from the Alaska Department of Fish and Game, Habitat Division, Regional Supervisor, 333 Raspberry Road, Anchorage, Alaska 99518–1599; phone (907) 267–2284 or (907) 267–2342.

C. Discharge 001 (Drilling Muds and Cuttings)

The term "drilling fluid" generally includes all compositions of fluids used to aid the production and removal of cuttings (particles from geological formations) from a borehole in the earth. The essential function of drilling fluids are:

- to carry cuttings to the surface,
- to cool and clean drill bit & reduce friction in the borehole,
- to maintain pressure balance between formation and borehole in uncased sections of hole, and
- to assist in collection and interpretation of information available from cuttings, cores, electrical logs, etc.

All drilling fluids fall into one of three classes based on their principal components: gas (e.g., mist or foam), water, or oil. When the main component of the drilling fluid is liquid (i.e., water or oil), it is referred to as "mud." All of Region 10's previous permits only cover the discharge of muds because gas fluids are not used for most offshore or coastal drilling operations.

As discussed in subsections 1 and 2 below, the discharge of oil-based muds is limited because they do not comply with the no free oil limitation. Furthermore, the discharge of diesel oil as a mud base or as part of an additive is strictly prohibited. The basis for the diesel prohibition is substitution of mineral oil (which is less toxic) when lubrication is required.

As discussed in section III.A. and as shown on Table 1, the following BCT- and BAT-based permit requirements are based on the Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory, promulgated by the Agency in March, 1993 (40 CFR Part 435, Subpart A). In the absence of promulgated rules for coastal (i.e., upper) Cook Inlet, EPA has used Best Professional Judgement in applying BCT and BAT Offshore requirements to all applicable Coastal operations although the acronyms "BPJ/BCT" and "BPJ/BAT" are not added in the discussion below. To simplify the discussion, the bases for establishing permit limits are discussed in terms of the applicable Offshore Guidelines, BCT and BAT.

1. BCT Limitations on Drilling Muds and Cuttings

Free oil & oil-based muds: No free oil is permitted from the discharge of drilling mud, drill cuttings, or washwater, based on BPT guidelines. The discharge of oil-based drilling fluids is prohibited since oil-based fluids would violate the BCT effluent limitations of no discharge of free oil. These discharges have been subject to a no free oil limitation in previous permits issued by Region 10 and past practices have not resulted in violations of the limitation. No technology performance data available to Region 10 indicate that more stringent standards are appropriate at this time. Region 10 has, therefore, set BCT limitations equal to the BPT level of control. As such, these limitations impose no incremental costs.

Compliance with the free oil limitation will be monitored by year-round use of the Static Sheen Test daily and before bulk discharges. Region 10 requires use of the Static Sheen Test because visual observation of the discharge for sheen upon the receiving water will not prevent violations of the standard. This test is also appropriate for the harsh weather and extended periods of darkness common in Alaska.

Previous permits issued by Region 10 contained a limit on the oil content of cuttings (not to exceed 10% (wt), based on use of cuttings washers). In the proposed permit, however, the 10% (wt) limit has been rejected in favor of the no free oil limitation contained in the Offshore guidelines (58 FR 12454, March 4, 1993). The Agency rejected an oil content limit because limitations on other pollutant parameters (diesel oil, free oil and toxicity) are sufficient to reduce toxics from drilling wastes (at 56 FR 10682 and 56 FR 10685, March 13, 1991). Because the no free oil limitation is more stringent than the 10% (wt) limitation on the oil content of cuttings, this change does not invoke antibacksliding provisions (see 40 CFR 122.44(1)(2)).

Oil content of cuttings: The proposed permit limits the discharge of oil-contaminated drill cuttings by prohibiting the discharge of free oil, which is BCT (see Part III.B. of the permit). The proposed permit requires an analysis of cuttings for oil content daily when oil-based drilling fluids or mineral oil additives are used. In addition, analysis is required immediately on any sample that has failed the daily Static Sheen Test if a discharge has occurred. Two alternative analytical methods for determining the oil content of drill cuttings are specified in the permit: (1) the soxhlet extraction procedure for oil and grease (as specified in 40 CFR Part 136), and (2) the American Petroleum Institute (API) retort distillation procedure for oil (Recommended Practice 13B, 1990).

2. BAT Limitations on Drilling Muds and Cuttings

Diesel oil: The discharge of drilling muds and cuttings which have been contaminated by diesel oil is prohibited by the Agency, in accordance with the offshore oil and gas effluent guidelines (58 FR 12469, March 4, 1993). The prohibition on the discharge of diesel oil has been part of all of the general NPDES permits issued by Region 10 for the Offshore and Coastal Subcategories. Diesel oil, which is sometimes added to a water-based mud system, is a complex mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. The pollutant "diesel oil" is being used as an "indicator" of the listed toxic pollutants present in diesel oil which are controlled through compliance with the effluent limitation (i.e., no discharge). The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

Mercury and Cadmium in Barite: In accordance with the offshore oil and gas effluent guidelines (58 FR 12569, March 4, 1993), the proposed permit contains limitations of 1 mg/kg mercury and 3 mg/kg cadmium in barite. Barite is a major constituent of drilling muds. These restrictions are designed to limit the discharge of mercury, cadmium, and other potentially toxic metals which can occur as contaminants in some sources of barite. The justification for the limitation under BAT is product substitution. That is, Alaskan operators can substitute "clean" barite, which meets the above limitations, for contaminated barite, which does not meet the limitations. Numerous offshore exploratory wells and the production wells drilled under permits previously issued by Region 10 have been drilled subject to this requirement. Chemical analyses have shown that the barite used has not exceeded the limitations. Given that "clean" barite is available and that operators have been complying with this limitation in previously issued permits, Region 10 believes that this limitation is both technologically feasible and economically achievable.

EPA has eliminated a waiver provision for the barite limits which was in the previous permits. The waiver stipulated that if a permittee was unable to comply with the barite limitations due to the lack of availability of barite which meets the limitation, then the permittee could request a case-by-case waiver allowing the discharge of barite which exceeded the limits (53 FR 37858, September 28, 1988). As a part of the effluent guidelines development, EPA investigated the availability of domestic and foreign supplies of barite to meet the cadmium and mercury limits. The Agency also considered the potential for the increased demand for clean barite stocks resulting from this rule to cause a rise in the cost of barite. (See the Development Document (EPA, 1993a) and the Economic Impact Analysis for detailed discussion on the availability and economic availability.) EPA concluded that "there are sufficient supplies of barite capable of meeting the limits of this rule to meet the needs of offshore drilling operations (58 FR 12480, March 4, 1993). As a result, the waiver provision was not in the general NPDES permit for the Arctic (60 FR 27508, May 24, 1995), nor is it proposed here.

Discharge Toxicity: Region 10 is proposing a toxicity limit of 30,000 ppm on the suspended particulate phase ("SPP") (a 96-hour LC50) on discharged drilling muds as a technology-based control on toxicity and toxic and nonconventional pollutants. The numeric effluent limit is based on the BAT as promulgated for the Offshore Subcategory (48 FR 1254, March 4, 1993). Compliance with the drilling mud toxicity limit will be monitored on a monthly basis for each well. When the end-of-well is reached, a final bioassay analysis will be required (see permit Part III.B.2.g.). In cases where mineral oil pills are used near the end-of-well, the Region will accept the bioassay reports required for pills as the end-of-well report (see permit Part III.B.2.g.).

It is important to note the inverse relationship between the 96-hr LC50 value of 30,000 ppm SPP and toxicity. The 30,000 ppm limit is the concentration (of mud in the suspended particulate phase) at which 50% mortality of the tested organisms (*Mysidopsis bahia*) occurs. As the 96-hr LC50 value increases, higher concentrations of mud are required to reach 50% mortality within the 96-hr test period; in other words, toxicity decreases as 96-hr LC50 values increase. Thus, the permit limit of 30,000 ppm SPP (96-hr LC50) is actually a minimum LC50 value used to represent the maximum toxicity allowed for drilling mud discharges.

The toxicity limit is an end-of-pipe discharge limit and represents a different approach to controlling this wastestream than the Region used previously. When the first general permits were issued during development of the Offshore guidelines, Region 10 developed a case-by-case approach to limiting the toxicity of discharged mud/additive systems as BPJ determination of BAT. In this approach, Region 10 used the 96-hr LC50 value of 30,000 ppm SPP value as a criterion in evaluating available bioassay data for the proposed mud/additive discharges. Now, Region 10 is discontinuing the mud preapproval process in favor of the end-of-pipe limitation based on promulgation of BAT for the Offshore subcategory (48 FR 1254, March 4, 1993). The end-of-pipe toxicity limitation for muds/additives was first applied in an individual NPDES permit issued for exploratory drilling in 1993 (EPA 1993d), followed by the general NPDES permit for the Arctic (59 FR 48314, September 20, 1994, and 60 FR 27508, May 24, 1995).

Drilling Mud Formulation: The proposed permit requires permittees to develop and implement a "Mud Plan" for each well drilled. The proposed permit does not authorize specific drilling fluid formulations or specialty additives in the way that past general NPDES permits issued for Alaskan operations have done. As discussed above, the discharge of oil-based drilling fluids or diesel oil is prohibited. Region 10 believes that an end-of-pipe toxicity limit for drilling muds in conjunction with implementation of a Mud Plan (containing specific mud/additive formulations) for each well constitutes BAT and ensures that the principles of best management practices and pollution prevention are met. The Mud Plan is discussed below as a permit requirement based on section 308 of the Act.

Oil-based Drilling Muds: As in all previous general oil and gas permits, and is discussed above under BCT for control of free oil, the proposed permit prohibits the discharge of "oil based muds." Previous permits, however, have not defined "oil-based" other than in terms of aqueous and dispersed phases. Based on comments Region 10 received on the general NDPES permit for the Arctic (EPA 1995d) and on interagency-industry studies in which EPA is involved, the proposed permit defines "oil-based" mud as a drilling mud with fossil-derived petroleum hydrocarbons as the continuous phase, and prohibits discharge of such a fluid. Discharges of "non-petroleum" or "non-fossil-derived" (hereinafter "synthetic") fluids (where the continuous phase consists of non-petroleum hydrocarbons) may be discharged and are required to meet all of the effluent limitations for drilling muds (e.g., toxicity, free oil (sheen), no diesel).

Synthetic-based drilling muds are currently used in offshore drilling outside of the United States and have potential for reducing the amount of cuttings generated and fluids discharged because they are frequently employed with slim-hole or coiled-tube drilling technologies. Preliminary data indicate that the toxicity of synthetic muds compares favorably with drilling fluids discharged under Region 10's various general NPDES permits. At a national level, the Agency is involved in a joint industry-agency group which is reviewing synthetic fluids with respect to toxic and nonconventional pollutants and appropriate analytical methods for monitoring these muds (EPA 1995d). Until such time as the joint industry-agency workgroup completes its evaluation of synthetic fluids and issues findings, Region 10 proposes the revised definition of "oil-based" muds to accommodate the discharge of synthetic muds as long as all other effluent limitations are met, including no discharge of free oil determined by the Static Sheen Test.

In cases where the discharge of cuttings from synthetic muds may fail the static sheen test, the Agency has determined such a discharge would not be in accordance with 40 CFR 122.28(2)(ii)(B), (C), and (D) requirements for coverage under the proposed general permit. Specifically, such a discharge may exhibit a higher free oil content (albeit from a non-petroleum based oil) and require unique effluent limitations and monitoring requirements such as those being evaluated by the joint industry-agency workgroup. Dischargers in this situation should contact Region 10 to submit an application for an individual NPDES permit.

3. Section 308 Requirements for Muds and Cuttings

Mud Plan: As mentioned above, Region 10 is discontinuing authorization of individual mud/additive systems. Instead EPA is shifting the responsibility of case-by-case evaluations from the Region to the operator. Resources no longer allow Region 10 to perform case-by-case evaluations or to issue discharge authorizations for each drilling mud/additive system. Hence, the proposed permit contains a requirement that the permittee develop, have on-site, and available upon request a plan for discharge of drilling muds and additives (hereafter called "Mud Plan"). Permit requirements for the Mud Plan make it analogous to analyses that the Region conducted in the past in development of drilling mud authorizations.

The basis for the Mud Plan requirement is section 308(a)(A) of the Act which provides that EPA may require the permittee to establish and maintain records and/or reports that will assist the Region to determine compliance with other requirements and effluent limitations of the permit. Since the mud plan is one component of the Best Management Practices Plan, additional authority for the mud plan is implicit in the authority to include BMP plans in NPDES permits. Pursuant to sections 304(e) and 402(a) of the Act, BMP plans may be included as conditions in NPDES permits. The mud plan requirement is also based upon the Pollution Prevention Act (section 107(b)(3)) and its policy of prevention, reduction, recycling, and treatment of wastes (PPA section 102(b)) through measures which include process modification, materials substitution, and improvement of management (PPA section 107(b)(3)).

The goal of requiring development of a mud plan is to ensure that personnel on-site are knowledgeable about the information needed and the methods required to formulate the mud/additive systems in order to meet the effluent toxicity limit. Simply put, the mud plan is intended to be a written guide for planning, and using, a mud/additive system in compliance with the permit.

Region 10's case-by-case approach to evaluating discharge of mud/additive systems coupled with use of worst-case cumulative toxicity estimates as bases for authorization, has been conducive to the discharge of muds with lower toxicity than elsewhere in the OCS. To date Alaskan operators have demonstrated that thorough planning and evaluation of mud/additive systems with respect to possible cumulative toxicity does consistently result in discharge of muds that are less toxic than the 30,000 ppm SPP limit.

The mud plan is intended to demonstrate that the discharged mud/additive system for the well in question will meet the effluent limit of 30,000 ppm SPP based on the following decision criteria:

- —Estimates of worst case cumulative discharge toxicity (either calculated or actual toxicity test results);
- —Estimates of toxicity of discharged mud when a mineral oil pill has been used; and
- —Use of less toxic alternatives where possible.

The mud plan shall also include a clearly stated procedure for dealing with situations in which additives not originally planned for are needed at the "last minute." This procedure should enable drilling and mud personnel to determine whether an additive or mud component may be added to the circulating mud system without significant effect upon the discharge toxicity. Criteria for reaching this type of "last minute" additive decision shall be clearly specified in the mud plan. In addition to developing the mud plan, the operator is also required to certify that the mud plan is complete, on-site, and available upon request (see Part III.B.1.c. of the permit). Certification is due no later than submission of their written notice of intent to commence discharge (see Parts I.A.3., I.B.3., I.C.3. and II.C.3.c. of the permit).

Region 10 first proposed requirements for a Mud Plan in the individual NPDES permit written and issued for exploratory operations in upper Cook Inlet in 1993 (EPA 1993d). Permit requirements for a Mud Plan were next proposed in the draft general NPDES permit for the Arctic (59 FR 48314, September 20, 1994) and garnered many comments. Region 10 responded to comments on the Mud Plan by modifying the final Arctic general permit (60 FR 27508, May 24, 1995) and by developing an example Mud Plan, which is available upon request.

Other: In addition to the Mud Plan, the discharge monitoring requirements listed below are based on section 308 of the Act and 40 CFR 122.44(i) to determine compliance with, or the possible need for, effluent limitations in the permit. All of the data below have been required in general permits previously issued by Region 10.

(1) Chemical analysis (barium, cadmium, chromium, copper, mercury, zinc and lead).

(2) Chemical inventory (discharged mud composition and toxicity test results).

(3) Volume discharged.

In both the proposed permit and in the final Arctic permit (60 FR 27508, May 24, 1995) permittees must draw a sample of mud of sufficient size to allow for analyses of both total and total recoverable metals; whereas, permits issued prior to 1994 required analyses only for total metals. This requirement will enable the Region to better evaluate the impact of metals in the mud discharge.

4. Section 403(c) Requirements for Muds and Cuttings

Flow rates: In addition to restrictions on all discharges imposed under section 403(c) of the Act and discussed in section III.B. of this fact sheet, muds and cuttings discharges are limited to the following maximum rates. These limitations are identical to those contained in the 1986 general permit.

- 1,000 bbl/hr on total muds and cuttings in waters greater than 40 m deep.
- 750 bbl/hr on total muds and cuttings in waters deeper than 20 m but not deeper than 40 m.
- 500 bbl/hr in waters deeper than 5 m but not deeper than 20 m.
- no discharge in waters shallower than 5 m.

These limits were established because, for any given discharge rate, the dilution of drilling muds and cuttings is not as great in shallow waters as in deeper waters. At any particular water depth, however, dilution near the point of discharge will increase as the rate of discharge decreases. Limiting maximum discharge rates will ensure that acceptable toxicity limits will not be exceeded at the edge of the 100 mixing zone (EPA 1986a, Tetra Tech 1995). (The 100 m mixing zone is defined in regulations for section 403 of the Act at 40 CFR Subpart M, 125.121(c)).

D. Discharge 002 (Deck Drainage)

Deck drainage includes all waste resulting from deck washings, spillage, rainwater, and run-off from gutters and drains including drip pans and work areas. Oil and grease are the primary pollutants identified in deck drainage. In addition to oil, various other chemicals used in drilling operations may be present, as discussed below.

1. BPT, BCT and BAT Limitations on Free Oil in Deck Drainage

As discussed in section III.A. and as shown on Table 1, the following discussion of BCT- and BAT-based permit requirements is based on the Effluent Limitations Guidelines and New Source Performance Standards for

the Offshore Subcategory, promulgated by the Agency in March, 1993 (40 CFR Part 435, Subpart A). In the absence of promulgated rules for coastal (i.e., upper) Cook Inlet, EPA has used Best Professional Judgement in applying BCT and BAT Offshore requirements to all applicable Coastal operations, although the acronyms "BPJ/BCT" and "BPJ/BAT" are not discussed above.

No free oil is permitted from the discharge of deck drainage. This limit is the current BPT level of control, and is also the appropriate level of control under BCT and BAT. Deck drainage was subject to this limitation in the previous permits issued by Region 10, and past practices have not resulted in violations of this limit. Monitoring of free oil to determine compliance with this limitation is required under section 308 of the Act.

2. Section 308 Requirements for Deck Drainage

Monitoring and analyses of deck drainage is warranted based on the prevalence of both aliphatic and aromatic hydrocarbons, and inorganics, as explained below.

The Cook Inlet Discharge Monitoring Study (CIDMS) required participants to inventory and report the various products that comprise the deck drainage wastestream. The CIDMS addressed deck drainage specifically because little was understood about the wastestream when the 1986 general permit was written. As stated in the response to comments issued with the final 1986 permit, EPA intended to use the chemical information on products contained in deck drainage to determine whether or not further monitoring and analysis of the wastestream was warranted (51 FR 35460, October 3, 1986).

From April 1987 through April 1988, operators reported product names, product uses and estimated application rates (e.g., gal/month). The CIDMS report identifies 35 types of cleaners and solvents, none of which are used more frequently than any other product. Material safety data sheets and product information on all of the identified products are included in the CIDMS report; some product components are not revealed, however, because they have been identified as proprietary trade information. The following product components, identified in CIDMS, are likely to be present in deck drainage and are of particular interest with respect to water quality.

Terpene hydrocarbon
Nonylphenols
Pine oil
Ethylene glycol
Polyglycol
Aromatic naphtha
Heavy aliphatic naphtha
Alkyl & oxyalkyated phenols
(Sodium) hypochlorite
Gluteraldehyde
Butylated Hydroxytoluene
Isopropyl alcohol
Alkyldimethylbenzyl ammonium chlorides
Methanol
Phosphate

In addition, aluminum, barium, iron, manganese, magnesium and titanium may also be found in deck drainage, according to the Agency's Development Documents for both the final Offshore and the proposed Coastal guidelines (EPA 1993a, EPA 1995a).

The proposed permit requires whole effluent toxicity (WET) tests to measure the chronic toxicity of deck drainage using the analytical methods required for produced water (see Part III.F. of permit). The proposed WET monitoring applies only to platforms that do not commingle deck drainage and produced water, because commingled deck drainage/produced water discharges are subject to produced water WET limitations (permit Part III.F.). WET sampling and protocols are discussed in more detail in section V.G.3. of this fact sheet. Monitoring is required twice each year at the beginning of the wettest times of the year during peak deck drainage flow; contaminant concentrations are likely to be highest at these times. Finally, the proposed monitoring requirements do not apply to exploratory platforms because exploratory operations are short-lived and may not occur in the Inlet during wet weather, when deck drainage flows are expected to be highest. The production platforms are permanent and have some existing qualitative data (Envirosphere 1989a) which may be useful when Region evaluates the WET monitoring.

E. Discharges 003 and 004 (Sanitary and Domestic Wastes)

Sanitary and domestic wastestreams include the wastes collected from toilets, urinals, showers, sinks, eye- and hand-wash stations, fish-cleaning stations, galleys and laundries. The pollutants in these wastestreams are: fecal coliforms (FC), residual chlorine (from treatment for coliforms), suspended solids (SS), biochemical oxygen demand (BOD), floating solids and visible foam.

1. BCT, BAT, and Water Quality-based Limitations for Sanitary and Domestic Wastes

As discussed in section III.A. in the absence of promulgated rules for coastal (i.e., upper) Cook Inlet, EPA has used Best Professional Judgement in applying BCT Offshore requirements to all applicable Coastal operations, although the acronym "BPJ/BCT" is not added to the discussion below. To simplify the discussion, the bases for establishing permit limits are discussed in terms of the applicable BCT or BAT Offshore Guidelines.

Floating Solids: The BCT prohibition on floating solids is equivalent to the current level of control for sanitary wastes in existing permits. Region 10 has determined that the BCT effluent limitations guideline of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. Other discharges have been subject to this limitation in previous permits and past practices have not resulted in violations of this limitation. No technology performance data available to Region 10 indicate that a more stringent standard is appropriate at this time. Therefore, Region 10 has determined that the BCT effluent limitation on floating solids from these discharges is equal to the BPT level of control. As such, the extension of this limitation to all discharges will involve no incremental cost.

Any facility using a marine sanitation devise (MSD) that complies with pollution control standards and regulations under section 312 of the Act in considered to be in compliance with the prohibition of floating solids.

Visible Foam: The promulgated Offshore guidelines set BAT for domestic wastes equal to no discharge of visible foam. Region 10 has determined this limitation is also appropriate for discharges occurring in the Coastal subcategory as well as for the discharge of sanitary wastes.

Chlorine: Chlorine is added to the sanitary waste stream to control fecal coliforms in the discharge, and is regulated by the Agency in the offshore oil and gas effluent guidelines as a conventional pollutant. In the 1986 Cook Inlet and other oil and gas permits, BCT for total residual chlorine (TRC) required that TRC levels be maintained as close as possible to, but no less than, 1 mg/l in sanitary waste discharges for facilities staffed by ten or more people. The intent of this standard is to ensure adequate disinfection of waste through chlorination, while minimizing the addition of excess chlorination to the environment. In the proposed permit, this BCT limit applies to federal waters. In state waters, the BCT chlorine limit has been proposed, but may be changed by ADEC's application of state water quality standards when the final permit is certified under section 401 of the Act. Water quality-based limits for TRC are discussed in section V.E.2., below. Weekly monitoring for TRC during peak periods of sanitary system flow is proposed. Any facility using a marine sanitation devise (MSD) that complies with pollution control standards and regulations under section 312 of the Act is considered to be in compliance with the TRC limitation.

For state waters, the proposed BCT end-of-pipe limit is based on the assumption that a mixing zone will be added to the final permit by ADEC as part of its certification under section 401 of the Act. If a mixing zone is added to the permit, it is anticipated that the Alaska water quality standard of 2.0 µg/l will apply at the edge of the mixing zone. The "as close as possible to 1 mg/l" portion of the BCT standard will still apply end-of-pipe, which effectively places an upper limit on the amount of chlorine that can be added to the sanitary wastestream and limits the size of a mixing zone.

If a mixing zone is not added to the final permit by ADEC, state water quality standards for TRC and fecal coliform will be added to the permit for state waters only. The Alaska water quality standard of 2.0 µg/l is the applicable criterion for a TRC end-of-pipe limitation, since the Alaska water quality standard is more protective than the BCT standard against the toxic effects of chlorine. Based on the method for deriving permit limits recommended in the TSD (EPA 1991b), the TRC limit will be changed in the final permit to a 1.0 µg/l monthly average and 2.0 µg/l daily maximum at the point of discharge. In order to ensure adequate treatment of fecal coliform, a fecal coliform limit of 43 FC/100 ml (daily maximum) and 14 FC/100 ml (monthly median) will also be added to the final permit. The Alaska standard for fecal coliform states that the median "most probably number" (MPN) shall not exceed 14 FC/100 ml, and not more than 10% of the samples shall exceed a FC MPN of 43 FC/100 ml. The proposed monthly median limitation of 14 FC/100 ml is derived directly from the Alaska standard. The proposed daily maximum of 43 FC/100 ml reflects the Alaska standard as long as the number of samples collected per month does not exceed ten. Since weekly sampling would be required, Region 10 has determined that 43 FC/100 ml appropriately reflects the Alaska standard.

3. Technology-based Limitation Based on Section 401 Certification of Prior Permit

Suspended Solids (SS) and Biochemical Oxygen Demand (BOD): The following SS and BOD limits are proposed for state waters only.

$SS_{effluent}$ limit	BOD limit	
SS_{intake} + 60 mg/l	60 mg/l	Daily maximum.
SS_{intake} + 45 mg/l	45 mg/l	Weekly average.
SS_{intake} + 30 mg/l	30 mg/l	Monthly average.

The proposed limits for BOD are identical to those contained in the 1986 permit while the proposed SS limits have been changed from the 1986 permit. Monitoring frequency has increased from monthly to weekly.

The 1986 permit contained BOD and SS limitations of 60 mg/l (24-hours), 45 mg/l (7 consecutive days), and 30 mg/l (30 consecutive days). These limits were required by the State in its section 401 certification (for discharges to state waters only), and were more stringent than EPA's BCT-based limitations for the sanitary wastestream. These numeric limits are required by state law under the Alaska definition of secondary treatment (18 AAC 72.990 (42)). In reissuing this permit, EPA must include the State's section 401-based limits on sanitary BOD and SS from the previous permit (40 CFR 122.44(l)). To not include these limits for discharge would constitute backsliding.

Note that the proposed permit addresses these numeric limits in terms of weekly and monthly averages rather than in terms of consecutive days. Standard NPDES reporting for weekly averages (i.e., sum of all daily discharges divided by the number of daily discharges) and monthly averages (i.e., the average of daily discharges calculated over a monitoring month) is different than the reporting required for limits based on −24 "consecutive days" (i.e., a rolling average). Region 10 anticipates that using standard NPDES terms in the proposed permit will alleviate some of the confusion and reporting complications generated by use of "consecutive days" in the 1986 permit.

The SS standard is technology-based and comes from the State's definition of secondary treatment (18 AAC 72.990(42)). Under 40 CFR 122.45(g)(1)(ii), technology-based effluent limitations may be adjusted to reflect credit for pollutants in the intake water if dischargers demonstrate control systems would meet effluent limits in the absence of pollutants in intake waters. Furthermore, credit for intake pollutants may only be granted under the following conditions:

- Constituents of the generic measure (i.e., SS in this case) in the effluent are substantially similar to constituents of the generic measure in the intake water, and
- intake water comes from the same body of water into which discharge occurs.

A review of past compliance data indicates that operators are not consistently meeting the technology-based SS limits in the current permit. At the request of SWEPI, Marathon, and Unocal, Region 10 has reviewed the nature of sanitary waters, their makeup and treatment prior to use in the system as well as sanitary treatments used on platforms. SS in the effluent is substantially similar to SS in the intake: there is no other source of SS in the effluent except in cases where domestic wastes are commingled with sanitary wastes. In these cases, domestic solids are removed by final sanitary treatment. In all cases, the source of sanitary intake water is Cook Inlet, which is also the discharge receiving water.

Region 10 has determined that high concentrations of SS in effluent are most likely due to high SS concentrations in the intake water used in sanitary systems. To understand how high SS in intake affects SS concentrations in the discharge, the process of taking water onboard and treating it is described as follows. Water is required on platforms for many purposes, of which two tolerate saline water (i.e., waterflood injection and sanitary systems). The general practice to provide water for waterflood and sanitary systems is to take water directly from Cook Inlet and treat it for either application. Primary treatment is solids removal with filters or varying screen sizes. In many cases, water destined for use in sanitary systems is diverted directly to the system after primary screening and/or filtration. Water used for waterflooding injection receive further treatment to remove both solids and oxygen.

Ideally, sanitary makeup water should also receive further treatment to remove solids before entering the sanitary system. Platforms are capable of removing SS; however, the technology for further solids removal is so closely associated with oxygen stripping for waterflood that considerable retro-fitting would be needed to divert water to the sanitary system before oxygen is removed. (Water with low oxygen is corrosive and not generally suitable for use in sanitary systems.) Furthermore, there is limited space available to install the additional filters and/or screens that would be needed to treat sanitary makeup water for SS to the same degree that waterflood makeup is treated.

Under 40 CFR 122.45(g)(1)(ii), Region 10 has determined that it is appropriate to propose effluent limitations for SS based on intake (or makeup) water plus ADEC's technology-based, secondary treatment limits. The effluent limits proposed for SS are based on the SS concentration of intake water after the water has received primary treatment for SS removal.

Permittees are required to monitor makeup water at a point immediately prior to the water entering the sanitary system. These values shall be reported on DMRs and labelled as SS_{intake}. Effluent shall be monitored and reported as the sums shown above. Eighteen months after the effective date of the permit, Region 10 will evaluate the DMR data to determine whether the SS limits should be modified.

Region 10 proposes to increase monitoring frequency from monthly to weekly in order to address compliance concerns. The overall increased monitoring for SS will enable Region 10 to determine (1) the nature of past noncompliance with numeric limits in the 1986 permit and (2) appropriate numeric SS limits based on the nature of Cook Inlet makeup water. Under section 308 of the Act and 40 CFR 122.44(i), the proposal for increased monitoring of BOD and SS in make-up water and the sanitary discharge is both reasonable and necessary. Region 10 does not propose any change to BOD limits other than monitoring and reporting frequency.

For the discharges to federal waters (i.e., operations on blocks leased under federal sales), any facility using a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with a limit of no floating solids, until the device is replaced or found not to comply with such standards and regulations.

4. Section 308 and Section 312 Requirements for Sanitary and Domestic Wastes

Based on section 308 of the Act, the proposed permit requires Permittees to estimate and report flow for each of these wastestreams. In addition, for platforms using U.S. Coast Guard certified marine sanitation devices (MSDs), the proposed permit requires Permittees to monitor the sanitary wastestream twice each month and submit the following information:

- FC and the estimated number of persons aboard for the 5 days preceding the sample.
- SS.
- TRC.

The information and data on FC and SS will be used for comparison with standards set forth at 40 CFR 140.3(d) for MSDs. (These regulations are based on section 312 of the Act.) As mentioned above, the proposed permit assumes that a Coast Guard certified MSD will comply with the BCT-based limits for TRC of "as close as possible to but no less than 1 mg/l" and the requirement for "no floating solids." While these assumptions are consistent with all offshore general permits issued previously by Region 10, TRC monitoring data required by the proposed permit will allow Region 10 to reassess its assumption for this pollutant.

F. Discharges 005–014 (Miscellaneous Discharges)

1. General Descriptions

Miscellaneous discharges are: desalination unit wastes (005); blowout preventer fluid (006); boiler blowdown (007); fire control system test water (008); non-contact cooling water (009); uncontaminated ballast water (010); uncontaminated bilge water (011); excess cement slurry (012); mud, cuttings and cement at seafloor (013); waterflooding discharges (014). The wastestream characterizations below are based on the Development Document for the Offshore guidelines (pp. X–38–42, EPA 1995b and Envirosphere 1989b, 1989c, 1989d), the 1986 general permit, and CIDMS reports.

Desalination unit wastes: This is wastewater associated with the process of creating fresh water from saltwater. The process itself is generally either distillation or reverse osmosis. The wastewater is a high-concentration brine very similar to seawater in composition but with higher concentrations of anions and cations.

Blowout preventer (BOP) fluid: These are fluids used to actuate the hydraulic equipment on blowout preventers. The fluid itself is generally an oil (vegetable or mineral) or antifreeze solution (e.g., glycol). The blowout preventer equipment may be located on the seafloor or on a platform and is designed to maintain the pressure in a well that cannot be controlled by drilling mud. Small quantities of BOP fluid are discharged when BOPs are tested.

Ballast: This is seawater added or removed to maintain proper draft for the purpose of platform stabilization. Unlike tank ballast water, uncontaminated ballast water is taken from waters adjacent to the platform (i.e., Cook Inlet) and will, at worst, be contaminated with oily slop water.

Bilge water: This is seawater which collects in the lower internal parts of a drilling vessel's hull and may be contaminated with oil & grease or rust. Bilge water is directed to an oil/water separator before discharge, which occurs intermittently.

Muds, cuttings and cement at the sea-floor: These wastes result from marine riser disconnect and well abandonment and plugging. Compared to discharge of muds and cuttings (Discharge 001), these volumes are small.

Boiler blowdown: The discharge of circulation water and minerals from boilers necessary to minimize solids build-up in the boilers. This is another intermittent discharge.

Excess cement slurry: This wastestream is the result of equipment washdown after a cementing operation.

Waterflooding: These discharges are associated with the treatment of seawater prior to its injection into a hydrocarbon-bearing formation to improve the flow of hydrocarbons from production wells. Seawater is taken aboard and treated to remove solids and dissolved oxygen, additional treatment may include flocculants, scale inhibitors, oxygen scavengers, and biocides. This wastestream also includes strainer and filter backwash water and excess treated water not injected. Of all the miscellaneous wastestreams discussed here, waterflood varies most widely in terms of volumes discharged—ranging from 6,300 to 1,793,820 gallons per day (gpd) (estimated daily averages, (Envirosphere 1989c)).

Fire control system test water: This is treated seawater which is released during the training of personnel in fire protection and the testing and maintenance of fire protection equipment.

Non-contact cooling water: This is water which circulates across crude oil or produced water tanks, power generators or other machinery for the purpose of cooling. As implied by the name, this water does not come in contact with product, produced water or the machinery it cools; although it may be treated with biocide to prevent fouling in heat exchangers.

2. BPJ/BPT Effluent Limitation

Neither the promulgated Offshore guidelines nor the proposed Coastal guidelines address the wastestreams described above. The Agency's basis for not addressing these wastestreams in either guideline is that they are more appropriately controlled by regionally issued NPDES permits such as the one proposed today. As discussed in section III.A., above, Region 10 has used Best Professional Judgement (BPJ) in applying permit limits and requirements for these miscellaneous wastestreams in the absence of promulgated technology-based guidelines.

No free oil: Region 10 has determined that no free oil shall be discharged in those wastestreams that are likely to be oil-contaminated. That is, a no free oil limitation is proposed for bilge water, uncontaminated ballast water, blowout preventer fluid, excess cement slurry and the discharge of muds, cuttings and excess cement at the seafloor. The proposed permit also requires bilge and ballast water to be processed through an oil-water separator prior to discharge. If bilge or ballast water are discharged during broken or unstable ice conditions, or during stable ice conditions, the static sheen test will be used to determine compliance with the no free oil limitation. In addition, the no free oil limit is also proposed for waterflooding discharges in the event that chemicals in preparation of seawater for injection may cause free oil. This limitation is Region 10's best professional judgement determination of BPT controls for these five miscellaneous wastestreams. Compliance with the free oil limitation will be by the visual sheen test. This no free oil limit has been applied in previous permits issued by Region 10 and past practices has not been violated.

The proposed permit does not limit free oil/sheen for desalination unit wastes, boiler blowdown, fire control system test water, or non-contact cooling water because these are "non-contact" wastestreams. That is, they do not come in contact with either the production stream (i.e., oil/water/gas from formation) or machinery surfaces where oily wastes are likely to contaminate them.

3. Section 308 Requirements

Flow Rate: Based on section 308 of the Act, the proposed permit requires estimated flow rates to be reported on a monthly basis for all of the miscellaneous wastestreams (Discharges 005–014). In addition, the proposed permit requires permittees to maintain an inventory of the quantities and rates of chemicals (other than fresh or seawater) added to the waterflooding (Discharge 014), noncontact cooling water (Discharge 009), and desalination (Discharge 005) systems. Reports shall be submitted monthly attached to DMRs. This reporting requirement is consistent with previous permits.

G. Discharge 015 (Produced Water)

Produced water is the total water generated from the oil and gas extraction process, and is the highest volume waste source in the offshore oil and gas industry. As discussed in section II of this fact sheet, the discharge of produced water is only authorized in state waters of Upper Cook Inlet, north of the Forelands. Produced water includes: the formation water brought to surface with the oil and gas, the injection water used for secondary oil recovery that has broken through the formation, and various well treatment chemicals added during production and the oil/water separation process. Formation water, which comprises the bulk of produced water, is found in the same rock formation as the crude oil and gas. There are currently five platforms that discharge directly into Cook Inlet (after physical separation of hydrocarbons), while the remaining nine pipe their combined production fluids (hydrocarbon and water) to one of the three shore-based separation/treatment facilities. Effluent flow rates vary from less than 0.2 ft^3 per second at the platforms, to 4 ft^3 per second at the Trading Bay Production Facility. The Cook Inlet Discharge Monitoring Study ("CIDMS") and the mixing zone application (Parametrix, 1995) identifies numerous organic and inorganic contaminants that are typically found in produced water, as discussed below.

1. BPJ/BCT Limitations for Produced Water

pH: It is proposed that the pH of discharged produced water be limited to a range of 6–9 at the point of discharge. These proposed limits are equal to the pH limitations in the 1986 permit. In the Agency's best professional judgement, this limitation appropriately equals a BPT level of control. No more stringent standard has been identified by the Agency at this time. Therefore, the Agency is setting a BPJ/BCT effluent limitation for the pH of produced water equal to that of BPT. Since previous permits have contained a limitation of pH 6–9, the requirement will not incur an incremental cost. The draft permit requires weekly monitoring of pH.

2. BPJ/BAT Limitations for Produced Water

Oil and Grease: It is proposed that oil and grease concentrations in discharges of produced water from all facilities (except Phillips Tyonek-A) be limited to a 29 mg/l monthly average and a 42 mg/l maximum daily. These oil and grease limits were promulgated as BAT for offshore facilities (40 CFR 435.15) as indicators of toxic and nonconventional pollutants, and are proposed in this permit as BPJ/BAT for coastal facilities (40 CFR 122.43, 122.44, and 125.3). Oil and grease limitations for Phillips Tyonek-A, a gas production platform, will be set at 15 mg/l monthly average and 20 mg/l daily maximum. The limitations for Tyonek-A are equal to those in the 1986 general permit for that facility, and are limitations with which Tyonek-A is currently in compliance. Note that while BPT oil and grease limitations have been promulgated for coastal facilities (40 CFR 435.42), the BPT limitations are less stringent than the limitations proposed above and have therefore not been used to establish permit limitations. The draft permit requires weekly monitoring of oil and grease.

Produced Sands: In the proposed permit, Region 10 prohibits the discharge of produced sands (formerly called "produced solids") as BPJ/BCT and BPJ/BAT based on the Agency's guidelines for both Offshore (promulgated) and Coastal (proposed) subcategories. Promulgated BAT (Offshore) for "produced sand" is no discharge based on the Agency's determination that these "sands" are sent on-shore on barges trips during regularly scheduled maintenance trips. In 1995, the Agency proposed Coastal guidelines in which BPT, BCT, BAT and NSPS are proposed to be equal to no discharge. The proposed Coastal guideline for produced sand is based on information from Cook Inlet operators stating that no produced sand discharges occur in this area (60 FR 9454, February 17, 1995).

The 1986 general permit defined "produced solids" as sands and other solids deposited from produced water which collect in vessels and lines and which must be removed to maintain adequate vessel and line capacities. In 1993, the promulgated Offshore rule (40 CFR 435.11(r)) defined "produced sand"

as slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production, desander discharge from the produced water wastestream, and blowdown of the water phase from the produced water treatment system.

3. Water Quality-Based Limitations for Produced Water

The State has issued a preliminary mixing zone determination for produced water that specifies mixing zones and dilutions for eight facilities discharging produced water to Cook Inlet. The State has notified EPA that the mixing zone request submitted by the permittees is adequate for incorporation into the draft permit (ADEC 1995). At each of the eight facilities, individual mixing zones have been proposed for metals (acute, chronic and human health), total aromatic hydrocarbons (TAH), total aqueous hydrocarbons (TAqH), and toxicity.

As part of the mixing zone application (Parametrix 1995), produced water discharges from production facilities in Cook Inlet were sampled at each of 8 facilities currently discharging produced water into Cook Inlet. Samples were analyzed for a broad range of potential pollutants, including metals, monoaromatic hydrocarbons (such as benzene), polynuclear aromatic hydrocarbons (such as naphthalene), and chronic toxicity.

The 1995 sampling effort supplements the 1988–89 sampling effort documented in the CIDMS. The CIDMS provided data for ten organic pollutants, zinc, and acute toxicity for 6 of the 8 facilities currently discharging produced water into Cook Inlet. The way in which available data were used to calculate water quality-based permit limits is discussed in part III.E. of this fact sheet, and below.

Metals: The 1986 permit did not limit metals in produced water. Data submitted by the permittees in the mixing zone application (Parametrix 1995) show exceedances of the water quality criteria for arsenic, copper, zinc and silver at numerous facilities. The following is a summary of the maximum concentrations reported, and applicable aquatic life and human health criteria. The applicable metals criteria for Alaska are written in terms of total recoverable metals; one total recoverable sample was analyzed at each facility.

Pollutant	Criteria			Maximum reported discharge
	Health	Acute	Chronic	
Arsenic	1.4 µg/l	69 µg/l	36 µg/l	230 µg/l (East Forelands).
Silver		2.3 µg/l		80 µg/l (Bruce).
Copper		2.9 µg/l	2.9 µg/l	64 µg/l (Dillon).
Zinc		95 µg/l	86 µg/l	2700 µg/l (Baker).

Acute, chronic and human health mixing zones have been proposed by the Permittees at each of the eight discharge locations. The following is a summary of the proposed acute and chronic mixing zones, and the associated dilution factors at each location. Where modeling results yielded a mixing zone with a radius less than 20 meters, a 20-meter mixing zone is proposed. The dilution factor represents the dilution that is predicted to occur at the edge of the mixing zone.

Location	Proposed acute mixing zone (m)	Dilution factor	Proposed chronic mixing zone (m)	Dilution factor
Granite Point PF	20	82	99	282
Trading Bay	300	4900	300	4900
East Foreland	20	42	109	632
Tyonek A	20	20	20	278
Bruce	37	327	46	336
Baker	22	174	37	300
Dillon	20	84	43	274
Anna	20	65	36	274

Based on the method for deriving permit limits recommended in the TSD (EPA 1991b), individual effluent limitations have been calculated for each of the platforms. If the final mixing zone approved by the state is different from the one used to calculate the limits for the draft permit, the limits in the final permit will reflect these changes. The following is a comparison of wasteload allocations, effluent limits, proposed mixing zone size and dilution factors for each location. Effluent limitations have not been imposed for every metal constituent at every facility. In some cases, the size of the proposed mixing zone diminishes the potential for exceedances of water quality standards at the edge of the mixing zone. In accordance with the TSD, limits are included only when there is a "reasonable potential" to exceed water quality criteria. At Trading Bay and Bruce, for example, a reasonable potential to exceed water quality criteria at the edge of the mixing zone was not found; therefore effluent limitations are not proposed.

Location	Pollutant	Wasteload allocation (µg/l)	Effluent limitations	
			Daily max (µg/l)	Monthly average (µg/l)
Granite Point	Copper	238	238	119
East Foreland	Copper	122	122	60.7
	Arsenic	885	1780	885
Tyonek A	Copper	58	58	29
Baker	Arsenic	420	843	420
	Zinc	16500	16500	8240
Dillon	Copper	244	244	121

Location	Pollutant	Wasteload allocation (µg/l)	Effluent limitations	
			Daily max (µg/l)	Monthly average (µg/l)
	Zinc	7980	7980	3980
Anna	Copper	189	189	94

Weekly monitoring for metals is required in the draft permit. Additional monitoring requirements for metals are discussed below in V.G.4.

Total Aromatic Hydrocarbons (TAH) and Total Aqueous Hydrocarbons (TAqH): TAH and TAqH were not limited in the 1986 general permit. The state of Alaska water quality standard for protection of aquatic life is 10 µg/l for TAH, and 15 µg/l for TAqH. TAH is defined as the sum of benzene, toluene, ethylbenzene, and the xylene isomers (usually referred to as BETX). TAqH is defined as the sum of TAH and polynuclear aromatic hydrocarbons (PAHs). All analytical requirements are specified in the Alaska standards (18 AAC 70.020(b).

Data submitted by the permittees in the CIDMS (Envirosphere 1990a) and the mixing zone application (Parametrix 1995) indicate that current TAH and TAqH levels are above the standard at numerous facilities. For example, maximum concentrations of 70,000 µg/l TAH and 70,500 µg/l TAqH were detected at the Bruce platform in 1995. Mixing zones have been proposed for TAH and TAqH at each of the eight discharge locations. The following is a summary of the maximum TAH and TAqH concentrations detected at each location, the proposed mixing zones, and the associated dilution factors. Where a mixing zone with a radius less than 20 meters (Tyonek-A) is needed, a 20-meter mixing zone is proposed. The dilution factor represents the dilution that is predicted to occur at the edge of the mixing zone.

Location	TAH max (µg/l)	TAqH max (µg/l)	Proposed mixing zone (m)	Dilution factor
Granite Point	14,400	15,029	955	3877
Trading Bay	6,970	7,330	300	4900
East Foreland	15,360	16,313	412	3762
Tyonek A	49	68	20	17
Bruce	70,000	70,536	867	18,164
Baker	20,550	21,006	555	5409
Dillon	20,000	13,300	405	3609
Anna	17,510	20,428	363	5233

Based on the method for deriving permit limits recommended in the TSD (EPA 1991b), individual effluent limitations have been calculated for each of the dischargers. The following is a comparison of wasteload allocations and effluent limits for each location. If the final mixing zone approved by the state is different from the one used to calculate the limits for the draft permit, the limits in the final permit will reflect these changes.

Location	Pollutant	Wasteload allocation (µg/l)	Effluent Limitations	
			Daily max (µg/l)	Monthly average (µg/l)
Granite Point	TAH	38,800	38,800	19,300
Prod Facility	TAqH	58,200	58,200	29,000
Trading Bay	TAH	49,000	49,000	24,400
	TAqH	73,500	73,500	36,600
East Forelands	TAH	37,600	37,600	18,800
	TAqH	56,400	56,400	28,100
Tyonek A	TAH	170	170	85
	TAqH	255	255	127
Bruce	TAH	182,000	182,000	90,500
	TAqH	272,000	0272,000	136,000
Baker	TAH	54,100	54,100	27,000
	TAqH	81,100	81,100	40,400
Dillon	TAH	36,100	36,100	18,000
	TAqH	54,100	54,100	27,000
Anna	TAH	52,300	52,300	26,100
	TAqH	78,500	78,500	39,100

The draft permit requires weekly monitoring for TAH and TAqH. Submittal of an annual report summarizing the concentrations of the individual TAH (benzene, toluene, ethylbenzene and xylene isomers) and TAqH components is also required.

The draft permit does not contain individual limitations for benzene, as the total aromatic hydrocarbon (TAH) criterion is significantly more protective than the benzene criterion. The benzene criterion of 710 µg/l is applicable for the protection of human health from potential carcinogenic effects due to benzene exposure through ingestion of contaminated aquatic organisms. This criterion represents an incremental increase of cancer risk of 10^{-5} over a lifetime. Existing data indicates that this criterion is exceeded in the 36 CIDMS samples, and all samples of all discharges (except Tyonek-A) in the mixing zone application; benzene concentrations range from 15 µg/l at Tyonek-A to 53,000 µg/l at Bruce. As part of their mixing zone application to the State, the permittees performed a human health assessment to evaluate potential carcinogenic risks to humans who consume fish and shellfish that inhabit Cook Inlet.

The results of the human health assessment indicate that produced waters are not expected to pose significant risks to human health from the consumption of fish and shellfish in Cook Inlet at the edge of mixing zone.

Whole Effluent Toxicity: Whole effluent toxicity (WET) tests are used to measure the acute and/or chronic toxicity of an effluent. Acute toxicity tests determine the effluent concentration that produces an adverse effect (i.e., death) on a group of test organisms during a short-term exposure. The LC_{50} is the concentration of effluent that would cause death in 50 percent of the organisms exposed. Acute toxicity units (TU_a) are defined as ($100/LC_{50}$).

Chronic toxicity measures a sublethal effect (e.g., reduced growth, reproduction) in an effluent compared to that of the control organism. When conducting a chronic toxicity test, the highest concentration of an effluent at which no adverse effects are observed on the aquatic test organisms is defined as the no observed effect concentration (NOEC). Chronic toxicity units (TU_c) are defined as (100/NOEC).

Alaska's water quality standard for toxicity is expressed as a measure of chronic, rather than acute toxicity. The Alaska standard states that substances must impart no chronic toxicity to aquatic organisms, expressed as 1.0 chronic toxic unit (TU_c) at the edge of the mixing zone, or end of pipe if there is no mixing zone. The relationship between TU_c and TU_a is usually expressed as the acute-to-chronic ratio (ACR). In the absence of site-specific data, the TSD recommends that an ACR of 10 be used.

Produced water toxicity was not limited in the 1986 general permit. Toxicity monitoring was, however, a requirement of the 1986 permit and was discussed in the CIDMS (**Envirosphere 1990a**). Produced water samples from three platforms and three shore-based facilities were tested for acute toxicity to the marine invertebrate *Mysidopsis bahia* using a 96-hour acute toxicity test. Chronic toxicity was measured at eight facilities currently discharging produced water to Cook Inlet as part of the mixing zone application (**Parametrix** 1995). For all locations, the mean TU_c exceeds the state water quality standard of 1.0 TU_c.

Mixing zones have been proposed for whole effluent toxicity at each of the eight discharge locations. The 1995 TU_c data (based on NOEC growth and survival), mixing zones and dilution factors are summarized below. Note that while the proposed mixing zones are based on the NOEC (survival), it is anticipated that the mixing zones will be recalculated prior to issuance of the final permit based on the NOEC (growth).

Dilution factor	Location	TU_c (growth)	TU_c (survival)	Proposed chronic mixing zone (m)
	Granite Point PF	21.28	7	2026
	Trading Bay	> 22	10	3004,900
	East Foreland	> 18	11	2040
	Tyonek A	> 5	2	206.2
	Bruce	> 143	21	2082
	Baker	> 17	10	2036
	Dillon	> 28	16	2057
	Anna	77	29	20110

Based on the method for deriving permit limits recommended in the TSD (**EPA 1991b**), individual effluent limitations have been calculated for each of the dischargers. The following is a comparison of wasteload allocations and effluent limits for each location. If the final mixing zone approved by the state is different from the one used to calculate the limits for the draft permit, the limits in the final permit will reflect these changes. Limitations have not been calculated for the Trading Bay facility. In accordance with the TSD, limits are included only when there is a "reasonable potential" to exceed water quality criteria.

Location	Wasteload allocation (TU_c)	Effluent limitations	
		Daily max (TU_c)	Monthly avg (TU_c)
Granite Point	26	43	29
East Forelands	40	66	45
Tyonek A	6	10	7
Bruce	82	135	92
Baker	36	59	40
Dillon	57	94	64
Anna	110	181	124

Monthly chronic toxicity monitoring using grab effluent samples is proposed. The permit requires tests using a vertebrate and two invertebrates, as follows:

Vertebrate: Inland silverside, *Menidia beryllina*

Invertebrate: Atlantic mysid, *Mysidopsis bahia* survival, growth and fecundity test and one of the following two bivalve species tests: *Mytilis sp.* or *Crassostrea gigas* larval development test, depending upon seasonal availability.

The level of chronic toxicity shall be estimated as specified in **Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, Second Edition**, EPA/600/4–90/003. For the bivalve species, chronic toxicity shall be estimated as specified in **Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water To West Coast Marine and Estuarine Organisms** (Chapman and Denton 1995)

If chronic toxicity is detected above the permit limits, the permittee shall conduct four more tests, bi-weekly, over an eight-week period. In accordance with EPA/600/2–88/070, a toxicity reduction evaluation (TRE) must be initiated within fifteen days of the exceedance in order to expeditiously locate the source(s) of toxicity and evaluate the effectiveness of pollution control actions and/or inplant modifications toward attaining compliance. If chronic toxicity is detected in any of the four bi-weekly tests, the permittee shall initiate a toxicity identification evaluation (TIE) to identify the specific chemical(s) causing toxicity according to the EPA protocols listed below. If none of the four bi-weekly tests indicate toxicity above the permit limit, then the permittee may return to the normal testing frequency.

- USEPA Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I (EPA/600/6–91/005F),
- USEPA Methods for Aquatic Toxicity Identification Evaluations: Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity (EPA/600/R–92/080), and
- USEPA Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures (EPA–600/R–92/081).

4. Section 308 Requirements for Produced Water

In addition to the effluent monitoring discussed above, the draft permit requires additional effluent monitoring of flow rate, metals, and total aqueous hydrocarbons.

Flow Rate: Measurement of the produced water flow rate is required daily. This requirement serves to determine compliance with, or the possible future need for, effluent limitations in the permit. The basis for this requirement is section 308 of the Act.

Metals: Monthly monitoring of total recoverable arsenic, cadmium, copper, lead, nickel, silver and zinc is required for one year. Because weekly effluent limitations for metals are not imposed at Bruce and Trading Bay, monthly monitoring of each of the seven metals is required. The remainder of the facilities discharging produced water to Cook Inlet must submit monthly monitoring results for those metals not limited in the permit at that facility. Method detection levels must be less than one-tenth the aquatic life criteria listed below. The minimum detection level required for arsenic is 1 μg/l.

Pollutant	Aquatic life chronic criteria
Cadmium	9.3 μg/l
Copper	2.9 μg/l
Lead	8.5 μg/l
Nickel	8.3 μg/l
Silver	2.3 μg/l
Zinc	86 μg/l

Existing Cook Inlet data are not sufficient to determine whether or not a reasonable potential to exceed water quality standards exists for these five metals at numerous discharge locations. Baseline effluent characteristics from the Thirty Platform Study (EPA 1993a) conducted in the Gulf of Mexico, however, found each of these priority metal pollutants to be above water quality standards in produced water. The basis for this requirement is section 308 of the Act.

H. Discharges 016–019 (Completion Fluids, Workover Fluids, Well Treatment Fluids, and Test Fluids)

Based on the promulgated Offshore guidelines and proposed Coastal guidelines, Region 10 is proposing the definitions shown below for workover, completion and treatment fluids. The proposed definitions are more specific than those in the 1986 permit.

- Workover fluids: salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. Workover fluids used in drilling are considered to be drilling muds. Packer fluids (low solid fluids between the packer, production string, and well casing) are considered to be workover fluids.
- Completion fluids: salt solutions, weighted brines, polymers, and various additives used to prevent damage to the wellbore during operations which prepare the drilled well for hydrocarbon production.
- Well treatment fluids: any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

Workover fluids and completion fluids may be broadly divided into two classes: water-based and oil-based. The proposed permit prohibits the discharge of oil-based fluids. According to the Offshore Development Document (EPA 1993a), water-based workover and completion fluids may be further classified as a brine water solution, a modified drilling fluid or a specialty drilling fluid, depending upon its purpose in the borehole. Brine solutions (e.g., potassium chloride, sodium chloride or bromide, calcium chloride or bromide) are used because they are low solid fluids with densities sufficient to control sub-surface pressures in the well. Modified drilling fluids are typically inorganic brines with polymers acids or oil-soluble materials needed to yield a fluids with properties necessary to inhibit clays, keep solids in suspension, control corrosion, or otherwise control or maintain downhole stability. Note that, as in the 1986 general permit, the proposed permit regulates the discharge of a drilling fluid *as* a drilling fluid, subject to limitations discussed earlier in this fact sheet for Discharge 001, regardless of its use downhole in an existing production well.

Well treatment is a multi-stage process involving a variety of solutions with specialty chemical additives that vary with the chemical reactions desired downhole and in the formation. Well treatment fluids may include: hydrochloric or hydrofluoric acid, EDTA, ammonium chloride, nitrogen, methanol, xylene, toluene or additives for inhibiting corrosion, neutralizing acids, reducing leak off rate, reducing friction, preventing aggregation and deposition of solids (p. X–14–15, EPA 1993a). In Cook Inlet, both acid and non-acid well treatments occur. Treatment, workover and completion fluids may be discharged either directly to the Inlet (in compliance with 1986 permit limits) or commingled with the production stream and discharged with produced water (Envirosphere 1988). In fact, the Agency has determined that

treatment, workover, and completion fluids are routinely commingled with produced water discharges in the Cook Inlet area (60 FR 9457, February 17, 1995).

The proposed permit defines test fluids as shown below. This same definition appeared in the 1986 Cook Inlet and 1995 Arctic general NPDES permits.

- Test Fluids: the discharge which would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content. The discharge consists of fluids sent downhole during testing, and formation water.

The 1986 Cook Inlet permit limited "well treatment" (i.e., treatment, workover and completion) fluids in conjunction with test fluids and Region 10 is using the same approach in the proposed permit.

1. BPJ/BCT Limitations for TWC and Test Fluids

pH: For the discharge of test fluids and well treatment, workover and completion fluids, the proposed permit limits pH to a range of 6.5–8.5 at the point of discharge. In Region 10's best professional judgement this appropriately equals a BPT level of control. No more stringent standard has been identified at this time. Therefore Region 10 is setting a BCT effluent limit for pH equal to BPT. This pH limit will ensure that pH changes greater than 0.2 pH unit will not occur beyond the edge of the 100 m mixing zone (40 CFR 125.121(c)). This requirement has been, and is, routinely complied with in previous permits and thus reflects no cost incremental to BPT.

Free oil: No discharge of free oil is permitted from any of the wastestreams authorized by the proposed permit. In the 1986 permit, Region 10 determined that the no free oil limitation and no discharge of oil-based fluids were appropriate levels of BCT control on the discharge of TWC and test fluids, establishing BPJ/BCT based on BPT. In 1993, the Agency promulgated BCT for the Offshore subcategory as no free oil; therefore, the no free oil limit for the discharge of test fluid from exploratory operations in lower Cook Inlet (i.e., Offshore subcategory) is BCT. For TWC and test fluids, the no free oil limit is BPJ/BCT for all operations in upper Cook Inlet (i.e., Coastal subcategory). All previous permits issued by Region 10 for either exploratory or production and development operations contained the no free oil limitation and past practices have not resulted in violations of the limit. In accordance with promulgated Offshore BCT and section 308 of the Act, the static sheen test is required to monitor compliance with the limitation.

2. BPJ/BAT Limitations for TWC and Test Fluids

Oil and grease: Although oil and grease is a conventional pollutant subject to BCT, it is also an indicator of toxic pollutants (thus serving BAT as well). Promulgated (offshore) BAT limitations for oil and grease in TWC are 29 mg/l monthly average and 42 mg/l daily maximum (58 FR 12506, March 4, 1993). It is the best professional judgement of Region 10 that these oil and grease limits are also appropriate levels of control for TWC discharges in the Coastal subcategory of Upper Cook Inlet. These limits in the proposed permit are also consistent with effluent limitations guidelines proposed for the Coastal subcategory (60 FR 9429–9430, February 17, 1995). Note that while BPT oil and grease limitations are promulgated for the Coastal subcategory (no free oil, 40 CFR 435.42), they are less stringent than those proposed and are therefore not used as a basis for the proposed permit. For the discharge of test fluids, the proposed oil and grease limits are Region 10's best professional judgement of BAT because no BAT effluent guidelines are promulgated or proposed for the Offshore or Coastal subcategories. Region 10 is using this same approach in the Arctic general NPDES permit (60 FR 27508, May 24, 1995).

3. Section 308 Requirements for TWC and Test Fluids

Flow Rate: Based on section 308 of the Act, the proposed permit requires estimated flow rates to be reported on a monthly basis for the discharge of each wastestream: this monitoring was required in the 1986 permit as well.

Metals: The proposed permit also requires analyses of each discharge of treatment, workover, and completion that is characterized as an acid job for the following metals (dissolved and total recoverable): cadmium, chromium, copper, lead, nickel and zinc. The CIDMS conducted under the 1986 permit indicates that these metals are likely to be present in TWC jobs involving treatment with acids. If these wastestreams are commingled with produced water prior to discharge, then they need not be monitored because similar monitoring is also required for the produced water discharge. In accordance with section 308 of the Act, and 40 CFR 122.44(i), monitoring for metals and flow are required to determine compliance with, or the possible need for, effluent limitations in the permit.

I. Other Discharge Limitations

1. No Floating Solids, Visible Foam or Oily Wastes

Region 10 has determined that the Offshore BCT effluent limitations of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. This requirement is consistent with the recently issued general NPDES permit for the Arctic (60 FR 27508, May 24, 1995). The limitations on discharge of visible foam and oily wastes have been applied (based on BCT) in previous permits issued by the Region and past practices have not resulted in violations.

2. Surfactants, Dispersants and Detergents

The proposed permit requires the discharge of surfactants, dispersants, and detergents to be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the MMS. These products contain primarily nonconventional pollutants. This provision has appeared in general NPDES permits for the Beaufort Sea, Chukchi Sea, Norton Sound, Bering Sea and the Arctic Ocean as well as in the 1986 Cook Inlet permit.

3. Other Toxic and Non-conventional Compounds

Discharge of the following pollutants is prohibited under the proposed permit: halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate, and sodium dichromate. The class of halogenated phenol compounds includes toxic pollutants while sodium chromate and dichromate contain chromium, which is also a toxic pollutant. Trisodium nitrilotriacetic acid is a nonconventional pollutant. Past permits prohibiting the discharge of these compounds are the Beaufort Sea, Chukchi Sea, Norton Sound, Bering Sea, Arctic Ocean and the 1986 Cook Inlet.

J. Best Management Practice Plan Requirement

It is national policy that, whenever feasible, pollution should be prevented or reduced at the source, that pollution which cannot be prevented should be recycled in an environmentally safe manner, and that disposal or release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner (Pollution Prevention Act of 1990, 42 U.S.C. 13101). Section 402(a)(1) authorizes EPA to include miscellaneous requirements in permits on a case-by-case basis which are deemed necessary to carry out the provisions of the Act. Best Management Practices (BMPs), in addition to numerical effluent limitations, are required to control or abate the discharge of pollutants in accordance with 40 CFR 122.44(k).

Pursuant to section 402(a)(1) of the Clean Water Act and Region 10 policy (EPA 1992), development and implementation of a Best Management Practices Plan is included as a condition of this NPDES general permit.

The proposed general permit requires the development and implementation of a BMP Plan which prevents or minimizes the generation of pollutants, their release, and/or potential release from the facility to the waters of the United States through normal operations and ancillary activities. Relevant operations and activities include material storage areas, site runoff, storm water, in-plant transfer, process and material handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal, or drainage from raw material storage. EPA does not intend for permittees to duplicate practices more fully described in other documents. Therefore, when a BMP issue is already addressed via a separate regulatory program, the BMP is expected to reference those efforts, not duplicate them.

In addition to developing and implementing the BMP Plan, the operator is also required to certify that the BMP Plan is complete, on-site, and available upon request (see Part III.I.1. of the permit). Certification is required no later than submission of their written notice of intent to commence discharge (see Parts I.A., I.B., and I.C. of the permit). These certification requirements are similar to the requirements for a mud plan.

The BMP Plan must be amended whenever there is a change in the facility or in the operation of the facility which materially increases the potential for an increased discharge of pollutants. The BMP Plan will become an enforceable condition of the permit; a violation of the BMP Plan is a violation of the permit.

VI. Other Legal Requirements

A. Oil Spill Requirements

Oil spill requirements in the proposed permit reflect Executive Order 12777 which implements provisions of the Oil Pollution Act of 1990. EO 12777 removed offshore facilities from jurisdiction under EPA and placed them under the jurisdiction of the Department of Interior (DOI), Minerals Management Service (MMS). Offshore operators are required to submit Oil Spill Contingency Plans to MMS for review. Additionally, operators in state waters are required to submit Oil Discharge Prevention and Contingency Plans to the ADEC for review.

The net effect of the Oil Pollution Act of 1990 and EO 12777 is that operators in state or federal waters are no longer required by section 311 of the Clean Water Act to develop Spill Prevention, Control and Contingency (SPCC) plans.

B. Endangered Species Act

The Endangered Species Act (ESA) allocates authority to, and administers requirements upon, federal agencies regarding endangered species of fish, wildlife, or plants and habitat of such species that have been designated as critical. Its implementing regulations (50 CFR Part 402) require EPA to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized, funded or carried out by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat (40 CFR 122.49(c)).

Implementing regulations for the ESA establish a process by which agencies consult with one another to ensure that the concerns of both the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) ("Services" collectively) are addressed. Briefly, the process is as follows: (a) The Services provide list(s) of species or habitats which coincide with the permit area or activity at the request of the licensing agency (in this case EPA Region 10), (b) the licensing agency develops a scientific or other report addressing listed species and/or habitats, and (c) the Services consult (either formally or informally) with the licensing agency. Region 10 is requesting comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service and will consider their comments in making the final permit decision. The Region will initiate consultation should new information reveal impacts not previously considered, should the activities be modified in a manner beyond the scope of the original opinion, or should the activities affect a newly listed species.

In compliance with section 7 of the ESA, Region 10 obtained lists of critical habitat areas and threatened and endangered species from the Alaska regional offices of the Services. The Agency contracted with Avanti, Inc. to prepare a draft/preliminary biological evaluation (BE) for threatened, endangered and candidate species reported in the area covered by the proposed general permit (Avanti 1992). In addition to the preliminary BE prepared by Avanti, Region 10 also considered a BE prepared for ARCO for development of an individual NPDES permit for exploratory drilling in upper Cook Inlet (EPA 1993c). These two BEs address the species listed below:

- Gray whale (Eschrichtius robustus, removed from list but continues to be monitored—USFWS),
- Humpback whale (Megaptera novaengliae, endangered—USFWS),
- Fin whale (Balaenoptera physalus, endangered—USFWS),
- Sei whale (Balaenpetera borealis, endangered—USFWS),
- Steller sea lion (Eumetopias jubatus and habitat, threatened—USFWS),
- American peregrine falcon (Falco peregrinus anatum, threatened—USFWS)
- Arctic peregrine falcon (Falco peregrinus tundrius, threatened—USFWS),
- Beluga whale (Delphinapterus leucas, candidate—NMFS), and
- Steller's eider (Polysticta stelleri, mentioned as Category 1 candidate species—USFWS).

In March of 1995 in response to the Region's request for updated status on species in the area of the permit, USFWS provided additional information as shown below. NMFS had no additional or new information to provide at the time of Region 10's request.

- Short-tailed albatross (Diomeda albatrus, added as endangered),
- Harelquin duck (Histrionicus histrionicus, mentioned as Category 2 candidate species)
- Kittlitz's murrelet (Brachyramphus brevirostris, mentioned as Category 2 candidate species)
- Marbled murrelet (Brachyramphus marmoratus, mentioned as Category 2 candidate species)
- Arctic peregrine falcon (F. p, tundrius, removed from list but continues to be monitored)

Based on BE reports, information in the Preliminary Ocean Discharge Criteria Evaluations (PODCEs) for OCS Sales 55 and 60, the Revised PODCE for Sale 88 and state lease sales in Cook Inlet, the revised PODCE for Sale 149 and on information in the Environmental Impact Statements (EISs) prepared for the federal lease sale areas, EPA has concluded that the discharges authorized by this general permit will not jeopardize the continued existence of any endangered or threatened species. The BEs, PODCEs, and EISs do not address the species added to the Region's list in March of 1995, nor are resources available to modify existing reports at this time. For the short-tailed albatross, Region 10 references the DEIS for Sale 149 (p. III.B.20 and p. IV.B.1.–60, MMS 1995) which states that this species rarely appears in the area of Sale 149 or state lease sales, and is therefore not likely to be affected by the discharges authorized in the proposed permit. For recently added species of murrelets and the Harelquin duck, Region 10 is deferring a determination until the species are listed, and more information is available.

Region 10's determinations under section 7 of the ESA are discussed below for each wastestream. Pursuant to the ESA, Region 10's determinations are either for *no effect* or *may effect:* findings of *may effect* are further categorized as *may beneficially affect, not likely to adversely affect,* or *may adversely affect.*

1. Muds, Cuttings & Washwater (Discharge 001)

The discharge of muds and cuttings may affect all of the listed species, but is not likely to adversely affect the peregrine falcons or the Steller's eider. Disturbances caused by drilling mud discharge occurring during whale migration through the discharge area or in the critical habitat area designated for Steller's sea lions (Avanti 1992) are beyond the scope of the proposed general permit. Issues such as noise and disturbance are considered twice by MMS (for federal leases) and/or the Alaska Department of Natural Resources Division of Oil and Gas (for state leases). The first time such issues are considered is for the whole sale area as part of the initial environmental impact statement or environmental assessment which requires public and interagency review. The second consideration for the specific location as when a lessee submits plans of exploration and operation required by the lease. These documents also undergo public and inter-agency review. The scope of the proposed NPDES permit is limited to controlling the discharge of pollutants in specific wastestreams rather than the presence or absence of an operation. With respect to the critical habitat designated for Steller sea lions, the proposed permit prohibits any discharge in, or within 1000 m of, the critical habitat area designated by USFWS (58 FR 45269–45285, August 27, 1993).

2. Produced Water (Discharge 015)

The discharge of produced water may affect, but is not likely to adversely affect, all of the considered species except the Beluga whale (a candidate species). This determination is based on the fact that the proposed permit authorizes discharges from production operations (i.e., produced water) to upper Cook Inlet and, since all of the species except Beluga whales occur most frequently in the lower Inlet, potential exposure is therefore reduced. The Beluga whales, which frequent the upper Inlet, may be adversely affected by pollutants in produced water. This species may be affected either directly (through exposure) or indirectly (through ingestion and bioaccumulation) (Avanti 1992). The Beluga whale is a candidate for listing; consequently, Region 10's determination of "may adversely affect" is based on lack of conclusive evidence regarding the actual impact of produced water discharges upon the species.

3. All Other Wastestreams

Discharge of the remaining wastestreams addressed by the proposed permit is determined to have either no effect or as not likely to adversely affect the species considered. These determinations are based on the relatively small amounts discharged (e.g., waterflood, completion, workover, treatment and test fluids), the absence of harmful pollutants (e.g., sanitary wastes), or the lack of potential to cause effects (e.g., domestic, desalination, blowout preventer fluid) (Ch.6, Avanti 1992).

C. Coastal Zone Management Act

The State of Alaska will be reviewing this permit to determine consistency with the Coastal Zone Management Act.

D. Maritime Protection, Research, and Sanctuaries Act

No marine sanctuaries, as designated by this Act, exist in the vicinity of the permit area. Since state waters are involved in the proposed general permit area the provisions of section 401 of the Act apply. In accordance with 40 CFR 124.10(c)(1), public notice of the draft permit has been provided to the State of Alaska agencies having jurisdiction over fish, shellfish, and wildlife resources.

E. Annex V of MARPOL (73/78 and 33 CFR 155.73)

Under Annex V of the International Convention for the Prevention of Pollution from Ships, the U.S. Coast Guard (USCG) has issued interim final regulations under 33 CFR 151.73 to control the disposal of garbage and domestic wastes from fixed or floating platforms. These regulations include those platforms involved in the exploration and exploitation of oil and gas resources, such as oil drilling rigs and production platforms. These regulations apply to all such vessels when in navigable waters of the U.S. or within the 200 mile Exclusive Economic Zone. This proposed permit will prohibit the discharge of garbage (as defined at 33 CFR 151) within 12 miles of the nearest land. The term garbage, as it is applied here, includes operational and maintenance wastes. Further amplification of wastes covered under these regulations can be found at 33 CFR 151. Beyond 12 miles from the nearest land, the discharge of food wastes which are ground so as to pass through a 25 millimeter mesh screen, incinerator ash, and non-plastic clinkers will be permitted. Incinerator ash and non-plastic clinkers that can pass through a 25 millimeter mesh screen will be permitted to be discharged beyond 3 miles from the nearest land. These requirements are already part of the Coast Guard regulations and are incorporated into the permit for consistency.

F. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in the proposed general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. Most of the information collection requirements have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act and assigned OMB control numbers 2040–0086 for the NPDES permit application and 2040–0004 for the discharge monitoring report form. In addition, the environmental monitoring requirements pursuant to section 403(c) of the Clean Water Act in Part III.B.3. of the proposed permit are similar to the notice of intent to be covered and monitoring requirements that were approved by OMB for the previously issued Beaufort Sea general permit (49 FR 23734, June 7, 1984) and Norton Sound general permit (50 FR 23578, June 4, 1985). While this permit requires some increased monitoring and reporting of that data, the region estimates that the additional burden will be similar to that projected for discharges covered under the most recent Gulf of Mexico general NPDES permit. The final general permit will explain how the information collection requirements respond to any OMB or public comments.

H. Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5023 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13–Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: September 8, 1995.

Charles Findley,

Acting Regional Administrator, U.S. EPA, Region 10.

BILLING CODE 6560-50-P

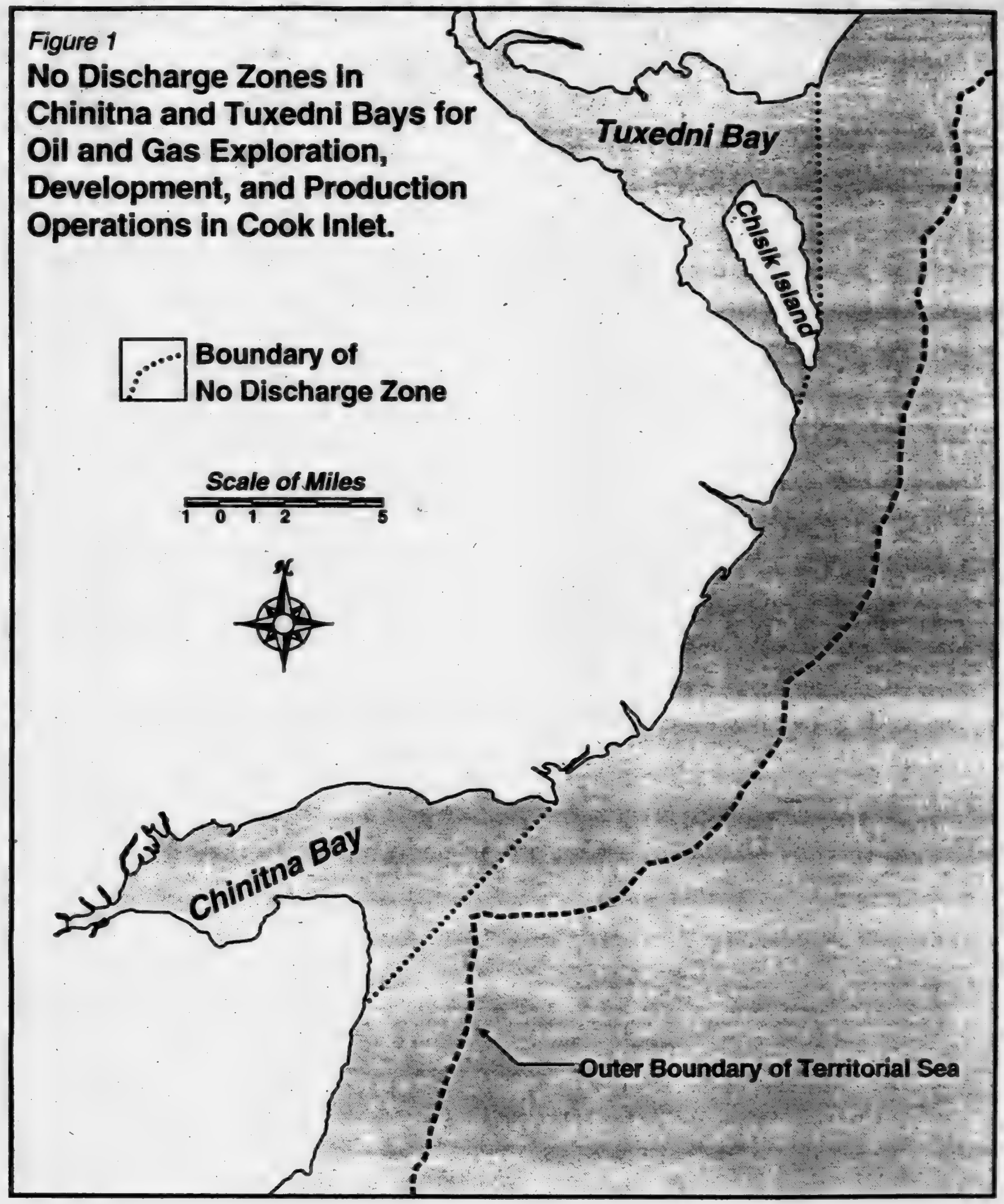

Figure 1

No Discharge Zones in Chinitna and Tuxedni Bays for Oil and Gas Exploration, Development, and Production Operations in Cook Inlet.

Tuxedni Bay
Chisik Island
Boundary of No Discharge Zone
Scale of Miles
1 0 1 2 5
N
Chinitna Bay
Outer Boundary of Territorial Sea

BILLING CODE 6560-50-C

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Permit No.: AKG285100

Cook Inlet

United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Oil and Gas Exploration, Development, and Production Facilities

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the "Act", the following discharges are authorized in accordance with this National Pollutant Discharge Elimination System ("NPDES"): from oil and gas development and production facilities to state waters north of the Forelands in Upper Cook Inlet. These development and production facilities are classified in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category, as defined in 40 CFR Part 435, Subpart D. Discharges are also authorized from exploratory facilities to all state and federal waters addressed by this permit. Exploratory facilities are classified in the Offshore and Coastal Subcategories as defined in 40 CFR Part 435, Subparts A and D. The receiving waters, state and federal, are Cook Inlet. Discharges shall be in accordance with effluent limitations, monitoring and reporting requirements, and other conditions set forth in Parts I through VI herein. The discharge of pollutants not specifically set out in this permit is not authorized.

Discharge	Discharge No.
Drilling Mud & Cuttings	001
Deck Drainage	002
Sanitary Wastes	003
Domestic Wastes	004
Desalination Unit Wastes	005
Blowout Preventer Fluid	006
Boiler Blowdown	007
Fire Control System Test Water	008
Non-Contact Cooling Water	009
Uncontaminated Ballast Water	010
Bilge Water	011
Excess Cement Slurry	012
Mud, Cuttings, Cement at Seafloor	013
Waterflooding Discharges	014
Produced Water	015
Completion Fluids	016
Workover Fluids	017
Well Treatment Fluids	018
Test Fluids	019

Permittees who are not granted coverage under this general permit as described in Part I are not authorized to discharge to the specified waters unless an individual permit has been issued to the Permittee by EPA, Region 10. Discharges from facilities in the Onshore Subcategory (40 CFR Part 435, Subpart C), or to wetlands adjacent to the territorial seas and inland coastal waters of the State of Alaska, are not authorized under this permit.

During the effective period of this permit, operators authorized to discharge under the general permit are authorized to discharge the enumerated pollutants subject to the restrictions set forth herein. This permit does not authorize the discharge of any waste streams, including spills and other unintentional or non-routine discharges of pollutants, that are not part of the normal operation of the facility, or any pollutants that are not ordinarily present in such waste streams, unless specifically authorized by EPA prior to discharge.

The authorized discharge sites include all blocks offered for lease by the US Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sales 50 and 149. Additionally, the authorized discharge sites include all Cook Inlet blocks previously offered for lease by the State of Alaska (including blocks offered in Sales 32, 33, 35, 40, 46A, 49, 67A, and 74) or offered under state lease sales held during the effective period of this permit. For the purposes of this permit, the southern boundary of Cook Inlet is defined to the line between Cape Douglas on th west and Port Chatham on the east.

The facilities listed below are authorized to discharge under this permit. The conditions of the previous permit become null and void upon the effective date of this permit.

Operator	Facility	NPDES permit No.
Unocal	Granite Point Treatment Facility (formerly Marathon)	AGK285001
Unocal	Trading Bay Treatment Facility (formerly Marathon)	AKG285002
Shell	East Foreland Treatment Facility	AKG285003
Unocal	Platform Anna (formerly Amoco)	AKG285004
Unocal	Platform Baker (formerly Amoco)	AKG285005
Unocal	Platform Bruce (formerly Amoco)	AKG285006
Unocal	Platform Dillon (formerly Amoco)	AKG285007
Unocal	King Salmon Platform (formerly ARCO)	AKG285008
Unocal	Dolly Varden Platform (formerly Unocal)	AKG285009
Marathon	Spark Platform	AKG285010
Phillips	Platform A (Tyonek Platform)	AKG285011
Shell	Platform A	AKG285012
Shell	Platform C (Middle Ground Shoal)	AKG285013
Marathon	Spurr Platform (formerly Texaco's Superior A Platform)	AKG285014
Unocal	Granite Point Platform	AKG285015
Unocal	Grayling Platform	AKG285016
Unocal	Monopod Platform	AKG285017
ARCO	Fire Island (Exploratory Well)	AKG285018 - INACTIVE
Unocal	Steelhead Platform	AKG285019
Marathon	Steelhead (Blowout Relief Well)	AKG285020 - INACTIVE
ARCO	Sturgeon (Exploratory Well)	AKG285021 - INACTIVE
ARCO	Sunfish (Exploratory Well)	AKG285022 - INACTIVE
ARCO	North Forelands (Exploratory Well)	AKG285023 - INACTIVE

This permit may be modified or revoked at any time if, on the basis of any new data, the Director determines that this information would have justified the application of different permit conditions at the time of issuance. Permit modification or revocation will be conducted in accordance with 40 CFR, sections 122.62, 122.63, and 122.64. In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the Director determines that continued discharges may cause unreasonable degradation of the marine environment.

This permit does not authorize discharges from "new sources" as defined in 40 CFR 122.2.

This permit shall become effective

This permit and the authorization to discharge shall expire at midnight,

Signed this day of

DRAFT

Chuck Clarke,

Regional Administrator, U.S. EPA, Region 10.

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I. Notification Requirements

A. New Exploration Facilities

1. Requests to be Covered by General Permit

Written request to be covered by this permit shall be provided to EPA at least 60 days prior to initiation of discharges. The request shall include the following information:

a. Name and address of the Permittee.

b. General location (lease and block numbers) of operations and discharges.

c. Any discharge or operating conditions which are subject to the special monitoring requirements (Part III.B.3.).

d. Any plans of exploration or operation that are submitted to MMS or the State of Alaska in application to drill.

2. Authorization to Discharge

The Permittee is not authorized to discharge without written notification from EPA that operations at the discharge site have been assigned an NPDES permit number under this general permit. A permit number cannot be assigned until the following information is received. This information shall be provided to EPA in the request for coverage, but in no case less than 30 days prior to commencement of discharges.

a. Name and location of discharge site, including lease block number and latitude and longitude.

b. Range of water depths (below mean lower low water) in the lease block(s), and the depth(s) of discharge(s).

c. Initial date(s) and expected duration of operations.

3. Commencement of Discharges

The Permittee shall notify EPA during the 7-day period prior to initiation of discharges from the platform and from each well. The notification shall include the exact, final latitude and longitude and water depth of the discharge site, as well as written certification that a Mud Plan (Part III.B.1.b.) is complete, on site and available to the Agency upon request. Similar notification is required for a Best Management Practices Plan (Part III.I.1). This notification may be oral or in writing; if notification is given orally, written confirmation must follow within 7 days.

B. New Development and Production Facilities

1. Requests to be Covered by General Permit

Written request to be covered by this permit shall be provided to EPA at least 60 days prior to initiation of discharges. Facilities wishing to start discharging within 60 days of the final effective date of this permit need not comply with the 60-day requirement, but shall provide the request for coverage as soon as possible prior to initiation of discharges. The request shall include the following information:

a. Name and address of the Permittee.

b. Name of facility.

c. Specific location (including latitude and longitude, and section, range, and township) of operations *and* discharges.

d. Water depth at site and depth of discharge(s) with respect to MLLW.

e. Date of commencing discharge and expected duration of operations.

f. Any discharge or operating conditions which are subject to the special monitoring requirements (Part III.B.3)

2. Authorization to Discharge

The Permittee is not authorized to discharge without written notification from EPA that operations at the discharge site have been assigned an NPDES permit number under this general permit.

3. Commencement of Discharges

The Permittee shall notify EPA within the 7-day period prior to initiation of discharges from the new facility. The notification shall include written certification that a Mud Plan (Part III.B.1.b.) is complete, on site and available to the Agency upon request. Drilling operators shall also notify EPA within the 7-day period prior to initiation of discharges from each new well thereafter. Similar notification is required for a Best Management Practices Plan (Part III.I.1). The notification may be oral or in writing: if notification is given orally, written confirmation must follow within 7 days.

C. Existing Facilities

1. Facilities authorized to discharge under the preceding general NPDES permit (AKG285000) are automatically authorized to discharge by this general permit as of its effective date. These facilities are listed on page 2 of the

permit. These permittees need not submit a formal request for authorization to discharge prior to commencement of discharges under this permit.

2. Commencement of Discharges from New Wells

The Permittee shall notify EPA within the 7-day period prior to initiation of discharges from each new well. The notification may be oral or in writing: if notification is given orally, written confirmation must follow within 7 days.

3. Commencement of Discharges from Closed In Platforms

The Permittee shall notify EPA in writing within the times specified below prior to initiation of discharges from a "closed in" platform. Notification shall include a list of discharges that will occur (as listed on page 1 of this permit) and information required in Part I.B.1.b–e., above.

a. If discharges have not changed with respect to treatment of wastestreams or effluent limits, written notification shall be provided within 30 days of initiation of discharge.

b. If any discharge is different from the past due to changes in treatment or operations on the platform, the Permittee shall notify EPA, Region 10 as early as possible, but in no case less than 90 days prior to initiation of discharge. *See also* Part V.J. (Planned Changes)

c. If drilling mud discharges are planned, the Permittee shall provide written notification, within 7 days of discharge, that a Mud Plan (Part III.B.1.b.) is complete, on-site and available to the Agency upon request.

d. The Permittee shall provide written notification, within 7 days of discharge, that a Best Management Practices Plan (Part III.I.1.) is complete, on-site, and available to the Agency upon request.

D. All Facilities Covered by the Permit

1. Submission of Plans of Operation, Environmental Reports, and Biological Surveys

The Permittee is responsible for providing EPA with final copies of any plans of operations, environmental reports, and biological surveys required by the Alaska Department of Natural Resources (ADNR), or by the Regional supervisor, Field Operations, of MMS, for the identification and/or protection of biological populations or habitats. The Permittee may provide these directly to EPA or ensure that ADNR or MMS have provided them to EPA. If final plans and environmental reports submitted to MMS are identical to review copies received by EPA, the Permittee need not submit them under this permit provision.

2. Duty To Reapply and/or Notice of Intent To Continue Activity

If the Permittee wishes to discharge under the authority of this permit *after* its expiration date, the Permittee must submit a notice of intent to EPA to do so. The Notice of Intent shall be submitted at least 180 days before the expiration date of this permit. An NPDES permit application (EPA Form 3510–2C, Wastewater Discharge Information, Consolidated Permits Program (revised February 1985)) shall constitute a complete Notice of Intent. Timely receipt of a complete Notice of Intent by EPA shall qualify the Permittee for an administrative extension of its authorization to discharge under this permit pursuant to 5 U.S.C. Section 558(c).

3. Termination of Discharges

The Permittee shall notify EPA within 30 days following cessation of discharges from each well and from the discharge site. The notification may be provided in a Discharge Monitoring Report (DMR) or under separate cover.

4. Submission of Requests To Be Covered and Other Reports

Reports and notifications required herein shall be submitted to the following addresses.

All requests for coverage—Director, Water Division, U.S. EPA, Region 10, Attn: Ocean Programs Section, WD–137, 1200 6th Avenue, Seattle, Washington 98101, Phone: (206) 553–8155

All monitoring reports and notifications of non-compliance—Director, Water Division, U.S. EPA, Region 10, Attn: Water Compliance Section, WD–135, 1200 6th Avenue, Seattle, Washington 98101, Phone: (206) 553–1846

For discharges to state waters only: copies of all requests, reports, and notifications—Regional Environmental Supervisor, South Central Regional Office, Alaska Department of Environmental Conservation, 555 Cordova, Anchorage, Alaska 99501, Phone: (907) 269–7564

E. Changes From Coverage Under General Permit to Coverage Under Individual Permit

1. The Director may require any permittee discharging under the authority of this permit to apply for and obtain an individual NPDES permit when any one of the following conditions exist:

a. The discharge(s), including stormwater, is a significant contributor of pollution.

b. The Permittee is not in compliance with the conditions of this general permit.

c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

d. Effluent limitation guidelines are promulgated for point sources covered by this permit.

e. The point sources covered by this permit no longer:

(1) Involve the same or substantially similar types of operations,

(2) Discharge the same types of wastewaters,

(3) Require the same effluent limitations or operating conditions, or

(4) Require the same or similar monitoring.

g. In the opinion of the Director, the discharges are more appropriately controlled under an individual permit than under a general NPDES permit.

2. The Director may require any permittee authorized by this permit to apply for an individual NPDES permit only if the Permittee has been notified in writing that an individual permit application is required.

3. Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Director no later than 90 days after the effective date of the permit.

4. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the applicability of this general permit to that owner or operator is automatically terminated on the effective date of the individual permit.

II. Prohibited Areas of Discharge and Depth-Related Requirements

Discharges from operations in Cook Inlet are prohibited in the cases listed below. Permit applicants should contact EPA if they are uncertain whether or not their discharges will be located in a prohibited area. The Agency will also provide a map showing the approximate location of prohibited areas upon request.

A. Produced Water

The discharge of produced water from new facilities is prohibited in intertidal areas. New discharges (as defined at 40 CFR 122.2) are also prohibited from discharging produced water shoreward of the 10 m isobath (as measured from mean lower low water).

B. Other Discharges

The discharge of all effluents other than those discussed in paragraph A, above, is prohibited shoreward of the 5 m isobath (as measured from mean lower low water) including intertidal areas.

All discharges are prohibited in the following areas:

1. Shoreward of the 5.5 m isobath adjacent to a either (1) the Clam Gulch Critical Habitat Area (Sales 32, 40, 46A, and 49) or (2) from the Crescent River northward to a point one-half mile north of Redoubt Point (Sales 35 and 49).

2. Within the boundaries or within 1,000 m of a coastal marsh, river delta, river mouth, designated Area Meriting Special Attention (AMSA), game refuge, game sanctuary, or critical habitat area. (The seaward edge of a coastal marsh is defined as the seaward edge of emergent wetland vegetation.)

The following State Game Refuges (SGR), Game Sanctuaries (SGS), Critical Habitat Areas (CHA), and AMSAs are located in the area covered by this permit:

Palmer Hay Flats SGR
Goose Bay SGR
Potter Point SGR
Susitna Flats SGR
McNeil River SGS
Redoubt Bay CHA
Trading Bay SGR
Kalgin Island CHA
Clam Gulch CHA
Kachemak Bay CHA
Anchorage Coastal Wildlife Refuge
Port Graham/Nanwalek AMSA

The legal descriptions of these state specialty areas are found in AS 16.20 The present boundaries of these state special areas are described in "State of Alaska Game Refuges, Critical Habitat Areas, and Game Sanctuaries," Alaska Department of Fish and Game, Habitat Division, March 1991. Further information can be obtained from the Alaska Department of Fish and Game, Habitat Division, Regional Supervisor, 333 Raspberry Road, Anchorage, Alaska 99518–1599; phone (907) 267–2284 or (907) 267–2342.

3. In Kamishak Bay west of line from Cape Douglas to Chinitna point.

4. In Chinitna Bay inside of the line between the points on the shoreline at latitude 59°52′45″ N, longitude 152°48′18″ W on the north and latitude 59°46′12″ N, longitude 153°00′24″ W on the south (Figure 1).

5. In Tuxedni Bay inside of the lines on either side of Chisik Island (Figure 1).

a. From latitude 60°04′06″ North, longitude 152°34′12″ West on the mainland to the southern tip of Chisik Island (latitude 60°05′45″ North, longitude 152°33′30″ West).

b. From the point on the mainland at latitude 60°13′45″ North, longitude 152°32′42″ West to the point on the north side of Snug Harbor on Chisik Island (latitude 60°06′36″ North, longitude 152°32′54″ West).

4. In Shelikof Strait south of a line between Cape Douglas (at 58° 51′ North, 153° 15′ West) on the west and the northernmost tip of Shuyak Island on the east (at 58° 37′ North, 152° 22′ West) (Figure 2).

5. Within 20 nautical miles of Sugarloaf Island as measured from a centerpoint at 58° 53′ North and 152° 02′ West. (Figure 2)

III. Effluent Limitations and Monitoring Requirements

The operators shall limit discharges as specified in the permit below. All figures represent maximum effluent limits unless otherwise indicated. The Permittee shall comply with the following effluent limits at all times unless provided for by this permit (e.g., unanticipated bypass) regardless of the frequency of monitoring or reporting required by other provisions of this permit.

A. Representative Sampling (Routine and Non-Routine Discharges)

The operators shall collect all effluent samples from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the operators shall collect additional samples at the appropriate outfall(s), and analyze them for the parameters appropriate to that waste stream, limited in Parts III.B.-III.I. of this permit, whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample.

The Permittee shall collect such additional samples as soon as possible after the spill or discharge. The samples shall be analyzed in accordance with the monitoring requirements in Parts III.B.-III.I. of this permit. In the event of an anticipated bypass, as defined in Part V of this permit, the Permittee shall collect and analyze additional samples as soon as the bypassed effluent reaches the outfall. The Permittee shall report all additional monitoring in accordance with Part IV.B., below.

B. Drilling Mud, Drill Cuttings (Discharge 001)

1. Effluent Limitations

In addition to the restrictions set out in Parts III.A., III.B.2–3. and IV, the Permittee shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
Flow Rate[1] (Water Depth)				
> 40 m	1,000 bbl/hr	Continuous during discharge	Estimate	Maximum hourly rate.
> 20–40 m	750 bbl/hr.			
5–20 m	500 bbl/hr.			
< 5 m	No discharge.			
Total volume	See note 2	Daily	Estimate	Monthly total.
Mud Plan	Part III.B.1.b	Prior Certification	N/A	N/A.
Toxicity of drilling mud	30,000 ppm SPP minimum	Monthly and End-of-Well	Grab/Drilling Fluids Toxicity Test.	96-hr LC50 (Part III.B.2.g.).
Free oil	No discharge	Daily and before bulk discharges.	Grab/Static Sheen Test Part III.B.2.c.	Number of days sheen observed.
Oil-based fluids	No discharge	N/A	N/A	N/A.
Oil content	N/A	Daily during discharge, prior to bulk discharge.	Parts III.B.2.c., 2.f	N/A.
Diesel oil content	No discharge	N/A	Grab/GC Part III.B.2.b	Presence or absence.
Mercury and cadmium in barite.	1 mg/kg Hg 3 mg/kg Cd	Once per well	AAS	mg/kg dry wt.
Chemical inventory	N/A	Once per mud system	Part III.B.2.a	N/A.
		Once per bioassay	Part III.B.2.g	N/A.
Metal analyses	N/A	Once per mud system	Part III.B.2.e	N/A.

[1] Maximum flow rate of total muds and cuttings includes predilutant water; water depths are measured from mean lower low water.

[2] Report total volumes for all types of operations (exploratory, production and development). For exploratory operations, drilling discharges are limited to no more than five wells at a single drilling site. If a step-out or sidetracked well is drilled from a previously drilled hole, the step-out well is counted as new well. Requests to discharge from more than five wells per site will be considered by the Water Division Director on a case-by-case basis.

a. *Drilling mud and additive formulations.* Only those drilling muds, specialty additives, and mineral oil pills that meet the criteria of this permit and are contained in the operator's Mud Plan (see Part *III.B.1.b.* below) may be discharged. In no case shall toxicity of the discharged mud exceed the toxicity limit of 30,000 ppm SPP (see Part *III.B.1.* above)

b. *Mud Plan—Planned discharge of drilling muds and additives.* The Permittee shall develop and have on-site at all times a written procedural plan for the formulation and control of drilling mud/additive systems (the "Mud Plan"). The Mud Plan must specify which mud/additive systems will be used. The Mud Plan shall be implemented during drilling operations.

The Mud Plan shall be available to the Agency upon request. Prior to commencement of discharges from a given well, the Permittee shall provide EPA with written certification that a Mud Plan does exist for the well and is available to the Agency. (See Parts I.A.3., I.B.3. and I.C.3.).

At a minimum, the Mud Plan shall provide the following information:

(1) The well name, well number, NPDES permit number, and the types of mud/additive systems proposed for use as basic identification of the Mud Plan for each well drilled.

(2) Specific for use at each well and for each mud/additive system, a list including commercial product names, descriptions of the products, and the maximum proposed discharge concentrations for each product. Concentrations shall be stated in terms of "lb/bbl" or "gal/bbl"; although, "% (wt)" or "% (vol)" may be appropriate in some instances. Each mud/additive system shall be clearly labelled (e.g., KCl/polymer mud, freshwater lignosulfonate mud, spud mud). Components of the basic mud shall be listed separately from specialty or contingency additives that may be used.

(3) A record of the operator's determination of how discharge is expected to comply with the 30,000 ppm SPP toxicity limitation. Operator's determination must be based upon, but necessarily limited to, the following criteria:

(a) Estimates of worst-case cumulative discharge toxicity (e.g., based on additive toxicity estimates or commercially calculated discharge toxicity estimates).

(b) Estimates of discharge toxicity based on the use of mineral oil pills (and subsequent discharge of residual mineral oil concentrations (see *Part III.B.1.g.* below)) must be shown separately from the estimate for the basic mud with other additives.

(c) Where possible, overall toxicity shall be minimized.

(4) A clearly stated procedure for determining whether or not an additive not originally planned for or included in toxicity estimations discussed above may be used and discharged.

(5) An outline of the mud planning process which shall be consistent with other permit requirements. Names and titles of personnel responsible for the mud planning process shall be included.

c. *Certification of Mud Plan.* For each well the operator shall submit written certification stating that a Mud Plan is complete, on-site, and available upon request. In addition, each certification shall identify the well it pertains to by well name, well number and NPDES permit number. Written certification shall be submitted no later than the written notice of intent to commence discharge (see Parts I.A.3., I.B.3. and I.C.3.).

If the operator elects to use a particular sequence of mud/additive systems on subsequent wells, a previous Mud Plan may be re-used. Information identifying the Mud Plan, however, must reflect use of the plan for the current well (see *Part III.B.1.e(1),* above).

d. *Restrictions on the use of mineral oil pills in drilling muds.* The discharge of residual amounts of mineral oil pills (mineral oil plus additives) is authorized by the permit provided that the mineral oil pill and at least a 50 bbl buffer of drilling fluid on either side of the pill are removed from the circulating drilling fluid system and not discharged to waters of the United States. In the event that more than one pill is applied to a single well, the previous pill and buffer shall be removed prior to application of a subsequent pill. Residual mineral oil concentration in the discharged mud shall not exceed 2% v/v (API Recommended Practice 13–1, 1990) (see *Part III.B.2.b.* below). The discharged mud must comply with all permit conditions, including no discharge of free oil.

Should drilling mud containing residual mineral oil pill (after pill and buffer removal) be discharged the following information shall be reported with 60 days of the discharge:

(1) Dates of pill application, recovery, and discharge;

(2) Results of the Drilling Fluids Toxicity Test on samples of:

(a) the mud *before* each pill is added and

(b) the mud *after removal* of each pill and buffer (taken when residual mineral oil pill concentration is expected to greatest);

(3) Name of spotting compound and mineral oil product used;

(4) Volumes of spotting compound, mineral oil, water, and barite in the pill;

(5) Total volume of mud circulating prior to pill application, volume of pill formulated, and volume of pill circulated;

(6) Volume of pill recovered, volume of mud buffer recovered, and volume of mud circulating after pill and buffer recovery;

(7) Percent recovery of the pill (include calculations);

(8) Estimated concentrations of residual spotting compound and

mineral oil in the sample of mud discharged, as determined from amounts added and total mud volume circulating prior to pill application;

(9) Measured oil content of the mud samples, as determined by the API retort method; and

(10) An itemization of other drilling fluid components and specialty additives contained in the discharged mud with concentrations reported in gal/bbl or lb/bbl.

2. Monitoring Requirements

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in *Part III.A.*

a. *Chemical inventory.* For each mud system discharged, the Permittee shall maintain a precise chemical inventory of all constituents added downhole, including all drilling mud additives used to meet specific drilling requirements. The Permittee shall report the following for *each* mud system:

(1) Base mud type (as identified in the Mud Plan);

(2) Name and total amount (volume or weight) of each constituent in discharged mud;

(3) The total volumes of mud created and added downhole; and

(4) The maximum concentration of each constituent in the discharged mud.

In addition, for each mud system discharged, the Permittee shall report the following:

(5) The total volumes of mud discharged; and

(6) The estimated amount of each constituent discharged.

The inventory shall be submitted within 45 days of well completion.

b. *Diesel Oil.* Compliance with the limitation on diesel oil shall be demonstrated by gas chromatography (GC) analysis of drilling mud collected from the mud used at the greatest well depth ("end-of-well" sample) and of any muds or cuttings which fail the daily Static Sheen Test (Part *III.B.2.c.* below). In all cases, the determination of the presence or absence of diesel oil shall be based on a comparison of the GC spectra of the sample and of diesel oil in storage at the facility. The method for GC analysis shall be that described in "Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings" (CENTEC, 1985) available from EPA, Region 10. Gas chromatography/mass spectrometry (GC/MS) may be used if an instance should arise where the operator and EPA determine that greater resolution of the drilling mud "fingerprint" is needed for a particular drilling mud sample.

The end-of-well analysis for diesel oil shall be done in conjunction with the end-of-well chemical analyses required in Part *III.B.2.e.* The results and raw data, including the spectra, from the GC analysis shall be provided to the Director by written report (1) within 30 days of a positive result with the Static Sheen Test when a discharge has occurred, or (2) for the end-of-well analysis, within 45 days of well completion.

c. *Static Sheen Test.* The Permittee shall perform the Static Sheen Test on separate samples of drilling muds and cuttings, as required in Appendix 1 to Subpart A of 40 CFR Part 435. Samples shall be collected on each day of discharge and prior to bulk discharges. The test shall be conducted in accordance with "Approved Methodology: Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry" which is Appendix 1 to Subpart A of 40 CFR Part 435. For discharge below ice or during periods of unstable or broken ice, water temperature for the Static Sheen Test shall approximate surface water temperatures at ice breakup. The discharge of drilling muds or cuttings which fail the Static Sheen Test is prohibited.

Whenever muds or cuttings fail the Static Sheen Test and a discharge has occurred in the past 24 hours, the Permittee is required to analyze an undiluted sample of the material which failed the test to determine the presence or absence of diesel oil. The determination and reporting of results shall be performed according to Part *III.B.2.b.* above.

d. *Mercury and cadmium content of barite.* The Permittee shall analyze a representative sample of stock barite once prior to drilling each well and submit the results for total mercury and total cadmium in the DMR upon well completion. Analyses shall be conducted by absorption spectrophotometry and results expressed as mg/kg (dry weight) of barite.

If more than one well is drilled at a site, new analyses are not required for subsequent wells if no new supplies of barite have been received since the previous analysis. In this case, the DMR should state that no new barite was received since the last reported analysis. Operators may provide certification, as documented by the supplier(s), that the barite meets the above limits. The concentration of mercury and cadmium in stock barite shall be reported on the DMR as documented by the supplier.

e. *Metals analysis.* The Permittee shall analyze each discharged mud system containing a mineral oil lubricity and/or spotting agent in the mud discharge for the following metals: barium, cadmium, chromium, copper, mercury, zinc, and lead. Analyses for total *and* total recoverable concentrations shall be conducted on split samples and reported for each metal utilizing the methods specified in 40 CFR 136. The results shall be reported in "mg/kg of whole mud (dry weight)," and the moisture content (percent by weight) of the original drilling mud sample shall be reported.

Samples shall be collected when the residual mineral oil concentration is at its maximum value (see *Part III.B.1.d.*, above). If no mineral oil is used, the analysis shall be done on a drilling mud sample collected from the mud system used at the greatest well depth. All samples shall be collected prior to any predilution. Each drilling mud sample shall be of sufficient size to allow for both the chemical testing described here and toxicity testing described below in Part *III.B.2.g.*

Results of metals analyses shall be submitted within 45 days of well completion. Results shall be submitted with the end-of-well chemical inventory and shall identify the corresponding mud system from the end-of-well inventory.

f. *Oil content.* Permittees shall analyze mud and cuttings samples for oil content (percent by weight and volume) using the retort distillation method for oil (American Petroleum Industry, Recommended Practice 13–B, 1990) or by procedures described at 40 CFR 136 (soxhlet extraction for oil and grease).

g. *Toxicity test for drilling fluids.* If no mineral oil is used (*Part III.B.1.d.*), a toxicity test shall be conducted monthly to determine compliance with the drilling fluid toxicity limit. At the end-of-well, a sample shall be collected for toxicity testing. This sample can also serve as the monthly monitoring sample. The sample shall be a representative subsample of that collected for metals analysis (see Part *III.B.2.e.*, above).

The Permittee shall complete a minimum of two toxicity tests on each mud system where a mineral oil lubricity or spotting agent is used. One sample shall be collected before applying the pill and one after removing the pill (see Part *III.B.1.d.(2)*). The "after pill" sample test results can be used as the monthly monitoring sample. If the well is completed within 96 hours of collection of the "after pill" drilling mud sample, then these test results can also serve as the end-of-well test.

The testing and reporting of drilling fluid toxicity test results shall be in accordance with Appendix 2 to Subpart A of 40 CFR Part 435 (Drilling Fluids Toxicity Test). Results of drilling fluid toxicity tests (in terms of the 96-hr LC50 value) shall be reported on the DMRs. Complete copies of the test reports shall be attached to the DMR and be accompanied by an inventory of all of the drilling mud components and specialty additives present in the sampled mud (including the concentrations of each).

3. Environmental Monitoring Requirements

a. *Within 1500 m of sensitive areas.* Monitoring of the fate and effects of drilling muds and/or cuttings discharges shall be required for new exploration, development and production facilities or when the location of the discharges is within 1500 m of an area such as a coastal marsh, river delta, river mouth, designated AMSA, game refuge, game sanctuary, or critical habitat area. Discharges are prohibited within 1000 m of sensitive areas (see *Part II.B*).

b. *Environmental Monitoring Study.* The Permittee shall submit a plan of study for environmental monitoring to EPA for review with, or prior to, submission of a written request for authorization to discharge (*Parts I.A.2. and I.B.1–2.*).

The objectives of the monitoring shall be to:

(1) Monitor for discharge-related impacts,

(2) Determine statistically significant changes in sediment pollutant concentrations and sediment toxicity with time and distance from the discharge,

(3) Monitor for discharge related impacts to the benthic community,

(4) Assess whether any impacts warrant an adjustment of the monitoring program, and

(5) Provide information for permit reissuance.

The monitoring shall include, but not be limited to, relevant hydrographic, sediment hydrocarbon, and heavy metal data from surveys conducted before and during drilling mud disposal and up to a least one year after drilling operations cease.

The monitoring plan shall address:

(1) The monitoring objectives,

(2) Appropriate null and alternate test hypotheses,

(3) A statistically valid sampling design,

(4) All monitoring procedures and methods,

(5) A quality assurance/quality control program,

(6) A detailed discussion of how data will be used to meet, test and evaluate the monitoring objectives, and

(7) A summary of the results of previous environmental monitoring as they apply to the proposed program plan.

c. *Reporting and Data Submission Requirements.* The Permittee shall analyze the data and submit a draft report by within 180 days following the completion of sample collection. The report shall address the environmental monitoring objectives by using appropriate descriptive and analytical methods to test for and to describe any impacts of the effluent on sediment pollutant concentrations, sediment quality, water quality and/or the benthic community. The report shall include all relevant quality assurance/quality control (QA/QC) information, including but not limited to instrumentation, laboratory procedures, detection limits/precision requirements of the applied analyses, and sample collection methodology.

EPA will review the draft report in accordance with the environmental monitoring objectives and evaluate it for compliance with the requirements of the permit. If revisions to the report are required, the Permittee shall complete them and submit the final report to EPA within two months of the Director's request. The Permittee will be required to correct, repeat and/or expand environmental monitoring programs which have not fulfilled the requirements of the permit.

d. *Modification of Monitoring Program.* The monitoring program may be modified if EPA determines that it is appropriate. The modified program may include changes in (1) sampling stations, (2) sampling times, and/or (3) parameters.

e. *Exemption.* Region 10 will grant an exemption to this requirement if the Permittee can satisfactorily demonstrate that information on the fate and effects of the discharge is available and/or the discharge will not have significant impacts on the area of biological significance. An exemption to post-drilling monitoring will be granted if no impact was indicated during drilling.

C. Deck Drainage (Discharge 002)

1. Effluent Limitations.

In addition to the restrictions set out in Parts III.A., III.C.2–4. and IV, the Permittee shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported Values
Exploratory and Production Operations:				
Flow rate (MGD)	N/A	Monthly	Estimate	Monthly avg.
Free oil	No discharge	Daily, during discharge	Visual/Sheen on receiving water[1].	Number of days sheen observed.
Production Operations:				
Whole effluent toxicity[2]	N/A	Twice per year[3]	Part III.F.3.b.	TU$_c$[4].

[1] If discharge occurs during broken or unstable ice conditions, or during stable ice conditions, the sample type/method shall be "Grab/Static Sheen Test."

[2] Applies only to production platforms where deck drainage *is not* commingled with produced water discharges. Contaminated deck drainage shall be processed through an oil-water separator prior to discharge and samples for that portion of the deck drainage collected from the separator effluent and shall be sampled for WET testing. If deck drainage is mixed with produced water flow, then effluent limitations and monitoring requirements for produced water shall apply. (See Part III.F.).

[3] Once during the first significant rainfall (to capture first flush of surfaces after the dry season) and once during snowmelt.

[4] With final report for each test, the following shall also be reported: date and time of sample, the type of sample (i.e., rainfall or snowmelt), estimate of daily flow and basis for the estimate (e.g., turbine meters, monthly precipitation, estimated washdown).

2. Drains.

Area drains for either washdown or rainfall that may be contaminated with oil and grease shall be separated from those area drains that would not be contaminated. The contaminated deck drainage shall be processed through an oil-water separator prior to discharge and samples for that portion of the deck drainage collected from the separator effluent shall be tested for sheen.

3. Commingled Wastestreams.

Any deck drainage which is commingled with other wastes prior to discharge shall be subject at the point of discharge to the most stringent of the limitations on the individual effluents.

4. Monitoring Requirements.

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in *Part III.A.*

D. Sanitary Wastes and Domestic Wastes (Discharges 003, 004)

1. Effluent Limitations

In addition to the restrictions set out in Parts III.A., III.D.2–3. and IV, the Permittee shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
Sanitary and Domestic Wastes:				
Flow rate (MGD)		Monthly	Estimate	Monthly Average.
Floating solids[1]	No discharge	Daily	Observation[2]	Number of days solids observed.
Sanitary Wastes[3]:				
Total residual chlorine (TRC)[1,4,5].	As close as possible to, but no less than, 1 mg/l[6].	Weekly	Grab	Concentration in mg/l.
BOD (mg/l)[7]	60 mg/l	Weekly[8]	Grab	Daily Maximum.
	45 mg/l			Weekly Average.
	30 mg/l			Monthly Average.
SS (mg/l)[1,7]	SS_{intake} + 60 mg/l	Weekly[8]	Grab	Daily maximum.
	SS_{intake} + 45 mg/l			Weekly Average.
	SS_{intake} + 30 mg/l			Monthly Average.
MSDs (FC, SS, TRC)[9]		Twice/month	Grab	Estimated # persons aboard.[9]
Domestic Wastes:				
Foam	No discharge	Daily	Observation[10]	Number of days foam observed.

[1] Any facility using a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with these limitations until such time as the device is replaced or found not to comply with such standards and regulations. The MSD shall be tested yearly for proper operations and test results maintained at the facility.

[2] For state waters, permittee shall monitor by observing the surface of the receiving water in the vicinity of the outfall(s) during daylight at the time of maximum estimated discharge. For domestic waste, observations shall follow either the morning or midday meal.

[3] In cases where sanitary and domestic wastes are mixed prior to discharge, and sampling of the sanitary waste component stream is infeasible, the discharge may be sampled after mixing. In such cases, the discharge limitations for sanitary wastes shall apply to the mixed waste stream.

[4] Limit applies only to facilities continuously staffed by ten or more people.

[5] Limit applies to those facilities discharging a chlorinated treatment water in state or federal waters.

[6] If a mixing zone is not designated during the 401 certification, the TRC discharge limit will be changed to 2.0 µg/l (daily maximum) and 1.0 µg/l (monthly average) to reflect Alaska water quality standards; a fecal coliform limit of 43 FC/100 ml (daily maximum) and 14 FC/100 ml (monthly median) will also be added to the permit.

[7] The numeric limits for BOD and SS apply only to discharges to state waters. Influent samples shall be taken with the same frequency that effluent samples are taken. If enough water is taken on-board to create several days' supply for the sanitary system, then the SS value shall be reported as "carried over" from the date of intake and sampling.

When reported on DMRs, actual intake SS concentrations shall be labelled SS_{intake}. Actual effluent SS concentrations shall be labelled $SS_{effluent}$. Effluent limits for SS concentrations (SS_{limit}) shall be calculated as the sum of SS_{intake} plus 60, 45, or 30 mg/l to report daily maximum, weekly average, or 30 day maximum effluent concentrations, respectively.

[8] Based on weekly sampling and depending on the length of the calendar month, a total of 3–4 samples will be analyzed per month. The reported monthly average value shall be the average of all weekly samples taken during the month. Each weekly sample value will then be subject to both the daily maximum and weekly average criteria.

[9] Applies to facilities with MSDs only. Sample the effluent twice each month and report the following: date of sample, estimated number of persons aboard for 5 days preceding the sample, the number of FC/100 ml, TRC and SS.

[10] Monitoring by visual observation of the surface of the receiving water in the vicinity of the outfall(s) shall be done during daylight at a time of maximum estimated discharge.

2. Discharge Below Water Surface

Domestic and sanitary wastes shall be discharged below the water surface.

3. Monitoring Requirements

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in Part II.B.

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a. *Residual Chlorine.* Residual chlorine shall be monitored using a 40 CFR 136 method which obtains an MDL of at least 10 µg/l.

b. *Sanitary Wastes.* Sanitary waste grab samples shall be collected during periods of sanitary system peak flow.

E. Miscellaneous Discharges (Discharges 005–014)

1. Effluent Limitations

In addition to the restrictions set out in Parts III.A., III.E.2–4. and IV, the discharge of desalination unit wastes (005); blowout preventer fluid (006); boiler blowdown (007): fire control system test water (008); non-contact cooling water (009); uncontaminated ballast water (010); bilge water (011); excess cement slurry (012); mud, cuttings, cement at the seafloor (013); and waterflooding (014) shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
All Miscellaneous:				
Flow (MGD)	N/A	Monthly	Estimate	Monthly average.
Blowout Preventer, Excess Cement Slurry, Waterflooding:				
Muds, Cuttings and Cement at Seafloor, Ballast, Bilge Free Oil.	No discharge	Once/discharge for discharges lasting < 24 hrs. Once/24-hrs for discharges lasting < 24 hrs.	Visual/Sheen on receiving water[1].	Number or days sheen is observed.
Waterflooding, Non-Contact Cooling Water, Desalination Wastestreams:				
Chemical Inventory	N/A	Monthly	Part III.E.2.	Part III.E.2.

[1] For Uncontaminated Ballast Water (010) and Bilge Water (011) only: uncontaminated ballast and bilge water shall be processed through an oil-water separator prior to discharge. If discharge of bilge water occurs during broken, unstable, or stable ice conditions, the sample type/method used to determine compliance with the no free oil limitation shall be "Grab Static Sheen Test" (Appendix 1 to Subpart A of 40 CFR Part 435). For discharges above stable ice, below ice, to unstable or broken ice, a water temperature that approximates surface water temperatures after breakup shall be used.

2. Desalination Unit Wastes (005), Non-Contact Cooling Water (009) and Waterflooding (014)

The Permittee shall maintain an inventory of the quantities and application rates of chemicals (other than fresh or seawater) added to waterflooding, cooling water and desalination systems. The inventory(ies) shall be submitted with the monthly DMR.

3. Monitoring Requirement

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in Part III.A.

F. Produced Water (Discharge 015)

1. Effluent Limitations

In addition to the restrictions set out in Parts III.A., III.F.2–3., IV, the Permittee shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
Flow rate (MGD)	N/A	Daily	Estimate	Daily avg and monthly average.
Produced sands	No discharge.			
Oil and Grease:				
Phillips A/Tyonek	20 mg/l daily max	Weekly	Composite	Daily Maximum.
	15 mg/l monthly avg			Monthly Average.
All other facilities	42 mg/l daily max	Weekly	Composite	Daily Maximum.
	29 mg/l monthly avg			Monthly Average.
pH	6–9	Weekly	Grab	pH.
Copper:				
Granite Point	238 µg/l	Weekly	Grab	Daily Maximum.
AKG285101	119 µg/l			Monthly Average.
East Forelands	122 µg/l	Weekly	Grab	Daily Maximum.
	60.7 µg/l			Monthly Average.
Anna	189 µg/l	Weekly	Grab	Daily Maximum.
	94 µg/l			Monthly Average.
Dillon	244 µg/l	Weekly	Grab	Daily Maximum.
	121 µg/l			Monthly Average.
Phillips A/Tyonek	58 µg/l	Weekly	Grab	Daily Maximum.
	29 µg/l			Monthly Average.
Arsenic:				
East Forelands	1780 µg/l	Weekly	Grab	Daily Maximum.
	885 µg/l			Monthly Average.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
Baker	843 µg/l	Weekly	Grab	Daily Maximum.
	420 µg/l			Monthly Average.
Zinc:				
Baker	16,500 µg/l	Weekly	Grab	Daily Maximum.
	8,240 µg/l			Monthly Average.
Dillon	7,980 µg/l	Weekly	Grab	Daily Maximum.
	3,980 µg/l			Monthly Average.
Total Aromatic Hydrocarbons (TAH) [1]:				
Granite Point PF	38,800 µg/l	Weekly	Grab	Daily Maximum.
AKG285101	29,000 µg/l		Part III.F.3.a	Monthly Average.
Trading Bay	49,000 µg/l	Weekly	Grab	Daily Maximum .
	24,400 µg/l		Part III.F.3.a	Monthly Average.
East Forelands	37,600 µg/l	Weekly	Grab	Daily Maximum.
	18,800 µg/l		Part III.F.3.a	Monthly Average.
Anna	52,300 µg/l	Weekly	Grab	Daily Maximum.
	26,100 µg/l		Part III.F.3.a	Monthly Average.
Baker	54,100 µg/l	Weekly	Grab	Daily Maximum.
	27,000 µg/l		Part III.F.3.a	Monthly Average.
Bruce	182,000 µg/l	Weekly	Grab	Daily Maximum.
	90,500 µg/l		Part III.F.3.a	Monthly Average.
Dillon	36,100 µg/l	Weekly	Grab	Daily Maximum.
	18,000 µg/l		Part III.F.3.a	Monthly Average.
Phillips A/Tyonek	170 µg/l	Weekly	Grab	Daily Maximum.
	85 µg/l		Part III.F.3.a	Monthly Average.
Total Aqueous Hydrocarbons (TAqH) [1]:				
Granite Point PF	58,200 µg/l	Weekly	Grab	Daily Maximum.
AKG285101	19,300 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Trading Bay	73,500 µg/l	Weekly	Grab	Daily Maximum.
	36,600 µg/l	Monthly	Part III.F.3.a	Monthly Average.
East Forelands	56,400 µg/l	Weekly	Grab	Daily Maximum.
	28,100 µg/l	Monthly	Part III.F.3.a	Monthly average.
Anna	78,500 µg/l	Weekly	Grab	Daily Maximum.
	39,100 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Baker	81,100 µg/l	Weekly	Grab	Daily Maximum.
	40,400 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Bruce	272,000 µg/l	Weekly	Grab	Daily Maximum.
	136,000 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Dillon	54,100 µg/l	Weekly	Grab	Daily Maximum.
	27,000 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Phillips A/Tyonek	255 µg/l	Weekly	Grab	Daily Maximum.
	127 µg/l	Monthly	Part III.F.3.a	Monthly Average.
Whole Effluent Toxicity:				
Granite Point PF	43 TU_c	Monthly	Grab	Daily Maximum.
AKG285101	29 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
East Forelands	66 TU_c	Monthly	Grab	Daily Maximum.
	45 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
Anna	181 TU_c	Monthly	Grab	Daily Maximum.
	124 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
Baker	59 TU_c	Monthly	Grab	Daily Maximum.
	40 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
Bruce	135 TU_c	Monthly	Grab	Daily Maximum.
	92 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
Dillon	94 TU_c	Monthly	Grab	Daily Maximum.
	64 TU_c		Parts III.F.2., 3.b	Monthly Average Parts III.F.2., 3.b.
Phillips A/Tyonek	10 TU_c	Monthly	Grab	Daily Maximum.
	7 TU_c	Parts III.F.2., 3.b	Monthly Average	Parts III.F.2., 3.b.
Metals [2]	N/A	Monthly for one year	Part III.F.3.c.	

[1] Submittal of an annual report summarizing the concentrations of the individual TAH components (benzene, toluene, ethylbenzene and xylene isomers) and individual TAqH components is required.

[2] Monthly monitoring of total recoverable arsenic, cadmium, copper, lead, nickel, silver and zinc is required for one year. Because weekly effluent limitations for metals have not been imposed at Bruce and Trading Bay, monthly monitoring of each of the seven metals is required. The remainder of the facilities discharging produced water to Cook Inlet must submit monthly monitoring results for those metals not limited in the permit at that facility.

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2. Commingled Wastestreams

If workover, completion, well treatment or test fluids are mixed with produced water, then all of the effluent limitations and requirements applied to produced water shall apply (*Part III.G.2*) and supersede limits for the separate wastestreams. Likewise, if deck drainage is commingled with produced water, then all of the effluent limitations and requirements applied to produced water shall apply (*Part III.C.1*) and supersede limits for the separate discharge of deck drainage.

If deck drainage, workover, completion, well treatment or test fluids are commingled with produced water, "commingled" shall be reported on the DMRs for *both* produced water *and* the wastestream mixed with it.

3. Monitoring Requirements

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in *Part III.A*.

a. *Total Aromatic Hydrocarbons (TAH) and Total Aqueous Hydrocarbons (TAqH).* For analysis of TAH and TAqH, all analytical requirements cited in the Alaska Standards, 18 AAC 70.020(b) are applicable.

b. *Whole Effluent Toxicity.* Produced water samples shall be collected at least once per month. The Permittee shall conduct tests on grab effluent samples with one vertebrate and two invertebrate species, as follows:

Vertebrate (survival and growth): Inland silverside, *Menidia beryllina*
Invertebrate: Atlantic myside *Mysidopsis bahia* (survival, growth and fecundity test) and one of the following two bivalve species tests: *Mytilis sp.* or *Crassostrea gigas* (larval development test, depending upon seasonal availability).

Results shall be reported in TUc, where TUc=100/NOEC.

The presence of chronic toxicity shall be estimated as specified in USEPA Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, Second Edition, EPA/600/4–90/003. For the bivalve species, chronic toxicity shall be estimated as specified in Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to West Coast Marine and Estuarine Organisms (Draft Chapman and Denton, 1995)

The following quality assurance procedures shall be followed:

A series of five dilutions and a control will be tested. The series shall include the instream waste concentration (IWC), two dilutions above the IWC, and two dilutions below the IWC. The IWC is the concentration of effluent at the edge of the mixing zone.

Concurrent testing with reference toxicants shall be conducted. If either of the reference toxicant tests or the effluent tests do not meet all test acceptability criteria as specified in the test methods manual, then the permittee must re-sample and re-test as soon as possible.

Control and dilution water should be receiving water, or salinity adjusted lab water. If the dilution water used is different from the culture water, a second control, using culture water shall also be used.

If chronic toxicity is detected above the permit limits, the permittee shall conduct four more tests, bi-weekly, over an eight-week period. In accordance with EPA/600/2–88/070, a toxicity reduction evaluation (TRE) must be initiated within fifteen days of the exceedance in order to expeditiously locate the source(s) of toxicity and evaluate the effectiveness of pollution control actions and/or inplant modifications toward attaining compliance. If chronic toxicity is detected in any of the four bi-weekly tests, the permittee shall initiate a toxicity identification evaluation (TIE) to identify the specific chemical(s) responsible for toxicity (EPA/600/6–91/005F (Phase I), EPA/600/R–92/080 (Phase II), and EPA–600/R–92/081 (Phase III)). If none of the four bi-weekly tests indicate toxicity above the permit limit, then the Permittee may return to the normal testing frequency *of once per month.*

c. *Metals.* The minimum detection level for arsenic must be 1 µg/l. For the remainder of the metals, method detection levels must be less than one-tenth the aquatic life criteria listed below:

Pollutant	Aquatic life chronic criteria (µg/l)
Cadmium	9.3
Copper	2.9
Lead	8.5
Nickel	8.3
Silver	2.3
Zinc	86

G. Completion Fluids, Workover Fluids, Well Treatment Fluids, and Test Fluids (Discharges 016–019)

1. Effluent Limitations

In addition to the restrictions set out in Parts III.A., III.G.2–3., IV, the Permittee shall comply with the following effluent limitations and monitoring requirements.

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Reported values
All Wastestreams:				
Discharge frequency	N/A	Once/discharge [1]	Count	Type & total number of discharges.[1]
Flow rate (MGD)	N/A	Daily [1]	Estimate	Monthly average.
Oil-based fluids	No discharge	Included in free oil monitoring, below [2].		
Free oil [3]	No free oil	Once/discharge [1]	Grab/Static Sheen Test	Number of times sheen observed.
Oil and grease [3]	42 mg/l max. daily, 29 mg/l monthly avg.	Weekly	Composite	Daily max. and monthly average.
pH	6.5–8.5	Weekly	Grab	pH.
Treatment, Workover, Completion:				
Metals		Once per discharge [1]	Part III.G.2.a.	

[1] The type of discharge (i.e., completion, workover, treatment, test fluid, or any combination) shall be reported. Discharge of individual wastestreams shall reported separately from the discharge of commingled wastestreams.

[2] Discharge of oil-based fluids is prohibited.

[3] No free oil and oil and grease limits apply to each discharge, whether these wastestreams are discharged individually or are commingled. All fluids shall be processed through an oil-water separator prior to discharge. Samples shall be collected after the final step of treatment.

2. Commingled Wastestreams

If workover, completion, well treatment or test fluids are mixed with produced water, then all of the effluent limitations and requirements applied to produced water (*Part III.F.*) shall also apply to these wastestreams.

3. Monitoring Requirements

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures are specified here or elsewhere in this permit. Representative sampling requirements are discussed in *Part III.A.*

Metals. For each discharge of well treatment, completion or workover fluids which is characterized as an acid job (strong or weak, including but not limited to hydrochloric or hydrofluoric acid, EDTA), samples of effluent shall be taken for analyses of the following: cadmium, chromium, copper, lead, nickel and zinc. Analyses for total recoverable concentrations shall be conducted and reported for each metal.

H. Other Discharge Limitations

1. *Floating Solids, Visible Foam, or Oily Wastes*. There shall be no discharge of floating solids or visible foam in other than trace amounts, nor of oily wastes which produce a sheen on the surface of the receiving water.

2. *Surfactants, Dispersants, and Detergents*. The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service. The discharge of dispersants to marine waters in response to oil or other hazardous spills is not authorized this permit.

3. *Applicable Marine Water Quality Criteria*. There shall be no discharge of any constituent in concentrations which results in an exceedence of applicable marine water quality criteria at the edge of any permitted mixing zone.

4. *Other Toxic and Non-conventional Compounds*. There shall be no discharge of diesel oil, halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate or sodium dichromate.

I. Best Management Practices Plan Requirement

1. *Implementation*. The Permittee shall develop and implement a Best Management Practices (BMP) Plan which achieves the objectives and the specific requirements listed below. The BMP Plan shall be implemented as soon as possible but no later than 7 days prior to initiation of discharges from the facility and from each well.

The Permittee shall certify that its BMP Plan is complete, on-site, and available upon request to EPA. This certification shall identify the well it pertains to by well name, well number, and the NPDES permit number and be signed by an authorized representative of the Permittee. The certification shall be submitted no later than the written notice of intent to commence discharge (*see* Parts I.A.3, I.B.3., and I.C.3.) and the Certification of Mud Plan (*see Part III.B.1.b.*).

2. *Purpose*. Through implementation of the BMP Plan the Permittee shall prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States through normal operations and ancillary activities.

3. *Objectives*. The Permittee shall develop and amend the BMP Plan consistent with the following objectives for the control of pollutants.

a. The number and quantity of pollutants and the toxicity of effluent generated, discharged or potentially discharged at the facility shall be minimized by the Permittee to the extent feasible by managing each influent waste stream in the most appropriate manner.

b. Under the BMP Plan, and any Standard Operating Procedures (SOPs) included in the Plan, the Permittee shall ensure proper operation and maintenance of the treatment facility.

c. The Permittee shall establish specific objectives for the control of pollutants by conducting the following evaluations.

(1) Each facility component or system shall be examined for its waste minimization opportunities and its potential for causing a release of significant amounts of pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc. The examination shall include all normal operations and ancillary activities including material storage areas, site runoff, in-plant transfer, process and material handling areas, loading or unloading operations, spillage or leaks, sludge and waste disposal, or drainage from raw material storage.

(2) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of pollutants which could be discharged from the facility as a result of each condition or circumstance.

4. *Requirements*. The BMP Plan shall be consistent with the objectives in Part 3 above and the general guidance contained in the publication entitled "Guidance Document for Developing Best Management Practices (BMP)" (EPA Document Number EPA 833–B–93–004, U.S. EPA, 1993) or any subsequent revisions to the guidance document. The BMP Plan shall:

a. Be documented in narrative form, and shall include any necessary plot plans, drawings or maps, and shall be developed in accordance with good engineering practices. The BMP Plan shall be organized and written with the following structure:

(1) Name and location of the facility or operation (including identification by latitude/longitude).

(2) Statement of BMP policy.

(3) Description of the person(s) and/or staff position responsible for developing and overseeing implementation of the BMP Plan; and procedures for BMP approval.

(4) Specific management practices and standard operating procedures to achieve the above objectives, including, but not limited to, the following:

(a) modification of equipment, facilities, technology, processes, and procedures,

(b) reformulation or redesign of products,

(c) substitution of materials, and

(d) improvement in management, inventory control, materials handling or general operational phases of the facility.

(5) Risk identification and assessment.

(6) Reporting of BMP incidents.

(7) Materials compatibility.

(8) Good housekeeping.

(9) Preventative maintenance.

(10) Inspections and records.

(11) Security.

(12) Employee training.

b. Include the following provisions concerning BMP Plan review:

(1) Be reviewed by plant engineering staff and the plant manager as warranted by changes in the operation or at the facility which are covered by the BMP.

(2) Be reviewed and endorsed by the individuals responsible for development and implementation of the BMP Plan.

(3) Include a statement that the above reviews have been completed and that the BMP Plan fulfills the requirements set forth in this permit. The statement shall be certified by the dated signatures of the individuals responsible for development and implementation of the BMP Plan.

c. Establish specific best management practices to meet the objectives

identified in Part 3 this section, addressing each component or system capable of generating or causing a release of significant amounts of pollutants, and identifying specific preventative or remedial measures to be implemented.

d. Establish specific best management practices or other measures which ensure that the following specific requirements are met:

(1) Ensure proper management of solid and hazardous waste in accordance with regulations promulgated under the Resource Conservation and Recovery Act (RCRA) and the Alaska Solid Waste Management Regulations (18 AAC 60). Management practices required under RCRA regulations shall be referenced in the BMP Plan.

(2) Reflect requirements within Oil Spill Contingency Plans required by the Minerals Management Service (*see* 30 CFR 254). Permittees in state waters must also reflect the requirements within Oil Discharge Prevention and Contingency Plans as required by ADEC. Permittees may incorporate any part of such plans into the BMP Plan by reference.

(3) Reflect requirements for storm water control under Section 402(p) of the Act and the regulations at 40 CFR 122.26 and 122.44, and otherwise eliminate to the extent practicable, contamination of storm water runoff.

(4) Reflect the development and implementation of the Mud Plan (*see Part III.B.1.b.*) for the formulation and control of drilling mud systems.

5. *Documentation*. The Permittee shall maintain a copy of the BMP Plan at the facility and shall make the plan available to EPA upon request. All offices of the Permittee which are required to maintain a copy of the NPDES permit shall also maintain a copy of the BMP Plan.

6. *BMP Plan Modification*. The Permittee shall amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of pollutants or their release or potential release to the receiving waters. The Permittee shall also amend the Plan, as appropriate, when plant operations covered by the BMP Plan change. Any such changes to the BMP Plan shall be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan shall be reviewed by the plant engineering staff and plant manager and shall be reported to EPA in writing.

7. *Modification for Ineffectiveness*. At any time, if the BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of pollutants and their release and potential release to the receiving waters and/or the specific requirements above, the permit and/or the BMP Plan shall be subject to modification to incorporate revised BMP requirements.

IV. Recording and Reporting Requirements

A. Reporting of Monitoring Results

The Permittee shall summarize monitoring results each month on the Discharge Monitoring Report (DMR) form (EPA No. 3320–1). The Permittee shall submit reports monthly, postmarked by the 10th day of the following month. The Permittee shall sign and certify all DMRs, and all other reports, in accordance with the requirements of *Part VI.D.* of this permit ("*Signatory Requirements*").

The Permittee shall submit the legible originals of these documents to the Director, Water Division, with copies to ADEC, at the following addresses:

United States Environmental Protection
Agency, Region 10, 1200 Sixth
Avenue, WD–135, Seattle,
Washington 98101

Alaska Department of Environmental
Conservation, Attn: Water Quality &
Wastewater Programs, 411 W. 4th
Ave., suite 2C, Anchorage, Alaska
99501.

B. Additional Monitoring by Permittee

If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the Permittee shall include the results of this monitoring in the calculation and reporting of the data submitted in the DMR. The Permittee shall indicate on the DMR whenever it has performed additional monitoring, and shall explain why it performed such monitoring.

Upon request by the Director, the Permittee shall submit results of any other sampling, regardless of the test method used.

C. Records Contents

All effluent monitoring records shall bear the hand-written signature of the person who prepared them. In addition, all records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The names of the individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The names of the individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

D. Retention of Records

The Permittee shall retain records of all monitoring information, including, but not limited to, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the Director at any time.

A copy of the final permit shall be maintained at the drilling site.

E. Twenty-four Hour Notice of Noncompliance Reporting

1. The Permittee shall report the following occurrences of noncompliance by telephone within 24 hours from the time the Permittee becomes aware of the circumstances:

a. Any noncompliance that may endanger health or the environment;

b. Any unanticipated bypass that results in or contributes to an exceedance of any effluent limitation in the permit (*see Part V.G., "Bypass of Treatment Facilities"*);

c. Any upset that results in or contributes to an exceedance of any effluent limitation in the permit (see *Part V.H., "Upset Conditions"*); or

d. Any violation of a maximum daily discharge limitation for any of the pollutants listed in the permit .

2. The Permittee shall also provide a written submission within five days of the time that the Permittee becomes aware of any event required to be reported under subpart 1 above. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Dteps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

e. The results of any monitoring data required under Paragraph III.C., above.

3. The Director may, at her or his sole discretion, waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the

Water Compliance Section in Seattle, Washington, by telephone, (206) 553–1846.

4. Reports shall be submitted to the addresses in *Part IV.A.* (*"Reporting of Monitoring Results"*).

F. Other Noncompliance Reporting

The Permittee shall report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for *Part III.A.* are submitted. The reports shall contain the information listed in *Part IV.E.2.* of this permit.

G. Changes in Discharge of Toxic Substances

The Permittee shall notify the Director as soon as it knows, or has reason to believe:

1. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 µg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

V. Compliance Responsibilities

A. Duty to Comply

The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Permittee shall give reasonable advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. *Civil and Administrative Penalties.* Sections 309(d) and 309(g) of the Act provide that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil or administrative penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties:

a. *Negligent Violations.* Section 309(c)(1) of the Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. *Knowing Violations.* Section 309(c)(2) of the Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. *Knowing Endangerment.* Section 309(c)(3) of the Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person that is an organization shall be subject to a fine of not more than $1,000,000.

d. *False Statements.* Section 309(c)(4) of the Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in *Part V.G.*, (*"Bypass of Treatment Facilities"*) and *Part V.H.*, (*"Upset Conditions"*), nothing in this permit shall be construed to relieve the Permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of water and wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters, except as specifically authorized in Part II.

G. Bypass of Treatment Facilities

1. *Bypass not exceeding limitations.* The Permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.

2. Notice.

a. *Anticipated bypass.* If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. *Unanticipated bypass.* The Permittee shall submit notice of an unanticipated bypass as required under *Part IV.E.* (*"Twenty-four Hour Notice of Noncompliance Reporting"*).

3. Prohibition of bypass.

a. Bypass is prohibited, and the Director may take enforcement action against the Permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment shall have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The Permittee submitted notices as required under paragraph 2 of this Part.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this Part.

H. Upset Conditions

1. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the Permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. *Demonstration of an upset.* To establish the affirmative defense of upset, the Permittee shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the Permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The Permittee submitted notice of the upset as required under *Part IV.E., Twenty-four Hour Notice of Noncompliance Reporting;* and

d. The Permittee complied with any remedial measures required under *Part V.D., Duty to Mitigate.*

3. Burden of proof. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

J. Planned Changes

The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under *Part IV.G.*

The Permittee shall give notice to the Director as soon as possible of any planned changes in process or chemical use whenever such change could significantly change the nature or increase the quantity of pollutants discharged.

K. Anticipated Noncompliance

The Permittee shall also give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

VI. General Provisions

A. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

B. Duty To Provide Information

The Permittee shall furnish to the Director, within the time specified in the request, any information that the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

C. Other Information

When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to the Director, it shall promptly submit the omitted facts or corrected information.

D. Signatory Requirements

All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director, and

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company.

3. *Changes to authorization.* If an authorization under *Part VI.D.2.* is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph *VI.D.2.* must be submitted to the Regional Administrator prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. *Certification.* Any person signing a document under this Part shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Availability of Reports

Except for data determined to be confidential under 40 CFR 2, all reports prepared in accordance with this permit shall be available for public inspection at the offices of the state water pollution control agency and the Director. As required by the Act, permit applications, permits, Best Management Practices Plans, Mud Plans, and effluent data shall not be considered confidential.

F. Inspection and Entry

The Permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

G. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under Section 311 of the Act.

H. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

I. Severability

The provisions of this permit are severable. If any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

J. Transfers

This permit may be automatically transferred to a new Permittee if:

1. The current Permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new Permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The Director does not notify the existing Permittee and the proposed new Permittee of his or her intent to modify, or revoke and reissue the permit.

If the notice described in paragraph 3 above is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2 above.

K. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

L. Reopener Clause

1. This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act, as amended, if the effluent standard, limitation, or requirement so issued or approved:

a. Contains different conditions or is otherwise more stringent than any condition in the permit; or

b. Controls any pollutant or disposal method not addressed in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

2. This permit may be reopened to adjust any effluent limitations if future water quality studies, waste load allocation determinations, or changes in water quality standards show the need for different requirements.

VII. Definitions

1. "AAS" means atomic absorption spectrophotometry.

2. "Acute toxic unit (TU_a)" is a measure of acute toxicity. The number of acute toxic units in the effluent is calculated as 100/LC50, where the LC50 is measured in percent effluent.

3. "ADEC" means the Alaska Department of Environmental Conservation.

4. "Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

5. "Ballast water" means harbor or seawater added or removed to maintain the proper ballast floater level and ship draft.

6. "bbl/hr" means barrels per hour. One barrel equals 42 gallons.

7. "Bilge water" means water which collects in the lower internal parts of the drilling vessel hull.

8. "Biocide" means any chemical agent used for controlling the growth of or destroying nuisance organisms (e.g., bacteria, algae, and fungi).

9. "Blowout preventer fluid" means fluid used to actuate hydraulic equipment on the blowout preventer.

10. "BOD" means biochemical oxygen demand.

11. "Boiler blowdown" means the discharge of water and minerals drained from boiler drums.

12. "Bulk discharge" means the discharge of more than 100 barrels in a one-hour period.

13. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

14. "Cd" means cadmium.

15. "Chronic toxic unit (TU_c)" is a measure of chronic toxicity. The number of chronic toxic units in the effluent is calculated as 100/NOEC, where the NOEC is measured in percent effluent.

16. "COD" means chemical oxygen demand.

17. "Completion fluid" means salt solutions, weighted brines, polymers, and various additives used to prevent damage to the wellbore during operations which prepare the drilled well for hydrocarbon production.

18. "Composite sample" for oil and grease analysis means a set of four individual grab samples taken a minimum of two hours apart within a 24-hour period. The samples shall be of equal size and of not less than 100 ml each. They shall be collected and stored

in accordance with procedures in 40 CFR 136. Samples shall be analyzed separately and the results of the four analyses averaged to provide a single value for the composite sample.

19. "Cooling water" means once-through non-contact cooling water.

20. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

21. "Deck drainage" means all waste resulting from platform washings, deck washings, spillage, rainwater, and runoff from curbs, gutters, and drains including drip pans and wash areas within facilities subject to this permit.

22. "Desalination unit wastes" means wastewater associated with the process of creating freshwater from seawater.

23. "Development" operations are those operations that are engaged in the drilling and completion of production wells. These operations may occur prior to or simultaneously with production operations.

24. "Diesel oil" means the grade of distillate fuel, as specified in the American Society for Testing and Materials Standard Specifications D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids, which contains a number of toxic pollutants. For the purpose of this permit, "diesel oil" includes the fuel oil present at the facility.

25. "Director" means the Regional Administrator or delegated authority for administration of the NPDES program in EPA, Region 10.

26. "Domestic wastes" means materials discharged from showers, sinks, safety showers, eye-wash stations, hand-wash stations, fish-cleaning stations, galleys and laundries.

27. "Drill cuttings" means particles generated by drilling into subsurface geological formations and carried to the surface with the drilling fluid.

28. "Drilling fluid" means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspended medium for solids, whether or not oil is present. See also "oil-based drilling mud", below.

29. "Drilling Fluids Toxicity Test" means a toxicity test conducted and reported in accordance the following approved toxicity test methodology: "Drilling Fluids Toxicity Test," as defined in Appendix 2 to Subpart A of 40 CFR 435, or other methods approved in advance by Region 10 that produce results which will assure equivalent protection levels.

30. "Drilling mud" means any fluid sent down the hole, including any specialty products, from the time a well is begun until final cessation of drilling in that hole. It also includes fluids used in workover operations involving drilling. A water-base drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. For the purposes of this permit, an oil-based drilling fluid has a petroleum-based hydrocarbon oil as its continuous phase with water as the dispersed phase. See "oil-based drilling mud", below.

31. "Excess cement slurry" means the excess cement and wastes from equipment washdown after a cementing operation.

32. "Exploratory" operations are limited to those operations involving drilling to determine the nature of potential hydrocarbon reserves and does not include drilling of wells once a hydrocarbon reserve has been defined. Discharges from exploratory operations are limited to five wells per site.

33. "Fire control system test water" means the water released during the training of personnel in fire protection and the testing and maintenance of fire protection equipment.

34. "GC" means gas chromatography. "GC/MS" means gas chromatography/mass spectrometry.

35. A "Grab" sample is a single sample or measurement taken at a specific time or over as short a period of time as is feasible.

36. "Hg" means mercury.

37. "lb/bbl" means pounds per barrel.

38. "LC_{50}" means the concentration of effluent that is acutely toxic to 50 percent of the test organisms exposed.

39. "Maximum daily discharge limitation" means the highest allowable "daily discharge."

40. "Maximum hourly rate" as applied to drilling mud, cuttings, and washwater means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

41. "Method Detection Limit (MDL)" means the minimum concentration of an analyte that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero as determined by a specific laboratory method.

42. "MGD" means million gallons per day.

43. "mg/kg" means milligrams per kilogram.

44. "mg/l" means milligrams per liter.

45. "Mineral oil" means a class of low volatility petroleum product, generally of lower aromatic hydrocarbon content and lower toxicity than diesel oil.

46. "Mineral oil pills" (also called mineral oil spots) are formulated and circulated in the mud system as a slug in attempt to free stuck pipe. Pills generally consist of two parts: a spotting compound and mineral oil.

47. "Minimum daily" discharge limitation means the lowest allowable "daily discharge.

48. "Monitoring month" means the period consisting of the calendar weeks which end in a given calendar month.

49. "Monthly average" means the average of "daily discharges" over a monitoring month, calculated as the sum of all "daily discharges" measured during a monitoring month divided by the number of "daily discharges" measured during that month.

50. "MSD" means marine sanitation device.

51. "Muds, cuttings, cement at sea floor" means the materials discharged at the surface of the ocean floor in the early phases of drilling operations, before the well casing is set, and during well abandonment and plugging.

52. "NAA" means neutron activation analysis.

53. "No discharge of free oil" means that waste streams may not be discharged when they would cause a film or sheen upon or a discoloration of the surface of the receiving water or fail the static sheen test defined in Appendix 1 to 40 CFR 435, Subpart A.

54. "No discharge of diesel oil" in drilling mud means a determination that diesel oil is not present based on a comparison of the gas chromatogram from an extract of the drilling mud and from diesel oil obtained from the drilling rig or platform. GC/MS may also be used.

55. "NOEC" means no observable effect concentration. The NOEC is the highest tested concentration of an effluent at which no adverse effects are observed on the test organisms at a specific time of observation.

56. "Non-contact cooling water"—see "cooling water."

57. "Oil-based drilling mud" means a drilling mud with fossil-derived petroleum hydrocarbons as the continuous phase.

58. "Open water" means less than 25 percent ice coverage within a one mile radius of the discharge site.

59. "Produced solids" means sands and other solids deposited from produced water which collect in vessels and lines and which must be removed to maintain adequate vessel and line capacities

60. "Produced water" means fluid extracted from a hydrocarbon reserve during development or production. The fluid is generally a mixture of oil, water, and natural gas. This may include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

61. "Production" operations are those operations involving active recovery of hydrocarbons from production formations. These operations may occur simultaneously with or following development operations.

62. "Sanitary wastes" means human body waste discharged from toilets and urinals.

63. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

64. "Site" means the single, specific geographical location where a mobile drilling facility (jackup rig, semi-submersible, or arctic mobile rig) conducts its activity, including the area beneath the facility, or to a location of a single gravel island.

65. "Slush ice" occurs during the initial stage of ice formation when unconsolidated individual ice crystals (frazil) form a slush layer at the surface of the water column.

66. "Stable ice" means ice that is stable enough to support discharged muds and cuttings.

67. "Static Sheen Test" means the standard test procedures that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in Appendix 1 to Subpart A of 40 CFR 435.

68. "Test fluid" means the discharge which would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content. This would consist of fluids sent downhole during testing along with water from the formation.

69. "TOC" means total organic carbon.

70. A "24-hour composite" sample shall mean a flow-proportioned mixture of not less than 8 discrete aliquots. Each aliquot shall be a grab sample of not less than 100 ml and shall be collected and stored in accordance with procedures prescribed in the most recent edition of *Standard Methods for the Examination of Water and Wastewater.*

71. "Unstable or broken ice conditions" means greater than 25% ice coverage within a one mile radius of the discharge site after spring breakup or after the start of slush ice formation in the fall, but not stable ice.

72. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

73. "Waste stream" means any non-de minimus stream of pollutants within the Permittee's facility that enters any permitted outfall or navigable waters. This includes spills and other unintentional, non-routine or unanticipated discharges.

74. "Waterflooding discharges" means discharges associated with the treatment of seawater prior to its injection into a hydrocarbon-bearing formation to improve the flow of hydrocarbons from production wells. These discharges include strainer and filter backwash water, and treated water in excess of that required for injection.

75. "Weekly average" means the average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. For fecal coliform bacteria, the weekly average is calculated as the geometric mean of all daily discharges measured during a calendar week.

76. "Well completion fluids" are salt solutions, weighted brines, polymers and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water.

77. A "well treatment fluid" is any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon bearing strata after a well has been drilled.

78. "Workover fluids" are salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair of abandonment procedures. Drilling fluids used during workover operations are not considered workover fluids by definition. Packer fluids (low solid fluids between the packer, production string, and well casing) are considered to be workover fluids.

79. "XFA" means x-ray fluorescence analysis.

80. "96-hour LC50" means the concentration of a test material that is lethal to 50 percent of the test organisms in a toxicity test after 96 hours of constant exposure.

81. "µg/l" means micrograms per liter.

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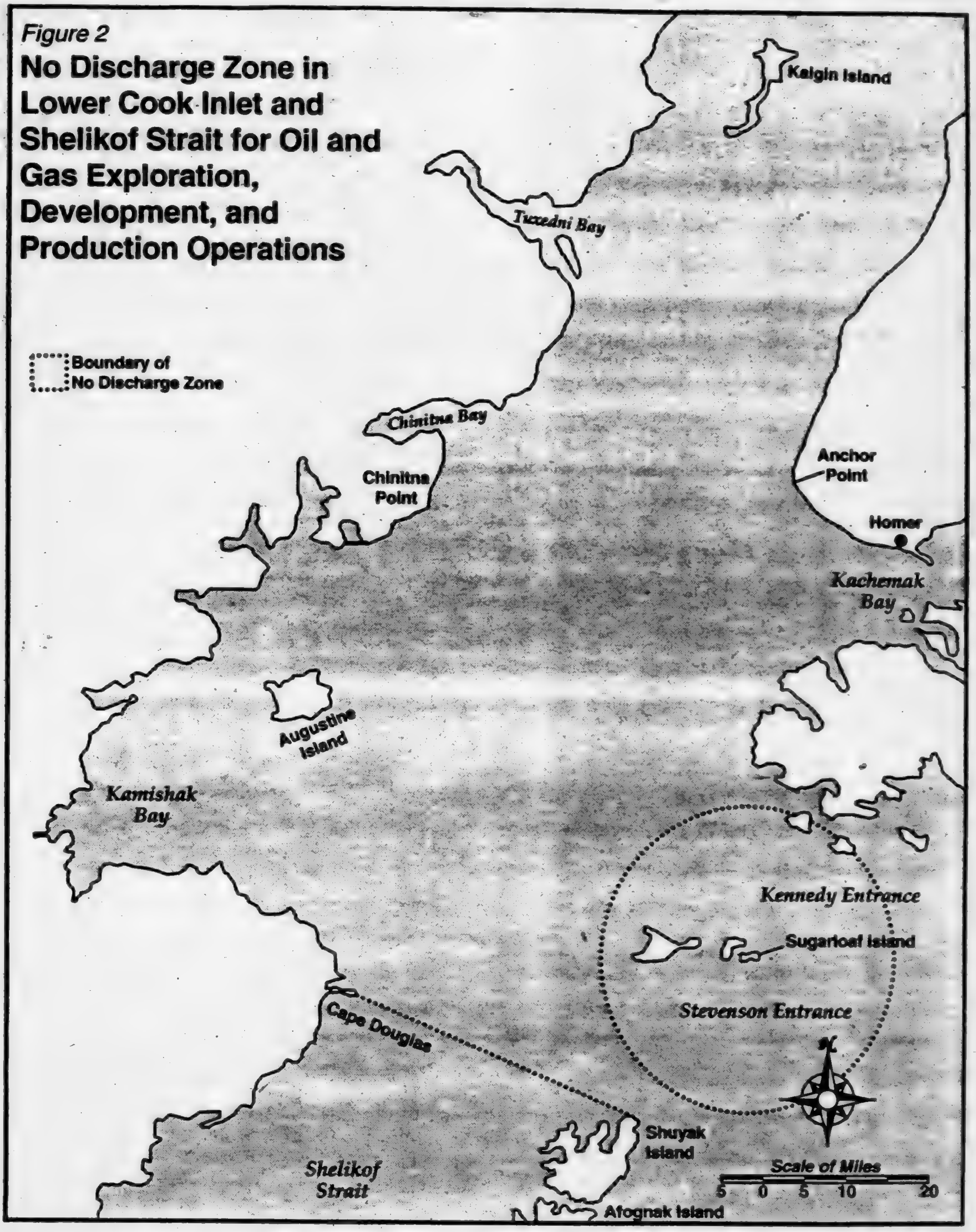

Figure 2

No Discharge Zone in Lower Cook Inlet and Shelikof Strait for Oil and Gas Exploration, Development, and Production Operations

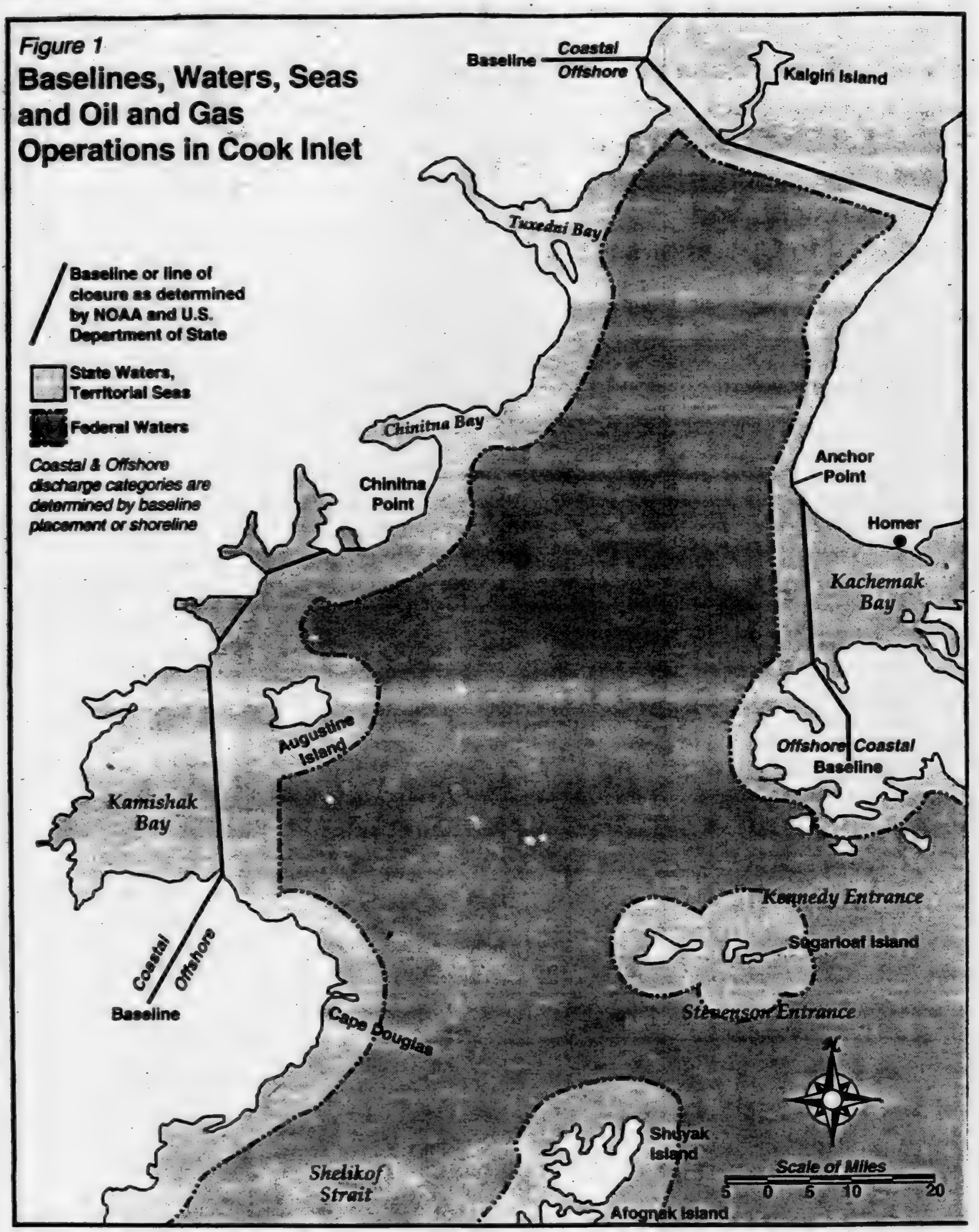
Figure 1
Baselines, Waters, Seas and Oil and Gas Operations in Cook Inlet
Baseline or line of closure as determined by NOAA and U.S. Department of State
State Waters, Territorial Seas
Federal Waters
Coastal & Offshore discharge categories are determined by baseline placement or shoreline
Baseline
Coastal
Offshore
Kalgin Island
Tuxedni Bay
Chinitna Bay
Chinitna Point
Anchor Point
Homer
Kachemak Bay
Augustine Island
Kamishak Bay
Offshore
Coastal
Baseline
Kennedy Entrance
Sugarloaf Island
Stevenson Entrance
Coastal
Offshore
Baseline
Cape Douglas
Shuyak Island
Shelikof Strait
Afognak Island
Scale of Miles
5 0 5 10 20
N

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References

1. EPA Form 3510–2C, Wastewater Discharge Information, Consolidated Permits Program (revised 2/85).

2. State of Alaska. State of Alaska Game Refuges, Critical Habitat Areas, and Game Sanctuaries, Alaska Department of Fish and Game, Habitat Division. March 1991.

3. EPA. Drilling Fluids Toxicity Test. Appendix 2 to Subpart A of 40 CFR Part 435.

4. EPA. Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings. CENTEC 1985.

5. EPA. Approved Methodology: Laboratory Sheen Tests for the Offshore Subcategory, Oil and Gas Extraction Industry. Appendix 1 to Subpart A of 40 CFR Part 435.

6. EPA. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms (2nd edition). EPA/600/4–90/003.

7. Chapman, Gary, and Denton, Debra. Standard Practice for Conducting Static Acute Toxicity Tests With Larvae of Four Species of Bivalve Molluscs. Designation: E 724–89. ASTM 1989.

8. EPA. Toxicity Reduction Evaluation Protocol for Industrial Treatment Plants. EPA/600/2–88/070.

9. EPA. Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluent, Phase I. EPA/600/6–91/005F.

10. EPA. Methods for Aquatic Toxicity Identification Evaluations: Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity. EPA/600/R–92/080.

11. EPA. Methods for Aquatic Toxicity Identification Evaluations: Phase III Toxicity Confirmation Procedures. EPA/600/R–92/081.

[FR Doc. 95–23207 Filed 9–19–95; 8:45 am]

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federal register

Wednesday
September 20, 1995

Part VI

Department of Education

34 CFR Part 75
Direct Grant Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA61

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) governing the deadline date for submitting discretionary grant award applications and the selection of applications for new grants. These amendments are in response to a National Performance Review recommendation to streamline and improve the Department of Education's discretionary grants award process. The amendments would change the way the Department interprets the deadline date for receipt of discretionary grant applicationsand also expand the bases for rejecting applications for new grants to include consideration of a recipient's previous performance under any Department of Education grant program as well as its failure to submit a final performance report or its submission of a report of unacceptable quality. These amendments are expected to reduce the processing time of discretionary grants, provide at least as much time for applicants to prepare their applications as they have now, improve the quality of final performance reports and increase the ability of the Department to ensure that qualified applicants receive grants.

DATES: Comments must be received on or before November 20, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mary P. Liggett, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3636, ROB–3, Washington, D.C. 20202–4700. Comments may also be sent through Internet to Dead_Line@ed.gov.

FOR FURTHER INFORMATION CONTACT: Ronelle Holloman, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3636, ROB–3, Washington, D.C. 20202–4700. Telephone: (202) 205–3501. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In December 1993 the National Performance Review (NPR) issued its Accompanying Report for the Department of Education. The Accompanying Report included recommendations to streamline and improve the Department of Education's discretionary grants award process. One of the areas identified as a concern was the grant application review process. The discretionary grants process, including proposal preparation time, takes approximately 26 weeks. Of these 26 weeks, six to eight weeks are allowed for the grant applicant to develop a proposal. The remaining time is used by the Department to process and award discretionary grants. Under the current rule, applications must be postmarked or hand delivered to the Department by the deadline date. The NPR recommended the Department change this rule so that all applications must be received in the Department by the deadline date, as is already the case for contract proposals, unless certain circumstances exist.

Consistent with the governmentwide requirement for contracts, there will be certain reasonable exceptions to this standard. For instance, under this proposed regulation, a grant application may be accepted after the deadline if it carries a legible proof-of-mailing date assigned by the U.S. Postal Service or a commercial carrier, which shows the application was mailed not later than the fifth calendar day (for applications sent by mail) or the second calendar day (for applications sent by commercial carrier) before the date specified for receipt of applications.

The new regulation would require an applicant to send its application by mail or commercial carrier to the Department earlier than is now required. However, the Department would add the review time saved by the new procedures to the time that applicants have to prepare applications by increasing the time between publication of the program announcement and the deadline date.

The NPR report also identified the failure to receive final performance reports once Federal funds are spent as a priority issue to be addressed in the grant process. The final performance report is due within 90 days after the completion of a grant and provides the Department the opportunity to review a project in its entirety for its strengths and accomplishments. Additionally, the final step in managing a grant, 'grant closeout,' cannot begin without the final report. The Department begins to officially close out a grant after the expiration or termination of the grant. During closeout, the Department determines whether all required work of a grant project has been completed and Federal funds have been properly accounted for. In addition to providing the Department with conclusive information about the achievements of a project, these missing performance reports contain valuable information on ways to raise education standards and further improve education. These reports, if received, could be disseminated and successful project activities replicated.

The recommendation of the NPR is to amend the regulations to allow the Secretary of Education, when making future funding decisions, to consider a recipient's past performance under any Department program, including the failure to submit a final performance report or the submission of a report of unacceptable quality. Currently, the Department can only consider an applicant's performance under the program from which it is seeking a new grant. Therefore, a recipient could, under the Department's current regulations, misuse Federal monies or perform poorly under one program, and still be considered for funding under another program.

So that the proposed regulations do not impede the Department's goal of awarding timely FY 1995 discretionary grants, they would not take effect until FY 1996 competitions.

Executive Order 12866

Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Department's programs effectively and efficiently. As stated under the heading Paperwork Reduction Act of 1995 in this preamble, this proposed rule contains no paperwork burdens.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential

costs or increase potential benefits resulting from these proposed regulations.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. For the most part these revisions are adopted to streamline and improve the discretionary grant process. The proposed revisions would not have a significant economic impact on the entities affected.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3636, Regional Office Building No. 3, Seventh and D Streets S.W., Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Education department, Discretionary grant programs—education, Continuation funding, Grant administration, Incorporation by reference, Reporting and recordkeeping requirements, Performance reports, Unobligated funds.

Dated: July 20, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary proposes to amend part 75 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.102 is amended by revising paragraphs (a) and (b) and adding new paragraph (c), to read as follows:

§ 75.102 Deadline date for applications.

(a) The application notice for a program sets a deadline date for applications to be received in the Department.

(b) (1) The Department of Education only accepts a direct grant application if it is received on or before the deadline date unless one of the exceptions in paragraph (c) of this section applies.

(2) If an applicant hand delivers a direct grant application to the Department, the applicant shall deliver the application to the address specified in the application notice by 2:00 p.m. (Washington, D.C., time) on the deadline date.

(c) The Department accepts a direct grant application received after the deadline date only if—

(1) The applicant can show proof that the application was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., if an announcement requires receipt of applications by the 20th of the month, the late application must have been mailed by the 15th); or

(2) The applicant can show proof that the application was sent by commercial carrier not later than the second calendar day before the date specified for receipt of applications (e.g., if an announcement requires receipt of applications by the 20th of the month, the late application must have been sent by the 18th).

* * * * *

3. Section 75.103 is amended by revising paragraph (b) to read as follows:

§ 75.103 Deadline date for preapplications.

* * * * *

(b) An applicant shall submit its preapplication in accordance with the procedures for applications in § 75.102 (b), (c), and (d).

* * * * *

4. Section 75.158 is amended by revising paragraph (c) to read as follows:

§ 75.158 Deadlines for State comments.

* * * * *

(c) The appropriate State official shall submit comments to the Secretary by the deadline date for State comments. The procedures in § 75.102 (b), (c), and (d) (how to meet a deadline) of this part apply to this submission.

* * * * *

5. Section 75.217 is amended by revising paragraph (d)(3) to read as follows:

§ 75.217 How the Secretary selects applications for new grants.

* * * * *

(d) * * *

(3) Any other information—

(i) Relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants;

(ii) Concerning the applicant's performance and use of funds under a previous award under any Department program; and

(iii) Concerning the applicant's failure under any Department program to submit a performance report or submission of a performance report of unacceptable quality.

* * * * *

[FR Doc. 95–23301 Filed 9–19–95; 8:45 am]

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federal register

Wednesday
September 20, 1995

Part VII

Department of Education

34 CFR Part 685
William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC19

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to amend provisions of the income contingent repayment plan under the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The Secretary is amending these provisions to provide benefits to borrowers and protect the taxpayers' interests.

DATES: Comments on the proposed regulations must be received on or before October 31, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Rachel Edelstein, U.S. Department of Education, P.O. Box 23272, Washington, D.C. 20026–3272. Comments may also be sent via the internet to: direct ____ loans@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Edelstein, telephone: (202) 708–9406. (Internet address: direct __loans@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1994, the Secretary published final regulations that included provisions for the income contingent repayment plan during Year One of the Direct Loan Program. The Higher Education Act of 1965, as amended (HEA), directed the Secretary, to the extent practicable, to develop proposed rules for the Direct Loan Program through a negotiated rulemaking process for the second and subsequent years of the program (1995–1996 and beyond). Therefore, following negotiated rulemaking, the Secretary published a Notice of Proposed Rulemaking on August 18, 1994, and final regulations on December 1, 1994, both of which included new provisions for the income contingent repayment plan of the Direct Loan Program. On December 22, 1994, the Secretary published regulations that revised the July 1, 1994, regulations to provide that provisions for income contingent repayment would be identical for Year One and Year Two of the Direct Loan Program. After a year of administering the Direct Loan Program, the Secretary proposes to make improvements to the existing income contingent repayment plan.

Provisions Proposed

These proposed regulations include policies and procedures that would apply to borrowers who initially select the income contingent repayment plan under the Director Loan Program when they enter repayment on or after July 1, 1996 and borrowers who switch into the income contingent repayment on or after July 1, 1996. To improve the existing income contingent repayment plan, the Secretary proposes the following: To revise the income contingent repayment formula so that payments will increase more significantly as debt increases than under the current formula; to eliminate the minimum payment amount currently allowed under regulations so that more borrowers will be in the habit of repaying regularly; to alter the treatment of married borrowers when calculating the repayment amount by always including the income of the borrower and the borrower's spouse so that the Secretary may more accurately assess the married borrower's ability to repay; and to require alternative documentation of income for most borrowers in their first and second years of repayment, because, for most of these borrowers, the previous year's adjusted gross income (AGI) will not accurately reflect current income.

Summary of Contents

Revised Repayment Formula

After administering the current income contingent loan repayment plan, the Secretary is proposing several ways to improve the repayment formula. The Statement of Managers language included in the Conference Report on the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) stated that payments should generally be directly proportional to the amount borrowed in order to discourage over-borrowing. The current income contingent repayment plan increases borrowers' payments by only 0.2 percent of income per $1,000 borrowed; therefore, increased borrowing affects monthly repayment amounts only negligibly. For example, a student who has borrowed $5,000 could continue to borrow until his or her loan balance reaches almost six times that amount ($29,000) before the repayment amount doubles, and almost 11 times that amount ($53,000) before the repayment amount triples. Because payments do not increase significantly with the amount borrowed, the Secretary believes the current income contingent repayment plan may encourage over-borrowing.

Under the proposed formula, borrowers' payments would equal the 12-year amortization repayment amount for their outstanding loans multiplied by an income percentage factor that varies with annual income; however, borrowers would never pay more than 20 percent of their discretionary income. Discretionary income for single borrowers and single head of household borrowers is defined as adjusted gross income (AGI) minus $7,087; discretionary income for married borrowers is AGI minus $8,517. Therefore, under the revised formula, no payment will be required of single borrowers or single head of household borrowers with incomes of $7,087 or less, and no payments will be required of married borrowers with income of $8,517 or less. The Secretary believes that the threshold income levels discussed above are reasonable measures for determining discretionary income.

Except for the protection that borrowers never pay more than 20 percent of their discretionary income under the proposed formula, the formula increases payment amounts directly in proportion to the amount borrowed. Therefore, payments required under the proposed formula increase more significantly in relation to amounts borrowed than under the current formula, and this proposed plan is more likely to discourage over-borrowing than the current plan.

Under the current formula, payments are a flat percentage of income for any given debt. Thus, as annual income rises from $10,000 to $100,000, the expected repayment amount increases by a factor of 10. This variance is too wide and results in a plan that is not useful for many borrowers because the monthly repayment amount is too large for higher income borrowers. The Secretary believes that it would be more

appropriate to structure a plan so that, for any given debt level, the highest repayment amounts should be no more than four times the lowest payments for most borrowers.

Because the new formula uses a factor relative to income and takes debt into greater consideration, payments are no longer a flat percentage of income. Under the proposed plan, while payments increase significantly in relation to amounts borrowed, the highest repayment amount at any debt level is no more than four times the lowest payment for that debt level. Limiting the variance in repayment amounts results in some borrowers at higher income levels repaying a smaller percentage of total income than borrowers at lower income levels with the same level of debt; however, the borrowers with higher income levels will make larger monthly payments than the borrowers with lower income levels. The income percentage factors ensure that payments increase with income, that borrowers pay what they can afford to pay, and that borrowers repay their loans within a reasonable period of time.

Under the existing income contingent repayment plan, borrowers choose between two repayment formulas. The choice of two repayment calculation options may have confused borrowers. In addition, under one of these options, the "capped amount," borrowers repay under an income contingent repayment plan that does not take income into account. Under the proposed plan, there is only one repayment formula. This change would reduce borrower confusion and simplify administration of the income contingent repayment plan.

In addition to the improvements listed above, for many low- to middle-income borrowers the proposed formula plan offers lower monthly payment amounts. For borrowers with annual incomes between $15,000 and $35,000 and average levels of debt, the revised repayment formula offers lower monthly repayment amounts than the current plan. However, the proposed formula does not significantly increase the number of borrowers who have not paid in full after 25 years. In fact, for medium- and high-income borrowers, who represent 75 percent of total borrowers, the percentage who repay within 25 years increases.

Finally, the current plan has been criticized for allowing borrowers to make monthly payments that are less than interest accrued (that is, borrowers may go into negative amortization). Recognizing that borrowers cannot always afford to make payments to cover interest, the Secretary also understands the importance of avoiding negative amortization whenever possible. Under the proposed plan, the overall percentage of borrowers who experience a period of negative amortization is expected to decrease slightly.

Examples of the calculation of monthly repayment amounts, together with tables showing the repayment amounts for borrowers at various income and debt levels, are included in Appendix A to the regulations.

Minimum Payments

Under the current plan, borrowers with a calculated monthly payment below $15 are not required to make any payment. The Secretary proposes to change this provision. Instead, all borrowers with a calculated repayment amount greater than zero would be required to make payments. Further, the Secretary proposes requiring borrowers with a calculated repayment amount that is at least 1 cent but less than $2.00 to make a two dollar payment. The Secretary believes that removing the minimum payment threshold promotes responsible repayment practices. Even if borrowers are required to repay only a small amount each month, this requirement will ensure that borrowers are in the habit of repaying and remain in contact with the Direct Loan Servicing Center. Under this approach, borrowers with very low incomes may still have a calculated monthly payment of zero.

The Secretary also requests comments on establishing a policy whereby borrowers who are repaying under the income contingent repayment plan (and who are not in deferment or forbearance) would always make a monthly payment, even if their calculated monthly repayment amount is $0. The Secretary solicits comments and supporting arguments on whether requiring monthly payments of all borrowers would promote responsible repayment practices and help to prevent defaults. The Secretary also solicits comments and supporting evidence about what an appropriate minimum repayment level would be, if one were to be required.

Treatment of Married Borrowers

Under the current regulations, a married borrower who files a Federal income tax return separately from his or her spouse is not required to provide any income information concerning his or her spouse (unless the spouses are repaying their loans jointly). The Secretary has determined that this policy may prevent an accurate assessment of the borrower's ability to repay the loan and may allow for uneven treatment of married borrowers, depending upon whether they file their income tax separately or jointly. Section 455(e)(3) of the HEA provides the Secretary with the authority to obtain additional information concerning a borrower's income when AGI does not reasonably reflect the borrower's income. Therefore, in order to assess accurately the borrower's ability to repay, the Secretary proposes requiring married borrowers who do not file joint tax returns with their spouses and who choose to repay under the income contingent repayment plan to obtain a consent to disclosure of tax information from their spouses. This policy will ensure that the Secretary obtains the AGI of both the borrower and the borrower's spouse; the couple's joint AGI will be used to calculate the borrower's repayment amount. However, the Secretary would not require a spouse's tax return information if the spouses are legally separated.

In addition, under the current regulations, for married borrowers who each have loans and who choose to repay their loans jointly under the income contingent repayment plan, the Secretary assumes that the AGI for each married borrower is proportionate to the relative size of the borrower's individual debt. The Secretary proposes to eliminate the assumption that the AGI for each married borrower is proportionate to debt in order to assess more accurately borrowers' ability to repay. Under the proposed repayment formula, the repayment amounts for married borrowers who repay jointly are based on their combined AGIs and their combined debts. A step-by-step calculation of a combined amount is included as Example 2 in Appendix A.

Married borrowers who each have outstanding balances on Direct Loans are not required to repay their loans jointly. However, even if only one borrower chooses to repay under the income contingent repayment plan, the Secretary will use the AGI of both spouses to determine the payback rate of the borrower who is repaying under the income contingent repayment plan.

Cohort of Borrowers Affected by New Plan

When these regulations become effective, this new formula will apply to borrowers who select the income contingent repayment plan when they enter repayment and to borrowers who are in other repayment plans and switch into the income contingent repayment plan on or after July 1, 1996. Borrowers who are already in repayment under the income contingent repayment plan will continue under the current formula, although they will be given the option of converting to the new formula.

Borrowers in Their First and Second Years of Repayment

The Secretary proposes requiring borrowers who are in their first and second years of repayment and who are repaying under the income contingent repayment plan to submit alternative documentation of their income (that is, other than IRS-reported AGI) to the Secretary, when, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income. Under current regulations, the previous year's IRS-reported AGI is used to calculate the monthly payment amount for all borrowers. However, borrowers in their first year of repayment have recently left school, and their incomes while in school were likely lower than their incomes after leaving school. Therefore, if these borrowers filed taxes while they were in school, the AGI representing the year prior to the year they entered repayment would not, in most cases, reflect their current income and their current ability to repay their loans. In addition, borrowers may need some time to find their first job after graduation. Therefore, the AGI the secretary would obtain for the borrower's second year of repayment still might not reflect current income. As discussed above, the HEA provides the Secretary with the authority to obtain additional information concerning a borrower's income when the AGI does not reasonably reflect the borrower's income (see section 455(e)(3) of the HEA). The Secretary believes that, for the majority of borrowers, the AGI will not accurately reflect a borrower's income or ability to repay during the first and second years of repayment. Therefore, the Secretary proposes to request alternative documentation of income from these borrowers under the statutory authority provided in the HEA, when, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this proposed regulatory action.

The plan does not impose unacceptable new costs; it would increase costs of the Federal Government by an estimated $145 million over 5 years. This increase in costs represents only a 2 percent increase in overall program costs. Costs increase under this proposed plan because low-income borrowers make lower payments than under the current formula and some do not fully repay; in addition, high-income high-debt borrowers repay their loans more quickly than under the current formula and, therefore, pay less in interest. Although not reflected in the cost estimate, this proposal may actually reduce long-term costs because under the income contingent repayment plan, defaults may decrease. Defaults may decrease because payments will be more affordable under the income contingent repayment plan than under other available repayment plans. The Secretary has determined that the potential costs associated with the proposed regulations are necessary for administering the income contingent repayment plan effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are explained elsewhere in the preamble under the heading of Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs. A further discussion of the benefits and costs of the proposed regulations is contained in the summary of the provisions proposed.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the title IV, HEA programs.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 685.209 *Income Contingent Repayment Plan.*) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in the understanding of the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW., (Room 5442 FOB–10), Washington, DC. 20202–2110.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The regulations will affect borrowers who are in repayment. They will not have a significant economic impact on any small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

Section 685.209 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information

Income Contingent Repayment Plan Consent to Disclosure of Tax Information form from spouses of married borrowers who file separately and select the income contingent repayment plan and collection of alternative documentation of income from borrowers in their first and second years of repayment, when in the opinion of the Secretary, AGI does not reasonably reflect a borrower's current income.

Married Borrowers

Under the current regulations, a married borrower who is not repaying jointly with his or her spouse is not required to provide any income information concerning his or her spouse unless the couple files their taxes jointly. The Secretary proposes requiring all spouses of married borrowers who choose to repay under income contingent repayment to complete the Income Contingent Repayment Plan Consent to Disclosure of Tax Information form. This policy will ensure that the Secretary obtains the AGI of both the borrower and the borrower's spouse and will enable to the Secretary to assess more accurately a borrower's ability to repay.

First and Second Year Borrowers

The Secretary proposes requiring borrowers who are in their first and second years of repayment and who are repaying under the Income Contingent Repayment Plan to complete the Income Contingent Repayment Plan Request of Alternative Documentation of Income Form when, in the Secretary's opinion, AGI does not reasonably reflect the borrower's current income.

Spouses of married borrowers would be required to provide consent to tax disclosure only once every five years. The Secretary estimates that all first and most second year borrowers would be required to provide alternative documentation of income annually, while in the first two years of repayment.

Annual public reporting burden for this collection of information is estimated to average .32 hours for each of the estimated 230,288 individuals providing information regarding Income Contingent Repayment Information (total annual reporting burden equals 73,692 hours).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4624, Regional Office Building 3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: September 13, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.268, William D. Ford Federal Direct Loan Program)

The Secretary proposes to amend Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*

2. Section 685.209 is amended by revising paragraphs (a) and (b); removing paragraph (c) and redesignating paragraph (d) as paragraph (c); in newly designated paragraph (c), redesignating paragraphs (c)(2) through (5) as (c)(4) through (7), respectively; and adding new paragraphs (c)(2) and (c)(3) to read as follows:

§ 685.209 Income contingent repayment plan.

(a) *Repayment amount calculation.* (1) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2) of this section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debt at the time they enter joint repayment.

(2) The annual amount payable under the income contingent repayment plan by a borrower is the lesser of—

(i) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's adjusted gross income (AGI) as shown in the income percentage factor table in Appendix A; or

(ii) 20 percent of discretionary income.

(3) For purposes of this section, *discretionary income* is AGI minus—

(i) For a single borrower, the lowest amount shown in the income percentage factor table in Appendix A for single borrowers;

(ii) For a single head of household borrower, the lowest amount shown in the income percentage factor table in Appendix A for head of household borrowers; or

(iii) For a married borrower, the lowest amount shown in the income percentage factor table in Appendix A for married borrowers.

(4) For exact incomes not shown in the income percentage factor table in

Appendix A, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(5) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, and the income percentage factors in Table A.

(6) For purposes of the annual recalculation described in paragraph (a)(4), after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the income contingent repayment plan.

(7) For each calendar year after calendar year 1996, the Secretary publishes in the **Federal Register** a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(8) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in Appendix A to this part.

(b) *Treatment of married borrowers.* (1) A married borrower who wishes to repay under the income contingent repayment plan and who has filed an income tax return separately from his or her spouse must provide his or her spouse's written consent to the disclosure of certain tax return information under paragraph (c)(5) of this section (unless the borrower is legally separated from his or her spouse). The AGI for both spouses is used to calculate the monthly repayment amount.

(2) Married borrowers may repay their loans jointly. The outstanding balance on the loans of each borrower are added together to determine the borrowers' payback rate under (a)(1) of this section.

(3) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(c) * * *

(2) *First and second year borrowers.* The Secretary requires alternative documentation of income from borrowers in their first and second years of repayment, when in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income.

(3) *Adjustments to repayment obligations.* The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

* * * * *

3. Appendix A to part 685 is revised to read as follows:

Appendix A Income Contingent Repayment

Examples of the Calculation of Monthly Repayment Amounts

Example 1. A single borrower with $12,500 of Direct Loans, 8.25 percent interest and an AGI of $25,000.

Step 1: Determine annual payments based on what the borrower would pay over 12 years using standard amortization. To do this, multiply the principal balance by the constant multiplier for 8.25% interest (0.1315452). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (See the constant multiplier chart below to determine the constant multiplier you should use for the interest rate on the loan. If the exact interest rate is not listed, choose the next highest rate for estimation purposes.)

- ■ 0.1315452×12,500=1,644.315

Step 2: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to the borrower's income (if the income is not listed, you can "interpolate" by following the instructions under the *interpolation* heading below):

- ■ 85.55% (0.8555)×1,644.315=1,406.7115

Step 3: Determine 20 percent of discretionary income. To do this, subtract the lowest income for single borrowers shown in the income percentage factor table from the borrower's income and multiply the result by 20%:

- ■ $25,000−$7,087=$17,913
- ■ $17,913×0.20=$3,582.60

Step 4: Compare the amount from *step 2* with the amount from *step 3.* The lower of the two will be the borrower's annual payment amount. This borrower will be paying the amount calculated under *step 2.* To determine the monthly repayment amount, divide the annual amount by 12.

- ■ 1,406.7115÷12=$117.23

Example 2. Married borrowers both repaying under the income contingent repayment plan with a combined Adjusted Gross income (AGI) of $30,000. The husband has a Direct Loan balance of $5,000, and the wife has a Direct Loan balance of $15,000.

Step 1: Add the Direct Loan balances of the husband and wife together to determine the aggregate loan balance.

- ■ $5,000+$15,000=$20,000

Step 2: Determine the annual payments based on what the couple would pay over 12 years using standard amortization. To do this, multiply the aggregate principal balance by the constant multiplier for 8.25% interest (0.1315452). (See the constant multiplier chart to determine the constant multiplier you should use for the interest rate on the loan. If the exact interest rate is not listed, choose the next highest rate for estimation purposes.)

- ■ 0.1315452×20,000=2630.904

Step 3: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to the couple's income (if the income is not listed, you can "interpolate" by following the instructions under the *interpolation* heading below):

- ■ 82.74% (0.8274)×2,630.904=2,176.80997

Step 4: Determine 20 percent of the couple's discretionary income. To do this, subtract the lowest income for married borrowers shown in the income percentage factor table from the couple's income and multiply the result by 20%:

- ■ $30,000−$8,517=$21,483
- ■ $21,483×0.20=$4,296.60

Step 5: Compare the amount from *step 3* with the amount from *step 4.* The lower of the two will be the annual payment amount. The married borrowers will be paying the amount calculated under *step 3.* To determine the monthly repayment amount, divide the annual amount by 12.

- ■ $2,176.80997÷12=$181.40

Interpolation: If your income does not appear on the income percentage factor table, you will have to calculate the income percentage factor through interpolation. For example, let's say you are single and your income is $26,000. To interpolate, you must first find the interval between the closest income listed that is less than $26,000 and the closest income listed that is greater than $26,000 (for this discussion, we'll call the result "the income interval"):

- ■ $27,122−$25,000=$2,122

Next, find the interval between the two income percentage factors that are given for these incomes (for this discussion, we'll call the result, the "income percentage factor interval"):

- ■ 88.77−85.55=3.22

Subtract the income shown on the chart that is immediately less than $26,000 from $26,000:

- ■ $26,000−$25,000=1,000

Divide the result by the number representing the income interval:

- ■ 1,000÷2,122=0.4713

Multiply the result by the income percentage factor interval:

- ■ 0.4713×3.22=1.52

Add the result to the lower income percentage factor used to calculate the income percentage factor interval for $26,000 in income:

- ■ 1.52+85.55=87.07%

INCOME PERCENTAGE FACTORS

[Based on annual income]

Single		Married		Head of Household	
Income	Percent factor	Income	Percent factor	Income	Percent factor
7,087	55.00	8,517	50.52	7,087	50.52
9,752	57.79	10,000	52.72	10,000	54.90
10,000	58.03	12,678	56.68	11,183	56.68
12,548	60.57	15,000	59.29	13,328	59.56
15,000	65.42	18,139	62.83	15,000	62.92
15,409	66.23	20,000	64.98	17,424	67.79
18,139	71.89	23,536	69.07	20,000	72.39
20,000	76.44	25,000	72.31	21,585	75.22
21,585	80.33	29,127	81.46	25,000	82.87
25,000	85.55	30,000	82.74	27,112	87.61
27,112	88.77	35,000	90.09	30,000	92.80
30,000	93.48	35,434	90.73	34,003	100.00
34,003	100.00	40,000	96.87	35,000	100.00
35,000	100.00	42,325	100.00	40,000	100.00
40,000	100.00	50,000	100.00	40,895	100.00
40,895	100.00	52.663	100.00	50,000	108.28
49,152	111.80	60,000	106.92	51,233	109.40
50,000	112.52	68,787	115.20	60,000	117.34
60,000	121.01	70,000	115.76	68,462	125.00
62,935	123.50	80,000	120.40	70,000	125.99
70,000	128.27	90,000	125.04	80,000	132.46
80,000	135.03	94,663	127.20	90,000	138.93
89,137	141.20	100,000	128.73	92,583	140.60
90,000	141.78	126,822	136.40	100,000	142.49
100,000	148.52	150,000	142.02	129,481	150.00
102,205	150.00	176,713	148.50	150,000	162.50
150,000	179.93	200,000	162.71	200,000	192.95
182,045	200.00	250,000	193.23	211,581	200.00
		261,096	200.00		

CONSTANT MULTIPLIER CHART

Interest Rate	7.00%	7.25%	7.43%	7.50%	7.75%	8.00%	8.25%	8.36%	8.50%	8.75%	9.00%
Annual Constant Multiplier	0.1234056	0.1250112	0.126174	0.1266276	0.1282546	0.129894	0.1315452	0.132408	0.1332072	0.123488	0.1365636

BILLING CODE 4000-01-M

Income Contingent Repayment Plan
Sample First-year Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels

	Initial Debt																							
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15
9,000	16	31	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32
10,000	16	32	48	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49
12,500	17	33	50	66	83	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90
15,000	18	36	54	72	90	108	126	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132
17,500	19	39	58	77	97	116	135	155	174	174	174	174	174	174	174	174	174	174	174	174	174	174	174	174
20,000	21	42	63	84	105	126	147	168	189	210	215	215	215	215	215	215	215	215	215	215	215	215	215	215
22,500	22	45	67	90	112	134	157	179	202	224	257	257	257	257	257	257	257	257	257	257	257	257	257	257
25,000	23	47	70	94	117	141	164	188	211	234	281	299	299	299	299	299	299	299	299	299	299	299	299	299
30,000	26	51	77	102	128	154	179	205	231	256	307	359	382	382	382	382	382	382	382	382	382	382	382	382
35,000	27	55	82	110	137	164	192	219	247	274	329	384	438	465	465	465	465	465	465	465	465	465	465	465
40,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	548	549	549	549	549	549	549	549	549	549
45,000	29	58	87	116	145	174	203	232	261	290	348	406	464	522	580	632	632	632	632	632	632	632	632	632
50,000	31	62	93	123	154	185	216	247	278	309	370	432	493	555	617	678	715	715	715	715	715	715	715	715
55,000	32	64	96	128	160	192	224	256	288	320	384	448	512	576	640	704	768	799	799	799	799	799	799	799
60,000	33	66	99	133	166	199	232	265	298	332	398	464	531	597	663	730	796	862	882	882	882	882	882	882
65,000	34	68	103	137	171	205	240	274	308	342	411	479	548	616	685	753	821	890	958	965	965	965	965	965
70,000	35	70	106	141	176	211	246	281	316	352	422	492	562	633	703	773	844	914	984	1,049	1,049	1,049	1,049	1,049
75,000	36	72	108	144	180	216	253	289	325	361	433	505	577	649	722	794	866	938	1,010	1,082	1,132	1,132	1,132	1,132
80,000	37	74	111	148	185	222	259	296	333	370	444	518	592	666	740	814	888	962	1,036	1,110	1,184	1,215	1,215	1,215
85,000	38	76	114	152	190	228	266	303	341	379	455	531	607	683	759	834	910	986	1,062	1,138	1,214	1,290	1,299	1,299
90,000	39	78	117	155	194	233	272	311	350	389	466	544	622	699	777	855	933	1,010	1,088	1,166	1,243	1,321	1,382	1,382
95,000	40	80	119	159	199	239	278	318	358	398	477	557	636	716	796	875	955	1,034	1,114	1,193	1,273	1,352	1,432	1,465
100,000	41	81	122	163	204	244	285	326	366	407	488	570	651	733	814	895	977	1,058	1,140	1,221	1,302	1,384	1,465	1,549

Sample repayment amounts are based on an interest rate of 8.25%.

Income Contingent Repayment Plan
Sample First-year Monthly Repayment Amounts for a Head of Household Borrower at Various Income and Debt Levels

	Initial Debt																							
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	14	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15
9,000	15	29	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32	32
10,000	15	30	45	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49	49
12,500	16	32	48	64	80	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90	90
15,000	17	34	52	69	86	103	121	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132	132
17,500	19	37	56	74	93	112	130	149	168	174	174	174	174	174	174	174	174	174	174	174	174	174	174	174
20,000	20	40	60	79	99	119	139	159	179	199	215	215	215	215	215	215	215	215	215	215	215	215	215	215
22,500	21	42	64	85	106	127	148	169	191	212	254	257	257	257	257	257	257	257	257	257	257	257	257	257
25,000	23	45	68	91	114	136	159	182	204	227	273	299	299	299	299	299	299	299	299	299	299	299	299	299
30,000	25	51	76	102	127	153	178	203	229	254	305	356	382	382	382	382	382	382	382	382	382	382	382	382
35,000	27	55	82	110	137	164	192	219	247	274	329	384	438	465	465	465	465	465	465	465	465	465	465	465
40,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	548	549	549	549	549	549	549	549	549	549
45,000	28	57	85	114	142	171	199	227	256	284	341	398	455	512	569	625	632	632	632	632	632	632	632	632
50,000	30	59	89	119	148	178	208	237	267	297	356	415	475	534	593	653	712	715	715	715	715	715	715	715
55,000	31	62	93	124	155	185	216	247	278	309	371	433	495	556	618	680	742	799	799	799	799	799	799	799
60,000	32	64	96	129	161	193	225	257	289	322	386	450	515	579	643	707	772	836	882	882	882	882	882	882
65,000	33	67	100	134	167	200	234	267	301	334	401	468	534	601	668	735	802	868	935	965	965	965	965	965
70,000	35	69	104	138	173	207	242	276	311	345	414	483	552	622	691	760	829	898	967	1,036	1,049	1,049	1,049	1,049
75,000	35	71	106	142	177	212	248	283	319	354	425	496	567	637	708	779	850	921	992	1,062	1,132	1,132	1,132	1,132
80,000	36	73	109	145	182	218	254	290	327	363	436	508	581	653	726	799	871	944	1,016	1,089	1,162	1,215	1,215	1,215
85,000	37	74	112	149	186	223	260	298	336	372	446	521	595	669	744	818	893	967	1,041	1,116	1,190	1,264	1,299	1,299
90,000	38	76	114	152	190	228	267	305	343	381	457	533	609	685	761	838	914	990	1,066	1,142	1,218	1,295	1,371	1,382
95,000	39	77	116	155	194	232	271	310	349	387	464	542	619	697	774	851	929	1,006	1,084	1,161	1,238	1,316	1,393	1,465
100,000	39	78	117	156	195	234	273	312	351	390	469	547	625	703	781	859	937	1,015	1,093	1,171	1,250	1,328	1,406	1,549

Sample repayment amounts are based on an interest rate of 8.25%.

Income Contingent Repayment Plan
Sample First-year Monthly Repayment Amounts for a Married Borrower at Various Income and Debt Levels

Income	Initial Debt																							
	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9,000	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
10,000	14	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25	25
12,500	15	31	46	62	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66	66
15,000	16	32	49	65	81	97	108	108	108	108	108	108	108	108	108	108	108	108	108	108	108	108	108	108
17,500	17	34	51	68	85	102	119	136	150	150	150	150	150	150	150	150	150	150	150	150	150	150	150	150
20,000	18	36	53	71	89	107	125	142	160	178	191	191	191	191	191	191	191	191	191	191	191	191	191	191
22,500	19	37	56	74	93	112	130	149	167	186	223	233	233	233	233	233	233	233	233	233	233	233	233	233
25,000	20	40	59	79	99	119	139	159	178	198	238	275	275	275	275	275	275	275	275	275	275	275	275	275
30,000	23	45	68	91	113	136	159	181	204	227	272	317	358	358	358	358	358	358	358	358	358	358	358	358
35,000	25	49	74	99	123	148	173	198	222	247	296	346	395	441	441	441	441	441	441	441	441	441	441	441
40,000	27	53	80	106	133	159	186	212	239	265	318	372	425	478	525	525	525	525	525	525	525	525	525	525
45,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	548	603	606	606	606	606	606	606	606	606
50,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	548	603	658	691	691	691	691	691	691	691
55,000	28	56	84	112	140	168	196	224	252	280	336	392	448	504	560	616	672	728	775	775	775	775	775	775
60,000	29	59	88	117	147	176	205	234	264	293	352	410	469	527	586	645	703	762	820	858	858	858	858	858
65,000	31	61	92	122	153	184	214	245	275	306	367	428	489	551	612	673	734	796	857	918	941	941	941	941
70,000	32	63	95	127	159	190	222	254	286	317	381	444	508	571	634	698	761	825	888	952	1,015	1,025	1,025	1,025
75,000	32	65	97	129	162	194	227	259	291	324	388	453	518	582	647	712	777	841	906	971	1,036	1,100	1,106	1,106
80,000	33	66	99	132	165	198	231	264	297	330	396	462	528	594	660	726	792	858	924	990	1,056	1,122	1,188	1,191
85,000	34	67	101	135	168	202	235	269	303	336	404	471	538	606	673	740	807	874	942	1,009	1,076	1,143	1,211	1,275
90,000	34	69	103	137	171	206	240	274	308	343	411	480	548	617	685	754	822	891	959	1,028	1,097	1,166	1,234	1,358
95,000	35	70	105	140	174	209	244	279	314	349	419	488	558	628	698	767	837	907	977	1,047	1,116	1,186	1,256	1,395
100,000	35	71	106	141	176	212	247	282	318	353	423	494	564	635	706	776	847	917	988	1,058	1,129	1,199	1,270	1,411

Sample repayment amounts are based on an interest rate of 8.25%.

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Wednesday
September 20, 1995

Part VIII

Department of Education

34 CFR Part 685

William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC22

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to amend the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The proposed regulations would apply to loans under the Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) Program, the Federal Direct Unsubsidized Stafford/Ford Loan (Direct Unsubsidized Loan) Program, the Federal Direct PLUS Loan (Direct PLUS Loan) Program, and the Federal Direct Consolidation Loan (Direct Consolidation Loan) Program, collectively referred to as the Direct Loan Program. These proposed regulations would provide schools with more flexibility in performing origination functions, and clarify the date of loan origination. These proposed regulations also would set timelines for the submission of promissory notes, disbursement records, and origination records. Finally, the regulations being proposed would address the repayment plans available for the consolidation of a single Federal Family Education (FFEL) Loan Program loan into the Direct Loan Program.

DATES: Comments on the proposed regulations must be received on or before October 31, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Katrina Ingalls, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. Comments may also be sent via the internet to: direct–loans@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Ms. Katrina Ingalls. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary proposes to amend the Direct Loan Program regulations (34 CFR Part 685), to improve the program based on experience gained during the first year of operation. These regulations propose programmatic changes that the Secretary believes would improve services to student and parent borrowers, increase institutional flexibility, and enhance the Department's administrative and fiscal oversight capabilities.

The Secretary proposes to revise the current definitions of school origination option 1, school origination option 2, and standard origination found in § 685.102 to increase program flexibility for schools and the Secretary. Under the proposed rules, with the approval of the Secretary, schools would be permitted to customize the origination process based on individual needs.

These proposed regulations would also clarify the date on which a Direct Loan is originated. For schools originating under school origination option 1 or option 2, the date of loan origination would be the earlier of: The date the promissory note is printed or the date the origination record is accepted by the Secretary. For a school that participates under standard origination, the date of loan origination would be the date the origination record is accepted by the Secretary. Beginning with the 1996–1997 loan year, originating schools will be able to generate a print date on the promissory note. This print date on the promissory note is a new step intended to establish an alternative method to document the loan origination date. This change will increase program flexibility. If a school originates a loan and prints the promissory note showing the print date and the student's eligibility changes before the loan origination record is transmitted to the Secretary, the school may make a disbursement to the borrower following the late disbursement guidelines. This change promotes flexibility in processing loans near the end of a student's period of enrollment.

As a result of administering the program for one year, the Secretary is convinced that services to borrowers would be substantially improved by requiring the timely submission of certain program data by schools to the Direct Loan Servicer. In particular, it is imperative that borrowers receive disclosure information and loan servicing information shortly after the loan is disbursed. Further, Direct PLUS Loan borrowers enter repayment when the loan is fully disbursed and the Department must receive disbursement information in a timely manner in order to establish repayment terms. Therefore, in these regulations, the Secretary proposes to require schools to submit origination records, promissory notes, and disbursement records (both initial and subsequent), to the Direct Loan Servicer no later than 30 days following the disbursement of a Direct Loan. Further, this change would also serve to improve the Department's administrative and fiscal oversight capabilities of the program.

While program experience now indicates that establishing firm deadlines for the submission of origination records, promissory notes, and disbursement records is necessary, the Secretary is sensitive to the potential need for flexibility in this area. During the first year of a school's participation in the Direct Loan Program, the school must make changes to its administrative functions, implement new computer systems, and become familiar with Direct Loan Program requirements. At times, the transition to Direct Loans may seem complex to these schools, particularly in the initial stages of the transition. The Secretary assures schools that, during their first year of participation in the Direct Loan Program, these obstacles will be considered in determining the Secretary's position regarding an institution's compliance with program regulations. However, the proposed regulation to require schools to submit origination records, promissory notes, and initial and subsequent disbursement records to the Direct Loan Servicer no later than 30 days following the disbursement of a Direct Loan is particularly critical at the end of the Federal fiscal year (September 30th). To ensure program integrity and facilitate audit review, the Secretary will require that all documents for loans made during a fiscal year be submitted no later than 30 days following the end of the Federal fiscal year.

The Secretary is proposing to revise the repayment plan regulations to reflect the Secretary's current operational practice regarding the repayment plans available to a FFEL Program loan borrower consolidating only one FFEL Program loan into the Direct Loan Program. Under the proposed regulations, borrowers who consolidate only one FFEL Program loan into the Direct Loan Program would be required to initially choose a repayment plan other than the standard repayment plan.

The Secretary is considering establishing requirements for foreign school participation in the Direct Loan Program. Due to the nature of the Direct Loan Program, the Secretary believes that additional fiscal oversight and administrative requirements may be warranted for foreign schools. The Direct Loan Program is unique among the financial aid programs with respect to its funds disbursement processes and requirements. Because there is no authorized limit to the amount of funds that schools may draw down in the Direct Loan Program, the Department must rigorously oversee the funds disbursement process. To prevent potential program abuse, the Secretary is committed to the careful monitoring of the drawdown of funds to schools and then disbursement to students. To minimize potential risks to borrowers and taxpayers, the Secretary is considering additional school participation requirements for those foreign schools interested in participating in the Direct Loan Program. Therefore, the Secretary solicits comments and supporting arguments on what, if any, additional standards should be established for foreign schools that participate in the Direct Loan Program. The Secretary invites comments and supporting arguments on the potential financial risks, as well as benefits of admitting foreign schools into the Direct Loan Program. Finally, the Secretary requests comments and supporting statements concerning the potential losses or benefits to students related to foreign school participation in the Direct Loan Program.

Proposed Regulatory Changes

The following sections summarize the major changes in this notice of proposed rulemaking:

Section 685.102 Definitions

School origination option 1, School origination option 2, and Standard origination: The Secretary proposes to modify the definition of the specific functions that a school must perform for school origination option 1, school origination option 2 and standard origination. While the functions for the three levels would generally remain unchanged, in certain circumstances schools would have some flexibility in selecting the functions they would perform. Any request to modify the functions must be approved by the Secretary. Further, the regulations would specify that the Secretary has the authority to modify the functions a school performs to best meet the needs of the program.

Section 685.201 Obtaining a Loan

Paragraphs (a)(2) and (b) of this section, which describe the school's responsibility to perform certain functions to process a Direct Loan, would be modified to provide the flexibility needed by schools to allow them, with the concurrence of the Secretary, to tailor the process to accommodate their individual needs.

Section 685.208 Repayment Plans

For purposes of consolidating one FFEL Program loan into a Federal Direct Consolidation Loan, the Secretary proposes to modify the available repayment plan options. Borrowers consolidating one FFEL Program loan would not be permitted to initially choose the standard repayment plan; however, they could choose the extended, graduated, or income contingent repayment plan. This proposed change appears in § 685.208(a)(1) and (2), and § 685.215(h)(2).

Section 685.210 Choice of Repayment Plans

In § 685.210(a), a new paragraph would be added advising the borrower that the Secretary will designate the extended repayment plan if a FFEL Program loan borrower consolidating only one FFEL Program loan into the Direct Loan Program does not select a repayment plan.

Section 685.215 Consolidation

The Secretary proposes that § 685.215(h), which discusses repayment plans available to borrowers of Direct Consolidation Loans, be amended by adding a new paragraph. This new paragraph would provide that, for purposes of consolidating only one FFEL Program loan into a Federal Direct Consolidation Loan, borrowers may not initially choose the standard repayment plan.

Section 685.301 Origination of a Loan by a Direct Loan Program School

The Secretary proposes to add a new paragraph to this section to clarify the date of origination. A school may only originate a loan while the student meets the borrower eligibility requirements. Through the origination process, a school certifies a borrower's eligibility for a loan, the loan amount, and anticipated disbursement dates. The proposed rule provides that the date of loan origination would be the earlier of the date that the school prints the promissory note or the date that the origination record is accepted by the Secretary.

The Secretary also proposes to amend the regulations to require schools to submit the promissory note, disbursement record (original and subsequent), and origination record no later than 30 days of the date of disbursement of loan funds. Requiring the timely submission of program data would result in improved services to borrowers and would also enhance the Department's administrative and fiscal oversight capabilities.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are explained elsewhere in this preamble under the heading of *Paperwork Reduction Act of 1995.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

2. Clarity of [illegible] Re[illegible]ns

Executive [illegible]6 requires each agency to writ[illegible]ons that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 685.215 *Consolidation.*) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in the understanding of the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW., (Room 5100 FB–10), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are institutions of higher education. Certain reporting, recordkeeping, and compliance requirements are imposed on schools by the regulations. These requirements, however, would not have a significant impact on these institutions and would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

Section 685.301 contains an information collection requirement. As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of information: Reporting loan origination and disbursement records, and submitting promissory notes.

The Department collects information regarding Direct Loan Program loan origination. These regulations require postsecondary institutions participating in the Direct Loan Program to submit student and parent loan origination records, promissory notes, and disbursement records to the Secretary within 30 days of disbursement. Direct Loan Program loans are usually made once each academic year to eligible parent and student borrowers. Promissory notes and origination records are submitted once for each loan; funds are disbursed in at least two installments. This Loan origination information is needed to establish that a legally-enforceable loan exists and to service and collect that loan.

Annual reporting burden for this collection of information is estimated to average 0.3 burden hours for each of the projected 1,986,857 loans. The total annual reporting burden equals 59,606 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3053, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary requests comments on whether the proposed regulations would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number: 84.268, William D. Ford Federal Direct Loan Program)

Dated: September 13, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend part 685 of title 34 of the Code of Federal Regulations to read as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1078a *et seq.*, unless otherwise noted.

2. Section 685.102, paragraph (b) is amended by revising the definitions of "School origination option 1," "School origination option 2," and "Standard origination."

§ 685.102 Definitions.

* * * * *

(b) * * *

School origination option 1: In general, under this status the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer initiates the drawdown of funds for schools participating in school origination option 1. The Secretary may modify the functions performed by a particular school.

School origination option 2: In general, under this status the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, determines funding needs, initiates the drawdown of funds, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Secretary may modify the functions performed by a particular school.

* * * * *

Standard origination: In general, under this status the school performs the following functions: creates a loan origination record, transmits the record to the Secretary, receives funds electronically, disburses funds, creates a disbursement record, transmits the disbursement record to the Secretary, and reconciles on a monthly basis. The Secretary prepares the promissory note, obtains a completed and signed promissory note from a borrower, and initiates the drawdown of funds for schools participating in standard origination. The Secretary may modify the functions performed by a particular school.

(Authority: 20 U.S.C. 1087a *et seq.*)

3. Section 685.201 is amended by revising paragraph (a)(2)introductory text, and paragraph (b) to read as follows:

§ 685.201 Obtaining a loan.

(a) * * *

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled shall perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school shall perform the following functions:

* * * * *

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent shall complete the application and promissory note and submit it to the school at which the student is enrolled. The school shall complete its portion of the application and promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. Unless a school's agreement with the Secretary specifies otherwise, the school shall perform the following functions: A school participating under school origination option 2 shall draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

* * * * *

(Authority: 20 U.S.C. 1087 a *et seq.*, 1091a)

4. Section 685.208 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 685.208 Repayment plans.

(a) *General.* (1) Except as provided in § 685.215, a borrower may repay a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, or the income contingent repayment plan.

(2) Except as provided in § 685.215, a borrower may repay a Direct PLUS Loan or a Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan.

* * * * *

(Authority: 20 U.S.C. 1087a *et seq.*)

5. Section 685.210 is amended by revising paragraph (a)(2) and by adding a new paragraph (a)(3) to read as follows:

§ 685.210 Choice of repayment plan.

(a) * * *

(2) If a borrower does not select a repayment plan, the Secretary designates the standard repayment plan described in § 685.208(b) for the borrower, unless the borrower is consolidating only one FFEL Program loan.

(3) If a borrower consolidating only one FFEL Program loan into the Direct Loan Program does not initially select a repayment plan offered by the Secretary, the Secretary will designate the extended repayment plan described in § 685.208(c) for the borrower.

* * * * *

(Authority: 20 U.S.C. 1087a *et seq.*)

6. Section 685.215 is amended by revising paragraph (h)(1), redesignating paragraph (h)(2) as paragraph (h)(3) and adding a new paragraph (h)(2) to read as follows:

§ 685.215 Consolidation.

* * * * *

(h) * * *

(1) A borrower may not repay a Direct PLUS Consolidation Loan under the income contingent repayment plan;

(2) A borrower consolidating only one FFEL Program loan into the Direct Loan Program may not initially select the standard repayment plan (described in § 685.208(b).

* * * * *

7. Section 685.301 is amended by redesignating paragraphs (a)(5) and (a)(6) as paragraph (a)(6)and (a)(7), respectively, adding a new paragraph (a)(5) and by adding a new paragraph (d) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) * * *

(5) The date of loan origination is the earlier of—

(i) The date the promissory note is printed; or

(ii) The date the origination record is accepted by the Secretary.

* * * * *

(d) *Reporting to the Secretary.* (1) A school that originates a loan must submit the promissory note, loan origination record, and initial and subsequent disbursement record to the Secretary no later than 30 days following the date of disbursement. A school must submit the loan origination record and disbursement record to the Secretary no later than 30 days following the date of disbursement for each subsequent disbursement.

(2) A school that participates under standard origination must submit the initial and subsequent disbursement record to the Secretary no later than 30 days following the date of disbursement. A school must submit the disbursement record to the Secretary no later than 30 days following the date of disbursement for each subsequent disbursement.

(Authority: 20 U.S.C. 1087a *et seq.*)

[FR Doc. 95–23300 Filed 9–19–95; 8:45 am]

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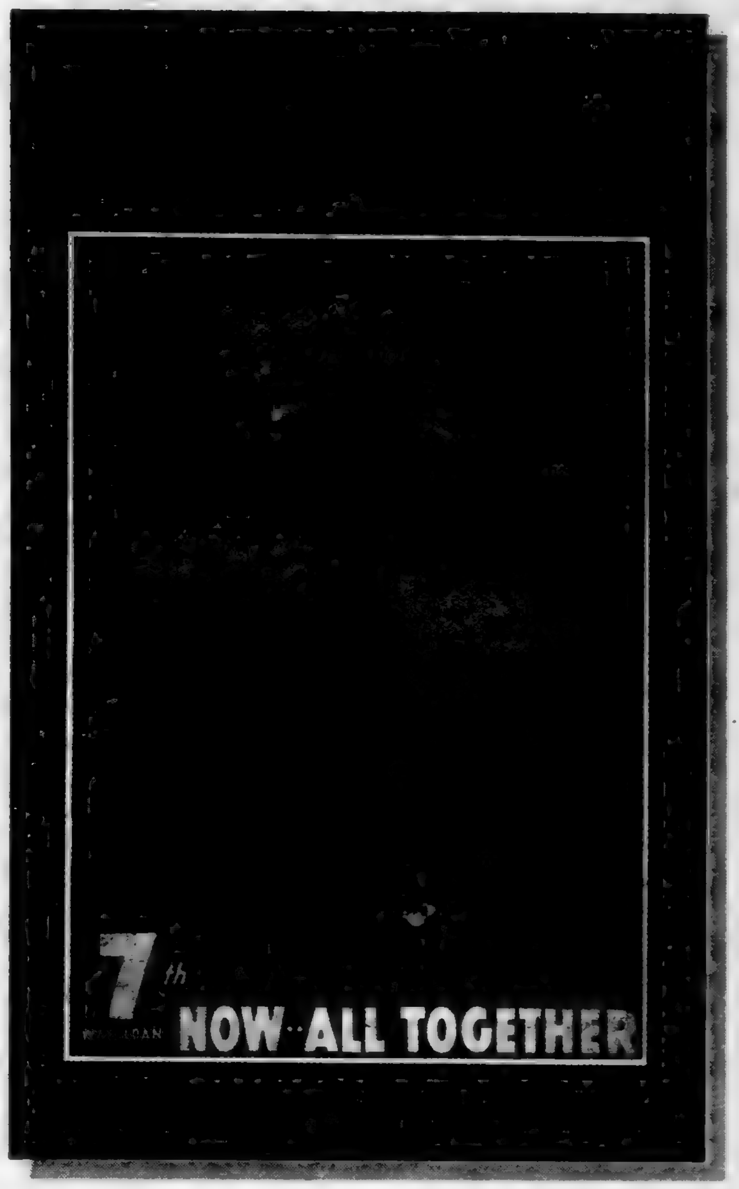

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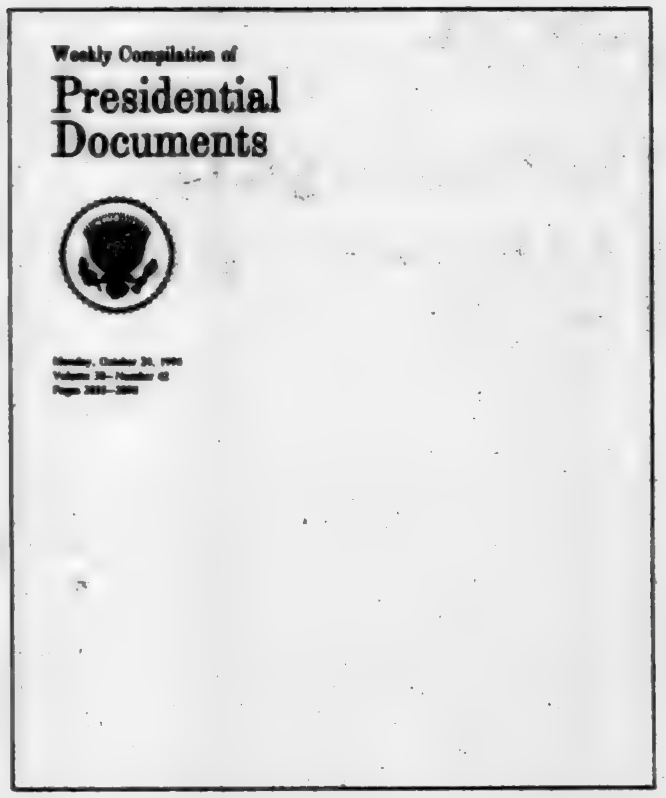
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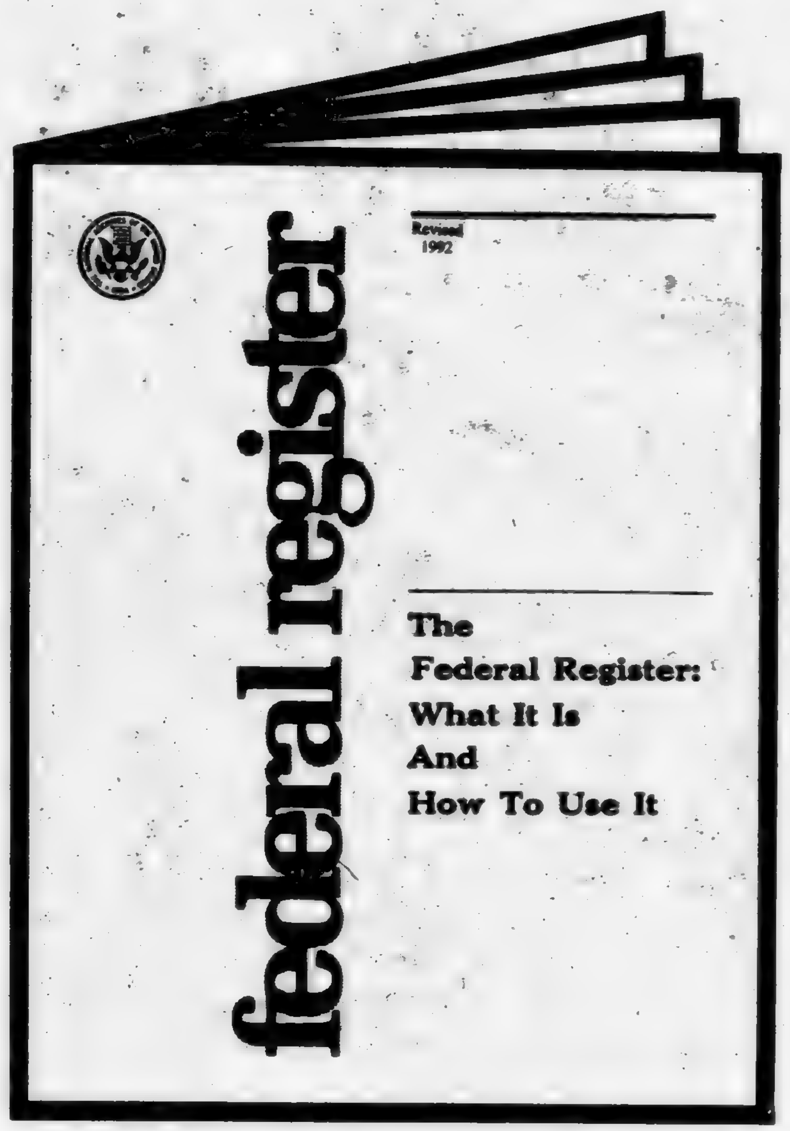

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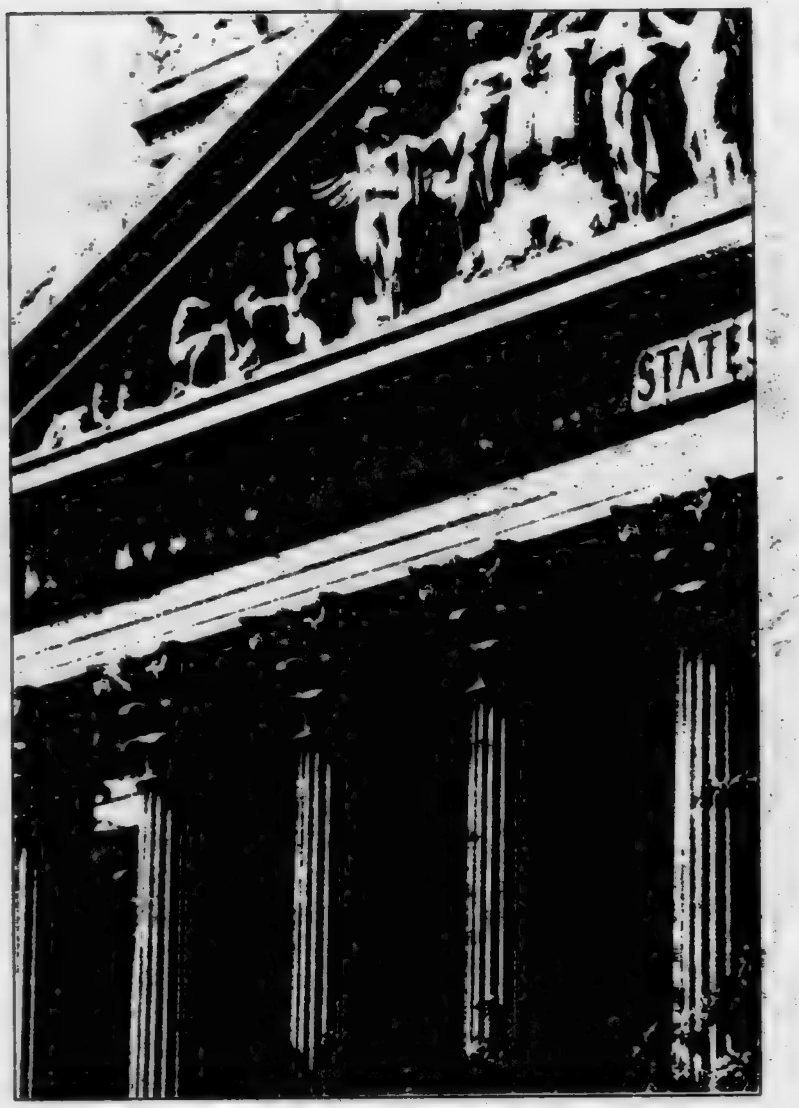

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Presidential Documents

Title 3—

The President

Executive Order 12972 of September 18, 1995

Amendment to Executive Order No. 12958

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to amend Executive Order No. 12958, it is hereby ordered that the definition of "agency" in section 1.1(i) of such order is hereby amended to read as follows: "(i) "Agency" means any "Executive agency" as defined in 5 U.S.C. 105; any "Military department" as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into the possession of classified information."

William J. Clinton

THE WHITE HOUSE,
September 18, 1995.

[FR Doc. 95–23581
Filed 9–19–95; 2:33 pm]
Billing code 3195–01–P

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Rules and Regulations

Federal Register
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Thursday, September 21, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272, and 273

[Amendment No. 370]

Food Stamp Program: Student Eligibility

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: On November 1, 1993, the Department published a proposed rule regarding the eligibility of students for the Food Stamp Program and the treatment of educational and training assistance for food stamp purposes. Public comments were solicited and considered. This rule finalizes the student eligibility provisions with the changes specified herein and makes a technical change to the resource section. The provisions regarding the handling of educational and training assistance will be finalized in a separate rule.

DATES: Sections 273.5 (b)(1), (b)(4), and (b)(9) are effective February 1, 1992. The introductory paragraph of § 273.5(b)(6) is effective February 1, 1992. The introductory paragraph of § 273.5(b)(10) is effective February 1, 1992. Sections 273.5(b)(11)(ii), (b)(11)(iii), and (b)(11)(iv) are effective February 1, 1992.

Sections 273.5 (b)(6)(i) and (b)(6)(ii) and sections 273.5 (b)(10)(i) and (b)(10)(ii) and the remaining provisions of this regulation are effective November 1, 1995 and must be implemented no later than February 1, 1996.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Chief, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; Telephone: (703) 305–2520.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service has certified that this action does not have a significant economic impact on a substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Households are affected to the extent that some currently ineligible students will become eligible for program benefits.

Executive Order 12778

This proposed rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This is not intended to have retroactive effective dates unless so specified in the DATES section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1)) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to nonquality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Paperwork Reduction Act

Pursuant to 7 CFR 273.2(f), State welfare agencies must verify certain information which affects household eligibility and benefits. Applicant households are required to provide the necessary information to the State agency. The reporting and recordkeeping burden associated with the application, certification, and continued eligibility of food stamp applicants has been approved by the Office of Management and Budget under OMB No. 0584–0064. OMB approval includes the burden associated with verification of information provided on the food stamp application. OMB approval of the verification requirements in § 273.2(f)(xi) of this rule is not necessary because the statements do not add new or additional verification responsibilities on State agencies, but simply relocate existing verification requirements from § 273.5(a).

Background

On November 1, 1993, the Department proposed procedures to implement amendments to the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 *et seq.*), as set forth in sections 1715 and 1727 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, enacted November 28, 1990, and section 903 of Title IX of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, enacted December 13, 1991. section 1715 of Public Law 101–624, as amended by Section 903 of Public Law 102–237, established procedures for determining an income exclusion for certain educational and training assistance received by eligible students. Section 1727 of Public Law 101–624 amended the Food Stamp Act to grant eligibility for participation in the Food Stamp Program ("Program") to certain students currently considered ineligible to participate.

Procedures were also proposed for implementing amendments to the Higher Education Act of 1965 as set forth in sections 471 and 1345 of the Higher Education Amendments of 1992, Public Law 102–325, enacted July 23, 1992. Those sections prohibit certain Federal educational assistance from being considered as income and resources for food stamp purposes.

Lastly, procedures were proposed for implementing a provision of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, Pub. L. 101–392, enacted September 25, 1990, which prohibits counting certain educational assistance received by students from a program funded by the Perkins Act as income or resources when determining the eligibility and benefits of households containing students.

The Department accepted comments on this rulemaking through January 2, 1994. Comments were received from eight State agencies, one public interest group, and one advocate.

The proposed rule contained provisions on both student eligibility and the treatment of educational and training assistance. This rule finalizes only the provisions concerning student eligibility. The comments pertaining to the student eligibility provisions are discussed below. The provisions regarding the treatment of educational and training assistance contain issues which are, as yet, unresolved, and the Department has decided to finalize those provisions in a separate rulemaking so as not to further delay publication of the student eligibility provisions.

A full explanation of the rule was contained in the preamble of the proposed rule published November 1, 1993 ("November 1 rule") (58 FR 58463). The reader should refer to the preamble of that rule for a full understanding of the provisions of this final rule.

In the proposed rule under Supplementary Information, Executive Order 12778, the Department stated that prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. One commenter said that administrative procedures do not have to be exhausted before judicial challenge and that the Department should correct this misstatement and avoid making such statements in future rulemakings. While we believe that it would have been fully within the Secretary's discretionary authority, as granted in section 4(c) of the Food Stamp Act (7 U.S.C. 2013(c)), to establish an exhaustion requirement, this matter has now been specifically addressed by statute. Section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law 103–354, requires persons to exhaust all administrative appeal procedures established by the Secretary or required by law before the person may bring an action in a court of competent jurisdiction against the Secretary, the Department or an agency, office, officer, or employee of the Department.

Institution of Higher Education—§ 271.2 and § 273.5(a)

An institution of higher education is currently defined in 7 CFR 271.2 of the regulations as any institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities and vocational or technical schools at the post-high school level. The November 1 rule did not propose to change this definition.

One commenter requested that the regulations be changed to specify that community colleges that do not routinely require high school diplomas are not institutions of higher education.

The Department has become aware that some colleges no longer require a high school diploma due to declining enrollment. It is the Department's intent that persons enrolled in a regular curriculum at a college be considered enrolled in an institution of higher education even if a diploma is no longer required. The Department has also become aware that some colleges that normally require a high school diploma or equivalency certificate may not require them for special programs such as courses for English as a second language or for courses which are not part of the regular curriculum. The Department does not intend that such persons be considered enrolled in an institution of higher education. Therefore, the Department has decided to revise the language so that a student will be considered enrolled in an institution of higher education if the person is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. A college includes a junior, community, two-year, or four-year college or a university. A person who is attending a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certification for enrollment in the curriculum would also be considered enrolled in an institution of higher education.

The Department is also taking this opportunity to move the provision regarding enrollment in an institution of higher education from the definition section to the student eligibility section to facilitate a better understanding of the student provisions. Accordingly, the Department has removed the definition of an institution of higher education from 7 CFR 271.2 and has added a new sentence to 7 CFR 273.5(a).

Student Eligibility—§ 273.5

Age Limit

Current regulations provide that students age 60 or over do not have to meet one of the student eligibility criteria to qualify for the program. In accordance with section 1727 of the Food, Agriculture, Conservation, and Trade Act of 1990, the proposed rule lowered the age exemption from 60 to 50. Two commenters supported this change. Because this is a nondiscretionary change, it is being adopted as proposed at 7 CFR 273.5(a).

The Department is taking this opportunity to move the student exemptions contained in 7 CFR 273.5(a) to 7 CFR 273.5(b) to consolidate them at one place.

On-the-Job Training

The Department proposed to incorporate current policy that a person is exempt from the student ineligibility provisions during the period of time the person is being trained by an employer under an on-the-job training program. However, during the period of time that the person is only attending classes, he or she would be considered a student subject to the provisions of 7 CFR 273.5.

One commenter supported the provision. Another commenter suggested that student status should coincide with the period of time educational income is prorated. A third commenter said all participants in on-the-job training should be exempt if their employer requires class attendance; alternatively they should be exempt if they are enrolled in non-degree programs or for periods too short, e.g., one semester or quarter, to obtain a degree.

There is no basis in the Food Stamp Act for extending the exemption to other participants in on-the-job training programs. Therefore, the Department is adopting the proposal without change at 7 CFR 273.5(a). A student would have to meet one of the other student exemptions to qualify when enrolled and only attending classes in an institution of higher education at least half time.

Work Study

The proposed regulations expanded the list of eligible students to include students participating in a State (as well as a Federal) work study program during the regular school year.

One commenter suggested that any needs-based subsidized employment program that a State supports be defined as a work study program.

Section 6(e) of the Food Stamp Act, as amended, specifically provides that the program must be a work study program. Since many employment programs do not have a study component, the Department is not adopting this suggestion. The Department is adopting the proposal without change at 7 CFR 273.5(b)(1)(ii).

The Department further proposed that a student who was approved for work study at the time of application for food stamps, and anticipated starting a job within two months after the date of application for food stamps, would qualify for this exemption until the student stopped working. However, if a student stopped working because work study funding had run out, the student would continue to qualify for this exemption for no more than two months. The Department specifically asked for comments on whether or not the two-month grace periods would result in making affluent students eligible.

Three of the commenters indicated that affluent students would not become eligible. One commenter thought that the student should actually be participating in work study to be eligible. Another commenter supported the provision but suggested that students remain on the program when work study runs out for two months or until the end of the school term, whichever is later. Five commenters were opposed to the two-month provisions—four of them thought the procedures would be too administratively complex and error prone. (The following are some examples of administrative problems foreseen by commenters. The first two-month period would be tied to the date of application whereas eligibility for the food stamp program is determined for full months. A person could quit work study and reapply for food stamps during the two-month period. "No more than two additional months" could have been interpreted as giving the State agency an option. It may be difficult to anticipate when a student will actually begin work. Numerous contacts with the institutions could be required to keep track of when a student qualifies for the food stamp exemption.) Another commenter suggested that student eligibility status based on work study should continue through the term over which the work study is prorated. The only exception should be for students who refuse to participate in a work study assignment. Two commenters advised that most work study is approved for a given term or semester and the proposed procedure is unfair to students who receive the same amount of work study but whose work assignments can be completed in a shorter period of time.

After carefully reviewing the comments, the Department has decided to make some changes to the provisions as proposed. The Department has decided to provide an exemption for the school term if a student has been approved for work study during the school term and anticipates actually working during that time. The student must be approved for work study at the time she or he applies for food stamps. The student exemption will begin with the month in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption will continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment. The Department believes that this will simplify the procedure and be in compliance with the Act which requires participation in work study during the regular school year. The Department has incorporated this change in the final regulations at 7 CFR 273.5(b)(1)(ii).

One commenter suggested that anyone accepted for work study by a school should be considered participating in a work study program. The Department has not adopted this suggestion because students may be determined eligible for work study based on need but frequently funding or work is not available.

One commenter suggested that the regulations mandate use of the verified amount of work study approved by the school. While this would simplify administration of the provision, the Department has not adopted this suggestion because the actual anticipated amount may be less than the approved amount.

One commenter asked if a claim would be required if a student intended to begin work within two months but does not actually work. Another commenter suggested that recoupment be pursued if a student refuses to participate in a work study assignment.

Under the Department's revised procedure, the two-month time frame is not an issue, but a student could anticipate work study during the school term and it may not materialize. If the work study is questionable, the school could be contacted to determine if funding and a job will be available. A claim would not be required unless a determination is made that the student deliberately gave wrong or misleading information.

One commenter asked if student eligibility based on work study would be retained through scheduled breaks and vacations. In accordance with the Department's changes to the final regulation, the student work study exemption will not continue between terms when there are breaks of a full month or longer for which work study has not been approved. The exemption only applies to months in which the student is approved for work study.

Assigned Students

The proposed regulation expanded the list of eligible students to include students who are assigned to, or placed in, an institution of higher education through, or in compliance with, an employment and training (E&T) program operated by a State or local government which contains components which are at least equivalent to the acceptable components of the food stamp E&T program.

One commenter supported this provision. A second commenter opposed requiring standards comparable to food stamp E&T components; stated that the Department does not have the authority to and should not regulate the content of E&T programs; persons attending community colleges should be considered participating in a State or local government's E&T program, and E&T programs should not serve exclusively food stamp recipients.

Section 6(e)(3)(D) of the Food Stamp Act, as amended by section 1727 of the Food, Agriculture, Conservation, and Trade Act of 1990, clearly provides the Department with the authority for determining which State and local E&T programs are appropriate. All persons attending community colleges cannot be considered participating in a state or local government's E&T program because attendance at a community college does not necessarily indicate participation in an employment program. The Department agrees that E&T programs need not serve food stamp recipients exclusively in order to qualify, but they must be for low-income households. Consequently, the Department is revising the final regulations at 7 CFR 273.[illegible]11)(iv) to this effect.

A third comm[illegible]is provision suggested that the [illegible]ent clarify that an appropriate program does not have to have all the components, or any combination of components, required in the food stamp E&T program and that State agencies should make the general equivalency determinations but that

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students should be permitted to provide evidence of the appropriateness of a program.

The Department agrees that the E&T program should have to meet only one of the acceptable food stamp E&T components. Since the guidelines for the food stamp E&T components are specified in the regulations, the Department also agrees that State agencies may make the equivalency determinations. The Department has changed the final regulations at 7 CFR 273.5(b)(11)(iv) accordingly. The Department does not believe that it would be administratively feasible to require eligibility workers to make a determination on the appropriateness of a program based on information submitted by an individual student.

One commenter thought that self-placements in connection with any of the E&T programs listed should exempt the student. The Department agrees that placements that are initiated by a person while the person is enrolled in an approved E&T program should be considered to be in compliance with the requirements of that program provided that the E&T program the person is enrolled in has a component for enrollment in an institution of higher education and that program accepts the placement. Other self-placements would not qualify. The Department has changed the final regulations at 7 CFR 273.5(b)(11) accordingly.

One commenter thought that participants who voluntarily participate in one of the listed E&T programs should be entitled to an exemption. Section 6(e)(3) of the Food Stamp Act does not limit the exclusion to persons who are required to participate in an approved E&T program. Therefore, the Department agrees that all persons, regardless of whether they are volunteers, who are placed in an institution of higher education by or in accordance with the requirements of an approved program, qualify for the student exemption. The Department has made this change in the final regulations at 7 CFR 273.5(b)(11).

Job Opportunities and Basic Skills (JOBS) Program

The proposed regulations expanded the list of eligible students to include students participating in the work incentive program under part A of title IV of the Social Security Act or its successor program (currently the JOBS program). One commenter supported this change. Since this is a nondiscretionary provision that is required by the Food Stamp Act, as amended, the Department is adopting the proposed language without change at 7 CFR 273.5(b)(1)(vii).

Single Parents

The proposed regulations provided that a single parent enrolled full time in an institution of higher education who is responsible for the care of a child under age 12 is exempt from the student provisions. This provision would apply where only one natural, adoptive, or stepparent, regardless of martial status, is in the same food stamp household as the child. For example, if one natural parent and a stepparent are living with the child, neither the natural parent nor the stepparent could qualify for the student exemption. If no natural, adoptive, or stepparent is in the same food stamp household as the child, another full-time student in the same food stamp household as the child could qualify for eligible student status if he or she has parental control over the child and is not living with his or her spouse.

One commenter requested that the definition used for the Aid to Families with Dependent Children (AFDC) program be used instead. The commenter stated that the definition is a parent who is singly responsible for a child because of the death, absence, or incapacity of the child's other parent.

AFDC does not have a definition of a single parent. It appears that the commenter is referring to the AFDC definition of deprivation. For AFDC purposes, one category of needy children is those deprived of parental support or of care by reason of the death, continued absence from the home, or physical or mental incapacity of the parent, or unemployment of a principal earner. There is no basis in the Food Stamp Act for limiting the exclusion to cases of deprivation. Therefore, the Department is not adopting this recommendation.

The Department would, however, like to clarify that "regardless of marital status" means that the parent could be single (meaning never married), a widow or widower, separated, divorced, or married and living in a separate household from the other parent. For example, if the natural parents are still legally married but only one parent is living with the child, that parent would be considered a single parent for purposes of this provision.

Resource Exclusions—§ 273.8(e)(11)

In the proposed regulations under the list of resources required to be excluded by other Federal laws, the Department listed payments received under the Job Training Partnership Act (Pub. L. 97–300). It has come to the Department's attention that Public Law 97–300 only requires that the payments be excluded from income for food stamp purposes. Educational assistance is excluded from resources for the period of time for which it is provided. Allowing an indefinite resource exclusion would create an unnecessary administrative burden to keep track of the payments in subsequent months. For these reasons, the Department is not adopting the proposed change.

Technical Changes

The Department is taking this opportunity to make the following two technical changes.

Verification—§ 273.2(f)

In order to consolidate the verification requirements, the Department is moving the verification requirement for a determination that a person is unfit from the student eligibility section at 7 CFR 273.5(a) to the verification section at 7 CFR 273.2(f)(1).

Resource Exclusions—§ 273.8(e)(11)(vi)

The Job Training Partnership Act of 1982 replaced the Comprehensive Employment and Training Act (CETA) (Pub. L. 97–300, section 183). Because CETA payments have not been made for over ten years, the Department is deleting the reference to CETA payments in the resource section at 7 CFR 273.8(e)(11)(vi).

Implementation—§ 272.1(g)

As stated in the preamble to the proposed regulations, State welfare agencies were instructed through agency directive to implement on February 1, 1992, the provisions of section 1727 of the Food, Agriculture, Conservation, and Trade Act of 1990, which extended eligibility to students attending institutions of higher education on at least a half-time basis if the student is between 50 and 60 years of age; a student with responsibility for a child between the ages of 5 and 12 if adequate child care is not available to enable the individual to attend class and work a minimum of 20 hours per week or participate in a work study program during the regular school year; a student participating in a State financed work study program during the regular school year; enrolled as a result of participation in the Job Opportunities and Basic Skills (JOBS) program; assigned to an institution of higher education by the food stamp employment and training program, a program under section 236 of the Trade Act of 1974, or certain State or local employment and training programs; or a full-time student who is a single parent responsible for the care

of a child under 12. The corresponding provisions in this regulation are effective on that date.

The remaining provisions are effective November 1, 1995 and must be implemented no later than February 1, 1996.

The provisions of the final rule must be implemented no later than the dates specified for all affected households that newly apply for Food Stamp Program benefits on or after the implementation dates. If for any reason a State agency fails to implement, restored benefits must be provided, as appropriate, back to the effective date of the provision, or the date of application, whichever is later.

The current caseload must be converted to the requirements of the final regulations at a household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency is required to provide restored benefits back to the effective date of the provision or the date of application, whichever is later.

The preamble to the proposed rule provided that any variance resulting from implementation of the provisions of the subsequent final rule would be excluded from error analysis for 90 days from the specified implementation dates of such final rule.

One commenter pointed out that the grace period should be 120 days. Section 13951 of the Mickey Leland Childhood Hunger Relief Act, enacted August 10, 1993, excludes from the payment error rate any errors resulting in the application of new procedures for 120 days from the required implementation dates. Accordingly, the Department has provided for a 120-day grace period at 7 CFR 272.1(g).

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 271, 272, and 273 are amended as follows:

1. The authority citation for parts 271, 272, and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

2. In § 271.2, the definition of an "Institution of higher education" is removed.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraph (g)(144) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(144) *Amendment No. (370).* The provisions of Amendment No. (370) are effective and must be implemented as follows:

(i) Sections 273.5(b)(1), (b)(4), and (b)(9) are effective February 1, 1992. The introductory paragraph of 273.5(b)(6) is effective February 1, 1992. The introductory paragraph of 273.5(b)(10) is effective February 1, 1992. Sections 273.5(b)(11)(ii), (b)(11)(iii), and (b)(11)(iv) are effective February 1, 1992.

(ii) Sections 273.5(b)(6)(i) and (b)(6)(ii) and sections 273.5(b)(10)(i) and (b)(10)(ii) and the remaining provisions of this regulation are effective November 1, 1995 and shall be implemented no later than February 1, 1996.

(iii) The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency shall provide restored benefits back to the effective date.

(iv) Any variance resulting from implementation of a provision in this rule shall be excluded from error analysis for 120 days from the required implementation date of that provision.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.2, a new paragraph (f)(1)(xii) is added to read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(xii) *Students.* If a person claims to be physically or mentally unfit for purposes of the student exemption contained in § 273.5(b)(2) and the unfitness is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

* * * * *

5. In § 273.5:

a. paragraph (a) is revised;

b. paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (c) and (d); and

c. the heading of paragraph (b) and paragraph (b)(1) are redesignated as paragraph (b) and revised. The revisions read as follows:

§ 273.5 Students.

(a) *Applicability.* An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section. An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) *Student Exemptions.* To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria.

(1) Be age 17 or younger or age 50 or older;

(2) Be physically or mentally unfit;

(3) Be receiving Aid to Families with Dependent Children under Title IV of the Social Security Act;

(4) Be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;

(5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;

(6) Be participating in a State or federally financed work study program during the regular school year.

(i) To qualify under this provision, the student must be approved for work study at the time of application for food stamps, the work study must be approved for the school term, and the student must anticipate actually working during that time. The exemption shall begin with the month

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in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

(7) Be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

(8) Be responsible for the care of a dependent household member under the age of 6;

(9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of paragraph (b)(5) or (b)(6) of this section;

(10) Be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

(i) This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same food stamp household as the child.

(ii) If no natural, adoptive or stepparent is in the same food stamp household as the child, another full-time student in the same food stamp household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.

(11) Be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in paragraphs (b)(11)(i) through (b)(11)(iv) of this section. Self-initiated placements during the period of time the person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment and training program in which the person is enrolled provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements of the program shall also qualify for the exemption. The programs are:

(i) a program under the Job Training Partnership Act of 1974 (29 U.S.C. 1501, et seq.);

(ii) an employment and training program under § 273.7;

(iii) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

(iv) an employment and training program for low-income households that is operated by a State or local government where one or more of the components of such program is at least equivalent to an acceptable food stamp employment and training program component as specified in § 273.7(f)(1). Using the criteria in § 273.7(f)(1), State agencies shall make the determinations as to whether or not the programs qualify.

§ 273.8 [Amended]

6. In § 273.8, paragraph (e)(11)(vi) is removed, and paragraphs (e)(11)(vii) through (e)(11)(xi) are redesignated as paragraphs (e)(11)(vi) through (e)(11)(x).

Dated: September 15, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95–23404 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–30–P

Rural Utilities Service

7 CFR Part 1717

Investments, Loans, and Guarantees by Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby revises its policies and requirements governing restrictions on investments, loans and guarantees made by electric borrowers. This rule is intended to clarify RUS's policies and requirements, reduce uncertainty by borrowers, and improve compliance.

EFFECTIVE DATE: This rule is effective October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Alex M. Cockey, Jr., Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, room 4037–S, Ag Box 1560, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–9547.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), under control number 0572–0032.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 10102, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

Background

On December 22, 1987, section 312 was added to the Rural Electrification Act of 1936. This section allows electric borrowers to invest their own funds or make loans or guarantees, not in excess

of 15 percent of their total utility plant, without restriction or prior approval of the Administrator of the Rural Utilities Service (RUS). On June 29, 1989, RUS issued a final rule codifying this provision in 7 CFR part 1717, subpart N (at 54 FR 27325). Mortgages executed prior to that date contained a provision granting the Administrator the right to approve investments, loans and guarantees by the borrower once the aggregate of such investments, loans and guarantees reached 3 percent of total utility plant.

On February 16, 1995, at 60 FR 8981, RUS published a proposed rule to clarify RUS's policies and requirements regarding restrictions on borrower investments, loans and guarantees. Over the years borrowers had raised a number of questions about such issues as: which investments, loans or guarantees are subject to RUS approval and which are excluded; the criteria used by RUS in approving an investment, loan or guarantee; whether RUS approval of an investment, loan or guarantee means that it is no longer counted in determining the ratio to total utility plant; whether RUS will approve an investment, loan or guarantee if the borrower is under the 15 percent limit; whether a borrower will be in default under its mortgage because net profits earned on its investments pushed its total above the 15 percent limit. This final rule resolves such questions.

RUS is also in the process of updating its mortgage and loan contract used with electric borrowers. RUS published a proposed mortgage for electric distribution borrowers on September 29, 1994 at 59 FR 49594. In that rule it was proposed that RUS controls over borrower investments, loans and guarantees be moved from the mortgage to the RUS loan contract. Such a move would have no effect on RUS's controls or their enforceability under the RUS mortgage. On July 18, 1995 RUS published the final rule for the distribution mortgage and a proposed rule for the distribution loan contract, at FR 36882 and FR 36904, respectively.

Comments on the proposed changes to RUS investment controls contained in 7 CFR part 1717, subpart N were received from 26 commenters, including the National Rural Electric Cooperative Association, the National Rural Utilities Cooperative Finance Corporation (CFC), the Saint Paul Bank for Cooperatives, and 23 borrowers or regional borrower associations. All comments were considered in preparing this final rule. The more significant or more frequently made comments are discussed below.

Section 1717.651 Policy

Questions were raised about the second part of the statement: "RUS electric borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not in any way put government funds at risk or impair a borrower's ability to repay its indebtedness to RUS and other lenders." RUS did not propose any change in this statement, which is contained in the existing rule.

It was suggested that this policy is unworkable since any investment involves some risk. RUS recognizes that most investments involve some risk, but continues to believe that it is only prudent that borrowers avoid those investments having risks of a magnitude that would in any way put government funds at risk or impair loan repayment. We continue to believe that this is the correct interpretation of the intent of section 312.

Section 1717.652 Definitions

The term "own funds" was defined as "money belonging to the borrower other than the proceeds of loans made or guaranteed by RUS." Such proceeds include, but are not limited to, all funds on deposit in the cash-construction fund-trustee account. A commenter pointed out that requests for loan advances commonly occur after general funds have already been expended for loan purposes, and that it would be difficult to separate general funds into cash generated by operations and that derived from loan advances. This was not the agency's intent, nor is such separation required under the existing rule. To make this clear, the definition has been revised as follows: "Own funds means money belonging to the borrower other than funds on deposit in the cash-construction fund-trustee account."

One commenter stated that Operating TIER and Operating DSC, used as part of the criteria in proposed § 1717.655 to determine eligibility for an exemption from controls, appeared to be the same as standard TIER and DSC. They are not, since they measure interest and debt coverage only for the borrower's electric utility operations. Margins used in the calculation are operating margins rather than total margins. A few technical changes have been made to the definitions in this final rule to make it clearer that Operating TIER and Operating DSC apply only to the borrower's electric system and do not apply to any other utility operations of the borrower, such as a water and waste disposal system owned by the borrower.

One commenter asked whether margins earned by subsidiaries controlled by a borrower would be included in operating margins used in calculating Operating TIER and DSC. Since such subsidiaries are separate business entities outside the borrower's core electric utility business, as indicated above their profits or losses will not be included in calculating Operating TIER and DSC. They are, however, included in the calculation of standard TIER and DSC contained in the rate covenant of the typical mortgage or loan contract.

A question was asked about whether "telecommunication and other electronic communication system" includes satellite and direct broadcast television service. The answer is yes, provided that "the service" includes providing a continuing service to customers, such as television programming, rather than just a one-time sale of equipment, and as set forth in the definition, such services "are available by design to all or a substantial portion of the members of the community."

Section 1717.653 Borrowers in Default

This section has been added to clarify the point that if a borrower in not in compliance with all provisions of its mortgage, loan contract, or any other agreements with RUS, the borrower must obtain prior written approval from the Administrator to invest its own funds or to make loans or guarantees, unless such loan document or other agreement specifically provides otherwise. This was implicit in proposed section 1717.653(a) (renumbered 1717.654(a)), and is now spelled out for greater clarity.

Section 1717.654 (Proposed 1717.653) Transactions Below the 15 Percent Level

Clarification was requested of the statement that "funds necessary to make timely payments of principal and interest on loans secured by the RUS mortgage remain subject to RUS controls. * * *" The purpose of this statement is to make it clear that while RUS controls on investments, loans and guarantees by the borrower do not ordinarily apply below the 15 percent level, RUS may impose such controls case-by-case in those circumstances where they are necessary to ensure reasonably adequate loan security or to ensure the repayment of loans secured under the mortgage. Such instances presumably would be relatively rare, and the borrower would be notified in advance that the controls were being imposed.

One commenter stated that the apparent effect of paragraph (b) of this section is to restrict the limitations on investments contained in the rule to loan contracts or mortgages executed after the effect date of the final rule. That is not correct. Proposed paragraph (b) described language to be included in the loan contract or mortgage regarding investment controls, and proposed certain changes in the prescribed language for these documents contained in § 1717.654(b) of the existing rule. In the final rule, this prescribed language has been further revised to conform with the approach used in the new mortgage and proposed loan contract for distribution borrowers: namely, the provision is expressed in more general terms, relying on RUS regulations to flesh out the interpretation and specific requirements of the provision. Revised paragraph (b) has been moved to § 1717.659.

The provisions of existing subpart N have applied to all borrowers since the date it became effective, July 31, 1983, regardless of when their loan contracts or mortgages were executed. Changes to subpart N contained in this final rule will also apply to all borrowers regardless of when their loan documents were executed. This has been clarified in § 1717.650. RUS believes that borrowers who qualify for an outright exemption from investment controls should not have to wait until new loan documents are executed before becoming eligible. Nor should other reforms be delayed, such as excluding rural community infrastructure from the 15 percent calculation.

Section 1717.655 (Proposed 1717.654) Exclusion of Certain Investments, Loans, and Guarantees

The Saint Paul Bank for Cooperatives recommended that investments in it be excluded, as are investments in CFC and CoBank. This has been done.

A commenter pointed out that investments made in a trust fund dedicated to pay the decommissioning costs of nuclear generating facilities was not listed in this section as an excluded investment, but is excluded under RUS Bulletin 1717B–3. Failure to list such investments as excluded under this section was inadvertent, and this has been corrected.

One commenter noted that several generation and transmission borrowers (G&Ts) have invested in fuel supply subsidiaries in an effort to control fuel costs, and argued that such investments should be excluded. This recommendation has not been adopted.

Such subsidiaries often have other lines of business and often provide services to other utilities or other companies, making it difficult to determine to what extent the subsidiary is involved in providing services in direct support of the borrower's electric utility business. If fuel supply subsidiaries were excluded, then there would be pressure to exclude other subsidiaries that might provide some services to the borrower, such as warehousing, barge service, railroad or truck service, insurance, engineering services, etc. Moreover, the property of a subsidiary generally is not subject to the lien of the government's mortgage, and the property and operations of the subsidiary are not subject to RUS operational controls and approval rights. This often can present serious problems with respect to the agency's programmatic and security interests.

A commenter recommended that patronage capital allocated to a G&T by its distribution members be excluded. Such allocations often occur when a G&T buys power from its members for headquarters, warehouses, and metering points located in the members' territory. This recommendation has been adopted.

Another commenter stated that the exclusion of community infrastructure in paragraph (c)(3) should not be based on whether the infrastructure is located within the borrower's service territory, but whether the infrastructure serves consumers located in rural areas. RUS agrees with the recommendation for the purposes of this rule, and has so revised the paragraph.

Proposed paragraph (c)(1) excluded investments or loans made by a borrower derived from funds obtained from grants or loans received from a USDA agency. Such grants and loans from a USDA agency normally would be for purposes supporting rural economic development. A commenter recommended that the source of the grant or loan be expanded to include any Federal, State or local government agency. RUS agrees with this recommendation provided that such loan funds are designated to promote rural economic development and the borrower uses the funds for that purpose. Grant funds that the borrower is not obligated to repay may be for any purpose since there would be little or no risk to RUS loan security. In reality, most such grants likely would be for rural economic development.

A co-mortgagee suggested that it be granted what it described as the same preapproval of credit enhancement in paragraph (d) as granted USDA agencies in cases where a borrower is required to make an investment, loan, or guarantee, for example, as a condition of obtaining financial assistance from the agency. The intent of this provision is to support rural economic development, for example, in instances where a borrower is required to invest some of its own funds in order to qualify for a rural development grant or loan, which usually will be on subsidized terms. Investments in the co-mortgagee in question are excluded under paragraph (b) of this section.

Section 1717.656 (Proposed 1717.655) Exemption of Certain Borrowers From Controls

A number of comments were received about the criteria for qualifying for an exemption from investment controls set forth in paragraph (a).

One borrower asked whether patronage capital earned or refunded would be subtracted from the average residential rate of borrowers in making the comparison with the average residential rate for all utilities serving a state. The answer is, no. This adjustment would not be significant enough to make a difference among borrowers or to justify the additional complexity. Borrowers are reminded that if they fail to qualify for an exemption based solely on the rate disparity criterion, upon request the Administrator may grant the exemption if he or she determines that the borrowers' strengths in the other criteria outweigh their weakness on rate disparity.

Several borrowers suggested that it would be more "prudent" to use a standard TIER of 1.05 for G&Ts rather than the proposed Operating TIER and Operating DSC of 1.0. RUS disagrees that that would be more "prudent" from the standpoint of loan security. In addition to Operating TIER and DSC, a borrower would have to meet the TIER and DSC requirements in its mortgage (the first criterion under paragraph (a)), which for most G&Ts is a standard DSC of 1.0 and standard TIER of 1.0 or 1.05. The advantage of requiring a minimum Operating TIER and DSC of 1.0 is that it will ensure that a borrower is at least breaking even on its main business, its electric operations, and does not need to rely on income from investments and other non-core activities to meet its debt service and other expenses of its core business.

Several G&Ts argued that the minimum equity required to qualify for an exemption should be set lower for G&Ts than for distribution systems. RUS disagrees since it is not apparent that giving G&T's wider latitude to make investments without RUS approval would involve less risk to loan security than in the case of distribution borrowers.

Several borrowers opposed the netting out of regulatory created assets when calculating equity as a percent of total assets. RUS disagrees since these assets represent current period expenses that should have been expensed, rather than capitalized, in order to reflect the true operating performance of the borrower. Deferring these expenses overstates both equity and total assets. RUS has followed this practice for the past several years, codifying it in the lien accommodation rule (7 CFR part 1717, subparts R and S), the 110 percent rule (7 CFR 1710.7 and 7 CFR 1717.860), and the distribution mortgage (7 CFR part 1718, subpart B).

Under paragraph (c), a borrower that has lost its exemption may regain it if it once again meets the exemption criteria. One commenter recommended that restoration of the exemption ought to be automatic, rather than contingent upon written notice from RUS. RUS believes that notice is required in order for the borrower and RUS to have the same understanding about the exemption status of the borrower. Without requiring notification, disputes and associated administrative costs and delays would likely occur. Requiring written notice to restore an exemption is consistent with the written notice required to terminate an exemption.

Under paragraph (d), a borrower that has lost its exemption and has exceeded the 15 percent limit would be required to reduce or restructure its investment portfolio to come within the 15 percent limit. If the borrower failed to come within the 15 percent limit within a reasonable period of time determined by the Administrator, the borrower could be given notice of default.

The proposed paragraph implicitly assumed the borrower was in compliance with all other provisions of its mortgage, loan contract, and any other agreements with RUS. This has now been made explicit, and it has been reiterated that if the borrower is not in compliance with such provisions it may be required to reduce its investment portfolio below the 15 percent level, if not prohibited by the explicit terms of the borrower's mortgage, loan contract, or other agreement with RUS.

One commenter argued that RUS should not be able to call a default if the investments that exceeded the 15 percent limit were made while the borrower was exempt. RUS disagrees, since without the right to call a default there would be less leverage to reduce loan security risks in cases where a borrower had a high-risk investment portfolio that substantially exceeded the 15 percent limit. There would also be less incentive for borrowers to maintain the performance levels required for an exemption if there were no penalty for failing to maintain these levels.

However, it may not be necessary in all cases to require a formerly exempt borrower to reduce its investment portfolio to the 15 percent limit. Paragraph (d) has therefore been revised to give the Administrator the flexibility to allow a formerly exempt borrower not in default to remain above the 15 percent limit if the Administrator determines that reducing or restructuring the investment portfolio to come within the limit would not be in the financial interest of the government from the standpoint of loan security and/or repayment.

Section 1717.657 (Proposed 1717.656) Investments Above the 15 Percent Level by Certain Borrowers not Exempt Under § 1717.656(a)

A commenter recommended that G&Ts not meeting the minimum criteria in paragraph (c) for requesting RUS approval of investments above the 15 percent level should nevertheless be given a chance to have their requests considered. RUS disagrees. The criteria are very minimal: no default, no financial workout or restructured debt, and a minimum equity of 5 percent. G&Ts (as well as distribution borrowers) that are in default do not in the first place qualify under § 1717.654(a) to make investments, loans and guarantees up to the 15 percent level without RUS approval. Section 1717.657 does not apply to them. Other G&Ts that are not in default but have equity of less than 5 percent, or are in financial workout, or have had their debt restructured, ought to confine investments above the 15 percent level to excluded investments.

Another commenter recommended that distribution borrowers not meeting the criteria for an outright exemption from investment controls (§ 1717.656(a)) ought to be able to seek approval from RUS for investments above the 15 percent level. RUS believes such borrowers should restrict their investments above the 15 percent level to excluded investments. Some 84 percent of distribution borrowers qualify for an outright exemption. Many of the remaining borrowers could make changes in their operations and qualify for an exemption.

A co-mortgagee argued that it would be more prudent to relate the maximum limit on investments by G&Ts to equity, rather than 20 percent of total utility plant (see § 1717.657(c)). RUS agrees that it would be more logical to use equity, one of the criteria used to determine eligibility for an exemption from investment controls. However, setting the maximum investment limit at even 100 percent of equity would result in a limit for most G&Ts lower than the 15 percent of total utility plant mandated by section 312 of the RE Act.

A commenter asked whether the 10-year look-back on net profits on investments in paragraph (d) is a rolling or one-time calculation. It is a rolling calculation done at the time RUS is asked by a borrower to exclude all or a portion of net profits that have resulted in investments exceeding the 15 percent limit.

Section 1717.658 (Proposed 1717.657) Records, Reports and Audits

One commenter recommended changing current practice which requires guarantees and lines of credit to be counted in full against the 15 percent limit whether or not there is a loan outstanding or any likelihood the guarantee will be called upon. RUS does not believe current practice should be changed. A line of credit could be drawn upon at any time and RUS would have no way of anticipating when that time might come. Presumably borrowers would not want their ability to make good on a line of credit commitment to another party to be subject to subsequent approval by RUS. As to excluding guarantee obligations of the borrower that are unlikely to be called upon, in most cases it would be very difficult and time-consuming for RUS to assess the probability that the borrower will be required to perform under the guarantee.

One commenter stated that the balance sheet method used by RUS to count investments is not consistent with section 312. RUS disagrees with that view, and notes that § 1717.657(d) of the rule addresses the main concern that has been raised over the years: namely, that net profits on investments may cause a borrower to exceed the 15 percent limit and possibly be in default. Section 1717.657(d) provides that such circumstances would not necessarily result in a default, and at a borrower's request, the Administrator could exclude up to the amount of net profit earned over the past 10 years if such exclusion would not increase loan security risks.

Section 1717.659 (Proposed 1717.658) Effect on RUS Loan Contract and Mortgage

Section 1717.656(c) of the existing regulation explicitly states that, "Nothing in this subpart authorizes a borrower to make extensions or improvements to its electric system without prior approval of RUS." That provision was subsumed under a more comprehensive provision in proposed § 1717.658(a), which in the final rule has been clarified by adding the specific reference to RUS approval rights over system extensions and additions. Similar changes have been made to sections 1717.654 and 1717.656.

Borrowers Exempt From Investment Controls

The distribution and power supply borrowers listed below meet the criteria in § 1717.656(a) and are exempt from RUS approval of any investment, loan, or guarantee made on or after September 21, 1995. Borrowers are reminded that, under § 1717.656(c), if they subsequently cease to meet the exemption criteria, upon written notice from RUS they will no longer be exempt from RUS investment controls.

Borrowers that do not meet the criteria for exemption will be notified individually in writing by RUS and will be advised of the reasons they fail to qualify.

Borrowers Exempt From RUS Investment Controls

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List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated, subpart N of 7 CFR part 1717 is revised to read as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

Subpart N—Investments, Loans, and Guarantees by Electric Borrowers

Sec.
1717.650 Purpose.
1717.651 General.
1717.652 Definitions.
1717.653 Borrowers in default.
1717.654 Transactions below the 15 percent level.
1717.655 Exclusion of certain investments, loans, and guarantees.
1717.656 Exemption of certain borrowers from controls.
1717.657 Investments above the 15 percent level by certain borrowers not exempt under § 1717.656(a).
1717.658 Records, reports and audits.
1717.659 Effect of this subpart on RUS loan contract and mortgage.

Subpart N—Investments, Loans, and Guarantees by Electric Borrowers

Authority: 7 U.S.C. 901–950b; Pub.L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*); Title I, Subtitle D, Pub.L. 100–203, 101 Stat. 1330.

§ 1717.650 Purpose.

This subpart sets forth general regulations for implementing and interpreting provisions of the RUS mortgage and loan contract regarding investments, loans, and guarantees made by electric borrowers, as well as the provisions of the Rural Electrification Act of 1936, as amended, including section 312 (7 U.S.C. 901 et seq.) (RE Act), permitting, in certain circumstances, that electric borrowers under the RE Act may, without restriction or prior approval of the Administrator of the Rural Utilities Service (RUS), invest their own funds and make loans or guarantees.

§ 1717.651 General.

(a) *Policy.* RUS electric borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not in any way put government funds at risk or impair a borrower's ability to repay its indebtedness to RUS and other lenders. In considering whether to make loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve. RUS assumes that borrowers will use the latitude afforded them by section 312 of the RE Act primarily to make needed investments in rural community infrastructure projects (such as water and waste systems, garbage collection services, etc.) and in job creation activities (such as providing technical, financial, and managerial assistance) and other activities to promote business development and economic diversification in rural communities. Nonetheless, RUS believes that borrowers should continue to give primary consideration to safety and liquidity in the management of their funds.

(b) *Applicability of this subpart.* This subpart applies to all distribution and power supply borrowers regardless of when their loan contract or mortgage was executed.

§ 1717.652 Definitions.

As used in this subpart:

Borrower means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification.

Cash-construction fund-trustee account means the account described in the Uniform System of Accounts as one to which funds are deposited for financing the construction or purchase of electric facilities.

Distribution borrower means a Distribution Borrower as defined in 7 CFR 1710.2.

Electric system means all of the borrower's interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear, or other fuel or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the borrower's generating plants, including any interest or participation of the borrower in any such facilities or any rights to the output or capacity thereof, together with all lands, easements, rights-of-way, other works, property, structures, contract rights and other tangible and intangible assets of the borrower in each case used or useful in such electric system.

Equity means the Margins and Equities of the borrower as defined in the Uniform System of Accounts, less regulatory created assets.

Guarantee means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation, including, without limitation, the obligations of subsidiaries. Some examples of such guarantees include guarantees of payment or collection on a note or other debt instrument (assuring returns on investments); issuing performance bonds or completion bonds; or cosigning leases or other obligations of third parties.

Invest means to commit money in order to earn a financial return on assets, including, without limitation, all investments properly recorded on the borrower's books and records in investment accounts as those accounts are used in the Uniform System of Accounts for RUS Borrowers. Borrowers may submit any proposed transaction to RUS for an interpretation of whether the action is an investment for the purposes of this definition.

Make loans means to lend out money for temporary use on condition of repayment, usually with interest.

Mortgaged property means any asset of the borrower which is pledged in the RUS mortgage.

Natural gas distribution system means any system of community infrastructure that distributes natural gas and whose services are available by design to all or a substantial portion of the members of the community.

Operating DSC means Operating Debt Service Coverage (ODSC) of the borrower's electric system calculated as:

$$\mathrm{ODSC} = \frac{A+B+C}{D}$$

where:

All amounts are for the same year and are based on the RUS system of accounts;

A=Depreciation and Amortization Expense of the electric system;

B=Interest on Long-term Debt of the electric system, except that Interest on Long-term Debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property of the electric system exceed 2 percent of Total Margins and Equities;

C=Patronage Capital & Operating Margins of the electric system (distribution borrowers) or Operating Margins of the electric system (power supply borrowers); and

D=Debt Service Billed (RUS + other) which equals all interest and principal billed or billable during the calendar year for long-term debt of the electric system plus ⅓ of the amount, if any, by which the rentals of Restricted Property of the electric system exceed 2 percent of Total Margins and Equities. Unless otherwise indicated, all terms used in defining ODSC and OTIER are as defined in RUS Bulletin 1717B–2 Instructions for the Preparation of the Financial and Statistical Report for Electric Distribution Borrowers, and RUS Bulletin 1717B–3 Instructions for the Preparation of the Operating Report for Power Supply Borrowers and for Distribution Borrowers with Generating Facilities, or the successors to these bulletins.

Operating TIER means Operating Times Interest Earned Ratio (OTIER) of the borrower's electric system calculated as:

$$\mathrm{OTIER} = \frac{A+B}{A}$$

where:

All amounts are for the same year and are based on the RUS system of accounts;

A=Interest on Long-term Debt of the electric system, except that Interest on Long-term Debt shall be increased by 1/3 of the amount, if any, by which the rentals of Restricted Property of the electric system exceed 2 percent of Total Margins and Equities; and

B=Patronage Capital & Operating Margins of the electric system (distribution borrowers) or Operating Margins of the electric system (power supply borrowers).

Own funds means money belonging to the borrower other than funds on deposit in the cash-construction fund-trustee account.

Power supply borrower means a Power Supply Borrower as defined in 7 CFR 1710.2.

Regulatory created assets means the sum of the amounts properly recordable in Account 182.2 Unrecovered Plant and Regulatory Study Costs, and Account 182.3 Other Regulatory Assets of the Uniform System of Accounts.

RUS means the Rural Utilities Service, an agency of the U.S. Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178, 7 U.S.C. 6941 et seq.) and, for purposes of this subpart, includes its predecessor, the Rural Electrification Administration.

RUS loan contract means the loan contract between the borrower and RUS.

RUS mortgage means any and all instruments creating a lien on or security interest in the borrower's assets in connection with loans or guarantees under the RE Act.

Solid waste disposal system means any system of community infrastructure that provides collection and/or disposal of solid waste and whose services are available by design to all or a substantial portion of the members of the community.

Subsidiary means a company which is controlled by the borrower through ownership of voting stock, and is further defined in 7 CFR 1767.10.

Supplemental lender means a lender that has provided a supplemental source of financing that is secured by the RUS mortgage.

Telecommunication and other electronic communication system means any community infrastructure that provides telecommunication or other electronic communication services and whose services are available by design to all or a substantial portion of the members of the community.

Total assets means the total assets of the borrower as calculated according to

the Uniform System of Accounts, less regulatory created assets.

Total utility plant means the sum of the borrower's Electric Plant Accounts and Construction Work in Progress—Electric Accounts, as such terms are used in the Uniform System of Accounts.

Uniform System of Accounts means the system of accounts prescribed for RUS borrowers in 7 CFR part 1767.

Water and waste disposal system means any system of community infrastructure that supplies water and/or collects and treats waste water and whose services are available by design to all or a substantial portion of the members of the community.

§ 1717.653 Borrowers in default.

Any borrower not in compliance with all provisions of its mortgage, loan contract, or any other agreements with RUS must, unless the borrower's mortgage, loan contract, or other agreement with RUS specifically provides otherwise with respect to such a borrower:

(a) Obtain prior written approval from the Administrator to invest its own funds or to make loans or guarantees regardless of the aggregate amount of such investments, loans, or guarantees; and

(b) If requested by the Administrator, restructure or reduce the amount of its investments, loans, and guarantees to a level determined by the Administrator, in his or her sole discretion, to be in the financial interest of the government with respect to loan security and/or repayment. If the borrower does not so restructure or reduce its portfolio within a reasonable period of time determined by the Administrator, which shall not exceed 12 months from the date the borrower was notified of the required action, then, upon written notice from RUS, the borrower shall be in default of its RUS loan contract and mortgage.

§ 1717.654 Transactions below the 15 percent level.

(a) A borrower in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreements with RUS may, without prior written approval of the Administrator, invest its own funds or make loans or guarantees not in excess of 15 percent of its total utility plant without regard to any provision contained in any RUS mortgage or RUS loan contract to the effect that the borrower must obtain prior approval from RUS, provided, however, that the borrower may not, without the prior written approval of the Administrator, make such investments, loans, and guarantees to extend, add to, or modify its electric system. Moreover, funds necessary to make timely payments of principal and interest on loans secured by the RUS mortgage remain subject to RUS controls on borrower investments, loans and guarantees.

(b) RUS will not consider requests from borrowers to exclude investments, loans, or guarantees made below the 15 percent level. (Categorical exclusions are set forth in § 1717.655.)

§ 1717.655 Exclusion of certain investments, loans, and guarantees.

(a) In calculating the amount of investments, loans and guarantees permitted under this subpart, there is excluded from the computation any investment, loan or guarantee of the type which by the terms of the borrower's RUS mortgage or RUS loan contract the borrower may make in unlimited amounts without RUS approval.

(b) Furthermore, the borrower may make unlimited investments, without prior approval of the Administrator, in:

(1) Securities or deposits issued, guaranteed or fully insured as to payment by the United States Government or any agency thereof;

(2) Capital term certificates, bank stock, or other similar securities of the supplemental lender which have been purchased as a condition of membership in the supplemental lender, or as a condition of receiving financial assistance from such lender, as well as any other investment made in, or loans made to, the National Rural Utilities Cooperative Finance Corporation, the Saint Paul Bank for Cooperatives, and CoBank, ACB;

(3) Patronage capital allocated from an electric power supply cooperative of which the borrower is a member; and

(4) Patronage capital allocated from an electric distribution cooperative to a power supply borrower.

(c) Without prior approval of the Administrator, the borrower may also:

(1) Invest or lend funds derived directly from:

(i) Grants which the borrower in not obligated to repay, regardless of the source or purpose of the grant; and

(ii) Loans received from or guaranteed by any Federal, State or local government program designed to promote rural economic development, provided that the borrower uses the loan proceeds for such purpose;

(2) Make loans guaranteed by an agency of USDA, up to the amount of principal whose repayment, with interest, is fully guaranteed; and

(3) (i) Make unlimited investments in and unlimited loans to finance the following community infrastructure that serves primarily consumers located in rural areas as defined in 7 CFR 1710.2, and guarantee debt issued for the construction or acquisition of such infrastructure, up to an aggregate amount of such guarantees not to exceed 20 percent of the borrower's equity:

(A) Water and waste disposal systems;

(B) Solid waste disposal systems;

(C) Telecommunication and other electronic communication systems; and

(D) Natural gas distribution systems.

(ii) In each of the four cases in paragraph (c)(3)(i) of this section, if the system is a component of a larger organization other than the borrower itself (e.g., if it is a component of a subsidiary of the borrower or a corporation independent of the borrower), to be eligible for the exemption the borrower must certify annually that a majority of the gross revenues of the larger organization during the most recent fiscal year came from customers of said system who were located in a rural area.

(d) Also excluded from the calculation of investments, loans and guarantees made by the borrower are:

(1) Amounts properly recordable in Account 142 Customer Accounts Receivable, and Account 143 Other Accounts Receivable;

(2) Any investment, loan, or guarantee that the borrower is required to make by an agency of USDA, for example, as a condition of obtaining financial assistance for itself or any other person or organization;

(3) Investments included in an irrevocable trust for the purpose of funding post-retirement benefits of the borrower's employees;

(4) Reserves required by a reserve bond agreement or other agreement legally binding on the borrower, that are dedicated to making required payments on debt secured under the RUS mortgage, not to exceed the amount of reserves specifically required by such agreements; and

(5) Investments included in an irrevocable trust approved by RUS and dedicated to the payment of decommissioning costs of nuclear facilities of the borrower.

(e) Grandfathered exclusions. All amounts of individual investments, loans, and guarantees excluded by RUS as of February 16, 1995 shall remain excluded. Such exclusions must have been based on the RUS mortgage, RUS loan contract, regulations, bulletins, memoranda, or other written notice from RUS. Profits, interest, and other returns earned (regardless of whether or not they are reinvested) on such investments, loans and guarantees after

February 16, 1995 shall be excluded only if they are eligible for exclusion under paragraphs (a) through (d) of this section. Any new commitments of money to such investments, loans and guarantees shall likewise be excluded only if they are eligible under paragraphs (a) through (d) of this section.

(f) Any investment, loan or guarantee made by a borrower that is not excluded under this section or under § 1717.657(d) shall be included in the aggregate amount of investments, loans and guarantees made by the borrower, regardless of whether RUS has specifically approved the investment, loan or guarantee under § 1717.657(c), or has approved a related transaction (e.g., a lien accommodation).

§ 1717.656 Exemption of certain borrowers from controls.

(a) Any distribution or power supply borrower that meets all of the following criteria is exempted from the provisions of the RUS mortgage and loan contract that require RUS approval of investments, loans, and guarantees, except investments, loans, and guarantees made to extend, add to, or modify the borrower's electric system:

(1) The borrower is in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreements with RUS;

(2) The average revenue per kWh for residential service received by the borrower during the two most recent calendar years does not exceed 130 percent of the average revenue per kWh for residential service during the same period for all residential consumers located in the state or states served by the borrower. This criterion applies only to distribution borrowers and does not apply to power supply borrowers. If a borrower serves customers in more than one state, the state average revenue per kWh will be based on a weighted average using the kWh sales by the borrower in each state as the weight. The calculation will be based on the two most recent calendar years for which both borrower and state-wide data are available. If a borrower fails to qualify for an exemption based solely on its failure to meet this criterion on rate disparity, at the borrower's request the Administrator may, at his or her sole discretion, exempt the borrower if he or she finds that the borrower's strengths with respect to the other criteria are sufficient to offset any weakness due to rate disparity;

(3) In the most recent calendar year for which data are available, the borrower achieved an operating TIER of at least 1.0 and an operating DSC of at least 1.0, in each case based on the average of the two highest ratios achieved in the three most recent calendar years;

(4) The borrower's ratio of net utility plant to long-term debt is at least 1.1, based on year-end data for the most recent calendar year for which data are available; and

(5) The borrower's equity is equal to at least 27 percent of its total assets, based on year-end data for the most recent calendar year for which data are available.

(b) While borrowers meeting the criteria in paragraph (a) of this section are exempt from RUS approval of investments, loans and guarantees, they are nevertheless subject to the record-keeping, reporting, and other requirements of § 1717.658.

(c) Any borrower exempt under paragraph (a) of this section that ceases to meet the criteria for exemption shall, upon written notice from RUS, no longer be exempt and shall be subject to the provisions of this subpart applicable to non-exempt borrowers. A borrower may regain its exemption if it subsequently meets the criteria in paragraph (a) of this section, and is so notified in writing by RUS.

(d)(1) A borrower that loses its exemption and is not in compliance with all provisions of its mortgage, loan contract, or any other agreement with RUS may be required to restructure or reduce its portfolio of investments, loans and guarantees as provided in § 1717.653(b). If the borrower's portfolio exceeds the 15 percent level, the borrower will be required to restructure or reduce its portfolio to the 15 percent level or below. For example, if the borrower's mortgage or loan contract has an approval threshold, the borrower may be required to reduce its portfolio to that level, which in many cases is 3 percent of total utility plant.

(2) A borrower that loses its exemption but is in compliance with all provisions of its mortgage, loan contract, and any other agreements with RUS will be required, if its investments, loans and guarantees exceed the 15 percent level, to restructure or reduce its portfolio to the 15 percent level, unless the Administrator, in his or her sole discretion, determines that such action would not be in the financial interest of the government with respect to loan security and/or repayment. (Such borrower is eligible to ask RUS to exclude a portion of its investments under the conditions set forth in § 1717.657(d).)

(3) If a borrower required to reduce or restructure its portfolio does not fully comply within a reasonable period of time determined by the Administrator, which shall not exceed 12 months from the date the borrower was notified of its loss of exemption, then, upon written notice from RUS, the borrower shall be in default of its RUS loan contract and/or RUS mortgage.

(e) By no later than July 1 of each year, RUS will provide written notice to any borrowers whose exemption status has changed as a result of more recent data being available for the qualification criteria set forth in paragraph (a) of this section, or as a result of other reasons, such as corrections in the available data. An explanation of the reasons for any changes in exemption status will also be provided to the borrowers affected.

§ 1717.657 Investments above the 15 percent level by certain borrowers not exempt under § 1717.656(a).

(a) *General.* (1) This section applies only to borrowers that are in compliance with all provisions of their mortgage, loan contract, and any other agreements with RUS and that do not qualify for an exemption from RUS investment controls under § 1717.656(a).

(2) Nothing in this section shall in any way affect the Administrator's authority to exercise approval rights over investments, loans, and guarantees made by a borrower that is not in compliance with all provisions of its mortgage, loan contract and any other agreements with RUS.

(b) *Distribution borrowers.* Distribution borrowers not exempt from RUS investment controls under § 1717.656(a) may not make investments, loans and guarantees in an aggregate amount in excess of 15 percent of total utility plant. Above the 15 percent level, such borrowers will be restricted to excluded investments, loans and guarantees as defined in § 1717.655. (However, they are eligible to ask RUS to exclude a portion of their investments under the conditions set forth in paragraph (d) of this section.)

(c) *Power supply borrowers.* (1) Power supply borrowers not exempt from RUS investment controls under § 1717.656(a) may request approval to exceed the 15 percent level if all of the following criteria are met:

(i) Satisfactory evidence has been provided that the borrower is in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreements with RUS;

(ii) The borrower is not in financial workout and has not had its government debt restructured;

(iii) The borrower has equity equal to at least 5 percent of its total assets; and

(iv) After approval of the investment, loan or guarantee, the aggregate of the

borrower's investments, loans and guarantees will not exceed 20 percent of the borrower's total utility plant.

(2) Borrower requests for approval to exceed the 15 percent level will be considered on a case by case basis. The requests must be made in writing.

(3) In considering borrower requests, the Administrator will take the following factors into consideration:

(i) The repayment of all loans secured under the RUS mortgage will continue to be assured, and loan security must continue to be reasonably adequate, even if the entire investment or loan is lost or the borrower is required to perform for the entire amount of the guarantee. These risks will be considered along with all other risks facing the borrower, whether or not related to the investment, loan or guarantee;

(ii) In the case of investments, the investment must be made in an entity separate from the borrower, such as a subsidiary, whereby the borrower is protected from any liabilities incurred by the separate entity, unless the borrower demonstrates to the satisfaction of the Administrator that making the investment directly rather than through a separate entity will present no substantial risk to the borrower in addition to the possibility of losing all or part of the original investment;

(iii) The borrower must be economically and financially sound as indicated by its costs of operation, competitiveness, operating TIER and operating DSC, physical condition of the plant, ratio of equity to total assets, ratio of net utility plant to long-term debt, and other factors; and

(iv) Other factors affecting the security and repayment of government debt, as determined by the Administrator on a case by case basis.

(4) If the Administrator approves an investment, loan or guarantee, such investment, loan or guarantee will continue to be included when calculating the borrower's ratio of aggregate investments, loans and guarantees to total utility plant.

(d) *Distribution and power supply borrowers.* If the aggregate of the investments, loans and guarantees of a distribution or power supply borrower exceeds 15 percent of the borrower's total utility plant as a result of the cumulative profits or margins, net of losses, earned on said transactions over the past 10 calendar years (i.e., the sum of all profits earned during the 10 years on all transactions—including interest earned on cash accounts, loans, and similar transactions—less the sum of all losses experienced on all transactions during the 10 years) then:

(1) The borrower will not be in default of the RUS loan contract or RUS mortgage with respect to required approval of investments, loans and guarantees, provided that the borrower had not made additional net investments, loans or guarantees without approval after reaching the 15 percent level; and

(2) At the request of the borrower, the Administrator in his or her sole discretion may decide to exclude up to the amount of net profits or margins earned on the borrower's investments, loans and guarantees during the past 10 calendar years, if the Administrator determines that such exclusion will not increase loan security risks. The borrower must provide documentation satisfactory to the Administrator as to the current status of its investments, loans and guarantees and the net profits earned during the past 10 years. Any exclusion approved by the Administrator may or may not reduce the level of investments, loans and guarantees to or below the 15 percent level. If such exclusion does not reduce the level to or below the 15 percent level, RUS will notify the borrower in writing that it must reduce or restructure its investments, loans and guarantees to a level of not more than 15 percent of total utility plant. If the borrower does not come within the 15 percent level within a reasonable period of time determined by the Administrator, which shall not exceed 12 months from the date the borrower was notified of the required action, then, upon written notice from RUS, the borrower shall be in default of its RUS loan contract and mortgage.

§ 1717.658 Records, reports and audits.

(a) Every borrower shall maintain accurate records concerning all investments, loans and guarantees made by it. Such records shall be kept in a manner that will enable RUS to readily determine:

(1) The nature and source of all income, expenses and losses generated from the borrower's loans, guarantees and investments;

(2) The location, identity and lien priority of any loan collateral resulting from activities permitted by this subpart; and

(3) The effects, if any, which such activities may have on the feasibility of loans made, guaranteed or lien accommodated by RUS.

(b) In determining the aggregate amount of investments, loans and guarantees made by a borrower, the borrower shall use the recorded value of each investment, loan or guarantee as reflected on its books and records for the next preceding end-of-month, except for the end-of-year report which shall be based on December 31 information. Every borrower shall also report annually to RUS, in the manner and on the form specified by the Administrator, the current status of each investment, outstanding loan and outstanding guarantee which it has made pursuant to this subpart.

(c) The records of borrowers shall be subject to the auditing procedures prescribed in part 1773 of this chapter. RUS reserves the right to review the financial records of any subsidiaries of the borrower to determine if the borrower is in compliance with this subpart, and to ascertain if the debts, guarantees (as defined in this subpart), or other obligations of the subsidiaries could adversely affect the ability of the borrower to repay its debts to the Government.

(d) RUS will monitor borrower compliance with this subpart based primarily on the annual financial and statistical report submitted by the borrower to RUS and the annual auditor's report on the borrower's operations. However, RUS may inspect the borrower's records at any time during the year to determine borrower compliance. If a borrower's most recent annual financial and statistical report shows the aggregate of the borrower's investments, loans and guarantees to be below the 15 percent level, that in no way relieves the borrower of its obligation to comply with its RUS mortgage, RUS loan contract, and this subpart with respect to Administrator approval of any additional investment, loan or guarantee that would cause the aggregate to exceed the 15 percent level.

§ 1717.659 Effect of this subpart on RUS loan contract and mortgage.

(a) Nothing in this subpart shall affect any provision, covenant, or requirement in the RUS mortgage, RUS loan contract, or any other agreement between a borrower and RUS with respect to any matter other than the prior approval by RUS of investments, loans, and guarantees by the borrower, such matters including, without limitation, extensions, additions, and modifications of the borrower's electric system. Also, nothing in this subpart shall affect any rights which supplemental lenders have under the RUS mortgage, or under their loan contracts or other agreements with their borrowers, to limit investments, loans and guarantees by their borrowers to levels below 15 percent of total utility plant.

(b) RUS will require that any electric loan made or guaranteed by RUS after October 23, 1995 shall be subject to a provision in the loan contract or mortgage restricting investments, loans and guarantees by the borrower substantially as follows: The borrower shall not make any loan or advance to, or make any investment in, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assume or otherwise become obligated or liable with respect to the obligations of, any other person, firm or corporation, except as permitted by the RE Act and RUS regulations.

(c) RUS reserves the right to change the provisions of the RUS mortgage and loan contract relating to RUS approval of investments, loans and guarantees made by the borrower, on a case-by-case basis, in connection with providing additional financial assistance to a borrower after October 23, 1995.

Dated: September 15, 1995.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–23380 Filed 9–20–95; 8:45 am]

BILLING CODE 3410–15–P

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 93–058–2]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Kansas from a modified accredited State to an accredited-free State. We have determined that Kansas meets the criteria for designation as an accredited-free State.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on June 27, 1995 (60 FR 33100–33101, Docket No. 93–058–1), we amended the tuberculosis regulations in 9 CFR part 77 by removing Kansas from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before August 28, 1995. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 77.1 and that was published at 60 FR 33100–33101 on June 27, 1995.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 15th day of September 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–23478 Filed 9–20–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–20–AD; Amendment 39–9379; AD 95–19–18]

Airworthiness Directives; Twin Commander Aircraft Corporation 680, 681, 690, and 695 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Twin Commander Aircraft Corporation (Twin Commander) 680, 681, 690, and 695 series airplanes. This action requires installing a placard warning the pilot to observe turbulent air penetration speeds. Two accidents involving Model 690 airplanes where the affected airplanes encountered turbulence while descending at high speeds prompted this action. The actions specified by this AD are intended to prevent structural damage to the airplane caused by excessive turbulence, which could result in loss of control of the airplane.

EFFECTIVE DATE: October 25, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19010 59th Drive, N.E., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–20–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David D. Swartz, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone (206) 227–2624; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Twin Commander 680, 681, 690, and 695 series airplanes was published in the **Federal Register** on April 11, 1995 (60 FR 18374). The action proposed to require incorporating a placard and Airplane Flight Manual/Pilot's Operating Handbook (AFM/POH) revisions that warn the airplane operator of the importance of observing the Turbulent Air Penetration and Maneuvering speeds. The following kits include the placard and AFM/POH revisions:

Kit No.	Model affected
SB220–1	680T.
SB220–2	680V.
SB220–3	680W.
SB220–4	681.
SB220–5	690.
SB220–6	690A.
SB220–7	690B.
SB220–8	690C.
SB220–9	690D.
SB220–10	695.
SB220–11	695A.
SB220–12	695B.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 566 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $38 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $55,468. This figure is based on the assumption that no affected airplane owner/operator has incorporated the placard and AFM/POH revisions included with the applicable SB220 kit. Twin Commander has informed the FAA that no kits have been distributed to the owners/operators of the affected airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–19–18 Twin Commander Aircraft Corporation: Amendment 39–9379; Docket No. 95–CE–20–AD.

Applicability: The following airplane models and serial numbers, certificated in any category.

Models	Serial No.
680T and 680V	1473 through 1720.
680W	1721 through 1850.
681	6001 through 6072.
690	11001 through 11079.
690A	11100 through 11344.
690B	11350 through 11566.
690C	11600 through 11735.
690D	15001 through 15042.
695	95000 through 95084.
695A	96000 through 96100.
695B	96201 through 96208.

Note 1: This AD applies to each airplane identified in the preceding applicability revision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent structural damage to the airplane caused by excessive turbulence, which could result in loss of the airplane, accomplish the following:

(a) Install the placard (to the windshield centerpost) and incorporate the airplane flight manual/pilot operating handbook (AFM/POH) revisions that are included with the kits presented below. The placard and AFM/POH revisions provide warnings to the airplane operator of the importance of observing the Turbulent Air Penetration and Maneuvering speeds:

Kit No.	Model affected
SB220–1	680T.
SB220–2	680V.
SB220–3	680W.
SB220–4	681.
SB220–5	690.
SB220–6	690A.
SB220–7	690B.
SB220–8	690C.
SB220–9	690D.
SB220–10	695.
SB220–11	695A.
SB220–12	695B.

Note 2: Twin Commander Service Bulletin No. 220, dated February 1, 1995, relates to the subject of this AD, and references the SB220 service kits specified above.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) All persons affected by this directive may obtain copies of the kits referenced above that include the placard and the AFM revisions upon request to the Twin Commander Aircraft Corporation, 19010 59th Drive, NE., Arlington, Washington 98223; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–9379) becomes effective on October 25, 1995.

Issued in Kansas City, Missouri, on September 13, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–23355 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWA–3]

Establishment of Class C Airspace and Revocation of Class D Airspace, Cyril E. King Airport, VI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class C airspace area and revokes the Class D airspace area at the Cyril E. King Airport, Charlotte Amalie St. Thomas, VI. Cyril E. King Airport is a public-use facility with a Level II control tower served by Limited Radar Approach Control. The establishment of this Class C airspace area requires pilots to maintain two-way radio communications with the air traffic control (ATC) while in Class C airspace. Implementation of the Class C airspace, at this location, promotes the efficient control of air traffic and reduces the risk of midair collision in the terminal area.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that Terminal Radar Service Areas (TRSA's) should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated Airport Radar Service Area (ARSA), was recommended by a consensus of the task group.

The FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining ARSA airspace and establishing air traffic rules for operation within such an area.

Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which were included in the TRSA replacement program. The task group recommended that these criteria include, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are being published via the FAA directives system.

The FAA has established ARSA's at 121 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's that warrant implementation of an ARSA. Airspace Reclassification, effective September 16, 1993, reclassified ARSA's as Class C airspace areas. This change in terminology is reflected in the remainder of this rule.

This amendment establishes a Class C airspace area at a location which was not identified as a candidate for Class C in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register**.

The Cyril E. King Airport is a public-use airport with an operating Level II control tower served by Limited Radar Approach Control. Passenger enplanements reported at Cyril E. King Airport were 640,642, 583,817, and 602,373, respectively, for calendar years 1993, 1992, and 1991. This volume of passenger enplanements and aircraft operations meets the FAA criteria for establishing Class C airspace to enhance safety.

On June 27, 1995, the FAA proposed to designate a Class C airspace area at the Cyril E. King Airport, Charlotte Amalie St. Thomas, VI (60 FR 33152). Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. No comments were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class C airspace area and revokes the Class D airspace area at the Cyril E. King Airport, Charlotte Amalie St. Thomas, VI. Cyril E. King Airport is a public airport with a Level II operating control tower served by Limited Radar Approach Control. In addition, this action removes the existing Class D airspace area at Cyril E. King Airport, Charlotte Amalie St. Thomas, VI. The establishment of this Class C airspace area will require pilots to establish two-way radio communications with the ATC facility providing air traffic services prior to entering the airspace and thereafter maintain those communications while within the Class C airspace area. Implementation of the Class C airspace area will promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area. The Class D airspace area is being revoked because Class C airspace is more restrictive (i.e., carries higher operational requirements) than Class D airspace. Therefore, the FAA is revoking the Cyril E. King Airport, Charlotte Amalie St. Thomas, VI, Class D airspace area.

This action supports a goal of airspace reclassification to simplify the airspace by eliminating overlapping airspace designations. The coordinates in this document are based on North American Datum 83. Except for editorial changes and minor changes to the coordinates from "lat. 18°20′19″N., long. 64°58′11″W." to "lat. 18°20′14″N., long. 64°58′24″W," this amendment is the same as that proposed in the notice. Class C and Class D airspace designations are published in paragraphs 4000 and 5000, respectively, of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area listed in this document will be published subsequently in the Order and the Class D airspace area listed in this document will be removed subsequently from the Order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule (1) Will generate benefits that justify its costs and is not "a significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Costs

The establishment of the St. Thomas Class C airspace area will impose a one-time FAA administrative cost of $600. For the aviation community (namely, aircraft operators and fixed based operators), this final rule will impose little, if any, operating or equipment cost. The potential costs are presented below.

The FAA does not expect to incur any additional costs for ATC staffing, training, or facility equipment. The FAA is confident that it can handle any additional traffic that will participate in radar services through more efficient use of personnel at the current staffing level.

The FAA holds an informal public meeting at each proposed Class C airspace area location. These meetings provide pilots with the best opportunity to learn both how a Class C airspace area works and how it will affect their local operations. The expenses associated with these public meetings are incurred regardless of whether a Class C airspace area is ultimately established. Thus, they are more appropriately considered routine FAA costs. When this Class C airspace area becomes effective, any subsequent public information costs will be strictly attributed to the final rule. For instance, the FAA will distribute a Letter To Airmen to all pilots residing within 50 miles of the Class C airspace area site that will explain the operation and airspace configuration of the Class C airspace area. The Letter to Airmen cost will be approximately $600. This one-time negligible cost will be incurred upon the initial establishment of this Class C airspace area.

The FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications may choose to navigate around the airspace. However, the FAA contends that these operators can navigate around, over, or under the airspace without significantly deviating from their regular flight paths.

The FAA recognizes that delays might develop at St. Thomas following the initial establishment of the Class C airspace area. The additional traffic that ATC will be handling due to the mandatory pilot participation requirement may result in minor delays to aircraft operations. However, those delays that do occur are typically transitional in nature. The FAA contends that any potential delays will eventually be more than offset by the increased flexibility afforded controllers in handling traffic as a result of Class C separation standards. This has been the experience at other Class C airspace areas.

The FAA assumes that aircraft operating in the vicinity of St. Thomas already have two-way radio communications capability and, therefore, will not incur any additional costs.

Once this Class C airspace area goes into place, aircraft operators will be subject to the Mode C Rule. That rule requires all aircraft to be equipped with an operable transponder with Mode C capability when operating in and above a Class C airspace area (up to 10,000 feet MSL). Some aircraft operators may have to acquire (or upgrade to) a Mode C transponder as a result of the establishment of the Class C airspace area. However, the cost of acquiring a Mode C transponder for all aircraft in the U.S. was previously accounted for as a cost of the Mode C Rule.

The FAA has also adopted regulations requiring certain aircraft operators to install Traffic Collision Avoidance System (TCAS), which allows pilots to determine the position of other aircraft from the signal emitted by Mode C transponders. TCAS issues conflict resolution advisories as to what evasive actions are most appropriate for avoiding potential midair collisions. The TCAS Rule will not contribute to the potential costs associated with establishing the Class C airspace area, but it will contribute to the potential safety benefits. The benefits of establishing the St. Thomas Class C airspace area are discussed below.

Benefits

The primary benefit of establishing the St. Thomas Class C airspace area will be enhanced aviation safety for the increasing number of passengers transiting through airspace. The volume of passenger enplanements at St. Thomas has risen dramatically. Enplanements in 1995 are projected to be 648,000, up from 491,000 in 1990; by 2000, enplanements are projected to be 810,000. This high volume of passenger enplanements has made St. Thomas eligible to become a Class C airspace area.

To study the effect that Class C airspace areas have on reducing the risk of midair collisions, the FAA looked at the occurrences of near-midair collisions (NMAC). In a study of NMAC data, the FAA's Office of Aviation Safety found that approximately 15 percent of reported NMACs occur in airspace similar to that at St. Thomas. This study found that about half of all NMACs occur in the 1,000 to 5,000 feet altitude range, which is closely comparable to the altitudes where aircraft operate around airports that qualify for Class C airspace areas. This study also found that over 85 percent of NMACs occur in visual flight rules (VFR) conditions when visibility is five miles or greater. Finally, the study found that the largest number of NMAC reports are associated with instrument flight rules (IFR) operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. The mandatory participation requirements of the Class C airspace area and the radar services provided by ATC to VFR as well as IFR pilots will help alleviate such conflicts.

A NAR Task Group study conducted by Engineering & Economics Research, Inc. reviewed NMAC data for Austin and Columbus during the 1978 to 1984 period. This study found that the presence of Class C airspace reduced the probability of NMAC occurrence by 38 percent at Austin and 33 percent at Columbus. Another FAA study estimated that the potential for NMACs could be reduced by about 44 percent. Since near midair and actual midair collisions result from similar causal factors, a reduction in the risk of NMACs suggests a reduction in the risk of actual midair collisions.

Ordinarily, the benefit of a reduction in the risk of midair collisions from establishing a Class C airspace area will be attributed entirely to establishing the Class C airspace area. However, an indeterminate amount of the benefits

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have to be credited to the interaction of the Class C airspace area program with the Mode C Rule, which in turn interacts with the TCAS Rule. The benefits of establishing a Class C airspace area, as well as other designated airspace actions that require Mode C transponders, cannot be separated from the benefits of the Mode C and TCAS Rules. These airspace actions will share potential benefits totaling $4.4 billion.

Comparison of Costs and Benefits

The rule to establish a Class C airspace area at St. Thomas, VI, will impose a negligible cost of $600 on the agency. When this cost estimate of $600 is added to the total cost of establishing the other Mode-C-dependent airspace classes and the Mode C Rule and TCAS Rule, the costs will still be less than their total potential safety benefits. The rule will also generate some benefits in the form of enhanced operational efficiency while imposing little, if any, additional operating costs on pilots who choose to remain clear of the airspace. Thus, the FAA believes that the rule will be cost-beneficial.

International Trade Impact Assessment

The rule will only affect U.S. terminal airspace operating procedures at and in the vicinity of St. Thomas, VI. The rule will not impose a competitive trade disadvantage on foreign firms in the sale of either foreign aviation products or services in the United States. In addition, domestic firms will not incur a competitive trade disadvantage in either the sale of United States aviation products or services in foreign countries. Since all operators will be affected, the final rule will not give a competitive trade advantage or disadvantage to U.S. or foreign air carriers, fixed-base operators, or airports in the vicinity of St. Thomas.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Under FAA Order 2100.14A entitled Regulatory Flexibility Criteria and Guidance, a significant economic impact means annualized net compliance cost to an entity, which when adjusted for inflation, is greater than or equal to the threshold cost level for that entity. A substantial number of small entities means a number that is eleven or more and is more than one-third the number of the small entities subject to a proposed or existing rule.

For the purpose of this evaluation, the small entities that will be potentially affected by the final rule are fixed-base operators, flight schools, banner towing, seaplane shuttle bases, and other small aviation businesses located at and around St. Thomas. By using cutouts, special procedures, and Letters of Agreement between ATC and the affected parties, the FAA will make any practicable effort to eliminate the adverse affects on the operations of small entities in the vicinity of St. Thomas. The FAA has utilized such arrangements extensively in implementing other Class C airspace areas in the past. In addition, any delay problems that may initially develop following implementation will be transitory. This has been the experience at other Class C airspace areas. Thus, the final rule will not result in a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations adopted herein will not have direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed above, the FAA has determined that this rule (1) is not a "significant regulatory action" under Executive Order 12866; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is also certified that this rule does not require preparation of a Regulatory Flexibility Analysis under the RFA.

List of Subjects 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration dmends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 4000—Subpart C-Class C Airspace

* * * * *

ASO VI C Charlotte Amalie St. Thomas, VI [New]

Cyril E. King Airport
(lat. 18°20′14″N., long. 64°58′24″W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Cyril E. King Airport; and that airspace extending upward from 1,900 feet to and including 4,000 feet MSL within a 10-mile radius of the airport from the 075° bearing from the airport clockwise to the 020° bearing from the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 5000—Subpart D-Class D Airspace

* * * * *

ASO VI D Charlotte Amalie Cyril E. King Airport, St. Thomas, VI [Removed]

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Issued in Washington, DC, on September 6, 1995.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

BILLING CODE: 4910–13–P

ST. THOMAS
CLASS C AIRSPACE AREA

(Not to be used for navigation)

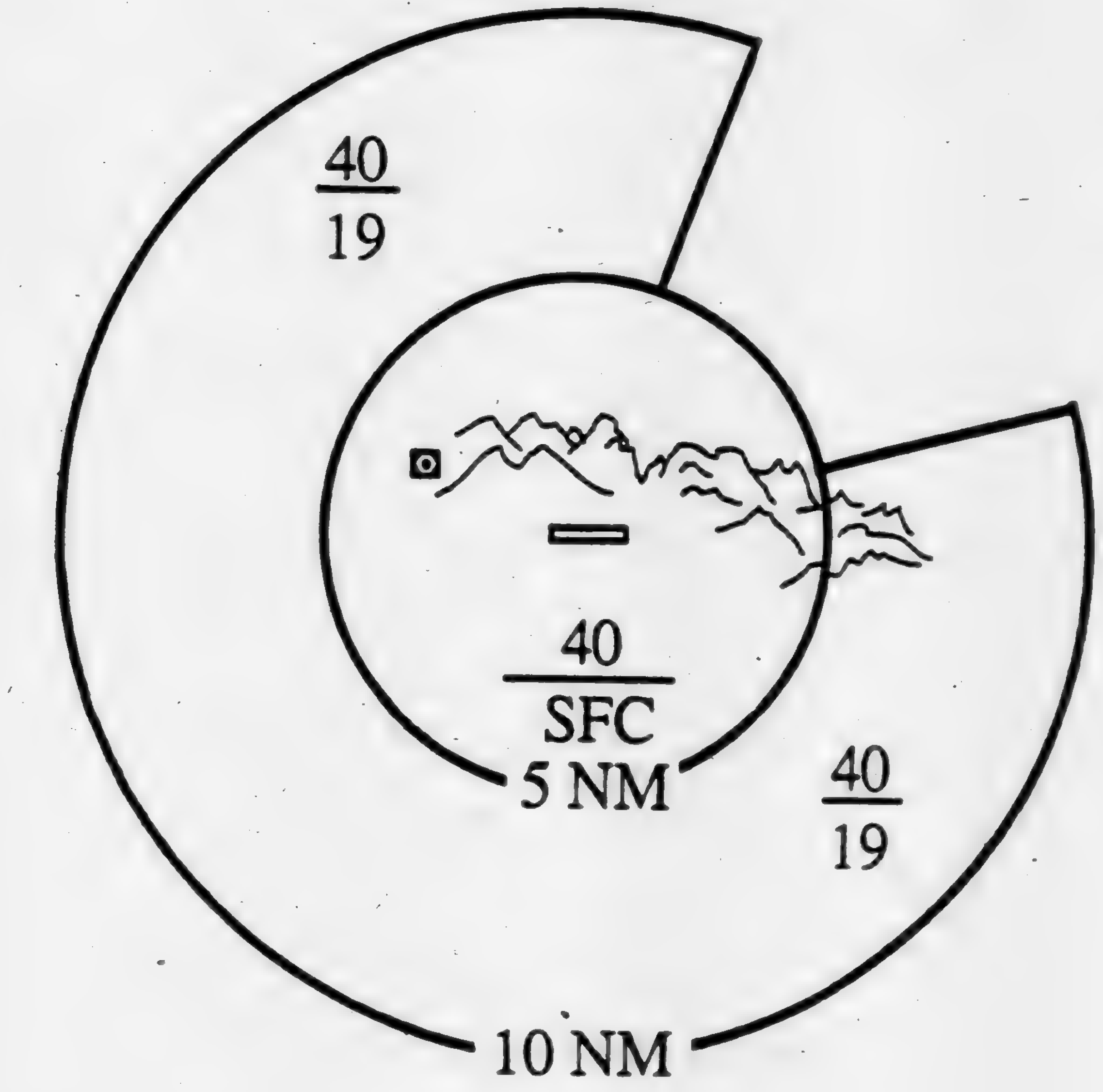

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Publications Branch
ATP-210

[FR Doc. 95–23459 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–13–C

14 CFR Part 71

[Airspace Docket No. 94–ASO–21]

Modification Jet Routes; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies several existing jet routes in the Miami, FL, area. This action is necessary because of the decommissioning of the Miami, FL, Very High Frequency Omnidirectional Range and Tactical Air Navigation (VORTAC) and the commissioning of the Dolphin, FL, VORTAC.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On May 11, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify several existing jet routes in the Miami, FL, area (60 FR 25175). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies existing jet routes in the Miami, FL, area. This action is necessary because of the decommissioning of the Miami, FL, VORTAC and the commissioning of the new Dolphin, FL, VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Because these amendments involve, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–43 (Revised)

From Dolphin, FL; LaBelle, FL; St. Petersburg, FL; Tallahassee, FL; Atlanta, GA; Volunteer, TN; Falmouth, KY; Rosewood, OH; Carleton, MI; to Sault Ste. Marie, MI.

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J–53 (Revised)

From Dolphin, FL; INT Dolphin 354° and Pahokee, FL, 157° radials; Pahokee; INT Pahokee 342° and Orlando, FL, 162° radials; Orlando; Craig, FL; INT Craig 347° and Colliers, SC, 174° radials; Colliers; Spartanburg, SC; Pulaski, VA; INT of Pulaski 015° and Ellwood City, PA, 177° radials; to Ellwood City.

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J–55 (Revised)

From Dolphin, FL; INT Dolphin 331° and Gainesville, FL, 157°, radials; INT Gainesville 157° and Craig, FL, 192°, radials; Craig; INT Craig 004° and Savannah, GA, 197° radials; Savannah; Charleston, SC; Florence, SC; INT Florence 003° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham; INT Raleigh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; to INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Providence, RI; Boston, MA; Kennebunk, ME; Presque Isle, ME; to Mont Joli, PQ, Canada, excluding the portion within Canada.

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J–58 (Revised)

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Farmington, NM; Las Vegas, NM; Amarillo, TX; Wichita Falls, TX; Dallas-Fort Worth, TX; Alexandria, LA; Harvey, LA; INT of Grand Isle, LA, 105° and Crestview, FL, 201° radials; INT of Grand Isle 105° and Sarasota, FL, 286° radials; Sarasota; Lee County, FL; to the INT Lee County 120° and Dolphin, FL, 293° radials; Dolphin.

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J–73 (Revised)

From Dolphin, FL; LaBelle, FL; Lakeland, FL; Tallahassee, FL; La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

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J–75 (Revised)

From Dolphin, FL; INT Dolphin 293° and Lee County, FL, 120° radials; Lee County; INT Lee County 340° and Taylor, FL, 176° radials; Taylor; INT Taylor 019° and Columbia, SC, 203° radials; Columbia; Greensboro, NC; Gordonsville, VA; INT Gordonsville 040° and Modena, PA, 231° radials; Modena; Solberg, NJ; Carmel, NY; INT Carmel 045° and Boston, MA, 252° radials; to Boston.

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J–79 (Revised)

From Key West, FL; INT Key West 038° and Dolphin, FL, 244° radials; Dolphin; Palm Beach, FL; Vero Beach, FL; Ormond Beach, FL; INT Ormond Beach 356° and Savannah, GA, 184° radials; INT Savannah 184° and Charleston, SC, 212° radials; Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; INT Salisbury 018° and Kennedy, NY, 218° radials; Kennedy; INT Kennedy 080° and Nantucket, MA, 254° radials; INT Nantucket 254° and Marconi, MA, 205° radials; Marconi; INT Marconi 006° and Bangor, ME, 206° radials; Bangor.

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J–81 (Revised)

From Dolphin, FL; INT Dolphin 354° and Pahokee, FL, 157° radials; Pahokee; INT Pahokee 342° and Orlando, FL, 162° radials; Orlando; Cecil; INT Cecil 007° and Craig, FL,

347° radials; INT Craig 347° and Colliers, SC, 174°, radials; Colliers.

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J–85 (Revised)

From Dolphin, FL; INT Dolphin 331° and Gainesville, FL, 157° radials; Gainesville; Taylor, FL; Alma, GA; Colliers, SC; Spartanburg, SC; Charleston, WV; INT of the Charleston 357° and the DRYER, OH, 172° radials; DRYER. The portion within Canada is excluded.

J–86 (Revised)

From Boulder City, NV, via Peach Springs, AZ; Winslow, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; Austin, TX; Humble, TX; Leeville, LA; INT of Leeville 104° and Sarasota, FL, 286° radials; Sarasota; INT of Sarasota 103° and La Belle, FL, 313° radials; La Belle; Dolphin, FL.

* * * * *

Issued in Washington, DC, on September 12, 1995.

Reginald C. Matthews,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–23428 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 73

[Airspace Docket No. 95–ASO–12]

Amendment of Restricted Area R–3004, Fort Gordon, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action lowers the upper limit of Restricted Area R–3004, Fort Gordon, GA, from 17,000 feet mean sea level (MSL) to 16,000 feet MSL. The using agency has determined that there is no longer a requirement for restricted airspace above 16,000 feet MSL at this location.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9361.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations reduces the size of Restricted Area R–3004 at Fort Gordon, GA, by lowering the upper limit of the restricted area from 17,000 feet above MSL to 16,000 feet MSL. Based on a review of area utilization and projected requirements, the using agency determined that there is no longer a need for restricted airspace above 16,000 feet MSL in R–3004. This action will not change the current lateral boundaries, time of designation, or activities conducted in R–3004. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 73.30 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8C dated June 29, 1995.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action amends the internal subdivision of existing restricted airspace and does not affect the lateral boundaries, times of use, or activities conducted within the restricted airspace. As a result, there are no changes to air traffic control procedures or routes. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.30 [Amended]

2. R–3004 Fort Gordon, GA [Amended].

By removing the current "Designated altitudes. Surface to 17,000 feet MSL" and substituting the following:

"Designated altitudes. Surface to 16,000 feet MSL."

Issued in Washington, DC, on September 8, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–23430 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 73

[Airspace Docket No. 95–ASO–6]

Amendment of Restricted Areas R–3702A and R–3702B, Fort Campbell, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the altitude that defines the internal vertical subdivision between Restricted Areas R–3702A and R–3702B, Fort Campbell, KY, in order to efficiently utilize the airspace.

Restricted Area R–3702C is not affected by this action.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9361.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the designated altitudes that divide Restricted Areas R–3702A and R–3702B, Fort Campbell, KY. Currently, R–3702A extends from the surface to 16,000 feet above mean sea level (MSL). R–3702B overlies R–3702A and extends from 16,000 feet MSL to Flight Level 220 (FL 220). The using agency frequently conducts activities within R–3702A that require restricted airspace only up to 6,000 feet MSL. However, due to the current configuration of the areas, airspace is actually restricted up to 16,000 feet MSL whenever R–3702A is activated. This amendment lowers the dividing line between R–3702A and R–3702B from 16,000 feet MSL to 6,000 feet MSL. This change enables the using agency to accomplish its mission while improving the capability to activate only the minimum amount of restricted

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airspace necessary for that mission. There is no change to the lateral boundaries, times of use, or activities conducted in R–3702A and R–3702B. R–3702C, which overlies R–3702B, is unaffected by this amendment. This amendment affects only the internal subdivision of existing restricted areas and enhances efficient airspace utilization. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 73.37 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8C dated June 29, 1995.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action amends the internal subdivision of existing restricted airspace and does not affect the lateral boundaries, times of use, or activities conducted within the restricted airspace. As a result, there are no changes to air traffic control procedures or routes. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.37 [Amended]

2. R–3702A Fort Campbell, KY [Amended].

By removing the current "Designated altitudes. Surface to 16,000 feet MSL" and substituting the following:

"Designated altitudes. Surface to 6,000 feet MSL."

3. R–3702B Fort Campbell, KY [Amended].

By removing the current "Designated altitudes. 16,000 feet MSL and including FL 220" and substituting the following:

"Designated altitudes. 6,000 feet MSL to FL 220."

Issued in Washington, DC, on September 8, 1995.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–23429 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; correction.

SUMMARY: The CPSC corrects the amendments to its requirements under the Poison Prevention Packaging Act of 1970 ("PPPA") for child-resistant packaging which appeared in the **Federal Register** on July 21, 1995 (60 FR 37710). The correction specifies the effective date for the amendment to 16 CFR 1700.14 (see 60 FR at 37739, col. 2).

DATES: The amendment to 16 CFR 1700.14 will become effective July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Division of Regulatory Management, Directorate for Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504–0400, ext. 1368.

Dated: September 15, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–23351 Filed 9–20–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 89G–0316]

Maltodextrin Derived From Potato Starch; Affirmation of GRAS Status as Direct Human Food Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that maltodextrin derived from potato starch is generally recognized as safe (GRAS) for use as a direct human food ingedient. This action is in response to a petition filed by AVEBE America, Inc.

DATES: Effective September 21, 1995. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication listed in 21 CFR 184.1444, effective September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), AVEBE America, Inc., Princeton Corporate Center, 4 Independence Way, Princeton, NJ 08450, submitted a petition (GRASP 9G0353) proposing that maltodextrin derived from potato starch be affirmed as GRAS for use as a direct food ingredient.

FDA published a notice of filing of this petition in the **Federal Register** of August 31, 1989 (54 FR 36053), and gave interested parties an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. FDA received no comments in response to that notice.

II. Standards for GRAS Affirmation

Pursuant to § 170.30 (21 CFR 170.30), general recognition of safety of food ingredients may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of food substances. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, through experience based on common use in food. General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation, and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use of a substance in food prior to January 1, 1958, may be determined without the quantity or quality of scientific evidence required for approval of a food additive regulation, and ordinarily is to be based upon generally available data and information (§ 170.30(c)(1)).

III. Safety Evaluation

The petition by AVEBE America, Inc., argues that experience based on common use in food prior to 1958 establishes that maltodextrin derived from potato starch is GRAS. The petition contains documentation that maltodextrin derived from potato starch was used in infant formula prior to 1958. However, based upon an evaluation of the evidence presented, the agency does not agree that the information in the petition establishes that maltodextrin derived from potato starch was in common use in food as defined in § 170.3(f) (21 CFR 170.3(f)), before 1958. However, the agency does conclude that the information presented in the petition, together with other available information, supports a determination that use of maltodextrin derived from potato starch is GRAS based upon scientific procedures. Data in the petition, along with other information in the agency's files, demonstrate that potato starch is chemically equivalent to corn starch. Additionally, the hydrolysis products made from these starch sources, including maltodextrins, are essentially equivalent. Thus, maltodextrin derived from potato starch is equivalent in all material respects to maltodextrin derived from corn starch, which has been affirmed as GRAS (§ 184.1444 (21 CFR 184.1444)).

1. Evidence of Uses in Food Prior to 1958

The agency has reviewed the information submitted by the petitioner to support its assertion that maltodextrin derived from potato starch was in common use in food prior to 1958 in Europe. "Common use in food" means a substantial history of consumption of a substance for food use by a significant number of consumers (§ 170.3(f)).

Information included in the petition documents that maltodextrin derived from potato starch was first sold for use by infants and children in Europe in 1935 (Ref. 1). One such product was produced by enzyme hydrolysis of potato starch as described by a 1951 brochure (Ref. 2), which is included in the petition. Additionally, in 1935, a British patent specification was issued entitled "Improved Process for the Production of a Sugar Preparation from Starch, and for Manufacturing a Milk Suitable for Infants" (Ref. 3). The patent specifically mentions potato starch as one of the alternate starting materials (the others being starch from wheat, oats, or other cereals). The benefits of maltodextrin and its uses as an ingredient in milk fed to infants were also described in an article printed in Holland in 1942 (Ref. 4). In 1947, Campagne (Ref. 5) published a scientific explanation of the function of maltodextrin-based products in the infant diet. The diet described contained maltodextrin derived from potato starch.

The agency concludes that information presented in the petition demonstrates that maltodextrin derived from potato starch was used in infant formula prior to 1958. The agency does not agree, however, that the evidence supports a finding of "common" use in food because the totality of information shows that maltodextrin was used solely as an ingredient in infant formulas. No evidence was presented to show that the population at large used maltodextrin derived from potato starch in the food supply. While the agency does not believe that maltodextrin derived from potato starch was commonly used in food prior to 1958, its historical use in infant formulas is evidence of general recognition of safety because it represents documented experience in a particularly sensitive segment of the population, namely, human infants.

2. Evidence of Chemical Equivalency of Potato Starch to Corn Starch

Starch is the reserve carbohydrate in tubers, such as potatoes; in grains, such as rice, corn, or barley; in seeds; and in many fruits. As early as 1811, scientists had determined that food starches from various plant sources were essentially equivalent (Ref. 6). All food starches, regardless of the plant source, are composed of chemically equivalent polymeric forms of alpha-bond-linked glucose units (Ref. 7). Starch consists of polymers of amylose and amylopectin polysaccharides (Refs. 6 and 8). The relative proportions of amylose and amylopectin are characteristic of the plant species from which the starch is derived. Corn starch, for example, typically contains about 27 percent by weight of amylose and 73 percent by weight of amylopectin, whereas potato starch typically contains 22 percent amylose by weight and 78 percent amylopectin by weight (Refs. 8 and 9).

Because food starches derived from different plant sources are equivalent in all material respects, FDA's food additive regulation for modified food starch (21 CFR 172.892) does not specify that any particular source of food starch be used to manufacture the additive. (According to the petitioner, potato starch is being used to make modified food starch.) In the **Federal Register** of April 1, 1985 (50 FR 12821) (Ref. 10), FDA published a proposal to find that the use of potato starch (as well as several other starches) in food is GRAS. FDA has not issued a final rule in that rulemaking. In addition, the Committee on Food Chemicals Codex of the National Academy of Sciences has published a monograph on maltodextrin stating that it may be obtained from any edible starch (Ref. 11). Like FDA's food additive regulation for modified food starch, the monograph does not require that the starch be derived from any particular plant source.

Producing maltodextrin by the degradation of starch requires the formation of intermediate breakdown products called dextrins, which result from the partial hydrolysis of starch with mineral acids or amylase. Further hydrolysis of the starch dextrins yields maltodextrins.

Dextrins are affirmed as GRAS under 21 CFR 184.1277 and can be prepared by partially hydrolyzing the starch in corn, potato, arrowroot, wheat, rice, or other starch sources. It has been common industrial practice to use a wide variety of starch sources in manufacturing commercial dextrin products (Refs. 7 and 12). During digestion, acid and enzymatic processes in the stomach convert the starch macromolecules to smaller molecules such as maltodextrin, and eventually to glucose. This digestion process is similar to the commercial process used to produce glucose and fructose, which are GRAS starch-based sweeteners presently used in foods (Ref. 7). (See corn sugar, 21 CFR 184.1857; corn syrup, 21 CFR 184.1865; and high fructose corn syrup, 21 CFR 182.1866.)

Starch hydrolysates below 20 dextrose equivalents (D.E.) are classified as maltodextrins (Refs. 13 and 14). Specifications for maltodextrins are listed in the Food Chemicals Codex, 3d ed., 3d supp. (1992) (Ref. 11).

Equivalent maltodextrin products result from equivalent hydrolysis of edible starch sources (Ref. 15). Since corn starch and potato starch are essentially equivalent, the products of hydrolysis, from simple glucose molecules to more complex starch hydrolysates, such as dextrins and maltodextrins, are essentially equivalent in terms of chemical, physical, and organoleptic properties.

3. Corroborative Evidence of Chemical Equivalency

The petitioner has submitted data to demonstrate the equivalency of maltodextrin derived from corn and potato starches, based upon their dextrose equivalents (D.E.) (Refs. 16, 17, and 18). Hydrolysis of corn starch or potato starch under similar conditions produces a maltodextrin product with a D.E. of less than 20. The range of carbohydrate composition (glucose, maltose, maltotriose, and polysaccharides larger than maltotriose) in maltodextrins derived from potato starch (Ref. 16) is virtually identical to that for maltodextrins derived from corn starch (Refs. 15, and 16) at a D.E. of less than 20. Also, based upon information submitted by the petitioner and on information available in current scientific literature, FDA believes that potato starch may be considered chemically similar to corn starch in regard to amylose and amylopectin content (Refs. 6, 8, 9, 19, and 20).

4. Proposed Use in Food

Information supplied by the petitioner evidences that maltodextrin derived from potato starch will be used as a replacement for maltodextrin derived from corn starch in the same foods, at essentially the same levels, and for the same technical effects that maltodextrin derived from corn starch is now used (Ref. 21). The petitioner states that maltodextrins are currently used in a wide range of processed and convenience foods, principally as a filler or carrier for flavorings and intensive sweeteners and as a sweetness reducer or texture modifier. Because maltodextrin derived from potato starch will be used as a replacement for maltodextrin derived from corn starch, the consumer exposure to maltodextrin is not expected to increase.

5. General Recognition of Safety

The agency has determined, based on the published literature, that the safety of maltodextrin derived from potato starch is generally recognized by food safety experts. Foremost in the support of safety is published information that shows that corn starch and potato starch are essentially equivalent, and therefore maltodextrin derived from potato starch is equivalent to the maltodextrin derived from corn starch. Thus, maltodextrin derived from potato starch presents no more of a safety concern than maltodextrin derived from corn starch, which has been affirmed as GRAS.

Additionally, based on published information in the petition, maltodextrin derived from potato starch was extensively used in infant formulas for over 20 years prior to 1958 (Refs. 1, 2, 3, 4, and 5), and the agency is not aware of any reports of injuries or health risks resulting from such use.

As a consequence of conclusions regarding safety, many countries, including those represented by the European Starch Association (Ref. 14), recognize "food starches," including potato starch, as a suitable raw material for maltodextrin production. Furthermore, the Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Expert Committee on Food Additives (JECFA) (Refs. 22 and 23) recognizes maltodextrin as an intermediate product in the production of enzyme-treated starches, a process that JECFA has stated results in the production of normal (meaning safe) food constituents. JECFA does not restrict the sources of food starches used in the production of products such as maltodextrins. JECFA also does not require toxicological testing of products such as maltodextrins that are produced from enzyme-treated starches. Finally, as noted previously, the agency has proposed to find that potato starch is GRAS.

The agency concurs that maltodextrin derived from potato starch is chemically and functionally equivalent to maltodextrin derived from corn starch (Ref. 15). No increase in exposure to maltodextrin would be expected due to the substitution of one source for the other. Because potato starch is already a significant constituent of the typical diet (Ref. 24), the agency does not believe that there will be any impurities in potato-derived maltodextrin that would cause a safety concern (Refs. 15 and 25).

6. Specifications

The agency has reviewed the specifications for maltodextrin published in the Food Chemicals Codex, 3d ed., 3d supp., p. 125, and finds that they are acceptable for maltodextrin derived from edible starches. Therefore, the agency is adopting the specifications for maltodextrin derived from edible starches for maltodextrin derived from potato starch. Published elsewhere in this issue of the **Federal Register** is a notice of proposed rulemaking to adopt these specifications for maltodextrin derived from corn starch.

IV. Conclusions

The agency has evaluated the information in the petition, along with other available data, and has reached the following conclusions:

(1) Potato starch is chemically equivalent to corn starch.

(2) Maltodextrin derived from potato starch is chemically equivalent to maltodextrin derived from corn starch, which is currently affirmed as GRAS for food use without restriction under § 184.1444.

(3) Maltodextrin derived from potato starch has been used in infant formula prior to 1958 with no reported adverse effects.

(4) When maltodextrin derived from potato starch is manufactured as specified in § 184.1444, there is general recognition among qualified experts that its use in food is safe.

Based upon the evaluation of published information, corroborated by unpublished data and information, i.e., based upon scientific procedures (§ 170.30(b)), the agency also concludes that maltodextrin derived from potato starch is GRAS for use as a replacement for maltodextrin derived from corn starch. Therefore, the agency is affirming that maltodextrin derived from potato starch is GRAS when used in accordance with good manufacturing practice (21 CFR 184.1(b)(1)).

V. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive

Order. In addition, because the final rule is not a significant regulatory action as defined by the Executive Order and therefore is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule requires no change in the current industry practice concerning the manufacture and use of this ingredient, the cost of compliance with this regulation is zero, and the potential benefits of the rule include the wider use of this substance to achieve the intended technical effects, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

1. "Potato-Derived Maltodextrins for Infants and Toddlers," W. A. Scholten's Chemical Factories' Brochure, Avebe Foxhol, 1941.

2. "The Double Triangle," 3d Annual, no. 36, W. A. Scholten's Chemical and Potato Starch Factories and Meihuizen Boon's Factories, Holland, pp. 1–10, June 21, 1951.

3. Patent Specification no. 435,034, "Improved Process for the Production of a Sugar Preparation from Starch, and for Manufacturing a Milk Suitable for Infants," United Kingdom, 1935.

4. Kuyk, P. G., and K. Schots, "For Infant and Toddler," in "The Book of Foods and Allied Products and of Substitutes During Wartime," 1942.

5. Campagne, J. vL., "Feeding and Nutritional Derangements of Infants," Scientific Publisher of the Amsterdam Book and Newspaper Society, pp. 33, and 126–127, 1947.

6. Wolfram, M. L., and H. El Khadem, "Chemical Evidence for the Structure of Starch" in "Starch: Chemistry and Technology," R. L. Whistler, and E. F. Paschall, eds. Academic Press, Inc., New York, pp. 251–278, 1965.

7. Schenck, F. W., and R. E. Hebeda, "Starch Hydrolysis Products: An Introduction and History" in *Starch Hydrolysis Products, Worldwide Technology, Production, and Applications*, F. W. Schenk, and R. E. Hebeda, eds., VCH Publishers, Inc., New York, pp. 1–21, 1992.

8. "Evaluation of the Health Aspects of Starches and Modified Starches as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1979.

9. Young, A. H., "Fractionation of Starch" in "Starch," 2d ed., R. L. Whistler, and E. F. Paschall, eds., Academic Press, Inc., New York, pp. 249–283, 1984.

10. "Unmodified Food Starches and Acid-Modified Starches; Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients," 50 FR 12821, April 1, 1985.

11. Food Chemicals Codex, 3d ed., 3d supp., p. 125, 1992.

12. Evans, R. B., and O. B. Wurzburg, "Production and Use of Starch Dextrins" in Starch: Chemistry and Technology, vol. 2, R. L. Whistler and E. F. Paschall, eds., Academic Press, Inc., New York, pp. 253-278, 1967.

13. "Food Additives and Contaminants Committee Report on Modified Starches," United Kingdom Ministry of Agriculture, Fisheries and Food, FAC/REP/31, Her Majesty's Stationery Office, London, p. 5, 1980.

14. "Definition of Maltodextrin," European Starch Associations, Circular Letter Stex 4/88, February 1988.

15. Memorandum dated September 11, 1989, from the Food and Color Additives Review Section, FDA to the Direct Additives Branch, FDA, "Maltodextrin from Potatoes."

16. "Maltodextrins," Technical Bulletin No. 5.10.20.119EF, AVEBE Veenddam-Holland, April 1987.

17. Letter plus attachments, in response to a letter of July 13, 1978, from George W. Irving of the Select Committee on GRAS Substances, Federation of American Societies for Experimental Biology, Bethesda, MD, to Corbin Miles, Food and Drug Administration, Washington, DC, pp. 1-4, 1978.

18. "Maltodextrins and Corn Syrup Solids," Technical Bulletin, A. E. Staley Manufacturing Co., Decatur, IL, Bulletin, July 1987.

19. Zuber, M. S., "Genic Control of Starch Development" in "Starch: Chemistry and Technology," R. L. Whistler, and E. F. Paschall, eds., Academic Press, Inc., New York, pp. 43–62, 1965.

20. Whistler, R. L., and J. R. Daniel, "Starch," in *Kirk-Othmer's Encyclopedia of Chemical Technology*, 3d ed., vol. 21, J. Brown, C. I. Eastman, C. Galojuch, A. Klingsberg, and M. Wainwright, eds., pp. 492–496, 1983.

21. "Maltodextrin; Proposed Affirmation of GRAS Status as Direct Human Food Ingredient," 47 FR 36443, August 20, 1982.

22. "Specifications for the Identity and Purity of Food Additives and Their Toxicological Evaluation," FAO Nutrition Meetings Report Series, no. 46 and WHO Technical Report Series, no. 445, pp. 13–14, 1970.

23. "Toxicological Evaluation of Some Food Colours, Emulsifiers, Stabilizers, Anti-Caking Agents, and Certain Other Substances," FAO Nutrition Meetings Report Series, no. 46A, p. 62 and WHO/FOOD ADD./70.36, 1970.

24. "Potato Facts," Economics Research Service, U.S. Department of Agriculture, Fall/Winter, 1988/89.

25. Memorandum dated October 17, 1989, from the Additives Evaluation Branch, FDA, to the Direct Additives Branch, FDA, "Maltodextrin derived from potatoes."

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. Section 184.1444 is amended by revising the second sentence in paragraph (a) and by revising paragraph (b) to read as follows:

§ 184.1444 Maltodextrin.

(a) * * *. It is prepared as a white powder or concentrated solution by partial hydrolysis of corn starch or potato starch with safe and suitable acids and enzymes.

(b)(1) Maltodextrin derived from corn starch must be of a purity suitable for its intended use.

(2) Maltodextrin derived from potato starch meets the specifications of the Food Chemicals Codex, 3d ed., 3d supp. (1992), p. 125, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave., NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 800 North Capital St. NW., suite 700, Washington, DC 20408, or at the Division of Petition Control (HFS–217), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

* * * * *

Dated: September 6, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–23352 Filed 9–20–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Gentamicin Sulfate Intrauterine Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Fermenta Animal Health Co. The ANADA provides for the use of a generic gentamicin solution for control of bacterial infections of the uterus (metritis) of horses and as an aid in improving conception in mares with uterine infections caused by bacteria sensitive to gentamicin.

EFFECTIVE DATE: (September 21,1995.)

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1612.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153, is the sponsor of ANADA 200–023, which provides for the use of a generic gentamicin solution (100 milligrams/milliter (mg/mL)) for control of bacterial infections of the uterus (metritis) in horses and as an aid in improving conception in mares with uterine infections caused by bacteria sensitive to gentamicin.

ANADA 200–023 for Fermenta Animal Health Co.'s gentamicin sulfate solution (100 mg/mL gentamicin) is approved as a generic copy of Schering's Gentocin® Solution (100mg/mL gentamicin) in NADA 046–724. The ANADA is approved as of August 4, 1995, and the regulations are amended in 21 CFR 529.1044a to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended to read as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 529.1044a [Amended]

2. Section 529.1044a *Gentamicin sulfate intrauterine solution* is amended in paragraph (b) by removing "000061, 000856, 057561, and 058711" and adding in its place "000061, 000856, 054273, 057561, and 058711".

Dated: September 5, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–23353 Filed 9–20–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076–AC51

Land Acquisitions (Nongaming)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule: correction.

SUMMARY: This document contains corrections to the final rule 25 CFR Part 151, which was published Friday, June 23, 1995, (Vol. 60, No. 121, FR 32874–32879). The regulations related to land acquisitions for nongaming purposes by an Indian individual or tribe.

EFFECTIVE DATE: September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Alice A. Harwood, Chief, Branch of Technical Services, Division of Real Estate Services, Bureau of Indian Affairs, Room 4522, Main Interior Building, 1849 C Street, NW, Washington, DC 20240, Telephone No. (202) 208–3604.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections modified three existing sections within Part 151 (Land Acquisitions) and created a new section which contained additional criteria and requirements used by the Secretary in evaluating requests for the acquisition of lands by the Untied States in trust for federally recognized Indian tribes when lands are outside and noncontiguous to the tribe's existing reservation boundaries.

Need for Correction

As published, the final rule contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on June 23, 1995, of the final rule (25 CFR 151), FR Doc. 95–15215, is corrected as follows:

Part 151—LAND ACQUISITIONS (NONGAMING)

On page 32878, third column, in the title, delete "(Nongaming)".

§ 151.11 [Amended]

On page 32879, in the second column, in § 151.11, add "(Nongaming)" after "acquisitions" in the title.

On page 32879, in the second column, in § 151.11, line four of paragraph (b), insert "as follows:" after the word "considered."

On page 32879, in the second column, in § 151.11, line three of paragraph (d), insert "as follows:" after the word "completed."

Dated: September 7, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–23010 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–95–039]

Safety Zone Regulation; Trojan Nuclear Plant, Rainier, OR, to Port of Benton, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving safety zone around the barge ZB–1801 and accompanying towboats as the vessels complete five separate transits through U.S. navigable waters between Rainier, Oregon, and Benton, Washington. A safety zone is needed to protect the barge ZB–1801 and accompanying towboats, persons, facilities, and other vessels from safety hazards associated with onlookers and others who may wish to view the barge at close range. Entry into the safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on September 20, 1995 at 12 a.m. (PDT) and will terminate on November 19, 1995 at 12 p.m. (PST), unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG C. A. Roskam, c/o U.S. Coast Guard Captain of the Port, 6767 N. Basin Ave., Portland, Oregon 97217–3992, Ph: (503) 240–9338.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Specific final details regarding the schedule of the barge movements were not available in sufficient time to allow for the publication of a Notice of Proposed Rulemaking. Publishing a Notice of Proposed Rulemaking and delaying this regulation's effective date would be contrary to the public interest since immediate action is needed to prevent potential hazards to the barge ZB–1801 and other vessels that may transit the area. For these reasons, normal rulemaking procedures would have been impracticable.

Drafting Information

The drafters of this regulation are LTJG C. A. Roskam, Project Officer for the Captain of the Port, and LCDR John C. Odell, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin on September 20, 1995 at 2 p.m. (PDT). Upon request of the Portland General Electric Company, the Coast Guard is establishing a moving safety zone consisting of all navigable waters within 100 yards of the barge ZB–1801 and accompanying towboats. While this safety zone is in effect, these vessels are expected to complete five separate round-trip transits on the Columbia River from the Trojan Nuclear Plant in Rainier, Oregon, to the Port of Benton, Washington. The safety zone will be in effect at all times while the barge is being loaded at the Trojan Nuclear Plant, while the barge and accompanying towboats transit from the Trojan Nuclear Plant to the Port of Benton, while the barge is unloaded at the Port of Benton, and during the barge's return transits to the Trojan Nuclear Plant. Thus, the safety zone remains in effect for the duration of the five transits, each of which may result in a large number of vessels congregating near, or in the path of the barge and towboats. This safety zone is needed due to the limited maneuverability of the barge and towboats, as well as the need to ensure the safety of mariners who may attempt to approach the barge and towboats during loading, unloading, and transiting. This moving safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the relatively short duration of the safety zone and the small geographic area affected.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard was required to consider whether this action would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because it expects the impact of this action to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This action contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this action and concluded that, under paragraph 2.B.2.c. of Commandant Instruction M16475.1B, this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

For the reasons set out in the preamble, the Coast Guard amends subpart C of part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.T13–036 is added to read as follows:

§ 165.T13–036 Safety zone: COTP Portland, Oregon.

(a) *Location.* The following area is a safety zone: All waters within 100 yards of the barge ZB–1801 and accompanying towboats during the loading of the barge ZB–1801 at the Trojan Nuclear Plant, and while in transit from the Trojan Nuclear Plant, Rainier, Oregon, to the Port of Benton, Washington. The safety zone continues while the barge is unloaded at the Port of Benton, and remains in effect during the barge's return transits to the Trojan Nuclear Plant. The barge and accompanying towboats will make approximately five round-trip transits between the Trojan Nuclear Plant and the Port of Benton during the time this safety zone is in effect.

(b) *Definitions.* A designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Portland, to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at Coast Guard Group Portland, Oregon.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited, unless authorized by the Captain of the Port or his designated representatives.

(d) *Effective Dates.* This section is effective on September 20, 1995 at 12 a.m. (PDT), and remains in effect until November 19, 1995 at 12 p.m. (PST), unless sooner terminated by the Captain of the Port.

Dated: August 29, 1995.

C.E. Bills,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 95–23354 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL90–2–6840; FRL–5299–3]

Approval and Promulgation of an Implementation Plan for Vehicle Miles Traveled; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving a request from Illinois, for a State Implementation Plan (SIP) revision for the Chicago ozone nonattainment area, which demonstrates how mobile source emissions will continue to decline over the years and not increase. In addition, Illinois has implemented 127 transportation control measures (TCMs) for a total reduction of more than two tons per day of volatile organic compounds. Two public comment letters were received which are addressed in this rulemaking. This rulemaking action approves, in final, the first two requirements of the vehicle miles traveled (VMT) Offset SIP revision request and the associated TCMs for Chicago, Illinois as requested by Illinois.

EFFECTIVE DATE: This final rule is effective on October 23, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(d)(1)(A) of the Clean Air Act, as amended in 1990 (Act), requires States containing ozone nonattainment areas classified as "severe" pursuant to section 181(a) of the Act to adopt TCMs and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498), in addition to section 182(d)(1)(A) of the Act.

The VMT Offset provision requires that States submit by November 15, 1992, specific enforceable TCMs and strategies to offset any growth in emissions from growth in VMT or number of vehicle trips sufficient to allow total area emissions to comply with the RFP and attainment requirements of the Act.

As described in the November 2, 1994, proposed rule (see 59 FR 54866, 54867), the USEPA has observed that these three elements (i.e., offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of the ozone National Ambient Air Quality Standards (NAAQS)) can be divided into three separate submissions that could be submitted on different dates.

Under this approach, the first element, the emissions offset element, was due on November 15, 1992. The USEPA believes this element is not necessarily dependent on the development of the other elements. The State could submit the emissions growth offset element independent of an analysis of that element's consistency with the periodic reduction and attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this offset requirement. As submitting this element in isolation does not implicate the timing problem of advancing deadlines for RFP and attainment demonstrations, USEPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element.

The second element, which requires the VMT Offset SIP to comply with the 15 percent RFP requirement of the Act, was due on November 15, 1993, which is the same date on which the 15 percent RFP SIP itself was due under section 182(b)(1) of the Act. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the entire 15 percent SIP was due, as this allows States to develop the comprehensive strategy to address the 15 percent reduction requirement and assure that the TCM elements required under section 182(d)(1)(A) are consistent with the remainder of the 15 percent demonstration. Indeed, USEPA believes that only upon submittal of the broader 15 percent plan can a State have had the necessary opportunity to coordinate its VMT strategy with its 15 percent plan.

The third element, which requires the VMT Offset SIP to comply with the post-1996 RFP and attainment requirements of the Act, was due on November 15, 1994, the statutory deadline for those broader submissions. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the post-1996 RFP and attainment SIPs are due for the same reasons it is reasonable to extend the deadline for the second element. First, it is arguably impossible for a State to make the showing required by Section 182(d)(1)(A) for the third element until the broader demonstrations have been developed by the State. Moreover, allowing States to develop the comprehensive strategy to address post-1996 RFP and attainment by providing a fuller opportunity to assure that the TCM elements comply with the broader RFP and attainment demonstrations, will result in a better program for reducing emissions in the long term.

On July 14, 1994, Illinois submitted to USEPA documentation to fulfill the VMT-Offset SIP. A public hearing was held on June 22, 1994, and documentation on the public hearing was submitted to complete the SIP revision request. The SIP revision was found to be complete by the USEPA in a letter dated August 4, 1994. The USEPA proposed to approve the first and second element on December 4,

1994. The public comment period ended on January 5, 1995, and two public comment letters were received.

II. Evaluation of the State Submittal

Section 182(d)(1)(A) of the Act requires the State to offset any growth in emissions from growth in VMT. As discussed in the General Preamble, the purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. The USEPA interprets this provision to require that sufficient measures be adopted so that projected motor vehicle volatile organic compound (VOC) emissions will never be higher during the ozone season in one year than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline, and is above and beyond the separate requirements for the RFP and the attainment demonstrations. The ceiling level is defined, therefore, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of Federal measures such as new motor vehicle standards, phase II RVP controls, and reformulated gasoline, as well as the Act-mandated SIP requirements.

The State of Illinois has demonstrated in its submittal of July 14, 1994, that the predicted growth in VMT in Chicago, Illinois, is not expected to result in a growth in motor vehicle emissions that will negate the effects of the reductions mandated by the Act. For this analysis, Illinois used an average summer weekday VMT growth rate of 2.7 percent per year between 1990 and 1996. This growth rate is supported by the ground counts in the Illinois road file and confirmed by the Illinois Department of Transportation. Further, Illinois has projected motor vehicle emissions to the year 2007 using a 2.7 percent per year growth rate not withstanding that the most current socioeconomic data in combination with the transportation network model predicts a lower VMT growth rate. The 2.7 percent per year projection does not predict an upturn in motor vehicle emissions through the year 2007. In the event that the projected socioeconomic data and associated VMT grow more rapidly than currently predicted, Illinois is required by Section 182(c)(5) to track actual VMT starting with 1996 and every three years thereafter to demonstrate that the actual VMT is equal to or less than the projected VMT. TCMs will be required to offset VMT that is above the projected levels (section 182(c)(5)).

Illinois has evaluated the effectiveness and predicted impact of a number of TCMs. The TCM evaluation is documented in the December 9, 1993, Chicago Area Transportation Study (CATS) document "Transportation Control Measures Contribution to the 15 percent Rate of Progress State Implementation Plan". CATS is the metropolitan planning organization for the Chicago metropolitan area. The December 9, 1993, document (which is part of the docket for this notice) lists the TCMs and the emission reduction calculation methodology. Illinois has implemented TCMs in the Chicago area and has included TCMs in the 15 percent RFP SIP. Today's SIP revision approval incorporates these TCMs into the Illinois SIP and requires Illinois to construct and operate the specified TCMs that are identified and credited to meet the 15 percent RFP and post 1996 RFP. These TCMs are listed in Table 1. On March 9, 1995 the Policy Committee of the Chicago Area Transportation Study, as metropolitan planning organization for northeastern Illinois, approved these TCMs for submittal to the Illinois Environmental Protection Agency as part of the control strategy SIP for the Chicago ozone nonattainment area. There are 127 TCMs that are being incorporated into the Illinois SIP, for an estimated reduction in volatile organic compounds of 2.78 tons per day (tpd). Illinois is using 2.0 tpd to meet the required 15 percent, and the additional 0.78 tpd will be credited toward the post 1996 RFP. Most of the TCMs (111) have already been completed and the remaining TCMs are scheduled to be completed by the end of 1996. The vanpool incentive program has been implemented and the Pace Board (the project implementor) has committed to this project for future years.

Illinois has taken credit for conventional TCMs such as signal interconnects, additional commuter parking, vanpool programs and transit improvements which include station improvements and new rapid transit service to Midway Airport. The specific projects are listed in Table 1. In addition, Illinois has implemented a number of TCMs that are expected to benefit air quality such as bicycle and pedestrian projects that will help eliminate trips. At this time, however, Illinois is not taking a reduction credit for these projects since a methodology for determining the emission reduction credit is not firmly established and additional studies of the effectiveness of these projects are being conducted. Illinois may take credit for these projects at a later date. Because Illinois is not taking credit at this time, these projects are not currently being approved as part of this SIP revision request.

Illinois submitted a 15 percent RFP SIP for the Chicago area to the USEPA in November 1993, but the submittal was found incomplete in a letter dated January 21, 1994. The RFP SIP lacked enforceable regulations.

On May 23, 1995, Illinois submitted materials to supplement the 15 percent RFP plan. This submittal finalized Illinois' 15 percent SIP. The USEPA found Illinois' submitted 15 percent SIP complete on June 15, 1995. The SIP submission contains a menu of adopted emissions reductions measures that the State believes will achieve the 15 percent reduction requirement by November 15, 1996. In the submission, Illinois uses TCMs for a reduction credit of 2 tpd.

For the attainment demonstration and post-1996 RFP SIPs, which Illinois submitted on November 22, 1994 and May 23, 1995, USEPA is still in the process of evaluating these SIP submission.

Illinois has met the first and second elements of the VMT offset SIP requirements of section 182(d)(1)(A). Regarding the first element, Illinois has identified and evaluated TCMs to reduce VMT, and has shown that VMT growth will not result in a growth of motor vehicle emissions that will negate the effects of the reductions required under the Act and that there will not be an upturn of motor vehicle emissions. Regarding the second element, Illinois has submitted a complete 15 percent SIP that relies upon TCMs for 2 tpd to make its proffered showing that the 15 percent reduction will be achieved. These TCMs will be approved into the Illinois SIP effective with this final rule. Consequently, USEPA does not believe it is necessary to delay taking action on this second element of the VMT SIP, and that the Agency can at this point rely upon Illinois's submitted 15 percent SIP to satisfy the second VMT SIP element. However, if in evaluating the 15 percent SIP for approval it is determined that Illinois will in fact need to implement additional measures to meet the 15 percent RFP requirement, and a subsequent submission of a revised 15 percent SIP is required, EPA would have to reevaluate its approval of the second element of the VMT SIP.

The third requirement is for Illinois to use TCMs as necessary to attain the standard. This third requirement will be applicable if Illinois incorporates TCMs into its attainment plan through any future SIP revisions.

III. Public Comments

On December 6, 1994, the USEPA proposed to approve the first and second elements of the Illinois VMT Offset SIP and requested public comment. The public comment period closed on January 5, 1995, and 2 sets of comments were received. The Natural Resources Defense Council (NRDC) submitted comments and the Environmental Law and Policy Center submitted comments for themselves and the following groups: the American Lung Association of Metropolitan Chicago; Business and Professional People for the Public Interest; the Center for Neighborhood Technology; the Chicagoland Bicycle Federation; and the Sierra Club, Illinois Chapter. The following summarizes the comments and USEPA's response to these comments:

Comment: Commenters argue that the Act requires TCMs to offset emissions resulting from all growth in VMT above 1990 levels, and USEPA is required by the Act to ensure emission reductions despite an increase in VMT. The legislative history states that "[t]he baseline for determining whether there has been a growth in emissions due to increased VMT is the level of vehicle emissions that would occur if VMT held constant in the year." See H. Rep. No. 101–490 Part I, 101st Cong., 2nd session at 242, and S. Rep. No. 101–228, 101st Cong., 1st Sess. at 44.

Response: As discussed in the General Preamble, USEPA believes that section 182(d)(1)(A) of the Act requires the State to "offset any growth in emissions" from growth in VMT but not, as suggested by the comment, all emissions resulting from VMT growth (see 57 FR 13498, 13522–13523, April 16, 1992). The purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. The baseline for emissions is the 1990 level of vehicle emissions and the subsequent reductions in emission levels required to reach attainment. Thus, the anticipated benefits from the mandated measures such as the Federal motor vehicle pollution control program, lower reid vapor pressure, enhanced inspection and maintenance and all other motor vehicle emission control programs are included in the ceiling line calculation used by Illinois in the VMT Offset SIP. Table 2 in the Illinois submittal shows how emissions will decline substantially from 491.2 tons per day (tpd) in 1990 to 151.4 tpd in 2007 (assuming a 2.7 percent per year VMT growth rate) and will not begin to turn up. Emission reductions are expected every year through the year 2007.

The ceiling line approach does not "tolerate increases in traffic of a magnitude that would wipe out the air quality gains" as suggested by the comment. In fact, the ceiling line level decreases from year to year as the State implements various control measures and the decreasing ceiling line prevents an upturn in mobile source emissions. Dramatic increases in VMT that could wipe out the benefits of motor vehicle emission reduction measures will not be allowed and will trigger the implementation of TCMs. This prevents mere preservation of the status quo, and ensures emissions reductions despite an increase in VMT such that the rate of emissions decline is not slowed by increases in VMT or number of trips. To prevent future growth changes from adversely impacting emissions from motor vehicles, Illinois is required by section 182(c)(5) to track actual VMT starting with 1996 and every three years thereafter to demonstrate that the actual VMT is equal to or less than the projected VMT. TCMs will be required to offset VMT that is above the projected levels (section 182(c)(5)).

Under the commenter's approach to section 182(d)(1)(A), Illinois would have to offset VMT growth even while vehicle emissions are declining. Although the statutory language could be read to require offsetting any VMT growth, USEPA believes that the language can also be read so that only actual emissions increases resulting from VMT growth need to be offset. The statute by its own terms requires offsetting of "any growth in emissions from growth in VMT." It is reasonable to interpret this language as requiring that VMT growth must be offset only where such growth results in emissions increases from the motor vehicle fleet in the area.

While it is true that the language of the legislative history appears to support the commenter's interpretation of the statutory language, such an interpretation would have drastic implications for Illinois if the State were forced to ignore the beneficial impacts of all vehicle tailpipe and alternative fuel controls. Although the original authors of the provision and the legislative history may in fact have intended this result, USEPA does not believe that the Congress as a whole, or even the full House of Representatives, believed at the time it voted to pass the 1990 Amendments to the Act that the words of this provision would impose such severe restrictions.

Given the susceptibility of the statutory language to these two alternative interpretations, USEPA believes it is the Agency's role in administering the statute to take the interpretation most reasonable in light of the practical implications of such interpretation and the purposes and intent of the statutory scheme as a whole. In the context of the intricate planning requirements Congress established in title I to bring areas towards attainment of the ozone NAAQS, and in light of the absence of any discussion of this aspect of the VMT offset provision by the Congress as a whole (either in floor debate or in the Conference Report), USEPA concludes that the appropriate interpretation of section 182(d)(1)(A) requires offsetting VMT growth only when such growth would result in actual emissions increases.

Comment: Section 182(d)(1)(A) of the Act requires that emissions of oxides of nitrogen (NO_X) as well as VOCs resulting from VMT growth must be offset.

Response: USEPA disagrees with the commenter's interpretation that section 182(d)(1)(A) requires NO_X emissions from VMT growth to be offset. While that section provides that "any growth in emissions" from growth in VMT must be offset, USEPA believes that Congress clearly intended that the offset requirement be limited to VOC emissions. First, section 182(d)(1)(A)'s requirement that a State's VMT TCMs comply with the "periodic emissions reduction requirements" of sections 182(b) and (c) the Act indicates that the VMT offset SIP requirement is VOC-specific. Section 182(c)(2)(B), which requires reasonable further progress demonstrations for serious ozone nonattainment areas, provides that such demonstrations will result in VOC emissions reductions; thus, the only "periodic emissions reduction requirement" of section 182(c)(2)(B) is VOC-specific. In fact, it is only in section 182(c)(2)(C)—a provision not referenced in section 182(d)(1)(A)—that Congress provided States the authority to submit demonstrations providing for reductions of emissions of VOCs and

NO_X in lieu of the SIP otherwise required by section 182(c)(2)(B).

Moreover, the 15 percent periodic reduction requirement of section 182(b)(1)(A)(i) applies only to VOC emissions, while only the separate "annual" reduction requirement applies to both VOC and NO_X emissions. USEPA believes that Congress did not intend the terms "periodic emissions reductions" and "annual emissions reductions" to be synonymous, and that the former does not include the latter. In section 176(c)(3)(A)(iii) of the Act, Congress required that conformity SIPs "contribute to annual emissions reductions" consistent with section 182(b)(1) (and thus achieve NO_X emissions reductions), but does not refer to the 15 percent periodic reduction requirement. Conversely, section 182(d)(1)(A) refers to the periodic emissions reduction requirements of the Act, but does not refer to annual emissions reduction requirements that require NO_X reductions. Consequently, USEPA interprets the requirement that VMT SIPs comply with periodic emissions reduction requirements of the Act to mean that only VOC emissions are subject to section 182(d)(1)(A) in severe ozone nonattainment areas.

Finally, USEPA notes that where Congress intended section 182 ozone SIP requirements to apply to NO_X as well as VOC emissions, it specifically extended applicability to NO_X. Thus, references to ozone or emissions in general in section 182 do not on their own implicate NO_X. For example, in section 182(a)(2)(C), the Act requires States to require preconstruction permits for new or modified stationary sources "with respect to ozone"; Congress clearly did not believe this reference to ozone alone was sufficient to subject NO_X emissions to the permitting requirement, since it was necessary to enact section 182(f)(1) of the Act, which specifically extends the permitting requirement to major stationary sources of NO_X. Since section 182(d)(1)(A) does not specifically identify NO_X emissions requirements in addition to the VOC emissions requirements identified in the provision, USEPA does not believe States are required to offset NO_X emissions from VMT growth in their section 182(d)(1)(A) SIPs.

IV. Final Rulemaking Action

Based on the State's submittal request and in consideration of the public comments received in response to the proposed rule, USEPA is approving the SIP revision submitted by the State of Illinois as satisfying the first two of the three VMT offset plan requirements. The USEPA is also approving into the Illinois SIP 127 TCMs creditable to the 15 percent and post 1996 RFP.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 20, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (see Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Transportation control measures, Vehicle miles traveled offset.

Dated: August 31, 1995.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (j) to read as follows:

§ 52.726 Control Strategy: Ozone

* * * * *

(j) Approval—On July 14, 1994, Illinois submitted two of three elements required by section 182(d)(1)(A) of the Clean Air Amendments of 1990 to be incorporated as part of the vehicle miles traveled (VMT) State Implementation Plan intended to offset any growth in emissions from a growth in vehicle miles traveled. These elements are the offsetting of growth in emissions attributable to growth in VMT which was due November 15, 1992, and, transportation control measures (TCMs) required as part of Illinois' 15 percent reasonable further progress (RFP) plan which was due November 15, 1993. Illinois satisfied the first requirement by projecting emissions from mobile sources and demonstrating that no increase in emissions would take place. Illinois satisfied the second requirement by submitting the TCMs listed in Table 1 which are now approved into the Illinois SIP.

TABLE 1

Project type	Location description	Completion status	SIP credit VOC tpd
RS/SIG MOD	Madison Street (Western Ave. to Halsted Street)	Done	0.015400
SIG COORD	Willow Road (Landwer Road to Shermer)	Awarded	0.052000
SIG COORD	Rand Road (Baldwin Road to Kennicott)	Awarded	0.052000
SIG COORD	Northwest Hwy (Potter Road to Cumberland Avenue)	Awarded	0.030000
SIGS/SIG COORD	159th Street (US 45 to 76th Ave & at 91st Avenue)	Awarded	0.030000
SIG COORD	Harlem Ave. (71st St. to 92nd)	Awarded	0.052000
SIG COORD	Harlem Ave. (99th Street to 135th St.)	Awarded	0.052000
RECONST/SIGS/LTS	Archer Ave. (88th Ave to 65th St.)	Awarded	0.030000
SIG COORD	Ogden Ave. (N. Aurora Road to Naper Boulevard)	Awarded	0.030000
SIG COORD	North Ave. (Tyler to Kautz)	Awarded	0.030000
SIG COORD	Higgens Road (Il 72 at Il 31)	Awarded	0.030000
SIG COORD	Sheridan Road (Il 173 to Wadsworth)	Awarded	0.030000
SIG COORD	Lagrange Road (Belmont to Lake St.)	Awarded	0.030000
SIG COORD	Dundee Road (Sanders Road to Skokie Valley Road)	Awarded	0.052000
SIG COORD	Dundee Road (Buffalo Grove Road to Il 21)	Awarded	0.030000
INT IMP/SIG COORD	Golf Road (E. River Road to Washington Ave.)	Awarded	0.052000
SIG COORD	Golf Road (Barrington to Roselle Road)	Awarded	0.030000
SIG COORD	Higgins Road (Barrington to Roselle Road)	Awarded	0.030000
SIG COORD	Joe Orr Road (Vincennes Ave. to Il 1)	Awarded	0.030000

TABLE 1

Project type	Location description	Completion status	SIP credit
SIG COORD/RS	Crawford Ave. (93rd Street to 127th Street)	Awarded	0.052000
SIG COORD	IL 53 (Briarcliff to South of I–55)	Done	0.030000
SIG COORD	Ogden Ave. (Oakwood Avenue to Fairview Avenue)	Awarded	0.019000
SIG COORD	US 14 (Rohlwing Road to Wilke Road)	Awarded	0.030000
SIG COORD	US 30 (At Cottage Grove, Ellis St)	Awarded	0.030000
SIG COORD	IL 53 (Modonough to Mills)	Done	0.030000
SIG CONN	Ogden Ave. (IL 43 to 31st Street)	Awarded	0.013000
SIG CONN	US 12 (Long Grove—Hicks Road)	Awarded	0.055200
SIG CONN	North Ave. (Oak Park to Ridgeland)	Awarded	0.007000
SIG CONN	Roosevelt Road (Westchester Bl—IL 43)	Awarded	0.137000
SIG CONN	Depster St (Keeler to Crawford Ave.)	Awarded	0.010000
SIG CONN	Arlington Hgts Rd. (Thomas to Central)	Awarded	0.044000
SIG CONN	Palatine Rd. (Shoenbeck to Wolf Roads)	Awarded	0.042500
SIG CONN	Western Ave. (US 30—Lakewood)	Awarded	0.018900
RS/INT IMP	North Ave. (I–290 to IL 43)	Awarded	0.056100
INT IMP	Plum Grove Rd. (At Higgins Road)	Awarded	0.010700
INT IMP	St Street (At Illinois)	Awarded	0.002700
RS/SIG MOD/INT IMP	Illinois/Grand (Kingsbury to Lake Shore Drive)	Done	0.004200
ADD TURN LANES	York Rd. (Industrial to Grand Ave.)	Done	0.003800
SERVICE IMP	SW Route Lane Service	Scheduled	0.005516
SIG INTCONN	Washington Street	Scheduled	0.030370
SIG INTCONN	IL 59	Scheduled	0.068650
ENGR	Citywide—Naperville		0.086230
SIG INTCONN	Washington Street	Scheduled	0.008230
SIG INTCONN	Lewis Ave. (Yorkhousse to ILL 173)	Scheduled	0.034600
SIG INTCONN	Schaumberg Rd. (Barrington to Martingale)	Scheduled	0.078080
Vanpool Program (94 vehicles)	Region-Wide Suburban	Done	0.134000
Transp. Center	North West Cook County	Done	0.032835
Transp. Center	Sears T.F.	Done	0.005805
Station	Clark/Lake	Done	0.010000
Station Recon	18 Th Douglas Line	Done	0.001500
Station Recon	Linden	Done	0.001500
Station Recon	Cottage Grove	Done	0.001300
Com. Pkg	Lisle	Done	0.010177
Com. Pkg	Jefferson Park	Done	0.000110
Com. Pkg	Edison Park	Done	0.003614
Com. Pkg	Palatine	Done	0.004336

TABLE 1—Continued

Project type	Location description	Completion status	SIP credit
Com. Pkg	Central Street	Done	0.000519
Com. Pkg	Palatine	Done	0.004890
Com. Pkg	Crystal Lake	Done	0.034948
Com. Pkg	137Th/Riverdale	Done	0.004565
Com. Pkg	River Forest	Done	0.000289
Com. Pkg	115Th/Kensington	Done	0.002795
Com. Pkg	119Th St	Done	0.004483
Com. Pkg	Wilmette	Done	0.001587
Com. Pkg	111Th St	Done	0.000507
Com. Pkg	Edison Park	Done	0.002371
Com. Pkg	Joliet	Done	0.003967
Com. Pkg	Hanover Park	Done	0.021799
Com. Pkg	Bartlett	Done	0.008911
Com. Pkg	Chicago Ridge	[illegible]	0.002159
Com. Pkg	103 Rd St	Done	0.000675
Com. Pkg	Elmhurst	Done	0.003857
Com. Pkg	Bartlett	Done	0.009326
Com. Pkg	Morton Grove	Done	0.001444
Com. Pkg	Palatine	Done	0.003598
Com. Pkg	Harvard	Done	0.006299
Com. Pkg	Willow Springs	Done	0.001200
Com. Pkg	Edgebrook	Done	0.002240
Com. Pkg	Bensenville	Done	0.002010
Com. Pkg	Hanover Park	Done	0.015020
Com. Pkg	Midlothian	Done	0.002570
Com. Pkg	Route 59	Done	0.025020
Com. Pkg	Lake Forest (West)	Done	0.013780
Com. Pkg	Lombard	Done	
Com. Pkg	Elmhurst	Done	0.001010
Com. Pkg	Woodstock	Done	0.019000
Com. Pkg	University Park	Done	0.019950
Com. Pkg	Grayslake	Done	0.006210
Com. Pkg	Oak Forest	Done	0.004260
Com. Pkg	91 St St.	Done	0.003380
Com. Pkg	Lockport	Done	0.007360
Com. Pkg	Ravenswood	Done	0.000130
Com. Pkg	Hickory Creek	Done	0.060140
Com. Pkg	Cary	Done	0.005980
Com. Pkg	Blue Island	Done	0.019430
Com. Pkg	Lemont	Done	0.016200
Com. Pkg	Itasca	Done	0.003860
Com. Pkg	Maywood	Done	0.000600
Com. Pkg	Ivanhoe	Done	0.001960
Com. Pkg	Ravinia	Done	0.003210
Com. Pkg	Fox River Grove	Done	0.025170
Com. Pkg	Medinah	Done	0.012250
Com. Pkg	Hanover Park	Done	0.011840
Com. Pkg	Worth	Done	0.003530
Com. Pkg	Roselle	Done	0.007710
Com. Pkg	Crystal Lake	Done	0.015050
Com. Pkg	Gresham	Done	0.000300
Com. Pkg	Barrington	Done	0.002420
Rideshare Prog.	Regionwide	Scheduled	0.040000
Rapid Transit Service	Midway Airport	Done	0.220000
Transp. Center	Deerfield Lake-Cook	Done	0.004160
Station Recon	Davis St.	Done	0.004000
Station Recon	Addison	Done	0.004000
Station Recon	King Drive	Done	0.003000
Station Recon	Washington/Wells	Done	0.003000
Com. Pkg	Cary	Done	0.027910
Com. Pkg	Morton Grove	Done	0.002460
Com. Pkg	80th Ave.	Scheduled	0.043200
Com. Pkg	Round Lake	Done	0.015150
Com. Pkg	Grayslake	Done	0.009170
Com. Pkg	Ingleside	Scheduled	0.005430
Com. Pkg	Schamburg	Scheduled	0.042090
Com. Pkg	Oak Forest	Scheduled	0.004680
Com. Pkg	Lake Cook	Scheduled	0.026390
Com. Pkg	Grayslake	Scheduled	0.035290

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[FR Doc. 95–23472 Filed 9–20–95; 8:45 am]

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40 CFR Part 300

[FRL–5300–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of NAS Whidbey Seaplane Base, located on Whidbey Island, Washington from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Washington have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of public health, welfare and the environment.

EFFECTIVE DATE: September 21, 1995.

FOR FURTHER INFORMATION CONTACT:
R. Matthew Wilkening, Site Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, HW–124, Seattle, WA 98101, (206) 553–1284.
Engineering Field Activity, NW (primary Admin. Record location) Naval Facilities Engineering Command, 19917 7th Ave. Poulsbo, Washington

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is NAS Whidbey Seaplane, Whidbey Island, Washington.

A Notice of Intent to Delete for this site was published July 17, 1995 in **Federal Register** [60 FR 36770]. The closing date for comments on the Notice of Intent to Delete was August 31, 1995. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 12, 1995.

Chuck Clarke,

Regional Administrator, USEPA Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp. p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 2 of Appendix B to part 300 is amended by removing the site NAS Whidbey Seaplane Base, Whidbey Island, Washington.

[FR Doc. 95–23438 Filed 9–20–95; 8:45 am]

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40 CFR Part 799

[OPPTS–42111F, FRL 4927–8]

RIN NO. 2070–AB94

Withdrawal of Certain Testing Requirements for Office of Water Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the final test rule for the Office of Water Chemicals by rescinding the 90–day subchronic testing requirement for 1,1,2,2-tetrachloroethane and the 90–day and 14–day testing requirements for 1,1-dichloroethane. The testing requirements are being rescinded because the Agency has received data adequate to meet the data needs for which the test rule was promulgated.

DATES: This amendment shall become effective on November 6, 1995. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on October 5, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551, Internet address: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is amending the final test rule for the Office of Water Chemicals in 40 CFR 799.5075 by rescinding; (1) the 90–day subchronic testing requirement for 1,1,2,2-tetrachloroethane, (2) the 90–day testing requirements for 1,1-dichloroethane, and (3) the 14–day testing requirements for 1,1-dichloroethane.

I. Background

In the **Federal Register** of April 10, 1995 (60 FR 18079), EPA proposed rescinding the 90–day subchronic testing requirement for 1,1,2,2-tetrachloroethane and the 90–day and 14–day testing requirements for 1,1-dichloroethane. The rule establishing these testing requirements was promulgated pursuant to TSCA section 4(a), and published in the **Federal Register** on November 10, 1993 (58 FR 59667).

The reasons for the proposal were that data had become available for these substances which, after review by EPA, were adjudged to be adequate to meet the data needs for which the test rule for these substances was promulgated, the establishment of Health Advisories for the Office of Water. The final test rule for Drinking Water Contaminants Subject to Testing ("the Office of Water Chemicals test rule") which EPA is now amending, is codified in 40 CFR 799.5075.

II. Public Comments

EPA received only one public comment during the public comment period. This comment, from the ODW Chemicals Task Force of Washington, D.C., agreed with the Agency proposal.

III. Amended Testing Requirements

The Office of Water Chemicals test rule at 40 CFR 799.5075 is amended to delete the 90–day subchronic testing requirement for 1,1,2,2-tetrachloroethane and the 14–day and 90–day testing requirements for 1,1-dichloroethane. Specifically, parties subject to the test rule will no longer have to comply with 40 CFR 799.5075(a)(1), (c)(1)(i)(A) and (c)(2)(i)(A).

IV. Economic Analysis

Eliminating these testing requirements will reduce testing costs. Therefore, this amendment should not cause adverse economic impact.

V. Rulemaking Record

EPA has established a docket for this rulemaking (docket number OPPTS–42111F).This docket contains the basic information considered by EPA in developing this rule, appropriate **Federal Register** notices, and the comment received on the proposal. The rulemaking record includes the following:

(1) Halogenated Solvents Industry Alliance (HSIA). Letter from Peter Voytek, Ph.D. to Connie Musgrove, USEPA entitled; Request for Modification of Study Requirements (June 28, 1994).

(2) National Institute of Environmental Health Sciences (NIEHS). Letter from William Eastin, Ph.D. to Roger Nelson, USEPA (July 7, 1994) with two attachments:

(a) Pathco. "Chairperson's Report Structure Activity Relationship Studies of Halogenated Ethane-Induced Accumulation of Alpha-2U-Globulin in the Male Rat Kidney: Part A, B, C, - Studies Conducted in F344 Rats at Microbiological Associates."

(b) Microbiological Associates, Inc. Final Report -Study Nos. 03554.11 – 03554.12. 1,1,2,2-Tetrachloroethane (TCE).

(3) USEPA. Memorandum from Bruce Mintz to Roger Nelson "Request for Office of Water Recommendation for Approval/Disapproval of June 28, 1994 HSIA Request for Modification of Test Standards for 1,1-Dichloroethane and 1,1,2,2-Tetrachloroethane." (Office of Water Test Rule).

(4) Voytek, P. Note (Fax) to Roger Nelson entitled "Preliminary Testing of 1,1-Dichloroethane in Drinking Water." (Aug 3, 1994).

(5) Unpublished. "Original Draft of Report to EPA HERL, Cincinnati in 1986" - James V. Bruckner, Ph.D. (Undated).

(6) Muralidhara, S., R. Ramanathan, C.E. Dallas and J.V. Bruckner. "Acute, Subacute and Subchronic Oral Toxicity Studies of 1,1-Dichloroethane (DCE) in Rats." *Society of Toxicology Abstract* (1986).

(7) USEPA. Memorandum from Krishan Khanna to Roger Nelson "Review of 1,1-Dichloroethane (DCE) Data (TSCA Test Rule for Office of Water Chemicals)." November 15, 1994.

(8) ODW Chemicals Task Force. Letter to TSCA Documents Receipt Office, Re: OPPTS–42111E. May 10, 1995.

(9) USEPA. Office of Water Chemicals; Final Test Rule. 58 FR 59667, November 10, 1993.

(10) USEPA. Test Rule; Office of Water Chemicals Proposed Withdrawal of Certain Testing Requirements. 60 FR 18079, April 10, 1995.

VI. Public Docket

The docket for this rulemaking is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office, is located in Room B–607 Northeast Mall, 401 M St., SW., Washington, D.C. 20460.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this test rule would not have a significant impact on a substantial number of small businesses because the amendment would relieve a regulatory obligation to conduct certain chemical tests.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule reduces enforceable duties on any of these governmental entities or the private sector by revoking rules requiring testing.

D. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed test rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB Control number 2070–0033. This rule would reduce the public reporting burden associated with the testing requirement under the final test rule. A complete discussion of the reporting burden is contained at 58 FR 59680, November 10, 1993.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Health effects, Laboratories, Provisional testing, Reporting and recordkeeping requirements, Testing, Incorporation by reference.

Authority: 15 U.S.C. 2603.

Dated: September 12, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, subchapter R, part 799 is amended as follows:

PART 799 — [AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In § 799.5075 by revising paragraphs (a)(1), (c)(1)(i)(A), (c)(2)(i)(A) and (d)(1) to read as follows:

§ 799.5075 Drinking water contaminants subject to testing.

(a) * * *

(1) Chloroethane (CAS No. 75–00–3), 1,1,2,2-tetrachloroethane (CAS No. 79–34–5), and 1,3,5-trimethylbenzene (CAS No. 108–67–8) shall be tested as appropriate in accordance with this section.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) An oral 14–day repeated dose toxicity test shall be conducted with chloroethane, 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650(a); (b)(1); (c); (e)(3), (4)(i), (5), (6), (7)(i), (iv), (v), (8)(vii), (9)(i)(A), (B), (11)(v); and (f)(2)(i). Each substance shall be tested in one mammalian species, preferably a rodent, but a non-rodent may be used. The species and strain of animals used in this test should be the same as those used in the 90–day subchronic test required in paragraph (c)(2)(i) of this section. The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(2) * * *

(i) * * *

(A) An oral 90–day subchronic toxicity test shall be conducted with chloroethane and 1,3,5-trimethylbenzene in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650(e)(3), (7)(i), and (11)(v). The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(d) *Effective date.* (1) This section is effective on December 27, 1993, except for paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A). Paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A) are effective on November 6, 1995.

* * * * *

[FR Doc. 95–23461 Filed 9–20–95; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43–CFR Public Land Order 7160

[CO–935–1430–01; COC–55991]

Withdrawal of National Forest System Lands for Telluride Ski Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 4,000 acres of National Forest System lands from mining for 50 years to protect recreational resources and facilities at the Telluride Ski Area. These lands have been and will remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), for protection of facilities and resources at the Telluride Ski Area:

Uncompahgre National Forest

New Mexico Principal Meridian

T. 42 N., R. 9 W.,
  Sec. 1, lots 2, 3, 4, 6, 7, and 8, S½NW¼, and SW¼;
  Sec. 2, lots 1, 2, 3, and 4, S½NE¼, S½SW¼, and SE¼;
  Sec. 4, lot 2;
  Sec. 9, S½S½NE¼, S½NW¼, and S½;
  Sec. 10, W½NE¼SE¼NE¼, S½SW¼NW¼, W½SW¼, and E½SE¼;
  Sec. 11;
  Sec. 12, W½;
  Sec. 13, W½;
  Sec. 14;
  Sec. 15, E½ and NW¼;
  Sec. 22, NE¼NE¼;
  Sec. 23, N½;
  Sec. 24, NW¼.
T. 43 N., R. 9 W.,
  Sec. 33, lots 18, 19, and 20;
  Sec. 34, lots 17, 18, 22, 23, and 24;
  Sec. 35, lots 28, 29, 30, 31, and 32.

The areas described aggregate approximately 4,000 acres of National Forest System lands in San Miguel County. This withdrawal includes all National Forest System lands and excludes any privately owned lands within the described areas.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 5, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–23365 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–JB–P

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43 CFR Part 1820

[WO–420–4191–02–24 1A]

RIN 1004–AC41

Application Procedures, Execution and Filing of Forms: Correction of State Office Addresses for Filings and Recordings, Proper Offices for Recording of Mining Claims

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This administrative final rule amends the regulations pertaining to execution and filing of forms in order to reflect the new address of the Wyoming State Office of the Bureau of Land Management (BLM), which moved in September 1995. All filings and other documents relating to public lands in Wyoming and Nebraska must be filed at the new address of the State Office.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Hudson, (202) 208–4256.

SUPPLEMENTARY INFORMATION: This administrative final rule reflects the administrative action of changing the address of the Wyoming State Office of BLM. It changes the street address for the personal filing of documents relating to public lands in Wyoming and Nebraska, but makes no other changes in filing requirements.

Specifically, it does not change the mailing address of the Wyoming State Office, but only the street address. Therefore, this amendment is published as a final rule with the effective date shown above.

Because this final rule is an administrative action to change the address for one BLM State Office, BLM has determined that it has no substantive impact on the public. It imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure thereon are unnecessary and that this rule may take effect upon publication.

Because this final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule is categorically excluded from review under Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by private property. No private property rights would be affected by a rule that merely reports address changes for BLM State Offices. The Department therefore certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Reporting address changes for BLM State Offices will not have any economic impact whatsoever.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department hereby certifies that this proposed rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Application procedures, Execution and filing of forms, Bureau offices of record.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), and 43 U.S.C. 1740, subpart 1821, part 1820, group 1800, subchapter A, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

1. The authority citation for part 1820 is revised to read as follows:

Authority: R.S. 2478, 43 U.S.C. 1201; 43 U.S.C. 1740, unless otherwise noted.

2. Section 1821.2–1 is amended by revising in paragraph (d) the location and address of the Bureau of Land Management State Office in Wyoming to read:

§ 1821.2–1 Office hours; place for filing.

* * * * *

(d) * * *

STATE OFFICE AND AREA OF JURISDICTION

* * * * *

Wyoming State Office, 5353 Yellowstone Rd, Cheyenne WY 82009; Mail: P.O. Box 1828, Cheyenne, WY 82003—Wyoming and Nebraska

* * * * *

Dated: September 14, 1995.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 95–23408 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[FCC 95–316]

Fixed-Satellite Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On August 3, 1995 (60 FR 39657), the Commission published a final rule amending its Table of Frequency Allocations by adding a footnote and revising a footnote to permit use of the 17.8–20.2 GHz band for military space-to-Earth ("downlink") fixed-satellite transmissions. The Commission is correcting the amendatory language and table amendments to ensure that the amendments are properly incorporated into the 1995 revision of the Code of Federal Regulations volume.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 776–1620.

SUPPLEMENTARY INFORMATION: The Commission is correcting the amendatory language and display of the Table of Frequency Allocations in the summary of the Memorandum Opinion and Order published in the **Federal Register** August 3, 1995, (60 FR 39657) at the request of the Office of the Federal Register to ensure that the October 1, 1995, revision of 47 CFR Parts 0 to 19 accurately reflects those amendments to the Table and is in the correct editorial format.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Amendatory Text Correction

Accordingly, in FR Doc. 95–19164, published in the **Federal Register** on August 3, 1995, beginning on page 39657, make the following corrections:

§ 2.106 [Corrected]

Beginning on page 39657, in the third column, amendatory instruction 2 and the amendments to § 2.106 Table of Frequency Allocations are corrected to read as follows:

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Remove the existing entries for 17.7–18.1 GHz and 18.1–18.6 GHz in columns (1) through (3) and for 17.7–17.8 GHz and 17.8–18.6 GHz in columns (4) through (7);

b. Add entries in numerical order for 17.7–17.8 GHz, 17.8–18.1 GHz and 18.1–18.6 GHz in columns (1) through (7);

c. Revise entries for 18.6–18.8 GHz through 20.1–20.2 GHz;

d. Add United States footnote US334; and

e. Revise Government footnote G117.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation GHz	Region 2—allocation GHz	Region 3—allocation GHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation GHz	Allocation GHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
17.7–17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.7–17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.7–17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.7–17.8 US271	17.7–17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) MOBILE US271 NG140 NG144	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
17.8–18.1 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.8–18.1 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.8–18.1 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.8–18.1 US334 G117	17.8–18.1 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE US334 NG144	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
18.1–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 870	18.1–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 870	18.1–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 870	18.1–18.6 870 US334 G117	18.1–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 870 US334 NG144	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
18.6–18.8 FIXED FIXED-SATELLITE (space-to-Earth) 872 MOBILE except aeronautical mobile Earth Exploration-Satellite (passive)	18.6–18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 872 MOBILE except aeronautical mobile	18.6–18.8 FIXED FIXED-SATELLITE (space-to-Earth) 872 MOBILE except aeronautical mobile Earth Exploration-Satellite (passive)	18.6–18.8 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive)	18.6–18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	

International table			United States table		FCC use designators	
Region 1—allocation GHz	Region 2—allocation GHz	Region 3—allocation GHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation GHz	Allocation GHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Space Research (passive) 871	SPACE RESEARCH (passive) 871	Space Research (passive) 871	US254 US255 US334 G117	SPACE RESEARCH (passive) US254 US255 US334 NG144		
18.8–19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	18.8–19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	18.8–19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	18.8–19.7 US334 G117	18.8–19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE US334 NG144	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
19.7–20.1 FIXED-SATELLITE (space-to-Earth) Mobile-Satellite (space-to-Earth) 873	19.7–20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 873 873A 873B 873C 873D 873E	19.7–20.1 FIXED-SATELLITE (space-to-Earth) Mobile-Satellite (space-to-Earth). 873	19.7–20.1 US334 G117	19.7–20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 873A 873B 873C 873D 873E US334		
20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 873 873A 873B 873C 873D	20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 873 873A 873B 873C 873D	20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 873 873A 873B 873C 873D	20.1–20.2 US334 G117	20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 873A 873B 873C 873D US334		
*	*	*	*	*	*	*

United States (US) Footnotes

* * * * *

US334 In the band 17.8–20.2 GHz, Government space stations and associated earth stations in the fixed satellite (space-to-Earth) service may be authorized on a primary basis. For a Government geostationary satellite network to operate on a primary basis, the space station shall be located outside the arc measured from East to West, 70°W to 120°W. Coordination between Government fixed-satellite systems and non-Government systems operating in accordance with the United States Table of Frequency Allocations is required.

Government (G) Footnotes

* * * * *

G117 In the bands 7.25–7.75 GHz, 7.9–8.4 GHz, 17.8–21.2 GHz, 30–31 GHz, 39.5–40.5 GHz, 43.5–45.5 GHz and 50.4–51.4 GHz the Government fixed-satellite and mobile-satellite services are limited to military systems.

* * * * *

[FR Doc. 95–23168 Filed 9–20–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 95–39; FCC 95–382]

Network Financial Interest and Syndication Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission repealed significant portions of its financial interest and syndication ("fin/syn") rules, scheduled the remaining rules for expiration, and committed itself to conducting a proceeding six months prior to the scheduled expiration date. On April 5, 1995, the Commission adopted a Notice of Proposed Rule Making initiating the instant review of these rules. It also sought comment in the Notice of Proposed Rule Making on whether to accelerate the expiration date for the remaining rules in the event it determined that no basis had been shown for retaining them. Having

considered the record before it, the Commission finds that those parties favoring retention of the remaining fin/syn rules have failed to meet their burden of proof, and that continuation of the rules therefore is not justified. The intended effect of this action is to eliminate the fin/syn rules in their entirety without delay.

EFFECTIVE DATES: Sections 73.659, 73.660, 73.661, and 73.663 are removed effective September 21, 1995. Section 73.662 is amended effective September 21, 1995, and removed effective August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Kieschnick, (202) 739–0770, or David E. Horowitz, (202) 776–1653, Mass Media Bureau, Policy and Rules Division.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 95–39, FCC 95–382, adopted August 29, 1995, and released September 6, 1995. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Synopsis of the Report and Order

1. The fin/syn rules, which were adopted in 1970 to limit network control over television programming and thereby foster diversity of programming through the development of diverse and antagonistic programming sources, restricted the ability of the three established networks (ABC, CBS, and NBC) to own and syndicate television programming. As stated above, we initiated the instant proceeding pursuant to our Second R&O in MM Docket No. 90–162, in which we determined that, given competitive conditions in the television programming marketplace, the fin/syn rules should be repealed in their entirety. While we concluded in the Second R&O that market conditions did not justify retention of the fin/syn restrictions, we also determined that several critical non-market factors warranted a staggered repeal rather than immediate elimination of all of the rules. First, we developed a scheme to allow us to observe the operation of a partially deregulated market for a period of time to see whether our assessment that the networks would not act in ways detrimental to diversity and competition following deregulation was valid. Second, a gradual phase-out of our restrictions on active syndication in particular appeared warranted because we considered that lifting the restraints on such syndication posed a more significant risk of damage to outlet diversity than that posed by lifting the other restraints, in the event our conclusions about the reactions of the marketplace proved wrong. Finally, we recognized that immediate elimination of all the rules could be disruptive and have unintended and unforeseen negative effects.

2. The rules that we retained, and which we consider here, relate to active syndication on the part of the networks, their involvement in the first-run non-network market, warehousing of programs, and reporting requirements. Under these rules, the networks have been prohibited from actively syndicating prime time entertainment network programming or first-run non-network programs to television stations within the United States. Any such program for which a network holds a passive syndication right must have been syndicated domestically through an independent syndicator. Further, networks have been prohibited from holding or acquiring a continuing financial interest or syndication right in any first-run, non-network program distributed in the United States unless the network had solely produced that program. The anti-warehousing safeguards we adopted were designed to prevent a network from withholding prime time programs from the syndication market for an unreasonable period of time. Finally, sem-annual reporting requirements were imposed on the networks.

3. Both the Second R&O and the Notice were explicit that parties who oppose the scheduled expiration of the remaining fin/syn restrictions would bear the burden of proof in this proceeding. In the Notice, we further explained that commenters opposing the expiration of the rules would "need to convince us that, based on the current status of the program production and distribution markets and the activities of the networks since 1993, the Commission should continue regulation in this area. Parties arguing for retention of fin/syn restrictions should support their positions with empirical data and economic analysis." Notice at para. 12. Thus, because we determined that, as of 1993, market conditions did not justify retention of the fin/syn rules, we made clear that those favoring retention of the rules would have to present evidence of the networks' behavior and the status of program production and distribution markets since that time.

4. In both the Second R&O and the Notice, we also set forth a list of fourteen factors that we deemed relevant to our review of the remaining rules. See Second R&O at para. 118; Notice at para. 12.

5. We find that commenters favoring retention of the remaining fin/syn rules have failed to carry their burden of demonstrating that, based on empirical data and economic analysis of the television program production and distribution markets and network activities since 1993, the rules are necessary to ensure competitive market conditions or source and outlet diversity.

6. Certain arguments made by these commenters suggest that the Commission must prove that repeal of the rules is justified. The Association of Independent Television Stations, Inc. ("INTV"), for example, argues that there is no rational basis for sunsetting the rules, that the FCC has found that the networks have the incentive and ability to deprive independent stations of access to syndicated programming, and that the Commission must make contrary findings based on substantial evidence in order to sunset the rules. We disagree. Based on a thorough review of extensive record evidence, the Commission concluded in the Second R&O that the development of competitive conditions in program production and distribution markets and the decline of network dominance warranted the total repeal of the rules. This decision was affirmed by the Seventh Circuit. *Capital Cities/ABC, Inc.* v. *FCC*, 29 F.3d 309 (7th Cir. 1994). Moreover, the Court warned the FCC that only a compelling reason could justify retention of the rules after their scheduled expiration. Id. at 316. Thus, absent such a compelling showing on the part of those seeking to retain the rules, there are no grounds for suggesting, as INTV does, that the Commission must reexamine its conclusions regarding the lack of need for fin/syn regulation.

7. The Coalition to Preserve the Financial Interest and Syndication Rule ("Coalition") acknowledges in its reply comments that it must carry the burden of proof. Nonetheless, its discussion at times suggests that the burden of proof has shifted to those favoring expiration of the rules, i.e., the networks. Thus, the Coalition asserts that the networks have failed to show that certain arguments submitted and findings made in proceedings conducted prior to 1993 are no longer valid. However, absent a showing based on post-1993 evidence that such earlier arguments and findings are valid now, the networks are not required to disprove them.

8. Proponents of retention of the rules also argue that repeal of the rules will yield no benefits. The Coalition, for example, states that the purpose of the instant proceeding is to test the Commission's 1993 predictions regarding the beneficial effects of repealing the rules, and argues that, since 1993, our relaxation of the rules has not resulted in predicted public welfare benefits. Similarly, King World Productions, Inc. ("King World"), which focuses its comments on first-run syndicated programming, argues that allowing the networks to syndicate first-run programming would produce no public benefit and a probability of harm to source diversity.

9. The purpose of this proceeding, however, is not to determine whether any particular benefits have been realized as a result of the partial elimination of our fin/syn rules. Rather, we provided for the instant review of our remaining rules because we wanted to be certain that their removal would not cause harm. Among our concerns was the possibility that we may have erred in predicting that the networks would not be able to abuse their position if we removed all restrictions on syndication. However, we have already concluded, and the Seventh Circuit has agreed, that the syndication rules are no longer justified by the conditions of the program distribution market, and we are concerned here only with preventing any harm that could result if we were wrong. We anticipate that the repeal of our fin/syn rules will have benefits over time, but our focus here is on whether or not there is evidence that repeal will threaten diversity in the program production and distribution markets.

10. Generally speaking, many of the pro-fin/syn arguments presented in this proceeding are unconvincing because they rely on conclusions reached by the Commission or others prior to 1993, or on analysis of network behavior before that time. Proponents of retaining the rules also rely in part on arguments that were rejected in the Second R&O. Our Notice stated that commenters opposing the scheduled expiration of our rules would need to present information about and analysis of network activities and the operation of program markets since 1993. Thus, arguments based on earlier analyses or data are irrelevant to the instant review (unless the data are used as a comparative benchmark), as are arguments rejected in our Second R&O.

11. We turn now to an examination of the arguments made in this proceeding that provide data and/or economic analysis relevant to the period from 1993 to the present. In the discussion set forth below, we consider these arguments as they relate to the fourteen factors set forth in the Second R&O and the Notice.

12. *The extent to which a network-owned program is syndicated primarily to that network's affiliates*. The only relevant data on this issue were submitted by those favoring elimination of the remaining fin/syn rules. Thus, for example, the National Broadcasting Company, Inc. ("NBC") provides figures for its single in-house production that has been in active first-run syndication by a third-party syndicator since 1993, a series entitled "News 4 Kids." As of May 1995, this program was being carried on 210 stations, of which only 49—or 23%—are either owned by or affiliated with NBC. In contrast, the proponents of retention of the rules did not provide evidence showing that network-owned programs are syndicated primarily to network-owned or -affiliated stations. King World states in its comments that NBC launched a weekly series entitled "Memories Then and Now" which, in its initial season, was carried on 44 stations, 31 of which were either owned by or affiliated with NBC. According to King World, this program illustrates how the networks exploit their affiliates to exercise power over the distribution system. However, the figures King World cites are for February 1992, a period of time that is not relevant to this proceeding except insofar as it is used to place post-1993 network behavior into context. Moreover, even if we consider these figures as relevant here, we note that NBC points out that "Memories Then and Now" was syndicated by an independent distributor, and that King World does not claim that NBC had any influence over the syndicator's sales practices. According to NBC, the fact that the program was a failure in syndication shows that NBC does not have the power over the distribution system that King World claims. If it had such power, NBC states, it would have been able to force sufficient clearances to make the show a success. ABC also points out that the clearance of a program by only 31 NBC affiliates does not show that the networks have used their affiliates to exercise undue control over the distribution system. Finally, we observe that no evidence was presented showing that Fox Broadcasting Company ("Fox"), which is permitted under our rules to engage in active syndication, has favored its affiliates in syndicating Fox programming. We find that evaluation of fin/syn repeal under this factor fails to support a conclusion that the networks favor affiliates in syndicating their programs.

13. *The percentage of network programming in which a network has obtained a financial interest or syndication right*. According to the Coalition, the established networks have taken financial interests, through either co-productions or in-house productions, "in approximately 40 percent of new shows picked up since the Commission eliminated the financial interest rule in 1993." Coalition Comments at 17. The Coalition asserts that this figure is evidence of the exercise of the established networks' market power in the purchase of programming. However, the Coalition does not explain how it arrived at this figure. Moreover, as both Capital Cities/ABC, Inc. ("ABC") and NBC point out, the Coalition's figure, even if valid, merely shows that the established networks have not had a financial interest in the majority of new shows picked up since the Commission eliminated the financial interest rule, a circumstance that is inconsistent with the contention that the networks have exercised undue market power. In sum, no evidence has been presented that demonstrates that the established networks have exercised undue market power in acquiring a financial interest in prime time entertainment programming.

14. Further, no party has presented any evidence indicating that the established networks have allowed their financial interests in or syndication rights to programming aired during prime time to influence their decisions to either retain or cancel that programming. Under our current rules, the established networks may have both a financial interest in and syndication rights to programming produced in-house. NBC states that every network in-house program that premiered in the fall of 1994 was canceled by its respective network by the end of the broadcast season, and asserts that this fact refutes any suggestion that the networks accord favored treatment to their in-house productions. We find that proponents of retaining the remaining fin/syn restrictions have not demonstrated network favoritism toward programming in which they have a financial interest, or to which they have syndication rights, in any way that would adversely affect diversity within the program production market.

15. *The relative change in the number of independent producers creating and selling television shows to the networks.* In its reply comments, the Coalition suggests that data from a study

submitted by Economists Incorporated in comments filed in MM Docket No. 94–123, the Prime Time Access Rule ("PTAR") proceeding, demonstrate that "source diversity has declined dramatically since the financial interest rule was repealed." Coalition Reply Comments at 25. Specifically, the Coalition relies on Appendix E of the study to show that there has been a reduction in the number of suppliers of prime time entertainment series since the 1993–94 season. This appendix lists the packagers of programming included in the prime time schedules of ABC, NBC, and CBS Inc. ("CBS") from the 1969–70 season to the 1994–95 season and the percentage of prime time network programming supplied by these packagers. Figures for the 1995–96 season are projected based on one week of the announced fall line-up on the three networks. Economists Incorporated defines "packager" for purposes of this calculation as the entity that assumed contractual responsibility to a network for production or delivery of a series.

16. While we agree with the Coalition that the Economists Incorporated study indicates a decline in the number of packagers of programming included in the prime time schedules of ABC, NBC, and CBS from 29 in 1993–94 to 17 in the fall of 1995, we do not agree that these figures necessarily demonstrate a reduction in source diversity due to either the relaxation of our fin/syn rules or anticompetitive behavior on the part of the three networks. We note that Appendix E also shows that the number of packagers declined from 31 to 26 from 1990–91 to 1991–92, which was prior to the relaxation of our rules. We believe that this decline, which cannot be attributed to elimination of the financial interest rule, is instead attributable to the inherent riskiness of prime time programming, which may also explain the change in the number of packagers on which the Coalition comments. In addition, we observe that the identity of the packagers listed in Appendix E varies from year to year. This suggest that the list for any given year does not represent all program suppliers selling to the networks, nor can the variations in the lists be used to support a finding that suppliers are being excluded from the market. We also observe that Warner Brothers, which is developing a new broadcast television network to compete with ABC, CBS, and NBC, is providing 23.33% of the prime time entertainment schedule of the three major networks for the fall of 1995. This figure tends to discount any claim that ABC, CBS, and NBC are trying to restrict the supply of programming provided by competitors. In short, the information cited by the Coalition does not demonstrate that relaxation of our fin/syn rules has led to any reduction in the number of independent producers actively competing to create and sell television shows to the networks. Finally, to the extent that there has been any decline in the number of suppliers of prime time programming, it may be due at least in part, as CBS claims, to the major studios supplying an increased percentage of prime time programming.

17. *Concentration of ownership in the program production industry.* In connection with this factor, commenters favoring retention of the fin/syn rules focused on levels of network ownership of prime time entertainment programming. The Coalition asserts that the networks' share of copyrights in such programming has increased from 29% to 35% since repeal of the financial interest rule but does not provide documentation for these figures. INTV contends that the percentage of prime time entertainment series produced in-house by the networks increased from less than 1% in 1984–85 to 7.6% in the 1993–94 season. (We note that Economists Incorporated, upon which INTV relies, has revised its figures of 7.6% for 1993–94 to 6.3%.) However, neither the Coalition nor INTV establishes a clear trend toward increased network ownership of such programming that is attributable to the relaxation of our fin/syn rules or that constitutes a cause for concern from a public interest standpoint. Moreover, looking at the percentages of hours of prime time entertainment series accounted for by in-house network production since 1993, we observe that these percentages have fluctuated from year to year. Accordingly to NBC, in-house productions accounted for 20.2% of the established networks' prime time entertainment series hours in 1992–93, 19.0% of these hours in 1993–94, 25.8% of these hours in 1994–95, and 22.2% of these hours in the Fall 1995 schedule. (We note that the wide difference between the figures cited by INTV and those cited by NBC is due to the fact that INTV's figures refer to the percentage of the number of prime time entertainment series produced in-house, whereas NBC's figures document the number of hours of such programming.) Thus, we cannot say, based on the showings made in this proceeding, that the networks have acted to preclude the prime time programs of other producers from reaching the market, or that program production has been concentrated in the hands of the networks as a result of the relaxation of the fin/syn rules to the detriment of the viewing public. Indeed, the fact that independently owned "packagers" provided 80.97% of the prime time programming hours included in the schedules of ABC, CBS, and NBC during the 1993–94 season, provided 74.2% of these hours during the 1994–95 season, and are scheduled to provide 77.7% of these hours in the upcoming 1995–96 season clearly demonstrates that the three established networks are not precluding independent product from their schedules and thereby concentrating ownership of prime time programming in their hands.

18. *Audience shares of first-run syndicated programming carried by non-network affiliated stations during prime time.* According to INTV, expiration of the fin/syn rules will limit the ability of independent stations to acquire first-run prime time syndicated programs. INTV states that first-run programming accounts for only 39% of the prime time programming of independent stations, and that this programming "rarely achieves" ratings comparable to the ratings of programming shown on the networks. However, the Economists Incorporated data cited by INTV reflect only programming aired in the top 50 markets in November 1994, and do not include ratings information. Thus, the data cited do not support INTV's claims. ABC notes that first-run productions such as "Star Trek/Deep Space Nine," "Kung Fu," and "The Legendary Journeys of Hercules" have been syndicated successfully in prime time without reliance on the networks' affiliates. In sum, it has not been shown that competitive first-run prime time programming is unavailable to independent stations, nor has it been demonstrated that the repeal of our remaining fin/syn restrictions would diminish the amount of first-run programming available to independent stations or otherwise be detrimental to the diversity of programs and program sources.

19. *The overall business practices of emerging networks, such as Fox, in the network television and syndication business.* Although it does not directly discuss its business practices, Fox provides information in its reply comments about its production of prime time programming. Fox states that it currently produces only 3½ of its own 15 hours of prime time network programming, and that it produces a substantial amount of programming for other networks, including "Chicago Hope" and "Picket Fences" for CBS.

Fox offers itself as a "perfect laboratory model" of a broadcast network that has not been subject to regulatory constraints as a producer. We believe that the fact that most of the prime time programming aired on the Fox network is produced by outside suppliers is evidence that permitting a network to own and syndicate programming does not result in foreclosing independent suppliers from the market.

20. *Network negotiating patterns, particularly the manner in which networks obtain financial interests and syndication rights and the extent to which successful negotiations over back-end rights influence network buying decisions.* While not directly addressing this issue, the Coalition does assert that the established networks have uniformly lowered the license fees they pay for prime time entertainment programming. However, the Coalition cites figures without providing any documentation. Moreover, as NBC points out, the Coalition does not indicate in citing its figures what type of programming is involved or the track record of the producer. As a result, we cannot assess the significance of the Coalition's numbers. We note, too, that CBS cites independent industry analysts as reporting that the average license fees paid by the three major networks, as estimated on a per-hour basis, remained virtually unchanged from the 1992–93 season through the 1994–95 season. Thus, we find that proponents of retaining the fin/syn rules have provided no probative evidence that the established networks have exercised undue market power since 1993 in their negotiations for financial interests and syndication rights in television programming.

21. *Mergers or acquisitions involving networks, studios, cable systems and other program providers since our 1993 fin/syn decision took place.* CBS cites a number of mergers that have occurred since 1993 that have resulted in the formation of large new competitors in the video production and distribution markets. Among these are the merger of Viacom Inc., Blockbuster Entertainment Corp., and Paramount Communications, Inc., which has resulted in a company with both production and distribution capabilities. To the extent that such mergers have strengthened the production and distribution capabilities of the merging parties, the three original networks are facing more effective competitors in the video production and distribution markets. We note as well the recent announcements that the Walt Disney Company plans to acquire ABC and that Westinghouse Electric Corp. plans to purchase CBS. The Commission will, or course, be reviewing these acquisitions in the normal course of its regulatory business to ensure that they do not undermine the competiveness of the production and distribution markets.

22. *The growth of additional networks, including the development of Fox and its position vis-a-vis the three major networks.* In their comments, NBC, CBS, and ABC point to the growing audience share of Fox, and to their own declining audience share, as evidence of the competition Fox provides to the established broadcast networks. CBS notes that the aggregate prime time viewing share of the three original networks, which had already fallen to 59% in 1992, dropped further to 57% in the 1993–94 season. NBC, CBS, and ABC also point to the emergence of the United Paramount and Warner Brothers networks as evidence of both the forward integration of existing television programming producers into the distribution of programming through broadcast television outlets and the increased number of potential purchasers of television programming. INTV argues that these new networks cannot compete effectively with the established networks because of the structural advantages enjoyed by the latter—primarily the number of VHF stations owned by or affiliated with the established networks. INTV also suggests that the two newest networks have not had a significant competitive impact because they supply only 2 to 4 hours of weeknight prime time programming. We have, however, already decided in our Second R&O that any structural advantages of the established networks are no longer sufficient to allow them to dominate the program production and distribution markets. Moreover, Fox has competed effectively for a number of VHF affiliates and initiated a series of affiliate switches, which have resulted in some of the established networks having fewer, rather than more, VHF affiliates than they did in 1993. Thus, any structural advantage that the established networks may have had based on ownership of an affiliation with VHF stations has been diminished rather than increased since our Second R&O. Even if the impact of the United Paramount and Warner Brothers networks is currently relatively small, they nonetheless appear to be viable new competitors for the established networks and may increase their market share as Fox has done. Given Fox's growth in audience share, as documented by Economists Incorporated in our PTAR proceeding, and the emergence of two additional broadcast networks, we find that the established broadcast television networks have faced more, rather than less, competition from broadcast television purchasers and distributors since 1993. In keeping with this finding, we disagree with King World's claim that the established networks have bottleneck power over the broadcast television distribution system.

23. *The growth in the number and types of alternative outlets for sale of programming (e.g. the development of the Direct Broadcast Satellite ("DBS") service; cable penetration; wireless cable development).* We determined in our Second R&O that cable networks were competitors to the established broadcast television networks in the purchase of television programming. CBS and ABC point out in this proceeding that there has been continued growth in the number and audience share of not only cable networks but also other networks using alternative distribution technologies (e.g., DBS, wireless cable), and they cite data provided in Economists Incorporated's PTAR comments that demonstrate the increased market share of cable networks. The Coalition argues that cable and other services are not effective competitors to broadcast television, and that cable and other non-broadcast networks therefore are not effective competitors to broadcast networks. However, we have already decided in our Second R&O that these alternative video delivery systems provide sufficient competition with the broadcast networks to obviate the need for fin/syn restrictions and, absent evidence of new developments, this conclusion need not be revisited. Moreover, based on the evidence in the record before us, we find that the established broadcast television networks have faced more, rather than less, competition for the acquisition of television programming from non-broadcast television purchasers since 1993.

24. Proponents of retaining our remaining fin/syn rules have failed to carry their burden of proof that earlier relaxation of these rules has threatened diversity in the television program production and distribution markets, or enabled the established networks to engage in anticompetitive activities to the detriment of the public interest; or that the current conditions of the production and distribution markets warrant retention of the rules. Proponents of retaining the rules have not provided persuasive evidence that the established networks engage in, or

threaten to engage in, affiliate favoritism to the detriment of non-network stations; that the established networks place or retain programming in their schedules because of their financial interests in or syndication rights to that programming, or for other than legitimate competitive reasons; or that the established networks have reduced the pool of suppliers of television programming through anticompetitive practices.

25. In addition, proponents of retaining the remaining fin/syn rules have provided no evidence unrelated to our fourteen factors that would cause us to question whether the conclusions we reached in 1993 remain valid today. Nor have they shown that the semi-annual reports submitted by the networks reveal ownership patterns that pose a threat to programming diversity. Moreover, there is persuasive evidence that the established broadcast television networks have faced increased competition for the acquisition of television programming from broadcast and non-broadcast television distributors since 1993, and there is evidence which suggests that the market power of the established networks, as determined by their prime time audience share, has decreased since 1993. We therefore decline to alter our 1993 decision to sunset the remaining fin/syn rules. In light of the fact that the commenters have not shown a need to retrain these rules, we also conclude that there is no justification for strengthening any of the rules, as the Coalition urges.

26. Finally, we note that both the Coalition and INTV urge us to retain, and indeed strengthen, our reporting requirements for the networks even if we allow the rest of the fin/syn rules to expire. These parties argue that it is important for the Commission to monitor the network's conduct following repeal of the remaining rules in order to assess the impact of such repeal. However, neither of these commenters has demonstrated the need to continue reporting requirements, and we decline to do so.

27. In our Notice, we sought comment on whether, in the event proponents of retention of the fin/syn rules failed to meet their burden of proving that retaining the rules is warranted, we should amend our rules to allow for an expiration date earlier than November 10, 1995. Commenters in this proceeding have failed to demonstrate that market conditions and networks behavior since 1993 justify retraining the rules. In addition, no evidence or argument has been submitted showing that repeal of the remaining rules before November 10, 1995, would disrupt the conduct of business by parties relying on the rules, although we sought comment on this point. We also note, as discussed above, that the networks now face more competition than in 1993 for the acquisition of television programming from broadcast and non-broadcast television distributors. Moreover, we have described at length the negative effects of the fin/syn rules on production and distribution markets in our earlier decisions. Under these circumstances, we conclude that no public interest purpose would be served by allowing the rules to remain in effect until November 10, 1995. We thus conclude that all of the remaining fin/syn rules will be repealed immediately upon publication of this Order in the **Federal Register**.

Final Regulatory Flexibility Analysis

28. Pursuant to the Regulatory Flexibility Act of 1980, the Commission has set forth the following Final Regulatory Flexibility Analysis. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act, 4 U.S.C. § 601 et seq.

29. Need for and Purpose of this Action: This action is taken to accelerate the expiration of the Commission's remaining fin/syn rules—previously scheduled for November 10, 1995—so that the rules will expire upon publication of this Order in the **Federal Register**.

30. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis: None.

31. Significant Alternatives Considered and Rejected: The Commission considered retaining the remaining fin/syn rules. However, after reviewing the comments submitted in this proceeding, the Commission concluded that the proponents of retaining the rules had not met their burden of proving that the rules are still needed to achieve the FCC's goals of source and outlet diversity in the television programming marketplace. One commenter in this proceeding argued that the fin/syn rules should be strengthened. The Commission considered this argument but concluded that it was without merit in light of the fact that no need for retaining the rules at all had been demonstrated. The Commission also considered leaving the remaining fin/syn rules in place until their previously scheduled expiration date of November 10, 1995, but concluded that no evidence had been presented showing that earlier repeal would disrupt the conduct of business by parties relying on the rules. Given the increased competition facing the networks and the negative effects of the fin/syn rules on production and distribution markets, the Commission concluded that no public interest purpose would be served by waiting until November 10, 1995, to sunset the rules.

Ordering Clauses

32. Accordingly, It Is Ordered that pursuant to the authority contained in Sections 4(i), 4(j), 301, 303(i), 303(r), 313 and 314 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303(i), 303(r), 313 and 314, Sections 73.659 through 73.663 of Part 73 of the Commission's Rules, 47 CFR Part 73, Are Amended as set forth below, effective upon publication of this Order in the **Federal Register**.

33. In keeping with our recent decision in our PTAR proceeding, It Is Further Ordered that section 73.662 of Part 73 of the Commission's Rules, 47 CFR Part 73, Is Further Amended as set forth below, effective August 30, 1996.

34. It Is Further Ordered that MM Docket No. 95–39 Is Terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

2. Sections 73.659 through 73.661, and 73.663, are removed and reserved.

3. Sections 73.662 is amended by revising the heading and introductory text to read as follows:

73.662 Definitions for television prime time access rules.

For purposes of § 73.658(k):

* * * * *

4. Effective August 30, 1996, § 73.662 is removed and reserved.

[FR Doc. 95–23366 Filed 9–20–95; 8:45 am]

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47 CFR Part 90

[PR Docket No. 89–553, PP Docket No. 93–253, GN Docket No. 93–252; FCC 95–395]

SMR Systems in the 900 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a Second Order on Reconsideration and Seventh Report and Order, implementing final auction rules for the 900 MHz Specialized Mobile Radio (SMR) service. The Second Order on Reconsideration addresses reconsideration petitions concerning the service rule adopted in the Second Report and Order and Second Further Notice of Proposed Rule Making. The Seventh Report and Order sets forth the rules and procedures governing the 900 MHz SMR auction, including reduced down payments, bidding credits and installment payment plans for small businesses and partitioning for rural telephone companies. The intended effect of this action is to facilitate the development of SMR services and to promote competition in the wireless marketplace.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Amy Zoslov (202) 418–0660. Wireless Telecommunications Bureau or Diane Law (202) 418–0660. Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Second Order on Reconsideration and the Seventh Report and Order, released September 14, 1995. The complete text of this Second Order on Reconsideration and Seventh Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Second Order on Reconsideration and Seventh Report and Order

Adopted: September 14, 1995
Released: September 14, 1995

I. Background

When the Commission established the 900 MHz SMR service in 1986, it elected to use a two-phase licensing process. In Phase I, licenses were assigned in 46 "Designated Filing Areas" (DFAs) comprised of the top 50 markets. Phase II licensing, for facilities outside the DFAs, was frozen after 1986, when the Commission opened its filing window for the DFAs. In 1989, the Commission adopted a Notice of Proposed Rule Making in PR Docket 89–533, 55 FR 744 (Jan. 9, 1990), proposing to begin Phase II licensing of 900 MHz SMR facilities nationwide. In 1993, the Commission adopted a First Report & Order and Further Notice of Proposed Rule Making in PR Docket 89–553, 58 FR 12176 (March 3, 1993), modifying its Phase II proposal and seeking comment on whether to license the 900 MHz SMR band to a combination of nationwide, regional, and local systems. Shortly thereafter, Congress amended the Communications Act to reclassify most SMR licensees as Commercial Mobile Radio Service (CMRS) providers and establish the authority to use competitive bidding to select from among mutually exclusive applicants for certain licensed services. The Commission deferred further consideration of Phase II and incorporated the 900 MHz docket into its CMRS proceeding.

In the CMRS Third Report & Order, PR Docket 89–553, 59 FR 59945 (Nov. 21, 1994), the Commission further revised its Phase II proposals and established the broad outlines for the completion of licensing in the 900 MHz SMR band. The Commission left the adoption of specific auction and service rules for the Phase II Order which the Commission adopted in the Second Report and Order and Second Further Notice, PR Docket 89–553, GN Docket No. 93–252, PP Docket No. 93–253, FCC 95–159, 60 FR 21987 and 60 FR 22023 (May 4, 1995), (Second R&O & Second Further Notice). In that proceeding, the Commission adopted final service rules, established technical and operational rules for the new MTA licensees, defined the rights of incumbent SMR licensees already operating in the 900 MHz band, and requested comment on proposed auction rules. The 900 MHz SMR band will be divided into 20 ten-channel blocks in each of 51 service areas based on Major Trading Areas (MTAs), which match the blocks previously licensed for the DFAs. Each MTA license will give the licensee the right to operate throughout the MTA on the designated channels except where a co-channel incumbent licensee already is operating. MTA licensees will be allowed to aggregate multiple blocks within an MTA and to aggregate blocks geographically in multiple MTAs. The Commission also addressed issues raised on reconsideration of the CMRS Third Report & Order pertaining specifically to the 900 MHz SMR service. The Commission set forth proposals for new licensing rules and auction procedures for the service, including provisions for designated entities. The Commission later issued a Public Notice requesting further comment on the impact of the Supreme Court's subsequent decision in *Adarand Constructors, Inc* v. *Peña*, 115 S.Ct. 2097 (1995), on the proposed treatment of designed entities.

In this Second Order on Reconsideration & Seventh Report & Order the Commission affirms the coverage requirements for MTA licensees and the interference protections and loading requirements for incumbents, and clarifies secondary site licensing, finders' preference and foreign ownership waiver policies. The Order also adopts auction rules, including a tiered bidding credit and enhanced installment payment plans for small businesses and partitioning for rural telephone companies.

II. Second Order on Reconsideration

A. Service Rules

Coverage Requirements

As decided in the Second R&O & Second Further Notice, MTA licensees in this service will be required to meet coverage requirements of ⅓ of the population in the service area within three years of the initial license grant and ⅔ of the population within five years. Alternatively, a licensee may make a showing at five years that it is providing "substantial service." The Commission denies reconsideration of these benchmarks, and reiterates that MTA licensees must satisfy these requirements regardless of the area or percentage of the MTA population that is served by incumbent licensees. MTA licensees may consider options such as resale or management agreements to fulfill the coverage requirements.

Treatment of Incumbents

To ensure that incumbent licensees receive protection from interference by MTA licensees, Second R&O & Second Further Notice provides that MTA licensees either must maintain a minimum 113 kilometer (70 mile) geographic separation or comply with the Commission's short-spacing rules with respect to all incumbent facilities in their service area or in adjacent MTAs. The Commission affirms its intention to allow MTA licensees to use short-spacing rules to comply with interference protection standards, and does not believe it will result in a plethora of interference disputes at the Commission. The Commission also affirms its adoption of the 40 dBu signal strength contour as the protected service area in which incumbents may modify or add facilities, and reject petitioners' requests to use the 22 dBu contour instead.

The Commission will allow incumbents to have their licenses reissued if they are not the successful bidder for the MTA in which they are currently operating. This procedure, which would be granted post-auction upon the request of the incumbent, would essentially convert their current site licenses to a single "partitioned" license, authorizing operations throughout the contiguous and overlapping 40 dBu signal strength contours of the multiple sites. All incumbents with reissued "partitioned" licenses will have to make a one-time filing of specific information for each of their external base sites that will assist the staff in updating the Commission's database after the close of the 900 MHz SMR auction. Incumbents cannot expand their 40 dBu signal strength contour, so they may make additions or modifications to their facilities without notifying the Commission. If incumbents seek to gain additional geographic coverage beyond the 40 dBu protected contour, they must apply for the MTA license.

Secondary Site Licensing/Finders' Preference

As decided in the Second R&O & Second Further Notice, no secondary site licenses will be granted once an MTA licensee has been selected. The Commission states that it is important to assure potential MTA bidders that the spectrum upon which they are bidding will not become subsequently encumbered with secondary sites. The Commission clarifies that all pending finders' preference requests for 900 MHz SMR licenses will be processed, but eliminates future finders' preferences for the 900 MHz SMR service. As provided by the rules, any stations licensed to incumbents that are not constructed or placed in operation will revert automatically to the MTA licensee for that channel block.

Loading Requirements

The Commission denies further reconsideration of its decisions in the CMRS Third Report & Order and the Second R&O & Second Further Notice with respect to loading requirements in the 900 MHz service, as petitioners have raised no new arguments that would merit reconsideration. Consequently, incumbent 900 MHz SMR licensees will continue to be subject to loading requirements, although they are eliminated for MTA licensees. However, temporary relief of the loading rules may be available if the incumbent's unique circumstances warrant a waiver of the rules.

Discontinuance of Operation

The Commission clarifies that the amended rule regarding discontinuance of operation (Section 90.631(f)), which provides that stations taken out of service for 90 consecutive days are considered permanently discontinued, applies only to stations that were taken out of service after June 5, 1995 (the effective date of the rule). The former rule provided that stations taken out of service for 12 months were considered permanently discontinued. Consequently, stations that were taken out of service prior to June 5, 1995, are entitled to stay out of service for the remainder of the original 12 months provided in the former rule, before they will be considered permanently discontinued. Those stations taken out of service on or after June 5, 1995, will be considered permanently discontinued after 90 days. With regard to wide-area SMR licensees that are replacing high power analog sites with low power digital sites, however, the Commission will deem all the base stations "in operation" if the system meets the standards and conditions set out in Fleet Call, Inc., *Memorandum Opinion and Order*, 6 FCC Rcd 1533 (1991), *recon. dismissed*, 6 FCC Rcd 6989 (1991). In Fleet Call, the Commission found that conversion from Fleet Call's existing base stations with aggregate loading from single high-power sites to multiple low-power sites on an integrated basis in six major markets would increase spectrum efficiency without posing a risk of spectrum warehousing.

Foreign Ownership Waivers

In Section 332(c)(6) of the Communications Act, Congress reclassified certain categories of private land mobile radio providers (PLMRS) as commercial mobile radio service (CMRS) providers, and provided for their treatment as common carriers. As a result, reclassified providers are subject to the Section 310(b) foreign ownership restrictions. Congress provided for limited grandfathering of existing foreign interests in such licensees through a waiver petition process whereby any reclassified PLMRS licensee could petition the Commission by February 10, 1994 for waiver of the application of Section 310(b) to any foreign ownership that lawfully existed as of May 24, 1993. In the Second R&O & Second Further Notice, the Commission decided to grandfather any timely-filed petitions for waiver of the foreign ownership restrictions filed by an incumbent in the event the incumbent wins the MTA license. In the Foreign Ownership Order, GN Docket 93–252, 60 FR 40177 (Aug. 7, 1995), the Wireless Telecommunications Bureau noted that the waivers apply to additional licenses granted to petitioners in the same service after May 24, 1993 and prior to August 10, 1996, provided the same ownership structure is maintained. Thus, such entities may acquire other SMR licenses, including MTA licenses in which it is not the incumbent.

III. Seventh Report and Order

A. Auction Rules

A total of 1,020 MTA licenses (51 MTAs times 20 licenses in each MTA) will be awarded in the 900 MHz SMR service. The Commission will use a single simultaneous multiple round auction to award these licenses, because the licenses are interdependent, and licensees likely will aggregate and/or substitute across spectrum blocks and geographic areas. Both incumbents and new entrants are eligible to bid for all MTA licenses, but winning bidders will be subject to the CMRS spectrum cap in 47 CFR 20.6. All applicants for MTA licenses are treated as initial applicants for Public Notice, application processing, and auction purposes. The Wireless Telecommunications Bureau will announce the time and place of the auction and provide additional information to bidders by future Public Notice.

Applicants will apply for the 900 MHz SMR auction by filing a short-form application (FCC Form 175 and paying an upfront payment. The Commission adopts the standard upfront payment formula of $0.02 per pop-MHz, based on the number of 10-channel blocks in each MTA identified on the applicant's Form 175 and the total MTA population. The Wireless Telecommunications Bureau will announce, by Public Notice, the population calculation of each MTA, using a formula that takes into account incumbents within the MTA, and the upfront payment amount of each MTA. The Commission also adopts the Milgrom-Wilson activity rule used in previous multiple-round simultaneous auctions, which requires bidders to declare their maximum eligibility in terms of MHz-pops and limits them to bidding on licenses encompassing no more than the MHz-pops covered by their upfront payment. Failure to maintain the requisite activity level will result in a reduction in the amount of MHz-pops upon which a bidder will be eligible to bid in the next round of bidding, unless an activity rule waiver is used. The Commission will provide bidders with five activity rule waivers which may be used in any round, but retains the discretion to issue additional waivers during the course of the auction.

Each applicant will be required to specify on its Form 175 its classification, status as a designated entity (if applicable), markets and frequency blocks applied for, and persons authorized to place or withdraw bids. In the Order, the Commission modified the tables in 47 CFR 90.617 and 90.619 to assign block letters to the former frequency block numbers. Applicants must identify any arrangements or agreements with other parties relating to the licenses that are being auctioned, and certify that there are no arrangements other than those specified. Applicants may correct minor defects in their short-form applications, prior to the auction, but may not make any major modifications to their applications, including license area changes, cognizable ownership changes or changes in the identification of parties to bidding consortia, until after the auction. Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. In instances where only a single applicant has applied for a particular MTA channel block, the Commission will cancel the auction for that block and establish a deadline for filing of the applicant's long-form application. In all instances where mutually exclusive applications are filed, the MTA channel block will be included in the auction.

Bidding Issues

Bidders will be able to submit bids on site, via personal computers using remote bidding software, or via telephone, but the Commission reserves the right to have only remote bidding—by personal computers and by telephone—for the 900 MHz SMR auction. The timing and duration of auction rounds would be determined by the Wireless Telecommunications Bureau and announced by Public Notice. As in prior auctions, the Commission expects to start the auction with relatively large bid increments and reduce increments as bidding activity falls. The Commission will use a simultaneous stopping rule for this auction to afford bidders flexibility to pursue back-up strategies to ensure that bidders will not hold back bids until the final round. During the auction, the Commission retains the discretion to declare that the auction will end after a specified number of additional rounds.

The Commission will specify bid increments, i.e., the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current bidding round. The application of a minimum bid increment helps to ensure that the auction closes within a reasonable period of time and is expressed in both a percentage and fixed dollar amount. The Commission may impose a minimum bid increment of five percent or $0.02 per pop-MHz, whichever is greater, but also retains the discretion to set, and by announcement before or during the auction, vary the minimum bid increments for licenses over the course of an auction. Where a tie bid occurs, the Commission will determine the high bidder by the order in which the Commission receives the bids.

Withdrawal and Default

The Commission will use the bid withdrawal and default rules for this auction similar to those used in prior auctions. Under these rules, any bidder that withdraws a high bid during an auction before the Commission declares bidding closed must reimburse the Commission for the difference between the amount of the ultimate winning bid and the withdrawn bid if the winning bid is lower than the withdrawn bid. An auction winner defaulting after the close of the auction will also have to pay the lesser of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid. In the event that an auction winner defaults, is disqualified, or if the license is revoked or terminated, the Commission will re-auction the license, except that the Commission may offer the license to the second highest bidder if the default occurs within five days after the auction closes.

Down Payment and Final Payment

At the conclusion of the auction, winning bidders must supplement their upfront payments and file their long-form applications (FCC Form 600). The upfront payment must be supplemented in an amount sufficient to bring the winning bidder's deposit up to 20 percent of its winning bid within five days after the close of the auction. Small businesses eligible for installment payments, however, must bring their deposits up to five percent of the winning bid within five days after the close of the auction. Once each applicant has filed its long form and submitted its down payment, the Wireless Telecommunications Bureau will issue a Public Notice announcing the application's acceptance for filing and open a 30-day window for filing petitions to deny. Excluding designated entities eligible for installment payments, payment of the remaining balance due on the license must be paid within five business days following a Pubic Notice announcing that the Commission is prepared to award the license.

Rules Prohibiting Collusion and Transfer Requirements

The 900 MHz SMR auction will be subject to the same regulatory safeguards as prior auctions to prevent applicants from colluding during the auction or obtaining unjust enrichment from subsequent transfer of the license. To prevent collusion, bidders who have applied for licenses in the same MTA on their short-form applications may not cooperate, collaborate, discuss, or disclose the substance of their bids or strategies with other bidders during the auction except pursuant to a consortium or arrangement identified in the short-form application. Bidders must also attach an exhibit to the Form 600 explaining the terms, conditions, and parties involved in any bidding arrangement. With respect to transfers, licensees transferring their licenses within three years of the initial license grant must disclose to the Commission all contracts and other documentation associated with the transfer.

B. Designated Entities

Background

Section 309(j)(3)(B) of the Communications Act provides that in establishing eligibility criteria and bidding methodologies the Commission shall "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women," collectively referred to as "designated entities." For broadband PCS, the Commission adopted special provisions for businesses owned by members of minority groups or women—bidding credits, installment payments and a separate entrepreneur's block—and analyzed their constitutionality using the "intermediate scrutiny" standard of review articulated in *Metro Broadcasting* v. *FCC*, 497 U.S. 547, 564–65 (1990), because, as in *Metro*, the proposed provisions involved Congressionally-mandated benign race- and gender-conscious measures.

After the release of the broadband PCS rules, the Supreme Court decided *Adarand Constructors* v. *Peña*, 115 S. Ct. 2097 (1995), which overruled *Metro Broadcasting* "to the extent that *Metro Broadcasting* is inconsistent with the holding in *Adarand* that all racial classifications must be analyzed under strict scrutiny. In the *Competitive Bidding Further Notice of Proposed Rulemaking*, PP Docket No. 93–253, 60 FR 37786 (July 21, 1995), the Commission modified the designated entities provisions in the entrepreneur's block auction so as to render them race- and gender-neutral, because of the substantial delay that would be incurred in supplementing the record to meet a "strict scrutiny" standard, and to avoid the substantial likelihood that the auction would be stayed based on the holding in *Adarand*.

Eligibility

In the 900 MHz SMR service, as in other auctionable services, the Commission remains committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Because of the large number of available licenses and the presence of incumbents throughout the 900 MHz SMR band, the Commission will not create an entrepreneur's block in this service. Nevertheless, the Commission adopts several provisions for bidding in the 900 MHz auction by small businesses which will foster the Commission's statutory goals. Taking commenters' suggestions into account, the Commission defines two categories of small businesses: (1) An entity that, together with affiliates, has average gross revenues for the three preceding years of $3 million or less; and (2) an entity that, together with affiliates, has average gross revenues for the three preceding years of $15 million or less. The Commission will define any investor in the applicant with a 20 percent or greater interest to be attributable for purposes of determining small business status. The 20 percent attribution threshold is derived from the measure of SMR attribution for purposes of applying the CMRS spectrum cap. The Commission also adopts the multiplier governing the CMRS spectrum cap, set out in 47 CFR 20.6(d)(6).

Bidding Credits, Installment Payments and Reduced Down Payments

Under this "tiered" approach, small businesses falling under the $3 million benchmark are eligible for a 15 percent bidding credit on any MTA license; those falling under the $15 million benchmark are eligible for a 10 percent bidding credit. Bidding credits for small businesses are not cumulative. Thus a $3 million small business will be eligible for only a 15 percent bidding credit, not a 25 percent credit. All small businesses may make a reduced down payment (five percent of the winning bid following the close of the auction, with the balance of the down payment paid five days after a Public Notice announcing that the Commission is prepared to grant the license), and are entitled to pay the bid balance in quarterly installments over the remaining license term. Small businesses falling under the $3 million benchmark will be able to make interest-only payments (U.S. Treasury note rate) for the first five years of the license term; small businesses falling under the $15 million benchmark will be able to make interest-only payments (U.S. Treasury note rate plus 2.5 percent) for the first two years of the license term. The Commission believes that broadening the scope of opportunities for small businesses, particularly on a tiered basis, will result in substantial participation by women and minorities, and that the expected capital outlay for the 900 MHz service will not present the same type of obstacles for those entities as a more costly spectrum-based service like PCS. For this reason, the Commission does not adopt reduced upfront payments for small businesses in the 900 MHz service.

Transfer Restrictions and Unjust Enrichment Provisions

Small businesses entitled to special provisions in the 900 MHz SMR service seeking to transfer their licenses, as a condition to approval of the transfer, must remit to the government a payment equal to a portion of the total value of the benefit conferred by the government. Thus, a small business that received bidding credits seeking transfer or assignment of a license to an entity that is not a small business or does not qualify as a smaller business under the definitions in 47 CFR § 90.814(b)(1), will be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before transfer will be permitted. The amount of this payment will be reduced over time as follows: a transfer in the first two years of the license term will result in a reimbursement of 100 percent of the value of the bidding credit: in year three of the license term the payment will be 75 percent; in year four the payment will be 50 percent and in year five the payment will be 25 percent, after which there will be no payment. If a small business under the $3 million definition seeks to transfer or assign a license to a small business under the $15 million definition, for the purposes of determining the amount of payment, the value of the bidding credit is five percent, the difference between the 10 and 15 percent bidding credits. The five percent difference will be subject to the same percentage reductions over time as specified above. These payments will have to be paid to the U.S. Treasury as a condition of approval of the assignment or transfer.

If a licensee that was awarded installment payments seeks to assign or transfer control of its license to an entity that does not meet either of the definitions set forth in Section 90.814(b)(1) during the term of the license, the Commission will require payment of the remaining principal and any interest accrued through the date of assignment as a condition of the license assignment or transfer. Moreover, if a small business under the $3 million definition seeks to assign or transfer control of a license to a small business under the $15 million definition (that does not qualify for as favorable an installment payment plan), the installment payment plan for which the acquiring entity qualifies will become effective immediately upon transfer. A licensee may not switch to a more favorable payment plan. If an investor subsequently purchases an "attributable" interest in the business during the first five years of the license term and, as a result, the gross revenues or total assets of the business exceed the applicable financial cap, thereby requiring the applicant to forfeit eligibility for an installment payment scheme, unjust enrichment provisions also will apply.

Partitioning for Rural Telcos

Rural telephone companies (rural telcos) are permitted to acquire partitioned 900 MHz SMR licenses in either of two ways: (1) They may form bidding consortia to participate in auctions, and then partition the licenses won among consortia participants; and (2) they may acquire partitioned 900 MHz SMR licenses from other licensees through private negotiation and agreement either before or after the auction. Each member of a consortium will be required to file a long-form application, following the auction, for its respective mutually agreed-upon geographic area. Partitioned areas must conform to established geopolitical boundaries (such as county lines). With respect to rural telcos, each area must include all portions of the wireline service area of the rural telco applicant that lies within the MTA service area. Rural telcos are defined as local exchange carriers having 100,000 or fewer access lines, including all affiliates. If a rural telco receives a partitioned license post-auction from another MTA licensee, the partitioned area must be reasonably related to the rural telco's wireline service area that lies within the MTA service area. The Commission will presume as "reasonably related" a partitioned area that contains no more than twice the population of that portion of a rural telco's wireline service area that lies within the MTA service area.

C. Other Matters

Although the Commission did not request comment on this issue, the National Paging and Personal Communications Association (NPPCA) suggests that the Commission establish a Telecommunications Development Fund (TDF) to assist small businesses in accessing capital for build-out purposes. While the Commission fully supports the goal of ensuring the participation of small businesses in the provision of SMR services, the proposal raised by NPPCA is beyond the scope of this proceeding. As such, it is not addressed in this proceeding.

IV. Procedural Matters and Ordering Clauses

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 603, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the Further Notice of Proposed Rule Making. Written public comments on the IRFA were requested. The Commission's final regulatory flexibility analysis for this Seventh Report and Order in PP Docket No. 93–253 is as follows:

A. *Need for and purpose of the action.* This rule making proceeding was initiated to secure comment on proposals for establishing a flexible regulatory scheme for the 900 MHz Specialized Mobile Radio (SMR) service that would promote efficient licensing and enhance the service's competitive potential in the commercial mobile radio marketplace. The proposals adopted herein are also designed to implement Congress's goal of giving small businesses, rural telephone companies, and businesses owned by members of minority groups and women the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D).

B. *Issues raised in by the public in response to the initial analysis.* No comments were submitted specifically in response to the Initial Regulatory Flexibility Analysis.

C. *Significant alternatives considered.* The Second Further Notice of Proposed Rule Making in this proceeding offered numerous proposals. All significant alternatives have been addressed in the Seventh Report and Order. The majority of commenters supported the major tenets of the proposed rules and some commenters suggested changes to some of the Commission's proposals. Any regulatory burdens we have adopted for applicants (for example, small businesses) in the 900 MHz SMR applicants are necessary to carry out the Commission's duties under the Communications Act of 1934, as amended, and the Omnibus Budget Reconciliation Act of 1993. The Final Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act is set forth in Appendix B.

Ordering Clauses

Accordingly, *it is ordered* That, pursuant to the authority of Sections 4(i) 303(r), 309(j), and 332 of the Communications Act of 2934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), and 332, this Second Order on Reconsideration and Seventh Report and Order is adopted and Part 90 of the Commission's Rules is amended as set forth below.

It is further ordered that the rule amendments set forth below will become effective October 23, 1995.

It is further ordered, that the Petitions for Reconsideration filed by Advanced Mobilecomm, Inc., American Mobile Telecommunications Association, Celsmer, DW Communications, Inc., Geotek Communications, Inc., Nextel, Personal Communications Industry Association, RAM Mobile Data Limited Partnership, and Southern California Edison Company are granted to the extent discussed herein, and denied in all other respects.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 is revised as follows:

Authority: Sections 4, 303, 309 and 332, 48 Stat. 1066, 1062, as amended; 47 U.S.C. §§ 154, 303, 309 and 332, unless otherwise noted.

2. Section 90.7 is amended by adding a definition for "*900 MHz SMR MTA-based license or MTA license*" in alphabetical order to read as follows:

§ 90.7 Definitions.

* * * * *

900 MHz SMR MTA-based license or *MTA license.* A license authorizing the right to use a specified block of 900 MHz SMR spectrum within one of the 47 Major Trading Areas ("MTAs"), as embodied in Rand McNally's Trading Areas System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the "MTA Map"), with the following exceptions and additions:

(1) Alaska is separated from the Seattle MTA and is licensed separately.

(2) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.

(3) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.

(4) American Samoa is licensed as a single MTA-like area.

The MTA map is available for public inspection in the Office of Engineering and Technology's Technical Information Center, room 7317, 2025 M Street NW., Washington, DC.

* * * * *

2. Section 90.173 is amended by revising paragraph (k) to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

* * * * *

(k) Notwithstanding any other provisions of this part, any eligible person may seek a dispositive preference for a channel assignment on an exclusive basis in the 220–222 MHz,

VOL
60
SS
183
SE
21
995
MI

470–512 MHz, and 800 MHz bands by submitting information that leads to the recovery of channels in these bands. Recovery of such channels must result from information provided regarding the failure of existing licensees to comply with the provisions of §§ 90.155, 90.157, 90.629, 90.631 (e) or (f), or 90.633 (c) or (d). Any recovered channels in the 900 MHz SMR service will revert automatically to the MTA licensee.

* * * * *

3. Section 90.617(d) is amended by revising Table 4B to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.

* * * * *

(d) * * *

TABLE 4B—SMR CATEGORY 896–901/935–940 MHz Band-Channels (200 CHANNELS)

Block	Channel Nos.
A	1–2–3–4–5–6–7–8–9–10
B	21–22–23–24–25–26–27–28–29–30
C	41–42–43–44–45–46–47–48–49–50
D	61–62–63–64–65–66–67–68–69–70
E	81–82–83–84–85–86–87–88–89–90
F	101–102–103–104–105–106–107–108–109–110
G	121–122–123–124–125–126–127–128–129–130
H	141–142–143–144–145–146–147–148–149–150
I	161–162–163–164–165–166–167–168–169–170
J	181–182–183–184–185–186–187–188–189–190
K	201–202–203–204–205–206–207–208–209–210
L	221–222–223–224–225–226–227–228–229–230
M	241–242–243–244–245–246–247–248–249–250
N	261–262–263–264–265–266–267–268–269–270
O	281–282–283–284–285–286–287–288–289–290
P	301–302–303–304–305–306–307–308–309–310
Q	321–322–323–324–325–326–327–328–329–330
R	341–342–343–344–345–346–347–348–349–350
S	361–362–363–364–365–366–367–368–369–370
T	381–382–383–384–385–386–387–388–389–390

* * * * *

4. Section 90.619(a)(5) is amended by revising Table 4B to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

(a) * * *
(5) * * *

TABLE 4B—UNITED STATES-MEXICO BORDER AREA, SMR CATEGORY 896–901/935–940 MHZ BAND (200 CHANNELS)

Block	Channel Nos.
Channels numbered above 200 may be used only subject to the power flux density limits at or beyond the Mexican border stated in paragraph (a)(2) of this section.	
A	1–2–3–4–5–6–7–8–9–10
B	21–22–23–24–25–26–27–28–29–30
C	41–42–43–44–45–46–47–48–49–50
D	61–62–63–64–65–66–67–68–69–70
E	81–82–83–84–85–86–87–88–89–90
F	101–102–103–014–105–106–107–108–109–110
G	121–122–123–124–125–126–127–128–129–130
H	141–142–143–144–145–146–147–148–149–150
I	161–162–163–164–165–166–167–168–169–170
J	181–182–183–184–185–186–187–188–189–190
K	201–202–203–204–205–206–207–208–209–210
L	221–222–223–224–225–226–227–228–229–230
M	241–242–243–244–245–246–247–248–249–250
N	261–262–263–264–265–266–267–268–269–270
O	281–282–283–284–285–286–287–288–289–290
P	301–302–303–304–305–306–307–308–309–310
Q	321–322–323–324–325–326–327–328–329–330
R	341–342–343–344–345–346–347–348–349–350
S	361–362–363–364–635–366–367–368–369–370
T	381–382–383–384–385–386–387–388–389–390

* * * * *

5. Section 90.631 is amended by revising paragraph (f) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(f) If a station is not placed in permanent operation, in accordance with the technical parameters of the station authorization, within one year, except as provided in § 90.629, its license cancels automatically and must be returned to the Commission. For purposes of this section, a base station is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation. An SMR licensee with facilities that have discontinued operations for 90 continuous days after the effective date of this rule is presumed to have permanently discontinued operations, unless the licensee notifies the FCC otherwise prior to the end of the 90 day period and provides a date on which operation will resume, which date must not be in excess of 30 additional days.

* * * * *

6. Section 90.665 (c) and (d) are revised to read as follows:

§ 90.665 Authorization, construction and implementation of MTA licenses.

* * * * *

(c) Each MTA licensee in the 896–901/935–940 MHz band must, three years from the date of license grant, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of the MTA. Further, each MTA licensee must provide coverage to at least two-thirds of the population of the MTA five years from the date of license grant or, alternatively, demonstrate through a showing to the Commission that it is providing substantial service. The MTA licensee must meet the population coverage benchmarks regardless of the extent to which incumbent licensees are present within the MTA block.

(d) MTA licensees who fail to meet the coverage requirements imposed at either the third or fifth years of their license term, or to make a convincing showing of substantial service, will forfeit the portion of the MTA license that exceeds licensed facilities constructed and operating on the date of the MTA license grant.

7. Section 90.667 is revised to read as follows:

§ 90.667 Grandfathering provisions for incumbent licensees.

(a) These provisions apply to all 900 MHz SMR licensees who obtained licenses or filed applications for secondary sites on or before August 9, 1994 ("incumbent licensees"), as well as to all 900 MHz SMR licensees who obtained authorizations pursuant to § 90.173(k). An incumbent licensee's service area shall be defined by its originally-licensed 40 dBu field strength contour. Incumbent licensees are permitted to add new or modify transmit sites in this existing service area without prior notification to the Commission so long as their original 40

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dBu field strength contour is not expanded.

(b) Incumbent licensees operating at multiple sites may, after grant of MTA licenses has been completed, exchange multiple site licenses for a single license, authorizing operations throughout the contiguous and overlapping 40 dBu field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information for each of their external base sites after the close of the 900 MHz SMR auction.

(c) Applications in the 900 MHz SMR service for secondary sites filed after August 9, 1994 shall be authorized on a secondary, non-interference basis to MTA licensee operations. No secondary sites shall be granted on this basis in an MTA once the MTA licensee has been selected.

6. A new subpart U consisting of §§ 90.801 through 90.815 is added to Part 90 to read as follows:

Subpart U—Competitive Bidding Procedures for 900 MHz Specialized Mobile Radio Service

Sec.
90.801 900 MHz SMR subject to competitive bidding.
90.802 Competitive bidding design for 900 MHz SMR licensing.
90.803 Competitive bidding mechanisms.
90.804 Aggregation of 900 MHz SMR licenses.
90.805 Withdrawal, default and disqualification payments.
90.806 Bidding application (FCC Form 175 and 175–S Short-form).
90.807 Submission of upfront payments and down payments.
90.808 Long-form applications.
90.809 License grant, denial, default, and disqualification.
90.810 Bidding credits for small businesses.
90.811 Reduced down payment for licenses won by small businesses.
90.812 Installment payments for licenses won by small businesses.
90.813 Procedures for partitioned licenses.
90.814 Definitions.
90.815 Eligibility for small business status.

§ 90.801 900 MHz SMR subject to competitive bidding.

Mutually exclusive initial applications to provide 900 MHz SMR service are subject to competitive bidding procedures. The general competitive bidding procedures found in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

§ 90.802 Competitive bidding design for 900 MHz SMR licensing.

The Commission will employ a simultaneous multiple round auction design when choosing from among mutually exclusive initial applications to provide 900 MHz SMR service, unless otherwise specified by the Wireless Telecommunications Bureau before the auction.

§ 90.803 Competitive bidding mechanisms.

(a) *Sequencing.* The Wireless Telecommunications Bureau will establish and may vary the sequence in which 900 MHz SMR licenses will be auctioned.

(b) *Grouping.* All 900 MHz SMR licenses for each of the MTAs will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative auction scheme.

(c) *Minimum bid increments.* The Wireless Telecommunications Bureau will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(d) *Stopping rules.* The Wireless Telecommunications Bureau will establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) *Acitvity rules.* The Wireless Telecommunications Bureau will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted a certain number of waivers of such rule during the auction.

§ 90.804 Aggregation of 900 MHz SMR licenses.

The Commission will license each 10-channel block in the 900 MHz SMR spectrum separately. Applicants may aggregate across spectrum blocks within the limitation specified in § 20.6(b) of this chapter.

§ 90.805 Withdrawal, default and disqualification payments.

(a) During the course of an auction conducted pursuant to § 90.802, the Wireless Telecommunications Bureau will impose payments on bidders who withdraw high bids during the course of an auction, who default on payments due after an auction closes, or who are disqualified.

(b) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment would be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(c) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (b) of this section plus an additional payment equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission. If the default occurs within five business days after the bidding has closed, the Commission retains the discretion to offer the license to the second highest bidder at its final bid level, of it that bidder declines the offer, to offer the license to other bidders (in descending order of their bid amounts) at the final bid levels.

§ 90.806 Bidding application (FCC Form 175 and 175–S Short-form).

All applicants to participate in competitive bidding for 900 MHz SMR licenses must submit applications on FCC Forms 175 and 175–S pursuant to the provisions of § 1.2105 of this chapter. The Wireless Telecommunications Bureau will issue a Public Notice announcing the availability of 900 MHz SMR licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This Public Notice also will specify the date on or before which applicants intending to participate in a 900 MHz SMR auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed. In addition to identifying its status as a small business or rural telephone company, each applicant must indicate whether it is a minority-owned entity, as defined in § 90.814(g) and/or a women-owned entity.

§ 90.807 Submission of upfront payments and down payments.

(a) Each bidder in the 900 MHz SMR auction will be required to submit an upfront payment of $0.02 per MHz per pop, for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this chapter and procedures specified by Public Notice.

(b) Each winning bidder in the 900 MHz SMR auction shall make a down payment to the Commission in an amount sufficient to bring its total deposits up to 20 percent of its winning bid within five business days after the auction closes, and the remaining balance due on the license shall be paid within five business days after Public Notice announcing that the Commission is prepared to award the license. The grant of the application required by § 90.808 is conditional upon receipt of full payment, except for small businesses that are winning bidders, which are governed by § 90.811. The Commission generally will grant the license within ten (10) business days after the receipt of the remaining balance due on the license.

§ 90.808 Long-form applications.

Each winning bidder will be required to submit a long-form application on FCC Form 600 within ten (10) business days after being notified by Public Notice that it is the winning bidder. Applications on FCC Form 600 shall be submitted pursuant to the procedures set forth in 90.119 and any associated Public Notices. Only auction winners (and rural telephone companies and incumbent 900 MHz SMR licensees seeking partitioned licenses pursuant to agreements with auction winners under § 90.813) will be eligible to file applications on FCC Form 600 for initial 900 MHz SMR licenses in the event of mutual exclusivity between applicants filing Form 175.

§ 90.809 License grant, denial, default, and disqualification.

(a) A bidder who withdraws its bid subsequent to the close of bidding, defaults on a payment due, or is disqualified, will be subject to the payments specified in § 90.805 or § 1.2109 of this chapter, as applicable.

(b) MTA licenses pursued through competitive bidding procedures will be granted pursuant to the requirements specified in § 90.166.

§ 90.810 Bidding credits for small businesses.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 90.814(b)(1)(i) may use a bidding credit of 15 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B. A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 90.814(b)(1)(ii) may use a bidding credit of 10 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B.

(b) Unjust Enrichment. (1) A small business seeking transfer or assignment of a license to an entity that is not a small business under the definitions in § 90.814(b)(1) will be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before transfer will be permitted. The amount of this payment will be reduced over time as follows: a transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit: in year three of the license term the payment will be 75 percent; in year four the payment will be 50 percent and in year five the payment will be 25 percent, after which there will be no assessment. If a small business as defined in § 90.814(b)(1)(i) seeks to transfer or assign a license to a small business as defined in § 90.814(b)(1)(ii), the value of the bidding credit to be repaid is five percent, the difference between the 10 and 15 percent bidding credits. The five percent difference will be subject to the percentage reductions over time specified above. These payments must be paid back to the U.S. Treasury as a condition of approval of the assignment or transfer.

(2) If a small business that utilizes a bidding credit under this section seeks to assign or transfer control of its license to a small business meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

§ 90.811 Reduced down payment for licenses won by small businesses.

Each winning bidder that qualifies as a small business shall make a down payment equal to ten percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five (5) business days after the auction closes, and the remainder of the down payment (five percent) shall be paid within five (5) business days following Public Notice that the Commission is prepared to award the license. The Commission generally will grant the license within ten (10) business days after receipt of the remainder of the down payment.

§ 90.812 Installment payments for licenses won by small businesses.

(a) Each licensee that qualifies as a small business may pay the remaining 90 percent of the net auction price for the license in quarterly installment payments pursuant to § 1.2110(e) of this chapter. Licensees who qualify for installment payments are entitled to pay their winning bid amount in installments over the term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. Payments shall include both principal and interest amortized over the term of the license. An MTA license issued to an eligible small business that elects installment payments will be conditioned on the full and timely performance of the license holder's quarterly payments. The additional following terms apply:

(1) An eligible licensee qualifying as a small business under § 90.814(b)(1)(i) may make interest-only payments for five years. Interest will accrue at the Treasury note rate. Payments of interest and principal shall be amortized over the remaining five years of the license term.

(2) An eligible licensee qualifying as a small business under § 90.814(b)(1)(ii) may make interest-only payments for the first two years of the license term. Interest will accrue at the Treasury note rate plus an additional 2.5 percent. Payments of interest and principal shall be amortized over the remaining eight years of the license term.

(b) Unjust Enrichment. (1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval.

(3) if a licensee that utilizes installment financing under this section seeks to assign or transfer control of a license to an entity that does not qualify for as favorable an installment payment plan, the installment payment plan for which the acquiring entity qualifies will become effective immediately upon transfer.

§ 90.813 Procedures for partitioned licenses.

(a) Notwithstanding § 90.661, a rural telephone company, as defined in § 90.814, may be granted a 900 MHz SMR license that is geographically partitioned from a separately licensed MTA, so long as the MTA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the entity.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive procedures—

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this part and Part 1 of this chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among other entities to partition the license pursuant to this section, if won at auction (see 47 CFR 1.2105(a)(2)(viii));

(2) Each rural telephone company that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the MTA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the MTA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 90.153.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) Conforms to established geopolitical boundaries (such as county lines);

(2) Includes the wireline service area of the rural telephone company applicant; and

(3) Is reasonably related to the rural telephone company's wireline service area.

Note to paragraph (d): A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (*see* § 90.665).

§ 90.814 Definitions.

(a) Scope. The definitions in this section apply to §§ 90.810 through 90.813, unless otherwise specified in those sections.

(b) *Small Business: Consortium of Small Business:*

(1) A small business is an entity that either:

(i) together with its affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, has average gross revenues that are not more than $3 million for the preceding three years; or

(ii) together with its affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, has average gross revenues that are not more than $15 million for the preceding three years.

(2) For purposes of determining whether an entity meets either the $3 million or $15 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, persons or entities holding interests in the entity and their affiliates shall be considered on a cumulative basis and aggregated, subject to the exceptions set forth in § 90.814(g).

(3) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies either definition of a small business in paragraphs (b)(1) and (b)(2) of this section. In a consortium of small businesses, each individual member must establish its eligibility as a small business, as defined in this section.

(c) *Rural Telephone Company.* A *rural telephone company* is a local exchange carrier having 100,000 or fewer access lines, including all *affiliates*.

(d) *Gross Revenues.* For applications filed after December 31, 1994, *gross revenues* shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(e) *Businesses Owned by Members of Minority Groups and/or Women.* A business owned by members of minority groups and/or women in which minorities and/or women who are U.S. citizens control the applicant, have at least 50.1 percent equity ownership and, in the case of a corporate applicant, a 50.1 percent voting interest. For applicants that are partnerships, every general partner either must be a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis.

(f) *Members of Minority Groups. Members of minority groups* includes Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

(g) *Attributable Interests.* Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a licensee or applicant will be attributable.

(1) *Multiplier.* Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and

application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any line in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(h) *Affiliate.* (1) *Basis for Affiliation.* An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant (both referred to herein as "the applicant") if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(iv) Has an "identity of interest" with the applicant.

(2) *Nature of control in determining affiliation.* (i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (h)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example for paragraph (h)(2)(iii). In a corporation where the officers and directors own various size blocks totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

Example 1 for paragraph (h)(3) introductory text. Two shareholders in Corporation Y each have attributable interests in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity or interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

Example 2 for paragraph (h)(3) introductory text. One shareholder in Corporation Y, shareholder A, has an attributable interest in a SMR application. Another shareholder in Corporation Y, shareholder B, has a nonattributable interest in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. Through the common investment of shareholders A and B in the SMR application, Corporation Y would still be deemed an affiliate of the applicant.

(i) *Spousal Affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship Affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father, or -mother, step-brother, or -sister, step-son, or -daughter, half brother or sister. This presumption may be rebutted by showing that

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (h)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in an SMR application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.*

(i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (h)(5). If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in an SMR application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of Company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (h)(5). If a large company, BigCo, holds 70% (70 to 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in an SMR application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present in this case.

Example 3 for paragraph (h)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.*

(i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through theses sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.*

(i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express of implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

§ 90.815 Eligibility for small business status.

(a) *Short-Form Applications: Certifications and Disclosure.* Each applicant for an MTA license which qualifies as a small business or consortium of small businesses shall append the following information as an exhibit to its short-form application (Form 175):

(1) The identity of the applicant's affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, and, if a consortium of small businesses, the members in the joint venture; and

(2) The applicant's gross revenues, computed in accordance with § 90.814.

(b) Long Form Applications: Certifications and Disclosure. In addition to the requirements in subpart U of this part, each applicant submitting a long-form application for license(s) and qualifying as a small business shall, in an exhibit to its long-form application:

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with § 90.814, for each of the following: the applicant; the applicant's affiliates, the applicant's attributable investors, affiliates of its attributable investors, and, if a consortium of small businesses, the members of the joint venture;

(2) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under §§ 90.810 through 90.812, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(3) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(c) *Records Maintenance.* All winning bidders qualifying as small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any documents necessary to establish eligibility as a small business and/or consortium of small businesses under § 90.814. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(d) *Audits.* (1) Applicants and licensees claiming eligibility as a small business or consortium of small businesses under §§ 90.810 through 90.812 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed 900 MHz SMR service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(e) *Definitions.* The terms *affiliate, business owned by members of minority groups and/or women, consortium of small businesses, gross revenues, members of minority groups, nonattributable equity, small business* and *total assets* used in this section are defined in § 90.814.

[FR Doc. 95–23407 Filed 9–20–95; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 60, No. 183
Thursday, September 21, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[Docket No. AO–160–A71; DA–93–30]

Milk in the Middle Atlantic Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document adopts changes in some provisions of the Middle Atlantic milk marketing order based on industry proposals considered at a public hearing. The changes will reduce the standards for regulating distributing plants and cooperative reserve processing plants and increase the amount of producer milk that can be diverted to nonpool plants. Additional changes will authorize the market administrator to adjust pool plant qualification standards and producer milk diversion limits to reflect changes in marketing conditions. Also, the decision provides that a pool distributing plant that meets the pooling standards of more than one Federal order should continue to be regulated under this order for two consecutive months before regulation can shift to the other order. A decision on a proposal that would utilize only a route disposition standard to determine under which Federal order a plant should be regulated cannot be made on the basis of the hearing record, and therefore is not adopted.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued February 25, 1994; published March 4, 1994 (59 FR 10326).

Recommended Decision: Issued July 10, 1995; published July 14, 1995 (60 FR 36239).

Preliminary Statement

A public hearing was held upon proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Middle Atlantic marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), at the Holiday Inn-Independence Mall, 400 Arch Street, Philadelphia, Pennsylvania, on May 3, 1994. Notice of such hearing was issued on February 25, 1994, and published March 4, 1994 (59 FR 10326).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on July 10, 1995, issued a recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein. No exceptions regarding the findings and conclusions of the recommended decision were received.

The material issues on the record of the hearing relate to:

1. Pool plant definitions and qualifications;
2. Diversions of milk to nonpool plants;
3. Regulation of distributing plants that meet the pooling standards of more than one Federal order.
4. Discretionary authority to revise pooling standards and producer milk diversion limits.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pool Plant Definitions and Qualifications

Two proposals that would modify the pool plant definition of the order should be adopted. One proposal would exclude diversions of producer milk from a pool distributing plant's receipts in determining whether or not the plant satisfies the pool plant definition standard. Currently, the order's pool plant definition includes diverted producer milk as a receipt at a distributing plant in determining whether the plant has a sufficient proportion of its receipts in Class I use to qualify as a pool plant. The other proposal would reduce the percentage

of a cooperative association's member milk that must be transferred to pool distributing plants from 30 percent to 25 percent of receipts for a reserve processing plant to qualify as a pool plant.

Pennmarva, a federation of certain Middle Atlantic marketing area dairy cooperatives, and Atlantic Processing, Inc., an association of cooperatives, proposed the changes to the pool plant definition of the order which were published as Proposal No. 1 and Proposal No. 4 in the hearing notice. Pennmarva's members include Atlantic Dairy Cooperative; Dairymen Incorporated (Middle Atlantic Division); Maryland and Virginia Milk Producers' Cooperative Association; and Valley of Virginia Co-operative Milk Producers Association—associations that market more than 90 percent of the producer milk associated with the order. Atlantic Processing, Inc., members include Mount Joy Milk Producers Cooperative and Cumberland Valley Milk Producers Cooperative.

According to the Pennmarva witness, changing the distributing plant pooling standard (Proposal No. 1) is a more comprehensive solution to past informal rulemaking actions which suspended the requirement that 40 percent of a pool plant's receipts be disposed of as Class I milk during the months of September through February. These suspension actions were taken because of the decline of Class I use in the Order 4 marketplace and because of a shift in regulation of two plants that were regulated under the order.

Pennmarva testified that a more permanent change to the pool plant definition is warranted because: (1) The Order 4 market is primarily serviced by cooperatives in a system-wide fashion and that accounting for diversions at the individual plant level given this cooperatively-supplied nature of the Order 4 market is burdensome; (2) there is a lack of complete knowledge by the servicing cooperative of the total receipts and Class I sales of the pool distributing plants from which the cooperative diverts milk; and (3) continued association of diverted milk on the order would still be provided for because of the producer definition of the order.

Cooperatives in Order 4 attempt to market milk, said Pennmarva, in a manner that will minimize the overall transportation costs. Pennmarva said that accounting for diversions at the individual plant level places an unnecessary and costly burden on cooperatives. Pennmarva also noted that to a pool handler who buys his/her entire milk supply from a cooperative, there are no market-disruptive consequences if milk is over-diverted. According to Pennmarva, handlers continue to pay the appropriate class price for the milk when an excess amount of milk is diverted from the plant. However, the cooperative supplying milk must reduce the volume of milk from the pool when it over-diverts milk shipments so that the plant will continue to qualify as a pool plant.

Additionally, Pennmarva testified that the lack of complete knowledge of a pool distributing plant's other milk supplies makes it unnecessarily difficult to effectively operate under the current requirements of the pool plant definition. No supplier knows either the total receipts of the distributing plant or the Class I disposition of the plant, said Pennmarva. Similarly, Pennmarva testified, suppliers of a pool distributing plant have no knowledge of the plant's in-area Class I sales. This lack of knowledge by the supplying cooperative is especially important, according to Pennmarva, because the "lock-in" provisions of the pool plant definition do not apply to the requirement that 15 percent of the plant's sales must be within the marketing area.

Pennmarva testified that deleting diversions from a plant's receipts in determining its regulatory status would have limited effects given present marketing conditions within the order. According to Pennmarva, plants that meet the 15 percent in-area sales and 40 percent Class I disposition pooling standard in the months of September through February, and 30 percent Class I disposition during the remainder of the year, will continue to be pooled under the order. According to Pennmarva, diversions from such plants either by a cooperative or by a handler with a non-member supply will continue to be regulated through the producer definition of the order. Pennmarva also indicated that both the producer definition and the pool reserve processing plant definition will continue to encourage deliveries of cooperative and non-member milk supplies to Order 4 pool plants in meeting priority Class I needs of the market while decreasing the uneconomic movement of milk.

No opposition to excluding diverted milk as a receipt at a distributing plant for determining pool plant status (Proposal No. 1) was received.

Currently, a cooperative must ship a minimum of 30 percent of its member milk to an Order 4 pool distributing plant in order for its milk to be pooled. Pennmarva proposed to reduce the minimum percentage to 25 percent as published in the hearing notice as Proposal No. 4. Pennmarva testified that this reduction is needed to continue the pooling of Order 4 producers historically associated with the market and is preferable to suspension of such provisions.

Pennmarva testified that this change is warranted because of recent changes in the market. Pennmarva cited that between 1990 and 1992, the level of Class I sales has remained unchanged, while producer receipts expanded. The expansion of producer receipts caused a reduction of the Class I utilization for the market, according to published statistics. Class I use dropped from 53.1 percent in 1990, to 50.7 percent in 1991, and to 48.0 percent in 1992. Level Class I sales and expanding production in Order 4 between 1990 and 1992, said Pennmarva, reduced the proportion of Order 4 milk delivered to pool distributing plants by cooperatives operating reserve processing plants.

Pennmarva also testified that in 1993, both Class I and producer receipts declined. According to market administrator statistics, production decreased by 162.3 million pounds and Class I sales fell by 265.6 million pounds—resulting in a Class I utilization percentage of 45.1 percent.

According to Pennmarva, the reduction of Class I use in Order 4 during 1993 was partially attributable to a shifting of an Order 4-regulated distributing plant located in Lansdale, PA, in November 1992 and another distributing plant located in Reading, PA, in January 1993 to regulation under another Federal order. Pennmarva said this had the effect of reducing the Order 4 pool plant deliveries required by reserve processing plants to maintain pool status.

Pennmarva maintained that the shifting of regulation of these two plants has had a dramatic effect. In a one-year period from October 1992 to October 1993, Atlantic Dairy Cooperative, which operates a pool reserve processing plant, delivered 13.3 percent less milk to a Lansdale, PA, distributing plant. Between December 1992 and December 1993 Maryland and Virginia Milk Producers Cooperative Association, which also operates a pool reserve processing plant, experienced a 14 percent reduction in deliveries to a Reading, PA, distributing plant.

Pennmarva noted other changes in the Order 4 market, including the closing of a distributing plant in Harrisburg, PA, and a change in the product mix of two large Order 4 distributing plants that eliminated yogurt and cottage cheese production. Pennmarva said this loss of Class II business at distributing plants caused a reduction in the amount of pool-qualifying milk deliveries for the cooperative supplying milk to these plants. Additionally, Pennmarva made note of previous suspension actions to extend the period of automatic pool plant status for supply and reserve processing plants.

No opposition to reducing the shipping standard (Proposal No. 4) was received.

Regarding Proposal No. 1, the record is clear that cooperatives play a dominant role in servicing the Middle Atlantic marketing area, accounting for some 90 percent of milk deliveries to pool distributing plants. While accounting for diversions on an individual plant basis has merit, good reason exists to conclude that in this market, retaining individual plant accounting for the purposes of diversions does place a burden and costs on cooperatives who seek to deliver milk to where it is needed in the most economic fashion. This is especially important and justified due to the changing marketing conditions of declining Class I use in the marketing area.

As indicated by the testimony and in a brief filed by Pennmarva, distributing plants generally have more than one supplier, and such suppliers generally do not know the plant's total receipts and Class I disposition. This makes it difficult to determine what milk can be diverted from any single pool plant in a given month. Inadvertent over-diversions of milk will result in milk not being eligible for pooling and the benefits that accrue from such pooling.

Part of the Order 4 pooling provisions rests on a 15 percent route disposition standard. Adoption of Proposal No. 1 would enable cooperatives supplying the market to more economically move milk without undermining this standard or other pool plant definition standards.

Regarding Proposal No. 4, changing marketing conditions, namely expanding producer receipts and a decline in the Class I utilization of the market, provide support for changing the pooling requirements for reserve processing plants operated by a cooperative, without negating the demands of the Class I market. Such prevailing marketing conditions have in the past resulted in the suspension of certain pooling provisions of reserve processing plants operated by cooperatives so that producer milk normally associated with the Order 4 market would remain pooled under the order. Proposal No. 4 offers a more permanent and reasonable solution to potentially repetitive requests by Order 4 producers for suspension of such pooling standards by easing the shipping standard by 5 percentage points.

2. Diversions of Milk to Nonpool Plants

Two proposals that would increase the permissible percentage of milk deliveries for both cooperative (or federation of cooperative associations) and non-cooperative (nonmember) milk that may be diverted under the producer definition of the order should be adopted. The proposal for increasing the permissible percentage of cooperative milk that can be diverted to nonpool plants was proposed by Pennmarva and was Proposal No. 7 as published in the hearing notice. The proposal for increasing the permissible percentage of nonmember milk that can be diverted to nonpool plants was proposed by Johanna Dairies, Inc. (Johanna), a handler regulated under both the Middle Atlantic and New York-New Jersey marketing orders and was Proposal No. 9 as published in the hearing notice.

Another proposal by Pennmarva—intended to more clearly define the pooling requirements for producer deliveries to pool plants and the status of producers whose marketing is interrupted by compliance with health regulations under the producer definition of the order—was abandoned and received no evidence or testimony at the hearing. This proposal was Proposal No. 6 as published in the hearing notice.

In Proposal No. 7, Pennmarva recommended increasing the permissible percentage of milk that can be diverted to nonpool plants to a maximum volume of 55 percent of receipts instead of the current 50 percent maximum. For nonmember milk, Johanna proposed increasing the maximum allowable deliveries from the current 40 percent to a new maximum of 45 percent.

Citing statistics prepared by the market administrator, the Pennmarva witness observed that over the three-year period of 1991 to 1993, producer receipts under Order 4 increased by 158.8 millions pounds, while Class I disposition fell by 277.3 million pounds. Similarly, over the same three-year period, the witness also noted the annual Class I utilization of the market fell from 50.7 percent in 1991, to 48 percent in 1992, and to 45.1 percent in 1993. This witness testified that because the market's Class I use decreased, diversions to nonpool plants increased. According to Pennmarva, such a situation makes it difficult to keep producers historically associated with the market pooled under the order.

Johanna provided similar testimony and indicated that there is no equitable basis why diversions of nonmember milk should not similarly be increased from the current 40 percent of receipts for nonmember milk to a maximum of 45 percent of receipts. Johanna testified that the producer definition historically has offered disparate treatment between member (cooperative) and nonmember milk in terms of the allowable percentage of milk that can be diverted to nonpool plants and still be priced under the order. Johanna noted that the incremental difference between the two has consistently been 10 percentage points, and that if the allowable percentage of member deliveries can be increased by 5 percentage points, nonmember milk should similarly be increased by the same amount.

Johanna also supported Pennmarva's observations of the market administrator statistics that show the steadily declining percentage of Class I milk receipts within the order's pool. The same statistics, Johanna said, support the adoption of their proposal.

No opposition to the adoption of Proposals Nos. 7 and 9 was received.

Regarding Proposal No. 7, changing marketing conditions, namely increasing producer receipts and declining Class I use, provide support for adoption of this proposal to increase the percentage of milk of cooperative members which may be diverted to non-pool plants during the months of September through February. This proposal offers a reasonable unopposed solution for more orderly marketing and to keep milk pooled under the order that has historically been associated with the market.

Regarding Proposal No. 9, the record does not reveal any reason to not similarly increase the permissible diversion limit by handlers with non-cooperative member milk supplies for the same reasons already indicated regarding Proposal No. 7.

3. Regulation of Distributing Plants That Meet the Pooling Standards of More Than One Federal Order

a. A proposal to leave the determination of which order regulates a plant with pool-qualifying disposition in more than one Federal order to the provisions of § 1004.7(f)(1) cannot be decided upon on the basis of the hearing record. The provisions of § 1004.7(f)(1) requires that if a pool plant qualifies as a pool plant in another order, the plant will be regulated under that order unless the plant has a greater volume of Class I dispositions in the Order 4 marketing area. Currently, this order provision is subordinated by an

additional provision in § 1004.7(f)(2) that yields a plant's pool status to another order whenever such plant qualifies as a pool plant under the other order. It is this subordinating provision that is proposed to be deleted from the order (Proposal No. 3 as published in the hearing notice). In other words, Proposal No. 3, offered by Pennmarva, would determine the regulation of a plant under the order on the basis of where the plant has its greatest Class I route disposition in the event that a plant qualifies as a pool plant under another order.

According to Pennmarva, the yield provision contained in § 1004.7(f)(2) unnecessarily subordinates the Middle Atlantic milk order to the provisions of another Federal order. Such subordination is not needed, said Pennmarva, because the provisions of § 1004.7(f)(1) defines a comprehensive and adequate standard for determining whether a pool plant should be regulated under Order 4.

Pennmarva testified that two pool plants, one located in Lansdale, PA (Lansdale), and the other located in Reading, PA (Reading), have changed from being regulated under Order 4 to Order 2. These changes, said Pennmarva, have had the effect of depressing the Order 4 blend price relative to the blend price of Order 2. According to Pennmarva, the New York-New Jersey 1992 average blend price was $0.68 per hundredweight less than the Order 4 blend price for the same time period. Similarly, Pennmarva indicated that for 1993, the Order 2 blend price was $0.50 per cwt. less than in Order 4.

Pennmarva testified that between 1992 and 1993 there also were changes in Class I receipts and utilization between Order 4 and Order 2. During this time period, Class I receipts of producer milk in Order 4 fell by 265,613,000 pounds while in Order 2 they rose by 170,765,660 pounds, said Pennmarva. During this same time period, the Class I utilization of Order 4 shrank by nearly 3 percentage points to a total of 45.1 percent, while the Order 2 Class I utilization grew by one percentage point to a total of 40.3 percent. Pennmarva attributed these changes partly to the change in regulation of the already-noted plants.

Pennmarva also testified that the exchange of milk between Orders 2 and 4 has historically been equal. However, according to Pennmarva, this relationship changed greatly in the past year. Citing Order 4 market administrator published statistics (the volume of packaged fluid sales from Order 2 into the Order 4 marketing area in 1993), Pennmarva indicated that 327.3 million pounds of pooled and priced Order 2 milk was disposed of in the Order 4 marketing area, up by 134.7 million pounds from 1992—an increase of 70 percent. However, Order 4 priced and pooled milk in the Order 2 marketing area over the same time period increased by only 12.1 percent to a total of 238.0 million pounds. This change of the historical balance was attributed by Pennmarva to the shifting of regulation of the Lansdale pool plant in November 1992 and the Reading pool plant in January 1993 to regulation under Order 2. Even though these plants became regulated under the New York-New Jersey milk order, Pennmarva said, these plants continued to have significant Class I route disposition in the Order 4 marketing area.

Pennmarva also justified using the measure of greatest Class I route sales as the basis for deciding where a plant should be pooled by citing the provisions of nearby orders that provide for this measurement; specifically, the Carolina (Order 5) and the Eastern Ohio-Western Pennsylvania (Order 36) milk orders. However, noted Pennmarva, the New York-New Jersey order provides a different measure.

Pennmarva noted differences between Order 4 and Order 2 pooling provisions. Order 2 allows for transfers of bulk fluid milk (classified as Class I–A) between plants, while Order 4 specifically excludes deliveries to a plant, said Pennmarva. This difference in order provisions may result in a situation where a plant may have a greater in-area packaged route disposition in Order 4, but, testified Pennmarva, because Order 2 allows for plant transfers of bulk fluid milk (milk classified as Class I–A), such bulk transfers may cause the plant to have greater total Class I assignments in Order 2 than in Order 4. In this event, said Pennmarva, the subordinating language of § 1004.7(f)(2) causes the plant to be regulated as an Order 2 pool plant, even though it may have more packaged Class I route distribution in the Order 4 marketing area.

Pennmarva said this proposal would not change the pool plant definition of the New York-New Jersey order. According to Pennmarva, a plant which qualifies as a pool plant in either order prior to the adoption of this proposal will continue to qualify as a pool plant.

Significant opposition testimony was received regarding Proposal No. 3. Johanna testified that Proposal No. 3 seems intended to prevent them from pooling the milk from its Lansdale plant under the New York-New Jersey milk order despite the fact that the greater percentage of such milk ultimately is distributed as Class I milk in that area. To the best of its knowledge, Johanna said, Proposal No. 3 would have no effect on any other handler. Moreover, the requirement that milk received at Johanna's Lansdale plant be pooled in Order 4 yields no material benefit to Order 4 producers.

According to Johanna, Proposal No. 3 fails to recognize the close relationship between the Order 2 and Order 4 markets and would be counterproductive to the goals of the Federal milk marketing scheme. Johanna contended that milk which is received and separated at one plant, and then shipped as bulk milk for subsequent packaging and Class I distribution by another plant, is most clearly associated with the market in which the milk ultimately is distributed on fluid routes. Johanna also asserted that if more than half of a plant's receipts from producers are regularly shipped to another plant for packaging and Class I disposition in another order, the plant initially receiving the milk, and those farmers who supply such milk, should be associated with and pooled under the order where those later fluid Class I sales are made.

Johanna testified that its Lansdale plant became pooled under Order 2 for legitimate business reasons and not for the purpose of circumventing where it is regulated. The reason for the switch in regulation from Order 4 to Order 2 was the cessation of milk processing at another Johanna plant located in Flemington, New Jersey (Flemington). Prior to this plant's closure, Johanna said, the Flemington plant had been distributing some 677 million pounds of Class I milk annually in the Order 2 market and had been an Order 2 pool plant for more than 15 years.

Upon closing the Flemington plant, Johanna indicated that the greatest majority of its milk business was relocated to its Lansdale operation, with the greatest majority of its Class I sales in Order 2. Johanna said there was no change in Class I disposition in either Order 2 or Order 4 by virtue of the movement of that milk. Johanna asserted again that the combining of operations of the two plants at Lansdale was a business decision and not an attempt at manipulating order provisions.

Johanna testified that producers in Pennsylvania's milkshed typically supply large quantities of milk to handlers in both Orders 2 and 4. Further, said Johanna, it is unrealistic to view the Pennsylvania milkshed as somehow geographically linked to the Order 4 market. The overlapping nature of this milkshed between the two orders, said Johanna, supports Order 2 regulation of a Pennsylvania plant that distributes the majority of its fluid milk within the Order 2 marketing area.

Johanna emphasized that the Lansdale plant is a "designated" Order 2 pool plant, and therefore is relied upon by the performance standards of such designation to provide support for Class I sales within the marketing area. The presence of such plants, said Johanna, supports the blend price which accommodates the large amount of manufacturing milk pooled in the New York-New Jersey order.

No appreciable adverse effect on the Order 4 blend price would result from the inclusion of the Lansdale plant under Order 2, according to Johanna's analysis. The effect on the Order 4 blend price using 1993 averages, said Johanna, amounts to about a three-cent reduction. Johanna also indicated that pooling the milk under Order 4 would have had a slightly smaller reduction in the blend price received by Order 2 producers.

Johanna concluded that any justification for adopting Proposal No. 3 upon a supposed improvement in the blend price by pooling the Lansdale plant under Order 4 fails to account for the effect upon the blend price in Order 2. At most, said Johanna, classification of the plant's milk with one order or the other would represent an insignificant adjustment in the movement, up or down, of blend prices in either order.

Johanna also testified that Proposal No. 3 seems intended to eliminate the applicable location differential as an Order 2 plant. Because of the Lansdale's route distribution in Order 2, the existing location differential is fair, said Johanna. Adoption of Proposal No. 3, according to Johanna, would place them at a competitive disadvantage against other Order 2 handlers competing in the market for fluid sales. Johanna noted that there is a 24.5-cent difference in the location differential in Order 2 between the Lansdale plant's applicable zone (the 71–75 mile zone) and the next nearer zone (the 61–70 mile zone). If Proposal No. 3 is intended to alter the location differentials of Order 2 because of some perceived unfairness, such changes to the Order 2 pricing structure should be addressed through proposed amendments to the New York-New Jersey order and not this proceeding, said Johanna.

Johanna asserted that the 24.5-cent location adjustment between the two zones was properly factored into Order 2's location differential scheme based upon the historical mechanism of transporting distant milk to the urban market through the use of receiving stations. Johanna added that the 24.5-cent difference equalizes the price, for competitive purposes, of milk brought into the Order 2 market from more distant locations. The witness said that as milk had to be shipped from more distant locations, receiving stations collected the milk from dispersed producers. At the time the Order 2 location differential applicable to the Lansdale operation was adopted, said Johanna, the location adjustment difference was intended to allow handlers to recoup the fixed costs associated with the creation and maintenance of receiving stations. At the same time, Johanna added, the location adjustment difference between zones was intended to not affect any Order 2 plant then in existence.

A witness from Dairylea Cooperative, Inc. (Dairylea), of Syracuse, New York, also testified in opposition to Proposal No. 3. Dairylea is a dairy farmer cooperative comprised of some 2,200 members throughout the northeast of the United States who produce milk regulated under Federal Orders 1, 2, 4, and 36. This witness testified Order 4 provisions currently recognizes its interdependence with Order 2. When there is a dispute over which order a particular plant should be pooled under, Dairylea said, there is recognition by Order 4 provisions of the historical uniqueness of Order 2 in terms of its use of upcountry plants to separate farm milk into skim milk that is shipped hundreds of miles to city bottling plants, while leaving the cream fraction of the raw milk in the up-country plants for processing into Class II or Class III products. Dairylea said this is part of a sound economic system that has developed over many years.

According to Dairylea, adoption of Proposal No. 3 would set up a direct conflict between Order 4 and Order 2 pooling provisions because adopting it would tend to amend the application of Order 2's pooling provisions. Dairylea was of the opinion that Proposal No. 3 appeared to be based solely on the goal of enhancing a single group's economic interest without regard to the potential of injury to another order's system of milk sales that developed over many years.

Opposition testimony was also received from a witness on behalf of Clover Farms Dairy Company (Clover Farms), located in Reading, PA. Clover Farms testified that adoption of Proposal No. 3 would lead to irreconcilable conflict with the provisions of the New York-New Jersey order.

Clover Farms testified that the most basic provisions of any milk marketing order are those that determine which plants are to be regulated. These provisions, Clover Farms said, often differ from one order to another because they are designed to meet the varying characteristics of the marketing areas involved. According to Clover Farms, because an individual plant serving a diverse market may meet the pooling requirements of more than one Federal order, each order must specify how such a situation is to be resolved. Moreover, said Clover Farms, the resolution as determined by each order involved must lead to the same conclusion, otherwise no guidance will be given either to the Department of Agriculture or to the courts in resolving the conflict.

Clover Farms testified that Proposal No. 3 would eliminate the basis for deciding which order takes precedence when a plant would otherwise be subject to the classification and pricing provisions of both Order 4 and another Federal order. Leaving the determination on which order has the greater volume of Class I milk disposed of on routes in its marketing area from the plant might work, said Clover Farms, provided the other order has a provision that provides the same conclusion. This could not work in the case of Order 4 and Order 2, Clover Farms indicated, because the provisions of the New York-New Jersey order bases the decision on which order has the larger portion of disposition of Class I-A milk, which includes bulk shipments of milk assigned to Class I, in its marketing area. Since Order 4 does not recognize the role of bulk shipments in its calculation, said Clover Farms, adoption of Proposal No. 3 would provide no basis upon which to resolve the conflict between the two orders when a plant meets the pooling provisions of both.

The opposition testimony of the Clover Farms witness was supported in testimony by a witness who testified on behalf of Eastern Milk Producers Cooperative Association, a dairy farmer cooperative having some 2,400 members that ship milk to Orders 1,2,4, and 36.

A brief filed by Pennmarva noted that while Johanna agrees that a plant should be pooled under the order in which most Class I sales are made, Johanna provided no evidence to support the claim that fluid milk transfers from the Lansdale plant were in fact distributed on routes in the Order 2 marketing area, thereby meeting a defacto route disposition test. Pennmarva argues here that if, in fact, the Lansdale plant has greater route disposition in Order 2 than it has in Order 4, the adoption of Proposal No. 3 will have no effect on the plant. Pennmarva further argues that even if the plant did not now have

greater route disposition in Order 2, operators of the plant could implement the changes necessary to ensure greater route sales in Order 2.

To illustrate the need for adopting Proposal No. 3, the Pennmarva brief noted that in 1993, the Lansdale plant had 224 millions pounds of Class I disposition in Order 4 and 245 million pounds of Class I disposition in Order 2, for a total of 469 million pounds. Of that 469 million pounds, Pennmarva indicated that at least 10 percent (46.9 million pounds) of its milk was transferred in bulk or packaged form from Lansdale to other plants. According to Pennmarva, Lansdale consequently distributed on routes no more than 198.1 million pounds in the Order 2 marketing area. Thus, Pennmarva claims that the Lansdale plant distributed 198.1 million pounds of Class I milk on routes in Order 2 versus 224 million pounds of Class I milk in Order 4, clearly revealing that there is more route disposition under Order 4. However, because of the yield provision contained in § 1004.7(f)(2), according to Pennmarva, the Lansdale plant is regulated under Order 2.

The Pennmarva brief contends that Johanna's testimony that the Lansdale Class I–A milk transfers were ultimately distributed on routes in Order 2 is in error. Pennmarva noted that the definition of Class I–A milk under Order 2 is "as route disposition in an other order marketing area" as delineated in § 1002.41(a)(1)(ii) of the New York-New Jersey order. Thus, according to Pennmarva, a plant which otherwise qualifies as an Order 2 pool plant can dispose of milk on routes in the Order 4 marketing area, and such dispositions are classified under Order 2 as Class I–A. Pennmarva indicated that once classified as Class I–A, no further distinction is made regarding the ultimate destination of route sales.

The Pennmarva brief also challenged the Johanna witness' assertion that all of its transferred milk was ultimately distributed on routes in the Order 2 marketing area. Pennmarva noted that transfers were made between Lansdale, PA, and Reddington Farms (an Order 2 pool plant) and that market administrator statistics indicate that Reddington Farms enjoyed Class I route disposition in the Order 4 marketing area in every month between 1991 and 1994.

In response to the Clover Farms' testimony that adoption of Proposal No. 3 would lead to irreconcilable conflict with Order 2 and that such conflict would need to be addressed by the Dairy Division, Pennmarva cited an example of how, through administrative determination, a pooling issue such as this might be handled. The Pennmarva brief asserted that it is within the purview of the Act for proponent cooperatives, which represent volumes in excess of 90 percent of the Order 4 market, to delete provisions which subjugate the order to all other orders and to rely on a route disposition test in determining where a plant should be pooled when it also qualifies for pooling under another order.

According to the Pennmarva brief, orderly marketing within Order 4 should not be hinged on an accommodation to another order. Pennmarva does concede that the interplay of adjoining markets, such as Order 2 and 4, must be considered in maintaining orderly marketing but indicated there is nothing in the record which provides a reason why Order 4 should be subordinated to Order 2 or any other order. This is important, according to Pennmarva, because of the economic hardship brought about through depressed blend prices. Pennmarva indicates that there is no benefit to Order 4 producers from the application of the provisions of § 1004.7(f)(2) and that its elimination will not change the pooling standards of any other Federal order.

In defense of the adequacy of using a route disposition test, the Pennmarva brief cited a recommended decision applicable to another Federal order in which a plant that qualifies under more than one order is regulated under the order which it enjoys the greatest route disposition. This recommended decision indicated that such application normally assures that all handlers having principal sales in a market are subject to the same pricing and other regulatory requirements. Official Notice is taken of the Final Decision (59 FR 26603, published May 23, 1994) for the Southern Michigan marketing area in which no changes were made regarding this issue from the recommended decision. According to Pennmarva, such an example speaks to a fundamental intent of milk marketing orders—to regulate handlers that compete for sales within the specific geographic definition of the marketing area.

A brief filed by Johanna reiterated their opposition to the adoption of Proposal No. 3.

Reply briefs filed by both Pennmarva and Johanna similarly reiterated their positions given in testimony and in submitted briefs. However, Johanna's reply brief takes objection to Pennmarva's suggestion that Johanna should simply effectuate changes in its Lansdale operations so as to convert its bulk shipments of fluid milk to Order 2 into route disposition and thereby preserve the plant as an Order 2 plant under the strictures of § 1004.7(f)(1). According to Johanna, this suggestion does not take into account the impracticality and costs to Johanna of pooling the Lansdale plant to accommodate the packaging requirements of multiple wholesale customers who presently receive bulk shipments from the Lansdale plant for packaging and ultimate route disposition in Order 2.

Johanna also counters the Pennmarva's reference to another rulemaking proceeding and recommended decision involving a pooling issue of a Ultra High Temperature (UHT) plant in another Federal order. While Pennmarva cited this recommended decision as an example of how administrative intervention could be used to determine where a plant should be regulated, Johanna views this recommended decision as providing certainty and orderly conditions for the UHT plant and its producers on where it will be pooled. In this example, Johanna notes that the route disposition test, as a single criteria for pooling, is rejected because of the unique aspects of the marketing conditions faced by the UHT plant. Such uniqueness should also be recognized for the Lansdale plant, said Johanna, because it makes Class I bulk shipments to an order which does not rely solely on a route distribution pooling test.

At issue regarding Proposal No. 3 is where a plant should be pooled and regulated when it meets the pooling standards of more than one order. Both the proponent and opponents to Proposal No. 3 agree that the market in which fluid sales distributed on routes are greatest is where a plant should be regulated. Where a plant should be regulated is a most important feature of all Federal milk orders. The basis upon which a marketing area is determined is founded on the basis of where handlers compete with each other for fluid sales. An important determinant of handlers competing with each other for sales is generally made through a measurement of the route disposition of fluid milk. For the Middle Atlantic marketing area, the order clearly defines route disposition, and its measurement can be made with exacting precision every month. However, the New York-New Jersey marketing order differs from Order 4 in that it provides for the bulk transfers of fluid milk between plants that are classified as Class I–A milk. Order 4 specifically excludes such transfers between plants from meeting its route disposition test.

Opponents of Proposal No. 3 assert, in part, that bulk transfers of Class I–A between plants are an important feature of the Order 2 marketing area because of the market structure that evolved there over time. The basis of providing for bulk transfers of Class I–A milk between plants recognized the market structure and conditions in that order. Opponent witnesses describe "up-country" plants that assemble and separate the skim fraction of producer milk for subsequent transfer to "city" bottling plants for eventual distribution to retail outlets, while leaving the cream fraction in country plants to be further processed into Class II and Class III products, as a unique characteristic of the Order 2 marketplace.

On its face, it is difficult to conclude that adoption of Proposal No. 3 somehow threatens the above described market structure that Order 2 handlers have relied upon for a long period of time. Both the proponent and opponents of Proposal No. 3 recognize and describe similarly the close relationship between Order 2 and Order 4. The record reveals that both orders share, to a significant extent, a common milkshed. The record also reveals that milk movements between orders have been historically equal until the Lansdale plant switched regulation from Order 4 to Order 2. The change in the regulatory and pool status of the Lansdale plant was due to Order 2 allowing for bulk transfers of Class I–A milk as a fluid use which brought the total Class I disposition of the plant to have more milk associated with the New York-New Jersey marketing area than it had with the Middle Atlantic marketing area. This allowance for bulk transfers under the New York-New Jersey order, together with the subordinating language of Order 4, required the regulatory and pool status of the Lansdale plant to shift to Order 2 even if the Lansdale plant may have had more route sales in Order 4.

The Lansdale plant is physically located within the Order 4 marketing area and until recently had historically been pooled as an Order 4 pool distributing plant. Further, the Lansdale plant is clearly a fluid distributing plant that competes with other handlers for fluid sales in Order 4. In the New York-New Jersey order, it seems to enjoy, from the testimony of some opponent witnesses, the status of a distributing plant while at the same time was inferred to be a "country" plant. Nevertheless, Order 2 recognizes the Lansdale plant as a fluid milk distributing plant with the transferring of milk as a secondary operation. This distinction is made here because Order 2 also recognizes processing plants with manufacturing as a secondary operation. Simply put, the Lansdale plant's primary enterprise is as a fluid distributing plant.

The effect of the New York-New Jersey order provision of allowing for bulk transfers of Class I–A milk and its lack of a route disposition test makes it difficult to determine precisely where the majority of Landsdale's Class I sales take place that includes the bulk transferred milk. The record reveals, in testimony by Johanna, that bulk transfers of Class I–A milk end up eventually as route disposition, although the record does not reveal how much of such milk is distributed on routes within Order 2 or in another marketing area. Pennmarva makes a case from the record evidence that suggests that there is more route disposition in Order 4. In this regard, Johanna's claim that fluid milk transfers from the Lansdale plant were in fact distributed on routes in Order 2 might not be totally accurate on basis of the record evidence. This conclusion is further supported by examining the Order 2 provision of what constitutes Class I–A milk, namely, inclusion of milk distributed on routes in another marketing area. This decision agrees with Pennmarva that a plant which otherwise qualifies as an Order 2 pool plant can dispose of milk on routes in the Order 4 marketing area with such disposition classified as Class I–A, and then once so classified, no further distinction as to the ultimate route disposition is made through the transfer chain.

In summary, a conclusion on the basis of the record of where the greatest route sales of fluid milk are made by Johanna's Lansdale plant cannot be determined. This is problematic because both proponent and opponent witnesses indicate that a plant should be pooled where it enjoys the majority of its Class I disposition, but Order 2 and Order 4 each rely on different forms of measuring this outcome. Due recognition of the regulatory impact on a plant that meets the pooling standards of the New York-New Jersey order is warranted because the plant has met that order's standards. At the same time, Order 4 producers are required by their order to yield to the pricing provisions of another order on the terms of measurement that are not its own.

This decision agrees with an opponent witness' testimony that each marketing order should specify how to resolve differences and conflicts that arise in the regulation and pooling of plants. In this regard, opponents to Proposal No. 3 voiced concern that its adoption would lead to irreconcilable conflict with the provisions of the New York-New Jersey order. Such conflict probably would not be the case if an identical definition and standard of measurement, that is route disposition, existed for both orders.

In short, adoption of Proposal No. 3 would leave determination of the regulatory and pool status of the Lansdale plant solely to the Order 4 route disposition test. However, adoption of this proposal has the effect of causing a change to the New York-New Jersey order which was not open or noticed in this proceeding. Adoption of Proposal No. 3 provides neither clarity nor a basis, at least with respect to the relationship between Order 4 and Order 2, to determine in which order a plant should be pooled.

The apparent intent of Pennmarva's Proposal No. 3 seems clear and consistent with how milk is regulated and pooled throughout the Federal milk order system. In this regard, Pennmarva is asking that milk distributed on routes be the sole test for determining where a plant should be pooled. Proponents and opponents agree that where a plant has most of its sales is the most appropriate basis for making such a determination. Unfortunately, Proposal No. 3 falls short of being able to accomplish this without causing a change to the New York-New Jersey order.

The Johanna witness testified that, in part, the purpose of Proposal No. 3 appeared intended to eliminate the location differential as an Order 2 plant. This would obviously place Johanna at a competitive disadvantage against other Order 2 handlers competing in the market for fluid sales in the Order 2 marketing area. The witness observed correctly that there is a 24.5-cent difference in the location adjustment in Order 2 between the Lansdale plant's applicable zone (the 71–75 mile zone) and the nearer zone (the 61–70 mile zone). On this point, an examination of the Class I price at the Lansdale location reveals a disparate price difference between being regulated under Order 2 or Order 4. Under the provisions of the Middle Atlantic order, the Class I price applicable at Lansdale is $0.345 more than what the applicable Class I price would be if it were regulated under the New York-New Jersey order.

This disparate price difference suggests that the Class I price, at least at the Lansdale location, could be better aligned. To the extent that a $0.345 price difference between the pricing provisions of two adjoining orders may be sufficient to encourage bulk Class I–A milk transfers, that, together with other forms of milk disposition in the New York-New Jersey order, provides the Lansdale plant the economic

incentive to meet the pooling standards and pricing provisions of Order 2. If the Class I price at Lansdale were in better alignment, it is reasonable to suppose that Johanna would likely be indifferent on which order they sought pricing and regulatory status. On the one hand, Landsdale is able to attract an adequate supply of fluid milk at a price lower than what would be applicable if regulated under Order 4. Further, adoption of Proposal No. 3 would likely cause a shift in the regulatory status of the Lansdale plant back to Order 4, causing their cost of milk to increase when they meet the pooling standards of another order. On the other hand, if the Lansdale plant enjoys its greatest route disposition in the Order 4 marketing area, they enjoy a sales advantage against other Order 4 regulated handlers that pay more for their milk.

It is because of the above discussion of this issue that a recommendation for or denial of Proposal No. 3 cannot be made on the basis of this record. Adoption of Proposal No. 3 would have the effect of causing a change to another order which cannot be accomplished without a hearing that includes the other order. Further, the apparent disparate price difference between the pricing provisions of the Middle Atlantic and New York-Jersey orders suggests that the pooling question at issue is perhaps a pricing issue. As such, it is not appropriate to attempt correction of a pricing problem by changing pooling provisions.

Notice is given that the Department expects that interested parties will investigate and offer proposals that address the Class I price alignment structure between Order 2 and Order 4. Other features of marketing order differences, such as that exhibited on the issue regarding Proposal No. 3, should similarly be considered with the view to facilitating more orderly marketing conditions.

Written comments received on the recommended decision from Dairylea and Pennmarva support the conclusions discussed above regarding Proposal No. 3.

b. A second proposal that would eliminate the exemption of a pool plant's regulation under Order 4 when such a plant meets the pool plant definition of another order from the pool plant definition of the order should be adopted. This was proposed by Pennmarva (Proposal No. 2 as published in the hearing notice).

Currently, an Order 4 pool plant can continue to be regulated under the order as a pool plant for two succeeding months after it fails to meet certain pooling standards, unless it simultaneously meets the pooling provisions of another Federal order. This feature of the order is commonly referred to as the "lock-in" provision.

Pennmarva testified that in the recent past, two Order 4 pool distributing plants changed their status from being regulated under the Middle Atlantic marketing order to the New York-New Jersey marketing order (Order 2). In both cases, Pennmarva said, notice of the change of regulation was provided to cooperative suppliers in a timely fashion so that the appropriate logistical arrangements could be made. According to Pennmarva, an important logistical item attended to was the reassociation of the market's producers whose last shipment to a pool distributing plant was to one of these plants. Pennmarva said accomplishing this task was exacting and time consuming.

Pennmarva testified that there is no requirement or certainty for a handler to give adequate notice to its cooperative suppliers of milk. Further, said Pennmarva, cooperative suppliers have no independent knowledge that a plant may change from regulation under the order to another order. In a worst case scenario, Pennmarva said, a cooperative supplying milk to a handler changing regulation would not discover this change until ten days into the following month. Pennmarva indicated the intent of this proposed amendment is to enhance orderly marketing rather than keeping a plant pooled permanently under Order 4.

Opposition to Proposal No. 2 was voiced by Dairylea. According to Dairylea, Proposal No. 2 has no economic or substantive basis. This witness drew attention to the timely notification to suppliers by the two plants that shifted regulation to the New York-New Jersey order as an indicator of the well-functioning current provision of the order. Thus, Dairylea concluded that the order therefore does not require a modification to address the issue.

In the interest of promoting more orderly marketing conditions, Proposal No. 2 has merit because it mitigates a cooperative's lack of knowledge of a distributing plant's dispositions. Such knowledge is needed in order for the cooperative to know where a plant is pooled or when a plant's pool status may change in any given month. It is reasonable to expect that when a distributing plant does change its regulatory status under the order, producers supplying the plant should have the time to make the business changes and adjustments they deem necessary without the loss of the certainty of where their milk will be pooled. The record reveals that advance notification was provided to cooperative suppliers prior to changes of where certain plants would be regulated in some instances. This is commendable and speaks well to the interactions between cooperative suppliers of milk and handlers. However, such notification is clearly voluntary when requiring it would offer clear advantages without being burdensome. The merit in requiring advance notification stems from the very real and reasonable need of cooperatives to have such prior knowledge of where their milk will be pooled and priced. Finding out after-the-fact that a plant's regulatory status has changed is tantamount to denying producers access to an intended market. For this reason, the objections by the opposition witness from Dairylea have little merit. It also places an unreasonable economic burden on Order 4 producers because of the order's requirement to re-associate producer milk in the marketing area so that producers may enjoy the benefits from being pooled in Order 4.

Because a decision regarding Proposal No. 3 cannot be made on the basis of this record, the proposed deletion of § 1004.7(a)(4) as proposed by Pennmarva would not accomplish implementing the intent of this proposal (Proposal No. 2). Accordingly, this decision modifies the language of § 1004.7(a)(4) to ensure that the two month "lock-in" provisions (as contained in § 1004.7(a)(3)) will apply to plants that may, in the future, shift regulation to another Federal order or become a nonpool plant.

In written comments to the recommended decision, Pennmarva offered more specific order language that clarifies the terms of the "lock-in" provision. This clarifying language should be reflected in the provisions of § 1004.7(a)(4) so as to insure a two-month "lock-in" refers to consecutive months. Therefore the language of § 1004.7(a)(4) has been modified.

4. Discretionary Authority To Revise Pooling Requirements and Producer Milk Diversion Limits

Two proposals offered by Pennmarva that would provide discretionary authority for the market administrator to revise pooling requirements and producer milk diversion limits should be adopted. Proposal No. 5, as published in the hearing notice, would provide the market administrator the authority to raise or lower the applicable pooling standards for distributing plants, supply plants, and reserve processing plants. Proposal No. 8, as published in the Notice of Hearing, would similarly provide the market administrator the authority to raise or lower the applicable diversion limits for cooperative associations, federations of cooperative associations, and handlers with non-member milk supplies. Adoption of these provisions will provide a procedure for the order to be modified in a more responsive manner to changes in marketing conditions than is currently the case. Modification can be made to encourage the shipment of additional supplies of milk for fluid use or to prevent the uneconomic shipments of milk that are in excess of fluid needs.

The order does not currently provide for such discretionary authority for the market administrator to change pooling requirements or diversion limitations. Typically, pooling standards may be temporarily revised or suspended administratively through informal rulemaking by the Department at a petitioner's request. The Department investigates the request and determines the need to temporarily revise or suspend pooling standards. Permanent changes or amendments to Federal order provisions, as in this proceeding, are accomplished through formal rulemaking procedures based on a public hearing.

The pool plant definition of Order 4 currently requires that in meeting pool plant qualification status, a plant must have a Class I disposition of at least 40 percent of its receipts in the months of September through February and 30 percent in the months of March through August. Additionally, at least 15 percent of receipts must be within the marketing area. Any plant that does not meet this criteria for pool plant status can still be a pool plant if at least a specified percentage of its milk receipts are moved during the month to a plant(s) that meets the Class I disposition requirements and volume of route disposition within the marketing area indicated above. The applicable percentage for the months of September through February is 50 percent of receipts; for the months of March through August, the applicable percentage is 40 percent. A reserve processing plant operated by a cooperative association or by a federation of cooperative associations is a pool plant provided, in part, that at least 30 percent of the total milk receipts of member producers during the month is moved to and physically received at a plant that meets the Class I disposition standards.

The producer definition of Order 4 currently provides that dairy farmers can be producers under the order even though their milk is moved from the farm to nonpool plants for manufacturing purposes rather than to plants for fluid use. Diversion limits apply to handlers marketing dairy farmer's milk such as cooperative associations, federations of cooperatives, and handlers marketing non-member milk. The diversion limit for a cooperative association or a federation of cooperatives is restricted to 50 percent of the volume of milk of all members of a cooperative association or federation delivered to, or diverted from, pool plants during the month. The diversion limit for handlers with non-member milk supplies is restricted to 40 percent of the total of non-member milk for which a pool plant operator is the handler during the month.

Pennmarva testified that granting the market administrator the authority to raise or lower pooling standards and diversion limits will enhance orderly marketing by either encouraging needed milk shipments or preventing the uneconomic movement of milk. Pennmarva indicated that such administrative authority is granted to market administrators in other markets, noting for example that the market administrator in the Upper Midwest marketing area (Order 68) has similar authority.

Before making any revision to the pooling standard or diversion limits established by the order, Pennmarva offered a specific procedure that would govern the conditions under which revisions might be warranted. The procedure offered specifies that the market administrator may increase or decrease the applicable percentages of either the pool plant definition section or the producer definition section of the order (Sections 1004.7 and 1004.12 respectively) if a revision is necessary to encourage needed shipments or to prevent uneconomic shipments of milk. Before making such a finding, the order procedure requires the market administrator to investigate the need for revision either on the market administrator's own initiative, or at the request of interested parties. If the investigation shows that a revision might be appropriate, the proposed order language requires the market administrator to issue a notice stating that a revision is being considered and invite data, views, and arguments on whether a revision is necessary. The procedure also specifies that any request for revisions be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired to be effective.

Pennmarva testified that this amendment would provide for more timely decisions on factors affecting the pool status of dairy farmers. It was Pennmarva's opinion that the market administrator and staff are fully appraised of the market conditions in the Middle Atlantic market. Such working knowledge, said Pennmarva, can decrease the time and expense needed to respond to a changing market and improve regulatory efficiency.

Pennmarva maintains that this process is superior to the process currently used to affect needed changes in pooling standards and diversion limitations. Pennmarva noted that the Department can effectuate suspension actions of order provisions that remove regulatory language, thus reducing the burden on handlers. However, the witness indicated that deletions of language by informal rulemaking procedures is too limiting to address changes in marketing conditions. Pennmarva said that providing the market administrator with a procedure to make specific percentage changes, either up or down, would be a more flexible way of changing shipping requirements or diversion limits.

Opposition testimony was received from Dairylea for granting such discretionary authority to the market administrator for revising shipping requirements (Proposal No. 5). Dairylea said that while they have significant faith in market administrators, they see no reason to abandon long-term practices of having a public hearing or meeting to discuss the merits of changing applicable shipping standards within an order. Dairylea is of the view that Proposal No. 5 does not provide for a public meeting forum but rather simply written arguments almost after the fact. Dairylea indicated that shipping standards can have a profound economic impact of farmers, cooperatives, processors and consumers, and, in fact, are the very essence of the market order structure. The witness said that changing these standards without public scrutiny in the form of a public meeting or hearing should not be allowed. The witness feared that a simple request for a written response would leave many people out of the discussion and decisionmaking process.

A witness for Clover Farms testified in opposition to both Proposal Nos. 5 and 8. Clover Farms opposes these two proposals unless provision is made for a public forum to aid in the decision making process of the market administrator.

A witness for Eastern Milk Producers Cooperative Association (Eastern) also testified in opposition to Proposal Nos. 5 and 8. Eastern indicated that it makes sense to provide a degree of administrative discretion to the market

administrator to resolve the problems that may arise as a result of changes in supply and demand conditions in the marketplace that would warrant adjustment of shipping percentages. Nevertheless, before such discretion is exercised, Eastern maintained that there be notice to the industry and preferably that there be an opportunity for a public meeting for interested parties to bring evidence in aiding the market administrator to make a proper decision. Eastern noted that the "call" provision of the New York-New Jersey marketing order, which requires the market administrator to conduct a public meeting in setting performance standards on handlers to ensure that the fluid market needs are adequately served, works well. Eastern indicated support for a proposal that would be similar in scope for the Middle Atlantic order.

At issue on the part of those who oppose granting administrative discretion to the market administrator in adjusting shipping requirements and diversion limitations is the lack of a public meeting. Opponents have firm opinions that the public and interested parties should have a greater degree of participation in the decisional process than the proposed administrative proceeding would require. However, opponents take no issue on the ability, impartiality or integrity of the market administrator to make appropriate administrative decisions regarding adjustments to shipping requirements and diversion limits. The issue here is one of procedure.

The informal rulemaking procedure is routinely used for making temporary suspensions or revisions to pool plant shipping requirements and diversion limitations. The procedure of public notice and comment before deciding on the appropriate course of action that is proposed in Proposals Nos. 5 and 8 follow in identical fashion the procedures followed by the Department. This informal rulemaking procedure does not include reliance on public hearings or meetings because of the need for urgent and expeditious action to address rapidly changing market conditions. Nevertheless, any interested party has the opportunity to have their views included in the decision making process.

As the record reveals, such a procedure has been used in the Upper Midwest Marketing Area since 1990. Since the record does not reveal any lack of confidence in the ability of market administrators (who are entrusted with great responsibility in administering the order) to effectively carry out this duty, it is reasonable to conclude that on the basis of the broad authorities already entrusted to the market administrator to provide for the effective administration of the order, such discretionary authority that would be granted with the adoption of Proposals Nos. 5 and 8 are consistent with those already given. Furthermore, these two proposals have the broad support of producers who represent some 90 percent of the milk associated with the market.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Middle Atlantic order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

No exceptions to the findings and conclusions of the recommended decision were received.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Middle Atlantic marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

May 1995 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Middle Atlantic marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

Dated: September 13, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Order Regulating the Handling of Milk in the Middle Atlantic Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The finding[illegible] and [illegible]inations hereinafter s[illegible]ort[illegible]ement those that were mad[illegible]e order was first issued and whe[illegible] amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle

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Atlantic marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect the market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative To Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Middle Atlantic marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on July 10, 1995, and published in the **Federal Register** on July 14, 1995 (60 CFR 36239), except for the clarifying change being made to § 1004.7(a)(4), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR Part 1004 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 1004.7 is amended by revising paragraphs (a)(1) and (a)(4); revising paragraph (d)(1); and by adding a new paragraph (g), to read as follows:

§ 1004.7 Pool plant.

* * * * *

(a) * * *

(1) Milk received at such plant directly from dairy farmers (excluding milk diverted as producer milk pursuant to § 1004.12, by either the plant operator or by a cooperative association, and also excluding the milk of dairy farmers for other markets) and from a cooperative in its capacity as a handler pursuant to § 1004.9(c); or

* * * * *

(4) A plant's status as an other order plant pursuant to paragraph (f) of this section will become effective beginning the third consecutive month in which a plant is subject to the classification and pricing provisions of another order.

* * * * *

(d) * * *

(1) A reserve processing plant operated by a cooperative association at which milk from dairy farmers is received if the total of fluid milk products (except filled milk) transferred from such cooperative association plant(s) to, and the milk of member producers physically received at, pool plants pursuant to § 1004.7(a) is not less than 25 percent of the total milk of member producers during the month.

* * * * *

(g) The applicable shipping percentage of paragraphs (a) and (b) or (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

3. Section 1004.12 is amended by revising paragraphs (d)(2)(i) and (d)(2)(ii); and by adding a new paragraph (g), to read as follows:

§ 1004.12 Producer.

* * * * *

(d) * * *

(2) * * *

(i) All of the diversions of milk of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk so diverted does not exceed 55 percent of the volume of milk of all members of such cooperative association or federation delivered to or diverted from pool plants during the month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 45 percent of the total of such nonmember milk for which the pool plant operator is the handler during the month.

* * * * *

(g) The applicable percentages in paragraphs (d)(2)(i) and (d)(2)(ii) may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the diversion limit percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of the diversion limit percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

Appendix to the Proposed Rule

Marketing Agreement Regulating the Handling of Milk in Middle Atlantic Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provision of §§ 1004.1 to 1004.95, all inclusive, of the order regulating the handling of milk in the Middle Atlantic marketing area (7 CFR Part 1004) which is annexed hereto; and

II. The following provisions:

§ 1004.96 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of May 1995, __________ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1004.97 Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature
By (Name) ____________________
(Title) ____________________
(Address) ____________________
(Seal)
Attest

[FR Doc. 95–23194 Filed 9–20–95; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 437

[Docket No. EE-RM–95–202]

RIN 1904–AA–74

Voluntary Home Energy Rating System Guidelines

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Rescheduling of public hearing.

SUMMARY: On July 25, 1995 the Department published a proposed rule on Voluntary Home Energy Rating System Guidelines and announced public hearing dates for that rule. Due to possible fiscal restraints, the facilities at the Department of Energy may not be available on October 2, 1995 to host the scheduled public hearing. The Department is rescheduling the public hearing by extending the date by fifteen (15) days. The Voluntary Home Energy Rating Systems Guidelines public hearing is rescheduled for October 17, 1995.

DATES: Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on October 17, 1995. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., Thursday, October 12, 1995. Ten copies of statements to be given at the public hearing must be received by the Department no later than 4:00 p.m., Thursday, October 12, 1995. The hearing will begin at 9:00 a.m. on October 17, 1995, and will be held at the U.S. Department of Energy, Forrestal Building, Room 6E–069, 1000 Independence Avenue, SW., Washington, DC 20585. The length of each presentation is limited to twenty (20) minutes or an equal time for all presenters.

ADDRESSES: Oral statements, requests to speak at the hearing and requests for speaker lists are to be submitted to: Voluntary Home Energy Rating System Guidelines (Docket No. EE-RM–95–202), U.S. Department of Energy, Office of Codes and Standards, Buildings Division, EE–432, 1000 Independence Avenue, SW, Rm 1J–018, Washington, DC 20585, (202) 586–7574.

Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Robert L. Mackie, PM., U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7892

Diane Dean, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Department published a Notice of Proposed Rulemaking (NOPR) on July 25, 1995, entitled "Voluntary Home Energy Rating System Guidelines" (10 CFR Part 437).

Issued in Washington, DC September 14, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–23480 Filed 9–20–95; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB60

Definition of Qualified Financial Contracts

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC or Corporation) is publishing for notice and public comment a proposed rule defining spot and other short-term foreign exchange agreements and repurchase agreements on qualified foreign government securities to be "qualified financial contracts" (QFCs) under the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.* (FDI Act). In the interest of providing a measure of protection to the financial markets, the FDI Act provides special rules for the treatment of QFCs held by an insured depository institution in default for which the FDIC is appointed conservator or receiver. The FDIC believes that the market's use of these agreements to obtain liquidity in order to manage financial risk indicates that they should be included as QFCs. Promulgation of the proposed regulation to include spot and other short-term foreign exchange contracts and repurchase agreements on qualified foreign government securities within the definition of QFC is not intended to exclude other agreements that may otherwise qualify to be QFCs.

DATES: Comments must be received by November 20, 1995.

ADDRESSES: Send comments to Jerry L. Langley, Executive Secretary, FDIC, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room 400, 1776 F Street, N.W., Washington, D.C. 20429 on business days between 8:30 a.m. and 5 p.m. [FAX number: (202) 898–3838; Internet: comments@fdic.gov]. Comments will be available for inspection or photocopying at the FDIC's Reading Room, Room 7118, 550 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Sharon Powers Sivertsen, Assistant General Counsel, Legal Division, (202) 736–0112; Keith A. Ligon, Senior Counsel, Legal Division, (202) 736–0160; or Christine M. Bradley, Attorney, Legal Division, (202) 736–0106, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is contained in the proposed rule. Consequently, no information was submitted to the Office of Management and Budget for review.

II. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the proposed rule will not have a significant economic impact on a substantial number of small business entities.

III. Discussion

A. The QFC Provisions

Sections 11(e) (8) through (10) of the FDI Act, 12 U.S.C. 1821(e) (8) through (10), provide special rules for the treatment of QFCs in the event the FDIC is appointed receiver or conservator for an insured depository institution in default. The statute seeks, among other things, to protect parties to QFCs by allowing for the liquidation, termination, and netting of their agreements. The statute identifies securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements as QFCs.

Section 11(e)(8)(D) of the FDI Act identifies in some detail the types of contracts to be treated as QFCs, but additionally affords the FDIC express authority to adopt regulations extending the definition to any similar agreements. 12 U.S.C. 1821(e)(8)(D)(i). As discussed below, the Corporation is proposing rules that would extend the QFC definition to spot and other short-term foreign exchange agreements and to repurchase agreements on securities issued or guaranteed by the central governments belonging to the Organization for Economic Cooperation and Development (OECD). Promulgation of the proposed regulation to include spot and other short-term foreign exchange contracts and repurchase agreements on qualified foreign government securities within the definition of QFC is not intended to be interpreted so as to exclude other agreements that may otherwise qualify to be QFCs under the language of section 11(e)(8)(D) itself.

As the Board of Directors of the FDIC has previously recognized, QFCs occupy a unique and important position in the financial markets, allowing appropriate liquidity, hedging and financial intermediation operations in financial institutions, and are generally conducted within a highly supervised industry. FDIC Statement of Policy on Qualified Financial Contracts (Dec. 12, 1989). See 55 FR 7027 (1990). The Corporation believes that these goals would be well served by expressly extending QFC treatment to spot and other short-term foreign exchange agreements and repurchase agreements on foreign government securities issued or guaranteed by the central governments of the OECD-based group of countries.

B. Foreign Exchange Agreements

Although section 11(e)(8)(D)(vi) of the FDI Act, defining "swap agreements" which are to be included within the statutory definition of QFCs, refers to forward foreign exchange agreements, the statute does not explicitly mention spot or other short-term foreign exchange agreements. The statute, in relevant part, covers any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a forward foreign exchange agreement or any other similar agreement. 12 U.S.C. 1821(e)(8)(D)(vi). While the FDIC believes that spot and other short-term foreign exchange agreements fall within the QFC definition of swap agreement even in the absence of FDIC regulatory action, the FDIC also believes that market participants would be best served by the certainty of an explicit rule providing that spot foreign exchange agreements are QFCs. "Spot" foreign exchange agreements, like forwards, do not settle immediately; spot agreements are typically outstanding for one or two days. As is the case with other QFCs, market participants tend to enter into multiple spot agreements for both long and short positions in many products with the same counterparty. As a result, market participants are also creating the same termination and netting agreements as are used with other QFCs.

The Corporation is proposing a rule to recognize the inclusion of spot and other short-term foreign exchange agreements as QFCs. The language of the proposed rule would extend QFC treatment to short-dated transactions such as spots, tomorrow/next day and same day/tomorrow transactions, thus eliminating any concern that spot and other short-term foreign exchange agreements are not included within the definition of QFC.

C. Repurchase Agreements on Qualified Foreign Government Securities

Although section 11(e)(8)(D)(v) of the FDI Act includes repurchase agreements within the definition of a QFC, the statute does not cover repurchase agreements on foreign government securities. Section 11(e)(8)(D)(v) incorporates the repurchase agreement definition under section 101(47) of the Bankruptcy Code, 11 U.S.C. 101(47), with certain additions not relevant here, and restricts the definition of qualified financial contract to repurchase agreements on securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States. Section 101(47) of the Bankruptcy Code defines a repurchase agreement as:

> an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds;

11 U.S.C. 101(47).

In the years since the QFC provisions were added to the FDI Act by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, 101 Stat. 183 (1989), the market for foreign government repurchase agreements appears to have developed to a point that such repurchase agreements have become a recognized source of liquidity. However, the FDIC also believes that it is appropriate to limit the kinds of foreign government securities which may be the subject of a repurchase agreement for QFC purposes. The FDIC proposes to extend QFC treatment only to repurchase agreements on securities issued or guaranteed by the central governments of countries that are either full members of the OECD or that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow.[1]

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[1] The OECD is an international organization of countries which are committed to market-oriented economic policies, including the promotion of private enterprise and free-market prices, liberal trade policies, and the absence of exchange controls.

The FDIC believes that repurchase agreements on foreign government securities issued or guaranteed by the OECD-based group of countries are similar in nature to the repurchase agreements on securities issued or guaranteed by the United States, which are presently included within the statutory definition of QFC. The risk weightings recommended for such securities by the International Convergence of Capital Measurement and Capital Standards of July 1988 by the Basle Committee on Banking Supervision (Basle Accord)[2] reflects that the securities issued or guaranteed by the OECD-based group of countries present similar degrees of credit risk. Further, the FDIC's risk-based capital rules at 12 CFR part 325, appendix A, implementing the Basle Accord, consider the credit risk among the securities issued or guaranteed by the central governments of the OECD-based group of countries as being equal for purposes of determining capital requirements. And, pursuant to 12 CFR part 325, appendix A, section II.B.2, securities issued or guaranteed by the central governments of the OECD-based group of countries are among the limited forms of collateral which are formally recognized by the FDIC's risk-based capital framework. Accordingly, repurchase agreements on securities issued or guaranteed by the OECD-based group of countries are treated consistently under the risk-based capital rules. *See* 12 CFR part 325, appendix A, section II.C.

The FDIC is thus proposing a rule to include repurchase agreements on securities issued or guaranteed by the OECD-based group of countries within the definition of a QFC. In the interests of consistency and simplicity, the rule would incorporate by reference the definition of "central government" as set forth in 12 CFR part 325, appendix A, section II.C note 17[3] and "OECD-based group of countries" as set forth in 12 CFR part 325, appendix A, section II.B.2, note 12 (and incorporating any changes to these definitions that should occur by future amendment).[4]

List of Subjects in 12 CFR Part 360

Banks, Banking, Savings Associations.

For the reasons set out in the preamble, the FDIC Board of Directors proposes to amend 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(11), 1821(e)(8)(D)(i), 1823(c)(4); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

2. Section 360.5 is added to Part 360 as follows:

§ 360.5 Definition of qualified financial contracts.

(a) *Authority and purpose.* Sections 11(e)(8) through (10) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e)(8) through (10), provide special rules for the treatment of qualified financial contracts of an insured depository institution for which the FDIC is appointed conservator or receiver, including rules describing the manner in which qualified financial contracts may be transferred or closed out. Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e)(8)(D)(i), grants the Corporation authority to determine by regulation whether an agreement in addition to those identified by section 11(e)(8)(D) itself should be included in the definition of qualified financial contract. The purpose of this section is to identify additional agreements which the Corporation has determined to be qualified financial contracts.

(b) The following agreements shall be deemed "qualified financial contracts" under section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(i)):

(1) *Spot foreign exchange agreements.* A spot foreign exchange agreement is any agreement or combination of agreements (including master agreements) providing for or effecting the purchase or sale of one currency in exchange for another currency (or a unit of account established by an intergovernmental organization such as the European Currency Unit) with a maturity date of two days or less after the agreement has been entered into, and includes short-dated transactions such as tomorrow/next day and same day/tomorrow transactions.

(2) *Repurchase agreements on qualified foreign government securities.* (i) A repurchase agreement on qualified foreign government securities is an agreement or combination of agreements (including master agreements) which provides for the transfer of securities that are direct obligations of, or that are fully guaranteed by, the central governments (as set forth at 12 CFR part 325, appendix A, section II.C, n. 17, as may be amended from time to time) of the OECD-based group of countries (as set forth at 12 CFR part 325, appendix A, section II.B.2., note 12 as may be amended from time to time) against the transfer of funds by the transferee of such securities with a simultaneous agreement by such transferee to transfer to the transferor thereof securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

(c) Nothing in this section shall be construed as limiting or changing a party's obligation to comply with all reasonable trading practices and requirements, non-insolvency law requirements and any other requirements imposed by other provisions of the FDI Act. This section in no way limits the authority of the Corporation to take supervisory or enforcement actions, or to otherwise manage the affairs of a financial institution for which the Corporation has been appointed conservator or receiver.

By Order of the Board of Directors.

Dated at Washington, D.C., this 6th day of September, 1995.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–23479 Filed 9–20–95; 8:45 am]

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[2] The Basle Accord established a risk-based framework for measuring the capital adequacy of internationally active banks. The Basle Accord was originally proposed by the Basle Committee on Banking Supervision (Basle Supervisors' Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. See, Int'l Convergence of Capital Measurement & Capital Standards, Comm. on Banking Regulations & Supervisory Practices, reprinted in 30 I.L.M. 967, 980 (1991).

[3] The definition of central government includes departments and ministries of the central government, as well as central banks, but does not extend to state, provincial, or local governments or commercial enterprises owned by central governments. Nor does it extend to securities of local government entities or commercial enterprises guaranteed by the central government. 12 CFR part 325, section II.C., note 17 (1995).

[4] The Corporation has recently issued a Notice of Proposed Rulemaking proposing to amend the existing definition of "OECD-based group of countries." 60 FR 8582 (Feb. 15, 1995).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ANE–11]

Proposed Alteration of V–2 and V–14; New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter Federal Airways V–2 and V–14 between Albany, NY, and Gardner, MA.

This action would allow more flexibility in air traffic operations and enhance utilization of that airspace.

DATES: Comments must be received on or before November 9, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE–500, Docket No. 95–ANE–11, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANE–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter Federal Airways V–2 and V–14 from the Albany, NY, Very High Frequency Omnidirectional Range (VOR) to the Gardner, MA, VOR. These airways are the primary arrival routes to Boston, MA, from the west. At the present time, the segment of the airways between the Albany VOR and the Gardner VOR is limited to a 10,000-foot minimum en route altitude (MEA). Realigning these airways would allow for a lower MEA to be assigned along these routes and would provide more flexibility in air traffic operations in that area. Consequently, this proposed alteration would enhance utilization of that airspace. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–2 [Revised]

From Seattle, WA; Ellensburg, WA; Moses Lake, WA; Spokane, WA; Mullan Pass, ID; Missoula, MT; Drummond, MT; Helena, MT; INT Helena 119° and Livingston, MT, 322° radials; Livingston; Billings, MT; Miles City, MT; 24 miles, 90 miles, 55 MSL, Dickinson, ND; 10 miles, 60 miles, 38 MSL, Bismarck, ND; 14 miles, 62 miles, 34 MSL, Jamestown, ND; Fargo, ND; Alexandria, MN; Gopher, MN; Nodine, MN; Lone Rock, WI; Madison, WI; Badger, WI; Muskegon, MI; Lansing, MI; Salem, MI; INT Salem 093° and Aylmer, ON, Canada, 254° radials; Aylmer; INT Aylmer 086° and Buffalo, NY, 259° radials; Buffalo; Rochester, NY; Syracuse, NY; Utica, NY; Albany, NY; INT Albany 084°T(097°M) and Gardner, MA, 284° radials; to Gardner. The airspace within Canada is excluded.

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V–14 [Revised]

From Chisum, NM, via Lubbock, TX; Childress, TX; Hobart, OK; Will Rogers, OK; INT Will Rogers 052° and Tulsa, OK, 246° radials; Tulsa; Neosho, MO; Springfield, MO; Vichy, MO; INT Vichy 067° and St. Louis, MO, 225° radials; Vandalia, IL; Terre Haute, IN; Indianapolis, IN; Muncie, IN; Findlay, OH; DRYER, OH; Jefferson, OH; Erie, PA; Dunkirk, NY; Buffalo, NY; Geneseo, NY; Georgetown, NY; INT Georgetown 093° and Albany, NY, 270° radials; Albany; INT Albany 084°T(097°M) and Gardner, MA, 284° radials; Gardner; to Norwich, CT. The

airspace within R–5207 and Canada is excluded.

* * * * *

Issued in Washington, DC, on September 14, 1995.

Reginald C. Matthews,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–23427 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 95N–0169]

Maltodextrin; Food Chemicals Codex Specifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to adopt the Food Chemicals Codex specifications for maltodextrin derived from corn starch. The agency is proposing to amend its regulations by removing the requirement that maltodextrin be of a purity suitable for its intended use and by adding a requirement that the substance comply with the Food Chemicals Codex, 3d ed., 3d supp. (1992) specifications for maltodextrin. Elsewhere in this issue of the **Federal Register**, the agency is also publishing a final rule adopting the same specifications for maltodextrin derived from potato starch.

DATES: Written comments by November 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 15, 1983 (48 FR 51911), FDA published a final rule that affirmed the use in food of maltodextrin derived from corn starch as generally recognized as safe (GRAS) in § 184.1444 (21 CFR 184.1444). No food-grade specifications were available for maltodextrin at that time. Therefore, the regulation required that the maltodextrin be of a purity suitable for its intended use. The agency stated, however, that it was working with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop food-grade specifications for maltodextrin, and that it would incorporate the specifications into the maltodextrin regulation upon completion.

In 1992, the Food Chemicals Codex Committee published its third supplement to the third edition of the Food Chemicals Codex. The supplement contains food-grade specifications for maltodextrin that is derived from any edible starch. FDA has reviewed these specifications and tentatively concludes that they are acceptable for maltodextrin derived from corn starch. Therefore, the agency is proposing in § 184.1444 to adopt these specifications for maltodextrin derived from corn starch. Elsewhere in this issue of the **Federal Register**, the agency is also publishing a final rule adopting the same specifications for maltodextrin derived from potato starch.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has examined the economic implications of removing the current requirement that maltodextrin be of a purity suitable for its intended use and of adding a requirement that the additive meet the Food Chemicals Codex specifications for maltodextrin, as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to minimize the impact of their regulation on small entities. Because the proposed rule requires no change in the current industry practice concerning the manufacture and use of this ingredient, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Interested persons may, on or before November 20,1995, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 184 be amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. Section 184.1444 is amended by revising paragraph (b) to read as follows:

184.14444 Maltodextrin.

(a) * * *

(b) Maltodextrin derived from potato starch or corn starch meets the specifications of the Food Chemicals Codex, 3d ed., 3d supp. (1992), p. 125, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC 20408, or at the Division of Petition Control (HFS–217), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

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Dated: September 6, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–23241 Filed 9–20–95; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 240

RIN 1510–AA45

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This rule revises 31 CFR Part 240, which governs the indorsement and payment of checks drawn on the United States Treasury. The changes are intended both to fix the time by which Treasury can decline payment on Treasury checks and to provide financial institutions with a date certain for final payment. These rules also provide greater clarity by defining previously undefined terms and by ensuring symmetry with current Treasury regulations governing Federal payments utilizing the automated clearing house method. This rule also provides that Treasury may instruct Federal Reserve Banks to intercept and return, unpaid, benefit payment checks issued to deceased payees. These proposed revisions are issued in response to concerns raised by financial institutions, Federal agencies, and other affected parties.

DATES: Comments must be submitted on or before November 6, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ronald Brooks, Senior Program Analyst, Financial Processing Division, Financial Management Service, Prince Georges Center II Building, 3700 East-West Highway, Room 725–D, Hyattsville, Maryland 20782. Comments may be faxed to (202) 874–7534.

FOR FURTHER INFORMATION CONTACT: Ronald Brooks, (202) 874–7620 (Senior Program Analyst, Financial Processing Division); Paul M. Curran, (202) 874–6680 (Principal Attorney).

SUPPLEMENTARY INFORMATION:

Limitations on Payment

The current regulation provides that Treasury shall have the right to conduct first examination of Treasury checks presented for payment, and to refuse payment of any checks within a reasonable time. The current regulation also provides that such checks shall be deemed paid only upon Treasury's completion of first examination. The proposed rule clarifies this in two ways.

First, it defines first examination, and defines material defects or alterations as including counterfeit checks. These definitions are consistent with Treasury's longstanding interpretation of these terms.

Second, it fixes the time by which Treasury must complete first examination, and provides that if Treasury fails to do so within 150 days, the check will be deemed paid. This change narrows the time by which Treasury must complete first examination since Treasury interprets the current regulation as affording up to one year for first examination. This proposed change is intended to accommodate financial institutions which seek not only a more compressed time frame for first examination but also a date certain for final payment of Treasury checks.

While Treasury will, in most cases, complete first examination within 30 days of presentment of a Treasury check to a Federal Reserve Bank, the 150 day maximum period affords Treasury sufficient time to complete first examination in certain problem cases. For example, up to 150 days may be required in instances where there are delays in Treasury's obtaining from check certifying or authorizing agencies the payment issue tapes necessary to complete first examination.

Recovery by Bank From Depositors

The proposed rule clarifies that the regulations contained in this part neither authorize nor direct any financial institution to debit the account of any depositor. It further clarifies that any financial institution's right of recovery against depositors is derived from both the depository contracts with its customers and any self-help remedies authorized by State law governing the relationship between financial institutions and their customers. This provision mirrors the regulations codified in 31 CFR Part 210, which pertains to "Federal Payments Through Financial Institutions By the Automated Clearing House Method."

Deceased Payee Check Intercepts

Currently, where a benefit payment check has been issued and negotiated after a payee's death, Treasury generally recovers the funds from financial institutions through the reclamation process. Financial institutions have expressed dissatisfaction with these procedures because Treasury reclamation actions only occur after final payment and because in many instances the depositors have closed their accounts or withdrawn most or all of the funds. These financial institutions seek a process by which Treasury can intercept such checks upon presentment and return such checks unpaid before the financial institutions are required under Federal Reserve Regulation CC (12 C.F.R. Part 229) to make funds permanently available to their depositors. This proposed rule responds to those concerns, and should result in a lower volume of payments to nonentitled payees.

Specifically, it clarifies that benefit payment checks issued after a payee's death are not payable. It also sets forth procedures by which Treasury will instruct the Federal Reserve to intercept such checks upon presentment and return unpaid those checks which are successfully intercepted to the depositary banks.

Rulemaking Analysis

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

It is hereby certified pursuant to the Regulatory Flexibility Act that this revision will not have a significant economic impact on a substantial number of small business entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

These regulations impose time frames within which final payment of Treasury checks must be accomplished, and establish consequences for the failure of Treasury to honor those time frames. Consequently, these regulations provide financial institutions with greater certainty regarding the entire payment process, and place higher standards of performance on Treasury in its processing of checks.

The other principal provision of these regulations will reduce the likelihood that final payment on Treasury checks will be made to nonentitled persons. Treasury's efficiency and its ability to serve the needs of legitimate payees of benefit programs will thereby be enhanced.

Notice and Comment

Public Comment is solicited on all aspects of this proposed regulation. Treasury will consider all comments made on the substance of this proposed regulation, but does not intend to hold hearings.

List of Subjects in 31 CFR Part 240

Checks, Counterfeit Checks, Forgery, Banks, Banking, Guarantees, Federal Reserve System.

For the reasons set out in the preamble, 31 CFR Part 240 is proposed to be amended as follows.

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

1. The authority citation for part 240 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321; 31 U.S.C. 3328; 31 U.S.C. 3331; 31 U.S.C. 3334; 31 U.S.C. 3343; 31 U.S.C. 3711; 31 U.S.C. 3712; 31 U.S.C. 3716; 31 U.S.C. 3717.

2. Section 240.2 is revised to read as follows:

§ 240.2 Definitions.

(a) *Agency* means any department, instrumentality, office, commission, board, service, or other establishment of the United States authorized to issue Treasury checks or for which checks drawn on the Treasury of the United States are issued.

(b) *Bank* means any financial institution, including but not limited to, any savings bank, national bank, trust company, state bank, and credit union created under Federal or state law.

(c) *Benefit payment* includes but is not limited to a payment of money for any Federal Government entitlement program or annuity.

(d) *Certifying agency* means an agency authorizing the issuance of a Treasury payment by a Treasury disbursing officer or a non-Treasury disbursing officer in accordance with 31 U.S.C. 3325.

(e) *Check* means a draft or an order to pay drawn on the United States Treasury.

(f) *Check payment* means the amount paid to a presenting bank by a Federal Reserve Bank.

(g) *Commissioner* means the Commissioner of the Financial Management Service, Department of the Treasury.

(h) *Days* means calendar days.

(i) *Decline payment* means the process whereby Treasury refuses to make final payment on a check by instructing the Federal Reserve Bank to reverse its provisional credit to a presenting bank.

(j) *Federal Reserve Bank* means a Federal Reserve Bank and its branches.

(k) *Financial institution* means any bank, including but not limited to, any savings bank, national bank, trust company, state bank and credit union created under Federal or state law.

(l) *First examination* means Treasury's process of check reconciliation which involves comparing disbursing officer issue information on checks with Federal Reserve Bank payment information. Where the issue information is at odds with the payment information, first examination will include retrieval and inspection of the check, or the best available image thereof.

(m) *Material defect or alteration* means

(1) The counterfeiting of a check; or

(2) Any physical change on a check, including, but not limited to, the amount, date, payee name, or other identifying information printed on either the front or the back of the check; or

(3) Any forged or unauthorized indorsement appearing on the back of the check.

(n) *Person* or *persons* means an individual or individuals, or an institution or institutions, including all forms of financial institutions.

(o) *Presenting bank* means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depositary, designated by statute, which is authorized to charge checks directly to the Treasury General Account and present them to Treasury for payment through a designated Federal Reserve Bank.

(p) *Protest* means a bank's written statement and any supporting documentation tendered for the purpose of establishing that the bank is not liable for refund of the reclamation balance.

(q) *Reclamation* means a demand by Treasury to a bank for refund of the amount of a check payment.

(r) *Reclamation date* means the date on which Treasury prepares a demand for refund. Normally, demands are sent to banks within 2 working days of the reclamation date.

(s) *Treasury* means the United States Department of the Treasury.

(t) *U.S. securities* means securities of the United States and securities of Federal agencies and wholly or partially Government-owned corporations for which Treasury acts as the transfer agent.

(u) *Unauthorized indorsement* means:

(1) An indorsement made by a person other than the payee, except as authorized by and in accordance with § 240.5 and §§ 240.11 through 240.15;

(2) An indorsement by a bank under circumstances in which the bank breaches the guaranty of indorsement required of it by 31 CFR 209.9(a);

(3) A missing indorsement where the depositary bank had no authority to supply the indorsement.

3. Section 240.3 is amended by revising paragraphs (c), (d) and (e) to read as follows:

§ 240.3 Limitations on payment.

* * * * *

(c)(1) Treasury shall have the right as drawee to examine checks presented for payment and reconcile or direct the Federal Reserve Bank to refuse payment of any checks.

(2) Receipt of credit by a bank from a Federal Reserve Bank shall be provisional until Treasury completes first examination of the check.

(3) When first examination by Treasury establishes that a check has a material defect or alteration, Treasury will decline payment on the check.

(d) Notwithstanding the provisions of paragraph (c) of this section, when issue information is not available within 150 days after the check is presented to the Federal Reserve Bank for payment, or when first examination is otherwise not completed within such time frame, Treasury will be deemed to have made final payment on the check.

(e) Notwithstanding the provisions of paragraph (d) of this section, if Treasury is on notice of a question of law or fact about whether a check is properly payable upon presentment for payment, and Treasury refers such question to the Comptroller General under 31 U.S.C. 3328(a)(2), the Commissioner may defer final payment on the check until the Comptroller General settles the question.

4. Section 240.4 is amended by redesignating paragraph (a)(3) as paragraph (c) and revising it to read as set forth below; removing paragraph (b) and redesignating paragraph (a)(2) as (b); and by redesignating paragraph (a)(1) as (a) and revising it to read as follows:

§ 240.4 Cancellation and distribution of proceeds of checks.

(a) Any check issued on or after October 1, 1989 that has not been paid and remains outstanding for more than 12 months shall be cancelled by the Commissioner.

(b) * * *

(c) On a monthly basis, the Commissioner shall provide to each agency that authorizes the issuance of Treasury checks a list of those checks issued for such agency which were cancelled during the preceding month pursuant to paragraph (a) of this section.

5. Section 240.6 is amended by revising paragraph (a) to read as follows:

§ 240.6 Reclamation of amounts of paid checks.

(a) If Treasury determines that a check has been paid over a forged or unauthorized indorsement, or that a check containing a material defect or alteration is deemed paid under § 240.3, the presenting bank or any other indorser shall be liable to the Treasury for the full amount of the check payment. The Commissioner may reclaim the amount of the check payment from the presenting bank, or from any other indorser that breached its guaranty of indorsement prior to:

(1) The end of the 1-year period beginning on the date of provisional payment; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (a)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the certifying agency.

* * * * *

6. Section 240.9 is amended by revising paragraphs (a)(1) and (a)(3) (ii) and (iv) to read as follows:

§ 240.9 Processing of checks.

(a) *Federal Reserve Banks.* (1) Federal Reserve Banks shall cash checks for Government disbursing officers when such checks are drawn by the disbursing officers to their own order. Payment of such checks shall not be refused except for material defect or alteration of the check.

(2) * * *

(3) * * *

(ii) Give immediate provisional credit therefor in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the account of the Treasury, subject to first examination and payment by Treasury.

(iii) * * *

(iv) Release the original checks to a designated Federal Records Center upon notification from Treasury. Treasury shall return to the forwarding Federal Reserve Bank a copy of any check the payment of which is declined upon the completion of first examination, together with notice of the declination. Federal Reserve Banks shall give immediate credit therefor in Treasury's account, thereby reversing the previous charge to the account for such check. Treasury authorizes each Federal Reserve Bank to release a copy of the check to the indorser when payment is declined.

* * * * *

7. Section 240.13 is amended by adding paragraph (c) to read as follows:

§ 240.13 Checks issued to deceased payees.

* * * * *

(c) *Deceased payee check intercepts.*

(1) A benefit payment check, issued after a payee's death, is not payable. When a certifying agency learns that a payee has died, the certifying agency shall give immediate notice to Treasury. Upon receipt of such notice, Treasury will instruct the Federal Reserve Bank to refuse payment on the check upon presentment. The Federal Reserve Bank will make every appropriate effort to intercept the check. Where a check is successfully intercepted, the Federal Reserve bank will refuse payment, and return the check unpaid to the bank with an annotation that the payee is deceased. Where a financial institution learns that a date of death triggering action under this section is erroneous, the appropriate certifying agency which authorized the issuance of the check should be contacted.

(2) Nothing in this section shall limit the right of Treasury to institute reclamation proceedings under the provisions of § 240.6 with respect to a deceased payee check paid over a forged or unauthorized indorsement.

8. Section 240.16 is added to read as follows:

§ 240.16 Lack of authority to shift liability.

(a) This part neither authorizes nor directs a bank to debit the account of any party or to deposit any funds from any account in a suspense account or escrow account or the equivalent. However, nothing in this part shall be construed to affect a bank's contract with its depositor(s) under authority of State law.

(b) A bank's liability under this part is not affected by any action taken by it to recover from any party the amount of the bank's liability to the Treasury.

9. Section 240.17 is added to read as follows:

§ 240.17 Implementing instructions.

Procedural instructions implementing the regulations in this part will be issued by the Commissioner of the Financial Management Service in volume I, part 4 and volume II, part 4 of the Treasury Financial Manual.

Dated: July 14, 1995.

Russell D. Morris,

Commissioner.

[FR Doc. 95–22647 Filed 9–20–95; 8:45 am]

BILLING CODE 4810–35–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[SD–001; FRL–5300–8]

Clean Air Act Proposed Full Approval of Operating Permits Program; State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: The EPA proposes to change the existing interim approval of the Operating Permits Program submitted by the State of South Dakota to a full approval for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 23, 1995.

ADDRESSES: Comments should be addressed to the contact indicated below. Copies of the State's submittal and other supporting information used in developing this proposed approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART–AP, U.S. Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

The Governor of South Dakota's designee, Robert E. Roberts, Secretary of the Department of Environment and Natural Resources, submitted the State of South Dakota Title V Operating Permit Program (PROGRAM) to EPA on November 12, 1993. On March 22, 1995, EPA published a **Federal Register** notice promulgating final interim approval of the South Dakota PROGRAM. See 60 FR 15066. Full approval of the South Dakota PROGRAM was not possible at that time due to the following issue identified during EPA's PROGRAM review: The State's criminal enforcement statute only allowed for a maximum penalty of $1,000 for failure to obtain a permit and $500 for violation of a permit condition. The State was required to adopt legislation consistent with part 70.11, prior to receiving full PROGRAM approval, to allow for a maximum criminal fine of not less than $10,000 per day per violation for knowing violation of operating permit requirements, including making a false statement and tampering with a monitoring device. In a letter dated April 21, 1995, the State submitted evidence that this corrective action had been completed, which EPA has reviewed and has determined to be adequate to allow for full PROGRAM approval. This corrective action included the adoption of Senate Bill 36 by the South Dakota Legislature which contains the necessary language to allow for criminal penalties consistent with part 70.11.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of the provisions of 40 CFR part 63, Subpart A, and section 112 standards promulgated by EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. EPA granted approval of the State's PROGRAM, under section 112(l)(5) and 40 CFR part 63.91, for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated for part 70 sources in the **Federal Register** notice promulgating final interim approval of the South Dakota PROGRAM. See 60 FR 15066. Based on a State request, EPA is proposing to expand this approval to include non-part 70 sources. EPA believes this is warranted because State law does not differentiate between part 70 and non-part 70 sources for purposes of implementation and enforcement of section 112 standards that the State adopts. This approval would not delegate authority to the State to enforce specific section 112 standards, but instead would establish a basis for the State to request and receive future delegation of authority to implement and enforce, for non-part 70 sources, section 112 standards that the State adopts without change.

The scope of the PROGRAM and all of the clarifications made in the **Federal Register** notice proposing interim approval of the South Dakota PROGRAM still apply. See 60 FR 2917.

B. Proposed Action

EPA is proposing to change the existing interim approval of the operating permits program submitted to EPA by the State of South Dakota on November 12, 1993 to a full approval. Among other things, South Dakota has demonstrated that the PROGRAM will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70. EPA is also proposing to expand approval of South Dakota's PROGRAM for receiving delegation of section 112 standards to include non-part 70 sources.

Today's proposal to give full approval to the State's part 70 PROGRAM does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State: 1. Cheyenne River; 2. Crow Creek; 3. Flandreau; 4. Lower Brule; 5. Pine Ridge; 6. Rosebud; 7. Sisseton; 8. Standing Rock; and 9. Yankton.

The State has asserted it has jurisdiction to enforce a part 70 PROGRAM within some or all of these "existing or former" Indian reservations and has provided an analysis of such jurisdiction. EPA is in the process of evaluating the State's analysis and will issue a supplemental notice regarding this issue in the future. Before EPA would approve the State's part 70 PROGRAM for any portion of "Indian Country," EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice. This is a complex and controversial issue, and EPA does not wish to delay full approval of the State's part 70 PROGRAM with respect to undisputed sources while EPA resolves this question.

In deferring final action on program approval for sources located in "Indian Country," EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Instead, EPA is deferring judgment regarding this issue pending EPA's evaluation of the State's analysis.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for this proposed approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of these proposed approvals. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by October 23, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 11, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–23437 Filed 9–20–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 70

[AD–FRL–5300–5]

Title V Clean Air Act Proposed Interim Approval of Operating Permits Program; State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Interim Approval.

SUMMARY: EPA is proposing interim approval of the operating permits program submitted by the State of Delaware. This program was submitted by the State for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 23, 1995.

ADDRESSES: Comments should be addressed to Robin M. Moran, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the State of Delaware's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Robin M. Moran, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–3023.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

As required under Title V of the Clean Air Act (CAA) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250, July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources. Due to pending litigation over several aspects of the Part 70 rule which was promulgated on July 21, 1992, Part 70 is in the process of being revised. When the final revisions to Part 70 are promulgated, the requirements of the revised Part 70 will define EPA's criteria for the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits program submittals. Until the date which the revisions to Part 70 are promulgated, the currently effective July 21, 1992 version of Part 70 shall be used as the basis for EPA review.

B. Federal Oversight and Sanctions

The CAA requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the CAA and Part 70, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, EPA must establish and implement a federal operating permits program.

Following final interim approval, if the State fails to submit a complete corrective program for full approval by 6 months before the interim approval period expires, EPA would start an 18-month clock for mandatory sanctions. If the State then failed to submit a complete corrective program before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the CAA. Such a sanction would remain in effect until EPA determined that the State had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, six months after application of the first sanction, the State still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the State's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State had submitted a revised program and EPA had determined that this program corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In all cases, if, six months after EPA applied the first sanction, the State had not submitted a revised program that EPA had determined corrected the deficiencies that prompted

disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if the State has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a State program by the expiration of an interim approval period, EPA must promulgate, administer and enforce a federal operating permits program for the State upon the date the interim approval period expires.

C. State of Delaware's Submittal

On November 15, 1993, the State of Delaware submitted an operating permits program for review by EPA. The submittal was supplemented by additional materials on November 22, 1993, and was found to be administratively incomplete pursuant to 40 CFR 70.4(e)(1) on January 18, 1994. Additional materials were submitted on February 9, 1994, and May 15, 1995. Based on additional information received in the May 15, 1995, submittal, EPA found the submittal to be administratively complete on May 19, 1995. The State submitted supplemental information on September 5, 1995. The submittal includes a letter from the Secretary of the Department of Natural Resources and Environmental Control requesting approval of the State's Title V program, a description of the State's Title V program, permitting regulations, an Attorney General's legal opinion, permitting program documentation, a permit fee demonstration, a description of compliance tracking and enforcement program, and provisions implementing the requirements of other Titles of the CAA.

II. Summary and Analysis of the State of Delaware's Submittal

The analysis contained in this notice focuses on the major portions of the State's operating permits program submittal, including regulations and program implementation, variances, insignificant activities, permit fee demonstration, and provisions implementing the requirements of Titles III and IV of the CAA. Specifically, this notice addresses the deficiencies in the State's submittal which will need to be corrected prior to full approval by EPA. These deficiencies as well as other issues related to the State's operating permit program are discussed in detail in the Technical Support Document (TSD). The full program submittal and the TSD are available for review as part of the public docket. The docket may be viewed during regular business hours at the EPA Region III office listed in the **ADDRESSES** section of this notice.

A. Regulations and Program Implementation

The State of Delaware's operating permit program is primarily defined by Regulation No. 30, "Title V State Operating Permit Program," which is part of the State of Delaware "Regulations Governing the Control of Air Pollutants." Provisions for enforcement authority are located at 7 *Del. C.*, Chapter 60. The following analysis of the State's operating permit regulations corresponds directly with the format and structure of Part 70.

§§ 70.4 and 70.6 Permit Content. The State's regulations substantially meet the requirements of 40 CFR 70.4 and 40 CFR 70.6 for permit content. The following changes must be made to Regulation No. 30 in order to fully meet the requirements of 40 CFR 70.4 and 40 CFR 70.6:

1. Delaware must revise Regulation 30, Section 6(f) to address the scope of the permit shield provision, consistent with Part 70, as described below. The permit shield provision of 40 CFR 70.6(f)(1) provides that the permitting authority may expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. Delaware's Regulation 30, Section 6(f) provides that a source may request that the Department include in the Part 70 permit a provision stating that compliance with the terms and conditions of the permit shall constitute compliance with "7 *Del. C.*, Chapter 60, for the discharge of any air contaminant specifically identified in the permit application as of the day of permit issuance." The extent of the permit shield is inconsistent with Part 70 for the following reasons.

First, as written in Regulation 30, the permit shield would apply to any air contaminant specifically identified in the *permit application* as of the day of permit issuance, rather than any applicable requirement of the *final permit*. Thus, the extent of the permit shield is too broad, because a source may include provisions in its permit application that are removed or made more stringent by the permitting authority upon issuance of the final permit. Delaware must revise Regulation 30 to make it clear that the permit shield applies to any applicable requirement as of the date of permit issuance. Part 70.6(f)(1)(i) and (ii) also require, as a condition of granting a permit shield, that the applicable requirements must be included and specifically identified in the permit, or that the permitting authority determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes a determination or a concise summary thereof. Regulation 30 also must be revised to include these provisions.

Second, the reference to "7 *Del. C.*, Chapter 60, for the discharge of any air contaminant" appears to extend the permit shield to any requirement of the Delaware Water and Air Resources Act, which is broader than "any applicable requirement" as defined by Part 70. The definition of "air contaminant" in 7 *Del. C.*, Chapter 60, § 6002(2), means "particulate matter, dust, fumes, gas, mist, smoke or vapor or any combination thereof, exclusive of uncombined water." For consistency with Part 70, Delaware must revise the reference to "7 *Del. C.*, Chapter 60, for the discharge of any air contaminant" to "any applicable requirement" consistent with § 70.6(f)(1).

§ 70.7 Permit Issuance, Renewal, Reopenings, and Revisions. The State's regulations substantially meet the requirements of 40 CFR 70.7. The following changes must be made to Regulation No. 30 in order to fully meet the requirements of 40 CFR 70.7:

1. Delaware must revise Regulation 30, Section 7(d)(1)(v) to ensure that any preconstruction review permit requirements that are incorporated into a Title V permit through the administrative permit amendment procedure have undergone the procedural requirements specified in 40 CFR 70.7(d)(1)(v). This section provides that the State may include as a change under an administrative permit amendment, the incorporation of requirements from preconstruction review permits under an EPA-approved program, provided that the program meets procedural requirements for permit issuance, including public, EPA, and affected State review, substantially equivalent to the Part 70 program requirements that would apply to permit modifications, and contains compliance requirements substantially equivalent to those contained in § 70.6. Delaware's Regulation 30, Section 7(d)(1)(v), allows that the requirements from preconstruction review permits issued by the Department under Parts C and D of the Act or permits issued under Regulation No. 2 may be incorporated into the permit as an administrative permit amendment, when such permits were issued "meeting the public participation

provisions of Section 7(j)". However, Delaware's regulations do not require that a preconstruction permit must meet other procedural requirements of permit issuance, including affected state and EPA review, or that the permit contain compliance requirements substantially equivalent to those contained in 40 CFR 70.6. The anticipated future revisions to Part 70 may provide additional flexibility for the process of incorporating preconstruction review permits into a Title V operating permit.

2. Delaware must revise Regulation 30, Section 7(f)(4) to require that permits for major sources with a remaining permit term of three years or more shall be reopened for cause within 18 months after a new applicable requirement is promulgated, consistent with 40 CFR 70.7(f). Delaware's Regulation 30, Section 7(f)(4) requires permit reopening within 18 months after promulgation of an applicable requirement, but applies this provision to paragraph (1)(iii) only, which pertains to new applicable requirements for affected sources under the acid rain program. Section 7(f)(4) should refer to paragraph (1)(*ii*), which pertains to major sources with a permit term of more than 3 years.

3. Delaware must revise Regulation 30, Section 7(j)(4) to require that the Department shall give notice of any public hearing at least 30 days in advance of the hearing, consistent with 40 CFR 70.7(h)(4). As currently written, Section 7(j)(4) provides that any public hearing shall be held no earlier than the 31st day following publication of the public notice. However, the public notice is not required to provide notice that a hearing is scheduled; according to Section 7(j)(2), the public notice must include the time and place of the hearing *or* a statement of procedures to request a hearing. Section 7(j)(3) provides that the Department shall hold a hearing if the Secretary receives a meritorious request for a hearing within a reasonable time as stated in the advertisement. Regulation 30 does not provide that the Department shall give the public 30 days notice that a hearing will be held.

§ 70.11 Requirements for Enforcement Authority. The State's statute substantially meets the requirements of 40 CFR 70.11 for enforcement authority. The following changes must be made in order to fully meet the requirements of 40 CFR 70.11:

1. Delaware must revise 7 *Del. C.*, Chapter 60, § 6013(b) to provide that each day of violation shall be considered as a separate violation. 40 CFR 70.11(a)(3)(iii) requires a penalty in a maximum amount of not less than $10,000 per day per violation for any person who knowingly makes a false material statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method. 7 *Del. C.*, Chapter 60, § 6013(b) provides, for these types of violations, a criminal penalty of not less than $500 nor more than $10,000, or by imprisonment for not more than 6 months, or both. Section 6013(b) of the statute does not, however, provide that each day of violation shall be considered as a separate violation.

B. Variances

Section 3(f) of Regulation 30 states that "any determination by the Secretary to not require a permit under 7 *Del. C.*, Chapter 60, Section 6003(e), or any variance granted by the Secretary under 7 *Del. C.*, Chapter 60, Section 6011, shall not apply to this rule until such time as the exemption or variance is approved by the Administrator." EPA has no authority to approve provisions of State law that are inconsistent with the CAA. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable Part 70 permit, except where such relief is granted through procedures allowed by Part 70. EPA reserves the right to enforce the terms of the Part 70 permit where the permitting authority purports to grant relief from the duty to comply with a Part 70 permit in a manner inconsistent with Part 70 procedures.

C. Insignificant Activities

Appendix A of Regulation No. 30 contains a list of 33 insignificant activities. Appendix A provides that any information required by the permit application need not be submitted for these insignificant activities; however, the source must provide a list of any activities that are excluded from the permit application because of size, emission rate, or production rate. Section 5(c) requires that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, including those that become applicable after the effective date of this regulation. Section 5(c) also requires that emissions from the insignificant activities shall be included when determining whether a source is subject to Regulation No. 30, or when determining the applicability of any applicable requirement.

D. Permit Fee Demonstration

7 *Del. C.*, Chapter 60, section 6097 requires owners or operators of sources subject to Title V to pay annual fees to be used solely to carry out Title V activities. The statute establishes 13 fee categories, each category is defined by progressively increasing emission ranges. As stated in a May 15, 1995 letter from the Secretary of DNREC, the State's fee calculation, based on 1990 emissions inventory data, demonstrates that approximately $2.15 million will be raised through the fee program. The State believes that revenues will be able to cover the estimated costs of the program. The State estimates that total emissions from Title V facilities applicable to the fees is 59,656 tons per year. Therefore, the average fee is estimated at $36.00 per ton for calendar year 1995, which is above the presumptive minimum of $25.00 per ton based on 1989 dollars.

E. Provisions Implementing the Requirements of Title III

Implementing Title III Standards through Title V Permits. Under 7 *Del. C.*, Chapter 60, § 6003, and Regulation No. 30, Section 3(a) and 6(a), the State of Delaware has demonstrated in its Title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements. In its November 15, 1993, submittal, Delaware agreed to "expeditiously adopt any new authority needed to implement future applicable requirements. This will include requirements promulgated under Section 112 of [the Act]." This commitment is stated in the narrative description of Delaware's program, Section VIII (Other Provisions of the Act - Toxics and Enhanced Monitoring). EPA has determined that this commitment, in conjunction with the State of Delaware's broad statutory authority, adequately assures compliance with all the CAA's section 112 requirements. EPA regards this commitment as an acknowledgement by the State of Delaware of its obligation to obtain further legal authority as needed to issue permits that assure compliance with the CAA's section 112 applicable requirements. This commitment does not substitute for compliance with Part 70 requirements that must be met at the time of program approval.

EPA interprets the above legal authority and commitment to mean that the State of Delaware will be able to carry out all of the CAA's section 112 activities. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking which is located in the public docket and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities,"

signed by John Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, USEPA.

Implementation of 112(g) Upon Program Approval. EPA is proposing to approve the State of Delaware's operating permits program for the purpose of implementing section 112(g) during the transition period between federal promulgation of a section 112(g) rule and State adoption of 112(g) implementing regulations. EPA had until recently interpreted the CAA to require sources to comply with section 112(g) beginning on the date of approval of the Title V program regardless of whether EPA had completed its section 112(g) rulemaking. EPA has since revised this interpretation of the CAA as described in a February 14, 1995 **Federal Register** notice (see 60 FR 83333). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The rationale for the revised interpretation is set forth in detail in the February 14, 1995 interpretive notice.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the State must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of implementing State regulations.

EPA believes that, although the State currently lacks a program designed specifically to implement section 112(g), the State's Regulation No. 30 permit program will serve as an adequate implementation vehicle during a transition period because it will allow the State to select control measures that would meet Maximum Achievable Control Technology (MACT) on a case-by-case basis, as defined in section 112, and incorporate these measures into federally enforceable source-specific permits. Section 112(g) requirements for case-by-case MACT determinations are governed by the provisions of Section 5(a)(1)(iv) and the Section 2 definition of "Applicable requirement" (item 4). However, in accordance with the provisions of section 112(g), the Section 5(a)(1)(iv) requirement to obtain an operating permit or permit revision within twelve (12) months after commencing operation must instead be satisfied prior to construction during the transition period.

This proposed approval clarifies that the operating permits program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by the State of Delaware of rules established to implement section 112(g). EPA is proposing to limit the duration of this approval to an outer limit of 18 months following promulgation by EPA of the section 112(g) rule. Comment is solicited on whether 18 months is an appropriate period taking into consideration the State's procedures for adoption of regulations.

However, since this proposed approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted.

Although section 112(l) generally provides the authority for approval of state air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V.

If the State of Delaware does not wish to implement section 112(g) through its Regulation No. 30 permit program and can demonstrate that an alternative means of implementing section 112(g) exists during the transition period, EPA may, in the final action approving the State of Delaware's Part 70 program, approve the alternative instead.

Program for Straight Delegation of Section 112 Standards. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the state programs contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State of Delaware's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. For EPA-promulgated rules which are applicable to sources in the State, the State intends to request delegation after adopting the rules. The details of this delegation mechanism will be established prior to delegating any section 112 standards under the State's approved section 112(l) program for straight delegation. This program applies to both existing and future standards but is limited to sources covered by the Part 70 program.

F. Title IV Provisions/Commitments

As part of the program submittal, the State of Delaware committed to submit all missing portions of the Title IV acid rain program by January 1, 1995. Delaware did not meet the January 1, 1995 date for submitting its Title IV program. EPA requested the State to submit a revised commitment for submitting the Title IV acid rain program. On September 5, 1995, the State submitted a letter committing to adopt and submit to EPA their acid rain program by July 1, 1996.

III. Request for Public Comments

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in this federal rulemaking action by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

Proposed Action

EPA is proposing to grant interim approval to the operating permits program submitted by the State of Delaware on November 15, 1993, with supplemental submittals on November 22, 1993, February 9, 1994, May 15, 1995, and September 5, 1995. The scope of the State's Part 70 program applies to all Part 70 sources ("covered sources" as defined in the State's program) within the State, except for sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the CAA as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993). Prior to full approval by EPA, the State must make the following changes:

1. Revise Regulation 30, Section 6(f), to be consistent with the scope of the permit shield provision of 40 CFR 70.6(f)(1).

2. Revise Regulation 30, Section 7(d)(1)(v), to ensure that any preconstruction review permit requirements that are incorporated into a Title V permit through the

administrative permit amendment procedure meet the provisions of 40 CFR 70.7(d)(1)(v).

3. Revise Regulation 30, Section 7(f)(4) to require that permits for major sources with a permit term of three years or more shall be reopened for cause within 18 months after a new applicable requirement is promulgated, consistent with 40 CFR 70.7(f).

4. Revise Regulation 30, Section 7(j)(4) to require that the Department shall give notice of any public hearing at least 30 days in advance of the hearing, consistent with 40 CFR 70.7(h)(4).

5. Revise the Delaware Water and Air Resources Act, *7 Del. C.*, Chapter 60, section 6013(b) to provide that each day of violation shall be considered as a separate violation, consistent with 40 CFR 70.11.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, Delaware is protected from sanctions for failure to have a fully approved Title V, Part 70 program, and EPA is not obligated to promulgate a federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's section 112(l)(5) requirements for approval of a program for delegation of section 112 standards applicable to Part 70 sources as promulgated by EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70.

Therefore, EPA is also proposing under section 112(l)(5) and 40 CFR 63.91 to grant approval of the State's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action to propose interim approval of the State of Delaware's operating permits program pursuant to Title V of the CAA and 40 CFR part 70 does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 13, 1995.

Stanely L. Laskowski,

Acting Regional Administrator.

[FR Doc. 95–23435 Filed 9–20–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 799

[OPPTS–42111H; FRL–4972–3]

RIN 2070–AB94

Office of Water Chemicals Test Rule Proposed Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to withdraw the testing requirements for chloroethane, one of the chemical substances listed in the Office of Water Chemicals test rule published in the **Federal Register** of November 10, 1993. EPA believes that data recently made available provides sufficient information to determine or predict the health effects posed by short and long-term exposures to chloroethane. Therefore, EPA is proposing the withdrawal of the 14-day and 90-day testing requirements for chloroethane.

DATES: Written comments must be received by EPA on or before October 23, 1995.

ADDRESSES: Submit written comments, identified by the docket control number (OPPTS–42111H), in triplicate to: Document Control Office (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Rm. G–099, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action, without Confidential Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460, from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

Comments and data may be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–42111H. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV. of this preamble.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document proposes to withdraw certain testing requirements for one of the chemical substances listed in the Office of Water Chemicals test rule referenced above.

I. Summary of Proposed Modification

Pursuant to section 4 of the Toxic Substances Control Act (TSCA) EPA proposed a test rule (FRL–3712–5) in the **Federal Register** of May 24, 1990 (55 FR 21393), and finalized the test rule (FRL–4047–2) in the **Federal Register** of November 10, 1993 (58 FR 59667), requiring certain testing of chloroethane. The final rule concluded that chloroethane is produced in substantial quantities and that there may be substantial exposure to it, there are insufficient data to determine or predict the health effects from short and long-term exposures to chloroethane in drinking water, and that testing is required to determine or predict the health effects from short and long-term exposures to chloroethane. Based on these conclusions, EPA required a subacute toxicity (oral 14-day repeated dose toxicity) and a subchronic (oral 90-day subchronic toxicity) toxicity test. The data from these studies would be used to develop Health Advisories (HAs) for chloroethane in drinking water as under section 1445 of the Safe Drinking Water Act (SDWA).

EPA has recently received information which, in the judgment of EPA, provides sufficient information to determine or predict the health effects from exposure to chloroethane in drinking water (Ref. 1a). On May 1, 1995, the Dow Chemical Company submitted a study entitled "Ethyl Chloride Palatability and 14-day Drinking Water Toxicity Study in Fischer 344 Rats." The study concluded that there were no toxicological effects from the drinking water administration of chloroethane to the treated rats at the level of practical saturation. After submission of additional information requested by the Agency (Refs. 2, 2a, 3, and 4), EPA conducted a review (Ref. 5). The EPA review, dated July 14, 1995, concluded that the 14-day study provided sufficient information to establish appropriate Health Advisories. Therefore, there is no reason to continue to require the testing specified for chloroethane in the Office of Water Chemicals test rule.

EPA is providing 30 days from publication of this proposed modification for submission of written comments on the elimination of both the subacute (oral 14-day repeated dose toxicity) and subchronic (oral 90-day subchronic toxicity) toxicity test requirements for chloroethane. If the 30-day deadline passes and no adverse public comments have been received, EPA will grant the proposed modification to delete these tests in a final rule published in the **Federal Register**.

II. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting confidential comments must prepare and submit a public version of the comments for the EPA public file.

III. Analyses Under Executive Order 12866, the Unfunded Mandates Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

Because this action reduces certain pending requirements, this action is not "significant" within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), and does not impose any Federal mandate on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reasons, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this action will not have a significant economic impact on a significant number of small entities. Additionally, the information collection requirements associated with TSCA Section 4 Test Rules have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, and have been assigned OMB control number 2070–0033. EPA has determined that this proposed rule eliminates certain pending recordkeeping and reporting requirements.

IV. Rulemaking Record

A record has been established for this proposed rule under docket number "OPPTS–42111H" (including comments and data submitted electronically as described below). A public version of the record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this proposed rule, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

The record includes the following information:

(1) Letter from Annette L. Hayes of Latham Watkins to Amber L. Aranda, U.S.E.P.A. transmitting April 28, 1995 Dow Chemical Study (May 1, 1995) (with attachment:).

(a) Dow Chemical Company. Study titled "Ethyl Chloride: Palatability and 14-Day Drinking Water Toxicity Study in Fischer 344 Rats" (April 26, 1995).

(2) Facsimile note from Roger A. Nelson, U.S.E.P.A. to Dr. Lynn Pottenger, The Dow Chemical Company requesting information (June 7, 1995) (with attachment:).

(a) Memorandum from Jennifer Orme-Zavaleta, U.S.E.P.A. to Frank Kover, U.S.E.P.A. requesting additional data (June 5, 1995).

(3) Letter from Lynn Pottenger, The Dow Chemical Company to Roger Nelson, U.S.E.P.A., Re: Questions on Chloroethane Study Report (June 9, 1995).

(4) The Dow Chemical Company. "Report Addendum" to Ethyl Chloride: Palatability and 14-Day Drinking Water Toxicity Study in Fischer 344 Rats (June 9, 1995).

(5) Memorandum from Jennifer Orme-Zavaleta, U.S.E.P.A. to Frank Kover, U.S.E.P.A. Office of Water Review (July 14, 1995).

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Chemical export, Hazardous substances, Health effects, Incorporation by reference, Laboratories, Provisional testing, Reporting and recordkeeping requirements, Testing.

Dated: September 12, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 799 be amended as follows:

PART 799—IDENTIFICATION OF SPECIFIC CHEMICAL SUBSTANCE AND MIXTURE TESTING REQUIREMENTS

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5075 is amended by revising paragraphs (a)(1), (c)(1)(i)(A), and (c)(2)(i)(A) to read as follows:

§ 799.5075 Drinking water contaminants subject to testing.

(a) *Identification of test substance.* (1) 1,1,2,2-Tetrachloroethane (CAS No. 79–34–5), and 1,3,5-trimethylbenzene (CAS No. 108–67–8) shall be tested as appropriate in accordance with this section.

* * * * *

(c) *Health effects testing*—(1) *Subacute toxicity*—(i) *Required testing.* (A) An oral 14-day repeated dose toxicity test shall be conducted with 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650 (a), (b)(1), (c), (e)(3), (e)(4)(i), (e)(5), (e)(6), (e)(7)(i), (e)(7)(iv), (e)(7)(v), (e)(8)(vii), (e)(9)(i)(A), (e)(9)(i)(B), (e)(11)(v), and (f)(2)(i). Each substance shall be tested in one mammalian species, preferably a rodent, but a non-rodent may be used. The species and strain of animals used in this test should be the same as those used in the 90-day subchronic test required in paragraph (c)(2)(i) of this section. The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

(2) *Subchronic toxicity*—(i) *Required testing*. (A) An oral 90-day subchronic toxicity test shall be conducted with 1,3,5-trimethylbenzene in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650 (e)(3), (e)(7)(i), and (e)(11)(v). The test shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

* * * * *

[FR Doc. 95–23460 Filed 9–20–95; 8:45 am]

BILLING CODE 6560-50-F

LEGAL SERVICES CORPORATION

45 CFR Part 1633

Restriction on Representation in Certain Eviction Proceedings

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule is intended to ensure that recipients refrain from using Legal Services Corporation ("LSC" or "Corporation") funds to provide representation in eviction proceedings of persons engaged in certain illegal drug activity.

DATES: Comments must be submitted on or before October 23, 1995.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, N.E., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, at (202) 336–8810.

SUPPLEMENTARY INFORMATION: On June 25, 1995, the Corporation Board of Directors ("Board") adopted a resolution requiring Corporation staff to prepare a regulation prohibiting the use of Corporation funds to represent in certain eviction proceedings persons alleged to be engaging in illegal drug activity. On September 9, 1995, the Board's Operations and Regulations Committee ("Committee") held public hearings on proposed 45 CFR Part 1633. After adopting several changes to the staff draft of the regulation, the Committee voted to publish the proposed rule in the **Federal Register** for notice and comment.

The LSC Act grants the Corporation both general and specific rulemaking authority. *Texas Rural Legal Aid* v. *LSC*, 940 F.2d 685, 690–91 (D.C. Cir. 1991); see *e.g.*, 42 U.S.C. 2996e(a)(1)(A), (a)(1)(B), and 2996f(a)(3). In particular, section 1007(a)(3) of the LSC Act "gives [the Corporation] substantial power to regulate the 'delivery of legal assistance' by program recipients." *TRLA*, at 691. In addition, as a private corporation granted the powers of a District of Columbia nonprofit corporation, 42 U.S.C. 2996e(a), the Corporation has the power to establish the terms under which it will make grants to entities to provide legal assistance. *Id.* Congress intended the exercise of "considerable discretion" by the Corporation in its implementation of the LSC Act. *Id.* Finally, under section 1007(a)(2)(C) of the LSC Act, 42 U.S.C. 2996f(a)(2)(C), the Corporation may provide guidance to its recipients as to appropriate caseload matters by establishing national goals, in conformance with which recipients are to establish priorities for the acceptance of cases. *Id.* at 693.

A purpose of the legal services program is to assist in improving opportunities for low income persons. 42 U.S.C. 2996(3). In addition, in its grantmaking and oversight functions, the Corporation must ensure that recipients provide legal assistance in the most economical and effective manner. 42 U.S.C. 2996f(a)(3). Hence, a principal national goal of the Corporation, based in the LSC Act, is to provide economical and effective legal assistance in a manner that improves opportunities for low income persons.

The drug problem has had a devastating effect on the poor in our country, especially those living in public housing. This situation is of grave concern to the Board, and has been an on-going concern in Congress. For example, section 508(18) of H.R. 2076, an appropriations measure currently before Congress, would prohibit recipients from providing representation in certain drug-related eviction proceedings. See H.R. 2076, 104th Cong., 1st Sess, section 504(18).

Since tenants of public housing projects who engage in illegal drug activity may be viewed as a destructive force within public housing communities acting to the detriment of low income persons, it is the Corporation's considered view that representation of those who engage in such activity undermines the purposes of the LSC Act. Based on the above, the Board directed staff to prepare a proposed regulation addressing these concerns. Such regulation will implement the Corporation's goal of providing economical and effective legal assistance in a manner that improves opportunities for low income persons and will provide specific guidance to recipients to revise their priorities and procedures in the area of representation in drug-related eviction proceedings.

A section-by-section discussion of the proposed rule is provided below.

Section 1633.1 Purpose

This section sets out the purpose of the proposed rule: to implement the goal of the Corporation to provide economical and effective legal assistance in a manner that improves opportunities for low income persons and to provide specific guidance in the case of drug-related eviction proceedings by prohibiting any recipient from providing representation in certain proceedings to evict from public housing projects persons convicted of or being prosecuted for certain drug-related activity.

Section 1633.2 Definitions

This section defines "controlled substance," "public housing project," and "public housing agency" in the manner those terms are defined by federal statute. The term "being prosecuted" is defined to make clear that the prohibition attaches only when a prosecution has been instituted and is being pursued by a governmental authority, for example, by indictment or information. It is not sufficient for an affidavit to have been sworn by a private citizen or for an arrest to have occurred if no prosecution has followed.

Section 1633.3 Prohibition

This section sets out the prohibition on the use of Corporation funds. It is intended to preclude the provision of representation in a proceeding to evict from a public housing project a person who has been recently convicted of or is being prosecuted for illegal drug activity. Such activity must be evidenced by a conviction or current prosecution for the sale, distribution, use or manufacture of a controlled substance. Under the prohibition if representation was commenced prior to prosecution, the recipient should seek to end the representation if a prosecution is thereafter commenced. The Corporation has concluded that a formal charge of illegal drug activity against a client will suffice to prohibit representation even though a conviction has not as yet resulted. The Corporation, however, believes that the prohibition should apply only when the charge of illegal drug activity has resulted in formal prosecution proceedings.

In addition, the prohibition applies only if the allegation which forms the

basis for the eviction proceeding is that the particular illegal drug activity for which the person has been convicted or is being prosecuted did or does now threaten the health or safety of others living in the public housing project or working in the public housing agency. This qualification is intended to make clear that, in order for the prohibition to apply, the allegation which forms the basis for the eviction must be that, at the time the illegal drug activity was engaged in, it threatened the health or safety of others within the public housing community or that the activity currently threatens such health or safety. In other words, the threat must stem from the illegal drug activity which resulted in prosecution/conviction.

Finally, the prohibition extends only to the individual who has been convicted or is being prosecuted, and does not extend to other members of the individual's household who may be facing eviction because of the individual's illegal activity. For example, if a person is facing eviction based on the fact that another person in the household has been convicted of or is being prosecuted for the illegal sale, distribution, use or manufacture of a controlled substance, then the prohibition would not attach.

Section 1633.4 Recordkeeping

This section requires recipients to maintain documentation regarding representation declined under this part. Such recordkeeping will assist the Corporation in its compliance monitoring efforts and will provide empirical data for informational purposes.

List of Subjects in 45 CFR 1633

Legal services, Drugs, Public housing.

For reasons set forth in the preamble, LSC proposes to amend 45 CFR chapter XVI by adding part 1633 as follows:

PART 1633—RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS

Sec.
1633.1 Purpose.
1633.2 Definitions.
1633.3 Prohibition.
1633.4 Recordkeeping.

Authority: 42 U.S.C. 2996e(a), (b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e).

§ 1633.1 Purpose.

This part is designed to ensure that Corporation funds will not be used to provide representation in certain eviction proceedings to persons charged with or convicted of illegal drug activities.

§ 1633.2 Definitions.

(a) "Controlled substance" has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(b) "Public housing project" and "public housing agency" have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a); and

(c) A person is "being prosecuted" if a criminal proceeding has been instituted against such person by a governmental authority with jurisdiction to bring such prosecution.

§ 1633.3 Prohibition.

Corporation funds shall not be used to defend any person in a proceeding to evict that person from a public housing project if:

(a) the person has been recently convicted of or is being prosecuted for the illegal sale, distribution, use or manufacture of a controlled substance; and

(b) the eviction proceeding is brought by a public housing authority on the basis that such illegal drug activity for which the person has been convicted or for which the person is being prosecuted did or does now threaten the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

§ 1633.4 Recordkeeping.

Recipients shall maintain a record of all instances in which representation is declined under this part. Records required by this section shall be available to the Corporation, and should be maintained in a manner consistent with the attorney-client privilege and the rules of professional responsibility applicable in the local jurisdiction.

Dated: September 18, 1995.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 95–23490 Filed 9–20–95; 8:45 am]

BILLING CODE 7050-01-P

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45 CFR Part 1634

Competitive Bidding for Grants and Contracts

AGENCY: Legal Services Corporation.

ACTION: Proposed Rule.

SUMMARY: The Corporation anticipates that Congress will adopt legislation requiring the Corporation to utilize a system of competitive bidding for the award of grants and contracts. This proposed rule is intended to implement such a system of competitive bidding for the award of grants and contracts for the delivery of legal services to eligible clients. The competitive bidding system would be structured so as to meet the primary purposes of the Legal Services Corporation Act as amended—to ensure the economical and effective delivery of high quality legal services to eligible clients and improve opportunities for low income persons. Competitive bidding is also intended to encourage recipients to improve their performance in delivering legal services.

DATES: Comments must be submitted on or before October 23, 1995.

ADDRESSES: Comments should be submitted to the Office of General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, at (202) 336–8810.

SUPPLEMENTARY INFORMATION: On June 25, 1995 the LSC Board of Directors ("Board") adopted a resolution requiring Corporation staff to prepare a regulation on competition in the delivery of legal services. On September 8 and 9, 1995, the Board's Operations and Regulations Committee and the provision for the Delivery of Legal Services Committee ("Committee") held public hearings on a draft proposed rule, 45 CFR part 1634. After adopting several changes to the draft proposed rule, the Committees voted to publish a proposed rule in the **Federal Register** for notice and comment.

Generally, the proposed rule is intended to set out the framework for a system of competitive bidding that would be structured so as to meet the primary purposes of the Legal Services Corporation Act, that is, to ensure the effective and efficient delivery of high quality legal services to eligible clients and to improve opportunities for low-income persons. Through the proposed competitive bidding system, qualified attorneys and entities would be provided an opportunity to compete for grants and contracts to deliver a full range of high quality legal services in service areas determined by the Corporation. Competitive bidding is also intended to encourage recipients to improve their performance in delivering legal services.

The competitive system envisioned in this regulation is intended to encourage realistic and responsible bids aimed toward the provision of quality legal services. Applicants should submit proposals that favor cost-effectiveness rather than cost and a system that provides a full range of legal assistance rather than fragmented services.

Finally, the rule provides authority for the Corporation to modify the timetables and other provisions of the system to conform to requirements imposed by law.

A section-by-section discussion of the proposed rule is provided below.

Section 1634.1 Purpose

This section sets out the purpose of the proposed rule, which is to encourage the efficient and effective delivery of high quality legal services to eligible clients through an integrated system of legal services providers by providing opportunities for qualified attorneys and entities to compete for grants and contracts and by encouraging recipients to improve their performance in delivering legal assistance. The section also indicates that the system of competition will preserve local control over resource allocation and program priorities, and minimize disruptions when there is a change in providers in the delivery of legal services to eligible clients within a service area.

Section 1634.2 Definitions

This section defines key terms used in the regulation. A "review panel" is defined to include, at a minimum, lawyers experienced in and knowledgeable about the delivery of legal assistance to low-income persons and eligible clients or representatives of low-income community groups. The definition prohibits any person from membership on a review panel that has a financial conflict of interest with or has, within the last five years, been employed by or has been a board member of the applicant being reviewed. The definition also contemplates that the Corporation would spell out in greater detail what constitutes a conflict of interest. Although Corporation staff should not be part of review panels, they may facilitate the work of the panels by providing planning and administrative services.

"Qualified applicants" is defined to include recipients and other lawyers or entities qualified to compete.

"Service area" is defined as an area over which there is to be competition and could include all or part of a current recipient's service area or be larger than an area served by a current recipient. The determination of particular services areas for any particular competitive process would be determined by the Corporation.

Finally, "subpopulation of eligible clients" is defined as population groups, such as Native Americans and migrant farm workers, who have been historically recognized as requiring a separate system of delivery in order to provide legal assistance effectively.

Section 1634.3 Competition for Grants and Contracts

This section sets out the framework for competition for grants and contracts awarded under section 1006(a)(1)(A) of the LSC Act and is based on the provisions in HR 1806, the McCollum-Stenholm Bill of 1995, and the language in the House appropriations bill, HR 2076. Paragraph (a) provides that, as of a date certain, all grants and contracts for the direct provision of legal assistance will be awarded by competition. Paragraph (b) provides that the Corporation will determine the service areas or the subpopulations of clients to be served within service areas. Paragraph (c) states that the use of a competitive process for the awarding of the grant or contract for a particular service area, consistent with HR 1806 and HR 2076, will not constitute a termination or denial of refunding pursuant to parts 1606 and 1625 of the Corporation regulations. Paragraph (d) authorizes the Corporation to award more than one grant or contract for all or part of a service area but paragraph (e) states that no grant or contract may be awarded for terms more than five years. Paragraph (e) also clarifies that, if the amount of funding during the period of the grant or contract is reduced as a result of changes in Congressional appropriations, such reductions will not be considered to be the terminations or denials of refunding under Corporation regulations.

Section 1634.4 Announcement of Competition

Paragraph (a) of this section requires the Corporation to publicly announce a competition within a particular service area to current recipients, appropriate bar associations and other interested groups. The Corporation must also publish an announcement in periodicals of State and local bar associations and at least one daily newspaper of general circulation in the area to be served. The timing of the announcements may be dependent upon Congressional directions. Paragraph (b) sets out the general contents for the request for proposals (RFP), but leaves to the Corporation the details of what the RFP will include. The Corporation is required by paragraph (c) to send a copy of the RFP to any person or entity requesting one.

Section 1634.5 Identification of Qualified Applicants for Grants and Contracts

This section lists types of applicants that would qualify to compete under HR 1806 and HR 2076. These include current recipients and other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, private attorneys, groups of private attorneys or law firms, state or local governments and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials. The rule proposes that in order to received an award of a grant or contract, all of the above entities would be required to have, depending on the type of applicant, a governing or policy body that is consistent with the provisions of 45 CFR part 1607, the Corporation's regulations on governing bodies. Such a board or policy is not necessarily mandated by law for § 1634.5(a) (3), (4) and (5). Much will depend on the legislation finally enacted. However, the Corporation seeks comments on whether, as a matter of policy, some governing or policy body should be required for all types of grantees so that all grantees are accountable to and guided by the policy decisions of such bodies.

Section 1635.6

This section contemplates that all applicants, including current recipients, who intend to compete for a grant or contract for a particular service area, will file a notice of intent to compete along with any other additional information determined to be necessary and appropriate by the Corporation. Filing deadlines for the notices shall be specified in the RFP. The information requested will give the Corporation notice of the level of competition and some indication as to whether applicants may need assistance in order to complete a full application.

Section 1634.7

This section sets out the application process and the basic requirements that applicants will have to meet in order to compete for a grant or contract to deliver services in a particular service area. The Corporation is given broad discretion to determine what information is needed to complete a particular application.

Pursuant to paragraph (e), the Corporation may require each applicant to agree in writing that, if the applicant is not selected for the award of a grant or contract, the applicant would not

institute a court action regarding the denial of an award until the applicant has participated in a mediation with the Corporation on the matter. The inclusion of this provision in the rule should not suggest that applicants have any property or hearing rights. It is well established that, absent express statutory language to the contrary or a showing that the applicant's statutory or constitutional rights have been violated, pre-award applicants for discretionary grants have no protected property interests in receiving a grant and thus have no standing to appeal the funding decision by the grantor. *See* Cappalli, Federal Grants and Cooperative Agreements, § 3.28 and *Legal Services Corporation* v. *Ehrlich*, 457 F. Supp. 1058, 1062–64 (D. Md. 1978). Nevertheless, the Corporation could decide that it is productive to mediate a particular matter with the applicant so that the applicant might submit a better application the next time around or at least have a better understanding of the process.

Section 1634.8

This section sets out the selection process to be used by the Corporation when deciding what grants or contracts are to be made to service areas. It requires the Corporation to review all relevant information for each applicant, request any necessary additional information, conduct on-site visits if appropriate to fully evaluate an application and summarize in writing any information not contained in an applicant's application. Monitoring and Compliance reports for current or former grantees that are older than five years would not be reviewed by the Corporation because they would lack relevance to the grantee's current status and would create too great an administrative burden on the Corporation and review panel members.

This section also requires the Corporation to convene a review panel if there is more than one applicant for a particular service area although it could choose to convene a panel when there is only one applicant. Review panels would review the applications and any summaries prepared by the Corporation and would make recommendations to the Corporation regarding awards for particular service areas. This section then requires that the Corporation staff consider the review panel's recommendation and forward a staff recommendation to the Corporation President for a final decision. If the staff recommendation differs from that of the review panel, the staff's written recommendation must include the recommendations of the review panel as well as an explanation of why the recommendations differ.

The Corporation staff could recommend that the President make an award up to five years or, if there is no applicant for a service area or no applicant meets the criteria to receive a grant, paragraph (c) makes it clear that the Corporation has discretion to determine how to provide for the provision of legal assistance to the service area. Among other choices, the Corporation could put a current grantee on month-to-month funding in order to conduct a new competition or enlarge the service area of a neighboring grantee.

Finally, this rule provides that the President is to make final decisions of what grants will be awarded and for how long (although not exceeding five years). The Corporation is then required to notify all applicants in writing of the President's decisions.

Paragraph (d) provides that the Corporation shall not give any preference to current or previous recipients of funds when awarding grants and contracts under the competitive bidding system.

Section 1634.9

This section sets out the selection criteria that the Corporation will use in selecting recipients for the service areas subject to competition. These criteria include those specified in HR 1806 and HR 2706 as well as additional criteria taken from the provisions of the LSC Act and regulations and from the Performance Measures which the Corporation has developed to measure the performance of recipients.

Subsection (a) requires each applicant to demonstrate an understanding of the basic legal needs of the eligible clients in the area served.

Subsection (b) requires each applicant to demonstrate that its delivery approach adheres to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor. Among other things, applicant's ability to meet this criterion could be demonstrated by information regarding the applicant's experience with the delivery of the type of legal assistance contemplated under the grants or contracts.

Subsection (c) requires that, where applicable, the applicant's governing board or policy body meets or will meet all applicable statutory, regulatory or other legal requirements.

Subsection (d) requires that the applicant demonstrate how it will comply with applicable provisions of the law and LSC regulations. Among other things, the applicant's past experience of compliance with the Corporation or other funding sources or regulatory agencies would be evidence of the applicant's ability to comply with this criterion.

Subsection (e) is taken from HR 1806 and requires that the Corporation consider the reputations of the applicant's principals.

Subsection (f) requires applicants to demonstrate their capacity to provide high quality, effective and effective legal services through an integrated delivery system, such as a capacity of the applicant to develop non-Corporation funds and to engage in collaborative efforts with other organizations involved in serving or assisting eligible clients.

Subsection (g) requires that applicants who are not current recipients demonstrate how they will continue service to clients with pending matters.

Subsection (h) focuses on institutional conflicts of interest of the applicant with the client community. Institutional conflicts could prevent applicants from being able to deliver the full range of legal services necessary to address the basic legal needs of clients. Applicants must show that they would not be required by such conflicts to refuse to provide representation on particular cases that are of high priority to the client community because the applicant is not permitted by a funding source independent of LSC to provide such assistance.

Section 1634.10

This section provides for transition steps that the Corporation may take when a current recipient is replaced by another applicant. Under subsection (a)(1), funding can be provided to enable a current recipient to complete cases, or withdraw or transfer such cases to the new recipient or other appropriate legal services provider. Subsection (a)(2) authorizes the Corporation to ensure the appropriate disposition of real and personal property of the current recipient which was purchased in whole or in part with Corporation funds. Subsection (b) provides that the Corporation can use slope funding if necessary to ensure effective and efficient use of Corporation funds during the early months of its grant. Such funding was used effectively in past years when new grantees were funded and helped prevent the accumulation of excessive fund balances.

Section 1634.11

This section provides that the President may waive or amend certain parts of the regulations, including the timetables established thereunder, in order to comply with requirements imposed by law on the awards of grants and contracts for a particular fiscal year. This is necessary, for example, because HR 2076 requires that LSC use a competitive bidding system for grants and contracts to be awarded for 1996. It will be impossible for LSC to comply with all of the provisions of this part and still issue grants by January of 1996. For example, if the House requirements remain in the appropriation legislation, it will be impossible to use review panels or require a notice of intention to compete. The Corporation seeks comments on whether any other sections of the rule should be waived.

List of Subjects in 45 CFR Part 1634

Contracts, Grants, Legal services.

For the reasons set out in the preamble, LSC proposes to amend 45 CFR Ch. XVI by adding part 1634.

PART 1634—COMPETITIVE BIDDING FOR GRANTS AND CONTRACTS

Sec.
1634.1 Purpose.
1634.2 Definitions.
1634.3 Competition for grants and contracts.
1634.4 Announcement of competition.
1634.5 Identification of qualified applicants for grants and contracts.
1634.6 Notice of intent to compete.
1634.7 Application process.
1634.8 Selection process.
1634.9 Selection criteria.
1634.10 Transition provisions.
1634.11 Emergency procedures and waivers.

Authority: 42 U.S.C. 2996e(a)(1)(A).

§ 1634.1 Purpose.

This part is designed to improve the delivery of legal assistance to eligible clients through the use of a competitive system to award grants and contracts for the delivery of legal services. The purpose of such a competitive system is to:

(a) Encourage the effective and efficient delivery of high quality legal services to eligible clients that is consistent with the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor through an integrated system of legal services providers;

(b) Provide opportunities for qualified attorneys and entities to compete for grants and contracts to deliver high quality legal services to eligible clients;

(c) Encourage ongoing improvement of performance by recipients in providing high quality legal services to eligible clients;

(d) Preserve local control over resource allocation and program priorities; and

(e) Minimize disruptions in the delivery of legal services to eligible clients within a service area during a transition to a new provider.

§ 1634.2 Definitions.

(a) *Qualified applicants* are those persons, groups or entities described in § 1634.5(a) of this part who are eligible to submit notices of intent to compete and applications to participate in a competitive bidding process as described in this part.

(b) *Review panel* means a group of individuals who are not Corporation staff but who are engaged by the Corporation to review applications and make recommendations regarding awards or contracts for the delivery of legal assistance to eligible clients. Review panels must include, at a minimum, lawyers experienced in and knowledgeable about the delivery of legal assistance to low-income persons, and eligible clients or representatives of low-income community groups. No person may serve on a review panel for any applicant with whom the person has a financial interest or ethical conflict; nor may the person have been a board member of or employed by such applicant in the past five years.

(c) *Service area* is the area defined by the Corporation to be served by grants or contracts to be awarded on the basis of a competitive bidding process. A service area is defined geographically and may consist of all or part of the area served by a current recipient, or it may include an area larger than the area served by a current recipient.

(d) *Subpopulation of eligible clients* includes Native Americans and migrant farm workers and may include other groups of eligible clients that, because they have special legal problems or face special difficulties of access to legal services, might better be served by a separate system to deliver legal assistance in order to serve that client group effectively.

§ 1634.3 Competition for grants and contracts.

(a) After the effective date of this part, all grants and contracts for legal assistance awarded by the Corporation under section 1006(a)(1)(A) of the LSC Act shall be subject to the competitive bidding process described in this part. No grant or contract for the delivery of legal assistance shall be awarded by the Corporation for any period after ______[1] unless the recipient of that grant has been selected on the basis of the competitive bidding process described in this part.

(b) The Corporation shall determine the service area to be covered by grants or contracts and shall determine whether the population to be served will consist of all eligible clients within the service area or a specific subpopulation of eligible clients within one or more service areas.

(c) The use of the competitive bidding process to award grant(s) or contract(s) shall not constitute a termination or denial of refunding of financial assistance to a current recipient pursuant to parts 1606 and 1625 of this chapter.

(d) The Corporation may award more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area, provided that, to the maximum extent possible, such grants and contracts are awarded so as to ensure that all eligible clients within the service area will have access to a full range of legal services in accordance with the LSC Act.

(e) In no event may the Corporation award a grant or contract for a term longer than five years, and the amount of funding provided annually under each such grant or contract is subject to changes in Congressional appropriations or restrictions on the use of those funds by the Corporation. A reduction in a recipient's annual funding required as a result of a change in the law or a reduction in funding appropriated for the Corporation shall not be considered a termination or denial of refunding under parts 1606 or 1625 of this chapter.

§ 1634.4 Announcement of competition.

(a) The Corporation shall give public notice that it intends to award a grant or contract for a service area on the basis of a competitive bidding process and shall take appropriate steps to announce the availability of such a grant or contract in the periodicals of State and local bar associations and shall publish a notice of the Request For Proposals (RFP) in at least one daily newspaper of general circulation in the area to be served under the grant or contract. In addition, the Corporation shall notify current recipients, other bar associations, and other interested groups within the service area of the availability of the grant or contract and shall conduct such other outreach as the Corporation determines to be appropriate to ensure that interested parties are given an opportunity to participate in the competitive bidding process.

(b) The Corporation shall issue an RFP which shall include information regarding: Who may apply; application procedures; the selection process; selection criteria; the service areas that will be the subject of the competitive bidding process; the amount of funding available for the service area, if known; applicable timetables and deadlines; and the LSC Act, regulations, guidelines and instructions and any other applicable federal law. The RFP may also include any other information that the Corporation determines to be appropriate.

(c) The Corporation shall make available a copy of the RFP to any person, group or entity that requests a copy in accordance with procedures established by the Corporation.

§ 1634.5 Identification of qualified applicants for grants and contracts.

(a) The following persons, groups and entities are eligible to submit a notice of intent to compete and an application to participate in the competitive bidding process:

(1) Current recipients;

(2) Other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients;

(3) Private attorneys, groups of attorneys or law firms (except that no private law firm that expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public may be awarded a grant or contract under the LSC Act);

(4) State or local governments;

(5) Substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

(b) All persons, groups and entities listed in paragraph (a) of this section must have a governing or policy body consistent with the requirements of part 1607 of this Chapter or other applicable law.

(c) Applications may be submitted jointly by more than one qualifying individual, group or entity.

§ 1634.6 Notice of intent to complete.

(a) In order to participate in the competitive bidding process, an applicant must submit a notice of intent to compete on or before the date designated by the Corporation in the RFP. The Corporation may extend the date if necessary to take account of special circumstances or to permit the Corporation to solicit additional notices of intent to compete.

(b) Either at the time or prior to the filing of the notice of intent to complete, each applicant must provide the Corporation with the following information as well as any additional information that the Corporation determines is appropriate:

(1) Names and resumes of principals and key staff;

(2) Names and resumes of current and proposed governing board or policy body members and their appointing organizations;

(3) Initial description of area proposed to be served by the applicant and the services to provided.

§ 1634.7 Application process.

(a) The Corporation shall set a date for receipt of applications and shall announce the date in the RFP. The date shall afford applicants adequate opportunity, after filing the notice of intent to compete, to complete the application process. The Corporation may extend the application date if necessary to take account of special circumstances.

(b) The application shall be submitted in a form to be determined by the Corporation.

(c) A completed application shall be include all of the information requested by the RFP. It may also include any additional information needed to fully address the selection criteria, and any other information requested by the Corporation. In complete applications will not be considered for competition by the Corporation.

(d) The Corporation shall establish a procedure to provide notification to applicants of receipt of the application.

(e) The Corporation may require that, as a condition of being an applicant, an applicant must agree in writing that, prior to instituting any court action regarding a dispute with the Corporation or its employees arising from the application or the Corporation's action regarding the application, the applicant will participate in mediation with a representative of the Corporation. Mediation procedures shall be designed by the Corporation to provide for the convenience of the parties and to encourage the expeditious resolution of the applicant's concerns. The use of such mediation procedures should not be interpreted to suggest that applicants have any property or hearing rights pursuant to the competitive process.

§ 1634.8 Selection process.

(a) After receipt of all applications for a particular service area, Corporation staff shall:

(1) Review each application and any additional information that the Corporation has regarding each applicant, including for any applicant that is or includes a current or former recipient, past monitoring and compliance reports, performance evaluations and other pertinent records for the past five years;

(2) Request from an applicant and review any additional information that the Corporation determines is appropriate to evaluate the application fully;

(3) Conduct one or more on-site visits to an applicant if the Corporation determines that such visits are appropriate to evaluate the application fully;

(4) Summarize in writing information regarding the applicant that is not contained in the application if appropriate for the preview process; and

(5) Unless there is only one applicant for a particular service area and the Corporation therefore determines that use of a review panel is not appropriate, convene a review panel to:

(i) Review the applications and the summaries prepared by the Corporation staff. (The Corporation staff shall also identify other information reviewed by the Corporation and which the review panel may request in order to evaluate the applications fully); and

(ii) Make a written recommendation to the Corporation regarding the award of grants or contracts from the Corporation for a particular service area.

(6) After considering the recommendation made by the review panel, if a review panel was convened, make a staff recommendation to the Corporation President. If the staff recommendation differs from that of the review panel, the staff recommendation shall include the recommendation of the review panel and an explanation of the basis for the staff recommendation.

(b) After reviewing the written recommendations, the President shall select the applicants to be awarded grants or contracts from the Corporation and the Corporation shall notify each applicant in writing of the President's decision regarding each applicant's application. The President of the Corporation shall not make an award of a grant or contract for a term longer than five years.

(c) In the event that there are no applicants for a service area or the Corporation determines that no competitor meets the criteria and therefore determines not to award a grant for a particular service area, the Corporation has discretion to determine how to provide the provision of legal assistance to the service area under competition, including but not limited to, enlarging the service area of a neighboring program or putting a current recipient on month-to-month funding in order to permit the Corporation to conduct a new competition.

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[1] The date will depend upon the appropriation or reauthorization provisions that are enacted into law.

(d) In selecting recipients of awards for grants or contracts under this part, the Corporation shall not grant any preference to current or previous recipients of funds from the Corporation.

§ 1634.9 Selection criteria.

The Corporation shall consider the following criteria in selecting recipients.

(a) Whether the applicant has a full understanding of the basic legal needs of the eligible clients in the area to be served;

(b) The quality, feasibility and cost-effectiveness of the applicant's legal services delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor, as evidenced by, among other things, the applicant's experience with the delivery of the type of legal assistance contemplated under the proposal;

(c) Whether the applicant's governing or policy body meets or will meet all applicable requirements of the LSC Act, regulations, guidelines, instructions and any other requirements of law;

(d) Applicant's capacity to comply with all other applicable provisions of the LSC Act, rules, regulations, guidelines and instructions, as well as with ethical requirements and any other requirements imposed by law. Evidence of the applicant's capacity to comply with this criterion may include, among other things, the applicants compliance experience with the Corporation or other funding sources or regulatory agencies, including but not limited to federal or state agencies, bar associations or foundations, courts, IOLTA programs, and private foundations;

(e) The reputations of the applicant's principals and key staff;

(f) The applicant's knowledge of the various components of the legal services delivery system in the State and its willingness to coordinate with them as appropriate to assure the availability of a full range of legal assistance, including its capacity to:

(1) develop and increase non-Corporation resources,

(2) cooperate with State and local bar associations, private attorneys and pro bono programs to increase the involvement of private attorneys in the delivery of legal assistance and the availability of pro bono legal services to eligible clients, and

(3) have knowledge of and cooperate with other services providers, community groups, public interest organizations and human services providers in a manner that is consistent with the local ethical requirements;

(g) Applicant's capacity to ensure continuity in client services and representation of eligible clients with pending matters.

(h) Applicant does not have known or potential conflicts of interest, institutional or otherwise, with client community and demonstrates a capacity to protect against such conflicts that may arise during the term of the grant or contract.

§ 1634.10 Transition provisions.

(a) When the competitive bidding process results in the award of a grant or contract to an applicant other than the current recipient to serve the area currently served by that recipient, the Corporation may, if the law permits;

(1) Provide continued funding to the current recipient, for a period and at a level to be determined by the Corporation after consultation with the recipient, to ensure the prompt and orderly completion of or withdrawal from pending cases or matters or the transferral of such cases or matters to the new recipient or to other appropriate legal services providers in a manner consistent with the rules of ethics or professional responsibility for the jurisdiction in which those services are being provided;

(2) Ensure, after consultation with the recipient, the appropriate disposition of real and personal property purchased by the current recipient in whole or in part with Corporation funds.

(b) Awards of grants or contracts for legal assistance to any applicant that is not a current recipient may, in the Corporation's discretion, provide for incremental increases in funding up to the annualized level of the grant or contract award in order to ensure that the applicant has the capacity to use Corporation funds in an effective and efficient manner.

§ 1634.11 Emergency Procedures and Waivers

The President of the Corporation may waive the requirements of § § 1634.6 and 1634.8(a)(3) and (5), when necessary to comply with requirements imposed by law on the awards of grants and contracts for a particular fiscal year.

Dated: September 18, 1995.

Suzanne B. Glasow,

Senior Counsel for Operations and Regulations.

[FR Doc. 95–23491 Filed 9–20–95; 8:45 am]

BILLING CODE 7050–01–M

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45 CFR Part 1635

Timekeeping Requirement

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule requires all recipients of Legal Services Corporation ("LSC" or "Corporation") funds to account for the time spent on all cases, matters and other activities by their attorneys and paralegals, whether funded by the Corporation or by other sources.

DATES: Comments must be submitted on or before October 23, 1995.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, at (202) 336–8810.

SUPPLEMENTARY INFORMATION: On June 25, 1995, in order to improve the accountability of recipients for their Corporation funds, and in response to concerns expressed during congressional hearings, the LSC Board of Directors ("Board") adopted a resolution requiring Corporation staff to prepare a regulation specifying a time and recordkeeping system for implementation by LSC recipients. On September 8, 1995, the Board's Operations and Regulations Committee ("Committee") held public hearings on proposed 45 CFR part 1635. After adopting several changes to the proposed rule, the Committee voted to publish the proposed rule in the **Federal Register** for notice and comment.

This proposed rule requires recipients to account for the time spent on all cases, matters and other activities by their attorneys and paralegals. These requirements apply whether the case, matter or activity is funded by the Corporation or by other sources. Such timekeeping is not now required under 45 C.F.R. part 1630.

Perhaps a quarter of current Corporation recipients already maintain time records that meet most or all of the conditions of the proposed rule. They are already able to avail themselves of the potential benefits of timekeeping to recipients, such as improved supervisory information, better cost estimation in bidding for other funds, enhanced control of priority implementation by their local boards of directors and more informative reports to grantors and the public.

The Corporation is mindful of the costs which this regulation will impose

on its recipients, especially those who currently do not have the capacity to maintain the time records required by this proposed rule. Timekeeping is time consuming, and record keeping systems have real costs. Nevertheless, despite the possibility that implementation of this proposed rule will reduce a recipient's LSC-funded capacity for client services by one- or two-percent or more, the Corporation has concluded that timekeeping by attorneys and paralegals will materially improve recipient accountability for Corporation funds.

If adopted, this part shall be effective January 1, 1996.

A section-by-section discussion of the proposed rule is provided below.

Section 1635.1 Purpose

This section sets out the purpose of the proposed rule: to improve recipient accountability for the use of funds provided by the Corporation. This section also sets out the manner in which the proposed rule achieves its stated purpose: by assuring supporting documentation of allocations of expenditures of Corporation funds, by enhancing recipients' ability to determine costs, and by increasing the information available to the Corporation for assuring recipient compliance.

Section 1635.2 Definitions

This section defines "case", "matter" and "activity," the functions of a program for which time records are required to be kept. The definitions are formulated so as to cover all allocations of recipients. Some examples of "matters" are education of eligible clients and development of written materials explaining legal rights and responsibilities. "Administrative and general" is a catchall category within "activity." It is designed to encompass everything that does not fall within cases or matters or fund-raising activities, and would include, for example, skills training and professional activities.

Section 1635.3 Timekeeping Requirement

This section sets out the timekeeping requirement. It is intended to require all recipients to account for the time spent on all cases, matters and other activities by their attorneys and paralegals, whether funded by the Corporation or by other sources. Recipients must account for one hundred percent of attorney and paralegal time spent in the course of their employment, even if the time is spent outside normal business hours. Allocation of costs based on time and other records continues to be governed by 45 C.F.R. part 1630, which requires a reasonable basis for allocations of expenses to all funds.

The Corporation does not prescribe either manual or automated timekeeping systems, nor specific report formats or contents. Each recipient will need to determine the appropriate matters and activities for which time will be kept, keeping in mind its particular service patterns. In order to assist recipients, the Corporation plans to make available this fall a manual of forms and operating systems already in use by some recipients.

Section 1635.4 Administrative Provisions

This section advises recipients of the Corporation's access to the time records required by this part. Since these records will be available for examination by auditors and representatives of the Corporation, they should be maintained in a manner consistent with the attorney-client privilege and all applicable rules of professional responsibility. As a practical matter, this may mean that client names should not appear in time records.

List of Subjects in 45 CFR Part 1635

Legal services, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, LSC proposes to amend 45 CFR chapter XVI by adding part 1635 as follows:

PART 1635—TIMEKEEPING REQUIREMENT

Sec.
1635.1 Purpose.
1635.2 Definitions.
1635.3 Timekeeping Requirement.
1635.4 Administrative Provisions.

Authority: 42 U.S.C. 2996e(b)(1)(A), 2996g(a), 2996g(b), 2996g(e).

§ 1635.1 Purpose.

This part is intended to improve recipient accountability for the use of funds provided by the Corporation by:

(a) assuring that allocations of expenditures of Corporation funds pursuant to 45 C.F.R. part 1630 are supported by accurate and contemporaneous records of the cases, matters and activities for which the funds have been expended;

(b) enhancing the ability of recipients to determine the cost of specific functions; and

(c) increasing the information available to the Corporation for assuring recipient compliance with federal law and Corporation rules and regulations.

§ 1635.2 Definitions.

As used in this part—

(a) "Activity" means all other actions of or by a recipient, including fund-raising and administrative and general, which are not cases or matters.

(b) "Case" means the provision of advice to representation of one or more clients.

(c) "Matter" means the provision of other program services that do not involve advice to or representation of one or more clients.

§ 1635.3 Timekeeping Requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters or activities. The allocation of all expenditures must be carried out in accordance with 45 C.F.R. part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter or activity. Time records must be created contemporaneously and must account for time in increments not greater than one-quarter of an hour which aggregate to all of the efforts of the attorneys and paralegals for which compensation is paid.

§ 1635.4 Administrative Provisions.

Time records required by this section shall be available for examination by auditors and representatives of the Corporation, and should be maintained in a manner consistent with the attorney-client privilege and the rules of professional responsibility applicable in the local jurisdiction.

Dated: September 18, 1995.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 95–23489 Filed 9–20–95; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91–35; FCC 95–374]

Operator Service Access and Payphone Compensation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted a Notice of Proposed Rulemaking ("Notice") seeking comment on tentative proposals for implementing a per-call system of compensation for the largest operator services providers

("OSPs"), in lieu of the current flat-rate compensation system. Under the Commission's current rules, certain OSPs pay competitive payphone owners ("PPOs") a flat-rate of $6 per payphone per month for originating interstate access code calls. An "access code" is "a sequence of numbers that, when dialed, connects the caller to the OSP associated with that sequence, as opposed to the OSP presubscribed to the originating line." In particular, this Notice seeks comment on how individual access calls could be tracked and the appropriate per-call compensation amount.

DATES: Comments must be received on or before October 10, 1995; replies must be received on or before October 31, 1995.

ADDRESSES: Comments and replies must be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554; one copy shall also be filed with the Commission's contractor, International Transcription Services, Inc. (ITS, Inc.) 2100 M Street, NW., Suite 140, Washington, DC 20037 (202–857–3800). The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, 202–418–0960, Enforcement Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Notice

1. Ability of IXCs to Track Interstate Access Code Calls

The Commission believes that tracking 1–800 and 1OXXX access code calls through the use of automatic number identification (ANI) and the special billing treatment "07" code would provide OSPs with a means of paying compensation to PPOs on a per-call basis. Because this solution to the problem of tracking access code calls builds on an OSP's existing capabilities, we believe that it would be relatively easy and inexpensive to administer for those OSPs that receive a large number of access code calls. The Commission notes that AT&T and Sprint have already agreed to meet their compensation obligations through this method.

According to data submitted by the American Public Communications Council ("APCC"), the volume of 1–950 access code calls that cannot be tracked directly does not appear to be so significant as to justify rejection of a per-call compensation mechanism. The Commission tentatively concludes that it would be reasonable to require OSPs that utilize 1–950 access to rely upon a usage-based surrogate to determine their per-call compensation obligations. The Commission also tentatively finds that such a surrogate could be based on the ratio of 1–950 access code calls to the total access code calls received by OSPs. The Commission tentatively concludes that the ratios set forth by APCC in its petition are appropriate for calculating the compensation obligations of those OSPs that utilize 1–950 access. The Commission encourages parties, particularly MCI and LDDS, to comment on this tentative conclusion and to submit data supporting alternative ratios. The Commission also tentatively concludes that the relatively minor percentage of competitive payphones in non-equal access areas, as estimated by APCC, which do not transmit the ANI required to track access phone calls, should be subject to status quo flat-rate compensation. The Commission invites parties to comment on the accuracy of APCC's estimates and to suggest alternative approaches for compensating PPOs for access code calls originating from non-equal access areas.

2. IXCs Required to Pay Per-Call Compensation

The Commission tentatively concludes that the largest OSPs should be required to pay compensation to PPOs on a per-call basis. The Commission notes that AT&T and Sprint have already begun paying per-call compensation. In the absence of a showing to the contrary, the Commission believes that the two other OSPs that currently have annual toll revenues exceeding $1 billion dollars should be able to pay compensation on a per-call basis without incurring significantly different administrative costs that those associated with the current per-phone mechanism. The Commission invites parties to comment on these tentative conclusions. The Commission also tentatively concludes that the flat-rate compensation obligations of the OSPs not meeting the annual revenue threshold should not change as a result of the implementation of per-call compensation for the largest OSPs. However, the Commission believes that such OSPs should be given the opportunity to pay compensation on a per-call basis, at their option. In addition, the Commission proposes to continue to monitor call-tracking capabilities within the industry for the purpose of moving in the future to a per-call compensation mechanism for all OSPs that receive access code calls.

3. Proposed Compensation Amount

The Commission established a range of reasonable compensation rates in the *Second Report and Order*, 57 FR 21038–01 (1992). The proposed rate of $.25 per call, identical to that negotiated by AT&T and APCC, is clearly within that range. The Commission sees no reason to reconsider at this juncture its conclusions about the reasonableness of possible compensation rates, unless the participants in this docket submit useful data that differ significantly from the information that the Commission previously examined in this proceeding. The Commission tentatively concludes that a per-call rate will lead to a more efficient compensation mechanism through which both PPOs and OSPs ultimately will benefit. In addition, consumers will benefit because the per-call rate will encourage PPOs to place their payphones in locations that are likely to generate the most calls. The parties are invited to comment on these tentative conclusions.

4. Compensable Access Code Calls

The definition of "acess code" set for in the Communications Act encompasses "sequence[s] of numbers" such as 1–800—COLLECT, 1–800–OPERATOR, and others that connect a caller to an OSP which is not presubscribed to the originating line. The Commission tentatively concludes that OSPs must pay per-call compensation for 1–800 or 1–950 access code calls, whether or not the dialing sequences were in use at the time the Commission adopted its previous orders in this docket. The Commission notes that AT&T has already agreed to pay APCC per-call compensation on the various 1–800 dialing sequences that allow callers to reach its operator services.

5. Functioning of Per-Call Compensation Mechanism

In the Second Report and Order, the Commission prescribed the existing direct-billing arrangement because it placed the burden of implementing the compensation mechanism on those parties that receive the benefits of access code calls—IXCs and PPOs. The Commission tentatively concludes that this direct-billing arrangement should be maintained with the simple addition of requiring each OSP to send back to each PPO a statement indicating the number of access code calls that it has received from each of that PPO's competitive payphones. As before, the Commission continues to leave the specific details of the billing arrangement for the parties to determine. The Commission believes that this slight modification of the *status quo* most efficiently implements payments of per-call compensation by the largest OSPs.

6. Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et seq.* (1981), the Commission has prepared a Regulatory Flexibility Analysis of the expected impact on small entities resulting from the policies and proposals set forth in the *Notice*. The full analysis is contained within the *Notice*. The Secretary shall send a copy of the *Notice* to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

7 Ex Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda, provided they are disclosed as provided in Commission rules.

All interested may file comments on the per-call compensation issues by October 10, 1995, and reply comments by October 31, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of comments and reply comments. If participants want each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. The petition, comments, and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 230) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Copies of the petition and any subsequently filed documents in this matter may be obtained from ITS, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Ordering Clauses

It is Ordered, pursuant to Sections 1, 4(i)–4(j), 201–205, 226, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 226, and 303(r), that a Further Notice of Proposed Rulemaking is Issued.

It is further ordered That the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures, if necessary, to provide for a fuller record and a more efficient proceeding.

List of Subjects in 47 CFR Part 64

Communications common carriers, Operator service access, Payphone compensation, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–23406 Filed 9–20–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[I.D. 091195A]

South Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) will hold public hearings to solicit comments on management measures for a new Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region (FMP).

DATES: Written comments regarding the issues being discussed at the hearings will be accepted through October 19, 1995.

The hearings are scheduled as follows:

1. Tuesday, September 26, 1995, 7.00 p.m., Cocoa Beach, FL; 2. Wednesday, September 27, 1995, 7.00 p.m., Dania, FL; and 3. Thursday, September 28, 1995, 7.00 p.m., Key West, FL.

ADDRESSES: To send comments, and to request copies of public hearing documents, write to: Susan Buchanan, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699. Copies of a revised draft FMP will be available to the public at the hearings.

The hearings will be held at the following locations:

1. Cocoa Beach—Holiday Inn, 1300 N. Atlantic Avenue, Cocoa Beach, FL 32931; telephone (407) 783–2271;

2. Dania—Sheraton Design Center Hotel, 1825 Griffin Road, Dania, FL 33004; telephone (305) 920–3500; and

3. Key West—Holiday Inn Beachside, 3841 N. Roosevelt Blvd., Key West, SC 29407–4699; telephone (305) 294–2571.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, (803) 571–4366; Fax: (803) 769–4520.

SUPPLEMENTARY INFORMATION: At its meeting of August 21–25, 1995, the SAFMC decided to make changes in its proposed golden crab management program, which will be specified in a revised draft FMP. The SAFMC has decided to hold additional public hearings in order to solicit public views on the revised management measures for inclusion in the FMP.

The FMP management unit is the population of golden crab occurring along the U.S. Atlantic coast from the east coast of Florida to the North Carolina/Virginia border. Other deep-water crabs, such as red crab and jonah crab, are included in the FMP for data collection purposes only; no management actions are planned for these species under the initial FMP. Although all three species of crab are harvested in the Gulf of Mexico and Mid-Atlantic/New England, it is believed that the populations are sufficiently separated from one another to be managed independently.

The following types of management measures for golden crab are under consideration by the SAFMC for inclusion in its final FMP:

(1) Definition of terms, including: Optimum yield, overfishing, and crustacean trap;

(2) Gear controls, including: Use of traps only and a limit on their size, requirements for trap escape gaps, degradable escape panels, use of rope only as trap main line, and requiring that crabs be landed whole;

(3) Measures to ensure conservation of the fishery, including: No retention of females;

(4) Establishment of the following zones in the golden crab fishery:

(A) Northern Zone—North of the Volusia/Flager Line (29° 25′ N. lat.) to the North Carolina/Virginia border;

(B) Mid Zone—29° 25′ to 25° N. lat.; and

(C) Southern Zone—South of 25° N. lat. to the boundary between the areas of jurisdiction of the SAFMC/Gulf of Mexico Fishery Management Council;

(5) Measures to limit access to the fishery. Criteria for access will be as follows: Apply an April 7, 1995, control

date to limit fishery access in the southern and mid-zones, and apply a date of September 1, 1995, as a criterion for limiting fishery access in the northern zone. Criteria for fishery access will be based on demonstrated landings from the Council's area of jurisdiction prior to the dates specified;

(6) Area restrictions, including limiting deployment of traps to depths of 900 ft (295 m) or greater in the northern zone and 700 ft (230 m) or greater in the middle and southern zones;

(7) Bait restrictions to protect snapper and grouper;

(8) Enforcement provisions, including: Vessel permits, and dealer permits;

(9) Collection of information requirements for science and research purposes, such as use of information from sales reports, and logbook requirements, and;

(10) Framework rulemaking procedures to provide administrative flexibility to change management measures in a timely manner.

The Council intends to finalize the FMP at its meeting in Wilmington, NC from October 23–27, 1995. The public will have an opportunity to comment at the full Council session before the Council takes final action to adopt the FMP's management measures. Once finalized, the FMP will be submitted to NMFS for review, approval and implementation. NMFS will provide for a 60-day public comment period on the FMP and a 45-day public comment period on the proposed implementing rule during its 110-day review period.

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by September 21, 1995.

For special accommodations regarding the hearings, contact the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23398 Filed 9–18–95; 12:52 pm]

BILLING CODE 3510–22–F

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50 CFR Part 638

[I.D. 091295A]

Coral and Coral Reefs off the Southern Atlantic States; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs off the Southern Atlantic States (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before November 17, 1995.

ADDRESSES: Comments must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 3, which includes a regulatory impact review, a social impact assessment, and an environmental assessment, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, telephone: 803–571–4366; FAX: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared amendment to a FMP be submitted to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Amendment 3 proposes the following measures: Establish a live rock aquaculture permit system applicable to the exclusive economic zone off the southern Atlantic states (including a prohibition on chipping of aquacultured live rock); prohibit octocoral harvest north of Cape Canaveral, FL; and prohibit anchoring of fishing vessels in the Oculina Bank Habitat Area of Particular Concern.

Proposed regulations to implement Amendment 3 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 15, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23399 Filed 9–18–95; 12:52 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 183

Thursday, September 21, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; David Brownhill; Order Denying Permission To Apply for or Use Export Licenses

On October 6, 1993, David Brownhill (Brownhill) was convicted in the U.S. District Court for the Eastern District of New York of violating the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)) (IEEPA). Specifically, Brownhill was convicted of knowingly and willfully attempting to export and causing to be exported, from the United States to Republic of South Africa, three polygraph machines and one MCM component part, without having first obtained the required validated export license.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. 103–277, July 5, 1994)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1995)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the IEEPA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Brownhill's conviction for violating the IEEPA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Brownhill permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on October 6, 2003. I have also decided to revoke all export licenses issued pursuant to the Act in which Brownhill had an interest at the time of his conviction.

Accordingly, it is hereby Ordered

I. All outstanding individual validated licenses in which Brownhill appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Brownhill's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until October 6, 2003, David Brownhill, 13 Robin Road, Northcliff Ext. 12, Johannesburg, South Africa, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Brownhill by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

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[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act. Because of a recent Bureau of Export Administration reorganization, this responsibility now rests with the Director, Office of Exporter Services. Subsequent regulatory references herein to the "Director, Office of Export Licensing," should be read as meaning "Director, Office of Exporter Services."

V. This Order is effective immediately and shall remain in effect until October 6, 2003.

VI. A copy of this Order shall be delivered to Brownhill. This Order shall be published in the **Federal Register**.

Dated: September 11, 1995.

Eileen M. Albanese,

Acting Director, Office of Export Services.

[FR Doc. 95–23361 Filed 9–20–95; 8:45 am]

BILLING CODE 3510-DT-M

Action Affecting Export Privileges; Edward A. Johnson; Order Denying Permission to Apply for or Use Export Licenses

On August 7, 1995, Edward A. Johnson (Johnson) was convicted in the U.S. District Court for the Southern District of Florida of violating section 38 of the Arms Export Control Act (22 U.S.C.A. 2778 (1990)) (the AECA), among other crimes. Specifically, Johnson was convicted on one count of causing the export of ordnance grade zirconium from the United States to Chile without obtaining the required license or written approval from the U.S. Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1995)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Johnson's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Johnson permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on August 7, 2005. I have also decided to revoke all export licenses issued pursuant to the Act in which Johnson had an interest at the time of his conviction.

Accordingly, it is hereby Ordered

I. All outstanding individual validated licenses in which Johnson appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Johnson's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until August 7, 2005, Edward A. Johnson, 1655 Ferguson Drive, N.W., Albany, Oregon 97321, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving nay commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department aay export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Johnson by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for other person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until August 7, 2005.

VI. A copy of this Order shall be delivered to Johnson. This Order shall be published in the **Federal Register**.

Dated: September 11, 1995.

Eileen M. Albanese,

Acting Director, Office of Exporter Services.

[FR Doc. 95–23362 Filed 9–20–95; 8:45 am]

BILLING CODE 3510-DT-M

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[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act. Because of a recent Bureau of Export Administration reorganization, this responsibility now rests with the Director, Office of Exporter Services. Subsequent regulatory references herein to the "Director, Office of Export Licensing," should be read as meaning "Director, Office of Exporter Services."

Action Affecting Export Privileges; George Rosen

Order Denying Permission To Apply For or Use Export Licenses

In the Matter of: George Rosen, 21–80 33rd Road, Long Island City, New York 11106.

On May 11, 1993, George Rosen (Rosen) was convicted in the U.S. District Court for the Southern District of New York of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act).[1] Specifically, Rosen was convicted on one count of knowingly and willfully exporting and causing to be exported, from the United States to Iran, a polygraph machine and specifically designed parts and accessories, without having first obtained the required validated export license, and with knowledge that the polygraph machine was destined for and would be used for the benefit of Iran, a country to which exports are controlled for foreign policy purposes.

Section 11(h) of the Act, provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1995)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the Act, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Rosen's conviction of violating the Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Rosen permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on May 11, 2003. I have also decided to revoke all export licenses issued pursuant to the Act in which Rosen had an interest at the time of this conviction.

Accordingly, it is hereby Ordered

I

All outstanding individual validated licenses in which Rosen appears or participates, in any manner of capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Rosen's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II

Until May 11, 2003, George Rosen, 21–80 33rd Road, Long Island City, New York 11106, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States of abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III

After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Rosen by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV

As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V

This Order is effective immediately and shall remain in effect until May 11, 2003.

VI

A copy of this Order shall be delivered to Rosen. This Order shall be published in the **Federal Register**.

Dated: September 11, 1995.

Eileen M. Albanese,

Acting Director, Office of Exporter Services.

[FR Doc. 95–23357 Filed 9–20–95; 8:45 am]

BILLING CODE 3510-DT-M

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[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act. Because of a recent Bureau of Export Administration reorganization, this responsibility now rests with the Director, Office of Exporter Services. Subsequent regulatory references herein to the "Director, Office of Export Licensing," should be read as meaning "Director, Office of Exporter Services."

Action Affecting Export Privileges; Philip J. Rosen; Order Denying Permission to Apply for or Use Export Licenses

On March 22, 1995, Philip J. Rosen (Rosen) was convicted in the U.S. District Court for the Eastern District of New York of violating the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)) (IEEPA). Specifically, Rosen was convicted on one count of knowingly and willfully attempting to export and causing to be exported from the United States to the Republic of South Africa, three polygraph machines, without having first obtained the required validated export license.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. 103–277, July 5, 1994)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1995)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Section 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the IEEPA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Rosen's conviction for violating the IEEPA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Rosen permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on March 22, 2005. I have also decided to revoke all export licenses issued pursuant to the Act in which Rosen had an interest at the time of his conviction.

Accordingly, it is hereby Ordered

I. All outstanding individual validated licenses in which Rosen appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Rosen's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until March 22, 2005, Philip J. Rosen, 432 Links Drive East, Oceanside, New York 11572, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Rosen by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until March 22, 2005.

VI. A copy of this Order shall be delivered to Rosen. This Order shall be published in the **Federal Register**.

Dated: September 11, 1995.

Eileen M. Albanese,

Acting Director, Office of Exporter Services.

[FR Doc. 95–23364 Filed 9–20–95; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Swissco Management Group, Inc.; Order Denying Permission To Apply for or Use Export Licenses

On August 7, 1995, Swissco Management Group, Inc. (Swissco) was convicted in the U.S. District Court for the Southern District of Florida of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–377, July 5, 1994)) (the Act),[1] among other crimes. Specifically, Swissco was convicted on one count of exporting zirconium from the United States to Chile in violation of the terms of a U.S. Department of Commerce export license.

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[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act. Because of a recent Bureau of Export Administration reorganization, this responsibility now rests with the Director, Office of Exporter Services. Subsequent regulatory references herein to the "Director, Office of Export Licensing," should be read as meaning "Director, Office of Exporter Services."

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1991)).

Section 11(h) of the Act, provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1995)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the Act, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Swissco's conviction for violating the Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Swissco permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of its conviction. The 10-year period ends on August 7, 2005. I have also decided to revoke all export licenses issued pursuant to the Act in which Swissco had an interest at the time of its conviction.

Accordingly, it is hereby Ordered

I. All outstanding individual validated licenses in which Swissco appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Swissco's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until August 7, 2005, Swissco Management Group, Inc., 15485 Eagle Nest Lane, #210, Miami Lakes, Florida 33014, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing or such commodities or technical data.

III. After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Swissco by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying its export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until August 7, 2005.

VI. A copy of this Order shall be delivered to Swissco. This Order shall be published in the **Federal Register**.

Dated: September 11, 1995.

Eileen M. Albanese,

Acting Director, Office of Exporter Services.

[FR Doc. 95–23363 Filed 9–20–95; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

Docket A(32b1)–17–95

Foreign-Trade Zone 84—Houston, TX, Subzone 84J, Shell Oil Company (Oil Refinery Complex); Request for Modification of Restrictions

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, pursuant to § 400.32(b)(1) of the Board's regulations, for modification of the restrictions in FTZ Board Order 669 (58 FR 68116, 12/23/93) authorizing Subzone 84J at the crude oil refinery complex of Shell Oil Company (Shell) in Harris County, Texas. The request was formally filed on September 13, 1995.

The Board Order in question was issued subject to certain standard restrictions, including one that required the election of privileged foreign status on incoming foreign merchandise. The zone grantee has requested that the latter restriction be modified so that Shell would have the option available under the FTZ Act to choose non-privileged foreign (NPF) status on foreign refinery inputs used to produce certain petrochemical feedstocks and by-products, including the following: Benzene, toluene, xylenes, other hydrocarbon mixtures, distillates/residual fuel oils, kerosene, naphthas, liquified petroleum gas, ethane, methane, propane, butane, ethylene, propylene, butylene, butadiene, petroleum coke, asphalt, sulfur, and sulfuric acid.

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[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act. Because of a recent Bureau of Export Administration reorganization, this responsibility now rests with the Director, Office of Exporter Services. Subsequent regulatory references herein to the "Director, Office of Export Licensing," should be read as meaning "Director, Office of Exporter Services."

The request cites the FTZ Board's recent decision in the Amoco, Texas City, Texas case (Board Order 731, 60 FR 13118, 3/10/95) which authorized subzone status with the NPF option noted above. In the Amoco case, the Board concluded that the restriction that precluded this NPF option was not needed under current oil refinery industry circumstances.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 23, 1995.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: September 15, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–23486 Filed 9–20–95; 8:45 am]

BILLING CODE 3510–DS–P

A–538–802

Shop Towels From Bangladesh; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On December 28, 1994, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on shop towels from Bangladesh. The review covers six producers and/or exporters of this merchandise to the United States and the period September 21, 1991, through February 28, 1993.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have made certain changes for the final results. The review indicates the existence of dumping margins for certain firms during the review period.

EFFECTIVE DATE: September 21, 1995.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1993, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 9688) the antidumping duty order on shop towels from Bangladesh. Milliken & Company (Milliken), the petitioner, requested in accordance with 19 C.F.R. 353.22 that we conduct an administrative review of the period September 12, 1991, through February 28, 1993. We published a notice of initiation of administrative review for this period on May 6, 1993 (58 FR 26960). On December 28, 1994, we published the preliminary results of the administrative review (59 FR 66910).

The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references the provisions as they existed on December 31, 1994.

Scope of Review

The product covered by this administrative review is shop towels. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100 percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedule (HTS). Although HTS subheadings are provided for convenience and customs purposes, our written description of this proceeding remains dispositive.

The administrative review covers six firms for the period September 21, 1991, through February 28, 1993: Eagle Star Mills, Ltd. (Eagle Star); Greyfab (Bangladesh) Ltd. (Greyfab); Hashem International (Hashem); Khaled Textile Cotton Mills, Ltd. (Khaled); Shabnam Textiles (Shabnam); and Sonar Cotton Mills (BD), Ltd. (Sonar).

Analysis of Comments Received

The Department gave interested parties the opportunity to comment on the preliminary results. At the request of both respondents and petitioner, we held a hearing on February 13, 1995. We received case and rebuttal briefs from the petitioner and respondents Greyfab, Hashem, Khaled, Shabnam, and Sonar.

General Comments

Comment 1: Respondents Greyfab, Khaled and Sonar contend that the Department should not adjust their constructed value (CV) by calculating an imputed interest expense on the loans made by directors to their companies during the initial stages of production. Respondents argue that such interest-free loans represent a form of equity infusion and are the typical form of capitalization in the Bangladesh shop towel industry for companies which do not finance operations through bank loans. Respondents note the use of this form of capitalization by three respondents as evidence of industry practice in Bangladesh. Respondents claim that the actual interest expense recorded on their financial statements should be used for CV, since this reflects the actual costs the companies incurred. Further, respondents contend that the Department did not have statutory authority to apply the "best evidence available" provision for these related party transactions to the general expenses, which include interest expenses. Moreover, respondents maintain that, in calculating CV, the Department has not established a precedent for imputing interest expense on interest-free loans.

Finally, respondents assert that, if the Department considers it appropriate to impute interest expense on the director loans, it should not rely on the short- or medium-term interest rate used to compute CV for the preliminary results of review. Rather, respondents contend that, because the loans do not have fixed repayment schedules, they are designed to meet the three companies' long-term financing needs. As such, respondents argue that the Department should impute interest expense based on an interest rate charged on a long-term bank loan to one of the other two remaining respondents. According to Greyfab, Khaled and Sonar, this bank loan rate, charged by an unrelated party, represents an appropriate interest rate.

Petitioner argues that the Department properly imputed interest expense on interest-free loans from related parties and that this is consistent both with related party transaction provisions in the statute and with the Department's normal practice. Petitioner also states that the director loans are not equity capital, as claimed by the respondents. In petitioner's view, the CV the Department uses in its margin

calculations should reflect the fair market cost of this type of loan. Petitioner further asserts that, contrary to respondents' claim, director loans are not the customary form of financing shop towel production in Bangladesh, since two of the five respondents do not have such loans, and that other alternative forms of financing, including bank loans, are normally used. Petitioner contends that the Department used an appropriate short- to medium-term interest rate for the preliminary results. Petitioner argues that the absence of a specified repayment schedule and the use of funds from the loans for start-up costs support the Department's treatment of these loans as short- to medium-term in nature. Petitioner asserts that the Department should use the same interest rate for its final results.

DOC Position: We agree with petitioner. The director loans are identified on the respondents' financial statements as "Loan from Director" and "Director's Loan." Additionally, there is no evidence on the record to support respondents' contention that these amounts should be treated as equity capital and, in fact, equity accounts appear elsewhere on their financial statements. Since we have no basis to reclassify these amounts to equity, we consider them to be loans, consistent with respondents' financial statement treatment. See Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Ecuador, 60 FR 7019, 7039 (February 6, 1995).

We disagree with respondents' assertion that we do not have the statutory authority to apply the "best evidence available" provision to determine the interest rate applicable to these related party transactions. Section 773(e)(2) of the statute permits the Department to use best evidence available to assign an appropriate amount to any element of value, including interest expense, which it believes is not fairly valued. As demonstrated in Final Determination of Sales at Less than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide From the Netherlands, 59 FR 23684, 23689 (May 6, 1994), our practice is to impute interest expense on transactions when the rate charged by a related party lender does not reflect a fair market rate. In this case, we do not consider the respondents' interest-free related party loans to be reflective of the fair market borrowing rate in Bangladesh since such loans typically involve some cost to the borrower. Therefore, we imputed interest expense on these loans using a rate of 15 percent.

We obtained the 15-percent interest rate from the November 1993 version of International Financial Statistics, published by the International Monetary Fund (IMF). The publication describes the rate as representative of the amount Bangladesh banks charge "usually to meet the short- and medium-term financing needs of the private sector" (as shown on page XVIII). Despite their claim that the director loans should be classified as long-term liabilities, respondents only point to the absence of a fixed repayment schedule in support of their claim. We disagree with respondents; in this instance, the absence of a fixed repayment schedule is, in fact, indicative of a short-term demand note because the lender can demand payment on the principal at any time. In addition, there is evidence on the record supporting the position that these amounts should be considered current liabilities, including the significant loan repayments made by Greyfab and Sonar and the statement by respondents that the amounts are refundable when funds become available from company operations.

Finally, we do not believe the alternative interest rate suggested by the respondents is appropriate, as the bank loan to which they refer occurred after the period of review (POR) and the interest rate is adjustable. Accordingly, we consider the IMF rate for short- and medium-term financing to be a reasonable approximation of the fair market borrowing rate in Bangladesh for similar loans.

Comment 2: Khaled claims that the Department's calculation of interest expense on director loans for the preliminary results of review was incorrect. Khaled notes that the Department multiplied the amount of the director loan by the imputed interest rate to obtain a twelve-month interest expense figure and then divided this amount by the cost of goods sold figure from Khaled's audited financial statements to calculate the interest factor. Khaled argues that this is inappropriate because the financial statements cover an eight-month period and claims that the Department should adjust the interest expense figure to reflect an eight-month period.

Petitioner contends that the Department's calculation of interest expense for Khaled is understated. Petitioner states that the Department should use a twenty-month period to calculate interest expense because the director loans were outstanding during a twelve month period in which operations were suspended, plus the eight months immediately following, which were covered by Khaled's financial statements.

DOC Position: Since we have determined that it is appropriate to impute interest on the director loans, we must consider the proper period over which to calculate the imputed interest. It is well-established Department practice to calculate a net interest expense factor based on a respondent's full-year audited [illegible] statements for the yea[illegible] that [illegible] closely corresponds [illegible] R. See, e.g., Final Determinatio[illegible] es at Less Than Fair Value: Canned Pineapple Fruit From Thailand, 60 FR 29553, 29569 (June 5, 1995). Khaled's financial statements include a statement from its auditors expressing an opinion on the profit and loss statement "for the year ended on that date" (February 28, 1993). However, the heading of the profit and loss statement suggests that it covers a period from July 1992 to February 1993. Due to the conflicting evidence in Khaled's financial statements, we were unable to determine with certainty whether the profit and loss statement does, in fact, cover only eight months. Therefore, in accordance with our practice, we computed the interest expense factor by dividing the full year's imputed interest expense by the cost of goods sold figure listed in the respondent's financial statement.

Comment 3: Sonar disagrees with the Department's decision to reject portions of its brief regarding the prior year adjustments it reported on its financial statements for fiscal years 1991, 1992, and 1993. Sonar states that its submission containing these explanations does not represent new factual information, as determined by the Department. Rather, Sonar contends, the submission merely explains and reorganizes data it submitted earlier in the review. In addition, Sonar states that the Department should not apply best information available (BIA) to the company's general expenses because of the unexplained prior year adjustment amounts. Sonar notes that it has substantially cooperated with the Department. Thus, in Sonar's view, it would be unjust for the Department to apply an adverse methodology due to the company's failure to provide a complete response to one question of a supplemental questionnaire.

Sonar asserts that if the Department does use BIA, then it should select a neutral surrogate amount for selling, general and administrative (SG&A) expenses rather than the BIA methodology which the Department used in the preliminary results of review. Sonar claims that the approach the Department used for the preliminary results is inconsistent, since the Department treated negative and positive prior year adjustments in the same manner, *i.e.*, by adding the adjustment amounts to the reported SG&A expenses. Sonar also claims that this methodology is arbitrary in that it results in SG&A figures which are many times as high as those shown for other companies in the industry.

Petitioner asserts that, because Sonar submitted its explanation of the prior year adjustments long after the Department's due date, the Department's treatment of these adjustments using BIA is justified. Petitioner views the respondent's failure to provide the necessary information regarding the prior year adjustments as uncooperative and states that the Department should reject Sonar's submitted costs and, citing *National Steel Corporation et al.* v. *United States*, Slip. Op. 94–194 (CIT December 13, 1994), argues that the Department should instead apply a first-tier total BIA margin of 42.31 percent. Petitioner further argues that even if the Department does not use first-tier total BIA to establish Sonar's dumping margin, then the Department should apply an adverse partial BIA because Sonar omitted information that was not beyond its control and which affects a large portion of its total sales during this review period. Finally, petitioner suggests that even if the Department considers its use of BIA inappropriate, it should still include the prior year adjustments in CV as it is within the Department's discretion to do so.

DOC Position: We disagree with Sonar that the Department should accept its untimely submission of information explaining the prior year adjustments. Sonar submitted this information of the prior year adjustments on the record well beyond the due date (see letter from Director, Office of Antidumping Compliance, addressed to Sonar Cotton Mills (BD), April 18, 1995).

We also disagree with petitioner that the Department should apply a first-tier total BIA. Because Sonar cooperated in all other aspects of the review, application of total BIA is inappropriate. However, because we did not receive a timely explanation of these prior year adjustment amounts, we have applied a partial BIA approach in our treatment of them for purposes of calculating CV. As BIA, we have included the negative "expense" prior year adjustment amounts and we have excluded the positive "income" prior year adjustment amount.

Comment 4: Greyfab argues that the Department erroneously double-counted the treatment of inspection fees on U.S. sales by subtracting these fees from United States price (USP) while adding these fees to the foreign market value (FMV). Respondents request that the Department change its calculations to ensure that its sales reflect the adjustment correctly.

Department's Position: We disagree with respondents. The Department made the correct calculation for the circumstance-of-sale adjustment by subtracting inspection fees from only USP. We did not make an adjustment to FMV for inspection fees in our preliminary results. Therefore, no change to our calculations is necessary.

Comment 5: Hashem contends that the Department used the incorrect invoice price for two shipments. Hashem states that it submitted the correct invoice price for both shipments to the Department in the supplemental questionnaire response dated April 1, 1994. However, Hashem asserts the Department neglected to use this information in the preliminary calculations.

Department's Position: We agree with Hashem. We have made the necessary changes for these final results.

Comment 6: Hashem argues that for the sales it made to a certain customer, the Department erroneously used the amounts that Hashem reported as "total net weight (lbs)" instead of using the amounts reported as "total net weight (kgs)". Respondent asserts that the Department should use the value for "total net weight (kgs)" in its calculation of USP because, in its view, to do otherwise significantly overstates the "total net weight (kgs)" which has a significant impact on the Department's calculation of USP. In addition, respondent asserts that the Department used the incorrect values in the "total net weight (kgs)" column for three observations in the calculations of USP. The respondent states that for one of the observations, the Department erroneously divided the weight (kgs/bale) by the conversion factor used to convert pounds to kilograms, when none of the other figures in the same column within the spreadsheet were manipulated by the conversion factor. The respondent states that in the case of the other two observations, the figures used by the Department in the "total net weight column" were not the values it reported for these specific observations, but rather, were values taken from different observations in Hashem's reported spreadsheet.

Department's Position: We agree with the respondent and have made the necessary corrections for these final results.

Comment 7: Petitioner argues that the Department should add an imputed interest expense to Sonar's CV for a bank loan which appears on the company's financial statements. Petitioner notes that even though Sonar did not make any interest payments on this bank loan, Sonar has incurred a period obligation to pay interest. Petitioner suggests that Sonar's attempt to obtain a waiver is evidence that there is an obligation to pay interest it incurred during the period. According to petitioner, the Department should include this obligation in Sonar's CV and impute interest at the prevailing lending rate of 15 percent.

Sonar claims that the Department has no authority to disregard actual general expenses in transactions between unrelated parties in calculating CV. Sonar also notes that a reserve has not been recorded on its audited financial statements for any potential interest obligation and that there is no evidence on the record that it will pay interest to the bank which made the loan. Sonar argues that any interest which it might pay to the bank in the future is currently a potential contingent liability and claims that the Department's practice does not support adjusting actual expenses under such circumstances.

DOC Position: We agree with petitioner. Although Sonar did not reserve for interest related to the bank loan in its financial statements, we believe there is a basis for imputing interest on the loan and adding this expense to the company's CV. The Department's practice is to rely on a respondent's books and records prepared in accordance with its home country GAAP unless those accounting principles do not reasonably reflect costs associated with the production of the subject merchandise. See, e.g., Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand, 60 FR 29553, 29560 (June 5, 1995). In this instance, respondent's accounting principles do not reasonably reflect costs. Although Sonar has provided audited financial statements which do not reflect an interest accrual, there is no evidence to support the position that the company does not have an obligation to pay interest on its bank loan. We consider zero interest expense on a loan an unreasonable cost of borrowing. The interest expense associated with this bank loan should properly be reflected in the cost of producing the subject merchandise. Therefore, we imputed interest expense on this loan and adjusted CV accordingly.

Comment 8: Petitioner argues that the Department should adjust Greyfab's CV

to include the balance of "Liabilities for Other Finance", which appears on the respondent's June 30, 1993, balance sheet. While acknowledging that this amount concerns expenses incurred for the 1991 hurricane that damaged the company's factory building and production facilities, petitioner argues that the Department should include this expense in CV. Petitioner asserts that there is no basis to exclude such repair and shut-down expenses from CV.

Greyfab claims that the Department should not include the Liabilities for Other Finance in CV since this amount represents extraordinary, non-operating expenses. According to Greyfab, the Department's normal practice is to exclude such extraordinary losses which are not related solely to current operations.

DOC Position: We disagree with petitioner. Petitioner refers to "Liabilities for Other Finance", which is a balance sheet item. The balance sheet reports a company's assets and liabilities as of a certain date, and does not necessarily reflect expenses incurred during the POR. We are satisfied that Greyfab reconciled all costs reported on its financial statements to its submitted costs. In addition, while this liability reflects an expense which was recognized in either the current year or a past year, there is no evidence on the record to indicate that Greyfab has excluded POR repair and shut-down expenses related to this liability. Accordingly, we have not adjusted CV for the "Liabilities for Other Finance" amount Greyfab reported on its balance sheet.

Comment 9: Petitioner argues that the Department should adjust Khaled's CV to include expenses related to a twelve-month suspension of company operations. Petitioner claims that Khaled's reported expenses for this event are inadequate and the Department should substitute a BIA approach to calculate the actual costs incurred by the respondent. Petitioner suggests that the temporary suspension of operations should have resulted in the recording of significant expenses, including depreciation of idle plant and equipment, shut-down costs, start-up costs, inventory disposal expenses, and payments to officers and employees. According to petitioner, Khaled did not account for any of these expenses in its submissions.

Khaled argues that petitioner has no basis for suggesting that its reported costs are inadequate and claims that the record provides no evidence to suggest that Khaled incurred any expenses beyond those which it submitted in its response. Khaled argues that all costs have been properly reported in its audited financial statements and suggests that there is no support for the Department to apply BIA.

DOC Position: We agree with the respondent. We are satisfied that Khaled reconciled all costs reported on its financial statements to its submitted costs. Khaled and its counsel have certified to the Department that its submitted costs are accurate. See Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from France, Final Results of Antidumping Duty Administrative Review, 57 FR 28360 (1992). From a review of the record, there is no basis to conclude that Khaled has not reported all costs related to its twelve-month suspension of operations. Therefore, we have not adjusted CV as petitioner suggests.

Comment 10: Petitioner claims that the Department should use BIA to determine the cost associated with operating the weavers villages (employee housing) that Khaled and Shabnam have established. According to petitioner, the record indicates that Khaled and Shabnam have not fully accounted for all expenses relating to these villages in their cost submissions. Petitioner suggests that the fixed asset schedules Khaled and Shabnam submitted do not appear to cover all assets and expenditures related to the establishment and maintenance of the weavers villages. Specifically, petitioner argues that the reported costs do not reflect each company's cost of providing roads, repairs and maintenance, security and health services, utilities, telephones and entertainment. Additionally, petitioner claims that the Department should adjust respondents' labor costs to reflect the provision of company housing to employees. As BIA, petitioner suggests that the Department use World Bank statistics which provide U.S. housing costs as a percentage of total personal consumption expenditures.

Khaled and Shabnam claim that petitioner has no basis for arguing that they have not properly accounted for the costs related to the weavers' housing. They claim that they included amounts in their submissions for repairs and maintenance, entertainment, and miscellaneous expenses, and that their depreciation schedules include amounts for colony and road development. Khaled and Shabnam also indicate that the workers are responsible for maintenance of their own homes. Respondents argue that the BIA methodology petitioner proposes is unreasonable and claim that there is no rational relationship between housing costs as a percentage of total personal consumption expenditures in the United States and the cost of company housing in Bangladesh.

DOC Position: We agree with the respondents. There is no reason for the Department to apply a BIA rate to adjust respondents' labor costs to reflect the provision of company housing to employees. From a review of the record, there is no basis to conclude that Khaled and Shabnam have not reported all costs related to the establishment and maintenance of the weaver villages. In addition, respondents and their counsel certified the accuracy of the respondents' responses. See Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from France, Final Results of Antidumping Duty Administrative Review, 57 FR 28360 (1992). We are therefore satisfied that Khaled and Shabnam reported all costs.

Comment 11: Sonar claims that the Department made a clerical error in its calculation of SG&A for the preliminary results of review. Sonar states that there is an incorrect formula in the Department's calculations of CV for each product. Sonar requests that the Department review its calculation of SG&A and make the appropriate corrections.

DOC Position: We agree with Sonar and have corrected this error in our SG&A calculation for the final results of review.

Final Results of the Review

As a result of the comments received, we have revised our final results and determine that the following margins exist for the period September 21, 1991 through February 28,1993:

Manufacturer/exporter	Margin (percent)
Eagle Star	42.31
Greyfab	0.00
Hashem	0.01
Khaled	9.61
Shabnam	0.15
Sonar	8.30

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for Eagle Star, Greyfab, Hashem, Khaled, Shabnam, and Sonar will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 4.60 percent, the "all others" rate from the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23487 Filed 9–20–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–538–802]

Shop Towels From Bangladesh; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on shop towels from Bangladesh. The review covers 6 manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is March 1, 1993, through February 28, 1994.

We have preliminarily determined that one exporter made no shipments during the POR and that the use of best information available (BIA) is appropriate for two exporters. We have also preliminarily determined that sales by the remaining exporters have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 21 ,1995.

FOR FURTHER INFORMATION CONTACT: Matthew Rosenbaum, Davina Hashmi or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1992, the Department published in the **Federal Register** (57 FR 9688) the antidumping duty order on shop towels from Bangladesh. On March 4, 1994, the Department published a notice of "Opportunity to Request an Administrative Review" (59 FR 10368) of this antidumping duty order for the period March 1, 1993, through February 28, 1994. On March 15, 1994, the petitioner, Milliken & Company, requested an administrative review for six manufacturers/exporters of shop towels from Bangladesh.

We published a notice of initiation of the review on April 15, 1994 (59 FR 18099). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of Review

The product covered by this administrative review is shop towels. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100 percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedules (HTS). Although HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

United States Price

In calculating USP, the Department used purchase price as defined in section 772(b) of the Act, because the subject merchandise was sold to unrelated U.S. purchasers prior to importation and the exporter's sales price (ESP) methodology was not indicated by other circumstances.

Purchase price was based on ex-factory, f.o.b., c.i.f., or c&f prices to unrelated purchasers in the United States. We made adjustments, where applicable, for ocean freight, insurance, and forwarding charges in accordance with section 772(d)(2) of the Act.

No other adjustments were claimed or allowed.

Foreign Market Value

We calculated FMV based on constructed value (CV) in accordance with section 773(e) of the Act, because none of the respondents sold such or similar merchandise in the home market or in any third-country market during the POR. The CV includes the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit and packing. To calculate CV we used: (1) Actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) profit, as calculated by using the statutory minimum of 8 percent of materials, fabrication costs and general expenses; and (3) packing costs for merchandise exported to the United States. Because the only general expenses incurred were those incurred for U.S. sales, we used these general expenses in our calculation of CV. We made no adjustments.

Currency Conversion

In our analysis, we normally make currency conversions in accordance with 19 CFR 353.60 using the exchange rates certified by the Federal Reserve Bank of New York. Since the Federal Reserve Bank of New York does not provide exchange rate information for Bangladesh, we used the average monthly exchange rates published in the International Monetary Fund's International Financial Statistics.

Best Information Available

In accordance with section 776(c) of the Act, we have preliminarily determined that the use of BIA is appropriate for two companies that did not submit timely or complete responses to the questionnaire. Section 776(c) of the Act states that the Department shall use BIA wherever a company refuses or is unable to produce information in a timely manner and in the form required, or significantly impedes an administrative review.

In determining what to use as BIA, section 353.37(b) of the Department's regulations provides that the Department may take into account whether a party refuses to provide requested information or impedes a proceeding. The Department employs a two-tiered methodology that takes into account the degree of cooperation provided by a respondent.

In the case of respondents who refuse to provide information requested in a timely manner, or who otherwise significantly impede the review, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the less-than-fair-value (LTFV) investigation or prior administrative reviews; or (2) the highest calculated rate in the current review for any firm. When a company substantially cooperates with our requests for information, but fails to provide all information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the current review for any firm for the class or kind of merchandise from the same country (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al., 58 FR 39729 (July 26, 1993)). See also Allied-Signal Aerospace Co. v. United States, 996 F.2d 1195 (Fed. Cir. 1993); Krupp Stahl AG et al v. United States, 822 F. Supp 789 (CIT May 26, 1993).

In our original questionnaire we stated that companies must report all entries of purchase price sales of subject merchandise during the POR. In Khaled Textiles Mills Ltd. (Khaled)'s initial response to our questionnaire, it indicated that it did not produce shop towels during the review period and therefore was not interested in participating in this review. Since Khaled did not indicate in its submission that it had no shipments during the review period we sent a letter to Khaled in order to clarify its statement. Khaled responded by indicating that it did ship shop towels to the United States during the period of review, from the prior year's production. We then sent Khaled a letter requiring it to respond completely to our original questionnaire. After several extensions, Khaled responded to our questionnaire. Khaled indicated that it had already answered the narrative portion of the questionnaire in the first administrative review and was only submitting additional sales data for the second review period. However, the Department does not accept questionnaire responses submitted in previous reviews because the Department views each review as a distinct and separate proceeding. See Barium Chloride from the People's Republic of China; Final Results of Antidumping Administrative Review, 54 FR 52 (January 3, 1989).

The information that Khaled did submit was highly deficient. Khaled submitted only the invoice number, bill of lading number and date, invoice value, terms of sale, freight expenses and weight for each shipment. Without a narrative response, we do not know if Khaled included all relevant expenses. In addition, the constructed value information Khaled submitted could not be used since Khaled calculated one constructed value for both shop towels and non-subject merchandise, and it was not calculated on a per-unit basis. Given the deficiencies of Khaled's response, in accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate. Because Khaled attempted to provide the necessary information to the Department in a timely manner, we have considered Khaled to be a cooperative respondent. Accordingly, we have preliminarily assigned Khaled a margin of 9.61 percent, which is the highest rate ever applicable for Khaled.

In Sonar's initial response to our questionnaire, it indicated that it was no longer producing shop towels and had temporarily closed its factory. Sonar further stated that it did not have competent staff to respond to the questionnaire. Since Sonar did not indicate that it had no shipments of subject merchandise during the period of review, we sent a letter to Sonar in order to clarify its statement. Sonar responded by indicating that it did ship subject merchandise to the United States during the POR. In this letter it provided the commercial invoice number, the bill of lading number, the invoice value and ocean freight. We then sent another letter requesting that it respond fully to the questionnaire. Sonar did not submit a response until four days after the extended due date. We have returned Sonar's late submission in accordance with 19 CFR 353.31(b)(2)(1994). Since Sonar did not submit a timely response to the questionnaire, in accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate for Sonar, and we have considered Sonar to be an uncooperative respondent. Accordingly, we have preliminarily assigned Sonar a margin of 42.31 percent, which is the highest rate in the LTFV investigation and the highest rate ever found in this proceeding.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margins exist for the period March 1, 1993, through February 28, 1994:

Manufacturer/exporter	Margin (percent)
Eagle Star Mills Ltd.	[1] 42.31
Greyfab (Bangladesh) Ltd.	0.00
Hashem International	0.00
Khaled Textile Mills Ltd.	9.61
Shabnam Textiles	1.74
Sonar Cotton Mills (Bangladesh) Ltd.	42.31

[1] No shipments or sales subject to this review; rate is from LTFV investigation.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions concerning all respondents directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of the review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be 4.60 percent, the "All Others" rate established in the LTFV investigation (57 FR 3996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c).

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23468 Filed 9–20–95; 8:45 am]

BILLING CODE 3510-DS-P

National Technical Information Service

Notice of Prospective Extension of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209 (c)(1) and (d) and 37 CFR 404.7 (a)(1)(i) and (b)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating extending its grant of an exclusive license in the United States of America and certain foreign countries to practice the inventions embodied in U.S. Patent Nos. 4,311,826 (Ser. No. 6–085,450) and 4,391,969 (Ser. No. 6–266,484) to Martin Resources, Inc., having a place of business in Kilgore, Texas. The patent rights in these inventions have been assigned to the United States of America.

The prospective extension of the exclusive license will include royalty terms and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license extension may be granted unless, within 60 days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The respective inventions expressed in the patents cited above describe: (1) A modified sulfur cement comprising the polymeric reaction product of elemental sulfur and a cyclopentadiene oligomer containing reactant; cement compositions can be formulated by blending an aggregate material with the modified sulfur cement; and (2) a modified sulfur cement formulation, comprising the polymeric reaction product of sulfur with a cyclopentadiene oligomerdicyclopentadiene containing modifier in which the cyclopentadiene oligomer content of said modifier is at least 37 wt. %, the sulfur cement product having a softening point ranging up to 116 °C.

The availability of the inventions for licensing were published in **Federal Register** notices on April 27, 1982, Vol. 47, No. 81, p. 18019 and October 16, 1985, Vol. 50, No. 200, p. 41931, the latter in the form of a notice of "intent to grant a license." Copies of the instant U.S. patents are available from the Commissioner of Patents and Trademarks, Box 9, Washington, DC at a cost of $3.00 each.

Any inquiries and comments relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, Virginia 22151. Properly filed competing license applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Director, Office of Federal Patent Licensing.

[FR Doc. 95–23446 Filed 9–20–95; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: 21 & 22 September 1995.

Time of Meeting: 0900–1700.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board's 1994 Summer Study on "Technical Architecture C4I" will meet for discussions on ASB business. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matter to be discussed is so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–23450 Filed 9–20–95; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.2), notice is hereby given that the Naval Research Advisory Committee Special Study Panel to Review the Department of the Navy Science and Technology Program will

meet on October 11 and 12, 1995. The session on October 11 will be held at the Pentagon, Arlington, Virginia; the session on October 12 will be held at the Naval Surface Warfare Center, Carderock Division, Bethesda, Maryland. The meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on October 11 and 12, 1995. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide an assessment of the Department of the Navy Science and Technology Program, make recommendations on how to best posture the Department to be a world class customer of science and technology innovation, and determine whether the Department's execution philosophy and management structure allow for the most effective utilization of innovation. The agenda will include briefings and discussions on perspectives from internal Department of the Navy sources, as well as the Department of the Air Force, the Department of the Army, and the Advanced Research Projects Agency. These briefings and discussions will involve sensitive Department of Defense information. Premature public disclosure of this information would be likely to significantly frustrate proposed agency action. The information involved is specifically authorized under criteria established by Executive order to be withheld from the public if the agency determines it to be in their best interest. The sensitive matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(9)(B) of title 5, United States Code.

For further information concerning these meetings contact: Ms. Diane Mason-Muir, Office of Naval Research, Ballston Center Tower One, 800 North Quincy Street, Arlington, VA 22217-5660, Telephone Number: (703) 696-4870.

Dated: September 15, 1995

M. A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–23482 Filed 9–20–95; 8:45 am]

BILLING CODE 3810-FF-F

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearings

I. Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, September 27, 1995. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 10:30 a.m. in the Lecture Room of the Brandywine River Museum, located on U.S. Route 1 just south of PA Route 100 in Chadds Ford, Pennsylvania. Entrance to the Lecture Room is on the river side of the building, lower level. No smoking is permitted in the building. For those interested in touring the museum, there is a $5 admission fee.

An informal conference among the Commissioners and staff will be held at 10 a.m. at the same location to discuss upcoming public hearing records and response documents.

The subjects of the September 27, 1995 hearing will be as follows:

Possible Drought Emergency Declaration

Section 10.4 of the Delaware River Basin Compact provides that in the event of a drought or other condition which may cause an actual and immediate shortage of available water supply within the Basin, or within any part thereof, the Commission may, after public hearing, determine and delineate the area of such shortage and declare a water supply emergency therein. For the duration of such emergency, the Commission could limit the extent to which water users may divert or withdraw water for any purpose. The Commission is considering whether current and developing conditions of water supply and demand require the declaration of a water supply emergency. The purpose of this hearing is to permit the public to comment on these matters and to make any suggestions or recommendations concerning possible Commission action.

At the conclusion of the drought hearing, the business meeting will recess and reconvene at 1:30 p.m..

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Holdover Project: C S Water & Sewer Associates D–76–21 (Revised).* An application to revise DRBC Docket No. D–76–21 to approve an existing discharge from a 0.1 million gallons per day (mgd) sewage treatment plant (STP) to an unnamed tributary of the Delaware River; the applicant also proposes to modify the plant by adding an equalization tank. The STP was originally approved predicated upon a discharge directly to the Delaware River. The project STP is located in Lackawaxen Township, Pike County, Pennsylvania. The STP will continue to serve the community of Masthope Rapids. This hearing continues that of August 9, 1995.

2. *Public Service Electric & Gas Company D–68–20 CP (Revised).* An application for approval to revise the heat dissipation area specified in DRBC Docket No. D–68–20 CP for the thermal discharge of the Salem Generating Station, and incorporate modifications reflecting requirements of the NJPDES permit. The project is located in DRBC Zone 5 on Artificial Island in Lower Alloways Creek Township, Salem County, New Jersey.

3. *Merrill Creek Owners Group (MCOG) D–77–110 CP (Amendment 7).* An application for inclusion of the Logan Generating Company L.P. Keystone Facility (approved by Docket D–90–48 on September 25, 1991) as an additional Designated Unit to Table A (Revised) of the Merrill Creek Reservoir Project, to enable releases from the reservoir to make up for consumptive water use during drought periods. The Keystone Facility is expected to average approximately 2.7 mgd in consumptive use and is located west of Route 130, adjacent to the Delaware River in Logan Township, Gloucester County, New Jersey; Merrill Creek Reservoir is located in Harmony Township, Warren County, New Jersey.

4. *Merrill Creek Owners Group (MCOG) D–77–110 CP (Amendment 8).* An application for inclusion of the Northampton Generating Company, L.P. Northampton Cogeneration Facility [approved by Docket No. D–91–95 (Revision 1) on April 28, 1993] as an additional Designated Unit of Table A (Revised) of the Merrill Creek Reservoir project, to enable releases from the reservoir to make up for consumptive water use during drought periods. The Northampton Facility is expected to average approximately 2.02 mgd in consumptive use and is located in Allen Township with its withdrawal located on the Lehigh River in Northampton Borough, all in Northampton County, Pennsylvania; Merrill Creek Reservoir is located in Harmony Township, Warren County, Pennsylvania.

5. *City of Lewes, Board of Public Works D–85–54 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 60 million gallons (mg)/30 days of water to the applicant's distribution

system from Well Nos. 1A, 2A, 3A, 4A and 5A. Commission approval on October 30, 1985 was limited to ten years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 60 mg/30 days. The project is located in the City of Lewes, Sussex County, Delaware.

6. *Perkasie Borough Authority D–92–75 CP.* An application for the renewal of a ground water withdrawal project to supply up to 45 mg/30 days of water to the applicant's distribution system, and to consolidate all Perkasie Borough Authority wells into one comprehensive docket with an increase in total allocation. Commission approval of Docket No. D–87–75 CP (Well No. 11) on February 24, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells be increased from 34.2 mg/30 days to 45 mg/30 days. The project is located in Perkasie Borough, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Borough of Glassboro D–93–39 CP.* An application for approval of a ground water withdrawal project to supply up to 17.8 mg/30 days of water to the Borough of Glassboro's distribution system from existing Well No. 6, screened in the Mount Laurel-Wenonah Aquifer, and up to 25.9 mg/30 days of water from new Well No. 7 (and possibly a second well at this location) screened in the Cohansey Aquifer, without an increase in the existing total allocation of ground water. The project is located in Glassboro Borough, Gloucester County, New Jersey.

8. *Borough of Medford Lakes D–93–44 CP.* A project to upgrade the existing Medford Lakes 0.55 mgd capacity STP located in, and serving only, the Borough of Medford Lakes, Burlington County, New Jersey. The existing STP provides secondary biological treatment via a trickling filter and the proposed upgraded STP will be an extended aeration activated sludge process with tertiary filtration. The upgraded STP will continue to operate at 0.55 mgd and discharge to Aetna Run, a tributary of Birchwood Lakes in the Haynes Creek portion of the Southwest Branch Rancocas Creek Watershed.

9. *South Jersey Water Supply Company D–93–50 CP.* An application for approval of a ground water withdrawal project to supply up to 21.9 mg/30 days of water to the applicant's distribution system from new Well No. 6, and to increase the existing withdrawal limit of 11 mg/30 days from all wells to 42.4 mg/30 days. The project is located in Harrison Township, Gloucester County, New Jersey.

10. *Evesham Municipal Utilities Authority D–94–33 CP.* A project to modify and expand the applicant's existing 2.3 mgd STP to treat 3.0 mgd (average flow) and continue to serve a portion of Evesham Township in Burlington County, New Jersey. The STP will continue to provide advanced secondary treatment and tertiary filtration prior to discharging via the existing outfall to the Southwest Branch Rancocas Creek. The STP is located just east of Elmwood Road and north of the receiving stream in Evesham Township.

11. *Burlington Township D–94–67 CP.* An application for approval of a ground water withdrawal project to supply up to 43.2 mg/30 days of water to the applicant's distribution system from new Well No. 6, and to increase the existing withdrawal limit of 69 mg/30 days from all wells to 98.2 mg/30 days. The project is located in Burlington Township, Burlington County, New Jersey.

12. *East Marlborough Township D–95–22 CP.* A project to construct a new 0.125 mgd capacity STP to create a centralized treatment facility to replace failing on-lot treatment systems within East Marlborough Township, Chester County, Pennsylvania. The proposed STP will provide a lagoon treatment/spray irrigation system, and there will be no stream discharge. The STP and spray irrigation disposal fields are located just north of Street Road approximately 1500 feet west of Route 82, in the West Branch Red Clay Creek watershed (Water Quality Zone C–5) in East Marlborough Township.

13. *Borough of Dublin D–95–25 CP.* An application for approval of a ground water withdrawal project to supply up to 1.73 mg/30 days of water to the applicant's distribution system from new Well No. 5, and to retain the existing withdrawal from all wells of 4.36 mg/30 days. Well No. 5 will be a replacement supply to homes with wells that have been contaminated with trichloroethene, and a part of a ground water remediation system. The project is located in the Borough of Dublin, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

14. *Clement Pappas & Company, Inc. D–95–37.* An application for approval of a ground water withdrawal project to supply up to 73.4 mg/30 days of water to the applicant's food processing facility from new Well No. 6B, and to retain the existing withdrawal limit from all wells of 73.4 mg/30 days. The project is located in Upper Deerfield Township, Cumberland County, New Jersey.

15. *Sun Company, Inc. (R&M) Philadelphia Refinery D–95–41.* An application for approval of a ground water withdrawal project to withdraw up to 12.35 mg/30 days of water (as part of the applicant's decontamination project) from 36 new wells, Nos. RW100–RW502, and to increase the existing withdrawal limit of 9.2 mg/30 days from all wells to 12.35 mg/30 days. The project is located in the City of Philadelphia, Philadelphia County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

II. The Commission will hold a public hearing on Wednesday, October 18, 1995 at 6:30 p.m. in the UGI Utilities, Inc. Auditorium, Lehigh Valley Industrial Park One, 2121 City Line Road, Bethlehem, Pennsylvania.

The subject of the hearing is an application for approval of the following project: *Blue Mountain Power, L.P. D–95–42.* A proposal to construct and operate a 150 megawatt (MW) combined cycle electric power generating facility. The proposed independent power plant will withdraw approximately 1.2 mgd from the Lehigh River at its south bank in the City of Bethlehem, Lehigh County, Pennsylvania, and pipe it approximately 15 miles to the power generation plant situated just southeast of the intersection of the Reading Railroad with California Road in Richland Township, Bucks County, Pennsylvania. The intake structure will be situated near the Pennsylvania Highway 378 bridge over the Lehigh River. Consumptive use is expected to be 100 percent since the applicant proposes a zero-liquid discharge system which recycles and reuses process wastewater. Blue Mountain Power presently has an agreement to supply the generated electrical power to Metropolitan Edison.

The Commission's preliminary docket is available upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing and may be asked to limit their remarks to five minutes, to enable all who wish to speak to do so.

Other Scheduled Hearings

By earlier notice, the Commission announced its schedule of public hearings on proposed amendments to its

Comprehensive Plan, Water Code and Water Quality Regulations concerning water quality criteria for toxic pollutants, and policies and procedures to establish wasteload allocations and effluent limitations for point source discharges to Zones 2 through 5 (Trenton, New Jersey to the Delaware Bay) of the tidal Delaware River. Specifically, water quality criteria for selected toxic pollutants are proposed for incorporation in the Comprehensive Plan and Article 3 of the Water Code and Water Quality Regulations as stream quality objectives. Revisions are also proposed for Article 4 of the Water Quality Regulations describing the policies and procedures to be used to establish wasteload allocations for those discharges containing pollutants which impact the designated uses of the river. Adoption of these revisions will provide a mechanism for identifying toxic pollutants which may impair aquatic life and human health, and developing uniform and equitable wasteload allocations for these pollutants for all NPDES discharges to the tidal Delaware River. The permitting authorities of the states will utilize the allocations developed by the Commission to establish effluent limitations for NPDES permittees in their jurisdictions.

Hearing Dates: The public hearings are scheduled as follows:

October 5, 1995, beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

October 11, 1995, beginning at 1:30 p.m. and continuing until 5:00 p.m., and resuming at 6:30 p.m. and continuing until 9:00 p.m., as long as there are people present wishing to testify.

October 13, 1995, beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

The deadline for inclusion of written comments in the hearing record will be announced at the hearings.

Addresses: The October 5, 1995 hearing will be held in the Second Floor Auditorium of the Carvel State Building at 820 N. French Street, Wilmington, Delaware.

The October 11, 1995 hearing will be held in the Franklin Room of the Holiday Inn at 4th and Arch Streets, Philadelphia, Pennsylvania.

The October 13, 1995 hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

For Further Information Contact: Copies of the full text of the proposed amendments, the Water Code and the Water Quality Regulations as well as Basis and Background Documents entitled "Water Quality Criteria for Toxic Pollutants for the Delaware River Estuary" and "Implementation Policies and Procedures Phase I TMDLs for Toxic Pollutants in the Delaware River Estuary" may be obtained by contacting Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, telephone (609) 883–9500 ext. 203.

Persons wishing to testify are requested to notify the Secretary in advance. Written comments on the proposed amendments should also be submitted to the Secretary at the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

Dated: September 12, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–23454 Filed 9–20–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Availability of the Dual Axis Radiographic Hydrodynamic Test Facility Final Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Dual Axis Radiographic Hydrodynamic Test (DARHT) Facility Final Environmental Impact Statement (EIS), DOE/EIS–0228. The alternative actions analyzed in the EIS would occur at the DOE's Los Alamos National Laboratory (LANL) in northern New Mexico.

DATES: The Final EIS was approved by the Department on August 25, 1995. The U.S. Environmental Protection Agency published its Notice of Availability regarding this Final EIS on September 8, 1995 (60 FR 46833). DOE intends to issue a Record of Decision on the DARHT project; the decision may be issued no sooner than 30 days from the date of the Environmental Protection Agency Notice of Availability.

ADDRESSES: Requests for copies of the DARHT EIS should be addressed to: Ms. Diana Webb, DARHT EIS Project Manager, Los Alamos Area Office, Department of Energy, 528 35th Street, Los Alamos NM 87544. Ms. Webb may be contacted by telephone at (505) 665–6353 or by facsimile at (505) 665–4872. In addition, DOE is issuing the DARHT Final EIS in CD ROM format. Interested parties may obtain a copy of the CD version by contacting Ms. Webb at the address and phone number above.

FOR FURTHER INFORMATION CONTACT: For general information on the DARHT project, interested parties may contact Ms. Webb at the address and phone number above. For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, Department of Energy, 1000 Independence Ave., SW., Washington DC 20585. Ms. Borgstrom may be contacted by leaving a message at (800) 472–2756 or by calling (202) 586–4600.

SUPPLEMENTARY INFORMATION: The DARHT Final EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500–1508) and the DOE NEPA regulations (10 CFR part 1021).

The Department proposes to provide enhanced high-resolution radiography (x-ray) capability for the purpose of performing hydrodynamic tests and dynamic experiments in support of its national defense mission. The enhanced radiographic facility would be a key component of the Department's near-term science-based stockpile stewardship and management program. These hydrodynamic tests and dynamic experiments are needed to assist DOE in ensuring the continued safety, performance and reliability of existing nuclear weapons as they age.

The DARHT EIS analyzes the environmental consequences of alternative ways to accomplish the proposed action. The DOE's preferred alternative would be to complete and operate the DARHT facility at LANL in northern New Mexico, and provide an enhanced level of environmental protection by using steel containment vessels, with implementation to be phased over a 10-year period. Radiographic hydrodynamic testing is now conducted in two existing facilities within the DOE complex—a 30-year-old facility at LANL, and a 10-year-old facility at the DOE's Lawrence Livermore National Laboratory in California. The DARHT EIS compares the environmental impacts that would be expected to occur from continuing to operate the existing facility at LANL (the No Action Alternative) with the consequences that would be expected to occur if DOE implemented the Preferred Alternative or one of four other operational alternatives. The DARHT EIS has a classified supplement that provides additional information and analysis.

DOE issued a DARHT Draft EIS in May 1995 and invited comments on the adequacy and accuracy of the draft analysis. Over sixty parties provided comments on the Draft EIS. The Final EIS reflects changes made by DOE to respond to public comments received, to provide additional environmental baseline information, and to discuss additional technical considerations. The Final EIS also reflects the commitment made by the President on August 11, 1995, to seek a "zero-yield" Comprehensive Test Ban Treaty. The type of capability proposed for the DARHT facility is essential to assuring the continued safety and reliability of the nuclear weapons stockpile under a test ban. DOE made the following major changes between the Draft and Final EIS:

—A Phased Containment Option was added to the Enhanced Containment Alternative, and was designated as DOE's preferred alternative.

—DOE discovered the presence of the federally listed threatened species, the Mexican spotted owl, in the vicinity of the DARHT site, identified measures to mitigate any adverse effects to the owl, and received concurrence from the US Fish and Wildlife Service that operation of the facility is not likely to adversely effect the owl.

—Additional mitigation measures were added after consultation with affected American Indian tribes.

—The DOE proposal incorporates upgraded accelerator equipment within both the first and second axis of the proposed DARHT facility.

—DOE incorporated information regarding its Stockpile Stewardship and Management Programmatic Environmental Impact Statement (60 FR 31291, June 14, 1995).

—The Final EIS includes unclassified information from the impact analysis in the classified supplement, which had been made available to the public during the comment period on the Draft EIS.

DOE has distributed copies of the DARHT Final EIS to appropriate Congressional members and committees, the State of New Mexico, affected American Indian tribes, local county governments, other federal agencies, and other interested parties. DOE expects to issue a Record of Decision on the DARHT proposal in October, 1995.

Signed in Washington, DC, this 15th day of September, 1995, for the United States Department of Energy.

Everet H. Beckner,

Principal Deputy Assistant Secretary for Defense Programs.

[FR Doc. 95–23493 Filed 9–20–95; 8:45 am]

BILLING CODE 6450-01-P

Financial Assistance: Institute of Paper Science and Technology (IPST), Atlanta, GA

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to renew Grant Number DE–FG02–90CE40936 to Institute of Paper Science and Technology, Atlanta, Georgia. It is DOE's intent to provide funds for the renewal of a project entitled: "Black Liquor Combustion-Validated Recovery Boiler Modeling". The project goal is to develop various submodels that incorporate all of the available knowledge of the chemical reactions occurring in a recovery boiler, together with a specially developed computational fluid dynamics (CFD) modeling code, to obtain an overall (global) computer model useful for the analysis, design, and optimization of recovery boilers. The original proposal "Black Liquor Combustion—Validated Recover Boiler Modeling" was submitted to DOE by IPST in April 1990 as an unsolicited proposal. The project has previously been funded for a cost of $5,143,000 with a 29% IPST cost share. The proposed renewal will have a duration of 15 months. IPST proposed total cost is $1,219,740 of which the proposed DOE cost is $849,999 and IPST's and associated partner's proposed cost-share is $370,740 (30%) of the total cost.

The Federal Domestic Catalog Number is 81.078.

FOR FURTHER INFORMATION CONTACT: Kara Twitchell, U.S. Department of Energy, Drive, MS 1221, Idaho Falls, Idaho 83401–1563, (208) 526–4958.

SUPPLEMENTARY INFORMAITON: The statutory authority for the proposed award is the Energy Conservation Program begun in 1975 under the mandate of the Federal Non-Nuclear Energy Idaho Operations Office, 850 Energy Research and Development Act of 1974 (Pub. L. 93–577). The proposal meets the criteria for "non-competitive" financial assistance as set forth in 10 CFR Part 600.7(b)(2)(i)(A). The applicant is an institution of higher education. The anticipated period to complete the renewal is fifteen (15) months. The total estimated cost of this renewal project is $1,219,740 of which the proposed DOE cost is $849,999 and IPST's and associated partner's proposed cost-share is $370,740 (30%) of the total cost.

B.G. Bauer,

Acting Director, Procurement Services Division.

[FR Doc. 95–23447 Filed 9–20–95; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance: Institute of Paper Science and Technology (IPST), Atlanta, GA

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to renew Grant Number DE–FG02–85CE40738 to Institute of Paper Science and Technology, Atlanta, Georgia. It is DOE's intent to provide funds for the renewal of a project entitled: "Advanced Water Removal Processes for Drying in the Pulp and Paper Industry—Impulse Drying". The project goal is to demonstrate through pilot testing a novel water removal process, Impulse Drying, for the manufacture of paper. Utilizing this process would greatly reduce the energy and associated costs required for the full cycle of drying required for paper manufacture. The original proposal "Advanced Water Removal Processes for Drying in the Pulp and Paper Industry" was submitted to DOE by IPST in May 1984 as an unsolicited proposal. The project has previously been funded at a cost of $5,152,000 with a 35% IPST cost share. The proposed renewal will have a duration of two (2) years. IPST proposed total cost is $2,446,250 of which the proposed DOE cost is $1,957,000 and IPST's and associated partner's proposed cost-share is $489,250 (20%) of the total cost.

The Federal Domestic Catalog Number is 81.078.

FOR FURTHER INFORMATION CONTACT: Kara Twitchell, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563, (208) 526–4958.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is the Energy Conservation Program begun in 1975 under the mandate of the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The proposal meets the criteria for "non-competitive" financial assistance as set forth in 10 CFR Part 600.7(b)(2)(i)(A). The applicant is an institution of higher education.

The anticipated period to complete the renewal is two (2) years. The total estimated cost of this renewal project is $2,446,250 of which the proposed DOE cost is $1,957,000 and IPST's and associated partner's proposed cost-share is $489,250 (20%) of the total cost.

B.G. Bauer,

Acting Director, Procurement Services Division.

[FR Doc. 95–23465 Filed 9–20–95; 8:45 am]

BILLING CODE 6450-01-M

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 1995.

Acharya, Sarbeswar Nmi
Ackerly, Lawrence R.
Adler, Ira M.
Alcock, Robert M.
Alessi, Victor E.
Allen, Grover L.
Alvarez, Robert
Andersen, Arthur T.
Anderson, Phyllis L.
Baca, Frank A.
Bacher, Stephen Eugene
Bajura, Rita A.
Baker, Kenneth E.
Bamberger, Craig S.
Barber, Robert W.
Barker Jr., William L.
Barnes, Wesley E.
Barrett, Lake H.
Bartholomew, John W.
Baublitz, John E.
Bechtel, Thomas F.
Beckett, Thomas H.
Beckner, Everet H.
Beecy, David J.
Bell, George E.
Bellows, Jerry L.
Benedict, George W.
Bergholz Jr., Warren E.
Berls Jr., Robert E.
Bernard, Peter A.
Berube, Raymond P.
Bielan, Douglas J.
Bishop, Yvonne M.
Bixby, Willis W.
Black, Richard L.
Blackwood, Edward B.
Borgstrom, Carol M.
Borgstrom, Howard G.
Bornhoft Jr., Budd B.
Bostock, Judith L.
Bowman, Gerald C.
Boyd, Gerald G.
Boyle, Phillip D.
Bradley Jr., Theron M.
Brechbill, Susan R.
Bresee, James C.
Breznay, George
Brice, James F.
Brockman, David A.
Brodman, John R.
Brogan, John J.
Brolin, Edson C.
Brown Jr., Charles H.
Brown, Frederick R.
Brown, Richard W.
Brush, Peter N.
Bryant, McKinley E.
Buffum, Elizabeth
Burns Jr., Thomas F.
Canter, Howard R.
Carabetta, Ralph A.
Cardinali, Henry A.
Carey Jr., Edwin F.
Carlson, John T.
Carlson, Kathleen Ann
Carlson, Lynda T.
Caruso, Guy F.
Castelli, Brian T.
Chappell, Gerald F.
Chaput, Ernest S.
Cheney, David W.
Chernock, Warren P.
Christensen, William J.
Christopher, Robert K.
Chun, Sun W.
Chupka, Marc
Claflin, Alan B.
Clark, John R.
Clausen, Max Jon
Cole, George F. III
Combs, Marshall O.
Cone, Ronald E.
Conley, Michael W.
Cook, John S.
Cornwell, Thomas F.
Costello, William J.
Cote, Joel S.
Cowan, Stephen P.
Crandall, David H.
Crawford, Timothy S.
Cross, Claudia A.
Crowe, Richard C.
Culpepper, James W.
Cumesty, Edward G.
Curtis, James H.
Cygelman, Andre I.
Czajkowski, Anthony F.
Davies, James D.
Davies, Nelia A.
Davis, Howlie R.
Davis, James T.
Decker, James F.
Degrasse Jr., Robert W.
Dehanas, Thomas W.
Dempsey, Robert D.
Dennison, William J.
Der, Victor K.
Dials, George E.
Diaz Jr., Romulo L.
Didisheim, Peter F.
Diebold, Robert E.
Dienes, Nicholas S.
Difiglio, Carmen
Dirks, Timothy M.
Divone, Louis V.
Doherty, Donald P.
Domagala, Martin J.
Dorsey, William A.
Dover, Agnes P.
Doyle, Mark J.
Durnan, Denis D.
Edmondson, John J.
Edwards, Gregory A.
Egger, Mary H.
Engel, Walter P.
Erb, Donald E.
Esvelt, Terence G.
Evans, Thomas W.
Fausett, Stephen A.
Feibus, Howard
Feider, James C.
Fiore, James J.
Fiore, Joseph N.
Fiori, Mario P.
Fisher, Roger E.
Fitzgerald Jr., Joseph E.
Ford, James L.
Ford, John A.
Forrister, Derrick L.
Fowler, Jennifer Johnson
Fox Penner, Peter S.
Frank, Clyde William
Franklin, John R.
Frei, Mark W.
Friedman, Gregory H.
Furiga, Richard D.
Fygi, Eric J.
Garson, Henry K.
Garvie, William H.
Gebus, George R.
Geidl, John C.
Geisbush, Jon C.
Gibson Jr., William C.
Gibson, Judith D.
Gilbertson, Mark A.
Goldenberg, Neal
Goldenberg, Ralph D.
Goldman, David Tobias
Goldsmith, Robert
Gollomp, Lawrence A.
Gottlieb, Paul
Graham, A. Diane
Greenwood, Johnnie D.
Greiner, Lloyd M.
Gross, Thomas J.
Gruenspecht, Howard K.
Guidice, Carl W.
Guidice, Stephen J.
Gunn Jr., Marvin E.
Gurule, David A.
Guyer, Arthur E.
Haberman, Norton
Hacskaylo, Michael S.
Hahn, Richard D.
Hale, Douglas R.
Hall Jr., Spain W.
Hall, James C.
Hamer Jr, David L.

Hamric, Jon P.
Hanessian, Souren
Hansen, Charles A.
Hardin, Michael G.
Hardy, Randall W.
Harris, Jessie J.
Hartman, James K.
Harvey, Gordon W.
Haspel, Abraham E.
Hawkins, Francis C.
Heath, Charles C.
Heenan, Thomas F.
Hegburg, Alan S.
Heinkel, Joan E.
Henderson, Lynwood H.
Hendricks, Nancy L.
Hendrie, David L.
Henry, Carol J.
Hensley Jr., Willie F.
Hess, Wilmot N.
Heusser, Roger K.
Hickey, Sue F.
Hickok, Steven G.
Highland, Nadine M.
Hirahara, James S.
Hoffman, Allan R.
Hogan, Danny A.
Holbrook, Phillip L.
Hopf, Richard H.
Hopkins, T. J.
Hughes, Jeffrey L.
Hunter, Ray A.
Hutzler, Mary Jean.
Inge Jr., Edwin F.
Inlow, Rush O.
Isaacs, Thomas H.
Izatt, Ronald D.
Izell, Kathy D.
Jaffe, Harold
Jhirad, David J.
Johansen, Judith A.
Johnson, Frederick M.
Johnson, Gerald W.
Johnson, Milton D.
Johnson, Owen B.
Johnston, Marc
Jones, C. Rick
Jones, David A.
Joseph, Antionette Grayso
Juckett, Donald A.
Karol, Michael S.
Katz, Maurice J.
Kelly, Cynthia C.
Kennedy, John P.
Kight, Gene H.
Kilgore, Webster C.
Kilpatrick, Michael A.
Kingsbury, Robert L.
Kinzer, Jackson E.
Klein, Keith A.
Klein, Susan Elaine
Knuth, Donald F.
Koontz, Max A.
Kountoupes, Lisa M.
Kripowicz, Robert S.
Landers, James C.
Lane, Anthony R.
Langenfeld, Cherri J.
Larson Jr., Victor R.
Lash, Terry R.
Lavin, Ann W.
Leclaire, David B.
Lewis Jr., Howard E.
Lewis Jr., William A.
Lewis, Lenora J.
Lewis, Roger A.
Lien, Stephen C.T.
Lightner, Ralph G.
Lique, E Diane W.
Longton, Joseph N.
Loose, Ronald R.
Lorenz, Milton C.
Lowe, Owen W.
Luongo, Kenneth N.
Lynch, Oliver D. T. Jr.
Lytle, Jill Ellman
MacDougall, Carmen E.
MacLachlan, Alexander
Magruder, James K.
Mahaley, Joseph S.
Mangeno, James J.
Mann, Thomas O.
Manning, William F.
Marchese, Andrew R.
Marianelli, Robert S.
Marlay, Robert C.
Maroldo, James H.
Marquess, Paul T.
Marquez, Richard A.
Mathamel, Martin S.
Maupin, Gary T.
Maxey, Kenneth G.
Mayhew, Delmar D.
McCallum, Edward J.
McCammon, Helen M.
McClain, Linda K.
McCoy, Frank R. III
McCraney, Percy P.
McFadden Jr., George L.
McIntyre, Donald D.
Michelsen, Stephen J.
Miller, Clarence L.
Miller, Deborah C.
Millhone, John P.
Milner, Ronald A.
Monlyn, Sylvia McDonald
Moore, Kenneth G.
Moorer, Richard F.
Morris, Marcia L.
Mournighan, Stephen D.
Mravca, Andrew E.
Murphy, Robert E.
Nealy, Carson L.
Neilsen, Finn K.
Nelson, David B.
Nelson, Rodney R.
Nettles Jr, John J.
Newman, David G.
Nichols, Clayton R.
Nolan, Elizabeth A.
Nulton, John D.
O'Brien Jr., Robert A.
O'Fallon, John R.
Oliver, Lawrence R.
Olson, Gary C.
Parnes, Sanford J.
Patil, Pandit G.
Patrinos, Aristides A.
Patton, Gloria S.
Pearman Jr., Donald W.
Pearson, Orin F.
Pelletier, Raymond
Perin, Stephen G.
Pesyna, Gail M.
Peters, Franklin G.
Pettengill, Harry J.
Pettis, Lawrence A.
Piper II, Lloyd L.
Plaisance Jr., Paul J.
Podonsky, Glenn S.
Poe, Robert W.
Pollock III, Walter E.
Powers, James G.
Pray, Charles P.
Prewitt, Jana S.
Price Jr., Robert S.
Prudom, Gerald H.
Przybylek, Charles S.
Pumphrey, David L.
Pye, David B.
Rabago, Karl R.
Rabben, Robert G.
Reddick, William C.
Reicher, Dan W.
Reid, James E.
Rhoades, Daniel R.
Richardson, Herbert.
Richardson, Steven D.
Riggs, John A.
Roberson, Jessie M.
Roberts, Michael.
Robertson, John S.
Robison, Sally A.
Rock, Bernard J.
Rodeheaver, Thomas N.
Rodekohr, Mark E.
Rohlfing, Joan B.
Rollow, Thomas A.
Romm, Joseph J.
Rooney, John M.
Rosen, Sol.
Rosenzweig, Richard.
Rosselli, Robert M.
Rousso, Samuel NMI.
Rozzi, Dolores L.
Rudins, George.
Rudy, Gregory P.
Rumsey, Terry Cornwell
Ryder, Thomas S.
Salm, Philip E.
Saltzman, Jerome D.
Salvador, Louis A.
Samber, Martin
San Martin, Robert L.
Scheetz, Karl G.
Schiavo, Lisa C.
Schmitt, Carl H.
Schmitt, Eugene C.
Schmitt, William A.
Schnapp, Robert.
Schneider, Sandra L.
Scott, Randal.
Season Jr., Harry T.
Semedo, Barbara.
Shafer, John M.
Shelor, Dwight E.
Shirley Sr., John W.

Siebert Jr., Arlie B.
Sienkiewicz Jr., E. W.
Silverman, Mark N.
Simon, Robert M.
Simpson, Charles Kyle
Singer, Marvin I.
Sitzer, Scott B.
SJostrom, Leonard C.
Smedley, Elizabeth E.
Smith, Alexandra B.
Smith, David A.
Smith, Douglas W.
Smith, Leanne Waldo
Sohinki, Stephen M.
Spigal, Harvard P.
Spiller, Reginal W.
Stadler, Silas D.
Stallman, Robert M.
Stark, Richard M.
Stello Jr., Victor (NMN)
Stewart Jr., Frank M.
Stewart Jr., Jake W.
Stone, Philip M.
Strakey Jr., Joseph P.
Stumbaugh, David C.
Sulak, Stanley R.
Sullivan, Mary Anne
Swink, Denise F.
Sye, Linda G.
Taboas, Anibal L.
Tamura, Thomas T.
Tavares, Antonio F.
Tedrow, Richard T.
Terrell, Robert L.
Thomas, Iran L.
Thompson, Jerry F.
Throckmorton, Ralph R.
Tierney, Charles R.
Tillman, Luther J.
Torkos, Thomas M.
Tryon, Arthur E.
Tseng, John C.
Tucker, William E.
Turi, James A.
Turner, James M.
Tuttle III, Edward H.
Twining, Bruce G.
Vaeth, Terry A.
Vagts, Kenneth A.
Vanzandt, Vickie R.
Volpe, Frederick J.
Wagner, Mary Louise
Wagoner, John D.
Walsh, Robert J.
Walton, Howard L.
Warnick, Walter L.
Watkins, Anthony Lee.
Watts, Carolyn Herr.
Weidenfeller, Nancy K.
Werner, James D.
Whitaker Jr., Mark B.
White, James K.
Whiteman, Albert E.
Wieber, Paul R.
Wieker, Thomas L.
Wilcynski, John M.
Wilken, Daniel H.
Williams, Edward R.
Williams, Mark H.
Willis, John W.
Wilmot, Edwin L.
Wisenbaker Jr., William
Wooley, John C.
Yuan-Soo Hoo, Camille C.

Issued in Washington, DC September 14, 1995.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

[FR Doc. 95–23494 Filed 9–20–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM96–1–97–000]

Chandeleur Pipe Line Company; Notice of Annual Charge Adjustment Clause Filing

September 15, 1995.

Take notice that on September 11, 1995, Chandeleur Pipe Line Company (Chandeleur) tendered for filing proposed tariff sheets designed to add an Annual Charge Adjustment Clause to its FERC Gas Tariff.

Chandeleur also proposed to adjust its rates to reflect the Commission's FY 1996 annual charge for natural gas pipeline companies of $0.0023 per Mcf. Chandeleur has proposed an effective date for the revised tariff sheets of October 1, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–23385 Filed 9–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–68–000, RP94–223–000, and RP94–379–000 (not consolidated)]

Colorado Interstate Gas Company; Notice of Telephone Technical Conference

September 15, 1995.

Pursuant to the Commission order which issued on December 30, 1994, a telephone technical conference will be conducted by the Commission Staff on Wednesday, September 27, 1995, at 3:15 p.m., to resolve the issues in the above-captioned proceeding.

Parties who wish to participate in, or have any questions about the conference, should contact Maria Sweitzer at (202) 208–0417 no later than Tuesday, September 26, 1995.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–23382 Filed 9–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–10–003]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

September 15, 1995.

Take notice that on September 11, 1995, pursuant to Section 154.62 of the Commission's Regulations and in compliance with the Commission's March 17, 1995 order in Docket No. GT95–10–000, Texas Eastern Transmission Corporation (Texas Eastern) herewith submits for filing executed Section 7(c) service contracts listed on Appendix A of the filing between Texas Eastern, as Pipeline, and New Jersey Natural Gas Company under its firm Rate Schedules FTS, FTS–2, FTS–4, FTS–5, FTS–7, FTS–8 and SS.

Texas Eastern requests that the Commission waive all necessary rules and regulations to permit the contracts listed on Appendix A of the filing to become effective on the first day of the primary term as stated in each contract.

Texas Eastern states that a copy of the letter of transmittal and its attached contracts are being sent to the listed customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–23381 Filed 9–20–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95–436–000]

Transcontinental Gas Pipe Line Corporation; Notice of Petition For Declaratory Order

September 15, 1995.

Take notice that on September 1, 1995, Transcontinental Gas Pipe Line Corporation (Transco) and certain traditional shippers[1] (herein collectively, with Transco, referred to as the Transco Group) filed a Petition for Declaratory Order.

The Transco Group requests that the Commission order Coastal Eagle Point Oil Company to comply with Transco's tariff provision requiring the payment of overrun penalty amounts incurred as a result of unauthorized takes of gas in excess of its maximum firm contract entitlement during December of 1992. In support thereof, the Transco Group seeks a declaratory order finding that (1) a shipper's intent at the time that it incurs an overrun is not relevant to the assessment of an overrun penalty; (2) a "harm" standard is not relevant to the assessment of an overrun penalty, and (3) Transco is not required to provide verbal or written notice to a shipper prior to the assessment of an overrun penalty.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 25, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–23383 Filed 9–20–95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95–437–000]

WestGas InterState, Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 15, 1995.

Take notice that on September 12, 1995, WestGas Interstate, Inc. (WGI) tendered for filing certain revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff, as identified on the Appendix A attached to the filing. The proposed effective date of these tariff sheets is November 1, 1995.

WGI states that the tariff revisions reflect a decrease in all of the rates applicable under WGI's transportation rate schedules and would decrease overall revenues from WGI's jurisdictional services by $105,510, based on the twelve-month period ended June 30, 1995, as adjusted for known changes through December 31, 1995. Specifically, WGI proposes to decrease its maximum reservation charge under Rate Schedule FT from $2.2344 per dth to $1.2828 per Dth and to decrease its maximum commodity charge under Rate Schedule IT from $0.0492 per dth to $0.0401 per dth. WGI further states that the revised tariff sheets also reflect certain revisions which update and clarify WGI's FERC gas tariff, and bring WGI's tariff into conformance with recent Commission Orders.

WGI states that a copy of its filing was served on each of its jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20406, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–23384 Filed 9–20–95; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5297–7]

Agency Information Collection Activities up for Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before November 20, 1995.

ADDRESSES: U.S. Environmental Protection Agency, Assessment and Modeling Division, Emission Inventory Group, 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Donald M. Szeles. Telephone: (313) 668–4513, Facsimile: (313) 668–4497.

SUPPLEMENTARY INFORMATION:

Affected Entities

The entity affected by this action is the general public that own on-road motor vehicles.

Title

Mobile Source Emission Factor Survey—2060–0078.

Abstract:

The EPA Emission Inventory Group, through contractors, solicits the general public to voluntarily offer their vehicle for emissions testing. The owner is also asked to complete a multiple choice form of nine questions that summarize vehicle usage. There are two methods of soliciting the general public for participation in the Emission Factor Program (EFP):

1. Postal cards are sent to a random selection of vehicle owners using State motor vehicle registration lists.
2. A random selection of motor vehicle owners who arrive at State emission inspection stations on an annual or biennial schedule.

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[1] The Brooklyn Union Gas Company, Consolidated Edison Company of New York, Inc., Elizabethtown Gas Company a division of NUI Corporation, Long Island Lighting Company, North Penn Gas, Inc., Penn Fuel Gas, Inc., Pennsylvania Gas and Water Company, Philadelphia Gas Works, Piedmont Natural Gas Company and Public Service Electric & Gas Company have joined Transco in this Petition to evidence their support for the findings requested.

Information from the EFP provides a basis for developing State Implementation Plans (SIPs), Reasonable Further Progress (RFP) reports, attainment status assessments for the National Ambient Air Quality Standards (NAAQS).

The legislative basis for the Emission Factor Program is Section 103(a)(1)(2)(3) of the Clean Air Act, which requires the Administrator to: "conduct * * * research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution" and "conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency * * *"

EPA uses the data from the EFP to verify predictions of the computer model known as MOBILE, which calculates the contribution of mobile source emissions to ambient air pollution. MOBILE is used by EPA, state and local air pollution agencies, the auto industry, and other parties interested in estimating mobile source emissions.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; and

(iii) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated technology (e.g., permitting electronic submission of responses).

Burden Statement: Public reporting burden for this collection of information is estimated to average 10 minutes per response for a contractor laboratory questionnaire and up to 2 hours per response for a post card questionnaire, including the time for reviewing instructions, completing the questionnaire, and delivering the vehicle for testing.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460;

and the

Paperwork Reduction Project (OMB # 2060–0078), Office of Information and Regulatory Affairs, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: September 1, 1995.

Donald M. Szeles,

Mechanical Engineer.

[FR Doc. 95–23434 Filed 9–20–95; 8:45 am]

BILLING CODE 6560-50-P

[AMS-FRL–5300–6]

California State Nonroad Engine Pollution Control Standards; Authorization of State Standards; Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice regarding authorization of State standards.

SUMMARY: EPA is authorizing California to enforce regulations for exhaust emission standards and test procedures for 1996 and later new heavy-duty off-road diesel cycle engines 175 horsepower and greater pursuant to section 209(e) of the Clean Air Act.

ADDRESSES: The Agency's decision document containing an explanation of the Administrator's decision, as well as all documents relied upon in reaching that decision, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center in Docket A–94–44 during the working hours of 8:00 a.m. to 5:30 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. Copies of the decision can be obtained from EPA's Manufacturers Operations Division by contacting David Dickinson, as noted below.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney/Advisor, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Telephone: (202) 233–9256.

SUPPLEMENTARY INFORMATION: I have decided to authorize California to enforce regulations for standards and test procedures for nonroad engines pursuant to section 209(e) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543. These regulations establish exhaust emission standards and test procedures for 1996 and later new heavy-duty off-road diesel cycle engines 175 horsepower and greater, including alternate-fueled engines, produced on or after January 1, 1996. A comprehensive description of these California regulations can be found in the decision document for this authorization and in materials submitted by CARB.

On the basis of the record before me, I cannot make the findings required to deny authorization under section 209(e)(2) of the Act. Therefore, I am authorizing California to enforce these regulations.

On February 14, 1995 EPA published a notice of opportunity for a public hearing and a request for written comments concerning California's request.[1] EPA received no request for a hearing. EPA received comments from the United States Office of the Deputy Under Secretary of Defense. Consequently, this determination is based on written submissions by CARB, the written comments submitted in response to the above-mentioned notice and all other relevant information.

Section 209(e) of the Act as amended, 42 U.S.C. 7543(e), addresses state regulation of nonroad engines and vehicles. EPA issued on July 20, 1994 a final regulation to implement section 209(e) entitled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" (section 209(e) rule).[2] Section 209 preempts states from regulating several types of new nonroad engines and vehicles, including new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower; and new locomotives or new engines used in locomotives. The section 209(e) rule sets forth definitions for these preempted categories of engines.

For those new pieces of equipment or new vehicles other than those a State is not permanently preempted from regulating under section 209(e)(1), the State of California may promulgate standards regulating such new equipment or new vehicles provided California complies with Section 209(e)(2). The section 209(e) rule provides that if certain criteria are met, the Administrator shall authorize

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[1] 60 FR 8381 (February 14, 1995).

[2] See 59 FR 36969 (July 20, 1994) and codified at 40 C.F.R. Part 85, Subpart Q, §§ 85.1601–85.1606.

California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards; whether California needs state standards to meet compelling and extraordinary conditions; and whether California's standards and accompanying enforcement procedures are consistent with section 209.

California determined that its standards and test procedures would not cause California emission standards, in the aggregate, to be less protective of public health and welfare as the applicable Federal standards. I was not presented with any information opposing California's authorization request or demonstrating that California arbitrarily or capriciously reached this protectiveness determination. Therefore, I cannot find California's determination to be arbitrary or capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program. In addition, CARB provided information regarding actions taken by the California Legislature in an effort to address the current air quality conditions in California, directing CARB to consider adopting regulations for off-road engines. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Based on previous showings by California in the context of motor vehicle waivers and CARB's submission to the record regarding the status of air quality in the state, I agree that compelling and extraordinary conditions warrant the need in California for separate standards for heavy-duty off-road diesel cycle engines. Thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 209 of the Act.

The one issue of inconsistent test procedures was resolved. For the test procedure for hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X), EPA has more stringent test specifications such that EPA cannot be certain that if an engine were tested and met the California test specifications, that it would definitely meet the EPA test specifications. It is clear, on the other hand, that an engine that passed the EPA test specifications could definitely be deemed to have passed the CARB test specifications. CARB presented a letter to EPA dated January 21, 1995, which resolved this issue.[3] The letter stated that "tests properly conducted by the manufacturer, according to the U.S. EPA procedure, will be considered valid for purposes of California certification, quality-audit, and new engine compliance testing." Thus, the manufacturer will be able to accomplish both Federal and California certification requirements with one test and the test procedure tier of the consistency criterion is met.

The Agency received no comments regarding this issue. Since both California and Federal certification requirements can be met with the same test vehicle in the course of a single test, test procedure inconsistency is not a bar to California to obtaining authorization by EPA to adopt and enforce California regulations. Thus, based on the foregoing information, I cannot find that California's standards and accompanying enforcement procedures are inconsistent with section 209 of the Act.

The Agency received written comment from the United States Department of Defense expressing concern that CARB's emission standards will have a major impact on military operations in California. As further explained in the decision document for this authorization, EPA expects CARB to adequately address this concern by adopting regulatory language to closely parallel the national security exemption provisions promulgated by EPA.

Accordingly, I cannot make the determinations required for a denial of this authorization under section 209(e) of the Act, and therefore, I authorize the State of California to enforce these regulations.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad equipment engines for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by November 20, 1995. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver and authorization decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(e) of the Act to the Assistant Administrator for Air and Radiation.

Dated: September 15, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95-23436 Filed 9-20-95; 8:45 am]

BILLING CODE 6560-50-P

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[3] Letter to Charles N. Freed, EPA from K.D. Drachand, CARB dated January 21, 1995. Docket A-94-44 II-D-3.

[FRL-5300-2]

Border Environment Cooperation Commission Guidelines

AGENCY: Border Environment Cooperation Commission (BECC).

ACTION: Notice.

SUMMARY: This notice announces the availability of the BECC Guidelines for Project Submission and Criteria for Project Certification document to the public.

FOR FURTHER INFORMATION OR A COPY CONTACT: April Lander, Manager-Environmental Program, Border Environment Cooperation Commission, P.O. Box 221648, El Paso, TX 79913, tel. (011-52-16) 29-23-95, fax (011-52-16) 29-23-97, Email becc1@itsnet.com.

SUPPLEMENTARY INFORMATION: A report to the public discussing BECC responses to public comment is also available to the public. For further information or a copy contact April Lander, H. Roger Frauenfelder, General Manager, Border Environment Cooperation Commission, P.O. Box 221648, El Paso, TX 79913.

Dated: September 11, 1995.

H. Roger Frauenfelder,

General Manager.

BECC Guidelines for Project Submission and Criteria for Project Certification

I. Authority

These guidelines and criteria are adopted under the authority of the November 1993 Agreement Between the Government of the United States of America (U.S.) and the Government of the United Mexican States (Mexico) Concerning the Establishment of a Border Environment Cooperation Commission (BECC) and a North American Development Bank (NADBank) (Agreement) which authorizes the BECC Board of Directors (Board) to determine its general operational and structural policies as may be necessary or appropriate to conduct BECC business.

II. Program Purpose

The purpose of BECC is to help preserve, protect, and enhance the environment of the border region in order to advance the well-being of the people of the United States and Mexico and achieve sustainable development. In carrying out this purpose, BECC will cooperate as appropriate with the NADBank and other national and international institutions, and with private sources supplying capital for environmental infrastructure projects in the border region.

III. Program Scope

In carrying out its purpose, BECC will: (1) assist states and localities and other public entities, and private investors in (A) coordinating, preparing, developing, implementing, and overseeing environmental infrastructure projects; (B) assisting with planning, design, construction management, operation and maintenance; (C) providing technical assistance to applicants in the development of proposals, project feasibility planning, engineering design, and environmental assessments; (D) assessing the technical and financial feasibility of projects; (E) evaluating social, environmental, and economic benefits of projects; (F) organizing, developing, and arranging public and private financing for projects; (G) assisting with the development of a comprehensive public outreach and participation plan, and (2) certify projects for financing by the NADBank or other sources.

Projects located within 100 km (62 miles) on either side of the U.S./Mexico border may be considered for certification. Projects outside this region may be considered for certification only if the BECC, with concurrence of the U.S. Environmental Protection Agency (EPA) and the Mexican Secretaria de Desarrollo Social, find the project would remedy an environmental or health problem within the 100 km (62 mile) area.

In certifying projects, or in providing technical assistance, BECC shall give preference to projects relating to:

(a) water pollution,
(b) wastewater treatment,
(c) municipal solid waste management, and
(d) related matters.

Potential water pollution projects could include, but are not limited to:

(a) potable water treatment,
(b) water supply systems,
(c) water pollution prevention, and
(d) projects to improve or restore the quality of water resources.

Potential wastewater treatment projects could include, but are not limited to:

(a) wastewater collection systems,
(b) wastewater treatment plants,
(c) water reuse systems, and
(d) systems for treatment and beneficial use of sludge.

Potential municipal solid waste projects could include, but are not limited to:

(a) landfills,
(b) solid waste collection and disposal, and
(c) reuse, recycling, or waste-to-energy projects.

Related projects include projects which in some way directly or indirectly correspond to the three priority areas described above. Interpretation of this term will be at the discretion of the BECC Board of Directors on a case-by-case basis.

The BECC acknowledges the importance of the environmental goals and objectives embodied in the following international agreements: Agreement on Cooperation for the Protection and Improvement of the Environment in the Border Area (La Paz Agreement) the North American Free Trade Agreement (NAFTA), and the North American Agreement on Environmental Cooperation as well as other agreements undertaken by the United States or Mexico.

IV. Definition of Terms

Advisory Council. Advisory Council of the BECC. The Council has eighteen members, nine from the United States and nine from Mexico. The Council may provide advice to the Board of Directors or the General Manager on any matter within the scope of BECC functions, including certifications, and may perform such other functions as directed by the BECC Board of Directors. The BECC shall consult with the Council regarding community participation and requests for technical assistance.

Agreement. Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank dated November 1993.

Applicant. States and localities, other public entities, and private investors which submit proposals for certificates or technical assistance to the BECC. Applicants may include individuals, non-profit organizations, and non-governmental organizations.

Appropriate Technology. Technology which closely matches the level of technology used with the ability of the local user to operate and maintain the system without creating dependency on high levels of resource inputs from outside the community and without adding significant stress to the environment or the social fabric of the community.

Board of Directors. Board of Directors of the BECC. The Board has ten directors, five from the United States and five from Mexico. The Board determines general operational and structural policies for the BECC, evaluates projects and certifies qualified projects pursuant to the Agreement.

Certification. The approval of the BECC Board of Directors that an environmental infrastructure project meets the criteria for certification as described in the Agreement and in this document.

Community Participation. Active and interactive involvement by individuals or groups who reside in an affected community, or other representatives officially designated by the affected community, who can represent the community's interest in decision-making during the project life cycle.

Cultural Resources. Historical, archeological, and ethnic resources, both past and present.

Environmental Infrastructure Project. A project that will prevent, control, or reduce environmental pollutants, improve the drinking water supply, or protect flora and fauna so as to improve human health, promote sustainable development, or contribute to a higher quality of life.

General Manager. General Manager of the BECC.

Impacts. Potential and actual environmental, social, and economic effects of project development and implementation. Impacts may be adverse or beneficial.

Life Cycle Cost. Cost of the entire project from beginning to end, including planning, construction, operations and maintenance phases. Includes purchase of land, site restoration, and post-closure maintenance whenever applicable.

Mitigation. Avoidance of negative impacts by not taking an action and/or the minimization of impacts by limiting the degree or magnitude of the action.

Municipal Solid Wastes. Domestic and commercial non-hazardous waste accumulated by a community.

Natural Resources. Flora, fauna, minerals, soil, surface water, groundwater, wetlands, and air.

Project Life Cycle. Planning, development, construction, operation, closure, and post-closure phases of a project.

Sustainable Development. Development which meets the needs of the current generation without compromising the needs of future generations to meet their own needs (Brundtland Report: Our Common Future, World Commission on Environment and Development, 1987, p. 43).

User Fees. Fees paid by users of the infrastructure projects.

Wastewater Treatment. Pre-treatment, primary, secondary, or tertiary treatment of a polluted liquid of diverse composition coming from domestic, industrial, commercial, agricultural, livestock waste, or other sources.

Water Pollution. Presence of one or more contaminants in the environment which damage or degrade the quality of water resources.

V. Technical Assistance Proposal Submission Procedures

Requests for technical assistance for development of proposals, planning and project feasibility, including community involvement in the process and engineering design studies, and environmental assessments may be submitted at any time to the General Manager with the Step I Project Pre-Proposal Submission Form. Funds for technical assistance in the form of direct grants are limited but BECC is working on a revolving fund to enable initial grants for planning which would then be paid back as part of the overall loan package if the project is certified by BECC and financed by NADBank. A technical assistance guide will be developed with public input to help potentially eligible project applicants in this process. Also, BECC staff is available to assist with general proposal guidance. BECC will give technical assistance priority to communities which have the least available resources for project development.

VI. Project Proposal Submission Procedures

A. Preapplication Communication

Prior to project submission, project originators are highly encouraged to meet or communicate with BECC staff to establish fundamental eligibility of the proposed project and to be briefed on the two step BECC project submission process and the BECC technical assistance program.

B. Step I: Project Pre-Proposal Submission Process

Step I is a preliminary stage in the project proposal submission process to be completed prior to the comprehensive project proposal as described in Step II: Project Proposal Submission Process. Step I involves completion of a simple form describing the project's basic parameters. These parameters will be used to establish initial project conformance with BECC objectives and will indicate the applicant's need for technical assistance. The Step I: Project Pre-Proposal Form may be submitted at any time to the General Manager of the BECC. After positive review of Step I, the Applicant may submit Step II. Applicants will be sent a letter acknowledging receipt of Step I within 30 days.

The project information requested on the Step I Form includes the project title, project type, project sponsor information, and contractor, if known. Additionally, general project information is requested such as project location and type of technical assistance needed. Furthermore, information describing the project and project planning information is requested. In the case that not all information requested is available, please indicate that you are in the process of developing this information and include the approximate date this information will be provided to the BECC. The Step I Form is provided at the end of this document.

C. Step II: Project Proposal Submission Process

Step II of the project submission process may be undertaken after completion of the Step I Form. Step II involves provision of detailed project proposal information, based upon the proper engineering, environmental, economic, financial and social studies, to the BECC in the following areas:

(1) general project description,
(2) environment and human health,
(3) technical feasibility,
(4) economic and financial feasibility,
(5) social issues,
(6) community participation,
(7) operation and maintenance, and
(8) sustainable development.

Although it is not entirely necessary to have the final design of the project completed by the time that Step II is submitted, it is required that the process design is well advanced and a fairly good estimation of the total project cost is available, so that the NADBank can determine its funding feasibility. The greater the detail provided in the areas mentioned above, the easier it will be for the BECC staff to review and come up with a recommendation for certification to the Board of Directors.

The proposed project must meet fundamental BECC criteria for certification. The project Applicant should not only provide as much information as possible on each of the above areas, but should describe and fully justify all of the components involved in the project, especially those related to the different fundamental criteria that appear in the following sections. Applicants will be sent a letter acknowledging receipt of Step II within 30 days.

The BECC requests the project information be submitted in the same order and using the same alphanumeric system as in this document, in order to make the document easier to review and speed-up the certification process.

VII. Project Certification Criteria

Each of the following eight categories of fundamental criteria must be satisfactorily met in order for projects to obtain BECC certification. The BECC Board of Directors, with advice from the BECC Advisory Council, will make the final decision on project certification. Certification will formally document the project's compliance, or ability to comply, with the fundamental criteria prior to submission to NADBank, or other financing sources. Certification by BECC is not a guarantee that NADBank will approve the project for financing; however, once certified, BECC will work with project applicants to obtain financing for the project.

1. General Project Description

Information Requested

a. Project Applicant's. Provide information, that has changed from the Step I form, including, lead organization, all co-applicants, and contractor information, if applicable. Information should include lead contact persons, addresses, phone numbers, fax

numbers, and Email addresses. Additionally, provide history of cooperation between applicants, if applicable. Provide evidence of financial responsibility and performance history of company contracted for the project, if applicable.

b. Project Location.

i. Describe the geographical location of the project and provide a site location map as well as a regional map showing the site location. Also, describe the area of project impact as specifically as possible. If possible, use a scale of 1:24000 for regional area maps and of 1:2400 for project site maps. Provide Geographic Information System (GIS) maps or overlays, if available.

ii. Describe the suitability of the proposed site, identifying such factors as the existence and capacity of available infrastructure, natural resources, etc.

c. Environmental Issue. Describe the environmental condition or issue to be addressed by the project and the activities taken in response to the environmental condition that led up to the proposed project. If available, include preliminary reports.

d. Project Alternatives. Describe the analysis of alternatives considered to address the environmental and or health issues.

e. Project Justification. Justify aspects which make project implementation necessary, including the consequences of not implementing the project. Explain why the proposed project is the best alternative to solve the problem. Describe the net environmental benefit to be achieved by the project both onsite and overall. Discuss project strengths and weaknesses and available resources to overcome the weaknesses. Provide relevant health statistics, environmental monitoring results, or other materials, if available, documenting the justification.

f. Transboundary Aspects. Discuss difficulties and opportunities, if any, created by projects which are located in and/or impact both the United States and Mexico. Explain how these difficulties might be resolved or opportunities taken. Consider applicable international agreements.

g. Project Work Tasks. Provide a detailed list of project work tasks through construction. List who will complete the task, the cost of each task, and a time schedule for each task.

Fundamental BECC Criteria

a. Project Location. The project must be located within 100 km (62 miles) of the U.S./Mexican border or has been found by the BECC, in concurrence with the U.S. Environmental Protection Agency and the Mexican Secretaria de Desarrollo Social, to remedy a transboundary environment or health issue.

b. Project Work Tasks. Project work tasks and budget estimates by task must be reasonable, in order to complete project as planned by the Applicant.

2. Environment and Human Health

The goal of BECC is to help preserve, protect, and enhance the environment in a sustainable manner in order to improve the quality of life in the U.S./Mexico border region. The applicant should ensure that negative environmental impacts of the project have been avoided to the extent reasonably possible. Those negative impacts that are unavoidable should have been identified and considered in the project evaluation process, and the Applicant must ensure that appropriate safeguards have been included in the project for potential impacts which could cause damage to the environment and human health. All projects, once completed, must be in compliance with applicable local, regional, state, and federal laws, rules, standards and applicable international agreements.

Information Requested

a. Documentation of Environmental Regulatory Compliance. Project applicants must coordinate with appropriate local, regional, state, and federal agencies, as early in the project planning process as possible, to identify all environmental impacts to natural resources. Applicants must demonstrate that the project will meet all applicable environmental regulations once the project is constructed, although all permits may not be completed at the time of BECC certification. Such a project may be certified by BECC on the condition that all environmental authorizations are obtained prior to construction. Applicants must identify for the BECC all environmental and regulatory authorizations that are required for completion of the project and demonstrate that the project is capable of meeting those regulatory requirements.

i. Describe environmental action required, including no action, regulatory organization requiring the action, proof of action completed or proof of approval for method to complete the action in the future, and contact person.

ii. List required authorizations (i.e. permits, licenses, etc.), regulatory organization providing authorizations, date authorizations approved or anticipated, status of authorization or proof of authorization approval, and contact person. Such information should include the appropriate environmental standards to be met.

iii. Provide copies of all documents submitted to regulatory agencies to BECC at the time of application, and all future documentation when available.

iv. Identify any environmental issues not already addressed in i.–iii. that may be affected by project development.

v. Provide environmental baseline studies and other environmental or health reports, if available. If not available, describe gaps in the environmental impact information.

b. Conformance with Local and Regional Conservation and Development Plans. Projects submitted to the BECC must conform with local and regional plans as well as land use and zoning regulations.

i. List applicable local and regional plans and regulations, agency (or agencies) with authority, and contact person.

ii. Describe how the project addresses or will address the plans and regulations.

c. Environmental Assessment. Every Applicant must submit an environmental assessment before the project may be considered for certification. On a case-by-case basis the BECC may certify a project before the assessment is "final" according to applicable environmental law. In such instances, the BECC may condition the certification upon successful completion of the assessment.

i. The assessment should include an analysis of a full range of project alternatives, including implications of not implementing the project, as well as justification for the alternative chosen. Additionally, it should include a discussion on indirect, cumulative, and short, medium, and long-term positive and negative impacts on biological diversity, ecosystem integrity, sensitive environmental habitats, and human health. If negative impacts are unavoidable describe actions to be taken to mitigate these impact. Furthermore, provide an overview of environmental risks and costs, environmental standards and objectives of the affected area, and appropriate additional information which has not already been described in documents provided to the BECC.

ii. Each assessment must include a discussion on transboundary effects. If the project is located in and/or impacts both the United States and Mexico, the assessment should include a discussion on possible effects in both countries. If the project is located in only one country it should include a discussion of possible impacts on the other country.

Fundamental BECC Criteria

a. Enhancement of Environment and Human Health. All projects must address a critical human health and/or environmental need.

b. Environmental Protection. Projects should achieve a high level of environmental protection for the affected area that results in a benefit to the environment or human health. Projects with negative impacts must provide actions to mitigate the impacts.

c. Compliance with Applicable Environmental Regulations. All projects certified by the BECC must demonstrate compliance with all applicable local, regional, state, and federal environmental regulations before project operations begin. The BECC may condition its certification upon the Applicant's ability to comply with applicable environmental regulations.

d. Environmental Assessment. Every Applicant must submit an environmental assessment before the project may be considered for certification. On a case-by-case basis, the BECC may certify a project before the assessment is "final" according to applicable domestic environmental laws. In such instances, the BECC may condition the certification upon successful completion of the assessment.

e. Conformance with Applicable Local and Regional Plans. All projects must address applicable local and regional plans as well as land use and zoning regulations.

f. Conformance with Applicable International Agreements. Projects must comply with applicable international agreements.

3. Technical Feasibility

BECC projects must utilize appropriate technology and provide a close match between the level of technology used and the ability of the local user to operate and maintain the system without creating dependency on high levels of resource inputs from outside the community and without adding significant stress to the environment or the social fabric of the community.

Information Requested

a. Project Specifications. It is necessary to include all technical aspects which justify the project, including a study of sensitivity analysis and a justification of the following factors, depending upon the type of project:

i. Water Supply. Growth analysis, both mid and long range for the proposed planning time frame; average and peak daily consumption rate; characteristics of the production source, water quality analysis, water conservation program, pollution prevention program, description of the well-head protection program (for groundwater system, if any), transportation, and distribution infrastructure; type capacity of treatment and its efficiencies; estimate of design and construction costs, estimated annual operation, and maintenance costs; and any other information that will ensure a better understanding of the project.

ii. Wastewater Treatment. Quantity and quality of wastewater to be treated; industrial wastewater control program; projection of the wastewater volume for the proposed life of the project; design of collection system including pumping; design of treated wastewater discharge or reuse systems; analysis of treated wastewater quality; sludge treatment system, analysis of treated sludge and final disposal system; stormwater pollution prevention and treatment systems if applicable, and any other information that will ensure a better understanding of the project.

iii. Municipal Solid Waste. Projection of amounts of solid waste generated by the population for the proposal life of the project; source reduction, separation, treatment and recycling programs; areas of collection; description of operation efficiency; type and capability of proposed equipment; plan for treatment and disposal of household hazardous waste; recycling and waste stream reduction proposals; plan for the expansion, upgrade, or closure of landfills; incineration capabilities; composting capabilities; energy production capabilities; and any other information that will ensure a better understanding of the project.

b. Technical Process. Use of appropriate technologies known to be effective is encouraged. Criteria for selection and justification of the chosen technology should be included with emphasis on appropriateness to the community and efficiency of operation.

c. Quality Control Program. Submit the quality control plan for all aspects of the project. It should include contractor and equipment quality control and personnel training, as well as other quality control issues.

d. Investment Timetable. Submit the project financing plan and the required sequence to be followed in order to implement different stages of the project. Additionally, provide project development with a detailed description of stages, and activities necessary to reach the objectives in a timely and cost-effective manner. Include a bar diagram showing the actions to be carried out, an investment schedule, stages of progress, cost and source of funds.

Fundamental BECC Criteria

a. Appropriate Technology. BECC will only certify projects which use appropriate technology and which are designed to be constructed, operated, and maintained in a cost-effective manner to achieve the project's purpose.

4. Economic and Financial Feasibility

BECC projects must show financial feasibility, considering that any NADBank financing will require loan repayment. Potential access to grants and the amount of owner equity will be key considerations in BECC's evaluation of financial feasibility.

Information Requested

Applicants are requested to submit financial information that allows the analysis of the project's future results. All projects must show with a reasonable assurance, based on sound assumptions, that their future performance is going to be financially successful regardless of the project's source of funds. Specifically, the applicant is requested to provide the following information:

a. Main Financial Information. This should include cash flow, balance sheet, income statement, and sources of financing. In case of an existing business, the financial information should cover the past five years.

b. Planning, Construction, Operations, and Maintenance Budget. The Budget should show fixed and variable costs as well as expected revenues during the investment recovery period. It should also include an analysis and characterization of anticipated income sources. If a user fee or other dedicated revenue source is to be established, the budget must state clearly how the system will be set up and what assurances there are that users will pay.

c. Sensitivity Analysis. Tests the impact on the results of the analysis from changes in one or more of the input variables.

d. Break-Even Analysis (Operational and financial). Determine the level of revenues at which the project will just recover fixed and variable costs.

e. Economic Benefits. Provide an analysis of the economic benefits of the project.

Fundamental BECC Criteria

a. Debt Coverage. Project revenues must be sufficient to cover debt amortization and operation and

maintenance costs with an appropriate safety margin.

5. Social Issues

The BECC recognizes the need to assess social issues which may affect the success of a project. A goal of BECC is to improve quality of life in the border zone.

Information Requested

a. General Information on the Community. Provide information on the size of the population based on the most recent census, population growth rate, and demographic information.

b. Description of Local Environmental Services. Provide information on the current availability of environmental services (i.e. water, wastewater, solid waste).

c. Potential Economic Impacts. Provide information on the number of people who will directly benefit if the project is implemented, as a percentage of the total population, and the number of people who would be affected directly and indirectly if the project is not implemented. Discuss the positive and negative impacts of the project on the community, including local employment, local economic development, social development (i.e. education, training, and institutional strengthening), quality of life, and other local issues.

d. Project Impacts on Cultural Resources. Provide information about project impacts on cultural resources including historical, archeological, and ethnic resources.

e. Other Project Impacts. Other predicted impacts on the local population (e.g. odors, noise, or visual impacts).

Fundamental BECC Criteria

a. Compliance with Applicable Cultural Resource Regulations. All projects certified by the BECC must comply with all appropriate cultural resource (i.e. historical, archeological, and ethnic) regulations.

6. Community Participation

In order to fulfill BECC's mission, each project submitted must demonstrate community acceptance. An interactive process has been developed to ensure meaningful community participation in the development and implementation of project proposals.

Information Requested

a. Comprehensive Community Participation Plan. Before a project may be certified, an Applicant must submit to the BECC a "Comprehensive Community Participation Plan" that must be approved by BECC and implemented by the Applicant.

Each Comprehensive Community Participation Plan will vary with the specifics of each project and will be designed to meet the particular needs of the community where the project will be located. In each case, the Applicant must demonstrate how the public will be meaningfully engaged in project development and implementation.

Members of the BECC Board of Directors, Advisory Council, and staff will participate, where appropriate, in the implementation of this Comprehensive Plan to ensure compliance with the community participation criteria.

Each Comprehensive Community Participation Plan should contain at least the following essential components:

i. Local Steering Committee. The Applicant may develop a local steering committee made up of representatives from diverse organizations in the affected community (i.e. business, government, elected, education, academia, civic, non-profit, environment, etc.) to assist with all aspects of community participation. The steering committee may be made up of representatives from both countries if the proposed project is located in and/or impacts both the United States and Mexico.

The local steering committee may be responsible for developing detailed outreach activities, disseminating information about the project, engaging public participation in the process, developing public education and media campaigns, and soliciting public acceptance. The local steering committee may also be involved in developing the Comprehensive Community Participation Plan.

ii. Meetings with Local Organizations (Consultations). The Applicant must meet individually with local organizations affected by the project and provide information on and develop acceptance for the project (i.e. business, civic, community, neighborhood, environmental, academic, etc.).

iii. Public Meeting. Each Applicant must hold at least one public meeting in the community affected by the project. If the project affects more than one community, a public meeting should be held in each community.

The Applicant must comply with the following requirements of a BECC-approved public meeting:

(1) The Applicant must provide legal notice of a public meeting to include the date, time, place, and agenda at least 30 days prior to the meeting to the BECC, in the local newspaper, and other media avenues, where appropriate. The legal notice must include an accessible location where the public may obtain the Applicant's project proposal and supporting documentation, in English and Spanish where appropriate, 30 days prior to the meeting.

(2) During the public meeting the Applicant must provide a briefing on the proposed project and hear public comments on the proposed project. The Applicant's project proposal and supporting documentation must be made available during the public meeting.

(3) The Applicant must record Minutes of the public meeting to include the names of the participants and comments made. The Minutes will serve as an official record of the meeting.

The public meeting may be conducted in conjunction with public meetings required to comply with existing state or federal environmental law as long as the state or federal agency agrees to such and the legal notice of a public meeting is written and published accordingly.

iv. Report to BECC. The Applicant must provide a written report to the BECC documenting the successful completion of the Comprehensive Community Participation Plan. The report must include supporting documentation including a list of local steering committee members and their activities related to the project, if applicable, a list of the local meetings conducted, a copy of the legal notice of the public meeting, the minutes from the public meeting, and other such documentation as to demonstrate the scope and success of the public participation plan. The report should convey that the community understands and accepts the project and the associated environmental, health, and social benefits and associated costs such as a tariff increase.

v. Post-Certification Participation Plan. The Applicant must develop a post-certification participation plan with a goal of achieving public awareness of and acceptance for the construction, operation, and maintenance of a facility during its life cycle.

Fundamental BECC Criteria

a. Comprehensive Community Participation Plan. Applicants must submit and implement a BECC-approved Community Participation Plan that will consist of meeting with local organizations conducting at least one publicly advertised public meeting, and may utilize a local steering committee.

b. Public Acceptance. The Comprehensive Community

Participation Plan report submitted to the BECC following implementation shall indicate the degree of public acceptance of the project.

7. Operation and Maintenance

It is important to detect and correct any shortcomings in operations at an early stage in order to reach planned operational efficiency levels as soon as possible.

Information Requested

a. Start-Up Operation Program. Establish the sequence in which operation of the infrastructure will be initiated, as well as how any projected problems or defects in equipment or workmanship will be identified and corrected during the start-up phase.

b. Contingency Program. Describe actions and corrective measures to be taken should a contingency program be needed during start-up and operational phases of the project.

c. Operation and Maintenance Program. A well-defined long-term operation and maintenance program is necessary. Describe the system's operation and maintenance program to include training and certification of operators, training of maintenance personnel, and preparation of operation and maintenance instruction material. Also quantify funds reserved in project budget to ensure adequate support for operation and maintenance program.

d. Safety Program. An operational safety program should be an integral part of the operation and maintenance program.

c. Pollution Prevention Plan. Projects having a potential for release of pollutants must submit a pollution prevention plan identifying pollutants of concern generated during operation, actions that will be taken to prevent or reduce their release, including projected year to year improvements during the life of the facility.

f. Closure and Post-Closure Plan for Landfills. Submit a closure and post-closure plan which describes how waste resulting from the closure of the facility will be treated and disposed of, and how the site will be monitored after closure.

Fundamental BECC Criteria

a. Operation and Maintenance Program. Project documents must include an operation and maintenance program, including an effective program for emergency planning, an occupational health and safety plan, training plan for operation and maintenance personnel, and where applicable, a pollution prevention plan, facility closure plan, and post-closure plan.

8. Sustainable Development

Sustainable development is that which meets the needs of the present without compromising the ability of future generations to meet their own needs. The BECC adheres to this definition and the following sustainable development principles:

Principle 1. Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature;

Princple 2. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations; and

Principle 3. In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Information Requested

Much of the information related to a project's contribution to sustainable development will have been provided under previous headings including environment and human health; technical feasibility; economic and financial feasibility; social issues; community participation; and operation and maintenance. A proposed project may, however, have characteristics contributing to sustainable development that are not fully described under those headings. Examples of such characteristics are described below under the headings: conservation of natural resources, energy efficiency, natural resource preservation, capacity building, and benefits for low income communities.

Applicants should provide as much information as possible about any additional development characteristics of their projects not described under prior headings in order to maximize their chances of attracting funding from sources particularly concerned with sustainable development. In particular, there are a number of foundations that may be willing to make grants in support of projects that exhibit additional sustainable development characteristics such as those described below.

In its certification documents, BECC will give explicit recognition to those projects that incorporate a large number of sustainable development characteristics (including, but not limited to, the following examples) that go beyond the minimum requirements of the fundamental sustainable development criteria and effectively promote sustainable development.

Fundamental BECC Criteria

a. Principles. Projects must adhere to the principles of sustainable development set forth above.

b. Institutional and Human Capacity Building. Projects must demonstrate and strengthen the ability of the community for long-term support and maintenance, including measures to build human and institutional capacities.

Examples of Project Characteristics that Contribute to Sustainable Development

Natural Resource Management

a. Ecosystem Management. Projects that adopt a comprehensive approach to natural resource management and environmental protection by implementing ecosystem management.

b. Source Reduction. Projects that reduce the amount of pollution per unit of economic activity through more efficient use of inputs and/or superior technology.

c. Recycling. Projects that recycle residuals to the production of saleable products.

d. Project Life Cycle Planning. Projects that combine source reduction and recycling into an overall product life cycle approach that minimizes residuals.

Technical Efficiency

a. Project Life Cycle Cost. Projects that are designed to lower their life cycle cost by reducing inputs of energy, equipment, maintenance, and other resources.

b. Energy Production Efficiency. Projects that increase the efficiency of energy production (i.e., more efficient turbines).

c. Energy End-Use Efficiency. Projects that increase the efficiency of energy end use (i.e. better insulation, energy efficient lighting, variable speed motors).

Natural Resource Preservation

a. Habitat Preservation or Enhancement. Projects that preserve or enhance a wildlife habitat such as wetlands used by migratory birds or a forest inhabited by an endangered species.

b. Creation or Improvement of Parks or Reserves. Projects that create or improve the quality of parks, reserves, or other areas where people can enjoy nature.

Environmental Protection

a. Prevention and Compliance. Projects that implement an effective pollution-prevention program and implement an effective environmental compliance program.

Benefits to Low-Income Residents

a. Jobs. Projects that provide additional long-term job opportunities to low-income residents.

b. Better Environmental or Health Services. Projects that improve the quality of environmental or health services (i.e. clean drinking water in low-income communities).

c. Other Community Enhancements. Projects that provide new recreational, educational, or other community development benefits.

Community Participation

a. Education Program. Projects that include an environmental education program directed at schools, civic organizations, and other institutions.

b. Post-Certification Participation Plan. Projects that present an effective post-certification plan with a goal of achieving public awareness.

VII. Project Certification

After review of the proposed project, BECC staff will make a determination on whether to recommend certification of the project to the Board of Directors, based on the fundamental criteria described in this document. The BECC should be involved in local public meetings on the projects under consideration prior to certification in order to achieve a higher level of appreciation for public acceptance. The Board will certify projects during its scheduled public meetings. Projects certified by the Board will be submitted as a proposal for financing to the NADBank or to other sources of funding a appropriate. Project certification does not guarantee financing by the NADBank or by other sources.

BECC

BORDER ENVIRONMENT COOPERATION COMMISSION

STEP I

FORM FOR PRESENTING PROJECTS FOR CERTIFICATION

Date of Submittal to the BECC ______________________________
Date of Receipt of BECC ______________________________

NAME AND TYPE OF PROJECT

1. NAME OF THE PROJECT:

____

____

____

2. TYPE OF PROJECT:
A. ____ Water Supply.
B. ____ Wastewater Treatment.
C. ____ Solid Waste Management.
D. ____ Other Related Projects.

PRIMARY APPLICANT INFORMATION

3. NAME OF THE ORGANIZATION: ____
Name of Contact Person: ____
Position: ____
Address: ____
City:______________________________State: _____ ZIP CODE: ___________
Phone No.:____ Fax:___________________
E-mail Address: ____

CO-APPLICANT INFORMATION (IF APPLICABLE)

4. NAME OF THE ORGANIZATION: ____
Name of Contact Person: ____
Position: ____
Address: ____
City:______________________________ State: _____ ZIP CODE: ___________
Phone No.:______________________________ Fax: _________
E-mail Address: ____

CONTRACTOR INFORMATION (IF APPLICABLE)

5. NAME OF THE FIRM: ____
Name of Contact Person: ____
Position: ____
Address: ____
City:______________________________ State: _______ ZIP CODE: ___________
Phone No.:______________________________ Fax: _________
E-mail Address: ____

GENERAL PROJECT INFORMATION

6. LOCATION OF PROJECT SITE: Mexico_____ U.S.A._____
7. NEAREST City:______________________________ State:_______________
8. DISTANCE FROM NEAREST City (in miles): ______________________________
9. POPULATION OF NEAREST CITY: ______________________________
10. POPULATION BENEFITED: ______________________________
11. IS PROJECT WITHIN THE BORDER REGION? (62 mi either side) Yes____ No___
12. IF THE ANSWER TO QUESTION 11 IS NO: HOW does the Project Affect the Border Region?:

____

____

13. TYPE OF PROJECT: NEW SYSTEM, EXPANSION OR REHABILITATION OF CURRENT ONE?:
New_____ Expansion_____ Rehabilitation_____
14. ESTIMATED USEFUL LIFETIME OF THE PROJECT:_____years.

TECHNICAL ASSISTANCE

15. IS TECHNICAL ASSISTANCE REQUIRED?: Yes____ No____

If the Answer is Yes, Indicate Type and Amount of Technical Assistance Required in Order to Complete the Documentation Necessary for STEP II:

(a) ____ Environmental Assessment Study .... ____________ $U.S.
(b) ____ Technical Feasibility and Preliminary Engineering Study .... ____________ $U.S.
(c) ____ Development of Project Final Design .... ____________ $U.S.
(d) ____ Economic and Financial Feasibility Study .... ____________ $U.S.
(e) ____ Evaluation of Social and Sustainability Aspects of the Project .... ____________ $U.S.
(f) ____ Planning the Public Outreach Program .... ____________ $U.S.
(g) ____ Development of the Operation and Maintenance Program .... ____________ $U.S.
(h) ____ Other .... ____________ $U.S.
(i) ____ Total .... ____________ $U.S.

DESCRIPTION OF THE PROJECT

A. IF THE PROJECT IS RELATED TO WATER SUPPLY, IT CONCERNS:
16. DEVELOPMENT OF A WATER SOURCE: .... Yes _____ No _____
17. WATER TREATMENT: .... Yes _____ No _____
18. WATER DISTRIBUTION: .... Yes _____ No _____
19. CONTROL OF SUPPLY IN DISTRIBUTION SYSTEM: .... Yes _____ No _____
20. PUMP STATIONS AND SUMPS: .... Yes _____ No _____
21. WATER TRANSMISSION LINES: .... Yes _____ No _____
22. OTHER: ____________
B. IF THE PROJECT IS RELATED TO WASTEWATER TREATMENT, IT CONCERNS:
22. TYPE OF WASTEWATER: Municipal _____ Industrial _____
24. SEWER SYSTEM: .... Yes _____ No _____
25. COLLECTOR TRUNK LINES: .... Yes _____ No _____
26. WASTEWATER TREATMENT PLANTS: .... Yes _____ No _____
27. WATER REUSE: .... Yes _____ No _____
28. DISCHARGE OF TREATED WASTEWASTER: .... Yes _____ No _____
29. TREATMENT OF WASTEWATER GENERATED SLUDGE: .... Yes _____ No _____
30. DISPOSAL OF WASTEWATER GENERATED SLUDGE: .... Yes _____ No _____
31. OTHER: ____________
C. IF THE REPORT IS RELATED TO MUNICIPAL SOLID WASTE, IT CONCERNS:
32. RECOVERY OF RECYCLABLE MATERIALS: .... Yes _____ No _____
33. TREATMENT OF MUNICIPAL SOLID WASTE:
_____ Composting
_____ Incineration
_____ Power Generation
34. DISPOSAL OF MUNICIPAL SOLID WASTE:
_____ Sanitary Landfill
35. OTHER: ____________________
D. IN CASE OF OTHER RELATED PROJECTS PLEASE INDICATE RELATIONSHIP:
36. PREVENTION, CONTROL OR REMEDIATION OF POLLUTION CASES RELATED TO:
Water Supply .... Yes _____ No _____
Treatment of Wastewater .... Yes _____ No _____
Municipal Solid Waste Disposal .... Yes _____ No _____

Indicate How the Project is Related to the Three Previously Mentioned Subjects:
Q____

PROJECT PLANNING INFORMATION

THE PROJECT ALREADY HAS COMPLETED:
37. ENVIRONMENTAL ASSESSMENT STUDY: .... Yes _____ No _____
38. PRELIMINARY ENGINEERING STUDY: .... Yes _____ No _____
39. TECHNICAL FEASIBILITY STUDY: .... Yes _____ No _____
40. ECONOMIC AND FINANCIAL FEASIBILITY STUDY: .... Yes _____ No _____
41. PRELIMINARY DESIGN: .... Yes _____ No _____
42. FINAL DESIGN: .... Yes _____ No _____
43. COST ANALYSIS: .... Yes _____ No _____
44. COST ESTIMATE FOR:.
Final Design Development: ____________ $U.S.
Construction of Facilities: ____________ $U.S.
Operation & Maintenance (annual): ____________ $U.S.
Financing Costs (annual): ____________ $U.S.

45. ESTIMATE THE TIME REQUIRED FOR EXECUTION OF:
Planning: _______ months.
Design: _______ months.
Construction: _______ months.
Environmental Permits: _______ months.
Preparation of Site: _______ months.
Plant Start-up: _______ months.
Total Time Required: _______ months.
46. HAVE POTENTIAL SOURCES OF FINANCING BEEN IDENTIFIED: Yes _____ No _____
Indicate Which and the Percentage that may be Contributed by each (mark all that apply):
_____ MUNICIPAL _____ %
_____ FEDERAL _____ %
_____ WORLD BANK _____ %
_____ STATE _____ %
_____ NADBANK _____ %
_____ PRIVATE BANK _____ %
_____ NON-GOVERNMENTAL ORGANIZATIONS _____ %
_____ INTERAMERICAN DEVELOPMENT BANK _____ %
_____ EQUITY _____ %
_____ OTHER _____ %
47. WHAT WILL BE THE SOURCE OF REVENUE FOR REPAYMENT OF THE LOANS? (mark all that apply):
a) Government _____
b) Serviced Users _____
c) Industrial Clients _____
d) Other _____
e) In Process of Identification _____
48. PUBLIC MEETINGS HAVE BEEN HELD IN THE COMMUNITY: Yes _____ No _____
49. PUBLIC PARTICIPATION PLAN HAS BEEN DEVELOPED: Yes _____ No _____

ADDITIONAL INFORMATION

50. ADDITIONAL INFORMATION THAT YOU WOULD LIKE TO PROVIDE:
____

The projects that will be presented to the BECC should be sent to either one of the following addresses:

In Mexico: Apartado Postal, Apartado Postal 3114–J, Cd. Juárez, Chihuahua, México. Teléfonos: (91–16) 29–2395, Fax: (91–16) 29–2397, Email: becc1@itsnet.com.

Office Location: Blvd. Tomás Fernández #7940, Torres Campestre, Piso 6, Cd. Juárez, Chihuahua C.P. 32470, México.

In the United States: Post Office Box, P.O. Box 221648, El Paso, TX 79913, USA. Phone: (011–52–16) 29–2395, Fax: (011–52–16) 29–2397, Email: becc1@itsnet.com.

[FR Doc. 95–23439 Filed 9–20–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

BACKGROUND: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340).

Final approval under OMB delegated authority of the extension, with revisions, of the following report:

1. Report title: Report of Commercial Paper Outstanding Placed by Brokers and Dealers (FR 2957a); Report of Commercial Paper Outstanding Placed Directly by Issuers (FR 2957b); Daily Report of Offering Rates on Commercial Paper (FR 2957d).
Agency form numbers: FR 2957a, b, and d
OMB Docket number: 7100-0002
Frequency: Daily, weekly, and monthly
Reporters: Brokers and dealers and direct issuers of commercial paper
Annual reporting hours: 1,858
Estimated average hours per response: 0.20 to 0.75
Number of respondents: 68
Small businesses are not affected.

General description of report: This information collection is voluntary and is authorized by law [12 U.S.C. §248(a)(2)]. The FR 2957a and b are confidential [5 U.S.C. §552(b)(4)].

Abstract: These reports provide information on the amounts outstanding and selected offering rates on commercial paper, which the Federal Reserve uses to gauge the aggregate flow of funds and to determine the composition of short-term financing components in credit markets.

2. Report title: International Applications and Prior Notifications under Subparts A and C of Regulation K.
Agency form number: FR K-1
OMB Docket number: 7100-0107

Frequency: On occasion
Reporters: State member and national banks, Edge and corporations, and bank holding companies.
Annual reporting hours: 440
Estimated average hours per response: Varies from 10 to 20 hours
Number of respondents: 38
Effecitve Date: [insert a date 30 days after publication]
Small businesses are not affected.

General description of report: This information collection is required (sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 601-604(a) and 611-631), and the Bank Holding Company Act (12 U.S.C. 1843(c)(13), 1843(c)(14), and 1844(c))). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Abstract: The FR K-1 is a compilation of all the applications and prior notification requirements in Regulation K that govern the formation of Edge and Agreement corporations and the international and foreign activities of U.S. banking organizations.

The proposed revisions include the addition of one item, expansion of an existing item, and clarifications to the reporting instructions. The Federal Reserve proposes adding a new item that will require foreign banking organizations that are seeking to either establish or acquire control of an existing Edge corporation to furnish information relating to the supervision and regulation of the foreign banking organization by its home country supervisor, as well as information to allow the Federal Reserve to determine whether the foreign banking organization will be able to provide whatever information is deemed necessary to determine and enforce compliance with U.S. law. This is the same type of information that a foreign banking institution must provide (pursuant to the Foreign Bank Supervision Enhancement Act of 1991) in order to acquire ownership or control of a subsidiary bank or commercial lending company or to establish a branch or agency in the United States. The Federal Reserve proposes that Attachment H require applicants seeking to engage in any activity that the Federal Reserve has not previously determined to be of a banking or financial nature to discuss the extent to which such activity is usual in connection with the transaction of banking or other financial operations in the country in which the activity is to be conducted, supported by examples. The proposed revision to item 2.f. would enable the Federal Reserve to determine whether a proposed new activity is usual in connection with the transaction of the business of banking or other financial operations abroad, as the Federal Reserve is required to do under section 211.5(d)(20) of Regulation K.

Final approval under OMB delegated authority of the extension, without revision, of the following reports:

1. Report title: Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks
Agency form number: FR 2225
OMB Docket number: 7100-0216
Frequency: Annual
Reporters: U.S. branches and agencies of foreign banks
Annual reporting hours: 240
Estimated average hours per response: 1.0
Number of respondents: 240
Small businesses are not affected.

General description of report: This information collection is voluntary (sections 11(i), 16, and 19(f) of the Federal Reserve Act). The FR 2225 is a public report subject to the right of individual reporters to request confidential treatment on an ad hoc basis for particular items.

Abstract: This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve's Payments System Risk policy. The report provides the Federal Reserve with the foreign bank's worldwide capital figure which, in connection with a net debit cap multiple, is used to calculate the bank's daylight overdraft limit.

Under the Federal Reserve's Payments System Risk policy, all institutions that maintain a Federal Reserve account are assigned or may establish a net debit cap that represents a maximum limit on daylight overdrafts incurred in that account on a single day or on average during a two-week maintenance period. The net debit cap is a multiple applied to the risk-based capital for a U.S.-chartered institution and to the consolidated U.S. capital equivalency for a U.S. branch or agency of a foreign bank.

The FR 2225 report was designed to minimize the reporting burden for foreign banks by relying as much as possible on publicly available data regarding capital and by requiring most foreign banks to submit their capital and asset figures only once each year, within three months following the end of the bank's fiscal year. A bank may voluntarily submit the report more frequently to have their overdraft limit based on current data. However, the overdraft limit generally would be smaller for any bank that does not provide the requested information because the limit would be based on the imputed capital of the bank's U.S. branches and agencies.

2. Report title: Report of Net Debit Cap
Agency form number: FR 2226
OMB Docket number: 7100-0217
Frequency: Annually
Reporters: Depository institutions, Edge and agreement corporations, and U.S. branches and agencies of foreign banks
Annual reporting hours: 2,250
Estimated average hours per response: 1.0
Number of respondents: 2,250
Small businesses are not affected.

General description of report: This information collection is required (sections 11, 16, and 19 of the Federal Reserve Act) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve is concerned about the risks associated with critical payment systems. The Federal Reserve Banks are directly exposed to the risk of loss if a depository institution uses Federal Reserve intraday credit to settle Fedwire funds or book-entry securities transfer payments and is unable to repay the extension of credit. The Federal Reserve has adopted a payment system risk reduction policy that relies in part on the efforts of individual institutions to identify, control, and reduce their exposure. The Report of Net Debit Cap comprises one or more resolutions filed by an institution's board of directors.

Under the Federal Reserve's Payments System Risk policy, all institutions that maintain a Federal Reserve account are assigned or may establish a net debit cap that represents a maximum limit on daylight overdrafts incurred in that account on a single day or on average during a two-week maintenance period. The net debit cap is a multiple applied to the risk-based capital for a U.S.-chartered institution and to the U.S. capital equivalency for a U.S. branch or agency of a foreign bank.

3. Report title: Applications for the Issuance and Cancellation of Federal Reserve Stock--National Bank, Nonmember Bank, Member Bank
Agency form number: FR 2030, 2030a, 2056, 2086a, 2086b, and 2087
OMB Docket number: 7100-0042
Frequency: On occasion
Reporters: National, State Member and Nonmember Banks
Annual reporting hours: 942 (FR 2030: 43; FR 2030a: 29; FR 2056: 797; FR 2086a: 26; FR 2086b: 24; FR 2087: 23).
Estimated average hours per response: 0.5 (for each form)
Number of respondents: 1,881 (FR 2030: 86; FR 2030a: 57; FR 2056: 1,594; FR 2086a: 52; FR 2086b: 47; FR 2087: 45).
Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. §§35, 222, 282, 287, 288, and 321 and 12 C.F.R. §§209.1, 209.3, 209.5(b), 209.6, 209.7, and 209.8] and is not given confidential treatment.

Abstract: These Federal Reserve Bank stock application forms are required to be submitted to the Federal Reserve System by any national bank, state member bank, or state nonmember bank wanting to purchase stock in the Federal Reserve System, increase or decrease its Federal Reserve Bank stock holdings, or cancel such stock.

National banks, chartered by the Comptroller of the Currency, are required to become members of the Federal Reserve System. State-chartered commercial banks may elect to become members if they meet the requirements established by the Board of Governors of the Federal Reserve System. When a bank receives approval for membership in the Federal Reserve System, the bank agrees to certain conditions of membership which are contained in an approval letter sent to the bank by the Federal Reserve Bank in the District where the bank is located. In addition to the conditions of membership, the bank also is advised by the Reserve Bank that it must subscribe to the capital stock of the Federal Reserve Bank of its District in an amount equal to 6 percent of the bank's paid-up capital and surplus, including reserve for dividends payable in common stock, pursuant to Section 5 of the Federal Reserve Act and Regulation I. However, the bank is required to make payment for only 50 percent of the subscription, which is recorded as paid-in capital on the Reserve Bank's balance sheet. The remaining 50 percent is subject to call by the Board of Governors of the Federal Reserve System. On June 30, 1994, there were 4,160 Federal Reserve member banks, and their consolidated paid-in capital at the twelve Federal Reserve Banks was $3.5 billion.

The applications are necessary in order to obtain account data on the bank's capital and surplus and to document its request to increase or decrease its holdings of Federal Reserve Bank stock. Another purpose of the applications is to verify that a request has been duly authorized and to prevent unauthorized requests for issuance or cancellation of Federal Reserve Bank stock. The applications are used exclusively by the applying banks and the Federal Reserve Banks. The information collected on the applications is not available from any other source.

Board of Governors of the Federal Reserve System, September 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23386 Filed 9–20–95; 8:45AM]

Billing Code 6210–01–F

Nathaniel Anderson, et al.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 4, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Nathaniel Anderson, B.M. Broderick, Jr., Manfred Hill, and Gary J. Marshik, all of Canton, South Dakota, each to acquire an additional 5 percent, for a total of 25 percent, of the voting shares of Canton Bancshares, Inc., Canton, South Dakota, and thereby indirectly acquire First American Bank, Canton, South Dakota.

Board of Governors of the Federal Reserve System, September 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23371 Filed 9–20–95; 8:45 am]

BILLING CODE 6210–01–F

Bank of Boston Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Bank of Boston Corporation, Boston, Massachusetts; to engage *de novo*, through its subsidiary BancBoston Leasing Investments, Inc., Boston, Massachusetts, in arranging and investing in entities for the financing of low-income housing eligible for Federal income tax credits under Section 42 of the Internal Revenue Code, and providing advice to customers in connection therewith; and the acquisition of both real and personal property for lease to customers and acting as broker, agent or advisor in connection therewith pursuant to §§ 225.25(b)(4), 225.25(b)(5), and 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23375 Filed 9–20–95; 8:45 am]

BILLING CODE 6210–01–F

The Bessemer Group, Incorporated; Notice to Engage in Certain Nonbanking Activities

The Bessemer Group, Incorporated, Woodbridge, New Jersey (Notificant), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 USC 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y (12 CFR 225.23), to establish a wholly owned *de novo* subsidiary, Bessemer Asset Management, Inc., New York, New York (Company), that would establish and control one or more limited partnerships (Partnerships), including Old Westbury Investment Partners, L.P., New York, New York. Company would serve as the sole general partner of the Partnerships and would provide administrative services to the Partnerships. In order to serve as the general partner of the Partnerships, Company would register with the Commodity Futures Trading Commission as a commodity pool operator (CPO). Company would engage unaffiliated asset managers to manage the investment portfolios of the Partnerships, and the limited partnership interests in the Partnerships would be privately placed with institutional customers by Notificant's subsidiary banks and a broker-dealer subsidiary of one of Notificant's subsidiary banks. Directors, officers and employees of Notificant's subsidiary banks and trust companies may serve as directors and officers of Company. However, directors of Notificant's subsidiary banks and trust companies would not be engaged in the management or performance of Company's day-to-day operations. Notificant proposes that the Partnerships be permitted to invest in the following instruments:

1. U.S. government and agency securities and other securities in which national banks may invest;
2. All types of debt and equity securities;
3. Loan participations;
4. Foreign exchange and interest rate contracts, including spot, forward, swap, futures, options, and options on futures contracts;
5. Money market instruments and commercial paper;
6. options, swaps, futures and options on futures on financial assets and indices, including securities and bond indices;
7. Gold and silver coin, bar, round and bullion, as well as spot, forward, futures, options, and options on futures contracts on such metals;
8. Futures and options on futures contracts on a wide variety of non-financial commodities;
9. Distressed debt securities, including debt securities of an issuer that are in default, bankruptcy, receivership, or subject to an assignment for the benefit of creditors; and
10. Platinum and palladium coin, bar, round and bullion, as well as spot, forward, futures, options and options on futures contracts on these metals.Notificant has stated that the Partnerships may establish wholly owned subsidiaries to hold certain assets, instruments and contracts. The proposed activities are to be conducted throughout the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto". In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are

1. Whether banks generally have in fact provided the proposed services,
2. Whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services, and
3. Whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Notificant maintains that the Board previously has permitted a bank holding company to organize, act as the general partner of, and provide administrative services to limited partnerships whose interests are not registered under the Securities Act of 1933. *See Meridian Bancorp, Inc.*, 80 Federal Reserve Bulletin 736 (1994) (*Meridian*). Notificant also maintains that the proposed activities of the Partnerships, which include investing in instruments that were not considered in *Meridian*, are operationally and functionally similar to the investment portfolio services that Notificant's subsidiary trust companies perform for their customers.

Notificant states that the limited partnerships involved in *Meridian* were permitted to invest in the instruments listed in paragraphs 1 and 2. Notificant also states that the Board has permitted bank holding companies to invest for their own accounts in most of the instruments listed in paragraphs 3 through 8. *See* 12 CFR 225.25(b)(1) (acquiring participations in loans); *The Hongkong and Shanghai Banking Corporation*, 75 Federal Reserve Bulletin 217 (1989) (trading foreign exchange); *The Hongkong and Shanghai Banking Corporation*, 72 Federal Reserve Bulletin 345 (1986), *Westpac Banking Corporation*, 73 Federal Reserve Bulletin 61 (1987), and *Swiss Bank Corporation*, 81 Federal Reserve Bulletin 185 (1995) (*Swiss Bank*) (trading money market instruments, interest rate contracts, gold, silver, contracts on certain financial assets and indices, and contracts on non-financial commodities and indices). Notificant maintains that the Office of the Comptroller of the Currency (OCC) has permitted national banks to purchase and sell for hedging purposes those instruments listed in paragraphs 6 through 8 that the Board has not permitted bank holding companies to trade. For this reason, Notificant states that these activities are functionally and operationally so similar to activities conducted by banks that banking organizations are particularly well equipped to engage in the proposed activities.

The Board has not previously permitted a bank holding company to act as a CPO. Notificant contends that this activity is similar to organizing, and acting as the general partner of, a closed-end investment company or an unregistered limited partnership. *See Meridian* and 12 CFR 225.24(b)(4). Notificant also notes that the OCC has permitted a national bank to act as a CPO under certain circumstances. *See* OCC Interpretive letter No. 496 (December 18, 1989).

Notificant believes that investing in the instruments and commodities listed in paragraphs 9 and 10 is closely related to banking. Notificant maintains that investing in distressed debt is within the scope of a bank holding company's authority to acquire non-controlling positions in the securities of any issuer. In this regard, Notificant has made certain commitments in its notice, including that the Partnerships would not acquire quantities of distressed debt that are reasonably likely to result in the Partnerships acquiring more than 5 percent of the voting securities of the obligor. In addition, Notificant maintains that investing in platinum and palladium is closely related to banking. Notificant states that since the Board's denial of an application by a bank holding company to deal in platinum and palladium, *Standard and Chartered Banking Group*, Ltd., 38 FR 27,552 (1973), the Board has permitted bank holding companies, under Regulation K, to trade these metals. *See Republic National Bank of New York*, 80 Federal Reserve Bulletin 177 (1994); *J.P. Morgan & Company, Inc.*, 76 Federal Reserve Bulletin 552 (1990). The Board also has permitted a bank holding company, under Regulation Y, to trade platinum coin, bullion and futures. *See Swiss Bank*. Notificant maintains that based on these orders, and in light of the precious metals activities currently conducted by banks, the proposed activities are functionally and operationally so similar to activities conducted by banks that banking organizations are particularly well equipped to engage in the proposed activities.

In order to approve the proposal, the Board must determine that the proposed activities "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Notificant believes that the proposed activities would produce public benefits that outweigh any potential adverse effects. These public benefits include increased competition and greater convenience to Notificant's customers. In addition, Notificant indicates that the proposed activities, in light of Notificant's proposed safeguards and the commitments made by Notificant, would not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 19, 1995. Any request for a hearing on this notice must, as required by section 262.3(e) of the Board's Rules of Procedure (12 C.F.R. 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System. September 14, 1995.

William W. Wiles,

Secretary of the Board

[FR Doc. 95–23369 Filed 9–20–95; 8:45 am]

BILLING CODE 6210-01-F

Carroll County Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Carroll County Bancshares, Inc., Carroll, Iowa; to acquire Carroll Credit, Inc., Carroll, Iowa, and thereby engage in owning and operating a finance company, and to engage in credit insurance activities through Notificant's subsidiary, Credit, pursuant to §§ 225.25(b)(1)(i) and 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23372 Filed 9–20–95; 8:45 am]

BILLING CODE 6210-01-F

Doniphan Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 13, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Doniphan Bancshares, Inc., Doniphan, Nebraska to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Doniphan, Doniphan, Nebraska.

2. Estes Park Bank Restated Employee Stock Ownership 401(k) Plan and Retirement Trust, Estes Park, Colorado; to acquire 51.45 percent of the voting shares of Estes Bank Corporation, Estes Park, Colorado, and thereby indirectly acquire The Estes Park Bank, Estes Park, Colorado.

Board of Governors of the Federal Reserve System, September 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23373 Filed 9–20–95; 8:45 am]

BILLING CODE 6210-01-F

First American Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 16, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First American Corporation, Nashville, Tennessee; to merge with First City Bancorp, Inc., Murfreesboro, Tennessee, and thereby indirectly acquire First City Bank, Murfreesboro, Tennessee, and Citizens Bank, Smithville, Tennessee.

2. The Queensborough Company, Louisville, Georgia; to acquire 100 percent of the voting shares of Ogeechee Valley Bank, Millen, Georgia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Randall Bancorp, Inc., Pine River, Minnesota; to become a bank holding company by acquiring 72.22 percent of the voting shares of Randall Holding Co., Inc., Pine River, Minnesota, and thereby indirectly acquire Randall State Bank, Randall, Minnesota.

In connection with this application, Applicant also has applied to acquire 13.66 percent of the voting shares of Norbanc Group, Inc., Pine River, Minnesota, and thereby indirectly acquire Pine River State Bank, Pine River, Minnesota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Overton Financial Corporation, Overton, Texas; to acquire an additional 4.28 percent, for a total of 31.14 percent, of the voting shares of Longview Financial Corporation, Longview, Texas, and thereby indirectly acquire Longview Delaware Corporation, Dover, Delaware; Longview Bank & Trust, Longview, Texas; and First State Bank, Van, Texas.

In connection with this application, Overton Delaware Corporation, Dover, Delaware, has applied to acquire an additional 4.28 percent, for a total of 31.14 percent, of the voting shares of Longview Financial Corporation, Longview, Texas; and thereby indirectly acquire Longview Delaware Corporation, Dover, Delaware; Longview Bank & Trust, Longview, Texas; and First State Bank, Van, Texas.

Board of Governors of the Federal Reserve System, September 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23413 Filed 9–20–95; 8:45 am]

BILLING CODE 6210-01-F

Louis G. Titus, et al. Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-22566) published on page 47369 of the issue for Tuesday, September 12, 1995.

Under the Federal Reserve Bank of Kansas City heading, the entry for Louis G. Titus, is revised to read as follows:

1. Liscomb J. Titus and Paula E. Titus, trustees of the Louis G. Titus Revocable Trust to vote 51.2 percent; Paula E. Titus, to vote an additional 9.16 percent; and John L. Titus, all of Holdrege, Nebraska, to vote 39.2 percent of the voting shares of LJT, Inc., Holdrege, Nebraska, and thereby indirectly acquire The First National Bank of Holdrege, Holdrege, Nebraska.

Board of Governors of the Federal Reserve System, September 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23416 Filed 9–20–95; 8:45 am]

BILLING CODE 6210-01-F

National Westminster Bank PLC; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 5, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. National Westminster Bank PLC, London, England, and Natwest Holdings Inc., New York, New York; to engage *de novo* through their subsidiary, Natwest Investment Management, Inc., Boston, Massachusetts, in providing advisory services to affiliated and non-affiliated entities with respect to futures contracts; and in providing advisory services with respect to certain futures contracts and options on futures contracts on index products previously approved by the Board, pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23414 Filed 9–20–95; 8:45 am]

BILLING CODE 6210-01-F

Richard Conrad Skates, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 5, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Richard Conrad Skates, Woodland, Georgia; to acquire a total of 74.35 percent of the voting shares of Canebrake Bancshares, Inc., Uniontown, Alabama, and thereby indirectly acquire First State Bank of Uniontown, Uniontown, Alabama.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Ernest J. Boch, Edgartown, Massachusetts; to acquire a total of 9.93 percent; Byrne & Sons, l.p., Norwich, Vermont, to acquire a total of 7.82 percent; Edward A. Fox, Harborside, Maine, to acquire a total of 4.91 percent; Charles E. Hugel, Melvin Village, New Hampshire, to acquire a total of 2.79 percent; Robert P. Keller, Gilford, New Hampshire, to acquire a total of .45 percent; K. Thomas Kemp, Hanover, New Hampshire, to acquire a total of 1.12 percent; Jefferson W. Kirby, Short Hills, New Jersey, to acquire 9.93 percent; Northwood Ventures, Syosset, New York, to acquire a total of 3.13 percent; Northwood Capital Partners LLP, Syosset, New York, to acquire a total of 1.12 percent; John J.F. Sherrerd, Bryn Mawr, Pennsylvania, to acquire a total of 3.35 percent; and George U. Wyper, Darien, Connecticut, to acquire a total of 1.45 percent, of the voting shares of SDN Bancorp, Encinitas, California, and thereby indirectly acquire San Dieguito National Bank, Encinitas, California. Comments regarding this application, must be received not later than September 25, 1995.

Board of Governors of the Federal Reserve System, September 15, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23415 Filed 9–20–95; 8:45 am]

BILLING CODE 6210-01-F

Stichting Prioriteit ABN AMRO Holding; Notice to Engage in Certain Nonbanking Activities

Stichting Prioriteit ABN AMRO Holding, Stichting Administratiekantoor ABN AMRO Holding, ABN AMRO Holding N.V., and ABN AMRO Bank N.V., all of Amsterdam, The Netherlands (collectively, Notificants), have provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to retain their interest in Alfred Berg, Inc., New York, New York (Alfred Berg), and thereby engage in the following activities:

1. Underwriting and dealing in debt and equity securities, other than interests in open-end investment companies;
2. Acting as agent in the private placement of securities;
3. Acting as riskless principal in the purchase and sale of all types of securities on behalf of customers;
4. Providing full service securities brokerage services; and
5. Providing investment advisory services.

Notificants propose that Alfred Berg engage in these activities throughout the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Notificants maintain that the Board previously has determined by order and regulation that the activities listed in paragraphs 2 through 5 are closely related to banking. *See* 12 CFR 225.25(b)(4) (investment advisory services); 12 CFR 225.25(b)(15) and *PNC Financial Corp*, 75 Federal Reserve Bulletin 396 (1986) (full services securities brokerage); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) (acting as agent in the private placement of securities and purchasing and selling securities on the order of investors as a riskless principal). Notificants have stated that Alfred Berg would conduct these proposed activities within the limitations and prudential guidelines established by the Board.

Notificants also maintain that the Board has determined that underwriting and dealing, to a limited extent, in debt and equity securities is closely related to banking. *See Canadian Imperial Bank of Commerce*, 76 Federal Reserve Bulletin 158 (1990) (*CIBC*); *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990); and *Citicorp, et al.*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom. Securities Industry Ass'n v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir.), *cert. denied*, 486 U.S. 1059 (1988). Notificants have stated that Alfred Berg would conduct the proposed activities within the limitations and prudential guidelines established by the Board in previous orders, with one exception. In particular, Notificants propose to modify firewall number 19 of *CIBC* to permit Alfred Berg, in connection with its market making activities, to purchase from and sell to its foreign affiliates American Depositary Receipts (ADRs) and the underlying foreign securities represented by the ADRs in such quantities that are reasonably related to *bona fide* indications of buying and selling interest of unaffiliated customers of Alfred Berg. Notificants maintain that their proposal is consistent with the Board's determination in *CIBC* to permit foreign affiliates of an underwriting subsidiary, in certain circumstances, to purchase from the underwriting subsidiary securities being underwritten by such subsidiary. Notificants also state that the purchases and sales of ADRs and foreign securities between Alfred Berg and its foreign affiliates would not be for the purpose of providing liquidity or capital support to Alfred Berg.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Alfred Berg "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Notificants believe that the proposal would produce public benefits that outweigh any potential adverse effects. In particular, Notificants maintain that the proposal would enhance competition and enable Notificants to offer their customers a broader range of products. Notificants also maintain that their proposal would not result in any adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 19, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, September 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–23374 Filed 9–20–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974: System of Records

AGENCY: General Services Administration (GSA).

ACTION: Notice of a system of records subject to the Privacy Act of 1974.

SUMMARY: The following notice is reissued to show that the record system GSA/OEA–1, Records of Defunct Agencies, is still in effect. It also updates references to offices and officials.

FOR FURTHER INFORMATION CONTACT: Mary L. Cunningham, Records Officer (202) 501–3415.

SUPPLEMENTARY INFORMATION: Under a reimbursable agreement, the GSA services the records of governmental units that have shut down, including presidential commissions, committees, small agencies, and boards.

GSA/OEA–1 1–23–00–0103

SYSTEM NAME:

Records of Defunct Agencies.

SYSTEM LOCATION:

The system of records is located in the GSA regional office building, 7th & D Streets, SW., Washington, DC 20407, and at the GSA National Payroll Center, Kansas City, MO 64131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of defunct agencies, including but no limited to, presidential commissions, committees, small agencies, and boards, whose records the GSA services under a reimbursable agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and financial records, including but not limited to, time and attendance cards, payment vouchers, employee health benefit records, requests for deductions, tax forms, including W–2 forms, overtime requests, leave data, retirement records, and vendor register and payment tapes.

AUTHORITY FOR MAINTAINING THE SYSTEM:

The Money and Finance Act, 31 U.S.C. 1535, 1536, and 3324, and the Federal Property and Administrative Services Act of 1949, 63 Stat. 377.

ROUTINE USES OF THE RECORDS IN THE SYSTEM, INCLUDING TYPES OF USERS AND THE PURPOSES OF SUCH USES:

The GSA uses the records for concluding the administrative operations of the defunct agency. Routine uses include providing a copy of an employee's Department of the Treasury Form W–2, and Wage and Tax Statement, to the State, city, or other local jurisdiction that has authority to tax the employee's pay. The agency also provides a record under a withholding agreement between a State, city, or other jurisdiction and the Department of the Treasury under 5 U.S.C. 5516, 5517, and 5520, or in response to the written request of an authorized official of the taxing jurisdiction to the Regional Administrator, General Services Administration (6A), 1500 East Bannister Road, Kansas City, MO 64131. The request must include a copy of the statute or ordinance showing the authority of the jurisdiction to tax the employee based on place of residence, place of employment, or both.

Under a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), the GSA furnishes copies of executed city tax withholding certificates to the city in response to a written request from the proper city official to the GSA official named in the paragraph above.

Records are also released to the General Accounting Office for audits and to the Internal Revenue Service for use in investigations.

Additional routine uses are:

A. To disclose a record to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, or regulation, or order, where the GSA becomes aware of an indication of a violation, or potential violation of a civil or criminal law or regulation.

b. To disclose a record to a Federal, State, or local agency maintaining civil, criminal, or related enforcement information or information, such as licenses, when needed to make a decision on hiring or retaining an employee, issuing a security clearance, letting a contract, or issuing a license, grant, or other benefit.

c. To disclose a record to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other authorized official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee.

d. To disclose a record to a congressional office in response to an inquiry of that office made at the request of the subject of the record.

e. To disclose a record to the Office of Management and Budget for reviewing private relief legislation at any stage of the legislative clearance process.

f. To disclose a record to (1) an expert, consultant, or contractor of the GSA as needed to further the performance of a Federal duty and (2) a physician to conduct a fitness-for-duty examination of a GSA officer or employee.

g. To disclose a record to the OPM concerning pay, benefits, retirement deductions, and other information needed under that agency's responsibility to evaluate Federal personnel management.

To the extent that official personnel records in the GSA's custody are covered within systems of records published by the OPM as Governmentwide records, the records are considered part of the Governmentwide system. Other personnel records covered by notices published by the GSA and considered to be separate systems of records may be transferred to the OPM under personnel programs as a routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are in file folders and card files. Microfilm records are on reels and in cabinets. Magnetic tapes and cards are in cabinets and storage libraries. Electronic records are stored in computers and attached equipment.

RETRIEVABILITY:

Payroll records are retrievable by social security number and other records by name.

SAFEGUARDS:

When not in use by an authorized person, the records are stored in locked metal containers or in secured rooms.

RETENTION AND DISPOSAL:

The Division Director of the Agency Liaison Division disposes of the records as scheduled in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGERS AND ADDRESS:

The system manager is the Director, Agency Liaison Division (WB–E), General Services Administration, 7th & D Streets, SW., Washington, DC 20407.

NOTIFICATION PROCEDURE:

Requests to review or receive a copy of a record should be sent to the system manager named above.

RECORD ACCESS PROCEDURES:

See 41 CFR part 105–64, published in the **Federal Register**, for the procedures. Address your written request to review or copy records to the system manager, with the words "Privacy Act Request" written on the the letter and on the envelope.

CONTESTING RECORD PROCEDURES:

See 41 CFR part 105–64.

RECORDS SOURCE CATEGORIES:

When it shuts down, the agency that the GSA services publishes a notice in the **Federal Register** transferring administrative responsibility for the records to the GSA.

Dated: September 14, 1995.

Kenneth S. Stacey,

Acting Director, Information Management Division.

[FR Doc. 95–23445 Filed 9–20–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

Correction

In **Federal Register** Document 95–20814 appearing at pages 43805–06 in the issue for Wednesday, August 23, 1995, the September 27, 1995, meeting of the "National Advisory Council on Nurse Education and Practice and the Council on Graduate Medical Education" has been changed. The meeting will include a demonstration of the computer-based requirements model at 7:45 p.m. to 9:00 p.m. on September 26.

All other information is correct as it appears.

Dated: September 15, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–23417 Filed 9–20–95; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

Program Exclusions: September 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of September 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grant to [illegible] Social Services [illegible] addition, no program [illegible] made to any business or [illegible] e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
Program-Related Convictions	
AUTORINO, MARK M, SUFFIELD, CT	08/29/95
DRAKE, SAMUEL L, VISTA, CA	08/29/96
J P HARRISON, INC. DELMAR, DE	08/29/95
NATIVIDAD, GLORIA Q, KIRKLAND, WA	08/29/95
PATEL, MANNY, TAMPA, FL	08/29/95
PEARSON, STEPHEN D, ROGERSVILLE, TN	08/29/95
RUSSELL, ALEXANDER B, SOLDOTNA, AK	08/29/95
VALDES, EMILIO, MIAMI, FL	09/11/95
WISECARVER, GLORIA, SOLDOTNA, AK	08/29/95
Patient Abuse/Neglect Convictions	
BARNES, ADDISON A JR, SHERIDAN, OR	08/29/95
HERT, CAMERON J, GLENDALE, AZ	08/29/95
JORDAN, JOE L, NASHVILLE, TN	08/29/95
KIMBELL, CYNTHIA R, TUCSON, AZ	08/29/95
LAWRENCE, CLARENCE O, MAYSVILLE, NC	08/29/95
SPENCE, ZELIA, YORKTOWN HGTS, NY	08/29/95
VERNON, PATRICIA, TUCSON, AZ	08/29/95
Conviction for Health Care Fraud	
WILLIAMS, DESIREE JONES, HARVEY, LA	08/29/95
License Revocation/Suspension/Surrender	
APPLEBAUM, WAYNE S, MINNEAPOLIS, MN	09/11/95
BALMES, RUBEN ALONZO, TEMPE, AZ	09/11/95
BOYADJIAN, VAHE, WEEHAWKEN, NJ	08/29/95
CAUTHEN, JENNIFER B, WHITE BLUFF, TN	08/29/95
CRIM, KELLY, MIDDLETOWN, RI	08/29/95
DEITZLER, MARGARET, ALAMEDA, CA	08/29/95
DOLORES, MICHAEL A, SAN FRANCISCO, CA	09/11/95
ENGVICK, JOHN, CAMP VERDE, AZ	08/29/95
HIGNELL, THOMAS E, CHICO, CA	08/29/95
KIRKPATRICK, JAMES D, INDIANAPOLIS, IN	08/29/95
LINDEN, ZENA, LOS GATOS, CA	09/11/95
LOWE, CRAIG EDMOND, MONTEBELLO, CA	09/11/95
MACLEAN, CHARLES A, OWOSSO, MI	08/29/95
NADELL, RAYMOND, BROOKLYN, NY	08/29/95
OLIVER, JOHN PAUL, PHOENIX, AZ	09/11/95
PAYNE, KENNETH E, CAMPBELL, CA	08/29/95
ROSCHEN, FRITZ, ELK GROVE, CA	08/29/95
SOULE, SHEILA, WEST HAVEN, CT	08/29/95
STARK, WILLIAM R, JOHNSTON, RI	08/29/95
WIERSUM, JEFFREY, SYRACUSE, NY	08/29/95
Federal/State Exclusion/Suspension	
BINGHAM, CHARLES B, VEYO, UT	08/29/95
Entities Owned/Controlled by Convicted/Excluded	
MEDICINE SHOPPE PHARMACY, HENDERSONVILLE, TN	08/29/95
Default on Public Health Service Loan	
BACHWALD-HEILIG, BONNIE I, TUCSON, AZ	08/29/95
BURKART, JOHN D, DENVER, CO	08/29/95
CASELLA, ANGELA, BRONX, NY	08/29/95
CORLEY, LEE JR, EVERETT, WA	08/29/95
DAVIS, CLARENCE JR, NASHVILLE, TN	08/29/95
HALL, PATRICIA L, TAMPA, FL	09/11/95
HOEHN, JAMES D JR, W LAKE VILLAGE, CA	08/29/95
KECK, JULIE N, NASHVILLE, TN	08/29/95
LEVIN, NANCY E, PALM BCH GARDENS, FL	08/29/95
MORA, ALFRED JOSE, PALM BAY, FL	09/11/95
MULHOLLEN, KELLI M, MEMPHIS, TN	09/11/95
OWEN, GARY L, LUBBOCK, TX	08/29/95
PRESCOD, GLENN S, PROVIDENCE, RI	08/29/95
QUAST, SEAN C, WHITE BEAR LAKE, MN	08/29/95
RUTA, EUGENIO, LIVINGSTON, NJ	08/29/95
SCHECHER, VALERIE A, EAST MEADOW, NY	08/29/95
SMITH, MARK A, CAPE CORAL, FL	09/11/95
WILSON, SONI Y, DETROIT, MI	08/29/95

Dated: September 14, 1995.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95–23448 Filed 9–20–95; 8:45 am]

BILLING CODE 4150-04-P

National Institutes of Health

Proposed Data Collections Available for Public Comment and Recommendations

Section 3506(c)(2)(A) of the Paperwork Reduction act of 1995 requires that Federal agencies provide a 60-day notice in the **Federal Register** concerning each proposed collection of information. The National Institute of Child Health and Human Development (NICHD) of the National Institutes of Health (NIH) is publishing this notice to solicit public comment on a proposed data collection for the Contraception and Infertility Research Loan Repayment Program. To request copies of the data collection plans and instruments, call Dr. Louis DePaolo on (301) 496–6515 (not a toll-free number).

Comments are invited on: (a) Whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency's estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Written comments are requested within 60 days of the publication of this notice. Send comments to Dr. Louis DePaolo, Reproductive Sciences Branch, Center for Population Research, NICHD, NIH, Building 61E, Rm. 8B01, Bethesda, Maryland 20892–7510.

Proposed Project

The Center for Population Research of the NICHD, NIH, intends to make available educational loan repayment under the NICHD Contraception and Infertility Research Loan Repayment Program (CIR–LRP). The CIR–LRP is authorized by Section 487B of Part G of Title IV of the Public Health Service (PHS) Act (42 U.S.C. 288–2) as amended by the NIH Revitalization Act of 1993 (Pub. L. 103–43). The program intends to provide for the repayment of the educational loan debt of health professionals (including graduate students) who agree to commit to a period of obligated service of not less than two years conducting research with respect to contraception and/or infertility. The CIR–LRP will pay up to

$20,000 of the principal and interest of such individual's educational loans for each year of commitment not to exceed one-half of the remaining loan balance. The CIR–LRP is designed to provide an incentive for health professionals to work in areas of reproductive research directly related to contraceptive development and/or infertility diagnosis and treatment by providing assistance in repaying educational loans for such individuals. The long-range objective of the CIR–LRP is to stimulate the commitment of researchers to sustaining a career focus on contraception and/or infertility research.

The information proposed for collection will be used by the NICHD to determine an applicant's eligibility for participation in the CIR–LRP. The CIR–LRP application consists of two parts: Part I (Information About the Applicant) is completed by the applicant; Section A of Part II (Loan Information and Permission for Disclosure) is also completed by the applicant; and Section B, Part II (Lender's Verification) is completed by the Lending Institution. It may also be necessary for a State or other entity to verify an outstanding service obligation. In these instances, written verification of the service obligation will be requested from the State or other entity.

The annual burden estimates are as follows:

	No. respondents	No. responses per respondent	Avg. burden per response (hrs)
Applicant	50	1	5.5
Lender	200	1	0.5
State/Other Entity	8	1	0.5

Dated: September 5, 1995.

Benjamin E. Fulton,

Deputy Executive Officer, National Institute of Child Health and Human Development.

[FR Doc. 95–23392 Filed 9–20–95; 8:45 am]

BILLING CODE 4140-01-M

Proposed Data Collection Available for Public Comment

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects. To request more information on the proposed project, call Frances E. Thompson, Ph.D., Epidemiologist, at (301) 496–8500.

Comment are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Frances E. Thompson, Ph.D., National Cancer Institute, EPN 313, 6130 Executive Blvd MSC 7344, Bethesda, MD 20892–7344. Written comments should be received by November 20, 1995.

Proposed Project: Checklist Validation of Dietary Questionnaire—New—This experiment will compare the performance of two self-administered food frequency questionnaires which use different approaches to collect the information. The purpose of the study is to determine which food frequency approach more nearly replicates the information collected on the criterion Daily Checklist Instrument, which is a list of about 30 key food items selected especially for this comparative assessment. The Checklist will be completed daily for 30 days by each study participant. Following the 30-day period, one group will complete the NCI Health Habits and History Questionnaires (HHHQ), and the other group will complete the NCI Diet History Questionnaire (DHQ). Respondents to each data collection instrument will estimate how often they eat a series of food items in the last month. Complete questionnaires will be obtained on 250 subjects in each of the two study groups. Study participants will be compensated. The results of the study will be used to refine the NCI Diet History Questionnaire. Participants will be adult volunteers from the Washington, DC metropolitan area. Burden estimates are as follows:

	No. of respondents	Instrument type	No. of responses per respondent	Avg. burden/response (hrs)
Group 1	250	Checklist HHHQ	30 1	.114 .500
Group 2	250	Checklist DHQ	30 1	.114 .667

Dated: September 13, 1995.

Philip D. Amoruso,

NCI Executive Officer.

[FR Doc. 95–23393 Filed 9–20–95; 8:45 am]

BILLING CODE 4140-01-M

Proposed Data Collection Available for Public Comment

In compliance with the requirement of Section 3506(c)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), is publishing this notice of a proposed project. Written comments are requested within 60 days of the publication of this notice. For more information, please contact the NICHD Clearance Liaison at (301) 496–1971 (not a toll-free number).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of study entitled Preventing Problem Behavior Among Middle School Students. The purpose of the study is to test the effect of education on the prevalence of problem behavior. The study involves the students in seven middle schools in one Maryland school district. The school board, school superintendent, principals of each middle school, and various parent and teacher groups have reviewed and approved or endorsed the study, including data collection. At the beginning of 6th grade, and at the end of 6th, 7th, 8th, and 9th grades, students will be asked to complete questionnaires on attitudes and behavior regarding the use of tobacco and alcohol and misconduct at school and in the community. Also, a sample of 1000 parents will be interviewed by telephone about practices that protect children from problem behavior. The estimated annual burden is 4900 hours, with 7900 respondents providing an average of .73 responses of .91 hours duration.

Send comments to Bruce Simons-Morton, Project Officer, 6100 Executive Blvd, 7B05, DESPR, NICHD, Rockville, MD 20852.

Dated September 11, 1995.

Heinz Berendes,

Director, DESPR, NICHD, National Institute of Child Health and Human Development.

[FR Doc. 95–23394 Filed 9–20–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: October 24, 1995.
Time: 2:00 p.m.
Place: Ramada Hotel, Arlington, VA.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Multidisciplinary Sciences.
Date: November 1–2, 1995.
Time: 7:00 p.m.
Place: University Inn, Urbana-Champagne, IL.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Clinical Sciences.
Date: November 1, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 4218, Telephone Conference.
Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

Name of SEP: Biological and Physiological Sciences.
Date: November 17, 1995.
Time: 9:00 a.m.
Place: American Inn, Bethesda, MD.
Contact Person: Dr. David Remondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892, (301) 435–1038.

Purpose/Agenda

To review Small Business Innovation Research.

Name of SEP: Multidisciplinary Sciences.
Date: October 11, 1995.
Time: 1:00 p.m.
Place: Holiday Inn-National Airport, Crystal City, VA.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Multidisciplinary Sciences.
Date: October 30–November 1, 1995.
Time: 8:00 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, Maryland 20892, (301) 435–1174.

Name of SEP: Clinical Sciences.
Date: November 8, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–23387 Filed 9–20–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–806153

Applicant: Donald Bedell, Sikeston, MO.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by Mr. L. Kock, Verborgenfontein, Merriman, South Africa for the purpose of enhancement of the survival of the species.

PRT–806318

Applicant: Mike Murray, Tulsa, OK.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) from culled from the captive herd maintained by the Ciskei Government, Tsolwana Game Reserve, Tarkastad, South Africa for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 15, 1995.

Caroline Anderson,

Acting Chief Branch of Permits,' Office of Management Authority.

[FR Doc. 95–22356 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of a Draft Recovery Plan for the Ute Ladies'-tresses (Spiranthes diluvialis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Ute ladies'-tresses (*Spiranthes diluvialis*) This plant occurs on public, private, and Ute tribal lands in the Uinta Basin, along the Wasatch Front, and in the west desert in Utah; along Colorado's's Front Range north of Denver; in two locations in Wyoming; and in one location in Montana. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before November 20, 1995 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contracting the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Written comments and materials regarding this plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lucy A. Jordan, Fish and Wildlife Biologist (see **ADDRESSES** above), at telephone 801/524–5001.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The Ute ladies'-tresses (*Spiranthes diluvialis*) is a perennial, terrestrial orchid 20 to 50 cm (8 to 20 inches) tall. The flowers are white or ivory and cluster into a spike arrangement at the top of the stem. The plan generally occurs in small, scattered groups in low elevation riparian, spring, and lakeside wetland meadows. The species range includes the west desert, Wasatch Front, and Uinta Basin in Utah; the Front Range north of Denver in Colorado, southeastern to central Wyoming, and southwestern Montana.

The Ute ladies'-tresses was listed as a threatened species on January 17, 1992 (57 FR 2053), under the authority of the Act. It was listed due to current and potential threats to the species' population and habitat from increasing urbanization, water diversions, alteration and management of stream systems that result in a decrease in stream dynamics, increasing recreation, and invasion of habitat by exotic plant species. The goal of the recovery plan is to maintain and protect viable populations to ensure the species' survival and to guide recovery actions to facilitate downlisting and delisting of the species. Recovery efforts will focus on developing and implementing watershed management programs that help retain and restore streams and streamside habitats where the plant occurs, establishing formal land management designations that provide long-term protection of the species and its habitat, conducting biological and habitat management research, managing recreation, and implementing integrated pest management for weed control.

Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 14, 1995.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 95–23481 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AZ–024–05–3809–00; AZA–29237]

Notice of Intent To Prepare an Environmental Impact Statement Analyzing the Impacts of the Proposed Yarnell Mine Project, Yarnell, AZ

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Intent to prepare an environmental impact statement for a proposed gold mine near Yarnell, Arizona.

SUMMARY: This notice advises the public that the Bureau of Land Management, Phoenix District Office, intends to prepare an environmental impact statement on the impacts of a proposed gold mining and processing project near the town of Yarnell, in Yavapai County, Arizona. Yarnell Mining Company, a wholly-owned subsidiary of Bema Gold (U.S.) Incorporated, has submitted a proposed mining plan of operations to the Bureau of Land Management, as required under the Code of Federal Regulations and Title V of the Federal Land Policy and Management Act of 1976. The Bureau of Land Management has responsibility for review, analysis, and approval of the mining plan. Preparation of the environmental impact statement will follow the Code of Federal Regulations, title 40, subpart 1500.

The mining plan proposes conventional open-pit excavation, waste rock dumps, and cyanide heap leach processes to mine the Yarnell gold deposit over a period of approximately six years, with an additional two years for reclamation. The proposed project area includes 160 acres, located 1.5 miles south of Yarnell and 70 miles northwest of Phoenix.

The no action alternative and alternatives that consider various engineering designs and impact mitigating measures will be analyzed. Anticipated issues include surface and groundwater quality, groundwater depletion, visual impacts, public safety, noise, air quality, effects of blasting, mine reclamation, impacts on socioeconomic values, and impacts on riparian, wildlife, and cultural resources.

DATES: Public scoping meetings will be held to determine issues of concern. Public meetings will be held at the following locations and times:

(1) Wickenburg meeting: October 17, 1995, 6:00–9:00 p.m., at the Wickenburg Community Center, 160 North Valentine Street, Wickenburg, Arizona (520) 684–7656.

(2) Yarnell meeting: October 18, 1995, 6:00–9:00 p.m., at the Yarnell Senior Citizens Center, 136 Broadway, Yarnell, Arizona (520) 427–6401.

(3) Prescott meeting: October 19, 1995, 6:00–9:00 p.m., at the Prescott Resort Conference Center, Cottonwood Room, 1500 Highway 69, Prescott, Arizona (520) 776–1666.

Public input may be submitted during the public meetings or in writing to the address given in the section below. Public comments relating to the identification of issues will be accepted until 60 days from this publication date. There will be additional opportunities for public comment on completion of the draft environmental impact statement.

ADDRESSES: Written comments concerning the environmental impact statement should be submitted to the Bureau of Land Management, Attn: Gail Acheson, Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Connie Stone, EIS Project Manager, Bureau of Land Management, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027, telephone (602) 780–8090.

Dated: September 15, 1995.

David J. Miller,

Associate District Manager.

[FR Doc. 95–23456 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–32–P

[CA–067–7123–00]

Extension of Comment Period for Proposed Update of Off-Road Vehicle Designation of Routes of Travel on Public Land in Eastern San Diego and Imperial Counties, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of open, closed and limited routes of travel.

SUMMARY: Notice is hereby given that the comment period for Route of Travel Designations on Public Land in Eastern San Diego and Imperial Counties is being extended. The environmental assessment, Maps and Proposed Vehicle Route Designation Records for each route may be reviewed Monday through Friday at the following locations through November 10, 1995: El Centro Resource Area Office, 1661 South 4th Street, El Centro, CA, 7:45 a.m.–4:30 p.m.; California Desert District Office, 6221 Box Springs Blvd., Riverside, CA, 7:45 a.m.–4:30 p.m.; J's Maintenance Service, 3550 Foothill Blvd., La Cresenta, CA., 9 a.m.–6 p.m.; and Fibertech Manufacturing, 10809 Prospect Ave., Santee, CA., 9 a.m.–6 p.m. (9 a.m.–4 p.m. Saturdays).

DATES: For Comments: The public review period has been extended for review of the proposed route designations. Written comments must be filed no later than November 10, 1995.

ADDRESSES: Written comments must be filed no later than November 10, 1995, and be addressed to: Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243.

FOR ADDITIONAL INFORMATION CONTACT: Robert Bower, Outdoor Recreation Planner, Bureau of Land Management, El Centro Resource Area, 1661 South 4th Street, El Centro, California, 92243.

SUPPLEMENTARY INFORMATION: The El Centro Resource Area is updating its vehicle designations for Public Lands in Eastern San Diego County and in Imperial County those Public Lands west of a line along the Chocolate Mountains Aerial Gunnery Range and the east side of the Imperial Sand Dunes. Numerous requests were received to extend the comment period during public meetings held the week of August 28, 1995. This extension is in response to these requests.

Dated: September 13, 1995.

G. Ben Koski,

Area Manager.

[FR Doc. 95–23451 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–40–P

[NM–070–1430–01; NMNM95192]

Notice of Right-of-Way Application; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application, serialized as NMNM95192, was received from El Paso Natural Gas Company (EPNG) for a natural gas pipeline right-of-way in San Juan County, New Mexico.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1020 (30 USC 185); as amended by the Act of November 16, 1973, (37 Stat. 576), EPNG has applied for a right-of-way for 34 inch diameter pipeline that is 2,719 feet in length. An additional 29 miles are located on land administered by the Bureau of Indian Affairs, and on Navajo Nation land. The project would loop existing lines and will help relieve line pressure and also help in accommodating projected volumes. The proposed line crosses the following public lands.

New Mexico Principal Meridian

T. 29 N., R. 13 W.,
  Sec. 30, 2½.

The purpose of this notice is to inform the public that the Bureau will be making a decision on approval of the right-of-way, and if so, under what terms and conditions.

Interested persons desiring to express their views should send their name and address to the District Manager, Bureau of Land Management, 1235 La Plata Highway, Farmington, New Mexico 87401 within 15 days of publication of this notice. Additional information can be obtained by contacting Jerry Crockford at (505) 599–6333.

Dated: September 15, 1995.

Robert Moore,

Acting Assistant District Manager for Resources.

[FR Doc. 95–23483 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–050–05–1210–00; AZA 29273]

Mohave County, Arizona: Realty Action, AZA–29273

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Realty Action—Leasing of Public Lands; Mohave County, Arizona.

SUMMARY: The following public lands in Mohave County, Arizona will be leased under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976 and 43 CFR Part 2920. The lands will be leased for commercial use to Albert and Ernestine Warminski.

Gila and Salt River Meridian, Arizona

T. 20 N., R. 22 W.,
  Sec. 12, portion of lot 5.
  Containing 0.63 acres, more or less.

This action will convert the Warminski's present Bureau of Reclamation lease to BLM leasing authority. The lease will be for 25 years.

DATES: On or before November 6, 1995, interested persons may submit comments regarding the proposed lease to the address under the ADDRESSES caption of this notice. Any adverse comments will be evaluated by the Area Manager who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Area Manager, this Realty Action will become the final determination of the Bureau.

ADDRESSES: For further information or to submit comments regarding the proposed lease contact Karen Montgomery, Realty Specialist, Bureau of Land Management, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406. (520) 855–8017.

SUPPLEMENTARY INFORMATION: This parcel is located on lands withdrawn by the Bureau of Reclamation, and they concur with the proposed leasing action on this parcel.

Dated: September 13, 1995.

Wlliam J. Liebhauser,

Area Manager.

[FR Doc. 95–23453 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–32–P

(AZ-024–05–1430–01; AZA–1232 and AZA–16865)

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, DOI

ACTION: Notice.

SUMMARY: The following public lands in Maricopa County, Arizona have been examined and found suitable for classification for conveyance to Arizona Game and Fish Department under the provision of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

(1) AZA–1232. The Arizona Game and Fish Department is currently leasing the following described lands for an archery range associated with the Ben Avery Shooting Range.

Gila and Salt River Meridian

T. 6N., R. 2E.,
  Sec. 28, S½SW¼SW¼;
  Sec. 33, W½NW¼, NW¼SW¼.
  Containing 120 acres.

(2) AZA–16865. The Arizona Game and Fish Department is currently leasing the lands described below for their Mesa Regional Office.

Gila and Salt River Meridian, Arizona

T. 1N., R. 7E.,
  Sec. 18, W½W½SW¼SE¼, that portion lying North of University Road.
  Containing 8.89 acres.

The patents, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

In addition to the above, the following will also be subject to the following terms, conditions and reservations as it effects the identified case.

(AZA–1232)

1. Those rights for transmission line purposes granted to Arizona Public Service Company by Right-of-Way number AZA–22432.

(AZA–16865)

1. Those rights for power transmission/irrigation project purposes granted to the Bureau of Reclamation Regional Office by Right-of-Way number AZPHX–086506.
2. Those rights for road (University Drive) purposes granted to Maricopa County, Department of Transportation by Right-of-Way number AZAR–035348.
3. Those rights related to the withdrawal to the Bureau of Reclamation for Salt River Project by serial number AZA–13014.

FOR FURTHER INFORMATION CONTACT: Jim Andersen, bureau of Land Management, Phoenix Resource Area Office, 2015 West Deer Valley road, Phoenix, Arizona 85027. telephone (602) 780–8090.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the purposes described above. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability for an archery range associated with the Ben Avery Shooting Range and the Arizona Game and Fish Department Mesa Regional Office.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 day from the date of publication in the **Federal Register.**

September 14, 1995.

David J. Miller,

Associate District Manager.

[FR Doc. 95–23455 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–32–P

[CA–010–05–1430–01; CA–35289]

Notice of Realty Action; Land Use Lease of Public Lands, Nevada County, CA

AGENCY: Bureau of Land Management, Interior.

REALTY ACTION: Land Use Lease, Nevada County, CA–35289.

SUMMARY: The following described public land is being considered for a land use lease pursuant to Section 302 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

T. 15 N., R. 10 E., M.D.M.
  Sec. 6: lot 89 (portion of). Nevada County, CA.
  Containing 4.71 acres, more or less.

The above parcel of public land would be leased to the R.J. Miles Company of Colfax, CA, through a non-competitive process to resolve a trespass situation. Due to a boundary discrepancy, a gravel operation plant was constructed on and has been operating on the public lands. The lease would authorize this activity on the public lands and would be issued for an initial term of five years, subject to renewal. The land will be leased at fair market value.

The lease would be subject to any prior existing rights. A categorical exclusion and decision record have been completed. The proposal is consistent with the Bureau's land use plans that support the settlement of trespass by lease where equities through prior use of the land exists.

ADDRESSES: Interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630. Comments must be received within 45 days from date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marianne Wetzel at (916) 985–4474 or at the address above.

Timothy J. Carroll,

Acting Area Manager.

[FR Doc. 95–23457 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–40–M

[MT–930–5420–00–EO25; MTM 84344]

Recordable Disclaimer; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Herigstad Ranch Inc., has applied for a Recordable Disclaimer of Interest from the United States under the provisions of Section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745 (1994), for an irregular tract of land situated West and adjacent to the Yellowstone River in the S½ and NE¼ of Section 17, T. 19 N., Range 58 E., Principal Meridian, Montana, containing 145.94 acres.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2829.

SUPPLEMENTARY INFORMATION: The official records of the Bureau of Land Management (BLM) were reviewed and a determination made that the United States may have no claim to or interest in the land described, and issuance of a recordable disclaimer will remove a cloud on the title to the land. The record on this application, including the complete metes and bounds description, is available for review at the above address.

For a period of 90 days from the date of publication of this notice, all persons who wish to present comments, suggestions, or objections in connection with the proposed disclaimer may do so by writing to the Chief, Branch of Land Resources, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107. If no objections are received, the disclaimer will be published shortly after the 90 days has lapsed.

Dated: September 12, 1995.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 95–23445 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–DN–P

[AZ–942–05–1420–00]

Notice of Filing of Plats of Survey; Arizona

September 14, 1995.

1. The plat of survey of the following described lands was officially filed in the Arizona State Office, Phoenix, Arizona, on the date indicated:

A plat representing the survey of a portion of the south boundary, a portion of the subdivisional lines, and a metes-and-bounds survey in section 31, Township 17 South, Range 5 East, Gila and Salt River Meridian, Arizona, was approved August 21, 1995, and officially filed August 29, 1995.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

2. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16380, Phoenix, Arizona 85011.

Lanny K. Talbot,

Acting Chief Cadastral Surveyor of Arizona.

[FR Doc. 95–23452 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–32–M

[NV–930–1430–01; N–59007]

Partial Cancellation of Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal insofar as it affects 27.98 acres of public land requested by the Department of the Army, Corps of Engineers for flood control facilities in Clark County, Nevada. This action will open the 27.98 acres to surface entry and mining, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 59 FR 60998, November 29, 1994, which segregated the lands described therein from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The Corps of Engineers has determined that certain lands will not be needed in connection with the flood control facilities and has cancelled its application for those lands. The lands are described as follows:

Mount Diablo Meridian

T. 21 S., R. 60 E.,
  Sec. 29, E½SW¼SE¼SE¼.
T. 21 S., R. 61 E.,
  Sec. 31, lots 26, 30, 35, 36,
    S½S½NE¼NW¼, and
    NE¼SE¼NE¼NW¼.

The lands described aggregate 27.98 acres in Clark County.

1. At 9 a.m. on October 23, 1995, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 23, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on October 23, 1995, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has

provided for such determinations in local courts.

Dated: September 13, 1995.

William K. Stowers,

Lands Team Lead.

[FR Doc. 95–23458 Filed 9–20–95; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department of Justice policy, 28 CFR § 50.7, notice is hereby given that on September 8, 1995 a proposed Consent Decree in *United States* v. *Cleveland Asbestos Abatement, Inc. et al,* Case No. 1:93CV01317, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleges violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR Part 61, Subpart M. The Consent Decree requires Cleveland Asbestos Abatement, Inc., to comply with the asbestos NESHAP and to provide United States Environmental Protection Agency approved training to its asbestos abatement workers and inspectors during the term of the decree. The consent decree also requires Cleveland Asbestos Abatement to pay a civil penalty of $22,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Cleveland Asbestos Abatement, Inc., et al.*, D.J. Ref. No. 90–5–2–1–1825.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, 1800 Band One Center, 600 Superior Avenue, East, Cleveland, Ohio 44114–2600 (contact Assistant United States Attorney Steven J. Paffilas): (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Ill. 60604–3590 (contact Assistant Regional Counsel David P. Mucha); and (3) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. For a copy of the Consent Decree, please enclose a check in the amount of $3.00 (25 cents per page reproduction charge) payable to Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section.

[FR Doc. 95–23358 Filed 9–20–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that a proposed Consent Decree in *United States* v. *River Properties, et al.*, has been lodged on August 30, 1995, with the United States District Court for the Eastern District of Wisconsin. The proposed Consent Decree concerns the J.K. Drum Superfund Site ("J.K. Drum Site" or "Site"), located at 615 West Wolf River Road, New London (Waupaca County), Wisconsin. The Site was contaminated with numerous hazardous substances, which included heavy metals, flammable materials, acids and cyanide liquids, during the operation of a drum disposal, cleaning and recycling business from 1985 until 1989. Pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9607(a), the complaint in this action seeks recovery of costs incurred by the United States during the removal of hazardous substances at the Site.

The 24 Settling Defendants have agreed in the proposed Consent Decree to reimburse the United States in the amount of $780,000, which comprises approximately 95% of the costs incurred at the Site.

The Department of Justice will receive comments concerning the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *River Properties, et al.*, D.O.J. Number 90–11–2–1077.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the Eastern District of Wisconsin, Federal Building Room 530, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, (414) 297–1700; (2) the U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd. Chicago, Illinois 60604 (312) 886–6609; and (3) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed Decree may be obtained by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. For a copy of the Consent Decree, please enclose a check for $17.25 ($.25 per page reproduction charge) payable to "Consent Decree Library."

Joel M. Cross,

Acting Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 95–23359 Filed 9–20–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,206, 207, and 207A]

Anchor Glass Container Corporation; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 12, 1995, applicable to all workers at the Anchor Glass Container Corporation locations in Gurnee, Illinois, and Huntington Park, California. The notice was published in the **Federal Register** on August 9, 1995 (60 FR 40613).

The Department, on its own motion, reviewed the certification for workers of the subject firm. New information received by the Department shows that imports of articles like or directly competitive with glass containers produced at Anchor's Keyser, West Virginia location contributed importantly to company sales, production, and employment declines at that location. Accordingly, the Department is expanding its certification to those workers at Anchor Glass Container Corporation, Keyser, West Virginia.

The amended notice applicable to TA–W–31,207 is hereby issued as follows:

> "All workers of Anchor Glass Container Corporation, Gurnee, Illinois (TA–W–31,206); Huntington Park, California (TA–W–31,207); and Keyser, West Virginia (TA–W–31,207A) engaged in employment related to the production of glass containers who became totally or partially separated from

employment on or after June 16, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 8th day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23467 Filed 9–20–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,352]

Don Shapiro Industries a/k/a Action West, El Paso, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 31, 1995, applicable to all workers of Don Shapiro Industries located in El Paso, Texas. The notice will soon be published in the **Federal Register**.

New information received from the company show that some of the workers at Don Shapiro Industries had their unemployment insurance (UI) taxes paid to Action West.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–31,352 is hereby issued as follows:

> "All workers of Don Shapiro Industries, a/k/a Action West, El Paso, Texas engaged in employment related to the production of jeans, shorts and skirts who became totally or partially separated from employment on or after August 9, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 8th day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23468 Filed 9–20–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,241A]

Majesty a/k/a Colberts, Incorporated, Dallas, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 10, 1995, applicable to all workers at the subject firm. The notice was published in the **Federal Register** on August 24, 1995 (60 FR 44079).

New information received from the State Agency shows that some of the workers at Majesty, Dallas, Texas, had their unemployment insurance (UI) taxes paid to Colberts, Incorporated.

The Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–31,241A is hereby issued as follows:

> "All workers of Majesty, a/k/a Colberts, Incorporated, Dallas, Texas who became totally or partially separated from employment on or after June 30, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 12th day of September 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–23469 Filed 9–20–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 2, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 2, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 11th day of September, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 09/11/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,405	W.C.A. Industries (CJA)	Merrill, WI	08/29/95	Architectual Millwork.
31,406	Integrated Circuit System (Wkrs)	Valley Forge, PA.	08/29/95	Integrated Circuits.
31,407	D and H Companies (Co.)	Odessa, TX	08/20/95	Oil Recovery Services.
31,408	Columbus Energy Corp. (Co.)	Denver, CO	08/23/95	Crude Oil, Natural Gas.
31,409	Springtown Apparel Corp. (UNITE)	Wrightsville, GA.	08/31/95	Underwear.
31,410	Springtown Knitwear, Inc. (UNITE)	Cartersville, GA	08/31/95	Underwear.
31,411	Enpak Battery (Co.)	Memphis, TN	08/29/95	Auto & Truck Batteries.
31,412	DNT, Inc. (Co.)	Byrdstown, TN	08/28/95	Ladies' Sportswear.
31,413	Anderson's Peanuts (Wkrs)	Opp, AL	09/01/95	Peanuts (110 lbs bags).
31,414	Vaagen Brothers Lumber (Co.)	Colville, WA	08/30/95	Dimensional Lumber.
31,415	Vaagen Brothers Lumber (Co.)	Ione, WA	08/30/95	Dimensional Lumber.
31,416	Vaagen Brothers Lumber (Co.)	Republic, WA	08/30/95	Dimensional Lumber.

[FR Doc. 95–23466 Filed 9–20–95; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–85; Exemption Application No. D–09882, et al.]

Grant of Individual Exemptions; Retirement Plan for Employees of Automobile Club of New York, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Retirement Plan for Employees of Automobile Club of New York, Inc. (the Plan) Located in Garden City, New York

[Prohibited Transaction Exemption 95–85; Exemption Application No. D–9882]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the: (1) The purchase (the Purchase) by the Plan of a certain office building (the Building) from Automobile Club of New York, Inc. (the Club), a sponsor of the Plan and a party in interest with respect to the Plan; (2) a subsequent leaseback (the Lease) of the Building by the Plan to the Club; and (3) the potential future exercise of (a) a repurchase option (the Repurchase Option) between the Club and the Plan; and (b) a make whole obligation (the Make Whole Obligation) whereby the Club will pay the Plan the difference between the original acquisition price paid by the Plan for the Building, and the price received by the Plan upon the sale of a Building to a purchaser other than the Club; provided that the following conditions are satisfied:

(1) All terms and conditions of the Purchase, the Lease, the Repurchase Option, and the Make Whole Obligation are and will be at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) the Lease will have an initial term of fifteen years with three five year renewal options, and will be a triple net lease under which the Club as the tenant is obligated for all operating expenses, including real estate taxes, insurance, repairs, maintenance, electricity and other utilities;

(3) the fair market value of the Building has been determined by an independent qualified appraiser, and will be updated as of the date of purchase by the Plan;

(4) with respect to the Lease, the fair market rental amount has been and will be determined by an independent qualified appraiser, which amount will never be below the initial fair market annual rental amount of $470,000;

(5) with respect to the Lease, appraisals of the Building will be performed at three year intervals during the initial fifteen year term of the Lease, and at five year intervals with respect to the three renewal periods for purposes of updating the fair market rental amount to be received by the Plan;

(6) the fair market value of the Building will not exceed 25% of the Plan's total assets. Notwithstanding this condition, if the 25% limitation is ever exceeded the Club will have 60 days to comply with the 25% limit. In the event the 25% limit cannot be met within the 60 days, the Plan will undertake an orderly disposition of its interests in the Building in such manner as to cure the violation within nine (9) months of the date when the 25% limit was initially exceeded. If at any time during the 9 month disposition period, the Building exceeds 30% of the Plan's total assets, the exemption will no longer be available;

(7) an independent fiduciary will be appointed to review, approve and monitor the transactions described herein, and the fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Club or related parties, will not exceed 1% of its annual income for each fiscal year that it continues to serve in the independent fiduciary capacity with respect to these transactions;

(8) U.S. Trust, as the independent fiduciary, will evaluate the transactions described herein and deemed them to be administratively feasible, protective and in the interest of the Plan;

(9) U.S. Trust, as the independent fiduciary, will monitor the terms and the conditions of the exemption and the Lease throughout its initial term plus the three renewal periods, and will take whatever action is necessary to protect the Plan's rights;

(10) U.S. Trust, as the independent fiduciary, will monitor the net subleasing amount received by the Club during any annual period under the Lease. If such subleasing amount results in a profit to the Club, the Club will contribute this profit to the Plan; and

(11) the Plan will bear no costs or expenses with respect to the transactions described herein.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 31, 1995 at 60 FR 39016/39020.

Written Comments

The Department received two written comments on the proposed exemption and no requests for a hearing. The Automobile Club of New York, Inc., the applicant, suggested certain modifications to the language of the proposed exemption as it appears in the **Federal Register** to clarify and more accurately reflect the conditions and representations surrounding the transactions. U.S. Trust, as the independent fiduciary with respect to the transactions described herein, concurs with these suggested modifications. Specifically, the applicant suggests that:

1. The words "its interests in" should be inserted in condition 6, line 9 of the proposed exemption as it appears in the **Federal Register**, such that condition 6 should read, in relevant part, "* * *the Plan will undertake an orderly disposition of its interests in the Building* * *".

2. The words "for no more than" should have been inserted in the Summary of Facts and Representations (the Summary), paragraph 2, line 4, such that it would have read, "First, the Plan will purchase the Building from the Club for no more than fair market value* * *", and the words " for no less than" should have been inserted in paragraph 2, line 11, such that it would have read, "* * *the Club will lease the Building from the Plan for no less than fair market rental* * *".

3. The words "the Plan" should have been substituted for "U.S. Trust" in the Summary, paragraph 6, line 14, such that it would have read, "* * *with three renewable options of five years each at the discretion of the Plan."

4. The words "the Plan" should have been substituted for "U.S. Trust as the independent fiduciary" in the Summary, paragraph 9, line 8, such that it would have read, "the Repurchase Option can be exercised under certain circumstances under the discretion of the Plan* * *".

5. The words "its interests in" should have been inserted in the Summary, paragraph 17, line 26, such that it would have read, "* * *the Plan will undertake an orderly disposition of its interests in the Building* * *". The Department concurs with these modifications.

One former employee of the applicant asserted in a comment that the fair market value of the Building, and subsequent evaluations thereof, should be determined by at least two qualified appraisers, not one as currently proposed, to assure a fair and accurate finding. Also, the commentor asserted that the appraisers should be certified as completely independent of, and receiving no other business from, the Automobile Club of New York, its Board of Directors, the Retirement Committee, the American Automobile Association, as well as independent of any of the individuals (and their relatives) associated with any of the above bodies.

In response to this comment the applicant asserted that the retention of a second appraiser is unnecessary. The appraiser(s) for the initial and all subsequent appraisals of the Building is being selected by U.S. Trust, as the independent fiduciary, not the Automobile Club of New York, Inc. The integrity of the appraisal is ensured through the use of an independent fiduciary to retain and evaluate the appraiser. Also, the applicant asserted that this requirement is substantially satisfied by the Certificate of Appraisal contained in the limited scope appraisal dated January 10, 1995, which was submitted to the Department by the applicant as part of the exemption application.

After giving full consideration to the record, the comments submitted to the Department, and the response of the applicant, the Department has determined to grant the exemption, as described herein.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number).

Adel E. Zaki Money Purchase Pension Plan (the Plan) Located in Los Angeles, California

[Prohibited Transaction Exemption 95–86; Exemption Application No. D–9883]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale of a parcel of improved real property (the Property) by the Plan to Adel E. Zaki, M.D. (Dr. Zaki), a party in interest with respect to the Plan; provided that (1) the sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan receives in cash the greater of $710,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale; (3) the Plan pays no commissions, fees, or other expenses as a result of the transaction; and (4) the terms of the sale are no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on July 12, 1995 at 60 FR 35943.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

John L. Rust Co. Profit Sharing Plan (the Plan) Located in Albuquerque, New Mexico

[Prohibited Transaction Exemption 95–87; Exemption Application No. D–09943]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the past and proposed purchases by the Plan of certain leases of equipment (the Leases) from John L. Rust Co. (Rust), the Plan sponsor and a party in interest with respect to the Plan, and (2) the agreement by Rust to indemnify the Plan against any loss relating to the Leases and also to repurchase any Leases that are in default in accordance with paragraph (E) below, provided that the following conditions are met:

A. Any sale of Leases to the Plan will be on terms at least as favorable to the Plan as an arm's length transaction with an unrelated third party would be.

B. Subsequent to the date of publication of the proposed exemption (July 21, 1995), the acquisition of a Lease from Rust shall not cause the Plan to hold immediately following the acquisition (i) more than 25% of the current value (as that term is defined in section 3(26) of the Act) of Plan assets in customer notes and Leases sold by Rust or (ii) more than 10% of Plan assets in the aggregate of Leases with and customer notes of any one entity.

C. Prior to the purchase of each Lease, an independent, qualified fiduciary must determine that the purchase is appropriate and suitable for the Plan and that any Lease purchase is a fair market value transaction.

D. The independent fiduciary, on behalf of the Plan, will monitor the terms of the Leases and the exemption and take whatever action is necessary to enforce the rights of the Plan.

E. Upon default by the lessee on any payment due under a Lease, Rust has agreed to repurchase the Lease from the Plan at the payout value as of the date of the default, without discount, and to indemnify the Plan for any loss suffered. The occurrence of any of the following events shall be considered events of default for purposes of this section: The lessee's failure to pay any amounts due

hereunder within five days after receipt of written notice from the Plan's independent fiduciary, or the lessee's failure to pay any amounts due hereunder within 30 days after payment becomes past due, if earlier; the lessee's failure to perform any other obligation under this agreement within ten days of receipt of written notice from the Plan's independent fiduciary; abandonment of the equipment by the lessee; the lessee's cessation of business; the commencement of any proceeding in bankruptcy, receivership or insolvency or assignment for the benefit of creditors by the lessee; false representation by the lessee as to its credit or financial standing; attachment or execution levied on lessee's property; or use of the equipment by third parties without lessor's prior written consent.

F. The Plan receives adequate security for the Lease. For purposes of this exemption, the term adequate security means that the Lease is secured by a perfected security interest in the leased property which will name the Plan as the secured party.

G. Insurance against loss or damage to the leased property from fire or other hazards will be procured and maintained by the lessee and the proceeds from such insurance will be assigned to the Plan.

H. The Plan shall maintain for the duration of any Lease which is sold to the Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The Plan will continue to maintain the records for a period of six years following the expiration of the Lease or the disposition by the Plan of the Lease. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plan, during normal business hours by the Internal Revenue Service, the Department of Labor, Plan participants, any employee organization any of whose members are covered by the Plan, or any duly authorized employee or representative of the above described persons.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 21, 1995 at 60 FR 37685.

Temporary Nature of Exemption

EFFECTIVE DATE: This exemption is effective December 30, 1985. However, the exemption is temporary and will expire five years from the date the exemption is granted with respect to the Plan's future purchases of Leases. The Plan may hold the Leases pursuant to the terms of the exemption subsequent to the end of the five year period.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Donald D. Busker Individual Retirement Account (the IRA) Located in Detroit Lakes, Minnesota

[Prohibited Transaction Exemption 95–88; Application No. D–10005]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of two parcels of unimproved real property (the Properties) by the IRA to Donald D. Busker, a disqualified person with respect to the IRA,[1] provided the following conditions are met:

(a) The sale is a one-time transaction for cash;

(b) The terms and conditions of the sale are at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party;

(c) The IRA receives the fair market value of the Properties as established at the time of the sale by an independent qualified appraiser; and

(d) The IRA is not required to pay any commissions, costs or other expenses in connection with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption Notice published on August 11, 1995, 60 FR 41125.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Banc One Capital Corporation (Banc One) Located in Columbus, OH

[Prohibited Transaction Exemption 95–89; Exemption Application No. D–10046]

Exemption

Section I. Transactions

A. Effective June 2, 1995, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Subsection I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[2]

B. Effective June 2, 1995, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

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[1] Pursuant to 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[2] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(a)(ii) and regulation 29 CFR 2510.3–21(c).

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[3] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Subsection I.B. (1) or (2).

C. Effective June 2, 1995, the restrictions of sections 406(a), 406(b), and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to or described in all material respects in the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[4]

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.S.

D. Effective June 2, 1995, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II. General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision of Subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Subsection II.A.(6) above.

Section III. Definitions

For purposes of this exemption:

A. Certificate means:

(1) A certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) above for which Banc One or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. Trust means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either—

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in Section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in Section III.U);

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this Section B.(1);

(2) Property which had secured any of the obligations described in Subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in Subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) Banc One;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Banc One; or

(3) Any member of an underwriting syndicate or selling group of which Banc One or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *independent* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

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[3] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[4] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Banc One* means Banc One Capital Corporation, an Ohio corporation, and its affiliates.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of Prohibited Transaction Exemption (PTE) 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, at 35932.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 11, 1995 at 60 FR 41127.

EFFECTIVE DATE: This exemption is effective for transactions occurring on or after June 2, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of September, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 95–23463 Filed 9–20–95; 8:45 am]

BILLING CODE 4510–29–P

[Application No. L–09927, et al.]

Proposed Exemptions; Plumbers and Steamfitters Local No. 177

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Plumbers and Steamfitters Local No. 177, Health and Welfare Fund (the Welfare Plan), and Plumbers and Steamfitters Local No. 177, Pension Trust Fund (the Pension Plan; collectively, the Plans), Located in Brunswick, Georgia

[Application Nos. L–09927, D–09928 and L–09929]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply (1) effective February 17, 1994, to the past sale by the Welfare Plan of an office building located in Brunswick, Georgia (the Office Building) to Plumbers and Steamfitters Local No. 177 (the Union), a party in interest with respect to the Plans; and (2) effective February 16, 1995, to the past and proposed leases (the Leases) of space in the Office Building by the Union to the Plans; provided the following conditions are satisfied:

(a) The purchase price paid by the Union for the Office Building was no less than the fair market value of the Office Building as of the date of the sale;

(b) All terms of the Leases are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties;

(c) Rents paid under the Leases do not exceed the fair market rental values of the leased spaces;

(d) The interests of the Plans under the Leases for all purposes are represented by a qualified independent fiduciary who monitors the Leases and takes appropriate action to enforce the Union's compliance with all Lease terms and conditions; and

(e) Within 60 days of the publication in the **Federal Register** of a notice granting this exemption, the Union pays any excise taxes applicable under section 4975(a) of the Code by virtue of the past Leases for the period commencing February 17, 1994 to February 16, 1995.

EFFECTIVE DATES: This exemption, if granted, will be effective as of February 17, 1994 with respect to the sale of the Office Building, and February 16, 1995 with respect to the Leases.

Summary of Facts and Representations

1. The Welfare Plan is a multi-employer welfare benefit plan with total assets of $650,788 and approximately 600 participants as of July 31, 1994. The Pension Plan is a defined contribution money purchase pension plan, with total assets of $8,406,592, and approximately 240 participants as of December 31, 1994. The Plans are maintained pursuant to collective bargaining agreements between the Union and employers of members of the Union (the Employers). The Plans share the same board of trustees (the Trustees), consisting of three representatives of the Union and three representatives of the Employers.

2. The Office Building, located on the New Jesup Highway in Brunswick, Georgia, was constructed in 1960 as a single-family residence, and has been remodeled and adapted for use as a business office facility. The Office Building has 4,550 square feet of floor space and is situated on a 4.11 acre parcel of land. The Trustees represent that they purchased the Office Building on behalf of the Welfare Plan on August 1, 1985 for $168,000 from an individual unrelated to the Plans, the Union and the Employers. Since 1985 the Office Building has served as the site of the administrative offices of the Welfare Plan. The Welfare Plan also shared space in the Office Building with the Pension Plan and the Union.[1]

3. In early 1994 the Trustees determined that the assets of the Welfare Plan were in need of diversification and enhanced liquidity, and that the Office Building should be sold in order to address these needs. After investigations into the prevailing circumstances of the real estate market in which the Office Building is situated, the Trustees determined to accept an offer by the Union to purchase the Office Building from the Welfare Plan. Accordingly, on February 17, 1994, the Union purchased the Office Building from the Welfare Plan, and the Union immediately commenced leasing space in the Office Building to the Welfare Plan and the Pension Plan (the New Leases). The Trustees are requesting an exemption with respect to the sale of the Office Building to the Union and the past and proposed New Leases, under the terms and conditions described herein.

4. The Trustees represent that their sale of the Office Building was necessary in order to diversify the investment of the assets of the Welfare Plan, which were invested disproportionately in real property, and that the sale to the Union was the most advantageous means of achieving such a sale. The Trustees represent that due to the "soft" conditions prevailing in the local real estate market, the Welfare Plan could not reasonably expect to receive the full appraised fair market value of the Office Building in an arm's length sale transaction involving an unrelated buyer. In the sale of the Office Building to the Union, however, the Trustees state that they succeeded in obtaining a purchase price in the amount of the Office Building's full fair market value as of the sale date. The Office Building was appraised by Richard C. Friedman, SRA (Friedman), an independent professional realty appraiser in Brunswick, Georgia, who determined that as of February 5, 1994, the Office Building had a fair market

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[1] The Trustees represent that the sharing of office space in the Office Building with the Pension Plan, the apprenticeship plan and the Union satisfied the requirements of Prohibited Transaction Class Exemption 76–1 (PTCE 76–1, 41 FR 12740, March 26, 1976) and Prohibited Transaction Class Exemption 77–10 (PTCE 77–10, 42 FR 33918, July 1, 1977), and, therefore, is exempt from the prohibitions of sections 406(a) and 406(b)(2) of the Act. The Department expresses no opinion on whether the sharing arrangements satisfied the requirements of PTCEs 76–1 and 77–10.

value of $230,000. In accordance with Friedman's appraisal, the Union bought the Office Building on February 17, 1994 for a cash purchase price of $230,000. Aside from a settlement charge of $230, the Union paid all expenses related to the sale transaction.

5. Since the Union's purchase of the Office Building, the Welfare Plan and the Pension Plan have continued to occupy and utilize space therein as they had done prior to the sale transaction. Effective February 28, 1994, leases were executed on behalf of each Plan (the Leases) providing for the Plans' lease of space in the Office Building from the Union. Under the Leases, each Plan leases one half of the same 1,327 square feet of space in the Office Building which the Plans had shared and utilized prior to the Union's purchase of the Office Building from the Union, consisting of a large office, supply room, reception area, and use of all common areas. The Union occupies and utilizes the remaining office space in the Office Building, which consists of an office for the Union's business manager, a general office, meeting space, storage space, reception area, and use of all common areas. The Plans' Leases each have an initial term of three years, with provisions for successive three-year renewal periods under the same terms as the initial Lease, subject to increases in the rental amounts. Under each Lease the Union is responsible for paying all taxes, insurance and utilities other than telephone service, and for all repairs to the Office Building. Each Lease includes a provision giving the Plan the unconditional right to terminate the Lease at any time without penalty upon sixty days written notice. The interests of the Plans for all purposes under the Leases are represented by an independent fiduciary (the Fiduciary), described below, whose functions include the negotiation, monitoring and enforcement of the Leases' terms and conditions on behalf of the Plans.

6. Rent under the Leases, payable monthly, will be no more than the fair market value of the space leased. In another appraisal of the Office Building, Friedman determined that as of April 17, 1995, the fair market rental value of the Office Building space leased under each Lease was $359.40 per month, for a combined total of $718.80. In accordance with Friedman's appraisal, initial rent under each Lease is set at $359.40 per month. Rental during any successive renewal term(s) will be established as follows: During the last two months of the initial term, and thereafter during the last two months of the renewal term, the Fiduciary shall cause the Office Building to be reappraised for its fair market rental value, and the rental in the subsequent renewal term, if any, shall be the newly reappraised fair rental market of the leased space.

7. The interests of the Plans under the Leases are represented for all purposes by the Fiduciary, Julian R. Friedman, Esq., an attorney who represents that he is independent of the Union.[2] The Fiduciary represents that he has substantial experience with collectively-bargained employee benefit plans and the fiduciary responsibility provisions of the Act. Acting as a fiduciary under the Act on behalf of the Plans, the Fiduciary will oversee the relationship between the Union as lessor and the Plans as lessees under the Leases, and will monitor and enforce the Union's performance of its obligations thereunder. The Fiduciary will be responsible for securing the appraisals required by the Leases' rental-review provisions, and for making any adjustments in the rent in accordance with such appraisals. The Fiduciary negotiated and prepared the Leases on behalf of the Plans, and he states that he has determined that they are in the best interests of the participants and beneficiaries of the Plans due to the protective and advantageous features of the Leases. The Fiduciary also represents that he has determined that the particular space in the Office Building which is shared by the Plans and rented from the Union pursuant to the Leases is sufficient and appropriate for the Plans' operations, and that the arrangement does not have the effect of subsidizing the Union's use of other space in the Office Building.

8. The Department is not proposing exemptive relief for the Leases for any period prior to February 16, 1995, because that is the date on which the Plans's interests under the Leases commenced to be represented for all purposes by the Fiduciary. The Union recognizes that the leases of the Office Building to the Plans under the Leases for the period commencing February 28, 1994 to February 16, 1995 constituted prohibited transactions under the Act and the Code for which no exemptive relief is proposed herein. Accordingly, as a condition of the proposed exemption, if granted, within sixty days of the publication in the **Federal Register** of a notice granting the exemption, the Union will pay any excise taxes which are applicable under section 4975(a) of the Code by reason of such Leases of the Office Building for the period commencing February 28, 1994 to February 16, 1995.

9. In summary, the applicant represents that the past and proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The sale of the Office Building was necessary to enhance the liquidity and diversification of the assets of the Welfare Plan; (2) The sale was a cash transaction in which the Welfare Plan received the full appraised fair market value of the Property as of the sale date; (3) The interests of the Plans under the Leases are represented by the Fiduciary, who has determined that the Leases are in the best interests and protective of the participants and beneficiaries of the Plans, and who will monitor and enforce the Union's compliance with all Lease terms and conditions; (4) The Plans will pay no more than fair market rental for the space leased in the Office Building; and (5) Each Plan has the right under each Lease to terminate the Lease for any reason upon sixty days written notice.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

State Mutual Life Assurance Company of America (State Mutual) Located in Worcester, MA

[Application No. D–10008]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[3]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (a) the receipt of common stock of State Mutual, (b) the substitution of the common stock of Allmerica Financial Corporation (Allmerica), State Mutual's prospective sole owner, for the State Mutual stock, or (c) the receipt of cash or policy credits, by or on behalf of an employee benefit plan policyholder of State Mutual (the Plan), other than any policyholder which is a Plan maintained by State Mutual or an affiliate of State Mutual for its own employees (the State Mutual Plans)[4], in exchange for such policyholder's membership interest in State Mutual, in accordance with the terms of a plan of reorganization (the Demutualization Plan) adopted by State Mutual and implemented pursuant to section 19E (Section 19E) of Chapter 175 of the Massachusetts General Laws.

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[2] The Fiduciary represents that he is not related to Richard C. Friedman, S.R.A., a real property appraiser previously referred to in this summary of facts and representations.

[3] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by the State Mutual Pension Plan, of employer securities in the form of excess stock, in accordance with the terms of the Demutualization Plan.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Demutualization Plan is implemented in accordance with procedural and substantive safeguards that are imposed under Massachusetts law and is subject to the review and supervision by the Massachusetts Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to certain policyholders of State Mutual, which include, but are not limited to the subject Plans and the State Mutual Plans (the Eligible Policyholders), as part of such Commissioner's review of the Demutualization Plan, and approves the Demutualization Plan following a determination that such Demutualization Plan is not prejudicial to all Eligible Policyholders.

(c) The Demutualization Plan is filed with the New York Superintendent of Insurance (the Superintendent) who determines whether the Demutualization Plan is fair and equitable to Eligible Policyholders from New York.

(d) Each Eligible Policyholder has an opportunity to comment on the Demutualization Plan and decide whether to vote to approve such Demutualization Plan after full written disclosure is given such Eligible Policyholder by State Mutual, of the terms of the Demutualization Plan.

(e) Any election by an Eligible Policyholder which is a Plan (including the State Mutual Plans), to receive stock, cash or policy credits, pursuant to the terms of the Demutualization Plan is made by one or more independent fiduciaries (the Independent Fiduciaries) of such Plan and neither State Mutual nor any of its affiliates exercises any discretion or provides investment advice with respect to such election.

(f) In the case of the State Mutual Plans, where the consideration is in the form of stock, the Independent Fiduciary—

(1) Elects the form of consideration that such Plans receive;

(2) Monitors, on behalf of such Plans, the acquisition and holding of the stock;

(3) Makes determinations on behalf of such Plans with respect to the voting, the continued holding or the disposition of such stock; and

(4) Disposes, in a prudent manner, shares of stock exceeding the 10 percent holding limitation of section 407(a)(2) of the Act within 90 days following its receipt by the State Mutual Pension Plan. Such shares that are not disposed of during this initial 90 day period must be disposed of within an additional period of 90 days.

(g) After each Eligible Policyholder entitled to receive stock is allocated at least thirty shares of stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of State Mutual which formulas have been approved by the Commissioner and the Superintendent.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of stock or in connection with the implementation of the commission-free sales program.

(j) All of State Mutual's policyholder obligations remain in force and are not affected by the Demutualization Plan.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term "State Mutual" means State Mutual Life Assurance Company of America and any affiliate of State Mutual as defined in paragraph (b) of this Section III.

(b) An "affiliate" of State Mutual includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with State Mutual. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "Eligible Policyholder" means a policyholder whose name appears on the conversion date on the insurer's records as owner of a participating policy under which there is a right to vote and which is in full force on both the December 31 immediately preceding the conversion date and the date the insurer's board of directors first votes to convert to stock form. Under Massachusetts law, only such policyholders are entitled to receive consideration in the demutualization. Policyholders who are not Eligible Policyholders will not receive any stock or other consideration. As used herein, the term "Eligible Policyholder" includes, but is not limited to, the State Mutual Pension Plan as well as those Plans that are not sponsored by State Mutual.

(d) The term "policy credit" means an increase in accumulation account value (to which no surrender or similar charges are applied) in the general account or an increase in a dividend accumulation on a policy.

Summary of Facts and Representations

1. State Mutual is a mutual life insurance company organized under the laws of the State of Massachusetts and maintaining its headquarters in Worcester, Massachusetts. It is the fifth oldest life insurance company in the United States. In asset size, State Mutual ranks among the 20 largest mutual life insurance companies in the country. As of December 31, 1994, State Mutual and its subsidiaries had total assets in excess of $10.5 billion and more than $40.2 billion of individual life insurance policies in force. State Mutual has a number of subsidiaries and affiliates that provide a variety of financial services to policyholders including investment management and brokerage services. State Mutual and its investment management subsidiaries had approximately $10.7 billion in

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[4] With the exception of the State Mutual Companies' Pension Plan (the State Mutual Pension Plan), State Mutual is not requesting, nor is the Department providing exemptive relief herein with respect to the distributions of State Mutual or Allmerica common stock to other plans that State Mutual or its affiliates maintain for their own employees. State Mutual represents that such stock would constitute qualifying employer securities within the meaning of section 407(d)(5) of the Act and that section 408(e) of the Act would apply to such distributions. In this regard, the Department expresses no opinion on whether such distributions would satisfy the terms and conditions of section 408(e) of the Act.

assets under management as of December 31, 1994.

As a mutual life insurance company, State Mutual has no stockholders. Instead, policyholders of State Mutual are considered members of the company and, in this capacity, are entitled to vote to elect directors of State Mutual and to share in the assets of the company upon its liquidation.

2. State Mutual is the common parent of an affiliated group of companies. One of these companies is SMA Financial Corporation (SMA Financial), a Massachusetts corporation which is a wholly owned, direct subsidiary of State Mutual. SMA Financial owns 57 percent of the common stock of Allmerica Property & Casualty Companies, Inc. (APY), a Delaware corporation. As a majority shareholder, State Mutual exercises management control over APY. SMA Financial also owns 100 percent of the stock of SMA Life Assurance Company (SMA Life), a Delaware stock life insurance company.

The stock of APY that is not held by SMA Financial is widely held and is traded on the New York Stock Exchange. APY is the holding company and is the common parent of an affiliated group of companies which includes two property and casualty insurance companies—The Hanover Insurance Company and Citizens Insurance Company of America.

State Mutual and its affiliates provide a variety of fiduciary and other services to Plans. These services include plan administration and related services, investment management services and securities brokerage and related services. Many Plans for which State Mutual provides services are also State Mutual policyholders. As of December 31, 1994, there were approximately 10,000 State Mutual insurance policies and contracts held by pension and welfare plans.

3. State Mutual and its affiliates sponsor a number of plans for which it is not requesting exemptive relief herein.[5] However, one plan, for which State Mutual has specifically requested exemptive relief is the State Mutual Companies' Pension Plan, a defined benefit plan. The State Mutual Pension Plan covers eligible career agents, general agents and clerical employees of State Mutual and its affiliates. The State Mutual Pension Plan provides retirement, disability and death benefits to eligible participants and their beneficiaries. The trustee of the State Mutual Pension Plan is Mechanics Bank of Worcester, Massachusetts. The decisionmakers with respect to investments in the State Mutual Pension Plan are members of an investment committee consisting of State Mutual's Board of Directors. As of December 31, 1994, the State Mutual Pension Plan had 6,187 participants. As of December 31, 1994, the State Mutual Pension Plan had net assets available for benefits of $156,100,000.

4. In July 1993, State Mutual's Board of Directors authorized management to develop a plan of demutualization whereby State Mutual would be converted from a mutual life insurance company to a stock life insurance company. The purposes of the Demutualization Plan are to (a) improve State Mutual's access to the capital markets and competitiveness in the insurance industry; (b) establish Allmerica, a single, publicly-traded company, which will become the exclusive owner of State Mutual and whose stock will be issued by State Mutual to certain Eligible Policyholders as a result of the demutualization; and (c) raise capital for State Mutual through an initial public offering (the IPO) of the stock of the new publicly-traded company. State Mutual has developed the Demutualization Plan and its Board of Directors formally adopted the Demutualization Plan on February 28, 1995.

5. It is currently anticipated that the following steps will be undertaken with respect to the implementation of State Mutual's Demutualization Plan:

(a) *The Demutualization.* To become a stock life insurance company, State Mutual will demutualize under Massachusetts law as well as under the provisions of the Demutualization Plan. Each policyholder's membership interest in State Mutual will be terminated. As compensation for their membership interests, Eligible Policyholders will receive cash, policy credits and initially, shares of State Mutual common stock. The State Mutual common stock will be issued to First Chicago Trust Company of New York as transfer agent on behalf of Eligible Policyholders and exchanged in the merger described below in Step (b).

(b) *Creation of Special Purpose Subsidiary.* Allmerica will form a special purpose Massachusetts subsidiary called "Allmerica Merger Subsidiary Inc." (Merger Sub). On the effective date of the demutualization (i.e., on or before December 31, 1995), Merger Sub will merge with and into the demutualized State Mutual pursuant to Section 19E of Massachusetts demutualization law. In the merger, Eligible Policyholders will receive shares of Allmerica common stock in exchange for the shares of State Mutual common stock they initially held. The stock of Merger Sub will be converted into the only issued and outstanding stock of State Mutual. State Mutual will then become a wholly owned subsidiary of Allmerica.

(c) *The IPO.* Allmerica may sell new Allmerica stock in an underwritten IPO, which is expected to occur on the same day as the demutualization. At present, the size of the IPO is not known.[6]

(d) *Contribution to the Capital of State Mutual.* Following the transactions described above, Allmerica will contribute cash raised in the IPO to State Mutual. The Demutualization Plan requires that the contribution be in an amount at least equal to the amount required for State Mutual (a) to pay transaction expenses resulting from the demutualization, (b) to pay cash and fund policy credits awarded to Eligible Policyholders required to receive such consideration under the terms of such Demutalization Plan and (c) to purchase assets required for the funding of certain "closed block" policies.[7] The amount of this contribution is currently anticipated to be in excess of $100 million.

The Demutualization Plan also permits Allmerica to retain, for general corporate purposes, amounts raised in the IPO (or by the other transactions described above) in excess of the amount to State Mutual.

6. In addition to economic arguments raised by State Mutual in support of the Demutualization Plan, as noted above, State Mutual represents that its proposed conversion from a mutual life insurance company to a stock life insurance company will give Eligible Policyholders marketable securities, cash or policy credits in exchange for their membership interests. State Mutual represents that the demutualization will provide the flexibility to cause its non-insurance operations to become direct holdings of an "upstream" holding company and enable it to use stock options or other equity-based compensation arrangements in order to attract and retain talented employees. State Mutual believes these consequences of the conversion will benefit all of its policyholders. State Mutual further explains that its insurance policies will remain in force and policyholders will be entitled to receive the benefits under their policies and contracts to which they would have been entitled if the Demutualization Plan had not been adopted.

7. State Mutual represents that Section 19E of the Massachusetts demutualization law establishes an approval process for the demutualization of a life insurance company organized under Massachusetts law. Section 19E requires that the demutualization plan be filed with, and approved by, the Massachusetts Commissioner of Insurance. The Commissioner may approve the demutalization plan only after notice is given to the insurer, its directors, officers, employees and policyholders and a hearing on such plan is held. All persons to whom notice is given have the right to appear and be heard at the hearing and to present oral or written comments.

After the hearing, State Mutual explains that the Commissioner may approve the demutualization plan if he determines that the plan is not prejudicial to the insurer's policyholders or to the "insuring public." The Commissioner must also determine that the demutualization plan conforms to the provisions of Section 19E. In pertinent part, Section 19E requires that (a) policyholders be provided with reasonable notice of the procedure for voting on the demutualization plan; (b) each policyholder, in exchange for membership interests in the insurer, is given appropriate consideration determined under a fair and reasonable formula, which is based upon the insurer's entire adjusted surplus; (c) unless not approved by the Commissioner, each policyholder is given a preemptive right to acquire such policyholder's proportionate interest in the capital stock of the insurer within a reasonable time period; (d) shares of the insurer's stock are offered to policyholders at a price not greater than that offered to others under the demutualization plan; (e) each policyholder receives consideration which may consist of cash, securities, a certificate of contribution, additional life insurance or annuity benefits, increased dividends or other consideration or any combination of such forms of consideration; (f) the converted insurer's paid-in capital stock is in an amount not less than the minimum paid-in capital stock plus the net cash surplus required of a new domestic stock insurer authorized to transact similar kinds of insurance business; (g) the insurer's management has not sought to affect the number or identity of the insurer's policyholders to be entitled to participate in the demutualization plan, or to secure for the insurer's management, any unfair advantage through the demutualization plan; and (h) the classifications of management and employee groups that are offered shares not subscribed for by policyholders in the preemptive offering are reasonable.

Section 19E authorizes the Commissioner to employ staff personnel and to engage outside consultants to assist the Commissioner in determining whether a demutualization plan meets the requirements of Section 19E and any other relevant provisions of Massachusetts law. In the case of State Mutual, it is anticipated that the Commissioner will retain an actuarial firm, legal advisers and an investment banking firm as consultants, and possibly other consultants as well. A decision by the Commissioner to approve a demutualization plan under Section 19E is subject to judicial review in the Massachusetts courts.

In addition to being approved by the Commissioner, State Mutual represents that the demutualization plan must be approved by the policyholders of the insurer. In this regard, Section 19E, requires that the policyholders be provided with notice of a meeting convened for the purpose of voting on whether to approve the demutualization plan. Moreover, the demutalization plan must be approved by a vote of not less than two-thirds of the votes of the policyholders who may vote in person, by proxy or by mail.[8]

8. State Mutual represents that it is licensed to transact business in all fifty states. However, only the State of New York requires that a foreign insurance company that is planning to demutualize file a copy of its demutualization plan with state insurance authorities. In this regard, State Mutual explains that section 1106(i) (Section 1106(i)) of the New York Insurance Law authorizes the Superintendent to review the demutualization plan of a foreign life insurer licensed in New York and to specify the conditions that the Superintendent would impose in order for the foreign insurer to retain its New York license following its demutualization. Specifically, Section 1106(i) requires that a foreign life insurer licensed in New York file with the Superintendent a copy of the demutualization plan at least 90 days prior to the earlier of (a) the date of any public hearing required to be held on the demutualization plan by the insurer's state of domicile, and (b) the proposed date of the demutualization.

If, after examining the demutualization plan, the Superintendent finds that the plan is not fair or equitable to the New York policyholders of the insurer, the Superintendent must set forth the reasons for his findings. In addition, the Superintendent must notify the insurer and its domestic state insurance regulator of his findings and his reasons for such findings and advise of any requirements he considers necessary for the protection of current New York policyholders in order to permit the insurer to continue to conduct business in New York as a stock life insurer after the demutualization. In the event the Superintendent has any objections to the Demutualization Plan, State Mutual represents that it will amend the Plan so that it will meet the approval of the Superintendent or otherwise, work out a satisfactory solution with the Superintendent. However, should the Superintendent require changes in the Demutualization Plan that are unacceptable to the Commissioner, State Mutual will make a decision on how to proceed.

9. Once finalized, it is expected that State Mutual's Demutualization Plan will provide for Eligible Policyholders to ultimately receive common stock of Allmerica,[9] cash or policy credits as consideration for giving up their membership interests in State Mutual. Accordingly, State Mutual requests an administrative exemption from the Department in order that certain of its

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[5] As stated previously, State Mutual believes that distributions of stock to such Plans would constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act and that section 408(e) of the Act would apply to such distributions.

[6] The Demutualization Plan provides that in addition to the IPO, Allmerica may raise capital through one or more of the following: (a) A private placement of debt securities on or prior to the demutualization date, (b) bank borrowings on or prior to the demutualization date or (c) a public offering of debt securities on the demutualization date.

[7] According to State Mutual, the closed block is an accounting mechanism whereby the experience on certain dividend-paying policies and contracts of State Mutual will be accounted for separately on State Mutual's books so that dividend scales can be revised in the future to reflect that experience. No assets will be physically segregated. The closed block is not set aside or deposited for the purpose of doing business. Thus, the purpose of the closed block is to protect the dividend expectations of such dividend-paying policies and contracts after the effective date of the Demutualization Plan.

[8] State Mutual has approximately 100,000 policyholders who are eligible to vote on the Demutualization Plan. The voting provisions follow the voting regulations for annual meetings of mutual insurance companies, as set out in Chapter 175, Section 94 of Massachusetts Insurance Law. The number of votes to which any Eligible Policyholder is entitled will vary with the number of policies and the amounts of insurance owned by such Policyholder. In no case, however, may an Eligible Policyholder cast more than 20 votes.

[9] It is expected that Allmerica stock will be traded on the New York Stock Exchange. Under the terms of the Demutualization Plan, Allmerica is required to arrange for the listing of its stock on a national securities exchange and to use its best efforts to maintain such listing for as long as it is a publicly-traded company.

Eligible Policyholders that are Plans, including the State Mutual Plans, may receive stock, cash or policy credits in exchange for their membership interests in State Mutual. In addition, State Mutual requests exemptive relief in order that the State Mutual Pension Plan, may receive consideration in the form of stock. Because the value of the stock to be received by the State Mutual Pension Plan will exceed the 10 percent limitation prescribed in section 407(a)(2) of the Act by 6 percent, State Mutual requests exemptive relief so that the State Mutual Pension Plan may continue holding stock exceeding such limitation for a temporary, three month period.

10. According to the Demutualization Plan, certain Eligible Policyholders will receive cash or policy credits in lieu of stock under the following circumstances:

a. *Cash* will be received in lieu of allocable stock (1) with respect to a policy that is known to State Mutual to be subject to a lien (other than a policy loan made by State Mutual) or a bankruptcy proceeding, or (2) where the Eligible Policyholder's address for mailing purposes, as shown on the records of State Mutual, is located outside the United States of America, or (3) where the Eligible Policyholder has made an affirmative election, on a form provided to such Eligible Policyholder by State Mutual, to receive cash in lieu of stock. (If no such preference is expressed under Item 3, the Eligible Policyholder will receive stock.[10]

b. *Policy credits* will be received in lieu of stock allocable to any policy that is (1) an individual retirement annuity contract within the meaning of section 408 of the Code, (2) a tax sheltered annuity contract within the meaning of section 403(b) of the Code, (3) an individual annuity contract that has been issued pursuant to a plan qualified under section 401(a) of the Code directly to the plan participant, or (4) an individual life insurance policy that has been issued pursuant to a plan qualified under section 401(a) of the Code directly to the plan participant.

The cash or policy credits will have a value equal to the stock such policyholders would otherwise have received, based on the price per share of Allmerica stock in the IPO which is expected to occur at the time of the demutualization. Any election by a Plan, including the State Mutual Plans, to receive stock or cash pursuant to the terms of the Demutualization Plan, will be made by one or more fiduciaries of such Plan which is independent of State Mutual.[11] In addition, neither State Mutual nor any of its affiliates may exercise discretion or provide investment advice with respect to such election. Further, no Eligible Policyholder will pay any brokerage commissions or fees in connection with their receipt of stock.[12]

The stock allocated to Eligible Policyholders will be allocated among them by providing at least thirty shares for each such Policyholder. This number is, however, subject to proportional adjustment. Any remaining stock will be allocated substantially on the basis of the contributions to surplus made by each such Policyholder's in force participating policies. The allocation methodology must be fair and reasonable and approved by the Commissioner. The allocation formulas are also subject to review by the Superintendent.

11. State Mutual notes that the proposed receipt of stock by the State Mutual Pension Plan would violate section 406(a)(1)(E) of the Act because the receipt of such stock would be in violation of section 407(a)(2) of the Act, which prohibits the acquisition by a plan of any qualifying employer security if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets. State Mutual represents that the stock, which will be a "qualifying employer security" represent approximately 16 percent of the assets of the State Mutual Pension Plan after its acquisition and thus will exceed the 10 percent limitation of section 407(a)(2) of the Act. Accordingly, State Mutual represents that the statutory exemptive relief contained in section 408(e) of the Act will not apply to the acquisition and holding of the stock by the State Mutual Pension Plan. Thus, State Mutual requests administrative exemptive relief from the Department. State Mutual further notes that the holding of stock by the State Mutual Pension Plan will not violate the provisions of section 407(f) of the Act.

12. State Mutual represents that pursuant to a Retainer Agreement and an Indemnification Agreement, both of which are dated March 27, 1995 (collectively, the Engagement Agreements), it has retained the services of State Street Bank and Trust Company (State Street) of Quincy, Massachusetts to serve, on behalf of the State Mutual Pension Plan and the other State Mutual Plans, as the Independent Fiduciary (and also investment manager). Specifically, State Street represents that it has been retained to consider, on behalf of the State Mutual Plans, whether to approve the proposed transactions and, if so approved, whether to receive consideration in the form of stock or cash. To assist State Street in carrying out its fiduciary responsibilities under the Engagement Agreements, State Street has retained Whitman Heffernan Rhein & Co. (WHR & Co.), as its independent financial adviser, and Paul, Weiss, Rifkind, Wharton & Garrison (Paul Weiss), as its independent legal counsel.

State Street represents that it is one of the largest trust companies in the United States with over $170 billion in assets under management, a significant percentage of which consists of pension plan assets. State Street also represents that it has served as an independent fiduciary for numerous retirement plans that acquire or hold employer securities and has managed, at various times, over $20 billion in employer securities held by various retirement plans. In managing such investments, State Street states that it has supervised numerous transactions involving the acquisition, retention and disposition of employer securities. Further, State Street explains that it monitors the performance of the employer securities it manages on a continuing basis.

State Street represents that it has the following *de minimus* business relationships with State Mutual:

(a) Its Insurance Division provides various services to several retained asset accounts of State Mutual and/or various subsidiaries of State Mutual. Revenue received by State Street for these services in 1994 totaled approximately $52,000.

(b) It serves as an investment manager for fixed income investment funds of defined contribution plans. Currently, it manages approximately $6 billion in fixed income securities. Approximately $84 million of that is invested, on behalf of various clients, in guaranteed investment contracts issued by State Mutual. Revenue received in 1994 by State Street for the investment in these contracts totaled less than $10,000.

(c) It provides master trust and custody services to various pension plans. Some of these plans may invest in guaranteed investment contracts issued by State Mutual. It also serves as a directed trustee/custodian to these plans and receives no revenue from the investment in these contracts. State Street receives a trust/custody fee based on the total value of the plan, irrespective of the investments.

(d) It has voting and/or dispositive control over 221,800 shares of Allmerica stock.

State Street also explains that it had revenues in 1994 of over $981 million. However, State Street points out that all revenues and fees that were associated with State Mutual represented less than one-hundredth of one percent of State Street's total revenues.

In addition, State Street represents that none of its officers or directors is an officer or director of State Mutual or vice versa. Further, State Street represents that State Mutual does not have an ownership interest in State Street and State Street does not have an ownership interest in State Mutual except for the relationships described above.

As the Independent Fiduciary for the State Mutual Plans, State Street represents that it understands and acknowledges its duties, responsibilities and liabilities under the Act as a fiduciary for such Plans. In this regard, State Street asserts that it will have the authority and responsibility to monitor the acquisition and holding of the stock that is received by the State Mutual Plans. State Street also represents that it will be authorized to dispose, in a prudent manner, shares of the stock that is held by the State Mutual Pension Plan which exceeds the 10 percent limitation imposed by section 407(a)(2) of the Act. Such disposition will take place within 90 days of the receipt of the stock by the State Mutual Pension Plan. If, however, State Street is unable to dispose of the stock following the initial 90 day period, it will sell the stock within the following 90 day period. Therefore, State Street must dispose of all shares of excess stock that are held by the State Mutual Pension Plan within 180 days of receipt.

State Street also asserts that it will act as the Independent Fiduciary for both the State Mutual Plans with respect to the policyholder vote and decisions to be made by such plans as to the form of consideration. Moreover, State Street explains that it will monitor the proposed transactions throughout their duration on behalf of these Plans and take all actions that are necessary and proper to safeguard the interests of such Plans.

State Street represents that the proposed transactions are prudent for the State Mutual Plans and in the best interests of such Plans' participants and beneficiaries. State Street notes that the consummation of the proposed transactions is conditioned upon approval by Eligible Policyholders of State Mutual as well as the other conditions set forth in the Demutualization Plan (including the receipt of state regulatory approval). As a general matter, however, State Street explains that its determination that the proposed transactions are appropriate for the State Mutual Plans is based upon an economic analysis of the consideration to be acquired by such Plans. In this connection, State Street represents that WHR & Co. has performed a comprehensive analysis of State Mutual in the context of prevailing market conditions and has concluded that for each State Mutual Plan, the proposed consideration to be received is fair to such plan from a financial point of view. In reaching this conclusion, State Street indicates that WHR & Co. has performed various activities such as reviewing annual reports prepared by State Mutual and its affiliates, conducting discussions with senior management of State Mutual and Allmerica and reviewing the Demutualization Plan and portions of the Policyholder Information Statement. In addition, State Street represents that it has conducted its own due diligence which included a review of all available policyholder information, a review of all relevant Plan information, interviews with management and attending policyholder meetings and public hearings relating to the proposed transaction. Finally, State Street asserts that its fiduciary committee met and determined, based on presentations from WHR & Co., Paul Weiss, corporate counsel and other bank management officials, that the transactions would be in the best interests of all of the State Mutual Plans and their participants and beneficiaries. Accordingly, State Street has directed the appropriate fiduciaries to approve the proposed transactions.

13. The Demutualization Plan provides for the establishment of a commission-free sales program whereby Eligible Policyholders will be permitted to sell the stock they have received pursuant to the Demutualization Plan in the public market. The commission-free sales program will commence on the first business day after the six month anniversary of the effective date of the demutualization and will continue for ninety days thereafter. The program may be extended with the approval of the Commissioner, if the Board of Directors of Allmerica determines such extension would be appropriate and in the best interest of Allmerica and its stockholders. In the commission-free sales program, any Eligible Policyholder receiving fewer than one hundred shares of stock will have the opportunity to sell, at prevailing market prices, all of the stock or to increase

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[10] Under the Demutualization Plan, Eligible Policyholders who receive their entire consideration in the form of Allmerica common stock were asked to express a preference for cash in lieu of stock, should funds become available. However, these "cash elections" are restricted by a number of factors. First, a limited amount of cash will be available to pay all such cash elections (currently estimated at $24 million). Second, all Eligible Policyholders actually receiving cash pursuant to cash elections will receive their entire consideration in the form of cash. Third, to the extent the available cash is insufficient to satisfy all cash elections, the cash elections of Eligible Policyholders allocated the fewest number of shares will be satisfied first. Fourth, if State Mutual is unable to pay cash to Eligible Policyholders allocated the fewest number of shares who have expressed a cash preference, no cash payments (other than mandatory cash payments) will be made.

Accordingly, on the effective date of the Demutualization Plan, State Mutual, with the approval of the Commissioner, will allocate an amount to make cash elections. Such cash will be applied first to pay the entire consideration of those Eligible Policyholders allocated the fewest number of shares, if all such requests for cash may be satisfied. Thereafter, State Mutual will continue to apply the allocated cash to pay the entire consideration of each Eligible Policyholder requesting cash at higher share allocations until such allocated cash is exhausted. After the allocated cash is exhausted, each Eligible Policyholder whose request cannot be satisfied will receive his or her entire consideration in the form of stock. Thus, Eligible Policyholders electing cash will receive either stock or cash but *not* both.

[11] State Mutual represents that under paragraph 5 of Section 19E of Massachusetts Insurance Law, the policyholder eligible to participate in the distribution of stock, cash, policy credits or other consideration resulting from the Demutualization Plan is "the person whose name appears . . . on the insurer's records as owner" of the policy. State Mutual further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, State Mutual asserts that it is required under Massachusetts Insurance Law to make distributions resulting from the Demutualization Plan to the employer or trustee as owner of the policy, with the following exception. Specifically, the Demutualization Plan provides that where group policies or annuities have been issued to a trust established by State Mutual for an employee benefit plan, the employer will be deemed to be the owner of such policy if the employer plan or policy has adopted the master trust to which the policy is issued. The trustee of any such trust established by State Mutual will not be considered a policyholder or owner.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when State Mutual incurs the obligation to distribute stock, cash, policy credits or other compensation, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[12] Under current provisions of the Demutualization Plan, Eligible Policyholders who receive stock or, for that matter, any other form of consideration, will not be entitled to receive subscription rights to purchase additional stock. Under Section 19E of Massachusetts Insurance Law, the Commissioner has the authority to approve a plan which provides for no preemptive rights.

such Eligible Policyholder's holdings to a one hundred share round lot. No brokerage commissions, mailing charges, registration fees or other administrative expenses will be charged in connection with either the demutualization or with sales or purchases of stock under the commission-free sales program.

14. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Demutualization Plan will be implemented in accordance with procedural and substantive safeguards that are imposed under Massachusetts law and will be subject to the review and supervision by the Commissioner.

(b) The Commissioner will review the terms of the options that are provided to Eligible Policyholders of State Mutual as part of such Commissioner's review of the Demutualization Plan, and will approve the Demutualization Plan following a determination that such Demutualization Plan is not prejudicial to all Eligible Policyholders.

(c) The Demutualization Plan will be filed with the New York Superintendent who will determine whether the Demutualization Plan is fair and equitable to Eligible Policyholders from New York.

(d) Each Eligible Policyholder will have an opportunity to comment orally or in writing on the Demutualization Plan and decide whether to vote to approve in writing such Demutualization Plan after full written disclosure is given such policyholder by State Mutual, of the terms of the Demutualization Plan.

(e) Any election by an Eligible Policyholder which is a Plan to receive stock, cash or policy credits, pursuant to the terms of the Demutualization Plan will be made by one or more Independent Fiduciaries of such plan and neither State Mutual nor any of its affiliates will exercise any discretion or provides investment advice with respect to such election.

(f) In the case of the State Mutual Plans, where the consideration is in the form of stock, an Independent Fiduciary will (1) monitor, on behalf of such Plans, the acquisition and holding of the stock; (2) make determinations, on behalf of such Plans, with respect to the voting, the holding or the disposition of such stock, and (3) dispose, in a prudent manner, on behalf of the State Mutual Pension Plan, stock that exceeds the 10 percent limitation under section 407(a)(2) of the Act within 90 days following its receipt; however, if there are any shares of excess stock remaining after the initial period, the Independent Fiduciary will have an additional 90 days to sell such stock.

(g) After each Eligible Policyholder is allocated at least thirty shares of stock, additional consideration allocated to Eligible Policyholders who own participating policies will be based on actuarial formulas that take into account each participating policy's contribution to the surplus of State Mutual which formulas have been approved by the Commissioner and reviewed by the Superintendent.

(h) All Plans that are Eligible Policyholders, including the State Mutual Plans and the State Mutual Pension Pension Plan, will participate in the transactions on the same basis as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder will pay any brokerage commissions or fees in connection with such Eligible Policyholder's receipt of stock or in connection with the implementation of the commission-free sales program.

(j) All of State Mutual's policyholder obligations will remain in force and will not be affected by the Demutualization Plan.

Notice to Interested Persons

State Mutual will provide notice of the proposed exemption to Eligible Policyholders which include Plans and the State Mutual Plan within 5 days of the publication of the notice of pendency in the **Federal Register**. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the **Federal Register**. The notice will also inform interested persons of their right to comment on the proposed exemption and/or to request a hearing. Comments with respect to the notice of proposed exemption are due within 35 days after the date of publication of this exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Michael Elkin Individual Retirement Account (the IRA), Located in New York, New York

[Application No. D–10022]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase for cash of a certain limited partnership interest in the Medallion Fund (the Interest) by the IRA from Michael Elkin, a disqualified person with respect to the IRA,[13] provided the following conditions are met:

(a) The purchase is a one-time transaction for cash;

(b) The terms and conditions of the purchase are at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party;

(c) The IRA pays no more than the fair market value of the Interest, as established by an independent qualified appraiser at the time of the transaction;

(d) The IRA is not required to pay any commissions, costs or other expenses in connection with the transaction; and

(e) The fair market value of the Interest is based on an independent valuation of the total net asset value of the Fund and does not represent more than 25% of the total assets of the IRA at the time of the transaction.

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described under section 408(a) of the Code, which was established by Michael Elkin (Mr. Elkin). As of March 31, 1995, the IRA had assets valued at $330,286. The trustee of the IRA is the Independent Trust Corporation, located at 15255 S. 94th Avenue, Orland Park, Illinois.

2. Mr. Elkin owns a limited partnership interest in the Medallion Fund (the Fund). Mr. Elkin's interest in the Fund had a net asset value of $251,854 as of April 30, 1995. The total net asset value of the Fund was $585,910,089, as of April 30, 1995. Thus, Mr. Elkin states that his interest in the Fund represented less than 1/20 of one (1) percent of the total net asset value of the Fund as of such date.

3. The Fund is an investment fund established on April 1, 1988, which was organized as an exempted limited partnership under the laws of the Islands of Bermuda. The Fund was formed for the purpose of investing in commodities of various types (i.e. foodstuffs, metals, industrial raw materials, etc.), commodity futures contracts, financial futures contracts (including stock index futures contracts), forward contracts, as well as options to purchase or sell any of the foregoing financial instruments. Assets of the Fund not on deposit with brokers are invested principally in U.S. Treasury Bills held at the Bank of New York, checking accounts held at other major banks in the United States, and short-term commercial paper with a minimum rating of A–1 or P–1 by Moody's Investors Service.

Interests in the Fund are not registered under the Securities Act of 1933 (the Securities Act), the Investment Company Act of 1940, or the securities laws of any of the States of the United States. Mr. Elkin states that he purchased his interest in the Fund as part of an offering that was made in reliance upon an exemption from the registration requirements of the Securities Act for a sale of securities which does not involve a public offering, and analogous exemptions under state securities laws. However, Mr. Elkin represents that the Fund otherwise is fully registered with the appropriate U.S. regulatory authorities and complies with various state "blue sky" laws, as discussed in the Fund's Information Memorandum. Mr. Elkin also represents that the Fund fully complies with U.S. tax laws. In this regard, the Fund files U.S. tax returns and provides all investors (i.e. partners) with K–1 information returns so that such investors can include their proportionate income in their personal tax returns.

The Information Memorandum for the Fund indicates that interests in the Fund are subject to substantial restrictions on transferability. However, certain transfers of Fund interests to relatives or other entities are permissible under the terms of the Fund. In addition, limited partners of the Fund may redeem all or part of their interests in the Fund at the end of each calendar quarter on ten days notice.

Limited partners may also make, with permission of the managing general partner, additional capital contributions to the Fund on the first day of any calendar quarter. Each limited partner's respective liability for the Fund's debts and other obligations is limited to the balances in such partner's capital account. The Fund's limited partners are under no obligation to make additional capital contributions to the Fund.

4. The managing general partner of the Fund is Medallion Limited, located at 3 Reid Street, Hamilton, Bermuda. The applicant states that the individuals who are officers of Medallion Limited, Norman J. Holbrow (President) and Jan J. Spiering (Vice President), have no relationship to Mr. Elkin or any of his affiliates.

The investment general partner of the Fund is the Renaissance Technologies Corporation (Renaissance), a corporation organized under the laws of the State of Delaware with its principal offices located at 800 Third Avenue, New York, New York. The Information Memorandum for the Fund states that Renaissance has been registered with the Commodity Futures Trading Commission (CFTC) as both the commodity pool operator and commodity trading adviser (CTA) of the Fund since July 6, 1988 and April 2, 1991, respectively. The applicant represents that since Renaissance is registered with the CFTC as a commodity pool operator and a CTA, the Fund is subject to the same regulatory regimen as any U.S. based commodity partnership. Mr. Elkin also states that he is independent of and unrelated to Renaissance and its affiliates.

5. The applicant proposes to have the IRA invest approximately $75,000 to purchase part of Mr. Elkin's interest in the Fund (i.e. the Interest). The IRA would purchase the Interest directly from Mr. Elkin for cash. The applicant represents that the proposed transaction would be permissible under the terms of the Fund as they relate to the restrictions on the transferability of a limited partner's interests in the Fund. The IRA would pay no more than the fair market value of the Interest as established by an independent, qualified appraiser (as described below in Paragraph 7). The IRA would not pay any commissions or other expenses in connection with the transaction.

Mr. Elkin states that the proposed purchase of the Interest for $75,000 would involve approximately 22% of the total assets of the IRA. Mr. Elkin states further that the proposed transaction will not exceed the lesser of either $75,000 or 25% of the IRA's total assets at the time of the transaction (see Paragraph 7 below). After the purchase of the Interest by the IRA, the IRA would own approximately 1/60 of one (1) percent of the Fund, based on recent quarterly valuations for the Fund.[14] Mr. Elkin would continue to own the balance of his current interest in the Fund.

6. Mr. Elkin states that the Fund has exhibited superior investment performance over the last year. Mr. Elkin believes that an investment in the Fund by the IRA would represent an excellent opportunity for the IRA to achieve a high rate of return. Mr. Elkin states that the proposed purchase of the Interest by the IRA would be consistent with his investment strategy for the IRA's assets. In this regard, Mr. Elkin maintains that his primary goal for the assets of the IRA that would be involved in the proposed transaction is growth of capital, despite the higher degree of risk involved with such an investment.[15] Mr. Elkin represents that he has reviewed information regarding investment funds similar to the Fund and believes that the Fund offers a better prospect for achieving superior returns on capital invested than other such funds.

7. Kempe & Whittle Associates Limited (KWAL), the administrators for the Fund, will act as an independent, qualified appraiser to establish the fair market value of the Interest for purposes of the proposed transaction. KWAL is responsible for the maintenance of the Fund's books and records and for the preparation of the Fund's financial statements, annual reports, and monthly reports to investors. In addition, KWAL determines the total net asset value of the Fund on a quarterly basis for purposes of any redemptions of limited partnership interests by partners in the Fund at that time. KWAL states that a limited partnership interest in the Fund is equal to a partner's share of the Fund's total net asset value on such date.

Therefore, Mr. Elkin proposes to have the IRA purchase the Interest from himself at an amount equal to the total net asset value which the Interest would represent, as established by KWAL, as of the end of the next calendar quarter following the granting of this proposed exemption, provided that such amount does not exceed the lesser of either $75,000 or 25% of the IRA's total assets at the time of the transaction.

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[13] Pursuant to 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[14] The applicant represents that the Fund's assets are not considered to be "plan assets" under the Department's regulations defining that term for purposes of plan investments because investments in the Fund by benefit plan investors are not significant (see 29 CFR 2510.3–101). In this regard, the Information Memorandum for the Fund states that it is the intention of the Fund to ensure that all types of plan investors collectively will own less than 25 percent of the outstanding interests in the Fund. The Department expresses no opinion in this proposed exemption as to whether the assets held by the Fund would be considered "plan assets" under the Department's regulations.

[15] The Department notes that the Internal Revenue Service has taken the view that if a plan is exposed to the risk of large losses because of the speculative nature of investments made by the plan, such an investment strategy may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. For example, see Rev. Rul. 73–532, 1973–2 C.B. 128, which states, among other things, that the safeguards and diversity that a prudent investor would adhere to must be present in order for the "exclusive-benefit-of-employees" requirement to be met. The Department notes further that section 408(a) of the Code, which describes the tax qualification provisions for IRAs, also contains an exclusive benefit rule for an individual and his or her beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of section 408(a) of the Code would occur as a result of an IRA's acquisition of investments that may be speculative in nature, such as the proposed purchase of a partnership interest in a fund which invests in exchange-traded futures contracts as well as forward contracts and options relating to such financial instruments.

8. In summary, the applicant represents that the proposed transaction would satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the purchase will be at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party; (b) the purchase will a one-time cash transaction which will allow the IRA to acquire an asset which, in the applicant's view, has the prospect for superior investment returns; (c) the IRA will pay no more than the fair market value of the Interest, as established by an independent, qualified appraiser at the time of the transaction; (d) the IRA will not pay any commissions or other expenses in connection with the transaction; (e) the fair market value of the Interest will be based on an independent valuation of the total net asset value of the Fund and will not represent more than 25% of the total assets of the IRA at the time of the transaction; and (f) Mr. Elkin has determined that the proposed transaction will be in the best interests of the IRA.

NOTICE TO INTERESTED PERSONS: Because Mr. Elkin is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of September, 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 95–23464 Filed 9–20–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by October 15, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer*. Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may also be submitted to:

(B) *OMB Desk Officer*. Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Industrial Research and Development, 1995–96

Affected Public: Businesses or other for-profit institutions

Respondents/Reporting Burden: 23,300 respondents, 61,300 total burden hours.

Abstract: This survey measures the amount and indicates the direction of R&D expenditures by U.S. industry. Government agencies, corporations, academic researchers, trade associations, research organizations, and others use the statistics produced from the survey to analyze and forecast technological growth, investigate productivity determinants, formulate tax policy, and compare individual company performance with industry averages. Companies with known R&D activity and samples of companies are selected industries which may conduct R&D are included.

Dated: September 15, 1995.

Herman G. Fleming,

Reports Clearance Officer.

FR Doc. 95–23395 Filed 9–20–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry and Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biochemistry and Molecular Structure and Function—(1134) (Panel A).

Date and Time: Wednesday, Thursday, and Friday, October 11, 12, and 13, 1995, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Drs. Jack Cohen and Valerie Hu, Program Directors for Molecular Biochemistry, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1443).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 18, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–23422 Filed 9–20–95; 8:45 am]

BILLING CODE 7555–01–M

Division of Environmental Biology: Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–464, as amended), the National Science Foundation (NSF) announces the following meetings.

Name: Advisory Panel for Ecological Studies (#1751).

Date and Time: October 12–13, 1995, 8:00 am-5:00 pm each day.

Place: Room 330, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. James Callahan, Program Director, Ecological Studies, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Agenda: To review and evaluate Ecosystem Studies proposals as part of the selection process for awards.

Name: Advisory Panel for Ecological Studies (#1751).

Date and Time: October 11–13, 1995, 8:30 am-5:00 pm each day.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. Scott L. Collins, Program Director, Ecological Studies, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306–1479.

Agenda: To review and evaluate Ecology proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology (#1753).

Date and Time: October 17–20, 1995, 8:00 am-5:00 pm each day.

Place: Rooms 3751, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. James Rodman, Program Director, Systematic and Population Biology, Room 635, Division of Environmental Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Agenda: To review and evaluate Systematic Biology proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology (#1753).

Date and Time: October 10–13, 1995, 8:00 am-5:30 pm each day.

Place: Room 380 and 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. Mark W. Courtney, Program, Director, Systematic and Population Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 306–1479.

Agenda: To review and evaluate Population Biology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 18, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–23421 Filed 9–20–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Elementary, Secondary and Informal Education (59).

Date and Time: October 12–14, 1995; 8:00 to 5:00 each day.

Place: Hyatt Rosslyn, 1325 Wilson Blvd., Arlington, Va.

Type of Meeting: Closed.

Contact Person: Dr. Gerhard Salinger, Program Director, Division of Elementary, Secondary and Informal Education, Room 885, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, telephone (703) 306–1614.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instructional Material Development proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: September 18, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–23419 Filed 9–20–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Engineering (#1170).

Date and Time: October 12, 1995/9:30 am–5:00 pm; October 13, 1995/8:30 am–12 Noon.

Place: Room 1235, (National Science Board Meeting Room) National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type: Open.

Contact Person: Dr. William S. Butcher, Advisory Committee for Engineering, National Science Foundation, Room 505, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1302.

Minutes: May be obtained from the contact person listed above.

Purpose: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate, discussion of Engineering Directorate budget situation as well as other items.

Dated: September 18, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–23420 Filed 9–20–95; 8:45 am]

BILLING CODE 7555–01–M

Federal Networking Council Advisory Committee

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Federal Networking Council Advisory Committee (#1177).

Date and Time: October 10, 1995; 9 a.m. to 5 p.m. and October 11, 1995; 9 a.m. to 1 p.m.

Place: Room 1225, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Ms. Tracie Monk, Coordinator, Federal Networking Council, DynCorp ATS, 4001 N. Fairfax Drive, Suite 200, Arlington, VA 22203–1614, Telephone: (703) 522–6410, Fax: (703) 522–7161. Internet: tmonk@csto.snap.org.

Purpose of Meeting: The purpose of this meeting is for the Advisory Committee to provide the Federal Networking Council

(FNC) with technical, tactical, and strategic advice, concerning policies and issues raised in the implementation and deployment of the National Research and Education Network (NREN) Program.

Agenda: Federal Transition Plan, Internet Security, CIC/HPCCIT R&D Agenda, Education, Internet Economics/Statistics Acquisition.

Luncheon: There is no fee to attend this meeting. However, attendees who register in advance may order refreshments and/or a box lunch for which there will be a charge. To obtain registration form, contact Ms. Monk by telephone, fax, or electronic mail at the numbers above. Forms must be received by October 4, 1995.

Dated: September 18, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–23424 Filed 9–20–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics and Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics and Nucleic Acids (1149) (Panel C).

Date and Time: Tuesday Oct. 10 and Wednesday Oct. 11, 1995, at 8:30 am to 5:00 pm.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Todd M. Martensen, Program Director for Biochemical Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Biochemical Genetics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 18, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–23425 Filed 9–20–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (#1208).

Date: October 9–11, 1995.

Place: Bridge Annex, California Institute of Technology 1201 E. California Boulevard, Pasadena, California.

Type of Meeting: Closed.

Contact Person: Dr. David Berley, Program Manager, Laser Interferometer Gravitational Observatory, Physics Division, Room 1015, National Science Foundation, 4201 Arlington Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.

Purpose of Meeting: To review the technical aspects and management of the Laser Interferometer Gravitational-Wave Observatory (LIGO) project.

Agenda: An overview of the project. Detailed examination of the technical aspects of the project and the management of the technical systems.

Reason for Closing: The Project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 18, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–23418 Filed 9–20–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Availability of Draft Application Format and Content Guidance and Review Plan and Acceptance Criteria for Non-Power Reactors

The U.S. Nuclear Regulatory Commission (NRC) is in the process of developing for Non-Power Reactors (NPRs) a "Format and Content for Applications for the Licensing of Non-Power Reactors" (F&C) and a "Standard Review Plan and Acceptance Criteria for Applications for the Licensing of Non-Power Rectors" (SRP). The NRC has made available a draft of Chapter 11, "Radiation Protection Program and Waste Management," of the F&C and SRP documents for comment.

A copy of this chapter has been placed in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. Single copies of this chapter may be requested in writing from Alexander Adams, Jr., Senior Project Manager, U.S. Nuclear Regulatory Commission, MS: 0–11–B–20, Washington, DC 20555. Comments on this chapter should be sent by December 12, 1995, to the Director, Non-Power Reactors and Decommissioning Project Directorate at the above address.

Dated at Rockville, Maryland, this 15th day of September 1995.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23410 Filed 9–20–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 70–7001; 70–7002]

United States Enrichment Corporation: Paducah Gaseous Diffusion Plant; Portsmouth Gaseous Diffusion Plant; Notice of Receipt of Application for Certification for the Gaseous Diffusion Plants, Notice of Comment Period, and Notice of Public Meetings

I. Receipt of Application and Availability of Documents

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has received by letter dated September 15, 1995, an application in its entirety to replace the application dated April 18, 1995, from the United States Enrichment Corporation (USEC) for the initial certification of the gaseous diffusion plants (GDPs) located near Paducah, Kentucky and Piketon, Ohio. The Energy Policy Act of 1992 established the USEC to operate the GDPs under lease from the U.S. Department of Energy, and required the NRC to establish a certification process and standards for the GDPs to assure protection of public and workers' health and safety and adequate safeguards and security. NRC determined that USEC's April submittal did not adequately address the standards NRC had established for the GDPs and therefore rejected the application on May 5, 1995. NRC's decision to reject the application was not a determination that the operations of the plants were unsafe. NRC originally intended to issue a certification decision in October 1995. However, because the original application was rejected, NRC now plans to issue a decision in February, 1996.

Copies of the application for certification (except for classified and proprietary portions withheld in accordance with 10 CFR 2.790,

"Availability of Public Records") are available for public inspection and copying at the Commission's Public Document Room (PDR) in the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and in the Local Public Document Rooms (LPDRs) established for these facilities. A copy of the application for the Paducah plant is available at the Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003. A copy of the application for the Portsmouth plant is available at the Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662. Copies of related correspondence and staff evaluations (except for portions withheld in accordance with 10 CFR 2.790) will also be made available at these locations. A copy of the original application continues to be available at these public document rooms.

The Energy Policy Act also requires USEC to submit a compliance plan, prepared by the Department of Energy, which addresses areas where the USEC facilities are not yet in compliance with NRC requirements. The compliance plan is expected in early November. A separate notice of its availability and comment period will be issued when it is received.

II. Notice of Comment Period

Any interested party may submit written comments on the September application for certification for either the Paducah plant or the Portsmouth plant for consideration by the staff. To be certain of consideration, comments must be received by November 6, 1995. Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Written comments on the application should be mailed to the Chief, Rules Review and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 or hand delivered to 11545 Rockville Pike, Rockville, MD 20852 between 7:45 am and 4:15 pm Federal workdays. Comments should be legible and reproducible, and include the name, affiliation (if any), and address of the commenter. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room located in Washington, DC and the Local Public Document Rooms located in Paducah, Kentucky and Portsmouth, Ohio. In accordance with 10 CFR 76.62 and 76.64, a member of the public must submit written comments or provide oral comments at a public meeting described below to petition the Commission requesting review of the Director's decision on certification.

III. Notice of Public Meetings

The NRC will hold two meetings concerning the application for certification for the Portsmouth and Paducah GDPs. These meetings are being held to solicit public input on the initial certification of these facilities. The meeting on the Paducah Gaseous Diffusion Plant will be held at the Paducah Information Age Park Resource Center, 200 McCracken Boulevard in Paducah, Kentucky on December 5, 1995, 7 pm. The meeting on the Portsmouth Gaseous Diffusion Plant will be held at the Vern Riffe Joint Vocational School, 23365 State Rt. 124 in Piketon, Ohio on November 28, 1995, 7 pm.

In order to allow a maximum number of speakers, statements by the public will be limited to 5 minutes per individual. Those interested in speaking at the meetings may register in advance or may register at the meeting. Any person interested in registering in advance may do so by sending a written request to Ms. Rocio Castaneira, U.S. Nuclear Regulatory Commission, T–8A33, Washington, DC 20555. The request should clearly state the individual's name and for which meeting the individual is registering. Written requests must be received by November 16, 1995. Speakers will be taken in the order the requests are received. After all pre-registered speakers have presented their comments, those individuals that register at the door will be taken in the order of sign-up. A record of the public meeting will be placed in the PDR and the LPDR. Written comments will also be accepted at the meetings.

FOR FURTHER INFORMATION CONTACT: Ms. Rocio Castaneira, (301) 415–8103; Mr. Carl B. Sawyer, (301) 415–8174; or Ms. Merri Horn, (301) 415–8126; Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville Maryland, this 15th day of September 1995.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief Enrichment Branch Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 95–23409 Filed 9–20–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Expedited Review of a Revised Information Collection OPM Form 2809–EZ2

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for expedited review of a revised information collection. OPM Form 2809–EZ2, Open Season Health Benefits Enrollment Change Form, is used by annuitants only at Open Season to elect a change in health benefits coverage.

Approximately 35,345 OPM Forms 2809–EZ2 are completed annually. Each form takes approximately 30 minutes to complete. The annual burden is 17,672 hours.

A copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received on or before September 26, 1995. OMB has been requested to take action within eight (8) calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623, U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

The content of draft OPM Form 2809–EZ2 is set out below:

DRAFT OPM Form 2809–EZ2
1995 FEHB Open Season
Revised October 1995

Federal Employee Health Benefits Program

United States Office of Personnel Management

Civil Service Retirement System/Federal Employees Retirement System

Enrollment Change Form
Form Approved: OMB 3206–0200

Use this form to change your health benefits enrollment during the 1995 Open Season. This form has been personalized with your name, retirement claim number and health benefits plans available to persons residing in your address area. Do Not use someone else's form. Fill in Sections A, B, and C on the reverse side of this form. If You Do Not Want To Change Your Health Plan Or Type Of Coverage, Do Not Return This Form. If you need assistance in completing this form, call the Office of Personnel Management at (202) 606–0500. For the hearing impaired: Call the Retirement Information Office TTD number (202) 606–0551.

Important Directions For Marking Answers & Signing This Form

—Fill out form on hard surface
—Make heavy black marks that fill the circle completely
—Erase any changes completely
—Make no stray marks
—Do not write in margins
[ ] Right
[ ] Wrong
Brochure Requested:
Claim Number:

ADDRESS CORRECTION

[ ] Address Change. If your permanent mailing address is incorrect, darken the Address Change circle and make the necessary corrections in the space provided below.
Street Address (include Apartment No. or Lot no.)
City, State and ZIP Code
Country (if not United States)

Section A—Choose a Self Only or Self and Family enrollment. DARKEN ONLY ONE CIRCLE.

[ ] Self Only or[ ] Self and Family

Section B—PLAN CHOICES

Listed are the health plans in your state. (Select only one—Darken the circle between the two-character enrollment code and the name of the plan you want.)

GOVERNMENT WIDE PLANS

[ ]
[ ]

Fee-for Service—PLANS OPEN TO ALL

[ ]
[ ]*
*There are 8 selections available for "Fee-for-Service—PLANS OPEN TO ALL"

Fee-for-Service—RESTRICTED PLANS

(You must be a member of a specific group to enroll in a plan below.)

[ ]
[ ]**
**There are 7 selections available for "Fee-for-Service—RESTRICTED PLANS"

PREPAID PLANS:

[ ]
[ ]***
***There are 41 selections available for "PREPAID PLANS".

SECTION C—You must SIGN, date and give your telephone number below. Your Signature *(must be signed by the addressee, an OPM approved representative, or person holding power of attorney).*

Today's Date

Your daytime telephone number & area code (   )

[FR Doc. 95–23412 Filed 9–20–95; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–68]

Masik Tool & Die Corporation Profit Sharing Plan (the Plan)

AGENCY: Department of Labor.

ACTION: Notice of technical correction.

On August 9, 1995, the Department of Labor (the Department) published in the **Federal Register** (60 FR 40623) an individual exemption which permits: (1) the past leasing (the Lease) of a lathe (the Lathe) owned by the Plan and certain individually-directed accounts in the Plan (the Accounts) to Masik Tool and Die Corporation (Masik), a party in interest with respect to the Plan; and (2) the proposed cash sale of the Lathe by the Accounts to Masik.

With respect to the effective date of the exemption for the Lease, the first sentence in the third paragraph of the second column on page 40623 should read as follows:

"* * * This exemption is effective for the period from June 1, 1988 through May 31, 1993 with respect to the Lease."

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams, of the Department, at (202) 219–8194.

Signed at Washington, D.C., this 18th day of September, 1995.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 95–23462 Filed 9–20–95; 8:45 am]
BILLING CODE 4510–29–P

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800
Upon written request copy available from: Securities and Exchange Commission, Office of Filing and Information Services, 450 5th Street NW., Washington, DC 20549

Revision

Mutual Fund Telephone Survey: File No. 270–395
Mall Intercept Survey: File No. 270–393
Mutual Fund Mail Survey: File No. 270–395

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval to execute a mutual fund telephone survey, a mall intercept survey, and a mutual fund mail survey. These surveys will attempt to assess the public's understanding of mutual funds and other financial matters. The results will enable the Commission to better understand the level of investor comprehension of mutual fund prospectuses and financial issues.

The mutual fund telephone survey is estimated to require 750 burden hours. Approximately 3,000 people will participate in the telephone survey, with each interview lasting 15 minutes.

The mall intercept survey is estimated to require 33 burden hours. Approximately 100 people will participate in the survey, with each interview lasting 20 minutes.

The mutual fund mail survey is estimated to require 333 burden hours. Approximately 1000 people will participate in the survey, with the interview lasting 20 minutes.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated burden hours for compliance with the Securities and Exchange Commission to Michael E. Bartell, Associate Executive Director, Office of Information Technology, 450 Fifth Street, NW., Washington DC 20549 and the Clearance Officer for the Securities and Exchange Commission, Project Numbers 3235–0450, 3235–0448, and 3235–0451, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 7, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23474 Filed 9–20–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–36238; File No. S7–29–95]

Contracting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of intent to modify the prime dissemination contract to deregulate certain prices charged outside of the public reference rooms.

SUMMARY: The Securities and Exchange Commission (the "SEC" or the "Commission") is announcing that it has reached a preliminary agreement with its prime dissemination contractor,[1] Disclosure Information Services, Inc. ("Disclosure"), to modify the terms of its contract during Fiscal Year 1996. Pursuant to this agreement, the Commission intends to end its current practice of regulating the prices for microfiche and watch services that Disclosure sells to the public outside of the Commission's public reference rooms, effective January 1, 1996. The Commission is publishing this notice to solicit comments from interested persons.

DATES: Comments should be received on or before October 6, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6–9, Washington, D.C. 20549. All comment letters should refer to File No. S7–29–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Fernando Alegria, Contracting Officer, at (202) 942–4000, Office of Administrative and Personnel Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Under the prime dissemination contract, Disclosure furnishes the Commission and users of the Commission's public reference rooms with various document-related services, including microfiche-based copying services, and offers SEC-regulated microfiche and watch services for SEC filings to its commercial customers outside of the public reference rooms.[2] Disclosure's costs for providing these services are paid for by public reference room revenues, revenues derived by Disclosure from its regulated outside sales, and SEC payments to Disclosure.

The Commission's purpose in regulating the price of Disclosure's microfiche services offered outside of the public reference rooms was to ensure the availability of this records system for SEC filings pending the maturation of electronic technologies, particularly the Electronic Data Gathering Analysis and Retrieval ("EDGAR") system. EDGAR data now is readily available at very low cost through a variety of service organizations and over the Internet, however. In addition, the National Archives and Records Administration ("NARA") recently concluded that the Commission can use magnetic tape instead of silver halide microfilm to satisfy NARA's archival requirements, and the Commission soon will begin to use magnetic tape for this purpose. These developments demonstrate that electronic records technologies now are widely accepted. Under these circumstances it no longer makes sense for the Commission to subsidize or regulate the relatively antiquated technology of maintaining records of SEC filings in microfiche form. Accordingly, the Commission intends to end its payments for Edgar-based microfiche and deregulate Disclosure's microfiche prices outside the public reference rooms, effective January 1, 1996.[3]

Notwithstanding deregulation, the existing contracts of regulated-rate microfiche subscribers will be honored by Disclosure until the end of their terms. It also appears that Disclosure and other companies will remain in the market to furnish microfiche of SEC paper filings.[4] Thus, it appears that the supply of such fiche will not come to an abrupt end, although prices should be higher than Disclosure's current regulated rates. In addition, fiche of SEC paper filings will remain available through services Disclosure will provide to the Commission's public reference rooms, including services to public reference room user organizations through whom such fiche might be ordered. Once the Commission's agreement with Disclosure is modified, the Commission no longer will be supporting the production of any Edgar-based fiche, however. Thus, the economics of producing such fiche might not remain attractive to Disclosure, leading to a possible end to this source of supply once all of its existing regulated-rate contracts have been serviced.

Dated: September 15, 1995.

For the Commission, by the Executive Director, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–23376 Filed 9–20–95; 8:45 am]
BILLING CODE 8010–01–M

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[1] The Commission's prime dissemination contractor furnishes various services to the Commission, the Commission's public reference rooms, and the outside commercial market, as discussed below, in connection with disseminating SEC filings to the public

[2] The cost for Disclosure's microfiche services outside the public reference rooms are to be recovered by disclosure through charging clients "not-to-exceed" regulated prices set forth in the agreement. The regulated price is two-tiered. Under Tier 1, Disclosure call sell microfiche to its commercial clients outside the public reference rooms at cost, but not to exceed .90 cents per microfiche card if they are advance annual subscription purchasers of 50,000 or more microfiche cards per year, or if they are universities or not for profit libraries irrespective of volume. All of Disclosure's other commercial microfiche clients outside of the public reference rooms must pay the Tier 2 price, i.e. at cost, but not to exceed $1.05 per microfiche card.

[3] The affected commercial subscribers will include re-sellers that compete with Disclosure in the aftermarket, and many university and not for profit libraries. Of course, all of Disclosure's sales inside the Commission's public reference rooms will continue to be at prices set by the Commission.

[4] After the next round of filer phase-ins on EDGAR, these mostly will consist of insider trading reports and regulated entity registration forms. The Commission is considering incorporating into EDGAR some or all of the few remaining form types that are filed on paper.

[Release No. 34–36226; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Amendment No. 4 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

September 13, 1995.

On September 12, 1995, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, "Participants")[1] submitted

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[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. ("NASD"), and the Chicago Stock Exchange, Inc. ("Chx")

Continued

to the Commission proposed Amendment No. 4 to a joint transaction reporting plan ("Plan") for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] The Commission is approving the proposed amendment to the Plan and trading pursuant to the Plan on a temporary basis to expire on October 12, 1995.

I. Background

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant UTP. The Commission originally approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Consequently, the pilot period commenced on July 12, 1993. As requested by the Participants in Amendment Nos. 1, 2, and 3, to the Plan, the Commission has extended the effectiveness of the Plan three times. Accordingly, the effectiveness of the Plan was scheduled to expire on September 12, 1995.[4]

As originally approved by the Commission, the Plan required the Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The January 1995 Extension Order approved the effectiveness of the Plan through August 12, 1995, and since that time the Commission has expected the Participants to conclude their financial negotiations promptly (at the time, before January 31, 1995), and to submit a filing to the Commission that reflected the results of the negotiations.[5] To date, the Participants have not completed their financial negotiations.

Proposed Amendment No. 4 to the Plan would extend the effectiveness and the negotiation period for an additional month through October 12, 1995. The Commission believes it is appropriate to extend the effectiveness of the pilot program for an additional month in order to continue the pilot program in place while the Commission awaits the Participants' filing of a proposed Plan amendment concerning revenue sharing pursuant to the Plan.[6]

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on September 12, 1995, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer ("BBO"), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. At the request of the Participants, this order extends these exemptions through October 12, 1995, provided that the Plan continues in effect through that date pursuant to a commission order.[7] The Commission continues to believe that exemptive relief from these provisions is appropriate through October 12, 1995.

III. Comments on the Operation of the Plan

In the January 1995 Extension Order and the August 1995 Extension Order, the Commission solicited, among other things, comment on: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The commission continues to solicit comment on these matters.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submission should refer to File No. S7–24–89 and should be submitted by October 12, 1995.

V. Conclusion

The Commission finds that proposed Amendment No. 4 to the Plan to extend the operation of the Plan and the financial negotiation period for an additional month is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extensions of the exemptive relief requested through October 12, 1995, as described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and with more information to evaluate the effects of and proposed course of action for the pilot program. This, in turn, should further the objects of the Act in general, and specifically those set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the act and (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 4 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an exchange on an unlisted or listed basis is hereby approved, and trading pursuant to the Plan is hereby approved on a temporary basis through October 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23475 Filed 9–21–95; 8:45 am]

BILLING CODE 8010-01-M

(previously, the Midwest Stock Exchange, Inc.) Philadelphia Stock Exchange, Inc. ("Phlx"), and the Boston Stock Exchange, Inc. ("BSE"), are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as "Nasdaq/NMS") securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] The Commission notes that Section 12(f) of the Act describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.*, by extending unlisted trading privileges ("UTP") to the security. Section 12(f) was amended on October 22, 1994, 15 U.S.C. 78*l* (1991) (as amended 1994). Prior to the amendment, Section 12(f) required exchanges to apply to the Commission before extending UTP to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange ("OTC/UTP"), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. These requirements operated in conjunction with the Plan currently under review. The recent amendment to Section 12(f), among other matters, removes the application requirement and permits OTC/UTP only pursuant to a Commission order or rule. The order or rule is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications. The present order fulfills these Section 12(f) requirements.

[3] See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 ("1990 Approval Order"). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, see 1994 Extension Order, *infra* note 4.

[4] See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 ("1994 Extension Order"). See also Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 ("January 1995 Extension Order"), and Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 ("August 1995 Extension Order").

[5] See January 1995 Extension Order, *id*, at n. 6.

[6] The NASD, in its letter attached to the present filing, states that all Plan Participants have made a good faith effort to reach final agreement on the revenue sharing plan in accordance with the Commission's direction in the most recent order extending the effectiveness of the Plan. See letter from Robert E. Aber, NASD, to Jonathan Katz, Commission, dated September 11, 1995. Presumably, this is in reference to the Commission's August 1995 statement that: "The Commission also is directing the Participants to submit the filing [concerning revenue sharing] to the Commission on or before August 31, 1995." August 1995 Extension Order *supra* note 4. The Participants are reminded that they currently are in violation of the Commission order because no proposal concerning finances has been filed with the Commission. The Commission urges the Participants to comply with the Commission's request for the filing promptly.

[7] In the August 1995 Extension Order, the Commission extended these exemptions from August 12, 1995, through September 12, 1995. Pursuant to a request made by the NASD, this order further extends the effectiveness of the relevant exemptions from September 12, 1995, through October 12, 1995. See letter dated September 11, 1995, *id*.

[Release No. 34–36236; File No. SR–PSE–95–18]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Partial, Accelerated Approval of a Proposed Rule Change Relating to the PSE Technology Index and Opening Price Settlement of Component Securities

September 14, 1995.

On August 21, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the existing position and exercise limits for options on the PSE Technology Index ("Technology Index" or "Index") and change the terms of option contracts overlying the Index from closing price (p.m.) settlement to opening price (a.m.) settlement.

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on August 31, 1995.[3] No comments were received on the proposal. This order grants partial accelerated approval of that portion of the proposal relating to a.m. settlement of options on the Index.[4]

I. Description of the Proposal

On November 26, 1991, the Commission approved an exchange proposal to re-classify the Technology Index as a broad-based index for position limit and margin purposes.[5] The Index is a price-weighted, European-style[6] index comprised of 100 stocks that are intended to represent a broad spectrum of companies principally engaged in manufacturing and service-related products within advanced technology fields.

The Exchange is proposing that options on the Index be settled based on opening market prices for the underlying securities rather than based on closing market prices for such underlying securities as originally approved. Accordingly, the last day of trading for options on the Index shall be the business day preceding the last day of trading in the underlying securities prior to expiration. This day will generally be the Thursday preceding an expiration Friday. The current index value at the expiration of an opening price settled index option shall be determined based on opening prices on the last day of trading in the underlying securities prior to expiration (*i.e.*, the Friday immediately preceding the third Saturday of the month). In this regard, for settlement purposes, the first reported sale (opening) prices of the underlying securities on such day would be used, except that the last reported sale price of such a security from the previous day would be used in any case where the security does not open for trading on that day. There are no currently outstanding Technology Index option series.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5),[7] in particular, in that it should help remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors and the public interest. Moreover, the Commission believes that the PSE's proposal to reclassify the Technology Index option from a closing price settled contract to an opening price settled contract may help ameliorate the price effects associated with expirations of Technology Index options.

Further, the Commission believes that the PSE's Technology Index option opening price settlement proposal is a reasonable attempt to address and ameliorate the effects on the equity markets that have been associated with, but not necessarily the result of, the expiration of index options.

The Commission has identified several benefits to opening-price settlement for broad-based index options. First, an opening price settlement method for Technology Index options can help facilitate the development of contra-side interest to alleviate order imbalances in underlying markets from the unwinding of index-related positions. In contrast to expirations associated with closing price settled options, firms providing contra-side interest will not necessarily assume overnight or weekend position risks because they will have the rest of the day to liquidate or trade out of their positions. Second, even if the opening price settlement results in a significant change in underlying stock prices, participants in the markets for those stocks will have the remainder of the trading day to adjust to those price movements and to determine whether those movements reflect changes in fundamental values or rather short-term supply/demand considerations. In addition, settling Technology Index options at the underlying market opening will allow corresponding stock positions associated with expiring Technology Index contracts to be subject to the NYSE's auxiliary opening procedures implemented on expiration Fridays, where applicable. These procedures provide for the orderly entry, dissemination and matching of orders. The Commission also notes that because currently there are no Technology Index options series with closing settlement values outstanding, approval of the proposal will not result in investor confusion. This will also ensure that all series of Technology Index options utilize the same opening price settlement procedures.

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[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 36146 (August 23, 1995), 60 FR 45509.

[4] In partially approving the PSE proposal, the Commission is not approving, at this time, the portion of the proposal relating to increasing the position and exercise limits on the Technology Index from 15,000 contracts to 37,500 contracts, with no more than 22,500 of such contracts in the series with the nearest expiration month. That portion of the proposal has been published for comment. The comment period expires on September 21, 1995.

[5] Securities Exchange Act Release No. 29994, 56 FR 63536 (Dec. 4, 1991). The Commission initially approved options trading on the Index in November 1983. See Securities Exchange Act Release Nos. 20424, 48 FR 54557 (Dec. 5, 1983); and 20499, 48 FR 58880 (Dec. 23. 1983).

[6] A European-style option may only be exercised during a specified period prior to expiration.

[7] 15 U.S.C. 78f(b)(5)(1982).

The Commission finds good cause for approving that portion of the rule change relating to a.m. settlement prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As discussed above, and on the basis of the expirations over the past several years, the Commission believes that opening-price settlement of stock index options and futures is beneficial. Opening-price settlement procedures have operated smoothly and effectively and have contributed to dampening expiration Friday volatility. The Commission believes opening price settlement for Technology Index options will permit the market to benefit from the pre-opening procedures described above when positions in the contract are unwound on expiration Fridays. In addition, because there are currently no outstanding Technology Index options series, all new Technology Index options listed in the future will have the same opening settlement procedures, thereby avoiding investor confusion. For these reasons, the Commission believes that it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act to approve the PSE's Technology Index opening price based settlement proposal on an accelerated basis.

It Therefore Is Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the portion of the proposed rule change (SR–PSE–95–18) relating to the changing of the settlement feature of options on the Technology Index from closing price settlement to opening price settlement is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23378 Filed 9–20–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36239; International Series Release No. 854; File No. SR–Phlx–95–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Japanese Yen Quote Spread Parameters

September 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 22, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes that the quotation spread parameters (bid/ask differentials) applicable to Japanese yen options be widened to reflect added volatility and appreciation in the market for the underlying currency, the Japanese yen. Option quote parameters govern the width of market quotations, establishing the maximum widths between the bid and the offer for an option contract.

Specifically, the Exchange proposes to change the parameters in Rule 1014(c)(ii) and Floor Procedure Advice ("Advice") F–6, Option Quote Parameters, from $.000004, $.000006, and $.000008 to $.000006, $.000009, and $.000012. Under the proposal, the new quote spread parameters will be reflected in Rule 1014 as follows: no more than $.000006 between the bid and the offer for each option contract for which the bid is $.000040 or less; no more than $.000009 where the bid is more than $.000040 but does not exceed $.000160; and no more than $.000012 where the bid is more than $.000160.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In response to worldwide market conditions respecting the Japanese yen, the Exchange proposes to increase the applicable quote spread parameters respecting Japanese yen options. During recent years, the value of the yen in relation to the U.S. dollar has risen appreciably. As a result, employing the current option quote parameters, which are too narrow for today's prices, deprives investors from identifying price levels from off-floor where liquidity will be available in the sizes most often sought by currency option investors.

Further, because the Japanese yen spot value (in relation to the U.S. dollar) has increased, the U.S. dollar value of each yen option contract has likewise increased. For instance, 20 contracts previously represented $1 million of yen; currently on 16 contracts represent $1 million of yen. This, in turn, results in greater risk associated with each option contract. As contract size increases, the risks of market making in these options are amplified. As a result, the Exchange believes that the quote spread parameter should be widened to offset the greater risk. The existence of high strike prices increases this risk.

The increase in the yen spot value has also resulted in wider spreads between the bid and the offer in the spot price. For example, a spot market of 101.50 (bid)—.60 (ask) yen in January 1995 represented $.009852—.009842 in American terms, which is ten "ticks" wide. Comparatively, a spot market of 85.10—.20 yen in May 1995 represents $.011751—.011737, which is 14 ticks wide. Thus, as the yen spot value has increased, a former ten tick wide market in European terms has widened to 14 ticks. Similarly, the spreads in Japanese yen futures and forward contracts have also widened. Thus, the Exchange believes that the wider spreads in the spot and futures markets necessitate wider quote spread parameters in yen options for competitive reasons.

The Exchange notes that the Japanese yen quote spread parameters were last amended in 1991[2] from $.000004, $.000008, and $.000012 to $.000004, $.000006, and $.000008. The spot value in American terms was 68.50 in July 1990 when the proposal was filed and 71.20 when it was approved. At that time, the Exchange cited the competitive implications of quote spread parameters, which do not exist in the over-the-counter market for foreign currency options ("FCOs"). Also, the Commission noted that remaining competitive with such markets is important to the depth and liquidity of Exchange-traded FCOs.

The Exchange believes that its proposal is consistent with Section 6 of the Act in general, and in particular,

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[8] 15 U.S.C. 78s(b)(2)(1988).

[9] 17 CFR 200.30–3(a)(12)(1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 28937 (March 4, 1991) 56 FR 10290.

with Section 6(b)(5), in that it is designed to promote just and equitable principals of trade, as well as to protect investors and the public interest, by providing a more efficient and competitive market for FCOs. Widening the Japanese yen quote spread parameters to reflect current volatility and wider spreads in competing markets should promote market depth and liquidity by allowing Phlx market makers to compete more effectively.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission grant accelerated approval of its proposal.

IV. Solicitations of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Phlx–95–47 and should be submitted by October 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23473 Filed 9–20–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21360; 812–9644]

Daily Money Fund, et al.; Notice of Application

September 14, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Daily Money Fund, Daily Tax-Exempt Money Fund, Fidelity Advisory Annuity Fund, Fidelity Special Situations Fund, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Beacon Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Destiny Portfolios, Fidelity Deutsche Mark Performance Portfolio, L.P., Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Government Securities Fund, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Institutional Tax-Exempt Cash Portfolios, Fidelity Institutional Investors Trust, Fidelity Institutional Trust, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Sterling Performan[illegible] Po[illegible] L.P., Fidelity Summer S[illegible] Fidelity Trend Fund, Fidel[illegible] Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investments-Bond Fund, L.P., Fidelity U.S. Investments-Government Securities Fund, L.P., Fidelity Yen Performance Portfolio, L.P., Spartan U.S. Treasury Money Market Fund, Variable Insurance Products Fund, Variable Insurance Products Fund II, and Zero Coupon Bond Fund (each a "Trust"); on behalf of themselves and all subsequently registered open-end investment companies advised by Fidelity Management & Research Company ("FMR") (collectively, with the Trusts, the "Funds"); and FMR.

RELEVANT ACT SECTIONS: Order requested (a) under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act and rule 2e–7 thereunder; (b) under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1) of the Act; and (c) pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit each applicant investment company to establish deferred compensation plans for its trustees who are not interested persons of the company.

FILING DATES: The application was filed on June 27, 1995, and amended on August 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 82 Devonshire Street F5E, Boston, Massachusetts 02109–3614.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at

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[3] 17 CFR 200.30–3(a)(12) (1994).

(202) 942–0573, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Trust is a registered open-end management investment company advised by FMR. Fidelity Distributors Corporation or National Financial Services Corporation (each a "Distributor") serve as the distributors of the Trusts' shares.

2. Each Fund has or will have a board of trustees, directors, or director general partners ("trustees"), a majority of whom are not "interested persons" of that Fund within the meaning of section 2(a)(19) of the Act. Each trustee, other than those who are "interested persons" of the Trusts, receives an annual fee. No trustee who is an affiliated person of FMR or a Distributor receives any remuneration from applicants.

3. The proposed deferred fee arrangements would be implemented by means of a Fee Deferral Plan (the "Plan") entered into by each Fund. The Plan would permit individual trustees of a Fund who are not "interested persons" of such Fund to elect to defer receipt of all or a portion of their fees. This would enable the trustees to defer payment of income taxes on such fees. The trustees may amend the Plan from time to time. Such amendments will be consistent with any relief granted pursuant to this application.

4. Under the Plan, the trustee's deferred fees will be credited to a book entry account established by each participating Fund (the "Deferred Fee Account"), as of the date such fees would have been paid to a trustee. The value of the Deferred Fee Account will be periodically adjusted by treating the Deferred Fee Account as though an equivalent dollar amount had been invested and reinvested in certain designated securities (the "Underlying Securities"). The Underlying Securities for a Deferred Fee Account will be shares of the Funds that a participating trustee designates. Each Deferred Fee Account shall be credited or charged with book adjustments representing all interest, dividends, and other earnings and all gains and losses that would have been realized had such account been invested in the Underlying Securities.

5. As a matter of risk management, each Fund intends, and with respect to any money market Fund that values its assets by the amortized cost method undertakes, to purchase and maintain Underlying Securities in an amount equal to the deemed investments of the Deferred Fee Accounts. Although a Fund's own shares may serve as an Underlying Security with respect to deferred fees earned by a trustee, it is not anticipated that a Fund will purchase its own shares. Rather, monies equal to the amount credited to the Deferred Fee Account will be invested as part of the general investment operations of that Fund.

6. The amounts paid to the trustees under the Plan are expected to be insignificant in comparison to total net assets of applicants. The Plan provides that a Fund's obligation to make payments from a Deferred Fee Account will be a general obligation of the Fund and payments made pursuant to the Plan will be made from the Fund's general assets and property. With respect to the obligations created under the Plan, the relationship of a trustee to a Fund will be that of a general unsecured creditor. A Fund will be under no obligation to the trustee to purchase, hold, or dispose of any investments but, if a Fund chooses to purchase investments to cover its obligations under the Plan, then any and all such investments will continue to be part of the general assets and property of the Fund.

7. Under the Plan, a trustee may specify that the trustee's deferred fees be distributed in whole or in part commencing on or as soon as practicable after a date specified by the trustee, which may not be sooner than the earlier of (a) a date five years following the deferral election, or (b) the first business day of January following the year in which the trustee ceases to be a member of the board of trustees of the Fund. Notwithstanding any elections by a trustee, his or her deferrals under the Plan shall be distributed (x) in the event of the trustee's death, or (y) upon the dissolution, liquidation, or winding up of the Fund, whether voluntary or involuntary; or the voluntary sale, conveyance or transfer of all or substantially all of the Fund's assets (unless the obligations of the Fund shall have been assumed by another Fund); or the merger of the Fund into another trust or corporation or its consolidation with one or more other trusts or corporations (unless the obligations of the Fund are assumed by such surviving entity and the surviving entity is another Fund.) In addition, upon application by a trustee and a determination by the Administrator that the trustee has suffered a severe and unanticipated financial hardship, the Administrator shall distribute to the trustee, in a single lump sum, an amount equal to the lesser of the amount needed by the trustee to meet the hardship, or the balance of the trustee's Deferred Fee Account. Payments will be made in a lump sum or in installations as elected by the trustee. In the event of the trustee's death, amounts payable under the Plan will be payable to the trustee's designated beneficiary. In all other events, the trustee's right to receive payments will be nontransferable.

8. The Plan will not obligate any Fund to retain the services of a trustee, nor will it obligate any Fund to pay any (or any particular level of) trustee's fees to any trustee. The proposed arrangements will not affect the voting rights of the shareholders of any of the Funds. If a Fund purchases Underlying Securities issued by another Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such other Fund.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting relief from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f) and 22(g) of the Act and rule 2a–7 thereunder to the extent necessary to permit the Funds to enter into deferred free arrangements with their trustees; under sections 6(c) and 17(b) of the Act granting relief from section 17(a)(1) to the extent necessary to permit the Funds to sell securities issued by them to participating Funds, and pursuant to section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to engage in certain joint transactions incident to such deferred fee arrangements.

2. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact these sections. The Plan would not: (a) Induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits; (b) affect control of any Fund; (c) confuse investors or convey a false impression as to the safety of their investments; or (d) be inconsistent with the theory of mutuality of risk. All liabilities created under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

4. Section 22(f) prohibits undisclosed restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth any restrictions on transferability or negotiability, and such restrictions are primarily to benefit the participating trustees and would not adversely affect the interests of the trustees or of any shareholder of any Fund.

5. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants submit that the Plan would provide for deferral of payment of fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

6. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Any relief granted from section 13(a)(3) of the Act would extend only to existing Trusts with a fundamental investment restriction prohibiting investments in securities of investment companies, except in connection with a merger, consolidation, or acquisition of assets. Applicants submit that it is appropriate to exempt applicants as necessary from section 13(a)(3) so as to enable the existing Trusts to invest in Underlying Securities without a shareholder vote. Applicants will provide notice to shareholders in the statement of additional information of the deferred fee arrangements with the trustees. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the respective Trust, and will at all times equal the value of the Trust's obligations to pay deferred fees.

7. Rule 2a–7 imposes certain restrictions on the investments of "money market funds," as defined under the rule, that would prohibit a fund that is a money market fund from investing in the shares of any other Fund. Applicants submit that the requested exemption would permit the Funds to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements would not affect net asset value. Applicants further assert that the amounts involved in all cases would be *de minimis* in relation to the total net assets of each Fund, and would have no effect on the per share net assets value of the Funds.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company, except in limited circumstances. Funds that are advised by the same entity may be "affiliated persons" of one another under section 2(a)(3)(C0 of the Act by reason of being under the common control of their adviser. Applicants assert that section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interests in such enterprises. Applicants submit that an exemption from this provision would not implicate Congress' concerns in enacting section 17(a)(1), but would facilitate the matching of each Fund's liability for deferred trustees' fees with the Underlying Securities that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the transaction is consistent with the policy of each registered investment company concerned; and (c) the transaction is consistent with the general purposes of the Act. Because section 17(b) may apply only to a specific proposed transaction,[1] applicants also request an order under section 6(c) so that relief will apply to a class of transactions. Applicants believe that the proposed transactions satisfy the criteria of sections 6(c) and 17(b).

10. Section 17(d) and rule 17d–1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement on a basis different from or less advantageous than that of the affiliated person. Under the Plan, participating trustees would not receive a benefit that otherwise would inure to a Fund or its shareholders. When all payments have been made to a participating trustee, the participating trustee will be no better off (apart from the effect of tax deferral) than if he or she had received fees on a current basis and invested them in Underlying Securities.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market Fund that values its assets by the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23377 Filed 9–20–95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–21361; 812–9630]

Janus Investment Fund, et al.; Notice of Application

September 14, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Janus Investment Fund, Janus Aspen Series, Janus Service Corporation ("JSC"), and Janus Capital Corporation ("Janus Capital").

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the series of certain investment companies and certain private accounts to deposit their uninvested cash balances in one or more joint accounts to be used to enter into short-term investments.

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[1] In the Matter of Keystone Custodian Funds, Inc., 21 SEC 295 (1945).

FILING DATES: The application was filed on June 19, 1995, and amended on August 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 100 Fillmore Street, Suite 300, Denver, CO 80206–4923.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Janus Investment Fund and Janus Aspen Series are open-end management investment companies comprised of multiple series. Janus Investment Fund is organized as a Massachusetts business trust, and Janus Aspen Series is organized as a Delaware business trust. Janus Capital serves as investment adviser to each Fund and provides the Funds with certain administrative services. JSC is a wholly-owned subsidiary of Janus Capital and serves as shareholder servicing and dividend paying agent of Janus Investment Fund and Janus Aspen Series.

2. Applicants request that any relief granted also apply to any present or future registered investment companies that are advised by Janus Capital, or any entity controlling, controlled by, or under common control with Janus Capital (the "Funds"); individual, corporate, charitable, and retirement accounts for which Janus Capital serves as investment adviser (the "Private Accounts"); any entity controlling, controlled by, or under common control with JSC that serves as shareholder servicing agent or dividend paying agent for any of the Funds; and any entity controlling, controlled by, or under common control with Janus Capital that serves as investment adviser to any of the Funds. All Funds that currently intend to rely on the requested order are named as applicants.

3. At the end of each trading day, the Funds and Private Accounts have uninvested cash balances in their accounts at their respective custodian banks that would not otherwise be invested in portfolio securities by Janus Capital. Generally such cash balances are invested in short-term liquid assets such as commercial paper or U.S. Treasury bills. Cash balances may also be invested in shares of the money market series of Janus Investment Fund or Janus Aspen Series.[1]

4. JSC, in its capacity as shareholder servicing and dividend paying agent, maintains certain accounts in its name on behalf of the Funds at a variety of banks.

5. Applicants propose to deposit uninvested cash balances of the Funds and Private Accounts that remain at the end of the trading day, as well as cash for investment purposes, into one or more joint accounts (the "Joint Accounts") and to invest the daily balance of the Joint Accounts in: (a) Repurchase agreements collateralized by U.S. government securities (as defined in the Act) or by First Tier Securities (as defined in rule 2a–7 under the Act); (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term money market instruments, including variable rate demand notes and other tax-exempt money market instruments, that constitute "Eligible Securities" (as defined in rule 2a–7 under the Act) (collectively, "Short-Term Investments"). JSC, in its capacity as shareholder servicing and dividend paying agent, may also deposit cash in the Joint Accounts. JSC, Funds, and Private Accounts that are eligible to participate in a Joint Account and that elect to participate in such Account are collectively referred to as "Participants."

6. Janus Capital has discretion to purchase and sell securities for the Private Accounts in accordance with each Private Account's investment objectives, policies, and restrictions. At this time, no Private Account has determined whether it will be able or willing to participate in a Joint application.

7. A Participant's decision to use a Joint Account would be based on the same factors as its decision to make any other short-term liquid investment. The sole purpose of the Joint Accounts would be to provide a convenient means of aggregating what otherwise would be one or more daily transactions for some or all Participants necessary to manage their respective daily account balances.

8. Janus Capital will be responsible for investing funds held by the Joint Accounts, establishing accounting and control procedures, and ensuring fair treatment of Participants. Janus Capital will manage investments in the Joint Accounts in essentially the same manner as if it had invested in such instruments on an individual basis for each Fund or Private Account.

9. Any repurchase agreements entered into through the joint account will comply with the terms of Investment Company Act Release No. 13005 (February 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the SEC's published statements on repurchase agreements, and represent that repurchase agreement transactions will comply with future positions of the SEC to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the SEC sets forth guidelines with respect to other Short-Term Investments, all such investments made through the Joint Account will comply with those guidelines.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order.

2. The Participants, by participating in the proposed Joint Account, and Janus Capital, by managing the proposed Joint Account, could be deemed to be "joint participants" in a transaction within the meaning or section 17(d) of the Act. In addition, the proposed Joint Account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

3. Although Janus Capital will realize some benefits through administrative convenience and some possible reduction in clerical costs, the Participants will be the primary beneficiaries of the Joint Accounts because the account may result in higher returns and would be a more efficient means of administering daily cash investments.

4. Applicants believe that no Participants will be in a less favorable position as a result of the Joint Accounts. Each Participant's investment in a Joint Account would not be subject to the claims of creditors, whether brought in bankruptcy, insolvency, or other legal proceeding, of any other Participant. Each Participant's liability on any Short-Term Investment will be limited to its interest in such investment; no Participant will be jointly liable for the investments of any other Participant.

5. Participants may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, it is generally possible to negotiate a rate of return on larger repurchase agreements and other Short-Term Investments that is higher than the rate available on smaller repurchase agreements and other Short-Term Investments. The Joint Account also may increase the number of dealers and issuers willing to enter into Short-Term Investments with such Participants and may reduce the possibility that their cash balances remain uninvested.

6. The Joint Accounts may result in certain administrative efficiencies and a reduction of the potential for errors by reducing the number of trade tickets and cash wires that must be processed by the sellers of Short-Term Investments, the Participants' custodians and Janus Capital's accounting and trading departments. For the reasons set forth above, applicants believe that granting the requested order is consistent with the provisions, policies, and purposes of the Act and the intention of rule 17d–1.

Applicants' Conditions

Applicants will comply with the following procedures as conditions to any other granted by the SEC:

1. The Joint Accounts will not be distinguishable from any other accounts maintained by Participants at their custodians except that monies from Participants will be deposited in the Joint Account on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by Janus Capital of uninvested cash balances.

2. Cash in the Joint Accounts will be invested in one or more of the following, as directed by Janus Capital: (a) Repurchase agreements "collateralized fully" as defined in rule 2a–7 under the Act; (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term money market instruments, including variable rate demand notes and other tax-exempt money market instruments, that constitute "Eligible Securities" (as defined in rule 2a–7 under the Act). Short-Term Investments that are repurchase agreements would have a remaining maturity of 60 days or less and other Short-Term Investments would have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act.

3. All assets held in the Joint Accounts would be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules, or orders.

4. Each Participant that is a registered investment company valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Account in which such Participant has an interest (determined on a dollar weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

5. In order to assure that there will be no opportunity for any Participant to use any part of a balance of a Joint Account credited to another Participant, no Participant will be allowed to create a negative balance in any Joint Account for any reason, although each Participant would be permitted to draw down its entire balance at any time. Each Participant's decision to invest in a Joint Account would be solely at its option, and no Participant will be obligated to invest in the Joint Account or to maintain any minimum balance in the Joint Account. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the Joint Account, including interest payable on such assets invested in the Joint Account.

6. Janus Capital will administer the investment of cash balances in and operation of the Joint Accounts as part of its general duties under its advisory agreements with Participants and will not collect any additional or separate fees for advising any Joint Account.

7. The administration of the Joint Accounts would be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The Trustees of the Funds will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. The Trustees will make and approve such changes as they deem necessary to ensure that such procedures are followed. In addition, the Trustees will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the proposed procedures.

9. Any Short-Term Investments made through the Joint Accounts will satisfy the investment criteria of all Participants in that investment.

10. Each Participant's investment in a Joint Account will be documented daily on the books of each Participant and the books of its custodian. Each Participant will maintain records (in conformity with Section 31 of the Act and the rules thereunder) documenting for any given day, its aggregate investment in a Joint Account and its *pro rata* share of each Short-Term Investment made through such Joint Account. Each Participant that is not a registered investment company or registered investment adviser will make available to the SEC, upon request, such books and records with respect to its participation in a Joint Account.

11. Every Participant in the Joint Accounts will not necessarily have its cash invested in every Short-Term Investment. However, to the extent that a Participant's cash is applied to a particular Short-Term Investment, the Participant will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the Participant.

12. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (a) Janus Capital believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Participants in the investment because of a downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. Janus Capital may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Participants and the transaction will not adversely affect other

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[1] An SEC exemptive order permits Funds advised by Janus Capital to invest their cash balances in shares of certain affiliated money market series. See Janus Investment Fund, Investment Company Act Release Nos. 21042 (May 4, 1995) (notice) and 21103 (May 31, 1995) (order).

Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

13. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and, for any Participant that is an open-end investment company registered under the Act, subject to the restriction that the fund may not invest more than 15% (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, if Janus Capital cannot sell the instrument, or the fund's fractional interest in such instrument, pursuant to the preceding condition.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 95–23379 Filed 9–20–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License # 02/02–0478]

ASEA—Harvest Partners II; Notice of License Surrender

Notice is hereby given that ASEA—Harvest Partners II, ("ASEA"), 767 Third Avenue, New York, New York 10017, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). ASEA was licensed by the Small Business Administration on October 9, 1984.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on September 6, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 14, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–23476 Filed 9–20–95; 8:45 am]

BILLING CODE 8025–01–P

[License No. 02/02–0564]

Creditanstalt Small Business Investment Corporation; Notice of Issuance of a Small Business Investment Company License

On Friday, July 14, 1995, a notice was published in the **Federal Register** (Vol. 60, No. 135, FR 36325) stating that an application had been filed by Creditanstalt Small Business Investment Corporation, at 245 Park Avenue, 27th Floor, New York, NY 10167, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1995)) for a license to operate as a small business investment company.

Interested parties were given until close of business Monday, July 31, 1995, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0564 on August 25, 1995, to Creditanstalt Small Business Investment Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 14, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–23477 Filed 9–20–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 8, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–601
Date filed: September 7, 1995
Parties: Members of the International Air Transport Association
Subject: COMP Meet/P 1060 dated August 18, 1995 Composite Resolutions r–1 to r–28
Proposed Effective Date: April 1, 1996

Docket Number: OST–95–602
Date filed: September 7, 1995
Parties: Members of the International Air Transport Association
Subject: COMP Reso/P 1063 dated August 29, 1995 Composite Resolutions r–1 to r–9
Proposed Effective Date: November 1, 1995

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95–23401 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–62–P–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 8, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–586.

Date filed : September 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 1995.

Description: Application of Sun Pacific International, Inc., pursuant to Section 401(d) of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity, authorizing it to engage in interstate and overseas charter air transportation of persons, property and mail.

Docket Number: OST–95–588.

Date filed : September 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 1995.

Description: Application of Capital Cargo International Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing foreign scheduled air transportation.

Docket Number: OST–95–589.

Date filed : September 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 1995.

Description: Application of Capital Cargo International Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing it to engage in foreign charter air transportation of cargo.

Docket Number: OST–95–590.

Date filed : September 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 1995.

Description: Application of Capital Cargo International Airlines, Inc., pursuant to 49 U.S.C. Section 41103 and Subpart Q of the Regulations, for a certificate authorizing domestic charter all-cargo air transportation

Docket Number: OST–95–604.

Date filed : September 7, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 5, 1995.

Description: Application of Jet Express Corporation pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation.

Docket Number: OST–95–621.

Date filed : September 8, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 6, 1995.

Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101, Part 210 of the Act and Subpart Q of the Regulations, applies for renewal of authority to serve London on segment 1 of its certificate of public convenience and necessity for Route 603. This authority is due to expire on March 13, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–23402 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–62–P

Office Of The Secretary

Notice

Pursuant to 49 U.S.C. 44907C, on June 8, 1995, I notified the Government of Colombia that I had determined the Eldorado International Airport, Bogota, Colombia, did not administer and maintain effective security measures. On September 5, 1995, 90 days elapsed since my determination, and I have found that Eldorado International Airport still does not administer and maintain effective security measures. My determination is based on Federal Aviation Administration assessments which reveal that security measures used at the airport do not meet the standards established by the International Civil Aviation Organization.

Pursuant to 49 U.S.C 44907D(1), I have directed that a copy of this notice be published in the **Federal Register**, that my determination be displayed prominently in all U.S. airports regularly being served by scheduled air carrier operations, and that the news media be notified of my determination. In addition, as a result of this determination, all U.S. air carriers and foreign air carriers (and their agents) providing service between the United States and Eldorado International Airport must provide notice of my determination to any passenger purchasing a ticket for transportation between the United States and Eldorado International Airport, with such notice to be made by written material included on or with such ticket.

Dated: September 15, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–23403 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Survivor Locator Lights

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and request comments on a proposed revision to the technical standard order (TSO) pertaining to survivor locator lights. The proposed TSO revises the minimum performance standards that survivor locator lights must meet to be identified with the marking "TSO–C85a."

DATES: Comments must identify the TSO file number and be received on or before November 30, 1995.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Program and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C85a, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 804, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Program and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Fax No. (202) 267–5340, Telephone (202) 267–9546.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 804, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service before issuing the final TSO.

Background

The proposed TSO–C85a would revise the original standard which became effective July 6, 1964, and prescribes the minimum performance standards for survivor locator lights. This proposed TSO references the standard set forth in the Society of Automotive Engineers (SAE), 4492, "Survivor Locator Lights," dated January 1995, which would revise the original FAA standard. The proposed standard for survivor locator lights permits the use of steady or flashing type lights, defines the light characteristics, permits the use of white or yellow-green lights, requires automatic activation, and specifies upgraded environmental tests. The proposed TSO is intended for use on life preservers, life rafts, and slide/rafts.

How To Obtain Copies

A copy of the proposed TSO–C85a may be obtained by contacting "For Further Information Contact." Copies of SAE AS 4492 may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, PA 15096. RTCA Document No. DO–160C, "Environmental Conditions and Test Procedures for Airborne Equipment," may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 95–23426 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–06; Notice 2]

Denial of Petition for Import Eligibility Decision

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(C)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)). The petition, which was submitted by J.K. Motors, Inc. of Kingsville, Maryland (J.K.), a registered importer of motor vehicles, requested NHTSA to decide that 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to the versions of 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 passenger cars that were originally manufactured for importation into and sale in the United States and that were certified by their original manufacturer, Mitsubishi Motors Corporations, as complying with the safety standards, and (2) they are capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

NHTSA published a notice in the **Federal Register** on February 7, 1995 (60 FR 7266) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to this notice, from Mitsubishi Motors America Inc. ("Mitsubishi"), a U.S. subsidiary of the vehicle's original manufacturer.

In its comment, Mitsubishi stated that based upon its own evaluation of the vehicles involved, it believes that they are not capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. In particular, Mitsubishi noted that non-U.S. certified versions of the 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 do not have a seat belt telltale, as required by Standard No. 101, Controls and Displays, do not have a windshield wiper arm and blade that cover the area required by Standard No. 104, Windshield Wiping and Washing System, and have ABS symbols that do not conform to the lettering height requirements of Standard No. 105, Hydraulic Brake Systems. Additionally, Mitsubishi noted that the vehicles are equipped with "pop-up" headlamps that are part of an integrated system, and that this entire assembly does not comply with Standard No. 108, Lamps, Reflective Devices, and Associated Equipment. Mitsubishi also asserted that some of the vehicles involved would have to be retrofitted with a different occupant restraint system to conform to the requirements of Standard No. 208, Occupant Crash Protection. Mitsubishi additionally observed that this restraint system may have to be tested to assure compliance with the standard, and that the front seat assembly may have to be repositioned to withstand the standard's injury criteria, which are more stringent than those of the corresponding European standard. Mitsubishi further noted that the non-U.S. certified versions of the 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 do not have knee bolsters or metal inserts in their glove compartments, as found on the U.S. certified versions of these vehicles, and have seat belts that are manufactured to manufactured to specifications that differ from those found in Standard No. 209, Seat Belt Assemblies. Finally, Mitsubishi noted that contrary to J.K.'s assertion, the bumpers on the non-U.S. certified versions of the 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 differ from those found on the U.S. certified versions of these vehicles, and have not been tested to assure compliance with the Bumper Standard found in 49 CFR part 581.

NHTSA accorded J.K. an opportunity to respond to Mitsubishi's comments. As of the date of this notice, J.K. has failed to submit such a response. This has compelled NHTSA to conclude, from the state of the record, that the petition does not clearly demonstrate that the non-U.S. certified versions of the 1993, 1994, and 1995 Mitsubishi 3000GT and 3000GT VR–4 are eligible for importation. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with 49 U.S.C. 30141(b)(1) (formerly section 108(c)(C)(ii) of the Act), NHTSA will not consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 18, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–23485 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration (RSPA), DOT

[Docket No. PS–142; Notice 1]

Risk Management and the Pipeline Industry, Notice of Public Conference

SUMMARY: Pipeline regulators, pipeline operators, and the public are invited to a conference, Risk Management and the Pipeline Industry, on November 6, 1995 from 6 p.m. to 9 p.m. and on Nov. 7 from 8 a.m. until 6 p.m. at the McLean Hilton at Tysons Corner in McLean, Virginia. Sponsoring the conference are the Office of Pipeline Safety (OPS), RSPA, U.S. Department of Transportation (DOT); the American Gas Association (A.G.A.); the American Petroleum Institute (API); the Interstate Natural Gas Association of America (INGAA); the Gas Research Institute (GRI); the American Public Gas Association (APGA); and the Association of Oil Pipe Lines (AOPL).

DATES: The conference will be held on November 6 through 9 at the McLean Hilton at Tysons Corner in McLean, Virginia. To register for the conference, please call up the Walcoff and Associates home page on the Internet, htpp://www.walcoff.com/ or fax, mail, or use the Internet to e-mail the registration printed at the end of this notice to Ms. Debra Banks, Walcoff and Associates, 12015 Lee Jackson Highway, Suite 500, Fairfax, Virginia, 22033, office: (703) 218–1449, fax: (703) 934–9866, Internet e-mail address: rspa@walcoff.com. The charge for the conference lunch on November 7 is $25. Checks should be made payable to and mailed to Walcoff and Associates. Walcoff also accepts MasterCard, Visa, and American Express.

Sponsors will have background material for participants to read before the conference. Background reading includes the Oil and Gas Risk Assessment Quality Team reports, the Harvard School of Public Health Center for Risk Analysis' Reform of Risk Regulation: Achieving More Protection at Less Cost, and the Gas Research Institute's Natural Gas Pipeline Risk Management Reports, Volumes One through Four.

To discuss the conference or to order reading material, please contact one of the sponsors: INGAA, Terry Boss, tdboss@ix.netcom.com, (202) 626–3234; API, Krista Mutch, (202) 682–8188; A.G.A., John Erickson, (703) 841–8450, jerick06@reach.com; GRI, Tina Thomas, (202) 662–8937, cthomas@gri.org; APGA, Bob Cave, (703) 352–3890; AOPL, Michele Joy, (202) 408–7970; or OPS, Melanie Barber, (202) 366–4560, barberm@rspa.dot.gov.

ADDRESSES: The conference will be held at the McLean Hilton at Tysons Corner Hotel, 7920 Jones Branch Drive, McLean, Virginia, 22102, phone: (703) 847–5000.

Send two copies of written comments on the eight questions to be discussed in the November 7 break-out sessions that are listed in the next to last paragraph of this notice to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C., 20590–0001. Identify the docket and notice numbers in the heading of this notice.

All comments and docketed material will be available for inspection and copying in Room 8421 between 8:30 a.m. and 4:30 p.m. each business day. A summary of the conference will be available from the Dockets Unit about two months after the conference.

SUPPLEMENTARY INFORMATION: The conference will focus on openly discussing how Government and pipeline industries may use risk management, learning how risk management may be used to invest resources more wisely in pipeline safety and environmental protection, and addressing how Government can oversee pipeline operations while allowing industry more latitude in choosing safety options.

Conference participants are encouraged to take part in the follow-on activities. On the morning of November 8, INGAA, GRI, and the Pipeline Research Committee are sponsoring a seminar on preventing, inspecting, identifying, and responding to third party damage to pipelines. Conferees are also invited to the Technical Pipeline Safety Advisory Committee meetings on November 8 and 9 at the McLean Hilton. The Technical Advisory Committee meeting agendas will be published in the **Federal Register** at least thirty days before the November 8 and 9 meetings.

The conference will begin with a risk management primer on methods and tools for practitioners on November 6 from 6 p.m. to 9 p.m. Gas Research Institute, Hartford Steam Boiler, and Chevron representatives will lead the primer. The November 7 session will start with an introduction to risk management principles and the value risk management brings to Government and industry. Keynote speakers will be Joe Martinelli, President, Chevron Pipe Line Company; John Riordon, President and CEO, MidCon Corporation; Robert Catell, President and CEO, Brooklyn Union Gas Company; Bruce Ellsworth, New Hampshire Public Utility Commissioner; and Richard Felder, Associate Administrator for Pipeline Safety, OPS, RSPA, DOT.

After risk management is explained, key risk management initiatives being developed will be explained. Government/Industry Oil and Gas Risk Assessment Quality Team (RAQT) members will discuss making the transition from prescriptive regulations to pipeline company specific risk management plans. Conferees will hear presentations from and ask questions of Federal, State, and Local Government officials and gas and liquid industry representatives expressing views and raising concerns about implementing risk management programs.

Among featured speakers on November 7 are William Burnett, Senior Vice President, GRI; Bernie Selig, Vice President, Hartford Steam Boiler; Don Stursma, Iowa Commerce Department; Ruth Kretschmer, Illinois Commerce Commission; Andy Drake, Panhandle Eastern; Mike Neuhard, Fairfax County Fire and Rescue Department; and Jim Thomas, OPS Southwestern Regional Director.

Following the perspective presentations and questions and answers, conferees will meet in break-out sessions to address issues raised in the presentations and the participants' concerns, including: (1) How can industry use resources more effectively to improve pipeline safety? (2) How can one determine if risk management equals or improves the current safety level? (3) Why is risk management good for a company? (4) How much flexibility will a company gain by developing an approved risk management program? (5) How much information are industry and Government comfortable sharing? (6) What are good benchmarks to judge the risk management demonstration projects? (7) How will standards be created and applied? (8) What roles do State and local agencies play?

After the break-out sessions, all participants will return to the main meeting room. The break-out session leaders will summarize each break-out group's concerns and issues for all conferees to discuss. The conference is designed (1) for all pipeline stakeholders to share concerns about and discuss issues inherent to implementing risk management and (2) for government and industry to respond to these concerns and issues with strong action.

Issued in Washington, D.C. on September 14, 1995.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

BILLING CODE 4910–60–P

CONFERENCE REGISTRATION
RISK MANAGEMENT AND
THE PIPELINE INDUSTRY
NOVEMBER 6 THROUGH 9, 1995
MCLEAN HILTON AT TYSONS CORNER

NAME

____

TITLE AND ORGANIZATION

____

ADDRESS

____

____

PHONE NUMBER

____

FAX NUMBER

____

INTERNET E-MAIL ADDRESS

____

1. The conference is being held at the McLean Hilton at Tysons Corner, McLean, Virginia. The conference rate for single and double rooms is $114.00. You will need to make reservations directly with the McLean Hilton by calling (800) HIL-TONS or (703) 847-5000.

2. The sponsors need to know how many people will take part in the conference and how many will be staying at the McLean Hilton as space is limited and we need to reserve enough meeting space and order enough material for all. Please list the number of rooms ____ and the dates you will need them, November ___________.

3. The cost of the November 7 lunch is $25. I will __ will not ___ attend the November 7 lunch.

Please make checks payable to Walcoff and Associates. If you would like to pay with American Express ___, Visa ___, or MasterCard ___, please write your name as it appears on the credit card ____________________, the card number ____________________, and the expiration date ___________.

4. Will you take part in the:

(a) Risk Management Primer on November 6 from 6 p.m. to 9 p.m.? Yes ____ No ___

(b) November 7 conference from 8 a.m. to 6 p.m.? Yes __ No ___

(c) External Damage Seminar that Gas search Institute, Interstate Natural Gas Association of America, and Pipeline Research Committee are sponsoring on the morning of November 8? Yes ___ No ___

d) November 8 and 9 Technical Pipeline Safety Advisory Committee meetings? Yes ___ No ___

You may register:

(1) on the Internet by completing this form on Walcoff and Associates' home page, htpp://www.walcoff.com/ or

(2) by mailing, faxing, or e-mailing this completed form to:

Ms. Debra Banks
Walcoff and Associates
12015 Lee Jackson Highway
Suite 500
Fairfax, Virginia, 22033
Fax: (703)934-9866
Office: (703) 218-1449
E-mail: rspa@walcoff.com.

Conference Sponsors:

American Petroleum Institute (API), American Gas Association (A.G.A.), Interstate Natural Gas Association (INGAA), American Public Gas Association (APGA), Gas Research Institute (GRI), Association of Oil Pipe Lines (AOPL), and Office of Pipeline Safety (OPS), U.S. Transportation Department.

List the risk management issues that interest you most:

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[FR Doc. 95–23350 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–60–C

DEPARTMENT OF THE TREASURY

General Counsel

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Marlene Gross, Deputy Chief Counsel;
2. Neal S. Wolen, Deputy General Counsel;
3. Eliot D. Fielding, Associate Chief Counsel (Enforcement Litigation);
4. William F. Hammack, Acting Southwest Regional Counsel;
5. James A. Nelson, Los Angeles District Counsel;
6. Nancy J. Marks, Deputy Associate Chief Counsel (Employee Benefits and Exempt Organizations).

This publication is required by 5 U.S.C. 4314(c)(4).

Stuart L. Brown,

Chief Counsel.

[FR Doc. 95–23367 Filed 9–20–95; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register

Vol. 60, No. 183

Thursday, September 21, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 95–23005.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, September 21, 1995 at 10:00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:

Final Audit Report on Friends of Marc Little.

Draft Final Rules and Accompanying Explanation and Justification on Amendments to the communications Disclaimer Requirements (11 CFR 110.11). Continued from meeting of September 14, 1995.

DATE AND TIME: Tuesday, September 26, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. Sc 437g.
Audits conducted pursuant to 2 U.S.C. Sc 437g, Sc 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, September 28, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1995–28: Dave Long, Vice President, American Health Care Association (AHCA)
Petition of the Bush-Quayle '92 Primary Committee, Inc., the Bush-Qualye '92 General Committee, Inc. and the Bush-Quayle '92 Compliance Committee, Inc. to Stay Repayment Pending Appeal (LRA #425)
Regulations:
  Promulgation of final rules: Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures
  Revised *MCFL* Regulations on Facilitation, Candidate Appearances, Endorsements, Voter Guides and Meeting Rooms (if not concluded at the meeting of September 21, 1995)
  MCFL Regulations: Defining Restricted Class; Logos and Letterhead; Registration & Voting Information and Communications; GOTV Drives

CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–23608 Filed 9–19–95; 3:09 pm]

BILLING CODE 6715-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services, Committee Meeting, Changes

CITATION OF PREVIOUS "FEDERAL REGISTER" NOTICE: 60 FR 47977.

PREVIOUSLY ANNOUNCED TIME AND DATE: September 22, 1995 at 9 a.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: Legal Services Corporation, 750 1st Street, NE., Board Room, 11th Floor, Washington, DC 20002, (202) 336–8800.

CHANGES TO THE MEETING: The meeting has been canceled.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: September 19, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–23631 Filed 9–19–95; 3:46 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Meeting Changes

CITATION OF PREVIOUS "FEDERAL REGISTER" NOTICE: 60 FR–47977.

PREVIOUSLY ANNOUNCED TIME AND DATE: September 22, 1995 at 2:00 p.m.; and September 23, 1995 at 9:00 a.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: Legal Services Corporation, 750 1st Street, N.E., Board Room, 11th Floor, Washington, D.C. 20002, (202) 336–8800.

CHANGES TO THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Dated Issued: September 19, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–23632 Filed 9–19–95; 3:46 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Finance Committee Meeting, Changes

CITATION OF PREVIOUS "FEDERAL REGISTER" NOTICE: 60 FR–47977.

PREVIOUSLY ANNOUNCED TIME AND DATE: September 22, 1995 at 9:00 a.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: Legal Services Corporation, 750 1st Street, N.E., Board Room, 11th Floor, Washington, D.C. 20002, (202) 336–8800.

CHANGES TO THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: September 19, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–23633 Filed 9–19–95; 3:46 am]

BILLING CODE 7050-01-M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: November 5–7, 1995, 8:30 a.m. to 5:00 p.m.

LOCATION: Sheraton City Centre Hotel, 1143 New Hampshire Avenue NW, Washington, DC 20037; (202) 775–0800.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; (202) 272–2004 (Voice), (202) 272–2074 (TT), (202) 272–2022 (Fax).

AGENCY MISSION: The National Council on Disability is an independent federal agency led by 15 members appointed by the President on the United States and confirmed by the U.S. Senate. The overall purpose of the National Council is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability by October 27, 1995.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPENING MEETING: This quarterly meeting of the National Council shall be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director.

Committee Meetings and Committee Reports.

National Disability Policy: A Progress Report Update.

National Summit on Disability Policy Update.

Unfinished Business.

New Business.

Announcements.

Adjournment.

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on September 19, 1995.

Ethel D. Briggs,

Executive Director.

[FR Doc. 95–23609 Filed 9–19–95; 8:45 am]

BILLING CODE 6820-BS-M

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Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95-041-2]

Availability of Determination of Nonregulated Status for Genetically Engineered Corn

Correction

In noitce document 95–21847 beginning on page 47107 in the issue of Tuesday, September 5, 1995, make the following corrections:

1. On page 46107, in the second column, under **Analysis**, in the third line, "CryCIA(b)" should read "CryIA(b)".

2. On the same page, in the third column, in the first and fifth lines, "CryCIA(b)" should read "CryIA(b)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion of Native American Human Remains in the Possession of the Utah Field House of Natural History State Park, Vernal, UT

Correction

In notice document 95–22375 appearing on page 47181 in the issue of Monday, September 11, 1995, make the following correction:

On page 47181, in the second column, second full paragraph, in the sixth line from the bottom "[*thirty days after publication of this notice in the* **Federal Register**]." should read "October 11, 1995."

BILLING CODE 1505-01-D

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federal register

Thursday
September 21, 1995

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Crashworthiness Protection Requirements for Tank Cars; Detection and Repair of Cracks, Pits, Corrosion, Lining Flaws, Thermal Protection Flaws and Other Defects of Tank Car Tanks; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 179, and 180

[Docket Nos. HM–175A and HM–201; Amdt Nos. 171–137, 172–144, 173–245, 179–50, and 180–8]

RIN 2137–AB89 and 2137–AB40

Crashworthiness Protection Requirements for Tank Cars; Detection and Repair of Cracks, Pits, Corrosion, Lining Flaws, Thermal Protection Flaws and Other Defects of Tank Car Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR) to: Require facilities that build, repair, and ensure the structural integrity of tank cars, to develop and implement a quality assurance program (QAP); allow the use of non-destructive testing (NDT) techniques, in lieu of currently prescribed periodic hydrostatic pressure tests, for fusion welded tank cars; require thickness measurements of tank cars; allow the continued use of tank cars, with limited reduced shell thicknesses, for certain hazardous materials; increase the frequency for inspection and testing of tank cars for added safety; clarify tank car pretrip inspection requirements; expand the use of thermal protection systems and head protection on tank cars to include certain other high hazard materials; add new requirements for bottom-discontinuity protection; require the use of protective coatings on insulated tank cars; prohibit the use of self-energized manways located below the liquid level of the tank; remove "grandfather" provisions allowing certain uses of tank cars; and improve the puncture resistance of tank cars used for certain high hazard materials, including those that are poisonous-by-inhalation (PIH) and those determined by the Environmental Protection Agency (EPA) to pose health and environmental risks.

These actions are being taken to enhance the safe transportation of hazardous materials in tank cars. The intended effects of these actions are to improve the crashworthiness of tank cars and to increase the probability of detecting critical tank car defects.

DATES: *Effective date.* The effective date of these amendments is July 1, 1996.

Compliance date. Voluntary compliance with the regulations, as amended herein, is authorized November 1, 1995.

Incorporation by reference date. The incorporation by reference of certain publications listed in these amendments is approved by the Director of the Federal Register as of July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ed Pritchard (telephone 202–366–0509) and James H. Rader (telephone 202–366–0510), Hazardous Materials Division; or Thomas A. Phemister (telephone 202–366–0635), Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

This final rule consolidates two related notices of proposed rulemaking published under Docket HM–175A [58 FR 52574, October 8, 1993] and Docket No. HM–201 [58 FR 48485 September 16, 1993], that address the safe performance of tank cars used to transport hazardous materials. RSPA believes that, by consolidating these two rulemakings, changes to sections that are affected by both rules will be more easily understood by readers. This preamble discusses separately, for each rulemaking, the notices of rulemaking and comments received in response to these notices. A consolidated "Review by Section Summary" summarizes the changes made under this final rule.

The Federal Railroad Administration (FRA) has enforcement authority for tank cars and rail transportation. FRA developed these rulemakings jointly with RSPA.

II. Docket HM–175A—Crashworthiness Protection Requirements for Tank Cars

A. Background

Based on research and on the FRA's continuing review of serious accidents, involving the transportation of hazardous materials in tank cars in the United States and Canada, RSPA issued a number of regulations to improve the survivability of tank cars in accidents.[1] In these rulemakings, RSPA required the installation of a tank-head puncture-resistance system (head protection), a coupler vertical restraint system (shelf couplers), insulation, and a thermal protection system for certain high-risk hazardous material ladings. The difference between a "thermal protection system" and "insulation" is that a "thermal protection system" protects a tank from a pool or torch-fire environment. In contrast, "insulation" protects the lading inside the tank from ambient, temperature differentials, much like home insulation. The record shows that these systems, working in combination, have greatly reduced the potential harm to human health and the environment when tank cars are involved in accidents.

On October 8, 1993, RSPA published a notice of proposed rulemaking (NPRM) under Docket HM–175A (58 FR 52574) based, in part, on recommendations issued by the National Transportation Safety Board (NTSB) and comments received in response to an advance notice of proposal rulemaking published on May 15, 1990 [55 FR 20242], and a supplemental advance notice of proposed rulemaking published on August 29, 1990 [55 FR 35327]. The NPRM solicited comments on the costs and safety benefits that would be derived should the HMR be amended in the following areas: (1) Tank-head protection; (2) thermal protection; (3) self-energized manways below the tank liquid level; (4) non-pressure tank cars for PIH materials; (5) grandfather provisions allowing use of certain tank cars conforming to former standards; (6) bottom discontinuity protection on tank cars; (7) protective coatings on insulated tanks; and (8) tank cars of limited and designated specifications, with greater protection in accidents for transporting materials determined by EPA to pose health and environmental risks.

On January 6, 1994, FRA and RSPA held a public hearing to solicit information to assist in deciding what actions, if any, should be taken to improve the survivability of tank cars involved in hazardous materials accidents. Twelve persons made presentations at the public hearing. In addition, RSPA received 37 written comments in response to the NPRM from representatives of trade associations and the various industries that own, lease, transport, or use tank cars. All written and oral comments were given full consideration.

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[1] The discussions in the following rulemakings provide greater detail about each of these safety system requirements: *Interlocking Couplers and Restrictions of Capacity of Tank Cars,* Docket HM–38, 35 FR 14215 (September 9, 1970); *Tank Car Tank Head Protection,* Docket HM–109, 41 FR 21475 (May 26, 1976); *Shippers; Specifications for Pressure Tank Cars,* Docket HM–144, 42 FR 46306 (September 15, 1977); *Shippers, Specifications for Tank Cars,* Docket HM–174, 49 FR 3473, (January 27, 1984); *Specifications for Railroad Tank Cars Used to Transport Hazardous Materials,* Docket HM–175, 49 FR 3468 (January 27, 1984); *Transportation of Hazardous Materials, Miscellaneous Amendments,* Docket HM–166W, 54 FR 38790 (September 20, 1989); and *Performance-Oriented Packaging; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative,* Docket HM–181, 55 FR 52402 (December 21, 1990).

B. Tank Cars Transporting "Thermally Reactive Materials" (Materials That May Violently Decompose or Polymerize When Exposed to Fire)

In the NPRM, RSPA proposed to require the use of full-head protection and thermal protection on tank cars used for certain materials termed, "thermally reactive." These materials, listed by name, are thought by many to be capable of a violent decomposition or polymerization reaction when exposed to fire. For these materials, the critical temperature for the tank car, and its thermally reactive lading, may be the heat at which the material undergoes decomposition or polymerization—as opposed to the temperature at which the steel of the tank becomes so plastic, it begins to lose tensile strength.

The proposal was based on several accidents involving thermally reactive materials. For example, on August 2, 1988, at 9:00 p.m., in Brazoria, Texas, 13 cars of a Union Pacific freight train derailed.[2] Seven of the derailed tank cars contained acetaldehyde, and none of these tank cars had a thermal protection system, which was not required. Two acetaldehyde tank cars sustained coupler punctures and released their contents, which ignited. The resulting fire engulfed four other acetaldehyde tank cars, and each of them had a total failure or rupture of the tank shell within 5 to 10 minutes after the derailment. Witnesses reported 3–4 explosions between 9:05 p.m. and 9:10 p.m.

In another accident, NTSB found that the puncture of a tank car containing hydrogen peroxide resulted in a release of lading and, when the hydrogen peroxide combined with contaminants on the ground, a chemical reaction occurred causing a fire.[3] The fire heated and ignited nearby polyethylene pellets, causing an explosion of the hydrogen peroxide tank car and releasing a force equivalent to an explosion of 10 tons of TNT (trinitrotoluene).

Most commenters opposed the requirement for full-head protection or thermal protection on tank cars used for thermally reactive materials. In clarifying its comments on the NPRM, the Association of American Railroads (AAR) stated that full-head protection is not necessary for tank cars used for these materials, unless the materials pose another hazard that warrants such protection. Other commenters, such as American Petroleum Institute (API), Chemical Manufacturers Association (CMA), and the Compressed Gas Association, Inc. (CGA), suggested that RSPA open a new ANPRM to address these materials. A commenter stated—

> the creation of this category has ramifications that reach far beyond this particular rulemaking, which deals with one mode of transportation (rail) and one type of packaging (tank cars). We are concerned with the likelihood that, in the future, the Department will expand the regulation of TRMs to affect other modes of transportation and types of packaging.

Other commenters objected to the proposal to identify by list, rather than by definition, certain existing hazardous materials that would be designated "thermally reactive." CMA challenged the placement of several chemicals on the list, such as "styrene, monomer inhibited," "vinyl toluene," "vinylidene chloride," "sulfur trioxide," and "hydrogen peroxide." CMA further stated that—

> [s]tyrene, for example, is flammable and can polymerize in an accident but solidifies causing little or no harm to the environment. For hydrogen peroxide tank cars, the proposed rule would create a safety hazard by requiring thermal protection.

Another commenter stated that "[s]ome of the materials on the list react violently when exposed to heat differentials and may decompose with explosive force * * * Other materials, however, decompose through polymerization into substances of relatively little hazard." The commenter further explained that the key to the polymerization of styrene is the absence of the inhibitor. Styrene is typically shipped with inhibitor concentrations great enough to cover fairly lengthy, unexpected delays in transportation. If a tank car of styrene is exposed to extreme external heat, disregarding its flammable nature, the inhibitor will dissipate rapidly as the temperature of the material rises above 125 °F., which will allow the polymerization process to begin. As a result of the polymerization, the internal heat of the product will increase, and, with increasing temperature, the process will accelerate.

Several commenters opposed the requirement for a thermal protection system on tank cars used to transport "hydrogen peroxide." One of the commenters stated that hydrogen peroxide does not polymerize or burn, and the products of decomposition—water and oxygen—are not toxic.

Two commenters, Eka Nobel and FMC Corporation (FMC), furnished independent analyses of the fire effects on tank cars containing "hydrogen peroxide." Eka Nobel contracted with the IIT Research Institute (IITRI), which used FRA's computer model to analyze the fire effects on a tank car containing hydrogen peroxide.[4] The results of IITRI's analysis indicate that a tank car constructed from stainless steel will meet the thermal protection criterion for withstanding the effects of a pool fire.

FMC furnished a detailed, mathematical heat transfer model using a correlation contained in a National Fire Protection Association (NFPA) publication, "NFPA Pamphlet No. 30." FMC stated that for materials that decompose exothermically, such as hydrogen peroxide, thermal stability requires that the heat losses to the surroundings balance the heat generated by the decomposition. Failure to remove the heat of reaction could lead to runaway decomposition, and if the increased pressure exceeds the burst pressure of the tank, the tank will fail. Furthermore, heat input causes oxygen generation from thermal decomposition of peroxide and vapor generation, by boiling off the water-peroxide mixture. FMC further stated that because water is more volatile than peroxide, the hydrogen peroxide concentration in the tank will increase (although this may be compensated by water formation and peroxide loss from thermal decomposition). If the peroxide concentration reaches 74 percent by weight, the vapors in equilibrium with the liquid (40 percent by weight of peroxide) can detonate, if ignited, causing the tank car to fail.

The results of FMC's mathematical heat transfer model show that tank cars containing hydrogen peroxide (having no less than a 7-percent outage) will not fail and such tank cars will meet the thermal protection criterion in § 179.18 of this final rule for withstanding the effects of a pool-fire. Readers who are interested in a detailed discussion of Eka Nobel or FMC's fire studies on tank cars containing hydrogen peroxide, should refer to the comments filed in the RSPA Dockets Unit.

Many commenters suggested a performance-based definition as a means to ensure the proper identification and packaging of thermally reactive materials, because, with increasing temperature, all materials will reach a stability limit.

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[2] *Union Pacific Derailment at Brazoria, Texas,* FRA Accident Investigation No. 137–88, Railroad Report No. 0888H0200, August 2, 1988.

[3] *Collision and Derailment of Montana Rail Link Freight Train with Locomotive Units and Hazardous Materials Release, Helena, Montana, February 2, 1989,* National Transportation Safety Board Report NTSB/RAR–89/05, National Transportation Safety Board, Washington, D.C.

[4] *"Temperatures, Pressures and Liquid Levels of Tank Cars Engulfed in Fires,"* NTIS DOT/FRA/OR&D–84/08.11, (1984), Federal Railroad Administration, Washington, DC.

These commenters suggested a performance-based definition that would include the polymerization potential; the rate of the chemical reaction (reaction kinetics); any highly exothermic reaction; the formation of gases, vapors, or fumes in a quantity sufficient to present a danger to human health and the environment; and any reactive by-products that could lead to over-pressurization of the tank. Commenters stated that a performance-based definition was the best way to ensure that the proper packaging requirements are attached to the appropriate hazardous materials.

As evidenced from the comments, there is no single agreement on the best approach to identify these materials, nor to ensure the proper packaging requirements are assigned to these materials. Because of the multiplicity of these yet unresolved issues, the packaging requirements proposed in the NPRM for thermally reactive materials have not been adopted in this final rule.

C. Tank-Head Protection

In the NPRM, RSPA proposed several changes relating to tank-head protection. The proposal would require tank-head protection on tank cars, used for all Class 2 materials and for tank cars constructed from aluminum or nickel plate, when used to transport a hazardous material. RSPA included Division 2.2 in its proposal to reduce the violent rupture hazard and the asphyxiation potential to railroad workers or bystanders exposed to the product if these tank cars are punctured. The proposal to require full-head protection for tank cars constructed from aluminum or nickel plate is based on the vulnerability of the tank head to a puncture. The top-half of the tank head is vulnerable to puncture in a derailment. Existing tank cars with half-head protection were excluded, based on RSPA and FRA's regulatory analysis discussed later in this preamble. Consistent with these proposed changes, RSPA also proposed to eliminate a grandfather provision, in place since 1984, following publication of a final rule under Docket HM–175, that permits certain tank cars, with a capacity of less than 70 kiloliters (kl; 18,500 gallons), to continue in service without head protection.

RSPA first introduced tank-head protection requirements after a series of railroad accidents in the late 1960s and early 1970s involving head punctures of tank cars (39 FR 27572 and 41 FR 21475). The requirements of, and criteria for, head protection were based on tests performed by FRA, the AAR, and the Railway Progress Institute (RPI) Tank Car Safety Research and Test Project in the early 1970s. In summary, these tests showed that head punctures, caused by over-speed impacts in railroad classification yards, generally occurred at speeds above 12 mph and often happened when a loaded tank car struck a standing empty tank car, causing the empty car to "jump" and ram its coupler into the head of the oncoming tank. A recent informal staff analysis of data on main-line accidents showed that objects, such as broken rails and couplers, may penetrate the top half of the tank head, indicating that head protection is essential, even though not 100 percent effective, in a train derailment.

The NPRM referenced the recent FRA research on puncture resistance, which shows that puncture resistance is strongly influenced by impact location, head and jacket thickness, and insulation thickness.[5] Stated differently, research demonstrates that puncture resistance is an inter-related function of head thickness, insulation thickness, and jacket thickness, and that the concept of "head protection" must include more than just traditional "head shields." Based on the results of this research, FRA expects that certain tank cars may meet the 29 kilometers per hour (18-mph) threshold for puncture-resistance, prescribed in § 179.16 of this final rule, without further modification.

Tank cars currently equipped with half-head protection. Most commenters agreed that there is no need to require full-head protection on existing tank cars having only half-head protection.

In comments filed in this docket, NTSB stated that the NPRM addressed many of their concerns, but noted the proposal failed to require existing tank cars used to transport Division 2.1 (flammable gas) materials, or other materials with extreme hazards, to be modified with full-head protection. Thus, these materials could be transported indefinitely in tank cars without full-head protection modifications.

While we appreciate the concerns of NTSB, we are not able to establish a positive benefit/cost ratio by requiring modification of the existing tank car fleet, primarily because the half-head protection on existing cars is already about 95-percent effective. It is not credible to argue that greater safety gains are realized by mandating safety improvements on tank cars that currently have a 95-percent effective protection system, than by requiring improvements on tank cars without a head-protection system. The regulatory evaluation considered both approaches, with emphasis being placed on choosing the alternative offering maximum potential benefit to society, while imposing the least net cost. Based on the regulatory evaluation, this final rule does not require that existing half-head protection be removed and replaced with full-head protection.

Head protection systems for existing tank cars with capacities less than 70 kl (18,500 gallons). RSPA received diverse comments in response to this proposal in the NPRM. One commenter agreed that class DOT 105 tank cars having capacities less than 70 kl (18,500 gallons) and transporting Division 2.1, 2.2, and 2.3 materials, should have full-head protection, unless already equipped with half-head protection.

CMA supported the proposal to require full-head protection on newly built class DOT 105A tank cars, regardless of tank capacity, when used to transport a Division 2.1 or 2.3 material. The Reebie Associates report, submitted as part of CMA's comments, assumed that all tank cars would require head protection, except those that have a tank test pressure of 41.4 Bar (600 pounds per square inch [psi]).

The Chlorine Institute agreed that head protection systems are now warranted for the transportation of chlorine, but recognized, based on FRA research and the accident history, that many tank cars currently used to transport chlorine meet the performance standard by virtue of a thick tank-head and a tank jacket.

NTSB commented that RSPA should require tank-head protection, within 5 years, for all class 105 tank cars having capacities of less than 70 kl (18,500 gallons) when used to transport a Division 2.1 (flammable gas) material as proposed in Option B of the NPRM.

RPI commented that, except for the nominal 41 kl (11,000-gallon) capacity tank cars, existing tank cars of less than 70 kl (18,500-gallon) capacity, transporting Division 2.1 materials or anhydrous ammonia, should have head-protection, but only half-head protection. RPI further commented that RSPA should exclude tank cars having a nominal capacity of 41 kl (11,000 gallons) from any head protection modification program, because most tank cars in this category are near or exceed 30 years of age; consequently, the economic life of the tank is nearing an end.

RSPA and FRA believe that there is no longer a justification for excluding tank cars having a capacity less than 70 kl (18,500 gallons) from the modification requirements. While CMA's report is not so optimistic on the use of DOT 105A500W specification tank cars, RSPA and FRA believe that most of these tank cars will meet the performance standard by virtue of their increased head thickness, insulation, and metal jacket. Because of the small number of tank cars in this category, and the small incremental cost to make such head protection modifications for those tank cars that do not otherwise meet the performance standard mandated by this rule, in this final rule RSPA is removing the 70 kl (18,500-gallon) exception for existing tank cars in current §§ 173.314(c) and 173.323(c)(1).

Further, while most commenters supported the 10-year modification program for existing tank cars, we agree with NTSB, that when these tank cars are used to transport Division 2.1 materials, a 5-year modification program (as proposed in Option B of the NPRM) will ensure that those cars presenting the greatest risk are modified first.

Tank cars transporting materials in Division 2.2. A commenter stated that the proposal to require full-head protection for Division 2.2 gases is sound and should be finalized. Several other commenters disagreed with the proposal to require full-head protection for Division 2.2 materials. The Reebie Associates report, submitted by CMA, identified 467 Class 2 materials affected by the proposed rule, 11 of which are Division 2.2 materials. The report shows that shippers used 1,448 tank cars in 1992 to transport these Division 2.2 materials, as follows:

Commodity	Population
Argon, refrigerated liquid	2
Ammonia solutions	28
Bromotrifluoromethane	1
Carbon dioxide, refrigerated liquid	1,016
Chlorodifluoromethane	145
Chlorotetrafluoroethane	26
Chloropentafluoroethane	37
Dichlorotetrafluoroethane	164
Fertilizer, ammoniating solutions	4
Trifluoromethane	1
Xenon, refrigerated liquid	24
Total	1,448

CGA opposed the full-head protection requirement for tank cars transporting carbon dioxide. CGA referenced the testimony presented by RPI at the January 6, 1994 public hearing concerning recent head impact tests that verified the adequacy of the current head protection system on DOT 105A500W specification tank cars.

With regard to CMA's and CGA's comments, RSPA and FRA believe that most tank cars used for "carbon dioxide, refrigerated liquid," meet the performance standard for head protection by virtue of their tank head thickness and metal jacket. Tank cars used for "argon, refrigerated liquid," and "xenon, refrigerated liquid," also meet the head performance standard by virtue of the authorized class DOT 113 tank car specification. These tank cars must have a minimum outer jacket tank head of not less than ½-inch thick steel. See § 179.400–8(d). A total of 1,042 tank cars, or 72 percent of the total Division 2.2 tank car population, are used to transport these three commodities.

A commenter opposed tank-head protection for Division 2.2 materials stating, "heavy walled tank and protective housing for the fittings is adequate for the transportation environment." The commenter also provided an in-house report using a computer model that claims the asphyxiation potential from a punctured Division 2.2 refrigerant gas tank car to be very low." Another commenter opposed applying head protection to tank cars transporting Division 2.2 refrigerant gases. This commenter stated that, in the past, DOT had judged a material based on its hazards under normal conditions of transport, and that in this rulemaking, DOT was over-assessing the potential for harm in a low-probability event. RPI supported full-head protection on new, insulated tank cars transporting Class 2 materials, but it opposed full-head protection for new non-insulated tank cars or for existing tank cars transporting these materials.

We believe that even though the probability of an event occurring with these materials is low, safety concerns still need to be addressed, because the event may lead to high consequences, such as a large scale evacuation or an oxygen deficient atmosphere in a concentrated populated area. Taking the safety steps adopted in this final rule will mitigate these hazards.

We also believe that the transportation risks associated with Division 2.2 gases are sufficient to require full-head protection for new tank cars, and for existing tank cars without head protection, when used to transport Division 2.2 materials. As noted above, this rule does not require existing tank cars equipped with half-head protection to be modified with full-head protection. RSPA and FRA are aware of industry concerns that the attachment of full-head protection to non-jacketed cars is a feature not yet proven by long service. Similar arguments were raised when head protection was first required almost two decades ago [HM–144; 42 FR 46306, September 15, 1977]. FRA is aware of companies with plans to attach full-head protection to their non-jacketed tank cars. As discussed later in this preamble, a phased-in 10-year modification program is provided for existing tank cars.

Existing tank cars without head protection. Most commenters to the NPRM supported the need to modify existing tank cars to meet the current safety requirements. One commenter supported the need to modify existing tank cars constructed from aluminum plate with half-head protection, but believed full-head protection should be required when a proven full-head shield design is available. Another commenter suggested that DOT should specifically recognize that tank cars used in "chlorine" service meet the performance requirements for head protection and that DOT should not require any additional head protection for these tank cars.

As stated in the NPRM, the benefits of head protection are real, predictable, and quantifiable. RSPA disagrees with commenters who state that full-head protection is not warranted. Where earlier rules required head protection on tank cars, it was a matter of recognizing the highest priority needs first. The question is not one of demanding low-priority, safety benefits, but the need to expand the safety base of hazardous materials transportation in tank cars. Further, the small additional cost of installing full-head protection on cars that now have no head protection system, as compared with adding only half-head protection, is justified on the basis of increased safety (see Chapter V of the Economic Impact Assessment and Regulatory Flexibility Analysis). In this final rule, RSPA requires existing tank cars that currently have no head protection, to have full-head protection installed when used to transport a Class 2 material. As explained below, RSPA is also requiring full-head protection for tank cars constructed from aluminum or nickel plate when used to transport hazardous material.

Tank cars constructed from aluminum and from nickel plate. Commenters supported the need for head protection on tank cars constructed from aluminum or nickel plate, but not the full-head protection requirement proposed in the NPRM. Most commenters stated that there is no design available for the securement of full-head protection on tank cars without metal jackets.

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[5] Coltman, M., & Hazel, M., Jr., *Chlorine Tank Car Puncture Resistance Evaluation* (1992), Federal Railroad Administration, Washington, DC (NTIS DOT/FRA/ORD–92/11).

One commenter stated that his company's new aluminum tank cars, constructed with greater tank shell and head dimensions than standard tank cars, offer greater protection without head protection. The commenter stated that further testing should be done and suggested that RSPA and FRA submit more evidence to support the need for this requirement.

CMA supported requiring half-head protection for new tank cars constructed from aluminum or nickel plate, and requiring half-head protection for existing tank cars for certain hazardous materials. Several commenters requested that RSPA consider the characteristics of an individual Division 2.2 material, and that materials not subject to the HMR, and low hazard materials should be excluded.

We realize that the use of good engineering practice and design specifications are needed to secure full-head protection to tank cars without metal jackets. Although there is no service experience for a full-head protection design on non-insulated tank cars, such designs are certainly not unreachable within the years ahead. In rulemaking proceedings under another docket [HM–144; 42 FR 46306, September 15, 1977] introducing half-head protection, commenters offered similar arguments regarding head protection, for which solutions were later found as a result of technological innovation. Currently, FRA is aware of several companies that are nearing completion on their full-head protection designs for aluminum and nickel tank cars. We, therefore, believe that the introduction of this requirement will not adversely affect industry. In this final rule, the use of full-head protection for all tank cars constructed from aluminum or nickel plate is required when used to transport a hazardous material. As discussed later in this preamble, RSPA has provided for a phased-in 10-year modification program.

D. Thermal Protection Systems

In the NPRM, RSPA proposed to require a thermal protection system for a Class 2 material when a thermal analysis of the tank car and lading shows that a release will occur other than through the safety relief valve when the tank car is subjected to either a 100-minute pool fire or a 30-minute torch fire. The current HMR require thermal protection for Division 2.1 (flammable gas) materials (with limited car capacity restrictions) and certain Division 2.3 (poison gas) materials. RSPA proposed to expand the thermal protection requirements to include Division 2.2 materials because, as stated by AAR, "[a]t a chemical accident, there are generally two reasons for an evacuation, one is to protect the public from any toxic, poisonous, or noxious vapors or fumes generated by the product itself . . ., the second is to protect the public from thermal ruptures and the container debris that may be hurled from an incident site" [*Emergency Action Guides*, p. VII]. RSPA also proposed to expand the thermal protection requirement to include all Division 2.3 materials.

RSPA began to require the application of a thermal protection system on tank cars transporting Division 2.1 materials (flammable gases) or "ethylene oxide" (Division 2.3) after a series of major railroad accidents involving fires and ruptures of non-insulated pressure tank cars. The design of and criteria for thermal protection systems were based on tests performed by FRA at the U.S. Army Ballistics Research Laboratory in White Sands, New Mexico, and at the Transportation Test Center in Pueblo, Colorado. These tests revealed that a 127.2 kl (33,600 gallon) non-protected tank car filled with propane (Division 2.1) will rupture, with 40 percent of the lading remaining in the tank car, within 24 minutes after exposure to a pool-fire. Rupture occurs when the residual strength of the tank shell falls below the force generated by the vapor pressure of the lading exerted on the inside surface of the tank shell. Further testing by FRA demonstrated that a tank car filled with propane and equipped with a thermal protection system delayed the thermal rupture of the tank car for 94.5 minutes, by maintaining the shell temperature low enough to vent 98 percent of the lading through the safety relief valve. The current performance standard, requiring exposure to a 100-minute pool fire and a 30-minute torch fire, was chosen because it provides emergency response personnel time to assess the accident and to initiate remedial actions, such as evacuating an area.

Division 2.1 (flammable gas) and 2.3 (poisonous gas) materials: Several commenters supported the need for a thermal protection system on tank cars transporting Division 2.1 or 2.3 materials, regardless of tank car capacity. The AAR and another commenter supported a thermal protection system for all Class 2 materials, unless a shipper could show that a release will not occur, other than through the safety relief valve, when the tank and lading are subject to a fire. RPI also concurred on the need for thermal protection for all Class 2 materials, but, except for Division 2.1, but did not support the high-temperature performance standard proposed in § 179.18. RPI stated that most insulation materials (e.g., 4 inches of glass-fiber insulation) are adequate.

In this regard, RSPA stated in the NPRM that many insulation materials also provide good thermal protection. These insulation materials, when analyzed with the tank and the lading, may show that nothing further needs to be installed on the tank car to achieve passage of the pool- and torch-fire performance tests. Research sponsored by FRA on urethane-foam and glass-fiber insulation systems show that urethane-foam insulation will pass the pool- and torch-fire requirements and that glass-fiber insulation will also pass both tests, provided the insulation is held in place with a plastic or wire scrim. Owners of tank cars with either of these systems, or another comparable system, may find that their thermal analysis of the tank car shows the presence of sufficient thermal protection to meet the performance standard. In this case, the tank car owner would have to verify only that the insulation material installed on the tank car is capable of passing the pool- and torch-fire verification or "proof" tests in Appendix B to Part 179 of this final rule. Owners may find that a tank car will pass the performance standard with only minor modifications, such as applying a thermal protection system to the manway nozzle.

Also in the NPRM, RSPA stated that, in 1981, a joint effort between the Chlorine Institute and RPI-AAR Tank Car Safety Research and Test Project resulted in the development of an insulation system to protect a chlorine tank car involved in a fire. The insulation system developed maintains back plate (inside surface of the tank car shell) temperatures below 250.56 °C (483 °F). After reviewing the thermal resistance capabilities of the insulation system used on chlorine tank cars, RSPA incorporated it into the HMR in 1987. Readers should refer for more information to Docket HM–166U, entitled "*Transportation of Hazardous Materials; Miscellaneous Amendments*", 52 FR 13034, (April 20, 1987).

Division 2.2 (nonflammable gas) materials. As noted earlier in the preamble discussion on tank-head protection for Division 2.2 materials, CMA commented that there were 1,448 tank cars allocated to Division 2.2 materials that had not already been captured in another service, such as PIH. Of those, "argon, refrigerated liquid," "carbon dioxide, refrigerated liquid," and "xenon, refrigerated liquid," represent 1,042 tank cars, or 72 percent. CMA further commented that almost 100 percent of the total would need retrofitting and that the overall economic impact of the new regulations on this group of tank cars amounts to $26.0 million for retrofitting and $2.59 million for higher lease rates and additional cars in the tenth year of the implementation period.

With regard to the issues raised by CMA, this final rule does not contain any new thermal protection requirements for "argon, refrigerated liquid," "carbon dioxide, refrigerated liquid," or "xenon, refrigerated liquid." Carbon dioxide is transported in DOT 105A500W tank cars equipped with two regulator valves, a reclosing pressure-relief device, a frangible disc, and an insulation system with good thermal performance (a thermal conductance of 0.03 British Thermal Units [B.t.u.] per square foot per degree Fahrenheit differential). Consequently, existing and new tank cars in carbon dioxide service have sufficient thermal resistance when exposed to fire. Likewise, because with argon and xenon, refrigerated liquids are packaged under the exceptions for atmospheric gases in § 173.320, this final rule does not impose any new thermal protection requirements. This section exempts cryogenic atmospheric gases from the packaging requirements when the packagings are designed to maintain pressures below 1.74 Bar (25.3 psi) under ambient temperature conditions.

Another commenter opposed the use of thermal protection for Division 2.2 materials on the basis that the hazards they pose do not equate to those of Division 2.1 and 2.3 materials. The commenter further stated that the thermal protection requirements proposed for Division 2.2 materials do not appear to be justified by the hazards posed, because, in many cases, these materials dissipate naturally with little risk to the surroundings.

A commenter, primarily addressing refrigerant gases, noted that an analysis of each Division 2.2 material, to predict the behavior of a tank car in a 100-minute pool-fire, seemed an unnecessary precaution because the calculations, required by the current regulations, for sizing safety relief valves accomplish the same purpose and meet this same standard. RSPA and FRA disagree with this commenter's position that the current regulations for sizing safety relief valves accomplish the same purpose as the proposed Division 2.2 thermal protection performance standard. The current safety relief valve-sizing requirements make several assumptions. First, the valve sizing formula assumes the exposure factor, that portion of the tank car exposed to fire (represented as $A^{0.82}$), is about one-fourth of the tank. The pool-fire computer model in this final rule assumes total engulfment. Second, the safety relief valve sizing formula assumes that flame temperatures will reach approximately 650 °C (1,200 °F.). The pool-fire standard assumes flame temperatures will reach 871 °C (1,600 °F) for a pool-fire and 1,204 °C (2,200 °F) for a torch fire at 40 miles per hour.[6] Third, the safety relief valve-sizing formula does not take into consideration either an overturned tank car venting liquid or a liquid-gas mixture (two phase flow) or the diminished burst strength of the heated tank shell in the non-wetted area, after prolonged fire exposure.

The Fertilizer Institute did not support the requirement for thermal protection on tank cars transporting "anhydrous ammonia". It stated that the likelihood of a fire-induced rupture of a tank car carrying anhydrous ammonia has significantly decreased since 1980 because of added safety devices, safer placement in trains, and improved emergency response procedures. Thus, there is little, if any, increase to public safety by imposition of the proposed thermal protection requirements on these tank cars.

While RSPA and FRA agree with The Fertilizer Institute that the safety record for tank cars transporting "anhydrous ammonia" is good, these cars have a potential for violent rupture similar to compressed gas tank cars, which received thermal protection many years ago. As The Fertilizer Institute notes, the threat of a fire-induced violent rupture of an anhydrous ammonia tank car is more than just a theoretical potential. Since 1990, according to figures from the AAR, "anhydrous ammonia" has been the sixth highest volume hazardous material transported by railroad.

AAR and two other commenters supported the need for thermal protection for Class 2 materials, including Division 2.2. One of these commenters stated: "thermal protection systems are a good, simple idea whose time has come. The purpose of the system is to prevent rupture of the tank car in a fire with the release of its hazardous materials contents to the environment. Uncontrolled release of almost any hazardous material to the environment is objectionable whether due to toxicity, flammability, or simply clean-up costs." This commenter further stated that there can be little basis for exempting anhydrous ammonia from the thermal protection requirements simply because it is not likely to catch fire once released. Its PIH characteristic remains, and the potential for rupturing in a non-insulated tank car is high.

Although not all commenters agree on the need for thermal protection for Division 2.2 materials, in this final rule RSPA requires such a system if, after an analysis of the effects of a 100-minute pool fire and a 30-minute torch fire, there will be a release of the tank car lading other than through the safety relief valve. Because tank cars may transport different ladings, and because changing ladings may affect the whole system, owners or shippers may choose to perform a "worst case" analysis based on all the commodities the car is likely to carry.[7]

Based on these comments and FRA's research, this final rule requires the owner or the shipper of a Class 2 material, with the exception of "carbon dioxide, refrigerated liquid," "chlorine," and "nitrous oxide, refrigerated liquid" as explained above, to perform an analysis of the characteristics of the material and of the thermal resistance capabilities of the tank car, taking into consideration the safety relief valve start-to-discharge pressure setting and relief capacity and all areas of the tank car that are not afforded protection from fire (such as stub sills, bolsters, and protective housings).

Tank cars constructed from aluminum and nickel plate. Most commenters said that the lading within a tank car constructed from aluminum or nickel plate should determine the need for a thermal protection system.

We agree. The NPRM proposed to require a thermal protection analysis for aluminum and nickel plate cars carrying Class 2 materials. Based on the comments received, we believe that all such tank cars will need protection and that such protection is essential.

This final rule requires the owner of an aluminum or nickel plate tank car used to transport a Class 2 material to perform an analysis of the tank car in a 100-minute pool fire and in a 30-minute torch fire using FRA's Tank Car Fire model. If the analysis shows that a release of the lading from the tank car, will occur, other than through the safety relief valve, a thermal protection system will be required. This final rule adopts a 10-year phase-in period for those existing tank cars required to have thermal protection.

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[6] The pool-fire computer model assumes an average heat flux over the entire tank surface, equivalent to complete engulfment in a fire, where the flame temperature is 815.5 °C (1,500 °F). If a higher or lower flame temperature were assumed, the parametric analyses in the computer model would not match the actual field test data.

[7] Owners are reminded that 49 CFR 173.31(a)(4) limits the use of tank cars to those commodities for which they are authorized. Authorized (or approved) commodities are those listed on the certificate of construction or an AAR R–1 form. (*See* the AAR Specifications for Tank Cars Section 1.4.3.1 and Appendix R, Section R4.04.)

E. Shell Protection

For tank cars transporting of a material poisonous by inhalation (PIH), RSPA proposed that they have "shell protection conforming to § 179.100–4." That is, the optional use of an insulated DOT 105S tank car or a non-insulated, but thermally protected, DOT 112J or 114J tank car having a metal jacket. Although RSPA used the term "shell protection" to identify these systems, the intent of the NPRM was to require tank cars transporting a PIH *gas* (Division 2.3) to conform to the same requirements as tank cars transporting a PIH *liquid*. For a complete discussion, see *Performance-Oriented Packaging Standards; Miscellaneous Amendments*, Docket HM–181F, 58 FR 50224 (September 24, 1993). In the final rule issued under that docket, RSPA authorized the optional use of an insulated DOT 105S tank car or a non-insulated, but thermally protected, DOT 112J or 114J tank car for poisonous liquids having a PIH hazard.

In its comments to the NPRM, one commenter supported the need for shell protection for PIH materials. Another commenter suggested that, in lieu of a metal jacket, RSPA should establish a performance standard, as with thermal and head protection. Until a performance standard is established, shell-protection resistance should be equivalent to a tank car having a tank test pressure of 20.7 Bar (300 psi) constructed from carbon steel and with a 1/8-inch carbon steel jacket. The commenter stated that the shell-puncture resistance should be based on either a total metal thickness, or an approved calculation. We agree with this commenter that a performance-based standard for shell-puncture resistance may have merit over specification-based standard adopted in this final rule. However, such performance based standards have not been proposed.

Another commenter opposed the use of a metal jacket on pressure tank cars transporting a PIH material on the basis that the FRA's proposal did not support the conclusion that jacketing improves puncture resistance. The commenter further questioned the use of a tank jacket over thicker tank shells, since "jackets provide thermal not puncture protection."

In response to similar remarks, RSPA discussed in the NPRM a 1987 RPI report on the vulnerability of pressure tank car shells to puncture.[8] RPI found that shelf couplers, hardboard insulation (cork), increased shell thickness, thermal protection, small tank car size and increased jacket thickness proved effective towards reducing the frequency of shell punctures. The RPI report summarizes a 20½-year history of accident data on shell punctures of pressure tank cars and concludes that the 11-gauge steel jacket provides a measure of shell protection. In addition to RPI's report, FRA also found, in a research contract awarded to the AAR, that puncture resistance is strongly influenced by impact location, by head and jacket thickness and by insulation thickness.[9]

RSPA explained earlier, in Docket HM–181, that the purpose of a metal jacket is to provide "both accident damage and fire protection" for certain [liquid] PIH materials.[10] This final rule expands that philosophy to all PIH materials [including compressed gases] and authorizes the use of an insulated class DOT 105S tank car or a non-insulated, but thermally protected, class DOT 112J or 114J tank car.

F. Self-Energized Manways Located Below the Liquid Level of the Lading

RSPA proposed in the NPRM to prohibit the use on tank cars of a self-energized manway located below the liquid level of the lading. The proposal was based on a September 8, 1987 railroad yard incident in New Orleans, Louisiana.[11] In this incident, a tank car equipped with a self-energized bottom manway and loaded with butadiene developed a leak and caught fire. At one point during the incident, the flames were large enough that both spans of a bridge on Interstate 10 were engulfed. After the investigation, NTSB concluded that "it is unlikely that a hazardous material leak through a bottom manway during transportation could be stopped." NTSB urged FRA to prohibit the transportation of tank cars that have a manway opening located below the liquid level of the lading in hazardous materials service. Because the design of bottom manways depends in part on the weight of the product and the pressure in the tank to make the seal fully effective, this type of closure system becomes vulnerable to releasing product when the lading is displaced within the tank. Therefore, we agree with NTSB's conclusion.

In its comments to the NPRM, the AAR, RPI, and several other commenters supported the proposal to remove self-energized manways located below the liquid level of the lading. A commenter stated that their design incorporates an externally elliptically shaped ring clamp which is bolted to the manway closure plate with numerous closely-spaced studs around the circumference of the ring. This commenter holds two DOT exemptions (DOT-E 5493 and DOT-E 6117) to operate tanks cars in hydrogen sulphide service with this design. RSPA and FRA believe that this design is certainly preferable to that used on the car that leaked and burned in New Orleans and is similar to a more conventional external flange, however, we believe this design still remains a potential source of leaks since it is located below the liquid level of the lading. Based on these reasons, RSPA will grant the exemption holder a reasonable amount of time to phase out the use of these tank cars.

While some commenters agreed with a 2-year phase out program of self-energized manways, NTSB stated that RSPA should immediately prohibit such manways, and the AAR suggested a one-year phase-out program.

Based on these comments, this final rule prohibits the construction of new tank cars having an internal self-energized manway located below the liquid level of the lading. This prohibition is added in § 179.103–5. Based on NTSB's comments, compliance with this provision is required beginning on the effective date of this final rule.

G. Non-Pressure Tank Cars for Materials Poisonous by Inhalation

In the NPRM, RSPA proposed to prohibit the use of non-pressure tank cars (e.g., class DOT 111A) for materials poisonous by inhalation.

In a recent research report, FRA found that, in a single-car national risk profile, the transportation of ethylene oxide in a DOT 111A100W4 tank car involves significantly greater risk than transportation of the same material in a DOT 105J500W tank car.[12] Characteristics and parameters evaluated in this assessment included the toxicity, fire hazard, and explosion hazard. In comments to the ANPRM, RPI reported that, during the time period of 1965 through 1986, class DOT 111A tank cars involved in accidents and damaged were slightly more than three times as likely to lose lading as were class DOT 105 cars in similar situations.[13]

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[8] Phillips, E.A., *Review of Pressure Car Shell Puncture Vulnerability*, RA–09–6–52, (1987), AAR-RPI Railway Tank Car Safety Research and Test Project, AAR Technical Center, Chicago, Illinois.

[9] (Coltman, M., & Hazel, M., Jr., *Chlorine Tank Car Puncture Resistance Evaluation*, (1992) Federal Railroad Administration, Washington, D.C. (NTIS DOT/FRA/ORD–92/11).

[10] *See* the final rule on *Performance-Oriented Packaging Standards; Miscellaneous Amendments*, Docket HM–181F, 58 FR 50224 (September 24, 1993), and the NPRM, 58 FR 37612 (July 12, 1993).

[11] *Butadiene Release and Fire from GATX 55996 at the CSX Terminal Junction Interchange, New Orleans, Louisiana, September 8, 1987*, National Transportation Safety Board Report NTSB/HZM–88/01, National Transportation Safety Board, Washington, D.C.

The Raj/Turner report amply demonstrates (and AAR/RPI Tank Car Safety Test and Research Project data support) that it is "improbable" to assume that any single tank car (e.g., DOT 111A or DOT 105) would be involved in an accident. However, based on FRA accident data referenced earlier regarding DOT 111A and DOT 105 tank cars, a significant number of such cars will be involved in accidents during their service life.

Several commenters supported disallowing the use of non-pressure tank cars for the transportation of PIH materials. Because of the hazards associated with PIH materials and the performance superiority of the so-called "pressure" tank cars for this service, RSPA agrees with the commenters. This final rule removes the class DOT 111A tank car as an authorized packaging for Division 2.3 materials on the effective date of this final rule.

H. Phasing Out of Various "Grandfather" Provisions

In the NPRM, RSPA proposed to remove from the HMR several grandfather provisions that affect tank cars. The grandfather provisions allow tank cars built before a certain date to remain in service without modification. As an example, in § 173.314(c), Notes 23 and 24 allow the continued use of class DOT 105A tank cars for certain compressed and flammable gases if they were built before September 1, 1981, while tank cars built after that date must meet a more stringent class DOT 105S or 105J standard.

NTSB stated, in a March 1, 1988 letter to RSPA, that tank cars failing to meet current minimum safety requirements should no longer be used for transportation of hazardous material under grandfather provisions. NTSB stated that these grandfather provision could result in a reduced level of safety. The AAR also petitioned RSPA to amend § 173.314(c) Note 30 (P–1138), stating that it does not provide any assurance that tank cars with head protection will be used for PIH gas service in the foreseeable future because companies will be able to use tank cars without head protection for PIH compressed gas service for the next 30 years. Other commenters agreed that the grandfather provisions proposed for removal in the NPRM are no longer compatible with the needs of safety.

Based on these comments, RSPA is removing certain grandfather provisions. In § 171.102, special provision "B63" is removed to disallow the use of DOT 105A100W, 111A100W4, 112A200W, and 114A340W tank cars for "ethyl chloride" and "ethyl methyl ether." Prior to the issuance of Docket HM–181, these two materials were classed as flammable liquids. Because these tank cars do not have head protection or thermal protection systems, they do not provide an equivalent level of safety compared to other tank cars used for Division 2.1 materials. Also, special provision "B63" is removed from column 7 of the § 172.101 table entries for these two hazardous materials, thereby prohibiting the use of non-protected tank cars.

Other changes are made to disallow the use of class DOT 111A non-pressure tank cars for Class 2 (compressed gas) materials, such as "ammonia solutions," "ethylamine," "ethyl chloride," and "ethyl methyl ether." This final rule also removes the DOT 111A100W4 car as a packaging for "ethylene oxide" in § 173.323(c)(1).

I. Bottom-Discontinuity Protection for Bottom Outlets

In the NPRM, RSPA proposed to require bottom-discontinuity protection (e.g., for bottom outlets) on tank cars. The proposed requirements were intended to simply adopt the requirements published by the AAR. In July of 1979, the AAR required bottom-discontinuity protection for new tank car construction. Over a period of years, these requirements were extended to existing tank cars on a priority schedule determined by the nature of the commodity transported. The AAR's program for bottom-discontinuity protection consists of either a metal "skid" protecting the portion of the bottom outlet that protrudes beyond the shell or the machining of a "breakage groove" in the valve assembly.

AAR, the Chlorine Institute, CMA, and several other commenters supported the adoption of bottom-discontinuity protection for tank cars, provided such protection was consistent with the AAR requirements. API asked RSPA to clarify the requirements for bottom-discontinuity protection in this final rule. API and several other commenters stated that the proposed rule would require the modification of a number of tank cars, built before July 1, 1979, because most were modified according to Appendix Y and not paragraphs E9.00 or E10.00 of the AAR Specifications for Tank Cars. Appendix Y permits three levels of protection for allowing the types of discontinuity: bottom outlets that extend 1 inch or more; blind flanges and washouts that extend 2 and ⅝ inches or more; and sumps and internally closed washouts that extend 5 inches or more. Paragraphs E9.00 and E10.00 generally require the protection of each valve and fitting from mechanical damage by the tank, an another protective device, or the underframe.

Several other commenters stated that the proposed rule would also require the modification of all existing tank cars, including those that do not transport hazardous materials. The Sulphur Institute and another commenter opposed the need to add bottom-discontinuity protection to existing tank cars that transport sulfur, molten, claiming that such protection has little practical benefit.

In the public hearing held on January 6, 1994, in Washington, D.C., FRA stated that it was not the Department's intention to require the modification of previously modified tank cars, nor to require bottom-discontinuity protection for tank cars that transport materials not subject to the HMR.

In this final rule, RSPA requires bottom-outlet protection that conforms to paragraphs E9.00 and E10.00 of the AAR Specifications for Tank Cars, M–1002, for all new tank cars equipped with bottom unloading devices. Existing tank cars, without bottom-discontinuity protection, used for the transportation of hazardous materials must conform to the above paragraphs no later than 10 years after the effective date of this final rule. Existing tank cars that conform to the bottom-discontinuity protection requirements of Appendix Y of the AAR Specifications for Tank Cars, M–1002 may continue in use after the effective date of this final rule. This final rule does not require the modification of existing tank cars that transport materials not subject to the HMR.

J. Protective Coatings on Insulated Tank Cars

In the NPRM, RSPA proposed use of protective coatings on the exterior of a tank car and the interior of a tank car jacket to retard rust or corrosion. The proposal was in response to an AAR petition (P–1050) and FRA's findings of severe corrosion or pitting on the outer surface of the tank shell, or the inner surface of the tank jacket, of insulated tank cars. It is not known whether the corrosion stems from the physical properties of the insulation itself or whether the corrosion develops when insulation becomes impregnated or contaminated with water or a chemical from the atmosphere in which the tank car operates. Research within the industry has led to the development of protective coating materials.

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[12] Raj, P.K., and Turner, C.K., *Hazardous Materials Transportation In Tank Cars/Analysis of Risks—Part 1*, NTIS DOT/FRA/ORD–92/34, (1993), Federal Railroad Administration, Washington D.C.

[13] Phillips, E.A., *Analysis of Tank Cars Damaged in Accidents 1965 through 1986*, RA–02–6–55, (1989), AAR-RPI Railway Tank Car Safety Test and Research Project, AAR Technical Center, Chicago, Illinois.

Most commenters supported the proposal. One commenter stated that acid-resistant protective coatings should be applied. The commenter further stated that several manufacturing and repair shops are using non-acid resistant latex coatings under polyurethane-foam insulations. Another commenter suggested that the rule should be clarified to exclude tanks or jackets manufactured with self-protective materials such as stainless steel. Still another commenter asked RSPA to consider adopting a recommended practice for applying protective coatings on tank cars that is now under development by the National Association of Corrosion Engineers.

With regard to these comments, this final rule simply modifies §§ 179.100–4 and 179.200–4 by removing the exception for polyurethane-foam insulations. Each of the current sections, and the proposed rule, only require a protective coating on a carbon steel tank shell and tank jacket. Concerning the comment on acid-resistant coatings, RSPA agrees that applied coatings should prevent any corrosive attack to the tank metal. RSPA and FRA will explore, in cooperation with the AAR, CMA, and RPI, the need for and development of acid-resistant coating standards.

NTSB commented that the proposed rule does not sufficiently address the potential problem of existing tank cars. NTSB further noted that a requirement to apply a protective coating on an existing tank car, only when the jacket is removed to repair a tank, cannot ensure that corrosion problems will be detected before the tank corrodes through and releases its lading. NTSB stated that, at a minimum, tank cars currently in use without protective coatings should be inspected periodically for corrosion damage and tank cars found with corrosion damage should be required to have appropriate repairs.

We agree with NTSB, and in this final rule require, under Docket HM–201, new inspection intervals for materials that are corrosive to the tank and a thickness performance measurement to ensure that the tank shell is not corroded below the minimum shell thickness as prescribed by the AAR. RSPA and FRA believe that HM–201 is responsive to NTSB's concerns.

In this final rule, RSPA is requiring protective coatings for all new tank cars and for existing tank cars when a repair to the tank car requires the complete removal of the jacket, as suggested by commenters.

K. Halogenated Organic Compounds (HOC)

To address a 1991 NTSB safety recommendation,[14] RSPA proposed in the NPRM to require the use of a tank car with enhanced puncture resistance if the tank is used to transport one or more of the 100 HOC compounds listed in 40 CFR Part 268 Appendix III. The Appendix III list was developed by EPA pursuant to statute (42 U.S.C. 6924) in order to prohibit the land disposal of certain compounds having a carbon-halogen bond, and that have the potential to harm human health and the environment (these EPA compounds were identified as the "California List" under the statute [*See also* 40 CFR 268.32]).

Many commenters opposing regulation of the EPA compounds suggested that RSPA should continue to only regulate the compounds identified as hazardous substances in Appendix A to Part 172. Commenters further suggested that DOT should not consider the HOC concentration threshold for those compounds. Several commenters stated that the regulatory action proposed by RSPA is unnecessary, that RSPA should discontinue its efforts to regulate these EPA compounds, and that RSPA should not consider extending enhanced tank car standards to those carrying the more than 1,000 chemicals prohibited from land disposal.

API, CMA, and several other commenters suggested that the threshold quantities for the EPA compounds are too low for transportation purposes. The EPA threshold in 40 CFR 268.32 is 1,000 milligrams per liter (mg/l) for liquids and 1,000 milligrams per kilogram (mg/kg) for solids.

CMA furnished a benefit/cost analysis, prepared by Reebie Associates, that used 1992 TRAIN II data; thereby updating the previous work performed by AAR, CMA, and RPI addressed in the NPRM. The CMA report shows that a total of 3,893 tank cars transported an EPA compound. CMA's list and the number of tank cars used for such compounds follows:

Hazardous substances	CMA's 1992 population	AAR/CMA/RPI agreement (based on 1988 data)	Currently in pressure tank cars	Remaining
1,1-Dichloroethylene	1			1
1,2-Dichloroethane	236	236		
1,2-Dichloropropane	31			31
Carbon tetrachloride	312	312		
Chlordane	10			10
Chlorobenzene	105	105		
Chloroethane (ethyl chloride)	106		106	
Chloroform	227	227		
Chloropropene	7			7
CIS 1,3-dichloropropane	42			42
Dichlorodifluoromethane	224		224	
Dichlorofinroromethane	2			2
Dichlorofluoromethane	1			1
Hexachlorocyclopentadiene	8		8	
Methylene chloride	2	2		
o-Dichlorobenzene	15	15		
p-Dichlorobenzene	82	82		
Pentachlorophenol	10			10
Tetrachloroethane	13	13		
Trichlorobenzene	6			6
Trichloromonofluoromethane	4		4	
Vinyl chloride	2,449		2,449	
Totals	3,893	992	2,791	110

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[14] *Transportation of Hazardous Materials by Rail,* National Transportation Safety Board Safety Study, Report NTSB/SS–91/01, National Transportation Safety Board, Washington, D.C. (Safety Recommendations R–91–11 and R–91–12).

Commenters stated that RSPA should not include materials that are transported as a solid because, when released, the clean up of these materials is easily achieved. This statement assumes that accidents will not occur near lakes, rivers or streams, or that rainfall will not carry solid residue to such water sources. It is RSPA's and FRA's experience that these types of accidents can occur as evidenced by the metam sodium spill in the Sacramento River in California.

As discussed in the NPRM, these materials were also evaluated by the AAR in an effort to identify materials that have the potential to harm human health and the environment. The AAR analyzed the EPA compounds using a computer model based on EPA and standard chemical dispersion equations. The AAR model describes a method of evaluating the relative environmental hazard of chemicals shipped in tank cars.[15] In addition to the computer model, the AAR surveyed the railroad industry for the clean-up costs associated with a spill of an EPA compound. The AAR considered in their analysis: (1) Compounds that were permitted in non-pressure tank cars by the DOT in 1988; (2) at least one shipment of the compound reported to TRAIN II[16] in 1988; (3) the compounds with an EPA reportable quantity (RQ) of less than 1,000 pounds in 1988; (4) the compounds prohibited from land disposal by the EPA; and (5) the compounds suggested by the railroads' hazardous materials or environmental staff, or the AAR contractor on the project. The results of the 1988 survey identified 10 compounds, transported in class DOT 111A tank cars at that time, that pose a potential threat to human health and the environment. These compounds were:

Carbon tetrachloride
Chlorobenzene
Chloroform
Dichlorobenzene
Ethylene dibromide (1,2-Dibromomethane)
Ethylene dichloride (1,2-Dichloroethane)
Methyl chloroform (1,1,1-Trichloroethane)
Methylene chloride (Dichloromethane)
Perchloroethylene (Tetrachloroethene)
Trichloroethylene (Trichloroethene)

The results of AAR's analysis show that, within the last 10 years, the release of these compounds in railroad accidents has resulted in environmental clean-up costs exceeding $50 million. Even though these materials accounted for less than one percent of the total volume of hazardous materials, their releases accounted for 60 percent of all railroad environmental clean-up costs. Based on the results of the analysis, the AAR, CMA, and RPI have agreed that by January 1, 2000, these 10 compounds should be transported only in a DOT 105S200W or a DOT 112S200W tank car manufactured from AAR TC–128 normalized steel. One of the 10 compounds, "ethylene dibromide," is a compound that is poisonous by inhalation (Zone B).

As shown by CMA, 3,893 tank cars were used to transport these "EPA compounds"; of that total, "chloroethane," "dichlorodifluoromethane," "hexachlorocyclopentadiene," "trichloromonofluoromethane," and "vinyl chloride" represent 2,791 tank cars, or 72 percent of the total. Because the packaging authorizations for these compounds currently require the use of classes DOT 105J, 112J, 112T, 114J, 114T tank cars, these tank cars currently meet the proposed standard.

As noted above, AAR, CMA, and RPI agreed to use only DOT 105S200W and 112S200W (or better) tank cars: These compounds are transported in 992 dedicated tank cars. CMA identified an additional 110 tank cars that are used to transport an EPA compound, but lie outside of the industry agreement. Because these 110 additional tank cars represent a potential risk to human health and the environment, RSPA believes it is reasonable to require the same level of protection for the additional tank cars identified by CMA, based on the 1992 TRAIN II data, as those identified by the AAR, CMA, and RPI, based on the 1988 TRAIN II data. It simply cannot be argued that the shipment of an EPA compound identified after 1988 poses less risk in transportation than if the EPA compound would have been identified by the AAR, CMA, and RPI in 1988. Furthermore, because the AAR, CMA, and RPI agreement does not preclude the use of a non-protected tank car in transportation by any one member or nonmember of the agreement, such cars may still be used.

After considering each of the comments, RSPA agrees it should only regulate those EPA compounds listed in the HMR. After reviewing the 100 EPA compounds (*listed in 40 CFR 268 Appendix III*), RSPA found that all but 16 of the compounds are currently identified as a hazardous substance. The 16 compounds are:

Bis(2-chloroethoxy)ethane
Bis(2-chloroethyl)ether
Bromomethane
2-Chloro-1,3-butadiene
3-Chloropropene
1,2-Dibromomethane
Dibromomethane
Hexachlorodibenzo-p-dioxins
Hexachlorodibenzofuran
Iodomethane
Methylene chloride
Pentachlorodibenzo-p-dioxins

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[15] Löwenbach, William, A., *Consequence Models of Hazardous Materials Releases on Railroads,* Association of American Railroads (1989) Washington, D.C.

[16] The Association of American Railroads (AAR) data network, Tele-Rail Automated Information Network (TRAIN II), collects information on approximately 90 percent of the rail traffic originating and terminating in the United States. Users of the network can trace individual car movements or gather information on a particular cargo moving by rail. The AAR uses the data to develop statistical trends in both car movement and commodity flow.

Pentachlorodibenzofuran
Tetrachlorodibenzofuran
Tribromomethane
1,2,3-Trichloropropane

More than 30 of the compounds are listed by proper shipping name in the § 172.101 Table. As a group, the EPA compounds include: volatiles (35 compounds); semivolatiles (33 compounds); organochlorine pesticides (20 compounds); phenoxyacetic acid herbicides (3 compounds); PCBs (all PCBs); and dioxins and furans (7 compounds).

Based on this review, this final rule requires that, when the EPA compounds listed in the HMR are transported in large capacity tank cars, the tank cars must conform to a limited and designated specification with greater protection in accidents. Also, to ensure the proper identification and packaging of these materials, RSPA is listing (with the exception of Class 2 materials [compressed gases], PIH materials, and the 16 materials not now identified as hazardous substances) in § 173.31(f), all EPA compounds listed in 40 CFR Part 268, Appendix III. As explained elsewhere in the preamble, RSPA is no longer authorizing Class 2 materials or PIH materials in low-pressure tank cars, e.g., class DOT 111A.

Because RSPA is listing the EPA halogenated-organic compounds as hazardous substances, in this final rule, the threshold quantity is the reportable quantity of the hazardous substance. As an example, if the material in the tank car (including its mixtures and solutions) (1) is listed in Appendix A to § 172.101, (2) *is in a quantity that equals or exceeds the reportable quantity (RQ) of the material listed in Appendix A*, and (3) is listed in § 173.31(f), it must be transported in a tank car of limited and designated specification to offer greater protection in the event of an accident.

In the NPRM, RSPA proposed that any of the halogenated organic compounds identified by EPA must be transported in a tank car meeting DOT 105S200W, DOT 112S200W with an 11-gauge metal jacket, or DOT 112S340W without a metal jacket. RSPA stated that the metal jacket and head protection on these tank cars blunt the impacting forces from couplers, wheels, track, and other objects along the carrier's right-of-way. According to FRA research, this blunting effect is directly proportional to the thickness of the tank jacket or head shield and is effective in preventing tank punctures.[17] The NPRM would have allowed the use of any class DOT 105 or DOT 112 tank car regardless of its date of construction. Older tank cars would be allowed, including those constructed with an older steel specification, such as ASTM A212 Grade B. Because the older steels have less puncture resistance than the steels currently in use, the NPRM proposed the use of an external metal jacket to help blunt any impacting force, as a result of an accident, to the tank shell.

At the January 6, 1994, public hearing, a commenter asked RSPA to consider the use of a non-jacketed DOT 112S200W tank car, provided that the tank car was constructed from an AAR normalized high-strength steel specification, AAR TC–128. This steel specification has high tensile and yield strength. In addition to the higher tensile and yield strengths, commenters stated that normalization of the steel adds extra puncture resistance. A commenter further stated that a tank car constructed from the AAR's TC–128 steel specification would provide a level of puncture resistance comparable to that of tank cars proposed for use in the NPRM, and would also render a indisputable benefit/cost ratio. Upon further review, RSPA agrees that a tank car constructed from AAR TC–128, normalized, would provide a level of puncture resistance equivalent to a tank car constructed from any steel specification proposed in the NPRM. In this final rule, RSPA has provided for the use of a DOT 112S200W (non-jacketed tank car) constructed from AAR TC–128 normalized steel as an authorized packaging, as suggested by the commenter.

L. Implementation of New Requirements

In the NPRM, RSPA proposed two implementation dates. Under "Option A," most of the compliance dates were set at 10 years from the effective date of this final rule. This is a period that also coincides with the duration frequently specified in typical full-term tank car leases, whether a true lease or a financing vehicle; and with the "thorough inspection" interval for tank cars in Interchange Rule 88.B.2.[18] Under "Option B," RSPA proposed that certain tank car types and car/commodity combinations be considered for shorter retrofit periods, with 5 years given to bring existing cars into compliance. For instance, aluminum and nickel tank cars are more vulnerable to puncture, and tanks used for transporting PIH materials present special hazards.

Option A was supported by commenters. Although urging RSPA to adopt the 10-year time limit, RPI stated that, because of start-up complexities, it will not be reasonable to accomplish this on a 10-percent per year basis. Instead, RPI suggested that its members were willing to modify 50 percent of the fleet in the first 5 years and 50 percent in the second 5 years. This accomplishes the desired goal while minimizing scheduling problems and maximizing efficiency.

Option B was supported by NTSB who stated that RSPA should require tank-head protection, within 5 years, for all class DOT 105 tank cars having capacities of less than 70 kl (18,500 gallons) when used to transport a Division 2.1 material (flammable gas).

Most commenters supported the 10-year modification program for existing tank cars. RSPA believes, however, that a 5-year modification program is more appropriate for class DOT 105 tank cars that have a capacity less than 70 kl (18,500 gallons) when used to transport a Division 2.1 material. Mandating an accelerated modification program for these particular tank cars will ensure that those cars presenting the greatest risk are modified first. Therefore, this final rule requires that each tank car built on or after the effective date of this final rule conform to this final rule. For tank cars built prior to the effective date, the phase-in period is 10 years: at least 50 percent of the fleet in the first 5 years and the balance in the second 5 years. The phase-in-period for tank cars transporting a Division 2.1 material is 5 years, with at least 50 percent within 2½ years and the balance in the second 2½ years. For existing tank cars constructed with an internal self-energized manway located below the liquid level of the lading, the compliance date is the effective date of this final rule.

III. Docket HM–201—Detection and Repair of Cracks, Pits, Corrosion, Lining Flaws and Other Defects of Tank Car Tanks

A. Background

On September 16, 1993, RSPA published in the **Federal Register** a NPRM under Docket HM–201; Notice No. 93–15 [58 FR 48485]. The NPRM contained proposals to: (1) require the development and implementation of a quality assurance program (QAP) at each facility that builds, repairs, or ensures the structural integrity of tank cars; (2) require the use of non-destructive testing (NDT) techniques in lieu of the current periodic hydrostatic pressure tests for fusion welded tank cars to more adequately detect cracks in principal structure elements (PSE), the failure of which could cause catastrophic failure of the tank; (3) require thickness measurements of tank cars; (4) allow for the continued use of tank cars with limited reduced shell thicknesses; (5) increase the inspection and test intervals for tank cars; and (6) clarify the tank car pretrip inspection requirements. Readers are referred to the NPRM preamble for a complete background, including a more extensive discussion of issues and citations to research data summarized in the final rule.

RSPA received 31 comments in response to the NPRM from members of the various industries that own, lease, transport, or use tank cars. RSPA and FRA have given full consideration to all comments in the development of this final rule. Following is a summary of the written comments, a summary of the final rule, and the actions taken by RSPA and FRA in this final rule:

B. Damage-Tolerance Fatigue Evaluations

In 1992, the NTSB issued a report on the inspection and testing of tank cars. The report disclosed that many tank car defects are not routinely detected. These defects may suddenly grow to a critical size resulting in failure of the tank car. The NTSB recommended that FRA and RSPA develop requirements for the periodic inspection and tests of tank cars to help ensure the detection of cracks before the cracks propagate to a critical length. Such requirements would establish inspection and test intervals based on the defect size detectable by the inspection and test method used and on the stress level and crack propagation characteristics of the PSE based on a "damage-tolerance" approach. The Federal Aviation Administration (FAA) defines a structure as damage tolerant if the structure has been evaluated to ensure that, should serious fatigue, corrosion, or accidental damage occur within the operational life of the structure, the remaining structure can withstand reasonable loads without failure or excessive structural deformation until the damage is detected (FAA Advisory Circular AC No. 25.571–1A). Damage-tolerance assumes that flaws exist in the structure and that the design of the structure is such that these flaws will not grow to a critical size and cause catastrophic failure to the structure within a specified damage detection period. The damage detection period depends on the characteristics of each PSE, each element's susceptibility to severe corrosive environments, the inspectability of each element, the inspection method, and procedures used and maintenance practices.

In the NPRM, RSPA proposed to allow tank car owners to use an alternative inspection and test procedure or interval based on the completion of a damage-tolerance fatigue evaluation. The evaluation procedures would be reviewed by the AAR and approved by the Associate Administrator for Safety, FRA. As stated in the NPRM, FRA believes that some tank car owners may be able to reduce inspection and test costs by using damage-tolerance fatigue evaluation procedures that incorporate: (1) In-service inspection and test using techniques such as ultrasonic or acoustic emission; (2) sampling of individual designs with a 100 percent inspection and test of the design if a crack is found; (3) inspection and test intervals unique to each tank car component; and, (4) inspection and test intervals based on the degree of risk a material poses (i.e., high risk materials have shorter inspection and test intervals than those with low risks).

Most commenters stated that the damage-tolerance approach is a significant step toward advancing the detectability of defects and well suited to a tank car and its associated structure. They suggested that RSPA and FRA expand the damage-tolerance approach, for fatigue, to include other types of damage mechanisms, such as corrosion, corrosion fatigue, original fabrication defects, stress corrosion cracking, impact damage, and damage caused by an accident.

RSPA and FRA agree that the use of a damage-tolerance approach to periodic inspection and test of tank cars would substantially increase the likelihood of the detection of cracks and crack-like defects before such defects propagate to a critical size. RSPA and FRA also believe that the inspection interval for each PSE should be based on the inspection method used, the stress level in each PSE, and the crack propagation characteristics of each PSE.

The agencies realize, however, that in order to fully implement a damage-tolerance program, it will take years for each owner or manufacturer of a tank car to analyze each element on the tank car, and to support the results of such analysis with test evidence and service experience. FRA is currently working with the AAR Tank Car Committee, the RPI, tank car owners, lessors, and manufacturers to develop acceptable non-destructive testing techniques, and to develop an inspection and test program based on damage-tolerance principles. These programs include finite element analysis of the stub sill and its attachment to the tank shell to identify the PSE on the tank car that should be examined, over-the-road tests to define the typical environmental loading spectrum expected in service, and a damage-tolerance evaluation of the structure.

In this final rule, RSPA is revising the regulatory text for the damage-tolerance fatigue evaluation proposed in § 180.509(k). This revised requirement provides that an acceptable damage-tolerance and fatigue evaluation include other types of damage mechanisms and is supported by test evidence and, if available, by service experience.

C. Inspection and Test Intervals

FRA found that cracks may reach a critical size in a PSE within about 400,000 miles of railroad service [*see* "Owners of Railroad Tank Cars; Emergency Order Requiring Inspection and Repair of Stub Sill Tank Cars," (Emergency Order Number 17) 57 FR 41799, September 11, 1992]. To ensure against premature failure, common procedures for NDT allow for two opportunities to inspect an item before predicted failure. Because tank cars travel an average of about 18,000 miles per year and most cracks become critical at about 400,000 miles of railroad service, in the NPRM, RSPA proposed an inspection and test interval, based on a simplified damage-tolerance evaluation, of 10 years to allow for two opportunities to inspect an item before predicted failure.

For the sake of efficiency, and to increase safety margins for most cars, RSPA proposed to implement the 10-year inspection and test interval starting at what would otherwise be the next scheduled tank hydrostatic pressure test. For tank cars within a 20-year test cycle, RSPA proposed that the next inspection and test date be the publication date of this rule plus one half of the remaining years to what would otherwise be the next scheduled tank hydrostatic test. After that the tank would require an inspection and test on a 10-year interval.

For materials corrosive to the tank and shipped in non-lined or non-coated tank cars, RSPA proposed an inspection and test interval based on the lower of (1) the corrosion rate of the material on the tank shell or (2) the fatigue life of the tank structure as discussed above. RSPA and FRA developed a test interval to ensure that the calculated thickness of the tank at the next inspection and test will not fall below the proposed allowable minimum wall thickness. The inspection and test interval in this case is calculated by subtracting the actual thickness (measured at the time of construction or any subsequent inspection and test) from the allowable minimum thickness and then dividing that difference by the corrosion rate of the hazardous material on the tank. Consequently, as the shell thickness corrodes throughout the service-life of the tank, the tank must receive an inspection and test more frequently.

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[17] Coltman, M., & Hazel, M., Jr., *Chlorine Tank Car Puncture Resistance Evaluation*, Report DOT/FRA/ORD–92–11, Federal Railroad Administration (1992), Washington, D.C.

[18] *Field Manual of the Interchange Rules*, adopted by the Association of American Railroads, Mechanical Division, Washington, D.C., 1992. At intervals not to exceed 10 years, major components of the car must be inspected, including body bolsters and center plates, center sills, crossbearers, crossties, draft systems and components, end sills, side sills, and trucks.

Commenters supported the proposed inspection and test program for most tank cars. They suggested, however, that RSPA consider the availability of tank car facility space and the practicality of implementing the new inspection and test and quality assurance programs without immobilizing a large number of tank cars. In particular, commenters suggested that RSPA not reduce the inspection and test intervals for tank cars constructed during the 1975–1979 period that are now subject to a 20-year hydrostatic pressure test interval. As proposed, these particular tank cars become due for inspection and test during the years 1995 through 1997. A major oil company stated that these particular tank cars represent at least 20 percent of its tank car fleet.

Several commenters stated tank cars used to transport chlorine, unlike other tank cars, are currently tested every two years. As such, all 8,000 tank cars in chlorine service would have to be brought in conformance with the new inspection and test requirements within two years. One company stated that it maintains 3,000 tank cars in chlorine service and it would have to inspect 5.7 tank cars per day, which may not be feasible because companies must first determine efficient inspection techniques and provide training to inspection personnel. Commenters further argue that because tank cars that transport chlorine have an insulation system and a metal jacket, the inspectability of certain PSE on these tank cars is difficult; accordingly, RSPA should not mandate the new requirements in the short-term until the industry and the government specify the acceptable NDT techniques for inspecting tank cars that have metal jackets.

The RPI suggested that RSPA phase in the new procedures slowly by beginning with tank cars without a metal jacket and then tank cars having a metal jacket when appropriate inspection techniques are developed. Although RPI did not explain the basis for its comment, RSPA and FRA assume that the reason behind RPI's comment is the difficulty of inspecting PSE on a tank car having an insulation system covered by a metal jacket or a thermal protection system; consequently, tank car facilities will need time to develop the inspection methods and to train inspection personnel on the use of those methods. Only after identifying the appropriate inspection method and by training inspection personnel, will there be a high probability of defect detection.

Several commenters requested that RSPA not require, in proposed § 180.509(b)(3), an inspection and test [requalification] of the tank each time it is transferred into or out of a service that is corrosive to the tank, which one commenter stated could occur 4 times per month. Another commenter stated that the program is redundant with proposed § 180.509(c)(3)(ii) and, therefore, the section should be deleted. The Chemical Manufacturers Association (CMA) suggested that RSPA amend the proposal to allow for routine transfers, so long as the tank car is within the established intervals for the periodic inspection requirements. A commenter suggested that localized modifications to a tank, such as modifying nozzles or bottom outlets, should not subject the tank to a complete requalification.

Based on the comments received, RSPA is not adopting proposed paragraphs (b) (3) and (4). Paragraphs (b) (5) and (6) are renumbered accordingly.

RSPA and FRA also agree that local repairs or modifications should not subject the tank to the full inspection and test program, because the repair or modification must be done according to Appendix R of AAR's Specifications for Tank Cars. Appendix R specifies the procedures for repairs, alterations, and conversions of tank cars and the appropriate non-destructive testing method to ensure that the repairs, alterations, or conversions were performed correctly.

RSPA and FRA agree that the new inspection and test methods, combined with other FRA mandated inspection programs, may cause a tremendous backlog of tank cars awaiting inspection. Therefore, to maintain an acceptable level of safety, but also to allow for an orderly and acceptable phased-in NDT inspection and test program, RSPA will delay the compliance date of this final rule for 24 months for tank cars without metal jackets and 48 months for tank cars having a metal jacket or a thermal protection system. Before the compliance date, tank cars may be given an inspection and hydrostatic test in accordance with the current requirements or the requirements contained in this final rule. After the compliance date, each tank car must be given an inspection and test according to the requirements contained in this final rule on or before the next scheduled tank hydrostatic pressure test date.

D. High-Mileage Tank Cars

FRA realizes that some tank cars can travel in excess of 18,000 miles each year and, by doing so, the tank cars may reach 200,000 miles of railroad service before their first periodic inspection and 400,000 miles before their second.

The NTSB expressed its concerns that the proposed regulations recommend, but do not require, more frequent inspections and tests for tank cars with mileage rates that exceed the average. Further, because there is no requirement to maintain cumulative mileage on individual tank cars, the NTSB expressed concern that high-mileage tank cars would not be identified for the more frequent inspections and tests, thereby increasing the possibility of a non-detected fatigue crack propagating and causing a structural failure within the 10-year inspection and test cycle.

RSPA and FRA agree with the NTSB that high-mileage tank cars should receive an inspection and test prior to reaching 200,000 miles of railroad service. However, no requirement for the maintenance or retention of car mileage records was proposed. Because car owners keep records of car mileage, the owners can ensure that tank cars having high-mileage are inspected more frequently than the inspection and test intervals adopted in this final rule. Current § 173.24(b) provides that each package used for the shipment of hazardous materials shall be so designed, constructed, and maintained . . . so that under conditions normally incident to transportation—the effectiveness of the package will not be substantially reduced. Thus, an owner has an obligation to ensure the continuing effectiveness of a tank car. This duty is not unlike that of an owner of an automobile who replaces the tires on his or her car when worn and not based on the warranty period. FRA will, during its inspection activities, assess the need for a rulemaking (1) to require owners to retain car mileage records and (2) to inspect their tank cars before the cars accumulate more than 200,000 miles of railroad service.

E. NDT Techniques

In the NPRM, RSPA proposed to require that the bottom shell of fusion welded tank cars be inspected periodically by appropriate NDT techniques, such as optically aided visual inspections, ultrasonic, radiographic, magnetic particle, and dye penetrant testing methods, in lieu of hydrostatic pressure tests.

All commenters supported the use of NDT techniques to assess the integrity of a tank car in lieu of a hydrostatic pressure test. Several commenters stated that the use of qualification procedures will require formal NDT techniques in defined areas where no previous requirements existed and will improve the overall safety of tank cars.

Several commenters suggested that RSPA should authorize the use of acoustic emission testing to qualify tank cars for further use. One commenter stated that acoustic emission testing is widely used in the chemical process industry to assure the integrity of pressure vessels, tanks, and piping. The commenter further stated that the overall reliability of a series of local tests (ultrasonic, dye penetrant, radiography, etc.) is incorrectly compared with the reliability of a single global test (hydrostatic, acoustic emission) and that substitution of multiple local tests for a single global test may endanger, rather than enhance the safe transportation of hazardous materials.

RSPA and FRA do not agree with the commenters's conclusion about the potential danger of multiple local tests as compared with a single global test. RSPA and FRA believe that multiple local tests, focusing on known areas of tank car stress, have a safety advantage over single global tests, at least with the current state of development of acoustic emission testing in the tank car industry. The NDT methods mandated by this rule are a safety improvement. As noted immediately below, the agencies have underscored their belief in the potential benefits acoustic emission testing offers by granting an exemption that will permit its development and refinement in a railroad industry context.

Outside the scope of this rulemaking, but related to it by means of subject matter, Monsanto Chemical Company applied for a DOT exemption to use acoustic emission technology, in lieu of the current hydrostatic retest, for the tank cars it owns. The procedures developed by Monsanto to support its exemption were recently evaluated under a research contract administered by the government of Canada. (McBride, S. L., *Acoustic Emission Tank Car Test Method Review & Evaluation,* Transport Canada Report No. TP 12140E (1994) Montreal, Quebec). The results of that research show that Monsanto's acoustic emission testing procedures appear to be sound. The report suggests, however, minor refinements in the acoustic emission procedures. Taking this into account, RSPA issued Monsanto an exemption on September 9, 1994 (DOT–E 10589). The following companies were granted "party to" status on the Monsanto exemption: Union Tank Car Company, Testing Associates, and Physical Acoustics Corporation.

This final rule does not include acoustic emission testing as an authorized NDT technique. RSPA and FRA are committed, however, to explore new technologies for inspecting and testing tank cars and will continue to evaluate the possibly of authorizing the acoustic emission testing procedure in the future. In support of this commitment, FRA issued a research contract to further explore and refine the use of acoustic emission testing procedure and other NDT techniques in determining the integrity of insulation and lining covered welds of tank cars.

F. Leakage Test

In the NPRM, RSPA proposed a leakage test that would include all product piping with all valves and accessories in place and operative, except that during the test the tank car facility would remove or render inoperative any venting devices set to discharge at less than the test pressure. As proposed, the test pressure would be maintained for at least 5 minutes at a pressure of not less than 50 percent of the tank test pressure.

Most commenters opposed the proposed change to use 50 percent of the tank test pressure as the standard, because these pressures, some as high as 300 psig, would constitute an unsafe maintenance practice. RSPA proposed the leak test to ensure that when valves, fittings, and manway cover plates are replaced on a tank car after an inspection and test, that valves and fittings are securely applied and in a "leak-free" condition under normal operating pressures. This will help ensure against product leakage from a valve, fitting, or manway cover plate should the vapor pressure of the commodity rise after the shipper loads the tank car, normally on its first trip after an inspection and test at a tank car facility.

Berwind Railway Service Company suggested conducting the leak test at 30 psig for tank cars having a test pressure less than or equal to 200 psig and 50 psig for tank cars having a tank test pressure greater than 200 psig. AAR and RPI supported similar pressures. In the commenters experience, pressures of this magnitude are effective in ensuring that tank cars are released from tank car facilities in a leak free condition.

The suggested leak test pressures are similar to the leak test pressures currently used to qualify highway cargo tanks. For example, the leak test for a cargo tank may not be less than 80 percent of the tank design pressure (or its maximum allowable working pressure [MAWP]); or, the maximum normal operating pressure when the cargo tank has a MAWP equal to or greater than 6.9 Bar (100 psig); or, 4.1 Bar (60 psig) when the cargo tank is used to transport liquefied petroleum gas. After considering the comments, RSPA and FRA agree that a lower leak test pressure would provide an adequate leak test with less risk to persons performing the test. In this final rule, RSPA is requiring a leak test at 30 psig for tank cars having a test pressure less than or equal to 200 psig and a leak test at 50 psig for tank cars having a tank test pressure greater than 200 psig.

G. Bottom Shell

FRA has found that principal structural elements (PSE) located within four feet of the bottom longitudinal centerline are susceptible to fatigue cracking due to repeated loading conditions. Stress concentrations in these areas may cause the formation of small cracks that may not be detected under the current inspection and test procedures. Because some defects may lie outside the area currently defined as the bottom shell, such as those in the attachment welds of bottom discontinuities, RSPA proposed, based on FRA's findings, to revise the current definition of the bottom shell by enlarging the area from 60.96 cm (two feet) to 121.92 cm (four feet) on each side of the bottom longitudinal center line of the tank.

The Chlorine Institute, CMA, and others agreed that experience has shown that the bottom shell is prone to fatigue cracking. However, all known fatigue-related defects have originated within two feet of the bottom longitudinal centerline of the tank, which is the area most highly stressed in train operation.

RPI's comments referenced a report, "Final Phase 14 Report on the Stub Sill Buckling Study," that shows, when stub sill tank cars are subjected to static and dynamic (impact) loads, a complex biaxial stress field results in the shell area between the stub sills. The report shows that measured strains are due to a combination of axial compression and bending components and at high loads, high magnitude strains occur over certain localized areas. The results of the RPI report show that the stresses on the bottom longitudinal centerline of the tank are about 1.8 times the magnitude of the stresses occurring from two to four feet from the bottom longitudinal centerline.

RPI further stated that fatigue damage increases exponentially with the ratio of stress ranges and that crack initiation and propagation within the area of two feet from the bottom longitudinal centerline is much faster than the area two to four feet from the bottom longitudinal centerline. Based on the Phase 14 report, RPI suggests that the bottom shell definition should encompass an area that lies below the horizontal plane of two longitudinal parallel lines extending two feet on each side from the bottom longitudinal centerline, through the tank heads. K & K Consultants, Incorporated, who also commented on the Phase 14 report provided a summary of the data and explained that the principal stresses in the tank are approximately parallel to the bottom longitudinal centerline, and that the stresses tend to decrease circumferentially away from the bottom longitudinal centerline.

After consideration of the comments, RSPA and FRA agree that four feet on each side of the bottom longitudinal centerline is overly restrictive. Therefore, the current definition of bottom shell in § 171.8 is retained.

H. Structural Integrity Inspections

In the NPRM, RSPA proposed a structural integrity inspection and test on all circumferential and longitudinal welds and welded attachments on the bottom of the tank, within 121.92 cm (4 feet) on each side of the bottom tank centerline, using one or more non-destructive test methods. As explained above under the heading "bottom shell," several commenters stated that this area is more appropriately defined as within 60.96 cm (2 feet) on each side of the bottom tank centerline.

FRA has learned that some high-stressed areas lie outside of the 60.96 cm (2 feet) bottom longitudinal centerline area. Brake pipe supports, body stiffeners, tank anchors, and other attachments and structures having large welds are examples of high-stressed areas that may lie outside of this area. As a general matter, the HMR require reinforcing pads for these high-stressed areas between external brackets and tank shells if an attachment weld exceeds 6 linear inches of 0.64 cm (0.25 inch) fillet weld per bracket or bracket leg (§§ 179.100–16 and 179.200–19). In its Tank Car Manual, AAR requires the use of a reinforcing pad if a bracket or attachment welded directly to the tank could cause damage to the tank, either through fatigue, over-stressing, denting, or puncturing in the event of an accident. If a reinforcing pad is used under a bracket or attachment, AAR specifies that the pad shall not be less than 0.64 cm (0.25 inch) thick. For further information, see sections E15.01 and E15.02 of AAR Tank Car Manual.

Further, in an investigation of tank shell cracking, FRA found that local areas of the tank shell near tank discontinuities are subjected to the combination of live-load stress in addition to the residual stress induced by reinforcement pad welds, and that this combination makes the sensitivity of the welded area near the discontinuity and reinforcing pad weld susceptible to fatigue crack propagation. After performing residual stress measurements of retro-fitted tank car weldments, AAR confirmed FRA's findings that significant tensile stresses (on the order of 30,000 psi) occur in the vicinity of the fillet welds having a throat size (weld depth) greater than 0.64 cm (0.25 inch). In general, fillet welds larger than 0.635 cm (0.25 inch) are considered structural welds, and AAR requires post weld heat treatment when these welds, such as interior brackets, supports, and reinforcement bar pads, have a throat thickness exceeding 0.635 cm (0.25 inch). For further information see R17.01 of AAR Tank Car Manual.

In its comments to the NPRM, the Sulphur Institute stated that stress type defects may originate in some attachment fillet welds, such as those greater than 0.64 cm (0.25 inch) that are currently located outside of the current bottom shell definition. Examples given were body stiffener and brake pipe support fillet welds.

RPI gave similar comments by suggesting that the inspection of attachment welds on the bottom of the tank should be limited to structure welds, such as transverse fillet welds larger than 0.64 cm (0.25 inch), the terminations of longitudinal fillet welds larger than 0.64 cm (0.25 inch), and tank shell butt welds within 60.96 cm (24 inches) of the bottom longitudinal center line and between the body bolsters. When asked to clarify its comments, RPI told FRA that a 0.64 cm (0.25 inch) fillet weld refers to the leg-length (see also the definitions of "Size [fillet]" and "Full Fillet Weld" in Section W2.00 of AAR Tank Car Manual). Furthermore, RPI stated that limiting the inspection and test requirements to fillet welds greater than 0.64 cm (0.25 inch), would exclude non-structural fillet welds, such as those used to attach exterior heater coils.

RSPA and FRA agree that the stress concentration effects around structural attachments will cause the formation of fatigue cracks and, if these cracks are not detected and repaired during routine maintenance of the tank car, such cracks will grow to failure. In this final rule, RSPA requires a structural integrity inspection and test in those areas known to develop cracks. Such an inspection and test includes transverse fillet welds greater than 0.64 cm (0.25 inch) within 121.92 cm (48 inches) of the bottom longitudinal center line, the termination of longitudinal fillet welds greater than 0.64 cm (0.25 inch) within 121.92 cm (4 feet) of the bottom longitudinal center line, and all tank shell butt welds within 60.96 cm (2 feet) of the bottom longitudinal center line. By limiting the required inspection to known areas of crack initiation, RSPA and FRA can expect an increase in the probability of defect detection, as well as an improvement in the reliability of the inspection results and a reduction in inspection costs.

The Sulphur Institute commented that if the integrity of the coatings or linings applied to protect tank car tank metal remains acceptable, there should be no need to remove the coating or lining to inspect the tank for structural integrity. The purpose of the structural integrity inspection is to ensure the detection of fatigue cracks before the cracks progress to a dangerous size, thereby reducing the residual strength of the tank. In order to inspect each PSE to confirm structure integrity, tank car facilities may need to remove portions of the lining or coating. Owners may choose, however, to use a non-destructive testing method that interfaces between different materials, with effective penetration, so that there will be no need to remove the coating or lining. Such non-destructive testing methods include radiography and ultrasonics.

I. Minimum Shell Thickness

Recognizing that a tank car shell tends to decrease in thickness over time, RSPA proposed in the NPRM a definite service-life shell thickness requirement for all areas of the tank shell and heads. The proposed minimum in-service shell thickness requirement was based, in part, on an AAR–RPI report, "Allowable Thickness Reduction from Minimum Prescribed Thickness of Carbon Steel Tank Car Tanks," that discussed the investigation of shell thickness below the Part 179 construction standard in certain areas. The RPI–AAR report considered the effects of an overall or localized reduction in the tank wall thickness from a principal mode of failure—failure of a tank car due to the effects of fire, fatigue crack growth leading to fracture, and failure of the tank due to puncture of the heads. The results of the RPI–AAR report show that

the effects of a slightly reduced shell thickness on tank cars used to transport "ethylene oxide," "butadienes, inhibited," "vinyl chloride," "propane," and "propylene" will not have a significant effect on safety. The NPRM also proposed to allow localized areas of thickness reduction to have a total cumulative surface perimeter not exceeding 182.88 cm (72 inches), consistent with the current provisions in § 173.31(a)(11)(iv).

In its comments to the NPRM, RPI suggested that the 72-inch cumulative perimeter should apply to the bottom shell only. RPI further stated that RSPA should allow the rest of the tank shell, excluding the tank heads, to have an unlimited number of two foot perimeter reductions, provided such areas of reduction are separated by at least 16 inches (twice the diameter of a circle having a 24 inch circumference).

AAR also suggested that the permitted local thickness reductions for non-pressure tank cars should depend on cause. AAR thickness reduction tables, endorsed by many commenters under an earlier rulemaking, differentiated between corrosion and mechanical damage for non-pressure tank cars (see "Shippers Use of Tank Cars with Localized Reductions in Shell Thickness," 54 FR 8336, 8337, February 28, 1989). AAR further commented that there is no need to make a distinction between the cause of damage for pressure tank cars because of the stricter limits imposed on such cars. AAR proposed that, for non-pressure tank cars, RSPA should permit a 0.48 cm (0.188 inch) local thickness reduction in the top shell and 0.32 cm (0.125 inch) local thickness reduction in the bottom shell for corrosive damage. For mechanical damage, RSPA should permit 0.32 cm (0.125 inch) local thickness reduction in the top shell and a 0.16 cm (0.063 inch) local thickness reduction in the bottom shell. AAR asserts that the stresses from a given thickness reduction attributed to mechanical damage can be greater than the same reduction attributed to corrosion damage, because mechanical damage causes a more abrupt change in the thickness.

After full consideration of the merits of these comments, RSPA and FRA agree that there should be no overall limit on the amount of surface area with localized reduced shell thicknesses, provided such limitations apply only to the top shell of the tank and such areas are separated by at least 16 inches. Also, RSPA is modifying the thickness reduction table, as recommended by AAR, and endorsed by several commenters, to differentiate between corrosion and mechanical damage.

AAR commented that RSPA proposed, in § 180.509(g), maximum thickness reductions from the original thickness of the tank and not the required thickness of the tank: a thickness specified in a chart summarizing specification requirements (e.g., § 179.101–1(a)), or the result of a calculation (e.g., § 179.100–6(a)). RSPA disagrees. The proposed section in the NPRM states that—

> [a] tank car found with a thickness below the *required* minimum thickness after forming for its specification, as stated in Part 179 of this subchapter, may . . . [emphasis added]

AAR further stated that RSPA should include an explicit provision enabling the owner of a tank car to "downgrade" [downrate] the car to the point where the loss of thickness exceeds the maximum allowed by the regulation. As RSPA stated in the NPRM under the preamble heading, "Safety System Inspections,"

> [n]othing in the regulations would preclude a tank car owner from marking a tank as meeting a less stringent specification, such as re-marking a specification DOT 112J tank car to a DOT 112S or 112J400W tank specification to a DOT 112J340W tank specification when the tank car no longer conforms to the marked specification.

Downrating is permissible and a tank car owner may mark a tank as meeting a less stringent specification, such as marking a specification 112A340W tank car to a DOT 111A100W1 tank car when the tank, because of its shell thickness, no longer conforms to the marked specification. Owners are reminded that changing the marked specification also changes the certificate of construction and, when so doing, they must follow the procedures in Appendix R of AAR's Specifications for Tank Cars (*see* § 173.31(a)(4) and (f), and § 179.6).

In its comments, RPI proposed a standardized minimum inspection pattern for conducting thickness tests. RPI suggests that thickness readings should be taken at the bottom, one side (90°), and the top within 6-inches of each circumferential weld for each plate. RPI further states that corresponding readings should also be taken along the head circumferential weld seam and another reading at the center of the tank head. This would result in 32 thickness readings for a four-ring tank. In addition to the tank shell, two readings would be taken on the manway nozzle, the top unloading nozzle, and the sump. According to RPI, if an inspector finds corrosion or other damage that reduces the shell thickness, additional readings must be taken to more specifically identify the damaged area.

RSPA is not incorporating a written procedure for conducting thickness measurements throughout the tank shell to increase the probability of defect or corrosion detection. RSPA and FRA believe that such procedures belong in the tank car owner's written maintenance plans or AAR Specifications for Tank Cars. Throughout this rulemaking, RSPA and FRA have developed a course of action that outlines where and what to inspect, but not how to inspect. This approach allows each tank car owner the flexibility to develop inspection and test procedures appropriate for each unique tank car, or a series of unique tank cars based on operating and maintenance experience.

J. Lining and Coating Inspections and Tests

In the NPRM, RSPA proposed an inspection and test requirement for tank cars with linings and coatings. This would ensure that the lining or coating is in proper condition for the transportation of hazardous materials. As proposed, owners of lined or coated tank cars must determine the periodic inspection interval and inspection technique for the lining and coating, based on the owner's knowledge of the material used. The owner would also maintain all supporting documentation used to make such a determination, such as the lining or coating manufacturer's recommended inspection interval and inspection technique, at the owner's principle place of business. Further, the supporting documentation used to make such inspection interval determinations and the inspection technique would have to be made available to FRA upon request.

All commenters supported RSPA's proposed inspection and test requirement for tank cars with linings and coatings. RPI suggested that RSPA should specify "owners of linings and coatings," as opposed to the "tank car owner," to determine the inspection and test technique and interval—since most shippers own the tank car lining or coating as opposed to the tank car owner. Mobil Oil Corporation and others suggested that the regulation should only apply to linings and coatings installed to protect the tank shell, as opposed to those applied for lading integrity or quality.

RSPA and FRA agree with RPI and are revising the proposed requirements to incorporate RPI's suggestions. In this final rule, owners of linings and coatings in tank cars must determine the periodic inspection interval and inspection technique for the lining and coating, based on the owner's knowledge of the material used. This will ensure that the lining or coating is in proper condition for the transportation of hazardous materials. The owner must also maintain all supporting documentation used to make such a determination, such as the lining or coating manufacturer's recommended inspection interval and inspection technique, at the owner's principle place of business. The supporting documentation used to make such inspection interval determinations and the inspection technique must be made available to FRA upon request.

Further, in § 180.509, RSPA is revising paragraphs (c)(3)(i) and (iii)(A) to require an inspection and test of the lining or coating *only when the lining or coating is applied to protect the tank shell* from a lading such as hydrochloric acid.

K. Safety System Inspections

In the NPRM, RSPA proposed to add explicit requirements for the inspection of thermal protection systems, tank head puncture resistance systems, coupler vertical restraint systems, and devices used to protect discontinuities. If, after an inspection, one or more of these systems do not conform to the applicable specification requirements contained in Part 179, renewal or repair of the system is necessary to continue the qualification of the tank car. RSPA received two comments on this proposal, both indicating support.

In this final rule, RSPA is adopting the requirements for the inspection of these safety systems.

L. Quality Assurance Program (QAP)

In the NPRM, RSPA proposed to require that each tank car facility establish a Quality Assurance Program (QAP) to detect non-conformities during the manufacturing, repair, or inspection and test process. A tank car facility means an entity that manufactures, repairs, inspects, or tests tank cars to ensure that the tank cars conform to Parts 179 and 180, that alters the certificate of construction of the tank car, or that verifies that the tank car conforms to the specification.

All commenters endorsed the QAP proposal; however, several commenters suggested that RSPA delay the effective date for at least 18 months so that tank car repair facilities will have the opportunity to develop a QAP. In its comments, AAR supported RSPA's QAP requirements and further stated that the QAP developed by RSPA is consistent with AAR's quality assurance requirements.

Several commenters asked RSPA to clarify whether or not a tank car facility includes a shipper's loading facility where items such as gaskets and manway bolts are normally inspected and replaced as part of a "pre-trip" inspection. It is not the intention of RSPA to include within the definition of a tank car facility a shipper's facility where pre-trip inspections are performed. Generally, a tank car facility evaluates the tank structure to ensure that, if serious fatigue, corrosion, or accidental damage occurs within the inspection and test interval, the remaining structure can withstand reasonable loads without failure or excessive structural deformation. A shipper, on the other hand, ensures by inspection that the tank is in proper condition for transportation from point of origin to destination.

Based on the comments received, RSPA is requiring each tank car repair facility to develop a QAP that has the means to detect any nonconformity in the manufacturing, maintenance, or repair process and that has the means to prevent its recurrence. Furthermore, the QAP must ensure that the finished product conforms to the requirements of the applicable specification and the regulations in the HMR. RSPA is also clarifying the definition of a tank car facility to mean an entity that manufactures, repairs, inspects, or tests tank cars to ensure that the tank cars conform to Parts 179 and 180, that alters the certificate of construction of the tank car, that ensures the continuing qualification of a tank car by performing a function prescribed in Parts 179 or 180, or that makes any representation indicating compliance with one or more of the requirements of Parts 179 or 180. This language mirrors that for the qualification of highway cargo tanks (*see* § 180.2). A shipper that inspects a tank car solely to ensure that the tank car is safe for transportation is not performing a periodic qualification function. On the other hand, a shipper who continues the qualification of a tank car, by performing a function described in Parts 179 or 180, meets the definition of a tank car facility.

M. Inspection Requirements Prior to Transportation

The current regulations, at § 173.31(b)(3), require that the shipper inspect a tank car before releasing it into transportation to ensure that, among other things, the closures are in a "tool-tight," secure condition. Further, closures on the tank (under § 173.24(f)(1)(ii)) must be so designed and closed that "under conditions (including the effects of temperature and vibration) normally incident to transportation . . . the closure is secure and leakproof."

RSPA and FRA proposed in § 174.68 that tank cars be inspected prior to transportation as an amendment to the current requirements because of their concerns about tank cars in transportation with loose closures. Since 1989, FRA inspectors have found loose closures on tank cars containing hazardous materials more than 23,000 times. In that same period, RSPA has received about 1,100 to 1,200 incident reports each year on tank cars that had released product, often as a result of a loose closure. Those releases resulted in injury to 85 railroad employees. This history shows that more needs to be done to ensure that tank cars conform to the regulations when offered for transportation. It is FRA's experience that properly designed and secured closures (closures meeting the standards of §§ 173.24 and 173.31) do not become loose during transportation and that most of the incidents reported to RSPA reflect poor pre-trip preparation of the tank car prior to offering it for transportation. In order to clearly state the offerors responsibility for pre-trip inspection of a tank car, § 174.68 in the NPRM proposed a rebuttable presumption against a proper pre-trip inspection if unsecured closures were found in transit.

RSPA and FRA believe that aligning the inspection requirements in current § 173.31(b) with the design and operations requirements in § 173.24 will clarify their full intent, foster compliance with safety standards, and improve hazardous materials transportation safety. Comments on the proposed § 174.68 came from most of those filing responses to the NPRM and they covered five aspects of the proposal. First, several commenters argued that § 174.68 was the wrong place for pre-trip inspection requirements, that, as shipper responsibilities, they belonged in Part 173. RSPA and FRA agree and the final rule includes pre-trip inspection in § 173.31.

Second, several commenters said that the proposal raised the duty of care for pre-trip car preparation to an all but impossible level. Current § 173.31(b)(1) requires that "the shipper must determine *to the extent practicable*, that . . . fittings are in proper condition. . . ." [emphasis added] The origin of the phrase "to the extent practicable" in § 173.31(b) has its roots in the Interstate Commerce Commission's (ICC) regulations prior to 1960. In those

regulations, the ICC required shippers, before loading the tank car, to examine the tank and each appurtenance to see that the safety and outlet valves, safety vents, the excess flow valves (if any), the closures of all openings, and the protective covers of all appurtenances were in proper condition.

In a letter dated July 10, 1959, to AAR, the Manufacturing Chemists' Association (MCA) stated that the addition of the words "to the extent practicable" in the tank car loading section was to clarify the purpose of the regulations and to make the regulation more realistic and to eliminate from the regulation items which were either very difficult to inspect or very expensive to inspect such as a full inspection of safety relief valves or excess flow valves. Read literally, the regulation at that time would impose a duty on the shipper to disassemble and inspect safety valves and excess flow valves prior to each trip.

As a result of the MCA letter in 1959, AAR petitioned the ICC to amend the current regulations by inserting the phrase "to the extent practicable" in the tank car loading section. The ICC agreed and the new phrase went into the regulations on March 23, 1960, under Order Number 42. From the beginning, this phrase was meant to reflect the practical impossibility of, for instance, taking the valves apart before each trip; the additional language was not intended to excuse poor pre-trip preparation. This final rule does not enlarge the "to the extent practicable" standard.

Third, several commenters seemed to confuse the essential elements of the loose closure violation by arguing that evidence of a leak (or release of product) in transit does not necessarily prove the lack of a pre-trip inspection. They mistakenly believed that the proposal focused on *releases* of hazardous materials rather than the broader fault: *loose fittings and closures.* FRA and RSPA agree that leaks can develop in transit from sources other that insecure closures, the failure of a rubber lining and the failure of a frangible disc are two possible examples. This provision was developed from the requirement in the current § 173.31(b) that closures must be secured in place with an appropriate tool, and the final rule makes no changes in that requirement.

Fourth, many commenters argued that the condition of tank cars in transit is the responsibility of the railroads, that it is their duty to ensure that the closures are, and remain, tight. RSPA and FRA note that current § 173.31(b)(3) requires the shipper to make closures "tool tight" prior to shipping and that § 173.24(b) and (f) require closures to be designed, maintained, and closed so that "under conditions (including the effects of temperature and vibration) normally incident to transportation" they will remain secure. Responsibility for tight closures must rest primarily with the offeror. The railroads' duty to inspect a tank car is aimed at detecting obvious leaks and defects in the running gear of the vehicle. FRA's pre-departure inspection requirements—applicable to all trains whether or not carrying hazardous materials—are found at 49 CFR 215.13. Appendix D to Part 215 describes the inspection to be performed by a train crew, "At each location where a freight car is placed in a train and [designated inspectors] are not on duty. . . ." Appendix D requires the train crew to reject a placarded hazardous materials tank car from which lading is leaking. As the National Industrial Transportation League said in its comments, "The key issue in determining the regulatory responsibilities under the HMR should be to determine which functions parties actually performed, or should have performed." This final rule is not intended to, nor does it, change these essential relationships.

Fifth, several commenters argued that the proposed rebuttable presumption will be impossible to meet. The proposed rule states examples (derailment and vandalism) that will rebut the presumption, but they are not intended to be exclusive. In FRA's experience in discussing alleged violations with shippers over the past few years, the following circumstances have led to either termination or a penalty amount significantly reduced from that originally proposed, depending on the facts and circumstances of each case:

- Delivery to a mistaken destination and subsequent rerouting to the original destination,
- Erroneous spotting at a repair facility,
- Actual delivery to the consignee prior to inspection,
- Abnormally rough handling by a railroad,
- Gaskets, otherwise secure at the start of the trip, deteriorating enroute in a manner the offeror could not have foreseen.

One commenter cited case law on irrebuttable presumptions. RSPA and FRA agree with the commenter that a presumption impossible to rebut would not be proper; for the reasons given, RSPA and FRA do not view the presumption in the regulation published today as impossible to rebut.

In some cases, FRA has seen pre-trip inspection check lists that were at obvious odds with the conditions discovered on the car. The rebuttable presumption stated today is not designed to make enforcement "easier," it is designed to make responsibility more certain. For most shippers of hazardous materials, today's rule will not mean a change in the regulator/regulated relationship.

When FRA issues a Notice of Proposed Violation for an alleged violation of the HMR, the respondent (railroad, shipper, or manufacturer) is afforded the opportunity to investigate the charges and to collect factual evidence to mitigate or dismiss the case. Respondent has the opportunity for a hearing. FRA, or an Administrative Law Judge, considers respondent's submissions, together with the factors in 49 U.S.C. § 5123(c), before reaching a decision. The standard in this final rule does not change the process by which FRA enforces railroad related hazardous materials violations. FRA expects that, by clarifying the responsibility of the shipper, there will be fewer loose closures on tank cars and fewer injured railroad employees.

Several commenters mentioned mishandling, even abusive handling, by the railroads. FRA's own studies have demonstrated that overspeed impacts in railroad switching operations are far from a rarity, but FRA is not aware that overspeed impacts will loosen the threaded fasteners securing lading retention fittings on a tank car. Overspeed impacts can cause severe structural damage, lessen the service life of the car, and cause frangible safety vent discs to rupture. In such cases, enforcement actions against the railroads are appropriate, and FRA pursues them. One shipper, PPG Industries, Inc., put impact recorders on a test fleet of 50 tank [illegible]rs operated out of its Lake [illegible]arl[illegible]siana plant. The impacts in [illegible] G's (about 8 miles per hour) be[illegible]y 1992 and December 19[illegible] documented in PPG's comments in this docket. Because they are limited in geographic scope, RSPA and FRA cannot say that this data presents a typical picture, nation-wide, but PPG's charts are graphic evidence, arranged by railroad and by terminal, that railroad tank cars are subject to stresses well above their optimum operating environment.

In the final rule, RSPA is articulating a rebuttable presumption standard aimed specifically at loose closures on tank cars. The statement of this presumption in § 173.31(d)(2) does not mean, however, that there is a different standard for railroad tank cars than for

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other packagings used to transport hazardous materials. The "secure and leakproof" standard established in § 173.24(f) applies to closures on all packagings used for transportation. If a hazardous materials package is discovered with loose closures, either the closures were not designed properly or they were not tightened properly. Neither RSPA nor FRA are aware of hazardous materials packagings designs that allow closures to loosen in transit. Hence the presumption that, when an inspector discovers a loose closure, it was not tightened properly. RSPA has made the presumption explicit for railroad transportation because FRA's enforcement experience, discussed earlier, proves the need to focus responsibility on those who prepare hazardous materials for transportation.

The following table lists the adopted paragraphs or sections and, where applicable, the corresponding paragraph or section contained in the current HMR. In some cases, the cross-references are to provisions which are similar to, but not identical with current provisions.

New section	Old section
173.31(a)(2)	173.31(a)(4) [except 4th and 5th sentence].
173.31(a)(3)	
173.31(a)(4)	173.31(a)(7) [1st sentence after "Effective July 1, 1991..." and preceding "..., as in effect on November 16, 1990"].
173.31(a)(5)	
173.31(a)(6)	173.31(a)(3) [1st sentence]. 173.31(a)(3)(i).
173.31(b)(1)	173.31(a)(5) [except last sentence].
173.31(b)(2)	173.31(a)(12). 173.31(a)(15) [1st sentence preceding "...nonreclosing pressure relief devices."] [2nd preceding "...provided that the liquid..."] [3rd sentence preceding "...breather holes are not..."].
173.31(b)(3)	
173.31(b)(4)	
173.31(b)(5)	
173.31(b)(6)	
173.31(c)	173.31(a)(14) [1st sentence preceding "...equal to or greater than..."]. 173.31(a)(14)(i) [1st sentence preceding "...ullage space or dome of tank."]. 173.31(a)(14)(ii). 173.31(a)(14)(iii).
173.31(d)(1)	
173.31(e)(1)	173.31(a)(17).
173.31(e)(2)	
173.31(f)	
173.314(c), Note 2	173.314(c), Note 25.
173.314(c), Note 3	173.314(c), Note 21.
173.314(c), Note 4	173.314(c), Note 20.
173.314(c), Note 6	173.314(c), Note 12 [except 1st and last sentence].
173.314(c), Note 7	173.314(c), Note 18 [1st sentence preceding "...g, when offered for transportation."].
173.314(c), Note 8	173.314(c), Note 19 [1st sentence preceding "...g, when offered for transportation."].
179.7	
179.16	179.100–5.
179.18	179.100–4.
179.20	
179.22	179.100–21. 179.105–8. 179.200–25. 179.203–3.
Appendix A to Part 179	179.105–5 (b) and (c).
Appendix B to Part 179	179.105–4 (d) and (e).
Subpart F to Part 180	
180.501	
180.503	
180.505	
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IV. Review by Section Summary

Part 171

Section 171.7(a)(3). The 49 CFR reference sections for the Association of American Railroads standards and for a Compressed Gas Association standard are added, revised or removed, as appropriate, to reflect the changes in this rulemaking.

Part 172

Section 172.101. In the HMT, three special provisions are removed. Special Provision "B41," appearing in column (7) of the entries for benzyl chloride, fluorosulfonic acid, and titanium tetrachloride is no longer necessary due to the new inspection and test intervals adopted in this final rule. Special Provision "B43," appearing in column (7) of the entries for carbon dioxide, refrigerated liquid, hydrogen chloride, refrigerated liquid, and vinyl fluoride,

inhibited, also is no longer necessary because of the new inspection and test requirements. For the Division 2.1 (flammable gas) entries ethyl chloride and ethyl methyl ether, Special Provision "B63" is removed, thus prohibiting the use of tank cars without head protection or thermal protection.

Section 172.102. As discussed above, Special Provisions "B41" and "B43" are removed. The inspection and test intervals (i.e., 5–3–1) specified in Special Provision "B41" and the nondestructive test requirements specified in Special Provision "B43" are incorporated into Subpart F of Part 180. Special Provision "B63" appears only in the entries ethyl chloride and ethyl methyl ether and, therefore, in paragraph (c), is removed. Special Provision "B64" is amended by changing the head-protection section reference "§ 179.105–5" to read "§ 179.16," and Special Provision "B79" is amended by changing the head- and thermal-protection section references "§§ 179.105–4 and 179.105–5" to read "§ 179.16 and 179.18".

Part 173

Section 173.31. The section heading is revised to read "Use of Tank Cars." This section also is completely revised and reorganized for clarity.

New paragraph (a)(1) corresponds to the language in the HMR for cargo tanks and portable tanks (*see* §§ 173.32c(a) and 173.33(a)). The section also includes reference to certain "AAR" specification tank cars that are authorized for hazardous materials service in the HMR (*see* §§ 173.241 and 173.242). When these tank cars are used for the transportation of hazardous materials, the tank cars must meet the minimum specification for new construction as required by AAR.

New paragraph (a)(2) is essentially current § 173.31(a)(4). The first, second, and third sentences are revised to clarify the use of the term "authorized." Prior to December 19, 1957 (ICC Order No. 33), the regulations stated that:

> [T]ank cars and appurtenances may be used for the transportation of any commodity for which they are authorized, as indicated on the certificate of construction. When a car is to be used for the transportation of a commodity other than those approved on the certificate of construction, it must be approved for such loading by the A.A.R. Tank Car Committee. Changes in fittings or commodity stencilling required to transfer a car from one service to another as authorized on the certificate of construction, may be made only be the owner or owner's authorized agent * * *.

As evidenced by the language above, the term "authorized" means those commodities designated on the certificate of construction and approved by the AAR Tank Car Committee. Order No. 33 changed the regulation by removing the phrase "as indicated on the certificate of construction" because many car owners did not have a certificate for older Class ARA-II (built prior to 1917), ARA-III (built prior to 1927), and some ICC–103 (built after 1927) tank cars. Because this final rule requires that the original and subsequent tank car certificates must be maintained for the life of the car and transferred with ownership, RSPA is clarifying the purpose of this paragraph by inserting the phrase "in this part and specified on its certificate of construction" at the end of the first sentence. See § 180.517. The second and third sentences are modified accordingly. Provisions contained in the fourth and fifth sentences of current § 173.31(a)(4), stating that DOT 105A-W, 109A-W, 111A100W4, 112A-W, and 114A-W tank cars may be used for any commodity for which it is approved and may be stencilled accordingly, and that a tank car stencilled to indicate that it is authorized for one commodity may not be used for any other service, are removed. The stencilling requirement for these cars is optional and, therefore, not enforceable.

New paragraph (a)(3) provides that no person may fill a tank car with a hazardous material when the tank car is overdue for periodic inspection and test. This provision allows the movement of tank cars containing hazardous material residue to a tank car facility for inspection and testing.

New paragraph (a)(4) is current § 173.31(a)(7). It removes reference to a compliance date, now past, and establishes that air brake equipment support attachments must be welded to pads instead of directly to the tank shell in conformance with §§ 179.100–16 and 179.200–19.

New paragraph (a)(5) prohibits the use of an internal self-energized manway that is located below the liquid level of the lading on a tank car, beginning on the effective date of this final rule. After the effective date of this final rule, an exemption would be required in order to continue to operate such a tank car. This provision was proposed paragraph (a)(22) in HM–175A.

New paragraph (a)(6) is current § 173.31(a)(3). It removes specific "DOT" class references and explains that any tank car of the same class with a higher tank test pressure than the tank car authorized in the HMR may be used. The paragraph is also simplified by specifying the hierarchy of the letters in the specification marking that describe special protective systems (e.g., "J" for thermally protected, jacketed cars; "T" for thermally protected, non-jacketed cars; "S" for cars with head shields but without thermal protection; and "A" for cars without protective systems).

New paragraph (b)(1), concerning the use of coupler vertical restraint systems, is current § 173.31(a)(5). It is revised to require all DOT specification tank cars and any other tank car used to transport hazardous material to be equipped with a coupler vertical restraint system. This revision also removes reference to a compliance date, now past, excepting DOT specification tank cars in nonhazardous materials service from being equipped with a coupler vertical restraint system.

New paragraph (b)(2), concerning pressure relief devices, is current §§ 173.31(a)(12) and 173.31(a)(15). This revision is simplified by using the term "poisonous by inhalation" (see § 171.8) in place of the defining criteria.

New paragraph (b)(3) requires head protection for all tank cars transporting Class 2 materials and tank cars constructed from aluminum or nickel plate. Tank cars currently equipped with half-head protection are excluded. The compliance period is 10 years from the effective date of this rule, except for class DOT 105 tank cars with less than 70 kl (18,500 gallon) capacity when used to transport a Division 2.1 material, which have a compliance period of 5 years. This provision was proposed paragraph (a)(19) in HM–175A.

New paragraph (b)(4) requires tank cars transporting Class 2 materials to have thermal protection. Exceptions from the thermal protection standard are granted for "chlorine," "carbon dioxide, refrigerated liquid," and "nitrous oxide, refrigerated liquid," and for tank car tank classes DOT 106, 107A, 110, and 113. This provision was proposed paragraph (a)(20) in HM–175A. In the NPRM, RSPA did not propose thermal protection for the commodities identified above (see proposed § 173.314(k) and (o)). The compliance period is 10 years from the effective date of this final rule.

New paragraph (b)(5) requires bottom-discontinuity protection for all existing tank cars transporting a hazardous material. The new protection requirements conform to paragraphs E9.00 and E10.00 of the AAR Specifications for Tank Cars, M–1002. Existing tank cars that conform to Appendix Y of the AAR Specifications for Tank Cars, M–1002, may continue in use. The compliance period is 10 years from the effective date of this final rule.

This provision was proposed paragraph (a)(23) in HM–175A.

New paragraph (b)(6) is added to require tank car owners to implement measures to ensure the phased-in completion of the modifications on each tank car subject to this final rule. As discussed earlier in this preamble, RSPA and FRA have several programs in place to improve the tank car fleet. Owners, therefore, should develop careful plans, procedures, and schedules to assure completion of the modifications before the regulatory compliance date. Paragraph (b)(6) also requires submission of a yearly progress report to FRA that shows the reporting mark of each tank car requiring modification, the type of modification required for each tank car during the previous year, and the total number of tank cars modified the previous year.

New paragraph (c) was proposed as paragraph (d) in HM–201. This final rule revises the terms "un-insulated" to "non-insulated," "ullage space or dome" to "vacant," and clarifies that this provision applies to cars in hazardous materials service only. A new provision is added in paragraph (c)(3) to require all tank cars transporting a PIH material to have a tank test pressure of at least 20.7 Bar (300 psi). This provision is consistent with other regulations adopted under Docket HM–181 for PIH liquids.[19] Also, several shipping names appearing in the opening paragraph are revised for consistency with the proper shipping name as shown in the § 172.101 table.

New paragraph (d) reinforces the inspection requirements that must be fulfilled before a tank car of hazardous materials is offered for transportation. These provisions were proposed paragraph (a)(4) and § 174.68 in HM–201. These proposed requirements were revised and combined based on suggestions made by the commenters.

In new paragraph (e), to clarify that the paragraph applies to materials that are poisonous by inhalation, the paragraph heading is revised to read "Special requirements for materials poisonous by inhalation."

New paragraph (e)(1) concerns the use of heater coils. This provision is essentially current paragraph § 173.31(a)(17). This provision was proposed paragraph (e) in HM–201.

New paragraph (e)(2) requires that tank cars used for materials poisonous by inhalation must conform to at least a DOT 105S300W, 105S300ALW, 112J340W, or 114J340W. This provision was proposed paragraph (a)(21) in HM–175A. It is made consistent with Special Provision B74 for liquid PIH materials in Zone B. The compliance period is 10 years from the effective date of this final rule.

New paragraph (f) requires the use of a DOT 105S200W; a DOT 112S200W with an 11-gauge steel jacket conforming to § 179.100–4; a DOT 112S340W; or a DOT 112S200W tank car constructed from AAR steel specification TC–128, normalized, for the transportation of certain listed hazardous substances in § 173.31(f) that pose a potential threat to human health and the environment. This provision was proposed paragraph (a)(24) in HM–175A.

Section 173.314. In the table in paragraph (c), the entries are amended by removing references to the individual tank car *specifications* and adding references to the authorized tank car *classes*. This change ensures that § 173.314 does not authorize a tank car having a tank test pressure below the regulatory minimum in § 173.31(c). The current notes following the table are amended by redesignating, revising, or removing all tank car "design requirements" as follows (notes that apply to filling limits are retained):

Note 1, no change.

Note 2 is restated without substantial change and moved to § 173.314(n).

Note 3 and *Note 4* are restated without substantial change and moved to § 173.314(j), which is applicable to all materials having a primary or secondary Division 2.1 (flammable gas) hazard.

Note 5 is restated without substantial change for clarity.

Note 6 is restated without substantial change and moved to § 173.314(o).

Note 7, which restricts the transportation of multi-unit tank cars tanks (ton containers) to rail and highway only, is removed. RSPA believes no valid reason exists to restrict the transport of these units by water. A provision restricting the transport of multi-unit tank car tanks by air is unnecessary because all multi-unit tank car tanks exceed the maximum quantity limitations allowed by air.

Note 8 is restated without substantial change and moved to § 173.314(l).

Note 9 is moved to § 173.314(j) and made applicable to all materials with a primary or secondary Division 2.1 (flammable gas) hazard.

Note 10 is restated without substantial change and moved to § 173.314(m).

Note 11 is restated without substantial change and included in § 173.314(m).

Note 12 is restated without substantial change. The filling density requirements are moved to Note 6, and the design requirements are moved to § 173.314(k).

Note 13 is removed to eliminate duplication of the marking requirements prescribed in Special Provision B12, §§ 173.314(a)(5) and 172.330(a)(1)(i).

Note 14 is removed because it is not referenced in the table.

Note 15 is removed since it is included with the other design requirements applicable to tank cars used for materials having a primary or secondary Division 2.1 (flammable gas) hazard in § 173.314(j).

Note 16, which is currently reserved, is removed.

Note 17, which references § 173.314(g) is removed.

Note 18 is restated without substantial change and moved to Note 7.

Note 19 is restated without substantial change and moved to Note 8.

Note 20 is restated without substantial change and moved to Note 4.

Note 21 is restated without substantial change and moved to Note 3.

Note 22, referencing the requirements in § 173.245, is incorporated into the table under the entry "Division 2.3, Zone A materials."

Note 23 and *Note 24* are removed based on other changes in this final rule concerning the elimination of grandfather provisions.

Note 25 is restated without substantial change and moved to Note 2.

Note 29 and *Note 30* are removed based on other changes in this final rule concerning the elimination of grandfather provisions.

In addition, the table in § 173.314(c) will reflect the tank car classes and not the specifications.

Section 173.319. Paragraph (a)(4)(iii) is revised by removing a parenthetical reference to current § 173.31(c)(13). A requirement contained in § 173.31(c)(13) prescribing special retest requirements for class DOT–113 tank cars is revised and moved to new paragraph § 173.319(e).

Section 173.323. Paragraph (c)(1) is revised to require a tank test pressure of at least 20.7 Bar (300 psi) for ethylene oxide no later then 10 years after the effective date of this final rule. Authorization for the use of a DOT 111A100W4 and 111J100W4 tank car is removed.

Part 179

Section 179.1. In paragraph (c), the section reference "§ 173.31" is revised to read "§ 180.507".

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[19] For further information see *Performance-Oriented Packaging*, Docket HM–181, 55 FR 52402 (December 21, 1990). In general, liquid materials PIH in Hazard Zone A are assigned Special Provision B72 and those in Hazard Zone B are assigned Special Provision B74. These two special provisions require the use of a 105S, 112J, or a 114J tank car having a tank test pressure greater than 18 Bar (300 psi).

Section 179.2. This section is amended by adding a definition for "Tank car facility."

Section 179.7. This section requires tank car facilities to have a Quality Assurance Program (QAP). Paragraph (a) sets forth performance standard for the program. Paragraphs (b)(1) through (b)(13) require that the QAP have certain minimum requirements. The term "Enhanced visual imagery" in paragraph (b)(10) is changed to read "Optically-aided visual inspection" to correctly identify that the visual inspection method is "optically aided." Optically-aided visual methods include the use of magnifiers, borescopes, fiberscopes, and machine vision technology (e.g., a video digitizer that converts images into digital form, and through image enhancement, image segmentation, and feature extraction, the computer classifies objects within the image). Paragraph (c) requires tank car facilities to ensure that only personnel qualified to perform a particular nondestructive inspection and test perform that operation. Paragraph (d) requires each tank car facility to have written procedures, covering inspection, fabrication, and repair operations as appropriate, for their employees. Paragraph (e) cross-references the training requirements in Subpart H of Part 172. (Section 172.702 requires that a hazmat employer train each of its hazmat employees.) Paragraph (f) specifies the compliance date by which tank car facilities must have a QAP and written procedures in effect.

Section 179.16. This new section contains the tank-head puncture-resistance requirements found in current §§ 179.100–23 and 179.105–5.

Section 179.18. This new section contains the thermal protection requirements found in current § 179.105–4(a), (b), and (c). A requirement that the exterior of the tank car must be painted white in proposed § 179.18(d) is moved to § 179.101–1, Note 4 in this final rule. Editorial revisions are made to these requirements for clarity and for consistency with other changes in this final rule.

Section 179.20. This new section contains bottom-discontinuity protection requirements. For new tank cars, bottom-discontinuity protection must conform to paragraphs E9.00 and E10.00 of the AAR Specifications for Tank Cars, M–1002.

Section 179.22. New section 179.22 consolidates the marking requirements contained in current §§ 179.100–21, 179.105–8, 179.200–25, and 179.203–3. Based on this consolidation, §§ 179.100–21, 179.105–8, 179.200–25, and 179.203–3 are removed.

Section 179.100–4. This section is amended by removing the phrase "except that a protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied" at the end of the first paragraph. This change is based on an AAR petition (P–1050) to require protective coatings on the outside surface of the tank shell and the inside surface of the jacket.

Section 179.100–21. The marking requirements contained in this section are consolidated with other marking requirements in new § 179.22 and, as discussed earlier, § 179.100–21 is removed.

Section 179.100–23. The head protection requirements contained in this section are moved to § 179.16(b), and, as discussed earlier, § 179.100–23 is removed.

Section 179.101–1. Certain editorial changes are made in § 179.101–1, Note 4, for clarity and consistency with other changes made in this final rule. In the first sentence in Note 4, the section reference "§ 179.100–4," which addresses insulated tank cars, is removed because Note 4 applies to non-insulated cars only. Note 4 is revised to clarify that there is no need to paint the tank white when a "thermal protection" system is applied (consistent with current § 179.105–4(g) and proposed § 179.16 (d)), and to remove a requirement that tank cars in hydrogen fluoride service need to have a dark colored band in the top platform and fitting area because hydrogen fluoride is not a Class 2 (compressed gas) material. The last sentence is also removed because it is not a mandatory requirement.

Section 179.103–1. Current paragraph (c), providing that a manway may be located other than at the top of the tank is no longer valid and, therefore, is removed and reserved.

Section 179.103–2. Current paragraph (a) containing manway cover plate requirements is revised by removing the phrase "may be of the self-energizing type and". This change would prohibit the construction of tank cars with a self-energized manway located below the liquid level of the lading.

Section 179.103–5. In current paragraph (a)(1), the first two sentences authorizing the location of a self-energizing manway below the liquid level of the tank is no longer valid and, therefore are removed.

Section 179.105. Current §§ 179.105 through 179.105–8 containing special requirements for class DOT 105S, 105J, 111J, 112S, 112J, 112T, 114S, 114J, and 114T specification tank cars are removed because they are unnecessary. The applicable requirements concerning head protection and thermal protection are moved to §§ 179.16, 179.18, and Appendices A and B to Part 179, as appropriate. The marking requirements are consolidated into § 179.22. The requirement for exterior tank color was moved to footnote 4 of the § 179.101–1 table.

Section 179.200–4. This section is amended by removing the phrase "except that a protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied" at the end of the first paragraph. This change is based on an AAR petition (P–1050) to require protective coatings on the outside surface of the tank shell and the inside surface of the jacket.

Section 179.200–25. The marking requirements contained in this section are consolidated with other marking requirements in § 179.22, and, as discussed earlier, § 179.200–25 is removed.

Section 179.200–27. The head protection requirements are consolidated into § 179.16. Therefore, current § 179.200–27 is removed.

Section 179.203. Current §§ 179.203, 179.203–1, 179.203–2, and 179.203–3 containing special requirements for class DOT 111 tank cars are unnecessary and are removed. The restriction in paragraph (c) against the use of class DOT 111 tank cars built after March 1, 1984, for the transportation of flammable gases or ethylene oxide is incorporated into §§ 173.314 and 173.323. The applicable head-protection and thermal-protection requirements are consolidated into §§ 179.16 and 179.18, respectively. The marking requirements are consolidated into § 179.22.

Appendix A. The tank-head puncture-resistance test verification requirements in § 179.105–5 paragraphs (b) and (c) are moved to this Appendix.

Appendix B. This appendix contains the thermal-protection test-verification requirements found in current § 179.105–4(d), (e) and (f). These requirements are editorially revised for clarity.

Part 180

Subpart F of Part 180. This subpart contains the qualification and maintenance requirements for tank cars.

Section 180.501. Paragraph (a) specifies the applicability of the Subpart. Paragraph (b) specifies that any person who performs a function required by Subpart F of Part 180 must perform that function according to the regulations.

Section 180.503. This section defines certain terms used throughout the subpart.

Section 180.505. This section requires each tank car facility performing repair work to have a QAP based on requirements in § 179.7 for new car construction.

Section 180.507. This section contains the continuing qualifications for existing tank cars that are no longer authorized for new construction, such as a class DOT 113A175W tank car. Paragraph (a) is essentially current § 173.31(a)(1) except that it is revised to include non-specification tank cars that are currently authorized for the transportation of hazardous materials. Paragraphs (b)(1), (2), (3), and (4) are current § 173.31(a)(2), (8), (9), and (10).

Section 180.509. This section specifies the requirements for the periodic inspection and testing of tank cars. Paragraph (a)(1) requires each tank car facility to evaluate the tank car according to the "*Acceptable results of inspections and tests*" as prescribed in § 180.511. Paragraph (a)(2) requires marking each tank car passing a periodic inspection and test to indicate the date it passed this review and the due dates for the next inspection and test required in the new § 180.515. Paragraph (a)(3) requires a written report for each tank car after it successfully passes an inspection and test. Paragraph (b) specifies unusual conditions that may require an inspection and test of tank cars. Paragraph (b)(1) requires an inspection and test if the tank shows evidence of abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition unsafe for transportation. Paragraph (b)(2) requires an inspection and test if the tank car was in an accident and damaged to the extent that may adversely affect its capability to retain its contents (e.g., large dent or gouge in the tank shell). Paragraph (b)(3) requires an inspection and test if the tank was involved in a fire. Paragraph (b)(4) requires an inspection and test of either a single tank car or a design of tank cars operating in an unsafe condition, if required by FRA, based on the existence of a probable cause. Probable cause may include an inspection and test where FRA discovers a crack in a welded area, a wheel burn, or a large dent or bulge in the tank shell; it may also include a group of cars of a given design if FRA discovers problems apparently related to cars of that design.

Paragraph (c) specifies the frequency with which inspections and tests must be performed on tank cars. Paragraph (c)(1) specifies the requirements for the inspection and hydrostatic test of class DOT 107 tank cars and riveted tank cars. As noted above, the hydrostatic test is still effective for these tank cars since it will detect loose rivets and areas of metal distress. Paragraph (c)(2) requires an inspection for thermal integrity of class DOT 113 tank cars in place of the inspection and testing requirements in Subpart F of Part 180. This paragraph cross-references the requirements in § 173.319(e). Paragraph (c)(3) specifies the inspection and test requirements for fusion welded tank cars. The intervals would vary depending upon whether or not the tank car was lined or coated and upon whether or not the car was transporting materials corrosive to the tank. For linings and coatings, this final rule requires a tank car facility to inspect the lining or coating based on the inspection and test intervals and techniques established by the lining or coating owner. The owner must establish an inspection interval and test technique based on the manufacturer's recommendations or the owner's knowledge of the life-expectancy of the lining or coating.

Paragraph (d) specifies the manner for conducting a visual inspection for each tank car. Paragraph (d)(1) requires an inspection of the tank car internally and externally for abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other conditions unsafe for transportation. Paragraph (d)(2) requires the inspection of all piping, valves, fittings, and gaskets for corrosion and any other condition unsafe for transportation. Paragraph (d)(3) requires an inspection of the tank cars for missing or loose bolts, nuts, or other elements. Paragraph (d)(4) requires an inspection of all closures on the tank car for proper securement. The tank car facility would also inspect the protective housings for proper securement. Paragraph (d)(5) requires an inspection of the seats on excess flow valves. Paragraph (d)(6) requires an inspection of the markings on the tank car for legibility.

Paragraph (e) requires that a structural integrity inspection and test shall include all transverse fillet welds greater than 0.64 cm (0.25 inch) within four feet of the bottom longitudinal center line; the termination of longitudinal fillet welds greater than 0.64 cm (0.25 inch) within four feet of the bottom longitudinal center line; and all tank shell butt welds within two feet of the bottom longitudinal center line using one or more nondestructive test methods. The term "Enhanced visual imagery" is changed to read "Optically-aided visual inspection" to correctly identify that the visual inspection method is "optically aided."

Paragraph (f) requires thickness measurements to determine that the tank car is not below the minimum shell thickness.

Paragraph (g) specifies the allowable shell thickness reductions. Paragraph (g)(1)(i) allows thickness reductions on carbon steel, stainless steel, aluminum, nickel, and manganese-molybdenum steels. Paragraph (g)(1)(ii) specifies the minimum shell and head thickness reductions for uniform and localized areas and Note 5 of the table is removed to disallow any reduction in the shell thickness for class DOT 111A tank cars transporting ethylene oxide. As discussed earlier, this final rule prohibits the transportation of ethylene oxide in a class DOT 111 tank car.

Paragraph (h)(1) requires the inspection of the safety systems on the tank, such as thermal protection systems, tank-head puncture-resistance systems, and coupler vertical restraint systems, to ensure their integrity. Paragraph (h)(2) requires the inspection and test of re-closing pressure relief devices (safety valves).

Paragraph (i) requires an inspection and test of tank cars with a lining or coating on the tank car. The inspection interval is determined by the owner based on the type of testing technique used, and knowledge of the material and tank car, but cannot exceed 10 years.

Paragraph (j) requires a leakage pressure test of the tank car and appurtenances.

Paragraph (k) allows the use of an alternative inspection and test procedure provided the procedure is based on a damage-tolerance evaluation, examined by the AAR Tank Car Committee, and approved by the Associate Administrator for Safety FRA.

Paragraph (l) specifies the compliance date for the new inspection and test requirements.

Section 180.511. This section specifies the acceptable results of inspections and tests. Paragraph (a) establishes that an acceptable visual inspection as one that shows no structural defect that may cause the tank car to fail (including leak) before the next inspection and test interval.

Paragraph (b) establishes that an acceptable structural integrity inspection and test is one that shows no structural defect that may initiate cracks or propagate cracks and cause the tank car to fail before the next inspection and test interval.

Paragraph (c) establishes that an acceptable service life shell thickness is one that shows no areas of the tank car

below the minimum shell or head thickness allowed in § 180.509(g).

Paragraph (d) establishes that an acceptable safety system inspection is one that shows the systems (e.g., a thermal protection system) conform to Part 179.

Paragraph (e) establishes that an acceptable inspection and test for lining and coatings as one that shows no holes or degraded areas.

Paragraph (f) establishes that an acceptable inspection and test for a leakage pressure test as one that shows no indications of leakage in any product piping, fitting, or closure.

Paragraph (g) establishes that an acceptable hydrostatic test, for class DOT 107 tank cars and riveted tank cars, is one that shows no leakage or deformations (i.e., distress) in the tank.

Section 180.513. This section specifies that tank car repairs must conform to the requirements of Appendix R of AAR Specifications for Tank Cars. As proposed in HM–175A, the introductory text becomes paragraph (a), and § 173.31 paragraph (f)(3) becomes § 180.513 paragraph (b). Section 180.513(b) requires that, unless the exterior tank car shell or interior tank car jacket has a protective coating, when the complete tank car jacket is removed to effect a repair, the exterior tank car shell and the interior tank car jacket must have a protective coating applied to prevent the deterioration of the tank shell and tank jacket.

Section 180.515. This section specifies the marking requirements for tank cars after a successful tank inspection and test.

Section 180.517. This section specifies the reporting and record retention requirements after a tank car has successfully completed its required inspection and test. Paragraph (a) requires the tank car owner to retain the certificate of construction of the tank car (AAR Form 4–2) and related documentation certifying that the tank car conforms to the specification. The owner shall retain the documents for the period of ownership. Upon a change in ownership, Section 1.3.15 of AAR Specifications for Tank Cars requires the transfer of these documents to the new owner. Paragraph (b) specifies the inspection and test reporting requirements.

Section 180.519. This section specifies the periodic test and inspection requirements for multi-unit tank cars (e.g., class DOT 106 and 110 multi-unit tank cars).

V. Regulatory Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is considered significant under the Regulatory policies and Procedures of the Department of Transportation (44 FR 11034) because it affects a significant segment of the tank car industry. A regulatory evaluation is available for review in the docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not "substantively the same" as the Federal requirements. 49 U.S.C. 5125(b)(1). These covered subjects are:

(A) the designation, description, and classification of hazardous material;

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, contents, and placement of those documents;

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses the design, manufacturing, repairing, and other requirements for packages represented as qualified for use in the transportation of hazardous material. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not "substantively the same" as Federal requirements on these subjects. Section 5125(b)(2) of Title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier that the 90th day following the date of issuance of the final rule and no later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of this final rule will be 90 days after publication in the **Federal Register**.

Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The entities affected by the rule are involved in tank car leasing, maintenance, repair and use. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (Pub. L. 95–511) under OMB control number 2137–0559.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN numbers contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 179

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.7 [Amended]

2. In § 171.7, in paragraph (a)(3) Table, the following changes are made:

a. Under the *Association of American Railroads*, for the entry "AAR Manual of Standards and Recommended Practices, Section C–Part III, Specifications for Tank Cars, Specification M–1002, September, 1992" in column 2, the references are revised to read "173.31; 174.63; 179.6; 179.7; 179.12; 179.16; 179.20; 179.22; 179.100; 179.101; 179.102; 179.103; 179.200; 179.201; 179.220; 179.300; 179.400; 180.509; 180.513; 180.515; 180.517.".

b. Under the *Association of American Railroads*, for the entry "AAR Specifications for Design, Fabrication and Construction of Freight Cars, Volume 1, 1988" in column 2, the reference is revised to read "179.16.".

c. Under the *Compressed Gas Association, Inc.*, for the entry "CGA Pamphlet C–6, Standards for Visual Inspection of Compressed Gas Cylinders, 1984" in column 2, the reference is revised to read "173.34; 180.519.".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

4. In § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entries "Benzyl chloride", "Fluorosulfonic acid", and "Titanium tetrachloride", in Column (7), Special Provision "B41," is removed.

b. For the entries "Carbon dioxide, refrigerated liquid" and "Vinyl fluoride inhibited", in Column (7), Special Provision "B43" is removed.

c. For the entry "Hydrogen chloride, refrigerated liquid", in Column (7), Special Provision ", B43" is removed.

d. For the entry "Ethyl methyl ether", in column (7), Special Provision "B63" is removed.

e. For the entry "Ethyl chloride", in column (7), Special Provision "B63," is removed.

§ 172.102 [Amended]

5. In § 172.102, in paragraph (c)(3), the following changes are made:

a. Special Provision "B41" is removed.

b. Special Provision "B43" is removed.

c. Special Provision "B63" is removed.

d. Special Provision "B64" is amended by revising the section reference "§ 179.105–5" to read "§ 179.16".

e. Special Provision "B79" is amended by revising the section references "§§ 179.105–4 and 179.105–5" to read "§§ 179.16 and 179.18".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

7. Section 173.31 is revised to read as follows:

§ 173.31 Use of tank cars.

(a) *General.* (1) No person may offer a hazardous material for transportation in a tank car unless the tank car meets the applicable specification and packaging requirements of this subchapter or, when this subchapter authorizes the use of an non-DOT specification tank car, the applicable specification to which the tank was constructed.

(2) Tank cars and appurtenances may be used for the transportation of any commodity for which they are authorized in this part and specified on the certificate of construction (AAR Form 4–2 or by addendum on Form R–1). See § 179.5 of this subchapter. Transfer of a tank car from one specified service on its certificate of construction to another may be made only by the owner or with the owner's authorization. A tank car proposed for a commodity service other than specified on its certificate of construction must be approved for such service by the AAR's Tank Car Committee.

(3) No person may fill a tank car overdue for periodic inspection with a hazardous material and then offer it for transportation. Any tank car marked as meeting a DOT specification and any non-specification tank car transporting a hazardous material must have a periodic inspection and test conforming to Subpart F of Part 180 of this subchapter.

(4) No railroad tank car, regardless of its construction date, may be used for the transportation in commerce of any hazardous material unless the air brake equipment support attachments of such tank car conform to the standards for attachments set forth in §§ 179.100–16 and 179.200–19 of this subchapter.

(5) No railroad tank car, regardless of its construction date, may be used for the transportation in commerce of any hazardous material with a self-energized manway located below the liquid level of the lading.

(6) Unless otherwise specifically provided in this part:

(i) When this subchapter designates a specific specification tank car, the same class tank car with a higher marked test pressure also may be used.

(ii) When the tank car specification delimiter is an "A," offerors may also use tank cars with a delimiter "S," "J" or "T".

(iii) When the tank car specification delimiter is an "S," offerors may also use tank cars with a delimiter "J" or "T".

(iv) When a tank car specification delimiter is a "T" offerors may also use tank cars with a delimiter of "J".

(v) When a tank car specification delimiter is a "J", offerors may not use a tank car with any other specification delimiter.

(b) *Safety systems*—(1) *Coupler vertical restraint.* Each tank car conforming to a DOT specification and any other tank car used for transportation of a hazardous material must be equipped with a coupler vertical restraint system that meets the requirements of § 179.14 of this subchapter.

(2) *Pressure relief devices.* (i) Pressure relief devices on tank cars must conform to Part 179 of this subchapter.

(ii) Except for shipments of chloroprene, inhibited, in class DOT 115 tank cars, tank cars used for materials meeting the definition for Division 6.1 liquid, Packing Group I or II, Class 2 materials, or Class 3 or 4 liquids, must have self-closing pressure relief devices. However, a tank car built before January 1, 1991, and equipped with a non-closing pressure relief device may be used to transport a Division 6.1 or Class 4 liquid if the liquid is not poisonous by inhalation. Unless otherwise specifically provided in this

subchapter, frangible discs may not have breather holes.

(3) *Tank-head puncture-resistance requirements.* The following tank cars must have a tank-head puncture-resistance system that conforms to the requirements in § 179.16 of this subchapter, or to the corresponding requirements in effect at the time of installation:

(i) Tank cars transporting a Class 2 material.

(ii) Tank cars constructed from aluminum or nickel plate that are used to transport hazardous material.

(iii) Except as provided in paragraph (b)(3)(iv) of this section, tank cars not requiring a tank-head puncture-resistance system prior to July 1, 1996, must have a tank-head puncture-resistance system installed no later than July 1, 2006.

(iv) Class DOT 105A tank cars built prior to September 1, 1981, having a tank capacity less than 70 kl (18,500 gallons), and used to transport a Division 2.1 (flammable gas) material, must have a tank-head puncture-resistant system installed no later than July 1, 2001.

(4) *Thermal protection requirements.* The following tank cars must have thermal protection that conforms to the requirements of § 179.18 of this subchapter:

(i) Tank cars transporting a Class 2 material, except for class DOT 105A tank cars transporting chlorine, carbon dioxide refrigerated liquid, or nitrous oxide refrigerated liquid, and class DOT 106, 107A, 110, and 113 tank cars.

(ii) Tank cars not requiring thermal protection prior to July 1, 1996, must conform to this section no later than July 1, 2006.

(5) *Bottom-discontinuity protection requirements.* No person may offer for transportation a hazardous material in a tank car unless the tank car has bottom-discontinuity protection that conforms to the requirements of E9.00 and E10.00 of the AAR Specifications for Tank Cars. Tank cars not requiring bottom-discontinuity protection under the terms of Appendix Y of the AAR Specifications for Tank Cars as of July 1, 1996, must conform to these requirements no later than July 1, 2006. Tank cars modified before July 1, 1996, may conform to the bottom-discontinuity protection requirements of Appendix Y of the 1992 edition of the AAR Specifications for Tank Cars.

(6) *Scheduling of modifications and progress reporting.* The date of conformance for the continued use of tank cars subject to paragraphs (b)(3), (b)(4), (b)(5), (e)(2), and (f) of this section and §§ 173.314(j) and 173.323(c)(1) is subject to the following conditions and limitations.

(i) Each tank car owner shall modify, reassign, retire, or remove at least 50 percent of their in-service tank car fleet within the first half of the compliance period and the remainder of their in-service tank car fleet during the second half of the compliance period.

(ii) Before July 1 of each year, each owner shall submit to the Associate Administrator for Safety, FRA (Attention: RRS–12) a progress report that shows the reporting mark of each tank car, the status of each tank car during the previous year, and the total number of those tank cars modified reassigned, retired, or removed the previous year.

(c) *Tank car test pressure.* A tank car used for the transportation of a hazardous material must have a tank test pressure equal to or greater than the greatest of the following:

(1) Except for shipments of carbon dioxide, anhydrous hydrogen chloride, vinyl fluoride, ethylene, or hydrogen, 133 percent of the sum of lading vapor pressure at the reference temperature of 46 °C (115 °F) for non-insulated tank cars or 41 °C (105 °F) for insulated tank cars plus static head, plus gas padding pressure in the vacant space of a tank car;

(2) 133 percent of the maximum loading or unloading pressure, whichever is greater;

(3) 20.7 Bar (300 psi) for materials that are poisonous by inhalation;

(4) The minimum pressure prescribed by the specification in Part 179 of this subchapter; or

(5) The minimum test pressure prescribed for the specific hazardous material in the applicable packaging section in Subpart F or G of this Part.

(d) *Examination before shipping.* (1) No person may offer for transportation a tank car containing a hazardous material or a residue of a hazardous material unless that person determines that the tank car is in proper condition and safe for transportation. As a minimum, each person offering a tank car for transportation must perform an external visual inspection that includes:

(i) Except where insulation or a thermal protection system precludes an inspection, the tank shell and heads for abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation;

(ii) The piping, valves, fittings, and gaskets for corrosion, damage, or any other condition that makes the tank car unsafe for transportation;

(iii) For missing or loose bolts, nuts, or elements that make the tank car unsafe for transportation;

(iv) All closures on tank cars and determine that the closures and all fastenings securing them are properly tightened in place by the use of a bar, wrench, or other suitable tool;

(v) Protective housings for proper securement;

(vi) The pressure relief device, including a careful inspection of the frangible disc in non-closing pressure relief devices, for corrosion or damage that may alter the intended operation of the device;

(vii) Each tell-tale indicator after filling and prior to transportation to ensure the integrity of the frangible disc;

(viii) The external thermal protection system, tank head puncture resistance system, coupler vertical restraint system, and other safety systems for conditions that make the tank car unsafe for transportation;

(ix) The required markings on the tank car for legibility; and

(x) The periodic inspection date markings to ensure that the inspection and test intervals are within the prescribed intervals.

(2) Closures on tank cars are required, under this subchapter, to be designed and closed so that under conditions normally incident to transportation, including the effects of temperature and vibration, there will be no identifiable release of a hazardous material to the environment. In any action brought to enforce this section, the lack of securement of any closure to a tool-tight condition, detected at any point, will establish a rebuttable presumption that a proper inspection was not performed by the offeror of the car. That presumption may be rebutted only by evidence establishing that the car was subjected to abnormal treatment, e.g., a derailment or vandalism.

(e) *Special requirements for materials poisonous by inhalation*—(1) *Interior heater coils.* Tank cars used for materials poisonous by inhalation may not have interior heater coils.

(2) *Tank car specifications.* Except as otherwise provided in this subchapter, tank cars used for materials poisonous by inhalation must conform to at least a DOT 105S300W, 105S300ALW, 112J340W, or 114J340W specification. Hazardous materials not requiring the use of a class DOT 105S300W, 105S300ALW, 112J340W, or 114J340W tank car prior to July 1, 1996, must be transported in one of these specifications no later than July 1, 2006.

(f) *Special requirements for hazardous substances.* (1) Before July 1, 2006, each tank car used for transportation of a hazardous substance listed in paragraph (f)(2) of this section must conform to DOT 105S200W, DOT 112S200W with an 11-gauge steel jacket, DOT 112S340W, or DOT 112S200W constructed from AAR steel specification TC–128, normalized.

(2) *List of hazardous substances.* Hazardous substances for which the provisions of this paragraph (f) apply are as follows:

Aldrin
Allyl chloride
alpha-BHC
beta-BHC
delta-BHC
gamma-BHC
Bis(2-chloroethyl) ether
Bromoform
Carbon tetrachloride
Chlordane
p-Chloroaniline
Chlorobenzene
Chlorobenzilate
p-Chloro-m-cresol
2-Chloroethyl vinyl ether
Chloroform
2-Chloronapthalene
o-Chlorophenol
3-Chloropropionitrile
DDE
DDT
1,2-Dibromo-3-chloropropane
m-Dichlorobenzene
o-Dichlorobenzene
p-Dichlorobenzene
3,3′-Dichlorobenzidine
1,4-Dichloro-2-butene
1,1-Dichloroethane
1,2-Dichloroethane
1,1-Dichloroethylene
Dichloroisopropyl ether
Dichloromethane
2,4-Dichlorophenol
2,6-Dichlorophenol
1,2-Dichloropropane
1,3-Dichloropropene
Dieldrin
alpha-Endosulfan
beta-Endosulfan
Endrin
Endrin aldehyde
Heptachlor
Heptachlor epoxide
Hexachlorobenzene
Hexachlorobutadiene
Hexachloroethane
Hexachlorophene
Hexachloropropene
Isodrin
Kepone
Methoxychlor
4,4′-Methylenebis(2-chloroaniline)
Methylene bromide
Pentachlorobenzene
Pentachloroethane
Pentachloronitrobenzene (PCNB)
Pentachlorophenol
Polychlorinated biphenyls (PCBs)
Pronamide
Silvex (2,4,5-TP)
2,4,5-T
TDE
1,2,4,5-Tetrachlorobenzene
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)
Tetrachloroethane
Tetrachloroethylene
2,3,4,6-Tetrachlorophenol
Toxaphene
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene
2,4,5-Trichlorophenol
2,4,6-Trichlorophenol
Tris(2,3-dibromopropyl) phosphate

8. In § 173.314, the section heading and paragraph (c) are revised, and paragraphs (j) through (o) are added to read as follows:

§ 173.314 Compressed gases in tank cars and multi-unit tank cars.

* * * * *

(c) *Authorized gases, filling limits for tank cars.* A compressed gas in a tank car or a multi-unit tank car must be offered for transportation in accordance with § 173.31 and this section. The named gases must be loaded and offered for transportation in accordance with the following table:

Proper shipping name	Outage and filling limits (see note 1)	Authorized tank car class
Ammonia, anhydrous, or ammonia solutions > 50 percent ammonia	Note 2	105, 112, 114.
	Note 3	106.
Ammonia solutions with > 35 percent, but ≤ 50 percent ammonia by mass	Note 3	105, 109, 112, 114.
Argon, compressed	Note 4	107.
Boron trichloride	Note 3	105, 106.
Carbon dioxide, refrigerated liquid	Note 5	105.
Chlorine	Note 6	105.
	125	106.
Chlorine trifluoride	Note 3	106, 110.
Chlorine pentafluoride	Note 3	106, 110.
Dimethyl ether	Note 3	105, 106, 110.
Dimethylamine, anhydrous	Note 3	105, 106, 112.
Dinitrogen tetroxide, inhibited	Note 3	105, 106, 110.
Division 2.1 materials not specifically identified in this table	Note 3	105, 106, 110, 112, 114.
Division 2.2 materials not specifically identified in this table	Note 3	105, 106, 109, 110, 112, 114.
Division 2.3 Zone A materials not specifically identified in this table	None	See § 173.245.
Division 2.3 Zone B materials not specifically identified in this table	Note 3	105, 106, 110, 112, 114.
Division 2.3 Zone C materials not specifically identified in this table	Note 3	105, 106, 110, 112, 114.
Division 2.3 Zone D materials not specifically identified in this table	Note 3	105, 106, 109, 110, 112, 114.
Ethylamine	Note 3	105, 106, 110, 112, 114.
Helium, compressed	Note 4	107.
Hydrogen	Note 4	107.
Hydrogen chloride, refrigerated liquid	Note 7	105.
Hydrogen sulphide, liquified	68	106.
Methyl bromide	Note 3	105, 106.
Methyl chloride	Note 3	105, 106, 112.
Methyl mercaptan	Note 3	105, 106.
Methylamine, anhydrous	Note 3	105, 106, 112.
Nitrogen, compressed	Note 4	107.
Nitrosyl chloride	124	105.
	110	106.
Nitrous oxide, refrigerated liquid	Note 5	105.
Oxygen, compressed	Note 4	107.
Phosgene	Note 3	106.
Sulfur dioxide, liquified	125	105, 106, 110.
Sulfuryl fluoride	120	105.
Vinyl fluoride, inhibited	Note 8	105.

Notes:

1. The percent filling density for liquefied gases is hereby defined as the ratio of the mass of gas in the tank to the mass of water the tank will hold. For determining the water capacity of the tank in kilograms, the mass of one liter (0.264 gallons) of water at 15.55 °C (60 °F.) in air is 1 kg (2.204 pounds).
2. The liquefied gas must be so loaded so that the outage is at least two percent of the total capacity of the tank at the reference temperature of 46 °C (115 °F.) for non-insulated tanks and 41 °C (105 °F.) for insulated tanks.
3. The requirements of § 173.24b(a) apply.
4. The gas pressure at 54.44 °C (130 °F.) in any non-insulated tank car may not exceed 7/10 of the marked test pressure, except that a tank may be charged with helium to a pressure 10 percent in excess of the marked maximum gas pressure at 54.44 °C (130 °F.) of each tank.
5. The liquid portion of the gas at -17.77 °C (0 °F.) must not completely fill the tank.
6. The maximum permitted filling density is 125 percent. The quantity of chlorine loaded into a single unit-tank car may not be loaded in excess of the normal lading weights nor in excess of 81.65 Mg (90 tons).
7. 89 percent maximum to 80.1 percent minimum at a test pressure of 6.2 Bar (90 psi).
8. 59.6 percent maximum to 53.6 percent minimum at a test pressure of 7.2 Bar (105 psi).

* * * * *

(j) *Special requirements for materials having a primary or secondary Division 2.1 (flammable gas) hazard.* For single unit tank cars, interior pipes of loading and unloading valves, sampling devices, and gauging devices with an opening for the passage of the lading exceeding 1.52 mm (0.060 inch) diameter must be equipped with excess flow valves. For single unit tank cars constructed before January 1, 1972, gauging devices must conform to this paragraph by no later than July 1, 2006. The protective housing cover must be provided with an opening, with a weatherproof cover, above each safety relief valve that is concentric with the discharge of the safety relief valve and that has an area at least equal to the valve outlet area. Class DOT 109 tank cars and tank cars manufactured from aluminum or nickel plate are not authorized.

(k) *Special requirements for chlorine.* Tank cars built after September 30, 1991, must have an insulation system consisting of 5.08 cm (2 inches) glass fiber placed over 5.08 cm (2 inches) of ceramic fiber. Tank cars must have excess flow valves on the interior pipes of liquid discharge valves. Tank cars constructed to a DOT 105A500W specification may be marked as a DOT 105A300W specification with the size and type of safety relief valves required by the marked specification.

(l) *Special requirements for hydrogen sulphide.* Each multi-unit tank car must be equipped with adequate safety relief devices of the fusible plug type having a yield temperature not over 76.66 °C (170 °F.), and not less than 69.44 °C (157 °F.). Each device must be resistant to extrusion of the fusible alloy and leak tight at 55 °C (130 °F.). Each valve outlet must be sealed by a threaded solid plug. In addition, all valves must be protected by a metal cover.

(m) *Special requirements for nitrosyl chloride.* Single unit tank cars and their associated service equipment, such as venting, loading and unloading valves, and safety relief valves, must be made of metal or clad with a material that is not subject to rapid deterioration by the lading. Multi-unit tank car tanks must be nickel-clad and have safety relief devices incorporating a fusible plug having a yield temperature of 79.44 °C (175 °F.). Safety relief devices must be vapor tight at 54.44 °C (130 °F.).

(n) *Special requirements for hydrogen chloride.* Each tank car must be equipped with one or more safety relief devices. The discharge outlet for each safety relief device must be connected to a manifold having a non-obstructed discharge area of at least 1.5 times the total discharge area of the safety relief devices connected to the manifold. All manifolds must be connected to a single common header having a non-obstructed discharge pointing upward and extending above the top of the car. The header and the header outlet must each have a non-obstructed discharge area at least equal to the total discharge area of the manifolds connected to the header. The header outlet must be equipped with an ignition device that will instantly ignite any hydrogen discharged through the safety relief device.

(o) *Special requirements for carbon dioxide, refrigerated liquid and nitrous oxide, refrigerated liquid.* Each tank car must have an insulation system so that the thermal conductance is not more than 0.613 kilojoules per hour, per square meter, per degree Celsius (0.03 B.t.u. per square foot per hour, per degree Fahrenheit) temperature differential. Each tank car must be equipped with one safety relief valve set to open at a pressure not exceeding 75 percent of the tank test pressure and one frangible disc design to burst at a pressure less than the tank test pressure. The discharge capacity of each safety relief device must be sufficient to prevent building up of pressure in the tank in excess of 82.5 percent of the test pressure of the tank. Tanks must be equipped with two regulating valves set to open at a pressure not to exceed 24.1 Bar (350 psi) on DOT 105A500W tanks and at a pressure not to exceed 27.6 Bar (400 psi) on DOT 105A600W tanks. Each regulating valve and safety relief device must have its final discharge piped to the outside of the protective housing.

9. In § 173.319, new paragraph (e) is added to read as follows:

§ 173.319 Cryogenic liquids in tank cars.

* * * * *

(e) *Special requirements for class DOT 113 tank cars.* (1) A class DOT–113 tank car need not be periodically pressure tested; however, each shipment must be monitored to determine the average daily pressure rise in the tank car. If the average daily pressure rise during any shipment exceeds 0.2 Bar (3 psi) per day, the tank must be tested for thermal integrity prior to any subsequent shipment.

(2) *Thermal integrity test.* When required by paragraph (e)(1) of this section, either of the following thermal integrity tests may be used:

(i) *Pressure rise test.* The pressure rise in the tank may not exceed 0.34 Bar (5 psi) in 24 hours. When the pressure rise test is performed, the absolute pressure in the annular space of the loaded tank car may not exceed 75 microns of mercury at the beginning of the test and may not increase more than 25 microns during the 24-hour period; or

(ii) *Calculated heat transfer rate test.* The insulation system must be performance tested as prescribed in § 179.400–4 of this subchapter. When the calculated heat transfer rate test is performed, the absolute pressure in the annular space of the loaded tank car may not exceed 75 microns of mercury at the beginning of the test and may not increase more than 25 microns during the 24-hour period. The calculated heat transfer rate in 24 hours may not exceed:

(A) 120 percent of the appropriate standard heat transfer rate specified in § 179.401–1 of this subchapter, for DOT–113A60W and DOT–113C120W tank cars;

(B) 122.808 joules (0.1164 Btu/day/lb.) of inner tank car water capacity, for DOT–113A175W tank cars;

(C) 345.215 joules (0.3272 Btu/day/lb.) of inner tank car water capacity, for DOT–113C60W and 113D60W tank cars; or

(D) 500.09 joules (0.4740 Btu/day/lb.) of inner tank car water capacity, for DOT–113D120W tank cars.

(3) A tank car that fails a test prescribed in paragraph (e)(2) of this section must be removed from hazardous materials service. A tank car removed from hazardous materials service because it failed a test prescribed in paragraph (e)(2) of this section may not be used to transport a hazardous material unless the tank car conforms to all applicable requirements of this subchapter.

(4) Each frangible disc must be replaced with a new frangible disc every 12 months, and the replacement date must be marked on the car near the pressure relief valve information.

(5) Pressure relief valves and alternate pressure relief valves must be tested every five years. The start-to-discharge pressure and vapor tight pressure requirements for the pressure relief valves must be as specified in § 179.401–1 of this subchapter. The alternate pressure relief device values specified in § 179.401–1 of this subchapter for a DOT–113C120W tank car apply to a DOT–113D120W tank car.

§ 173.319 [Amended]

10. In addition, in § 173.319, in paragraph (a)(4)(iii), the parenthetical reference "(see § 173.31(c)(13))" is removed.

11. In § 173.323, paragraph (c)(1) is revised to read as follows:

§ 173.323 Ethylene oxide.

* * * * *

(c) * * *

(1) *Tank cars.* Class DOT 105J tank cars: Notwithstanding the requirements of § 173.31(c), each tank car must have a tank test pressure of at least 20.7 Bar (300 psi) no later than July 1, 2006.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

2. The authority citation for part 179 continues to read as follows:

Authority: 49 App. U.S.C. 5101–5127; 49 CFR 1.53.

§ 179.1 [Amended]

13. In § 179.1, in paragraph (c), the section reference "§ 173.31" is revised to read "§ 180.507".

14. In § 179.2, paragraph (a)(10) is redesignated as paragraph (a)(11) and a new paragraph (a)(10) is added to read as follows:

§ 179.2 Definitions and abbreviations.

(a) * * *

(10) *Tank car facility* means an entity that manufactures, repairs, inspects, or tests a tank car to ensure that the tank car conforms to this part and subpart F of part 180 of this subchapter, that alters the certificate of construction of the tank car, that ensures the continuing qualification of a tank car by performing a function prescribed in parts 179 or 180 of this subchapter, or that makes any representation indicating compliance with one or more of the requirements of parts 179 or 180 of this subchapter.

* * * * *

15. Section 179.7 is added to subpart A to read as follows:

§ 179.7 Quality assurance program.

(a) At a minimum, each tank car facility shall have a quality assurance program, approved by AAR, that—

(1) Ensures the finished product conforms to the requirements of the applicable specification and regulations of this subchapter;

(2) Has the means to detect any nonconformity in the manufacturing, repair, or testing of the tank car; and

(3) Prevents non-conformities from recurring.

(b) At a minimum, the quality assurance program must have the following elements—

(1) Statement of authority and responsibility for those persons in charge of the quality assurance program.

(2) An organizational chart showing the interrelationship between managers, engineers, purchasing, construction, inspection, testing, and quality control personnel.

(3) Procedures to ensure that the latest applicable drawings, design calculations, specifications, and instructions are used in manufacture, inspection, testing, and repair.

(4) Procedures to ensure that the fabrication and construction materials received are properly identified and documented.

(5) A description of the manufacturing, inspection, and testing program so that an inspector can determine specific inspection and test intervals.

(6) Monitoring and control of processes and product characteristics during production.

(7) Procedures for correction of imperfections.

(8) Provisions indicating that the requirements of the AAR Specifications for Tank Cars, Specification M–1002, apply.

(9) Qualification requirements of personnel performing ultrasonic, radiographic, dye penetrant, magnetic particle, or other non-destructive inspections and tests.

(10) Qualification requirements of personnel performing optically aided visual inspections (including fiber optic, borescope, and video-image-scope systems). Under these requirements, the examiner must have the capability to consistently and repetitively find flaws under test conditions. Furthermore, the requirements must include visual acuity criteria where detectability (minimum size of a flaw that an examiner can find); resolution (minimum distance at which two flaws may be seen separately); and contrast sensitivity (minimum detectable thickness change (convolutions) over a surface area) further define the qualifications of the examiner.

(11) Procedures for evaluating the inspection and test technique employed, including the accessibility of the area and the sensitivity of the inspection and test technique and minimum detectable crack length.

(12) Procedures for the periodic calibration and measurement of inspection and test equipment.

(13) A system for the maintenance of records, inspections, tests, and the interpretation of inspection and test results.

(c) Each tank car facility shall ensure that only personnel qualified for each non-destructive inspection and test perform that particular operation.

(d) Each tank car facility shall establish written procedures for their employees to ensure that the work performed on the tank car conforms to the specification and AAR approval for the tank car.

(e) Each tank car facility shall train its employees in accordance with Subpart

H of part 172 of this subchapter on the program and procedures specified in paragraph (b) of this section to ensure quality.

(f) *Date of conformance.* After July 1, 1998, no tank car facility may manufacture, repair, inspect, or test tank cars subject to requirements of this subchapter, unless it is operating in conformance with a quality assurance program and written procedures required by paragraphs (a) and (b) of this section.

16. Section 179.16 is added to subpart B to read as follows:

§ 179.16 Tank-head puncture-resistance systems.

(a) *Performance standard.* When the regulations in this subchapter require a tank-head puncture-resistance system, the system shall be capable of sustaining, without any loss of lading, coupler-to-tank-head impacts at relative car speeds of 29 km/hour (18 mph) when:

(1) The weight of the impact car is at least 119,295 kg (263,000 pounds);

(2) The impacted tank car is coupled to one or more backup cars that have a total weight of at least 217,724 kg (480,000 pounds) and the hand brake is applied on the last "backup" car; and

(3) The impacted tank car is pressurized to at least 6.9 Bar (100 psi).

(b) Compliance with the requirements of paragraph (a) of this section shall be verified by full-scale testing according to Appendix A of this part or by installing full-head protection (shields) or full tank-head jackets on each end of the tank car conforming to the following—

(1) The tank-head puncture-resistance system must be at least 1.27 cm (0.5 inch) thick, shaped to the contour of the tank head and made from steel having a tensile strength greater than 379.21 N/mm^2 (55,000 psi).

(2) The design and test requirements of the tank-head puncture-resistance system must meet the impact test requirements of Section 5.3 of the AAR Specifications for Tank Cars.

(3) The workmanship must meet the requirements of Section C, Part II, Chapter 5 of the AAR Specifications for Design, Fabrication, and Construction of Freight Cars.

17. Section 179.18 is added to subpart B to read as follows:

§ 179.18 Thermal protection systems.

(a) *Performance standard.* When the regulations in this subchapter require thermal protection on a tank car, the tank car must have sufficient thermal resistance so that there will be no release of any lading within the tank car, except release through the safety relief valve, when subjected to:

(1) A pool fire for 100 minutes; and

(2) A torch fire for 30 minutes.

(b) *Thermal analysis.* (1) Compliance with the requirements of paragraph (a) of this section shall be verified by modeling the fire effects on the entire surface of the tank car according to the procedures outlined in *"Temperatures, Pressures and Liquid Levels of Tank Cars Engulfed in Fires," DOT/FRA/OR&D–84/08.11, (1984), Federal Railroad Administration, Washington D.C.* (available from National Technical Information Service, Springfield, VA 22161), or other procedure approved by the AAR Committee on Tank Cars. The analysis must also consider the fire effects on and the heat flux through tank discontinuities, protective housings, underframes, metal jackets, insulation, and thermal protection. A complete record of each analysis shall be made, retained and, upon request, made available for inspection and copying by an authorized representative of the Department.

(2) When the analysis shows the thermal resistance of the tank car does not conform to paragraph (a) of this section, the thermal resistance of the tank car must be increased by using a system listed by the Department under paragraph (c) of this section or by testing an unlisted system and verifying it according to appendix B of this part.

(c) *Systems that no longer require test verification.* The Department maintains a list of thermal protection systems that comply with the requirements of appendix B of this part and that no longer require test verification. Information necessary to equip tank cars with one of these systems is available in the Dockets Unit, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001.

18. Section 179.20 is added to subpart B to read as follows:

§ 179.20 Service equipment; protection systems.

If an applicable tank car specification authorizes location of filling or discharge connections in the bottom shell, the connections must be designed, constructed, and protected according to paragraphs E9.00 and E10.00 of the AAR Specifications for Tank Cars, M–1002.

19. Section 179.22 is added to subpart B to read as follows:

§ 179.22 Marking.

In addition to any other marking requirement in this subchapter, the following marking requirements apply:

(a) Each tank car must be marked according to the requirements in Appendix C of the AAR Specifications for Tank Cars.

(b) Each tank car that is equipped with a tank-head puncture-resistance system must have the letter "S" substituted for the letter "A" in the specification marking.

(c) Each tank car that is equipped with a tank-head puncture-resistance system, a thermal protection system, and a metal jacket must have the letter "J" substituted for the letter "A" or "S" in the specification marking.

(d) Each tank car that is equipped with a tank-head puncture-resistance system, a thermal protection system, and no metal jacket must have the letter "T" substituted for the letter "A" or "S" in the specification marking.

§ 179.100–4 [Amended]

20. In § 179.100–4, in paragraph (a), the last sentence is amended by removing the phrase "except that a protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied".

§§ 179.100–21 and 179.100–23 [Removed]

21. Sections 179.100–21 and 179.100–23 are removed.

22. In § 179.101–1, in paragraph (a), Note 4 following the table is revised to read as follows:

§ 179.101–1 Individual specification requirements.

(a) * * *

[4] Tank cars not equipped with a thermal protection or an insulation system used for the transportation of a Class 2 (compressed gas) material must have at least the upper two-thirds of the exterior of the tank, including manway nozzle and all appurtenances in contact with this area, finished with a reflective coat of white paint.

* * * * *

§ 179.103–1 [Amended]

23. In § 179.103–1, paragraph (c) is removed and reserved.

24. In § 179.103–2, paragraph (a) is revised to read as follows:

§ 179.103–2 Manway cover.

(a) The manway cover must be an approved design.

* * * * *

§ 179.103–5 [Amended]

25. In § 179.103–5, paragraph (a)(1) is amended by removing the first two sentences.

§§ 179.105, 179.105–1—179.105–8 [Removed]

26. Sections 179.105, 179.105–1 through 179.105–8 are removed.

27. In § 179.200–4, in paragraph (a), the last sentence is revised to read as follows:

VOL
60
SS
1
8
3
SE
21
995
MI

§ 179.200–4 Insulation.

(a) * * * The exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket must be given a protection coating.

* * * * *

§§ 179.200–25 and 179.200–27 [Removed]

28. Sections 179.200–25 and 179.200–27 are removed.

§§ 179.203, 179.203–1—179.203–3 [Removed]

29. Sections 179.203, 179.203–1 through 179.203–2 are removed.

30. Appendixes A and B are added to Part 179 to read as follows:

Appendix A to Part 179—Procedures for Tank-Head Puncture-Resistance Test

1. This test procedure is designed to verify the integrity of new or untried tank-head puncture-resistance systems and to test for system survivability after coupler-to-tank-head impacts at relative speeds of 29 km/hour (18 mph).

2. *Tank-head puncture-resistance test.* A tank-head puncture-resistance system must be tested under the following conditions:

a. The ram car used must weigh at least 119,295 kg (263,000 pounds), be equipped with a coupler, and duplicate the condition of a conventional draft sill including the draft yoke and draft gear. The coupler must protrude from the end of the ram car so that it is the leading location of perpendicular contact with the impacted test car.

b. The impacted test car must be loaded with water at six percent outage with internal pressure of at least 6.9 Bar (100 psi) and coupled to one or more "backup" cars which have a total weight of 217,724 kg (480,000 pounds) with hand brakes applied on the last "backup" car.

c. At least two separate tests must be conducted with the coupler on the vertical centerline of the ram car. One test must be conducted with the coupler at a height of 53.3 cm (21 inches), plus-or-minus 2.5 cm (1 inch), above the top of the sill; the other test must be conducted with the coupler height at 79 cm (31 inches), plus-or-minus 2.5 cm (1 inch), above the top of the sill. If the combined thickness of the tank head and any additional shielding material is less than the combined thickness on the vertical centerline of the car, a third test must be conducted with the coupler positioned so as to strike the thinnest point of the tank head.

3. One of the following test conditions must be applied:

Minimum weight of attached ram cars in kg (pounds)	Minimum velocity of impact in km/hour (mph)	Restrictions
119,295 (263,000).	29 (18)	One ram car only.
155,582 (343,000).	25.5 (16) ..	One ram car or one car plus one rigidly attached car.
311,164 (686,000).	22.5 (14) ..	One ram car plus one or more rigidly attached cars.

4. A test is successful if there is no visible leak from the standing tank car for at least one hour after impact.

Appendix B to Part 179—Procedures for Simulated Pool and Torch-Fire Testing

1. This test procedure is designed to measure the thermal effects of new or untried thermal protection systems and to test for system survivability when exposed to a 100-minute pool fire and a 30-minute torch fire.

2. *Simulated pool fire test.*

a. A pool-fire environment must be simulated in the following manner:

(1) The source of the simulated pool fire must be hydrocarbon fuel with a flame temperature of 871 °C (1,600 °F), plus-or-minus 37.8 °C (100 °F), throughout the duration of the test.

(2) A square bare plate with thermal properties equivalent to the material of construction of the tank car must be used. The plate dimensions must be not less than one foot by one foot by nominal 1.6 cm (0.625 inch) thick. The bare plate must be instrumented with not less than nine thermocouples to record the thermal response of the bare plate. The thermocouples must be attached to the surface not exposed to the simulated pool fire and must be divided into nine equal squares with a thermocouple placed in the center of each square.

(3) The pool-fire simulator must be constructed in a manner that results in total flame engulfment of the front surface of the bare plate. The apex of the flame must be directed at the center of the plate.

(4) The bare plate holder must be constructed in such a manner that the only heat transfer to the back side of the bare plate is by heat conduction through the plate and not by other heat paths.

(5) Before the bare plate is exposed to the simulated pool fire, none of the temperature recording devices may indicate a plate temperature in excess of 37.8 °C (100 °F) nor less than 0 °C (32 °F).

(6) A minimum of two thermocouple devices must indicate 427 °C (800 °F) after 13 minutes, plus-or-minus one minute, of simulated pool-fire exposure.

b. A thermal protection system must be tested in the simulated pool-fire environment described in paragraph 2a of this appendix in the following manner:

(1) The thermal protection system must cover one side of a bare plate as described in paragraph 2a(2) of this appendix.

(2) The non-protected side of the bare plate must be instrumented with not less than nine thermocouples placed as described in paragraph 2a(2) of this appendix to record the thermal response of the plate.

(3) Before exposure to the pool-fire simulation, none of the thermocouples on the thermal protection system configuration may indicate a plate temperature in excess of 37.8 °C (100 °F) nor less than 0 °C (32 °F).

(4) The entire surface of the thermal protection system must be exposed to the simulated pool fire.

(5) A pool-fire simulation test must run for a minimum of 100 minutes. The thermal protection system must retard the heat flow to the plate so that none of the thermocouples on the non-protected side of the plate indicate a plate temperature in excess of 427 °C (800 °F).

(6) A minimum of three consecutive successful simulation fire tests must be performed for each thermal protection system.

3. *Simulated torch fire test.*

a. A torch-fire environment must be simulated in the following manner:

(1) The source of the simulated torch must be a hydrocarbon fuel with a flame temperature of 1,204 °C (2,200 °F), plus-or-minus 37.8 °C (100 °F), throughout the duration of the test. Furthermore, torch velocities must be 64.4 km/h ± 16 km/h (40 mph ± 10 mph) throughout the duration of the test.

(2) A square bare plate with thermal properties equivalent to the material of construction of the tank car must be used. The plate dimensions must be at least four feet by four feet by nominal 1.6 cm (0.625 inch) thick. The bare plate must be instrumented with not less than nine thermocouples to record the thermal response of the plate. The thermocouples must be attached to the surface not exposed to the simulated torch and must be divided into nine equal squares with a thermocouple placed in the center of each square.

(3) The bare plate holder must be constructed in such a manner that the only heat transfer to the back side of the plate is by heat conduction through the plate and not by other heat paths. The apex of the flame must be directed at the center of the plate.

(4) Before exposure to the simulated torch, none of the temperature recording devices may indicate a plate temperature in excess of 37.8 °C (100 °F) or less than 0 °C (32 °F).

(5) A minimum of two thermocouples must indicate 427 °C (800 °F) in four minutes, plus-or-minus 30 seconds, of torch simulation exposure.

b. A thermal protection system must be tested in the simulated torch-fire environment described in paragraph 3a of this appendix in the following manner:

(1) The thermal protection system must cover one side of the bare plate identical to that used to simulate a torch fire under paragraph 3a(2) of this appendix.

(2) The back of the bare plate must be instrumented with not less than nine thermocouples placed as described in paragraph 3a(2) of this appendix to record the thermal response of the material.

(3) Before exposure to the simulated torch, none of the thermocouples on the back side of the thermal protection system configuration may indicate a plate temperature in excess of 37.8 °C (100 °F) nor less than 0 °C (32 °F).

(4) The entire outside surface of the thermal protection system must be exposed to the simulated torch-fire environment.

(5) A torch-simulation test must be run for a minimum of 30 minutes. The thermal protection system must retard the heat flow to the plate so that none of the thermocouples on the backside of the bare plate indicate a plate temperature in excess of 427 °C (800 °F).

(6) A minimum of two consecutive successful torch-simulation tests must be performed for each thermal protection system.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

31. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

32. A new Subpart F is added to part 180 to read as follows:

Subpart F—Qualification and Maintenance of Tank Cars

Sec.

180.501 Applicability.
180.503 Definitions.
180.505 Quality assurance program.
180.507 Qualification of tank cars.
180.509 Requirements for inspection and test of specification tank cars.
180.511 Acceptable results of inspections and tests.
180.513 Repairs, alterations, conversions, and modifications.
180.515 Markings.
180.517 Reporting and record retention requirements.
180.519 Periodic retest and inspection of tank cars other than single-unit tank car tanks.

Subpart F—Qualification and Maintenance of Tank Cars

§ 180.501 Applicability.

(a) This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173, and 179 of this subchapter, applicable to any person who manufactures, fabricates, marks, maintains, repairs, inspects, or services tank cars to ensure that the tank cars are in proper condition for transportation.

(b) Any person who performs a function prescribed in this part shall perform that function in accordance with this part.

§ 180.503 Definitions.

The definitions contained in §§ 171.8 and 179.2 of this subchapter apply.

§ 180.505 Quality assurance program.

The quality assurance program requirements of § 179.7 of this subchapter apply.

§ 180.507 Qualification of tank cars.

(a) Each tank car marked as meeting a "DOT" specification or any other tank car used for the transportation of a hazardous material must meet the requirements of this subchapter or the applicable specification to which the tank was constructed.

(b) *Tank car specifications no longer authorized for construction.* (1) Tank cars prescribed in the following table are authorized for service provided they conform to all applicable safety requirements of this subchapter:

Specification prescribed in the current regulations	Other specifications permitted	Notes
105A200W	105A100W	1
105A200ALW	105A100ALW	1
105A300W	ICC–105, 105A300.	
105A400W	105A400.	
105A500W	105A500.	
105A600W	105A600.	
106A500X	ICC–27, BE–27, 106A500.	
106A800X	106A800.	
107A * * * *	....	2

Note 1: Tanks built as Specification DOT 105A100W or DOT 105A100ALW may be altered and converted to DOT 105A200W and DOT 105A200ALW, respectively.

Note 2: The test pressures of tanks built in the United States between January 1, 1941 and December 31, 1955, may be increased to conform to Specification 107A. Original and revised test pressure markings must be indicated and may be shown on the tank or on a plate attached to the bulkhead of the car. Tanks built before 1941 are not authorized.

(2) For each tank car conforming to and used under an exemption issued before October 1, 1984, which authorized the transportation of a cryogenic liquid in a tank car, the owner or operator shall remove the exemption number stenciled on the tank car and stamp the tank car with the appropriate Class DOT–113 specification followed by the applicable exemption number. For example: DOT–113D60W–E * * * * (asterisks to be replaced by the exemption number). The owner or operator marking a tank car in this manner shall retain on file a copy of the last exemption in effect during the period the tank car is in service. No person may modify a tank car marked under this paragraph unless the modification is in compliance with an applicable requirement or provision of this subchapter.

(3) Specification DOT–113A175W, DOT–113C60W, DOT–113D60W, and DOT–113D120W tank cars may continue in use, but new construction is not authorized.

(4) Class DOT 105A and 105S tank cars used to transport hydrogen chloride, refrigerated liquid under the terms of DOT–E 3992 may continue in service, but new construction is not authorized.

§ 180.509 Requirements for inspection and test of specification tank cars.

(a) *General.* (1) Each tank car facility shall evaluate a tank car according to the requirements specified in § 180.511.

(2) Each tank car that successfully passes a periodic inspection and test must be marked as prescribed in § 180.515.

(3) A written report as specified in § 180.517(b) must be prepared for each tank car that is inspected and tested under this section.

(b) *Conditions requiring inspection and test of tank cars.* Without regard to any other periodic inspection and test requirement, a tank car must have an inspection and test according to this section if:

(1) The tank car shows evidence of abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation.

(2) The tank car was in an accident and damaged to an extent that may adversely affect its capability to retain its contents.

(3) The tank bears evidence of damage caused by fire.

(4) The Associate Administrator for Safety, FRA, requires it based on the existence of probable cause that a tank car or a class or design of tank cars may be in an unsafe operating condition.

(c) *Frequency of inspection and tests.* Each tank car shall have an inspection and test according to the requirements of this paragraph.

(1) For Class 107 tank cars and tank cars of riveted construction, the tank car must have a hydrostatic pressure test and visual inspection conforming to the requirements in effect prior to July 1, 1996, for the tank specification.

(2) For Class DOT 113 tank cars, see § 173.319(e) of this subchapter.

(3) For fusion welded tank cars, each tank car must have an inspection and test in accordance with paragraphs (d) through (k) of this section.

(i) For cars transporting materials not corrosive to the tank, every 10 years for the tank and service equipment (i.e., filling and discharge, venting, safety, heating, and measuring devices).

(ii) For non-lined or non-coated tank cars transporting materials corrosive to the tank, an interval based on the following formula, but in no case shall the interval exceed 10 years for the tank and 5 years for service equipment:

$$i = \frac{t_1 - t_2}{r}$$

where:

i is the inspection and test interval.
t_1 is the actual thickness.
t_2 is the allowable minimum thickness under paragraph (g) of this section.
r is the corrosion rate per year.

(iii) For lined or coated tank cars transporting a material corrosive to the tank, every 10 years for the tank, 5 years for the service equipment, and when a lining or coating is applied to protect the tank shell from the lading, an interval based on the owner's determination for the lining or coating, but not greater than every 10 years.

(A) When a lining or coating is applied to protect the tank shell from the lading, each owner of a lining or coating shall determine the periodic inspection interval and test technique for the lining or coating. The owner must maintain all supporting documentation used to make such a determination, such as the lining or coating manufacturer's recommended inspection interval and test technique, at the owner's principal place of business.

(B) The supporting documentation used to make such inspection and test interval determinations and technique must be made available to FRA upon request.

(d) *Visual inspection.* At a minimum, each tank car facility must visually inspect the tank externally and internally as follows:

(1) An internal inspection of the tank shell and heads for abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation, and except in the areas where insulation or a thermal protection system precludes it, an external inspection of the tank shell and heads for abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation;

(2) An inspection of the piping, valves, fittings, and gaskets for indications of corrosion and other conditions that make the tank car unsafe for transportation;

(3) An inspection for missing or loose bolts, nuts, or elements that make the tank car unsafe for transportation;

(4) An inspection of all closures on the tank car for proper securement in a tool tight condition and an inspection of the protective housings for proper securement;

(5) An inspection of excess flow valves having threaded seats for tightness; and

(6) An inspection of the required markings on the tank car for legibility.

(e) *Structural integrity inspections and tests.* At a minimum, each tank car facility shall inspect the tank car for structural integrity as specified in this section. The structural integrity inspection and test shall include all transverse fillet welds greater than 0.64 cm (0.25 inch) within 121.92 cm (4 feet) of the bottom longitudinal center line; the termination of longitudinal fillet welds greater than 0.64 cm (0.25 inch) within 121.92 cm (4 feet) of the bottom longitudinal center line; and all tank shell butt welds within 60.96 cm (2 feet) of the bottom longitudinal center line by one or more of the following inspection and test methods to determine that the welds are in proper condition:

(1) Dye penetrant test;

(2) Radiography test;

(3) Magnetic particle test;

(4) Ultrasonic test; or

(5) Optically-aided visual inspection (e.g., magnifiers, fiberscopes, borescopes, and machine vision technology).

(f) *Thickness tests.* (1) Each tank car facility shall measure the thickness of the tank car shell, heads, sumps, domes, and nozzles on each tank car by using a device capable of accurately measuring the thickness to within ±0.05 mm (±0.002 inch).

(2) After repairs, alterations, conversions or modifications of a tank car that result in a reduction to the tank car shell thickness, the tank car facility shall measure the thickness of the tank car shell in the area of reduced shell thickness to ensure that the shell thickness conforms to paragraph (g) of this section.

(g) *Service life shell thickness allowance.* (1) A tank car found with a shell thickness below the required minimum thickness after forming for its specification, as stated in part 179 of this subchapter, may continue in service if:

(i) Construction of the tank car shell and heads is from carbon steel, stainless steel, aluminum, nickel, or manganese-molybdenum steel; and

(ii) Any reduction in thickness of the tank shell or head is not more than that provided in the following table:

ALLOWABLE SHELL THICKNESS REDUCTIONS

Damage type	Class DOT 103, 104, 111, and 115 tank cars		Class DOT 105, 109, 112, and 114 tank cars	
	Top shell	Bottom shell	Top shell	Bottom shell
Corrosion	3.17 mm (0.125 inch)	1.58 mm (0.063 inch)	0.79 mm (0.031 inch)	0.79 mm (0.031 inch).
Corrosion and mechanical	3.17 mm (0.125 inch)	1.58 mm (0.063 inch)	0.79 mm (0.031 inch)	0.79 mm (0.031 inch).
Corrosion, local	4.76 mm (3/16 inch)	3.17 mm (0.125 inch)	1.58 mm (0.063 inch)	1.58 mm (0.063 inch).
Mechanical, local	3.17 mm (0.125 inch)	1.58 mm (0.063 inch)	1.58 mm (0.063 inch)	1.58 mm (0.063 inch).
Corrosion and mechanical, local.	4.76 mm (3/16 inch)	3.17 mm (0.125 inch)	1.58 mm (0.063 inch)	1.58 mm (0.063 inch).

Notes:

1. The perimeter for a local reduction may not exceed a 60.96 cm (24 inch) perimeter. Local reductions in the top shell must be separated from other reductions in the top shell by at least 40.64 cm (16 inches). The cumulative perimeter for local reductions in the bottom shell may not exceed 182.88 cm (72 inches).
2. Any reduction in the tank car shell may not affect the structural strength of the tank car so that the tank car shell no longer conforms to Section 6.2 of the AAR Specifications for Tank Cars.
3. Any reduction applies only to the outer shell for Class DOT 115 tank cars.
4. For Class DOT 103 and 104 tank cars, the inside diameter may not exceed 243.84 cm (96 inches).

(h) *Safety system inspections.* At a minimum, each tank car facility must inspect:

(1) Tank car thermal protection systems, tank head puncture resistance systems, coupler vertical restraint systems, and systems used to protect discontinuities (i.e., skid protection and protective housings) to ensure their integrity.

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(2) Reclosing pressure relief devices by:

(i) Removing the safety relief device from the tank car for inspection; and

(ii) Testing the safety relief device with air or another gas to ensure that it conforms to the start-to-discharge pressure for the specification or hazardous material in this subchapter.

(i) *Lining and coating inspection and test.* When this subchapter requires a lining or coating, at a minimum, each tank car facility must inspect the lining or coating installed on the tank car according to the inspection interval and test technique established by the owner of the lining or coating in accordance with paragraph (c)(3)(iii) of this section.

(j) *Leakage pressure test.* (1) At a minimum, each tank car facility shall perform a leakage pressure test on the tank fittings and appurtenances. The leakage pressure test must include product piping with all valves and accessories in place and operative, except that during the pressure test the tank car facility shall remove or render inoperative any venting devices set to discharge at less than the test pressure. Test pressure must be maintained for at least 5 minutes. Leakage test pressure may not be less than 2.1 Bar (30 psig) for tank cars having a test pressure less than or equal to 13.8 Bar (200 psig), or 3.4 Bar (50 psig) for tank cars having a tank test pressure greater than 13.8 Bar (200 psig).

(2) Interior heater systems must be tested hydrostatically at 13.87 Bar (200 psi) and must show no signs of leakage.

(k) *Alternative inspection and test procedures.* In lieu of the other requirements of this section, a person may use an alternative inspection and test procedure or interval based on a damage-tolerance fatigue evaluation (that includes a determination of the probable locations and modes of damage due to fatigue, corrosion, or accidental damage), when the evaluation is examined by the Association of American Railroads Tank Car Committee and approved by the Associate Administrator for Safety, FRA.

(l) *Inspection and test compliance date for tank cars with metal jackets or thermal protection systems.* (1) After July 1, 2000, each tank car with a metal jacket or with a thermal protection system shall have an inspection and test conforming to this section no later than the date the tank car requires a periodic hydrostatic pressure test (i.e., the marked due date on the tank car for the hydrostatic test).

(2) After July 1, 1998, each tank car without a metal jacket shall have an inspection and test conforming to this section no later than the date the tank car requires a periodic hydrostatic pressure test (i.e., the marked due date on the tank car for the hydrostatic test).

(3) For tank cars on a 20-year periodic hydrostatic pressure test interval (i.e., Class DOT 103W, 104W, 111A60W1, 111A100W1, and 111A100W3 tank cars), the next inspection and test date is the midpoint between the compliance date in paragraph (l)(1) or (2) of this section and the remaining years until the tank would have had a hydrostatic pressure test.

§ 180.511 Acceptable results of inspections and tests.

Provided it conforms with other applicable requirements of this subchapter, a tank car is qualified for use if it successfully passes the following inspections and tests conducted in accordance with this subpart:

(a) *Visual inspection.* A tank car successfully passes the visual inspection when the inspection shows no structural defect that may cause leakage from or failure of the tank before the next inspection and test interval.

(b) *Structural integrity inspection and test.* A tank car successfully passes the structural integrity inspection and test when it shows no structural defect that may initiate cracks or propagate cracks and cause failure of the tank before the next inspection and test interval.

(c) *Service life shell thickness.* A tank car successfully passes the service life shell thickness inspection when the tank shell and heads show no thickness reduction below that allowed in § 180.509(g).

(d) *Safety system inspection.* A tank car successfully passes the safety system inspection when each thermal protection system, tank head puncture resistance system, coupler vertical restraint system, and system used to protect discontinuities (e.g., breakage grooves on bottom outlets and protective housings) on the tank car conform to this subchapter.

(e) *Lining and coating inspection.* A tank car successfully passes the lining and coating inspection and test when the lining or coating shows no evidence of holes or degraded areas.

(f) *Leakage pressure test.* A tank car successfully passes the leakage pressure test when all product piping, fittings and closures show no indication of leakage.

(g) *Hydrostatic test.* A Class 107 tank car or a riveted tank car successfully passes the hydrostatic test when it shows no leakage, distortion, excessive permanent expansion, or other evidence of weakness that might render the tank car unsafe for transportation service.

§ 180.513 Repairs, alterations, conversions, and modifications.

(a) In order to repair tank cars, the tank car facility must comply with the requirements of Appendix R of the AAR Specifications for Tank Cars.

(b) Unless the exterior tank car shell or interior tank car jacket has a protective coating, after a repair that requires the complete removal of the tank car jacket, the exterior tank car shell and the interior tank car jacket must have a protective coating applied to prevent the deterioration of the tank shell and tank jacket.

§ 180.515 Markings.

(a) When a tank car passes the required inspection and test with acceptable results, the tank car facility shall mark the date of the inspection and test and the due date of the next inspection and test on the tank car in accordance with paragraph (b) of this section. When a tank car facility performs multiple inspection and test at the same time, one date may be used to satisfy the requirements of this section. One date also may be shown when multiple inspection and test have the same due date.

(b) The tank car facility must comply with the marking requirements of Appendix C of the AAR Specifications for Tank Cars.

(c) Converted tank cars must have the new specification and conversion date permanently marked in letters and figures at least 0.95 cm (0.375 inch) high on the outside of the manway nozzle or the edge of the manway nozzle flange on the left side of the car. The marking may have the last numeral of the specification number omitted (e.g., "DOT 111A100W" instead of "DOT 111A100W1").

(d) When pressure tested within six months of installation and protected from deterioration, the test date marking of a safety relief device is the installation date on the tank car.

§ 180.517 Reporting and record retention requirements.

(a) *Certification and representation.* Each owner of a specification tank car shall retain the certificate of construction (AAR Form 4–2) and related papers certifying that the manufacture of the specification tank car identified in the documents is in accordance with the applicable specification. The owner shall retain the documents throughout the period of ownership of the specification tank car and for one year thereafter. Upon a change of ownership, the requirements of Section 1.3.15 of the AAR Specifications for Tank Cars apply.

(b) *Inspection and test reporting.* Each tank car that is inspected as specified in § 180.509 must have a written report, in English, prepared according to this paragraph. The owner must retain a copy of the inspection and test reports until successfully completing the next inspection and test of the same type. The inspection and test report must include the following:

(1) Type of inspection and test performed (a checklist is acceptable);

(2) The results of each inspection and test performed;

(3) Owner's reporting mark;

(4) DOT Specification;

(5) Inspection and test date (month and year);

(6) Location and description of defects found and method used to repair each defect;

(7) The name and address of the tank car facility and the signature of inspector.

§ 180.519 Periodic retest and inspection of tank cars other than single-unit tank car tanks.

(a) *General.* Unless otherwise provided in this subpart, tanks designed to be removed from cars for filling and emptying and tanks built to a Class DOT 107A specification and their safety relief devices must be retested periodically as specified in Retest Table 1 of paragraph (b)(5) of this section. Retests may be made at any time during the calendar year the retest falls due.

(b) *Pressure test.* (1) Each tank, except as provided in paragraph (b)(8) of this section, must be subjected to the specified hydrostatic pressure and its permanent expansion determined. Pressure must be maintained for 30 seconds and far as long as necessary to secure complete expansion of the tank. Before testing, the pressure gauge must be shown to be accurate within 1 percent at test measure. The expansion gauge must be shown to be accurate, at test pressure, to within 1 percent. Expansion must be recorded in cubic centimeters. Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure and the tank must not leak or show evidence of distress.

(2) Each tank, except tanks built to specification DOT 107A, must also be subjected to interior air pressure test of at least 100 psi under conditions favorable to detection of any leakage. No leaks may appear.

(3) Safety relief valves must be retested by air or gas, must start to discharge at or below the prescribed pressure and must be vapor tight at or above the prescribed pressure.

(4) Frangible discs and fusible plugs must be removed from the tank and visually inspected.

(5) Tanks must be retested as specified in Retest Table 1 of this paragraph (b)(5), and before returning to service after repairs involving welding or heat treatment:

RETEST TABLE 1

Specification	Retest interval—years		Minimum Retest pressure—p.s.i.		Safety relief valve pressure—p.s.i.	
	Tank	Safety relief devices [d]	Tank hydrostatic expansion [c]	Tank air test	Start-to-discharge	Vapor tight
DOT 27	5	2	500	100	375	300
106A500	5	2	500	100	375	300
106A500X	5	2	500	100	375	300
106A800	5	2	800	100	600	480
106A800X	5	2	800	100	600	480
106A800NCI	5	2	800	100	600	480
107A * * * *	[a]5	[a]2	(b)	None	None	None
110A500–W	5	2	500	100	375	300
110A600–W	5	2	600	100	500	360
110A800–W	5	2	800	100	600	480
110A1000–W	5	2	1,000	100	750	600
BE–275	5	2	500	100	375	300

Notes:

[a] If DOT 107A * * * * tanks are used for transportation of flammable gases, one frangible disc from each car must be burst at the interval prescribed. The sample disc must burst at a pressure not exceeding the marked test pressure of the tank and not less than 70 percent of the marked test pressure. If the sample disc does not burst within the prescribed limits, all discs on the car must be replaced.

[b] The hydrostatic expansion test pressure must at least equal the marked test pressure.

[c] See § 180.519(b)(1).

[d] Safety relief valves of the spring-loaded type on tanks used exclusively for fluorinated hydrocarbons and mixtures thereof which are free from corroding components may be retested every 5 years.

(6) The month and year of test, followed by a "V" if visually inspected as described in paragraph (d)(8) of this section, must be plainly and permanently stamped into the metal of one head or chime of each tank with successful test results; for example, 1–60 for January 1960. On DOT 107A**** tanks, the date must be stamped into the metal of the marked end, except that if all tanks mounted on a car have been tested, the date may be stamped into the metal of a plate permanently applied to the bulkhead on the "A" end of the car. Dates of previous tests and all prescribed markings must be kept legible.

(c) *Visual inspection.* Tanks of Class DOT 106A and DOT 110A–Z specifications (§§ 179.300, 179.301, 179.302 of this subchapter) used exclusively for transporting fluorinated hydrocarbons and mixtures thereof, and that are free from corroding components, may be given a periodic complete internal and external visual inspection in place of the periodic hydrostatic retest. Visual inspections shall be made only by competent persons. The tank must be accepted or rejected in accordance with the criteria in CGA Pamphlet C–6.

(d) *Written records.* The results of the pressure test and visual inspection must be recorded on a suitable data sheet. Completed copies of these reports must be retained by the owner and by the person performing the pressure test and visual inspection as long as the tank is in service. The information to be recorded and checked on these data

sheets are: Date of test and inspection; DOT specification number; tank identification (registered symbol and serial number, date of manufacture and ownership symbol); type of protective coating (painted, etc., and statement as to need for refinishing or recoating); conditions checked (leakage, corrosion, gouges, dents or digs, broken or damaged chime or protective ring, fire, fire damage, internal condition); test pressure; results of tests; and disposition of tank (returned to service, returned to manufacturer for repair, or scrapped); and identification of the person conducting the retest or inspection.

Issued in Washington, DC, on September 7, 1995 under authority delegated in 49 CFR Part 1.

D.K. Sharma,

Administrator.

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September 21, 1995

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 50, et al.

Protection of Human Subjects; Informed Consent; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50, 56, 312, 314, 601, 812, and 814

[Docket No. 95N–0158]

RIN 0910–AA60

Protection of Human Subjects; Informed Consent

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its current informed consent regulations to permit harmonization of Federal policies on emergency research, and to reduce confusion as to when such research can proceed without obtaining informed consent. The regulation provides a narrow exception to the requirement for obtaining and documenting informed consent from each human subject prior to initiation of an experimental treatment. The exception would apply to a limited class of research activities involving human subjects who, because of their life-threatening medical condition and the unavailability of legally authorized persons to represent them, are in need of emergency medical intervention and cannot provide legally effective informed consent. FDA is proposing this action in response to growing concerns that current rules are making high quality acute care research activities difficult or impossible to carry out at a time when the need for such research is increasingly recognized.

DATES: Written comments by November 6, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glen D. Drew, Office of Health Affairs (HFY–20), Food and Drug Administration, Rockville, MD 20852, 301–443–1382.

SUPPLEMENTARY INFORMATION:

I. Harmonization

Recently, the Department of Health and Human Services (HHS) authorized Institutional Review Boards (IRB's) to waive informed consent requirements for one specific National Institutes of Health-funded project under strictly defined circumstances similar to those authorized by these FDA proposed rules. (See HHS Notice of Action Related to Emergency Research Activity at 60 FR 38353 through 38354, July 26, 1995.) HHS is considering a general IRB authorization to waive informed consent requirements under the same strictly defined circumstances as those identified in the specific project waiver authorization and in the FDA proposed rule. Any HHS decision to grant a general informed consent waiver authority to IRB's for emergency research activities will be made with attention to harmonization with action on these FDA proposed rules and will be published in the **Federal Register**. It is the intent of HHS to bring the HHS (45 CFR part 46) and FDA (21 CFR part 50) regulations into harmony on this matter at the time this rule is made final.

II. Informed Consent Regulations

Much of what has become standard, accepted, medical therapies for use in acute or resuscitation clinical care has not been evaluated by adequate trials that demonstrate either safety or effectiveness. Controlled clinical trials have demonstrated that some therapies that have become standard medical practice are ineffective or even harmful. Other standard therapies, although shown to be effective in clinical trials, have significant limitations, in that, for example, they only work in a small percentage of those individuals who receive the therapies, so that testing of improved or additional therapies remains critically important. By permitting certain adequate and well-controlled clinical trials to occur that involve human subjects who are confronted by a life-threatening condition and who also are unable to give informed consent because of that condition, the agency expects the clinical trials to allow individuals in these situations access to potentially life-saving therapies and to result in advancement in knowledge and improvement of therapies used in emergency medical situations that currently have poor clinical outcome.

Sections 505(i), 507(d), and 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i), 357(d), and 360j(g)) require FDA to publish regulations governing the use in humans of drugs, including certain biologics and antibiotics, and devices in clinical investigations (hereafter "investigational drugs" and "investigational devices," respectively).

In 1962, amendments to the act (Section 505(d)) provided that drugs could be approved for marketing only if they were found, on the basis of adequate and well-controlled clinical investigations, to be effective as well as safe for their intended use. Section 505(i) of the act also provided that unapproved drugs could be made available to humans for investigational use only. Section 505(i) of the act further provided for the issuance of regulations which condition the investigational use, in part, on:

> * * * the manufacturer * * * requiring that experts using such drugs * * * certify * * * that they will inform any human beings to whom such drugs, or any controls used in connection therewith, are being administered, or their representatives, that such drugs are being used for investigational purposes and will obtain the consent of such human beings or their representatives, except where they deem it not feasible, or in their professional judgment, contrary to the best interests of such human beings.

This provision created the general requirement of informed consent for investigations conducted under sections 505(i) and 507(d) of the act.

The Medical Device Amendments of 1976 revised FDA's authority to regulate medical devices and, in part, set up a statutory scheme under which devices would be classified and subjected to varying degrees of regulatory control according to classification. Section 520(g) of the act created a system under which the safety and effectiveness of new medical devices could be investigated by qualified experts. Among other requirements, section 520(g)(3)(D) of the act provided that the sponsor of clinical investigations must:

> * * * assure that informed consent will be obtained from each human subject (or his representative) * * * except where subject to such conditions as the Secretary may prescribe, the investigator conducting or supervising the proposed clinical testing of the device determines in writing that there exists a life threatening situation involving the human subject of such testing which necessitates the use of such device and it is not feasible to obtain informed consent from the subject and there is not sufficient time to obtain such consent from his representative.

Section 520(g)(3)(D) of the act further provided that this determination:

> * * * shall be concurred in by a licensed physician who is not involved in the testing of the human subject with respect to which such determination is made unless immediate use of the device is required to save the life of the human subject of such testing and there is not sufficient time to obtain such concurrence.

Sections 505(i) and 507(d) of the act permit waiver of informed consent either when "it [is] not feasible" or when it is "contrary to the best interests of such [subjects]." Section 520(g) of the act permits waiver of informed consent in life-threatening situations which "necessitates the use of such device and it is not feasible to obtain informed consent * * *."

In 1979, following the enactment of the Medical Device Amendments, FDA proposed rules revising its regulations governing informed consent (44 FR 47713, August 14, 1979). FDA issued final regulations governing informed consent in the **Federal Register** of January 27, 1981 (46 FR 8942). Those regulations, codified in part 50 (21 CFR part 50), apply to any clinical investigation subject to regulation by FDA under sections 505(i), 507(d), and 520(g) of the act, as well as to clinical investigations that support applications for research or marketing permits for products regulated by FDA. The agency explained its reasons for revising its regulations governing informed consent in the preamble to these final regulations. These reasons included, among others: (1) The desire to address the informed consent provision included in the device amendments; (2) the need to create a uniform set of agency-wide informed consent standards for more effective administration of the agency's bioresearch monitoring program; (3) implementation of recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research; and (4) harmonization of FDA rules with those of the HHS.

Some comments on the proposed regulations questioned whether the regulations met the statutory requirements of sections 505, 507, and 520 of the act, but all comments approved of the elimination of regulatory confusion and the enhancement of human subject protections. In responding to public comments, the agency stated its belief that the standard regarding informed consent expressed in the 1962 Drug Amendments was the standard of its time, but that it was no longer the current standard of practice, given progress in the understanding of ethical principles and their relevance to biomedical research. The preamble went on to express the agency's intent to adopt a single standard that reflected both the most current congressional thinking on informed consent and the important ethical principles and social policies underlying the doctrine of consent. (See 46 FR 8942 to 8944, January 27, 1981.) In the preamble to the August 14, 1979, proposed rule, FDA further explained the requirement that a determination be made as to lack of an available alternative method of therapy that may save the life of the subject. FDA stated that this requirement:

> * * * has been added to prevent routine reliance on the exception. This additional requirement should provide guidance to investigators regarding those exceptional situations in which informed consent need not be obtained. As noted above, obtaining informed consent has come to be a standard of practice for professional clinical investigators. Defining those circumstances when informed consent need not be obtained should provide a clearer understanding of how to determine when informed consent is "not feasible."

(44 FR 47713 at 47720).

In § 50.23(a)) of the 1981 rule, FDA required informed consent except when obtaining informed consent is determined not to be feasible for the emergency use of an investigational article, where:

> * * * both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the following: (1) The human subject is confronted by a life-threatening situation necessitating the use of the test article. (2) Informed consent cannot be obtained from the subject because of an inability to communicate with, or obtain legally effective consent from, the subject. (3) Time is not sufficient to obtain consent from the subject's legal representative. (4) There is available no alternative method of approved or generally recognized therapy that provides an equal or greater likelihood of saving the life of the subject.

If immediate use of the investigational product is, in the investigator's opinion, required to preserve the life of the subject, and there is not sufficient time to obtain an independent physician's determination in advance of using the product, the use of the product is to be reviewed and evaluated in writing by a physician who is not participating in the study within 5 working days after its use (46 FR 8951, January 27, 1981).

On December 21, 1990, FDA published an interim rule in the **Federal Register** (55 FR 52814), amending these informed consent regulations to permit an exception from the general requirements for informed consent in certain military combat circumstances. As codified in § 50.23(d), the Commissioner of Food and Drugs (the Commissioner) is permitted to make a determination that obtaining informed consent from military personnel for the use of an investigational drug or biologic is not feasible in certain battlefield or combat-related situations. The Commissioner is authorized to make such a determination when the physician(s) responsible for the medical care of the military personnel involved and the investigator(s) named in the investigational new drug application (IND) provide written justification for their conclusions that, in the use of specific investigational drugs or biologics in a specific combat-related situation, obtaining informed consent is not feasible and withholding treatment would be contrary to the best interests of the military personnel because of military combat exigencies and that the waiver of informed consent is ethically justified (52 FR 52814, December 21, 1990). This exception was upheld in the United States Court of Appeals for the D.C. Circuit in 1991. (See *Doe* v. *Sullivan*, 938 F.2d 1370 (D.C. Cir. 1991), affirming 756 F. Supp. 12 (D. D.C. 1991)).

In June 1991, the Office of Science and Technology Policy published the common Federal Policy for the Protection of Human Subjects (common rule) in the **Federal Register**. (56 FR 28002, June 18, 1991.) Issuance of the common rule was the result of more than a decade of work by Federal agencies and departments that conduct, support, or regulate research involving human subjects. The common rule implemented a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (President's Commission). This recommendation was included in the December 1981 report of the President's Commission, entitled, "First Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and their Implementation, for the Protection of Human Subjects in Biomedical and Behavioral Research, Protecting Human Subjects," which stated:

> The President should, through appropriate action, require that all federal departments and agencies adopt as a common core the regulations governing research with human subjects issued by the Department of Health and Human Services (codified at 45 CFR 46), as periodically amended or revised, while permitting additions needed by any department or agency that are not inconsistent with these core provisions.

(56 FR 28004, June 18, 1991)

In May 1982, the Chairman of the Federal Coordinating Council for Science, Engineering, and Technology appointed an Ad Hoc Committee for the Protection of Human Subjects. The Ad Hoc Committee agreed that uniformity was desirable among departments and agencies and worked to develop a model Federal policy, which became the common rule, to "eliminate unnecessary regulation and to promote increased understanding and ease of compliance by institutions that conduct federally supported or regulated research involving human subjects." (56 FR 28004, June 18, 1991.) Section xx.116(d) of the common rule described the conditions under which an Institutional Review Board (IRB) was authorized to waive some or all of the elements of informed consent. This section was adopted unchanged into the HHS regulations (45 CFR part 46). (56 FR

28022, June 18, 1991.) The HHS regulations apply to research supported or conducted by HHS; they are implemented under the direction of the Office for Protection from Research Risks (OPRR) at the National Institutes of Health (NIH).

Although FDA concurred in the common rule and amended its regulations in 21 CFR parts 50 and 56 to conform them to the common rule to the extent permitted by the act, FDA regulations diverged from section xx.116(d). (56 FR 28025, June 18, 1991.) In describing the reason for this divergence, FDA stated as follows:

> The act requires that informed consent be obtained from all subjects of clinical investigations except in very limited circumstances (see, e.g., 21 U.S.C. 355(i), 357(d)(3), and 360j(g)(3)(D), which establish requirements for the conduct of clinical investigations for drugs, antibiotic drugs, and medical devices, respectively). FDA does not have the authority under the act to waive this requirement.
>
> (53 FR 45679, November 10, 1988).

Thus, FDA retained its exception language dealing with individual emergency use which was contained in FDA's 1981 regulations (§ 50.23(a) through (c)); this exception remains applicable today. FDA modified other aspects of parts 50 and 56 (21 CFR part 56) in the **Federal Register** on June 18, 1991, in order to bring them into harmony with the common rule (56 FR 28025).

IRB's that are subject to both the HHS and FDA regulations have had to ensure that both the criteria in the common rule as set forth at 45 CFR part 46 and in FDA's regulation at 21 CFR part 50 are met in order to permit research to be approved.

On many occasions IRB's, functioning under HHS regulations, have been unable to approve research that required use of the waiver allowed by 45 CFR 46.116(d) because the risk involved in emergency research activities was thought to be greater than minimal and therefore the condition that the research activity "involve no more than minimal risk" could not be met. (See 45 CFR 46.116(d).)

Similarly, FDA has permitted only a very limited number of controlled trials involving investigational drugs to be conducted without informed consent under its current exception provisions. This is because § 50.23(a) permits the use of an investigational product without consent only in order to save the life of a patient, and if there is no other approved or generally recognized alternative therapy available that provides an equal or greater likelihood of saving the life of the patient. In other words, the investigator and the independent physician have had to determine that the investigational product represented the best available treatment for the patient.

The agency has permitted limited trials involving investigational drugs to be conducted by interpreting § 50.23(a) as describing the general state of circumstances that must exist as a threshold to determining that informed consent is not feasible (Refs. 1 and 2). The term "human subject," defined in § 50.3(g) as one who participates in research either as a recipient of the test article or as a control, supports the interpretation that this provision was intended to be used in the setting of an investigation conducted in accordance with principles of good clinical design, including blinding, randomization, and, where appropriate, use of a placebo as a control.

III. Background on Current Practices in the Research Community

Most therapeutic intervention in acute care and emergency research must be initiated immediately to be life-saving. For victims of heart attacks or head injuries, for example, this intervention often must be instituted in the field, prior to hospital admission, when the individual is usually found to be unresponsive and unable to communicate and where there usually is no authorized representative of the subject available to give surrogate consent.

In 1993, the agency became aware that certain IRB's were approving research involving interventions in acutely life-threatening situations by invoking a "deferred consent" procedure. This term was used to describe a procedure whereby subjects or representatives of subjects are informed, after the fact, that the subject participated, unknowingly, in a clinical investigation of an experimental product, and was administered a test article in the course of the investigation. Subjects or their representatives were then asked to ratify that participation retroactively, and to agree to continuing participation (Refs. 3 through 6). As described, "deferred consent" is nothing other than post-hoc ratification. Post-hoc ratification is not genuine consent because the subject or representative has no opportunity to prevent the administration of the test article, and cannot, therefore, meaningfully be said to have consented to its use (Ref. 7).

In August 1993, IRB chairs at institutions with written assurances of compliance with HHS regulations were sent a letter by NIH's OPRR reiterating the mandate for obtaining legally effective informed consent prospectively and reminding them that the only deviation allowed by the HHS regulations is contained in 45 CFR 46.116(d), its waiver provision. The letter indicated that "deferred consent" or "ratification" fails to constitute informed consent under the HHS regulations (Ref. 8).

During the summer of 1993, the Commissioner of Food and Drugs received a number of letters from the neurology and emergency medicine communities, including the Society for Academic Emergency Medicine, the National Coalition for Research in Neurological Disorders, and the National Head Injury Foundation, expressing concern about their continued ability to conduct placebo controlled research in subjects unable to provide informed consent if FDA did not permit "implied" or "deferred consent." The Commissioner responded to these letters on September 14, 1993, indicating that FDA did not agree that "deferred" consent constituted true consent; he stated further that:

> While we recognize that it is not always possible to obtain informed consent from subjects prior to the administration of an investigational drug, we believe that it is critical to define and seek some consensus on how, precisely, patients who cannot give consent can be enrolled in such trials * * *. Before establishing new policy in this area, the Agency believes that it needs broad public and scientific input in order to determine how to balance the need for well-controlled studies with the protection of subjects' rights. Therefore, we are in the early stages of planning a workshop that will be co-sponsored by NIH to obtain necessary advice on this topic. * * * *
>
> (Refs. 9 through 12)

Thus, although the research community is now aware that "deferred consent" does not meet the requirements of either HHS or FDA rules, and does not constitute valid informed consent, it has been given no alternative procedure, under which it may conduct emergency research under the FDA and HHS regulations, other than the limited exceptions and exemptions described previously.

IV. Patients and Research Community's Support for Change in Regulation and Congressional Interest

In correspondence, at meetings, and in published articles, the IRB and research communities have expressed their frustration at the difficulties they faced in interpreting existing regulations to fit the needs of emergency research. They have identified the need for FDA and NIH to reach a decision concerning the conduct of these studies that would result in a harmonization of the FDA and HHS regulations. Patient advocacy

groups and researchers have stressed that the research at stake is of great importance to patients and the health of the nation and care must be taken to ensure that the agencies' regulations do not inappropriately disrupt access to, or prevent the development of, potentially life-saving treatments for serious illnesses and injuries (Refs. 13 through 20). The IRB and research communities have stressed that a common position adopted by both FDA and NIH will help eliminate confusion concerning which regulations, FDA or HHS or both, need to be followed and will eliminate conflicting requirements that must be met in order for the research to proceed. This is especially true in cases where a majority of the study sites are subject to both sets of regulations. Finally, they have argued that it is appropriate that FDA and NIH agree on the basic conditions and the ethical conduct of acute care research in order to carry out PHS's dual leadership responsibility to promote sound biomedical research while helping to protect the rights and welfare of human subjects (Refs. 21 through 25).

The research addressed by this proposed regulation is believed to constitute a small fraction of all clinical research. This is because, in some instances, an individual may be unconscious or incompetent to give informed consent, but immediate involvement in research is not needed to promote healing or to prevent death. In those instances, it may be possible to delay participation in research until consent from a legally authorized representative can be obtained. There are also medical conditions that predictably occur in given identifiable patient populations. In such cases, prior informed consent can be obtained from potential future subjects before the intervention occurs because the patient will understand the likelihood of the future need to participate in research when consent cannot be obtained. In other cases, such as events that occur regularly in already hospitalized, acutely ill patients, the majority of subjects will have a legally authorized representative readily available to provide surrogate consent. In these instances, the research may, in accord with the provisions of the law of the jurisdiction, proceed without invoking a waiver of informed consent. In those cases that remain, research can only be conducted in the absence of informed consent.

A May 23, 1994, hearing of the Subcommittee on Regulation, Business Opportunities, and Technology, House Committee on Small Business, then chaired by Representative Ron Wyden, addressed problems encountered in securing informed consent of subjects in clinical trials of investigational drugs and medical devices (Ref. 26). In Representative Wyden's opening remarks, he acknowledged that while informed consent is an essential component of biomedical research, there are certain conditions under which obtaining informed consent in the classic sense may not be possible, and it is imperative that testing of potentially life-saving therapies go forward. He further asserted that contradictory and confusing Federal policies on informed consent have fostered inconsistent application of the Federal requirements on the part of investigators and IRB members. Representative Larry Combest, in his opening statement, expressed his desire for HHS Secretary Donna Shalala to establish consistent Federal rules related to obtaining informed consent during research on unapproved drugs and medical devices. He emphasized the need to harmonize HHS and FDA regulations while streamlining the approval process.

Researchers, IRB members, device and drug manufacturers, and ethicists testified about the state of emergency research and the negative impact current regulations have had on the ability of such research to proceed; the ethical issues surrounding the conduct of emergency research in situations where human subjects are not competent to give informed consent; and the need for better guidance from Federal agencies. Representatives from NIH and FDA testifying at the hearing acknowledged the need to further examine the issue of circumstances under which research activities may go forward when informed consent cannot be obtained.

On October 25, 1994, persons associated with several professional organizations, institutions, patient advocacy groups, and the bioethics community met at the Coalition Conference of Acute Resuscitation and Critical Care Researchers (the Coalition) to discuss the current Federal regulations regarding informed consent for participation in research. Observers from the legal community, congressional and senate offices, FDA, and the NIH's OPRR also attended.

The Coalition conference was convened under the joint sponsorship of the American Heart Association and the Society for Academic Emergency Medicine and included representatives from the American Academy of Clinical Toxicology, the American Association for the Surgery of Trauma, the American College of Cardiology, the American College of Emergency Physicians, the Applied Research Ethics National Association, the Emergency Nurses Association, the Joint Section on Neurotrauma and Critical Care, the National Head Injury Foundation, and the Society of Critical Care Medicine.

Following this Coalition conference, the Coalition developed a consensus document to offer recommendations to help resolve some of the issues concerning informed consent and waiver of consent in emergency research. The American Heart Association and the Society for Academic Emergency Medicine submitted the consensus statement to FDA. The consensus document has been endorsed by a number of professional organizations, including the American Academy of Clinical Toxicology, the American Academy of Pediatrics' Pediatric Emergency Medicine Collaborative Research Committee and Section on Emergency Medicine, the American Association for the Surgery of Trauma, the American Autoimmune Related Diseases Association, the American Brain Injury Consortium, the American College of Emergency Physicians, the Applied Research Ethics National Association, the Emergency Nurses Association, the Medical Device Manufacturers Association, the National Head Injury Foundation, the New England Biomedical Research Coalition, the Society for Pediatric Emergency Medicine, the Society for Critical Care Medicine, and the National Association of EMS Physicians.

The consensus document described the importance of emergency research, provided background on the current regulations that govern waiver of consent in clinical research trials, and reviewed current issues arising from the use of waiver of consent in emergency research. The consensus document concluded that there are circumstances under which it is not feasible to obtain consent for enrollment into a protocol involving emergency research; and that, in these circumstances, patients are vulnerable both to risks associated with research, but also to being denied benefits offered by research interventions when no effective standard treatment is known. The consensus document contained recommendations "which should be met when the critical nature of the illness or injury, or the need for rapid treatment intervention, precludes prospective consent for participation in emergency research" (Ref. 22).

On January 9 and 10, 1995, FDA and NIH cosponsored a Public Forum on Informed Consent in Clinical Research Conducted in Emergency

Circumstances, as was proposed by the Commissioner of Food and Drugs in his letters of September 14, 1993 (Refs. 9 through 12 and Refs. 23 and 24). The Coalition consensus document was presented and discussed as well as other models for changing the regulatory paradigm (Ref. 25). Participants at that public forum affirmed the need to protect research subjects while allowing clinical research to proceed if the research subjects are in a life-threatening situation, available treatments are unproven or unsatisfactory, and immediate intervention is necessary if the intervention is to be of benefit (Refs. 25 and 26). Many participants expressed concern that the current regulations value individual autonomy and the right to informed consent at the expense of the principles of beneficence and justice. They argued that when the expected outcome of standard therapy is poor, and a promising research intervention is available, the principle of beneficence should be permitted to take precedence over the principle of autonomy (Ref. 23). A minority view expressed was that one cannot ethically assume that acutely ill, incompetent patients would, if they were able, choose to participate in a research protocol. Those supporting this view believed that to exclude these patients from a research protocol did not discriminate against them, but rather respected their autonomy (Refs. 24, 27, and 28).

Forum participants discussed the ethical, regulatory, and operational challenges faced by IRB's and by emergency and acute care researchers, as well as ideas for resolving those dilemmas in an ethical way. Speakers emphasized that the "golden hour" or the "window of opportunity" following acute injury is a concept on which modern trauma care is based. "Nearly all patients who die from injury in the first 24 hours do so from processes set in motion at the time of injury. Any therapeutic intervention must [therefore] be begun immediately to interrupt the injury-induced cascade of body reactions leading to death. That is, intervention must be instituted in the field by the first response team of paramedics, in the trauma room in the operating room, and in the surgical critical care unit" (Ref. 23, p. 277).

Participants agreed that current resuscitation modalities are only minimally effective in saving lives and improving outcome and quality of life. Trauma and acute care physicians reported frustration in employing time-honored treatments that provide little benefit to their patients. Many expressed concern that, because of the current Federal regulations, emergency care professionals are hesitant to conduct appropriately designed clinical trials which are needed to validate or discredit current or innovative treatments. During the Public Forum, participants provided numerous examples of the chilling effect that the current regulations have had on the conduct of clinical research, including cardiopulmonary resuscitation (CPR) studies, and studies of acute trauma, overdose, acute asthma exacerbations, cardiac arrest, head injury, seizures, and stroke (Refs. 23, 24, and 25).

Representative of the studies discussed was one in the area of sudden cardiac arrest. Each year, approximately 350,000 people in the United States suffer a sudden cardiac arrest. Most die, while many others are irreversibly harmed by complications such as brain damage. In the cases of patients who survive, the risk of recurrence is high and the protection offered by easily implantable cardioverter-defibrillators exemplifies the important successes that can be achieved. One of the most critical challenges is to find ways to improve the initial survival rate of individuals who are typically unresponsive and unable to communicate. Currently, despite efforts to instill basic life support education (i.e., standard CPR techniques), only a small percentage of individuals who suffer sudden out-of-hospital cardiac arrests are resuscitated by bystanders. Few survive to leave the hospital. This percentage may be as low as 1 to 3 percent in some large metropolitan areas, with the best results estimated to be only in the 25 percent range. Given the large number of sudden cardiac arrests annually in the United States alone, even small improvements in care offer enormous life-saving potential (Ref. 29).

Standard CPR methodology was largely developed on a mechanistic and theoretical basis. Improvement or rigorous challenge of the methodology is complicated by the difficulty in obtaining approval to undertake studies in out-of-hospital cardiac arrest victims. The inability of most cardiac arrest victims to provide the requisite informed consent has proved a significant barrier to evaluating either treatment options available in other countries, or new techniques devised in the United States (Ref. 29).

Participants asserted that, without validation of standard treatment, many patients are now essentially participants in uncontrolled "experiments" when they receive emergency care. These "experiments," however, do not yield data on which progress in rational medical decisionmaking can be based. For example, one IRB would not approve a protocol for a randomized clinical trial of high dose versus standard dose epinephrine in cardiac arrest, even though some clinicians at that institution used high dose epinephrine in some cases and others did not. The ultimate result was that patients were not allocated randomly to high or standard dose (Ref. 30). The scientific question of which dose was better could be realistically addressed only in a controlled trial with subjects randomly allocated to each dosage level in order to assure that multiple variables caused by differences in physicians or other features of resuscitation technique did not confound the data.

The majority of participants in the Public Forum recommended that NIH and FDA change their regulations so that they are clear and consistent and that NIH and FDA develop a new section in the regulations to clearly permit the waiver of informed consent for acute care research if certain defined conditions and safeguards are met. Participants recommended that a short- and long-term solution be sought which would permit this research to proceed. The short-term solution would be needed if a change in the regulations could not be accomplished quickly.

Since the time of the Public Forum, the Assistant Secretary for Health, the NIH Director, and the Commissioner of FDA have received a number of letters urging NIH and FDA to clarify their regulations to allow for waiver of informed consent in appropriate emergency research circumstances. On March 31, 1995, the Coalition of Acute Resuscitation and Critical Care Researchers submitted a statement containing over 1,300 signatures requesting that NIH and FDA: (1) Recognize the need for clinical research in emergent circumstances where informed consent may not be feasible; and (2) issue an interpretation of the existing Federal regulations to allow the performance of this research.

V. Statutory Basis for These Regulations

Sections 505(i), 507(d), and 520(g) of the act direct the Secretary (and, in accordance with section 903 of the act (21 U.S.C. 394), FDA) to issue regulations establishing conditions under which investigational use of drugs and devices by qualified experts will be permitted. For drugs (including biological drugs and antibiotics) and devices, the statute specifies that the agency must include among these conditions that the product manufacturer or sponsor require the expert studying the product to obtain informed consent from the subjects or their representatives.

The only exceptions from the informed consent requirement for drugs are where the investigators "deem it not feasible or, in their professional judgment, contrary to the best interests" of the subjects (sections 505(i) and 507(d) of the act). The language of these provisions makes it clear that Congress contemplated that informed consent could be waived in the context of placebo-controlled drug trials: "[the investigators] will inform any human beings to whom such drugs, *or any controls used in connection therewith*, are being administered * * * and will obtain the consent of such human beings or their representatives, except where [not feasible or contrary to their best interests]" (emphasis added). The 1962 Drug amendments, which included section 505(i) of the act, added the requirement that drugs be shown to be not only safe, but also effective through "adequate and well-controlled investigations, including clinical investigations," by experts qualified to evaluate effectiveness (section 505(d) and (e)). Section 505(i) of the act, then, authorized FDA to establish the conditions for the conduct of these required studies in humans. (See also section 507(d) of the act.)

The 1962 amendments were adopted following the thalidomide tragedy, in which women were given the drug without being informed that the drug was experimental, or that they were research subjects, or that the safety of the drug had not been established. (See generally legislative history discussion at 44 FR 47714–47715, August 14, 1979.) Although the House bill would have required informed consent in all clinical trials of drugs, the version reported out of Conference allowed the exceptions that became law (H.R. Rept. No. 2526, 87th Cong., 2d sess., October 3, 1962, pp. 4 and 5). Professional responsibility, based on "the greatest exercise of conscience," was accepted in permitting administration of investigational drugs without informed consent (108 Congressional Record 22038, 22042–43, 87th Cong., 2d sess., October 3, 1962).

The only exceptions from the informed consent requirements for devices are where the investigator determines "there exists a life threatening situation involving the human subject of such testing which necessitates the use of such device and it is not feasible to obtain informed consent from the subject and there is not sufficient time to obtain such consent from his representative" (section 520(g)(3)(D) of the act). In addition, "unless immediate use of the device is required to save the life of the human subject," and there is insufficient time to obtain the concurrence of a licensed physician not involved in the testing, such a physician must concur in the determination (section 520(g)(3)(D) of the act). The exceptions to require informed consent are "subject to such conditions as the Secretary may prescribe."

The context of this provision also is a statutory amendment allowing exemptions to permit investigational use to study the products' safety and effectiveness (section 520(g)(2)(A) of the act). The Medical Device Amendments of 1976, which included section 520(g), added a system of classifications and premarket approval for certain devices (section 513 of the act (21 U.S.C. 360c)). The amendments contemplated that, with certain exceptions, effectiveness would be determined based on "well-controlled investigations, including clinical investigations where appropriate," by experts qualified to evaluate effectiveness (section 513(a)(3) of the act).

Congress was explicit about the purpose of section 520(g) of the act: "to encourage to the extent consistent with the protection of the public health and safety and with ethical standards, the discovery and development of useful devices intended for human use and to that end to maintain optimum freedom for scientific investigators in their pursuit of that purpose" (section 520(g)(1)). The conditions required by section 520(g), then, are to be interpreted within the context of this stated general purpose of providing freedom to the investigators within ethical standards and health and safety protections.

Both the House report on the bill containing the language that became law in section 520(g) of the act and the Conference report refer to the study by the National Commission on the Protection of Human Subjects concerning informed consent. (See H.R. Rept. No. 853, 94th Cong., 2d sess. 44 (1976); H.R. Rept. No. 1090, 94th Cong., 2d sess. 64 (1976).) This Commission, established by the National Research Act in 1974, was to study the basic ethical principles underlying the conduct of biomedical and behavioral research involving human subjects. Congress clearly intended HHS to act in response to the Commission's efforts (id.). The Commission issued numerous reports, including a report on Institutional Review Boards. (See generally 44 FR 47716, August 14, 1979 for a listing of the reports.) This IRB report stated that "investigators should not have sole responsibility for determining whether research involving human subjects fulfills ethical standards. Others, who are independent of the research, must share this responsibility, because investigators are always in positions of potential conflict by virtue of their concern with the pursuit of knowledge as well as the welfare of human subjects of their research" (43 FR 56174, November 30, 1978).

The Commission's articulation of the basic ethical principles that should underlie the conduct of biomedical research involving human subjects is the Belmont Report, which was prepared by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research in 1978 (44 FR 23192, April 18, 1979). In proposing its informed consent regulations in 1979, FDA noted the congressional purpose reflected in both the Drug Amendments of 1962 and the Medical Device Amendments of 1976, to require that biomedical research be conducted "in accordance with the highest contemporary ethical standards" (44 FR 47718, August 14, 1979). In interpreting sections 505(i), 507(d), and 520(g) of the act in 1995, it remains consistent with congressional intent to apply the principles of the Belmont Report in their applications by ethicists to current research issues. As discussed in detail in the following section, this proposed rule to provide an exception from the requirement of informed consent is supported by contemporary application of the ethical principles of the Belmont Report.

Congress did not specifically address the fact that the statutory language containing the informed consent exemption requirements for investigational devices differed from those for investigational drugs enacted 14 years earlier. However, as the agency discussed in proposing its informed consent regulations in 1979, the actual policy followed by FDA regarding the drug informed consent exception was very similar to the policy being proposed for devices (44 FR 47718). In originally promulgating its regulations in part 50 on the protection of human subjects, FDA chose to apply the same standards to drug and device research. In order to preclude confusion that might result from different systems for informed consent for drug and device research and to implement congressional purpose reflected in both the Drug Amendments of 1962 and the Medical Device Amendments of 1976 (i.e., to require conduct of research in accordance with contemporary ethical standards), FDA is again proposing to apply the same standards to drug and device research.

Sections 505(i), 507(d), and 520(g) of the act authorize the agency to establish the conditions for investigational use. In the proposed rule, FDA would establish conditions that satisfy the statutory criteria for exceptions from the informed consent requirement and allow for safe use under ethical standards for research.

Under sections 505(i) and 507(d) of the act, a showing that obtaining informed consent is not "feasible" is alone sufficient to permit an exception to the requirement. Research without informed consent is also authorized in drug studies based upon professional judgment regarding the "best interest" of the subjects. Under section 520(g), informed consent is required unless there is a written determination that (1) "There exists a life threatening situation involving the human subject of such testing which necessitates the use of such device," (2) "it is not feasible to obtain informed consent from the subject," and (3) "there is not sufficient time to obtain such consent from his representative." In addition, a licensed physician who is not involved in the testing must agree with this three-part determination unless there is not sufficient time to obtain such concurrence. Consequently, circumstances that satisfy the statutory informed consent exception criteria for investigational devices will also satisfy the criteria for investigational drugs.

The exception from the informed consent requirement permitted by the proposed rule would be conditioned upon various findings by an IRB. First, the subjects must be in a situation that is: (1) Life-threatening, (2) where available treatments are unproven or unsatisfactory, and (3) the collection of valid scientific evidence is necessary to determine the most beneficial intervention (§ 50.24(a)(1)). In addition, the opportunity to be in the study must be in the interest of the subject because the life-threatening situation necessitates intervention and the risk of the study is reasonable in light of the medical condition and what is known about the risks and benefits of current therapy and of the investigational intervention (§ 50.24(a)(3)). With regard to the study itself, it must be research that could not practicably be carried out without the informed consent waiver (§ 50.24(a)(4)).

These conditions satisfy the criterion included in sections 505(i) and 507(d) of the act regarding the best interest of the subject. They also satisfy the criteria in section 520(g) of the act that the subject be in a "life threatening situation" which "necessitates the use of such device." The proposed rule would limit the exception to the narrow circumstance in which both (1) intervention is needed because of the subject's medical condition, and (2) the collection of valid data is needed because of the absence of proven satisfactory available treatment for the condition. The proposed rule thus gives double weight to the statutory "necessitates" criterion.

The agency's proposed implementation of the "necessitates" criterion also would permit administration of either the test product or a control product, in keeping with the legislative intent to permit scientific investigation to demonstrate safety and effectiveness. Randomized placebo-controlled or active-controlled studies may be needed to demonstrate the effectiveness of products for life-threatening, as well as nonlife-threatening, conditions. As discussed in more detail below, this interpretation is also consistent with the ethical principles in the Belmont Report. For example, the principle of beneficence supports research that ultimately "makes it possible to avoid the harm that may result from the application of previously accepted routine practices that on closer investigation turn out to be dangerous" (Belmont Report, 44 FR 23192 at 23194, April 18, 1979).

In issuing current § 50.23(a), permitting exceptions from obtaining informed consent, the agency included an additional criterion not required by section 520(g)(3)(D) of the act (44 FR 47720, August 14, 1979). This provision of the regulation, codified at § 50.23(a)(4), was added "to prevent routine reliance on the exception" (44 FR 47720, August 14, 1979). In final form, this subsection required that "[t]here is available no alternative method of approved or generally recognized therapy that provides an equal or greater likelihood of saving the life of the subject." The proposed new § 50.24(a) would permit use of the test product when there is an alternative unproven or unsatisfactory therapy in general use that may be equally likely to save the subject's life. Section 50.24(a)(3) would allow for "reasonable" risk, given what is known about the risks and benefits of the test product, the alternative therapy, and the medical condition. The narrowly circumscribed situation described in § 50.24, as well as additional safeguards, such as public disclosure prior to beginning the study, protects against "routine reliance" on this exception to conduct research without informed consent.

Section 50.24 also would require, in accordance with the criterion in sections 505(i), 507(d), and 520(g) of the act, that obtaining informed consent not be "feasible." This regulation would restrict determinations of infeasibility to those situations in which: (1) The subjects are unable to give consent because of their medical condition, (2) the product must be administered before it is feasible to obtain consent from legally authorized representatives, and (3) individuals likely to be eligible cannot reasonably be identified prospectively (§ 50.24(a)(2)). Thus, section 50.24(a)(2) also incorporates the required criterion of section 520(g) that there be insufficient time to obtain consent from a representative.

Section 50.24 would require approval of the protocol by an IRB, which is also required to have at least one member who is a licensed physician not otherwise involved in the research protocol (or such a consultant) who concurs with the protocol. That physician's concurrence is in keeping with the provision of 520(g)(3)(D) for concurrence by such an individual that the criteria for testing without informed consent have been satisfied. In most, if not all, instances under § 50.24 there will be a need for "immediate use" to save the subject's life and not sufficient time following the onset of the life-threatening condition to obtain the concurrence by an independent physician and, therefore, there will be no statutory requirement for such concurrence. Nevertheless, the agency believes that concurrence with the protocol by an independent physician associated with the IRB is another valuable protection for the subject and additional assurance that the statutory intent of independent physician concurrence will be satisfied.

For the reasons discussed above, the provisions of § 50.24 satisfy all of the statutory criteria of sections 505(i), 507(d), and 520(g) of the act for permitting exceptions to the informed consent requirements for investigational drug and device uses.

Section 50.24 also contains additional protections for the health and safety of the research subjects (e.g., establishment of an independent data and safety monitoring board), as authorized by, and in keeping with the purposes of sections 505(i), 507(d), and 520(g) of the act. This proposed regulation is also authorized by section 701(a) of the act, which provides general authority to issue regulations for the efficient enforcement of the act.

The conforming amendments to regulations governing drug and device investigations and marketing are authorized by sections 502, 503, 505, 506, 510, 513, 514, 515, 516, 518, 519, 520, 701, and 801 of the act and section 351 of the Public Health Service Act (21 U.S.C. 352, 353, 355, 356, 360, 360c, 360d, 360e, 360f, 360h, 360i, 360j, 371, and 381, and 42 U.S.C. 262)

VI. Ethical Basis for These Regulations

In developing this proposed regulation, FDA has carefully considered the basic ethical principles that underlie research to ensure that it is consistent with those principles. The agency is convinced that the research described in this section is ethically permissible.

The current FDA and HHS IRB and informed consent regulations are based, in large part, on the ethical principles discussed in the Belmont Report. As discussed in that report, the three basic ethical principles that are relevant to research involving human subjects are the principles of respect for persons, beneficence, and justice.

The.principle of respect for persons incorporates two general rules of ethical behavior: (1) Competent individuals must be treated as autonomous agents, that is to say, persons who are legally and morally competent to understand the risks and benefits of a proposed research activity must provide prior, uncoerced informed consent before they may be enrolled as research subjects; and (2) persons whose autonomy is absent or diminished may participate in research only if additional protections are provided for them. The proposed rule recognizes that subjects who are candidates for emergency research will not meet the condition of being fully competent. In many cases, they will be totally incompetent. Such potential subjects, if they are to be enrolled in research, must be provided with special additional protections. The special protections proposed in this rule for subjects of emergency research include prior FDA and community consultation on the research, public disclosure, and careful mandatory oversight of the welfare of subjects by a data and safety monitoring board. These special protections are described below.

The principle of beneficence requires that the risks associated with a research activity are reasonable in the light of expected benefits and it also requires that the chance for benefits from participation be maximized, and the risk of possible harms be minimized, consistent with sound research design.

The principle of justice requires that the burdens and benefits of participation in research be equitably distributed across the entire population in the place or region where the research is conducted. That means, in general, that racial, ethnic, gender, and economic status should not be used as exclusion criteria for participation in research. It further means that persons who are eligible for participation in the research because of their disease or condition, should be provided reasonable opportunity to participate in research until the research cohort is fully recruited. Experience has repeatedly shown that requiring surrogate consent from legally authorized representatives tends to inhibit equitable inclusion in the study because surrogate consent is more easily obtained from family members of Caucasians than from family members of minorities, and it is more easily obtained from family members of middle and upper income persons than from persons of lower income (Ref. 31). Waiving the requirement for informed consent from potential subjects and their surrogates helps to provide for an equitable distribution of both burdens and benefits of emergency research in a manner that meets the requirements of justice.

The Belmont Report notes that "[t]hese principles cannot always be applied so as to resolve beyond dispute particular ethical problems. The objective is to provide an analytical framework that will guide the resolution of ethical problems arising from research involving human subjects." (44 FR 23193, April 18, 1979.) The Belmont Report did not, therefore, address resolution of conflicts among these ethical principles that might be occasioned by a particular research protocol, but it did provide a framework within which conflicts among the principles could be resolved.

The National Commission did not explicitly address the issue of research involving the comatose patient. However, in March 1983, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research issued its "Second Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and of their Implementation, for the Protection of Human Subject." In its report, the President's Commission identified research on the comatose as an issue worthy of further consideration. In its discussion, it noted that

> It is settled law that physicians and hospitals may assume that an emergency patient would consent to life-saving treatment; such treatment may therefore be initiated without express consent. The legal principle is based, however, on the provision of standard care. It is not so clear, however, whether one should assume that an emergency patient would consent to participation in research on new or experimental treatment.

(Ref. 32)

The agency has considered the ethical principles set forth in the Belmont Report in the formulation of this rule. It has also engaged in extended public dialogue to resolve the difficulty noted by the President's Commission. The exception from informed consent for investigations involving life-threatening conditions would apply only to subjects not in a position to exercise autonomy. These subjects will be in a life-threatening situation which necessitates emergency intervention. Thus, in accord with the principle of respect for persons, persons in these situations are entitled to special protection.

In emergent situations, protection is provided and the principle of respect for persons is satisfied if, in circumstances of clinical equipoise, either the test therapy or its historic alternative is provided, even without specific consent. When the relative benefits and risks of the proposed intervention, as compared to standard therapy, are unknown, or thought to be equivalent or better, there is clinical equipoise between the historic intervention and the proposed test intervention. Clinical equipoise would exist, according to testimony presented at the January 1995 FDA/NIH Public Forum on Informed Consent in Clinical Research Conducted in Emergency Circumstances, whenever at least a reasonable minority of medical professionals believe the experimental treatment would be as good as, or better than, the standard treatment (Ref. 23).

This proposed rule is also consistent with the principle of beneficence. The principle of beneficence maximizes possible benefits and minimizes possible harms. In order to avoid harm, one must know what is harmful. In emergency medicine, the standard of care may not have been validated—it may be beneficial or it may be harmful. The principle of beneficence dictates that knowledge be gathered when there is clinical equipoise between established and proposed interventions, through the conduct of research. Beneficence can be assured by the collection of valid scientific evidence, including evidence derived from randomized controlled clinical trials, in order to determine whether the particular intervention is beneficial. Harms are minimized, in part, by careful monitoring of the study by an independent data and safety monitoring board that regularly compares study data with preestablished "stopping rules" designed to terminate the study before any serious harm occurs.

The principle of justice is also pertinent to this proposed rule. Systematically excluding persons who are unable to give informed consent and who have no surrogate to consent for them from research may be discriminatory, as noted above. An inability to consent, or lack of an authorized representative, should not in itself be a reason for excluding persons from participating in potentially beneficial and scientifically well-designed, controlled, studies (Refs. 33 and 34).

VII. Description of the Proposed Rule

A. Introduction

Section 50.24 will be applicable only to that limited subset of research activities that involve individuals who are in a life-threatening situation and for whom available treatments are unproven or unsatisfactory (e.g., have poor clinical outcome or leave individuals with substantial mortality or major morbidity). FDA believes that evidence submitted at the Public Forum on the chilling effect of current regulations on the care and medical management of such persons in life-threatening situations, including impairing their access to potentially life-saving therapy, justifies the prompt issuance of regulations governing research on such subjects. Thus, FDA intends to issue a final rule, responding to comments received on this proposed rule, promptly following the 45-day comment period.

B. Scope

Section 50.24(d) will require that all protocols that involve a product regulated by FDA and that involve the possibility of invoking an exception under this section are to be performed under a separate IND or a separate Investigational Device Exemption (IDE).

For medical devices, this means that a sponsor may not submit the investigation to an IRB as a nonsignificant risk device (21 CFR 812.2(b)). All device investigations are to be submitted to the agency as separate IDE's, prominently identified as IDE's that propose to invoke the exception in this rule. If the sponsor has already submitted an IDE to the agency for the medical device, the sponsor may cross-reference information in that IDE. The purpose of proposing to require a separate IDE is to ensure that there are 30 days before commencement of the trial in order to permit agency review of the protocol and supporting information.

For drugs, this means that the exemptions from the requirement to submit an IND, contained in 21 CFR 312.2(b), may not be invoked for investigations of a drug product that is lawfully marketed in the United States if the investigation involves potential invoking of § 50.24. The agency believes that investigations that propose to involve individuals who are unable to give informed consent do not meet the requirements of § 312.2(b)(iii), i.e., the use in this subject population would increase the risks or decrease the acceptability of the risks associated with the use of the drug product and, therefore, agency review of the IND is appropriate. All drug investigations will be submitted to the agency as separate IND's, prominently identified as IND's that propose to invoke the exception in this rule. If the sponsor has already submitted an IND to the agency for the drug product, the sponsor may cross-reference information in that IND. The purpose of proposing to require a separate IND is to ensure that there are 30 days before commencement of the trial in order to permit the agency to review the protocol and supporting information.

C. IRB Responsibilities

Section 50.24(a) gives the IRB the primary responsibility for determining that the research meets the requirements of this proposed rule. In the Coalition's consensus statement, the Coalition recommended that the interests, rights, and welfare of subjects in emergency research trials be protected by special safeguards applied by IRB's. It recommended further that because IRB's have good insight into local practice, subject populations, and the capabilities of researchers, institutions and resources, that IRB's should be the primary unit responsible for maintaining oversight of these clinical trials. The majority of participants at FDA/NIH Public Forum also expressed support for this responsibility being placed on IRB's.

At the congressional hearing and at the Public Forum, some individuals expressed concern about placing this responsibility with IRB's that charge for their services and that are not physically located where the research is to be conducted, so called, "independent IRB's." The agency has considered these concerns, but believes that duly constituted IRB's that fulfill the requirements of part 56 (21 CFR part 56) and § 50.24, including paragraph (a)(5) which will require consultation with the communities from which the subjects will be drawn and public disclosure, will ensure that the rights and welfare of research subjects are protected. The agency has permitted independent IRB's to review research since 1981. The agency has acknowledged that independent IRB's that lack members from the area of the research site may have difficulty acquiring knowledge of community attitudes, information on conditions surrounding the conduct of the research, and the continuing status of the research. FDA has advised these IRB's, at conferences and in written educational materials, to be particularly sensitive to meeting all requirements of the regulations.

This regulation would permit the IRB to approve research without requiring that informed consent be obtained if the IRB determines and documents that it is approving such research for the reasons given in § 50.24(a).

D. IRB Documentation

This regulation will require the IRB to document that it considered each element in § 50.24(a) and found that each element was met by the proposed research. The agency believes that this documentation is necessary to ensure that the IRB is adequately protecting the rights and welfare of human subjects.

Under § 50.24(e), an IRB would be required to document its findings when it cannot approve the research either because the research does not meet the criteria in § 50.24 or because of other relevant ethical concerns. The IRB is to provide this information in writing to the research sponsor. The sponsor of the research must share this information with FDA, and investigators, and other IRB's that are asked to review this or a substantially equivalent trial. FDA believes that sharing IRB information with these entities concerned with the study will enhance the protection provided to research subjects by establishing communication among IRB's on this important issue. IRB concerns about the approvability of studies may identify to the sponsor and FDA issues that need to be addressed in the research such as the need to alter the study design to better protect the rights and welfare of research subjects. The sponsor's sharing of these concerns with other investigators and IRB's that are asked to review this or substantially equivalent research, assures that all relevant IRB's and investigators will be aware of concerns noted by other IRB's and will have the opportunity to assess those concerns in their review of the research activity.

Because IRB's that review FDA-regulated research may be institutionally-based, independent of an

institution, commercial, established by the sponsor of the research, or established by a group of investigators, it is possible for an investigator to seek approval of an investigation from more than one IRB. Thus, if the study is disapproved by one IRB, it is possible for the investigator to seek approval from another. The agency believes that the provision requiring the sharing of information will enable any IRB that is asked to review the study to take into account relevant ethical concerns raised by another IRB.

This requirement would not add an additional documentary burden to IRB's because under § 56.115(a)(2), the IRB is required to document the basis for disapproving any proposed research and to prepare a written summary of the discussion of controverted issues and their resolution. The proposed requirement in § 50.24(c), for IRB retention of records and for their availability during an inspection, is identical to that required for records maintained pursuant to part 56.

E. Criteria for IRB Approval

Section 50.24(a)(1) would require that the IRB determine that:

> * * * the human subjects are in a life-threatening situation, available treatments are unproven or unsatisfactory, and the collection of valid scientific evidence, which may include evidence obtained through randomized placebo controlled trials, is necessary to determine what particular intervention is most beneficial.

The agency believes that an IRB can determine that the subjects are in a life-threatening situation if it determines that the medical condition being treated by the proposed intervention poses an imminent risk of loss of life. FDA considers treatments to be unproven when, for example, their safety and effectiveness have not been established in adequate and well-controlled clinical trials. FDA believes that unsatisfactory treatments include those treatments which fail to prevent a significant proportion of deaths or permanent disabilities in the population of interest. As discussed earlier, in order to learn what is harmful or beneficial, the intervention or activity must be subjected to adequate and well-controlled trials, including, where appropriate, trials involving a placebo. Determining the risks and benefits of intervention for potentially life-saving therapies will enable physicians to better evaluate the appropriate treatment for individual patients.

As the Coalition noted in its consensus statement:

> Patients deserve and expect modern, safe, and effective medical care when they are acutely ill or injured. We believe the public desires advances in acute emergency and critical care and understands that research is required to improve medical care. The benefits of emergency research include potential improvement in survival and the quality of life following many life threatening conditions that otherwise would have dismal outcomes. The risk of not doing emergency research is denying promising new treatments to individual patients with conditions that currently have no effective therapy, or to future patients with the same devastating condition.

(Ref. 22.)

Section 50.24(a)(2) defines when obtaining informed consent is not feasible. The agency believes that the first criterion (§ 50.24(a)(2)(i)) generally will be met if, once the medical condition develops, the potential subjects would not be able to give informed consent as a result of the medical condition. Examples of situations in which obtaining informed consent from the subject may not be feasible include individuals who have suffered a cardiac arrest, severe head injury, or other catastrophic medical or traumatic event.

Section 50.24(a)(2)(ii) would require the IRB to determine that it is necessary to administer the intervention before it is feasible to obtain informed consent from a legally authorized representative. It would require the IRB to consider the consequences of waiting to administer the intervention until a legally authorized representative can consent on behalf of the subject. This criterion recognizes the Coalition's concern that "the test therapy for these catastrophic conditions must be given immediately after the acute injury or illness to have any possibility of benefit." If the window of time is narrow, it will be difficult or impossible to identify a legally authorized representative especially for patients whose identities are unknown at the time of presentation.

Section 50.24(a)(2)(iii) would require the IRB to determine that there is no reasonable way to identify prospectively the individuals likely to become eligible for the research because the emergence of the condition to be studied cannot be predicted reliably in particular individuals. The agency believes that when there is a reasonable way to prospectively identify such individuals, that efforts should be made to obtain prospective consent for the particular protocol from those subjects.

Section 50.24(a)(3) describes why the research intervention is in the best interests of subjects. As discussed earlier, the agency expects clinical equipoise to exist in protocols that would be approved under this section. Clinical equipoise exists when the relative benefits and risks of the proposed intervention are unknown, or thought to be equivalent or better than standard therapy. Clinical equipoise has been described as existing when at least a reasonable minority of medical professionals believe the test article is as good as or better than the standard treatment or that the standard treatment to be tested is no better than placebo. The agency expects that evidence from animal studies, previous use in humans (for other indications), similarity to other products used in humans, and other evidence, could be used to document clinical equipoise.

Section 50.24(a)(4) would require the IRB to determine that the study could not practicably be conducted without the waiver. This regulation will not permit waiver of informed consent in instances in which an individual may be unconscious or otherwise incompetent to give informed consent, but immediate intervention is not needed in order to prevent death because there is sufficient time to locate, and obtain consent from, a legally authorized representative. In those instances, it may be possible to delay treatment until a court appointed patient-advocate is arranged, the consent of a family member can be obtained, or some other procedure for a surrogate can be followed. There are also medical conditions that predictably occur in given identifiable subject populations. In those cases, it is possible to obtain advance consent before the intervention is required. In other cases, such as events that occur regularly in already hospitalized, acutely ill patients, the majority of subjects will have a family member or a legally authorized representative readily available to provide consent. In these instances, the research may, in accord with the provisions of the law of the jurisdiction, proceed without invoking a waiver of informed consent. In cases such as these, it will be inappropriate to invoke this exception.

The agency recognizes that there may be situations where research studies that would be conducted under § 50.24(a) may include a limited number of subjects for whom a representative is able to provide surrogate consent for the subject, and the treatment window may be such to permit such consent to be obtained. In anticipation of this possibility, the IRB will be required to have reviewed and approved an informed consent document in accord with § 56.109(b), so that surrogate consent can be obtained for those subjects.

Section 50.24(a)(5) describes four "additional protections" that would have to be provided for each protocol:

consultation with representatives of the communities from which the subjects will be drawn; public disclosure prior to the commencement of the study sufficient to describe the study and its risks and benefits; public disclosure of sufficient information following completion of the study to apprise the community and researchers of the study and its results; and the establishment of an independent data and safety monitoring board. In addition to these protections, the IRB should consider whether there are other appropriate additional protections that should be included to protect the rights and welfare of these subjects.

In order to provide for consultation with representatives of the communities from which the subjects will be drawn, and to supplement the information available for review by the IRB, all IRB's should consider, for example, having the clinical investigator or sponsor convene a public meeting in the community on the protocol; establishing a separate panel of members of the community from which the subjects will be drawn; including consultants to the IRB from the community from which the subjects will be drawn; enhancing the membership of the IRB by adding additional members who are not affiliated with the institution and are representative of the community; or developing some other mechanism to ensure community involvement and input into the IRB's decisionmaking process.

In order to provide for public disclosure, the IRB should consider how best to publicly disclose, prior to the commencement of the study, sufficient information to describe the study's risks and benefits, e.g., relevant information from the investigator's brochure or study protocol. Public disclosure following IRB review should be sufficient to disclose information concerning the IRB's resolution of issues and final decisions; this disclosure should provide community confidence in the role of the IRB and in its decisionmaking capability. Disclosure following completion of the study should provide sufficient information to the community about its results and sufficient information to researchers, which would include the underlying data, to be able to assess the results of the study.

The agency recognizes that the level of disclosure to representatives of the community and to researchers that would be required by § 50.24(a)(5) would require sponsors to disclose information about an investigation which they might not otherwise publicly disclose. FDA would require sponsors to provide copies to FDA of the publicly disclosed information for any investigation which proposes an exemption from the informed consent requirement. The agency believes that by disclosing the information described in this paragraph, the community will better understand the nature of the research and the rights and welfare of subjects will be better protected. By broadly sharing the results of the research with the scientific community, there may be less need to replicate the research; therefore, fewer subjects may be needed to obtain the same level of scientific knowledge and to advance emergency medicine.

Requiring an independent data and safety monitoring board would help ensure that if it becomes clear that risks are greater than anticipated, or that the benefits do not justify the risks of the research, the IRB is informed and can act on the information. For multi-center studies, the agency generally would expect the sponsor of the research, rather than the IRB, to establish the independent data and safety monitoring board. By "independent," the agency intends that the board be composed solely of individuals who have no financial interest in the outcome of the study, and who have not been involved in the design or conduct of the study. Section 56.111(a)(6) currently requires the IRB to determine that, where appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects. As discussed in the preamble to the January 27, 1981, regulations, in response to comments questioning the meaning of § 56.111(a)(6) and requesting guidelines for determining at what point in each experiment one treatment is shown to be safer and more effective than alternative treatments or no treatments, FDA responded:

> This [data monitoring] procedure might be an appropriate requirement in large scale clinical trials or in studies with a high degree of risk. The IRB may require the use of data safety monitoring boards in order to meet the requirements of this provision. Thus, if it becomes clear that risks are greater than anticipated, or that the benefits do not justify the risks of the research, the IRB is informed and can act on the information. This provision matches the HHS requirement * * *. IRB's generally will not have the scientific competence to make such a judgement [at what point in each experiment one treatment is shown to be safer and more effective than alternate treatments or no treatment]. The determination whether and at what point in an investigation a test article has been shown to be safe and effective in accordance with the requirements of the act is a determination that must be made by the investigator, the sponsor, and, ultimately, FDA.
> (46 FR 2869, January 27, 1981)

Section 50.24(b) describes a hierarchy of persons who should be informed of the subject's inclusion in the study, about the details of the study, and that the subject can discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled. The hierarchy is, first, the subject; if the subject remains incapacitated, then a legally authorized representative of the subject; if the representative is not available, a member of the subject's family is to be informed. The agency has included the phrase "without penalty or loss of benefits to which the subject is otherwise entitled" to ensure, in part, that a subject who is withdrawn from a study is provided with appropriate alternative medical care consistent with that person's medical condition.

The definition of "family members" in § 50.3(n) was taken from the Federal Government's Office of Personnel Management's final rule which relates, in part, to the use of sick leave to care for family members. That rule implements the Federal Employees Friendly Family Leave Act (Pub. L. 103–388), and was published in the **Federal Register** of December 2, 1994 (59 FR 62266). The definition has been modified by the phrase "legally competent" to acknowledge that family members must be not only of legal age, but also possess appropriate mental capacity, to have this information meaningfully conveyed to them.

F. Preemptive Effect

In developing these proposed rules, FDA considered whether there were existing State or local legal requirements governing informed consent that might limit or preclude participation in research in circumstances that otherwise could be authorized by IRB's acting in accord with these proposed rules. FDA believes that it is important that informed consent requirements governing this type of research be nationally uniform, particularly in light of the current confusion created in the research community by differing Federal regulations. FDA recognizes, however, that the existing Federal Policy for the Protection of Human Subjects, which governs much of this type of research, currently provides that it does not affect any State or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects. Accordingly, FDA specifically invites comment on whether there are existing State or local legal requirements that might limit or preclude participation in research in circumstances that otherwise could be authorized by IRB's acting in accord with these proposed rules and whether any such requirements should be preempted by Federal requirements.

VIII. Effective Date

FDA is proposing to make these regulations effective on the date of publication of the final rule in the **Federal Register** because of the urgent need to permit emergency research to proceed. The agency believes that it is in the public interest to have a final rule in place as quickly as possible. By permitting certain controlled clinical trials to be conducted with the involvement of human subjects who are confronted by a life-threatening condition and who are also unable to give informed consent because of that condition, the agency expects to provide individual access to potentially beneficial treatment. The agency also expects that research to result in advancement and improvement of therapies used in emergency medicine situations that currently have poor clinical outcome. As a result of this rule, many individuals confronted by life-threatening situations will benefit immediately. Survival of these individuals may be enhanced by their participation in controlled trials. Therefore, FDA tentatively concludes that there is good cause to dispense with the normal 30-day period between publication of a final rule and its effective date.

IX. Request for Comments

Interested persons may, on or before November 6, 1995 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Comments are also solicited regarding the need for Federal preemption (see sections VII.F. and XI.B. of this document) and information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (see section XIII. of this document). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Comments on information collection requirements should be directed to FDA's Dockets Management Branch (address above) and to OMB's Office of Information and Regulatory Affairs (addressed below in section XIII. of this document).

FDA believes that a comment period greater than 45 days would be contrary to the public interest for the reasons given above. In addition, FDA is taking this action in response to the congressional hearing, the Consensus Conference, FDA/NIH Public Forum, and to public and professional concerns that not all of what has become standard and accepted medical therapy for use in acute or resuscitation care has been subjected to controlled clinical trials to establish its safety or effectiveness.

Currently, there are some investigations ongoing involving life-threatening conditions which enroll only subjects able to consent; other investigations are on hold pending issuance of this regulation. In those trials that are ongoing, accrual of subjects is exceedingly slow. Further delay could cause sponsors and funding institutions to cease support of such research, resulting in the research being stopped before sufficient data is gathered to demonstrate efficacy. FDA believes that extending the comment period would delay implementation of this rule and would result in the cessation of some of these studies or in the diversion of emergency research resources to other activities. As a result, potential subjects would be deprived of the opportunity to obtain potentially life-saving treatment. In addition, society would suffer as a result of this discontinuity in research by not being able to determine the effectiveness of potentially life-saving therapies.

Because of these public health concerns, FDA does not intend to extend the comment period beyond that date. Also, the agency is advising that it may not be able to consider any comments received at the Dockets Management Branch after the close of business on November 6, 1995. Although FDA is providing 45 days, rather than 90 days, for comments on this subject through the routine notice and comment procedures, it has received much input through the various conferences and congressional hearings discussed above and in correspondence. This input has come from IRB's, sponsors, investigators, ethicists, patient groups, etc.

The agency considered whether a reinterpretation of its existing regulations would meet the needs of persons in life-threatening situations and the research community. It concluded against such a reinterpretation for a number of reasons, including: it would not make the FDA regulations and the HHS regulations congruent; it would not provide prospective protections to subjects participating in such research; it would be difficult if not impossible to enforce additional safeguards that the agency believes are essential to protect subjects involved in such research activities; and it would not adequately eliminate the confusion that currently exists within the research community as to the standards that must be applied to this research. The sole benefit of a reinterpretation of existing regulations would be to permit this limited class of research to move forward quickly, rather than delaying until a new regulation could be written. The agency has, thus, placed priority on developing this proposed regulation in order to permit the ethical conduct of a limited class of emergency research.

X. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Executive Orders

A. Executive Order 12606: The Family

Executive Order 12606 directs Federal agencies to determine whether policies and regulations may have a significant impact on family formation, maintenance, and general well-being. FDA has analyzed this proposed rule in accordance with Executive Order 12606, and has determined that it has no potential negative impact on family formation, maintenance, and general well-being.

FDA has determined that this rule will not affect the stability of the family, and particularly, the marital commitment. It will not have any significant impact on family earnings. The proposed rule would not erode the parental authority and rights in the education, nurture, and supervision of children.

B. Executive Order 12612: Federalism

Executive Order 12612 requires Federal agencies to carefully examine regulatory actions to determine if they would have a significant effect on federalism. Using the criteria and principles set forth in the order, FDA has considered the proposed rule's impact on the States, on their relationship with the Federal Government, and on the distribution of power and responsibilities among the various levels of government. FDA concludes that this proposal is consistent with the principles set forth in Executive Order 12612.

Executive Order 12612 states that agencies formulating and implementing policies are to be guided by certain federalism principles. Section 2 of Executive Order 12612 enumerates fundamental federalism principles. Section 3 states that, in addition to these fundamental principles, executive departments and agencies shall adhere, to the extent permitted by law, to certain listed criteria when formulating and implementing policies that have federalism implications. Section 4 lists special requirements for preemption.

Section 4 of Executive Order 12612 states that an executive department or agency foreseeing the possibility of a conflict between State law and federally protected interests within its area of regulatory responsibility is to consult with States in an effort to avoid such conflict. Section 4 also states that an executive department or agency proposing to act through rulemaking to preempt State law is to provide all affected States notice and opportunity for appropriate participation in the proceedings. As required by the Executive Order, States have, through this notice of proposed rulemaking, an opportunity to raise the possibility of conflicts and to participate in the proceedings (section 4(d) and (e)). Consistent with Executive Order 12612, FDA requests information and comments from interested parties, including but not limited to State and local authorities, on these issues of federalism.

XII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–395). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule is a deregulatory action insofar as it will permit research to proceed which could not proceed under existing regulations, and because relatively few research projects will need to meet the requirements of this rule, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

XIII. Paperwork Reduction Act of 1995

This proposed rule contains only information collection requirements which are subject to review by the OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), and which are already approved under Protection of Human Subjects—Recordkeeping Requirements for Institutional Review Boards, part 56 under OMB Control No. 0910–0130; Investigational New Drug Application under OMB Control No. 0910–0014; and Investigational Devices Exemption Reports and Records, part 812 under OMB Control No. 0910–0078. Modifications to these approved information collection requirements are underway.

For Protection of Human Subjects—Recordkeeping Requirements for Institutional Review Boards (IRB) under OMB Control No. 0910–0130, FDA has calculated the existing recordkeeping burden on IRB's based on the estimated number of IRB's and the estimated annual number of hours each IRB spends in recordkeeping activities. FDA does not believe that this rule will increase the number of IRB's. However, the agency estimates that the number of hours for recordkeeping related to studies which propose to invoke this exception from informed consent will increase for an estimated 200 IRB's by 5 annual hours per record-keeper. This will change the estimated recordkeeper burden from 65 to 70 hours annually.

The newly redesignated and revised § 56.109(e) proposes to require that an IRB notify in writing the sponsor of the research when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception provided under § 50.24(a) of this chapter or because of other relevant ethical concerns. In accord with the Paperwork Reduction Act of 1995, this proposal discloses the agency's intent to require this third party notification.

For Investigational New Drug Application under OMB Control No. 0910–0014, the agency estimates that sponsors will submit an average of 20 studies a year, with an average of 20 clinical investigators each, that propose to invoke this exception from informed consent. Currently, the agency estimates the reporting requirements contained in part 312 to average 123.34 hours per respondent annually. FDA estimates that respondents will increase by 400 annually, resulting in an increase of 49,336 hours over that currently estimated. The reporting burden for respondents will, as a result, increase from an estimated 3,926,308 hours annually to 3,975,644 hours annually.

New § 312.54(b) proposes to require the sponsor to provide information when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception in § 50.24(a) of this chapter or because of other relevant ethical concerns. This information is to be provided promptly in writing to FDA, investigators who are asked to participate in the trial or a substantially equivalent trial, and other IRB's that are asked to review the trial or a substantially equivalent trial. In accord with the Paperwork Reduction Act of 1995, this proposal discloses the agency's intent to require this third party notification.

For recordkeeping, the agency estimated that an average of 165.13 hours were spent per respondent. For the estimated additional 400 recordkeeping respondents invoking this rule, this would result in approximately 66,072 hours annually. The recordkeeping burden for respondents will, as a result, increase from an estimated 2,244,090 hours annually to 2,310,162 hours annually.

For Investigational Devices Exemption Reports and Records under OMB Control No. 0910–0078, the agency estimates that 10 studies proposing to invoke this exception will be submitted to the agency annually. The number of studies upon which the current paperwork reporting burden is estimated may, therefore, increase from 244 original submissions to 254 original submissions, increasing the number of hours by 800 for respondents (estimated at 80 hours per submission), from a total of 19,520 to 20,320 hours annually.

New § 812.47(b) proposes to require the sponsor to provide information when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception in § 50.24(a) of this chapter or because of other relevant ethical concerns. This information is to be provided promptly in writing to FDA, investigators who are asked to participate in the trial or a substantially equivalent trial, and other IRB's that are asked to review the trial or a substantially equivalent trial. In accord with the Paperwork Reduction Act of 1995, this proposal discloses the agency's intent to require this third party notification.

The number of recordkeepers is currently estimated at 700; this number is not expected to change. The estimated number of annual hours for recordkeeping requirements is expected to increase by 100 hours. The agency had estimated that original submissions require 10 hours annually of recordkeeping per submission; recordkeeping related to protocols invoking this rule are expected to increase the submissions from 244 to a total of 254.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted a copy of this proposed rule to OMB for its review of these previously approved information collection requirements. The agency solicits comments on the information collection requirements in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 10235, New Executive Office Bldg., 725 17th Street, N.W., Washington, DC 20503, Attention: Desk Officer for FDA.

XIV. Conforming Amendments

This proposed rule would necessitate a number of changes to the regulations for human drugs, biologics, devices, and institutional review boards so that those regulations are consistent with this rule.

A. Amendments to Regulations for IRB's

FDA is proposing to amend § 56.109(c) to expressly recognize that IRB's may approve studies for which informed consent is not obtained when the requirements in § 50.24 are met. FDA is also proposing to amend § 56.109 to specify in the IRB regulations the requirement to notify sponsors when an IRB determines it cannot approve such studies and to notify sponsors when public disclosure of these studies has occurred. In addition, FDA is proposing to revise § 56.111 to reference the IRB's need to find that the criteria set forth in § 50.24 are met before approving investigations involving an exception from informed consent under § 50.24.

B. Amendments to Regulations for Human Drug Products

The proposed amendment to § 312.2(b) (21 CFR 312.2(b)) makes clear that these studies are not exempt from the requirements of part 312 (21 CFR part 312). Proposed § 312.20(a) and the amendments to § 312.30 would codify in the IND regulations the requirement for a separate IND for studies under § 50.24. Proposed new § 312.23(f) contains the requirement referenced in § 50.24(d) that sponsors prominently identify these studies in separate IND's. FDA is proposing to add new § 312.54 to specify the need for sponsors to actively monitor the progress of proposed investigations so that appropriate public disclosure can occur and so that other IRB's, investigators, and FDA are notified of an IRB determination that it cannot approve the investigation. Section 312.60 would be amended to reference the exception from informed consent in § 50.24. The amendment to § 314.430(d) (21 CFR 314.430(d)) would acknowledge that studies involving § 50.24 will not proceed without public discussion. Section 314.430(d) would be amended to codify that sponsors identify the information publicly disclosed.

C. Amendment to Biologics Regulations

FDA is proposing to amend 21 CFR 601.51(d) for the reasons set forth above for § 314.430(d).

D. Amendment to Device Regulations

FDA is proposing to amend §§ 812.20 and 812.35(a) (21 CFR 812.20 and 812.35(a) to codify in the IDE regulations the requirement for filing a separate IDE for studies under § 50.24. Section 812.20(b)(13) would be amended to codify the need to clearly identify in the IDE submission that the study involves an exception from informed consent under § 50.24. The amendment to § 812.38(b)(2) would acknowledge that studies involving § 50.24 will not proceed without public discussion. Section 812.38(b) would be amended to codify that sponsors identify the information publicly disclosed.

New § 812.47 would specify the need for the sponsor to actively monitor proposed investigations so that appropriate public disclosure can occur and so that other IRB's, investigators, and FDA are notified of an IRB determination that it cannot approve the investigation. FDA is proposing to amend 814.9(d) (21 CFR 814.9(d)) to codify the need for sponsors to identify information publicly disclosed consistent with the requirements of § 50.24(a)(5)(ii) and [illegible]5)(iii).

XV. References

The follo[illegible]mation has been placed on dis[illegible]n the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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3. Fost N., and J. A. Robertson, "Deferring Consent with Incompetent Patients in an Intensive Care Unit." *IRB Review of Human Subjects Research*, 2:5–6, 1980.

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List of Subjects

21 CFR Part 50

Informed consent, Prisoners, Reporting and recordkeeping requirements, Research, Safety.

21 CFR Part 56

Human research subjects, Reporting and Recordkeeping requirements, Safety.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 50, 56, 312, 314, 601, 812, and 814 be amended as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 21 CFR part 50 continues to read as follows:

Authority: Secs. 201, 406, 408, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 379e, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

2. Section 50.3 is amended by adding a new paragraph (n) to read as follows:

§ 50.3 Definitions.

* * * * *

(n) *Family members* means the following legally competent persons: Spouses; parents; children (including adopted children); brothers, sisters and their spouses; and any individual related by blood or affinity whose close association with the subject is the equivalent of a family relationship.

3. Section 50.24 is added to subpart B to read as follows:

§ 50.24 Exception from informed consent requirements for emergency research.

(a) The IRB responsible for the review, approval, and continuing review of the clinical investigation described in this section may approve that investigation without requiring that informed consent be obtained if the IRB (with a concurring licensed physician member or consultant) finds and documents each of the following:

(1) The human subjects are in a life-threatening situation, available treatments are unproven or unsatisfactory, and the collection of valid scientific evidence, which may include evidence obtained through randomized placebo controlled trials, is necessary to determine what particular intervention is most beneficial.

(2) Obtaining informed consent is not feasible because:

(i) The subjects will not be able to give consent as a result of their medical condition; and

(ii) The intervention under study must be administered before consent from legally authorized representatives is feasible; and

(iii) There is no reasonable way to identify prospectively the individuals likely to become eligible for the research because the emergence of the condition to be studied cannot be predicted reliably in particular individuals.

(3) The opportunity for the subjects to participate in the research is in the interest of the subjects because:

(i) A life-threatening situation necessitates intervention, and

(ii) The risk of the investigation is reasonable in light of what is known about the medical condition and the risks and benefits of current therapy, if any, and what is known about the risks and benefits of the proposed intervention or activity.

(4) The research could not practicably be carried out without the waiver.

(5) Additional protections of the rights and welfare of the subjects will be provided, including, at least:

(i) Consultation (which may include consultation carried out by the IRB itself) with representatives of the communities from which the subjects will be drawn;

(ii) Public disclosure prior to the commencement of the study sufficient to describe the study and its risks and benefits;

(iii) Public disclosure of sufficient information following completion of the study to apprise the community and researchers of the study and its results; and

(iv) The establishment of an independent data and safety monitoring board.

(6) The IRB has reviewed and approved an informed consent document for use with subjects or legal representatives in situations in which obtaining such consent may be feasible for some subjects.

(b) When possible and at the earliest possible opportunity, each subject (or, if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member) will be informed of the subject's inclusion in the research study, the details of the research study, and that the subject (or, if the subject remains incapacitated, a legally authorized representative of the subject or, if such a representative is not reasonably available, a family member) may discontinue the subject's participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(c) The IRB determinations required by paragraph (a) of this section and the documentation required by paragraphs (d) and (e) of this section are to be retained by the IRB for at least 3 years after completion of the research, and the records shall be accessible for inspection and copying by FDA in accordance with 56.115(b) of this chapter.

(d) Protocols involving an exception to the informed consent requirement under this section must be performed under an investigational new drug application (IND) or investigational device exemption (IDE). FDA requires clear identification of protocols that would include subjects who are unable to consent, and submission of those protocols in a separate IND/IDE (even if an IND for the same drug product or an IDE for the same device already exists). Applications for investigations under this section may not be submitted as supplemental applications under §§ 312.30 or 812.35 of this chapter.

(e) If an IRB determines that it cannot approve this research because the research does not meet the criteria in the exception provided under paragraph (a) of this section or because of other relevant ethical concerns, the IRB must document its findings and provide these findings in writing to the sponsor of the research. The sponsor of the research must share this information with FDA, researchers/clinical investigators who are asked to participate in this or a substantially equivalent trial, and to other IRB's which are asked to review this or a substantially equivalent clinical trial.

PART 56—INSTITUTIONAL REVIEW BOARDS

4. The authority citation for 21 CFR part 56 continues to read as follows:

Authority: Secs. 201, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 379e, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C 216, 241, 262, 263b–263n).

5. Section 56.109 is amended by revising paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), by adding a new sentence to the end of newly redesignated paragraph (e), and by adding new paragraphs (d) and (g) to read as follows:

§ 56.109 IRB review of research.

* * * * *

(c) An IRB shall require documentation of informed consent in accordance with § 50.27 of this chapter, except as follows:

(1) The IRB may, for some or all subjects, waive the requirement that the subject, or the subject's legally authorized representative, sign a written consent form if it finds that the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside the research context, or

(2) The IRB may, for some or all subjects, find that the requirements in § 50.24 of this chapter for an exception from informed consent for emergency research are met.

(d) In cases where the documentation requirement is waived, the IRB may required the investigator to provide subjects with a written statement regarding the research.

(e) * * * For studies involving an exception to informed consent under § 50.24 of this chapter, an IRB shall notify in writing the sponsor of the research when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception provided under § 50.24(a) of this chapter or because of other relevant ethical concerns.

* * * * *

(g) An IRB shall provide in writing to the sponsor of research involving an exception to informed consent under § 50.24 of this chapter a copy of information that has been publicly disclosed under § 50.24(a)(5)(ii) and (a)(5)(iii). The IRB shall provide this information to the sponsor promptly so that the sponsor is aware that such disclosure has occurred. The sponsor shall provide copies of the information disclosed to FDA.

6. Section 56.111 is amended by adding new paragraph (c) to read as follows:

§ 56.111 Criteria for IRB approval of research.

* * * * *

(c) When the research involves an exception from informed consent for emergency research under § 50.24 of this chapter, the IRB finds and documents that the safeguards set forth in § 50.24 are included.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

7. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 321, 331, 351, 352, 353, 355, 356, 357, 371); sec 351 of the Public Health Service Act (42 U.S.C. 262).

8. Section 312.2 is amended by adding pragraph (b)(6) to read as follows:

§ 312.2 Applicability.

* * * * *

(b) * * *

(6) A clinical investigation involving an exception from informed consent under § 50.24 of this chapter is not exempt from the requirements of this part.

* * * * *

9. Section 312.20 is amended by adding paragraph (c) to read as follows:

§ 312.20 Requirements for an IND.

* * * * *

(c) A sponsor shall submit a separate IND for any clinical investigation involving an exception from informed consent under § 50.24 of this chapter.

10. Section 312.23 is amended by adding paragraph (f) to read as follows:

§ 312.23 IND content and format.

* * * * *

(f) If the investigation involves an exception from informed consent under § 50.24 of this chapter, prominent identification on the cover sheet that the investigation is subject to the requirements in § 50.24.

11. Section 312.30 is amended by adding a new sentence to the end of the introductory text to read as follows:

§ 312.30 Protocol amendments.

* * * Whenever a sponsor intends to conduct a clinical investigation with an exception from informed consent for emergency research as set forth in § 50.24 of this chapter, the sponsor shall submit a separate IND for such investigation.

* * * * *

12. New section 312.54 is added to subpart D to read as follows:

§ 312.54 Emergency research under § 50.24 of this chapter.

(a) The sponsor shall monitor the progress of all proposed investigations involving an exception from informed consent under § 50.24 of this chapter. The sponsor shall determine when the public disclosures required by § 50.24(a)(5)(ii) and (a)(5)(iii) of this chapter of the proposed investigation have occurred and promptly shall submit to the IND file and to Dockets Management Branch copies of the information that was disclosed.

(b) The sponsor also shall monitor such proposed investigations to identify when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception in § 50.24(a) of this chapter or because of other relevant ethical concerns. The sponsor promptly shall provide this information in writing to FDA, investigators who are asked to participate in this or a substantially equivalent trial, and other IRB's that are asked to review this or a substantially equivalent trial.

13. Section 312.60 is amended by revising the second and third sentences in the text as follows:

§ 312.60 General responsibilities of investigators.

* * * An investigator shall, in accordance with the provisions of part 50 of this chapter, obtain the informed consent of each human subject to whom the drug is administered, except as provided in § 50.23 or § 50.24 of this chapter. Additional specific responsibilities of clinical investigators are set forth in this part and in parts 50 and 56 of this chapter.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

14. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

15. Section 314.430 is amended by adding two sentences to the end of paragraph (d) to read as follows:

§ 314.430 Availability for public disclosure of data and information in an application or abbreviated application.

* * * * *

(d)* * * For applications concerning investigations involving an exception from informed consent under § 50.24 of this chapter, sponsors are required to submit copies of information that has been publicly disclosed under § 50.24(a)(5)(ii) and (a)(5)(iii) to the IND file and to Dockets Management Branch. Copies of this information will be available to the public from the Dockets Management Branch.

* * * * *

PART 601—LICENSING

16. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263).

17. Section 601.51 is amended by adding two sentences to the end of paragraph (d) to read as follows:

§ 601.51 Confidentiality of data and information in applications for establishment and product licenses.

* * * * *

(d) * * * For applications concerning investigations involving an exception from informed consent under § 50.24 of this chapter, sponsors are required to submit copies of information that has been publicly disclosed under § 50.24(a)(5)(ii) and (a)(5)(iii) to the IND file and to the Dockets Management Branch. Copies of this information will be available to the public from the Dockets Management Branch.

* * * * *

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

18. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 702, 704, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C 216, 241, 262, 263b–263n).

19. Section 812.20 is amended by revising paragraph (a)(1) and adding paragraph (a)(4) to read as follows;

§ 812.20 Application.

(a) *Submission.* (1) A sponsor shall submit an application to FDA if the sponsor intends to use a significant risk device in an investigation, intends to conduct an investigation that involves an exception from informed consent under § 50.24 of this chapter, or if FDA notifies the sponsor that an application is required for an investigation.

* * * * *

(4)(i) A sponsor shall submit a separate IDE for any clinical investigation involving an exception from informed consent under § 50.24 of this chapter, and

(ii) If the investigation involves an exception from informed consent under § 50.24 of this chapter, the sponsor shall prominently identify on the cover sheet that the investigation is subject to the requirements in § 50.24.

* * * * *

20. Section 812.35 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 812.35 Supplemental applications.

(a) * * * Whenever a sponsor intends to conduct a clinical investigation with an exception from informed consent for emergency research as set forth in § 50.24 of this chapter, the sponsor shall submit a separate IDE for such investigation.

* * * * *

21. Section 812.38 is amended by adding two sentences to the end of paragraph (b)(2) to read as follows:

§ 812.38 Confidentiality of data and information.

* * * * *

(b) * * *

(2) * * * If a device is subject to an investigation that involves an exception from informed consent under § 50.24 of this chapter, sponsors are required to submit copies of information that has been publicly disclosed under § 50.24(a)(5)((ii) and (a)(5)(iii) to the IDE file and to the Dockets Management Branch. Copies of this information will be available to the public from the Dockets Management Branch.

* * * * *

22. New section 812.47 is added to subpart C to read as follows:

§ 812.47 Emergency research under § 50.24 of this chapter.

(a) The sponsor shall monitor the progress of all proposed investigations involving an exception from informed consent under § 50.24 of this chapter. The sponsor shall determine when the public disclosures under § 50.24(a)(5)(ii) and (a)(5)(iii) of this chapter of the proposed investigation have occurred. The sponsor promptly shall submit copies of the information that has been publicly disclosed to the IDE file and also to the Dockets Management Branch.

(b) The sponsor also shall monitor such studies to determine when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception in § 50.24(a) of this chapter or because of other relevant ethical concerns. The sponsor promptly shall provide this information in writing to FDA, investigators who are asked to participate in this or a substantially equivalent trial, and other IRB's that are asked to review this or a substantially equivalent trial.

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

23. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: Secs. 501, 502, 503, 510, 513–520, 701, 702, 703, 704, 705, 708, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381).

24. Section 814.9 is amended by adding two sentences to the end of paragraph (d) to read as follows:

§ 814.9 Confidentiality of data and information in a premarket approval application (PMA) file.

* * * * *

(d)* * * For applications concerning investigations involving an exception from informed consent under § 50.24 of this chapter, sponsors are required to submit copies of information publicly disclosed under § 50.24(a)(5)(ii) and (a)(5)(iii) to the IDE file and to the Dockets Management Branch. Copies of this information will be available to the public from the Dockets Management Branch.

* * * * *

Dated: August 31, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 95–23239 Filed 9–20–94; 8:45 am]

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federal register

Thursday
September 21, 1995

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.

Hazardous Materials Regulations; Editorial Corrections and Clarifications; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, 175, 176, and 178

[Docket No. HM–189L, Amdt. Nos. 107–35, 171–136, 172–145, 173–246, 174–81, 175–54, 176–38, 178–110]

RIN 2137–AC72

Hazardous Materials Regulations; Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes, and in response to requests for clarification, improves the clarity of certain provisions of the Hazardous Materials Regulations (HMR). The intended effect of this rule is to enhance accuracy and reduce misunderstandings of the HMR. The amendments contained in this rule are minor editorial changes and do not impose new requirements.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, (202)366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

RSPA annually reviews the Hazardous Materials Regulations (HMR) to detect errors which may be causing confusion to its readers. Inaccuracies corrected in this final rule include typographical errors, incorrect references to other rules and regulations in the CFR, inconsistent use of terminology, and misstatements of certain regulatory requirements. In response to inquiries RSPA received concerning the clarity of particular requirements specified in the HMR, certain other changes are made to reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure are unnecessary. For the same reason, there is good cause to make these amendments effective without the customary 30-day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

The following is a section-by-section summary of the amendments made under this final rule. It does not discuss editorial corrections (e.g., typographical, capitalization, and punctuation errors), changes to legal citations and certain other minor adjustments to enhance the clarity of the HMR.

Summary of Regulatory Changes by Section

Part 107

Appendix A to Subpart B

Under the sections entitled "Motor Carriers" and "Water Carriers," the names of the offices in the Federal Highway Administration and the United States Coast Guard designated for handling emergency exemptions are revised to reflect recent name changes.

Section 107.335

In the first sentence, the word "chapter" the first place it appears, is corrected to read "subchapter."

Part 171

Section 171.8

Definitions for "Hazmat employee" and "Hazmat employer," as mandated by the Federal Hazardous Materials Transportation Law, Section 5102, are revised to include persons who are involved in the manufacturing of hazardous material packages. In addition, the definition of "Hazardous material" is corrected by removing the reference to § 172.102, which is not applicable.

Section 171.10

In paragraph (c)(2), the Table of Conversion Factors For SI Units is revised to more accurately reflect certain equivalent measurements for pressure.

Section 171.12

Paragraph (b)(5) is revised to reflect the correct reference to the International Maritime Dangerous Goods (IMDG) Code.

Section 171.15

Paragraph (b) is revised to reflect the new telephone number for the Director, Center for Disease Control in Atlanta, Georgia.

Part 172

Section 172.101

In paragraph (i)(4), the packaging section table is revised by adding packaging sections for pyrophoric materials.

The Hazardous Materials Table (the Table). The Table is amended as follows:

Punctuation and other minor editorial corrections to proper shipping names in Column (2) are made to the following entries: "Antimony trifluoride solution," "Benzoic derivative pesticides, solid toxic," "Bromates, inorganic, aqueous solution, n.o.s.," "Cyclonite and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*," "Permanganates, inorganic, aqueous solution, n.o.s.," "Pesticides, liquid, flammable, toxic, *flashpoint less than 23 degrees C,*" "Toxic liquids, water-reactive, n.o.s.," "Toxic liquids, water-reactive, n.o.s. *Inhalation hazard, packing group I, Zone A,*" "Toxic liquids, water-reactive, n.o.s. *Inhalation hazard, packing group I, Zone B,*" and "Toxic solids, water-reactive, n.o.s."

In Column (3), the hazard class/division for "Articles, explosive, n.o.s.", UN0354 is corrected to read "1.1L."

For the entry, "Diborane mixtures," a "D" is added to Column (1) to identify this proper shipping name as appropriate for domestic transportation, but not necessarily for international transportation under the provisions for international regulations.

For the entry, "Dyes, liquid, toxic, n.o.s. *or* Dyes, intermediates, liquid, toxic, n.o.s.," in Column (9B), the specification for the maximum quantity that may be offered for transportation in one package by cargo aircraft is clarified by adding the unit of measurement.

The exceptions reference for packaging authorizations in Column (8A) for the entry, "Dicyclohexylammonium nitrite" is revised to reflect the correct section reference, § 173.151.

The entries "Hydrocyanic acid, aqueous solutions *or* Hydrogen cyanide, aqueous solutions *with not more than 20 percent hydrogen cyanideic acid*" and "Hydrocyanic acid, aqueous solutions *with less than 5 percent hydrogen cyanideacid,*" in Column (2), are revised to correct the last two words and last word, respectively, to read "*cyanide.*"

The entry "*Hydrofluoroboric acid, see* Fluoboric acid," in Column (2), is revised to correct the word "Fluoboric" to read "Fluoroboric."

For the entry "Insecticide gases *flammable* n.o.s," "D" is added to Column (1), because it was inadvertently omitted.

The entries "Isocyanates, flammable, toxic, n.o.s. *or* Isocyanate solutions, flammable, toxic, n.o.s. *flashpoint less than 23 degrees C,*" and "Triazine pesticides, liquid, flammable, toxic *flashpoint less than 23 degrees C*" in Column (2) are corrected by removing the Packing Group III entries, which are not authorized for these materials.

For the entry "Medicine, liquid, flammable, toxic, n.o.s.," "1 L" is added to Column (9A) as the quantity limitation for passenger aircraft or railcar, because it was inadvertently omitted.

For the entry "Methyl chloroformate," Column (7) is corrected by removing Special Provision notes "A3," "A6" and "A7" because this material is forbidden from transportation by air.

The entries "Sulfur chlorides," and "Thionyl chloride," in Column (7), are revised to reflect the correct Special Provision "T" codes.

The entry "Titanium tetrachloride," in Column (7), is corrected by removing Special Provision "N41," because it is inconsistent with the other packaging authorizations for this material.

Appendix A to § 172.101

The entry "2,4-(1H,3H-Pyrimidinedione, 5[bis(2-chloroethyl)amino]-" is placed in the correct alphabetical order.

Section 172.102

In paragraph (c)(1), Special Provision 52, the reference to § 173.150 is revised to reflect the correct reference, § 173.50. In Special Provision 103, the appropriate word "propagation" replaces "preparation."

Section 172.308

Paragraph (b) is removed because currently there are no authorized proper shipping names for "ammunition" that contain the words "with" or "without." In addition, paragraphs (c) and (d) are redesignated as (b) and (c) and in new paragraph (c), the example "2,4-D," which is no longer listed as a proper shipping name, is removed and replaced with "PCB."

Section 172.322

In paragraph (d)(2)(i), in provisions for combination packagings for marine pollutants, the customary measurement provided for informational purposes is adjusted to correctly read "(1.3 gallons)."

Section 172.704

Paragraph (a)(2)(i) is revised to reflect the correct subchapter reference.

Part 173

Section 173.32

In paragraph (e)(3), the marking reference for the retesting of portable tanks is corrected.

Section 173.34

In paragraph (d)(7), the reference for pyrophoric liquids, n.o.s. is corrected.

Section 173.62

In paragraph (c), in the Table of Packing Methods, for the packing method entries E–108 and E–128, the obsolete particular packing exception requirement "23" is removed.

Section 173.150

Paragraph (b)(3) is revised to reflect "(1.3 gallons)" as the equivalent customary measurement for 5 L.

Section 173.164

Redesignated paragraphs (c)(1) and (c)(5), as revised under Docket HM–215A, December 29, 1994, are revised to reflect the correct paragraph references for the packaging requirements for electron tubes, mercury vapor tubes and similar tubes, and the packaging requirements for mercurial barometers, respectively.

Section 173.224

Paragraph (b) is revised to reflect the correct reference for approval provisions for self-reactive materials.

Sections 173.242 and 173.243

To alleviate inconsistency resulting from the reference to an exception in § 173.33(d), paragraph (b)(1) of each section is revised to permit non-reclosing pressure relief devices on MC 310, MC 311 and MC 312 cargo tanks used for Class 8 materials.

Section 173.306

Paragraph (d)(3)(iii) is revised to reflect the correct reference for approval provisions for actuating cartridges and also removes an incorrect definition reference.

Part 174

Section 174.67

Paragraph (k) is revised to clarify the process for securing tank cars after unloading by allowing more innovative methods while ensuring compliance.

Part 175

Section 175.45

Paragraph (a)(3) is revised to reflect the new telephone number for the Director, Center for Disease Control in Atlanta, Georgia.

Part 176

Section 176.76

In paragraph (h)(1), the cargo tank provision for the transportation of cryogenic liquids is revised.

Section 176.83

The diagram in paragraph (c)(2)(iv) is revised to correct an editorial inconsistency with the IMDG Code by adjusting the segregation provision applicable to stowage aboard vessels.

Part 178

Section 178.504

Paragraph (b)(1) is revised to reflect the correct reference for minimum thickness marking requirements for drums intended for reuse.

Section 178.819

Paragraph (b)(2) is revised to correct an error under Docket HM–181E (59 FR 38079, July 26, 1994), "Intermediate Bulk Containers for Hazardous Materials," for the vibration test specifications for intermediate bulk containers, by removing the word "rotate."

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Incorporation by reference, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701, 49 CFR 1.45, 1.53.

Appendix A to Subpart B of Part 107 [Amended]

2. In Appendix A to subpart B of part 107, the following changes are made:

a. In the section entitled "Motor Carriers", the wording "Chief, Hazardous Materials Division, Office of Motor Carrier Field Operations," is removed and "Chief, Hazardous Materials and Safety Division, Office of Safety and Technology," is added in its place.

b. In the section entitled "Water Carriers", the wording "Hazardous Materials Branch, Marine Technical and Hazardous Materials Division," is removed and "Hazardous Materials Standards Branch, Operating and Environmental Standards Division," is added in its place.

§ 107.201 [Amended]

3. In § 107.201, in paragraph (c), the word "the" is added before the wording "Federal hazardous materials transportation law".

§ 107.311 [Amended]

4. In § 107.311, in paragraph (c), in the second sentence, the word "the" is added before the wording "Office of Chief Counsel".

§ 107.335 [Amended]

5. In § 107.335, in the first sentence, the wording "the Federal hazardous material transportation law, this chapter, subchapter C of this chapter," is removed and "the Federal hazardous material transportation law, this subchapter, subchapter C of this chapter," is added in its place.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

6. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.8 [Amended]

7. In § 171.8, the following changes are made:

a. For the definition "*Hazardous material*", in the second sentence, the wording "§§ 172.101 and 172.102" is removed and "§ 172.101" is added in its place.

b. For the definition "*Hazmat employee*", in paragraph (2), the wording "Tests, reconditions," is removed and "Manufactures, tests, reconditions," is added in its place.

c. For the definition "*Hazmat employer*", in the first sentence, the wording "offering, reconditioning," is removed and "offering, manufacturing, reconditioning," is added in its place.

§ 171.10 [Amended]

8. In § 171.10, paragraph (c)(2), the following changes are made:

a. In the text preceding the table, the word "method" is removed and the wording "conversion table" is added in its place.

b. In the table, for the entry "Pressure", in the second column "SI to U.S. standard", the second entry "1 Bar=100 kPa=14.5 psi" is removed and "1 Bar=100 kPa=14.504 psi" is added in its place.

c. In the table, for the entry "Pressure", in the third column "U.S. standard to SI", the second entry "1 psi=0.06 Bar" is removed and "1 psi=0.06895 Bar" is added in its place.

§ 171.12 [Amended]

9. In § 171.12, in paragraph (b)(5), the wording "Chapter 26 of the IMDG Code," is removed and "Section 26 of the General Introduction to the IMDG Code," is added in its place.

§ 171.15 [Amended]

10. In § 171.15, in paragraph (b) introductory text, in the second sentence, the first telephone number "Area Code (404) 633–5313" is removed and "1–800–232–0124" is added in its place.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

11. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

12. In § 172.101, in paragraph (i)(4), the table is amended by adding the following entry, in numerical order, to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(i) * * *

(4) * * *

Packaging section reference for solid materials	Corresponding packaging section for liquid materials
§ 173.187	§ 173.181
* * *	* *

* * * * *

13. In § 172.101, the Hazardous Materials Table as revised at 59 FR 67409, effective October 1, 1995, is amended by removing the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

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§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.* * *)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* * * * * * *												
	Isocyanates, flammable, toxic, n.o.s. *or* Isocyanate solutions, flammable, toxic, n.o.s. *flashpoint less than 23 degrees* C. [REMOVE]	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	....	....	....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1, T8	150	203	242	60L	220L	A	
	* * * * * * *												
	Triazine pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
	* * * * * * *												
	[REMOVE].												
	....	....	....	III	FLAMMABLE LIQUID, KEEP AWAY FROM FOOD.	B1	150	203	242	60L	220L	A	
	* * * * * * *												

* * * * *

§ 172.101 [Amended]

14. In addition, in § 172.101, in the Hazardous Materials Table, as revised at 59 FR 67409, effective October 1, 1995, the following changes are made:

a. For the entry "Antimony trifluoride solution", in Column (2), as revised at 59 FR 67415, a comma is added immediately following the word "trifluoride".

b. For the entry "Articles, explosive, n.o.s.", UN0354, in Column (3), as revised at 59 FR 67416, "1 1L" is removed and "1.1L" is added in its place.

c. For the entry "Benzoic derivative pesticides, solid toxic", in Column (2), as revised at 59 FR 67418, a comma is added immediately following the word "solid".

d. For the entry "Bromates, inorganic, aqueous solution, n.o.s.", in Column (8B), as revised at 59 FR 67419, the reference "2O2" (which has the letter "O" instead of the numeral "0") is removed and "202" is added in its place.

e. For the entry "Cyclonite and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*ed", in Column (2), as revised at 59 FR 67431, the letters "ed" immediately following the abbreviation "*etc.*" are removed.

f. For the entry "Diborane mixtures", in Column (1), as revised at 59 FR 67432, the letter "D" is added.

g. For the entry "Dicyclohexylammonium nitrite", in Column (8A), as revised at 59 FR 67433, the reference "153" is removed and "151" is added in its place.

h. For the entry "Dyes, liquid, toxic, n.o.s. *or* Dye intermediates, liquid, toxic, n.o.s.", in Column (9B), as revised at 59 FR 67436, for Packing group III, the number "220" is removed and "220 L" is added in its place.

i. For the entry "Hydrocyanic acid, aqueous solutions *or* Hydrogen cyanide, aqueous solutions *with not more than 20 percent hydrogen cyanideic acid*", in Column (2), as revised at 59 FR 67445, the wording "*cyanideic acid*" is removed and "*cyanide*" is added in its place.

j. For the entry "Hydrocyanic acid, aqueous solutions *with less than 5 percent hydrogen cyanideacid*", in Column (2), as revised at 59 FR 67445, the wording "*hydrogen cyanideacid*" is removed and "*hydrogen cyanide*" is added in its place.

k. For the entry "*Hydrofluoroboric acid, see* Fluoboric acid", in Column (2), as revised at 59 FR 67445, the wording "Fluoboric acid" is removed and "Fluoroboric acid" is added in its place.

l. For the entry "Insecticide gases *flammable* n.o.s.", in Column (1), as revised at 59 FR 67446, the letter "D" is added.

m. For the entry "Medicine, liquid, flammable, toxic, n.o.s.", in Column (9A), as revised at 59 FR 67450, the letter "L" is removed and "1 L" is added in its place.

n. For the entry "Methyl chloroformate", in Column (7), as revised at 59 FR 67453, the references "A3, A6, A7," are removed.

o. For the entry "Permanganates, inorganic, aqueous solution, n.o.s.", in Column (8B), as revised at 59 FR 67462, the reference "2O2" (which has the letter "O" instead of the numeral "0") is removed and "202" is added in its place.

p. For the entry "Pesticides, liquid, flammable, toxic, (flashpoint less than 23 degrees C)", in Column (2), as revised at 59 FR 67463, the wording "(flashpoint less than 23 degrees C)" is removed and "*flashpoint less than 23 degrees C*" is added in its place.

q. For the entry "Sulfur chlorides", in Column (7), as revised at 59 FR 67475, the reference "N34." is removed and "N34, T18, T27." are added in its place.

r. For the entry "Thionyl chloride", in Column (7), as revised at 59 FR 67476, the reference "T42." is removed and "T18, T27." are added in its place.

s. For the entry "Titanium tetrachloride", in Column (7), as revised at 59 FR 67477, the reference "N41," is removed.

t. For each of the following entries, in Column (2), as revised at 59 FR 67478 and 67479, the wording "water-reative" is removed and the wording "water-reactive" is added in its place:

i. "Toxic liquids, water-reative, n.o.s."

ii. "Toxic liquids, water-reative, n.o.s. *Inhalation hazard, packing group I, Zone A*".

iii. "Toxic liquids, water-reative, n.o.s. *Inhalation hazard, packing group I, Zone B*".

iv. "Toxic solids, water-reative, n.o.s."

Appendix A to § 172.101—[Amended]

15. In Appendix A to § 172.101, the entry "2,4-(1H,3H)-Pyrimidinedione, 5[bis(2-chloroethyl)amino]-" is removed from immediately following the entry "Hexaethyl tetraphosphate" and added in proper alphabetical order.

§ 172.102 [Amended]

16. In § 172.102, in paragraph (c)(1), the following changes are made:

a. In Special Provision 52, as added at 59 FR 67486, effective October 1, 1995, the reference "§ 173.150" is removed and "§ 173.50" is added in its place.

b. In Special Provision 103, in the first sentence, the word "preparation" is removed and "propagation" is added in its place.

§ 172.308 [Amended]

17. In § 172.308, the following changes are made:

a. Paragraph (b) is removed and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively.

b. In newly designated paragraph (c), the example "'2,4-D"' is removed and "'PCB"' is added in its place.

§ 172.322 [Amended]

18. In § 172.322, in paragraph (d)(2)(i), the wording "(1 gallon)" is removed and "(1.3 gallons)" is added in its place.

§ 172.400a [Amended]

19. In § 172.400a, in paragraph (a)(1) introductory text, the wording "A cylinder or Dewar flask" is removed and "A cylinder, or a Dewar flask" is added in its place and a dash is added after the words "that is".

§ 172.704 [Amended]

20. In § 172.704, paragraph (a)(2)(i), the wording "subchapter B" is removed and "subchapter A" is added in its place.

PART 173 — SHIPPERS — GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

21. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 173.32 [Amended]

22. In § 173.32, in paragraph (e)(3), in the last sentence, the reference "§ 173.24" is removed and "§ 178.3 of this subchapter" is added in its place.

§ 173.34 [Amended]

23. In § 173.34, the following changes are made:

a. In paragraph (d)(3), the second sentence beginning with "Notwithstanding the requirements in § 171.14(b)(4)(ii) of this subchapter," is removed.

b. In paragraph (d)(7), the reference "§ 173.134" is removed and "§ 173.124" is added in its place.

§ 173.62 [Amended]

24. In § 173.62, in paragraph (c), in the Table of Packing Methods, as revised at 59 FR 67492, effective October 1, 1995, for the packing method entries E–108 and E–128, in column four, the particular packaging exception/requirement "23" is removed each place it appears.

§ 173.150 [Amended]

25. In § 173.150, in paragraph (b)(3), the wording "(1 gallon)" is removed and "(1.3 gallons)" is added in its place.

§ 173.159 [Amended]

26. In § 173.159, in paragraph (c)(3), the following changes are made:

a. In the first sentence, a comma is added immediately after the word "each".

b. In the second sentence, a period is added after the wording "(75 pounds)".

§ 173.164 [Amended]

27. In § 173.164, the following changes are made in paragraph (c), as redesignated at 59 FR 67509, effective October 1, 1995:

a. In paragraph (c)(1), in the first sentence, the words "paragraph (b)(2)" are removed and "paragraph (c)(3)" is added in its place.

b. In paragraph (c)(5), in the first sentence, the wording "paragraph (b)(1)" is removed and "paragraph (c)(1)" is added in its place.

§ 173.224 [Amended]

28. In § 173.224, as revised at 59 FR 67511, effective October 1, 1995, in paragraph (b) introductory text, the reference "§ 173.124(a)(2)(vii)" is removed and "§ 173.124(a)(2)(iii)" is added in its place.

§ 173.242 [Amended]

29. In § 173.242, in paragraph (b)(1), at the end of the second sentence, the wording "(except for Class 8, Packing Group I and II)" is added immediately following "MC 307 cargo tank".

§ 173.243 [Amended]

30. In § 173.243, in paragraph (b)(1), at the end of the second sentence, the wording "(except for Class 8, Packing Group I and II)" is added immediately following "MC 307 cargo tank".

§ 173.306 [Amended]

31. In § 173.306(d)(3)(iii), the following changes are made:

a. Following the words "in accordance with", the reference "§ 173.86" is removed and "§ 173.56" is added in its place.

b. The wording "and meet the definition set forth in § 173.100(w)" is removed.

PART 174—CARRIAGE BY RAIL

32. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 174.67 [Amended]

33. In § 174.67, in paragraph (k), the following changes are made:

a. In the first sentence, the wording "must be made tight," is removed and the words "must be made tight by the use of a bar, wrench or other suitable tool," are added in its place.

b. The last sentence, beginning with "The manhole cover must" is removed.

PART 175—CARRIAGE BY AIRCRAFT

34. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.45 [Amended]

35. In § 175.45(a)(3), the telephone number "area code 404–633–5313" is removed and "1–800–232–0124" is added in its place.

PART 176—CARRIAGE BY VESSEL

36. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 176.76 [Amended]

37. In § 176.76, in paragraph (h)(1), the wording ", or a cargo tank approved under the provisions of § 173.33(b)(2) of this subchapter" is removed.

38. In § 176.83, in paragraph (c)(2)(iv), the diagram which precedes the note is revised to read as follows:

§ 176.83 Segregation.

* * * * *

(c) * * *
(2) * * *
(iv) * * *

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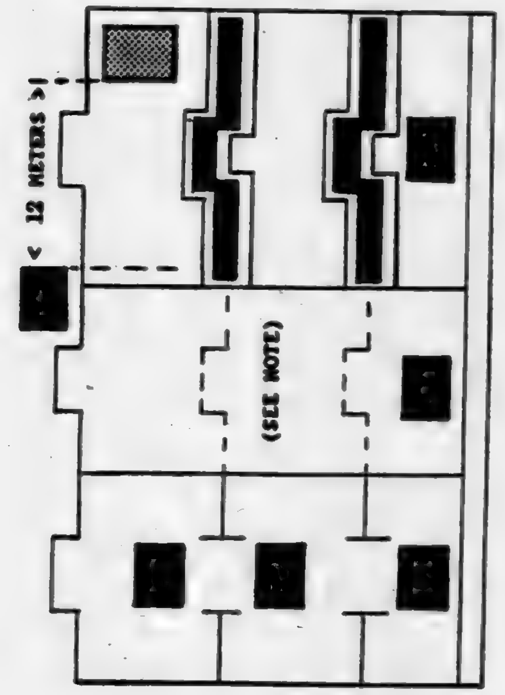

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§ 176.136 [Amended]

39. In § 176.136, in paragraph (a), the period is removed after the word "section" and a comma is added in its place.

§ 176.410 [Amended]

40. In § 176.410, in paragraph (b), the parenthetical mark following "Class 9" is removed.

PART 178—SPECIFICATIONS FOR PACKAGINGS

41. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.53–5 [Amended]

42. In § 178.53–5, the parenthetical authorities at the end of the section are removed.

§ 178.58–5 [Amended]

43. In § 178.58–5, the parenthetical authorities at the end of the section are removed.

§ 178.358–3 [Amended]

44. In § 178.358–3, in paragraph (a), the word "to" preceding "April 1, 1989" is removed.

§ 178.504 [Amended]

45. In § 178.504, in paragraph (b)(1), in the last sentence, the reference "§ 178.503(a)(10)" is removed and "§ 178.503(a)(9)" is added in its place.

§ 178.819 [Corrected]

46. In the **Federal Register** of August 4, 1995, on page 40039, in column one, in amendatory instruction 19, lines two through four are corrected to read "in the second sentence, the wording 'move vertically, bounce and rotate' is removed and 'move vertically and bounce' is added in its place.".

Issued in Washington, DC, on September 8, 1995, under the authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–22772 Filed 9–20–95; 8:45 am]

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Thursday
September 21, 1995

Part V

Department of Education

34 CFR Parts 668, 674, et al.

Higher Education Act of 1965; Student Financial Assistance Programs; Federal Regulatory Assistance Review; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 682, 685, and 690

RIN: 1840 AC20

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Programs, and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), the Federal Family Education Loan (FFEL) programs, the William D. Ford Federal Direct Loan programs, the Federal Pell Grant Program, and the State Student Incentive Grant program. These proposed amendments, which eliminate unnecessary regulations and improve the existing regulations, are part of a planned series of regulatory reform and relief proposals for the title IV, HEA programs. The Secretary is proposing these changes in response to the President's Regulatory Reform Initiative.

The Federal student financial assistance programs support the National Education Goals by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning.

DATES: Comments on the proposed regulations must be received on or before October 27, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Harold McCullough, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. Comments may also be sent through the Internet to reg_relief@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the proposed regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named above.

FOR FURTHER INFORMATION CONTACT:

1. For the Student Assistance General Provisions: Claude Denton, Student Eligibility and Verification Section, General Provisions Branch on (202) 708–7888;
2. For the Federal Perkins Loan Program: Sylvia R. Ross, Campus-Based Loan Programs Section, Loans Branch on (202) 708–8242;
3. For the FWS and FSEOG programs: Kathy S. Gause, Campus-Based Programs Section, Grants Branch on (202) 708–4690;
4. For the FFEL Programs: Ralph Madden, GSL Programs Section, Loans Branch on (202) 708–8242;
5. For the William D. Ford Federal Direct Loan Programs: Doug Laine, Direct Loan Policy Group on (202) 708–9406; and
6. For the Federal Pell Grant Program: Mike Oliver, Pell and State Grant Section, Grants Branch on (202) 708–4607.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 4, 1995, the President directed every Federal agency to review its rules and procedures to reduce regulatory and paperwork burden, and directed Federal agencies to eliminate or revise those regulations that are outdated or otherwise in need of reform. Responding to the President's Regulatory Reform Initiative, the Secretary announced plans to eliminate or revise 93 percent of the Department's regulations. To launch the Department's reinvention effort, the Secretary published a notice in the May 23, 1995 **Federal Register** (60 FR 27223–27226), eliminating more than 30 percent of the Department's regulations, primarily in areas not related to student financial assistance.

The Secretary is conducting a page-by-page review of all student financial assistance regulations to identify those that should be eliminated or improved. The Secretary is also considering developing proposals for statutory amendments to eliminate unnecessary administrative burden.

As part of his response to the President's regulatory reinvention initiative, the Secretary is proposing these amendments to the regulations that apply to the title IV, HEA programs. The Secretary plans to propose additional reform and relief regulatory amendments for the title IV, HEA programs in the upcoming months.

A description of the major proposed changes follows. The proposed changes that apply to more than one program are described first followed by descriptions of provisions that apply only to a specific program.

The Federal student financial assistance programs support the National Education Goals by enhancing opportunities for postsecondary education.

Summary of Proposed Changes

Student Assistance General Provisions

The Student Assistance General Provisions regulations, 34 CFR part 668, implement requirements that are common to the title IV, HEA programs.

Subpart A—General

Section 668.7 Eligible Student

The Secretary proposes to remove and reserve the section formerly designated as § 668.7, "Eligible student." The "eligible student" provisions currently provided in § 668.7 would now comprise a revised subpart C of 34 CFR part 668.

The Secretary believes that this relocation will improve regulatory organization, provide greater clarity, and improve understanding of those provisions.

Subpart B—Standards for Participation in Title IV, HEA Programs

Section 668.19 Financial Aid Transcript

Under the current regulations, if an institution determines that a student previously attended another institution, the institution must obtain a financial aid transcript from that other institution. The financial aid transcript provides some of the information that enables an institution to determine whether an enrolling student is eligible to receive title IV, HEA program funds. Thus, the financial aid transcript may indicate that a student is in default on a title IV, HEA program loan, or owes a repayment on a title IV, HEA program grant or loan. It may also help the institution to determine the amount that an eligible student is entitled to receive in the current award year by indicating

a student's Scheduled Federal Pell Grant award or the amount of FFEL or William D. Ford Federal Direct loan funds that the student received in the current award year.

The Secretary proposes an alternative to obtaining a financial aid transcript. The Department has been developing the National Student Loan Data System (NSLDS), which will contain basically the same information that is included on a financial aid transcript. When the system becomes fully operational, institutions will be able to obtain financial aid history information about an applicant for title IV, HEA program assistance from the NSLDS instead of from other institutions previously attended by the applicant. Therefore, the Secretary is proposing in § 668.19 that when the NSLDS can be used to satisfy this purpose, an institution will have the option of obtaining information about an enrolling student who has previously attended another institution from the NSLDS instead of requesting a financial aid transcript from the other institution.

At the present time, the Secretary anticipates that institutions will be able to obtain financial aid transcript information from the NSLDS starting with the 1996–97 award year. However, the Secretary is proposing in § 668.19 to notify institutions through a **Federal Register** notice when they may begin to use this option.

After experience demonstrates that the NSLDS is a valid alternative to requesting a financial aid transcript from another institution, the Secretary anticipates that institutions will use the NSLDS exclusively to obtain information and the Secretary will eliminate the financial aid transcript requirement.

The Secretary expects that use of NSLDS will relieve institutions of the burden of requesting and compiling information from financial aid transcripts. Because financial aid history information will be available electronically, obtaining information from the NSLDS will also reduce delays in awarding and disbursing title IV, HEA program assistance to students.

While the Secretary is confident that NSLDS data will provide accurate and reliable information, there will be instances where an institution encounters inconsistencies between NSLDS data and other sources of information. If that happens, the institution is expected to resolve those conflicts in accordance with § 668.16(f). Resolution of inconsistencies can be achieved through use of the financial aid transcript or other methods the institution determines to be appropriate.

Subpart C—Student Eligibility

Because of increased statutory requirements affecting a student's eligibility to receive title IV, HEA program funds, the Secretary believes that the inclusion of all those requirements in one section of the regulations has become too cumbersome. Therefore, the Secretary has revised and reorganized those requirements into subpart C of 34 CFR part 668. The Secretary requests comments on this proposed reorganization.

Section 668.33 Student Identification

The Office of Inspector General recently recommended enhancement of the data match with the Social Security Administration (SSA), under which SSA would confirm claims of U.S. citizenship by applicants for title IV, HEA program funds on their Free Application for Federal Student Aid (FAFSA). Currently, the Department and SSA have a data match under which SSA confirms the accuracy of social security numbers provided by title IV, HEA program applicants.

The Secretary and SSA have agreed to this expanded data match starting with the 1996–97 award year application cycle. Section 668.33 has provisions to conform these regulations to this internal interagency process.

Operationally, the citizenship aspect of the SSA data match would be similar to other data matches. If a student's claim of U.S. citizen status is confirmed by SSA, the central processor will generate a confirming message on an applicable "output document," such as an ISIR or SAR. No further action will be required by either the student or institution, absent conflicting information. If the student's claim is not confirmed, the student would be advised of the lack of confirmation and would be given the opportunity to provide documentary evidence to the institution, such as a birth certificate, naturalization certificate, or passport, to support his or her assertion of citizenship.

The Secretary proposes, in this section, to allow students to satisfy the requirement of filing a Statement of Educational Purpose with the institution, by completing the FAFSA, which will include this statement starting with the 1996–97 award year. Currently, institutions must collect a Statement of Educational Purpose individually from each student applying for title IV, HEA program assistance. The Secretary;s proposal does not affect current FFEL requirements with regard to this statement on loan applications.

The Secretary proposes to eliminate the model Statement of Educational Purpose in the current regulations. A model statement would be duplicative because the statement will appear on the FAFSA starting with the 1996–97 award year.

The Secretary also proposes to eliminate the Statement of Registration Status because the statement is duplicative. A male student's selective service registration status is now confirmed through a data match with the Selective Service System. This data match eliminates the need for the collection of a separate statement.

Section 668.34 Student Debts Under the HEA and to the U.S.

The Secretary is proposing in these regulations to amend and reorganize, for clarity and conformity, the provisions under which a student who owes a debt under the HEA or to the United States may nevertheless be eligible to receive title IV, HEA program assistance. Also, the Secretary proposes to conform the regulations to existing statutory requirements pertaining to bankruptcy.

Specifically, these regulations would allow a student who owes a debt under the HEA or to the United States to be eligible to receive title IV, HEA program funds even though the student (1) is in default on a title IV, HEA program loan, (2) inadvertently received a title IV, HEA program loan in an amount that exceeded that program's annual or aggregate loan limits, (3) owes a repayment on a title IV, HEA program grant or loan, or (4) has property subject to a judgment lien for a debt owed to the United States.

Under the proposed regulations, a student who is in default on a title IV, HEA program loan would be eligible to receive additional title IV, HEA program funds if the student repays the loan in full, or makes six consecutive monthly payments on the defaulted loan and makes arrangements, satisfactory to the holder of the loan, to repay that loan.

A student who is not in default but inadvertently obtained loan funds under a title IV, HEA loan program in an amount that exceeded the annual or aggregate loan limits under that program would be eligible to receive additional title IV, HEA program funds if the student repays in full the excess loan amount or makes arrangements satisfactory to the holder of the loan, to repay that excess loan amount.

A student who receives a grant or loan overpayment under a title IV, HEA program would be eligible for additional title IV, HEA program funds if the student pays the overpayment in full, or makes arrangements satisfactory to the institution to pay the overpayment.

A student who has property subject to a judgment lien for a debt owed to the United States would be eligible for title IV, HEA program funds if the student pays the debt in full, or makes arrangements satisfactory to the United States to pay the debt.

In addition, the proposed regulations clarify that the exception under bankruptcy law is applicable to a student who is otherwise in default on a title IV, HEA program loan, or owes an overpayment on a title IV, HEA program grant or loan.

These proposed changes provide clarification and, to the extent allowed by the HEA, consistency in the treatment by institutions of applicants for title IV, HEA program assistance who may owe a debt on previously awarded title IV aid or when the applicant has had a lien placed on another debt owed to the United States. Additionally, they provide, in the case of a grant or loan overpayment, flexibility to the holder of the debt by allowing for the establishment of satisfactory arrangements to repay so that the applicant who demonstrates good faith in resolving his or her obligation may regain eligibility for title IV, HEA program assistance.

Subpart I—Immigration-Status Confirmation

Section 668.133 Conditions Under Which an Institution Shall Require Documentation and Request Secondary Confirmation

The Secretary proposes to remove the requirement that an institution request secondary confirmation from the Immigration and Naturalization Service for a student if (1) the student presents documents verifying his or her immigration status that are identical to documents presented to that institution in a previous year, and (2) that institution determined the student to be an eligible noncitizen using secondary confirmation of those same documents in a previous award year. This waiver of secondary confirmation requirements would not apply if the institution has conflicting information or reason to doubt the student's claim to be an eligible noncitizen.

Subpart K—Cash Management

Section 668.164 Maintaining Funds

The Secretary proposes to amend § 668.164(a)(2) to limit the requirement that all institutions file a UCC–1 statement for any bank account in which title IV, HEA program funds are maintained. Specifically, the Secretary proposes to eliminate the UCC–1 filing requirement for institutions that (1) disclose clearly in the name of the account that Federal funds are maintained in that account, or (2) are backed by the full faith and credit of a State. The filing of a UCC–1 would only be required for bank accounts of institutions that do not satisfy either of these conditions.

In establishing this requirement, the Secretary sought to use the UCC–1 filing process as the means by which an institution publicly discloses which of its accounts contain Federal funds. A public disclosure reduces the possibility that an unscrupulous institution could misrepresent Federal funds as its own funds.

Upon further review, the Secretary believes that the disclosure purposes of the UCC–1 filing requirement are adequately accomplished where an institution includes the phrase "Federal funds" in the name of its accounts. Moreover, the Secretary believes that the UCC–1 filing requirement is not appropriate for public institutions because these institutions generally do not seek to obtain credit in the same manner as private institutions.

Section 668.165 Disbursing Funds

The Secretary is proposing to modify section 668.165(b)(1) to provide an institution as much flexibility as possible with respect to how it notifies a student or parent borrower that William D. Ford Federal Direct Loan or FFEL program funds have been credited to a student's account. Under the current regulations, the institution must provide such notification in writing. Under the proposed rules, the institution would be able to provide this notification electronically or through the use of telecommunication devices. If an institution provides the notification through these devices, the institution must have a means of documenting that the student or parent received this information. For example, if the institution provides this information through electronic mail, the institution must ensure that it receives a "return receipt" message from the addressee.

The Secretary proposes to amend § 668.165(b) (1) and (3) to provide that under certain circumstances, and with a student's permission, an institution may credit the student's account with title IV, HEA program funds to pay for minor institutional charges from a prior year. Currently, § 668.165(b)(1) prohibits this practice. This prohibition reflects long-standing Department policy and is based on the tenet that title IV, HEA program funds are intended to be used to pay for educational expenses a student incurs in the period for which those funds are provided. The Cash Management regulations published on December 1, 1994 merely codified this policy.

After the publication of these regulations, institutions have brought to the Secretary's attention circumstances under which a limited exception to this rule may be appropriate. These circumstances occur where a student incurs a minor institutional charge late in a semester after the institution has released to the student all of his or her title IV, HEA program funds. This charge is often not paid by the student by the end of the semester and is consequently carried over to the next semester. Where that next semester falls within the award year, the charges may be paid using the student's title IV, HEA program funds. The institutions note, however, that a problem arises where the next semester falls in a subsequent award year because many institutions have a policy that prevents a student from continuing at the institution until all prior year charges are paid. In this case, the student's current title IV, HEA program funds may not be used to pay the prior year charges even if the amount of these funds exceeds all current allowable costs and the student's remaining funds are sufficient to pay the prior year charges. While the institutions acknowledge that a student's failure to pay institutional charges when those charges are due is a problem that may arise regardless of whether a student receives title IV, HEA program funds, they maintain that the current regulatory prohibition on the payment of prior year charges imposes an unnecessary administrative burden and otherwise interferes with an institution's ability to resolve this problem with the student.

After further review, the Department announced on July 11, 1995 that in the case described above where a balance of title IV, HEA program funds remains after the student's current allowable costs are paid, an institution may use the student's current title IV, HEA program funds to pay for minor prior year charges provided that the institution obtains appropriate authorization from a student to do so. These proposed regulations merely restate this announced policy.

The Secretary believes that, as a practical matter, the payment of minor prior year charges does not violate the intended use of title IV, HEA program funds because the primary purpose of these funds is to assist a student in beginning and continuing to pursue his or her postsecondary education. However, the Secretary is concerned that the payment of prior year charges may impair a student from continuing his or her education at an institution if the amount of those charges reduces adversely the amount of title IV, HEA program funds that the student would otherwise rely on in meeting his or her living expenses and other educational costs. The Secretary believes strongly that this would not only violate the intended use of title IV, HEA program funds but that it would be a disservice to the student and waste of Federal funds. Therefore, although the Secretary does not specify the dollar amount of prior year charges that may be paid, the Secretary would expect institutions to use the latitude provided under this proposal in a reasonable manner.

Campus-Based Programs

Sections 674.2, 675.2 and 676.2 Definitions

Section 674.2(b) and § 675.2(b) of the Federal Perkins Loan and FWS program regulations, respectively, define the terms "full-time or professional student" and "full-time undergraduate student" and § 676.2(b) of the FSEOG program regulations defines the term "full-time undergraduate student." However, § 668.2 of the Student Assistance General Provisions regulations contains a definition of the term "full-time student" that duplicates those definitions. Therefore, the Secretary is proposing to eliminate these duplicative definitions in § 674.2(b), § 675.2(b) and § 676.2(b) and instead incorporate the definition of the term "full-time student" set forth in § 668.2 for all three of the campus-based programs.

Sections 674.17, 675.17, and 676.17 Federal Interest in Allocated Funds

Section 674.17(a), § 675.17 and § 676.17 of the Federal Perkins Loan, FWS, and FSEOG program regulations provide that program funds are held in trust for the Secretary and intended student beneficiaries and cannot be used or hypothecated for any other purpose. These very provisions are included in § 668.161(b) of the Student Assistance General Provisions regulations so are not needed in these program regulations.

In the past, the Secretary kept these provisions in program regulations even though they were in the Student Assistance General Provisions regulations as a reminder of their importance. However, the Secretary now believes that the continued presence of redundant regulatory provisions in each Title IV, HEA program regulation is no longer needed.

Sections 674.19, 675.19, and 676.19 Fiscal Procedures and Records

The Secretary proposes to amend §§ 674.19(e)(4)(v), 675.19(c)(3), and 676.19(c)(3) of the Federal Perkins Loan, FWS, and FSEOG program regulations, respectively, to allow institutions the additional flexibility of using optical disk technology in complying with recordkeeping requirements. The Secretary believes that the use of new technologies such as optical disk is an important tool in reducing paper retention at an institution, particularly if an institution keeps its records in computer format. The Secretary further believes that broadening methods of record retention through the use of optical disk will enhance administrative efficiency and increase flexibility by providing institutions with a new recordkeeping option that saves time and space.

Federal Perkins Loan Program

Section 674.2 Definitions

The current definition of "making of a loan" under § 674.2 of the Federal Perkins Loan program regulations includes the burdensome requirement of collecting a student's signature each time loan funds are advanced. In order to make this definition consistent with the changes in signature requirements being proposed in § 674.16, the Secretary is proposing to amend this definition by removing the reference to a borrower signing for each advance of funds. The Secretary proposes to redefine "making of a loan" simply as when the borrower signs the promissory note and the loan funds are disbursed.

Section 674.16 Making and Disbursing Loans

In keeping with the Secretary's desire to alleviate administrative burden on institutions and to protect students, the Secretary is proposing to eliminate the requirement that a student must sign for each loan advance under the Federal Perkins Loan Program. The financial aid community has commented repeatedly that this is a time-consuming, costly, and impractical requirement that often results in long lines of students waiting to sign loan documents.

Under the Secretary's proposal, an institution simply must obtain the borrower's signature on a promissory note for each award year before it disburses any loan funds under that promissory note for that award year. Thus, when he or she signs a promissory note for an award year, the student will know the loan amount for that award year. Moreover, the student will know when and how those funds will be disbursed because the institution is required to provide that information to the student under § 668.165 of the Student Assistance General Provisions regulations.

Section 674.31 Promissory Note

The Secretary proposes to amend § 674.31(a) of the Federal Perkins Loan Program regulations to indicate that the Secretary will provide sample promissory notes to institutions. Institutions may add additional items to the sample notes as long as the new items do not alter the substance of these sample notes.

Section 674.33 Repayment

The Secretary is proposing to amend § 674.33(a)(2) of the Federal Perkins Loan Program regulations by allowing institutions to combine the last scheduled Federal Perkins Loan payment with the next-to-last payment if the last payment is $25 or less. As currently written, in order to combine payments, the last payment must be $15 or less. The Secretary believes that allowing institutions to combine a last payment of a higher dollar amount will reduce collection costs by eliminating the generation of bills for small dollar amounts and also significantly improve an institution's success in collecting small loan balances.

Section 674.47 Costs Chargeable to the Fund

The Secretary recently issued a "Dear Colleague" Letter regarding the limitations on write-offs in the Federal Perkins Loan Program (CB–95–17). However, the Secretary believes that confusion still exists as to what the term "write-off" means as it relates to § 674.47(g). In an attempt to clarify the Secretary's position and to alleviate burden on institutions, the Secretary is proposing to revise § 674.47(g) by replacing the term "write-off" with the term "cessation of collection activity."

As the proposed change indicates, an institution may cease collection activity on a defaulted account with a balance of less than $25. However, the institution must continue to include the loan as in default for purposes of calculating its cohort default rate.

Cessation of collection activity by an institution does not relieve the borrower of his or her obligation to repay that loan, and interest continues to accrue on the amount on which collection activities cease. Moreover, the borrower is still considered in default on that loan and therefore remains ineligible for further title IV, HEA program assistance and retains an adverse credit rating.

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It is the Secretary's long-standing policy to require institutions to collect every amount due on an account from the borrower. However, the Secretary recognizes that institutions and collection agencies experience cost-inefficiencies in their attempts to collect small-balance, defaulted loan accounts.

The Secretary recognizes that very small balances frequently occur, for example, when a few days of additional interest accrues on the final balance, and that billing borrowers for this small remaining balance is not cost-effective for institutions as servicing fees often exceed the remaining balance. Accordingly, the Secretary is proposing to further amend § 674.47 by adding new paragraph (h) to allow institutions to cease collection activities and write off loan accounts with a balance of less than $1, including outstanding principal, accrued interest, collection costs, and late charges.

The write-off of balances of less than $1 creates a paid-in-full status on the loan and, therefore, relieves the borrower of all obligations, does not have an adverse effect on the borrower's credit rating, does not affect the borrower's eligibility for further title IV, HEA program assistance, nor will the loan be included in the calculation of an institution's cohort default rate.

Federal Work-Study Programs

Appendix B—Model Off-Campus Agreement

When an institution enters into a written agreement—a contract—with any off-campus agency or company that employs FWS students, the institution must make sure the organization is a reliable organization with professional direction and staff, and that the work to be performed is adequately supervised and consistent with the purpose of the FWS Program. Appendix B of the current FWS regulations provides a model off-campus agreement. Institutions can use this model as a guide in developing their agreements.

In an effort to streamline regulations, the Secretary is proposing to eliminate this sample agreement as an appendix to the FWS regulations. The Secretary will include a model off-campus agreement in the Federal Student Financial Aid Handbook.

Federal Family Education Loan Program, William D. Ford Federal Direct Loan Programs

Sections 682.201 and 685.200 Eligible Borrowers

The Secretary proposes to expand the pool of borrowers under the Federal PLUS and Federal Direct PLUS programs to include the spouse of a student's parent if that parent remarried. The Secretary is proposing this expansion to provide greater flexibility to the student's family to enable them to pay for the student's educational costs. The proposed extension includes the spouse of the parent if that spouse's income and assets would be taken into account in determining the student's expected family contribution.

Section 682.600 Agreement Between an Eligible School and the Secretary for Participation in the FFEL Programs and § 682.602 Schedule Requirements for Courses of Study by Correspondence

The Secretary believes that the provisions of § 682.600(a) through § 682.600(c) duplicate provisions in 34 CFR part 600 or 668 and are therefore unnecessary. Accordingly, the Secretary has proposed to eliminate those provisions in 34 CFR part 682. The provisions included in § 682.600(d) that deal with foreign schools are needed and the Secretary has proposed to include those provisions in a new section, § 682.611.

Students enrolled in correspondence programs are not eligible to receive FFEL Program loans unless they are enrolled in a program that leads to an associate, bachelor, or graduate degree. Therefore, the Secretary believes that the provisions contained in § 682.602 are no longer needed and has proposed to eliminate those provisions.

Federal Pell Grant Program

Subpart A—Scope, Purpose and General Definitions

Section 690.7 Institutional Participation

The Secretary proposes to revise § 690.7 by deleting current paragraph (a)(1) because the provisions contained in that paragraph duplicate provisions in 34 CFR part 600 or 668.

Subpart G—Administration of Grants Payments

Section 690.71 Scope, § 690.72 Institutional Participation, § 690.73 Termination of Institutional Participation Agreement, and § 690.74 Provision of Funds to Institutions

The Secretary proposes to eliminate the last sentences in §§ 690.71, 690.72, 690.73, and 690.74 because they duplicate provisions contained in 34 CFR part 668.

Section 690.83 Submission of Reports

The Secretary proposes to revise § 690.83 by consolidating in one paragraph the procedures that allow institutions to receive payment or credit for Federal Pell Grants they previously disbursed if that situation is disclosed by an initial audit or program review.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading, for example, § 674.4 Allocation and reallocation.) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this

description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 5125, FOB–6), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these proposed regulations are small institutions of postsecondary education. The changes in these regulations will not substantially increase institutions—workload or costs associated with administering the title IV, HEA programs and, therefore, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

Sections 668.19, 668.32, 668.33, 668.34, 668.36, 668.133, 668.164, 668.165, 674.16, 674.19, 674.31, 674.47, 675.19, 676.19, and 690.83 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of information: Student Assistance General Provisions—

Section 668.19—Financial aid transcript—Institutions are required to obtain financial aid transcript information for purposes of determining student eligibility under these regulations. The information to be collected includes: assurances to meet certain statutory requirements and specific information regarding a student's financial aid history. Institutions need and use the information to release title IV, HEA program funds.

All information is to be collected on a case by case basis for those students that previously attended an institution and received title IV, HEA program funds. Annual recordkeeping and reporting burden contained in the collection of information proposed in these regulations are estimated to average .17 hours for 17,600 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual recordkeeping and reporting burden equals 2992 hours.

Section 668.32—Statement of Educational Purpose—The Department currently has this section approved under OMB control number for the FAFSA (1840–0110). There are no new information collection requirements as a result of these regulations.

Section 668.33—Statement of Registration Status—The Department currently has this section approved under OMB control number for the FAFSA (1840–0110). There are no new information collection requirements as a result of these regulations.

Section 668.34—Model Statement of Educational Purpose and Registration Status—The Department currently has this section approved under OMB control number for the FAFSA (1840–0110). There are no new information collection requirements as a result of these regulations.

Section 668.36—Selective Service notification, administrative review, and liability—The Department currently has this section approved under OMB control number for the FAFSA (1840–0110). There are no new information collection requirements as a result of redesignating and renaming this section from § 668.35.

Section 668.133—Conditions under which an institution shall require documentation and request secondary confirmation—Institutions must require documentation and secondary confirmation with INS for purposes of determining student eligibility for noncitizen applicants under these regulations. The information to be collected includes: specific information regarding a student's residency status and documentary evidence. Institutions need and use the information to determine a student's eligibility for title IV, HEA program funds.

All information is to be collected on a case by case basis. Annual recordkeeping and reporting burden contained in the collection of information proposed in these regulations are estimated to average .25 hours for 8,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual recordkeeping and reporting burden equals 2000 hours.

Section 668.164—Maintaining funds—Institutions are required to deposit title IV, HEA program funds into a bank account, (1) with the words "Federal funds" in the title of the account, or (2) be backed by the full faith and credit of a state, or (3) file a UCC–1 form with the appropriate county and/or State office(s) and maintain a copy of that filing in its records to disclose that Federal funds are maintained in that bank account under these regulations.

All information is to be collected on a one time basis if changing the title of a bank account, or annually if filing a UCC–1 form. Annual recordkeeping and reporting burden contained in the collection of information proposed in these regulations are estimated to average 1.23 hours for 3,634 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual recordkeeping and reporting burden equals 4470 hours.

Section 668.165—Disbursing funds—There are no new information collection requirements as a result of these regulations.

Collection of information: Federal Perkins Loan, FWS, and FSEOG programs—

Section 674.16—Making and disbursing loans and section 674.31—Promissory note—There are no new information collection requirements as a result of these regulations.

Section 674.19, 675.19, and 676.19—Fiscal procedures and records—The Department currently has these sections approved under OMB control number for the FISAP (1840–0073). There are no new information collection requirements as a result of these regulations.

Section 674.47—Costs chargeable to the fund—There are no new information collection requirements as a result of these regulations.

Collection of information: Federal Pell Grant Program—

Section 690.83—Submission of reports—Institutions must follow certain procedures for receiving funds for payment submissions after established deadline dates.

All information is to be collected annually. There are no new collection requirements as a result of these regulations. The current annual recordkeeping and reporting burden contained in section 690.83 is estimated to average 41 hours for 400 respondents, including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The total annual recordkeeping and reporting burdne equals 16,400 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have a practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefullness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3053, ROB–3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Loan programs—education, Grant programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 675

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 676

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program.)

Dated: September 13, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 668, 674, 675, 676, 682, 685, and 690 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

§ 668.2 [Amended]

2. Section 668.2, paragraph (b) is amended by revising the first paragraph of the definition of "Payment period" to read as follows: "With respect to the Federal Pell Grant Program, a payment period as defined in 34 CFR 690.3;"

§ 668.7 [Amended]

3. Section 668.7 is removed and reserved.

4. Section 668.19 is revised to read as follows:

§ 668.19 Financial aid transcript.

(a)(1) An institution shall determine whether a student who is applying for assistance under any title IV, HEA program has previously attended another eligible institution.

(2) Before a student who previously attended another eligible institution may receive any title IV, HEA program funds—

(i) The institution must request each institution the student previously attended to provide a financial aid transcript to the institution the student is, or will be, attending; or

(ii) The institution may use information obtained from the National Student Loan Data System, that would otherwise be provided on a financial aid transcript, once the Secretary notifies institutions through a notice in the **Federal Register** that the National Student Loan Data System is available for this purpose.

(3) Except as provided in paragraph (a)(5) of this section, if an institution requests a financial aid transcript from each of the institutions a student previously attended, until the institution receives a financial aid transcript from each of those institutions, the requesting institution—

(i) May withhold payment of Federal Pell Grant and campus-based funds to the student;

(ii) May disburse Federal Pell Grant or campus-based funds to the student for one payment period only;

(iii) May decline to certify the student's Federal Stafford Loan application or the parent's Federal PLUS application under the FFEL Program;

(iv) May decline to originate the student's Federal Direct Stafford Loan application or the parent's Federal Direct PLUS application under the William D. Ford Federal Direct Loan Programs;

(v) May not release Federal Stafford Loan proceeds to a student or Federal PLUS proceeds to a parent or student under the FFEL Program; and

(vi) May not release Federal Direct Stafford Loan proceeds to a student or Federal Direct PLUS proceeds to a parent or student under the William D. Ford Federal Direct Loan Programs.

(4)(i) An institution may not hold Federal Stafford, or Federal PLUS loan proceeds under paragraph (a)(3) of this section for more than 45 days. If an institution does not receive all required financial aid transcripts for a student within 45 days of the receipt of those proceeds, the institution shall return the loan proceeds to the appropriate lender.

(ii) An institution that certifies a Federal Stafford or Federal PLUS loan

application before receiving all required financial aid transcripts shall return to the lender the appropriate amount of any Federal Stafford or Federal PLUS loan proceeds for the student if it receives a financial aid transcript indicating that the student is not eligible for all, or a part, of the loan proceeds.

(5) An institution may disburse title IV, HEA program funds to a student without receiving a financial aid transcript from an eligible institution the student previously attended if the institution the student previously attended—

(i) Has closed, and information concerning the student's receipt of title IV, HEA program assistance for attendance at that institution is not available;

(ii) Is not located in a State; or

(iii) Provides the disbursing institution with the written certification described in paragraph (b)(2)(ii) of this section.

(b) Upon request, each institution located in a State shall promptly provide to the institution that requested a financial aid transcript—

(1) All information in its possession concerning whether the student in question attended institutions other than itself and the requesting institution; and

(2)(i) A financial aid transcript for that student, if the student received or benefited from any title IV, HEA program assistance while attending the institution; or

(ii) A written certification that—

(A) The student did not receive or benefit from any title IV, HEA program assistance while attending the institution; or

(B) The transcript would cover only years for which the institution no longer has records and is no longer required to keep records under the applicable title IV, HEA program recordkeeping requirements.

(c) An institution must disclose on a financial aid transcript for a student—

(1) The student's name and social security number;

(2) To the extent that the institution is aware, whether the student is in default on any title IV, HEA loan;

(3) Whether the student owes an overpayment on any grant made under the Federal Pell Grant or FSEOG programs and, to the extent that the institution is aware, the SSIG Program, for attendance at the institution;

(4) For the award year for which a financial aid transcript is requested—

(i) The student's scheduled Federal Pell Grant award;

(ii) The amount of Federal Pell Grant funds disbursed to the student;

(iii) The amount of loans made under the National Defense Student Loan, Direct Loan, and Federal Perkins Loan programs; and

(iv) The amount of loans made under the FFEL and William D. Ford Federal Direct Loan programs; and

(5) The aggregate amount of loans under the title IV, HEA loan programs for attendance at the institution.

(d)(1) A financial aid transcript must be signed by an official authorized by the institution to disclose information in connection with title IV, HEA programs.

(2) An institution must base the information it includes on financial aid transcripts on records it maintains under the title IV, HEA programs' recordkeeping requirements.

5. The heading for § 668.21 is revised to read as follows:

668.21 Treatment of Federal Perkins Loan, FSEOG, and Federal Pell Grant program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

§ 668.22 [Amended]

6. Section 668.22 is amended by removing paragraph (h)(1)(i) and redesignating paragraphs (h)(1)(ii) through (xiii) as paragraphs (h)(1)(i) through (xii), respectively.

7.–8. Subpart C is revised to read as follows:

Subpart C—Student Eligibility

Sec.
668.31 Scope.
668.32 Student enrollment.
668.33 Student identification.
668.34 Student debts under the HEA and to the U.S.
668.35 Program-specific requirements.
668.36 Selective Service notification, administrative review, and liability.

Subpart C—Student Eligibility

§ 668.31 Scope.

This subpart establishes rules by which a student establishes eligibility for assistance under the title IV, HEA programs. In order to qualify as an eligible student, a student must meet all applicable requirements in this subpart.

(Authority: 20 U.S.C. 1091)

§ 668.32 Student enrollment.

A student is eligible to receive assistance under the title IV, HEA programs if the student—

(a)(1) Is a regular student enrolled or accepted for enrollment in an eligible program at an eligible institution;

(2) For purposes of the FFEL or William D. Ford Federal Direct Loan programs, is enrolled for no longer than one twelve-month period as at least a half-time student in a course of study necessary for enrollment in an eligible program; or

(3) For purposes of the Federal Perkins Loan, FWS, FFEL, or William D. Ford Federal Direct Loan programs, is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary school or secondary school in that State;

(b) Is not enrolled in either an elementary or secondary school;

(c)(1) Has a high school diploma or its recognized equivalent;

(2) Has obtained within 12 months before the date the student initially receives title IV, HEA program funds, a passing score specified by the Secretary on an approved, independently administered test, in accordance with subpart J of this part; or

(3) Is enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of this part;

(d) Maintains satisfactory progress in his or her course of study according to the institution's published standards of satisfactory progress that satisfy the provisions of § 668.16(e). To make a determination that a student is maintaining satisfactory progress, an institution shall—

(1) At a minimum, review the student's academic progress at the end of each academic year;

(2) If the student is enrolled in a program of study of more than two academic years, at the end of the student's second year of attendance, determine that the student—

(i) Has at least a cumulative grade point average of "C" or its equivalent, or has academic standing consistent with the institution's graduation requirements; or

(ii) Failed to have at least a cumulative grade point average of "C" or its equivalent, or academic standing consistent with its graduation requirements because of—

(A) The death of a relative of the student;

(B) An injury or illness of the student; or

(C) Other special circumstances; or

(3) Is not making satisfactory progress at the end of the second academic year, but at the end of a subsequent grading period comes into compliance with the institution's requirements for graduation. The institution may consider the student as making satisfactory progress beginning with the next grading period;

(e) Is enrolled in an educational program leading to an associate, bachelor's, or graduate degree, if enrolled in telecommunications or correspondence courses; and

(f) If engaged in a study-abroad program, (which need not be required as part of the student's degree program)—

(1) Maintains enrollment in an eligible institution during his or her study-abroad program; and

(2) Enrolls in a study-abroad program that has been approved for academic credit by the eligible institution at which the student is enrolled.

(Authority: 20 U.S.C. 1091)

§ 668.33 Student identification.

A student is eligible to receive assistance under the title IV, HEA programs if the student—

(a) *Citizenship status.* (1) Has confirmed status as a U.S. citizen or national as a result of a data match with the Social Security Administration;

(2) In the absence of confirmation as provided in paragraph (a)(1) of this section, and within a deadline to be set by the institution of no less than 30 days from the date the institution is notified of the results of the data match, has provided documented evidence that he or she is a U.S. citizen or national;

(3) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) For purposes of the FWS, FSEOG, and Federal Pell Grant programs—

(i) Is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau, and attends an eligible institution of higher education in a State or a public or nonprofit private institution of higher education in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau; or

(ii) Meets the requirements of paragraph (a)(1), (a)(2), or (a)(3) of this section and attends an eligible public or nonprofit private institution of higher education in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau;

(b) *Selective Service.* (1) Has confirmed registration with Selective Service as a result of a data match with the Selective Service System; or

(2) In the absence of confirmation as provided in paragraph (b)(1) of this section and within a deadline to be set by the institution of no less than 30 days from the date the institution is notified of the results of the data match, has provided evidence of compliance with, or exemption from, Selective Service registration requirements. An institution may establish that a student is exempt from Selective Service registration requirements if the institution determines, based on clear and unambiguous evidence, that—

(i) The student is not, or was not required to be, registered with Selective Service; or

(ii) The student—

(A) Was required to be registered with the Selective Service prior to age 26;

(B) Is now at least 26 years old;

(C) Failed to register with the Selective Service prior to age 26; and

(D)(*1*) Demonstrates to the institution that he did not knowingly and willfully fail to register with the Selective Service. The Secretary considers that a student satisfies this requirement by obtaining and presenting to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register, and the institution does not have uncontroverted evidence that the student knowingly and willfully failed to register; or

(*2*) Served as a member of one of the U.S. Armed Forces on active duty and received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the Reserve Forces and National Guard;

(iii) The student is enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(A) The Citadel, Charleston, South Carolina;

(B) North Georgia College, Dahlonega, Georgia;

(C) Norwich University, Northfield, Vermont; or

(D) Virginia Military Institute, Lexington, Virginia;

(iv) The student is a commissioned officer of the Public Health Service or a member of the Reserve of the Public Health Service who is on active duty as provided in section 6(a)(2) of the Military Selective Service Act; or

(v) The student was unable to present himself for registration for reasons beyond his control, such as being hospitalized, institutionalized, or incarcerated;

(c) *Incarcerated students.* For purposes of the Federal Perkins Loan, FFEL, and William D. Ford Federal Direct Loan programs, is not an incarcerated student at the time funds are delivered or disbursed;

(d) *Social security number.* Except for the residents of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau, has a correct social security number that has been verified by an eligible institution, which shall enforce the following conditions:

(1) An institution may not deny, reduce, delay or terminate a student's eligibility for assistance under the title IV, HEA programs because social security number verification is pending.

(2) If the institution receives an output document indicating that the Secretary has determined that the student's social security number is correct, the institution may not require the student to produce other evidence to confirm that the student's social security number is correct, unless the institution—

(i) Has documentation that conflicts with the social security number status reported on the output document; or

(ii) Has reason to believe the output document is incorrect.

(3) If the institution receives an output document indicating that the Secretary has determined that the social security number provided by the student is incorrect, or that the Secretary was unable to confirm that the social security number provided by the student is correct, the institution—

(i) Shall provide the student an opportunity, within a deadline of at least 30 days from the date the institution is notified of the results of the data match, to provide clear and convincing evidence to verify that the student has a correct social security number;

(ii) May disburse any combination of title IV, HEA program funds, employ the student under the FWS Program, certify a Federal Stafford, Federal PLUS, or originate a William D. Ford Federal Direct Loan application for the student upon making, based on the evidence provided for in paragraph (d)(3)(i) of this section, a determination that the social security number provided by the otherwise eligible student to the institution is correct; and

(iii) Shall ensure that the student reports his or her correct social security number to the Secretary if the correct social security number differs from the social security number previously reported by the student to the Secretary.

(4) If a student fails to submit the documentation by the deadline established in accordance with paragraph (d)(3)(i) of this section, the institution need not disburse to the student, or certify the student as eligible for, any title IV, HEA program funds for that period of enrollment or award year; employ the student under the FWS Program; certify a Federal Stafford, or Federal PLUS; or originate a William D. Ford Federal Direct Loan for the student for that period of enrollment.

(5) If the Secretary determines that the social security number provided to an institution by a student is incorrect, and the institution has not made a determination under paragraph (d)(3) of this section, and a loan has been guaranteed for the student under FFEL Program, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, until the Secretary or the institution determines that the social security number provided by the student is correct, but the guaranty may not be voided or otherwise nullified with respect to disbursements made before the date that the lender and the guaranty agency receive the notice.

(6) Nothing in this section permits the Secretary to take any compliance, disallowance, penalty or other regulatory action against—

(i) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or

(ii) Any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student; and

(e) *Statement of Educational Purpose.* Has filed a Statement of Educational Purpose with the institution, or under the FFEL Program, with the lender, in accordance with instructions of the Secretary.

(Authority: 20 U.S.C. 1091)

§ 668.34 Student debts under the HEA and to the U.S.

(a) Except as provided under paragraphs (b) through (g) of this section, a student is ineligible to receive title IV, HEA program funds if the student—

(1) Is in default on a loan made under a title IV, HEA loan program;

(2) Has inadvertently obtained loan funds under a title IV, HEA loan program in an amount that exceeded the annual or aggregate loan limits under that program;

(3) Received a grant or loan overpayment under a title IV, HEA grant program; or

(4) Has property subject to a judgment lien for a debt owed to the United States.

(b) A student who is in default on a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program funds if the student—

(1) Repays the loan in full; or

(2)(i) Makes at least six consecutive monthly payments on the defaulted loan; and

(ii) Makes arrangements, satisfactory to the holder of the loan, to repay the loan balance.

(c) A student who is not in default on a loan made under a title IV, HEA loan program but has inadvertently obtained loan funds under a title IV, HEA loan program in an amount that exceeded the annual or aggregate loan limits under that program may nevertheless be eligible to receive title IV, HEA program funds if the student—

(1) Repays in full the excess loan amount; or

(2) Makes arrangements, satisfactory to the holder of the loan, to repay that excess loan amount.

(d)(1) A student who receives a grant or loan overpayment under a title IV, HEA program may nevertheless be eligible to receive title IV, HEA program funds if the student—

(i) Pays the overpayment in full; or

(ii) Makes arrangements, satisfactory to the institution, to pay the overpayment.

(2) If a student's grant or loan payments exceed the amount he or she is eligible to receive, he or she has received a grant or loan overpayment.

(e) A student who has property subject to a judgment lien for a debt owed to the United States may nevertheless be eligible to receive title IV, HEA programs funds if the student—

(1) Pays the debt in full; or

(2) Makes arrangements, satisfactory to the United States, to pay the debt.

(f)(1) The Secretary considers that a student does not receive a Federal Pell Grant overpayment during an award year if the institution can eliminate that overpayment by adjusting subsequent Federal Pell Grant payments in the same award year.

(2) The Secretary considers that a student does not receive a Federal Perkins Loan, FSEOG or SSIG overpayment during an award year if the institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant) disbursements in the same award year.

(g) A student who otherwise is in default on a loan made under a title IV, HEA loan program or who otherwise owes an overpayment on a title IV, HEA program grant or loan is not considered to be in default or owe an overpayment if the student—

(1) Obtains a judicial determination that the debt has been discharged or is dischargeable in bankruptcy; or

(2) Demonstrates to the holder of the debt that—

(i) When the student filed the petition for bankruptcy relief, the loan, or demand for the payment of the grant overpayment, had been outstanding for the period required under 11 U.S.C. 523(a)(8)(A), exclusive of applicable suspensions of the repayment period for either debt of the kind defined in 34 CFR 682.402(m); and

(ii) The debt is otherwise qualifies for discharge under applicable bankruptcy law.

(Authority: 20 U.S.C. 1091 and 11 U.S.C. 523 and 525)

§ 668.35 Program-specific requirements.

A student is eligible to receive assistance under the campus-based, FFEL, William D. Ford Federal Direct Loan, and Federal Pell Grant programs if the student has financial need, if applicable, and otherwise meets the student eligibility requirements of—

(a) For purposes of the Federal Perkins Loan Program, 34 CFR 674.9;

(b) For purposes of the FWS Program, 34 CFR 675.9;

(c) For purposes of the FSEOG Program, 34 CFR 676.9;

(d) For purposes of the FFEL Program, 34 CFR 682.201;

(e) For purposes of the William D. Ford Federal Direct Loan Programs, 34 CFR 685.200;

(f) For purposes of the Federal Pell Grant Program, 34 CFR 690.75; or

(g) For purposes of the SSIG Program, 34 CFR 692.40.

(Authority: 20 U.S.C. 1091)

§ 668.36 Selective Service notification, administrative review, and liability.

(a) *General.* Before denying aid to any student under any title IV, HEA program who is required by law to register with the Selective Service, but fails to do so, the institution shall inform that student in writing that he or she will be denied title IV, HEA program assistance.

(b) *Selective Service notification.* (1) A student notified under paragraph (a) of this section who has not registered, although required to do so, may establish his eligibility for title IV, HEA program assistance for the award year in which he was notified under paragraph (a) of this section by registering with Selective Service before the end of that award year.

(2) A student notified under paragraph (a) of this section who is not required to register with the Selective Service may establish his or her eligibility for title IV, HEA program

assistance for the award year in which he was notified under paragraph (a) of this section by providing evidence of exemption within 30 days of the receipt of the notice or the end of the same award year, whichever is later.

(c) *Administrative review.* (1) A student who is required to register with Selective Service, claims that he is registered with Selective Service, and has been denied title IV, HEA program assistance because he has not proven to the satisfaction of the institution that he has complied with that requirement, may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (c)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (c)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official may not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(4) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(5) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(d) *Liability.* An institution is liable for any title IV aid provided to a student who was required to register, but who was not registered, if—

(1) The institution made its determination that the student was not required to register on the basis of ambiguous information regarding his status under registration law; or

(2)(i) The institution had conflicting information about whether the student was required to register; and

(ii) Its determination that the student was not required to register was not reasonable in the light of all available information.

(Authority: 50 U.S.C. App. 462)

9. Section 668.133 is amended by revising paragraph (b) to read as follows:

§ 668.133 Conditions under which an institution shall require documentation and request secondary confirmation.

* * * * *

(b) *Exclusions from secondary confirmation.* (1) An institution may not require the student to produce the documentation requested under § 668.33(a)(3) and may not request that INS perform secondary confirmation, if—

(i) The student demonstrates eligibility under the provisions of § 668.33(a)(4); and

(ii) The institution does not have conflicting documentation or reason to believe that the student's claim of eligible noncitizen status is incorrect.

(2) An institution receiving documentation required under § 668.33(a)(3) from a student need not request that INS perform secondary confirmation for that student, if—

(i) The documents submitted by the student are identical to documents received by the institution in a previous award year and for which secondary confirmation was performed;

(ii) Based on the results of secondary confirmation, the institution determined the student to be an eligible noncitizen for a previous award year; and

(iii) The institution does not have conflicting documentation or reason to believe that the student's claim of eligible noncitizen status for the current award year is incorrect.

* * * * *

10. Section 668.164 is amended by revising paragraph (a) to read as follows:

§ 668.164 Maintaining funds.

(a) *General.* (1) The requirements in this section apply only to title IV, HEA program funds an institution receives under the campus-based, William D. Ford Federal Direct Loan, Federal Pell Grant, and SSIG programs. An institution that receives FFEL program funds through electronic funds transfer or by master check must maintain those funds as provided under 34 CFR 682.207(b).

(2)(i) Except as provided in paragraph (e) of this section, an institution is not required to maintain a separate account for title IV, HEA program funds. For funds an institution receives under the campus-based, William D. Ford Federal Direct Student Loan, Federal Pell Grant, and SSIG programs, an institution must maintain a bank account that meets the requirements under paragraphs (b) or (c) of this section. In establishing the bank account, an institution must—

(ii) Ensure that the name of the account discloses clearly that Federal funds are maintained in that account; or

(iii)(A) Notify the bank of the accounts that contain Federal funds and retain a record of that notice in its recordkeeping system; and

(B) Except for an institution that is backed by the full faith and credit of a State, file with the appropriate State or municipal government entity a UCC–1 statement disclosing that the account contains Federal funds and maintain a copy of that statement in its records.

* * * * *

11. Section 668.165 is amended by revising paragraph (b)(1); by removing the word "and" at the end of paragraph (b)(3)(iv)(A); by removing the period at the end of paragraph (b)(3)(iv)(B) and adding in its place "; and"; and by adding new paragraph (b)(3)(iv)(C) to read as follows:

§ 668.165 Disbursing funds.

* * * * *

(b) *Crediting a student's account—(1) General.* In crediting the student's account with title IV, HEA program funds, the institution may apply those funds only to allowable charges described under paragraph (b)(3) of this section. An institution must notify expeditiously a student or parent borrower, in writing, electronically, or by other means that the institution has credited the student's account with FFEL or William D. Ford Federal Direct Loan program funds.

* * * * *

(3) * * *

(iv) * * *

(C) Provided that a student has or will have a title IV, HEA credit balance as determined under paragraph (b)(2) of this section, minor institutional charges assessed the student in a prior award year or period of enrollment. For purposes of this paragraph, minor institutional charges are limited to an amount that does not, or will not, monetarily impair the student from paying for his or her room, board, transportation, or other education-related expenses.

* * * * *

§ 668.1 [Amended]

12. In § 668.1, paragraph (c)(11), remove "FDSL" and add in its place "William D. Ford Federal Direct Loan Programs".

§ 668.2 [Amended]

13. In § 668.2, paragraph (b) in the definitions of "Federal Direct PLUS loan" and "Federal Direct Stafford loan" remove "Federal Direct Student Program" and add in its place "William D. Ford Federal Direct Loan Programs"; in the definition of "Federal Direct Student loan" remove "Federal Direct Student loan" and add in its place "William D. Ford Federal Direct loan"; and in the definition of "Federal Direct Student Loan (FDSL) program" remove "Federal Direct Student Loan (FDSL) program" and add in its place "William D. Ford Federal Direct Loan Programs"; and remove the definition of "Income Contingent Loan (ICL) program".

§ 668.13 [Amended]

14. In § 668.13, paragraph (a)(4)(i) remove "Federal Pell Grant Program, the campus-based programs, the FDSL program, or the Federal Stafford Loan, Federal SLS, or Federal PLUS Program" and add in its place "campus-based programs, the Federal Stafford Loan, Federal PLUS programs, the William D. Ford Federal Direct Loan Programs, or the Federal Pell Grant Program".

§ 668.21 [Amended]

15. In § 668.21, in the heading and in paragraph (a)(1), respectively, remove "Pell Grant, SEOG, ICL, and Perkins Loan" and add in its place "Federal Perkins Loan, FSEOG, and Federal Pell Grant".

§ 668.22 [Amended]

16. In § 668.22, paragraphs (c)(2)(ii) and (g)(2)(ii)(B) remove "Federal Direct Student Loan Program" and add in its place "William D. Ford Federal Direct Loan Programs".

§ 668.23 [Amended]

17. In § 668.23, paragraphs (a) introductory language and (c)(1)(i) remove "FDSL" and add in its place "William D. Ford Federal Direct Loan".

§ 668.26 [Amended]

18. In § 668.26, paragraph (b)(4) remove "FDSL" and add in its place "William D. Ford Federal Direct Loan"; in paragraph (b)(6) remove "National Defense/Direct Student Loan and ICL." and add in its place "National Defense Student Loan and Direct Loan programs"; in paragraph (d)(1) remove "or PAS Program"; in paragraph (d)(3) remove "FDSL" and "Federal Direct Student loan", respectively, and add in its place "William D. Ford Federal Direct Loan", respectively; in paragraph (d)(3)(i) remove "FDSL" and add in its place "William D. Ford Federal Direct Loan"; and in paragraph (e)(1) remove "and PAS programs" and add in its place "Program".

§ 668.43 [Amended]

19. In § 668.43, paragraph (c)(6) remove "Federal Direct Student Loan" and add in its place "William D. Ford Federal Direct Loan".

§ 668.51 [Amended]

20. In § 668.51, paragraph (a) remove "FDSL" and add in its place "William D. Ford Federal Direct Loan".

§ 668.52 [Amended]

21. In § 668.52, in the definition of "Student aid application" remove "Federal Direct Loan" and add in its place "William D. Ford Federal Direct Loan".

§ 668.54 [Amended]

22. In § 668.54, paragraph (a)(2)(i) remove "Federal Pell Grant, Federal Direct Student Loan, campus-based, and Federal Stafford Loan" and add in its place "campus-based, Federal Stafford Loan, William D. Ford Federal Direct Loan, and Federal Pell Grant".

§ 668.55 [Amended]

23. In § 668.55, paragraph (c) remove "Federal Pell Grant, campus-based, Federal Stafford Loan, or FDSL" and add in its place "campus-based, Federal Stafford Loan, William D. Ford Federal Direct Loan, or Federal Pell Grant"; in paragraphs (c)(1) and (c)(2) remove "Federal Pell Grant, campus-based, or FDSL", respectively, and add in its place "campus-based, William D. Ford Federal Direct Loan, or Federal Pell Grant", respectively.

§ 668.58 [Amended]

24. In § 668.58, paragraph (a)(1)(i) remove "Federal Pell Grant, campus-based, or need-based ICL" and add in its place "campus-based, or Federal Pell Grant"; in paragraph (a)(2)(i) remove "Federal Pell Grant and campus-based" and add in its place "campus-based and Federal Pell Grant"; and in paragraph (a)(2)(iii)(A) add "origination of the applicant's" before "William"; and add "originate the" before "William".

§ 668.59 [Amended]

25. In § 668.59, paragraph (d)(1) add "s" to "Program".

§ 668.60 [Amended]

26. In § 668.60, paragraph (b) remove "FDSL" and add in its place "William D. Ford Federal Direct Loan"; in paragraphs (b)(1)(i)(A) and (b)(1)(iii), respectively, remove "FDSL, or FSEOG" and add in its place "FSEOG, or William D. Ford Federal Direct Loan", respectively; and in paragraph (d) remove "FDSL, or Federal Stafford Loan" and add in its place "Federal Stafford Loan, or William D. Ford Federal Direct Loan".

§ 668.61 [Amended]

27. In § 668.61, paragraph (a)(2)(ii)(B) remove "Federal Pell Grant, Federal Perkins Loan, FDSL, or FSEOG" and add in its place "Federal Perkins Loan, FSEOG, William D. Ford Federal Direct Loan, or Federal Pell Grant".

§ 668.161 [Amended]

28. In § 668.161, paragraph (a)(4) remove "Federal Pell Grant, PAS, FSEOG, Federal Perkins Loan, FWS, Direct Loan, and FFEL" and add in its place "Federal Perkins Loan, FWS, FSEOG, FFEL, William D. Ford Federal Direct Loan, and Federal Pell Grant".

§ 668.162 [Amended]

29. In § 668.162 in the definition of "Disburse" in paragraph (1)(i) add "William D. Ford Federal" before "Direct"; in paragraph (1)(ii) remove "Direct Loan or FFEL" and add in its place "FFEL or William D. Ford Federal Direct Loan"; and in the definition of "Period of enrollment" add "William D. Ford Federal" before "Direct".

§ 668.165 [Amended]

30. In § 668.165, paragraph (c)(2)(ii) remove "Direct Loan and FFEL" and add in its place "FFEL and William D. Ford Federal Direct Loan"; and in paragraph (c)(3) add "William D. Ford Federal" before "Direct".

§ 668.166 [Amended]

31. In § 668.166, paragraph (b)(3) add "William D. Ford Federal" before "Direct".

* * * * *

PART 674—FEDERAL PERKINS LOAN PROGRAM

32. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087ii and 20 U.S.C. 421–429, unless otherwise noted.

33. Section 674.2 paragraph (a) is amended by adding, in alphabetical order, "Full-time student".

34. Section 674.2 paragraph (b) is amended by removing the definitions of "Full-time graduate or professional student" and "Full-time undergraduate student"; and by revising the definition of "Making of a loan" to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Making of a loan: When the borrower signs the promissory note and the loan funds are disbursed.

* * * * *

35. Section 674.16 is amended by revising paragraph (d) to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(d)(1) The institution shall disburse funds to a student or the student's account in accordance with 34 CFR 668.165.

(2) The institution shall obtain the borrower's signature on a promissory note for each award year before it disburses any loan funds to the borrower under that note for that award year.

* * * * *

§ 674.17 [AMENDED]

36. Section 674.17 is amended by removing paragraph (a) and by redesignating paragraphs (b)(1), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(2), (b)(3), (b)(4), (b)(4)(i), (b)(4)(ii), and (5) as paragraphs (a), (a)(1), (a)(2), (a)(3), (b), (c), (d), (d)(1), (d)(2), and (e), respectively.

37. Section 674.19 is amended by revising paragraph (e)(4)(v) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(4) * * *

(v) An institution may keep the records required in this section on microforms, optical disk, other machine readable format, or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy, microforms, optical disk, or other machine readable format, the source documents supporting the computer input.

* * * * *

38. Section 674.31 is amended by redesignating paragraph (a)(2) as paragraph (a)(3); and by adding a new paragraph (a)(2) to read as follows:

§ 674.31 Promissory note.

* * * * *

(a) * * *

(2) The Secretary provides sample promissory notes to participating institutions. The institution may not change the substance of these sample notes.

* * * * *

§ 674.33 [Amended]

39. Section 674.33, paragraph (a)(2) is amended by removing "$15" and adding in its place "$25".

40. Section 674.47 is amended by revising paragraph (g) and by adding a new paragraph (h) to read as follows:

§ 674.47 Costs chargeable to the fund.

* * * * *

(g) *Cessation of collection activity of defaulted accounts.* (1) An institution may cease collection activity of a defaulted account with a balance of less than $25, including outstanding principal, accrued interest, collection costs, and late charges.

(2) An institution that ceases collection activity under paragraph (g)(1) of this section may no longer include the amount of the account as an asset of the Fund.

(h) *Write-offs of accounts of less than $1.* Notwithstanding any other provision in this subpart, an institution may write off an account with a balance of less than $1, including outstanding principal, accrued interest, collection costs, and late charges.

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

41. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756b, unless otherwise noted.

§ 675.2 [Amended]

42. Section 675.2, paragraph (a) is amended by adding in alphabetical order, "Full-time student".

43. Section 675.2, paragraph (b) is amended by removing the definitions of "Full-time graduate or professional student" and "Full-time undergraduate student".

§ 675.17 [Removed]

44. Section 675.17 is removed and reserved.

45. Section 675.19 is amended by revising paragraph (c)(3) to read as follows:

§ 675.19 Fiscal procedures and records.

* * * * *

(c) * * *

(3) An institution may keep the records required in this section on microforms, optical disk, other machine readable format, or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy, microforms, optical disk, or other machine readable format, the source documents supporting the computer input.

* * * * *

Appendix B to Part 675—[Removed]

46. Appendix B to part 675—Model Off-Campus Agreement is removed.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

47. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070–3, unless otherwise noted.

§ 676.2 [Amended]

48. Section 676.2, paragraph (a) is amended by adding in alphabetical order, "Full-time student".

49. Section 676.2, paragraph (b) is amended by removing the definition of "Full-time undergraduate student".

§ 676.17 [Removed]

50. Section 676.17 is removed and reserved.

51. Section 676.19 is amended by revising paragraph (c)(3) to read as follows:

§ 676.19 Fiscal procedures and records.

* * * * *

(c) * * *

(3) An institution may keep the records required in this section on microforms, optical disk, other machine readable format, or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy, microforms, optical disk, or other machine readable format, the source documents supporting the computer input.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

52. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

53. Section 682.201, paragraph (b) is amended by redesignating paragraphs (b)(1) through (b)(8) as paragraphs (b)(1)(i) through (b)(1)(viii), respectively; by redesignating the introductory sentence as paragraph (b)(1); and by adding a new paragraph (b)(2) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(b) * * *

(2) For purposes of paragraph (b)(1) of this section, a "parent" includes the individuals described in the definition of the term "parent" in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets are taken into account when calculating a dependent student's expected family contribution.

§ 682.600 [Removed]

54. Section 682.600 is removed and reserved.

§ 682.602 [Removed]

55. Section 682.602 is removed and reserved.

56. A new § 682.611 is added to read as follows:

§ 682.611 Foreign schools.

A foreign school shall comply with the regulations in this part except to the extent that the Secretary states in these regulations or in other official publications or documents that those schools do not have to comply.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1088, and 1094)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAMS

57. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1078a *et seq.*, unless otherwise noted.

58. Section 685.200, paragraph (b) is amended by redesignating paragraphs (b)(1) through (b)(7) as paragraphs (b)(1)(i) through (b)(1)(vii), respectively; by redesignating the introductory sentence as paragraph (b)(1); and by adding a new paragraph (b)(2) to read as follows:

§ 685.200 Borrower eligibility.

* * * * *

(b) * * *

(2) For purposes of paragraph (b)(1) of this section, a "parent" includes the individuals described in the definition of the term "parent" in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets are taken into account when calculating a dependent student's expected family contribution.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

59. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

§ 690.7 [Amended]

60. Section 690.7, paragraph (a)(1) is removed and paragraph (a)(2) is redesignated as paragraph (a).

§ 690.71 [Amended]

61. Section 690.71 is amended by removing the second sentence.

§§ 690.72, 690.73, 690.74 [Removed]

62. Sections 690.72, 690.73, and 690.74 are removed and reserved.

§ 690.83 [Amended]

63. Section 690.83 is amended by removing paragraph (c); by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively; by removing in redesignated paragraph (c), "paragraphs (a), (b) or (c) of this section" and adding, in its place, "paragraphs (a) or (b) of this section"; and by removing in redesignated paragraph (d)(1), "Notwithstanding paragraphs (a), (b), (c)(1) or (2), or (d) of this section" and adding, in its place, "Notwithstanding paragraphs (a), (b), or (c) of this section"; by removing in redesignated paragraph (d)(1) "(e)" and adding, in its place, "(d)"; by adding in redesignated paragraph (d)(2) "or program review," after "34 CFR 668.23(c),", and "or program review" after "audit" in the last sentence.

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September 21, 1995

Part VI

Department of Education

34 CFR Part 682

Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC21

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Federal Stafford Loan, the Federal SLS, the Federal PLUS and the Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs. The Secretary is proposing to make changes to the FFEL Program regulations to reflect policies and procedures implemented in the William D. Ford Federal Direct Student Loan Program, hereinafter referred to as the Direct Loan Program.

DATES: Comments must be received on or before October 23, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Pamela A. Moran, U.S. Department of Education, Post Office Box 23272, Washington, DC 20026–3272. Comments may also be sent through the internet to ffel__conform@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Barbara Bauman, Program Specialist, Loans Branch, Policy Development Division, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, SW. (room 3053, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is proposing to amend 34 CFR Part 682 of the Department's regulations to adopt certain policies and procedures that have been used in the Direct Loan Program.

On October 7, 1994, the Secretary published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (59 FR 51346) proposing changes to the FFEL regulations to reflect certain policy decisions made during development of the Direct Loan regulations. The comments on the NPRM suggested additional changes to those included in the proposed rule. In publishing the final regulations on November 29, 1994 (59 FR 61210), the Secretary stated that he needed to further evaluate the implications of these additional changes. This NPRM proposes to adopt many of the suggestions made by those comments. The Secretary believes these regulations will streamline and improve the efficiency of the FFEL program.

By improving the efficiency of the FFEL Program, these proposed regulations will enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

The student aid programs also enable both current and future workers to have the opportunity to acquire both basic and technologically-advanced skills needed for today's and tomorrow's workplace. These programs provide the financial means for an increasing number of Americans to receive an education that will prepare them to think critically, communicate effectively, and solve problems efficiently, as called for in the National Education Goals.

Proposed Regulatory Changes

The Secretary proposes to amend the following sections of the regulations to reflect changes needed to conform the FFEL Program to the final regulations for the Direct Loan Program. Those changes not related to the Direct Loan Program are otherwise noted.

Section 682.200 Definitions

Satisfactory repayment arrangement—The Secretary, in order to reflect a recent statutory change made by the Higher Education Technical Amendments of 1993, Public Law 103–208, proposes to amend the regulations to clarify that a borrower may make satisfactory repayment arrangements on a defaulted FFEL debt for purposes of regaining Title IV eligibility only one time.

Section 682.201 Eligible Borrowers

Section 682.201(c)(1)(iii)(D)—In order to align the FFEL Program with the Direct Loan Program regulations, the Secretary proposes to allow a borrower in a default status to be eligible for a consolidation loan if the borrower either makes satisfactory repayment arrangements as that term is defined or agrees to repay the consolidation loan under an income-sensitive repayment plan.

Section 682.207 Due Diligence in Disbursing a Loan

Section 682.207(c)(4)—The Secretary proposes, in order to conform to Direct Loan Program regulations and to reflect current FFEL policy, to allow a loan to be disbursed in a single installment, if at least one-half of the loan period has elapsed before the first disbursement is made.

Section 682.207(d)(2)(iii)—The Secretary proposes to clarify that a lender has an additional 30-day period to make a late disbursement of a loan if the school documents a borrower's exceptional circumstances. Previously, the regulations suggested that documentation of the exceptional circumstances was required for all late disbursements.

The Secretary also proposes to remove the references in § 682.207 and § 682.604 providing for lender or guaranty agency options regarding disbursement policies, so that every eligible student is assured certain opportunities with the approval of the school.

Section 682.209 Payment Application and Prepayment

Section 682.209(b)(2)—The Secretary further clarifies that this section deals with the application of payments and how to deal with prepayments. The Secretary proposes to require a lender who receives a prepayment (made by a borrower without the borrower's specific instructions as to how to apply the proceeds) in an amount that equals or exceeds the borrower's scheduled monthly repayment amount to apply that amount to future installment payments on the loan by advancing the borrower's next payment due date. The Secretary proposes this change (previously left to the lender's discretion and allowed only in situations where a borrower's payment exceeded 3 full payments) to conform to current Direct Loan Program policies and so that all borrowers are treated equally.

Section 682.210 Deferment

Section 682.210(a)(8)—The Secretary proposes to clarify that a defaulted borrower is eligible for a deferment only if the borrower has made satisfactory repayment arrangements with the lender prior to the lender's filing of a default claim on the loan.

Section 682.211 Forbearance

Section 682.211(f)(9)—The Secretary proposes to allow a lender to provide administrative forbearance in situations where a borrower ends a period of eligible deferment in delinquent status.

Section 682.401 Basic Program Agreement

Section 682.401(b)(10)(vi)(B)(1)—The Secretary proposes that in instances where a loan or a portion of a loan is returned by the school at any time to a lender, the lender shall refund to the borrower the premium attributable to each disbursement of the loan.

Section 682.402 Death, Disability, Closed School, False Certification, and Bankruptcy Payments

Section 682.402—The Secretary proposes to clarify that a lender must return any payments made by or on behalf of the borrower after the date that the borrower became totally and permanently disabled as certified by a physician. At the same time that the lender returns the payments to the borrower or sender, the lender must notify the borrower or sender that there is no obligation to repay that loan.

Also, the Secretary proposes, in order to conform with the Direct Loan Program, that if a guaranty agency receives any payments from a borrower or a borrower's representative for a loan discharged in bankruptcy on which the Secretary previously paid a claim, the agency must return 100% of these payments to the borrower. Previously these payments were remitted to the Secretary. At the same time that the guaranty agency returns the payments to the borrower or representative the agency must notify the borrower that there is no obligation to repay that loan.

Section 682.412 Consequences of the Failure of a Borrower or Student To Establish Eligibility

Section 682.412(c)—The Secretary is making a change in the regulations to clarify that a borrower has 30 days from the date a final demand letter is sent by the lender in which to repay an amount for which the borrower was ineligible.

Section 682.603 Certification by a Participating School in Connection With a Loan Application

Section 682.603 (f) and (g)—The Secretary proposes this change to conform to language in the Direct Loan Program regulations.

Section 682.605 Determining the Date of a Student's Withdrawal.

Section 682.605(c)—The Secretary is reinserting language that was inadvertently deleted during the development of the November 29, 1994 final regulations regarding the determination of the date of a student's withdrawal for purposes other than calculating a refund.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 682.200 *Definitions.*) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue SW. (Room 5100, FB–10), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of [illegible] entities.

While the [illegible] that the Secretary [illegible] actions that must be taken [illegible] program participants, these requirements would not have a significant impact because they would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal additional requirements to protect the Federal fiscal interest, as well as the interests of the borrowers under the programs.

Paperwork Reduction Act of 1995

Sections 682.207, 682.209, 682.210, 682.211, 682.401, 682.402, 682.412, 682.603, 682.604 and 682.605 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of

Management and Budget (OMB) for its review.

Collection of Information: Federal Family Education Loan Program. Documentation and notification requirements.

These regulations require institutions to document a borrower's exceptional circumstances in instances where a lender disburses a loan within 30 days beyond the usual 60-day period. A lender is now required to advance a borrower's due date for repayment if a borrower doesn't indicate how a payment that equals or exceeds a scheduled monthly payment should be applied. In those instances, these regulations require the lender to notify the borrower that the payment has been applied in such a manner and the next payment due date. A lender or guaranty agency must now return any payments made by or on behalf of the borrower after the date that the borrower became totally and permanently disabled as certified by a physician and if a guaranty agency receives any payments from a borrower or a borrower's representative for a loan discharged in bankruptcy on which the Secretary previously paid a claim, the agency must return 100% of the payments to the borrower. In both of these circumstances, a lender and guaranty agency must also notify the borrower that there is no obligation to repay that loan.

There is no annual frequency of reporting this information to the Department. However, the recordkeeping burden for this collection of information is estimated to average 1 hour per response for 12,803,255 respondents, including the time for documenting circumstances, researching existing data sources, gathering and maintaining the data needed, and generating and processing the collection of information. The total annual recordkeeping burden equals 12,803,255 hours.

These regulations affect the business, for-profit and not-for-profit entities that participate in the Title IV Federal student aid programs.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3053, Regional Office Building 3, 7th and D Streets, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: September 13, 1995.

Richard W. Riley,
Secretary of Education.

The Secretary proposes to amend part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.200, paragraph (b) is amended by revising paragraph (1) of the definition of "satisfactory repayment arrangement" to read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Satisfactory repayment arrangement. (1) For purposes of regaining eligibility under section 428F (b) of the HEA, the making of six (6) full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

* * * * *

3. Section 682.201 is amended by revising paragraph (c)(1)(iii)(C) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(C) In a default status and has either made satisfactory repayment arrangements or has agreed to repay the consolidation loan under the income sensitive repayment plan described in § 682.209(a)(6)(viii).

* * * * *

4. Section 682.207 is amended by adding a new paragraph (c)(4) and revising paragraphs (d)(1) and (d)(2)(iii) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) * * *

(4) If at least one-half of the loan period has elapsed when the first disbursement is made, the loan may be disbursed in a single installment.

(d)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was intended, in accordance with paragraphs (d)(2) and (3) of this section.

(2) * * *

(iii) In exceptional circumstances within 30 days after the period

described in paragraph (d)(2)(ii) of this section. The school shall document the exceptional circumstances in the student's file.

* * * * *

5. Section 682.209 is amended by revising paragraph (b) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(b) *Payment application and prepayment.* (1) The lender may credit the entire payment amount first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal.

(2)(i) The borrower may prepay the whole or any part of a loan at any time without penalty.

(ii) If the prepayment amount equals or exceeds the monthly payment amount under the repayment schedule established for the loan, the lender shall apply the prepayment to future installments by advancing the next payment due date, unless the borrower requests otherwise. If the lender applies payments to future installments without the borrower's request, it shall notify the borrower that the payments have been so applied, and remind the borrower of the repayment obligation and the next scheduled due date.

* * * * *

6. Section 682.210 is amended by revising paragraph (a)(8) to read as follows:

§ 682.210 Deferment.

(a) * * *

(8) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made satisfactory repayment arrangements with the lender prior to the filing of a default claim.

* * * * *

7. Section 682.211 is amended by adding a new paragraph (f)(9) to read as follows:

§ 682.211 Forbearance.

* * * * *

(f) * * *

(9) For a period of delinquency that may remain after a borrower ends a period of deferment.

* * * * *

8. Section 682.401(b)(10)(vi)(B), introductory text, is amended by adding a dash after the word "if", and by removing "within 120 days of disbursement"; redesignating paragraphs (B)(*1*), (B)(*2*), and (B)(*3*) as paragraphs (B)(*2*), (B)(*3*), and (B)(*4*), respectively; at the beginning of redesignated paragraphs (B)(*2*), (B)(*3*) and (B)(*4*) remove "The" and add, in its place, "Within 120 days the"; and a new paragraph (B)(*1*) is added to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(10) * * *

(vi) * * *

(B) * * *

(*1*) The loan or a portion of a loan is returned by the school to the lender;

* * * * *

9. Section 682.402 is amended by revising paragraph (c)(3); removing "(l)(2)" in paragraph (l)(3) and adding, in its place, "(l)(1)"; by revising paragraphs (l)(1) and (l)(2) to read as follows:

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(c) * * *

(3) After receiving the physician's certification described in paragraph (c)(2) of this section, the lender shall return to the borrower any payments received by the lender after the date that the borrower became totally and permanently disabled as certified by the physician. At the same time that the lender returns the payment, it shall notify the borrower that there is no obligation to repay a loan discharged on the basis of disability.

* * * * *

(l) * * *

(1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been discharged in bankruptcy on which the Secretary previously paid a bankruptcy claim, the guaranty agency shall return 100 percent of these payments to the sender. The guaranty agency shall promptly return, to the sender, any payment on a cancelled or discharged loan made by the sender and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it shall notify the sender that there is no obligation to repay a loan discharged on the basis of death, disability, bankruptcy, false certification, or closing of the school.

(2) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third party with respect to a loan on which the Secretary previously paid a closed school or false certification claim.

* * * * *

10. Section 682.412 is amended by revising paragraph (c) to read as follows:

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

* * * * *

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days from the date the letter is mailed the borrower repay in full any principal amount for which the borrower is ineligible and any accrued interest, including interest and all special allowance paid by the Secretary.

* * * * *

11. Section 682.603 is amended by adding a new paragraph (f)(4) and by revising paragraph (g) to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(f) * * *

(4) In prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan.

(g) A school may not assess the borrower a fee for the completion or certification of any FFEL Program forms or information or for providing any information necessary for a student or parent to receive a loan under part B of the Act or any benefits associated with such a loan.

* * * * *

12. Section 682.604 is amended by removing paragraph (e)(3), redesignating paragraph (e)(4) as paragraph (e)(3), in redesignated paragraph (e)(3), introductory text, at the beginning of the paragraph, removing "If the lender or guaranty agency has not informed the school that it prohibits a late disbursement as permitted by § 682.207(d)(2)(i), and", and capitalizing the "i" in the word "if".

* * * * *

13. Section 682.605 is revised to read as follows:

§ 682.605 Determining the date of a student's withdrawal.

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, a school shall follow the procedures in 34 CFR 668.22(j) for determining the student's date of withdrawal. In a case of a summer break, the school must determine the student's date of withdrawal no later than 30 days after the first day of the next scheduled term.

(b) Except for students involved in a summer break as provided in paragraph (a) of this section, the school shall use the date determined under 34 CFR 668.22(j) for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under 34 CFR 668.22.

(c) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month, day and year of the withdrawal date.

[FR Doc. 95–23125 Filed 9–20–95; 8:45 am]

BILLING CODE 4000–01–P

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federal register

Thursday
September 21, 1995

Part VII

Department of Transportation

Federal Highway Administration

23 CFR Part 655

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Control Devices (MUTCD); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 95–8, Notice No. 1]

RIN 2125–AD57

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices (MUTCD)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA proposes to extend the comment period for a notice of proposed amendments to the MUTCD which was published June 12, 1995, at 60 FR 31008. The original comment period was set to close on September 11, 1995. The proposed extension stems from concern expressed by the National Committee on Uniform Traffic Control Devices (NCUTCD) that the September 11 closing date does not provide sufficient time for appropriate response to the proposed MUTCD changes. The FHWA recognizes that other commenters may be subject to similar time constraints and agrees with the NCUTCD that the comment period should be extended. Therefore, the closing date for comments is changed to March 11, 1996 which will provide the NCUTCD and other interested commenters additional time to evaluate the proposed changes and to submit responses.

DATES: Submit written comments on or before March 11, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–8, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments or a copy of the proposed text contact Mr. Ernest Huckaby, Office of Highway Safety, (202) 366–9064, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Room 3419, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, and recognized as the national standard for traffic control on all public roads. As discussed in the June 12, 1995 notice of proposed rulemaking, the FHWA is in the process of rewriting and reformatting the MUTCD. As the effort proceeds, many changes to the MUTCD will be identified. The June 12, 1995 notice of proposed rulemaking invites comments on the proposed changes which the FHWA has identified to date. As other changes are identified or proposed, they will be published in a future rulemaking. These changes affect various parts of the MUTCD and are intended to expedite traffic, promote uniformity, improve safety and traffic control device application, and provide a clearer understanding of the principles contained in the MUTCD.

As noted, the original comment period for the June 12, 1995 notice of proposed amendments to the MUTCD is set to close on September 11, 1995. The NCUTCD has expressed concern that this closing date does not provide sufficient time to review the proposed changes, consolidate comments, and submit these comments to its member organizations for approval. The NCUTCD only meets in January and June of each year to vote as a full body on proposals and issues relating to the MUTCD. The FHWA recognizes that the issuance of the June 12, 1995 notice did not allow enough time for the proposed changes to be discussed and approved at the regularly scheduled meetings. Therefore, the closing date for comments is changed to March 11, 1996 to allow the NCUTCD and other commenters additional time to respond.

The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, Stock No. 050–001–00308–2.

Authority: 23 U.S.C. 315, 49 CFR 1.48.

Issued on: September 13, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–23349 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–22–P

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federal register

Thursday
September 21, 1995

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Between the United States and Iraq; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26380; Special Federal Avitition Regulation (SFAR) No. 61–2]

RIN 2120–AF87

Prohibition Against Certain Flights Between the United States and Iraq

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule replaces the flight prohibition implemented by the FAA in SFAR 61, which was made effective on November 9, 1990, and expired on November 9, 1991. This action prohibits the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of Iraq. This action further prohibits the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight's origin or ultimate destination is Iraq. Exceptions are made for particular flights approved by the United States Government in consultation with the UN Security Council committee established under Security Council Resolutions 661, 666 and 670 (1990) and for certain emergency operations. This action is necessary to implement Executive Orders 12722 (1990) and 12724 (1990) and Security Council Resolutions 661, 666, and 670 mandating an embargo of air traffic with Iraq.

DATES: SFAR 61–2 is effective on September 21, 1995. SFAR 61–2 shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Klang, International Affairs and Legal Policy Staff, AGC–7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591; telephone: 202–267–3515.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Public Inquiry Center, APA–230, 800 Independence Avenue S.W., Washington, DC 20591, or by calling 202–267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of the Advisory Circular No. 11–2A, which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 40101(d)(1) of Title 49, United States Code, requires the Administrator of the FAA to consider the regulation of air commerce in a manner that best promotes safety and fulfills the requirements of national security as being in the public interest. In addition, 49 U.S.C. 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the United States Government under an international agreement.

One such international agreement is the Charter of the United Nations (the Charter) (59 Stat. 1031; 3 Bevans 1153 (1945)). Under Article 25 of the Charter, "the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Article 48(1) of the Charter further provides, in pertinent part, that "[t]he action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all members of the United Nations . . . ."

On September 25, 1990, acting under Chapter VII of the Charter, the Security Council adopted Resolution 670, mandating an embargo of certain air traffic with Iraq. Paragraph 3 of Resolution 670 requires all states to deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq other than food provided under humanitarian circumstances, or supplies intended strictly for medical purposes, or solely for the UN Iran-Iraq Military Observer Group (UNIIMOG). Paragraph 4 imposes an obligation on all States to deny permission to any aircraft destined to land in Iraq to overfly its territory unless:

(a) The aircraft lands at an airfield designated by that State outside of Iraq in order to permit its inspection to ensure that there is no cargo aboard in violation of Resolution 661 or 670;

(b) The particular flight has been approved by the sanctions committee established by Resolution 661; or

(c) The flight is certified by the UN as solely for the purposes of UNIIMOG.

The United States Government has taken several actions to restrict air transportation between the United States and Iraq. On August 2, 1990, the President issued Executive Order 12722 (55 FR 31803, August 3, 1990), which prohibits "any transaction by a United States person relating to transportation to or from Iraq; the provision of transportation to or from the United States by any Iraqi person or any vessel of Iraqi registration; or the sale in the United States . . . of any transportation by air which includes any stop in Iraq;" and defines "United States person" so as to include any person within the United States.

On August 6, 1990, the Secretary of Transportation implemented Executive Order 12722 by issuing Order 90–8–16, which amended all Department of Transportation (DOT) certificates issued under section 401 of the Federal Aviation Act, all permits issued under section 402 of the Act, and all exemptions from sections 401 and 402 to prohibit the holder from selling or engaging in transportation by air to Iraq, or engaging in any transportation to or from Iraq.

On August 8, 1990, the President, exercising his authority under the United Nations Participation Act of 1945, as amended, issued Executive Order No. 12724 (55 FR 33089, August 13, 1990), pertaining to Iraq. This order contains additional prohibitions on air transportation to Iraq.

In support of Executive Orders 12722 and 12724, the FAA adopted SFAR 61 on November 9, 1990. SFAR 61 prohibited the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of Iraq. SFAR 61 also prohibited the landing in, takeoff from, or overflight of the territory of the United States by an aircraft on a flight from or to any intermediate destination, if the flight is destined to land in or take off from Iraq. SFAR 61 expired on November 9, 1991.

Copies of UN Security Council Resolutions 660, 661 and 670, Executive Orders 12722 and 12724, and DOT Order 90–8–16, all of which remain in effect, have been placed in the docket for this rulemaking.

Prohibition Against Certain Flights Between the United States and Iraq

On the basis of the above, and in support of the Executive Order of the President of the United States, I find that immediate action by the FAA is required to implement Executive Orders 12722 and 12724 and to meet the obligations of the United States under international law as evidenced by U.N. Security Council Resolutions No. 660, 661 and 670. Accordingly, I am ordering a prohibition on the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight that has Iraq as its origin or ultimate destination. Operations approved by the United States Government in consultation with the UN Security Council Committee established under Resolution 661 and certain emergency operations shall be excepted from this prohibition. For the reasons stated above, I also find that notice and public comment under 5 U.S.C. 533(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon publication. I also find that this action is fully consistent with my obligations under section 49 U.S.C. 40105(b)(1)(A) to act consistently with the obligations of the United States under international agreements.

The rule contains no expiration date, and will be terminated as soon as the underlying legal requirements leading to its adoption are removed.

Regulatory Evaluation

The potential cost of this regulation is limited to the net revenue of commercial flights between the United States and Iraq. However, revenue flights to Iraq are currently prohibited by DOT Order 90–8–16. Accordingly, this action will impose no additional burden on those operators.

Paperwork Reduction Act

The rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

International Trade Impact Assessment

DOT Order 90–8–16 prohibits U.S. and foreign air carriers from engaging in the sale of air transportation to or from Iraq. This SFAR does not impose any restrictions on commercial carriers beyond those imposed by the DOT Order. Therefore, the SFAR will not create a competitive advantage or disadvantage for foreign companies in the sale of aviation products or services in the United States, nor for domestic firms in the sale of aviation products or services in foreign countries.

Federalism Determination

The amendment set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 4168; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this action is not a "significant regulatory action" under Executive Order 12866. This action is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Iraq are already prohibited by DOT Order 90–8–16, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Freight, Iraq.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.;* E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation (SFAR) No. 61–2 is added to read as follows:

Special Federal Aviation Regulation No. 61–2—Prohibition Against Certain Flights Between the United States and Iraq

1. Applicability. This Special Federal Aviation Regulation (SFAR) No. 61–2 applies to all aircraft operations originating from, landing in, or overflying the territory of the United States.

2. Special flight restrictions. Except as provided in paragraphs 3 and 4 of this SFAR No. 61–2—

(a) No person shall operate an aircraft on a flight to any point in Iraq, or to any intermediate point on a flight where the ultimate destination is any point in Iraq or that includes a landing at any point in Iraq in its intended itinerary, from any point in the United States;

(b) No person shall operate an aircraft on a flight to any point in the United States from any point in Iraq, or from any intermediate point on a flight where the origin is in Iraq, or from any point on a flight which includes a departure from any point in Iraq in its intended itinerary; or

(c) No person shall operate an aircraft over the territory of the United States if that aircraft's flight itinerary includes any landing at or departure from any point in Iraq.

3. Permitted operations. This SFAR shall not prohibit the flight operations between the United States and Iraq described in section 2 of this SFAR by an aircraft authorized to conduct such operations by the United States Government in consultation with the committee established by UN Security Council Resolution 661 (1990), and in accordance with UN Security Council Resolution 666 (1990).

4. Emergency situations. In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations or the aircraft involved in the deviation, including a description of the deviation and the reasons therefore.

5. Duration. This SFAR No. 61–2 shall remain in effect until further notice.

Issued in Washington, DC, on September 13, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–23347 Filed 9–20–95; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
September 21, 1995

Part IX

Environmental Protection Agency

40 CFR Part 186

Pesticide Tolerances; Revocation of Certain Feed Additive Regulations; Proposed Rule and Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 186

[OPP-300397; FRL-4977-3]

RIN 2070-AC18

Pesticides; Feed Additive Regulation Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA has made determinations regarding 36 feed additive regulations (FARs) for 16 pesticides in animal feeds that were previously reported as potentially inconsistent with the Delaney clause in section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). EPA is proposing to revoke 34 animal feed FARs because they are not needed to prevent adulterated food, and two additional animal feed FARs because they violate the Delaney clause.

DATES: Written comments, identified by the document control number [OPP-300397], must be received on or before December 19, 1995.

ADDRESSES: By mail, submit comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: OPP Docket, Public Information Branch, Field Operations Division, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The telephone number for the OPP docket is (703)-305-5805. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (or CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2 and in section 10 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). For questions related to disclosure of materials, contact the OPP Docket at the telephone number given above. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in the OPP Docket, Rm. 1132, at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300397]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460. Office location and telephone number: Crystal Station #1, 2800 Crystal Drive, Arlington, VA. Telephone: 703-308-8010; e-mail: nazmi.niloufar@epamail.epa.gov.

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I. Introduction

In this document, EPA examines whether 36 FARs for 16 pesticides in animal feeds should be revoked, either because the FAR is inconsistent with the Delaney clause in section 409(c)(3) of the FFDCA or because the FAR is not needed to prevent adulterated feed under current Agency policies and guidelines. For those FARs which EPA determines should be revoked, EPA is in this document proposing revocation.

EPA concludes that the Delaney clause affects few of the FARS involved in this document, primarily because of revised Agency policies and guidelines governing when FARs are required to prevent adulterated animal feed. Although a combination of factors are responsible for this result, perhaps the most significant point is that the FARs in this document involve animal feeds. For example, almost half of the 36 FARs were judged unnecessary because EPA concluded that the animal feeds in question were not a significant portion of the livestock diet.

EPA will in the near future be making decisions concerning the fate of a number of FARs for processed human foods. EPA proposals are pending to revoke human food FARs for 11 pesticides covering 32 uses. The policies announced in the Agency's June 14, 1995 response to the National Food Processors' Association (NFPA) petition have been instituted, and EPA has begun to review the effects of those policies on its earlier proposals. EPA has not completed this analysis and so its results are uncertain, but the Agency believes that the effects of its policy changes will not be as dramatic for human, as opposed to animal, foods. For example, in general EPA has concluded that most processing byproducts used as animal feeds are not ready to eat; processed human foods are not as obviously amenable to such a broadly drawn conclusion. EPA anticipates that case-by-case determinations will be the rule for human foods.

Finally, EPA notes that the identification of pesticides and uses that are potentially subject to the Delaney clause is an ongoing process as EPA receives new cancer and processing studies required as part of reregistration. When EPA concludes that a processed food or feed tolerance is necessary under FFDCA section 409 for a pesticide that induces cancer within the meaning of the Delaney clause, EPA will take action to revoke or deny that tolerance.

II. Background

A. Statutory Background

The Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.) authorizes the establishment of maximum permissible levels of pesticides in foods, which are referred to as "tolerances" (21 U.S.C. 346a, 348). Under the FFDCA, a tolerance is required for pesticide residues in food for consumption by humans or by food animals. Without such a tolerance or an exemption from a tolerance, a food or

feed containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce (21 U.S.C. 342). Monitoring and enforcement of pesticide residues are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The FFDCA governs tolerances for raw agricultural commodities (RACs) and processed foods separately. For pesticide residues in or on RACs, EPA establishes tolerances, or exemptions from tolerances when appropriate, under section 408. For processed foods, food additive regulations (FARs) setting maximum permissible levels of pesticide residues are established under section 409. Section 409 FARs are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, no section 409 FAR is required if any pesticide residue in a processed food, when ready to eat, is equal to or below the tolerance for that pesticide in or on the RAC from which it was derived and all other conditions of section 402(a)(2) are met. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to the processed food form. Thus, a section 409 FAR is necessary to prevent foods from being deemed adulterated when the concentration of the pesticide residue in a processed food is greater than the tolerance prescribed for the RAC, or if the processed food itself is treated or comes in contact with a pesticide.

If a food additive regulation must be established, section 409 of the FFDCA requires that the use of the pesticide will be "safe" (21 U.S.C. 348(c)(3)). Section 409 also contains the Delaney clause, which specifically provides that, with little exception, "no additive shall be deemed safe if it has been found to induce cancer when ingested by man or animal" (21 U.S.C. 348(c)(3)).

B. Regulatory Background

1. *Les v. Reilly*. On May 25, 1989, the State of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals filed a petition requesting that EPA revoke several food additive regulations. The petitioners argued that these food additive regulations should be revoked because they violate the Delaney clause.

EPA responded to the petition by revoking certain food additive regulations, but retained several others on the grounds that the Delaney clause provides an exception for pesticide residues posing *de minimis* risk. EPA denied the petition for the food additive regulations determined to fall under this exception. EPA's response was challenged by the petitioners in the U.S. Court of Appeals, Ninth Circuit. On July 8, 1992, the court ruled in *Les v. Reilly*, 968 F.2d 985 (9th Cir.), cert. denied, 113 S.Ct. 1361 (1993), that the Delaney clause of section 409 barred the establishment of a food additive regulation for pesticides which "induce cancer," even if the risks are considered *de minimis*. In response to the court's decision in *Les v. Reilly*, EPA has taken steps to identify and revoke all section 409 FARs for pesticides which "induce cancer." In the **Federal Register** of March 30, 1994 (59 FR 14980), EPA issued a list of pesticide uses which were likely to be affected by the court's decision. (Note that for the purpose of this document, the list has been superseded by Appendices to the court-approved settlement in *California v. Browner*, discussed below.)

EPA first revoked certain FARs of six pesticides that were the subject of the original NRDC petition. (58 FR 37862, 58 FR 59663 and 59 FR 10993). A number of these actions have been challenged in court; some have been stayed. EPA decided to evaluate the remaining FARs potentially inconsistent with the Delaney clause in phases. The first two phases focused on processed human foods. EPA proposed the first set of revocations, including 26 FARs for seven pesticides, in the **Federal Register** of July 1, 1994 (59 FR 33941). A second set of proposed revocations, including six FARs for four pesticides, was published in the **Federal Register** of January 18, 1995 (60 FR 3607). These two proposed revocations have not yet been finalized. This document, which focuses on FARs for animal feeds, completes EPA's review of the FARs earlier identified as potentially inconsistent with the Delaney clause.

2. *California v. Browner*. In a court-approved settlement, entered on February 9, 1995, in the case of *California v. Browner*, EPA agreed to make decisions regarding pesticides that may be affected by the Delaney clause. This settlement agreement includes Appendices listing pesticides and uses upon which EPA must make decisions and a timetable for making the decisions. The settlement required EPA to rule on the NFPA petition that challenged a number of policies under which EPA administers its tolerance-setting program. This document is consistent with the timeframes in that settlement.

In the **Federal Register** of June 14, 1995 (60 FR 31300), EPA issued a partial response to the NFPA petition. In that document, EPA concluded that some changes were warranted to its policies concerning application of the Delaney clause. The proposals below in this document are consistent with these new policies.

III. Revised Agency Policies, Guidelines, and Legal Interpretations

A. Concentration and "Ready to Eat" Policies

To determine whether the use of a pesticide on a growing crop needs a section 409 FAR in addition to a section 408 tolerance, EPA looks at the likelihood that the residue levels in the processed food will exceed the section 408 tolerance level. In the past, EPA applied this policy focusing almost exclusively on the results of processing studies using treated crops. In response to the NFPA petition, EPA announced new policies on how it would determine whether a pesticide needs a section 409 FAR. EPA stated that it would consider a greater range of information in determining the likelihood of residues in processed food exceeding the section 408 tolerance. EPA also adopted a definition of "ready to eat" (RTE) as it applies to human food and animal feed. Whether a food is RTE or not is critical to application of the concentration policy. If a food is not RTE, EPA must consider the degree of dilution that occurs in producing a RTE food from the not-RTE food in determining the likelihood that residues in RTE food will exceed the section 408 tolerance.

Perhaps the most significant new information that EPA stated it would consider is information bearing on the average residue value from crop field trials. The data from field residue trials show that it is possible to obtain significantly different residue values from multiple field trials. EPA concluded that where a crop is mixed or blended during processing, it would be appropriate to use an average residue value rather than the highest field trial sample value in estimating the potential level of residue in processed food. As EPA noted, EPA believes that generally the most appropriate average value to use is the highest average field trial (HAFT) value. Consequently, EPA revised its procedures and is now using the HAFT as the basis for determining whether a section 409 FAR is needed.

Another outcome of the new concentration policy is that EPA has revised its policies for the use of multiple processing studies. EPA may receive several processing studies for a crop, with each showing a different concentration factor. When different concentration factors result from multiple processing studies, EPA will now use the average concentration factor to determine concentration. EPA explained the basis for this change in its response to comments filed on the NFPA petition. In addition, EPA is examining processing studies to ensure that they reflect typical commercial practices. If a study does not include a step (e.g., washing) that is considered typical practice in processing an RAC, EPA may not include that study in the calculation of the average concentration factor.

In response to the NFPA petition, EPA stated it would interpret the phrase RTE food as meaning food ready for consumption "as is" without further preparation. EPA also announced that it will apply a similar approach to processing byproducts used as animal feeds. With regard to animal feed, EPA announced that if a feed item is considered unpalatable when fed "as is" or if for nutritional or other reasons the feed item is generally further processed or mixed, EPA will consider that feed item not RTE. EPA has applied this new interpretation on a case-by-case basis in making determinations on several of the feed items that are the subject of this document.

B. Guidelines on Significant Animal Feeds

EPA requires processing data and sets tolerances and FARs only on animal feeds that are consumed in significant amounts in the United States. Table II of the Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry, provides a listing of all significant food and feed commodities, both raw and processed, for which residue data are collected and tolerances or FARs are established. On June 8, 1994, EPA revised Table II and sought comments on these revisions (59 FR 29603). In response, EPA received extensive new data and many comments concerning the amounts of raw agricultural commodities and processing byproducts that are used as animal feeds. As a result, EPA has updated Table II and modified its guidelines regarding which raw commodities and processing byproducts EPA will consider as animal feeds possibly requiring FARs.

The general cutoff point used by EPA in deciding which feed items are considered "significant" is whether the feed item constitutes greater than 0.04 percent, by weight, of the total feed available to livestock in the U.S. However, feed items constituting less than 0.04 percent are also considered significant if:

1. Greater than 10,000 tons are fed annually (ca. 0.0015% of total feed), and the crop is grown exclusively for use as animal feed (e.g., vetch); or
2. The feed is of particular regional concern (e.g., animal feeds likely to result in residues in regionally produced commodities such as milk and eggs) or has had historical incidence issues (e.g., pineapple process residue); or
3. The feed is included in commodities market listings and is thus traded and likely to be found in interstate commerce. Using these criteria, approximately 99.8% of feeds available to livestock in the U.S. are accounted for in the updated Table II.

Although many feed items, including processing byproducts, are no longer included in Table II as a result of the new information used to revise the table, these commodities combined represent less than 0.2 percent by weight of total livestock feeds. The percentage represented by any single feed item is negligible.

Elsewhere in this issue of the **Federal Register**, EPA is issuing a Notice of Availability of the revised table.

C. DES Proviso

The Delaney clause in section 409 of the FFDCA contains an exception for animal feed additives that do not harm the animal and are not found in the resulting animal food products by an analytical method approved or prescribed by FDA or EPA as applicable. In full, this exception reads:

> The Delaney clause shall not apply with respect to the use of a substance as an ingredient of feed for animals which are raised for food production, if the Secretary finds:
>
> (i) That, under the conditions of use and feeding specified in proposed labeling and reasonably certain to be followed in practice, such additive will not adversely affect the animals for which such feed is intended; and
>
> (ii) That no residue of the additive will be found (by methods of examination prescribed or approved by the Secretary by regulations, * * *) in any edible portion of such animal after slaughter or in any food yielded by or derived from the living animal. 21 U.S.C. 348(c)(3)(A).

This exception historically has been referred to as the "DES proviso" because it was enacted, in part, in response to the use of the animal drug diethylstilbestrol (DES). A similar provision is included in the Delaney clauses in the color additives and animal drug provisions of the FFDCA. See 21 U.S.C. 360b(d)(1)(I) and 379e(b)(5)(B).

FDA has a long history of rulemaking on the DES proviso. FDA's current regulations regarding the DES proviso codify what FDA has described as a "sensitivity of method" (SOM) approach. In brief, the SOM approach uses quantitative risk assessment to define a level of residue in the edible animal product which represents no more than a 1-in-1 million lifetime risk. This residue level is then taken to represent an insignificant risk level to the public, and FDA designates that residue level and below as "no residue" under the DES proviso whether or not such residues are detected by the approved method. See 21 CFR 500.84. Additionally, under the SOM approach, FDA requires sponsors of compounds to develop analytical methods which are at least sensitive enough to measure residues down to the level of residue corresponding to an insignificant risk. 21 CFR 500.88.

Although the DES proviso and the SOM approach were not part of the *Les v. Reilly* decision, EPA undertook a full review of its policies related to the Delaney clause including the SOM approach in the wake of that decision. For that reason, EPA requested comment on the SOM approach in its notice announcing receipt of the NFPA petition. 58 FR 7474 (February 5, 1993). After reviewing the comment received and after consulting with FDA and the Department of Justice, EPA has decided generally to continue to rely on the SOM approach including taking risk considerations into account in determining whether an analytical method is sufficiently sensitive to be approved. EPA, however, will not rely on one aspect of the SOM approach. EPA will not rely upon estimates of risks posed by residues to designate a "no residue" level, at or below which residues are presumed not to be found. Rather, EPA will determine whether residues could be found by (1) determining the level of residue expected in animal products given the conditions of use of the pesticide and the levels of residue expected in feed, and then (2) examining whether the approved method could detect such residue levels in animal products. If the method could detect the residues expected in animal products (even residues below the risk level determined under the SOM approach), then these residues would be considered to be "found" under the DES proviso, and the DES proviso could not be invoked as an exception to the Delaney clause.

EPA does not anticipate that this approach to determining whether

residues are "found" will change the substance of EPA's current practices involving method development and approval. As required by the DES proviso, however, EPA will formally approve methods by regulation when the DES proviso is invoked to support a FAR. EPA will not approve a method, and therefore not exercise the DES proviso, if the method cannot detect residues that the Agency considers to pose a risk of concern.

EPA believes that its decision to interpret the DES proviso as imposing a strict detectability standard is consistent with the plain language of the statute. The DES proviso requires that "no residue of the additive will be found [] by methods of examination prescribed or approved by the Secretary * * * ." The use of the term "found" and the express mention of analytical methods support reading the DES proviso as imposing a detectability test. This conclusion is confirmed by the legislative history which shows both that Congress understood that the DES proviso imposed a detectability standard and that Congress was opposed to the principle that any detected residue of a carcinogen could be found to be safe.

The prior justification for the taking risk into account in determining whether residues are "found" was that a literal approach to the term "no residue" would render the DES proviso meaningless because scientists could never conclude that a substance introduced into an animal left absolutely no molecules of residue in edible animal products. (52 FR 49572, December 31, 1987). To avoid construing the DES proviso so as to render it inconsequential, the concept of risk was introduced as a way of defining "no residue." After further evaluation, EPA believes that reading the DES proviso as imposing a detectability standard is both consistent with the statutory language and avoids making the DES proviso a meaningless provision. EPA's experience has been that the presence of pesticide residues in animal feeds often does not lead to detectable residues in edible animal products. EPA regulations in 40 CFR 180.6 reflect that experience by explicitly directing that no tolerance for pesticide residues in animal products is required when appropriate studies show that detectable residues are not reasonably expected.

IV. Decision Framework

In analyzing whether the 36 FARs addressed in this document should be revoked, EPA has used the following decision framework. First, EPA determined whether a section 409 FAR is necessary to prevent adulteration, given the revisions to the animal feed guidelines, the concentration policy, or new data which have been submitted. If application of the revised guidelines and concentration policy shows no FAR is needed, this document proposes that the FAR be revoked on that ground. Second, if this analysis showed that a FAR is still needed, then the FAR's consistency with the Delaney clause was analyzed.

In examining whether a FAR was needed, EPA followed a stepwise process involving a series of questions. In brief, the questions are:

A. Significant Animal Feed

Is the feed for which the FAR was established a significant animal feed? EPA has updated its table of significant animal feeds. In the process, the Agency has identified a number of processed animal feed items that are not significant according to the criteria in Unit. III.B. of this preamble. If the animal feed for which the FAR was established has been dropped from the list of significant animal feeds, the FAR is not necessary.

B. Concentration Policy Including RTE

1. *Using highest average residue value from field trials (HAFT), do residues in processed food exceed the section 408 tolerance?* Use of the HAFT for feed commodities that are likely to be mixed or blended decreases the likelihood that residues in processed feed will exceed the section 408 tolerance. Typically, EPA would determine the HAFT as part of its review of field residue data for a new tolerance. For the pesticides that are the subject of this proposed rule, however, EPA did not determine the HAFT in most cases, because other factors, notably new processing studies and use of average concentration factors, were sufficient for EPA to conclude that residues would not exceed the 408 tolerance.

2. *Do processing data show that there is concentration of residues during processing?* If processing studies demonstrate that the level of residues in the processed animal feed is less than the level of residues in the precursor crop (i.e., no "concentration in fact"), a FAR is unnecessary. For some pesticides subject to this proposed rule, EPA has received new processing studies which change its previous conclusion that concentration occurs in processing.

3. *Does use of the average concentration factor show that there is concentration of residues during processing?* Use of the average concentration factor from multiple processing studies generally decreases the likelihood that residues in the processed animal feed will exceed the section 408 tolerance.

4. *Is the dilution that occurs during preparation of RTE animal feed sufficient to reduce pesticide residues below the section 408 tolerance?* If a processed feed item is not fed to animals "as is," EPA must evaluate the expected residue level in RTE animal feed containing the processed feed item. EPA has determined that many of processed feed items covered by the FARs addressed in this proposal are not RTE. Information available to EPA shows that processed feed items are rarely fed to animals singly or "as is," that they are typically mixed or blended with other feed items to create a finished RTE feed. Blending of processed feed items is necessary to make them palatable or to ensure that the animal receives a nutritionally sufficient diet. For example, soybean hulls by themselves are neither palatable to animals nor an adequate nutritional source, and are therefore fed only in a feed mixture.

To determine the levels of pesticides residues in the RTE animal feed, EPA obtained information on the amount of dilution that occurs from mixing and blending feed items into finished feeds (a "dilution factor"). Since the amount of dilution in finished animal feeds varies due to differences in animal dietary needs, EPA used the lowest dilution factor (the highest level of potential residues in finished feed) in its determinations. If the dilution of residues resulting from mixing and blending is greater than the concentration of residues resulting from processing (the dilution factor is greater than the concentration factor), it is likely that the residues in the finished RTE feed will be less than the section 408 tolerance. In this case, no FAR is necessary for the RTE animal feed.

5. *Does a combination of concentration factors show that it is unlikely that the residues in processed food will exceed the section 408 tolerance*? For some pesticides, the factors analyzed individually might indicate that residues exceed the section 408 tolerance, but when analyzed in combination they allow EPA to conclude that, in actuality, residues are not likely to exceed the section 408 tolerance. Therefore, the final step in this analysis was to look at the above factors in combination to determine if a FAR is needed.

If, after consideration of the above factors, a FAR is determined to be necessary, EPA then examined whether a FAR for the pesticide chemical is consistent with the Delaney clause. That examination focused on whether the pesticide induces cancer within the meaning of the Delaney clause. If EPA concluded that the pesticide induces cancer, then EPA determined whether the FAR is nonetheless excepted from the Delaney clause prohibition by the DES proviso.

V. EPA's Decisions

Based on the above analyses, EPA proposes to revoke 34 FARs on the basis that they are not needed to prevent adulterated food and two FARs because they violate the Delaney clause.

A. Food Additive Regulation Is Not Needed

1. *Not considered significant feed item.* As a result of the updating of the guideline on significant animal feeds, 16 of the 36 FARs are no longer considered necessary. EPA proposes to revoke on this ground the following FARs: (1) benomyl on dried apple pomace, dried grape pomace and raisin waste; (2) diflubenzuron on soybean soapstock; (3) iprodione on dried grape pomace, raisin waste, and peanut soapstock; (4) mancozeb on milled fractions of barley, oats, and rye; (5) norflurazon on citrus molasses; (6) propargite on dried apple pomace and dried grape pomace; (7) thiophanate-methyl on dried apple pomace; and (8) triadimefon on wet/dry grape pomace and raisin waste. Documentation explaining EPA's conclusions on what animal feeds are significant is included in the docket.

After this reassessment, only 20 of the original 36 FARs require further consideration.

2. *Revised concentration policy including RTE—i. Highest average field trial value.* Consideration of HAFT values from crop field trials did not alone affect whether any FARs were needed. (The HAFT was considered in combination with other factors in determining that a tolerance for diflubenzuron on soybean hulls was not necessary.)

ii. *New processing study.* EPA has received new processing studies that show that 4 of the remaining FARs are unnecessary because processing results in no concentration in fact of residues. EPA proposes to revoke on this ground the following FARs: (1) dimethipin on cottonseed hulls; (2) norflurazon on dried citrus pulp; (3) propargite on dried citrus pulp; and (4) thiodicarb on cottonseed hulls. Documentation on these new processing studies is included in the docket.

After this reassessment, only 16 of the original 36 FARs require further consideration.

iii. *Average concentration factor shows no concentration in fact.* Calculation of the average concentration factor from more than one processing study shows that 4 of the remaining FARs are unnecessary because processing results in no concentration in fact of residues. EPA proposes to revoke on this ground the following FARs: (1) acephate on cottonseed meal and soybean meal; (2) carbaryl on pineapple bran; and (3) dimethoate on dried citrus pulp. Documentation on the calculation of the average concentration factors is included in the docket.

After this reassessment, only 12 of the original 36 FARs require further consideration.

iv. *Dilution factor is greater than concentration factor during processing* For the remaining FARs, EPA concluded that the following processed feed items are not RTE: Cottonseed hulls, dried citrus pulp, rice bran and hulls, milled fractions of wheat, and soybean hulls.

EPA concluded that the following processed feed item is RTE: Sugarcane molasses.

Evaluation of the degree of dilution involved in the preparation of RTE animal feeds from not-RTE processed feed items showed that 8 of the remaining FARs are unnecessary because residues are unlikely to exceed the section 408 tolerance in the RTE animal feeds. EPA proposes to revoke on this ground the following FARs: (1) acephate on cottonseed hulls; (2) benomyl on dried citrus pulp and rice hulls; (3) imazalil on dried citrus pulp; (4) iprodione on rice bran and rice hulls; (5) mancozeb on milled fractions of wheat; and (6) thiodicarb on soybean hulls.

For these pesticide/processed feed item combinations, EPA plans to use its general rulemaking authority under FFDCA sec. 701, to establish maximum residue levels. Documentation of EPA's conclusions regarding concentration factors, RTE status, and dilution factors for these processed feed items is provided in the docket.

After this reassessment, only 4 of the original 36 FARs require further consideration.

v. *Combination of factors.* Analysis of the combined effect of the use of the above factors for RTE feeds showed that two of the remaining FARs are unnecessary. EPA is proposing to revoke on this ground the FARs for diflubenzuron on soybean hulls and triadimefon on wet apple pomace.

The tolerance for diflubenzuron in soybeans is at the limit of quantification (LOQ) of the analytical method (0.05 ppm). A single processing study shows residues of diflubenzuron in soybean hulls concentrate to eight times the soybean level. Using the HAFT of 0.03 ppm obtained using a more sensitive analytical method, a concentration factor of 8 and a dilution factor of 4 for soybean hulls, residues in finished RTE feed are calculated to be 0.06 ppm (0.03 X 8 divided by 4). This is within the limit of analytical variability of the LOQ tolerance of 0.05 ppm. Documentation on consideration of these factors for this FAR is provided in the docket.

Several factors were considered in the determination as to whether the feed additive tolerance for triadimefon on wet apple pomace is still necessary. (The existing feed additive tolerance covers both wet and dry apple pomace; however, dry apple pomace is no longer considered a significant feed item.) All registered uses of triadimefon on apples have been amended to extend the preharvest interval (PHI) from 0 days to 45 days. Available residue data reflecting a 45-day PHI support a tolerance of 0.2 ppm on raw apples. The HAFT from these studies is 0.09 ppm, and a new processing study indicates a concentration factor of 1.6X for residues in wet apple pomace. Residues in wet apple pomace can thus be calculated as 0.09 ppm X 1.6 = 0.14 ppm, which is below the 0.2-ppm tolerance needed for apples. Therefore, a section 409 tolerance for wet apple pomace is not required.

After this reassessment, only 2 of the original 36 FARs require further consideration.

B. Food Additive Regulation is Needed

EPA has determined that one of the remaining FARs is necessary because the application of the pesticide to the RAC could lead to residues in RTE processed feed that exceed the applicable section 408 tolerance. This is simazine on sugarcane molasses. Documentation as to why this FAR is needed under the revised concentration policy is included in the docket.

The last FAR, tetrachlorvinphos in processed feed items, is needed because it is a direct additive to processed animal feed. None of the above factors is relevant to a direct additive to processed animal feeds.

C. Induce Cancer Call for Pesticides that Need 409s

If a FAR is necessary to prevent adulterated food, as in the case of the two pesticides named in Unit V.B. above, EPA next determined whether the pesticide induces cancer within the meaning of the Delaney clause.

In construing the "induce cancer" standard as to animals, EPA follows a weight-of-the-evidence approach. In regard to animal carcinogenicity, EPA, in general, interprets "induces cancer" to mean:

The carcinogenicity of a substance in animals is established when administration in an adequately designed and conducted study or studies results in an increase in the incidence of one or more types of malignant (or, where appropriate, benign or a combination of benign and malignant) neoplasms in treated animals compared to untreated animals maintained under identical conditions except for exposure to the test compound. Determination that the incidence of neoplasms increases as the result of exposure to the test compound requires a full biological, pathological, and statistical evaluation. Statistics assist in evaluating the biological significance of the observed responses, but a conclusion on carcinogenicity is not determined on the basis of statistics alone. Under this approach, a substance may be found to "induce cancer" in animals despite the fact that increased tumor incidence occurs only at high doses, or that only benign tumors occur, and despite negative results in other animal feeding studies. (See 58 FR 37863, July 14, 1993; 53 FR 41108, October 19, 1988; and 52 FR 49577, December 31, 1987).

In a proposed revocation issued in 1994, EPA concluded that simazine meets this standard. EPA is currently considering comments on this proposal. EPA believes that tetrachlorvinphos also qualifies as an animal carcinogen under this test.

Summarized below is the information supporting EPA's determination that tetrachlorvinphos induces cancer. Full copies of each of these reviews and other references in this document are available in the OPP Docket, the location of which is given under "ADDRESSES" above. Information on simazine is contained in OPP Docket OPP-300335.

Tetrachlorvinphos

After a full evaluation of the data and supporting information regarding animal carcinogenicity, EPA concludes that exposure to tetrachlorvinphos results in an increased incidence of hepatocellular carcinomas and combined adenomas/carcinomas (predominantly malignant carcinomas) in female B6C3Fl mice.

In male mice there are also increases in hepatocellular combined adenomas/carcinomas and tumors of the kidney (carcinomas, adenomas and combined adenomas/carcinomas with a large contribution from malignant carcinoma). In the male Sprague-Dawley rat there are nonsignificant increases in adrenal benign pheochromocytomas (significant positive trend) and thyroid C-cell adenomas. These latter two tumor types are consistent with the same tumor types observed in another earlier study in Osborne-Mendel rats.

The mutagenicity data for tetrachlorvinphos demonstrate clastogenic activity, which supports a carcinogenicity concern. Analogs structurally similar to tetrachlorvinphos (DDVP and phosphamidon) are also carcinogenic. Tetrachlorvinphos can undergo hydrolysis and then tautomerize to generate a potentially carcinogenic reactive ketone intermediate.

Discussions of the various studies on the carcinogenicity of tetrachlorvinphos can be found in the Peer Review of tetrachlorvinphos (Dec. 12, 1994) in the docket.

D. DES Proviso

EPA may establish or maintain a section 409 FAR for a pesticide that induces cancer only if the DES proviso excludes it from the Delaney clause (see Unit III.C. of this preamble). When a pesticide needing a FAR is found to induce cancer, the final step in the analysis is to determine if the FAR is nonetheless excepted from the Delaney clause prohibition by the DES proviso.

The DES proviso applies when no detectable residues are expected in the animal commodities (meat, milk, poultry, eggs) as a result of animal consumption of feeds containing tolerance level residues. If no detectable residues of the chemical can be found in the animal commodities, the FAR can be maintained or established.

1. *Tetrachlorvinphos.* EPA concludes that the DES proviso does not except the tetrachlorvinphos FAR from the Delaney clause. The tetrachlorvinphos FAR does not qualify because the existing enforcement method has not been approved under the DES proviso and EPA does not believe it would be appropriate to approve that method because it determines residues of parent only and not several metabolites of carcinogenic concern. Moreover, EPA has estimated, if a method covering these metabolites were developed, the method would be expected to be able to detect residues of tetrachlorvinphos in animal products, assuming the method is of comparable sensitivity to the existing method.

2. *Simazine.* EPA has concluded that the DES proviso does not except the simazine FAR from the Delaney clause. Using the existing enforcement method for simazine, EPA has estimated, residues of simazine will not be found in edible products of animals. However this enforcement method has not been approved by regulation for use by applying the DES proviso and EPA does not believe the method is sufficiently sensitive that it should be approved. As FDA's regulations concerning the DES proviso make clear, methods used in applying the DES proviso must be capable of detecting residues at a level representing a maximum lifetime cancer risk of 1-in-1 million. 21 CFR 500.88(b). The current enforcement method for simazine detects residues in edible animal products only down to a level representing a lifetime cancer risk from simazine in such products of approximately 1 in 100,000. Because this method is not sufficiently sensitive, EPA is not proposing it for approval, and therefore EPA cannot conclude that the DES proviso is available to exempt the simazine FAR from the Delaney clause. If a method for simazine is available that has greater sensitivity, EPA will reexamine the question of whether the DES proviso does apply.

VI. Proposed Rules

A. Proposed Revocations: Section 409 FAR Is Not Needed.

EPA is proposing to revoke the following 34 of the original 36 FARs because the Agency has determined they are not needed:

Name of pesticide	40 CFR cite	Processed feed item
Acephate	186.100	Cottonseed meal, cottonseed hulls, soybean meal
Benomyl	186.350	Dried apple pomace, dried citrus pulp, dried grape pomace, raisin waste, rice hulls
Carbaryl	186.550	Pineapple bran (wet and dry)
Diflubenzuron	186.2000	Soybean hulls, soybean soapstock
Dimethipin	186.2050	Cottonseed hulls

Name of pesticide	40 CFR cite	Processed feed item
Dimethoate	186.2100	Dried citrus pulp
Imazalil	186.3650	Dried citrus pulp
Iprodione	186.3750	Dried grape pomace, raisin waste, peanut soapstock, rice bran, rice hulls
Mancozeb	186.6300	Milled barley fractions, milled oat fractions, milled rye fractions, milled wheat fractions
Norflurazon	186.4450	Dried citrus pulp, citrus molasses
Propargite	186.5000	Dried apple pomace, dried citrus pulp, dried grape pomace
Thiodicarb	186.5650	Cottonseed hulls, soybean hulls
Thiophanate-methyl	186.5700	Dried apple pomace
Triadimefon	186.800	Grape pomace (wet and dry), raisin waste, apple pomace (wet/dry)

B. Proposed Revocations: Violates Delaney Clause

1. *Tetrachlorvinphos*. EPA is proposing to revoke the FAR for tetrachlorvinphos (2-chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate) when used as a direct feed additive. This FAR is codified at 40 CFR 186.950. EPA is proposing to revoke this FAR because EPA has determined that tetrachlorvinphos induces cancer in animals. Because a section 409 FAR is required and the DES proviso does not apply, the regulation violates the Delaney clause in section 409 of the FFDCA.

2. *Simazine*. EPA is proposing to revoke the FAR for simazine residues on sugarcane molasses. This FAR is codified at 40 CFR 186.5350. EPA is proposing to revoke this FAR because EPA has determined that simazine induces cancer in animals. Because a section 409 FAR is required and the DES proviso does not apply, the regulation violates the Delaney clause in section 409 of the FFDCA.

VII. Consideration of Comments

Any interested person may submit comments on this proposed action to the address given in the "ADDRESSES" section (see above). Before issuing a final rule based on this proposal, EPA will consider all relevant comments. EPA also welcomes comment on whether its proposed revocations issued on July 1, 1994 (59 FR 33941; OPP Docket 300335) and January 18, 1995 (60 FR 3607; OPP Docket 300360) should be revised based on the changed policies and guidelines discussed in this proposed rule. Any comment on these prior proposals should bear their appropriate OPP docket control numbers. After consideration of comments, EPA will issue a final order determining whether revocation of the regulations is appropriate. Such order will be subject to objections pursuant to section 409(f) (21 U.S.C. 348(f)). Failure to file an objection within the appointed period will constitute waiver of the right to raise issues resolved in the order in future proceedings.

A record has been established for this rulemaking under docket number [OPP-300397] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

VIII. Executive Order 12866

EPA believes that there will be no significant economic impacts from this action. Revocation of 34 unnecessary tolerances does not affect the availability of the pesticides for use on the crops involved. EPA has not completed an evaluation of the economic impacts of this particular action for the two proposed revocations under the Delaney clause, since the Delaney clause requires EPA to act without considering the costs or benefits of the action. Nevertheless, EPA believes that the revocation of simazine on sugarcane molasses and tetrachlorvinphos on processed animal feed will have little economic impact.

Simazine residues on domestically produced molasses are assumed to be zero since simazine is no longer registered for use on sugarcane domestically. No impacts are expected to U.S. sugarcane growers from this proposed revocation. However, there could be short-term impacts to the domestic market due to decreased supply or increased price for imported molasses for animal feed. EPA cannot accurately estimate the amount of molasses from sugarcane that is imported to the U.S. Data on sugarcane molasses are generally aggregated with other molasses imports. Moreover, EPA lacks information on pesticide usage from some countries with significant molasses exportation. However, based on available information from countries for which EPA has data and alternative sources of molasses, EPA believes impacts upon domestic users of molasses will be minor and temporary.

Tetrachlorvinphos is used as a feed-through insecticide for control of flies on cattle, hogs, and horses. The bulk is used as a cattle feed-through; little is used for hogs or horses. Both diflubenzuron and methoprene are registered alternatives for cattle. For hogs and horses, although there are no feed-through alternatives available, dimethoate, cyromazine, and dichlorvos are available as nonfeed-through alternatives, and tetrachlorvinphos remains available for direct application to animals. Given that the costs of some of the alternatives are less than tetrachlorvinphos, alternatives exist, and dermal applications are permitted, EPA believes that there will be no significant adverse economic effects from revocation of the animal feed tolerance for tetrachlorvinphos.

IX. Regulatory Flexibility Act

As explained above, the Agency is compelled to take this action without regard to the economic impacts, including impacts on small businesses. Therefore, this rule has not been reviewed under the provisions of sec. 3(a) of the Regulatory Flexibility Act.

X. Paperwork Reduction Act

There are no information collection requirements in this proposed order.

List of Subjects in 40 CFR Part 186

Environmental protection, Agricultural commodities, Pesticides and pests, Feed additives, Reporting and recordkeeping requirements.

Dated: September 15, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 186 be amended as follows:

PART 186—[AMENDED]

1. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 186.100 [Removed]

2. By removing § 186.100 *Acephate.*

§ 186.350 [Removed]

3. By removing § 186.350 *Benomyl.*

§ 186.550 [Removed]

4. By removing § 186.550 *Carbaryl.*

§ 186.800 [Removed]

5. By removing § 186.800 *1-(4-chlorophenoxy)-3,3-dimethyl -1-(1H-1,2,4-triazol-1-yl)-2-butanone.*

§ 186.950 [Removed]

6. By removing § 186.950 *2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate.*

§ 186.2000 [Removed]

7. By removing § 186.2000 *Diflubenzuron.*

§ 186.2050 [Removed]

8. By removing § 186.2050 *Dimethipin.*

§ 186.2100 [Removed]

9. By removing § 186.2100 *Dimethoate including its oxygen analog.*

§ 186.3650 [Removed]

10. By removing § 186.3650 *Imazalil.*

§ 186.3750 [Removed]

11. By removing § 186.3750 *Iprodione.*

§ 186.4450 [Removed]

12. By removing § 186.4450 *Norflurazon.*

§ 186.5000 [Removed]

13. By removing § 186.5000 *Propargite.*

§ 186.5350 [Removed]

14. By removing § 186.5350 *Simazine.*

§ 186.5650 [Removed]

15. By removing § 186.5650 *Thiodicarb.*

§ 186.5700 [Removed]

16. By removing § 186.5700 *Thiophanate-methyl.*

§ 186.6300 [Removed]

17. By removing § 186.6300 *Zinc ion and maneb coordination product.*

[FR Doc. 95–23443 Filed 9–18–95; 1:26 pm]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–000412; FRL–4978–5]

Update of Table II of Pesticide Residue Chemistry Guidelines; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of updated guidance for registrants on the residue data requirements to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act and tolerances under the Federal Food, Drug and Cosmetic Act. The updated guidance consists of a revision of Table II of the Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry, describing raw and processed foods and feedstuffs. EPA will begin using the updated Table immediately, but for a period of 6 months will be flexible about the acceptability of residue studies that do not include data on new commodities in the Table.

ADDRESSES: A reference copy of Table II (September 1995) and Agency responses to comments received for Table II (June 1994) are filed with the Pesticides Docket, Office of Pesticide Programs, Public Response and Program Resources Branch, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5805.

FOR FURTHER INFORMATION CONTACT: By mail: Jerry Stokes, Health Effects Division (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Rm. 803, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-7561 or FAX (703)-305-5147; e-mail: Stokes.Jerry@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Table II of the Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry, provides a listing of all significant food and feed commodities, both raw and processed, for which residue data are collected and tolerances may be set. In addition, for feed commodities, Table II provides (1) the maximum percent of the diet for beef and dairy cattle, poultry and swine, and (2) guidance on which crops EPA believes it would be appropriate to allow label restrictions prohibiting use of commodities as feedstuffs. As a culmination of a long-term project to update Agency guidance on the amounts of feedstuffs in livestock diets, EPA issued Table II (June 1994). A notice of availability of the updated Table II was published in the **Federal Register** of June 8, 1994 (59 FR 29603). This update of Table II was deemed appropriate because there had been significant changes in agricultural, processing, and feeding practices in the past decade. In response to a request for comments on Table II (June 1994), extensive information was received on the amounts of various feedstuffs and their proportions of animal diets. Therefore, Table II (June 1994) has now been further revised to reflect the most recent data and definitions on crops, raw agricultural and processed commodities, and feedstuffs. Other comments received by the Agency were also addressed.

In Table II (June 1994) EPA evaluated the policy of allowing a label restriction prohibiting the use of a commodity for livestock feeding as a substitute for data. Based on comments on the document, EPA has revised the list of commodities for which a prohibitive label statement is an acceptable alternative to development of data.

EPA will begin to use Table II (September 1995) as guidance in its evaluation of pesticide registrations and tolerances. EPA realizes that in some instances where studies have already begun or are scheduled to begin in the near future, data may not be able to be collected on the commodities that have been added to Table II. EPA believes that 6 months should be sufficient time for registrants to familiarize themselves with the changes in Table II. For studies begun either prior to the publication of this notice or in the next 6 months, EPA will be flexible regarding whether studies which do not supply data on the new commodities in Table II are adequate for registration, reregistration, and tolerance purposes and when additional data, if any, will be required to be submitted under EPA's data call-in authority or as a condition of registration.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping.

Dated: September 14, 1995.

Stephanie R. Irene,

Acting Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 95–23444 Filed 9–18–95; 1:26 pm]

BILLING CODE 6560–50–F

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federal register

Thursday
September 21, 1995

Part X

Department of Housing and Urban Development

Notice of Sale of Defaulted Title I Loans; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. FR–3953–N–01]

Notice of Sale of Defaulted Title I Loans

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development.

ACTION: Notice of Sale of Defaulted Title I Loans.

SUMMARY: This notice announces the Department's intention to sell defaulted Title I loans by sealed bid. The loans were insured under the provisions of section 2 of title I of the National Housing Act (12 U.S.C. 1703). Each loan was made for either the alteration, repair or improvement of property, or for the purchase of a manufactured home. This notice also describes the bidding process for these loans. This is a notice of a sale of three pools of loans. It is not an offer to sell the loans. Offers will only be made individually to those interested parties that have executed a Confidentiality Agreement and a Bidder Qualification Statement that are accepted by the Department.

DATES: Bid Packages will be available on or about September 25, 1995. The loan sale will occur on or about November 6, 1995.

ADDRESSES: To obtain a Bid Package interested parties must obtain and execute both a Confidentiality Agreement and a Bidder Qualification Statement. Interested parties can obtain these documents from: FHA Information Center, 135 Center Street, Bristol, CT 06010, telephone 1–800–877–4814, FAX (203) 584–4759. (This FAX number is not a toll-free number.) Upon receipt of an executed Confidentiality Agreement and a Bidder Qualification Statement, a Bid Package will be forwarded by regular mail. Interested parties may make special arrangements to receive a Bid Package the next day.

FOR FURTHER INFORMATION CONTACT: William Richbourg, Office of the Housing-FHA Comptroller, Room 5146, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 401–0577, ext. 2727. Hearing or speech-impaired individuals may call (202) 708–4594 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Department intends to sell three pools of approximately 16,000 defaulted Title I loans. The majority of loans are unsecured and nonperforming. A loan is considered to be nonperforming if fewer than 10 of the previous 12 scheduled payments have been made. Some nonperforming loans do generate cash flows from borrower payments. A list of specific loans and pool descriptions will be contained in the Bid Package. No loans will be sold individually. The loans will be sold without Federal Housing Administration (FHA) insurance. Interested parties may bid competitively on the pool(s) of the defaulted Title I Loans. Bids may be made for one or all of the pools of defaulted Title I Loans, as well as for any combination of the pools. The Department will accept those bids that maximize the gross proceeds from the sale.

This is not an offer to sell these loans. Offers will only be made individually to interested parties that certify that they or their advisors: (a) Are sophisticated purchasers; (b) have been given the opportunity to make their purchase decisions based upon review of information concerning the loans and such other due diligence as they deem necessary; (c) are not relying on representations or warranties, written or oral, from HUD; and (d) have the ability to evaluate the risks of the transactions and can bear the loss of the purchase price.

The Bid Process

The Department will describe the procedure for participating in the Title I Defaulted Loan Sale in a Bid Package, which will include a nonnegotiable loan sale agreement prepared by the Department (Sale Agreement), specific bid instructions, as well as pertinent information such as total outstanding debt and applicable interest rate. Bid Packages will be mailed approximately 6 weeks prior to the Bid Date. The Bid Package will also include instructions for Bidder Registration and will contain procedures for obtaining supplemental information about the loans. Any interested party may request a copy of the Bid Package by following the instructions specified in the **ADDRESSES** section, above, of this notice.

Prior to the Bid Date a Bid Package Supplement will be mailed to all Registered Bidders. It will contain the final list of loans to be conveyed to the successful bidder(s).

Each bidder must include a deposit equal to 10% of the amount of its bid(s). If a successful bidder fails to abide by the terms of the Sale Agreement, including paying the Department any remaining sums due pursuant to the Sale Agreement and closing within the time period provided by the Sale Agreement, the Department shall retain and accept any deposit as liquidated damages.

Due Diligence Facilities

A due diligence period will take place prior to the Bid Date. During the due diligence period, supplemental information including payment and collection histories will be available for review by registered bidders. Supplemental information will be available by mail in an electronic form or by examination of servicing files located at Due Diligence Facilities located in Albany, New York; Chicago, Illinois; and Seattle, Washington. The supplemental information at each Due Diligence Facility will not be duplicative of the information in the other Due Diligence Facilities. Registered bidders must go to the three Due Diligence Facilities to gain access to hard copy supplemental information covering the complete portfolio. Specific instructions for ordering supplemental information in an electronic format or making an appointment to utilize one of the Due Diligence Facilities will be included in the Bid Package. The Department reserves the right to charge a reasonable fee to cover its costs in duplicating and forwarding any information requested by an interested party.

Title I Defaulted Loan Sale Policy

The Department reserves the right to add or delete loans to the Title I Defaulted Loan Sale at any time prior to the sale. The Department also reserves the right to reject any and all bids, without prejudice to the Department's right to include any defaulted Title I Loans in a later sale.

Ineligible Bidders. The following individuals and entities (either alone or in combination with others) are ineligible to bid on any one or combination of the Title I Defaulted Loan pools included in the Title I Defaulted Loan Sale:

(1) Any employee of the Department;

(2) Any individual or entity that is debarred from doing business with the Department pursuant to 24 CFR Part 24;

(3) Any contractor, subcontractor and/or consultant (including any agent of the foregoing) who performed services for, or on behalf of, the Department in connection with the Title I Defaulted Loan Sale;

(4) Any individual that was a principal and/or employee of any entity or individual described in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of, the Department in connection with the Title I Defaulted Loan Sale; and

(5) Any individual or entity that does not meet the qualifications as certified in the Bidder Qualification Statement.

Number of Bids. A bidder may bid on as many pools as the bidder chooses.

Timely Bids and Deposits. Each bidder assumes all risks of loss relating to its failure to deliver, or cause to be delivered, on a timely basis and in the manner specified by the Department, each bid form, earnest money deposit, and loan sale agreement required to be submitted by the bidder.

Ties for High Bidder. In the event there is a tie for a high bid, the Department, through its financial advisor, will contact the parties for which there are tied bids and afford each of them an opportunity to offer a best and final bid. The successful bidder will be the one with the highest bid. If a tie continues after the best and final offers are submitted or the bidders do not respond within the time period established by the Department, the successful bidder will be determined by lottery. Notwithstanding the above, the Department reserves the right to withdraw any pool(s) of Title I defaulted loans subject to tied bids.

Cashflow Status of Title I Defaulted Loans. Most of the loans included in the Title I Defaulted Loan Sale are nonperforming. However, some of the loans generate cash flow from borrower payments under the terms of modification agreements or repayment plans. The Department will provide details of the repayment terms and payment histories, as reflected in Departmental records. The completeness and accuracy of the records cannot be guaranteed but the Department will provide to the best of its ability the current information contained in its records. During the due diligence period the Department will continue aggressive collection activities and some loans which are nonperforming may pay off or begin to generate cash flow on or before the date that title is transferred to the successful bidder. Some loans which are generating cash flow may also pay off or become nonperforming. In the Final Bid Package the Department will include the most current status of each loan available. However, the Department makes no representations as to the status of loans on the date that title is transferred.

Interest Rate Restrictions. Restrictions on the rates of interest that may be charged by the purchasers of the Title I loans will convey with the loans. When the Department accepted ownership of these loans, which generally carry high interest rates, it assessed interest at the lesser of the rate specified in the loan or the United States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid by the Department. See 24 CFR 201.62(a). Purchasers of defaulted Title I loans will be required to charge interest at no greater rate than that charged by the Department.

These are the essential terms of sale. The Sales Agreement will provide additional details. To ensure a competitive bidding process, the terms of sale are not subject to negotiation.

Title I Defaulted Loan Sale Procedure

The Department selected competitive sealed bids as the method to sell the pools of defaulted Title I loans. This method of sale optimizes the Department's return on the sale of these Title I loans, affords the greatest opportunity for all interested parties to bid on the defaulted Title I loans, and provides the quickest and most efficient vehicle for the Department to dispose of the pools of defaulted Title I loans.

Security Interests

Manufactured home loans are unsecured. These loans were secured when made, but the collateral was repossessed by the lenders, and the debts owed to the Department on these loans represents the deficiency after deducting the greater of the assessed value or the sale price from the unpaid principal balance of the loans, and adding certain expenses incurred by the lenders.

Property improvement loans may or may not be secured. The regulations require that any property improvement loan over a specified dollar amount must be secured by a deed of trust or a mortgage or, in Texas, a mechanic's or materialman's lien. This dollar amount has been, at various times, $2,500, $5,000, and $7,500.

In addition, lenders could require security for loans below those amounts. Therefore, many of the property improvement loans may be accompanied by security instruments. The liens are usually second liens, but in some cases may be first liens, and in others may be in third or even lower position. Many of the liens represented by these security instruments may have been extinguished due to foreclosures of superior liens. The Department makes no representation as to the status or validity of any lien obtained as security for a Title I loan.

Scope of Notice

This notice applies to the Title I Defaulted Loan Sale, and does not establish Departmental procedures for the sale of other loans, mortgage loans, or servicing interests. If there are any conflicts between the Notice and the Bid Package, the contents of the Bid Package prevail.

Dated: September 8, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–23396 Filed 9–20–95; 8:45 am]

BILLING CODE 4210–27–P

federal register

Thursday
September 21, 1995

Part XI

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB44

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions. These amendments are necessary to implement the Student Right-to-Know Act, as amended by the Higher Education Technical Amendments of 1991 and the Higher Education Technical Amendments of 1993. The proposed regulations would require an institution that participates in any student assistance program under Title IV of the Higher Education Act of 1965, as amended (title IV, HEA program) to disclose information about graduation rates to current and prospective students. The proposed regulations would also require an institution that participates in any title IV, HEA program and awards athletically related student aid to provide certain types of data regarding the institution's student population, and the graduation rates of categories of student-athletes, to potential student-athletes and to the athletes' parents, coaches, and high school guidance counselors.

DATES: Comments must be received by October 25, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Ms. Paula Husselmann, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272, or to the following internet address: srtk@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the above paragraph.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Husselmann or Mr. David Lorenzo, U.S. Department of Education, 600 Independence Avenue, SW., ROB–3, Room 3045, Washington, DC 20202–5346. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions (34 CFR part 668) apply to all institutions that participate in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). The proposed changes in these regulations are necessary to implement changes to the HEA made by the Student Right-to-Know Act, Public Law 101–542, as amended by the Higher Education Technical Amendments of 1991, Public Law 102–26, and the Higher Education Technical Amendments of 1993, Public Law 103–208. The Secretary published a proposed rule on July 10, 1992 to implement the Student Right-to-Know and Campus Security Act. Over three hundred commenters responded to those proposed rules. Final regulations implementing the Campus Security Act were published separately on April 29, 1994.

This second proposed rule incorporates a number of recommendations submitted by the higher education community in response to the first proposed rule. In addition, this second proposed rule is published in response to comments expressed in many meetings with the higher education community concerning the implementation of the various graduation rate requirements mandated by the Higher Education Amendments of 1992, Public Law 102–325.

The HEA, as amended by Public Law 102–325, uses completion or graduation rates for administering provisions of the statute beyond those governing student consumerism. The July 10, 1992 NPRM proposed a rigorous, standardized methodology so that the same data could be used for purposes of the Student Right-to-Know regulations, the State Postsecondary Review Program, and regulations governing institutional eligibility for short-term vocational programs. However, Congress has rescinded funding for the State Postsecondary Review Program and has not proposed funding for future years. Unlike the provisions of the Student Right-to-Know Act, the statutory requirements for completion or graduation rate data for institutional eligibility purposes do not apply to all schools that participate in title IV, HEA programs. The Secretary has therefore decided that this proposed rule would address only the calculation of completion or graduation rates for purposes of the consumer information requirements of the Student Right-to-Know Act, and that these proposed rules would be more flexible than the July 10, 1992 NPRM.

The Secretary appreciates that some members of the higher education community favor the promulgation of a single valid methodological approach that would cover all the Student Assistance General Provisions regulations that require the calculation of completion or graduation rates. The Secretary believes, however, that the flexible approach and narrow scope of these proposed rules are appropriate. The Student Right-to-Know statute only requires completion or graduation rate calculations for consumer information purposes, so the scope of these proposed regulations is consistent with the law. The relative lack of methodological prescription in the statute means that the more prescriptive approach needed to generate completion or graduation rate calculations for other purposes would not be required by this law. The separation of these regulations governing student consumer information requirements from other regulations also makes it easier for the Department to meet the requirements of Executive Order 12866 to regulate flexibly and minimize burden on institutions. Finally, the Secretary solicits comments on whether the guidance these proposed regulations would provide is sufficient to generate useful data for the student consumer information purposes outlined in the statute, and on ways in which these proposed rules might be improved.

Given the flexible and limited approach the Secretary has adopted, the Secretary also, in the preparation of final regulations, wants to strike an appropriate balance among several important but sometimes competing aims related to these issues. First, the Secretary wants to balance the need to preserve flexibility with the need to avoid requiring institutions to use different methodologies when calculating completion or graduation rates to satisfy the requirements of this statute and other statutes and regulations. Second, the Secretary wants to balance the need to regulate institutions within the current level of technology and available information while preserving the flexibility to anticipate future developments. The Secretary foresees that institutions' ability to gather information and measure completion or graduation rates

will evolve and improve in the future. Such developments might lead to the identification and adoption of more rigorous methodologies for calculating completion or graduation rates for other regulatory purposes. If such methodologies are identified and adopted, the Secretary will look at the possibility of allowing institutions to use those methodologies to satisfy the requirements of the Student Right-to-Know statute as well as the requirements of other statutes and regulations.

In this regard the Secretary asks for comments on possible ways that consistency might be attained and overall burden reduced in light of the different purposes to which completion or graduation rate calculations are used in the Student Assistance General Provisions regulations. The Secretary also asks for comments on whether these proposed regulations strike the appropriate balance between flexibility and duplication of effort, and between current conditions and future developments in technology and information management, and how these regulations might be improved to better address these issues.

Preparation of Proposed Regulations

The Secretary has formulated these proposed regulations in accordance with Executive Order 12866, the Administration's initiative on regulatory reinvention, and the Department's own Principles for Regulating.

The Secretary believes that the Student Right-to-Know Act establishes important consumer information disclosure standards for institutions. In proposing these regulations, the Secretary's goal is to ensure that institutions provide consistent and useful information on completion and graduation rates. With this information in hand, the Secretary believes that students and student-athletes can make better, more informed choices when they choose a postsecondary institution.

The Secretary believes these proposed regulations strike an appropriate balance between establishing a basic level of useful consumer information for students, and keeping the burden on institutions to a minimum. However, the Secretary solicits comments on ways to reach both the goal of providing useful consumer information and the goal of keeping burden on institutions to a minimum, and on whether these proposed regulations are successful in meeting both goals.

Summary of the Proposed Regulations

The following is a summary of the regulations that the Secretary proposes to implement the Student Right-to-Know Act:

Section 668.41 Reporting and disclosure of information

Public Law 101–542 expands the types of "consumer information" that institutions must disclose to students to include completion or graduation rates. The statute and § 668.41(a)(3) of these regulations require an institution to update this information annually, and to make that updated information readily available, through appropriate publications and mailings, to both current and prospective students. The statute also requires an institution to disclose the information to prospective students before they enroll or enter into any financial obligation with the institution. The statute defines a prospective student as "an individual who has contacted an eligible institution requesting information concerning admission to that institution." The Secretary also encourages institutions to make the rates available to secondary schools and guidance counselors so they have the information needed to advise student and parent consumers.

The Secretary invites comments on the differences between the reporting requirements contained in these proposed regulations and those contained in the Campus Security Act final regulations, with regard to where the institutions should publish this information, and whether the Department should regulate the placement of information in publications.

With respect to potential student-athletes, the statute and § 668.41(b) require that institutions that award athletically related student aid develop an annual, updated report containing information regarding the graduation rates of athletes, categorized by race, gender, and sport, as well as other data regarding the institution's student profile. The statute, and these proposed regulations, also require that institutions provide this report not only to the prospective student-athlete, but also to his or her parents, coach, and guidance counselor when the institution offers a potential student-athlete some form of athletically related student aid. The statute, and these regulations, define athletically related student aid as "any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution in order to receive that assistance."

The statute, and § 668.41(b)(2) of these regulations, require that institutions provide a copy of this report on the completion or graduation rates of student-athletes to the Secretary by every July 1, beginning July 1, 1997.

The Secretary is proposing the following definitions in § 668.41(c) of these regulations:

The Secretary proposes to define "full-time" to mean the student workload, measured in credit or clock hours, that the institution consistently designates as a full-time workload. The Secretary is proposing this definition rather than the definition found elsewhere in the student assistance general provisions, in 34 CFR 668.2, to allow institutions greater flexibility in establishing the group of entering students on which the graduation rate is based. The definition of "full-time" in § 668.2 is designed for the narrow purpose of calculating award amounts for title IV, HEA program purposes; the Secretary proposes that institutions have wider latitude in defining "full-time" for this purpose than is provided by that definition.

The Secretary emphasizes, however, that this flexibility does not allow institutions to create new definitions of "full-time" for use only for purposes of these calculations. The Secretary also expects that the institution's customary definition of "full-time" is located in publications widely available to students. The Secretary solicits comment as to the utility of requiring an institution to supply its definition of "full-time" in the completion or graduation rate information it discloses so that students will have information about the different underlying components that contribute to a final completion or graduation rate.

These regulations would define the statutory term "normal time" as the minimum length of time necessary for a full-time student, continuously attending the institution, to complete a certificate or degree program. Many students do not complete or graduate within this definition of normal time for a variety of reasons, for example, family responsibilities, the need to work to earn income, the need for remediation, or changes in academic program or goals. An institution's completion or graduation rate may be influenced by varying factors, such as open admission requirements and student profiles. But the Secretary believes it was the intent of Congress in using the term "normal time" in the statute to mean a minimal length of time, rather than an average length of time, and that Congress meant to address the issues discussed above when it set the limit for counting completers or graduates at 150% of normal time.

These regulations also contain the statutory definitions of the terms "athletically related student aid" and "prospective students".

Section 668.46 Report on Completion/Graduation Rate

This new section of the regulations would incorporate section 485(a)(1)(L) of the HEA, which requires an institution to disclose the completion or graduation rate of certificate- or degree-seeking, full-time, undergraduate students entering the institution. To promote flexibility and reduce regulatory burden, the Secretary is proposing that each institution have discretion to define the terms "certificate- or degree-seeking students" and "undergraduate students" for purposes of these regulations, but expects that the definitions it uses for these terms will be those it customarily employs. The Secretary solicits comment as to the utility of requiring an institution to supply its definition of "full-time" in the completion or graduation rate information it discloses so that students will have information about the different underlying components that contribute to a final completion or graduation rate.

Institutions are required by the statute to base their graduation rate on the group of students who enter between each July 1 and June 30, beginning with students who enter on or after July 1, 1996. This is reflected in §§ 668.46(a) and 668.46(a)(1)(i). An institution may arrive at this rate by counting all the graduates or completers among all the students who enter for this entire time period (year-long data), or by counting those in a portion of this time period (e.g., fall enrollment) who complete or graduate and then extrapolate from those data a final rate. In this regard, the Secretary only requires that the institution's methodology be reasonable, and that the completion or graduation rate yielded by that methodology represent an accurate description of the completion or graduation rate at the institution. However, the Secretary invites comments on this proposal, and particularly wishes to hear the views of the higher education community with regard to issues of comparability between those institutions that use fall cohorts, and those institutions that count all students who enter during the year.

The Department will publish a sample methodology that institutions may use to satisfy the requirements of this statute, and will work with the higher education community to identify other satisfactory methodologies.

With regard to the statutory provision that institutions base their graduation rate on students who "enter" between every July 1 and June 30, the Department's July 10, 1992 NPRM would have excluded transfer students from the completion or graduation rate calculation, on the grounds that those students were not "first-time students." The Secretary received comments from the higher education community that failure to consider transfer students in an institution's completion or graduation rate did not accurately reflect the true completion or graduation rate for institutions that admit a considerable number of transfer students. In light of these comments, the Secretary proposes to require the inclusion of transfer students—as well as first-time students—in the denominator of the institution's completion or graduation rate fraction.

Thus, the Secretary proposes in § 668.46(a)(1)(ii) of these regulations that "entering students" include both first-time students and students who enter the institution by transfer. The Secretary also believes that for both first-time and transfer students, "enter" would mean a student's attendance of at least one day of class.

The concept of "entering" raises in addition the question of how to track students' performance. The July 10, 1992 NPRM proposed for institutions without continuous enrollment the tracking of first-time students entering in the fall, as defined by the Integrated Postsecondary Educational Data System (IPEDS), or, for institutions with continuous enrollment, the tracking of first-time students entering between July and September. These proposed regulations do not prescribe any specific tracking methodology. Instead, these regulations allow institutions the flexibility to choose the methodology that best suits the institution's circumstances, including tracking on a student by student basis, on a program by program basis, or on a cohort basis, so long as that methodology (a) is applied to a population of students based on the group of full-time, certificate- or degree-seeking students who enter between every July 1 and June 30; (b) is applied to both first-time students and transfer students, as discussed above; and (c) is reasonable and generates an accurate completion or graduation rate for the group of students described by the statute.

Nor do these regulations *per se* propose that institutions track students continuously during 150% of normal time for completion or graduation from their respective programs. These regulations only propose that an institution take a reasonable methodological approach to tracking students for purposes of calculating the completion or graduation rates required by the statute. One reasonable approach an institution may choose to take is to establish a cohort for a given year and look back after 150% of normal time has elapsed to see how many students in that cohort completed, graduated, or transferred to a program for which the student's prior program provided substantial preparation. This process entails no individual tracking and keeps administrative burden to a minimum. The Secretary plans to disseminate non-binding guidance at a later date that will contain a model methodology for tracking students that institutions may use (but will not be required to use) to satisfy the requirements of the statute and these regulations.

With regard to the issue of tracking, the Secretary is concerned that the goals of providing useful consumer information and of providing institutional flexibility both be met in these regulations, and solicits comments concerning how both these goals may be accomplished, and whether this portion of the proposed regulations does in fact accomplish both.

The Secretary is cognizant that tracking students who enter an institution creates particular kinds of administrative burdens on some schools. In view of these concerns, and the lack of statutory requirements on this point, the Secretary does not propose to regulate how institutions must track or place transfer students, but rather proposes that institutions adopt a reasonable approach for tracking transfer students, and placing them in groups of students that make up the denominators of particular completion or graduation rate fractions. However, the Secretary expects institutions to place a transfer student in the group of students that most closely matches the transfer student's academic status. For example, the Secretary would not deem it reasonable for an institution that offers only four-year programs to place a transfer student that it classifies academically as a junior in a group of students that it classifies as freshmen. The Secretary solicits comments on this issue, especially with regard to possible abuses, and whether the Department should include in the final regulations specific guidance regarding the placement of transfer students.

Section 668.46(a)(2)(i) of these regulations proposes that an institution disclose its first graduation rate no later than the October 1st following the lapsing of 150% of normal time for all certificate- or degree-seeking, full-time undergraduate students who enter the institution between July 1, 1996 and June 30, 1997. If an institution offers programs of varying lengths, these regulations allow the institution to disclose its graduation rate no later than the October 1st following the lapse of 150% of normal time for its longest program. An institution may report earlier if it wishes, or on a program by program basis. The Secretary would expect, however, that an institution would report on the basis of the length of its predominant program, "predominant" being measured by the standards of both the number of programs of a particular length, and the number of students in programs of a particular length. The Secretary also solicits comments on the entire issue of reporting dates, and how the Secretary should balance flexibility in reporting with students' need for timely consumer information.

While these proposed regulations would not require institutions to provide information on groups of students who enter before July 1, 1996, the Secretary encourages institutions to disclose the completion or graduation rates for earlier groups. If an institution does disclose information on earlier groups, it should use the statutory methodology described below for counting the students it places in the completion or graduation rate denominator.

Section 668.46(a)(2)(ii) of these regulations proposes that an institution subsequently disclose its graduation rate no later than the October 1st following the lapsing of 150% of normal time for all certificate- or degree-seeking, full-time undergraduate students who enter between every July 1 and June 30. This date represents the latest time that an institution may disclose its graduation rate for that group, except in cases where 150% of normal time elapses on a date between July 1 and October 1. In those cases the Secretary will allow institutions to report no later than the following October 1.

In all cases, these regulations allow an institution to report earlier than the latest reporting date described above. For example, an institution may choose to report before the lapse of 150% of normal time. And, as discussed above, an institution that has programs of different lengths may choose to report on the basis of 150% of the normal time for its longest program, or a program other than its longest program, subject to the Secretary's expectations on this matter regarding the institution's "predominant" programs. But regardless of the length of the program on which the institution bases its disclosure date, each student would still be limited to 150% of normal time for his or her program to complete, graduate or transfer in order to count in the numerator of the institution's completion or graduation rate calculation. For example, the students enrolled in a two-year program at an institution would receive three years to complete or graduate in order to count as completers or graduates for these purposes, and students in a year-long program at the same institution would only receive eighteen months to complete or graduate, even if the institution bases its disclosure date on 150% of the normal time for the two-year program.

Under the flexible provisions of these regulations, an institution would have to decide the following: (a) Whether it will track students on a cohort basis, a program by program basis, or an individual basis; (b) whether its methodology will track the entire group of students who enter between July 1 and June 30, or will track some appropriate portion (e.g., fall enrollment); and (c) the length of the program on which the reporting date will be based.

For example, suppose an institution (a) uses a cohort methodology; (b) uses a fall only cohort, and admits students in the fall up to September 1; and (c) offers only four-year programs on a fall and spring semester schedule. The institution would tag students who enter during the fall of 1996, allow 150% of normal time to elapse (six years), and disclose its first graduation rate no later than October 1, 2002. That rate would be based on the percentage of students in the original cohort who completed or graduated no later than the end of the institution's sixth academic year at the end of the spring semester of 2002. If the institution had chosen to track the cohort of students who entered up to the beginning of the spring semester of 1997, rather than the fall only cohort, disclosure would take place no later than October 1, 2003, and would include all students who completed, graduated, or transferred as of the end of the fall semester of 2002.

If an institution (a) tracked students on a student by student basis, (b) tracked all students who entered between July 1 and June 30, and (c) offered two-year associate degree programs only, the latest that institution could disclose a graduation rate for students entering the institution between July 1, 1996 and June 30, 1997 would be October 1, 2000. This would allow 150% of normal time—that is, three years—to elapse for all students who entered up to June 30, 1997 and would include in the numerator of the fraction all students in the group who completed, graduated, or transferred by June 30, 2000.

If an institution (a) tracked on a program by program basis, (b) offered six-month programs, and (c) tracked students admitted to programs between July 1 and June 30, the last class entering the program by June 30, 1997 would complete 150% of normal time in March, 1998, and the institution would disclose its completion or graduation rate information on the entire group no later than October 1, 1998, reflecting students who completed, graduated, or transferred no later than the end of March 1998 (nine months after the beginning of the program).

Section 668.46(b)(1) of the proposed rules follows the statute in specifying that institutions count a student as having completed or graduated from his or her program only if the student completed or graduated from his or her program within 150% of the normal time for completion or graduation from that program, or, within that time frame, subsequently enrolled in any program of an eligible institution for which the prior program provided substantial preparation.

The Secretary is proposing institutional flexibility with respect to the determination of substantial preparation for transferring students, with the exception that the student must be in good academic standing at the time the student transfers to another eligible program. Each institution must document that substantial preparation has taken place in order to comply with the statute. However, unlike the provisions of the July 10, 1992 NPRM, the Secretary is not proposing regulations that specify the kinds of documentation an institution must collect as proof that a student has transferred. Rather, the Secretary asks for comments regarding which methods for documenting transfers the Department should accept as reasonable interpretations of the statute. For example, should the Department accept as sufficient proof of transfer a simple request that an academic transcript be sent to another institution? Or should the Department only accept a request made by an institution to which the student intends to transfer or has already transferred? The Secretary is also interested in comments proposing other methods for determining the number of students who transfer, other than a student by student count, that would fulfill the requirements of the statute. For example, should the

Department accept the use of a methodology by which an institution samples students who leave the institution and extrapolates from those data a transfer percentage reflecting the entire population?

Also in contrast with the July 10, 1992 NPRM, the Secretary does not propose in these regulations that the transferring student, in order to be counted as a completer or graduate, be required to enter a higher-level program. Several commenters on the earlier NPRM argued that counting only those students who transfer to higher-level programs unfairly penalizes institutions who prepared students to transfer to parallel or other programs. Since the statute only speaks to substantial preparation for a program, the Secretary would allow institutions to count as completers or graduates all transfers that the institution can document as transferring with substantial preparation. However, the Secretary solicits comments on whether this position sufficiently protects against potential abuses, and if there are alternative ways of providing relief in this area that may better protect against potential abuse.

In § 668.46(b)(1)(iii) the Secretary also proposes allowing institutions to count as a completer or graduate for these purposes a student who originally enrolled in a program longer than the program on which the institution bases its disclosure and who is still enrolled in that program and in good academic standing, so long as 150% of the normal time for completion or graduation for the student's program has not elapsed by the date the institution makes its completion or graduation rate information available. The Secretary believes that this is necessary to allow institutions to report on a basis earlier than 150% of normal time for their longest programs and not be penalized for their inability to count students who would complete or graduate from those longer programs. In this case, the Secretary believes that the value derived from encouraging an institution to report its completion or graduation rate information sooner rather than later outweighs any loss of precision that may arise from counting these students who are still enrolled in longer-term programs as completers or graduates. However, the Secretary reiterates the expectation that an institution use as the program on which it bases its reporting date a predominant or other program that best reflects the overall profile of the institution's program offerings.

The July 10, 1992 NPRM proposed the disclosure of what was essentially a persistence rate for all students until such time that the graduation rate could be disclosed. For institutions that wish to consider the disclosure of a persistence rate, the Secretary considers the use of a persistence rate as a reasonable proxy for a graduation rate until such time that the graduation rate can be disclosed. These proposed regulations, however, would not require that institutions disclose a persistence rate. The Secretary also notes that a persistence rate cannot substitute for the graduation rate mandated by the statute except in the limited circumstances regarding an enrolled student in a program longer than the program on which the institution's disclosure date is based, as described above.

The statute and § 668.46(b)(2) allow an institution to exclude certain students from the calculation of a graduation rate, namely, students who leave the institution to serve: In the Armed Forces; on official church mission assignments; and with a foreign aid service of the Federal Government, such as the Peace Corps. The Secretary also proposes in these regulations to allow an institution to exclude those students who have died, or are unable to continue enrollment because of a permanent and total disability. The Secretary believes that institutions should not be required to include these students in their completion and graduation rate calculation because these students are unable to complete or graduate.

Some commenters on the July 10, 1992 NPRM believed that documenting these statutory exclusions would be difficult. The Secretary notes that the statute and these regulations do not require an institution to exclude these students; rather, an institution may choose whether to do so.

In § 668.46(c) of these regulations the Secretary proposes that institutions disclose as part of their completion or graduation rate the separate ratios of the following to the denominator of the completion or graduation rate fraction: (1) The number of completers or graduates included in the numerator; (2) the number of transfer students included in the numerator; and (3) the number of students in good academic standing still enrolled in programs longer than the program the institution uses as the basis of its disclosure date included in the numerator. The Secretary believes that it is useful and important for students and potential students to have this breakdown of the completion or graduation rate on hand, because it allows them to separate the completion rate of students who received a degree or certificate from the rate of those students who transfer, and from the rate of those who are still persisting in longer programs. The Secretary also believes that this reporting requirement is not burdensome, as it only requires the reporting of details that the institution would have assembled in order to calculate its completion or graduation rate.

Section 668.46(d) of these proposed rules contains the statutory provision that authorizes the Secretary to waive the requirements of this section if the institution belongs to an athletic association or conference that publishes substantially comparable information, and if the institution, or athletic association or conference, satisfies the Secretary that this information is accurate and substantially comparable. An institution is still responsible for making this information available under the provisions listed in § 668.41(a)(3) even if it does successfully request waivers for this portion of the regulations.

Section 668.49 Report on Completion or Graduation Rates for Student Athletes

This section incorporates section 485(e) of the HEA by requiring each institution that awards athletically related student aid to disclose the completion or graduation rates of various student populations at the institution, including student athletes, beginning July 1, 1997.

Specifically, the statute and § 668.49(a) require an institution that awards athletically related student aid to disclose to the potential student-athlete and his or her parents, high school coach, and guidance counselor the following information at the time the institution makes the potential student-athlete an offer of athletically related student aid: (1) The number of students at the institution, categorized by race and gender, and (2) the number of those students, by sport, who receive athletically related student aid, categorized by race and gender. The Secretary proposes that the data under these provisions be based on students who attended the institution during the year preceding the year in which the institution discloses the data. This section would also require an institution to supply information concerning the completion or graduation rate for each category (race, gender, and sport) of these students within the group defined in §§ 668.46(a)(1)(i) and 668.46(a)(1)(ii) of these proposed rules. It also requires the provision of a four-year average of the graduation rates of the group of students defined in §§ 668.46(a)(1)(i) and 668.46(a)(1)(ii), categorized by race and gender. An institution that has completion or graduation rates for fewer than four classes would have to disclose the average rate of those classes for which it has rates.

For these purposes, a sport is defined by the statute, and § 668.49(a)(2) of these proposed regulations, as basketball; football; baseball; cross-country and track combined; and all other sports combined. A "sport" is also defined under the Equity in Athletics Disclosure Act, but it is defined in that statute to include all varsity teams. Normally the Secretary, as encouraged by the higher education community, prefers consistency of definitions under the student aid programs. However, in this case the Secretary has no discretionary authority under either statute to allow for consistent treatment. The Secretary does note that the institutions affected by this section of the proposed regulations are a subset of those covered by the Equity in Athletics Disclosure Act, and that they may obtain waivers to these provisions as described below.

In order to reduce burden on institutions, § 668.49(b) proposes that the calculation of graduation rates in this section follow the regulations contained in § 668.46(b) and (c).

The statute and § 668.49(c) of these proposed regulations provide that an institution may, if it so wishes, provide supplemental information to the Secretary, potential student-athletes, and others regarding: (1) The graduation rate of those students who transfer into the institution, and (2) the number of students who transfer out of the institution.

In addition, as under § 668.46(d), the Secretary is authorized to waive the requirements of this section if the institution belongs to an athletic association or conference that publishes substantially comparable information, and the institution, or conference or association applying on its behalf, satisfies the Secretary that this information is accurate and substantially comparable to the information this statute requires institutions to produce.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of the regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements. Burdens specifically associated with information collection requirements are identified and explained elsewhere in the preamble under the heading Paperwork Reduction Act of 1995.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on how to minimize potential costs or to increase potential benefits resulting from these proposed regulations consistent with the purposes of the Student Right-to-Know Act.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading: For example, § 668.46 *Report on completion or graduation rates*). (4) Is the description of the proposed regulating in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Mr. Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue SW. (room 5121, FOB–10), Washington, DC 20202–2241.

Paperwork Reduction Act of 1995

Sections 668.41, 668.46 and 668.49 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Student Right-to-Know.

These regulations affect the following types of entities eligible to participate in the Title IV, HEA programs: Educational institutions that are public or nonprofit institutions, and businesses and other for-profit institutions. The information to be collected includes the graduation rate of full-time, certificate- or degree-seeking undergraduate students entering the institution; the number of students attending the institution; the number of students attending the institution who received athletically related student aid, broken down by race and gender; the completion or graduation rate of full-time, certificate- or degree-seeking undergraduate students broken down by race and gender; the completion or graduation rate of full-time, certificate- or degree-seeking undergraduate students who received athletically related student aid, broken down by race and gender within each sport; and the average completion or graduation rate of full-time, certificate- or degree-seeking undergraduate students for the four most recent completing or graduating classes, broken down by race and gender. Institutions of higher education that participate in title IV, HEA programs will need and use the information required by these regulations to meet the eligibility requirements for participation in those programs that were added by the Student Right-to-Know Act. Institutions must make available to current and prospective students the information regarding completion or graduation rates of full-time, certificate- or degree-seeking, undergraduate students described above, and the general and completion or graduation rate information of students who received athletically related student aid to students offered athletically related student aid, and to the parents, coaches, and guidance counselors of those students. Institutions that award athletically related student aid must also provide a report to the Secretary of the completion or graduation rate information those institutions must provide to students offered athletically related student aid. The Secretary needs and uses this report to fulfill statutory requirements under the Student Right-to-Know Act to publish that information broken down by institution and athletic conference.

Information is to be collected and disclosed once each year for institutions covered by §§ 668.41(a)(3) and 668.46, and collected, disclosed, and reported to the Secretary once each year for institutions covered by §§ 668.41(b) and 668.49. Annual public reporting and recordkeeping burden is estimated to average 24.5 hours for each response for 8,000 respondents for § 668.46, and 24.5

hours for each response for 1,800 respondents for § 668.49. These hours include the time needed for searching existing data sources and gathering, maintaining and disclosing the data. Educational institutions that are public or nonprofit institutions or businesses or other for-profit institutions may participate in the Title IV, HEA programs. Institutions of higher education that participate in title IV, HEA programs will need and use the information required by these regulations to meet the eligibility requirements for participation in those programs that were added by the Student Right-to-Know Act. Thus, the total annual reporting and recordkeeping burden for this proposed collection is estimated to be 240,100 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3045, Regional Office Building 3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: September 14, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Intervention and Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c and 1141, unless otherwise noted.

2. Section 668.41 is amended by adding a new paragraph (a)(3); redesignating paragraph (b) as paragraph (c) and revising the newly redesignated paragraph (c); and by adding new paragraph (b) to read as follows:

§ 668.41 Scope and special definitions.

(a) * * *

(3) The institution's completion or graduation rate, produced in accordance with § 668.46.

(b)(1) Each institution participating in any title IV, HEA program, when it offers a potential student-athlete athletically related student aid, shall provide to the potential student-athlete, and his or her parents, high school coach, and guidance counselor, the information on graduation rates and other data produced in accordance with § 668.49.

(2) The institution shall also submit to the Secretary the report produced in accordance with § 668.49 by July 1, 1997 and by every July 1 thereafter.

(c) The following definitions apply to this subpart:

Athletically related student aid means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution in order to receive that assistance.

Full-time means the student workload, measured in credit or clock hours, that the institution customarily designates as a full-time workload.

Normal time means the amount of time necessary for a full-time student continuously attending the institution to complete a certificate or degree program.

Prospective students means individuals who have contacted an eligible institution requesting information concerning admission to that institution.

(Authority: 20 U.S.C. 1092)

3. Section 668.46 is added to subpart D, to read as follows:

§ 668.46 Information on completion or graduation rates.

(a) An institution shall prepare annually information regarding the completion or graduation rate of the certificate- or degree-seeking, full-time undergraduate students entering that institution on or after July 1, 1996.

(1)(i) An institution must base its completion or graduation rate calculation on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution between every July 1st and June 30th.

(ii) An institution shall count as entering students—

(A) First-time students; and

(B) Students who enter the institution by transfer.

(2)(i) Beginning with the group of students who enter the institution between July 1, 1996 and June 30, 1997,

an institution shall disclose its graduation or completion rate information no later than the October 1 immediately following the point in time when 150% of the normal time for completion or graduation has elapsed for all the students in the group.

(ii) An institution shall disclose no later than October 1 each year thereafter its completion or graduation rate information for each succeeding group of students who, as of the preceding June 30, completed or graduated within 150% of normal time for completion or graduation from their programs.

(b)(1) In calculating the completion or graduation rate under paragraph (a) of this section, an institution shall count as completed or graduated—

(i) Students who have completed or graduated within 150% of the normal time for completion or graduation from their program;

(ii) Students who, within 150% of the normal time for completion or graduation from the program in which the student was enrolled, subsequently enroll in any program of an eligible institution for which the prior program provides substantial preparation; or

(iii) Students who are in good standing and still enrolled in a program of greater length than the length of the program on which the institution bases its reporting date, unless 150% of the normal time for graduation or completion from that longer program has elapsed by the reporting date.

(2) For the purpose of calculating a completion or graduation rate, an institution may exclude from the calculation of completion or graduation rates students who—

(i) Have left school to serve in the Armed Forces;

(ii) Have left school to serve on official church missions;

(iii) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps; or

(iv) Are deceased, or totally and permanently disabled.

(c) In reporting the graduation or completion rate as calculated in paragraph (b) of this section, the institution shall, as part of its disclosure of its overall rate of graduation or completion rate, disclose the ratio of each of the following to the group:

(1) The number of students who graduated or completed, as described in paragraph (b)(1)(i) of this section.

(2) The number of students who transferred, as described in paragraph (b)(1)(ii) of this section.

(3) The number of students who are persisting in programs that are longer than the program on which the disclosure date is based, as described in paragraph (b)(1)(iii) of this section, if the institution includes these students in its graduation or completion rate.

(d)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (d)(1) of this section shall submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(Authority: 20 U.S.C. 1092)

4. Section 668.49 is added to subpart D, to read as follows:

§ 668.49 Report on completion or graduation rates for student-athletes

(a)(1) By July 1, 1997, and by every July 1 thereafter, each institution that is attended by students receiving athletically related student aid shall produce an annual report containing the following information:

(i) The number of students, categorized by race and gender, who attended that institution during the year prior to the submission of the report.

(ii) The number of students described in paragraph (a)(1)(i) of this section who received athletically related student aid, categorized by race and gender within each sport.

(iii) The completion or graduation rate of all the entering, certificate- or degree-seeking, full-time, undergraduate students described in § 668.46(a)(1)(i) and § 668.46(a)(1)(ii), categorized by race and gender.

(iv) The completion or graduation rate of the entering students described in § 668.46(a)(1)(i) and § 668.46(a)(1)(ii) who received athletically related student aid, categorized by race and gender within each sport.

(v) The average completion or graduation rate for the four most recent completing or graduating classes of entering students described in § 668.46(a)(1)(i) and § 668.46(a)(1)(ii), categorized by race and gender. If an institution has completion or graduation rates for fewer than four of those classes, it shall disclose the average rate of those classes for which it has rates.

(2) For purposes of this section, *sport* means—

(i) Basketball;

(ii) Football;

(iii) Baseball;

(iv) Cross-country and track combined; and

(v) All other sports combined.

(b) The provisions of § 668.46(b) and (c) apply for purposes of calculating the completion or graduation rates required under paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) of this section.

(c) Each institution of higher education described in paragraph (a) of this section may also provide to students and the Secretary supplemental information containing—

(i) The graduation or completion rate of the students who transferred into the institution; and

(ii) The number of students who transferred out of the institution.

(d) Section 668.46(d) applies for purposes of this section.

(Authority: 20 U.S.C. 1092)

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Part XII

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 55 and 59

Voluntary and Mandatory Egg and Egg Products Inspection; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55 and 59

[Docket No. PY–93–001]

RIN 0581–AA58

Voluntary and Mandatory Egg and Egg Products Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing the voluntary and mandatory egg and egg products inspection programs authorized by the Agricultural Marketing Act of 1946, as amended, and the Egg Products Inspection Act in response to new technology and current production and processing practices within the egg products industry. The revisions redefine dirty eggs; define nest-run eggs and washed ungraded eggs; and clarify the type of facilities and equipment to be supplied to the grader/inspector, officially identifying products, appeal procedures, equipment requirements, sanitizing shell eggs prior to breaking, and general operating procedures. The revisions also provide for less than quarterly visits to hatcheries and update the types of nonallowed discrimination in providing service.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, 202/720–3271.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purpose of Executive Order 12866 and therefore has not been reviewed by OMB.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirements contained in 7 CFR Parts 55 and 59 have been approved by the Office of Management and Budget and assigned OMB Control Numbers 0581–0146 and 0581–0113, respectively, under the Paperwork Reduction Act of 1980.

Background

The rule encompasses amendments for two separate, but related regulations. Regulations for voluntary inspection of egg products and grading (7 CFR Part 55) are authorized by the Agricultural Marketing Act of 1946, as amended, (AMA) (7 U.S.C. 1621–1627). These regulations cover several types of inspection and grading activities and product identification or certification which are not covered by the mandatory inspection regulations. Regulations for the mandatory inspection of eggs and egg products (7 CFR Part 59) are authorized by the Egg Products Inspection Act (EPIA) (21 U.S.C. 1034). The regulations require and provide for the continuous inspection of the processing of egg products and the control and disposition of restricted eggs. The EPIA and regulations were designed to provide a safe food source for the consuming public. The revisions will clarify and update the regulatory provisions commensurate with changes in industry technology and marketing practices, or are editorial in nature.

For the voluntary inspection program, the amendments update the types of prohibited discrimination (§ 55.11). They specify the facilities and equipment to be provided for sampling, weighing, and examination of product and the office space and equipment to be furnished (§ 55.95). Alternative work schedules also are provided (§ 55.96). The amendments provide for application of the official plant number at alternative locations on official labels (§ 55.310) and specify the permitted disposition of labels and packaging materials bearing official identification when inspection service is terminated by USDA (§ 55.330). The amendments also clarify appeal gradings and inspections including certificate issuance (§ 55.410 through § 55.460).

For the mandatory inspection program, the amendments redefine dirty eggs by deleting the term prominent stains. The amendments also define nest-run eggs and washed ungraded eggs (§ 59.5). The amendments also update the types of nonallowed discrimination (§ 59.17). The amendments provide a minimum of one visit each fiscal year to hatcheries since present operating practices pose minimal risk of incubator reject eggs or other restricted eggs from these operations entering consumer channels (§ 59.28). In official egg products plants, the amendments define or specify the following: time of inspection, basis of billing, and the type of facilities and equipment to be furnished by the plant (§§ 59.122 through 59.136). The amendments clarify the conditions under which labeling of product is to be corrected in the appeal procedure (§§ 59.300 through 59.360). They also clarify the labeling requirements with regard to approval, format, terminology, identification, and disposition (§§ 59.411 through 59.417). In addition, the amendments expand on equipment requirements and general plant operational procedures, including the shipment of nondenatured inedible, use of approved compounds, candling and transfer room facilities, and equipment and egg sanitizing requirements (§§ 59.502 through 59.515) due to changes in industry technology. The amendments also provide for liquid egg cooling and frozen egg defrosting with a definition of "cold tap water" (§§ 59.530 through 59.539). The disposition of restricted eggs and the labeling and sale of nest-run and washed ungraded eggs are further defined (§§ 59.720 through 59.801). The section dealing with imported shell eggs and egg products is revised to require that the date of production be provided for shell eggs, to exempt certain shell eggs imported for breaking from primary container labeling requirements, and to clarify tha provisions for relabeling imported egg products. (§§ 59.900 through 59.956).

Comments

AMS published proposed revisions in the **Federal Register** (60 FR 20054) on April 24, 1995, to the Regulations Governing the Voluntary Inspection of Egg Products and Grading in 7 CFR part 55 and to the Regulations Governing the Inspection of Eggs and Egg Products in 7 CFR part 59. A 60-day comment period was provided. Effective May 28, 1995, the voluntary and mandatory egg products inspection program activities were transferred from AMS to the Food Safety and Inspection Service (FSIS). AMS retained authority under EPIA for the shell egg surveillance program. This program requires quarterly visits to egg packers and hatcheries to determine the disposition of certain types of undergrade eggs.

In response to the notice of proposed rulemaking, AMS received sixteen comments, the majority of which addressed the shell egg surveillance portion of the regulations. The comments were received from six industry members, six State Governments, two industry associations, one university, and one State Government organization.

Three commenters expressed overall support of the proposal.

Several commenters responded to the proposal to change the number of inspection visits to hatcheries from each calendar quarter to once each fiscal year. Three commenters supported the proposal; one commenter supported the proposal, but questioned if even one visit a year was necessary; one commenter recommended eliminating all visits to hatcheries; and three commenters objected to the change because they believed that the reduced visits would increase the likihood of incubator rejects and other restricted eggs entering consumer channels.

When the regulations implementing the EPIA were promulgated, the Agency determined that hatcheries should be subject to quarterly inspections similar to shell egg packers packing eggs for the ultimate consumer. Hatcheries, in addition to supplying chicks to the poultry industry traditionally sold surplus shell eggs to the consuming public. Likewise, before the enactment of the EPIA, hatcheries could legally process restricted eggs into egg products which were sold for human consumption.

As the industry evolved from many small independent hatcheries to a fewer number of very large integrated firms, the volume of shell eggs supplied to consumer channels by hatcheries has diminished significantly. Additionally, incidents involving hatcheries processing restricted eggs for human consumption are a rare exception.

The Agency also considered other issues when it proposed reducing the required number of inspection visits to hatcheries. These considerations included recent reviews of the quarterly inspection reports which revealed only a few minor violations, such as recordkeeping and labeling; the increased emphasis and importance of biosecurity at all hatchery facilities; and a potential cost savings which would result from fewer visits to hatcheries.

Under the revision, hatcheries will be subject to a minimum of one inspection visit each fiscal year. However, if at anytime, the Agency has reason to believe that a hatchery is in violation of the EPIA and its regulations, the Agency is authorized to perform as many inspection visits as necessary to assure that the hatchery or any egg handler, for that matter, is in compliance with the Act.

The Agency is not making any changes as a result of the comments made in response to this revision. The regulations authorize and the Agency believes that inspection visits to hatcheries are an important vital part of its regulatory responsibilities. The revision reduces the number of required visits to a frequency that is in accordance with the current makeup of the industry while not limiting the Agency's ability to perform inspection visits and administer the program.

One commenter recommended utilizing funds saved by the reduction of inspection visits to hatcheries to perform inspection visits to distributors.

We did not accept the recommendation. In 1987, the Agency discontinued inspection visits to wholesalers/distributors except in cases such as performing destination gradings or following up on an alleged violation of the EPIA. The Agency decided to concentrate its inspection activities on the egg handlers packing eggs destined for the ultimate consumer and does not plan to resume routine inspection visits to wholesalers/distributors at this time except on a case-by-case basis. Funds saved will be used to administer other segments of the shell egg surveillance program in the most cost effective manner.

One commenter recommended revising the proposed definition of washed ungraded eggs to include "except some dirties or other obvious undergrades may have been removed."

The Agency did not accept the recommendation because the suggested addition did not describe washed ungraded eggs. The suggested addition more correctly describes nest-run eggs for which it is appropriate to remove obvious dirties and undergrade eggs to facilitate egg grading and/or processing. Washed ungraded eggs do not require this exception because dirties and undergrades have been either already eliminated by the washing operation or previously removed if the eggs were packed as nest-run.

One commenter expressed support of the proposal to revise the definition of dirty eggs and recommended that containers used to transport washed ungraded eggs be labeled with the size of the eggs in the lot to facilitate the standardization of total solids of liquid whole eggs.

We did not accept the recommendation to allow washed ungraded shell eggs to be identified by size because any such further identification could indicate that the product was intended for consumer sales by obscuring the fact that the product was nest-run eggs which had not been graded for quality. The purpose of defining washed ungraded shell eggs was to categorize shell eggs from inline operation facilities which could not be defined as nest-run eggs because they had been washed. In many inline operations, shell eggs move through washing equipment as part of the collection process. Management determines at a later time if the washed product will be sized and graded for quality or sold as a washed ungraded product.

One commenter expressed support for the revisions but recommended that the addition of previously frozen egg or egg products to unpasteurized liquid be permitted for the purpose of complying with liquid cooling requirements.

The Agency did not accept this recommendation. The addition of previously frozen egg or egg products to liquid product (either pasteurized of unpasteurized) for the purpose of complying with liquid cooling requirements is not a recommended good manufacturing practice due to the potential for contamination of the resultant liquid. We find it inappropriate to approve a procedure which has the potential to contaminate a product even if the product is subject to further processing (pasteurization).

One commenter generally supported the revisions but questioned the elimination of "or prominent stains" from the definition of dirty egg.

The Agency is making this change to make the regulations consistent with the language of the EPIA. Since the EPIA does not define dirty by prominent stains, the regulations should not include a stain criteria in its definition.

The commenter also took exception to the removal of the last sentence of 7 CFR 59.155.

When the Egg Products Inspection Act took effect on July 1, 1971, the subject sentence provided plants the authority to maintain possession of any egg products they had processed prior to July 1, 1971, and their inauguration of service. The sentence is out-of-date and obsolete and will be removed from the regulations.

Additionally, the commenter suggested that the word "place" in new paragraph 7 CFR 59.350(a) was too restrictive and that we should consider using "establishment" instead.

We did not accept this recommendation. The term "place" generally means any location where product is located, whereas the term "establishment" generally means the location of a business or firm where product is located. Accordingly, "place" is the least restrictive term to use when describing the location of product.

The Agency is also withdrawing from the final rule the proposal to define a recognized laboratory and a split sample (§ 59.5), the proposal to provide an alternate operating schedule (§ 59.124), the proposal to specify the requirements for blueprints, changes and approval (§ 59.146), and the proposal to specify the sampling of egg products (§ 59.580 (b), (d), and (e)). The current regulations for these sections will not be amended at this time pending further review by FSIS.

With the exception of the above changes, the regulatory text contained in the proposed rule is hereby adopted.

List of Subjects

7 CFR Part 55

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 59

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, title 7, Code of Federal Regulations, Parts 55 and 59 are amended as follows:

PART 55—REGULATIONS GOVERNING THE VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for Part 55 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 55.11 [Amended]

2. Section 55.11 is amended by removing the words "or national origin" and adding in its place "national origin, age or disability".

3. Section 55.95 is revised to read as follows:

§ 55.95 Facilities and equipment to be furnished for use of graders and inspectors in performing service on a resident inspection basis.

(a) Facilities and equipment for proper sampling, weighing, examination of products and monitoring processing procedures shall be furnished by the official plant for use by inspectors and graders. Such facilities and equipment shall include but not be limited to a room or area suitable for sampling product, and acceptable candling light, flashlight, heavy duty, high speed drill with an eleven sixteenths-inch or larger bit of sufficient length to reach the bottom of containers used for frozen eggs, metal stem thermometer(s), test thermometer(s), stop watch, test weighing scale(s) and test weight(s), test kit for determining the bactericidal strength of sanitizing solutions, and stationary or adequately secured storage box or cage (capable of being locked only by the inspector) for holding official samples.

(b) Acceptable furnished office space and equipment, including but not being limited to, a desk, lockers or cabinets (equipped with a satisfactory locking device) suitable for the protection and storage of supplies, and with facilities for inspectors and graders to change clothing.

4. Section 55.96 is amended by adding a sentence before the last sentence and revising the last sentence of the section to read as follows:

§ 55.96 Schedule of operation of official plants.

* * * * *

As an alternative, the normal operating schedule shall consist of a continuous 10-hour period per day (excluding not to exceed 1 hour for lunch), 4 consecutive days per week, within the administrative workweek, Sunday through Saturday for each full shift required. Graders are to be given reasonable advance notice by management of any change in the hours that grading service is requested.

5. In § 55.310, paragraph (b) is revised to read as follows:

§ 55.310 Form of official identification symbol and inspection mark.

* * * * *

(b) The inspection marks which are permitted to be used on products shall be contained within the outline of a shield and with the wording and design set forth in Figure 2 of this section, except the plant number may be preceded by the letter "P" in lieu of the word "plant". Alternatively, it may be omitted from the official shield if applied on the container's principal display panel or other prominent location and preceded by the letter "P" or the word "Plant".

6. In section 55.330, paragraph (c) is revised to read as follows:

§ 55.330 Unauthorized use or disposition of approved labels.

* * * * *

(c) Upon termination of inspection service in an official plant pursuant to the regulations in this part, all labels or packaging material bearing official identification to be used to identify product packed by the plant shall either be destroyed, or have the official identification completely obliterated under the supervision of a USDA representative, or, if to be used at another location, modified in a manner acceptable to the Service.

7. In § 55.410, paragraph (b) is amended by removing the words "in the regional office" and adding in its place "with the Regional Director in the region", and revising the heading of paragraph (a) to read as follows:

§ 55.410 Where to file an appeal.

(a) *Appeal of resident grader's or inspector's grading or decision in an official plant.* * * *

8. Section 55.420 is revised to read as follows:

§ 55.420 How to file an appeal.

The request for an appeal grading or inspection or review of a grader's or inspector's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the identity of the product, the decision which is questioned, and the reason(s) for requesting the appeal service. If such appeal request is based on the results stated on an official certificate, the original and all copies of the certificate available at the appeal grading or inspection site shall be provided to the appeal grader or inspector assigned to make the appeal grading or inspection.

§ 55.430 [Amended]

9. Section 55.430 is amended by adding after the words "or not substantial," the words "class, quality, quantity," and removing the word "such" after the words "reason(s) for".

10. Section 55.450 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and adding a new paragraph (a) to read as follows:

§ 55.450 Procedures for selecting appeal samples.

(a) Prohibition on movement of product. Products shall not have been moved from the place where the grading or inspection being appealed was performed and must have been maintained under adequate refrigeration, when applicable.

* * * * *

11. In § 55.460, the last sentence is revised to read as follows:

§ 55.460 Appeal certificates.

* * * * *

When the appeal grader or inspector assigns a different class to the lot or determines that a net weight shortage exists, the lot shall be retained pending correction of the labeling or approval of the product disposition by the National Supervisor.

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

12. The authority citation for part 59 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

13. Section 59.5 is amended by revising the definition for the term "Dirty egg" or "Dirties"; adding

alphabetically two new terms; and by removing the word "salmonella" and adding the word "Salmonella" in its place everywhere it appears in the Part.

§ 59.5 Terms defined.

* * * * *

Dirty egg or "Dirties" means an egg(s) that has an unbroken shell with adhering dirt or foreign material.

* * * * *

Nest-run eggs means eggs which are packed as they come from the production facilities without having been washed, sized and/or candled for quality, with the exception that some checks, dirties, or other obvious undergrades may have been removed.

* * * * *

Washed ungraded eggs means eggs which have been washed but not sized or segregated for quality.

* * * * *

§ 59.17 [Amended]

14. Section 59.17 is amended by removing the words "or national origin" and adding in its place "national origin, age, or disability".

15. Section 59.28 (a) (1) is amended by revising the last sentence and adding an additional sentence, to read as follows:

§ 59.28 Other inspections.

(a) * * *

(1) * * * In the case of shell egg packers packing eggs for the ultimate consumer (i.e., packed for direct use of household consumers, restaurants, institutions, etc.), such inspections shall be made a minimum of once each calendar quarter. Hatcheries are to be inspected a minimum of once each fiscal year.

* * * * *

16. Section 59.122 is revised to read as follows:

§ 59.122 Time of inspection.

The inspector who is to perform the inspection in an official plant shall be given reasonable advance notice by plant management of the hours when such inspection will be required.

17. Section 59.130 is amended by adding two sentences at the end of the section to read as follows:

§ 59.130 Basis of billing plants.

* * * In addition, fees will be charged and collected for certifications requested by and provided for the official plant that are not within the scope of these regulations. Unless otherwise provided in this part, the fees to be charged and collected for any service performed (other than an appeal) shall be based on the applicable rates specified in the Regulations Governing the Voluntary Inspection of Egg Products and Grading (7 CFR, 55.510 through 55.560).

18. In § 59.136, the heading and paragraph (a) are revised to read as follows:

§ 59.136 Facilities and equipment to be furnished by official plants for use of inspectors in performing service.

(a) Such facilities and equipment shall include but not be limited to a room or area suitable for sampling product, and acceptable candling light, flashlight, heavy duty, high speed drill with an eleven sixteenths-inch or larger bit of sufficient length to reach the bottom of containers used for frozen eggs, metal stem thermometer(s), test thermometer(s), stop watch, test weighing scale(s) and test weight(s), test kit for determining the bactericidal strength of sanitizing solutions, and stationary or adequately secured storage box or cage (capable of being locked only by the inspector) for holding official samples.

* * * * *

§ 59.155 [Amended]

19. Section 59.155 is amended by removing the last sentence of the section.

§ 59.300 [Amended]

20. Section 59.300 is amended by adding immediately after the word "class" the word ", quantity,".

§ 59.310 [Amended]

21. In section 59.310, paragraph (a) is amended by removing the word "from" in the heading and replacing it with the word "of", and in the first sentence, adding a comma followed by the word "quantity," immediately after the words "determination of the class", and adding a comma immediately after the words "left such plant".

22. Section 59.320 is revised to read as follows:

§ 59.320 How to file an appeal.

The request for an appeal inspection or review of an inspector's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the identity of the product, the decision which is questioned, and the reason(s) for requesting the appeal service. If such appeal request is based on the results stated on an official certificate, the original and all copies of the certificate available at the appeal inspection site shall be provided to the inspector assigned to make the appeal inspection.

23. A new § 59.330 is added to read as follows:

§ 59.330 When an application for an appeal grading or inspection may be refused.

When it appears to the official with whom an appeal request is filed that the reasons given in the request are frivolous or not substantial, or that the condition of the product has undergone a material change since the original grading or inspection, or that the original lot has changed in some manner, or the Act or the regulations in this part have not been complied with, the applicant's request for the appeal inspection may be refused. In such case, the applicant shall be promptly notified of the reason(s) for such refusal.

24. Section 59.350 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and adding a new paragraph (a) to read as follows:

§ 59.350 Procedures for selecting appeal samples.

(a) Prohibition on movement of product. Products shall not have been moved from the place where the inspection being appealed was performed and must have been maintained under adequate refrigeration when applicable.

* * * * *

25. Section 59.360 is amended by revising the last sentence to read as follows:

§ 59.360 Appeal inspection certificates.

* * * When the appeal inspector assigns a different class to the lot or determines that a net weight shortage exists, the lot shall be retained pending correction of the labeling or approval of the product disposition by the National Supervisor.

26. Section 59.411 is amended by revising (b)(1) and (c)(3), revising the first sentence of (c)(1) and (e), and revising the last sentence of (e)(3) to read as follows:

§ 59.411 Requirement of formulas and approval of labels for use in official egg products plants.

* * * * *

(b) * * *

(1) A statement showing by their common or usual names the kinds and percentages of the ingredients comprising the egg product. A range may be given in cases where the percentages may vary from time to time. Formulas are to be expressed in terms of a liquid product except for products which are dry blended. Also, for products to be dried, the label may show the ingredients in the order of descending proportions by weight in the dried form. However, the formula

submitted must include the percentage of ingredients in both liquid and dried form.

* * * * *

(c) * * *

(1) The common or usual name, if any, and if the product is comprised of two or more ingredients, such ingredients shall be listed in the order of descending proportions by weight in the form in which the product is to be marketed (sold), except that ingredients in dried products (other than dry blended) may be listed in either liquid or dried form. * * *

* * * * *

(3) The lot number or approved alternative code number indicating date of production;

* * * * *

(e) Nutrition information may be included on labels used to identify egg products, providing such labeling complies with the provisions of 21 CFR part 101, promulgated under the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. * * *

* * * * *

(3) * * * All labels showing nutrition information or claims are subject to review by the Food and Drug Administration prior to approval by the Department.

* * * * *

27. In § 59.412, paragraph (b) is revised to read as follows:

§ 59.412 Form of official identification symbol and inspection mark.

* * * * *

(b) The inspection mark which is to be used on containers of edible egg products shall be contained within the outline of a shield and with the wording and design set forth in Figure 2 of this section, except the plant number may be preceded by the letter "P" in lieu of the word "plant". Alternatively, it may be omitted from the official shield if applied on the container's principal display panel or other prominent location and preceded by the letter "P" or the word "Plant".

* * * * *

28. Section 59.415 is amended by revising the second sentence of the introductory text to read as follows:

§ 59.415 Use of other official identification.

* * * The plant number may be omitted from the identification if applied elsewhere on the container's principal display panel or other prominent location and preceded by the letter "P" or the word "plant".

* * * * *

29. In § 59.417, paragraph (c) is revised to read as follows:

§ 59.417 Unauthorized use or disposition of approved labels.

* * * * *

(c) Upon termination of inspection service in an official plant pursuant to these regulations, all labels or packaging materials indicating product packed by the plant which bear official identification shall either be destroyed under the supervision of the Service or, if used in another location, modified in a manner acceptable to the Service before use.

30. In § 59.502, paragraph (b) is revised to read as follows:

§ 59.502 Equipment and utensils; PCB-containing equipment.

* * * * *

(b) Except as authorized by the Administrator, in new or remodeled equipment and equipment installations, the equipment and installation shall comply with the applicable 3–A or E–3–A Sanitary Standards and accepted practices currently in effect for such equipment.

* * * * *

31. In § 59.504, the last sentence of paragraph (c) and paragraph (h) are revised to read as follows:

§ 59.504 General operating procedures.

* * * * *

(c) * * * In addition, product shipped from the official plant for industrial use or animal food need not be denatured or decharacterized, provided, that such product is properly packaged, labeled, segregated, and inventory controls are maintained, and that such product is shipped under Government seal and certificate and received at the destination location by an inspector or grader as defined in this part.

* * * * *

(h) Only germicides, insecticides, rodenticides, detergents, or wetting agents or other similar compounds which will not deleteriously affect the eggs or egg products when used in an approved manner and which have been approved by the Administrator, may be used in an official plant. The identification, storage, and use of such compounds shall be in a manner approved by the Administrator.

* * * * *

32. In § 59.506, paragraph (d) is revised to read as follows:

§ 59.506 Candling and transfer-room facilities and equipment.

* * * * *

(d) Candling devices of an approved type shall be provided to enable candlers to detect loss, inedible, dirty eggs, and eggs other than chicken eggs.

* * * * *

33. Section 59.515 is amended by removing the last sentence of paragraph (a)(8), removing (a)(9), and removing paragraph (c).

34. A new § 59.516 is added to read as follows:

§ 59.516 Sanitizing and drying of shell eggs prior to breaking.

(a) Immediately prior to breaking, all shell eggs shall be spray rinsed with potable water containing an approved sanitizer of not less than 100 ppm nor more than 200 ppm of available chlorine or its equivalent. Alternative procedures may be approved by the Administrator in lieu of sanitizing shell eggs washed in the plant.

(b) Shell eggs shall be sufficiently dry at time of breaking to prevent contamination or adulteration of the liquid egg product from free moisture on the shell.

35. In § 59.530, paragraph (g) is added to read as follows:

§ 59.530 Liquid egg cooling.

* * * * *

(g) Previously frozen egg or egg product cannot be added to liquid product for the purpose of complying with liquid cooling requirements.

36. In § 59.539, paragraph (d)(1) is revised to read as follows:

§ 59.539 Defrosting operations.

* * * * *

(d) * * *

(1) Frozen eggs packed in metal or plastic containers may be placed in running tap water (70 F° or lower) without submersion to speed defrosting.

* * * * *

37. Section 59.580 is amended by revising paragraph (c) to read as follows:

§ 59.580 Laboratory tests and analyses.

* * * * *

(c) Results of all analyses and tests performed under paragraphs (a) and (b) of this section shall be provided to the inspector promptly upon receipt by the plant. If samples of pasteurized products or heat treated dried egg whites, in addition to those described in paragraphs (a) and (b) of this section, are analyzed for the presence of Salmonella, the plant shall immediately advise the inspector of any such samples which are determined to be Salmonella positive.

* * * * *

38. In § 59.720, paragraphs (a)(1) and (b) are revised to read as follows:

§ 59.720 Disposition of restricted eggs.

(a) * * *

(1) Checks and dirties shall be labeled in accordance with § 59.800 and shipped directly or indirectly to an official egg products plant for segregation and processing. Inedible and loss eggs shall not be intermingled in the same container with checks and dirties.

* * * * *

(b) Eggs which are packed for the ultimate consumer and which have been found to exceed the tolerance for restricted eggs permitted in the official standards for U.S. Consumer Grade B shall be identified as required in §§ 59.800 and 59.860 and shall be shipped directly or indirectly:

(1) To an official egg products plant for proper segregation and processing; or

(2) Be regraded so that they comply with the official standards; or

(3) Used as other than human food.

* * * * *

39. Section 59.800 is amended by revising the next to last sentence to read as follows:

§ 59.800 Identification of restricted eggs.

* * * When eggs are packed in immediate containers, e.g., cartons, sleeve packs, overwrapped 2½- or 3-dozen packs, etc., for sale to household consumers under the exemptions provided for in section 59.100 (c), or (f), they shall be deemed to be satisfactorily identified in accordance with the requirements of this part if such immediate containers bear the packer's name and address and the quality of the eggs. * * *

40. In § 59.801, the section is revised to read as follows:

§ 59.801 Nest run or washed ungraded eggs.

Nest run or washed ungraded eggs are exempt from the labeling provisions in § 59.800. However, when such eggs are packed and sold to consumers, they may not exceed the tolerance for restricted eggs permitted in the official standards for U.S. Consumer Grade B shell eggs.

41. In § 59.905, paragraph (a) is revised to read as follows:

§ 59.905 Importation of restricted eggs or eggs containing more restricted eggs than permitted in the official standards for U.S. Consumer Grade B.

(a) No containers of restricted egg(s) other than checks or dirties shall be imported into the United States. The shipping containers of such eggs shall be identified with the name, address, and country of origin of the exporter, and the date of pack and quality of the eggs (e.g., checks, or dirties) preceded by the word "Imported" or the statement "Imported Restricted Eggs—For Processing Only In An Official USDA Plant," or "Restricted Eggs—Not To Be Used As Human Food." Such identification shall be legible and conspicuous. Alternatively, for properly sealed and certified shipments of shell eggs imported for breaking at an official egg products plant, the shipping containers need not be labeled, provided that the shipment is segregated and controlled upon arrival at the destination breaking plant.

* * * * *

§ 59.915 [Amended]

42. In § 59.915, paragraph (b)(8) is amended by adding after the words "shell eggs" the words ", including date of pack,".

§ 59.940 [Amended]

43. In § 59.940, the last sentence is removed.

44. In § 59.945, paragraph (b) is revised to read as follows:

§ 59.945 Foreign eggs and egg products offered for importation; reporting of findings to customs; handling of products refused entry.

* * * * *

(b) Consignees shall, at their own expense, return immediately to the collector of customs, in means of conveyance or packages sealed by the U.S. Department of Agriculture, any eggs or egg products received by them under this part which in any respect do not comply with this part.

* * * * *

45. Section 59.950 is amended by revising paragraphs (a)(3) and (a)(8), redesignating paragraph (b) as (c), and adding a new paragraph (b) to read as follows:

§ 59.950 Labeling of containers of eggs or egg products for importation.

(a) * * *

(3) The quality or description of shell eggs, including date of pack;

* * * * *

(8) The date of production and plant number of the plant at which the egg product was processed and/or packed.

(b) For properly sealed and certified shipments of shell eggs imported for breaking at an official egg products plant, the immediate containers need not be labeled, provided that the shipment is segregated and controlled upon arrival at the destination breaking plant.

* * * * *

46. Section 59.955 is amended by redesignating paragraph (b) as (c) and adding a new paragraph (b) to read as follows:

§ 59.955 Labeling of shipping containers of eggs or egg products for importation.

* * * * *

(b) For properly sealed and certified shipments of shell eggs imported for breaking at an official egg products plant, the shipping containers need not be labeled, provided that the shipment is segregated and controlled upon arrival at the destination breaking plant.

* * * * *

47. A new § 59.956 is added to read as follows:

§ 59.956 Relabeling of imported egg products.

(a) Egg products eligible for importation may be relabeled with an approved label under the supervision of an inspector at an official egg products plant or other location. The new label for such product shall indicate the country of origin except for products which are reprocessed (repasteurized, or in the case of dried products, dry blended with products produced in the United States) in an official egg products plant.

(b) The label for relabeled products must state the name, address, and zip code of the distributor, qualified by an appropriate term such as "packed for", "distributed by" or "distributors".

Dated: September 13, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–23193 Filed 9–20–95; 8:45 am]

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federal register

Thursday
September 21, 1995

Part XIII

Department of Education

Part A of Title I of the Elementary and Secondary Education Act of 1965, as Amended; Notice

DEPARTMENT OF EDUCATION

Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended

AGENCY: Department of Education.

ACTION: Notice exempting schoolwide programs under Part A of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, from statutory or regulatory requirements of other Federal education programs.

SUMMARY: The U.S. Secretary of Education (the Secretary) exempts schoolwide programs under Part A of Title I, ESEA, from complying with statutory or regulatory provisions of most Federal education programs, if the intent and purposes of those programs are met in the schoolwide program. This notice complements the final Title I regulations that were published in the **Federal Register** on July 3, 1995 (60 FR 34800). Those final regulations explain schoolwide programs in greater detail, including eligibility requirements and program components. This notice identifies which Federal education program funds and services may be incorporated in a schoolwide program and provides guidance on satisfying the intent and purposes of the programs included.

FOR FURTHER INFORMATION CONTACT: Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW (Portals Building, room 4400), Washington, D.C. 20202–6132. Telephone (202) 260–0826. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Schoolwide Programs in General

One of the most promising changes in the recent reauthorization of Title I, ESEA, is the expansion of schoolwide programs. A schoolwide program permits a school to use funds under Part A of Title I to upgrade the entire educational program of the school and to raise academic achievement for all children in the school, in contrast to a Title I targeted assistance program, in which Part A funds may be used only for supplementary educational services for eligible children. Under the reauthorized ESEA, this authority has now been expanded to include other Federal education funds (see the heading "Inclusion of other Federal Funds").

Schoolwide programs grew out of research about what makes schools work for disadvantaged students. Repeated findings show that the principals, teachers, and other staff in highly successful schools develop and carry out comprehensive schoolwide reform strategies and expect high academic achievement from every child. They establish safe environments that are conducive to learning and support enriched instruction in an expanded core of subjects. Over the years, researchers have documented that when the entire school is the target of change, schools serving even the most disadvantaged youth can achieve success.

Section 1114 of Title I authorizes a school with a concentration of poverty of at least 60 percent in the 1995–96 school year and 50 percent in subsequent years to use funds under Part A to operate a schoolwide program and upgrade the entire educational program in the school. Under section 1114(b) of Title I and § 200.8(d) of the final regulations, each schoolwide program must include a number of specific components. A schoolwide program school, for example, must conduct a comprehensive needs assessment of the entire school to determine the performance of its children in relation to the State's challenging content and performance standards; implement schoolwide reform strategies that are based on effective means of improving the achievement of children and that address the needs of all children in the school; use highly qualified professional staff; provide professional development for teachers and other staff; and implement strategies to increase parental involvement. Under a schoolwide program, a school is not required to identify particular children as eligible to receive Part A services, demonstrate that the services provided with Part A funds are supplemental to services that would otherwise be provided, or document that Part A funds are used to benefit only the intended beneficiaries.

Inclusion of Other Federal Education Funds

For the first time, a schoolwide program school may also use funds from other Federal education programs in addition to Part A funds to upgrade the entire educational program. Specifically, section 1114(a)(4) of Title I authorizes the Secretary, through publication of a notice in the **Federal Register**, to exempt schoolwide programs from statutory or regulatory provisions of any other noncompetitive, formula grant program or any discretionary grant program administered by the Secretary (other than formula or discretionary grant programs under the Individuals with Disabilities Education Act), if the intent and purposes of those programs are met.

This authority affords a schoolwide program school significant flexibility to serve better all children in the school and their families through comprehensive reforms of the entire instructional program, rather than by providing separate services to specific target populations. The Secretary emphasizes that a school with a schoolwide program must address the needs of all children in the school, particularly the needs of children who are members of the target population of any other Federal education program that is included in the schoolwide program.

Through this notice, the Secretary authorizes a schoolwide program school to use funds from most Federal education programs administered by the Secretary (including programs under the School-to-Work Opportunities Act, which is jointly administered by the Secretary and the U.S. Secretary of Labor) to support its schoolwide program. This authority also extends to services, materials, and equipment purchased with those funds and provided to the school. To provide schoolwide program schools maximum discretion in using resources from Federal education programs to their best advantage, the Secretary encourages local educational agencies (LEAs), to the extent possible, to provide Federal funds directly to those schools, rather than providing personnel, materials, or equipment.

Programs That May Be included

Except as provided below and consistent with this notice and section 1114 of Title I, the Secretary authorizes a schoolwide program school to use funds or services that the school receives from any Federal education program administered by the Secretary to upgrade its entire educational program. This authority does not apply to funds from the following types of programs:

- Formula or discretionary grant programs under the Individuals with Disabilities Education Act (excluded by section 1114(a)(4)(A) of Title I) and funds provided for eligible children with disabilities under section 8003(d) of the ESEA.
- Funds provided under the Schools Facilities Infrastructure Improvement Act to ensure the health and safety of students through the repair, renovation, alteration, and construction of school facilities.

- Programs under Subpart 1 of Part D of Title I, ESEA, to State agencies for services to children in State institutions for neglected or delinquent children, unless funds are used for transition services involving a schoolwide program school.
- Programs under the Adult Education Act or Subpart 3 of Part A of Title IX of the ESEA (adult Indians), unless adult literacy services are integrated within a schoolwide program plan. Adult education funds could be included, for example, if they provide adult literacy as part of a family literacy activity under a schoolwide program plan.
- Funds awarded to institutions of higher education, unless those funds support elementary or secondary schools (e.g., the School, College, and University Partnerships program).
- Programs that are not administered by the Secretary, such as the National School Lunch Program and Head Start.

In addition, the authority to use funds under other programs in schoolwide program schools does not apply to funds that are allocated by formula to nonschoolwide program schools in an LEA. This is not an authority to redistribute funds among schools. Any redistribution of funds would have to be consistent with the authorizing statute.

Satisfying "Intent and Purposes"

In general, a school that combines funds from other Federal education programs in a schoolwide program is not required to meet the statutory or regulatory requirements of those programs. Combining funds to meet the collective needs of the included programs allows schools to address needs in an integrated way and frees schools from documenting that a specific program dollar was spent only for a specific program activity. However, the school must meet the intent and purposes of the included programs to ensure that the needs of the intended beneficiaries of those programs are addressed by the school. In so doing, the school must be able to demonstrate that its schoolwide program contains sufficient activities to reasonably address those needs and thus meet the intent and purposes of each included program. However, the school need not document that it used funds from a particular program to meet the specific intent and purposes of that particular program.

The following examples illustrate how a schoolwide program could meet the intent and purposes of specific Federal education programs:

- A secondary school may use funds received under the Carl D. Perkins Vocational and Applied Technology Education Act to support its schoolwide program if its program improves vocational education in the school, for example, by integrating academic and vocational education, and its program improves access to vocational education for special populations in the school.
- A schoolwide program school may use funds received under the Dwight D. Eisenhower Professional Development program provided the school has a sustained and intensive high-quality professional development program for school staff in core academic subjects that is aligned with the State's content and performance standards, reflects recent research on teaching and learning, and incorporates methods and practices to meet the educational needs of diverse student populations.
- A schoolwide program school may use funds received under Subpart 1 of Part A of the Safe and Drug-Free Schools and Communities program provided the school has a comprehensive drug and violence prevention program designed for all students and employees to create a disciplined environment conducive to learning, prevent violence and promote school safety, prevent the use, possession, and distribution of tobacco, alcohol, and illegal drugs by students, and prevent the illegal use, possession, and distribution of those substances by employees.
- A school may use funds received under Subpart 1 of the Bilingual Education Act to support its schoolwide program provided the program implements a bilingual education or special alternative instruction program that reforms, restructures, and upgrades the programs and operations that serve limited-English proficient children and youth in the school.
- A secondary school may use funds received under the School-to-Work Opportunities Act to support its schoolwide program provided the program integrates school-based and work-based learning, establishes effective linkages between secondary and postsecondary education, and is part of a comprehensive State model school-to-work opportunities system that provides for the early selection of career majors and the awarding of skill certificates.

The Department will provide examples from schoolwide schools when they become available.

Requirements With Which a Schoolwide Program School Must comply.

Even though a schoolwide program school combines funds from other Federal programs in its schoolwide program and is thus freed from most statutory and regulatory requirements of those programs, the school and its LEA, as appropriate, must still comply with requirements applicable to those programs relating to—

- Health and safety requirements.
- Civil rights requirements. These requirements include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990. In addition, if a schoolwide program school receives Magnet Schools Assistance funds, to eliminate, reduce, or prevent minority group isolation, the school must continue to operate under its desegregation plan.
- Gender equity requirements.
- Participation and involvement of parents and students. A schoolwide program school must implement extensive parent involvement requirements under Part A that would likely satisfy most, if not all, parent involvement requirements in other Federal education programs.
- Private school children, teachers, and other educational personnel. In other words, applicable requirements concerning the equitable participation of eligible private school children, teachers, and other educational personnel under other Federal education programs must be met even though funds from those programs are combined in schoolwide program schools.
- Maintenance of effort. For programs covered under the maintenance of effort requirements in section 14501 of the ESEA, those requirements would be met through participation in Part A.
- Comparability of services. For example, a secondary schoolwide program school within an LEA that receives funds under the Carl D. Perkins State Vocational and Applied Technology Education Program must be provided services from State and local funds that, taken as a whole, are at least comparable to the services being provided in other secondary schools or sites within the same LEA that are not being served with Perkins funds.
- Use of Federal funds to supplement, not supplant non-Federal funds. In other words, a schoolwide program school must receive at least the same amount of State and local funds that, in

the aggregate, it would have received in the absence of the schoolwide program, including funds needed to provide services that are required by law for children with disabilities and children with limited-English proficiency. The school, however, does not have to demonstrate that the specific services provided with those funds are supplemental to services that would have been provided in that school in the absence of the schoolwide program.

- Distribution of funds to State educational agencies (SEAs) and LEAs.

In addition, a school must comply with the following requirements if it combines funds from these programs in its schoolwide program:

- Consistent with section 1306(b)(3) of Title I and § 200.8(c)(3)(ii)(B)(1) of the proposed Title I regulations, a schoolwide program school that combines funds received under Part C of Title I, ESEA, for the education of migratory children must, in consultation with parents of migratory children or organizations representing those parents, first address the identified needs of migratory children that result from the effects of their migratory lifestyle or are needed to permit those children to participate effectively in school and document that services to address those needs have been provided.
- Consistent with section 9115(c) of the ESEA and § 200.8(c)(3)(ii)(B)(2) of the Title I regulations, a schoolwide program school may combine funds received under Subpart 1 of Part A of Title IX of the ESEA regarding Indian education if the parent committee established by the LEA under section 9114(c)(4) of the ESEA approves the inclusion of those funds.

Cross-cutting Federal Requirements

There are requirements contained in the General Education Provisions Act and in the Education Department General Administrative Regulations that apply generally to Department of Education grants, including Title I. To the extent that these requirements affect activities in schools, they would also apply to a schoolwide program school by virtue of its participation in Title I. The consolidation of Department programs in a schoolwide program, however, would not add to these requirements or require that they be applied separately on a program-by-program basis.

Discretionary Grant Funds

In general, a schoolwide program school may combine funds it receives from discretionary (competitive) grants as well as from formula grants. If a schoolwide program school combines funds from discretionary grant programs, the school must still carry out the activities described in the application under which the funds were awarded. For example, if a schoolwide program is based in a school receiving Federal funds under the Magnet Schools Assistance program, the school must implement activities described in its plan to eliminate, reduce, or prevent minority group isolation. However, a schoolwide program school would not need to account separately for specific expenditures of the combined Federal funds. Although not required, the applicant LEA or school preferably should indicate in its application for discretionary funds that some or all of the funds would be used to support a schoolwide program and describe its activities accordingly. Moreover, if authorized by the program statute, the Department or an SEA could include in its selection criteria for a particular program extra points for conducting activities in a schoolwide program school. For example, an SEA could include such points when awarding subgrants under the Even Start Family Literacy program, which requires an SEA to give priority to applicants that target services to families in need of family literacy services residing in areas with high levels of poverty, illiteracy, or other such need-related factors, including projects that serve a high percentage of children to be served who reside in participating areas under Part A.

Limitations

The authority in this notice does not apply to nonschoolwide program schools that participate in Title I. Those schools must comply with all statutory and regulatory requirements that apply to funds or benefits they receive. This authority also does not relieve an LEA from complying with all requirements that do not affect the operation of a schoolwide program. For example, to the extent an LEA is required under the Stewart B. McKinney Homeless Assistance Act to designate a homeless liaison to ensure, among other things, that homeless children and youth enroll and succeed in school, the LEA would not be relieved of this requirement by virtue of operating one or more schoolwide programs.

Guidance and Technical Assistance

The Secretary intends to issue additional guidance on schoolwide programs in the near future. In addition, staff in the office of Compensatory Education Programs, in conjunction with staff in the other affected Federal program offices, are available to assist LEAs and schools operating schoolwide programs to implement the authority contained in this notice. If LEAs or schools have specific questions, they should contact Mary Jean LeTendre, Director, Compensatory Education Programs, as provided at the beginning of this notice.

National Assessment of Schoolwide Programs

The Department is directed by section 1501 of Title I to examine, in a national assessment of Title I programs, how well schools are providing participating children an enriched and accelerated educational program through schoolwide programs and how schoolwide programs are meeting the needs of children from migratory families. In this assessment, the Department will examine how the authority contained in this notice has been implemented.

Dated: September 15, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.010, Improving Programs Operated by Local Educational Agencies)

[FR Doc. 95–23471 Filed 9–20–95; 8;45 am]

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federal register

Thursday
September 21, 1995

Part XIV

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC17

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions (General Provisions) regulations. The General Provisions regulations govern elements common to all the Federal Student Financial Aid programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA) (hereafter Title IV Programs). These amendments would modify the Secretary's Federal Family Education Loan (FFEL) Program default reduction initiative and implement default prevention measures in the William D. Ford Federal Direct Loan (Direct Loan) Program. These regulations would streamline the Secretary's ability to take limitation, suspension, and termination (L,S, and T) action against an institution and would prevent an institution from evading the consequences of a high FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate.

DATES: Comments must be received on or before October 31, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mr. Douglas Laine, Program Specialist, Direct Loan Policy Group, Policy Development Division, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. Comments may also be sent through the internet to DIRECT__LOANS@ED.GOV.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Laine, Program Specialist, Direct Loan Policy Group, Policy Development Division, U.S. Department of Education, 600 Independence Avenue, SW, room 3045, Regional Office Building 3, Washington, DC 20202–5400, telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is proposing to revise 34 CFR part 668 to enhance the Secretary's FFEL Program default reduction initiative and provide additional default prevention measures in the Direct Loan Program. The Secretary first published regulations to begin the FFEL Program default reduction initiative on June 5, 1989. This gave the Department the authority to take action to limit, suspend or terminate an institution's participation in the Title IV programs based on a high FFEL Program cohort default rate. The June 5, 1989 regulations provided that the Department may take L, S, and T action against an institution if it has an FFEL Program cohort default rate that exceeds 40 percent.

On July 19, 1991, the Secretary further expanded the default reduction initiative to reflect new legislation that made an institution ineligible to participate in the FFEL Program if that institution had a high FFEL Program cohort default rate for three consecutive years, unless the institution could demonstrate to the Secretary that exceptional mitigating circumstances would make the loss of eligibility inequitable. Currently, under that legislation, an institution is subject to the loss of eligibility if it has an FFEL Program cohort default rate that equals or exceeds 25 percent for three consecutive fiscal years. Under the exceptional mitigating circumstances criteria in the Department's regulations, an institution may appeal this loss of eligibility if it can demonstrate to the satisfaction of the Secretary that it has a completion and placement rate of at least 66.6 percent, and either less than 15 percent of its students borrow under the FFEL Program or at least 66.6 percent of its students come from economically disadvantaged backgrounds.

The Direct Loan Program was authorized by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) with the first loans made in July 1994. When the Direct Loan Program was authorized, the statute mandating the calculation of FFEL Program cohort default rates was not revised to include Direct Loan Program loans. Moreover, the statute authorizing the Direct Loan Program does not specifically require the Secretary to calculate a similar rate for institutions that participate in the Direct Loan Program or contain a specific provision under which an institution would lose its eligibility to participate in the Direct Loan Program based on a default rate. The Secretary has determined, however, that it is appropriate to establish a measurement similar to the FFEL cohort default rate in the Direct Loan Program. Therefore, the Secretary is proposing in regulations to define a measurement similar to the FFEL Program cohort default rate under the Direct Loan Program, a "cohort rate" for Direct Loans, and to establish similar institutional eligibility requirements based on the repayment of Direct Loans by the institution's former students. The Secretary is proposing this change because FFEL Program cohort default rates have been a useful measure of institutional performance and have provided the Secretary an effective means to reduce defaults by removing high default institutions from participation in the FFEL Program. The potential loss of eligibility to participate in the FFEL Program based on high FFEL Program cohort default rates provides a powerful incentive for institutions to keep their FFEL Program cohort default rates low. This has resulted in increased protection for students and taxpayers, and has improved the integrity of the FFEL Program.

As in the FFEL Program, the Secretary proposes that exceptional mitigating circumstances be taken into consideration in determining whether an institution may continue to participate in the Direct Loan Program on the basis of its cohort rate. Further, the Secretary is proposing to modify the regulations for the FFEL Program to simplify the cohort default rate appeal process and to establish fair and reasonable measures for exceptional mitigating circumstances, while reducing the substantial burden on institutions and the Department that exists under the current regulations. Exceptional mitigating circumstances under the Direct Loan and FFEL Programs would be the same.

Finally, to make the L, S, and T process more effective, the Secretary is proposing to streamline the current L, S, and T procedures and to limit the grounds on which the institution may appeal when the L, S, or T action is warranted by high default rates. The current L, S, and T procedures are exceedingly lengthy and have not effectively protected students and Federal taxpayers from institutions whose high FFEL Program cohort default rates are evidence of abuse of the Title IV programs. Additionally, the Secretary is proposing to prescribe timeframes that would reduce the amount of time an L, S, and T action would take to complete. Finally, the Secretary is proposing to remove the "Appendix D defense" which contains measures for an institution to follow to help the institution to reduce its cohort default rate. The Secretary believes that the measures included in the Appendix D defense, while effective for helping an institution reduce its default rate, do not support the continuation of a high FFEL Program cohort default rate institution's participation in the Title IV programs. The Secretary is proposing that the only means by which an institution may successfully appeal an L, S, and T action against its participation in the Title IV programs is to demonstrate to the hearing officer that its FFEL Program cohort default rate, Direct Loan Program cohort rate, or if applicable, weighted average cohort rate, is inaccurate, and that a correct recalculation of the rate would result in the institution having a rate that is beneath the thresholds that make the institution subject to L, S, and T action.

Proposed Regulatory Changes

Due to the complex nature of these proposed regulations, a chart is provided in each major section of the preamble that provides an overview of the proposed changes.

Section 668.17 Default Reduction and Prevention Measures

L, S, and T Authority. The proposed regulations would provide the Secretary with the authority to take L, S, and T action against an institution if it has an FFEL Program cohort default rate, a Direct Loan Program cohort rate, or, if applicable, a weighted average cohort rate that is greater than 40 percent for a fiscal year. The Secretary is proposing this 40 percent threshold to make his authority to take L, S, and T action against an institution participating in the Direct Loan Program comparable with such authority under the FFEL Program.

The proposed regulations would also provide the Secretary with the authority to take L, S, and T action against an institution's participation in the FFEL Program if it has any combination of an FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, a weighted average cohort rate that equals or exceeds 25 percent for three consecutive fiscal years. Having a combination of these rates for three consecutive fiscal years is analogous to having FFEL Program cohort default rates that exceed the thresholds for three consecutive years. The Secretary is proposing this measure to prevent an institution that would not be eligible to participate in the Direct Loan Program based on consecutively high Direct Loan Program cohort rates or weighted average cohort rates from participating in the FFEL Program. The Secretary believes that this action is consistent with the statutory requirement that institutions with consecutively high default rates lose their eligibility to participate in the FFEL Program.

ACTION TAKEN AGAINST SCHOOLS BY TYPE OF RATE

Type of rate	Direct loan program schools	FFEL program schools
40+ percent FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate for one year.	L, S, and T for Title IV	L, S, and T for Title IV.
25 percent or greater Direct Loan Program cohort rate for three consecutive years.	Loss of eligibility for Direct Loan Program.	L, S, and T for FFEL Program.
25 percent or greater weighted average cohort rate for three consecutive years.	Loss of eligibility for Direct Loan Program.	L, S, and T for FFEL Program.

Direct Loan Program cohort rate and weighted average cohort rate. The Secretary proposes to calculate a Direct Loan Program cohort rate or weighted average cohort rate to use as a measure to determine if an institution should remain eligible to participate in the Direct Loan Program. The Secretary is proposing to use different formulas to calculate these rates for different sectors of institutions.

For a public institution, private nonprofit institution, or degree-granting proprietary institution, the Secretary proposes to calculate a Direct Loan Program cohort rate or weighted average cohort rate based on the number of an institution's current and former students who enter repayment on a Direct Loan in a fiscal year and who, by the end of the following fiscal year, are in default on those loans. This is the same formula the Secretary is required by section 435(a) of the HEA to use to calculate cohort default rates under the FFEL Program.

For non-degree-granting proprietary institutions, the Secretary is proposing to calculate Direct Loan Program cohort rates or weighted average cohort rates based on the percentage of students who enter repayment in a fiscal year and who, by the end of the following fiscal year, are either in default or are in repayment under the income contingent repayment (ICR) plan, and have scheduled monthly payments that are less than $15 per month, and that payment is less than the interest that is accruing on the loan (i.e., in negative amortization).

If there are both FFEL Program and Direct Loan Program loans entering repayment in the institution's cohort, the Secretary will calculate a weighted average cohort rate for the institution. As in the FFEL Program, the Secretary will base the Direct Loan Program cohort rate or weighted average cohort rate on borrowers, not loans. For example, if a student enters repayment on both FFEL Program and Direct Loan Program loans so as to be in the same cohort, the student will be counted only once in the calculation used to calculate the rate. However, an institution will continue to have an FFEL Program cohort default rate as long as it has former students entering repayment on FFEL Program loans. Such an institution will continue to be subject to loss of eligibility to participate in the FFEL Program or be subject to L, S, and T action based on its FFEL Program cohort default rate.

A "weighted average" cohort rate is calculated by taking the percentage of students who entered repayment on FFEL Program and Direct Loan Program loans in a fiscal year received for attendance at the institution (or on the portion of a loan made under the Federal Direct Consolidation Loan or Federal Consolidation Loan Programs that is used to repay those loans), who are in default before the end of the fiscal year immediately following the year in which they entered repayment, and, for non-degree-granting institutions, are in repayment under the income contingent repayment plan at the end of that following fiscal year and have scheduled payments that are less than $15 per month and that payment results in negative amortization.

BORROWERS INCLUDED IN TYPES OF RATES

Type of institution	Type of rate	Defaulted borrowers	ICR component
Public, private-nonprofit, and degree-granting proprietary institutions.	FFEL Program Cohort Default Rate	Yes	No.
	Direct Loan Program Cohort Rate	Yes	No.
	Weighted Average Cohort Rate	Yes	No.
Non-Degree-Granting Proprietary Institutions.	FFEL Program Cohort Default Rate	Yes	No.
	Direct Loan Program Cohort Rate	Yes	Yes.
	Weighted Average Cohort Rate	Yes	Yes.

If an institution has less than 30 former students entering repayment in a fiscal year on Direct Loan and FFEL Program loans received at that institution, the Secretary will calculate the institution's Direct Loan Program cohort rate or weighted average cohort rate for that fiscal year based on the institution's former students who enter repayment on their Direct Loans or FFEL Program loans over the three most recent fiscal years.

A loan will be considered in default for purposes of a Direct Loan Program cohort rate or weighted average cohort rate for all institutions if a borrower or endorser has failed to make an installment payment when due provided that this failure has persisted for 270 days. The Secretary has chosen 270 days because this closely approximates the date a default claim is paid under the FFEL Program. The date a default claim is paid by a guaranty agency is used as the date the loan defaults for FFEL Program cohort default rates. A loan will not be considered in default if, after going into default, the borrower has made 12 consecutive on-time monthly payments under 34 CFR 685.211(e) on the loan before the end of the fiscal year following the fiscal year the loan entered repayment.

The Secretary has chosen to include a minimum payment component in defining the Direct Loan Program cohort rate and weighted average cohort rate for non-degree-granting proprietary institutions for several reasons. The Secretary believes that this is an appropriate performance-based measure to assess a borrower's ability to repay a student loan and the institution's quality of training. The Secretary is concerned that without such a measure an institution could have a low Direct Loan Program cohort rate or weighted average cohort rate when its former students are only making minimal payments on their loans. The Secretary believes that this measure is needed to prevent an institution from effectively avoiding the effects of its failure to provide appropriate training by encouraging its students to repay their loans under the ICR plan. Under the ICR plan, a borrower with a low income may have scheduled monthly payments that are very low or zero. The $15 payment rate was chosen because it is the approximate amount a borrower would have to pay if his or her income is at the poverty level as determined by the Department of Health and Human Services. The Secretary believes that if a sufficient proportion of borrower incomes is so low that the scheduled monthly payments for those borrowers under the ICR program are less than $15 per month and those payment amounts result in negative amortization, this is generally evidence that the institution has not provided those borrowers with the education or training needed to obtain gainful employment that can provide the borrowers with sufficient incomes to repay the student loans incurred to attend the institution. The Secretary believes that such loans would likely go into default if the ICR plan were not available. The negative amortization factor was included with the $15 dollar payment in order to exclude from the default calculation borrowers with incomes much higher than the poverty level who have small debts. The Secretary is proposing to use the minimum payment rate for non-degree-granting proprietary institutions because these institutions are in business to provide students with education or training needed to secure employment. A borrower's repayment schedule under the ICR plan will directly reflect the value of the education or training provided by the institution in the marketplace. Further, the former student borrowers of non-degree-granting proprietary institutions are at the highest risk of default among all the sectors of institutions and the Secretary believes that for this reason, the use of the ICR plan by former students of these institutions be closely monitored.

The Secretary invites public comment regarding the use of the minimum payment under the ICR plan that may be used for the Direct Loan Program cohort rate for certain sectors of institutions. In addition, the Secretary is interested in knowing if the public believes the Secretary should implement measures to prevent an institution from evading the proposed rules under which a Direct Loan Program cohort rate and weighted average cohort rate are calculated for non-degree-granting proprietary institutions if such an institution switched to a non-profit status. The Secretary is also interested in receiving public comment regarding other possible measures that may be used to determine if an institution should be able to continue to participate in the Direct Loan Program or FFEL Program. The Secretary is especially interested in public comment on the following possible alternative measures to determine if an institution should continue to participate in the Direct Loan Program: (1) A percentage of Direct Loan borrowers paying under the ICR plan whose scheduled payments are less than the amount of interest that accrues monthly on their loans, i.e., in negative amortization, and (2) a percentage of the institution's former students who are making payments under the ICR plan whose income is less than a certain amount, such as $15,000 (because income is a major factor in calculating monthly payments under the ICR plan).

The Secretary is also interested in public comment regarding a measure for borrowers for whom payment has been deferred for an extended period of time under the economic hardship or

unemployment deferment or forbearance. The Secretary is considering using such a measurement to trigger L, S, and T action against an institution participating in the FFEL and Direct Loan programs if a high percentage of its former students have forborne repayment on their loans or have deferred repayment on their loans for an extended period of time because of unemployment or economic hardship. Similar to the Secretary's concern that institutions may attempt to evade the consequences of a high Direct Loan Program cohort rate or weighted average cohort rate by encouraging students to use the ICR plan, the Secretary is concerned that institutions are evading the consequences of a high FFEL Program cohort default rate by encouraging and assisting a high percentage of their former students to obtain deferments or forbearance solely for the purpose of keeping their loans out of default until the period the Department uses to calculate FFEL Program cohort default rate has elapsed. Because a deferment or forbearance generally lasts for one year, an institution generally needs to assist a former student to obtain only one deferment or forbearance to ensure that the former student does not default during the period the Department uses to calculate the FFEL Program cohort default rate. Finally, the Secretary specifically requests comment regarding how a borrower who has a scheduled ICR payment of less than $15 and who would qualify for the economic hardship deferment should be treated in the Direct Loan Program cohort rate or weighted average cohort rate calculation.

Loss of eligibility to continue to participate in the Direct Loan Program. An institution with any combination of an FFEL Program cohort default rate, a Direct Loan Program cohort rate, or a weighted average cohort rate calculated by the Secretary that is equal to or greater than 25 percent for three consecutive fiscal years would cease to be eligible to participate in the Direct Loan Program beginning 30 days from the date it receives notification of the loss of eligibility unless it can demonstrate to the satisfaction of the Secretary that exceptional mitigating circumstances would make the loss of eligibility inequitable. The Secretary will place such an institution on reimbursement until the 30th day following the institution's receipt of the notification of the loss of eligibility or, if the institution appeals, until the appeal is decided. Once the institution's appeal is decided, the Secretary will take the institution off reimbursement only if the appeal is successful. If the appeal is denied, the institution will not be eligible to participate in the Direct Loan Program for the remainder of the current fiscal year plus the following two fiscal years.

ELIGIBILITY STATUS OF INSTITUTIONS WITH HIGH RATES

Type of rate	Direct loan program	FFEL program
25 percent or greater FFEL Program cohort default rate for three consecutive years.	Loss of eligibility for Direct Loan Program.	Loss of eligibility for the FFEL Program.
25 percent or greater Direct Loan Program cohort rate for three consecutive years.	Loss of eligibility for Direct Loan Program.	L,S, and T for FFEL Program only.
25 percent or greater weighted average cohort rate for three consecutive years.	Loss of eligibility for Direct Loan Program.	L,S, and T for FFEL Program only.

The Secretary has chosen to eliminate institutions from the Direct Loan Program based on high cohort rates for several reasons. First, the Secretary believes it is imperative that institutions that would have high FFEL Program cohort default rates not be able to evade the consequences of that rate by participating in the Direct Loan Program, which currently has no default rate definition. Second, the Secretary is firmly committed to protecting students and Federal taxpayers from unscrupulous institutions that participate heavily in the loan programs but do not provide quality educational services to their students. The sanctions the Secretary is authorized to impose under the HEA and regulations on institutions that participate in the FFEL Program have proven to be a successful way to protect students, the Federal taxpayer, and the integrity of the loan programs. Therefore, the Secretary is proposing these regulations to provide him with the authority to take similar actions against institutions that have a high percentage of students that do not repay their Direct Loan Program loans.

The Secretary does not have the authority to amend or add to the definition of the FFEL Program cohort default rate because that definition is specifically mandated in statute. The Secretary is, therefore, prohibited from adding to the FFEL Program cohort default rate a component that measures a minimum payment amount. The Secretary also does not have the authority to immediately terminate an institution's eligibility to participate in the FFEL Program if it has a Direct Loan Program cohort rate or weighted average cohort rate that equals or exceeds 25 percent for three consecutive years. This means that an institution could have an FFEL Program cohort default rate of 25 percent or more for two years and a Direct Loan Program cohort rate of 25 percent for one year and remain eligible for the FFEL Program after it has lost its eligibility to participate in the Direct Loan Program. In this case, the Secretary will take L, S, and T action against the institution's participation in the FFEL Program.

Under these proposed rules, if an institution's former students enter repayment under both the FFEL Program and the Direct Loan Program in a fiscal year, the Secretary would calculate a weighted average cohort rate to determine if an institution would lose its eligibility to participate in the Direct Loan Program. The Secretary will continue to use only FFEL Program loans to calculate an FFEL Program cohort default rate for that institution which will trigger a statutory loss of eligibility to participate in the FFEL Program. True equity between the Direct Loan and FFEL programs on this issue would require a statutory change that gives the Secretary authority to establish, in regulations, institutional eligibility requirements for the FFEL Program similar to the statutory authority for the Direct Loan Program, thus allowing him to move quickly to terminate any institution's participation in the FFEL Program when that institution's FFEL Program cohort default rate, Direct Loan cohort rate, or weighted average cohort rate warrants an action. The loss of eligibility provision in section 435 (a) of the HEA does not authorize the Secretary to make an institution ineligible to participate in the FFEL Program if it has Direct Loan Program cohort rates or weighted average cohort rates that exceed 25 percent for three consecutive years. However, under these regulations, the

Secretary will consider excessive Direct Loan Program cohort rates or weighted average cohort rates as a basis to take L, S, and T action against an institution's participation in the FFEL Program.

In addition to establishing this strict eligibility requirement under the Direct Loan Program, the Secretary will provide Direct Loan institutions with certain tools to help manage and reduce their Direct Loan Program cohort default rates. While the Secretary believes that the repayment plans available under the Direct Loan Program, coupled with the frequent borrower contact maintained by the Department's loan servicing efforts, will result in fewer defaults than in the FFEL Program, the Secretary is committed to developing, and making available to institutions, tools that will enable them to work effectively with borrowers to prevent defaults. These tools will include reports on delinquent borrowers, access to borrower information on the toll-free servicing telephone number, and free loan counseling materials for use during both entrance and exit interviews with borrowers. The Secretary invites public comment on the types and frequency of assistance that institutions need to help prevent Direct Loan defaults.

Exceptional Mitigating Circumstances. The Secretary proposes to modify the exceptional mitigating circumstances and the appeal process under which an institution may appeal the statutory loss of its eligibility to participate in the FFEL Program and the proposed loss of its eligibility to participate in the Direct Loan Program. Exceptional mitigating circumstances would be the same for both the Direct Loan and FFEL Programs. The Secretary believes that the current standards for exceptional mitigating circumstances are burdensome on an institution and administratively difficult for the Department to administer. For these reasons, the Secretary is proposing to change the exceptional mitigating circumstances and require that any appeal based on an exceptional mitigating circumstance be verified by an independent auditor prior to its submission to the Secretary. Under the proposed rules, any of the following criteria may be used as exceptional mitigating circumstances:

Exceptional Mitigating Circumstances

1. Participation Rate Index equal to or less than 0.0375 (Rate times percentage of students participating in the FFEL or Direct Loan programs)
2. 70 percent or greater completion rate and 70 percent or more students come from economically disadvantaged backgrounds, for public or private-nonprofit institutions.
3. 50 percent or greater placement rate and 70 percent or more students come from economically disadvantaged backgrounds, for proprietary institutions.

- Participation rate index: The participation rate index is a new criterion based on an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate and the percent of an institution's students who were enrolled on at least a half-time basis that borrow under the FFEL or Direct Loan programs. This rate would be calculated by multiplying the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, its weighted average cohort rate by the percent of the institution's students who were enrolled on at least a half-time basis that borrowed under that loan program during a 12-month period that ended during the six months immediately preceding the fiscal year used to determine the cohort of borrowers for the institution's rate. If this product is equal to or less than 0.0375, the institution would meet an exceptional mitigating circumstance. The Secretary has chosen 0.0375 as the participation rate index standard because, under the current mitigating circumstances, a borrower participation rate of 15 percent or less is acceptable as part of one of the exceptional mitigating circumstances. A cohort default rate of 25 percent for three consecutive years was the minimum rate that would trigger loss of eligibility. The Secretary has formulated the 0.0375 participation rate index criterion based on these percentages; 0.25×0.15=0.0375. Therefore the Secretary is proposing to use 0.0375 as the index.

For example, under this formula, an institution with an FFEL Program cohort default rate of 28 percent and a student borrower participation rate of 13 percent would be able to continue to participate in the FFEL program because 0.28×0.13=0.0364, which is less than 0.0375. The participation rate index criterion may be used by any institution that has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, a weighted average cohort rate of less than 40 percent for the most recent fiscal year. In order to appeal under this criterion, an institution would only need to submit to the Secretary a statement certifying the number of its students who were enrolled on at least a half-time basis during a 12-month period that has ended during the six months immediately preceding the fiscal year used to determine the cohort of borrowers for the institution's borrower participation rate, and the number of those students that borrowed under the FFEL Program or Direct Loan Program, along with identifying information for those borrowers so they may be verified by the Secretary. In particular, the institution would need to provide the Secretary with the name, address, and social security number of each of those students. This will help the Department to verify this information through the National Student Loan Data System.

- Economically disadvantaged background rate and completion or placement rate: This exceptional mitigating circumstance criterion is derived from the current criteria which use completion rates, placement rates and the percent of the institution's students from economically disadvantaged backgrounds. Under this proposed rule, an institution would meet this exceptional mitigating circumstance if it can demonstrate that 70 percent or more of its student population, over a 12-month period that ended during the six months immediately preceding the fiscal year used to determine the cohort of borrowers for the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, came from an economically disadvantaged background, and either:

(1) For a public or private nonprofit institution, 70 percent of its students who were enrolled on at least a half-time basis, and were originally scheduled to complete their programs during a 12-month period that has ended during the six months immediately preceding the fiscal year used to determine the cohort of borrowers in the institution's rate, have completed their programs; or

(2) For a proprietary institution, 50 percent of its students originally scheduled to complete the programs during a 12-month period that has ended during the six months immediately preceding the fiscal year used to determine the cohort of borrowers used to calculate the institution's rate are currently employed, or were employed for at least 13 weeks, in an occupation related to the training they received, or are enrolled in a higher level educational program at another institution, or were enrolled such an institution for at least 13 weeks, for which the appealing institution's educational program provided substantial preparation.

For purposes of the completion rate and placement rate, a student is originally scheduled, at the time of enrollment, to complete the educational program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application, if any, whichever is less.

For purposes of the completion rate, a student is considered to have completed the program if the student received a degree, certificate, or other recognized educational credential from the institution, transferred to a higher level educational program at another institution, or remained enrolled and was making satisfactory academic progress toward completion of the educational program.

The Secretary has chosen a 50 percent placement rate based on the completion rate and placement rate standards that are used to determine if certain programs are eligible for purposes of the FFEL Program. See section 481(e) of the HEA. This section mandates that such a program have a verified completion rate of at least 70 percent and a verified placement rate of 70 percent. The 50 percent threshold is derived from these two percentages. If an institution has a 70 percent completion rate and 70 percent of those students obtain employment in a relevant occupation, the institution will have a 49 percent placement rate under the proposed placement rate. The Secretary has chosen 50 percent because he believes an institution should exceed this threshold to be considered under an exceptional mitigating circumstance.

For purposes of the placement rate, a former student is considered placed if the student is employed or had been employed for at least 13 weeks following his or her last day of attendance at the institution, or enrolled in a higher level educational program at another institution for which the appealing institution's educational program provided substantial preparation.

The Secretary is proposing to remove the 15 percent or less student loan borrower rate as well as the 66.6 percent completion rate and 66.6 placement rate as an exceptional mitigating circumstance. In place of the loan borrower rate, the Secretary is proposing to add the participation rate index criterion because he believes that, when an institution has such a small percent of its students borrow under the Direct Loan or FFEL Programs, borrower behavior may not reflect the quality of education at the institution. An appeal under this criterion is limited to institutions that have a Direct Loan Program cohort rate, an FFEL Program cohort default rate, or, if applicable, a weighted average cohort rate, that is less than 40 percent for a fiscal year. When more than 40 percent of all students at an institution are not repaying their loans, even if this percentage is based on a small proportion of the student body, the Secretary considers the institution to represent a significant financial risk for the taxpayers. Further, the Secretary believes that future student borrowers at the institution should be protected from the risks associated with borrowing Federal loans to pay for attending the institution.

Under the current exceptional mitigating circumstances, an institution can appeal if it has a completion rate of 66.6 percent or more, a placement rate of 66.6 percent or more, and if 66.6 percent or more of its students came from an economically disadvantaged background. The proposed regulations would make an appeal less burdensome to institutions because it would examine the completion, placement, and economically disadvantaged rates of the institution's former students over a shorter period of time. These modifications will also make the students who are included in the completion, placement and economically disadvantaged rates more representative of the borrowers included in the cohort used to determine the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate. Although the formula used for calculating the completion rate and student population from economically disadvantaged backgrounds is essentially the same, the institution would only need to review students who attended the institution (or for the completion rate, those students who were scheduled to complete their programs), during the 12-month period that preceded the fiscal year used to determine the cohort for the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate. The current regulations require an institution to review students over a 24-month period.

The Secretary is also proposing to modify the placement rate criterion for appeals to make it available only to proprietary institutions of higher education. The proposed placement rate will be measured by using the percent of the institution's former students who were scheduled to complete their programs, during a 12-month period that ended during the six months immediately preceding the fiscal year used to determine the cohort of borrowers for the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, who either received a job in an occupation related to the training they received for at least 13 weeks or transferred to a higher level educational program. The current regulations base the placement rate on only those students who complete their educational programs in a recent 24-month period chosen by the institution. The Secretary has decided to use the students who were scheduled to graduate during the 12-month period preceding the fiscal year in which the cohort is determined for the institution's rate because it will be more representative of the former students in that cohort. The Secretary also believes that the calculation of a completion rate in this fashion is more equitable for proprietary institutions because students receiving training to obtain employment in a particular field may gain such employment before they complete their programs.

The Secretary is also proposing to revise the appeal procedures to make them easier for the institutions as well as the Department to manage while maintaining program integrity to ensure speedy resolution of appeals. Under the current appeal process, to remain eligible to participate in the FFEL Program during an appeal process, an institution is required to notify the Secretary within seven days following its receipt of its notification of the loss of eligibility that it intends to appeal the loss. The institution must then submit all the required information to support its appeal within 30 calendar days following the notification of loss of eligibility. The Secretary is proposing to remove from the regulations the requirement that the institution notify the Secretary in writing within the seven days that it intends to appeal in order to remain eligible during the appeal.

The Secretary is also proposing to remove the requirement that an institution notify the Secretary that it has requested verification of its FFEL Program cohort default rate data from the relevant guaranty agencies. Under the proposed regulations, an institution would remain eligible to participate in the FFEL Program or Direct Loan Program during the appeal if it submits a complete and accurate appeal, under the guidelines for exceptional mitigating circumstances or inaccurate data, within 30 days from the date it is notified by the Secretary that it is no longer eligible to participate in the FFEL Program or Direct Loan Program.

Under the current regulations, if an institution requests verification of the data used to determine its cohort default rate from a guaranty agency, the institution remains eligible to participate in the FFEL Program until the guaranty agency verifies the data. Under the proposed rules, an institution would not remain eligible to participate beyond the 30-day period if the Secretary has not received the verified data by the 30th day following the notification of loss of eligibility. The Secretary believes that the new procedures for issuance and review of draft FFEL Program cohort default rates, that allow an institution to review the draft rates for error prior to the issuance of the official rates, will significantly improve the accuracy of the official FFEL Program cohort default rate. The Secretary will provide Direct Loan Program institutions with Direct Loan Program cohort rates, or if applicable, weighted average cohort rates, a similar opportunity to review the data used to determine those rates to ensure that they are accurate before the rates are made official. An institution should be able to resolve any additional discrepancies it believes exist in the FFEL Program cohort default rate, Direct Loan cohort rate, or weighted average cohort rate within 30 days.

Exceptional Mitigating Circumstances Appeal Process

- Institution receives notice that its participation in the FFEL or Direct Loan program will end in 30 days unless the institution appeals.
- The institution must submit a complete written appeal within 30 days after receiving the notice of loss of eligibility. An appeal will not be accepted after the 30th day.
- The Secretary issues a final decision on the institution's appeal within 45 days after receiving the appeal.
- No oral hearing is provided.

Subpart G—Fine, Limitation, Suspension, and Termination Proceedings

The proposed rules would provide the Secretary with the authority to take L, S, and T action against an institution that has a Direct Loan Program cohort rate or weighted average cohort rate that is greater than 40 percent for a fiscal year. The Secretary believes that such an authority is needed to protect students and taxpayers from abuse of the Direct Loan Program. The Secretary has chosen a 40 percent Direct Loan Program cohort rate to parallel the 40 percent default rate threshold that triggers L, S, and T action against an institution that participates in the FFEL Program under 34 CFR 668.17(a)(1). Further, under the proposed rules, the Secretary could initiate an L, S, or T action against an institution's participation in the FFEL Program if it has a combination of an FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate that equals or exceeds 25 percent for three consecutive years. For example, an L, S, and T action could be taken against the institution if it has an FFEL Program cohort default rate that equals or exceeds 25 percent for one fiscal year, and a weighted average cohort rate for each of the two following fiscal years that equals or exceeds 25 percent. Such an institution is not subject to statutory loss of eligibility to participate in the FFEL Program. The Secretary is proposing this provision to prevent an institution that has lost its eligibility to participate in the Direct Loan Program, or attempts to evade a potential loss of eligibility to participate in the Direct Loan Program, from participating in the FFEL Program. The Secretary believes that such an institution presents an unreasonable risk to students and the Federal taxpayer. Under the proposed rules, the Secretary will cease any L, S, and T action against an institution's participation in the FFEL Program if that institution successfully appeals its loss of eligibility to participate in the Direct Loan Program under exceptional mitigating circumstances.

The Secretary is also proposing to revise the procedures and appeals for an L, S, and T action he may initiate when an institution has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, a weighted average cohort rate above 40 percent for a fiscal year or a combination of an FFEL Program cohort default rate, Direct Loan Program cohort rate or weighted average cohort rate that equals or exceeds 25 percent for three consecutive fiscal years. Under these revised procedures, an institution would have 30 days to notify the designated department official that it intends to appeal the L, S, or T; otherwise the action would become effective on the 31st day. If the institution intends to appeal, it may request a hearing or it may send written material to the designated department official within 30 days after it receives notice of the Secretary's intent to initiate L, S, or T action. If a hearing is requested, the hearing officer must schedule a hearing within 15 days of the date the institution notifies the designated department official that it requests the hearing.

The designated department official or the hearing officer may only consider the accuracy of the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, the weighted average cohort rate to determine if the L, S, or T action should be upheld or dismissed. In light of the extensive process for determining default rates, the institution will have the burden of proving that the calculation of the rate was wrong. The Secretary believes it is appropriate to presume that the rates are accurate unless the institution can present clear and convincing evidence that the rate identified in the notice of intent is not final (i.e., the default rate appeal is pending) or does not accurately reflect the final rate determined by the Department. The designated department official or the hearing officer shall issue a final determination to uphold or dismiss the L, S, or T action within 30 days after the date the written material is received by the designated department official or the date the hearing is concluded, whichever is later.

In addition to streamlining the L, S, and T process, the Secretary is proposing to eliminate Appendix D as a defense from L, S, and T action. Appendix D was created to protect institutions from the consequences of L, S, and T action while they took action to reduce their FFEL Program cohort default rates. The Secretary believes that institutions have had ample time to exercise the measures provided in this section to reduce their FFEL Program cohort default rates and keep them low. The Secretary does not believe that the implementation of default reduction measures by an institution justifies the continued participation of a high default institution in the Title IV programs. However, the Secretary encourages institutions to continue to implement these measures to keep their default rates low.

Streamlined L, S, and T Procedures

- Institution receives notice stating that the L, S, or T action will be effective in 30 days unless the institution requests a hearing.
- Institution must request the hearing prior to the effective date.
- The hearing will be scheduled within 15–20 days after the request is received.

- The institution may appeal the proposed action only on the basis of the accuracy of the rate.
- The L, S, and T action is effective 30 days after the hearing if the hearing officer decides the action is warranted.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are explained elsewhere in this preamble under the heading of Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.17 *Default Reduction and Prevention Measures*) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in the understanding of the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern whether these proposed regulations are easy to understand should also be sent to Stanley Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW., (Room 5100 FB–10), Washington, D.C. 20202.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Certain reporting, recordkeeping, and compliance requirements are imposed on institutions by the regulations. These requirements, however, would not have a significant impact because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

Section 668.17 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Exceptional Mitigating Circumstances Appeals

The Student Assistance General Provisions regulations codify the procedures and the exceptional mitigating circumstances criteria under which an institution may appeal a loss of eligibility to participate in the FFEL Program or Direct Loan Program. The information to be collected may include one of the following: (1) For the participation rate index, the number of an institution's students enrolled on at least a half-time basis who enrolled in the appealing institution during a 12-month period and the number of those students who borrowed under the FFEL and Direct Loan programs during that 12-month period and the name, address and social security number of those students; (2) for the completion rate, the number of an institution's students who were scheduled to complete their programs in a 12-month period and the name, address and social security number and, if applicable, the name of the institution and program to which the student transferred, for each of those students who actually completed; (3) for the placement rate, the number of students who were scheduled to complete their programs during a 12-month period and the name, address, social security number, job title, dates during which the student was employed, and the employer's name and address for all those students who obtained employment in an occupation related to the education or training received. The Department needs and uses the information to determine whether the institution may continue to participate in the FFEL or Direct Loan programs.

All information is to be collected and reported only once and only if the institution has a FFEL Program cohort default rate, Direct Loan Program cohort rate or weighted average cohort rate that equals or exceeds 25 percent for three consecutive fiscal years. Annual public reporting and recordkeeping burden contained in the collection of information proposed in these regulations is estimated to be 80 hours per response for 200 respondents (total annual reporting and recordkeeping burden equals 16,000 hours) including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing collection of information, and submitting materials.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: September 14, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Stafford Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; and 84.226 Income Contingent Loan Program)

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1148, unless otherwise noted.

2. Section 668.17 is amended by redesignating paragraphs (f), (g), and (h) as paragraphs (g), (h) and (i) respectively, and revising paragraphs (a) through (f) to read as follows:

§ 668.17 Default reduction and prevention measures.

(a) *Default rates.* (1) If the FFEL Program cohort default rate, Direct Loan Program cohort rate, or if applicable, weighted average cohort rate for an institution exceeds 20 percent for any fiscal year, the Secretary notifies the institution of that rate.

(2) The Secretary may initiate a proceeding under subpart G of this part to limit, suspend, or terminate the participation of an institution in the Title IV, HEA programs, if—

(i) For an institution whose former students enter repayment only on FFEL Program loans in a fiscal year, the FFEL Program cohort default rate for that institution exceeds 40 percent for that fiscal year;

(ii) For an institution whose former students enter repayment only on Direct Loan Program loans in a fiscal year, the Direct Loan Program cohort rate for that institution exceeds 40 percent for that fiscal year; or

(iii) For an institution that has both FFEL Program and Direct Loan Program loans entering repayment in the same fiscal year, the weighted average cohort rate for that institution exceeds 40 percent for that fiscal year.

(3) Unless an institution is subject to loss of eligibility to participate in the FFEL Program under paragraph (b)(1) of this section, the Secretary initiates a proceeding under subpart G of this part to limit, suspend, or terminate an institution's participation in the FFEL Program if the institution, for three consecutive fiscal years, has a combination of—

(i) An FFEL Program cohort default rate that is equal to or greater than 25 percent if only FFEL loans enter repayment in that cohort;

(ii) A Direct Loan Program cohort rate that is equal to or greater than 25 percent if only Direct Loan Program loans enter repayment in that cohort; or

(iii) A weighted average cohort rate that is equal to or greater than 25 percent if both FFEL Program and Direct Loan Program loans enter repayment in that cohort.

(4) The Secretary may require an institution that meets the criteria under paragraph (a)(2) of this section to submit to the Secretary, within a timeframe determined by the Secretary, any reasonable information to help the Secretary make a preliminary determination as to what action should be taken against the institution.

(5) The Secretary will cease any limitation, suspension, or termination action against an institution under paragraph (a)(3) of this section if the institution satisfactorily demonstrates to the Secretary that, pursuant to a timely submitted appeal under paragraph (b)(6) of this section, the institution meets one of the exceptional mitigating circumstances under paragraph (c)(1)(ii) of this section.

(b) *End of participation.* (1) Except as provided in paragraph (b)(6) of this section, an institution's participation in the FFEL Program ends 30 days after the date the institution receives notification from the Secretary that its FFEL Program cohort default rate for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than 25 percent.

(2) Except as provided in paragraph (b)(6) of this section, an institution's participation in the Direct Loan Program ends 30 days after the date the institution receives notification from the Secretary that for each of the three most recent fiscal years the institution has any combination of—

(i) An FFEL Program cohort default rate that is equal to or greater than 25 percent if only FFEL Program loans enter repayment in that cohort;

(ii) A Direct Loan Program cohort rate that is equal to or greater than 25 percent if only Direct Loan Program loans enter repayment in that cohort; or

(iii) A weighted average cohort rate that is equal to or greater than 25 percent if both FFEL Program and Direct Loan Program loans enter repayment in that cohort.

(3) Except as provided in paragraph (b)(6) of this section, an institution whose participation in the FFEL Program or Direct Loan Program ends under paragraph (b)(1) or (2) of this section respectively may not participate in that program on or after the 30th day after the date it receives notification from the Secretary that its FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate exceeds the thresholds specified in paragraph (b)(1) or (2) of this section and continuing—

(i) For the remainder of the fiscal year in which the Secretary determines that the institution's participation has ended under paragraph (b)(1) or (2) of this section; and

(ii) For the two subsequent fiscal years.

(4) An institution whose participation in the FFEL Program or Direct Loan Program ends under paragraph (b)(1) or (2) of this section may not participate in that program until the institution satisfies the Secretary that the institution meets all requirements for participation in the FFEL Program or Direct Loan Program and executes a new agreement with the Secretary for participation in that program following the period described in paragraph (b)(3) of this section.

(5) Until July 1, 1998, the provisions of paragraph (b)(1) or (2) of this section and the provisions of § 668.16(m) do not apply to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo community college under the Navajo Community College Act.

(6) An institution may, notwithstanding § 668.26, continue to participate in the FFEL Program or Direct Loan Program, if the Secretary receives an appeal that is complete, accurate, and timely in accordance with paragraph (c) of this section.

(c) *Appeal procedures.* (1) An institution may appeal the loss of participation in the FFEL Program or Direct Loan Program under paragraph (b)(1) or (2) of this section by submitting an appeal in writing to the Secretary that must be received by the 30th calendar day following the date the institution receives notification of the end of participation. The institution may appeal on the grounds that—

(i)(A) The calculation of the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, for any of the three fiscal years relevant to the end of participation is not accurate; and

(B) A recalculation of the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, with corrected data verified by the cognizant guaranty agency or agencies for the FFEL Program loans, or the Secretary for Direct Loan Program loans would produce an FFEL Program cohort default rate, a Direct Loan Program cohort rate, or weighted average cohort rate for any of those fiscal years that is below the threshold percentage specified in paragraph (b) (1) or (2) of this section; or

(ii) The institution meets one of the following exceptional mitigating circumstances:

(A) The institution has a participation rate index of 0.0375 or less. The participation rate index is determined by multiplying the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate or, if applicable, weighted average cohort rate, by the percentage of the institution's students who were enrolled on at least a half-time basis who received a loan made under either the FFEL Program or Direct Loan Program, for a 12-month period that has ended during the six months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's rate is determined.

(B) For a 12-month period that has ended during the six months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's rate is determined, 70 percent or more of the institution's students who are enrolled on at least a half-time basis are individuals from disadvantaged economic backgrounds, as established by documentary evidence submitted by the institution. Such evidence must relate to either qualification by those students for an expected family contribution (EFC) of zero for any award year that generally coincides with the 12-month period, or attribution to those students of an adjusted gross income of the student and his or her parents or spouse, if applicable, reported for any award year that generally coincides with the 12-month period, of less than the poverty level, as determined under criteria established by the Department of Health and Human Services.

(*1*) For a public or private nonprofit institution, 70 percent or more of the institution's students who were initially enrolled on a full-time basis, and were scheduled to complete their programs during a 12-month period that has ended during the six months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's rate is determined, completed the educational programs in which they were enrolled. This rate is calculated by comparing the number of students who were classified as full-time at their initial enrollment in the institution and were originally scheduled, at the time of enrollment, to complete their programs within the relevant 12 month period, with the number of these students who received a degree, certificate, or other recognized educational credential from the institution; transferred from the institution to a higher level educational program at another institution for which the prior program provided substantial preparation; or, at the end of the 12-month period, remained enrolled and were making satisfactory academic progress toward completion of their educational programs; or

(*2*) For a proprietary institution, the institution had a placement rate of 50 percent or more with respect to its former students who were enrolled in a program to receive a degree, certificate, or other recognized educational credential from the institution, and who remained in the program beyond the point the students would have received a 100 percent tuition refund from the institution. This rate is based on those students who were scheduled to complete their educational programs during the 12-month period ending prior to the fiscal year for which the cohort for the institution's rate is determined. This rate is calculated by determining the percentage of all those students who, based on evidence submitted by the institution, are, on the date the institution submits the appeal, employed, or had been employed for at least 13 weeks following their last day of attendance at the institution, in the occupation for which the institution provided training, or are enrolled, or had been enrolled for at least 13 weeks following receipt of the credential from the institution, in a higher level educational program at another institution for which the prior educational program provided substantial preparation.

(2) For purposes of the completion rate and placement rate described in paragraph (c)(1)(ii)(B) (*1*) and (*2*) of this section, a student is originally scheduled, at the time of enrollment, to complete the educational program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the original date of enrollment and the anticipated graduation date appearing on the student's loan application, if any, whichever is less.

(3) The Secretary issues a decision on the institution's appeal within 45 days after the institution submits a complete appeal that addresses the applicable criteria in paragraph (c)(1)(i) or (ii) of this section to the Secretary.

(4) The Secretary's decision is based on the consideration of written material

submitted by the institution. No oral hearing is provided.

(5) The Secretary withdraws the notification of loss of participation in the FFEL Program or Direct Loan Program sent to an institution under paragraph (b)(1) or (2) of this section, if he determines that the institution's appeal satisfies one of the grounds specified in paragraph (c)(1)(i) or (ii) of this section.

(6) An institution must include in its appeal a certification by the institution's chief executive officer that all information provided by the institution in support of its appeal is true and correct.

(7) An institution that appeals on the grounds that it meets the exceptional mitigating circumstances criteria contained in paragraph (c)(1)(ii) of this section must include in its appeal the following information:

(i) A written statement from an independent auditor that the information contained in the appeal is complete, accurate and determined in accordance with the requirements of this section;

(ii) For purposes of the participation index under paragraph (c)(1)(ii)(A) of this section—

(A) A statement indicating the number of students who were enrolled on at least a half-time basis at the institution in the relevant 12-month period; and

(B) The name, address, and social security number of each of the institution's current and former students who received Federal Stafford, Federal SLS, or Direct Loan Program loans during that 12-month period.

(iii) For purposes of the institution's percentage of students coming from disadvantaged economic backgrounds under paragraph (c)(1)(ii)(B) of this section:

(A) The number of students who were enrolled on at least a half-time basis at the institution in the relevant 12-month period; and

(B)(*1*) If EFC is used to determine if a student comes from an economically disadvantaged background, the name, address, and social security number, of each student with an EFC of zero, for an award year that, in whole or part, coincides with the relevant 12-month period, who was enrolled on at least a half-time basis at the institution in the relevant 12-month period; or

(*2*) If poverty level income as determined by the Department of Health and Human Services is used to measure an economically disadvantaged background, the name, address, and social security number of each student with an adjusted gross income, or attribution to that student of an adjusted gross income of that student and his or her parents or spouse, if applicable, reported for the most recent calendar year that is less than the poverty level, and documentation of that income.

(iv) For purposes of the completion rate under paragraph (c)(1)(ii)(B)(*1*) of this section—

(A) The number of students who were initially enrolled on a full-time basis at the institution and were scheduled to complete their programs in the relevant 12-month period;

(B) For each of those former students who received a degree, certificate, or other recognized educational credential from the institution, the student's name, address, and social security number;

(C) For each of those former students who transferred to a higher level educational program at another institution, the name, address, social security number of the student, and the name and address of the institution to which the student transferred and the name of the higher level program; and

(D) For each of those students who remained enrolled and was making satisfactory academic progress toward completion of the educational program, the student's name, address, and social security number.

(v) For purposes of the placement rate under paragraph (c)(1)(ii)(B)(*2*) of this section—

(A) The number of students who were scheduled to receive a degree, certificate, or other recognized educational credential at the institution during the relevant 12 month period who remained enrolled beyond the point in the program in which he or she would receive a 100 percent tuition refund from the institution;

(B) For each of those former students who is employed or had been employed for at least 13 weeks following his or her last day of attendance at the institution, the student's name, address, and social security number, the employer's name and address, the student's job title, and the dates the student was so employed; and

(C) For each of those former students who enrolled in a higher level educational program at another institution for which the appealing institution's educational program provided substantial preparation, the former student's name, address, and social security number, the subsequent institution's name and address, the name of the educational program, and the dates the former student was so enrolled.

(d) *Definitions.* The following definitions apply to this section and § 668.90:

(1)(i) For purposes of the FFEL Program, except as provided in paragraph (e)(1)(ii) of this section, the term FFEL Program cohort default rate means—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who default before the end of the following fiscal year; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on such loans in any of the three most recent fiscal years, who default before the end of the fiscal year immediately following the year in which they entered repayment.

(C) In determining the number of students who default before the end of that following fiscal year, the Secretary includes only loans for which the Secretary or a guaranty agency has paid claims for insurance.

(ii)(A) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(B) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(C) Any loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(D) For the purposes of this definition, an SLS loan made in accordance with section 428A of the HEA (or a loan made under the Federal Consolidation Loan Program, a portion of which is used to repay a Federal SLS loan) shall not be considered to enter repayment until after the borrower has ceased to be enrolled in an educational program leading to a degree, certificate, or other recognized educational credential at the participating institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of forbearance or deferment based on such enrollment. Each eligible lender of a loan made under section 428A (or a loan made under the Federal Consolidation Loan Program, a portion of which is used to repay a Federal SLS loan) of the HEA shall provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this definition, and the guaranty agency shall provide that information to the Secretary.

(iii)(A) An FFEL Program cohort default rate of an institution applies to all locations of the institution as the institution exists on the first day of the fiscal year for which the rate is calculated.

(B) An FFEL Program cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(iv)(A) For an institution that changes its status from that of a location of one institution to that of a free-standing institution, the Secretary determines the FFEL Program cohort default rate based on the institution's status as of October 1 of the fiscal year for which an FFEL Program cohort default rate is being calculated.

(B) For an institution that changes its status from that of a free-standing institution to that of a location of another institution, the Secretary determines the FFEL Program cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This FFEL Program cohort default rate applies to the new, consolidated institution and all of its current locations.

(C) For free-standing institutions that merge to form a new, consolidated institution, the Secretary determines the FFEL Program cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from all of the institutions that are merging. This FFEL Program cohort default rate applies to the new consolidated institution.

(D) For a location of one institution that becomes a location of another institution, the Secretary determines the FFEL Program cohort default rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

(2) Fiscal year means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(e)(1) *Direct Loan Program cohort rate.* For purposes of the Direct Loan Program, the Secretary calculates Direct Loan Program cohort rates using the following formulas:

(i) For public institutions, private nonprofit institutions, or proprietary degree granting institutions—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who are in default before the end of the following fiscal year; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on those loans in any of the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment.

(ii) For proprietary non-degree granting institutions—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who are in default before the end of the following fiscal year, or are in repayment under the income-contingent repayment plan at the end of that following fiscal year whose scheduled payments are less than 15 dollars per month and that payment results in negative amortization; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on those loans in the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment, or are in repayment under the income contingent repayment plan at the end of that following fiscal year and whose scheduled payments are less than 15 dollars per month and that payment results in negative amortization.

(2) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(3) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(4) Any loan on which the borrower has made 12 consecutive monthly on-time payments under 34 CFR 685.211(e) before the end of that following fiscal year is not considered as in default for purposes of this definition.

(5) A Direct Loan Program cohort rate of an institution applies to all locations of the institution as the institution exists on the first day of the fiscal year for which the rate is calculated.

(6) A Direct Loan Program cohort rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(7) For an institution that changes its status from that of a location of one institution to that of a free-standing institution, the Secretary determines the Direct Loan Program cohort rate based on the institution's status as of October 1 of the fiscal year for which the rate is being calculated.

(8) For an institution that changes its status from that of a free-standing institution to that of a location of another institution, the Secretary determines the Direct Loan Program cohort rate based on the combined

number of students who enter repayment during the applicable fiscal year from both the former free-standing institution and the other institution. This Direct Loan Program cohort rate applies to the new, consolidated institution and all of its current locations.

(9) For free-standing institutions that merge to form a new, consolidated institution, the Secretary determines the Direct Loan Program cohort rate based on the combined number of students who enter repayment during the applicable fiscal year from all of the institutions that are merging. This Direct Loan Program cohort rate applies to the new consolidated institution.

(10) For a location of one institution that becomes a location of another institution, the Secretary determines the Direct Loan Program cohort rate based on the combined number of students who enter repayment during the applicable fiscal year from both of the institutions in their entirety, not limited solely to the respective locations.

(11) Fiscal year means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(12) For purposes of an institution's Direct Loan cohort rate, a Direct Loan Program loan is considered in default when the borrower's or endorser's failure to make an installment payment when due has persisted for 270 days.

(f)(1) *Weighted average cohort rate.* For purposes of an institution that has former students entering repayment in a fiscal year on both Direct Loan Program and FFEL Program, the Secretary calculates a weighted average cohort rate using the following formulas;

(i) For public institutions, private nonprofit institutions, or proprietary degree granting institutions—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan Program or Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who are in default before the end of the following fiscal year; and

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan Program or Federal Direct Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on such loans in the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment.

(ii) For proprietary non-degree granting institutions—

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan or Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on such loans who are in default before the end of the following fiscal year, or are in repayment under the income-contingent repayment plan at the end of that following fiscal year and whose scheduled payments are less than 15 dollars per month and that payment results in negative amortization; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan Program or Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on those loans in any of the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment or are in repayment under the income contingent repayment plan at the end of that following fiscal year whose scheduled payments are less than 15 dollars per month and that payment results in negative amortization.

(2) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(3) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(4) Any Direct Loan Program loan on which the borrower has made 12 consecutive monthly on-time payments under 34 CFR 685.211(e) or has an FFEL Program loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(5) A weighted average cohort rate of an institution applies to all locations of the institution as the institution exists on the first day of the fiscal year for which the rate is calculated.

(6) A weighted average cohort rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(7) For an institution that changes its status from that of a location of one institution to that of a free-standing institution, the Secretary determines the weighted average cohort rate based on the institution's status as of October 1 of the fiscal year for which the rate is being calculated.

(8) For an institution that changes its status from that of a free-standing institution to that of a location of another institution, the Secretary determines the weighted average cohort rate based on the combined number of students who enter repayment during the applicable fiscal year from both the former free-standing institution and the other institution. This weighted average cohort rate applies to the new, consolidated institution and all of its current locations.

(9) For free-standing institutions that merge to form a new, consolidated institution, the Secretary determines the weighted average cohort rate based on the combined number of students who enter repayment during the applicable fiscal year from all of the institutions that are merging. This weighted average cohort rate applies to the new consolidated institution.

(10) For a location of one institution that becomes a location of another institution, the Secretary determines the weighted average cohort rate based on the combined number of students who enter repayment during the applicable fiscal year from both of the institutions in their entirety, not limited solely to the respective locations.

(11) Fiscal year means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(12) For purposes of an institution's weighted average cohort rate cohort rate, a Direct Loan Program loan is considered in default when a borrower's or endorser's failure to make an installment payment when due has persisted for 270 days.

3. Section 668.85 is amended by revising paragraph (b)(1)(ii) and revising paragraph (b)(3) to read as follows:

§ 668.85 Suspension proceedings.

* * * * *

(b)(1) * * *

(ii)(A) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent; or

(B) In the case of a suspension action taken due to the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the proposed effective date of the suspension is no more than 30 days after the date of the mailing of the notice of intent.

* * * * *

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and place. The date is at least 15 days after the designated department official receives the request. In the case of a hearing for an institution subject to suspension action because of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the hearing is set no later than 20 days after the date the designated department official receives the request. The suspension does not take place until after the requested hearing is held.

* * * * *

4. Section 668.86 is amended by revising paragraph (b)(1)(ii) and revising paragraph (b)(3) to read as follows:

§ 668.86 Limitation or termination proceedings.

* * * * *

(b)(1) * * *

(ii)(A) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent; or

(B) In the case of a limitation or termination action based on an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the proposed effective date of the termination is no more than 30 days after the date of the mailing of the notice of intent.

* * * * *

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and place. The date is at least 15 days after the designated department official receives the request. In the case of a hearing for an institution subject to limitation or termination action because of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the hearing is set no later than 20 days after the date the designated department official receives the request. The limitation or termination does not take place until after the requested hearing is held.

* * * * *

5. Section 668.90 is amended by adding a new paragraph (a)(1)(iii)(D), and revising paragraph (a)(3)(iv) to read as follows:

§ 668.90 Initial and final decisions.

* * * * *

(a)(1) * * *

(iii) * * *

(D) For hearings regarding the limitation, suspension, or termination of an institution based on an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the 30th day after the conclusion of the hearing.

* * * * *

(3) * * *

(iv) In a limitation, suspension, or termination proceeding commenced on the grounds described in § 668.17(a)(1), if the hearing official finds that an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate meets the conditions specified in § 668.17(a)(1) for initiation of limitation, suspension, or termination proceedings, the hearing official also finds that the sanction sought by the designated department official is warranted, except that the hearing official finds that no sanction is warranted if the institution presents clear and convincing evidence demonstrating that its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate is not final or does not accurately reflect the final rate determined by the Department and that the correct rate would result in the institution having an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that is beneath the thresholds that make the institution subject to limitation, suspension, or termination action.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

[FR Doc. 95–23470 Filed 9–20–95; 8:45 am]

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federal register

Thursday
September 21, 1995

Part XV

Department of Health and Human Services

Food and Drug Administration

Ephedrine Alkaloids: Reports of Adverse Events; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0304]

Ephedrine Alkaloids: Reports of Adverse Events; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of reports of adverse events associated with the consumption of food products containing ephedrine alkaloids as well as redacted copies of any accompanying medical records where available. In addition, a bibliography listing of published medical and scientific literature relevant to the adverse event reports is available. FDA is announcing the availability of this information to ensure that all interested parties have the opportunity to review these documents before an upcoming meeting of the working group of the Food Advisory Committee at which the effects of consuming food products that contain ephedrine alkaloids will be considered.

ADDRESSES: The adverse event reports, redacted accompanying medical records, and the bibliography listing are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. Submit written comments identified with the docket number found in brackets in the heading above to Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Margaret C. Binzer, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5372.

SUPPLEMENTARY INFORMATION: FDA will soon be announcing a meeting of a working group of the Food Advisory Committee to be held in October, 1995. The purpose of the meeting is to have the working group consider the significance and extent of the serious adverse events associated with the consumption of food products that contain a source of ephedrine alkaloids, including ephedrine, pseudoephedrine, and norpseudoephedrine from *Ephedra sinica* Stapf. and other related species (e.g., Ma huang and Chinese ephedra). FDA is announcing the availability of the adverse event reports associated with these products and other materials relevant to the working group's discussion.

To date, FDA has received over 300 adverse event reports associated with food products containing ephedrine alkaloids. Because of the volume of adverse event reports received by the agency, the agency would be unable to respond to any Freedom of Information Act requests for the reports before this meeting. FDA is, therefore, taking the unusual step of making available properly redacted copies of the adverse event reports through Dockets Management Branch to ensure that all interested parties have access to these documents before this meeting so that they will be able to fully understand the issues that are the subject of the working group's discussion.

Copies of the adverse event reports, redacted accompanying medical records, and a bibliography listing of documents available from other sources, may be seen in the Dockets Management Branch (address above). Copies of these documents will not be available at the working group meeting.

Dated: September 15, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–23557 Filed 9–19–95; 12:43 pm]

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1727–95]

RIN 1115–AE22

Adding Daytona, Florida and Memphis, Tennessee to the List of Ports of Entry Accepting Applications for Direct Transit Without Visa

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (the Service) regulations by adding Daytona, Florida, and Memphis, Tennessee, to the list of ports of entry where, except for transit from one part of foreign contiguous territory to another part of the same territory, an alien must make application for admission to the United States for direct transit without visa. This change is necessary to accommodate the increase in international commerce serving Daytona, Florida, and Memphis, Tennessee.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7228, Washington, DC 20536, telephone number (202) 616–7499.

SUPPLEMENTARY INFORMATION: This final rule adds Daytona, Florida, and Memphis, Tennessee, to 8 CFR 214.2(c)(1) as ports of entry where, except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without visa must be made. The Daytona Beach International Airport in Daytona, Florida, will be adding additional international passenger service, specifically arrivals transiting between Frankfurt, Germany, and San Andrés, Colombia. The Memphis International Airport in Memphis, Tennessee, has added international passenger service which will be arriving from Amsterdam, The Netherlands, transiting to Canada, Mexico, and the Caribbean. By allowing these airports to accept applications for direct transit without visa, both Daytona and Memphis will be able to accommodate these transit air passengers.

The Service's implementation of this rule as a final rule is based on the "good cause" exception found at 5 U.S.C. 553(d)(3). The reasons and necessity for immediate implementation are as follows: This rule is necessary to accommodate the increase in international carriers serving Daytona, Florida, and Memphis, Tennessee, and to facilitate travel for the public.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely allows the Daytona, Florida, and the Memphis, Tennessee, airports to accommodate international passengers by providing authority to accept applications for direct transit without visa. This rule with facilitate travel for the public.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Passports and Visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

§ 214.2 [Amended]

2. In § 214.2, paragraph (c)(1) is amended, in the fourth sentence, by adding "Daytona, FL," immediately after "Dallas, TX," and by adding "Memphis, TN," immediately after "Los Angeles, CA," to the listing of ports of entry authorized to accept direct transit without visa applications.

Dated: September 13, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–23500 Filed 9–21–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF ENERGY

10 CFR Parts 210, 211, 212, 303, 305, 459, 465, 730, 761, 762, 763, 790, 791, 792, 794, 796, 797, 798, 799, and 1020

Removal of Obsolete Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending the Code of Federal Regulations (CFR) to remove obsolete regulations. This action is being taken in response to the President's Regulatory Reform Initiative to eliminate obsolete regulations and streamline existing rules. The Department has targeted 33 percent of all CFR pages for elimination, and has now completed the elimination of 21 percent of all such pages.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Romulo L. Diaz, Jr., Director, Rulemaking Support, Office of the General Counsel, (GC–75), U.S.

Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION: In connection with the President's Regulatory Reinvention Initiative, the Department of Energy is engaged in a continuing and comprehensive review of its regulatory program. As part of that in depth review, the Department is removing from Title 10 of the CFR those regulations for which statutory authority has expired or been superseded by subsequent legislation, as well as regulations governing nonfunctioning and unfunded programs.

Several of the regulations being eliminated with this notice were included in the Department's November 14, 1994, Notice of Inquiry (59 FR 56421) seeking public input concerning specific regulations targeted for modification or elimination. No comments were received concerning the Notice of Inquiry.

Since the publication of the Notice of Inquiry, the Department expanded the number of regulations identified as obsolete and has included them in this notice for removal from the CFR.

The Department has reviewed all of its regulations and has identified obsolete regulations for removal as follows:

10 CFR Parts 210, 211 and 212—Mandatory Petroleum Price and Allocation Regulations

The Emergency Petroleum Allocation Act of 1973 (P.L. 93–159, as amended), authorizing the regulation of the allocation and pricing of crude oil and petroleum products, expired in 1981. The Department is eliminating the following sections from 10 CFR: 210.61, Part 211 (including Appendix A), 212.10, 212.126–7, and Appendix A to Part 212. Also being removed are Department of Energy Rulings 1974–1 through 1984–1 in Chapter II, Subchapter A which relate to the application of petroleum price and allocation regulations.

10 CFR Parts 303 and 305—Coal Utilization Program

The Energy Supply and Environmental Coordination Act of 1974 (ESECA), (P.L. 93–319), authorized the Federal Energy Administration (one of the Department's predecessor agencies) to require existing and new powerplants and major fuel burning facilities to burn coal rather than natural gas or petroleum products as their primary energy source. The regulations at 10 CFR Parts 303 and 305 establish the procedures and sanctions for ESECA's coal utilization program.

The Department's authority to issue orders and operate the ESECA coal utilization program was superseded by passage of the Powerplant and Industrial Fuel Use Act of 1978, (P.L. 100–42). Elimination of these regulations will not affect the recipients of prior ESECA orders. Should any existing orders require modification or recision, other administrative procedures within the Department will be utilized.

10 CFR Part 459—Residential Energy Efficiency Program

This part sets forth the procedures for awarding and administering financial assistance under the Residential Energy Efficiency Program. Authority for this program expired on June 30, 1989, (P.L. 99–412, § 105).

10 CFR Part 465—Energy Extension Service

Authority for the Energy Extension Service was repealed on October 24, 1992, (P.L. 102–486, Title I, § 143(a)).

10 CFR Part 730—Unusual Volumes Allocation Petition Procedure

The Low-Level Radioactive Waste Policy Amendments Act of 1985, (P.L. 99–240), included provisions regulating access by waste generators to commercially-operated, low-level radioactive waste disposal facilities between January 1, 1985, and December 31, 1992, known as the "interim access period." With the expiration of the interim access period, this regulation no longer serves any useful purpose.

10 CFR Parts 761, 762, and 763—Uranium Regulations

For the years 1983 to 1992, the Department was required to report annually to the Congress and the President on the viability of the domestic uranium mining and milling industry, (P.L. 97–415, § 23). Specific criteria to be assessed in these annual reports were established in Part 761. Although the Energy Policy Act of 1992 (EPAct) requires the Department to report annually on the domestic uranium industry, the criteria in Part 761 do not apply to the Department's current reporting requirement, (P.L. 102–486, Title X).

Part 762 established the terms and condition under which the Department offered uranium enrichment services to its civilian customers. Part 763 determined how the Department would assess late payment charges for uranium enrichment services. The statutory authority for these regulations was superseded by the passage of EPAct, which, among other things, transferred the uranium enrichment function from the Department to the United States Enrichment Corporation.

10 CFR Part 790—The Geothermal Loan Guaranty Program

Authority for this program was granted on a year-to-year basis. Congress last authorized the issuing of loan guarantees for the commercial development of geothermal resources in 1981 and is unlikely to reinstate the program.

10 CFR Part 791—Electric and Hybrid Vehicle Research, Development, Demonstration, and Product Loan Guarantees

Authority for issuing loan guarantees to qualified borrowers for research, development, and production of electric and hybrid vehicles and components expired in September 1983, (P.L. 94–413, § 10).

10 CFR Part 792—Loans for Reservoir Confirmation Projects

Authority for issuing loan guarantees to finance the exploration and confirmation of geothermal reservoirs expired on September 30, 1986, (P.L. 96–294, § 614).

10 CFR Part 794—Loans for Development of Wind Energy Systems and Small Hydroelectric Power Projects

Authority for issuing loans for the development of wind energy projects expired September 30, 1988, (P.L. 96–345). Authority for issuing loans for the development of small hydroelectric power projects expired on September 30, 1980, (P.L. 95–617).

10 CFR Part 796—Federal Loan Guarantees for Alternative Fuel Demonstration Facilities

Authority for this program was granted on a year-to-year basis. The Congress last authorized the issuing of loan guarantees for alternative fuels demonstration facilities in 1982 and is unlikely to reinstate the program.

10 CFR Part 797—Loans for Small Hydroelectric Power Project Feasibility Studies and Related Licensing

No funds for this loan guarantee program were appropriated after 1981.

10 CFR Part 798—Urban Wastes Demonstration Facilities Loan Guarantee Program

Authority for issuing loan guarantees for urban wastes demonstration facilities expired September 30, 1984, (P.L. 96–294).

10 CFR Part 799—Loans Guarantees for Alcohol Fuels, Biomass Energy and Municipal Waste Projects

Authority for issuing loan guarantees for alcohol fuels, biomass energy and municipal waste projects expired September 30, 1984, (P.L. 96–294).

10 CFR Part 1020—Grand Junction Remedial Action Criteria

The regulation sets forth criteria for remediating certain properties in Grand Junction, Colorado, that were contaminated with uranium mill tailings. P.L. 92–314 authorized the cleanup of such properties, upon application of the affected property owners before June 16, 1980. The Grand Junction remedial action program under this law ended in 1987.

Rulemaking Analyses

Regulatory Planning and Review

The elimination of obsolete regulations does not constitute a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 (58 FR 51735); therefore, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Federalism

The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that there are no federalism implications that would warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Department certifies that this rulemaking will not have a "significant economic impact on a substantial number of small entities."

National Environmental Policy Act

This rule amends Title 10 of the Code of Federal Regulations by removing regulations for which statutory authority has expired or been superseded by subsequent legislation, as well as regulations governing nonfunctioning and unfunded programs. This rulemaking will not change the environmental effect of the regulations being amended because they are already obsolete regulations which have no current environmental effect. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to a rulemaking amending an existing regulation that does not change the environmental effect of the regulation being amended.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Final Rulemaking

As the foregoing discussion indicates, most of the Code of Federal Regulation parts being removed are based on statutory authorities that have expired, been executed or been superseded. The remainder of the regulations being removed involve loan or loan guarantee authorities for which there has not been an appropriation since the early 1980's. Although these statutory authorities have not expired technically, the regulations are dormant because there is no reason to expect that the President will request, or that Congress will again provide, an appropriation. In the Department's view, retention of dormant regulations could not serve any useful purpose. Accordingly, the Department has determined, pursuant to 5 U.S.C. 553, that there is good cause to conclude that prior notice and opportunity for public comment is unnecessary and contrary to the public interest.

List of Subjects

10 CFR Part 210

Petroleum allocation, Petroleum price regulations.

10 CFR Part 211

Oil Imports, Petroleum allocation, Reporting and recordkeeping requirements.

10 CFR Part 212

Petroleum price regulations, Reporting and recordkeeping requirements.

10 CFR Part 303

Administrative Practice and Procedure, Air pollution control, Coal Conversion program, Investigations, Penalties.

10 CFR Part 305

Coal conversion program, electric power plants, energy conservation, environmental impact statements.

10 CFR Part 459

Energy conservation, Grant programs—energy, Housing

10 CFR Part 465

Administrative Practice and Procedure, Energy conservation, Grant programs, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

10 CFR Part 730

Hazardous waste, Nuclear Power Plants and reactors.

10 CFR Part 761

Public lands—mineral resources, Reporting and Recordkeeping requirements, Uranium.

10 CFR Part 762

Nuclear materials, Uranium.

10 CFR Part 763

Nuclear materials, Uranium.

10 CFR Part 790

Geothermal energy, Loan programs—energy, Research.

10 CFR Part 791

Electric power, Energy conservation, Loan programs—energy, Motor vehicles, Research, Small businesses.

10 CFR Part 792

Geothermal energy, Loan programs—energy.

10 CFR Part 794

Electric power, Energy conservation, Loan programs—energy.

10 CFR Part 796

Administrative practice and procedure, Coal conversion program, Energy conservation, Grant programs—housing and community development, Loan Programs—energy, Petroleum, Reporting and Recordkeeping requirements, Research.

10 CFR Part 797

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, research.

10 CFR Part 798

Energy, Loan programs—energy, Waste treatment and disposal.

10 CFR Part 799

Administrative practice and procedure, Alcohol and alcoholic beverages, Energy conservation, Loan programs—energy, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 1020

Radiation Protection, Uranium.

Issued in Washington, DC on September 18, 1995.

Robert R. Nordhaus,

General Counsel.

For the reasons set forth in the preamble, under the authority of 42

U.S.C. 7101, Chapter II, III, and X of title 10 of the Code of Federal Regulations are amended by removing parts 211, 303, 305, 459, 465, 730, 761, 762, 763, 790, 791, 792, 794, 796, 797, 798, 799, and 1020.

Title 10 of the Code of Federal Regulations is further amended as follows:

PART 210—GENERAL ALLOCATION AND PRICE RULES

1. The authority citation for part 210 continues to read as follows:

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, EO 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub L. 92–210, 85 Stat. 743; Pub L. 93–28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47; 39 FR 24.

Subpart D [Removed]

2. Subpart D, which includes § 210.61, of part 210 is removed.

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

3. The authority citation for Part 212 continues to read as follows:

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, EO 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub L. 92–210, 85 Stat. 743; Pub L. 93–28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47; 39 FR 24.

Subpart A, Subpart I, Appendix A to Part 212—[Removed]

4. Subpart A, which consists of § 212.10, Subpart I, which consists of §§ 212.126 and 212.127, and Appendix A to Part 212 are removed.

Appendix A to Subchapter A—DOE Rulings [Removed]

5. 10 CFR Chapter II, Subchapter A—Oil, is amended by removing Appendix A to Subchapter A—DOE Rulings.

[FR Doc. 95–23567 Filed 9–21–95; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900 and 922

[No. 95–23]

Revision of Board of Directors Reporting Requirements

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board is amending its regulation on Board of Directors Responsibilities and Conduct to eliminate the required submission of Form FB–1, the Personal Certification and Disclosure Form, and the certification and disclosure requirements applicable to the four Federal Housing Finance Board Directors appointed by the President upon appointment and annually thereafter, in order to avoid duplicative and burdensome reporting requirements.

EFFECTIVE DATE: This final rule is effective on September 22, 1995.

FOR FURTHER INFORMATION CONTACT: David A. Guy, Associate General Counsel, Office of General Counsel, (202) 408–2536, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

As a result of an ongoing internal review of its regulations, the Federal Housing Finance Board (Board) has identified the certification and disclosure requirements applicable to the four Board Directors appointed by the President, by and with the advice of the Senate (appointed Board Directors), *see* 12 U.S.C. 1422a(b)(1)(B), upon appointment and annually thereafter, *see* 12 CFR 922.6(a), (c), and the use of Form FB–1, *see id.* §§ 922.7, 900.51, as unnecessarily burdensome and duplicative. Accordingly, the Board intends to eliminate Form FB–1 and the certification and disclosure requirements.

Currently, under § 922.6 of the Board's regulations, each appointed Board Director, upon appointment and annually thereafter, must certify in writing to the Board's designated agency ethics official (DAEO) on Form FB–1, that he or she meets all of the requirements for appointment mandated by the Federal Home Loan Bank Act (Bank Act) and part 922, and, further, must disclose in writing to the DAEO on Form FB–1, certain financial relationships with any member of any Federal Home Loan Bank (FHLBank). *See id.* § 922.6(a), (c).

Both the Bank Act and part 922 of the Board's regulations require that appointed Board Directors be citizens of the United States, *see* 12 U.S.C. 1422a(b)(1)(B), 12 CFR 922.2(a), and prohibit appointed Board Directors from serving as a director or officer of any FHLBank or any member of any FHLBank, or holding shares of, or any other financial interest in, any member of any FHLBank. *See* 12 U.S.C. 1422a(b)(2)(C), 12 CFR 922.3. In addition to the duty of an appointed Board Director to comply with the law, Part 922 imposes on each appointed Board Director an affirmative obligation to obey the regulations and policies established by the Board. *See* 12 CFR 922.2(b). The additional requirement that appointed Board Directors certify their compliance with the mandatory conditions for appointment is unnecessarily burdensome.

The financial disclosures required of appointed Board Directors under part 922 also are unnecessarily burdensome and duplicative. Under the Ethics in Government Act of 1978, as amended, 5 U.S.C. App. 101, *et seq.*, and the implementing regulations promulgated by the Office of Government Ethics (OGE), 5 CFR Part 2634, appointed Board Directors already are required to disclose, as a part of the Senate confirmation process and annually thereafter in writing to the DAEO and the OGE, detailed information regarding their financial interests, including the information required to be reported to the DAEO on Form FB–1. *See* 5 U.S.C. App. 101(c), 5 CFR 2634.201, 2634.202. In fact, the financial disclosures required by the OGE are more exacting than the financial disclosures required under part 922.

Part 922 also requires that, if an appointed Board Director knows or suspects at any time that he or she does not meet any of the statutory or regulatory requirements for appointment, he or she must report the specific factual basis for noncompliance to the DAEO in writing on Form FB–1 within 30 days of the date noncompliance did or may have occurred. *See* 12 CFR 922.6(b). Because contemporaneous disclosure of known or suspected noncompliance is not otherwise required, the Board will retain this written disclosure requirement, although it will no longer require that appointed Board Directors report the noncompliance on Form FB–1. Further, the phrase "suspected noncompliance" is being substituted for the phrase "should have known of the noncompliance" in 12 CFR 922.6(b) because it forms a more reasonable basis for a report of this kind.

II. Analysis of the Final Rule

Since the certification and disclosure requirements applicable to appointed Board Directors upon appointment and annually thereafter, and the use of Form FB–1 currently required by § 922.6(a) and (c), and § 922.7 of the Board's regulations, are unnecessarily burdensome and duplicative for the reasons stated in part I of the Supplementary Information, repeal of these sections is appropriate.

Repeal of these provisions of parts 900 and 922 also will be consistent with the goal of the Vice President's National Performance Review to reduce the total number of regulations of executive agencies. *See* Report of the National Performance Review 32–33 (Sept. 17, 1993); E.O. 12861, 58 FR 48255 (Sept. 11, 1993).

For the foregoing reasons, the Board has decided to repeal § 922.6(a) and (c) and § 922.7, and to amend § 922.6(b) and § 900.51 of its regulations, pursuant to its general rulemaking authority under section 2B(a)(1) of the Bank Act. *See* 12 U.S.C. 1422b(a)(1).

III. Notice and Public Participation

Publication of notice of proposed rulemaking is not required by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, because the Board, for good cause, finds that the notice and comment procedure is unnecessary and contrary to the public interest in this instance. *See id.* § 553(b)(3)(B). Compliance with the public notice and comment procedure requirement of APA section 553 is unnecessary because the final rule makes only minor changes to the disclosure requirements imposed on appointed Board Directors, repeals provisions of the Board's regulations that have no effect on the public, and eliminates unnecessarily burdensome and duplicative regulations.

IV. Effective Date

For the reasons stated in part III of the Supplementary Information, the Board finds that, under APA section 553(d)(3), there is good cause for the final rule to become effective upon publication.

V. Regulatory Flexibility Act

The Board is adopting the changes to parts 900 and 922 in the form of a final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply. *See id.* §§ 601(2), 603(a).

List of Subjects

12 CFR Part 900

Organizations and functions (Government agencies).

12 CFR Part 922

Conflict of interests.

Accordingly, Chapter IX, Title 12, parts 900 and 922, Code of Federal Regulations, are hereby amended as follows:

PART 900—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

1. The authority citation for part 900 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1422b(a).

2. Section 900.51 is revised to read as follows:

§ 900.51 Forms.

The following forms are available at the Finance Board headquarters facility (see § 900.3) and shall be used for the purpose indicated:

Form

10–91—Monthly Survey of Rates and Terms on Conventional 1 Family Nonfarm Mortgage Loans.
9102—Certificate of Nomination, Election of Federal Home Loan Bank Directors.
9103—Election Ballot, Election of Federal Home Loan Bank Directors.
A–1—Appointive Director Candidates—Personal Certification and Disclosure Form.
A–2—Appointive Directors—Personal Certification and Disclosure Form.
E–1—Elective Director Nominees—Personal Certification and Disclosure Form.
E–2—Elective Directors—Personal Certification and Disclosure Form.
90–T04—Local Travel Claim.

PART 922—BOARD OF DIRECTORS AND EMPLOYEES RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 922 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b.

2. Section 922.6 is revised to read as follows:

§ 922.6 Duty to report.

If an appointed Board director knows or suspects at any time that he or she does not meet any of the requirements for appointment set forth in sections 2A(b)(1)(B) and 2A(b)(2)(C) of the Act or this part, the appointed Board director shall report the specific factual basis for the known or suspected noncompliance in writing to the Board's designated agency ethics official within 30 days of the date noncompliance did or may have occurred.

§ 922.7 [Removed]

3. Section 922.7 is removed.

Dated: September 14, 1995.

By the Federal Housing Finance Board.

Bruce A. Morrison,
Chairman.

[FR Doc. 95–23391 Filed 9–21–95; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 602

[TD 8619]

RIN 1545–AR01

Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to eligible rollover distributions from tax-qualified retirement plans and section 403(b) annuities. These regulations reflect the changes made by the Unemployment Compensation Amendments of 1992 and affect the administrators, sponsors, payors of, and participants in tax-qualified retirement plans and section 403(b) annuities.

EFFECTIVE DATE: These regulations are effective on October 19, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622–6050 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1341. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per plan administrator/payor/recordkeeper varies from .05 hour to 330 hours, depending on individual circumstances, with an estimated average of .50 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On October 22, 1992, Temporary Income Tax Regulations (TD 8443) under sections 401(a)(31), 402(c), 402(f), 403(b), and 3405(c) of the Internal Revenue Code (Code) were published in the **Federal Register** (57 FR 48163). A notice of proposed rulemaking (EE–43–92) cross-referencing the temporary regulations was published in the **Federal Register** (57 FR 48194) on the same day. The temporary regulations provide guidance for complying with the Unemployment Compensation Amendments of 1992 (UCA). In addition, Notice 92–48 (1992–2 C.B. 381), provides a safe harbor explanation that can be used in order to satisfy section 402(f) of the Code. Written comments were received on the proposed and temporary regulations and a public hearing on the proposed and temporary regulations was held on January 15, 1993.

In response to initial comments on the proposed and temporary regulations, the IRS provided additional guidance under UCA in Notice 93–3 (1993–1 C.B. 293), and Notice 93–26 (1993–1 C.B. 308). The notices solicited public comments concerning the additional guidance.

After consideration of all the comments, the temporary regulations are replaced and the proposed regulations under sections 401(a)(31), 402(c), 402(f), 403(b), and 3405(c) are adopted as revised by this Treasury decision.

Explanation of Provisions

1. Overview

UCA significantly changed the treatment of distributions from qualified plans and section 403(b) annuities. First, under section 402(c), as amended by UCA, all distributions from qualified plans to an employee (or to the employee's spouse after the employee's death) from the "balance to the credit" of the employee are "eligible rollover distributions" to the extent includible in gross income, except (1) substantially equal periodic payments over life or life expectancy or for a period of ten years or more, and (2) required minimum distributions under section 401(a)(9).

Second, UCA added a new qualification provision under section 401(a)(31) that requires qualified plans to provide employees with a direct rollover option. Under a direct rollover option, an employee may elect to have an eligible rollover distribution paid directly to an individual retirement account or individual retirement annuity, or to another qualified plan that accepts rollovers (collectively referred to as eligible retirement plans). The direct rollover option is provided in addition to the pre-existing rollover provisions under section 402. Thus, an employee who receives an eligible rollover distribution but who does not elect a direct rollover still has the option to subsequently roll over the distribution to an eligible retirement plan within 60 days of receipt.

Third, UCA amended section 3405 to impose mandatory 20-percent income tax withholding on any eligible rollover distribution that the employee does not elect to have paid in a direct rollover. This withholding applies even if the employee receives a distribution and then rolls it over within the 60-day period. (However, where employer securities are distributed, a special rule limits withholding to the value of cash and other property received in the distribution.) To the extent that a distribution is both includible in gross income and not an eligible rollover distribution, the elective withholding rules under section 3405 and § 35.3405–1 continue to apply.

Finally, section 402(f), as amended by UCA, requires that, within a reasonable period of time before making a distribution, the plan administrator give a written explanation (the section 402(f) notice) to the employee of: (1) The availability of the direct rollover option; (2) the rules that require income tax withholding on distributions; (3) the rules under which the employee may roll over the distribution within 60 days of receipt; and, (4) if applicable, the other special tax rules (e.g., five-year averaging) that may apply to the distribution.

Similar rules are provided for section 403(b) annuities. However, a distribution from a section 403(b) annuity may only be rolled over to another section 403(b) annuity or individual retirement plan and not to a qualified plan.

UCA requirements generally apply to distributions from qualified plans and section 403(b) annuities that are made on or after January 1, 1993. (A special delayed effective date applies to certain section 403(b) annuities sponsored by state or local governments.)

In general, comments received on the proposed and temporary regulations were favorable. Thus, the final regulations retain the general structure and substance of the proposed and temporary regulations.

2. Notice 93–3 and Notice 93–26

As discussed above, in response to initial comments on the proposed and temporary regulations, additional guidance under UCA was provided by Notice 93–3, 1993–1 C.B. 293, and Notice 93–26, 1993–1 C.B. 308. The major issues addressed in these notices include the following:

- A distribution that occurs when a participant's accrued benefit is offset by the amount of a plan loan is an eligible rollover distribution if it otherwise qualifies as such. However, the plan need not offer a direct rollover of the offset distribution. For purposes of determining the amount that must be withheld, the offset distribution is treated in the same manner as a distribution of employer securities.
- In determining whether a distribution is a required minimum distribution for purposes of section 402(c), any distribution prior to the year an employee attains (or would have attained) age 70½ is not treated as a required minimum distribution and any annuity distribution paid from a defined benefit plan or an annuity contract in that year or a subsequent year is treated as a required minimum distribution.
- A participant may affirmatively elect to make an immediate direct rollover or receive an immediate payment, provided that the participant has been informed of the right to take at least 30 days, after receiving the appropriate notices, to make this decision.
- Amounts paid under an annuity contract distributed by a qualified plan are payments of the balance to the credit in the qualified plan for purposes of section 402(c) and, thus, are subject to the same UCA rules as distributions from qualified plans (e.g., permitting direct rollover and requiring 20-percent withholding).

The commentary on Notices 93–3 and 93–26 was favorable. Accordingly, the guidance contained in the notices has been incorporated into these final regulations. In addition, certain other revisions have been made to the regulations in response to comments, to clarify certain issues, and to facilitate administration and compliance. The most significant of these revisions are discussed below.

3. Section 402(f) and Other Participant Notices

a. Timing of Notice

As discussed above, the Code requires that the plan administrator provide the section 402(f) notice within a reasonable period of time prior to making an eligible rollover distribution. The temporary regulations provide that this reasonable time period is the same period required for obtaining consent to a distribution under section 411(a)(11). The regulations under section 411(a)(11) provide that a participant's consent to a distribution is not valid unless the participant receives a notice of his or her rights under the plan, including the right to defer the distribution, no more than 90 days and no less than 30 days prior to the annuity starting date.

The 90/30-day time period was adopted in the temporary regulations under section 402(f) because the IRS and Treasury believed that it was appropriate for the section 402(f) notice to be provided within the same time period in which plan administrators are required to provide other distribution information. In response to initial comments, the IRS and Treasury issued Notice 93–26, which modified the 30-day time period to allow a participant to affirmatively elect to make an immediate direct rollover or receive an immediate payment, but did not change the 90-day time period for either section 402(f) or section 411(a)(11). As discussed above, the final regulations are modified in a manner consistent with the additional guidance provided in Notice 93–26.

Commentators requested an expansion of the 90-day time period. More broadly, commentators asked that the requirements of sections 411(a)(11), 417, and 402(f) be addressed in the context of new technologies that use electronic media, such as telephone or computer systems, to automate plan administrative functions that traditionally have been processed manually by use of paper-based systems (e.g., notices to participants and participant distribution requests). For example, some commentators suggested that plans be permitted to provide an annual written notice if a summary of the notice is provided through these new technologies. In addition, commentators asked that the modification to the 30-day rule permitting immediate payment after an affirmative election, announced in Notice 93–26, be applied to distributions subject to section 401(a)(11) and 417.

The IRS and Treasury continue to believe that the section 402(f) notice (as well as the section 411(a)(11) and section 417 notices) should be provided close to the time participants are considering the distribution to which the notice applies. Therefore, no change to the 90-day rule is made in these final regulations.

Although no additional guidance on the use of electronic media is provided in these final regulations, the IRS and Treasury will continue to consider modifications of the notice and consent requirements that might be appropriate to accommodate new technologies, if adequate safeguards are provided. The IRS and Treasury continue to invite comments on this issue. These final regulations specifically delegate authority to the Commissioner to modify or provide additional guidance in the Internal Revenue Bulletin with respect to the notice requirements of section 402(f). A parallel delegation of authority is provided in the proposed and temporary regulations under sections 411(a)(11) and 417 which are being published in connection with these final regulations.

The proposed and temporary regulations under section 411(a)(11) are modified in a manner consistent with the changes to the 30-day rule described in Notice 93–26. The proposed and temporary regulations under section 417 modify the timing requirement with respect to the notice required by that section. Under this modification, if a participant affirmatively elects a distribution (whether a qualified joint and survivor annuity or an optional form of benefit), the plan may permit the distribution to commence at any time more than seven days after the section 417 notice is given, provided that the distributee has the right to revoke the election until the later of the annuity starting date or the expiration of the seven-day period that begins the day after the section 417 notice is provided.

b. Posting of Notice

In response to questions from commentators, the final regulations clarify that section 402(f) notices must be provided directly to each distributee rather than by posting at the place of employment.

c. Additions to Model Notice

Notice 92–48, 1992–2 C.B. 381, contains the model section 402(f) notice that serves as a "Safe Harbor Explanation" for purposes of complying with section 402(f). The IRS is considering developing additional model language to address specific subjects not addressed in the current model notice, including withholding on employer securities, treatment of plan loan offset amounts (including withholding and the timing and availability of a right to roll over), and the $5,000 death benefit exclusion. Until this additional language is published, plan administrators may continue to satisfy section 402(f) by providing the current model notice, even if issues not addressed in the current notice (such as those listed in the preceding sentence) are relevant to the distributee. Plan administrators are encouraged, however, to supplement the model notice with language addressing these issues when applicable to a distributee. The IRS and Treasury invite comments or suggestions concerning possible additions or modifications to the notice.

4. Definition of Eligible Rollover Distribution

As noted above, under section 402(c) and section 403(b), as amended by UCA, all distributions from qualified plans and section 403(b) annuities to an employee (or to the employee's spouse after the employee's death) of any portion of the "balance to the credit" of the employee are "eligible rollover distributions" to the extent includible in gross income, except (1) substantially equal periodic payments over life or life expectancy or for a period of ten years or more, and (2) required minimum distributions under section 401(a)(9).

a. Benefits Included in the Balance to the Credit

Based on the broad statutory definition of an eligible rollover distribution and the UCA legislative history, the final regulations provide that generally all plan benefits are included in the "balance to the credit" of an employee, including ancillary benefits not protected by section 411(d)(6). Therefore, the final regulations do not adopt commentators' suggestions to exclude various items from the definition, such as qualified disability benefits, hardship distributions, and distributions that are includible in gross income but that are made to a distributee reasonably expected to have no income tax liability.

b. Substantially Equal Periodic Payments From a Defined Contribution Plan

The final regulations retain the rule that the principles of section 72(t) apply for purposes of determining whether distributions constitute a series of substantially equal periodic payments. The preamble to the temporary regulations provides that, in determining whether payments in a series are substantially equal for purposes of section 402(c)(4), the principles of Notice 89–25, 1989–1 C.B. 662, are applicable. Notice 89–25 provides guidance for determining whether distributions from a separate account are substantially equal for purposes of section 72(t). Commentators requested guidance on applying the three methods in Notice 89–25 for determining whether payments are substantially equal over life or life expectancy to payments for a period other than life or life expectancy. In response to these comments, the final regulations provide that payments from a qualified defined contribution plan that are calculated on a declining balance of years will be considered substantially equal. In addition, if a distribution from a defined contribution plan consists of payments of a fixed amount each year until the account balance is exhausted, reasonable actuarial assumptions must be used to determine the period of years over which the payments will be made.

c. Disregard of Contingencies

The final regulations retain the rule that the determination of whether payments are substantially equal for a given period is made when payments commence, without regard to contingencies or modifications that have not yet occurred. Recovery from a disability is added to the final regulations as an example of a contingency that is disregarded until it occurs. In addition, although not addressed in the regulations, it should be noted that a mere change in the type (as opposed to the amount) of benefit being paid in a series of payments is not relevant in determining whether the payments are substantially equal and are being paid for a period described in section 402(c)(4)(A). Thus, if a distributee receives a series of disability benefits followed by a series of retirement benefits, and the two benefits are reasonably expected to be substantially equal, the retirement benefits may be combined with the disability benefits in determining whether a series of payments are substantially equal and are for a period described in section 402(c)(4)(A).

In response to comments, the final regulations also clarify that a mere change in distributee upon the death of an employee is not a modification that requires a redetermination of whether the remaining payments under the annuity are substantially equal periodic payments over a period described in section 402(c)(4)(A) and, thus, excluded from the definition of eligible rollover distribution.

d. Coordination With Social Security Benefits

The final regulations expand the scope of the rule in the temporary regulations permitting social security benefits to be taken into account in determining whether a series of periodic payments are substantially equal. Under the final regulations, if the amount paid annually from the plan is reduced upon attainment of social security retirement age (or commencement of social security benefits), the payments after the reduction will be treated as substantially equal to the payments prior to the reduction, even if the reduction is not equal to the distributee's annual social security benefits, provided that the reduction does not exceed the annual social security benefits and the post-reduction payments are substantially equal.

e. Supplements and Adjustments to Annuity Payments

The final regulations retain the rule that a payment will be treated as independent, and thus as not part of a series of substantially equal periodic payments, if the payment is substantially larger or smaller than the other payments in the series. However, in response to comments, the final regulations clarify that adjustments to the amount of annuity payments that result solely from correction of reasonable administrative error or delay in payment will not cause any payment in a series of payments that are otherwise substantially equal to fail to be treated as a payment in the series.

Further, in response to comments concerning the payment of "13th checks" and other supplemental annuity payments, the regulations provide an additional rule for defined benefit plans. If a defined benefit plan provides a benefit increase for annuitants (e.g., retirees or beneficiaries) that supplements a series of substantially equal annuity payments in a consistent manner for all similarly situated annuitants, the benefit increase will not constitute an independent payment (and will not cause the series of payments to be treated as not substantially equal), if the payment either is not more than 10 percent of the annual rate of payment or is not more than $750.

f. Required Minimum Distributions

As noted above, the final regulations incorporate the guidance in Notice 93–3 concerning the determination of the required minimum distribution for purposes of section 402(c). Also, in response to questions concerning the allocation of basis in the case of a required minimum distribution, the final regulations clarify that if part (but not all) of a payment is required under section 401(a)(9) and if part (but not all) of the same payment represents return of basis, the plan must first allocate the return of basis toward satisfaction of the section 401(a)(9) required minimum distribution. This rule has the effect of maximizing the amount that is eligible to be rolled over.

g. Corrective Distributions and Deemed Distributions

The final regulations retain the rule that certain corrective distributions and deemed distributions are excluded from the definition of an eligible rollover distribution. The regulations also clarify that, to the extent corrective distributions are properly made from a section 403(b) annuity, they are not eligible rollover distributions.

With respect to deemed distributions under section 72(p), the final regulations include the clarifications provided in Notice 93–3 with respect to the distinction between plan loan offset amounts and deemed distributions under section 72(p), except for the portion of Example 6 from Notice 93–3 that addressed issues relating to the tax treatment of a distribution that occurs after a deemed distribution. This portion of the example generated numerous questions and comments concerning the proper interpretation of section 72(p). Those questions and comments are best addressed in the context of guidance under section 72(p) rather than section 402(c). No inference should be drawn from the deletion of a portion of the example.

h. $5,000 Death Benefit Exclusions

The final regulations clarify that, to the extent that a death benefit is a distribution from a qualified plan, the portion of the distribution that is excluded from gross income under section 101(b) is not an eligible rollover distribution. However, recognizing that a surviving spouse or former spouse may be entitled to more than one death benefit that might qualify for the death benefit exclusion, the final regulations permit the plan administrator of a qualified plan to assume, for purposes of section 401(a)(31) and section 3405, that any death benefit being distributed from the plan to the surviving spouse or former spouse of an employee that qualifies for the exclusion is the only benefit that so qualifies.

5. Direct Rollover Requirement

a. Procedures for Accomplishing a Direct Rollover

The final regulations under section 401(a)(31) retain the rules that permit the employer to accomplish an employee's direct rollover by any reasonable means of delivery to an eligible retirement plan, including delivery of a check to the eligible retirement plan by the employee (provided that the payee line of the

check is made out in a manner that will ensure that the check is negotiable solely by the trustee or custodian of the recipient plan). The preamble to the temporary regulations requested comments on whether a standard notation, such as "Direct Rollover," should be required to appear on the face of any check provided to an employee for delivery. The comments received were divided, and the final regulations do not require any standard notation.

b. Procedures That Substantially Impair the Availability of Direct Rollover

The temporary regulations provide that it would not be reasonable, and thus would not satisfy section 401(a)(31), for a plan administrator to require information or documentation or to establish procedures that "effectively eliminate" the right to take a direct rollover. The final regulations broaden this language to include procedures that "substantially impair" the right to take a direct rollover, and provide additional examples illustrating violations of section 401(a)(31).

c. Qualification Protection for Recipient Plans

The temporary regulations do not address qualification protection for qualified plans accepting rollovers. Comments were received asking for criteria that, if satisfied, would permit a receiving plan to assume that the plan from which it is accepting a rollover is qualified. To encourage plans to accept rollovers, these final regulations provide a safe harbor for receiving plans that reasonably determine that the distributing plan is qualified. The regulations also provide an example of a reasonable determination in this respect. The example illustrates that a reasonable determination will have been made if, prior to accepting a rollover contribution, the receiving plan obtains a plan administrator's letter indicating that the distributing plan had a favorable determination letter regarding qualification. However, if the receiving plan later obtains actual knowledge that the distributing plan was not qualified at the time of the direct rollover, corrective distributions with respect to the rollover amount would be required.

In addition, the final regulations under section 3405 retain the rule that no withholding liability will be imposed on a plan administrator that reasonably relies on "adequate information" provided by the distributee. Commentators asked whether this "adequate information" protection under section 3405 could also be extended to section 401(a)(31). Specifically, they asked if the distributing plan is protected from being treated as violating section 401(a)(31) where the distributee purports to elect a direct rollover but the distribution made in accordance with the information provided by the distributee does not in fact result in a direct rollover. The IRS and Treasury do not believe any special relief is needed in this case because there is no violation of section 401(a)(31) if the plan follows the distributee's directions after providing a direct rollover option.

d. Direct Rollovers to Qualified Defined Benefit Plans

The definition of eligible retirement plan under section 402(c) includes all qualified trusts (defined contribution plans and defined benefit plans) as well as qualified annuity plans under section 403(a) and individual retirement plans. For purposes of section 401(a)(31), section 401(a)(31)(D) provides that the only qualified trusts that are treated as eligible retirement plans are defined contribution plans. Commentators asked whether a plan may permit direct rollovers to qualified defined benefit plans. The final regulations clarify that the limitation in section 401(a)(31)(D) applies only for purposes of determining the scope of the requirement under section 401(a)(31), while the definition of eligible retirement plan in section 402(c)(8)(B) controls the types of plans to which direct rollovers are permitted. Thus, under section 401(a)(31), a plan is required to offer a direct rollover to any defined contribution plan, and is permitted (but not required) to offer a direct rollover to a qualified trust that is a defined benefit plan. In addition, the final regulations clarify that an eligible rollover distribution that is paid in a direct rollover to a defined benefit plan is not subject to withholding.

e. Default Procedures

The final regulations retain the rules permitting a plan administrator to establish a procedure for a participant who fails to make any election. However, the regulations clarify that if a default procedure is implemented, the distributee must receive an explanation of the procedure in conjunction with the section 402(f) notice.

f. Valuation of Distributed Property

Some commentators raised concerns about the valuation of property in order to determine the portion of the distribution eligible for direct rollover or subject to withholding. The IRS and Treasury recognize the difficulties in satisfying the rollover, withholding, and reporting requirements where property is involved and invite comments regarding these issues, including suggested approaches for addressing the valuation and taxation of property distributed by qualified plans. While these regulations include no changes with respect to these issues, they continue to permit use of the rules provided in Q&A F–1 and Q&A F–3 of § 35.3405–1 for purposes of withholding.

g. Plan Amendments

The final regulations retain the rule that, although plans must comply in operation with section 401(a)(31) beginning January 1, 1993, plans need not be amended to comply with section 401(a)(31) until the end of the remedial amendment period for amending the plan to comply with the amendments to section 401(a) made by the Tax Reform Act of 1986 (TRA '86). Notice 92–36 (1992–2 C.B. 364), specifies the remedial amendment period for most employers. Announcement 95–48 (1995–23 IRB 11), dated June 5, 1995, extends this period for plans maintained by tax exempt organizations and governments.

Plans may continue to use the model amendment published in Rev. Proc. 93–12 (1993–1 C.B. 479), to comply in form with section 401(a)(31) and these final regulations. For plans that have received favorable determination letters, see the relevant guidance for the timing of plan amendments, e.g., section 21.04 of Rev. Proc. 95–6 (1995–1 I.R.B. 166).

6. Other Rollover Rules

a. Rollover Elections Are Irrevocable

The final regulations incorporate the rule in § 1.402(a)(5)–1T that, in order for a contribution of an eligible rollover distribution to an individual retirement plan to qualify for exclusion from gross income as a rollover contribution, the participant must irrevocably elect to treat the contribution as a rollover contribution at the time the contribution is made to the individual retirement plan. A direct rollover election is deemed to be such an irrevocable election.

b. 60-Day Rule

The final regulations clarify that the 60-day period for a distributee to roll over a distribution commences on the date of that distribution regardless of the number of distributions during the taxable year. Because section 402, as amended by UCA, no longer requires that the distribution constitute a specified portion of the balance to the credit of the employee in order to be eligible for rollover, there is no longer any need for the prior administrative rule under which the 60-day period began as of the date of the last distribution during the taxable year.

c. Rollover From Plan Not Counted in One-Year-Look-Back Rule

The final regulations clarify that a rollover (whether or not it is a direct rollover) from a qualified plan is not treated as a rollover contribution for purposes of the one-year-look-back rule in section 408(d)(3)(B).

7. 20-Percent Mandatory Withholding

a. Additional Withholding

In response to comments, the regulations clarify that a plan administrator or payor may (but is not required to) permit a distributee to elect to have more than 20 percent withheld from an eligible rollover distribution.

b. Limitation of Withholding to Cash and Property Distributed

Section 3405(e)(8) limits the maximum amount that may be withheld on any designated distribution to the sum of the amount of money and the fair market value of property (other than employer securities) that is received in the distribution. Commentators asked whether 20-percent withholding applies if the portion of the distribution that is a designated distribution is allocated to employer stock and paid to the employee, while the portion of the distribution that is the return of basis is allocated to cash. The final regulations clarify that the section 3405(e)(8) provision limiting withholding to the sum of cash and property (other than employer securities) applies to the total distribution (including, for example, return of basis) and not just to the designated distribution.

Effective Date

These final regulations apply to distributions made on or after October 19, 1995. The text of these regulations replaces the temporary regulations published in the **Federal Register** on October 22, 1992. Although they will be removed from the Code of Federal Regulations (CFR), the temporary regulations, as they appear in the April 1, 1995 edition of 26 CFR part 1, retain their effectiveness with respect to distributions made on or after January 1, 1993, but before October 19, 1995. However, for any distribution made on or after January 1, 1993 but before October 19, 1995, plans may comply with the provisions of UCA by substituting all or part of the provisions of these final regulations for the corresponding provisions of the temporary regulations, if any.

In addition, no penalties or sanctions will apply for failure to satisfy section 401(a)(31) or section 402(f), or for failure to withhold in accordance with section 3405(c), if the requirements of UCA are satisfied with respect to a distribution, made on or after October 19, 1995 but before January 1, 1996, by substituting all or part of the provisions of the temporary regulations for the corresponding provisions of these final regulations. For any distribution made on or after October 19, 1995 but before January 1, 1996, a distributee may roll over the distribution if it qualifies as an eligible rollover distribution if all or part of the provisions of the temporary regulations are substituted for the corresponding provisions of these final regulations. Moreover, during this period, the plan administrator and the employee (or spousal distributee) need not apply the provisions in the same manner with respect to any distribution.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Accordingly, 26 CFR parts 1, 31, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805. * * *

§§ 1.401(a)(31)–1T, 1.402(c)–2T, 1.402(f)–2T, and 1.403(b)–2T [Removed]

Par. 2. Sections 1.401(a)(31)–1T, 1.402(c)–2T, 1.402(f)–2T, and 1.403(b)–2T are removed.

Par. 3. Sections 1.401(a)(31)–1, 1.402(c)–2, and 1.403(b)–2 are added and § 1.402(f)–1 is revised to read as follows:

§ 1.401(a)(31)–1 Requirement to offer direct rollover of eligible rollover distributions; questions and answers.

The following questions and answers relate to the qualification requirement imposed by section 401(a)(31) of the Internal Revenue Code of 1986, pertaining to the direct rollover option for eligible rollover distributions from pension, profit-sharing, and stock bonus plans. Section 401(a)(31) was added by section 522(a) of the Unemployment Compensation Amendments of 1992, Public Law 102–318, 106 Stat. 290 (UCA). For additional UCA guidance under sections 402(c), 402(f), 403(b)(8) and (10), and 3405(c), see §§ 1.402(c)–2, 1.402(f)–1, and 1.403(b)–2, and § 31.3405(c)–1 of this chapter, respectively.

List of Questions

Q–1: What are the direct rollover requirements under section 401(a)(31)?

Q–2: Does section 401(a)(31) require that a qualified plan permit a direct rollover to be made to a qualified trust that is not part of a defined contribution plan?

Q–3: What is a *direct rollover* that satisfies section 401(a)(31), and how is it accomplished?

Q–4: Is providing a distributee with a check for delivery to an eligible retirement plan a reasonable means of accomplishing a direct rollover?

Q–5: Is an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover currently includible in gross income or subject to 20-percent withholding?

Q–6: What procedures may a plan administrator prescribe for electing a direct rollover, and what information may the plan administrator require a distributee to provide when electing a direct rollover?

Q–7: May the plan administrator treat a distributee as having made an election under a default procedure where the distributee does not affirmatively elect to make or not make a direct rollover within a certain time period?

Q–8: May the plan administrator establish a deadline after which the distributee may not revoke an election to make or not make a direct rollover?

Q–9: Must the plan administrator permit a distributee to elect to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

Q–10: Must the plan administrator allow a distributee to divide an eligible rollover distribution into two or more separate distributions to be paid in direct rollovers to two or more eligible retirement plans?

Q–11: Will a plan satisfy section 401(a)(31) if the plan administrator does not permit a distributee to elect a direct rollover if his or her eligible rollover distributions during a year are reasonably expected to total less than $200?

Q–12: Is a plan administrator permitted to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applying to all subsequent payments in the series?

Q–13: Is the eligible retirement plan designated by a distributee to receive a direct rollover distribution required to accept the distribution?

Q–14: For purposes of applying the plan qualification requirements of section 401(a), is an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover a distribution and rollover or is it a transfer of assets and liabilities?

Q–15: Must a direct rollover option be provided for an eligible rollover distribution that is in the form of a plan loan offset amount?

Q–16: Must a direct rollover option be provided for an eligible rollover distribution from a qualified plan distributed annuity contract?

Q–17: What assumptions may a plan administrator make regarding whether a benefit is an eligible rollover distribution?

Q–18: When must a qualified plan be amended to comply with section 401(a)(31)?

Questions and Answers

Q–1: What are the direct rollover requirements under section 401(a)(31)?

A–1: (a) *General rule.* To satisfy section 401(a)(31), added by UCA, a plan must provide that if the distributee of any eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan, and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover described in Q&A–3 of this section. Thus, the plan must give the distributee the option of having his or her distribution paid in a direct rollover to an eligible retirement plan specified by the distributee. For purposes of section 401(a)(31) and this section, eligible rollover distribution has the meaning set forth in section 402(c)(4) and § 1.402(c)–2, Q&A–3 through Q&A–10 and Q&A–14, except as otherwise provided in Q&A–2 of this section, eligible retirement plan has the meaning set forth in section 402(c)(8)(B) and § 1.402(c)–2, Q&A–2.

(b) *Related Internal Revenue Code provisions*—(1) *Mandatory withholding.* If a distributee of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under section 401(a)(31), the eligible rollover distribution is subject to 20-percent income tax withholding under section 3405(c). See § 31.3405(c)–1 of this chapter for guidance concerning the withholding requirements applicable to eligible rollover distributions.

(2) *Notice requirement.* Section 402(f) requires the plan administrator of a qualified plan to provide, within a reasonable period of time before making an eligible rollover distribution, a written explanation to the distributee of the distributee's right to elect a direct rollover and the withholding consequences of not making that election. The explanation also is required to provide certain other relevant information relating to the taxation of distributions. See § 1.402(f)–1 for guidance concerning the written explanation required under section 402(f).

(3) *Section 403(b) annuities.* Section 403(b)(10) provides that requirements similar to those imposed by section 401(a)(31) apply to annuities described in section 403(b). See § 1.403(b)–2 for guidance concerning the direct rollover requirements for distributions from annuities described in section 403(b).

(c) *Effective date*—(1) *Statutory effective date.* Section 401(a)(31) applies to eligible rollover distributions made on or after January 1, 1993.

(2) *Regulatory effective date.* This section applies to eligible rollover distributions made on or after October 19, 1995. For eligible rollover distributions made on or after January 1, 1993 and before October 19, 1995, § 1.401(a)(31)–1T (as it appeared in the April 1, 1995 edition of 26 CFR part 1), applies. However, for any distribution made on or after January 1, 1993 but before October 19, 1995, a plan may satisfy section 401(a)(31) by substituting any or all provisions of this section for the corresponding provisions of § 1.401(a)(31)–1T, if any.

Q–2: Does section 401(a)(31) require that a qualified plan permit a direct rollover to be made to a qualified trust that is not part of a defined contribution plan?

A–2: No. Section 401(a)(31)(D) limits the types of qualified trusts that are treated as eligible retirement plans to defined contribution plans that accept eligible rollover distributions. Therefore, although a plan is permitted, at a participant's election, to make a direct rollover to any type of eligible retirement plan, as defined in section 402(c)(8)(B) (including a defined benefit plan), a plan will not fail to satisfy section 401(a)(31) solely because the plan will not permit a direct rollover to a qualified trust that is part of a defined benefit plan. In contrast, if a distributee elects a direct rollover of an eligible rollover distribution to an annuity plan described in section 403(a), that distribution must be paid to the annuity plan, even if the recipient annuity plan is a defined benefit plan.

Q–3: What is a direct rollover that satisfies section 401(a)(31), and how is it accomplished?

A–3: A direct rollover that satisfies section 401(a)(31) is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee. A direct rollover may be accomplished by any reasonable means of direct payment to an eligible retirement plan. Reasonable means of direct payment include, for example, a wire transfer or the mailing of a check to the eligible retirement plan. If payment is made by check, the check must be negotiable only by the trustee of the eligible retirement plan. If the payment is made by wire transfer, the wire transfer must be directed only to the trustee of the eligible retirement plan. In the case of an eligible retirement plan that does not have a trustee (such as a custodial individual retirement account or an individual retirement annuity), the custodian of the plan or issuer of the contract under the plan, as appropriate, should be substituted for the trustee for purposes of this Q&A–3, and Q&A–4 of this section.

Q–4: Is providing a distributee with a check for delivery to an eligible retirement plan a reasonable means of accomplishing a direct rollover?

A–4: Providing the distributee with a check and instructing the distributee to deliver the check to the eligible retirement plan is a reasonable means of direct payment, provided that the check is made payable as follows: [Name of the trustee] as trustee of [name of the eligible retirement plan]. For example, if the name of the eligible retirement plan is "Individual Retirement Account of John Q. Smith," and the name of the trustee is "ABC Bank," the payee line of a check would read "ABC Bank as trustee of Individual Retirement

Account of John Q. Smith." Unless the name of the distributee is included in the name of the eligible retirement plan, the check also must indicate that it is for the benefit of the distributee. If the eligible retirement plan is not an individual retirement account or an individual retirement annuity, the payee line of the check need not identify the trustee by name. For example, the payee line of a check for the benefit of distributee Jane Doe might read, "Trustee of XYZ Corporation Savings Plan FBO Jane Doe."

Q–5: Is an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover currently includible in gross income or subject to 20-percent withholding?

A–5: No. An eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is not currently includible in the distributee's gross income under section 402(c) and is exempt from the 20-percent withholding imposed under section 3405(c)(2). However, when any portion of the eligible rollover distribution is subsequently distributed from the eligible retirement plan, that portion will be includible in gross income to the extent required under section 402, 403, or 408.

Q–6: What procedures may a plan administrator prescribe for electing a direct rollover, and what information may the plan administrator require a distributee to provide when electing a direct rollover?

A–6: (a) *Permissible procedures.* Except as otherwise provided in paragraph (b) of this Q&A–6, the plan administrator may prescribe any procedure for a distributee to elect a direct rollover under section 401(a)(31), provided that the procedure is reasonable. The procedure may include any reasonable requirement for information or documentation from the distributee in addition to the items of adequate information specified in § 31.3405(c)–1(b), Q&A–7 of this chapter. For example, it would be reasonable for the plan administrator to require that the distributee provide a statement from the designated recipient plan that the plan will accept the direct rollover for the benefit of the distributee and that the recipient plan is, or is intended to be, an individual retirement account, an individual retirement annuity, a qualified annuity plan described in section 403(a), or a qualified trust described in section 401(a), as applicable. In the case of a designated recipient plan that is a qualified trust, it also would be reasonable for the plan administrator to require a statement that the qualified trust is not excepted from the definition of an eligible retirement plan by section 401(a)(31)(D) (i.e., is not a defined benefit plan).

(b) *Impermissible procedures.* A plan will fail to satisfy section 401(a)(31) if the plan administrator prescribes any unreasonable procedure, or requires information or documentation, that effectively eliminates or substantially impairs the distributee's ability to elect a direct rollover. For example, it would effectively eliminate or substantially impair the distributee's ability to elect a direct rollover if the recipient plan required the distributee to obtain an opinion of counsel stating that the eligible retirement plan receiving the rollover is a qualified plan or individual retirement account. Similarly, it would effectively eliminate or substantially impair the distributee's ability to elect a direct rollover if the distributing plan required a letter from the recipient eligible retirement plan stating that, upon request by the distributing plan, the recipient plan will automatically return any direct rollover amount that the distributing plan advises the recipient plan was paid incorrectly. It would also effectively eliminate or substantially impair the distributee's ability to elect a direct rollover if the distributing plan required, as a condition for making a direct rollover, a letter from the recipient eligible retirement plan indemnifying the distributing plan for any liability arising from the distribution.

Q–7: May the plan administrator treat a distributee as having made an election under a default procedure where the distributee does not affirmatively elect to make or not make a direct rollover within a certain time period?

A–7: Yes, the plan administrator may establish a default procedure whereby any distributee who fails to make an affirmative election is treated as having either made or not made a direct rollover election. However, the plan administrator may not make a distribution under any default procedure unless the distributee has received an explanation of the default procedure and an explanation of the direct rollover option as required under section 402(f) and § 1.402(f)–1, Q&A–1 and unless the timing requirements described in § 1.402(f)–1, Q&A–2 and Q&A–3 have been satisfied with respect to the explanations of both the default procedure and the direct rollover option.

Q–8: May the plan administrator establish a deadline after which the distributee may not revoke an election to make or not make a direct rollover?

A–8: Yes, but the plan administrator is not permitted to prescribe any deadline or time period with respect to revocation of a direct rollover election that is more restrictive for the distributee than that which otherwise applies under the plan to revocation of the form of distribution elected by the distributee.

Q–9: Must the plan administrator permit a distributee to elect to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

A–9: Yes, the plan administrator must permit a distributee to elect to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder paid to the distributee. However, the plan administrator is permitted to require that, if the distributee elects to have only a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover, that portion be equal to at least a specified minimum amount, provided the specified minimum amount is less than or equal to $500 or any greater amount as prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter. If the entire amount of the eligible rollover distribution is less than or equal to the specified minimum amount, the plan administrator need not allow the distributee to divide the distribution.

Q–10: Must the plan administrator allow a distributee to divide an eligible rollover distribution into two or more separate distributions to be paid in direct rollovers to two or more eligible retirement plans?

A–10: No. The plan administrator is not required (but is permitted) to allow the distributee to divide an eligible rollover distribution into separate distributions to be paid to two or more eligible retirement plans in direct rollovers. Thus, the plan administrator may require that the distributee select a single eligible retirement plan to which the eligible rollover distribution (or portion thereof) will be distributed in a direct rollover.

Q–11: Will a plan satisfy section 401(a)(31) if the plan administrator does not permit a distributee to elect a direct rollover if his or her eligible rollover distributions during a year are reasonably expected to total less than $200?

A–11: Yes. A plan will satisfy section 401(a)(31) even though the plan

administrator does not permit any distributee to elect a direct rollover with respect to eligible rollover distributions during a year that are reasonably expected to total less than $200 or any lower minimum amount specified by the plan administrator. The rules described in § 31.3405(c)–1, Q&A–14 of this chapter (relating to whether withholding under section 3405(c) is required for an eligible rollover distribution that is less than $200) also apply for purposes of determining whether a direct rollover election under section 401(a)(31) must be provided for an eligible rollover distribution that is less than $200 or the lower specified amount.

Q–12: Is a plan administrator permitted to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applying to all subsequent payments in the series?

A–12: (a) Yes. A plan administrator is permitted to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applying to all subsequent payments in the series, provided that:

(1) The employee is permitted at any time to change, with respect to subsequent payments, a previous election to make or not make a direct rollover; and

(2) The written explanation provided under section 402(f) explains that the election to make or not make a direct rollover will apply to all future payments unless the employee subsequently changes the election.

(b) See § 1.402(f)–1, Q&A–3 for further guidance concerning the rules for providing section 402(f) notices when eligible rollover distributions are made in a series of periodic payments.

Q–13: Is the eligible retirement plan designated by a distributee to receive a direct rollover distribution required to accept the distribution?

A–13: (a) *General rule.* No. Although section 401(a)(31) requires qualified plans to provide distributees the option to make a direct rollover of their eligible rollover distributions to an eligible retirement plan, it imposes no requirement that any eligible retirement plan accept rollovers. Thus, a plan can refuse to accept rollovers. Alternatively, a plan can limit the circumstances under which it will accept rollovers. For example, a plan can limit the types of plans from which it will accept a rollover or limit the types of assets it will accept in a rollover (such as accepting only cash or its equivalent).

(b) *Qualification of receiving plan.* A plan that accepts a direct rollover from another plan will not fail to satisfy section 401(a) merely because the plan making the distribution is, in fact, not qualified under section 401(a) or section 403(a) at the time of the distribution, if, prior to accepting the rollover, the receiving plan reasonably concluded that the distributing plan was qualified under section 401(a) or section 403(a). For example, the receiving plan may reasonably conclude that the distributing plan was qualified under section 401(a) or section 403(a) if, prior to accepting the rollover, the plan administrator of the distributing plan provided the receiving plan with a statement that the distributing plan had received a determination letter from the Commissioner indicating that the plan was qualified.

Q–14: For purposes of applying the plan qualification requirements of section 401(a), is an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover a distribution and rollover or is it a transfer of assets and liabilities?

A–14: For purposes of applying the plan qualification requirements of section 401(a), a direct rollover is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. For example, if the consent requirements under section 411(a)(11) or sections 401(a)(11) and 417(a)(2) apply to the distribution, they must be satisfied before the eligible rollover distribution may be distributed in a direct rollover. Similarly, the direct rollover is not a transfer of assets and liabilities that must satisfy the requirements of section 414(l). Finally, a direct rollover is not a transfer of benefits for purposes of applying the requirements under section 411(d)(6), as described in § 1.411(d)–4, Q&A–3. Therefore, for example, the eligible retirement plan is not required to provide, with respect to amounts paid to it in a direct rollover, the same optional forms of benefits that were provided under the plan that made the direct rollover. The direct rollover requirements of section 401(a)(31) do not affect the ability of a qualified plan to make an elective or nonelective transfer of assets and liabilities to another qualified plan in accordance with applicable law (such as section 414(l)).

Q–15: Must a direct rollover option be provided for an eligible rollover distribution that is in the form of a plan loan offset amount?

A–15: A plan will not fail to satisfy section 401(a)(31) merely because the plan does not permit a distributee to elect a direct rollover of an eligible rollover distribution in the form of a plan loan offset amount. Section 1.402(c)–2(b), Q&A–9 defines a plan loan offset amount, in general, as a distribution that occurs when, under the terms governing a plan loan, the participant's accrued benefit is reduced (offset) in order to repay the loan. A plan administrator is permitted to allow a direct rollover of a participant note for a plan loan to a qualified trust described in section 401(a) or a qualified annuity plan described in section 403(a). See § 1.402(c)–2, Q&A–9 for examples illustrating the rules for plan loan offset amounts that are set forth in this Q&A–15. See § 31.3405(c)–1, Q&A–11 of this chapter for guidance concerning special withholding rules that apply to a distribution in the form of a plan loan offset amount.

Q–16: Must a direct rollover option be provided for an eligible rollover distribution from a qualified plan distributed annuity contract?

A–16: Yes. If any amount to be distributed under a qualified plan distributed annuity contract is an eligible rollover distribution (in accordance with § 1.402(c)–2), Q&A–10 the annuity contract must satisfy section 401(a)(31) in the same manner as a qualified plan under section 401(a). Section 1.402(c)–2, Q&A–10 defines a qualified plan distributed annuity contract as an annuity contract purchased for a participant, and distributed to the participant, by a qualified plan. In the case of a qualified plan distributed annuity contract, the payor under the contract is treated as the plan administrator. See § 31.3405(c)–1, Q&A–13 of this chapter concerning the application of mandatory 20-percent withholding requirements to distributions from a qualified plan distributed annuity contract.

Q–17: What assumptions may a plan administrator make regarding whether a benefit is an eligible rollover distribution?

A–17: (a) *General rule.* For purposes of section 401(a)(31), a plan administrator may make the assumptions described in paragraphs (b) and (c) of this Q&A–17 in determining the amount of a distribution that is an eligible rollover distribution for which a direct rollover option must be provided. Section 31.3405(c)–1, Q&A–10 of this chapter provides assumptions for purposes of complying with section 3405(c). See § 1.402(c)–2, Q&A–15 concerning the effect of these assumptions for purposes of section 402(c).

(b) *$5,000 death benefit.* A plan administrator is permitted to assume that a distribution from the plan that

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qualifies for the $5,000 death benefit exclusion under section 101(b) is the only death benefit being paid with respect to a deceased employee that qualifies for that exclusion. Thus, to the extent that such a distribution would be excludible from gross income based on this assumption, the plan administrator is permitted to assume that it is not an eligible rollover distribution.

(c) *Determination of designated beneficiary.* For the purpose of determining the amount of the minimum distribution required to satisfy section 401(a)(9)(A) for any calendar year, the plan administrator is permitted to assume that there is no designated beneficiary.

Q–18: When must a qualified plan be amended to comply with section 401(a)(31)?

A–18: Even though section 401(a)(31) applies to distributions from qualified plans made on or after January 1, 1993, a qualified plan is not required to be amended before the last day by which amendments must be made to comply with the Tax Reform Act of 1986 and related provisions, as permitted in other administrative guidance of general applicability, provided that:

(a) In the interim period between January 1, 1993, and the date on which the plan is amended, the plan is operated in accordance with the requirements of section 401(a)(31); and

(b) The amendment applies retroactively to January 1, 1993.

§ 1.402(c)–2 Eligible rollover distributions; questions and answers.

The following questions and answers relate to the rollover rules under section 402(c) of the Internal Revenue Code of 1986, as added by sections 521 and 522 of the Unemployment Compensation Amendments of 1992, Public Law 102–318, 106 Stat. 290 (UCA). For additional UCA guidance under sections 401(a)(31), 402(f), 403(b)(8) and (10), and 3405(c), see §§ 1.401(a)(31)–1, 1.402(f)–1, and 1.403(b)–2, and § 31.3405(c)–1 of this chapter, respectively.

List of Questions

Q–1: What is the rule regarding distributions that may be rolled over to an eligible retirement plan?

Q–2: What is an *eligible retirement plan* and a *qualified plan*?

Q–3: What is an *eligible rollover distribution*?

Q–4: Are there other amounts that are not eligible rollover distributions?

Q–5: For purposes of determining whether a distribution is an eligible rollover distribution, how is it determined whether a series of payments is a series of substantially equal periodic payments over a period specified in section 402(c)(4)(A)?

Q–6: What types of variations in the amount of a payment cause the payment to be independent of a series of substantially equal periodic payments and thus not part of the series?

Q–7: When is a distribution from a plan a required minimum distribution under section 401(a)(9)?

Q–8: How are amounts that are not includible in gross income allocated for purposes of determining the required minimum distribution?

Q–9: What is a distribution of a plan loan offset amount and is it an eligible rollover distribution?

Q–10: What is a qualified plan distributed annuity contract, and is an amount paid under such a contract a distribution of the balance to the credit of the employee in a qualified plan for purposes of section 402(c)?

Q–11: If an eligible rollover distribution is paid to an employee, and the employee contributes all or part of the eligible rollover distribution to an eligible retirement plan within 60 days, is the amount contributed not currently includible in gross income?

Q–12: How does section 402(c) apply to a distributee who is not the employee?

Q–13: Must an employee's (or spousal distributee's) election to treat a contribution of an eligible rollover distribution to an individual retirement plan as a rollover contribution be irrevocable?

Q–14: How is the $5,000 death benefit exclusion under section 101(b) treated for purposes of determining the amount that is an eligible rollover distribution?

Q–15: May an employee (or spousal distributee) roll over more than the plan administrator determines to be an eligible rollover distribution using an assumption described in § 1.401(a)(31)–1, Q&A–17?

Q–16: Is a rollover from a qualified plan to an individual retirement account or individual retirement annuity treated as a rollover contribution for purposes of the one-year look-back rollover limitation of section 408(d)(3)(B)?

Questions and Answers

Q–1: What is the rule regarding distributions that may be rolled over to an eligible retirement plan?

A–1: (a) *General rule.* Under section 402(c), as added by UCA, any portion of a distribution from a qualified plan that is an eligible rollover distribution described in section 402(c)(4) may be rolled over to an eligible retirement plan described in section 402(c)(8)(B). For purposes of section 402(c) and this section, a rollover is either a direct rollover as described in § 1.401(a)(31)–1, Q&A–3 or a contribution of an eligible rollover distribution to an eligible retirement plan that satisfies the time period requirement in section 402(c)(3) and Q&A–11 of this section and the designation requirement described in Q&A–13 of this section. See Q&A–2 of this section for the definition of an eligible retirement plan and a qualified plan.

(b) *Related Internal Revenue Code provisions*—(1) *Direct rollover option.* Section 401(a)(31), added by UCA, requires qualified plans to provide a distributee of an eligible rollover distribution the option to elect to have the distribution paid directly to an eligible retirement plan in a direct rollover. See § 1.401(a)(31)–1 for further guidance concerning this direct rollover option.

(2) *Notice requirement.* Section 402(f) requires the plan administrator of a qualified plan to provide, within a reasonable time before making an eligible rollover distribution, a written explanation to the distributee of the distributee's right to elect a direct rollover and the withholding consequences of not making that election. The explanation also is required to provide certain other relevant information relating to the taxation of distributions. See § 1.402(f)–1 for guidance concerning the written explanation required under section 402(f).

(3) *Mandatory income tax withholding.* If a distributee of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under section 401(a)(31), the eligible rollover distribution is subject to 20-percent income tax withholding under section 3405(c). See § 31.3405(c)–1 of this chapter for provisions relating to the withholding requirements applicable to eligible rollover distributions.

(4) *Section 403(b) annuities.* See § 1.403(b)–2 for guidance concerning the direct rollover requirements for distributions from annuities described in section 403(b).

(c) *Effective date*—(1) *Statutory effective date.* Section 402(c), added by UCA, applies to eligible rollover distributions made on or after January 1, 1993, even if the event giving rise to the distribution occurred on or before January 1, 1993 (e.g. termination of the employee's employment with the employer maintaining the plan before January 1, 1993), and even if the eligible rollover distribution is part of a series of payments that began before January 1, 1993.

(2) *Regulatory effective date.* This section applies to any distribution made on or after October 19, 1995. For eligible rollover distributions made on or after January 1, 1993 and before October 19, 1995, § 1.402(c)–2T (as it appeared in the April 1, 1995 edition of 26 CFR part 1), applies. However, for any distribution made on or after January 1, 1993 but before October 19, 1995, any

or all of the provisions of this section may be substituted for the corresponding provisions of § 1.402(c)–2T, if any.

Q–2: What is an *eligible retirement plan* and a *qualified plan*?

A–2: An eligible retirement plan, under section 402(c)(8)(B), means a qualified plan or an individual retirement plan. For purposes of section 402(c) and this section, a qualified plan is an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a). An individual retirement plan is an individual retirement account described in section 408(a) or an individual retirement annuity (other than an endowment contract) described in section 408(b).

Q–3: What is an *eligible rollover distribution*?

A–3: (a) *General rule.* Unless specifically excluded, an eligible rollover distribution means any distribution to an employee (or to a spousal distributee described in Q&A–12(a) of this section) of all or any portion of the balance to the credit of the employee in a qualified plan. Thus, except as specifically provided in Q&A–4(b) of this section, any amount distributed to an employee (or such a spousal distributee) from a qualified plan is an eligible rollover distribution, regardless of whether it is a distribution of a benefit that is protected under section 411(d)(6).

(b) *Exceptions.* An eligible rollover distribution does not include the following:

(1) Any distribution that is one of a series of substantially equal periodic payments made (not less frequently than annually) over any one of the following periods—

(i) The life of the employee (or the joint lives of the employee and the employee's designated beneficiary);

(ii) The life expectancy of the employee (or the joint life and last survivor expectancy of the employee and the employee's designated beneficiary); or

(iii) A specified period of ten years or more;

(2) Any distribution to the extent the distribution is a required minimum distribution under section 401(a)(9); or

(3) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation described in section 402(e)(4)). Thus, for example, an eligible rollover distribution does not include the portion of any distribution that is excludible from gross income under section 72 as a return of the employee's investment in the contract (e.g., a return of the employee's after-tax contributions), but does include net unrealized appreciation.

Q–4: Are there other amounts that are not eligible rollover distributions?

A–4: Yes. The following amounts are not eligible rollover distributions:

(a) Elective deferrals, as defined in section 402(g)(3), that, pursuant to § 1.415–6(b)(6)(iv), are returned as a result of the application of the section 415 limitations, together with the income allocable to these corrective distributions.

(b) Corrective distributions of excess deferrals as described in § 1.402(g)–1(e)(3), together with the income allocable to these corrective distributions.

(c) Corrective distributions of excess contributions under a qualified cash or deferred arrangement described in § 1.401(k)–1(f)(4) and excess aggregate contributions described in § 1.401(m)–1(e)(3), together with the income allocable to these distributions.

(d) Loans that are treated as deemed distributions pursuant to section 72(p).

(e) Dividends paid on employer securities as described in section 404(k).

(f) The costs of life insurance coverage (P.S. 58 costs).

(g) Similar items designated by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter.

Q–5: For purposes of determining whether a distribution is an eligible rollover distribution, how is it determined whether a series of payments is a series of substantially equal periodic payments over a period specified in section 402(c)(4)(A)?

A–5: (a) *General rule.* Generally, whether a series of payments is a series of substantially equal periodic payments over a specified period is determined at the time payments begin, and by following the principles of section 72(t)(2)(A)(iv), without regard to contingencies or modifications that have not yet occurred. Thus, for example, a joint and 50-percent survivor annuity will be treated as a series of substantially equal payments at the time payments commence, as will a joint and survivor annuity that provides for increased payments to the employee if the employee's beneficiary dies before the employee. Similarly, for purposes of determining if a disability benefit payment is part of a series of substantially equal payments for a period described in section 402(c)(4)(A), any contingency under which payments cease upon recovery from the disability may be disregarded.

(b) *Certain supplements disregarded.* For purposes of determining whether a distribution is one of a series of payments that are substantially equal, social security supplements described in section 411(a)(9) are disregarded. For example, if a distributee receives a life annuity of $500 per month, plus a social security supplement consisting of payments of $200 per month until the distributee reaches the age at which social security benefits of not less than $200 a month begin, the $200 supplemental payments are disregarded and, therefore, each monthly payment of $700 made before the social security age and each monthly payment of $500 made after the social security age is treated as one of a series of substantially equal periodic payments for life. A series of payments that are not substantially equal solely because the amount of each payment is reduced upon attainment of social security retirement age (or, alternatively, upon commencement of social security early retirement, survivor, or disability benefits) will also be treated as substantially equal as long as the reduction in the actual payments is level and does not exceed the applicable social security benefit.

(c) *Changes in the amount of payments or the distributee.* If the amount (or, if applicable, the method of calculating the amount) of the payments changes so that subsequent payments are not substantially equal to prior payments, a new determination must be made as to whether the remaining payments are a series of substantially equal periodic payments over a period specified in Q&A–3(b)(1) of this section. This determination is made without taking into account payments made or the years of payment that elapsed prior to the change. However, a new determination is not made merely because, upon the death of the employee, the spouse or former spouse of the employee becomes the distributee. Thus, once distributions commence over a period that is at least as long as either the first annuitant's life or 10 years (e.g., as provided by a life annuity with a five-year or ten-year-certain guarantee), then substantially equal payments to the survivor are not eligible rollover distributions even though the payment period remaining after the death of the employee is or may be less than the period described in section 402(c)(4)(A). For example, substantially equal periodic payments made under a life annuity with a five-year term certain would not be an eligible rollover distribution even when paid after the death of the employee with three years remaining under the term certain.

(d) *Defined contribution plans.* The following rules apply in determining whether a series of payments from a defined contribution plan constitute substantially equal periodic payments for a period described in section 402(c)(4)(A):

(1) *Declining balance of years.* A series of payments from an account balance under a defined contribution plan will be considered substantially equal payments over a period if, for each year, the amount of the distribution is calculated by dividing the account balance by the number of years remaining in the period. For example, a series of payments will be considered substantially equal payments over 10 years if the series is determined as follows. In year 1, the annual payment is the account balance divided by 10; in year 2, the annual payment is the remaining account balance divided by 9; and so on until year 10 when the entire remaining balance is distributed.

(2) *Reasonable actuarial assumptions.* If an employee's account balance under a defined contribution plan is to be distributed in annual installments of a specified amount until the account balance is exhausted, then, for purposes of determining if the period of distribution is a period described in section 402(c)(4)(A), the period of years over which the installments will be distributed must be determined using reasonable actuarial assumptions. For example, if an employee has an account balance of $100,000, elects distributions of $12,000 per year until the account balance is exhausted, and the future rate of return is assumed to be 8% per year, the account balance will be exhausted in approximately 14 years. Similarly, if the same employee elects a fixed annual distribution amount and the fixed annual amount is less than or equal to $10,000, it is reasonable to assume that a future rate of return will be greater than 0% and, thus, the account will not be exhausted in less than 10 years.

(e) *Series of payments beginning before January 1, 1993.* Except as provided in paragraph (c) of this Q&A, if a series of periodic payments began before January 1, 1993, the determination of whether the post-December 31, 1992 payments are a series of substantially equal periodic payments over a specified period is made by taking into account all payments made, including payments made before January 1, 1993. For example, if a series of substantially equal periodic payments beginning on January 1, 1983, is scheduled to be paid over a period of 15 years, payments in the series that are made after December 31, 1992, will not be eligible rollover distributions even though they will continue for only five years after December 31, 1992, because the pre-January 1, 1993 payments are taken into account in determining the specified period.

Q–6: What types of variations in the amount of a payment cause the payment to be independent of a series of substantially equal periodic payments and thus not part of the series?

A–6: (a) *Independent payments.* Except as provided in paragraph (b) of this Q&A, a payment is treated as independent of the payments in a series of substantially equal payments, and thus not part of the series, if the payment is substantially larger or smaller than the other payments in the series. An independent payment is an eligible rollover distribution if it is not otherwise excepted from the definition of eligible rollover distribution. This is the case regardless of whether the payment is made before, with, or after payments in the series. For example, if an employee elects a single payment of half of the account balance with the remainder of the account balance paid over the life expectancy of the distributee, the single payment is treated as independent of the payments in the series and is an eligible rollover distribution unless otherwise excepted. Similarly, if an employee's surviving spouse receives a survivor life annuity of $1,000 per month plus a single payment on account of death of $7,500, the single payment is treated as independent of the payments in the annuity and is an eligible rollover distribution unless otherwise excepted (e.g., $5,000 of the $7,500 might qualify to be excluded from gross income as a death benefit under section 101(b)).

(b) *Special rules*—(1) *Administrative error or delay.* If, due solely to reasonable administrative error or delay in payment, there is an adjustment after the annuity starting date to the amount of any payment in a series of payments that otherwise would constitute a series of substantially equal payments described in section 402(c)(4)(A) and this section, the adjusted payment or payments will be treated as part of the series of substantially equal periodic payments and will not be treated as independent of the payments in the series. For example, if, due solely to reasonable administrative delay, the first payment of a life annuity is delayed by two months and reflects an additional two months worth of benefits, that payment will be treated as a substantially equal payment in the series rather than as an independent payment. The result will not change merely because the amount of the adjustment is paid in a separate supplemental payment.

(2) *Supplemental payments for annuitants.* A supplemental payment from a defined benefit plan to annuitants (e.g., retirees or beneficiaries) will be treated as part of a series of substantially equal payments, rather than as an independent payment, provided that the following conditions are met—

(i) The supplement is a benefit increase for annuitants;

(ii) The amount of the supplement is determined in a consistent manner for all similarly situated annuitants;

(iii) The supplement is paid to annuitants who are otherwise receiving payments that would constitute substantially equal periodic payments; and

(iv) The aggregate supplement is less than or equal to the greater of 10% of the annual rate of payment for the annuity, or $750 or any higher amount prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the **Federal Register**. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(3) *Final payment in a series.* If a payment in a series of payments from an account balance under a defined contribution plan represents the remaining balance to the credit and is substantially less than the other payments in the series, the final payment must nevertheless be treated as a payment in the series of substantially equal payments and may not be treated as an independent payment if the other payments in the series are substantially equal and the payments are for a period described in section 402(c)(4)(A) based on the rules provided in paragraph (d)(2) of Q&A–5 of this section. Thus, such final payment will not be an eligible rollover distribution.

Q–7: When is a distribution from a plan a required minimum distribution under section 401(a)(9)?

A–7: (a) *General rule.* Except as provided in paragraphs (b) and (c) of this Q&A, if a minimum distribution is required for a calendar year, the amounts distributed during that calendar year are treated as required minimum distributions under section 401(a)(9), to the extent that the total required minimum distribution under section 401(a)(9) for the calendar year has not been satisfied. Accordingly, these amounts are not eligible rollover distributions. For example, if an employee is required under section

401(a)(9) to receive a required minimum distribution for a calendar year of $5,000 and the employee receives a total of $7,200 in that year, the first $5,000 distributed will be treated as the required minimum distribution and will not be an eligible rollover distribution and the remaining $2,200 will be an eligible rollover distribution if it otherwise qualifies. If the total section 401(a)(9) required minimum distribution for a calendar year is not distributed in that calendar year (e.g., when the distribution for the calendar year in which the employee reaches age 70½ is made on the following April 1), the amount that was required but not distributed is added to the amount required to be distributed for the next calendar year in determining the portion of any distribution in the next calendar year that is a required minimum distribution.

(b) *Distribution before age 70½.* Any amount that is paid before January 1 of the year in which the employee attains (or would have attained) age 70½ will not be treated as required under section 401(a)(9) and, thus, is an eligible rollover distribution if it otherwise qualifies.

(c) *Special rule for annuities.* In the case of annuity payments from a defined benefit plan, or under an annuity contract purchased from an insurance company (including a qualified plan distributed annuity contract (as defined in Q&A–10 of this section)), the entire amount of any such annuity payment made on or after January 1 of the year in which an employee attains (or would have attained) age 70½ will be treated as an amount required under section 401(a)(9) and, thus, will not be an eligible rollover distribution.

Q–8: How are amounts that are not includible in gross income allocated for purposes of determining the required minimum distribution?

A–8: If section 401(a)(9) has not yet been satisfied by the plan for the year with respect to an employee, a distribution is made to the employee that exceeds the amount required to satisfy section 401(a)(9) for the year for the employee, and a portion of that distribution is excludible from gross income, the following rule applies for purposes of determining the amount of the distribution that is an eligible rollover distribution. The portion of the distribution that is excludible from gross income is first allocated toward satisfaction of section 401(a)(9) and then the remaining portion of the required minimum distribution, if any, is satisfied from the portion of the distribution that is includible in gross income. For example, assume an employee is required under section 401(a)(9) to receive a minimum distribution for a calendar year of $4,000 and the employee receives a $4,800 distribution, of which $1,000 is excludible from income as a return of basis. First, the $1,000 return of basis is allocated toward satisfying the required minimum distribution. Then, the remaining $3,000 of the required minimum distribution is satisfied from the $3,800 of the distribution that is includible in gross income, so that the remaining balance of the distribution, $800, is an eligible rollover distribution if it otherwise qualifies.

Q–9: What is a distribution of a plan loan offset amount, and is it an eligible rollover distribution?

A–9: (a) *General rule.* A distribution of a plan loan offset amount, as defined in paragraph (b) of this Q&A, is an eligible rollover distribution if it satisfies Q&A–3 of this section. Thus, an amount equal to the plan loan offset amount can be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the 60-day period under section 402(c)(3), unless the plan loan offset amount fails to be an eligible rollover distribution for another reason. See § 1.401(a)(31)–1, Q&A–15 for guidance concerning the offering of a direct rollover of a plan loan offset amount. See § 31.3405(c)–1, Q&A–11 of this chapter for guidance concerning special withholding rules with respect to plan loan offset amounts.

(b) *Definition of plan loan offset amount.* For purposes of section 402(c), a distribution of a plan loan offset amount is a distribution that occurs when, under the plan terms governing a plan loan, the participant's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in a participant's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of circumstances, e.g., where the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, accelerated, or treated as if it were in default (e.g., where the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

(c) *Examples.* The rules with respect to a plan loan offset amount in this Q&A–9, § 1.401(a)(31)–1, Q&A–15 and § 31.3405(c)–1, Q&A–11 of this chapter are illustrated by the following examples:

Example 1. (a) In 1996, Employee A has an account balance of $10,000 in Plan Y, of which $3,000 is invested in a plan loan to Employee A that is secured by Employee A's account balance in Plan Y. Employee A has made no after-tax employee contributions to Plan Y. Plan Y does not provide any direct rollover option with respect to plan loans. Upon termination of employment in 1996, Employee A, who is under age 70½, elects a distribution of Employee A's entire account balance in Plan Y, and Employee A's outstanding loan is offset against the account balance on distribution. Employee A elects a direct rollover of the distribution.

(b) In order to satisfy section 401(a)(31), Plan Y must pay $7,000 directly to the eligible retirement plan chosen by Employee A in a direct rollover. When Employee A's account balance was offset by the amount of the $3,000 unpaid loan balance, Employee A received a plan loan offset amount (equivalent to $3,000) that is an eligible rollover distribution. However, under § 1.401(a)(31)–1, Q&A–15 Plan Y satisfies section 401(a)(31), even though a direct rollover option was not provided with respect to the $3,000 plan loan offset amount.

(c) No withholding is required under section 3405(c) on account of the distribution of the $3,000 plan loan offset amount because no cash or other property (other than the plan loan offset amount) is received by Employee A from which to satisfy the withholding. Employee A may roll over $3,000 to an eligible retirement plan within the 60 day period provided in section 402(c)(3).

Example 2. (a) The facts are the same as in *Example 1*, except that the terms governing the plan loan to Employee A provide that, upon termination of employment, Employee A's account balance is automatically offset by the amount of any unpaid loan balance to repay the loan. Employee A terminates employment but does not request a distribution from Plan Y. Nevertheless, pursuant to the terms governing the plan loan, Employee A's account balance is automatically offset by the amount of the $3,000 unpaid loan balance.

(b) The $3,000 plan loan offset amount attributable to the plan loan in this example is treated in the same manner as the $3,000 plan loan offset amount in *Example 1*.

Example 3. (a) The facts are the same as in *Example 2*, except that, instead of providing for an automatic offset upon termination of employment to repay the plan loan, the terms governing the plan loan require full repayment of the loan by Employee A within 30 days of termination of employment. Employee A terminates employment, does not elect a distribution from Plan Y, and also fails to repay the plan loan within 30 days. The plan administrator of Plan Y declares the plan loan to Employee A in default and executes on the loan by offsetting Employee A's account balance by the amount of the $3,000 unpaid loan balance.

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(b) The $3,000 plan loan offset amount attributable to the plan loan in this example is treated in the same manner as the $3,000 plan loan offset amount in *Example 1* and in *Example 2*. The result in this *Example 3* is the same even though the plan administrator treats the loan as in default before offsetting Employee A's accrued benefit by the amount of the unpaid loan.

Example 4. (a) The facts are the same as in *Example 1*, except that Employee A elects to receive the distribution of the account balance that remains after the $3,000 offset to repay the plan loan, instead of electing a direct rollover of the remaining account balance.

(b) In this case, the amount of the distribution received by Employee A is $10,000, not $3,000. Because the amount of the $3,000 offset attributable to the loan is included in determining the amount that equals 20 percent of the eligible rollover distribution received by Employee A, withholding in the amount of $2,000 (20 percent of $10,000) is required under section 3405(c). The $2,000 is required to be withheld from the $7,000 to be distributed to Employee A in cash, so that Employee A actually receives a check for $5,000.

Example 5. The facts are the same as in *Example 4*, except that the $7,000 distribution to Employee A after the offset to repay the loan consists solely of employer securities within the meaning of section 402(e)(4)(E). In this case, no withholding is required under section 3405(c) because the distribution consists solely of the $3,000 plan loan offset amount and the $7,000 distribution of employer securities. This is the result because the total amount required to be withheld does not exceed the sum of the cash and the fair market value of other property distributed, excluding plan loan offset amounts and employer securities. Employee A may roll over the employer securities and $3,000 to an eligible retirement plan within the 60-day period provided in section 402(c)(3).

Example 6. Employee B, who is age 40, has an account balance in Plan Z, a profit sharing plan qualified under section 401(a) that includes a qualified cash or deferred arrangement described in section 401(k). Plan Z provides for no after-tax employee contributions. In 1990, Employee B receives a loan from Plan Z, the terms of which satisfy section 72(p)(2), and which is secured by elective contributions subject to the distribution restrictions in section 401(k)(2)(B). In 1996, the loan fails to satisfy section 72(p)(2) because Employee B stops repayment. In that year, pursuant to section 72(p), Employee B is taxed on a deemed distribution equal to the amount of the unpaid loan balance. Under Q&A–4 of this section, the deemed distribution is not an eligible rollover distribution. Because Employee B has not separated from service or experienced any other event that permits the distribution under section 401(k)(2)(B) of the elective contributions that secure the loan, Plan Z is prohibited from executing on the loan. Accordingly, Employee B's account balance is not offset by the amount of the unpaid loan balance at the time Employee B stops repayment on the loan. Thus, there is no distribution of an offset amount that is an eligible rollover distribution in 1996.

Q–10: What is a qualified plan distributed annuity contract, and is an amount paid under such a contract a distribution of the balance to the credit of the employee in a qualified plan for purposes of section 402(c)?

A–10: (a) *Definition of a qualified plan distributed annuity contract*. A qualified plan distributed annuity contract is an annuity contract purchased for a participant, and distributed to the participant, by a qualified plan.

(b) *Treatment of amounts paid as eligible rollover distributions*. Amounts paid under a qualified plan distributed annuity contract are payments of the balance to the credit of the employee for purposes of section 402(c) and are eligible rollover distributions, if they otherwise qualify. Thus, for example, if the employee surrenders the contract for a single sum payment of its cash surrender value, the payment would be an eligible rollover distribution to the extent it is includible in gross income and not a required minimum distribution under section 401(a)(9). This rule applies even if the annuity contract is distributed in connection with a plan termination. See § 1.401(a)(31)–1, Q&A–16 and § 31.3405(c)–1, Q&A–13 of this chapter concerning the direct rollover requirements and 20-percent withholding requirements, respectively, that apply to eligible rollover distributions from such an annuity contract.

Q–11: If an eligible rollover distribution is paid to an employee, and the employee contributes all or part of the eligible rollover distribution to an eligible retirement plan within 60 days, is the amount contributed not currently includible in gross income?

A–11: Yes, the amount contributed is not currently includible in gross income, provided that it is contributed to the eligible retirement plan no later than the 60th day following the day on which the employee received the distribution. If more than one distribution is received by an employee from a qualified plan during a taxable year, the 60-day rule applies separately to each distribution. Because the amount withheld as income tax under section 3405(c) is considered an amount distributed under section 402(c), an amount equal to all or any portion of the amount withheld can be contributed as a rollover to an eligible retirement plan within the 60-day period, in addition to the net amount of the eligible rollover distribution actually received by the employee. However, if all or any portion of an amount equal to the amount withheld is not contributed as a rollover, it is included in the employee's gross income to the extent required under section 402(a), and also may be subject to the 10-percent additional income tax under section 72(t).

Q–12: How does section 402(c) apply to a distributee who is not the employee?

A–12: (a) *Spousal distributee*. If any distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. The same rule applies if any distribution attributable to an employee is paid in accordance with a qualified domestic relations order (as defined in section 414(p)) to the employee's spouse or former spouse who is an alternate payee. Therefore, a distribution to the surviving spouse of an employee (or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order), including a distribution of ancillary death benefits attributable to the employee, is an eligible rollover distribution if it meets the requirements of section 402(c)(2) and (4) and Q&A–3 through Q&A–10 and Q&A–14 of this section. However, a qualified plan (as defined in Q&A–2 of this section) is not treated as an eligible retirement plan with respect to a surviving spouse. Only an individual retirement plan is treated as an eligible retirement plan with respect to an eligible rollover distribution to a surviving spouse.

(b) *Non-spousal distributee*. A distributee other than the employee or the employee's surviving spouse (or a spouse or former spouse who is an alternate payee under a qualified domestic relations order) is not permitted to roll over distributions from a qualified plan. Therefore, those distributions do not constitute eligible rollover distributions under section 402(c)(4) and are not subject to the 20-percent income tax withholding under section 3405(c).

Q–13: Must an employee's (or spousal distributee's) election to treat a contribution of an eligible rollover distribution to an individual retirement plan as a rollover contribution be irrevocable?

A–13: (a) *In general*. Yes. In order for a contribution of an eligible rollover distribution to an individual retirement plan to constitute a rollover and, thus, to qualify for current exclusion from gross income, a distributee must elect, at the time the contribution is made, to treat the contribution as a rollover

contribution. An election is made by designating to the trustee, issuer, or custodian of the eligible retirement plan that the contribution is a rollover contribution. This election is irrevocable. Once any portion of an eligible rollover distribution has been contributed to an individual retirement plan and designated as a rollover distribution, taxation of the withdrawal of the contribution from the individual retirement plan is determined under section 408(d) rather than under section 402 or 403. Therefore, the eligible rollover distribution is not eligible for capital gains treatment, five-year or ten-year averaging, or the exclusion from gross income for net unrealized appreciation on employer stock.

(b) Direct rollover. If an eligible rollover distribution is paid to an individual retirement plan in a direct rollover at the election of the distributee, the distributee is deemed to have irrevocably designated that the direct rollover is a rollover contribution.

Q–14: How is the $5,000 death benefit exclusion under section 101(b) treated for purposes of determining the amount that is an eligible rollover distribution?

A–14: To the extent that a death benefit is a distribution from a qualified plan, the portion of the distribution that is excluded from gross income under section 101(b) is not an eligible rollover distribution. See § 1.401(a)(31)-1, Q&A–17 for guidance concerning assumptions that a plan administrator may make with respect to whether and to what extent a distribution of a survivor benefit is excludible from gross income under section 101(b).

Q–15: May an employee (or spousal distributee) roll over more than the plan administrator determines to be an eligible rollover distribution using an assumption described in § 1.401(a)(31)-1, Q&A–17?

A–15: Yes. The portion of any distribution that an employee (or spousal distributee) may roll over as an eligible rollover distribution under section 402(c) is determined based on the actual application of section 402 and other relevant provisions of the Internal Revenue Code. The actual application of these provisions may produce different results than any assumption described in § 1.401(a)(31)–1, Q&A–17 that is used by the plan administrator. Thus, for example, even though the plan administrator calculates the portion of a distribution that is a required minimum distribution (and thus is not made eligible for direct rollover under section 401(a)(31)), by assuming that there is no designated beneficiary, the portion of the distribution that is actually a required minimum distribution and thus not an eligible rollover distribution is determined by taking into account the designated beneficiary, if any. If, by taking into account the designated beneficiary, a greater portion of the distribution is an eligible rollover distribution, the distributee may rollover the additional amount. Similarly, even though a plan administrator assumes that a distribution from a qualified plan is the only death benefit with respect to an employee that qualifies for the $5,000 death benefit exclusion under section 101(b), to the extent that the death benefit exclusion is allocated to a different death benefit, a greater portion of the distribution may actually be includible in gross income and, thus, be an eligible rollover distribution, and the surviving spouse may roll over the additional amount if it otherwise qualifies.

Q–16: Is a rollover from a qualified plan to an individual retirement account or individual retirement annuity treated as a rollover contribution for purposes of the one-year look-back rollover limitation of section 408(d)(3)(B)?

A–16: No. A distribution from a qualified plan that is rolled over to an individual retirement account or individual retirement annuity is not treated for purposes of section 408(d)(3)(B) as an amount received by an individual from an individual retirement account or individual retirement annuity which is not includible in gross income because of the application of section 408(d)(3).

§ 1.402(f)–1 Required explanation of eligible rollover distributions; questions and answers.

The following questions and answers concern the written explanation requirement imposed by section 402(f) of the Internal Revenue Code of 1986 relating to distributions eligible for rollover treatment. Section 402(f) was amended by section 521(a) of the Unemployment Compensation Amendments of 1992, Public Law 102–318, 106 Stat. 290 (UCA). For additional UCA guidance under sections 401(a)(31), 402(c), 403(b)(8) and (10), and 3405(c), see §§ 1.401(a)(31)–1, 1.402(c)–2, 1.403(b)–2, and 31.3405(c)–1 of this chapter, respectively.

List of Questions

Q–1: What are the requirements for a written explanation under section 402(f)?

Q–2: When must the plan administrator provide the section 402(f) notice to a distributee?

Q–3: Must the plan administrator provide a separate section 402(f) notice for each distribution in a series of periodic payments that are eligible rollover distributions?

Q–4: May a plan administrator post the section 402(f) notice as a means of providing it to distributees?

Questions and Answers

Q–1: What are the requirements for a written explanation under section 402(f)?

A–1: (a) *General rule*. Under section 402(f), as amended by UCA, the plan administrator of a qualified plan is required, within a reasonable period of time before making an eligible rollover distribution, to provide the distributee with the written explanation described in section 402(f) (section 402(f) notice). The section 402(f) notice must be designed to be easily understood and must explain the following: the rules under which the distributee may elect that the distribution be paid in the form of a direct rollover to an eligible retirement plan; the rules that require the withholding of tax on the distribution if it is not paid in a direct rollover; the rules under which the distributee may defer tax on the distribution if it is contributed in a rollover to an eligible retirement plan within 60 days of the distribution; and if applicable, certain special rules regarding the taxation of the distribution as described in section 402(d) (averaging with respect to lump sum distributions) and (e) (other rules including treatment of net unrealized appreciation). See § 1.401(a)(31)–1, Q&A–7 for additional information that must be provided if a plan provides a default procedure regarding the election of a direct rollover.

(b) *Model section 402(f) notice*. The plan administrator will be deemed to have complied with the requirements of paragraph (a) of this Q&A–1 relating to the contents of the section 402(f) notice if the plan administrator provides the applicable model section 402(f) notice published by the Internal Revenue Service for this purpose in a revenue ruling, notice, or other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(c) *Delegation to Commissioner*. The Commissioner, in revenue rulings, notices, and other guidance, published in the Internal Revenue Bulletin, may modify, or provide any additional guidance with respect to, the notice requirement of this section. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(d) *Effective date*—(1) *Statutory effective date*. Section 402(f) applies to eligible rollover distributions made after December 31, 1992.

(2) *Regulatory effective date*. This section applies to eligible rollover distributions made on or after October

19, 1995. For eligible rollover distributions made on or after January 1, 1993 and before October 19, 1995, § 1.402(c)–2T, Q&A–11 through 15 (as it appeared in the April 1, 1995 edition of 26 CFR part 1), apply. However, for any distribution made on or after January 1, 1993 but before October 19, 1995, a plan administrator or payor may satisfy the requirements of section 402(f) by substituting any or all provisions of this section for the corresponding provisions of § 1.402(c)–1T, Q&A–11 through 15, if any.

Q–2: When must the plan administrator provide the section 402(f) notice to a distributee?

A–2: The plan administrator must provide a distributee with the section 402(f) notice no less than 30 days and no more than 90 days before the date of distribution. However, if the distributee, after having received the section 402(f) notice, affirmatively elects a distribution, a plan will not fail to satisfy section 402(f) merely because the distribution is made less than 30 days after the section 402(f) notice was provided to the distributee, provided that the following requirement is met. The plan administrator must provide information to the distributee clearly indicating that (in accordance with the first sentence of this Q&A–2) the distributee has a right to consider the decision of whether or not to elect a direct rollover for at least 30 days after the notice is provided. The plan administrator may use any method to inform the distributee of the relevant time period, provided that the method is reasonably designed to attract the attention of the distributee. For example, this information could be provided either in the section 402(f) notice or stated in a separate document (e.g., attached to the election form) that is provided at the same time as the notice. For purposes of satisfying the requirement in the first sentence of this Q&A–2, the plan administrator may substitute the annuity starting date, within the meaning of § 1.401(a)–20, Q&A–10, for the date of distribution.

Q–3: Must the plan administrator provide a separate section 402(f) notice for each distribution in a series of periodic payments that are eligible rollover distributions?

A–3: No. In the case of a series of periodic payments that are eligible rollover distributions, the plan administrator is permitted to satisfy section 402(f) with respect to each payment in the series by providing the section 402(f) notice prior to the first payment in the series, in accordance with the rules in Q&A–1 and Q&A–2 of this section, and providing the notice at least once annually for as long as the payments continue. However, see § 1.401(a)(31)–1, Q&A–12 for additional guidance if the plan administrator intends to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applicable to all subsequent payments in the series (absent a subsequent change of election).

Q–4: May a plan administrator post the section 402(f) notice as a means of providing it to distributees?

A–4: No. The posting of the section 402(f) notice will not be considered provision of the notice. The written notice must be provided individually to any distributee of an eligible rollover distribution within the time period described in Q&A–2 and Q&A–3 of this section.

§ 1.403(b)–2 Eligible rollover distributions; questions and answers.

The following questions and answers relate to eligible rollover distributions from annuities, custodial accounts, and retirement income accounts described in section 403(b) of the Internal Revenue Code of 1986, as amended by sections 521 and 522 of the Unemployment Compensation Amendments of 1992 (Public Law 102–318, 106 Stat. 290) (UCA). For additional UCA guidance under sections 401(a)(31), 402(c), 402(f), and 3405(c), see §§ 1.401(a)(31)–1, 1.402(c)–2, 1.402(f)–1, and § 31.3405(c)–1 of this chapter, respectively.

List of Questions

Q–1: What is the rule regarding distributions that may be rolled over to an eligible retirement plan from annuities, custodial accounts, and retirement income accounts described in section 403(b)?

Q–2: Is a section 403(b) annuity required to provide the direct rollover option described in section 401(a)(31) as a distribution option?

Q–3: Is the payor of a section 403(b) annuity required to provide a distributee of an eligible rollover distribution with an explanation of the direct rollover option?

Q–4: When do sections 403 (b)(8) and (b)(10), as amended by UCA, and this § 1.403(b)–2 apply to distributions from section 403(b) annuities?

Questions and Answers

Q–1: What is the rule regarding distributions that may be rolled over to an eligible retirement plan from annuities, custodial accounts, and retirement income accounts described in section 403(b)?

A–1: Under section 403(b)(8), as amended by UCA, any eligible rollover distribution from a section 403(b) annuity is permitted to be rolled over to an eligible retirement plan. For purposes of this section, a section 403(b) annuity includes an annuity contract, a custodial account, and a retirement income account described in section 403(b). For purposes of section 403(b)(8) and this section, an eligible retirement plan means another section 403(b) annuity or an individual retirement plan (as defined in § 1.402(c)(2), Q&A–2 but does not include a qualified plan (as defined in § 1.402(c)–2), Q&A–2. Except to the extent otherwise provided in this section, an eligible rollover distribution from a section 403(b) annuity is an eligible rollover distribution described in section 402(c) (2) and (4) and § 1.402(c)–2, Q&A–3 through Q&A–10 and Q&A–14, except that the distribution is from section 403(b) annuity rather than a qualified plan. Thus, for example, to the extent that corrective distributions described in § 1.402(c)–2, Q&A–4 are properly made from a section 403(b) annuity, such distributions are not eligible rollover distributions. Similarly, in the case of annuity distributions from an annuity contract described in section 403(b), the entire amount of any such annuity payment made on or after January 1 of the year in which an employee attains (or would have attained) age 70½ will be treated as an amount required under section 401(a)(9) and, thus, will not be an eligible rollover distribution. The rules with respect to rollovers in sections 402 (c)(1), (c)(3), and (c)(9) and § 1.402(c)–2, Q&A–11 through Q&A–13 and Q&A–15 also apply to eligible rollover distributions from section 403(b) annuities.

Q–2: Is a section 403(b) annuity required to provide the direct rollover option described in section 401(a)(31) as a distribution option?

A–2: (a) *General rule.* Yes. Pursuant to section 403(b)(10), section 403(b) does not apply to an annuity contract, custodial account, or retirement income account unless the annuity contract, custodial account, or retirement income account provides that if the distributee of any eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan (as defined in Q&A–1 of this section) and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover. For purposes of determining whether a section 403(b) annuity has satisfied this direct rollover requirement, the provisions of § 1.401(a)(31)–1 apply to the section 403(b) annuity as though it were a plan qualified under section 401(a) unless otherwise provided in this section. For example, as described in § 1.401(a)(31)–1, Q&A–14 a direct rollover from a section 403(b) annuity to another section 403(b) annuity is a distribution and a rollover and not a transfer of funds between section 403(b) annuities and, thus, is not subject to the applicable law governing transfers of funds between section 403(b) annuities. In applying the provisions of § 1.401(a)(31)–1, the payor of the eligible rollover distribution is treated as the plan administrator.

(b) *Mandatory withholding.* As in the case of an eligible rollover distribution from a qualified plan, if a distributee of an eligible rollover distribution from a section 403(b) annuity does not elect to have the eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover, the eligible rollover distribution is subject to 20-percent income tax withholding imposed under section 3405(c). See § 31.3405(c)–1 of this chapter for provisions regarding the withholding requirements relating to eligible rollover distributions.

Q–3: Is the payor of a section 403(b) annuity required to provide the distributee of an eligible rollover distribution with an explanation of the direct rollover option?

A–3: Yes. In order to ensure that the distributee of an eligible rollover distribution from a section 403(b) annuity has a meaningful right to elect a direct rollover, the distributee must be informed of the option. Thus, within a reasonable time period before making an eligible rollover distribution, the payor must provide an explanation to the distributee of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover. For purposes of satisfying the reasonable time period, the qualified plan timing rule provided in § 1.402(f)–1, Q&A–2 does not apply to section 403(b) annuities. However, a payor of a section 403(b) annuity will be deemed to have provided the explanation within a reasonable time period if the payor complies with the time period in that rule.

Q–4: When do sections 403(b)(8) and (b)(10), as amended by UCA, and this § 1.403(b)–2 apply to distributions from section 403(b) annuities?

A–4: (a) *General rule*—(1) *Statutory effective date.* Section 403(b)(8), as amended by UCA, and section 403(b)(10), as amended by UCA, apply to distributions made on or after January 1, 1993. In addition, the underlying section 403(b) annuity document must be amended at the time provided in, and the section 403(b) annuity must operate in accordance with the requirements of § 1.401(a)(31)–1, Q&A–18. Section 522 of UCA provides a special effective date for governmental section 403(b) annuities. This special effective date is specified in § 1.403(b)–2T (as it appeared in the April 1, 1995 edition of 26 CFR part 1).

(2) *Regulatory effective date.* This section applies to distributions made on or after October 19, 1995. For distributions made on or after January 1, 1993 and before October 19, 1995, § 1.403(b)–2T (as it appeared in the April 1, 1995 edition of 26 CFR part 1), applies. However, for distributions made on or after January 1, 1993 but before October 19, 1995, a section 403(b) annuity may satisfy section 403(b)(10) by substituting any or all provisions of this section for the corresponding provisions of § 1.403(b)–2T, if any.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 4. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 5. Section 31.3402(p)–1 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 31.3402(p)–1 Voluntary withholding agreements.

(a) * * * See § 31.3405(c)–1, Q&A–3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible rollover distributions within the meaning of section 402.

* * * * *

Par. 6. Section 31.3405(c)–1 is added to read as follows:

§ 31.3405(c)–1 Withholding on eligible rollover distributions; questions and answers.

The following questions and answers relate to withholding on eligible rollover distributions under section 3405(c) of the Internal Revenue Code of 1986, as added by section 522(b) of the Unemployment Compensation Amendments of 1992 (Public Law 102–318, 106 Stat. 290) (UCA). For additional UCA guidance under sections 401(a)(31), 402(c), 402(f), and 403(b)(8) and (10), see §§ 1.401(a)(31)–1, 1.402(c)–2, 1.402(f)–1, and 1.403(b)–2 of this chapter, respectively.

List of Questions

Q–1: What are the withholding requirements under section 3405 for distributions from qualified plans and section 403(b) annuities?

Q–2: May a distributee elect under section 3405(c) not to have Federal income tax withheld from an eligible rollover distribution?

Q–3: May a distributee be permitted to elect to have more than 20-percent Federal income tax withheld from an eligible rollover distribution?

Q–4: Who has responsibility for complying with section 3405(c) relating to the 20-percent income tax withholding on eligible rollover distributions?

Q–5: May the plan administrator shift the withholding responsibility to the payor and, if so, how?

Q–6: How does the 20-percent withholding requirement under section 3405(c) apply if a distributee elects to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

Q–7: Will the plan administrator be subject to liability for tax, interest, or penalties for failure to withhold 20 percent from an eligible rollover distribution that, because of erroneous information provided by a distributee, is not paid to an eligible retirement plan even though the distributee elected a direct rollover?

Q–8: Is an eligible rollover distribution that is paid to a qualified defined benefit plan subject to 20-percent withholding?

Q–9: If property other than cash, employer securities, or plan loans is distributed, how is the 20-percent income tax withholding required under section 3405(c) accomplished?

Q–10: What assumptions may a plan administrator make regarding whether a benefit is an eligible rollover distribution for purposes of determining the amount of a distribution that is subject to 20-percent mandatory withholding?

Q–11: Are there special rules for applying the 20-percent withholding requirement to employer securities and a plan loan offset amount distributed in an eligible rollover distribution?

Q–12: How does the mandatory withholding rule apply to net unrealized appreciation from employer securities?

Q–13: Does the 20-percent withholding requirement apply to eligible rollover distributions from a qualified plan distributed annuity contract?

Q–14: Must a payor or plan administrator withhold tax from an eligible rollover distribution for which a direct rollover election was not made if the amount of the distribution is less than $200?

Q–15: If eligible rollover distributions are made from a qualified plan, who has responsibility for making the returns and reports required under these regulations?

Q–16: What eligible rollover distributions must be reported on Form 1099–R?

Q–17: Must the plan administrator, trustee or custodian of the eligible retirement plan report amounts received in a direct rollover?

Questions and Answers

Q–1: What are the withholding requirements under section 3405 for distributions from qualified plans and section 403(b) annuities?

A–1: (a) *General rule.* Section 3405(c), added by UCA, provides that any designated distribution that is an eligible rollover distribution (as defined in section 402(f)(2)(A)) from a qualified plan or a section 403(b) annuity is subject to income tax withholding at the rate of 20 percent unless the distributee of the eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan in a direct rollover. See § 1.402(c)–2, Q&A–2 of this chapter for the definition of a qualified plan and § 1.403(b)–2, Q&A–1 of this chapter for the definition of a section 403(b) annuity. For purposes of section 3405 and this section, with respect to a distribution from a qualified plan, an eligible retirement plan is a trust qualified under section 401(a), an annuity plan described in section 403(a), or an individual retirement plan (as described in § 1.402(c)–2, Q&A–2 of this chapter). For purposes of section 3405 and this section, with respect to a distribution from a section 403(b) annuity, an eligible retirement plan is an annuity contract, a custodial account, a retirement income account described in section 403(b), or an individual retirement plan. If a designated distribution is not an eligible rollover distribution, it is subject to the elective withholding provisions of section 3405(a) and (b) and § 35.3405–1 of this chapter and is not subject to the mandatory withholding provisions of section 3405(c) and this section.

(b) *Application of other statutory provisions.* See § 1.401(a)(31)–1 of this chapter concerning the requirements and the procedures for electing a direct rollover under section 401(a)(31). See section 402(c)(2) and (4), and § 1.402(c)–2, Q&A–3 through Q&A–10 and Q&A–14 of this chapter for rules to determine what constitutes an eligible rollover distribution. See § 1.402(f)–1, Q&A–1 through Q&A–3 and § 1.403(b)–2, Q&A–3 of this chapter concerning the notice that must be provided to a distributee, within a reasonable period of time before making an eligible rollover distribution. See § 1.403(b)–2, Q&A–1 and Q&A–2 of this chapter for guidance concerning the rollover provisions and direct rollover requirements for distributions from annuities described in section 403(b).

(c) *Effective date*—(1) *Statutory effective date*—(i) *General rule.* Section 3405(c), as added by UCA, applies to eligible rollover distributions made on or after January 1, 1993, even if the employee's employment with the employer maintaining the plan terminated before January 1, 1993 and even if the eligible rollover distribution is part of a series of payments that began before January 1, 1993.

(ii) *Special rule for governmental section 403(b) annuities.* Section 522 of UCA provides a special effective date for governmental section 403(b) annuities. This special effective date appears in § 1.403(b)–2T of this chapter (as it appeared in the April 1, 1995 edition of 26 CFR part 1).

(2) *Regulatory effective date.* This section applies to eligible rollover distributions made on or after October 19, 1995. For eligible rollover distributions made on or after January 1, 1993 and before October 19, 1995, § 31.3405(c)–1T (as it appeared in the April 1, 1995 edition of 26 CFR part 1), applies. However, for any distribution made on or after January 1, 1993 but before October 19, 1995, a plan administrator or payor may comply with the withholding requirements of section 3405(c) by substituting any or all provisions of this section for the corresponding provisions of § 31.3405(c)–1T, if any.

Q–2: May a distributee elect under section 3405(c) not to have Federal income tax withheld from an eligible rollover distribution?

A–2: No. The 20-percent income tax withholding imposed under section 3405(c)(1) applies to an eligible rollover distribution unless the distributee elects under section 401(a)(31) to have the eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover. See § 1.401(a)(31)–1 and § 1.403(b)–2, Q&A–2 of this chapter for provisions concerning the requirement that a distributee of an eligible rollover distribution be permitted to elect a distribution in the form of a direct rollover.

Q–3: May a distributee be permitted to elect to have more than 20-percent Federal income tax withheld from an eligible rollover distribution?

A–3: Yes. Under section 3402(p), a distributee of an eligible rollover distribution and the plan administrator or payor are permitted to enter into an agreement to provide for withholding in excess of 20 percent from an eligible rollover distribution. Any agreement must be made in accordance with applicable forms and instructions. However, no request for withholding will be effective between the plan administrator or payor and the distributee until the plan administrator or payor accepts the request by commencing to withhold from the amounts with respect to which the request was made. An agreement under section 3402(p) shall be effective for such period as the plan administrator or payor and the distributee mutually agree upon. However, either party to the agreement may terminate the agreement prior to the end of such period by furnishing a signed written notice to the other.

Q–4: Who has responsibility for complying with section 3405(c) relating to the 20-percent income tax withholding on eligible rollover distributions?

A–4: Section 3405(d) generally requires the plan administrator of a qualified plan and the payor of a section 403(b) annuity to withhold under section 3405(c)(1) an amount equal to 20 percent of the portion of an eligible rollover distribution that the distributee does not elect to have paid in a direct rollover. When an amount is paid under a qualified plan distributed annuity contract as defined in § 1.402(c)–2, Q&A–10 of this chapter, the payor is treated as the plan administrator. See Q&A–13 of this section concerning eligible rollover distributions from a qualified plan distributed annuity contract.

Q–5: May the plan administrator shift the withholding responsibility to the payor and, if so, how?

A–5: Yes. The plan administrator may shift the withholding responsibility to the payor by following the procedures set forth in § 35.3405–1, Q&A E–2 through E–5 of this chapter (relating to elective withholding on pensions, annuities and certain other deferred income) with appropriate adjustments, including the plan administrator's identification of amounts that constitute required minimum distributions.

Q–6: How does the 20-percent withholding requirement under section 3405(c) apply if a distributee elects to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

A–6: If a distributee elects to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to receive the remainder of the distribution, the 20-percent withholding requirement under section 3405(c) applies only to the portion of the eligible rollover distribution that the distributee receives and not to the portion that is paid in a direct rollover.

Q–7: Will the plan administrator be subject to liability for tax, interest, or penalties for failure to withhold 20 percent from an eligible rollover distribution that, because of erroneous information provided by a distributee, is not paid to an eligible retirement plan even though the distributee elected a direct rollover?

A–7: (a) *General rule.* If the plan administrator reasonably relied on adequate information provided by the distributee (as described in paragraph (b) of this Q&A), the plan administrator will not be subject to liability for taxes, interest, or penalties for failure to withhold income tax from an eligible rollover distribution solely because the distribution is paid to an account or plan that is not an eligible retirement plan (as defined, with respect to distributions from qualified plans, in section 402(c)(8)(B) and § 1.402(c)–2, Q&A–2 of this chapter and, with respect to a distributions from section 403(b) annuities, in § 1.403(b)–2), Q&A–1 of this chapter. Although the plan administrator is not required to verify independently the accuracy of information provided by the distributee, the plan administrator's reliance on the information furnished must be reasonable. For example, it is not reasonable for the plan administrator to rely on information that is clearly erroneous on its face.

(b) *Adequate information.* The plan administrator has obtained from the distributee adequate information on which to rely in making a direct rollover if the distributee furnishes to the plan administrator: the name of the eligible retirement plan; a representation that the recipient plan is an individual retirement plan, a qualified plan, or a section 403(b) annuity, as appropriate; and any other information that is necessary in order to permit the plan administrator to accomplish the direct rollover by the means it has selected. This information must include any information needed to comply with the specific requirements of § 1.401(a)(31)–1, Q&A–3 and Q&A–4 of this chapter. For example, if the direct rollover is to be made by mailing a check to the trustee of an individual retirement account, the plan administrator must obtain, in addition to the name of the individual retirement account and the representation described above, the name and address of the trustee of the individual retirement account.

Q–8: Is an eligible rollover distribution that is paid to a qualified defined benefit plan subject to 20-percent withholding?

A–8: No. If an eligible rollover distribution is paid in a direct rollover to an eligible retirement plan within the meaning of section 402(c)(8), including a qualified defined benefit plan, it is reasonable to believe that the distribution is not includible in gross income pursuant to section 402(c)(1). Accordingly, pursuant to section 3405(e)(1)(B), the distribution is not a designated distribution and is not subject to 20-percent withholding.

Q–9: If property other than cash, employer securities, or plan loans is distributed, how is the 20-percent income tax withholding required under section 3405(c) accomplished?

A–9: When all or a portion of an eligible rollover distribution subject to 20-percent income tax withholding under section 3405(c) consists of property other than cash, employer securities, or plan loan offset amounts, the plan administrator or payor must apply § 35.3405–1, Q&A F–2 of this chapter and may apply § 35.3405–1, Q&A F–3 of this chapter in determining how to satisfy the withholding requirements.

Q–10: What assumptions may a plan administrator make regarding whether a benefit is an eligible rollover distribution for purposes of determining the amount of a distribution that is subject to 20-percent mandatory withholding?

A–10: (a) *In general.* For purposes of determining the amount of a distribution that is subject to 20-percent mandatory withholding, a plan administrator may make the assumptions described in paragraphs (b), (c), and (d) of this Q&A in determining the amount of a distribution that is an eligible rollover distribution and a designated distribution. Q&A–17 of § 1.401(a)(31)–1 of this chapter provides assumptions for purposes of complying with section 401(a)(31). See § 1.402(c)–2, Q&A–15 of this chapter concerning the effect of these assumptions for purposes of section 402(c).

(b) *$5,000 death benefit.* A plan administrator may assume that a distribution that qualifies for the $5,000 death benefit exclusion under section 101(b) is the only death benefit being paid with respect to a deceased employee that qualifies for that exclusion. Thus, in such a case, the plan administrator may assume that the distribution is not an eligible rollover distribution to the extent that it would be excludible from gross income based on this assumption.

(c) *Required minimum distributions.* The plan administrator is permitted to determine the amount of the minimum distribution required to satisfy section 401(a)(9)(A) for any calendar year by assuming that there is no designated beneficiary.

(d) *Valuation of property.* In the case of a distribution that includes property, in calculating the amount of the distribution for purposes of applying section 3405(c), the value of the property may be determined in accordance with § 35.3405–1, Q&A F–1 of this chapter.

Q–11: Are there special rules for applying the 20-percent withholding requirement to employer securities and a plan loan offset amount distributed in an eligible rollover distribution?

A–11: Yes. The maximum amount to be withheld on any designated distribution (including any eligible rollover distribution) under section 3405(c) must not exceed the sum of the cash and the fair market value of property (excluding employer securities) received in the distribution. The amount of the sum is determined without regard to whether any portion of the cash or property is a designated distribution or an eligible rollover distribution. For purposes of this rule, any plan loan offset amount, as defined in § 1.402(c)–2, Q&A–9 of this chapter, is treated in the same manner as employer securities. Thus, although employer securities and plan loan offset amounts must be included in the amount that is multiplied by 20-percent, the total amount required to be withheld for an eligible rollover distribution is limited to the sum of the cash and the fair market value of property received by the distributee, excluding any amount of the distribution that is a plan loan offset amount or that is distributed in the form of employer securities. For example, if the only portion of an eligible rollover distribution that is not paid in a direct rollover consists of employer securities or a plan loan offset amount, withholding is not required. In addition, if a distribution consists solely of employer securities and cash (not in excess of $200) in lieu of fractional shares, no amount is required to be withheld as income tax from the distribution under section 3405 (including section 3405(c) and this section). For purposes of section 3405 and this section, employer securities means securities of the employer corporation within the meaning of section 402(e)(4)(E)(ii).

Q–12: How does the mandatory withholding rule apply to net unrealized appreciation from employer securities?

A–12: An eligible rollover distribution can include net unrealized appreciation from employer securities, within the meaning of section 402(e)(4), even if the net unrealized appreciation is excluded from gross income under section 402(e)(4). However, to the extent that it is excludable from gross income pursuant to section 402(e)(4), net unrealized appreciation is not a designated distribution pursuant to section 3405(e)(1)(B) because it is reasonable to believe that it is not includable in gross income. Thus, to the extent that net unrealized appreciation is excludable from gross income pursuant to section 402(e)(4), net unrealized appreciation is not included in the amount of an eligible rollover distribution that is subject to 20-percent withholding.

Q–13: Does the 20-percent withholding requirement apply to eligible rollover distributions from a qualified plan distributed annuity contract?

A–13: The 20-percent withholding requirement applies to eligible rollover distributions from a qualified plan distributed annuity contract as defined in Q&A–10 of § 1.402(c)–2 of this chapter. In the case of an eligible rollover distribution from such an annuity contract, the payor is treated as the plan administrator for purposes of section 3405. See § 1.401(a)(31)–1, Q&A–16 of this chapter concerning the direct rollover requirements that apply to distributions from such an annuity contract and see § 1.402(c)–2, Q&A–10 of this chapter concerning the treatment of distributions from such annuity contracts as eligible rollover distributions.

Q–14: Must a payor or plan administrator withhold tax from an eligible rollover distribution for which a direct rollover election was not made if the amount of the distribution is less than $200?

A–14: No. However, all eligible rollover distributions received within one taxable year of the distributee under the same plan must be aggregated for purposes of determining whether the $200 floor is reached. If the plan administrator or payor does not know at the time of the first distribution (that is less than $200) whether there will be additional eligible rollover distributions during the year for which aggregation is required, the plan administrator need not withhold from the first distribution. If distributions are made within one taxable year under more than one plan of an employer, the plan administrator or payor may, but need not, aggregate distributions for purposes of determining whether the $200 floor is reached. However, once the $200 threshold has been reached, the sum of all payments during the year must be used to determine the applicable amount to be withheld from subsequent payments during the year.

Q–15: If eligible rollover distributions are made from a qualified plan, who has responsibility for making the returns and reports required under these regulations?

A–15: Generally, the plan administrator, as defined in section 414(g), is responsible for maintaining the records and making the required reports with respect to eligible rollover distributions from qualified plans. However, if the plan administrator fails to keep the required records and make the required reports, the employer maintaining the plan is responsible for the reports and returns.

Q–16: What eligible rollover distributions must be reported on Form 1099–R?

A–16: Each eligible rollover distribution, including each eligible rollover distribution that is paid directly to an eligible retirement plan in a direct rollover, must be reported on Form 1099–R in accordance with the instructions for Form 1099–R. For purposes of the reporting required under section 6047(e), a direct rollover is treated as a distribution that is immediately rolled over to an eligible retirement plan. Distributions that are not eligible rollover distributions are subject to the reporting requirements set forth in § 35.3405–1 of this chapter and applicable forms and instructions.

Q–17: Must the plan administrator, trustee or custodian of the eligible retirement plan report amounts received in a direct rollover?

A–17: (a) *Individual retirement plan.* If a distributee elects to have an eligible rollover distribution paid to an individual retirement plan in a direct rollover, the eligible rollover distribution is reported on Form 5498 as a rollover contribution to the individual retirement plan, in accordance with the instructions for Form 5498.

(b) *Qualified plan or section 403(b) annuity.* If a distributee elects to have an eligible rollover distribution paid to a qualified plan or section 403(b) annuity, the recipient plan or annuity is not required to report the receipt of the rollover contribution.

§ 31.3405(c)–1T [Removed]

Par. 7. Section 31.3405(c)–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (c) is amended as follows:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* *
1.401(a)(31)–1T	1545–1341
* * *	* *
1.402(c)–2T	1545–1341
* * *	* *
1.402(f)–2T	1545–1341
* * *	* *
1.403(b)–2T	1545–1341
* * *	* *
31.3405(c)–1T	1545–1341
* * *	* *

2. Revising the entry for 1.402(f)–1 and adding entries to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* *
1.401(a)(31)–1	1545–1341
* * *	* *
1.402(c)–2	1545–1341
* * *	* *
1.402(f)–1	1545–1341
* * *	* *
1.403(b)–2	1545–1341
* * *	* *
31.3405(c)–1	1545–1341
* * *	* *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: August 29, 1995.

Cynthia G. Beerbower,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–23265 Filed 9–15–95; 4:00 pm]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[TD 8620]

RIN 1545–AT75

Notice, Consent, and Election Requirements of Sections 411(a)(11) and 417

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations that provide guidance concerning the notice and consent requirements under section 411(a)(11) and the notice and election requirements under section 417. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622–6050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1471. Responses to this collection of information are required to assure that the rights of qualified plan participants are protected.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 411(a)(11) and section 417(e). Section 1.411(a)–11(c) provides that a participant's consent to a distribution under section 411(a)(11) is not valid unless the participant receives a notice of his or her rights under the plan no more than 90 and no less than 30 days prior to the annuity starting date. Section 1.417(e)–1 sets forth the same 90/30-day time period for providing the notice explaining the qualified joint and survivor annuity and waiver rights required under section 417(a)(3).

The October 1992 temporary regulations that provided guidance on the amendment to section 402(f) made by the Unemployment Compensation Amendments of 1992 (UCA), published in the **Federal Register** at 57 FR 48163, generally prescribed this 90/30-day time period for purposes of the notice requirement under that section. In the preamble to those regulations, the IRS and Treasury requested comments on the appropriateness of this time period for section 411(a)(11), as well as for section 402(f).

In response to initial comments on the UCA proposed and temporary regulations, additional guidance was provided in Notice 93–26 (1993–1 C.B. 293), which modified the 30-day time period for purposes of sections 402(f) and 411(a)(11). These temporary regulations modify the 30-day time period in § 1.411(a)–11 in a manner consistent with Notice 93–26 and also provide a more limited modification to the 30-day time period in § 1.417(e)–1. These temporary regulations are being published in conjunction with the final regulations implementing the UCA changes, published elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

1. Overview

Section 411(a)(11) provides that, if the value of a participant's accrued benefit exceeds $3,500, a qualified plan generally may not distribute the benefit to the participant without the participant's consent.

Section 401(a)(11) requires that certain distributions be made in the form of a qualified joint and survivor annuity (QJSA) unless, in accordance with section 417, the participant waives the QJSA and elects a different form of benefit. Profit-sharing plans and stock bonus plans that meet the requirements of sections 401(a)(11)(B)(iii) (I) through (III) are not subject to the survivor annuity requirements of sections 401(a)(11) and 417.

Section 417 sets forth the requirements applicable to a waiver of the QJSA. Section 417(a) requires the participant to obtain the consent of the participant's spouse, if any, to any waiver of the QJSA and election of a form of benefit other than a QJSA. Any election made by the participant must be revocable during the 90-day period ending on the annuity starting date. Section 417(a)(3) requires that, within a reasonable period of time before the participant's annuity starting date, a plan provide the participant with a notice explaining the participant's right to the QJSA and the participant's right to waive the QJSA.

2. Implementation of Notice 93–26 Modification of 30-Day Period

Under Notice 93–26, if, after having received the notice of distribution rights described in § 1.411(a)–11, a participant affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution is made less than 30 days after the notice was provided to the participant. However, the participant must be notified that he or she has the opportunity to consider whether to elect a distribution (and, if applicable, a particular distribution option) for at least 30 days after the notice is provided. The plan administrator may provide this information to the participant using any method that is reasonably designed to attract the attention of the participant.

The comments on the guidance in Notice 93–26 with respect to section 411(a)(11) were generally favorable. Accordingly, these temporary regulations amend § 1.411(a)–11 by modifying the 30-day rule in a manner consistent with Notice 93–26.

The final UCA regulations and these temporary regulations are structured to allow plan administrators to provide the participant notices required under sections 402(f), 411(a)(11) and 417 at the same time. Under the final UCA regulations, the section 402(f) notice must be provided no more than 90 and no less than 30 days before the date of distribution. Similarly, these temporary regulations provide that the 30-day and 90-day periods for purposes of the section 411(a)(11) notice are measured from the date that the distribution commences.

Alternatively, the plan administrator may substitute the annuity starting date, as defined in § 1.401(a)–20, Q&A–10, for the date the distribution commences for purposes of both the section 402(f) notice and the section 411(a)(11) notice. If a plan administrator uses this alternative, the 90/30-day time period will be the same for the notices required under sections 402(f), 411(a)(11) and 417.

3. Modification of 30-Day Time Period for QJSA Explanation

Notice 93–26 did not affect the requirements that sections 401(a)(11) and 417 and related regulations impose on distributions subject to those sections. Some commentators requested that the modification provided in Notice 93–26 with respect to section 411(a)(11) be made to the 30-day time period in the regulations under section 417. These temporary regulations under section 417 provide substantial relief from the constraints imposed by the 30-day time period but, for the reasons noted below, do not adopt a rule that is identical to that provided under section 411(a)(11).

After careful consideration, the IRS and Treasury have concluded that it would not be consistent with the statutory purpose of section 417 to adopt the same modification to the 30-day time period that was adopted by Notice 93–26 under section 411(a)(11). Plans subject to section 417 often provide a variety of distribution options that may have different actuarial values and can be difficult to evaluate. In addition, section 417 establishes a revocation period for a waiver of the QJSA and provides explicit safeguards to ensure informed consent of the participant and the participant's spouse. For example, section 417 requires witnessed or notarized spousal consent that acknowledges the effect of the election to waive the QJSA. This statutory structure reflects Congressional recognition that a distribution election with respect to annuity benefits is an important financial decision that affects the retirement security of the participant and the participant's spouse. In view of these concerns, these temporary regulations retain a minimum period for participants and spouses to consider or reconsider the distribution options after the section 417 notice is provided.

However, the IRS and Treasury are also aware that, if a plan provides an unreduced early retirement annuity, the application of the current 30-day election and revocation period might cause the participant to lose a month's benefit. Moreover, a full 30-day election and revocation period may not be necessary for a participant (and where applicable, the participant's spouse) who, after being provided with the opportunity to carefully consider the decision, affirmatively elects a form of distribution.

In order to address these concerns, while still providing sufficient time to consider (or reconsider) the decision whether to waive the QJSA, these temporary regulations permit the plan (or, where not inconsistent with the terms of the plan, the plan administrator) to commence distributions before the end of the 30-day time period, if certain requirements are met. Specifically, after an affirmative distribution election, with any applicable spousal consent, the plan may permit the distribution to commence at any time more than seven days after the explanation of the QJSA was provided to the participant. The annuity starting date must be a date after the explanation of the QJSA is provided to the participant, but may precede the date the participant affirmatively elects a distribution or the date the distribution commences. Any distribution election must remain revocable until the later of the annuity starting date or the expiration of the seven-day period that begins the day after the QJSA explanation is provided. For example, if a married participant receives the explanation of the QJSA on November 28 and elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate single life annuity, the annuity starting date is permitted to be December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date.

4. 90-Day Time Period and Method of Providing Notice

Some commentators requested an expansion of the 90-day time period. More broadly, commentators asked that the requirements of sections 411(a)(11), 417, and 402(f) be addressed in the context of new technologies that use electronic media, such as telephone or computer systems, to automate plan administrative functions that traditionally have been processed manually by use of paper-based systems (e.g., notices to participants and participant distribution requests). For example, some commentators have suggested that plans be permitted to provide an annual written notice if a summary of the notice is provided through these new technologies.

The IRS and Treasury continue to believe that the section 411(a)(11) and section 417 notices, as well as the section 402(f) notice, should be provided close to the time participants are considering the distribution to which the notice applies. Therefore, these temporary regulations do not change the 90-day time period.

Although these temporary regulations provide no additional guidance on the use of electronic media, the IRS and Treasury will continue to consider possible modifications to the notice and consent requirements that might be appropriate to accommodate new technologies, if adequate safeguards are provided, and invite comments on this issue. These final regulations specifically delegate authority to the Commissioner to modify the notice, consent, and election requirements or provide additional guidance, in the Internal Revenue Bulletin, with respect to those requirements.

5. Effective Date

Because these temporary regulations relax the requirements that plans must satisfy, they are effective September 22, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. § 1.411(a)-(11) is amended as follows:

1. Paragraph (c)(2)(ii) is revised to read as set forth below.
2. Paragraph (c)(2)(iii) is removed.

§ 1.411(a)–11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(2) * * *

(ii) For additional rules concerning the consent requirement of section 411(a)(11), see § 1.411(a)–11T(c)(2)(ii) through (v) and (c)(8).

* * * * *

Par. 3. § 1.411(a)–11T is added to read as follows:

§ 1.411(a)–11T Restriction and valuation of distributions (temporary).

(a) and (b) [Reserved]

(c) *Consent, etc. requirements*—(1) *General rule.* [Reserved]

(2) *Consent*—(i) [Reserved]

(ii) Written consent of the participant to the distribution must not be made before the participant receives the notice of his or her rights specified in this paragraph (c)(2) and must not be made more than 90 days before the date the distribution commences.

(iii) A plan must provide participants with notice of their rights specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided that the following requirement is met. The plan administrator must provide information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (c)(2)(iii)) the participant has a right to at least 30 days to consider whether to consent to the distribution.

(iv) For purposes of satisfying the requirements of this paragraph (c)(2), the plan administrator may substitute the annuity starting date, within the meaning of § 1.401(a)–20, Q&A–10, for the date the distribution commences.

(v) See § 1.401(a)–20, Q&A–24 for a special rule applicable to consents to plan loans.

(3) through (7) [Reserved].

(8) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See § 601.601(d)(2)(ii)(*b*) of this chapter.

Par. 4. § 1.417(e)–1 is amended by revising paragraph (b)(3) to read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

(3) *Time of consent.* For distributions on or after September 22, 1995, the additional rules concerning the notice and consent requirements of section 417 in § 1.417(e)–1T(b) (3) and (4) also apply. For distributions before September 22, 1995, the additional rules concerning the notice and consent requirements of section 417 in § 1.417(e)–1(b)(3) (as it appeared in the April 1, 1995 edition of 26 CFR part 1) apply.

* * * *

Par. 5. Section 1.417(e)–1T is amended by adding paragraph (b) to read as follows:

§ 1.417(e)–1T Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417 (temporary).

* * * * *

(b) *Consent, etc. requirements*—(1) *General rule.* [Reserved]

(2) *Consent.* [Reserved]

(3) *Time of consent*—(i) Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date.

(ii) A plan must provide participants with the written explanation of the QJSA required by section 417(a)(3) no less than 30 days and no more than 90 days before the annuity starting date. However, if the participant, after having received the written explanation of the QJSA, affirmatively elects a form of distribution and the spouse consents to that form of distribution (if necessary), a plan will not fail to satisfy the requirements of section 417(a) merely because the annuity starting date is less than 30 days after the written explanation was provided to the participant, provided that the following requirements are met:

(A) The plan administrator provides information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (b)(3)(ii)) the participant has a right to at least 30 days to consider whether to waive the QJSA and consent to a form of distribution other than a QJSA.

(B) The participant is permitted to revoke an affirmative distribution election at least until the annuity starting date, or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(C) The annuity starting date is after the date that the explanation of the QJSA is provided to the participant. However, the plan may permit the annuity starting date to be before the date that any affirmative distribution election is made by the participant and before the date that the distribution is permitted to commence under paragraph (b)(3)(ii)(D) of this section.

(D) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(iii) The following example illustrates the provisions of this paragraph (b)(3):

Example. Employee E, a married participant in a defined benefit plan whc has terminated employment, is provided with the explanation of the QJSA on November 28. Employee E elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate distribution in the form of a single life annuity. The plan may permit Employee E to receive payments with an annuity starting date of December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date. The plan can make the remaining monthly payments on the first day of each month thereafter in accordance with its regular payment schedule.

(4) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See § 601.601(d)(2)(ii)(*b*) of this chapter.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by adding to the table the following entries in numerical order to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* *
1.411(a)–11T	1545–1471

VOL
60
ISS
184
SE
22
995
UMI

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.417(e)–1T	1545–1471
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: August 29, 1995.

Cynthia G. Beerbower,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–23263 Filed 9–15–95; 4:00 pm]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 94–105]

RIN 2115–AE99

Coast Guard Rulemaking Procedures

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard revises the regulations describing its rulemaking procedures to provide for a "direct final rule" process for use with noncontroversial rules. Under the direct final rule procedure, a rule will become effective 90 days after publication in the **Federal Register** unless the Coast Guard receives written adverse comment within sixty days. This new procedure should expedite the promulgation of routine, noncontroversial rules by reducing the time necessary to develop, review, clear, and publish separate proposed and final rules.

EFFECTIVE DATE: October 23, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington D.C. 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LT R. Goldberg, Staff Attorney, Regulations and Administrative Law Division, Office of Chief Counsel, U.S. Coast Guard Headquarters, (202) 267–6004.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 14, 1995, the Coast Guard published a notice of proposed rulemaking entitled "Coast Guard Rulemaking Procedures" in the **Federal Register** (60 FR 31267) with a thirty day comment period which ended July 14. In response to a request for additional time, the Coast Guard published a notice in the August 1, 1995 **Federal Register** (60 FR 39130) reopening the comment period on the proposal for an additional thirty days, until August 31, 1995. Over both comment periods, the Coast Guard received fourteen letters commenting on the proposal. No public meeting was requested, and none was held.

Discussion of Comments and Changes

The Coast Guard received fourteen comments in response to its proposal to implement a direct final rule procedure from a variety of parties including an insurance broker, a shipping company, a commercial fisherman, a corporation interested in offshore operations, maritime consultants, industry associations and the Administrative Conference of the United States. One comment, from a national manufacturers association representing over 1,600 manufacturers association representing over 1,600 manufacturers of recreational boats and equipment, fully supported the proposal for an expedited rulemaking process. The comment from the Administrative Conference of the United States (Administrative Conference) expressed pleasure at the Coast Guard's proposal to use direct final rulemaking and took the opportunity to compare the Coast Guard's proposed procedure to the Administrative Conference's recently adopted Recommendation 95–4, "Procedures for Noncontroversial and Expedited Rulemaking." the other comments were generally supportive of the idea of a streamlined rulemaking process, but expressed concerns with the shortness of the proposed comment period, the list of subjects suggested by the Coast Guard for the direct final rule process, the possibility that there may not be 30 days notice before the effective date of the rule as required by the Administrative Procedure Act (APA) and with the lack of an adequate definition of an "adverse comment". Additionally, one comment contended that all rulemakings are "controversial" and therefore the direct final rule process is not appropriate for any rulemaking.

Eight comments directly objected to the proposed thirty day comment period. The comment from the Administrative Conference supported this provision as providing the required comment under the APA, but took no specific position on the actual length of the period. The comments which objected to the length of the comment period argued that it often took much longer than thirty days for a proposal to be disseminated to, and analyzed by, potentially interested parties. According to the comments, this additional time is required because of a number of factors. One factor cited by three comments was the fact that many mariners who may be interested in a proposal are often out to sea for periods of time greater than thirty days. Other comments also noted the time delay caused by the postal system in receiving copies of the **Federal Register** and the fact that many people learn of new proposed rules through industry and trade publications which need time to publish and mail the information. Additionally, one comment raised the question of whether the short comment period satisfies § 553(c) of the APA which requires an agency to give interested parties an adequate opportunity to participate in the rulemaking. The comments suggested increased comment periods ranging from 60 to 160 days so that a rule published as a direct final rule would become effective in the range of 90 to 180 days after publication.

The Coast Guard understands that it takes time for information regarding proposed rules to reach interested parties. Public participation in the rulemaking process is important to, and highly encouraged by, the Coast Guard. The Coast Guard is planning to use the direct final rule procedure only for rules it considers to be noncontroversial and for which no adverse comment is anticipated. Consequently, the Coast Guard believes that the direct final rulemaking procedure provides the public an adequate opportunity to comment on a rule subject to this procedure before the rule becomes effective. If an adverse comment or a notice of intent to submit an adverse comment is received within the comment period, the direct final rule will be withdrawn without ever having taken effect. If the Coast Guard later decides to proceed with the rulemaking, a new notice of proposed rulemaking will be published. This process will give the pubic an adequate opportunity to participate in the rulemaking procedure before a rule goes into effect. The Coast Guard believes that a lengthy comment period would defeat the purpose of having an expedited rulemaking process. Nevertheless, to ensure that the

public has a meaningful opportunity to participate, the Coast Guard is increasing the minimum comment period stated in § 1.05–55(c) under the direct final rule process from 30 to 60 days, and preserving an option for any particular rulemaking to have a longer comment period.

Three of the comments, including one from a national trade association representing 23 U.S.-flag carriers and one from a shipping company which operates for U.S.-flag ships, expressed concern over the list of subjects suggested as appropriate for the direct final rule process by the Coast Guard. Two of the comments expressed the opinion that the proposed procedure would be appropriate for some of the types of rulemakings suggested but not for all. In particular, both of these comments objected to the use of the direct final rule process for the waiver of navigation and vessel inspection laws and regulations, the regulation or description of anchorage areas, the regulation or description of shipping safety fairways and the regulation or description of offshore traffic separation schemes. The trade association also objected to the use of the proposed procedure to adopt technical standards set by outside organizations and to regulate the compatibility of cargoes. The shipping company comment also objected to using the procedure to establish safety and security zones.

A comment from a national association of maritime educators commented that in the past, the association has offered comments on many subjects of the type included on the list of possible subjects and therefore viewed none of the proposed subjects as "noncontroversial" and objected to the entire list of subjects. That comment also stated that there is no such thing as a "noncontroversial" rule and stated that the decision whether a rule is deemed "noncontroversial" or not is a subjective rather than objective standard.

The Coast Guard realizes that the direct final rule process is not the proper procedure for use with all rulemakings. On the other hand, there are numerous rulemakings which the Coast Guard does believe to be "noncontroversial" in nature and for which the Coast Guard does not anticipate adverse comments. The suggested list of subjects stated in the NPRM was not meant to be a comprehensive or ironclad list of subjects for use with the direct final rule process. Every rulemaking will be evaluated independently to determine: (1) Whether it is likely to be noncontroversial in nature; and (2) whether the direct final rule process is appropriate. If during the comment period any adverse comment or notice of intent to submit an adverse comment is received, the rule will be withdrawn. If a rule is withdrawn and the Coast Guard decides to proceed with the rulemaking, a separate notice of proposed rulemaking will be published unless an exception to the APA requirement for notice and comment applies. The Coast Guard believes that this procedure will guarantee the public an adequate opportunity to participate in the rulemaking procedure and inform the Coast Guard of opposition to a rulemaking which the Coast Guard viewed as noncontroversial. Both by requiring that a rulemaking be deemed to be noncontroversial before being published as a direct final rule and by requiring that if an adverse comment is received a rulemaking published under this process be withdrawn and a separate NPRM published to proceed, the Coast Guard believes that sufficient safeguards exist to ensure no rule is implemented without adequate opportunity for public participation.

The comment from the Administrative Conference in addition to two other comments, expressed concern that the procedure proposed may not always satisfy § 553(d) of the APA which requires thirty days notice prior to the effective date of a rule. The specific concern stated by the Administrative Conference is that the notice stating that the Coast Guard has received no adverse comment and therefore, the rule will go into effect as originally scheduled, may not be published thirty days before the effective date of the rule. The conference recommended either making the rule effective thirty days after the date of the described notice or specifying a date after the close of the comment period by which the Coast Guard will notify the public whether the direct final rule will become effective, with the rule's effective date at least 30 days after such specified date. The Coast Guard has decided to go forward with the second alternative and therefore will publish a specific date in the direct final rule by which the public will be notified of whether the rule will go into effect.

One comment from a maritime safety specialist objected to the lack of adequate guidelines concerning what the Coast Guard would consider to be an "adverse comment." In addition, the Administrative Conference in Recommendation 95–4, "Procedures for Noncontroversial and Expedited Rulemaking" (Recommendation) proposed a definition of adverse comment that differed from that proposed by the Coast Guard. The Administrative Conference acknowledged the difference between its own definition and the Coast Guard's, but viewed the Coast Guard's proposed definition as reasonable.

Section 1.05–55(c) of the NPRM stated that an adverse comment would be any comment received by the Coast Guard which objects to a proposed rule as written. The preamble of the NPRM further explained that neither a comment submitted in support of a rule nor one suggesting that the policy or requirements of a rule should or should not be extended to a Coast Guard program outside the scope of the rule will be considered as adverse. On the other hand, the Administrative Conference in its Recommendation suggested that the definition of significant adverse comment be "one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change." The Administrative Conference went on to state in its Recommendation that agencies "should consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process." Because the Coast Guard believes that the Administrative Conference's recommended definition of adverse comment provides better guidance and a clearer definition of what types of comments will be considered adverse, the Coast Guard has decided to adopt the Administrative Conference's recommended definition of adverse comment. An adverse comment is now defined in § 1.05–55(f).

The Administrative Conference comment also suggested that in addition to publishing the initial notice in the final rule section of the **Federal Register**, that a cross reference be inserted in the proposed rule section. The Coast Guard agrees with this idea and will do so.

In addition to the changes discussed above, a few minor editorial changes were made to the language of the rule to promote the public's understanding of the direct final rule process.

Explanation of Procedure

The Coast Guard is establishing a new direct final rulemaking procedure for noncontroversial rules. This process is consistent with the goals of the National Performance Review, a recent Presidential initiative to reorganize and streamline the Federal government. The process is also consistent with recommendations of the Administrative Conference of the United States and meets the requirements for providing an opportunity for public notice and comment under the Administrative Procedure Act (APA) (5 U.S.C. 553).

Under this procedure, the Coast Guard will publish direct final rules in the final rule and proposed rule sections of the **Federal Register**. The preamble to a direct final rule will indicate that no adverse comment is anticipated and that the rule will become effective not less than 90 days after publication unless written adverse comment or written intent to submit adverse comment is received within a specified time, usually not less than 60 days. The direct final rule will also state a date by which the Coast Guard will provide notice of whether the rule will be effective. This procedure will ensure that, as required by the APA, the public will be given notice of Coast Guard rulemaking actions and will have an opportunity to participate in the rulemaking by submitting comments.

If no written adverse comment or written notice of intent to submit an adverse comment is received in response to the publication of a direct final rule, the Coast Guard will then publish a notice in the **Federal Register**, stating that no adverse comment was received and confirming that the rule will become effective as scheduled. However, if the Coast Guard receives any written adverse comment or any written notice of intent to submit an adverse comment, then the Coast Guard will publish a notice in the final rule and proposed rule sections of the **Federal Register** to announce withdrawal of the direct final rule. If adverse comments clearly apply to only part of a rule, and that part is severable from the remaining portions, such as a rule that deletes several unrelated regulations, the Coast Guard may adopt as final those parts of the rule on which no adverse comments were received. The part of the rule that was the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rulemaking (NPRM) will be published, unless an exception to the APA requirement for notice and comment applies.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The change in procedure will not impose any costs on the public. In cases where the rule would result in cost savings, the cost savings would occur sooner with the use of direct final rule procedure.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard has evaluated this rule under the Regulatory Flexibility Act. This rule will not have substantive impact on the public. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation as a regulation of a procedural nature. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 1

Administrative practice and procedures, Authority delegations (Government agencies), Coast Guard, Freedom of information, Penalties.

For the reasons set out in the preamble, the Coast Guard is amending Subpart 1.05 of Part 1 of Title 33, Code of Federal Regulations as follows:

PART 1—GENERAL PROVISIONS

Subpart 1.05—[Amended]

1. The authority citation for Subpart 1.05 continues to read as follows:

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; 49 CFR 1.4(b), 1.45(b), and 1.46.

2. Section 1.05–55 is added to read as follows:

§ 1.05–55 Direct final rule.

(a) A direct final rule may be issued to allow noncontroversial rules that are unlikely to result in adverse public comment to become effective more quickly.

(b) A direct final rule will be published in the **Federal Register** with an effective date that is generally at least 90 days after the date of publication.

(c) The public will usually be given at least 60 days from the date of publication in which to submit comments or notice of intent to submit comments.

(d) If no adverse comment or notice of intent to submit an adverse comment is received within the specified period, the Coast Guard will publish a notice in the **Federal Register** to confirm that the rule will go into effect as scheduled.

(e) If the Coast Guard receives a written adverse comment or a written notice of intent to submit an adverse comment, the Coast Guard will publish a notice in the final rule section of the **Federal Register** to announce withdrawal of the direct final rule. If an adverse comment clearly applies to only part of a rule, and it is possible to remove that part without affecting the remaining portions, the Coast Guard may adopt as final those parts of the rule on which no adverse comment was received. Any part of a rule that is the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, a separate Notice of Proposed Rulemaking (NPRM) will be published unless an exception to the Administrative Procedure Act requirements for notice and comment applies.

(f) A comment is considered adverse if the comment explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be

ineffective or unacceptable without a change.

Dated: September 15, 1995.

J.E. Shkor,

U.S. Coast Guard Chief Counsel.

[FR Doc. 95–23518 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AF02

Schedule for Rating Disabilities; Hemic and Lymphatic Systems

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA) Schedule for Rating Disabilities of the Hemic and Lymphatic Systems. The effect of this action is to update the hemic and lymphatic portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: This amendment is effective October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Don England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 1800 G Street, Washington, DC, 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 30, 1993, (58 FR 26080–83) VA published a proposal to amend the Schedule for Rating Disabilities of the hemic and lymphatic systems. Interested persons were invited to submit written comments, suggestions or objections on or before June 1, 1993. We received comments from the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America and one comment from a concerned individual.

We proposed to reduce the evaluation for splenectomy, diagnostic code 7706, from 30 percent to 10 percent. Several commenters felt, for various reasons, that the evaluation for splenectomy should be more than 10 percent.

One commenter agreed that antibiotics may compensate for any increased susceptibility to infection, but was not persuaded that medical treatment is so effective that disabling consequences of splenectomy are nearly eliminated. He maintained that asplenic patients require vigilant medical intervention to ward off infections. Another commenter suggested that after splenectomy, patients must carefully avoid activities that may result in trauma and avoid exposure to infection, and that these environmental restrictions substantially limit the range of vocational possibilities, resulting in industrial impairment greater than the 10 percent proposed for this disability. A third commenter stated that since he has undergone a splenectomy, employers have turned him down due to high risk and that his life insurance is more expensive.

On reconsideration, we have determined that an evaluation of 20 percent is warranted instead of 10 percent because of the many functions that the spleen performs in the areas of immune response, filtration of the blood, iron reutilization, blood volume regulation and others, and that splenectomy increases susceptibility to certain infections, such as those caused by encapsulated pneumococcus bacteria. This increased susceptibility requires that splenectomy patients restrict their activities, resulting in moderate industrial impairment, which we feel is consistent with the 20 percent level of disability. This level of disability is assigned throughout the rating schedule for "moderate" disability, for example, under the diagnostic codes for liver abscess (7313), pellagra (6315), resection of large intestine (7329) and erythromelalgia (7119).

One commenter stated that asplenia should be included in the evaluation criteria for sickle cell anemia. We do not agree. If removal of the spleen is necessary in the treatment of sickle cell anemia, the splenectomy will be evaluated separately under diagnostic code 7706, and combined.

One commenter assumed that complications of splenectomy such as anemia would be rated on the symptomatology demonstrated. He is correct and, for the sake of clarity, we have added a note instructing the rater to separately evaluate complications if they become manifest to a compensable degree.

One commenter felt that the 30 percent evaluation for splenectomy should be "grandfathered", and in fact it is. In section 103(a) of the Veterans' Benefits Programs Improvement Act of 1991 (Pub. L. 102–86) Congress modified 38 U.S.C. 1155 to provide that a readjustment to the rating schedule will not result in a reduction of any disability evaluation in effect on the date of the readjustment unless that disability has actually improved. Given the permanent nature of a splenectomy, a 30 percent evaluation assigned under the prior rating schedule will be protected. The effect of this change is, therefore, prospective only.

One commenter felt that VA should contact all veterans who would be affected by the change in the evaluation of splenectomy, rather than requiring them to read the **Federal Register**.

Publication in the **Federal Register** is the legal means for any federal agency to notify the public of changes to regulations. Furthermore, since this change is prospective, taking the additional step of contacting asplenic veterans who are currently receiving benefits would serve no purpose since they will not be affected by this change in the regulation.

One commenter believed that there should be a note following the evaluation formula for anemia, diagnostic code 7700, instructing the rater to evaluate chronic residuals of the disease separately.

We agree and have added a note following the rating criteria for diagnostic code 7700, anemias, to instruct the rater to evaluate the complications of pernicious anemia, such as dementia or peripheral neuropathy, separately. These complications occur often enough that this instruction is warranted to ensure consistent evaluations. Furthermore, the note is consistent with instructions for other conditions throughout the schedule, such as lupus erythematosus, (diagnostic code 6350), leprosy (Hansen's Disease), (6302), and rheumatoid arthritis, (5002), which instruct the rater to evaluate residuals separately.

The proposed levels of evaluations for anemia, diagnostic code 7700, were based solely on hemoglobin levels. One commenter noted that the key determination in evaluating the degree of disability is not the laboratory value, but the primary diagnosis and compensatory level of the cardiovascular system. He felt, therefore, that the purely objective criteria of hemoglobin levels are inadequate for rating anemia unless clinical findings are also considered.

The normal level of hemoglobin differs by sex, with men having a higher level, on the average, than women. Individuals also vary in the possible compensatory mechanisms, such as tachycardia, brought to bear when anemia develops. Along with the level of hemoglobin, the speed of onset of the anemia helps determine the symptoms. We agree, therefore, that levels of hemoglobin in combination with clinical findings will allow a better assessment of disability than either alone. We have revised the criteria to include clinical findings such as a weakness, easy fatigability, headaches, lightheadedness, or shortness of breath on mild exertion. We have also added a 10 percent evaluation because there are patients with a hemoglobin level of 10gm/100ml or less who also have symptoms such as weakness, easy fatigability or headaches. Those with a hemoglobin level of 10gm/100ml or less who are asymptomatic will be assigned a zero percent evaluation. This provide a clear separation between the requirements for the 10% and 0% levels since they require the same hemoglobin levels.

The proposed evaluation formulas for agranulocytosis, diagnostic code 7702, and aplastic anemia, diagnostic code 7716, provided for 100, 50 and zero percent evaluations. One commenter suggested that there should be a 60 percent evaluation level.

We have reviewed the proposed evaluation criteria for agranulocytosis (diagnostic code 7702) and apastic anemia (diagnostic code 7716) and agree that a wider range of evaluation levels is warranted because of the range of possible manifestations of the conditions. We have, therefore, redesignated the evaluations proposed as 50 percent disabling for both of these disabilities as 60 percent disabling, and added 30 percent and 10 percent evaluation levels. The 30 percent levels are based on the number of transfusions required or infections that occur, and the 10 percent levels are based on the need for continuous medication for control. We have removed the 0 percent evaluation level because a noncompensable evaluation can always be assigned under § 4.31 of this section whenever the residuals required for a compensable evaluation are not shown. Retaining the 0 percent evaluation level would be redundant. These changes provide a realistic range of evaluations and clear guidelines for assigning those evaluations.

The proposed regulation provided an indefinite total evaluation for aplastic anemia, diagnostic code 7716, following bone marrow transplant, with mandatory VA examination six months following hospital discharge, with any change based on that examination subject to the provisions of § 3.105(e). This is consistent with other diseases of this type, such as malignancies, leukemia and anemia.

One commenter stated that the post-hospital stabilization period for aplastic anemia, diagnostic code 7716, should be one year, not six months. We do not concur. A person who has required hospitalization for aplastic anemia would not be discharged unless stable, and it is reasonable to examine the patient six months thereafter to verify that the condition has indeed stabilized. The purpose of the VA examination six months after hospital discharge is to gather medical information regarding the actual level of disability. Therefore, there would be no possibility of an immediate reduction. Should the examination demonstrate that the condition remains totally disabling, the evaluation will not be changed.

The proposed evaluation formula for leukemia, diagnostic code 7703, includes instructions to otherwise rate as anemia (code 7700) or aplastic anemia (code 7716), whichever would result in the greater benefit, and a note instructing the rater to continue the 100 percent evaluation indefinitely following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedures, with a mandatory BA examination six months following hospital discharge.

One commenter stated that evaluations less than 100 percent for leukemia should not be based on diagnostic codes 7700 or 7716.

We do not agree. Using the evaluation criteria from other codes is common in the rating schedule and this is consistent with that practice. The symptoms and treatments in the criteria for anemia and aplastic anemia are the same as those for leukemia and the percentage levels reflect the amount of disability.

One commenter pointed out an inconsistency between the proposed criteria for a 100 percent evaluation and the NOTE: the NOTE establishes the length of time that a 100 percent evaluation will continue after surgery or the termination of radiation, chemotherapy or other therapeutic procedure, whereas the criteria for a 100 percent evaluation require "intensive treatment" such as periodic irradiation or transfusion. The language in the evaluation criteria was retained from the 1945 rating schedule. Since "intensive treatment" might be construed as being more restrictive than the language of the NOTE—an effect we did not intend—we have revised that language to indicate that a 100 percent evaluation will be assigned while the disease is active or during a treatment phase. That language not only eliminates the perceived disparity between the evaluation criteria and the Note under diagnostic code 7703, it is also consistent with the language in the evaluation criteria for Hodgkin's disease (diagnostic code 7709) and non-Hodgkin's lymphoma (7715).

We have reworded the NOTE following code 7703, leukemia, for clarity. No substantive change is intended.

One commenter stated that polycythemia vera, code 7704, warrants a higher evaluation than 40 percent if myelosuppressive therapy is necessary.

Polycythemia vera is a readily managed disorder in most patients that can remain asymptomatic for long periods. Although inadequate management of the red cell mass can result in both thrombotic and hemorrhagic complications, control of blood volume and viscosity with the use of phlebotomy, supplemented when indicated with the use of myelosuppression, can ensure most patients with polycythemia vera a prolonged period of relatively symptom-free survival. (*Cecil, Textbook of Medicine*, 19th edition, 1992, pages 925–29.) On the other hand, certain myelosuppressants, such as P32 and chlorambucil, can have severe side effects and possibly lead to the development of leukemia in polycythemia patients. On the basis of this comment, we have revised the evaluation criteria for polycythemia by adding a 100 percent evaluation during periods of myelosuppressive therapy and for three months after completion of the therapy. Further, we have revised the proposed criteria for the 40 percent evaluation, which will now be assigned when the condition is controlled by phlebotomy, and added a 10 percent evaluation. As a result, a total evaluation will be assigned when the disease is active and the patient is being treated with myelosuppressants, a 40 percent evaluation will be assigned when the disease is controlled with phlebotomy, and a 10 percent evaluation will be assigned when the condition is stabilized with or without medication. We have removed the 0 percent level since a noncompensable evaluation can be assigned under § 4.31 of this section at any time when required residuals are not shown. Retaining the 0 percent evaluation level would be redundant. In our judgment, these changes will provide evaluations which accurately reflect the levels of this disability.

The same commenter suggested that the frequency of phlebotomies should be evaluated the same as the frequency of blood transfusions for aplastic anemia (diagnostic code 7716).

Phlebotomy, the removal of blood, is a different procedure than transfusion, the injection of blood. Different risks are involved and the amount of time before symptoms are resolved is dramatically different. Phlebotomy provides rapid

remission of symptoms. Transfusions, on the other hand, may have to be repeated several times before the desired results are attained, and even then it may be days or weeks before symptoms completely disappear. For these reasons, we do not believe that phlebotomy warrants an evaluation equivalent to that assigned based on transfusions.

One commenter noted that hypertension and gout are common complications of polycythemia vera and suggested that in the note following the evaluation formula they be mentioned along with stroke and thrombotic disease as complications to be rated separately.

We agree and have included these additional conditions in the note following diagnostic code 7704, polycythemia vera.

One commenter, noting that the criteria for non-total ratings for thrombocytopenia under diagnostic code 7705 specify that there be no bleeding, suggested that the 100 percent evaluation be assigned during periods of active bleeding.

We agree and have revised the criteria for the 100 percent evaluation to require that there be active bleeding. When a patient with thrombocytopenia is actively bleeding, he or she would be under close medical supervision, unable to work and totally disabled. Requiring that there be active bleeding for the 100 percent evaluation level clearly separates the total evaluation from lower evaluations, which specifically require no bleeding.

One commenter suggested that there should be a total rating assigned for thrombocytopenia during an appropriate stabilization and observation period, with an examination to follow.

We do not concur. The periods of thrombocytopenic bleeding are relatively short, but require aggressive medical management. If the veteran requires prolonged hospitalization (over 21 days), a total evaluation would be assigned under the provisions of § 4.29. If medically indicated, a period of convalescence would be assigned under the provisions of § 4.30. Since an exacerbation of this severity is closely followed by a medical professional, records of observation and treatment which are normally available are adequate to evaluate any progression of the disease. If they are not, an examination would be requested.

One commenter stated that the convalescence periods for Hodgkin's disease, diagnostic code 7709, and non-Hodgkin's lymphoma, diagnostic code 7715, should not be reduced to six months.

The commenter appears to have misinterpreted the proposed rule to mean that a convalescent evaluation will be terminated six months after treatment has ceased. However, under the proposed change there cannot be a reduction at six months because the process of re-evaluation does not begin until that time. First, there must be a VA examination six months after completion of treatment. Then, if the results of that or any subsequent examination warrant a reduction in evaluation, the reduction will be implemented under the provisions of 38 CFR 3.105(e), which requires 60 days notice before VA reduces an evaluation and an additional 60 days notice before the reduced evaluation takes effect. The revision not only provides for a current examination to assure that all residuals are noted, but also offers the veteran more contemporaneous notice of any proposed action and expands the veteran's opportunity to present evidence shown that the proposed action should not be taken. In our judgment this method will better ensure that actual side-effects and recuperation times are taken into account because they will be noted on the required VA exam.

One commenter stated that the provisions for an examination six months after cessation of treatment as in Hodgkin's and non-Hodgkin's lymphoma should be applied under malignant neoplasms of the genitourinary system (code 7528) and the gynecological system (code 7627). The revisions of these systems have been made since this comment was received and the rating procedure of evaluating malignancies of these systems based on an examination six months following cessation of treatment was implemented.

We have made a number of editorial changes, primarily of syntax and punctuation, throughout the final rule. These changes are intended to clarify the rating criteria and represent no substantive amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 601(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

List of Subjects in 38 CFR Part 4

Persons with Disabilities, Pensions, Veterans.

Approved: June 13, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4 is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 is revised to read as follows:

Authority: 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. Section 4.117 is revised to read as follows:

§ 4.117 Schedule of ratings—hemic and lymphatic systems.

	Rating
7700 Anemia, hypochromic-microcytic and megaloblastic, such as iron-deficiency and pernicious anemia:	
Hemoglobin 5gm/100ml or less, with findings such as high output congestive heart failure or dyspnea at rest	100
Hemoglobin 7gm/100ml or less, with findings such as dyspnea on mild exertion, cardiomegaly, tachycardia (100 to 120 beats per minute) or syncope (three episodes in the last six months)	70
Hemoglobin 8gm/100ml or less, with findings such as weakness, easy fatigability, headaches, lightheadedness, or shortness of breath	30
Hemoglobin 10gm/100ml or less with findings such as weakness, easy fatigability or headaches	10
Hemoglobin 10gm/100ml or less, asymptomatic	0

	Rating

Note: Evaluate complications of pernicious anemia, such as dementia or peripheral neuropathy, separately.

	Rating
7702 Agranulocytosis, acute:	
Requiring bone marrow transplant, or; requiring transfusion of platelets or red cells at least once every six weeks, or; infections recurring at least once every six weeks	100
Requiring transfusion of platelets or red cells at least once every three months, or; infections recurring at least once every three months	60
Requiring transfusion of platelets or red cells at least once per year but less than once every three months, or; infections recurring at least once per year but less than once every three months	30
Requiring continuous medication for control	10

Note: The 100 percent rating for bone marrow transplant shall be assigned as of the date of hospital admission and shall continue with a mandatory VA examination six months following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

	Rating
7703 Leukemia:	
With active disease or during a treatment phase	100
Otherwise rate as anemia (code 7700) or aplastic anemia (code 7716), whichever would result in the greater benefit.	

Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no recurrence, rate on residuals.

	Rating
7704 Polycythemia vera:	
During periods of treatment with myelosuppressants and for three months following cessation of myelosuppressant therapy	100
Requiring phlebotomy	40
Stable, with or without continuous medication	10

Note: Rate complications such as hypertension, gout, stroke or thrombotic disease separately.

	Rating
7705 Thrombocytopenia, primary, idiopathic or immune:	
Platelet count of less than 20,000, with active bleeding, requiring treatment with medication and transfusions	100
Platelet count between 20,000 and 70,000, not requiring treatment, without bleeding	70
Stable platelet count between 70,000 and 100,000, without bleeding	30
Stable platelet count of 100,000 or more, without bleeding	0
7706 Splenectomy	20

Note: Rate complications such as systemic infections with encapsulated bacteria separately.

	Rating
7707 Spleen, injury of, healed.	
Rate for any residuals.	
7709 Hodgkin's disease:	
With active disease or during a treatment phase	100

Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

	Rating
7710 Adenitis, tuberculous, active or inactive.	
Rate under §§ 4.88c or 4.89 of this part, whichever is appropriate.	
7714 Sickle cell anemia:	
With repeated painful crises, occurring in skin, joints, bones or any major organs caused by hemolysis and sickling of red blood cells, with anemia, thrombosis and infarction, with symptoms precluding even light manual labor	100
With painful crises several times a year or with symptoms precluding other than light manual labor	60
Following repeated hemolytic sickling crises with continuing impairment of health	30
Asymptomatic, established case in remission, but with identifiable organ impairment	10

Note: Sickle cell trait alone, without a history of directly attributable pathological findings, is not a ratable disability. Cases of symptomatic sickle cell trait will be forwarded to the Director, Compensation and Pension Service, for consideration under § 3.321(b)(1) of this chapter.

	Rating
7715 Non-Hodgkin's lymphoma:	
With active disease or during a treatment phase	100

Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be dtermined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

	Rating
7716 Aplastic anemia:	
Requiring bone marrow transplant, or; requiring transfusion of platelets or red cells at least once every six weeks, or; infections recurring at least once every six weeks	100
Requiring transfusion of platelets or red cells at least once every three months, or; infections recurring at least once every three months	60
Requiring transfusion of platelets or red cells at least once per year but less than once every three months, or; infections recurring at least once per year but less than once every three months	30
Requiring continuous medication for control	10

Note: The 100 percent rating for bone marrow transplant shall be assigned as of the date of hospital admission and shall continue with a mandatory VA examination six months following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

[FR Doc. 95–23515 Filed 9–21–95; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–5300–4]

Ocean Dumping; Site Modifications and Site Dedesignation; Charleston, South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today modifies the designation of an Ocean Dredged Material Disposal Site (ODMDS) and dedesignates another ODMDS in the Atlantic Ocean offshore Charleston, South Carolina. The modifications are to extend the period of use and to provide for improved management of the Charleston Harbor Deepening Project ODMDS. The dedesignation is for the smaller Charleston ODMDS. These actions are necessary to provide an environmentally acceptable ocean disposal site for projects in the Charleston area.

EFFECTIVE DATE: This final rule is effective on October 23, 1995.

ADDRESSES: Wesley B. Crum, Chief, Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/347–1740 ext. 4287.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to the Regional Administrator of the Region in which sites are located. The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, Section 228.11) state that use of disposal sites may be modified.

The Charleston Harbor Deepening Project ODMDS was designated on August 3, 1987 along with a smaller Charleston ODMDS. A decision to designate a small site for permanent use at Charleston was based on projected future disposal volumes and the ease of monitoring. The larger Harbor Deepening Project site, which was the interim site, was designated for a seven-year period and restricted to use for Harbor Deepening material only. The smaller, permanent Charleston ODMDS lies within the boundaries of, and completely in the western portion of, the larger Charleston Harbor Deepening Project ODMDS. The sites are defined by the following coordinates:

Charleston Harbor Deepening Project ODMDS;
32°38′06″ N, 79°41′57″ W;
32°40′42″ N, 79°47′30″ W;
32°39′04″ N, 79°49′21″ W;
32°36′28″ N, 79°43′48″ W.
Charleston ODMDS;
32°40′27″ N, 79°47′22″ W;
32°39′04″ N, 79°44′25″ W;
32°38′07″ N, 79°45′03″ W;
32°39′30″ N, 79°48′00″ W.

Recent on-site investigations have revealed the presence of significant live bottom resources within and around both Charleston ODMDSs. These resources are located primarily in the western half of the smaller site and along the southern boundary of the larger site. While the effects of burial by dredged material disposal are apparent, the effects of nearby disposal (particularly of fine material) on these resources is yet to be determined. Ongoing studies are being conducted to determine whether recently disposed fine materials are impacting these resources. Until these studies are complete, further disposal of all fine material will be limited to the eastern portion of the Charleston Harbor Deepening Project ODMDS to prevent interference with these studies and to minimize further potential impacts.

On March 5, 1991 final rulemaking was issued to modify the Charleston Harbor Deepening ODMDS to allow non-harbor deepening projects access to this site. Since the smaller ODMDS was the only site available at that time for such projects, and the resources of concern were located within that site, it was determined that such a modification was necessary for continued disposal of Charleston Harbor area projects in an environmentally-acceptable manner.

In March 1993, the EPA and the Charleston District of the U.S. Army Corps of Engineers (COE) entered into an agreement concerning the management and monitoring of the Charleston Harbor Deepening ODMDS. This Site Management Plan (the Plan) was the result of partnering of the federal, state and local authorities who have an interest in ocean disposal and the protection of marine resources. The Site Management and Monitoring Team (the Team) jointly developed the Plan which outlines specific management and monitoring objectives for the Charleston ODMDS. The Team meets regularly to review the progress and results of monitoring and makes recommendations to EPA and the COE on the management and regulation of ocean disposal at the site. The current five year monitoring effort has entered its third year. Copies of the Plan, which is scheduled for review in 1997, may be obtained for review and comment from either the EPA regional office or the COE District office.

The Proposed Rule for these actions was published in the **Federal Register** on May 11, 1995 [60 FR 25192]. Only one letter of comment was received during the 45 day comment period. This letter was from the U.S. Department of the Interior and expressed their concerns that the live bottoms of interest went undetected during the site evaluation studies. The EPA acknowledges this concern and has reviewed the way in which these studies were approached in the late 1970's to avoid any repetition on future site evaluations.

B. EIS Determination

EPA has voluntarily committed to prepare Environmental Impact Statements (EIS) in connection with the designation of ocean disposal sites [39 FR 16186 (May 7, 1974)]. The need for an EIS in the case of modifications is addressed in 39 FR 37420 (October 21, 1974), Section 1(a)(4). If the change is judged sufficiently substantial by the responsible official, an EIS is needed.

The continued use of the Charleston Harbor Deepening ODMDS is vital to the management goals of the Plan. The existence of natural resources within the smaller ODMDS, by itself, should preclude any further use of that site. By allowing the larger ODMDS to receive material on a continued basis, the need for the smaller ODMDS no longer exists, thereby allowing for disposal to occur in a more environmentally-acceptable location. In addition, disposal within the larger site will have to proceed in accordance with the Plan. Strict adherence to the disposal placement as specified in the Plan is necessary to prevent wasted monitoring efforts, which were designed based on the disposal of fine-grained materials within a specific location. Because monitoring results may cause management objectives to change, the Plan was designed so that appropriate changes could be made with the concurrence of EPA and the COE. EPA believes these changes do not warrant the preparation of an Environmental Impact Statement (EIS).

Once studies are complete, EPA may redefine the boundaries of the Charleston Harbor Deepening Project ODMDS through further rulemaking. Such rulemaking could modify disposal activities in the vicinity of the area's resources and reduce the potential for adverse impacts or allowing greater utilization of the site. EPA's primary concern is to provide an environmentally acceptable ocean disposal site for Charleston Harbor area dredging projects on a continued basis.

C. Site Modifications

The site modifications for the Charleston Harbor Deepening Project ODMDS are the extension of the period of use and to adjust certain restrictions on site use. The present period of use on the site is for seven years from the initiation of the Charleston Harbor deepening project. EPA changes the period of use to 'continued use.' EPA also adds to the present restriction of site use the following language: 'and in accordance with all provisions of material placement as specified by the Site Management Plan.'

D. Site Dedesignation

The dedesignation of the smaller Charleston ODMDS is due to the presence of natural resources within its boundaries. Disposal of material within this site, particularly fine-grained materials, could directly and indirectly affect the survival of these resources. The modification on the larger ODMDS to allow for continued use will provide a suitable location for the disposal of all materials from the Charleston area that meet the ocean disposal criteria. Additionally, the boundaries of the smaller ODMDS lie totally within the larger ODMDS. Therefore, this action does not, at this time, actually remove any ocean bottom from potentially being used, if appropriate.

E. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the modifications and dedesignation will only have the effect of providing an environmentally acceptable disposal option for dredged material on a continued basis. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

John H. Hankinson, Jr.,
Regional Administrator.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by revising paragraphs (h)(5) (v) and (vi) and by removing and reserving paragraph (h)(4) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(5) * * *

(v) Period of use: Continued use.

(vi) Restriction: Disposal shall be limited to dredged material from the Charleston Harbor area. All dredged materials, except entrance channel materials, shall be limited to that part of the site east of the line between coordinates 32°39′04″ N, 79°44′25″ W and 32°37′24″ N, 79°45′30″ W unless the material can be shown by sufficient testing to contain 10% or less of fine material (grain size of less than 0.074 mm) by weight and shown to be suitable for ocean disposal. Additionally, all disposals shall be in accordance with all provisions of material placement as specified by the Site Management Plan.

* * * * *

[FR Doc. 95–23577 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5299–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Brown Wood Preserving Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Brown Wood Preserving Site (Site) in Live Oak, Suwannee County, Florida, from the National Priorities List (NPL). The NPL is codified as Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA and the State of Florida (State) have determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that the remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Randall Chaffins, U.S. Environmental Protection Agency, Region IV, Waste Management Division, South Superfund Remedial Branch, 345 Courtland Street, N.E., Atlanta, GA 30365, (404) 347–2643 ext. 6260.

SUPPLEMENTARY INFORMATION: The Brown Wood Preserving Superfund Site in Live Oak, Florida will be deleted from the NPL. A Notice of Intent to Delete this Site from the NPL was published in the **Federal Register** on July 6, 1995 (60 FR 35160). The closing date for comments on the Notice of Intent to Delete was August 7, 1995. EPA received no comments and therefore did not prepare a Responsiveness Summary.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Superfund.

Dated: September 5, 1995.

John H. Hankinson, Jr.,
Regional Administrator, USEPA Region IV.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp. p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site "Brown Wood Preserving Site, Live Oak, Florida".

[FR Doc. 95–23321 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 763

[OPPTS–62091A; FRL–4976–4]

Asbestos-Containing Materials in Schools; State Request for Waiver From Requirements; Final Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final decision on requested waiver.

SUMMARY: EPA is issuing a final decision which approves the request of Utah for a waiver from the requirements of 40 CFR part 763, subpart E, Asbestos-Containing Materials in Schools.

ADDRESSES: A copy of the complete waiver application submitted by the State is available from the TSCA Nonconfidenital Information Center, TSCA Docket Receipt (7404), Office of Pollution Prevention and Toxics, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A copy is also on file and may be reviewed at the EPA Region 8 office in Denver, Colorado: EPA, Region 8 (8ART–RTI), 999 18th St., Denver, CO, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This action is issued under the authority of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2641, *et seq.* TSCA Title II was enacted as part of the Asbestos Hazard Emergency Response Act (AHERA), Pub. L. 99519. AHERA is the abbreviation commonly used to refer to the statutory authority for EPA's rules affecting asbestos in schools and will be used in this document. EPA issued a final rule in the **Federal Register** of October 30, 1987 (52 FR 41846), the "Asbestos-Containing Materials in Schools Rule" (the Schools Rule, 40 CFR part 763, subpart E), which requires all Local Education Agencies (LEAs) to identify asbestos-containing building materials (ACBMs) in their school buildings and to take appropriate actions to control the release of asbestos fibers.

Under section 203 of AHERA, EPA may, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, waive in whole or part the requirements of the Schools Rule, if the State has established and is implementing or intends to implement an ongoing program of asbestos inspection and management which is at least as stringent as the requirements of the rule. 40 CFR 763.98 sets forth the procedures to implement this statutory provision. The Schools Rule requires that specific information be included in the waiver request submitted to EPA, establishes a process for reviewing waiver requests, and sets forth procedures for oversight and rescission of waivers granted to States. The Agency encourages States to establish and manage their own school regulatory programs under the AHERA waiver program.

EPA issued a notice in the **Federal Register** of July 17, 1990 (55 FR 29069), which announced the receipt of a waiver request from the State of Utah, and solicited comments from the public. The notice also discussed the program elements of the State program.

No comments were received during the 60–day comment period. No request for a public hearing was received.

EPA is required to issue a notice in the **Federal Register** announcing its decision to grant or deny a request for waiver within 30 days after the close of the comment period. The comment period for this docket closed on September 17, 1990. The 30–day review period may be extended if mutually agreed upon by EPA and the State. EPA and Utah mutually agreed to extend the review period.

The remainder of this document is divided into two units. The first unit discusses the Utah program and sets forth the reasons and rationale for EPA's decision on the State's waiver request. Unit I. is subdivided into two sections. Section A discusses key elements of the State's program. Section B gives EPA's final approval of the waiver. The second unit of this document discusses statutory requirements of the Paperwork Reduction Act.

I. The Utah Program

A. Program Elements

The Utah Air Conservation Act, Title 26, Chapter 13 and implementing regulations (section 8, Utah Air Conservation Regulations) give the Utah Department of Environmental Quality (UDEQ) the authority to regulate asbestos in schools and commercial buildings. The State's regulations adopt by reference the AHERA regulations at 40 CFR part 763, subpart E effective when an AHERA waiver is approved by EPA. The State has the enforcement mechanism to allow it to implement the program. The State has EPA-approved Neutral Administrative Inspection Scheme (NAIS), logging system for tracking tips, complaints, etc., and an enforcement response policy in place. The State has qualified personnel to carry out the provision relating to the waiver. The program will be administered by the UDEQ, Bureau of Air Quality.

Since the State application for a waiver was received, EPA published a revision to its Asbestos Model Accreditation Plan (MAP). The Asbestos Model Accreditation Plan; Interim Final Rule was published on February 3, 1994 (59 FR 5236). This MAP required that each State adopt an accreditation plan that is at least as stringent as this MAP within 180 days after the commencement of the first regular session of the legislature of the State that is convened on or after April 4, 1994. The UDEQ submitted copies of the State's revised regulations. However, the State's regulations are not final at this time. Utah's revised regulations meet the requirements of the new MAP.

B. EPA's Decision on Utah's Request for Waiver

EPA grants the State of Utah a partial waiver from the requirements of 40 CFR part 763, subpart E, effective 30 days after publication of this Final Decision. This waiver includes all AHERA requirements except the MAP. EPA will amend the AHERA waiver to include the MAP when the State's MAP regulations become final. Federal jurisdiction shall be in effect in the period between the date of publication of this document and the effective date. This will assure that the State has sufficient time to prepare to assume its new responsibilities. It will also assure the public that no gap in authority occurs, and gives the public sufficient notice of the transfer of duties from EPA to the State of Utah. This waiver is applicable to all schools and public and commercial buildings covered by AHERA in the State and is subject to

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rescission under 40 CFR 763.98(j) based on periodic EPA oversight evaluation and conference with the State in accordance with 40 CFR 763.98(h) and 763.98(i).

II. Other Statutory Requirements

The reporting and recordkeeping provisions relating to State waivers from the requirements of the Asbestos-Containing Materials in Schools Rule (40 CFR part 763) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and have been assigned OMB control number 2070–0091.

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Asbestos in schools (AHERA), Hazardous substances, Reporting and recordkeeping requirements, State and local governments, Worker protection.

Dated: September 6, 1995.

Robert L. Duprey,

Acting Regional Administrator, Region 8.

[FR Doc. 95–23569 Filed 9–21–95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91–35; FCC 95–374]

Operator Service Access and Payphone Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On April 9, 1992, the Commission adopted a *Second Report and Order* prescribing an interim mechanism by which competitive payphone owners ("PPOs") may collect compensation from certain interexchange carriers ("IXCs") for originating interstate access code calls from their payphones. In the *Memorandum Opinion and Order on Reconsideration*, adopted August 17, 1993, the Commission substantially affirmed the *Second Report and Order*, although the Commission modified it in certain respects. Upon further reconsideration the Commission now affirms the *Reconsideration Order*, making one additional modification and a clarification with the intended effect of facilitating the payment of compensation by IXCs to PPOs. First, the Commission directs each PPO submitting an affidavit as verification of a compensation claim to include evidence that the particular payphone is owned by the PPO seeking compensation, and that the payphone was in working order during the period in question. Second, the Commission clarifies that IXCs to which the customer-owned coin-operated telephone ("COCOT") lists are provided must pay local exchange carriers ("LECs") reasonable charges for the costs of generating those lists. Third, the Commission rejects RCI's request that we exempt from compensation obligations those IXCs whose operator services consist of 1–800 and 950–10XX access code calls to preexisting accounts. The Commission also rejects RCI's request that we allow OSPs to remove themselves from the payphone compensation list at any time. Fourth, the Commission reverses our previous decision denying Allnet's request to be removed from the list of OSPs with payphone compensation obligations on the grounds that it is not a provider of "operator services," a defined by the Telephone Operator Consumer Services Improvement Act.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, 202–418–0960, Enforcement Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Order

A. Affidavit Procedure for Payphones Not Appearing on COCOT Lists

Upon reconsideration of the requirement that PPOs must submit sufficient verification information to IXCs when their payphones do not appear on COCOT lists, the Commission affirms its conclusion that the affidavit procedure the Commission established in the *Reconsideration Order*, 58 FR 57748 (1993), provides PPOs a "last resort" procedure when other procedures and informal negotiations fail to resolve LEC COCOT list problems. The Commission further concludes, however, that additional information would assist the IXCs in verifying their compensation obligations for competitive payphones not appearing on LEC COCOT lists. Accordingly, the Commission directs each PPO submitting an affidavit to include evidence that a particular payphone is owned by the PPO seeking compensation, and that the payphone was in working order during the period in question. Such evidence of the payphone's operability should include, at a minimum, the telephone bill for the last month of the billing quarter indicating use of a line screening service. The Commission believes that the inclusion of such evidence will serve the interest of all parties by allowing IXCs to pay legitimate claims more quickly. The Commission also believes that the potentially significant penalties for the submission of fraudulent affidavits will continue to protect the IXCs against the misuse claims if good-faith negotiations between the relevant parties fail to resolve the dispute.

B. LEC Recovery of the Costs of Producing the COCOT Lists

The Commission articulates with more specificity what it held in the *Reconsideration Order*: that LECs may recover their reasonable costs in generating and producing the COCOT lists through direct charges to the IXCs that use them. The COCOT lists are produced exclusively to assist the IXCs in verifying their compensation obligations to PPOs. Because the COCOT lists are produced to assist the IXCs pursuant to FCC rules and are not included in state-tariffed payphone service, the Commission rejects MCI's argument that the lists are generated "as a by-product of the provision of LEC payphone service to PPOs." Even if the IXCs choose not to receive the COCOT lists, they are still responsible for compensating PPOs for each eligible competitive payphone in the amount of $6 per month. In sum, the LEC COCOT lists are provided for the convenience of the IXCs, who, if requested, must pay the LECs a reasonable charge.

C. Certification Issues Raised by RCI's Petition for Clarification

Although it styles its pleading as a petition for clarification, RCI in effect requests reconsideration of the Commission's holding in both the Second Report and Order, 57 FR 21038 (1992), and the Reconsideration Order. As such, the Commission declines to adopt RCI's proposal for either expanding the scope of the exemption from the obligation to pay compensation to PPOs or modifying the terms of the affidavit procedure. The exemption from the compensation obligation is intended to apply to carriers that receive access code calls from their own presubscribed lines because such carriers already pay a commission to the PPO for such calls. The Commission emphasized that "if the carrier receives *any* user-initiated access code calls from payphones on which it is not the presubscribed carrier, that carrier [will] be required to participate in the compensation mechanism." RCI proposes to expand this exemption significantly to include access code calls from non-presubscribed lines for which

the PPO would not receive compensation. The Commission concludes that this proposal is flatly inconsistent with the purpose of the narrow exemption and, accordingly, decline to adopt it.

RCI argues that its proposed modification would be consistent with TOCSIA, which exempts from the statute's consumer protection requirements interstate telephone calls that are answered by automatic equipment and completed only if the caller inputs a PIN. This argument relies upon a statutory exclusion that removes from the definition of "operator services" any calls that receive "completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer."

The Commission has previously rejected an identical argument by RCI that calls placed to 800 and 950 numbers from non-presubscribed lines should be excluded from the payphone compensation provisions. In the *Second Report and Order*, the Commission explained that the exclusions incorporated into TOCSIA's definition of "operator services" applied to the branding requirements imposed on OSPs by Section 226(b), and served to limit those requirements to situations in which they were necessary. The Commission found that the text of the payphone compensation provisions, when read in conjunction with the legislative history, makes clear that Congress intended that the Commission consider the need to prescribe compensation for PPOs for access code calls. In addition, RCI petitions the Commission to exclude "800" and "950" calls from the definition of "access code calls." RCI's request, however, amounts to an untimely petition for reconsideration of the *Second Report and Order*. As RCI acknowledges, the definition of "access codes", as set forth in the *Second Report and Order*, states that "[a]ccess codes include 10XXX in equal access areas and "950" Feature Group B dialing * * * anywhere, where the three-digit XXX denotes a particular IXC. Some OSPs use an 800 number as an access code." The period within which parties were authorized to seek reconsideration of this decision expired many months ago. We, accordingly, decline to consider RCI's late-filed petition.

With regard to RCI's "inconsistency" argument that including "800" and "950" calls to OSPs within the definition of compensable "access code calls" would penalize OSPs for complying with the Commission's unblocking requirements, the Commission notes that it required OSPs to establish "800" and "950" access numbers as a means of permitting callers to reach the OSP whenever 10XXX calls were blocked from a particular competitive payphone. Thus, OSPs that are required to provide access from non-presubscribed payphones could do so through an access number, through 10XXX access, or through both. No matter how they provided access, these OSPs would be subject to the obligation to pay compensation to PPOs. In sum, because the Commission does not find any inconsistency between the definition of "access code calls" and the requirement that OSPs establish access numbers, the Commission declines to make the "clarification" requested by RCI.

The Commission also declines to modify the requirement that the certification must be made within 30 days after the public notice of the FCC staff report entitled "Long Distance Market Shares." To permit IXCs to seek at any time an exemption from the obligation to pay compensation, as RCI suggests, would undermine the efficient operation of the compensation mechanism and significantly increase the associated administrative costs. More specifically, because a single exemption alters the amount of compensation due from each OSP, the Commission would be required to readjust on a continuous basis the proportionate share of the $6 per payphone per month due from each OSP subject to the compensation obligation. In addition, each OSP paying compensation, and each PPO seeking compensation, would be required to make corresponding changes to their respective payment and accounting operations. The costs of such ongoing changes for all parties, including the Commission, could be unduly burdensome. Accordingly, the Commission denies RCI's request.

D. Allnet's Request To Be Removed From List of IXCs Required to Pay Compensation to PPOs

Since Allnet filed its petition for reconsideration of the Commission's decision not to remove Allnet from the list of compensation payors, the Court of Appeals for the District of Columbia decided the *Florida Public Telecommunications* case. Although it does not directly address the issue of who is a "provider of operator services," and it instead concerns an earlier Commission decision about the scope of compensable calls, *Florida Public Telecommunications* provides guidance on how the specific terms of TOCSIA are to be read in the context of the legislative purpose of that statute. As relevant to the statutory interpretation arguments advanced by Allnet, the rule of *Florida Public Communications* is that the plain meaning of the statutory language of TOCSIA must govern unless the Commission can show that Congress intended a different result.

While Allnet has always maintained that it was not a provider of "operator services," as defined by TOCSIA, the Commission has answered in the past that Allnet is, however, a recipient of interstate access code calls originated by competitive payphones. Indeed, Allnet provides long-distance service to transient customers through 1–800 access numbers with billing to a preestablished account. This service clearly fits within the Commission's definition of compensable access code calls. Because TOCSIA is concerned with providing callers with access to the OSP of their choice, the Commission reasoned that a carrier that receives interstate access code calls should share the burden of paying compensation to PPOs for their origination. To this end, the Commission adopted a procedure in the *Reconsideration Order* whereby a carrier could certify that it did not receive *any* access code calls to be exempted from the obligation to pay compensation.

In applying the *Florida Public Telecommunications* guidelines for interpreting TOCSIA to the instant case, the Commission finds that even if a carrier receives interstate access code calls from competitive payphones, it must also be a provider of "operator services," as defined by TOCSIA in Section 226(a)(7). If a carrier, such as Allnet, provides only the services that fall within the definition's exclusions, *e.g.*, "with billing to an account previously established with the carrier by the consumer," and does not otherwise provide "operator services," the Commission cannot require it to pay compensation under TOCSIA. Thus, under its rules and pursuant to TOCSIA, a carrier is not required to pay compensation under the interim flat-rate compensation mechanism, as established by the Commission's *Second Report and Order*, unless: (1) it receives access code calls; and (2) it is a provider of "operator services."

Based on Allnet's repeated statements that it does not provide "operator services" as defined by TOCSIA, the Commission finds that while it fits within the first part ("receives access code calls") of this two-part test for compensation payors, Allnet does not meet the second part ("provides 'operator services' "). Therefore, upon reconsideration, the Commission removes Allnet from the list of compensation payors retroactive to the advent of the interim flat-rate compensation mechanism. The Commission does not expect that use of this two-part test will impact the status of any of the other carriers currently required to pay compensation. Because the Commission is removing Allnet from the list of carriers required to pay compensation to PPOs, it need not decide the other related issues raised by Allnet, such as whether it was given appropriate notice by the Commission that it was to be included among the compensation payors.

Ordering Clauses

Accordingly, pursuant to authority contained in Sections 1, 4, 201–205, and 226 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201–205, and 226, It is Ordered that the policies, rules, and requirements set forth herein are ADOPTED.

It is Further Ordered that MCI's Petition for Further Reconsideration and Clarification of the *Reconsideration Order* is DENIED in part and GRANTED in part, as described herein.

It is Further Ordered that RCI's Petition for Clarification of the *Reconsideration Order* is Denied.

It is Further Ordered that the petition for reconsideration filed by Allnet is GRANTED in part, as described herein.

It is Further Ordered that this Memorandum Opinion and Order on Further Reconsideration will be effective October 23, 1995.

List of Subjects in 47 CFR Part 64

Communications common carriers, Operator service access, Payphone compensation, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendment to the Code of Federal Regulations

Title 47 of the CFR, Part 64, is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201–4, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201–4, 218, 225, 226, 227, unless otherwise noted.

2. Section 64.1301 is amended by revising paragraph (f) to read as follows:

§ 64.1301 Competitive payphone compensation.

* * * * *

(f) A competitive payphone owner (PPO) that seeks compensation for competitive payphones that are not included on a LEC COCOT list satisfies its obligation to provide alternative reasonable verification to an IXC if it provides to that IXC:

(1) A notarized affidavit, signed by the president of the company, attesting that each of the payphones for which the PPO seeks compensation is a competitive payphone that was in working order as of the last day of the compensation period); and

(2) Corroborating evidence that each such payphone is owned by the PPO seeking compensation and was in working order on the last day of the compensation period. Corroborating evidence shall include, at a minimum, the telephone bill for the last month of the billing quarter indicating use of a line screening service.

[FR Doc. 95–23405 Filed 9–21–95; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91–25; RM–7219]

Radio Broadcasting Services; Headland, AL, and Chattahoochee, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 287C3 for Channel 287A at Chattahoochee, Florida, reallots Channel 287C3 from Chattahoochee to Headland, Alabama, and modifies the license for Station WUMG(FM) to specify Channel 287C3, Headland, Alabama, as its community of license, at the request of Chattahoochee Broadcast Associates. *See* 56 FR 07317, February 22, 1991. The allotment of Channel 287C3 to Headland, Alabama, will provide the community with its first local transmission service, in accordance with Section 1.420(i) of the Commission's Rules. Channel 287C3 can be allotted to Headland in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) southeast of the community in order to avoid a short-spacing to Station WOAB, Channel 285A, Ozark, Alabama. The coordinates for Channel 287C3 at Headland, Alabama, are North Latitude 31–16–19 and West Longitude 85–17–46. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91–25, adopted September 8, 1995, and released September 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Headland, Channel 287C3.

3. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Chattahoochee, Channel 287A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–23527 Filed 9–21–95; 8:45 am]

BILLING CODE 6712-01-F

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47 CFR Part 73

[MM Docket No. 93–205; RM–8270]

Radio Broadcasting Services; Donalsonville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: Pursuant to petitions for reconsideration, the Commission amends the FM Table of Allotments to allot Channel 298A to Donalsonville, GA, and delete Channel 271A. The Commission determined that this would be in the public interest in light of recent events. This represents a reconsideration of *Report and Order* in MM Docket No. 93–205, 8 FCC Rcd 8506 (1993), 58 Fed. Reg. 65132 (Dec. 13, 1993). The coordinates for channel 298A at Donalsonville are 30–59–07 and 84–53–12. There is a site restriction 6.5 kilometers south of the community.

DATES: Effective November 3, 1995. The window period for filing applications will open on November 3, 1995 and close on December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 739–0773.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in MM Docket No. 93–205, adopted September 8, 1995 and released September 19, 1995. The full text of this decision is available for public inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S. C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202 (b), the Table of FM Allotments under Georgia, is amended by removing Channel 271A and adding Channel 298A at Donalsonville.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–23530 Filed 9–21–95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[I.D. 062495C]

Atlantic Shark Fisheries; Large Coastal Closure Notice

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal sharks conducted by vessels with a Federal Atlantic Shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota for the period July 1 through December 31, 1995.

EFFECTIVE DATE: 2330 hours local time September 30, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347; Kevin B. Foster, 508–281–9260; or Michael Justen 813–893–3161.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed by NMFS according to the fishery management plan (FMP) for Atlantic Sharks under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.24(b) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The second semiannual quota is available for harvest from July 1 through December 31, 1995.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.25 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.24(b). When shark harvests reach, or are projected to reach, a quota established under § 678.24(b), the AA is further required under § 678.25 to close the fishery.

The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period July 1 through December 31, 1995, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by September 30, 1995. During this closure, for vessels issued a permit under § 678.4, possession of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case the vessel limit per trip is four large coastal sharks. However, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4, is prohibited, except for those that were harvested, off-loaded, and sold, traded, or bartered prior to September 30, 1995, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a)(2). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 18, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23499 Filed 9–18–95; 3:49 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 60, No. 184
Friday, September 22, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–95–011]

Results of Soybean Producer Poll

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of poll results.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing the results of a national poll among soybean producers and the elimination of refunds effective October 1, 1995.

DATES: Producers will not be entitled to refunds of assessments paid on soybeans sold on or after October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp; Marketing Programs Branch; Livestock and Seed Division, AMS, USDA, Room 2606–S; P.O. Box 96456; Washington, DC 20090–6456. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Pursuant to the Soybean Promotion, Research, and Consumer Information Act (Act) (7 U.S.C. 6301 *et seq.*) the Department of Agriculture (USDA) conducted the required producer poll on Wednesday, July 26, 1995, among soybean producers to determine if the conduct of a refund referendum on the continuance of the payment of refunds was favored.

The Act requires USDA to conduct a refund referendum if at least 76,200—20 percent of the 381,000 producers nationwide (not in excess of one-fifth of which may be producers in any one State)—sign the poll.

The poll produced a total of 48,782 valid signatures. This total does not meet the requirement; therefore, the Secretary has determined based on the poll results that a refund referendum will not be conducted. As a result, producers will not be entitled to refunds of assessments paid on soybeans sold on or after October 1, 1995.

Dated: September 15, 1995.

Lon Hatamiya,
Administrator.

[FR Doc. 95–23554 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–24–93]

RIN 1545–AT75

Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance concerning the notice and consent requirements under section 411(a)(11) and the notice and election requirements of section 417. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by December 20, 1995.

ADDRESSES: Send submissions to CC:DOM:CORP:T:R (EE–24–93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:T:R (EE–24–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622–6050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224. To ensure that comments on the collection of information may be given full consideration during the review by OMB, these comments should be received by December 20, 1995.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information is in the provisions of §§ 1.411(a)–11(c)(2)(iii) and 1.417(e)–1(b)(3)(ii) that require the plan administrator to inform a participant that the participant has a right to at least 30 days to consider distribution options. Existing regulations implement the mandate of section 417(a)(3) that a qualified plan provide a written explanation of distribution options to each participant. Under existing regulations, a distribution cannot be made until 30 days after the explanation is provided. The provisions of this notice of proposed rulemaking give plans the flexibility to make a distribution within 30 days provided the participant is clearly informed of the right to at least 30 days for consideration of the distribution options. The IRS requires this information to be provided to participants to assure they have adequate time to evaluate their distribution options.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

The collection of information under this notice of proposed rulemaking can be satisfied by the addition of a statement to the explanation already provided by plan administrators to participants under existing regulations. Therefore, this collection of information results in a minor increase in an existing burden.

Estimated total annual reporting burden: 8333 hours. The estimated burden per respondent varies from 0 hours to 2 hours, depending on individual circumstances, with an estimated average of .011 hours.

Estimated number of respondents: 750,000.

Estimated annual frequency of responses: One time per year.

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 411(a)(11) and section 417. The temporary regulations contain rules relating to the notice, consent, and election requirements of those sections.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel, (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.411(a)–11 is amended by:

1. Revising paragraphs (c)(2) (ii) and (iii).
2. Adding paragraphs (c)(2) (iv) and (v) and (c)(8).

The revisions and additions read as follows:

§ 1.411(a)–11 Restriction and valuation of distributions.

[The text of proposed paragraphs (c)(2)(ii) through (c)(2)(v) and (c)(8) are the same as the text of § 1.411(a)–11T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.417(e)–1 is amended by:

1. Revising paragraph (b)(3).
2. Adding paragraph (b)(4).

The revision and addition read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

[The text of proposed paragraphs (b) (3) and (4) is the same as the text of § 1.417(e)–1T published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 95–23264 Filed 9–15–95; 4:00 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 94–023]

Port Access Routes: Approaches to Delaware Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: The Coast Guard is publishing the results of a port access route study which evaluated the need for changes to the traffic separation scheme and precautionary area in the approaches to Delaware Bay. The study concluded that the eastern approach lanes of the traffic separation scheme should be adjusted and a two-way route for use by tug and tow traffic should be established to separate tug and tow traffic from large, inbound vessel traffic. The study also concluded that the precautionary area needed to be reconfigured to exclude shoal areas too shallow for deep draft vessels. However, the existing southeastern approach should remain as presently configured.

FOR FURTHER INFORMATION CONTACT: LCDR Tom Flynn, Project Officer, Fifth Coast Guard District at (804) 398–6285, or Margie G. Hegy, Project Manager, Coast Guard Headquarters at (202) 267–0415.

SUPPLEMENTARY INFORMATION: A report on the study addressed in this notice is available for inspection and copying at the Marine Safety Council, U.S. Coast Guard Headquarters, room 3406, 2100 Second Street SW., Washington, DC 20593–0001, or at the Fifth Coast Guard District office, room 509, 431 Crawford Street, Portsmouth, VA 23704–5004, between the hours of 8 a.m. and 3:30 p.m., Monday through Friday, except holidays.

The Study

The Coast Guard has concluded its study of the vessel traffic separation scheme (TSS) and the precautionary area in the approaches to Delaware Bay which was announced in a notice published in the **Federal Register** on March 22, 1994 (59 FR 14126). The TSS is an internationally recognized routing measure intended to minimize the risk of collision by separating vessels into separate, opposing lanes of traffic. It consists of two parts and a precautionary area. The first part, or eastern approach, consists of westbound and eastbound traffic lanes, and a separation zone. The second part, or southeastern approach, consists of north-westbound and south-eastbound traffic lanes, and a separation zone.

Public Comments

The port access route study was opened primarily because of concerns, expressed by the Mariners Advisory Committee for the Bay and River Delaware, about near misses between deep-draft vessels and tugs with tows at Delaware Bay Entrance. Comments were received from vessel operators using the area, the Departments of Army, Commerce, and Navy, and the Philadelphia Regional Port Authority.

The Coast Guard met with representatives of the Mariner's Advisory Committee for the Bay and River Delaware, the Pilots' Association for the Bay and River Delaware, and tug masters for Maritrans Towing on January 19, 1995, in Philadelphia, PA, to discuss the results of the study. They agreed that the proposed changes were needed and would improve the safety and efficiency of navigation at the Delaware Bay entrance.

Additionally, the Coast Guard discussed the results of the study at the regular meeting of the Mariner's Advisory Committee for the Bay and River Delaware held on March 9, 1995. The Committee agreed with the recommendations in this notice.

Findings and Conclusions

(a) Outbound tugs with tows routinely depart from Brandywine Channel, head on a southeasterly course past Delaware Bay Entrance Channel Lighted Buoy 8, and, in the vicinity of Delaware Bay Entrance Lighted Buoy 6, change course to a northeasterly heading. This course change occurs within the current precautionary area near the pilot area and frequently confuses operators of inbound, deep-draft vessels. Operators not familiar with the local towing practices are placed in what initially appears to be a crossing situation, then appears to be a collision situation, and then again appears to be a crossing situation. These situations occur before a pilot boards the vessel. The master of the inbound vessel must determine what options apply as the situation appears to change, while entering unfamiliar pilotage waters.

(b) The current configuration of the precautionary area includes numerous shoal areas to the north and east of the channel marked for use by deep-draft vessels. These shoals are charted and well marked with buoys. Only recreational, shallow-draft vessels can use these shoal areas. There is no navigational or safety need to include these shoals in the precautionary area.

(c) The total tonnage handled by the ports on the Delaware Bay and River between 1989 and 1992 increased 15.26 percent. The number of vessels calling on the Delaware Bay and River was at its highest in 1988 with 3,041 arrivals. The lowest number of arrivals was in 1993 with 2,579. There were 2,679 arrivals in 1994, which is an increase of 100 vessels over 1993. A trend for larger capacity vessels calling on the ports of the Delaware Bay and River is expected.

(d) The COE's Philadelphia Harbor to the Sea 45-Foot Channel Project, scheduled to begin in fiscal year 1997 and be complete in 2003, will allow access to the Delaware Bay and River by larger, deeper-draft, bulk and containerized, cargo vessels. Traffic projections indicate that an increase in the number of vessels entering and departing the Delaware Bay can be expected. The recommended changes to the TSS would allow for safer and more efficient navigation by all vessel traffic.

(e) The Delaware River Port Authority has implemented new marketing strategies to attract new customers to the region. This should result in an increase in traffic.

(f) There were 1,015 tug and tow transits of this area in 1994. Tug and tow traffic departing Delaware Bay and bound for New York, Boston, and other northeast ports tends to hug the deeper water south and east of the shoals located off Cape May, New Jersey. The eastbound track of the traditional tug route runs parallel with the westbound lane of the eastern approach (Five Fathom Bank to Cape Henlopen Traffic Lane) of the TSS. There have been several near misses and at least one collision (T/V FAITH I (BH)) between an inbound deep-draft vessel and a departing tug with tow. That collision resulted in a discharge of approximately 150,000 gallons of unleaded gasoline. A contributing factor was the position of Delaware Bay North Approach Lighted Bell Buoy 2 (LL 1475), which marks a shallow spot with a depth of 37 feet. This buoy is located in the middle of the western terminus of the Five Fathom Bank to Cape Henlopen Traffic Lane. The northern boundary of this lane, in conjunction with the position of Delaware Bay North Approach Lighted Bell Buoy 2 (LL 1475), is often confusing to inbound traffic. The buoy is red and, thus, intended to be passed to starboard by inbound vessels. However, due to the present location of the charted boundary line, inbound vessels often mistake the buoy for a safe water buoy. This confusing situation could be eliminated by rotating the west end of the northern boundary of the TSS clockwise to the position of Delaware Bay North Approach Lighted Bell Buoy 2 (LL 1475) which would serve to better separate tug and tow traffic from inbound seagoing vessels.

(g) During the course of this study, NOAA's National Ocean Service (NOS) conducted hydrographic surveys which included the area bound by the eastern approach, portions of the precautionary area, and portions of the southeastern approach. Results of the surveys have been incorporated into the most recent editions of the charts serving the Delaware Bay entrance. Formerly charted obstructions were investigated and were either proven to exist or disproved. New obstructions were investigated and charted if proven to be classified as a hazard or obstruction to navigation.

Recommendations

(1) The two lanes and the separation zone of the southeastern approach should remain unchanged.

(2) The western terminus of the eastern approach of the TSS where it joins the Precautionary area should be relocated as follows:

Part I: Eastern approach

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
38°46′18″ N	74°34′27″ W
38°46′20″ N	74°55′45″ W
38°47′27″ N	74°55′45″ W
38°47′21″ N	74°34′30″ W

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
38°48′19″ N	74°55′18″ W
38°49′40″ N	74°36′45″ W

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
38°45′27″ N	74°56′12″ W
38°44′27″ N	74°34′21″ W

(3) The boundaries of the precautionary area should be reconfigured as follows: From 38°42.8′ N, 74°58.9′ W; thence northerly by an arc of eight nautical miles centered at 38°48.9′ N, 75°05.6′ W to 38°47′27″ N, 74°55′18″ W; thence westerly to 38°47′30″ N, 75°01′48″ W; thence northerly to 38°50′45″ N, 75°03′24″ W; thence northeasterly to 38°51′16″ N, 75°02′50″ W; thence northerly to 38°52′12″ N, 75°01′48″ W; thence westerly by an arc of 6.8 nautical miles centered at 38°48.9′ N, 75°05.6′ W to 38°55′55″ N, 75°05′48″ W; thence southwesterly to 38°54′00″ N, 75°08′00″ W; thence southerly to 38°42.8′ N, 74°58.9′ W. Reconfiguring the precautionary area would remove areas that cannot be used by deep-draft vessels due to the naturally available water depths and more accurately reflects to the mariner where precaution should be exercised.

(4) Two-way traffic route should be established to better separate tug and

tow traffic from inbound large-vessel traffic in the eastern approach. The two-way traffic route should be bounded on the west and south by a line connecting the following geographical positions:

Latitude	*Longitude*
38°50′45″ N	75°03′24″ W
38°47′30″ N	75°01′48″ W
38°48′19″ N	74°55′18″ W
38°50′12″ N	74°49′44″ W
39°00′00″ N	74°40′14″ W

and, bounded on the east and north by a line connecting the following geographical positions:

Latitude	*Longitude*
30°00′00″ N	74°41′00″ W
38°50′29″ N	74°50′18″ W
38°48′48″ N	74°55′15″ W
38°48′20″ N	74°59′18″ W
38°49′06″ N	75°01′39″ W
38°51′16″ N	75°02′50″ W

(5) The sound signals on all buoys marking the TSS should be removed.

Datum: NAD 83.

The Coast Guard will initiate rulemaking and seek IMO approval to reconfigure the eastern approach and the precautionary area and establish a two-way traffic route recommended for use by tug and tow traffic available to all vessels with a draft that enables them to operate safely.

Dated: September 15, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–23519 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, and 265

[FRL–5301–3]

Hazardous Waste Management System; Testing and Monitoring Activities; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is extending the comment period for the proposed rule (Update III of SW–846) that adds, revises, and deletes testing methods from SW–846 and from certain regulations for complying with the requirements of subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976. The Proposed rule appeared in the **Federal Register** on July 25, 1995 (see 60 FR 37974). The extension of the comment period is needed because of packaging and shipping problems with the Proposed Update III document. The Government Printing Office plans to distribute new packages to those subscribers whose packages were damaged or lost. This extension will allow commenters an opportunity to review the Proposed Update III package and supply their comments to the Agency.

DATES: EPA will accept public comments on this proposed decision must be submitted on or before December 21, 1995.

ADDRESSES: The public should submit an original and two copies of their comments on this proposed rule to the Docket Clerk (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The official record for this rulemaking (Docket No. F–95–WT3P–FFFFF) is located at the above address in Room M–2616, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must request material from the RCRA Docket, or they may make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW–846, as amended by Updates I, II, IIA, and IIB, and the proposed Update III are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 512–1800. The GPO document number is 955–001–00000–1. Copies of the Third Edition and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or call (703) 920–9810; or, for hearing impaired, call TDD (800) 553–7672. For technical information, contact Kim Kirkland, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–4761.

SUPPLEMENTARY INFORMATION:

Background Summary

On July 24, 1995, EPA proposed to revise certain testing methods used in complying with the requirements of subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA also proposed to add several new testing methods that may be used in complying with the requirements of subtitle C of RCRA. These new and revised methods, designated as Update III, were proposed to be added to the Third Edition of the EPA-approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846. In addition, EPA proposed to delete several obsolete methods from SW–846 and the RCRA regulations. The comment period was to end on September 25, 1995. However, due to problems involving the distribution of the Proposed Update III package, the Agency has decided to extend the comment period to December 21, 1995.

Dated: September 15, 1995.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 95–23573 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 281

[FRL–5299–2]

Montana; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of State of Montana for Final Approval, Public Hearing and Public Comment Period.

SUMMARY: The State of Montana has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Montana application and has made the tentative decision that Montana's underground storage tank (UST) program satisfies all of the requirements necessary to qualify for final approval. Notably, the State of Montana's statute authorizes the issuance of regulations that are broader in scope than the Federal regulations. EPA intends to grant final approval to the State to operate its program in lieu of the Federal program. The State of Montana's application for final approval is available for public review and comment.

DATES: All comments on Montana's final approval application must be received by the close of business on October 23, 1995. The public hearing is tentatively scheduled for November 13, 1995.

ADDRESSES: Written comments should be sent to U.S. EPA, Attention: Kristine Knutson, DWR 10096, 301 South Park, Helena, Montana 59626–0096.

If the public hearing is held it will be at the Department of Health and Environmental Sciences, 2209 Phoenix Avenue, Helena, Montana, at 1 p.m.

Copies of Montana's final approval application are available during normal working days at the following addresses for inspection and copying: from 8 a.m.—5 p.m. at the Montana Department of Health and Environmental Sciences, 2209 Phoenix Avenue, Helena, Montana 59620–0901, phone: (406) 444–5970; and from 12 p.m.—4 p.m. at the U.S. EPA Region 8, Library, Suite 144, 999 18th Street, Denver, Colorado 80202, phone: (303) 294–7616.

FOR FURTHER INFORMATION CONTACT: Kristine Knutson, U.S. EPA, Region 8, Montana Office, DWR 10096, 301 South Park, Helena, Montana 59626–0096, phone: (406) 449–5414, extension 225.

PUBLIC HEARING: EPA has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing to EPA or calling the contact within 30 days of the date of publication of this notice, EPA will hold a hearing on the date given above in the **DATES** section. EPA will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval is granted by EPA if the Agency finds that the State program: (1) Is "no less stringent" than the Federal program in all seven elements, and includes notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8); and (2) provides for adequate enforcement of compliance with UST standards (Section 9004(a), 42 U.S.C. 6991c(a)).

B. State of Montana

In April 1985, the State of Montana established authority through an amendment to the 1981 Montana Hazardous Waste Act to implement an underground storage tank program. The State changed the title of the Act to the Montana Hazardous Waste and Underground Storage Tank Act in April 1989, and further amended the Act in 1989 to expand rulemaking authority. Another amendment in 1993 provided the State with rulemaking authority to assess civil penalties.

The State submitted a draft application for state program approval in December 1992. Supplemental information was provided in January 1993. EPA reviewed and commented on the draft application and requested additional information to be included in the final application.

On February 22, 1995, Montana submitted an official application for final approval. Prior to its submission, Montana provided an opportunity for public notice and comment in the development of its underground storage tank program as required under § 281.50(b). EPA has reviewed Montana's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final approval. Consequently, EPA intends to grant final approval to Montana to operate its program in lieu of the Federal program.

This tentative determination to approve the Montana UST program applies to all activities in Montana outside of "Indian Country," as defined in 18 U.S.C. section 1151, including the following Indian reservations in the State of Montana:

1. Blackfeet;
2. Crow;
3. Flathead;
4. Fort Belknap;
5. Fort Peck;
6. Northern Cheyenne; and
7. Rocky Boys.

The Environmental Protection Agency retains all underground storage tank authority under RCRA which applies to Indian Country in Montana.

Before EPA would be able to approve the State of Montana UST program for any portion of "Indian Country," the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a state to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority pursuant to applicable principles of Federal Indian Law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval. EPA has reason to believe that disagreement exists with regard to the State's jurisdiction over "Indian Country," and EPA is not satisfied that Montana has, at this time, made the requisite showing of its authority with respect to such lands.

In withholding program approval for these areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Should the State of Montana choose to submit analysis with regard to its jurisdiction over all or part of "Indian Country" in the State, it may do so without prejudice.

EPA's future evaluation of whether to approve the Montana program for "Indian Country," to include Indian reservation lands, will be governed by EPA's judgment as to whether the State has demonstrated adequate authority to justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

In accordance with Section 9004 of RCRA 42 U.S.C. 6991c and 40 CFR 281.50(e), the Agency will accept written comments on EPA's tentative determination until October 23, 1995. Copies of Montana's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Montana. EPA expects to make a final decision on whether or not to approve Montana's program by December 21, 1995, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of Montana's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6991c.

Dated: August 1, 1995.

Kerrigan Clough,

Acting Regional Administrator.

[FR Doc. 95–23574 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 95–144; FCC 95–389]

Filing of UHF Noise Figure Performance Measurements

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this *Notice of Proposed Rulemaking* (*NPRM*), the Commission proposes to amend its rules regarding television receivers by eliminating the requirement that parties who manufacture, import, or market television receivers file reports concerning the UHF noise figure performance of recently-introduced models. The Commission believes this action will reduce the regulatory burden on manufacturers and importers of television receivers.

DATES: Comments must be filed on or before October 12, 1995. Reply comments must be filed on or before October 27, 1995.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kimberly Baum, Office of Engineering and Technology, (202) 776–1606.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM*, adopted September 5, 1995, and released September 12, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of NPRM

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") filed a petition requesting that the Commission delete the requirements for the submission of UHF noise figure measurement data. In its petition, EIA/CEG stated that requiring the compilation and submittal of test data, after the receiver has been verified as compliant with the Commission's rules, is unnecessary and inconsistent with the verification procedure for equipment authorization. EIA/CEG maintained that past filings of UHF noise figures showed a high level of compliance with the rules, which demonstrates the industry's commitment to the quality of UHF television.

2. Accordingly, the Commission proposes to eliminate the requirement for submission of UHF noise figure performance measurement data now submitted to the FCC. All television receivers shipped in interstate commerce or imported into the United States for sale or resale to the public would remain subject to the 14 dB noise figure. Compliance with this requirement would be maintained through the verification process, such routine follow-on testing as the manufacturer or importer believes is necessary, and random sampling by the Commission. The Commission believes this action will reduce the regulatory burden on manufacturers and importers of television receivers. Reduction of administrative burden on manufacturers could potentially result in a reduction in price to the consumer and thus is in the public interest.

List of Subjects in 47 CFR Part 15

Communicaitons equipment, Radio.

(Authority: 47 U.S.C. 154(i), 302, 303(e), 303(f), 303r), 303(s).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–23525 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–244; RM–8315; RM–8401]

Radio Broadcasting Services; Pike Road and Ramer, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document denies a petition filed on behalf of Fred R. Hughey (RM–8315) requesting the allotment of FM Channel 248A to Pike Road, Alabama, as that locality's first local aural transmission service, and also denies a mutually-exclusive proposal to allot FM Channel 248A to Ramer, Alabama, as that community's first local aural transmission service, as requested by A. J. Miller (RM–8401). The proposals are denied based upon each proponent's failure to demonstrate that either Pike Road or Ramer, Alabama, constitute *bona fide* "communities", as that term is defined for purposes of Section 307(b) of the Communications Act, for allotment objectives. *See* 58 FR 50313, September 27, 1993. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–244, adopted September 8, 1995, and released September 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Com [illegible] unic [illegible] ommission.

John A. Kar [illegible] sor

Chief, Allocat [illegible] h, Policy and Rules Division, Mass [illegible] ureau.

[FR Doc. 95–23529 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–147; RM–8694]

Radio Broadcasting Services; Meredosia, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Larry K. and Cathy M. Price to allot Channel 228A to Meredosia, Illinois, as the community's first local FM service. Channel 228A can be allotted to Meredosia in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) east, at coordinates 39–50–14 North Latitude and 90–32–24 West Longitude, to avoid a short-spacing to Station

KGRC, Channel 225C1, Hannibal, Missouri.

DATES: Comments must be filed on or before November 13, 1995, and reply comments on or before November 28, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Larry K. and Cathy M. Price, WKXQ Radio, P.O. Box 196, 123 North Liberty Street, Rushville, Illinois 62681 (Petitioners).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–147, adopted September 7, 1995, and released September 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–23526 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–148; RM–8693]

Radio Broadcasting Services; Big Sky, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by George Russell & Associates, Inc. proposing the allotment of Channel 283A to Big Sky, Montana, as that community's first local service. Channel 283A can be allotted to Big Sky without a site restriction at coordinates 45–16–03 and 111–18–04.

DATES: Comments must be filed on or before November 13, 1995, and reply comments on or before November 28, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Brian M. Madden, Deborah R. Coleman, Leventhal, Senter & Lerman, 2000 K Street, NW., Suite 600, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–148, adopted September 8, 1994, and released September 19, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–23528 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 260

[Docket No. 950915231–5231–01; I.D. 091495E]

RIN 0648–AI45

Privatization of In-plant Seafood Inspections and Related Services

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inquiry.

SUMMARY: NOAA announces that it will change the way it delivers in-plant seafood inspections and related services under the Agricultural Marketing Act of 1946 (the Act). Currently, these services are provided by NOAA employees on a fee-for-service basis which enables NOAA to fully recover the service costs. NOAA is considering that some of these services would no longer be provided directly by NOAA employees, but rather be offered by private parties. This document outlines the action NOAA contemplates to assure that the privatized program conducted under Federal oversight will be the full equivalent of the current program. NOAA is issuing this notice to inform the public of its ideas on restructuring the way it provides services under the Act; to describe the method by which it would assure continued availability of the benefits of these services through private inspectors certified by NOAA; and to invite submission of written recommendations and comments.

DATES: Comments must be received on or before November 21, 1995.

ADDRESSES: Director, Office of Industry Services, 1315 East-West Highway, Room 12553, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: James W. Brennan, NOAA Deputy General Counsel at (202) 482–3044.

SUPPLEMENTARY INFORMATION: Comments should take into account the following criteria that will fundamentally affect the viability of a privatized inspection program: (i) Fair treatment of Government inspectors currently

providing the services; (ii) minimum modification of relationships with customers subscribing to the current program, and assurance that the internal operations of these customers need not be changed to accommodate a privatized system; (iii) continued recognition by foreign governments of official indicia as indicating safety, wholesomeness and acceptability of products to which the indicia are affixed or to which they relate; (iv) acceptance of the integrity of the privatized inspection program by harvesters, processors, wholesalers, retailers and consumers; and (v) likelihood of the continued economic viability of the private entity (or entities) providing the services into the indefinite future.

In furtherance of Administration efforts to "reinvent" and improve the way services are delivered to the public, and to comply with the personnel reductions mandated by the Federal Work Force Restructuring Act, NOAA is considering privatization of inspections and related services for fish and fishery products currently conducted under its voluntary fee-for-service program. By the end of FY 1996, NOAA would discontinue direct involvement by Federal employees in performing these services under authority of the Act (7 U.S.C. 1621 *et seq.*). However, NOAA will retain oversight to maintain public confidence in the continued integrity of the program. One or more qualified entities in the private sector would be officially recognized and authorized by NOAA to provide inspection services. NOAA would no longer conduct inspection services to be performed by Federal and cross-licensed State employees, but would certify the competence of each private entity authorized to provide these services to members of the public.

The current voluntary program has been a notable success. It promotes domestic and foreign commerce in American seafood in several important ways. It is a tool available to exporters to provide a known, reliable assurance that seafood exported from the United States to foreign markets conforms to the agreed contract specifications between the domestic exporter and the foreign purchaser. It provides a governmental assurance of the safety, wholesomeness, and acceptability to officials of other nations, thereby speeding customs clearance at foreign borders. In those countries that require certification from a Federal entity, NMFS certification has routinely satisfied these requirements. The program also serves domestic purchasers at the import, wholesale, retail or consumer level who desire assurance from a disinterested expert that fishery products in the market place meet appropriate standards, and fishery products that they have purchased meet their requirements. In addition, the official marks (e.g., U.S. Grade A, Packed Under Federal Inspection) associated with this program are often used in the trade and at retail to market the product to its best advantage and allow consumers to choose product of the desired quality. During 1994, the NOAA program inspected more than 984 million lb (446,000 mt) of fishery products for domestic and foreign use.

It is important to foreign governments, in particular, that the assurances conveyed by the voluntary fee-for-service activities under the Act are backed by a disinterested entity of unimpeachable integrity. During 1994, NOAA inspected and certified 156.4 million lb (70,900 mt) of fishery products for export. While the Federal Government may need to retain involvement in providing assurances to foreign governments, many of the services that NOAA currently provides can be assumed by qualified, knowledgeable and disinterested private inspectors, provided that NOAA retains the oversight necessary to foster public confidence in the system of private inspection and related services.

Private inspectors would be required to maintain complete records of their activities under the Act, which NOAA would review as it audits performance under the program. NOAA contemplates that it would charge certified entities a fee to cover the oversight, audit and certification costs.

Prior to privatization, NOAA would amend certain inspection and certification provisions to expand the fee-for-service activities that may be conducted under the Act by persons who are not Federal employees.

The simplest way to privatize these services would be to certify each private person who satisfies applicable qualification standards to perform services under the Act as a private inspector (subject to oversight of NOAA). This approach could result in such a large number of geographically dispersed, qualified inspection firms that the quality of NOAA's oversight would be impaired, thereby affecting the integrity of the system. Furthermore, the size of some firms conducting inspections could be so small that it would raise legitimate concerns that decisions of these firms could be subject to undue influence by a customer who provides a significant portion of their income. Such cases would adversely affect the perceived credibility of the private inspection program by members of the seafood industry, by consumers and by foreign governments. Such a course of action could also seriously disrupt ongoing activities of existing customers. For those reasons, NOAA has determined that this approach is so unacceptable to customers, consumers, and the domestic industry in general that it would be unworkable.

NOAA believes that a better approach would be the establishment of a private, employee-owned Corporation (the Corporation) that would acquire the program and operate it subject to the oversight of NOAA. NOAA employees currently performing these services could become employees of the Corporation if they so elected, and would acquire an ownership interest therein by means of an Employee Stock Ownership Plan (ESOP). Under this alternative, NOAA would terminate its inspection services and would eliminate its inspector positions soon after the Corporation is established. This option has four important advantages: (1) Current employees would be treated fairly, (2) customer relations would be fostered, (3) NOAA oversight would be simplified, and (4) the integrity of the program would be maintained. Because NOAA inspectors would be represented in the process of establishing the ESOP and would have a stake in the ownership of the Corporation, the morale and productivity of inspectors would likely be high. Furthermore, ongoing relationships with current customers would not be disrupted. NOAA would deal with one major certified entity, and perhaps a small number of reasonably sized competing entities. Oversight would be far less burdensome this way compared to dealing with a large number of small certified entities. Furthermore, the inspectors employed by the employee-owned Corporation, being former NOAA inspectors, would be familiar with the procedures that will govern the conduct of inspections by private inspectors. These inspectors would also understand the overriding importance of maintaining the integrity of the inspection process.

The ESOP proposal would require more preparatory work in legal/financial areas that are unfamiliar to NOAA, and would perhaps involve greater initial costs to the Government. However, once the infrastructure is in place, the transition should go smoothly and rapidly. The inspectors employed by the Corporation would be highly qualified, as noted above, and these former NOAA inspectors would fully appreciate the necessity for complete impartiality in performing their duties. They would also have a comprehensive knowledge of the inspection manual used by NOAA that would continue as the standard reference to ensure consistency by all inspectors throughout the program.

NOAA is in the process of contracting for a study of the feasibility of establishing a new Corporation, owned in whole or part by an ESOP, to undertake inspection services. The contractor will be encouraged to seek the views of affected employees, current customers, other members of the seafood industry and consumers.

At this point, NOAA assumes that the study will conclude that the approach contemplated is feasible. However, if the study, discussions with affected or interested persons, or comments resulting from this notice indicate that the five criteria essential for the success of a privatized system are not likely to be met, NOAA will pursue other options. Any option likely to be successful will probably require legislation, and will therefore have to be pursued as a matter of urgency if the deadline of September 30, 1996, is to be met.

In addition to providing services under the Act, the possibility exists that the Corporation could also be authorized to conduct similar services on behalf of other Federal or state agencies engaged in seafood inspection or in quality inspection of other foods, provided suitable arrangements could be made with other interested agencies. This raises the following questions: How should the privatized program mesh with the mandatory seafood inspection program now being operated by the U.S. Food and Drug Administration: Currently, NOAA has memoranda of understanding with FDA which include inspection and research. FDA is converting its inspection regime to one that is based on the Hazard Analysis Critical Control Point (HACCP) principles. Should the Corporation conduct inspections that could qualify under FDA's mandatory program? If so, how should this work? Should consultative services that the Corporation conducts under the NOAA voluntary program include training and technical assistance to facilitate compliance with the FDA mandatory program, especially by small businesses?

In certain areas, NOAA utilizes cross-licensed state and Federal inspectors from the Department of Agriculture to provide inspection services. In order to enhance the success of the Corporation, work that is currently performed by these governmental bodies could be directed to the new Corporation. The Corporation may wish to continue to utilize state or Federal personnel. NOAA would have no objection to this as long as these individuals meet the qualification standards that will be maintained by NOAA. To facilitate this transition NOAA would recognize a cross-licensed state and Federal inspector who has demonstrated satisfactory performance during the last year in a specific inspection function(s) as a certified entity for such activity(ies) to provide the Corporation with the ability to use these individuals. Future certification of state and Federal employees would be dependent on meeting the previously stated qualification standards.

NOAA contemplates establishing or authorizing the establishment of additional service marks to inform consumers of the official assurances provided by certified private inspectors, to provide other information useful to consumers, and to encourage foreign governments to rely on those logos for the government-backed assurance of safety, wholesomeness and quality. For entry into a foreign country where a governmental certificate may be required as a condition of acceptance by the importing foreign government, NOAA would either countersign the certificate of compliance or retain responsibility for certification for specific countries. In the latter case, NOAA certification would be based upon inspections conducted by the Corporation acting under contract with NOAA. The oversight and standard-setting roles of NOAA could eventually be assumed by a government Corporation. However, in the context of an inspection program conducted by a certified private entity, that must be considered a long-range possibility, not a short-term or medium-term goal.

The Corporation itself would need to comply with practices and standards established by NOAA. Its employees conducting inspections and related services would also be required to meet appropriate standards of education, training, or experience established by NOAA. The major source of qualified employees would be the NOAA employees performing fee-for-service activities under the Act. NOAA currently has 168 inspectors providing inspection services. These inspectors are classified in two personnel series: (1) Consumer Safety Officer (GS-696) series—there are currently 131 NOAA field inspectors in this series (this is the same series as Food and Drug Administration Consumer Safety Officers); and (2) Consumer Safety Inspector (GS-1862)—there are currently 40 NOAA field inspectors in this series. The basic requirements for the two series are as follows:

(1) Consumer Safety Officer (entry level)

A. Bachelor's degree that includes at least 30 semester hours in one or a combination of the following: Biological sciences, chemistry, pharmacy, physical sciences, food technology, nutrition, medical science, engineering, epidemiology, veterinary medical science, or related scientific fields that provide knowledge directly related to consumer safety officer work, or

B. Combination of education and experience—courses consisting of at least 30 semester hours in the fields of study described in A, plus appropriate experience or additional education.

(2) Consumer Safety Inspector (lowest entry level)

A. Successful completion of 2 years of study, which includes at least 12 semester hours in any combination of courses such as those in the agricultural, biological, or physical sciences, food technology, epidemiology, home economics, pharmacy, engineering, or nutrition.

(3) Consumer Safety Inspector (above lowest entry level)

A. Successful completion of a 4-year course of study leading to a bachelor's degree with at least 24 semester hours in any combination of courses in subjects as listed under A; or

B. Specialized experience in work that has provided knowledge of the properties and characteristics of the commodities and substances regulated in the position to be filled, skill in applying proper techniques for collecting samples and performing field tests and examinations, skill in reporting both orally and in writing, and skill in maintaining effective personal contacts. Such experience may be acquired in work such as the following: Food inspector, public health inspector, and quality inspection specialist.

The qualifications of all persons applying for certification would be examined to assure that they meet minimal agency standards of competence. NOAA anticipates that any person who has successfully performed as a Federal Consumer Safety Officer or Consumer Safety Inspector for more than 1 year and has successfully completed the necessary training courses for the activities for which certification is requested would qualify to conduct like services under the program as a certified entity or as an employee of such entity. Periodic review of the qualifications of all certified inspectors, and attendance at approved training courses to keep

current with advances in the art will be required in order to maintain a current certification.

Although the Corporation currently contemplated by NOAA is likely to meet the criteria needed for authorization to provide privatized inspection services, it would not necessarily be the only authorized entity. Other entities could apply to the Secretary of Commerce for authorization, and if they meet applicable requirements, they would be authorized to conduct the services. However, as noted previously, it is assumed that authorization of entities employing a small number of employees would make the system unworkable. Therefore, NOAA contemplates that one of the authorization criteria would be that the applicant must employ a minimum number of certified inspectors, perhaps in the range of 50 to 60. Comments on the number of certified inspectors needed to qualify a firm would be particularly useful. Additionally, NOAA probably would require that an entity authorized under the program could not receive more than a fixed percentage of its annual income from performing these services for any one seafood processor or group of related seafood processors. And, of course, a certified entity could not inspect its own seafood as a Federally certified entity.

Initially, it is contemplated that the private inspectors conduct one or more of the following services under the Act:

- Sampling;
- Determination of essential characteristics;
- Determination of class, quality or condition; and
- Continuous in-plant inspection.

Under the changes contemplated, inspectors probably would not be certified initially to approve HACCP plans. Because of the inherent complexity in approving HACCP plans, the variety of the plans themselves, and the relative novelty of the application of HACCP to seafood quality programs, it is contemplated that approval of HACCP plans will not be delegated until the process of privatization has matured. Under currently approved HACCP plans, firms have assumed significant responsibilities for assuring the safety, wholesomeness and quality of their own products, subject to periodic audits by NOAA. This will continue whether NOAA or a certified entity is responsible for the audit. Monitoring of approved HACCP programs by qualified certified private inspectors is being considered. Even if it were decided that they would not initially oversee HACCP plans as a certified inspector under the Act, certified private inspectors could assist their customers in designing HACCP programs as a private consultation service in much the same manner as NOAA currently does. Comments on this point are particularly desired.

It is anticipated that functions such as specification and label approval, as well as training functions in specialized activities such as sensory evaluation, will initially be retained by NOAA. The performance of appeal inspections is also considered to be a function that must be retained by NOAA to resolve issues of conflict between a certified entity and a party that requests an inspection service. NOAA will maintain the development of voluntary grade standards, functions associated with agency and trade interests in international activities, and performance of laboratory analyses to ensure the integrity of the NOAA program.

NOAA's role in providing for-fee services not initially included would be reexamined as the program proceeds. Ultimately, it is envisioned that NOAA's role could diminish to the point that it would issue voluntary standards and audit the performance of private inspectors, and, as noted, even those functions may eventually be assigned to a government Corporation or even be privatized if the right vehicle for doing so could be designed.

At first glance, it would seem that the possibility of having a single private entity authorized to conduct most of the services on behalf of NOAA could raise concerns about inflated pricing unless NOAA regulated the prices that could be charged. NOAA does not contemplate doing that for several reasons. Subscription to the service is not mandated by law. Less than 25 percent of the seafood in the domestic market place is now covered by the program; that suggests that the majority of seafood producers find that the value of the current service as a marketing tool does not exceed the cost of participation. It is unlikely that the privatized service would be able to charge fees that significantly exceed fees for similar services under the current program.

NOAA is considering a variation to ease the transition to the privatized system. Under the variation, NOAA would continue existing contracts with customers to provide inspection services but would negotiate a contract with the Corporation to actually conduct these services as a subcontractor to NOAA. (The inspectors employed by the Corporation would likely be the very inspectors who provided the services as Government employees). NOAA would pay the Corporation for services provided and bill and receive payment from the customers. Contracts with new customers would be established between the Corporation and those customers as the need arises. Over the course of the 1-year transition period, the Corporation gradually would assume full responsibility for existing NOAA contracts, on a time schedule that would be mutually convenient to the customers and the Corporation. In addition to offering a phased process, fully transparent to existing customers, this approach may provide a contractual vehicle to allow the transfer of control to the Corporation of some NOAA property currently used by its inspectors. Comments on the desirability of the variation would be helpful.

Request for Comments and Views

Affected employees, domestic and foreign consumers, seafood harvesters, processors, traders, retailers, importers and exporters, as well as entities interested in qualifying as certified inspection entities, are invited to submit comments and suggestions on the points discussed above, or any related topic.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the Federal Register to the Assistant Administrator for Fisheries, NOAA.

This notice has been determined to be not significant for purposes of E.O. 12866.

Dated: September 15, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–23484 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 184

Friday, September 22, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–95–00–2]

Extension of Time for Submitting Nominations for Members of the National Organic Standards Board (NOSB)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice—Extension of time for Filing Nominations for Membership on the NOSB.

SUMMARY: This notice extends the time for submission of nominations to fill positions on the NOSB. The time has been extended from August 31, 1995 to September 30, 1995. The terms of five members will expire in January 1996. The Secretary seeks nominations of individuals to be considered for selection as NOSB members.

DATES: Written nominations, with resumes, now must be postmarked on or before September 30, 1995.

ADDRESSES: Nominations should be sent to Dr. Harold S. Ricker, Staff Director, Transportation and Marketing Division, Room 2945 South Building, Agricultural Marketing Service, U.S. Department of Agriculture (USDA), P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202) 720–2704.

SUPPLEMENTARY INFORMATION: Prior documents with this notice: Nominations for Members of the National Organic Standards Board: Published August 7, 1995 (60 FR 40153).

Notice is hereby given that the time for making nominations is hereby extended from August 31, 1995 to September 30, 1995. This will allow additional time for submission of nominations. The Secretary seeks nominations of individuals to be considered for selection as NOSB members.

Nominations are sought for the positions of representatives of farmers/growers (2), consumer/public interest groups (2), and environmentalist. Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic farming operation, an individual who represents public interest or consumer interest groups, or an expert in the area of environmental protection and resource conservation.

Selection criteria will include such factors as: demonstrated experience and interest in organics; commodity and geographic representation; endorsed support of consumer and public interest organizations; demonstrated experience with environmental concerns; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical forms. The biographical information must be completed and returned to USDA within 10 working days of its receipt, to expedite the clearance process that is required by the Secretary.

7 U.S.C. 6501 et seq.

Dated: September 19, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–23553 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–02–P

Economic Research Service

Essential Agricultural Uses and Volumetric Requirements—Natural Gas Policy Act; Coronet, Industries, Inc.

AGENCY: Office of Energy and New Uses (OENU), Economic Research Service.

ACTION: Notice.

SUMMARY: This notice advises the public that a request for an interpretation of the Essential Agricultural Uses and Requirements regulations at 7 CFR Part 2900 has been received from Coronet Industries, Inc. ("Coronet"), seeking that the Department of Agriculture classify all of Coronet's existing natural gas uses as Essential Agricultural Uses.

DATES: Written comments will be accepted with respect to Coronet's request, if received by October 12, 1995.

ADDRESSES: Copies of the request for interpretation from which confidential information has been deleted in accordance with 7 CFR 2901.4(a)(2) may be obtained from: Matthew M. Schreck, Curran, Corbett & Stiles, P.C., 800 Gessner, Suite 930, Houston, Texas 77024, Attorney for Coronet Industries, Inc.

FOR FURTHER INFORMATION CONTACT: Roger K. Conway, Director, Office of Energy and New Uses, Economic Research Service, United States Department of Agriculture, 1301 New York Avenue, NW., Room 1212, Washington, DC 20005–4788; telephone number: (202) 219–1941.

SUPPLEMENTARY INFORMATION: Section 401(c) of the Natural Gas Policy Act of 1978 (NGPA) requires the Secretary of Agriculture to determine the essential uses of natural gas, and to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) the natural gas requirements for essential agricultural uses in order to meet the requirements of full food and fiber production. Under provisions of NGPA, FERC must approve natural gas curtailment plans that are implemented in the event of natural gas shortages. However, natural gas classified for essential agricultural uses is not subject to curtailment until all other uses except for Priority 1 (homes hospital, etc.) have been curtailed. FERC also has additional authorities to prevent curtailments as needed.

The Secretary of Agriculture has defined essential agricultural uses at 7 CFR part 2900. The administrative procedures for adjustments in natural gas curtailment priorities and volumetric requirements are set forth at 7 CFR part 2901. Today's notice is in response to a request by Coronet Industries, Inc. for an interpretation of volumetric requirements for its essential agricultural uses.

Coronet is a manufacturer of animal feed supplements with manufacturing facilities located in Plant City, Florida. Coronet's manufacturing process utilizes natural gas in both kilns and reactors. Coronet receives natural gas from a direct interconnection with Florida Gas Transmission Company (FGT), an interstate pipeline subject to FERC jurisdiction. Coronet has no alternative fuel capability at the plant.

A January 12, 1995, FERC settlement agreement FGT and its customers required FGT to change from an end-use curtailment plan to a pro-rata curtailment by November 1, 1995. Only a portion of Coronet's natural gas use is currently classified as Priority 2, essential agricultural uses.

FGT's previous end-use curtailment plan interrupted service based on the end use of the natural gas in accordance with the NGPA priority categories. Consequently, Priorities 3 through 9 were curtailed in their entirety in their respective orders of priority before Priority 2 was curtailed. Under FGT's new pro-rata curtailment plan, only Priority 1 and Priority 2 will be considered exempt from curtailment. Any natural gas uses not included in Priority 1 or 2, depending on the magnitude of the shortage, will be curtailed on a pro-rata basis.

In response to the change in FGT's curtailment plan, Coronet reviewed its natural gas usage and determined that all of the natural gas it burns at its plant is utilized to manufacture animal feed supplements (SIC Category 2048). According to Coronet, the volume differential between Coronet's previous Priority 2 classification, and its current total natural gas consumption for which priority 2 classification is now sought is attributable to its increased gas consumption.

Done, at Washington, DC., this 14th day of September 1995.

Roger K. Conway,

Director.

[FR Doc. 95–23432 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–18–M

Essential Agricultural Uses and Volumetric Requirements—Natural Gas Policy Act; U.S. Agri-Chemicals Corp.

AGENCY: Office of Energy and New Uses (OENU), Economic Research Service.

ACTION: Notice.

SUMMARY: This notice advises the public that a request for an interpretation of the Essential Agricultural Uses and Requirements regulations at 7 CFR part 2900 has been received from U.S. Agri-Chemicals Corporation ("U.S. Agri-Chem"), seeking that the Department of Agriculture classify all of U.S. Agri-Chem existing natural gas uses as Essential Agricultural Uses.

DATES: Written comments will be accepted with respect to U.S. Agri-Chem's request, if received by October 12, 1995.

ADDRESSES: Copies of the request for interpretation from which confidential information has been deleted in accordance with 7 CFR 2901.4(a)(2) may be obtained from: Matthew M. Schreck, Curran, Corbett & Stiles, P.C., 800 Gessner, Suite 930, Houston, Texas 77024, Attorney for U.S. Agri-Chem.

FOR FURTHER INFORMATION CONTACT: Roger K. Conway, Director, Office of Energy and New Uses, Economic Research Service, United States Department of Agriculture, 1301 New York Avenue, NW., Room 1212, Washington, DC 20005–4788; telephone number: (202) 219–1941.

SUPPLEMENTARY INFORMATION: Section 401(c) of the Natural Gas Policy Act of 1978 (NGPA) requires the Secretary of Agriculture to determine the essential uses of natural gas, and to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) the natural gas requirements for essential agricultural uses in order to meet the requirements of full food and fiber production. Under provisions of NGPA, FERC must approve natural gas curtailment plans that are implemented in the event of natural gas shortages. However, natural gas classified for essential agricultural uses is not subject to curtailment until all other uses except for Priority 1 (homes, hospitals, etc.) have been curtailed. FERC also has additional authorities to prevent curtailments as needed.

The Secretary of Agriculture has defined essential agricultural uses at 7 CFR part 2900. The administrative procedures for adjustments in natural gas curtailment priorities and volumetric requirements are set forth at 7 CFR part 2901. Today's notice is in response to a request by U.S. Agri-Chemicals Corporation for an interpretation of volumetric requirements for its essential agricultural uses.

U.S. Agri-Chem is a manufacturer of animal feed supplements with manufacturing facilities located in Plant City, Florida. U.S. Agri-Chem's manufacturing process utilizes natural gas in both kilns and reactors. U.S. Agri-Chem receives natural gas from a direct interconnection with Florida Gas Transmission Company (FGT), an interstate pipeline subject to FERC jurisdiction. U.S. Agri-Chem has no alternative fuel capability at the plant.

A January 12, 1995, FERC settlement agreement between FGT and its customers required FGT to change from an end-use curtailment plan to a pro-rata curtailment by November 1, 1995. Only a portion of U.S. Agri-Chem's natural gas use is currently classified as Priority 2, essential agricultural uses.

FGT's previous end-use curtailment plan interrupted service based on the end use of the natural gas in accordance with the NGPA priority categories. Consequently, Priorities 3 through 9 were curtailed in their entirety in their respective orders of priority before Priority 2 was curtailed. Under FGT's new pro-rata curtailment plan, only Priority 1 and Priority 2 will be considered exempt from curtailment. Any natural gas uses not included in Priority 1 or 2, depending on the magnitude of the shortage, will be curtailed on a pro-rata basis.

In response to the change in FGT's curtailment plan, U.S. Agri-Chem reviewed its natural gas usage and determined that all of the natural gas it burns at its plant is utilized to manufacture animal feed supplements (SIC Category 2048). According to U.S. Agri-Chem, the volume differential between U.S. Agri-Chem's previous Priority 2 classification, and its current total natural gas consumption for which Priority 2 classification is now sought is attributable to its increased gas consumption.

Done, at Washington, DC, this 14th day of September, 1995.

Roger W. Conway,

Director.

[FR Doc. 95–23517 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–18–M

Natural Resources Conservation Service

Omak Creek Watershed Project, Colville Indian Reservation, Washington

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Omak Creek Watershed Project, Colville Indian Reservation, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, natural Resources conservation Service, Rock Pointe Tower West 416 Boone Avenue, Suite 450, Spokane, Washington 99201, telephone (509) 353–2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, tribal or national impacts to the human environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The project purposes are watershed protection, fish and wildlife enhancement, and to improve the water quality. The planned works of improvement include developing resource management system plans with the Colville Confederated Tribe and individual land operators. Conservation practices include grazing management, riparian planting, creating fish passage, water developments, fencing, cultural resource plots, bioengineered streambank stabilization, critical area planting, range seeding, troughs and other land treatment practices.

With the adoption of this plan, Omak Creek could support the only anadromous fish run within the boundaries of the Colville Confederated Tribe's sovereign nation. Nearly 40 miles of Omak Creek and its tributaries may once again be available for summer steelhead and, potentially, chinook salmon. Treatment measures are proposed to additionally address habitat components necessary to restore salmonid habitat and to protect the watershed. Two major fish passage structures are proposed to provide access for salmonids to Omak Creek. Some treatment measures are planned to enhance and protect cultural resources. Both the physical and human environments were considered while developing the strategy for total watershed treatment.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Frank R. Easter, Assistant State Conservationist (Programs).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: September 13, 1995.

Lynn A. Brown,

State Conservationist.

[FR Doc. 95–23501 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: High Seas Fishing Compliance Act.

Agency Form Number: None assigned.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 30 hours.

Number of Respondents: 60.

Avg Hours Per Response: 30 minutes.

Needs and Uses: An Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas was adopted by consensus by the United Nations Food and Agriculture Organization. The need for the Agreement evolved from the concern that vessels belonging to member nations of regional fisheries organizations were reflagging to non–member nations, in order to continue fishing in the management areas unconstrained by the rules affecting member nations. The primary tenet of the Agreement is the obligation of a nation to require specific authorization to fish on the high seas for vessels carrying its flag. The nation is also responsible for ensuring that its authorized vessels do not undermine conservation and management measures that have been adopted by global or regional fishery management organizations. This collection will establish a system of licensing, reporting and recordkeeping for U.S. flag vessels.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishing Capacity Reduction Program.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0289.

Type of Request: Revision of a currently approved collection.

Burden: 2,010 hours.

Number of Respondents: 1,050.

Avg Hours Per Response: Between 1 and 16 hours depending on the requirement.

Needs and Uses: This program seeks to reduce permanently the fishing capacity within Northeast fisheries. Applicants must provide information on vessel ownership, catch history, financial information, and a bid for the amount for which the applicant's Federal fishing permit will be surrendered. NOAA will use the information to select the vessels to be removed.

Affected Public: Businesses or other for–profit organizations, individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries.

Agency Form Number: None.

OMB Approval Number: 0648–0272.

Type of Request: Extension of a currently approved collection.

Burden: 18,845 hours.

Number of Respondents: 6,700.

Avg Hours Per Response: Ranges between 30 minutes and 4 hours depending on the requirement.

Needs and Uses: The Individual Fishing Quota (IFQ) program allocates annual total catch limits for the halibut and sablefish fisheries among individual fishermen. Collection of information is necessary to establish eligibility for quota shares, to obtain registered buyers permits, to track the transfer of quota shares and IFQs, and to report on various activities. The information is used to manage these fisheries.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Salmon Northwest Emergency Assistance Plan.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0288.

Type of Request: Revision of a currently approved collection.

Burden: 12,116 hours.

Number of Respondents: 3,611.

Avg Hours Per Response: Ranges between 2 and 40 hours depending on the requirement.

Needs and Uses: A Federal financial assistance program has been established

for fishermen in the Northwest who can document losses resulting from the resource disaster in the salmon fishery. Fishermen will be apply to apply for two short–term jobs programs or apply for participation in a fishing permit buy–back program.

Affected Public: Individuals, business or other for–profit organizations, not–for–profit institutions, state, local or tribal government.

Frequency: On occasion when funding is made available.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: September 13, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–23578 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of the Census

Notice of Proposal To Submit an Information Collection to the Office of Management and Budget (OMB)

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-submission consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing information collections before they are submitted to OMB for review. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Census Bureau, within the Department of Commerce, is soliciting comments concerning its plans to submit the Annual Demographic Survey (ADS), which we conduct in conjunction with the March 1996 Current Population Survey (CPS), to OMB for review.

DATES: Submit written comments on or before (insert 60 days after publication date). If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Direct all written comments to Gerald Taché, Departmental Forms Clearance Officer, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, or copies of the information collection instrument and survey procedures should be directed to Oscar Perez, Bureau of the Census, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of the Census conducts the ADS in conjunction with the March 1996 CPS. The Bureau of the Census has conducted this supplement annually for over 40 years. It is authorized by Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9. The Bureau of the Census, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement.

The work experience items provide a unique measure of the dynamic nature of the labor force as viewed over a one year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by persons, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. We can make indirect measurements of discouraged workers and others with a casual attachment to the labor market.

The income data from the ADS are used by social planners, economists, Government officials, and market researchers to gauge the economic well-being of the Nation as a whole, and selected population groups of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data for forecasting economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use March data to determine the effects of various economic forces such as inflation, recession, recovery, etc., and their differential effects on various population groups.

A prime statistic of interest is the classification of persons as being in poverty and how this measurement has changed over time for various groups. Researchers evaluate March income data not only to determine poverty levels but also to determine whether Government programs are reaching eligible households.

II. Current Actions

The March 1996 supplement instrument will consist of the same items that were included in the March 1995 instrument, with the following changes:

A. In the migration series, we are eliminating the 1995 questions that asked about migration five years ago. In 1996, the migration series will ask only about migration one year ago.

B. We are reformatting a number of income items to allow reporting the amounts' periodicity on a more detailed basis than strictly annual, and to ensure consistency with all other income items. In 1995, we reformatted selected income items in this manner, and they resulted in better income data. The items we are reformatting in 1996 include:

Item No.	Item description
Q48b	Self-employment earnings from longest job.
Q49B2	Other self-employment earnings.
Q49B3	Other farm income.
Q60A88	Veteran's benefits (this series collects income amounts for up to *two* sources).
Q58a	Survivor benefits (this series collects income amounts for up to *three* sources).
Q61b	Disability benefits (this series collects income amounts for up to *two* sources).
Q63A1 through Q63A3	Interest income.
Q64a	Dividend income.
Q65A1 through Q65A3	Rents, royalties, estates and trusts.
Q66b	Educational assistance.
Q73A1 and Q73A2	Other income.

C. We are making minor wording changes in a few items; for example:

1. Changed the wording (for all periodicity-based income questions) from "biweekly" to "every other week," and "twice monthly" to "twice a month."

2. Changed the statement for Item Q63c (interest income) to "Only include

interest received from U.S. Savings Bonds cashed during 1995."

D. We are deleting some items based on suggestions from interviewers and other staff. These items are CHK50A, Q50b, and Q50b-add (additional farm income series).

E. We are adding some items based on suggestions from data users:

1. We will identify persons covered by AFDC and food stamps.

2. We will collect eligibility reasons for receipt of Social Security and/or Social Security Income.

3. We will add a question that will identify child recipients of Social Security and Social Security Income.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in Item II. The following general guidelines are provided to assist in the preparation of responses. Please include the name of this information collection, the Annual Demographic Survey, in your comments.

As a potential data user:

A. Have you ever used the Annual Demographic Survey data from the CPS?

B. If so, will any of the proposed changes described in Section II adversely affect your analyses? If yes, please explain.

C. In general, do you agree or disagree that the modifications listed in Section II should be adopted? Please be specific.

D. As a user of these data, can you suggest modifications to the proposed items that, if incorporated, would better serve your analytical needs? If so, please submit your suggested changes with a short statement describing the perceived benefits.

As a potential respondent:

A. We estimate that it will take the average respondent about 25 minutes to answer the appropriate questions. Is this a reasonable burden?

B. Are the questions sensitive in nature? If so, please be specific in describing why.

C. Are the questions understandable and framed in a sensible manner? If not, what items are confusing and how should we clarify them?

D. In your opinion, could a proxy respondent (i.e., one household member providing information for another household member) provide complete and accurate answers? If not, why?

E. Do you have any suggestions on ways of reducing the burden associated with responding to this information collection?

The Census Bureau is also interested in receiving comments from persons regarding their views on the need for this information collection.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 18, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–23524 Filed 9–21–95; 8:45 am]

BILLING CODE 3510-07-P

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 08/16/95–09/15/95

Firm name	Address	Date petition accepted	Product
Aco Enterprises, Inc	395 East 300 North, Morgan, UT 84050.	09/15/95	Bicycle packs and sports bags.
Bonnell Mfg. Co., Inc	Church Rd. & Roland Ave., Mt. Laurel, NJ 08054.	08/18/95	Bridesmaid, brides, and flower girl dresses.
Circuit Concepts, Inc	14201 58th Street North, Clearwater, FL 34620.	08/21/95	Printed circuit boards.
Co-Nect-It Frame Corp. DBA Mid-America Chops.	1100 S.E. Rice Road, Topeka, KS 66607.	09/05/95	Wood molding to create picture frames and picture frame kits.
Creighton Shirtmakers, Inc	P.O. Box 1797, 112 Industrial Dr., Reidsville, NC 27320.	09/13/95	Ladies' skirts and slacks and men's slacks and shirts.
Depoe Bay Fish Company, Inc	617 Southwest Bay Boulevard, Newport, OR 97365.	09/15/95	Fish fillets and shrimp.
Don-Lin Jewelry Co., Inc	39 Haskins St., Providence, RI 02903.	08/21/95	Costume jewelry.
Lexington United Corporation DBA Nat'L Plastics.	P.O. Box 568, 305 Industrial Ave., Port Gibson, MS 39150.	08/31/95	Dinnerware.
Metropolitan Flags Mfg. Corp. DBA Metro Flags, Inc.	47 Bassett Highway, Dover, NJ 07801.	08/31/95	Flags, wall banners, emblems, and insignias.
Nasco Industries, Inc	3 N.E. 21st Street, Washington, IN 47501.	09/11/95	Unisex jackets, coats, coveralls, overalls, hoods and aprons of man-made fibers coated with rubber.
New York Hardboard & Plywood Corp.	129 30th Street, Brooklyn, NY 11232.	09/05/95	Wood Furniture.
The Frame Company	33 Hope Street, Jersey City, NJ 07307.	08/24/95	Picture frames.
Thermo Tech, Inc	287 South Santa Fe Drive, Denver, CO 80223.	09/13/95	Stainless steel silicone connectors and food and dairy process hoses.
United Knitting, Inc	P.O. Box 3748, 310 Industrial Dr., Cleveland, TN 37320–3748.	09/14/95	Circular knit fabrics.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United states of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: September 18, 1995.

Lewis R. Podolske,

Director, Trade Adjustment Assistance Division.

[FR Doc. 95–23523 Filed 9–21–95; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On April 20, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles, (HFHTs) from the People's Republic of China (PRC). The reviews cover two exporters of the subject merchandise to the United States and the period February 1, 1992, through January 31, 1993. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of reviews.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 1995, the Department published in the **Federal Register** (60 FR 19723) the preliminary results of the administrative reviews of the antidumping duty orders on HFHTs from the PRC (56 FR 6622, February 19, 1991). The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of These Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg. (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars and wedges); (3) picks and mattocks (picks/mattocks); and (4) axes, adzes and similar hewing tools (axes/adzes).

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel woodsplitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

These reviews cover two exporters of HFHTs from the PRC, Fujian Machinery & Equipment Import & Export Corporation (FMEC) and Shandong Machinery Import & Export Corporation (SMC). The review period is February 1, 1992, through January 31, 1993.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received joint comments from FMEC, SMC, and Olympia Industrial Inc., an importer of the subject merchandise, (together, respondents), and rebuttal comments from Woodings-Verona Tool Works, Inc., petitioner. At the request of FMEC, SMC, and petitioner, a hearing was held on June 7, 1995.

Comment 1: Respondents argue that the Indian import statistics for the period April-December 1992, which the Department used to value direct materials and packing materials for the preliminary results of these reviews, are aberrational and should largely be rejected. Respondents contend that the aberrations in the surrogate values result from the fact that basket categories were used to value the factor inputs, that the imports sometimes reflected small import quantities, and that the import statistics have deviant values. They argue that other sources for surrogate values should be considered.

According to respondents, although the Department's first choice for publicly available published information (PAPI) is import statistics, as import prices theoretically represent the price paid by producers in the surrogate country, the Department has in past cases abandoned its reliance on import statistics and PAPI from the primary surrogate country when they are aberrational and do not fairly represent the market value of the input. They cite to the Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China (60 FR 22544, May 8, 1995) (Furfuryl Alcohol), the Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (60 FR

22359, May 5, 1995) (Lighters), the Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994) (Coumarin), the Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (59 FR 22585, May 2, 1994) (Silicon Carbide), the Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China (59 FR 58818, November 15, 1994) (Saccharin), and the Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China (59 FR 55625, November 8, 1994) (Pencils). Respondents contend that, in each of these cases, the Department determined that the import values in the surrogate country for certain inputs could not be used because the import values were aberrational, *i.e.*, too high, when compared to other sources of market value, or because the quantity imported was small, and used another source of data to determine the surrogate value, such as export statistics or price quotations in the surrogate country.

Respondents argue that the Indian import statistics should not be used for several reasons. First, respondents argue that the use of import statistics from the period April-December 1992 is arbitrary and unfair because the statistics were published in September 1993 and therefore not available at the time the merchandise was sold or the reviews requested. As a result, respondents complain that the exporters and importers did not have any knowledge of or control over the values which would be used to determine the margins.

Second, respondents note that the Indian import statistics do not reflect data for the period January-March 1992 and that the Department did not make an adjustment to the data to cover that period. Respondents argue that, since a significant percentage of the production of HFHTs took place outside of the period covered by the Indian import statistics, and all production of picks sold by FMEC took place in 1991, the Department should use the 1991 Indian import statistics and carry the figures forward to reflect the appropriate period, if it decides the Indian import statistics should be used as the surrogate values. According to respondents, the 1991 statistics should be adjusted forward, rather than adjusting the 1992 data backwards, since it is impossible to relate future imports to past periods.

Third, respondents argue that including data from December 1992 does not reflect the production of HFHTs. They contend that, since production time is 30–45 days and purchases of raw materials are made before production, raw materials for shipments made at the end of December 1992 would need to be purchased no later than November 1992.

Next, respondents contend that the Department's assumption that imports occur at prices equal to or just below those in the domestic market does not apply to low-value factors. According to respondents, since India is a major producer of steel and other HFHT input factors, it is more reasonable to assume that India's imports represent those products which India does not make, such as specialty steels or expensive types of wood. As a result, respondents argue, the basket categories which were used to determine the surrogate values and which cover a broad range of products, rather than the basic input factors used to produce and pack HFHTs, are biased toward higher values.

Respondents also argue that Yugoslavia was erroneously excluded from several Indian import categories on the basis that it is a non-market-economy (NME) country. They cite to Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Republic of Romania; Final Results of Antidumping Duty Administrative Review (56 FR 1169, January 11, 1991) as evidence that the Department considers Yugoslavia to be a market-economy country, and contend that, if Indian import prices are used for the final results, imports from Yugoslavia should be included in the calculation.

Last, respondents state that the 1992 Indian import statistics the Department used for the preliminary results do not show the month in which the imports were made (they note that the December import statistics are separately reported). Therefore, respondents contend, all of the imports could have taken place in November and December, and they argue that the potential that imports could be grouped in a few months should cause the Department to disregard those values particularly when the import quantities are small.

Respondents argue that the surrogate values for the following factor inputs are aberrational and should be disregarded, and that other surrogate values, particularly Indian export statistics, should be used: steel, steel pellets, wood for handles, detergent, resin glue, paint, varnish, dilution (paint thinner), anti-rust oil, wood for pallets, nails, cartons, iron straps, plastic straps, synthetic fiber, plastic bags, anti-rust paper, anti-damp paper, iron wire, iron buttons, and iron knots. They argue that these values are aberrational as a result of the change in the average import value between 1991 and 1992, the differences between the export and the import figures, and the range in quantities and values of imports from various countries.

Petitioner responds that use of Indian import statistics is reasonable and conforms to long-standing Department practice. It notes that FMEC and SMC suggested the use of Indian import statistics for a variety of factors of production, including steel, prior to the issuance of the preliminary results of reviews.

Petitioner contends that the Department should continue to exclude Yugoslavia from its calculation of the average Indian import price. It states that it is unclear whether the newly independent states of Croatia, Slovenia, and Bosnia-Herzegovina, which were recognized by the United States and the European Community in April 1992, were market oriented during the period of review.

Department's Position: As discussed in the Final Determination of Sales at less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China (57 FR 21058, May 18, 1992) (Pipe Fittings), the Department relies on PAPI for surrogate values. In determining the most appropriate PAPI to use, the Department prefers import data in the selected surrogate country over export data because import prices more closely reflect the market price of that factor in the surrogate country. See our response to comment 15 in the Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China (58 FR 48833, September 20, 1993) (Lock Washers), in which we state that any system of priorities in the selection of surrogate values should result in the use of import statistics when they are available, and Pencils, in which the PAPI selected were average non-export values.

Prior to the issuance of the preliminary results of these reviews, FMEC and SMC suggested the use of Indian import statistics for a number of direct inputs and packing materials. They did not suggest any other sources of surrogate values for direct inputs or packing materials, with the exception of prices for specific imported material inputs. Petitioner submitted a price quotation in India as a surrogate value for steel, but did not provide any other surrogate values for direct inputs or packing materials. The Department selected, for the preliminary results, the HTS categories recommended by FMEC

and SMC for certain inputs, including steel, and used Indian import statistics to value all inputs used to produce the subject merchandise, as well as all packing materials. In its case brief, respondents submitted new PAPI, which we returned to the respondents as untimely filed.

We agree with respondents that prices which are aberrational should not be used to value the factors of production, and we have in past cases, such as Saccharin, turned to sources other than import statistics from the selected surrogate country when certain surrogate values have been found to be aberrational. Therefore, for these final results, where we have other sources of market value such as Indonesian import statistics or U.S. import statistics, we have compared the Indian import statistics to these sources of market value to determine whether the Indian import values are aberrational, *i.e.*, too high or too low. We have also compared the average import values to other sources of market values if the total quantity imported under a specific category was small, and, if the value was found to be aberrational, *i.e.*, too high or too low, we have chosen another surrogate value.

For these final results, we have continued to use Indian import statistics for all direct inputs and packing materials, except for the iron wire, and we have selected the basket categories which most closely correspond to the inputs being valued. For certain factors, we have chosen a different HTS category than was used for the preliminary results. For iron wire, we have found that the Indian import statistics are aberrational, and have used Indonesian import statistics for the surrogate values for this factor. Specific factor inputs are discussed in the following comments.

With respect to respondents' complaint that the ranges of quantities and values of imports into India result in aberrational values, we note that imports into any country will reflect imports from a variety of countries in varying quantities and with varying prices. This does not mean that the average value derived from those imports is aberrational. Moreover, there is no basis for rejecting import values simply because the values are too high or too low. See Lock Washers. Therefore, we have used the Indian import statistics unless we have found that the values are aberrational by comparison to other sources of market value. However, where the quantity imported from a specific country was insignificant, we have eliminated imports from that country from the calculation of the surrogate value.

We disagree with respondents' arguments that use of import statistics from the April-December 1992 period is unfair because they were not available when the merchandise was sold or the reviews requested. It is the Department's standard practice to use surrogate values from a time period which is contemporaneous to the period of investigation or the period of review. See, *e.g.*, Furfuryl Alcohol, in which the surrogate value for furfuryl was selected because it was more contemporaneous than other sources, and the Preliminary Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China (60 FR 31282, June 14, 1995), in which surrogate values within the period of investigation, or most contemporaneous with the period of investigation, were selected.

With respect to respondents' arguments that the surrogate values do not reflect the period January–March 1992 and were not adjusted to reflect that period, and that production of the subject merchandise took place prior to the period covered by the import statistics, we have changed our calculations for the final results to use 1991 surrogate values for production which occurred in 1991, and 1992 surrogate values for production which occurred in 1992.

With regard to respondents' argument that data from December 1992 does not reflect the production of HFHTs, we note that the period of review covers the period through January 1993. Therefore, for shipments which occurred in the last month of the period, raw materials purchases could have taken place in December 1992, since the average production time is 30–45 days. It is thus appropriate to include imports in this month in the calculation of the surrogate values. In the event that there might not have been shipments during January 1993, it would still be appropriate to include statistics from December 1992 since that month is in the period of review.

The Department has consistently used basket categories under the HTS to value factor inputs. In Pipe Fittings, we state that basket import statistics that closely correspond to the factor input more accurately reflect the market price of that factor than other sources of surrogate data. In these reviews, there is no information on the record regarding more specific sources of surrogate values, with the exception of the prices of imported materials from market economy countries for specific factors. We have discussed the use of import prices in comments 2 and 8 below. Further, there is no evidence on the record to indicate that any of the factors being valued are of low value compared to other items in the basket categories, thus biasing the statistics toward higher values. The Department has selected the HTS categories which most closely represent the factors being valued, and, for certain factors, has selected HTS categories other than those selected in the preliminary results, as discussed in the following comments.

We agree with respondents that imports from Yugoslavia should not have been excluded from the calculation of the surrogate values since Yugoslavia has been treated as a market economy country in past investigations and reviews. Therefore, for these final results, we have included imports from Yugoslavia in our calculations of the surrogate values.

We disagree with respondents that the potential that imports could be grouped in a few months should cause the Department to disregard certain import statistics. When it uses import statistics, the Department bases the surrogate values on imports over a certain period, and does not perform an analysis of when those imports occurred. However, we agree with respondents' concern about small import quantities, and have, when the import volume is small, compared the import value to other sources of surrogate values to determine whether the value is aberrational.

Comment 2: Respondents argue that the import statistics used to determine the surrogate value for steel do not provide a statistically valid basis on which to calculate an average value because of the small quantity of imports during the time period. According to respondents, the small quantity of steel imported for that HTS category, 7213.49.09, makes the statistics vulnerable to distortion because a shift of the product mix within the HTS category could have a dramatic effect on the per-unit calculations. Moreover, respondents contend that the Indian import statistics for this category have experienced tremendous shifts over different periods, resulting in significant changes in the average value between 1991 and 1992 and demonstrating that the average values are unreliable and aberrational. They note that the average import value in 1991 was less than half the average import value in 1992.

Furthermore, respondents contend that there is a huge disparity between the Indian import and export statistics for steel, stating that a comparison between the import and export prices shows that the import statistics are aberrational.

Instead of the Indian import statistics, respondents have suggested the following alternative surrogate values which they claim fall within a range of prices which are reasonably comparable with each other: the prices of imported steel used by the HFHT factories, Indian export values, Indonesian export values, world steel prices (such as Japanese export prices to the PRC), and lastly, if the Department continues to use Indian import statistics to value steel, Indian imports of HTS category 7214.50, which respondents claim is the HTS category best covering the steel used to produce HFHTs.

Petitioner notes that, in their supplemental questionnaire responses, FMEC and SMC urged the use of steel import values, and contends that they are now attempting to pick the best surrogate values from around the world. Petitioner argues that the official Indian import statistics for steel are reasonable, and that the data submitted by petitioner on actual steel prices for the specific type and grade of steel used for manufacturing HFHTs closely correspond to the import values. Petitioner cites to Coumarin, where the Department noted its strong preference for using surrogate country import statistics as the best PAPI, despite the fact that, in that case, the Department rejected import statistics in favor of more specific and reliable price quotations. Petitioner notes that, in this case, the Indian import prices used by the Department in the preliminary results are consistent with the price quotations submitted by petitioner to the record of these reviews, covering the specific categories of steel used to produce HFHTs. According to petitioner, these price quotations are the next best surrogate data after the Indian import statistics.

Petitioner contends that all other possible surrogate values offered by respondents should be rejected. Petitioner argues that the import prices should not be used because there was no evidence on the record regarding which products were produced from imported steel and which were produced from domestically-produced steel. Moreover, it notes that only one factory used imported steel in its production. Also, according to petitioner, Indian export values are unreliable because they do not represent home market consumption in India and the vast majority of these exports are to countries not at a level of economic development comparable to the PRC. Petitioner also argues that Indonesian export prices should be rejected as Indonesia is the last of the five countries selected by the Department as possible surrogate countries. Petitioner rejects the use of world market prices as reported in the American Metal Market, arguing that the prices contained therein vary significantly by grade and type and, therefore, have no relation to the type of steel used to produce HFHTs. Petitioner also rejects the use of Japanese prices. Finally, petitioner argues that the Department used the proper tariff heading, HTS category 7213.49.09, in valuing steel, and that the HTS category suggested by respondents, 7214.50, is incorrect because it includes bars already forged, noting that respondents perform the forging in the production of HFHTs. Petitioner states that there is no evidence to show that HTS category 7213.49.09 covers steel in wound coil form which is more expensive than the bar steel used to produce HFHTs.

Department's Position: For the preliminary results of reviews, we used HTS category 7213.49.09, bars and rods containing more than 0.25 percent but less than 0.60 percent carbon in wound coils, to value the steel bars used to produce HFHTs, as suggested by FMEC, SMC, and petitioner. However, we have determined that, since this category covers steel in wound coils, it does not cover the cut-to-length steel bars used to produce HFHTs. Instead, for the final results, we have used Indian import statistics and HTS category 7214.50, forged bars and rods containing more than 0.25 percent carbon but less than 0.60 percent carbon, to determine the surrogate value for steel. We have determined that this HTS category is more specific to the cut-to-length steel bars used to produce the subject merchandise.

Because the quantities imported into India under HTS category 7214.50 were not large in 1991 and 1992, we compared the steel values against other sources of market value, i.e., Indonesian import values and U.S. import values, to determine whether they were aberrational. We found that the 1992 Indian import value is not aberrational, and have used this value in our final results. We found that the 1991 value is aberrational by comparison to Indonesian and U.S. import statistics. Therefore, for the final results, for the 1991 surrogate value for steel, we have deflated the 1992 value to 1991 using wholesale price indices published by the International Monetary Fund. Because we have been able to use Indian import values in our analysis, we have not considered the other sources of surrogate values suggested by respondents.

We did not use the prices of steel imported by the factories because we do not know what models were produced using the imported steel or the portion of steel used by the factories which was imported.

Comment 3: Respondents argue that detergent used for cleaning and pellets used to remove the oxidation from the surface of the tool heads are considered by the factories, and should be considered by the Department, to be part of factory overhead, as these items are not physically incorporated into the finished product. They also note that the pellets are recycled until they are pulverized. Respondents cite to the Notice of Final Determination of Sales at Less Than Fair Value: Certain Paper Clips From the People's Republic of China (59 FR 51168, October 7, 1994) (Paper Clips) as evidence for their position. Respondents contend that, if the Department determines that the steel pellets are a direct factor input, the steel pellets should be valued as scrap, as the pellets are made from scrap steel bought locally.

Department's Position: We agree with respondents that pellets and detergent should be considered as factory overhead, and have changed our analysis accordingly. These items are used for the purposes of removing oxidation from the tool heads and for cleaning the tool heads, and are not physically incorporated into the subject merchandise. As such, they should not be valued as direct material inputs in the production of the subject merchandise. This is consistent with the Department's position in Paper Clips, in which the Department valued certain inputs as direct materials because they were physically incorporated into, and became part of, the subject merchandise.

Comment 4: Respondents contend that HTS category 3814, selected for dilution (paint thinner) for the preliminary results, is too broad, and argue that the narrower HTS category 3814.00.09 should be selected for this input.

Department's Position: We agree with respondents. The HTS category selected for dilution (paint thinner) for the preliminary results, HTS 3814, includes both "composite solvents and thinners for varnishes and similar products" and "solvents for printing." The HTS category 3814.00.09 is specific to solvents and thinners and has been used for the final results.

Comment 5: Respondents state that the wedges are made by the HFHT factories from scrap steel generated from the production of the tool heads, rather than from steel bars. Therefore, respondents argue that the Department should value the wedges using the HTS category selected for scrap, rather than the HTS category selected for steel. Further, respondents contend that, since the wedges are produced at the factories, there should be no adjustment for transportation for this input.

Department's Position: We agree with respondents. The record indicates that scrap steel resulting from the production process is used to produce other products which require small pieces. Therefore, we have adjusted the calculations so that wedges are valued with the value for scrap. Since these items are made at the factory, we have not made an adjustment for freight costs for this input.

Comment 6: Respondents argue that the packing costs determined by the Department are too high and clearly do not represent reasonable packing costs. According to respondents, the materials used to pack HFHTs are generally low-value items which are discarded once the shipments reach the importer's site. Respondents contend that deriving the cost of packing from surrogate values leads to erroneous results and that the use of basket categories biases the values toward high average values.

Respondents note that, in comparable cases, packing rates were 1–2 percent of production costs. Respondents cite as evidence Chrome-Plated Lug Nuts from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review (60 FR 19719, April 20, 1995) (Lug Nuts I), where a rate of 1 percent of production costs was used as the best information available (BIA), and Lock Washers, in which the petitioner stated that its packing costs were 2 percent of its production costs.

Petitioner responds that there is no support on the record to show that the purportedly high packing costs result from surrogate country data which are unreliable because the packing materials are low-value inputs. Petitioner also states that it is irrelevant that packing costs are lower in the two cases cited by respondents because each case is fact specific. Moreover, petitioner argues that the supposed aberrations in the Indian import data do not justify rejecting valid data published by the Indian government.

Department's Position: We disagree with respondents that we should not use surrogate values to calculate packing costs. It is the Department's standard practice to use surrogate values to value packing costs. See, e.g., the Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers from the People's Republic of China (60 FR 29571, June 5, 1995) and Pencils, for which Indian import statistics were used to value packing materials. Moreover, in *Lock Washers*, the Department valued packing materials using Indian import statistics. We further note that, in the administrative review of lug nuts from the PRC subsequent to that cited by respondents, factors data for packing were on the record of the review and were used to determine packing costs (Chrome-Plated Lug Nuts from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review (60 FR 42504, August 16, 1995) (Lug Nuts II).

For these reviews, unlike Lug Nuts I, the information needed to calculate packing costs using surrogate values is on the record. Therefore, for the final results, we have continued to value these packing inputs using surrogate values. However, as discussed in our response to comment 1 above, and in our responses to comments 7–11 below, we have made adjustments in the valuation of packing materials for the final results.

See our response to comment 1 regarding respondents' complaint about the use of basket categories.

Comment 7: Respondents argue that the Department should abandon its factor methodology for valuing the pallets based on the costs of the wood and the nails used to construct the pallets, and, instead, should determine a separate price for pallets. Respondents argue that the cost of a pallet as calculated by the Department is much higher than the cost to purchase a pallet in the United States.

Petitioner responds that the fact that the Department calculated a pallet cost which is substantially more than the cost of a wood pallet in the United States is irrelevant to the price of pallets in India or the PRC.

Department's Position: We agree with respondents that we should value the pallets separately, rather than valuing both the wood and the nails used to make the pallets. To value the pallets, we have used Indian import statistics and HTS category 4415.10, packing cases, boxes, crates, drums, and similar packings of wood, which was suggested by FMEC and SMC in their supplemental questionnaire responses prior to the preliminary results.

Comment 8: Respondents argue that the HTS category selected to value the cartons is too broad a category to determine a specific value for the cartons, and that a more specific price should be used. They note that two of the HFHT factories used imported cartons, and that the Department used the price of the imported cartons to value cartons for only one of those factories. They further state that the surrogate value is roughly three times higher than the value of the imported cartons, and argue that the price of the imported cartons should be used as a benchmark.

Department's Position: We disagree with respondents. We have continued to use for the final results the HTS category selected for the preliminary results of these reviews, HTS category 4819.10. There is no information on the record to indicate that either of the two narrower HTS categories, 4819.10.01, boxes of corrugated paper and paperboard, or 4819.10.09, cartons and cases of corrugated paper and paperboard, are more specific to this input. Therefore, we have valued the cartons using the broader HTS category 4819.10.

As discussed above in our response to comment 2, we have used import prices where we knew the percentage of the imported material to the total material purchased. Therefore, for one factory, we were able to use the price of the imported cartons to value the cartons. As mentioned by respondents, another factory also used imported cartons. Since the price paid by this factory for the imported cartons was in Chinese currency, we were unable to use this price.

Comment 9: Respondents argue that the categories selected to value the iron straps and the plastic straps are too broad and the variations in the Indian import statistics for these categories too great to reflect reasonable values for these factor inputs, and contend that an alternative source of valuation must be found. Further, according to respondents, imports from Yugoslavia were incorrectly excluded from the calculation of the average import value.

Department's Position: We agree with respondents that imports from Yugoslavia were incorrectly excluded from the calculation of the plastic strap, and have included such imports in our calculation of the surrogate value for the final results. We note, however, that respondents have not suggested an alternative HTS category or source for valuing the plastic strap, and, for the final results, we have continued to use the value selected for the plastic strap for the preliminary results.

Prior to the preliminary results, FMEC and SMC suggested HTS categories 7216.21.00 and 7216.60.01, angles, shapes and sections of hot-rolled steel and of cold-rolled steel to value the iron straps; the Department selected HTS category 7216.90.01, other angles, shapes and sections, as the appropriate category for iron straps for the preliminary results. There is no information on the record to indicate which of these categories better covers the iron straps. Since respondents have not provided evidence to indicate that the HTS categories FMEC and SMC suggested are more appropriate, and since their brief simply indicates that an alternative source of valuation must be found since the category selected is too broad, without identifying an alternative source, we have continued to use the same category we selected for the preliminary results for the iron strap. Moreover, there is no indication that the HTS categories suggested by FMEC and SMC would be any less broad than that selected by the Department.

Comment 10: Respondents argue that the Department made significant errors in valuing the synthetic fiber (PVC bags) by inaccurately determining the weight of the bags, and contend that the calculation should be corrected.

Petitioner asserts that the respondents have not alleged that the information on which the Department based its calculation was wrong, but merely that the Department reached a different conclusion from respondents.

Department's Position: We agree with respondents, and have reweighed the synthetic fiber and adjusted the calculations accordingly.

Comment 11: Respondents argue that six materials used to pack HFHTs are incidental items and that their collective values are extremely small or *de minimis*. These materials are plastic bags, anti-rust paper, anti-damp paper, iron wire, iron buttons, and iron knots. Respondents argue that the use of basket categories to value these items makes their individual and collective values significant.

Respondents further argue that the anti-damp paper and the anti-rust paper are *de minimis* items which should be eliminated from the Department's calculations. Although they do not disagree with the HTS categories selected, they note that the aberrational values for these HTS categories indicate that the HTS categories include many items other than those being valued.

Respondents contend that the Department selected too broad a category for the plastic bags, inaccurately determined the weight of the plastic bags, and incorrectly excluded imports from Yugoslavia from the calculation.

Furthermore, according to respondents, the HTS category selected for the iron wire is too broad, and the iron wire was inaccurately weighed for the preliminary results. They also argue that the HTS categories selected for the iron knots and the iron buttons are too broad.

Petitioner responds that the record shows that anti-damp paper and anti-rust paper are not *de minimis* factors in India. Petitioner also states that it is impossible to reweigh the plastic bags at this point in the process, and that FMEC and SMC should have provided additional information regarding the weights of these items with their questionnaire responses or at verification.

Department's Position: We disagree with respondents that certain factor inputs should be eliminated from the analysis because of their small value. The items identified by respondents as being incidental items are all materials used to pack the subject merchandise, and, as such, they should be valued.

We agree with respondents that the HTS categories selected for the plastics bags and the iron wire were incorrect. We have used, for the final results, the categories suggested by the respondents, HTS category 3923.21 for the plastic bags and HTS category 7217.90 for the iron wire. However, we have found that the Indian import statistics for the iron wire are aberrational, and have used Indonesian import statistics to determine the surrogate values for the iron wire for these final results. Moreover, as samples of these items were provided to the Department prior to the issuance of the preliminary results of reviews, we have reweighed these items and have adjusted our calculations accordingly. We also agree that imports from Yugoslavia should be included in the calculation of the average import values; however, we note that there were no imports into India from Yugoslavia in 1991 or 1992 under the HTS category for plastic bags selected for the final results.

We have continued to use the same HTS categories selected for the preliminary results for the anti-damp paper, the anti-rust paper, the iron buttons and the iron knots. We note that we used the categories suggested by the respondents prior to the preliminary results for the anti-damp paper and the anti-rust paper, and that respondents did not suggest a category for the iron buttons. For the iron knots, we have selected HTS category 8309.90.09, other packing accessories of base metal, rather than the HTS category suggested by respondents, 7326.90.09, other articles of iron or steel, because it is more specific to the packing input being valued.

Comment 12: Respondents contend that the labor rates and the fringe benefit and bonus rates used by the Department in its preliminary results, collected from the Business International Corporation (BIC) report ILAT India, released November 1992, appear to reflect wage rates in urban areas, while the Chinese HFHT factories are located in rural areas. They note that the BIC is a non-government organization which provides estimates of Indian labor rates based on available data. The respondents state that they do not contest the estimated wage rates used by the Department in its preliminary results, as they believe that they are comparable to those used by the Department in other cases, such as Lighters and Furfuryl Alcohol, but argue that the adjustment for fringe benefits and bonuses should be reduced to those required by Indian law.

Petitioner responds that the respondents' assertion that the labor rates reported in IL&T India appear to reflect wages in urban areas is without citation or support, and that there is no evidence on the record to suggest that these data are inappropriate for valuing labor. It contends that the respondents' suggested bonus rates are based solely on the mandatory statutory bonus rates and do not reflect any amounts for fringe benefits paid in India or any benefits privately negotiated between employers and employees. It notes that there could easily be benefit levels beyond the statutory minimum requirements. Petitioner further notes that respondents do not contest the use of wage rates from the same publication from which these fringe benefit and bonus rates were obtained. Petitioner further contends that the wage rates used in Lighters and Furfuryl Alcohol are irrelevant to this case because these industries are not comparable to the HFHT industry and because the surrogate country used in those cases was Indonesia.

Department's Position: We disagree with respondents. Respondents have not placed any information on the record to demonstrate that the labor rates used in our preliminary results reflect wage rates in urban, rather than rural, areas. Moreover, we agree with petitioner that there could be benefit levels beyond what is statutorily required. The data provided by the BIC with respect to fringe benefits and bonuses provide an estimate of what is actually paid, and is therefore more indicative of actual fringe benefits and bonuses paid to workers in India than the minimum requirements of Indian law. Since the surrogate values should reflect actual costs in the surrogate country, we have continued to use the wage rates and the fringe benefit and bonus rates used in the preliminary results, rather than the

minimum requirements of Indian law, as suggested by respondents.

Comment 13: Respondents argue that the surrogate values for electricity and coal should be adjusted to account for the period during which picks sold by FMEC were produced.

Department's Position: We agree with respondents. As discussed above in our response to comment 1, we have valued production occurring in 1991 using 1991 values, and production occurring in 1992 using 1992 values. Accordingly, all inputs for merchandise produced in 1991 have been valued using 1991 values, not just coal and electricity.

Comment 14: Respondents argue that the Department erred in determining the amounts of scrap and waste which were sold, and should recalculate these amounts. According to respondents, the amounts reported in the questionnaire responses as total scrap and waste collected were verified and represent scrap sold.

Department's Position: We agree with respondents. As discussed in FMEC's and SMC's questionnaire responses, the amounts reported as scrap and waste collected are the amounts of salable scrap. We have adjusted our calculations to reflect these reported amounts of salable scrap.

Comment 15: According to respondents, the Department should determine the steel input factor according to the methodology applied in Lock Washers. Respondents contend that, in that case, the Department determined the steel input factor by disregarding the scrap and valuing the steel factor based on the net weight of the finished product plus the waste. According to respondents, the Department would not have to determine scrap values with this methodology.

Department's Position: We disagree with respondents. In order to determine the costs of materials to a producer, we multiply the gross amounts of the materials used in the production process by the surrogate values. If the producer sells scrap resulting from the production process, we allow revenue resulting from that sale as an offset to the materials costs. Since the value of the scrap which is sold is less than the value of the material input purchased by the manufacturer, we calculate the revenue from the sale of scrap by multiplying the amount of scrap sold by the value of the scrap, and subtracting that result from the materials costs. Using respondents' methodology would mean that the scrap is valued at the original input cost, which would overstate the scrap value.

Comment 16: Respondents recommend that the Department use the rail rate reported in Doing Business in India—An Economic Profile, published by the Director, Economic Coordination Unit, Ministry of External Affairs. According to respondents, this information should be used because it is official Indian government data, is more current than the data used for the preliminary results of reviews, and provides a specific rate on a per-kilometer basis, rather than for a range of kilometers.

Petitioner responds that the Department should reject the freight rate suggested by the respondents as it is less detailed than the cable data used in the preliminary results of these reviews, as well as other investigations and reviews.

Department's Position: We disagree with respondents. The rail freight rate suggested by the respondents was submitted to the record of these reviews after the preliminary results were issued, and therefore was returned as untimely filed pursuant to section 353.31(a)(3) of the Department's regulations.

Comment 17: Respondents argue that, in those instances where the distance between a factory and one of its suppliers is not supplied, the Department should use a simple average of the distances which were provided, rather than applying the longest distance as BIA. Respondents contend using the longest distance imposes a burden on small, rural factories to keep records beyond their abilities and unfairly adds to the input costs.

Moreover, as mentioned in Comment 5, respondents contend that the Department should not adjust the factor input for wedges for transportation as the wedges were made at the factory site from scrap. In the case of pellets, respondents argue that the Department should recognize that the pellets were sourced locally and make the adjustment for transportation accordingly, if the Department does not include pellets in factory overhead.

Lastly, respondents contend that the factories used their own trucks to pick up materials from the rail yards, and that expenses associated with these trucks are considered as overhead by the factories. Accordingly, they contend that where factory trucks are used, no adjustment for transportation costs should be made. Respondents cite to Lock Washers as evidence for their position.

Petitioner responds that use of the longest reported distance between a factory and one of its suppliers in those instances where no distances have been reported is reasonable and consistent with past Department practice.

Department's Position: We disagree with respondents. We have applied as BIA the longest distance in two situations: first, when the distance between a factory and its supplier was not reported; and second, when several suppliers supplied a factory with the input and the percentage of material purchased from each supplier was not reported. In their questionnaire responses, FMEC and SMC did not indicate that they could not provide such information for all factors. As petitioner states, it is the Department's practice to use the longest distance in such instances. *See, e.g.*, Pencils and Saccharin, where the most expensive distance/mode of transportation was used when a respondent had failed to provide information regarding transportation between factories and suppliers.

As discussed in our response to comment 12, we agree with respondents that wedges were made at the factory and have not made an adjustment for transportation for this input.

We disagree with respondents that certain truck costs should be considered as factory overhead. There is nothing on the record to indicate that factory trucks are used to pick up merchandise from the rail yards.

Comment 18: Respondents argue that, in calculating the average ocean freight rates for FMEC and SMC for shipments made by non-PRC-owned ocean freight companies, which have been applied to those sales for which ocean freight services were provided by PRC-owned companies, the Department omitted several non-PRC-owned company shipments. According to respondents, the calculation of the average ocean freight rates should be revised to include these shipments.

Department's Position: We agree with respondents that there is additional information on the record regarding ocean freight shipments provided by non-PRC-owned carriers which was not included in our preliminary calculation of the average ocean freight rates. Therefore, for these final results, we have recalculated the average ocean freight rates using the additional shipments.

Comment 19: According to respondents, the Department should have calculated the average ocean freight rates for shipments supplied by non-PRC-owned companies on a weight basis, by dividing the reported per-piece ocean freight charge by the weight per piece.

Department's Position: We disagree with respondents. We calculated the average ocean freight rate by dividing the ocean freight charge for each shipment by non-PRC-owned companies by the weight of the finished product; then, the results were summed for those shipments, and the total divided by the total number of pieces shipped by non-PRC-owned companies. This methodology is more accurate than respondents' methodology because it allocates the weight of each shipment to the charge for that shipment. Conversely, respondents' methodology, by which the total of the ocean freight charges for shipments by non-PRC-owned companies would be divided by the total weight of those shipments, allocates the weight of each shipment over all ocean freight charges. Therefore, we have not changed our calculation of the average ocean freight rates, except to include the additional shipments, as discussed in our response to comment 18.

Final Results of Reviews

As a result of our reviews, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Fujian Machinery & Equipment Import & Export Corporation		
Axes/Adzes	2/1/92–1/31/93	21.92
Bars/Wedges	2/1/92–1/31/93	66.32
Hammers/Sledges	2/1/92–1/31/93	44.41
Picks/Mattocks	2/1/92–1/31/93	108.20
Shandong Machinery Import & Export Corporation		
Axes/Adzes	2/1/92–1/31/93	21.92
Bars/Wedges	2/1/92–1/31/93	49.69
Hammers/Sledges	2/1/92–1/31/93	35.57
Picks/Mattocks	2/1/92–1/31/93	49.64

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above which have separate rates will be the rates for those firms as stated above; (2) for all other PRC exporters, the cash deposit rates will be the rates established in the less-than-fair-value (LTFV) investigations; and (3) the cash deposit rates for non-PRC exporters of the subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. The rates established in the LTFV investigations are 45.42 percent for hammers/sledges, 31.76 percent for bars/wedges, 50.81 percent for picks/mattocks, and 15.02 percent for axes/adzes. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a final reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23580 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–814]

Pure Magnesium From Canada, Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 5, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on pure magnesium from Canada. The review covers one company, Norsk Hydro Canada, Inc. (NHCI), for the period August 1, 1993, through July 31, 1994. Since there were no shipments of the subject merchandise during the period of review, we have assigned NHCI the 21 percent cash deposit rate established for all entries of pure magnesium in *Pure Magnesium From Canada: Amendment of Final Determination of Sales at Less than Fair Value and Order in Accordance with Decision on Remand* (58 FR 62643), November 29, 1993.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution

Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4793 or 48204114, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 5, 1995, the Department published in the **Federal Register** the preliminary results (60 FR 34967) of its administrative review of the antidumping duty order on pure magnesium from Canada. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this review. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule (HTS). HTS item numbers are provided for convenience and for Customs purposes. The written description remains dispositive.

Final Results of Review

The Department received no comments on its preliminary results. The first administrative review of this order has not yet been completed. Therefore, we have assigned NHCI the cash deposit established for "all other" producers and exporters in *Pure Magnesium From Canada: Amendment of Final Determination of Sales at Less Than Fair Value and Order in Accordance with Decision on Remand* (58 FR 62643), November 29, 1993. The rate is 21 percent.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in any review or the original less-than-fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) for all other producers and/or exporters of this merchandise, the cash deposit shall be 21 percent, the "all others" rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until the publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 15, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–23579 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[(A–821–802), (A–834–802), (A–844–802)]

Suspension Agreements on Uranium from the Russian Federation, Kazakhstan, and Uzbekistan.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Information solicitation of U.S. electric utilities concerned with third country enrichment issue.

SUMMARY: In order to facilitate its evaluation of the application of the Agreements Suspending the Antidumping Investigations on Uranium from the Russian Federation, Kazakhstan, and Uzbekistan, the Department is requesting that those U.S. electric utilities which have contracts that may be affected by implementation of amendments to these agreements provide certain information to the Department, as outlined below.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: James Doyle or Alexander Braier, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

NOTICE: On March 27, 1995, the Department and the Republic of Kazakhstan finalized an amendment to the Kazakhstan uranium suspension agreement. This amendment, in part, provided that the quantitative restraints on Kazakhstani-origin uranium includes all uranium mined and milled in Kazakhstan and enriched in a third country prior to exportation to the United States. On June 21, 1995, the Department and the Government of Uzbekistan initialed an amendment to the Uzbekistan uranium suspension agreement which expanded the definition of Uzbek-origin uranium in a manner similar to the Kazakhstan amendment. The Department expects to sign this amendment with Uzbekistan soon. In addition, the Department expects to accelerate consultations with the Russian Federation regarding an amendment to the Russian uranium suspension agreement. In the amendment that results from these consultations, the Department expects to treat Russian-origin uranium in a manner similar to the Kazakhstan-origin amendment. As a result of these changes, uranium from these countries that has undergone enrichment in a third country prior to importation into the United States will be subject to the export limits of the suspension agreements.

The Department is interested in considering the precise effects on U.S. utilites regarding the implementation of the Kazakhstani amendment, and upcoming Uzbek and Russian amendments. In order to facilitate its evaluation, the Department needs certain contract-specific information from the U.S. utilities that hold these contracts. Therefore, the Department hereby notifies all U.S. electric utilities that have contracts that they believe will be affected by these changes to submit for the record the information pertaining to these contracts. The Department requests that all affected utilities respond within 10 days of the publication date of this notice. Finally, the Department notes that it will require access to the underlying contracts.

All information provided to the Department by U.S. electric utilities will be subject to release under Administrative Protective Order in accordance with 19 CFR 353.34.

Dated: September 19, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Annex

- Provide the total number of natural uranium contracts your utility holds for Russian, Kazakhstani, or Uzbek and which are scheduled for, or have undergone, foreign enrichment, and are intended for importation to the United States.
- Provide the number of foreign enrichment contracts.
- For each of these contracts, provide the following information:
  - Contracting parties;
  - Contract signature dates;
  - Contract terms:
  - base, minimum and maximum volumes, over life of contract,
  - if a requirements contract, provide complete information to determine base, minimum and maximum volumes over the life of the contract,
  - acceleration clauses,
  - delivery schedules to utilities' accounts in the third country, with minimum, base and maximum volumes stipulated in each contract for each delivery period,
  - quantities and associated delivery schedules of EUP to the United States,
  - contract amendment dates and terms if applicable,
  - Force majeure language,
  - Origin specifications,
  - Any other options or flexibilities potentially affecting the volume or natural uranium deliverable under the contract.
- Exact quantities of affected U_3O_8, UF_6 and EUP in the accounts of each utility in the third country that are earmarked for third country enrichment.
- For each of these accounts, please provide the date and quantity of each transfer to the utility's account.
- For data presented in terms of UF_6 or EUP, please provide the enrichment percentage, and demonstrate the calculation used to convert these volumes into pounds U_3O_8 equivalent.

[FR Doc. 95–23676 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 091395A]

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit 977 (P771#74).

SUMMARY: Notice is hereby given that Dr. Howard Braham, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way, NE. BIN C15700, Bldg. 4, Room 2149, Seattle, WA 98115–0070 has been issued a permit to take California sea lions (*Zalophus californianus*), Northern fur seals (*Callorhinus ursinus*), and Northern elephant seals (*Mirounga angustirostris*) for the purpose of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Kellie M. Foster, 301/713–1401.

SUPPLEMENTARY INFORMATION: On June 22, 1995, notice was published in the **Federal Register** (60 FR 32507) that a request for a scientific research permit to take California sea lions, Northern fur seals and Northern elephant seals had been submitted by the above-named individuals. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and the fur seal regulations at 50 CFR part 215:

The permit authorized the holder to take up to 250,410 California sea lions, 9,275 Northern fur seals and 21,650 Northern elephant seals in the course of conducting four research projects which will focus on several aspects of California sea lion biology: 1) annual at-sea distribution, foraging behavior, and food habits of adult females, mother-pup activity patterns and weaning behavior; 2) identification of diseases in the population and the effects of diseases on survival of individuals and weaning parameters of pups; 3) assessment of vital parameters; and 4) assessment of population trends and pup mortality: live and dead pup counts. Research will take place on San Miguel Island, the Channel Islands and haul-out sites along the entire coast of California. Research will be initiated in September 1995.

Dated: September 14, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–23562 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List bond paper to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 23, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 30, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 34235) of proposed addition to the Procurement List.

Comments were received after the close of the comment period from a lawyer representing the parent corporation of two of the current contractors for the paper. The lawyer objected to the denial of his request for an extension of the comment period. He claimed that his client had received inadequate notice of the Committee's proposal to add the paper to the Procurement List, that the Committee is required to grant an extension of the comment period, and that the procurement schedule of the Federal agency which buys the paper for the Government is irrelevant to the Procurement List addition process.

The Committee is required by law to provide notice of proposed additions to the Procurement List through publication in the **Federal Register**. This publication is considered to be adequate notice to all affected parties. 44 U.S.C. 1507. The lawyer's client is a very large corporation which cannot be said to be ignorant of the **Federal Register**.

The lawyer based his claim that the Committee is required to grant an

extension of the comment period on a 1978 legal opinion concerning another addition to the Procurement List, *Barrier Industries, Inc.* v. *Eckard*, 584 F.2d 1074 (D.C. Cir.). That opinion addresses the issue of notice only by saying that the required form of notice is publication in the **Federal Register**, 584 F.2d at 1082, and that the failure by the plaintiff in that case to note the **Federal Register** publication meant that it missed its opportunity to submit comments, 584 F.2d at 1083. Nothing in the opinion supports the lawyer's contention that the Committee is required to grant an extension of a comment period.

The Government purchases the paper through semiannual requirements contracts. If the Committee were to grant the requested extension of the comment period, its addition of the paper to the Procurement List would be sufficiently delayed that half a year's requirement for the paper would not be available for production under the Committee's program. The statutory purpose of the Committee's program, to create jobs for people who are blind or severely disabled, would be frustrated as these people would be unable to produce the paper.

Because the corporation the lawyer represents is very large, the percentage of its sales which the Government requirement for this paper represents is extremely small, so it is very unlikely that the addition to the Procurement List would have a severe adverse impact on the corporation. Accordingly, it is unlikely that an extension of the comment period would result in any significant new information being brought to the Committee's attention. Any information the lawyer obtains later can be brought to the Committee's attention through the reconsideration process set forth in Committee regulations at 41 CFR 51–2.6.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Paper, Bond
- 7530–00–290–0599
- 7530–00–290–0600
- 7530–00–290–0617
- 7530–00–290–0618

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–23592 Filed 9–21–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 23, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 21, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 37631) of proposed addition to the Procurement List.

Comments were received from two organizations and a State agency which represent blind people. All three commenters claimed that adding this service to the Procurement List would conflict with the priority afforded blind vendors in Federal buildings by the Randolph-Sheppard Act, 20 U.S.C. 107. Two commenters also objected to the Committee's certification under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., that there was no regulatory alternative to adding the service to the Procurement List which would accomplish the objectives of the Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. 46–48c. Those commenters indicated that provision of the service under the Randolph-Sheppard Act would accomplish the objectives of the JWOD Act. One commenter asked the Committee not to inject the JWOD Program into a controversy between the Department of Veterans Affairs (VA) and the blind vendor community over the application of the Randolph-Sheppard Act to VA facilities.

The Randolph-Sheppard Act provides, in pertinent part, that blind vendors are authorized to operate "vending facilities" on Federal property, 20 U.S.C. 107(a), and are afforded a priority for "operation of cafeterias on Federal property," 20 U.S.C. 107d–3(e). The service to be provided by a nonprofit agency employing people with severe disabilities at the VA medical center will involve the performance of a number of discrete food service activities, such as preparation of Government-provided food, transporting meals to patient rooms, and cleaning utensils and the food service facility. VA will retain overall management control of food service operations. VA does not charge any fee to the individuals who consume the food, and the nonprofit agency will be paid by VA out of funds appropriated for the operation of the medical center. Consequently, the Committee believes that addition of the service to the Procurement List does not violate the Randolph-Sheppard Act, as no vending of food occurs, and the limited services to be provided by the nonprofit agency under VA management control do not constitute operation of a cafeteria.

The Committee does not agree that provision of this service under the Randolph-Sheppard Act would accomplish the objectives of the JWOD Act, which are to create employment for individuals with severe disabilities through using them to perform the labor connected with providing the service to the Government. The Randolph-Sheppard Act provides employment only for one blind vendor per food service operation, and for the people the vendor hires, who are not required to have any disabilities. Provision of the service under the JWOD Program will create employment for several individuals with severe disabilities.

The controversy between VA and the blind vendor community concerns application of the Randolph-Sheppard Act to VA canteen service operations at medical centers. The patient food service involved in this addition to the Procurement List is not connected to the medical center's canteen operation. Accordingly, the Committee does not believe this addition to the Procurement List will inject the JWOD Program into the controversy.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Food Service Attendant, Department of Veterans Affairs Medical Center, Mountain Home, Tennessee

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–23593 Filed 9–21–95; 8:45 am]

BILLING CODE 6820-33-P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 23, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 28, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 38794) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Food Service Attendant, U.S. Coast Guard Air Station, Clearwater, Florida.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–23594 Filed 9–21–95; 8:45 am]

BILLING CODE 6820-33-P

Procurement List, Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 23, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Paper, Mimeograph and Duplicating
  7530–00–234–7169
  7530–00–285–3060
  7530–00–285–3070
  7530–00–285–3072
  7530–00–285–3073
  7530–00–286–6178
  7530–01–072–2533
  7530–01–074–1832
  7530–00–160–8260
  7530–00–213–7125
  7530–00–221–0805
  7530–00–224–6754
  7530–00–239–9747
  7530–00–253–0986
  7530–01–037–5555
  7530–01–037–5556
  7530–01–071–9768
  7530–01–071–9775
  7530–01–072–2534
  7530–01–240–4768
NPA: Louisiana Association for the Blind, Shreveport, Louisiana

Liner, Poncho, Wet Weather
  8405–00–889–3683
  (Remaining Government Requirement)
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

Services

Janitorial/Custodial, Naval and Marine Corps Reserve Center, Training Building, Portland, Oregon
NPA: Tualatin Valley Workshop, Inc., Hillsboro, Oregon

Janitorial/Custodial, Clarksburg AMSA, 6 Armory Road, Clarksburg, West Virginia
NPA: Summit Job Squad, Inc., Clarksburg, West Virginia

Janitorial/Custodial, Clarksburg Memorial U.S. Army Reserve Center, Route 19 South, Clarksburg, West Virginia
NPA: Summit Job Squad, Inc., Clarksburg, West Virginia

Mailroom Operation, Immigration and Naturalization Service, Administrative Center & Western Operations Region, Laguna Niguel, California
NPA: Goodwill Industries of Orange County Santa Ana, California

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–23595 Filed 9–21–95; 8:45 am]

BILLING CODE 6820-33-P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare Environmental Impact Analyses for Defense Base Realignment and Disposal Actions Resulting from the 1995 Commission's Recommendations

AGENCY: United States Army, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Defense Base Closure and Realignment Commissions were established by Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, to recommend military installations for realignment and closure. The 1995 Commission's recommendations were included in a report which was presented to the President on July 1, 1995. The President approved and forwarded this report to Congress on July 13, 1995. A joint resolution to disapprove these recommendations did not pass in Congress on September 8, 1995. Thus, if no further action is undertaken to disapprove such recommendations within the statutorily provided time period, then these recommendations will become law and must be implemented consistent with the requirements of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510.

Public Law 101–510 exempts the decision-making processes of the Commission from the provisions of the National Environmental Policy Act of 1969 (NEPA). The law also relieves the Department of Defense from the NEPA requirement to consider the need for closing, realigning, or transferring functions and from looking at alternative installations to close or realign. Nonetheless, the Department of the Army must still prepare environmental impact analyses during the process of property disposal and during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. These analyses will include consideration of the direct and indirect environmental and socioeconomic effects of these actions and the cumulative impacts of other reasonably foreseeable actions affecting the installation during the same time.

The Army intends to prepare environmental impact analysis to assess the environmental effects of the actions listed below. Opportunities for public participation will be announced in the local newspaper. Comments from the public will be considered before any action is taken to implement these actions.

a. Environmental Assessments are planned for the following realignment actions:

(1) Anniston Army Depot, Alabama, receiving: towed and self-propelled combat vehicle mission from Letterkenny Army Depot, Pennsylvania; and material remaining at Defense Distribution Depot Letterkenny (DDLP) at the time of disestablishment from DDLP, Chambersburg, Pennsylvania, to be combined at the Defense Distribution Depot Anniston, Alabama (DDAA).

(2) Detroit Arsenal, Michigan, receiving: automotive materiel management functions from Aviation-Troop Command, St. Louis, Missouri, to align with Tank-Automotive and Armaments Command.

(3) Fort Belvoir, Virginia, receiving: Concepts Analysis Agency from leased facilities in Bethesda, Maryland.

(4) Fort Bliss, Texas, receiving: U.S. Army Test and Experimentation Center missions and functions from Fort Hunter Liggett, California.

(5) Fort Detrick, Maryland, receiving: 1111th Signal Battalion and 1108th Signal Brigade from Fort Ritchie, Maryland.

(6) Fort Huachuca, Arizona, receiving: Information Systems Engineering Command elements from Fort Ritchie, Maryland.

(7) Fort Jackson, South Carolina, receiving: Defense Polygraph Institute from Fort McClellan, Alabama.

(8) Fort Meade, Maryland, receiving: Defense Investigative Service, Investigations Control and Automation Directorate from Fort Holabird, Maryland; and Information Systems Software Center from leased facilities in Fairfax, Virginia.

(9) Fort Monmouth, New Jersey, receiving: functions related to materiel management of communications-electronics from Aviation-Troop Command, St. Louis, Missouri, to align with Communications-Electronics Command.

(10) Fort Wainwright, Alaska, receiving: Cold Regions Test Activity and Northern Warfare Training Center from Fort Greely, Alaska.

(11) McAlester Army Ammunition Plant, Oklahoma, receiving: U.S. Army Defense Ammunition Center and School from Savanna Army Depot Activity, Illinois.

(12) Redstone Arsenal, Huntsville, Alabama, receiving: Aviation Research, Development & Engineering Center; Aviation Management; and Aviation

Program Executive Offices from Aviation-Troop Command, St. Louis, Missouri, to form the Aviation & Missile Command.

(13) Tobyhanna Army Depot, Pennsylvania, receiving: core missile guidance system workload from Letterkenny Army Depot, Pennsylvania; and Common-Use Ground-Communication Electronics from McClellan Air Force Base, California.

b. An Environmental Impact Statement is planned for Fort Leonard Wood, Missouri, receiving: U.S. Army Military Police School and U.S. Army Chemical School from Fort McClellan, Alabama.

c. Environmental Assessments are planned for property disposal actions at the following closure locations:

(1) Bellmore Logistics Activity, New York;
(2) Big Coppett Key, Florida;
(3) Camp Bonneville, Washington;
(4) Camp Kilmer, New Jersey;
(5) Camp Pedericktown, New Jersey;
(6) Defense Distribution Depot, Ogden, Utah;
(7) Detroit Army Tank Plan, Michigan;
(8) East Fort Baker, California;
(9) Fort Buchanan, Puerto Rico;
(10) Fort Dix, New Jersey;
(11) Fort Greely, Alaska;
(12) Fort Holabird, Maryland;
(13) Fort Missoula, Montana;
(14) Fort Pickett, Virginia;
(15) Fort Totten, New York;
(16) Hingham Cohassett, Massachusetts;
(17) Kelly Support Center, Pennsylvania;
(18) Letterkenny Army Depot, Pennsylvania;
(19) Recreation Center #2, North Carolina;
(20) Red River Army Depot, Texas;
(21) Rio Vista Army Reserve Center, California;
(22) Seneca Army Depot, New York;
(23) Sierra Army Depot, California; and
(24) Sudbury Training Annex, Massachusetts.

d. Environmental Impact Statements are planned for property disposal actions at the following closure locations:

(1) Bayonne Military Ocean Terminal, New Jersey;
(2) Defense Distribution Depot, Memphis, Tennessee;
(3) Fitzsimons Army Medical Center, Colorado;
(4) Fort Chaffee, Arkansas;
(5) Fort McClellan, Alabama;
(6) Fort Ritchie, Maryland;
(7) Oakland Army Base, California;
(8) Savanna Army Depot Activity, Illinois; and
(9) Stratford Army Engine Plant, Connecticut.

FOR FURTHER INFORMATION CONTACT: For further information regarding these environmental impact analyses, please contact the Public Affairs Office of the affected installations or the appropriate higher headquarters as indicated below:

Installation	(Area code) commercial No.
Anniston Army Depot, AL	(205) 235–6281
Bayonne Military Ocean Terminal, NJ	(201) 823–6351
Bellmore Logistics Activity, NY	(404) 669–5607/5686
Big Coppett Key, FL	(404) 669–5607/5686
Camp Bonneville, WA	(404) 669–5607/5686
Camp Kilmer, NJ	(404) 669–5607/5686
Camp Pedrick-town, NJ	(404) 669–5607/5686
Defense Distribution Ctr, Memphis, TN	(901) 775–6753
Defense Distribution Ctr, Odgen, UT	(801) 399–7828
Detroit Army Tank Plant, MI	(810) 574–6584
Detroit Arsenal, MI	(810) 574–6584
East Fort Baker, CA	(404) 669/5607/5686
Fitzsimons Army Medical Center, CO	(303) 361–3192/3952
Fort Belvoir, VA	(703) 805–5001
Fort Bliss, TX	(915) 568–4505
Fort Buchanan, PR	(404) 669–5607/5686
Fort Chaffee, AR	(501) 484–2905
Fort Detrick, MD	(301) 619–2018
Fort Dix, NJ	(404) 669–5607/5686
Fort Greely, AK	(907) 873–4661
Fort Holabird, MD	(301) 677–1361
Fort Huachuca, AZ	(602) 533–2752
Fort Jackson, SC	(803) 751–7650
Fort Leonard Wood, MO	(314) 563–4013
Fort McClellan, AL	(205) 848–3643/6716
Fort Meade, MD	(301) 677–1361
Fort Missoula, MT	(404) 669–5607/5686
Fort Monmouth, NJ	(908) 532–6031
Fort Pickett, VA	(404) 669–5607/5686
Fort Ritchie, MD	(301) 878–5729
Foprt Totten, NY	(404) 669–5607/5686
Fort Wainwright, AK	(907) 353–6706
Hingham Cohassett, MA	(404) 669–5607/5686
Kelly Support Center, PA	(404) 669–5607/5686
Letterkenny Army Depot, PA	(717) 267–5102
McAlester Army Ammo Plant, OK	(816) 421–2191
Oakland Army Base, CA	(510) 466–3021
Recreation Center #2, NC	(404) 669–5607/5686
Red River Army Depot, TX	(903) 334–3143
Redstone Arsenal, Huntsville, AL	(205) 876–4161
Rio Vista Army Reserve Center, CA	(404) 669–5607/5686
Savanna Army Depot Activity, IL	(815) 273–8701
Seneca Army Depot, NY	(607) 869–1235
Sierra Army Depot, CA	(916) 827–4343
Stratford Army Engine Plant, CT	(810) 574–6584
Sudbury Training Annex, MA	(404) 669–5607/5686
Tobyhanna Army Depot, PA	(717) 894–7308

Dated: September 19, 1995.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 95–23606 Filed 9–21–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Draft Waste Management Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Waste Management Programmatic Environmental Impact Statement (PEIS) for public review and comment. The draft PEIS has been prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969; Council on Environmental Quality regulations implementing NEPA, 40 CFR Parts 1500–1508; and DOE NEPA Implementing Procedures, 10 CFR Part 1021. The draft PEIS evaluates waste management strategies and siting alternatives for each of five waste types: high-level waste; transuranic waste; low-level waste; low-level mixed waste; and hazardous waste. The public is invited to comment on the draft PEIS during a 90-day public comment period, which starts on the date of this Notice.

ADDRESSES: Requests for information about and copies of the draft PEIS should be directed to: Center for Environmental Management Information, P.O. Box 23769, Washington, D.C. 20026–3769, 1–800–736–3282 or in Washington, D.C.: 202–863–5084.

Written comments on the draft PEIS should be mailed to the following address: U.S. Department of Energy, Waste Management PEIS Comments, P.O. Box 3790, Gaithersburg, MD 20885–3790.

For information on the DOE National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4600 or leave message at 1–800–472–2756.

Availability of the draft PEIS: Copies of the draft PEIS have been distributed to Federal, State, and local officials, as well as agencies, organizations and individuals who may be interested or affected. Copies of the draft PEIS and supporting technical reports are also available for public review at the locations listed at the end of this Notice.

DATES: The comment period on the draft PEIS will continue until December 21, 1995. Comments postmarked after that date will be considered to the extent practicable.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1990, DOE issued a Notice of Intent (55 FR 42633) to prepare the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement. DOE identified the proposed action as follows: "to formulate and implement an integrated environmental restoration and waste management program in a safe and environmentally sound manner and in compliance with applicable laws, regulations and standards." The Notice of Intent identified two separate sets of alternatives to be evaluated, one for environmental restoration and one for waste management. The public comment period on the Notice of Intent extended from October 22, 1990 to February 19, 1991, with 23 public scoping meetings at various locations across the country.

The availability of a draft Implementation Plan for the PEIS was announced on February 4, 1992 (57 FR 4193), and after six public workshops, the Plan was completed in January 1994 and made available to the public (59 FR 7990, February 17, 1994). Subsequently, DOE concluded that it would be inappropriate to make programmatic decisions regarding environmental restoration strategies because such cleanup decisions primarily reflect site- and/or project-specific conditions. The draft PEIS now considers DOE-wide management strategies for five types of radioactive and/or hazardous wastes and analyzes alternative sites at which the wastes could be managed in the future. This approach is consistent with the alternatives outlined for waste management in the PEIS Implementation Plan.

Alternatives Considered

The draft PEIS evaluates treatment, storage and/or disposal alternatives for five types of radioactive and/or hazardous waste in DOE's existing inventory and waste to be generated from DOE's operations over the next twenty years. Due to the complexity and unique management requirements of each of the waste types, the draft PEIS contains separate analyses of each waste type as follows: High-level waste; transuranic waste; low-level waste; low-level mixed waste (containing radioactive and hazardous components); and hazardous waste.

Four categories of management alternatives are considered. The No Action (status quo) alternative would provide a baseline for comparing other alternatives. The Decentralized alternatives would maintain waste management activities essentially at the sites of generation. The Regionalized alternatives would provide for fewer locations at which waste is managed, and the Centralized alternatives would consolidate waste management activities at one or two sites. Within each category, there are a number of subalternatives for each waste type. The alternatives analyzed for each waste type encompass the following activities.

- Storage of high-level waste;
- Treatment and storage of transuranic waste;
- Treatment and disposal of low-level and low-level mixed waste; and
- Treatment of hazardous waste.

Preferred Alternatives

The draft PEIS identifies DOE's preferred management alternatives for three of the five waste types, as follows:

- The No Action (status quo) alternative is preferred for the treatment of hazardous wastes, which would continue the extensive use of commercial facilities for non-wastewater hazardous waste and on-site treatment of hazardous wastewater at DOE sites.
- DOE prefers to continue to store high-level waste on-site at the Hanford site, Idaho National Engineering Laboratory, and the Savannah River site, pending disposal in a geologic repository. This preferred alternative can be accommodated under either the No Action, Decentralized, or Regionalized alternatives. DOE does not yet have a preference as to where West Valley Demonstration Project high-level waste, once vitrified, will be stored, pending disposal in a geologic repository.
- The Regionalist Alternatives are preferred for low-level mixed waste treatment because they most closely approximate DOE's proposed Site Treatment Plans, under the Federal Facility Compliance Act. However, ongoing negotiations with regulatory authorities regarding the proposed Site Treatment Plans mey affect this preference.

Invitation To Comment

The public is invited to submit written and oral comments on any or all portions of the draft PEIS. Example topics on which DOE welcomes comments include: the technical adequacy of the document; what alternatives DOE should select upon completion of the document; and what criteria DOE should use in making these selections.

DOE will hold a series of eleven public hearings according to the schedule provided at the end of this section. In general, these meetings will be supported by a televideo link with DOE Headquarters in Washington, D.C. This approach will allow DOE Headquarters officials to efficiently participate in the meetings in an interactive forum with the public. The session format will provide for collection of written and oral comments and will enable the public to discuss issues and concerns with DOE managers. Participants who wish to speak at the hearings are asked to register in advance by calling the following toll-free number: 1–800–736–3282. Requests to speak that have not been submitted prior to the hearings will be handled in the order in which they are received during the meetings. DOE's responses to comments received during the public comment period will be presented in the final PEIS.

Schedule of Public Hearings

October 17, 1995—Aiken, SC

6:00–10:00 pm eastern time, SR Highway 1A, Building 703–41A (Yellow Room), Aiken, SC 29802, Contact: Andrew Grainger, 803–725–1523

October 24, 1995—Oak Ridge, TN

6:00–10:00 pm eastern time, Lockheed Martin Technology Transfer Bldg., 701 Scarboro Road, Room 240, Oak Ridge, TN 37831, Contact: William Gilbert, 423–576–1817

October 25, 1995—Idaho Falls, ID

6:00–10:00 mountain time, 8:00–12:00 eastern time, Technical Support Annex, 1580 Sawtelle Dr., Room 133, Idaho Falls, ID 83403, Contact: Kenny Osborne, 208–526–0805

October 25, 1995—Boise, ID

6:00–10:00 mountain time, 8:00–12:00 eastern time, Simplot Micron Instructional Technology Center, 1910 University Drive, Boise State University, Boise, ID 83720, Contact: Kenny Osborne, 208–526–0805

October 26, 1995—Tracy, CA

6:00–9:00 p.m. pacific time, Tracy Community Center, 300 E. 10th Street, Tracy, CA 95378, Contact: Dave Christy, 510–637–1812

October 26, 1995—Argonne, IL

5:00–9:00 p.m. central time, 6:00–10:00 eastern time, 9800 South Cass Avenue, Building 201, Room 3A, Argonne, IL 60439, Contact: Mary Jo Acke, 708–252–8796

October 26, 1995—Upton, NY

6:00–10:00 p.m. eastern time, Brookhaven National Laboratory, 12 Bell Avenue, Building 475B, Room 36, Upton, NY 11973, Contact: Mary Jo Acke, 708–252–8796

October 26, 1995—Fernald, OH

2:00–4:00 eastern time, Fernald Environmental Management Project, 7400 Wiley Road, Safety and Health Building, Room 111, Fernald, OH 45030, Contact: Mike Jacobs, 513–648–3043

November 1, 1995—Albuquerque, NM

6:00–10:00 mountain time, 8:00–12:00 eastern time, University of New Mexico, Continuing Education Conferencing Center, 1634 University Blvd. NE., Albuquerque, NM 87131, Contact: Tracy Longhead, 505–845–5977

November 2, 1995—Las Vegas, NV

6:00–9:00 pacific time, 9:00–12:00 eastern time, DOE/NV Auditorium, 2753 S. Highland, Room 200–1239, Las Vegas, NV 89109, Contact: Angela Colarusso, 702–295–1218

November 7, 1995—Arvada, CO

4:30–8:30 p.m. mountain time, 6:30–10:30 p.m. eastern time, Arvada Center for the Arts and Humanities, 6901 Wadsworth Boulevard, Arvada, CO 80003, Contact: Miriane Anderson, 303–966–6088

November 9, 1995—Richland, WA

6:00–9:00 pacific time, 9:00–12:00 eastern time, Federal Building, 825 Jadwin Avenue, Room 784–B, Richland, WA 99352, Contact: Jon Yerxa, 509–376–9628

November 9, 1995—Lacey, WA

6:00–9:00 pacific time, 9:00–12:00 eastern time, Department of Information Services, Washington Interactive Television, 710 Sleater-Kinney Road, SE., Suite Q, Lacey, WA 98504, Contact: Jon Yerxa, 509–376–9628

November 9, 1995—Pasco, WA

6:00–9:00 pacific time, 9:00–12:00 eastern time, Education Service, District 123, 124 South 4th St, Pasco, WA 99301, Contact: Jon Yerxa, 509–376–9628

November 9, 1995—Seattle, WA

6:00–9:00 pacific time, 9:00–12:00 eastern time, Seattle Community College, 1500 Harvard, Seattle, WA 98122, Contact: Jon Yerxa, 509–376–9628

November 14, 1995—Portsmouth, OH

7:00–10:00 p.m. eastern time, Shawnee State University, Flohr Lecture Hall, Library Bldg., 940 Second Street, Portsmouth, OH 45662, Contact: Sandy Childers, 614–897–2336

November 14, 1995—Paducah, KY

6:00–9:00 p.m. central time, 7:00–10:00 p.m. eastern time, Paducah Community College, Resource Center at Paducah, Information Age Park, 2000 McCraken Drive, Paducah, KY 42001, Contact: Dennis Hill, 502–441–5194

List of Public Reading Rooms where the draft PEIS and supporting technical documents are available.

Berkeley Public Library, Kittredge and Shattuck, Berkeley, CA 94704, 510–644–6648, M–Th 10 a.m.–9 p.m.; F, Sat 10 a.m.–6p.m.; Sun 1 p.m.–5p.m.

Lawrence Livermore Eastgate Visitors Center, Greenville Road, Livermore, CA 94550, 510–424–4819, M–F 8 a.m.–5p.m.

DOE Reading Room, 1301 Clay Street, Room 700N, Oakland, CA 94612, 510–637–1762, M–F 9 a.m.–4p.m.

Contra Costa County Library, 1750 Oak Park Boulevard, Pleasant Hill, CA 94523, 510–646–6457, M, T, Th 12 p.m.–8p.m.; W 10 a.m.–6p.m.; F, Sat 10 a.m.–6p.m.

Department of Toxic Substances Control, Lincoln Plaza Building, 400 P Street, 4th Floor, Sacramento, CA 95814, 916–324–5898, M–F 7:30 a.m.–4:30 p.m.

Simi Valley Public Library, Tapo Canyon Road, Simi Valley, CA 93063, 805–526–1735, M–Th 10 a.m.–8p.m.; Sat 10 a.m.–5p.m.

Contra Costa County Library, 1750 Oak Park Boulevard, Pleasant Hill, CA 94523, 510–646–6457, M, T, Th 12 p.m.–8p.m.; W 10 a.m.–6p.m.; F, Sat 10 a.m.–6p.m.

Standley Lake Library, 8485 Kipling Street, Arvada, CO 80005, 303–456–0806, M–Th 10 a.m.–9p.m.; F 10 a.m.–5p.m.; Sun 12 p.m.–5p.m.

U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2405, 303–293–1807, M–F 7:30 a.m.–4:30 p.m.

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive, South, Denver, CO 80222–2405, 303–692–3398, M–F 8 a.m.–5p.m.

Government Reference Center, Mesa County Public Library, 530 Grand Avenue, Grand Junction, CO 81501, 970–241–5251, M–Th 9 a.m.–9 p.m.; F, Sat 9 a.m.–5p.m.

Rocky Flats Environmental Technology Site Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030, 303–469–4435, T, Th 12:30 p.m.–4:30 p.m.

Rocky Flats Citizens Advisory Board, 9035 Wadsworth Parkway, Suite 2250, Westminister, CO 80021, 303–420–7855, M–F 8:30 a.m.–5p.m.

Windsor Public Library, 323 Broad Street, Windsor, CT 06095, 203–285–1910, M–Th 9 a.m.–9 p.m.; F 9 a.m.–5p.m.; Sat 9 a.m.–1p.m.

U.S. Department of Energy, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–8062, M–F 9 a.m.–4p.m.

Center for Environmental Management Information, 470 L'Enfant Plaza East, SW., Suite 7112, Washington, DC 20024, 202–863–5090, M–F 9 a.m.–7 p.m.

Pinellas Park Public Library, 7770 52nd Street, North, Pinellas Park, FL 34665, 813–541–0718, M–Th 9 a.m.–8:30p.m.; F, Sat 9 a.m.–5p.m.; Sun 1 p.m.–5p.m.

Atlanta Fulton Public Library, Govt. Documents Section, 2nd Floor, 1 Margaret Mitchell Square, Atlanta, GA 30303, 404–730–1706, M–Th 9 a.m.–9p.m.; F, Sat 9 a.m.–6p.m.; Sun 2 p.m.–6p.m.

Main Branch, Chatham Effingham Liberty Regional Library, 2002 Bull Street, Savannah, GA 31499–4301, 912–652–3600, M–Th 9 a.m.–9p.m.; F 9 a.m.–6p.m.; Sat 10 a.m.–6p.m.; Sun 2 p.m.–6p.m.

Reese Library, Reference Section, Augusta College, 2500 Walton Way, Augusta, GA 30904–2200, 706–737–1744, M-Th 7:45am-10:30pm; F 7:45am-5pm; Sat 9am-5pm; Sun 1:30pm-9:30pm

Pearl City Public Library, 1138 Waimano Home Road, Pearl City, HI 96782, 808–453–6566, M,T 10am-8pm; W,Th,Sat 10am-8pm; Sun 1pm-5pm

Pearl Harbor Naval Base Library, Code 90L, 1514 Makalapa Drive, Pearl Harbor, HI 96860–5350, 808–471–8238, T-Th 10am-7pm; F,Sat 9am-5pm; Sun 1pm-5pm

Ames Public Library, Information Services Department, 515 Douglas Avenue, Ames, IA 50010, 515–233–2115, M-Th 9am-9pm; F,Sat 9am-6pm; Sun 1pm-5pm

Boise Public Library, Government Documents Section, 715 S. Capitol Boulevard, Boise, ID 83702, 208–384–4023, M,F 10am-6pm; T-Th 10am-9pm; Sat 12pm-5pm; Sun 12pm-5pm

State Library, 325 West State Street, Boise, ID 83702, 208–334–2152, M-F 9am-5pm

INEL Boise Outreach Office, 816 W. Bannock, Suite 306, Boise, ID 83702, 208–334–9572, M-F 7:30am-5pm

City of Burley Public Library, 1300 Miller Avenue, Burley, ID 83318–1729, 208–678–7708, M-Th 11am-7pm; F,Sat 11am-6pm

City of Emmett Public Library, 275 South Hayes, Emmett, ID 83617, 208–365–6057, M,W 12pm-9pm; T,Th,F 12pm-5pm

Shoshone-Bannock Library, Bannock and Pima Streets, HRDC Building, Fort Hall, ID 83203, 208–238–3882, M-F 8am-5pm

Consolidated Free Library, Hayden Branch, 8385 North Government Way, Hayden Lake, ID 83835, 208–772–5612, M-Th 10am-8pm; F,Sat 10am-5pm; Sun 12pm-5pm

INEL Library, 900 North Skyline Drive, Idaho Falls, ID 83402, 208–528–2600, M-F 8am-5pm

INEL Technical Library, DOE Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83415–2300, 208–526–1185, M-F 8am-5pm

Idaho Falls Public Library, 457 Broadway, Idaho Falls, ID 83402, 208–529–1462, M-Th 9am-9pm; F,Sat 9am-5:30pm; Sun 1:30pm-5:30pm

Clearwater Memorial Public Library, 402 Michigan Avenue, Orofino, ID 83544, 208–476–3411, M,F 10am-5:30pm; T-Th 10am-8pm, Sat 10am-3pm

Idaho State University Library, Documents Department, 10th & East Lovejoy, Pocatello, ID 83209–8089, 208–236–2907, M-F 7:30am-9pm; Sun 1pm-9pm

Argonne National Laboratory (West)—Idaho, Technical Library INEL Site, Scoville, ID 83415, 208–533–7237, M-F 8am-4:30pm

Twin Falls Public Library, 434 Second Street, East, Twin Falls, ID 83301, 208–733–2964, M,F,Sat 10am-6pm; T-Th 10am-9pm

Ames Public Library, Information Services Department, 515 Douglas Avenue, Ames, IA 50010, 515–233–2115, M-Th 9am-9pm; F,Sat 9am-6pm; Sun 1pm-5pm

Bedford Park Public Library, 7816 West 65th Place, Bedford Park, IL 60510, 708–458–6826, M-Th 9am-8pm; F 9am-5pm; Sat 9am-4pm

Bridgeview Public Library, 7840 West 79th Street, Bridgeview, IL 60455, 708–458–2880, M-Th 9am-8pm; F,Sat 9am-5pm; Sun 10am-12pm

U.S. DOE Public Document Room, Document Department, University Library, 3rd Floor Center, University of Illinois at Chicago, 801 S. Morgan Street, Chicago, IL 60607, 312–996–5129, M-Th 8am-10pm; F 8am-7pm; Sat 10am-5pm; Sun 1pm-9pm

Lemont Public Library, 810 Porter Street, Lemont, IL 60439, 708–257–6541, M-Th 9am-8pm; F 9am-6pm; Sat 9am-4pm; Sun 1pm-5pm

DOE Environmental Information Center, 175 Freedom Boulevard, Kevil, KY 42053, 502/462–2550, M-F 8am-5pm

Rice Public Library, 8 Wentworth Street, Kittery, ME 03904, 207–439–1553, M,T,W,F 10am-5pm; Th 10am-8pm; Sat 10am-4pm

Blue Ridge Branch, Mid-Continent Public Library, 9253 Blue Ridge, Kansas City, MO 64138, 816–761–3382, M-Th 9am-9pm; F 9am-6pm; Sat 9am-5pm

Columbia Public Library, 100 West Broadway, Columbia, MO 65203, 314–443–3161, M-Th 9am-9pm; F 9am-6pm; Sat 9am-5pm; Sun 1pm-5pm

Portsmouth Public Library, 8 Islington Street, Portsmouth, NH 03801, 603–427–1540, M-Th 9am-9pm; F 9am-5:30pm; Sat 9am-5pm

Maywood DOE Public Information Center, 55 West Pleasant Avenue, Maywood, NJ 07607, 201–843–7466, M,W 9am-4pm

Plainsboro Public Library, 641 Plainsboro Road, Plainsboro, NJ 08536, 609–275–2898, M,F 9am-5:30pm; T-Th 9am-8:30pm; Sat 9am-3pm; Sun 1pm-5pm

Albuquerque Operations DOE Reading Room, Kirtland Air Force Base, National Atomic Museum, 20358 Wyoming Boulevard, SE, Albuquerque, NM 87117, 505–845–6670, M-F 9am-5pm

Zimmermann Library, Government Publications Department, University of New Mexico, Albuquerque, NM 87131, 505–277–5441, M-Th 8am-9pm; F 8am-5pm; Sat,Sun 12pm-4pm

Carlsbad Public Library, 101 South Halagueno Street, Carlsbad, NM 88220, 505–885–0731, M-Th 10am-8pm; F,Sat 10am-6pm; Sun 2pm-6pm

Los Alamos National Laboratory Reading Room, Museum Park Complex, 1350 Central, Suite 101, Los Alamos, NM 87544, 505–665–2127, M-F 9am-5pm

New Mexico State Library, 325 Don Gasper, Santa Fe, NM 87503, 505–827–3805, M-F 9am-5pm

Carson City Public Library, 900 North Roop Street, Carson City, NV 89701, 702–887–2247, M,F,Sat 10am-6pm; T-Th 10am-9pm

Nevada State Library and Archives, 100 Stewart Street, Capitol Complex, Carson City, NV 89710, 702–687–8327, M-F 8am-5pm

Nevada Operations Office Public Reading Facility, 2621 Losee Road, North Las Vegas, NV 89030, 702–295–1623, M-F 7:30am-4:30pm

Buffalo and Erie County Public Library, Science and Technology Department, Lafayette Square, Buffalo, NY 14203, 716–858–7100, M,T,W,F,Sat 8:30am-6pm; Th 8:30am-8pm; After October 1, Sun 1pm-5pm

William K. Sanford Town Library, 629 Albany-Shaker Road, Loudenville, NY 12211, 518–458–9274, M-Th 9am-9pm; F 9am-6pm; Sat 9am-5pm; Sun 1pm-5pm

Town of Brookhaven, Public Information Office, 3233 Route 112, Medford, NY 11763, 516–451–6260, M-F 9am-4:30pm

Longwood Public Library, 800 Middle Country Road, Middle Island, NY 11953, 516–924–6400, M-F 9:30am-9pm; Sat 9:30am-5pm; Sun 1pm-5pm

EPA Emergency and Remedial Response Division, 290 Broadway, 18th Floor, New York, NY 10007–1866, 212–637–4296, M-F 9am-5pm

Olean Public Library, 134 N. 2nd Street, Olean, NY 14760, 716–372–0200, M-Th 9am-9pm; F 9am-6pm; Sat 10am-5pm

Saratoga Springs Library, 49 Henry Street, Saratoga Springs, NY 12866–3224, 518–584–7860, M-Th 9am-9pm; F 9am-6pm; Sat 9am-5pm; Sun 1pm-5pm

Schenectady County Public Library, Main Branch, 99 Clinton Street, Schenectady, NY 12305–2083, 518–388–4524, M-Th 9am-9pm; F,Sat 9am-5pm; After October 1, Sun 1pm-5pm

Mastics-Moriches-Shirley Community Library, 425 William Floyd Parkway, Shirley, NY 11967, 516–399–1511, M-F 8:30am-9pm; Sat, Sun 9am-5pm

Hulbert Library of the Town of Concord, 18 Chapel Street, Springville, NY 14141, 716–592–7742, M 2pm-9pm; T 2pm-7pm; Th 10am-12pm and 2pm-9pm; F 1pm-8pm; Sat 10am-12pm

Brookhaven National Laboratory, Research Library, Building 477A, Upton, NY 11973, 516–282–3489, M-F 8:30am-9pm; Sat,Sun 9am-5pm

West Valley Demonstration Project, DOE Public Reading Area, 9030 Route 219, West Valley, NY 14171, 716–942–2021, M-F 7:30am-4pm

Columbus Metropolitan Library, Main Branch, 96 S. Grant Avenue, Columbus, OH 43215, 614–645–2710, M-Th 9am-9pm; F, Sat 9am-6pm

Northside Branch Library, 1423 N. High Street, Columbus, OH 43201, 614–645–2110, M-Th 10am-8pm; F,Sat 10am-6pm

State Library of Ohio, 65 S. Front Street, Columbus, OH 43215, 614–644–6952, M-Th 8am-5pm; F 9am-5pm

West Jefferson Public Library, 270 Lilly Chapel Road, West Jefferson, OH 43162, 614–879–8448, M-F 10am-8pm; Sat 10am-2pm

Public Environmental Information Center, 10845 Hamilton Cleves Highway, Harrison, OH 45030, 513–738–0164, M and Th 9am-7pm; T,W,F 9am-4:30pm; Sat 9am-1pm

Miamisburg Senior Adult Center, Public Reading Room, 305 Central Avenue, Miamisburg, OH 45343, 513–847–6670, M 12pm–8pm; T 8:30am–1:30pm, 4pm–8pm; W 12pm–8pm; Th 8:30am–1:30, 4pm–8pm; F 1:30pm–4:30pm

DOE Environmental Information Center, 505 West Emmitt Avenue, Suite 3, Waverly, OH 45690, 614–947–5093, M,T,W,F 10am–4pm; Th 9am–12noon

Portland State University, Branford Price Millar Library, SW Harrison and Park, Portland, OR 97201, 503–725–3690, M F 8am–10pm; Sat 10am–10pm; Sun 11am–10pm

Carnegie Library of Pittsburgh, Science and Technology Department, 4400 Forbes Avenue, Pittsburgh, PA 15213, 412–622–3141, M,T,W,F 9am–9pm; Th,Sat 9am–5:30pm; After October 1, Sunday 1pm–5pm

Charleston County Library, 404 King Street, Charleston, SC 29403, 803–723–1645, M Th 9:30am–9pm; F,Sat 9:30am–6pm; Sun 2pm–5pm

University of South Carolina Aiken, Gregg Graniteville Library, 171 University Parkway, Aiken, SC 29801, 803–641–3465, M,T,W,F 8am–5pm; Th 8am–9pm

South Carolina State Library, 1500 Senate Street, Columbia, SC 29201, 803–734–8666, M F 8:15am–5:30pm; Sat 9am–1pm

Lawson McGhee Public Library, 500 West Church Avenue, Knoxville, TN 37902, 615–544–5700, M Th 9am–8:30pm; F 9am–5:30; Sat,Sun 1pm–5pm

DOE Environmental Information Resource Center, 105 Broadway, Oak Ridge, TN 37830, 615–241–3314, M,W,F 8am–5pm; T,Th 8am–7pm; Sat 9am–1pm

DOE Public Reading Room, Oak Ridge Operations Office, 55 Jefferson Circle, Room 112B, Oak Ridge, TN 37831, 615–576–1216, M F 8am–11:30pm; and 12pm–4:30pm

Memphis/Shelby County Public Library and Information Center, 1850 Peabody Avenue, Memphis, TN 38104, 901–435–8800, M Th 9am–9pm; F 9am–6pm; Sat 9am–5pm; Sun 1pm–5pm

Rockwood Public Library, 117 North Front Avenue, Rockwood, TN 37854, 615–354–1281, M,W,F,Sat 10am–5pm; T,Th 10am–8pm

Amarillo College Library, Lynn Library, DOE Reading Room, 2201 S. Washington, Amarillo, TX 79109, 806–371–5419, M Th 7:15am–10pm; F 7:15am–12:30pm; Sat 8:30am–12:30pm; Sun 2pm–6pm

Houston Public Library, 500 McKinney, Texas Room, Houston, TX 77002, 713–247–1664, M Sat 9am–6pm

Carson County Library, Public Reading Room, 401 Main Street, Panhandle, TX 79060, 806–537–3742, M 9am–7pm; T F 9am–5pm

Portsmouth Public Library, 601 Court Street, Portsmouth, VA 23704, 804–393–8501, M F 9am–9pm; Sat 9am–5pm

Kitsap Regional Library, 1301 Sylvan Way, Bremerton, WA 98310, 206–405–9119, M Th 9:30am–9pm; F 9:30am–5:30pm; Sat 9:30am–5:30pm; Sun 12:30pm–5:30pm

Department of Ecology, Washington State Nuclear and Mixed Waste Library, 300

Desmond Drive, SE., Lacey, WA 98503, 206–407–7097, M F 8am–5pm
U.S. Department of Energy Public Reading Room, 100 Sprout Road, Room 130W, Richland, WA 99352, 509–376–8583, M F 10am–5pm
U.S. Environmental Protection Agency, 1200 6th Avenue, HW–070, Seattle, WA 98101, 206–553–1388, M F 8:30am–4:30pm
University of Washington, Government Publications, Suzzallo Library, Seattle WA 98195–2900, 206–685–9855, M Th 9am–8pm; F 9am–5pm; Sat 9am–5pm
Gonzaga University, Foley Center, East 502 Boone, Spokane, WA 99258, 509–328–4220 ext. 3829, M Th 8am–12am; F 8am–9pm; Sat 9am–9pm; Sun 11am–12am

Issued in Washington, D. C., September 13, 1995.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Environmental Management.

[FR Doc. 95–23492 Filed 9–21–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Fusion Energy Advisory Committee; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Fusion Energy Advisory Committee.

DATES: Thursday, October 12, 1995, 9:00 a.m. to 6:00 p.m.; and Friday, October 13, 1995, 9:00 a.m. to 6:00 p.m.

ADDRESSES: Renaissance Washington D.C. Hotel, 999 Ninth Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, III, Executive Assistant, Office of Fusion Energy, ER–50, GTN, U.S. Department of Energy, Washington, D.C. 20585, Telephone: 301–903–4941.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The Committee will receive a new charge from the Department and will begin the process of organizing itself to complete the necessary work.

Tentative Agenda

Thursday, October 12, 1995, and Friday, October 13, 1995

Executive session for FEAC members
Presentation of new FEAC members
Presentation of new charge to FEAC
Presentation of the President's Committee of Advisors on Science & Technology (PCAST) results
Presentation on FY 1996 Budget
Presentation and Discussion on Proposed new Strategy
Public Comments (10 minute rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Albert Opdenaker at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, I–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on September 19, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–23568 Filed 9–21–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–751–000]

High Island Offshore System; Notice of Application

September 18, 1995.

Take notice that on September 13, 1995, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–751–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service currently being rendered to Transcontinental Gas Pipe Line Corporation (Transco) which was authorized in Docket No. CP75–104, *et al.*, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, HIOS proposes to abandon firm service rendered under its Rate Schedule T–16 to Transco by exercising its option to terminate the related service agreement upon expiration of the primary term.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 10, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for HIOS to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23512 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–748–000]

Natural Gas Pipeline Company of America; Notice of Application

September 18, 1995.

Take notice that on September 11, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP95–748–000 an abbreviated application pursuant to section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission to abandon an

interruptible natural gas transportation service for South Jersey Exploration Company (SJEX), a producer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it proposes to abandon an interruptible transportation service authorized in Natural's Docket No. CP78–89, as amended, and performed under Natural's Rate Schedule X–98. Natural further states that under the arrangement, dated September 30, 1977, SJEX made available up to 5,000 Mcf of natural gas per day to Natural in Nacogdoches County, Texas via a joint venture gathering line to Natural in Nacogdoches County, Texas, and Natural redelivered an equivalent volume of natural gas for the account of SJEX to Transcontinental Gas Pipe Line Corporation (Transco) at the outlet of Mobil Oil Corporation's Cameron Gas Processing Plant in Cameron Parish, Louisiana, for further transportation and ultimate distribution to certain of Transco's customers or their producing affiliates.

Natural indicates that it had an option, which Natural exercised, to purchase up to ten percent of the total amount of gas it received in Nacogdoches County, Texas for the account of SJEX. Natural also indicates that SJEX sold a part of such gas to Natural in Docket No. CS76–818. It is also indicated that the gas that Natural was transporting for SJEX was gas that was not all owned by SJEX as SJEX was also acting as agent for six other companies. It is further indicated that the six other companies and the docket numbers regarding their sales to Natural were Delmarva Energy Corporation in Docket No. CS76–1086, Dover Exploration Company in Docket No. CI77–34, NCNG Exploration Corporation in Docket No. CS77–39, Piedmont Exploration Company, Inc. in Docket No. CS76–1125, Rockingham Exploration Company in Docket No. CS 77–339, Tar Heel Energy Corporation in Docket No.CS76–982, and U.G.C. Energy Corporation in Docket No. CS77–464.

Natural states that by a letter of South Jersey Industries, Inc. (SJI)[1] dated July 20, 1995, Natural was notified that its transportation service for SJEX was no longer required. Therefore, Natural requests authority to abandon its transportation service for SJEX under the agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 10, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23511 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–710–000, et al.]

Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

September 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP95–710–000]

Take notice that on August 25, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–710–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale certain gas supply facilities in Knoxo Field, Walthall County, Mississippi, all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern proposes to abandon by sale two receiving stations and associated 6-inch and 4-inch supply lines in the Knoxo Field. The facilities were constructed in the 1960's to connect gas supplies fo Southern's system. Because of decreased production in the field, the facilities are no longer economical to maintain, according to Southern. An agreement has been entered with the operator of the upstream wellhead production facilities J.R. Pounds, Inc., to acquire the facilities. No impact on Southern's system capacity or its customers would result.

Comment date: October 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. CNG Transmission Corporation and Texas Eastern Transmission Corporation

[Docket No. CP95–668–001]

Take notice that on September 8, 1995, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 and Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, collectively referred to as Applicants, filed a joint amended application in Docket No. CP95–668–001 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

On August 7, 1995, in Docket No. CP95–668–000, Applicants filed an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon certain facilities at the Jeannette Compressor Station and a certificate of public convenience to add horsepower at the South Oakford Compressor Station. Applicants also proposed to install two new, parallel storage pipelines consisting of 3,158 feet of 30-inch storage suction pipe and 3,158 feet of 20-inch storage discharge pipe. Applicants state that updated engineering studies have indicated that the 20-inch storage discharge pipe may be replaced with the same length of 16-inch pipe at a cost savings. Applicants therefore propose to install a 16-inch storage discharge pipe in lieu of the 20-inch pipe.

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[1] Natural indicates that SJI is the parent company of South Jersey Gas Company (South Jersey). Natural states that SJEX was the producing affiliate of South Jersey. It is further indicated that SJEX dissolved in 1992.

Comment date: October 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP95–722–000]

Take notice that on August 31, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP95–722–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service under its Rate Schedule X–99 with Equitable Gas Company (Equitable), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that, under the exchange, Columbia delivered up to 1,000 Mcf/d of gas to Equitable in Braxton County, and up to 1,000 Mcf/d of gas in Upshur County, West Virginia. Equitable redelivered equivalent volumes, received at the above points, in Wetzel County West Virginia. This was accomplished by reducing volumes which Columbia delivered to Equitable in Wetzel County, West Virginia. It is stated that the service was on thermally equivalent basis, and therefore there was no charge, however any imbalances were treated as transportation volumes and an appropriate rate was charged the party receiving the benefit. It is stated that the service is no longer required, since such have been terminated and alternative service has been offered Equitable under a Part 284 Firm Transportation Rate Schedule.

Comment date: October 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Carnegie Interstate Pipeline Company

[Docket No. CP95–731–000]

Take notice that on September 5, 1995, Carnegie Interstate Pipeline Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP95–731–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point to an end user, Columbia Gas of Pennsylvania, Inc. (Columbia Gas), under Carnegie's blanket certificate issued in Docket No. CP88–248–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Carnegie proposes to construct and operate a new delivery point to an end user, Columbia Gas, in Fayette County, Pennsylvania, in order to provide up to 600,000 Mcf annually, under its Rate Schedules FTS and ITS.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Eastern Transmission Corporation and Transcontinental Gas Pipe Line Corporation

[Docket No. CP95–737–000]

Take notice that on September 7, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251 filed in Docket No. CP95–737–000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain transportation services which were authorized in Docket Nos. CP80–311–000 et al, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to abandon the firm transportation of up to 15,000 Mcf of gas per day, for Transco under Rate Schedule X–132. Transco proposes to abandon the firm transportation of up to 40,000 Mcf per day, for Texas Eastern under Rate Schedule X–129. Texas Eastern and Transco state that pursuant to their August 22, 1995 Settlement Agreement, they have agreed to terminate the above rate schedules effective September 1, 1995. Texas Eastern and Transco also mention that their Settlement Agreement provides for Texas Eastern making a lump sum payment of an exit fee for demand charges owed through March 14, 1996. Texas Eastern and Transco assert that they do not propose to abandon any facilities.

Comment date: October 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP95–749–000]

Take notice that on September 11, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed a request with the Commission in Docket No. CP95–749–000 pursuant to Sections 157.205, 157.211 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for approval to abandon certain facilities and operations at the Enumclaw Meter Station in King County, Washington, and to construct and operate modified replacement facilities at the Enumclaw Meter to more efficiently accommodate existing firm maximum daily delivery obligations to the City of Enumclaw (Enumclaw) and the City of Buckley, Washington; authorized in blanket certificate issued in Docket No. CP82–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to partially abandon facilities and operations at the existing Enumclaw Meter Station by replacing one existing 4-inch orifice meter with one new 6-inch turbine meter and appurtenances to more efficiently accommodate existing fluctuation of the flow rates. Northwest also proposes to disconnect the recorder from the second 4-inch orifice meter and convert the meter run into a by-pass line. Northwest states that it plans to install a 4-inch filter upstream of the new 6-inch turbine meter to decrease flow from approximately 7,333 Dth per day to approximately 6,753 Dth per day at the contractual delivery pressure of 150. Northwest states that the maximum design capacity of the meter station will remain unchanged, since it is limited by the existing regulators to 6,652 Dth per day at 150 psig. The estimated cost of modifying the facilities at the Enumclaw Meter Station would be $81,870. Northwest states that this expenditure is necessary to allow more efficient daily delivery obligations and that Northwest will not require any cost reimbursement from Enumclaw.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene

in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23542 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–754–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

September 18, 1995.

Take notice that on September 14, 1995, NorAm Gas Transmission Company (NGT), P.O. Box 21734, Shreveport, Louisiana 71151, filed a prior notice request with the Commission in Docket No. CP95–754–000 pursuant to Sections 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon certain pipeline facilities in Caddo Parish, Louisiana, under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.* pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

NGT proposes to abandon 14,627 feet of inactive 4-inch diameter pipe, an inactive 1-inch tap, and metering facilities on its Line G in Caddo Parish. NGT states that it no longer needs these inactive facilities, which were installed in 1950 at pipeline station no. 6 + 90, to serve a domestic customer served by its affiliate, Arkla Gas Company (Arkla). Arkla notified NGT via a letter dated June 14, 1995, that it concurs with NGT's abandonment of these facilities. NGT states that it would abandon the pipe and tap in place and remove all above ground metering facilities. NGT also states that it would cost approximately $29,676 to abandon these facilities.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23513 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES95–37–003]

Texas-New Mexico Power Company and Texas Generating Company II; Notice of Amended Application

September 18, 1995.

Take notice that on September 18, 1995, Texas-New Mexico Power Company (TNP) filed an amendment to the application submitted by TNP and Texas Generating Company II (TGC II) in Docket No. ES95–37–000, *et al.* The amendment deleted the proposal that TGC II be the principal obligor of borrowings under a proposed Amended Credit Facility and proposes that TNP be the obligor of borrowings under the Amended Credit Facility.

The application was amended as follows:

(1) Subparagraph (1) of Paragraph (e) on page 2 of the referenced application is amended by deleting the fourth sentence in its entirety and substituting in its place the following sentence: "TNP will be the obligor under the Amended Credit Facility."

(2) Subparagraph (7) of Paragraph (e) on page 5 of the referenced application is amended by deleting the second sentence after the chart in its entirety and substituting in its place the following sentence: "Of all the proposals submitted to TNP, the Amended Credit Facility secured by the New Bonds will provide TNP with the lowest cost of money and the greatest net proceeds."

(3) Paragraph (f) on page 6 of the referenced application is amended by deleting the second sentence in its entirety.

(4) Paragraph (f) on page 6 of the referenced application is further amended by deleting the third sentence in its entirety and substituting in its place the following sentence: "TNP will be able to borrow and prepay funds on one to three days' notice with interest determined pursuant to TNP's election between a LIBOR rate and an alternate base or prime rate."

(5) Paragraph (f) on page 6 of the referenced application is further amended by deleting the last sentence in its entirety.

(6) Subparagraph (1)(ii) of Paragraph (g) on page 6 of the referenced application is amended by deleting the first sentence in its entirety and substituting in its place the following sentence: "Each syndicate bank will receive a commitment fee at closing, the amount of which will depend on the amount that each bank commits to loan to TNP."

(7) Subparagraph (2) of Paragraph (h) on page 9 of the referenced application is amended by deleting the first sentence in its entirety and substituting in its place the following sentence: "At closing, TNP will draw on the Amended Credit Facility to repay outstanding indebtedness under the Existing Credit Facility."

(8) Subparagraph (3) of Paragraph (h) on page 10 of the referenced application is amended by deleting the first sentence in its entirety and substituting in its place the following sentence: "In addition to repaying Existing Credit Facility borrowings and other long-term debt, TNP expects Amended Credit Facility funds to be used for general working capital on an ongoing basis."

(9) Subparagraph (2) of Paragraph (j) on page 11 of the referenced application is amended by deleting the first two sentences in their entirety and substituting in their places the following sentences:

"Approval of the Amended Credit Facility will enable TNP to borrow and repay funds as appropriate to manage normal fluctuations in cash flow experienced by a seasonal peaking utility. Enhanced flexibility in the use of proceeds under the New Credit Facility will also enable TNP to avoid arranging permanent financing before certain unfavorable conditions are removed."

(10) Paragraph (k) on page 12 of the referenced application is amended by deleting the first two sentences in their entirety and substituting in their places the following sentences:

"The Amended Credit Facility is expected to require that TNP maintain a minimum ratio of earnings before interest and taxes to interest expense ranging from 1.2 from closing through June 30, 1996, to 1.5 from July 1, 1999, until the Amended Credit Facility is repaid. TNP must also maintain a maximum ratio of debt to capitalization ranging from 77 percent from closing through June 30, 1996, to 65 percent from July 1, 1999, until the Amended Credit Facility is repaid."

TNP and TGC II request that the Commission's order in Docket No. ES94–12–000[1] concerning the Existing Credit Facility remain effective until closing and funding of the Amended Credit Facility.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 95–23544 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

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[1] 66 FERC ¶ 62,054 (1994).

[Docket No. CP95–723–000]

Tuscarora Gas Transmission Company; Notice of Request Under Blanket Authorization

September 18, 1995.

Take notice that on August 31, 1995, Tuscarora Gas Transmission Company (Tuscarora), 6100 Neil Road, P.O. Box 30057, Reno, Nevada 89520–3057 filed in Docket No. CP95–723–000, a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new tap and meter station in Washoe County, Nevada, to be known as the La Posada Meter Site, for the delivery of gas to an existing customer, Sierra Pacific Power Company (SPPC), under the blanket certificate issued in Docket No. CP93–685–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tuscarora proposes to install an 8-inch tap and associated meter at Milepost 217.2 on its mainline in Washoe County, Nevada to establish an additional point for the delivery of natural gas to SPPC, for redelivery and resale to consumers in Reno, Nevada and environs. Tuscarora indicates that construction of the tap will enable SPPC to receive up to 12,000 MMBtu of natural gas directly into the La Posada area of its existing service area. Tuscarora asserts that the construction of this additional delivery point is consistent with Tuscarora's tariff and the total volume to be delivered to SPPC will not exceed the volume previously authorized for delivery to SPPC. Tuscarora states the projected cost of the proposed facilities is $198,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23510 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC95–21–000, et al.]

Oklahoma Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

September 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Company

[Docket No. EC95–21–000]

Take notice that on September 7, 1995, Oklahoma Gas and Electric Company (OG&E) has filed an application for an order authorizing a planned corporate reorganization.

OG&E is a corporation organized and existing under the laws of the State of Oklahoma, and is engaged in producing and selling electric energy.

OG&E proposes to reorganize by causing the creation of a holding company to be named OG&E Holding Corp. (Holding Company), which will become the owner of all the common stock of OG&E. This will be accomplished through a mandatory share acquisition and exchange following shareholder approval, whereby each outstanding share of OG&E common stock (other than shares held by persons who properly exercise their appraisal rights under Oklahoma law) will be exchanged for an outstanding share of Holding Company common stock. The preferred stock and debt obligations of OG&E will not be exchanged and will remain preferred stock and debt obligations of OG&E. Following the share acquisition and exchange, OG&E will cause all of its subsidiaries to be transferred to Holding Company. Also, immediately prior to the creation of the holding company structure, OG&E will reduce its ownership of The Arklahoma Corporation from 34% to below 5%. The principal property of The Arklahoma Corporation currently consists of a 161 kV transmission line extending 166 miles from Boudinot Tap near Tahlequah, Oklahoma, to Substation A located at Lake Catherine, Arkansas.

OG&E states that the proposed transaction is consistent with the public interest.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket No. ER94–1062–003]

Take notice that on September 7, 1995, Montaup Electric Company (Montaup) filed a compliance reporting showing the credit in lieu of refunds pursuant to the settlement agreement in this docket between Montaup and its nonaffiliated customers. The credit appeared on the Montaup bills for July issued on August 9, 1995.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Calpine Power Marketing, Inc.

[Docket No. ER94–1545–002]

Take notice that on September 5, 1995, Calpine Power Marketing, Inc. filed certain information as required by the Commission's March 9, 1995, order in Docket No. ER94–1545–000. Copies of Calpine Power Marketing's informational filing are on file with the Commission and are available for public inspection.

4. Proven Alternatives, Inc.

[Docket No. ER95–473–001]

Take notice that on September 5, 1995, Proven Alternatives, Inc. filed certain information as required by the Commission's March 9, 1995, order in Docket No. ER95–473–000. Copies of Proven Alternatives' informational filing are on file with the Commission and are available for public inspection.

5. Public Service Company of New Mexico

[Docket No. ER95–1052–000]

Take notice that on August 18, 1995, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Appalachian Power Company

[Docket No. ER95–1315–000]

Take notice that on August 28, 1995, Appalachian Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic City Energy Company

[Docket No. ER95–1319–000]

Take notice that on September 8, 1995, Atlantic City Electric Company (AE) filed supplemental information in the above-captioned docket.

AE served a copy of the filing on the City of Vineland, New Jersey and the New Jersey Board of Public Utilities.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Power, Inc.

[Docket No. ER95–1375–000]

Take notice that on August 28, 1995, Entergy Power, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas & Electric Company

[Docket No. ER95–1429–000]

Take notice that on August 24, 1995, Southern Indiana Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Western States Power Providers, Inc.

[Docket No. ER95–1459–000]

Take notice that on September 8, 1995, Western States Power Providers, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Indiana Gas & Electric Company

[Docket No. ER95–1497–000]

Take notice that on August 24, 1995, Southern Indiana Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company

[Docket No. ER95–1700–000]

Take notice that on September 5, 1995, Boston Edison Company (Edison), tendered for filing a Service Agreement under Original Volume No. II, Non-Firm Transmission Tariff (Tariff) for Rainbow Energy Marketing Corp. (REMC). Boston Edison requests that the Service Agreement become effective as of November 5, 1995.

Edison states that it has served a copy of this filing on REMC and the Massachusetts Department of Public Utilities.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER95–1701–000]

Take notice that on September 5, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Engelhard Power Marketing, Inc. (Engelhard) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

Engelhard also filed a Certificate of Concurrence as it relates to exchange transactions under the Tariff.

NUSCO states that a copy of this filing has been mailed to Engelhard.

NUSCO requests that the Service Agreement become effective September 1, 1995.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER95–1702–000]

Take notice that on September 5, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Heartland Energy Services, Inc. (Heartland) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

Heartland also filed a Certificate of Concurrence as it relates to exchange transactions under the Tariff.

NUSCO states that a copy of this filing has been mailed to Heartland.

NUSCO requests that the Service Agreement become effective September 1, 1995.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER95–1703–000]

Take notice that on September 5, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Energy Services and Rainbow Energy Marketing Corporation (Rainbow Energy). Entergy Services states that the TSA sets out the transmission arrangements under which the Energy Operating Companies will provide Rainbow Energy non-firm transmission service under their Transmission Service Tariff.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1704–000]

Take notice that on September 5, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 123, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this increase take effect as of August 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23543 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11243 Alaska]

Whitewater Engineering Corporation; Notice of Scoping Pursuant to the National Environmental Policy Act of 1969

September 18, 1995.

The Energy Policy Act of 1992, allows applicants to prepare their own draft environmental assessment (EA) for hydropower projects and file it with the Federal Energy Regulatory Commission (Commission) along with their license application as part of the "applicant-prepared EA" process. Whitewater Engineering Corporation (Whitewater) intends to prepare an EA to file with the Commission for the Power Creek Hydroelectric Project No. 11243. Whitewater will hold two public scoping meetings, pursuant to the National Environmental Policy Act of 1969, to identify the scope of environmental issues that should be analyzed in the EA.

Scoping Meetings

The times and locations of the two scoping meetings are:

Public Meeting

Date: Tuesday, October 10, 1995.

Place: Cordova High School's Library, 100 Fisherman's Way, Cordova, Alaska.

Time: 7:00 p.m.

Agency Meeting

Date: Thursday, October 12, 1995.

Place: New Federal Building, 222 W. 7th Avenue, Room 133, Anchorage, Alaska.

Time: 1:30 pm.

At the scoping meetings, Whitewater will (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially qualified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the EA.

All interested individuals, organizations, and agencies are invited and encouraged to attend either or both meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, Whitewater prepared and distributed Scoping Document 1 for this project. Copies of this scoping document can be obtained by calling Mike Prewittt of Whitewater at (206) 957–1874, or can be obtained directly at either meeting.

Site Visit

Whitewater will also conduct a site visit for this project on Wednesday, October 11, 1995. Those attending the site visit must meet in the lobby of the Old Courthouse (Old Post Office), at 612 2nd Street, in Cordova by 9:00 am. Those planning to attend the site visit must notify Whitewater at least three days prior to that date.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting, the Commission will not conduct another NEPA scoping meeting when the application and draft EA are filed with the Commission.

Both meetings will be recorded by a stenographer, and thus will become a part of the formal record of the proceedings for this project.

Those who choose not to speak may instead submit written comments on the project. These comments should be mailed to Mike Prewitt at Whitewater's Seattle office, 1415 140th Street, #9, Bellevue, Washington 90885. All correspondence should clearly show the following caption on the first page: Scoping Comments, Power Creek Project, FERC No. 11243, Alaska.

For further information, please contact Mike Prewitt at (206) 957–1874, or Mike Strzelecki of the Commission at (202) 219–2827.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23509 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

(ER–FRL–5229–1)

Environmental Impact Statements And Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 04, 1995 Through September 08, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–FRC–L05213–WA Rating EO2, Rocky Reach Hydroelectric Project (FERC No. 2145). Operating License Amendment Issuance to Increase Lake Entiat Reservoir, Chelan and Douglas Counties, WA.

Summary

EPA expressed environmental objections due to potentially significant water quality, wetland and fish impacts. Additional information was requested on cumulative effects, mitigation measures and impacts on water quality, wetlands and fisheries resources.

ERP No. D–NAS–K59011–CA Rating EC2, Programmatic EIS—NASA Ames Aerodynamic Testing Program, Implementation, Analyzation of the Noise Envelope of Future Wind Tunnel Testing at the National Full-Scale Aerodynamic Complex (NFAC), NASA Ames Research Center, Moffet Field, Santa Clara County, CA.

Summary

EPA expressed environmental concerns regarding the lack of air quality mitigation measures, noise impacts to Air Force housing and dependents, and the lack of detail concerning noise mitigation.

ERP No. DS–AFS–L65183–AK Rating LO, Central Prince of Wales Ketchikan Pulp Long-Term Timber Sale, Additional Information, Implementation, Tongass National Forest, Prince of Wales Island, AK.

Summary

EPA provided no comments and therefore has no objection to the preferred alternative as described in the EIS.

Final EISs

ERP No. F–AFS–L65238–WA Thunder Mountain Fire Recovery and Salvage Project, Implementation, Okanogan National Forest, Tonasket and Methow Valley Ranger Districts, Okanogan County, WA.

Summary

EPA had no objection to the proposed action. The final EIS has addressed EPA concerns.

ERP No. F–NPS–L64043–WA Elwha River Ecosystem Restoration, Implementation, Olympic National Park, Clallam County, WA.

Summary

EPA had no objection to the proposed action.

ERP No. FS–RUS–E08017–FL Hardee Unit 3 440 Megawatt (MW) Natural Gas and Oil Fired Combined Cycle Electric Power Station, Construction and Operation, Approval, Funding and NPDES Permit, Hardee County, FL.

Summary

EPA expressed environmental concerns regarding groundwater and environmental justice.

Dated: September 19, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–23585 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5301–6]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), notice is hereby given of a proposed settlement agreement in the following case: *OZ Technology* v. *Environmental Protection Agency,* No. 95–0289 (D. Id.). This action was filed pursuant to 28 U.S.C. 1331 and 1361 and 5 U.S.C. 701–706, seeking a preliminary injunction. At issue is the alleged failure of EPA to respond to petitions filed by OZ Technology pursuant to section 612(d) of the CAA, 42 U.S.C. 7671k(d). In addition, OZ Technology sought relief from "misinformation and misstatements" allegedly communicated by EPA regarding OZ Technology's products.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed agreement if the comments disclose facts or circumstances that indicate that such agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed settlement agreement is available from Sonja Lee, Air and Radiation Division (2344R), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (703) 235–5330. Written comments should be sent to Jan M. Tierney, at the above address and must be submitted on or before October 23, 1995.

Dated: September 12, 1995.

Jonathan Z. Cannon,

Assistant Administrator (General Counsel).

[FR Doc. 95–23572 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5301–4]

Access to Confidential Business Information by Armstrong Data Services, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has authorized Armstrong Data Services, Inc. (ADSI) of Vienna, Virginia who is the prime contractor, and Labat-Anderson, Inc. (LAI) of Arlington, Virginia who is the subcontractor, for access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted through September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Irvin Weiss, Environmental Protection Agency, Office of Information Resources Management, Management Evaluation Staff (3401), 401 M Street, SW., Washington, DC 20460. Telephone (202) 260–9388.

SUPPLEMENTARY INFORMATION: Under EPA Contract Number 68–W5–0024, ADSI and LAI provide agency-wide information management support services to the Environmental Protection Agency for the operation of dockets, records management support programs, records centers, and file rooms in certain Headquarters, Regional, Laboratory, and other offices. In performing these tasks, ADSI and LAI employees have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, filming, scanning, etc. The documents to which ADSI and LAI have access potentially include all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, and Comprehensive Environmental Response, Compensation, and Liability Act. Some of these documents may contain information claimed as CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that ADSI and LAI require access to CBI to perform the work required under the contract. These regulations provide for five days notice before contractors are given CBI.

ADSI and LAI are required by contract to protect confidential information. When their need for the information is completed, ADSI and LAI will return them to EPA.

Dated: September 15, 1995.

Sallyanne Harper,

Acting Assistant Administrator for Administration and Resource Management.

[FR Doc. 95–23575 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5228–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed September 11, 1995 Through September 15, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950422, DRAFT EIS, COE, CA, Delta Wetlands Project, Construction and Operation, Water Storage Project on Four Islands in the Sacramento-San Joaquin Delta, Approval of Permits, San Joaquin and Contra Costa Counties, CA, Due: November 21, 1995, Contact: Jim Monroe (916) 557–5266.

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EIS No. 950423, DRAFT SUPPLEMENT, FHW, SC, Mark Clark Expressway Facility Construction, Sam Rittenberg Boulevard (SC–7) to Folly Road (SC–171) crossing the Stono River, Updated Information concerning the last portion of the Charleston Inner Belt Freeway, Funding and COE Sections 404 and 10 Permits and US Coast Guard Bridge Permit Issuance, Charleston County, SC, Due: November 06, 1996, Contact: Kenneth Myers (803) 253–3881.

EIS No. 950424, DRAFT EIS, AFS, MT, Mormon Ridge Winter Range Peak Ecosystem Restoration, Implementation, Lolo National Forest, Missoula Ranger District, Missoula County, MT, Due: November 06, 1995, Contact: Andy Kulla (406) 329–3962.

EIS No. 950425, DRAFT EIS, BLM, NV, Round Mountain Mine Mill and Tailings Facility, Construction and Operation for the Smoke Valley Operation, Plan of Operations Amendment, Nye County, NV, Due: November 22, 1995, Contact: Christopher Stubb (702) 635–4000.

EIS No. 950426, FINAL EIS, AFS, UT, Brian Head Recovery Project, Timber Harvest, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT, Contact: Ronald S. Wilson (801) 865–3200.

ADDITIONAL PUBLIC REVIEW NOT NECESSARY—The Brian Head DEIS was reviewed by the public for a 45 day period and comments have been included in the FEIS. The FEIS and Decision will not require additional public review as described in Paragraph 6 of the Memorandum of Agreement on Timber Salvage Activities under Public Law 104–19, between the USDA, USDOI, USDOC and the USEPA.

EIS No. 950427, FINAL EIS, AFS, ID, Thunderbolt Wildfire Recovery Project, Implementation, Boise and Payette National Forests, Valley County, ID, Due: October 23, 1995, Contact: Ronn Julian (208) 382–7400.

EIS No. 950428, LEGISLATIVE DRAFT EIS, AFS, MT, Lolo National Wild and Scenic Rivers, Suitability Study for Eight Rivers for Inclusion in the National Wild and Scenic River System, Lolo National Forest, Lewis & Clark, Missoula, Powell, Ravalli and Sanders Counties, MT, Due: November 06, 1995, Contact: Suzanne Artley (406) 329–3776.

EIS No. 950429, FINAL EIS, FHW, AL, I–59/I–759 Interchange to US 11 and US 431/US 278, Construction, Funding, Etowah County, AL, Due: October 23, 1995, Contact: Joe Wilkerson (205) 223–7370.

EIS No. 950430, DRAFT EIS, COE, VA, VA–168 Battlefield Boulevard South, Construction between Peaceful Road and the North Carolina State Line, Issuance of Permits, VA, Due: November 06, 1995, Contact: Alice Allen-Grimes (804) 441–7219.

EIS No. 950431, DRAFT EIS, DOE, Programmatic EIS Waste Management, Managing Treatment, Storage and/or Disposal of Radioactive and Hazardous Waste for Five Types of Waste: Low-Level Radioactive; Low-Level Mixed; Transuranic Radioactive; High-Level Radioactive and Hazardous Waste, Sites Selection Around the United States, Due: December 21, 1995, Contact: David Hoel (202) 586–3977.

Amended Notices

EIS No. 930170, DRAFT EIS, AFS, OR, Camas Salvage Timber Sales, Restoration and Off-Highway Vehicle Trail Complex Projects, Implementation, Umatilla National Forest, North Fork John Day Ranger District, Umatilla and Union Counties, OR, Contact: Jeff Hammes (503) 427–3231.

Published FR 05–28–93—Officially Withdrawn by the Preparing Agency.

EIS No. 950306, DRAFT EIS, SFW, NV, Lahontan Valley Wetlands Water Rights Acquisition Program, Implementation, Churchill County, NV, Due: October 20, 1995, Contact: Ronald M. Anglin (702) 432–5128.

Published FR 07–21–95—Review period extended.

EIS No. 950405, DRAFT EIS, AFS, MT, Rock Creek Copper/Silver Mine Project, Construction and Operation, COE Section 404 Permit and Permits Approval, Kootenai National Forest, Sanders County, MT, Due: October 23, 1995, Contact: Paul Kaiser (406) 293–6211.

Published FR 09–8–95—Officially Withdrawn by the Preparing Agency.

Dated: September 19, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–23586 Filed 9–21–95; 8:45 am]

BILLING CODE 6560-50-U

[FRL–5301–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; Announcement of Application Deadline for the Competition for Brownfields Economic Redevelopment Initiative Pilots"

AGENCY: Environmental Protection Agency.

ACTION: Notice of application deadlines, revised guidelines.

SUMMARY: The United States Environmental Protection Agency (EPA) will continue to accept proposals for the national Brownfields Economic Redevelopment Pilots. EPA received over 100 applications for the deadlines of March 1, 1995 and April 17, 1995; from these applications EPA was able to select 15 national pilots which were announced on July 26, 1995. EPA will select a total of twenty additional pilots in 1996 during the next two rounds of the competition: The next two upcoming deadlines for these rounds are November 17, 1995 and March 4, 1996. All applications received by March 1, 1995 and April 17, 1995—but not chosen as national pilots in the July 26, 1995 announcement—will continue to be considered by EPA during the subsequent two rounds of this competition.

To further improve the competition process, EPA has made clarifications to the Application Guidelines for Demonstration Pilots (revised edition September 1995). However, those entities which submitted applications by March 1 and April 17 will not be required to re-submit their applications. Nonetheless, EPA urges these applicants to review the clarifications and determine whether they wish to revise and resubmit their applications.

DATES: This action is effective as of December 1, 1994, and expires on March 4, 1996. All proposals must be postmarked or sent to EPA via registered or tracked mail by the expiration dates cited above.

ADDRESSES: Applications booklets can be obtained by calling the Superfund Hotline at the following numbers: Washington, DC Metro Area at 703–412–9810, Outside Washington, DC Metro at 1–800–424–9346, TDD for the Hearing Impaired at 1–800–553–7672.

Booklets may also be obtained by writing to: U.S. EPA—Brownfields Application, Superfund Document Center 5201G, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION: The U.S. EPA is funding 50 two-year demonstration pilots up to $200,000 for cleaning up and redeveloping brownfields. Eighteen national pilot projects already have been selected. EPA defines brownfields as abandoned, idled or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. EPA's Brownfields Initiative is an organized commitment to help communities revitalize such properties both environmentally and economically, mitigate potential health

risks and restore economic vitality to areas where these brownfields exist.

The goal of the Brownfields Initiative is to empower states, communities and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse brownfields. Experience gained from the pilots, along with partnerships and outreach activities, will provide a growing knowledge base to help direct EPA's Brownfields Initiative. EPA's Brownfields Pilots will test redevelopment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated efforts at the federal, state, and local levels. EPA will facilitate a coordinated federal strategy to help initiate a significant national effort to clean up and redevelop brownfields.

Cities, counties, towns, states, Territories, and Native American Tribes are all eligible to apply.

The Brownfields Economic Redevelopment Initiative is founded on the belief that "economic development and environmental protection must go hand in hand," (Carol Browner, Administrator, Environmental Protection Agency, Announcing the Cleveland Brownfields Pilot on November 8, 1993.)

In order to ensure a fair selection process, panels consisting of EPA Regional and Headquarters staff, as well as other Federal Agency representatives, evaluated all of the applications. These panels assess how well the proposals met the selection criteria outlined in The Brownfields Economic Redevelopment Initiative: Application Guidelines for Demonstration Pilots. These panels' evaluations will be presented to EPA Senior Management for final selection. Proposals will be evaluated on the following criteria (a more detailed and complete set of criteria are included in the application booklet):

- Demonstrated commitment of public and private leadership to brownfields redevelopment.
- Clear delineation of how federal support will make a difference.
- Plans for effective community involvement.
- Contributions to environmental justice goals.
- Government support and technical, legal, and political capacity to complete goals.
- Clearly outlined potential sources of cleanup funding.
- Potential for national replication.
- Well-defined approach to environmental assessment.

Dated: September 14, 1995.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 95–23576 Filed 9–21–95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Financial Institution Partners, L.P.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 6, 1995.

A. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Financial Institution Partners, L.P. and Hovde Capital, Inc.*, both of Buffalo Grove, Illinois; to acquire an additional 15 percent, for a total of 24.9 percent, of the voting shares of North County Bancorp, Escondido, California.

Board of Governors of the Federal Reserve System, September 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23547 Filed 9–21–95; 8:45 am]

BILLING CODE 6210-01-F

NationsBank Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 16, 1995.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NationsBank Corporation and its subsidiary NB Holdings Corporation*, both of Charlotte, North Carolina; to merge with North Florida Bank Corporation, Madison, Florida, and thereby indirectly acquire Bank of Madison County, National Association, Madison, Florida.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *NEMO Bancshares, Inc.*, Madison, Missouri; to become a bank holding company by acquiring at least 67.5 percent of the voting shares of Madison-Hunnewell Bank, Madison, Missouri.

Board of Governors of the Federal Reserve System, September 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23548 Filed 9–21–95; 8:45 am]

BILLING CODE 6210-01-F

Wells Fargo & Company; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 6, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company, San Francisco, California; to engage *de novo* through an unnamed wholly-owned subsidiary in data processing and data transmission services through the ownership, installation, operation, and maintenance of automatic teller machines in the State of Texas, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23549 Filed 9–21–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 082895 AND 090895

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Jordan Industries, Inc., John D. Simms, Elmco Industries, Inc	95–2345	08/28/95
Jordan Industries, Inc., Merkle-Korff Industries, Inc., Merkle-Korff Industries, Inc	95–2346	08/28/95
New Valley Corporation, RJR Nabisco Holdings Corp., RJR Nabisco Holdings Corp	95–2397	08/28/95
Pittencrieff Communications, Inc., FMR Corp., Advanced MobileComm Southwest Corp	95–2428	08/28/95
FMR Corp., Pittencrieff Communications, Inc., Pittencrieff Communications, Inc	95–2429	08/28/95
Unitrin, Inc., Milwaukee Insurance Group, Inc., Milwaukee Insurance Group, Inc	95–2435	08/28/95
PETsMART, Inc. The Pet Food Giant, Inc., The Pet Food Giant, Inc	95–2436	08/28/95
Morgan Stanley Group Inc., Miller Anderson & Sherred, LLP, Miller Anderson & Sherred, LLP	95–2439	08/28/95
Sophus Berendsen A/S, Mayne Nickless Limited, Stanley Smith Security, Inc	95–2443	08/28/95
Argo Partnership, L.P., Kemper Corporation, Kemper Corporation	95–2453	08/28/95
Brazos Fund, L.P., Kemper Corporation, Kemper Corporation	95–2460	08/28/95
Bayer Ag, Myriad Genetics, Inc., Myriad Genetics, Inc	95–2464	08/28/95
Worms & Cie, Lafarge Coppee S.A., Coppee Industries, Inc	95–2465	08/28/95
Fibreboard Corporation, S–K–I Ltd., Bear Mountain Ltd	95–2469	08/28/95
Columbia/HCA Healthcare Corporation, Hopewell Hospital Authority, John Randolph Hospital	95–0742	08/29/95
David C. Pratt, John M. Allman, Peters Acquisition Company	95–2419	08/29/95
David C. Pratt, Craig E. Jackman, Peters Acquisition Co	95–2420	08/29/95
General Electric Company, Outlet Communications, Inc., Outlet Communications, Inc	95–2442	08/29/95
General Electric Company, National Westminster Bank plc, Tilden Financial Corp	95–2452	08/29/95
Agrium Inc., Nu-West Industries, Inc., Nu-West Industries, Inc	95–2422	08/31/95
Manor Care, Inc., Beverly Enterprises, Inc., Beverly Enterprises, Inc	95–2356	09/01/95
Clear Channel Communications, Inc., BCI Growth III, L.P., WHP Television, L.P	95–2393	09/01/95
"Winterthur" Swiss Insurance Company, Baldwin and Lyons, Inc., Hoosier Insurance Company	95–2409	09/01/95
First Business Capital Group, Inc., Sterling West Bancorp, Sterling Business Credit, Inc	95–2456	09/01/95
PriCellular Corporation, Sterling Cellular Holdings Limited, Great Seal Cellular Limited Partnership	95–2462	09/01/95
Burlington Resources Inc., Roger H. Evans, Jr. and Ann C. Evans, Race Holding Co. and B T Operating Co	95–2463	09/01/95
Lincoln National Corporation, North American Property Unit Trust, Largo Mall, Inc	95–2471	09/01/95
Diamond Multimedia Systems, Inc., Supra Corporation, Supra Corporation	95–2472	09/01/95
Jerfferson-Pilot Corporation, Household International, Inc., Alexander Hamilton Life Insurance Company of America	95–2473	09/01/95
Tetra Tech, Inc., The Black & Decker Corporation, PRC Environmental Management, Inc	95–2476	09/01/95
Sanifill, Inc., Filiberto Lebron Saldana, El Coqui Waste Disposal, Inc	95–2477	09/01/95
ARAMARK Corporation, Alan F. Bloomfield, Gall's Inc	95–2480	09/01/95
Burlington Resources Inc., C. Campbell & Michelle C. Evans, Race Holding Co. and B T Operating Co	95–2481	09/01/95
Avis, Inc., Sam J. Frankino, National Auto Credit, Inc	95–2483	09/01/95
Hugo Pimienta, Interamericas Investments, Ltd. (a Grand Caymans co.), Integra Financial Services Corp	95–2484	09/01/95
Philips Electronics N.V. (a Dutch company), Rodolfo Rodriguez-Miranda, Unimusica, Inc	95–2486	09/01/95
Philips Electronics N.V. (a Dutch company), Ricardo Cisneros, Unimusica, Inc	95–2487	09/01/95
Philips Electronics N.V., Scesplana Settlement, Unimusica, Inc	95–2488	09/01/95
Boise Cascade Corporation, Jay Sarver, Word Technology Systems, Inc	95–2497	09/01/95
Boise Cascade Corporation, Herbert Gittelman, Word Technology Systems, Inc	95–2498	09/01/95
Hollinger, Inc., Kenneth R. Thomson, The Northwest Arkansas Times	95–2505	09/01/95
Falcon Drilling Company, Inc., Sonat Offshore Drilling, Inc., Sonat Offshore Ventures Inc	95–2507	09/01/95
900 Partners' Investments, Flagstar Companies, Inc., IM Parks, Inc	95–2336	09/03/95
Eureko B.V., California Casualty Management Company, California Casualty & Life Insurance Co	95–2468	09/05/95
DRLX Partners, L.P., ENSCO International Incorporated, ENSCO Technology Company, ENSCO Technology Canada Inc	95–2492	09/05/95
WLR Food, Inc., J. Harold Webber, New Hope Feeds, Inc., Economy Truck Leasing Inc	95–2499	09/05/95
Worms & Cie, National Gypsum Company, National Gypsum Company	95–2466	09/06/95
Federal-Mogul Corporation, Mr. Candido Gonzalez, Auto-Repuestos de Puerto Rico, Inc	95–2482	09/07/95
Republic Waste Industries, Inc., Felix A. Crawford, Southland Environmental Services, Inc	95–2501	09/07/95
Felix A. Crawford, Republic Waste Industries, Inc., Republic Waste Industries, Inc	95–2502	09/07/95
Aetna Life and Casualty Company, David L. Tsoong, M.D., Gateway Medical Group I, Inc	95–2503	09/07/95
Heilig-Meyers Company, Transamerica Corporation, BWAC International Corporation/BWAC Credit Corporation	95–2510	09/07/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23566 Filed 9–21–95; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Fresno United States Courthouse; Notice of Availability

AGENCY: General Services Administration.

ACTION: Notice of Availability of the Final Environmental Impact Statement (EIS) for a new United States Courthouse.

SUMMARY: The action to be evaluated by this EIS is the site selection and construction of a new United States Courthouse in Fresno, California. The Facility will be located on an approximately 4.5 acre site and includes construction of 392 subterranean and surface parking spaces.

ALTERNATIVES: The EIS evaluates four alternative sites. Three of the sites are located in downtown area of the city while the fourth is located in north Fresno. In addition, as required by the National Environmental Policy Act (NEPA), the "No Action" alternative is also analyzed in the EIS as a baseline for gauging the impacts of not building a new courthouse.

PUBLIC INVOLVEMENT: The public is invited to participate in reviewing the Final EIS. A copy of the FEIS is available for public review at the Fresno County Library, 2420 Mariposa Street in Fresno, and at GSA's Field Office at the B. F. Sisk Federal Building-United States Courthouse, 1130 'O' Street in Fresno. Comments are due: October 13, 1995.

POINT OF CONTACT: Mr. Javad Soltani, Asset Manager, United States General Services Administration, The Pacific Rim Region, at (415) 744–5255.

Dated: September 11, 1995.

Aki K. Nakao,

Deputy Regional Administrator (9AD).

[FR Doc. 95–23503 Filed 9–21–95; 8:45 am]

BILLING CODE 6820–23–M

Public Buildings Service

Evo A. Deconcini Federal Building—United States Courthouse City of Tucson, Arizona; Notice of Availability Final Environmental Impact Statement

ACTION: Pursuant to the Council on Environmental Quality Regulations (40 Code of Federal Regulations parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the U.S. General Services Administration (GSA) hereby gives notice that Final EIS for the construction of a new FB–CT within the City of Tucson, Arizona has been prepared and filed with the United States Environmental Protection Agency (EPA). The proposed project would include the construction of a new FB–CT with approximately 419,742 gross square feet (GSF) of building space and 187 onsite parking spaces. The preferred site encompasses approximately 4 acres and is located within the city's Central Business Area (CBA). The site is bound by the US West bank/office building, the historic El Paso and Southwestern depot and courtyard, and a private paved parking lot on the west, West Congress Street on the north, Granada Avenue to the east, and the southern boundary would be a presently undetermined property line located approximately 600 feet south of West Congress Street.

ALTERNATIVES: In addition to the Proposed Action, the DEIS examined five alternatives including: (1) Construction of the FB–CT on three, separate, alternative sites within the CBA; and (2) no action or continued use of the existing FB–CT and lease space.

PUBLIC INVOLVEMENT: The Final EIS, prepared by GSA addressing this action, is on file and may be obtained from: Ms. Sheryll White, U.S. General Services Administration, Portfolio Management Division (9PT), 525 Market Street, San Francisco, CA 94105–2799, Telephone: (415) 744–5252. A limited number of copies of the Final EIS is available to fill single copy requests. Loan Copies of the Final EIS are available for review at the City of Tucson Central Library and at the GSA Field Office, 300 West Congress Street, Tucson, Arizona.

GSA encourages all interested parties to comment on the document. Written comments on the Final EIS can be submitted until October 16, 1995 to the address listed above.

Dated: September 11, 1995.

Aki K. Nakao,

Deputy Regional Administrator (9AD).

[FR Doc. 95–23502 Filed 9–21–95; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review; Proposed Information Collection Submitted for Public Comment and Recommendations

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Administration for Children and Families (ACF) is publishing the following summary(ies). To request copies of the proposed collection of information write to The Administration for Children and Families, Office of Information Systems, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Proposed Project(s)

Title: Welfare Reform Demonstration: Special Application Form.

OMB No.: 0970–0134.

Description: The information collected by the "Welfare Reform Demonstration: Special Application Form" will be used by the Department of Health and Human services to consider welfare reform demonstration projects. Under 42 U.S.C. 1315(a), the Department is given latitude, subject to the requirements of the Social Security Act, to consider and approve demonstration proposals that are likely to assist in promoting the objectives of titles IV–A and D and XIX of the Act.

Respondents: State governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
Form	54	1	0.75	40.5
Estimated Total Annual Burden Hours: 40.5				

Dated: September 14, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–23521 Filed 9–21–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC) Family and Intimate Violence Prevention Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 3 p.m.–6 p.m., October 22, 1995.

Place: Holiday Inn Downtown, Des Moines Room, 1050 6th Avenue, Des Moines, Iowa 50314, 515/283–0151.

Status: Open to the public, limited only by the space available.

Purpose: To provide and make recommendations to the ACIPC and the Director, National Center for Injury Prevention and Control (NCIPC), regarding feasible goals for prevention and control of family and intimate violence. The Subcommittee makes recommendations regarding policies, strategies, objectives and priorities; and advises on the development of a national plan for family and intimate violence and the development of new technologies and their subsequent application.

Matters to be Discussed: The Subcommittee will discuss State and community-based projects funded in fiscal year 1994 by the Family and Intimate Violence Prevention Program.

Agenda items are subject to change as priorities dictate.

Contract Person for More Information: Ms. Denise Johnson, Acting Team Leader, Family and Intimate Violence Prevention Team, Division of Violence Prevention, NCIPC, CDC, 4770 Buford Highway NE, M/S K–60, Atlanta, Georgia 30341–3724, telephone 770/488–4410.

Dated: September 15, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–23555 Filed 9–21–95; 8:45 am]

BILLING CODE 4163–18–M

Substance Abuse and Mental Health Services Administration

Proposed Data Collection Available for Public Comment

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Alcohol and Drug Services Survey (ADSS) Phase I—New—ADSS Phase I will gather information from a sample of 2,200 substance abuse treatment programs nationwide, including data on treatment type and costs, program capacity, number of clients served, waiting lists, and services provided to special populations including pregnant women. Interviews will also be conducted with approximately 1,200 "parent" facilities to ascertain their organizational relationship to the treatment facilities. Automated collection techniques are not cost-effective for this study. ADSS is a three phase study that will be conducted twice. The total annual burden estimate for Phase I of the first round of ADSS is 5,440 hours, as shown below:

	Number of respondents	Number of responses per respondent	Average burden/response	Total burden
Treatment facility directors	2,200	2	1.1 hours	4,840 hours.
Parent facility directors	1,200	1	.5 hours	600 hours.

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated September 17, 1995.

Richard Kopand,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–23532 Filed 9–21–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–55]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies utilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226); TDD number for the hearing and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free, or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available

Propertieslisted as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ed Guilford, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–2059; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: September 15, 1995.

Ken Williams,

Deputy Assistant Secretary for Grant Programs.

Title V, Federal Surplus Property Program Federal Register Report for 09/22/95

Suitable/Available Properties

Buildings (by State)

Arkansas

Federal Building
115 South Denver Avenue
Russellville Co: Pope AR 80205–
Landholding Agency: GSA
Property Number: 549530004
Status: Excess
Comment: 2640 sq. ft., 2 story plus basement, presence of asbestos, timber frame w/brick facing, most recent use—offices.
GSA Number: 7–G–AR–546

Wyoming

Bldg., Seminoe Dam House
Seminoe Camp Co: Carbon WY
Landholding Agency: Interior
Property Number: 619530014
Status: Excess
Comment: 832 sq. ft. frame house, off-site use only.

Bldg., Seminoe Dam House
Seminoe Camp Co: Carbon WY
Landholding Agency: Interior
Property Number: 619530015
Status: Excess
Comment: 1200 sq. ft. frame house, off-site use only.

Bldg., Seminoe Dam House
Seminoe Camp Co: Carbon WY
Landholding Agency: Interior
Property Number: 619530016
Status: Excess
Comment: another 1200 sq. ft. frame house, off-site use only.

Land (by State)

Arizona

Tract No. OSG–1–23
Near McDowell Road & Bush Hwy.
Mesa Co: Maricopa AZ 85207–
Landholding Agency: Interior
Property Number: 619530012
Status: Excess
Comment: 0.29 acres, located next to private land owner, limited access.

Wisconsin

Portion, Kewaunee Eng. Depot
East Storage Yard
Kewaunee Co: Kewaunee WI 54216–
Landholding Agency: GSA
Property Number: 319440013
Status: Excess
Comment: 0.95 acres, storage bldg. on prop. owned by State, limited access (water access only).
GSA Number: 2–D–WI–572

Unsuitable Properties

Buildings (by State)

Maine

Bld. 487
Bangor International Airport
Bangor Co: Penobscot ME 04401–
Landholding Agency: GSA
Property Number: 549530006
Status: Excess
Reason: Within airport runway clear zone.
GSA Number: 5700–26051

North Carolina

Unit #71
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530011
Status: Unutilized
Reason: Floodway.

Unit #72
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530012
Status: Unutilized
Reason: Floodway.

Unit #73
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530013
Status: Unutilized
Reason: Floodway.

Unit #74
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530014
Status: Unutilized
Reason: Floodway.

Unit #75
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530015
Status: Unutilized
Reason: Floodway.

Unit #63
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530016
Status: Unutilized
Reason: Floodway.

Unit #64
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530017
Status: Unutilized
Reason: Floodway.

Unit #76
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530018
Status: Unutilized
Reason: Floodway.

Unit #68
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530019
Status: Unutilized
Reason: Floodway.

Unit #69
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530020
Status: Unutilized
Reason: Floodway.

Unit #70
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530021
Status: Unutilized
Reason: Floodway.

Unit #77
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530022
Status: Unutilized
Reason: Floodway.

Unit #78
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530023
Status: Unutilized
Reason: Floodway.

Washington

Portion—Former Sage Complex
Moses Lake Co: Grant WA 98837–
Landholding Agency: GSA
Property Number: 549530007
Status: Underutilized
Reason: Secured Area.
GSA Number: 9–G–WA–513M

[FR Doc. 95–23397 Filed 9–21–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–00–P; F–14938–C]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to St. Michael Native Corporation for approximately 640 acres. The lands involved are in the vicinity of St. Michael, Alaska.

Kateel River Meridian, Alaska

T. 24 S., R. 18 W.
Sec. 36

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal

government or regional corporation, shall have until October 23, 1995, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Robin Rodriguez,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–23561 Filed 9–21–95; 8:45 am]

BILLING CODE 4310–JA–P

[CO–034–05–1220–00]

Designated Order; Notice of Motorized Vehicle Use and Overnight Camping Closure of Approximately 25 Acres of Public Lands in T45N, R8W, Sec. 9, Near Ridgway, CO, in Ouray County

AGENCY: Bureau of Land Management, Montrose District, Uncompahgre Resource Area, Montrose, Colorado.

ACTION: Notice; closure of a tract of public land administered by the Bureau of Land Management to motorized vehicle use and overnight camping. The 25 acre (approximate) tract of land is located west of US Highway 550S adjacent to the Uncompahgre River, in T45N, R8W, Section 9, about one mile north of Ridgway, Colorado. This closure does not affect other uses of the public lands in this tract.

DATES: This closure will be effective September 29, 1995 until such time that the San Juan-San Miguel Resource Management Plan is amended or revised.

SUPPLEMENTARY INFORMATION: This closure is established to assist the Bureau of Land Management in reducing problems associated with vehicle and camping use in this special riparian/wetland area, recently established and managed as a "watchable wildlife" site. The closure is consistent with management of the non-motorized Uncompahgre RiverWay trail connecting this tract of public land with Ridgway Town Park.

This closure will prevent excessive impacts to soil, riparian vegetation, wildlife, and other resources caused by overnight camping and inappropriate vehicle use. The closure applies to all public land users except those who have prior approval specifically from the authorized officer.

CFR Title 43, Chapter II, Subpart 8364.1 and Subpart 8341.2(a) provide BLM the authority for these closures. 8360.0–7 and 8340.0–7. Penalties: Violations of any regulations in these subparts by a member of the public are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this closure of public lands administered by the Bureau of Land Management in Ouray County in the State of Colorado may be obtained from Chip Marlow, Resource Advisor, Montrose District Office, 2465 S. Townsend, Montrose, Colorado, 81401, (970) 249–7791 or from Karen Tucker, Outdoor Recreation Planner, Uncompahgre Resource Area, 2505 S. Townsend, Montrose District, Montrose, Colorado, 81401, (970) 249–6047.

Dated: September 15, 1995.

Allan J. Belt,

Area Manager.

[FR Doc. 95–23504 Filed 9–21–95; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–3130–00; N–59229]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Advent Methodist Church proposes to use the land for a church site.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 32, NE1¼NE¼ NW¼
Containing 10 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement described as the north 50 feet, the west 40 feet, and the south 30 feet of the subject parcel, together with a 20-foot spandrel area in the SE corner thereof concave northwesterly and being tangent to the north line of said south 30 feet and tangent to the west line of said east 40 feet; also together with a 25 foot spandrel area in the NE corner thereof concave southwesterly being tangent to the West line of the East 40 feet and tangent to the south line of said north 50 feet, in favor of Clark County for roads, public utilities and flood control purposes.
2. Those rights for water pipeline purposes which have been granted to Las Vegas Valley Water District by Permit No. N–55369 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89108.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: August 31, 1995.

District Manager,

Las Vegas, NV.

FR Doc. 95–23505 Filed 9–21–95; 8:45 am]

BILLING CODE 3130-HC-P

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. PRT–803610

Applicant: Museum of Vertebrate Zoology, Berkeley, California. The applicant requests a permit to capture and remove from the wild individual Morro Bay kangaroo rats (*Dipodomys heermanni morroensis*) throughout the species' range, excluding the Bayview "Morro-Palisades" property, in San Luis Obispo County, California for captive propagation and then reintroduce captive-bred individuals back into the species' historic range, where authorization has been obtained, to enhance the propagation and survival of the species.

Permit No. PRT–804887

Applicant: Brian Tsukimura, Fresno, California. The applicant requests a permit to take (collect) the vernal pool tadpole shrimp (*Lepidurus packardi*) in Merced, Fresno, and Tulare Counties, California for reproductive studies for the purpose of enhancing the survival of the species.

Permit No. PRT–804204

Applicant: Jill Dye, San Diego, California. The applicant requests a permit to take (survey and mark nests) the California least tern (*Sterna antillarum browni*) and western snowy plover (*Charadrius alexandrinus*) for population studies in south San Diego Bay, California for the purpose of enhancing the survival of the species.

Permit No. PRT–806679

Applicant: Maria Ellis, Fall River Mills, California. The applicant requests a permit to take (capture, weigh, mark, and release) the Shasta crayfish (*Pacifastacus fortis*) to conduct presence/absence surveys and population studies throughout the range of the species in Shasta County, California for the purpose of enhancing the survival of the species.

Permit No. PRT–806723

Applicant: Enterprise Advisory Services, Inc., Oak Ridge, Tennessee. The applicant requests a permit to take (capture, mark, measure, radio-collar, ear-tag, collect biological samples, vaccinate for rabies, and relocate) the San Joaquin kit fox (*Vulpes macrotis mutica*), take (capture, mark, measure, and release) the blunt-nosed leopard lizard (*Gambelia silus*), giant kangaroo rat (*Dipodomys ingens*), and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and take (collect, preserve, and mount voucher specimens) the California jewelflower (*Caulantus californicus*), Kern mallow (*Eremalche kernensis*), San Joaquin wooly-threads (*Lembertia congdonii*), and Hoover's wooly-star (*Eriastrum hooveri*) on the Elk Hills Naval Petroleum Reserve, and Buena Vista Petroleum Reserve in Kern and San Luis Obispo Counties, and adjacent areas that are within the following townships and ranges of the Mt. Diablo base meridian T29S to T32S; R22E to R25E, in California for the purpose of enhancing the survival of these species.

DATES: Written comments on the permit applications must be received on or before October 23, 1995.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: September 15, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–23563 Filed 9–21–95; 8:45 am]

BILLING CODE 4310-55-P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32723]

Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Construction and Operation Exemption—Stratford, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation of a line of railroad by Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, SP). The proposed 1,222-foot line will connect the track of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and the track of SP at the Santa Fe/SP intersection at Stratford, TX. By decision served August 9, 1995 (published August 9, 1995, at 60 FR 40602), the Commission conditionally exempted the construction and operation of the line, subject to completion of environmental review and a further decision. The environmental analysis has now been completed.

DATES: This exemption is effective on September 15, 1995, subject to the condition that SP comply with certain mitigation measures adopted in the decision. Petitions to reopen must be filed by October 12, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32723 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423; and (2) Petitioner's representative: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: September 15, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23495 Filed 9–21–95; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32704]

East Cooper & Berkeley Railroad—Construction and Operation of a Rail Line—Berkeley County, South Carolina

The East Cooper and Berkeley Railroad (ECBR) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 1.7-mile extension of ECBR's existing rail line in Berkeley County, South Carolina. The proposed rail line extension is part of a large economic incentive program offered jointly by state and local governments to NUCOR Corporation in connection with its proposed electric arc steel mill and associated industries. The ECBR rail line extension would carry materials for the construction of the steel mill and then, upon completion of the mill, move raw materials in (mainly scrap) and finished steel products out. The Commission's Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA) for this project. Based on the information provided and the environmental analysis conducted to date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions requiring ECBR to implement the mitigation contained in the EA.

The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making final environmental recommendations to the Commission. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of Dana White (202) 927–6214. Requests for copies of the EA should also be directed to Ms. White.

Date made available to the public: September 22, 1995.

Comment due date: October 23, 1995.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23584 Filed 9–21–95; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB–57 (Sub-No. 41X)]

Soo Line Railroad Company—Abandonment Exemption—In Benson County, ND

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 5.5 miles of its "Harlow to Baker Trackage" between milepost 474.35±, near Harlow, and milepost 479.54±, near Baker, in Benson County, ND.

Soo has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 22, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 2, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 12, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Larry D. Starns, 1000 Soo Line Building, 105 South 5th St., Minneapolis, MN 55402.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Soo has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 27, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

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filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23497 Filed 9–21–95; 8:45 am]

BILLING CODE 7035-01-P

[Ex Parte No. 388 (Sub-No. 36)]

Intrastate Rail Rate Authority—Wisconsin

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Wisconsin to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective on September 23, 1995, and will expire on September 22, 2000.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: September 12, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23496 Filed 9–20–95; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of A Currently Approved Collection

(1) Denial of Federal Benefits for Drug Offenders.

(2) Form: OJP 3500/2 (5/90). Office of justice Programs, United States Department of Justice.

(3) Primary: State, Local or Tribal Government. Other: Federal Government. The Anti-Drug abuse Act of 1988, dated November 19, 1995, Section 5301, permits Federal, state and local courts to deny certain Federal benefits to individual's convicted of any Federal or state offense. The form is used to collect the necessary information to deny a convicted individual from receiving any benefits.

(4) 500 responses per year at 5 minutes per response.

(5) 41 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 18, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

FR Doc. 95–23514 Filed 9–21–95; 8:45 am]

BILLING CODE 4410-18-M

Immigration and Naturalization Service

[INS No. 1649–95]

Office of Policy and Planning Stakeholders' Workshop

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of request for input re: INS Strategic Plan Key Issues and notice of Stakeholders' Workshop.

SUMMARY: The Immigration and Naturalization Service (INS) is collecting information for input on key issues facing INS as we move forward with initiatives set forth in the Strategic Plan. We are soliciting information from those entities affected by, or interested in, the INS Strategic Plan, which provided long-range goals and objectives for the major functions and operations of the agency. Interested parties may provide input through written comments or attendance at a Stakeholders' Workshop to be held in October 1995.

DATES: Written comments on issues outlined in the Strategic Plan are due by October 17, 1995. The Stakeholders' Workshop will be held October 23, 1995, from 9 a.m. to 5 p.m. Seating is limited, so participants should respond by phone at (202) 616–7768, by October 17, 1995. It is requested that only one or two representatives per organization attend.

ADDRESSES: The Stakeholders' Workshop will be held at the Holiday Inn, 4610 North Fairfax Drive, Arlington, Virginia. Written comments should be sent, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference the INS No. 1649–95 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Elizabeth Brown, Office of Policy and Planning, Immigration and Naturalization Service, 425 I Street, NW., Room 6321, Washington, DC 20536, telephone (202) 616–7987.

SUPPLEMENTARY INFORMATION: The "Government Performance and Results Act of 1933" mandates that, no later than September 30, 1997, the head of each agency shall submit to the Director of the Office of Management and Budget and to the Congress a strategic plan for program activities. The Act also mandates that, during development of strategic plans, agencies must consult with Congress and those entities potentially affected by or interested in such plans. The INS Strategic Plan was

approved on November 2, 1994. To consult with those who have an interest in the progress of the INS Strategic Plan, the Service is accepting written comments. Written comments, limited to a maximum of 3 pages, should address what you believe are the major issues confronting INS in meeting initiatives set forth in the Strategic Plan, and the recommended strategies for moving INS in desired directions to properly address those major issues. Also, in accordance with Executive Order 12862, "Setting Customer Service Standards." the INS is setting standards but we want to continue to canvass our stakeholders as we work towards the future in managing our agency.

The INS will also be holding a Stakeholders' Workshop on October 23, 1995, to further solicit the views and opinions of Congressional staff, Federal agencies, immigration groups, members of the public, and other parties which have a "stake" in the future actions of INS. The 1-day workshop will be structured to encourage participants to have open dialogue about the major issues that INS needs to consider in addressing initiatives within the Strategic Plan. The workshop will be structured in breakout sessions led by professional facilitators. Participants should have knowledge and understanding of immigration issues. Attendees will be expected to participate in the breakout sessions and to provide direct input during discussions. The information compiled in the breakout sessions will be documented and presented in the afternoon during a breakout session.

Dated: September 18, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–23534 Filed 9–21–95; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Agency Information Collection Review

AGENCY: Employment Standards Administration, DOL.

ACTION: Expedited review of the following information collection request under the Paperwork Reduction Act.

SUMMARY: The Office of Workers' Compensation (OWCP), Employment Standards Administration (ESA), Department of Labor (DOL), invites comments on the following proposed expedited review information collection request, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR 1320 (53 FR 16618, May 10, 1988).

DATES: This expedited review is being requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 29, 1995.

ADDRESSES: Written comments should be addressed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Debra Bond, Desk Officer, 725 17th Street, N.W., Room 10235, New Executive Office Building, Wash., D.C. 20503. Request for copies of the proposed information collection request should be addressed to Theresa M. O'Malley, Department of Labor, 200 Constitution Ave., N.W. Room N–1301, Wash., DC 20210.

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley (202) 219–5095. Individuals who use a telecommunications device for the deaf (TTY/TDY) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested persons an early opportunity to comment on information requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with the agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management Policy, publishes this notice simultaneous with the submission of this request to OMB. This notice contains the following information:

Type of Review: Expedited

Title: Claim for Compensation on Account of Traumatic Injury or Occupational Disease, Form CA–7; and, Claim for Continuing Compensation on Account of Disability, Form CA–8

Frequency of Response: Form CA–7 is used as an initial claim for compensation and the CA–8 is filed for continuing compensation

Affected Public: The forms are required of a member of the public on rare occasions, such as when compensation is claimed after the claimant's Federal employment has terminated

Form	Respondents	Per response	Total hours
CA–7 .	Est. 200 ...	30 minutes ..	100
CA–8 .	Est. 200 ...	30 minutes ..	100

Total Annual Burden Hours: 200

Respondents Obligation to Reply: Mandatory for determining claimants continuing eligibility for and computation of benefits

Description: The ESA, Office of Workers' Compensation Programs administers the Federal Employees' Compensation Act that provides for payment of benefits for wage-loss and/or for permanent impairment to a scheduled member arising out of a work related injury or disease. The Act outlines eligibility requirements, as well as amount of benefits. Information from these forms allow OWCP to fulfill its statutory requirement.

Signed at Washington, D.C. this 18 day of September 1995.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–23536 Filed 9–21–95; 8:45 am]

BILLING CODE 4510-27-M

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Extension of Announcement of Vacancies to October 18, 1995 Request for Nominations

The announcement of vacancies to the ERISA Advisory Council is being extended through October 18, 1995. Earlier candidates whose nominations have been acknowledged need not reapply.

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides or the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

. Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his functions under ERISA, and to submit to the Secretary, or his designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the council expire on Tuesday, November 14, 1995. The groups or fields represented are as follows: employee organizations (multiemployer plans), accounting, insurance, employers, and the general public (pensioners). Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.W., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 18, 1995.

Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of Section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, D.C. this 19th of September, 1995.

Olena Berg,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

[FR Doc. 95–23591 Filed 9–21–95; 8:45 am]

BILLING CODE 4510-29-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

Michigan
  MI950007 (Feb. 10, 1995)

Volume V

Iowa
  IA950004 (Feb. 10, 1995)
  IA950005 (Feb. 10, 1995)
  IA950006 (Feb. 10, 1995)
  IA950013 (Feb. 10, 1995)
  IA950016 (Feb. 10, 1995)
  IA950024 (Feb. 10, 1995)
Kansas
  KS950008 (Feb. 10, 1995)
  KS950012 (Feb. 10, 1995)
Missouri
  MO950001 (Feb. 10, 1995)

Volume VI

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 15th day of September 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–23303 Filed 9–21–95; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Appointment of New Members

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of appointment of members.

Notice is hereby given that appointments have been made to fill two (2) vacancies on the Advisory Committee on Construction Safety and Health (ACCSH). Pursuant to 29 CFR 1912.3(g), the terms of members appointed in September 1994 were staggered to provide for continuity in the membership of the ACCSH. Accordingly, one member is being appointed to a two-year term to fill the vacancy created by the resignation of a member appointed to a one-year term. The other new member is being appointed to fill the vacancy created by the resignation of a member prior to the expiration of a two-year term. The new members of the Committee, the categories represented and the terms of appointment are as follows:

Employee

Mr. Steve Cooper, Executive Director, Occupational Safety and Health, International Association of Bridge, Structural and Ornamental Ironworkers (term expires September 1997).

Employer

Mr. Robert Masterson, Manager, Safety and Loss Control, The Ryland Group, Inc (term expires September 1996).

The Advisory Committee on Construction Safety and Health was established under section 107 of the Contract Work Hours and Safety Standards Act and 7(b) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on matters pertaining to construction safety and health.

For Additional Information Contact: Tom Hall, Division of Consumer Affairs, Room N–3647, Telephone (202) 523–8615, at the Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 15th day of September, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–23535 Filed 9–21–95; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–90; Exemption Application No. D–09783, et al.]

Grant of Individual Exemptions; Texas Commerce Bank National Association, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Texas Commerce Bank National Association (Texas Commerce) Located in Houston, TX

[Prohibited Transaction Exemption 95–90; Exemption Application No. D–09783]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the leasing, since September 15, 1993, of certain office space in a building (the Building) owned by the Maritime Association—I.L.A. Pension Fund (the Pension Plan) to Texas Commerce, a party in interest with respect to the Pension Plan.

This exemption is conditioned on the following requirements:

(a) The trustees of the Pension Plan (the Trustees), who are independent of Texas Commerce, believe that the leasing of office space in the Building by the Plan to Texas Commerce is and will continue to be in the best interest of the Pension Plan and its participants and beneficiaries.

(b) The decision by the Pension Plan to enter into and continue leasing office space in the Building to Texas Commerce has been made and will continue to be made by the Trustees in consultation with an independent property manager and an independent fiduciary.

(c) The terms of the lease have remained and will remain at least as favorable to the Pension Plan as those obtainable in an arm's length transaction with an unrelated party.

(d) The rental charged by the Pension Plan under the lease has been based and will continue to be based upon arm's length negotiations with unrelated parties.

(e) The Trustees, in conjunction with the independent fiduciary, have and will continue to (i) Monitor the terms and conditions of the lease as well as the terms and conditions of the exemption and (ii) take all actions that are necessary and proper to safeguard the interests of the Pension Plan and its participants and beneficiaries.

(f) The subject lease has involved and will continue to involve less than 25 percent of the Pension Plan's total assets.

EFFECTIVE DATE: If granted, this exemption will be effective September 15, 1993.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 31, 1995 at 60 FR 39014.

Written Comments

The Department received one written comment with respect to the notice of proposed exemption which related to issues that were not germane to the subject lease transaction. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption as described above. The complete application file, including all supplemental submissions received by the Department as well as the comment letter, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Group Profit Sharing Plan and Retirement Savings Plan (the Plan) Located in Cedar City, Utah

[Prohibited Transaction Exemption 95–91; [Exemption Application No. D–09979]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of certain real property (the Property) to the Cedar Development Corporation, a party in interest with respect to the Plan, provided that (1) The Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expense from the transaction; and (3) the Plan receives as consideration from the Sale the greater of either $310,000 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 21, 1995, at 60 FR 37687.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Central Freight Lines Employees Profit Sharing and Retirement Plan (the Plan) Located in Waco, TX

[Prohibited Transaction Exemption 95–92; Exemption Application No. D–09994]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the cash sale by the Plan of certain unimproved real property (the Property) to Central Freight Lines, Inc., a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any real estate commissions or fees in connection with the transaction; and (4) the Plan receives a sales price for the Property which is not less than the greater of (a) the fair market value of the Property as determined by a qualified, independent appraiser, or (b) the net acquisition cost of the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 11, 1995 at 60 FR 41123.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of September, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–23583 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–29–P

Work Group on Defined Contribution Adequacy; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, public meetings of the Work Group on Defined Contribution Adequacy of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on October 11, 1995, in Room S–3215 A-B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The propose of the meetings, which will run from 9:30 a.m. to noon and from 1:00 until approximately 3:30 p.m., is to allow work group members to begin formulating their recommendations to the Secretary of Labor as they relate to various policy issues surrounding retirement income adequacy.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 1, 1995 to Sharon Morrissey, Acting Executive Secretary, Erisa Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Defined Contribution Adequacy Work Group of the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 1 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and indicated in the record of the meeting if received on or before October 1, 1995.

Signed at Washington, DC this 19th day of September, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–23587 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–29–M

Pension and Welfare Benefit Administration

Work Group on Pension Education; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142. a public meeting of the Work Group on Pension Education of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on October 10, 1995, in Room S–3215 A–B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 9:30 a.m. and end at approximately noon on October 10, is to allow Work Group members the opportunity to begin formulating their final recommendations to be made to the Secretary of Labor on the necessity of the Department's continuing efforts to better educate the public to save for retirement and to assist in identifying additional ways in which the Department may meet this challenge.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 1, 1995 to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Pension Education Work Group of the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 1 at the address indicated in the notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 1, 1995.

Signed at Washington, DC this 19th day of September, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–23589 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–29–M

Pension and Welfare Benefits Administration

Work Group on Real Estate Investment; Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on the Real Estate Investment of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on October 10, 1995, in Room S–3215 A–B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will begin at 1:00 p.m. and will last until approximately 4:30 p.m., is to hear any final testimony on regulatory issues that impact on real estate investments for pension funds and allow members to begin formulating their final recommendations for the Secretary of Labor on this issue.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 1, 1995, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Real Estate Investment Work Group of the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 1 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 1, 1995.

Signed at Washington, DC this 19th day of September, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–23588 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, the Cleveland Electric Illuminating Company, the Toledo Edison Company Beaver Valley Power Station, Unit Nos. 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–66 and NPF–73 Duquesne Light Company, et al. (the licensee) for operation of Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2), located in Beaver County, Pennsylvania.

The proposed amendments would revise the Administrative Controls section and the Bases section of the BVPS–1 and BVPS–2 technical specifications to be consistent with the requirements of the Offsite Dose Calculation Manual (ODCM). The ODCM was recently updated to reflect the radioactive liquid and gaseous effluent release limits and the liquid holdup tank activity limit of BVPS–1 License Amendment No. 188 and BVPS–2 License Amendment No. 70 which were issued June 12, 1995.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased or decreased by this proposed technical specification change which modifies the liquid and gaseous effluent release limits and the Liquid Holdup Tank activity limit. This technical specification change will not impact the function or method of operation of plant equipment. Thus, there is no significant increase in the probability of a previously analyzed accident due to this change. No systems, equipment, or components are affected by the proposed change. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report are not increased by this change.

The proposed change affects the liquid and gaseous effluent release limits and Liquid Holdup Tank activity limit. As such, the proposed change has no impact on accident initiators or plant equipment, and therefore, does not affect the probabilities or consequences of an accident.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed technical specification revisions do not involve changes to the physical plant or operation of equipment considered as a potential accident initiator or equipment necessary to mitigate the consequences of an accident. The new Beaver Valley Power Station-Emergency Action Levels do use multiples of Offsite Dose Calculation Manual liquid release criteria for initiation of an unusual event or alert. However, there are no protective actions required when reaching either the unusual event or alert levels. The protective actions are performed when Environmental Protection Agency Drinking Water Standards are met or exceeded. Since limitations on concentrations of radioactive material released in liquid and gaseous effluents to unrestricted areas does not contribute to accident initiation, a change related to the requirement cannot produce a new accident scenario or produce a new type of equipment malfunction, as such, this change does not alter any existing accident scenarios.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change concerns the liquid and gaseous effluent release limits and Liquid Holdup Tank activity limit and does not directly affect plant equipment or operation related to design basis accident prevention or mitigation. Safety limits and limiting safety system settings are not affected by this proposed change.

Therefore, use of the proposed technical specification would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 23, 1995, the licensee may file a request for a hearing with respect

to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments request involves a significant hazards consideration, any hearing held would take place before the issuance of the amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz; Director, Project Directorate I–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 13, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 19th day of September 1995.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23540 Filed 9–21– 95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–445 AND 50–446]

Texas Utilities Electric Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–87 and NPF–89, issued to the Texas Utilities Electric Company (TU Electric, the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action is in response to the licensee's application dated September 19, 1994, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Final Safety Analysis Report (FSAR) and design change reports for facility changes made under 10 CFR 50.59 for the CPSES. Under the proposed exemption the licensee would schedule updates to the single, unified FSAR for the two units that comprise CPSES once per fuel cycle (based on the unit with the shortest interval between scheduled refueling outages). With the current fuel cycles, FSAR updates would be submitted every 18 months.

The Need for the Proposed Action

10 CFR 50.71(e)(4) requires licensees to submit updates to their UFSAR within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since CPSES, Units 1 and 2 share a common FSAR, the licensee must update the same document within 6 months after a refueling outage for either unit. CPSES units have alternating refueling outages, thus linking the submittal of the update to the completion of one unit's refueling outage when the other unit is scheduled for a refueling outage within six to twelve months is an administrative burden which does not enhance achieving the purpose of the rule. Allowing the exemption would maintain the CPSES FSAR current within 24 months of the last revision and would not exceed the 24-month interval for submission of the 10 CFR 50.59 design change report for either unit.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Comanche Peak Steam Electric Station, dated October 1989.

Agencies and Persons Consulted

In accordance with its stated policy, on August 10, 1995, the staff consulted with the Texas State official, Mr. Authur Tate of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 19, 1994, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 12th day of September 1995.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23539 Filed 9–21–95; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 5–7, 1995, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Tuesday, August 22, 1995 (60 FR 43619).

Thursday, October 5, 1995

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:15 a.m.: Proposed Final Revision 1 to Regulatory Guide 1.152, "Criteria for Programmable Digital Computer Systems Software in Safety-Related Systems of Nuclear Power Plants." (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final revision 1 to Regulatory Guide 1.152.

Representatives of the industry will participate, as appropriate.

10:30 a.m.–12:30 p.m.: Meeting with the Director of the Office of Nuclear Regulatory Research (RES) (Open)—The Committee will hear presentations by and hold discussions with the RES Director on items of mutual interest, including:

- Overview of the RES program support budget for FY 1996. Impact of the proposed budget reduction on continuing and proposed research programs.
- Role of the ACRS and NSRRC in reviewing NRC research programs
- High Burnup Fuel Issues/Research activities
- Maintenance of technical capability:

—at NRC
—at supporting laboratories (focus on a few labs)

- Development of supporting information for risk-based regulations and performance-based regulations:

—test cases
—human factors
—organizational factors

- Potential research needs in the following areas:

—advanced plants
—plant life extension

—digital instrumentation and control

- Severe accident "closure"

1:30 p.m.–3:00 p.m.: National Academy of Sciences and Engineering Study on Application of Digital Instrumentation and Control Technology to Nuclear Power Plants (Open)—The Committee will hear presentations by and hold discussions with the Chairman of the NAS Committee, which was formed to study digital I&C issues, regarding the findings and recommendations of NAS contained in its Phase I report.

Representatives of the NRC staff will participate, as appropriate.

3:15 p.m.–4:45 p.m.: Shutdown Cooling Bypass Event at Hope Creek Nuclear Plant (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the findings and recommendations of the Special Inspection Team that evaluated the July 8, 1995 shutdown cooling bypass event at the Hope Creek Nuclear Plant.

Representatives of the industry will participate, as appropriate.

5:00 p.m.–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as proposed ACRS reports on the resolution of Generic Safety Issue 78, "Monitoring of Fatigue Transient Limits for the Reactor Coolant System," and on Fatigue Action Plan proposed by the NRC staff.

Friday, October 6, 1995

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:30 a.m.–10:00 a.m.: Foreign Reactor Events Involving Human Factor Issues (Open/Closed)—The Committee will hear representations by and hold discussions with representatives of the NRC staff regarding foreign reactor events involving human factor issues.

A portion of this session may be closed to discuss information provided in confidence by a foreign source.

10:15 a.m.–11:45 a.m.: Supplement 5 to Generic Letter 88–20, IPE for External Events for Severe Accident Vulnerabilities (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Supplement 5 to Generic Letter 88–20.

Representatives of the industry will participate, as appropriate.

11:45 a.m.–12:00 Noon: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses expected from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports.

1:00 p.m.–1:45 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

1:45 p.m.–2:15 p.m.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

2:15–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, including those on the proposed resolution of Generic Safety Issue 78 and on Fatigue Action Plan.

Saturday, October 7, 1995

8:30 a.m.–10:00 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports on matters considered during this meeting, and on other matters noted above.

10:15 a.m.–12:45 p.m.: Strategic Planning (Open)—The Committee will discuss items that are of importance to the NRC, including rebaselining of the Committee activities for FY 96–97.

12:45 p.m.–1:00 p.m.: Miscellaneous (Open)—The Committee will discuss matters considered during this meeting and matters considered but not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that related solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), to discuss information provided in confidence by a foreign source per 5 U.S.C. 552b(c)(4), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6)

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunist to present oral statements and the time allotted therefore can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301–415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: September 18, 1995.

Andrew L. Bates,

Advisory Committee Management Officer

[FR Doc. 95–23537 Filed 9–21–95; 8:45 am]

BILLING CODE 7590–01–M

Uranium Mill Facilities, Notice of Two Guidance Documents: Final Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments; Final Position and Guidance on the Use of Uranium Mill Feed Materials Other Than Natural Ores

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of final guidance.

SUMMARY: The U.S. Nuclear Regulatory Commission has finalized two uranium mill licensing guidance documents after consideration of comments received in response to a request for public comment in a **Federal Register** notice published May 13, 1992 (57 FR 20525). Only minor changes were made to the proposed guidance documents titled, "Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments" and "Position and Guidance on the Use of Uranium Mill Feed Materials Other Than Natural Ores."

ADDRESSES: Copies of the comments and the NRC staff responses, as well as SECY–91–243, can be examined at the Commission's Public Document Room at 2120 L Street NW. (lower level), Washington DC.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415–6629.

SUPPLEMENTARY INFORMATION:

Final Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments

1. In reviewing licensee requests for the disposal of wastes that have radiological characteristics comparable to those of Atomic Energy Act (AEA) of 1954, Section 11e.(2) byproduct material (hereafter designated as "11e.(2) byproduct material") in tailings impoundments, staff will follow the guidance set forth below. Since mill tailings impoundments are already regulated under 10 CFR part 40, licensing of the receipt and disposal of such material [hereafter designated as "non-11e.(2) byproduct material [1]"] should also be done under 10 CFR part 40.

2. Radioactive material not regulated under the AEA shall not be authorized for disposal in an 11e.(2) byproduct material impoundment.

3. Special nuclear material and Section 11e.(1) byproduct material waste should not be considered as candidates for disposal in a tailings impoundment, without compelling reasons to the contrary. If staff believes that such material should be disposed of in a tailings impoundment in a specific instance, a request for approval by the Commission should be prepared.

4. The 11e.(2) licensee must demonstrate that the material is not subject to applicable Resource Conservation and Recovery Act (RCRA) regulations or other U.S. Environmental Protection Agency (EPA) standards for hazardous or toxic wastes prior to disposal. To further ensure that RCRA hazardous waste is not inadvertently disposed of in mill tailings impoundments, the 11e.(2) licensee also must demonstrate, for waste containing source material, as defined under the AEA, that the waste does not also contain material classified as hazardous waste according to 40 CFR part 261. In addition, the licensee must demonstrate that the non-11e.(2) material does not contain material regulated under other Federal statutes, such as the Toxic Substances Control Act. Thus, source material physically mixed with other material, would require evaluation in accordance with 40 CFR part 261, or 40 CFR part 761. (These provisions would cover material such as: Characteristically hazardous waste; listed hazardous waste; and polychlorinated biphenyls.) The demonstration and testing should follow accepted EPA regulations and protocols.

5. The 11e.(2) licensee must demonstrate that there are no Comprehensive Environmental Response, Compensation and Liability Act issues related to the disposal of the non-11e.(2) byproduct material.

6. The 11e.(2) licensee must demonstrate that there will be no significant environmental impact from disposing of this material.

7. The 11e.(2) licensee must demonstrate that the proposed disposal will not compromise the reclamation of the tailings impoundment by demonstrating compliance with the reclamation and closure criteria of appendix A of 10 CFR part 40.

8. The 11e.(2) licensee must provide documentation showing approval by the Regional Low-Level Waste Compact in whose jurisdiction the waste originates as well as approval by the Compact in whose jurisdiction the disposal site is located.

9. The Department of Energy (DOE) and the State in which the tailings impoundment is located, should be informed of the Nuclear Regulatory Commission findings and proposed action, with a request to concur within 120 days. A concurrence and commitment from either DOE or the State to take title to the tailings impoundment after closure must be received before granting the license amendment to the 11e.(2) licensee.

10. The mechanism to authorize the disposal of non-11e.(2) byproduct material in a tailings impoundment is an amendment to the mill license under 10 CFR part 40, authorizing the receipt of the material and its disposal. Additionally, an exemption to the requirements of 10 CFR part 61, under the authority of § 61.6, must be granted. (If the tailings impoundment is located in an Agreement State with low-level waste licensing authority, the State must take appropriate action to exempt the non-11e.(2) byproduct material from regulation as low-level waste.) The license amendment and the § 61.6 exemption should be supported with a staff analysis addressing the issues discussed in this guidance.

Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores

Staff reviewing licensee requests to process alternate feed material (material other than natural ore) in uranium mills should follow the guidance presented below. Besides reviewing to determine compliance with appropriate aspects of appendix A of 10 CFR part 40, the staff should also address the following issues:

1. Determination of Whether the Feed Material is Ore

For the tailings and wastes from the proposed processing to qualify as 11e.(2) byproduct material, the feed material must qualify as "ore." In determining whether the feed material is ore, the following definition of ore must be used:

Ore is a natural or native matter that may be mined and treated for the extraction of any of its constituents or any other matter from which source material is extracted in a licensed uranium or thorium mill.

2. Determination of Whether the Feed Material Contains Hazardous Waste

If the proposed feed material contains hazardous waste, listed under subpart D §§ 261.30–33 of 40 CFR (or comparable RCRA authorized State regulations), it would be subject to EPA (or State) regulation under RCRA. To avoid the complexities of NRC/EPA dual regulation, such feed material will not be approved for processing at a licensed mill. If the licensee can show that the proposed feed material does not contain a listed hazardous waste, this issue is resolved.

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[1] "non-11e.(2) byproduct material" as used here is simply an encompassing term for source, special nuclear, and 11e.(1) byproduct materials.

Feed material exhibiting only a characteristic of hazardous waste (ignitable, corrosive, reactive, toxic) would not be regulated as hazardous waste and could therefore be approved for recycling and extraction of source material. However, this does not apply to residues from water treatment, so acceptance of such residues as feed material will depend on their not containing any hazardous or characteristic hazardous waste. Staff may consult with EPA (or the State) before making a determination of whether the feed material contains hazardous waste.

3. Determination of Whether the Ore is Being Processed Primarily for its Source-Material Content

For the tailings and waste from the proposed processing to qualify as 11e.(2) byproduct material, the ore must be processed primarily for its source-material content. There is concern that wastes that would have to be disposed of as radioactive or mixed waste would be proposed for processing at a uranium mill primarily to be able to dispose of it in the tailings pile as 11e.(2) byproduct material. In determining whether the proposed processing is primarily for the source-material content or for the disposal of waste, either of the following tests can be used:

a. *Co-disposal test:* Determine if the feed material would be approved for disposal in the tailings impoundment under the "Final Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments," or revisions or replacements to that guidance. If the material would be approved for disposal, it can be concluded that if a mill operator proposes to process it, the processing is primarily for the source-material content. The material would have to be physically and chemically similar to 11e.(2) byproduct material and not be subject to RCRA or other EPA hazardous-waste regulations, as discussed in the guidance.

b. *Licensee certification and justification test:* The licensee must certify under oath or affirmation that the feed material is to be processed primarily for the recovery of uranium and for no other primary purpose. The licensee must also justify, with reasonable documentation, the certification. The justification can be based on financial considerations, the high uranium content of the feed material, or other grounds. The determination that the proposed processing is primarily for the source material content must be made on a case-specific basis.

If it can be determined, using the aforementioned guidance, that the proposed feed material meets the definition of ore, that it will not introduce a hazardous waste not otherwise exempted, and that the primary purpose of its processing is for its source-material content, the request can be approved.

Dated at Rockville, Maryland, this 13th day of September 1995.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–23531 Filed 9–21–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21362; No. 812–9602]

Golden American Life Insurance Company, et al.

September 15, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Golden American Life Insurance Company ("Golden American"), Separate Account B ("Account B") and Separate Account D ("Account D"—together with Account B, "Separate Accounts"), and Directed Services, Inc. ("DSI").

RELEVANT 1940 ACT SECTION: Order requested under Section 6(c) of the 1940 Act granting exemptions from Sections 12(b), 26(a)(2) and 27(c)(2) thereof and Rule 12b–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges, including an asset-based enhanced death benefit charge, from the assets of the Separate Accounts in connection with the offering of certain variable annuity contracts ("Contracts") and certain other variable annuity contracts ("Future Contracts") issued in the future by Golden American that are materially similar to the Contracts. Applicants also request that the order permit the deduction of a mortality and expense risk charge from the assets of any other separate accounts ("Future Accounts") established in the future by Golden American in connection with the offering of the Future Contracts.

FILING DATE: The application was filed on May 11, 1995, and amended on August 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Mitchell M. Cox, Esq., Vice President, Assistant Secretary and Associate General Counsel, Golden American Life Insurance Company, 1001 Jefferson Avenue, 4th Floor, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representation

1. Golden American is a stock life insurance company authorized to do business in all jurisdictions, except New York. Golden American is a wholly-owned subsidiary of BT Variable, Inc. and a wholly-owned indirect subsidiary of Bankers Trust Company.

2. The Separate Accounts were established by Golden American as segregated asset accounts to fund variable annuity contracts. Account B is registered under the 1940 Act as a unit investment trust. Account D is registered under the 1940 Act as a non-diversified open-end management company. Registration statements on Form N–4 and Form N–3, registering the Contracts as securities under the

Securities Act of 1933 ("1933 Act") have been filed with the Commission. Future Accounts also will be established by Golden American as segregated asset accounts. Future Accounts will be registered with the Commission either as unit investment trusts or open-end management companies under the 1940 Act. Registration statements will be filed with the Commission to register Future Contracts funded by the Future Accounts as securities under the 1933 Act.[1]

3. Account B presently has thirteen divisions, eleven of which are available for investment under the Contracts. Each investment division of Account B invests in shares of a corresponding series of The GCG Trust ("Trust"). Account D's only division, the Managed Global Account, invests directly in portfolio securities. (Account B and Account D divisions are referred to collectively as "Divisions.") Additional divisions may be established in the future within the Separate Accounts and may invest in shares of the Trust, another mutual fund or investment vehicle, or directly in portfolio securities. Divisions of Future Accounts established as unit investment trusts may invest in the Trust or other registered open-end management companies. Divisions of Future Accounts established as open-end management companies will invest directly in portfolio securities.

4. DSI, a wholly-owned subsidiary of BT Variable, Inc., is the distributor of the Contracts and of other contracts issued by Golden American. DSI has entered into and will continue to enter into sales agreements with broker-dealers to solicit for the sale of the Contracts through registered representatives licensed to sell securities and variable insurance contracts, including variable annuities. DSI is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. DIS also is registered with the Commission as an investment adviser.

5. The Trust is registered under the 1940 Act as an open-end management investment company. The Trust currently offers eleven series available for investment under the Contracts. DSI serves as manager to each series of the Trust.

6. The Contracts are deferred flexible premium variable annuity contracts that are issued on a group and individual basis. The Contracts may be purchased on a non-tax qualified basis ("Non-Qualified Contracts") or in connection with retirement plans that quality for special federal tax treatment under Section 408 of the Internal Revenue Code ("Qualified Contracts").

7. The Contracts may be obtained: (a) Under a flexible premium plan which provides for an initial premium payment and for optional subsequent premium payments; (b) pursuant to an exchange of other contracts issued by insurance companies not affiliated with Golden American effected in accordance with Section 1035 of the Internal Revenue Code of 1986, as amended; and (c) through an update of a deferred variable annuity contract previously issued by Golden American to incorporate the features of the Contract described herein.

8. The Contracts provide for the accumulation of values on a variable basis, a fixed basis, or both, and for the payment of periodic annuity benefits on a variable or fixed basis. Contract owners may allocate premium payments, or reallocate accumulation value under the Contracts, among the Divisions, Golden American's Fixed Account Option for specified Guarantee Periods[2] or, in those states where the fixed account is not available, Golden American's Fixed Interest Division, which is part of Golden American's general account.[3] Future Contracts offered through the Separate Accounts or Future Accounts also may offer a Fixed Account Option or Fixed Interest Division materially similar to those described herein.

9. The Contracts also provide for the payment of a death benefit, payable in a single sum or applied to any of the annuity options available under the Contracts. Contract owners generally may choose from among: (a) A standard death benefit equal to the greatest of (i) the accumulation value, (ii) total premium payments less partial withdrawals, and (iii) cash surrender value; or (b) either of two optional enhanced death benefits: the "7% Solution" and the "Annual Ratchet". A Contract owner may elect an optional death benefit only at issue, and only if the Contract owner or annuitant (when the Contract owner is other than an individual) is age 75 or less with respect to the 7% Solution option, or age 79 or less with respect to Annual Ratchet option. If an optional death benefit is selected, the death benefit will equal the greatest of: (a) accumulation value; (b) total premiums less partial withdrawals; (c) cash surrender value; and (d) the optional death benefit.

a. 7% Solution Option

Under the 7% Solution option, the death benefit payable equals: (i) the guaranteed death benefit from the prior valuation date;[4] plus (ii) interest calculated on the guaranteed death benefit for the current valuation period at an annual rate of 7%;[5] plus (iii) any additional premiums paid during the current valuation period; less (iv) any partial withdrawals made during the current valuation period. Each accumulated initial or additional premium payment, reduced by any partial withdrawal, will continue to grow at the guaranteed death benefit interest rate until reaching its maximum guaranteed death benefit. Such maximum guaranteed death benefit is initially equal to two times the initial or each additional premium paid. Thereafter, the maximum guaranteed death benefit as of the effective date of a partial withdrawal is reduced first by the amount of any partial withdrawal of earnings and second in proportion to the reduction in the accumulation value for any partial withdrawal of premium (in each case, including any associated market value adjustment and surrender charge incurred).

b. Annual Ratchet Option

Under the Annual Ratchet option, the death benefit payable equals: (i) The guaranteed death benefit from the prior valuation date;[6] less (ii) any partial withdrawals taken since the prior valuation date; plus (iii) additional premium paid since the prior valuation date.

c. Annually on each Contract anniversary on or prior to the Contract owner attaining age 80, the guaranteed death benefit is reset to equal the greater of (i) the guaranteed death benefit from the prior valuation date, less any partial withdrawals taken since the prior valuation date, plus any additional premiums paid since the prior valuation date, or (ii) the accumulation value as of such date.

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[1] Future Accounts may receive and invest premium payments under Future Contracts, as well as other variable annuity contracts, although relief sought herein will not apply to such other contracts.

[2] Golden American currently offers Fixed Allocations to which it credits fixed rates of interest for Guarantee Periods with durations of 1, 3, 5, 7 and 10 years, but reserves the right to increase or decrease the number of Guarantee Periods available.

[3] Applicants state that the Fixed Interest Division is not registered under the 1940 Act or under the 1933 Act in reliance upon Section 3(a)(8) of the 1933 Act.

[4] On the Contract date the guaranteed death benefit is equal to the initial premium.

[5] With respect to amounts in the Liquid Asset Division and Limited Maturity bond Division, and amounts in a Fixed Allocation or the Fixed Interest Division, however, the interest rate applied will be the applicable net rate of return for the Liquid Asset Division and the Limited Maturity Bond Division, and interest credited to the Fixed Allocation or Fixed Interest Division during the current valuation period, if such rate is less than an effective annual rate of 7%.

[6] On the Contract date the guaranteed death benefit is equal to the initial premium.

10. The following charges are deducted under the Contracts.

a. Premium Taxes. A premium tax charge, ranging from 0% to 3.5% of premiums, may be deducted from accumulation value for premium taxes assessed against Golden American by various states and local jurisdictions. Golden American reserves the right to change this amount to conform with changes in the law or in the state of residence of the Contract owner. The charge will be deducted on the annuity commencement date if premium taxes are incurred on such date. If a premium tax is incurred at the time of premium payment, deduction of the premium tax charge will be deferred until the Contract is surrendered, an excess partial withdrawal is taken, or the date annuity payments commence.

b. Contingent Deferred Sales Charge ("CDSC"). No sales charge currently is deducted from premium payments. A CDSC will be imposed as a percentage of premium payments being withdrawn if the contract is surrendered or an excess partial withdrawal is taken within seven years from the date Golden American receives and accepts each premium payment. The amount of the surrender charge at the time of surrender or excess partial withdrawal depends upon the number of complete years that have elapsed since the premium payment being withdrawn was made. In calculating the CDSC, Golden American treats premium payments as being withdrawn on a first-in first-out basis, and as being withdrawn before earnings. The CDSC as a percentage of each premium payment is determined as follows:

Surrender charge (as a percent of the premium payment being withdrawn	Complete years since receipt of premium
7	0–1
6	2
5	3
4	4
3	5
1	6
0	7 and over.

In no event will the CDSC exceed 8.5% of premium payments.

Amounts equal in the aggregate to 15% of the accumulation value may be withdrawn free of any CDSC each Contract year. Golden American will impose a CDSC on any partial withdrawal in excess of that amount; the CDSC will be deducted from the accumulation value in proportion to the accumulation value in each Division of the Separate Accounts, a Fixed Allocation or the Fixed Interest Division from which the withdrawal is taken. Golden American may waive the CDSC for a surrender or "excess partial withdrawal" where the Contract owner (i) receives qualified extended medical care on or after the first Contract anniversary for at least 45 days during any continuous 60 day period, or (ii) is first diagnosed by a qualifying medical professional, on or after the first Contract anniversary, as having a qualifying terminal illness.

c. Administrative Charge. A charge of $40 is deducted on the Contract anniversary and on surrender of the Contract for administrative costs expected to be incurred over the life of the Contracts. No administrative charge is deducted if the accumulation value or total premiums paid at the end of the Contract processing period equals or exceeds $100,000. The charge is deducted proportionately from the Divisions, Fixed Allocation or Fixed Interest Division. The charge is guaranteed not to increase for the duration of the Contracts. Applicants intend to rely on Rule 26a–1 under the 1940 Act to deduct this charge. Golden American does not anticipate any profit from this charge.

d. Excess Allocation Charge. No charge currently is deducted for reallocation of accumulation values. Golden American reserves the right to charge a maximum $25 fee for each reallocation made after the twelfth reallocation in a Contract year.[7] This charge will be deducted proportionately from each Division and Fixed Allocation or Fixed Interest Division from which such reallocation is made, unless the Contract owner has elected the option to have all charges against accumulation value deducted exclusively from the Liquid Asset Division. Applicants intend to rely on Rule 26a–1 under the 1940 Act to deduct this charge. Golden American does not expect to make a profit from this charge.

e. Asset Based Administrative Charge. A daily charge equal to an annual rate of 0.15% will be deducted from the assets in each Division for expenses incurred in administration of the Contracts and the Separate Accounts. The charge is guaranteed not to increase, and is designed to reimburse Golden American only for administrative costs expected to be incurred over the life of the Contracts. Applicants represent that the charge will be deducted in reliance on Rule 26a–1 under the 1940 Act. Golden American does not expect to make a profit from this charge.

f. Mortality and Expense Risk Charge. Golden American imposes charges as compensation for bearing certain mortality and expense risks under the Contracts. For Contracts with the standard death benefit or an Annual Ratchet death benefit; Golden American will deduct a daily mortality and expense risk charge from the Separate Accounts at an annual rate not to exceed a maximum 1.25% of the value of the average daily net asset in each Division. Of the 1.25% mortality and expense risk charge associated with the Annual Ratchet death benefit, approximately 0.90% is allocable to mortality risks and 0.35% to expense risks. If the Contract owner selects the standard death benefit, the mortality and expense risk charge will decrease. For Contracts with the 7% Solution death benefit, Golden American will deduct a daily mortality and expense risk charge at an annual rate of 1.40% (of which 0.35% is allocable to expense risks, 0.90% to mortality risks and 0.15% to the additional enhanced death benefit) of the value of the average daily net assets in each Division. This charge may be a source of profit for Golden American and the excess may be used for, among other things, the payment of distribution expenses.

Golden American will assume two mortality risks under the Contracts: (1) That the annuity rates under the Contracts cannot be changed to the detriment of Contract owners even if annuitants live longer than projected; and (2) that Golden American may be obligated to pay a claim for a standard death benefit or an optional death benefit in excess of a Contract owner's cash surrender value. Golden American also will assume an expense risk through its guarantee not to increase the charges for issuing the Contracts and administering the Contracts and the Separate Accounts, regardless of its actual expenses.

g. Deductions for Other Taxes. No charge currently is imposed for federal, state or local income taxes attributable to the Separate Accounts. Golden American may make such a charge in the future, subject to necessary regulatory approvals. Charges also may be made for any other applicable taxes or economic burden resulting from the application of tax laws that Golden

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[7] Any reallocations made pursuant to the dollar cost averaging program will not be included in determining if an excess allocation charge will be imposed.

American determines to be properly attributable to the Separate Accounts.

h. Expenses of the Trust and Separate Accounts. Net assets of Account B and Account D will reflect the investment advisory fee and other expenses incurred by the Trust and by the Managed Global Account, respectively.

11. Applicants request that the exemptive relief also apply to Future Contracts issued by Golden American through the Separate Accounts or Future Accounts which may invest in the Trust or in shares of other registered investment companies, or directly in a portfolio of securities. Applicants state that a Future Contract will be deemed a materially similar contract if it provides the same rights, benefits and obligations as the Contract described herein and has charges equal to or less than the charges assessed under the Contracts, including the mortality and expense risk charge, enhanced death benefit charge and CDSC for the Contracts described herein. In particular, the maximum surrender charge will be 7% of a premium payment, and each Contract year a Contract owner may withdraw up to 15% of accumulation value free of any CDSC that otherwise might apply. After a premium payment has been invested for 7 years, no CDSC will apply. Moreover, in no event will the CDSC exceed 8.5% of premium payments made.

Applicants Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes or persons, securities or transactions, from the provisions of the 1940 Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Exemptive Relief Under Section 26(a)(2) and 27(c)(2) of the 1940 Act

2. Applicants request an order under Section 6(c) granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the assessment of chargers for mortality and expense risks, including the enhanced death benefit charge, under the Contracts and Future Contracts.

3. Applicants submit that their request for an order that applies to Future Contracts and to Future Accounts is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act. Without the requested relief, Golden American would have to request and obtain exemptive relief for each new Future Account it establishes and each class of Future Contracts it issues. Applicants represent that such additional requests for exemptive relief would present no issues under the 1940 Act that have not already been addressed in this application.

4. Applicants further state that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity policy market by eliminating the need for Golden American to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring Golden American to seek exemptive relief repeatedly with respect to the issues addressed in this Application. Applicants assert that the delay and expense involved would impair Golden American's ability to take advantage effectively of business opportunities as they arise and would disadvantage investors as a result of Golden American's increased overhead expenses.

5. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

6. Applicants submit that the mortality and expense risk charges are reasonable and proper insurance charges. Applicants represent that the mortality and expense risk charges are within the range of industry practice for comparable variable annuity contracts. This representation is based upon Golden American's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Applicants state that Golden American will maintain at its home office and make available to the Commission, upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

7. Applicants further represent that the additional charge for the enhanced death benefit is reasonable in relation to the risks assumed by Golden American in connection with the 7% Solution option. In arriving at this determination, Golden American ran a large number of computer generated trials at various issue ages and determined actuarially the level cost of providing the enhanced death benefits. Based on this analysis, Golden American determined that an additional charge equal to 0.15% of the net assets in the Separate Accounts was a reasonable charge. Golden American undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the additional charge for the enhanced death benefit under the 7% Solution option is reasonable in relation to the risks assumed by Golden American under the Contracts.

8. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses borne by Golden American. Golden American has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and the Contract owners. Golden American will keep at its home office and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

9. With respect to any Future Contracts offered through the Separate Accounts and any Future Accounts, Golden American undertakes that it will not offer any such Future Contracts without first making the determination that the mortality and expense risk charge was within the range of industry practice, that any additional charge for any enhanced death benefit was reasonable in relation to the risks assessed, and that there is a reasonable likelihood that proposed distribution financing arrangements will benefit the affected Separate Accounts or Future Accounts and existing Contract owners and Future Contact owners.

Further, the basis for each such determination shall be set forth in a memorandum which will be maintained by Golden American at its home office and which will be made available to the Commission.

10. Applicants represent that Account B and any Future Account established as a unit investment trust will invest only in a management investment company that has undertaken, in the event any such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of any such investment company, as defined in the 1940 Act, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses. Applicants further represent that Account D undertakes, and any Future Account established as an open-end management company will undertake, in the event that it adopts a plan under Rule 12b–1 to finance distribution expenses, to have a majority of its board of directors who are not interested persons, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Request for Exemptive Relief From Section 12(b) of the 1940 Act and Rule 12b–1

11. Section 12(b) of the 1940 Act makes it unlawful for a registered investment company from acting as a distributor of securities of which it is the issuer, except through an underwriter. Rule 12b–1 prohibits any such company from directly or indirectly financing distribution of the company's shares except in compliance with the Rule's requirements. Rule 12b–1 requires that a company financing distribution of its shares formulate a written plan describing all material aspects of the proposed arrangement, and that the plan be approved initially by the company's shareholders, directors and disinterested directors. The directors must vote annually to continue such a plan, and the directors must conclude that there is a reasonable likelihood that implementation or continuation of the plan will benefit the company and its shareholders.

12. Applicants expect to finance the expenses of distributing the Contracts through use of Golden American's general assets, which may be attributable in part to the surplus from mortality and expense risk charges. Golden American requests an order under Section 6(c) of the 1940 Act for exemptive relief from Section 12(b) of the 1940 Act and Rule 12b–1 thereunder, insofar as the proposed distribution financing arrangement might be deemed to involve the direct or indirect use of assets in Account D, or in any Future Account established as an open-end management company, for distribution. Applicants represent that this aspect of the requested relief is solely "defensive," i.e., to clarify that the current distribution financing is not subject to Section 12(b) or Rule 12b–1 thereunder. Applicants contend that the requested relief is not intended to cover the imposition of a separate charge for distribution expenses against the assets in Account D. Applicants represent that no separate charge for distribution expenses will be assessed on the assets of Account D or any Future Account organized as an open-end management company unless and until the charge complies with the requirements of Rule 12b–1.

13. Applicants assert that Rule 12b–1 was not intended to apply to managed accounts, that the Rule's provisions are directed only at traditional mutual funds and should not be applied to managed accounts, and that the protections of Rule 12b–1 are not necessary in the case of managed accounts. Applicants state that the Commission's review under Sections 26 and 27 of the 1940 Act of the reasonableness of asset charges of managed accounts, and explicit prospectus disclosure that the asset charge may be used for distribution expenses, provide sufficient protection for Contract owners and obviates the need for a managed account to comply with the requirements of Rule 12b–1.

14. Applicants assert that application of Rule 12b–1 to managed accounts would produce a burdensome and inequitable treatment of these accounts, would place them at an unfair disadvantage with respect to unit investment trusts offering similar annuity contracts, and would create an artificial distinction between managed accounts and unit investment trusts not justified by policy considerations.

Conclusion

Applicants assert that for the reasons and based upon the facts set forth above, the requested exemptions from sections 12(b), 26(a)(2)(C) and 27(c)(2) of the 1940 Act and Rule 12b–1 thereunder to deduct a mortality and expense risk charge under the Contracts and Future Contracts offered by the Separate Accounts or by Future Accounts are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 95–23507 Filed 9–21–95; 8:45 am]

BILLING CODE 8010–02–M

[Release No. 35–26375]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 15, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 10, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas System, Inc., et al. (70–8471)

Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, seventeen wholly-owned subsidiary companies of Columbia,[1] all of which are engaged in

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[1] Columbia Gas of Pennsylvania, Inc. ("Columbia Pennsylvania"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Ohio, Inc. ("Columbia Ohio"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Maryland, Inc. ("Columbia Maryland"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"), 200 Civic Center Drive, Columbus, Ohio 43215; Commonwealth Gas Services, Inc. ("Commonwealth Services"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Co. ("Columbia Gulf"), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314; Columbia Gas Development Corp. ("Columbia Development"), One Riverway, Houston, Texas 77056; Columbia Natural Resources, Inc. ("Columbia Resources"), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Coal Gasification Corp.

Continued

the natural gas business, twelve subsidiary companies of TriStar Ventures ("TriStar Ventures Subsidiaries"),[2] Columbia Gas Transmission Corp. ("Gas Transmission", 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Energy Marketing Corp. ("Energy Marketing"), 2581 Washington Road, Pittsburgh, Pennsylvania 15241, have filed a post-effective amendment to the application-declaration, previously filed by all the applicants-declarants but for Gas Transmission and Energy Marketing, under Sections 6, 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Act and Rules 42, 43, 45, and 46 thereunder.

By order dated December 22, 1994 (HCAR No. 26201) ("Order"), Columbia, and fourteen of the subsidiary companies ("Subsidiaires"),[3] were authorized to recapitalize Columbia Gulf, Columbia Development, and Columbia Coal, to implement the 1995 and 1996 Long-Term and Short-Term Financing Programs of the Subsidiaries, and to continue the Intrasystem Money Pool ("Money Pool") through 1996.

By order dated March 15, 1995 (HCAR No. 26251), the TriStar Ventures Subsidiaries were authorized to invest in, but not to borrow from, the Money Pool.

The applicants-declarants now seek Commission authorization for Gas Transmission and Energy Marketing to invest in, but not to borrow from, the Money Pool, which will continue to be operated in accordance with the terms of the Order.

Georgia Power Co. (70-8665)

Georgia Power Company ("GPC"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, a wholly owned public utility subsidiary company of The Southern Company ("Southern"), a registered holding company, has filed an application under sections 9(a) and 10 of the Act and rules 44 and 54 thereunder.

GPC proposes to purchase from Florida Power Corporation ("FPC"), a nonaffiliate of GPC or Southern, a one-third undivided ownership interest in the Intercession City Facility Combustion Turbine ("Facility") pursuant to the Intercession City Siemens Unit Purchase and Ownership Participation Agreement dated June 8, 1994 between GPC and FPC ("Ownership Agreement") and the Intercession City Siemens Unit Step-Up Transformer Purchase Agreement dated June 8, 1994 between GPC and FPC. The Facility includes one complete Siemens V84.3 combustion turbine-generating unit and a step-up transformer.

The purchase price for the assets to be acquired by GPC at the closing will be one-third of the costs of construction incurred with respect to the Facility, which are currently estimated to be $13,137,680 ("Purchase Price"). To such amount shall be added an amount to compensate FPC for federal and state income taxes payable due to differences in book and tax basis of the equity component of the allowance for funds used during construction with respect to the sale by FPC of such undivided ownership interest in the Facility, which taxes are approximately $40,000.

At the closing, which is currently scheduled to occur in January 1996, FPC will furnish to GPC a release from any and all mortgages, deeds to secure debt, or other security interests with respect to the undivided ownership interest in the Facility. In addition, GPC shall pay FPC for the use of common facilities during the construction and testing period, which is stipulated to be $87,500, and carrying charges with respect to the fuel inventory maintained during the testing period, which is approximately $9,491. FPC will adjust the Purchase Price within one hundred eighty (180) days after the closing to account for any necessary true-ups and inform GPC of any amounts to be reimbursed to GPC or any amounts owned by GPC with respect to the Purchase Price.

Pursuant to the Long Term Lease Agreement dated June 8, 1994, between GPC and FPC, FPC shall lease to GPC an undivided one-third interest in the real property on which the Facility will be developed. The annual rent for the leasehold interests conveyed to GPC shall be $300.00 per year plus all Florida sales taxes applicable thereto.

The Facility will be managed, controlled, operated and maintained by FPC on its own behalf and as agent for GPC in accordance with the terms and conditions set forth in the Ownership Agreement and the Intercession City Siemens Unit Operating Agreement dated June 8, 1994 between GPC and FPC ("Operating Agreement"). FPC and GPC shall pay all future costs of construction on a pro rata basis on their percentage undivided ownership interests in the Facility at the time such costs are incurred.

FPC and GPC will share operating costs and fuel costs. Fixed operation and maintenance costs and fixed fuel costs shall be allocated between FPC and GPC in proportion to their respective percentage undivided ownership interests in the Facility. Variable operation and maintenance costs and variable fuel costs incurred by FPC during the months of June, July, August and September ("Summer Period") shall allocated solely to GPC and variable operation and maintenance costs and variable fuel costs incurred by FPC during the months of October, November, December, January, February, March, April and May ("Winter Period") shall be allocated solely to FPC. In addition, GPC will pay a share of the monthly administrative and general costs of operating the Facility pursuant to the terms of the Operating Agreement.

GPC will be entitled to the net capacity and the net energy output of the Facility at all times during the Summer Period. FPC will be entitled to the net capacity and the net energy output of the Facility at all times during the Winter Period. The Facility is currently scheduled to go into commercial operation in January 1996.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23506 Filed 9–21–95; 8:45 am]

BILLING CODE 8010-01-M

("Columbia Coal"), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corp. ("Columbia Services"), 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gas System Service Corp. ("Service Corporation"), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Propane Corp. ("Columbia Propane"), 800 Moorefield Park Drive, Richmond, Virginia 23236; Commonwealth Propane, Inc. ("Commonwealth Propane"), 800 Moorefield Park Drive, Richmond, Virginia 23236; TriStar Ventures Corp. ("TriStar Ventures"), 20 Montchanin Road, Wilmington, Delaware 19807; TriStar Capital Corp. ("TriStar Capital"), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Atlantic Trading Corp. ("Columbia Atlantic"), 20 Montchanin Road, Wilmington, Delaware 19807; and Columbia LNG Corp. ("Columbia LNG"), 20 Montchanin Road, Wilmington, Delaware 19807.

[2] TriStar Pedrick Limited Corporation, TriStar Pedrick General Corporation, TriStar Binghamton Limited Corporation, TriStar Binghamton General Corporation, TriStar Vineland Limited Corporation, TriStar Vineland General Corporation, TriStar Rumford Limited Corporation, TriStar Georgetown General Corporation, TriStar Georgetown Limited Corporation, TriStar Fuel Cells Corporation, TVC Nine Corporation, and TVC Ten Corporation, all of 20 Montchanin Road, Wilmington, Delaware 19807.

[3] Columbia Pennsylvania, Columbia Ohio, Columbia Maryland, Columbia Kentucky, Commonwealth Services, Columbia Gulf, Columbia Development, Columbia Resources, Columbia Coal, Service Corporation, Columbia Propane, Commonwealth Propane, TriStar Capital, and Columbia Atlantic.

[Rel. No. IC–21363; 812–9494]

Scudder Investment Trust, et al.; Notice of Application

September 18, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Scudder Investment Trust, on behalf of its series Scudder Growth and Income Fund (the "Fund"), Scudder Cash Management Investment Trust (the "Trust"), Scudder Trust Company (the "Trustee"), Scudder, Stevens & Clark, Inc. (the "Adviser"), and any other registered management investment company, except for an investment company that holds itself out as a money market fund in accordance with rule 2a–7, that in the future is advised by the Adviser or any person controlled by or under common control with the Adviser (together with the Fund, the "Funds").[1]

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c) and 17(b) of the Act that would grant an exemption from section 17(a), and under rule 17d–1 to permit certain transactions in accordance with section 17(d) of the Act and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds to use cash collateral received from the borrowers of their portfolio securities to purchase shares of the Trust, an affiliated private investment company, pursuant to a securities lending program.

FILING DATES: The application was filed on February 22, 1995, and amended on June 1, 1995 and August 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 345 Park Avenue, New York, New York 10154.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund is a series of Scudder Investment Trust, a registered open-end management investment company organized as a Massachusetts business trust. The Fund invests in a variety of equity and convertible securities in accordance with its investment objectives and policies. The Adviser manages the daily investment and business affairs of the Funds, subject to the policies established by the trustees of each of the Funds.

2. The Trust is a newly formed New Hampshire investment trust of which the Trustee, a New Hampshire banking corporation, is the sole trustee. It is a private investment company excluded from the definition of "investment company" pursuant to section 3(c)(1) of the Act. The Trust intends to meet the maturity, quality, and diversification requirements set forth in paragraphs (c)(2), (3), and (4), and (d) of rule 2a–7 under the Act. The Trust also intends to offer daily redemption of its shares and to use the "amortized cost methods," as defined in rule 2a–7, to determine the Trust's net asset value per share. The Trustee will adopt procedures that are designed to stabilize the Trust's net asset value per share at a single value. In these respects, the Trust intends to operate as a money market fund.

3. The Trustee will cause the Trust to retain the Adviser to manage the investments of the Trust, subject to the Trustee's overall supervision. The Adviser owns substantially all of the common stock of the Trustee; therefore, the Trustee and the Adviser are affiliated persons of one another under section 2(a) (3) of the Act, and the Trustee is an affiliated person of an affiliated person of the Funds.

4. The Fund has the ability to increase its income by lending portfolio securities to registered broker-dealers deemed by the Adviser to be of good standing. These loans may not exceed one third of the Fund's total assets taken at market value. The Fund and NationsBank of Texas, N.A. (the "Agent") have entered into an agreement pursuant to which the Fund is one of the participants in a securities lending program (the "Program") administered by the Agent. The Program conforms to the securities lending guidelines established in a number of no-action letter issued by the SEC staff.[2] The Agent has been appointed subcustodian of the Fund and has entered into a subcustody agreement with State Street Bank and Trust Company, the custodian of the Fund.

5. Under the Program, the Agent enters into agreements with borrowers to lend them portfolio securities of the Fund ("Securities Loan Agreements"). Pursuant to the Securities Loan Agreements, the Agent delivers Fund portfolio securities to borrowers, who agree to return such securities on demand. The Agent may enter into Securities Loan Agreements only with borrowers from a list approved by the Fund's board of trustee's. The list also provides the maximum percentage of the Fund's total lendable assets that may be loaned to each borrower.

6. The Agent currently is authorized to accept only cash collateral for the loaned securities, although it may accept securities or letters of credit if the Fund consents. The Fund may invest the cash collateral itself or direct the Agent to invest the collateral. The cash collateral received for the securities loaned by the Fund may be reinvested in shares of registered or unregistered investment companies acceptable to the Adviser that meet the quality, maturity, and diversification requirements of rule 2a–7 under the Act. The Agent also may invest cash collateral in other instruments, subject to certain parameters.

7. Net annual interest income earned from the investment of cash collateral is divided between the Fund and the Agent. The Adviser receives no part of this return. Under each Securities Loan Agreement, the borrower receives a specified cash collateral fee, computed daily based on the amount of cash held as collateral at such rates as the borrower and the Agent may agree. The cash collateral fee is not based on the investment return of the cash collateral. Any excess return is divided between the Agent and the Fund. The Agent may receive a fee to pass on to the providers

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[1] The Adviser currently advises other investment companies that presently do not intend to rely on the requested order, however, any such company may rely on the requested order in the future in accordance with the representations and conditions of the order.

[2] *See, e.g., Washington Square Cash Fund, Inc.* (pub. avail. July 9, 1990); *The Adams Express Company* (pub. avail. Oct. 8, 1984); and *State Street Bank & Trust Co.* (pub. avail. Sept. 29, 1972).

of related services, such as investment management, custody, and accounting or audit services.

8. Applicants seek an order to permit the Fund (and any other Funds that in the future determine to lend their portfolio securities) to purchase shares of the Trust using cash collateral received from the borrowers of its portfolio securities. By investing cash collateral in shares of the Trust, applicants anticipate that the Fund can reduce its transaction costs, create more liquidity, enjoy greater returns on the cash collateral, and achieve greater diversification with respect to its investment. Therefore, the board of trustees of the Fund has approved the investment of cash collateral in shares of the Trust.

9. Shares of the Trust are offered to participants in the Program, as well as to other institutional investors in reliance on the exemption provided by Regulation D under the Securities Act of 1933. The shares, together with any other outstanding securities (other than short-term paper) of the Trust, will not be beneficially owned by more than one hundred persons. the Trust is not making and presently does not propose to make a public offering of its shares or other securities. The Trust intends to enter into an advisory contract with the Adviser, under which the Adviser will make investment decisions with respect to Trust assets and administer the Trust in accordance with the declaration of trust and the policies of the Trust.

10. The Adviser will receive an annualized fee from the Trust. The shareholders of the Fund, however, will not be subject to the imposition of duplicative advisory fees. An amount of advisory fee equal to the net asset value of the Fund's holdings in the Trust multiplied by the applicable Trust management fee rate charged by the Adviser will be waived in the overall calculation of the Fund's advisory fees.

11. The Agent will be paid a fee by the Trust for performing custodial, administrative, and transfer agency functions. Scudder Fund Accounting, a subsidiary of the Adviser, will be paid a fee by the Trust for providing accounting and other administrative services to the Trust. Together, the fees paid by the Trust to the Agent and Scudder Fund Accounting will not exceed three basis points. In addition, the Trustee will receive compensation from the Trust equal to one basis point of the market value of the assets of the Trust.

Applicants' Legal Analysis

1. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company. As the investment manager of the Funds, the Adviser is an affiliated person of the Funds under section 2(a)(3) of the Act. Because the Adviser owns substantially all the shares of common stock of the Trustee, the Trustee may be considered an affiliated person of an affiliated person of the Funds. The Trust may be considered an affiliated person of an affiliated person of the Funds under section 2(a)(3) because the Adviser, as owner of substantially all the shares of common stock of the Trustee, may be deemed to control the Trust. Accordingly, the sale of shares of the Trust to the Funds, and the redemption of such shares from the Funds, would be prohibited under section 17(a).

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Section 17(b) could be interpreted to exempt only a single transaction. However, the Commission, under section 6(c) of the Act, may exempt a series of transactions that otherwise would be prohibited by section 17(a).

3. Applicants believe that the terms of the proposed transactions are reasonable and fair and consistent with the general purposes of the Act as well as with the policy of the Fund as recited in its registration statement. The Fund will be treated like any other investor in the Trust. The Fund will purchase and sell shares of the Trust on the same terms and on the same basis as shares are purchased and sold by all other shareholders of the Trust. Applicants also state that the transactions will not involve any duplicative advisory fees because an amount equal to the net asset value of the Fund's holdings in the Trust multiplied by the applicable Trust advisory fee rate charged by the Adviser will be waived in the overall calculation of the advisory fees of the Fund. Permitting the Fund to invest cash collateral in the Trust enables the Fund to invest in a vehicle that is similar to a money market fund in terms of the liquidity, diversity, and quality of its investment at a cost that is expected to be significantly lower than the cost typically incurred when investing in a registered money market fund. Therefore, applicants believe that the proposed transactions are in the best interests of the Fund and its shareholders.

4. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The Funds, by purchasing shares of the Trust, the Adviser, by managing the portfolio securities of the Funds and the Trust at the same time that the Funds' collateral is invested in shares of the Trust, the Trust, by selling shares to and redeeming them from the Funds, and the Trustee, by serving as trustee of the Trust at the same time that the Trust sells shares to and redeems them from the Funds, could be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d)(1) and rule 17d–1.

5. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

6. Applicants believe that the proposal satisfies these standards. The Fund will invest in shares of the Trust on the same basis as any other shareholder. All investors in the Trust will be subject to the same eligibility requirements imposed by the Trust and all shares of the Trust will be priced in the same manner and will be redeemable under the same terms. In addition, the Fund will be able to invest in a vehicle that is similar to a registered money market fund at a cost that is expected to be significantly lower.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. None of the Funds will enter into a securities lending program without the approval of a majority of their independent directors or trustees. Such directors or trustees will also evaluate the securities lending arrangement and its results no less frequently than annually, and determine that any investment of cash collateral in the Trust is in the best interest of the shareholders of the Fund.

2. With respect to any Fund that enters into a securities lending program (a "Lending Fund"), the Adviser will reduce its advisory fees charged to the Lending Fund by an amount (the "Reduction Amount") equal to the net asset value of the Lending Fund's holdings in the Trust multiplied by the rate at which advisory fees are charged by the Adviser to the Trust. Any fees remitted or waived pursuant to this condition will not be subject to recoupment by the Adviser or its affiliated persons at a later date.

3. If the Adviser waives any portion of its fees or bears any portion of the expenses of the Lending Fund (an "Expense Waiver"), the adjusted fees for the Lending Fund (gross fees less Expense Waiver) will be calculated without reference to the Reduction Amount. Adjusted fees then will be reduced by the Reduction Amount. If the Reduction Amount exceeds adjusted fees, the Adviser also will reimburse the Lending Fund in an amount equal to such excess.

4. Investment in shares of the Trust will be in accordance with each Lending Fund's respective investment restrictions and will be consistent with its policies as recited in its registration statement and prospectus.

5. The Trust will maintain a portfolio that complies with the maturity, quality, and diversification requirements of rule 2a–7(c) (2), (3), (4), and (d) under the Act. A Lending Fund may purchase shares of the Trust if the Adviser determines on an ongoing basis that the Trust is in compliance with paragraphs (c)(2), (c)(3), (c)(4), (c)(6), and (d) of rule 2a–7. The Adviser shall preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which such determination was made. This record will be subject to examination by the SEC and its staff.

6. The Trust will comply with the requirements of sections 17 (a), (d), and (e), and 18 of the Act as if the Trust were a registered open-end investment company. With respect to all redemption requests made by a Lending Fund, the Trust will comply with section 22(e) of the Act. The Adviser shall, subject to approval by the Trustee, adopt procedures designed to ensure that the Trust complies with sections 17 (a), (d), and (e), 18, and 22(e). The Adviser will also periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and its staff.

7. The Trust will value its shares, as of the close of business on each business day, as follows: The Trust will use the "amortized cost method," as defined in rule 2a–7, to determine the Trust's net asset value per share. In this regard, the Trust will comply with rule 2a–7(c)(6), except that the Adviser, subject to approval by the Trustee, shall adopt the procedures described in that provision and the Adviser shall monitor such procedures and take such other actions as are required to be taken by a board of directors pursuant to that provision.

8. The Adviser, subject to approval by the Trustee, will adopt procedures that are designed, taking into account current market conditions and the Trust's investment objectives, to stabilize the Trust's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at a single value. These procedures will be reviewed annually by the board of trustees of each Lending Fund.

9. The shares of the Trust will not be subject to a sales load, redemption fee, or any asset-based sales charge.

10. Each Lending Fund will purchase and redeem shares of the Trust as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Trust. A separate account will be established in the shareholder records of the Trust for the account of each Lending Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 95–23560 Filed 9–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36242; File No. SR–CBOE–95–22]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Members' Compliance with Position and Exercise Limits for Non-CBOE Listed Options

September 18, 1995.

On April 20, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rules 4.11, "Position Limits," and 4.12. "Exercise Limits," to require CBOE members who trade non-CBOE listed option contracts and who are not members of the exchange where the options are traded to comply with the option position and exercise limits set by the exchange where the transactions are effected.[3]

Notice of the proposed rule change appeared in the **Federal Register** on May 31, 1995.[4] No comments were received on the proposed rule change.[5]

The CBOE proposes to amend Exchange Rules 4.11 and 4.12 to require CBOE members who trade non-CBOE listed option contracts and who are not members of the exchange where the options are traded to comply with the option position and exercise limits set by the exchange where the transactions are affected.[6] According to the CBOE, the proposal is designed to eliminate a jurisdictional loophole whereby a CBOE member who exceeds position or exercise limits on another options exchange in an option class not listed on the CBOE and who is not a member of the other exchange falls outside of both the CBOE's and the other options exchange's jurisdiction for position and exercise limit purposes.[7]

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concern. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[4] *See* Securities Exchange Act Release No. 35759 (May 24, 1995), 60 FR 28432.

[5] The CBOE amended its proposal to indicate that the CBOE will also apply the position limit exemptions, interpretations, and policies of the exchange where the transactions are effected. *See* Letter from Margaret G. Abrams, Attorney, CBOE, to Yvonne Fraticelli, Attorney, Division of Market Regulation ("Division"), Commission, dated September 6, 1995 ("Amendment No. 1").

[6] The proposal applies to transactions in index options as well as equity options. Telephone conversation between Margaret G. Abrams, Attorney, CBOE, and Yvonne Fraticelli, Attorney, Options Branch, Division, Commission, on September 14, 1995.

Specifically, although CBOE Rules 4.11 and 4.12 prohibit excessive positions or exercises in CBOE listed option contracts, they do not currently prohibit a CBOE member from exceeding applicable limits set by another exchange for non-CBOE listed option contracts. If the CBOE member is not a member of the other exchange which lists the option contracts, then the other exchange cannot enforce its position and exercise requirements against the CBOE member.

The proposed amendments will extend CBOE Rules 4.11 and 4.12 to apply to option contracts dealt in on any exchange (rather than only to option contracts dealt in on the CBOE) by requiring a CBOE member who is effecting transactions in non-CBOE listed option contracts on another exchange, of which he or she is not a member, to comply with the position and exercise limits set by the exchange on which the transaction is effected.[8] Thus, a CBOE member's customer transactions in non-Exchange listed options will be brought within the CBOE's jurisdiction for position and exercise limit purposes when the exchange on which the excessive transactions are effected does not have member jurisdiction over the CBOE member.

In addition, the CBOE proposes to amend the text of CBOE Rule 4.12 to replace references to the Exchange's previous equity option position limits with reference to the Exchange's current equity option position limits, which were excluded inadvertently from the text of CBOE Rule 4.12 when the equity option position limits were increased in December 1993.[9]

Finally, the CBOE proposes to amend CBOE Rules 4.11 and 4.12 to indicate that the Exchange's position and exercise limits are now established by the staff of the CBOE, rather than by the CBOE's Board of Directors ("Board").[10]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[11] in that it is designated to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the CBOE has noted that Exchange Rules 4.11 and 4.12 do not currently prohibit CBOE members from exceeding the position and exercise limits set by another exchange for non-CBOE listed option contracts. Thus, if the CBOE member is not a member of the exchange which lists the options, then neither the CBOE or the exchange that lists the options is able to enforce its position and exercise limits against the CBOE member. The proposal eliminates this loophole and strengthens the Exchange's rules by requiring a CBOE member who trades non-CBOE listed option contracts on another exchange, and who is not a member of that exchange, to comply with the option position and exercise limits set by the exchange where the transactions are effected.[12]

As the Commission has noted in the past,[13] options position and exercise limits are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designated to minimize the potential for mini-manipulations[14] and for corners or squeezes of the underlying market. They also impose a ceiling on the maximum position an investor with inside corporate or market information can establish through the use of options. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. The proposal extends the benefits of the position and exercise limit rules to include all exchange-traded options transactions entered into by CBOE members by bringing a CBOE member's customer transactions in non-CBOE exchange listed options within the CBOE's jurisdiction for position and exercise limits purposes. The Commission also notes that violations under CBOE Rules 4.11 and 4.12 for transactions that do not comply with the position and exercise limits of another exchange will be subject to the same fines or disciplinary action for position and exercise limit violations as those applicable to CBOE options.[15]

The Commission believes that the proposal to amend the text of CBOE Rule 4.12 to reflect the current position limits for equity options, which were not included in the text of CBOE Rule 4.12 when the equity option position limits were increased in 1993, should benefit market participants by ensuring the accuracy of CBOE Rule 4.12. The text of CBOE Rule 4.12, as amended, will reflect the Exchange's current equity option position and exercise limits.

The Commission also believes that it is reasonable for the Exchange to amend CBOE Rules 4.11 and 4.12 to indicate that the Exchange's position and exercise limits are now established by the staff of the CBOE, rather than by the CBOE's Board. In this regard, as noted above, any proposal to increase the Exchange's position and exercise limits must be approved by the Commission.

The Commission finds good cause for approving Amendment No. 1 to the proposal on an accelerated basis. Amendment No. 1 to the proposal strengthens and clarifies the CBOE's proposal by indicating that the CBOE will apply the position limit exemptions, interpretations, and policies of the exchange where the transactions are effected. Accordingly, the Commission believes it is appropriate and consistent with Sections 6(b)(5) and 19(b) (2) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

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[7] The Commission notes that, generally, the options exchanges have adopted uniform options position and exercise limits.

[8] The CBOE will also apply the position limit exemptions, interpretations, and policies of the exchange where the transactions are effected. *See* Amendment No. 1, *supra* note 5.

[9] *See* Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR–CBOE–93–43).

[10] The Commission notes that any proposal to revise the Exchange's position and exercise limits must be filed with, and approved by, the Commission pursuant to Section 19(b)(2) under the Act.

[11] 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).

[12] Under the proposal, the CBOE will also apply the exemptions, interpretations, and policies of the exchange where the options transactions are effected. *See* Amendment No. 1, *supra* note 5.

[13] *See, e.g.*, Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR-CBOE–93–43).

[14] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

[15] *See* CBOE Rule 17.50, "Imposition of Fines for Minor Rule Violations." Violations of the Exchange's exercise limit rules are subject to disciplinary action under Chapter 17, "Discipline," of the CBOE's rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted October 13, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the amended proposed rule change (File No. SR-CBOE–95–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17].

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23558 Filed 9–21–95; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. § 78s(b)(2) (1982).

[17] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36245; File No. SR–NASD–95–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Effective Date of an Amendment to the Prompt Receipt and Delivery of Securities Interpretation Concerning Affirmative Determinations Made in Connection with Short Sales

September 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 6, 1995,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The NASD is proposing to change the effective date of a rule change previously approved by the Commission regarding an amendment to the NASD's Prompt Receipt and Delivery of Securities ("Interpretation") issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice that deals with affirmative determinations made by members in connection with short sales.[2] Specifically, the NASD proposes to delay, until February 20, 1996, the effectiveness of the portion of the rule change that prohibits NASD members from using blanket or standing assurances that securities are available for borrowing to satisfy their affirmative determination requirements. An affirmative determination as to stock availability and annotation of that affirmative determination must still be made for each and every transaction, however. Thus, a firm that relies on a fax sheet or other standing assurance as to stock availability must annotate such reliance for each short sale transaction.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 12, 1994, the SEC approved an NASD rule change (SR–NASD–94–32) that amended the Interpretation.[3] Specifically, the new rule requires members to annotate, on the trade ticket or on some other record maintained for that purpose by the member firm, the following information:

1. If a customer assures delivery, the member must annotate that conversation noting the present location of the securities; whether the securities are in good deliverable form; and whether they will be delivered to the firm within time for settlement; or
2. If the member locates the stock, the member must annotate the identity of the individual and firm contacted who offered assurance that the shares would be delivered or were available for borrowing by settlement date; and the number of shares needed to cover the short sale.

The amendment also provided that the manner by which a member or person associated with a member annotates compliance with this "affirmative determination" requirement (e.g., marking the order ticket, recording inquiries in a log, etc.) is left for each individual firm to decide. In addition, the amendment clarified that an affirmative determination and annotation of that affirmative determination must be made for each and every transaction since a "blanket" or standing assurance that securities are available for borrowing is not acceptable to satisfy the affirmative determination requirement ("standing assurance provision"). Thus, by requiring firms to annotate each and every affirmative determination, the amendment made clear the NASD's policy that firms cannot rely on daily fax sheets of "borrowable stocks" to satisfy their affirmative determination requirements under the Interpretation.

In NASD Notice to Members 94–80, the NASD announced that the effective date of the amendments to the Interpretation would be November 30, 1994. Based upon feedback from a broad spectrum of NASD members that compliance with the amended Interpretation would not be possible by November 30, 1994, due to a variety of operational adjustments that needed to be made, the NASD decided to postpone the effective date of the amendments to the Interpretation until January 9, 1995, to give member firms sufficient time to prepare for the rule change.[4]

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[1] The proposed rule change was initially submitted on August 31, 1995, but was amended prior to publication in the **Federal Register**. The amendment was intended to clarify the requirements imposed on NASD members with respect to the annotation requirement. The amendment is available for copying in the Commission's Public Reference Room.

[2] *NASD Manual*. Rules of Fair Practice, Article III, Sec. 1, (CCH) ¶ 2151.04.

[3] *See* Securities and Exchange Act Release No. 34653 (September 12, 1994), 59 FR 47965 (September 19, 1994).

In addition, in light of the NASD's concern that the prohibition against the use of daily fax sheets and other "blanket" or standing assurances may have created an unnecessarily burdensome regulatory requirement of NASD members, the NASD decided to postpone the effective date of the standing assurance provision until August 1, 1995, to give the NASD the opportunity to determine whether to amend or delete the rule or let it go into effect as approved by the SEC.[5] The effective date for the standing assurance provision was extended once more, until September 5, 1995.[6] Because the NASD is still in the process of evaluating comments raised by market participants concerning the provision, the NASD is proposing to further postpone the effective date of the standing assurance provision until February 20, 1996.[7]

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires that the rules of the NASD, among other things, remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest, in that delaying the effective date of the standing assurance provision until February 20, 1996, will assist members in complying with the new rule. Similarly, the NASD believes that delaying the effective date of the standing assurance provision until February 20, 1996, will give the NASD and its members ample time to consider whether to retain this provision or modify it to better reflect industry practice, thereby avoiding member firm confusion and ensuring that NASD rules are crafted to achieve their regulatory goals in a manner that is the least burdensome for the membership.

B. Self-Regulatory Organization's Statement on Burden on Competing

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and paragraph (e) of Rule 19b–4 promulgated thereunder in that it changes the effective date of a new provision of the NASD's rules and is therefore a policy relating to the administration or enforcement (i.e., the effective date) of a new rule of the Association.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–38 and should be submitted by October 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23559 Filed 9–21–95; 8:45 am]

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[4] *See* NASD Special Notice, dated November 29, 1994.

[5] *See* Securities Exchange Act Release No. 35207 (January 10, 1995), 60 FR 3445 (January 17, 1995).

[6] *See* NASD Special Notice, dated July 28, 1995.

[7] Of course, if the standing assurance provision were to be modified or deleted prior to February 20, 1996, pursuant to a rule proposal approved by the Commission, the provision would not go into effect in its current form on February 20, 1996.

[8] 17 CFR 200.30(a0(12).

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, as amended (P.L. 104–13 effective October 1, 1995), The Paperwork Reduction Act. Since the last list was published in the **Federal Register** on September 1, 1995, the following information collections have been proposed or will require extension of the current OMB approvals.

(Call the Reports Clearance Officer on (410) 965–4142 for a copy of the form(s) or package(s), or write to her at the address listed after the information collections.)

SSA Reports Clearance Officer: Charlotte S. Whitenight.

1. Psychiatric Review Techniques—0960–0413. The information on form SSA–2506 is used by the Social Security Administration to evaluate the severity of mental impairments in adults who have filed a claim for disability benefits. The affected public consists of State Disability Determination Agencies who are responsible for reviewing the claim from beneficiaries/recipients and who report their findings to SSA.

Number of Respondents: 54.

Frequency of Response: 15,822 per State Agency.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 213,594 hours.

2. Questionnaire for Children Claiming SSI Benefits—0960–0499. The form SSA–3881 is used by the Social Security Administration to obtain information which is needed to evaluate disability in children claiming supplemental income payments. The respondents are such claimants whose alleged disability does not meet our medical listings.

Number of Respondents: 177,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 59,000 hours.

3. Annual Registration Statement Identifying Separated Participants with Deferred Benefits—0960–NEW. The information on form Schedule SSA is used by the Social Security Administration to provide beneficiaries information about their future pension benefits. The respondents are administrators of private pension plans.

Number of Respondents: 345,544.

Frequency of Response: 1.

Average Burden Per Response: 5 hours, 47 minutes (Recordkeeping—5.50 hours; Learning about the form—.10 hours; Preparing form—.19 hours.

Estimated Annual Burden: 2,000,700 hours.

Social Security Administration

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: September 18, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–23533 Filed 9–21–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: September 18, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Gemma deGuzman, Information Resource Management (IRM) Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on September 18, 1995:

DOT No: 4116

OMB No: 2115–New.

Administration: United States Coast Guard.

Title: Navigation Safety Equipment for Towing Vessels.

Need for Information: Under the Ports and Waterways Safety Act (Pub. L. 92–340), vessels that are 26 feet or more in length and engaged in towing services will be required to install and use specified navigation and communication equipment.

Proposed Use of Information: Coast Guard's inspectors will use this information to determine if a vessel is in compliance, or in the case of a casualty, whether failure to meet the regulations contributed to that casualty.

Frequency: Annually.

Respondents: Owners and Operators of Towing Vessels.

Number of Respondents: 5,203.

Burden Estimate: 336,102 hours.

Form(s): None.

Average Burden Hours Per Response: 64.6 hours.

DOT No: 4117

OMB No: 2115–0592.

Administration: United States Coast Guard.

Title: 46 CFR Subchapter L; Reporting, Recordkeeping and Marking.

Need for Information: Under 46 USC 3305 and 3306, the Coast Guard must prescribe necessary regulations and conduct inspections of offshore supply vessels to ensure the safety of individuals and property onboard.

Proposed Use of Information: The information will be used to ensure that vessels are in compliance with the prescribed regulations and the Coast Guard is aware when significant maintenance or repair work is done to offshore supply vessels.

Frequency: On occasion.

Burden Estimate: 2,051.25 hours.

Respondents: Owners or operators of offshore supply vessels.

Number of Respondents: 45.

Form(s): None.

Average Burden Hours Per Response: 15 minutes reporting and 1 hour recordkeeping.

DOT No: 4118

OMB No: 2115–0585.

Administration: United States Coast Guard.

Title: Marine Portable Tanks (MPT), Alteration Non-Specification Portable Tanks; Approval.

Need for Information: Title 46 CFR 64.9 specifies that each owner or manufacturer who wants to alter an existing MPT must request a written approval from the Commanding Officer, Coast Guard Marine Safety Center.

Proposed Use of Information: Coast Guard will use this information to ensure that alterations to the tank will retain the level of safety to which it was originally designed.

Frequency: On occasion.

Burden Estimate: 53 hours.

Respondents: Owners and manufacturers of marine portable tanks.

Number of Respondents: 1.

Form(s): None.

Average Burden Hours Per Response: 53 hours reporting.

DOT No: 4119.

OMB No: 2120–0067.

Administration: Federal Aviation Administration.

Title: Air Taxi and Commercial Operator Airport Activity Survey.

Need for Information: The information is needed to allocate Airport Improvement Program (AIP) funds to airports as required by 49 USC Section 40102(a)(2), 40104, 47101(a)(1), 47102(10), 47104(a), 47114(b), 47114(c)(1)(A) are the sections of 49 USC that authorize the collection.

Proposed Use of Information: The data collected serves as the only source of data for charter and nonscheduled passenger data by Part 135 operator (both air taxis and commuters). The data received on the form is then incorporated into the Air Carrier Activity Information System which is used to determine whether an airports eligible for AIP funds and for calculating primary airport sponsor apportionments as specified by Title 49 USC.

Frequency: Annually.

Burden Estimate: 423 hours annually.

Respondents: Business and State and Local Governments.

Number of Respondents: 325.

Form(s): FAA Form 1800–31.

Average Burden Hours Per Response: 1.3 hours.

DOT No: 4120.

OMB No: 2117–0049.

Administration: Research and Special Programs Administration (RSPA).

Title: Recordkeeping Requirements for Gas Operators.

Need for Information: The gas pipeline safety regulations (49 CFR 192) require gas pipeline operators to maintain a series of test, inspection, and maintenance records so that compliance can be ascertained.

Proposed Use of Information: This information will be used by RSPA to ascertain from the information compliance with regulations since most of the operator's facilities are buried underground and are not readily accessible.

Frequency: On occasion.

Burden Estimate: 1,063,517 hours.

Respondents: Natural Gas Operators.

Number of Respondents: 54,700.

Form(s): None.

Average Burden Hours Per Response: 19.44 hours.

DOT No: 4121

OMB No: 2120–0569.

Administration: Federal Aviation Administration.

Title: Airport Grants Program.

Need for Information: The Airport and Airway Improvement Act (AAIA) of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987 (Public Law 100–223) prescribes policies and procedures for administration and management of the Airport Improvement Program (AIP).

Proposed Use of Information: This information through preapplications, applications and amendments is used to verify that a particular sponsor and airport is eligible for Federal assistance. Financial reports and requests for payment are used in the grant programs' fund control process, payment process, and accounting systems. The data is used by FAA Airports personnel and accountants to ensure that grant obligations are not exceeded and revenue is not diverted. Performance reports by FAA personnel to determine that project performance goals are being met.

Frequency: On occasion and quarterly.

Burden Estimate: 67,714 hours annually.

Respondents: Businesses, State, Local or Tribal Governments.

Number of Respondents: 1950.

Form(s): FAA Forms 5100–108, 5100–30, 5100–125, 5370–1.

Average Burden Hours Per Response: 28 hours.

Issued in Washington, D.C. on September 18, 1995.

Jim Harrell,

Computer Specialist, Information Resource Management (IRM) Strategies Division.

[FR Doc. 95–23541 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 95–005]

Area To Be Avoided Off the Washington Coast

AGENCY: Coast Guard, DOT.

ACTION: Notice of results of public meeting and request for comments.

SUMMARY: The Coast Guard recently held a public meeting and requested written comments on whether the applicability of the Area To Be Avoided off the Washington Coast should be expanded to include vessels other than those carrying cargoes of oil or hazardous materials. The Area To Be Avoided, as adopted by the International Maritime Organization, recommends that all ships, including barges, carrying cargoes of oil or hazardous materials avoid the area. Based on the information received at the public hearing and in the written comments, the Coast Guard has determined that changes to the applicability of the Area To Be Avoided are not warranted at this time.

ADDRESSES: Written comments and the transcript of the public meeting are available for inspection or copying at Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593; Thirteenth Coast Guard District, 915 Second Avenue, Room 3410, Seattle, WA 98174; and at the Olympic Coast National Marine Sanctuary, 138 W. First Street, Port Angeles, WA 98362–2600 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Project Manager, Vessel Traffic Services Division, phone (202) 267–0415. This telephone is equipped to take messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1994, the Maritime Safety Committee of the International Maritime Organization (IMO) adopted the Area To Be Avoided off the Washington Coast (ATBA), recommending that all ships, including barges, carrying cargoes of oil or hazardous materials avoid the area. The ATBA, which was established to reduce the risk of marine casualty and resulting pollution and damage to the environment of the Olympic Coast National Marine Sanctuary, became effective on June 7, 1995. The boundaries of the ATBA do not overlay the Sanctuary boundaries, but are in close proximity.

On January 27, 1995, the Coast Guard published a request for comments and notice of meeting in the **Federal Register** (60 FR 5454) to obtain comment on whether the ATBA should apply to additional categories of vessels. Forty-two people attended the meeting, which was held on February 23, 1995, in Seattle, Washington. In response to comments, on March 6, 1995, the Coast Guard published a notice in the **Federal Register** (60 FR 12276) to extend the comment period until April 17, 1995.

The eighteen attendees who made oral statements at the meeting represented the Olympic Coast National Marine Sanctuary, Coalition of Washington Ocean Fishermen, Washington Public Ports Association, American Waterways Operators, Washington Environmental Council, Mayor of City of Hoquiam, Port of Grays Harbor, American Factory Trawler Association, Washington State Department of Ecology, Washington State Office of Marine Safety, Puget Sound Steamship Operators, Arctic Storm, Inc., Tyson Seafood Group, Jones Stevedoring Company, Makah Tribal Council, United Catcher Boats, Port of Seattle, and the Center for Marine Conservation. In addition to the oral statements, the Coast Guard received 48 written comments from individuals, the fishing industry, charter boat owners and operators, vessel associations, shipping agents, environmental organizations, ports officials, Chambers of Commerce, Congress of the United States, Washington State Legislature, and city, county, state, and Federal Government agencies. Six of the eighteen speakers also provided written

comments. Over 50% of the written comments were from people who derive a significant portion of their income from fish caught within the boundaries of the ATBA. Fifteen of the speakers at the meeting and 45 of the 48 written comments were opposed to any changes to the ATBA; 5 commenters requested change in the applicability of the ATBA.

Discussion of Comments

Comments Recommending Changes

Five commenters recommended that the categories of vessels to which the ATBA applies be expanded. One commenter noted that the ATBA applies to only 15 percent of vessels that currently navigate the area. One commenter recommended that all vessels and barges, in addition to those carrying oil or hazardous materials as cargo, avoid the area. Four commenters want all vessels over 500 gross tons to avoid the area, and two of these commenters would exempt fishing, military vessels, nature tour vessels, and tugs pulling barges carrying non-hazardous cargoes.

Four commenters were concerned with the consequences of a spill of large amounts of bunker fuel. They noted that the tank vessels and barges to which the ATBA currently applies are not the only vessels carrying large quantities of oil. They specifically mentioned freighters and bulk carriers which carry large quantities of bunker fuel. One commenter stated that 55 percent of the vessels, navigating in the area and greater than 80,000 dead weight tons, are bulk carriers. When inspected by the Washington State Office of Marine Safety, 59 percent of these vessels had deficiencies. These commenters believed that age and poor condition of these ships, and the history of oil spills and the environmental sensitivity of the area are ample reasons to expand the applicability of the ATBA to additional vessels.

Comments Recommending No Change

On behalf of the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management, the Olympic Coast National Marine Sanctuary Manager stated that the original ATBA proposal was aimed at providing enhanced protection from the greatest threat to Sanctuary resources, i.e., vessels carrying cargoes of oil or hazardous materials. NOAA also stated that the Sanctuary is not an exclusion area and that safe marine transportation and commercial fishing are two commercial uses compatible with sanctuary designation.

Commenters generally agreed that the ATBA as adopted should not be changed. These commenters were generally concerned that any changes would adversely impact trade competitiveness and jobs in struggling coastal Washington communities. They felt that expanding the applicability of the ATBA to additional categories of vessels would adversely affect current and future users of this area who depend on it for fishing, recreation, and maritime trade. They were also concerned about the safety of any additional vessels recommended to operate outside the ATBA boundaries which might increase the crossing or meeting situations and the probability of vessel collisions.

Economic Concerns: Commenters who wanted no change in the applicability of the ATBA discussed a variety of issues concerning the economic competitiveness of Washington ports. They stated that marine transportation is a crucial part of the state's economy and the ability to compete in the full range of shipping markets would be compromised by an expansion of the applicability of the ATBA. They were particularly concerned that Washington ports could lose their natural advantage in cargo movements to Asia; South America and other regions. Commenters also stated that changing the applicability of the ATBA would adversely affect the loggers. Due to the drop in log exports, only partial loads are being taken by vessels calling in a Columbia River port, Grays Harbor, and a Puget Sound port. Additionally, if the ATBA were not available for use by fishing vessels, it would adversely affect their ability to maintain family-wage jobs.

Safety Concerns: Commenters discussed the following factors as affecting safety of additional vessels operating outside the ATBA: (1) Sea state and weather changes outside the ATBA; (2) increased probability of vessel collisions immediately west of the ATBA boundary if vessels currently operating in the ATBA remain outside; (3) increased transit time caused by operating outside the ATBA could result in vessels operating at higher speeds to make up time lost; and, (4) interference between commercial vessel traffic and military operations.

Conclusion

The Coast Guard has carefully considered all the comments received and concludes that expanding the applicability of the ATBA to include vessels and barges other than those carrying cargoes of oil or hazardous materials is not justified at this time.

Dated: September 15, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation, Safety and Waterway Services.

[FR Doc. 95–23520 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–067]

Reorganization of the Office of Marine Safety, Security and Environmental Protection

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is announcing the comprehensive reorganization of the Office of Marine Safety, Security and Environmental Protection (G–M). Though all existing functions will continue to be performed, the office is being extensively reorganized, with no direct comparability between the new organizational units and the old ones. This notice describes the new organizational structure, lists interim telephone numbers, and announces the establishment of a customer help line to assist the public in locating the correct division, branch or project officer.

FOR FURTHER INFORMATION CONTACT: 1. To locate the correct division, branch, or project manager, call (703) 560–4787 between 8:30 a.m. and 5:30 p.m., Monday through Friday.

2. For further information on the reorganization, call CDR Theron "Pat" Patrick or MSTCM Bruce Peters at (703) 235–1819 between 8 a.m. and 3 p.m., Monday through Friday, or write to the MTRANS Reorganization Staff, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Room B723, Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION:

Description of the New Directorates

The Office of Marine Safety, Security and Environmental Protection (G–M), a Headquarters staff element, is being reorganized into four major divisions or directorates. The Standards, Field Activities, and Resources Directorates are located at Coast Guard Headquarters. The National Maritime Center (NMC) is located in Arlington, VA. Each directorate is headed by a senior civilian (SES/GM–15) or military officer (06) who serves as an associate program director under the Chief of G–M, an Admiral.

Most of the necessary physical relocation will be accomplished during August and September 1995. The new organizational symbols and titles have been in use since August 1, 1995.

The purpose of the reorganization is to improve services to distinct customer groups and to be more effective and responsive to customer's needs. It will enhance the expertise and effectiveness of the G–M staff. Most importantly, it will better enable the Office to meet the challenges of the new century, yet reduce costs, by applying a complete system approach to safety, service, and environmental protection.

Organization Chart

The following is a chart showing the titles and symbols of the new units:

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Office of Marine Safety, Security and Environmental Protection

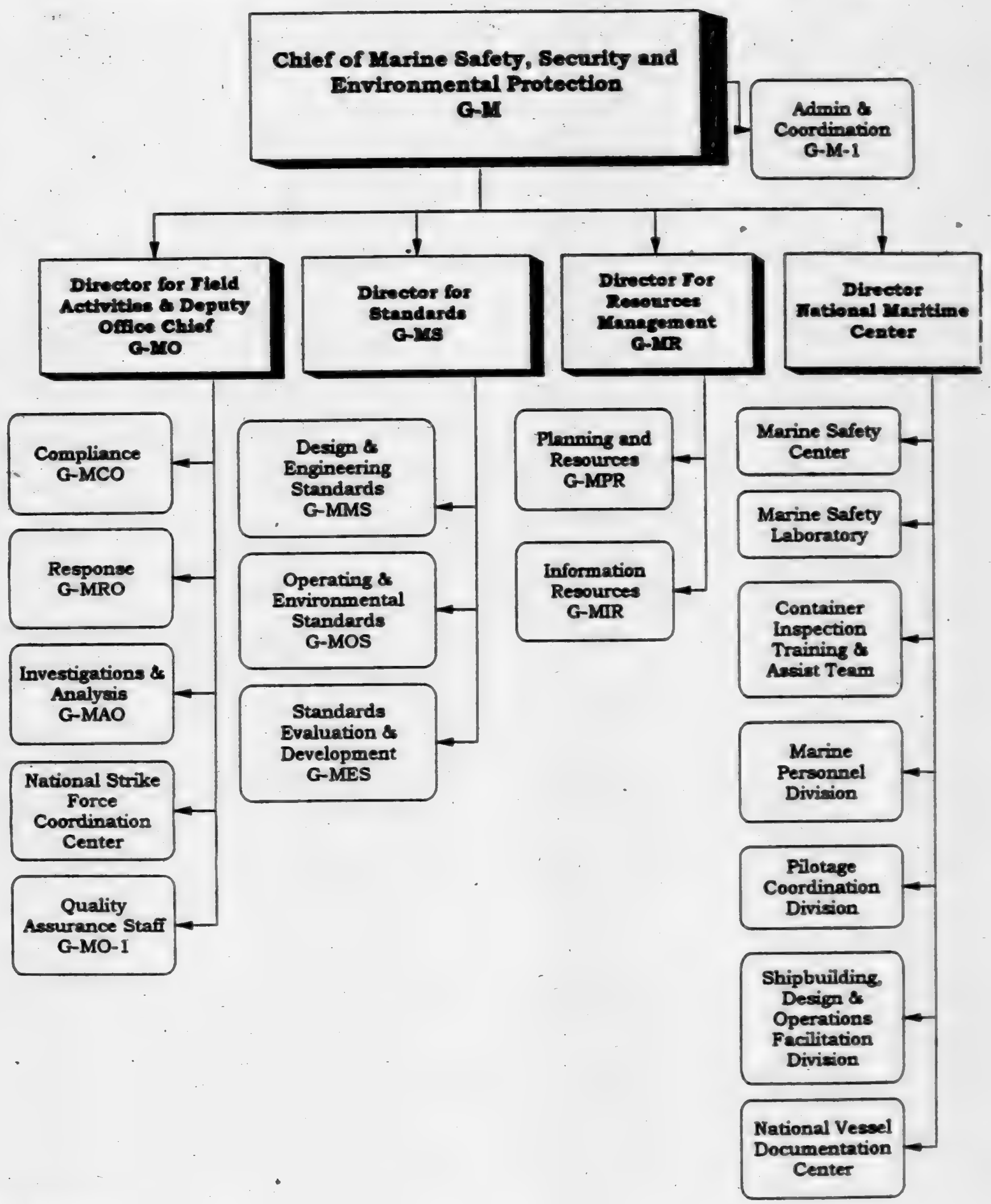
Chief of Marine Safety, Security and Environmental Protection G-M
Admin & Coordination G-M-1
Director for Field Activities & Deputy Office Chief G-MO
Director for Standards G-MS
Director For Resources Management G-MR
Director National Maritime Center
Compliance G-MCO
Response G-MRO
Investigations & Analysis G-MAO
National Strike Force Coordination Center
Quality Assurance Staff G-MO-1
Design & Engineering Standards G-MMS
Operating & Environmental Standards G-MOS
Standards Evaluation & Development G-MES
Planning and Resources G-MPR
Information Resources G-MIR
Marine Safety Center
Marine Safety Laboratory
Container Inspection Training & Assist Team
Marine Personnel Division
Pilotage Coordination Division
Shipbuilding, Design & Operations Facilitation Division
National Vessel Documentation Center

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Functions of the Directorates

1. *Field Activities.* This directorate focuses on Coast Guard field commands, third parties acting on the Coast Guard's behalf, and their associated customers. It provides a focal point for policy guidance on field activities concerning prevention, response, investigation, and quality assurance. The Director for Field Activities also serves as the deputy chief of G–M.

2. *Standards.* This directorate works with industry and the public to develop design, engineering, operating, and environmental standards applicable to the marine community. The primary goals of this directorate are to lead the way in resolving maritime problems and to create solutions that emphasize safety and environmental protection. This directorate will take the lead in addressing the human element as the cause of more than 80% of all marine casualties.

3. *Resource Management.* This directorate focuses on internal Coast Guard matters (including other directorates, the NMC, and other Headquarters offices). It provides planning, budgeting, training, resource and information management, and program analysis to support marine safety and environmental protection missions. The directorate's primary goal is to provide the resources and services needed by the Standards and Field Activities directorates.

4. *National Maritime Center (NMC).* The NMC provides direct services to the public, including plan review and technical assistance for vessels, documentation of vessels, identification of oil, licensing of marine personnel, and management of seamen's records. The NMC will better enable the Coast Guard and industry, working together, to resolve problems and improve U.S. maritime competitiveness. The address of the NMC is Director, National Maritime Center, 4200 Wilson Boulevard, Suite 510, Arlington, VA 22203. Certain units are located in other States as indicated in the Interim Telephone Numbers section of this Notice.

INTERIM TELEPHONE NUMBERS

Title	Staff Symbol	Interim Phone No.
Chief, Office of Marine Safety, Security and Environmental Protection	(G–M)	(202) 267–2200
Director For Field Activities & Deputy Office Chief	(G–MO)	(202) 267–2201
Quality Assurance Staff	(G–MO–1)	(202) 267–1080
Compliance Division	(G–MCO)	(202) 267–2978
Licensing and Manning Branch	(G–MCO–1)	(202) 267–0475
Vessel Compliance Branch	(G–MCO–2)	(202) 267–1464
Port and Facility Compliance Branch	(G–MCO–3)	(202) 267–0495
Response Division	(G–MRO)	(202) 267–0518
Port and Environ. Mgmt. Branch	(G–MRO–1)	(202) 267–0419
Plans and Preparedness Branch	(G–MRO–2)	(202) 267–6714
Response Operations Branch	(G–MRO–3)	(202) 267–2611
Investigations and Analysis Division	(G–MAO)	(202) 267–1430
Investigations Branch	(G–MAO–1)	(202) 267–1430
Compliance Analysis Branch	(G–MAO–2)	(202) 267–1417
Director for Standards	(G–MS)	(202) 267–2970
Design & Engineering Standards Div	(G–MMS)	(202) 267–2967
Human Element & Systems Engineering	(G–MMS–1)	(202) 267–2997
Naval Architecture Branch	(G–MMS–2)	(202) 267–2988
Engineering Systems Branch	(G–MMS–3)	(202) 267–2206
Lifesaving & Fire Safety Stds. Branch	(G–MMS–4)	(202) 267–1076
Operating & Environmental Stds. Div	(G–MOS)	(202) 267–0215
Maritime Personnel Qualifications Br	(G–MOS–1)	(202) 267–0229
Vessel & Facility Operating Stds. Br	(G–MOS–2)	(202) 267–1181
Hazardous Materials Stds. Branch	(G–MOS–3)	(202) 267–1217
Environmental Stds. Branch	(G–MOS–4)	(202) 267–0707
Standards Evaluation & Development Div	(G–MES)	(202) 267–6826
Standards Evaluation & Analysis Br	(G–MES–1)	(202) 267–6827
Project Development Branch	(G–MES–2)	(202) 267–1492
Director For Resources Management	(G–MR)	(202) 267–6955
Planning and Resources Division	(G–MPR)	(202) 267–1401
Strategic Plans & Analysis Branch	(G–MPR–1)	(202) 267–1401
Budget & Resources Branch	(G–MPR–2)	(202) 267–1401
Human Resources Branch	(G–MPR–3)	(202) 267–1401
Information Resources Division	(G–MIR)	(202) 267–6993
Data Admin. Branch	(G–MIR–1)	(202) 267–0266
System Support Branch	(G–MIR–2)	(202) 267–0452
System Development Branch	(G–MIR–3)	(202) 267–0452
Director, National Maritime Center	(NMC)	(703) 235–0002
Shipbuilding, Design, and Operations Facilitation Staff	(NMC–1)	(703) 235–0013
Container Inspection Training & Assist Team (Oklahoma City, OK)	(NMC–1A)	(405) 954–8985
Pilotage Coordination Division	(NMC–2)	(703) 235–0014
Budget, Admin. & Planning Division	(NMC–3)	(703) 235–1561
Marine Personnel Division	(NMC–4)	(703) 235–0011
Marine Personnel Admin. Branch	(NMC–4A)	(703) 235–1951
Exam Administration Branch	(NMC–4B)	(703) 235–1300
Marine Safety Center	(MSC)	(202) 366–6480
National Vessel Documentation Center (Martinsburg, WV)	(NVDC)	(304) 271–2400/2405
Marine Safety Laboratory (Groton, CT)	(MSL)	(203) 441–2645

Dated: August 31, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–23516 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–14–P

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Riverside Municipal Airport, Riverside, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the city of Riverside, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the Noise Exposure Maps for Riverside Municipal Airport, Riverside, California is September 12, 1995.

FOR FURTHER INFORMATION CONTACT: Charles B. Lieber, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007. Telephone (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at the same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Riverside Municipal Airport, Riverside, California are in compliance with applicable requirements of Federal Aviation Regulations (FAR) Part 150, effective September 12, 1995.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and supporting documentation submitted by the city of Riverside. The specific maps under consideration are Exhibit 2G, "1994 Aircraft Noise Exposure" and Exhibit 2H "1999 Aircraft Noise Exposure" in the submission. The FAA has determined that these maps for Riverside Municipal Airport are in compliance with applicable requirements. This determination is effective on September 12, 1995. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of the Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutory required consultation has been accomplished.

Copies of the Noise Exposure Maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591
Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261
Mr. John Sabatello, Airport Director, Riverside Municipal Airport, 6951 Flight Road, Riverside, California 92504.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on September 12, 1995.

Robert C. Bloom,

Acting Manager, Airports Division, AWP–600 Western-Pacific Region.

[FR Doc. 95–23565 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc. Special Committee 185; Aeronautical Spectrum Planning Issues

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 185 meeting to be held October 10-11, 1995, starting at 9:00 a.m. The meeting will be held at the RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Welcome and Administrative Remarks; (2) Introductions; (3) Review and Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Review of Results of Working Group 1 Editorial Group Meeting; (6) Presentations; (7) Assignment of Tasks; (8) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax): Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 18, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–23584 Filed 9–21–95; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of priority areas for Commission research and amendment study. Request for public comment.

SUMMARY: As part of its statutory continuing responsibility to analyze sentencing issues, including the operation of the federal sentencing guidelines, the Commission has identified certain priorities as the principal focus of its work in the coming year and, in some cases, beyond. Following the practice of past years, the Commission invites comment on identified priorities (including the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to an identified priority). The Commission also invites comment on any other aspect of guideline application that it should address during the coming year.

DATES: Public comment should be received not later than October 31, 1995, to be considered by the Commission in shaping its work during the next year.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500 South, Washington, D.C. 20002–8002, Attention: Public Information—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent agency in the judicial branch of the United States Government, is empowered by 28 U.S.C. § 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. § 994(o), (p).

As in previous years, the Commission uses this announcement to solicit formal and informal comment regarding certain areas upon which the Commission expects to concentrate its attention during the coming year. This notice provides interested persons with an opportunity to inform the Commission of legal, operational, or policy concerns within the identified areas relating to the guidelines and to suggest specific solutions and alternative approaches.

Following are the priority areas for amendment study, research, or other planned actions identified by the Commission. Where possible, a general timeframe for the initiative is indicated. These timeframes should be considered subject to change as the Commission deems necessary.

- Measuring the Success of the Guidelines: A staff working group, under the direction of an outside consultant, has undertaken a number of projects that will measure the success of the guidelines in meeting the goals set forth in the Sentencing Reform Act. Projects related to just punishment, recidivism, and selective incapacitation are well underway. Other projects will examine offense seriousness, real-offense sentencing, judicial discretion, criminal history, alternatives to incarceration, and disparity.
- Guideline Simplification and Modification: A staff working group, under the direction of an outside consultant, will focus on simplifying and improving the guidelines. This effort will be informed substantially by the work, discussed above, measuring the success of the guidelines. In accordance with 28 U.S.C. § 994 (o), (p), and (x), the Commission intends that this process will involve consultation with a wide variety of interested groups and individuals. The Commission has prepared the following purpose statement for this working group:

Working Group on Guideline Simplification: Purpose Statement

I. Introduction

The Sentencing Commission, at its May meeting, identified comprehensive review of the federal guidelines system as a top agency priority. The Commission is well positioned to undertake this task, given the vast amounts of information available from the more than 225,000 cases sentenced under the guidelines during the past eight years, numerous appellate opinions issued on various guidelines issues, the growing body of academic literature and public comment, and the extensive empirical analysis of the guidelines conducted to date.

This purpose statement outlines the working group's proposed scope of inquiry and methodology.

II. Working Group Mandate

The objective of the working group's comprehensive review of the guidelines is twofold: 1) to reduce the complexity of guideline application ("simplification"); and 2) to improve federal sentencing by working closely with the judiciary and others to refine the guidelines (revisiting the balance of judicial flexibility/discretion and the availability of alternative punishments). The group will comprehensively and aggressively assess each major section of the guidelines, critique application complexities, and develop options for Commission consideration. Complexity is viewed as the source of confusion and frustration in guideline application. Moreover, this confusion results in unreliable application and judicial resistance—two outcomes that undermine the effectiveness of the guidelines.

Guideline complexity derives, in part, from fundamental decisions made by the original Commission in its effort to meet the Sentencing Reform Act's twin goals of: 1) assuring that the purposes of sentencing are met (i.e., just punishment, deterrence, incapacitation, and rehabilitation); and 2) providing certainty and fairness in meeting the purposes of sentencing while avoiding unwarranted disparities between similarly situated defendants (see 28 U.S.C. § 991(b)(1)). To ensure that the ramifications of all options for change are clear, the group will highlight the broader policy implications of its proposals (e.g., its effect on proportionality or a judge's ability to individualize sentences).

III. Methodology

The working group proposes the following strategy to assist commissioners in their deliberations on how they might simplify and improve the guidelines system. The group will prepare *concise* issue papers on major guideline topics to provide a foundation for Commission consideration of relevant issues and possible sentencing models. Each paper will:

- Review the history behind the original policy decision so as to ensure that the Commission is sensitive to the underlying principles and the impact of any revisions on these principles;
- Assess how the particular guideline is working (e.g., application complexities; frequency of use identified through monitoring data);
- Summarize information needs that might reasonably assist the Commission's decision making on the topic; and
- Outline broad options for refinement.

These papers will provide sound bases for commissioners, staff, and the public to understand the current guidelines and assess any proposals for change.

The group is currently drafting issue papers on the following topics:

1. Sentencing Reform Act (and subsequent sentencing legislation)
2. Drafting process used by initial Commission; major changes since that time
3. Real offense sentencing (Relevant Conduct)
4. Criminal history
5. Level of detail (specific offense characteristics)
6. Chapter Three adjustments
7. Departures/offender characteristics
8. Sentencing table/sentencing ranges
9. Availability of probation/split sentences (alternatives)
10. Multiple counts

This methodology will enable staff to provide the Commission the full range of options for reviewing and revising the guidelines. In its review, the working group will examine how state guideline systems have addressed issues that judges and practitioners have found particularly complex in the federal system. In addition, the group will consult closely with judges and practitioners and solicit a wide variety of public comment from the Criminal Law Committee of the Judicial Conference, Practitioners' and Probation Officers' Advisory Groups, Department of Justice, Federal and Community Defenders, and others. Finally, the working group will analyze all responsible suggestions for guideline reform from outside individuals and groups.

The simplification process should be developmental and done with caution because significant changes may result in unforeseen anomalies. Therefore, it is important that as the simplification working group develops proposals it ensures that the proposals: 1) be consistent with the Sentencing Reform Act; 2) be sensitive to case law; and 3) be aware of the underlying premises that the previous Commission used in developing the guidelines. This caution will ensure that the guidelines are an evolving set of standards that change as information and experience buttresses the need for change.

- Evaluation of Commission Staff Resources: The Commission has begun a program to measure the use of staff resources as presently allocated and to explore changes to the current staff resource allocation. This review is examining present procedures and processes to improve efficiency and determine strengths and weaknesses in various Commission functional components.
- Organizational Guidelines for Environmental Offenses: Development of fine guidelines for organizational defendants convicted of environmental offenses remains under consideration; however, the Commission expects that the guideline assessment and simplification efforts set forth above will receive priority attention.
- Substantial Assistance Working Group: This ongoing working group has recently completed the data collection portion of its study effort. The group is expecting to issue a report this fall.
- Implementation of Crime-related Legislation: The Congress is now considering legislation concerning terrorism, firearms, and other crime-related issues. The Commission will move promptly to implement any enacted legislation affecting criminal penalties through the promulgation of necessary guideline amendments or other actions as appropriate.
- Miscellaneous Issues: The Commission expects to propose for comment amendments to the food and drug guidelines. Amendments addressing some of the more important guideline application issues involving conflicting court interpretations also may be considered.

The Commission welcomes comments on the aforementioned priorities as well as any other aspect of guideline application or implementation of the Sentencing Reform Act.

Authority: 28 U.S.C. § 994 (a), (o), (p).

Richard P. Conaboy,

Chairman.

[FR Doc. 95–23552 Filed 9–21–95; 8:45 am]

BILLING CODE 2210-40-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Defense Policy Advisory Committee for Trade; Notice of Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of closed meeting. The September 14, 1995 meeting of the Defense Policy Advisory Committee for Trade was closed to the public.

SUMMARY: The meeting included a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I determined that the meeting concerned matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to any trade agreement the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: The meeting was held on September 14, 1995.

ADDRESSES: The meeting was held at the Pentagon, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Clayton Parker, Director of Intergovernmental Affairs, Office of the United States Trade Representative, Executive Office of the President (202) 395–6120.

Michael Kantor,

Office of the United States Trade Representative.

[FR Doc. 95–23546 Filed 9–21–95; 8:45 am]

BILLING CODE 3190-01-M

Third Country-by-Country Reallocation of the Tariff-rate Quota for Sugar

AGENCY: Office of the United States Representative, 600 17th Street, NW., Washington, DC 20508.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of a country-by-country reallocation of part of the in-quota quantity of the tariff-rate quota for imported sugar for the period that ends September 30, 1995.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Inquiries may be mailed or delivered to Tom Perkins, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Tom Perkins, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: On September 14, 1995, the United States Trade Representative determined and announced that countries to which an allocation had been made of the in-quota quantity under the sugar tariff-rate quota (TRQ) provided for in Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) would not be filing their allocations and that the amount of this shortfall would be reallocated to other supplying countries or areas. This notice documents this earlier announcement. Following is information on the quota shortfall and reallocation amounts for the September 14 announcement.

September 14, 1995, Reallocation

On September 14, 1995, the United States Trade Representative determined and announced that five countries would not be filling their allocations under the tariff-rate quota for sugar. Accordingly, their remaining quota balances are being reallocated. These countries (and the respective shortfall amounts being reallocated in MT, raw value) are: Bolivia 1,300 MT, Haiti 21,840 MT, the Philippines 15,400 MT, Mauritius 900 MT, and Trinidad-Tobago 85 MT. The amount of the total shortfall is 39,525 metric tons (43,569 short tons).

This amount has been reallocated among the following supplying countries in metric tons, raw value:

Country	Reallocated amount
Argentina	5,548
Australia	10,708
Brazil	7,000
Colombia	3,097
Fiji	1,162
Nicaragua	500
Panama	1,000
Peru	5,291
South Africa	2,967
Swaziland	705
Zimbabwe	1,547
Total	30,525

Note: The reallocation amount is zero for the ten minimum quota-holding countries including: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papau New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay, since the previously announced minimum allocation for these countries already exceeds the base import quota plus any reallocation adjustment.

This reallocation applies to the period ending September 30, 1995, only.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–23545 Filed 9–21–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 184

Friday, September 22, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [insert FR citation].

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., September 21, 1995.

CHANGES IN MEETING: Meeting concerning Acetone Petition HP 95–2 was canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 20, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–23746 Filed 9–20–95; 3:20 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, September 28, 1995 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bicycle Helmets

The staff will brief the Commission on a revised proposed safety standard for bicycle helmets, which the staff recommends based on technical assessments of comments received on the notice of proposed rulemaking (NPR) published in the **Federal Register** on August 15, 1994.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 20, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–23747 Filed 9–20–95; 3:20 am]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, September 27, 1995, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 20, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–23748 Filed 9–20–95; 3:20 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, September 19, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: Texas American Bank/Fort Worth, National Association, Fort Worth, Texas (Case No. 450–05993–95–BOD)

Matters relating to the Corporation's corporate and supervisory activities.

Application of Shoreline Bank, Benton Harbor, Michigan, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Edwardsburg Branch of Old Kent Bank, Grand Rapids, Michigan.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chariman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: September 19, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–23735 Filed 9–20–95; 2:27 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, September 26, 1995, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and/or by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Amendment to an Existing System of Records—Financial Institutions Investigative and Enforcement Records System.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which (1) delay the collection date for the first quarterly assessment payment that insured institutions must make for the first semiannual period of each year (first payment); (2) give insured institutions the option of prepaying the first quarterly payment during the prior December; and (3) replace the interest rate to be applied to underpayments and overpayments of assessments with a new rate.

Memorandum and resolution re: Proposed amendments to Part 339 of the Corporation's rules and regulations, entitled "Loans in Areas Having Special Flood Hazards," regarding lending requirements in areas having special flood hazards.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 19, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–23736 Filed 9–20–95; 2:27 pm]

BILLING CODE 6714–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 1:00 p.m., Thursday, September 28, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Approval of NCUA's Serving the Underserved Conference.
3. Proposed Rule: Amendments to Part 760, NCUA's Rules and Regulations, Flood Insurance.
4. Final Rule: Amendments to Section 701.21(c)(8), NCUA's Rules and Regulations, Prohibited Fees.
5. Final Rule: Amendments to Part 722, NCUA's Rules and Regulations, Appraisals.
6. Proposed Amendments to Interpretive Ruling and Policy Statement (IRPS) 94–1, Chartering and Field of Membership.

RECESS: 2:20 p.m.

TIME AND DATE: 2:30 p.m., Thursday, September 28, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Request from a Corporate Federal Credit Union for a Waiver from Section 704.6, NCUA's Rules and Regulations. Closed pursuant to exemption (8).
3. Administrative Actions under Section 205 of the FCU Act. Closed pursuant to exemptions (8) and (9)(B).
4. Request from a Federal Credit Union for a Community Charter Expansion. Closed pursuant to exemption (8).
5. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Personnel Actions. Closed pursuant to exemptions (2), (6), (8), and (10).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–23754 Filed 9–20–95; 8:45 am]

BILLING CODE 7535–01–M

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federal register

Friday
September 22, 1995

Part II

Department of Transportation

Federal Highway Administration

49 CFR Part 382

Controlled Substances and Alcohol Use and Testing; Foreign-Based Motor Carriers and Drivers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 382

[FHWA Docket No. MC–93–3]

RIN 2125–AD11

Controlled Substances and Alcohol Use and Testing; Foreign-Based Motor Carriers and Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is extending the applicability of rules on controlled substances and alcohol use and testing to include foreign-based drivers of motor carriers operating in the United States. This action is taken pursuant to the Omnibus Transportation Employee Testing Act of 1991 and is consistent with the international obligations of the United States. The rules will apply to all foreign-based drivers and employers, who are predominantly from Canada and Mexico, to the same extent as those based in the United States.

EFFECTIVE DATE: This rule is effective October 23, 1995.

FOR FURTHER INFORMATION CONTACT: For information regarding FHWA alcohol and controlled substances testing requirements regarding 49 CFR part 382: Office of Motor Carrier Research and Standards, (202) 366–1790. For information regarding alcohol and controlled substances testing legal issues: Office of the Chief Counsel—Motor Carrier Law Division, (202) 366–0834. For requests for presentations on implementation of the alcohol and controlled substance testing requirements in foreign countries: International Program (HPS–1), (202) 366–5370, Office of Motor Carrier Planning and Customer Liaison, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except United States Federal holidays.

For information regarding Department of Transportation (DOT) procedural issues and testing protocols in 49 CFR part 40: Director (S–1), (202) 366–3784, Office of Drug Enforcement and Program Compliance, Room 10317, Office of the Secretary of Transportation, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Office hours are from 9:00 a.m. to 5:30 p.m., e.t., Monday through Friday, except United States Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1988, the FHWA, along with certain other agencies within the Department of Transportation (the Department), adopted regulations requiring pre-employment, periodic, post-accident, reasonable cause and random controlled substances testing of safety sensitive employees, including commercial motor vehicle (CMV) drivers. The FHWA rule applied to certain CMV drivers while operating in the United States, regardless of whether they were based in a foreign country or the United States. The rule provided generally, however, that it would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rule as originally published further provided that it would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rules raises questions of compatibility with that country's laws or policies. *See* 53 FR 47134, codified at 49 CFR 391.81 *et seq.*

The FHWA subsequently amended its regulation to delay the effective date of controlled substances testing requirements for foreign-based drivers of foreign-based motor carriers on four occasions. *See* 54 FR 39546, September 27, 1989; 54 FR 53294, December 27, 1989; 56 FR 18994, April 24, 1991; 57 FR 31277, July 14, 1992. The primary reason for each delay was because the DOT thought it would be more effective to address the problem through bilateral or multilateral agreements and wanted to continue exploring the possibility of such an agreement. Prior to implementation of the North American Free Trade Agreement (NAFTA) on December 17, 1995, the only foreign-based motor carriers operating throughout the United States in significant numbers will be Canadians, with Mexicans confined to operating in limited commercial zones.

Meanwhile, on October 28, 1991, the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) was enacted. 49 U.S.C. 31306. The Omnibus Act requires the Secretary of Transportation to issue regulations requiring controlled substances and alcohol testing of CMV drivers who are subject to the commercial driver's licensing (CDL) requirements of the Commercial Motor Vehicle Safety Act of 1986. 49 U.S.C. Chapter 313. The final rule implementing such testing was published on February 15, 1994. *See* 59 FR 7302, codified at 49 CFR part 382. The 1994 rule replaced the current controlled substances testing rule in 49 CFR part 391, and instituted alcohol testing. With part 391 to be completely superseded by part 382 on January 1, 1996, the most recent compliance date in part 391 for foreign-based motor carriers was removed. *See* 60 FR 54, January 3, 1995.

The Omnibus Act applies to motor carriers and drivers operating in the United States, which includes foreign employers and drivers. The only express provision for foreign-based operations is that the new rule be "consistent with international obligations of the United States, and * * * shall consider applicable laws and regulations of foreign countries." 49 U.S.C. 31306(h). Thus, foreign-based drivers are required by the statute to be subject to testing to the extent such rules are consistent with United States international obligations, and the Secretary is granted the authority to deem the requirement satisfied by, and must take into consideration, the laws and regulations of foreign nations.

As part of its consideration of foreign laws, the FHWA solicited information from interested parties regarding the applicability of part 382 to foreign-based drivers. 57 FR 59536 (December 15, 1992) (advance notice of proposed rulemaking); 59 FR 7528 (February 15, 1994) (notice of proposed rulemaking). In the notice of proposed rulemaking (NPRM), the FHWA proposed to apply part 382 to foreign-based operations beginning on January 1, 1996, while continuing to explore the possibility of entering into agreements to recognize other nations' testing programs for purposes of compliance with part 382. In today's document, based upon comments received and the FHWA's intent to provide regulatory flexibility for foreign employers, the FHWA is adopting July 1, 1996, as the effective date for large foreign employers and drivers to comply with these regulations and July 1, 1997, as the effective date for small foreign employers and drivers to comply with these regulations. The FHWA has reconsidered the period when implementation of the rule is necessary and believes now that providing a two-tier implementation phase-in period for this rulemaking is consistent with the implementation phase-in periods provided to domestic employers in 1994. The FHWA believes that this is necessary to provide consistency and fairness to foreign employers.

On December 19, 1994, in a letter to United States Secretary of Transportation Federico Peña, Canadian Transport Minister Douglas Young indicated that the Canadian government

would not be introducing legislation on prevention of substance use in transportation at this time. Minister Young further stated that Canada's motor carrier industry should be allowed to develop a voluntary program "tailored to their particular needs."

II. Comments

There were twelve comments to the docket for the NPRM of February 15, 1994. Two of the twelve comments did not address the foreign-based testing issue. All references to a foreign nation in the other comments were to Canada or Mexico, with specific information provided about Canada but not about Mexico. No other nations were mentioned in the comments as a base from which drivers or motor carriers operate in the United States. The FHWA is aware of rare, limited instances of drivers from other nations operating in the United States.

Seven relevant comments were received prior to Transport Minister Young's letter to Secretary Peña, from the American Bus Association (ABA), the Owner-Operator Independent Drivers Association (OOIDA), the American Trucking Associations, Inc. (ATA), the Embassy of Canada, the Canadian Bus Association (CBA), the Ontario Motor Coach Association (OMCA), and the Canadian Trucking Association (CTA). Three comments were received from one organization, the Canadian Coalition of Motor Carriers on Substance Use (CCMCSU), after Transport Minister Young's letter. The CCMCSU is a coalition of the CBA, the CTA, the Private Motor Truck Council of Canada, and the COM–CAR Owner-Operators' Association, and represents about 2,000 Canadian motor carriers. There are approximately 8,450 Canadian motor carriers listed on the FHWA's Motor Carrier Management Information System census database that operate in the United States.

A. Applicability

The ABA and the ATA strongly support applying the alcohol and controlled substances testing regulations to foreign-based drivers and motor carriers operating in the United States. The OOIDA stated that although it has never supported alcohol and controlled substances testing without cause, because testing is required of United States-based employers and drivers, "the Association reluctantly takes the position that the scope of the controlled substance and alcohol testing regulations should be expanded to include drivers of foreign-based motor carriers."

The comments of the CBA, CTA, and OMCA all supported the Embassy of Canada's comment favoring continuation of reciprocity discussions and negotiations in the interest of efficiency, cost, and comity. Once it became clear that Canada would not have reciprocal standards, at least for testing requirements, the CCMCSU commented that it was prepared to begin assisting implementation of the FHWA alcohol and controlled substances testing regulations in Canada.

FHWA Response: The statutory directive is clear. All drivers operating in the United States are to be subject to controlled substances and alcohol testing, regardless of domicile. The safety concerns which led to the Omnibus Act pertain equally to United States and foreign-based drivers. Furthermore, it would be unfair and competitively harmful to United States' drivers and employers to require them to incur significant costs not borne by foreign-based operations. This is particularly true in light of provisions in NAFTA designed to open United States motor carrier markets to operators based in Mexico, and vice versa, beginning in December 1995.

From their inception in 1988, part 391 controlled substances testing requirements applied to foreign-based carriers. Though Canadians continued to operate throughout the United States, foreign implementation was delayed several times while legal and other issues were discussed bilaterally with Canada. Foreign application of part 382 has, in effect, been delayed for the same reason. Now that it is clear that Canada will not establish, and further discussion will not result in, comprehensive national standards comparable to part 382, there is no reason to delay further, and, indeed, every reason to advance, this important safety rule. The imminence of Mexican operations in the United States reinforces this need.

Applicability of part 382 will therefore be extended to that class of drivers currently expressly excluded—foreign-based drivers of foreign-based motor carrier employers while operating in the United States. The rule as written can be administered wholly in the United States, though perhaps not most efficiently (see discussion below on Testing Procedures). Most parts of the rule can also be administered in Canada or Mexico, though some parts of the rule will have to be administered in the United States, such as use of U.S. Department of Health and Human Services (DHHS) certified laboratories, all of which are in the United States. In any event, unless otherwise provided by the FHWA at a later date based on recognition of comparable foreign standards, the rule will apply to foreign-based drivers of foreign-based employers to exactly the same extent and in exactly the same manner as to domestic operators.

Nevertheless, the FHWA remains very interested in continuing to explore bilateral agreements that would have the effect, subject to the FHWA's rulemaking and waiver authority in this area, of recognizing all or part of any Canadian program and Mexican standards as comparable to part 382, "consistent with the international obligations of the United States, and * * * [taking] into consideration any applicable laws and regulations of foreign countries." Two examples of comprehensive reciprocity agreements with Canada and Mexico are the Memoranda of Understanding that recognize their commercial driver's license (CDL) systems as equivalent to the United States requirements. See 54 FR 22392 (May 23, 1989); 57 FR 31454 (July 16, 1992).

B. Implementation Dates

The FHWA proposed in the NPRM that all foreign employers be required to comply with part 382 requirements beginning on January 1, 1996, one year after large United States carriers, and the same day as smaller United States carriers. The ABA commented that the date should be January 1, 1995, arguing that there was no justification for permitting discrimination against domestic motor carriers by granting an additional year to large foreign employers. The ATA hoped that further extension of the deadline would be unnecessary, but recognized "the complexities of imposing (the testing) requirements on foreign-based motor carriers and drivers, and that the details remain to be worked out as an integral part of harmonization of medical standards." The CCMCSU requested that FHWA impose testing requirements one year from the date of the final rule, in order to provide adequate time to develop and implement effective programs and overcome the perceived level of confusion of its members about implementing testing programs.

FHWA Response: The FHWA is most concerned with the effective implementation of this program and has always provided reasonable implementation schedules to domestic motor carriers to implement the complex requirements of controlled substances and alcohol testing. Given the changing nature and source of the DOT testing programs since 1988 and the numerous delays, the FHWA believes it would be unreasonable to expect a foreign-based employer to have sufficient understanding to begin implementation immediately.

The FHWA believes the best course is to allow foreign-based employers a similar implementation schedule as was provided to domestic employers. Large domestic employers were provided approximately one year to implement a testing program, while small employers were provided two years. The purpose was to give employers with different capabilities and resources sufficient time to implement technically sound testing programs.

Therefore, the FHWA has decided that large foreign-based employers will be required to implement part 382 on July 1, 1996, and small foreign-based employers will be required to implement part 382 on July 1, 1997. Foreign employers may not implement part 382 testing requirements until the dates specified.

Consistent with implementation by domestic employers, the factor which determines whether a foreign-based employer is considered large or small is the number of drivers of CMVs it employs or uses in North American operations on a certain date. That date will be December 17, 1995, which correlates with the NAFTA implementation date for allowing Mexican drivers to operate in California, Arizona, New Mexico, and Texas. Thus, all drivers assigned by the foreign-based employer to operate in North America on December 17, 1995, are to be included in the count of drivers.

C. Testing Procedures

Various comments from Canadian entities have requested that laboratories certified in Canada be acceptable for analysis of urine specimens for controlled substance testing. The CCMCSU also has asked whether foreign collection sites, medical review officers (MRO), substance abuse professionals (SAP), breath alcohol technicians (BAT), and other personnel involved in the testing process will be allowed to provide services in Canada, or may only United States-based providers provide such services.

FHWA Response: With respect to testing for controlled substances, the Omnibus Act requires that the Secretary incorporate the scientific and technical guidelines established by DHHS, including forensic standards for laboratory procedures and certification. The DOT has fulfilled this directive by requiring that all DOT-mandated testing be conducted only by DHHS-certified laboratories, all of which are currently in the United States.

The DOT recognizes the interest that Canadians have in using Canadian laboratories. Yet, it is critical that the integrity of the testing process be protected, which is why DHHS certification is required for testing in the United States. The DOT will work with the DHHS, Canada, and Mexico in determining whether foreign laboratory procedures may be DHHS certified or are forensically comparable such that reciprocity is possible.

As to the other elements mentioned, there is no requirement that urine collection personnel, MROs, SAPs, or BATs be licensed, certified, or trained in the United States. However, MROs and SAPs must be appropriately licensed or certified by the jurisdiction in which they perform such functions. The definition of an SAP may include professional categories irrelevant in Canada and Mexico, particularly certification by the National Association of Alcohol and Drug Abuse Counselors; however, the DOT is willing to discuss reciprocity with regard to national counterparts.

D. Enforcement

The ATA and the CCMCSU provided comments regarding the enforcement of the alcohol and controlled substances testing regulations on foreign-based motor carriers and drivers. The ATA suggests that foreign-based drivers be required to join a United States-based consortium within 30 days of their initial entry into the United States, pass both alcohol and controlled substance tests, and be issued tamper-resistant photo identification cards documenting compliance that must be presented to United States border officials as a condition of entry into the United States. The CCMCSU notes that it will work with FHWA to facilitate and educate Canadian motor carriers about compliance with these new rules, and suggests that the FHWA coordinate with Transport Canada officials to address program enforcement issues.

FHWA Response: Enforcement of controlled substances and alcohol testing requirements must be seen in the context of the entire motor carrier safety program. The United States and Canada have had a long-term, ongoing, and successful relationship enforcing motor carrier safety regulations. The distinguishing factor in the testing area is the absence of regulatory standards from Transport Canada. The FHWA will work with Transport Canada and the Canadian provincial governments to develop enforcement systems, using existing systems to the extent possible, but also considering some form of certification of compliance and other innovative methods.

The situation with Mexico is altogether different. Since Mexicans will only begin operating in the United States in December 1995, the enforcement systems in place on the northern border may be lacking on the southern. Controlled substances and alcohol testing enforcement will be a part of any systems established. Reciprocity and innovative methods will be considered.

III. Final Rule

The applicability section of the controlled substances and alcohol testing rule is being amended to include coverage of foreign-based drivers of foreign-based carriers. To accomplish this, § 382.103(c)(4), which excludes foreign-based carriers, is deleted. The implementation dates of the requirements of 49 CFR parts 40 and 382 will go into effect on July 1, 1996, for large foreign employers, and will go into effect on July 1, 1997, for small foreign employers. Accordingly, § 382.115 is being amended to require foreign-based carriers to implement the rule by July 1, 1996, and July 1, 1997, whichever is applicable.

IV. Education and Technical Assistance

The FHWA is committed to assisting foreign governments, motor carriers, and drivers to understand and implement effective alcohol and controlled substance testing programs that meet the FHWA requirements. The FHWA will, to the extent possible, make presentations, attend seminars, and meet with interested parties to assist with the foreign implementation of the FHWA alcohol and controlled substances testing rules. If a group of foreign entities would like FHWA involvement in educating their members or providing technical assistance in implementing alcohol and controlled substances testing programs, please provide a written request to the FHWA International Program, at least 4 weeks in advance, at the address noted above under the caption FOR FURTHER INFORMATION CONTACT.

Rulemaking Analyses and Notices; Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 but is significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA prepared a regulatory evaluation for the proposed rule. No comments were received with respect to the evaluation. The evaluation indicates that the rule will have a positive impact of $8.5 million discounted over ten years. A copy of the regulatory evaluation is included in the docket for this final rule.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the regulatory evaluation, the FHWA believes that the impact on small entities will be minimal. Furthermore, it should be noted that the Omnibus Act mandates alcohol and controlled substances testing irrespective of the size of the entities.

For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criterion contained in Executive Order 12612, and it has been determined that the proposed rulemaking has no federalism implications to warrant the preparation of a Federalism Assessment. This action would require foreign-domiciled employers to test their drivers for the use of controlled substances and alcohol. The action does not place any requirements on the States to comply with this rule.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements associated with compliance by foreign employers and drivers was included in the paperwork approval request submitted to and approved on February 28, 1994, by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has been assigned OMB control number 2125- 0543, approved through March 31, 1997.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR 382

Alcohol testing, Controlled substances testing, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: September 19, 1995.

Federico Peña,
Secretary of Transportation.

Rodney E. Slater,
Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending 49 CFR, subtitle B, chapter III, part 382 as set forth below:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING—[AMENDED]

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.48.

2. Section 382.103 is revised to read as follows:

§ 382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to:

(1) The commercial driver's license requirements of part 383 of this subchapter;

(2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The Canadian National Safety Code commercial driver's license requirements.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement an alcohol and controlled substances testing program that includes more persons than himself/herself as covered employees in the random testing pool.

(c) This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of parts 653 and 654 of this title; or

(2) Granted a full waiver from the requirements of the commercial driver's license program; or

(3) Who have been granted a State option waiver from the requirements of part 383 of this subchapter.

3. Section 382.115 is revised to read as follows:

§ 382.115 Starting date for testing programs.

(a) *Large domestic employers.* Each employer with fifty or more drivers on March 17, 1994, will implement the requirements of this part beginning on January 1, 1995.

(b) *Small domestic employers.* Each employer with fewer than fifty drivers on March 17, 1994, will implement the requirements of this part beginning on January 1, 1996.

(c) *All domestic employers.* Each domestic employer that begins commercial motor vehicle operations after March 17, 1994, but before January 1, 1996, will implement the requirements of this part beginning on January 1, 1996. However, such an employer may be subject to the requirements of Part 391, Subpart H on the date they begin operations, if operating commercial motor vehicles in interstate commerce. A domestic employer that begins commercial motor vehicle operations on or after January 1, 1996, will implement the requirements of this part on the date the employer begins such operations.

(d) *Large foreign employers.* Each foreign-domiciled employer with fifty or more drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1996.

(e) *Small foreign employers.* Each foreign-domiciled employer with less than fifty drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1997.

(f) *All foreign employers.* Each foreign-domiciled employer that begins commercial motor vehicle operations in the United States after December 17, 1995, but before July 1, 1997, must implement the requirements of this part beginning on July 1, 1997. A foreign employer that begins commercial motor vehicle operations in the United States on or after July 1, 1997, must implement the requirements of this part on the date the foreign employer begins such operations.

[FR Doc. 95–23590 Filed 9–21–95; 8:45 am]

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